UNITED STATES OF AMERICA

Congressional Record

PROCEEDINGS AND DEBATES OF THE 100th CONGRESS
FIRST SESSION

VOLUME 133—PART 21

OCTOBER 22, 1987 TO OCTOBER 29, 1987
(PAGES 28797 TO 30271)

UNITED STATES GOVERNMENT PRINTING OFFICE, WASHINGTON, 1987

For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

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HOUSE OF REPRESENTATIVES—*Thursday, October 22, 1987*

The House met at 10 a.m.

The Chaplain, Rev. James David Ford, D.D., offered the following prayer:

Gracious God, as we view the tragic divisions of our world that separate members of the human family, we pray that we may know the reconciling spirit of Your love. May we be brought together by our common thanksgivings for the blessed gifts of life that each person has received, and may we see our responsibility in the nurture of those precious gifts. May that love that will not let us go sustain our spirits and give us grace, now and evermore. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Hallen, one of its clerks, announced that the Senate had passed without amendment a bill of the House of the following title:

H.R. 3325. An act to designate the segment of Corridor V in the State of Alabama as the Robert E. (Bob) Jones, Jr. Highway.

The message also announced that the Senate has passed a bill of the following title, in which the concurrence of the House is requested:

S. 1793. An act to reinstate and make permanent the disregard of nonprofit organizations in-kind assistance to SSI and AFDC recipients.

SUMMITS—SAME TIME, NEXT YEAR

(Mr. LANTOS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LANTOS. Mr. Speaker, whatever the agenda of the upcoming summit meeting between President Reagan and Secretary Gorbachev, one item needs to be added—an agreement that henceforth the President of the United States and the leader of the Soviet Union will hold regular annual summit meetings.

The present haphazard pattern of on-again, off-again summits is no way to conduct relations between the superpowers—who between them have the capacity to destroy the world. Some way must be found to make summit meetings more productive and less iffy, while at the same time reducing the high expectations and sense of mystery that engulf such meetings.

To achieve this goal, today I am introducing legislation that hopefully will result in establishing a routine annual schedule for summit meetings between our President and the Soviet leader.

Unrealistically high expectations around summit meetings now are caused by their uncertainty and the commotion that leads up to them. In the weeks before and immediately after the 1985 Reagan-Gorbachev summit, Time magazine devoted no fewer than seven cover stories to the subject.

Scheduled meetings would muffle some of the hoopla and free the leaders from the absurd notion that they must perform miracles. The meetings would assume manageable proportions and take on a little of the mundane look and feel of the yearly economic summits among leaders of the Western industrialized democracies.

Institutionalizing summits into annual affairs is no panacea. But at the same time, they are a better way to conduct top-level talks between Moscow and Washington than we have now. They could reduce the chances for miscalculation and misunderstanding that have undercut past summits, and could prevent the superpowers from stumbling into war.

TESTIMONY OF MS. LESLIE HUNTER BEFORE SUBCOMMITTEE ON WESTERN HEMISPHERE AFFAIRS

(Mr. LAGOMARSINO asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LAGOMARSINO. Mr. Speaker, yesterday, the Subcommittee on Western Hemisphere Affairs held a hearing on the peace process in Central America. One of the witnesses before the subcommittee was Ms. Leslie Hunter, a representative of the bipartisan Central American Peace and Democracy Watch, who had just returned from 3 weeks in Nicaragua. She interviewed more than 80 people, including members of the Sandinista government, the civic opposition, the press, labor and professional organizations, plus representatives from the church and human rights groups.

Her comments are extremely enlightening in terms of giving a cross section of Nicaraguan opinion on the prospects for Sandinista compliance with the peace process. Her opinion, based on those interviews and observations, is that the Sandinistas appear determined to comply with the peace accords in a minimum way while trying to derive the maximum publicity benefit from it. I placed Ms. Hunter's testimony in the RECORD yesterday, and I urge my colleagues to carefully consider her statement.

CONGRESS MUST ADDRESS OUR NATION'S BUDGET AND TRADE DEFICITS

(Mr. KILDEE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. KILDEE. Mr. Speaker, I intended today to speak about the horrendous effect Gramm-Rudman sequestration could have on Federal programs which address the needs of the most vulnerable members of our society, the old, the young, and the poor.

☐ This symbol represents the time of day during the House proceedings, e.g., ☐ 1407 is 2:07 p.m.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

These people can least afford an 8.5 percent cut.

I intended to point out that cuts of $100 million for Head Start and $30 million for community service employment programs for older Americans will eliminate Head Start services for 40,000 of the 400,000 children served nationwide and 5,000 jobs for older Americans.

However, Mr. Speaker, Monday's financial meltdown on Wall Street provided us all with a sobering reminder of the desperate need to address our Nation's two deficits, budget and trade, in a sensible, bipartisan manner.

We are not going to outgrow our Federal budget deficit, we can no longer hide it with smoke and mirrors, we cannot turn the decisionmaking over to OMB's computers, and we certainly cannot wave it away with a constitutional amendment.

We need real deficit reduction, which can only be achieved through spending cuts and increased revenues.

Far from making Wall Street nervous, a prudent tax increase, designed to decrease the deficit, would demonstrate to domestic and international financial markets that Congress and the administration will not abdicate our responsibility to put the Federal house in order.

We have been warned.

It is time to get serious about addressing the Federal budget deficit.

FREEDOM OF INFORMATION IN NICARAGUA

(Mr. BALLENGER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BALLENGER. Mr. Speaker, my colleagues in the Congress today received a letter from Congressman LANTOS of California, Congressman PORTER of Illinois, and myself.

This letter asks for other Members to join us in a bipartisan effort to encourage freedom of information in Nicaragua.

Our appeal is addressed to President Daniel Ortega. It does not include any condemnation of the Sandinista government; rather it calls upon President Ortega to honor his commitment to allow the free flow of information, without censorship or prior restraint, in Nicaragua.

I would urge my colleagues to join in this effort by becoming cosignators of the letter.

CALL FOR BIPARTISAN SUMMIT ON BUDGET AND TRADE DEFICITS

(Mr. COELHO asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. COELHO. Mr. Speaker, all year, congressional Democrats have warned that, without action to reduce the budget and trade deficits, the administration's credit-card recovery would come to an end. The collapse of the markets Monday changed that from rhetoric to reality.

Congressional Democrats cannot address the twin towering budget and trade deficits alone. Without help from the administration, the Federal Reserve, and our Republican colleagues in the House, our efforts to cope with America's economic crisis will not succeed.

We need a real, bipartisan summit on the budget and trade deficits; a summit without preconditions or posturing; a summit that will not be adjourned without a grand compromise on the deficit.

Passing a guaranteed deficit reduction measure will be the first strong signal we can send that Congress means business. After watching corporate America lose $500 billion in value over 8 hours, Mr. Speaker, we should not argue over $12 billion in taxes collected over 1 year's time. It's time to take politics off the table and start talking about preserving America's economic future.

PROGRAM TRADING AND OUR FINANCIAL SYSTEM

(Mr. RAVENEL asked and was given permission to address the House for 1 minute.)

Mr. RAVENEL. Mr. Speaker, the chaos in our securities markets may be the result of greed by major financial institutions in their unrestrained use of what is called program trading. This is a computer generated system taking advantage of the spread between the price of future contracts on commodity exchanges and the value of the underlying stocks in the market indices by buying the futures contracts and selling the stocks simultaneously. Shares of companies are not sold because there has been a fundamental change in their fortunes, but because a computer has noted that the price differential between current prices of the stocks and an index future will allow the programmer to make a profit. These programs feed upon themselves taking the market to wrenching extremes.

The only economic function served by program trading is to generate millions of dollars in management fees and commissions for a very few securities firms. Our stock market, which is the linchpin of our economic system, has become a giant commodity pit.

Program trading could be destroying our financial system. I urge this scrutiny by the appropriate committees of the Congress.

□ 1015

GRAMM-RUDMAN CUTS MUST BE AVOIDED

(Mr. BIAGGI asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BIAGGI. Mr. Speaker, what do programs such as student loans, mass transit and the Older Americans Act have in common with Wall Street?

They both got big and negative shocks early this week. The programs were told they face across-the-board cuts of about 8.5 percent under Gramm-Rudman—and the market suffered its single biggest loss in history—500 points.

What do these programs and the stock market not have in common? The stock market can recoup its losses almost overnight. Already in just 2 days more than 40 percent of the loss has been recouped. The Gramm-Rudman cuts after November 20 could be for the entire fiscal year.

We expect full recovery from the stock market. The Gramm-Rudman cuts may make it hard for these programs to ever recover.

We learned yesterday that these cuts could result in a reduction in Federal aid of $168 million—just in the city of New York.

The deficit is obviously the culprit behind both the market's fall and the need for Gramm-Rudman and the cuts.

Yet it seems to have taken the Monday jolt on Wall Street to get the administration to move off dead center and begin to work with Congress on a solution to avert these devastating cuts.

Negotiations began yesterday. Enormous decisions hang in the balance. It seems almost inevitable that we must find and raise new revenues. The administration must accept this.

Yet the clock is ticking. Unless there is legislation passed to produce new revenues, these cuts will take effect on November 20. The programs that will be cut were victimized less than 2 years ago with a 4.3-percent cut. These cuts are twice as high and will produce twice the suffering. We must avert this catastrophe.

OPPOSITION TO THE WATER AND POWER AUTHORIZATION ACT

(Mr. WELDON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WELDON. Mr. Speaker, I rise today in opposition to the Water and Power Authorization Act. This week's plunge in the stock market is an unpleasant reminder of what the financial markets think of this body's spending habits. Investors from Wall Street to Tokyo are doubting whether Congress has the resolve to deal with the deficit. Despite these indicators, we have before us today another careless authorization bill.

As of yesterday, there was no CBO estimate for the spending level of S. 640. Some people say the bill will cost between $25 and $30 million; others say between $30 and $35 million. Many people think that $25 to $35 million is a drop in the bucket, yet, in these days of spiraling deficits, every dollar counts. I believe the most disturbing aspect of S. 640 is that there have not been any hearings on it in the House. We are being asked to approve deferrals of water project repayment obligations, cost-ceiling increases and new authorizations when there has not been a serious review of the bill.

My second major concern with the bill is its effect on our environmental policy. Federal agencies have a tendency to write environmental impact statements as window dressing. Before embarking on a project, an agency will write an EIS to appease the environmental community. However, when it comes time to carry out the mitigative measures, few agencies really implement them.

In this bill, the Oroville-Tonasket water project in Washington is a clear example of the Bureau of Reclamation ignoring an EIS. According to the committee report, it has been more than 10 years since the project was authorized with an EIS to mitigate the effects on salmon fisheries. After 10 years, the fisheries problem still exists because the EIS were never implemented. Today, we are being asked to approve a $17.1 million ceiling increase for the project.

Earlier this year, my colleagues in the Merchant Marine Committee joined me in passing legislation that would require Federal agencies to report back to Congress on the implementation of their EIS's. Mr. Speaker, with this positive development in mind, let's not reward the Bureau of Reclamation for environmental negligence. I urge my colleagues to vote against S. 640.

MEETING THE GOALS OF THE CENTRAL AMERICAN PEACE AGREEMENTS

(Mr. TALLON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. TALLON. Mr. Speaker, the means have replaced the ends as the focus of America's debate and policy on Nicaragua. The debate has degenerated to a futile pattern of divisive bickering and second guessing between the supporters and opponents of Contra aid.

Yet, despite their differences on the methods, those on both sides of the issue share common democratic goals—the same goals of freedom of movement and assembly, civil and political rights, free elections and the principles of democracy generally agreed to in the Guatemala peace accords.

These are the ends that I believe we should join with the Central American people in contemplating, discussing and implementing. That is why I am joined by Representative CHANDLER and a number of other colleagues in introducing a resolution that lays out in the most certain terms the specific reforms necessary to meet the goals of the peace agreement.

The cosponsors of this resolution represent a wide spectrum of viewpoints on Nicaragua. Yet, all are committed to furthering the same democratic goals as those in the Central American peace plan and we recognize that communication is the key. Importantly, we share a vision not only of what can be done but also of what ought to be done.

Those of us who have pressed for efforts toward a diplomatic and political initiative in Nicaragua now have a clear responsibility to help materialize the possibilities of the Central American peace process. I urge all my colleagues to join me in accepting this responsibility by giving shape to that promise.

DEMOCRACY IN NICARAGUA

(Mr. CHANDLER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. CHANDLER. Mr. Speaker, I am proud to join in the introduction of this sense of Congress resolution addressing the compliance issue for peace in Central America along with the honorable gentleman from South Carolina [Mr. TALLON].

The fundamental requirement for peace in Central America is true and lasting democracy in Nicaragua. Without this, all of the democratic leaders of the region agree, no peace is possible.

This month, the President of Costa Rica, Oscar Arias was given the Nobel Peace Prize for his efforts on both these fronts, peace, and democracy. Earlier this week we honored him for his vital work.

But there is still considerable debate over what is democracy in Nicaragua. This bill describes in much needed detail what changes must occur in Nicaraguan law and official practice, for that country to be considered a free and open society by this body.

I want to commend my friend, the gentleman from South Carolina [Mr. TALLON] for his leadership on this issue, and I urge all of my colleagues to support the measure that we cosponsor and introduce today.

WHO IS ON WELFARE?

(Mr. DOWNEY of New York asked and was given permission to address the House for 1 minute and revise and extend his remarks.)

Mr. DOWNEY of New York. Mr. Speaker, next week we are going to debate welfare reform when we take up budget reconciliation legislation. Before the shrieking hysteria starts about welfare kings and queens busily gaming the system, let us try to get a grip on who we will be talking about.

Who is on welfare?

By and large, the average AFDC recipient is a recently divorced woman with two children. She will probably remain on welfare for less than 2 years, hardly long enough to grow accustomed to the face of Uncle Sam on her benefit checks. In fact, nearly half of the families on AFDC turn to the program after a divorce or a separation. And just as divorce is the most common way on to AFDC, marriage is the most common way out.

Because the Federal Government cannot act as a matchmaker or marriage counselor, we have a responsibility to try and find a way to take children, especially children, out of poverty.

The Committee on Ways and Means' welfare reform bill does just that. It provides modest financial incentives like day care and health benefits to enable single mothers to work without fear that their children will be inadequately cared for.

Welfare reform means an investment in our future, especially in our children, and the Committee on Ways and Means' bill does just that.

SENDING A SIGNAL TO COCOM

(Mr. LEWIS of Florida asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LEWIS of Florida. Mr. Speaker, in July I introduced H.R. 3047, legislation to send a signal to our Cocom allies, "Strengthen your enforcement of the Cocom export rules or lose access to the U.S. market."

Japan and Norway have taken steps to strengthen their enforcement of the Cocom rules but the action must not stop here.

Today, the Washington Post reports that the Norwegian police have uncovered a 10-year pattern of illegal sales of high-technology equipment to the Soviet Union by other European and United States companies. This information highlights the vital importance of strengthening the Cocom rules.

In an age where businessmen are motivated only by greed, it is vital that we motivate their actions by fear, a real fear of Cocom.

Let us give Cocom some teeth and cosponsor H.R. 3047. The security of the United States is vital to all of us and it is our responsibility to make sure that high technology in no way leaves our shores and weakens our defense mechanisms and goes on to the Soviet Union.

Again I urge my colleagues to cosponsor H.R. 3047.

FREEDOM FOR MOSES MAYEKISO

(Mr. TORRES asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. TORRES. Mr. Speaker, I rise today to focus attention on the plight of Moses Mayekiso, one of South Africa's leading black trade unionists. The former auto worker, who currently holds the position of general secretary of the National Union of Metalworkers of South Africa, has been charged with treason. South Africa's apartheid government seeks to make an example of Moses, and may execute him by hanging.

What is the basis for the charges brought against Moses Mayekiso? He was involved in community organizing activities in a black township located outside Johannesburg. He organized rent and consumer boycotts against the town council and formed a residents' committee to deal with deteriorating sanitation and health problems, declining housing conditions, and crime, among other issues.

In any civilized democracy, these community organizing activities would hardly constitute crimes, let alone such for which the death penalty would be imposed. But once again, we are reminded that South Africa is a long way from being a civilized democracy.

I presided over the House this past Tuesday when House Resolution 141 was considered. This resolution called for the immediate release of all children detained under state of emergency regulations in South Africa issued in June 1986. This inhumane practice of jailing children without charge and denying access to their parents is yet another example of action taken by the South African regime to exert their control. Far from being a civilized democracy, the only way the South African Government can survive is by force, as is demonstrated by these repressive acts.

Mr. Speaker, if Moses Mayekiso is executed, not only would black trade unions suffer a severe setback, so too would local community groups, students, church activists and many others in the forefront of the anti-apartheid movement. That is why I call today on the South African Government to release Moses Mayekiso.

ANNIVERSARY OF THE HUNGARIAN UPRISING AGAINST COMMUNISM

(Mr. McEWEN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. McEWEN. Mr. Speaker, I rise today to honor the courageous people of Hungary, who, 31 years ago this week, rose up against the iron fist of communism in a valiant attempt to achieve independence from their Soviet masters.

Inspired by similar anti-Soviet demonstrations in Poland, Hungarian patriots took to the streets of Budapest chanting, "We will never be slaves again," only to be crushed by the full weight of the Red army. The Kremlin was quick to react, fully understanding that such a challenge to their authority must not be allowed to succeed and inspire other peoples to rise against the totalitarian grip that hung over Eastern Europe. Of course, as we know, the grip tightened, and the shadow still darkens that part of Europe today.

Mr. Speaker, the inspiring efforts of the Hungarian people 31 years ago should not only be an inspiration to we Americans, who revolted against the oppression of King George the Third over 200 years ago, but also to other people throughout the world who are enslaved by the chains of political tyranny and yearn to someday be free.

IMPORTANT DEVELOPMENTS REGARDING BHOPAL TRAGEDY

(Mr. THOMAS of Georgia asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. THOMAS of Georgia. Mr. Speaker, I rise today to bring to the attention of my colleagues in the House important and positive developments regarding the Bhopal tragedy. Judge Deo in the Bhopal District Court has recently requested that the Government of India and Union Carbide promptly negotiate a settlement which would compensate the victims and terminate the case. I'm pleased to hear of this positive step.

Failure to promptly resolve this matter would only lead to expensive litigation over many years, diverting resources to the legal process and away from the victims, as well as delaying compensation to them.

In this country, it seems to me that a settlement would be well understood as an appropriate outcome. Almost all complex legal proceedings of this kind are terminated in the United States in this way. In addition, I imagine that a settlement is expected and desired by the U.S. business community. This litigation has surely created significant uncertainty among those firms with existing or planned investment in India.

Let's hope that Judge Deo and the parties involved are successful in securing a prompt and reasonable settlement of this important matter.

WORLD BANK ENVIRONMENTAL REFORMS

(Mr. PORTER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PORTER. Mr. Speaker, the annual World Bank meetings in Washington last week also generated meetings of worldwide environmental groups. Grassroots conservation advocates confronted bank officials and voiced their disapproval of the environmental damage caused by much of the bank's lending policy.

Representatives from the developing world also lobbied for relief from their $1 trillion debt; the exports they need to produce to pay their debt are quickly depleting their natural resources.

Brazilian Congressman Fabio Feldmann, who was elected by grassroots environmental groups, believes that my legislation, The Tropical Forest Protection Act, can offer Brazil an opportunity for environmental protection and sustainable development. Suspension of part of Brazil's debt in exchange for conservation programs can halt those development projects that degrade the fragile Amazon ecosystem—particularly massive deforestation.

Mr. Speaker, let's support environmentalists from the developing world who seek reform in World Bank lending policies and let's supply the means for developing countries to protect their natural resources upon which they depend for daily living and long-term growth.

TRIBUTE TO JOHN HUMPHREY EVANS IV, WINNER IN CONGRESSIONAL AWARD PROGRAM

(Mrs. BYRON asked and was given permission to address the house for 1 minute and to revise and extend her remarks.)

Mrs. BYRON. Mr. Speaker, the Congress, through the Congressional Award Program, recognizes the initiative, achievement, and excellence of young people, ages 14 through 23, who accomplish high goals in voluntary public service and personal development activities, with presentation of a medal by a Member of Congress.

Yesterday, I had the pleasure of presenting the Silver Congressional

Award to my constitutent, John Humphrey Evans IV, of Potomac, MD.

John is one of those special people who goes the extra mile—who does what is required, and them some. He is the young man who earned all 124 scouting merit badges, which no one else has done, nor can do, since now only 119 badges are possible.

In the three required award areas, in the field of voluntary public service, which requires 200 activity hours, John amassed 260 hours, including service with the Boy Scouts, and Civil Air Patrol Search and Rescue.

The field of personal development, the goal of which is to develop personal interests, and social and employment skills, requires 100 hours. John amassed over 400 hours. He holds a private pilot's license, was a finalist in the Westinghouse talent science project.

In the field of physical fitness and expedition, which requires 100 activity hours, John completed 146 hours. He has served as a Scout patrol leader, and on the Police Boxing League. His other sports include sailing, horseback riding, and tennis.

As you can see, John is not only well rounded, but is an educated, skilled, resourceful young man. He has undertaken and succeeded in activities which require self-discipline, effort, initiative, and leadership.

Mr. Speaker, in this age when much is said about what is wrong with today's youth I think it is important to talk about what is excellent in today's youth. I think John is a fine example of what is excellent.

COUNTING UNDOCUMENTED PERSONS IN DECENNIAL CENSUS

(Mr. DYMALLY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DYMALLY. Mr. Speaker, it has come to my attention that a "Dear Colleague" letter is circulating in the House this week which addresses the question of counting undocumented persons in the decennial census.

The letter informs Members that certain States are likely to lose congressional seats following the next reapportionment if illegal aliens are included in the 1990 census counts.

As chairman of the Subcommittee on Census and Population, I feel obligated to let my colleagues know that these reapportionment projections are misleading and inaccurate.

Population projections for 1990 are too tentative to permit accurate determinations on reapportionment at this time.

Furthermore, many factors other than the number of undocumented persons, such as the substantial undercount of minorities, the homeless, and the rural poor, affect apportionment of congressional seats among the States.

It simply is irresponsible to take another swipe at undocumented persons in the United States by causing a panic on an issue as sensitive as reapportionment.

I urge my colleagues to carefully review the real facts on this issue before responding to the "Dear Colleague" letter.

CONTRA KIDNAPING

(Mrs. BOXER asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. BOXER. Mr. Speaker, 2 days ago my constituent, Paul Fisher, was kidnaped by the Contras. Mr. Fisher, a member of the United Church of Christ, is a Witness for Peace volunteer who has been in Nicaragua with other church volunteers working for peace.

Along with other Members of Congress, I have called on Secretary of State George Shultz to immediately demand Paul Fisher's release. As the primary supporter of the Contras, I believe this administration must be held responsible for the actions of the Contras.

The President has called the Contras the equivalent of our Founding Fathers. Our Founding Fathers never kidnaped innocent people.

Mr. Speaker, in the context of the peace process underway in Central America, this kidnaping and other hostile actions by the Contras are an angry contrast to the reconciliation efforts underway throughout the region.

Mr. Fisher, an innocent American civilian, must be freed. The Contras have told our State Department he will be freed. We anxiously await that moment.

JUSTICE DEPARTMENT IS WRONG ON PLASTIC GUNS

(Mr. HUGHES asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. HUGHES. Mr. Speaker, can you believe this. According to news reports today, the U.S. Department of Justice, under pressure from the National Rifle Association, has withdrawn its consideration of support for legislation which addresses the problem of plastic weapons that are capable of evading metal detectors.

If these reports are true, and I suspect they are, this decision represents a major blow to the safety and security of our Nation. Over the past year, the House Subcommittee on Crime, which I chair, has conducted three hearings on the subject of nonmetallic firearms, and we have a fourth scheduled for November 3. Thus far our hearings have produced two clear conclusions:

First, that rapid progress is being made in the development of plastic or ceramic weapons which can escape detection by metal detectors or airport baggage x-ray machines; and

Second, that such firearms, once perfected, will likely become the weapons of choice for terrorists and other criminals.

Can you imagine what it will mean if terrorists are able to board airplanes, or to walk into courtrooms or even the White House carrying guns which can escape detection? If this is allowed to happen, we will have a crisis on our hands the likes of which our law enforcement community has never encountered before.

We have an opportunity now to stay ahead of the curve, and to address this problem before the plastic gun technology is in place. It is unconscionable for the Justice Department to cave in to the gun lobby on this issue, while turning its back on the police and law enforcement officers who serve on the frontlines in our war against crime, and who will be among those who will have to pay the consequences of this ill-advised decision.

THE STOCK MARKET AND THE ECONOMY

(Mr. DORNAN of California asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DORNAN of California. Mr. Speaker, it is no secret that the stock market crash of 1929 came with the collapse of the political coalition against the Smoot-Hawley tariff. And when that tariff was passed by Congress and President Hoover announced he would not veto it, that was all she wrote. The protectionists had turned a stock market correction into the Great Depression.

There are very few parallels between the great crash of 1929 and the recent plunge in stock prices. But two obvious and troubling similarities are that in both instances the black clouds of protectionism and raising taxes were hanging over the market. In both instances the Congress had under consideration trade bills that would distort international markets and erect barriers to trade; 1930 marked the beginning of a global trade war that prompted the Great Depression and led eventually to war itself. And in both instances there was the specter of higher taxes, as if raising taxes was good for the economy. In 1931 a huge tax increase consolidated the Depression. In short, protectionism caused the Great Depression, and taxes consolidated it. Let us not repeat those same mistakes in 1987 or 1988.

I am therefore asking my colleagues, especially my Republican colleagues, to join me in signing a letter to President Reagan urging him to stand firm and not capitulate in the face of mounting pressure from the protectionists and the big spenders on either raising taxes or on this trade legislation. We must send a signal to the markets that we are serious about our commitment to the Reagan policies that resulted in the 1982-87 bull market. On the Republican side we have a choice. We can either be Reagan Republicans and fight the tax hikes and protectionism sure to cause a recession; or we can be Hoover Republicans, accomplices in a return to the economic policies of the Carter administration. The choice is yours.

BAN UNDETECTABLE FIREARMS

(Mr. WEISS asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mr. WEISS. Mr. Speaker, plastic guns that can escape detection by current security devices can be used by terrorists to threaten innocent victims here in the United States and around the globe.

At the urging of virtually every law enforcement group in the country, the administration was on the verge of proposing that these guns be banned in the interests of public safety. But Attorney General Meese has withdrawn this proposal from final consideration following a high-level lobbying and intimidation National Rifle Association.

It is not surprising that the NRA opposes every effort to protect American citizens, even efforts to prevent this new terrorist technology from being used in the United States. But it is shocking to learn that the Attorney General is also in the stranglehold of this radical organization.

During this past week, we have been threatened with crushing retaliation by a terrorist nation. It is absolutely incredible that the Attorney General will not act to prevent the threat of undetectable weapons that would be favored by potential terrorists.

Congress must act quickly to pass pending legislation in the House and the Senate to ban undetectable firearms.

WE SHOULD KEEP OUR DEFENSE PRODUCTION AT HOME

(Mrs. BENTLEY asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. BENTLEY. Mr. Speaker, I call to the attention of my colleagues an article in today's Washington Post headlined on the front page "Europeans Sold Gear to Soviets." For some time now, Congressmen DUNCAN HUNTER, GERRY SOLOMON, CHARLES WILSON, and myself have been urging that we should keep our technology at home, keep our defense production at home within our own borders. Actually, it was former Congresses that are responsible for allowing the transfer of our technology abroad and to make defense purchases overseas.

Now in the current trade bill pending we propose to lift even further other export controls to countries in the Third World, including Libya, I understand.

I also understand that last week in the Defense Appropriation Subcommittee, the Senate amendment calling for the retaining of all SDI development in this country was wiped out by the House Committee as well as an amendment or requirement for the Defense Department to purchase all machine tools only in the United States.

I will discuss this entire procedure in a special order later today, but meanwhile in view of the latest disclosure, I urge my colleagues to reconsider past actions and place a fortress around American technology.

LEGISLATION SUPPORTING DEMOCRATIZATION PROCESS IN SOUTH KOREA

(Mr. FOGLIETTA asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. FOGLIETTA. Mr. Speaker, today I am introducing legislation in support of the democratization process in South Korea. The announcement this summer by the Korean Government to adopt wide-ranging democratic reforms was heralded the world over. For the first time in 16 years, the Korean people will be able to vote directly for their next President. Many of us here in the Congress have watched with great optimism the steps taken toward the liberalization of the press, the release of political prisoners, and the settlement of labor strikes. It appears the promise of full democracy in Korea is at hand.

However, Mr. Speaker, I am deeply concerned about possible military intervention in South Korean politics. Twice before, once in 1961 and again in 1980, the Korean Armed Forces staged a coup and installed a military dictator to head the Government. There is grave concern that this action might be repeated in 1987 or 1988. The resolution I have introduced will send a clear message that the Congress disapproves of any intervention or interference by the Korean military in the internal affairs of that country and would be inconsistent with and contradictory to the establishment of full democracy. I believe this is an important statement to make and will lend key support to the democratization process in Korea.

I urge my colleagues to support the resolution.

DUE PROCESS FOR CUBAN PRISONER REFUGEES

(Mr. LEWIS of Georgia asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LEWIS of Georgia. Mr. Speaker, there are almost 2,000 Cubans being held in the Atlanta Federal Penitentiary without any idea of when they may be released.

In an editorial in the Atlanta Constitution on Wednesday, October 21, 1987, regarding the Atlanta Federal Penitentiary, I quote:

> The official capacity of the federal prison system is 28,000. Its actual population is 44,000, a number expected to rise sharply in the next few years. The feds will need every last bed thay can find for native criminals. But in Atlanta, an entire institution is given the dubious duty of imprisoning Cubans, at a cost of $30 to $40 million a year. Other Cuban prisoners are scattered throughout the Nation. Since 1980 the total cost has come to hundreds of millions of dollars. This is senseless. The feds could end this mess with a simple move: a decision to give Cuban prisoners the same constitutional rights as American prisoners.

Mr. Speaker, it is always the right time to do what is right. And the time has come for the Congress of the United States to step in and mandate due process for these refugees, who came to our shores only seeking freedom, the greatest gift our country has to give.

I urge my colleagues to work with me in seeking legislation to guarantee due process for the Cubans held in indefinite detention in the United States.

BIRMINGHAM-SOUTHERN COLLEGE IN ALABAMA TOP-RANKED IN LIBERAL ARTS FIELD

(Mr. ERDREICH asked and was given permission to address the House for 1 minute.)

Mr. ERDREICH. Mr. Speaker, we all know the importance of quality education for our economic future. Jobs are on the line and our competition around the world depends on our improving our educational institutions. I am very pleased that the current issue of the U.S. News World Report in its listing of best colleges in America points out that one of my colleges in my district, Birmingham-Southern College, is one of the best in the Nation and indeed is listed at the best liberal arts college in the South.

I would congratulate Dr. Neil Berte of that institution and all of the faculty and students. I say keep up the good work. These sort of efforts assure that America's future is bright.

THE AGENDA OF THE ECONOMIC SUMMIT SHOULD INCLUDE THE TRADE DEFICIT AS WELL AS THE FEDERAL BUDGET DEFICIT

(Mr. ALEXANDER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ALEXANDER. Mr. Speaker, I congratulate you for bringing about an economic summit meeting with the President. I urge you to include on the agenda of the economic summit the trade deficit as well as the Federal budget deficit.

Observers of Wall Street have said in recent days that one of the reasons for the lack of confidence in the American economy is the growing trade deficit and the failure of our country to diminish that growing number.

Mr. Speaker, we do not have to import that $40 billion in foreign oil that we depend upon for a third of our energy requirements. We have the technology and the resources to produce alternative fuels in America. We lack only a policy.

I urge you to advocate with the President for a national energy policy that would establish a blended fuel, combining petroleum, methanol and ethanol that would revive our areas in this country which produce those commodities, that would reduce our deficit and would make us energy independent.

LET US TELL THE PEOPLE'S REPUBLIC OF CHINA TO STOP PROVIDING SILKWORM MISSILES TO THE IRANIANS

(Mr. BEREUTER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BEREUTER. Mr. Speaker, in the last few hours a Silkworm missile has badly damaged, perhaps destroyed, a Kuwaiti oil terminal.

Last week a Silkworm missile was used against an American-flagged Kuwaiti vessel in Kuwaiti waters.

The Silkworm missile is manufactured in the People's Republic of China. Silkworm missiles have been provided and apparently are continuing to be provided to Iran by the People's Republic of China directly or indirectly but with full intent.

The Chinese deny this. It is true, however. There is some indication that they intend to continue supplying them in substantially greater numbers under an existing agreement.

Mr. Speaker, this is a hostile act against the noncombatant countries that are trying to traverse the gulf for economic reasons. It is a hostile act against the noncombatant state of the Persian Gulf like Kuwait and against the United States. We have made errors, certainly tragic errors, in providing arms to Iran. That is in the part.

I think at this point, though, it is quite clear that we should say to the People's Republic of China, "Stop providing the Silkworm missile to the Iranians."

SOME SUGGESTIONS FOR THE PRESIDENT'S PRESS CONFERENCE THIS EVENING

(Mr. MARKEY asked and was given permission to address the House for 1 minute.)

Mr. Speaker, on Monday the needle of voodoo economics finally punctured the heart of Wall Street. This evening the President will hold a press conference that may be one of the most important of the Reagan era.

Mr. President, permit me to give you some advice.

Tell the Nation that last Monday's opening bell on Wall Street was an alarm that awakened you from your dreams to the harsh reality of debts and deficits. Tell the Nation that you have freed yourself from the shackles of ideology which have prevented reasonable compromises on both the budget and trade deficit.

Tell the Nation that next month we will see an agreement with the Congress leading toward a balanced budget. Tell the Nation that there is something wrong when computers on automatic pilot can program trades to buy and dump blocks of stock and futures so huge and so complex and so fast that the human mind is left out of the transaction.

Mr. President, take a leaf from the notebooks of Allen Greenspan, Chairman of the Fed and John Phelan, chairman of the stock exchange, each of whom has served the Nation well this week, by taking measured yet decisive and pragmatic action to restore stability to the financial markets.

Otherwise, we may find that our economy, like a large bag of potato chips that looks so good from the outside, when opened is really filled more with air than with substance.

THE HOUSE OF REPRESENTATIVES SHOULD INSTALL BETTER COMMUNICATIONS

(Mr. KANJORSKI asked and was given permission to address the House for 1 minute.)

Mr. KANJORSKI. Mr. Speaker, I have now found out why the American stock market has crashed on Monday and why the American people consider their Congress out of touch with them, because in fact we are. We have accomplished something that I thought modern man could never accomplish. We have accomplished the American Telephone & Telegraph Co. substituting a communications system in the House of Representatives that is second to none in lacking its capacity to complete what it was intended to do.

I have had the occasion now over the last 2 months to meet with I think every executive or every account person of AT&T and in the Congress of the United States, to try and have my district represented adequately with communications. I will tell you that I have never seen such a foulup as we now have in the House of Representatives. We have a telephone system that just does not function. We do not even have the capacity to carry on partyline conversations and have more than two people on the telephone line at one time, which was established well before the coming of the 20th century.

Now I have brought my telephone from my office by a rather annoyed way of extracting it. I am going to deliver it to the Clerk of the House this morning. All I would ask my fellow colleagues in the Congress of the United States is will you give me five simple lines so that I can talk uninterrupted to my constituents for people in the U.S. Government without 20 percent of my telephone calls being lost and with the capacity occasionally to have conference calls that I can talk back and forth across this country with people that are important in order to carry on the functions of this Government?

If we are so cheap that we cannot afford an adequate communications system in the United States, we do not deserve to exist as a Congress representing the people of the United States.

Now I suggest to the leadership of this House that they do something about the telephone contract system with AT&T.

PROVIDING FOR CONSIDERATION OF S. 640, WATER AND POWER AUTHORIZATION ACT OF 1987

Mr. BEILENSON. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 282 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 282

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 1(b) of rule XXIII, declare the House resolved into the Committee of the Whole House on the State of the Union for the consideration of the bill (S. 640) for the relief of the city of Dickinson, North Dakota, and for other purposes, and the first reading of the bill shall be dispensed with. All points of order against the consideration of the bill for failure to comply with the provisions of section 302(f) of the Congressional Budget Act of 1974, as amended (Public Law 93-344, as amended by Public Law 99-177) are hereby waived. After general debate, which shall be confined to the bill and which shall not exceed one hour, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Interior and Insular Affairs, the bill shall be considered for amendment under the five-minute rule. It shall be in order to consider the amendment in the nature of a substitute recommended by the Committee on Interior and Insular Affairs now printed in the bill as an original bill for the purpose of amendment under the five-minute rule, said substitute shall be considered as having been read, and all points of order against said substitute for failure to comply with the provisions of section 302(f) of the Congressional Budget Act of 1974, as amended, and with clause 7 of rule XVI and clause 5(a) of rule XXI are hereby waived. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as many have been adopted, and any Member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or to the committee amendment in the nature of a substitute. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

The SPEAKER pro tempore. The gentleman from California [Mr. BEILENSON] is recognized for 1 hour.

Mr. BEILENSON. Mr. Speaker, I yield the customary 30 minutes, for purposes of debate only, to the gentleman from Missouri [Mr. TAYLOR], pending which I yield myself such time as I may consume.

Mr. Speaker, House Resolution 282 is the rule providing for consideration of S. 640, a bill for the relief of the city of Dickinson, ND, and for other purposes. This is an open rule, providing for 1 hour of debate to be equally divided and controlled by the chairman and ranking minority member of the Committee on Interior and Insular Affairs. The rule makes in order the Interior Committee's amendment in the nature of a substitute now printed in the bill as original text for the purpose of amendment.

The rule before us provides for two waivers of House rules, and one Budget Act waiver.

The rule waives clause 7 of rule XVI, which prohibits nongermane amendments. This waiver is necessary because the Interior Committee added several unrelated water and power matters to the bill which were not considered by the Senate.

The rule also waives clause 5(a) of rule XXI, which prohibits appropriations in a legislative bill. This waiver will allow the consideration of a transfer of funds in the bill, which has no budgetary impact.

And, the rule waives section 302(f) of the Budget Act, which prohibits the consideration of legislation which would cause the appropriate subcommittee level, or program level, ceilings to be breached. This waiver is needed because the bill provides for changes in repayment obligations related to the Dickinson Dam and the Minot Pipeline, also in North Dakota, which will result in foregone revenue to the Federal Government. Although the bill would not exceed the Interior Committee's 302(a), or committee, allocation for budget authority, it would exceed the Water and Power Subcommittee's 302(b), or subcommittee, allocation and thus the 302(f) waiver is needed.

Finally, the rule before us provides one motion to recommit, with or without instructions.

S. 640, the bill for which the Rules Committee has recommended this rule, requires the Interior Department to enter into a new contract with the city of Dickinson, ND, for repayment for improvements to the Dickinson Dam. The bill as reported by the Interior Committee also authorizes changes in contracts involving several other water and power projects in several Western States.

In addition, the bill contains a number of other provisions relating to water and power: it increases the authorization for a unit of the Chief Joseph Dam project in the State of Washington; it authorizes a temperature control demonstration project, at Shasta Dam as mentioned earlier; it authorizes the activities of four regional power marketing administrations for fiscal years 1988 and 1989; and, it renames three aqueducts in Arizona.

Mr. Speaker, I urge the adoption House Resolution 282, so that the House can proceed to consideration of S. 640.

□ 1055

Mr. TAYLOR. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, House Resolution 282 is an open rule under which the House will consider a Senate-passed bill, S. 640, and a 10-title substitute containing various water and power authorizations.

The rule waives section 302(f) of the Budget Act against consideration of S. 640, and it also waives that section of the Budget Act against consideration of the substitute reported from the Committee on Interior and Insular Affairs.

Mr. Speaker, as passed by the Senate, S. 640 provides new budget authority in fiscal year 1987 and is within the Interior Committee's spending allocation contained in the 1987 budget resolution.

The rule waives the point of order that would otherwise lie against the Senate-passed bill, and it also waives the point of order that would otherwise lie against the Interior Committee amendment.

Mr. Speaker, the simple explanation of the need for this waiver is that the Interior Committee has made no allocations of discretionary budget authority to its subcommittees, as called for in Budget Act. Without these subcommittee allocations, consideration of this bill is in violation of section 302(f) of the Budget Act.

In addition, the rule waives clause 5(a) of rule XXI against the amendment in the nature of a substitute, reported from the Interior Committee.

This waiver is included in the rule because a provision of section 501 of the substitute may constitute an appropriation by authorizing the transfer of funds from one fund to another.

Mr. Speaker, there was no controversy about these two waivers when the Committee on Rules conducted its hearing on this legislation, and I am not aware of any opposition to them.

Mr. Speaker, title I of the Interior Committee amendment is identical to S. 640 as passed by the Senate.

It settles a dispute between the Bureau of Reclamation and the city of Dickinson, ND, over repayment of Federal costs for improvements to the Dickinson Dam.

Improvements to the dam and reservoir were estimated to cost $1.5 million when they began 11 years ago, and the city of Dickinson agreed to pay an estimated $681,000. Design errors by the Bureau of Reclamation resulted in cost overruns that have now escalated the city's total $3.22 million.

This title relieves the city of Dickinson of its obligation to repay approximately one-half of the costs, and authorizes a new repayment contract of $1.625 million over a period of 40 years.

Mr. Speaker, the Interior Committee added nine additional titles to S. 640, using it as a vehicle to take care of several matters pending before the committee dealing with various water and power projects.

For this reason, the rule includes a waiver of clause 7 of rule XVI. The additional titles deal with subjects different from S. 640, they are not germane to the bill passed by the Senate.

Mr. Speaker, the Committee on Interior and Insular Affairs will have an hour of general debate under this rule to explain its committee substitute. Under this rule, the committee's substitute will be open to amendments.

Mr. Speaker, I urge adoption of the rule, so the House may consider the bill.

Mr. Speaker, I yield 3 minutes to the gentleman from Pennsylvania [Mr. WALKER].

Mr. WALKER. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, I rise in opposition to this rule. It does not in fact include a budget waiver. As the gentleman from California has explained, the budget waiver is in reality a waiver of the 303(b) authority, although we are referring in this resolution to 302(f).

What we are talking about here is the appropriation levels being exceeded. In other words, the actual spending levels are being exceeded, so this is a real budget waiver.

We are in fact spending real money in this instance, and I would caution the Members that in voting for this rule, they are voting to exceed that in the Budget Act which specifically refers to real spending.

I would like to ask the gentleman from California whether or not the committee requested a waiver of rule XI, clause 2 for this particular bill?

The rule that specifies that a quorum must be present when the bill is reported?

Mr. BEILENSON. Mr. Speaker, will the gentleman yield?

Mr. WALKER. I yield to the gentleman from California.

Mr. BEILENSON. Mr. Speaker, I thank the gentleman for yielding.

We did not ask for any such waiver.

Mr. WALKER. And was the committee aware of any problems with regard to this particular rule?

Mr. BEILENSON. As far as this gentleman is concerned, the answer is no.

This gentleman was there, and there appeared to be no such problem.

Mr. WALKER. Could the gentleman tell me, is the committee small enough that having eight or nine people present is a big enough number to constitute a quorum for the Committee on Interior and Insular Affairs?

Mr. BEILENSON. This gentleman was responding with respect to the Committee on Rules.

Mr. WALKER. I understand; but when the Committee on Interior and Insular Affairs came before the Committee on Rules, did they in fact request a waiver of rule XI, clause 2, for the reporting of this bill, because they did not have sufficient numbers of people present when they reported that bill from the committee?

Mr. BEILENSON. This gentleman does not recall such a request.

Mr. WALKER. I thank the gentleman.

Let me just tell the House that there appears to be an additional problem then, since the rule does not specify that rule XI, clause 2 shall be waived.

It is the information of this gentleman that in fact there were not sufficient people present when the bill was reported to constitute a quorum; and so, therefore, the lack of an inclusion of that particular waiver in the bill is another problem.

Mr. TAYLOR. Mr. Speaker, I yield myself such time as I may consume.

I would just say, if the gentleman believes that a point of order lies against the bill, it could be pursued at the appropriate time in the appropriate manner when the bill comes before the floor.

I suggest that maybe that might be an option.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. BEILENSON. Mr. Speaker, I yield myself such time as I may consume.

I agree fully with the comments of the gentleman from Missouri [Mr. TAYLOR].

There is, in response to the gentleman from Pennsylvania, a real but a very minor Budget Act waiver being asked for because of forgone revenues to the tune of perhaps $120,000 a year, perhaps a little bit less, over the course of 40 years.

We have certain amount of discretion in granting these waivers. We did so in this particular case, speaking on behalf of the Committee on Rules, and because it was such a minor matter, and because the full Committee on Interior and Insular Affairs was within its allocations under the Budget Act.

It is only the subcommittee, and the subcommittee only misses by about $120,000 a year.

Mr. Speaker, I have no further requests for time, and I move the previous question on the resolution.

The previous question was ordered.

The SPEAKER pro tempore (Mr. KILDEE). The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. WALKER. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 263, nays 140, not voting 30, as follows:

[Roll No. 374]

YEAS—263

Ackerman
Akaka
Alexander
Anderson
Andrews
Annunzio
Anthony
Applegate
Aspin
Atkins
AuCoin
Badham
Barton
Bates
Beilenson
Bennett
Bereuter
Berman
Bevill
Bilbray
Boland
Bonior
Bonker
Borski
Bosco
Boucher
Boxer
Brennan
Brooks
Brown (CA)
Bruce
Bryant
Byron
Campbell
Cardin
Carper
Carr
Chandler
Chapman
Chappell
Coelho
Coleman (TX)
Collins
Cooper
Coyne
Crockett
Daniel
Darden
Davis (MI)
de la Garza
DeFazio
Dellums
Derrick
Dicks
Dingell
Dixon
Donnelly
Dorgan (ND)
Dowdy
Downey
Duncan
Durbin
Dwyer
Dymally
Dyson
Early
Eckart
Edwards (CA)
Erdreich
Espy
Evans
Fascell
Fazio
Feighan
Flake
Flippo
Florio
Foglietta
Foley
Ford (MI)
Frank
Frost
Garcia
Gaydos
Gejdenson
Gibbons
Gilman
Glickman
Gonzalez
Gordon
Gradison
Grandy
Grant
Gray (IL)
Gray (PA)
Green
Guarini
Hall (TX)
Hamilton
Hammerschmidt
Hansen
Harris
Hatcher
Hayes (IL)
Hefner
Herger
Hertel
Hochbrueckner
Howard
Hoyer
Hubbard
Huckaby
Jacobs
Jeffords
Johnson (SD)
Jones (NC)
Jones (TN)
Kanjorski
Kaptur
Kastenmeier
Kennedy
Kennelly
Kildee
Kleczka
Kolter
Kostmayer
LaFalce
Lancaster
Lantos
Lehman (CA)
Lehman (FL)
Leland
Levin (MI)
Levine (CA)
Lewis (GA)
Lipinski
Lloyd
Lowry (WA)
Lujan
Luken, Thomas
MacKay
Manton
Markey
Martinez
Matsui
Mazzoli
McCloskey
McCurdy
McDade
McHugh
McMillen (MD)
Mfume
Mica
Miller (CA)
Miller (OH)
Mineta
Moakley
Mollohan
Montgomery
Moody
Morrison (CT)
Morrison (WA)
Mrazek
Murphy
Murtha
Myers
Nagle
Natcher
Neal
Nelson
Nichols
Nowak
Oakar
Oberstar
Obey
Olin
Ortiz
Owens (NY)
Owens (UT)
Panetta
Parris
Pashayan
Patterson
Pease
Pelosi
Penny
Pepper
Perkins
Pickett
Pickle
Price (IL)
Price (NC)
Pursell
Quillen
Rahall
Rangel
Ravenel
Ray
Regula
Rhodes
Richardson
Rinaldo
Robinson
Rodino
Roe
Rose
Rostenkowski
Rowland (GA)
Roybal
Russo
Sabo
Sawyer
Scheuer
Schroeder
Schumer
Sharp
Shays
Sikorski
Sisisky
Skaggs
Skeen
Skelton
Slaughter (NY)
Smith (IA)
Smith (NE)
Smith (NJ)
Solarz
Spence
Spratt
Staggers
Stallings
Stangeland
Stark
Stokes
Stratton
Studds
Swift
Synar
Tallon
Taylor
Thomas (GA)
Torres
Torricelli
Towns
Traficant
Traxler
Udall
Valentine
Vento
Visclosky
Volkmer
Walgren
Watkins
Waxman
Weiss
Wheat
Wilson
Wise
Wolpe
Wyden
Yates
Yatron
Young (AK)

NAYS—140

Archer
Armey
Baker
Ballenger
Barnard
Bartlett
Bateman
Bentley
Bilirakis
Bliley
Boulter
Broomfield
Brown (CO)
Bunning
Burton
Callahan
Cheney
Clinger
Coats
Coble
Coleman (MO)
Combest
Conte
Courter
Craig
Crane
Dannemeyer
Davis (IL)
DeLay
DeWine
Dickinson
DioGuardi
Dornan (CA)
Dreier
Edwards (OK)
Emerson
English
Fawell
Fields
Fish
Frenzel
Gallegly
Gallo
Gekas
Gingrich
Goodling
Gunderson
Hastert
Hefley
Henry
Hiler
Holloway
Hopkins
Houghton
Hughes
Hunter
Hutto
Hyde
Inhofe
Ireland
Jenkins
Johnson (CT)
Jontz
Kasich
Kolbe
Konnyu
Kyl
Lagomarsino
Latta
Leach (IA)
Lent
Lewis (CA)
Lewis (FL)
Lightfoot
Lott
Lowery (CA)
Lukens, Donald
Lungren
Mack
Madigan
Martin (IL)
Martin (NY)
McCandless
McCollum

McEwen
McGrath
McMillan (NC)
Meyers
Michel
Miller (WA)
Molinari
Moorhead
Morella
Nielson
Oxley
Packard
Petri
Porter
Ridge
Ritter
Roberts
Rogers
Roth
Roukema
Saiki
Saxton
Schaefer
Schneider
Schuette
Schulze
Sensenbrenner
Shaw
Shumway
Shuster
Slattery
Slaughter (VA)
Smith (TX)
Smith, Denny (OR)
Smith, Robert (NH)
Smith, Robert (OR)
Snowe
Solomon
Stenholm
Stump
Sundquist
Sweeney
Swindall
Tauke
Thomas (CA)
Upton
Vander Jagt
Vucanovich
Walker
Weber
Weldon
Whittaker
Wolf
Wortley
Wylie
Young (FL)

NOT VOTING—30

Biaggi
Boehlert
Boggs
Buechner
Bustamante
Clarke
Clay
Conyers
Coughlin
Daub
Ford (TN)
Gephardt
Gregg
Hall (OH)
Hawkins
Hayes (LA)
Horton
Kemp
Leath (TX)
Livingston
Marlenee
Mavroules
Roemer
Rowland (CT)
Savage
Smith (FL)
St Germain
Tauzin
Whitten
Williams

□ 1110

The Clerk announced the following pair:

On this vote:

Mrs. Boggs for, with Mr. Daub against.

Mr. SLATTERY changed his vote from "yea" to "nay."

Messrs. HEFNER, NELSON of Florida, and STANGELAND changed their votes from "nay" to "yea."

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

REMOVAL OF NAME OF MEMBER AS COSPONSOR OF H.R. 1115

Mr. STOKES. Mr. Speaker, I ask unanimous consent that my name be removed as a cosponsor of the bill H.R. 1115, the Uniform Production Safety Act of 1987.

The SPEAKER pro tempore (Mr. Kildee). Is there objection to the request of the gentleman from Ohio?

There was no objection.

PERMISSION FOR COMMITTEE ON THE JUDICIARY TO HAVE UNTIL 5 P.M. FRIDAY, OCTOBER 23, 1987, TO FILE REPORT ON H.R. 3483, CRIMINAL FINE IMPROVEMENTS ACT OF 1987

Mr. HUGHES. Mr. Speaker, I ask unanimous consent that the Committee on the Judiciary may have until 5 p.m. Friday, October 23, 1987, to file a report on H.R. 3483, Criminal Fine Improvements Act of 1987.

Mr. Speaker, this has been cleared with the minority.

The SPEAKER pro tempore (Mr. Kildee). Is there objection to the request of the gentleman from New Jersey?

There was no objection.

POINT OF ORDER

Mr. WALKER. Mr. Speaker, I make a point of order against consideration of S. 640 on the grounds that it violates rule XI, clause 2.

The SPEAKER pro tempore (Mr. Beilenson). The gentleman will state his point of order.

Mr. WALKER. Mr. Speaker, the rule to which I refer provides that "no measure or recommendation shall be reported from any committee unless the majority of the committee was actually present."

Mr. Speaker, when the bill S. 640 was reported from the Committee on Interior and Insular Affairs, it is my understanding that at no time were more than eight or nine Members of the committee present, clearly less than a majority of the 41-member committee.

□ 1120

Eyewitness accounts of the considerations that day indicate to me that the following Members of the House Interior and Insular Affairs Committee were present at the time the committee reported S. 640: Chairman Udall, Chairman Miller, Mr. Vento, Mr. Lehman of California, Mr. Cheney, Mr. Rhodes, Mr. Campbell, Mr. Lewis of Georgia, and Mr. Clarke.

It is also my understanding that a couple of other Members came into the room immediately after the vote on S. 640, Mr. Coelho and Mr. Young of Alaska.

Mr. Speaker, although there was no rollcall or written record of attendance, it is my understanding that those are the people who were present, based upon eyewitness accounts. One of those gentlemen is from the National Wildlife Federation who sat through the entire consideration of this particular bill.

I, therefore, Mr. Speaker, insist on my point of order.

The SPEAKER pro tempore (Mr. Beilenson). Does the gentleman from California [Mr. Miller] wish to be heard on the point of order?

Mr. MILLER of California. Yes, Mr. Speaker.

Mr. Speaker, on the day S. 640 was reported by the Interior and Insular Affairs Committee there was a full agenda of items under consideration. Given the business that was considered by the committee on this day, I can assure the House that a quorum was present at the time S. 640 was ordered reported by the Committee on Interior and Insular Affairs, and what we have here is a statement of eyewitnesses, also eyewitnesses apparently who are in opposition to the bill.

Under committee rules, attendance is not taken, the bill was reported out, there was no objection, and I assure the Chair that a quorum was present.

The SPEAKER pro tempore. Does the gentleman from Pennsylvania [Mr. Walker] wish to be heard further on the point of order?

Mr. WALKER. Mr. Speaker, I would say when we have public hearings, one of the purposes of public hearings is to allow the public to make an evaluation about our processes. In this particular case, there is at least one gentleman who has made that claim, that he did a specific count of the people, he has records of his minutes, and he made a specific count of who the people were that were there when this bill was reported.

This gentleman can be corroborated, as I understand it, by three other public witnesses that were in the room at the time. I obviously was not in the room. I am taking my information from the public who was there. The chairman claims that there was a quorum there. I am simply insisting on my point of order based upon the public input that this gentleman has received, and I thank the Chair.

The SPEAKER pro tempore. The Chair is prepared to rule unless the gentleman from California [Mr. Miller] wishes to speak further.

Mr. MILLER of California. No, Mr. Chairman. I think it is quite clear we have the official records of the committee, and we have the official proceedings of the committee as opposed to what now can become precedent whereby anybody in the room can make any contention they want about the activities of the committee.

Mr. WALKER. Mr. Speaker, on that point, it is my understanding that there are no official records of a vote count, that there was no specific vote count at this point, and there is no official record indicating who was in attendance at the time that this particular bill was reported. So therefore, we do have to rely somewhat on people who may have been in the room.

The SPEAKER pro tempore (Mr. Beilenson). The Chair, as I said before, is prepared to rule. The precedents of such a case are quite clear. Under the precedents in Deschler's chapter 17, section 14.10, where the committee transcript is not conclusive, the Chair will accept the absolute assurance from the manager of the bill that a majority of the full committee was physically present at the time the bill was ordered reported to the House.

The Chair has received that assurance from the manager of the bill and, therefore, rules that the gentleman's objection is overruled.

WATER AND POWER AUTHORIZATION ACT OF 1987

The SPEAKER pro tempore. Pursuant to House Resolution 282 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the Senate bill, S. 640.

□ 1130

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the Senate bill (S. 640) for the relief of the city of Dickinson, ND, with Mr. McCURDY in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the first reading of the bill is dispensed with.

Under the rule, the gentleman from California [Mr. MILLER] will be recognized for 30 minutes and the gentleman from Arizona [Mr. RHODES] will be recognized for 30 minutes.

The Chair recognizes the gentleman from California [Mr. MILLER].

Mr. MILLER of California. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise in support of S. 640, the Water and Power Authorization Act of 1987.

This bill takes care of a number of matters which are important to the orderly development of Federal water and power resources, and it does so at minimal cost to the taxpayers. I would like to take this opportunity to briefly explain the provisions in the bill.

Title I would reduce the amount of money the city of Dickinson, ND, must repay for construction of gates on the city's water supply reservoir. Under the new plan authorized by this title, the city would repay $1.6 million over a period of 40 years at an interest rate of 7.21 percent annually.

The reduction in the city's repayment obligation is justified because modifications made at Dickinson Dam were improperly designed and constructed by the Bureau of Reclamation.

Title II increases the authorization ceiling for the Oroville-Tonasket Unit, Chief Joseph Dam project, Washington, by $17.1 million. This project is over 50 percent complete. This increase in authorization will correct a siltation problem and finance a salmon enhancement program. This request for a ceiling increase is supported by the administration.

Funds authorized to be appropriated for the project may only be obligated through the end of fiscal year 1991.

Title III provides the Secretary of the Interior with authority to make modifications to Shasta Dam in California to control the temperature of water released from the dam. This is needed to protect the survival of salmon runs on the Sacramento River, San Francisco Bay, and the Sacramento-San Joaquin Delta.

The survival of these fish is threatened because water released from the dam during the summer is often too warm for the survival of salmon eggs.

The Sacramento River below Shasta Dam supports a salmon run valued at $100 million a year for commercial and sportfishing and for fishing-related tourism. The fishery resources of California have been severely damaged by the construction and operation of the major water projects. This provision in S. 640 will correct a serious problem in a quick and inexpensive manner.

Title IV includes the full text of H.R. 1819, H.R. 1820, and H.R. 1821. The title will change the name of three aqueducts in the Central Arizona project; they are: Stewart Udall-Barry Goldwater Aqueduct, Hayden-Rhodes Aqueduct, and the Fannin-McFarland Aqueduct.

Title V would authorize the appropriation of such sums as may be necessary for fiscal year 1988 and fiscal year 1989 for the Alaska, Southeastern, Southwestern, and Western Area Power Administrations.

Title VI authorizes the Secretary of the Interior to allow the local irrigation district to continue to operate the hydroelectric powerplant at the Grand Valley project, Colorado, for an additional 25 years.

The district is also authorized by this title to use receipts from the sale of power during this period to repay the costs of the irrigation project. At the end of the contract, assuming all costs are repaid, title to the irrigation project will vest with the district, in accordance with reclamation law.

Title VII directs the Secretary to transfer title of small parcels of reclamation-withdrawn land to the town of Veteran, WY.

This provision is needed because the Bureau of Reclamation never turned the withdrawn lands over to the town, even though that was the original intent.

Title VIII would relieve the city of Minot, ND, of all liability to repay costs associated with the excess capacity of the Minot pipeline. The excess capacity costs total approximately $1 million, and are the result of the enactment of the Garrison Diversion Reformation Act of 1986, which deauthorized certain features of the Garrison project.

Legislation similar to this title, but affecting other project features, was included in the Garrison Reformulation Act.

Title IX authorizes the Secretary of the Interior to renegotiate the payment schedules for loans made to the Redwood Valley County Water District, California. Payments due to the United States from the district under the existing loans would be suspended until October 1, 1989. The total loan amount involved is $7.3 million.

A combination of circumstances have made it impossible for the district to meet its repayment obligation according to the existing schedule. This amendment to S. 640 will allow the district sufficient time to get its financial affairs in order so that payments on the loan balances can be resumed.

The final title would allow the Lakeview Irrigation District in Wyoming to purchase 10,000 to 15,000 acre-feet of water stored in Buffalo Bill Reservoir. This purchase would serve as a form of insurance for the district's farmers, who would be able to irrigate their crops even in drought years.

Mr. Chairman, this legislation was favorably reported by voice vote from the Committee on Interior and Insular Affairs earlier this month. The bill will correct a number of relatively minor but pressing problems, and I urge my colleagues to support its passage.

□ 1135

Mr. LUJAN. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise in support of the legislation. I think the chairman of the subcommittee has done an excellent job of presenting the legislation to the House. I concur with those statements and associate myself with his remarks.

I do not have any request, for time at the present but I will reserve the balance of my time.

Mr. MILLER of California. Mr. Chairman, I yield 1 minute to the gentleman from Colorado [Mr. CAMPBELL].

Mr. CAMPBELL. Mr. Chairman, first I would like to thank Congressman MILLER for including a measure in his "S. 640" which is important to Colorado.

Title VI of the substitute addresses the need for a renewed contract between the Bureau of Reclamation and the Grand Valley Water Users for the operation of the Grand Valley Power Plant, near Grand Junction, CO.

In the original law authorizing the Grand Valley Hydropower plant, Congress made no arrangements for the plant's continued operation, and as a consequence, the plant was shut down.

On April 30, 1986, the Bureau of Reclamation entered into an interim contract for the operation of the powerplant until new legislation is passed. The interim contract expires on December 31, 1987.

Chairman MILLER's amendment allows the plant to be operated for an additional 25 years. The legislation also makes it possible for the title to the reclamation project and the powerplant to be transferred to the Grand Valley Water Users Association, if the parties so desire. It should be noted that the Grand Valley Power Plant has been in operation for 50 years under their contractual agreement with the Bureau.

Federal funds have never been expended on the powerplant, and will not be expended under the proposed legislation. I also believe the U.S. Treasury will benefit from the acceleration of repayments mandated by the legislation.

I hope my colleagues will support Mr. MILLER's efforts to ensure that expensive reclamation and hydropower plants do not go to waste.

Mr. MILLER of California. Mr. Chairman, I yield 2 minutes to the gentleman from North Dakota [Mr. DORGAN].

Mr. DORGAN of North Dakota. I thank the gentleman for yielding.

Mr. Chairman, this piece of legislation has two provisions in it dealing with cities in North Dakota and I wanted to describe them for my colleagues.

One deals with the city of Minot, ND. In 1972, Minot contracted with the Bureau of Reclamation to build a pipeline to provide water to that city with pipeline sized on an assumption that it would convey water from the Garrison diversion project. In 1986, Congress reformulated the Garrison diversion project and deauthorized the Velva Canal, which means the pipeline Minot built cannot now be used to its capacity. It was not Minot's fault. The city built it relying on information from the Federal Government. City officials felt that needed features would be in the Garrison diversion project. They built the pipeline, and the features are not now in the Garrison project. Consequently, the pipeline has excess capacity.

Mr. Chairman, they need to be absolved of the responsibility for paying for that excess capacity and title VIII of the bill does just that.

Second and briefly, the city of Dickinson contracted with the Bureau of Reclamation to add bascule gates to the city dam and thereby increase reservoir capacity. They have had a serious water shortage which the project was supposed to correct. Unfortunately for Dickinson, it turns out the gates did not work because the design was faulty. Temperatures fell to 20 to 30 degrees below and the bascule gates that were designed for warm, free-flowing rivers frankly did not function. The city is now stuck with the excess cost from fixing the design flaw and the city needs to be absolved of those costs. That is what title I of this legislation will do.

On behalf of the city of Dickinson and the city of Minot, these are very justifiable claims and we would hope for the favorable recommendation by the House of Representatives.

And I thank the gentleman for yielding.

Mr. MILLER of California. Mr. Chairman, I yield 5 minutes to the gentleman from Indiana [Mr. JONTZ].

Mr. JONTZ. Mr. Chairman, I rise in opposition to the bill, S. 640, as reported by the Interior Committee, is a collection of 10 provisions dealing primarily with water and power projects of the Bureau of Reclamation in 6 Western States. About half of these provisions attempt to deal in one way or another with projects that have gone sour—cost overruns, poor engineering, environmental problems, and the like—problems that all too often are associated with Bureau of Reclamation water projects.

To their credit, our colleagues on the Interior Committee have attempted to respond to problems created by the Federal Government's dam builders. In the past, the Bureau has squandered huge amounts of Federal tax dollars on projects of dubious value. Even now, as the gentleman from California [Mr. MILLER] has noted so often, the Bureau continues to lavish subsidies on large-scale agribusiness operations in utter disregard for the intent of Congress to curtail such inequity.

The billion-dollar-a-year reclamation program literally cries out for congressional oversight, and indeed, the distinguished subcommittee chairman, Mr. MILLER, has made great progress in placing Bureau operations under greater public scrutiny.

But what about S. 640? Where was the investigation and oversight that this program needs so badly? The bill was assembled without hearings, reported without a CBO report, and scheduled for floor action immediately. In the haste to accommodate our colleagues and their constituents who have been on the receiving end of the Bureau's mismanagement, the bill that has emerged will compromise our efforts to reform and improve this program.

For example:

DICKINSON, ND

The bill attempts to referee a contract dispute between the Bureau of Reclamation and the town of Dickinson, ND, by simply waiving local repayment requirements for water supply facilities. A more appropriate response would be to leave this dispute for the courts to resolve. Certainly my own constituents are not at fault in this situation, but yet the bill would require my own constituents, as Federal taxpayers, to pay. In the absence of any indication of material hardship for Dickinson to repay the disputed amount over the next 50 years, I think the bill sets a very poor precedent.

OROVILLE-TONASKET, WA

Another title to the bill will raise the appropriation ceiling for the Oroville-Tonasket project in the State of Washington, bringing the new total to $88,000,000. When this project was originally authorized over 10 years ago, its purposes included fishery restoration, as well as irrigation. Yet in August of this year, the Commissioner of Reclamation reported that "little progress has been made in resolving the uncertainties about the salmon enhancement aspects of the project." I believe that if we are going to spend $8,000 per acre on an irrigation project, we should do so with the assurance that all environmental problems have been resolved. Unfortunately, the bill would defer the resolution of environmental issues into the future.

Several other provisions of the bill relate in one way or another to fishery resources. The bill and the report are silent about the consequences to fisheries resulting from current operations of the Grand Valley project in Colorado and proposed changes in operations of the Shoshone project in Wyoming. The bill would also have all Federal taxpayers assume the burden of restoration of fisheries in the Sacramento River that have been impaired by operations at Shasta Dam. The cost of this worthwhile effort should surely be born by the beneficiaries of the water and power that has been delivered at such low cost from Shasta for decades.

Fundamentally, S. 640 will not improve the reclamation program. Waiving repayment requirements will not prevent cost overruns or engineering errors in the future. Ignoring environmental problems will not make them go away. Extending taxpayer subsidies will not improve the management of our Nation's water resources. And enacting special favors for selected beneficiaries will not advance public confidence in the Federal water resources program.

Mr. Chairman, I urge a "no" vote on S. 640.

Mr. MILLER of California. Mr. Chairman, I yield 3 minutes to the gentleman from California [Mr. BOSCO].

Mr. BOSCO. Mr. Chairman, I thank my colleague from California for bringing forward this bill. It will make measured improvements in the Sacramento River Fishery which is extremely important to the State of California and in addition, help on a number of Bureau projects that need one kind of aid from the Congress or another.

I think it is a mistake to think that out of the thousands of Bureau of Reclamation projects around the country, most of which are operating as they had intended to, that there cannot be a few of these projects that they occasionally have to review and reset the parameters for. One of these is the Redwood Valley project in my distict in California. It is a small project.

In the early seventies a number of mistakes were made in planning for this project, one of which was the Bureau and the private engineer's estimate on what it would cost. Another of the mistakes was what percentage or residential versus agricultural users there would be.

As a result, this district has no way of paying back to the Government. This particular measure before us would allow a restructuring of that debt so that it will be paid, not that it will be defaulted on or somehow forgiven, but that it will be repaid to the benefit of the U.S. taxpayers.

I notice that some of the environmental groups must not have had too much else going for them around here the last couple of weeks so they have chosen this bill as one of their targets. Normally, these groups offer more respectable advice to the Congress. But in this case they are simply nit-picking.

It is a mistake to think that everything we do here is a major precedent, that every little change we make in Bureau of Reclamation projects is somehow going to affect the rest of the future.

That is not the case. I think that in instances such as the ones that are included in this bill fine-tuning has to take place. It is perfectly appropriate for Congress to do that. It is done all the time in the private sector when either debt has to be restructured or other changes made in agreements that have been made earlier.

I commend the chairman. This is a good bill. It is a small bill.

The environmental groups have tried to make a mountain out of a mole hill here and I think we are all well advised to get this bill along, get it passed so that we can get on with our business in repaying the Government for a number of these projects.

Mr. LUJAN. Mr. Chairman, I yield 5 minutes to the gentleman from Washington [Mr. MORRISON].

Mr. MORRISON of Washington. Mr. Chairman, on February 26, 1987, I introduced legislation (H.R. 1304) to increase the authorization ceiling for the rehabilitation of the Oroville-Tonasket Unit of the Chief Joseph Dam project in Washington State. Similar legislation (S. 649) was introduced in the Senate by Senators EVANS and ADAMS on March 3, 1987. The language of this bill, as amended by the Interior Committee, was incorporated into S. 640 as title II of that bill.

The Oroville-Tonasket irrigation project was authorized in 1976 to replace the district's outdated and inefficient wooden flume delivery system with an up-to-date pressurized delivery system. Also included in that legislation were fish and wildlife mitigation and enhancement requirements. Construction was begun in 1980 and was designed to be a three-phase process. Unfortunately, the third phase of the project has yet to be completed, problems have plagued the second phase of the project, fish and wildlife activities have not yet been completed and the Bureau is nearing the authorization ceiling for the bill.

The water users of the Oroville-Tonasket Irrigation District deserve the up-to-date, efficient water delivery system they were promised and they are already paying for. In addition, the important fish and wildlife mitigation and enhancement activities included in the law must be completed. Without the increase in the authorization ceiling included in this legislation, neither of these two goals can be accomplished.

☐ 1150

Mr. MILLER of California. Mr. Chairman, I yield back the balance of my time.

Mr. LUJAN. Mr. Chairman, I have no further requests for time, and I yield back the balance of my time.

The CHAIRMAN. Pursuant to the rule, the committee amendment in the nature of a substitute now printed in the reported bill is considered as an original bill for the purpose of amendment and is considered as having been read.

The text of the committee amendment in the nature of a substitute is as follows:

S. 640

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this act shall be cited as the "Water and Power Authorization Act of 1987".

TITLE I—CITY OF DICKINSON, NORTH DAKOTA

CANCELLATION AND AUTHORIZATION OF REPAYMENT CONTRACT

SEC. 101. (a) Notwithstanding title II of the Reclamation Authorization Act of 1975 (Public Law 94-228), the City of Dickinson, North Dakota, is forgiven all obligations incurred by such city under the contract (numbered 9-07-60-WR052) entered into with the Secretary of the Interior or his delegate.

(b)(1) The Secretary of the Interior, acting through the Commissioner of the Bureau of Reclamation, is authorized to enter into a new repayment contract with the city of Dickinson the terms of which shall entitle the city of Dickinson to water supply benefits provided by the bascule gate project authorized by title II of the Reclamation Authorization Act of 1975 in consideration for repayment of the costs of the bascule gate project as provided in paragraph (2).

(2) Repayment terms of the new contract shall provide for—

(A) repayment by the city of Dickinson of the capital cost of the bascule gate project of $1,625,000 over a period of forty years at an interest rate of 7.21 per centum per annum; and

(B) payment of the annual operation, maintenance, and replacement costs of the project facilities.

TITLE II—INCREASE IN AUTHORIZATION CEILING

OROVILLE-TONASKET UNIT, CHIEF JOSEPH DAM PROJECT, WASHINGTON

SEC. 201. (a) The first sentence of section 208 of Public Law 94-423 (90 Stat. 1324) is amended by striking out "for the fiscal year 1978 and thereafter the sum of $39,370,000 (January 1976 prices)" and inserting in lieu thereof: "through September 30, 1991, the sum of $88,000,000 (January 1987 prices)".

(b) The Secretary of the Interior is authorized and directed to submit a report, together with recommendations, for mitigation of the impact of the project on salmon resources, and for enhancing the production of salmons to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate no later than one hundred twenty days after the date of enactment of this Act.

TITLE III—CENTRAL VALLEY PROJECT WATER RELEASES

AUTHORIZATION FOR RELEASES

SEC. 301. The Secretary is authorized and directed to install a temperature control curtain as a demonstration project at Shasta Dam, Central Valley Project, California, at a cost not to exceed $3,000,000. The purpose of the demonstation project is to determine the effectiveness of the temperature control curtain in controlling the temperature of water releases from Shasta Dam, so as to protect and enhance anadromous fisheries in the Sacramento River and Sam Francisco Bay/Sacramento-San Joaquin Delta and Estuary. The costs of conducting the demonstration project, including necessary studies, construction and installation of the temperature control curtain, and its operation and maintenance, shall be nonreinbursable.

TITLE IV—NAME CHANGES

STEWART UDALL-BARRY GOLDWATER AQUEDUCT

SEC. 401. (a) The Tucson aqueduct, Phase A, of the Central Arizona project, constructed, operated and maintained under section 301(a)(6) of the Colorado River Basin Project Act (43 U.S.C. 1521(a)(6)), hereafter shall be known and designated as the "Stewart Udall-Barry Goldwater Aqueduct".

(b) Any reference in any law, regulation, document, record, map, or other paper of the United States to the aqueduct referred to in subsection (a) hereby is deemed to be a reference to the "Stewart Udall-Barry Goldwater Aqueduct".

HAYDEN-RHODES AQUEDUCT

SEC. 402. (a) The Granite Reef Aqueduct of the Central Arizona project, constructed, operated, and maintained under section 301(a)(1) of the Colorado River Basin Act (43 U.S.C. 1521(a)(1)), hereafter shall be known and designated as the "Hayden-Rhodes Aqueduct".

(b) Any reference in any law, regulation, document, record, map, or other paper of the United States to the aqueduct referred to in section 1 hereby is deemed to be a reference to the "Hayden-Rhodes Aqueduct".

FANNIN-MCFARLAND AQUEDUCT

SEC. 403. (a) the Salt-Gila aqueduct of the Central Arizona project, constructed, operated, and maintained under section 301(a)(7) of the Colorado River Basin Project Act (43 U.S.C. 1521(a)(7)), hereafter shall be known and designated as the "Fannin-McFarland Aqueduct".

(b) Any reference in any law, regulation, document, record, map, or other paper of the United States to the aqueduct referred to in subsection (a) hereby is deemed to be a reference to the "Fannin-McFarland Aqueduct".

TITLE V—POWER MARKETING ADMINISTRATION AUTHORIZATION

AUTHORIZATIONS

SEC. 501. There are authorized to be appropriated for the fiscal years beginning October 1, 1987, and extending through September 30, 1989, the following sums:

(a) ALASKA POWER ADMINISTRATION.—For necessary expenses of operation and maintenance of projects in Alaska and of marketing electric power and energy by the Alaska Power Administration, such sums as may be necessary, to remain available until expended.

(b) SOUTHEASTERN POWER ADMINISTRATION.—For necessary expenses of operation and maintenance of power transmission facilities and of marketing electric power and energy pursuant to the provisions of section 5 of the Flood Control Act of 1944 (16 U.S.C. 825s), as applied to the Southeastern Power Administration, such sums as may be necessary, to remain available until expended.

(c) SOUTHWESTERN POWER ADMINISTRATION.—For necessary expenses of operation and maintenance of power transmission facilities and of marketing electric power and energy, and for construction and acquisition of transmission lines, substations and appurtenant facilities, and for administrative expenses connected therewith, in carrying out the provisions of section 5 of the Flood Control Act of 1944 (16 U.S.C. 825s), as applied to the Southwestern Power Administration, such sums as may be necessary, to remain available until expended; in addition, notwithstanding the provisions of 31 U.S.C. 3302, such sums as may be necessary in collections from the Department of Defense from power purchases and in collections from non-Federal entities for construction projects, to remain available until expended.

(d) WESTERN AREA POWER ADMINISTRATION.—For carrying out the functions and other related activities, as applied to the Western Area Power Administration, including conservation and renewable resources programs, such sums as may be necessary, to remain available until expended, of which such sums as may be necessary shall be derived from the Department of the Interior Reclamation Fund. In addition, the Secretary of the Treasury is authorized to transfer from the Colorado River Dam Fund to the Western Area Power Administration funds to carry out the power marketing and transmission activities of the Boulder Canyon Project as provided in section 104(a)(4) of the Hoover Power Plant Act of 1984, to remain available until expended.

TITLE VI—ACCELERATED REPAYMENT, GRAND VALLEY PROJECT, COLORADO

AUTHORIZATION FOR CONTRACT

SEC. 601. Upon the expiration of the contract between the United States, the Grand Valley Water Users Association (Association) and Orchard Mesa Irrigation District (District) (hereinafter jointly referred to as the "Water Users"), and the Public Service Company of Colorado, dated April 30, 1986, the Water Users, with the approval of the Secretary of the Interior, are authorized to enter into a contract or contracts for a cumulative total period of not to exceed twenty-five years for the sale or development of any power or power privileges under the Grand Valley Reclamation Project in the vicinity of Grand Junction, Colorado: Provided, That such sale or development of power or power privileges shall be without expenditure of funds by the United States. Any such contract or contracts shall provide, among other things, that annual net power revenues shall be applied to the remaining indebtedness of the Association and the District to the United States in following order and manner—

(a) such revenues shall be credited first to the final payments due in the oldest remaining contracts obligating repayment to the United States by each of the Water Users until such contracts have been repaid and then to the final payments due in the next oldest contracts until all such repayments have been made under those and all successive existing contracts: Provided, That the District or the Association, as the case may be, shall continue to be liable for the annual payments due under each such contract in each year until full repayment is made on all existing contracts; and

(b) thereafter, net power revenues shall be applied in accordance with the Act of December 5, 1924 (section 4, subsection I, 43 U.S.C 501), as limited by the Act of July 1, 1946 (16 U.S.C. 825t): Provided, however, That any surplus net revenues not required for operation, maintenance, or replacement of the Grand Valley Reclamation Project irrigation or power facilities shall be paid into the Treasury of the United States as "miscellaneous receipts.".

CONVEYANCE OF TITLE

SEC. 602. The Secretary of the Interior is authorized, upon reaching agreement with the Water Users and upon receipt of the final payment due to the United States from the Water Users, or either of them, to convey some or all right, title, and interest of the United States in the Grand Valley Reclamation Project or any part thereof to the Water Users or either of them, or their successors in interest.

TITLE VII—TOWNSITE LAND

VETERAN, WYOMING TOWNSITE

SEC. 701. (a) Notwithstanding any law or court order to the contrary, the Secretary of the Interior shall amend, subject to valid existing rights, the official subdivision survey and plat for the town site of Veteran, Wyoming, to take into account the actual and common use of streets and alleys on such lands for designation as public reservations in accordance with the Act of April 16, 1906 (34 Stat. 116), as amended.

(b) After completion of the work required to amend the town site survey and plat, the title of the United States in and to the public reservation lands shall be patented to Goshen County, Wyoming. Title of the United States in and to a 90 feet by 75 feet lot of approximately .15 acres which is described in the records of the Goshen County, Wyoming, clerk's office as "a tract in southwest corner of town of Veteran, Block 40 in the original town of Veteran," shall be patented to Goshen County Unified School District Numbered One.

(c) The Secretary is authorized to dispose of Federal lands within the town site area by negotiated or public sale.

TITLE VIII—MINOT EXTENSION, GARRISON DIVERSION UNIT, N.D.

CANCELLATION OF REPAYMENT CONTRACT

SEC. 801. (a) The Act entitled "An Act to authorize the Secretary of the Interior to construct, operate, and maintain the Minot extension of the Garrison diversion unit of the Missouri River Basin project in North Dakota, and for other purposes", approved September 25, 1970 (84 Stat. 866), is amended by adding at the end thereof the following new section:

"SEC. 6. (a) Notwithstanding any other provision of law, the city of Minot, North Dakota, is relieved of all liability for repayment to the United States of the amount of $1,026,489.29, which amount is associated with the excess capacity of the Minot Pipeline resulting from the enactment of the Garrison Diversion Unit Reformulation Act of 1986 (Public Law 99-294).

"(b) The relief from liability for repayment granted by subsection (a) shall be effective retroactive to January 1, 1978, which is the beginning of the repayment obligation of the city of Minot, North Dakota, under its 1972 repayment contract with the Bureau of Reclamation.

"(c) If the excess capacity referred to in subsection (a) is ever used, the city of Minot shall reimburse the United States for the costs referred to in subsection (a) proportionate to the actual use of the excess capacity.".

TITLE IX—CONTRACTS WITH THE REDWOOD VALLEY COUNTY WATER DISTRICT

RENEGOTIATION OF CONTRACTS

SEC. 901. (a)(1) Notwithstanding any other provision of law, the Secretary of the Interior shall renegotiate the schedules of payment for the loans to the Redwood Valley County Water District which are numbered 14-06-200-8423A and 14-06-200-8423A Amendatory.

(2) Such renegotiated schedules of payment may not take effect until October 1, 1989.

(b) The obligation to repay amounts loaned to the Redwood Valley County Water District, California, pursuant to the original negotiated schedule of payment of a loan specified in subsection (a) is suspended until the renegotiated schedule of payment for that loan takes effect. Any obligation to repay amounts under any such loan which is due, but not paid as of the date of enactment of this Act, is suspended. The renegotiated schedules of payment referred to in subsection (a) shall take into account any obligation suspended by this subsection.

(c) No interest may be charged on any payment under either of the loans specified in subsection (a) which is due but not paid before the renegotiated schedule of payment for such loan takes effect.

TITLE X—WATER PURCHASE BY LAKEVIEW IRRIGATION DISTRICT

SEC. 1001. (a) The Secretary of the Interior, acting pursuant to Federal reclamation law (Act of June 17, 1902, 32 Stat. 388 and Acts amendatory thereto and supplementary thereof), is hereby authorized and directed to offer to the Lakeview Irrigation District, Wyoming the annual option to purchase 10,000 acre-feet but not more than 15,000 acre-feet of storage of the Buffalo Bill Dam and Reservoir, Shoshone Project, Pick-Sloan Missouri Basin Program, Wyoming.

(b) The Lakeview Irrigation District shall exercise its purchase option only in those water years where there is insufficient yield for the District after the primary flow rights of the Bureau of Reclamation for the management of the Buffalo Bill Dam and Reservoir are satisfied. Any water purchased by the District pursuant to this section shall in turn be provided without charge to the Bureau in return for the District's right, on an acre-foot per acre-foot basis, to continue upstream withdrawals for uses established pursuant to State law.

(c) Any allocation or reallocation from existing uses of water stored in the Buffalo Bill Dam and Reservoir resulting from this section shall not contravene the laws of the State of Wyoming.

AMENDMENT OFFERED BY MR. MILLER OF CALIFORNIA

Mr. MILLER of California. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. MILLER of California:

On page 8, line 7, delete the period and insert in lieu thereof the following:

"*Provided*, That, unless specifically authorized by Act of Congress, none of the funds authorized to be appropriated by this section shall be obligated or expended by the Western Area Power Administration to-

(i) construct,

(ii) participate in the construction of,

(iii) purchase an interest in, or

(iv) execute any arrangement for financing construction by non-Federal entities of any major transmission lines and related facilities in California which have not been specifically authorized by Act of Congress. The prohibition contained in the previous sentence shall not apply to the Pacific Northwest-Pacific Southwest Intertie previously authorized in Public Law 98-360, nor interconnections, services and facilities related thereto; to the Mead-Adelanto transmission line previously authorized in Public Law 88-552; or to the Tracy-Livermore Transmission Project. As used in this section, the phrase "major transmission lines and related facilities" means transmission lines and related facilities—

(i) used to provide services to entities not previously served by the Western Area Power Administration, or

(ii) for which the total estimated construction or acquisition cost represents more than two and one-half per centum (2½%) of the total fixed transmission assets of the Western Area Power Administration.".

Mr. MILLER of California (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. MILLER of California. Mr. Chairman, this amendment would require the Western Area Power Administration to receive authorization from Congress to construct major transmission lines and facilities in California.

The purpose of the amendment is to provide the Congress with badly needed oversight authority on Western's activities. In the past, the only safeguard the Congress has had was during the appropriations process. This is not enough.

This amendment will require Western to justify to the Congress its reasons for constructing major transmission lines and facilities in California. Major transmission lines are defined as those lines which will be used to provide services which were not previously connected, as well as lines which will cost more than $22 million.

Mr. Chairman, there has been some confusion about the intent of this amendment. This amendment is being offered to ensure that everyone concerned about transmission projects gets an opportunity to have their views considered.

There has also been some confusion about what this amendment does and does not do.

It's intended to increase congressional scrutiny.

It's intended to keep a closer watch on Western's activities.

It's not intended to bring construction of major transmission lines to a halt.

And it's not intended to stop Western from building transmission lines.

I would also point out that the amendment is prospective. It does not apply to major transmission lines under construction such as the Tracy-Livermore transmission project, the Mead-Adelanto line, and the Pacific Northwest-Pacific Southwest intertie.

Mr. Chairman, I urge adoption of the amendment.

AMENDMENT OFFERED BY MR. FAZIO AS A SUBSTITUTE FOR THE AMENDMENT OFFERED BY MR. MILLER OF CALIFORNIA

Mr. FAZIO. Mr. Chairman, I offer an amendment as a substitute for the amendment.

The Clerk read as follows:

Amendment offered by Mr. FAZIO as a substitute for the amendment offered by Mr. MILLER of California: Amend the Miller amendment to read as follows:

On page 7, line 20, delete all of subsection (d) down through page 8, line 7 and insert in lieu thereof the following:

"SEC. 502. (a) WESTERN AREA POWER ADMINISTRATION.—There are authorized to be appropriated for the fiscal year ending September 30, 1988 for carrying out the functions and other related activities, as applied to the Western Area Power Administration, including conservation and renewable resource programs, such sums as may be necessary, to remain available until expended, of which such sums as may be necessary shall be derived from the Department of the Interior Reclamation Fund. In addition, the Secretary of the Treasury is authorized to transfer from the Colorado River Dam Fund to the Western Area Power Administration funds to carry out the power marketing and transmission activities of the Boulder Canyon Project as provided in section 104(a)(4) of the Hoover Power Plant Act of 1984, to remain available until expended.

(b)(1) TRANSMISSION PROJECT LIST.—The Administrator of the Western Area Power Administration is authorized and directed no later than February 1, 1988, and not less than every year thereafter, to submit to the Congress a comprehensive list of major transmission lines and related facilities which the Western Area Power Administration plans to construct or participate in the construction of during the next five years.

(2) No funds are authorized to be appropriated after February 1, 1988 to the Western Area Power Administration to construct or participate in the construction of any major transmission lines and related facilities which are not included on the comprehensive list required by subsection (b)(1) of this section. The provisions of this subsection shall not apply to emergency projects or projects which the Administrator deems essential to provide adequate and reliable service.

(c) REPORT.—The Administrator is authorized and directed to review Western Area Power Administration transmission policies and programs, and provide, no later than May 1, 1988, recommendations to Congress, including legislative recommendations, for improving those policies and programs.

Mr. FAZIO. Mr. Chairman, I rise to offer a substitute to the amendment offered by my good friend from California, Representative GEORGE MILLER, the chairman of the House Interior Subcommittee on Water and Power. I am pleased to say that I am doing so with his support. In fact, this substitute evolved out of discussions he sponsored and participated in. He is as much responsible for its contents as anyone, if not more.

In his orginial amendment, Mr. MILLER brings the attention of the House to a general issue which is of vital concern to any utility, big or small, public or privately owned. That issue is the construction of transmission, or at least access to it. Transmission is extraordinarily difficult to build or obtain. Without dependable, low cost transmission to dependable, low cost sources of generation, a utility cannot compete to provide adequate service to its ratepayers. If it cannot compete to provide adequate service, it is only a matter of time before it goes out of business.

The particular aim of the chairman's amendment today is on the role which the Western Area Power Administration [WAPA] plays as part of the larger transmission grid in California. WAPA operates in the central valley and northern parts of the State, where its 1,200 miles of transmission lines constitute roughly 8 percent of the total transmission available. Virtually all the remaining transmission in this region is owned by the Pacific Gas and Electric Co.

Though WAPA's portion of the total transmission in the region may seem small, it is extremely important for several reasons. First, even a small share is vital to a system which functions as a network.

Second, WAPA's transmission consists of some major trunk lines which connect large areas with each other.

Third, and perhaps most importantly, WAPA's larger lines give numerous smaller California utilities alternative means by which they can reach their crucial sources of power. Without the alternatives provided by WAPA, a lack of transmission would eventually lead to a lack of competition between utilities. Should that ever occur, all the ratepayers of California would suffer.

In short, the Western system is vital to competition, and therefore vital to consumer service.

Mr. MILLER's amendment is prompted by the need for the Congress to educate itself on how well WAPA is fulfilling this role. There is a need for all of us to get a better idea of WAPA's activities in this period of ferment and restructuring in the utility industry. We must ensure that as market forces and Government policies evolve, an environment continues within which competition and service to the ratepayer flourish. For instance, we should maintain a fair distribution of the costs for our electrical system across the spectrum of ratepayers. We should also seek to avoid situations where control over certain sections of the grid can be used to the detriment of others legitimately needing transmission access.

Since the chairman first proposed his amendment there has been much constructive thinking about how Congress can best go about obtaining the oversight it needs. What I present here as a substitute to his original amendment is the result of those discussions. As I said, it is as much his amendment as anyone's, and I am grateful for his leadership in raising these issues and leading us to these conclusions.

This substitute amendment would do several things:

It would call upon the Administrator of WAPA to submit by February 1 of each year a 5-year plan encompassing all major transmission projects in every State in its service area.

The plan would be renewed and extended annually, or more often as new transmission needs develop.

It would restrict the authorizations for WAPA to construct or participate in construction of major transmission to those projects on the lists as well as those added for emergency or other timely reasons.

The Administrator would have the latitude necessary to respond to transmission emergencies or other unanticipated problems which occur suddenly and which threaten the maintenance of adequate and reliable service.

The amendment calls upon the Administrator to suggest improvements to the current set of policies and programs by which it constructs or participates in construction of transmission.

Last, the amendment would set the stage for annual hearings through which Congress can examine the Western transmission program as well as the operations of the grid as a whole in which WAPA plays a part.

Of course, the extent to which this procedure ends up benefiting the ratepayers in WAPA's region depends in part on what use Congress makes of this information. However, in my view, we are not saying by this amendment that there necessarily will be anything Congress should do to improve the current set of policies and programs by which WAPA participates in the overall electrical grid. I expect that the simple holding of hearings could have a healthy effect on the grid whether or not any action by Congress is called for. If action is called for, on the other hand, we will have sound bases on which to take it.

In addition, this provision removes opposition from the American Public Power Association and the municipal utilities involved.

Mr. MILLER of California. Mr. Chairman, will the gentleman yield?

Mr. FAZIO. I am happy to yield to the gentleman from California.

Mr. MILLER of California. Mr. Chairman, I will accept the amendment offered by my colleague, the gentleman from California [Mr. FAZIO] to my amendment.

I think that this will provide us with notice as to the activities of the Western Area Power Administration, and the committee at that time will then be able to engage in oversight activities far enough in advance to have some meaningful input into the process rather than simply finding out about many of these projects long after they have been considered by the various agencies.

I think this will enhance the role of the subcommittee in oversight, and I do recognize the fact that this is a compromise that has been worked out with all interested parties.

Mr. Chairman, as far as I know, there is no objection to this amendment to my amendment.

Mr. MORRISON of Washington. Mr. Chairman, will the gentleman from California yield?

Mr. FAZIO. I am happy to yield to the gentleman from Washington.

Mr. MORRISON of Washington. Mr. Chairman, I want to congratulate both gentlemen from California, because the substitute language that is now being proposed does satisfy a number of concerns many of us in the Western United States had over the proposal on the interties connecting our different regions. So we are pleased and I am pleased personally to be able to accept this amendment.

Mr. FAZIO. Mr. Chairman, I appreciate the gentleman's comments in support of the amendments.

Mr. MINETA. Mr. Chairman, I rise in support of this compromise amendment, offered by my fine colleague, Mr. FAZIO, which assures that the needs of the municipal utilities will be considered during the normal budget review process.

I applaud this compromise and the Members who worked together to effect this arrangement. Under the amendment, the Western Area Power Administration will provide a comprehensive list of major transmission lines and related facilities which the WAPA plans to construct or participate in the construction of during the next 5 years. I believe that this amendment will allow Congress to exercise its legitimate oversight role in this area, and at the same time will provide the flexibility to the public power utilities to obtain power at competitive rates.

Mr. Chairman, I would like to thank the two gentlemen from California, Mr. MILLER and Mr. FAZIO, who provided the leadership on this issue. I applaud their efforts on this compromise amendment.

Mr. SHARP. Mr. Chairman, I applaud the gentlemen from California on having worked together to forge a workable agreement that deals with the transmission plans of the Western Area Power Administration.

I believe that the substitute language is an improvement over the original amendment, which would have required express congressional authorization to allow WAPA to "construct, particiapte in the construction of, or purchase an interest in major transmission lines and related facilities in California."

The issues of transmission and reliability of electric power occupy the interest and jurisdiction of the Energy and Commerce Committee and my own Energy and Power Subcommittee. There is no issue in electricity more complex and controversial than transmission. We await eagerly the fruits of a comprehensive study of the Nation's transmission and distribution grid, which was undertaken earlier this year by the Office of Technology Assessment pursuant to a request by the chairman and ranking minority members of the Energy and Commerce Committee.

As the electric power industry and its regulators venture cautiously into the untested waters of competition in this vital industry, I believe that we cannot afford to stifle alternatives to the traditional, vertically integrated electric utility model. To succeed, competitive initiatives require counterweights to both the monopoly and monopsony powers of the utility.

The requirement in the substitute amendment that the WAPA Administrator "review [WAPA] transmission policies and programs, and provide * * * recommendations * * * for improving these policies and programs" invites an exercise from which any entity involved in the transmission of electricity, public or private, might well benefit.

Mr. MATSUI. Mr. Chairman, I rise in support of the substitute amendment offered by my colleague from California, Mr. FAZIO.

Several of my constituents representing the Sacramento Municipal Utility District [SMUD] as well as the Northern California Power Agency have raised serious concerns about the significance of transmission services in the State of California.

In the elecrtic utility industry, transmission lines are the arteries over which bulk power is moved in order to achieve efficiency, reliability, and the lowest possible cost to the electric consumer. In my district, SMUD has recently requested proposals for supplies of bulk power from numerous sources. Transmission will be a key to gaining access to the lowest cost supplier and keeping electric rates in Sacramento as low as possible.

The Western Area Power Administration [WAPA] plays an integral part in the transmission system in California. My colleague's substitute amendment will require WAPA to submit to Congress, on a regular basis, a 5-

year plan for its transmission construction activities. Submittal of this list will enable this body to review in an orderly fashion the transmission needs of the 15 States served by WAPA.

It is my understanding that the distinguished chairman of the Water and Power Resources Subcommittee is considering holding hearings on WAPA's transmission policies. I am hopeful that these efforts will provide an opportunity to review all current transmission practices and policies in order to move us closer to a transmission system that provides all electric consumers with access to reliable sources of affordable power.

My colleague's substitute represents a positive step, and I am pleased to join in supporting this compromise.

The CHAIRMAN. The question is on the amendment offered by the gentleman from California [Mr. FAZIO] as a substitute for the amendment offered by the gentleman from California [Mr. MILLER].

The amendment offered as a substitute for the amendment was agreed to.

The CHAIRMAN. The question is on the amendment offered by the gentleman from California [Mr. MILLER], as amended.

The amendment, as amended, was agreed to.

AMENDMENT OFFERED BY MR. MILLER OF CALIFORNIA

Mr. MILLER of California. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. MILLER of California:

At the end of the bill, insert the following new title:

TITLE —KESTERSON RESERVOIR PROHIBITION, CALIFORNIA

SEC. . The Secretary of the Interior is prohibited from dewatering or otherwise causing a discharge of water from Kesterson Reservoir, California, into the San Joaquin River or its tributaries.

Mr. MILLER of California (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. MILLER of California. Mr. Chairman, this amendment would prohibit the discharge of water from Kesterson Reservoir in California into the San Joaquin River or its tributaries.

I find it absolutely incredible that I have to offer this amendment. Kesterson Reservoir is widely known as one of the most seriously contaminated bodies of water in the United States. Hundreds of birds have died at Kesterson from selenium poisoning. Thousands more have been stillborn or born with grotesque deformities caused by selenium.

Now we find out that the Bureau of Reclamation wants to take the Kesterson water from the ponds, dilute it with fresh water so that it technically meets water quality standards. The Bureau would then dump it into a river system which provides drinking water to hundreds of thousands of California citizens, many of whom live in my district. From there, the selenium would flow into San Francisco Bay, adding to the selenium contamination which has been discovered there in recent years.

No, thank you, Mr. Secretary.

Until 1985, Kesterson was used to store irrigation drainage water collected from the Westlands Water District. Once it became clear that birds were dying from the contaminated water, the Secretary of the Interior ordered Kesterson closed. The Bureau of Reclamation is now under orders from the State of California to cleanup the mess at Kesterson by August of next year.

On October 9 of this year, we learned from the State of California that the Bureau of Reclamation has asked for permission to "dewater" the ponds at Kesterson and discharge their contents into a tributary of the San Joaquin River. The Bureau claims they must discharge the water from the ponds in order to meet the schedule for the cleanup. They can't wait for evaporation to do the job, they say.

I believe the Bureau's proposal is environmentally irresponsible and represents a direct insult to the millions of people who live and work in the San Francisco Bay area. Seven of my colleagues and I have registered our strong protests to the Secretary of the Interior and the chairman of the California State Water Resources Control Board, which must approve the Bureau plan. I ask unanimous consent that these letters be included in the RECORD at this point.

Unfortunately, strong letters of protest are all too often ignored by the Department of the Interior. I urge my colleagues to join me in supporting my amendment, which would deny the Secretary the opportunity to commit further environmental insult with water from Kesterson Reservoir.

CONGRESS OF THE UNITED STATES,
Washington, DC, October 15, 1987.

Hon. DONALD P. HODEL,
Secretary of the Interior,
Washington, DC.

DEAR MR. SECRETARY: We are writing to strongly protest the proposal by the Bureau of Reclamation to drain the waste disposal ponds at Kesterson Reservoir and discharge the toxic contents of the ponds into the San Joaquin River. Under the Bureau's plan, which was disclosed not by your Department or the Bureau but rather by the State of California and the press, Kesterson water containing selenium and other toxic contaminants would eventually reach the Sacramento-San Joaquin Delta and San Francisco Bay. Studies by the Fish and Wildlife Service have already found alarming levels of selenium and other poisons in fish and wildlife in these waters.

As you know, last March, the California State Water Resources Control Board rejected the Bureau's simplified proposal to contain the toxic wastes at Kesterson. Instead, the Board ordered the Bureau to implement a more effective and safer cleanup proposal and to complete the cleanup by August of 1988.

To our knowledge, a discharge of water from Kesterson was never contemplated as part of the approved cleanup plan. In fact, such a discharge runs directly counter to assurances we have repeatedly received from you and others in the Department regarding the plans to promptly clean up Kesterson without threats to fish, wildlife, or public health. Frankly, we were shocked to learn of this plan by reading about it in the October 13 editions of Bay Area newspapers, and disappointed that there was no attmept to advise the Congress or the public of the Bureau's intentions.

Draining the Kesterson ponds and discharging their toxic contents into surface waters which flow into the Delta and the Bay is, we believe, environmentally irresponsible and represents a direct insult to the millions of people who live and work in the Bay Area. This action would finally allow the Bureau to fulfill one of its most cherished goals—to use the Delta and the Bay as the dumping ground for wastewater generated by farming operations in the San Joaquin Valley.

Mr. Secretary, the Kesterson tragedy has been one of the most unfortunate and embarrassing events to plague the Department of the interior since Teapot Dome. We are certain you want to have this matter resolved as quickly as possible. Unfortunately, the Bureau of Reclamation in this instance has again demonstrated its ability to work its own will, seemingly independent of and indifferent to well-intentioned direction from your office. Our continued frustration with the Bureau's performance on the Kesterson issue casts serious doubt on the agency's capabilities to participate in environmental enhancement activities, as is suggested in the recent reorganization proposals.

We request that you immediately direct the Bureau of Reclamation to withdraw its request to dewater Kesterson Reservoir by discharging to surface waters. In addition, we request that you direct the Bureau to immediately proceed with implementation of the State's cleanup orders. In our view, the slightly longer time needed to evaporate the water now in the Kesterson ponds is vastly preferable to the dewatering proposal.

Please advise us promptly of your intentions regarding this matter.

Sincerely yours,
George Miller, Ronald Dellums, Pete Stark, Nancy Pelosi, Norman Mineta, Don Edwards, Barbara Boxer, Richard Lehman, Members of Congress.

CONGRESS OF THE UNITED STATES,
Washington, DC, October 15, 1987.

Mr. W. DON MAUGHAN,
Chairman, State Water Resources Control Board, Sacramento, CA.

DEAR MR. MAUGHAN: We are writing to strongly protest the proposal by the Bureau of Reclamation to drain the waste disposal ponds at Kesterson Reservoir and discharge the toxic contents of the ponds into the San Joaquin River. Under the Bureau's plan, which is now under review by the Central Valley Regional Board, Kesterson water containing selenium and other toxic contaminants would be discharged and diluted with fresh water so that the Bureau would technically be in compliance with water quality standards. In our view, this discharge proposal poses a significant environmental threat to the San Joaquin River, the Delta, and San Francisco Bay.

To our knowledge, a discharge of water from Kesterson was never contemplated as part of the approved cleanup plan set forth in State Water Resources Control Board Order 87-3. In effect, such a discharge would allow the Bureau to use the San Joaquin River and the Delta as a surrogate for the San Luis Drain. In addition, the Bureau's proposal seems to directly contravene a direct prohibition contained in the Central Valley Regional Board's Waste Discharge Requirements for Kesterson (Order No. 87-149), which states: "The discharge of solid or liquid waste or leachate to surface waters, surface water drainage courses or to ground water is prohibited" (page 13). The order also states: "The cleanup and disposal of waste shall not cause the degradation of any water supply" (page 14). As you know, well over 300,000 citizens served by the Contra Costa Water District depend on the Delta for their water supply.

Despite the Bureau's contention that they will be able to comply with State water quality standards by diluting their discharge, we believe that their proposal would significantly threaten water quality. The bioaccumulative nature of selenium has been demonstrated in horrible proportions by the wildlife tragedy at Kesterson. Dilution of selenium is no solution, and should not be tolerated as a pollution control measure.

We request that you intervene in the proceeding immediately, and that the Bureau's request to discharge be denied. We believe this is the only responsible course of action. To allow the discharge will not serve the public interest, and will continue to hold the specter of a continuing crisis at Kesterson over the heads of Bay Area residents. In our view, the slightly longer time needed to evaporate the water now in the Kesterson ponds is vastly preferable to the dewatering proposal.

Please advise us promptly of your intentions regarding this matter.

Sincerely yours,

George Miller, Ronald Dellums, Pete Stark, Nancy Pelosi, Norman Mineta, Don Edwards, Barbara Boxer, Richard Lehman, Members of Congress.

The CHAIRMAN. The question is on the amendment offered by the gentleman from California [Mr. Miller].

The amendment was agreed to.

Mr. CONTE. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I rise in opposition to this measure that would waive, reduce, or defer repayment obligations on water projects for a number of municipalities and other project sponsors.

Mr. Chairman, this measure goes in exactly the wrong direction. After over 10 years, last year we were finally able to break the log-jam on Corps of Engineers project authorizations by enacting significant cost-sharing and project repayment reforms.

Reform of the Bureau of Reclamation's program has also proceeded, both administratively and through the enactment of legislation on specific projects, including the massive Garrison diversion project.

Yet in the face of the trend toward more cost-sharing and more appropriate treatment of repayment obligations, the committee has come forward with a bill that can only be characterized as a blatant porkbarrel bailout for a few selected projects. It is bad policy and sets an even worse precedent.

Mr. Chairman, no hearings were held in the House committee on this measure, and of the bill's 10 provisions, only 3 were subject to hearings before the relevant Senate committee.

Several of the provisions in this bill are controversial, and should at the very least have been the subject of hearings.

Mr. Chairman, this morning a number of my colleagues took to the well to denounce the impact of the impending Gramm-Rudman-Hollings sequester. I share their views.

But in light of the impending sequester, now is not the time to provide a costly bail-out for a few special interest water projects. I urge my colleagues—don't make the deficit worse. Don't set water policy reform back another 10 years. Don't bail out these projects without at least a hearing and an opportunity for opponents to present their cases.

I urge the defeat of this bill.

AMENDMENT OFFERED BY MR. MILLER OF CALIFORNIA

Mr. MILLER of California. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Miller of California: At the end of Title V, add the following new section:

"Sec. . Bonneville Power Administration.—Section 8(d)(3) of the Pacific Northwest Electric Power Planning and Conservation Act (Public Law 96-501, 16 U.S.C. 838K(a)) is amended by deleting '$1,250,000,000' and inserting in lieu thereof: '$1,246,567,000'."

Mr. MILLER of California (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the Record.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. MILLER of California. Mr. Chairman, this amendment addresses the Bonneville Power Administration's $3 million furniture giveaway.

According to recent press reports, improprieties may have occurred when furniture valued at $5.8 million was purchased for Bonneville's sparkling new office building in Portland, OR. Apparently, Bonneville gave 3 million dollars' worth of perfectly good furniture away to other public agencies in exchange for a $3 million credit from the General Services Administration. It has also been reported that an additional $663,000 was spent to purchase office furniture for top Bonneville officials.

Some may find this incident comical. But it wasn't funny for the Bonneville contracting officer whose objections to the purchase were apparently ignored. And it isn't funny to Bonneville's customers who were asked to pay an average 7.7 percent more for their power at the same time as Bonneville was throwing away perfectly usable furniture.

The Bonneville Power Administration has spent the last year complaining of its need for revenues. In addition to the much publicized rate increase, Bonneville also announced that 300 jobs would be cut to save money. And Bonneville boasted of its goal to save $1 billion by holding spending through 1989 at 1986 levels. Apparently, the belt-tightening requirement didn't apply to Bonneville's interior decorator.

To correct the problem, I am offering an amendment which reduces Bonneville Power Administration's borrowing authority by $3.4 million. That is the amount Bonneville inappropriately spent for the new furniture. I urge that it be adopted.

[From the Seattle (WA) Times, Sept. 17, 1987]

BPA's $3 Million Furniture Giveaway

(By James E. Lalonde)

As the Bonneville Power Administration cut its budget and raised electrical rates last summer to make the payments on its $8 billion federal debt, the federal agency also gave away nearly $3 million worth of usable office furniture.

The BPA then replaced it with $5.8 million worth of similar, new furniture—at an average cost of $2,600 per office worker.

The BPA also ordered an additional $633,000 worth of posh executive furniture for a few dozen top BPA officials and their secretaries—at an average cost of more than $19,000 per executive suite.

And the BPA says it was all done in the name of necessity, efficiency, and saving the taxpayers' money.

Some Washington state officials, however, who got the hand-me-downs, say BPA gave away good furniture.

"The condition of that stuff is superb," said Ed Hannus, a maintenance administrator for the state Department of Transportation.

Office-furniture specialists not associated with the BPA contract, but who deal in similar lines of furniture, expressed shock at the price the BPA was paying to furnish executive suites.

"If I had clients who would spend $19,000 per office, I would be in heaven," said Ken Ellsworth, of Hunt, Johnson & Ellsworth, a Seattle office-furniture supplier with 10 years of experience. "Even if you are talking about an average of $11,000 per person, that would generally be considered high."

The great furniture giveaway came to light here because the Washington State Ferry System and the State Department of Transportation are two of more than half a dozen government agencies, including the Navy at Bremerton, that snapped up large lots of the excess furniture.

Washington state government alone got about $264,000 worth of furniture, enough for 110 employees' work stations.

The giveaway—called "excessing" in federal jargon—began this summer as the BPA moved into its new headquarters in Portland. It consolidated more than 2,000 employees from seven buildings into a single new headquarters, built for the BPA by the General Services Administration.

When the BPA moved, rather than update and use existing furniture, the GSA and the BPA opted to "excess" the furniture to other state and federal agencies, using a federal interagency surplus sharing and crediting procedure.

The federal government, through the GSA, then spent nearly $6 million to buy the BPA new furniture for the GSA-run building.

"The idea was to more efficiently utilize the space" in the new building, says Gary Graff, a GSA planner. New furniture, Graff explained, is more efficient than older furniture.

Jack Kiley, director of administrative services for the BPA, conceded that some of the furniture the BPA gave away was "nice stuff." He said that his agency did consider using the best of the BPA's old furniture, but rejected the idea as less efficient than starting over with new. About 10 percent of the agency's old furniture, mostly special equipment such as drafting tables, was saved, Kiley said.

"A large part of it was trying to get furniture that matched, so that it would present a nice image," he said. "Certainly one could make an argument that one could get a little more life out of an 8-year-old chair. We chose not to."

Since it was getting all new furniture for the troops, the BPA decided to buy new furniture for the executives as well. Though the GSA paid $5.8 million for work-station furniture for 2,200 employees, it did not budget for executive suites.

As a result, the BPA contracted separately for $633,000 worth of Stow and Davis brand furniture from a Portland office-supply company. About $137,000 of the $633,000 was spent for new conference-room furnishings for the seven-floor building, said Kiley.

The remaining half-million dollars went for the BPA's top 26 administrators and their 17 secretaries. The average cost was more than $19,000 for each of the 26 executive suites, including less expensive furniture for the secretaries.

"It is expensive and it is good-quality furniture," agreed Kiley. "Part of it is (for) the regional administrator. . . . I think we gave him furniture consistent with what he does."

Even the BPA, however, internally questioned the decision to buy such expensive furniture for its executives. The agency ordered a private review of the purchases in January and reportedly concluded the purchases were inappropriate.

"I looked, with our procurement people, at getting out of the contract and then going with procurement of standard GSA stock," said Steve Hickok, the BPA's executive assistant administrator and the No. 3 executive with the agency. "But it did not turn out to be cost-effective. It would cost us $100,000, $150,000 to get out of the contract. . . . And so we decided that it didn't make sense to get out of the contract."

Hickok blamed approval of the contracts on decisions made before the BPA's administrator, James Jura, took office in June 1986.

"They were decisions that were made by the previous administrator (Peter Johnson), when Bonneville's revenues were quite healthy," said Hickok. "If we had it to do all over again, we would go with standard stock."

However, Jura held Hickok's job as No. 3 executive under Johnson, while the specifications for the furniture were being drawn up. And the contracts were signed Sept. 30, 1986, more than three months after Jura became top administrator. Hickok's review did not take place until January 1987.

Requests for an interview with Jura were passed on to Hickok. Peter Johnson could not be reached for comment. The BPA raised its electrical rates 7.7 percent in July 1987 to meet the $600 million annual payments on its $8 billion federal debt.

Hickok, however, still defends the need for new executive furniture. He describes the existing furniture, including that of administrator Jura, as "more what you would expect of a government office in a field office of East Podunk."

The BPA is still waiting for its new executive furniture to arrive. The agency moved the old executive furniture to the new headquarters while it waits for the new $19,000 suites to arrive.

Kiley points out that the government will give the BPA credit for up to $3 million for the workers' furniture it gave away to other state and federal agencies.

"To me the bottom line on this thing is that government-wide, this worked to everyone's advantage," said Kiley. "Within our own federal community, I think people are just delighted."

"We got a great deal," said Hannus, the Washington state official who procured some of the BPA furniture for the state DOT. The state had to pay only about $15,000 to disassemble, store and transport the quarter-million dollars' worth of BPA furniture it acquired.

"We took advantage of it because we are trying to save the (state) taxpayers some money," Hannus said. "The question is, why did the BPA get rid of that perfectly good furniture? We all questioned that."

"It doesn't make sense to me," said Tom Wieman, a DOT employee. He says he questioned the BPA about the transaction in his capacity as a taxpayer and Republican precinct committeeman in Thurston County. "Giving away furniture at the same time they are talking about raising the rates to us?"

Wieman is considering nominating the BPA for Wisconsin Sen. William Proxmire's Golden Fleece Award for government inefficiency and boondoggles.

"You sure couldn't do that in private industry," Wieman said.

[From the Seattle (WA) Times, Sept. 20, 1987]

WORKER SAYS HE WARNED BPA

(By James E. Lalonde)

PORTLAND.—The former Bonneville Power Administration employee responsible for purchasing more than $600,000 worth of deluxe new furniture for top BPA officials says he tried to stop the deal from going through because the furniture was too extravagant and he was worried that the contracts may have violated federal regulations.

But the employee, Don Lewis, told The Times yesterday that when he tried to complain to the man who was then second in command of the BPA, James Jura, he was told by his supervisor to "let management handle it."

Jura, who has since been appointed administrator, the BPA's top position, expressed dismay and shock at Lewis' charges. He said no one ever had brought such accusations or complaints to his attention and that if there is a basis for the charges, he may call for an independent investigation.

Jura acknowledged he was the official who ordered the new executive furniture.

Lewis charged that after officials picked out the kind of desks they wanted—Stow and Davis brand furniture—bid specifications were drawn so specifically that other federal agencies that normally provide office furniture could not meet them.

Federal regulations require that government agencies must first try to obtain needed furniture from the General Service Administration or UNICOR, Federal Prison Industries, Inc. Because those agencies could not provide the high-priced, Stow and Davis quality furniture, BPA obtained a waiver to buy it. Even then, however, BPA records show, only two out of 22 manufacturers who submitted bids were able to qualify to make final bids on the contract.

"They made those specifications so restrictive," Lewis said, "that nobody with reasonably priced furniture could bid on them."

BPA ordered the Stow and Davis, hand-finished wooden office furniture for each of its top 26 executives and their 17 secretaries. It cost an average of more than $19,000 to equip each executive suite with furniture for the executive and his secretary.

The contract was signed in September 1986, three months after Jura became top administrator. At the same time, public utilities and rate payers were beginning to clamor about proposed rate increases and BPA was on its way to losing more than $64 million. This summer, BPA raised rates 7.7 percent, and projected a $130 million loss.

Lewis says that when he started complaining to his superiors in the spring of 1986, before the purchase, he was told not to take his concerns to Jura.

"I am troubled," Jura said of the charges. "I am going to follow up on this. I may call an investigation of my own, by an independent party, if I need to."

Half a dozen other key BPA officials involved with the purchase contracts vigorously denied Lewis' charges that there was anything improper about the handling of the purchases, or that Lewis had been denied access to Jura.

Pete Stemple, the supervisor Lewis says told him to "let management handle it," denied that Lewis ever asked him for permission to see Jura about the executive furniture.

"I don't believe I ever inhibited Don (Lewis) from going to the administrator if he felt it necessary to do so," Stemple said in an interview in the presence of head BPA spokeswoman Karen Hoenes.

Stemple also said he had not heard any complaints, from contractors or anyone else, that the contract was too restrictive.

But Lewis' claims are supported by other BPA employees and by documents in BPA files.

Judy Chorazy, another contract specialist who later took charge of the furniture contracts and is still with BPA, contradicted Stemple. Chorazy confirmed that she was with Lewis when he talked to Stemple and another BPA manager about his concerns.

"We discussed it . . . the possible need to go (see Jura)," Chorazy said in a separate interview, also with Hoenes present. "We discussed whether or not upper management was aware of everything (that was going on)."

"What I was concerned about," said Lewis, "was number one, the restrictive specifications, because we knew the thing had been drafted around Stow Davis furniture."

BPA officials, including Chorazy and her superiors, deny that Stow and Davis was used exclusively in drafting the bid specifications. However, in "furniture specification" documents obtained by The Times from BPA files, descriptions of many pieces included the phrase:

"Acceptable manufacturer/product: (1) Stow and Davis . . . Other manufacturers: Submit written request and samples."

The order ultimately placed with Smith Brothers Office Environments, in Portland, was for Stow and Davis products, including $2,700 executive desks and credenzas costing up to $3,700.

While BPA officials denied there was anything improper in the contracts, Jack Kiley, director of administrative services, conceded that even though BPA paid a design firm more than $15,000 to draft the bid specifications for furnishing the executive suites, Stow and Davis furniture was looked at by BPA early in the contract process. "I heard Stow and Davis used as a model kind of furniture," said Kiley.

BPA ordered the executive furniture for offices in its new, $71 million, marble- and chrome-decorated headquarters building, in Portland. The new headquarters, built by the General Services Administration, will be dedicated next Friday.

BPA moved in last month, consolidating 2,000 employees from seven buildings. When it moved in, it received a $3 million federal credit for its old furniture, which BPA gave away to other federal agencies, in a federal surplus-sharing program called "excessing." It then ordered $5.8 million worth of new furniture for workers, from GSA. The executive furniture was ordered under a separate $600,000-plus commercial contract, which included $137,000 for conference room furniture.

"I was really concerned that this was going to bring adverse publicity to Bonneville," Lewis said. "We had just bought executive furniture two or three years ago. And the furniture was still in beautiful shape. It was not good business judgment to buy furniture of that quality at that time."

Prior to learning that Lewis had gone public with his charges, Lewis' former supervisors told The Times that Lewis' performance at BPA had been very good.

Lewis said, however, that after he raised questions about the contract, he received poor performance reviews and no raises. "I was told I was not being a team player," Lewis said. "The last performance review I got was the worst I had in 27 years."

Lewis, 49, said he finally took early retirement from BPA last July— "in disgust," he said—after 17 years with the agency and 27 in government service.

Jura said that if he had the decision to make over again he might think twice about the need to order new executive furniture. He said planning for the furniture, including shopping trips by top BPA executives to Portland furniture stores, was all done when BPA's revenues were healthier.

"I am the one you are going to have to hold accountable for that," said Jura of the new furniture. "The question is, was good judgment used?"

The CHAIRMAN. The question is on the amendment offered by the gentleman from California [Mr. MILLER].

The amendment was agreed to.

Mr. MORRISON of Washington. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I take this time to make a request of the chairman of the subcommittee to participate in a colloquy.

Mr. Chairman, in title II of S. 640, the committee has included language requiring the Secretary of the Interior to report to the committee within 120 days of passage of the bill on the status of the Department's fish and wildlife mitigation and enhancement activities relative to the rehabilitation of the Oroville-Tonasket Unit of the Chief Joseph Dam project. Is it the committee's intent that this report will be used not only to measure the current status of the Department's efforts to meet its fish and wildlife mitigation and enhancement obligations under Public Law 94-423, but also to determine what, if any, further direction the committee needs to provide to the Department to ensure that it meets these obligations in a timely manner?

Mr. MILLER of California. Mr. Chairman, will the gentleman yield?

Mr. MORRISON of Washington. I yield to the subcommittee chairman.

Mr. MILLER of California. Mr. Chairman, the gentlemen from Washington is correct. The committee is concerned that enhancement and mitigation efforts have lagged behind the construction work on the Oroville-Tonasket rehabilitation project. The reporting requirement was included in title II to better measure the progress of enhancement and mitigation activities and to put the Department on notice that the committee views this Department's fish and wildlife responsibilities for the Oroville-Tonasket project to be equally as important as its construction obligations and that the committee will take further action if it determines that the Department is not fulfilling all of its obligations in a responsible manner.

Mr. MORRISON of Washington. Mr. Chairman, I thank the subcommittee chairman for that clarification and would like to assure him of my strong support for the committee's efforts.

AMENDMENT OFFERED BY MR. SHUMWAY

Mr. SHUMWAY. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. SHUMWAY:

At the end of the bill, insert the following new title:

TITLE —SLY PARK UNIT SALE

SEC. . SALE OF SLY PARK UNIT.

(a) IN GENERAL.—The Secretary shall, as soon as practicable after date of enactment of this Act, sell the Sly Park Unit to the El Dorado Irrigation District.

(b) SALE PRICE.—The sale price shall not exceed—

(1) the construction costs as included in the accounts of the Secretary, plus

(2) interest on the construction costs allocated to domestic use at the authorized rate included in enactment of the Act of October 14, 1949 (63 Stat. 852) up to an agreed upon date, plus

(3) the presently assigned Federal operation and maintenance costs, less

(4) all revenues to date as collected under the terms of the contract (Symbol 175v-1809) between the United States and the El Dorado Irrigation District.

(c) TERMS OF PAYMENT.—The Secretary may negotiate for a payment of the purchase price on a lump-sum basis or on a semiannual basis for a term of not to exceed twenty years. If payment is not to be lump-sum, then the interest rate to be paid by the District shall be the rate referred to in subsection (b)(2).

(d) CONVEYENCE.—Upon completion of payment by the District, the Secretary shall convey to the El Dorado Irrigation District all right, title, and interest of the United States in and to the Sly Park Unit. All costs associated with the transfer shall be borne by the District.

SEC. . DEFINITIONS.

For the purpose of this title, the term—

(1) "El Dorado Irrigation District" or "District" means a political subdivision of the State of California duly organized, existing, and acting pursuant to the laws thereof with its principal place of business in the city of Placerville, El Dorado County, California.

(2) "Secretary" means Secretary of the Interior.

(3) "Sly Park Unit" means the Sly Park Dam and Reservoir, Camp Creek Diversification Dam and Tunnel and conduits and canals as authorized under the American River Act of October 14, 1949 (63 Stat. 852).

Mr. SHUMWAY (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. SHUMWAY. Mr. Chairman, I offer an amendment which will authorize the Secretary of the Interior to sell the Sly Park Unit of the Central Valley project in California to the El Dorado County Irrigation District. This amendment is identical to legislation I have introduced, H.R. 516, into the 100th Congress.

The Sly Park Unit, consisting of the Sly Park Dam and Reservoir, Camp Creek Diversion Dam and Tunnel, conduits and canals, was originally authorized under the American River Act of 1949. Since its construction, the facilities have been operated totally independent of any of the other CVP facilities, and virtually all operation and maintenance responsibilities and costs have been undertaken by the El Dorado Irrigation District. Despite this seperation from the rest of the CVP, the Sly Park Unit remains legally and financially integrated with the CVP.

At a time, Mr. Chairman, when the Federal Government is reducing its involvement in water project construction and operation, particularly for smaller, independently operated projects such as the Sly Park Unit, it makes sense both from a fiscal and a resource management standpoint for the Federal Government to sell this project to the local user and beneficiary.

In the long run both the county of El Dorado and the Federal Government will benefit from this sale. The sale of the Sly Park Unit will allow the Federal Government to recoup its original investment plus the appropriate interest, and to cease to incur any more operating and maintenance costs. On the other hand, from the local perspective, this sale would mean that the Sly Park users would own this facility which they've been operating for more than 30 years, and they will cease to incur additional interest costs in the future on a project they are willing to pay off now.

As a matter of policy, there is plenty of precedent for this kind of sale. In fact, starting in 1956, after the Sly Park Unit was authorized, reclamation contracts were written to allow for conversion of the contracts "under stated terms and conditions mutually agreeable to the parties * * *—so that—the remaining amount of construction cost which is properly assignable for ultimate return by it can be repaid to the United States." In essence, then, this amendment only changes the terms of the present Sly Park contract which was negotiated in the early fifties to terms consistent with the kinds of contracts the Bureau has been awarding since the law was amended in 1956.

The El Dorado Irrigation District is a political subdivision of the State of California, duly organized, existing and acting pursuant to State laws. It has ably demonstrated that it is capable of operating and maintaining the Sly Park Unit, and it is the sole beneficiary of the project. I am aware of no opposition to this proposed sale of the Sly Park Unit; in fact, the CVP Water Users Association officially supports this effort.

Mr. Chairman, in summary, this amendment is consistent with the new generation of water project policy endorsed by the Congress with enactment of H.R. 6 in the 99th Congress: it places the burden of owning and operating a water project on the local beneficiary—not the Federal Government. It likewise benefits the Federal Government in that it allows the Department of Interior to recover its original financial investment, plus the appropriate interest, and do so immediately rather than over a drawn out course of time in the future. In that sense, Mr. Chairman, by raising Federal revenues, this amendment is actually a deficit reduction measure.

I urge my colleagues to support this amendment.

Mr. MILLER of California. Mr. Chairman, will the gentleman yield?

Mr. SHUMWAY. I am happy to yield to the subcommittee chairman.

Mr. MILLER of California. Mr. Chairman, I think the concept behind the gentleman's agreement makes sense, particularly since the Sly Park Unit is unique in that it is operationally separate from the rest of the CVP. However, I have a question regarding the impact of the amendment on the rest of the CVP water users. I am also concerned about the precedent this sets for breaking up the CVP as a unit.

I say that with the understanding that there are now discussions and we have been put on notice that there is some interest in reviewing the whole concept of the CVP between the State and the Federal Government, and I would like to have the opportunity to consider this amendment within that context but in no way certainly to prejudice the amendment. I wonder if the gentleman would be amenable to withdrawing his amendment at this point on the condition that the subcommittee schedule a hearing on his legislation, H.R. 516, in the very near future so we can do it in that context and then make a decision as to whether or not to report the bill out.

□ 1205

Mr. SHUMWAY. Mr. Chairman, I thank the subcommittee chairman for that offer; and given that assurance, I am willing to withdraw my amendment.

I would like to add, though, that under the provisions of my amendment, the Bureau and the El Dorado Irrigation District would have to sit down and discuss the specific conditions for a sale to take place.

Holding a hearing will go a long way toward bringing that needed dialog between the Bureau and the irrigation district, and I appreciate the chairman's willingness to do so.

Mr. Chairman, I ask unanimous consent to withdraw my amendment.

The CHAIRMAN. Is there objection to the request of the gentleman from California to withdraw his amendment?

There was no objection.

AMENDMENT OFFERED BY MR. COELHO

Mr. COELHO. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. COELHO: At the end of the bill, insert the following new title:

TITLE —CARRYOVER STORAGE, NEW MELONES UNIT

SEC. . Section 203 of the Act of October 23, 1962 (P.L. 87-874, 76 Stat. 1173) dealing with the New Melones project is amended by inserting before the period the following: ": *And provided further*, the Secretary of the Interior is authorized to make available unallocated carryover storage from the New Melones project to the Oakdale and South San Joaquin irrigation districts during drought emergency water conditions".

Mr. COELHO. Mr. Chairman, I offer an amendment to S. 640 to correct a problem facing the Oakdale Irrigation District and the South San Joaquin Irrigation District.

Under normal weather conditions, these districts do not use their total 200,000 acre-feet storage entitlement in New Melones Reservoir. The districts have often found themselves forfeiting a certain amount of their entitlement because the Bureau of Reclamation will not permit carryover storage.

The Bureau's refusal to recognize carryover storage causes severe problems in years, such as this year, when drought conditions occur.

In 1987, the irrigation districts were unable to meet the landowners' water needs and several crops failed causing a substantial loss of income.

All this was happening at a time when ample water remained stored in New Melones Reservior. However, the Bureau of Reclamation was unwilling to give the districts any additional water without making them sign a contract subjecting the water district users to all of the provisions of current reclamation laws.

My amendment would correct this problem by allowing the Bureau to make available to the two irrigation districts any carryover storage that is unallocated from the New Melones project when there are drought emergency conditions.

This water would be provided the same way their current water allocation is made without application of the provisions of Reclamation law.

The districts find themselves in these drought conditions approximately every 10 or 11 years.

I want to emphasize that we are not giving these districts any new benefits. We are merely letting them carry over some of their current benefits during emergency drought conditions.

I appreciate the support of the chairman of the Water and Power Resources Subcommittee, Mr. MILLER, for this amendment and I ask that it be approved by my colleagues.

Mr. MILLER of California. Mr. Chairman, will the gentleman yield?

Mr. COELHO. I yield to the gentleman from California.

Mr. MILLER of California. Mr. Chairman, I thank the gentleman for yielding to me.

We have had an opportunity to review the amendment and have no problem with it.

We think it makes sense both to protect the rights of the two irrigation districts, and at the same time it makes sense with respect to the water management within the system.

Mr. SHUMWAY. Mr. Chairman, will the gentleman yield?

Mr. COELHO. I yield to the gentleman from California.

Mr. SHUMWAY. Mr. Chairman, I thank the gentleman for yielding, and I rise in support of the amendment.

Mr. Chairman, I would like to commend the gentleman on this amendment.

Mr. Chairman, this amendment fixes a flaw in the existing law whereby New Melones project water which by rights belongs to, and is allocated to, the Oakdale Irrigation District and the South San Joaquin Irrigation District reverts back to the Bureau of Reclamation after each calendar year if not used.

Mr. Chairman, from an operational or resource management standpoint, this "use it or lose it" water policy makes absolutely no sense. The gentleman from California's amendment corrects this situation by simply allowing these two water districts to carryover storage in New Melones Reservoir of their allocated but unused water—which again by water rights law belongs to them—so that in drought years, they are able to use this water to meet their needs.

Mr. Chairman, this amendment promotes water conservation and efficiency in operation, an objective which all Members should support. I urge the House to adopt this important amendment.

Mr. LUJAN. Mr. Chairman, will the gentleman yield?

Mr. COELHO. I yield to the gentleman from New Mexico.

Mr. LUJAN. Mr. Chairman, I thank the gentleman for yielding to me.

I also want to join with the gentleman from California in supporting the gentleman's amendment.

My understanding is that the districts cannot meet the landowners' needs for water, and so we risk crop failures.

While there might be ample water stored in the New Melones, it seems to me like that is good water management; and I commend the gentleman for the gentleman's amendment.

As far as this side is concerned, we support this amendment.

Mr. COELHO. Mr. Chairman, reclaiming my time, I appreciate the gentleman's support.

The CHAIRMAN. The question is on the amendment offered by the gentleman [Mr. COELHO].

The amendment was agreed to.

AMENDMENT OFFERED BY MR. BEREUTER

Mr. BEREUTER. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. BEREUTER: At the end of the bill, insert the following new title:

TITLE —

SEC. . Section 3(a)(22) of the Wild and Scenic River Act of 1968, as amended (16 U.S.C. 1274(a)(22)), is further amended by inserting prior to the semi-colon at the end of subsection (A), the following: ": *Provided*, That no cost-sharing by local entities shall be required by the Secretary for streambank stabilization structures constructed under authority of this subsection".

Mr. BEREUTER (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Nebraska?

There was no objection.

Mr. BEREUTER. Mr. Chairman, my amendment today is a short, straightforward amendment to the Wild and Scenic Rivers Act. I have discussed the amendment with both the majority and the minority Members and staffs, and I appreciate the help which they have given to me in drafting it, the addition of the amendment, as I will explain, does not set a broad precedent, as it is a truly unique situation that I address.

The purpose of this amendment is to restate what I believe to be the original intention of Congress with regard to the sharing of the costs of bank stabilization structures which are identified as part of the Missouri National Recreation River project.

In 1978, Congress designated a 59-mile boundary of the Missouri River between the last (or downstream) mainsteam dam on the Missouri River, Gavins Point Dam near Yankton, SD, and Ponca, NE, as a recreation river under the Wild and Scenic Rivers Act. This 59-mile stretch of the Missouri River is unique because it is the last remaining stretch of the river which has not been either dammed, or channelized for navigation. It is also the only portion of the Missouri River below Gavins Point Dam that does not have extensive bank stabilization structures in place.

One of the original and major purposes of the Missouri Recreation River project was to arrest streambank erosion caused by the irregular release of water from Gavins Point Dam, and to provide for wildlife mitigation projects and recreation sites along the river. The extraordinary erosion is caused by Federal action—the irregular and occasionally very large water releases from the Gavins Point Dam. This is sufficient reason for the Federal Government to bear the cost of the extraordinary erosion damage its facility causes. It is not a proper burden for affected property owners, or local or State governments; furthermore cost-sharing was never contemplated at the time of passage or during the planning stage.

A unique—and that is the correct term—feature of the MoRec River project is that it combines the efforts and planning capabilities of both the Department of the Interior and the Army Corps of Engineers. However, the unique fact that two Federal agencies are involved in this project has compounded the problems of implementing it.

A key feature of the original legislation authorizing the MoRec River project is that Congress recognized that bank stabilization was an important and necessary part of preserving the scenic beauty and recreational aspect of this stretch of the Missouri River.

However, when Congress last year passed the Water Policy Resources Act (99-662), it required the Army Corps of Engineers to establish cost-sharing arrangements with local beneficiaries on all bank stabilization projects. Congress, perhaps inadvertently, did not make an exception for either recreation-designated rivers, or this unique project.

It certainly is justifiable to require local beneficiaries, be they State, public or private, to share the cost of bank stabilization structures when that benefit accrues to only private or local interests. However, when Congress chooses to designate a particular river, or a portion thereof, a recreational river under the Wild and Scenic Rivers Act, then it is the Nation's interest and responsibility to preserve it.

The amendment which I am offering today does not change the original authorization of the Missouri Recreation River project, nor does it modify any existing cost-sharing requirements on the part of locals for bank stabilization projects which the Corps of Engineers is authorized to build. The amendment does, however, eliminate the controversy over cost-sharing on bank stabilization structures designated in the Missouri Recreation River project which arose following the passage of Public Law 99-662 in 1986.

Again, both the majority and the minority staffs of the Interior Committee have had the opportunity to review this amendment.

Mr. Chairman, I move that the amendment be adopted.

Mr. Chairman, I yield to the gentleman from South Dakota [Mr. JOHNSON], whose district is included within the project area.

Mr. JOHNSON of South Dakota. Mr. Chairman, I thank the gentleman for yielding to me.

Mr. Chairman, I want to endorse in the strongest possible terms the gentleman's amendment to this bill, a badly needed amendment, and join with the gentleman in stating that we have here a unique national resource, 59 miles of the Missouri River, the last remaining stretch of the Missouri River which looks much as it did when Lewis and Clark traveled that river.

The last remaining stretch which has not been impounded by mainstream dams or channelized for barge traffic, it is truly a national resource, an important component of the flyway for waterfowl in that part of the Nation, and one which is subject to substantial damage because of action at the Federal dams which substantially raise and lower water levels to great extremes causing unusual levels of erosion on that stretch of the river.

The stretch of the river is just a magnificent piece of river, reaching sometimes a mile in width dotted with islands, sand bars.

It is a treasure which all of us as Americans have an interest in preserving, and the gentleman's amendment will do just that.

I strongly endorse the amendment on that stretch of river which separates the State of Nebraska from the State of South Dakota.

Mr. MILLER of California. Mr. Chairman, I move to strike the last word, and I rise in support of the amendment.

Mr. Chairman, I have no objection to the amendment offered by the gentleman from Nebraska. The amendment clarifies that no local cost-sharing is required for streambank erosion along a section of the Missouri wild and scenic river. When this wild and scenic river was established, it was understood that no cost-sharing should be required.

I have no objection to the amendment.

Mr. LUJAN. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I want to reiterate what the gentleman from California [Mr. Miller] has said, and having looked over the amendment, it makes sense that this being a recreational river, that it not be subject to cost-sharing; and we support the amendment.

Mr. BEREUTER. Mr. Chairman, will the gentleman yield?

Mr. LUJAN. I yield to the gentleman from Nebraska.

Mr. BEREUTER. Mr. Chairman, I thank the gentleman for yielding to me.

I want to thank the gentleman for the gentleman's statement in support of my amendment, and thank the chairman of the subcommittee and the staffs of both gentlemen for their assistance in addressing and examining this problem.

I appreciate it, as does the gentleman from South Dakota [Mr. Johnson].

The CHAIRMAN. The question is on the amendment offered by the gentleman from Nebraska [Mr. Bereuter].

The amendment was agreed to.

AMENDMENT OFFERED BY MR. HERGER

Mr. HERGER. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Herger: At the end of title IV, insert the following new section:

Sec. 403. (a) The Whiskeytown Dam of the Central Valley Project, constructed, operated and maintained under the authority of the Act of August 26, 1987 (50 Stat. 850) and acts supplementary and amendatory thereto, hereafter shall be known and designated as the "Clair A. Hill Whiskeytown Dam."

(b) Any reference in any law, regulation, document, record, map, or any other paper of the United States to the dam referred to in subsection (a) hereby is deemed to be a reference to the "Clair A. Hill Whiskeytown Dam".

Mr. HERGER (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the Record.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. HERGER. Mr. Chairman, this amendment would rename the Whiskeytown Dam, just west of Redding, CA, in my Second Congressional District, the Clair A. Hill Whiskeytown Dam.

Clair Hill, a native of Redding, is currently chairman of the California Water Commission and has held numerous positions in State and local government. He has devoted his life to the development of California's water resources.

In 1954, Clair Hill offered a vision to the Bureau of Reclamation, to improve the Central Valley project and provide for Shasta County's growing water and energy needs. As a result of his work, the Bureau modified the feasibility report on the Trinity River division to include the Whiskeytown Dam and reservoir on Clear Creek. This has provided additional water supplies for lands on both the east and west sides of the Sacramento River without increasing the project's cost.

Without Clair Hill's good judgment and foresight, this project would not exist, nor would the facilities of the Central Valley project within Shasta County area.

By renaming the Whiskeytown Dam, we pay tribute to Clair Hill and his work that has benefitted all Californians.

Mr. Chairman, this amendment has strong support on both the State and local levels, and I urge its adoption.

Mr. MILLER of California. Mr. Chairman, I rise in support of the amendment.

We have had an opportunity to review the amendment, and we have no objection to it.

Mr. Hill is a very well-respected individual, and the people in the community support this redesignation of the dam and support the amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from California [Mr. Herger].

The amendment was agreed to.

AMENDMENT OFFERED BY MR. LUJAN

Mr. LUJAN. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Lujan. Insert at the end thereof the following new title and renumber accordingly:

TITLE —NAVY LAND

Sec. . Section 2 of the Act entitled "An Act to provide for deferment of construction charges payable by Westlands Water District attributable to lands of the Naval Air Station: Lemoore, California, included in said district, and for other purposes", approved August 10, 1972 (86 Stat. 380), is amended by inserting "Proceeds from the leases in excess of these needs and from lease parcels not within Westlands Water District may be utilized by the Secretary of the Navy to acquire avigation easements in Kings County, California." after "are fully paid.".

Mr. LUJAN (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the Record.

The CHAIRMAN. Is there objection to the request of the gentleman from New Mexico?

There was no objection.

□ 1220

Mr. LUJAN. Mr. Chairman, I offer this amendment on behalf of the gentleman from California [Mr. Pashayan] who happens to be at the moment tied up because of some very important meetings over at the Committee on Standards of Official Conduct.

Simply put, the amendment permits the Secretary of the Navy to utilize funds received from agricultural leasing activities at Naval Air Station, Lemoore, CA, to acquire, over time, approximately 31,200 acres of air space easements in Kings County, CA. In 1985 dollars it was estimated that the acquisition costs would be at $17.3 million.

Lemoore Naval Air Station now generates approximately $1.3 million a year in agricultural leases from its lands which are within Westlands Water District. Congress, in 1972, required that the proceeds from these leases be utilized to pay the Secretary of the Interior the $8.3 million cost of construction. That debt is or is nearly retired.

My amendment, then, simply permits the Secretary of the Navy to use the funds that had been earmarked for construction of a water service line to that of acquiring additional air space easements over lands necessary to protect the integrity of the facility.

Mr. MILLER of California. Mr. Chairman, I rise in support of the amendment.

Mr. Chairman, we have had an opportunity to look at this amendment. This amendment was originally offered by the gentleman from California [Mr. PASHAYAN] and we think it takes care of a problem at the Lemoore district that again is consistent with the operation of the facilities.

Mr. Chairman, we support the amendment.0

The CHAIRMAN. The question is on the amendment offered by the gentleman from New Mexico [Mr. LUJAN].

The amendment was agreed to.

Mr. PETRI. Mr. Chairman, I move to strike the last word, and I rise in opposition to S. 640.

The bill comes before us, as has been pointed out, with no hearings, no congressional budget office estimate, not even a committee report until 24 hours after the rule had been granted. Now, we often have bills come to the floor on a fast track. And like this one, they are described as housekeeping bills, whose titles make technical corrections in aid of those who were inadvertently harmed by a provision of Federal law. But when the dust settles, and we take a good look at what we have passed so quickly, we discover that the bills are not really so benign. In fact, they set new precedents for policies which should be examined carefully, not railroaded through the House. This bill is a good example of that kind of legislation. S. 640 left the Senate as a one project bailout. The city of Dickinson, ND, owed the Federal Government a large sum of money in cost overruns on a municipal water supply project. It was decided that the city should not have to pay despite the fact that CBO estimates the cost would be only $15 per household per year.

Now it has been argued that the taxpayers should bear the cost because the cost overrun was caused by Bureau of Reclamation errors in the construction of the project. It seems to me that cost overruns are a risk with any construction project. And, current law requires the local project sponsors to bear that cost in order to ensure that the taxpayers aren't shouldering all the risk of building a given project. After all, if there is no risk to the beneficiaries, there is no incentive to control costs. With the Dickinson project provisions, we could be setting a precedent for the taxpayers to bear the risk on other projects as well. Even Mr. CHILES, the distinguished chairman of the other body's Budget Committee, expressed reservations about the kind of precedent set by S. 640.

But the bill passed the other body and came over here. Then, the House Interior Committee added a number of other provisions. Some of them set similar bad precedents. I am sure that the supporters of the additional provisions are convinced of the merits of each title. For my part, I am very concerned about the precedent set by the bill in waiving cost sharing requirements for some of this special group of projects. For example, in title III, the bill waives cost sharing for the project to mitigate damage to the salmon fishery below the Shasta Dam in California. The committee's report states that the cost sharing is waived because it is impossible to allocate the costs fairly among the beneficiaries of the project.

Yet, just last year, we passed a law which required the costs of mitigating the damage to the Suisun Marsh to be borne by the beneficiaries of the Shasta Dam—the same beneficiaries who ought to be paying to save the salmon. If we waive the cost sharing for environmental mitigation in this instance, will we do the same for other projects? Again, we are reducing the incentive for responsible action by the local authorities, and dumping the financial risk onto the taxpayers.

Mr. Chairman, the Department of the Interior recently proposed sweeping changes in the mission of the Bureau of Reclamation. A new environmentally oriented and economically sensitive philosophy was put forth. In the 99th Congress, we overhauled Corps of Engineers water projects policy. With this new proposal from the Bureau of Reclamation, we have been given a starting point for very real changes in the way we handle Bureau water projects policy.

This report wasn't written by political appointees trying to make a name for themselves before their term is up. It was written by career employees, who, having worked within the system for a long time, have taken a good, hard look at the future of their own agency, and seen the need for change.

Yet here we are, politics as usual, debating a bill with special exemptions and waivers that fly in the face of a reasoned, careful approach to water projects. It may be that some of S. 640's provisions are perfectly reasonable, that there is some overwhelming reason why the people in my district will have to pay for damage caused by a project that does not benefit them. Discovering such circumstances is one reason we have the hearing process. Perhaps we might also have learned why the problems facing these projects are so unique that other project beneficiaries won't point to this bill in support of their own bailouts.

But there have been no committee hearings, and I think the reason is pretty clear. The bill does set precedents for special treatment, it does waive cost sharing, and it does cost my constituents money. I urge my colleagues to vote no on S. 640.

Mr. MILLER of California. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I think that concludes consideration of amendments to this legislation.

Mr. Chairman, this legislation does a number of very important functions in terms of meeting some of the pressing needs of small districts throughout the country.

In most instances what we are asking is that people who contracted for benefits of projects but did not receive those benefits, either because of poor design or because of environmental mitigation. In one instance, one of the projects that is opposed by the environmental community, in fact, the reason that we need to do this is because of the environmental mitigation and the downscaling of the Garrison project. Those services will not be received by those communities. We do not think it is fair because of Federal mistakes and Federal activity that those people be forced to pay for that one. In fact, it is the Federal Government that brought about those additional costs.

We think that is a fair conclusion. We think that is equitable.

With respect to the other provisions of the bill, we are trying to provide some environmental mitigation with respect to some fisheries, where major fish runs in this country are in immediate threat and the only way we can do that is to try to alter some of the operations of Shasta Dam and some of the other rivers so that we have an opportunity to maintain those fisheries.

We have asked that they be done in the most inexpensive manner and done in the most efficient manner so that we can get on with the enhancement of those fisheries rather than the destruction of them.

Mr. Chairman, I would urge my colleagues to support this legislation. It is, in fact, nothing much more than a housekeeping bill of a number of items that have been pressing these small districts and they have to make some decisions.

Finally, one other project was referred to where we have renegotiated the loan. The Congress can make the point, should it want to, in the name of economy, that we can force the district to go bankrupt, then we would get no Federal revenues. Or, we can simply forgo revenues from that project. Again, that is because of a Federal mistake. The district does not currently have the ability to repay that, so what we can do is have them declare bankruptcy and go on their merry way or we can forgo payment of that loan for a year until they get their financial house in order and they can then pay back the moneys that were loaned to them through the small reclamation program.

So I think the bill is fair, it is equitable, it is environmentally sound, and I ask for the support of my colleagues for this legislation.

The CHAIRMAN. The question is on the Committee amendment in the nature of a substitute, as amended.

The Committee amendment in the nature of a substitute, as amended, was agreed to.

☐ 1230

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly, the Committee rose; and the Speaker pro tempore [Mr. Coelho] having assumed the chair, Mr. McCurdy, Chairman of the Committee of the Whole House on the State of the Union, reported that the Committee, having had under consideration the Senate bill (S. 640) for the relief of the city of Dickinson, ND, pursuant to House Resolution 282, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment to the committee amendment in the nature of a substitute adopted by the Committee of the Whole? If not, the question is on the amendment.

The amendment was agreed to.

The SPEAKER pro tempore. The question is on the third reading of the bill.

The bill was ordered to be read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the Senate bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. PETRI. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 220, nays 184, not voting 29, as follows:

[Roll No. 375]

YEAS—220

Akaka
Alexander
Anderson
Andrews
Annunzio
Anthony
Applegate
Aspin
Atkins
Badham
Barton
Bateman
Beilenson
Bentley
Bereuter
Berman
Bevill
Bilbray
Boland
Bonior
Bonker
Borski
Bosco
Boucher
Boxer
Brooks
Brown (CO)
Bruce
Bryant
Byron
Campbell
Carr
Chandler
Chapman
Cheney
Clarke
Coelho
Collins
Conyers
Coyne
Craig
Crockett
Dannemeyer
Darden
Davis (MI)
de la Garza
Derrick
Dingell
Dixon
Donnelly
Dorgan (ND)
Dowdy
Downey
Duncan
Durbin
Dymally
Espy
Fascell
Fazio
Fish
Flake
Foglietta
Foley
Ford (MI)
Ford (TN)
Frank
Frost
Gallegly
Garcia
Gaydos
Gejdenson
Gibbons
Gradison
Grandy
Grant
Gray (IL)
Gray (PA)
Hall (TX)
Hamilton
Hansen
Hatcher
Hayes (IL)
Hefley
Hefner
Herger
Hochbrueckner
Howard
Hoyer
Huckaby
Hunter
Hutto
Hyde
Johnson (SD)
Jones (NC)
Jones (TN)
Kaptur
Kastenmeier
Kennedy
Kennelly
Kleczka
Kolbe
Kostmayer
Kyl
LaFalce
Lagomarsino
Lancaster
Lantos
Lehman (CA)
Lehman (FL)
Levin (MI)
Levine (CA)
Lewis (CA)
Lewis (GA)
Lipinski
Lloyd
Lowery (CA)
Lujan
Luken, Thomas
Manton
Markey
Martinez
Matsui
Mavroules
Mazzoli
McCandless
McCloskey
McCurdy
McDade
McHugh
McMillen (MD)
Mica
Miller (CA)
Mineta
Moakley
Mollohan
Moorhead
Morrison (WA)
Mrazek
Murphy
Murtha
Nagle
Natcher
Neal
Nielson
Nowak
Oakar
Oberstar
Ortiz
Owens (NY)
Owens (UT)
Packard
Panetta
Parris
Pashayan
Patterson
Pelosi
Pepper
Perkins
Pickett
Pickle
Price (IL)
Price (NC)
Pursell
Quillen
Rahall
Rangel
Regula
Rhodes
Richardson
Robinson
Roe
Rostenkowski
Rowland (GA)
Russo
Sabo
Savage
Schaefer
Scheuer
Schneider
Schroeder
Schumer
Shumway
Sikorski
Skaggs
Skeen
Slaughter (NY)
Smith (FL)
Smith (IA)
Smith (NE)
Smith (NJ)
Smith, Robert (OR)
Solarz
Staggers
Stangeland
Stark
Stokes
Stratton
Stump
Swift
Synar
Taylor
Thomas (CA)
Thomas (GA)
Torres
Torricelli
Towns
Traficant
Udall
Valentine
Vento
Visclosky
Vucanovich
Walgren
Wheat
Williams
Wilson
Wise
Wyden
Yates
Young (AK)

NAYS—184

Ackerman
Archer
Armey
AuCoin
Baker
Ballenger
Barnard
Bartlett
Bates
Bennett
Bilirakis
Bliley
Boehlert
Boulter
Brennan
Broomfield
Brown (CA)
Bunning
Burton
Callahan
Cardin
Carper
Clinger
Coats
Coble
Combest
Conte
Cooper
Coughlin
Courter
Crane
Daniel
Davis (IL)
DeFazio
DeLay
DeWine
DioGuardi
Dornan (CA)
Dreier
Dwyer
Dyson
Early
Eckart
Edwards (CA)
Edwards (OK)
Emerson
English
Erdreich
Evans
Fawell
Feighan
Fields
Florio
Frenzel
Gallo
Gekas
Gilman
Gingrich
Glickman
Gonzalez
Goodling
Green
Guarini
Gunderson
Hall (OH)
Hammerschmidt
Harris
Hastert
Henry
Hertel
Hiler
Holloway
Hopkins
Houghton
Hubbard
Hughes
Inhofe
Ireland
Jacobs
Jeffords
Jenkins
Johnson (CT)
Jontz
Kanjorski
Kasich
Kildee
Kolter
Konnyu
Latta
Leach (IA)
Leath (TX)
Leland
Lent
Lewis (FL)
Lightfoot
Lott
Lowry (WA)
Lukens, Donald
Lungren
Mack
MacKay
Madigan
Marlenee
Martin (IL)
Martin (NY)
McCollum
McEwen
McGrath
McMillan (NC)
Meyers
Mfume
Miller (OH)
Miller (WA)
Molinari
Montgomery
Moody
Morella
Morrison (CT)
Myers
Nelson
Nichols
Obey
Olin
Oxley
Pease
Penny
Petri
Porter
Ravenel
Ray
Ridge
Rinaldo
Ritter
Roberts
Rodino
Rogers
Roth
Roukema
Rowland (CT)
Roybal
Saiki
Sawyer
Saxton
Schuette
Schulze
Sensenbrenner
Sharp
Shaw
Shays
Shuster
Sisisky
Skelton
Slattery
Slaughter (VA)
Smith (TX)
Smith, Denny (OR)
Smith, Robert (NH)
Snowe
Solomon
Spence
Spratt
Stallings
Stenholm
Studds
Sundquist
Swindall
Tallon
Tauke
Traxler
Upton
Vander Jagt
Volkmer
Walker
Watkins
Weber
Weiss
Weldon
Whittaker
Wolf
Wolpe
Wortley
Wylie
Yatron
Young (FL)

NOT VOTING—29

Biaggi
Boggs
Buechner
Bustamante
Chappell
Clay
Coleman (MO)
Coleman (TX)
Daub
Dellums
Dickinson
Dicks
Flippo
Gephardt
Gordon
Gregg
Hawkins
Hayes (LA)
Horton
Kemp
Livingston
Michel
Roemer
Rose
St Germain
Sweeney
Tauzin
Waxman
Whitten

☐ 1245

The Clerk announced the following pair:

On this vote:

Mr. Daub for, with Mr. Horton against.

Messrs. FLORIO, EDWARDS of California, GILMAN, SKELTON, MOLINARI, MFUME, RODINO, EDWARDS of Oklahoma, GUARINI, ROYBAL, and GONZALEZ changed their votes from "yea" to "nay."

Mr. DANNEMEYER and Mr. HUNTER changed their votes from "nay" to "yea."

So the Senate bill was passed.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore (Mr. Murtha). Without objection, a motion to reconsider is laid on the table.

Mr. WALKER. Mr. Speaker, reserving the right to object to the motion on reconsideration, I spent the last little while double-checking sources of mine with regard to the question resolved earlier about whether or not a quorum was present at the time this bill was reported to the floor.

It is my understanding that my original information was correct, that we may indeed be able to obtain sworn affidavits that my information was correct and so therefore it seems to me that the House, given circumstances that our rules may have been violated in troublesome ways, might want to leave the question of reconsideration open until we can resolve the matter of whether or not the bill was properly brought to the House.

So therefore it is my intent, Mr. Speaker, to object to the reconsideration action.

The SPEAKER pro tempore. Objection is heard.

Mr. MILLER of California. Mr. Speaker, I move to table the motion to reconsider.

PARLIAMENTARY INQUIRY

Mr. WALKER. Mr. Speaker, I have a parlimentary inquiry.

The SPEAKER pro tempore. The gentleman will state it.

Mr. WALKER. Mr. Speaker, is that motion at the desk? And a further parliamentary inquiry: who moved for reconsideration?

The SPEAKER pro tempore. The gentleman from California moved to reconsider the vote.

Mr. WALKER. No, he moved to table the reconsideration.

The SPEAKER pro tempore. He moved to table the reconsideration.

Mr. WALKER. There is no reconsideration motion before the House, Mr. Speaker.

The SPEAKER pro tempore. The gentlemen is correct.

The gentleman from Pennsylvania objected to the reconsideration.

Mr. FOLEY. Mr. Speaker, I move to reconsider the vote by which the bill was passed.

The SPEAKER pro tempore. The gentleman moves to reconsider——

Mr. WALKER. Mr. Speaker, is that motion in writing?

Mr. FOLEY. We will send it to the desk in writing, Mr. Speaker.

The SPEAKER pro tempore. The Clerk will report the motion.

Did the gentleman from Washington vote on the prevailing side?

Mr. FOLEY. I voted in the affirmative, Mr. Speaker.

The SPEAKER pro tempore. The Clerk will report the motion.

The Clerk read as follows:

> Mr. FOLEY moves to reconsider the vote by which the Senate bill, S. 640, was just passed.

The SPEAKER pro tempore. The question is on the motion——

Mr. MILLER of California. Mr. Speaker, I move to table the motion.

The SPEAKER pro tempore. The question is on the motion to table offered by the gentleman from California [Mr. MILLER].

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. WALKER. Mr. Speaker, I object to the vote on the ground a quorum is not present and make the point of order that quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device and there were—yeas 254, nays 142, not voting 37, as follows:

[Roll No. 376]

YEAS—254

Ackerman
Akaka
Alexander
Anderson
Andrews
Annunzio
Anthony
Applegate
Aspin
Atkins
Badham
Bates
Beilenson
Bennett
Bereuter
Berman
Bevill
Bilbray
Boland
Bonior
Bonker
Borski
Bosco
Boucher
Boxer
Brennan
Brooks
Broomfield
Brown (CO)
Bruce
Bryant
Byron
Campbell
Cardin
Carper
Carr
Chapman
Clarke
Coelho
Coleman (MO)
Collins
Conyers
Cooper
Coyne
Craig
Crockett
Daniel
Darden
Davis (MI)
de la Garza
Dellums
Dickinson
Dingell
Dixon
Donnelly
Dorgan (ND)
Dowdy
Downey
Durbin
Dymally
Dyson
Early
Eckart
Edwards (CA)
English
Erdreich
Espy
Fascell
Fazio
Feighan
Flake
Flippo
Florio
Foglietta
Ford (MI)
Ford (TN)
Frank
Frost
Gallegly
Garcia
Gaydos
Gejdenson
Gibbons
Glickman
Gonzalez
Grandy
Grant
Gray (IL)
Gray (PA)
Hall (OH)
Hall (TX)
Hamilton
Hansen
Harris
Hatcher
Hayes (IL)
Hefner
Herger
Hertel
Hochbrueckner
Howard
Hoyer
Hubbard
Huckaby
Hughes
Hutto
Jenkins
Johnson (SD)
Jones (NC)
Jones (TN)
Jontz
Kanjorski
Kaptur
Kennedy
Kennelly
Kildee
Kleczka
Kolbe
Kolter
Kostmayer
LaFalce
Lagomarsino
Lancaster
Lantos
Leath (TX)
Lehman (CA)
Lehman (FL)
Leland
Levin (MI)
Levine (CA)
Lewis (CA)
Lewis (GA)
Lipinski
Lloyd
Lowery (CA)
Lowry (WA)
Lujan
Luken, Thomas
MacKay
Manton
Markey
Martinez
Matsui
Mazzoli
McCandless
McCloskey
McCurdy
McDade
McHugh
McMillen (MD)
Mfume
Mica
Miller (CA)
Mineta
Moakley
Mollohan
Montgomery
Moody
Morrison (CT)
Mrazek
Murphy
Murtha
Nagle
Natcher
Neal
Nelson
Nichols
Nielson
Nowak
Oakar
Oberstar
Obey
Olin
Ortiz
Owens (NY)
Owens (UT)
Oxley
Packard
Panetta
Pashayan
Patterson
Pease
Pelosi
Penny
Pepper
Perkins
Pickett
Pickle
Price (IL)
Price (NC)
Rahall
Rangel
Ravenel
Ray
Regula
Rhodes
Richardson
Ridge
Robinson
Rodino
Roe
Rostenkowski
Rowland (GA)
Roybal
Russo
Sabo
Savage
Sawyer
Schaefer
Scheuer
Schneider
Schroeder
Schumer
Sharp
Shumway
Sisisky
Skaggs
Skeen
Skelton
Slaughter (NY)
Smith (FL)
Smith (IA)
Smith (NE)
Smith (NJ)
Solarz
Spence
Spratt
Staggers
Stallings
Stark
Stokes
Stratton
Studds
Swift
Synar
Tallon
Thomas (GA)
Torres
Torricelli
Towns
Traficant
Udall
Vento
Visclosky
Volkmer
Watkins
Weiss
Wheat
Williams
Wilson
Wise
Wolpe
Yates
Young (AK)

NAYS—142

Archer
Armey
AuCoin
Baker
Ballenger
Bartlett
Barton
Bateman
Bentley
Bilirakis
Bliley
Boehlert
Boulter
Brown (CA)
Bunning
Burton
Callahan
Cheney
Clinger
Coats
Coble
Combest
Conte
Coughlin
Courter
Crane
Dannemeyer
Davis (IL)
DeFazio
DeLay
DeWine
DioGuardi
Dornan (CA)
Dreier
Dwyer
Edwards (OK)
Emerson
Evans
Fawell
Fields
Fish
Foley
Frenzel
Gallo
Gekas
Gingrich
Goodling
Gradison
Green
Guarini
Gunderson
Hammerschmidt
Hastert
Hefley
Henry
Hiler
Holloway
Hopkins
Houghton
Hyde
Inhofe
Ireland
Jacobs
Jeffords
Johnson (CT)
Konnyu
Kyl
Latta
Leach (IA)
Lent
Lewis (FL)
Lightfoot
Lott
Lukens, Donald
Lungren
Mack
Madigan
Marlenee
Martin (IL)
Martin (NY)
McCollum
McEwen
McGrath
McMillan (NC)
Meyers
Miller (OH)
Miller (WA)
Molinari
Moorhead
Morella
Morrison (WA)
Myers
Parris
Petri
Porter
Pursell
Quillen
Rinaldo
Ritter
Roberts
Rogers
Roth
Roukema
Rowland (CT)
Saiki
Saxton
Schuette
Schulze
Sensenbrenner
Shaw
Shays
Shuster
Sikorski
Slaughter (VA)
Smith (TX)
Smith, Denny (OR)
Smith, Robert (NH)
Smith, Robert (OR)
Snowe
Solomon
Stangeland
Stump
Sundquist
Sweeney
Tauke
Taylor
Thomas (CA)
Traxler
Upton
Vander Jagt
Vucanovich
Walgren
Walker
Weber
Weldon
Whittaker
Wolf
Wortley
Wyden
Wylie
Yatron
Young (FL)

NOT VOTING—37

Barnard
Biaggi
Boggs
Buechner
Bustamante
Chandler
Chappell
Clay
Coleman (TX)
Daub
Derrick
Dicks
Duncan
Gephardt
Gilman
Gordon
Gregg
Hawkins
Hayes (LA)
Horton
Hunter
Kasich
Kastenmeier
Kemp
Livingston
Mavroules
Michel
Roemer
Rose
Slattery
St Germain
Stenholm
Swindall
Tauzin
Valentine
Waxman
Whitten

□ 1300

Messrs. STUMP, STANGELAND, HOPKINS, and FOLEY, Mrs. VUCANOVICH, Mrs. JOHNSON of Connecticut, and Mr. PORTER changed their votes from "yea" to "nay."

Mr. BERMAN and Mr. HALL of Texas changed their votes from "nay" to "yea."

So the motion to table was agreed to.

The result of the vote was announced as above recorded.

GENERAL LEAVE

Mr. MILLER of California. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks, and include extraneous matter, on the bill just passed.

The SPEAKER pro tempore. (Mr. MURTHA). Is there objection to the request of the gentleman from California?

There was no objection.

PERSONAL EXPLANATION

(Mr. COLEMAN of Missouri asked and was given permission to address the House for 1 minute.)

Mr. COLEMAN of Missouri. Mr. Speaker, the bells were not rung in my office on rollcall No. 375, which was the vote on final passage of the Water and Power Authorization Act. Unfortunately, I missed that vote. If I had been present, I would have voted "aye" on that rollcall.

PERSONAL EXPLANATION

Miss SCHNEIDER asked and was given permission to address the House for 1 minute, and to revise and extend her remarks.)

Miss SCHNEIDER. Mr. Speaker, I realized after the vote had been gaveled down on the Water and Power Authorization Act of 1987, that my vote should have been "no." I would like to correct my mistake. For the following reason I believe this authorizing bill should not pass. In light of our desperate attempts to reduce multi-hundred-billion-dollar budget deficits and the Nation's $2 trillion debt, this bill sets a bad budgetary precedent because it flies in the face of fiscal responsibility. We should not be deferring or negating cost sharing, but encouraging it. This bill steers us further away from any semblance of a balanced budget. It does this by containing increased spending or waivers of cost sharing for Bureau of Reclamation water projects. The recent events on Wall Street should have been a clear sign to everyone that we cannot long endure our open ended spending ways of the past. I regret any inconvenience or confusion that my mistaken vote may have caused and I want to reiterate that my opposition to both the environmental and budgetary effects of this project remains unchanged.

LEGISLATIVE PROGRAM

(Mr. LOTT asked and was given permission to address the House for 1 minute.)

Mr. LOTT. Mr. Speaker, I am advised that we do not plan any further votes today, and we wanted to make sure that the majority leader was aware of that. I have taken this time for the purpose of receiving the schedule, and I am glad to yield to the distinguished majority leader so we may receive the schedule.

Mr. FOLEY. Mr. Speaker, I thank the distinguished Republican whip for yielding, and think Members can now be safely assured that there will be no further rollcall votes.

Mr. LOTT. We will be glad to give that assurance, Mr. Speaker.

Mr. FOLEY. I thank the gentleman. We appreciate that assurance.

Mr. Speaker, this concludes the legislative business on which any votes are expected this afternoon. The House will not be in session tomorrow and will be in pro forma session on Monday next.

On Tuesday, the House will meet at noon and consider 16 bills under suspension of the rules, as follows:

H.R. 3460, Veterans Employment and Training Act of 1987;

H.R. 3457, Prompt Payment to Poultry Producers Act;

H.R. 1951, to extend the authority of the Secretary of Commerce to issue certain protective orders for semiconductor chip products;

H.R. 3483, Criminal Fine Improvements Act of 1987;

H.R. 2952, increasing the authorization for acquisition at the Women's Rights National Historical Park in Seneca Falls, NY;

H.R. 17, Olmsted Heritage Landscapes Act of 1987;

H.R. 1839, designating a segment of the Rio Chama River in New Mexico as a wild and scenic river;

H.R. 3479, notice to lessees No. 5 (NTL-5) Gas Royalty Act of 1987;

H.R. 1223, Indian Self-Determination Act Amendments of 1987;

H.R. 3097, Organ Transplant Amendments of 1987;

H.R. 2858, Regulatory Fairness Act;

H.R. 2818, Small Solar Power Production Facilities Extension Act;

H.J. Res. 112, to establish a U.S. Commission on Improving the Effectiveness of the United Nations;

H. Con. Res. 196, expressing the support of Congress for the implementation of the July 29, 1987, accord with respect to Sri-Lanka;

H. Con. Res. 68, expressing the sense of Congress regarding the inability of American citizens to maintain regular contact with relatives in the Soviet Union; and

H. Res. 248, expressing the sense of the House in support of efforts to forge a political compromise in Fiji.

In addition to that, the House will consider H.R. 2224, the Panama Canal Commission Authorization Act, subject to a rule.

On Wednesday and the balance of the week, October 28, 29, and 30, the House will meet at 10 a.m. and consider H.R. 515, the Credit Card Savings Act, subject to a rule, and an unnumbered bill, the Omnibus Budget Reconciliation Act, subject to a rule.

Conference reports, of course, may be brought up at any time, and any further program will be announced later.

Mr. Speaker, I would like to suggest, before the gentleman asks, that we intend to finish the Guaranteed Budget Reduction Act.

Mr. LOTT. Is that the reconciliation bill?

Mr. FOLEY. That is right. We intend to finish that when it is considered next Thursday; we will finish that bill either late Thursday night or we will carry it over until Friday, the following Friday, and conclude it on the next day. So Members should be aware that if the bill is not concluded on Thursday, it will be considered on Friday.

No other legislation will be scheduled for Friday. If we can conclude the business on Thursday, the Friday session will not be held.

Mr. LOTT. Could the gentleman tell us, on this unnumbered Omnibus Reconciliation bill, does he intend to have the so-called guaranteed reforms——

Mr. FOLEY. Does the gentleman refer to the Guaranteed Deficit Reduction Act?

Mr. LOTT. No, the Reconciliation Tax Increase Act.

Does the gentleman intend to attach welfare reform to that act?

Mr. FOLEY. At the present time there is a welfare component in the bill, the gentleman is correct. There is a welfare provision.

Mr. LOTT. Mr. Speaker, let me ask the gentleman a series of about five questions, and I will make my questions short so the gentleman can make his answers short.

Does the gentleman expect the House to be in session on Tuesday, November 3?

Mr. FOLEY. Yes.

Mr. LOTT. That is an election day in some States.

Mr. FOLEY. Yes.

□ 1315

Mr. LOTT. Does the gentleman expect the House to be out of session on November 11, which is a Wednesday, Veterans Day?

Mr. FOLEY. Yes, we do expect that; but I should caution Members that there is a very slight chance, which I hope is not likely to become a reality, that the expiration at midnight on the 10th of November, the previous day, of the continuing resolution makes it necessary for the Congress and the President to conclude the legislation extending the authority by which the present continuing resolution allows the functions of the Government to proceed.

We could not in conscience be out on the 11th if that matter was not resolved and needed a legislative day; but in that condition only, or in that alternative only, I can say we will be out on the 11th.

Mr. LOTT. Does the gentleman expect the House to be in session on the preceding day and the following day, the 12th?

Mr. FOLEY. At the present time we do. We expect to have a session on Monday and Tuesday, the 9th and the 10th.

If there is any change in that plan, it will be because of the conclusion of the problem of the continuing resolution.

Mr. LOTT. Does the gentleman expect the House to be out of session on Thanksgiving?

Mr. FOLEY. Yes, on Thanksgiving Day itself we expect Members will be able to be home with their families; and we expect the following Friday, the next day, we will not have a session, so at least at the minimum, Thanksgiving and the following weekend the House will not be in session.

It might be possible, and we have not reached this point yet, but it might be possible to provide some additional time for the Members preceding Thanksgiving Day in that week, and we will notify Members on both sides of the aisle simultaneously about that, and whenever it is concluded.

Mr. LOTT. Does this mean we will not finish up for the year by November 21?

Mr. FOLEY. It is still the strong intention of the Speaker, and this is concurred in by the Republican leader, Mr. MICHEL, that we should make every effort to conclude the House's schedule by the 21st of November.

Barring that, we would like to try and finish on Thanksgiving; but that is why it is not possible for me to say that we would guarantee that Members would be out on Monday, Tuesday, and Wednesday during the week before Thanksgiving.

We might be in the final days of the session on those days. If that is not possible, we will provide for some additional Thanksgiving recess before Thanksgiving, and perhaps a few days afterward; but we are not in a position to give precise information yet.

Mr. MONTGOMERY. Mr. Speaker, will the gentleman yield?

Mr. LOTT. I yield to the gentleman from Mississippi.

Mr. MONTGOMERY. Mr. Speaker, I thank the gentleman for yielding to me.

I have a question of the majority leader. It was not clear, but the gentleman made the point that there is a very, very good chance we will not be in session on November 11, and also that would apply to the 12th and the 13th?

Mr. FOLEY. Mr. Speaker, if the gentleman will continue to yield, no, I would say to the gentleman that the problem remains that the continuing resolution expires at midnight on the 10th of November, the day preceding Veterans Day; and if that matter has been resolved, and there is no likelihood of any interruption of Government activities, we will consider some additional time after Veterans Day.

For the moment, the only thing we can give a high probability about is Veterans Day itself, and there is a high probability that we will not be in session Veterans Day itself, but Members should not assume that covers Thursday and Friday following Veterans Day.

Mr. MONTGOMERY. Mr. Speaker, I think I thank the gentleman; I am not sure.

Mr. LOTT. Mr. Speaker, if I might say to the gentleman from Mississippi [Mr. MONTGOMERY], my distinguished colleague from my home State, we will ask this question every week until we get to Veterans Day; and maybe there will be an opportunity for Members to be in their home districts for Veterans Day, which would be very difficult if we must have the day off.

Mr. GINGRICH. Mr. Speaker, will the gentleman yield?

Mr. LOTT. I yield to the gentleman from Georgia.

Mr. GINGRICH. Mr. Speaker, I thank the gentleman for yielding to me.

I have one comment and a question. I want to make sure that I have heard from our distinguished Democratic leader who I have listened to with great interest week after week as the gentleman informed the Members of the closest approximation available that day as to what will happen later on in the day, sometimes with substantial accuracy.

I do now understand, and I want to make sure, because all of the Members will be grateful, that the gentleman has committed his prestige and the prestige of the gentleman's office to our absolutely under any circumstances having Thanksgiving Day off, is that correct?

Mr. FOLEY. Mr. Speaker, if the gentleman will continue to yield, the gentleman is correct.

I will stand by that commitment, and it will be met.

Mr. GINGRICH. I want to say on behalf of all of the back-bench Members who eagerly listen each week, that the gratitude that we felt across America by this profamily tradition being upheld is immense.

Second, one question, if I might ask, is there any possibility during brief moments when we might not be doing heavy lifting, and when there might be an opportunity to legislate on behalf of things that the American people care about, would there be a possibility, since almost 80 percent of the American people would like to have a constitutional amendment to require a balanced budget, that the leadership at some point may bring forth such a document, recognizing the vast power and influence the gentleman has over the Committee on Rules and the Committee on the Judiciary?

Mr. FOLEY. I will be glad to discuss the matter with the appropriate committee personnel.

Mr. LOTT. Mr. Speaker, reclaiming my time, I thought there were no appropriations bills scheduled for next week.

Do we anticipate any further appropriations bills being offered?

Mr. FOLEY. Yes, we do. We anticipate the likelihood probably of the agriculture appropriations bill.

Mr. LOTT. What about defense?

Mr. FOLEY. The defense bill is now in subcommittee, as the gentleman knows; and they are working very hard to try and complete action on that bill as well.

Mr. LOTT. Final question, with regard to the Omnibus Tax Increase Act that we referred to earlier——

Mr. FOLEY. Guaranteed Deficit Reduction Act of 1987.

Mr. LOTT. I guess we are talking about the same thing.

How does that square with the efforts of the majority and the minority to try to get some joint discussion between the two parties and with the administration to get to, if you will, a summit?

We talked about wanting to go into it with no preconditions, both on our side and from the Speaker of the whole House, and yet it appears that the gentleman still intends to bring this legislation up which runs counter to the whole spirit of what now may be an effort for the House to really sit down and negotiate in good faith on both sides.

Mr. FOLEY. With all due respect, I do not agree with the gentleman that it runs counter to the spirit of those discussions.

I think it is considered by both the Speaker and the leadership on this side, and by the leadership on the other side in the other body, that we want to work with the President to try and find ways of implementing actions to reduce the deficit; but we do not want those talks to be preconditioned, nor do we want them to be the occasion for a delay in the regular legislative procedures, so we are going to go forward just as the administration undoubtedly will go forward with provisions to impose sequestration.

We hope that that can be avoided, and we will be glad to consider whatever agreement might be reached on an expedited basis; but there is no call for changing the legislative schedule.

We have no intention to do so and were not requested to do so by the administration.

Mr. LOTT. I thank the gentleman for the gentleman's comments, and I believe they will call on the gentleman to do that.

I would like to urge that we take off a bill that would include tax increases and a welfare reform until we could have some summit discussions.

ADJOURNMENT TO MONDAY, OCTOBER 26, 1987

Mr. FOLEY. Mr. Speaker, I ask unanimous consent that when the

House adjourns today it adjourn to meet at noon on Monday next.

The SPEAKER pro tempore (Mr. MURTHA). Is there objection to the request of the gentleman from Washington?

There was no objection.

DISPENSING OF CALENDAR WEDNESDAY BUSINESS ON WEDNESDAY NEXT

Mr. FOLEY. Mr. Speaker, I ask unanimous consent that the business in order under the Calendar Wednesday rule shall be dispensed with on Wednesday next.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Washington?

There was no objection.

COMMEMORATING FRANK LLOYD WRIGHT

Mr. UDALL. Mr. Speaker, I ask unanimous consent for the immediate consideration of the resolution (H. Res. 289) to commemorate the contributions of Frank Lloyd Wright to art, architecture, culture, and education in America.

The SPEAKER pro tempore. The Clerk will report the resolution.

The Clerk read the resolution as follows:

H. RES. 289

Whereas the year 1987 is the 100th anniversary of the construction of Frank Lloyd Wright's first building at Taliesin in Wyoming Township, Iowa County, near Spring Green, Wisconsin—the Home Building of the Hillside Home School;

Whereas the year 1987 is the 50th anniversary of the establishment of Taliesin West, Frank Lloyd Wright's winter home, office, and architectural school campus in Scottsdale, Arizona;

Whereas the contribution of Frank Lloyd Wright to art, architecture, culture, and education in America during the seventy years of his professional career is increasingly recognized;

Whereas the role of Frank Lloyd Wright in creating an American Architecture—an architecture expressing freedom and democratic ideals in its use of space—is widely recognized;

Whereas the two National Landmarks, Taliesin and Taliesin West, are universally recognized as special evidence of his spirit of enterprize and of his contribution to art, architecture, culture, and education and as unique examples of his vision of an American Architecture—an architecture for a democratic society.

Resolved by the House of Representatives (the Senate concurring), That the contributions of Frank Lloyd Wright exemplified by his personal creations, Taliesin and Taliesin West, are hereby recognized as examples of the highest achievements in American artistic and architectural expression. These landmarks are especially noted for their sensitivity to the natural settings in which they are located and for the influence they have had on architects and architecture throughout the world.

□ 1330

Mr. UDALL (during the reading). Mr. Speaker, I ask unanimous consent that the resolution be considered as read and printed in the RECORD.

The SPEAKER pro tempore (Mr. MURTHA). Is there objection to the request of the gentleman from Arizona?

Mr. YOUNG of Alaska. Mr. Speaker, reserving the right to object, and I shall not object, I yield to the gentleman from Arizona [Mr. UDALL] to explain the resolution and what it does.

Mr. UDALL. Mr. Speaker, will the gentleman yield?

Mr. YOUNG of Alaska. I yield to the gentleman from Arizona.

Mr. UDALL. Mr. Speaker, I am very pleased today to offer House Resolution 289, to honor the work of Frank Lloyd Wright, one of the most distinctive and influential architects in American history.

It is particularly fitting that he be honored now as we are rapidly approaching ceremonies marking the 50th anniversary of the establishment of Taliesin West in Scottsdale, AZ, and the 100th anniversary of the construction of Wright's first building at Taliesin, near Spring Green, WI. Both of these sites are national landmarks.

Since 1937, Taliesin West has been the winter home, studio, workshop, and office of the more than 70 architects, faculty members, and students associated with the Frank Lloyd Wright Foundation. This foundation operates an apprenticeship program in architecture that was established by Mr. and Mrs. Wright and also maintains Frank Lloyd Wright's archives. The buildings themselves at Taliesin West are exceptionally beautiful and are characterized by their strong and distinctive relationship to the desert environment of the McDowell Mountains where they are located.

Frank Lloyd Wright was born in 1869 in southwestern Wisconsin. His father was a preacher and a musician, his mother was a teacher. From them he learned about the rhythms of nature and the structure of music. After his formal training in architecture at the University of Wisconsin and an apprenticeship with the great architect of the late 19th century, Louis Sullivan, Wright opened his own practice in 1893 and founded a distinctive new style of architecture he called "organic."

Taliesin and Taliesin West represent the evolution of Wright's architectural thought over more than six decades of a remarkably productive life. These works are enduring demonstrations of how man can build and live with respect for climate, terrain, and indigenous plant life.

This coming weekend past and present members of the Taliesin Fellowship, a group of teachers and architects dedicated to the preservation and furtherance of the philosophy and practice of organic architecture, are gathering at Taliesin West to celebrate the two anniversaries with music and other programs commemorating the evolution of the campus and outlining future plans.

It is therefore fitting that the House of Representatives take note of these events today by commemorating the life and work of Frank Lloyd Wright.

Mr. KASTENMEIER. Mr. Speaker, I am pleased to rise in support of the commemorative resolution, which I have cosponsored, to honor the immense contributions Frank Lloyd Wright has made to American architecture and the anniversaries of two of his personal creations, Taliesin East in the Second District of Wisconsin, and Taliesin West in Arizona. Frank Lloyd Wright was born in southwestern Wisconsin, spending most of his life in my congressional district.

This year marks the 100th anniversary of the construction of Frank Lloyd Wright's first building as well as the founding of the Hillside Home School at Taliesin in the community of Wyoming, WI. This enterprise, begun by Frank Lloyd Wright's aunts, Neil and Jane Lloyd Jones, became a landmark in the field of progressive education. This school served as the inspiration and model for the learn-by-doing architectural training program which Frank Lloyd Wright established as the Taliesin Fellowship in 1932. Today, architectural students are still influenced by this educational philosophy.

Taliesin East and Taliesin West, which is celebrating the 50th anniversary of the start of its construction this year, are prime examples of the highest achievements in American artistic and architectural expression. These two national landmarks are especially noted for their sensitivity to the natural settings in which they are located and for the influence they have had on architects and architectural design through the world.

Mr. Speaker, Frank Lloyd Wright is acknowledged as one of the giants in American architecture and art. I urge my colleagues to support this resolution.

Mr. KYL. Mr. Speaker, I rise in strong support of this resolution to commemorate the 50th anniversary of Taliesin West, one of the legacies of the great American architect, Frank Lloyd Wright.

Mr. Speaker, you might have noticed that, despite my support, I'm not listed as a cosponsor of the resolution. As a rule, I do not cosponsor commemoratives. And, as a matter of principle, I had to stick to that policy even in this instance—even though Taliesin West falls within my congressional district.

I hope we'll pass this resolution today unanimously and thereby provide the appropriate measure of recognition to help kick off the upcoming 3-day anniversary celebration at Taliesin West in Scottsdale. I'm told that architects from all over the world will be gathering there to display photographs of their work, share information, and just enjoy the anniversary of the Taliesin West landmark.

And, Mr. Speaker, Taliesin West is indeed a landmark to treasure and preserve. It is truly the desert masterpiece it's described to be.

With our recognition and support, Taliesin West will continue to thrive as a center for architectural brilliance—and the study of the ideas and architecture of Frank Lloyd Wright.

I urge the adoption of the resolution.

Mr. YOUNG of Alaska. Mr. Speaker, I thank the gentleman for explaining the resolution, and I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Arizona?

There was no objection.

The SPEAKER pro tempore. Is there objection to the initial request of the gentleman from Arizona?

There was no objection.

The resolution was agreed to.

A motion to reconsider was laid on the table.

INDIAN LAW TECHNICAL AMENDMENTS OF 1987

Mr. UDALL. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 2937) to make miscellaneous technical and minor amendments to laws relating to Indians, and for other purposes, with Senate amendments thereto, and concur in the Senate amendments.

The Clerk read the title of the bill.

The Clerk read the Senate amendments, as follows:

Senate amendments:

Page 1, after line 2, insert:

Section 1. This Act may be cited as the "Indian Law Technical Amendments of 1987".

Page 1, line 3, strike out "That section" and insert "Sec. 2. Section".

Page 1, line 7, strike out "2" and insert "3".

Page 2, line 6, strike out "3" and insert "4".

Page 2, line 15, strike out "implementation" and insert "execution".

Page 3, line 1, strike out "4" and insert "5".

Page 3, line 15, strike out "5" and insert "6".

Page 4, after line 6, insert:

(c) Notwithstanding any other provision of law, the Secretary of the Treasury is authorized and directed to transfer to the White Earth Economic Development and Tribal Government Fund, out of funds in the Treasury of the United States not otherwise appropriated, an amount equal to the sum of—

(1) $55,917 for the interest that would have accrued on the settlement funds appropriated pursuant to section 15 of the White Earth Reservation Land Settlement Act of 1985 if such funds had been properly invested during the period beginning on November 17, 1986, and ending on January 12, 1987, plus

(2) an amount equal to the interest that would have accrued on $55,917 during the period beginning on January 12, 1987, and ending on the date the transfer required under this subsection is made by the Secretary of the Treasury if $55,917 had been invested as part of the White Earth Economic Development and Tribal Government Fund on January 12, 1987.

Amounts transferred to the White Earth Economic Development and Tribal Government Fund under this subsection shall be treated as interest accrued on such Fund.

Page 4, line 7, strike out "6 and insert "7".

Page 4, line 8, "payment" insert "out of funds in the judgments, awards, and compromise settlements account of the United States Treasury".

Page 5, after line 2, insert:

Sec. 8. Section 1514 of the Higher Education Amendments of 1986 (20 U.S.C. 4421) is amended—

(1) by striking out "During the 2-year period beginning on the date referred to in subsection (f) of this section" in subsection (d) and inserting in lieu thereof "Unless the Board provides otherwise",

(2) by inserting ", until October 1, 1989," after "Secretary of the Interior shall" in subsection (d), and

(3) by striking out subsections (e) and (f) and inserting in lieu thereof the following:

"(e)(1) The transfers required under subsection (b) shall be completed by no later than June 1, 1988.

"(2) The Institute shall be under the direction and control of the Secretary of the Interior until the earlier of—

"(A) June 1, 1988, or

"(B) a date agreed to by the Board and the Secretary of the Interior.

"(f)(1) Before the later of October 15, 1987, or the date that is 10 days after the date of enactment of the Indian Law Technical Amendments of 1987, the Secretary of the Interior shall enter into a contract with the University of New Mexico, the terms of which shall—

"(A) include all administrative systems which are customary to the operation of a national art institute,

"(B) require the provision by the University of New Mexico of technical assistance to the Institute, including the monitoring of the transfers that are required to be made under subsection (b),

"(C) provide for the establishment by the University of New Mexico of an advisory council that makes recommendations to the University of New Mexico with respect to the operation of the contract,

"(D) allow the University of New Mexico to fulfill its obligations under the contract through subcontracts that are entered into in accordance with section 7 of the Indian Self Determination and Education Assistance Act (25 U.S.C. 450e),

"(E) provide for the expiration of the contract on the date that is 6 months after the date the contract is entered into, but the Board and the University of New Mexico may mutually agree to extend the contract for an additional 2-month period,

"(F) provide that any materials furnished to the Secretary of the Interior by the University of New Mexico, or any subcontractor of the University of New Mexico, under the contract shall become the property of the Institute, and

"(G) include such other terms as the Secretary of the Interior determines to be necessary.

"(2) The advisory council that is required to be established under the contract entered into under paragraph (1) shall be composed of—

"(A) a delegate of the executive director of the National Congress of American Indians,

"(B) a delegate of the president of the American Indian Higher Education Consortium, and

"(C) at least 5 individuals possessing knowledge and experience in Indian arts and culture and in post-secondary education, a majority of whom shall be Indians.".

Page 5, after line 2, insert:

Sec. 9. Subsection (e) of section 3 of the Saginaw Chippewa Indian Tribe of Michigan Distribution of Judgement funds Act (100 Stat. 675) is amended—

(1) by striking "Payments" in paragraph (4)(B) and inserting in lieu thereof "Except as otherwise provided in paragraph (5), payments",

(2) by redesignating paragraphs (5) and (6) as paragraphs (6) and (7), respectively, and

(3) by inserting after paragraph (4) the following new paragraph:

"(5)(A) The Tribal Council may accelerate the payment of the aggregate sum of $3,000 to those members of the tribe certified under paragraph (3) who—

"(i) are certified by a physician to be—

"(I) terminally ill, or

"(II) at least 50 percent permanently disabled, or

"(ii) are at least 60 years of age.

"(B) Notwithstanding any other provision of this Act, the Tribal Council may use interest accrued on the Investment Fund for the purpose of making accelerated payments under subparagraph (A).".

Page 5, after line 2, insert:

Sec. 10. The Frank's Landing Indian Community in the State of Washington is hereby recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians and is recognized as eligible to contract, and to receive grants, under the Indian Self-Determination and Education Assistance Act for such services, but the proviso in section 4(c) of such Act (25 U.S.C. 450b(c)) shall not apply with respect to grants awarded to, and controls entered into with, such Community.

Mr. UDALL (during the reading). Mr. Speaker, I ask unanimous consent that the Senate amendments be considered as read and printed in the Record.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Arizona?

Mr. YOUNG of Alaska. Mr. Speaker, reserving the right to object, and I shall not object, I would seek further clarification of the legislation.

The attorney general of the State of Alaska has expressed concern that section 7 of this bill, as previously passed by the House and the Senate may be construed as contrary to the State's position in certain litigation filed against the United States in the Claims Court. The litigation concerns section 14(g) of the Alaska Native Claims Settlement Act, and the "Terms and Conditions for Land Consolidation and Management in the Cook Inlet Area," a land management agreement between the United States, the State of Alaska, and the Cook Inlet Region, Inc., which was ratified by the Congress in 1976. It is my intent that section 7 is neutral with respect to any pending litigation concerning section 14(g).

Mr. UDALL. If the gentleman will yield, Mr. Speaker, any questions regarding congressional intent should be resolved by reference to this legislation and prior congressional action. I thank the Congressman from Alaska for seeking clarification of congressional intent.

Mr. YOUNG of Alaska. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Arizona?

Mr. RICHARDSON. Mr. Speaker, reserving the right to object, and I shall not object, I wanted to note that one of the amendments made by the Senate, which I support, added language identical to H.R. 3331, which I introduced on September 21, 1987. This language extends the date for completing the transfer of the Institute of American Indian and Alaskan Native Arts and Cultural Development from the BIA the new board of regents to no later than June 1, 1988. It also authorizes the BIA to contract with the University of New Mexico to develop the necessary administrative systems to ensure a smooth transition. This authority is contained in subsection (f)(1), which states that the contract terms shall include "all administrative systems which are customary to the operation of a national art institute."

Let me emphasize that this language is not intended to define the purpose or scope of the Institute nor to elevate the art institute mission of the Institute to a higher priority than the cultural mission. The original legislation establishing the Institute makes it clear that it is to be a unique cultural institution. This bill before us today in no way changes that original intent. The language quoted above merely describes a term of the contract with the University of New Mexico. It is intended by this language that the university will develop systems in the areas of financial management, personnel, and student services. The word "customary" must be understood in this context to refer only to these administrative systems. It is not intended that the university develop systems concerning policy or curriculum for the Institute. These issues are more properly left to the judgment of the board of regents.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Arizona?

There was no objection.

The SPEAKER pro tempore. Is there objection to the initial request of the gentleman from Arizona?

There was no objection.

A motion to reconsider was laid upon the table.

GENERAL LEAVE

Mr. UDALL. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on House Resolution 289 and also on H.R. 2937, the legislation just considered.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Arizona?

There was no objection.

PERMISSION FOR COMMITTEE ON RULES TO HAVE UNTIL 5 P.M., FRIDAY, OCTOBER 23, 1987, TO FILE A PRIVILEGED REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF H.R. 2224, THE PANAMA CANAL COMMISSION AUTHORIZATION ACT

Mr. PEPPER. Mr. Speaker, I ask unanimous consent that the Committee on Rules have until 5 p.m. tomorrow, Friday, October 23, 1987, to file a privileged report providing for the consideration of H.R. 2224, the Panama Canal Commission Authorization Act.

This bill is scheduled for the floor for next Tuesday, and this request has been approved by the minority.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

AUTHORIZING PRINTING OF GUIDE TO RESEARCH COLLECTIONS OF FORMER MEMBERS OF THE U.S. HOUSE OF REPRESENTATIVES, 1789-1987

Mr. JONES of Tennessee. Mr. Speaker, I ask unanimous consent that the Committee on House Administration be discharged from further consideration of the concurrent resolution (H. Con. Res. 140) authorizing printing of the compilation of materials entitled "Guide to Research Collections of Former Members of the United States House of Representatives, 1789-1987," and ask for its immediate consideration.

The Clerk read the title of the concurrent resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Tennessee?

Mr. GINGRICH. Mr. Speaker, reserving the right to object, and I will not object, but I yield to the distinguished gentleman from Tennessee [Mr. JONES] so that he might explain the purpose of the resolution.

Mr. JONES of Tennessee. Mr. Speaker, will the gentleman yield?

Mr. GINGRICH. Mr. Speaker, I yield to the gentleman from Tennessee.

Mr. JONES of Tennessee. Mr. Speaker, the resolution calls for the printing of 5,000 copies of this document. This document will be for the use of the Office of the Bicentennial of the House.

Mr. GINGRICH. Mr. Speaker, the minority has no objection to this concurrent resolution.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Tennessee?

There was no objection.

The Clerk read the concurrent resolution, as follows:

H. CON. RES. 140

Resolved by the House of Representatives (the Senate concurring), That the compilation of materials entitled "Guide to Research Collections of Former Members of the United States House of Representatives, 1789-1987" (prepared by the Office for the Bicentennial of the House of Representatives) shall be printed as a House document, with illustrations and suitable binding. In addition to the usual number, five thousand copies of such document shall be printed for the use of the Office for the Bicentennial of the House of Representatives.

The concurrent resolution was agreed to.

A motion to reconsider was laid on the table.

WHERE DOES NICARAGUA GET ITS ECONOMIC AID?

(Mr. DANIEL asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. DANIEL. Mr. Speaker, as discussion continues regarding the prospect for peace in Central America, I believe it is significant to note that aid continues to flow to the Marxist government from the nations of Western Europe.

In the period immediately after strong man Somoza was forced from office, foreign aid was contributed by many Western European and Latin American countries, to assist in rebuilding an economy which was in desperate disarray.

In the beginning, it was primarily United States money which kept the Government of Nicaragua afloat: In 1979, we provided more than a third of their foreign aid; in 1980, more than half.

It soon became clear that the Sandinistas had no intention of permitting a democratic government to develop.

Our own aid, as well as that of the United Kingdom, ceased in 1983; Japan followed suit in 1984, and West Germany in 1985.

For reasons I cannot fathom, other nations of Western Europe have continued, and at times increased their aid to this Marxist government.

As the chart shows, aid from member countries of the Organization for Economic Cooperation and Development, which are essentially the free-market nations of the West plus Japan, has remained consistent.

The continuing assistance by democratic nations, augmented by enormous infusions from Soviet bloc countries and Cuba, have enabled the Sandinistas to consolidate their hold on the people of Nicaragua, as they develop the most threatening military presence in Central America.

These nations of the West presently rely on our country to provide the greater part of the burden for the defense of Western Europe, while contributing to the destruction of free government in our own hemisphere.

There has been a lesson to be learned in Nicaragua, but unfortunately some of our allies have missed it altogether.

NICARAGUA: WESTERN ECONOMIC AID DISBURSEMENTS, 1979–86

	1979	1980	1981	1982	1983	1984	1985	1986	Total
Austria	0.2	0.7	0.7	8.7	8.1	0.5	0.5	0.5	19.9
Belgium	.9	.3	.8	.6	.5	.5	.5	.5	4.6
Canada		.3	5.6	2.3	6.2	8.8	8.0	7.0	38.2
Denmark	.9	.1	1.4	.3	1.6	.8	1.0	1.0	7.1
Finland	.1	.6		2.5	1.6	3.0	3.0	3.0	13.8
France		.5	1.3	8.5	8.7	8.5	8.0	4.0	39.5
FRG	18.2	13.3	14.2	10.3	16.7	4.5	1.0		78.2
Italy	1.1	1.1	5.0	2.5	1.9	2.6	3.0	3.0	20.2
Japan	5.5	2.3	.2	.3	.1	.1			8.5
Netherlands	6.4	14.6	15.8	23.9	17.6	21.2	18.0	15.0	132.5
Norway	.9	.5	.4	2.1	2.3	5.7	6.5	9.8	28.2
Spain	10.0	15.0	15.0	15.0	15.0	15.0	12.0	10.0	107.0
Sweden	8.1	7.7	3.9	9.3	12.1	16.6	16.0	17.9	91.6
Switzerland	2.3	.5	.8	1.4	2.5	2.1	2.0	2.0	13.6
United Kingdom	.5	.3	.2	.1	.1				1.2
United States	30.0	82.0	17.0	7.0	4.0				140.0
Total OECD	85.1	139.8	82.3	94.8	99.0	89.9	79.5	73.7	744.1

AUTHORIZING PRINTING OF COMPILATION OF MATERIALS ENTITLED "GUIDE TO RECORDS OF THE UNITED STATES HOUSE OF REPRESENTATIVES AT THE NATIONAL ARCHIVES, 1789-1989: BICENTENNIAL EDITION"

Mr. JONES of Tennessee. Mr. Speaker, I ask unanimous consent that the Committee on House Administration be discharged from further consideration of the concurrent resolution (H. Con. Res. 177) authorizing the printing of the compilation of materials entitled "Guide to Records of the United States House of Representatives at the National Archives, 1789-1979: Bicentennial Edition," and ask for its immediate consideration.

The Clerk read the title of the concurrent resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Tennessee?

Mr. GINGRICH. Mr. Speaker, reserving the right to object, I yield to the distinguished gentleman from Tennessee [Mr. JONES] so that he might explain the purpose of the concurrent resolution.

Mr. JONES of Tennessee. Mr. Speaker this resolution calls for the printing of 2,000 copies of the document and will be for the use of the Office of the Bicentennial of the House.

Mr. GINGRICH. Mr. Speaker, the minority has no objection, and I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Tennessee?

There was no objection.

The Clerk read the concurrent resolution, as follows:

H. CON. RES. 177

Resolved by the House of Representatives (the Senate concurring), That the compilation of materials entitled "Guide to Records of the United States House of Representatives at the National Archives, 1789-1989: Bicentennial Edition" (prepare under the supervision of the Commission on the United States House of Representatives Bicentenary, with the editorial assistance of the Historian of the House of Representatives) shall be printed as a House document, with illustrations and suitable binding. In addition to the usual number, two thousand copies of such document shall be printed for the use of the Office for the Bicentennial of the House of Representatives.

The concurrent resolution was agreed to.

A motion to reconsider was laid on the table.

AUTHORIZING PRINTING OF SENATE DOCUMENT, "GUIDE TO RECORDS OF THE UNITED STATES SENATE AT THE NATIONAL ARCHIVES, 1789-1989: BICENTENNIAL EDITION"

Mr. JONES of Tennessee. Mr. Speaker, I ask unanimous consent that the Committee on House Administration be discharged from further consideration of the Senate concurrent resolution (S. Con. Res. 64) which authorizes the printing of a Senate document entitled, "Guide to Records of the United States Senate at the National Archives, 1789-1989: Bicentennial Edition," and ask for its immediate consideration.

The Clerk read the title of the Senate concurrent resolution.

☐ 1340

The SPEAKER pro tempore (Mr. MURTHA). Is there objection to the request of the gentleman from Tennessee?

Mr. GINGRICH. Mr. Speaker, reserving the right to object, I yield to the gentleman from Tennessee [Mr. JONES], the distinguished chairman of the subcommittee, so he might explain the purpose of the resolution.

Mr. JONES of Tennessee. Mr. Speaker, I thank my colleague for yielding.

Mr. Speaker, the resolution calls for the printing of 2,000 copies of the document and is for the use of the Secretary of the Senate. This publication is a companion volume to the publication authorized in House Concurrent Resolution 177.

Mr. GINGRICH. Mr. Speaker, the minority has no objection and I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Tennessee?

There was no objection.

The Clerk read the Senate concurrent resolution, as follows:

S. CON. RES. 64

Resolved by the Senate (the House of Representatives concurring), That there shall be printed as a Senate document "Guide to Records of the United States Senate at the National Archives, 1789-1989: Bicentennial Edition" to be published under the supervision of the Secretary of the Senate with the editorial assistance of the Senate Historical Office.

SEC. 2. Such document shall include illustrations, and shall be in such style, form, manner, and binding as directed by the Joint Committee on Printing after consultation with the Secretary of the Senate.

SEC. 3. In addition to the usual number of copies, there shall be printed with suitable binding 2,000 additional copies, for use by the Secretary of the Senate.

The Senate concurrent resolution was concurred in.

A motion to reconsider was laid on the table.

PROVIDING FOR HOUSE AND SENATE SELECT COMMITTEES ON IRAN TO FILE AND PRINT A JOINT REPORT

Mr. JONES of Tennessee. Mr. Speaker, I ask unanimous consent that the Committee on House Administration and the Committee on Rules be discharged from further consideration of the concurrent resolution (H. Con. Res. 195) providing for the House and Senate Select Committees on Iran to file and print their reports as a joint report, and ask for its immediate consideration.

The Clerk read the title of the concurrent resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Tennessee?

Mr. GINGRICH. Mr. Speaker, reserving the right to object, I yield to the gentleman from Tennessee [Mr. Jones], the distinguished chairman of the subcommittee, so he might explain the purpose of the resolution.

Mr. JONES of Tennessee. Mr. Speaker, I thank my colleague for yielding.

The report will consist of several volumes and will be printed as a joint report. Numerous copies are requested for both the House and Senate select committees. I have two amendments at the desk. The first amendment simply changes the wording of the title. It does not change the meaning or the purpose of the resolution in any way. The second amendment reduces the number of copies that each of the select committees will receive of each volume and clarifies the contents of each volume of the report.

Mr. GINGRICH. Mr. Speaker, I yield to the very distinguished gentleman from Florida [Mr. Pepper], chairman of the Rules Committee.

Mr. PEPPER. Mr. Speaker, I thank the gentleman from Georgia for yielding.

Mr. Speaker, I rise to inform the House that the Committee on Rules has no objection to the action of the Committee on House Administration asking for unanimous consent to proceed to the consideration of House Concurrent Resolution 195, providing for the House and Senate Select Committees on Iran to file and print their reports as a single report. Since a waiver of House rules is included in the resolution in order that the report of the select committees may be printed as a single report and since the resolution also contains a waiver of the October 30 reporting deadline, the Committee on Rules has exclusive jurisdiction over these matters. The committee, however, recognizes the importance of this request and even though we have not officially considered House Concurrent Resolution 195 we have no objections to this unanimous-consent request.

Mr. GINGRICH. Mr. Speaker, I think the distinguished chairman of the Rules Committee. The minority has no objection.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Tennessee?

There was no objection.

The Clerk read the concurrent resolution, as follows:

H. Con. Res. 195

Resolved by the House of Representatives (the Senate concurring), That the House Select Committee to Investigate Covert Arms Transactions with Iran, and the Senate Select Committee on Secret Military Assistance to Iran and the Nicaraguan Opposition are authorized to file and print their reports as a joint report of more than one volume with necessary appendices. Following the filing of the report, the accompanying appendices will be filed for printing within thirty days. Thirty-two thousand copies of the first volume of the joint report shall be printed for the use of the House committee, in addition to the usual number, and twenty-five thousand copies of the first volume of the joint report shall be printed for the use of the Senate committee, in addition to the usual number, with minority, supplemental and additional views of both committees in this volume. Two thousand copies of the volume or volumes containing the narrative, with minority, supplemental and additional views of both committees in one volume, and one thousand copies of additional appendices, shall be printed for the use of the House committee, in addition to the usual numbers. Fifteen thousand copies of the volume or volumes containing the narrative, with minority, supplemental and additional views of both committees in one volume, and six thousand copies of additional appendices, shall be printed for the use of the Senate committee, in addition to the usual numbers. The report and appendices shall be printed in the size, style, design and typographical scheme directed by the chairmen of the committees, in consultation with the ranking minority member of the House committee and the vice-chairman of the Senate committee.

Sec. 2. The Superintendent of Documents shall make additional copies of the report and appendices available for purchase by the general public at no less than cost.

AMENDMENT OFFERED BY MR. JONES OF TENNESSEE

Mr. JONES of Tennessee. Mr. Speaker, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Jones of Tennessee: Page 1, strike out line 9 and all that follows through the end of the resolution and insert in lieu thereof the following:

30 days.

Sec. 2. (a) The joint report shall be numbered as a House report and as a Senate report, and organized as provided in this section.

(b)(1) The first volume of the joint report shall be printed in an appropriate number of parts.

(2) The first part of such volume shall contain a summary of facts, findings, conclusions, and recommendations, including supplemental, minority, and additional views. In addition to the usual number, 9,000 copies of such part shall be printed for the use of the House select committee, and 25,000 copies of such part shall be printed for the use of the Senate select committee.

(3) Further parts of such volume shall contain descriptive matter, including supplemental, minority, and additional views. In addition to the usual number, 2,000 copies of each descriptive part shall be printed for the use of the House select committee and 5,000 copies of such part shall be printed for the use of the Senate select committee.

(c) The remaining volumes of the joint report shall be appendices. In addition to the usual number, 1,000 copies of each appendix shall be printed for the use of the House select committee, and 1,000 copies of each appendix shall be printed for the use of the Senate select committee.

(d) The joint report shall be printed in the style and form directed by the chairman of the House select committee and the chairman of the Senate select committee, acting jointly and in consultation with the ranking minority party member of the House select committee and the vice-chairman of the Senate select committee.

Sec. 3. The Superintendent of Documents shall make additional copies of the joint report available for purchase at not less than cost (as determined by the Public Printer).

Mr. JONES of Tennessee (during the reading). Mr. Speaker, I ask unanimous consent that the amendment be considered as read and printed in the Record.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Tennessee?

There was no objection.

Mr. JONES of Tennessee. Mr. Speaker, as I stated earlier, the amendment simply reduces the number of copies and clarifies the contents of each volume.

The SPEAKER pro tempore. The question is on the amendment offered by the gentleman from Tennessee [Mr. Jones].

The amendment was agreed to.

The concurrent resolution was agreed to.

TITLE AMENDMENT OFFERED BY MR. JONES OF TENNESSEE

Mr. JONES of Tennessee. Mr. Speaker, I offer an amendment to the title.

The Clerk read as follows:

Title amendment offered by Mr. Jones of Tennessee: Amend the title so as to read: "Concurrent resolution providing for filing and printing of the reports of the House and Senate select committees on Iran as a joint report.".

The title amendment was agreed to.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. JONES of Tennessee. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days during which to revise and extend their remarks on the resolutions just adopted.

The **SPEAKER** pro tempore. Is there objection to the request of the gentleman from Tennessee?

There was no objection.

NATIONAL NHS—NEIGHBORWORKS WEEK

The **SPEAKER** pro tempore. Under a previous order of the House, the gentleman from California [Mr. FAZIO] is recognized for 5 minutes.

Mr. FAZIO. Mr. Speaker, I call upon my colleagues to join me in support of a resolution to designate the week beginning June 5, 1988, as "National NHS—NeighborWorks Week." The purpose of this resolution is to increase public awareness of Neighborhood Housing Services [NHS] and its affiliated partnership organizations which are rebuilding America's lower income neighborhoods through public and private participation. This resolution also recognizes NHS and its affiliated partnership organizations as principal members of the NeighborWorks Network, featured in a public service campaign undertaken by the Advertising Council to Illustrate the success of NHS partnership across the country and to enhance the public awareness of NHS. Additionally, the resolution will honor the thousands of volunteers who have contributed countless hours of work and private resources to the success of the NHS effort nationwide.

The success of the NeighborWorks Network is the result of active cooperation among neighborhood residents and the public and private sectors. This locally initiated partnership allows a neighborhood's residents to work directly with local business and government leaders to identify their neighborhood's problems, determine what needs to be done, and then work to achieve those goals. In general, the NeighborWorks goal is to reestablish a stable, healthy neighborhood, one characterized by: A healthy real estate market; sound housing and other physical conditions; a positive community image; and, a core of neighbors committed to, and capable of, managing the countinuing health of their neighborhood. These goals have been reached by 60 neighborhoods across the country and those neighborhoods are substantially self-reliant.

Congress' role in assisting this grass roots effort is through the work of the Neighborhood Reinvestment Corp. which we created to help local communities establish new Neighborhood Housing Services, Apartment Improvement Programs, and Mutual Housing Associations and provide technical services to the existing partnerships. The success of this effort is impressive and my own congressional district has benefited from this important partnership. In fact, NeighborWorks partnerships are working in over 297 neighborhoods in 137 cities, which along with the 60 new self-reliant neighborhoods, house nearly 3 million people. The NeighborWorks Network has generated more than $4 billion in reinvestment for the rehabilitation and development of America's low-income housing stock. But no numbers can capture the renewed sense of pride and confidence of the residents in these neighborhoods, a majority of whom are lower income, elderly and minority.

Each NeighborWorks partnership is locally initiated and funded by private sector institutions and local government. More than 3,000 businesses and local governments are contributing to the operations of their local NeighborWorks partnerships at an annual level of over $16 million. Keeping NeighborWorks partnership organizations strong and enabling them to serve additional neighborhoods requires a steady renewal of this local government and private sector support. "National NHS—NeighborWorks Week," will increase public awareness of the NeighborWorks effort nationwide and strengthen local support from the private sector.

I hope my colleagues will join me in designating the week of June 5, 1988, as "National NHS—NeighborWorks Week." Passage of this resolution will not mandate an outlay of Federal funds, but, it will give Congress' support of a national grassroots effort by people from all walks of life who are working together to improve America's neighborhoods.

THE ROLE OF COMMODITY PRICES IN THE INTERNATIONAL COORDINATION OF ECONOMIC POLICIES AND IN THE CONDUCT OF MONETARY POLICY

The **SPEAKER** pro tempore. Under a previous order of the House, the gentleman from South Carolina (Mr. NEAL] is recognized for 5 minutes.

Mr. NEAL. Mr. Speaker, the Subcommittee on Domestic Monetary Policy, which I chair, and the Subcommittee on International Finance, Trade and Monetary Policy, chaired by the Honorable ROBERT GARCIA, plan to hold joint hearings on the role of commodity prices in the international coordination of economic policies and in the conduct of monetary policy. The major industrial countries have been trying to develop a system of economic indicators that would guide them in the coordination of economic policies. The purpose of this coordination is to manage exchange rates in order to reduce major trade imbalances and promote more vigorous growth throughout the world economy. At the recent annual convention of the International Monetary Fund, the Secretary of the Treasury announced that "the United States is prepared to consider utilizing, as an additional indicator in the coordination process, the relationship among our currencies and a basket of commodities, including gold. This could be helpful as an early warning signal of potential price trends."

The Treasury has, to date, offered the Congress and the public very little information about the structure and workings of this system of indicators. The Treasury responded to my past inquiries on this subject by writing:

> At the Venice Summit, the Heads of State or Government endorsed understandings by the G-7 Finance Ministers to strengthen surveillance of their economies using economic indicators, in particular by:
>
> "The commitment by each country to develop medium-term objectives and projections for its economy, and for the group to develop objectives and projections, that are mutually consistent both individually and collectively; and
>
> "The use of performance indicators to review and assess current economic trends and to determine whether there are significant deviations from an intended course that require consideration of remedial actions."
>
> The economic indicators that are being used are drawn from those referred to in the Tokyo Summit Economic Declaration. Initially, the objectives and projections will involve the following key variables: growth, inflation, current accounts/trade balances, budget performance, monetary conditions and exchange rates. We are continuing to develop the indicator mechanism, including the establishment of agreed objectives and projections for use in the review process.

It is time for us to develop greater public awareness and understanding of this process of economic coordination. We have, therefore, invited the Treasury to present testimony that:

First, describes and analyzes the working of the system of indicators that has been developed, including a presentation of the actual recent behavior of these indicators, and an interpretation of what they have been indicating;

Second, presents the rationale for attempting to coordinate economic policy based on the behavior of these indicators, including arguments and evidence that indicate such coordination would promote more desirable exchange-rate behavior;

Third, discusses the kinds of policy tradeoffs we might have to make in order to coordinate policy with other countries; and

Fourth, presents the rationale for including an index of commodity prices in this system of indicators, along with evidence that some such index could provide useful information for the conduct of monetary policy.

Economic policymaking is shared, in our system of government, by the administration, the Congress, and an independent Federal Reserve System. Successful coordination with other countries will require participation and understanding by all parties, based on public discussion of these issues.

Within the coordination process monetary policy must play a paramount role. Monetary policy would be the first and foremost means through which the United States would be expected to react to the signals of a commodity price index. Efforts to formalize this system raise important questions about the future conduct of monetary policy. The Full Employment and Balanced Growth Act of 1978 requires the Federal Reserve to establish and report growth ranges for monetary and credit aggregates, taking into account several economic objectives. No mention is made of commodity prices.

The Federal Reserve has been asked to present testimony that would address the following questions:

First, what is the rationale for giving significant weight to the behavior of commodity prices in the conduct of monetary policy? What information is contained in this behavior that is missing in broader indices of inflation and real economy activity? Why would this information be useful?

Second, are not commodity prices determined, in part, by special supply and demand conditions pertaining on specific commodity markets, so that the information they convey could be very misleading if treated as a leading indicator of overall price or real economic trends?

Third, what role, if any, should commodity prices play in the coordination of exchange rates? What criteria should determine which countries should respond to commodity price indicators? If commodity prices are rising in dollars but falling in yen, should we simply try to stabilize exchange rates through intervention—by whom?—or should the United States tighten monetary policy, or should Japan loosen monetary policy, or should both react? On what criteria should these choices be made? Since the same problem can be posed in terms of general price behavior—prices rising in the United States and falling in Japan—what is gained by posing it in terms of the behavior of commodity prices?

Fourth, should gold be given significant weight in the commodity price index? Why? Would not giving significant weight to gold represent a repudiation of the March 1982 report to the Congress of the Commission on the Role of Gold in Domestic and International Monetary Systems? That Commission made no recommendation implying that gold should be given any weight whatsoever in the conduct of monetary policy. It did recommend, specifically, "no change in the usage of gold in the operation of the present exchange rate arrangements." Did the Commission err?

Fifth, would giving significant weight to commodity prices in the setting of monetary policy not require an amendment to the Full Employment and Balanced Growth Act of 1978? Should not the Federal Reserve be required to report a projected range for the movement of a commodity price index in addition to its projected ranges for the growth of monetary and credit aggregates? Should not the behavior of commodity prices be included among the economic developments the Congress requires the Federal Reserve to take into account in establishing monetary and credit aggregates?

Witnesses for these hearings will include:

November 5: The Honorable David Mulford, Assistant Secretary of the Treasury for International Affairs.

November 17: Mr. Charles W. Kadlec, vice president and director of research, J&W Seligman and Co.; Prof. Michael Bordo, Carnegie-Mellon University and University of South Carolina, former assistant to the Executive Director of the Gold Commission; Prof. Robert E. Hall, Hoover Institution, Stanford University; and Mr. David Jones, chief economist, Aubrey G. Lanston & Co.

November 19: The Honorable Alan Greenspan, Chairman, Board of Governors of the Federal Reserve System.

TAXATION OF LIFE INSURANCE PRODUCTS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California [Mr. STARK] is recognized for 5 minutes.

Mr. STARK. Mr. Speaker, I am sure that many offices are receiving calls and letters about a bill which the gentleman from Ohio [Mr. GRADISON] and I recently introduced, H.R. 3441, relating to the taxation of life insurance products.

The bill was caused by the explosive growth of single premium whole life policies, which have become the hottest tax shelter in our econmoy. Between 1984 and 1986, single premium life sales grew 318 percent, from a little over $1 billion to over $4.3 billion.

This year sales will approach $10 billion—equal to all the other ordinary life insurance premium combined. With $10 billion earning 8 percent tax-free, the U.S. Treasury will lose approximately $250 million in 1988 alone.

If anyone questions why corrective legislation is necessary, I would like to reprint below an advertisement from the Los Angeles Times of January 26, 1987, which describes the many tax shelter features of single premium whole life policies. As the ad states, SP's provide "tax sheltered earnings that you can spend." "Better than a CD, Treasury bill, Money Market Fund, Zero Coupon Bond, Annuity or Municipal Bond."

No, single premiums can't leap tall buildings in a single bound, but they are leaping around our efforts to provide tax reform and to encourage economic considerations over tax consideration in peoples' investment decisions.

On October 16, the General Accounting Office issued a report (GAO/GGD-88-9BR) entitled "Tax Policy: Taxation of Single Premium Life Insurance." Perhaps the key sentence in the report is: "the policies provide a device for capturing investment income without reflecting it on an income tax return."

Following is the cover letter of the GAO's report. As Members respond to their mail on this issue, I hope they will consider this information and keep their powder dry: Single premium life insurance is a tax loophole; it is unfair; it is used by upper income people who have large hunks of cash to invest; it is an economic distortion that should not be allowed to continue.

U.S. General Accounting Office,
Washington, DC, October 16, 1987.

B-229198

Hon. Fortney H. (Pete) Stark,
House of Representatives.

Dear Mr. Stark: On June 29, 1987, you requested that we provide information on the sales, features, and tax treatment of single premium life insurance. This report supplements a briefing given to you and your staff on October 13, 1987.

As you requested, we examined (1) single premium life insurance as a tax-favored investment, (2) the growth in sales of single premium life insurance products and their magnitude compared to sales of non-single premium life insurance products, and (3) potential approaches for changing the tax-favored status of single premium life insurance products. Appendix I provides details on the scope and methodology of our work.

Appendix II outlines the results of our work and potential approaches for changing the tax-favored status of single premium life insurance. The policies, which allow a single premium to be paid up-front, combine death benefits with tax-free accumulation of income. Policyholders can also obtain loans against the policies at little or no cost because the income on funds invested is used to offset the interest charged to borrowers. Expressed in another way, the policies provide a device for capturing investment income without reflecting it on an income tax return. The attractiveness of these features, especially in light of recent congressional actions to limit the tax-favored status of other financial vehicles like annuity contracts and Individual Retirement Accounts, has caused dramatic growth in sales of new single premium life insurance products. Between 1984 and 1986, single premium life sales grew 318 percent, from a little over $1.0 billion to over $4.3 billion. At the same time, ordinary premium sales grew 13.3 percent, from $8.3 billion to $9.4 billion.

Although single premium life insurance meets the definition of life insurance for tax purposes, the policies may be inconsistent with congressional efforts pertaining to life insurance and investments. For example, tax law changes in the Deficit Reduction Act (DEFRA) of 1984 eliminated the tax-favored status of endowment life insurance products because of their heavy investment orientation. Likewise, DEFRA brought about the full taxation of distributions from Single Premium Deferred Annuities, which are similar to single premium life insurance products.

Should Congress decide to change the tax status of single premium life insurance we present two alternatives. One alternative would treat loans from single premium life insurance policies in the same manner as distributions from annuity contracts, under which that part of a policy loan that represents return on investment is considered as taxable income in the year withdrawn. The other alternative would change the definition of life insurance such that single premium contracts no longer qualify for favorable tax treatment if policy loans reduce the death benefit below a certain level. Appendix III illustrates the latter alternative in greater detail.

We hope you will find this information useful in your deliberations on the taxation of single premium life insurance policies. As agreed with your staff, we will make this information available to other interested parties upon request. If you have any questions regarding this material, please contact Mr. Natwar Gandhi of my staff on 376-0023.

Sincerely yours,

Jennie S. Stathis,
Associate Director.

[Advertisement from the Los Angeles Times, Jan. 26, 1987]

Tax-Free Money * With the Best Financial Vehicle Ever Created

The Exciting—SP—Single Premium Whole Life.

Tax sheltered earnings that you can spend. Better than a CD, Treasury Bill, Money Market Fund, Zero Coupon Bond, Annuity or Municipal Bond.

Principal and 7½-9% Tax-Free Money guaranteed 100% by over 30 leading U.S. life insurance companies with assets up to 100 billion dollars.

What is an SP?

It's the most dynamic, revolutionary, and yet safest instrument in the financial marketplace. A totally flexible and versatile vehicle offering almost unbelievable benefits and tax advantages!

That's the SP: Single Premium Whole Life Insurance Policy.

---

* Via policy loans. Under current loan, amounts received as policy loans are not taxable as income as long as the policy remains in force.

But it is much more than just an insurance policy!

In a sense, it is a tax-free Certificate of Deposit, Zero Coupon Bond, Money Market Account, T-Bill, Annuity, Municipal Bond, and a fully paid-up life insurance policy all rolled into one contract! A contract where your SP will:

Produce a higher yield than is offered by each of the others.

Give you a yield income tax-free.

Never decrease the value of your growing cash accumulation (as tax-exempt bonds do when interest rates rise).

Never lose a cent of your original single payment (as you can with municipal bonds).

THE INCREDIBLE ADVANTAGES OF THIS DYNAMIC AND TOTALLY SAFE NEW CONCEPT

One payment

You can make a single payment, as you would for a CD, T-Bill, Bond, etc. In any amount from $5,000 to $5,000,000. You get a completely paid-up insurance policy for a full lifetime, written by a major life insurance company. You never pay another dollar! You also get access to a whole world of tax advantaged opportunities.

No hidden charges

Unlike many mutual funds, the SP carries no front-end load or sales charges. Nor are there ever any yearly administrative or management fees. There is a charge for early surrender. With the SP, 100% of your deposit goes to work immediately for you.

Guaranteed tax-free money based on current law

Each year, your SP insurance company offers a competitive rate of interest on your principal. Currently this ranges from 7½-9%, for 1-7 years, depending on the company. And this interest compounds tax-free, just like an Annuity or a tax-free Zero Coupon Bond. At the end of each contract year, you can receive your SP interest accumulation for that year, tax-free under current law. Or, you can leave it in and let it compound for another year.

Liquidity

The initial attraction of the SP is the accumulation of tax-deferred interest, but the real beauty of the single-premium whole life policy lies in its liquidity. Your SP accumulation can be withdrawn anytime you wish with a no-cost, tax-free loan! And you never have to pay back any withdrawal, whether it is an interest accumulation loan or a principal loan.

Tax-free death benefit

You receive an income tax-free death benefit. It can be anywhere from 100% or 500% of your principal. (The younger you are, the larger the benefit. If you wish, you may have the insurance placed on another family member). And the principal, any accrued interest not withdrawn as tax-free income, and the death benefit all transfer to your heirs with no income tax and no probate costs. (You can avoid estate tax by leaving it to your spouse).

Privacy

Your investment is private. No 1099 form is reported to the I.R.S. as long as you keep your SP plan in force. And there is no Social Security offset (your tax-free income does not count against the possible taxation of your Social Security payment).

Safety

The Single Premium Whole Life Policy is sold today by over 30 major U.S. insurance companies, many of which merit the highest rating of A+ from A.M. Best Co., an independent rating service. These underwriting organizations put their multi-billion dollar resources and integrity fully behind the SP.

THE SP IS A CONSERVATIVE PRODUCT WITH VERSATILE AND CREATIVE APPLICATIONS

Pay for your child's or grandchild's education on a pre-tax basis.

Support any relative with pre-tax dollars.

Give money to charity at a profit.

Pay alimony at no cost whatsoever.

Buy real estate at a discount.

Recover taxes on your pension benefits.

Recover business or investment losses.

Recover capital gains taxes paid.

Pay debts with pre-tax dollars.

Pay for life insurance with pre-tax dollars.

Eliminate all life insurance premiums.

Have your estate taxes paid for you, and many more.

THE NEW TAX ACT, DOES IT AFFECT THE SP?

Absolutely not. In no way does the new tax act impact on the SP. All tax-free and other benefits and advantages of the SP remain intact.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Georgia [Mr. GINGRICH] is recognized for 60 minutes.

[Mr. GINGRICH addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

INTERNATIONAL MONETARY AFFAIRS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Texas [Mr. GONZALEZ] is recognized for 60 minutes.

Mr. GONZALEZ. Mr. Speaker, the agitation that has been duly recorded by our newspaper and news information media concerning the stock market and related economic activities merely emphasizes what I have been saying, and I know some of us have been saying, and of course some that said it either no longer are Members of the House, have gone on either to retirement or have passed on, but have been saying for more than 20 years. That is that at no time since the inception of the Korean intervention on our part, though actually done under the aegis or the authority of the United Nations, a fact that has been lost sight of in subsequent involvements in our country, such as in Southeast Asia and Vietnam, and subsequently to that in other areas where our intervention has been unilateral, and where we have been isolated and where we have been alone. At all times throughout recorded human history, the economic, financial precedes, antecedes and also follows in rules the development of warfare and conflict. Just as warfare or violence is a confession to the breakdown or the failure of diplomatic or peaceful approaches to the conflicts that arise in human existence, so is it an axiom in history that wars and conflicts are won or lost at the financial tables.

As far as I know, as I have said on prior occasions, I am the only one of either membership in the House of Representatives of the United States or the Senate of the United States who has even made reference to, much less discussed, the European Monetary System, abbreviated as EMS, and the European Currency Unit [ECU], which actually was unveiled as the last line in the communique issued in May of 1979 at the conclusion of the economic summit meeting, and at that time President Jimmy Carter being President,

It was the last sentence in a rather laconic and rather brief communique so that nobody paid any attention to it. I, however, had been speaking about the emerging so-called European Monetary System and its implications to the United States and its future fiscal, financial and monetary well being.

I have not sat on the Banking Committee for 26 years for nothing. I was not chairman of the Subcommittee on International Finance merely marking time.

I might also say for the record that before I came to the Congress I was a member of the senate of the State of Texas for 5 years. I was also named chairman of the Banking Committee of that body then. Prior to that I served 3 years on the City Council of San Antonio where I was the only member that developed expertise in the city budget system and jargon and the financial strategies of municipal finance. It enabled me, and I felt that it was indespensable that I obtain that knowledge, it enabled me to get a good grasp as a working member of the council, later as a working member of the State senate, and for 26 years as what I consider myself to be a full-time working Member of the U.S. House of Representatives.

I have taken the floor, as I have long before there was any such thing as television coverage. As a matter of fact, I have said several times, I had not been sworn in 1 week in the 2d session of the 87th Congress before I made a special order speech. At that time it was very rare because if Members had special orders they merely wrote them and submitted them, and they were printed, just as if they had been uttered.

I felt then as I feel now, being knowledgeable as to the history of this great privilege of special orders, that it was not meant to be that way. It was meant to be used as a privilege, of course, because in a numerous body where by necessity debate must be limited, time for 435 Members to participate in a fair, reasonable, expeditious manner, of necessity it must be limited.

I came from the Texas State Senate which is the mother place of the unlimited debate, which is known in common parlance as the filibuster. It was not the U.S. Senate that originated that. It was the State senate of the State of Texas, where they really believed in unlimited debate. Once a State senator was recognized he could hold the floor until he dropped dead or the senate adjourned. That is really unlimited debate.

And so I was used to having full and free access of participation in all of the flow of business. So when I came to Congress and the House of Representatives it was very, very strange for me to vote on a measure that I considered to be very important, such as a tax bill, with no amendments because it was under a closed rule. So I got into the habit of even when it was a voice vote of voting and shouting out, "No." That antagonized the then powerful chairman of the Ways and Means Committee. So on one occasion, just to show me, he demanded a rollcall, which was a recorded rollcall, which was very rare.

☐ 1355

But I felt that when I was elected to the House that I was given as much freedom, in fact, complete freedom by the electorate and I have been very jealous to guard that freedom. That is the reason from the beginning I did not need an ethics bill, a financial disclosure bill. I knew what was mine, what was not mine and what, if I accepted, morally would obligate me, because I literally believe the scriptural injunction "accept no bribes, for bribes cloud the judgment," and the right thing cannot be done.

So even if it was legal, as things are today, I did not have to be told that if I want on the Banking Committee and I was offered 14,000 dollars' worth of bank stock, free of charge, in order to belong on the board of directors of a bank, that it had to do something with my assignment to the Banking Committee. My test always has been if I were not a Member of the House, if I were not a member of the committee, would this offer have been made? And, of course, the answer is literally clear, no.

So the same thing in dealing on matters which had to do with the general overall interest of this great army of American people. That is, bankers and the bankers lobby and the association—and they have every right in the world to exist—however, like other special interest groups, every special interest group, from church groups to labor groups to banking groups are all, of course, seeking the pursuit of the interests.

But the question is where is the greatest interest or the greatest number clearly involved contradistinguished to the interest of any special group? And that covers in my vocabulary every kind of group, even ethnic, racial, or minority groups, even those from which I emerge. Now it is easy to say that, but it has caused me a great deal of trouble in all of these areas of development. In my role as a member of what used to be called the Banking and Currency Committee of the U.S. House of Representatives, it did create some mischief.

At the time that I arrived here, if I had 10 one dollar bills in my pocket, if I reached to pull 1 out, 9 out of 10 of those would have had "U.S. Treasury Note."

Along about the middle 1960's and with the demonetization—what does that mean? That means that we took the silver content of all of the currency then in circulation, along about 1965, but coming events cast their shadows before and in 1963 as literally a freshman—literally almost—the Banking Committee for the first time had more than one meeting during a year. In my first year, the Banking Committee did not have but one meeting. So that in 1963 the Secretary of the Treasury then, considered a great expert on finances, Dillon, appeared before us to request that the Congress abolish the silver transactions tax.

At that time a lowly member was supposed to be seen, not heard. However, Chairman Patman, to his everlasting glory and may his soul rest in peace, had just become chairman and he inaugurated the 5-minute rule thereby every one of us would be given at least 5 minutes to ask a question.

I asked Mr. Dillon, "Is it not a fact that the silver transactions tax was placed on during the war and at the inception of the war, the main purpose being to control or to prohibit speculation in this precious metal?" He said, "That is exactly why we are asking for its repeal. The war is over with." And I said, "Yes, but the war conditions aren't. Our economy and the budget allocations for defense are not diminished, they have rather increased." He said, "Yes, but the industrial use of silver has risen exponentially and therefore we must be able to have a market for the Treasurer's procurement and holding for use in our currency of silver."

I tried to urge that unless the repealer would also have some measure of residual controls that it would be inevitable for speculative endeavors to give rise. And I even predicted that such a thing as a futures market—futures markets, like stock markets, are all speculative, in fact they actually are susceptible of being the biggest casinos in the world without regulation and control.

So what is happening now is what some of us predicted as long ago as 1963 and that is that all of the variable factors in this equation that had been put together in 1932 and in 1935, because it was in 1935 that the fundamental Basic Banking Act of 1935 was finally approved by the Congress and codified into banking laws. It also provided for the creation of those safeguards that at a hard price had been learned by the world, not just the United States, during the Depression.

So that some of us began to ask, "Is it not possible now, if this trend continues, that we will be under the guise and under different names, different guise and different names, placing all of these factors, even though they may be different, into this equation whereby we could have the kind of speculation that could lead to the kind of bubble?" And all history shows that all bubbles burst—and what is happening here is that these money manias we have had, and I have said here from the floor that the United States has been victimized with no less than five money manias in the last 15 years, beginning with the real estate investment trust, the so-called money markets. That term is variously used. Money markets usually refer to this Federal Government, Federal Reserve Board money market determination which in turn determines interest rates in our country, even though after 26 years on the Banking Committee I have yet to hear a chairman of the Federal Reserve Board admit to that, but rather comes and confesses that it is something that is sort of unable to be explained, unaccountable; that if anything should cause it, it would be the profligacy of the Congress. This is what several chairman have intimated when they have appeared before the committee and I have asked them point blank. And they say, "Oh, no, there is no way you can control interest rates. Those are acts of God." That is really what they are trying to tell us. Well, of course, it is nonsense. All of this jargon about money markets, disintermediation, that is just a lot of jargon used to confuse people. But actually this is not esoteric, this is not difficult to understand, it is the same old story and that is greed, unrestrained greed.

And that is the story of mankind. And what has happened is very simple to explain except I think at this point we ought to ponder some of the anticipatory legislative suggestions that we have made that we have introduced, that we have formulated, but I would think and I hope to enlarge upon that in a more specific way in my next special order, because we have not only inveighed against what we felt was an imminent danger and catastrophe, but we have also offered a suggestion, hopefully in 1966 when I was naive enough to think that we could offer preventive anticipatory suggestions that would avoid, and since then we have fallen into those pitfalls and traps.

And, of course, now what is happening here is that the danger will be that we will react out of emergency, out of crisis and usually the reaction is not too wise, it is not too good.

So let us review some of these factors, some of these variables I speak of.

In the first place, interest rates are the mechanism by virtue of which wealth is transferred within a society. All through mankind's recorded history and from time immemorial, 7,000 years before Christ, usury was considered to be unpardoned. In fact, at the time that Jesus Christ was on Earth, usury was punishable by death.

At no time has usury or exorbitant interest and interest itself—in fact, the church, that is the Catholic Church at the time it was worldwide, at least in the Western World, the church, had strong laws against usury. Even today I think the average American thinks that no such thing as usury can legally be charged.

I think a lot of the Members I have spoken with in the last 20 years, the majority have revealed to me that they are sure that there is some prohibitive enactment somewhere.

Well, the truth of the matter is that some of us have been saying there is not and there has not been since 1865 and the National Currency Act.

At the time, Lincoln was most preoccupied; his No. 1 issue, in fact the week that he was killed was the emerging danger that he said, and he spoke about, that it was actually incorporated into the National Currency Act of 1865, which some historians say was the beginning of our so-called national banking system. But which actually, if it is so, it would be a very crude beginning to what we know as the national banking system.

So that the fundamental factors to some of us, given mankind's experience that no society, even in the crudest form which we could not evoke today—there is no way we can evoke the world, even, of our Founding Fathers, no way. In fact, it is difficult for me, a person who has been given the good fortune by the Lord Almighty to live this long and try to evoke to my children and grandchildren what the Depression period was like, what real poverty was like, where people were dying in my hometown of San Antonio, where some were dying one at a time in families with tuberculosis, which is a socially communicable, highly communicable disease.

Incidentally, I might say by way of parenthesis that as chairman of a House subcommittee of the U.S. House of Representatives, ever since we noted this great shame of homelessness 4 years ago, we were the first to speak out on it, that I have been in touch with the Atlanta Disease Control Centers in order to track just where the disease of tuberculosis is. I want my colleagues to know there is a direct connection between overcrowdedness, density, poverty, malnutrition, and tuberculosis.

□ 1410

And here we were, patting ourselves on the back, those of us that remembered when people were saying, "Well, it is an act of God; there is nothing you can do, there is no cure. You just have to watch them die. All you can do is help them with a bottle of milk now and then." Then all of a sudden we saw the miracle of new drugs, and then, sure, everybody thought we had killed off tuberculosis. Well, I want my colleagues to know that here in the District of Columbia, just in the last 3 years, there has been a net growth of 23½ percent in the incidence of tuberculosis. In Boston, in what the center considers a homeless area, meaning a dense area or overcrowded area, the incidence of tuberculosis is almost about the same percentage.

So I think when we correlate this, we begin to see what some of us had hoped and prayed we would never see again, and those of us who are Depression children, of course, should not and cannot ever forget that.

When I see that in the last 3 years our country has become a debtor nation for the first time since 1914, of course, I cry. Of course, I cry out. But I feel it more particularly because we were saying that the possibility of this happening was very strong, and what we got in return, even from those meager few who paid attention to what we were saying, was ridicule and rejection of the possibilities. Therefore, we never did get any kind of consideration for what we were advocating in anticipation and in support of a sort of anticipatory, preventive type of action. In vain, I pointed out that in World War I, as well as World War II, we were the only creditor nation involved. It was our credit that enabled our so-called allies to win. Without our credit resources in either instance, World War I or World War II, the so-called allied cause could never have lasted more than 6 months. What happened after World War I has now happened after World War II, with Uncle Sam holding the bag.

When Secretary Baker day before yesterday was reported in the newspapers as returning from—where? From Germany in order to confront this great upheaval in the stock market, nobody wanted to ponder why it was that he had gone to Germany. Just as in May 1985, at the economic summit meeting, again in Bonn, West Germany, no newspaper in America that I know of, no periodical that I know of—the European periodicals did, but I did not see anything in American reports—pointed out that the real issue at that summit meeting was not the fact that President Reagan had gone to this supposed Nazi cemetery and laid a wreath of flowers. One would have thought that was the only reason he had gone there, according to our press. The real issue was that for the first time the nation of 6 or 10, depending on who you want to include, advised us—not the President; he does not know what it is all about—or advised his financial advisers, from the chairman of the Fed on down, that they had fleshed out and put in place the EMS, the European Monetary System, and the ECU, the European Currency Unit. Now, the whole purpose of that is their anticipatory action in order to save themselves when and if the dollar was replaced as the international reserve unit, which it has been, which it continues to be, but not if we continue to have the erosion of confidence which clearly is revealed during the happenings here in the case of the stock markets. They talked about the stock market in New York, as they had been in the case when it was going up and the newspapers were trumpeting about how it had gone over 2,000 on the index or on the Dow, as if that were some great achievement. Actually it was alarming to me because it was not a genuine growth, it was not a genuine reflection of stock transactions reflecting industrial and business movements. It was paper speculating on paper, through such things as stock loan maneuvers.

Incidentally, this is where Mr. Boesky was caught gypping somebody in Wall Street. This was his tactic here lately. And what was that? It was strictly speculative. It was not anything solid. When you start speculating in stock loan paper, you really are having paper on paper, and, of course, sooner or later something has to give and you have to have something, what the bankers call liquidity, or cash in our terms, and when it is not there, then something else is going to give.

Now, the bad part this time is that the loss of faith is reflected in the external markets. The Hong Kong stock exchange has been closed down, and London was in uproar. All the others in the European industrialized nations were affected, as well as Tokyo and Australia. This is what is bad.

Some of us have been noting since 1979 that internationally all these factors were now in place. Why? Because all the precautionary laws that were enacted in those first years of the President Roosevelt era, in 1932, to be exact, including such things as the gold prohibition clause, had their basis in fact, such things as the margin requirements and the creation of the Securities and Exchange Commission. All of that was vitiated with the practices that have emerged within the past 5 to 10 years, such things as trading in stock loans, so that eventually, regardless of whether interest rates were high or this, that or the other, something had to give. The bubble has to burst. The question is, Will this be the bubble that broke the world, not just the United States?

So in anticipation, these wily financiers in Europe who have a background of 400 years watched the follies of such people as the Hunt brothers in Texas who were thinking they could corner the silver market a few years ago. All they did was tie up 30 billion dollars' worth of American bank credit resources that should have been allocated to American industry, small business. Instead of that, they were foolishly extended and lost, to the point where they have had to declare bankruptcy. But, more importantly, this was destroying this tremendous segment of allocation of banking credit.

But since when are the banking institutions, as well as the Federal Reserve Board, of divine origin? Since when are they infallible? Since when are we creating institutions in our democracy that are not accountable to the President or to Congress? But this is what is happening.

This is why the Chairman of the Federal Reserve Board, in what he thought was going to be a secret hideout in Florida, with the then chairman of the First National City Bank of New York, Wriston, and with the Hunt brothers, was trying to see how they could soften that tremendous gambling loss with those silver markets in Europe. Why, they have in Zurich and they have in London, just on one street alone, a background of almost 500 years' experience in the most speculatively controlled market in the world, the gold and silver markets.

Yet we are here going through the same travail as after World War I, for the same basic reason. The only thing is we have to change the names of the countries involved.

All of this I have expounded upon in prior special orders, going back all the way to the first credit crunch of June 1966. That was when we saw the clear handwriting on the wall. It so happens that today it is no use and it will do no good to carry on what I think is an abominable trait on the part of President Reagan, who blamed everything that was wrong on Jimmy Carter. Even today they are trying to somehow blame it all on Jimmy Carter, even after Reagan has been in power almost 8 years. That does no good.

The American people elect us because they do not want us to go out here and say that somebody else is to blame. They want to know, "What are you going to do about it? If there is a problem, we send you there so that you will know about it and will do something about it."

This is what some of us have been trying to do, on the basis that nobody should say or accuse us of maintaining that it is on a partisan basis.

As I have said, economics, like corruption, is not partisan. It is bipartisan. There is no one party that is almighty pure, one way or the other. Corruption is bipartisan. Economics is not Republican, it is not Reaganomics, it is not Carter-nomics, it is not Roosevelt-nomics. It is either that you are right or you are wrong, and you cannot be right if you are living on borrowed money and follow this false creed that you can get into prosperous conditions by borrowing money.

In the last special order I gave, I brought out the statistics where we have reached this fantastic exposure and susceptibility to uncontrollable foreign elements. No longer now can even the Federal Reserve Board say that it can control interest rates. Foreign investors, who now own more of our Government paper and debt than the Federal Reserve Board does itself, are the ones who are going to determine what happens.

Let me say to my colleagues that I know when I have said this I have been looked at askance. In the case of the Defense bill, as I have said, I have sat here and listened to every bit of the debates on the so-called defense bill since I came to the Congress, and I can remember those good old days, the halcyon days in the 1960's, when they came in with these exponential growth figures in the Defense bills, and in 35 years there was very little debate before they were passed out. Then came Vietnam and the antimilitary sentiment that prevailed for a while, and then came the other reaction. Then came this era in which we have now budgeted $315 billion, by which we are taxing the American people.

But what kind of defense do we have? A defense based on a world that no longer exists, a defense based, for instance, in the case of Europe, on a 1947 Europe.

We have 300,000 of our troops stationed in Germany alone. How many do the British have? How many do the French have? Well, one has about 7,000, and the other has no more than about 10,000. But what is it they are holding on to? And what is our thinking on this budget? Well, about 65 percent of this $315 billion is really for the so-called defense of Europe. But what Europe? A 1947 Europe.

Now, if any one of us wants to believe that because we changed the designation of our troops in Germany from occupation to defense, if we believe that the good German burghers think that is what it is, I say to my colleagues they are going to wake up to a rude awakening one of these days. It is already there.

I think when our Secretary of the Treasury has to go to Germany in order to say, "Hey, we need to have you stimulate something over here in order to let our dollar go down," that is just a tremendous risk in itself, because we cannot control that in a declining market of faith. And how far will the world tolerate a loss or a decline in the value of the dollar? But in order to keep that investment that is running our country and keeping the so-called Reagan prosperity going, which is illusory, as I pointed out, we have to have high interest rates in order to keep those investors investing here to get that high yield.

☐ 1425

That is all the complication there is to that, so you cannot have it both ways.

You lower that dollar, you have an outward, external flight of this invested foreign capital as we did in the Continental Illinois Bank case.

That is what caused it to go under at a cost of $6 billion to the taxpayers, because that is what it took for the Fed to at least shore it up and nationalize it in reality.

We do not like to use those words. Those words are for Latin American countries, but that is actually what we have done.

If you keep on and the dollar drops, and you think you can peg it, and you find out you cannot, and they should have found out 6 months ago that they could not, because they tried it 6 months ago and it not help the trade balance.

Everybody said, well, if the dollar goes down, then we can afford to compete, and we can sell our goods at a good competitive price. It did not happen.

We have got the worst trade deficit in the history of all the combination of the industrial world, and that we cannot tolerate. We can piddle around with the so-called domestic rate, even though we are paying just one interest rate, interest charge for this debt, so far a monstrous price, that it has literally killed my soul to see what has been happening.

You cannot impose these extortionate rates of interest that have been exposed in our economy without destroying what we call the standard, the American standard of living. That is what I said was the issue in 1966. I have kept saying that.

It is not apparent, because it is hard to tell somebody, because this thing somebody calls prime interest rate is now no longer going to be determined nationally or domestically but by forces over which we have no control now externally.

The Feds do not know what to do. As a matter of fact, the outgoing Chairman, Mr. Volcker, appeared in his last appearance before the Committee on Banking, Finance and Urban Affairs, and it may have been the Subcommittee on Financial Institutions, but I was there.

I had 5 minutes to question him, and I did, I said, "Mr. Chairman, what about the several hundred billion dollars that everyday are floating around New York, London, Paris, Bonn, Sydney, Australia, Tokyo?"

I said, "Are these chasing billions?"

He said, "That is very conservative."

He said, "I am sure it is more than that."

I said that this is a terrible aberration, because this money is not going around in order that you have international trade. It is not purchasing goods.

This money is purchasing currencies. They are speculating against each currency.

All our corporations that are now megacorporations, transnational corporations, and some may consider them American; but they really have more relevance externally.

All of them have speculated against the dollar, ever since 1971 when President Nixon took us off the so-called gold-exchange standard, or devalued the dollar.

There was not one American newspaper that called that devaluation. Yet, that is what it was. There was no newspaper reporting that a few months after that, we had to pass a bill that went through the subcommittee over my objection. I was the only voice saying no.

That bill actually devalued the dollar in technical terms. Nobody was interested. They just passed it out. Yet, that is what it was: devaluation.

We went into this system of so-called floating rates which, of course, are at the bottom of the malaise, and American leadership was never forthcoming.

Since Franklin Roosevelt there has been no national leader, no President, no Secretary of the Treasury that has evolved short-term, long-term, unlike these other veteran nations and governments such as the British.

They have a thousand years of experience in government, and they have been unabashed imperialist nations, and wielded mighty world power; and they have the expertise, and even they avowed their short-term, their long-term, but not our country.

At a time when we have stepped into the shoes of these ex-colonial powers, we as Americans do not perceive ourselves as imperialists or colonialists; but the external world, in the Middle East, for instance, we are considered an imperial or colonial power that has stepped into the shoes of the old colonial powers, Britain and France.

At the bottom of all of that is your financial, your monetary, your money. In Vietnam when President Nixon made his famous trip in 1972 to China, I believe, I was the one that came out and had all kinds of calls saying, "What do you mean by that, that before the Chinese would let the Presidential plan land, we had to provide $10 million in gold?"

Now, a lot of people called me and said, "You mean gold,"

I said, No, you don't understand. They don't carry the bullion. That is not the way they do transactions. It means that the Chinese Government, the Communist government, if you please, demanded and got what they called would be the cost of their hosting, but which actually was tributary, $10 million in equivalent."

That $10 million was equated in gold value. That should have been the first signal that we were out there in that real world.

In 1975 at the end of the year, again over my objections, with great trumpeting as an accomplishment, the gold bugs declared that now American citizens could once again own gold.

When I raised objections and all, and I was chairman of the subcommittee at that time, I was left again alone. The then Secretary of the Treasury, Bill Simon, called me up and spoke to me.

He said, "Look, we have demonetized gold. It has no significance anymore."

I said, "Mr. Secretary, we have, but the other nations haven't. In France gold is still the thing."

He said, "I will tell you what we are going to do to show and prove how we believe that. We are going to auction our gold stock. We are going to have auction sales."

I said, "Well, that will be calamitous, unless you can prevent the central banks of France and other central banks in other countries from ending up owning our gold."

He said, "It could not happen, because we are going to limit the auction to bidders that are nongovernmental."

How naive can one be? Surely you could have an ostensible bidder with no governmental connection; but what was wrong with being a silent agent that eventually would turn over his purchases, and that is exactly what happened.

The U.S. Treasury had a total of three auctions of our gold stock, and finally they had to quit. Why didn't they continue?

If Mr. Simon has been so right, but nobody ever came back and said, well, you know, GONZALEZ, I guess you were right, because I guarantee you almost 100 percent of that gold ended up in the vaults of central banks in France and West Germany.

Those 6 or 10 nations today that are part of the European monetary system now have a gold holding far in excess of anything we have.

This is why the Japanese moved in heavily about 3 months ago, into the European Currency Unit, because that whole purpose of that is to replace the dollar, because it is feared that the dollar does not have that value.

When you have that fear, and it becomes prevalent enough, then you have what in the United States we call a run on the bank.

The significant item that I was in the financial pages of the day before yesterday was that the European dollar bond market has declined, and then with the rise of the European monetary system, just as after World War I, Germany laboring under the harsh Draconian Treaty at Versailles, and having to pay reparations and resisting them, and the two nations that we loanded money to, France and England, depending on the payment of the reparations to pay us, and finally in 1932 or thereabouts, maybe early 1930, President Hoover declared the Hoover moratorium on the payment of debts.

Germany then floated, and this was a direct cause of the contraction on the stock markets, the Imperial Japanese Government came to Wall Street and floated government bonds, 20, 25 years; and we were paying great interest, so there being no regulation at the time, every single bank in the United States that was holding these hard-earned savings of American citizens took their money, poured it into these Government bonds.

The Japanese floated in 1921 by the standards of that day quite a number of millions of dollars. They had not reached the point of talking about billions then, but it was for that day and time, that was the equivalent of billions.

They were to mature, guess when. In 1941.

The German Government with the great financial wizard, later known as Hitler's financial wizard, Hjalmar Schacht, who had dual citizenship. He was an American citizen if he was in the United States, and a German citizen the moment he set foot in Germany.

He was able to devise that beautiful, beautiful scenario that we call today foreign aid and so forth in which many of our corporations were able to finance Mr. Hitler in the beginning of his government.

Many of the corporations and the cartels then controlled in Germany were able to control the world market in many things, and even during World War II when Franklin Roosevelt announced in Great Britain, and I remember the headlines, going to produce 50,000 airplanes.

First we had to go get permission from the German-controlled cartel in Switzerland, so they would release their rights on magnesium in order for us to be able to produce the airplanes.

This kind of money, this kind of interest has no nationality. It has no allegiance, and I think that when our leaders, both private mostly as well as public, in their greed forget the general interest of the greatest number, then we are all in trouble.

When Congress and the American people through their Representatives give open carte blanche power and no accountability, human history is replete with the proof of the basic lesson that power corrupts.

Total power corrupts totally, and that is in every line of human endeavor, not just in politics, but in money, business, religion.

If you have power, and you do not have to account for that power, you are going to corrupt, no question about that.

We have allowed such entities as the Federal Reserve Board to become so powerful, and they are not governmental entities, because a Federal Reserve Board is not a Government agency. It is a private, commercial banking industry controlled by the private commercial banks which in turn, in practical terms, has meant control by seven or nine of the big, big giants in our country.

☐ 1440

What does that mean? They do not have an inspector general at the Fed. I pointed out one big scandal, put it in the RECORD, and after they had an inhouse report, I got that report and I printed that in the RECORD. So what? We still could never get an auditing bill through the Congress to provide for an audit of the Federal Reserve Board. There is no inspector general over there. These are bankers dealing among themselves.

The so-called Open Market Committee, is the one that actually sets Treasury bill rates, which in turn are going to determine interest rates in our country. That Open Market Committee consists of three or four Federal Reserve Board members plus private banking bank presidents.

I had several bills years ago, 18 years ago, and I would have enlarged the membership of the Federal Reserve Board. When one reads the debate that led to the acceptance of the Federal Reserve Board Act of 1913, the so-called Pujo bill named after Representative Pujo who was a Member of the Committee on Banking, Finance and Urban Affairs, and after the depression of 1907 they knew they had to do something.

What was 1908? It was the control of credit allocations that did not keep up with the pace of the bounding growth of the U.S. economy. That is what led to the 1913 Federal Reserve Board Act.

The idea was to have an equitable allocation of these resources. Why are banks chartered? Everybody forgets that a bank is the most privileged and most powerful because now they are coining our money literally.

When I referred at the outset today to this matter, I would say I would look into my pocket in the past, and I would get U.S. Treasury notes for the $1 bill. Today it is a "Federal Reserve note." On that Federal Reserve note, for each one of those dollar bills, we have to pay interest to print it. All of this happened because of sneaker clauses in legislation that the Congress passed going back to the creation of the Open Market Committee in 1923.

What can one do in light of that? Power does not yield willingly as the black liberator Douglass said. Power yields only on demand. It never has, and it never will.

Who today is going to bell that cat? We could not even get an auditing bill for 22 years for the Federal Reserve Board, much less what was originally intended that the Board would consist of a cross section of economic forces in our country.

On the contrary, it is 100 percent private banking that controls it.

We ought to have savings and loan presidents in there. We ought to have some commercial interests in there, and small business. Why should they not be there? I think they would have very different reasons for decisions made in private which are then only known 3 months after they have been taken as to just what it is they are going to be offering for Treasury yields.

This is why we have had to pay as much as 14½ percent interest on Treasury bills. Treasury bills come in 3 months, 6 months, or a year denomination. That is the most secure thing anybody can have.

All during World War II when we were utilizing over 46 percent of our gross national product on the Federal level, Franklin Roosevelt never had to pay to borrow even more than 2 percent. How could that happen? It did not happen because the bankers wanted it that way. It happened because President Roosevelt and his Secretary of the Treasury Morgantheau stood up and fought them. When they had the first issue of the liberty bonds, the bankers said, you are going to have to pay more than that in interest. You will have to pay 3, 4, 5 percent.

Franklin Roosevelt said, what do we do here?

Morgantheau said, wait, under that Federal Reserve Board Act we will just do it ourselves through the Treasury. After all, the Federal Reserve under law is supposed to be the fiscal agent of the Treasury.

As it is turning out, it is the other way around. The Treasury is the handmaiden. It is the lapdog of the Fed. What is it they gave us? Well, they gave us 20 percent interest.

What business can pay even what we have to pay now? If the primary rate is 11 percent, the little businessman trying to get a bank loan for $3,000 is going to have to pay at least 13 or 14 percent. At that rate he is working for the usurer.

What I call a little businessman, he cannot borrow $3,000 and stay in business. He has to make some profit. He cannot pay all his profit back in interest. Of course, something can be done about that. I have introduced legislation in that respect and have been doing that for six Congresses. I am not saying that I know it all, I am just saying that in the absence of rebuttal, in the absence of alternatives, I think I should have been listened to and I should be listened to now.

I submit for inclusion in the RECORD an enlargement of what I touched on lightly and that is the stock loan marketing practices. The Washington Post national weekly edition of August 26 entered an article "If You Like Junk Bonds, You'll Love Stock Loans."

IF YOU LIKED JUNK BONDS, YOU'LL LOVE STOCK LOANS

(By David A. Vise and Steve Coll)

NEW YORK—On Wall Street, amid the trading and the underwriting, the junk bonds and the billion-dollar buyouts, there is a little-known back-office business called stock loans.

The stock loan game can be more lucrative than the better-known businesses, but as Ivan F. Boesky discovered a little more than two years ago, it also can be perilous. Boesky was in the midst of a bold deal in February 1985, the acquisition of millions of dollars' worth of CBS Inc. stock. To finance those purchases and others, the speculator was using cash generated by lending his stock.

While ordinary investors can borrow no more than 50 percent of the cash needed to buy stock, Boesky was using stock loans to borrow several hundred percent of his cash outlay, a strategy regulators say was legal. In simplified terms, Boesky was able to do this by buying stock, "lending" it to other firms in exchange for cash, using that cash to buy more stock, lending out the new shares for more cash, and so on.

Using debt to maximize his stock purchases—and his potential profits—was a key Boesky strategy, perhaps because his illegal access to inside information about deals increased his confidence about buying certain stocks.

But there were risks to Boesky's strategy, risks more immediate than a prison term for illegal insider stock trading. The speculator was at the mercy of the Wall Street firms who lent him generous amounts of cash in exchange for his stock. At any moment, the firms could call in their huge loans.

In the middle of the CBS stock buying, the firms, led by Shearson Lehman Bros. Inc., decided to do just that. Angry with Boesky over an interest rate dispute, they demanded the speculator repay $500 million in borrowed cash immediately.

"Ivan went out of his mind," a Boesky aide who was involved says. "We would have had to sell $500 million in stock immediately."

Shearson and the firms were upset because one of Boesky's top financial officers, in an effort to cut the speculator's high borrowing costs, had tried to renegotiate the terms of his stock loans. The lending firms decided to retaliate in tandem by calling in their loans.

"Ivan chewed me out," Boesky's aide recalls. "His perspective was that the most important thing was having the cash. If that meant paying one or two points more [in interest] and not offending the stock loan cartel, that was the way it should be."

As it turned out, Boesky managed to obtain $500 million in financing and did not have to sell his shares. But he also acted to appease Shearson and the other firms, paying interest rates on their terms—a rare concession by Boesky, who was known as one of the most aggressive players on the Street.

The Boesky episode is illustrative of the high stakes and tough tactics prevalent in the stock loan business, a behind-the-scenes operation that has become a major source of profits to prestigious Wall Street firms.

It is also a business facing scrutiny from regulators and prosecutors. Though Boesky's use of stock loans as a financing technique was apparently legal, and though the former speculator has not been accused of any wrongdoing in this area, the stock loan business itself is the subject of continuing federal investigations.

"There are federal grand jury investigations under way in New York," says Ira Lee Sorkin, former head of the Securities and Exchange Commission's New York office. "They are looking at abuses in stock loan areas having to do with ripping firms off, embezzlement from firms, books and records violations, and the like."

U.S. Attorney Rudolph W. Giuliani in Manhattan declines to comment.

Generally, the stock loan business involves the borrowing and lending of stock among brokerage firms or between brokerage firms and institutional investors, such as insurance companies.

Over the years, the business has developed a dubious reputation, as employees have been charged with pocketing interest payments and with generating unnecessary transactions to earn fees. "It's generally a matter of an employee defrauding his firm—paying [interest rate] rebates to himself," says New York attorney Carl Hewitt.

Some problems have been cleaned up in recent years, according to Sorkin, Hewitt and others. As stock loans have grown rapidly into a business where billions of dollars of securities are borrowed every day, major Wall Street firms have increased their market share and in some cases their internal controls. Problems persist, however.

Used legitimately, stock loans serve two basic functions. Brokerage firms borrow stocks to deliver shares that have been sold by their customers. Because of occasional back-office foul-ups, the firms may not have those shares in inventory.

A second use of stock loans is in the area of "short sales." When a customer sells a stock short, he instructs his brokerage firm to sell certain shares, even though he does not yet own them. The customer is often hoping the price of the shares will decline so he can profit by purchasing the stock at a lower price than he has sold it.

In the interim, however, the brokerage firm must come up with the shares the customer has sold short and deliver these shares to the buyer. The firm is permitted to borrow the shares from another firm.

Boesky used stock loans in a different way. He found that stock loans afforded him a way around Federal Reserve rules governing borrowing by stock buyers. Boesky aggressively—and apparently legally—exploited the stock loan loophole.

Because he controlled a massive portfolio of stocks through a registered brokerage firm, Boesky could lend stocks to other brokerage firms in exchange for cash, use the cash to buy more stock, then repeat the process. Using this method, Boesky could leverage up to 600 percent before coming into conflict with other securities rules, according to Roger D. Blanc, partner in the law firm of Wilkie, Farr & Gallagher.

According to sources familiar with his operations, Boesky, who primarily speculated in stocks of companies involved in takeovers, controlled more than $3 billion worth of stock at one point last year, even though he had less than $1 billion in capital. Earlier in his Wall Street career, when Boesky had about $400 million in capital, his portfolio reached $2 billion, sources say.

According to the SEC, Boesky had reduced his stock loan exposure from the $600 million level to about $45 million by Nov. 14, 1986, when the charges against him were announced. Not all of Boesky's borrowings were made through stock loans, although they were an important element of his strategy, sources say.

The Federal Reserve's 50 percent limit on borrowing money to buy stocks was enacted to prevent the sort of speculation that led to the 1929 stock market crash. The dangers inherent in Boesky's use of stock loans to avoid the Fed limit do not appear to be widespread on Wall Street, several sources say, because other speculators are not believed to be using stock loans as aggressively as Boesky did.

I'm not saying that other arbs don't use stock loans to raise money on occasion, but I don't think people made as aggressive a play as he [Boesky] did," Blanc says. "Most people regarded that as more aggressive than they had been willing to be."

As stock loans have reached a multibillion-dollar annual volume, the business has been transformed from a relatively small-time operation dominated by independent stock loan finders to one largely controlled by the major brokerage firms. Among those firms, one of the most active and influential is considered to be Shearson, whose stock loan department is headed by Dennis Palmeri.

"Dennis [Palmeri] is a very aggressive person, a very, very good business person," says Nicola L. Caporale, partner in charge of operations at Goldman, Sachs & Co. "He gives you a very competitive rate and very good service and you feel as if he is really doing the job for you. When you are trying to find a particular security [to borrow], invariably Dennis can come up with it because of his desire to be at the forefront of his business."

In June, the SEC charged Shearson with lending about $69 million in stock that belonged to customers.

Shearson is permitted to lend a percentage of the stock that belongs to its customers, provided the shares have been purchased with borrowed cash. But brokerage firms are not permitted to lend fully paid customer securities.

Shearson, without admitting or denying the SEC charges, agreed to institute new policies designed to prevent future violations.

"The Shearson case was a significant back-office case," says Mark Fitterman, associate director of the SEC's market regulation division. "This is a matter that had been brought to Shearson's attention by the regulators and they didn't fix it. Other firms, who shall remain nameless, when confronted by the regulators, did fix it."

Shearson and other big Wall Street firms have turned their stock loan operations into major profit centers, earning fees not only for lending excess shares they have on hand but for acting as intermediaries in loan deals. While some brokerage firms, such as Goldman, typically need to borrow stock because of trading strategies that emphasize selling short, Shearson and other firms often have stock to lend because of their large networks of individual investors.

Sources familiar with Boesky's operation say Shearson, through Palmeri, was an important source of stock loan funds for Boesky and earned relatively high rates of interest by providing Boesky with large amounts of cash.

Several years ago, a Boesky employe complained that Palmeri improperly had provided a fully paid vacation to the man who headed Boesky's stock loan operations, sources say.

The complaint did not lead to any action or conclusions that were shared with Boesky employes.

Palmeri declined to be interviewed for this article and Shearson declined to make anyone else available to answer questions about its stock loan business. "He isn't interested in publicizing it [the stock loan operation] and the firm isn't," says Shearson spokesman Jim Podany.

He may shy away from publicity, but to at least one of his clients in the stock loan business, Palmeri is an impressive force.

□ 1450

REDUCING THE DEFICIT

The SPEAKER pro tempore (Mr. KANJORSKI). Under a previous order of the House, the gentleman from Oregon [Mr. DENNY SMITH] is recognized for 60 minutes.

Mr. DENNY SMITH. Mr. Speaker, I have taken this special order to try and talk about what a financial crisis we have and what an opportunity we have in the present situation in our economy. I think all of us were extremely concerned about what occurred last week and on Monday in the stock market.

In my estimation, what has occurred occurred because the Federal Reserve raised their interest rates, and if there were more Members here I know we could get a good discussion going and a good debate going on what actually caused that.

I do not think that is the important fact, however. I think the important thing is to try and figure out how we can solve this problem and what is going to put the financial affairs of this Congress back on the right course. It seems to me that for a long time this Congress has failed to live up to its responsibility.

The previous speaker talked about the fact that we had not lived up to our responsibility. I do not think this is necessarily important as to who is to blame. But we do have a window of opportunity to try and straighten out the problems in this economy, and we only have one area in which we can work, and that is in the Government spending and our tax policies.

It seems to me that we, and I am talking now more about my colleagues on the Budget Committee, have an opportunity with the reconciliation bill that is to be brought before the House next week. I think we have an opportunity to try and change the spending habits in this country.

I have seen since I came to the Congress in 1981 the spending in this country go from $660 billion to well in excess of $1 trillion this year. We have continued to talk and wring our hands about how we cannot cut anybody's program and so therefore we have not cut anybody's program. We have continued to add dollars to each segment of the budget process.

I think one of the dangerous things here is we talked ourselves into the fact that we needed to do this, than we could not make any changes in the way people perceived the need to increase their spending. More money for education, more money for the military, more money for water projects, We had a water project bill that the previous speaker was talking about a minute ago. We need to do something about our spending habits.

In 1981, I wrote the President about the fact that we ought to freeze the budget straight across the board. Nobody was going to get an increase, but nobody's program would be cut.

In 1981, had we done that, in about 18 months we would have had enough tax revenues from the growing economy and from the inflation that brought in more tax revenues, we would have had the opportunity to have a balanced budget in 18 months.

We clearly are not doing the job that we were elected to do. Now is the time for some tough decisions. Even if we can only agree to freeze the budget today, we will have done what we were elected to do with the corporate courage that we can summon in this body and in the Senate across the Congress.

I think the important thing about this is that the numbers get confusing, but if we look at what has happened since 1981 the spending program has grown from $660 billion to somewhere around $1.6 trillion. The tax revenues have grown from approximately $600 billion to an estimate of $903 billion for this fiscal year which we are in right now which began October 1.

Last year we had a budget that was moved by some $50 billion by taxes. If we look at the figures, the $850 billion we had for taxes last year are going to be moved to $903 billion, as an estimate. So we are moving the deficit by use of tax revenues, not by changing the spending habits. I think that is the important thing.

Taking more tax dollars from the average American working man, from corporate America, so that they cannot invest in more plant and equipment that will provide jobs in this economy is counterproductive. That tax bill last year was a disaster, and in fact in this last year we had receipts which increased the Federal Treasury by some $86 billion. We had increased spending of $27 billion. So we really moved the deficit down from $220 billion to $155 billion, mostly through the use of increased receipts or revenues.

Some of these receipts come in the entitlement programs. Social Security taxes flow into the so-called trust fund. Those revenues are being utilized to offset the deficit. We, of course, have already agreed to take the Social Security trust fund off budget. But at the present time they are actually reducing the deficit.

We probably have a deficit of closer to $200 billion, maybe more. We can only see about that when we take the amount of money that we have borrowed in that fiscal year to pay the bills of the U.S. Government, and to pay the entitlements that are written into the law.

What are we doing about it? How are we going to do the job that this country elected us to do as Members of the House of Representatives and the U.S. Congress?

I personally think the freeze is the only way to achieve that. But there is a proposal on the table by our minority leader, the gentleman from Illinois, ROBERT MICHEL, to appoint a summit conference committee which would consist of three Members appointed by the Speaker, two Members appointed by the gentleman from Illinois, Mr. MICHEL, three from the majority leader in the Senate, Mr. BYRD, and two from the minority leader in the Senate, Mr. DOLE, and two from the White House. These people would get together and attempt to come up with a solution for this budget process.

Let me propose what I think ought to be our solution. By just freezing the budget in both discretionary appropriations for both domestic and the military side of our budget, we would gain some $12.3 billion that otherwise would be increased in this year's budget. If we were to eliminate cost-of-living adjustments in the so-called entitlement programs known as the big E's, or big entitlements, we would get about $9.5 billion. This is treating everyone the same.

In other words, no one gets a COLA, but nobody gets cut. We also would have to allow for demographics so that if someone reached age 65 or were about to attain the number of years for retirement from the military or from the Civil Service, they would be allowed to retire and receive their pension benefits. But in no way would they receive a cost-of-living adjustment.

In other words, we are treating everybody the same. No one would be cut from any benefits. We would pick up approximately $3.5 billion in Medicare and Medicaid by not allowing the price inflation. We would cancel the pay raise that was assumed by Congress for both the Department of Defense and the civilian side, for $2.9 billion. By canceling the pay raise of 3 percent we would get $2.9 billion. Of course we could cut down further to try and see a further reduction. From a $35 billion deficit reduction we would save about $1.5 billion in interest in the fiscal year.

The reconciliation bill, as presently constituted, which will come before the House next week, on Wednesday I believe the majority leader said, has only about 1.5 billion dollars' worth of true changes in programs, which would result in savings to the Treasury of about $1.6 billion.

I think those are important ways to get at that. There are other ways.

In the tax bill that has been reported out, in the reconciliation part of the bill, there are some $2.03 billion of add-backs, changes in the tax law that would allow savings to taxpayers. These have turned into nothing but a Christmas tree for some members of the Ways and Means Committee to adjust with particular interests. Let us call them special interest tax add-backs. By getting to this we get some real savings. We get some change in the spending habits of this country, and it is something that we in the Congress are responsible for and can do.

I think there is nothing more important than sending a clear market signal to the stock market and to the people who invest in our economy, both in this economy and around the world, that we really intend to change the business as usual attitude because of what happened in this last week in the stock market.

I think if we look at what the Federal Reserve did following Monday's activity, they lowered the discount rate, we know the markets are sensitive to what we are doing with the twin trade deficit and budget deficit. It is extremely important that we try to do more than the $23 billion that we have in the so-called Gramm-Rudman-Hollings fix that is in that reconciliation bill.

We maybe have as much as $17 billion in revenue raising or revenue changes that are part of the $23 billion, plus we have a welfare program change that has not been through the Congress at all. It is coming out in a dark of the night kind of operation where we really will not have a chance to vote on that particular provision in and of itself.

So what I have tried to lay out here, and I hope to take a special order again on Tuesday next to talk about a way to solve the dilemma in the fiscal crisis that we see in this Congress. This is a window of opportunity. This is a chance for us to really change what has become the business as usual without hurting anyone.

There is a need in this country for this Congress to demonstrate in this window of opportunity that we do have our act together and that we can act decisively to make some changes. Nothing is more frustrating to this particular Member of Congress than to have talked for the past 7 years about the need to freeze this budget than to see us even quavering from doing that freeze, something that is fairly simple. It is not going to hurt anyone, but it is not going to continue to add spending to the budget.

I think that is the important fact here. Something needs to be done very badly, something can be done with a little corporate courage brought up by the Members in this body without really drastically changing the economy. We are not talking about making any great changes. The totals here would add to about $25 to $35 billion.

I know there are some other programs floating around in the House and in the membership here that would potentially change this business as usual. I think I will be attempting in these next few days to try and work with my colleagues to try and find something that approximates what I have talked about here today.

I do not think there is anything wrong with freezing this budget. It is the simplest and easiest way. We do not have to vote to cut anybody's benefit, but we certainly do not increase it.

I talked with my constitutents, and I have been talking about these freeze proposals since 1981, and even during the election of 1980, we definitely can make a difference here, we can change this, and no one is going to complain about it as long as they are treated the same way as everyone else in the budget. You cannot have one segment of the budget not frozen and freeze somebody else, or we get into this business where everybody ratchets up. That is how we got into this mess. That is how we went from 660 billion dollars' worth of spending to $1.6 trillion in just 7 short years.

I think this is a reasonable approach to the problem, something that we can do in this body. If we cannot do it in this body then we ought to quit.

There is one other way that we could solve it, and that is if the Speaker would agree to close the doors on the Chamber, put the press gallery behind closed doors and do this for the good of the Nation behind closed doors. If we cannot do it in the light of day, then maybe that has to be done in order to carry forward with a reasonable economic policy to try and straighten out this economy that has been caused by too much Government spending and too much taxation.

□ 1503

We could talk more about the tax bill provisions and I hope to on Tuesday during my special order. I think for now the important thing is that we have an opportunity to make some changes in the spending habit of this Congress and I think that if we miss this opportunity we are going to live in infamy for not having done what this country elected each and every Member of this body to do.

So, Mr. Speaker, I hope that in these next few days more colleagues of mine will join in trying to do what is best for America. I am not trying to fingerpoint. I will accept the responsibility for the votes that I have made while I have been in this Congress.

I am proud of having voted against many of the appropriations bills that have increased the levels. I think all of us are guilty of looking askance from time to time when we know what is going on. There is a great hypocrisy in this body, a great hypocrisy because we know if we do not stop the business as usual, if the Gramm-Rudman-Hollings goes through, within a few months we will be adding spending in supplemental appropriation bills.

Now that is a lousy way to do business. There is no reason why we cannot plan ahead and no reason why we cannot straighten this out.

I think this window of opportunity allows us to consider the freeze as the best and simplest method for all of us, be he conservative, as I consider myself, or liberal.

I think this is the opportunity we need to make greater changes in spending habits than what is proposed in Gramm-Rudman-Hollings.

If the freeze does not go through, we do fall back on Gramm-Rudman-Hollings, unfortunately the present reconciliation bill has too much taxation in it. That is not what the people want. The people want a reduction in spending, a change in the spending habits of those of us who are responsible for the spending programs in this country.

Mr. Speaker, I yield back the balance of my time.

CRACKING DOWN ON CRIMINAL ALIENS

The **SPEAKER** pro tempore (Mr. KANJORSKI). Under a previous order of the House, the gentleman from Florida [Mr. SMITH] is recognized for 10 minutes.

Mr. SMITH of Florida. Mr. Speaker, the New York Times on July 19, 1987, reported that a number of Jamaicans, mostly illegal aliens, have developed a massive criminal organization that imports and distributes narcotics as well as being involved in trafficking firearms. These aliens have established gangs in 15 metropolitan areas from Boston to Denver to carry out their business. A few days later, the Washington Post carried stories about these New York- and Miami-based gangs, bringing their operations into the Nation's Capital.

James L. Brown, special agent in charge of the Miami district office of the Bureau of Alcohol Tobacco and Firearms, estimates that 300 to 400 homicides could be attributed to the Jamaican gangs. Stories and statistics like these regarding the proliferation of illegal alien felonious activity are being repeated across the Nation.

I believe that we are faced with a problem that needs immediate congressional action—the problem of criminal aliens. All too often, these aliens—whether here legally or illegally—who are arrested for various felonious crimes, evade deportation, dodge trials, and continue with their recidivist activities.

They often are able to pay expensive bonds and disappear under a new identity often to reappear in court with a different name and a new offense. In some cases, they may return to their native lands and reenter the United States with new names and papers but committing the same crimes. Although the majority of these crimes are drug-related, alien criminals have been connected with money laundering, racketeering, weapons sales, prostitution rings, and a host of other heinous crimes.

Their scenarios may vary, but their results are the same. Criminal aliens typically avoid every branch of the criminal justice system of this Nation. They are making a mockery of law enforcement in this country. In 1986 more than 100,000 illegal aliens were arrested for criminal offenses. Only 12,000 of those aliens were deported, and countless numbers returned to our shores with new idenities but the same bad habits.

According to a GAO study in March of this year, 1 out of every 10 people arrested in New York City is an illegal alien. 12,300 aliens were arrested in New York City alone in a recent 15-month period.

A law enforcement officer from Orlando, FL, has testified that illegal aliens who deal crack cocaine have increased by 300 percent in the last year and less than 5 percent of those arrested have been successfully prosecuted. These kind of figures are repeated all over the Nation.

With these alarming statistics in mind, I am introducting five bills that will strengthen U.S. immigration law against alien felons.

The first bill would require manadatory detention of aliens convicted of aggravated felonies in this country. Aggravated felonies are defined as murder, rape, kidnaping, or attempts at such, and any trafficking of illegal drugs as listed under the Controlled Substances Act. This legislation would impose mandatory detention and deny any voluntary or mandatory parole in the immigration process to these aliens. This bill also would require immigration officials to make cases involving felons high priority in the overall immigration process.

The second bill would impose stricter criminal penalties upon aliens who reenter the United States after having been deported. Existing law includes a penalty of up to 2 years in prison and/or a $2,000 fine for any deported alien who reenters the United States. My bill adds two additional tiers of penalties. The second tier would apply to any returning deported alien who had committed a nonaggravated felony: up to 5 years in prison and/or up to a $10,000 fine. The third tier would cover any returning deported alien who had committed an aggravated felony: a mandatory 15 years in prison and up to $20,000 in fines. For the purposes of this bill, and aggravated felony will be murder, rape, kidnaping, or attempts at such, and any trafficking of illegal drugs listed under the Controlled Substances Act.

The third bill would make it a criminal offense for an alien to refuse to appear at immigration proceedings, including deportation and exclusion hearings, with penalties up to 5 years in prison and/or a fine of $5,000. By making it a criminal offense to fail to appear at immigration proceedings, aliens are more likely to show up at these hearings. If the alien continues to avoid these proceedings, the INS would have authority to prosecute these aliens on yet another charge.

The fourth proposal would impose criminal penalties against those persons who knowingly aid or conspire to assist alien felons in obtaining entry into the United States. Such offenses would be subject to penalties of up to 5 years in prison and/or fines up to $5,000. I hope that this proposal will discourage Americans and legal residents from recruiting and harboring aliens for felonious activity.

A Haitian working with the Orlando, FL, Police Department recently testified that "many Haitians are brought into the United States illegally for the sole purpose of dealing drugs and to recruit other Haitians for the drug business." It is the intent of this bill to deter this kind of activity.

The fifth proposal is intended to give statutory authority and clarity to a process which is being developed between INS and law enforcement agencies. The bill would require linkage of INS computers and the National Crime Information Center [NCIC] and other computerized criminal indexes. Such linkage is crucial to the overall apprehension and prosecution of aliens who commit criminal offenses. Law enforcement officials consistently have complained that information on certain aliens is not accessible. The implementation of the proposal would establish a coherent two-way channel of information between INS and appropriate law enforcement offices.

Mr. Speaker, I am not suggesting that these proposals are the panacea for the growing problem of felonious aliens. I do believe, however, that this is an area in which the Federal Government can provide the proper leadership for dealing with a problem that has plagued local law enforcement for years. Put simply, by enacting these bills, which already has been introduced in the other body, we will strengthen the ability of law enforcement officers to deal with a complex problem that is at the source of a major amount of crime in this country.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. GINGRICH) to revise and extend their remarks and include extraneous material:)

Mr. DENNY SMITH, for 60 minutes, today.

Mr. DENNY SMITH, for 60 minutes, on October 27.

Mrs. BENTLEY, for 60 minutes, on October 28 and 29.

(The following Members (at the request of Mr. GONZALEZ) to revise and extend their remarks and include extraneous material:)

Mr. PEASE, for 5 minutes, today.

Mr. FAZIO, for 5 minutes, today.

Mr. ANNUNZIO, for 5 minutes, today.

Mr. STARK, for 5 minutes, today.

Mr. SMITH of Florida, for 10 minutes, today.

Mr. PANETTA, for 60 minutes, today.

Mr. GONZALEZ, for 60 minutes, on October 26.

Mr. BONIOR of Michigan, for 60 minutes each day, on November 3, 4, 5, and 6.

Mr. FRANK, for 60 minutes each day, on November 3, 4, 5, and 6.

Mr. MILLER of California, for 60 minutes each day, on November 3, 4, 5, and 6.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

Miss SCHNEIDER following rollcall vote 375, today.

(The following Members (at the request of Mr. GINGRICH) and to include extraneous matter:)

Mr. DANNEMEYER.

Mr. PORTER in three instances.

Mr. MYERS of Indiana.

Mr. COATS.

Mr. LAGOMARSINO.

Mr. GREEN.

Mr. KYL.

Mrs. BENTLEY.

Mr. TAYLOR.

Mr. MADIGAN in two instances.

Mr. BILIRAKIS.

Mr. COLEMAN of Missouri.

Mr. HASTERT.

Mr. GILMAN in two instances.

Mr. CRANE in four instances.

(The following Members (at the request of Mr. GONZALEZ) and to include extraneous matter:)

Mr. RODINO in two instances.

Mr. TALLON.

Mr. SAWYER.

Mr. ROE.

Mr. DONNELLY.

Mr. LELAND.

Mr. LANTOS.

Mr. DELLUMS.

Mr. TORRICELLI.

SENATE BILL REFERRED

A bill of the Senate of the following title was taken from the Speaker's table and, under the rule, referred as follows:

S. 1793. an Act to reinstate and make permanent the disregard of nonprofit organizations inkind assistance to SSI and AFDC recipients; to the Committee on Ways and Means.

JOINT RESOLUTION PRESENTED TO THE PRESIDENT

Mr. ANNUNZIO, from the Committee on House Administration, reported that that committee did on this day present to the President, for his approval, a joint resolution of the House of the following title:

H.J. Res. 234. An act to designate the month of November in 1987 as "National Hospice Month."

ADJOURNMENT

Mr. DENNY SMITH. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 3 o'clock and 5 minutes p.m.) under its previous order, the House adjourned until Monday, October 26, 1987, at 12 o'clock noon.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

2279. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. Act 7-78, "D.C. Public School Nurse Assignment Act of 1987," and report, pursuant to D.C. Code section 1-233(c)(1); to the Committee on the District of Columbia.

2280. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. Act 7-87, "Wastewater System Regulation Amendment Temporary Act of 1987," pursuant to D.C. Code section 1-233(c)(1); to the Committee on the District of Columbia.

2281. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. Act 7-88, "D.C. Enterprise Zone Study Commission Act of 1986 Amendment Temporary Act of 1987," pursuant to D.C. Code section 1-233(c)(1); to the Committee on the District of Columbia.

2282. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. Act 7-84, "D.C. School of Law Interim Board of Governors Amendment Act of 1987," and report, pursuant to D.C. Code section 1-233(c)(1); to the Committee on the District of Columbia.

2283. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. Act 7-86, "Closing of Public Alleys in Square 35, S.O. 85-219, Act of 1987," and report, pursuant to D.C. Code section 1-233(c)(1); to the Committee on the District of Columbia.

2284. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. Act 7-85, "Public Defender Service Amendment Act of 1987," and report, pursuant to D.C. Code section 1-233(c)(1); to the Committee on the District of Columbia.

2285. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. Act 7-81, "Tenant Assistance Program Amendment Temporary Act of 1987," pursuant to D.C. Code section 1-233(c)(1); to the Committee on the District of Columbia.

2286. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. Act 7-79, "Hearing Aid Dealers and Consumers Act of 1977 Amendment Act of 1987," and report, pursuant to D.C. Code section 1-233(c)(1); to the Committee on the District of Columbia.

2287. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. Act 7-80, "D.C. Child Support and Alimony Amendment Act of 1987," and report, pursuant to D.C. Code section 1-233(c)(1); to the Committee on the District of Columbia.

2288. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. Act 7-83, "Human Rights Act of 1977 Amendment Act of 1987," and report, pursuant to D.C. Code section 1-233(c)(1); to the Committee on the District of Columbia.

2289. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. Act 7-82, "Uniform Limited Partnership Act of 1987," and report, pursuant to D.C. Code section 1-233(c)(1); to the Committee on the District of Columbia.

2290. A letter from the Secretary of Commerce transmitting a notification of steps taken that will stop the export to Iran of 14 broad categories of products with potential military application, pursuant to 50 U.S.C. app. 2405(j)(1); to the Committee on Foreign Affairs.

2291. A letter from the General Manager, Tennessee Valley Authority, transmitting notice of a proposed new Federal records systems, pursuant to 5 U.S.C. 552a(o); to the Committee on Government Operations.

2292. A letter from the Acting Assistant Secretary of the Army (Civil Works), Department of the Army, transmitting the final review on shoreline protection and beach erosion control projects for the Delaware coast, Cape Henlopen to Fenwick Island, pursuant to 33 U.S.C. 426 note; to the Committee on Public Works and Transportation.

2293. A letter from the Secretary of Labor, transmitting the quarterly report to the Congress on the expenditure and need for worker adjustment assistance training funds under the Trade Act of 1974, pursuant to 19 U.S.C. 2296(a)(2); to the Committee on Ways and Means.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. SMITH of Florida:

H.R. 3529. A bill to amend the Immigration and Nationality Act to require, pending deportation proceedings, the detention of aliens who have been convicted of aggravated felonies; to the Committee on the Judiciary.

H.R. 3530. A bill to provide for additional criminal penalties for deported aliens who reenter the United States, and for other purposes; to the Committee on the Judiciary.

H.R. 3531. A bill to impose criminal penalties upon persons who neglect or refuse to appear before certain proceedings under the Immigration and Nationality Act; to the Committee on the Judiciary.

H.R. 3532. A bill to impose criminal penalties against persons aiding aliens violating certain laws to enter the United States; to the Committee on the Judiciary.

H.R. 3533. A bill to amend the Immigration and Nationality Act to establish a connection between certain computerized indexes containing information on deportable aliens; to the Committee on the Judiciary.

By Mr. JACOBS:

H.R. 3534. A bill to eliminate notarization requirements for absentee voting documents submitted by absent uniformed services voters for Federal elections, and for other purposes; to the Committee on House Administration.

H.R. 3535. A bill to prohibit payment of Federal retirement benefits, except in certain cases, to those who are not retired as defined under the Social Security Act; jointly to the Committees on Post Office and Civil Service and Armed Services.

By Mr. LELAND:

H.R. 3536. A bill to amend title 39, United States Code, to authorize the U.S. Postal Service to approve advertisements to which U.S. postage stamps are affixed; to the Committee on Post Office and Civil Service.

By Mr. LENT (by request):

H.R. 3537. A bill to improve the U.S.-flag merchant marine; to the Committee on Merchant Marine and Fisheries.

By Mr. LEVINE of California:

H.R. 3538. A bill to suspend temporarily the duty on certain electronic connector contact parts; to the Committee on Ways and Means.

By Mr. LEVINE of California (for himself and Mr. Smith of Florida):

H.R. 3539. A bill to restrict transfers of Stinger missiles to foreign military or paramilitary forces; to the Committee on Foreign Affairs.

H.R. 3540. A bill to prohibit the sale, lease, donation, or other transfer of Stinger antiaircraft missiles to any foreign government in the Persian Gulf region; to the Committee on Foreign Affairs.

By Mr. LUJAN:

H.R. 3541. A bill to redesignate Salinas National Monument in the State of New Mexico, and for other purposes; to the Committee on Interior and Insular Affairs.

By Mr. MOLLOHAN:

H.R. 3542. A bill amending title 49, United States Code, to improve procedures for rail line abandonments, and for other purposes; to the Committee on Energy and Commerce.

By Mr. WALGREN (for himself and Mr. Bilirakis):

H.R. 3543. A bill to amend the Social Security Act to require skilled nursing facilities and intermediate care facilities under the Medicare and Medicaid Programs to provide the services of a registered nurse for 24 hours per day, 7 days per week; jointly, to the Committees on Ways and Means and Energy and Commerce.

By Mr. WILSON:

H.R. 3544. A bill to increase the size of the Big Thicket National Preserve in the State of Texas by adding the Village Creek Corridor unit, the Big Sandy Corridor unit, and the Canyonlands unit; to the Committee on Interior and Insular Affairs.

By Mr. FAZIO (for himself, Mr. Boland, Mr. Wylie, Mr. Lewis of California, Mr. Coughlin, Mr. St Germain, Mr. Wortley, Ms. Kaptur, Mr. Vento, Mr. Leach of Iowa, Mr. Hawkins, and Mr. Leland):

H.J. Res. 386. Joint resolution designating June 5-11, 1988, as "National NHS—Neighbor Works Week"; to the Committee on Post Office and Civil Service.

By Mr. SOLARZ (for himself, Mr. Gilman, Mr. Torricelli, Mr. Udall, Mr. Berman, Mr. Ackerman, Mr. Dymally, Mr. Bonker, Mr. Miller of Washington, Mr. Bereuter, Mr. Lantos, Mr. Smith of Florida, and Mr. Clarke):,

H.J. Res. 387. Joint resolution to provide statutory authorization under the War Powers Resolution for the continued presence of U.S. Armed Forces in the Persian Gulf; jointly, to the Committees on Foreign Affairs and Rules.

By Mr. FOGLIETTA:

H. Con. Res. 205. Concurrent resolution expressing the sense of the Congress that full democracy should be instituted in the Republic of Korea and that any intervention or other interference by the armed forces of the Republic of Korea in the internal affairs of that country would be inconsistent with and contradictory to the establishment of full democracy; to the Committee on Foreign Affairs.

By Mr. LANTOS:

H. Con. Res. 206. Concurrent resolution expressing the sense of the Congress that the President should exert every effort to schedule annual summit meetings with the leader of the Soviet Union; to the Committee on Foreign Affairs.

By Mr. UDALL (for himself, Mr. Kastenmeier, Mr. Rhodes, Mr. Aspin, Mr. Obey, Mr. Kolbe, Mr. Roth, Mr. Stump, Mr. Kleczka, and Mr. Moody):

H. Res. 289. Resolution to commemorate the contributions of Frank Lloyd Wright to art, architecture, culture, and education in America; considered and agreed to.

By Mr. TALLON (for himself, Mr. Chandler, Mr. Stenholm, Mr. McCurdy, Mr. Edwards of Oklahoma, Mr. Spratt, Mr. Lewis of California, Mr. Slattery, Mrs. Byron, Mr. Mack, Mr. Skelton, Mr. Alexander, Mr. Miller of Washington, Mr. Andrews, Mr. Ray, Mr. Roemer, Mr. Gunderson, Mr. Robinson, Mr. Hall of Texas, Mr. Ballenger, Mr. Darden, Mr. Thomas of Georgia, Mr. Ortiz, Mr. Ravenel, Mr. MacKay, and Mr. Carper):

H. Res. 290. Resolution expressing the sense of the House of Representatives on the reforms to be taken by the Government of Nicaragua in order to bring about lasting peace, pluralism, and democracy in Nicaragua; to the Committee on Foreign Affairs.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 12: Ms. Pelosi.

H.R. 81: Mr. Buechner, Mr. Bustamante, and Mr. Mfume.

H.R. 372: Mr. Hunter.

H.R. 911: Mr. Armey, Mr. Young of Alaska, Mr. Parris, Mr. Thomas of California, Mr. Lewis of California, Mr. Gekas, Mr. Broomfield, Mr. Coughlin, Ms. Snowe, Mr. Coleman of Missouri, Mr. Dannemeyer, Mr.

Wylie, Mr. Young of Florida, Mr. Hunter, Mr. Whittaker, and Mr. Ackerman.

H.R. 1001: Mr. Lantos and Mr. Brennan.

H.R. 1036: Mr. Bryant and Ms. Snowe.

H.R. 1038: Mr. Davis of Illinois.

H.R. 1119: Mr. Lehman of Florida and Mr. Matsui.

H.R. 1213: Mr. Hamilton.

H.R. 1373: Mr. Hayes of Illinois, Mr. Levin of Michigan, Mr. Traxler, Mr. Ford of Michigan, and Mr. Richardson.

H.R. 1536: Mr. Moorhead.

H.R. 1550: Mr. Lowery of California and Mr. Neal.

H.R. 1554: Mr. Borski.

H.R. 1604: Mr. Foglietta, Mr. Fawell, and Mr. Mfume.

H.R. 1647: Mr. Holloway.

H.R. 1699: Ms. Pelosi.

H.R. 2045: Mr. Smith of New Hampshire, Mr. Carr, and Mr. Livingston.

H.R. 2238: Mr. Tauke, Mr. Pashayan, Mr. Rowland of Georgia, and Mr. Grandy.

H.R. 2248: Mr. Taylor, Mr. Brennan, Mr. Mavroules, Mr. Lewis of California, Mr. Coughlin, and Mr. Jacobs.

H.R. 2429: Mr. Slattery.

H.R. 2508: Mr. Bates.

H.R. 2595: Mr. Swift and Mr. McCloskey.

H.R. 2609: Mrs. Collins, Mr. Rangel, Mr. Edwards of California, and Mr. Owens of Utah.

H.R. 2640: Mr. Yatron, Mr. Bonior of Michigan, Mr. Wortley, Mr. Kastenmeier, Mr. Dyson, Mr. Ridge, Mr. Gallo, Mr. Roth, Mr. Shays, Mr. Hertel, and Mr. Solarz.

H.R. 2698: Mr. Smith of New Hampshire.

H.R. 2801: Mr. AuCoin.

H.R. 2953: Mr. Hayes of Illinois, Mr. Gray of Pennsylvania, Mr. Conte, Mr. Kastenmeier, Mr. Dannemeyer, Ms. Slaughter of New York, Mr. MacKay, and Mr. Fascell.

H.R. 3054: Mr. Shays and Mr. Roe.

H.R. 3075: Mr. Espy, Mr. Holloway, Mr. Shumway, Mr. McEwen, and Mr. Slaughter of Virginia.

H.R. 3174: Mr. Hertel, Mr. Gonzalez, Mr. Fauntroy, Mr. Vento, Mr. Roe, Mr. Kennedy, Mr. Solarz, and Mr. Rodino.

H.R. 3193: Mr. Kennedy, Ms. Pelosi, Mr. Miller of Washington, Mr. Berman, Mr. Edwards of California, Mr. Lowry of Washington, Mr. Green, Mr. Fazio, Mr. Roybal, Mr. Crockett, Mr. Frank, Mr. Kastenmeier, Mr. Dixon, Mr. Dellums, Mr. Lehman of Florida, Mr. Owens of New York, Mr. Fauntroy, Mr. Cardin, Mrs. Morella, Mr. Martinez, Mr. Solarz, Mr. Biaggi, Mr. Hayes of Illinois, Mr. Stark, Mr. Flake, Mr. Morrison of Connecticut, Mr. Levine of California, Mr. Scheuer, Mr. Torres, Mr. Matsui, and Mrs. Boxer.

H.R. 3265: Mr. Mrazek, Mr. Ridge, Mr. Rangel, Mr. Hawkins, and Mr. Fish.

H.R. 3336: Mr. Clinger, Mr. Solarz, Mr. Thomas of Georgia, Mr. Eckart, Mr. Towns, Mr. Fazio, and Mrs. Martin of Illinois.

H.R. 3340: Mr. Frank, Mr. AuCoin, Mr. Russo, Mr. Hughes, and Mr. Lowry of Washington.

H.R. 3377: Mr. Studds, Mr. Fauntroy, Mrs. Boxer, Mr. Wyden, Mr. Fawell, and Mr. LaFalce.

H.R. 3383: Mr. Marlenee, Mr. Lightfoot, and Mr. Roberts.

H.R. 3440: Mr. Stark.

H.R. 3472: Mr. Carr, Mr. Conyers, Ms. Kaptur, Mr. Kildee, Mr. Mineta, Mr. Penny, Mr. Russo, Mr. Sabo, and Mr. Spratt.

H.J. Res. 206: Mr. Schaefer.

H.J. Res. 272: Mr. Solarz and Mr. Coughlin.

H.J. Res. 302: Mr. Molinari.

H.J. Res. 314: Mr. Armey, Mr. Boucher, Mr. Boulter, Mr. Clarke, Mr. Courter, Mr. DeFazio, Mr. Espy, Mr. Hayes of Illinois, Mr. Jeffords, Mr. Markey, Mr. McCloskey, Mr. McCurdy, Mrs. Patterson, Mr. Penny, Mr. Schuette, Mr. Smith of Flordia, Mr. Solarz, and Mr. Weldon.

H.J. Res. 328: Mr. Neal.

H.J. Res. 337: Mr. Levine of California, Mr. Clinger, Mr. Traxler, Mr. Dixon, Mr. Levin of Michigan, and Mr. Thomas of California.

H.J. Res. 353: Mrs. Byron, Mr. Spratt, Mr. Bilirakis, Mrs. Collins, Mr. Quillen, Mr. Carper, Mr. Davis of Michigan, Mr. Wolpe, Mr. Robinson, Mr. Shumway, Mr. Roberts, Mr. Ravenel, and Mr. Coble.

H.J. Res. 360: Mr. Courter, Mr. Lehman of Florida, Mr. Stangeland, Mr. Mrazek, Mr. Fish, Mrs. Meyers of Kansas, Mr. Traxler, Mr. Wyden, Mr. Wortley, and Mr. Wolpe.

H.J. Res. 372: Mr. Hall of Ohio, Mr. LaFalce, Mr. Synar, Mr. Fauntroy, Mr. Rangel, Mr. Daub, Mr. Schuette, Mr. Darden, Mr. Roe, Mr. Conte, Mr. Sikorski, Mr. de la Garza, Mr. Stangeland, Mr. Conyers, Mr. Sabo, Mr. Hayes of Louisiana, Mr. Lipinski, Mr. Buechner, Mr. Owens of New York, Mr. Penny, Mr. Lowery of California, Mr. Gordon, Mr. Kostmayer, Mr. Hughes, Mr. Lehman of Florida, Mr. Pepper, Mr. Mrazek, Mr. Tauzin, Mr. McCandless, Mrs. Boxer, Mr. Miller of California, Mr. Annunzio, Mr. Fuster, Mr. Lagomarsino, Mr. Smith of Florida, Mr. Coleman of Texas, Mr. Livingston, Mr. Flake, and Mr. Stallings.

H.J. Res. 377: Mr. Conyers, Mr. de Lugo, Mr. Garcia, Mr. Lewis of Georgia, Mr. Price of North Carolina, Mr. Rangel, Mr. Savage, Mr. Howard, Mr. Gray of Illinois, Mr. Borski, Mr. Hefner, Mr. Hochbrueckner, Mr. Levin of Michigan, Mr. Fazio, Mr. Foglietta, Mr. Fuster, Mr. Inhofe, Mr. Coyne, and Mr. Horton.

H.J. Res. 380: Mr. Daniel, Mrs. Lloyd, Mr. Ortiz, Mr. Rinaldo, and Mr. Gordon.

H. Con. Res. 188: Mrs. Collins, Mr. Conyers, Mr. Fazio, Mr. Volkmer, Mr. Bevill, Mrs. Boxer, Mr. Solarz, Mr. Conte, and Mr. Owens of Utah.

H. Res. 185: Mr. Roemer, Mr. Borski, Mr. Bates, Mr. Porter, Mr. Chandler, Mr. Alexander, Mr. Tauzin, Mr. Jeffords, Mrs. Saiki, Mr. McDade, Mr. Weldon, Mr. Hammerschmidt, Mr. Bosco, Mr. Petri, Mr. Neal, Mr. Levine, of California, Mr. Shays, Mr. Lehman of Florida, and Mr. Ray.

DELETIONS OF SPONSORS FROM PUBLIC BILLS AND RESOLUTIONS

Under clause 4 of rule XXII, sponsors were deleted from public bills and resolutions as follows:

H.R. 1115: Mr. Stokes.

SENATE—*Thursday, October 22, 1987*

(Legislative day of Friday, October 16, 1987)

The Senate met at 8:30 a.m., on the expiration of the recess, and was called to order by the Honorable BOB GRAHAM, a Senator from the State of Florida.

PRAYER

The Chaplain, the Reverend Richard C. Halverson, D.D., offered the following prayer:

Let us pray.

*Behold, the nations are as a drop of a bucket, and are counted as the small dust of the balance; behold, He taketh up the isles as a very little thing * * *. All nations before Him are as nothing; and they are counted to Him less than nothing, and vanity. To whom then will ye liken God? or what likeness will ye compare unto Him? * * * Hast thou not known? hast thou not heard, that the everlasting God, the Lord, the Creator of the ends of the Earth, fainteth not, neither is weary? there is no searching of his understanding. He giveth power to the faint; and to them that have no might He increaseth strength.*—Isaiah 40:15, 17-18, 28-29.

Eternal God, perfect in wisdom and power, thank You for the word of the prophet Isaiah, reminding us of Your supreme sovereignty over history and the nations. We thank You that You are the Lord of the infinite and the infinitesimal—the macrocosm and the microcosm. You rule the universe and You know when a sparrow falls to the ground. Gracious Lord, in these critical, sometimes confusing, and dangerous days, help us to remember Isaiah's word, to believe it, to trust You, and rest in Your infinite adequacy. In Your transcendent name, we pray. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore [Mr. STENNIS].

The assistant legislative clerk read the following letter.

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, October 22, 1987.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable BOB GRAHAM, a Senator from the State of Florida, to perform the duties of the Chair.

JOHN C. STENNIS,
President pro tempore.

Mr. GRAHAM thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE ACTING MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The acting Democratic leader, the Senator from Wisconsin, is recognized.

ROBERT BORK AND THE INVISIBLE LYNCH MOB

Mr. PROXMIRE. Mr. President, this Senator is one of those who has waited until all the facts are before us to determine how to vote on the Bork nomination to the Supreme Court. And I'm still waiting. I still haven't made up my mind. But I would like to spend a few minutes today protesting what has become a grossly unfair denunciation of the process the Senate has followed in fulfilling its constitutional responsibility to advise and consent to this Presidential nomination. Mr. President, in the more than 30 years I have served in this body, I have been generally impressed with the diligent, conscientious work of Senators and their staffs on legislation. Not on confirmation, Mr. President, definitely not on confirmations but on legislation. When it comes to legislative fights this body heats up. When it comes to confirmation of Supreme Court Justices or others, we go to sleep, while nodding a sheep-like assent. On legislative matters Senators spend many long hours in committee, in conference with the other body, in informal conferences and in debate on the floor. Often the process is tedious. Sometimes it is repetitive, even agonizingly repetitive. But it has generally been thorough.

But there has been one area where the Senate, in the judgment of this Senator, has failed and seriously failed in fulfilling its constitutional responsibilities. And that is in discharging its responsibilities under the advise and consent requirement for confirming Presidential nominations. Somehow the diligence and vigor that characterizes Senate work on legislation curls up and dies when we act on a nomination. Too many of us pay little attention to Presidential nominees unless they come before a committee on which one of us personally serves. Then if there is any question that the committee will not rubberstamp a nominee, the administration sends the nominee to call on each member of the committee. To get an added edge the administration will send a respected member of the administration along with the nominee. Those private conversations between Presidential nominees and individual Senators frequently have a magical effect. Almost all Senators like people, almost all of us want people to like us. When a person drops into our office seeking our support to a position to which the President of the United States has appointed her or him, it is very easy to say: "I like you." "I'm going to vote for you." "What can I do to help you?" This is why the overwhelming majority of Presidential nominees are approved and usually without opposition.

This is why the Senate so rarely fulfills its constitutional responsibility. This body is much too soft, too easy, too permissive in approving any nominee a President sends us. We should say "No!" to our Presidents far more often than we do. If we did, we would have a much better Federal Government than we do.

This is what troubles me most about the Bork nomination. Like other Senators I have listened and studied the record. Unlike most Senators I am undecided. I will stay undecided until the debate has resolved my doubts. But as one of a handful of undecided Senators I cannot for the life of me understand the cries of outrage about the way those for and against Robert Bork have carried on. The other day I received a note from a gentle lady who accused me of being "led around on a leash by the loony-left." Along with her letter, she sent me a dog's leash. So the masters of the political action left could keep me heeling like a good, little doggie. This lady had a marvelous sense of humor. She identified herself as the Chair of NICPAC. Now what's wrong with this kind of pressure? In my view, absolutely nothing. That lady felt deeply in favor of Mr. Bork. Well, good for her. The leash was a nice touch, not subtle, not tender, but cute, as well as nice. Mr. President, that letter constitutes the full extent of arm twisting and pressure from either side on this Senator in this entire Bork confirmation. I have received to date about 50,000 letters and phone calls from Bork opponents and supporters. But with the exception of the lady with the leash, all of them, on both sides, have been

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

thoughtful, temperate, and surprisingly gentle.

Oh, yes, I have heard a few radio ads in opposition to Mr. Bork. They have two characteristics. First, they have concerned themselves strictly with issues relevant to Mr. Bork's likely course as a Supreme Court Justice. They have not mentioned a word critical of Robert Bork's high intelligence, character, or the remarkable quality of his experience. Second, they have had about the same impact on this Senator as a butterfly's hiccough. That is absolutely none. So think of that Mr. President, a great storm was kicked up by those ads. The ads had to be directed primarily at the 10 or 15 of us in the Senate who are undecided. They very likely had no effect.

So where's the lynch mob? Where's the distortion? Where are the lies? After studying the Judiciary Committee report, plowing through a large part of the way through the hearing record, reading press reports, and listening to statements on the floor, the only remnant of even mild hostility in this whole Bork matter I have discovered is the letter from the lady with the leash.

Mr. President, there is no way this Bork matter is a political donnybrook. This isn't mud wrestling. It's not even a ping-pong match. It's a very gentlemanly game of croquet. Not a voice has been raised. Frankly, this Senator is disappointed. I'd like to see at least a little shouting and table pounding. After all a seat on the U.S. Supreme Court should wake us up and stir our emotion.

Some Senators have disputed this observation. They complain that the Senate's traditional civility is breaking down, right here on the floor of the Senate. These Senators simply haven't been here long enough. As one of the Senators who has served in this body for more than 30 years, I strongly disagree. This generation of Senators I'm proud to state, are rhetorical pussycats. As a matter of fact, the Senate has not even momentarily reached the vigor of discussion that characterizes the typical performances of the McLaughlin group on television or of the Agronsky show. We don't belittle or demean or insult each other. So occasionally—too occasionally for this Senator's taste, Members have had some strong words pro or con about Mr. Bork's controversial opinions. Robert Bork expressed his opinions with eloquent emphasis. Why should anyone take umbrage at support or criticism of the nominee's ideas no matter how vigorously that support or criticism is stated?

Mr. President, I ask unanimous consent that the text of the letter to which I have referred from the lady with the leash be printed at this point in the Record.

There being no objection, the letter was ordered to be printed in the Record, as follows:

National Conservative,
Political Action Committee,
Alexandria, VA, October 8, 1987.

Hon. William Proxmire,
Dirksen Senate Office Building, Washington, DC.

Dear Senator Proxmire: It is clear to the American public that the vocal special interests of the loony left have you and a number of your Senate colleagues on short tethers.

Recognizing that you are now trained to heel—or roll over and play dead—on command by liberal special interest groups such as People for the American Way, the Feminist Men's Alliance, NOW, and the informal associations of abortionists, labor bosses, and the radical left (as exemplified by "Hanoi Jane" Fonda), NCPAC hereby presents you with a Robert Bork Commemorative Leash, to help you keep your "chain" of command intact.

Yours very truly,
Maiselle Dolan Shortley,
Chairman.

RESERVATION OF LEADER TIME

Mr. PROXMIRE. Mr. President, I ask unanimous consent that the time of the majority and minority leaders be reserved for their use later today.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. PROXMIRE. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The Senator will withhold.

Mr. PROXMIRE. I withhold.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order there will now be a period for the transaction of morning business not to exceed beyond the hour of 9 a.m. with Senators permitted to speak therein for not to exceed 5 minutes each.

Mr. PROXMIRE. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SYMMS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. Reid). Without objection, it is so ordered.

THE DEATH OF PHIL McGANCE

Mr. BYRD. Mr. President, I was saddened to learn this morning of the death of former Senator Jennings Randolph's longtime administrative assistant, Mr. Philip V. McGance.

A native of Weston, WV, and a graduate of the U.S. Military Academy at West Point, Mr. McGance began working with Senator Randolph in 1964. From that time onward, Phil McGance assisted Senator Randolph with an efficiency and loyalty that were legendary on Capitol Hill and around Washington.

Subsequent to Senator Randolph's retirement from the Senate, Mr. McGance joined Senator Randolph in his private consulting firm downtown. There, he continued to superintend Senator Randolph's always active career with the same vigor and dedication that marked his work in Senator Randolph's office in the Senate.

I had many opportunities to work with Phil McGance over the years, especially on matters touching on West Virginia. I particularly appreciated his helpfulness and his commitment to finishing well whatever he began. Whoever worked with Phil McGance found him always cordial, thoughtful, and reasonable.

I know that our colleagues extend their condolences to Senator Randolph on the loss of such a valuable and selfless friend and coworker, and that other Senators who knew Phil McGance will join me in offering our sincere regrets to his family on the death of this talented man.

PROGRAM TRADING AND THE STOCK MARKET CRASH

Mr. LEAHY. Mr. Speaker, Monday's spectacular downturn of the stock market which rippled across the globe has caused pundits in the press, the financial community and in Congress to start pointing their fingers to find someone to blame. This morning's prime suspect is the practice of "program" or index-arbitrage trading.

There are serious questions about the effect index-arbitrage strategies have on already volatile stock markets that deserve serious answers. But to put the blame for Monday's crash on program trading is ludicrous.

Those who would fix that blame solely on Wall Street computers are like ostriches whose heads have been in the sand too long. They must have missed all that has gone on around them—the economic realities of our time and the amazing series of events that led up to black Monday.

On Tuesday, October 6, the Dow Jones took a record 95 point nosedive amid rumors that major banks planned to raise their prime lending rates. The banks followed suit the next day. Just 1 week later, Chemical Bank announced that it would raise its prime rate even higher, nudging 10 percent. The market reacted the next day by taking an even greater record plunge of more than 108 points.

Time after time banks have raised their interest rates when they lose confidence in the Government's ability to reduce the Federal deficit. And, that is what happened again. It was not just the computers that sent the

Dow Jones spiraling downward; it was the Federal deficit. It was a President who refuses to leave the White House Rose Garden to tend to the business of America. It was an administration pointing the finger of blame at Congress for running up the Federal deficit; the same administration that proposed higher deficits in 7 out of 8 years than those approved by Congress. For more than 6 years, American business leaders suspended disbelief—forgetting all the basic rules of economics—and they bought the administration's rhetoric which claimed we could grow out of our fiscal troubles. Last Monday, those same business people took a cold shower.

And, the ever increasing budget deficit was not the only cause of the stock market's unprecedented decline. On October 14, the administration announced that the trade deficit did not narrow as expected in September. In fact, the trade deficit in the month of September alone was more than $15 billion, nearly twice the trade deficit for the entire year of 1976. At that rate, the trade imbalance this year will be more than $200 billion and maybe $300 billion.

Do not blame the computers for our unprecedented trade deficit. For more than 6 years, the administration has preached free trade, while American manufacturing jobs have gone overseas. The machine tool industry, which is so vital to my home State of Vermont, has seen orders cut in half since 1981, while the administration resisted efforts to tear down illegal trade barriers which keep American machine tools out of foreign markets. Our lack of a national trade policy led to our record trade imbalance and led us to become the greatest debtor nation in the world. No one wants protectionism. We just want a smart, competitive trade policy. The financial markets are looking for the same thing.

We also must not forget the increasingly perilous situation in the Persian Gulf in our search for explanations for the stock market's tumble. In an effort to protect the flow of oil from that strategic region, American warships recently fired on and destroyed an oil production platform. Over the past month hostilities in the gulf continued to escalate. The Iranians tried to shoot down our helicopters and directed missiles against United States-flagged oil tankers. The strategically vital supply of oil from the Middle East can no longer be guaranteed. All of this had a destabilizing effect on financial markets around the world.

Alone, each of these factors, bad news about the budget and trade deficits and the escalating war in the Persian Gulf, could be expected to have a negative effect on the stock market. But, combined, they sent the market into a free fall.

Each of these problems can be solved, but only by decisive leadership and only with bipartisan cooperation. I am glad to see that the President is finally willing to permit his aides to work with Congress to reduce this year's budget deficit. I hope he will do the same thing on trade policy, and throw down his veto pen and his free trade rhetoric and roll up his sleeves and work with Congress to increase American competitiveness. Finally, the President must acknowledge the role Congress must play if the United States is going to have an effective policy in the Persian Gulf—a policy which the American people can support.

We all hope that this Wall Street roller coaster will end soon, but the only way to ensure that this will happen is to address these underlying problems.

None of this is to say that this week's events do not highlight the serious questions about how our securities and futures markets interrelate and are best coordinated and regulated.

I would point out that the impact of program trading has received a good deal of study. Reports by the SEC and CFTC concerning two previous record drops—one on September 11 and 12, 1986, and the other on January 23, 1987—concluded that these losses were not caused by program trading strategies, although such strategies were utilized as the market declined. Rather, these losses were serious market corrections which could have occurred with or without program trading. The Senate Committee on Agriculture, Nutrition and Forestry held hearings on these findings this July and we will continue to monitor these matters closely.

We ought to take the time to let Federal regulators seriously analyze what happened this week.

What role did index-arbitrage trading strategies play in this week's market volatility?

Were margins on index futures sufficient and did the futures exchanges respond quickly enough in raising margins?

Was the stock exchange specialist system adequate to handle the tremendous volumes being traded this week?

Would limits on daily price moves on index futures decrease market volatitity and would unacceptable market distortions result from such limits?

Are there better methods for coordination amongst the world's financial regulators to keep panic from spreading?

These are serious, complex questions. They deserve thoughtful answers not finger pointing and crash hearings.

Blaming the computers for Wall Street's near collapse is like the home-run hitter who blames his bat for striking out. When he hits a grand slam, all the glory is his. But, when times get tough, he looks for excuses.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, the hour of 9 a.m. having arrived, morning business is closed.

EXECUTIVE SESSION

The PRESIDING OFFICER. The Senate will now go into executive session to resume consideration of the nomination of Robert H. Bork. The clerk will report.

SUPREME COURT OF THE UNITED STATES

The legislative clerk read the nomination of Robert H. Bork, of the District of Columbia, to be an Associate Justice.

The Senate resumed consideration of the nomination.

Mr. SYMMS. Mr. President, I seek the floor this morning to speak in favor of Robert Bork as President Reagan's most recent nominee to the Supreme Court.

I would say at the outset that although I have had many, many areas of agreement with this administration and some areas of disagreement, the one area that I think the Attorney General and the President deserve good commendation from the American people, who elected the President in 1980 and again in 1984, is the process and the choice of selection of nominees to the high courts in this country, both to the Federal district courts of appeal, to Federal judgships across the country in the different districts, and to the Supreme Court.

I think that Judge Bork, it may be that in my time in the Senate, probably may be the highest qualified and the most distinguished judge to be nominated to the Supreme Court. I would hope that somehow, in spite of the pessimism as to the outcome of this nomination, some of our colleagues would reconsider their positions and reanalyze the qualifications of this very fine and distinguished judge and cast their vote for him for the Supreme Court so that the quality of the Court will not only be enhanced, but also, I would say, Mr. President, so that the process, which has been so highly politicized, could get back to a point of a better appreciation of the Constitution and how the process was intended to work than this process has been, where it has been so highly politicized concerning a very, very fine Judge. The American people, in my judgment, voted for President Reagan on two occasions with the intention that he would appoint nonactivist judicial people with a record of nonactivism to the Court and that they could be confirmed, so that we could have a Court that would interpret laws and not a Court that would try to make laws, so to speak.

I just would say at the outset that that is why I seek recognition this morning. I am not naive as to what may happen when the final rollcall is taken, but I guess we can always have hope that maybe there would be three or four Senators who could reconsider their position and if they did that there would be enough to pass the confirmation nomination process, the confirmation of Judge Bork, and he could move onto the Supreme Court.

Earlier this week, speaking of politicalization of this, and I want to go into what I think have been some of the reasons why this nomination has been so highly politicized, my good friend, the distinguished Senator from New Hampshire, stood on the floor for nearly 20 minutes responding to charges that a pro-Bork telephone campaign in which he was involved as honorary chairman has politicized the confirmation of Judge Bork.

Although the script of the telephonic recording was printed in the Record earlier this week, I want to read it again because I think that to say this is what politicized or has politicized the nomination is really quite not actually the case. I just want to read this statement and tell my colleagues so that they will understand what has happened.

Senator Humphrey. Hello, this is Gordon Humphrey in my role as honorary chairman of the National Conservative Political Action Committee. I decided to speak to you by telecomputer because of the urgent need for citizens to rally behind the President. President Reagan needs your support in his effort to have Judge Robert Bork confirmed to the United States Supreme Court. Please hold for an important message from President Reagan.

Then President Reagan's voice.

Judge Bork deserves a careful, highly civil examination of his record, but he has been subjected to a constant litany of character assassination and intentional misrepresentation. Tell your Senators to resist the politicalization of our court system. Tell them you support the appointment of Judge Robert Bork to the Supreme Court.

Announcer. As President Reagan and Senator Humphrey said, it is absolutely vital that you call your Senator (name, phone number) in Washington, DC., immediately. Urge him to vote in favor of Judge Robert Bork, and if at all possible please consider making a contribution to help win this important battle. If you would like to make a contribution, please tell me your name at the sound of the tone. Please tell me your telephone number at the sound of the tone so that one of our volunteers can contact you. Thank you for your support. Good evening.

That is it, Mr. President. That is the phone message to which several Members have referred earlier this week when they complained the confirmation of Bork was being politicized by Bork supporters. As Senator Humphrey stated, there is no criticism, either directly or indirectly, by name or implication, of any Senator. No Senator's motives are being impugned. It is a straightforward, factual statement urging citizens to support the President's nomination and to call the Senators at whatever number is indicated. The Senator from New Hampshire is exactly correct in his characterization of that telephonic message.

I referred to that unfortunate exchange, Mr. President, as an introduction to my thoughts about the politicization of the Bork nomination.

In my judgment, it is not the supporters of Judge Bork who have politicized the confirmation process. Indeed, I believe the pro-Bork forces, including Members of Congress and organizations around the country, have been far too reluctant to engage in the highly partisan trench warfare which the anti-Bork forces have conducted from the day the President announced his nomination of Judge Bork, and Members of this body have been directly involved in that trench warfare right from the start.

Mr. President, on that point, I would like to call to your attention some excerpts from newspaper editorials, articles on the Bork nomination, which the Republican Policy Committee has compiled from newspapers around the country, and some quotes from some of our distinguished colleagues made here on the Senate floor, and other statements.

On the day that President Reagan announced his nomination of Robert Bork, before the nomination had been officially received by the Senate, before the Judiciary Committee had held 1 day of hearings, one Senator rushed to the floor with this statement:

Robert Bork's America is a land in which women would be forced into back-alley abortions, blacks would sit at segregated lunch counters, rogue police could break down citizens' doors in midnight raids, schoolchildren could not be taught about evolution, writers and artists would be censored at the whim or government, and the doors of the Federal courts would be shut on the fingers of millions of citizens for whom the judiciary is often the only protector of the individual rights that are the heart of our democracy.

That was stated on this floor on July 1, 1987.

The opening salvo pretty much set the tone for what has been an abusive and unfair, distorted campaign against Judge Bork.

Referring to the comments noted above, Washington Post Columnist Edwin Yoder wrote this in the Washington Post, July 1, 1987:

This twaddle is what Adlai Stevenson used to call white collar McCarthyism.

Bork opponents now claim that they are not using McCarthy tactics. They claim they are not attacking Bork's integrity. They simply claim that they disagree with his legal views.

This may be true, but this is not what they were saying at the outset and in the past.

A few days after President Reagan submitted Judge Bork's nomination to the Senate, here is what one Member of Congress said:

"The next Justice must be a person of independence, impartiality and integrity. Judge Bork does not possess these qualities." Congressional Record, July 14, 1987, page 19613.

Another Member of Congress called Judge Bork, "a political extremist and a danger to the independence of the Supreme Court." September 10, 1987, Congressional Record.

Another Member of Congress said, "Robert Bork is a Trojan horse whose presence on the Supreme Court will result in the controversial process of undermining and sabotaging the mission of the Supreme Court." Congressional Record, September 15, 1987.

And still another Member of Congress, who also is a Presidential candidate called Judge Bork "one of the villains of Watergate." AP dateline New York, July 6, 1987.

"One of the villains of Watergate." I think Senator Hatch yesterday pointed out very clearly that one of the heroes of Watergate was Robert Bork. Hardly a villain of Watergate.

According to UPI another Presidential candidate speaking in New York likened Robert Bork to "A 19th century Supreme Court Justice Roger Taney, the author of the Dred Scott decision, affirming States rights to keep the blacks in slavery." UPI, July 8, 1987.

Now, Mr. President, I make the point that the politicization of the Bork nomination started and has been carried through by the opponents of Judge Bork. Does all of that sound like disagreements over fine points of constitutional law or does it sound like character assassination? I would leave it to my colleagues to be the judge of that. I hope that the American people will examine this very carefully as time goes on and remembers what happened to a very fine judge in the Senate of the United States and in the political process of this country.

Outside of the Congress the campaign against Judge Bork has been carefully orchestrated. An Associated Press report of July 11, 1987 noted:

The National Abortion Rights League on Saturday vowed an all-out attack, "the likes of which has never been seen," on President Reagan's nomination of Federal Judge Robert H. Bork to be Supreme Court Justice.

People for the American Way, a liberal lobbying group founded by television producer Norman Lear, was another organization active in the Bork smear campaign. Early in July, People for the American Way had five or six people working full time on the Bork nomination and the use of $350,000 in "seed money." PAW's executive director, Mr. Art Kropp said:

> We're talking at least a million this campaign. We're talking about a heavy newspaper print-ad strategy and radio strategy, hoping to reach saturation in some markets.

PAW's advertising campaign was started primarily for the opinionmaking markets of Washington, Chicago, New York, Los Angeles, and Atlanta. Washington Post July 7, 1987.

The fact is that they actually did launch a media blitz against Judge Bork. Analyzing one of the full-page newspaper ads sponsored by PAW, Senator HATCH of Utah, a member of the Senate Judiciary Committee, found 67 falsehoods, slants and distortions.

Mr. President, it is very interesting then after they have launched the attack and start affecting the opinion in the country, then some of the liberal groups start taking polls after they have had an impact on the opinions of some people with these distortions.

The special interest groups left no room for disagreement with their position. One special interest group leader said, "We must let our Senators know that a vote against Mr. Bork is a prerequisite for our vote in the next election." Washington Post, July 7, 1987.

Now, that is what I call politics and special interest group pressurers on Senators to vote on a matter as important as the confirmation of a judge to the highest court in the land.

Another special interest group leader warned a particular Senator that he better go along with the anti-Bork gang, adding, "I have the votes to defeat him. I'll get what I want. It's strictly politics." Washington Post, July 11, 1987, page 23.

But, some Bork opponents argue, all these heavyhanded McCarthy style tactics notwithstanding, there was a real grassroots movement in opposition to Judge Bork.

Maybe so, maybe not. But read carefully this excerpt from a New York Times article on the quick start made by the groups opposing the Bork nomination:

> Arlene Schwartz, director of the [National Abortion Rights Action] League's affiliate in New York State, said Judge Bork's opponents had already started a coordinated telephone campaign and were sending thousands of postcards and telegrams to Members of Congress. The New York organization was able to begin the effort on short notice, Ms. Schwartz said, by using a computerized system under which the league members authorized the organizations to send out telegrams in their name without prior consultation. (New York Times, July 13, page 12.)

Considering all this, is it any wonder that in response to the question did Judge Bork receive fair treatment, a Los Angeles radio received 3,453 calls in a 3-hour period with 84.6 percent saying no.

It is not a surprise to this Senator that that would happen after a well-orchestrated, special interest offense against this man was mounted, highly funded, well-financed, that then they could get responses like that and say, "See, the public is opposed to Robert Bork."

There is no way that the public would have known Robert Bork without a concerted effort to go after Judge Bork.

I use some more of the information that was made available to me by the staff of the U.S. Senate Republican Policy Committee, Mr. President, because I think it is important that our record reflect what some of the newspaper articles across the country have said.

"The Lies About Robert Bork," the New York Post, October 6, 1987:

> Over the last several weeks, Robert Bork has been the victim of one of the most extraordinary character assassination campaigns in recent history.

"The Bork Nomination," Washington Post, October 5, 1987.

I might point out, Mr. President, the Washington Post did not support the Bork nomination, but it was uncomfortable with the campaign against him saying, "Many aspects of the effort against him did not resemble an argument so much as a lynching."

In this same editorial the Post wrote:

> There has been an intellectual vulgarization and personal savagery to the elements of the attack profoundly distorting the record and nature of this man.

That is the Washington Post, October 5.

"The Bork Disinformers," the Wall Street Journal, October 5, 1987.

> Whether or not Judge Bork is confirmed, this shabby treatment of the Nation's most distinguished legal scholar and jurist will not soon be forgotten. Both conservatives and liberals who hold dear the ideals of rational discourse and honest scholarship will be passionate in their outrage, and that passion is likely to have lasting intellectual and political effects.

Already we have had one of our distinguished colleagues make statements in outrage, in moral, righteous indignation that if Judge Bork is not confirmed because of these outrageous attacks on him, he will never vote for a liberal judge again no matter who the President is or what the future is for it. I think it is unfortunate when we have those kinds of questions that have to come before this Senate and cause politics to drive what is happening with respect to something as important as this.

"The Vilification of Judge Bork That Simply Won't Stick," the Providence Journal, August 18, 1987:

> Unable to lay a finger on Mr. Bork on the basis of professional competence, his opponents have organized a multimillion-dollar, nationwide campaign designed to label him an extremist who stands outside the American mainstream. * * * It is unconscionable that a distinguished legal scholar and jurist should be subjected to such a disreputable campaign of vilification.

"Vicious Smear of Judge Bork," Chattanooga News-Free Press, September 14, 1987—"A man who is surely one of our country's most able judges, a man of clearly proved qualifications, is under smear attack. * * * Judge Bork deserves to win. If he does, justice will triumph. If he does not, justice will have suffered a serious blow that should be of concern to every thoughtful American."

"The Disfigured Debate Over Bork," the Chicago Tribune, September 6, 1987.—"In fact, the rhetoric of opposition is getting so extreme and misshapen that it is threatening to disfigure not only the nominee but everyone involved."

That is my concern, Mr. President. That is my deepest concern, that we have gotten off the track of what advice and consent, confirmation, and agreement is supposed to be. The President sent over a nominee of fine integrity. It has been said by all people; fine respectability, highly thought of in the legal community, has had a fine record as a Federal judge on one of the most important courts in the United States. He was confirmed by this Senate in 1982 by a unanimous vote. Now he has been subjected to special interest group attacks that are just unimaginable.

"Bork's Sin: Faith in Democracy," the New York Post, September 2, 1987.—"The anti-Bork campaign has been disgraceful. It is one thing to take issue with a presidential appointee on ideological grounds; it is quite another to read him out of civilized society."

"A Judge Gets Borked," the Atlanta Journal, August 20, 1987.—"Bork's opponents are in a frenzy. Frenzied mortals amplify some facts and gloss over others. Let's just hope something enduring results for the justice-to-be, like a new verb: "Borked." Dictionaries will say it's synonymous with "maligned."

"Bork: Pressure-group Hostage," San Diego Union, September 24, 1987.—Columnist Raymond Price wrote that the interest group campaign waged against Judge Bork is: "pressure group politics of the crassest sort, using one of the most vicious, calculated campaigns of slander since the days of Joe McCarthy."

"Steamroller of Fear and Hate Crushed President's Choice," New York Post, October 7, 1987.—Columnist Ray Kerrison, writing in the New York Post noted that Judge Bork's nomination, "unleashed a flood tide of character assassination" and Kerrison concluded that this attack was "stunningly effective." Kerrison wrote further: "So the 'get-Bork' crusade, with all its slander, was pushed at the grassroots level with one aim: to strike fear into the hearts of people that Bork's confirmation would somehow destroy the republic. The judicial record did not beat Bork yesterday. Fear and doubt did the job."

"Bork Inquisition Poisons Process," the Chicago Sun Times, October 5, 1987.—"By the savagery of their rhetoric, many Bork opponents have generated an uneasiness among Americans as reflected in public opinion polls. They have lent respectability to the pernicious notion that polls could determine the makeup of the branch of government that is supposed to be the most insulated form mass pressure."

"Bork Dilemma," the Dallas Morning News, October 3, 1987.—"But the Senate should not be stampeded by public opinion polls that have largely been fueled by special interest public relations campaigns."

"Bork, Hearings and Verdict," Chattanooga News-Free Press, October 1, 1987.—"Why the controversy? It is because, in the hearings and out, he has been subjected to the worst inquisition, smear and distortion campaign aimed at any judge in American history."

Mr. President, I was one Member of the Senate that was glad that Judge Bork stated his intention not to withdraw as the President's nominee despite the difficult task we have of getting Judge Bork confirmed, when we have had a majority of Senators already announcing their intentions to vote against his confirmation.

"A crucial principle is at stake," Judge Bork said. "That principle is the way we select the men and women who guard the liberties of all the American people. That should not be done through public campaigns of distortion. If I withdraw now, that campaign would be seen as a success and it would be mounted against future nominees."

This is very difficult, I am sure, for the judge's family and for the judge himself to go on with this fight. But I think it is important that we have this discussion, and this debate. And I suppose one would almost have to believe in miracles to think that maybe there would be three or four U.S. Senators that might change their position and decide they could find in their conscience the rationale to change their stated position and vote for Judge Bork.

The distinguished occupant of the chair, I believe, from my neighboring State of Nevada, has already made public that he has decided to vote against Judge Bork. I do not impugn his motives in any way. But I would hope even he, coming from a Western State, might reconsider that position because it would only take three or four Senators to change their position and we would have the votes to confirm this very fine judge.

I think Judge Bork is exactly right about the consequences for future nominees had he decided to withdraw, and I commend him for his courage and willingness to put his name and honor on the line to the end for the sake of that principle. The liberal propagandists apparently have won the battle against Judge Bork, but we have yet to see who will win the war over the most fundamental questions of judicial philosophy and the role of the Federal judiciary.

It is a war, Mr. President. A war over the scope of Federal judicial authority and, more fundamentally, a war over who will govern in this country—whether it will be the people, through their elected representatives, or the unelected members of the Federal courts. In sum, it is a war over whether or not we will have a majority of Supreme Court members who are committed to the concept of judicial restraint and believe laws should be made by legislatures and interpreted, not made, by courts. That is really fundamentally what is at stake in this question.

President Reagan nominated Judge Bork to fill the vacancy on the Supreme Court because both men believe in judicial restraint. Sadly, Judge Bork apparently will be rejected when the Senate votes on confirmation. His defeat—if it happens—will be the result of a successful campaign to distort Judge Bork's record on important legal and consitutional questions and to deceive the American people about the real issue of concern to those who have led the attack on Judge Bork.

This campaign of distortion and disinformation has not been focused on the issue of judicial restraint versus judicial activism, for obvious reasons. As succinctly defined in a White House briefing book on Judge Bork, judicial restraint means "judges must give full effect to values that may be fairly discovered in the text, language, and history of the Constitution and apply them to modern conditions as a check against government action. But unelected and unaccountable judges should not overturn legitimate policy choices of elected legislators by imposing their own personal preferences." Properly understood, the concept of judicial restraint is supported by the American people. They do not want Federal judges making laws; they elect representatives to do that job. That is what the Constitution commands us to do.

To camouflage the real issue, with which they could not win the sympathy of the American people or the vote of many undecided Senators, the leaders of the anti-Bork lobby created a considerable record of distortion and misrepresentation of fact relating to Judge Bork's judicial philosophy and position on important constitutional questions. Anti-Bork advertisements on television and radio and in the print media suggest directly or by innuendo that the President's Supreme Court nominee is a bigot, whose dogmatic legal views and social prejudices would turn back the clock on civil rights enforcement a hundred years or more. Those advertisements and some of the comments made by witnesses at the Judiciary Committee hearings strongly imply that Judge Bork supports such practices as forced sterilization of female laborers, poll taxes to discriminate against minority voters, sexual harassment and other forms of discrimination against women on the job, and government regulation of the sexual activities of married couples.

I was told by one of my colleagues that in a personal visit he had with Judge Bork this past week, the judge intimated to him, in his office, that the saddest thing about this was that some of the people, some of the groups, the minority groups, such as the blacks, in many cases, believe that the things that were said about him are true, and they are not true. It is heartbreaking to know a man of his fine credentials and fine record of restraint on the courts, of upholding the Constitution and upholding laws passed by Congress, with his record as Solicitor General of the U.S. Government, with his very sound civil rights record, and to have his record distorted to say that somehow he is a bigot.

It breaks my heart to think that this could have happened and that groups of people might have been misled by liberal propagandists and special-interest groups to distort the character and fineness of this man's qualifications.

That is the image of Judge Bork which the liberal propagandists have worked feverishly to plant in the mind of the American public. Unfortunately, I believe the number of Senators already committed in opposition to him indicates that this media blitz has met with sufficient success.

Others will outline in detail the facts relating to the court cases from which the innuendos against Judge Bork are drawn. Suffice it for me to say the facts in those court cases, combined with the testimony of jurists, lawyers, and scholars, liberal and conservative alike, who have known and worked with Judge Bork for years, lead one to exactly the opposite conclusion. This is a man of exceptional personal and professional character. As described by Leonard Garment, himself known for his longstanding commitment to civil rights and affirmative action programs, Judge Bork * * *

> Was and is open to ideas. He is devoid of cant, pomposity, and prejudice. I could never have come to this opinion of him, nor indeed would I write to you about it, if he were a crank, a zealot, or a manipulator, or if I had not found in him a natural respect for other human beings, their interests, and their needs.

I only wish, Mr. President, that the truth about Judge Bork's record and character were as easily, or as invitingly, portrayed in 30-second television bits or full-page ads as are the distortions produced by his opponents.

With respect to the suggestion that Judge Bork is too far outside the mainstream of judicial thought to serve on the High Court, it cannot be stated often enough that this conclusion is not borne out by a review of his 5-year record as a judge on the U.S. Circuit Court for the District of Columbia. During that 5-year period, Judge Bork has written more than 100 majority opinions and has been in the majority on more than 400 cases, none of which has been overturned by the Supreme Court. None. In addition, of the judge's 20 dissenting opinions, the Supreme Court has reviewed 6 and has adopted Judge Bork's position in each case. That is the Supreme Court we have today. He has agreed with liberal Circuit Court Judge Abe Mikva in 82 percent of the cases in which they both participated, and in the aggregate, he has agreed with his liberal colleagues on the circuit court in more than 75 percent of the cases. Put simply, that is not the record of an ideologue or of a jurist outside the mainstream of judicial thought. The record simply is not there to make the case that he is outside the mainstream.

As a final note on the question of qualifications, I would remind my colleagues that in 1982 we unanimously confirmed Judge Bork for his position on the D.C. Circuit Court, the second most important and influential court in the land. Now, I understand there may be a higher level of scrutiny required for nominees to the Supreme Court, but I repeat that just 5 years ago we confirmed the same man without a single "no" vote or a single reservation voiced. To quote the pointed and eloquent remarks of Senator HATFIELD on the question:

> There is no escape from the charge: This Senate was either asleep at the wheel and therefore derelict in its duty or there is something very wrong with what is occurring right now. Something very wrong. The case against this man is flawed.

I commend to my colleagues' attention Senator HATFIELD's thoughtful speech on the Bork nomination which appears in the October 7 CONGRESSIONAL RECORD on page S13744.

Mr. President, the debate on Judge Bork has included a considerable amount of discussion about the proper role of the Senate in the confirmation process. Some have suggested this is the proper place to emphasize the Senate's role as a coequal partner with the President in appointing officers of the United States. There should have been little doubt on this subject given the numerous Presidential nominees who have been rejected by the Senate in times past and the words of Alexander Hamilton in the Federalist Papers who said:

> The [President] would have a concurrent power with a branch of the legislature in the formation of treaties * * * and a like concurrent authority in appointing to offices.

With a powerful hand, this Senate has reemphasized its coequal status with the President in making appointments to the Supreme Court. Unfortunately for Judge Bork, the Federal judiciary, and the Nation, our action on this nomination fails to demonstrate the wisdom which must have coequal status with power in the Senate if our institutions of Republican government are to survive.

I am also concerned that our action on this nomination may reflect, in part, the growing hold of a psychology which some have labeled "the Imperial Senate" syndrome. I do not impugn the motives of any of my colleagues, but I would ask my colleagues to reflect for a moment on the complaints we have all heard on the floor and in the hallways that one or another Senator was not consulted on the nomination, or if consulted, not listened to. I would turn again to the Federalist Papers, No. 70, where Hamilton makes the following observations about human nature and our governmental institutions:

> Men often oppose a thing merely because they have had no agency in planning it, or because it may have been planned by those whom they dislike. But if they have been consulted, and have happened to disapprove, opposition then becomes, in their estimation, an indispensable duty of self-love. They seem to think themselves bound in honor, and by all the motives of personal infallibility, to defeat the success of what has been resolved upon contrary to their sentiments.

Again, I do not impugn the motives of any of my colleagues. I only ask that each of us examine our consciences to be sure that any ill feelings about the consultation process have not affected our votes on this most important nomination and will not affect our votes on any future nominations to the Supreme Court.

Finally, I want to address a few remarks to President Reagan. Mr. President, thank you for nominating Judge Bork to fill the Supreme Court vacancy. He is an honorable man and a highly qualified jurist who deserves to be confirmed. Sadly, it appears that will not be the result of our upcoming vote.

And I say that with all sincerity, sadly. I think it is a sad, sad day that this fine man has had his motives, thoughts, and record so badly distorted and politicized to the point that the special interest groups have been able to sway the decisions that are being made by our colleagues here in this body.

Since, then, you must quickly name another nominee, I take this opportunity to call your attention to the following insightful remarks of Dr. Thomas Sowell, a Fellow at the Hoover Institution and a witness at the Judiciary Committee hearings:

> This may be the most important Supreme Court nomination of our time, not simply because the present Court is so closely divided, or even because Judge Bork is the most highly qualified nominee of this generation, but because this is an historic crossroads as regards the expanding power of judges, which is to say the erosion of people's rights to govern themselves democratically.

So I would say, President Reagan, send us another highly qualified nominee, if we are not successful here. I pray that some of my colleagues will change their stated position and vote for Judge Bork. But to paraphrase Dr. Sowell's words, send us another nominee who would constrain the power of the Court within the bounds set by the Constitution, thereby protecting the people's rights to govern themselves democratically.

President Reagan, it is because of his commitment to judicial restraint that Judge Bork may be defeated when the Senate votes on the nomination. But he will not be defeated by that commitment to judicial restraint. His loss—our loss, really—will be the result of a well-organized, well-financed, nationwide advertising campaign of fear, distortion, and outright lies about the Judge's judicial philosophy and record. I repeat my conviction that the American people believe in judicial restraint—they believe judges should not make laws, but should only interpret them, and judges should not create constitutional rights out of whole cloth. The next advertising campaign of fear, distortion, and lies will lack public credibility, and this body will eventually confirm a qualified advocate of judicial restraint notwithstanding the virulent opposition of those who have led the attack on Judge Bork.

I personally truly regret the injustice Judge Bork and his family have suffered through this ordeal. I think it is a sad day. But I am sorrier still that the Nation will not benefit from his prudent judgment and intellect as an Associate Justice of the Supreme Court.

Mr. President, I ask unanimous consent that the following statement, editorials, and letters be printed in the RECORD at the end of my remarks: First, Judge Bork's October 9 statement as reprinted in the Washington Post; second, two fine editorials on the Bork nomination from the Wall Street Journal; third, a column by Dr. Walter Berns, which appeared in the August 24 Washington Post; fourth, a copy of a letter dated September 25, 1987, from Leonard Garment to Senator SPECTER; and fifth, a letter in support of Judge Bork from the Ad Hoc Committee for Principled Discussions of Constitutional Issues, signed by 129 of the Nation's leading professors and academics.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Washington Post, Oct. 10, 1987]

"ASK THAT VOICES BE LOWERED"

Here is the statement Supreme Court nominee Robert H. Bork made at the White House yesterday.

More than three months ago, I was deeply honored to be nominated by the president for the position of associate justice of the Supreme Court of the United States.

In the 100 days since then, the country has witnessed an unprecedented event. The process of confirming justices for our nation's highest court has been transformed in a way that should not and indeed must not be permitted to occur again.

The tactics and techniques of national political campaigns have been unleashed on the process of confirming judges. That is not simply disturbing, it is dangerous.

Federal judges are not appointed to decide cases according to the latest opinion polls. They are appointed to decide cases impartially, according to law.

But when judicial nominees are assessed and treated like political candidates, the effect will be to chill the climate in which judicial deliberations take place, to erode public confidence in the impartiality of courts and to endanger the independence of the judiciary.

In politics, the opposing candidates exchange contentions in their efforts to sway voters. In the give and take of political debate, the choice will, in the end, be clear.

A judge, however, cannot engage. Political campaigning and the judge's functions are flatly incompatible.

In 200 years, no nominee for justice has ever campaigned for that high office. None ever should, and I will not.

This is not to say that my public life, the decisions I have rendered, the articles I have written, should be immune from consideration. They should not.

Honorable persons can disagree about those matters, but the manner in which the campaign is conducted makes all the difference.

Far too often the ethics that should prevail have been violated, and the facts of my professional life have been misrepresented.

It is, to say no more, unsatisfying to be the target of a campaign that must, of necessity, be one-sided, a campaign in which the "candidate," a sitting federal judge, is prevented by the plain standards of his profession from becoming an energetic participant.

Were the fate of Robert Bork the only matter at stake, I would ask the president to withdraw my nomination.

The most serious and lasting injury in all of this, however, is not me. Nor is it to all of those who have steadfastly supported my nomination and to whom I am deeply grateful. Rather, it is to the dignity and the integrity of law and of public service in this country.

I therefore wish to end the speculation. There should be a full debate and a final Senate decision. In deciding on this course, I harbor no illusions.

But a crucial principle is at stake. That principle is the way we select the men and women who guard the liberties of all the American people. That should not be done through public campaigns of distortion. If I withdraw now, that campaign would be seen as a success and it would be mounted against future nominees.

For the sake of the federal judiciary and the American people, that must not happen. The deliberative process must be restored. In the days remaining, I ask only that voices be lowered, the facts respected and the deliberations conducted in a manner that will be fair to me and to the infinitely larger and more important cause of justice in America.

[From the Wall Street Journal, Oct. 1, 1987]

WHY NOT THE BEST?

The Bork hearings are over and despite the posturing and special-interest pressures the decision comes down to a handful of senators who seem honestly undecided. For senators interested in a decision on the merits, it's worth pondering for a moment the sweep of constitutional history as it applies to civil rights, judicial activism and Robert Bork.

Taking a broad view is not easy, of course, given the kind of campaign waged against the nominee—a campaign that started, we see in a Washington post profile of anti-Bork leader Ralph Neas, the moment Justice Powell resigned and before even the identity of the noiminee was known. One thing the senators have to weigh is how business is done in the World's Greatest Diliberative Body. If presssure campaigns of this type are proved to work they will be repeated, and life as a senator will not be enviable.

Still, it's clear that the honest doubts of honest men center on two issues: civil rights, in particular the Supreme Court's historic efforts against racial discrimination; and judicial activism, the propriety of the courts' assuming decisions that properly belong to the elected branches of government. The tension between these issues is no accident but is a product of history.

For of course, the recent era of judicial activism started with *Brown* v. *Board of Education*, which ordered school integration "with all deliberate speed." In trying to enforce this law, the courts encountered extraordinary resistance, often in clear bad faith. Faced with a doctrine of "massive resistance," the courts were in effect forced to assert extraordinary powers and find extraordinary remedies.

The American people are quite rightly proud of this sort of activist court. The historical justification for *Brown* is unchallengeable and unchallenged. The decision reversed the judicial activism of an earlier era, *Plessy* v. *Ferguson*'s unsustainable doctrine of separate but equal. And when the court moved, the legislative branch was hopelessly stalled by the undemocratic institution of the filibuster. In time the court's leadership helped open the legislative branch, allowing such landmark laws as the 1964 Civil Rights Act and, equally important in securing the rights of blacks, the 1965 Voting Rights Act.

All of this is now part of the warp and woof of American society. Practically no one, least of all anyone of Judge Bork's erudition, wants to reverse this kind of progress. But if a stiff dose of activism was crucial in the extraordinary circumstances of *Brown*, it nonetheless carries its dangers. Supreme Court justices are not elected and cannot be turned out by the people. The courts are not legislative bodies where compromise can be struck and consensus formed, nor executive bodies with experience at administration. The judiciary is supposed to exercise narrow powers and to be limited by a body of pre-existing law and constitutional doctrine, to be "the least dangerous branch."

Quite predictably, as traditional inhibitions to activism were worn down, the well-known dangers appeared. In the effort to protect the downtrodden, judges discovered plenty of new rights to protect accused criminals, but none for victims. Judges freed convicted criminals from state and federal prisons because of "unconstitutional" overcrowding. Judges deinstitutionalized mental institutions; many of the supposed beneficiaries are today's pitiful homeless. The other day in Missouri, a federal judge asserted the power to levy taxes.

Worst of all, the activist temperament invited anyone with a gripe to come into court, with the hope that judges would make laws that the voters and their elected representatives would never approve. The litigation explosion was upon us.

And inevitably, these results have produced a political reaction. Religious fundamentalists who were previously nonpolitical were turned into the New Right almost overnight by the school-prayer decision. Ronald Reagan could make reining in the power of federal judges a leading platform item in two landslides. Where judges actually have to face elections, Rose bird and her hyperactivist colleagues were cashiered from the California Supreme Court. The Bork foes have gained an upper hand in public opinion with a one-sided barrage the White House has not exerted itself to offset, but that is no guarantee they will like the final outcome of the game they are playing.

How, then, does Judge Bork fit into this historical maelstrom? As a legal scholar, he stopped supporting judicial activism when he saw that the courts had gone too far; he started to point early to its potential dangers. Yet, as was clear in his five days of testimony, he has no urge merely to turn activism in another direction. For example, he said that some doubtful court rulings, such as the broad view of the Commerce Clause, must stand because so many expectations have built up around them that they are now part of the social fabric. For another, he would give women the same protections blacks get from the 14th Amendment. And of course, his intelligence, integrity and scholarship are unchallenged.

The next phase of constitutional history has already begun; clearly it will consist of reimposing some limits on the excesses of judicial activism. Conceivably this could mean a wholesale rejection of both the bad and the good of the Warren Court, though we would think that likely only if Supreme Court seats become the spoils of demagogic political battles in which intelligence, scholarship and erudition count for nothing.

Honestly undecided senators, we would hope, would be looking for men with the temperament to make the next phase of constitutional history a constructive one, for men with the sophistication to conduct a principled and evolutionary change. In searching for such men, the first one you find is Robert Bork.

[From the Wall Street Journal, Oct. 15, 1987]

BOGEYMAN FUND-RAISING

"Robert Bork's America is a land in which women would be forced into back-alley abortions, blacks would sit at segregated lunch counters, rogue police could break down citizens' doors in midnight raids . . . and the doors of the federal courts would be shut on millions of citizens." These were Senator Teddy Kennedy's first words after the Bork nomination.

While at the time it seemed mere hyperventilation, this portrayal was in fact central to the apparently successful campaign to discredit Judge Bork. It's not that hyperbole directly persuaded Senators, but that the hyperbole was needed to raise the money to persuade Senators. The bogeyman image was absolutely crucial to the needs of the real special interests, the Spitz Channels of the left.

"Dear Friend," said Joanne Woodward's mass mailing on behalf of the National Abortion Rights Action League, "$500,000 is needed *immediately*. . . ." Norman Lear's People for the American Way mailed out 3.8 million anti-Bork solicitations; its Arthur Kropp boasts, "We wanted to raise $1 million but now it looks like closer to $2 million." Direct-mail consultant Roger Craver, who has five different anti-Bork clients, told the New York Times, "This is the equivalent of Jim Watt wanting to flood the Grand Canyon."

This is bogeyman fund-raising. The livelihood of fund-raisers is raising funds, either through direct contacts or mass mailings. Success lies in getting a batch of first contributions in some heated battle, then returning to a proven list to pay ongoing salaries. Not for nothing did more than 30 special-interest groups submit requests to testify—meaning, appear on national television. At the lowest and most cynical level of American politics, the level at which it has settled the past two months, one might argue that special-interest groups are prevailing and being well paid for their efforts. Judge Bork's discomfort is just tough luck; he happened to be handy when the fund-raisers needed a nightmarish caricature.

Of course, both conservatives and liberals have for some time exploited bogeyman fund-raising. Conservative direct mailers wept at Tip O'Neill's retirement. With the creation of the Bork bogeyman, however, something seems to have snapped in Washington politics. Tip O'Neill and Jesse Helms are political figures who have the platform and resources to fight back. A judicial nominee, especially a federal appeals court judge, is severely constrained from defending himself at the level of discourse preferred by, say, the creator of Archie Bunker.

It isn't only Judge Bork's supporters who are concerned that the rest of the country now sees Washington as a stinking swamp of intellectual dishonesty and political reprisal. Lloyd Cutler's support for the nomination is based not on the merits alone but on concern that the tenor of the Bork opposition is poisoning the well for his own party. In the current issue of The New Republic, Andrew Sullivan frets that with the fund-raising hysteria, "The only nominee who in the future will be able to survive the demagoguery will be someone who can respond in kind," Perhaps the president should nominate Don Rickles ("Get off my back, you hockey puck!")

Mr. Sullivan's article should be read by anyone who still doubts this process profoundly distorted the Bork record. While he says a serious case can be made against the nomination, he catalogs "the disingenuousness of the Bork-hate campaign," The lies, such as a claim that Judge Bork testified in favor of a law he in fact opposed. The name calling of Ralph Nader: "a plague on the next generation." The mailings of one of liberalism's sainted groups, Planned Parenthood, said, "Bork's position on reproductive rights? You don't have any." Mr. Sullivan concluded: "And Senators wonder why the polls show a drift away from the Bork nomination."

Editorialists, columnists and several Democratic senators are now engaged in an elaborate rationalization of this descent into political falsification. The public is asked to accept their argument that the assault on the integrity of a single American citizen by Planned Parenthood, People for the American Way and others was beside the point. That wrongful assault, however, will survive as a lesson of the Bork nomination.

The lesson is that up to now, the assault has worked. It intimidated not only Senators who spin like weather vanes, but also Senators made of sterner stuff. This was affirmed in the vote of the Senate Judiciary Committee and in thinly argued justifications for that vote. It is a new kind of politics, and it awaits the official imprimatur of 51 Senators. We hope that someone pauses to see the implications of turning the advice and consent role over to groups whose very livelihood depends on making U.S. politics ferverish and false.

[From The Washington Post, Aug. 24, 1987]

A JUDGE WHO RESPECTS LIMITS

(By Walter Berns)

Almost everybody who has addressed the subject has recognized at some point that it is improper to assess the qualifications of a Supreme Court nominee solely in terms of his politics or ideology. Most commentators acknowledge that federal judges are not politicians and ought not be judged like politicians.

Although it is not his main purpose, this point is well made by Prof. Charles L. Black Jr. in an article originally published in the Yale Law Journal and reprinted in The Post [Outlook, July 12]. A former colleague of Bork at the Yale Law School, Black points out that presidents surely take account of a person's political opinions when making a nomination—such considerations play a "large, often a crucial role in the president's choice of his nominee"—and, therefore, that the Senate cannot afford to ignore them when called upon to give its advice and consent.

To support his conclusion, however, he goes on to contrast the Senate's proper role in considering judical nominations with its role in considering a president's nominees for Cabinet positions. With the Cabinet, he writes, "there is a clear structural reason for a senator's letting the president have pretty much anybody he wants." Here—but by inference not in the case of judges—a nominee's politics will properly govern the outcome. Cabinet officers are the president's people; they work for him, as Black puts it. Not so the judges. "The judges are not the president's people," he says emphatically. "God forbid!" But, as he is quick to add, they are also not the Senate's people.

All of which is to say they are not politicians, and, because they are not, the Senate should not allow political considerations to govern or control its decision in a confirmation vote.

Of course, the same rule must constrain a president when he makes a judicial nomination, especially one for the Supreme Court. As the Framers of the Constitution reiterated time and again, judges occupy a separate branch of government—detached from the people by the manner of their selection and from the political branches by their life tenure—precisely because their work is not political in the ordinary sense. A good judge is not the same as a good politician; he is neither a conservative nor a liberal.

Bork, for example, is called a conservative by friends and enemies alike, but on the Court of Appeals he voted with his nominally liberal colleague, Judge Ruth Bader Ginsburg, in 90 percent of the cases on which they both sat, including an important press libel case where he differed with his so-called conservative colleague (as he then was), Judge Antonin Scalia.

How, then, to judge a judge? At a minimum, by his refusal to be political. A fair measure of that self-discipline is his capacity to recognize and his willingness to respect the difference between what is politically desirable (or at least desired) and what is constitutionally permissible. Bork's record is filled with examples of this.

When still a professor, Bork joined a host of legal luminaries (including Archibald Cox) by complaining that the Supreme Court had no constitutional warrant for its decision in *Roe v. Wade,* the abortion case; but as a judge he concurred in a decision holding that the Department of Health and Human Services had no authority to require that parents be notified of the contraceptives prescribed for their minor children. And in 1981 he testified against a proposed "human life bill," which sought to reverse *Roe v. Wade* by statutory means. Even if the original decision had been incorrect, he said, the proposed bill amounted to an unconsitutional attempt to prescribe a rule of decision for the courts.

Bork could not have liked the poster—"Tired of the JELLYBEAN REPUBLIC?"—condemning President Reagan for his alleged lack of compassion, and privately he may have agreed with the transit authorities who in 1983 refused to lease space to allow its display in the Washington-area subway stations. Nevertheless, Bork wrote the court's opinion declaring the officials' action to be a violation of the First Amendment.

Had he been a Republican member of the House of Representatives, Bork, too, might have protested the unfairness of the committee assignments made by the Democratic leadership. But as a judge, and going well beyond his colleagues sitting in the case, in 1983 he rejected the lawsuit filed by 14 Republican House members. As he put it, they lacked standing to bring this suit, a conclusion he reached out of respect for the constitutional principle of separation of powers.

Decisions such as these may explain why, although he has written 106 majority opinions during his five years on the Court of Appeals, he has never been reversed by the Supreme Court. What is perhaps even more remarkable, of the 401 cases in which he joined the majority, not one has been reversed by the Supreme Court. This surely can serve as a response to those critics who complain that his appointment would threaten the liberal-conservative balance on the court.

What is at stake here is more than the career of Robet Bork. Against the political activist of the left or right who would look outside the Constitution—which in practice means inside himself—for moral principles that he would then impose on the rest of us, Bork represents the cause of constitutional government. This means government limited by the rules and moral principles embodied in the text of the Constitution, rules that are to be honored by judges as well as by presidents and legislators. Honoring that text requires a judge to both abide by the rules and respect the principles.

As Bork said recently, in a constitutional democracy the moral content of the law must be given by the morality of the Framers or, in the case of a statute, that of the legislators, never by the morality of the judge. "The sole task of the latter—and it is a task quite large enough for anyone's wisdom, skill, and virtue—is to translate the Framer's or the legislator's morality into a rule to govern unforeseen circumstances."

That, I submit, can serve as the standard by which we judge a judge, especially a judge on a court with the power to overule the judgments of a democratic people.

WASHINGTON, DC, *September 25, 1987.*
Hon. ARLEN SPECTER,
U.S. Senate, Senate Office Building, Washington, DC.

DEAR ARLEN: During the Judiciary Committee hearings on Judge Robert Bork's nomination to the Supreme Court, witnesses have made many claims about his real attitude towards civil rights and suggested that he has changed his public positions on the issues in order to be confirmed by the Senate. I have some first-hand evidence that bears on these questions and hope the Committee will weigh it in the balance. I am presenting it to the Committee through you because I know you and because your much-noted colloquy with Judge Bork the other day on the subject of civil rights and Constitutional philosophy made quite clear that you know what the real issues are and take them with utter seriousness.

The Bork debate has gotten so full of accusations about bad motives and bad faith that I must ask you to bear with me while I give some personal history and establish my bona fides in the civil rights field.

I worked in the White House from 1969 to 1974, and my responsibilities lay largely in the area of civil rights. I played a central role in the Nixon administration's support of affirmative action programs for minorities and women (including the Philadelphia Plan, the 4-Agency Agreement, and the initiation of remedial race and gender litigation by the Department of Justice); the 1970 program for school desegregation in the South, including both the Emergency School Aid Act to help desegregating school districts and the critical work of the President's Committee on School Desegregation; the administration's role in the creation of the Legal Service Corporation, the development of the Indian Reform Act and the reorganization of the Bureau of Indian Affairs bureaucracy, and numerous other specific civil rights actions such as President Nixon's Executive Order directing the IRS to deny tax exemptions to segregated private schools. I was the administration's liaison to the U.S. Civil Rights Commission and the leadership of the civil rights community and formed close and continuing friendships there.

In 1975, having left government, I served under President Gerald Ford as U.S. Representative to the United Nations Human Rights Commission.

Since 1976 I have been chairman of the Judicial Selection Committee of Sen. Daniel P. Moynihan of New York; we have interviewed hundreds of men and women for the positions of federal district court judge and United States Attorney.

In 1977, President Carter named me to his judicial selection panel for the Second Circuit Court of Appeals, where I served as vice chairman. On our recommendation, President Carter appointed Amalya Kearse of New York and Jon Newman of Connecticut to the appeals bench, where I am proud to say both have served with distinction.

In 1970, as the result of a letter of recommendation dated May 15, 1970 from the late Prof. Alexander Bickel of the Yale Law School, I introduced Judge Bork to the administration. In 1973 he became Solicitor General. I dealt with him mainly on the important civil rights cases in which the government was involved during those years. I was usually on the sparsely-populated liberal side of the internal debates surrounding these cases, and during the brief period when our government service overlapped usually found that Judge Bork was my ally. I particularly remember our discussions in his office and his personal decision *not* to intervene on the side of the plaintiff in the controversial *De Funis* v. *Odegaard* reverse discrimination case, in the face of strong arguments from antiquota lobbying organizations, The White House and his own staff.

I became his friend, and found that he was a thoughtful, conscientious, sensitive, and witty human being. He was and is open to ideas. He is devoid of cant, pomposity, and prejudice. I could never have come to this opinion of him, nor indeed would I write to you about it, if he were a crank, a zealot, or a manipulator, or if I had not found in him a natural respect for other human beings, their interests, and their needs. This friendship has deepened considerably since my return to Washington in 1980.

I have been listening to critics of Judge Bork analyze his opinions and articles and say that they reveal a man without the social and philosophical sensitivities that are required in a judge. They say they see in Judge Bork's words a man who may sound moderate now, but who will reveal his callousness once you give him his judicial freedom.

I know, in the most definite and concrete way an individual can know these things, that those critics are saying untrue things about Judge Bork's character and temperament. The opinions and qualities I found admirable in him were there more than a decade ago, well in advance of these hearings. The Committee's deliberations should not be based on a falsified picture of him.

Judge Bork has taken some positions that do not agree with my social philosophy. When he has done so, though, it is clearly not because he is socially uncaring but because the central enthusiasm of his life is and has been the law—learning it, teaching it, speculating, writing, and debating about it, and applying it as judge. He has given his energies to a search for a coherent structure of Constitutional principle, thought through carefully and evolving slowly over the full span of his career.

The law—it is embarrassing to repeat such an obvious truth—is the centerpiece of all civilized human activity, and particularly of the life of a democratic society. For an individual to devote himself to the law as Judge Bork has done should need no defense. When we in this country reach the point in our political debate at which social philosophy leaves no room for judges who have such a love, and who do not always deliver the correct answers, we have started down the road to tragedy.

Sincerely,

LEONARD GARMENT.

AD HOC COMMITTEE FOR PRINCIPLED DISCUSSIONS OF CONSTITUTIONAL ISSUES,
New York, NY, October 13, 1987.
Hon. ROBERT C. BYRD,
Majority Leader, U.S. Senate, Washington, DC.
Hon. ROBERT DOLE,
Minority Leader, U.S. Senate, Washington, DC.

HONORABLE GENTLEMEN: The signers of the attached statement who are of varied political persuasions have different views on the substantive issues discussed by Judge Bork. But all are convinced, despite what has been said in the media and on the Senate floor, that Judge Bork's position on judicial restraint is an integral part of the mainstream of American jurisprudence, and that he is well qualified to serve as a justice of the United States Supreme Court.

Sincerely,

SIDNEY HOOK,
Emeritus Professor of Philosophy, New York University; Senior Research Fellow, Hoover Institution.

AD HOC COMMITTEE FOR PRINCIPLED DISCUSSIONS OF CONSTITUTIONAL ISSUES—STATEMENT OF SUPPORT

We are witnessing an incredible assault on a distinguished nominee to the Supreme Court, unparallelled perhaps since the battle to prevent Justice Brandeis' confirmation seventy years ago. The undersigned feel that reasoned analysis is needed as an antidote to emotions which may have affected even those Senators who should guide their colleagues towards a wise judgment.

Judge Bork is assaulted for being outside the "mainstream" of American constitutional interpretation and for threatening liberties and rights confirmed by previous decisions of the Supreme Court and by federal and state legislation. This is nothing less than an effort to impose one controversial theory of constitutional interpretation as the only legitimate one, and to exclude as beyond the pale all who challenge it. For the last 15 years or more we have witnessed many 5 to 4 or 6 to 3 decisions on important issues, with majorities and minorities split in their reasoning two or three ways. What is the "mainstream" in such split decisions? It is specious to argue the 5 or 6 Justices in the majority in these decisions represent the mainstream of constitutional interpretation, and that if the decisions were to have gone 5 to 4 or 6 to 3 the other way the Republic and our liberties would be in danger.

Judge Bork stands within a legitimate mainstream of constitutional interpretation, one which includes Justice Brandeis and Justice Frankfurter and other eminent jurists, and which asserts that when the Constitution is silent the legislatures, federal and state, the democratically elected representatives of the people, have the right to speak. It is deceptive to argue that a more restrained interpretation of the liberties protected by the Constitution threatens those liberties. Our liberties have been extended as much by state legislative and congressional action in the past few decades as by interpretations of the Constitution by the Supreme Court. Our liberties, in the large, are secure, and it betrays scant confidence in the American people—who are after all the final guarantors of our liberty—to insist hysterically that one appointment to the Supreme Court, of a scholarly judge, a former professor in one of our most distinguished law schools, a man already once confirmed unanimously by the Senate for the second most important court in the country, threatens those liberties.

We do not know how Judge Bork, were he a member of the Supreme Court, would rule on the issues that seem to arouse the most anxiety: on whether the states have the right to require notice to parents on abortions for children, or whether states may require a moment of silence in school, or how far affirmative action under the Fourteenth Amendment and the relevant statutes can extend, and on other issues. But however he would rule, and however these and other matters which arouse such concern in those fiercely opposed to him come out, the major structure of our liberties will be secure with Judge Bork on the Supreme Court. The mainstream of interpretation of the Constitution includes both those who would give it the most expansive interpretation and allow judges to exercise a wide power to redress wrongs and expand rights as they see fit, and those who see a more limited role for the Court, closer to the text and intention of the framers of the Constitution and the Amendments, and who support a larger role for the democratic branches of government. To read out of the "mainstream" the latter is to shortcircuit what should be a debate over principles, and pronounce an unjustified edict of excommunication from the democratic political community.

Henry J. Abraham, University of Virginia; Samuel Arahamsen, CUNY, Grad. Ctr./Brooklyn College; Howard Adelson, CUNY, City College; Judah Adelson, SUNY, New Paltz; Stephen H. Balch, CUNY, John Jay College; Andrew R. Baggaley, Univ. of Pennsylvania; Fred Baumann, Kenyon College; William R. Beer, CUNY, Brooklyn College; Aldo S. Bernardo, SUNY, Binghamton; Walter Berns, American Enterprise Institute; Brand Blanshard, Yale University; Thomas E., Borcherding, Claremont Graduate School; Yale Brozen, University of Chicago; Stanley C. Brubaker, Colgate University; R.C. Buck, University of Wisconsin; John H. Bunzel, Hoover Institution; Nicholas Capaldi, CUNY, Queen College; James S. Coleman, Univ. of Chicago; Werner Dannhauser, Cornell University; Harold Demsetz, Univ. of CA, Los Angeles; Gray Dorsey, Washington University; William A. Earle, Emeritus, Northwestern University; Ross D. Eckert, Claremont McKenna College; Ward Elliott, Claremont McKenna College; Charles Evans, CUNY, City College; Solomon and Bess Fabricant, New York University; Robert K. Faulkner, Boston College; Milton Friedman, Hoover Institution; Lowell Gallaway, Ohio University; L.H. Gann, Hoover Institution; Jules B. Gerard, Washington University; Hilail Gildin, CUNY, Queen College; Nathan Glazer, Harvard University; William C. Green, Boston University; C. Lowell Harriss, Columbia University; Louis G. Heller, CUNY, City College; Gertrude Himmelfarb, CUNY, Graduate Center; Jack Hirshleifer, UCLA; Sidney Hook, Hoover Institution; K.D. Irani, CUNY, City College; Erich Isaac, CUNY, City College; Robert Kagan, Univ. of California at Berkeley; Howard Kaminsky, Florida International U.; Thomas Kando, CA State Univ., Sacramento; Benjamin Klebaner, CUNY, City College; Benjamin Klein, Univ. of CA, Los Angeles; Fred Kort, University of Connecticut; Robert P. Kraynak, Colgate University; Paul Oskar Kristeller, Columbia University; Nino Languilli, St. Francis College; Charles Lofgreen, Claremont McKenna College; Herbert I. London, New York University; Joseph A. Mazzeo, Columbia University; John McCarthy, Sanford University; Paul McGouldrink, SUNY, Binghamton; Bernard D. Meltzer, University of Chicago; Marvin Meyers, Brandeis University; Stuart Miller, San Francisco State University; Katharina Mommsen, Sanford University; Aurelius Morgner, Univ. of Southern California; Allan Nelson, University of Waterloo; Rev. Richard John Neuhaus, Rockford Inst./Ctr. on Religion in Society; W.V. Quine, Harvard University; Steven Rhoads, University of Virginia; Ralph A. Rossum, Claremont McKenna College; Eugene V. Rostow, Yale University; Arnold M. Rothstein, Emeritus—CUNY, City College; Halley D. Sanchez, Univ. of Puerto Rico at Mayaguez; Wolfe W. Schmokel, University of Vermont; George Schwab, CUNY, City College; Paul Seabury, Univ. of California at Berkeley; John R. Searle, Univ. of California at Berkeley; Frederick Seitz, Rockefeller University; Malcolm Sherman, SUNY, Albany; Charles Sherover, CUNY, Hunter College; David Sidorsky, Columbia University; Philip Siegelman, San Francisco State University; Gerald Sirkin, CUNY, City College; Thomas Sowell, Hoover Institution; Edward Taborsky, University of Texas, Austin; Miro M. Todorovich, CUNY, Bronx Community College; Stephen J. Tonsor, University of Michigan; Richard K. Vedder, Ohio University; Arthur Vigdor, Emeritus—CUNY, City College; George Weigel, Catholic Theologian; Judy Wubnig, Cambridge, MA; Cyril Zebot, Georgetown University; Marvin Zimmerman, SUNY, Buffalo; Peter Ahrensdorf, Kenyon College; Armen A. Alchian, UCLA; Maurice Auerbach, St Francis College; R.K. Boutwell, University of Wisconsin; Harry Clor, Kenyon College; Robert Greer Cohn, Stanford University; John Murray Cuddihy, CUNY, Hunter College; Kirk Emmert, Kenyon College; Arnold Harberger, UCLA; Lawrence W. Hyman, Emeritus, CUNY, Brooklyn College; Rael Isaac, Irvington, NY; Pamela Jensen, Kenyon College; Whittle Johnston, University of Virginia; Alphonse Juilland, Stanford University; George L. Kline, Bryn Mawr College; David Leibowitz, Michigan State University; Sullivan S. Marsden, Jr., Stanford University; Clark R. McCauley, Jr., Bryn Mawr College; Arthur Melzer, Michigan State University; A. Mizrahi, Indiana University Northwest; Dean Morse, Columbia University; JoAnn Morse, Barnard College; Allan Nelson, University of Waterloo; Norma L. Newmark, CUNY, Herbert Lehman College; Allan Ornstein, Loyola University; Ibrahim Oweiss, Georgetown University; Thomas L. Pangle, University of Toronto; Jacob M. Price, University of Michigan; Jeremy Rabkin, Cornell University; Bogdan Raditsa, Fairleigh Dickinson Univ.; Harold P. Rusch, University of Wisconsin; Edward Shils, Chicago, IL; Morris Silver, CUNY, City College; Martin Trow, University of CA at Berkeley; George J. Viksnins; Georgetown University; Albert L. Weeks, New York University; Jerry Weinberger, Michigan State University; Arthur J. Weitzman, Northwestern University; Bradford Wilson, Ashland College; Richard M. Zinman, Michigan State University; Rev. Joseph Zrinyi, SJ, Georgetown University.

Mr. SYMMS. Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. INOUYE. Mr. President, I have followed the debates very carefully and I have been a bit confused. The word "politicized" has been used by every speaker as though to politicize was to commit a very evil deed. In fact, one would conclude after listening to these debates that to be a politician is to be akin to a thief. But, Mr. President, all of us are politicians. The President is a politician. Members of the Senate are politicians.

We are men and women who are involved in the art and science of politics. Politics is an essential element in a democracy. No one has ever described the Russian Prime Minister as being a politician or members of the politburo as being politicians. You do not find politicians in a Communist country. You find politicians in a democracy where men and women are able to stand up, debate, discuss, and disagree. There is nothing evil in being a politician.

But since that word "politicized" has been used so often, I believe a few statistics and quotations are justified.

Mr. President, one gets the idea that because of this politicizing the President has not been able to receive a fair hearing on his nominations. Since President Reagan first took his oath of office 6 years ago, he has submitted to the U.S. Senate a total of 379 judicial nominations, 379. It is almost one-half of all the judges in the United States.

Of the 379 nominations 3 were withdrawn and not resubmitted. This is where the Senate advised the President of the United States that these three men were not acceptable, that something was wrong with them. Names were withdrawn and not resubmitted. Three nominations were returned to the President and they were not resubmitted. In other words, the U.S. Senate rejected 6 out of 379 nominations.

Unless someone is suggesting to us that we should have approved every one of them, may I just remind ourselves and the people of the United States that this is the 200th anniversary of the Constitution and among the many words in our Constitution there are those important words that create the executive office and the legislative office. We are in the legislative branch of the Government. Nowhere in the Constitution did our Founding Fathers suggest that we Members of the U.S. Senate should be rubber stamps of the President. In fact, we have been overly generous. No other President has ever received this treatment.

Out of 379, 3 were drawn, 3 rejected.

Mr. President, in listening to those who support the nomination of Judge Bork one would get the impression that the committee hearings constituted a kangaroo court, that the witness was treated unfairly.

For the record, may I submit a few quotations? The first quotation is by the former President pro tempore of the U.S. Senate, a most distinguished Member of this body, the senior Senator from the State of South Carolina. He is the ranking Republican on the Judiciary Committee and this is what he had to say, and I quote:

> Now, Mr. Chairman, in closing I want to say that I think the hearings have been worthwhile and good, and I want to associate myself with the statement made by Senator Heflin [That "I think that everybody on the Republican side and * * * the undecided side will say that you have been completely fair, and I appreciate your fairness in this."] And I want to take this opportunity to express to you my sincere appreciation for the fair and reasonable manner in which you have handled these hearings. I don't know of anyone who would have conducted it in a fairer manner than you did * * * in conducting these hearings, you have stood by your reputation for being fair and just and reasonable.

Thus said the senior Senator from South Carolina, the ranking Republican on the committee.

And these are the words of the distinguished Senator from Iowa, my dear friend, Senator GRASSLEY:

> I want to thank you for the way you have conducted these hearings. You have handled them very well. It has been a very difficult job. You have been under a lot of pressure, but you have handled yourself and the committee extremely well and I want to thank you for that.

Thus said Mr. GRASSLEY.

And the assistant leader of the Republicans, a friend of all of ours, the senior Senator from Wyoming [Mr. SIMPSON], had this to say:

> I want to say, right now that our chairman has been ultimately fair, not only in these hearings, but in everything I have done with him in my 9 years in the Senate. He is very able, very candid, very accommodating, and very courteous to me, as a member of the majority, or the minority. * * *
>
> Mr. Chairman, I thank you. Indeed, you have tried to be fair in a very difficult situation.

Thus said Mr. SIMPSON.

And, now, Mr. President, these are the words of the nominee, Judge Bork:

> Members of the committee, this has been a long, detailed, and often a profoundly interesting 4½ days of hearings. And I want to thank you personally, Mr. Chairman, for the courtesies you have personally extended to me and to my family during this week. I also want to thank all the members of the committee for their patience, their attention, and their general good humor throughout these proceedings. For that I am most deeply grateful.

The chairman spoke:

> My function, as I have viewed it, is not to persuade, but to be part of assuring that all the issues were laid out; that you have a full and fair and thorough opportunity to respond, and to initiate any point that you wished to make. I hope you feel that has been done.

And Judge Bork responded: "I do."

Mr. President, the hearings were fair, just, open, candid, and very democratic. If this is what politicizing means, I hope that we continue to politicize all of our hearings.

I thank the Chair.

Mr. GRASSLEY addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I rise to speak again to my reasons why I think Judge Bork should be approved by this body, but as well to take time to set the record straight.

Before I start with my prepared remarks, Mr. President, I think it is important for those of us who support Judge Bork to speak about whether or not things are done fairly or not. There is absolutely no disagreement between the statements that we made in the Russell caucus room, the hearing there, the complimentary remarks we made to the chairman of the committee for the very fair job he did—and I repeat that—the very fair job he did in conducting that hearing.

But the point, Mr. President, is that it was not the hearing in the Russell caucus room that we refer to when we refer to the unfairness and the kangaroo-type environment in which people in this country are making a judgment upon and about Judge Bork, because there were really two hearings going on during the month of September and one since the committee adjourned.

There was the hearing in the Russell caucus room that was conducted, as most Senate hearings are, with an opportunity for all sides to be heard.

But there was another hearing going on simultaneously and still going on and that is what the public sees about Judge Bork. And that is how the public reacts to the interest groups that have decided to take their case to the grassroots, which in the normal environment of politics, where both proponents and opponents can respond, would be a very rational way to do things in a participatory democracy. But we are not talking about electing judges and Justices to the Supreme Court. We are talking about the appointment of people to the Supreme Court, and not the Senate's appointment to the Supreme Court, but the President's appointment to the Supreme Court with the additional power of advice and consent by the Senate.

And that hearing that went on outside of the Russell caucus room is the one that I want to refer to in my remarks today, and particularly those interest groups that were involved in the official testimony. And, again, I would have to say the chairman was very fair to those of us on the other side. But also as to the statements made by these same groups outside of the Russell caucus room, there was no chance for Judge Bork or any of us on the Senate Judiciary Committee to respond to.

So I rise this morning, Mr. President, to address a tactic that used to be referred to as "the big lie." I am sure my colleagues are familiar with how it has been employed in the past. All you have to do is just repeat the same outrageous charges and repeat them so often that people are persuaded that those charges are true.

Mr. President, this kind of strategy worked in the 1950's. And of course I think we all look back at that period of time as a very dark era in history. I hope that this is not evidence that that era is with us again.

I ask my colleagues to look at not only the debate on Judge Bork that is going on on this floor of the Senate, but give us an opportunity to look inwardly toward this body as well as suggesting what was done on the outside of this body of whether or not the process is the right process and whether, when the Judge Bork issue is behind us, that process ought to be repeated in the future.

Now the strategy of "the big lie" was candidly revealed in a Washington Post column by Mary McGrory on October 6.

It was reported there that when the hearings opened, the liberal lobby groups held daily strategy meetings at 8:30 a.m. At those meetings, they discussed their one goal in orchestrating the test and that goal was, "for everybody to say the same thing;" for everybody that day to say the same thing.

For the past 100 days, the "get Bork" forces have taken the form of a national political campaign machine, complete with pollsters, mobilization plans, "war rooms," and press kits. They have spent millions to willfully smear an American citizen.

Remember the strategy: "Everybody say the same thing." And, particularly, say the same thing on the same day. But in a court of law, and hopefully here in the U.S. Senate, the factfinders who have to decide the issue will have the opportunity to assess the credibility of the witnesses, in this case, the accusers.

So let us examine the past statements of some of these same groups. When we do, we find that they have a history of saying the same thing about Supreme Court nominees.

They also have a shabby record on the facts; so shabby that they have no credibility.

For instance, one noted civil rights lawyer once castigated a Supreme Court nominee's, and these are his words, "record of hostility to the law." And that same nominee's "continued war on the Constitution."

Who was this nominee referred to a few short years ago in our history?

That nominee was Lewis Powell, condemned by this civil rights lawyer. The year was 1971. The occasion was his nomination to the Supreme Court. The witness was a man named Henry Marsh.

This is the same Lewis Powell who some civil rights groups now find to be a paragon of fairness toward civil rights. The same Lewis Powell who the civil rights groups say cannot be replaced by Robert Bork.

Another witness said that the nominee, and I quote, "had already taken sides with the executive. He would be but their echo."

Who was this nominee to the Supreme Court? That nomineee was Lewis Powell again. The year, again, was 1971. The occasion was his nomination to the Supreme Court. The witness was liberal lawyer Paul O'Dwyer.

This is the same Lewis Powell who some in the liberal lobby now apparently think maintains the proper balance between the three branches of government. These same liberals now say that we will negatively alter the balance of the Court if we replace Lewis Powell with Robert Bork.

Another witness, this one from the National Organization of Women. They testified that of this nominee, and I quote: "Justice for women will be ignored or further delayed; which means justice denied." Who was this nominee? Well, again, it was Lewis Powell. Again, Mr. President, this is the same Lewis Powell who some of the so-called women's groups feel cannot be replaced by Robert Bork.

Another witness, this one from liberal National Lawyers Guild, stated that the nominee, and I quote: "does not bend or twist the Constitution. Instead, he totally ignores it."

Who was that nominee? Well, you guessed it again. It was Lewis Powell. This is the same Lewis Powell who apparently now has just the right kind of moderate views of the role of the Supreme Court and what a Justice on that Court ought to do; the same Lewis Powell who, some say, cannot be replaced by Robert Bork; the same Lewis Powell, by the way, who was confirmed by this body, Mr. President, on an 89-1 vote.

Mr. President, the big lie—let me emphasize, the big lie is standard operating procedures for some of these groups. Remember the strategy: Have everyone say the same thing. One of these groups appeared before the Judiciary Committee and had this to say about a nominee before the Supreme Court:

> We oppose his confirmation, not solely because of his consistent opposition to women's rights, but more importantly, because he has demonstrated that his legal opinions on women's issues are based on an apparent personal philosophy and not on the facts and the laws of the cases before him. . . His record as a circuit judge clearly reveals that he cannot fairly, judiciously, and impartially review women's rights cases.

Who was this monster? We might ask who was this monster of a sexist, because I am sure it has got to come out that way in that test. Well, this monster was Justice John Paul Stevens. The year was not 1971, when Powell was put on the Supreme Court. The year was 1975. The occasion was John Paul Stevens' nomination by President Ford to the Supreme Court. The witness who said all those bad things about John Paul Stevens was the president of the National Organization of Women.

Mr. President, and Members of this body, this is the very same John Paul Stevens who was so outside the mainstream on women's issues that this body, this very U.S. Senate voted to confirm him 98 to 0; 98 to 0.

As these examples show, some of these outside groups have a history of always saying the same thing about any nominee not pledged to their liberal agenda for America. However, their biggest problem is that they are always wrong. They are always wrong. The fact is that these attacks by some women and civil rights groups of Lewis Powell and John Paul Stevens were dead wrong. The careers of Powell and Stevens on the Supreme Court have been marked by openmindedness, by high principle and by integrity. It has not been marked in any way by bigotry, by insensitivity, and results-oriented jurisprudence, which has been alleged by all these groups that spoke so distastefully of these outstanding citizens and lawyers at that time, and now outstanding Supreme Court Justices.

I have not always agreed with every opinion authored by Justices Powell and Stevens, but they are without question, without question fairminded Justices. But it just so happens in this environment we are in today, being fairminded is not enough for some in the liberal lobby. You either play their tune without one single off-key note, or you cannot be in their band. That is where we are today, Mr. President and Members of this body, on this nomination. I believe that we are at a crossroads in terms of the Senate's role and I have asked my fellow colleagues to consider the Senate's role in the process as much as Judge Bork himself. Today, or when we vote on this, we can ratify the vicious campaigns of lies and innuendos or we can repudiate it and swear that it is never going to happen again; that we are never going to view a Supreme Court Justice as if it is an elected position, subject to campaigning as we do in our role, running as Senators.

I think, Mr. President, that this is a very critical choice because as I have just shown from recent history, the tactics used and the groups employing them are not in any way an aberration. Indeed, those most responsible have already so much as promised that they are going to do it again. They are going to exercise the big lie again. They are going to say the same thing at the same time again. And they are going to be just as wrong again.

Why are they about this? For them the stakes are no less than control of the Supreme Court itself or of intimidating the President of the United States; intimidating the Senate; intimidating the nominee, and even witnesses who offer to appear on behalf of the nominee, into total capitulation to special-interest politics.

Their "litmus test" finds acceptable only those who will commit to rule a certain way—their way—on every issue, not just a few key issues.

So much for the independent third branch of Government, which the judiciary is meant by our constitutional writers to be, and which it will not be if this process is followed any longer.

To some of these groups, our courts are just another political branch, responsible as a political branch for doling out "desirable" political results to the special interests that lobby them, like some kind of permanent, nonreversible, Appropriations Committee.

What is their message now, these groups that conducted this grass-roots, unfair campaign? That Judge Bork would "reopen old wounds;" that he would "return us to the days of segregated lunch counters;" that he would "turn back the clock" on civil rights.

In Judge Bork's own words, "That is preposterous." His dilemma, however, is one always faced by the target of a smear campaign—it takes longer to disprove the smear than to simply make the smear.

Robert Bork's personal commitment and record on civil rights are exemplary.

Read any of the briefs filed by Solicitor General Bork. As William Rogers, a former Attorney General and Secretary of State testified, Robert Bork often advanced positions on behalf of minorities that went beyond those ultimately adopted by the Supreme Court. Solicitors General have great discretion to file briefs weighing the claims of private parties in cases where they are not required to act on behalf of the Government. Robert Bork used his position to argue more pro-civil rights cases than any Supreme Court nominee since Thurgood Marshall.

Study his record on the court of appeals, where he never rendered a decision less sympathetic to minority or female plaintiffs than the position taken by the Supreme Court or Justice Powell. His opinions are among the most notable civil-rights rulings, especially for women.

Listen to witnesses like Griffin Bell, Attorney General under President Carter, and one of seven former attorneys general to testify on Judge Bork's behalf. He said:

> If I thought he was going to turn back the clock on civil rights, I would not support him * * * I have spent a lot of years of my life in that field of endeavor, and we do have things in pretty good shape now * * * but I have never seen him say anything that would indicate to me or seen anything he has written that he would do anything against civil rights.

Listen to witnesses like Ms. Jewel Lafontant, a former Deputy Solicitor General who served under Robert Bork, or Mr. Roy Innis, a leading national civil rights figure. Both spoke without hesitation before the Judiciary Committee in support of Judge Bork.

I think it is interesting—given the revelations of the past few days—that both Ms. Lafontant and Mr. Innis stated that some in the professional civil rights lobby "turned up the heat" to discourage them from appearing before our committee. It saddens me to think that a movement—long associated with freedom of speech, association, and the championing the rights of individuals against the onslaught of the majority—would be so insecure as to attempt to exercise this kind of censure of those who disagree.

I think Roy Innis captured the essence of the "big lie" when he said,

> My colleagues have chosen to ignore Judge Bork's remarkable record of concrete civil rights achievement and have latched onto, in some cases distorted some of the man's ancient academic views in order to whip people into an irrational hysteria. To defeat him on this basis would be more than unfortunate.
>
> What is upsetting my colleagues, I believe, is the notion that Judge Bork's exercise of judicial restraint will not guarantee the results that many of them want irrespective of what the Constitution and the law requires. The tragedy of this misguided view is that this desire for an activist judiciary clearly shows how out of touch much of the civil rights movement is with the problems facing black Americans in the 1980's.
>
> Rampant crime, inadequate education, single-parent families, teenage unemployment, AIDS, and drug-abuse—unlike desegregation and equal employment opportunities—are not problems that can be solved by even the most activist judiciary.

When some in the interest groups cannot rebut Judge Bork's pro-civil rights record, or the voices of reason like Judge Bell or Roy Innis, they resort to a loud chorus of slogans and falsehoods.

Let us face it: the reason for this noisy campaign of lies and fear has nothing to do with "reopening old wounds," "segregated lunch counters," or even poll taxes, literacy tests and restrictive covenants.

Those bygone issues and overworked slogans are but a smokescreen for today's special-interest agenda—a society racially polarized due to strict adherence to numerical quotas. If some of the special interest pleaders have their way, school admissions, government contracts, employment and other opportunities will all be distributed by courts on the basis of race, not merit.

Judge Bork has amply demonstrated his strong commitment to racial fairness as both Solicitor General and as a judge. The fact is, the interest groups fear he will be too fair—that he will apply the Constitution in a colorblind manner as the framers of the 14th amendment intended when they wrote the words "no State shall * * * deny to any person * * * the equal protection of the laws."

Minorities above all others ought to demand a justice who practices judicial restraint and a fair reading of the Constitution. After all, until fairly recently, Supreme Court history demonstrated how minorities are oppressed by activist judges. See Plessy versus Ferguson and Dred Scott as the two infamous examples. Do you think it cannot happen? This can happen again—to all our freedoms—unless we install judges who live by the credo of judicial restraint.

A second charge of those opposing Judge Bork concerns claims that he would not apply the equal protection clause of the 14th amendment in a manner consistent with liberal orthodoxy. This charge is a distortion of Judge Bork's views on equal protection, the status of existing law under the clause, and its significance as a source of legal progress for women.

Recall, however, the strategy of "the big lie" that I told you about—keep repeating the charge that women "fear" Judge Bork, and eventually people will start to believe it.

But let us break down this big lie.

First, the extreme preoccupation with the equal protection clause as the focus of the battle for women's rights is fundamentally off-base. The fact is that the vast majority of legal gains for women have been enacted by legislators by way of the numerous statutes prohibiting sex discrimination.

The fact is that gains for women have little to do with the equal protection clause. For example, title VII of the 1964 Civil Rights Act prohibits discrimination in all forms of employment. This has been the catalyst for female advances in the workplace all across America. Other major sources of women's rights are the Equal Pay Act, title IX of the Civil Rights Act, which prohibits gender discrimination in education programs, and a host of other Federal and State laws prohibiting discrimination.

Unlike the equal protection clause, these statutes apply even without State action. You would never know it by listening to some so-called women's groups, but the equal protection clause has played a minor role in the legal progress of women. Instead, the dominant source of rights are the statutes enacted by democratically elected representatives.

Judge Bork's record in vigorously enforcing those statutes in the Court of Appeals has been impeccable, as you would expect of a judge who has never been reversed.

Proponents of "the big lie" are not just wrong on the significance of the equal protection clause for women's rights. They then go on to deliberately and repeatedly misstate Judge Bork's position.

The equal protection clause of the 14th amendment states that no State shall deprive "any person" of the equal protection of the law. In applying this provision, the courts have adopted various levels of "scrutiny" to differing classifications. For example, measures discriminating on the basis of race are subjected to "strict scrutiny" and can be justified only by a compelling State interest. This means such distinctions will almost always be struck down.

Measures discriminating on other, noninvidious grounds are subjected to a much lesser degree of scrutiny, known as the rational basis test. Under this standard, the distinctions will be upheld if there is a rational regulatory basis for them.

Until about 15 years ago, gender-based classifications were subjected to this "rational basis" test for equal protection purposes. In subsequent cases, some Supreme Court cases have applied what is called intermediate or heightened scrutiny to gender-based classifications challenged under the equal protection clause. However, the Supreme Court justices have been sharply divided on this issue, and the appropriate level of scrutiny to be applied in gender cases has remained a matter of continuing debate within the Court.

During this proceeding, Judge Bork has been attacked on two different levels in this area. First, he is falsely charged with taking the position that women are not covered by the equal protection clause. This is simply not true—it is a falsehood because that is not the case.

Judge Bork testified clearly and repeatedly that the equal protection clause applies to women, as it applies to all persons. He would apply its protections to women as to all other persons.

Knowing full well that Judge Bork applies the equal protection clause to women, his "big lie" opponents move on to create an entirely misleading "straw man." This one on the level of "scrutiny" he would use in gender-based cases.

Because Judge Bork testified that he, like Justice John Paul Stevens, disagrees with the artificial and newly created "multi-tier" approach, his opponents charge that he will deny women the full benefit of the equal protection clause.

The "reasonableness" standard employed by Justice Stevens—and endorsed by Judge Bork—provides a responsible and effective alternative to the "multi-tier" approach, which has created only confusion. Judge Bork's test—like that of Justice Stevens—would invariably strike-down race-based classifications, since there is almost never a legitimate basis for a distinction based on race. It would also reject gender-based classifications, except in those occasional cases—such as women in combat—where a clearly justified distinction exists.

But this reasonable explanation is not enough to suit Judge Bork's "big lie" opposition: For them, his failure to commit himself to a particular, liberal orthodox position on this makes him ineligible to serve the Court.

So the "big lie" crowd in the end is both irresponsible and uninformed.

The fact is that in the most significant gender-based equal protection case of recent years—Mississippi University for Women versus Hogan—Justice Powell contended that a "rational basis" test, not "heightened scrutiny," was appropriate. Chief Justice Burger and Justice Rehnquist agreed.

In the 1976 case of Craig versus Boren, the Justices were in widespread disagreement over the proper standard. Quite simply, this is an unsettled area of the law. Yet many of my colleagues opposing Judge Bork condemn him as unfit to serve merely because he would opt for the perfectly responsible "reasonableness" test already used by Justice Stevens. Now, Mr. President, would they vote against Justice Stevens, whom this body confirmed on a 98 to 0 vote?

What is worse than falsely portraying Judge Bork's view, the "get Bork" crowd wants to force any nominee to "kowtow" to a Senator's individual politics on this particular issue as a condition for confirmation. In this way, the Senate becomes a kind of "enforcer"—a "bully" of the liberal, ideological orthodoxy. In my judgment, the Senate violates its traditional role, and the separation of powers, with such a litmus test.

If the Senate will confirm only those nominees with an ideology that conforms to what prevails in the Senate at a given time, it signals that the Senate wants the Court to decide constitutional issues not on an independent, judicial basis—but on a political, ideological basis.

In closing, Mr. President, I would like to quote Prof. Paul Bator of the University of Chicago Law School. When he was asked to speculate on the consequences of Judge Bork's rejection for the Court, he said:

> I think the consequences would be very sad, because I think that the precedent that would be set is that a nomination of the greatest possible distinction, in terms of intellectual and professional capacities, and in terms of moral integrity, can be done in, can be hounded to death on the basis of what are very short-range and partisan considerations * * * and what we are seeing today is really * * * a very sad and aggressive effort to excommunicate all who do not agree with a single * * * narrow and partisan version of what the Constitution must mean.

A very important quote for us to think about in these final days as we consider this nomination—a very distinguished university president.

Mr. President, I think that sums up where the "big lie" leads us. I ask my colleagues to reflect on this statement * * * on what the Senate has here wrought. I yield the floor.

Mr. ROTH. Mr. President, Senate confirmation of a Supreme Court Justice is a very serious responsibility under our Constitution. Consequently, I have been concerned by the attempts of some outside groups to politicize the confirmation process and to misrepresent the record of the nominee, Judge Robert Bork.

Under the Constitution the President has broad discretion in selecting a Supreme Court nominee. The function of the Senate cannot be equal to that of the President for obvious practical reasons. But neither was the Senate given its role as a matter of ceremony. As Hamilton explained in the Federalist Papers, the role of the Senate is to check whether the nominee is qualified. How the Senate has exercised its responsibility is a rich and colorful history, with nominations often hinging on Senate attitudes toward the President more than toward the nominees.

As the Senate's role has evolved over time, the Senate has limited its analysis to the nominee's objective qualifications regarding his or her experience, intelligence, temperament, competence, and integrity. However, as any witness to the Bork confirmation process knows, the Senate departed from its customary role. While some supporters of the Bork nomination might decry the double standard being applied, I am persuaded that our general practice in this century may have been too narrow. Yet, the present remedy is excessive.

I am very troubled that the questioning of the nominee was too specific and too detailed. In effect, committee members were extracting campaign promises from the nominee who gave them under oath. In doing this the Senate is seeking to control the result of Supreme Court deliberations. In my opinion, this compromises the independence of the judiciary and infringes on the separation of powers.

We have no business trying to get a nominee to decide cases our way. As a corollary, we must not deny confirmation because a nominee would decide this case or that case contrary to our preferences. It is not the proper role of the Senate to dictate how specific cases must be decided as a condition of confirmation. Never before has the Senate done so—until now.

Not only is such an approach offensive to the Constitution, it is unfair to the nominee. Constitutional law is a diverse and complex subject. If it becomes the practice to grill the nominee on every aspect of constitutional law in order to determine whether there is an area of disagreement, for which confirmation is denied, then no nominee will ever pass muster. For no two people will ever agree on all aspects of constitutional law.

While the distortions and misrepresentations surrounding the Bork nomination are deplorable, I am even more concerned by the new process I have described. Something is amiss when one Senator after another says, in effect, "while Judge Bork possesses all the objective qualifications for the Supreme Court, I will vote no because I disagree with him on this first amendment issue or that fourth amendment issue," or whatever specific issue the Senator chooses. We should not overlook the fact that the next Supreme Court Justice will face thousands of issues, not just one or two of interest today. Nor should we overlook our own shortcomings in being able to predict what those issues will be.

While I, like everyone else, disagree with Judge Bork on some issues, that is no reason, in my opinion, on which to base a no vote or a yes vote. Nor do I believe, as I said earlier, that the Senate should restrict itself simply to reviewing the objective qualifications of the nominee. I believe the Senate should take a middle ground between looking only at objective factors and grilling the nominee about specific issues: the Senate should review, in addition to the objective factors, the general judicial philosophy of the nominee to determine whether he or she fully appreciates the role of the Supreme Court in our democracy.

For most of the 200 years of our history under the Constitution, the proper role of the Supreme Court was not in doubt. Hamilton and Jefferson, who disagreed on many issues, concurred in the fundamental belief that the judiciary's role is to exercise judgment, not will, and to interpret law, not make law. They both understood that the special contribution of America to the history of the world—a written constitution—would be lost if judges substituted their views for those of the framers.

The Supreme Court has shared this faith in constitutional governance until modern times. That does not mean the Supreme Court never made a mistake. Hardly. Judicial restraint is not a magic formula that yields the single perfect answer to every issue. Rather, it is a way of approaching legal issues that excludes some very wrong answers.

Nor should one assume that a Supreme Court that expresses faith in constitutional governance never sins against it. In earlier days, judicial activists struck down laws abolishing slavery, improving working conditions, and establishing the New Deal. That this was judicial activism by the right makes it neither more nor less desirable. Judicial activism is equally wrong whether it favors the right or the left. In more recent days, liberal activists have created new constitutional rights to overprotect criminals and have gone overboard in requiring forced busing of schoolchildren.

Just this year, in an ironic celebration of the bicentennial, a judge has taken charge of a locality's taxing powers to impose taxes on citizens that they have already rejected by referendum. Two hundred years ago we believed that taxation without representation is tyranny. Today, it is not tyranny, just judicial activism.

By confusing the judicial and the legislative roles, judicial activism encroaches on the prerogatives of the legislature. When judges act like politicians in robes, we all lose. The ability of citizens to control their Government and their lives is diminished since judges are not accountable to the people. And respect for the judiciary declines as people begin to understand what is happening. That could bode ill for the future.

Judge Bork has devoted his considerable talents to demonstrating the errors of judicial activism. But in what is the most troubling and most shocking aspect of this confirmation process, Robert Bork is the first nominee in the history of the Republic to be denied confirmation for expressing opposition to judicial activism.

Imagine that Judge Bork agrees with our Founding Fathers and with Supreme Court opinions spanning nearly two centuries that the proper role of the judge lies in judicial restraint. And for that he is denied confirmation.

The judicial activism of today is different from that of yesteryear. No one owned up to it in the past, but today it is admitted and defended as a greater good. While today's activism may appear more honest, it is, my opinion, more dangerous.

Judicial activism is not only antithetical to our democratic institutions, it undermines respect for law itself. Today's judicial activists justify themselves not on the basis of the law but on the basis of results. Thus activists make a joke out of the amendment process in article V of the Constitution by circumventing its democratic requirements and taking a short cut requiring only 5 votes on the Supreme Court. Activists likewise make a joke out of article VI which requires that judges take an oath to support the Constitution. Activists take an oath only to their own creativity. If activism is acceptable, why take an oath at all?

Inherent in the concept of law itself is the sense of obligation. But what constrains an activist seeking to create new law? It can't be anything in the Constitution.

Members of Congress ought to be particularly hostile to judicial activism. Not only does it diminish our role as representatives accountable to the people, it makes us less than equal with the Supreme Court. For we are bound by the Constitution, whereas an activist Supreme Court is above the Constitution.

Judicial activism not only disparages the Congress but also deprecates Federalism and the States themselves. The committee's majority report asserts that judicial restraint is repugnant to our forefather's belief in God-given "inalienable rights," that assertion overlooks the simple fact of history that our forefathers were already citizens of the various States and were already enjoying their inalienable rights when the established a Federal Government with limited authority to be exercised by three limited branches.

In looking for vindication of their rights, our forefathers looked primarily to their State constitutions, their State legislatures, and their State courts. The Federal Constitution was never thought to establish a complete Government or a complete list of rights. The Federal Government is not our only government. But since today's activists don't like the results that come from the States and, moreover, don't like the results that come from the political branches of the Federal Government, it has become necessary in their eyes to legitimize an activist Supreme Court, a court that can look beyond the law and create new inalienable rights.

I am somewhat perplexed that such an antilegal doctrine could gain such acceptance in legal circles. Perhaps it is merely short-sighted enjoyment of current results. Perhaps it is the notion that if having some rights is good, having more rights is better. But if that were true, we would be tripping over ourselves in offering bills and amendments. Why don't we simply pass every proposal introduced in this Chamber and go home?

I am continually impressed by the wisdom of the framers and by our own shortcomings. Governance is something more than the creation of more and more rights. Under the law, a right is the validation of an interest. The framers recognized that we as a people have competing interests. The purpose of the Congress is to achieve an accommodation of those conflicting interests. It is not possible to govern by creating conflicting rights.

In my opinion, the notion underlying judicial activism that we are all better off to the extent more rights are created is naive. Are victims of crime better off when criminals go free on the basis of some new technicality?

Sometimes it is in the best interests of the Nation to create new rights and sometimes it is not. That's why we established the Congress—to make those choices. That is not why we established the Supreme Court.

It is ironic that it is Robert Bork who subscribes to this textbook explanation of constitutional governance, for which he is criticized as an extremist. If Robert Bork is an extremist, what word is left in the English language to describe his critics?

In summary, Robert Bork has demonstrated that he has a proper understanding of the role of the Supreme Court and that his critics do not. He has, as we all know, an excellent record as a lawyer and a judge.

He served with distinction as Solicitor General and has an exemplary record as an appellate judge. None of his majority opinions has ever been reversed by the Supreme Court and six of his dissents have become the majority view of the Supreme Court. His confirmation is supported by seven Attorneys General of both political parties, by President Ford, and by President Carter's White House Counsel, Lloyd Cutler. Chief Justice Burger testified that Robert Bork is as qualified a nominee as he has seen in his 50 years of professional life.

Mr. President, for these reasons I support the nomination.

Thank you.

Mr. PROXMIRE addressed the Chair.

The PRESIDING OFFICER (Mr. KERRY). The Senator from Wisconsin.

Mr. PROXMIRE. Mr. President, I have not made up my mind on the confirmation of the nomination of Robert Bork. There is no question in my mind that he has an excellent mind and he has a great deal of experience, and nobody, to the best of my knowledge, has questioned his integrity. But there are elements of Mr. Bork's background that trouble me.

Yesterday, I was visited by one of his strongest supporters and was told that the committee report is not accurate, that there are inaccuracies in it, and, as it was put by the person who visited me, they were lies.

The initial part of the committee report is very brief. It is only seven pages, and I would like to ask the distinguished manager of the bill on the majority side, Senator BIDEN, if he can respond to some questions in connection with this.

One of the most troubling parts of this report is this. It says:

> For the first time since the American Bar Association's Standing Committee on Federal Judiciary began evaluating Supreme Court nominees, a substantial minority of the standing committee found a Supreme Court nominee to be "not qualified" to serve on the Nation's highest court.

It points out that 10 members said "well qualified," 1 said "not opposed," and 4 said "not qualified."

The report states:

> No Supreme Court nominee who has received even a single "not qualified" vote from the standing committee has ever been confirmed by the Senate.

I ask the distinguished chairman of the Judiciary Committee: Has that statement ever been successfully challenged? Is there any documentation to refute that assertion?

Mr. BIDEN. My response is that the committee report accurately states that three members of the ABA committee said in 1971 that they were not opposed to confirmation. "Not opposed" is the language used in the report.

The Senator may know that for a Supreme Court nominee, the ABA allows their members to vote one of three ways: well qualified, not opposed, or not qualified.

"Not opposed" is a little bit like—and this is the characterization of the Senator from Delaware—passing the vote or voting "Present." "Not opposed" means just what it says—not for, not opposed.

In 1971, there were three members who voted "not opposed."

The report did not use the words "not qualified." It says "not opposed."

If I get a copy of the report, I believe that is accurate.

In response to the Senator's question, the report is accurate. There was one time in 1971 when the ABA had three members of the selection committee vote "not opposed," but they did not vote, as in the case of George Bork, "not qualified."

Mr. PROXMIRE. So in this case four voted "not qualified."

Mr. BIDEN. "Not qualified," and 1 voted "not opposed," and 10 voted "qualified," or the exact terminology is "well qualified."

Mr. PROXMIRE. What puzzles this Senator as a nonlawyer is how four distinguished members of the American Bar Association can say that a man with the experience of Judge Bork, a man who has served as a distinguished faculty member of one of the greatest law schools in the country, the Yale Law School, a man who has written widely, a man who has served in several administrations, and a man who has served on the appeals court for years, a man of unquestioned intellectual capacity, how can they say he is not qualified?

I know among the elements considered are the prospective nominee's compassion, decisiveness, openmindedness, sensitivity, courtesy, patience, freedom from bias, and commitment to equal justice.

Were these the factors that made them say that in spite of his experience, in spite of his intellect, in spite of his extensive writing, which is highly respected, that he was not qualified?

Mr. BIDEN. If I can answer the question by giving a very brief background, the ABA has jealously guarded their internal minutes and they have been less than forthcoming over the years with the exact rationale as to why they reached various conclusions for lower court judges as well as Supreme Court Judges. They have been on the end of criticism, the criticism directed at them from the Senator from Utah as well as the Senator from Delaware on occasion because it is not like you would expect a court hearing where there is a transcript, where there is a detailed analysis of why they vote the way they did.

But having said that, let me suggest to the Senator that Judge Harold Tyler who was the chair of the standing committee, a former Federal judge and a former high-ranking member of the Justice Department, came to deliver the report of the ABA for the minority as well as the majority, minority meaning those 4 who were against Judge Bork saying not qualified, the 1 saying not opposed, and the 10 saying well qualified; he spoke for all of them. We had entertained the idea of asking the dissenters to come in. We do not know who the dissenters were officially. There were a lot of rumors who they were, but we do not know who they were. Judge Tyler, and I think he is probably correct, refused to name specifically who voted for and against the judge and strongly pleaded with me not to subpoena them to come for fear that if we do it would chill future deliberations which are held in confidence and confidentiality and in private.

Mr. PROXMIRE. The Senator says he was wrong in doing that?

Mr. BIDEN. I think he was probably right in doing that, quite frankly. That is why I did not insist on the minority, whoever they were, coming to testify.

Now, having said that, Judge Tyler explained that the judicial dissenters, the four who said not qualified, were evaluating, in his words, "judicial temperament," which, according to the ABA, includes all the things that the Senator said.

Now, the spokesperson, the chair, did not come in, though, and say to us in the hearings and in response to some tough questioning from all members, and specifically suggest whether it was compassion, decisiveness, openmindedness, whatever. The chair did deny that it was politically or ideologically motivated.

So all we can do is go by the record under oath what Judge Tyler said, and what he said was to deny that it was political or ideological but did not specify in any detail as to how they arrived at the conclusion other than they did it according to ABA rules, according to Judge Tyler, the chair of the standing committee.

Mr. PROXMIRE. Would the chairman characterize the investigation conducted by the American Bar Association when they came to this very unusual conclusion of having four saying not qualified, that it was extraordinarily thorough. I got the impression from reading the report that it felt that way. Let me read why.

It said:

> The 15 members of the ABA Standing Committee conducted an extensive investigation of Judge Bork, including interviews with five members of the Supreme Court, with many of his colleagues on the D.C. Circuit Court of Appeals, and with approximately 170 other federal and state court judges, including female and minority members of the bench, throughout the United States. The ABA Committee also interviewed approximately 150 practicing attorneys, 79 law school deans and professors, 11 of Judge Bork's former law clerks and a number of present or former lawyers who served under Judge Bork in the office of the Solicitor General when he headed that office.

Then it says a little further down:

> Finally, Judge Bork was personally interviewed on two separate occasions, for a total of about six hours, by three members of the ABA Standing Committee. A second interview was unprecedented for a Supreme Court nominee, but was considered necessary because of "some additional questions" that arose from discussion among members of the ABA Committee and submissions of various groups.

In the many years the Senator from Delaware served on the Judiciary Committee, would he say this is an extraordinarily thorough investigation of a Supreme Court nominee?

Mr. BIDEN. I would, but in fairness let me say that I am reluctant to characterize it beyond saying that it was the most extensive that I am aware of. It was one where Judge Bork himself was before either individuals in the committee or more than one member of the committee, meaning the ABA standing committee, for a total of 6 hours.

Keep in mind, I say to my colleague from Wisconsin, Judge Bork's views and Judge Bork's judicial attitude and Judge Bork's judicial competence have generated a great deal of division within the legal community as a whole. Two thousand—two thousand—present teaching faculty members at the American law schools, 2,000 said

Judge Bork should not be a Supreme Court Justice.

Mr. PROXMIRE. That is my next question. As I understand it, the Senator is exactly right, 2,000, as I read the report, a little later on, to be a little more precise 1,925 law professors opposing Judge Bork's confirmation and then they said this:

> This figure represents nearly 40 percent of the full-time law faculty at American Bar Association-accredited law schools in 47 States——

And so forth.

Mr. BIDEN. That is correct, and the reason I get 2,000 there are 32 deans also. So, when you count the deans from Harvard Law School and Georgetown, now there were deans, for example, I believe from BYU and other schools, there were six deans that came and testified for him, the point being, the only point I am trying to make is I cannot get inside the mind of the ABA panel which is sometimes very cryptic and I am not the biggest fan of the process, I must acknowledge to the Senator.

Having said that, I think the reason why this was so extraordinary is because Judge Bork is such an extraordinary man, he generates very strong feelings for and against him because he has been so outspoken, so intellectually probing, so different in many cases on constitutional principles that all of those things were read into the RECORD.

For example, if I can make one slight digression, before the debate began, before the committee hearings began, I was here on the floor of the U.S. Senate with one of my distinguished colleagues from Kentucky, Senator MCCONNELL, and Senator MCCONNELL was pointing out that we should not make a single-issue test and we should just look at judicial temperament.

I said to the distinguished Senator at the time. I said, "How would you feel about a judge or a prospective nominee if they had ruled a certain way on a case?" And I mentioned Brown versus the Board of Education, explicitly, one that Judge Bork did not, did not I emphasize, take issue with. All right.

Well, obviously, if someone disagreed with Brown versus Board of Education, he said, I am paraphrasing him, I could not be for him because that would reflect on their judicial temperament, because obviously they could not be that far out of the mainstream and have a sound judicial temperament.

Whether or not that is correct, I cite that as a single Senator who uses judicial temperament as a way to reach a conclusion, depending on how a judge reaches a conclusion in a case.

I cannot get inside the minds of ABA members and conclude when they say "judicial temperament" and they say which according to the ABA definition includes compassion, decisiveness, open-mindedness, sensitivity, courtesy, patience, freedom from bias, and commitment to equality of justice, I cannot vouch that none of the members of that committee who dissented did not sit and say, well, because of Judge Bork's view on privacy, I can conclude that means he is not sensitive or not compassionate or not open-minded, and therefore lacks judicial temperament. I do not know how they arrived at the decision except Judge Tyler argued strenuously that it was not politically motivated in a partisan sense and was not ideologically motivated and was in accordance with ABA rules.

Mr. PROXMIRE. Now, I am very impressed by the fact that 40 percent—almost 40 percent—of the entire faculty of the accredited law schools in this country have gone on record against Judge Bork. Now, some people will say, "Well, 60 percent are for him."

Mr. BIDEN. Well, that is not correct.

Mr. PROXMIRE. But I take it the 40 percent that have gone on record impressed me because I would think most law school professors would not go on record at all. Many of them would not have an opinion, many of them might have an opinion against the Justice but might not want to make it public.

Is that not an enormously telling judgment when you consider the fact that these are law school professors whose life is devoted to teaching the law, understanding the law, teaching it to lawyers who were moving on?

Mr. BIDEN. In fairness to Judge Bork, I believe that, although there were only 99 professors who went on record for him and close to 2,000 against him, I think the reason why so many were against him was not because they did not think him intellectually competent, a good professor, or a legal scholar, but because, as he pointed out in the hearings and other witnesses pointed out on his behalf, his views are so different from the mainstream of present American judicial philosophy and teaching in the schools that he would generate that kind of change.

For example, throughout the history of American jurisprudence, there have been every 30 to 60 years swings in the judicial philosophy pendulum in this country from Cardozo to Frankfurter and on. Judge Bork, I believe, I say to my friend from Wisconsin, is on the cutting edge of a school of thought referred to as the school of law and economics. Mr. Posner is part of that, out of the University of Chicago.

I think one of the reasons why he generated such strong opposition from his colleagues—and almost every one of those letters that came in that were against him attested to his intellectual ability, honesty, and integrity—but I believe the reason they are against him is because he was an extraordinary man and he—I hate to use the expression to say different—but he departs in so many critical places from what has been the last 20 or 30 years of American jurisprudence.

So, again, I want to emphasize that they are not against him, as I have read the letters that came in—and I admit I did not read them all—because he was viewed as a lightweight, because he was viewed as dishonest, because of any of those things, but because he was so different than they in their thinking and in what most of them wrote.

One other point I would make on that. I could personally attest to having spoken to several of the Nation's most prestigious law deans, presidents of major universities, who called me to tell me that they really hoped Judge Bork would not go on the Court, but they did not want to come out publicly against him.

And the reason I bother to tell you that is I think it is totally inaccurate to suggest that because 40 percent took the time to write and say "We are against him," that the remaining 60 percent believe he should be on the Court.

Mr. PROXMIRE. As far as the record is concerned, it apparently shows that 40 percent of all professors in this country from accredited law schools went on record against him and less than 100 went on record for him; is that right?

Mr. BIDEN. Correct.

Now, again, there may be more than 100 that would be on record but who are not on record and who are for him. But only 100 went on record for him. Six law deans came and testified for him. Thirty-two law deans wrote against him.

Again, Judge Bork has been in the caldron of the debate on judicial philosophy in this country for the past 20 years. He has been the lightning rod, the center of the intellectual gravamen of one of the ends of that debate. And that is the very reason, by the way, why the Senator from Delaware has concluded that he is against him, because he does such, in my view, such an antiseptic and narrow reading of the Constitution.

It is an oversimplification to suggest this, but I think it is fair to say that those 40 percent of the teachers in law schools today, accredited ABA schools, share a similar view of the Senator from Delaware: that his view is antiseptic, it is narrow, it is not particularly appropriate for the 1990's.

Mr. PROXMIRE. Let me ask you a question about an area of substance that is important to this Senator, because I have been concerned, as the

Senator may know, with the economics of our country.

Dean Pitofsky, of Georgetown, a highly respected and fine law school, said about Judge Bork on antitrust, and I quote from page 77 of the report:

> As a result, it is likely that this would be a very difficult country.

If Judge Bork's view of antitrust prevails.

> Large firms could behave far more aggressively against rivals without fear of monopolization charges, each industry could become concentrated by merger to the point where only two or three firms remained, and wholesalers and retailers would be under the thumb of the suppliers as to where and at what price they can sell and what brands they can carry. Firms might continue to display vigorous competitive characteristics, but that would only be as a result of market forces. The antitrust laws would be available as a check should market forces fail to work properly.

Now, that is a very, very severe criticism in the antitrust area.

In my view, one of the great strengths of our country is the Sherman Act and the various other antitrust enactments that the Congress has imposed over the last 100 years on a bipartisan basis, Republicans and Democrats agreeing that, above all, we have to have a competitive economy.

So I want to ask the chairman if there was any view on antitrust that contradicted Pitofsky and indicated that this kind of antitrust view that Bork had, had been distorted in any way by Dean Pitofsky.

(Mr. FOWLER assumed the chair.)

Mr. BIDEN. Let me answer that in two ways. First, there was no disagreement about whether or not the statement made by the dean—and he was, I assume, very careful in the choice of his words, as the Senator from Delaware attempted to be.

Quoting from the same page, same paragraph, he says: "As a result, it is likely that this would be a very different country." And he goes on to point out if Judge Bork's views had been adopted. He is not saying if Judge Bork got on the Court it would be very different. He is saying if he got on the Court and his views prevailed.

Let me just read, if you have a moment, from the testimony of Judge Bork. Judge Bork wrote his famous book and one that was quoted, as pointed out—the second way to answer it—as the Senator from Utah and others very forthrightly and skillfully pointed out during the hearing that many in the economic field and many on the court and some on the Supreme Court have been moving toward Judge Bork's view. So there is no disagreement on what his view is. But it would not be appropriate to say that it is viewed as so outlandish that respectable people, including members of the Court, have also moved toward it. The Court has not fully, but some have.

Now, having said that, let me amplify for a moment on what Judge Bork said at the hearing. Judge Bork expressed his long-held views on antitrust laws. Unlike other areas of the law, he has not tried to distance himself in any way from his views. He said that he could give assurance that the antitrust laws would be enforced "but it will have to be according to my understanding of what the law means and what the economics means." That is volume 1, page 342 of the hearing testimony.

Judge Bork then reaffirmed his position on vertical price fixing should be legal per se, which is one of the points that the Senator spoke to and has been in the forefront of defending the Sherman Act and the other antitrust provisions in Congresses past.

He claimed that price-fixing between a manufacturer and a dealer could be justified by increasing competition in dealer services which might result. The argument he made, and some proponents agree with it, he said, and I remember the case, he said, "If you go downtown to a discount store, sure you can buy the TV more cheaply. But," he said, "they won't carry as much of the line. Now," he said, "if you allow the price-fixing, if you allow the manufacturer to tell Woodies" or I forget which store he named—Marshall Field—he said, "If you allow the manufacturer to tell Marshall Field that you must hire such and such a price for the television, then Marshall Field will carry the entire line of those televisions, thereby giving the consumer a greater choice, though it is at a higher price, a greater choice."

So he goes on to argue, therefore, this is not anticonsumer, it is proconsumer. The price will be higher, but selection will be greater, the point being that vertical integration, vertical price-fixing, I should say, is all right per se. Right now, it is the flip.

Let me go on just a moment longer. He said: "I may be wrong about resale price maintenance, because there may be new economic information on transition costs." He said, "All they have to do is say no resale price maintenance and it will be all right."

Judge Bork affirmed his views on mergers between competing companies. He said: "I do not think two or three companies can control the market unless they conspire, but if they could it" would be all right. Those were my words, the last four words.

He repudiates past statements that two companies in a market would be enough for competition. The view in the Congress in passing the Clayton Act would not allow him to do that, allow only two companies—that is at page 345. And he indicated for the first time that he would go along with the will of Congress in the antitrust field even if he thought the judgment of Congress was mistaken. He has said some very harsh things about the Congress, which is probably shared by some Members of this body, that the Congress is incapable of making difficult economic decisions. Therefore, when it makes decisions about antitrust, it really cannot direct the Court because none of us are smart enough in here to know—which prompted, by the way, one of the Members to suggest that maybe the Congress might be smart enough for individual Members, but it was the business of the Congress.

It seemed strange, by the way—editorial comment by the Senator from Delaware. It seems strange to the Senator from Delaware that here is a man who calls himself a strict constructionist; who calls himself—what is the exact phrase he uses? I cannot remember the exact phrase he uses. But original intent is his notion. He has looked at the Constitution for precisely what it means. That is what you must look at.

So he finds, for example, since there is no right of privacy listed, a generalized right of privacy, it does not exist. He goes down the line. But when it comes to antitrust he says: Hey, look, if the judge thinks that what the Congress did did not make any sense, then he does not have a pay attention to it because the Congress does not know what it is talking about in this field. It is a complicated field.

So he gives great latitude to judges to disregard the Congress in the area of antitrust but he wants the Court to follow precisely what the Constitution says and what the Congress says in all other fields.

Again, it has been the area where he is known—I conclude by saying he is known in the field among those 2,000 or 1,900 professors who were against him, as well as those who did not speak, as well as those who are for him—no one denies that he is the leading expert in antitrust in America. He has written more about it than anyone else. But that his views are significantly different than the views that have been the prevailing view in antitrust for the past 40 years.

Mr. HATCH. Will the Senator yield?

Mr. PROXMIRE. May I yield, Mr. President, without losing the right to the floor?

The PRESIDING OFFICER. Without objection.

Mr. HATCH. Let me just say that I believe that his position in front of the committee has been somewhat mischaracterized. I do not believe that Judge Bork indicated in any way that he would supersede Congress' wishes to impose his views in antitrust upon the jurisprudence of this country. As a matter of fact, it was precisely the contrary.

He is the leading advocate for support of congressional views on the bench today. He is the leading advocate that judges should interpret the laws, not make laws. I do not think there is any interpretation of the antitrust views of Judge Bork that would lead one to believe that he would be an activist, interventionist with regard to antitrust laws.

Mr. PROXMIRE. Would the Senator yield on that point?

Mr. HATCH. Sure.

Mr. PROXMIRE. What troubles me is that, as I understand it, Mr. Bork has not always been quite consistent in that view. What the chairman of the committee pointed out as the Bork lack of respect for Congress and Congress' intelligence in the economic area—he may be right about that, but that seems to contradict——

Mr. HATCH. I think you have pointed that out almost every morning you have been here.

Mr. PROXMIRE. I would agree we have been far from perfect. But that would seem to undermine in some respect the view that he would respect whatever Congress did with respect to antitrust.

Mr. HATCH. With all due respect to the Senator from Wisconsin, the fact of the matter is that he does not express a detrimental view of Congress. He does acknowledge that Congress has not gotten its house in order. I think all of us acknowledge that. I do not know of any Member of Congress who does not decry the failure of us to get our house in order.

But I might add that the report of the majority, really, concerning Judge Bork's antitrust views as extremist or extreme, and as advocating judicial activism, I think that report is far-fetched at best, really.

As to whether Judge Bork's views are extreme, the Senator declined to mention that 15 past chairmen of the American Bar Association's antitrust section wrote to report to the committee that Judge Bork's views are mainstream and that they accept those views.

Mr. BIDEN. If the Senator would yield—the Senator from Delaware did not use the world "extreme."

Mr. HATCH. I am not indicating the Senator did. I am talking about the report, not the Senator from Delaware. But I think the report may be even more important than the views of the Senator from Delaware, because that is what becomes the major record that Senators are relying on in this matter.

I might mention that these 15 past chairmen further noted that his book, which is harshly criticized by the report, has been cited with approval in six Supreme Court decisions joined by all nine current Justices.

Now, I think it is a misrepresentation to state here on the floor that Judge Bork would suddenly become an activist judge in antitrust law.

I might also add, as the distinguished Senator from Wisconsin undoubtedly knows, antitrust law, the laws that are written are very generalized laws and they are very much subject to interpretation and there are some areas where interpretations will disagree; and will be disagreed with.

I might add, there is a wide-ranging debate on which kind of economic principle should apply to various antitrust principles. I just submit to my dear friend from Wisconsin that there is no one alive in America today, or perhaps in the world, who understands antitrust law better than Judge Bork.

Mr. PROXMIRE. Would the Senator yield? This is exactly what bothers me, you know. If a man like Bork goes on the Court with his dominant understanding and all the work he has done in the antitrust area, he is likely to become the driving force.

Mr. HATCH. Yes.

Mr. PROXMIRE. If this results in vertical price fixing in which the manufacturer can determine the ultimate price, I think that it is a serious setback, from this Senator's value judgments, as far as our economy is concerned and I think it has a very adverse effect on the kind of competition, the kind of prices which consumers are going to pay.

Mr. HATCH. That is a legitimate complaint and legitimate concern. But let me just add this: Judge Bork did not say that he would change the present case law with regard to antitrust law. He did express some question as to whether or not certain aspects of present, current antitrust law really work or do not work. But I do not know anybody in the field who does not have some concerns in precisely those areas.

So I do not expect, and neither did he indicate, that he would suddenly change the laws with regard to price fixing and vertical integration.

But a man with his intellectual stature and understanding of our economy and antitrust laws and so forth, I would be deeply concerned that he could have a profound effect, fundamentally changing our laws and diminishing the kind of competition we have which I think is the very lifeblood of our economy.

If I could just finish this thought, let me say this. I think you have to judge Judge Bork upon his record as a public servant. And on his record as a public servant he has never been in my opinion a judicial activist nor has he been an advocate—activist in the sense of judicial activism as a Solicitor General.

I might add that Chief Justice Burger summed it up by stating that "Congress designed the Sherman Antitrust Act as a consumer welfare prescription."

For this proposition, the Chief Justice cited Judge Bork's book.

I might add that the report does say—and I think this is fair to state here at this time, in this context—that Judge Bork's Rothery decision is an example of judicial activism. The facts rebut that assertion.

Judge Bork reached the unremarkable conclusion that a firm supplying a mere 6 percent of the market has no market power and hence was not restraining trade beyond reason.

In fact Professor Areeda, Phil Areeda and Turner who have written the authoritative multivolume treatise suggest that a market share of less than 30 percent is presumptively evidence of lack of sufficient market power to produce a monopolistic result.

I believe you will find that not only are Judge Bork's views with regard to antitrust stringent, but they are widely subscribed to because they are extremely intelligent and well reasoned. You will also find that the leaders of unions basically subscribe to those views.

Mr. PROXMIRE. I am puzzled by the fact that a generation of Yale law students called him pro antitrust.

Mr. HATCH. I do not know that a generation has done that. There have been some, which is done all the time in antitrust. There are conservative viewpoints, there are liberal viewpoints, and there are viewpoints all the way in between. Judge Bork's would be more moderate to conservative, than, for instance, Professor Pitofsky.

Here is what I mean, when I cited the report. I am not attributing this directly to my good friend from Delaware, but he signed off on it. It says:

> Judge Bork has called antitrust "a particularly instructive microcosm" of his overall judicial, social and political philosophy. Despite his reputation as a practitioner of judicial restraint, he is, in the words of Robert Pitofsky, a respected antitrust scholar and Dean of the Georgetown University Law Center, "an activist of the right" in the antitrust field, "ready and willing to substitute his views for legislative history and precedent in order to achieve his ideological goals; and * * * even when examined by comparison to other conservative critics of antitrust enforcement, his views are extreme."

I might mention that Robert Pitofsky is not known for moderately conservative viewpoints in antitrust. I think you will find that with regard to activism he is far more an activist than Judge Bork ever thought of being.

I think the real answer that I am giving you is that Judge Bork is the leading proponent of judicial restraint in America today. He is the leading proponent that judges not substitute their own views as law and social policy, including antitrust policy, for that of the elected representatives of the people, meaning us. When the elected representatives have not defined some of these areas as they should, then judges are faced with a viewpoint that they cannot make any rulings in this area and have to find them, which all judges have to, I believe, and there will be areas, I think, where there are errors in decisions on antitrust by Judge Bork. But I can say that his positions are mainstream. I do not think they are radical, and I do not think they are not in accord with the laws.

Mr. PROXMIRE. Mr. President, I yield to my good friend, the manager of the bill.

Mr. BIDEN. Mr. President, let me try to respond.

First of all, nowhere in the report does the Senator from Delaware use the word "extreme." Dean Pitofsky used "extreme." We quote him because, as you know, he is one of the leading antitrust scholars in America. He views Judge Bork's views as extreme. That is Pitofsky's word. It is not BIDEN's. That is number one.

Second, with regard to his view toward Congress, if the Senator will look at page 76, we quote from Judge Bork's prior statements:

> Courts that know better ought not to accept delegations to make rules unrelated to reality and which, therefore, they know to be utterly arbitrary. * * * It would have been best, therefore, if the courts first confronted with the Clayton Act and later the Robinson-Patnam Act had said something along these lines: We can discern no way in which tying arrangements, exclusive dealing contracts, vertical mergers, price differences and like injure competition or lead to monopoly. * * * For these reasons, and since the statutes in question leave the ultimate economic judgment to us, we hold that, with the sole exception of horizontal mergers, the practices mentioned in the statutes never injure competition and hence are not illegal under the laws as written.

If they should not disregard the view of the Congress, at least they should give a very, very different interpretation to that of everyone else.

In the Rothery case, quoted by the Senator from Utah, Judge Bork did speak in an antitrust case. The result was a correct result by most people's standards, but the reasoning he used was very different and very much like he has written in the past. Judge Bork wrote only one significant antitrust opinion while serving on the court, but Rothery was a simple case involving competitive restraint placed upon a local agent by a national van line. Neither party held a significant share of the market. Judge Bork reached out and declared that two important Supreme Court cases on horizontal restraint had been effectively overruled even though the Court itself had not taken such action, implicitly or explicitly.

Throughout the hearing, he did not in any way modify his views on antitrust. I am not suggesting he should have. I am not suggesting that they are bad, immoral, unreasoned, but they are different.

Lastly, let me say to my friend from Wisconsin, Judge Bork considers his field antitrust. He has spoken on many other matters, but antitrust is the place where he has devoted most of his lifetime. He would be a powerful, intellectual force on that Court. His views are as follows, not only in his writings but in the hearing confirmed. I am not quoting, but I am giving you information.

All vertical price fixing and all nonprice vertical restraints would be lawful, according to Judge Bork. All conglomerate mergers and vertical mergers would be lawful, according to Judge Bork. All horizontal mergers would be permitted up to a point where an industry was left with only three firms holding 60 to 70 percent of the market.

All time agreements and exclusive dealing contracts would be lawful, per se. Even price fixing among competitors would be lawful if they possessed less than 40 percent of the total market.

The practical effect of these policies would have serious consequences on the American consumer and the American economy. Some would argue, and I suspect Judge Bork does, that those practices he suggests would benefit the economy. But at a minimum I think no one can doubt that if Judge Bork's views on antitrust prevailed, we would have a very fundamentally different antitrust policy in America. Maybe we should. But to suggest that these are somehow traditional views, traditional interpretations, ones that have been accepted by the vast majority of the courts in the past, is just not right.

Lastly, the Senator from Utah, as he skillfully does, says that the Supreme Court has cited on 60 occasions, I believe, Judge Bork's views on antitrust. That is true, but they have not cited them for any of these reasons to, in fact, come up with vertical price fixing, conglomerate mergers, et cetera. They cited them only to make a point in dicta that, in fact, economic effects should be taken into consideration. That is what they cite. They do not cite it, when the impression is left, to say, "As Judge Bork says, there is no restraint on vertical price fixing nor should there be."

They do not say things like that. They say that economic effects should be a consideration.

Mr. PROXMIRE. There are other areas I would like to explore with the distinguished chairman.

Vincent Blasi is a professor of law at Columbia University, a very distinguished professor of law. He has written a very detailed letter and a very impressive letter which I presume other Members of the Senate have received, and which troubles this Senator very basically.

He says:

> The most striking (and frightening) feature of his scholarly writing on the First Amendment is his rejection of the philosophical rationale for free speech that was expressed so eloquently by Justices Holmes and Brandeis in their now legendary opinions on the subject.
>
> That rationale has evolved into one of the most notable commitments of our constitutional tradition. The central tenet of that rationale is that government can never be trusted with the power to determine for its citizens what beliefs shall be held to be true. Over the years, different justices have expressed this idea in different ways. Holmes said:
>
> "The best test of truth is the power of the thought to get itself accepted in the competition of the market." Brandeis said:
>
> "The fitting remedy for evil counsels is good ones." Jackson said:
>
> "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, or other matters of opinion." Harlan said:
>
> "One man's vulgarity is another man's lyric." Justice Powell said:
>
> "Under the First Amendment there is no such thing as a false idea." These observations by such a spectrum of our most esteemed justices are so familiar that today they strike us virtually as homilies.
>
> But it takes only a passing familiarity with the climate of opinion at the time Holmes and Brandeis wrote to realize that it was not always taken for granted that government could not prescribe what shall be the orthodox view on the subject of the moral propriety of violent revolution.
>
> It is not an exaggeration to say that the principal achievement of modern First Amendment jurisprudence is the rejection of the claim that government possesses the power to make certain ideas off limits for its citizens.

Then he goes on to say:

> It is important to realize this in assessing the significance of the fact that Judge Bork has explicitly and repeatedly disassociated himself from the Holmes-Brandeis view of the First Amendment.
>
> The concerns I have expressed are not allayed by the modifications and concessions that Judge Bork recently has expressed regarding his views on the First Amendment. He now says that he would apply the First Amendment well beyond the realm of explicitly political speech, and I believe him. He has also said that he accepts the precedent of *Brandenburg* v. *Ohio*, even though he might have decided the case differently had he been writing on a blank slate. Again, I believe him. The problem for me is that these concessions do not go to the heart of the matter. A judge could adhere to Brandenburg and still hold that government employees can be dismissed from a wide range of jobs because of their political beliefs. A judge could adhere to Brandenburg and still believe that foreign nationals can be denied non-resident visas on the basis of the undesirability of the ideas they proclaim. A judge could adhere to Brandenburg and still believe that Marxist writings can be excluded from high school libraries. A judge could believe as a general matter that the First Amendment extends beyond explicitly

political speech and still hold that an unsettling idea such as the moral propriety of adultery can be banned from public discourse. A judge could believe that First Amendment protection extends beyond political speech and still hold that a book that contains graphic descriptions of sexual conduct such as D.H. Lawrence's Lady Chatterly's Lover can be made inaccessible to teenagers. With the exception of ideological visa denial case, which he has decided as a circuit judge, I would not pretend to know for certain that Judge Bork would rule against the First Amendment claims in these cases. But I do think that one can be certain he would approach these cases with a far greater predisposition to uphold the regulatory claims of government than would a judge who derives his understanding of the First Amendment from the premise of limited government so forcefully articulated in the opinions of Holmes and Brandeis.

I ask my good friend from Delaware, who has had an opportunity to make a judgment in this area, about the position of Judge Bork on the first amendment. This it seems to me goes to the very heart of our constitutional democracy and the freedom of speech.

Mr. BIDEN. I think it is probably getting hard for people to believe that the Senator and I have not talked before. This sounds like almost a setup because of what I am about to say. This is the first time, on or off the floor, I have discussed this matter with the Senator from Wisconsin.

I concur completely with the analysis by the professor, whom I do not know.

Mr. PROXMIRE. Professor Blasi of Columbia.

Mr. BIDEN. The Columbia professor. And everything he says in this Senator's view is consistent with what Judge Bork's view of free speech is.

Now, Judge Bork, as the Senator probably knows, in 1971 had an extremely limited view of free speech, of the first amendment, which in fact he has in his testimony and subsequently said he no longer adheres to but he has only come so far. He has only come as far as the professor from Columbia suggested in this Senator's view. Let me read to you—I will not take but a moment—from a speech delivered in 1978, I believe, by Judge Bork that relates to this issue.

Cohen versus California was a case where a young man had an obscenity written on his back about the draft, a four-letter word that said, "Blank blank blank blank the draft." He was brought up on a charge. He was convicted and the Supreme Court overruled. It was not a raging liberal Justice. Justice Harlan wrote the opinion, saying that this in fact was appropriate speech, the Government could not say whether or not it was appropriate, and it could contain political thought. Even though it was an obscenity, it expressed a political thought. Therefore, it would be protected even under the political protection notion that Judge Bork speaks to.

Judge Bork wrote:

> The Court has articulated no better grounds for these decisions * * *

Referring to Cohen as one of them:

> * * * than the danger of a slippery slope and moral relativism as constitutional command. Justice Harlan, writing for the majority in Cohen, expressed both ideas. He said the principle contended for by the State seems inherently boundless. How is one to distinguish this from any other offensive word? One might as well say that the negligence standard is inherently boundless.

This is Judge Bork speaking.

> For how is one to distinguish the utterly reckless driver from the safe one. The answer in both cases is the common sense of the community. Almost all judgments in the law are ones of degree.

He goes on to express why that is not the case. Then he says, in response to a question about the first amendment:

> No. I stated, and I still state, that in order to protect the First Amendment guarantees of free speech, the Court has to define what obscenity is and it may not allow a community to override that. I object to Cohen v. California. I have here my Francis Boyer lecture on this matter, and what I said was—and I disagreed with Justice Harlan on two grounds.

And he goes on to cite them again. The point is that he did not back off his objection on the limitation of what historically, what has at least for the past 30 years been the Court's relatively broad interpretation of the first amendment by very conservative Justices.

Again, I am taking too much of the Senator's time. I see others on the floor wishing to speak, but there is a great deal to be said about Judge Bork's views on the first amendment.

But I think the letter, in this Senator's perspective, from the professor at Columbia accurately captures and characterizes Judge Bork's view.

Mr. PROXMIRE. I appreciate that very much. I would like to conclude, Mr. President, by reading from the concluding sentences of the letter. Professor Blasi concludes by saying:

> But as I have tried to explain, I do think his confirmation would place on the Supreme Court a justice who does not share the premise upon which modern First Amendment doctrine rests. Over time, his contribution to First Amendment jurisprudence would surely be in the direction of establishing the premise of majoritarianism that he has asserted so frequently and defended so vigorously.
>
> My conclusion is that Judge Bork's academic writings, his speeches, his testimony, and his judicial decisions on the subject of freedom of speech exhibit a consistent theme * * *

He concludes:

> * * * constitutional tradition as it has evolved. I am sorry to say that in my opinion there is good reason to worry that the confirmation of Robert Bork would pose a threat of uncertain proportions to what I regard as one of our grandest constitutional commitments, the shared understanding of the freedom of speech articulated in the opinions of Justices Oliver Wendell Holmes, Louis Branders, Charles Evans Hughes, John Marshall Harlan, and Lewis Powell, to name only a few of the many justices who have helped build the First Amendment tradition that serves us today.

Mr. President, I ask unanimous consent that Professor Blasi's October 6, 1987 letter and an Open Letter to the Senate Judiciary Committee from the University of Wisconsin Law School dated September 19, 1987, be printed in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

COLUMBIA UNIVERSITY IN THE CITY
OF NEW YORK SCHOOL OF LAW,
New York, NY, October 6, 1987.

Hon. WILLIAM PROXMIRE,
U.S. Senate,
Washington, DC.

DEAR SENATOR PROXMIRE: As a professor of constitutional law and the editor of a book on the Burger Court, I have taken a keen interest in the Bork confirmation hearings. As a specialist in the law of free speech, I have been particularly attentive to the testimony concerning Judge Bork's views regarding the proper interpretation of the First Amendment. I am opposed to his confirmation, in part because of my belief that his elevation to the Supreme Court would pose a threat to the maintenance of what I regard as one of our noblest constitutional traditions, that regarding the protection of fundamental and sometimes intemperate criticism of government. On the basis of a close study of his academic writings, several conversations with him, and a genuine effort to understand and accept any modifications he has made in his views, I continue to regard Judge Bork as a radical on the subject of the First Amendment. I would like to explain in some detail why I hold that view.

There is no need, I trust, to rehash the radical nature of his 1971 article in the Indiana Law Journal. I would remind you, however, of the testimony given by Dean Bollinger of the University of Michigan Law School that there can be no explanation for a scholar publishing such an article other than his desire to indicate his belief in the ideas expressed therein. As dean Bollinger observed, the thesis of the article was hardly novel in the sense that other First Amendment scholars had not realized the availability of such a view. Nor can the article be considered a contribution due to the rigor or subtlety of the justification given for the thesis that is advanced. To the contrary, the article is notable for its truncated, almost conclusory style of argumentation. The importance of the article to the scholarly community lay entirely in the fact that a professor with respectable credentials should subscribe to such a startling view regarding the proper interpretation of the First Amendment. It would violate the canons of academic discourse for a professor to publish such an article without having concluded that he held the views advanced, and held them seriously, not casually or playfully.

The depth of Judge Bork's adherence to the views he expressed in the Indiana Law Journal article can be gauged also by the fact that he repeated those views in his Cooley Lecture at the University of Michigan Law School in 1979. Had the Indiana Law Journal article attracted no notice at all, it would be noteworthy if its author restated his acceptance of its thesis eight years later. In fact, however, from the moment of its publication the Indiana article was the subject of a great deal of debate in the law schools. Judge Bork was aware of that debate and surely must have given serious thought to his views about free speech before preparing his Cooley Lecture, which incidentally is one of the most prestigious lectureships in academia. It is noteworthy in this regard also that in a June 1986 interview with the publication "Judicial Notice," Judge Bork said this when asked what factors had influenced the development of his legal philosophy:

"What influenced it primarily was a seminar I taught with Alex Bickel in which we argued about these matters all the time. We taught it for seven years, and I finally worked out a philosophy which is expressed pretty much in that 1971 Indiana Law Journal piece which you have probably seen—"Neutral Principles and Some First Amendment Problems.".

This evidence does not establish that Judge Bork continues to hold the views about free speech that he expressed in that article. But it does prove, I believe, that his acceptance of those views in the past was the product of a serious and sustained effort to understand the First Amendment, not an offhand and fleeting attempt to be provocative.

There has been much speculation, of course, that Judge Bork has moderated his views about free speech in the course of his service on the Court of Appeals and in response to some probing questioning during his confirmation testimony. I have read his judicial opinions interpreting the First Amendment and I have listened carefully to his testimony. In my opinion, his performance as a judge and as a witness before the Senate Judiciary Committee provides little basis for concluding that the radical views he expressed as a scholar will not crucially influence the way he would interpret the First Amendment as a Supreme Court justice. The concessions he has made recently to traditional thinking about the First Amendment are not, I believe, as important as his proponents would have the public believe. Please permit me to specify.

The most striking (and frightening) feature of his scholarly writing on the First Amendment is his rejection of the philosophical rationale for free speech that was expressed so eloquently by Justices Holmes and Brandeis in their now legendary opinions on the subject. That rationale has evolved into one of the most notable commitments of our constitutional tradition. The central tenet of that rationale is that government can never be trusted with the power to determine for its citizens what beliefs shall be held to be true. Over the years, different justices have expressed this idea in different ways. Holmes said: "The best test of truth is the power of the thought to get itself accepted in the competition of the market." Brandeis said: "The fitting remedy for evil counsels is good ones." Jackson said: "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, or other matters of opinion." Harlan said: "One man's vulgarity is another man's lyric," Justice Powell said: "Under the First Amendment there is no such thing as a false idea." These observations by such a spectrum of our most esteemed justices are so familiar that today they strike us virtually as homilies. But it takes only a passing familiarity with the climate of opinion at the time Holmes and Brandeis wrote to realize that it was not always taken for granted that government could not prescribe what shall be the orthodox view on the subject of the moral propriety of violent revolution. It is not an exaggeration to say that the principal achievement of modern First Amendment jurisprudence is the rejection of the claim that government possesses the power to make certain ideas off limits for its citizens.

The public record indicates that Judge Bork has never made the Holmes-Brandeis tenet the starting point for his interpretation of the First Amendment. From his Indiana article in 1971 to his Boyer Lecture in 1985, he has decried the moral relativism he finds implicit in the limited-government view of the First Amendment. In contrast, Judge Bork derives the meaning of the First Amendment from the premise of majority rule: if a majority, acting through proper democratic processes, wishes to legislate a public morality in the realm of ideas, no constitutional check should frustrate that exercise of power. No matter how respectful of precedent he may be, a judge who views the First Amendment as an outgrowth of the principle of majority rule is bound to decide new cases in a manner radically different than a judge who views the First Amendment as an outgrowth of the philosophy of limited government. The philosophical difference I have sketched is fundamental. It is important to realize this in assessing the significance of the fact that Judge Bork has explicitly and repeatedly disassociated himself from the Holmes-Brandeis view of the First Amendment.

The concerns I have expressed are not allayed by the modifications and concessions that Judge Bork recently has expressed regarding his views on the First Amendment. He now says that he would apply the First Amendment well beyond the realm of explicitly political speech, and I believe him. He has also said that he accepts the precedent of *Brandenburg* v. *Ohio*, even though he might have decided the case differently had he been writing on a blank slate. Again, I believe him. The problem for me is that these concessions do not go to the heart of the matter. A judge could adhere to *Brandenburg* and still hold that government employees can be dismissed from a wide range of jobs because of their political beliefs. A judge could adhere to *Brandenburg* and still believe that foreign nationals can be denied non-resident visas on the basis of the undersirability of the ideas they proclaim. A judge could adhere to *Brandenburg* and still believe that Marxist writings can be excluded from high school libraries. A judge could believe as a general matter that the First Amendment extends beyond explicitly political speech and still hold that an unsettling idea such as the moral propriety of adultery can be banned from public discourse. A judge could believe that First Amendment protection extends beyond political speech and still hold that a book that contains graphic descriptions of sexual conduct such as D.H. Lawrence's *Lady Chatterly's Lover* can be made inaccessible to teenagers. With the exception of the ideological visa denial case, which he has decided as a circuit judge, I would not pretend to know for certain that Judge Bork would rule against the First Amendment claims in these cases. But I do think that one can be certain he would approach these cases with a far greater predisposition to uphold the regulatory claims of government than would a judge who derives his understanding of the First Amendment from the premise of limited government so forcefully articulated in the opinions of Holmes and Brandeis.

Defenders of Judge Bork might claim that he has modified his views on the First Amendment to the point that he now accepts the proposition that government has no business prescribing what shall be orthodox in matters of politics or morality. I find nothing in the public record to support that claim. His Boyer Lecture, delivered just two years ago at the University of Pennsylvania, contains a spirited defense of the proposition that government has a responsibility to promote a public morality. In his testimony before the Senate Judiciary Committee Judge Bork used the term "obscenity" to refer not simply to graphic depictions and descriptions of an erotic quality but also to the use of words and the expression of ideas that offend public taste and judgment. Any extension of the concept of obscenity beyond the traditional regulatory realm of graphic erotic depictions would greatly enhance the power of government to prescribe orthodoxy. One implication of the Holmes-Brandeis view of the First Amendment is that there can be no such thing as an obscene idea. So the Supreme Court held twenty-eight years ago. *Kingsley Int'l Pictures v. Regents*, 360 U.S. 684 (1959). Nothing in the public record—his academic writings, his decisions as a lower court judge, his testimony—indicates that Judge Bork would treat that proposition as a settled feature of the First Amendment tradition.

As these observations make plain, I believe that a judge's philosophy of the First Amendment necessarily exerts a powerful influence on the way he decides specific cases. That is true even for a judge who is unusually respectful of precedent. I do not know whether Robert Bork is such a judge—on this point his views expressed in speeches seem in clear conflict with his testimony. But even if you are convinced that as a justice of the Supreme Court he would follow established precedent faithfully, I do not think that prediction should be dominant consideration in the confirmation decision. At least in the area of First Amendment interpretation, the major determinant of a judge's performance inevitably must be his understanding of the underlying rationale for the principle of freedom of speech. For that reason, Judge Bork's emphatic, repeated, and never recanted rejection of the Holmes-Brandeis premise should cause anyone who cherishes our First Amendment tradition to view his confirmation with apprehension.

Judge Bork's defenders have argued that in assessing his probable performance as a Supreme Court justice one should give much more weight to his decisions as a sitting judge than to his academic writings and speeches. I think there is something to this point: although a lower court judge is more constrained by precedent than a Supreme Court justice, it is not true that lower court judges are so constrained by precedent that their underlying philosophies exert no influence on the way they decide cases. I am afraid, however, that as far as his views about the First Amendment are concerned, Judge Bork's performance on the bench does not provide the reassurance I seek that his thinking has evolved. In fact, I detect in the First Amendment decisions of Judge Bork a rather consistent adherence to the central theme of his academic writings and speeches: the renunciation of the Holmes-Brandeis premise that government has no authority to define for its citizens what ideas shall be considered acceptable.

For example, in *Abourezk v. Reagan*, 785 F.2d 1043 (1986), Judge Bork addressed the question whether the First Amendment restricts the power of the State Department to deny non-resident visas on ideological grounds (he was required to reach the First Amendment issue in the case only because he read the McCarran Act as modified by the McGovern Amendment to grant the State Department such authority). It is a fair characterization of his opinion, I believe, to say that he found the issue an easy one. In his view, the foreign affairs power of the Executive Branch clearly includes the power to wage ideological warfare by means of denying visas to foreigners who hold subversive beliefs. I do not mean to suggest that the issue is an easy one for those who would reach the contrary result. There are relevant Supreme Court precedents that take an expansive view of the power to deny visas, most notably *Kleindienst v. Mandel*, 408 U.S. 753 (1972). What is deeply troubling about Judge Bork's opinion, however, is that he hardly acknowledges the difficulty of the issue. He makes no reference whatever to the patent tension between the traditional strong presumption against content regulation of speech and the State Department's assertion of authority in the case. A judge who shared the Holmes-Brandeis premise could not help but be deeply troubled by the spectacle of our State Department denying visas on the ground of ideology. For Judge Bork, I am confident, the case was easy because his philosophy of the First Amendment, derived from the principle of majoritarianism, grants the government the power to protect its citizens from dangerous ideological imports.

Another decision that I find revealing is *Finzer v. Barry*, 798 F.2d 1450 (1986). In that case Judge Bork ruled that the United States government has the authority to prohibit American citizens from criticizing a foreign nation by means of displaying placards within five hundred feet of that nation's embassy. The regulation at issue did not prohibit the display in the identical place of a placard that carried a sympathetic or neutral message. Judge Bork's opinion echoes in some important respects his Boyer Lecture at the University of Pennsylvania. That is, he makes much of the point that a foreign nation can suffer a dignitary injury by means of being criticized near its embassy. In his Boyer Lecture he argued that First Amendment doctrine had gone astray by refusing to recognize what he characterized as "moral harms" as well as material harms. Again, I do not mean to suggest that the result in *Finzer v. Barry* is shocking, although I do believe the case was wrongly decided. There is a respectable argument that the diplomatic context of the dispute should weigh heavily in the determination of the First Amendment issue. But no judge who shared the Holmes-Brandeis view of the First Amendment could have been so casual about permitting speech to be regulated on the basis of amorphous dignitary interests, nor so willing to accept a regulation that makes legality turn on which point of view the speaker expresses.

Two decisions by Judge Bork in the First Amendment area have been invoked repeatedly during the hearings to support the claim that he does not invariably take a restrictive view of First Amendment rights. These decisions are *Lebron v. Washigton Metropolitan Area Transit Authority*, 749 F.2d 893 (1984), and *Ollman v. Evans*, 713 F.2d 838 (1983). In *Lebron* Judge Bork ruled that the Transit Authority could not refuse permission to an artist to buy space to display a poster critical of President Reagan simply on the ground that the artistic depiction was misleading. In *Ollman* Judge Bork ruled that two nationally-syndicated columnists could not be held liable for defamation for claiming that a college professor with left wing views had no standing in his profession. These cases have been cited by proponents of Judge Bork for the proposition that he does not always take a restrictive view of the First Amendment and does not always exhibit a visceral hostility to the constitutional claims of speakers and writers. I agree that the cases serve to refute some of the more extreme characterizations that have been made regarding Judge Bork's constitutional philosophy. Although *Lebron* impresses me as an easy case that no self-respecting judge could have decided otherwise, the same cannot be said for *Ollman*. And in both *Lebron* and *Ollman* Judge Bork offers dictum that belies the characterization of him as a judge who is invariably grudging in the vindication of First Amendment rights. Nevertheless, in neither case does the opinion of Judge Bork cast light on the aspect of his First Amendment philosophy that I believe should give any Senator pause in voting to confirm him. It simply was not necessary to accept the Holmes-Brandeis premise in order to grant the claims of the speakers in *Lebron* and *Ollman*. Those cases did not remotely raise the question whether government can use its regulatory power to foster an ideological orthodoxy. That Judge Bork ruled for the speakers in both of those cases, and did so in unstinting terms, does not put to rest my concern that his interpretation of the First Amendment as a Justice of the Supreme Court will be dominated by his philosophy of majoritarianism. Indeed, his views in the area of libel, to the extent they can be discerned from his opinion in *Ollman*, are consistent with the assessment of him as a judge who seldom favors the claims of individuals over the claims of some larger public good. An important twist of libel disputes is that the would-be regulators of speech are private individuals who claim to have suffered personal harms rather than the state claiming to speak in the name of the majority. That Judge Bork is unsympathetic to the claims of such individuals is not surprising.

I hope I have made plain that my objection to the confirmation of Judge Bork, insofar as it rests on his view of the First Amendment, is not based on the belief that he would be a justice who is disdainful of precedent or censorial in his sympathies. Nor would I accuse him of engaging in sophistical or disingenuous reasoning when discussing First Amendment issues. But as I have tried to explain, I do think his confirmation would place on the Supreme Court a justice who does not share the premise upon which modern First Amendment doctrine rests. Over time, his contribution to First Amendment jurisprudence would surely be in the direction of establishing the premise of majoritarianism that he has asserted so frequently and defended so vigorously.

My conclusion is that Judge Bork's academic writings, his speeches, his testimony, and his judicial decisions on the subject of freedom of speech exhibit a consistent theme that marks him as a radical thinker so far as the First Amendment is concerned. It is fair to ask, however, why the Supreme Court would not be enriched by the addition of such a radical thinker. Why should not the premise of majoritarianism have an articulate defender in the First Amendment deliberations of the Supreme Court? Is the Holmes-Brandeis premise of limited government so fragile that it ought not to be open to dispute within the chambers of the justices?

Were I confident that Robert Bork would stand alone as a justice in rejecting the Holmes-Brandeis view of the First Amendment, I would indeed be troubled by the line of argument I have just suggested. In fact, however, I am convinced that Chief Justice Rehnquist and Justice Scalia also bring to their interpretation of the First Amendment a philosophy of majoritarianism that is fundamentally at odds with the Holmes-Brandeis premise. As I see it, the confirmation of Judge Bork would leave the United States Supreme Court with a group of justices whose views on the freedom of speech and the judicial role are radically at odds with the premise that has spawned the modern First Amendment tradition. It is no answer, in my opinion, to say that those views cannot be so radical if they are held by so many justices. The unprecedented attention recently given to ideology in the appointment of Supreme Court justices explains how a political faction with radical views about individual rights can succeed in having those views championed by more than one justice on the Supreme Court.

When ideology plays so large a part in the initial appointment of justices to the Supreme Court, I think it is necessary that the Senate ask itself in ruling upon a nominee whether his or her confirmation would place in jeopardy any of the truly important features of our constitutional tradition as it has evolved. I am sorry to say that in my opinion there is good reason to worry that the confirmation of Robert Bork would pose a threat of uncertain proportions to what I regard as one of our grandest constitutional commitments, the shared understanding of the freedom of speech articulated in the opinions of Justices Oliver Wendell Holmes, Louis Brandeis, Charles Evans Hughes, John Marshall Harlan, and Lewis Powell, to name only a few of the many justices who have helped build the First Amendment tradition that serves us today.

For that reason, among others, I believe the Senate would be wise to reject the nomination of Robert Bork.

Best regards,

Vincent Blasi,
Professor of Law.

University of
Wisconsin Law School,
Madison, WI, Sept. 16, 1987.

An Open Letter to the Members of the Senate Judiciary Committee

We are members of the University of Wisconsin Law Faculty and, among us, hold views which cover the political spectrum. In addition, our backgrounds include those of us whose past work has been in academia, in government service and on behalf of business and corporate as well as individual clients. Despite this diversity in background and political views, we are united in urging that nomination of Robert Bork to the United States Supreme Court be defeated.

While a nominee's political or philosophical views are often overlooked by the Senate in the search for ability and integrity there is no constitutional mandate for such a limited Senate "advice and consent" function. President Washington's nomination of John Rutledge and President Johnson's nomination of Abe Fortas as Chief Justice and many in between were rejected on philosophical grounds. It is entirely consistent with the Senate's historical role to consider Robert Bork's views.

Among the major issues before the Supreme Court in the indefinite future will be several dealing with efforts by government, at all levels, to probe and regulate individual behavior utilizing and the amazing breakthroughs in technology that we are now seeing and will continue to see. Some examples are efforts utilizing advances in genetics and genetic engineering and electronic surveillance and monitoring. Questions about AIDS related legislation and practices will also find their way into the Court's calendar. We do not for a moment believe that all of these questions have to be resolved against government power. Nevertheless, the thought of a phalanx of five justices invariably and inevitably in favor of what the government does at the expense of the individual is frightening. Robert Bork would be the fifth.

As you know, Robert Bork subscribes to the theory of original intent and believes, essentially, that no individual protections should be read into the Constitution that were not intended by the framers when the Constitution was adopted. This is precisely the kind of cramped approach to the Constitution that will result in a massive enlargement of government power at the expense of the individual. For example, it takes no great historical insight to know that when the Bill of Rights was adopted, it was the excesses of the British Government over the prior centuries that were sought to be avoided—brutal interrogation techniques, persecution on account of religion, invasions of the home, suppressions of a free press, trial without jury, trials in places other than the venue of the accused, etc. The drafters of the Bill of Rights were good historians and knew about these abuses and did their best to keep them from recurring in the new Republic.

But brilliant as they were, there is no way they could have foreseen how the aged-old problem of reconciling a workable government and individual rights would manifest itself 200 years down the road. They could look back 200 years to Queen Elizabeth's Star Chamber but they could not look ahead 200 years to compulsory genetic testing or whatever the precise questions the Court will have to address in the near future.

The Constitution is a living document precisely because it represents a cautious and wary approach to the exercise of governmental power. A Justice who confines its protections to 18th century fears or to those prevalent when the 14th Amendment was adopted over a hundred years ago saps it of its vitality.

As you can see, we are not in blind opposition to a conservative nominee. Indeed, our position—grounded on a concern that government power be checked—could accurately be labelled conservative. We would certainly not urge defeat of a nominee such as retiring Justice Powell. Robert Bork, however, is not that kind of moderate conservative. He is an ideologue whose repeated and passionately expressed views commit him to the inevitable expansion of governmental power. We urge that you vote against his nomination.

Ann Althouse, Richard Bilder, Abner Brodie, Peter Carstenson, Arlen Christensen, Carin Clauss, Walter Dickey, Howard Erlanger, Martha Fineman, G.W. Foster, Marc Galanter, Herman Goldstein, Hendrik Hartog, Stephen Herzberg, J. Willard Hurst, James E. Jones, Jr., Leonard Kaplan.

John Kidwell, Neil Komesar, Lynn LoPucki, Stewart Macaulay, James MacDonald, Marygold Melli, Samuel Mermin, Joel Rogers, Frank Remington, Vicki Schultz, Gerald Thain, David Trubek, Frank Tuerkheimer, June Weisberger, William Whitford, Zigurds Zile.

Mr. PROXMIRE. Mr. President, I thank my good friend, the chairman of the Judiciary Committee, and my good friend, the distinguished Senator from Utah, for the exchanges that have taken place. They have been very helpful to this Senator in determining how I will vote on the nomination. I yield the floor.

Mr. GRAMM addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas [Mr. Gramm].

Mr. GRAMM. Mr. President, let me say that first I am awfully tempted to jump in and give all kinds of counterexamples that talk about the Cohen decision, a decision based on logic that one man's vulgarity is another man's lyric, and to talk about the Ollman versus Evans ruling where Judge Bork extended the first amendment right of free speech by finding that high settlements in liable suits threatened free speech in the media.

But the one thing I try never to do is become involved on somebody else's battlefield. While there are many distinguished students of the law here, I am not among them. I would argue that means on many occasions I am not confused. [Laughter.] But there are obviously those who would argue otherwise. I do not want to get into that debate.

I want to really address this whole issue of confirmation, and if I have anything to contribute on this subject, it is not trying to hammer out, from all of these rulings by names that most of us have never heard, that Judge Robert Bork is no extremist. What I want to talk about is the constitutional process, about confirmation, about what elections mean, and about what is at issue here for that process. And I want to try to do it in such a way as to focus on what I consider to be the big picture.

First of all, the Constitution outlines what we are about here in very simple terms. In article II, it gives the President the power to appoint people to the Supreme Court subject to the advice and consent of the Senate.

I would like to talk a little bit about what our Founding Fathers must have envisioned in the advise-and-consent role and what I believe they did not envision. Each of us must have a personal view of the Constitution. In fact, the other day I was speaking at an elementary school in Port Arthur, TX, and a third-grade student, a little girl, asked me, "Why does everybody love the Constitution?" I said, "Well, part of it is that we each sort of interpret it to suit ourselves." And I guess each of us come to this body with a general perception of our responsibilities under the Constitution.

I would like to outline my basic perception to set a context for what I am about to say.

I have always believed that elections set a political roadmap for the Nation, that when the American people go to the polls in a Presidential election and they elect a President in that election as in no other they set out their philosophical agenda. Obviously, each of us from time to time try to read our own meaning into what that is. I have served under one Democrat and one Republican President and I have always felt that when the people elect our Presidents, those Presidents ought generally to have the right to appoint the people they choose.

I guess I have come to understand the limits of Presidential power. And those limits are very severe indeed. We have about 3 million people who work for the Government. If you get elected President, you get to appoint about 3,000 of them. You have no guarantee that the other 3 million share your mission or your goal or your vision, or the vision of the people who elected you.

So I have always felt no matter who was in the White House, if he sent a nominee to the Congress for confirmation in the Senate, I ought consider two aspects. No. 1, the person's experience and qualifications; I think it is reasonable to vote against somebody if you think they are not qualified.

If I were appointed to the Supreme Court and someone said, "Well, old Gramm is an economist and not even a lawyer," that would be, it seems to me, a reasonable justification for voting against me.

The second thing I think we have a right and an obligation to look at is integrity. Does this person have integrity? Does he represent in actions and in words—because in our business, words are actions—the kind of person that we would want to fill a position of trust?

I have always believed that we should not be refighting the last election on Presidential appointments. One of the reasons I feel passionate about the subject of Judge Bork is not that I agree with Judge Bork on everything. In fact, a lot of things that Judge Bork has said and positions he has taken are positions and statements with which I do not agree. His position on the balanced budget amendment to the Constitution is totally unenlightened, which is code for "I don't agree with it."

In fact, I could say it is an extremist view. Eighty percent of the people of America in poll after poll after poll say they favor a balanced budget amendment to the Constitution, and here Judge Bork is taking an extremist view, going against the overwhelming will of the American people, saying he is against the balanced budget amendment to the Constitution.

There are few things that I agree with Thomas Jefferson more on than his belief that we made our major error in the Constitution by failing to limit the power of the Federal Government to borrow money.

So I do not agree with Judge Bork on the balanced budget amendment to the Constitution. Quite frankly, despite the discussion we had a minute ago on the floor about antitrust, as I read Judge Bork's rulings from the point of view of an economist and not a lawyer, I am not overwhelmed in terms of my support for where he has come down on the antitrust issue.

The point I am trying to make is the fact I do not agree with Judge Bork on issues that to me are pretty important, in the balanced budget amendment. I think it is important to the future of America and to the future of the free world, for that matter.

I am not opposing him because I disagree with him on that. In fact, I am in support of him, even though on this fundamental issue I could make an argument that this view is out of sync with the vast majority of the American people.

You see, my view is that when we elected Ronald Reagan there were judicial issues involved in that election that transcended these little specific instances where I might disagree with him.

I think most people who voted for Ronald Reagan in 1980 and in 1984 took the position that they wanted people on the Supreme Court, on the Federal bench in general, who were strict constructionists to the Constitution, who believed that the Founding Fathers wrote the Constitution to deal with the problems of their era and what they perceived to be the problems we would face in the future, but were not so arrogant as to believe they had a lock on truth for all times and, so, set out an amendment process, a process that we have now used many times.

I believe that a clear issue in those elections was a perception that Ronald Reagan would appoint people to the Federal bench who tended to be strict constructionists of the Constitution, and tended to believe that if it was not in the Constitution, and if Congress has not chosen in 200 years to amend the Constitution, that we ought not to have unelected officials writing the Constitution to suit themselves; that, in fact, if it is not in the Constitution as it was originally written and if it is not amended, the quickest way they can get it changed is to rule on the Constitution as written, and then have Congress and the legislatures change it if they choose to do that.

I think it is a fair assertion to say that there was a clear choice in 1980, and again in 1984 concerning this concept. I would say the vast majority of the American people believe Congress, not the courts, ought to make the laws.

I also think there is growing concern in this country about the rights of victims as well as the rights of criminals, a belief that our system has swung too far in protecting criminals at the expense of law-abiding citizens.

In very general terms, I think it is fair to assert that those issues were to some extent contested in 1980 and 1984.

Many newspapers have editorialized against Bork; but, as we have seen over and over, I think there is a general contention, and perhaps a consensus, that Judge Bork's nomination was a logical extension of the election of Ronald Reagan as President.

Now, what kind of debate have we had? We have had some reasonable debate, some not so reasonable, and we all want to define which is which. But I would like to point out the parts of the debate that I think go well beyond advice and consent.

We have had advertisements run that have said, in essence, that Judge Bork's confirmation would likely allow States to impose family quotas for population purposes or to sterilize anyone they chose. Perhaps the opening shot of this debate was the following statement, made on the floor of the Senate:

> Mr. Bork's America is a land in which women would be forced into back-alley abortions, blacks would sit at segregated lunch counters, rogue police could break down citizens' doors in midnight raids, schoolchildren could not be taught about evolution.

And the statement goes on and on.

Having watched some of the hearing, having tried, to the extent that anybody with mortal eyes, can try to look at the entire debate, I cannot, in my mind, come to the conclusion nor really understand how others could come to the conclusion that anything in Judge Bork's life would lead one to think that he would support, rule on the basis of, or try to promote the resegregation of America. I see absolutely nothing in this man's life that could ever prompt me to believe either that or the notion that Judge Bork's confirmation would mean giving States the power to sterilize anybody they chose.

It is very interesting that one of the great Supreme Court Justices, Oliver Wendell Holmes, who has been called forth as an example of a great Justice, did rule, in a case in Alabama, that three generations of "idiots" was enough to allow the constitutional sterilization of those who were deemed to be in that category. I do not think we would ever confirm anybody today who had made that ruling. Oliver Wendell Holmes would never have been on the bench if he were coming before us today, based on his record.

In the attack on Judge Bork that we have seen in the country, in advertising, and that we have seen to some degree here in the Senate, there is an inconsistency; and rather than trying to point out why the argument is not right, which has to do with all these legal opinions which often contradict each other, depending on how you interpret them, let me just make my point about contradiction.

On the one hand, a point is made that Bork is an extremist, that he is out of the mainstream of American thinking, that his views on the great judicial issues of our time are so extreme that he should not be confirmed. In fact, in paid advertising such as we have never seen on a judicial nomination, that is the principal thesis. But, when you get down to the bottom line and you look at the real opposition, you find that while he is portrayed as an extremist on one hand, the basic objection to Bork comes down to something that is in total contradiction of this extremist picture that is printed.

In fact, in what is the committee staff's response to the White House analysis of Judge Bork's record, a response that came out on September 2, on page 11, we really get down to what the bottom line is here. This says:

> When a nominee such as Judge Bork could dramatically change the direction of the Supreme Court, each Senator has both a right and a constitutional duty to consider whether the judicial philosophy of that nominee is desirable.

I submit to Members of the Senate that if you are an extremist, how are you going to tilt the balance in the U.S. Supreme Court? How can you be this radical, this extremist, and your one vote out of nine tilt the balance in the U.S. Supreme Court?

Now, I could go into a long discussion about why the extremist view is in no way borne out by the facts. We have all heard the facts presented. In Judge Bork we have a person who has been a distinguished law professor, Solicitor General, a member of the D.C. Appellate Court, and who has a record of basically mainstream rulings. Not one of his opinions has been overturned by the Supreme Court. That did not sound like a radical to me.

In terms of ruling with the majority on a court that was predominantly liberal and Democratic when Judge Bork was appointed, and which is now only roughly 50-50, he has ruled with the majority 94 percent of the time. That is more often than most Members of the Senate vote with our own leadership. Is that an extremist view? Well, it may be or it may not be, but I am not going to follow that rabbit trail, because I think that is not the issue.

The issue, if Bork were an extremist, the fundamental argument against him would be false. The fundamental concern, we all know, is that Judge Bork's nomination—as it says right here on page 11 of the response to the White House analysis of Bork's record—could dramatically change the direction of the Court.

You do not dramatically change directions of a nine-member decision-making unit if you are one extremist.

The argument here is that Judge Bork's nomination means that for the first time in 30 years the Court would have a majority that believed, in general terms in strict construction of the Constitution, which brings me to my principal point.

What we are doing here and what has occurred in the country is not what our Founding Fathers envisioned. Instead, we have had an effort to refight the 1980 and 1984 election.

Judge Bork has not been attacked because he lacks ability or because he lacks integrity. He has been attacked by exactly the same groups who opposed Ronald Reagan's election in 1980 and who opposed Ronald Reagan's election in 1984, groups trying to win in the Senate what they could not win at the ballot box. They are trying to prevent the democratic process from working in terms of a person who was elected as a conservative, as a strict constructionist of the Constitution; they are trying to prevent, by redebating those issues, a person who reflects the President's judicial philosophy from going to the bench. The reason is that the American people through the election process, as reflected in the appointment process, have started to change the direction of the Supreme Court.

Now, I do not think this serves the process. I do not think that this serves the process because we are seeing the injection of political debate into the confirmation process. How can the judiciary be independent if political issues dominate confirmation?

I have been concerned about this in appointments in general. Every time someone comes before the Senate in confirmation, we are trying to tie him down on some issue to force that nominee to carry out our will in return for granting him confirmation. I do not believe that is what the Founding Fathers had in mind.

I do not believe that those who have orchestrated this attack on Judge Bork are going to be successful. I am confident that the President is going to nominate someone, if Judge Bork is not confirmed, who will be conservative, who will be a strict constructionist of the Constitution. And I am also convinced that unless something very wrong occurs, the next nominee is going to be confirmed, principally because it is one thing to go out and say, "Look, I am not against Bork because Bork is a strict constructionist of the Constitution, and I am not against Bork because he believes that the Courts ought not to be making the law to suit some special interest they agree with, and I am not against Bork because of my position on the death penalty, 'or' I am not against Bork because I think it is fundamentally wrong for the person who believes in the sanctity of human life to serve on the Supreme Court."

People are not going to go out and say that they are against Bork because there is something wrong with Bork.

But if the President sends up someone who shares the same values, after all that old argument will not wash, and people will stop making it.

I would like to believe that we could have our hearts open, but we all know once we have taken a position it is hard to change. I would like to believe that Judge Bork is going to be confirmed but he probably will not be, and he is probably not going to be confirmed basically because of a philosophical dispute, a political dispute, concerning the direction of the Supreme Court.

I think this injection of politics hurts the process. I think that in Judge Bork, we have a good man who richly deserves to be on the Supreme Court. While I think Judge Bork's views on the balanced budget amendment to the Constitution are totally unenlightened, while there are many of his rulings with which I disagree, that does not change the fact, and while there are a lot of people who have come out against Judge Bork, in my opinion on political grounds, in the legal profession, since lawyers are not any more immune to politics than anybody else and some would say, they take to it easier.

The plain truth is that I believe and I think many in this Nation believe that Judge Bork was perhaps the most qualified candidate in a quarter of a century. He will probably not get to serve because of a political campaign that has been mounted against him in what was not supposed to be a political process.

Finally, I want to just sound one more alarm: I am deeply concerned that Bork was especially vulnerable to attack because he is brilliant, because he is outspoken, because he has been a teacher, because he has written extensively.

I think and I hope Members of the Senate will at least think about this as we go on to other nominations, that it is very dangerous when a person, because he is outstanding, because he does write things, because he is willing to look at new and innovative ideas, because as part of being a teacher, he is willing to make provocative statements, I think the fact that he is more vulnerable to attack than people who never write anything and people who never say anything, to people who do not stand out from the crowd intellectually, I think that is a real danger because I think it is clear that as a result of this decision we will assure that Presidents in the future will be less likely to nominate the most brilliant candidate, less likely to nominate the candidate whose position is part of the public record, less likely to appoint the candidate who has written a comprehensive book when the nominees very skills, brilliance, and willingness to speak out make him vulnerable to political attack.

So, I am concerned that not only are we turning what was supposed to be a debate about qualifications and integrity into a debate about political agenda, but I am deeply concerned that we are going to have fewer and fewer people appointed who ever wrote anything, who ever took a provocative position, who ever had an intellectual leadership role in forming public opinion, and I think that is a potential tragedy for America because the job of serving America is a job that deserves the very best. I would be willing to predict today that the President's next nominee will not have written as much as Judge Bork, will not have been on the cutting edge of the intellectual debate as Judge Bork has.

Now, what this means is we will not get the best, the keenest minds. We run the risk of affecting lower court decisions as people posture to get in a position that some day they might be confirmed to the Supreme Court. And we are in danger of inducing our best minds to not enter into debate about the issues on which the future of America depends.

I hope the day never comes when the only way to be confirmed to a Federal post is to never have written anything, to have never exposed your thought process, to have never engaged in a discussion of a controversial issue. We are all losers if that happens.

I yield the floor.

Mr. LEAHY and Mr. WALLOP addressed the Chair.

The PRESIDING OFFICER. The Senator from Vermont.

The Senator will suspend.

Let me say that I know there is no agreement formally or informally and no rules or requests; it is a matter of discretion of the Chair. The Chair, this Presiding Officer, does feel that when there are two Senators seeking simultaneous recognition, it is only fair to go from one party to the other party and from one who has spoken for the nomination to one against the nomination.

The Senator from Vermont.

Mr. WALLOP. Will the Senator yield just for an observation?

Mr. LEAHY. I yield if I can do so without losing the floor.

Mr. WALLOP. I have no intention of taking the floor.

I would just say to the Chair, I have no problem with his pursuit of fairness, but I think the rule, in fact, does state that that Senator on his feet seeking recognition first is to be recognized. I was, in fact, standing here during the time the Senator was on the phone, and long before he had his podium I had my podium. I have no objection to the Chair's pursuit of fairness, but I do not believe it should be done by violating the rules.

Mr. LEAHY addressed the Chair.

The PRESIDING OFFICER. The Senator will suspend. The Chair is the one that opened up this discussion. He realizes that. But the rule states that the Senator who is first heard in seeking recognition is the one to be recognized. The Chair, in his statement to the Senator from Wyoming, knows he has been on the floor, as has the Senator from Vermont. It is the opinion of the Chair that the Senator from Wyoming and the Senator from Vermont sought simultaneous, audible, appropriate recognition. The Chair only thought, so that there would be no misunderstanding, that because there was simultaneous attempts to have the floor, I chose the Senator from Vermont because of the reason the Chair has stated, in fairness both to the parties and those who are for or against the nomination.

The Senator from Vermont.

Mr. LEAHY. Mr. President, I thank the Chair for noting that. I would point out to the Senator from Wyoming that I have been on the floor off and on since 9 o'clock this morning hoping to be recognized. But I realized that some of the leaders in this debate were speaking and that we were going back and forth from proponent to opponent to proponent to opponent. So I waited until a proponent had spoken. I had no intent to cut off the amount of time that the proponent of the nomination wished to speak. I waited my turn. I might mention to the Senator from Wyoming that I sought recognition now, because shortly after I speak I have to go and chair a hearing where we are trying to get some of President Reagan's judicial nominations through. If I am not there, they will just have to be delayed until sometime next month or the month after. I am holding this hearing to try to help the administration get their nominations through.

But, in any event, I have been here for several hours waiting while the proponents and opponents spoke. I waited patiently and was willing to wait as long as the last proponent spoke.

Mr. President, I rise in support of the recommendation of the Judiciary Committee that the Senate withhold its consent to the President's nomination of Judge Robert Bork to be an Associate Justice of the Supreme Court.

I have already stated in detail here on the Senate floor my reasons for opposing this nomination. In fact, those reasons are also outlined in my separate views and they have been printed, along with the committee report. That report is on every Senator's desk. In the interest of time, I am not going to restate my reasons here today.

I have spoken about this nomination here on the Senate floor once on August 6 before the Judiciary Committee hearing began and again on September 30, the day those hearings concluded. I stated on both of those previous occasions that the central issue in this nomination is the question of Judge Bork's judicial philosophy: His approach to the Constitution, and to the role of the courts in discerning and enforcing its commands. The focus of the proceedings in the Judiciary Committee was an examination of Judge Bork's judicial philosophy. The committee's conclusions about that judicial philisphy led it to recommend that the Senate should withhold its consent to this nomination.

These issues of judicial philosophy have been at the heart of our debate on this nomination up until now. They should be at the heart of the debate in which we are now engaged here on the Senate floor. But, for the most part, that is not the debate in which we have been engaged here since yesterday when the proponents of this nomination finally consented to bring this issue to the Senate floor.

Mr. President, I have often said that the Senate should be the conscience of the Nation. I believe we should help mold and reflect that conscience in our debate here on the Senate floor. I was 34 when I first came to this Senate and made such commitments 13 years ago. I feel far more strongly about that today than I did then.

We have been told several times during this debate the same thing that the President of the United States told us in his speech last Wednesday: That this debate is not about the judicial philosophy of Judge Bork. Instead it is, in the President's words, about "the process that is used to determine the fitness of those men and women selected to serve on our courts."

I know a little bit about that process. I have served in the Senate for 13 years and I have seen us exercise our duty to advise and consent. I have served on the Judiciary Committee for more than 8 years. During that time, close to 400 nominations to the Federal courts have been considered by the committee. The overwhelming majority of them, perhaps 95 percent, have been approved by the committee and then confirmed by the Senate, with my support. This includes 318 nominations made by President Reagan. In fact, I have supported all but a tiny handful of the 318 nominations made by President Reagan. So has nearly every single Senator on both sides of the aisle.

My personal involvement in this process has deepened this year with the establishment of the Judiciary Committee's judicial nominations task force. As the chairman of that task force, I have presided at a great majority of the confirmation hearings held on nominations to the lower Federal courts. This year, the committee has recommended that the Senate consent to 28 judicial nominees, and 27 of these have been confirmed.

In fact, the Bork nomination is the first nomination the committee has reported unfavorably during this Congress.

Let me reiterate that, Mr. President, This year, the committee has recommended that the Senate consent to 28 judicial nominees and 27 have been confirmed. The Bork nomination is the first one the committee has reported unfavorably during this Congress.

Our task force is continuing its work. This afternoon, while this debate is going on, a hearing will be held on other judicial nominees. Tuesday, on the eve of this debate, a hearing was held on three judicial nominees. More are scheduled to be heard within the next few days.

What I am saying, Mr. President, is that President Reagan has been very successful when he submitted his judicial nominees to the advice and consent process of the U.S. Senate. But now that the President is about to lose a big one—and there is no doubt in anybody's mind he is about to lose—he has discovered some serious defects in the process. A few Senators have also made a similar discovery. As a result, we have the debate in which we are now engaged, a debate not on Judge Bork, but a debate on "the process."

This debate is not about Judge Bork, the man. It has never been about Judge Bork, the man. Robert Bork the man has my admiration and respect. I admire his scholarship, his intellect, his skill in crafting judicial opinions. I respect his personal decency and integrity, his unparalleled forthrightness in answering the most probing and far-ranging questions by members of the Judiciary Committee.

In his testimony during the hearings, he set a high standard that future nominees are going to find hard to match.

But the issue before the Senate is not Robert Bork, the man. The issue is the judicial philosophy of Robert Bork, his approach to the Constitution, and to the role of the Supreme Court in discerning and enforcing its commands.

In this bicentennial year of our Constitution, this is a debate over the future of our Constitution. It is a debate about our rights and liberties as American citizens. It is a debate about the Supreme Court as the ultimate guardian of these rights and liberties. It is a debate about the preservation and vitality of that essential role of the Supreme Court as this Nation embarks on its third century of constitutional self-government.

That is why the Senate Judiciary Committee spent so much time learning about the judicial philosophy of Judge Bork.

But more importantly, Mr. President, while the Senate Judiciary Committee has been learning about the judicial philosophy of Judge Bork the American people have been learning right along with us.

Last month Judge Bork testified before the Judiciary Committee for 5 days. Millions of Americans watched those hearings on television. Millions more followed in the press.

They heard what the members of the Judiciary Committee heard and they saw what we saw.

Judge Bork told the Judiciary Committee he still does not think that the Constitution gives Americans a right to privacy, a "right to be let alone" by their Government.

The American people head him defend that view, just as those of us who sit as Senators on the Judiciary Committee heard him.

Justice Bork told the Judiciary Committee last month that he has finally decided that Government discrimination against women is unconstitutional, at least if it is "unreasonable" discrimination.

He said that for the first time at those hearings. As recently as a month before he was nominated he had maintained his long-held view that the equal protection clause, the constitutional guarantee of equality, did not apply to sex discrimination.

The American people heard his newly expressed views on the subject just as the Senators on the Judiciary Committee heard him.

Judge Bork told the Judiciary Committee last month that he has finally accepted most of the Supreme Court precedents that protect our freedom of speech. This, too, was a departure from the views that Judge Bork has expressed for many years prior to his nomination to the Supreme Court.

The American people heard Judge Bork's newly expressed views on the first amendment just as the members of the Judiciary Committee heard them for the first time.

After hearing 5 days of testimony from Judge Bork, the committee heard 7 more days of testimony from witnesses, both supporting him and opposing him. Sixty-two of those witnesses urged us to give our consent to the nomination. Forty-eight of those witnesses urged us to withhold our consent. With few exceptions the testimony on both sides was well reasoned and throughtful and I think it was valuable to the committee in reaching its conclusion.

Mr. President, the hearings were only part of the process by which the Senate carried out its constitutional responsibility to advise and consent on this nomination. Before the gavel fell on September 15, opening the hearings, the members of the Judiciary Committee took the time to study the extensive written record of judge Bork's judicial philosophy. We read thousands of pages of his speeches, articles, interviews, and judicial decisions. In fact, I spent a good part of the month of August in Vermont doing nothing but reading those articles.

This preparation provided the essential context in which the committee evaluated Judge Bork's testimony, including his views on equality and free speech, views which, as I have said, he announced for the first time at the hearing.

But we also took time to hear from the people, the people of the 50 States who elected the 100 Members of the Senate and who count on us to do our duty under the Constitution. Two hundred Forty million Americans are going to be affected by our decision on the Bork nomination. Only 100 of those 240 million Americans will get to vote in this nomination. That makes it all the more important that the Senate look at the nomination seriously and carefully, and then vote one way or the other on this nomination.

We have heard from the people. We heard from them on preprinted postcards and letters, and that is the kind of mail a Senator weighs—literally weighs—rather than reads.

I go into my own office and say: "What have we got on the preprinted ones?" And we have a big sack one way and a big sack the other way. You can lift them up and weigh them, and say, OK, I know which way it is going."

But more importanly we heard from the American people in other ways. In my home State of Vermont I heard from the people about the Bork nomination every day for the last 3 months. They talked to me at town meetings and civic functions. When I was mowing my lawn, someone would come up to me and talk about the Bork nomination. In the supermarket, when I went to church, when I walked down the street to get a paper, when I went to my son's school—whatever I was doing in Vermont, somebody would come up and talk to me about this nomination. Whether it was in small towns or on city sidewalks, the people of Vermont let me know what they thought about Judge Bork.

When I was back here in Washington I received hundreds and thousands of thoughtful and thought-provoking letters and telephone calls from the people of my State on both sides of the issues.

I have never in 13 years here in the Senate encountered an issue on which the people of my State made such an effort to contact me personally and talk with me directly. There has never before been an issue where I could count on the fact that soon as I set foot in the State—and that is almost every week—people within minutes would come up to me and express a view either for or against the nomination. No other issue that we have had here in 13 years has caused so much comment.

Every one of these Vermonters agreed that the decision on the nomination of Judge Bork was one of the most important issues facing the Senate. Many thought the Senate should confirm Judge Bork, but many others had their doubts. They reminded me that a Supreme Court Justice does not serve just to the end of the term of this or any other President. A Supreme Court Justice serves for life. Vermonters were concerned about the legacy of freedom, of equality, of liberty that our generation will leave to our children. And I shared their concerns.

The record before the Senate is a record of the past; what Judge Bork has said and done up to today. But the Senate's decision is a referendum on the future.

I read the thousands of pages of articles and speeches and decisions written by Judge Bork. I listened to his testimony. I heard the other witnesses. I was there for almost all of the hearings.

At the end of the committee process I was not satisfied that the confirmation of Judge Bork would be in the best interests of the American people and of our Constitution. I concluded that the confirmation of Judge Bork would pose too great a risk for the future of the ideals—freedom, equality, and liberty—that "we the people" have emboided in our Constitution. A majority of the members of the Judiciary Committee reached the same conclusion.

It was a hard decision, one that will disappoint many of our constituents. But in the end I believe that it was the right decision.

The members of the Judiciary Committee made that decision on the record. We decided on the basis of Judge Bork's writings and on the basis of what we saw and heard at the hearings. We based our decision, in short, on the same evidence that the American people saw for themselves as they watched these historic hearings.

We did not base our decision on public opinion polls. We did not make up our minds because of newspaper, radio, or television advertising. We did not arrive at this difficult decision by examining the fundraising appeals of groups for or against Judge Bork.

We based our decision on the record. We explained our decision when the committee voted and in the committee report that is on every Senator's desk.

The American people elected Ronald Reagan as President, but they also elected the 100 Members of the U.S. Senate. The Constitution—that magnificent charter whose bicentennial we celebrate this year—tells us that the selection of Justices of the Supreme Court is too important to leave to one branch of government. It tells us that the President and the Senate are equal partners in that crucial decision.

The President carried out his part when he nominated Judge Bork. But now it is up to the Senate to carry out its constitutional duties.

That is the process by which the Judiciary Committee reached its decision. It is a process hallowed by 200 years of constitutional tradition. It is the process that the President of the United States unfortunately chose to denounce in his speech last Wednesday, when he said:

> The confirmation process became an ugly spectacle marred by distortions and innuendos, and casting aside the normal rules of decency and honesty.

Mr. President, I listened to every word of that speech. I was as troubled by it as I have ever been by a speech by any President.

This is a serious charge for a President to make against the Senate of the United States.

We in the Senate must take it seriously. We cannot just dismiss it as the cry of a sore loser who wants to change the rules of the game when he finally loses one.

So I ask the President, "Where did we in the Senate went wrong?" When did this process, by which more than 300 of the President's nominees to the Federal bench have been confirmed, turn ugly? When did it become indecent? What makes it dishonest?

Did we go wrong back in June when Justice Powell retired and this vacancy was created? Did we go wrong at the very beginning of the process of advise and consent?

The Constitution does not simply say the Senate must consent to Presidential nominations. It says we must advise and consent.

We might ask, how did the President seek the Senate's advice on this vacancy? He sent Howard Baker and Attorney General Meese to the Senate with a long list of possible nominees. There is nothing wrong with that. Judge Bork was at the top of that list. The Senate leadership replied that some of us knew enough about Judge Bork's record to predict that a Bork nomination would not have smooth sailing. It would be a difficult decision. It would spark in the words of the chairman of the Judiciary Committee, a contentious debate.

The Chief of Staff and the Attorney General went back down Pennsylvania Avenue and the next day the President announced he would nominate Judge Bork. Is that where the process went wrong? When the Senate leadership was presented with that list, should they have bitten their tongues and told the President, "We do not care. Take your pick. We will rubberstamp whomever you send."

That is not what any President should desire. Certainly that is not what 240 million Americans, represented by the 100 men and women in this Chamber, should ever expect.

Should we have done instead what the Constitution tells us to do, to give the President our advice? That is exactly what we did. That was not ugly. That was not indecent. That was not dishonest.

Obviously, the President's mind was already made up. He ignored the preliminary advice of the Senate. He nominated Judge Bork anyway. And the Constitution gives him that right. The Constitution does not limit in any way, shape, or manner whom the President can nominate. It does not limit the President in any way because the Constitution contains a check and balance. The Constitution says the Executive, the President, can nominate somebody. But that person does not become a judge with life tenure unless the U.S. Senate advises and consents. That is the check and the balance, and that is why the Constitution gives any President so much leeway.

After the nomination was made, we heard from some of the supporters of this nomination that the Senate should not consider Judge Bork's judicial philosophy. We were told that our only job was to make sure that the nominee was competent and law-abiding. Any further inquiry, we were told, would be ideological, and somehow improper.

That is a tough argument for anybody to make. The proponents of that argument want us to ignore 200 years of constitutional history. That history tells us that the Senate has often considered and debated the judicial philosophy of nominees to the Supreme Court. In fact, after those debates, one-fifth of these nominees have not been confirmed.

The proponents of the argument also want us to ignore the recent testimony of the Attorney General, who told the Judiciary Committee in March that it was appropriate for the Senate to inquire into "how the nominee, if confirmed, would go about interpreting how the commands of the Constitution applied to the cases that may come before him or her." Indeed, the proponents of this argument would want us to ignore the President himself, who said he nominated Judge Bork because the nominee has a philosophy that the President said he agreed with, a philosophy of judicial restraint.

Now at the urging of many Senators, conservatives and liberals alike, the Senate rejected the specious arguments that judicial philosophy is irrelevant.

In that instance, the process did not go wrong. It did not become ugly, indecent, or dishonest.

Or should we simply have said let us take the nominee's pulse, examine his résumé, and send him on to the Supreme Court? If he seems intelligent, healthy, and law-abiding, then should he automatically go to the Supreme Court?

I think the Constitution demands far more of us.

It is not ugly to insist that judicial philosophy be a central issue in this debate. Nor is it indecent to take the time to learn about Judge Bork's approach to the Constitution. Nor is it dishonest to prepare for the hearings by studying the written record of this nominee who has been a prolific writer and lecturer, both before and since becoming a judge.

What about the hearings themselves? Judge Bork testified for 5 full days. He answered virtually every question. He was never cut off. Once in a while, he thought it was improper to reply and his decision was respected. The distinguished chairman of the committee, Senator BIDEN, protected his rights all the way through. Time and time again, he told him he could have whatever time he wanted to frame his answers. In fact, the distinguished ranking member of the committee, Senator THURMOND, went out of his way at the end of the hearings to compliment the chairman of the committee for his fairness. That compliment was deserved.

There was nothing ugly in allowing the American people to get a chance to judge the nominee, and to judge whether the committee dealt fairly with him? It was not indecent that more than 100 additional witnesses had an opportunity to testify, the majority of them in support of the nomination. Nor was it dishonest for the committee to conclude that the decision on this nomination was so important that it should be made by the full Senate, all 100 of us, rather than allowing it to die in the Judiciary Committee, even though a majority of the committee members voted against this nomination.

Today, Mr. President, the Senate is ready to vote. All but a few Senators have declared their position, and the outcome is assured. Is it ugly to point out that the Senate must move on to other difficult issues on its agenda? Is it indecent to note that the longer we delay this vote, the longer the ninth chair of the Supreme Court is going to remain vacant? Is it dishonest to state that the Senate is ready to do its duty under the Constitution to advise and consent?

This debate is the culmination of the process by which the Senate has carried out its constitutional duty. It is the same process by which more than 300 of President Reagan's nominations to Federal courts, including three Supreme Court nominations, have received the consent of the Senate. The President has asked for our consent to the nomination of Judge Bork, and we in the Senate will refuse that consent. That will complete the process as far as this nominee is concerned, a process which regrettably the President has called ugly, indecent, and dishonest.

Maybe the President did not see the Members of the Senate preparing for the Judiciary Committee hearing, or listening closely to the concerns of articulate and well-spoken American citizens. But I saw that. The American people saw that. And we know it was not ugly.

Maybe the President did not follow the 12 days of hearings on this nomination. Maybe he did not hear the testimony of Judge Bork and the questions, fair questions, probing questions, thorough questions, by the members of the Judiciary Committee. But I heard that. The American people heard that. We know it was not indecent.

Maybe the President did not hear Senator after Senator explaining why they had decided Judge Bork should not be confirmed.

But I heard them. The American people herd them speaking from the floor of the Senate. And we know that their statements were not dishonest.

The President said in his speech last Wednesday that the rejection of the nomination of Judge Bork will "permanently diminish the sum total of American democracy." If he would have watched the proceedings and heard the Senators, he would have known that for the past few weeks democracy at its best has been at work.

We have seen the Senate carry out its role under the Constitution, not to rubberstamp this or any President's choice, but to consider seriously whether the President's choice is in the best interests of all Americans.

We have seen the American people involved and engaged in an important debate on the future direction of the Supreme Court. After all, this Court is the ultimate guardian of our constitutional liberties. The people have been heard.

Some of the voices on both sides of this issue have been strident. That is what happens when a democratic society debates the crucial issues of the day. But most of the voices have been serious and they have been sincere. The Senate has listened as well as participated in this debate.

The Bork nomination is over, but the ninth chair at the Supreme Court remains vacant. The President is angry. He announced last week that he will send up another nominee that the Senate, in his words, "will object to just as much."

That is his constitutional privilege. The Senate also has a constitutional responsibility. The next nominee will be examined thoroughly, fairly, and objectively. That is the process that has worked very well for this country for 200 years. I, for one, would not seek to change it.

There is one important difference between the process by which we have considered this nominee and the process by which we have considered more than 300 others since this administration began. Most judicial nominations are considered in relative obscurity. Most judicial nominations hearings attract little public interest. But on this nomination, which is so important to the future of our constitutional rights and liberties, the American people have taken center stage.

Newspapers have been filled with copy about this nomination almost from the moment Justice Powell retired. Millions of Americans read those articles and editorials both for and against Judge Bork. They saw the television coverage. They listened to the radio. They understood that the decision on this nomination was the most important decision in the field of constitutional rights in decades. They took seriously their responsibilities as citizens of a self-governing republic. And millions of American citizens mobilized either in support of or in opposition to this crucial nomination. They wrote, called, and telegraphed their elected representatives. They organized in groups to spread their viewpoint, pro and con, to their fellow citizens. Some dug into their own pockets to place advertisements in the mass media to influence us one way or the other.

We have heard a lot in this debate about those advertisements. We have heard that they are inaccurate, that they contained distortions; that they have polluted the advise and consent process. I am not here to defend or condemn those ads.

But let us put this debate in the proper perspective. Every debate on a controversial issue gives rise to advertisements about the issue. Pick up the paper, Mr. President, virtually any day the Senate is in session, and you will find an advertisement for or against some legislative proposal, urging readers to write to us, either for or against the proposal. Certainly when the appropriations bills are being considered, the local media enjoy a windfall. At that time of year, there will be an awful lot of ads that are designed only to reach 535 people—the Members of Congress.

Sometimes those ads are misleading and sometimes those ads are straightforward. Sometimes the letters that are generated as a result of these ads are difficult to understand because they bear so little relationship to the issue before Congress, but it is perfectly all right for people and organizations to raise issues in advertisements in the hopes of persuading Members of Congress to "see it their way."

In this case there were extremes. But I think the American people rejected the extremes.

I found some of these public relations tactics personally abhorrent, I think most Americans did. On the other hand, because a number of groups both for and against Judge Bork, raised the issue of this nomination in public debate, they helped to bring to people's attention the major constitutional debate we have had in the Senate. In that sense, some of the groups that have advertised both for and against this nomination did a service for the American people.

They helped to get Americans to pay attention. Americans can tell a slick ad from a straightforward recital of the facts. Because there was so much discussion of this nomination by both the proponents and the opponents of Judge Bork, millions of the American people started to think about it and decided they would make up their own minds. They watched the hearings. They listened to the hearings. They read about the hearings. They heard articulate, well-informed, well-meaning people speak for Judge Bork and articulate, well-informed, well-meaning people speak against him. Then the American people made up their own minds based on what they saw and heard. That decision is reflected in the decision by a majority of the 100 Members of the Senate opposed to the nomination of Judge Bork.

At the beginning of this process I made up my mind that I would decide based on the record of the hearings. I would decide based on the record of what Judge Bork himself said about his judicial philosophy, not on what some interest group might have said about that philosophy, reached their decisions in the same way.

Democracy can sometimes get just a tad hectic. Certainly debate in a democracy can sometimes be raucous. I would not have it any other way. I would not suggest that controls be put on the public debate. Ultimately we are going to have the debate in the Senate Chamber where each one of us will have to explain our own vote and our own reasons. That is really where the debate will end and the issue will be decided.

The public debate, even if it sometimes goes to extremes helps focus attention on the debate in the Senate. I have found over and over again we do not give enough credit to the wisdom of the American people. They will decide, listening to the debate, what is right and what is wrong, and whether we have made the right decision.

Some countries do not have this kind of public debate. I would hate to live in a country where people cannot state their views—even extreme views—on either side of an issue. That insight is hardly original with me. I think it was well stated by a prominent legal scholar who has devoted a good deal of time to thinking about the nature of public debate in a society dedicated to freedom of speech. Let me quote what that authority said. He said:

> Those who step into areas of public dispute, who choose the pleasures and distractions of controversy, must be willing to bear criticism, disparagement, and even wounding assessments. Perhaps it would be better if disputation were conducted in measured phrases and calibrated assessments, and with strict avoidance of the ad hominem; better, that is, if the opinion and editorial pages of the public press were modeled on the Federalist Papers. But that is not the world in which we live, ever have lived, or are ever likely to know, and the law of the First Amendment must not try to make public dispute safe and comfortable for all the participants. That would only stifle the debate.

I am sure, Mr. President, those who have studied this matter recognize the author of those words: Judge Robert Bork, in his concurring opinion in the case of Ollman versus Evans.

One other passage from this opinion is relevant to this debate. It concerns freedom of the press, but it applies just as well to the freedom of advocacy groups to bring their viewpoint to the marketplace of ideas:

> The American press is extraordinarily free and vigorous, as it should be. It should be, not because it is free of inaccuracy, oversimplification and bias, but because the alternative to that freedom is worse than those failings.

I could not agree more, Mr. President.

The public debate over the nomination of Judge Bork has certainly not been "free of inaccuracy, oversimplification, and bias." No public debate about important issues in a democracy ever meets that standard. The debate in the U.S. Senate on any subject, from widgets to the Constitution, never entirely meets the standard. The testimony before the Judiciary Committee on this nomination was on the whole excellent and well-reasoned, but even that record does not meet the standard of complete freedom from inaccuracy, oversimplification, and bias.

Our democratic system is based on the principle that a free marketplace of ideas is the best guarantee of wise decisionmaking. The people of the United States have elected us to the U.S. Senate because they have some confidence in our ability to separate the wheat from the chaff, to respond to the meritorious arguments and discard the rest. I believe the record will show that we have done just that in the debate over this nomination.

Certainly many shoddy goods have been brought to the marketplace of ideas in this great national debate. But these wares have not found many takers here in the U.S. Senate.

My final observation on this topic concerns the origin of those distasteful displays in the marketplace of ideas. For too many of these regrettable but inevitable moments in this debate have come to us courtesy of the proponents of this nomination, not its opponents.

It was not the opposition to this nomination that advanced the argument that the power to advise and consent was really only a duty to rubberstamp the President's choice. It was some of the proponents of this nomination who tried to pawn off that view as an accurate interpretation of the Constitution. They did not find many takers in this body.

It was not the opposition to this nomination that decided that the way to debate this nomination was to attack the integrity and the honesty of members of the Judiciary Committee. It was some of the proponents of this nomination who peddled that tawdry line in full-page ads in nationally circulated newspapers, and who planted the same bad seed in prepackaged letters to the editors of many local publications. I am glad to say that these distasteful wares found very few customers in this body.

It was not the opposition to this nomination that sought to delay the debate on the Senate floor to allow time for one last fundraising pitch to the faithful. It was some of the proponents of this nomination who put the advancement of their cause before the best interests of the Supreme Court, and of the Nation as a whole. But they didn't find very many takers in this body, even among those who agreed with them that Judge Bork ought to be confirmed.

I do not lay the responsibility for any of these low tactics at Judge Bork's door. I am convinced that they were devised without his knowledge or participation. Had he been asked, I am sure he would have disapproved. Those who seized upon these tactics obviously did not care that their actions demean the high office to which Judge Bork has been nominated.

I mention them here only because in our condemnation of the tactics of distortion, we must be careful not to engage in a distortion of our own. Neither side of this debate has a monopoly on truth. By the same token, neither side has a monopoly on falsehood.

Mr. President, the issue before the Senate is the nomination of Judge Bork. That issue has been considered on its merits; it should be decided on its merits. The quality of the public debate over this nomination—the fundraising appeals, the preprinted postcards, the advertisements—is largely irrelevant to this debate. But to the extent that it does enter into the debate, I urge the Senate to bear these observations in mind. These activities are common and legitimate features of public debate in a modern democracy. Inaccuracies and distortions in a great public debate are part of the price we pay for a democratic society; and, as Judge Bork himself has noted, that is a price well worth paying. And to the extent that distortions and personal attacks did enter into this debate, they were introduced by both sides.

But, Mr. President, I am convinced whether there are on either side, ultimately each Senator has made up his or her mind, either for or against the nomination of Judge Bork, based on the record itself, based on what they heard and read. So did the American people. Mr. President, I am heartened by the fact that from what I have read, from letters that come to my office, and from statements being made around the country it seems that the American people discarded the irrelevant statements, and the misleading advertisements. Instead they based their decision on what they heard in that hearing and the debate that they have heard here in the Senate.

So I do not think advertisements on either side of this issue really influenced the American people. But if indeed they whetted the interest of the American people, if indeed they directed the attention of the American people to these almost unprecedented hearings, then that fact makes even the personal attacks, whether on members of the committee or on other participants in the process, less important. If, ultimately, these advertisements helped direct the attention of the American people to these hearings—to one of the most significant recent examples of the Constitution at work—then they were worth it.

Advertisements will not decide this debate. Advertisements did not make up the minds of 100 men and women in this Chamber. A hearing of unprecedented fairness, of unprecedented thoroughness, was the most important factor in that decision.

Mr. SIMON. Will my colleague yield?

Mr. LEAHY. I yield.

Mr. SIMON. I commend the Senator and I associate myself with his remarks. I commend Senator LEAHY for his leadership in this whole matter.

Mr. President, to begin I would like to commend Chairman BIDEN for conducting scrupulously fair hearings. Over 12 days the committee had the opportunity to question 110 witnesses. Judge Bork himself testified for more than 30 hours, creating an unprecedented record. This gave me a chance to discuss my concerns with Judge Bork:

Could he be fair and open-minded? Carved in stone above the Supreme Court are the words "Equal Justice Under Law." I want a nominee who will make those words live, who will symbolize justice. I do not want someone with an ideological mission of either the right or the left.

Would Judge Bork be sensitive to civil rights? Much of our Nation's progress in this area has depended on the vision and courage of the Supreme Court. I want a nominee who can be a leader on civil rights, not someone who will drag his feet.

Would Judge Bork be sensitive to civil liberties? Freedom is much easier to give away than to protect. I want a nominee who will be willing to preserve freedom, even against public opinion.

Would Judge Bork be sensitive to our traditions of separation of church and state? My father was a Lutheran minister. I understand the yearning for values in our society. But I do not believe Government should promote religion. I want a nominee who understands the importance of our traditions in this area.

Above these specific concerns I had one overarching question: Would Judge Bork have compassion? The heart must not overrule the head, but the Supreme Court decides some close cases. I want a nominee who has a feeling for how legal theories will affect real people.

After carefully looking at his writings over 25 years, listening to Judge Bork's own testimony, reviewing the testimony of the 110 witnesses, and hearing from my constituents, I have concluded that I cannot support Judge Bork.

Judge Bork believes that "What a court adds to one person's constitutional rights, it subtracts from the rights of others." As I told Judge Bork in the hearings, "I have long thought it fundamental in our society that when you expand the liberty of any of us, you expand the liberty of all of us." Judge Bork's response to me: "I think, Senator, that is not correct."

The disagreement reveals Judge Bork's basic misunderstanding of the Constitution and its role in protecting the fundamental freedoms of all Americans. You cannot read the Constitution like the Tax Code. Majestic phrases—liberty, equality, freedom—were intended by the Framers to protect individuals against unreasonable Government power.

As Justice Harlan so eloquently put it, "Liberty is not a series of isolated points pricked out in terms of the taking of property, the freedom of speech, press, and religion. It is a rational continuum which, broadly speaking, includes a freedom from all substantial, arbitrary impositions and purposeless restraints."

I do not believe Judge Bork would advance that continuum, or expand rights for individuals. On the contrary, the philosophy he applies would cut back protection of fundamental liberties.

The President is entitled to nominate a conservative; I expect that. But the Senate has the responsibility to judge the qualifications of any nominee.

Judge Bork clearly has an intellectual understanding of the letter of the law and of the Constitution, but I believe he would snuff out its spirit. I regret that I must vote against his confirmation.

Mr. WALLOP. Mr. President, I note, with some wry amusement, the comment of the Senator from Vermont, before he started his statement, that if he did not get his opportunity to speak, the confirmation of additional judges this afternoon might well be in jeopardy. I hope they are still waiting for him, an hour and 15 minutes later.

Mr. LEAHY. I tell my friend from Wyoming that indeed if I had had to wait longer to speak, we would have missed that hearing. Now I will get there on time.

I notice that Senator THURMOND is not here. I suspect that he is also going to be able to make it on time.

I thank the Senator from Wyoming for observing the normal comity that has permitted this debate to go on, and that now permits Senator THURMOND and me to attend the hearing.

Mr. WALLOP. I certainly hope that the opening statement in the hearing is somewhat more curtailed than the one we have just been privileged to hear.

Mr. LEAHY. It will be less than 20 seconds, I tell the distinguished Senator.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. WALLOP. Mr. President, the Senator from Vermont suggested in his remarks that he took issue with what the President of the United States had said about this hearing process being ugly and distorted, and asked the rhetorical question, "Where did it go wrong?"

Let me suggest that perhaps in addition to watching the hearing process, the President may have read the Boston Globe, and heard the Senator from Massachusetts boast of his war room and his control center, which made the decision to delay the confirmation process over the August break in order to allow the public-interest groups to gain purchase with their campaign of vilification and distortion.

Perhaps the President was aware of what is clearly an ongoing and curious double standard, when the Senator from Vermont suggests that this process was about the judicial philosophy of Judge Bork. I would have to quote from the Commandant of the war room, Senator KENNEDY, in the nomination of Justice O'Connor, when he said:

> It is offensive to suggest that a potential Justice of the Supreme Court pass some presumed test of judicial philosophy. Even more offensive to suggest that a potential Justice must pass a litmus test of any single issue interest group.

Or, the remarks of the chairman of the committee, on the nomination of Abner Mikva, when he said:

> The real issue is your competence as a judge and not whether you voted rightly or wrongly on a particular issue. If we take that attitude, we fundamentally change the basis on which we consider the appointment of persons to the bench.

Or, the remarks of the Senator from Ohio [Mr. METZENBAUM] to a witness opposing the nomination of Ruth Bader Ginsburg:

> You don't mean that every nominee up for confirmation ought to have his or her views explored as to what his or her positions are on all of the controversial issues that may come before these jurisdictions? You don't actually mean that, do you?

Perhaps the President, in his sense of fair play, thought that those in opposition to the confirmation of Judge Bork might be at least persuaded to have some consistent standards by which they evaluated nominees. But it is, of course, in this day and age, a little too much to expect, I suppose.

It is curious to the Senator from Wyoming that the Senator from Vermont, in his remarks, cites Judge Bork's decisions on free speech, while the committee, which he says did such a careful and thorough job, takes specific issue with Judge Bork's decisions on free speech. It is wonderful that you can have it one way to supply that particular form of prejudice and the other way to cite the record of the committee. So the double standard exists.

Mr. President, I rise again today to join in this debate on the nomination of Judge Bork to the Supreme Court. Some have little doubt as to the outcome of the vote on this matter, but I believe the debate to be important, that the record needs to be set straight, and that minds could be changed, were it to be that anybody would choose to listen.

I do not know why Gregory Peck, in the twilight of a famous movie career would lie and have his lie filmed and presented across the country. I do not know why people from the American Way or the ACLU or the NEA or the NAACP would campaign with lies and distortions. It is beyond me. But it is not beyond us to examine the basis of these charges and not simply come to an opinion.

It is interesting to me that the Senator from Vermont said that the Judiciary Committee had come to a conclusion. I do not think that is the case. I think the committee started with a conclusion and came to a justification.

I would commend Judge Bork for his willingness to take this fight to the final battle.

As the Wall Street Journal stated it He said it was his "refusal to die a death of a thousand libels" than to die that death in silence.

I hope the country who has now, according to all polls, come to the conclusion that the hearing process was catastrophically unfair, will at least be persuaded to thank Judge Bork for his principled courage in seeing the fight through.

Much has been made of the politicization of this nomination and much should have been made. I certainly know, and have seen it here, that the confirmation process is rarely, if ever, totally devoid of politics.

But this particular nomination has been politicized by the completely unprincipled and frenzied smear campaign, complete with calculated television and newspaper advertising, that are not distinguishable from Presidential or senatorial election campaigns.

Unable to challenge Judge Bork's sterling credentials, those institutions based their assault on creating an irrational fear that this one man, by himself, could somehow or another destroy our Republic.

And the war room, of which the Boston Globe described in detail, saw to it that the confirmation process was delayed long enough so that this campaign could have its effect on polls and public anxiety.

So it is a new kind of politics that has stampeded its way into the Senate and threatened our advise-and-consent role. The campaign's powerful effect on this body is sadly evident in statements made by Senators in recent weeks.

These are colleagues whose fine judgment I normally respect, even in disagreement, but they leave me in this instance puzzled by their argument. They seem inconsistent and contrived. Perhaps as a nonlawyer, I cannot see their lines of reasoning but their conclusions do not readily flow from their stated presumptions.

For example, the Senator from Tennessee [Mr. SASSER] on this floor said of Judge Bork he:

> Revealed himself to be a complex and brilliant scholar. He has a searching intellect that has resulted in some truly profound inquiries into the Nation's judicial heritage * * * I have no doubt that Judge Bork is a man of the highest intellectual and moral integrity. I am convinced that his intellectual and political odyssey has been absolutely sincere. Yet, within moments, the Senator went on to say, * * * the question must be clear and alarming: who is the real Robert Bork and how can we possibly predict with any reasonable degree of certainty what kind of justice he will be?

This man of the highest intellectual and moral integrity. He went on to say:

> Mr. President, I am not convinced that Judge Bork has abandoned the radical judicial agenda he has charted out very carefully through 25 years of deeply considered scholarship. And, now, to be fair about it, Judge Bork has subsequently recanted these radical views. And if we are to believe his testimony before the Judiciary Committee * * * and so on.

How can a Senator believe that a man "of the highest intellectual and moral character" lied to the Judiciary Committee? It cannot be argued both ways. If Judge Bork is an honest man, as the Senator states him to be, then no other conclusion can be arrived at. There has to be another reason for opposing him.

And my friend from Louisiana, Mr. BREAUX, said on this floor of Judge Bork:

> The personal credentials of Judge Bork are impressive: law professor, court of appeals judge and, from all evidence, a man of high moral principle and honesty.

But he goes on to explain that it is Judge Bork's lack of predictability that troubles him.

Do we want predictable judges who, by the way, are a rare commodity on the Court, or do we want honest ones? And has anyone in this body been able to predict anything but that a reputation for high moral principles and honest behavior and integrity are the only predictable things that we should base our decision on? Could anyone in this body even predict the questions that may be presented to the Court, let alone the answers to those questions?

My colleague from Texas, Mr. BENTSEN, said:

> * * * When President Reagan nominated Robert Bork to the Supreme Court, it quickly became apparent that the President had selected a jurist of substantial intellect and unchallenged integrity who would nevertheless be an extremely controversial nominee.

The Senator said he has problems with Judge Bork on the issues of privacy and civil rights, issues which Judge Bork addressed in detail in the hearings.

And I would ask again, was the Judge Bork of unchallenged integrity lying when he gave the committee his views on those issues? Or is there some other reason for the Senator's opposition? If it is so that the issues of privacy and civil rights are the issue, from what basis would the Senator depart from the judgments of Judge Bork? Surely, we are owed the reasoning where in my friend would have judged differently.

The Senator from Vermont here in front of the gallery and the Senate, only a few minutes ago, talked of Judge Bork's finding no right to privacy, and that is an absolute fabrication of the hearing record, of the public record, of the judicial record of this nominee.

And surely the Senator from Vermont, or the chairman of the committee, or the distinguished Senator from Alabama, a former judge, would not say that some blanket right of privacy exits for all Americans, that you can sodomize, that you can indulge in incest, that you can indulge in spouse abuse merely because your bedroom door is shut.

No such right exists in our Constitution and no such right was found by Judge Bork and no such right should be found by the Senator from Vermont or any of his critics.

You cannot plot and plan the overthrow of the Government or the assassination of your neighbor or the mayor or anyone in the privacy of your own home and be free and absolutely protected by the Constitution of the United States. That is absurd on its face.

To suggest that such a right exists is to suggest that America itself is in peril by a Constitution which protects you against lawlessness merely because your bedroom door is shut.

To state otherwise is an absolute distortion and fabrication of the law.

The Senator from Tennessee, Mr. GORE, said of Judge Bork, "I respect Judge Bork as a man of integrity and intellect."

How often these phrases come back and come back.

He went on to say, "He is neither a racist nor a bigot." Yet the Senator opposes this confirmation because "Judge Bork does not understand the Constitution as most Americans do."

I would suggest that most Americans do not understand the Constitution as most judges and lawyers and Supreme

Court Justices do, because that is their training and it is not the training of most Americans. But clearly a man of Judge Bork's intellect and integrity has a greater capacity to understand the Constitution than most Americans and we have depended on those wisdoms of our judges to understand the Constitution better than do we.

If we all understood it to perfection, what on Earth would we need judges for? What would be there to judge if each of us understood it precisely the same as everyone else? There is nothing left to judge.

So to say that the standard for opposition is because he does not understand as most Americans do is a thin, thin line of reasoning.

And the Senator goes on to explain his view that the Supreme Court "must not only ensure that the laws are fairly applied, but that the laws themselves are fair."

I wonder who would suggest that believing something to be fair is the test for its constitutionality? There are greatly differing views as to what is and is not fair. That again is what comes before the Court to be judged.

Each side in contested issues believe that their side is fair and the Court is asked to judge which side is correct, not fair, under the interpretation of the law or the mandates of the Constitution.

And the Senator from Kentucky, Mr. [Ford] contends that Judge Bork "lacks the necessary humanitarian feel for the true spirit of human rights and human liberties."

Now, who can believe that Justices on the highest court in our land should make rulings based on their subjective humanitarian feelings, rather than on the basis of objective constitutionality.

The junior Senator from Florida, Mr. [Graham] recognizes that "Judge Bork has dedicated a lifetime to scholarly pursuits and judicial application. He has repeatedly defined a set of deeply held convictions which inform his decision. His intellect is formidable. His articulation of his views is forceful." Yet he comes down against him because "his inattention to the human consequences of adjudication is seen as a threat by many * * *"

I would ask again a rhetorical question: Should Supreme Court Justices decide cases on the basis of perceptions of groups, or should they apply the terms of the Constitution? Are we asking now, with such a standard, that the judges become second-guessers to the legislative process?

Mr. Chiles, is "satisfied that Judge Bork has the capacity. He seems to be a highly intelligent, perhaps brilliant legal scholar. I do not question his competence nor his integrity." Once again, those words. But the Senator comes down against Judge Bork because "his is a much narrower view of individual rights guaranteed by the Constitution."

And one would have to, in fairness, ask: narrower by whose view? Narrower by what objective standard? And by what objective standard can anyone be so judged? Is it on the basis of Judge Bork's passionate beliefs reflected when he sided time after time with the NAACP against his own administration when he was Solicitor General?

The senior Senator from Louisiana says, "What comes through is a brilliant professor, a fine lawyer." I think I would hire him as my solicitor general, if given a chance. And I think he is honest. I have no quarrel with his honesty." But he opposes Judge Bork because his scholarship is "devoid of moral content."

Now, how can someone be honest and be full of integrity and have his scholarship "devoid of moral content?" I ask America to look at what is taking place here. These are contrivances, not reasonings.

He goes on to say that Judge Bork:

> Misses the experience and the feeling and the spirit and moral content of the law.

And, again I ask: Is the Constitution a matter of the good feelings of individual judges, or a written document changed only by the democratic process of amendment? Does this Senator accuse Judge Bork of being immoral or amoral? Surely such a heavy accusation deserves substantiation if it is to stay.

And why would the Senator from Louisiana want to hire such a man, who is devoid of moral content, as his Solicitor General if given a chance?

And my respected and revered friend from Alabama [Mr. Heflin], supported the nomination of Justice Rehnquist as Chief Justice, despite accusations raised about his "alleged insensitivity to the rights and struggles of minorities, women, and disadvantaged citizens." This is from my friend's statement on Judge Rehnquist.

> In making that decision, the Senator said "but I cannot believe that if one of the members of the Court felt that elevation of William Hubbs Rehnquist to be Chief Justice would be detrimental to the institution itself that he or she would have remained silent * * * but to me the fact that Justice Rehnquist has earned the respect of those in the community in which he lives, the Supreme Court of the United States, was most persuasive.
>
> I wonder why the Senator did not find the opinions of former Chief Justice Warren Burger and of Justices White and Stevens equally persuasive in their support for Judge Bork? Or the opinion of his colleague on the Court of Appeals, former Congressman Abner Mikva, who said, "I think Abraham Lincoln would have liked Judge Bork."

Perhaps among the most expressive remarks are those from the junior Senator from Georgia:

> I promised the people of Georgia that I would not flock to any banner, that I would consider all the evidence presented and let the decision rest with my conscience. As I have done so, I have grown to have great respect for Judge Bork. I admire his intelligence and, especially, his candor, his readiness throughout his career to withstand public controversy and political pressure.
>
> We need, throughout our Government, but especially in the Courts—we need men and women who will stand up against noisy but narrow special interests that do not necessarily represent the overall welfare of our country. That is one issue that should not be lost on us, regardless of the outcome of this nomination. Many moot issues have been raised on the periphery of these proceedings, by both sides. I am appalled by the way this became a plebescite. We do not elect Justices to the Supreme Court in this country * * * we should not conduct national referendums. And I can sum up the effect of these campaigns on me: Those who attacked Judge Bork made me often yearn to confirm him. Those who campaigned for him by attacking his opponents turned me against the nomination.
>
> I, too, am appalled by the way this has become a plebescite. And I am troubled and puzzled by what my colleagues are saying, by the double-standard and inconsistency so prevalent in the campaign against Judge Bork. The judge is criticized for being unpredictable, yet the chairman of the Judiciary Committee, Senator Biden, himself earlier rejected this argument: "What dawned on me was that no one, Mr. President, in the approximately 200-year history of the Court, has been accurately able to predict what a Justice of the Supreme Court would be like prior to that Justice's being appointed to the Supreme Court. It is something of a futile exercise for us to stand on the floor of the Senate, with all due respect to my colleagues on both sides of the aisle, and assure our fellow Senators what this judge is going to be like."

The problem is that Justice O'Connor's standard in the eyes of the Senator from Delaware, is a different standard than, apparently, that which we are holding Judge Bork to.

The Senator further detailed the standards by which judges should be judged:

> Our review, I believe, must operate within certain limits. We are attempting to answer some of the following questions:
>
> First, does the nominee have the intellectual capacity, competence, and temperament to be a Supreme Court Justice?
>
> Second, is the nominee of good moral character and free of conflict of interest that would compromise her role as a member of the U.S. Supreme Court?
>
> Third, will the nominee faithfully uphold the laws and Constitution of the United States of America? We are not attempting to determine whether or not the nominee agrees with all of us on each and every pressing social issue of the day.
>
> Indeed, if that were the test, no one would ever pass this committee, much less the full Senate.

That is the standard by which a recent predecessor nominee to the Supreme Court was judged by the chairman of the committee. But, alas, that, too, was a standard that now seems only to have applied to Justice O'Connor—not, one presumes, solely because she was the first woman nominee to the Court.

Even the Senator from Massachusetts, who set such a savage tone for the last few months of attack by his "Robert Bork's America" speech, had a different standard of conduct for the confirmation of Justice O'Connor which I previously mentioned at the beginning of my statement. He further stated that:

> The disturbing tactic of diversion and distortion and discrimination practiced by the extremists of the "new right" have no place in these hearing and no place in our national democracy.

Would to God, that standard still applied in the mind of the Senator from Massachusetts. I certainly agree and would with equal passion add that the distortion and diversion we have seen for the last several weeks has no place in our national democracy. The orchestrated campaign of lies and distortion and fear-mongering offends this Senator profoundly, as it should offend those of my colleagues who, by their own statements, time after time, repeat that Robert Bork is a man of high moral character, great intellect and scholarship, and unchallenged integrity.

Lest anyone question whether there has been such a campaign and such an attack, remember the accusations. Morton Halpern of the ACLU said that Judge Bork's nomination "is a grave threat to the Constitution"—Washington Post, September 1, 1987. The Ohio AFL-CIO, quoted in the Cleveland Plain Dealer, asked, "Would Bork return to the days of robberbarons like Jay Gould, who said he could hire half the workers to kill the other half?" The September newsletter of the National Education Association ranted:

> Bork is a man who cavalierly disregarded the rule of law and executed order the apparent purpose of which was to frustrate an investigation into criminal wrongdoing in high office. Certainly, such a man does not possess the requisite moral fiber to sit on this country's highest court.
>
> People for the American way screamed in a fund-raising letter: "The nomination of Judge Robert Bork to fill Justice Powell's seat is one of the greatest threats to civil rights and liberties in three decades.

An article in the New Republic contended that Judge Bork's position would permit laws that "impose abortions—on welfare mothers, say, or single mothers." The New Yorker shrieked that Judge Bork's jurisprudence would let stand laws "requiring everyone of every race to be blond" and "enforcing a majoritarian preference that all single mothers should be sterilized. Or all women with an IQ below 130. Or all mothers under 18."

Edwin Yoder in the Washington Post correctly concluded that "this twaddle is what Adlai Stevenson used to call "white-collar McCarthyism.'"

The public campaign against Judge Bork has been well-orchestrated. It has been run by a war room in the Senate of the United States, boasted about in the Boston Globe. It has been a campaign of shrill vindictiveness. Indeed it is as Yoder noted, the closest thing we have seen to McCarthyism in 35 years. Vigorous, sometimes heated, political debate is part of the proud tradition of this great Republic. But character assassination, the vicious willingness to defame and destroy an individual with whom one disagrees is not, and that is what America has been treated to in these last few months.

Those are not politics or tactics of which sincere and conscientious opponents of Judge Bork can be proud. People for the American Way screamed in a fund-raising letter:

> The nomination of Judge Robert Bork to fill Justice Powell's seat is one of the greatest threats to civil rights and liberties in three decades * * *.

Mr. President, if this is so, ought we not send for the Articles of Impeachment? How can America sleep when such an ogre is loose anywhere within our judicial system? And he is. He is a judge in the second-highest court in America, approved unanimously twice by this same crowd of vilifiers gathered in these proceedings.

Sadly, Judge Bork's opponents have been willing to defame him in order to defeat him. They offer no proof; no standard of comparison; no judgment that they would have made in the cases they cite that would have been different; no reasoning why his views are so consistently upheld by those on the Supreme Court he seeks to join—the Court his opponents say he seeks to join in order to destroy.

That one man, somehow or another, has such a powerful intellect that he can dominate to the point of suffocation every other mind on that Court is absurd on its face and the opponents know it.

Most within this Chamber conceded that Judge Bork is a powerful intellectual, a man of honesty, morality, integrity. His scholarly, legal, and judicial credentials are unchallenged. Most who have met him like him. Most concede he is qualified by virtually any standard to which one can hold him.

The more moderate of Judge Bork's opponents chose to preface their statements of opposition with praise for the judge. Then they argue that they fear he will turn back the clock on civil rights, that he does not concede equal protection to women, that he has not changed from his scholarly writings of 25 years ago—though Senators are conceded to have done so—or that he does not demonstrate the necessary—in their view—human kindness and sense of fairness or sensitivity of spirit. Or that he is not predictable, the while predicting dire consequences from his confirmation. Or that he lacks proper temperament. Or that he doesn't understand the Constitution the way "most Americans" do.

Mr. President, these are not reasons for opposing the confirmation of Judge Bork. They are excuses. The junior Senator from Louisiana said:

> This decision, Mr. President, cannot be a political decision. It cannot be a popularity contest. It cannot be decided by adding up numbers in a poll or merely counting the mail we received. My decision must be based on whether this nominee is and of himself is the right person for the job.

Yet Louisiana newspapers—including the Ville Platte Gazette—the day after the Senator spoke those words on the Senate floor, quote the Senator in a very political statement:

> Those who helped us get elected—the Black voters—are united in their opposition to Bork, and don't think for a moment that we are going to ignore that.

And the Washington Post on the same day ran a lengthy story an "How the South was Swayed," describing the senior Senator from Louisiana telling a meeting of his colleagues that:

> You're going to vote against it—the nomination—because you're not going to turn your back on 91 percent of the black voters . . . and I know how you're going to vote, and you, and you, and you.

A political decision, Mr. President, is precisely what we have before us. Surely if this nomination turned on whether in and of himself Robert Bork was qualified to serve on the Supreme Court, there would be little left today to debate. That, I regret, is not the case.

This is a strong man, of not only powerful intellect and integrity, but with an admirable and proven sense of decency and honor. I admire and respect his decision to press forward with this nomination to what he must believe is almost a foregone conclusion on the floor. It is rare, indeed, that one can find a man or women who combines intellect, decency, and honor with a deeply-held set of principles and the courage to live by them, consistently and at cost to his own advancement. Traits, I fear, which are all too rare in this body.

I am not proud of what is expected to occur in this Chamber later this week. Failure to confirm this unquestionably and undeniably qualified man will be a great loss to our Nation. The politicization of this nomination will only serve to diminish our advice and consent role as well.

I would only hope and pray and ask, as we go down these roads, that statements that have been made about what it is, and is not, within our reach to judge in the nomination of a Supreme Court Justice at least be the same from one nomination to the next; and that the double standard not be so blatantly prescribed as herein it has been.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Maine.

Mr. MITCHELL. Mr. President, earlier I described in detail my reasons for voting against the nomination of Judge Bork to the Supreme Court. I will not repeat that statement in its entirety here. I will say that after listening to the debate which began yesterday, my convictions have been strengthened.

Much of the debate in the Senate since yesterday has not been about the merits of the nomination. Rather, it has focused on the process by which the nomination has been considered. And it has been an effort to create a myth.

It is a myth that prior to this nomination the legal philosophy and views of Supreme Court nominees were not considered.

It is a myth that only because Judge Bork is a conservative have so-called "liberals and special interests groups" injected consideration of his legal philosophy and views into the confirmation process.

It is a myth that to have done so has politicized a process that was previously nonpolitical.

Each of these assertions is contrary to fact.

Each of these assertions is contrary to history.

Unfortunately, there has been distortion and exaggeration in this matter. It has come from both sides.

President Reagan said American are sick of courts "inventing rights for criminals." He has plainly implied that those who oppose the nominee want "liberal judges whose decisions protect criminals." Over and over, the President has played upon the people's fear of crime in criticizing opponents of the nomination.

But opposition to Judge Bork has nothing to do with his views on criminal law.

In the hearings, Judge Bork himself said that criminal law had never been a specialty of his. His record confirms it. In all his voluminous writings, Judge Bork rarely mentioned and never emphasized the criminal law. His focus has been on other areas of the law, not on criminal procedure or criminal law.

For the President to claim that his nominee's failure to win majority approval has something to do with criminal rights or criminal law is without any basis in fact.

It is a revival of his failed 1986 election campaign rhetoric. It does no credit to the President or to his nominee.

In election campaign speeches last year, President Reagan sought to politicize the judicial nominating process. He traveled all over the country in support of his party's Senate candidates and he made judicial selection a political issue.

He charged that "over and over, the Democratic leadership has torpedoed our selection of judges" even though the Senate has confirmed most of the President's nominees and his appointees now total more than a quarter of all sitting Federal judges.

The President is angry that his social agenda lacks majority support in the country and the Congress. So he is trying to place on the courts judges who he hopes will support his agenda.

There is nothing improper or unusual about that. All Presidents seek judicial nominees who share their principles. President Reagan is just as entitled as any other President to use ideology as a major factor in his choice of nominees. It is precisely what he said he would do. It is what the American people expect him to do.

But he cannot fairly use ideology as a factor in making nominations and then criticize Senators for using ideology as a factor in considering his nominations. His right to pick nominees politically is uncontested. He has exercised that right repeatedly. But he cannot then fairly accuse others of politicizing a process which he has made openly political from the beginning.

Throughout his career, President Reagan has made no secret of his belief that the courts should be subject to political factors.

In 1980 and in 1984, as well as in 1986, he promised he would choose judges based upon their view. He has kept that promise.

Last year, of the California court system, under which voters may reject sitting justices, the President said, "That's what I call a good system."

In 1968, President Johnson nominated Supreme Court Justice Abe Fortas to be Chief Justice and Federal District Judge Homer Thornberry to succeed Fortas as an Associate Justice. Mr. Reagan, then a candidate for President, opposed the right of President Johnson, then a lame duck, to nominate anyone to the position.

Nineteen sixty-eight was an election year. Republicans expected to win the Presidency.

Within 24 hours of President Johnson's Supreme Court nominations, 19 Republican Senators, including then-Senator Howard Baker, circulated a statement which said:

> It is the strongly held view of the undersigned Republican Senators that the next Chief Justice of the United States should be selected by the newly elected President of the United States after the people have expressed themselves in the November elections. We will, because of the above principle, and absolutely with no reflection on any individuals involved, vote against confirming any Supreme Court nominees by the incumbent President.

Nineteen Senators pledged themselves to vote against any nominee regardless of that nominee's qualifications until after the elections.

Mr. BIDEN. Will the Senator yield for a question?

Mr. MITCHELL. I yield.

Mr. BIDEN. What was the month of that?

Mr. MITCHELL. I believe it was June 1968.

It is difficult to conceive of how the Supreme Court nomination process could be made any more political than saying that the Senate would reject any nominee, regardless of qualification, until after the next election.

Yet, that is exactly what happened in 1968. And some of those who now support the Bork nomination urged then that the philosophy of judicial nominees is important and should be considered.

Senator Robert Griffin, Republican of Michigan, who led the fight against that nomination, repeatedly acknowledged that the nominee's qualifications weren't the issue.

Senator Howard Baker said:

> I have no question concerning the legal capability of Justice Fortas, . . . there are, in my opinion, more important considerations at this time. . . . The appointment of the Chief Justice really ought to be the prerogative of the new administration . . . In my opinion, the judicial branch is not an isolated branch of government . . . [i]t is and must be responsive to the sentiment of the people of the nation.

Those were the words of then Senator Howard Baker when a Democratic President nominated a Chief Justice in the Supreme Court.

Our distinguished colleague, Senator THURMOND, stressed that "a man's philosophy, both his philosophy of life and his philosophy of judicial interpretation, are extremely important."

President Johnson's nominations were withdrawn. They were never voted down. In fact, more Senators were for them than against them. But they were defeated by a filibuster by a minority of Senators who openly proclaimed that they would vote against any nominee, regardless of that nominee's qualifications.

There were, of course, other factors present in the case of President Johnson's nominations that are not present here. But those factors were admittedly irrelevant to those Senators who said they would oppose any nominee, regardless of qualifications, and who insisted that no choice could be made until after the election.

Today, an absolute majority of the Senate has expressed a view against this nominee. Extensive, sober, and fair hearings were held. Yet an effort is being made here to create the impression that it's all political, it's never happened before, and it's creating a precedent. But for raw politics, this confirmation process doesn't come close to the Fortas fight. And the precedent goes far beyond that.

In the 200 years since the Constitution was written, 26 nominations to the Supreme Court have been rejected or withdrawn because of Senate opposition—almost 25 percent. Indeed, far more Supreme Court nominations have been rejected by the Senate than nominations for any other position.

They have been rejected for reasons ranging from principled opposition to a nominee's philosophy to blatant politics.

Our first President, George Washington, saw his nominee, John Rutledge, rejected by the Senate in 1795. Washington was so certain of his confirmation that he gave Rutledge a recess appointment and had the commission papers drawn up and ready to execute.

Washington had reason to be confident. Rutledge had been confirmed to the Supreme Court in 1790. He had been a delegate to the convention which wrote the Constitution. And when he resigned from the Court in 1791, he did so to become chief justice of South Carolina. There was no question about his ability or experience.

Yet the Senate rejected him because of his strong attack on the Jay Treaty with Great Britain, a controversial issue at the time.

That was the first, but not the last time the Senate rejected a nominee for policy reasons.

In 1811, President Madison's nomination of Alexander Wolcott was rejected by a Senate in which Madison's own party controlled 28 of the 34 seats.

Wolcott's rejection reflected both ability and politics, in particular his strong enforcement of the embargo during the war with Britain.

By contrast, President John Quincy Adams' nomination of John Crittenden in 1829 failed on purely partisan grounds. Crittenden was rejected because Adams was a lame duck President, having already lost the election to Andrew Jackson.

The effort being made by President Reagan today, to shift the Court in a direction he prefers, is nothing new. In 1937, after his landslide victory, President Franklin Roosevelt, the most popular President in our history, proposed to use his popularity to shift the Supreme Court in a direction he preferred.

He tried to pack the Court. His plan was to add a new Justice for every Justice over age 70 who refused to retire.

But despite his enormous popularity in the country, despite his overwhelming influence over the Congress, and despite the widespread acceptance of his legislative goals and policies, the Nation and the Congress rejected President Roosevelt's court-packing plan.

I accept the efforts of Judge Bork's supporters to persuade undecided Senators to their view. Similarly, I accept his opponents making a similar effort.

Both sides engaged in an elementary aspect of our Nation's political life—a free, open and vigorous debate of opposing views. Now, because their side lost, some are trying to disparage debate as "politics." They are missing the point.

The nomination of men and women to the Supreme Court is a proper matter of broad public concern, for it is at the nominating process that the public, through its elected representatives, exercises its only opportunity to influence the Court.

The often-repeated concern about unelected judges writing law or influencing policy reflects a real concern in a system whose governing bodies—except for the judiciary—are intended to be responsive to the public from which ultimate sovereignty flows.

Independence from the political process was intentionally made a permanent feature of the judiciary to assure the continuity of law, free from political or public pressure. It was also to ensure that protection of the rights of minorities would be in the hands of men and women who need not take popularity polls into account as they rule on cases involving unpopular defendants or unpopular causes.

Popular persons and popular causes need little protection—their very popularity is their insulation. But minorities, whether of race, religion, or opinion, are not so insulated. They need and have always needed the institutional safeguard of the law. They especially need the Supreme Court.

Ours is a nation under law. It has existed as such for 200 years because we respect the rule of law, whether or not we agree with a particular ruling.

The legitimacy of dissent and disagreement in American political life was established from the very beginning. Three of the delegates at Philadelphia 200 years ago refused to sign the new Constitution. Almost half of the ratifying States conditioned their acceptance on the passage of a Bill of Rights.

Those founders understood that the right to dissent, the right to disagree is essential if we are to preserve our liberties.

The right to disagree if fundamental to the legitimacy, not only of the Supreme Court, but of the Congress and the Presidency itself.

No President in our history has every obtained a unanimous vote. Those who dissent in an election are not disenfranchised when the election is over.

The mandate of the winner in a democracy is a circumscribed and limited mandate. It is—as it should be—tested again and again against individual issues and over time.

No other method preserves legitimacy. And nothing short of legitimacy can enjoy the freely granted public support upon which a free nation must rest.

In the debate over Judge Bork, feelings are deep and opinions are divided. But nothing will be added to Judge Bork's stature or to the stature of the Supreme Court by rhetorical excess which disparages the Senate's role in the confirmation process.

There are valid and persuasive reasons on which those Senators who support this nomination can draw. There are equally valid and persuasive reasons to oppose the nomination. They are what should be debated here. We could then hopefully learn from each other.

Instead, we are being treated to an effort to use the unfortunate circumstances of this nomination to create a myth for avowedly political purposes. The result is, by any measure, a personal tragedy for the nominee, a political tragedy for the President and an institutional tragedy for the Senate.

Mr. President, I yield the floor.

Mr. PACKWOOD addressed the Chair.

Mr. HECHT addressed the Chair.

The PRESIDING OFFICER. The Chair is going to recognize the Senator from Nevada. The Chair would note that when Senators seek recognition at the same time, the Chair in this debate has attempted to go from opponents to proponents. Consequently, the Chair would recognize the Senator from Nevada.

Mr. PACKWOOD. Will the Chair yield for a question?

The PRESIDING OFFICER. It would.

Mr. PACKWOOD. Is the Chair going to preside past 2 o'clock?

The PRESIDING OFFICER. It depends on when the next individual arrives, but that has been the——

Mr. PACKWOOD. So long as the policy is to go back and forth, I am willing to wait until the Senator from Nevada is done. But if the Senator is then in the chair, I will be on my feet when he finishes and would appreciate recognition.

The PRESIDING OFFICER. All people in the chair have attempted to follow this informal rule of going from one side to the other, which we thought was the fairest way to do it.

The Senator from Nevada.

Mr. HECHT. Mr. President, I rise today in support of the nomination of Judge Robert H. Bork to be an Associate Justice on the U.S. Supreme Court. At the outset, Mr. President, I would like to say that I am very disappointed with the way this confirmation has been handled on both sides of the issue. Cheap political attacks and partisan campaign tactics have no place in the Supreme Court nominating process. As U.S. Senators, it is our job to consider the facts, weigh the testimony, and make a decision on the merits of the nomination. It is not our job to give in to political pressure, or to sit on the fence and hope it goes away.

As all who are privileged enough to serve in this body know, when our constituents feel strongly about an issue they do not hesitate to contact us directly. I can honesty say that my office has received more letters, postcards, and telephone calls about the Bork nomination than on any issue before the Senate in quite a while. Additionally, on my recent statewide tour during the August recess, I found interest in, and support for, the confirmation of Judge Bork to be widespread throughout the State.

This volume of communication, Mr. President, indicates the importance of this nomination to my constituents. While I have received communications from Nevadans in opposition to the nomination, a clear majority of the correspondence has, in fact, strongly supported confirmation of Judge Bork. The people simply aren't buying these cheap, political attacks. In fact, at this point, I ask unanimous consent that an editorial from one of Nevadas finest newspapers, the Elko Daily Free Press, entitled "Here's what Americans Actually Have Said on Bork," be inserted into the Record.

There being no objection, the material was ordered to be printed in the Record, as follows:

[From the Elko (NV) Daily Press, Oct. 5, 1987]

Here's What Americans Actually Have Said on Bork

As Congress procrastinates its way toward a showdown vote on the nomination of Robert Bork to the U.S. Supreme Court, members of the anti-Bork clique have escalated their propaganda effort to a frenzied pitch.

When President Ronald Reagan announced his nomination of Bork those many months ago, raucous spokesmen for several narrow-interest groups quickly boasted they were prepared to spend millions of dollars in opposition to Bork's announcement. At the time, we wondered where the opportunity would come to squander millions of dollars, one way or the other, on what was supposed to be a staid deliberation during which members of the United States Senate would decide whether or not they would give their consent to the nomination, as provided in the U.S. Constitution.

As the scheme unfolded, it became readily apparent where all those special-interest dollars would be spent. Senate leaders connived with the splinter-group kooks to stall the hearings, so the rabble-rousers would have ample time to throw their money about in laying the groundwork for the frenzy of misinformation we have witnessed during the past week or so.

The much-touted hearings before the committee fizzled as a vehicle for arousing public animosity toward Bork; So the anti-Bork clique was forced to fall back on its reserve tactic of rigged "public opinion polls." These are expensive, because those who fabricate these attempts to manipulate public sentiment demand big bucks for manufacturing big lies.

The heavy investment by the kook-element bore fruit last week in a series of announcements of the findings of phony polls. Various pollsters delivered what they were paid to deliver—conentions that a majority of Americans opposed the nomination of Bork, for various fanciful reasons that has been predetermined.

But the exercise was so blatantly contrived we believe it was futile, no matter how many millions of kook dollars it might have cost.

The reason for this conclusion was identified the other day by Lars-Erik Nelson, a syndicated columnist whose commentary is distributed by Tribune Media Services.

He observed the same left-wing malcontents who now are busily manufacturing "public poll" results in their attempt to bolster their warped viewpoint were the same left-wing malcontents who issued strident warnings during the election years of 1980 and 1984. The repeated warnings was to the effect that if Ronald Reagan were to be elected as president, he would nominate "conservative" judges to the Supreme Court.

The American people responded to the warning decisively. In Nelson's words: "Reagan won both elections."

Those of course, were valid samplings of public opinion in the United States, in marked contrast to the "public opinion polls" contrived during the past few days and weeks on the topic of Robert Bork.

In two consecutive presidential elections, the American people were called upon to make a choice that specifically—in fact, thanks to the frenzied left-wing contingent, vociferously—included the prospect of President Reagan naming "conservative" judges to the federal bench. The American people made that choice with enthusiasm, most recently in 1984 when they accorded President Reagan a landslide re-election victory.

They have not spoken on the issue since, because the people of the United States speak at the voting booth, not through those insidiously rigged "public opinion polls." Regarding the elevation of "conservative" judges to the Supreme Court, they have spoken forcefully: Majorities of the voters in 49 states have given Reagan a mandate to nominate the likes of Robert Bork to the Supreme Court.

Mr. HECHT. Mr. President, I believe it is also relevant to remind my colleagues of the number and stature of individuals who have testified before the Judiciary Committee or made public announcements in support of the Judge. This distinguished list begins with former President Gerald Ford and former Chief Justice Warren Burger—two individuals whose credibility, experience and legal knowledge is renowned—and continues through seven former U.S. attorneys general, and numerous other individuals who are variously Democrat, Republican, liberal, moderate, and conservative.

But it is vital to remember that the nominee's qualifications, not public opinion or special interests, should lead Senators to support or oppose his nomination. It has been said by many that Judge Bork is perhaps the best qualified, most legally well-rounded nominee for a position on the Supreme Court in a long while. The Judge has been a member of the Armed Forces, a practicing attorney, a professor of law, a Solicitor General of the United States, and a Federal appellate court judge. I daresay his credentials for a seat on the Court are beyond reproach. And in that regard, Mr. President, I urge my colleagues to take the time, as I have, to thoroughly evaluate—or reevaluate—this nominee's qualifications. I think most will agree, upon piercing the veil of extreme and misplaced partisanship which has characterized this nomination from the outset, that Judge Bork is not the judicial extremist which some interest groups have attempted to portray.

In fact, in his 5 years on the bench, not one of the more than 100 majority opinions written by Judge Bork has been reversed by the Supreme Court. Nor has that Court reversed any of the over 400 majority opinions in which the Judge joined. This is evidence of a mainstream judicial temperament. Moreover, the Court adopted the reasoning of several of Judge Bork's dissents when it reversed appeals court opinions with which the Judge had disagreed. These facts speak highly of the Judge's ability to make judicial determinations in a manner consistent with the highest court of the land, and attest to his merit for a position on that court.

In past years, 7 out of 10 of Judge Bork's colleagues on the bench were appointed by democratic administrations, and 5 of his 10 present colleagues were. But in spite of this, in the hundreds of cases the Judge has heard, he has written only nine dissents and seven partial dissents from majority opinions. Obviously, this is not the record of a right wing ideologue unable to arrive at nonpartisan decisions.

Mr. President, in further evidence of the bipartisan support for this nomination, witness the statement of one who has risen above the conservative-versus liberal fight which has underlied Judge Bork's consideration. No lesser statesman than my distinguished colleague and good friend from South Carolina, Fritz Hollings, who, may I remind my colleagues, opposed this President in the last Presidential campaign—recently announced that he would not be caught up in the blind anti-Bork stampede, and would instead support the nomination in recognition of the Judge's tremendous legal and moral qualifications.

To address some of the specific allegations made by this nominee's opponents, I would first note that an analysis of Judge Bork's record simply shows no basis for their irrational statements that he would seek to roll back existing judicial precedents.

Judge Bork has faithfully applied the legal precedents of both the Supreme Court and his own circuit court throughout his time on the bench. While the Judge may have disagreed with certain court decisions in professorial writings, that does not mean he feels it within his power or calling to overrule them. In fact, Judge Bork has repeatedly faulted politicized, result-oriented jurisprudence of both the left and the right. Speaking of his adherence to precedence, Judge Bork testified during Senate consideration of his appeals court nomination:

> I think the value of precedent and of certainty and of continuity is so high that I think a judge ought not to overturn prior decisions unless he thinks it is absolutely clear that that prior decision was wrong and perhaps pernicious.

He further stated that even questionable prior precedent ought not be overturned when it has become part of the political fabric of the Nation.

Mr. President, one of Judge Bork's most relevant attributes is his belief in the philosophy of judicial restraint. This doctrine holds that judges should faithfully interpret the Constitution and statutes, adhering to the language and history of those documents, rather than engaging in subjective interpretations toward ends which they, the judges, consider to be most appropriate. And as we all realize, in reaching their decisions, judges may create new, or expand upon present, law. I concur in the philosophy of judicial restraint, since it is more democratic in my eyes than representatives who are elected to office—and periodically reevaluated by voters at reelection time—should hold the authority to make the law, as opposed to certain members of the judicial branch who are appointed to their positions for life.

Moving to a discussion of Judge Bork's civil rights record, we see a clear record of strong support for increased recognition and protection of basic civil rights. In fact, during his tenure as U.S. Solicitor General, he argued before the Supreme Court for more expansive interpretations of civil rights laws in some of this country's most significant cases on that logic. Among those cases were: Beer versus United States in which Solicitor General Bork urged a broad interpretation of the Voting Rights Act to strike down an electoral plan he believed would dilute black voting strength, and Washington versus Davis in which he argued that an employment test with a discriminatory "effect" was unlawful under title VII of the Civil Rights Act.

Mr. President, quite frankly, I could continue indefinitely citing Judge Bork's impressive record, and correcting the distortions propagated by liberal groups opposing his nomination. I am a businessman, not a lawyer. But even I can see that the legal arguments listed above are not those of a far-right ideolog. I can also see, Mr. President, that the partisan opposition to Judge Bork is actually aimed at undermining this President.

Just 1 year ago, the leaders of his opposition were publicly touting Judge Bork as a great legal mind they would support for an opening on the Supreme Court. Now, eager to take advantage of an embattled administration, these same individuals have done an about face and are attacking Judge Bork for everything they can find, even digging up articles he wrote two decades ago. I am sure that a look into the histories of some of those opposed to Judge Bork would reveal some interesting actions and philosophies espoused in their earlier years.

But rather than add fuel to the fire of what has already become an intensely—and inappropriately—political debate, I would instead simply urge that my colleagues take a long, hard look at Judge Bork's record and qualifications for this position, rather than becoming a part of the blind opposition to this nomination. I would also like to remind my colleagues that changing your mind when you are wrong is a virtue, not a vice. I implore you who have succumbed to inappropriate and unethical political pressure to reconsider your position. Judge Bork has given us the opportunity. He has bravely stood on principle and demanded a full accounting in the Senate, to clear his name and force the fence-sitters to take a stand. I salute him.

President Reagan has sent us a nominee qualified in every respect. That is his right, and his duty, under the Constitution. Our duty is to consider only the Judge's merits and qualifications, not political pressure, in the confirmation process. Judge Robert Bork deserves to be confirmed.

Several Senators addressed the Chair.

The PRESIDING OFFICER (Mr. BINGAMAN). The Senator from Oregon.

Mr. PACKWOOD. Mr. President, the year was 1215; the document, the Magna Carta, article 39:

> No free man shall be seized or imprisoned or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any other way, nor will we proceed with force against him, or send others to do so, except by the lawful judgment of his equals or by the law of the land.

The same document, article 40:

> To no one will we . . . delay right or justice.

The year 1679, Parliament, the Habeas Corpus Act:

> . . . Whensoever any person . . . shall bring any habeas corpus directed unto any sheriff . . . for any person in his . . . custody . . . the said officer . . . shall bring or cause to be brought the body of the party so committed . . . and shall then likewise certify the true cause of his detainder or imprisonment . . .

Mr. President, the American Bar Association, in its book "Sources of Our Liberties," in referring to the Habeas Corpus Act of 1679, says:

> The Habeas Corpus Act created no new right and introduced no new principle. Instead, it strengthened a right already existing. . .

The Magna Carta states again:

> In future, no official shall place a man on trial upon his own unsupported statement.

Finally, Mr. President, in the common law—this is not from the Parliament, this is not from the Magna Carta—but in the common law of The pleas of autrefois acquit and autrefois convict:

> A man shall not be brought into danger . . . for one and the same offense more than once.

Mr. President, the reason I read those documents is to enforce something that has been forgotten, I think, in this debate. In every instance, whether it was the Magna Carta, the common law, The Pleas of Autrefois Acquit and Autrefois Convict, whether it was the statute concerning justice and sheriffs, or the Habeas Corpus Act, or the English Bill of Rights; the rights set forth in those documents were not new rights granted by the government. They were confirmations of existing rights inherent in the people that the government was trying to take away.

So in the Magna Carta, which was basically a contract or compact between the nobles and the king, there is nothing that was not presumed to already exist as a right of the nobles. They thought the king was trying to take away their rights. By this compact between the nobles and the king, they, in essence, said to the government: "You can't take away these rights that inhere in us as individuals."

In the English Bill of Rights, in 1689, it was an act of Parliament, but again not creating new rights but confirming rights that existed in individuals which the government was trying to take away, and it was therefore necessary to pass an act of Parliament saying these rights are reconfirmed.

The same is true in The Pleas of Autrefois Acquit and Autrefois Convict. The court did not say at that time: "Here we go. For the first time in the history of this country we are now saying that you are protected against double jeopardy." That is what the plea was—you cannot be tried twice for the same crime. It was not a court saying, "We decided to come up with a new right; call it double jeopardy." The court said: "You always had this right, and now the king is trying to take it away from you and try you twice and three times, and henceforth we are going to confirm that right, and the king cannot do it."

It is important to understand what the courts were saying at that time, because the common law courts were not making law, nor did they ever claim to make law. They found law. Often, they would have to wait until the right case was presented before them. But when they made decisions that said to the king, "You can't try this man a second time," what they were saying was: "That right has always existed in that man." If the king didn't try to abuse it, we wouldn't have to have that court decision or an act of Parliament, because those rights are inchoate, they are inherent. So long as the government doesn't try to take them away from you, you don't need to pass any restriction on the government trying to take them away from you. But when the government tried, then the Parliament or the courts or the nobles felt compelled to attempt to put their rights in writing.

Mr. President, in this sense, the Anglo-Saxon law is unique. Ours is a heterogeneous country. We are ethnically diverse, with peoples from all over the world populating this country; but from the standpoint of the law, we are Anglo-Saxon—straight derivative from England.

The Anglo-Saxon law has a concept that is unique; the right of the individual is superior to the right of the State. You find that concept existing only throughout those countries which have an Anglo-Saxon common law heritage. You do not find this common law concept in the so-called Napoleonic Code countries, where there is much more of a preference for the power of the state over the right of the individual. They may be free countries in the sense we understand free countries—they have free elections and a reasonably free press. But in the code countries there is a decided preference where you have to make a choice between the two, the power of the state verus the right of the individual. In Anglo-Saxon countries, where they have to make a choice between the two, there is a decided preference for the right of the individual over the power of the state.

The founders of this country understood that very well. They were quite familiar with English history. They were quite familiar with what was regarded as the normal rights of Englishmen. Of course, they regarded themselves as Englishmen at the time. Yet, they discovered that because we were colonies, we were denied some of the rights that were otherwise assumed inherent in Englishmen.

And they saw a government in England trying to take away the rights in this country which would have been granted as a matter of right to anyone freeborn in England.

So when we adopted the Constitution our founders well understood the concept that men and women are born inherent with certain rights that the Government cannot take away, should not take away. They are yours. They belong to you.

And they also understood England's history that, from time to time, the king would try to take away those rights. Therein, whether it is the Habeas Corpus Act or the Magna Carta or the English Bill of Rights or the petition of rights you had, from time to time, to put those rights down in writing.

And we did copy from the English, sometimes in different words, but the concept is there.

Let me quote again Article 39 of the Magna Carta.

> No free man shall be seized or imprisoned or stripped of his rights or possessions, or outlawed or exiled, or deprived of this standing in any other way, nor will we proceed with force against him, or send others to do so, except by the lawful judgment of his equals or by the law of the land.

What did our founders say in the Bill of Rights?

> No person shall be deprived of life, liberty, or property, without due process of law * * *.

Magna Carta again:

> To no one will we * * * delay right or justice.

What do we say in the sixth amendment?

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial * * *.

Magna Carta:

> In future, no official shall place a man on trial upon his own unsupported statement.

What did we say in our Bill of Rights? "No person shall be compelled in any criminal case to be a witness against himself * * *".

Bail, almost word for word. The English bill of rights in 1689:

> That excessive bail ought not to be required nor excessive fines imposed nor cruel and unusual punishments inflicted.

Our Bill of Rights:

> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Double jeopardy, found in the common law under the Pleas of Autrefois Acquit and Autrefois Convict:

> A man shall not be brought into danger * * * for one and the same offense more than once.

Our fifth amendment to the Constitution:

> No person shall be subject for the same offence to be twice put in jeopardy of life or limb * * *.

Mr. President, over and over and over, we wrote into the Constitution words almost identical or words meaning the same thing as the principal documents of English liberty, and we did it not because we thought we were creating rights. We did it not thinking that the Constitutional Convention could give rights to people. We did it because we knew what the English experience was. That said you had rights but the government would try to take them away. So we were going to reconfirm them just as England reconfirmed them over roughly 500 years, from the time of Magna Carta in 1215 to their bill of rights in 1689.

And how many times have we heard that the Constitutional Convention created a government of limited powers, not citizens of limited powers? The power remained in the citizenry and the rights were unlimited, unless for the sheer necessity of government. Some rights had to be limited in order for the government to function in a collective society, and that is the only limitations there were.

And if that Constitution did not put limits on you, then you had all of the rights that anyone could ever have.

Professor Kurland, when he testified, could not have said it any better.

> Liberty was, indeed, the watchword of the national convention and of the state ratifying conventions as well.
>
> The Constitution did not create individual rights. The people brought them to the convention with them and left the convention with them, some enhanced by constitutional guarantees. The Bill of Rights, in guaranteeing some more, made sure that none was adversely affected.

The Bill of Rights in guaranteeing more made sure that none was adversely affected.

And that is why, Mr. President, we added the ninth amendment to the Constitution. That ninth amendment says that the enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

Now at the time, of course, of the adoption of the Constitution, we did not have a Bill of Rights in it. It came 4 years later. It was an interesting debate as to why we did not have the Bill of Rights in the original Constitution. Madison, Hamilton, and Wilson had grave misgivings about a Bill of Rights. They had the very fear, that is an understandable fear, that if you set out in the Bill of Rights the freedom of speech, freedom of press, right to petition, right to assemble, freedom against self-incrimination, freedom against illegal search and seizure, then the argument would be made those are the only rights you have and anything left out of this document, you do not have.

So when the Constitutional Convention met, Madison, Wilson, and Hamilton argued against the inclusion of a Bill of Rights for that reason. James Wilson says it well in the ratifying conventions in Pennsylvania in arguing for the Constitution, yet explaining why there was no Bill of Rights.

> [W]ho will be bold enough to undertake to enumerate all the rights of the people?—and when the attempt to enumerate them is made, it must be remembered that if the enumeration is not complete, everything not expressly mentioned will be presumed to be purposely omitted. So it must be with a bill of rights, and an omission in stating the powers granted to the government, is not so dangerous as an omission in recapitulating the rights reserved by the people.

Madison echoed that argument. Most of the ratifying conventions echoed that argument.

Two years later, in 1789, a Bill of Rights was introduced. Madison introduced it, but in introducing it Madison says:

> It has been objected also against a bill of rights, that, by enumerating particular exceptions to the grant of power, it would disparage those rights which were not placed in that enumeration; and it might follow, by implication, that those rights which were not singled out, were intended to be assigned into the hands of the General Government, and were consequently insecure.
>
> This is one of the most laudable arguments I ever heard against the admission of a bill of rights into this system but I conceive that it be guarded against and I attempted it.

He then makes reference to the ninth amendment, by saying everything not listed here which basically is a codification of the rights that already exist, if we forgot to mention them, then they exist in the people. The fact that we did not mention them does not mean the people do not have them.

Now the document is complete. The Bill of Rights is added.

Our background is in the common law. Our courts were common law courts. To this day, courts make decisions where they find law. Do you think that our founders intended, with their background, that what had been 500 years of common law suddenly stopped and the courts could no longer find law or interpret it if you wish. Critics, if they do not like this process, call it making law. Do you think our founders really used the terms "due process," "equal protection," "commerce among the States," and had in their mind exactly the way they think those terms should have been interpreted 5 years hence, 10 years hence, 50 years hence, 200 years hence? I do not think so.

I think what they intended was to create a court structure insulated by life tenure from Presidents who might want to remove judges or Congresses who might want to remove judges. They would then say to the courts, as new situations arise that we did not foresee, we intend that you should continue to find the law, not make it, but to find it.

A classic example of that in our day is Brown versus the Board of Education, a decision in 1953 that eliminated school segregation.

It was a direct reversal of Plessy versus Ferguson in 1896. In Plessy versus Ferguson, the U.S. Supreme Court had held that you could segregate the races, blacks here, whites here, and that separate but equal was constitutional.

Then in Brown versus Board of Education, about 60 years later, the Court says, "We now find that you cannot segregate the races, black here, whites here. That is not constitutional."

Mr. President, there had been no change in the law in those intervening years, no change in the Constitution, no statute passed. The U.S. Supreme Court, acting as a common law court, found that, for whatever reason, Plessy versus Ferguson was no longer the law and Brown versus the Board of Education was. And to this day, I know of almost no one that criticizes the Brown versus the Board of Education decision.

No, Mr. President, I think our founders full well understood what they were doing. They also understood that we can all be swept off of our feet by transitory passions. They had seen it in their lifetimes. They were familiar with it in history. And so they thought that rights and, Mr. President, especially minority rights, dissident opinions, those who are different, would best be protected by the courts—not by Congress, not by the President, not by the whims of current elections, but by the courts, peopled by judges with lifetime tenure who could not be threatened by the political process.

And, indeed, our founders again understood well. They understood themselves better than most of us realize. It did not take them a decade before many of them still in Congress voted for the passage of the Alien and Sedition Acts in 1798. Those acts said that you could be hauled off to jail for writing or speaking ill of the Government. The very people who created our Constitution, who adopted the bill of rights, within a decade of passing the bill, were taking away your rights of free speech and free press.

Fortunately, that law, Mr. President, was sunsetted and ran out before it was ever fully tested in court. But I would like to think that the Court would have found that law unconstitutional had they a chance to deal with it.

Then you can go right to our history and you can see us being swept off our feet. And by us, I mean the President and Congress, mostly. Andrew Jackson, in his prohibition of the mailing of abolitionist pamphlets said:

> I had a right to do this. This kind of literature is divisive to the country and I am going to try to stop it from being mailed.

That is a Presidential effort to limit speech.

The Palmer Red raids. Woodrow Wilson and Attorney General Palmer rounded up Communists in 1919 and 1920, whatever they believed Communists were. We did not know much about it. There had been a revolution in Russia and we were frightened to death in this country. Because we were frightened, then it was all right to trim people's rights a bit because it was for the collective good of the country.

The Joe McCarthy era prompted a congressional abuse of our liberty; the Watergate era, a Presidential abuse. Always we had the courts to defend us. In the 1950's, they said you cannot haul people before this Congress and make them give up their right against self-incrimination. You had the courts protecting our rights in Watergate.

The only times, perhaps that the court ever seriously fell down were in the cases involving the internment of Americans of Japanese ancestry during World War II. And that is a situation which those of us from the West may be more familiar with than those in the East.

We had a long history of Asian settlements in the West for over a century now. First came the Chinese, who worked on the railroads, and then the Japanese arrived before the turn of the century. What you had in 1942 was a liberal President, Franklin Roosevelt, signing an order saying that it was all right to intern Americans of Japanese ancestry.

Mr. President, I said Americans of Japanese ancestry. These were not aliens. These were not green card workers. These were not naturalized Americans. These were native-born Americans. And, to his eternal discredit, although he admitted it later in life, one of the principal supporters of that decision of the Government's right to intern Americans of Japanese ancestry was then California Attorney General Earl Warren. And the Court, in a shameful decision, upheld the Government's right.

No, our founders understood well passion will sweep us off our feet. We should create a Constitution which had a limited government. It gave that government limited powers and any powers the Constitution did not give the government, the government did not have and any other rights not stated were kept by the people. And, just to make sure, we are going to enumerate some of the rights which are unstated that the government might try to abuse, so the government understands it: Freedom of the press, speech, assembly, religion. You cannot take those away. You are not supposed to take them away anyway, but, to make sure you understand it, Mr. Government, we are going to put those in the Bill of Rights.

And now we come down to the issue of privacy and the views of Judge Bork on privacy and whether or not our founders intended a right of privacy.

Bear in mind, Mr. President, there is no constitutional provision that says all citizens have a right of privacy. That is not an enumerated right.

So the question is: Can you infer that right at the time of the founding of this Constitution? And I think, without question, you can. Our founders, again, intended that individuals kept every right they had, every right even unthought of, unless the Constitution specifically took it away to give it to the Government so that they had sufficient powers to govern. It is really a question of how you look at the Constitution and the convention as to where you come out today.

I think that Judge Bork views the constitutional rights as almost exclusionary, and unless they are stated or can be directly inferred, you do not have them. I base this conclusion partly on his testimony, but frankly, more on the meetings that I had with him in my office.

I come to just the opposite conclusion, Mr. President; just the opposite conclusion. Every right that you could conceivably have that is not specifically taken away, you keep. And that puts the judge and me poles apart as to how you look at rights in this country.

And the more I watch Government operate and the more I read history, the more I realize the danger we face from men and women of good will, usually zealous, who are convinced they are right; they know they are right. In some cases, they are convinced that God talks to them and tells them what is good for this country. And they just are so convinced it is good that they want to write it into law. So that if they cannot change our thoughts, at least they can change our actions to comport with what they know is right. And they are so convinced they are right, if that takes a little trimming and cutting of the Constitution, so be it, because the end justifies the means.

Mr. President, I am not accusing Judge Bork of that type of thinking. I want to make very clear that I do not think he believes the end justifies the means. But I think he does believe that if you cannot find the right specifically in the Constitution, then legislative bodies are entitled to do what the majority wants.

And, if that steamrollers over somebody's rights, tough luck. Because the founders did not specifically put it in the Constitution.

Mr. President, is that what our founders intended when they argued against the inclusion of a Bill of Rights in 1787? They argued against it because they were afraid if they stated things in the Bill of Rights and by mischance left something out, we lost those rights. That is not what they intended.

What they meant, and they said it so clearly in the ninth amendment, is you have every right you can possibly have. We will enumerate a number so that the Government understands you have got those rights. We will limit your rights a bit in this document so that the Government can operate. Beyond that, they are all yours and the Government cannot take them away.

On the right of privacy here is what Judge Bork said, quoting from notes of a meeting in my office. I do not have a transcript of this, in the sense of a judicial transcription. But, on September 10 in my office he said the following: "Our founders never intended the right of privacy to be covered by the Constitution. Unless rights are specifically protected either by the text or historical evidence, the right isn't protected."

I emphasize, Mr. President, "the right isn't protected."

That is not the way I read it and I do not think that is what our founders intended. It is a matter of honest disagreement, not just between Judge Bork and myself, but between proponents and opponents of Judge Bork on this floor; between constitutional scholars. But I do not know how you can misread the Constitutional Convention, the comments in the ratifying conventions, the Federalist Papers and the fact that it was only 2 years later that we put the Bill of Rights in. It is clear what we intended by it and what we meant to protect by it. I do not know how you can come to any other conclusion than that which says that any right the Government does not take away by the Constitution, you get to keep.

Here is where Judge Bork says, again:

> Courts must accept any value choice that the legislature makes unless it runs clearly contrary to the choice made in the framing of the Constitution.

I will say it once more, and then move on to the specific right of privacy. I would say State legislatures or the Congress cannot take away any of your rights, any of your rights, unless specifically permitted in the Constitution. Only when a court, acting in a common law capacity 100 years after the convention, 150 years after the convention, must weigh an action of a legislative body against the absolute necessity of a power to the Government for its vital existence, only then are they forced to weigh individual rights versus the power of the State.

I emphasize again, Mr. President, what the common law tradition has been in this country and in England. Our tradition is to tilt on the side of individual rights. Countries that live under the Napoleonic Code tilt on the side of the power of the State.

So, when you come to the rights of privacy and you weigh the cases and you think of what our founders intended in every case, before you trim the right to privacy, I think you have to ask: Is this act of the legislature or is this act of Congress so critical to the Government of this country that this country cannot exist without it?

Mr. President, the question in privacy cases is not whether the Government has the right to take away an individual's right to privacy just because the Government does not like what the individual is doing but instead that the governmental interest is so compelling that our system cannot survive without it.

Judge Bork, for the better part of his adult life, has criticized the privacy doctrine. He has said that it has no constitutional foundation. Mr. President, I have made the argument that I think it has a clear constitutional foundation and that foundation is the ninth amendment and that foundation is what our founders intended. Under that amendment, you get to keep every right, private right and otherwise, unless it is taken away from you. I think on privacy, Judge Bork would say: "If you can't find it enumerated, you have not got it."

I find it interesting that he has spent the better part of his adult career criticizing the right of privacy; interesting that in my office in our meetings and in his hearings he would say time and again: "I agree with the result in many of the cases but I disagree with the reasoning."

So let us take just a minute to say what the right of privacy is as best we can define it. It is not a new right. The right to privacy did not start with Roe versus Wade.

Mr. President, the first case that privacy was used was in 1923. It was Meyer versus Nebraska. Nebraska had passed a law that schools could not teach foreign languages. The case went to the Supreme Court. The Supreme Court said that is wrong, and they used some wonderful language when they threw out Nebraska's statute. They said:

> * * * The right of the individual * * * to acquire useful knowledge, to marry, to establish a home and bring up children, to worship God according to the dictates of his own conscience and generally to enjoy these privileges long recognized at common law is essential to the orderly pursuit of happiness by free men.

Let me emphasize again, Mr. President: "* * * These privileges long recognized at common law—is essential to the orderly pursuit of happiness by free men."

In that case the Supreme Court was not creating new law. The Supreme Court was confirming a common law right of privacy that has existed inherent and inchoate in the citizen from the time of the founding of this country. There would never be a need for a court decision on that right until the

Government tried to take it away. Then the Court said: You cannot do that.

Another early case on privacy came out of Oregon and is one I am slightly more familiar with. The case, Pierce versus Society of Sisters, came 2 years after Meyer versus Nebraska.

My dad was a lobbyist in the Oregon Legislature during the twenties and he told me the passion and the fear that existed then. The Ku Klux Klan controlled the Oregon Legislature for two sessions in the midtwenties. At that time, the Klan was a very anti-Catholic, anti-black, anti-Jewish, and anti-private education organization. Most private education, if it existed, was Catholic education.

Believe it or not, Mr. President, the Oregon Legislature passed a law outlawing private education. You could not send your child to private schools. That case went all the way to the Supreme Court. The Supreme Court said: You cannot do that, Oregon. So long as a school is created that meets the minimum standards that the State requires for all schools, then where you send your child to school is a private decision that the Government cannot take away from you.

Now, Mr. President, can you find in the Constitution any place enumerating something that says you have a right to send your child to the school you want? No, you cannot. The Court found it inherent in the right of parents to decide where to send their child to school. And the Government could not take that right away.

Mr. President, I ask unanimous consent to submit a list of 26 cases running from 1923 to 1987 that has been compiled by the Library of Congress, Congressional Research Division, the privacy cases.

I would call to the attention of the President that Roe versus Wade, the decision legalizing abortion, is one of the privacy cases located in the middle of this long list.

There being no objection, the material was ordered to be printed in the Record, as follows:

Leading Decisions of the Supreme Court Recognizing a Constitutional Right of Privacy Based on Substantive Due Process

Meyer v. *Nebraska*, 262 U.S. 390 (1923).

Pierce v. *Society of Sisters*, 268 U.S. 510 (1925).

Skinner v. *Oklahoma*, 316 U.S. 535 (1942).

Griswold v. *Connecticut*, 381 U.S. 479 (1965).

Eisenstadt v. *Baird*, 405 U.S. 438 (1972).

Roe v. *Wade*, 410 U.S. 113 (1973).

Doe v. *Bolton*, 410 U.S. 179 (1973).

Planned Parenthood v. *Danforth*, 428 U.S. 52 (1976).

Bellotti v. *Baird*, 428 U.S. 132 (1976). (Bellotti I).

Whalen v. *Roe*, 429 U.S. 589 (1977).

Moore v. *City of East Cleveland*, 431 U.S. 494 (1977).

Carey v. *Population Services International*, 431 U.S. 678 (1977).

Beal v. *Doe*, 432 U.S. 438 (1977).

Maher v. *Roe*, 432 U.S. 464 (1977).

Poelker v. *Doe*, 432 U.S. 519 (1977).

Colautti v. *Franklin*, 439 U.S. 379 (1979).

Bellotti v. *Baird*, 443 U.S. 622 (1979). (Bellotti II).

Harris v. *McRae*, 448 U.S. 297 (1980).

Williams v. *Zbaraz*, 448 U.S. 358 (1980).

H.L. v. *Matheson*, 450 U.S. 398 (1981).

City of Akron v. *Akron Center for Reproductive Health, Inc.*, 462 U.S. 416 (1983).

Planned Parenthood Association of Kansas City v. *Ashcroft*, 462 U.S. 476 (1983).

Simopoulos v. *Virginia*, 462 U.S. 506 (1983).

Thornburgh v. *American College of Obstetricians and Gynecologists*, 106 S.Ct. 2169 (1986).

Bowers v. *Hardwick*, 106 S.Ct. 2841 (1986).

Turner v. *Safley*, 107 S.Ct. 2254 (1987).

Source: Congressional Research Service, Library of Congress, September 14, 1987.

Mr. PACKWOOD. Now, Judge Bork says he agrees with the result in Meyer, the foreign language case. He agrees with the result in Pierce, that you have the right to send your child to a private school. He says he agrees with the results of the Griswold case, the contraceptive case out of Connecticut. He agrees with the conclusion. He does not agree with the reasoning. Yet when I talked with Judge Bork, and asked him what method of reasoning he would use to come to those same conclusions, I found him lacking.

When I asked Judge Bork first about Pierce versus Society of Sisters, he said that could have been decided on a freedom of religion basis. I said, "Your Honor, it could not be decided on a freedom of religion basis because there was a second plaintiff in the case. The co-plaintiff was a nonsectarian military academy and you could not have used freedom of religion for a nonsectarian school."

He said, "Then perhaps we would have to reach that conclusion on Freedom of Association or something like that. * * * "

Then I asked him, I said, "Judge, I know you do not like the abortion case. What if you were a lawyer in Chicago in 1970 and a woman came to you who was pregnant and wanted to have an abortion. The woman wanted you to bring a case for her in Federal court, guaranteeing her right to make a choice on abortion. You disagreed with privacy, and didn't think that would wash with the court. What would have been the theory of your brief representing the plaintiff?"

He did not have one.

Mr. President, while I may quarrel with whether or not Judge Bork agrees or disagrees with the right of a woman to make a choice on abortion, what I most fear is that a man who has spent a lifetime opposing privacy cases, saying he agrees with the results but not the reasoning, and is unable to come up with an alternative method of reasoning.

I think I understand why. It is one of those bolts of lightning that hit you every now and then and turns out to be a good idea. I called the Library of Congress.

As an aside, I have to say the Library of Congress is an extraordinary organization. Of all the privileges that come with being a U.S. Senator, access to that facility and the exceptionally bright people who work there, is one of the extraordinary privileges of a lifetime.

I talked to John Killian, the Senior Specialist on Constitutional Law, and I said, "Mr. Killian, I am curious. Can you tell me if there are any cases in the history of the Supreme Court where the Supreme Court made a decision confirming a particular liberty and later decided they did not like their reasoning in that case? However, because they wanted to still reach the same result, they reached the same result in another case by using a new method of reasoning, dismissing their old one?"

Here is what he said and I ask unanimous consent to have it printed in the Record.

There being no objection, the memorandum was ordered to be printed in the Record, as follows:

Congressional Research Service,
The Library of Congress,
Washington, DC, September 21, 1987.

To: Honorable Robert Packwood Attention: Jill Luckett

From: American Law Division.

Subject: Supreme Court decisions protecting individual liberties.

This memorandum responds to your inquiry whether we can identify any cases in which the Supreme Court has held protected against governmental abridgment a claim of individual liberty and in which subsequently the Court has decided the ground relied on cannot support the decision but another ground does support the same result. As we have previously reported, we have not been able to find such a case.

Johnny H. Killian,
Senior Specialist,
American Constitutional Law.

Mr. PACKWOOD. Mr. President, I asked Judge Bork on September 10 when he was in my office about this matter.

I asked the Library of Congress to come up with a case where the Supreme Court guaranteed a particular liberty using a particular method of reasoning and then in a subsequent decision abandoned that method of reasoning while continuing to defend the civil liberty but on different grounds. Judge, they could not come up with a case. Can you?

Judge Bork: I cannot think of one now but I would think they exist. I will ask some of my law school professor friends if they can come up with a case and I will send it along to you if I can come up with one.

Judge Bork has never sent me such a case. Mr. President, such a case does not exist.

So when Judge Bork says, "I do not like the right of privacy but, I do like the results," then I say, "How do you get the results?"

No answer.

If anything, it was basically my belief in the right of privacy, which caused me to reach the decision to oppose Judge Bork. If anything, the nomination hearings confirmed the meetings in my office, both of which took place prior to the hearings. In the hearings, he recanted a bit on the first amendment and decided it could cover commercial and artistic speech. He recanted a bit on equal protection of the laws, and said it could cover more than race. He never recanted on the right of privacy.

From day one until the end of his appearance before the committee, there was never any question in his testimony as to what he thought about the right of privacy. For him, it had no constitutional foundation. It had no constitutional foundation, despite the fact that the founders of this country said, "Every right that God can ever give to anybody is inherent in you and you can keep it unless the Government has taken it away from you in the Constitution."

Mr. President, if you cannot bring yourself to support a decision based on its reasoning, then, of course, you may ask the prospective nominee, "Can you support the decision based on stare decisis, that it is the law and should continue to exist even if you disagree with it?"

Both in my office and before the committee, these are basically the standards he set down for stare decisis: Private expectation; institutional dependency; age of the thing; fabric of the Nation; how internalized the right.

The judge referred to any number of situations where he said stare decisis ought to apply because the decision was so interwoven into the fabric of the country that even if he disagreed with it, it should not be overturned. He cited commerce cases, legal tender cased, first amendment cases, incorporation of the bill of rights, equal protection. In all of those, he could accept stare decisis in some areas even though he disagreed with the decision. But, again, he did not mention any privacy cases.

He mentioned the decision in Brown versus The Board of Education, but he said, "Of course, that is a case I agree with, however."

Then he mentioned Hart of Atlanta, a civil rights case which he had disagreed with at the time it was written. He mentioned Bolling versus Sharp, which was a school desegregation case in the District of Columbia, but he said based on stare decisis, he would support it. No privacy cases.

Now, Mr. President, it has come to the sharp issue currently found in privacy cases, that is the issue of abortion. I suppose I do not have to tell anybody in this body my views on that subject. I introduced in this Senate in 1970 a bill to legalize abortion nationally, 3 years before the Roe versus Wade decision. I spent 20 years before I came to this body working to ensure that a woman would have that right to choose. I regard it as very important.

I do not rest my opposition to Judge Bork solely on this one privacy right. I rest my opposition on the fact that I think he would undo all of the privacy cases if he could.

I was in the committee room in 1981 when Judge Bork testified on Senator HELMS' human life bill, in which he said, "I am convinced, as I think most legal scholars are, that Roe versus Wade is itself an unconstitutional decision, a serious and wholly unjustifiable judicial usurpation of State legislative authority.

Mr. President, you had to be in the room. The cold transcript was not enough. You had to hear it.

Mr. President, he hates that decision. He may think that of all of the privacy cases, that is the worst. I do not know. That decision he hates, and he told me—he may have said it publicly but certainly he told me privately—had he been on the Court at the time of Roe versus Wade he would have voted no, with the minority. I think he probably said that publicly also.

Now I have the situation, as I look at the confirmation of Judge Bork, of a man for whom the privacy cases are so distasteful that his distaste almost knows no bounds. In particular, he vehemently, strongly and passionately opposes the abortion case. In no way, shape, or form can I assume that he would support it on stare decisis because all the times he mentioned the cases he lives with but does not like; he never mentioned Roe versus Wade or any other privacy case as one that he would be willing to live with.

So I have to ask myself, how will he come out on the privacy cases? What are his personal feelings? I know his feelings is passionate, but how much does he dislike that case? Will his personal feelings affect his decision?

Judge Bork said in the California Law Journal, May 1985, "Justice Robert H. Bork: Judicial Restraint Personified"—

> No judge can completely get his own morality out of a decision, because the way we understand the world is changed unconsciously by our moral framework.

(Ms. MIKULSKI assumed the Chair.)

Mr. PACKWOOD. Madam President, I think Judge Bork is right. It is an unusual person that can so separate their feelings from their actions that their feelings can be utterly denuded. It is like separating the spirit from the body. I do not think you can do it. I do not think Judge Bork thinks you can do it. So knowing of his distaste for the privacy decisions, knowing of his intense dislike of Roe versus Wade—the abortion decision—I took the leap and I asked him about his personal feelings on abortion—his personal feelings, not his legal view about Roe versus Wade. This is what he said:

When he taught at Yale, he was aware that abortions were happening. If not prevalent, at least abortions were common. He did not have much feeling about it then, one way or the other. However, he said he has become somewhat disturbed and his views might be changing because of both the articles that he had read on fetal pain and the arguments he had seen raised that can justify other takings of life.

Now, Madam President, these are my notes that I dictated immediately after the meeting from handwritten notes that I was taking while I was meeting with Judge Bork. I had my staff person sitting in the meeting and she made her notes independent of mine, without any contact between us. Her notes say that he began to have qualms about abortion when he began to read articles on fetal pain and euthanasia. That is her word, it was not his; but I think that is what he meant because I phrased it "other arguments he had seen raised that could justify other takings of life by the State."

Madam President, I do not think Judge Bork realized that for those of us who have been involved in the pro-choice fight for a long time, the words "fetal pain" and "euthanasia" are code words. Those are words for people who want to undo the right to choose. As an aside Madam President, the argument on fetal pain is a bogus argument. If anyone is going to say that those of us who are pro-choice are thereby in favor of euthanasia or let us take everybody over 70 and get rid of them because they are going to cost too much to the Social Security System or that we should sterilize all the mentally incompetents, they are making unfair charges.

So that is where I end up. Here is what I am faced with:

First. The Court premised its decision in Roe versus Wade on the right of privacy. I say it again, The Court premised its decision in Roe on the right of privacy, a line of decision, that goes back to the midtwenties. It is now a well-established constitutional right in this country.

Second. Judge Bork does not like the constitutional theory upon which the right of privacy is premised.

Third. Judge Bork finds especially pernicious the right of privacy as enunciated in Roe versus Wade.

Fourth. Judge Bork recanted on the first amendment and he has recanted on equal protection but he has never recanted on privacy.

Fifth. In mentioning stare decisis, Judge Bork mentions many cases in which he thinks stare decisis should apply, even if he disagrees with the decision. Yet Judge Bork never mentions a privacy case as one he would sustain on the basis of stare decisis. He can find no privacy cases or mentions none.

Sixth. He admits that a judge's personal feelings are bound to creep into decisions and I think probably into his decisions. We would probably all agree that we cannot separate everything we are from everything we decide.

And lastly in my judgment, I repeat, in my judgment—I cannot prove this—I think Judge Bork now personally finds that the right of a woman to make a choice on abortion is pernicious.

You add those all together and where do I come out? Well, Madam President, I want to return to the Constitution. Madam President, do you think that our founders intended that the only rights that existed were those specifically stated in the Constitution? Furthermore, are these specific rights to apply only to those people covered in the Constitution and that never again was a court, including the Supreme Court, to exercise common law functions that were absolutely known, well-known to the founders of this country?

At the time of the adoption of our Constitution, the provision in it applied basically to white adult males who owned real property. Over the years, those protections have been extended to blacks and other minorities, the insane, criminal defendants, children, and women, although not fully or we would not be arguing over the equal rights amendment today. What do you think our founders intended when they adopted this document? They knew full well they were not giving full representation to some people and denying rights to others but do you think they intended in 1787 that rights existed for white adult males and nobody else ever forever?

I do not think that is what they intended.

Do you think that our founders intended that the only rights you had as an individual were those rights specifically enumerated in the Constitution and any other unstated right the State legislative body or the Congress could take away from you? I do not think that is what they intended. I think what they saw was a Supreme Court exercising common law functions, finding law—not making it, but finding it. I think they understood exactly what they were doing and the Supreme Court has, for over 200 years, done what the founders intended.

Mr. NICKLES. Will the Senator yield?

Mr. PACKWOOD. I am just about to conclude. So, Madam President, you can pay your money and take your choice. I come down on the side of the Constitution that says everyone in this country, man or woman, black or white, comes into this world with inchoate, inherent rights that the Government cannot take away, and if those rights are not specifically stated in the Constitution you still have them. I find Judge Bork on the other side; the only rights you have are those that the Constitution specifically gives you, not others.

Madam President, we are celebrating this year our 200th anniversary of the U.S. Constitution. But I think we would be wiser to realize that we are celebrating not 200 years of our history, but really 700 years of Anglo-Saxon history, in which men and women have fought and been tortured, forfeited their property, and died so that we could say what we want, do what we want, and be what we want without interference from the Government. I hope that as we celebrate the Constitution this year, we would remember those 700 years of the fight to confirm and expand the liberties and rights of our Constitution and that we would cherish it, preserve it, protect it, and pass it on to our children a bit more secure than we received it from our parents.

Madam President, I yield the floor.

Mr. NICKLES. Madam President, will the Senator yield for a question?

Mr. PACKWOOD. Sure.

Mr. NICKLES. I want to compliment my fellow colleague for his statement and also for a lot of the homework that he has done, particularly concerning the right of privacy, and also about the Library of Congress. I would echo the Senator's comments because I think he has done an outstanding job in many areas in congressional and legislative research. We talk about the right of privacy. I read the 10th amendment which says that all other rights and powers are reserved to the States and to the people.

I could certainly see the right of privacy being incorporated in many decisions, but is it synonymous that if you believe in the right of privacy, then you also believe that that legalizes abortion? Are they one and the same? If you support privacy, does that mean you support abortion?

Mr. PACKWOOD. I did not mean to make this debate on abortion rights nor do I intend to. My good friend from Oklahoma and I have debated this subject before. What I said about the right of privacy is this: That you have all of the rights that you can have as an individual when you are born in this country or become a citizen of this country. The Government cannot take those rights away. But I will make this argument, if the Senator wants, on the subject of abortion so long as he understands it is not the sole linchpin upon which I rest my answer.

At the time of the founding of this country, individuals had a private right of abortion. It was not illegal. It was not illegal before 4 to 5 or 6 months of pregnancy. It was not outlawed. Our founders both in the State conventions and in the Constitutional Convention of the country saw no reason to outlaw abortion.

Here is the reason. They assumed you had the right. It was common. They knew it. People practiced it. You had a number of court decisions, State court decision in the 1810's, 1820's, and 1830's confirming the right.

So, if the Senator's question is this: At the time of the founding of this country did people practice abortion? The answer is "yes."

Mr. NICKLES. That was not my question.

Mr. PACKWOOD. Let me finish. Did our founders know of it? Yes. Was it a private right that existed that they knew of? Yes. It was a private right held by individuals, yes. Did they see any reason to prohibit it? No. That was a right that existed.

So the question becomes was there anything in the Constitution that takes away that right that existed? I would say no. The Roe versus Wade decision happens to be hinged on privacy by historical precedent. No one can argue with the fact that at the time of the founding of this country it was not illegal, it was practiced, admitted, and accepted.

Mr. NICKLES. That was not my question. It is not my purpose to debate abortion with my good friend and colleague from Oregon. We have debated abortion in the past year and I am sure we will debate it many times in the future. But the Senator made a very strong argument concerning the right of privacy.

I would like to think, as a Senator, that I favor the right of privacy, but I do not want to favor that right if it is considered synonymous with legalizing abortion.

I heard the Senator make a statement that he introduced legislation 3 years before Roe versus Wade to legalize abortion. If abortion is going to be legalized I think Congress should legalize it.

The Constitution says Congress shall pass all laws. So I think that is the correct way to go. But when you have done so much homework concerning the right of privacy, I was concerned that a lot of people might infer that that positively means that the Constitution legalizes abortion.

Many legal scholars would take quite the opposite viewpoint. We can debate that issue another day. But I wanted to make sure if this Senator said, yes, I support the right of privacy, people would not be thinking that that is synonymous with legalizing abortion or other issues.

Quite the contrary, if you go back to the Constitution, the 10th amendment says it reserves all other rights and powers to the States and the people. Some of the States exercized that right and did restrict abortion which, of course, is that Roe versus Wade was dealing with.

I thank the Senator for yielding.

Mr. BIDEN and Mr. McCONNELL addressed the Chair.

The PRESIDING OFFICER. Does the Senator from Oregon yield?

Mr. PACKWOOD. I yield the floor.

Mr. BIDEN. Madam President, I am going to yield the floor but I would like to answer a question not asked of me, but I would like to speak to it since it is something that I literally spent 100, 125 hours researching by myself and dealing with in the hearings.

I think it is important for the Senator from Oklahoma to understand, at least from this Senator's perspective, that research and the records will plead what evidence I am about to say. Although the right of a woman to choose is anchored by the Supreme Court on the right of privacy, as the Senator from Oregon pointed out, that is not the essence of the privacy decisions. The difference between Judge Bork and all other Justices of the past 70 years is that Judge Bork is the only person, had he been put on the Court, who would have denied the existence of a generalized right to privacy. Every other Justice, Harlan, Black, Frankfurter, every other Justice, even the ones who disagreed in Roe versus Wade, have found our generalized right to privacy.

The distinction has to be made here. If there is an imaginary line, on one side of that line is no right of privacy, and the other side of the line is that there is a right of privacy in the Constitution, the debate for the last 70 years has taken place on this side of the line. And it has gone all the way from recognizing only the right to send your child to a parochial school, or have your child taught German in the State of Nebraska, or a married couple to use contraceptives in the privacy of their bedroom. It has gone all the way from that to some arguing that the right of privacy extends to consensual homosexual conduct.

The debate has taken place on this side of the line; that is, how far to extend it. No one on the Court has failed to crossed the line. Judge Bork is the only one who sits on the other side of the line. As I said last night in the debate, everyone else has crossed the Rubicon. Judge Bork has not even put a boat in the water.

There are other scholars who shared Judge Bork's opinion. But none of them has been on the Court in the last 70 years. Judge Bork would be the first in 70 years.

I refer my colleagues to page 35 of the committee report which is on their desks. Professor Sullivan of Harvard University said it more succinctly and with more articulation I suspect. As Professor Sullivan testified, Judge Bork's views on privacy place him in a lonely position. And I quote Professor Sullivan.

> On the scope of the right to privacy, good and reasonable, fair-minded men and women differ greatly, and in good faith, and that has happened, it is happening now, and I expect it to continue as long as there is a right of privacy to argue about.
>
> But there has been no disagreement on the Supreme Court, for 75 years, that there exists some right to privacy, and it is that disagreement of Judge Bork that we are focusing on.
>
> There are two sides to the issue on its scope, but there have not been, in our jurisprudence, two sides of the issue as to its existence, and that is what puts Judge Bork outside the mainstream.

The mainstream on the issue of privacy.

So I say to my friend from Oklahoma who has a view against the right of a woman to choose, I find myself somewhere between the Senator from Oregon and the Senator from Oklahoma on that issue. You need not even look at the abortion issue to conclude that there is a right to privacy, and if you conclude there is a right to privacy in the Constitution, you need not come to the conclusion that that means there is a right to abortion.

I yield the floor.

Mr. NICKLES. I thank the Senator for his clarification.

Mr. McCONNELL addressed the Chair.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. McCONNELL. Madam President, I had originally planned to speak at some length on this subject, as others have. I have been sitting here, listening with considerable interest to the comments of my friend from Oregon, Senator PACKWOOD, and others, and it has proved a great history lesson for those of us charged with the responsibility of advising and consenting to Supreme Court nominations.

As we all know, on the 200th anniversary of the Constitution, we look back to that document and honor its framers and think back to the debates they had. In examining the particular portion of the Constitution which applies to this exercise, the advice and consent role, I might say that this particular Senator has focused on this issue for quite some time. I have been a member of the Senate for only 2½ years, but have dealt with Supreme Court nominees for 18 years, going back to 1969.

During that earlier time, I was a legislative assistant to a Senator on the Judiciary Committee during the Haynsworth-Carswell period. We struggled then with the question of what advice and consent meant.

As an idealistic young lawyer in those days, I wrote an article for the University of Kentucky Law Review entitled "Haynsworth and Carswell: A New Senate Standard of Excellence," which attempted to codify an appropriate role for the Senate, with respect to its advice and consent responsibility.

Mr. President, I ask unanimous consent to have printed in the RECORD my 1970 article.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

HAYNSWORTH AND CARSWELL: A NEW SENATE STANDARD OF EXCELLENCE

(By A. Mitchell McConnell, Jr.)

"All politicians have read history: but one might say that they read it only in order to learn from it how to repeat the same calamities all over again."—Paul Valery.

With the confirmation of Judge Harry A. Blackmun by the United States Senate on May 12, 1970, the American public witnessed the end of an era, possibly the most interesting period in the Supreme Court history. In many respects, it was not a proud time in the life of the Senate or, for that matter, in the life of the Presidency. Mistakes having a profound effect upon the American people were made by both institutions.

The Supreme Court of the United States is the most prestigious institution in our nation and possibly the world. For many years public opinion polls have revealed that the American people consider membership on the Court the most revered position in our society. This is surely an indication of the respect our people hold for the basic fabric of our stable society—the rule of law.

To the extent that it has eroded respect for this highest of our legal institutions, the recent controversial period has been unfortunate. There could not have been a worse time for an attack upon the men who administer justice in our country than in the past year, when tensions and frustrations about our foreign and domestic policies literally threatened to tear us apart. Respect for law and the administration of justice has, at various times in our history, been the only buffer between chaos and order. And this past year this pillar of our society has been buffeted once again by the winds of both justified and unconscionable attacks. It is time the President and the Congress helped to put an end to the turmoil.

The President's nomination of Judge Harry Blackmun and the Senate's responsible act of confirmation is a first step. But before moving on into what hopefully will be a more tranquil period for the High Court, it is useful to review the events of the past year for the lessons they hold. It may be argued that the writing of recent history is an exercise in futility and that only the passage of time will allow a dispassionate appraisal of an event or events of significance. This may well be true for the author who was not present and involved in the event. However, for the writer who is a participant the lapse of time serves only to cloud the memory. Circumstances placed a few individuals in the middle of the controversies of the past year. In the case of the author the experience with the Supreme Court nominees of the past year was the direct result of Senator Marlow W. Cook's election in 1968 and subsequent appointment to the powerful Senate Judiciary Committee. This committee appointment by the Senate Republican leadership, and Supreme Court nominations by President Nixon, brought about an initial introduction to the practical application of Article II, section 2 of the Constitution which reads, in part, that the President shall "nominate and by and with the advice and consent of the Senate, shall appoint . . . judges of the Supreme Court."

The purpose of this article is to draw upon the events of the past year in suggesting some conclusions and making some recommendations about what the proper role of the Senate should be in advising and consenting to Presidential nominations to the Supreme Court. The motivations of the Executive will be touched upon only periferally.

Initiated by Senator Robert P. Griffin, Republican of Michigan, the senatorial attack upon the Johnson nomination of Justice Abe Fortas to be Chief Justice which resulted in blocking the appointment had set a recent precedent for senatoral questioning in an area which had largely become a Presidential prerogative in the twentieth century. The most recent period of senatorial assertion had begun. But there had been other such periods and a brief examination of senatorial action on prior nominations is valuable because it helps put the controversial nominations of the past two years in proper perspective.

Joseph P. Harris, in his book, "The Advice and Consent of the Senate," sums up the history of Supreme Court nominations by pointing out that approximately one-fifth of all appointments have been rejected by the Senate. From 1894 until the Senate's rejection of Judge Haynsworth, however, there was only one rejection. In the preceding 105 years, 20 of the 81 nominees had been rejected. Four of Tyler's nominees, three of Fillmore's, and three of Grant's were disapproved during a period of bitter partisanship over Supreme Court appointments. Harris concludes of this era:

"Appointments were influenced greatly by political consideration, and the action of the Senate was fully as political as that of the President. Few of the rejections of Supreme Court nominations in his period can be ascribed to any lack of qualifications on the part of the nominees; for the most part they were due to political differences between the President and a majority of the Senate."

The first nominee to be rejected was former Associate Justice John Rutledge, of South Carolina. He had been nominated for the Chief Justiceship by President George Washington. The eminent Supreme Court historian Charles Warren reports that Rutledge was rejected essentially because of a speech he had made in Charleston in opposition to the Jay Treaty. Although his opponents in the predominantly Federalist Senate also started a rumor about his mental condition, a detached appraisal reveals his rejection was based entirely upon his opposition in the Treaty. Verifying this observation, Thomas Jefferson wrote of the incident:

"The rejection of Mr. Rutledge is a bold thing, for they cannot pretend any objection to him but his disapprobation of the treaty.* * *

On December 28, 1835, President Andrew Jackson sent to the Senate the name of Roger B. Taney, of Maryland, to succeed John Marshall as Chief Justice. As Taney had been Jackson's Secretary of the Treasury and Attorney General, the Whigs in the Senate strongly opposed him. Daniel Webster wrote of the nomination: "Judge Story thinks the Supreme Court is gone and I think so, too." Warren reports that ". . . the Bar throughout the North, being largely Whig, entirely ignored Taney's eminent legal qualifications, and his brilliant legal career, during which he had shared . . . the leadership of the Maryland Bar and had attained high rank at the Supreme Court Bar, both before and after his service as Attorney General of the United States."

Taney was approved, after more than two months of spirited debate, by a vote of 29 to 15 over vehement opposition including Calhoun, Clay, Crittenden, and Webster. He had actually been rejected the year before but was re-submitted by a stubborn Jackson.

History has judged Chief Justice Taney as among the most outstanding of American jurists, his tribulations prior to confirmation being completely overshadowed by an exceptional career. A contrite and tearful Clay related to Taney after viewing his work on the Court for many years:

"Mr. Chief Justice, there was no man in the land who regretted your appointment to the place you now hold more than I did; there was no Member of the Senate who opposed it more than I did; but I have come to say to you, and I say it now in parting, perhaps for the last time—I have witnessed your judicial career, and it is due to myself and due to you that I should say what has been the result, that I am satisfied now that no man in the United States could have been selected more abundantly able to wear the ermine which Chief Justice Marshall honored."

It is safe to conclude that purely partisan politics played the major role in Senate rejections of Supreme Court nominees during the nineteenth century. The cases of Rutledge and Taney have been related only for the purpose of highlighting a rather undistinguished aspect of the history of the Senate.

No implication should be drawn from the preceding that Supreme Court nominations in the twentieth century have been without controversy because certainly this has not been the case. However, until Haynsworth only one nominee has been rejected in this century, President Woodrow Wilson's nomination of Louis D. Brandeis and the events surrounding it certainly exhibit many of the difficulties experienced by Judges Haynsworth and Carswell as Brandeis failed to receive the support of substantial and respected segments of the legal community. William Howard Taft, Elilm Root, and three past presidents of the American Bar Association signed the following statement:

"The undersigned feel under the painful duty to say . . . that in their opinion, taking into view the reputation, character and professional career of Mr. Louis D. Brandeis, he is not a fit person to be a Member of the Supreme Court of the U.S."

Hearings were conducted by a Senate Judiciary subcommittee for a period of over four months, were twice-reopened, and the record of the hearings consisted of over 1500 pages.

The nomination of Brandeis, like the nomination of Haynsworth, Carswell and to some extent Fortas (to be Chief Justice) quickly became a cause celebre for the opposition party in the Senate. The political nature of Brandeis' opposition is indicated by the fact that the confirmation vote was 47 to 22; three Progressives and all but one Democrat voted for Brandeis and every Republican voted against him.

The basic opposition to Brandeis, like the basic opposition to Haynsworth and Carswell, was born of a belief that the nominee's views were not compatible with the prevailing views of the Supreme Court at that time. However, the publicly stated reasons for opposing Brandeis, just as the publicly stated reasons for opposing Carswell and Haynsworth, were that they fell below certain standards of "fitness."

Liberals in the Senate actively opposed the nominations to the Court of Harlan Fiske Stone in 1925 and Charles Evans Hughes five years later, for various reasons best summed up as opposition to what opponents predicted would be their conservatism. However, it was generally conceded by liberals subsequently that they had misread the leanings of both nominees, who tended to side with the Progressives on the Court throughout their tenures.

No review of the historic reasons for opposition to Supreme Court nominees, even as cursory as this one has been, would be complete without mention of the Parker nomination. Judge John J. Parker of North Carolina, a member of the United States Court of Appeals for the Fourth Circuit, was designated for the Supreme Court by President Hoover in 1930. Harris reports that opposition to Parker was essentially threefold. He was alleged to be anti-labor, unsympathetic to Negroes, and his nomination was thought to be politically motivated.

Opposition to Haynsworth and Carswell followed an almost identical pattern except that Judges Parker and Carswell were spared the charges of ethical impropriety to which Judge Haynsworth was subjected. All three nominees, it is worthy of note for the first time at this point, were from the Deep South.

As this altogether too brief historical review has demonstrated, the Senate has in its past, virtually without exception; based its objections to nominees for the Supreme Court on party or philosophical considerations. Most of the time, however, Senators sought to hide their political objections beneath a veil of charges about fitness, ethics and other professional qualifications. In recent years, Senators have accepted, with a few exceptions, the notion that the advice and consent responsibility of the Senate should mean an inquiry into qualifications and not politics or ideology. In the Brandeis case, for example, the majority chose to characterize their opposition as objecting to his fitness not his liberalism. So there was a recognition that purely political opposition should not be openly stated because it would not be accepted as a valid reason for opposing a nominee. The proper inquiry was judged to be the matter of fitness. In very recent times it has been the liberals in the Senate who have helped to codify this standard. During the Kennedy-Johnson years it was argued to conservatives in regard to appointments the liberals liked that the ideology of the nominee was of no concern to the Senate. Most agree that this is the proper standard, but it should be applied in a nonpartisan manner to conservative southern nominees as well as northern liberal ones. Even though the Senate has at various times made purely political decisions in its consideration of Supreme Court nominees, certainly it could not be successfully argued that this is an acceptable practice. After all, if political matters were relevant to senatorial consideration it might be suggested that a constitutional amendment be introduced giving to the Senate rather than the President the right to nominate Supreme Court Justices, as many argued during the Constitutional Convention.

A pattern emerges running from Rutledge and Taney through Brandeis and Parker up to and including Haynsworth and Carswell in which the Senate has employed deception to achieve its partisan goals. This deception has been to ostensibly object to a nominee's fitness while in fact the opposition is born of political experience.

In summary, the inconsistent and sometimes unfair behavior of the Senate in the past and in the recent examples which follow do not lead one to be overly optimistic about its prospects for rendering equitable judgments about Supreme Court nominees in the future.

CLEMENT F. HAYNSWORTH, JR.: INSENSITIVE OR VICTIMIZED?

"For the great majority of mankind are satisfied with appearance, as though they were realities, and are often more influenced by the things that seem than by those that are."—(Author unknown.)

The resignation of Justice Abe Fortas in May of 1969 following on the heels of the successful effort of the Senate the previous Fall in stalling his appointment to be Chief Justice (the nomination was withdrawn after an attempt to invoke cloture on Senate debate was defeated) intensified the resolve of the Senate to reassert what it considered to be its rightful role in advising and consenting to presidential nominations to the Supreme Court.

It was in this atmosphere of senatorial questioning and public dismay over the implications of the Fortas resignation that President Nixon submitted to the Senate the name of Judge Clement F. Haynsworth, Jr., of South Carolina, to fill the Fortas vacancy. Completely aside from Judge Haynsworth's competence, which was never successfully challenged, he had a number of problems from a political point of view, given the Democrat-controlled Congress. Since he was from South Carolina his nomination was immediately considered to be an integral part of the so-called southern strategy which was receiving considerable press comment at that time. His South Carolina residence was construed as conclusive proof that he was a close friend of the widely-criticized senior Senator from that state, Strom Thurmond, whom in fact, he hardly knew. Discerning Senators found offensive such an attack against the nominee rather than the nominator, since the southern strategy would be only in the latter's mind, if it existed. Nevertheless, this put the nomination in jeopardy from the outset.

In addition, labor and civil rights groups mobilized to oppose Judge Haynsworth on philosophical grounds. Some of the proponents of the Judge, including their acknowledged leader Senator Cook, might have had some difficulty on these grounds had they concluded that the philosophy of the nominee was relevant to the Senate's consideration. Senator Cook expressed the proper role of the Senate well in a letter to one of his constituents, a black student at the University of Louisville who was disgruntled over his support for the nominee. It read in pertinent part as follows:

". . . First, as to the question of his [Haynsworth's] view on labor and civil rights matters, I find myself in essential disagreement with many of his civil rights decisions—not that they in any way indicate a pro segregationist pattern, but that they do not form the progress pattern I would hope for. However, as Senator Edward Kennedy pointed out to the conservatives as he spoke for the confirmation of Justice Thurgood Marshall.

"I believe it is recognized by most Senators that we are not charged with the responsibility of approving a man to be Associate Justice of the Supreme Court only if his views always coincide with our own. We are not seeking a nominee for the Supreme Court who will express the majority view of the Senate on every given issue, or on a given issue of fundamental importance. We are interested really in knowing whether the nominee has the background, experience, qualifications, temperament and integrity to handle this most sensitive, important, responsible job.

"Most Senators, especially of moderate and liberal persuasion, have agreed that while the appointment of Judge Haynsworth may have been unfortunate from a civil rights point of view, the ideology of the nominee is the responsibility of the President. The Senate's judgment should be made, therefore, solely upon grounds of qualifications. As I agree with Senator Kennedy and others that this is the only relevant inquiry, I have confined by judgment of this nominee's fitness to the issue of ethics of qualifications?"

The ethical questions which were raised about Judge Haynsworth were certainly relevant to the proper inquiry of the Senate into qualifications of appointment. Also distinction and competence had a proper bearing upon the matter of qualifications, but Judge Haynsworth's ability was, almost uniformly, conceded by his opponents and thus was never a real factor in the debate. A sloppy and hastily drafted document labelled the "Bill of Particulars" against Judge Haynsworth was issued on October 8, 1969, by Senator Birch Bayh of Indiana, who had become the de facto leader of the anti-Haynsworth forces during the hearings on the nomination before the Judiciary Committee the previous month. This contained, in addition to several cases in which it had been alleged during the hearings that Judge Haynsworth should have refused to sit, several extraneous and a few inaccurate assertions which were swiftly rebutted two days later by Senator Cook in a statement aptly labelled the "Bill of Corrections." This preliminary sparring by the leaders of both sides raised all the issues in the case but only the relevant and significant allegations will be discussed here, those which had a real impact upon the Senate's decision.

First, it was essential to determine what, if any, impropriety Judge Haynsworth had committed. For the Senator willing to make a judgment upon the facts this required looking to those facts. The controlling statute in situations where federal judges might potentially disqualify themselves is 28 U.S.C. § 455 which reads:

"Any Justice or Judge of the United States shall disqualify himself in any case in which he has a substantial interest, has been of counsel, is or has been a material witness, or is so related to or connected with any party or his attorney as to render it improper, *in his opinion* for him to sit on the trial, appeal, or other proceeding therein. [Italic added.]

Also pertinent is Canon 29 of the American Bar Association Canons of Judicial Ethics which provides: "A judge should abstain from performing or taking part in any judicial act in which his personal interests are involved." Formal Opinion 170 of the American Bar Association construing Canon 29 advises that a judge should not sit in a case in which he owns stock in a party litigant.

The first instance cited by Judge Haynsworth's opponents as an ethical violation was the much celebrated labor case, *Darlington Manufacturing Co.* v. *NLRB*, argued before and decided by the Fourth Circuit in 1963. The Judge sat in this case contrary to what some of his Senate opponents felt to have been proper. The facts were that Judge Haynsworth had been one of the original incorporators, seven years before he was appointed to the bench, of a company named Carolina Vend-A-Matic which had a contract to supply vending machines to one of Deerling-Millikin's (one of the litigants) plants. In 1957, when Judge Haynsworth went on the bench, he orally resigned as Vice President of the Company but continued to serve as a director until October, 1963, at which time he resigned his directorship in compliance with a ruling of the U.S. Judicial Conference. During 1963, the year the case was decided, Judge Haynsworth owned one-seventh of the stock of Carolina Vend-A-Matic.

Suffice it to say that all case law in point, on a situation in which a judge owns stock in a company which merely does business with one of the litigants before him, dictates that the sitting judge not disqualify himself. And certainly the Canons do not address themselves to such a situation. As John P. Frank, the acknowledged leading authority on the subject of judicial disqualification testified before the Judiciary Committee:

"It follows that under the standard federal rule Judge Haynsworth had no alternative whatsoever. He was bound by the principle of the cases. It is the Judge's duty to refuse to sit when he is disqualified, but it is equally his duty to sit when there is no valid reason not to . . . I do think it is perfectly clear under the authority that there was virtually no choice whatsoever for Judge Haynsworth except to participate in that case and do his job as well as he could."

This testimony by Mr. Frank was never refuted as no one recognized as an authority on the subject was discovered who held a contrary opinion.

The second situation of significance which arose during the Haynsworth debate concerned the question of whether Judge Haynsworth should have sat in three cases in which he owned stock in a parent corporation where one of the litigants before him was a wholly owned subsidiary of the parent corporation. These cases were *Farrow* v. *Grace Lines, Inc.*, *Donohue* v. *Maryland Casualty Co.*, and *Maryland Casualty Co.* v. *Baldwin*.

Consistently ignored during the outrage expressed over his having sat in these cases were the pleas of many of the Senators supporting the nomination to look to the law to find the answer to the question of whether Judge Haynsworth should have disqualified himself in these situations. Instead, the opponents decided, completely independent of the controlling statutes and canons, that the Judge had a "substantial interest" in the outcome of the litigation and should, therefore, have disqualified himself. Under the statute, 28 U.S.C. § 455, Judge Haynsworth clearly had no duty to step aside. Two controlling cases in a situation where the judge actually owns stock in one of the litigants, not as here where the stock was owned in the parent corporation, are *Kinn-*

car Weed Corp. v. *Humble Oil and Refining Co.* and *Lampert* v. *Hollis Music, Inc.* These cases interpret "substantial interest" to mean "substantial interest" in the outcome of the case, not "substantial interest" in the litigant. And here Judge Haynsworth not only did not have a "substantial interest" in the outcome of the litigation, he did not even have a "substantial interest" in the litigant, his stock being a small postion of the shares outstanding in the parent corporation of one of the litigants. There was, therefore, clearly no duty to step aside under the statute. It is interesting to note that joining in the *Kinncar Weed* decision were Chief Judge Brown and Judge Wisdom of the Fifth Circuit whom Joseph Rauh, a major critic of the Haynsworth nomination, had stated at the hearings on the nomination "would have been heroic additions to the Supreme Court."

But was there a duty to step aside in these parent-subsidiary cases under Canon 29? The answer is again unequivocally No. The only case law available construing language similar to that of Canon 29 is found in the disqualification statute of a state. In *Central Pacific Railroad Co.* v. *Superior Court,* the state court held that ownership of stock in a parent corporation did not require disqualification in litigation involving a subsidiary. Admittedly, this is only a state case, but significantly there is no federal case law suggesting any duty to step aside where a judge merely owns stock in the parent where the subsidiary is before the court. Presumably, this is because such a preposterous challenge has never occurred even to the most ingenious lawyer until the opponents of Judge Haynsworth created it. Therefore, Judge Haynsworth violated no existing standard of ethical behavior in the parent-subsidiary cases except that made up for the occasion by his opponents to stop his confirmation.

There was one other accusation of significance during the Haynsworth proceedings which should be discussed. It concerned the Judge's actions in the case of *Burnswick Corp.* v. *Long.* The facts relevant to this consideration were as follows: on November 10, 1967, a panel of the Fourth Circuit, including Judge Haynsworth, heard oral argument in the case and immediately after argument voted to affirm the decision by the District Court. Judge Haynsworth, on the advice of his broker, purchased 1,000 shares of Brunswick on December 20, 1967. Judge Winter, to whom the writing of the opinion had been assigned on November 10, the day of the decision, circulated his opinion on December 27. Judge Haynsworth noted his concurrence on January 3, 1968, and the opinion was released on February 2. Judge Haynsworth testified that he completed his participation, in terms of the decision-making process, on November 10, 1967, approximately six weeks prior to the decision to buy stock in Brunswick. Judge Winter confirmed that the decision had been substantially completed on November 10. Therefore, it could be strongly argued that Judge Haynsworth's participation in *Brunswick* terminated on November 10. However, even if it were conceded that he sat while he owned Brunswick stock it is important to remember that neither the statute nor the canons require an automatic disqualification, although Opinion 170 so advises. And the facts show that his holdings were so miniscule as to amount neither to a "substantial interest" in the outcome of the litigation under 28 § 455 or to a "substantial interest" in the litigant itself. Clearly, once again, Judge Haynsworth was guilty of no ethical impropriety.

As mentioned earlier there were other less substantial charges by Haynsworth opponents but they were rarely used by opponents to justify opposition. These which have been mentioned were the main arguments used to deny confirmation. It is apparent to any objective student of this episode that Haynsworth violated no existing standard of ethical conduct, just those made up for the occasion by those who sought to defeat him for political gain. As his competence and ability were virtually unassailable, the opponents could not attack him for having a poor record of accomplishment or for being mediocre (an adjective soon to become famous in describing a subsequent nominee for the vacancy). The only alternative available was to first, create a new standard of conduct; second, apply this standard to the nominee retroactively making him appear to be ethically insensitive; third, convey the newly-created appearance of impropriety to the public by way of a politically hostile press (hostile due to an aversion to the so-called southern strategy of which Haynsworth was thought to be an integral part); and fourth, prolong the decision upon confirmation for a while until the politicians in the Senate reached to an aroused public. Judge Haynsworth was defeated on November 21, 1969, by a vote of 55-45. Appearance had prevailed over reality. Only two Democrats outside the South (and one was a conservative—Bible of Nevada) supported the nomination, an indication of the partisan issue it had become, leading the Washington Post, a lukewarm Haynsworth supporter, to editorially comment, the morning after the vote:

"The rejection, despite the speeches and comments on Capitol Hill to the contrary, seems to have resulted more from ideological and plainly political considerations than from ethical ones. It is impossible to believe that all Northern liberals and all Southern conservatives have such dramatically different ethical standards."

CARSWELL: WAS HE QUALIFIED?

"Even if he was mediocre, there are a lot of mediocre judges and people and lawyers. They are entitled to a little representation, aren't they, and a little chance? We can't have all Brandeises and Cardozos Frankfurters and stuff like that there."—Senator Roman Hurska, March 16, 1970.

The United States Senate began the new year in no mood to reject another nomination of the President to the Supreme Court. It would take an incredibly poor nomination, students of the Senate concluded, to deny the President his choice in two successive instances. Circumstances, however, brought forth just such a nomination.

Subsequent to the defeat of Judge Haynsworth, President Nixon sent to the Senate in January of 1970 the name of Judge G. Harrold Carswell, of Florida and the Fifth Circuit. Judge Carswell had been nominated to the Circuit Court by President Nixon the year before, after serving 12 years on the U.S. District Court for the Northern District of Florida at Tallahassee to which he had been appointed by President Eisenhower.

He, too, faced an initial disadvantage in that he came from the south and was also considered by the press to be a part of the southern strategy. This should have been, as it should have been for Haynsworth, totally irrelevant to considerations of the man and his ability, but it was a factor and it immediately mobilized the not insignificant anti-south block in the Senate.

Many were troubled at the outset of the hearings about reports of a "white supremacy" speech Carswell had made as a youthful candidate for the legislature in Georgia in 1948, and later by allegations that he had supported efforts to convert a previously all-white public golf course to an all-white private country club in 1950, thus circumventing Supreme Court rulings. There were other less substantial allegations including lack of candor before the Senate Judiciary Committee (which had also been raised against Judge Haynsworth) but all of these were soon supplanted by what became the real issue—that is, did Carswell possess the requisite distinction for elevation to the High Court.

In attempting to determine by what standards Judge Carswell should be judged, some who had been very much involved in the Haynsworth debate attempted to define the standards which had been applied to the previous nominee. Kentucky's Marlow Cook called his standard the "Haynsworth test" and subsequently defined it as composed of essentially five elements, (1) competence; (2) achievement; (3) temperament; (4) judicial propriety and (5) non-judicial record.

Judge Haynsworth himself would not have passed this test had he in fact been guilty of some ethical impropriety—that is, if his judicial integrity had been compromised by violations of any existing standard of conduct. His record of achievement was only attacked by a few misinformed columnists and never really became an issue. And his competence, temperament and the record of his life off the bench was never questioned, but a breakdown in any of these areas might have been fatal also.

The judicial integrity component of the "Haynsworth test," previously described as a violation of existing standards of conduct for federal judges, was never in question in the Carswell proceedings. It was impossible for him to encounter difficulties similar to those of Judge Haynsworth because he owned no stocks and had not been involved in any business ventures through which a conflict might arise. Certainly, his non-judicial record was never questioned, nor was it a factor raised against any nominee in this century. Disqualifying non-judicial activities referred to here could best be illustrated by examples such as violations of federal or state law, or personal problems such as alcoholism or drug addiction—in other words, debilitating factors only indirectly related to effectiveness on the bench.

However, all the other criteria of the "Haynsworth test" were raised in the Carswell case and caused Senators seeking to make an objective appraisal of the nominee some difficulty. First, as to the question of competence, Ripon Society Report and a study of the nominee's reversal percentages by a group of Columbia law students revealed that while a U.S. District Judge he had been reversed more than twice as often as the average federal district judge and that he ranked sixty-first in reversals among the 67 federal trial judges in the south. Numerous reversals alone might not have been a relevant factor; he could have been in the vanguard of his profession some argued. This defense, however, ignored simple facts about which even a first year law student would be aware. A federal district judge's duty in most instances is to follow the law as laid down by higher authority. Carswell appeared to have a chronic inability to do this. No comparable performance was ever imputed to Judge Haynsworth even by his severest critics.

Second, in the area of achievement, he was totally lacking. He had no publications, his opinions were rarely cited by other judges in their opinions, and no expertise in any area of the law was revealed. On the contrary, Judge Haynsworth's opinions were often cited, and he was a recognized expert in several fields including patents and trademarks, habeas corpus cases, and labor law. In addition, his opinions on Judicial administration were highly valued; he had been called upon to testify before Senator Tydings' Subcommittee on Improvements in Judicial Machinery on this subject in June of 1969.

In addition to his lack of professional distinction, Judge Carswell's temperament was also questionable. There was unrebutted testimony before the Judiciary Committee that he was hostile to a certain class of litigants—namely, those involved in litigation to insure the right to vote to all citizens regardless of race pursuant to the Voting Rights Act of 1965. There had been testimony that Judge Haynsworth was anti-labor and anti-civil rights, but these charges alleged not personal antipathy but rather philosophical bias in a certain direction such as Justice Goldberg might have been expected to exhibit against management in labor cases. Such philosophical or ideological considerations, as pointed out earlier, are more properly a concern of the President and not the Senate, which should sit in judgment upon qualifications only.

And finally, a telling factor possibly revealing something about both competence and temperament was Judge Carswell's inability to secure the support of his fellow judges on the Fifth Circuit. By contrast, all Fifth Circuit judges had supported Judge Homer Thornberry when he was nominated in the waning months of the Johnson presidency, even though that was not considered an outstanding appointment by many in the country. All judges of the Fourth Circuit had readily supported Judge Haynsworth's nomination. Therefore, it was highly unusual and significant that Judge Carswell could not secure the support of his fellow judges, especially when one considers that they must have assumed at that time that they would have to deal with him continually in future years should his nomination not be confirmed. His subsequent decision to leave the bench and run for political office in Florida seeking to convert a wave of sympathy over his frustrated appointment into the consolation prize of a United States Senate seat only tended to confirm the worst suspicions about his devotion to being a member of the Federal Judiciary.

Judge Carswell, then, fell short in three of the five essential criteria evolving out of the Haynsworth case. This compelled a no vote by the junior Senator from Kentucky and he was joined by several other Senators who simply could not, in good conscience, vote to confirm despite the wishes of most of their constituents. Of the southern Senators who had supported Haynsworth, Spong, of Virginia, and Fulbright, of Arkansas, switched. Gore, of Tennessee and Yarborough, of Texas, voted no again and the only Democrat outside the south of liberal credentials who had supported the Haynsworth nomination, Gravel, of Alaska, joined the opponents this time.

Judge Carswell was defeated 51-45 on April 8, 1970 by essentially the same coalition which had stopped Judge Haynsworth. The justification for opposition, however, as this article seeks to demonstrate, was much sounder. Some undoubtedly voted in favor of Carswell simply because he was a Southern conservative. Others, no doubt, voted no for the same reason. The key Senators who determined his fate, however, clearly cast their votes against the Hruska maxim that mediocrity was entitled to a seat on the Supreme Court.

HARRY M. BLACKMUN: CONFIRMATION AT LAST

"The political problem, therefore, is that so much must be explained in distinguishing between Haynsworth and Blackmun, and when the explanations are made there is still room for the political argument that Haynsworth should have been confirmed in the first place."—Richard Wilson, Washington Evening Star, April 20, 1970.

President Nixon next sent to the Senate to fill the vacancy of almost one year created by the Fortas resignation, a childhood friend of Chief Justice Warren Burger, his first court appointment, Judge Harry A. Blackmun, of Minnesota and the Eighth Circuit. Judge Blackmun had an initial advantage which Judges Haynsworth and Carswell had not enjoyed—he was not from the South. Once again, in judging the nominee it is appropriate to apply Senator Cook's "Haynsworth test."

Judge Blackmun's competence, temperament, and non-judicial record were quickly established by those charged with the responsibility of reviewing the nomination, and were, in any event, never questioned, as no one asked the Judiciary Committee for the opportunity to be heard in opposition to the nomination.

In the area of achievement or distinction, Judge Blackmun was completely satisfactory. He had published three legal articles: "The Marital Deduction and Its Use in Minnesota;" "The Physician and His Estate;" and "Allowance of In Forma Pauperis in Section 2255 and Habeas Corpus Cases." In addition, at the time of this selection he was chairman of the Advisory Committee on the Judge's Function of the American Bar Association Special Committee on Standards for the Administration of Criminal Justice. Moreover, he had achieved distinction in the areas of federal taxation and medicolegal problems and was considered by colleagues of the bench and bar to be an expert in these fields.

The only question raised about Judge Blackmun was in the area of judicial integrity or ethics. Judge Blackmun, since his appointment to the Eighth Circuit by President Eisenhower in 1959, had sat on three cases in which he actually owned stock in one of the litigants before him: *Hanson* v. *Ford Motor Co., Kotula* v. *Ford Motor Co.,* and *Mahoney* v. *Northwestern Bell Telephone Co.* In a fourth case, *Minnesota Mining and Manufacturing Co.* v. *Superior Insulating Co.* Judge Blackmun acting similary to Judge Haynsworth in *Brunswick,* bought shares of one of the litigants after the decision but before the denial of a petition for rehearings.

As previously mentioned, Judge Haynsworth's participation in *Brunswick* was criticized as violating the split of Canon 29 and the literal meaning of Formal Opinion 170 of the ABA, thus showing an insensitivity to judicial ethics, but Judge Blackmun acted similarly in the 3M case and was not so criticized. Except as it could be argued in *Brunswick,* Judge Haynsworth never sat in a case in which he owned stock in one of the litigants but, rather, three cases in which he merely owned stock in the parent corporation of the litigant-subsidiary, a situation not unethical under any existing standard, or even by the wildest stretch of any legal imaginations, except those of the multi-Haynsworth leadership.

Judge Blackmun, on the other hand, committed a much more clear-cut violation of what could be labelled the "Bayh standard." Senator Bayh, the leader of the opposition in both the Haynsworth and Carswell cases, ignored this by breach of his Haynsworth test with the following justification:

"He [Blackmun] discussed his stock holdings with Judge Johnson, then Chief Judge of the Circuit, who advised him that *his holdings did not constitute a "substantial interest"* under 28 USC 455, and that he was obliged to sit in the case. There is no indication that Judge Haynsworth ever disclosed his financial interest to any colleague or to any party who might have felt there was an apparent conflict, before sitting in such case." [Italic added.]

Judge Haynsworth did not inform the lawyers because under existing Fourth Circuit practice he found no significant interest and, thus, no duty to disclose to the lawyers. In any event, Judge Blackmun did not inform any of the lawyers in any of the cases in which he sat, either. Judge Blackmun asked the chief judge his advice and relied upon it. Judge Haynsworth was the chief judge.

Chief Judge Johnson and Chief Judge Haynsworth both interpreted that standard, as it existed, not as the Senator from Indiana later fashioned it. That interpretation was, as the supporters of Judge Haynsworth said it was, and in accord with Chief Johnson who described the meaning of 28 U.S.C. § 455 to be "that a judge should sit regardless of interest, so long as the decision will not have a significant effect upon the value of the judge's interest.

In other words, it is not interest in the litigant but interest in the outcome of the litigation which requires stepping aside. But even if it were interest in the litigant, the interests of Blackmun were de minimis and the interests of Haynsworth were not only de minimis, but were one step removed—that is, his interest was in the parent corporation where the subsidiary was the litigant. Furthermore, the case law, what little there is, and prevailing practice dictate that in the parent-subsidiary situation there is no duty to step aside.

As John Frank pointed out in the Judiciary Committee during the Haynsworth hearings, where there is no duty to step aside, there is a duty to sit. Judge Haynsworth and Judge Blackmun sat in these cases because under existing standards, not the convenient ad hoc standard of the Haynsworth opponents, they both had a duty to sit. But it is worth noting that if one were to require a strict adherence to the most rigid standard—Formal Opinion 170, which states that a judge shall not sit in a case in which he owns stock in a party litigant—Judge Haynsworth whom Senator Bayh opposed had only one arguable violation, *Brunswick,* while Judge Blackmun whom Senator Bayh supported had one arguable violation, *3M,* and three clear violations, *Hanson, Kotula* and *Mahoney.*

The Senator from Indiana also argued that since Judge Blackmun stepped aside in *Bridgeman* v. *Gateway Ford Truck Sales,* arising after the Haynsworth affair, a situation in which he owned stock in the parent Ford which totally owned one of the subsidiary-litigants, he "displayed a laudable recognition of the changing nature of the standards of judicial conduct." Of course, Judge Blackmun stepped aside after seeing what Judge Haynsworth had been subjected to. Haynsworth did not have an opportunity to step aside in such situations since this new Bayh rule was established during the course of his demise. Certainly Judge Haynsworth would now comply with the Bayh test to avoid further attacks upon his judicial integrity just as Judge Blackmun wisely did in *Bridgeman*.

It is clear, then, to any objective reviewer, that the Haynsworth and Blackmun cases, aside from the political considerations involved, were virtually indistinguishable. If anything, Judge Blackmun had much more flagrantly violated that standard used to defeat Judge Haynsworth violated no existing standard worthy of denying him confirmation and he was quite properly confirmed by the Senate on May 12, 1970 by a vote of 88 to 0.

A NEW TEST CAN ONE BE CODIFIED?

"Bad laws, if they exist, should be repealed as soon as possible, still, while they continue in force, for the sake of example they should be religiously observed".—Abraham Lincoln.

It has been demonstrated that Judges Haynsworth and Blackmun violated no existing standards worthy of denying either of them confirmation. Judge Carswell's defeat, like Judge Haynsworth's, was due in part to the application of a new standard—it having been argued that mediocre nominees had been confirmed in the past, a fortiori Carswell should be also. Yet, certainly achievement was always a legitimate part of the Senate's consideration of a nominee for confirmation just as ethics had always been. The Senate simply ignored mediocrity at various times in the past and refused to do so in the case of Carswell. And in the case of Haynsworth it made up an unrealistic standard of judicial propriety to serve its political purposes and then ignored those standards later in regard to Judge Blackmun because politics dictated confirmation.

Possibly, new standards should be adopted by the Senate but, of course, adopted prospectively in the absence of a pending nomination and not in the course of confirmation proceedings. In this regard, Senator Bayh has now introduced two bills, The Judicial Disqualification Act of 1970 and the Omnibus Disclosure Act which, if enacted, would codify the standards he previously employed to defeat Judge Haynsworth. This legislative effort is an admission that the previously applied standards were nonexistent at the time. Those bills are, however, worthy of serious consideration in a continuing effort to improve judicial standards of conduct. Some standards have been suggested here and will be recounted again but first some observations about the body which must apply them.

First, it is safe to say that anti-southern prejudice is still very much alive in the land and particularly in the Senate. Although this alone did not cause the defeats of Haynsworth and Carswell, it was a major factor. The fact that so many Senators were willing to create a new ethical standard for Judge Haynsworth in November, 1969, in order to insure his defeat and then ignore even more flagrant violations of this newly established standard in May of 1970, can only be considered to demonstrate sectional prejudice.

Another ominous aspect of the past year's events has been that we have seen yet another example of the power of the press over the minds of the people. As Wendell Phillips once commented, "We live under a government of men and morning newspapers." Certainly, one should not accuse the working press of distorting the news. The reporters were simply conveying to the nation the accusations of the Senator from Indiana and others in the opposition camp. These accusations were interpreted by a misinformed public outside the south (as indicated by prominent public opinion polls) as conclusive proof of Judge Haynsworth's impropriety and Judge Carswell's racism, neither of which was ever substantiated. The press should remain unfettered, but public figures must continue to have the courage to stand up to those who would use it for their own narrow political advantage to destroy men's reputations, and more importantly, the aura of dignity which should properly surround the Supreme Court.

Some good, however, has come from this period. Senatorial assertion against an all-powerful Executive, whoever he may be, whether it is in foreign affairs or in Supreme Court appointments, is healthy for the country. Such assertions help restore the constitutional checks and balances between our branches of government, thereby helping to preserve our institutions and maximize our freedom.

In addition, the American Bar Association has indicated a willingness to review its ethical standards and has appointed a Special Committee on Standards of Judicial Conduct, under the chairmanship of Judge Traynor, which issued a Preliminary Statement and Interim Report which would update the ABA Canons of Judicial Ethics. This report was discussed in public hearings on August 8th and 10th, 1970 at the Annual Meeting of the ABA in St. Louis and may be placed on the agenda for consideration at the February, 1971, mid-year meeting of the House of Delegates. Both supporters and opponents of Judge Haynsworth agreed that a review and overhaul of the ABA's Canons of Judicial Ethics was needed. This should be valuable and useful to the Senate as the Judiciary Committee under Senator Eastland has made a practice of requesting reports on Presidential nominees to the Supreme Court by the Standing Committee on the Federal Judiciary of the ABA. This practice probably should be continued as the Senate has not, in any way, delegated its decision upon confirmation to this outside organization. Rather, it seeks the views of the ABA before reporting nominees to the Judiciary to the floor of the Senate just as any committee would seek the views of relevant outside groups before proposing legislation.

Although not central to the considerations of this article, it should be noted what the Executive may have learned from this period. President Johnson undoubtedly discovered in the Fortas and Thornberry nominations that the Senate could be very reluctant at times to approve nominees who might be classified as personal friends or "cronies" of the Executive. It was also established that the Senate would known upon Justices of the Supreme Court acting as advisors to the President as a violation of the concept of separation of powers. This argument was used very effectively against the elevation of Justice Fortas to the Chief Justiceship as he had been an advisor to President Johnson on a myriad of matters during his tenure on the Court. President Nixon learned during the Caswell proceedings that a high degree of competence would likely be required by the Senate before it approved future nominees. He also learned during the Haynsworth case that the Senate would likely require strict adherence to standards of judicial propriety.

Unfortunately, as a result of this episode, the Administration has adopted a very questionable practice in regard to future nominations to the Supreme Court. Attorney General John N. Mitchell announced on July 28, 1970 that the Justice Department would adopt a new procedure under which the Attorney General will seek a complete investigation by the ABA's Standing Committee on the Federal Judiciary before recommending anyone to the President for nomination to the Supreme Court. This Committee has already enjoyed virtually unprecedented influence in the selection of U.S. District and Circuit Judges as this Administration has made no nominations to these Courts which have not received the prior approval of this twelve man Committee. In effect, the Administration, after delegating to this Committee veto power over lower federal court appointments, has now broadened this authority to cover its selections to the Supreme Court. Complete delegation of authority to an outside organization of so awesome a responsibility as designating men to our federal District and Circuit Courts is bad enough, but such a delegation of authority to approve, on the Supreme Court level, is most unwise. Far from representing all lawyers in the country, the ABA has historically been the repository of "big-firm," "defense-oriented," "corporate-type lawyers" who may or may not make an objective appraisal of a prospective nominee. If President Wilson had asked the ABA for prior approval of Brandeis, the Supreme Court and the nation would never have benefitted from his great legal talents. The presumption that such an outside organization as the American Bar Association is better able to pass upon the credentials of nominees for the federal courts and especially the Supreme Court than the President of the United States who is given the constitutional authority is an erroneous judgment which the passage of time will hopefully see reversed. This is not to imply that ABA views would not be useful to the Executive in its considerations just as they are useful to but not determinative of the actions of the Senate (the Senate having rejected ABA approved nominees Haynsworth and Carswell).

What standard then can be drawn for the Senate from the experiences of the past year in advising and consenting to Presidential nominations to the Supreme Court? They have been set out above but should be reiterated in conclusion. At the outset, the Senate should discount the philosophy of the nominee. In our politically centrist society, it is highly unlikely that any Executive would nominate a man of such extreme views of the right of the left as to be disturbing to the Senate. However, a nomination, for example, of a Communist or a member of the American Nazi Party, would have to be considered an exception to the recommendation that the Senate leave ideological considerations to the discretion of the Executive. Political and philosophical considerations were often a factor in the nineteenth century and arguably in the Parker, Haynsworth and Carswell cases also, but this is not proper and tends to degrade the court and dilute the constitutionally proper authority of the Executive in this area. The President is presumably elected by the people to carry out a program and altering the ideological directions of the Supreme Court would seem to be a perfectly legitimate part of a Presidential platform. To that end, the Constitution gives to him the power to nominate. As mentioned earlier, if the power to nominate had been given to the Senate, as was considered during the debates at the Constitutional Convention, then it would be proper for the Senate to consider political philosophy. The proper role of the Senate is to advise and consent to the particular nomination, and thus, as the Constitution puts it, "to appoint." This taken within the context of modern times should mean an examination only into the qualifications of the President's nominee.

In examining the qualifications of a Supreme Court nominee, use of the following criteria is recommended. First, the nominee must be judged competent. He should, of course, be a lawyer although the Constitution does not require it. Judicial experience might satisfy the Senate as to the nominee's competence, although the President should certainly not be restricted to naming sitting judges. Legal scholars as well as practicing lawyers might well be found competent.

Second, the nominee should be judged to have obtained some level of achievement or distinction. After all, it is the Supreme Court the Senate is considering not the police court in Hoboken, N.J. or even the U.S. District or Circuit Courts. This achievement could be established by writings, but the absence of publications alone would not be fatal. Reputation at the bar and bench would be significant. Quality of opinions if a sitting judge, or appellate briefs if a practicing attorney, or articles or books if a law professor might establish the requisite distinction. Certainly, the acquisition of expertise in certain areas of the law would be an important plus in determining the level of achievement of the nominee.

Third, temperament could be significant. Although difficult to establish and not as important as the other criteria, temperament might become a factor where, for example in the case of Carswell, a sitting judge was alleged to be hostile to a certain class of litigants or abusive to lawyers in the courtroom.

Fourth, the nominee, if a judge, must have violated no existing standard of ethical conduct rendering him unfit for confirmation. If the nominee is not a judge, he must not have violated the Canons of Ethics and statutes which apply to conduct required of members of the bar. If a law professor, he must be free of violations of ethical standards applicable to that profession, for example plagiarism.

Fifth and finally, the nominee must have a clean record in his life off the bench. He should be free from prior criminal conviction and not the possessor of debilitating personal problems such as alcoholism or drug abuse. However, this final criterion would rarely come into play due to the intensive personal investigations customarily employed by the Executive before nominations are sent to the Senate.

In conclusion, these criteria for Senate judgment of nominees to the Supreme Court are recommended for future considerations. It will always be difficult to obtain a fair and impartial judgment from such an inevitably political body as the United States Senate. However, it is suggested that the true measure of a statesman may well be the ability to rise above partisan political considerations to objectively pass upon another aspiring human being. While the author retains to great optimism for their future usage, these guidelines are now, nevertheless, left behind, a fitting epilogue hopefully to a most unique and unforgettable era in the history of the Supreme Court.

Mr. McCONNELL. As everyone here must be aware, the Constitution, in describing the President's role in appointing Supreme Court Justices, says the President shall nominate, and by and with the advice and consent of the Senate, shall appoint judges of the Supreme Court. Clearly, the words "advice and consent" on the one hand, and "nominate" and "appoint" on the other, are not the same thing.

The Senate, obviously one of the most political bodies in the world, has wrestled with this concept for 200 years. On some occasions we have merely engaged in raw political exercises, approving or rejecting nominees on the basic of narrow personal or political motives. Senators on both sides have spoken on this issue and have described those ignominious occasions at great length. So far, however, I have not heard a single Senator approve of such raw political exercises, or say that we should return to those days when each nomination was turned into a political free-for-all. Not one of the Senators who has spoken on this subject indicated any pride over this blemish on the Senate's August history.

In the 20th century, however, we have been a little more responsible and a little more inclined to differentiate between nominate and appoint, on the one hand, and advice and consent on the other.

In making some effort to restrain ourselves—that is, limit our inquiry—I said in my 1970 Law Journal article that a majority of the Senate seemed to have settled on the following criteria as decisive, in advising and consenting to nominees to the Supreme Court. I listed five criteria that are obviously appropriate, that no one would argue with, and that I suggested should be controlling—not merely a factor in our decision.

First, we must make sure the nominee is absolutely competent. It is, after all, the Supreme Court of the United States we are talking about here, not the police court in Hoboken, NJ.

Second, we should insist on a nominee who has attained great achievement, distinguished achievement, in his or her professional life. Again, it is the Supreme Court we are considering here.

Third, judicial temperament is essential in examining the credentials of any nominee to the Supreme Court. Obviously temperament is something the Senate ought to look at.

Fourth, conduct on the bench: Clearly, we want somebody who has handled himself properly on the bench.

Fifth and finally, I believe personal integrity, at this highest level of our judicial system, is something we should be looking for.

In applying these standards of excellence to the Haynsworth-Carswell period, I concluded in my 1970 Law Journal article that Judge Haynsworth had been erroneously denied confirmation, but that Judge Carswell had certainly not deserved confirmation. I reached these results applying the very same standards to both nominees, whereas most people had a tendency to link the two together.

In those days, it was thought that if you were against Haynsworth, you were obviously against Carswell, or you accepted them both as a package. However, applying a relatively objective standard of excellence to both nominees, one could reach a decision that Judge Haynsworth was entitled to be confirmed and Judge Carswell should be defeated. Unfortunately, both were defeated and, in both cases, politics was the controlling standard—not judicial excellence.

That sorry episode was not this Senator's last experience with nominees to the Supreme Court. I came back in 1971 from Kentucky, as a volunteer on the confirmation of William Rehnquist, who had been appointed by President Nixon to the Supreme Court. I returned again, many years later, as a member of the Senate Judiciary Committee, participating in the nominations of Justice Rehnquist to Chief Justice and Judge Scalia to Associate Justice of the Supreme Court.

I say all this, Madam President, just to make the point that this Senator has wrestled with the advice and consent issue for some 18 years, and has given a good deal of thought to what those words mean, how they should be applied, and what the responsible role of the Senate ought to be in advising and consenting to Supreme Court nominations.

Frankly, it is not an easy task for a body as inherently political as the Senate. We all know that Presidents historically have had an interest in slanting the Court one way or another. President Roosevelt did, and certainly President Reagan is doing that now. Sometimes, that may be rather offensive to us, if our philosophical leaning is in contrast to the leaning of the President.

Some Members of the Senate have argued over the years: "Why restrain yourself at all? Anything that is relevant for the President in making his nomination is relevant for the Senate in advising and consenting." But until this Bork episode, a majority of the Members of the Senate, at least during this century, have believed that the advice and consent role did imply some restraint, some parameters, some moderation of the inquiry; and most Senators have believed during this century that we should limit ourselves to the kinds of criteria I outlined earlier, ensuring a standard of judicial excellence on the Supreme Court.

Several good reasons why the Members of this body have been reluctant to just throw all that to the wind, and say that politics is as relevant to the Senate as it is to the President, are outlined in an excellent article by Richard Friedman in the Cardozo Law Review in 1983. The title of this article is "The Transformation of the Senate Response to Supreme Court Nominations, From Reconstruction to the Taft Administration and Beyond."

Friedman writes, and I quote:

> When, as during Reconstruction, Senators treat the Supreme Court as a political institution that they desire to hew to a particular ideological line, the public is likely to see the Court in the same light, and so is the Court itself.

Further, he says:

> Perhaps, more importantly, if unpopular Supreme Court decisions tend to lead to nasty confirmation controversies that put the Court in an unfavorable light, then it is natural to expect that the Court will render fewer such decisions.

He goes on:

> The Court is not primarily a policy-making institution. Even to the extent it may be considered one, we do not allow it to make policy becasue it is politically accountable; on the contrary, it is the Court's independence and at least the appearance of impartiality that we prize. The Court is useful in our system of government, able to play a role distinct from those of the political branches, precisely because it is, and is perceived to be, different from those branches. If the distinctions blur, so will the role of the Court.

Further in the article, Friedman says:

> The Senate is a political body; a large part of a senator's job is, or should be, transformation of his beliefs or those of his constituents into public policy. It is not easy for a senator to accept willingly the nomination of a justice who likely will act contrary to those believes in decisions deeply affecting the life of the nation. But for several reasons a thoughtful senator should realize that any benefits of barring an ideological opponent from the Court are not likely to outweigh the damage done to the Court's institutional standing.

Friedman goes on:

> Ideological opposition to a nominee from one end of the poltical spectrum is likely to help generate similar opposition to later nominations from the opposite end. In the long run, the result of such opposition will probably be to politicize the selection process, not to shift the Court either to the left or the right.
>
> A second reason why opposing a Supreme Court nominee on ideological grounds is less beneficial than might appear at the time is the difficulty in predicting the nominee's judicial ideology and, a fortiori, the senator's own future assessment of that ideology. It is a commonplace that once a justice ascends the Supreme bench, he may very well surprise both admirers and critics. One survey estimates that "one justice in four has turned out to be quite different from what his appointer wanted.

Friedman goes on:

> It is not surprising, then, that senators have sometimes expressed regret that they opposed the nomination of a justice whose record on the bench they later approved. And this being so, a senator should have some humility in opposing a Supreme Court nomination on ideological grounds; more than in the case of most major public issues, there is a strong possibilty that he will later rue his action * * *

Friedman concludes:

> * * * there is a third reason why the senator should resist the temptation to oppose the nominee on ideological grounds: the damage that the justice can do is limited.

Is limited.

We've heard a lot of hyberbole, a lot of dire predictions about how Judge Bork is going to remake America. I tend to agree with Mr. Friedman when he says that the damage that one Justice can do is extremely limited, even if he or she harbors some views outside the judicial mainstream.

Often, of course, he or she may provide the crucial fifth vote on a decision that the reviewing Senator might find reprehensible; but that fifth vote counts no more than the votes of his more moderate colleagues, and certainly no more than the vote of the second-choice appointee—something we will soon receive—of the same appointing President.

Thus, the Senate is not likely to achieve much good by opposing a single nominee, even an extremist nominee, on the grounds that his or her votes and opinions might affect the Nation adversely, because this simply could not even be the case.

Friedman goes on:

> And if senators were regularly to vote against nominees of moderate but opposing views, the selection process would become almost unimaginably politicized and the appointment power would in large part be shifted from the president to the Senate.

Madam President, I ask unanimous consent that that entire article be printed in the RECORD at this point.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Cardozo Law Review, 1983]

THE TRANSFORMATION IN SENATE RESPONSE TO SUPREME COURT NOMINATIONS: FROM RECONSTRUCTION TO THE TAFT ADMINISTRATION AND BEYOND

(By Richard D. Friedman)*

INTRODUCTION

Since 1894, only four presidential nominations to the Supreme Court—three of them in the years 1968 to 1970—have failed to win the advice and consent of the Senate. Notwithstanding occasional outbursts of controversy, the confirmation process has, for the most part, become routine. It was not always so. From the founding of the Court through 1894, twenty-one nominees failed to win confirmation.

A. The Damage Caused

It is not surprising that ideological resistance has been most forceful when the Court's standing has been low and when its function has been viewed largely in political terms. That perceptions of the Court have strongly influenced the confirmation process is a theme running throughout this Article. That the relationship has run the other way—that the assertion of ideological objections to Supreme Court nominees has affected perceptions of the Court and its actual function—is more difficult to prove, but is strongly suggested by the experience of the late nineteenth century.[550] Rarely is public attention focused on the Court as intensely as during a confirmation struggle. Extended debates, both within and without the Senate, concerning the political philosophy of a nominee and recent decisions cannot help but diminish the Court's reputation as an independent institution and impress upon the public—and, indeed, on the Court itself—a political perception of its role. When, as during Reconstruction, senators treat the Supreme Court as a political institution that they expect to hew to a particular ideological line, the public is likely to see the Court in the same light, and so is the Court itself.[551] The actual role of the Court can be affected strongly by both the memory and the anticipation of confirmation battles. A justice who was confirmed only after a struggle in which he had to satisfy the Senate publicly as to his ideological acceptability may come to the bench with scars that will affect his judicial behavior.[552] Perhaps more importantly, if unpopular Supreme Court decisions tend to lead to nasty confirmation controversies that put the Court in an unfavorable light, then it is natural to expect that the court will render fewer such decisions.

To some perhaps, that is not a bad thing. Public understanding is all to the good, and those who view the Court's actual and proper role as a political one will generally cheer any debate that makes the public more aware of that role and encourages the court to embrace it.[553]

But, as the Reconstruction experience indicates, it would be unfortunate if the Supreme Court's place in American Government became comparable to that of the political institutions. One can embrace the core of legal realism, by acknowledging that a judge's philosophical and political beliefs profoundly influence his decisions, and still distinguish sharply between the functions of courts and those of political institutions. The Court is not primarily a policy-making institution. Even to the extent it may be considered one, we do not allow it to make policy because it is politically accountable; on the contrary, it is the Court's independence and at least the appearance of impartiality that we prize.[554] The Court is useful in our system of government, able to play a role distinct from those of the political branches, precisely because it is, and is perceived to be, different from those branches. If the distinctions blur, so will the role of the Court.[555]

It is for this reason that Franklin Roosevelt's 1937 Court-packing plan met such powerful resistance, much of it from persons sympathetic to the New Deal.[556] Congress clearly had the power to pack the

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Footnotes at end of article.

Court, and the scheme would have hastened the achievement of political goals approved by Congress. But to alter the Court's membership for political purposes would have tainted its standing as an independent institution.

B. *Ideological Consideration and Role Distinction*

One might concede that ideological control of the Court is of dubious merit and yet contend that in reviewing nominees the Senate must inevitably consider ideology because the president does so in selecting them.[557] But the roles of the president and the Senate are different, and there is no necessary symmetry in the factors that they should consider.

It is probably beneficial that a president pay at least some attention to the political tendencies of his nominees; this provides rough assurance that the justices understand, even if they do not represent, the temper of the times. And in any event, it would be unnatural for a president, in selecting among several qualified potential nominees, to put their philosophical leanings totally out of mind.

But the role of the Senate, in contrast to that of the president, is not to select. On the contrary, it is to approve or reject a choice that is constitutionally the province of another branch. For at least two reasons this distinction is significant.

First, if the Senate rejects a nominee on ideological grounds, the choice still belongs to the president, who may insist on nominating a justice to his liking ideologically.[558] In response, the Senate may back down—in which case it has accomplished nothing by its resistance.[559] Otherwise, there is a deadlock, one that is difficult to regard as beneficial for the Court or for the nation.[560] If, on the other hand, the president backs down, his nominee is effectively chosen in large measure by the Senate,[561] which thereby asserts a power it was not intended to have.[562] A Senate that consistently refuses to approve an ideologically hostile nominee is essentially denying the president his power of nomination. Such a policy resembles, though in more moderate form, the depacking of the Court by which Andrew Johnson was prevented from making any appointments.[563] And, like Court-packing, it is an attempt to control the decisions of the Court through the overly aggressive, albeit technically constitutional, exercise of a legislative power.

Second, in most cases it is not psychologically inevitable that a senator will consider a nominee's ideology. The Senate, unlike the president, does not have to choose among many candidates, all of whom are qualified for the job, and several of whom may appear to have comparable credentials. Rather, it has only to determine whether the nominee presented to it is acceptable. Usually the answer, apart from ideological criteria, is clearly affirmative. In such a case, it does not require heroic self-abnegation to decline to consider the ideological factors.

C. *The Benefits of Ideological Opposition: Less than Might Appear*

The Senate is a political body; a large part of a senator's job is, or should be, transformation of his beliefs or those of his constituents into public policy. It is not easy for a senator to accept willingly the nomination of a justice who likely will act contrary to those beliefs in decisions deeply affecting the life of the nation. But for several reasons a thoughtful senator should realize that any benefits of barring an ideological opponent from the Court are not likely to outweigh the damage done to the Court's institutional standing.

First, keeping in mind the Reconstruction nominations and the Fortas-Haynsworth-Carswell episode, a senator must consider the strong prospect of retribution.[564] Ideological opposition to a nominee from one end of the political spectrum is likely to help generate similar opposition to later nominations from the opposite end.[565] In the long run, the result of such opposition will probably be to politicize the selection process, not to shift the Court either to the left or the right. It is not surprising that both liberal and conservative senators have taken the view, when the nominee has been to their liking, that ideological opposition is generally inappropriate.[566] Nor is it surprising that they do not consistently adhere to that view when they dislike the nominee.[567] A farsighted senator would do so, however; in the long run, ideological opposition will probably not work in favor of his views substantially more often than it works against them, but it will contribute to the politicization of the Court.

A second reason why opposing a Supreme Court nominee on ideological grounds is less beneficial than might appear at the time is the difficulty in predicting the nominee's judicial ideology and, a fortiori, the senator's own future assessment of that ideology. It is a commonplace that once a justice ascends the Supreme bench, he may very surprise both admirers and critics. One survey estimates that "one justice in four has turned out to be quite different from what his appointer wanted."[568] Occasionally, as illustrated by Theodore Roosevelt's belittling of Justice Holmes, appraisals change with startling speed.[569] More often, probably, the shift is slower.

There may be several causes for such a change. Sometimes, the nominee's philosophical stance is not well understood from the start.[570] Often, his seat on the Court, by giving him a new outlook and subjecting him to a new set of influences and pressures, alters his ideology.[571] And always the nature of the Court's docket is changing; at the beginning of a justice's career it is difficult to predict what the important issues will be at the end, and there is not necessarily a correlation between the assessment that an observer will make of a justice's stances on the earlier and the later questions.[572]

It is not surprising, then, that senators have sometimes expressed regret that they opposed the nomination of a justice whose record on the bench they later approved.[573] And this being so, a senator should have some humility in opposing a Supreme Court nomination on ideological grounds; more than in the case of most public issues, there is a strong possibility that he will later rue his action or at least recognize that the consequences of defeat are not as dire as he had predicted.

Some nominees, however, have views that are so clear and so strongly held that a senator of opposite beliefs is justified in concluding that there is little prospect, especially in the foreseeable future, of conversion. Even in such a case, there is a third reason why the senator should resist the temptation to oppose the nominee on ideological grounds: the damage that the justice can do is limited. That he may have extreme views is generally of relatively minor consequence, for he cannot speak for the Court without the concurrence of half his colleagues.[574] Often, of course, he may provide the crucial fifth vote for a decision that the reviewing senator would find harmful, but his vote counts no more than those of his more moderate colleagues—and no more than would the vote of a second-choice appointee of the same president.

Thus, the Senate is not likely to achieve much good by opposing a single nominee, even an extremist one, on the ground that his votes and opinions are likely to affect the nation adversely. Ideological opposition is likely to produce substantial results only if the Senate is prepared to engage in it repeatedly. For a senator to believe that such a policy is proper, he must accept either of two propositions, or a combination of them, as true: one, that the Court is likely to be dominated by extremists or, two, that opposition on the basis of a nominee's views is appropriate regardless of how moderate these views may be.

The first proposition is almost always false as a matter of fact, and the second is unacceptable as a matter of policy. Because of the ideological unpredictability previously discussed, the moderate views of most presidents and the small probability that a majority of justices will be replaced in a single administration,[575] Court majorities rarely are in fact, or likely to become, extremist. Even the Four Horsemen[576] of the 1930's had bouts of moderation,[577] and even they had to pick up the vote of one of the Court's two moderates to form a majority.[578] And if senators were regularly to vote against nominees of moderate but opposing views, the selection process would become almost unimaginably politicized and the appointment power would in large part be shifted from the president to the Senate.

D. *An Exception at the Extremes*

Thus far this analysis has assumed that a justice's votes and opinions can have impact only to the extent that they have the concurrence of a majority of the Court. There is one sense in which this is not true, however, and it suggests that there are limited circumstances in which ideologically-based opposition to a Supreme Court nominee is appropriate. As a byproduct of its decisions, the Court performs an important educational function, stating fundamental principles of American government. All Supreme Court opinions, even lone dissents, have a measure of authority in the public eye by virtue of their high source. They thus lend legitimacy to the views they espouse. If a nominee's views are so repugnant that a senator perceives harm merely in giving him a lofty platform from which to air them, then the senator is justified in opposing him for that reason. All beliefs are worthy of expression in our society, but some are not worthy of expression from one of the nine seats on the Supreme Court.

The category of beliefs thus suggested—those so extreme that their mere statement in the opinion of a Supreme Court justice will be harmful—should be strictly bounded.[579] It should include only views that a senator considers beyond the realm of rational political discourse in the nation, not those at the heart of controversey. For example, in the 1980's it should include advocacy of separation of the races, or disbelief in the basic principles of free speech and free religion; it should not include beliefs in or against legalized abortion.

Where a nominee does have views so extreme that they fail under this test, there will be little force in the previously stated reasons for accepting a nomination despite ideological dissatisfaction. Unless the president himself is so fervent an extemist that he is determined to appoint a justice of similarly extreme views, rejection of such a nomination is unlikely to create a deadlock or shift the appointment power away from the president. Few senators need fear that the standard created by defeating such a nomination would later haunt them; a senator should be well satisfied if the standard is applied equally to extremists of the left and right. Moreover, a nominee so extremist that he is unfit under this standard is unlikely to have an ideological conversion before he does his damage—which he can inflict without assistance from any of his colleagues. Such a nominee should be rejected without fear that the rejection will harm the selection process or the Court itself.

But surely so dismal a nominee is rarely named, and it must be rarer still that a nominee would fail this standard and yet satisfy the Senate with respect to his ability, integrity, and temperament. Those should be the principal criteria that the Senate uses in reviewing virtually all Supreme Court nominations,[580] it should leave questions of ideology aside.

E. *Conclusion*

If the Senate follows this approach, it will, of course, occasionally abandon the opportunity to prevent an unfavorable decision or line of decisions. The Senate must demonstrate the self-restraint borne out of a sense of constitutional courage—recognition that some choices in our government are meant to be the province of other branches;[581] belief that improper judicial decisions can eventually be corrected by the constitutional process; and faith that it is more important to preserve the structural integrity of our government than it is to assure desired judicial results.

The Reconstruction Senate manifested no such self-restraint in considering Supreme Court nominations. Senators perceived the shortrun stakes of consolidating the results for which the Union fought as far more significant than longrun considerations of presidential choice and judicial independence. Whether or not that perception was correct is a difficult question—one depending on a debate that is far broader than the scope of this Article. But two things we can say. We may hope that American society is never again subject to the intense and immediate internal stress that marked the Civil War era. And, at least in the absence of such stress, senators considering Supreme Court nominations should take a longer view than did their Reconstruction predecessors.

FOOTNOTES

[550] See B. Schwartz, supra note 13, at 230 ("baneful effect . . . on the Supreme Court's reputation" of Grant's prolonged attempts to find a successor to Chase); cf. McConnell, supra note 532, at 8 ("To the extent that it has eroded respect for this highest of our legal institutions, the recent controversial period [in which both Haynsworth and Carswell were nominated and rejected] has been unfortunate").

[551] One must pay careful attention to this factor in considering Professor Black's proposition that before a senator votes on a Court nomination he should "ask himself . . . *every* question which heavily bears on the issue whether the nominee's sitting on the Court will be good for the country." Black, supra note 547, at 663 (emphasis in original); see also Rees, supra note 549, at 939 n.80 ("[A]rguments [favoring senatorial] deference must be convincing in order to establish that the legislator should vote against what would otherwise be in his best judgment of what is right for the country."). If that list of questions includes those relating to the impact that the debate and vote will themselves have on the actual and perceived role of the Court, then the proposition appears tautological. Cf. id. at 934 ("what is best for the country depends upon all the circumstances"). And if such institutional questions are not to be asked, then there is a strong probability that the proposition will not lead to results that are "good for the country."

Professor Black indicates in another context that the Senate should place weight on such broad-based institutional considerations. The members of the executive department, he says, are "the President's people"; "they are to work with him." Black, supra note 547, at 660. Accordingly, "there is a clear structural reason for a Senator's letting the President have pretty much anybody he wants, and certainly for letting him have people of any political views that appeal to him," id., presumably including views the senator finds harmful. This structural reason is not present when the Senate reviews a Supreme Court justice: "The judges are *not* the President's people. God forbid!" Id. (emphasis in original). That is true, of course, but with respect to justices another "structural reason," not present in political nominations, demands senatorial restraint—the need to preserve the actual and perceived role of the Court.

[552] Cf. R. Friedman, supra note 529, at 145a (Hughes' assignment practices as Chief Justice were affected by his recollection of the different receptions that liberals accorded his nomination and that of Roberts); cf. McKay, supra note 80, at 131 (it is clearly proper for the Senate to take into account "the general judicial philosophy of the nominee," but "a too-deep probing [into the nominees' views on specific issues] that might be understood as seeking assurance of particular results in individual cases is clearly an improper interference with the judicial function"). It is not clear why there should be less objection to a deep probing that might be seen as seeking assurance of adherence, in case after case, to an approved general philosophical approach.

[553] Even so, one may doubt whether confirmation battles are truly necessary to make the public aware of the importance of ideology in judicial decisionmaking. The storm of vituperation that confronts the Court after a controversial case, such as Roe v. Wade, 410 U.S. 113 (1973), suggests that few Americans any longer believe in what one commentator scornfully calls "slot machine jurisprudence." Beiser, supra note 547, at 269; see Black, supra note 547, at 657-58; supra note 547 and accompanying text.

[554] See Beiser, supra note 547, at 268-69 ("general[ly], the role of the judge as impartial arbiter does not appear to be seriously questioned in America;" impartial arbiter's role contrasted to that of a non-policy making referee).

I certainly do not intend to become involved here in the debate between "interpretivists" and "noninterpretivists," nor in that over the validity of the critical legal studies movement. That judicial independence and impartiality are to be applauded appears to be a proposition accepted across a broad spectrum. See Constitutional Adjudication and Democratic Theory, 56 N.Y.U.L. Rev. 259-584 (1981)(symposium reflecting wide range of interpretivist and noninterpretivist views). The more extreme noninterpretivists, however, appear not to accept the impartial model of judging. See, e.g., Tushnet, Following the Rules Laid Down: A Critique of Interpretivism and Neutral Principles, 96 Harv. L. Rev. 781, 784 (1983)("judges no less than legislators [are] political actors, motivated primarily by their own interests and values"); see also A. Miller, Toward Increased Judicial Activism: The Political Role of the Supreme Court 288 (1982)(espousing a thoroughly political role for the Court; Court as "acknowledged de facto third and highest legislative chamber.")

[555] Cf. Beiser, supra note 547, passim (contending that underlying the recent confirmation battles is a conflict over the proper role of the Supreme Court). The thesis presented here is that under a sound but realistic view of the Court's role—a role unlike those of the political branches but connoting far more than Beiser's referee, see supra note 550—extreme senatorial restraint in considering nominees to the Court is appropriate.

[556] See, e.g., 1 W. Swindler, supra note 361, at 68-69; see also R. Jackson, The Struggle for Judicial Supremacy: A Study of the Crisis in American Power Politics 193 (1941) ("The opposition was generally directed to the President's method rather than his objective.").

[557] See Black, supra note 547, at 658.

[558] This factor, among others, distinguishes ideology from other criteria—such as ability, integrity, and temperament—that are more properly part of the Senate's consideration. It is not at all surprising that, after one rejection, a president insists on nominating another justice of his ideological persuasion. See Udall, A Master Stroke, Wash. Post, July 13, 1981, at A13, col. 2 ("My Democratic friends ought to be grateful for [the O'Connor] appointment. It's almost inconceivable to me that they could do any better. Ronald Reagan isn't going to appoint liberal Democrats."). It would be rather extraordinary, however, for a president to become obdurate about his right to select an incompetent or dishonest nominee.

[559] For example, to the extent that the Senate opposed Judges Haynsworth and Carswell on ideological grounds, it abandoned its objective by accepting Judge Blackmun, who was also perceived to be very conservative.

[560] The separation of executive and legislative powers creates other possibilities of deadlock, of course, most notably in the consideration of legislation. That, however, is clearly distinguishable from the Supreme Court confirmation process. When it is difficult to determine the best legislative policy, temporary deadlock—requiring further debate and consideration—may be preferable to hasty adoption of one course or another; that, in any event, is the theory that justifies building into our legislative system the inertia of separated power. Cf. Immigration & Naturalization Serv. v. Chadha, 103 S. Ct. 2764, 2782 (1983) ("President's veto role in the legislative process . . . 'establishes a salutary check upon the legislative body, calculated to guard the community against the effects of faction, precipitancy, or of any impulse unfriendly to the public good which may happen to influence a majority of that body'" (quoting The Federalist No. 73 (A. Hamilton))). It would be difficult to make any corresponding argument in favor of a deadlock that left the Supreme Court understaffed for an extended period. And such an extended deadlock is not unthinkable in the context of nominations to the Court. "If each Senator 'felt institutionally free to insist on a nominee who agreed with [his] view on [a] particular matter, it is doubtful that anyone could be confirmed.'" Rees, supra note 549, at 938 (quoting statement of Stephen Gillers in Nomination of Judge Sandra Day O'Connor: Hearings Before the Senate Comm. on the Judiciary on the Nomination of Sandra Day O'Connor of Arizona to Serve as an Associate Justice of the Supreme Court of the United States, 97th Cong., 1st Sess. 1, 393-94 (1981).

[561] Of course it may be that the first nominee has views on particular subjects that, while especially distasteful to the Senate, are not important one way or another to the president. In such a case, rejection would allow the president to name a second nominee who he would find no less satisfactory but who would nevertheless meet the Senate's objections. But where the ideological dispute between the Senate and the first nominee is a matter of indifference to the president, it will rarely be of sufficient long-term importance to justify rejection.

[562] The view expressed here seems to be in accord with that stated by Hamilton in The Federalist:

> But might not his nomination be overrruled? I grant it might, yet this could only be to make place for another nomination by himself. The person ultimately appointed must be the object of his preference, though perhaps not in the first degree. It is also not very probable that his nomination would often be overruled. The Senate could not be tempted, by the preference they might feel to another, to reject the one proposed; because they could not assure themselves, that the person they might wish would be brought forward by a second or by any subsequent nomination. They could not even be certain, that a future nomination would present a candidate in any degree more acceptable to them; and as their dissent might cast a kind of stigma upon the individual rejected, and might have the appearance of a reflection upon the judgment of the chief magistrate, it is not likely that their sanction would often be refused, where there were not special and strong reasons for the refusal.
>
> To what purpose then require the cooperation of the Senate? I answer, that the necessity of their concurrence would have a powerful, though, in general, a silent operation. It would be an excellent check upon a spirit of favoritism in the President, and would tend greatly to prevent the appointment of unfit characters from State prejudice, from family connection, from personal attachment, or

from a view to popularity. In addition to this, it would be an efficacious source of stability in the administration.

The Federalist No. 76, at 405 (A. Hamilton) (New American Library ed. 1961); see id. No. 66 (A. Hamilton); J. Grossman, supra note 354, at 172 ("As interpreted by Hamilton, the Senate's function was not to choose judges, but rather to consent to their selection by the President."). With respect to judgeships and other offices situated within a single state, the Senate's power has, of course, become far greater than conceived by Hamilton. But his view that the Constitution gave the Senate a limited role in considering nominations appears to have predominated at the Convention and in the ratification debates, at least among the Constitution's proponents. See J. Harris, supra note 1, at 17-35.

[563] See supra note 117-19 and accompanying text.

[564] Cf. McConnell, supra note 533, at 9 (Senate considered Haynsworth nomination in light of "recent precedent for senatorial questioning" set by the Fortas episode).

[565] It may be responded that this argument could be applied to any political power assessted by Congress against the president (opposition to treaties, veto overrides, and the like); the same power is likely to be used in the future from the opposite side of the fence. But in such political cases there is no doubt about the appropriateness of political opposition. The argument made in this section begins with the premise—based on the argument in the preceding sections—that there are substantial reasons why philosophical opposition to Supreme Court nominations may cause institutional damage. The intent here is not to show the dangers of such opposition, but only to undercut the importance of reasons that might be offered to justify it.

[566] For example, in arguing for confirmation of Thurgood Marshall, Senator Edward Kennedy expressed the vire of many liberals when he declared:

> I believe it is recognized by most Senators that we are not charged with the responsibility of approving a man to be Associate Justice of the Supreme Court only if his views always coincide with our own. We are not seeking a nominee for the Supreme Court who will express the majority view of the Senate on every given issue, or on a given issue of fundamental importance. We are interested really in knowing whether the nominee has the background, experience, qualification, temperament and integrity to handle this most sensitive, important, responsible job.

Quoted in McConnell, supra note 533, at 15. This statement was quoted with obvious relish by Senator Marlow Cook in defending the nomination of Judge Haynsworth. Id.

[567] In leading the opposition to the nomination of Abe Fortas to be Chief Justice, Senator Robert Griffin took an expansive view of the Senate's role in the confirmation process—a view that Senator Joseph Tyding quoted approvingly in opposing the Carswell nomination. Grossman & Wasby, supra note 528, at 560 & n. 12. During the Fortas hearings, Senator Philip Hart espoused a narrow view of the proper senatorial role in considering Supreme Court nominations. But he "abandoned his position held at the Fortas hearings when the realization hit him and the other liberals that Republican presidents are also allowed Supreme Court appointments." Powe, supra note 549, at 892; see also Rees, supra note 549, at 925 ("broadest view . . . tend) to be taken by the Senators who [are] most hostile to the current nominee" (footnote omitted)).

[568] R. Scigliano, supra note. 4, at 157 ("In addition, other justices have failed to live up to expectations in particular cases."); see supra note 95 and accompanying text, regarding Chief Justice Chase's surprising switch on the legal tender issue—a switch made all the more ironic because Lincoln had chosen Chase in substantial part because he deemed his former Treasury Secretary reliable on that issue. The difficulties of predicting judicial philosophy are also discussed in J. Frank, Marble Palace: The Supreme Court in American Life 44-45 (1958); Halper, supra note 368, 570 (1976); McKay, supra note 80, at 126-27. But cf. Frank, supra note 1, at 488-89 (contending that "errors in misjudgment happen seldom, for most Presidents know the men with whom they are dealing").

[569] See supra note 340. Similar reappraisals include Truman's of Justice Tom Clark, see M. Miller, Plain Speaking 255-26 (1973), and Eisenhower's of Chief Justice Warren, see E. Warren. The Memoirs of Earl Warren 5 (1977) (quoting Eisenhower calling Warren's appointment "the biggest damn fool thing I ever did").

[570] James C. McReynolds no doubt benefited from such missunderstanding in 1914, because his vigorous attitude towards antitrust enforcement disguished a fundamentally reactionary nature. I W. Swindler, supra note 361, at 182; Frank, supra note 1, at 461. More often, misunderstanding has plagued nominees, as it did Hughes and Parker in 1930. See, e.g., Thorpe, supra note 532, at 374-75 & n. 18 (Parker's opponents were mistaken about him and would have been better off if he, rather than Roberts, had ben confirmed; he was sympathetic to the causes of both blacks and (labor). Progressives' fear of Hughes, which ignored his long, essentially progressive political and judicial career, led Zechariah Chafee, Jr. to comment that the place to look for intuition as to a nominee's judicial attitudes is "not in his file of clients or in his safe-deposit box but at the books in his private library at home." Z. Chafee, Free Speech in the United States 359 (1941).

Even in modern times, when nominees testify at length before the Senate Judiciary Committee, the Senate often has difficulty assessing their ideological stance. One problem is that many nominees refuse to discuss questions of judicial philosophy or constitutional law at their confirmation hearings. See Rees, supra note 549, at 947-66. Some nominees have expresed fears that such statements will appear improper when they are later called upon to decide controversial cases. Id. at 958-66. Others have asserted that such answers would require recusal in certain cases. Id. 950-58.

[571] For example, senators who opposed the first Justice Harlan because he had been a slaveholder, see supra text accompanying notes 136-40, could not easily predict that he would become the Court's staunchest defender of equal rights. See Plessy v. Ferguson, 163 U.S. 537, 552-64 (1896) (Harlan, J., dissenting); see also Halper, supra note 5, at 107 (rejecting a nominee because of prior indications of racism would have kept Harlan, Hugo Black and Earl Warren off the bench). Nor was it generally foreseen in 1925 that Harlan F. Stone, Coolidge's Attorney General, would by the mid-1930's be an anchor of the Court's liberal wing. See J. Harris, supra note 1, at 117-19; Frank, supra note 1, at 489, Mason, "Harlan Fiske Stone," in 3 L. Friedman & F. Israel, supra note 136, at 2223; Murphy, supra note 499, at 187. The influence of Justices Holmes and Brandeis may account in large part for the transformation. See Beard, Preface to S. Konefsky, Chief Justice Stone and the Supreme Court at xx (1945). See generally A. Mason, Harlan Fiske Stone: Pillars of the Law 219-20, 304-07 (1956) (describing Stone's early relationship with Brandeis and later alliance with Brandeis and Holmes).

Ideological shifts may result from the removal of old influences as well as from the introduction of new ones. One may speculate, for example, that Earl Warren would have been a different Chief Justice had he remained subject to the pressures of California politics.

[572] As Alexander M. Bickel once declared, " 'You shoot an arrow into a far-distant future . . . when you appoint a justice, and not the man himself can tell you what he will think about some of the problems he will face.' " Quoted in Abraham, "A Bench Happily Filled"; Some Historical Reflections on the Supreme Court Appointment process, 66 Judicature 282, 287 (1983).

[573] For example, Henry Clay, who had bitterly opposed the nomination of Roger B. Taney for Chief Justice, later told him: "I am satisfied now that no man in the United States could have been selected more abundantly able to wear the ermine which Chief justice Marshall honored." C. Swisher, supra note 28, at 405. Similarly, Senator George Norris came to regret his leading role in the opposition to confirmation of Justice Stone, R. Neuberger & S. Kahn, Integrity: The Life of George W. Norris 343 (1937), and several senators "quietly expressed regret" for their resistance to the nomination of Hughes as chief justice. 2 M. Pusey, supra note 384, at 661.

[574] A dissent or a separate concurrence may, of course, have a substantial, albeit deferred, impact as "an appeal to the brooding spirit of the law, to the intelligence of a future day." C. Hughes, supra note 18, at 68. But again, this will be true only to the extent that it persuades the majority of a latter-day court.

[575] Since the membership of the Court was set at nine in 1869, only presidents Taft (1909-1913) and Franklin Roosevelt (1937-1941) have appointed a majority of the justices during one administration. President Eisenhower also appointed a majority of the Court, but needed two terms in office to do so. See M. Wormser, supra note 2, at 177-79.

[576] Justices Van Devanter, McReynolds, Sutherland and Butler.

[577] See, e.g., Helvering v. Davis, 301 U.S. 619 (1937) (opinion upholding old age benefits provision of Social Security Act, joined by Van Devanter and Sutherland, JJ.)

[578] In several important cases, Justices Roberts and Hughes both voted with the Court's three liberals to defeat the conservative foursome. E.g., West Coast Hotel Co. v. Parrish, 300 U.S. 379 (1937); Nebbia v. New York, 291 U.S. 502 (1934; Home Bldg & Loan Ass'n v. Blaisdell, 290 U.S. 398 (1934). The Court of the late 1920's was probably more solidly and consistently reactionary than the "Nine Old Men" of the 1930's—but it did not have the same opportunities for mischief.

[579] Cf. Black, supra note 547, at 659 (arguing that a senator should not vote to confirm a nominee "whose views on great questions the Senator believes to make him dangerous as a judge"); Rees, supra note 549, at 941 (senators generally settle for the first nominee "not profoundly unacceptable to them," as Hamilton suggested they should). Professor Black is not clear as to what standard a senator should use in making the determination he suggests.

[580] McConnell, supra note 533, at 22, 33, suggests a somewhat different breakdown: (1) competence; (2) achievement; (3) temperament; (4) judicial propriety; and (5) nonjudicial record. See also Grossman & Wasby, supra note 528, at 562 n. 16 (tests adopted by Senators Javits and Proxmire). In occasional cases, other factors may also play a role. For example, it is certainly appropriate for the Senate to consider the advanced age of an otherwise qualified nominee. Cf. A.B.A. Committee on Judiciary, supra note 538, at 5 (age an important factor in assessing nominees for lower federal courts).

[581] Profesor Black questions whether it is possible to "conceive of sound 'advise' which is given by an advisor who has deliberately barred himself from considering some of the things that the person he is advising ought to consider, and does consider." Black, supra note 547, at 659. Surely any lawyer who has ever been asked to give legal advice but not to offer an opinion on the merits of a business or personal decision should be able to answer that question affirmatively.

Similarly, Professor Rees contends that arguments for deference to the president's nomination "must be convincing in order to establish that the legislator should vote against what would otherwise be his best judgement of what is right for the country." Rees, supra note 549, at 949-50; see id. at 941. He concludes that "the reponsibility of Senatdrs to choose good Supreme Court Justices is just as great as that of the President." Id. at 966. But deference by one branch to the choice made by another is an integral part of our constitutional system. Like Professor Black, Professor Rees acknowledges that, in the case of a cabinet nomination, a senator acting in the best interest of the country ordinarily *should* defer to the president. Id. at 943. (This conclusion, incidentally, undercuts, or at least renders irrelevant, the argument that the language of art. II, § 2 "suggests no distinction between the criteria the president should use to 'nominate' judges and those the Senate should use in exerising its 'advice and consent' function." Id. at 937; see Black, supra note 547, at 658-59. That language applies equally to cabinet and judicial nominations, and if it is compatible with different presidential and senatorial roles in the one case, it is in the other as well.) My contention is that the Senate ordinarily should defer to the president in both Supreme Court and cabinet nominations, but for different reasons, see supra note 551.

Mr. McCONNELL. Madam President, so where are we? Having thought about this issue quite often for nearly 20 years, it seems to me that a body as political as this one is no longer going to render the kinds of impartial judgments on Supreme Court nominees that it did earlier in this century, based upon the standards that the Senator from Kentucky laid out many years ago—the standards of competence, achievement, temperament, judicial conduct, and personal integrity.

In short, we will no longer limit our inquiry and decisionmaking to an objective, impoliticized standard of judicial excellence.

The Senator from Kentucky doesn't think that is the way it ought to be, but if nothing else I am practical; I have studied this issue and analyzed these nominations for 18 years, and reluctantly have concluded that the standards formulated by a rather idealistic 28-year-old lawyer are not likely to be honored by this body politic of the U.S. Senate.

It occurs to me that the only times we have been inclined to restrain ourselves, and limit our inquiry to objective standards of excellence, are the times we have been sent a noncontroversial nominee. The President, whoever he is, sends up a nomination that is not very controversial and we then have the leisure to preach to each other about how our advice and consent responsibility entails the standards of excellence, and how our objective inquiry has been satisfied. Noncontroversial nominees are easy; they require no senatorial restraint.

But if the President sends up a controversial nomination, and that is what this nomination has turned out to be, then it is no longer likely that we will restrain ourselves; the temptation to go for the political raw meat is just too great, and the demands of senatorial independence and courage too overwhelming.

And so, while I wish it were the way I said it ought to be back in 1970, it is not—and it appears to me that we might as well accept and adopt what the new standard really is.

I say this with no particular bitterness I might add, even though this new standard makes the article that I was proud of writing some 18 years ago dated and irrelevant. Despite all that, I am prepared today to accept the new standard. It is just asking too much of us to ignore the political implications of a nomination to the Supreme Court. We are going to do it from here on out; we'll do it whenever we want, whenever the President—whoever he may be—sends up somebody we do not like. At such times, there will be darn few people in the U.S. Senate who will be able to limit their inquiry to things like competence, achievement, judicial temperament, conduct, and integrity. In fact, no matter what we call it at the time, we simply will be trying to fabricate reasons to oppose any nomination which we really object to on purely philosophical grounds.

So, where is advice and consent in 1987, Madam President? Advice and consent in 1987, as a result of the imminent defeat of Judge Robert Bork, means this: We in the Senate are going to make our decision on any basis we darn well please, and if we object as a matter of philosophical persuasion to the direction the President is trying to move the Court, whether to the right or to the left, we can just stand up and say that and vote accordingly. No deliberation, no standards of excellence, no standards at all. All of that is out the window for good.

I must say that I reach this conclusion, in some respects, with a sense of relief: because if my party were not to win the Presidency next year, I anticipate a future nominee to the Supreme Court who is of philosophical persuasion that I would oppose. Were I obligated to apply the standards that I penned in 1970 in the Kentucky Law Journal, I would have to make a strictly controlled decision on that nominee, based solely upon his competence, achievements, temperament, conduct, and integrity. I would be forced to ignore that philosophical persuasion which I opposed.

But it occurs to this Senator that if nobody else is applying that kind of strict, temperate standard, then he should not either.

Therefore, and again I say this with no particular bitterness, I believe the Senate should consistently apply this new standard; and as far as my one vote is concerned, I shall henceforth carefully scrutinize the judicial philosophy of every nominee, perhaps even to the point of passing over the nominee's excellent credentials and unimpeachable character.

The Senator from Kentucky will do this with some measure of relief, as I indicated earlier, because it is not easy for us politicians to restrain ourselves, and confine our decisions to something as standardized and simplified as trying to ensure that we have truly outstanding members of the legal profession on the U.S. Supreme Court.

In conclusion, then, let me repeat: where we are in 1987 is that the words "nominate" and "appoint" still allow the President the right to select nominees; but now we interpret "advice" and "consent" much more broadly. If we do not like the philosophical leaning of a nominee, then henceforth the majority of the Senate will simply reject that nominee on a philosophical basis.

The danger of this approach, of course, is that it is a formula for gridlock, as I warned 3 months ago when political opposition to this nomination first arose. It is my prediction, Madam President, that the President will send up another nominee who is a philosophical "soul-mate" of Judge Bork, though perhaps not so widely published, and one about 10 or 15 years younger than Judge Bork; and we may waltz around this Maypole once again. We may be waltzing around the Maypole until next spring, and we may never resolve this gridlock, until the ability of the Supreme Court to function properly is badly impaired.

It will be interesting to see what happens to the next conservative nominee before the U.S. Senate. Is the standard going to be applied the same way? It is a formula for gridlock. But this new standard is, after all, a bit of freedom for each of us to do our thing. We may not be able to pick the nominee, but we can sure shoot him down—we can shoot them all down.

In conclusion, Madam President, let me say that I do have one regret about this point the Senate has reached: Judge Bork, though controversial, was—in my judgment—one of the most outstanding nominations of this century. As a Supreme Court Justice, I am certain that he would have ranked up there with Brandeis, Cardozo, Frankfurter, Harlan, and Hughes—interestingly enough, all Justices whose nominations were violently opposed and nearly defeated.

Further, I suspect the President would have been disappointed in Justice Bork on occasions. I doubt that he would have turned out exactly the way the President might have hoped. And had he been appointed, I suspect that we might have heard at some point in the cloakrooms, if not on the floor, from a number of Senators who had opposed him, saying, "You know, that Justice Bork really did surprise me. He ended up being a lot better and more open-minded than I thought he was going to be. I made a mistake."

We've heard a lot of similar remarks from those who voted against Judge Haynsworth's nomination to the Supreme Court. In fact, I think there are some instructive parallels between the Bork nomination and the failed nomination of Judge Haynsworth in 1969. What did Clement Haynsworth do after he was defeated? Did he resign and go home and sulk? No.

Madam President, Judge Clement Haynsworth spent the rest of his professional carrer on the fourth circuit, proving that his detractors in this body has made a terrible mistake.

And so I say to Judge Bork:

You are an outstanding public servant and jurist. You have distinguished yourself remarkably on the Court of Appeals for the District of Columbia, and I hope you will remain there if not confirmed. It is, after all, the second most important court in the Nation, and the best way to deal with this unfortunate occasion is to prove for the rest of your professional life how wrong the decision of the U.S. Senate was.

Judge Bork, you have fought the good fight and did your best. It was a tough contest, and you happened to be the one for whom the Senate adopted a new standard of review, that will be applied by a majority of the Senate from now on. Unfortunately, this standard was adopted "over your dead body," so to speak, in political terms.

Stay on the court, Judge Bork. Prove your detractors wrong. Continue in your outstanding career of public service and judicial excellence. This new Senate standard may not deserve your work but the Constitution and the people who are governed by it will always need you.

Madam President, I yield the floor.

Mr. MURKOWSKI addressed the Chair.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. MURKOWSKI. Madam President, I rise to speak to the nomination of Robert H. Bork to serve as Associate Justice of the Supreme Court.

I have refrained from publicly announcing my position on this crucial matter until today. I have done so deliberately. I have done so despite repeated requests by the press and others to announce a decision before I believed I had discharged my duty to engage in the kind of thoughtful deliberations that are the hallmark of this great body.

I have done so despite—and in part because of—the spectacle of the rush to judgment which has, in this Senator's opinion, denigrated one of the Senate's most important functions.

In considering my vote, Madam President, I examined four chief areas of concern:

First, the qualifications of the nominee;

Second, the findings and recommendations of the committee charged with reporting to the entire Senate;

Third, the issues surrounding this nomination; and, of course, the views of all Alaskans, whom I am privileged to represent in this Chamber. Thousands of Alaskans have called and written to me on this important matter.

Madam President, I am prepared now to voice my views.

In many ways the hearings on Judge Bork's nomination were extraordinary, to say the least. Never, I believe, in the history of this process has there been such an in-depth discussion of complex constitutional issues. Indeed, one of the committee members remarked that the exchanges with Judge Bork were "like going back to law school." And I am sure it was a very good law school.

I'm not a lawyer, Madam President, and I do not pretend to know the intricacies of constitutional jurisprudence. But I will say this: I understand the Constitution. And that is the way it was intended. Our Constitution was not necessarily written for lawyers. It was written by and for the group identified in its first three words: "We, the people."

I understand that the Constitution establishes a system of government for the people through a series of coequal branches that check and balance each other. I understand that the Constitution stands for fairness in process. I understand that the Constitution instructs us in how the system should work.

The Constitution expects factionalism in the legislative and executive branches. That is what majority rule is all about, and that is certainly fair.

But the Constitution does not expect a political judicial branch—It does not expect a political judicial branch. I repeat that, Madam President, because I think it needs emphasis. Judges must make impartial decisions—decisions based on a body of law without regard to their personal beliefs or party affiliation.

In fact, the Constitution goes to great lengths to insulate that branch from the winds of political change. For example, no matter what party is in the majority, appointments to the Federal bench are for life, so appropriately there is no leverage on the decisions of a Federal judge; no matter who the President is, a Federal judge's salary cannot be reduced. And when the Senate takes a judicial nomination under consideration, I believe we have to take into account the nature of the judicial branch and what the Constitution expects of judges when we determine what's "fair" about our process.

No, Madam President, I am not a lawyer. But I know enough about the Constitution and our system of government to know that we have not been fair in this process. We have not been honest with the process, with ourselves, with Judge Bork or with the American people.

We have allowed this process to become a spectacle of factionalism that just does not belong when the issue is nomination to the Supreme Court.

I do not want to imply that any one group is to blame. There is plenty of blame to go around, not the least of all—this very body. We're all responsible. And I am deeply troubled by these events, Madam President, because I fear we are setting a precedent that could haunt this body long after the final vote on Judge Bork's nomination.

Madam President, this debate did not begin with special interest groups or the media. It began on this floor within hours of the President's nomination of Judge Bork when we heard that women in our land would be forced into back-alley abortions, that blacks would again sit at segregated lunch counters, and local police could break down citizens' doors in midnight raids.

Long before our Judiciary Committee ever heard the testimony of Judge Bork, fires were fueled and fears aroused among black Americans and women. The process in the early stages lost my chance of fairness and objectivity. Perhaps the Washington Post which some of us from out of town do not necessarily agree with all the time, summed it up best when they wrote on October 5, 1987:

> There has been an intellectual vulgarization and personal savagery to elements of the attack, profoundly distorting the record and nature of this man.

The issue here, Madam President is not back-alley abortions, blacks at segregated lunch counters, and police breaking down citizens' doors in midnight raids. It is most unfortunate that the American people have been led to believe that these are the issues at hand.

Nor should the issue be Judge Bork's so-called judicial extremism. His tenure on the D.C. Court of Appeals has demonstrated a respect for precedent. Any fair comparison of his decisions while serving on the court of appeals with his testimony before the Judiciary Committee demonstrates not a confirmation conversion as some have suggested, but rather, a commitment to the protection of individuals rights.

This nomination brings into sharp focus questions about the way our Constitution works and how we think it should work. It is about the very nature of self-government—a representative democracy. "We the people" are the government.

Have we not heard from the people about a perceived expansion by the courts of criminal rights at the expense of victims? As I listen to my colleagues, I reflect how unfortunate it is that Judge Bork is not be here himself to respond to my fellow Senate colleague's interpretation of the judge's hypothetical beliefs on such issues as privacy or abortion; issues which are not necessarily enumerated in the Constitution. What would be the judge's theory of expanded rights granted by the Constitution? Should those expanded rights also extend to criminal rights? If so, how far?

Does the Court have the power to grant criminal rights beyond those provided in the Constitution and rights that we, who the people elect, are in opposition to?

It is my interpretation, Madam President, that Judge Bork believes in judicial restraint. He believes, as did Thomas Jefferson, that enlargements of Federal power properly come from the legislature, not the courts; as Mr. Jefferson said, "Our peculiar security is in the possession of a written Constitution." And Judge Bork believes, as did Justice Harlan, one of our greatest constitutional scholars, that:

> This Court, no less than all other branches of the Government, is bound by the Constitution. The Constitution does not confer on the Court blanket authority to step into every situation where the political branch may be thought to have fallen short. The stability of this institution ultimately depends not only upon its being alert to keep the other branches of government within constitutional bounds but equally

> upon recognition of the limitations on the Court's own functions in the constitutional system.

Madam President, neither of those great men can be challenged on their commitment to individual rights. And I do not think that Judge Bork has any less devotion to individual rights merely because he shares a judicial philosophy with Thomas Jefferson and John Harlan.

No, Madam President, extremism is not the issue. During the past 5 years, not 1 of the more than 400 majority opinions Judge Bork has written or joined with his fellow jurists on the bench has been reversed by the Supreme Court. Not one. Considering this, Madam President, how do Judge Bork's opponents define "the mainstream"? Was it not Judge Bork who years ago praised the major school desegregation decision in Brown versus Board of Education as one of "the Court's most splendid vindications of human freedom"?

Unfortunately, the issue has become Judge Bork's political reliability. The Senate confirmation process in the case of Robert Bork is not about qualifications, independence of judgment, judicial temperament, intellectual honesty or professional integrity; but, unfortunately, it is an attempt to control the specific outcome of future decisions of the Supreme Court by establishing political reliability as a litmus test for confirmation. Do we really want our hardest political decisions made by the unelected branch of our Federal Government? Did the framers of the Constitution contemplate this role for the Court when they established a judiciary that, as Alexander Hamilton once wrote, "had neither force nor will, but merely judgment"? How unfortunate that would be—for the Court and the Nation.

So, Madam President, Robert Bork—lawyer, law professor, Solicitor General of the United States, and Federal Appeals Court judge—has distinguished himself in a lifelong career dedicated to public service and to the education of future generations of lawyers. He has been lauded by past and present Supreme Court Justices, by distinguished lawyers who served Presidents in both Democratic and Republican administrations, by Dean Calabresi of Yale Law School, and by a panel of his peers from the American Bar Association. In sum, he is, by most accounts, a brilliant jurist, a noted scholar and writer, a thinker, a highly respected litigator, and a truly decent human being. I met with Judge Bork just a few days ago, and I was struck by his words:

When he responded to a question with regard to how he felt.

He said:

> Senator, my greatest disappointment is not losing the confirmation. It is that black Americans believe the lie that I am a racist. That hurts me, and it hurts me deeply.

I have been thinking about that ever since that meeting, Madam President.

Are we really willing to forsake the services of a man called the most qualified nominee in half a century because some of us think that we will not like the results he might reach in some cases: What does that say about us? What does that say about our attitude toward the Judicial System? Indeed, what does that say about our attitude toward our Constitution?

We demean ourselves, Madam President, by setting this kind of political predictability test for the Supreme Court. Look at where it leads: Unfair and misleading commercials that Judge Bork favors the imposition of literacy tests and poll taxes; inflammatory, baseless charges that Judge Bork would "turn back the clock" and "put women in the back seat." This kind of inflammatory rhetoric against a person of Judge Bork's character and record is shameful and intellectually dishonest.

But, we can expect this kind of response when we permit our standard of review for nomination to our highest Court to be one of common political expediency. I fear we are sending a message, Madam President, not only to future nominees, but to the Court itself, about what we think the Court should be. And that message is this: Forget intellectual rigor; forget judicial integrity; forget connections with a seamless web of jurisprudence that can be traced to times before this Nation was conceived. Forget that. Give us the result we want, and give it to us now.

Not only does that message offend the very basis of our system of Government, it may well augur something far worse: We may, Madam President, get exactly what we ask for.

I shall support our President's nomination of Judge Robert Bork to the Supreme Court.

I yield the floor.

Mr. NICKLES addressed the Chair.

Mr. DeCONCINI. I understand we are to alternate between speakers for and against Judge Bork. I will speak in opposition. The Senator from Oklahoma has been here for several hours. He indicates that he has not a short statement, but a statement that will not be more than 10 minutes. I know the Senator from New Hampshire has been here for a long time and would like to get unanimous consent of some sort.

I am prepared to ask for unanimous consent that the distinguished Senator from Oklahoma may proceed for not to exceed 10 minutes and then I will be recognized for my statement on Judge Bork.

The PRESIDING OFFICER. (Mr. ADAMS). Is there objection?

Mr. HUMPHREY. Would the Senator add my name to that request to follow the Senator from Arizona?

Mr. DeCONCINI. Under these circumstances, because the Senator from Oklahoma will not speak for a long time, I would have no objection. If the Senator wants to amend my request, I have no objection.

Mr. HUMPHREY. Mr. President, I ask unanimous consent that the Senator from New Hampshire may follow the Senator from Arizona.

The PRESIDING OFFICER. Is there objection?

Mr. METZENBAUM. Reserving the right to object, can the Senator tell us how long he will be?

Mr. HUMPHREY. I cannot say with great accuracy, but I would say about 30 minutes.

The PRESIDING OFFICER. The Senator has said that he thought he would be about 30 minutes. That is what the Chair understood.

Mr. METZENBAUM. Then I would ask that the unanimous consent request be modified so that immediately following the Senator from New Hampshire, the Senator from Ohio will be recognized.

The PRESIDING OFFICER. Is there objection? The Chair hears none. Without objection, it is so ordered.

The Chair will repeat the unanimous consent request: That the Senator from Oklahoma is recognized, I believe that was for 10 minutes; then the Senator form Arizona will be recognized; then the Senator from New Hampshire will be recognized; and then the Senator from Ohio will be recognized. That is the order of the Chair.

The Senator from Oklahoma.

Mr. NICKLES. Mr. President, I thank my good friend and colleague, the Senator from Arizona.

Mr. President, I rise in strong support of Judge Robert H. Bork for the U.S. Supreme Court. Mr. President, I think seldom have we had in history a man more qualified to serve in this position. I think everyone is well aware of his record as a law professor, as Solicitor General, as a judge on the United States Court of Appeals for the District of Columbia.

Judge Bork has done an outstanding job. He was unanimously confirmed by the Senate in 1982 for good reason: He was well qualified for that position. What has happened since 1982 to cause Senators to oppose his nomination? What did he do as a judge on the U.S. Court of Appeals?

He was involved in 416 cases. He voted in the majority 95 percent of the time. In those over 400 cases he has never been overturned by the Supreme Court, never. He dissented in 20 cases, 6 of which were reviewed by the Supreme Court and in all 6 cases the

Supreme Court concurred with Judge Bork's dissent.

That is an incredible record, an incredible record by any estimation whatsoever. Yet we find many of our colleagues, unfortunately the majority of our colleagues, stating their opposition to Judge Bork. Yet he was unanimously confirmed in 1982.

It is hard to understand.

I strongly support Judge Bork because, as I have read many of his statements, he is an advocate of judicial restraint. I will read a couple of his quotes.

> The judge's authority derives entirely from the fact that he is applying the law and not his personal values. That is why the American public accepts the decisions of its courts, and accepts even decisions that nullify the laws a majority of the electorate or of their representatives voted for.
>
> No one, including a judge, can be above the law. Only in that way will justice be done and the freedom of Americans assured.

Another quote from Judge Bork, and all these came from the confirmation hearings.

> My philosophy in judging, Mr. Chairman, as you pointed out, is neither liberal nor conservative. It is simply a philosophy of judging which gives the Constitution a full and fair interpretation but, where the Constitution is silent, leaves the policy struggles to the Congress, the President, the legislature and the executives of 50 States, and to the American people.

Mr. President, I could not agree more with that statement.

He also stated:

> If a judge abandons intention as his guide, there is no law available to him and he begins to legislate a social agenda for the American people. That goes well beyond his legitimate power.

Again, I concur wholeheartedly. Let us look at the Constitution.

The Constitution in article 1, section 1 says:

> All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives

Look at the 10th amendment to the United States Constitution. It says:

> The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States repectively, or to the people.

In other words, Judge Bork thinks that not the court should legislate, but the Congress should legislate and if the Congress does not, it should be reserved to the States and to the people. Then if the people do not agree with the legislature, they can change the Members of that body. The people have the checks and balances.

Many of my colleagues, I think, are opposing this nomination because Judge Bork believes in judicial restraint. The Senator from Oregon, my good friend, Senator PACKWOOD, was very forthright when he said he questioned Judge Bork concerning his philosophy on judicial restraint and on the issue of privacy. He was very frank when he said he was concerned about the judge overturning Roe versus Wade.

Roe versus Wade is an excellent example of judicial activism where the Court legislated, where the Supreme Court legalized abortion. Congress did not legalize abortion. The Senator from Oregon said he introduced legislation to do so but it did not pass Congress. It did not have the votes.

If abortion is going to be legal, then Congress should pass it. If we have the votes and courage to do so, let us do so. If the people do not like it, the people can change the Congress. That is the way it should be done. It should not be legalized by nine nonelected Justices of the Supreme Court.

Judicial restraint is important and it is needed.

Mr. President, I very much reject and resent a lot of the tactics that have come about as a result of Judge Bork's nomination.

I ask unanimous consent that an article from the Wall Street Journal on October 15 be inserted in the RECORD. I will just read a couple of comments. It says:

> "Dear Friend," said Joanne Woodward's mass mailing, $500,000 is needed immediately. Norman Lear's People for the American Way mailed out 3.8 million anti-Bork solicitations.

And on and on, a very active, a very negative, a very distorted campaign was conducted against an outstanding jurist. I resent that type of activity. I think it is unfortunate. I do not think it speaks well for the Senate. I do not think it speaks well for the nomination and the confirmation process. When we have jurists come before the Senate Judiciary Committee in the future, I think they are not going to be giving frank answers. They are not going to be giving detailed explanations of their judicial philosophy. Unfortunately, they are going to say, "Senator, I am sorry, I can't answer that question because it may come before the courts or may be pending before the courts somewhere in the judicial arena."

I think the next nominee will be stating that time and time again and Senators will be on this floor voting not knowing that particular nominee's philosophy.

Let me make two final comments.

The PRESIDING OFFICER. If the Senator will suspend, did he wish the article placed in the RECORD?

Mr. NICKLES. Yes. I ask unanimous consent that the article from the Wall Street Journal be inserted in the RECORD.

There being no objection, the article was order to be printed in the RECORD, as follows:

[From the Wall Street Journal, Oct. 15, 1987]

BOGEYMAN FUNDRAISING

"Robert Bork's America is a land in which women would be forced into back-alley abortions, blacks would sit at segregated lunch counters, rogue police could break down citizens' doors in midnight raids . . . and the doors of the federal courts would be shut on millions of citizens." These were Senator Teddy Kennedy's first words after the Bork nomination.

While at the same time it seemed mere hyperventilation, this protrayal was in fact central to the apparently successful campaign to discredit Judge Bork. It's not that hyperbole directly persuaded Senators, but that the hyperbole was needed to raise money to persuade Senators. The bogeyman image was absolutely crucial to the needs of the real special interests, the Spitz Channels of the left.

"Dear Friend," said Joanne Woodward's mass mailing on behalf of the National Abortion Rights Action League, "$500,000 is needed immediately. . . . " Norman Lear's People for the American Way mailed out 3.8 million anti-Bork solicitations; its Arthur Kropp boasts, "We wanted to raise $1 million but now it looks like closer to $2 million." Direct-mail consultant Roger Craver, who has five different anti-Bork clients, told the New York Times, "This is the equivalent of Jim Watt wanting to flood the Grand Canyon."

This is bogeyman fund-raising. The livelihood of fund-raisers is raising funds, either through direct contacts or mass mailings. Success lies in getting a batch of first contributions in some heated battle, then returning to a proven list to pay ongoing salaries. Not for nothing did more than 30 special-interest groups submit requests to testify-meaning, appear on national television. At the lowest and most cynical level of American politics, the level at which it has settled the past two months, one might argue that special interest groups are prevailing and being well paid for their efforts. Judge Bork's discomfort is just tough luck; he happened to be handy when the fund-raisers needed a nightmarish caricature.

Of course, both conservatives and liberals have for some time exploited bogeyman fund-raising. Conservative direct mailers wept at Tip O'Neill's retirement. With the creation of the Bork bogeyman, however, something seems to have snapped in Washington politics. Tip O'Neill and Jesse Helms are political figures who have the platform and resources to fight back. A judicial nominee, especially a federal appeals court judge, is severely constrained from defending himself at the level of discourse preferred by, say, the creator of Archie Bunker.

It isn't only Judge Bork's supporters who are concerned that the rest of the country now sees Washington as a stinking swamp of intellectual dishonesty and political reprisal. Lloyd Cutler's support for the nomination is based not on the merits alone but on concern that the tenor of the Bork opposition is poisoning the well for his own party. In the current issue of The New Republic, Andrew Sullivan frets that with the fund-raising hysteria, "The only nominee who in the future will be able to survive the demagoguery will be someone who can respond in kind." Perhaps the president should nominate Don Rickles ("Get off my back, you hockey puck!").

Mr. Sullivan's article should be read by anyone who still doubts this process pro-

> foundly distorted the Bork record. While he says a serious case can be made against the nomination, he catalogs "the disingenuousness of the Bork-hate campaign." The lies, such as a claim that Judge Bork testified in favor of a law he in fact opposed. The name-calling of Ralph Nader: "a plague on the next generation." The mailings of one of liberalism's sainted groups, Planned Parenthood, said, "Bork's position on reproductive rights? You don't have any." Mr. Sullivan concluded: "And Senators wonder why the polls show a drift away from the Bork nomination."
>
> Editorialists, columnists and several Democratic senators are now engaged in an elaborate rationalization of this descent into political falsification. The public is asked to accept their argument that the assault on the integrity of a single American citizen by Planned Parenthood. People for the American Way and others was beside the point. That wrongful assault, however, will survive as a lesson of the Bork nomination.
>
> The lesson is that up to now, the assault has worked. It intimidated not only Senators who spin like weather vanes, but also Senators made of sterner stuff. This was affirmed in the vote of the Senate Judiciary Committee and in thinly argued justifications for that vote. It is a new kind of politics, and it awaits the official imprimatur of 51 Senators. We hope that someone pauses to see the implications of turning the advice and consent role over to groups whose very livelihood depends on making U.S. politics feverish and false.

Mr. NICKLES. Two final quick comments. From Gerhard Casper, University of Chicago Law School:

> It would be ironic if, in this bicentennial year, the Senate were to oppose Judge Bork because he believes, correctly, that judges, like all other Government actors, are bound by the Constitution and should make its meaning the reference point of all interpretations. It would be ironic if in this bicentennial year, the Senate were to seek to legitimate a change in our form of government from one based on rule of law and the Constitution to one based on the rule of judges who have cut their moorings to the basic charter—and who have been chosen by a highly politicized process that obscures the crucial and delicate issues involved.

Mr. President, that could not say it any better. It is incumbent upon this Senate to act responsibly. I believe acting responsibly would be to confirm Judge Bork to the U.S. Supreme Court.

I yield the floor.

The PRESIDING OFFICER. Under the unanimous consent order, the Senator from Arizona is recognized.

Mr. DeCONCINI. Mr President, I think it is important for us to look at this confirmation process as, indeed, a process. Part of our duty as U.S. Senators as set out in the Constitution is to advise and consent. That means confirm or deny the confirmation of nominees by the President of the United States.

In doing so, indeed, I heard last night the senior Senator from Colorado urging everybody to keep cool heads. I think he used far better language than that in so articulating and I concur.

Mr. President, I would like to bring to my colleagues' attention some very disturbing reports that I have recently come across. According to the Washington rumor mill, the Heritage Foundation is completely financed and controlled by a foreign government whose objective is to steer American policy in the direction desired by this Government. Reputedly, high officials of the Heritage Foundation meet regularly with the governmental leaders of this foreign country to plot strategy to affect American policy. While these reports cannot be substantiated, I believe that they do lend credence to recent actions taken by the Heritage Foundation in the debate over the nomination of Robert Bork.

Mr. President, I think that all of us would be very disturbed by the allegations that I just made. Many people, hearing them said on the Senate floor, would believe that they must be true. In fact, they are not. I just made them up. I made them up to make a point; a point that I think has to be made. I am sure that all of my colleagues and indeed all Americans would believe that making up stories that have no foundation at all in order to justify a political position is reprehensible. Unfortunately, I have found myself the target of such a malicious practice.

I will read an excerpt from a column written by Gordon Jackson, managing editor of Policy Review, a quarterly publication of the Heritage Foundation. You will recognize the same phrases that I used in my opening remarks. The column said:

> DeConcini's role in the confirmation process has been that of a very active partisan. His fence-setting through the hearings was, according to the Washington rumor mill, nothing more than a pose. Reputedly, he huddled with feminist groups two months ago to plot his strategy against Bork. While this cannot be substatiated, DeConcini's aggressive effort to misunderstand Bork's positions, which a transcript of the hearing will make abundantly clear, lends credence to the account.

I believe that I understand Judge Bork's positions on issues very well. I sat through the hearings. I read a number of articles, speeches, and cases. He sees the law as an instrument to protect government from its citizens rather than vice versa and to protect those in power from those who are not in power. But, I think that it is perfectly appropriate for a newspaper columnist to give his opinions on my performance in office. What I find to be so objectionable and irresponsible is the use of rumors that even the writer concedes cannot be substantiated. There is a very good reason why these reports cannot be substantiated. They are not true just as the one I made up at the very beginning is not true. They were made up because they supported the story that some people wanted to tell. They gave in to the temptation that has proven too strong for many of Judge Bork's supporters. Having failed to prove to the American people and the Senate that Judge Bork should be confirmed, they began to attack the Members of the Senate. Having lost the debate on the merits, and now losing it on the floor, they began to attack the process and those involved in it. "Something went wrong," they say. "My gosh, what has happened to us all of a sudden?"

It is obvious how damaging the tactic used by the Heritage Foundation in this instance can be. One cannot prove that something never happened. These allegations are very different from what Judge Bork's supporters claim his opponents did. These allegations are not matters of interpretations of language or legal decisions. What the Heritage Foundation has done is personally attacked the integrity of me. They have a right to do that, I guess, but I am withdrawing my statement about the Foundation because it is not true. They should do the same thing. I wonder too; how many other Members of this body that organization has done likewise, coming up with absolutely no proof and even admitting in their article that it cannot be substantiated.

That is the kind of politicizing we have seen here. I believe that Judge Bork and President Reagan, who appointed him, deserve a fair hearing. I said so from the very beginning. I said I had not made up my mind and I had not. I urge my colleagues here, "do not make up your mind." Give this man a fair hearing. I gave him a fair hearing. Although I think everybody did. Some people may disagree,. But I gave him a fair hearing. My conscience is very clear about that. I listened to Judge Bork. I asked him pointed questions. I read dozens of his opinions, his articles, and his speeches. I was there for all but one day for the hearings, including the days that Judge Bork testified. I attempted to be fair and objective to the extent that that is possible. I excluded considerations as to what it may mean to me politically back home one way or the other.

Judge Bork supporters have decided that something is wrong here because the process did not quite work out; they did not get a vote in favor of the confirmation. We did not hear this when Justice O'Connor was confirmed. They thought the process worked pretty well then, and it did. I was part of that process. In committee there were a few Senators who became exercised and had some objection to Judge O'Connor at the time, but they ended up voting for her. There was some opposition. The National Right-to-Life felt that she was not clear on what her position was on abortion. They testified in opposition. But when it came down to a vote, it was unanimous in committee and unanimous on this floor. The system worked all right there, did it not? Yes. It worked just fine because it came out right. I think it came out right also.

When Justice Rehnquist was nominated to the Chief Justice of the U.S. Supreme Court, again the system was tested. How was it going to work? In that case there was some real opposition to Justice Rehnquist. There were witnesses from Arizona who came and attacked his credibility. There were people who said he was too far to the right, that he could not really be fair in his interpretation. This Senator made a judgment during the confirmation hearing that he was in the mainstream of conservatism and indeed should be confirmed. I went on the floor. I took part in that process. I argued in his behalf. The system seemed to work all right because he passed. If he did not pass, maybe his supporters would have said, "well, the system broke down." It did not work again. Doggone it, when it does not go my way, it just does not seem to work. Well, Justice Rehnquist was confirmed, as Justice Scalia was.

The supporters of Judge Bork are not here saying the system is working fine because now, it is not going their way. I think it is important to realize that what has happened here is President Reagan made a mistake. That is not terminal. We all make mistakes. He sent someone to the Senate who was not in the mainstream of conservatism and that individual tried the best he can. Those who support him I am sure are conscientious about trying the best they can to demonstrate that this man is a moderate. They have tried to show he is going to be the likes of Rehnquist, O'Connor, or Scalia, when, in fact, a close scrutiny demonstrates that he is not.

On October 8, 1987 the Arizona Republic published an editorial in which they espoused what I believe is a very valuable standard for all of us, including the Heritage Foundation and the Arizona Republic itself, to keep in mind during the debate; probably during any debate. They were making reference to the debate on Judge Bork. That standard is,

> Civility in public discourse, honesty in opposition, restraint in debate, and respect for the goodwill of one's opponents—these are the virtues on which democracy is nourished.

I believe that this standard has been violated by people on both sides of this issue. I regret saying so.

I do not believe either side has a monopoly on a pure approach to Judge Bork. That is unfortunate. That is part of the process. Does that mean it is all bad? No. It is too bad when it defames somebody and it is unfortunate. But it does not mean the process is bad and should be thrown out.

I urge my colleagues, and outside parties interested in the debate, to use civility, honesty, restraint, and respect as we discuss the nomination of Judge Bork to the U.S. Supreme Court. I especially ask the supporters of Judge Bork to respect the sincerity and honest motives of those who may vote or have decided to vote against him. I respect those who are voting for him. I believe Senators who support Judge Bork have concluded that this is the right person at this particular time, and I accept that, even though I disagree with it.

I may point out that it seems very likely Judge Bork is not going to be confirmed. Many who are now attacking the Senate will be supporting the next nominee. I think we need to look to the future as I have urged the President to do. We talk about how unfortunate the politicization of the process is unfortunate, but I guess it is probably something that we cannot avoid.

Let me just read a few quotes of politicians from different groups who have talked about the Supreme Court and even about Judge Bork. Let me just quote Bruce Fein of the Heritage Foundation, in Newsweek in October 1985. He said,

> It became evident after the first term that there was no way to make legislative gains in many areas of social and civil rights. . . . The President has to do it by changing the jurisprudence.

Mr. Fein also was quoted in Human Events on July 6, 1987. This Heritage Foundation official said,

> By packing the Supreme Court, President Reagan would be acting within the mainstream of American traditions to make the federal judiciary partially answerable to contemporary political influences.

Mr. President, on July 2, 1987, Pat McGuigon of the Free Congress Foundation was quoted in U.S.A. Today as saying:

> Bork has a constituency that will be easy to activate. This is very exciting.

There are other quotes. I could go on and on. Here is one from fundraiser Richard Viguerie, who I think is very recognized in our political system as raising substantial money for the far right and for conservative causes. He was quoted in the Washington Post July 2, 1987:

> Conservatives have waited for over 30 years for this day * * *. This is the most exciting news for conservatives since President Reagan's reelection.

It goes on and on. The Moral Majority, through its leader, Jerry Falwell, sent its members a fund-raising letter that said:

> I am issuing the most important "call-to-arms" in the history of the Moral Majority * * * our efforts have always stalled at the door of the U.S. Supreme Court * * *. President Reagan has chosen Judge Robert Bork * * * a pivotal person in getting the Supreme Court back on course * * *. I need your gift of $50 or $25 immediately. Time is short.

This is the person who had critical remarks, as you may recall, about Justice O'Connor. He was not sure that she could meet the litmus test of his judgment. This is the same person that Barry Goldwater, my former colleague, said that he ought to be kicked in the posterior. That is the kind of politicizing that has gone on the Bork issue on one side.

Unfortunately, we have seen politicizing by those who oppose Judge Bork. I regret that. But I do not hold any Senator here responsible for that. I do not see any names of Senators appearing in the ads that we have seen that have resulted, I believe, in the degradation of this process.

So I criticize those activist groups on the right and the left who want to make the process as political as they can with the hopes that, "well, maybe we can win this one." If they do not win it, it means to them that the process has broken down. They believe a mistake has occurred and therefore the process was not legitimate. Well, the process is legitimate. If you want to win you have to have a horse that can win. You have to have a thoroughbred and you have to have someone who can ride that thoroughbred well. You have to have the credentials and you have to be able to explain what you have done in your past as well as you feel about the Supreme Court or whatever the issue may be. If you cannot, you are going to get turned down.

President Reagan says, "Well, just wait, because I am going to send someone else up there you will dislike just as much." I guess that is supposed to put us in fear. "Oh, my goodness, what are we going to do?" I do not know if he can find someone else like Judge Bork, but let us assume that he could and he sends him up here. Are we going to shake? Are 100 Senators saying "That is it, we have to go along this time?" I think it was a good lesson when President Nixon tried to do that. This Senate is not going to buckle under because of political pressure. We are going to make our own judgments and some outside this body are going to disagree with our judgment. But we are going to make it based on what we think is right.

I am going to vote against Judge Bork for a lot of reasons. There is nothing evil about this man. He is indeed a scholar, and I recognize that. He has devoted a great deal of his life to his family, and I respect that immensely; and to his profession, as a teacher, a jurist, a lawyer, and as a public servant. He personal life is not why he is being confirmed as not confirmed—just based on that. He is being turned down for very solid reasons.

I have heard from thousands of people by mail, telophone calls, and personal meetings. What has struck me most about these people is their sincere belief in their position as to what is best for this country. There are some who are way off the wall, who write threats and make conversations on the telephone that no one can repeat; but they are few, and I do not judge the public at all by those radicals, whether they be for or against Judge Bork.

Those who urge me to support Judge Bork's nomination are convinced that his judicial philosophy will lead America into a new era of prosperity and reduced crime. Those who urge me to oppose the nomination are clearly convinced that his judicial philosophy will lead America back into an era of discrimination, economic monopolies, and Government intrusion into our everyday lives.

Why has this single nomination aroused so much passion and rhetoric? Because, more than any other legal thinker in America I believe that Judge Bork has become a symbol for a return to the days when our legal system protected only the haves and did not care about or did not recognize the have-nots; the time when going to court meant your rights and liberties were being taken away, not being protected; an era when the judge read the Constitution to protect the rights of the powerful and not of the powerless.

Judge Bork is different from Justice O'Connor, Chief Justice Rehnquist, and Justice Scalia. He has spent his career as a legal scholar, criticizing in the harshest terms the Court and its decisions. He has used inflammatory terms to criticize the decisions that most people in this country credit with giving some measure of equality and respect to all of us. Not that I agree with all those decisions, because I do not. But I recognize the Court's right and its independence to make those judgments. That is why I supported Scalia, O'Connor, and Rehnquist with such vigor, because I believe they have what is necessary to make independent judgments on the Supreme Court. They are in the mainstream of conservatism, and I think that is very positive. It is what I like to see on the Supreme Court.

In my judgment, no other potential Supreme Court nominee in history has been as strident in his criticism of the way the Constitution has been used to protect individual liberties as Judge Bork has. That is the difference between the previous nominees and this nominee.

Judge Bork was chosen by President Reagan because of his career and what he has come to symbolize. I believe he should be defeated, and I am confident that he will be. It does not bother me that Judge Bork is a conservative. I consider myself a conservative. However, I do not believe it to be my responsibility to base my decision on nominees to the Supreme Court on their political views.

In the past, I have voted for conservatives, for liberals, and for moderates. I have supported right-to-life candidates. I have supported right-to-work candidates. I have supported strong labor-endorsed candidates. I have supported liberal candidates. I have supported candidates if I felt they have an understanding of what the Constitution is about and if they realize the importance of the Court and what it means to our lives. I have supported them if they would exercise their honest beliefs and if they do not have a long history of tearing down a system that is second to none.

I began my consideration of Judge Bork's nomination with the presumption that the President's nominee to office should be confirmed. During August, I read extensively of Judge Bork's writings, his opinions, his speeches, and many of his law review articles. I talked to hundreds of people in Arizona between August and the time the hearings started and also during the hearings. My preparation left me with a number of questions that I had to ask Judge Bork; and after 12 days of hearings, including 5 days when the judge was before us, all my concerns have not been allayed.

I am no longer concerned about some of the things that bothered me about Judge Bork. To his credit, he was candid and was able to dispel some of my concerns.

One thing that satisfied me was the so-called dismissal of Archibald Cox, the "Saturday Night Massacre." I was satisfied with the judge's explanation. I did not agree with his action, but his explanation certainly was not unsatisfactory enough for me to deny him my vote, based on my disagreeing in that particular instance. He did have a plausible answer to that incident.

I was also concerned as to his judicial activism. After reading some of his opinions, where he expounded philosophically for page after page, I asked the judge, "How can you be a restrained Justice who is not going to be an activist?" I laid out some of the things my reasons for being concerned.

He had a good answer. He said that those points he brought up after he made the ruling in the case were brought up by the appellants in the brief before him. That is legitimate. One of my staff members read those briefs and confirmed to me that indeed those issues were brought up by the parties in the case. So I accept that explanation from Judge Bork.

However, Judge Bork has expressed views on the Constitution that greatly concern me. His views would not protect individual rights of privacy. His position on the right to privacy was clear in the hearings.

The distinguished Senator from Delaware probed his views at great length. I also asked some questions.

Judge Bork criticized the Supreme Court in Griswold versus Connecticut, in which the Court said that a State prohibition against contraceptives violated married persons' constitutional rights of privacy. Not only does Judge Bork say that the Constitution does not protect the right of privacy, but also, he says that he would be unable to find any other provision of the Constitution that would have allowed him to overturn that Connecticut law. Judge Bork says that since the law was not enforced in Connecticut, it did not matter that the "nutty" law was even on the books.

Well, subsequent to that statement, I had several calls from gynecologists and lawyers in Connecticut and some who had moved from Connecticut, and they indicated that not only had the law been enforced but also, contraceptives were generally not available in Connecticut from 1940 until 1965, when the Griswold decision came down from the Supreme Court.

I believe the Constitution does protect the right of privacy. I am disturbed that an individual who is as intelligent and articulate as Judge Bork is unable to find this right and would have the private rights of American citizens at the risk of Government intrusion by the will of a simple majority.

Imagine having a Justice on the Supreme Court who would uphold a State or Federal law which said it was against the law for married couples to use contraceptives. Compare this with Justice Powell's concurring opinion in the 1978 case Zablocki versus Redhail:

> This Court has long recognized that freedom of personal choice in matters of marriage and family life is one of the liberties protected by the due process clause of the 14th amendment. Our decisions indicate that the guarantee of personal privacy or autonomy secured against unjustifiable government interference by the due process clause has some extension to activities relating to marriage. While the outer limits of this aspect of privacy have not been marked by the Court, it is clear that among the decisions that an individual may make without unjustified governmental interference are personal decisions relating to marriage.

In addition, this past year Justice O'Connor wrote an opinion for a unanimous Court, including Rehnquist, Powell, Scalia, and White, finding that prisoners have a constitutionally protected right to marry.

It disturbed me when Judge Bork before the committee stated he could not find a right of privacy within the Constitution. I did not tell him where to look because he knows. He understands what the right of privacy is, what the Court's decisions have been and what is at stake with the Griswold case. He came away saying that a right of privacy could not be found in the Constitution and that is hard for me to accept.

Although I do believe that there is a right to privacy in the Constitution, I do not believe that it extends to abortion. I do not believe that any provision of the Constitution prohibits a State from regulating or prohibiting abortion. I have consistently and strongly supported pro-life issues throughout my career in the Senate and I will continue to do so. Some of Judge Bork's supporters have attempted to make the nomination into a referendum on Roe versus Wade, the Supreme Court's decision allowing abortion.

That is an important decision, one that I disagreed with and that I sponsored a constitutional amendment to reverse. That is not the issue with Judge Bork and I think people realize that.

I have rejected this reason on Roe versus Wade for three reasons. First, I object to judging any nominee on a single issue. I have no litmus test for judicial or political office. Second, we have no way of knowing how Judge Bork would vote on the Court on the issue of abortion and we should not have any absolute certainty.

Secretary Carla Hills, a Cabinet member under President Ford, testified that she did not believe that Judge Bork would vote to overturn Roe versus Wade.

She worked with Judge Bork. She qualified that statement saying she had no way of knowing, as none of us do. But she did not believe that he would overturn that decision.

So if you are looking for the right-to-life and the abortion issue, you have a very close associate of Judge Bork's who is pro-life and a former Cabinet member who testified under oath that she did not think that Judge Bork would vote to overturn Roe versus Wade. That is an opinion, but to me it certainly indicates that there is no guarantee with Judge Bork, just as there is not with anybody that you put on the Supreme Court.

And third, I have no doubt that if Judge Bork is not confirmed, the next nominee by President Reagan will also be conservative. To the extent that it is possible to determine, I am sure that any subsequent nominee appointed by President Reagan would share Judge Bork's and my own concerns about Roe versus Wade. Of course, we have no absolute assurance how any nominee or sitting Supreme Court Justice would vote even though we can speculate. We must also remember that justices have changed their positions from time to time.

Of course, we have no absolute assurance what anybody will do, as I indicated, and I do not believe that we should be looking for an absolute assurance.

Judge Bork has recently modified his views on the 14th amendment's equal protection clause.

This clause reads, "nor [shall any State] deny to any person within its jurisdiction the equal protection of the laws, a very short phrase, one that is so fundamental to all of us".

Although 5 months ago—I think it was June—he reiterated his long-held views that equal protection clause should apply only to racial and ethnic discrimination. He said for the first time during the hearings that the clause should apply to all Americans, including women.

While he did say that he would apply the clause to everyone, he did announce a new standard that he would apply to the equal protection clause of the 14th amendment, a standard that had never been used by the Supreme Court and has only been referred to by Justice Stevens, I believe.

The Court has for the last 15 years used a "heightened scrutiny" standard to review statutes that distinguish between groups based on sex.

Using this standard, the Court has consistently struck down statutes that discriminate against women.

Judge Bork said at the hearings that he would use a standard of deciding whether the statutes were "reasonable."

This is a new standard in the area of equal protection analysis.

Now some may say, boy, you really nit-pick, you prefer one standard of analysis over another standard of analysis, and because of that, you do not think Judge Bork is in the mainstream.

Let me say that Justice Rehnquist and the other Justices that have been appointed by President Reagan do not use the reasonable standard. They may not agree with the decision of the majority of the Court, but they acknowledge three existing standards and the heightened scrutiny standard in the area of sex discrimination, so I think it is indication to me clearly that this nominee is outside this area of mainstream conservatism which I think is absolutely necessary.

I am also concerned about Judge Bork's predictability. My concerns in this area are more difficult to articulate than in the aforementioned areas regarding the 14th amendment, but they are no less troubling to this Senator.

I do not believe it is necessary to be able to predict how a Supreme Court nominee will vote on any specific issue, nor am I suggesting that would be appropriate in any way.

The Senate should not demand this. We do not demand this in the committee nor do we on the floor of the Senate.

However, I do believe that it is important that Americans, particularly litigants before the Court and State legislatures trying to enact constitutional law, have an understanding of what the law is and by what standards their cases will be judged before the Supreme Court on constitutionality.

By his own statements, Judge Bork has been a socialist, a liberterian, and a political conservative. He modified at least two of his longheld views during or just prior to the committee's hearings. While I admire the ability to grow and change one's opinions, I did develop a troubling feeling about the predictability or unpredictability of Judge Bork's views. It is not because he has changed his mind about several important things. Change of mind is part of growth and maturity, and that I am prepared to accept that.

He has expressed a number of views about the role of the Court that add to my concerns in this particular area of predictability. His standard of review of equal protection cases leaves complete discretion to judges to determine what distinctions are reasonable. He told the committee that he would leave it completely up to the Court to determine what pornography is. I do not want judges making this determination, I want these decisions made by local officials. Furthermore, he has written that Congress and the legislatures do not understand the relationship between economics and antitrust laws and should leave it to the Courts to properly apply competitive principles. In his book, "The Antitrust Paradox," on page 412 to be exact Judge Bork said, "Congress as a whole is institutionally incapable of the sustained, rigorous, and consistent thought that the fashioning of a rational antitrust policy requires. No group of that size could accomplish the task." Judge Bork urges the Courts to interpret the antitrust laws using their own judgment as to what is best for consumers and business.

All of these factors have created grave doubts in this Senator's mind whether Judge Bork understands and would indeed be predictable as to what the process is as to who makes the laws in this country and who determines things such as pornography, antitrust laws and the interpretations thereof.

There are a number of other issues that have contributed to my decision to vote against this confirmation. William Coleman, former Secretary of Transportation under President Ford, former Congresswoman Barbara Jordan, and Atlanta Mayor Andrew Young testified quite eloquently about what the nomination of Robert Bork means to the black citizens of this country. Secretary Coleman said that, "So here you have a judge that in every instance on these great issues publicly as a scholar always comes out the wrong way." Secretary Coleman was talking about Judge Bork's opposition to the Public Accommodations Law, as well as his criticism of decisions overturning poll taxes, literacy tests, and racially restrictive covenants in deeds.

Barbara Jordan told the committee about how she had run for the Texas House of Representatives twice and lost because of malapportionment. Later, after the Supreme Court handed down its series of cases beginning with Baker versus Carr requiring the principle of one man, one vote be followed in state elections, she ran for the state senate and won. Earlier this year, Judge Bork said, "I think this Court stepped beyond its allowable boundaries when it imposed one man, one vote under the equal protection clause. That is not consistent with American political theory, with anything in the history or the structure or the language of the Constitution." Had Judge Bork been writing for the Court. America would have lost one of its most articulate and powerful spokeswomen, As congresswoman Jordan said about Judge Bork's criticism of Baker versus Carr, "If that were the case, I would right now be running my 11th unsuccessful race for the Texas House of Representatives."

This is the problem, Mr. President. We have someone so far out of touch, so far away from the mainstream of constitutional interpretation. I think that what troubles me most about Judge Bork's criticism of one man, one vote is his accompanying deference toward State legislatures. If we did not have the one-man-one-vote proposition today where would we be? Look at the advancement of many, many States in certain particular sections of this country, and what one man one vote has meant for equal representation for everybody who is a citizen, to have an opportunity to participate in that most cherished and most protected right—the right to vote.

I was most impressed by the conclusion of Professor John Hope Franklin of Duke University. Professor Franklin, one of this Nation's most respected and honored historians said:

> Perhaps the greatest concern is that the remarkable and historic strides that this country has made during the past 35 years, and at least mitigating some of the cruder aspects of its problem of race, could become the victim of one who has rarely assumed this judicial restraint in this area. There is no indication in his writings, his teachings or his rulings that this nominee has any deeply held commitment to the eradication of the problem of race or even of its mitigation.

The final area of concern that I will mention is Judge Bork's extremely restrictive view of access to the courts. A group of legal scholars asked by Chairman BIDEN to analyze Judge Bork's judicial record reported to the committee that in 14 split cases involving individuals or public interest groups seeking access to the courts or to administrative agencies, Judge Bork voted against granting access. I am disturbed by the barriers that Judge Bork has, and I must assume would continue, to erect to individuals and groups seeking redress in the courts.

Judge Bork did have some changes before the committee, but he certainly did not explain these away.

There are a great many other things that I could talk about here today, Mr. President, but I know other Senators are waiting to be heard and I could go on for some time, because I feel very strongly about our obligation here. I take it very seriously. Next to having, God forbid, to have to vote one way or the other to declare war, I know of no more important decision that we must make.

I am satisfied that whether we agree or not, that almost all Members and maybe all Members of this body really have made this decision based on what they think is right in their own conscience, what they think is good for this country, for their State, and for the Supreme Court.

I think Judge Bork is an admirable person. As I said, I certainly regret these issues have become so personal between some Members here. Statements have been made that can be interpreted personally. I will not say that Judge Bork should not take the criticism of him personally, because I know that would be impossible.

However, I have attempted to divorce myself from the political rhetoric and come down to an analysis of what is really important to this country.

There are many fine legal jurists sitting today on various courts, some in the Ninth Circuit, that I have already recommended to the President for consideration such as Clifford Wallace and John Noonan, who should be considered, and I believe confirmed. All of us would want to scrutinize and look carefully. I have suggested Paul Laxalt of Nevada, the best friend of the President, supposedly, in the Congress, someone with whom so many of us have served here with for a long time and recognize his legal ability and certainly his position on many issues. John Rhodes, former minority leader in the House of Representatives and Congressman from the State of Arizona, just to mention a few. There is not a shortage of strong conservative people to be considered for the Supreme Court.

I urge the President to move ahead. He has 14 months or so left in his term of office. There are many big problems facing this country. He has an opportunity to enter into a meaningful arms control agreement with the Soviet Union. He has addressed, and I thank him for doing so, a willingness to work with Congress to do something about the trade deficit and the budget deficit. These are important issues. The Supreme Court nominee is important, but it is over. And it is over because the votes are not there. The process is not dead. The process is alive. It just did not happen to work out the way those who support Judge Bork would like to have had it work out.

The PRESIDING OFFICER. The Senator from Arizona has yielded the floor.

Under the unanimous-consent order previously agreed to, the Senator from New Hampshire, [Senator HUMPHREY] is recognized.

Mr. McCLURE. Mr. President, will the Senator yield for a parliamentary inquiry?

Mr. HUMPHREY. Yes.

The PRESIDING OFFICER. The Senator will state his parliamentary inquiry.

Mr. McCLURE. What is the unanimous-consent agreement under which we are now operating?

The PRESIDING OFFICER. The unanimous-consent agreement was that the Senator from Oklahoma be recognized for 10 minutes, and that has been done; the Senator from Arizona be recognized without time limit, and that has been done; that the Senator from New Hampshire would next be recognized without a time limit. He indicated he intends to speak about 30 minutes, but he is not limited on time. After that, the Senator from Ohio, [Mr. METZENBAUM] is next to be recognized without an agreed time limit.

There is no further statement or order beyond that point, I would state to the Senator from Idaho.

Mr. McCLURE. Will the Senator yield further for a unanimous-consent agreement?

Mr. HUMPHREY. Yes.

Mr. McCLURE. Mr. President, I ask unanimous consent that the Senator from Idaho be recognized following Senator METZENBAUM.

The PRESIDING OFFICER. Is there objection? Is there objection? Hearing no objection, it is so ordered.

The Senator from Idaho will be recognized following the Senator from Ohio [Senator METZENBAUM].

Mr. McCLURE. I thank the Chair and I thank the distinguished Senator from New Hampshire.

The PRESIDING OFFICER. The Senator from New Hampshire.

(Mr. BREAUX assumed the chair.)

Mr. HUMPHREY. Mr. President, the revelation by the New York Times that a witness in support of the Bork nomination was intimidated by Senate staff is very distressing; that an aide to a Senator phoned the witness and suggested that if he appeared as he planned he would be humiliated is profoundly disturbing.

The witness is said to have told his friends: "I just couldn't take the heat."

Indeed, he could not, he canceled his appointment. After flying to Washington, he canceled at the last minute.

Now, we can understand the reaction. It is perfectly human. For those who are not used to the prospect of testifying before a committee of the Congress, especially one which is being telecast live and nationwide, can be very unsettling. On top of that, to receive a call from a Senator who opposes the nomination telling you that "If you come here, you become the issue" has to be chilling.

To be told by the aide that Senators will try to make you look foolish in front of your family and your friends and your associates and your colleagues and the tens of millions, presumably, of Americans who might be watching, must be little short of terrifying.

So we can sympathize with the witness. We can understand when he says he could not take it. We regret that the committee had to do without Professor Baker's testimony because he is a professor of law and a professor of law who is black. His testimony would have been especially valuable. But we are not surprised, at least this Senator is not surprised, to learn of intimidation. After all, much of the public relations campaign against Judge Bork has been based on fear and intimidation.

Nor are we surprised to learn that the aide who intimidated a black law professor is, herself, black. Because, after all, many of the leaders of the black organizations of this country have intimidated their membership into opposing the Bork nomination by resorting to the slander that Robert Bork would return America to the days of segregation, discrimination, and all the ugliness and injustice of the days of Jim Crow.

How ironic it is that black citizens, no longer intimidated, thank goodness, no longer intimidated by the fear tactics of segregationist of an age gone by, should now be subjected, at least on a psychological level, to fear tactics from some of their own leaders. How ironic and how tragic and how unjust.

Parenthetically, I know that I will be tagged as a racist for that statement. One of the unwritten laws of contemporary politics is that you never speak ill of black organizations. And that, too, is unfortunate.

Nonetheless, according to the New York Times report the Senate aide suggested she was just trying to do Professor Baker a personal favor when she persuaded him not to testify. She suggested he was not—she suggested he was not up to the questions on constitutional issues which Senators might pose.

How perfectly preposterous. The professor is a professor of law. He is a former dean of the Howard University Law School. Are we really to believe that the Senate aide considered a law school professor and the former dean, a former dean of the Howard University Law School, a man of her own race, as incompetent to testify? Are we supposed to believe that excuse?

Her explanation is simply implausible. Whatever her intent, whatever the true explanation of this incident—and it is under investigation by the Senate Judiciary Committee and, I understand, by the Justice Department—whatever the intent, the effect was that a witness who was friendly to the nomination, a black law professor who would have been an important witness, after flying to Washington changed his mind at the last moment and decided not to testify.

It is not at all surprising, at least to this Senator, that at this juncture a chapter on scandal should be added to the continuing story of the Bork confirmation. It is not surprising that an unethical act of scandalous proportions should have arisen out of the atmosphere of fear and hysteria, deliberately created for political purposes by the Bork opponents—or I should say by many of them. There have been, of course, many Bork opponents who have been perfectly ethical. I do not mean to lump them all together. But at the same time I stand by the statement that it is not only not surprising, but only logical and fitting that an unethical act of scandalous proportions should arise out of this climate of fear and hysteria, deliberately created by those irresponsible Bork opponents.

The last 3 months within the Senate, and more importantly without—let us face it, this nomination is being decided not within the confines of the Senate or the Judiciary Committee but instead within the confines of the borders of the United States of America.

Some might say that is fine. This is a democracy. I will address that point in just a moment. It is not fine. Not in the least.

The result so far, at least, has been the perpetration of a gross and shameful injustice against the person of a fine citizen. The person of Robert Bork. What is worse, a violent savaging of the once civil and reasonably apolitical process of confirming Supreme Court Justices.

Are the words "irresponsibility" and "villainy" too strong to apply to the conduct of some of the Bork opponents? I think not. I think they perfectly characterize, for instance, the effort of a prominent Bork opponent who, at the outset, deliberately, by his own later admission, set the tone which many of the Bork opponents would follow. This public person claimed that if Robert Bork were confirmed to the Supreme Court, "Women would be forced into back-alley abortions; blacks would sit at segregated lunch counters; rough police could break down citizens' doors in midnight raids; school children could not be taught about evolution."

That was the first uttering of a person of any prominence to follow immediately upon the heels of the announcement by the White House that Robert Bork was the President's nominee.

One of the public persons who was to become a leader in the anti-Bork forces made that demagogic, irresponsible, unfair, unfounded statement which received very wide circulation. It is little wonder in the climate which followed and arose out of that kind of demagoguery, that scandal and intimidation would become a part of this process.

Who can be surprised, then, that a made in Hollywood television ad featuring a famous Hollywood actor played a pivotal part in the smear of Judge Bork? Who can be surprised that in this climate a Senate aide committed, at the least, at the least, a serious impropriety in persuading a black witness to cancel his appearance before the Judiciary Committee? Who can be surprised that another black witness, supporting the nomination, former Deputy Solicitor General Jewel La Fontant, was told of third-party threats to institute a boycott against a cosmetics company on whose board she serves?

To her great credit, Mr. President, Miss LaFontant chose to testify, notwithstanding the threats and the pressure. Even though she said recently she took those threats seriously.

Fortunately there have been notably lofty points in this debate as well.

There have been times when witnesses with no political axes to grind, when witnesses with unimpeachable credibility, broke through the anti-Bork hysteria. One such witness was retired Chief Justice Warren Burger.

Prior to the hearings, at this summer's American Bar Association convention, Justice Burger said, with respect to the Bork nomination:

> I do not think in more than 50 years since I was in law school there has ever been a nomination of a man or woman any better qualified than Judge Bork.

Is Warren Burger the kind of man who would make an unfounded statement of that kind in that magnitude? Surely not.

Is Warren Burger a partisan politician? Surely not.

Is Warren Burger bucking for some higher honor in the legal profession? Surely not. He has gathered all the laurels, won all the honors which any man or woman can gather in the profession of the law. And he said he did not think in the more than 50 years since he was in law school there has ever been a nomination of a man or woman better qualified than Judge Bork.

I would like to see a Senator rise and explain away this accolade, coming from someone of unimpeachable credibility.

Is Warren Burger an ideologue, a racist, extremist, sexist, any of these nasty things that some of the opponents have thrown at Judge Bork? Of course not.

That is a profound statement. It ought to have profound significance. I hope that before this debate is over, it will.

When he came before the Judiciary Committee, Justice Burger said this of Judge Bork: "He is well, very well, qualified." He did not attach any conditions to that statement. He said, "He is well, very well, qualified."

Regarding the charge that Judge Bork is outside the mainstream of American jurisprudence, Chief Justice Burger told the committee, "If Judge Bork is not in the mainstream, neither am I, and neither have I been."

To this Senator, at least, that kind of testimony, coming from an unimpeachable witness, a witness of unimpeachable credibility, and clearly with no axes to grind, has far more weight than the clamoring of a group of special interest groups with their selfish agenda screaming for Judge Bork's scalp. I suggest to Senators that, likewise, that kind of testimony ought to have great weight.

We had over 100 witnesses. The chairman and members of the committee were diligent and hardworking in accommodating that many witnesses. There is no question about that. Over 100 witnesses.

But only with respect to a small handful could the statement be made that these were witnesses with no axes to grind. Only a few stood out as unimpeachable in their credibility. One of those, of course, was recently retired Chief Justice Warren Burger.

He said, "If Judge Bork is not in the mainstream, then neither am I and neither have I been."

Regarding the charge that Judge Bork is an extremist, Chief Justice Burger said, "It would astonish me to think that he is an extremist any more than I am an extremist."

Replying to the question Robert Bork someone whom black citizens and other minorities need fear, Chief Justice Burger said, "If they need fear him, they should have been fearful of me. I can see nothing in his record that would suggest that or support that."

Regarding the campaign conducted against Judge Bork, Chief Justice Burger said, "I do not think there has ever been one with more hype and more disinformation on a nominee than I have observed in recent days."

The proponents have accused the opponents of disinformation, and vice versa. There has been a lot of disinformation, unfortunately. Even Chief Justice Burger felt compelled to speak out against it. He said:

> I do not think there has ever been one with more hype and more disinformation on a nominee than I have observed in recent days.

Mr. President, compare Chief Justice Burger's words with those of the public person whom I cited a moment ago who claimed that Bork would force blacks to sit at segregated counters and that police would be beating down their doors. If you were jurors, to whose words would you give greater weight, the words of a retired Supreme Court Chief Justice, a man who has no political axes to grind, or the demogoguery of a public person, the man I quoted?

If you were jurists, whose words would have greater weight with you?

The answer is obvious. It is equally obvious that, in fact, we are jurors of a sort. We are jurors of an important sort, of a historical sort.

The question we are to decide is no longer whether Robert Bork should be confirmed. That question was answered by those witnesses whose testimony stands out from the rest because of its self-evident and unimpeachable objectivity.

They are Chief Justice Warren Burger, Carter administration Attorney General Bell, White House adviser Lloyd Cutler, to name a few. Of course Robert Bork is well qualified. Of course he ought to be confirmed.

The real question is, the historical question is, whether the Senate will abide the vicious, dishonest tactics used by many of the opponents of the nomination. The question is whether Senators will abide the raw politicizing of a process which above all others we must protect from politics, even at the expense of our political fortunes, may I say.

That is easier for a Senator from New Hampshire to say. I will get to that point in a moment. But even at the expense of political fortunes of Senators must we protect this process above all others from politics, this process by which we confirm or do not confirm a Supreme Court Justice.

The real question is, the historic question is, whether the Senate will stand up to the political pressures brought to bear by those who have politicized this nomination.

Mr. President, I am going to wade even deeper into more controversial waters because some things need to be said.

Mr. President, there are groups in this country who think they own Senators. Let me illustrate the point.

I note that shortly after the nomination was made, an official of the NAACP in a large Northeastern State had the gall to assert that she had one of that State's U.S. Senators in her pocket. A column by Mark Shields printed in July related that this NAACP official introduced the Senator to an NAACP convention as someone who would certainly vote against the nomination of Judge Bork.

When later she learned, to her evident annoyance, that the Senator would not say at that point how he might vote, this NAACP official responded, "I have the votes to defeat him. When I get together with his staff I will get what I want. It is strictly politics."

Mr. President, we can certainly understand the anger of the Senator, the displeasure of the Senator, the mortification of the Senator, when he later heard about that statement. But the fact remains, many of these groups—and I am not talking only about black groups—many of these groups expect Senators to knuckle under or else.

The question is, the historic question facing us, whether the Senate will bow to that kind of pressure and knuckle under.

By the testimony of the most credible witnesses, the witnesses of the most unimpeachable objectivity, Robert Bork has passed his test. The question is, will the Senate pass its test?

On this point, the senior Senator from Oregon recently made a landmark speech in this Chamber, a speech of historic importance. To this Senator, it is one of the best speeches in the whole debate within the Senate and without. I hope that Senators who were not able to hear the speech will read it in the CONGRESSIONAL RECORD of October 7, beginning on page 26877. Those who read it I guarantee will be very impressed.

I do not agree with all of the opinions expressed in that speech, but it was an extraordinary clear speech. It was incisive, it was powerfully analytical and, above all else, it was intellectually honest.

That is certainly not surprising to anyone because Senator HATFIELD is richly blessed with intellectual honesty and courage. So we are not surprised in the least what valuable commodities are those in this debate, intellectual honesty and courage.

Given the political pressures which Senators are under, the Senator from Oregon terms himself a liberal. As a conservative I would certainly acknowledge the accuracy of that self-designated label. He is a liberal. He says he is a liberal. I am disposed to believe it.

That makes his support of Judge Bork that much more credible.

About the nature of the campaign waged against Judge Bork these 3 months, he said,

> But never before have we seen the type of political viciousness which is unique to the television age threaten the independence and integrity of the judiciary. It has transformed a good man into an evil symbol.

The words of Senator HATFIELD.

Speaking of Bork's opponents, the Senator said:

> If you listen to the logic of his detractors, he must have been a danger to the Republic in 1982.
>
> Where were they then? We had the same documents, the same opinions—the same writings. There is no escape from the change: This Senate was either asleep at the wheel and therefore derelict in its duty or there is something very wrong with what is occurring right now. Something very, very wrong.

And he is in that passage of course referring to the fact that in 1982 this body by unanimous vote confirmed Robert Bork to the D.C. Circuit Court of Appeals, the second most important court in this country. And indeed he is right, or almost right. We had almost all of the same writings available in 1982 as are available now. We had almost all of the same speeches. And if those documents and speeches constitute an indictment against this man, they constituted an indictment in 1982.

Then listen to these next words. They are both wise and powerful. The Senator from Oregon said:

> This nomination debate has been described as a lynching. That imagery should serve as a reminder to all of us. For it is at moments such as this when we should remember that the independence and integrity of this Nation's judiciary is sometimes all we have to protect us from popular hysteria and the tyranny it feeds when there are no cool heads left.

Listen to this especially because it so fits the situation:

> When we politicians cower in fear of an arrogant majority or a potent minority, we had better hope that there are people seated on the bench who are willing to accept the accusation that they are "narrowly legalistic"—as Judge Bork has been accused.

And then Senator HATFIELD concluded:

> If I thought for a moment that this man was capable or likely or disposed to turn back the clock on civil rights, on antidiscrimination laws, on privacy—on any form of civil liberty—I would be leading the opposition on this floor today. But that is not the case and I think most of us know that is not the case. With all of the legitimate concerns one may have—and there have been many voices of reason opposing Judge Bork struggling to be heard above the catcalls—there is no question in my mind we will live to regret the powers which this body seems intent on pursuing.

"When we politicians cower in fear of an arrogant majority or a potent minority, we had better hope that there are people seated on the bench who are willing to accept the accusation that they are narrowly legalistic." And that, I suggest—my words—is precisely the situation in which we find ourselves, politicians facing in this case potent minorities and in some cases politicians cowering in fear of that situation.

Mr. President, is there another Senator in this body more highly regarded for this sense of fairness and his intellectual honesty than Senator HATFIELD? He is in many ways the conscience of the Senate. He is sometimes a troubling conscience, sometimes a real pain, when his principled positions reproach us, but we can always depend upon Senator HATFIELD for fairness, intellectual honesty, and courage. That is why I believe that his words carry so much weight in this debate. That is why I sought his permission to quote extensively these passages. His words bear repeating and rereading in this debate.

Mr. President, the partisan tactics employed by many of the Bork opponents ought to frighten every American. The damage wrought against the once civil and objective confirmation process is incalculable. The viciousness of the anti-Bork campaign will have a chilling effect on talented young men and women who are the potential Supreme Court nominees of the future. We may be sure that they will be extraordinarily circumspect in their writings and their speeches henceforth. They will speculate publicly about Court decisions with the greatest care, if indeed they speculate publicly at all. What is worse, the best of them may be 20 or 30 years down the road, unwilling at all to be considered for nomination, not wanting to subject themselves and their families to the kind of lynch-mob tactics employed by many of the Bork opponents.

With so much at stake before we vote, with the greatest respect, and for the most part affection in the long run, the affection I have for Senators, though like all Senators I sometimes grow impatient with certain of my colleagues, but nonetheless with the greatest respect I urge Senators to review once again not just the committee report, which, frankly, I have to grant is propaganda—it is really a hatchet job—not only the committee report but the transcript, the unedited transcript.

I cited earlier the unimpeachable remarks of Chief Justice Warren Burger in support of Robert Bork. Surely Senators will find the testimony of Lloyd Cutler of unquestioned credibility. Lloyd Cutler has had a long struggle to advance the civil rights movement. Mr. Cutler served as While House counsel to President Carter, and by his own description, he is a liberal Democrat. Surely he is not a man who would beat the drum for Republican initiatives or Republican candidates or nominees and yet he testified in support of confirmation.

He said:

> Based on my reading of this written record—

And here he was referring to Judge Bork's record as Solicitor General and appeals court judge——

> Based on my reading of this written record, and on 20 years of personal knowledge of Judge Bork, I have appraised him as a highly qualified judge, a conservative jurist who is closer to the moderate center than the extreme right.

Lloyd Cutler, a liberal Democrat, a man long active in advancing civil rights, President Carter's White House counsel, says Judge Bork is highly qualified. He says Judge Bork is closer to the moderate center.

He said:

> I would be prepared to bet that if Judge Bork is confirmed the journalists and the academics of 1992, 5 years from now, who follow the Court will rank his opinions as nearer the center than the extreme right, nearer to the center than some of the other sitting judges on the Court whom you have confirmed, and fairly close to those of the very distinguished Justice whose seat he would fill.

Mr. President, compare that testimony of unimpeachable, unchallengeable credibility, of Lloyd Cutler, with the claptrap about the rogue police beating down our doors in the middle of the night. Compare that with the effort to incite fear, successful, I am sorry to say, among black citizens, a red-hot rhetoric about blacks having to sit at segregated luncheon counters if Robert Bork is confirmed.

Does anyone believe that Lloyd Cutler would support a man who is a threat to the rights of citizens? Of course not. Are Senators going to dismiss his testimony in favor of pressure groups with their own agendas? In favor of the academic community which nowadays is so reduced in intellectual diversity that a book, "The Closing of The American Mind," which is critical of the narrow-mindedness of academia, has become a bestseller?

Much has been made, and 40 percent of the teaching law professors signed a letter in opposition to Judge Bork. That in this day and age could be read as a commendation. There is no breed, no practitioners of a profession who are more political than lawyers. If there is a class who are even more political than lawyers, it is law professors. Those who are familiar with the working of Roth and Lichter 2 or 3 years ago know that academia today is almost monolithically political and that applies to the law schools perhaps even more than academia in general.

So why should we be surprised that so many law professors opposed Judge Bork? I take it as a commendation.

Does anyone question the commitment to civil rights and equality of former attorney Gen. Griffin Bell? Certainly not. Does anyone suspect

Griffin Bell of harboring support of the Republican agenda? Certainly not, he served in President Carter's Cabinet and is a Democrat. He is, as far as I know, a life-long Democrat. He is certainly a confirmed Democrat. Does anyone believe Griffin Bell is careless about the quality of American jurisprudence, as a man who has devoted his lifetime to the profession of the law? Surely not. Surely he cannot be accused of that.

Here is what Attorney General Griffin Bell said about Robert Bork:

> I think he is a conservative, but he is principled, he is rational, and I think that he would not wear anyone's collar. I doubt President Reagan knows what he would do, and I like that. I like to see a man on the Court who is going to be his own judge, be his own man, and I think that is the way it is going to turn out * * * so I think that he is in the mainstream myself—

Said Griffin Bell—

> on the conservative side. If I thought he was going to turn back the clock—

And here this is the famous phrase which has incited so much fear in the black citizens, amongst black citizens—

> I would not support it.

Mr. President, does anyone think that Griffin Bell would support an ideolog? Certainly not. Are Senators going to dismiss Griffin Bell's testimony in favor of pressure groups and the academic community nowadays dominated so heavily by the far left?

I am glad to say, Mr. President, that while most black organizations oppose Judge Bork unreasonably and unfortunately, nonetheless the committee heard testimony from Roy Innis, a distinguished black American who is chairman of the Congress on Racial Equality. Mr. Innis had this to say:

> I support the nomination of Robert Bork * * * because I believe that he will apply the law in a fair and evenhanded way. His record as Solicitor General and as a Federal appellate judge attest that Justice Bork would vigorously enforce the civil rights laws on our statutes, books, and the Constitution. I also believe—

Roy Innis said—

> Judge Bork's presence on the Supreme Court can contribute mightily to the efforts to confront and mitigate one of the most pressing problems facing black America and today—urban crime.

Mr. President, does anyone question Roy Innis' devotion to the cause of civil rights? Of course not. Does anyone suggest that Roy Innis is a racist? Of course not. An extremist, outside the mainstream, a sexist, any of these other nasty labels that have been thrown at Robert Bork? Of course not.

Then why did Mr. Innis appear as a witness for Robert Bork? Here is what he said. He said:

> I believe quite frankly he—

Bork—

> has become the victim of a rigid and selectively unforgiving civil rights movement orthodoxy to whom the results desired have become more important than the fair and impartial application of the law.

There you have it, Mr. President, from one of America's most distinguished black citizens. He put his finger right on it, I believe, with respect to the almost monolithic opposition of groups which purport to speak for black citizens when he said with regard to Bork that—

> I believe quite frankly he has become the victim of a rigid and selectively unforgiving civil rights movement orthodoxy to whom the results desired have become more important than the fair and impartial application of the law.

In other words, he is saying that Bork has become the victim of an unforgiving movement to whom results are more important than the process. That really goes to the heart of the debate.

Those who like activist judges, subjective judges, are more concerned about results than they are about preserving the process, the integrity, and the independence of the judiciary, and the legitimate powers of the legislature, may I say.

I would like to hear a Senator stand and rebut, effectively rebut, the testimony of Warren Burger, Lloyd Cutler, Griffin Bell, Roy Innis, four of the most credible witnesses, in the opinion of this Senator, among the 100-plus who appeared before the committee.

Mr. President, I will say it again: Robert Bork has passed his test. He passed it during the 4 years he served as Solicitor General of the United States during which time he argued for extending the application of civil rights laws in 17 out of the 19 cases of that kind he argued before the Supreme Court; 17 out of 19. His opponents cavalierly and truly cruelly dismiss Robert Bork's record as Solicitor General, and appellate court judge, dismiss it; say it is irrelevant, with one exception. Of course, they are perfectly willing to have another long and hard look at the Cox affair, the dismissal of Archibald Cox. That is relevant, that one element, plucked from 5 years' service or 4 years' service as Solicitor General. That is relevant. That is fair game. But the rest is all irrelevant, they tell us. Do not consider it.

They falsely claim that the Solicitor General simply follows instructions from his superiors and that an appellate court judge simply follows the precedents of the Supreme Court. If that were so, we would not need circuit court judges. We could do it with computers. All they would have to do, the clerk could type in the facts of the case and the computer would consult Supreme Court precedents, and the result would be spit out. Think how much money we could save and how much time. But of course that is not true. Cases on appeal to the appellate courts do not fit nicely into preexisting Supreme Court pigeonholes called precedents, not at all.

You can tell a great deal, and indeed you can forecast pretty accurately the future conduct of a Supreme Court Justice based on his record in this case, extensive record, as an appellate court judge on the second most important appeals court in this country.

Bork's opponents tell us to dismiss the most comprehensive, the most concrete, the most revealing possible evidence available of how Robert Bork would approach his responsibilities on the Supreme Court.

How is that for cynicism? The Bork opponents want us to throw out the most objective evidence by which Judge Bork's conduct as a Justice might be estimated. It just shows again how completely unprincipled is much of the opposition to this nomination.

In 1982, the Senate unanimously confirmed Robert Bork as a judge of the D.C. Circuit Court of Appeals. In the ensuing years, Robert Bork has served with truly remarkable distinction. His decisions were in the mainstream on that court, and that says a great deal when you consider that some very liberal judges sit on that bench.

Judge Bork voted with Judge Wright in 75 percent of the cases in which they both participated. He voted with Judge Wald, a liberal judge, in 76 percent of the cases. He voted with Judge Edwards in 80 percent of the cases. Judge Bork voted with Abner Mikva, the liberal's liberal, in 82 percent of the cases in which they both participated. Judge Bork voted with Judge Ginsburg in 91 percent of the cases.

Does that sound like the record of an ideolog, a man who is outside the mainstream? It certainly does not.

In the 10 cases in which Judge Bork sat which involved substantive civil rights claims, he sided with the minority person or woman or older citizen 7 of the 10 times. In the three cases where he ruled against the plaintiff, Judge Bork was upheld by the Supreme Court in two of those cases.

Overall, Judge Bork has joined in over 400 opinions, of which he wrote 125, and not 1, as is now well known, was ever overturned—not 1. Never overturned by the Supreme Court. Does that sound like the record of an extremist, the record of an ideolog, the record of a man outside the judicial mainstream and whose conduct cannot be trusted?

Let me rebut the charge which the opponents always raise at this point. They say, yes, he is industrious and has participated in a lot of opinions. Yes, none of his opinions in which he has joined has ever been overruled, so far, with one exception, one case pending on appeal, not yet decided. The opponents say, yes, he has never been overturned in any of the decisions he has joined, but none of the decisions which he wrote has ever been taken under appeal by the Supreme Court, with the one exception that has not been decided.

Two points with regard to this fallacious discounting of the important fact that Judge Bork has never been overturned by the Supreme Court, notwithstanding the prolific number of opinions.

First, if Bork were the ideolog painted by his opponents, the Supreme Court, believe me, would have found plenty of cases among the more than 125 that he, himself, wrote that were worthy of review. But it did not find among those 125 any that were worthy of review, except 1, and that is pending.

The paucity of losing parties who felt a Bork decision worth appealing and the refusal of the Supreme Court to review Bork's opinions, save the one pending, it an impressive commentary on the soundness of Judge Bork's reasoning.

The second point: In fact, the Court has reviewed three opinions which Bork clearly wrote himself. These were opinions in which he formed the minority opinion by himself. These were three-judge panels. A majority was two and a minority was one, and obviously he wrote the dissenting opinion. The Court has reviewed three of those dissenting opinions, those minor opinions which he wrote, unquestionably. How did the Supreme Court rule in those three dissenting cases? It concurred in Bork's decision in all three.

So there are three that he wrote—uphill opinions, if you will, in that they stood against the majority—and the Court upheld him three out of three. That is pretty impressive.

Mr. President, clearly, the Senate was right in confirming Robert Bork to the second most important court in the land. So, why the change in opinion 5 years later by Senators who were here in 1982 and who voted for Judge Bork?

Clearly, all of Bork's writings and speeches were available to us, as I pointed out in my opening remarks before the Judiciary Committee hearings. The same material which Senators now say constitutes evidence of unfitness was available to us in 1982. Were Senators irresponsible in 1982? Did they confirm an ideologue to a court which is the second in importance only to the Supreme Court? Did they confirm a racist, a sexist, an enemy of civil rights? Of course not.

Then, why the change in opinion? We know the reason: pressure group politics. Some Senators are prepared to repudiate not only Robert Bork; some Senators are prepared to repudiate their vote in 1982. Indeed, some Senators are prepared to repudiate themselves, so worried are they about politics.

Senators were impressed by Robert Bork in 1982. They should be more impressed by Robert Bork in 1987, because his record is now even more impressive than it was 5 years ago. Any fair examination of his record as Solicitor General and as appeals court has to impress.

Unfortunately, the leaders of outside groups demanding that we string up Robert Bork are not prepared to be impressed, because they are not prepared to be fair. They have one object, and that is an activist Supreme Court with subjective judges who will do their bidding, just as they would have us do their bidding—or else.

Most black organizations want an activist Supreme Court with subjective judges, as do most women's organizations. I want to make clear that I do not believe these self-appointed black organizations represent all blacks, that these self-appointed women's organizations represent all women, or that these self-appointed homosexual rights organizations represent all homosexuals. I am not suggesting that these are monolithic blocks of citizens, not at all. But the ones that make the noise want an activist Supreme Court with subjective judges.

The question is, Will the Senate knuckle under and give them what they want? It is ironic, because citizens most threatened by subjective judges, judges who read into their opinions their own values and their own prejudices, are the greatest threat to minority citizens. Does anyone need proof? Just look at some of the most discredited Supreme Court decisions down through history.

The Supreme Court, despite its lofty reputation—because it is made up of human beings, as is the Senate—has made some supremely bad, unspeakably bad, decisions on those occasions when Justices chose to play the role of legislator and policymaker instead of judge.

The most famous example, of course, and the most unfortunate and tragic of all, is the Dred Scott decision of 1857. In Dred Scott versus Sanford, the Court rules that laws passed by Congress regulating and outlawing slavery in the Western Territories were unconstitutional. The Supreme Court took away from Congress the authority to regulate or to abolish human slavery in the territories.

Even worse, if that is possible—and it is possible; they outdid themselves—the majority claimed that black human beings are an inferior race, and even if free, can never become citizens of the United States. If ever there was a racist Court decision, that was it. If ever there was a subjective decision, that was it. If ever there was a decision not grounded in the Constitution, that was it.

If ever there was a decision that arose out of the personal values and prejudices of judges that was it.

Dred Scott perpetuated human slavery for another 10 years and certified the racist notion that blacks were legitimately objects of property and not worthy or entitled to citizenship. It took a Civil War and an amendment to the Constitution to undo the injustice before this body. Any fair examination of his record as Solicitor General and appeals court judge has to impress. Unfortunately, the leaders of the outside groups demanding we string up Robert Bork are not prepared to be impressed, because they are not prepared to be fair. They have one object, and that is an activist Supreme Court with subjective judges. Most black organizations want an activist Supreme Court with subjective judges. Most womens' organizations want an activist Supreme Court with subjective judges. Most homosexual groups want an activist Supreme Court with subjective judges. The question is, Will the Senate knuckle under and give them what they want?

It's ironic, because the citizens most threatened by subjective judges, judges who insert their own values—and prejudices—into their court opinions are minority citizens. Does anyone need proof? Just look at some of the most discredited Supreme Court decisions wrought by the Supreme Court in the Dred Scott decision. It took a bloody Civil War, in which hundreds of thousands died and many thousands more suffered, with decades more of suffering by black and white citizens alike, to undo Dred Scott.

On what basis did the majority reach their decision in Dred Scott? Justice Curtis, one of the dissenters, bless his soul, in his lengthy dissent, essentially accused the majority of making up their ruling out of thin air. The majority opinion was a subjective judgment. The majority wanted a particular result, given their own set of values, or prejudices, and they sacrificed the process and a lot more to get it. To result-oriented judges, judging is simply an extension of legislating. But where legislators can be held accountable, and that is what Senators are worried about, many of them, in this Bork matter, being unfairly held accountable, where legislators can be held accountable for their sins, judges appointed for life cannot. That is the danger of judges who cannot restrain themselves to leave out of their opinions their own values and prejudices.

Blacks and other minorities would be wise today to remember the bitter tragedies they have suffered at the hands of subjective judges.

Take another, one more case. Take Lochner, for another example of Justices acting as legislators. In the 1905, Lochner versus New York decision, the Supreme Court overturned a New York law designed to correct some of the worst abuses perpetrated against working men and women. The law limited the workday to 10 hours. We could do well with a law of that kind around here, I might say. Ten hours would be a pleasant relief from the 12- and 14- and 16-hour days we have.

But to get back to history, this law which was struck down by Lochner limited the workday to 10 hours and the workweek to 60 hours. For its reasoning, the Court invented a new doctrine, that of substantive due process, which was used not only to strike down Lochner but ultimately over the next 30 years, a host of State and Federal laws that protected workers from sweatshops, eliminated child labor, and reduced workplace hazards. In other words the Court got itself wholesale into the making of policy, usurping the role of the legislatures. President Franklin Roosevelt criticized the Court severely. He said, "The Court has been acting not as a judicial body, but as a policymaking body." Continuing, he said:

> The court * * * has improperly set itself up as a third house of Congress—a superlegislature, as one of the Justices has called it—reading into the Constitution words and implications which are not there and which were never intended to be there.

Should not blacks and others who have a special reverence for President Franklin Roosevelt share his concern about judges who read into the Constitution words and implications which are not there? I think they should. Should not minority citizens be concerned about judges who cannot restrain themselves from interjecting their own values—including prejudices—into their court decisions? The answer is obvious. Should not minority citizens support a judge who embraces, indeed practices, judicial restraint? Of course, they really should. Judges who cannot practice judicial restraint are a danger to citizens and especially minority citizens, as we have learned at such great cost whenever the Supreme Court has gone beyond interpreting the law to making the law.

If subjective judges playing legislator have been a danger to minority citizens down through the years, what kind of Justices should we seek? We should seek Justices who practice the time-honored doctrine of judicial restraint. That means that the Justices should base their decision, first of all, on the clear, plain meaning of the Constitution and then upon the most objective possible reading of the intent of the framers and the amenders and the ratifiers of the provisions of the Constitution. Justices should apply the Constitution to contemporary cases which they could never have envisioned, of course, by applying the clear meaning and intent and by applying inferences reasonably drawn from the intent. But where there is doubt about the intent and the meaning, matters should be left to the democratically elected legislatures. That is what judicial restrain is about. That is what the separation of powers is about. That is what accountability to the people is about. It is the difference between subjective judges and objective judges. It is the difference between the rule of law—the protection of the law—and the rule of princes wrapped in judicial robes. Princes can indulge themselves and their fancies. Judges must not. If you like the indulgences of judicial princes today, you might not like them tomorrow. Indeed, they may well be at your expense. Historians know too well the damage wrought when judges indulge themselves, but minority citizens unfortunately seem to have forgotten. They want subjective judges. The question is, will the Senate knuckle under to the acknowledged political power of minorities and the pressure politics they have engaged in with respect to this nomination?

I have wondered how to change some minds. We need only a few changes of mind to change history. We need only a few to turn the Senate from commiting a grave injustice. We need only a few to prevent fearmongering and distortion, and the political pressure they engender, from becoming the norm in the debate over Supreme Court nominations. We need only a few as the Marine Corps slogan says, a few good men and women, to make this come out honorably instead of dishonorably.

Respected persons of unquestioned credibility, such as Chief Justice Burger and Lloyd Cutler and Griffin Bell, and Roy Ennis, of the Congress on Racial Equality have laid out the facts. We need a few more Senators who will act on the facts. We need a few more who will stand up to pressure groups and pressure tactics.

We all know Senators are under pressure, some more than others.

I wish I could take on part of the burden that some Senators face given the demographics of their States. Senators from States with large numbers of black citizens are under enormous pressure and that is because in terms of numbers of citizens who are disposed to be influenced in future elections by Senators' votes on Robert Bork. I really think it is fair to say that the greatest number of such citizens are black citizens and that is a pity because I think that black citizens have been badly served in this debate by the national groups which purport to speak for them but the fact is that such groups have frightened many black citizens, not all of course, but many with the propaganda about turning back the clock on civil rights.

We also know by recent revelation that this tactic of scaring blacks was chosen after conducting some political polling and consulting the results. Some cynic said, "Ah, look at those numbers. The best way to succeed in beating Robert Bork is to scare the daylights out of the black citizens." And they did. They told black America that Robert Bork is a racist and that he will turn back the clock on civil rights.

We know, nonetheless, that eminent Americans, black and white alike, respected Americans, Americans who have long fought for civil rights, such Americans have dismissed that propaganda as a smear, a smear that it is. But the fact is that so many black citizens have been frightened, the fear tactics worked. The poll was right. And Senators are worried about the black vote.

It goes without saying that there is more at stake here than transient public opinion polls. There is more at stake than the political fortunes of Senators. And it is easy for the Senator from New Hampshire to say that, I recognize it. But there is more at stake than our political fortunes. What is at stake is principle. What is at stake is justice. What is at stake is the integrity and the honesty of the process by which we confirm for life Justices to the Supreme Court.

The Constitution does not intend that Supreme Corut Justices incorporate the latest opinion polls into their Court decisions. Heaven forbid it should ever get that bad. And Senators know that the Constitution does not intend for Senators in their confirmation of Supreme Court Justices to substitute the latest public opinion poll for their judgments. To do so would undermine the confidence not only in this body—if there is any confidence left—but more importantly would undermine the confidence in American justice by making the Supreme Court just another political prize to the hauled off into the camp of whichever faction has succeeded in intimidating the most Senators.

That is what is going on. Not only intimidation of the witness, and perhaps witnesses, but wholesale intimidation of Senators. That is what is going on.

As the official of the NAACP to whom I referred earlier in my remarks said, "It is just policies. Don't worry. These Senators will do what we want."

Well, friends, shall we consent to be intimidated now and certainly in future nominations on an increasing frequent scale? Shall we consent to be reduced to mere electors? Shall the confirmation of Supreme Court Justices be reduced to a mere electoral college, taking instructions for the latest public opinion poll? George Will, the eminent columnist, in a recent piece expressed that concern well. And it is a concern well taken. Will wrote that some are "pioneering a new wrinkle the framers neglected to provide—popular elections of Supreme Court Justices."

It might be well for each of us to refresh our minds as to why Senators have 6-year terms instead of 2-year terms like Members of the House. I want to read a couple quick passages from the Federalist Papers Nos. 62 and 63, which were written by Madison or Hamilton, depending upon which expert you consult, with respect to the terms and the purpose of the relatively long terms which Senators enjoy.

Federalist No. 62:

> The necessity of a Senate is not less indicated by the propensity of all single and numerous assemblies to yield to the impulse of sudden and violent passions, and to be seduced by factious leaders.

We have heard from factious leaders, have we not? Are we going to be seduced by them?—

> and to be seduced by factious leaders into intemperate and pernicious resolutions.

Or confirmation of Justices—

> All that need be remarked is that a body which is to correct this infirmity

That is the propensity to yield to the impulse of sudden and violent passions—

> which is to correct this infirmity ought itself to be free from it, and consequently ought to be less numerous. It

Being the Senate—

> ought, moreover, to possess great firmness, and consequently ought to hold its authority by a tenure of considerable duration.

That is why we have 6-year terms, to give us some isolation in the scheme of things from popular sentiment, from sudden and violent passions, as Madison put it.

And then from Federalist No. 63. This is even better because this really describes what is going on in 1987, although this is 200 years old.

> So there are particular moments in public affairs when the people, stimulated by some irregular passion, or some illicit advantage, or misled by the artful misrepresentations of interested men, may call for measures which they themselves will afterwards be the most ready to lament and condemn. In these critical moments, how salutary will be the interference of some temperate and respectable body of citizens,

That is supposed to be us—

> in order to check the misguided career and to suspend the blow medicated by the people against themselves, until reason, justice, and truth can regain their authority over the public mind?

That is why we have 6-year terms. Shall we be mere electors. Shall we be reduced by our own fear to mere electors? Shall this campaign of intimidation against Senators by organized groups succeed in reducing Senators to mere electors and this body to a mere electoral college responding to the latest public passion and the latest public opinion poll? That is the question before this body.

Mr. President, I say with the greatest possible sincerity and affection toward my colleagues that we who support this nomination wish that we could take some of the burden from those of our brethren who are under such great pressure. We sympathize with them. We understand their situation. But we cannot take the burden from them. We can only pray—we can only pray—that they might have the peace and the courage to resist the pressure; that they might resist the pressure to commit an injustice against a fine man; that they might resist the pressure to sacrifice the confirmation process to political expediency.

Earlier, I alluded to the speech by Senator HATFIELD. It contained a quote from the columnist David Broder about the kind of inappropriate tactics that have been used in the Bork debate and the importance of insulating the judiciary from politics. And that quote by David Broder bears repeating. He said, "I have seen enough politics in my life to have lost my squeamishness." It is true we lose our squeamishness and our innocence and idealism. That is unfortunate.

> I have seen enough politics in my life to have lost my squeamishness. But watching these tactics applied to judges is scary. It should send shivers down the spine of anyone who understands the role of the judiciary in our society.

Mr. President, I will say this finally. Senators have it in their power to do right. They have it in their power to resist political tactics inappropriate to the confirmation of Supreme Court Justices. They have it in their power to prevent the Supreme Court from becoming just another political spoils to fight over. They have it in their power to rescue a fine man from a cruel injustice. For Senators to exercise that power would be the finest and most long-lasting celebration of the 200th anniversary of our Constitution.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. ROCKEFELLER). The majority leader.

Mr. BYRD. Mr. President, the Senate will continue in session, at least until 10 o'clock this evening and I will be around. If Senators wish to speak longer, I can sit in the chair or I can stay on the floor.

I would suggest that those Senators who want to speak in opposition or in support of, be prepared to stay in that late or later.

I also should say that I hoped the Senate would vote today on the nomination but I have been unable to find anyone to discuss that with the final hour for voting. I can only assume that we will be still on the nomination tomorrow but I have alerted all Senators on this side to be here tomorrow, be prepared to vote tomorrow. I would suggest that those who are supporting the nominaton prepare to provide the speakers beginning at 8 o'clock tomorrow morning. Also, I will have a live quorum call, and see who is here.

So, I am saying now I will not have the live rollcall on getting the Sergeant at Arms to request the attendance of absent Senators at 8 o'clock tomorrow morning if those who support the nomination are prepared to speak at that hour. I hope that the leadership on the other side and I can talk and have some understanding as to what time on tomorrow the Senate can vote on this nomination. I do not see the necessity of going beyond tomorrow to vote.

Several Senators have spoken. I think there have been good debates. I believe that as of this moment those in support of the nomination have been about 13 in number or some such, and have utilized as of this moment something like 559 minutes. Those opposed have been 9 in number and as of this moment they have used 404 minutes.

So we have not had any quorum calls and both sides have produced speakers so there has not been any spinning of wheels with respect to lost time on quorums. But I think there does come a time when we need to have some knowledge as to when this debate is going to run its course and when the Senate will be able to vote on this nomination and then go on to other business. The other business, the first item of other business will be catastrophic illness.

I ask unanimous consent that following Mr. MCCLURE, Senators KENNEDY and NUNN be recognized.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, I thank the Chair and I thank all Senators.

JUDGE BORK

The PRESIDING OFFICER. Under the previous order, the Senator from Ohio is recognized.

Mr. METZENBAUM. Mr. President, I would like to ask the Senator from New Hampshire just one question. I intend to respond to his remarks.

When you opened your remarks you indicated, if I picked up your language, about Professor Baker receiving a call from the Senator. Was that your intent?

Mr. HUMPHREY. I hope, truly, I did not say that. Certainly it was not my intent. I never even thought it. I believe I said an aide from the Senator.

Mr. METZENBAUM. I know that you were talking about the aide to the Senator, and I will respond on that subject, but I want to make the record unequivocally clear the Senator called no prospective witness.

Mr. HUMPHREY. I do not believe I said it. If I did it was the worst slip of the tongue perhaps ever to come from this mouth. If I did say it I want to clear up the record. I do not think I did say it but just to err on the conservative side, if you will, I certainly did not mean to say it if I did, nor did I even think it. It was an aide to the Senator.

Mr. METZENBAUM. No problem. I thank the Senator from New Hampshire.

Mr. President, we have just heard a very lengthy presentation by the Senator from New Hampshire, and I think it was the 24th presentation made by a Member of this body in connection with the Bork nomination. I believe that I am the 25th to take the floor.

I must say that the comments of the Senator from New Hampshire were, indeed, sort of sad. They were distressing. They were disheartening. They were acrimonious.

I believe that they injected into the debate an element that has not been in the debate for the first 23 Members who have taken the floor and I am sorry that the Senator from New Hampshire saw fit to take that tack because I believe that Judge Bork's confirmation deserves more than that kind of invective.

I was sitting, listening to the Senator from New Hampshire and I heard such words as: "intimidation," "slander," "fear tactics," "scandalous and unethical conduct" "hysteria," "gross and shameful injustice," "vile savaging," "villainy," "demagogic," "smear," and "serious impropriety" and "viciously dishonest tactics." Then I heard him talk about groups who think that they own Senators and he went on to mention the NAACP. I do not think that that is what this debate is all about and I intend to discuss the substance of the issue with reference to the matter of whether or not Judge Bork should or should not be confirmed. But by reason of the presentation of the Senator from New Hampshire, I think it falls upon me to discuss the very lengthy presentation made by the Senator from New Hampshire about a member of my staff, Linda Greene.

Linda Greene is an able woman. She is very intelligent. She has integrity. She is a committed human being. She is a former professor of constitutional law at Oregon, Temple, Harvard, and Georgetown. Some have seen fit to accuse her of unbelievable acts: intimidation and even illegal, perhaps even criminal, conduct.

Come now, let us be realistic. Let us stay with the facts.

As a matter of fact, her accusers did not consult with her before they made false accusation. They did not consult with me. They did not consult with the alleged victim of the intimidation.

The distinguished Senator from New Hampshire has truly distinguished himself—in a way—by claiming that Ku Klux Klan tactics were used in connection with this matter. And he made this allegation in reference to this telephone call that was made as an act of love between two good friends.

Ku Klux Klan tactics? Ask black Americans about Ku Klux Klan tactics. Yes, ask Linda Greene. Ask Professor Baker, who supposedly was intimidated.

We will find that the comparison is so ugly and so pathetic that I am truly sorry it was made.

As a matter of fact, when it was made there was a banner story: "Ku Klux Klan tactics alleged in connection with Bork hearing." To equate this type of evil with the events that actually occurred is beneath the dignity of the Senate.

Let me read you what Coretta Scott King said when she heard about it. Said she:

> A month ago the Senate Judiciary Committee held an exhaustive and eminently fair inquiry into the nomination of Judge Robert Bork to the U.S. Supreme Court. During the course of that hearing both Judge Bork and his supporters on the committee agreed that the hearings were conducted in an equitable and balanced manner. The Senate's decision to reject Judge Bork represents a ringing endorsement of the achievements of the Supreme Court, and a repudiation of the extremist views advanced by the nominee.
>
> In an effort to obscure the basis on which Judge Bork has properly been rejected, proponents of Judge Bork have begun to complain that he was defeated solely because of improper tactics of his opponents. These arguments demean the integrity and competence of the Members of the Senate whose considered judgment is being attacked. This criticism of the Senate has now taken a shrill tone of which all Americans should disapprove, and which is particularly offensive to black Americans.
>
> The President has described the Senate Judiciary Committee that disapproved this nomination as a "lynch mob." More recently, Senator Humphrey has described as "Ku Klux Klan" tactics statements made by a member of the Senate staff to a potential pro-Bork witness.
>
> The cavalier use of this sort of language trivializes one of the darkest chapters in American history. Over the course of the last century gangs of hate-filled bigots summarily executed several thousand Americans, most of them black. Within the last decade a black man was lynched in the State of Alabama. It is an insult to the memory of these victims to suggest that the depraved crime inflicted on them is in any way analogous to the political dispute about the Bork nomination.
>
> The criticism of the conversation involving the committee staffer is unwarranted, since the participants were friends of longstanding, and the witness himself has said, "I bear complete responsibility for my decision. I would resent any attempt to attribute my position on Judge Bork or my ultimate decision not to testify to the influence of any other person." The suggestion that this exchange was equivalent to the tactics of the Ku Klux Klan is more than just factually inaccurate; it implies that the Klan's century long campaign of threats, beatings, bombings and killings was no more egregious and no more coercive than a benign admonition to a witness that his statements would be subject to cross examination. No one disputes the right of Judge Bork's supporters to use extravagant political rhetoric on this or any othe subject, but I, like many Americans, find deeply offensive an ill-considered analogy whose implications minimize the enormity of the racially motivated violence for which the Ku Klux Klan was responsible.

Now let us talk about the facts. Linda Greene, a longtime friend of Professor Baker, gave him moral support during a considerable period of time in his life which was particularly difficult. They were longtime friends. She cared about him. She was worried that he would be embarrassed if he was unprepared to answer difficult constitutional questions and she knew that constitutional law was not his field.

So Linda Greene called Professor Baker. She did not tell me she was calling him. She did not tell any of my staff. She did not tell any person involved with the nomination and no person asked her to make the call. She told no one of the call before making it. She discussed the issue of Professor Baker testifying with only one other person. That other person was a mutual friend of Professor Baker's and hers. He was also a black professor. She asked him, "Do you know why John is testifying?" And the other person said he did not know. That was the end of that conversation.

Now, it is easy for us to stand here and say, why did she call him? Why not let him alone? But they were close friends. They were colleagues. There are not thousands and thousands of black law professors in this country. Unfortunately, they are quite limited in number. She has helped him and knew intimately the problems he had experienced when he had been here at Howard University. As a matter of fact, she had been offered a professorship at Howard University when he was a dean there.

You have to understand the whole content to understand what occurred and why. You have to understand how a black professor might do this. You have to understand how a colleague would worry about a close friend and how would he do. Would he look unprepared? Would he maintain his academic reputation?

So she said to Professor Baker, "Be prepared for tough questions. It is your decision completely. But be prepared."

She said she told him, "I am calling you out of love," and he responded, "I know that."

The professor's own explanation has been that he was not intimidated and not threatened. He sent us a letter in which he said explicitly that, "I have not been intimidated." The letter reads:

Dear Senator Metzenbaum: Mr. Eddie Corrcia of your staff has requested an explanation for my decision not to testify as scheduled in favor of Judge Bork's nomination to the United States Supreme Court.

I bear complete responsibility for my decision. I would resent any attempt to attribute my position on Judge Bork or my ultimate decision not to testify to the influence of any other person. People supporting and opposing the nomination of Judge Bork offered me their insights concerning both the risks and benefits of testifying. I appreciated those insights because I am not the type of person who can make difficult decisions without regard to the personal consequences. By the same token, I am not the type of person whose judgment on the merits is overwhelmed by concerns relating to my personal interests.

Thank you for giving me an opportunity to clarify my views on this matter.

I ask unanimous consent that the letter be included in the Record.

There being no objection, the letter was ordered to be printed in the Record, as follows:

Indiana University,
School of Law,
Bloomington, IN, October 15, 1987.

Senator Howard Metzenbaum,
Russell Senate Office Building, Washington, DC.

Attention: Eddie Corrcia.

Dear Senator Metzenbaum: Mr. Eddie Corrcia of your staff has requested an explanation for my decision not to testify as scheduled in favor of Judge Bork's nomination to the United States Supreme Court.

I bear complete responsibility for my decision. I would resent any attempt to attribute my position on Judge Bork or my ultimate decision not to testify to the influence of any other person. People supporting and opposing the nomination of Judge Bork offered me their insights concerning both the risks and benefits of testifying. I appreciated those insights because I am not the type of person who can make difficult decisions without regard to the personal consequences. By the same token, I am not the type of person whose judgment on the merits is overwhelmed by concerns relating to my personal interests.

Thank you for giving me an opportunity to clarify my views on this matter.

Sincerely yours,

John T. Baker,
Professor of Law.

Mr. METZENBAUM. On October 21, which was yesterday, the Associated Press carried a story from Professor Baker, and the headline on the story was "Bork Friend Denies He Was Harassed."

I will not read the entire article, but I will read part of it.

A black law professor who was asked by Supreme Court nominee Robert Bork to testify on his behalf says he wasn't initimidated to cancel the appearance before the Senate Judiciary Committee.

John T. Baker, a friend of Bork who taught at Yale at the same time as the judge and now is a professor at Indiana University, said he received a call from a committee aide telling him that he, rather than his testimony, would be the focus of questioning.

"After about 10 hours of considering my testimony, I concluded it didn't make sense to appear unless I was prepared to deal with that kind of questioning," Baker told The Indianapolis News on Monday.

The article goes on to say:

Baker said he and Greene have been friends for several years and that accusations that she influenced him into canceling his appearance do not merit any kind of investigation.

"When you are the black professor, people call you. I have said explicitly that Linda never tried to intimidate me. If I was influenced by Linda, I was also influenced by the pro-Bork people," Baker said.

He said he was told by Bork, a U.S. Court of Appeals judge, that it would be helpful if he would appear before the committee.

I ask unanimous consent the entire article be included in the Record.

There being no objection, the article was ordered to be printed in the Record, as follows:

Bork Friend Denies He Was Harassed

Bloomington, IN.—A black law professor who was asked by Supreme Court nominee Robert Bork to testify on his behalf says he wasn't intimidated to cancel the appearance before the Senate Judiciary Committee.

John T. Baker, a friend of Bork who taught at Yale at the same time as the judge and now is a professor at Indiana University, said he received a call from a committee aide telling him that he, rather than his testimony would be the focus of questioning.

"After about 10 hours of considering my testimony, I concluded it didn't make sense to appear unless I was prepared to deal with that kind of questioning" Baker told the Indianapolis News on Monday.

Baker, the only black law professor who was to testify for Bork, was to have appeared Sept. 28. He phoned the White House and declined to appear before the panel after a call from committee aide Linda Greene the day before his scheduled appearance.

Baker said he and Greene have been friends for several years and that accusations that she influenced him into canceling his appearance do not merit any kind of investigation.

"When you are the black professor, people call you. I have said explicitly that Linda never tried to intimidate me. If I was influenced by Linda, I was also influenced by the pro-Bork people" Baker said.

He said he was told by Bork, a U.S. Court of Appeals judge, that it would be helpful if he would appear before the committee.

"He helped me with my scholarly writing" Baker said about Bork. "He appeared as a guest lecturer in my classes. We lunched together frequently and discussed some serious and not so serious matters. We were friends.

"I think he is a thoroughly decent man of true integrity. To say I would testify was a painful decision because so many of my friends whom I respect are opposed to him."

Fifty-four of Senate's 100 members have declared themselves against Bork as of yesterday. A vote on the nomination has not been set.

Mr. METZENBAUM. Now, one Member of this body has seen fit to call for a Judiciary Committee investigation. I have also asked the Judiciary Committee to investigate the facts. I might also say that I have received a letter from Linda Greene in which she says:

I understand that a request has been made to the chairman and ranking minority member of the committee to investigate the facts of this matter. I would welcome such an investigation.

I ask unanimous consent that that letter be included in the Record.

There being no objection, the letter was ordered to be printed in the Record, as follows:

Committee on the Judiciary,
Washington, DC, October 19, 1987.

Hon. Howard M. Metzenbaum,
Chairman, Subcommittee on Antitrust, Monopolies and Business Rights, Washington, DC.

Dear Senator Metzenbaum: As you know, On Sunday, October 18, 1987 and Monday, October 19, 1987, The New York Times and The Washington Post, respectively, carried stories about a telephone conservation I had with Indiana University Law Professor John Baker on September 27, 1987. I had called Professor Baker to ask if he was fully prepared to respond to all the issues likely to be raised by his testimony. At the time of our conversation, Professor Baker was scheduled to testify before the Judiciary Committee in support of Judge Robert Bork's nomination to the Supreme Court of the United States. Professor Baker subsequently withdrew as a witness.

I understand that a request has been made to the chairman and ranking minority member of the Committee to investigate the facts of this matter. I would welcome such an investigation.

Professor Baker and I are personal friends and professional colleagues. We have served together in professional associations and have known each other for several years. My phone call to Professor Baker was entirely personal. I did not act under instructions or encouragement from anybody; nor did I discuss the phone call with anyone prior to making it.

I did not contact Professor Baker to persuade him not to testify. Professor Baker said it best when he told The New York Times: "I was not intimidated by Linda Greene or anyone else. It is ironical that in this hard-fought confirmation process, a conversation between two black professionals who have known each other for several years should be thought of as newsworthy."

I also note that in The New York Times article, Dean Maurice Holland of the University of Oregon Law School is quoted as saying that Professor Baker told him that I had warned, " 'Our strategy will be to focus on you, to make you look silly and foolish.' " I never made any such statement and never said anything that could have been interpreted as such a statement. Nothing in my conversation with Professor Baker could be fairly interpreted as an attempt to intimidate him or influence his testimony before the Committee.

I regret that this matter has arisen. I am confident that a complete investigation will demonstrate that nothing improper occurred.

Sincerely,

Linda Greene.

Mr. METZENBAUM. Now, let us clear the air. Let us get the facts out. In a supercharged atmosphere the more hardened of us might have said, "Stay away from Professor Baker, leave him alone." I am frank to say if Linda Greene had asked me, I would have said, "Forget about calling your friend. Do not call him. I am not sure that you should do that because of some possible misperception of it." But there is certainly no impropriety, certainly nothing illegal, certainly an understandable call from one friend to another.

Is there anybody who really believes that Linda Greene could have conceivably thought that his testimony, one professor's, would make a difference in the confirmation hearing? Two thousand professors have signed a letter in opposition to Judge Bork's confirmation. Would one judge, black or white, appearing before the committee have made a difference? Of course not.

Was she trying to discourage an important witness from testifying? Absolutely not. The most which can be said is that she may not have used good judgment in calling the witness, even though she was a good friend and concerned about him. But it is simply a judgment question. That is not news and that is not headlines.

It is sad that some of the language that has been used in connection with that call is untrue and unfair. Most of all to this Senator it is sad because a dedicated, caring, competent human being has been held up to much criticism which this Senator believes is unwarranted and unfair.

I feel confident that when the Judiciary Committee concludes its investigation it will state publicly the very same thing that I have just said on the floor of the Senate.

I am, indeed, sorry that I found it necessary to comment on Linda Greene, but having heard the very lengthy discourse of the Senator from New Hampshire, I felt that I had no alternative in fairness to Linda Greene, whom I consider to be a very able, competent aide on my staff.

Proponents say let us debate the record of Judge Bork, and I could not agree more, but the debate lately, including today, has been about everything else. The issue is the record. It is not the advertising. It is not Gregory Peck. It is not the lobbying. It is not the process. From the beginning, there has been an attempt to divert attention away from the record. But let us face it. Judge Bork was picked because of his extreme positions. There is no secret about that. Everybody knew that Judge Bork would be controversial because he had written so extensively, and some of his writings were so far off the beaten path. But the far right was pushing for the selection of someone like Judge Bork.

Jerry Falwell commented prior to the Bork nomination:

> President Reagan has the opportunity of the century. Through his selection of a new conservative Supreme Court Justice, he can set the tone of the Court for many years to come—perhaps into the next century.

And after the President made the nomination, Jerry Falwell said:

> We are standing at the edge of history. Our efforts have always stalled at the door of the U.S. Supreme Court. Bork's nomination may be our last chance to influence this most important body.

The President argued: Do not consider the man's views, only his qualifications. The Senate should confirm him, the President said, simply because of his "outstanding intellect," his "unrivaled scholarly credentials."

Frankly, that was a reasoned approach. Judge Bork is intellectual. He is an able scholar. But there is more to it than that. And the administration could not sell Judge Bork just using that strategy.

Then they made an attempt to repackage Bork as a moderate. President Reagan portrayed Judge Bork as a moderate and reasonable jurist in the mold of Justice Powell.

Now, you have to consider this repackaging effort in the context of the far right's push for Judge Bork's nomination because he was so far to the right, because he was much more than a conservative. It is undeniable that this Senate has confirmed unanimously two very strong conservatives, Justice Scalia and Justice Sandra Day O'Connor—100 percent, not one vote against them. But when the White House found themselves with not just a conservative but one who was maybe a little bit off the beaten path as a conservative, then they came out with a new approach. The White House briefing book, some 72 pages long, claimed that:

> Judge Bork's legal philosophy follows directly in the mainstream tradition exemplified by jurists such as Frankfurter, Harlan, and Black.

Those were the great conservatives of the Court. In order to recast himself in that tradition, Judge Bork himself was willing to modify certain positions. At one point, he even said, "I don't consider myself to be a conservative."

At that point, Pennsylvania Avenue was acting very much like Madison Avenue. Then the White House became upset when the opponents of Judge Bork allegedly used some of their own methods.

But, frankly, there is another aspect of this confirmation proceeding about which we ought to be talking. That is Judge Bork's changing of positions as he came before the Senate to be confirmed as Solicitor General, when he changed his position with respect to the public accommodations law and its legality and with respect to his views about freedom of speech, when he was up for confirmation to be a circuit court of appeals judge. Then in the more recent hearings we find he took still different positions for the first time. For example, for the first time at the hearings, he said that the equal protection clause protects women. He had never said that before. And that was a very critical issue as far as the members of the Judiciary Committee were concerned. He went on to say that the first amendment protected nonpolitical speech. He had never said that in those terms before.

But even after the confirmation conversions, even after these changes made during the hearing, his positions, frankly, are unacceptable.

Now the President wants to blame somebody else for the fact that the American people and the U.S. Senate are not prepared to accept Judge Bork on the Supreme Court. He wants to blame the process. He wants to blame the advertising. He did not mind the advertising when it was supporting Judge Bork and there was certainly a tremendous amount of that. That was OK. But when there were ads against him, that was not OK. He wants to blame special interests whom he says are guilty, in his words, of "distortion," "disinformation," and "unfair and unfounded attacks."

There has been a constant litany about alleged character assassination, and intentional misrepresentations in connection with this confirmation—strong words, and the attacks have become the sideshows. They ignore the record which just will not go away.

The latest argument by the President is a very interesting one—very. The President said that Judge Bork is tough on crime. But frankly, Mr. President, that was not an issue in the hearings. I was there almost all of the time, and I never heard that issue brought up although I do know that Judge Bork testified to the following effect: "I have written nothing about criminal law. It's just never been one of my specialties."

I guess I would say to the President, How do you know that he is tough on crime? What makes you so certain of that? Judge Bork did not indicate that in the hearings. He has never written a word on the subject according to his own testimony.

Now let us look at the record, and let us debate that rather than extraneous issues.

Judge Bork's views on civil rights and constitutional protections of equality are very, very disturbing. They are troubling to those very persons who look to the Constitution for protection. Nobody claims that Judge Bork is a racist. Nobody claims that Judge Bork is sexist. Nobody claims that Judge Bork has any personal bias, and nobody claims that he is anything less than that which he is, and that is a distinguished scholar.

I do not doubt he now favors laws which prohibit discrimination. But the record shows his consistent opposition to leading Supreme Court decisions which provide such protection. In Judge Bork's legal world, he stands by on the sidelines regretting the result saying it is too bad but believing that the courts can do nothing about it.

The problem is not that he personally favors bad laws but that his constitutional interpretations would allow bad, unfair, discriminatory laws to stay on the books. Judge Bork said as recently as this summer that the equal protection clause should have been interpreted by the courts to apply only to race and ethnicity. That would mean no protection for women, no protection for the poor, no protection for aliens, no protection for illegitimate children, nor for other groups that the Supreme Court has found deserve protection.

As I said earlier, for the first time he announced at the hearings that he believed the equal protection clause did apply to women, but then he went on to say that the extent of protection is based on a "reasonable basis" test. Under this test Judge Bork believes that the Constitution would allow a State to provide for different drinking ages for men and women. In fact, he said that the Supreme Court decision which struck down this discriminatory law was a "trivialization of the Constitution." He would find that statistical differences about men and women drinking would justify that distinction.

But this is just the kind of discrimination that the Supreme Court has time and time again rejected. Yes, it is just the kind of discrimination that has plagued women.

On the issue of one man, one vote, he rejects the constitutional requirement of equal representation—the requirement that makes every person in this country equal in their right to vote. That principle prevents any voters from being disproportionately more important than others. It has revolutionized the political policy of America.

Go down South. Talk to the Congresspersons who appeared before our committee such as Barbara Jordan, who said without the principle of one man, one vote she never would have gotten to the U.S. Congress. And so many other Congresspersons and so many other public officials in the South, particularly black persons would not presently be holding their positions except for the one-man-one-vote decision that Judge Bork rejects on a constitutional basis. Yet Judge Bork says there is "no reputable theory" for the one-man-one-vote constitutional requirement.

Judge Bork also says that the poll tax decisions were wrongly decided. There is no claim that he personally favors the poll tax. There is no claim that he would vote for one if he were in the legislature. But the reality is that he criticized the Supreme Court decision that struck poll taxes down. He claimed that he would reach a different result if there was proof of racial discrimination in connection with the use of the poll tax.

But leaving the racial discrimination issue aside, one has to be concerned about economic discrimination when talking about the poll tax.

When the Supreme Court heard the Harper case the poll tax at that time was $1.50. Using normal inflation, that today would be about $5. Frankly, Mr. President, there are many in the South and in the North as well who never have had poll taxes who would not pay $1.50 20 years ago and certainly not $5 today in order to have the privilege of voting. Judge Bork's view would roll the clock back with respect to that issue.

He criticized the decision striking down racially restrictive covenants in the sale of housing. There is no claim that he personally favors such racially restrictive covenants. But under his views the Constitution would allow them. Racially restrictive covenants say only certain people may live in an area—discriminatory restrictions against blacks, Jews, and sometimes Catholics, members of the Indian race, and yellow races. He would not find a constitutional basis to strike down those laws.

He criticized the Supreme Court decision upholding the congressional authority to ban literacy tests. There is no claim again that he favors literacy tests as a qualification for voting. But the fact is he would not find a constitutional basis to strike down and ban literacy tests. The reality is that he does not believe that the Congress has the authority to ban them.

When we examine his views on the subject of privacy, we find he has consistently opposed privacy decisions in the harshest terms.

He compared the ban on married couples using birth control to an ordinance banning smoke pollution. He said that the two issues were identical. He wrote there was no "principled way to decide that one man's gratifications are more deserving of respect than another's * * * why is sexual gratification nobler than economic gratification?"

The proponents say he has changed. But in 1982, he said the result in the Griswold decision could not have been reached by a proper interpretation of the Constitution.

It will be recalled, Mr. President, that in Griswold the Supreme Court declared unconstitutional a Connecticut law making it illegal to prescribe or use birth control devices. Judge Bork found no basis to declare that law unconstitutional.

So that the record may be clear, we are talking about the fact that under the Connecticut law, the banned birth control devices was even applicable to a married couple's conduct in the privacy of their own bedroom.

He wrote in a 1984 court of appeals opinion that the privacy cases lacked an explanatory principle.

This summer, when asked by Time magazine if he found a right of privacy anywhere in the Constitution, he replied, "I do not."

At the hearings, he was asked, "Do you find that the Constitution recognizes a marital right to privacy?" He answered, "I do not know. It may well * * * But I have never worked on a constitutional argument in this area."

That is a subject he has been writing about for 20 years. If he has not found a constitutional right in 20 years, it is hard to believe that he is going to in the next 20, if he is confirmed and sitting on the Supreme Court of the United States.

He never said in the hearings, though given the opportunity many times, that he considers the privacy cases to be among the settled law he would not disturb on the Court.

Only one reasonable inference can be drawn from his unwillingness to take that position. He would vote to limit the principle of privacy established by the Supreme Court, and that is a frightening thought.

Judge Bork has little respect for precedent. He has repeatedly said that many of the Supreme Court's decisions should be overruled.

In January 1987, he said: "An originalist judge would have no problem whatever in overruling a nonoriginalist precedent because that precedent has no legitimacy."

He stated prior to the hearings that precedent is not all that important. At the Judiciary Committee hearings he said he had a newfound respect for precedent. But we cannot ignore the statements he has made and talked about and written about over a period of years and then accept his newfound respect for precedent at the time of the Senate Judiciary Committee hearings.

I cannot conclude that Judge Bork believes in expansive freedom of the individual. I cannot conclude that he accepts the tradition of substantive liberty. I cannot conclude that he accepts the constitutional principle of unenumerated rights.

We are left with a man with a narrow, long-rejected view of the Constitution, one which requires looking for freedoms in the fine print, a view that, however honestly held, is not one that belongs on the Supreme Court.

So I say to my colleagues that the President does not like the fact that the Senate is required to advise and consent to his appointments. But the reason why the framers required Senate approval was that they recognized the wisdom of the separation of powers.

Nobody objects to the President of the United States choosing a conservative. We have confirmed over 300 judicial nominees, conservatives. In this case, the President overreached. He tried to push the Court in one direction, and the American people said, "No; you have gone too far."

Never before in history of the Nation have the American people had such an opportunity to observe a hearing, day in and day out, while a Supreme Court nomination was being considered by the Judiciary Committee. The American people were brought into the process, and now we find that a strange notion is being argued, and that is that the people of the country should not be listened to in the confirmation process.

The proponents say it is improper that those opposed to Judge Bork attempted to convince the public to agree with them. The proponents say it is improper that Senators listen to the public in making up our minds.

My phones rang off the hook, people indicating support for Judge Bork, many indicating opposition to Judge Bork. But what a wonderful demonstration of the people of this country being involved in the process!

Whether it has to do with the confirmation of the judicial nomination or with the passage of a law, I can only say that I could not welcome more the people of this country participating in the political process here in the Congress of the United States.

I think the argument that the people should not be involved is one of the most ludicrous arguments imaginable. Since when are the American people to be shut out of the confirmation process?

Were Judge Bork's supporters paying no attention to the public when they made speech after speech in the hearing, when they ran ads, when they telephoned and orchestrated their telephone calls? Of course not. Did the framers of the Constitution contemplate that Senators would not listen to their constituents in giving advice and consent? Of course not.

This confirmation debate is like all others: Senators defer to the President unless there is an extraordinary case. Judge Bork's nomination is extraordinary.

It is a fact that Senators have listened to the American people; they have considered their views—on both sides. But more importantly Senators have listened to Judge Bork, and the American people have listened to Judge Bork. The ads did not defeat him. The telephone calls did not defeat him. The mail did not defeat him. Judge Bork will not be confirmed by the U.S. Senate because Judge Bork's own record and testimony did not rise to the standards that the Senate feels are imperative and important for a member of the Supreme Court of the United States.

I feel that we have been part of a magnificent process, and that process has made it possible for the people to be involved, for Senators in this instance to spend more time reading a nominee's writings than probably any time before in history.

On the basis of his article his speeches and his opinion, on the basis of the record that Judge Bork made before the committee, on the basis of the witnesses we heard before our committee, the Senate Judiciary Committee recommended that Judge Bork not be confirmed. I expect and hope that the entire Senate will agree with the Judiciary Committee's conclusion. I believe that a strong enough case has not been made for the confirmation of Judge Bork.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Who seeks recognition?

Under the previous order, the Senator from Idaho is to be recognized.

Mr. McCLURE. I thank the Chair.

Mr. President, I ask unanimous consent that the Senator from Wyoming [Mr. SIMPSON] be recognized to speak following the speech by the Senator from Georgia [Mr. NUNN].

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. McCLURE. Mr. President, I come before the Senate today with a plea to uphold the Constitution of the United States. I ask only that Members of this body uphold their oath to protect and defend that Constitution against the political forces and expediencies to which they bend and yield.

Two hundred years ago, this Nation adopted a Constitution of separate and limited powers. Today, the Senate stands on the brink of rejecting the most qualified jurist to be nominated to the Supreme Court in the last 50 years precisely because he believes in the system of government outlined in that Constitution.

The nomination of Judge Robert Bork raises the question of how to interpret our Constitution. Judge Bork says that when the Court reads new rights into the Constitution, they go beyond their power. I totally agree.

I ask that you look again at the record of Judge Robert Bork and to consider anew whether this man should indeed be elevated to the Supreme Court of the United States.

I believe he should. And I believe anyone who is willing to hear him over the clamor of his critics will agree with me.

The fact is, Robert Bork is the most deserving person in this Nation for the high post to which he has been nominated. He is a man of personal integrity, professional ability and judicial temperament. Thomas Jefferson said:

> The Judges, therefore, should always be men of learning and experience in the laws, of exemplary morals, great patience, calmness and attention; Their minds should not be distracted with jarring interests; They should not be dependent upon any man or body of men.

Mr. President, Robert Bork is such a man.

Throughout this process, Judge Bork has been defamed, his jurisprudence distorted, and his judicial record misrepresented. Accusation that he would allow the sterilization of his fellow human beings, that we would deny women the equal protection of the laws, and that he would violate the sanctity of the marital chamber are not only gross and misleading. They are lies.

On the basis of this campaign many of my distinguished colleagues have made early judgments on Judge Bork's fitness for our highest Court. To those who have so decided, I must ask only this: Are you willing to stand firm in a decision wrongly made on the basis of false impressions? If you are not, if you are willing to revisit this all important issue, the time to do so is now. History will not forgive us so rash a rush to judgment.

The body in which we are honored to serve has long been celebrated as the greatest deliberative body in the world. The essence of that greatness has been our commitment to decide the great issues of every age here on this floor of the Senate. Our solemn duty, our political responsibility, our constitutional obligation is to reach our decisions here, amongst ourselves, as little disturbed as we can be by the boisterous forces outside.

Make no mistake about it. This Senate is a representative body; but it is also more than that. Part of the Constitution's great design is that we must do more than merely represent or reflect the opinions, passions, and interests of the people, as Madison put it. We are here, as he said, to "refine and enlarge" those opinions and passions. This we are to do through deliberation—open, candid and above all, honest discussion. We must vote in a way we think most likely to conduce to the long-term interests of the people. Passion steeped in ignorance should never be our guide.

But passion steeped in ignorance is precisely what has come to characterize this nomination. Sensational rhetoric bereft of facts has skewed Judge Bork's record and has besmirched his good name. This we cannot allow to go unchallenged. Reason must reassert itself. Let us—the U.S. Senate—take a stand for justice, for decency, and for fairness. Let us see this man, Robert Bork, for what he really is—a great jurist.

Many of Judge Bork's critics have insisted that he would turn this Nation back to the political dark ages of our constitutional past. Judge Bork would, they allege, force us to reopen old wounds and to re-fight old battles. That one man could not do this is usually overlooked; that Robert Bork would not do this is always overlooked.

The fact is that Judge Bork has always been an ardent defender of the right of individuals. In a little read passage in his now-famous 1971 Indiana Law Journal article, Judge Bork put it simply. "There are some areas of life," Bork argued, "the majority should not control. There are some things a majority should not do to us no matter how democratically it decides to do them. These are areas properly left to individual freedom and coercion by the majority in these aspects of life is tryanny."

This is not the language of a man hostile to liberty. No, this is the language of a decent and liberal man who knows well the ever-present threat majority government poses to individual liberty.

The same man who has written of his strong commitment to individual liberty is also the same man who has been painted as some sort of mad extremist who, single-handedly, will change or reverse 200 years of judicial history. I've never heard such nonsense. To presume that Judge Bork is that extreme or that powerful is ludicrous. To believe that you have to believe that there are four other members of the Supreme Court who are also this extreme and that 51 Members of the U.S. Senate, having been elected by the people, are also that extreme. Robert Bork is a man who believes that the people should decide and that the Constitution should be interpreted, not rewritten, by judges. Does this body have less faith in the very people who elected us to office?

The real objection to Judge Bork lies in his view of judicial power under our written Constitution of limited and enumerated powers. His critics suggest that rights are best left to a textually unmoored judiciary to do what it thinks is right. Judge Bork knows better. He knows that any power unchained to the text and intention of the Constitution is a dangerous power.

Our Constitution is not a blank check for judicial activism. The framers of our Constitution did not send up blank pages to be filled out later by the courts. They wrote down words, and those words have meaning. The Constitution which governs the executive and legislature also governs the courts. No one in this country is above the law, and that includes Justices on the Supreme Court.

Unfortunately, the notion that the legislatures pass laws and the courts interpret them has fallen by the wayside. It seems to me that the Senate would want judges who are not going to be quick to make laws—that's our job. Why then do so many Senators applaud activist judges and oppose a nominee who embodies judicial restraint? There can only be one answer: They want courts to accomplish by judicial fiat what they could never accomplish in this body. They want courts to pass their agenda into law; they want courts to make the tough decisions; they want to be reelected and if they enacted the types of laws the courts are enacting the people would kick them out of office.

The bedrock principle of Judge Bork's jurisprudence is that of the great Chief Justice John Marshall. In the most famous of all Supreme Court opinions, *Marbury* v. *Madison* (1803) Marshall said that "a written constitution is the greatest improvement on political institutions * * * and must be understood as a rule for the government of courts as well as for legislatures." This was the same principle that led Thomas Jefferson to refer to a written Constitution as "our peculiar security."

Robert Bork, like John Marshall and Thomas Jefferson, knows the danger in trusting the good intentions of those who govern us. Like Marshall and Jefferson, Judge Bork stands committed to the rule of law over the inherently arbitrary and capricious rule of men, beset as they are by their own passions and opinions, by their own politics and predilections. This cautious view extends to judges not less than any other official.

By arguing, as Judge Bork always has, that the Court must be tied to the Constitution is to argue for judicial power, not against it. It is to bolster the force of the Court by keeping its work legitimate. For only if the Court is seen as giving force only to the will of the people, as expressed in their written Constitution, can the awesome power of judicial review ever be reconciled with our democratic society. We made our American judiciary independent for a very good reason. Our judges are to stand against the tides and trends of the moment and defend the rights and power of the Constitution.

In their heart of hearts, Judge Bork's critics know he poses no threat to the civil rights all Americans have gained over the past 30 years or so. They know, deep down inside, what the issue really is. And that issue is that judges like Robert Bork know what they are up to: making "an endrun around popular government," as Chief Justice Rehnquist once observed.

The critics' concern is that a court that starts acting like a court and not like a legislature may not be as likely to transform their policy preferences into constitutional decrees. They may find it far more difficult to have the Court give them the items on their social and political agenda. We did not create an independent judiciary so that judges are free to place their own values and standards on the Constitution. As Judge Bork said in his testimony:

> The judge's authority derives entirely from the fact that he is applying the law and not his personal values. This is why the American public accepts the decisions of its courts, accepts even decisions that nullify the laws a majority of the electorate or of their representatives voted for. The judge, to deserve that trust and that authority, must be every bit as governed by law as is the Congress, the President, the State governors and legislatures, and the American people. Only in that way will justice be done and the freedom of Americans assured.

What Robert Bork threatens is not the civil rights of yesterday and today gained through law, but the liberal social agenda sought for tomorrow through judicial decree. Perhaps we all hold specific views and values that we think are desirable and would steer a course other than that defined under law. But we are a government of laws, not of men, and we must resist those temptations which would destroy the liberty granted us by the written law.

It seems to me that it is a pretty sad day when we wantonly rush to keep a man off the Court because he does not think he should use that position to transform society. It is a strange day, indeed, when we deny our consent to a nominee because he thinks a judge should be a judge—and not a legislator or a policy planner.

At the deepest level, that is what this is all about. It is not over Robert Bork the man; it is over the great judicial tradition he represents. To vote no on Judge Robert Bork is to vote no on that judicial tradition, the tradition of John Marshall Harlan; of Oliver Wendell Holmes and Louis Brandeis; of Felix Frankfurter and yes, of Lewis Powell.

Alexander Hamilton understood the limited role the judiciary should assume, and the dangers of the mingling of judicial and legislative powers. In Federalist 78, he wrote:

> It equally proves that though individual oppression may now and then proceed from the courts of justice, the general liberty of the people can never be endangered from that quarter; I mean so long as the judiciary remains truly distinct from both the legislature and the executive. For I agree that "there is no liberty if the power of judging be not separated from the legislative and executive powers.

Time has proven Hamilton true. The most oppressive rulings have come from courts which usurped power from other branches—the Dred Scott case, Plessy versus Ferguson, and Roe versus Wade are examples of such rulings. The evil fruit of those rulings are blotches on the honorable record of our Nation. Hamilton rightly said that "Liberty can have nothing to fear from the judiciary alone, but would have everything to fear from its union with either of the other departments."

We stand on the edge of a great shadow of shame. Benjamin Franklin urged his fellow delegates to the Constitutional Convention of 1787 to doubt their own infallibility. We should doubt a little of our own infallibility on this great issue. We should always remember the mainstream of American jurisprudence has two banks; if Robert Bork stands on the one rather than the other is not to say he is unfit. Our constitutional tradition not only is sturdy enough to handle, but greatly needs, the presence of a Bork as much as a Brennan.

We who sit in this body took an oath to uphold the Constitution, It is an oath we all consider sacred. How can any of us be true to that oath, and to the people who entrusted us to sit here, if we reject a nominee whose judicial philosophy is premised upon being true to the Constitution?

The time has come to secure liberty in America, because liberty is not secure when it rests merely upon the ability to persuade five members of the Supreme Court. Our liberty does not proceed from the courts, but from a higher authority. It is given to us by God, and protected by our Constitution. That is why I support a judge who believes that the Constitution has a meaning beyond what special interest happens to be trendy. That is why Judge Robert Bork should be confirmed by the Senate.

The PRESIDING OFFICER (Mr. Graham). Does the Senator from Idaho yield the floor?

Mr. McCLURE. I yield the floor.

Mr. BIDEN. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. McCLURE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. McCLURE. Mr. President, I ask unanimous consent that Senators Hatch and Domenici be recognized following Senator Simpson.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. McCLURE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The absence of a quorum having been suggested, the clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, I have checked this out on the other side of the aisle, and it is agreeable, I understand. I ask unanimous consent that immediately following Mr. Hatch and prior to the recognition of Mr. Domenici, Mr. Heflin be recognized.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. BYRD. I yield the floor.

The PRESIDING OFFICER. Under the previous order, the Senator from Massachusetts is to be recognized at this time.

Mr. KENNEDY. Given the high stakes on this nomination and the inevitability of the outcome, it is understandable—but not justifiable—that the disgruntled supporters of Judge Bork are attempting to divert the focus of this debate to the question, "Who beat Bork?" The answer to that question is clear. I did not beat Bork. Senator Biden did not beat Bork. Senator Metzenbaum did not beat Bork. Gregory Peck did not beat Bork—Bork beat Bork.

At the Senate Judiciary Committee hearings, Judge Bork was his own worst witness. In large part, Judge Bork's reactionary views on civil rights and civil liberties are the major reason why he was nominated for the Supreme Court by President Reagan—and the major reason why he is being rejected by the Senate.

The statement I made on July 1 about Robert Bork's America was accurate then—and it is accurate today. It stated some of the most important reasons why many Senators and millions of Americans opposed Judge Bork's nomination from the beginning.

Nothing Judge Bork said in the hearings and none of his notorious confirmation conversions changed the fundamental point—that Robert Bork is wrong on civil rights, wrong on equal rights for women, wrong on the right to privacy, wrong on justice in America—and it would be wrong for the Senate to seat him on the Supreme Court of the United States.

The American people have sent a very important message in their rejection of this nomination: They are proud of the role of the Supreme Court in the last 40 years in advancing our most fundamental civil rights. They do not want a Supreme Court nominee who has opposed and harshly criticized the Court's proudest accomplishments in this area.

Robert Bork has rejected too much of what is great and good about this Nation's constitutional legacy. Before his nomination, and in the hearings, he expressed a cold, mathematical approach to civil rights. He believes that the Constitution is essentially a zero-sum game, in which granting rights to some diminishes the freedom of everyone else.

That strange view was demonstrated by an exchange with Judge Bork in the confirmation hearings. Senator Simon asked Judge Bork whether he believed that when a court adds to one person's rights, it subtracts from the rights of others. Judge Bork responded, and I quote, "Yes, Senator, I think it is a matter of plain arithmetic."

Later, Senator Simon said he thought it was fundamental in our society that "when you expand the liberty of any of us, you expand the liberty of all of us." Judge Bork responded, and again I quote, "I think, Senator, that is not correct."

Judge Bork is wrong as a matter of logic, and he is wrong as a matter of justice. His calculating view of civil rights makes us wonder whether Judge Bork has genuinely repudiated the unacceptable theory that led him to refer to the principle underlying the public accommodations provision of the Civil Rights Act of 1964 as "a principle of unsurpassed ugliness."

The view that Judge Bork expressed—that the rights of the majority would be unfairly limited if racial discrimination is abolished—is absolutely repugnant to this country's sense of justice.

It is worth reflecting on the context in which Judge Bork wrote his two notorious articles opposing the Civil Rights Act of 1964. When he wrote those anti-civil right tracts, Judge Bork was an associate professor at Yale Law School, and he did not mumble his views at a faculty tea. He trumpeted his opposition to civil rights in national publications at key moments in the national debate, when the outcome was hanging in the balance. And while Judge Bork was at Yale, working out his intellectual rationalization for opposing civil rights legislation, men and women of courage and judgment in all parts of the country—Republicans and Democrats, conservatives and liberals, blacks and whites—understood that the time had come to end race discrimination in America.

Judge Bork did not publicly recant these troubling views until his 1973 confirmation hearings, when he had been nominated to be Solicitor General. It is clear, however, from writing and speeches throughout his professional career, and from his testimony at the hearings, that Judge Bork continues to hold a narrow view of civil rights, inconsistent with the fundamental role of the Constitution and the courts in protecting equal justice under law.

He wrote in the Indiana Law Journal article that the Supreme Court's unanimous decision in Shelley versus Kraemer, barring court enforcement of racially restrictive covenants in real property agreements, was impossible to justify through application of neutral constitutional principles. During the hearings, Judge Bork did not back away from this position; instead, he suggested—falsely—that Shelley was a dead letter, ignoring the fact that the Supreme Court applied Shelley in the Barrows decision, when it ruled that the Constitution also forbids recovery of damages for breach of a racially restrictive covenant.

The American people know better.

They understand that it is wrong for courts to enforce a contract that prohibits the sale of a home to a family because their skin is a different color.

In Robert Bork's America, that may not be a denial of equal protection of the laws, but in our America, it is. And the Senate should reject a nominee who rejects that principle of simple justice.

At his confirmation hearings, Judge Bork added yet another major decision on civil rights to the hit list of Supreme Court rulings that he opposes.

In Bolling versus Sharpe in 1954, the Court unanimously held that public school segregation in the District of Columbia violated the fifth amendment guarantee of due process of law.

At the hearings, Judge Bork called that decision, and I quote, "constitutionally * * * a troublesome case," and one for which he had not, in his words, "thought of a rationale."

Judge Bork taught constitutional law at Yale Law School for more than 10 years. Yet he never thought of a rationale to support the Supreme Court's decision banning school segregation in the District of Columbia. Thirty-three years have elapsed since the Bolling decision; those same 33 years comprise Judge Bork's career in the law. If Judge Bork has not thought of a constitutional rationale for ending school segregation in the Nation's capital for 33 years, he never will.

The American people know better. We cannot take the risk that a Justice Bork will be unable to think of a rationale to protect civil rights in the next case to come along in the Supreme Court, or in the next decade he would be serving on the Court. That is a major reason why the Senate will reject this nomination.

During his confirmation hearings, Judge Bork also persisted in his view that the Supreme Court's decision in the Harper case was wrong, and that poll taxes are constitutional, unless there is evidence of race discrimination. Think about that for a moment. In 1987, Judge Bork still believes that the Constitution permits a poll tax, even though such a tax would keep poor citizens from voting.

The American people know better. Judge Bork's view that the Constitution permits a poll tax, even though some Americans would be too poor to vote, is completely repugnant to our sense of justice.

During the hearings, Judge Bork also persisted in his rejection of Supreme Court decisions recognizing the fundamental principle of "one man, one vote."

Even today, Judge Bork thinks that unequal voting districts are not unconstitutional, so long as a majority of the voters can elect a majority of the legislators.

The American people know better. They understand that every person's vote ought to count the same. Otherwise, minority constituents would be powerless to overcome the tyranny of a fixed and intransigent majority.

Without one-man one-vote, democracy would be diminished and the political process would lose its legitimacy.

Judge Bork has also persisted in his view that the Supreme Court was wrong to uphold a key provision in the Voting Rights Act banning literacy tests for voting. He called the decision "very bad, indeed pernicious, constitutional law."

The Supreme Court had ruled that section 5 of the 14th amendment gave Congress authority to prohibit literacy tests, because they deprive voters of the equal protection of the laws. Judge Bork thinks that Congress should have no such power, even though the power is plainly stated in the Constitution.

The American people know better. They understand that the framers of the 14th amendment intended to give the Congress broad power to enforce the guarantee of equal protection of the law. And they do not want a nominee on the Supreme Court who would drastically cut back the power of Congress to protect the most important civil right of all—the right to vote. In perhaps the single most revealing question and answer at the hearings, Judge Bork was asked why he wanted to be a Justice on the Nation's highest court. It would be "an intellectual feast," he said. To Robert Bork, service on the Supreme Court might be an intellectual feast, but in Robert Bork's America, millions of our fellow citizens would be starving for their rights.

After reviewing Judge Bork's persistent criticism of landmark Supreme Court decisions on civil rights, Mr. William T. Coleman, Jr., Secretary of Transportation under Republican President Gerald Ford and one of the most distinguished lawyers in the country, summarized the nominee's views as follows:

> At almost every critical turning point in the civil rights movement, as exemplified in these cases, Judge Bork has, as a public speaker and scholar, turned the wrong way.

That statement captures the essence of our pervasive concern about Judge Bork's attitude toward civil rights. At every critical juncture, Judge Bork has "turned the wrong way" on civil rights. In a lifetime in the law, he has heaped nothing but criticism on the Supreme Court's landmark civil rights decisions. In all his writings, he has never published an article or given a speech suggesting that the law should be construed to advance civil rights.

America is a better and fairer nation than Robert Bork thinks. The American people have turned away from Judge Bork's views on civil rights, and the Senate should turn down his nomination.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. NUNN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. NUNN. Mr. President, while the Senator from South Carolina is on the floor and the Senator from Delaware is on the floor, I agree with Senator THURMOND when he said, "Senator BIDEN has conducted this hearing in a fair, reasonable, and just manner."

I do want to add, however, that those of us in the Senate who are charged with the constitutional responsibility of advice and consent should be concerned about the environment surrounding the hearings and the Bork nomination. We call our body "the most deliberative legislative body in the world," and yet there has been tremendous pressure on Senators to take a position on the Bork nomination prior to the committee meetings, prior to the testimony being given, prior to the committee vote and prior to any Senate debate. While these groups have every right to make their views known at any time, Senators have a broader responsibility.

These pressures are, of course, not confined to the Bork nominations. There is an increasing tendency for outside groups, both from the right and the left, both liberal and conservative, to mount all-out campaigns on a subject long before the Senate process has started, let alone been completed. We must recognize that premature decisions threaten the Senate committee process and in the long run jeopardize the effectiveness of the Senate as an institution of thorough debate and careful deliberation.

It has been said that a conservative is someone who is opposed to doing anything for the first time. I hope that my conservatism does not go that far, but I do pose a few questions for the Senate's consideration. What is wrong with the old-fashioned way? What is wrong with telling our constituents, who express fervent support or opposition on a judicial nominee, or any other matter, that we will wait for the appropriate committee to have hearings before we make our decision? What is wrong with talking to the members of the relevant committee who spend hundreds of hours on a subject before deciding to vote "yes" or "no"? What is wrong with reading the committee report, including individual and minority views, before deciding? What is wrong with listening to Senate debate before deciding how to vote? Are we going to substitute 30-second TV ads for the Senate process and for the committee process?

Mr. President, I fully recognize the right of any individual or group to petition a Senator for a quick decision—but as for me, I have no apologies to make for doing things the old-fashioned way.

Mr. President, I regret that I did not have an opportunity to hear the testimony of Judge Bork before the Senate Judiciary Committee.

I know that those hearings were very educational. In fact, when I was in law school years ago, constitutional law, I think, was my favorite subject. I think the hearings have been an education to the country on the very important constitutional issues we face in the future and the ones we faced in the past.

While the committee hearings were being held, Senator WARNER and I spent 3 weeks on the floor of the Senate managing the Defense authorization bill.

I know the majority leader spent a number of hours on that one himself.

Since that bill was completed, I have spent a number of hours reading the transcript of Judge Bork's testimony as well as portions of the testimony of those who testified on his behalf and against him. I have also met with Judge Bork personally.

I have decided to vote "no" on the Bork nomination. I will not, however, cast this vote with 100 or 90 percent certainty that I am correct. After my own study of the record, I agree with the conclusion of the senior Senator from Alabama [Mr. HEFLIN] who stated:

> A lifetime position on the Supreme Court is too important to risk to a peron who has continued to exhibit—and may still possess—a proclivity for extremism in spite of confirmation protestation.

I do not pretend to be an expert on Judge Bork.

I wish I had had many more hours to spend studying his views and the views of those who spoke on his behalf and against him. I do, however, have a few observations I will share with my colleagues.

First, I am concerned that Judge Bork seems to have the belief that, 200 years ago, the Constitution was locked in concrete and that its interpretation is limited only to its exact and explicit words. I have always believed in judicial restraint, and I still believe in judicial restraint. I believe that the original intent of the authors of the Constitution should be the foundation of constitutional interpretation. However, I do not believe that interpretation can or should be limited to the explicit provisions of the Constitution. If this was the case, the Supreme Court would have very little to do today. Beginning with Marbury versus Madison, the court found that it was the final interpreter of the Constitution.

Such a responsibility was not explicitly set forth in the Constitution itself, but rather was implied by history and by common sense. I emphasize the words "common sense." Judicial restraint is not the equivalent of judicial rigidity. I believe, Mr. President, that our Founding Fathers intended to set forth general principles which would remain the foundation of our Nation and that they viewed the Constitution as a living document to be interpreted with common sense in light of changing conditions and circumstances.

Second, I am concerned about the conflicts between Judge Bork's testimony before the Judiciary Committee and his past articles and speeches, including some of recent vintage. For example:

In June 1987, prior to his appearance at the Judiciary Committee hearings, Judge Bork stated that the Equal Protection Clause of the Fourteenth Amendment prohibited discrimination only on the basis of race and ethnicity. This is contrary to several well-settled Supreme Court cases and would have the effect of denying meaningful protection to women. At his confirmation hearings, Judge Bork changed his position and said he would apply the Equal Protection Clause of the Fourteenth Amendment to everyone, including women, pursuant to a "reasonable basis" standard.

In 1971 Judge Bork stated his view that the First Amendment ". . . does not cover scientific, educational, commercial or literary expression as such." As late as June 1987, Judge Bork was still suggesting that speech, in order to be protected, had to have some connection to the political processes, but he was still hedging on whether it covered other speech. Yet at his confirmation hearings, although he questioned whether the First Amendment protected nonpolitical speech, he finally accepted the proposition that speech should be protected regardless of its relationship to the political process.

In strongly worded articles in 1963 and 1964, Judge Bork opposed the Civil Rights Act of 1964 which banned discrimination in public accommodations and employment. He called the principle underlying the proposed ban on discrimination in public accommodations "unsurpassed ugliness." It was not until his 1973 confirmation as Solicitor General that he publicly modified his views about the Civil Rights Act.

Although I am in favor of thoughtful change, the renunciation of long-held beliefs during confirmation hearings gives me some cause for concern. Which views would Judge Bork apply on the Supreme Court—his confirmation views or his previous views? Mr. President, I am not confident of the answer. America simply cannot afford to refight the civil rights battles of the 1950's, 1960's, and 1970's. America cannot afford to march backward on the quest for blacks and women to be accorded equal treatment in our society.

Contrary to his previous extreme positions, Judge Bork's recent confirmation testimony, as I viewed it and as I read it, reflected the views of a mainstream judicial conservative, with one troubling exception: His continued failure to recognize the unwritten rights reserved to the people under the Constitution. Judge Bork's view is outside the mainstream of such judicial conservatives as Justices Harlan and Frankfurter as well as such recent conservatives as Justices Stewart, Powell, and O'Connor and Chief Justice Burger. Each of these members of the Court accepted and applied, in one form or another, a concept of liberty and unwritten rights.

The framers intended, as I read the constitutional history, perhaps above all else, that the Constitution protect the ultimate right of the people to be sovereign. That principal permeates the very fabric of the Constitution—giving the Federal Government only specifically identified powers, preserving those accepted and traditional powers of State government and reserving all other rights and powers to the people.

I am puzzeld by Judge Bork's refusal to recognize among those reserved rights the people's right to privacy—some call it liberty, some call it privacy—the very basic right of the people to be left alone. In my view, the right to privacy encompasess those inherent rights which all Americans, regardless of race, sex, economic class, or political leanings, cherish and respect; among these are the right to marry, the right to bear and bring up children, and the right to live and work where we choose. The right to privacy ensures us the right to make those very personal decisions which determine how we live our lives. This right will become even more important in a technological age of supercomputers which can handle massive amounts of information and advanced biotechnology which can make possible genetic engineering and surrogate motherhood. Certainly, the right of privacy is not unlimited and lines must be drawn. Just as with any other constitutionally recognized right, it is a question of balancing the interest of the State against the right of the individual in each case. This is the function, a very important function, of our courts and our legislatures.

Finally, I am concerned by the history which Senator HEFLIN pointed out in his individual view:

> The history of Judge Bork's life and lifestyle indicates a fondness for the unusual, the unconventional and the strange. It has been said that he is either an evolving individual with an insatiable intellectual curiosity for the unique, the unknown, the different and the strange or, on the other hand, that he is an extremist with a propensity toward radicalism. His history as a young man reveals that he was first an avowed socialist—that he gave considerable attention to becoming a Marxist—then he returned to socialism, after which he moved toward libertarianism. As he grew older, he became next a "New Deal liberal" and then evolved to a strict constructionist—and more recently he has been a self-proclaimed "originalist." It now appears from his oral declarations at these hearings that he has turned another corner and is moving back towards the center.

Mr. President, Judge Bork has had, and I believe he will continue to have, a distinguished legal career. I admire him in many ways. He has a solid background as a private practitioner, an eminent professor at Yale University and a distinguished Solicitor General of the United States. He has been on the cutting edge of legal theory in this country, particularly in his days as a professor, his days as a writer, and also his days as a Solicitor General and a judge.

In reviewing Judge Bork's record, however, it is obvious that he has endeavored throughout his career to apply the technical precision of a mathematical formula to jurisprudence. But law is not mathematics and the social and human issues which it governs are not easily reduced to the figures and formulas of a science. Law cannot be looked at in a vacuum; it cannot be divorced from the reality of how it affects the people it governs. Just as I do not support sociological jurisprudence, neither do I support mathematical jurisprudence. Law cannot, by its nature, be a product of technically rigid formulas; it must instead reflect, to a large degree, a commonsense search for justice.

Unfortunately, Judge Bork's formula approach to legal analysis has not been anchored over the years by a search for common sense.

Mr. President, Judge Bork's confirmation testimony presents some evidence that his legal thinking is evolving away from rigidity. Looking at his entire record, however, I have considerable doubt as to where he would evolve as a Supreme Court judge. I believe that there is a considerable risk that Judge Bork's intellectual adventure might leave human values and commonsense justice outside the door of the Supreme Court.

Mr. President, because of these doubts and concerns, I will vote no on the Bork nomination.

Mr. President, I yield the floor.

Mr. SIMPSON addressed the Chair.

The PRESIDING OFFICER. The Senator from Wyoming is recognized.

Mr. SIMPSON. Mr. President, I will go forward for a few minutes, and I would share with the majority leader, who is present on the floor, that we are moving our people to seek the floor and speak. Obviously, those speaking on both sides are doing so with great personal intensity and that shows we can have a debate of this nature on a very serious issue which is our advice and consent function.

The majority leader has been very gracious and we will proceed. This evening the majority leader will present a proposed unanimous-consent agreement to go foward with a time certain to conclude this debate tomorrow. That is our hope.

I have visited with Judge Bork this afternoon about an hour or so ago. He has no desire to protract and prolong this. It is painful enough as we might all imagine for him and for his family. And we will go forward and work toward that with a vote certain tomorrow. But in the visit with Judge Bork he wanted to express that indeed he hoped we could conclude, that he has no desire to take it into next week or 2 weeks. Surely if there were some great revelation to be shared it would be known to us. One or two have popped up and they have been well portrayed, and they have been explained also on both sides.

So in sorting the debate, though, I think—this is difficult to do, and I do not speak on behalf of Judge Bork. I would not attempt to do that. Let me say, too, that I entered the fray here not at any direction from the White House. I entered the fray as a lawyer who had practiced law for 18 years, and though that this was kind of turning into a disappointing thing. I am not laying any particular blame, but it seemed to be very tough and demeaning kind of spectacle as to what happened the very day that Judge Bork was presented to the Senate by the President.

I do not think anyone was prepared for the intensity of that onslaught and obviously not prepared because it took hold out in America, and the American people were frightened by it all. And we were never able to steer them from that course. But there are a couple of things I would share on behalf of Judge Bork, after our visit, that there have been several things said that might bring it into better perspective.

One was the comments of our distinguished colleague from Oregon, Senator PACKWOOD, who spoke with great intensity. We all know that remarkable gentleman—about his feelings about the issue of privacy. I just want to share that Judge Bork wanted to put that in a little better perspective, and the true perspective, as Bob did also from his standpoint, is that their entire conversation was about abortion, and the right to privacy.

So as to the discussion of privacy, as expressed by the Senator from Oregon, Judge Bork wanted me to express that that entire conversation as he recalls it was about abortion; nothing more. We did not get expansive into the rights of privacy, although it is public information that Judge Bork has said that the finding of rights of privacy in the Constitution are different than Senator PACKWOOD's. That is the certainty of it. But it was limited to abortion.

Also, Judge Bork expressed that he had seen some of the ads that have been placed by those in support of him, particular targeted ads in the States of Senators who have been opposed to him. And he wanted to express that is very disturbing to him. He deplores that type of advertising campaign, just as he deplored the campaign that was addressed against him. I think that is kind of the measure of the man.

He wants to be sure that the Senate is aware that he disassociates himself completely with the advertising campaign which, as I say, has been targeted to some of our colleagues who have opposed or indicated they would vote against Judge Bork. He said, "That is not the kind of debate that I wanted, and I will not be any part of it. And I am appalled by it."

Therefore, I think that is important to spread on the record—the celerity across the entire spectrum with regard to advertising, and it should be disappointing to both the proponents and the opponents as to how far it went. It is just unfortunate—perhaps we did not have a better mixup at the earlier front end of it if we were going to have it. But such is the case. And Robert Bork said, "That is not the way I have ever done business," and those of us who have looked at his public record know that is exactly the case.

He loves to stir it up. He loves to create interest and excitement with his students and provocative comments in his Law Review articles. For that he paid a dear price. I hope it does not deter other thoughtful law professors in the years to come or the kind that bring real spirit to a classroom, and excite young people, and write provocative things. I hope we do not end up with a long series of milk soup nominees to the U.S. Supreme Court who shrivel from controversy. I can think of some on both sides of the aisle who are pretty spirited, on both sides of the spectrum who are pretty spirited, in what they have written as law professors.

Then, finally, I would want to express there was a discussion either today or yesterday in debate about

Judge Bork's antitrust record, and I would enter into the RECORD the letter from the 17 former chairmen of the antitrust section of the American Bar Association about Judge Bork and what an extraordinary authority he is in the United States on antitrust. It goes back almost through the entire spectrum of 20 years of the American Bar Association. That letter I will ask unanimous consent be entered into the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

SHEARMAN & STERLING
New York, NY, August 7, 1987.

Mr. BENJAMIN C. BRADLEE,
Executive Editor, The Washington Post, Washington, DC.

DEAR SIR: I am Immediate Past Chairman of the Section of Antitrust Law of the American Bar Association. I write this letter on behalf of myself and the previous Chairmen of the Section listed below.[1] We write to take issue with Colman McCarthy's criticisms in his article of July 12, 1987 stating that Judge Robert Bork's views on antitrust law are "over the edge" and anticonsumer.

To the contrary, Judge Bork's writings in this area have been among the most influential scholarship ever produced. While not all of us would subscribe to its every conclusion, we strongly believe that *The Antitrust Paradox*, which he published in 1978, is among the most important works written in this field in the past 25 years.

It is indicative of the value of Judge Bork's contributions that *The Antitrust Paradox* has been referred to by the United States Supreme Court and by the U.S. Circuit Courts of Appeals in 75 decisions since its publication. Perhaps the clearest evidence of its influence is that it has been cited approvingly by no fewer than six majority opinions written by Justices commonly viewed as having widely varied judicial philosophies: by Justice Brennan in *Cargill v. Monfort of Colorado, Inc.*, 107 S.Ct. 484, 495 n. 17 (1986); by Justice Powell in *Matsushita Electrical Industries v. Zenith Radio Co.*, 106 S.Ct. 1348, 1357 (1986); by Justice Stevens in *Aspen v. Aspen Highlands Skiing Corp.*, 105 S.Ct. 2847, 2858 and n. 29, 31, 2860-61 n. 39 (1985) and *NCAA v. Board of Regents*, 468 U.S. 85, 101 (1984); and by former Chief Justice Burger in *Reiter v. Sonotone Corp.*, 442 U.S. 330, 343 (1978) and *United States v. United States Gypsum Co.*, 438 U.S. 422, 442 (1978). Justice O'Connor also relied on *The Antitrust Paradox* in her concurring opinion in *Jefferson Parish Hospital District No. 2 v. Hyde*, 466 U.S. 2, 36 (1984), as did Justice Blackman in his dissent in *National Society of Professional Engineers v. United States*, 435 U.S. 679, 700 n.* (1978). It should also be noted that every member of the present Supreme Court joined one or another of these opinions.

In light of the fact that six of the nine present Justices have cited Judge Bork's book and that all of them have joined opinions citing it, Mr. McCarthy's claim that Judge Bork's antitrust views are "so far on the fringes of irrelevant extremism that [Bork] disqualifies himself from the debate" demonstrates more clearly than anything we could say that Mr. McCarthy does not know what he is talking about.

Mr. McCarthy is also quite wrong in his suggestion that Judge Bork's antitrust writings are anticonsumer. To the contrary, the central thesis of Judge Bork's book, as summarized in chapter 2, is that:

(1) The only legitimate goal of American antitrust law is the maximization of consumer welfare; therefore,

(2) "Competition, for purposes of antitrust analysis, must be understood as a term of art signifying any state of affairs in which consumer welfare cannot be increased by judicial decree. R. Bork, *The Antitrust Paradox*, 51 (1978).

It is true that Judge Bork has also stressed that protection of consumer welfare is sometimes inconsistent with protection of some businesses from legitimate competition. The key point, here, however, is that Judge Bork advocates pro-competitive policies which promote the very efficiency that makes the enhancement of consumer welfare possible.

Thus, we fear that it is Mr. McCarthy, and not Judge Bork, who is out of touch with the center of legitimate judicial and economic thought about the proper direction of antitrust analysis. Fortunately, the mainstream view, which no one has helped promote more than Judge Bork, is that the proper antitrust policy is one which encourages strong private and government action to promote consumer welfare rather than unnecessary government intervention to protect politically favored competitors.

Sincerely,

James T. Halverson, Shearman & Sterling, New York, New York, Immediate Past Chairman, Section of Antitrust Law, American Bar Association.

On behalf of himself and:

Richard A. Whiting, Steptoe & Johnson, Washington, D.C., Section Chairman, 1984-85.

Richard W. Pogue, Jones, Day, Reavis & Pogue, Cleveland, Ohio, Section Chairman, 1983-84.

Carla A. Hills, Weil, Gotshal & Manges, Washington, D.C., Section Chairman, 1982-83.

E. William Barnett, Baker & Botts, Houston, Texas, Section Chairman, 1981-82.

Harvey M. Applebaum, Covington & Burling, Washington, D.C., Section Chairman, 1980-81.

Earl E. Pollack, Sonnenschein, Carlin, Nath & Rosenthal, Chicago, Illinois, Section Chairman, 1979-80.

Allen C. Holmes, Cleveland, Ohio, Section Chairman, 1978-79.

Ira M. Millstein, Weil, Gotshal & Manges, New York, New York, Section Chairman, 1977-78.

Edwin S. Rockefeller, Schiff Hardin & Waite, Washington, D.C., Section Chairman, 1976-77.

John Izard, King & Spaulding, Atlanta, Georgia, Section Chairman, 1974-75.

Julian O. von Kalinowski, Gibson, Dunn & Crutcher, Los Angeles, California, Section Chairman, 1972-73.

Richard K. Decker, Of Counsel, Lord, Bissel & Brook, Chicago, Illinois, Section Chairman, 1971-72.

Frederick M. Rowe, Kirkland & Ellis, Washington, D.C., Section Chairman, 1969-70.

Miles W. Kirkpatrick, Morgan, Lewis & Bockius, Washington, D.C., Section Chairman, 1968-69.

Mr. SIMPSON. I thank the Chair.

These are from people who have known Judge Bork. They have worked with him. He presented his seminal work on antitrust and interestingly enough, the Supreme Court has often cited Judge Bork's work on antitrust in their opinions. I can cite those, and they will be entered in the RECORD at a later time.

But I think it is very important to note that the Supreme Court came around to almost all of the views of Judge Bork on antitrust legislation, which is a very proconsumer type of theory of antitrust, and an antiregulation restriction type of philosophy, which is very clear. The book he wrote, of course, we quoted from in the hearings and he is known as one of the great authorities on that area of law in the United States.

So, then, as for myself, I have shared with you the reasons I entered into the fray. As a lawyer practicing law for 18 years I felt that my reputation was all that I had—nothing more. That is the currency of this place, is our integrity and our reputations. And in the course of this long trial—and it has been a trial—almost as we used to think of it in the law business, what was particularly important to me was the attitude of his family. It may not mean anything to others. It does mean something to me. And they went through the process. It was a very painful experience for them, as it was for the judge.

When we came to this point here, where we are doing our statutory or our constitutional function of advise and consent, it is very obvious that here are people who had seen their husband and father portrayed in a way in which he was almost unrecognizable. So they expressed as a family unit, we think we ought to press forward and have that debate on the floor of the U.S. Senate, let the record be prepared and presented for people to read, throughout time, of a man whose entire personna was twisted and presented in a most grotesque way.

So they said go forward. That is not our husband and father that has been portrayed to the United States of America, and to the people—presented actually almost an evil caricature of a man, a gargoyle of a man.

I knew that something was up when I went home this summer in August, and I was besieged by people who I have known for many years, Democrats, Republicans, independents, but thoughtful people, good Wyoming people and they would come up to me and say, "Al, don't vote for Judge Bork. Promise me you won't do that."

I said, "Why?"

They said: "Why? I can't possibly even believe you would ask. I'm telling you why. Because what I have read and what I have seen on television and what I have read in the New Yorker or the Atlantic or heard by radio. Now what I'm surprised about is how could you support a man who would be one who favors sterilization of his fellow men and women; who is so consumed with big business and union busting that he has lost all sense of balance; who would go back to segregated lunch counters; who does not believe in equal protection for women; who would 'turn back the clock' on civil rights; who is insensitive to religious minorities; who would overturn all established precedents; who does not object to sexual harassment of women at work; who would impose poll taxes to prohibit blacks from voting and literacy tests to prohibit minorities from voting; who was the central figure in the firing of Archibald Cox; who would bring cameras and intrusions into the marital bedroom; who would assure that there would never be a right of privacy of any human being in the United States; who would enforce and believe the work of the executive branch over the legislative branch, if ever the choice came, always siding with the executive branch; who would personally overturn the Civil Rights Act of 1964; who favored racially restrictive covenants in deeds; who believes in freedom of speech only in the political sense and not in the sense of writings and art and letters and usual intercourse?"

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[1] The opinions expressed herein are those of the individuals listed below and are not intended to represent those of the Section of Antitrust Law or the American Bar Association.

Well, if I had heard that when I was just home practicing law in Cody, WY, and raising three babies, like I was in the 1960's, and doing Little League coaching and going to Rotary and the chamber of commerce, and I heard those things about a man, I would have been frightened to pieces. And they were. Maybe some still are. But, let me tell you, it surely was disappointing and saddening and galling to watch. And it worked.

They could have added, I guess, that he was in favor of euthanasia, child pornography. They did miss some things. I think it is important next time around that they try to gather those up and get them in, because there was not much they missed about the man and the "evilness" of him, and that is what they presented to the American people.

I do not know how it could have been much more lurid; but knowing some of the participants, I know it can get more lurid. It was almost a scorched-earth policy. If you will read the wire from the ACLU which went out to their members on August 31, you will get a better flavor of what I am speaking about. I ask unanimous consent that it be printed at this point.

There being no objection, the priority letter was ordered to be printed in the Record, as follows:

ACLU FOUNDATION,
New York, NY, August 31, 1987.

Late yesterday ACLU board voted to oppose nomination of Judge Robert Bork to U.S. Supreme Court.

Are moving at once to put in motion nationwide mobilization plan to block his appointment.

Detailed research reveals Bork far more dangerous than previously believed. His stated views clearly place him outside any range of judicial philosophy acceptable in recent decades. If his views were to prevail we risk nothing short of wrecking entire bill of rights and Federal courts in protecting individual liberty.

ACLU's decision not premised on single issue like abortion—racial equality—sex discrimination—privacy—religious liberty—or artistic freedom—even though all these would be in grave danger. Our decision to oppose is far more basic: his confirmation would threaten our system of government.

He does not believe in Supreme Court's role as defender of liberty against government abuse. In his mind Constitution protects power of majority to impose its moral values on all citizens. Record shows he believes that Supreme Court must defer to the will of local majorities—State and local legislatures.

This is basis for destroying protective function of Federal courts and overthrowing American tradition of tolerance for minority beliefs. Church/state issue good example. Bork says "government is inevitably entangled with religion." He believes ". . . exclusion (of religion in public schools) is an affront to democratic majority."

I am preparing detailed memo for you. Time is short. Urgently need your immediate financial help to launch this mobilization. Only tough, targeted campaign will work. Press releases, single issue pleas, shouting from rooftops simply not enough.

ACLU in unique position to make difference because Senate knows we have special credibility where entire bill of rights and Federal courts concerned.

Senate vote likely to be decided by slimmest of margins. ACLU most effective civil liberties voice in Washington. Highly respected by Senate. Can make the critical difference.

Early this morning began mobilization to focus on key Senate votes—reveal startling results of our research to Senators and editorial boards—and marshall support of opinion leaders in key States.

Requires extra staff, sophisticated materials, best legal talent available, activating our network of State affiliates. Enormously expensive.

Your special help critical. Time is short. Hearings start soon. Urge you to rush emergency contribution at once.

IRA GLASSER,
Executive Director.

Mr. SIMPSON. I think that one of the most important comments, as we summarize this very unfortunate experience, was by a man I think all of us deeply respect in the political world, I think the finest political commentator and journalist, David S. Broder. To paraphrase the old adage, "When David speaks, everybody listens."

David Broder is a man of rare balance and extraordinary ability to communicate, a reasoned man, and a delightful man of great good humor and spirit, who does not become obsessed with politics, who has found the leavening of existence that all of us seek as we participate in this sometimes barbaric experience—and it is in some cases that.

He said this in his column—and I will insert it in the Record—of the day of the vote on Judge Bork in the subcommittee:

> I have seen enough politics in my life to have lost my squeamishness but watching these tactics applied to judges is scary. It should send shivers down the spine of anyone who understands the role of the judiciary in this society.

Then he goes on to say:

> Candidates for elective office now routinely face battering by public emotions created by mass-media opinion manipulators. To subject judges and judicial appointees to the same propaganda torture test whether from the right or the left does terrible damage to the underlying values of this democracy and the safeguards of our freedom. No one wins in such a game.

Mr. President, I ask unanimous consent to have printed in the Record the article to which I have referred, by a man I greatly respect.

There being no objection, the article was ordered to be printed in the Record, as follows:

WHEN JUDGES ARE LYNCHED TO APPEASE THE PUBLIC

(By David S. Broder)

The victory that liberals now boast they will achieve in blocking Judge Robert H. Bork's elevation to the Supreme Court could be an expensive one. The game of judge-bashing, which they learned from their opponents on the political right, ultimately profits no one. It inevitably damages and could destroy one of the major safeguards of freedom in this society: the independence of the judiciary.

If Bork goes down, as seems likely, he would be the second prominent and principled jurist in a year's time to be victimized by a campaign of mass propaganda. The first was Rose Elizabeth Bird, the chief justice of the California supreme court. She was removed from the bench last November in a confirmation election that also terminated the tenure of two other "liberal" justices.

The parallels make activists of the left and right squirm, but they are unmistakable. The Senate confirmation process—like the California confirmation election—has been around for a long time. But neither has been used this way before. It is one thing for responsible senators to conclude, on their own reading of his record, that Bork does not belong on the Supreme Court, or for reputable legal scholars to oppose Bird's continued service on the California supreme court, as some did. It is something else when judges are lynched to appease the public.

Bird lost because of the multimillion-dollar, mass-media and direct-mail campaign mounted by her opponents, and if Bork goes down, it will be for the same reason. Once that gun is drawn, every judge and judicial appointee can be held hostage to the engineered popular passions of the moment. Something precious and vital to our democracy will be gone.

There's an obvious irony in the fact that the battle against Bird was organized by the right-wing supporters of the same Ronald Reagan who is decrying the assault on Bork. And to complete the paradox, liberals like Norman Lear, who were fervent in their defense of Bird, are uninhibited in their slugging of Bork.

Both the left and right are ready to use all the tools of today's high-tech political communications industry on judges, as if it were a campaign for governor or senator or president. The radio-TV spots and the computer letters employ the same systematic exaggeration and repetition. Bird was beaten on the false allegation that she was "soft on crime" because she had voted "wrong" on case after case applying the death penalty. Bork is succumbing to the false charge that he is "insensitive to personal rights" because he has been "wrong" on cases of importance to women and minorities

With both, political opponents overlooked the judges' claims that they were applying the law as it came to them. In both cases, the opponents conveniently ignored the fact that if the judges truly were "extremists," as charged, their views could not easily prevail on their presumably "mainstream" colleagues on the bench.

In both cases, the opponents were emboldened by the fact that the elected executives who appointed the judges no longer enjoyed great public confidence and the judges themselves were out-of-the-ordinary individuals. Bird, the first woman to serve on the California supreme court, was appointed by Gov. Edmund G. (Jerry) Brown Jr. By the time she faced the voters for confirmation, Brown was out of office and out of favor. Bork, a scholar and teacher whose writings offer endless fodder for intellectual debate, was named by Reagan in the twilight of his presidency, when other politicians no longer feared his power.

Hard-boiled political analysts can look at the two cases and say, "Tough luck, Bird and Bork. Your names came up at the wrong time, and your opponents were smarter, meaner, better-financed and more aggressive than your supporters. That's the way it goes."

I have seen enough politics in my life to have lost my squeamishness. But watching these tactics applied to judges is scary. It should send shivers down the spine of anyone who understands the role of the judiciary in this society.

Our history—like that of every other nation—has been marred by moments when a fever or passion seized the people and goads them to demand extreme action. Genuine conservatives, from Madison to Taft, and genuine liberals, from Jefferson to Douglas, have understood that in such moments, the majority of the country will howl that the offending person's or group's property be seized or their liberties suspended.

It is precisely at such moments—when economic or political freedom is threatened by a massive and angry majority, when a president wants to seize the steel industry or conduct mass arrests of demonstrators—that the independence and integrity of the judiciary is the nation's most precious resource.

Candidates for elective office now routinely face battering by public emotions created by mass-media opinion manipulators. To subject judges and judicial appointees to the same propaganda torture tests whether from the right or the left does terrible damage to the underlying values of this democracy and the safeguards of our freedom. No one wins in such a game.

Mr. SIMPSON. So, Mr. President, that was the case that was presented to the American people.

I left out one: Discrimination against women based upon their gender. How about that one? Evil. Yet, there are probably about half the Members of this body who voted on that one and must believe the same thing. This is the way the distortion comes. Anyone in this Chamber who voted to exempt women from the draft voted to discriminate against women based solely on their gender.

It sounds a little different that way, does it not? Six members of the Judiciary Committee, three Republicans and three Democrats, have already gone on record as discriminating against women based solely on their gender, because that is the vote when you cast it on exempting women from the draft.

I think I have covered them all. As I say, it worked, and that is troubling me enough.

So, I thought, too, as David Broder, that in 18 years of practice of law I had seen it all. I have seen a cowboy chew a guy's ear off and get charged with affray. You want to try one of those cases. I have seen the heirs begin to fight over the body before it even cooled, to get into the probate game.

I have done 1,500 divorces. I could write a book on that. That was not my principal interest in practice, but it was a small-town area. Of course, Wyoming was the second easiest State in those days to obtain a divorce. Nevada was 6 weeks and Wyoming was 60 days, so we had a lot of interesting practice, and I thought I had seen it all. I have tried cases—from reorganizing railroads to replevin of a one-eyed mule, but I had never seen anything like this.

With respect to the ad of Gregory Peck and the text of it—and that has been entered into the RECORD before—I have a hunch that Gregory Peck has no idea who Judge Bork is or what he really is as a human being or as a person. Even though it is imagery and fantasy, I shall never forget Gregory Peck's role in "To Kill a Mockingbird." If I recall, it was about fairness, it was about justice, it was about defanging prejudice and bigotry. I remember that part of it.

How ironic. Somebody got to Gregory Peck and said "Here you go. Here is some stuff about a person, but we will not tell you the whole story, but we will tell you the hideous parts of it and then if you will do this for us," and he did, and I think if I envision the man as I think I would like to, he is probably a bit troubled as he looks back upon what he has done and how the record has actually been presented here in a little bit different way.

So we have heard the debate or soon will tonight and tomorrow morning, and we are pressing for this vote at 2 o'clock and hope we can get that. I hope all of us want to get to that point. It has been fascinating. I tried to watch as much as I could.

There has been the presentation of the opponents and the proponents, the evidence presented by the proponents of what they perceive as distortion and, yes, lies, the presentation of evidence by the opponents as to this twisted record, a record that I know is frightening to them and something they would not want to see on the Supreme Court bench.

So, as I say it, I will present some of that into the RECORD.

I was interested in another interesting article from the Legal Times, and I commend the ACLU. I have had my scraps with the ACLU, won a few and lost a few, mostly lost them, and I was a member once of the ACLU. Do not say anything. No accolades. I was a young lawyer, and I was very fascinated with the things they were doing with right of privacy, things that happened, and then along came Skokie, IL, and I jumped ship. I said, "If you allow the Nazis to march in Skokie, IL, you lost the cowboy from Wyoming." They said, "We did not only lose the cowboy from Wyoming, we lost 200,000 members on that one," which they did.

Then, of course, I have worked with them and I enjoy their membership, their people who handle their Washington experiences here, Morton, Jerry, Wade Henderson, all of them. And we have had some good knockdown, drag out scraps especially in the immigration area.

But I think as I say I have entered into the RECORD their wire to their troops on August 31 which is a little bit, just a slight bit heavy.

Then in the Legal Times with this curious article, it says:

> While some Supreme Court watchers are bemoaning the near-certain prospect of an eight-member Court for at least the first few weeks of its fall term, others are viewing it as a blessing in disguise.

This is the Legal Times of August 3, 1987, in their Courtside column.

> Take, for example, the American Civil Liberties Union, which is a direct participant in six cases the Court has already agreed to hear this fall—an unusually high number including two that will be argued the first week of the term.
>
> In all but one of the six cases, the ACLU won in the court below, and the other side appealed to the high court.
>
> That't where the benefit of an eight-member Court could come in; if those five cases are heard by only eight justices, and if they produce four-to-four ties, then of course the lower-court ruling stands, and the ACLU prevails. It's a scenario that has not escaped the imagination of ACLU lawyers.
>
> "The balance of voting power is unpredictable," says the ACLU's associate legal director, Helen Hirshkoff, who adds that "one

could certainly wager" that at least some of the cases could come out four-to-four.

And then it cites the ACLU's busy docket.

I ask unanimous consent to print that in the Record as an interesting sidelight, I think.

There being no objection, the material was ordered to be printed in the Record, as follows:

Eight Is Enough

While some Supreme Court watchers are bemoaning the near-certain prospect of an eight-member Court for at least the first few weeks of its fall term, others are viewing it as a blessing in disguise.

Take, for example, the American Civil Liberties Union, which is a direct participant in six cases, the Court has already agreed to hear this fall—an unusually high number including two that will be argued the first week of the term.

In all but one of the six cases, the ACLU won in the court below, and the other side appealed to the high court.

That's where the benefit of an eight-member Court could come in; if those five cases are heard by only eight justices, and if they produce four-to-four ties, then of course the lower-court ruling stands, and the ACLU prevails. It's a scenario that has not escaped the imagination of ACLU lawyers.

"The balance of voting power is unpredictable," says the ACLU's associate legal director, Helen Hirshoff, who adds that "one could certainly wager" that at least some of the cases could come out four-to-four.

The ACLU's busy docket:

Reagan v. Abourezk, No. 86-656, on the denial of U.S. visas for foreign communists.

Karcher v. May, No. 85-1551, testing New Jersey's public school moment-of-silence law.

Webster v. Doe, No. 86-1294, whether the CIA dismissal of a gay employee is reviewable.

Hartigan v. Zbaraz, No. 85-673, on Illinois' abortion law.

Russoniello v. Olagues, No. 86-1217, involving a voter-fraud investigation that challenged only foreign-born voters who requested bilingual ballots.

McKelvey v. Turnage, No. 86-737 challenging the Veterans Administration refusal of educational benefits because of alcoholism.

Mr. SIMPSON. Then I think that I just want to comnent upon a really curious twist as we saw this thing develop. There was a discussion of what Robert Bork would do to the Supreme Court of the United States, that he would not be like Lewis Powell—the steadying, calm, swing vote—that he would be really bad news. But to be really bad news he has to go convince four of these sitting eight Justices to go with him.

I had not heard anything about how he would use his awesome powers to do that, just get appointed to the Court I guess and wrestle four of the eight to the ground and say we are going to overturn this and that and, of course, that is absurd.

Yet we were told that that would be the result.

What we saw happen in the Judiciary Committee hearings was a kind of a court packing. Do not miss the import of what you saw. I am gathering together, and it will just go in the record at some future time, I think there were at least 16 particular doctrines or themes that Robert Bork was asked about as to what would he do if—16 of them.

And the questions were pretty clear, "What would you do if the case of so and so like that came before you?", and he answered in ways that no other nominees will ever answer, at least I feel sure of that, because we will not have to do a book for the next Supreme Court nominee. All of us at the table, the Judiciary Committee, Democrats and Republicans alike, will say, "I want to know how you feel about this," and that person being adroit and having watched this, will say something like this: "Thank you very much, Senator Simpson. I appreciate your question. I want you to know that I feel quite certain that that issue will come before me, if I am confirmed to the Court, and therefore I do not believe that in good conscience or ethically I can comment on that and I will refuse to respond."

And that is it. The Judiciary Committee members will gnaw down through the table tops likely and they will be unsated and unsatisfied, both sides of the aisle.

But if you go back and look at the testimony at the hearings, go back and look at the testimony of Justice Rehnquist, Justice O'Connor, and Justice Scalia, you will find that that exactly is what they were saying. In fact, Justice O'Connor was the sharpest one in that game. She put it right in her opening statement right on the first page, and Justice Rehnquist then threw out his and he took a brutal pounding as we all saw and did that with great good humor and great equanimity and Justice Scalia in many occasions just quoted something like I have just shared with you.

That is the way it will be, at least I think it will in the future.

But Robert Bork opened himself to that because he said when he started, "I obviously have become so controversial that I am going to answer questions. Perhaps, I should not or I need not, "or by historical perspective would not." But, anyway, that happened.

That is what will happen, in my mind, in the future with the next Supreme Court nominee.

It is a form actually, as I say, of Court packing. If you ask a person who is there as the nominee, "Before I vote for you I insist on controlling the decision of the Court and if you are not going to support what I have just asked you I will not vote for you." That is I think a form of Court packing. I do not know what else you call that. I have another name for it, but I mean that would work for a Court packing.

A doctrinal test, that is, "You will not be on the Supreme Court, according to me, unless you meet the test of me and my philosophy and, therefore, if you do not you will not go on the Court. If you do, we will pack you on the Court."

I think that is Court packing. It would meet that definition.

But what will be the saddest part of the exercise other than pain for Judge Bork and his family—you know, somewhere under all the rubble and the glee. I understand now they are having a seminar soon in a couple of weeks on how it worked. And I guess you toady up a few bucks and they will teach you how to do this in your particular next thing before the Congress. It is a remarkable faculty. I know some of the people involved. I am sure they will have a high old time of it over there and make a few bucks on the side perhaps and teach people how to do this. Symbolism is terribly important—emotion, fear, guilt, racism. That is not the first time I have used those phrases, but it will not be the last when we get to Supreme Court judges.

And so what has happened or will happen is that we will deprive the U.S. Supreme Court of yeast and zest and spirit. That is what we will do in this process.

I had a hunch or a fantasy that 6 months from now, if we had Robert Bork on the Supreme Court, 6 months of him in his remarkable way with his brilliance—and not one person in America has questioned his brilliance or his intelligence. Not one. Not one, he would have had some of the most spirited conversations with Bill Brennan, who is a lovely friend, a respected friend of mine. Stimulating. I could see those conversations taking place. Or conversations with Thurgood Marshall, who I have come to know but not to the degree of Justice Brennan. Or our old friend—and he will not like it—Wizzer White who we remember in the West was a great All-American football player at Colorado.

I could just see what they would have done with each other and would have had a tremendous, tremendous spirit like all lawyers have, where you always learn more from the guy on the other side and learn more from what the adversary is doing than you do about your own case. And that Court has been deprived of that yeast, that stimulation.

I had this further fantasy that as they did that and they got to know each other better and saw how their mental processes worked and their prejudices which everyone brings to the table—and that is not prejudice in the racist sense. That is prejudice in the dictionary sense. Because a person without prejudices in the dictionary sense is a pretty bland person. I do not like being around too many people who do not have ego or prejudice, and I leave out the aura of racism when I speak of that, I assure you.

I had that hunch that in about 6 months that Robert Bork and Bill Brennan would go off somewhere and have a glass of grape pop and realize the respect that they would have for each other, because they would form that. There is not a question in my mind that they would not form that.

And that yeast and spirit and zest has been or will be deprived from the Court perhaps for a long while. I will tell you it is tough to lose a man of that caliber. America will be rethinking this one for a long time. Because they do not give him a chance. He had his chance. He was at the hearings. Yes, he testified. Yes, he went further than anyone. But there was no way to override what happened out in the real world.

And often in the time that I have been involved in this, someone would run up to me and maybe ram a microphone under my snoot and say, "Well, Simpson, if we have a Democratic President and a Democratic appointee, you would be doing the same thing as us. Don't give us that stuff." And I said, "No, I wouldn't, because I never have."

There is a lady who now sits as the chief judge of the District of Columbia Court of Appeals. Her name is Pat Wald. She is superb. As far as I know, in her other life she was a, quote, "liberal Democrat." And she was assailed when she came here, writing an article about the rights of a parent and children. And they were children of 12 or 13 years old. What are the rights of children of that age with their parents? And they told her to write a very provocative article. Well, she really did. And they used it on her and they took this one article. And Bork has written hundreds of provocative articles. So for her it was only one.

They said, "You do not deserve to be on that court because you have written something here which is antifamily. Whoever heard of giving a 12-year-old the right to do what is suggested here, the rights of arguing with the parent, saying, 'I'm going to do that.'" I said, "Well, I will read the article." And I did, and I thought it was delightful. It was not written to be delightful, but it showed a creativity.

And so I said to her, "I would work very hard to see that you are on the bench and I am a, quote, 'conservative Republican.' But you look like you have a tremendous mind. You love the law. You have been living with the same chap for all these years and have five delightful children and they are trying to palm that stuff off on you. They won't palm it off on me."

So she sits as the chief judge of the court on which Robert Bork sits and will continue to sit, I might add, if all goes awry here. I hope he will. And in the course of their time together on the bench, some 5½ years, they have voted together, I think, 76 percent of the time. That all got lost in the shuffle.

Ab Mikva, who was a, quote, "liberal Democrat" from Chicago, I was very anxious to help him get on the bench when President Carter appointed him. And then it surfaced that he had voted for some form of gun control at one time. I went to him. I said, "Wait, pal, judge to be, my friend, Ab, I can't support you any more. And it is on totally ideological grounds or whatever you want to call it. But in my part of the country, gun control is simply how steady you hold your rifle."

And I said, "I can't help you at all. But," I said, "I think you will be a great judge. That one part about gun control is something that, just being raised in the West, it is part of our ethic."

And gun control is not a popular subject in any way among those people of the West. These are not dull people who kill. These are thoughtful people, articulate and responsible people. That is another issue. But that is so overriding an issue. I told him, "I can't support you because of that. Wish I could, but can't."

And he now has served on that court with Judge Robert Bork and he and Robert Bork have voted the same way 82 percent of the time. That all got lost in the shuffle because of fear and the "frightening" aspect of this man.

Then here is one that really got lost in the shuffle—and I am very disappointed. I paid my dues to the American Bar Association for many a year. I was embarrassed when they came and presented their case on Robert Bork and they leaked the information as to what the scorecard was. It was 10, 4, and 1. And somebody leaked that from that group. I thought how weird—and that is the best word,—how weird that the American Bar Association gave Judge Bork just 6 years ago the recommendation of "exceptionally well qualified" by a unanimous vote. And then, of course, the U.S. Senate twice before, as Solicitor General under the Democratic Party and as he was seeking the court of appeals judgeship under the control of the Republican Party in here, received a unanimous vote. Unanimous.

And then, to come to this point in his life where they disregarded his entire record from that point and spent the entire time on the record prior to his time on the bench and not on the time and when he was Solicitor General and Federal Circuit Court of Appeals judge; and then the American Bar comes out and their literature and their bylaws and their stuff is full of things about high-blown phrases like, "We do never become involved in ideological issues, political issues," and so on.

Yet, four members of that committee are still hiding out somewhere. We do not know who they are, the four that rejected Robert Bork. Ten voted for him, gave him the highest rating they could give for a Supreme Court judge, and four voted against him and one not opposed. We do not know who they are. I think, hopefully, in the future we should smoke people like that out. I think the American public is entitled to that.

Furthermore, we understand that they interviewed judges all across the United States, including five sitting Supreme Court Justices. I understand that five of the members of the eight-member Court that are left, were interviewed. My hunch is that the ABA probably received a pretty good positive flavor from those people, but we will not know because they will not share with us what that was. I understand confidentiality, as a practicing lawyer, but I also understand, you know, kind of covering yourself up, too.

So, in my mind, I was embarrassed, as a member of the American Bar for many years, and as a member of the profession: One, that they had their little session; two, that they prattled on about ideology and politics and that that did not affect their decision, and yet 5½ years ago they gave him the supreme compliment, unanimously. What happened in that time?

He never had a case overturned. He never had an appeal that went to the Supreme Court that overturned his decision. Justice Powell voted with him 9 out of 10 times. In six dissents, the Supreme Court embraced his dissent.

He wrote six dissents on that court that went to the U.S. Supreme Court and they embraced his dissents, wrote the majority opinion on Robert Bork's dissent.

One hundred and seventeen opinions that he wrote. Well, I will tell you, I think America will look back with embarrassment, absolutely embarrassment if they reject this man. You have heard others speak. I will not belabor it and I will wind down here.

You have heard others speak about the American Cyanamide case, which was a real potent thing to talk about: Sterilization. Then you find that Judge Bork was not even on the bench; he was not even sitting at the time that these five women on a terribly unfortunate situation voluntarily chose to be sterilized. He was not even on the bench.

Boy, he got the whole load on that one. That was heavy, heavy stuff. That kept coming back. The American Cyanamide case.

In the record there is a letter from one of the women's attorneys who voluntarily sought the lady out and she sent a wire to the Judiciary Committee. It was pretty heavy. It said that Bob Bork gets glee out of this, or takes some kind of pleasure out of our terrible anxiety.

I could not let that one go. I said I thought that was offensive for a lawyer to go to a client she had in a previous case who had not wanted to testify. They had asked her before if she would say anything and she said no, as I gather it. Then the lawyer went to the lady and said: Send a wire; which she did.

Then they found out that she had not done that voluntarily. She had been urged to do that by her, I guess, former attorney. I think that is a very important part. I do not think it was her present attorney. It is not the issue whether she was paid or pro bono. The issue is the attorney sought her out.

So it appeared, then, that Judge Bork somehow had some judicial satisfaction out of this decision which is very cruel, in my mind. It was a terrible decision for these women because the lead level at the plant was not—the company said: "We cannot do any more about that." They said: "Well, if you cannot, we are going to have to close the plant or we are going to have to lay people off, or if you are going to work in that area and you are of childbearing age, you may choose to be sterilized."

Five women voluntarily made that decision. Then the suit arose, the union came into the case.

The OSHA review board was unanimous. The Court was unanimous. Do not miss the essence of that: It was a three-judge court. I think it was Judge Williams, Judge Scalia, and Judge Bork, unanimous. The full court of appeals chose not to hear it. It felt that it was a correct decision, and the Supreme Court did not choose to do anything with it whatsoever.

But that is what happened to Robert Bork on sterilization.

Then you remember that ad that Senator HATCH showed you? I cannot remember exactly how that was said, that Robert Bork was the man who caused your utility rates to go up. Well, that was the most minor charge of the whole last few weeks, but, you know, that gets people pretty keyed up. "So this is the fellow that made my light bill go up." That is pretty potent stuff.

Here it is. Yes. You see this is the ad and everyone in America has seen it. It ran all over the United States. Here is the first headline. It says: "Sterilizing Workers."

I just told you about the American Cyanamide case where he was not even on the bench when it happened. "Billing Consumers for Power They Never Got."

"Thanks to Judge Bork, Consumers Got a Bill for $400 Million."

Well, thanks to distortion, Judge Bork got worse than that and I am going to place in the RECORD the letter to the editor of the Washington Post by the counsel in the case. I know nobody wants to pay much attention to that, but I just thought I would throw it in: Leonard W. Belter.

He said he saw the ad full page, "Billing Consumers for Power They Never Got," and then he says:

> I represented Jersey Central in that case which was an appeal from an order of the Federal Energy Regulatory Commission. The facts are * * * it has long been an established principle at FERC that consumers must pay for prudent investments in power plants that are not completed. Thus, there was never any issue before Judge Bork over whether consumers had to pay for the investment in the plant. There was, and is, debate over whether consumers should pay a "return" on this investment during the time that the consumers pay for it. The precise issue before Judge Bork was a procedural one.

Get this; this is the attorney in the case.

> Jersey Central had alleged it needed the rate level requested in order to maintain its financial integrity. FERC denied Jersey Central's rate level request without a hearing. Judge Bork ordered FERC to afford Jersey Central a hearing on its allegations and that is all that Judge Bork's decision required FERC to do

Please hear this:

> The hearing that was ordered has not yet been held. Hence, consumers have not yet been billed one nickle because of Judge Bork's decision, much less $400 million.
>
> Let us hope that the debate on Judge Bork can be resolved on accurate facts, not the type of distortion evidenced by this example.

Well, unfortunately that did not happen, about the debate going forward on accurate facts, because I do not know what could be more accurate than that. But it does not fit the bill of an ad because it is not thoroughly larded with symbolism and this stuff here.

Then, "no privacy." You have all seen the ad. It went all over the United States. It hit every tabletop and every family in America and they were frightened when they saw it.

"Big business is always right." Those are little subheadings. The full text of that in larger form has been presented to you.

Then, of course, to find out that the Griswold case which was talked about so often was really a law school professor's exercise. They had had on the books in Connecticut, a law which said that it was illegal to use contraceptives if you were a married couple. That was the essence of it.

Nobody has ever brought a prosecution under that because it was very difficult to find the prosecutor who would do the investigating, apparently. But certainly nobody with any sense would have done anything with it. So nothing was done with it. Judge Bork called it a "nutty" law.

But he said legislatures have a way of passing, sometimes, nutty laws and there is a way to correct that. You do that through the people's elected representatives.

So when he described it as a law school professor's exercise, it was quite interesting to all of us.

They finally found a doctor who was selling contraceptive devices and they brought the issue up based on that. Thus, we find Robert Bork in his expressions of the right to privacy of a married couple is no more than the right of a polluter to pollute. I believe that is the way they garbled that baby up. If you look at the full text of it, you could see what Judge Bork was saying. He was saying just what Judge Hugo Black was saying, who dissented in that case.

We do not ever get to equate that very clearly.

Well, enough.

It is interesting to me to ask the American people, and I think they would want to ask this in the future, "How did this happen?" There will be a textbook written on it, I am sure. I hope not with pleasure, and I hope the seminars do not get too gleeful as they talk about destruction of something that probably means more to us in politics—no, just as much to us in politics—as it does to every human being, and that is their reputation—their reputation and their integrity as human beings. I thought of the irony of the whole thing. We talked about the rights of everybody on Earth in this hearing, the rights of minorities, the rights of this or that person, the rights of women, the rights of men, the rights of blacks, the rights of Jews, the rights of whites, and nobody ever talked about the rights of Judge Robert Heron Bork.

I tell you, somebody ought to be paying attention to that on the next go-round.

I appreciate the majority leader giving us the time to do this. Maybe we will find out later how did this happen; what did he really do; how did we warp his record and savage this man?

Maybe this record, this small attempt in the last 2 or 3 days, will help to heal the pain and present the man, the man himself, because the American people have seen him. But they did not know his feelings, how deep this has been for him. All I can tell you is that for me as a busy American citizen just watching, just reading, I would have been frightened to death by this man, and I would have been confused, too.

So it happened.

It must be puzzling to the Nation to know that this body has twice, by unanimous vote, found Robert Bork highly qualified to serve this country as Solicitor General and as judge of the circuit court of appeals—and then see a majority of the Senators publicly express their opposition to him, before the debate had even begun.

It must be perplexing—no, really unheard of—to know that a Chief Justice of the Supreme Court of the United States has testified that no nominee to the Supreme Court in 50 years has been better qualified than Robert Bork, yet the participants in this debate come to the floor with minds closed to arguments on the merits.

I believe this paradox can be explained by two phenomena which had distinguished this nomination:

First. The extraordinary and unprecedented efforts and influence of outside special interests.

Second. A nomination process dominated by partisanship. The senior Senator from Colorado spoke eloquently to these issues yesterday.

And I believe it is a national tragedy that we are permitting this to happen. I fear for the integrity of the nomination process; but even more I truly believe the President did indeed nominate the very best candidate available for the Supreme Court.

Robert Bork's intellectual brillance, his integrity, and his unusually qualifying legal and judicial experience are not questioned—even by his most strident opponents. No, it is Robert Bork's judicial philosophy which so violently upsets the opponents of this nomination.

Let's look at Judge Robert Bork's judicial philosophy:

Mr. President, some of the current opponents of the nomination of Judge Robert H. Bork view the role of the Supreme Court and the function of the judicial branch in a manner that I think poses a serious threat to the democratic rights of the American people. Perhaps the American people have tired of self-government; perhaps they want guardians appointed by others to make the tough policy decisions that will determine the quality of their lives and the lives of their children. But I do not believe this for a moment.

No, I think that there is another reason why the people have not deluged this body with demands that this wise, compassionate, learned, and able man be added to the Supreme Court. I think that the people have not fought harder for Judge Bork because they have been ill-served by those whose duty it is to keep them informed. Their elected leaders and the media have failed to help the people focus on the fundamental issues amidst all the legal technicalities, and to help them see through a vicious and dishonest campaign waged by ideologues who seem to distrust the democratic process.

Mr. President, at this time I want to review a fundamental issue that my colleagues and the American people might not be aware of.

One of the confusing elements of the debate so far is that the terms "liberal" and "conservative" are used to refer to two very different categories of a Justice's beliefs: political ideology and judicial philosophy. Furthermore, these labels are sometimes used to describe not a Justice's beliefs, but whether the results he tends to support are favored by political liberals or political conservatives. Thus, a dissenting vote in the abortion case is often called conservative without regard to whether it was grounded on political ideology or judicial philosphy—even though the two grounds have entirely different implications for how the Justice will decide other cases.

Mr. President, a Justice's political ideology—his personal opinions about what law and Government policy ought to be—determines how he votes as a private citizen and how he would vote if he were a legislator. Whether or not it significantly affects the Justice's votes on the Supreme Court depends on the Justice's judicial philosophy. If this philosophy is reasonable, then political ideology is of little importance.

Three aspects of a Justice's judicial philosophy are essential to the distinction that is made between liberal and conservative Justices. These concern: First, the proper way to interpret the Constitution; Second, the level of restraint the Court should show in close cases, especially out of deference to the elected branches of government; and third, the extent to which the Court should be bound by its prior decisions.

The most controversial aspect of judicial philosophy probably concerns constitutional interpretation. Those who believe in "original intent" interpretation believe that constitutional provisions should be interpreted in accordance with the understanding that was the basis on which the original Constitution and the subsequent amendments were ratified. Thus, the provisions of the Constitution should be interpreted to have the same meaning that the provisions were understood to have by the elected Representatives who consented to them on behalf of the American people—all being the process that makes laws legitimate in a democracy. The moral and policy judgments made by these Representatives must, of course, be applied to new circumstances, including those which result from new technology. The fourth amendment covers electronic surveillance even though this kind of "search" was not known 200 years ago. So the particular circumstances that a constitutional provision covers can change. But the policy judgments that are part of its meaning as a matter of principle remain the same.

Individuals who reject original intent interpretation as the basis for interpreting the Constitution usually believe that the meaning of a constitutional provision evolves, not merely in the sense that it applies to new particular circumstances, but also in its policy meaning. The two most common methods used to determine the Constitution's so-called evolved meaning involve either a Justice's assessment of the American people, or his identification of rights which are not specifically mentioned in the Constitution but which are, he believes, implied by provisions that are there. For example, because there are several specific rights relating to privacy, it is concluded that there is a general privacy right, which covers not only the rights actually mentioned in the Constitution and originally understood to be covered, but also an unknown number of additional rights.

Neither of these methods of constitutional interpretation—neither the one based on the speculations about the current policy preferences of the American people, nor the method that involves deriving general rights from specific constitutional provisions—can be applied in a predictable manner. The use of these methods requires a Justice to exercise discretion, and frequently appears to lead to the same result as would the direct application of the Justice's own moral and other policy judgments. In practice, the result is often that the opinions of Justices about what the people want or should want overrules the judgment of men and women who are democratically elected by the people as representatives and who are certainly accountable to them for their performance.

Mr. President, the judicial philosophy which is usually described as "conservative" includes original intent interpretation of the Constitution, judicial restraint, and strong adherence to precedent. These positions on judicial philosophy do not imply a "conservative" political ideology, either in theory or in the history of the Court. As the New Republic recently pointed out to political liberals who have become accustomed to judicial activists who produce results that liberals like:

> There is nothing inherently liberal about judicial activism: conservative judges [—and, Mr. President, the reference here is to politically conservative judges—] can discover rights just as readily as liberal judges.

Indeed, this is exactly what happened on the Court during the late 19th and early 20th centuries, when judicial activists who favored a conservative political ideology—and who ignored the original intent of the framers of the 5th and 14th amendments—declared unconstitutional much of the prolabor statutes and other economic regulation enacted by Federal and State legislatures during that period.

I hope, therefore, that my colleagues understand that a so-called conservative judicial philosophy offers them a secure opportunity to fight for the implementation of their policy preferences—in the legislatures, where ideological battles belong. They would not need to fear that a judge adhering to such a philosophy would seek to overturn their legislative successes by some arbitrary second-guessing of the legislature in identifying the fundamental values of the people, or by the discovery in the Constitution of some new general right. In other words, a "conservative" judicial philosophy is one which both political conservatives and political liberals should believe in—if, that is, they believe in democracy.

Mr. President, at the beginning of this statement I said that much of the current opposition to Judge Bork's nomination is based on a view of the role of the Supreme Court that poses a serious threat to the democratic rights of the American people. I would now like to pursue that theme.

In my view, the most fundamental rights of the American people remain today what they have traditionally been considered to be: First, that their Government act according to the law and, second, that the laws by which they are governed be laws to which they have consented.

The only legitimate reason for the Supreme Court to overrule the actions of the elected representatives of the people is that such actions are inconsistent with a more authoritative expression of the people's will, the Constitution. The Constitution both sets forth the limits of those representatives' permissible actions, and sets forth the terms on which the actions of such representatives are to be binding.

When an activist Court acts as a supreme policymaker, law is created which has not been consented to by the people. Not only is such law not legitimate, but it can be contrary to their will. Furthermore, such judicial overreaching cannot easily be remedied. As a result, the will of the people can be frustrated and their right to self-government abridged. This has happened many times in the last 25 years. Yet an activist Court is what is sought by many of the opponents to Judge Bork.

I would like to mention the effects of just a few of the Supreme Court decisions that would appear to be both opposed by the great majority of the American people and unsupported by the Constitution or laws of the United States as these were understood by the elected representatives who consented to them on behalf of the people. Confessed murderers, rapists, drug pushers, and other dangerous criminals are sometimes released, without punishment, into the community because the police have failed to follow certain court-mandated rituals that even the Court admits are not required by the Constitution itself; the death penalty is prohibited for years and then is later allowed subject to severe restrictions; pornography is rampant in communities all across the country; public schools are prohibited from allowing time for prayer or even silence even on a voluntary basis; forced busing frequently prevents children from attending a school in their own neighborhood unless the family leaves their own hometown and moves to a new area; reverse discrimination and quotas based on ethnic background or gender prohibit consideration of the most qualified candidates for many job or educational opportunities despite the clearly expressed intent of Congress to the contrary. I believe that these are examples of policymaking by the Court, not examples of a reasonable interpretation of the Constitution on congressional statues.

Like all laws, the Constitution should remain in effect as written until changed through the proscribed, formal democratic procedure. The amendment process was understood by the framers to be the only method for changing the meaning of the Constitution. Furthermore, the formal amendment process was not expected to be used as a way to resist changes in meaning, that is, as a routine remedy for the problem of a court that routinely exceeds the judicial role. It is much easier for an activist Court to overreach than it is for the people to correct the overreaching through amendment. Yet an activist Court is what is wanted by many of the opponents to Judge Bork.

Mr. President, it is not desirable to require the people to rely on the appropriately and intentionally difficult amendment process to resist change that they did not initiate and do not want. It should not be necessary for the people to say to the Court, in effect, "we still mean what we meant when we gave our formal consent—no less, but also no more." Furthermore, as my colleagues well know, efforts to correct Supreme Court overreaching can often be blocked by a determined minority. In practice, therefore, the amendment process is frequently not available to restore the Constitution to what the people want it to be—surely a clearly antidemocratic result.

Mr. President, seldom in our history has a nominee been so clearly the right choice. Judge Bork believes in interpreting our Constitution and statutes based on the understanding through which the democratically elected representatives of the people gave their consent. He also believes in judicial restraint. Fifteen years ago, Judge Bork wrote:

> Courts must accept any value choice the legislature makes, unless it clearly runs contrary to a choice made in the framing of the Constitution.

For example, if the people of a State want rights that the Constitution does not require, such as additional privacy rights, all they need to do is instruct their legislatures to enact laws creating such rights. Judge Bork would be the last Justice to prevent them from doing so, unless of course a provision of the Constitution clearly required otherwise.

Similary, in a speech given 2 years ago, he said:

> In a constitutional democracy, the moral content of law must be given by the morality of the framers or the legislator, never the morality of the judge. The sole task of the latter—and it is a task large enough for anyone's wisdom, skill, and virtue—is to translate the framer's or the legislator's morality into a rule to govern unforeseen circumstances.

Judge Bork's views on the authority of precedent are quite moderate. He does not believe that the court should always follow precedent, even long-followed precedents. Thus, he supports the court's decision in Brown versus Board of Education, which overturned an earlier decision that we now abhor: Plessy versus Ferguson. Conversely, Judge Bork does not believe that all precedents improperly decided should be overruled. He has long stated that some precedents have become so integral a part of American life that the disruption that would result if they were overruled would be too great.

At this point I want to quote a few words of Judge Bork that describe what he calls "the morality of the judge." The American heritage dictionary defines "morality" in part as "the quality of being in accord with standards of right or good conduct." I believe this is the precise sense in which he uses the word. In Judge Bork's view, "the morality of the judge" consists of an "abstinence from giving his own desires free play;" a "continuing and self-conscious renunciation of power." Let me repeat these two phrases that so capture the essence of Judge Bork's message: "abstinence from giving his own desires free play;" "continuing and self-conscious renunciation of power."

Judge Bork is, of course, referring to what he believes is the ideal of judgeship, the conduct to which a judge should aspire. I believe it is important for my colleagues to remember that acting on the bench strictly within the boundaries of the judicial role—the role of fairly applying policies chosen by others—is not a casual matter with

Judge Bork. It is a matter of deep conviction. It goes to the core of his own self-respect and ambition to be a great Justice.

I would hope Senators and the American people will ask themselves who is more of a threat to the traditional rights and liberties of the people, including their right to self-government. Is it someone like Judge Bork, who is so self-consciously and by deep conviction respectful of America's constitutional democracy? Is it the Judge Bork who so deeply respects the right of the American people to be governed by laws to which they have consented, and their right to the known and definite protections of the Constitution as it has traditionally and historically been understood? Or is the greater threat somebody like one of Judge Bork's prominent critics in the Senate, who recently claimed "(Judge Bork's) rigid ideology will tip the scales of justice against the kind of country America is and ought to be." This critic implies that the wisemen who meet that Senator's standards know what America "is and ought to be" better than her people, and that this unelected group should be able to impose its vision of America on the people whether the people like it or not. I hope the American people will understand that, if a politician argues for a process different from our traditional system of separating legislative and judicial powers, this politician can only believe that other values and some other "will" are so definitely superior that they should be imposed on the people without their consent. I reject that notion, as I believe do most Americans.

Some of Judge Bork's opponents claim that his nomination represents an attempt by the President to promote an ideological agenda, an agenda that the American people do not want. How can this be true when it is Judge Bork who wants to defer to the elected representatives of the people except when clearly contrary to the Constitution?

It is Judge Bork's opponents who will not admit that the Constitution does not mandate everything they believe is right, and does not prohibit everything they believe is wrong. Some of Judge Bork's critics are so convinced of their own wisdom that the disagreement of neither the American people nor the framers of the Constitution is enough to make them hesitate in their efforts to impose their vision of what America "ought to be."

I have already spoken to Judge Bork's conception of "the morality of the judge." Well, I believe that in this body we must each have a conception of the morality of the Senator—not one soul here believes that Senators should do everything they have the raw political power to do. According to my conception of this morality of a judge, when the President's nominee to the Supreme Court is being considered, Senators should not seek to remake the Court in the political image of the Senate. Instead, Senators should respect the Court's integrity as a judical entity, just as the Court should respect the Congress's role as the only national legislative body. The Court's integrity as a judicial entity will be best preserved if justices follow a judicial philosophy which recognizes the separation of powers between the Court, and the branches of Government that are formally responsible for making policy—and that are accountable to the people if their performance is unsatisfactory.

Mr. President, I deeply believe that a rejection of Judge Bork, would be a vulgar and sad milestone in our history. His character, competence, background, and judicial philosophy make him a truly uniquely qualified nominee. It is very likely that he could be one of the greatest of our Justices. I am certain that at any other time in our history there would have been no doubt about his confirmation. It this great body is to come to the point where a man of this quality and these principles could not be placed on the Supreme Court, the implications would be wretched indeed. It would mean that the belief of the Senate of the United States in the right of the people to self-government—and the Senate's commitment to that right—were no longer strong enough to resist the concerted pressure and yes, lies, of those groups who wish to impose their favored policies on the American people against their will. I strongly urge each of my colleagues who has decided to oppose this nomination to reconsider. There is surely no disgrace in acknowledging that, as a result of new information or new insights, that a prior position is no longer believed to be in the best long-term interest of the America people. I firmly believe that Judge Bork's announced opponents should reconsider.

I will conclude with the thought that we weigh rights and responsibilities, duties and especially our advice and consent function; that it would be good the next time, and let us say that the next time—well, that will be soon, very likely—I hope that some time while I am here we will have another provocative, interesting, fascinating human being who loves to argue and scrap and say provocative things and we can place such a man on the Court whose intelligence and intellect were unquestioned by every single witness who testifies.

You know, we used to do a lot of this in this country years ago. In Salem they did a little of that. There have been other times, times in the Civil War, times of the Ku Klux Klan, called symbolism, savagery, and I do not think we need to do that again in America. I hope I will not be part of it. I hope as we go on in these types of hearings where this is a very sacred thing that we perform—advise and consent under the Constitution—that we will do it with reason and sanity and not be driven by symbols and fear, raw fear, and emotions and terrible distortions of a man's most precious thing, his integrity and his reputation.

I thank the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Alabama, Senator HEFLIN.

Mr. HEFLIN. Mr. President, I do not rise to support or oppose the nomination of Judge Bork at this time. My words will be directed toward the effort to politicize the confirmation process. I think both parties have been guilty of efforts to politicize the confirmation process. Outside groups, groups representing those on the left and the right, have been guilty of these efforts to politicize the confirmation process.

In order to put this into proper perspective, let us go back to the time that Judge Bork was nominated. A few days after he was nominated, Col. Oliver North appeared before the select committee dealing with the Iran-Contra arms sale, and his testimony made him a national hero.

Immediately, every Senator began to receive telephone calls, telegrams, and messages pertaining to Colonel North.

I had a rather large number of rather unusual telephone calls that were followed by similarly worded telegrams and letters and other communications.

The telephone messages, in effect, relayed three messages: First, Colonel North is a national hero; second, vote for Contra aid; and, third, the telephone messages were repeating, vote for—and here, they would become confused in the pronunciation or spelling of the name. Some would say "Dort," some would say "Hork", some would say "Bork," as the proper name.

This indicated to me that these three messages that we were receiving, and we received thousands like this, were the result of an organized effort that was being orchestrated by some organization or by some organizations' telephone trees.

They came, and came in large numbers, to my offices in the State of Alabama and here in Washington. This was then followed by a letter writing campaign. Before the August recess the letter writing campaign was in full bloom. Most of the letters or telegrams contained the same message—which was, in my judgment, evidence of an organized, orchestrated effort to politicize the confirmation process.

Altogether, I would say that the count before the August recess ran 10 to 1 in favor of Judge Bork. I cannot break down how many messages we received before the August recess, but altogether we got about 40,000 communications—letters, telephone calls, various forms of communication. This is only about one-fourth of 1 percent of the population of Alabama, but it was a tremendous effort in organization and communication.

After the August recess, the groups that opposed Judge Bork went into action. For about a week then the communications were about equal. But again, thereafter, the pro-Bork communications were three to one or four to one, something in that neighborhood.

At this time, certain organizations went into action from the left. The American Way ran newspaper advertisements. We have heard a lot about that. And the newspaper advertisements that they ran have been introduced into the RECORD. Gregory Peck had a TV commercial that was run, and we have heard a great deal about it. I understand that a transcript of his commercial has been entered into the RECORD.

Then, just before the vote in the committee, there appeared a full-page ad in USA Today, which is a newspaper published with nationwide circulation, by an organization known as "We the People."

This newspaper ad, a full-page ad—I have a copy here—down at the bottom has, "We the People." And it begins, "The assassination of Judge Robert Bork. How politics stink and you lose."

It continues, reciting various ideas, positions, and then it launches into an attack against three Members of the U.S. Senate, Chairman JOE BIDEN, Senator TED KENNEDY, and Senator HOWARD METZENBAUM.

I am not going to read all the language of the attack that was published in this ad, but I will, at a proper time, enter it into the RECORD and it can be viewed and you can give it your own interpretation. It called upon people to call their Senators at the main telephone number of the U.S. Senate, and then it ends with the plea, "You can help," asking for people to give authorization for their names to be used in support of confirmation of Judge Bork. Finally, it reads, "Enclosed is a contribution" and then appears a block marked $25, $50, $75, $100. It finishes by saying, "Rush to We the People," at an address in Los Angeles, CA.

I am not going to read this attack that was made on the Members of this Senate, but in the same edition of USA Today there was a small ad paid for by a man named Z.C. Bernstein of Englewood, NJ. I will read this ad because I think it expresses, in brief, the message that the previous full page ad by "We the People" was trying to convey. This is a type of campaign that, in my judgment, raises many ethical questions. The ad begins with the question:

> Do you prefer Joe Biden, the plagiarist; Ted Kennedy, the Chappaquidick driver; Pat Leahy, the leaker, or Howard Metzenbaum, the finder's fee man? If you don't, let your Senators know that you believe they should vote for the confirmation of Judge Robert Bork to the Supreme Court.

At the proper time I will enter that into the RECORD. I believe that this is certainly designed to politicize the conformation process.

Following the committee action there was a delay in bringing the nomination to the floor. Efforts were made to bring before the full Senate the debate on Judge Bork. This would have occurred several days ago, I understand, but for various reasons it did not. There is now the appearance that an organized effort needed to be carried out, an organized effort to gin up the propaganda mills was to take place.

I do not know what has occurred in all other States. I have heard reports of efforts to politicize the confirmation process in a number of States. In my own State, however, I can verify that a great number of things have occurred. First, there were electronic telephone messages that were operated by computers. The majority of these phone calls had the voice of Senator HUMPHREY: "This is Senator HUMPHREY. I am honorary chairman of the National Conservative Political Action Committee." He next says, "I have a message from the President." The President then comes on. Following is another voice telling people to contact or phone their U.S. Senator, to phone me and Senator SHELBY, and then the electronic telephone message ends, "If you would like to make a contribution, give your name and telephone number after the beep." And then there was time for a message.

This telephone message was discussed last Tuesday on the floor. Senator PRYOR and Senator SANFORD talked about it. Senator HUMPHREY was here. At that time, I asked the Senator from New Hampshire about the fact that it had been reported to me from my offices in Alabama, from certain news correspondents, primarily one, that telephone calls were also mimicking my voice, saying, "This is Senator HEFLIN," with a message that was supposedly in my voice. I had certainly not authorized my name to be used.

I endeavored to try to find someone who knew of this campaign and who could write down exactly what was said. Most people indicated that they just remembered hearing my name; they did not remember all of the message, and that is true of these electronic telephone messages, you often don't remember much. Nevertheless, it was so frequently reported to us that my voice appeared on tape that we had to give some validity to the report that this was occurring. We thought that perhaps there might have been a mistake on the part of the listener, he may be mistaking the name of HUMPHREY with HEFLIN, since both started with an "H". But, on second thought, we realized that the distinguished Senator from New Hampshire's accent is a bit different from my accent.

So we cannot say that actually happened but there were enough reports to raise serious doubts that it did occur.

When Senator HUMPHREY was on the floor, I asked him about this. He denied that he knew anything about it, that his organization had anything to do with the possible use of my voice. I accept his explanation saying that he knew nothing. But that does not mean that it did not occur. There could be zealots in certain organizations, or in satellite organizations, or somebody else that could have mimicked my voice, and could have put that on the electronic telephone message.

Senator HUMPHREY, as I have always known him to be, is a person of integrity and I accept his word in regard to this matter pertaining to those telephone messages that would attempt to mimic me. But again it was a fundraising effort.

Then on Sunday of last week in the Birmingham News, which is the largest daily newspaper in our State with a circulation of over 200,000, there appeared a nearly full-page ad reading "Open Letter to Senator Heflin." It has a great number of names printed at the bottom, which would indicate to me that an organized effort was being made. This open letter to Senator HEFLIN read as follows:

> Dear Senator HEFLIN: We know that you knew better. We know that perhaps better than anyone else in our Nation you knew and understand the events which were being played out in your presence before your very eyes. We know that every fiber of your being cried out against the lynch mob of a special-interest and media blitz against the nomination of Judge Bork. And yet in the end you capitulated. You bowed your knee at the alter of political expediency. You will have another opportunity to vote on Judge Bork's confirmation. It is imperative that our constitutional process not be destroyed by partisan politics. If legislators persist in this usurpation of authority from the executive branch of Government, that will cripple both the executive and the judicial branches and demolish the balance of powers. Your vote on Judge Bork will determine whether the Supreme Court is going to control America or whether we will remain a constitutional government of, by and for the people. Since no American wants the Supreme Court to run the country, please place principle above party and vote for Judge Bork. You have our deepest prayers. Signed, Your fellow countrymen who bow our knees not to political expediency but only to God.

This is the message some organization published in the Birmingham

News under the name of the "Citizens for Bork." We have not counted every name, but we can count and estimate. It appears there are more than 600 names of people. People in my office, both in Birmingham and here in Washington, particularly those from Jefferson County, which is the county in which Birmingham is located, have seen some of the names and know from the addresses that they are dispersed throughout the county. This would indicate that an organized effort was made to get those names, if they did get the approval from individuals, and I certainly hope that they did, before they ran their names in this ad.

The following day which was Monday, October 19, in the Birmingham Post-Herald, and then later that day, in the evening paper, the Birmingham News, there is an ad from "We, the People." The headline reads "Alabama, Set America Straight; Don't Let Politics Kill Judge Bork." Then there are messages. I will read an excerpt.

> Throughout the world, terrorists have recently demonstrated to them no sacrifice is too big in their quest for victory. They figure wrongly that the end justifies the means, and that is what is happening here.

Then it goes on in the ad to say:

> It takes a certain maturity and sense of confidence for a people to reevaluate and when appropriate, reverse a once-taken position. This needs to be done by some Senators who have indicated they will oppose Judge Bork. It is our desire that Senator HEFLIN and Senator SHELBY will take their leadership position and make Alabama and our Nation proud. If you care to discuss this issue, let them know that you want them to vote for Judge Bork's confirmation to the Supreme Court. Please act now. Time is of the essence. Call Senator HEFLIN at Tuscumbia——

At my office number or my Washington number. My office number then appears.

> Senator SHELBY can be reached in Tuscaloosa.

And then his office number and his Washington number. Next appears: "We, the People." And, "Sign up with We, the People." Again, it has a contribution request, reading, "enclosed is a contribution" with request blocks for $25, $50, $75, or $100. It again has "Rush to We, the People."

This ad also includes a list of national figures: "We the People" national chairman, Gov. William P. Clements, Jr., Texas; Gov. Bob Martinez, Florida; Richard Riordan, Esq., California, and some other national endorsers. It also has Alabama endorsers, and, of course, the indication of who ran the "We the People" with an eagles head appearing next to that.

Again, in my judgment, this is an effort to politicize the process.

I next have another ad that appeared on Tuesday, October 20, 1987, in the Alabama Journal, which is the newspaper published daily in Montgomery. This ad is sponsored by the Congressional Majority Committee. It has printed the names Robert Bork, Ronald Reagan, ORRIN HATCH, and STROM THURMOND, on one side, versus, on the other side JOE BIDEN, TED KENNEDY, and ROBERT BYRD.

The next message which appears is: "The Verdict Is Up to You." I will not read all of this advertisement but other messages that appear are something to the effect that citizens can make a difference, "Because it is also a battle of the concerned patriotic citizens of America, versus every narrow self-serving liberal special-interest group that comes down the pike."

It goes on to say:

> Your two Senators will pay a lot of attention to your telephone call or note than some hot-shot Washington liberal in a three-piece suit, if you act now.

Then it says: "Pick up your phone and call your Senator," finally it has printed the message, "Mail to the Congressional Majority Committee," and a block saying "I am enclosing my contribution." It has a block for $15, $25, $50, and $100, with your name and address on it.

Mr. BYRD. Mr. President, will the Senator yield?

Mr. HEFLIN. Yes.

Mr. BYRD. I have three-piece suits. I have two-piece suits. Sometimes I do not wear any jacket at all. Where does that put me on the ideological spectrum?

Mr. HEFLIN. I wouldn't know about that, but I do not suppose anyone can call the Senator a hot-shot Washington liberal. At least West Virginia folks would not.

Mr. BYRD. This three-piece suit, may I say to the distinguished Senator, is 10 years old. I have a date on the inside. I bought it 10 years ago, and it is not ready to be thrown away yet. I am trying to get some more wear out of it. But when I bought it, I suppose, what was I at that point? That is a rhetorical question.

Mr. HEFLIN. Mr. President, all of these ads are efforts to politicize the process.

I want to emphasize a point regarding this "We the people" ad. It says: "The following citizens have endorsed the nomination of Judge Robert Bork to the United States Supreme Court," and then it lists a good many names, and some names from Alabama. It has the appearance that these people who are listed are paying for the ad but it has some language that could mean that they have merely endorsed it.

One of the names that appears in this list is James Roosevelt, a former U.S. Congressman from Irvine, CA.

James Roosevelt, the son of the former President, and the chairman of the committee that deals with Social Security, has contacted my office and he asked me to put into the RECORD this statement by him.

> Regardless of what advertisements appearing in Alabama newspapers may indicate, I have not endorsed the President's nomination of Judge Robert Bork to the U.S. Supreme Court.
>
> In fact, I had no knowledge of the ad, sponsored by a group called "We, the People" prior to calls from friends who read it in Alabama newspapers.
>
> I have not endorsed Judge Bork and have no plans to do so.
>
> My only dealings with this group occurred in a telephone call which dealt with the President's right to nominate an individual of his own choosing to the high court—or to any other federal post.
>
> I believe strongly that Presidents have a constitutional right to select their own nominees for positions such as this. In cases, where the Senate has the duty to advise and consent, I feel the Senate should accept the President's nominee unless there are strong reasons why that individual should be disqualified.
>
> The decision on Judge Bork's qualifications rests with the members of the U.S. Senate. I would not presume to tell them how to vote.

Yet, James Roosevelt's name appears on this ad that was published in the Birmingham News and the Birmingham Post Herald, a full-page ad.

Now, a while ago I mentioned the electronic telephone messages, and, as I said, I asked Senator HUMPHREY about them. He, of course, explained them and, as I said before, I accepted his explanation. I consider him an honorable person. I disagree with him on a great number of instances, but if he tells me something, I believe it, and in that questioning that occurred on Tuesday, October 20, in this Chamber, I asked him the following question:

> Let me ask the Senator another question. There is an organization that is running full-page ads in the daily newspapers in my State under the name of "We, the people." Is that connected with this National Conservative Political Action Committee? And do you have any connection with those full-page ads that are running?

Senator Humphrey replied:

> I am totally unaware of those ads, Senator. I do not know what that organization is. As far as I know, it is no part of this effort.

speaking of the National Conservative Political Action Committee.

He then continued to speak on matters regarding how ads are run, which are not really pertinent to the point I am making here, but then he said, "But, in any event, to answer the Senator's question, I have no knowledge of those ads and no involvement with them."

Now, his name appears in this ad that was published, the full-page ad in the Monday Birmingham News and in the Monday Birmingham Post Herald.

The printing of his name almost gives the appearance that he paid for it or is a part of the organization called "We The People."

However, there is this language that appears there, "The following citizens have endorsed the nomination of Judge Bork to the U.S. Supreme Court."

My office contacted two other people whose names appeared on this ad, and they stated that they had not given their approval, but that about 3 months ago they were contacted by an organization, which they recalled was named "We The People," and it is possible that there could be some type of misunderstanding or else some feeling of approval that they might have given to some activities of such an organization.

So I am not going to say that they did or did not. But here we have two people, in effect, who knew nothing about it, had no involvement with it and certainly James Roosevelt's statement ought to speak for itself.

In regard to each of these instances, it seems to me that the telephone calls, the telegrams, the letters that I have received have increased in the last several days. People, it seems, are responding to an organized effort. It takes time for an organized effort to be orchestrated. Therefore, that lends credence to the speculation that this is the reason the debate has been delayed for so long after the committee action. At least there exists that appearance.

I would like to have printed in the RECORD these various newspaper ads and statements that I have, and I ask unanimous consent that the one appearing in USA Today on Tuesday, October 6; the short statement from the man named Bernstein in Englewood, NJ, which appeared in USA Today; the full-page ad that appeared in the Birmingham News on Sunday, an open letter to Senator HEFLIN; the full-page ad that appeared in the Birmingham Post Herald on Monday, October 19 and in the Birmingham News on that same day; and the ad in re Bork of the Alabama Journal on Tuesday, October 20, along with the statement from James Roosevelt be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. HEFLIN. Now, Mr. President, let me say that I do not bow before any altar of political expediency. I made up my mind on this nomination in the committee because of the doubts and fears I have regarding the nominee. When we consider the damages of the efforts to politicize the confirmation process, I would strongly say that this should not be done. This is not to say that there is not a legitimate way to organize efforts or to urge letter writing or telegrams or telephone calls to Senators. That is a necessary part of a grassroots movement. But when so many messages are so organized that you are left with the impression that there is an organized effort to politicize the confirmation process, this compromises the grassroots effort.

Much has been said about "The American Way" ads, the Gregory Peck ads, and others. I do not approve of those. I did not think they were right, but neither did I think that the ads appearing in USA Today, which have come from the other side, or the ads that appeared in the Alabama papers were right. I understand there are some 18 different States where similar ads from either groups like this or from the same groups have appeared. I do not approve of those.

I think that all of those are directed toward politicizing the confirmation process.

And I do not think that either side or group can cast blame without first accepting it.

I am reminded of an old saying that appears in the Bible: "May he who is without sin cast the first stone."

There have been a lot of stones cast that have politicized the confirmation process. I do not think that either side is without sin in this matter. I think that the documentation that I have presented here, along with the statement of James Roosevelt, will allow people to form their own interpretation of all of this. But my personal interpretation is that there has been a deliberate effort to politicize the process. Both sides have done it.

Now, many of my colleagues have been angered by the solicitations, the mass media campaigns, and the organized efforts of outside groups to generate constituent calls and letters. They have intimated that, because of these efforts, Members have been pressured and persuaded to vote a certain way.

To be honest, many factors influence how a Senator votes. Among these are how his or her constituents feel, the views of outside groups, and the opinions of colleagues.

But, while these factors may influence how a Senator votes they do not dictate how he or she must vote.

My vote is mine alone. I make the ultimate decision. I stand behind it. I have to live with my conscience.

I would like to point out that all of these exhibits that I have put into the RECORD, and the attachments, in some way involve fundraising by these various organizations. And, it appears this is done by listing names of people without any stamp of approval. I believe that our system is compromised when organizations, such as those I have listed, raise money as they do by trying to bring into this organization certain famous or well-known people, who possess certain well-known attitudes or feelings and spread their propaganda.

In closing, I would like to say that there is no question that the confirmation process has been politicized. However, the fault does not lie with any one political party or organization. Republicans, as well as Democrats, should be faulted. Rightwing organizations, as well as those on the left, are subject to criticism, and should share the blame.

While this is the first time in the history of the U.S. Senate that such an expensive, multimedia campaign, and that such an organized politicizing effort has been waged in an effort to affect the outcome of a Supreme Court nomination, it is not the first time that politicians have entered the process. Certainly, outside political organizations were just as active during the confirmation hearing and the floor debates of Judge John Parker, who was nominated to the Supreme Court by President Hoover in 1930. However, the major difference was that they lacked the sophisticated media tools of today. And I dare say that the same political efforts we have seen this month were not carried out during the confirmation battle on Judge Haynesworth or during the attempted elevation to Chief Justice of Justice Abe Fortas.

The effect that such actions have had in the near term is debatable. But in my estimation the effect has been greatly exaggerated. There is no indication that any Senator based his decision either in support or opposition to the nomination, on the advertisements, telephone calls, telegrams, and letters sponsored and organized by various organizations.

I would first say that the effect that is apparent is in the massive amounts of money these groups have raised.

While, as I have said, there is room for some debate on the near-term effects, there can be no doubt of the long-term effect. We all end up losers. Losing is no longer confined to just the nominee, a given political party, or administration, but affects all of us.

Politicization of the process demeans the Supreme Court, and, if allowed to continue, will greatly reduce the public's confidence in the independence and integrity of our judicial system. As a cornerstone of this country's democratic government, our judicial system should not be subjected to such attacks.

For the sake of the Federal judiciary and the American people, I urge the Senate to vote as soon as possible on this nomination, and to get this issue behind us.

The confirmation of a Supreme Court nominee is one of the most, if not the most, important jobs facing a U.S. Senator. It should not be reduced to a campaign of hype and hysteria.

It seems inevitable, at this point, that the President will have to submit another nomination. I urge my colleagues to approach the next nomination with an open mind and to rise above the tactics that have been employed by both sides of this confirmation battle.

Thank you, Mr. President.

Exhibit 1

[From USA Today, Oct. 6, 1987]

The Assassination of Judge Robert Bork: How Politics Stink, and You Lose

Three months ago you probably had never even heard of Judge Robert Bork. Now you may recall his name and have some vague notion about who he is, and what he does. And oddly, you may not understand why you feel as you do.

What you have experienced is frightening. And if it makes you mad, join us and do something about it.

For the past several months you have been subjected to a stunning use of propaganda. Special interest groups and ambitious politicians have created perceptions that you may have unconsciously accepted. It has been slick and it is scary.

The committee that reviews presidential nominees to the Court delayed the confirmation hearings of Judge Robert Bork. Using the delay, political extremists in groups such as the ACLU, and NOW raised huge sums of money to run a scare campaign against Judge Bork. They manipulated the news with media events, ran television ads, print ads and even used computers to direct phone calls to targeted and vulnerable homes.

They spent millions of dollars to conjure images and perceptions of a one man court turning back accomplishments of an entire nation. They lied. They threw ethics and integrity out the window.

Think about it. They created a hate campaign to shape opinions that would suit their agenda. Their means could be justified by the end.

But is that what makes you most uncomfortable? Maybe. Maybe not.

Perhaps you are most uncomfortable because you know that a number of the senators conducting the hearing have serious personal character flaws. You see them using the opportunity to play politics. At your expense. And it is likely they are not even your senator.

Chairman Joe Biden, you recall, just admitted to lying and plagiarism as his presidential campaign self-destructed.

Biden with great cunning manipulated the hearing by staging who would be heard and when; personally seeking the media spotlight in an attempt to save his political life.

Ted Kennedy made you uncomfortable as he read his staff-prepared questions. Nervously and constantly pressing forward, hoping he wouldn't lose his place and have to start over again. You always wondered how he ever made it from the Chappaquidick incident or getting expelled from Harvard for cheating, to now being in such a position of trust. Perhaps his name, and the nostalgia from a lost hope were his greatest inheritance.

You recall Senator Metzenbaum's ethical quick-shift as he returned a quarter of a million dollars when the public discovered and reacted badly to the way he realized great wealth by just making a few phone calls. And it was Senator Leahy who cared so little about our national security that he personally leaked secret information to the point that he had to be replaced on the Senate Intelligence Committee.

Not the kind of guys most people would entrust with making judgments of character, integrity and personal ethics, are they?

You and Judge Bork have been cheated.

We all lose when the politicians's game costs us the service of a capable person like Judge Bork.

Judge Bork has stood for senate confirmation twice before and both times he was unanimously confirmed; once for Solicitor General and once for Circuit Judge of the U.S. Court of Appeals.

The Senate did not play politics then. The test was Judge Bork's ability, integrity, knowledge and experience. Then, as now, the American Bar Association gave him their highest rating. Judge Bork's credentials are impeccable and he is ranked among the top justices in American history.

But now it is politics, and it stinks.

Do something.

Call your senators at 202-224-3121, and tell them you have had enough nonsense. That you want them to move the process forward and vote to confirm Judge Bork to the Supreme Court. That it is time for integrity and strong ethics to have a place in the process.

And the next time you vote, think about how your candidate would work to clear the foul air that some have brought to our political process.

[From USA Today, Oct. 6, 1987]

Do you prefer Joe Biden, the plagiarizer, Ted Kennedy, the Chappaquiddick driver, Pat Leahy, the leaker, or Howard Metzenbaum, the finder's fee man?

If you don't, let your senators know that you believe they should vote for the confirmation of Judge Robert Bork to the Supreme Court.

(Paid for by Zalman Chaim Bernstein of Englewood, New Jersey.)

[From the Birmingham (AL) News, Oct. 18, 1987]

Open Letter to Senator Heflin

Dear Senator Heflin: We know that you knew better.

We know that perhaps better than anyone else in our nation, you knew and understood the events which were being played out in your presence, before your very eyes.

We know that every fiber of your being cried out against the lynch mob of the special interest and media blitz against the nomination of Judge Bork.

And yet, in the end, you capitulated. You bowed your knee at the altar of political expediency.

You will have another opportunity to vote for Judge Bork's confirmation.

It is imperative that our constitutional process not be destroyed by partisan politics. If legislators persist in this usurpation of authority from the executive branch of government, they cripple both the executive and judicial branches and demolish the balance of powers.

Your vote on Judge Bork will determine whether the Supreme Court is going to control America or whether we will remain a constitutional government of, by and for the people.

Since no American wants the Supreme Court to run the country, please place principle above party and vote for Judge Bork.

You have our deepest prayers.

Signed: Your fellow countrymen who bow our knees not to political expediency, but only to God.

Stephen & Garji Abernathy.
Lisa Abernathy.
Sue E. & Heidi Adams.
Jane S. Adkins.
Mark A. & Pamela D. Andrews.
Frederick & Vesta Ard.
Mike & Joyce A. Bagwell.
Kay B. Bakke.
Dr. M. Joe Bancroft.
Leila Banks.
Jim & Brenda J. Barnett.
Robert D. & Dreama Barr.
Walter N. Battles.
David C. Battles.
Marion D. Battles.
Hugh & Agnes Bazemore.
Leslie Beard.
T.C. and Shirley Beaty.
Janette R. Beaumont.
John F. Beaumont.
Terry Wayne Beck.
Stephanie W. Bell.
Jeanice Bell.
James W. Belyeu, M.D.
Frank & Susan L. Benefield.
Marlin & Karen Benneth.
Mike Berry.
Vernon A. Betsch.
Mary & John B. Blalock, Jr.
Linda Bodner.
Joyce W. Bolen.
Louise Bond.
Jeff & Leta Sue Bone.
Robert L. Bonham.
Nell T. Bonner.
Daphne G. Booth.
M/M John A. Bostic.
Betty Bostwick.
Rev. Herbert J. Bowsher.
Robert and Glenise Boyd.
Sharon G. & Stephanie Brackner.
Ann Bradford.
Coy S. Bragg.
Gaynell Brakefield.
Oliver B. Brank, M.D., P.A.
Mike Brascome.
Hayes Braun.
Bill and Leila Brazeal.
Keith & Regehea Brewer.
M/M Mark Brezina.
B. Stanley Bruce.
John B. & Laura H. Brunson.
David P. Bryant.
Evelyn Burch.
Gene Burgett.
Lesley Burk.
William Roger & Charlotte Burns.
Jill Busenlehner.
M. Bruce & Jane M. Bush.
Kenneth and Karen Bush.
James D. & Darcy Bussey.
Elma Buzemore.
Jill Bynon.
Rev. and Ms. R.T. Callahan.
Ora Lee Calloway.
Linda and Jerry Campbell.
M/M E. W. Canada.
Candy L. Cantrell.
Teresa P. Capra.
Marta and David Caradine.
Randy and Vicki Carleton.
Mr. & Mrs. Troy Carpenter.
Jimmy C. Carrier.
Louise Carroll.
Vito A. & Lorrie A. Carruba.
David Carter.
Barbara E. Carver.
James H. Chalmers, Jr.
Gregory Champion.
Allan J. Chappelle.
Tracy Cherrix.
David W. Childers.
Sheila & Lynn Childress.
Scott & Shirley Childs.
Stacy J. Childs, M.D.

Allen & Susan Clark.
Harold Clark.
Thomas S. & Bettie H. Clark.
Charles F. Clark.
Charlotte Railey Clayton.
Janet Clement.
Harry & Martha B. Cobb.
Robin Coburn.
Frank & Janice Cochran.
Joseph M. Cocke.
JoAnn Coffey.
Cindy & Mr. Tony Combs.
Catherine F. Cook.
Mr. & Mrs. Charles R. Cooper, Sr.
Mr. & Mrs. C.R. Cooper, Jr.
Mr. & Mrs. John M. Cowart.
Ruth Crim.
Robert E. & Margaret Dabbs.
Curtis R. & Darlene Darden.
Linda J. Davis.
Mary Lou & James E. Davis, Jr.
Jeff Davis.
Ken & Sandy Deaton.
Turner Dees.
M/M Albert T. Dennis.
Joseph A. & Suzi Dentici.
Ed & Cheryl Denton.
Freddie and Gale Dickey.
Florence & C.T. Dodge.
Mason Donovan.
Gilbert F. & Cynthia N. Douglas.
Mary S. Douglas.
Dr. & Mrs. Gilbert Douglas, Jr.
Jon Dudley
Ronald T. & Lisa Dudley, Jr.
Ronald & Carol Dudley.
James H. Dunklin IV.
Floice Earley.
Kenneth W. & Ann W. Earley.
Todd Early.
Mr. & Mrs. Larry Early.
Bettye East.
Ken J. Eddings.
William S. & Joan Ellington.
Bill and Roxie Elliott.
Webb and Mattie Ellis.
R. Trenton Ellison.
Clay E. & Nancy W. Erwin.
Mr. & Mrs. James V. Fairley.
Mary Sue Farmer.
Jane Fennell.
M/M William Ficken.
Rosa Flanagin.
John and Damon Folmar.
Ann Z. Fortner.
Mary H. Fortner.
Mr. & Mrs. Roger Fowler.
Ken Francis.
Lori and David Franz.
Mr. & Mrs. Bill French.
Michael and Leslee French.
Kenneth O. Friday, DMD.
Kenneth G. Friday.
Pauline J. & David J. Fugazzotto.
Dr. & Mrs. Tom Fuqua.
Wanda Gamble.
Marie Gann.
James D. Garner.
Garywood Assembly of God Church.
Donna J. Giada.
Richard L. Gilmer.
M/M Parker A. Glasgow.
Glen Iris Baptist Ministries.
Gene V. & Faye Glover.
R. Alan & Martha D. Godwin.
Brenda K. Goggins.
Judy B. Golden.
Mr. & Mrs. Patrick M. Gordon.
Mr. & Mrs. B.P. Graham.
Peggy Green.
Dorcas & Hubert W. Greene, Jr.
Mr. & Mrs. John R. Grimes.
Roberta & Alastair Guthrie, M.D.
Valcie Gwin.
Rick A. & Deborah M. Halbrooks.
Jackie S. Hall.
James and Stacey Hall.
Donna Hamilton.
Ray Hardin.
S.S. Hargraves.
Wendell B. Harless, Jr.
Alvon A. & Robbie A. Harris, Jr.
Dona Harris.
Michael and Joanne Harrison.
Bruce & Burt Haukohl.
Juergen & Nancy Haukohl.
Arthur A. Hawkins.
C.L. and Becky Hayes.
James L. Head.
Robert S. Helms.
Sharon Myers Henderson.
Sandra Henley.
Mr. & Mrs. Daniel N. Herman.
George & Helen Hewson.
O.V. & Carolyn Hill.
Evelyn Hill.
Miriam Hipp.
Linda M. & Leta A. Hobdy.
James and Francis Hobdy.
Kenneth G. & Gladys Y. Hodge.
David K. & Lisa Hogg.
Mr. & Mrs. Terry L. Hogue.
Darian Holcombe.
Clara N. Holmes.
Susana & James O. House, III.
James F. & Joy S. Houts.
Jerry Rockford Hudson.
Paul Hunter.
Rosemary and Charles Jager.
Mary Jemison.
Mr. & Mrs. Joc T. Johnson.
Harry & Evelyn Johnson.
Charles Howard Johnson.
A. Eric Johnston.
Mr. & Mrs. Robert C. Jones, III.
O.C. Jones, Jr.
Bobbie S. Jones.
Yvonne E. Jones.
Marilyn S. Jones.
Greg Jones.
Larry and Gay Jones.
Bobby P. Jordan.
C. Frederick Judd.
Bruce & Connie Jurgens.
Harold D. & Marie G. Kelley.
M/M Henry C. Kendall.
J.L. & Dianne Kerr.
Bradley & Lynn Ketch.
Gayle Kiker.
G. Daniel Kircus.
Dr. & Mrs. Stephen Klein.
Kitty Knapp.
Laverne S. & Richard N. Lamb, M.D.
Cheryl A. Lankford.
Luke & Donna Lea.
Stephen Lee Ledford, Jr.
Ann B. Leopard.
Thomas Leopard.
Clyde W. & Avon H. Letcher.
T.J. Lewis.
Roy Lewter.
Phillip & Lisa Lichlyter.
Jackie Lighfoot.
Minnie Lee Livingston.
W.K. Livingston.
Mrs. John T. Long.
Jane Long.
Nancy Looney.
Karan Looney.
Julie & John, III Loper.
John & Sharon Loper, Jr.
Mark & Rhonda Love.
Iva L. Love.
Nola Ann Ludolf.
Robert & Joanne Lukasik.
Floyd A. and Jean Maharrey.
Randy Maharrey.
Linda Martin.
Sharon B. & Lester Mason, Jr.
Mr. & Mrs. P.H. McAbee, Jr.
Donald McCants.
Douglas J. McCollum.
Kathy McCollum.
Lisa A. McCord.
Mrs. Ethel M. McCarney.
William C. McDonald III.
Ann W. EcElroy.
M/M Charlie MacGregor.
Jane McInvale.
Mr. & Mrs. Owen W. McKinney.
Mr. & Mrs. G.E. McLaurine.
John A. McNeil, Jr.
Tommy & Barbara McNutt.
Lorene McWaters.
Henry L. Mellen, Jr.
M/M Henry Mellen.
E.U. Meullen.
Sandra E. Mikul.
Gordon W. Miller.
Janet Millican.
Susie Milligan.
Larry D. Moon.
June Moon.
Alan Moore.
Mark Morales.
Paula and Barry Morehead.
Stephanie Morgan.
John and Libbie Morris.
Beverly J. Morton.
Carla S. Mosley.
Harold & Laura Mulkey.
Dick & Betty Murphree.
Ann Muths.
Carol Myers.
Scott Myrick.
Eugene W. & Lois W. Nabors.
Michael A. Neel.
David S. Neel.
T.N. & Janet Norden.
Betty E. Norris.
Clarence & Joy Northcutt.
H.C. Nunnelley.
Denise O'Callaghan.
Opal O'Conner.
Dave O'Hara, Jr.
Rabena Orr.
Teresa Orr.
Paul & Josephine Pankey.
Winfred and Lucille Parker.
Timothy W. & Charlotte Parrish.
M/M. Richard K. Patton.
Mary Patton.
Junie C. Peavy.
James W. & Martha J. Peeler.
Robert & Renee' Pelfrey.
Skeet & Angie Pender.
Meredith and Wayne Pender.
Richard, Judith, and Caleb Pender.
C. Paul Perry, M.D.
Tedford F. Phillips.
W. Monroe Phillips.
Carolyn Pitman.
Alan J. & Virginia A. Pitts.
John F. PItts.
Michael Polk.
Ron & Robbie Poole.
Faye, George, and Laurie Porter.
Martha and Charles Posey.
Judy Potts.
J.H. Pounds, Jr. & Family.
Lanie E. Radbill.
Dick & Pam Radke.
Lucile M. Railey.
David Ray.
Edward N. Reed, DMD.
M/M S.T. Reeder.
Reickenback.
Maralu Reid.
Mary and Brandon Reisman.
Arnold & Wanda Reuben.
David & Rhonda Richards.
Leah A. Ritchie.

Reba Roberts.
Mary A. Robinson.
Edith K. Robinson.
David B. Rogers.
Patsy Rogers.
Dawn Rollins.
Hank & Gail Roskamp.
Samuel R. Rubin.
Jim Russell.
Joyce Russell.
Ben H. Rylant.
Mrs. Melville S. Rylant.
Horace and Mary Jane Sanders.
Charles & Diane Sapp.
Eula Savage.
Mr. & Mrs. Kelly Schultz.
Paul & Norma Scott.
Lee and Timothy Scott.
Kevan C. Scott.
Julie and Mike Seals.
Sharon Sellers.
Dean Sessamen.
Cecil O. Sewell, Jr.
John and Mary Sharp.
Rev. William D. Shaw.
Ruth A. Shaw.
Clyde & Susan Sheehan.
David Shelton.
Mr. & Mrs. Hal Sheperd.
Louis O. Shifflett.
Keith & Teresa Silliman.
William Kyrle Simms.
Arvin Ray Simpson.
Jerry & Evelyn Simpson.
Jimmy L. & Delores Sims.
Lidie Watson Smith.
Gary & Jan Smith.
Hadden B. Smith, III.
Karen L. Smith.
Mr. & Mrs. Travis Smith.
Dennis H. & Nancy Smith.
Frank C. & Mary & Sarah Annette Smith.
W.T. Smith, Jr.
Donald R. Smith.
Margaret M. Smith.
Randall L. Snider.
J.H. Snow.
Southside Baptist.
Olive Spann.
Doris and Simon Speakman.
Andrew Spear, Jr.
Jacque Staed.
Gilbert Starns.
Mr. & Mrs. Ron Steel.
Brad & Kathy Steffler.
Ellen Griffin Stephenson.
Carolyn T. Stewart.
Mr. & Mrs. John M. Stewart.
Millie and John Summer.
Katherine J. Sutherland.
Mr. & Mrs. S.S. Swalley.
Henrie Ellen Swanson.
Henry S. & Mary Swindle.
Margaret T. Tanner.
Karen and David Tapley.
Mr. & Mrs. J.E. Taylor.
Randy Taylor.
Margaret R. Taylor.
Myrtle B. Templin.
Faye W. Terpo.
Debra Thompson.
Helen M. Thompson.
Ron & Betsy Threadgill.
Mr. & Mrs. Joe Tidwell.
Mark and Darby Travers.
Elisa N. Trott.
Annette and Phil Turner.
Bill & Deanie Uhrig.
Dr. Kenneth T. Usry.
Mr. & Mrs. H.T. Van Ness.
Thomas J. Vaughn.
Dr. & Mrs. Richard N. Vest, Jr.
Clara & Kathy Vickery.
Mr. & Mrs. Clifford N. Wade, Sr.
Ken Walden.
Geneva Waldrop.
Charlotte Waldrop.
Rex G. & Dorothy K. Walker.
Larry R. & Sharon I. Walker.
Bill E. Wallace.
Judy Walters.
William & Lori Watson.
Shelby & Elizabeth B. Watts.
Mr. & Mrs. Jesse M. Weaver.
Melanie T. Weeks.
Barbara O. Wenndt.
Charles Louis Whitson.
Rebecca J. Williams.
Al Williams.
Buzz & Carol Williams.
John Edwin Williamson.
Kenneth D. & Leslie H. Wilson.
Tracy W. & Michael B. Wilson, Sr.
Samuel W. & Margart H. Windham.
Mark & Pamela Winslett.
M/M Wintter Winter.
Ellen Wolfe.
Frances Womble.
Wanda Wright.
Jan Young.
Mr. & Mrs. Robert Zimmerman.

(Paid Pol. Adv. Citizens For Bork, Nancy Haukohl, coordinator, 3578 Rock Hill Road, Birmingham, Alabama 35223)

[From the Birmingham (AL) Post-Herald, Oct. 19, 1987]

ALABAMA: SET AMERICA STRAIGHT. DON'T LET POLITICS KILL JUDGE BORK

President Reagan nominated Judge Robert Bork to the U.S. Supreme Court on July 1, 1987. Before the day was over one of our history's nastiest political and propaganda campaigns had begun by a few members of the Senate along with some radical but well financed political extremists.

In a frightening misuse of our constitutional liberties these people spent millions of dollars to scare blacks, women, and others into believing that their rights would be taken from them. Newspaper, radio and television ads were made that sought to mobilize political pressure against those who would have to vote on Judge Bork's confirmation.

People were lied to by people they trusted. They were scared into believing the unbelievable. And as good people became aroused they put pressure on their representatives to save them from the horrible future others had said would happen.

They made a reasonable request. For unreasonable reasons.

WHERE WE ARE

This embarrassing time in our history leaves us now just a few hours from the final vote on Judge Bork's nomination. There is a strange uneasiness drifting through the Senate. There is a sense of uncertainty among many of those Senators who were rushed in the tide of political pressure to take a stand in opposition to Judge Bork.

Perhaps the current hesitancy comes from the realization that the pressure was not really against Judge Bork. That Judge Bork was and, in fact, is among the most qualified persons ever named to the Supreme Court. They know that based on historical standards Judge Bork's credentials are impeccable.

People are just now understanding that the propaganda was really aimed against a presidential administration by its opposition and that the nomination of Judge Bork was simply a political opportunity.

Throughout the world terrorists have recently demonstrated that, to them, no sacrifice is too big in their quest for victory. They figure, wrongly, that the ends justify the means. And that is what happened here.

THE SCARS ARE PERMANENT

It could be a temptation for some senators to still vote no on Judge Bork, and assume that the next candidate could be approved and the nation would move on never the worse for the experience. And never the wiser.

That would be wrong. The experience of Judge Bork being maligned and politically battered will become precedent to future scurrilous and vitriolic campaigns. Political machines will be geared up to shake the nation each time any president nominates a candidate to the court. Qualified persons will be tossed by the wayside and worse, others won't allow themselves to be considered.

ALABAMA KNOWS

Given the truth, it is certain that a majority of the people of Alabama would support Judge Bork's confirmation to the U.S. Supreme Court. With cooled, relaxed factual evaluation one realizes that Judge Bork has the ethics, integrity, knowledge, experience and ability that are demanded of a person in such an important position.

It takes a certain maturity and sense of confidence for a person to re-evaluate, and when appropriate, reverse a once-taken position. This needs to be done by some Senators who have indicated they will oppose Judge Bork.

It is our desire that Senator Heflin and Senator Shelby will take that leadership position and make Alabama and our nation proud.

If you care to discuss this issue and let them know that you want them to vote for Judge Bork's confirmation to the Supreme Court please act now. Time is of the essence.

Call Senator Heflin in Tuscumbia at 205 381-7060 or his Washington office, 202 224-4124. Senator Shelby can be reached in Tuscaloosa at 205 759-5047 or in Washington at 202 224-5744.

[From the Alabama Journal, Oct. 20, 1987]

IN RE: ROBERT H. BORK—RONALD REAGAN, ORRIN HATCH, STROM THURMOND VS. JOE BIDEN, TED KENNEDY, ROBERT BYRD—THIS VERDICT IS UP TO YOU

It's been called "the main event of this Congress," and "President Reagan's greatest legacy."

It's the battle over Robert Bork's nomination to the Supreme Court. And in this battle there's a secret weapon—you.

That's right. You can make the difference.

Because it's also a battle of the concerned, patriotic citizens of America versus every narrow, self-serving, liberal special-interest group that's come down the pike!

The liberals are spending millions to defeat Judge Bork. They know he will end their flagrant use of the Supreme Court as a political tool to further their own self-interests at the expense of a strong and free America.

They're running television commercials, full-page ads in all the major newspapers, and hiring high-priced lawyers and lobbyists to pressure U.S. Senators.

But the real key to the Senators' votes is people like you!

Your two Senators will pay a lot more attention to your telephone call or note than some hot-shot Washington liberal in a three-piece suit . . . if you act now!

So pick up the phone and call your Senators at (202) 224-3121. Or mail them the coupons below. Or better yet, do both.

The stakes don't get any greater. And remember, this verdict is up to you.

Statement by James Roosevelt on the Bork Nomination, October 21, 1987

"Regardless of what advertisements appearing in Alabama newspapers may indicate, I have not endorsed the President's nomination of Judge Robert Bork to the U.S. Supreme Court.

"In fact, I had no knowledge of the ad, sponsored by a group called 'We, the People" prior to calls from friends who read it in Alabama newspapers.

"I have not endorsed Judge Bork and have no plans to do so.

"My only dealings with this group occurred in a telephone call which dealt with the President's right to nominate an individual of his own choosing to the high court—or to any other federal post.

"I believe strongly that Presidents have a constitutional right to select their own nominees for positions such as this. In cases, where the Senate has the duty to 'advise and consent', I feel the Senate should accept the President's nominee unless there are strong reasons why that individual should be disqualified.

"The decision on Judge Bork's qualifications rests with the members of the U.S. Senate. I would not presume to tell them how to vote."

Mr. CRANSTON. Mr. President, I believe that Senator Domenici is to be recognized next, and I ask unanimous consent that I may be recognized thereafter, to speak on the nomination.

The PRESIDING OFFICER. Without objection, it is so ordered.

UNANIMOUS-CONSENT AGREEMENT

Mr. BYRD. Mr. President, I have discussed this request with the distinguished Republican leader, and it is as follows:

I ask unanimous consent that on tomorrow, at not later than the hour of 2 o'clock p.m., the Senate proceed to vote up or down on the nomination of Mr. Bork; provided, further, that on any motion to reconsider, there be no time for debate; that on the disposition of the nomination, the President be immediately notified of the outcome and the Senate return to legislative session, at which time it proceed to the consideration of the military construction appropriation bill, followed by the catastrophic illness legislation, with the understanding that there be no rollcall votes following the disposition of the Bork nomination, and that any rollcall votes so ordered go over until Tuesday morning next; provided, further, that the time between 9 o'clock and 2 o'clock p.m. be divided as follows: 3 hours for the proponents and 2 hours for the opponents, with the further provision that Mr. Melcher have 20 minutes from the time of the opponents and that Mr. Exon have 15 minutes to be charged against the time of the opponents.

The PRESIDING OFFICER. Is there objection?

Mr. DOLE. Mr. President, reserving the right to object—and I shall not object—I just wanted to indicate with respect to the military construction appropriation bill that I have not been able to reach the Senator from Pennsylvania [Mr. Specter]. I do not know of any objection he has to that; but if we could have some consultation with the two leaders, if I had a problem I could bring it up with the majority leader.

Mr. BYRD. Provided, further, that Mr. Heflin be guaranteed 15 minutes from the time of the opponents.

Mr. DOLE. Mr. President, I request that 1 hour of the time for the proponents be allotted to the distinguished Senator from Missouri [Mr. Danforth].

The PRESIDING OFFICER. Without objection, the request of the majority leader is agreed to.

Mr. BYRD. I thank the distinguished Republican leader. I also thank the distinguished Republican whip and the distinguished chairman and the ranking member of the Judiciary Committee, Mr. Thurmond—all of whom have worked to bring about this agreement. I will have further expressions of thanks and commendations to Senators on both sides of the aisle tomorrow.

May I say, before I yield the floor, that it would be my hope that the Senate could proceed with work on legislative matters tomorrow afternoon, after disposition of this nomination. At this late date in the session, I do not think we want to see several hours of a good afternoon go unutilized. It will help farther down the road.

So I close with this statement: If any Senators wish to come in ahead of 9 o'clock tomorrow to speak, they may do so. If I do not hear, however, within the next few minutes or by the time the Senate is ready to go out this evening, I will ask that the Senate come in at 8:30, so as to give the two leaders their time under the standing order; and there could be some morning business, with Senators speaking for not to exceed 5 minutes, and the Senate will go into executive session at 9 o'clock and proceed immediately under the agreement and in accordance with the agreement.

Mr. DOLE. Mr. President, will the majority leader yield?

Mr. BYRD. I yield.

Mr. DOLE. I am advised that Senator Specter is in the office. He is watching the debate on television. He will be prepared to go to military construction.

Mr. BYRD. I thank the distinguished Republican leader.

Mr. President, we will stay in session this evening as long as any Senators wish to speak.

I thank all Senators.

(Later the following occurred:)

Mr. BYRD. Mr. President, I earlier included in the order the provision that any rollcall votes ordered on tomorrow afternoon following the disposition of the Bork nomination be stacked for Tuesday next.

I ask unanimous consent, instead, that any rollcall votes ordered following the disposition of the nomination of Mr. Bork on tomorrow not occur before Tuesday next.

The PRESIDING OFFICER. Without objection, it is so ordered.

Under the previous order, the next Senator to be recognized is the Senator from California, Senator Cranston.

Mr. PRESSLER addressed the Chair.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. PRESSLER. It is my understanding that I would be the next speaker in place of Senator Domenici.

The PRESIDING OFFICER. The Chair will state there was a unanimous consent agreement that, after the Senator from Alabama, the Senator from New Mexico, Mr. Domenici, would be recognized, to be followed by the Senator from California, Senator Cranston.

Mr. PRESSLER. I was told that arrangements were made earlier with staff on the floor for me to speak in place of Senator Domenici. It is written in the special order, is it not?

The PRESIDING OFFICER. The Chair will state the only unanimous consent presented to the Chair was the one that the Chair has announced.

Mr. PRESSLER. Point of order, Mr. President.

The PRESIDING OFFICER. The Senator will state the point of order.

Mr. CRANSTON. Mr. President, if the Senator from South Dakota will yield for a moment to me, let me say that I am going to speak very, very briefly.

Mr. PRESSLER. I have to be someplace at 10 minutes of 10. I was going to speak briefly. I made the arrangements and I thought it was arranged and that there was no objection.

Mr. CRANSTON. I have no objection, since we are arguing about this, if the Senator has a brief speech, to go ahead.

I ask unanimous consent that the Senator from South Dakota may proceed.

The PRESIDING OFFICER. Without objection, the Senator from South Dakota is recognized.

Mr. PRESSLER. Mr. President, I rise in strong support of Judge Bork. I believe that he is a fine judge. When he was nominated to the U.S. Court of

Appeals, he was unanimously approved. He was given the highest ratings by the American Bar Association. Basically, I think that our President deserves his choice for the Supreme Court, unless there is some overwhelming ethical or competence problem, or if the nominee is not in the mainstream of American judicial thinking.

Indeed, when President Carter was in office, I followed this philosophy and voted for many of his well qualified nominees even if I may have disagreed with some of their views. At that time, some urged me to vote against certain nominees for the court of appeals or elsewhere and it was my strongest conviction that under our Constitution a President is entitled to his nominee unless there is some overriding concern.

Mr. President, I think that the Supreme Court in the 1950's, 1960's, and 1970's has been a very liberal Court, especially in the area of criminal law. I strongly believe that sometimes the victims of crime have fewer rights than the criminals. Because of the extensive Miranda warnings many criminals can slip through loopholes, creating difficulties for prosecutors. The fact that the National Association of Sheriffs, the National Association of Prosecuting Attorneys, the National District Attorneys, the chiefs of police, and other law enforcement agencies have all endorsed Judge Bork indicates a desire for the Supreme Court not to have so many loopholes for criminals to use.

The fact of the matter is that there is a feeling in this country that it has become very difficult to prosecute criminals, both white-collar criminals and non-white-collar criminals.

It has been my strongest feeling that the conservative side deserves an appointment. Ronald Reagan was elected and reelected. That is the way the system works. As a Member of the U.S. Senate, I am a believer in that system. I think it is the finest form of government devised by man. I believe what this Senate will probably do tomorrow at 2 o'clock will fly in the face of fair play.

I also happen to believe that Judge Bork is a fine man and a fair judge. He has written some provocative articles, and has taken some chances. He is a man, an academic man, who thinks and writes.

Are we to have only judges who have not written any Law Review articles, who have not made any provocative speeches, who have not had a repartee in some of their classes or have not had a repartee with some audience, thinking some extrapolative ideas?

Are we to nominate only people to the Supreme Court who are so cautious in what they say and so careful in every word that they write that we get almost an intellectual eunuch on the Supreme Court? That is what is going to happen if we hold people to every sentence.

There are Members of this body who in the 1960's voted and made speeches about certain civil rights pieces of legislation. Indeed, all of us have had changes of mind over the years. Certainly Judge Bork's 1971 article in the Indiana Law Review would indicate that he has changed his mind over the years. But would this not be expected of a university professor or of an active mind? Do we want someone who believes in exactly the same thing as they did in college, to the present day? Is that the standard we are imposing?

Mr. President, let me say that I have been disturbed by some of the statements about Judge Bork. Some of the ads that have been run have been very misleading. It seems that the national media, which normally gets very upset when anything misleading is said, has been completely silent. It seems that Judge Bork has been fair game, so to speak.

There has been an effort to, somehow, portray Judge Bork as a person who is antiwoman or antiblack. I must say that the image that has been projected by the national media and by ads has been quite successful in that portrayal. But I have read his cases and a lot of his judicial record—not all of the record but a lot of it—and that is not true.

Indeed, I would say he is prowoman and problack, in the sense of fairness.

I would predict that this body will go forward and quickly confirm the next nominee, whoever she or he may be. That nominee will probably be more conservative than Judge Bork, but probably will not have written as many articles or had so many extrapolative repartees with students. Because of this, I feel the Supreme Court and the country will suffer.

So, Mr. President, I shall vote with a great deal of pride and satisfaction for Judge Bork. I am disturbed by what has happened because I think we have politicized the nomination of a judge to the Supreme Court. I stand ready to evaluate the next nominee, if Judge Bork loses. However, I am saddened at making this speech because I believe very strongly that he deserves to be on the Supreme Court.

I also think that the country will miss out, and future generations of law school will miss reading some great opinions. I think that the freedom that we enjoy and the role that the Supreme Court plays will not be as efficient, in terms of preserving freedom, dignity, and decency throughout our land.

But worst of all, this sets a precedent, a very bad precedent, about the process of selecting a Supreme Court Justice. We are about to yield to a false national campaign and to Members becoming committed because of pressure groups. I am very, very saddened by this process.

Mr. President, I shall submit additional material. Tomorrow at 2 o'clock I shall vote with pride for Judge Bork.

The PRESIDING OFFICER. Under the previous order, the Chair will recognize the Senator from California, Senator CRANSTON.

Mr. CRANSTON. Mr. President, during this debate, there has been much discussion about character assassinations and the personal integrity of individuals.

I want to address specifically the personal integrity and reputation of one of the individuals whose name has been brought into this debate—a man who is one of my constituents—Gregory Peck.

Gregory Peck is a patriotic American whose integrity has never been questioned. He is a recipient of the Nation's highest honor for a civilian, the Medal of Freedom.

This afternoon a Senator made a statement on this floor that Gregory Peck had "lied" in a Bork TV spot. I am appalled at this personal insult to a man whose honor and reputation is above reproach and should not, in any way, be an issue in this controversy.

I spoke with Gregory Peck yesterday about the ctiticism which has been made about the TV spot which he narrated for People for the American Way. He asked that I make it clear to the Senate that he had personally read the material documenting the charges before he made the TV spot and that he made the spot only because he was convinced that it was a fair statement of Judge Bork's record and positions. He said he made this spot because, like many of us in this body, he felt a matter of high principle is at stake in this nomination.

I share that view and reached the same conclusion.

Mr. President, People for the American Way has prepared extensive documentation on each statement made in the ads. This organization is perfectly capable of defending the content of its ads and has done so ably. This detailed documentation, citing the statements made by Judge Bork which formed the basis for the charges made, was printed in the RECORD on Wednesday, October 21, at the request of the Senator from Delaware [Mr. BIDEN]. I urge a careful reading of this documentation by those who have loosely thrown heated charges at those who oppose this nomination.

Certainly the supporters of Judge Bork's nomination may disagree with the conclusions reached by the opponents. But Members of this body need to call a halt to the strident attacks upon the integrity and motives of those in opposition to this nomination. Suggesting that Gregory Peck lied went beyond the bounds of tolerable debate.

The real issue is Judge Bork and his record, and we ought to stay on that issue.

Mr. President, the stakes are always high in a controversy over a nomination to the U.S. Supreme Court. A Supreme Court Justice, as we've heard said many times over these past several weeks, rules on matters of major constitutional importance that can affect the course of our Nation for generations.

And that Supreme Court Justice may be playing a major role in Court decisions years after the President who made the nomination—and many Members of the Senate who voted on it—have left office.

The Senate's exercise of its constitutional responsibility to review and evaluate a President's nomination to the Supreme Court is one of our most important duties.

I believe strongly that the Senate has discharged that heavy responsibility with respect to the Bork nomination in a judicious, thoughtful manner. The hearings and the deliberations have been extensive and intensive, and rightly so.

Like many of my colleagues, however, I deplore the efforts of some to divert this debate away from the real issue into bitter and strident attacks upon the motives and integrity of those who oppose this nomination. The real issue is Judge Bork's judicial philosophy.

There has been much talk and discussion about the role that outside groups have played in this debate.

The distinguished Senator from Alabama, Senator HEFLIN, himself a former supreme court chief justice in the State of Alabama, spoke about that matter at length just now in a very appropriate manner.

It is true that both proponents and opponents of the nomination have sought to make their case to the Senate and to the American people directly. Both sides have utilized mass media, mass mailing and telephone banks to promote their views. But that's a first amendment right.

There should be no misunderstanding, however, as to the basis for Judge Bork's rejection by a majority of this body.

A majority of Senators made a careful and extensive review of Judge Bork's judicial philosophy as expressed in his writings and speeches over a 25-year career, in his record as a Federal court of appeals judge over the past 5 years, and in his more than 30 hours of testimony before the Senate Judiciary Committee. And a majority of Senators have concluded he should not be elevated to our Highest Court.

They concluded that Judge Bork's judicial philosophy posed a serious threat to the protection of individual rights and personal liberties.

The Senators who have spoken out against Judge Bork have done so in thoughtful and detailed statements, as have many of those on the other side.

The differences have often turned on judgment as to which man, if confirmed, would take a seat on the Supreme Court—the Robert Bork who for 25 years derided and repudiated in extreme terms Supreme Court decisions upholding individual rights, or the Robert Bork who moderated and revised his positions during his confirmation hearing. The motives and the integrity of those who found this confirmation conversion not credible should not be challenged any more than the motives or integrity of those who accepted it.

By the same token, it is misleading for the proponents of Judge Bork to describe as baseless the concerns of those opposing the nomination. And it is insulting to the U.S. Senate and demeaning to individual Senators to suggest that these concerns were nothing more than a reaction to deft television commercials or full-page ads.

Many Senators who will vote to confirm Judge Bork have acknowledged that there are deeply troubling matters in Judge Bork's record. Over and over, Senators speaking on behalf of the Bork nomination have expressed reservations or disagreement with him on issues of constitutional importance. The existence of the troubling statements and positions in Judge Bork's record cannot be discounted or denied.

It was Judge Bork's own words which defeated him.

Last month I spoke on the Senate floor detailing in depth my concerns with his judicial philosophy, particularly in the area of civil rights, women's rights, the right of privacy, and the power of government to interfere in the lives of individuals. I do not intend to reiterate those arguments today.

Succinctly put, the basic and fundamental flaw in Judge Bork's judicial philosophy—the fatal flaw, in my judgment—is that he does not find in the Constitution of the United States any fundamental overriding purpose to protect individuals from the tyranny of government.

That is Judge Bork's views of the Constitution. It is a view he expressed over and over in his writings, speeches, and in his testimony before the Judiciary Committee.

It is a view which rejects the established part of our legal tradition which holds that a principal objective of the framers of our Constitution was the preservation and advancement of individual liberty and inalienable rights. Those include rights and liberties not specifically enumerated in the Constitution.

Judge Bork's view of the Constitution is that individuals are guaranteed only those rights which are explicitly granted to them by their government.

From the basic perspective flows Judge Bork's attacks upon many Supreme Court decisions which safeguard individual rights and liberties.

The Constitution of the United States has historically stood as a bulwark against government intrusion into the lives of Americans. Judge Bork's judicial philosophy rejects those principles of individual liberty and freedom which lie, in my view, at the very heart of the Constitution.

Those of Judge Bork's supporters who argue that he has been unfairly attacked for not supporting civil rights, or women's rights, or individual rights have missed the point.

It is, and always has been, Judge Bork's judicial philosophy—not his personal philosophy—that is in question. That judicial philosophy, if adopted by our Highest Court, would jeopardize the stability of Supreme Court precedents which have protected individual rights.

It is that philosophy which a majority of the Senate correctly rejects in defeating this nomination.

Mr. President, I yield the floor.

Mr. BIDEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. Mr. President, I yield the floor.

Mr. DIXON addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DIXON. Mr. President, over the last several weeks we have heard a great deal about how the nomination of Judge Bork was treated by the Senate. I believe that Judge Bork received fair consideration by this body, and will be rejected, not because of interest group campaigns, but based on problems with respect to his views on fundamental constitutional issues.

Some of Judge Bork's supporters have argued that Judge Bork is the victim of a highly organized campaign spearheaded by special interest groups. They claim that Judge Bork's record was unfairly distorted by disinformation, and that media ads and an unfair portrayal of Judge Bork's record poisoned the minds of the public and the Senate. According to this argument, Senators are being misled by false characterizations of Judge Bork, and they never had a clear view of the judge's record. This smear campaign theory simply does not hold up to scrutiny. Quite frankly, I think that the whole scenario is demeaning to the Senate. I do not believe that the votes of Senators can be so easily swayed.

Both supporters and opponents of Judge Bork organized emotional, simplified appeals to mobilize public support and raise money for their position. In those appeals there have been excesses and exaggerations on both sides. That cannot be denied. However, it was not the efforts of grassroots citizens groups, or media ads, that defeated the nomination, it was Judge Bork himself!

Public opinion polls clearly show that the advertising campaigns had no significant effect on how Judge Bork was viewed. The sharpest swing of public opinion against Judge Bork came as a direct result of his own 5-day testimony. The American people saw Judge Bork, considered his views on the Constitution, and rejected them.

When the President sent the nomination of Judge Bork to the Senate, my initial inclination was to favor the appointment. I had voted for Judge Bork's appointment to the D.C. Circuit Court of Appeals, and I remembered that the American Bar Association had rated him "exceptionally well qualified" for that position. Judge Bork was unanimously confirmed for the Circuit Court of Appeals.

However, after careful consideration, I decided to oppose the nomination of Judge Bork. My decision was not based on interest groups or media advertisements. Judge Bork's problems were caused by his own words in the Senate Judiciary hearings, and in his writings.

I believe that the hearing process was very fair to Judge Bork. He testified before the committee for an unprecedented 5 days. During his 32 hours of testimony, he had an opportunity to fully present his views on fundamental constitutional issues and directly answer the charges of his critics. Judge Bork clearly had ample time to make sure the Senate had a thorough and accurate record of his views.

I had hoped that Judge Bork would set to rest the concerns I had about his nomination. He did not. After hearing Judge Bork, I felt even more uncomfortable with his constitutional views regarding such important issues as civil rights, privacy, and equal protection.

During the Judiciary Committee hearings, it was not the public special interest groups that testified. Rather, the witnesses were a distinguished group of prominent lawyers, scholars, and Government officials. The witnesses did not present simplified, emotional pleas, but instead provided detailed arguments regarding Judge Bork's record and writings. Sixty-two witnesses testified in support of Judge Bork's nomination, and 48 testified against. The Senate heard from 14 more Bork supporters than opponents. Clearly, there was more than a fair opportunity for Judge Borks supporters to make their case before this body.

During these hearings it became clear to me and many of my colleagues, that Judge Bork's judicial beliefs were not within the broad mainstream of American thought. It was not a question of conservative or liberal philosophy. Rather, it was a question of his fundamental views about our Constitution; how he sees the power of government and individual liberties; and the role he sees for the Court in protecting rights guaranteed by our Constitution.

President Reagan urged that the debate over Judge Bork not be politicized. Yet, in the next breath, he urges the public to call their Senators in support of Judge Bork. The President cannot have it both ways.

Furthermore, the debate on a Supreme Court nomination is inherently a political process—in the best sense of that phrase—and in a democratic society that is exactly as it should be. It is entirely appropriate for the Senate to examine Judge Bork's views on fundamental constitutional issues.

Let me say again, that I do not object to the nomination of a judicial conservative to the Supreme Court. I think the President is entitled to nominees that share his philosophy. I have voted for judicial conservative nominees in the past, and I expect to support the nomination of judicial conservatives in the future.

After the Senate rejects the nomination of Judge Bork, I fully expect President Reagan to send a conservative nominee, and in the end, I fully expect that the Senate will confirm a conservative nominee.

Judge Bork had a full and fair opportunity to express his views on these matters of fundamental importance. The hearing process allowed him to field questions from his critics and state his own positions with precision and clarity. Over the course of his career, Judge Bork has written prolifically. His academic and judicial writings were also closely studied by the Members of this body.

After careful and thorough consideration, the majority in the Senate decided that Judge Bork's judicial views raise too many questions and concerns for him to be confirmed.

Mr. President, the nominating process is working in the case of Judge Bork. He received fair and full consideration by the Senate. It was not the work of special interest groups distorting Judge Bork's views which caused Judge Bork problems. To accuse the Senate of being swayed by these campaigns is without basis and demeaning to every Senator in this body. It was Judge Bork's views, themselves, articulated by Judge Bork in the hearings and in his academic and legal opinions that have caused the majority in the Senate to reject his nomination.

Mr. BIDEN. Mr. President, Senator Hatch said yesterday that the committee report "is a grossly slanted and biased distortion of what really occurred in the committee and what was really at stake in this nomination."

He listed at least 39 inconsistences, to use his term, in that report.

While Senator HATCH's rhetoric may have an appealing ring to some, his statements and the alleged inconsistencies simply have no basis in fact.

The committee report accurately reflects what transpired in the hearings before the Judiciary Committee, and I wholeheartedly stand by the committee report.

INCONSISTENCY NO. 1

Charge: Senator HATCH says that the report states the ABA found Justice Rehnquist "not qualified" when he was first appointed in 1971, and he went on to say that this is a "totally fallacious charge."

Response: In fact, the committee report accurately states that three members of the ABA Committee said in 1971 that they were "not opposed" to his confirmation: "Not opposed" was the language used in the report.

The report did not use the term "not qualified," as Senator HATCH says.

I am compelled today to respond to some of Senator HATCH's charges—charges which are very serious but which are completely belied by the record.

Senator HATCH is apparently unable to distinguish between documents which disagree with him over principle—over what our Constitution should mean—and documents which are distortions or lies.

Let us look at some specific examples of the so-called inconsistencies cited by Senator HATCH.

INCONSISTENCY NO. 2

Charge: Senator HATCH attacks the committee report for its discussion of the members of the ABA Standing Committee who found Judge Bork to be "not qualified."

He says that the report failed to point out that the reasons given by those members "are outside the standards for ABA assessment."

Response: This is, pure and simple, Senator HATCH's own opinion.

Judge Harold Tyler, chair of the Standing Committee; a former Federal judge and a former high-ranking member of the Justice Department; explained that the dissenters were evaluating "judicial temperament" which, according to the ABA's definition includes: "compassion, decisiveness, open-mindedness, sensitivity, courtesy, patience, freedom from bias, and commitment to equal justice."

Judge Tyler also said that political or ideological philosophy is relevant to judicial temperament.

Indeed, the ABA's guidelines state that "while the same factors considered with respect to the lower courts are relevant to * * * the Supreme Court," the standards are actually more rigorous; they require a person "of exceptional ability," not just "a fine person or a good lawyer."

INCONSISTENCIES NOS. 3-10

Charge: Senator HATCH attacks the report for what he describes as its "heavy reliance on the extremist view that the Constitution is a mirror of an evolving 'image of human dignity.'"

He says that the report "assumes that judges manufacture new rights out of the 'open-ended phrases of the document.'"

Senator HATCH says that the "report's approval of substantive due process is appalling."

He says that Chief Justice Burger "shares Judge Bork's view of the Constitution's" liberty clauses, and that Chief Justice Rehnquist and Justice Scalia "are likely to share his views" on those clauses.

He says that the report "hits ecstacies when discussing the concept of fundamental rights."

And Senator HATCH says that the report's claim that Judge Bork's view of liberty sets him apart is "unsubstantiated."

Response: Before I respond to these charges, let me say one thing.

I believe that the wealth of the testimony of the hearings and the committee report itself demonstrate conclusively that Judge Bork's view of the liberty clauses—and his notion of the rights that I believe all Americans have—does stand alone among Justices who have sat on the Supreme Court.

Let me quote what Prof. Philip Kurland, of the University of Chicago, said.

Professor Kurland, by the way, is generally recognized as a conservative scholar of the Constitution.

Professor Kurland said:

> I think it makes all the difference in the world whether you start with the notion that the people have all the liberties except those that are specifically taken away from them, or you start with the notion, as I think Judge Bork now has, that they have no liberties except those which are granted to them.

Professor Kurland said that he does "not know of anything more fundamental in our Constitution"; I agree.

There is nothing more fundamental than the idea that the people have all the liberties except those specifically relinquished.

Now let me take up some of Senator HATCH's charges on this particular issue.

Take the claim that Chief Justice Burger shares Judge Bork's view of the liberty clauses.

Judge Bork at page 89 said:

> Once the Judge begins to say economic rights are more important than marital rights or vice versa and if there is nothing in the Constitution, the Judge is enforcing his own moral values, which I have objected to.

Nothing could be further from the truth.

The committee explored at length Judge Bork's view that there are not unenumerated rights under the Constitution.

I need not further explore Judge Bork's view in detail; but the former Chief Justice takes a different view.

In his 1980 opinion in Richmond Newspapers versus Virginia, he said:

> Fundamental rights, even though not expressly guaranteed, have been recognized by the Court as indispensable to the enjoyment of rights explicitly defined.

For a full recitation of Chief Justice Burger's views, I refer the Members of this body to pages 18-19 of the committee report.

Suffice it to say that Judge Bork and Chief Justice Burger do not, as Senator HATCH would have it, agree on this critical issue.

Chief Justice Rehnquist and Justice Scalia also have a far different view than Judge Bork on the question of liberty under the Constitution.

In Turner versus Safley, Justice O'Conner wrote for a unanimous Court that "the decision to marry is a fundamental right."

Scalia and Rehnquist agreed with this view—a view emphatically rejected by Judge Bork.

The many Justices discussed in the report who have embraced the notion of fundamental and unenumerated rights have not done so in "loose dicta," as Senator HATCH claims.

Take Justice Powell. He wrote in Moore versus East Cleveland that—

> This Court has long recognized that freedom of personal choice in matters of marriage and family life is one of the liberties protected by the due process clause of the Fourteenth Amendment.

And he said that—Our decisions establish that the Constitution protects the sanctity of the family precisely because the institution of the family is deeply rooted in this Nation's history and tradition.

Senator HATCH can call this loose dicta if he wants. I think it expresses a view of the Constitution with which most Americans would agree—a view that Judge Bork emphatically rejects.

Senator HATCH also seems to say that substantive due process and the concept of fundamental rights are without limits, so we have to reject the concepts in toto.

But Justices of the Supreme Court have not had the difficulty finding limits that Senator HATCH seems to have.

Let's look at Justice Powell and Justice Stevens. Justice Powell said in Moore versus East Cleveland:

> Appropriate limits on substantive due process can be found. They come not from drawing arbitrary lines but rather from careful respect for the teachings of history and solid recognition of the basic values that underlie our society. . . .

Justice Stevens has said:

> Guided by history, our tradition of respect for the dignity of individual choice in matters of conscience and the restraints implicit in the Federal system, Federal judges have accepted the responsibility for recognition and protection of these rights in appropriate cases.

These quotes illustrate my point.

Justices of the Supreme Court have accepted limits on substantive due process and fundamental rights—that is the role of Court, and it is the responsibility that the Court has historically accepted. Judge Bork does not accept that tradition and history.

INCONSISTENCIES NOS. 11, 14

Charge: Senator HATCH says that the majority report "chooses to ignore the discount Judge Bork's explanations of his view of stare decisis."

Response: Apparently Senator HATCH has not read pages 21-29 of the committee report. This section deals at length with Judge Bork's views of precedent.

Furthermore, the committee report does not discount his views—rather, the report analyzes his views, and then reaches a conclusion that Senator HATCH apparently does not like. The fact that he does not like that conclusion, however, does not give him license to claim that Judge Bork's views have been "discounted."

INCONSISTENCY NO. 12

Charge 1: That "Judge Bork never recanted his position that Justice Holmes' reasoning for the 'clear and present danger' test is inadequate. Judge Bork does not accept Justice Holmes' reasoning that 'if * * * beliefs expressed in proletarian dictatorships are destined to be accepted * * * then the only meaning of free speech is that they should be given their chance and have their way.'"

Response: This charge shows a simple lack of understanding of both Justice Holmes' real basis for his "clear and present danger" test and Judge Bork's core criticism of that test. The cited passage about "proletarian dictatorship" hav[ing] its way" isn't Justice Holmes' reasoning for the test but is rather one application of the test.

As Judge Bork himself recognizes, the crux of the Holmes-Brandeis position, with which he disagreed, was "the closeness of the danger" as he quoted from Justice Sanford, the "single revolutionary spark" that may lie "smoldering for a time."

In contrast, Holmes felt that, if Government officials were allowed to draw a line on where speech could be prohibited short of "clear and present danger," that line would be arbitrary and stifle the marketplace of ideas that the framers intended us to have.

On September 16, Judge Bork set out a functional rationale that said he agreed with "clear and present danger" and effectively repudiated

Sanford's position. "I now think this society is not susceptible to that * * *" which is a recantation by anyone's standard—even though he said the next day only that he accepts Brandenburg as a judge.

Charge 2: Judge Bork can apply the "clear and present danger" test on other rationales than Justice Holmes'.

Response; Because the "rationale" that Senator HATCH cites was neither Justice Holmes' rationale nor properly a rationale at all, it is hard to know what this claim means.

But either Judge Bork agrees with the "imminence" rationale—which is a recantation—or he still disagrees with it—in which case he would prefer to allow Government officials to decide what speech advocating law violation might or might not become dangerous at some later time. You can't find "another rationale" for what is, in this one case, a "yes or no" answer.

INCONSISTENCY NO. 13

Charge: Judge Bork did not contest the Supreme Court's application of Brandenburg to Hess, but only thought Hess could still be punished on other grounds, that is, the obscenity of his speech.

Response: This charge is a mere quibble over semantics. The committee report said that "Judge Bork did not find that Brandenburg controlled the facts presented by Hess." If Hess indeed "could still be punished on other grounds," then Brandenburg would not control the case in the accepted meaning of the term, because the case would then be decided under a new rule banning obscene speech that Judge Bork would favor. And favor such a rule he would, on the grounds of protecting "the health of our political processes."

INCONSISTENCY NO. 15

Charge: Senator HATCH asserts that "the report's treatment of the privacy question is riddled with false assumptions and slanted commentary."

Response: One example offered by Senator HATCH is his criticism that "Skinner is read as a fundamental rights case rather than an equal protection case."

What Senator HATCH fails to realize, however, is that Skinner cannot be explained as an equal protection case without understanding what the Court was protecting. The Court said:

> We are dealing here with legislation which involves one of the basic rights of man. Marriage and procreation are fundamental to the very existence and survival of the race.

The Court was ensuring equal protection for the fundamental right of procreation. It is this "fundamental right" aspect of Skinner that Judge Bork rejects.

Another example is Senator HATCH's statement that the report quickly dismisses without commentary the fact that Judge Bork might reach the same result as in Griswold by a different route. But Senator HATCH fails to recognize that Judge Bork's testimony left no room for arriving at a satisfactory rationale.

Judge Bork said that Griswold did not contain a correct understanding of the liberty and due process clauses of the 14th amendment.

He said that substantive due process "is a pernicious constitutional idea."

He rejected the ninth amendment as a possible basis for the Court's decision.

He said he would have dissented in Griswold.

And Judge Bork said that "I do not have available a constitutional theory that would support a general * * * right [of privacy]."

So Judge Bork left no room for reaching the same result in Griswold by a different route.

INCONSISTENCY NO. 16

Charge: Senator HATCH says that the committee report "protests too much about the privacy doctrine" and that "in fact, the privacy doctrine remains very controversial and has been criticized by four current Justices."

Response: Senator HATCH makes this rather conclusory statement without citing a specific case. I believe he may be talking about the Bowers versus Hardwick case.

In Bowers, however, the majority reviewed the privacy cases beginning with Pierce versus Society of Sisters and Meyer versus Nebraska and going through Griswold and Row versus Wade. The majority then said that it accepted the decisions in those cases.

Bowers, therefore, proves the point I have made before; namely, that the debate about unenumerated rights has always been about the scope of those rights, not about their existence.

INCONSISTENCY NO. 17

Charge: Senator HATCH claims that the committee report "repeats much of the erroneous demagoguery about Judge Bork's record on civil rights."

Response: In fact, what the committee report does is report what transpired at the hearings on a number of civil rights issues.

The committee report quotes from Nicholas Katzenbach, who was Attorney General during 1964-66.

The committee report quotes from Senator HEFLIN during a colloquy with Judge Bork.

The committee report quotes from former Congresswoman Barbara Jordan, one of the most respected persons ever to be a member of this body.

The committee report quotes from Andrew Young, the mayor of Atlanta and the former Ambassador to the United Nations.

The committee report quotes from William Coleman, former Secretary of Transportation and clearly one of the leading practitioners before the Supreme Court.

Most Members of this body, and most Americans, would agree with me that these individuals—these public servants—are not prone to "erroneous demagoguery," as Senator HATCH puts it. These are individuals who came to the careful, difficult and deliberate conclusion that Judge Bork's civil rights record should preclude his confirmation to the Supreme Court.

INCONSISTENCY NO. 18

Charge: Senator HATCH claims here that, among other things, the report fails to note "the distinction between Judge Bork and Professor Bork." "The function of a professor," says Senator HATCH, "is to be provocative."

Response: This charge raises an issue that has not been mentioned recently, but is one that is important. Judge Bork's own statements have made clear that his writings and speeches are not merely abstract exercises, divorced from his leanings as a potential Justice.

Less than 1 year ago—and more than 4 years after he began sitting as a member of the D.C. Circuit—Judge Bork commented on his roles as an academic and as a jurist.

In clear and unambiguous terms, he said: "Teaching is very much like being a judge and you approach the Constitution in the same way."

In a 1985 interview with the District Lawyer, Judge Bork said: "Obviously, when you're considering a man or woman for a judicial appointment, you would like to know what that man or woman thinks, you look for a track record, and that means that you read any articles they've written, any opinions they've written. That part of the selection process is inevitable, and there's no reason to be upset about it."

Thus, despite what Senator HATCH told us yesterday, Judge Bork's own statements inform the Senate as to where it should look in determining the nominee's views. And Judge Bork has told the Senate he approached the Constitution as a professor in the same way that he has as a judge.

INCONSISTENCY NO. 19

Charge: Senator HATCH here attacks the report's discussion of Shelley versus Kraemer, in which the Supreme Court unanimously held that the 14th amendment prohibits enforcement of racially restrictive covenants in residential real property agreements. One of Senator HATCH's points is that "the Supreme Court has refused to extend the principle of Shelley" and that "it has not proved to be a precedent of any significance."

Response: As pointed out on page 38 of the committee report, Shelley has been applied by the Supreme Court and it has proved to be precedent of significance.

In *Barrows* v. *Jackson*, 346 U.S. 249 (1953), for example, the Court held that the 14th amendment bars enforcement of a racially restrictive covenant in a State court action to recover damages for breach of the convenant.

In *Moose Lodge No. 7* v. *Irvis*, 407 U.S. 163 (1972), the Court cited Shelley for the proposition that "the impetus for the forbidden discrimination need not originate with the State if it is State action that enforces privately originated discrimination."

In *Palmer* v. *Sidoti*, 466 U.S. 429 (1984), Shelley was cited for the proposition that "the actions of State courts and judicial officers in their official capacity have long been held to be State action governed by the 14th amendment."

Thus, Shelley has had, in Judge Bork's words from the hearings, some generative force in the law.

INCONSISTENCY NO. 20

Charge: Senator HATCH once again takes issue with the committee report's discussion of Judge Bork's civil rights record, this time citing a decision in one of his court of appeals cases.

Response: It is again appropriate to remind the Senator from Utah what the minority leader, Senator DOLE, said in 1971 in connection with Chief Justice Rehnquist's nomination to the Court. Senator DOLE said:

> The role of the [lower court] judge * * * is not to state or define the law but to predict what the higher court would do in the situation at hand. Thus, a judge might be liberal in construing decisions of higher courts, yet were he promoted to a higher bench, he might be conservative in his statements of legal principles to be followed by lower courts.
>
> On the Supreme Court, the Justices do not predict the law; rather, they determine what it is in an absolute sense. There is a significant difference in these judicial roles.

Judge Bork's court of appeals record may thus tell us little about what he would do on the Supreme Court in civil rights matters.

INCONSISTENCY NO. 21

Charge: Senator HATCH criticizes the committee report's discussion of the poll tax issue.

Response: I addressed the poll tax issue last evening in my colloquy with Senator ARMSTRONG. But let me add one other point, which I did not make last night and which Senator HATCH does not mention in his list.

We should all bear in mind what Senator HEFLIN told Judge Bork during the hearings. Judge Bork defended his prior criticism of the Harper case by saying that there was no evidence of racial discrimination. Let me quote what Senator HEFLIN said in response—This is on page 39 of the committee report:

> There was no allegation? Is that the distinction you made? Because there is no question to me that a poll tax that required three years of history of payment, that the last payment had to be six months in advance, and you had to go to the courthouse to pay it was designed to prevent the poor and blacks from voting. I do not think there is any question that that is it.

INCONSISTENCY NO. 22

Charge: In connection with the principle of one person, one vote, Senator HATCH says that "despite the erroneous report's insinuation, [Judge Bork] has not questioned and does not oppose the Baker versus Carr opinion."

Response: The report makes it abundantly clear that Judge Bork rejected, and continues to reject, the one-person, one-vote principle. Judge Bork repeated that rejection during the hearings.

The fact of the matter is that Judge Bork thinks courts can get involved in malapportionment cases; he just believes that courts, under the Constitution, should tolerate some peoples' votes counting more than others. That's the bottom line.

INCONSISTENCY NO. 23

Charge: Regarding literacy tests, Judge Bork only objected to the Supreme Court's validation, in Katzenbach versus Morgan, of a congressional ban on nondiscriminatory tests as changing constitutional interpretation by statute. Moreover, the Supreme Court rejected its Katzenbach rationale 4 years later in the Morgan [was actually Oregon] case dealing with the 18-year-old vote.

Response: as any careful reader of the committee report must see, the sole point under discussion on pages 42-43 was the constitutionality of enforcement clause powers. As is often the case in his list, Senator HATCH's dispute is not with the report but with the Supreme Court.

Just because neither he nor Judge Bork accept the Court's recognition of substantive enforcement clause powers in the 13th, 14th, and 15th amendments does not mean that the committee is mistaken when it says that the Court was right to find such powers.

In addition, the notion that the Supreme Court rejected Morgan in the Oregon decision is 89 percent wrong—only Justice Harlan took that position.

And regarding the nationwide ban on literacy tests, all nine Justices in Oregon found that enforcement clause powers in the 15th or 14th amendments made such a ban constitutional—a position that Judge Bork attacked in 1981. Once again, Judge Bork stands alone.

INCONSISTENCIES NOS. 24-25

The charges:

At pages 45-50, the report "repeats misleading distortions of Judge Bork's statements and views of women's rights and the equal protection clause. * * * the hearings indicated that he defend[ed] Ms. LaFontant against subtle discrimination in the Justice Department."

The Response:

(1) these pages present Judge Bork's views largely in his own words, with direct quotations. I invite my colleagues to read them.

As just one instance, in 1987—this year—Judge Bork said "I do think the equal protection clause probably should have been kept to things like race and ethnicity * * *"

His remarks indicate he views the equal protection clause as providing no particular sensitivity to the claims of gender based discrimination.

(2) With respect to his defense of Ms. LaFontant in the Justice Department, the criticism of the committee report falls into the error of thinking the Senators were trying to evaluate what Judge Bork believed was personally the right or wrong thing to do as a human being.

But as I explained at length yesterday, we were interested in his constitutional reasoning, not in assessing his personality.

I, personally, have no doubt that Judge Bork is an honorable and principled person.

It is his constitutional views, that the committee report analyzes, not his personal preferences, which Judge Bork repeatedly has said ought to be kept separate from a judge's professional decisions.

INCONSISTENCY NO. 26

Charge 1: The committee report does not acknowledge that Judge Bork "has already voted on many occasions to grant broad protection to many varieties of speech" as a judge on the court of appeals.

Response: The argument that Judge Bork's actions in following Supreme Court precedents as a lower court judge are the best determinant of his judicial philosophy has worn rather thin by now. Judge Bork himself acknowledged the vast differences between the roles of judges on the appeals and Supreme Courts during the hearings.

But perhaps the best answer to Senator HATCH was given by his own minority leader, Senator DOLE, during the Debate over the nomination of Mr. Justice Rehnquist in 1971:

> "The role of the [lower court] judge . . . is not to state or to define the law but to predict what the higher court would do in the situation at hand. . . . On the Supreme Court, the justices do not predict the law; rather they determine what it is in an absolute sense."

Charge 2: The committee reports ignores Judge Bork's expansion of the first amendment beyond the "political speech" core prior to his nomination.

Response: It is utterly mistifying how Senator HATCH could say that the committee report "ignores" Judge Bork's post-1971 expansions of types of speech he considered protected when the report cites the supposedly ignored writing to say precisely that—that he did broaden protection.

Rather than examine what the committee report actually said, Senator HATCH simply raises a straw man here. The report expressly states that, after 1971, "Judge Bork made clear that he no longer believed speech had to be clearly political to be protected."

And the report details Judge Bork's expansions of what he viewed as properly protected speech in 1984 and 1987.

But as the report also quotes, less than a month before his nomination Judge Bork insisted that these broader areas of protected speech still had to have some "relation to those [political] processes." Judge Bork's words are clear and unequivocal on this point.

Charge 3: Judge Bork was criticizing Justice Harlan's rationale in Cohen versus California that "one man's vulgarity is another man's lyric," a rationale that would prohibit any regulation of obscenity and that the Supreme Court has elsewhere repudiated.

Response: Once again, this listing of charges apparently cannot distinguish between the rationale of a case and dictum. The cited quote was, in the manner of dicta, an aside that was not essential to the actual controversy in *Cohen:*

That while

> "The immediate consequence of this freedom [of speech] may often appear to be only verbal tumult, discord, and even offensive utterance, . . . the State has no right to cleanse public debate to the point where it is grammatically palatable to the most squeamish among us."

Saying that the "one man's lyric" dicta was actually the rationale accuses Justice Harlan of establishing a much broader rule than was necessary to decide the particular case—which such a strong believer in judicial restraint neither intended nor thought the Court had power to do.

Finally, saying *Cohen* would protect obscenity is patently wrong on its face. None of the obscenity cases cited had any relevance to the issue in *Cohen*

Even the dissenters in *Cohen* did not argue that the speech was prohibited because it was obscene, but because it "was mainly conduct and little speech," and was provocative "fighting words" besides. While that dissent may be somewhat of an inconsistency itself, it certainly doesn't support Judge Bork's complete emphasis on the vulgarity of the speech as punishable per se.

INCONSISTENCY NO. 27

Charge: "The report raises unfounded concerns about Judge Bork's willingness to permit peaceful civil demonstrations. * * * Judge Bork drew a logical distinction between demonstrations to test the constitutionality of a law and a subversive inciting to violence."

Response: Senator HATCH here seems more intent on disagreeing with the position taken by the committee report rather than dealing with the substance of that position.

In fact, the report treats the distinction extensively; it simply concludes, on the basis of thorough analysis, that it is a less meaningful distinction than it might at first appear. This criticism is also utterly inconsistent with the assertion in No. 12, charge 2, that Judge Bork would "fairly apply *Brandenburg*" when No. 27 argues that he shouldn't apply it at all.

INCONSISTENCY NO. 28

Charge: Repeat of numbers 12 and 13.

Response: The charges in numbers 12 and 13 were completely inaccurate and misconceived in the first place, and their repetition here doesn't make them any less so.

INCONSISTENCY NO. 29

Charge: At pages 57–65, the report overlooks "significant evidence" before the committee. In particular, it ignores Solicitor General Bork's views on the pocket veto, which shows he has a limited view of executive power.

Response: In fact, Solicitor General Bork opposed appealing a court of appeals decision ruling against the Ford administration on the pocket veto because he feared the Supreme Court would make a bad law on the question of congressional standing, which was involved in that case, and which Judge Bork opposes.

The report quotes the relevant material from a memorandum, prepared by Solicitor General Bork, at page 62.

INCONSISTENCY NO. 30

Charge: Referring to pages 57–59 of the committee report, Senator HATCH says that the discussion of the War Powers Act "overlooks several critical points," such as the fact that the War Powers Act then contained a legislative veto provision.

Furthermore, his other objection was only that Congress cannot micromanage tactical military decisions.

Response: In fact, the report does mention Judge Bork's criticism of the legislative veto. It also mentions his substantive criticism of the War Powers Act, which was that the War Powers Resolution may be unconstitutional in its time limits on undeclared wars.

As Professor Sunstein testified, such resolutions have nothing to do with micromanaging tactical military decisions.

Their "purpose and effect are to ensure that Congress, rather than the President, decides whether the Nation is to be at war."

INCONSISTENCY NO. 31

Charge: At pages 61–62, the report misrepresents Judge Bork's opposition to the special prosecutor statute by failing to note that the act he criticized in 1973 was never enacted, and the present law is very different from that earlier proposal.

Response: In fact, the act Judge Bork criticized and the current act are in relevant part identical. That was the testimony, unrebutted, and that is what the report says.

INCONSISTENCY NO. 32

Charge: At pages 62–64, the report's discussion of Judge Bork's attacks on congressional standing "omits the perfectly defensive reasons for Judge Bork's concern about this doctrine."

Response: Again, this is hardly an inconsistency.

The committee disagrees with the minority—the committee does not find Judge Bork's reasons for rejecting congressional standing sufficient.

The minority can continue to make that argument on its time and in its report, but the committee was not convinced, and it said so.

It is clear from the testimony that the fears Judge Bork asserts need not materialize under reasonable interpretations of congressional standing. See the committee report, at 62–64.

INCONSISTENCY NO. 33

Charge: At page 65, "The report's treatment of executive privilege is wholly inadequate."

Response: The committee disagrees.

Judge Bork's opinion in Wolf is yet another indication of his expansive construction of the executive power, as anyone reading it will see.

It takes "executive privilege as far as, and probably further than, any judge who has yet addressed the issue."

INCONSISTENCY NO. 34

Charge: The firing of Archibald Cox was legal, as the district court decision finding it illegal was vacated.

Judge Bork undertook a campaign immediately to find a new special prosecutor.

Response: These charges are remarkable for their patent ignorance of both the record and the committee report.

First, the fact that the Nader versus Bork decision was vacated as moot does not make the legal reasoning underlying that decision any less compelling.

As the committee report points out and Senator HATCH's criticism ignores, that reasoning—which underlay the key conclusion of Nader—that the special prosecutor regulation remained legally binding while still in force—was explicitly reaffirmed by the Supreme Court in United States versus Nixon.

So far as the U.S. reports show, United States versus Nixon has not been expunged, erased, eliminated, dismissed from the law books.

Second, if Senator HATCH thinks that Judge Bork "undertook a campaign immediately * * * to find a new prosecutor," then he has a serious argument with Judge Bork, not with the committee report.

As the report quotes Judge Bork's own testimony, "We did not initially contemplate a new special prosecutor until we saw that * * * the American people would not be mollified without one."

Finally, anyone who draws from the Watergate episode the conclusion that a full and successful investigation of the cover-up could have been run from inside the Justice Department still does not understand, 14 years later, why Archibald Cox was fired.

The committee report does not dispute that Judge Bork was acting with the best of intentions throughout these events. He simply did not see, nor does it seem that the author of the criticisms of the committee report sees, that President Nixon would not at any point permit an executive branch official who served at his pleasure to conduct a full and successful investigation of Presidential wrongdoing.

INCONSISTENCY NO. 36

Charge: "The report's account of the allegations of Judge Gordon evience a calculated but wholly unsuccessful effort to impugn Judge Bork's professional reputation."

Response: Senator HATCH has every right to take issue with Judge Gordon's recollection of and Judge Hufstedler's interpretation of this matter if he so desires. But that issue is properly and forthrightly with Judges Gordon and Hufstedler. It is not with the committee report, that simply quoted from Judge Gordon's affidavit to reconstruct the chain of events, and from both that affidavit and Judge Hufstedler's letter to draw an interpretation of those events.

INCONSISTENCY NO. 37

Charge: At pages 81-92, the report makes ludicrous assertions that Judge Bork's record as solicitor general and judge are "irrelevant on the one hand and are evidence of his judicial activism on the other."

Response: In fact, the committee report does not say those records are irrelevant. It says they are "not of much relevance."

Furthermore, the report does not claim that Judge Bork's record as solicitor general is evidence of his judicial activism.

Instead, it says that that record is "substantially less reflective of his . . . legal viewpoints than his supporters have characterized . . ."

And it quotes Judge Bork's own testimony, at his own confirmation hearing for that post, as evidence that he viewed that job as being "attorney for the government" and that in such a post he would not define Government policy.

As to Judge Bork's court of appeals record, the report says that the statistics cited by his supporters do not tell us much—an opinion with which the minority leader, Senator DOLE, seems to agree, I might add.

It does not say that an examination of the substance of those opinions, the reasoning, the rationale, might not tell us some things, and in fact it does.

One of the cases examined was Vinson versus Taylor, which the list of inconsistencies says the report "stretches out of its responsible context."

This case has been so often discussed in the hearings that the record on it is quite long.

The simplest approach is to invite Senators to read Judge Bork's opinion and compare it with that of the Supreme Court.

The issue the report focuses on is what constitutes sexual harassment under title VII.

Judge Bork would have "voluntariness" recognized as a complete defense—the position taken by the district court and rejected by a three judge panel of his court.

Here is what Judge Bork said:

> According to the panel opinion, when an employee charges sexual harassment in the workplace, the supervisor charged may not prove that the sexual behavior, far from constituting harassment, was voluntarily engaged in by the other person. [This] ruling[ ] seem[s] plainly wrong.

Now the Supreme Court flatly rejected voluntariness as a defense.

It said the only relevant question is whether the sexual advances were unwelcome, not whether the sexual activity was involuntary.

As to whether there is any difference between unwelcome and involuntary, let me tell you what Judge Shirley Hufstedler said:

> A decision by a dissident who wants to leave the Soviet Union who is told, yes, you can leave; of course, your family must stay.
>
> You can say that he stayed voluntarily. Did he stay because he welcomed that choice?
>
> Judge Bork treated the issue of voluntariness without recognizing that when the elements of choice are so far reduced, so, you do it, you go to bed with me or you are not going to be promoted, or fired, is my way of saying that is the kind of nonchoice you get.
>
> So that is a very significant difference between the way Judge Bork viewed the situation and the way the Supreme Court did.

That is her testimony, and that is in the committee report, too, at page 88.

I could go on at greater length and detail about each of the claimed inconsistencies, but let me sum up this way:

The Senator from Utah seems to be operating on the assumption that any statement he personally disagrees with is an inconsistency.

Some people have been trying to make so-called distortions, misinformation, and falsehoods the issue in these proceedings.

But it appears that these labels have come to mean that someone opposed to Judge Bork's confirmation has said something that his supporters disagree with.

Indeed, the report summarizes a number of concerns about Judge Bork's views—that is its function.

Senator HATCH obviously doesn't share those concerns, but they are none the less the sincerely held views of eight members of the Judiciary Committee.

The report, furthermore, gives citations to the record—which, I might add, is more than the minority views do—so that Senators can verify for themselves the accuracy of the statement made.

As to the arguments in the report, it is up to my colleagues to evaluate them, in light of anything Judge Bork's supporters might say on the merits.

But to call each argument or concern an inconsistency misuses the English language—perhaps in an effort to make it appear that the committee report and the ads that some of my colleagues have become concerned about are engaged in some kind of common scheme.

But there is no common scheme, and the concerns raised are not inconsistencies.

Likewise, it is a little extreme, to say the least, to cite repeatedly as inconsistencies places in the report that allegedly do not acknowledge certain facts, or overlook things, or fail to mention things.

The committee overlooked nothing in the record. The hearings were exhaustive and fair. To mention in the report everything that is in the record would obviously make the report as long as the three volume record. That is not the report's function.

What is clear is that, in the view of the committee, none of the omissions alter the conclusions the committee reached.

Perhaps what was desired is that the committee write the minority report for them—to make their arguments, to ratify their so-called evidence, and so forth. But that is the function of the minority. I shall leave it up to them.

And I shall leave it to my colleagues to read the reports, the record, and to listen to this debate to determine the better views.

Mr. President, many of Judge Bork's supporters appeared on national TV to defend and support Judge Bork.

President Reagan gave his position in an address televised last July in prime time and run on all three networks.

President Reagan's remarks on Judge Bork were placed on the nightly news shows on several other occasions.

Senators supporting Judge Bork, such as Senators HATCH and SIMPSON, have appeared on morning talk shows; weekend commentary shows; and programs such as "Nightline."

Prominent supporters of Judge Bork such as Lloyd Cutler, Ray Price, Paul Bator, and others also appeared on various morning, evening, and weekend news shows.

Journalists who strongly support Judge Bork such as George Will, Robert Novak, and John McLaughlin appeared on a number of TV shows and offered extensive pro-Bork commentary.

Mr. President, I ask unanimous consent that a chronology of events be printed in the RECORD.

There being no objection, the chronology was ordered to be printed in the RECORD, as follows:

CHRONOLOGY

V. Conservative groups begin with an aggressive campaign of organization and direct mail.

A. Groups coordinate closely among themselves and with the White House.

Patrick McGuigan of the Coalitions for America: "The meetings of conservative leaders to brainstorm and begin to start action were the very next morning." ("Lobbying Groups Gather Steam For Bork Confirmation Battle," Washington Post, 7/7/87).

"Conservative hard-liners in the Justice Department and pragmatists in the White House disagreed from the start about strategy; at one point in August, the divisions were so bad that Edwin Fuelner, president of the conservative Heritage Foundation, took it upon himself to convene a peace conference at his offices for top White House and Justice Department officials." ("How Reagan's Forces Botched the Campaign for Approval of Bork," Wall Street Journal, 10/7/87).

B. Existing groups swing into action with the rhetoric of an election campaign, promising that Judge Bork's confirmation would produce new political results on specific, litmus-test issues of the New Right, and ending with funding-raising appeals.

"The American Conservative Union sent its top 1,000 contributors what Executive Director Dan Casey described as a "here-we-go again letter," asking them to send contributions to support the Bork effort and to urge their Senators to back Bork. Casey said the group would send another 40,000 to 60,000 letters to supporters by the end of the month. Casey said "This is an issue that will fund itself because it's what they would say in the direct-mail world is a "hot button" issue." (Lobbying Groups Gather Steam," Washington Post, 7/7/87).

Citizens for Decency Through Law, July, 1987: "CDL has borrowed $140,000 from Peter to pay Paul for a massive counter campaign. Please help us defray our educational and media costs in this campaign to seat an upstanding individual—Judge Robert Bork—in the nation's highest court. . . . Your gift will block the efforts of the liberals who have had too much influence for too long."

Christian Voice, July 27, 1987: This is your one chance to help make history and to ensure a conservative America—even after President Reagan leaves the White House in 1988. . . . Now we have a prime opportunity to give the Supreme Court its first conservative majority since the 1930s. . . . Schoolchildren can't even say a silent prayer let alone study creationism. Bork could help correct this. . . . Your $10 or $20 gift or whatever you can manage to Christian Voice goes entirely to the work of this organization. Please help me carry this load?! In 10 years of operation this is the most critical battle we've fought and I need your financial support today."

Jerry Falwell/Moral Majority, Inc.: "I am issuing the most important "call-to-arms" in the history of the Moral Majority. . . . our efforts have always stalled at the door of the U.S. Supreme Court. . . . President Reagan has chosen Judge Robert Bork. . . . a pivotal person in getting the Supreme Court back on course. . . . I need your gift of $50 or $25 immediately. Time is short."

American Life League, Inc.: Judge Robert Bork has been nominated. . . . This is going to be a long and bitter battle. It will be the most massive, most critical and most expensive efforts you and I have ever undertaken. . . . I need your gift of $18 or $25 or $50—or whatever you can afford to help restore the paramount right to life."

Beverly LaHaye, Concerned Women for America: "we have prayed for an opening on the Supreme Court for many years, and now it is time to commit our efforts and money to back up our prayers. It will take pressure on the Senate and it will cost money to win the Bork nomination. . . . [A] plan we have developed involves the use of advertising to reach the American public. . . . With your contribution of $25 per advertising inch . . . we can be successful. . . ."

C. New groups and others jump in.

On July 21, Bill Roberts—a long-time Reagan supporter in California—held a press conference to announce the formation of "We The People," a pro-Bork group that sought to raise $2 million in 60 days ("Nationwide committee to Support Confirmation of Judge Robert Bork to U.S. Supreme Court Announced," news release by The Dolphin Group, 7/22/87).

Jack Kemp For President sent out mailings in mid-August asking recipients to send a postcard to Judiciary Committee Chairman Joseph Biden "to help President Reagan's Supreme Court nominee be confirmed," and as "a special favor, . . . Help me replenish my campaign funds." ("Kemp's Bork Two-fer," Washington Post, 8/23/87).

D. Kemp for President organizes pro-Bork, anti-Biden political rally/demonstration in New Hampshire ("Caught in the Middle," Delaware State News, 7/12/87).

VI. Right-wing groups then expanded into planning a full-scale media assault, the same kind of visible, election campaign-like effort that President Reagan and the Republicans now claim is dangerous and improper on judicial appointments.

A. In above direct mailings, see references to: "media . . . campaign" (Citizens for Decency Through Law).

"Through your gift of $25 to CWA, you will enable us to purchase an average of one square inch of advertising space in a major newspaper. . . . If 16 people give $25 each, we will have enough money to purchase an eighth of a page in a newspaper which will encourage hundreds of people to voice their support for Judge Bork." (Beverly LaHaye, Concerned Women for America).

Concerned Women for America writes its "area leaders" nationwide to activate "phone banks" in support of the nomination ("Lobbying Groups Gather Steam," Washington Post, 7/7/87).

Through the "Liberty Report" newspaper, lobbying on Capital Hill and a media blitz, we can make a difference." (Jerry Falwell/Moral Majority).

B. Public statements about plans for right-wing political campaigns for Bork.

"You can surmise that whatever the liberals have, we're going to have—radio, television, newspaper ads." Richard Viguerie, "Lobbying Groups Gather Steam," Washington Post 7/7/87).

"We're going in with newspaper ads, with television ads, with radio spots." Bill Roberts, on CBS Evening News, 7/23/87).

C. Public statements restating right-wing expectations about how their political interests would benefit from placing Judge Bork on the Supreme Court.

"This is the transition nomination. . . . The nomination has the potential not to institutionalize Reaganism, but to institutionalize the shift in political gravity—to the right." Patrick McGuigan, Coalitions for America, "Grass roots groups in frenzy over Bork," Christian Science Monitor, 9/2/87).

"Conservatives didn't work all these years to get a Ronald Reagan elected to have a centrist, a moderate appointed to the Supreme Court. We're interested in having someone with Ronald Reagan's views [appointed], and Bork is . . . right out of Ronald Reagan's ideology." Richard Viguerie ("Drawing Lightning," National Journal 9/12/87).

D. Right-wing advertising starts.

Coalitions for America runs pro-Bork radio spots in Washington, D.C. ("Groups Unlimber Media Campaigns Over Bork," Washington Post, 8/4/87).

Concerned Women for America run print ads in Alabama and Pennsylvania in support of Bork nomination ("Groups Unlimber Media Campaigns Over Bork," Washington Post, 8/4/87).

Coalition for America given free air time on three radio stations under Fairness Doctrine to reply to anti-Bork radio ads ("Washington Talk, Bork and Fairness," New York Times, 8/11/87).

Free the Court (conservative group) hires airplane to fly over Iowa State Fair with "banner denouncing 'Bork Bashers' and 'liberal lap dogs." ("Grass groups in frenzy over Bork, Christian Science Monitor, 9/2/87).

VII. The Administration and President Reagan campaign for Bork—and participate in the attack on Judiciary Committee Chairman Biden.

White House releases lengthy, unprecedented "briefing book" in support of Bork's nomination, July 27 (see table of contents page).

President Reagan addresses National Law Enforcement Council at White House, saying "that, if you want someone with Justice Powell's detachment and statesmanship, you can't do better than Judge Bork" ("Confirm Bork, Reagan Urges," Washington Post, 7/30/87).

Nationally televised address by President Reagan on August 12 ("Democrats Agree to Drop Iran-Contra Issue," Washington Post, 8/13/87).

Talk in Nebraska by President Reagan on August 13 ("Latin Peace is Priority for Reagan," Washington Post, 8/14/87).

President Reagan lobbies leaders of National Law Enforcement Council to support nomination on August 28 ("Police, Prosecutors Meet With Reagan on Bork," Washington Post, 8/29/87).

"Republican sources revealed that low- and mid-level White House officials privately distributed anti-Biden information to several GOP political consultants weeks before the Bork hearings began. The material . . . was given to the consultants to distance President Reagan and his top aides from suggestions they were orchestrating a smear campaign . . . . Among the consultants is former White House political director Mitch Daniels. He pressed reporters last week to contact former Biden political foes who told the White House they had 'files' on Biden." ("White House aides 'helped sink Biden,' " Boston Herald, 9/25/85).

Interior Secretary Donald Hodel the featured speaker at a pro-Bork rally sponsored by the conservative Coalition for America at Risk on September 10, five days before the opening of hearings ("Bork Rally," Washington Times, 9/10/87).

Speech to convention of Concerned Women for America by President Reagan on September 25 ("Reagan Reasserts Support for Contras," Washington Post, 9/26/87).

VIII. As the nomination proves unacceptable to the Senate and the American people, the administration and the right wing intensify their political campaign of advertising, phone banks, direct-mail fund raising, and distortion, continuing their summer-long view of the nomination as a political election campaign.

A. The right wing media campaign turns to fear-mongering and character assassination.

"We the People" runs a full-page ad in USA Today seeking to fill its coffers (ad includes coupon to send contributions from $25 to $100) by a personal smear of four named members of the Senate Judiciary Committee (USA Today, 10/6).

American Conservative Union runs radio ads in Alabama, Mississippi, Georgia, Louisiana, Nebraska, and Vermont, "pressuring announced opponents to switch their position," according to ACU chairman Dan Casey. ("Conservatives fighting now for next nominee," Washington Times, 10/12).

B. President Reagan uses increasingly intemperate rhetoric.

After Judiciary Committee sends nomination to full Senate with a 9-5 unfavorable recommendation, President Reagan declares, "I think it has become a disgraceful situation because I think the process of confirming a Supreme Court nominee has been reduced to a political, partisan struggle." ("President Determined to Battle On for Bork; Some Officials See Loss," Washington Post, 10/2/87).

President Reagan announces that the Bork nomination will fail in committee "over my dead body." ("Reagan Spurns Call to Drop Bork as Likelihood of Defeat Grows," Washington Post, 10/6/87).

President Reagan says he will not withdraw the nomination because "it would be impossible for me to give up in the face of a lynch mob." ("President Says Decision Is Up to Bork," Washington Post, 10/9/87).

President Reagan stated that "What's at issue is that we make sure that the process of appointing and confirming judges never again is turned into such a political joke. And if I have to appoint another one, I'll try to find one that they'll object to as much as they did to this one." ("Reagan Resumes Attack on Bork's Senate Foes," Washington Post, 10/14/87).

C. Right wing phone banks and direct mail companies take advantage of the political and financial bonanza of the Bork nomination's impending defeat, and right-wing groups set up their political litmus tests for the next nominee.

"Urgent! The Bork Supreme Court nomination is now in trouble. . . . I am now committing money to a last-minute lobbying effort. . . . Your gift of $30 or $15 makes the overall outreach of Moral Majority a reality in these critical times—and could make the difference in Judge Bork's confirmation." (Jerry Falwell/Moral Majority mailgram, 9/24/87).

"New Right fund-raiser Richard A. Viguerie has eagerly drummed up support for Supreme Court nominee Robert H. Bork. But . . . the White House recently got an urgent call seeking reassurance that Bork's nomination would not be withdrawn in the face of a negative committee vote. "I've got a million dollars' worth of "Save Bork" letters that I'm mailing out Monday morning [Oct. 5],' Viguerie reportedly explained, inquiring, 'You're not going to pull the rug out from under him, are you?' He was told, 'Go ahead and mail them, pal.' " ("Prudent Passion," National Journal, 10/10/87).

". . . the battle over Robert Bork's nomination to the Supreme Court . . . a battle of the concerned, patriotic citizens of America versus every narrow, self-serving liberal special-interest group that's come down the pike! . . . I'm enclosing my contribution to help CMC support Robert Bork and President Reagan's goal of a healthy, strong, safe, and secure America. [check boxes for $15, $25, $50, $100]" ("In re Robert Bork," advertisement of Congressional Majority Committee in the Washington Times, 10/15/87).

" 'I think the time to start the 1988 election is right now,' said conservative strategist and direct-mail executive Richard Viguerie. Within 15 minutes after Judge Bork announced Friday that he would not ask President Reagan to withdraw his nomination, conservative political action groups mailed 350,000 letters on the Supreme Court issue 'to raise money for 1988 campaign ads,' Mr. Viguerie said." ("Conservatives fighting now for next nominee," Washington Times, 10/12/87).

". . . we strongly urge that you advise the President against the nomination of Patrick Higginbotham . . . advise the President to pick from among the sizeable pool of distinguished jurists who share the philosophy of judicial restraint, rather than seizing upon a nominee who has already demonstrated a disregard for the most defenseless members of the human family, and who would engender intense opposition from the right-to-life movement." Letter to Attorney General Meese from the Directors of the National Right to Life Committee, Inc., October 4, 1987.

D. NCPAC and a United States Senator hold the Senate's vote on Bork hostage to the timing of their fund-raising campaign.

"Next week, NCPAC will generate 500,000 telephone calls to votes in states where at least one senator has not expressed a position on the Supreme Court nominee." ("Conservative ire," Washington Times, 10/9/87).

"Continued Republican delays in scheduling a vote on Robert Bork's Supreme Court nomination appear tied to a conservative group's lobbying and fund-raising effort, Senate Democrats charge. Sen. Dennis DeConcini of Arizona accused a fellow senator of using the delay to help the National Conservative Political Action Committee work computerized telephone lobbying and fund-raising tactics against him. The Republican senator was identified as Gordon Humphrey of New Hampshire, the archconservative honorary chairman of NCPAC, who is heard on telephone recordings along with President Reagan . . . DeConcini spokesman Bob Maines said Humphrey had led the Republicans pushing to delay the vote to at least Tuesday, coinciding with the scheduled end of the NCPAC effort, and he called the delay a gross distortion of the process. If the two are connected, then the Senate is being held up by a fund-raising effort for an extremist group." ("Senate Democrats charge NCPAC delaying Bork vote," UPI wire, 10/16/87).

Mr. BIDEN. Mr. President, one of the points some of my Republican colleagues have raised with disapproval is that some of those who oppose this nomination announced that opposition too quickly, before the hearings took place. This is on its face a double standard. Did they condemn their colleagues who came out in favor well before the hearings?

But Judge Bork was hardly an unknown commodity to many of us on the Judiciary Committee. We were certainly sufficiently familiar with his record to know that there was much in it that warranted concern—just as those instantly came out in support knew what it was they liked about that record. There's nothing wrong with that—but let's keep it consistent, folks.

And just as there is plenty of historical support for the Senate's broad right to look at the constitutional philosophy of Supreme Court nominees, particularly when the President chooses that nominee on clearly ideological grounds, there is also plenty of historical support for fairly quick opposition to certain nominees whose philosophy or view on basic governmental issues was well known at the time of his nomination.

You don't have to look too far back to begin with, either. Just 19 years ago, when President Lyndon Johnson nominated Abe Fortas—a sitting Justice on the Supreme Court—to be Chief Justice, there was more instant opposition from the Republican side of the aisle than at any other time in history.

By the afternoon of the day Justice Fortas was nominated, 17 out of the 38 Senate Republicans—almost half of the Senate Republicans—had vowed not only to vote against confirmation, but to hold a filibuster to block the Senate from even voting on it. And that opposition was not on the basis of the concerns about financial matters that arose later in the summer.

No, it was on the basis of Justice Fortas constitutional philosophy that they opposed him. He was "too liberal," they said. They didn't like some of his Supreme Court opinions, they said. That episode was the closest we've come to recalling a sitting Supreme Court Justice because some Senators didn't like his results. Where were the Republican voices then to state their concerns about the independence of the judiciary?

And you can go further back, too. When President Jackson nominated Roger Taney to be Chief Justice in 1835, Taney was a known commodity, too. He was fresh from taking Government deposits out of the Bank of the United States as Jackson's Secretary of the Treasury, after the two preceding Secretaries were fired for their refusal to do so.

The opposition Whigs knew where Taney stood on the great issues of the day: The relationship between Congress and the President and the role of the Federal Government in the life of the growing Nation. And they did not like his basic philosophy one bit. Quickly, the giants of the Senate—including Henry Clay—roared to the attack. Did that opposition fatally damage the judiciary and the stability of the country? I hardly think so.

And finally, you can go back to the first nominee defeated, also for Chief Justice—George Washington's nominee John Rutledge. Like Justice Fortas after him, Rutledge was a distinguished judge, the chief justice of the South Carolina Supreme Court and a former justice of the U.S. Supreme Court.

But, once he voiced opposition to the Jay Treaty—again, a very basic matter of how the new Nation would deal with the other nations of the world and our former enemy in particular—as I said, once he voiced opposition to the Jay Treaty, the majority Federalists quickly rose to the assault, and the Rutledge nomination was rejected. Was that quick opposition in defiance of the intent of the Framers? Hardly—3 of the 14 Senators in opposition were framers themselves.

So let us not get all distressed when concerns are voiced by some who have reason to know something about a Supreme Court nominee's basic philosophy when the nomination is made. Obviously, that will not happen very often, because few nominees are as well known as Rutlege, or Taney—or Judge Bork. But let us not insinuate that there's something indefensible about that quick opposition.

We have been told by one of our Republican colleagues that the close scrutiny given at the hearings to Judge Bork's numerous writings, speeches, and testimony will cause other academics to rein in their creative speculations in fear that they, too, might be called to account for their writings if nominated to high office some say.

Is this a realistic fear? Well, we had many highly distinguished academic witnesses testifying before us, and some of the most distinguished among them just didn't think so. I'd like to share some of their testimony with my colleagues:

Barbara Jordan, LBJ School of Government, University of Texas:

> Professors, in my opinion, will not be chilled by the examination you gave professorial theorizing. * * * Those theories he espoused were not lightly held theories, but deeply felt, and a part of a consistent ideology and philosophy which he was developing.

Laurence Tribe, Tyler professor of Law, Harvard Law School:

> I think [Professors] are expected to provoke discussion in a responsible way. I do not think that being a professor is an excuse for saying things one does not take seriously. I do believe that Judge Bork took very seriously the things that he wrote as a professor and that he has repeated as a Judge. Writing things with a certain flair is not the same thing as floating intellectual trial balloons which can be popped the moment one is nominated.

Lee Bollinger, dean, University of Michigan Law School:

> Judge Bork * * * is responsible for views that he has taken, or positions that he has taken, that bear on his likely performance as a Supreme Court Justice. These were not views that were expressed simply in one article, they were expressed throughout the 1970's and, as I understand it, up into the 1980's as well.

John Hope Franklin professor of history, Duke University:

> I do play the devil's advocate sometimes in my classes, but I do not take my position that I have in my classes as the devil's advocate, and then put those views in the American historical review, in the journal of Southern history, and in the journal of American history merely to provoke
>
> * * * and I would simply observe, Senator, that there are limits and that one, I think, cannot go to law reviews and other responsible learned journals and carry on there arguments which are for the purpose of provoking and stimulating, and then not bear the responsibility for the arguments.

Let me make one last comment. I listened to part of President Reagan's press conference today. He was asked a question about the Bork nomination. He made the statement, and I am paraphrasing, that the caliber of the witnesses who testified on behalf of Judge Bork was far superior to that of those who testified against him. The fact is the caliber of the witnesses who testified on both sides was of the highest, very distinguished Americans, both for and against Judge Bork.

I will just by reiterating remind the President that although there are very distinguished legal scholars to whom he referred, he said this evening there were six distinguished law deans who testified for Judge Bork and several other distinguished law professors who testified out of the 60-some witnessed who testified on behalf of Judge Bork, but there were also 32 law deans who testified against him; there were also 2,000 law school teachers at this very moment teaching in law schools accredited law schools in America, former presidents of the ABA, who testified for and against him.

The point being that not because the Senator from Delaware chaired those hearings, but because of the caliber of the people who testified for or against Judge Bork in a 12-day hearing that had over 100 witnesses, I challenge anyone, for or against Judge Bork, to find a set of hearings where the intellectual caliber of the witnesses was as consistently high and as consistently articulate as was demonstrated by those who testified at the hearing—not the Senators, those testifying.

I hope the President gets an opportunity to take a look at the record so when he is sending us up the next nominee he understands—and I am not being facetious when I say this—why this nominee will in all probability fail with 57 or more votes against him tomorrow when we vote.

Staff points out to me that I make something perfectly clear, that there were 32 law deans who did not testify against him but 32 law deans who wrote the committee expressing their opposition to his appointment. Several did testify. But the 32 I referred to wrote and did not testify.

I thank the Chair for its indulgence and I yield the floor.

PRIVACY

Mr. HATCH. Mr. President, we have heard repeatedly that Judge Bork is isolated on privacy, that Judge Bork is the only Justice or Supreme Court nominee who refuses to accept that the Constitution contains a generalized right of privacy found nowhere in the text of the document. In his eloquence, my colleague from Delaware says that every other Justice has "crossed the Rubicon on privacy, but Judge Bork has not even put a boat in the water."

Mr. President, I urge my colleague to check the river banks again; there are many other boats still on Judge Bork's side of the stream. Moreover those who have launched from the safe shores of the Constitution have been swept downstream into the rapids of judicial activism and unprincipled jurisprudence.

Let's count the boats still with Judge Bork on the bank defined by the words and structure of the Constitution as amended. The first boat belongs to the first and only woman Justice—Justice O'Connor.

In her dissenting opinion on Akron, a 1983 case invalidating a State law requiring a 24-hour waiting period on abortions, Justice O'Connor said:

> Irrespective of what we may believe is wise or prudent policy in this difficult area, the Constitution does not constitute us as "Platonic Guardians" nor does it vest in this Court the authority to strike down laws because they do not meet our standards of desirable social policy, "wisdom," or "common sense."

In another decision, Justice O'Connor dissented when the Court refused to allow parents to counsel with their minor children prior to an abortion. She said then:

> The Court's abortion decisions have already worked a major distortion in the Constitution.

Justice O'Connor also joined Justice White's opinion in the Hardwick case last year in which the Court refused to recognize any general privacy right to homosexual conduct. The only woman Justice has never endorsed any application of a right to privacy in any context.

Let's count still a second boat that stays on the Constitution's side of the Rubicon: Chief Justice Rehnquist's boat. The Chief Justice dissented in Roe versus Wade, the 1973 abortion case. He reasoned that the majority's privacy opinion—

> partakes more of judicial legislation than it does of a determination of the intent of the drafters of the 14th Amendment.

The Chief Justice also dissented in Carey versus Population Services saying:

> If those responsible for the due process clause could have lived to know that their efforts had enshrined in the Constitution the right of commercial vendors of contraceptives to peddle them to unmarried minors through such means as window displays and vending machines located in men's rooms of truck stops, it is not difficult to imagine their reaction.

Moreover, the Chief Justice has dissented in no less than six other cases based on the reasoning of the so-called privacy doctrine. One of these was the homosexual privacy case, where he said:

> The Court is most vulnerable and comes closest to illegitimacy when it deals with judge-made constitutional law having little or no cognizable roots in the language or design of the Constitution.

The Chief Justice, it is safe to say, has not left the safe shores of the Constitution.

The next boat lying beside Judge Bork's belongs to Justice White, President Kennedy's appointee. Justice White has opposed Roe versus Wade as "an improvident and extravagant exercise of the power of judicial review." He opposed seven other privacy-related cases. He wrote the opinion against homosexual privacy protections. He said in that case:

> It would be difficult, except by fiat, to limit the claimed right of homosexual conduct while leaving exposed to prosecution adultery, incest, and other sexual crimes even though they are committed in the home.

He was joined in that opinion by Chief Justice Burger and Justices Rehnquist and O'Connor. Justice White is not adrift in the rapids of judicial activism.

The next boat safely ashore on the banks of the Constitution is that of Justice Black. He dissented in the very first case to ever mention the alleged privacy doctrine, Griswold versus Conn. Justice Hugo Black stated:

> My brother Goldberg has adopted the recent discovery that the Ninth Amendment as well as the Due Process Clause can be used by this Court as authority to strike down all state legislation which this Court thinks violates "fundamental principles of liberty and justice" or is "contrary to the collective conscience of our people." He also states, without proof satisfactory to me, that in making decisions on this basis judges will not "consider their personal and private notions." One may ask how they can avoid considering them. The Court certainly has no machinery with which to take a Gallup Poll. And the scientific miracles of this age have not yet produced a gadget which the Court can use to determine what traditions are rooted in the "[collective] conscience of our people." Moreover, one would certainly have to look far beyond the language of the Ninth Amendment to find that the Framers vested any such awesome veto powers over lawmaking, either by the States or by Congress. Nor does anything in the history of the Amendment offer any support for such a shocking doctrine. The whole history of the adoption of the Constitution and Bill of Rights points the other Way. * * *

Justice Black sounds like Judge Bork. Or Judge Bork sounds like Justice Black. In any event, they are neither alone in their views.

Another Justice whose boat remains beside Judge Bork's is Justice Scalia. We must remember that Justice, then judge, Scalia joined Judge Bork's opinion in Dronenburg that denied homosexuals any constitutional privacy right. Justice Scalia's views on privacy must not be a secret because every advertisement suggests he will be one of the four to vote with Judge Bork in future abortion cases.

Frankly Judge Bork's boat seems to be accompanied by a vertiable fleet of ships unwilling to venture out into the constitutional storm that would result if the Court abandoned completely the words and structure of the document.

We must put this entire issue of privacy into context. Judge Bork and all the others we have discussed have consistently enforced the privacy rights against unreasonable searches or the privacy right to worship or the privacy right to speak or the privacy right against self-incrimination to name a few specific constitutional privacy rights. But this free-floating privacy notion that some say includes protections for homosexual conduct was not manufactured until 1965. Where was the right until then? It was not found in the Constitution! All Americans can read the document and they will not find even a mention of this privacy notion. Despite the fleet of judicial boats arrayed with Judge Bork, some have tried to kick those boats out to drift by creatively interpreting their record. For example it has been said that Justice Black accepted the privacy notion in the Skinner sterilization case. This is not a correct reading. Skinner was decided exclusively on equal protection grounds and said absolutely nothing about substantive due process or the right to privacy. Skinner held that a State law requiring sterilization of recidivist robbers, but not embezzlers, constituted "a clear, pointed, unmistakable discrimination," and therefore offending the equal protection guarantee of the 14th amendment.

Justice Black joined this case on equal protection, not privacy or due process, grounds. In fact, Black declined to join Stone's separate opinion which was based on due process.

We have also heard that the recent unanimous decision in Turner versus Safley was a general privacy case. This is misleading. Turner was not about a superprotected, substantive due process right of privacy or marriage. The case arose in a prison context, raising fairly narrow questions. In Turner, State prisoners challenged the constitutionality of a prison regulation that permitted prisoners to marry only if the superintendent of the prison determined that there were compelling reasons for doing so. Obviously, the State generally permitted its citizens to marry without requiring that they show a compelling reason for doing so. One question raised, therefore, was whether this legislative classification survived equal protection scrutiny: whether the State had valid reason for adopting a different rule for prisoners. The Court reviewed the applicable prison cases and summarized the proper analysis as follows:

> When a prison regulation impinges on inmates' constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests.

Indeed the approach of this case is similar to Judge Bork's reasonable basis test for equal protection. The clear basis for a reasonable distinction between prisons and law-abiding citizens would be "legitimate penological interests." In the case of marriage, Judge Bork would not find any reason why the prison regulation should survive.

Even if this is a due process case the reasoning is not that of privacy. After all, prisoners of necessity are deprived of liberty after the due process of a trial. The prisoners' claims that they have lost the liberty to marry are indeed analyzed according to the established standard of whether this additional liberty loss is justified by the states' interest in the orderly confinement of prisoners. A prison case, therefore, hardly suggests an adequate basis of concluding a general privacy or liberty right extends to other circumstances. Under this case's reasoning, Judge Bork, too, would have joined Turner.

CONCLUSION

The general privacy right questioned by Judge Bork was not manufactured by judges until 1965. This whole fanfare over Judge Bork reinforces my main point. The privacy doctrine was made by judges and can be unmade by judges. If it were actually in the Constitution, this would not be true. Judge Bork is opposed not because he is the sole voice against the general privacy notion, but because he may well be the fifth and deciding vote against this exercise of raw judicial activism.

In conclusion, I would like to slightly change my colleague's metaphor. Judge Bork is opposed because he is in the mainstream on privacy, not because he is alone on the shore. Regardless of whether he is on the shore or in the mainstream, he is accompanied by an impressive judicial fleet.

NATURAL LAW

A few months ago during the Iran-Contra hearings, Fawn Hall justified some of her actions on the basis of laws higher than the Constitution. This drew great cries of derision. A few weeks ago during the Bork hearings, the Senate Judiciary Committee Chairman said that "my rights are not derived from the Constitution . . . they represent the essence of human dignity." This drew ethereal sighs of approval from Professors Tribe and Jordan and others listed in the slanted Judiciary Committee report.

We should clarify what is really at stake in this question about the source of constitutional rights. No one in America questions that every individual is "endowed by the Creator with certain inalienable rights." That issue was settled in 1776, not 1987. The question that is still under debate is how those inalienable rights are to be identified and enforced.

The framers of the Constitution felt that rights must be identified by the people. After all the people are the source of those rights and know best how to identify and protect those prerogatives. Accordingly the framers wrote a Bill of Rights to specify which rights are protected and how. Moreover, the framers permitted amendments to the Constitution so that new rights might be added. Indeed this has been done by the people and their representatives as recently as 1971—18-year-old right to vote.

The alternative is to allow Judges to decide what rights the people ought to have. This process occurs as described by the genuinely extremist Judiciary Committee report. Judges expand the "open-ended phrases of the document: 'liberty,' 'due process,' 'equal protection of the laws,' and others" to protect what the extremist report calls the "image of human dignity." (page 8) The problem is that some people think the "image of human dignity" includes the right to use hallucinogenic drugs in private or the right to engage in homosexual conduct or the right to terminate unborn fetuses. Others think the "image of human dignity" includes the right of parents to counsel their minority children prior to an abortion or the right to silent classroom prayer.

Rather than allow Judges to make unprincipled choices between these competing "images of human dignity," the framers expected the people to govern themselves. They gave the people the power to identify rights both in the Constitution by amendment and by statute. Accordingly the people's representatives have also passed volumes of civil rights legislation.

Nonetheless some Judges have continued to follow the falacious path charted by the skewed committee report. The Senate, however, ought to carefully consider the mixed results of these past judicial efforts to discover "human dignity."

In the first major instance of judicial activism, Justice Chase in 1798 decided that the ex post facto clause was limited to criminal statutes. I mention this example because the Senate committee report cites a statement by James Iredell of North Carolina for the notion that the Constitution contains unspecified rights. James Iredell was the primary dissenter in the Calder versus Bull decision. Iredell harshly criticized the Chase opinion on these terms:

> Some speculative jurists have held, that a legislative act against natural justice must, in itself, be void; but I cannot think that. If the legislature of the Union shall pass a law, within the general scope of their constitutional power, the Court cannot pronounce it to be void, merely because it is, in their judgment, contrary to the principles of natural justice.

Rather than allow James Iredell's views of enforcement of rights to be misconstrued by the committee report, I would commend to my colleagues the remainder of his dissent.

Let's continue our stroll down judicial activism's memory lane. The next great attempt to expand the "open-ended" clauses of the Constitution came when the Supreme Court interpreted the due process "property" clause to include black persons. The infamous Dred Scott opinion was nothing more than a broad reading of the meaning of "property" which meant that black persons were not given any constitutional protecting as persons. An insightful scholar has noted that this decision was "an early indication of the vast judicial power that could be generated if political issues were converted by definition into constitutional questions."—Fehrenbacher, the Dred Scott case 1978. The result was tragic. The people lost the power to protect blacks by civil rights legislation.

The next great judicial flirtation with the "open-ended" clauses was the Lochner era of the Court. In that case, the Court read the due process clause to strike down a labor law governing working hours in bakeries. Regardless of health or safety considerations, the Court struck down numerous economic regulations as violative of an unprincipled reading of the due process clause. The result was the same as before: the people lost the power to protect health and safety by legislation.

More recent examples of this theory that judges may read their own "image of human dignity" into the "open-ended" clauses of the Constitution are familiar. Despite Cardozo's plea that the "criminal would go free because the constable blundered," the Court created an exclusionary rule in 1961—Mapp. The United States is still the only country in the free world with such a rule. Despite four or five constitutional references to capital punishment, the Court struck down 39 death penalty statutes in 1972—Furman. Despite statutes in all 50 States regulating abortion, the Court found a "privacy right to abortion" in 1973—Roe. This list could go on, but the point is clear. Every time the judges take it upon themselves to read "human dignity" into the Constitution, they deprive the people of the right to govern themselves. Moreover they reach some of the Court's most controversial and harmful results.

This is nothing more than Judge Bork has said throughout a brilliant legal career. This, however, is precisely why his nomination is under attack. Judge Bork believes in the rule of law, not the rule of men, to borrow a phrase from the famous Marbury versus Madison case. He does not believe that a few Judges ought to be able to tell the people of the Nation that a broad notion of "human dignity" forbids them from passing death penalty laws. Judge Bork believes in the Constitution, in law, in the right and ability of the people to govern themselves by law.

If judges can read any such notion into the open-ended clauses of the Constitution, then conservative Judges will create a right to a balanced budget amendment and liberal Judges will create a privacy right to homosexual conduct. Neither would be correct. Both would be wrong. The Constitution does not mention "human dignity," nor a "balanced budget," nor "privacy." If the people embrace these rights, a constitutional amendment will soon pass or at least a statute.

Fawn Hall was not correct. Even she, however, without extensive legal training did not presume to suggest that we ought to be governed by unwritten notions of "dignity." In this sense, Fawn Hall is at least one step ahead of the air-headed Judiciary Committee report.

When Senator PACKWOOD spoke earlier today, he grounded his notion of the privacy right in the ninth amendment. We should all realize that this is a new idea that sprang out of this nomination. Even the Supreme Court has not relied on the ninth amendment to support any decision, let alone a privacy decision.

NINTH AMENDMENT

The ninth amendment states that "the enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." Many have criticized Judge Bork because he maintains that this language does not authorize judges to construct rights not found elsewhere in the Constitution. A few facts would suffice to put this issue into legal focus:

One might well ask how many times has the Supreme Court relied only on the ninth amendment to create a new right. The answer is zero. The Court has never based a right solely on the ninth amendment.

One might well ask if the ninth amendment has been frequently relied upon for any kind of support in Supreme Court jurisprudence. The answer is no. It is probably relied on less than most any other provision of the Constitution. The times it has been cited can be quickly listed: First, the ninth amendment was mentioned, most prominently by Justice Goldberg, as part of the "penumbral" support for the Griswold opinion; second, similarly it is mentioned in the abortion privacy cases of Roe versus Wade and Doe; third, the ninth amendment is mentioned passingly in Justice Burger's first amendment decision on media access to the courts in Richmond newspapers. My quick research indicates that these three instances cover the complete volume of ninth amendment jurisprudence in the Supreme Court.

In other words, Judge Bork's comments about avoiding use of this broad and undefined language to create new rights does nothing more than describe 200 years of Supreme Court practice.

Asked what this amendment means in the Senate Judiciary Committee, Judge Bork gave a very credible answer. In the first place, it is of great historical significance, according to the Judge. It was drafted to cope with the fear that the enumeration of some rights in the Bill of Rights might omit others which the States are entitled to protect.

Thus, this amendment has importance as a guarantor that the people in their State governments may protect rights beyond those listed in the Bill of Rights. Thus, the absence of an equal rights amendment in the Bill of Rights does not prevent States from providing this additional protection. Indeed the people have provided themselves with a wide variety of additional protections in their State constitutions.

Judge Bork's reading is completely supported by responsible scholarship. As Russell Caplan states in the Virginia Law Review, the ninth amendment "is not an cornucopia of undefined Federal rights, but rather * * * the maintenance of rights guaranteed by the laws of the States." It would perhaps be beneficial to examine what other scholars have said. Justice Black stated that the "amendment was passed not to broaden the powers of this Court, but, as every student of history knows, to assure the people that the Constitution in all its provisions was intended to limit the Federal Government to the powers granted expressly."—Griswold.

Rather than recite a lengthy list of scholars, because as we now know, the Supreme Court in its entire history has not relied on the ninth amendment a single time, I would make just one final point. If judges relied on the ninth amendment to create new rights, there would be no standards to limit the judicial discretion. A conservative judge might find that the people retain the right to a balanced Federal budget. A liberal judge might find a right to engage in homosexual conduct. Both would be sure that the amendment created just that kind of right and that the "higher natural law" required this result. In the long run, those judges would both be reading their own views into the document and nothing more.

Judge Bork has been criticized for referring to the ninth amendment as an inkblot on the Constitution. This has been distorted out of context. He was not suggesting that the ninth amendment has no significance. It has an important historical significance, but he is correct that in terms of setting up standards to guide judges in the creation of new rights, it contains none of these standards. In the sense of granting judges the license to create new rights, the ninth amendment has no substantive content. Indeed the Supreme Court agrees. Judge Bork was saying nothing more and nothing less. He used colorful language to make his point memorable and obviously he succeeded.

Once again, Judge Bork's views are in tune with the current and all past Supreme Courts. In fact, it is those who criticize him on this point who are extreme. They cannot cite a single Supreme Court opinion for the notion that the ninth amendment creates rights not found elsewhere in the Constitution, yet they fault him for stating that fact.

Just a few moments ago we heard my colleague from Massachusetts raise many of the old myths—poll taxes, civil rights concerns, the sterilization case, and so forth. This litany demands a response.

Therefore, I ask that the following materials be put in the RECORD: my remarks on poll taxes, civil rights record as judge, civil rights record as Solicitor General, one man, one vote, Katzenbach versus Morgan, cyanamid case, Shelley versus Kraemer, Bakke statement, 1964 Civil Rights Act, and equal protection.

There being no objection, the material was ordered to be printed as follows:

POLL TAXES

One of the most offense forms of distortion and innuendo employed against Judge Bork involved the poll tax issue. Poll taxes, by their history and nature, invoke images of racial insensitivity. Judge Bork has not ever evinced that insensitivity in his public service as SG and as Judge, but the poll tax issue is raised to create the false impression that Judge Bork is insensitive to minority rights.

The genesis of this matter are a few questions Judge Bork raised about the form of reasoning used to reach the result in the *Harper* v. *Virginia Board of Elections* (1966) case. This case struck down all poll taxes, regardless of whether they disadvantage minority voters. In fact, in the Harper case the Court expressly stated that the poll tax in question did not involve discrimination or disadvantages to minorities. When asked in Committee hearings what he would do if a poll tax were levied in a racially discriminatory manner or were shown to exclude minorities from the polls, Judge Bork replied that he would invalidate the poll tax.

In other words, if a poll tax were ever levied for the purpose of discriminating or excluding minority voters, it would not withstand Judge Bork's ire. Nonetheless those who strain to find fault with the Judge will stop at nothing. They exaggerate the few words of the 1971 law review article completely out of context.

In fact, in his 1971 analysis, Professor Bork did question the social or political merits of poll taxes, but probed for the legal reasoning of the case. Professor Bork could not find in the equal protection clause sufficient justification to invalidate nondiscriminatory poll taxes. If they discriminate, that is a different matter.

Moreover Judge Bork's concerns were limited to this equal protection basis for the Harper case. The Judge has conjectured that he might well reach exactly the same result by employing a different constitutional provision, namely the republican form of government clause. Not only would the Judge strike down any discriminatory poll tax, he might strike down all poll taxes if the evidence of the case shows that it inhibits the voting process and the guarantee of republican governments.

Frankly this position makes criticisms of his position seem ludicrous. Moreover, Judge Bork's position on this issue is identical to that of almost every prominent jurist of this century including Justices Harlan, Stewart, Frankfurter, Jackson, Brandeis, and Cardozo. Each of these jurists either dissented in Harper or joined the opinion which it overruled. In the words of Justice Black, who should be added to that list, the Court in Harper was "using the old 'natural-law-due-process formula' . . . to write into the Constitution its notions of what it thinks is good government policy." Justice Harlan similarly stated that "it is all wrong for the Court to accept the political doctrines popularly accepted at a particular moment of our history and to declare all others to be irrational and invidious . . ."

Judge Bork is in very august company. Moreover his critics need to be ready to say why Justices Harlan or Brandeis or Cardozo were insensitive to civil rights if they persist in hauling out this idle "poll tax" charge.

One final point, Mr. President. In the Sumter County case Judge Bork had to review a voting rights claim involving minority rights. He found that South Carolina's county had not adequately shown its voting plan to be free of prejudicial taint. One other act of Judge Bork is relevant here. As SG, he filed the brief in the *United Jewish Organizations* v. *Carey* case and the *Virginia* v. *U.S.* case, both of which protected minority voting rights.

This is hardly the record of someone who is anxious to deprive minorities of their voting rights. In fact, this is someone willing to go to great lengths to uphold those rights. In light of his actual record, it is scandalous to drag out the "poll tax" charge—which is without foundation—and insinuate that Judge Bork would do anything other than what he has consistently done, namely, protect minority voting rights.

Here again, I would suggest that actions speak louder than words.

CIVIL RIGHTS RECORD AS JUDGE

To hear some of Judge Bork's critics talk, you would believe that he had struck down every civil rights law he reviewed. In fact, during his tenure on the D.C. Court of Appeals, the Judge has in every instance upheld civil rights laws—including title VII, the Equal Pay Act, and the Voting Rights Act—in a manner consistent with or broader than Supreme Court precedent. In his years on the D.C. Circuit, Judge Bork has had dozens of opportunities to construe civil rights statutes. In all but two of these civil rights cases, he has sided with the minority or female plaintiff. Again in both of those cases, the Supreme Court and Justice Powell agreed with Judge Bork that the law required a ruling against the minority plaintiffs. It would once again be valuable to deal in specifics, rather than speculation.

In 1983 Judge Bork participated in the *Sumter County* v. *U.S.* case, a South Carolina voting rights case. This was a major voting rights case. Judge Bork joined a three-judge panel which ruled that a South Carolina county had failed to show an at-large voting plan lacked discriminatory purpose or effect. Thus, the South Carolina County had to undergo preclearance procedures.

It may be of interest to the Senate to realize that Justice Powell, unlike Judge Bork, has continually criticized expansive interpretations of the Voting Rights Act. In fact, Justice Powell has voted against minority plaintiffs in 17 out of 25 Voting Rights cases he had decided. (See, E.G., *City of Rome* v. *U.S.* (1980).) I think that I am beginning to conclude that my critical colleagues would probably not confirm Justice Powell if he were before the Senate today. In fact, my memory may be hazy but Justice Powell was opposed by most civil rights groups when he came before the Senate in 1971. After all, he favored many narrower constructions of civil rights laws that has Judge Bork. I mention this not to cast any cloud on the record of Justice Powell. We all revere him as a giant amongst modern jurists. I mention this only to point out the shallow analysis of those who once opposed Justice Powell's nomination and now oppose, for equally unsubstantiated reasons, the nomination of Judge Bork.

To continue, I would direct the Senate's attention to the *Palmer* v. *Schultz* case concerning gender discrimination in the foreign service.

In this case, the D.C. district court had granted summary judgment to the government in a suit by female foreign service officers alleging discrimination in promotions. Judge Bork voted against the government and reinstated this Equal Pay Act case. This type of evidence was dismissed in the Judiciary Committee as an easy case and that as just an example of Judge Bork following established precedent. If this case was so easy and clearly disposed of by precedent, why did the district court rule against the women in the first instance?

In a similar case, *Osoky* v. *Wick*, Judge Bork also voted to reverse another district court case and apply the Equal Pay Act to the Foreign Service's merit system. In both of these cases, he found that inferences of intentional discrimination can be based solely on statistical evidence. This is hardly the work of a judge who walks in lock step with the President. The Judge ruled against the government in both cases and also ruled against the government on the basis of arguments that the President himself would probably not approve. It is clear that he was making no special effort to impress President Reagan. This is the profile of a classic independent judge, the kind we should want on the Supreme Court.

Judge Bork also decided the *Laffey* v. *NW Airlines* case concerning the applicability of the Equal Pay Act to stewardesses.

In this instance, he found that female stewardesses may not be paid less than male pursers. Thus, the airlines were found to have discriminated against the females. The Supreme Court denied certiorari in this case. Once again, it is impossible to characterize his position as insensitive to women or as "opposing every major advance in civil rights." Incidentally, he also ruled in that case that the backpay awards under the Equal Pay Act should be determined by figuring a woman's total experience. This was another significant victory for women's rights. This kind of hard evidence makes charges about Judge Bork's insensitivity to women's rights sound very hallow.

Once again a comparison to the Justice Judge Bork would replace is probably in order. Judge Bork is supposed to upset the balance on women's issues by replacing Justice Powell. And, in fact, we would all agree with women's groups that Justice Powell was very sensitive on these issues. It is interesting, however, that he voted against women in gender discrimination cases 22 of 32 times. For instance, Justice Powell voted for the Grove City case in 1983. The same cannot be said of Judge Bork who voted for women and minorities time and again.

We could examine case after case which show an inclination to uphold civil rights, including the case of *Emory* v. *Secretary of the Navy* involving the application of civil rights review to the Navy's promotion decisions.

In this case Judge Bork again reversed a district court's opinion. The District Court had held that the Navy's promotion decisions were immune from judicial review for civil rights deficiency. Judge Bork stated that "The military has not been exempted from constitutional provisions that protect the rights of individuals. It is precisely the role of the courts to determine whether those rights have been violated." This is hardly language one would expect from one who has been accused of closing the courts to civil rights claimants. To the contrary, this is an opinion—reversing a lower court—opening the military to judicial scrutiny. Once again, the accusations do not seem to square with the reality of the Judge's judicial record. Indeed, it is interesting to note how many of these cases—Palmer, Wick, Emory—were cases in which Judge Bork voted to reverse a lower court which had ruled against the civil rights plaintiffs. The special interest groups opposing the Judge purport to review his record based only on a small fraction of the cases he has heard—the non-unanimous ones. So the cases I just cited were all excluded from these reviews because the three-judge panel was unanimous—despite the fact that the lower court had ruled the other way. This only illustrates how statistics can be skewed.

We could look at other cases, such as *Norris* v. *D.C.* where the Judge rejected a District Court's attempt to dismiss a prisoner's complaint of mistreatment or *Doe* v. *Weinberger* where he ruled against the government and ensured that a homosexual was accorded full due process rights. In all of these instances, the Judge's critics would be hard pressed to explain why he was insensitive to civil rights. In fact, they are wrong. Bork's actions speak louder than their words. He has consistently voted to preserve fundamental rights. When the facts are known, they are hard to distort.

CIVIL RIGHTS RECORD AS SOLICITOR GENERAL

We have heard many allegations that Judge Bork is insensitive to the civil rights of minorities and women. Some distorted charges even allege that Judge Bork would only enforce with reduced vigor the *Bolling v. Sharpe* case which desegregated D.C. schools. This is extremely unfair criticism. Judge Bork has repeatedly emphasized that he would feel compelled as a Justice on the Supreme Court to refuse to enforce any law or policy that denied any citizen the right to vote or the right to equal protection of the laws because of his or her race. On this point, he was emphatically clear in 1971 as well as in 1987.

Beyond these words, however, Judge Bork's actions are even more eloquent. His actions are even more impressive than his words with respect to civil rights. Both as Solicitor General and as a judge on the D.C. Circuit, Judge Bork has *never* advocated a position less sympathetic to minority or female plaintiffs than that ultimately adopted by the Supreme Court or Justice Powell. In other words, he has consistently been just as sympathetic or more sympathetic to civil rights than the current Supreme Court and the Justice he would replace. (I realize that the one exception to this rule would be cases where a federal law or policy was challenged under civil rights laws. In such cases, the Solicitor General is compelled to defend the legality of government actions except in the most egregious cases.)

Let me mention a few cases that deserve a few moments of examination. In the *General Electric v. Gilbert* case, Judge Bork argued for an advance in Title VII law by establishing that pregnancy can be the basis for discrimination. Interestingly Justice Powell voted against Bork's position, the position favored by women, in that case.

Even though his argument was rejected by Justice Powell and the majority of the Supreme Court, Judge Bork's position is today the law of the land. Congress passed the Pregnancy Discrimination Act in 1976 to overcome the Supreme Court's restrictive reading of Title VII and adopt the position you argued in the Court. In this instance, Judge Bork's position eventually prevailed but only over the objection of the Supreme Court. This is a further instance where Judge Bork was at the vanguard of the civil rights movement fighting to win important protections for women and minorities. With this case and others in mind, it is hard to understand how anyone could criticize the Judge for opposing every major advance in civil rights or turning back the clock on civil rights. To the contrary, he was responsible for many of those advances and for propelling the civil rights clock forward.

Let's look at another example. In 1976, Judge Bork was responsible for the case of *Washington v. Davis* concerning the disparate impact on minorities of written examinations given to job applicants. Judge Bork, then SG, contended that an employment test with a discriminatory "effect" should be unlawful under Title VII. This, too, was heralded at the time as a civil rights advance. The Supreme Court decided the case against Bork's broader reading of the law and in favor of an intent test. Justice Powell once again disagreed with Bork's reading of the civil rights law.

I would like to emphasize that I do not offer these observations as a commentary on Justice Powell's record. We all revere him as a great jurist. My point is only that it is short-sighted and misleading to resort to labels to characterize Bork's work on civil rights issues. Those labels may not tell the whole story because often his record was more sensitive on civil rights than the popular perception of Justice Powell.

Rather than list some of the rest of Bork's cases one at a time, I will mention them all together. In *Beer v. U.S.* (1976), the Judge contended that a New Orleans reapportionment act violated the Voting Rights Act because it diluted black voting strength. In *Teamsters v. U.S.* (1977), he argued that a seniority system that perpetuated the effects of discrimination violated Title VII. In *Pasadena v. Spangler* (1975), he contended that even a school district with a busing plan can be ordered to achieve even a better racial balance. In each of these cases, Justice Powell voted against Bork's effort to advance civil rights. And certainly no one would question Justice Powell's commitment to civil rights.

Nonetheless the comparison to Justice Powell—which shows that in the five cases I have just named Justice Powell was less sensitive to civil rights than Judge Bork—illustrates another danger in some techniques of classifying judges by political standards. Someone could read these five cases and conclude that Justice Powell was not in tune with the needs of minorities. The opposite is true. Yet we have often heard one or two isolated quotes—far less authoritative than these five votes—cited to question Judge Bork's record on civil rights.

Mr. President, I would like to employ one more comparison with a current justice. In the 19 amicus briefs Judge Bork filed as SG, do you know which justice—who is still on the Court—sided with Bork most often?

It was actually Justice Brennan. In fact, during the Bork years as SG, he filed 19 amicus briefs in civil rights cases. By the way, the SG has no obligation to file amicus briefs, but exercises considerable personal discretion about when to intervene in these cases. This shows that Judge Bork was not "just doing his job" which would be a high compliment. Nonetheless he was exercising his own discretion in filing amicus briefs.

In those 19 cases, Bork sided with the minority or female plaintiff 17 times. In the two cases where he felt compelled by law to argue against the minority or female, the Supreme Court agreed with him. Thus, 19 out of 19 times Judge Bork was at least as sensitive to civil rights as Justice Powell and the Supreme Court and 17 of 19 times he sided with minorities and women.

In a vain attempt to respond to this outstanding record, some have said this means little because Judge Bork was only defending government policy. As I have just stated, however, an SG does not have to file amicus briefs.

Before leaving this subject, we need to examine some of the victories for civil rights Judge Bork won as SG. The classic example is the 1976 case of *Runyon* v. *McCrary* outlawing discriminatory private contracts under Section 1981. This established that Section 1981—a 100 year old civil rights law—could be applied to racially discriminatory private contracts. Because Bork prevailed in this case, there now exists a federal course of action against racially restrictive covenants. In other words, those who accuse the Judge of limiting the sweep of civil rights laws have not taken into account his action to make some discriminatory private contracts invalid under this old law. This makes ludicrous those allegations that he would allow racially discriminatory contracts. In fact, he was responsible for the legal means to outlaw them. This action, better than any words, indicates that he would enforce federal laws against private activities.

Another great victory for civil rights at that time was *United Jewish Organizations* v. *Carey* (1977) which established that electoral redistricting may use race-conscious methods to enhance minority voting strength. This victory might offend some who think the Constitution should be read as "color-blind" because it allowed some citizens to be given preferences over others in redistricting plans. As I understand it, one of the justices at oral argument in this case challenged Bork by suggesting that legislators should not be allowed to take race into account when drawing election district lines. He responded: "Asking legislators not to think about race when drawing district lines is like my asking you not to think of the word hippopotomas in the next five seconds." Judge Bork then waited a full five seconds and then proceeded with his argument. Once again, this is hardly the work of one insensitive to civil rights. This is hardly the work of a conservative judicial activist.

Judge Bork won again in *Lau* v. *Nichols* (1974). This case was a landmark in its day. It mandated bi-lingual education and held that Title VI, and possibly even the Constitution, reached actions that were discriminatory in effect, though not intent. Many, particularly many in President Reagan's administration, would prefer to require a showing of intent prior to imposing penalties for discriminatory actions. This is an indication of Bork's independence and dedication to the law because he is not, as some would like to make us believe, the perfect image of what President Reagan might want in a Justice. The President's administration has continually argued for intents analysis over effects analysis in these cases, yet in this case Bork was on the other side. Those who have attacked the Judge's civil rights record seem to have forgotten that he blazed some of the paths that civil rights advocates take for granted today. Once again, these actions speak louder than words.

Judge Bork also won a victory for women in *Corning Glass v. Brennan*, the 1974 case involving the applicability of the Equal Pay Act to women who work on different shifts from men. In this victory for women, he established that the Equal Pay Act barred men from earning more than women for similar jobs on different shifts. This expanded the applicability of the Equal Pay Act—a significant advancement for the principle of equal pay for equal work. Women seeking equal economic opportunities still benefit today from Judge Bork's actions more than a decade ago.

As you can see, we could easily go on through many more great civil rights victories—actions that speak far louder than the hallow words of Bork's critics. Let's look at just one more group of cases, however. Bork also won the 1975 case of *Albemarle Paper v. Moody*, involving the showing an employee had to make to demonstrate that a pre-employment test was discriminatory, and the 1976 case of *Franks v. Bowman Transportation*, involving retroactive seniority status for victims of discrimination.

In each of these cases, Judge Bork's victories made it easier for a plaintiff to prove employment discrimination by simply producing statistical evidence of discrimination. In other words, intent was not a prerequisite to civil rights enforcement. This grants broad latitude to civil rights plaintiffs.

This exercise could go on. We could examine *Virginia v. U.S.* (1975) where he required the state of Virginia to comply with special burdens imposed by the Voting Rights Act or *Fitzpatrick v. Bitzer* (1976) where he established that Congress can even waive sovereign immunity to enforce civil rights or many more such victories for civil rights. Frankly it is impossible to understand how Judge Bork's critics could have overlooked these actions. On the basis of these actions, Judge Bork should be acclaimed as one of the leading advocates for broad civil rights protections in our era.

To recap, the Bork record as SG is unassailable on civil rights issues. He laid many of the foundation stones for the modern civil rights movement. It is hard for me to imagine why critics would feel such antagonism toward President Reagan that they would be willing to overlook the facts in their rush to condemn the President's nominee. I am confident that as the charges are laid alongside the actual record that the false allegations will quickly be unmasked as distortions.

ONE MAN, ONE VOTE

Each of the charges against Judge Bork seems to fall apart upon a closer look. Another of the charges against him in the domain of civil rights regards his position on the one man, one vote cases. When this criticism of Judge Bork is subjected to careful scrutiny, it too falls apart.

This issue was resolved long ago, but Judge Bork's position is sound. When the question of inappropriate restrictions on representation of minorities began to arise, the major obstacle to court involvement with reapportionment was always the political question doctrine. Thus the landmark case in this area was *Baker v. Carr* which established that reapportionment questions are justiciable. Based on criticism of the Judge, one might conclude that Judge Bork opposed this case. The opposite is true. In his view, the *Carr* decision on the political question doctrine was adequately supported by the Constitution and correct.

This is very significant. Many giants in the legal world would not have agreed that courts may get involved in apportionment decisions. Indeed, Justice Harlan and Justice Frankfurter disagreed with Bork on this issue. That does not mean that these Justices were insensitive on civil rights. They dissented in *Baker v. Carr* because they disagreed with the legal reasoning of the Court's majority.

Right at the outset, we realize that Judge Bork's position is not the extreme position that your critics would like us to believe.

Judge Bork's concerns about apportionment issues have nothing to do with the basic concept but center on the Court's standard for deciding when a district or state is properly apportioned. In this regard, the views he expressed as a Professor are not out of the mainstream. Justices Frankfurter, Black, and Stewart also objected to this aspect of the Court's decisions because they felt that the Court was merely voting its preferences into law. Indeed as the Court has moved toward requiring mathematical perfection in apportionment formulas, Justices Harlan, White, Rehnquist, Burger, and yes, Powell, too, have dissented. (*Kirkpatrick v. Preisler* (1969) and *Karcher v. Daggett* (1983)) In fact, Powell states that his reading of the Constitution lead him to doubt that the document "could be read to require a rule of mathematical exactitude in legislative reapportionment." (Karcher) He went on to say the Court's insistence on such a reading—an absolute one man, one vote reading—is "self-deluding."

In the field of academics, Professor Bickel warned that the Warren Court should be "wary of its one man, one vote simplicities." Professor Kurland fears that "these decisions turned a slogan into a constitutional doctrine." In short, Judge Bork's legal views about the judicial standard used in apportionment have extensive support in the legal community.

It is important to realize that Judge Bork has always held that courts may legitimately review apportionment decisions. In addition, he has a very strong alternative standard for ensuring fair apportionment. He supports Justice Stewart's approach of upholding any rational state plan that does not permit the systematic frustration of the majority will. Once again, Justice Stewart is known as a responsible and powerful Justice. Judge Bork's agreement with him is hardly cause for concern of any kind.

Upon close examination in this area, we find again that Judge Bork will allow courts to review the problem of malapportioned legislatures and that he will invalidate any apportionment plan that attempts to systematically frustrate the majority will. This would solve the crux of the problem. In any event, his views as a Professor are hardly out of the mainstream when they are shared by many Justices and scholars. As a Judge or SG, his views are clear. Time after time, he has upheld minority rights and particularly voting rights.

KATZENBACH VERSUS MORGAN

Among the most slimey of the charges levelled against Judge Bork is the allegation that he supports "literacy tests to keep minorities from voting." This is an outrageous falsehood. Everything about this charge from its substance to the way that Judge Bork's actual statements are taken out of context and distorted is wrong. This entire matter began when Judge Bork appeared at a congressional hearing to testify against the Human Life bill. This bill attempted to redefine the Constitution's word "person" to include "unborn children," thus overturning the Supreme Court's Roe decision by a majority vote of Congress. In testifying against this bill, Judge Bork was harshly criticized by many who desired passage of that bill.

Judge Bork maintained, despite the pressure, that Congress must not be able to change the Constitution by majority vote. This had only happened once before—in connection with literacy tests. Judge Bork, in opposing the Human Life bill, criticized the literacy test case which had allowed Congress to do the same thing. This shows how such distortions develop.

In the case of *Katzenbach v. Morgan* (1966), the Supreme Court upheld a congressional statute that redefined the words of the Constitution. This case involved the constitutional validity of nondiscriminatory literacy tests. Earlier, in 1959, the Supreme Court had decided that a state may employ a literacy test as long as it did not discriminate. *Lassiter v. Northhampton.* Congress disliked this 1959 interpretation and therefore overturned it by statute.

Although critics contend that the Judge's comments in opposition to Katzenbach were an effort to reinstate literacy tests for voting, that is not the case. In fact, Judge Bork clearly said that he was only concerned that if Congress can undertake its own interpretation of the Constitution by a mere majority vote, then the Constitution is not an anchor holding our nation in place during political storms. Instead it becomes just another part of the storm itself. Moreover the venerable doctrine of judicial review becomes the doctrine of political review because the political branch can determine the meaning of the Constitution. In sum, Judge Bork argued that Katzenbach is at odds with the 1803 Marbury doctrine of judicial review, not that literacy tests ought to be reinstated.

This became entirely evident when Judge Bork stated clearly that he would overturn any literacy test employed for a discriminatory reason. Thus, to say that Judge Bork favors literacy tests to exclude minority voters is absurd. He never said that. He never meant that. He only commented on whether Congress ought to change the Constitution by majority vote.

This is the only sound course of constitutional interpretation. It is amazing how such a sound legal reasoning process can be distorted by those intent upon finding some fault with President Reagan's appointees.

Once again, it would be informative to check other jurists on their views of this issue. Professor Bork's views on the Katzenbach case were shared by Justices Harlan and Stewart who dissented from this decision saying that it would be a "sacrifice of fundamentals in the American constitutional system—the separation between the legislative and judicial function." Four years after Katzenbach, the Court refused to extend the doctrine to uphold the constitutionality of Congress's attempt to lower the voting age from 21 to 18. *Oregon v. Mitchell.* In that case, Justices Burger, Stewart, Harlan, Black, and Blackmun voted against the Katzenbach principle. Moreover Justice Powell cited Harlan's Katzenbach dissent with approval in the City of Rome voting rights case. He, too, endorsed the view Professor Bork had taken on this case. Once again, the Judge is in excellent company. Those who criticize his views on this case should explain why they also criticize Harlan, Stewart, Black, Burger, Blackmun, Powell and so forth because this list could be expanded.

The complete irony, however, is that this falsehood was taken from Judge Bork's testimony against the Human Life bill in 1981. This was an attempt by some Congressmen to define the term "person" in the Constitution to include unborn children. He was criticized by some for opposing a right to life initiative—albeit a misguided right to life initiative. Nonetheless he had the courage to stand up for the legal principle involved regardless of whether it was employed against abortion or against literacy tests. He was interested in the law not the outcome. This is precisely the kind of judge we need on the Supreme Court.

This demonstrates that the Judge was dedicated to the legal principle enough to risk political fall-out in an Reagan Administration which favors right to life initiatives. In a similar vein, Judge Bork could have used the Katzenbach principle to obtain the objective of limiting forced school busing when he was asked by President Nixon to prepare a paper on that subject. Once again he refused to employ this false doctrine for his own objectives. He was faithful to the legal principle and advised against this course.

By the way, a good way to see the inconsistency in this argument against Judge Bork is to realize that if his position on Katzenbach means he is "anti civil-rights" (which it clearly does not), then his position against the Human Life Bill means that he is "pro-abortion" (which is unknown).

Once again this is a powerful rebuttal to those who contend that he was willing to be judicially active or to bend legal principles to achieve your own political objectives. When he had that opportunity in the area of busing, he advised against employing Katzenbach to his own advantage. In any event, the important point is that the Judge's criticism of Katzenbach had nothing to do with voting rights, but had everything to do with protecting the constitutional function of the courts.

CYANAMID CASE

Rarely in the history of Senate debates has a single question been more sensationalized and stretched out of all proportion than the discussion of Judge Bork's opinion in the Cyanamid case.

The best way to discuss this issue is to focus on what critics have said in sensationalizing this case.

Those with little concern for the facts have gone so far as to charge by insinuation that Judge Bork engaged in "sterilizing workers." This is preposterous. Judge Bork did not, nor could he, force any sterilization. In what Judge Bork has described as a "heart-wrenching" case, the court was asked to construe a statute which simply did not classify the company policy as a hazard. If there was a problem it was Congress's failure to pass a statute on this subject, not the court's inability to do something outside the law.

The company policy was to only allow sterile women to work in an area polluted with lead and therefore unsafe for fetuses. Some women chose to be sterilized rather than move to another job. Subsequently those women brought a Title VII suit which was eventually settled. The case in question did not feature any of these women as plaintiffs; they had already been compensated in a separate suit. The case was an effort to fine the company for exposing women to "hazards," but as stated the language of the statute did not make this situation a hazard.

At the time Judge Bork heard the case, the five women were already sterilized and there was no chance that any other women could be subjected to a similar threat. Now how, I ask any fair-minded individual, can that be stretched into a charge that Judge Bork sterilizes women?

Those making the allegations do not stop there, however. They contend that the "company was pumping so much lead into the workplace that female employees were at risk." This creates a false impression by failing to mention that an Administrative Law Judge had found that there was no way to eliminate the lead levels sufficient to eliminate the risk. I do not want to defend the company, that is not my point. My point is that Judge Bork was bound by that finding. Any insinuation that he permitted the company to pump lead is ridiculous. The binding evidence showed that the company had no choice. Judge Bork could not choose to ignore the evidence. A judge cannot choose the facts of a case.

The purveyors of falsehood continue to say that "the company ordered all women workers to be sterilized or lose their jobs." This makes it sound like the Judge permitted the company to do this. In fact, this was not even before the Court. The only thing before the court was whether to fine the company for past hazards. Moreover, the company offered the women a choice. Due to the hazard, fertile women could not work in the plant. Rather than release the women outright, they were offered a choice. Judge Bork had nothing to do with that policy, only the question of whether this was a violation of law.

The allegations continue that "when the union took the company to court." This is only part of the truth. It is never mentioned that the OSHA review commission, the expert government agency, had already found the company policy was not a hazard. Moreover it does not mention that the injured women had been compensated.

The falsifiers never quit. They continue to say that "Judge Bork ruled in favor of the company." This sounds like Judge Bork approved of the "unhappy choice" the women had to make. In fact, he deplored it. Moreover the company's choice was not before him. He could not have made the company stop; it already had. He could not make the company pay the women; it already had. None of these was the case before Judge Bork. He was only asked if this was a hazard. The law said no.

This is political Falsehooding at its worst. Judge Bork is solely blamed. It is not mentioned that the court was unanimous. One of the other judges voting to uphold the law as written was Judge, now Justice, Scalia. Indeed the rest of the Circuit judges refused to overturn the unanimous court ruling.

Moreover, this is blatant sensationalism. It is not mentioned that the law as written by Congress did not include this situation as a "hazard" within the terms of the OSHA Act. To the extent that failure to anticipate this regrettable situation is cause for blame, Congress caused it and should correct it by legislation.

Finally, the falsifiers say quickly that "five women underwent surgical sterilization." This makes it sound like Judge Bork approved the action. Ridiculous. This, as I say, may be the worst distortion I have ever seen in Senate debate history

SHELLEY V. KRAEMER

We heard in the hearings and elsewhere that Judge Bork would permit discriminatory private contracts. This is absurd. Once again, this criticism follows a familiar pattern. Judge Bork has actually commented as a professor on a legal principle found in a case dealing with discriminatory contracts. The Judge's critics ignore what he really said and jump to the false conclusion that he opposes civil rights. A quick analysis reveals the foolishness of this charge.

In 1948, when the Supreme Court had just begun to grapple with many of the implications of the state action doctrine, it decided the case of *Shelley v. Kraemer.* In this case, it held that the fourteenth amendment forbids state court enforcement of a private contract containing a racially restrictive covenant. In a 1971 article, Professor Bork explained, as had Professor Herb Wechsler before him, that this decision was not supported by neutral reasoning. Unfortunately that legal concern has been misconstrued by many of your opponents. They seem to think that he supports racially discriminatory contracts. Judge Bork has repeatedly stated that he too opposes racially discriminatory contracts.

In fact, Judge Bork has done more than talk about his opposition to these contracts. When he was Solicitor General, he presented the case of *Runyon v. McCrary,* a case involving enforcement of private contracts under Section 1981—and won. He established that Section 1981 reaches private discriminatory contracts. This clearly indicates Judge Bork's disgust for discrimination in any form and his effort to deal with that problem in a legal manner.

Returning for a moment to Professor Bork's point, it too is well supported. Professor Bork's point was that the 14th Amendment reads: "No state shall . . . deny to any person within its jurisdiction the equal protection of the laws." It is the "NO STATE SHALL" language that note is of signficance. The amendment, by its language, prohibits, state discriminatory actions. It does not comment on private actions. Once again, Professor Bork was concerned about the constitutional justification for a Court decision, not the result in the decision. He even supported the result, but felt compelled as a professor to raise questions about the reasoning used to reach that result.

Clearly his argument had nothing to do with a lack of sensitivity to civil rights concerns, but was based on a legal reading of the Constitution. It would help, however, to inquire into what other legal scholars read the Constitution the way Professor Bork did. In the first place, we have the case of *Evans v. Abbey* decided in 1970. In that case, the Court was called upon to once again decide whether a state court could honor a racially discriminatory private contract. Justice Brennan for one said the the *Shelley* case governed. The majority of the Court, however, ruled 5-2, against that proposition. Or in other words, Justices Black and four of his colleagues followed the same reasoning as Professor Bork. In fact, since then, a series of cases—*Lugar* in 1982, *Flagg Bros.* in 1978, *Moose Lodge* in 1972, and the opinion authored by Justice Powell last term *San Francisco Arts v. U.S. Olympic Committee*—all have confined *Shelley* to its facts. In other words, the majority of the Supreme Court since 1970 has agreed with Professor Bork's legal reading. Moreover, the Fair Housing Act in 1968 invalidated racialy restrictive covenants and *Shelley* is no longer necessary for that purpose.

For those worried about this silly "balance" argument, however, Judge Bork's presence on the Supreme court would not alter its current doctrines on state action in the slightest. This seems to me to be another issue that has been blown out of proportion by those who want to employ political tactics in a legal context.

Because there was so little substance to the charges relevant to *Shelly,* you would be correct to conclude that the result is the same with regard to the *Reitman v. Mulkey* case, a subsequent Supreme Court case involving a California law which said that a seller may sell to whomsoever he chooses. California's law simply said that individuals may sell or lease to whomsoever they choose. The question was whether this violated the 14th Amendment because some people might rely on this general law to discriminate in their selling decisions. This was a case decided by a vote of 5-4. Justices Harlan, Black, Clark, and Stewart found that the California law was not "by its terms offensive" and that the State had not engaged in any "positive state cooperation" with discrimination. Justice Harlan concluded that the court "has taken to itself powers and responsibilities left elsewhere by the Constitution."

Professor Bork criticized the reasoning in this case as well. Even in 1968, it appears that he was in good company, but a 1982 case authored by Justice Powell, *Crawford v. LA Board of Education,* with the concurrence of 8 members of the Court, distinguishes and does not follow *Reitman.* In that case, the Court permitted the State of California to pass a proposition that limited busing to those circumstances necessary to comply with the constitution. In fact, Justice Powell wrote: "In this case, the Proposition (restricting busing except when necessary to conform to the federal constitution) was approved by an overwhelming majority of the electorate. It received support from members of all races. The purposes of the proposition are stated in its text and are legitimate, nondiscriminatory objectives. Under these circumstances we will not dispute the judgment of the Court of Appeals." This follows Judge Bork's reasoning to a tee.

In sum, Judge Bork deplores racially discriminatory private contracts. In fact, he argued a Supreme Court case to restrict them under federal law as Solicitor General. His concerns as a Professor were limited to legal considerations that have been supported by a majority of the Supreme Court since the early 70s. This makes one wonder who the extremists are. Those who do not agree with the majority of the Supreme Court or Judge Bork who does.

BAKKE STATEMENT

Despite an outstanding record on civil rights—a record that is certainly no more "conservative" or "liberal" than that of Justice Powell—Judge Bork has been criticized for opposing major civil rights advances. Much of the misconception about his commitment to civil rights springs from an article he wrote while still a law professor that was critical of the *Bakke* opinion. The 1978 *Bakke* decision authorized preferential treatment on the basis of race in some circumstances. Accordingly, I believe it would be very valuable to clarify some of the Judge's present and past words and actions with respect to affirmative action.

Once again on the theory that actions speak louder than words, it is interesting that Robert Bork never filed a brief as Solicitor General or voted in a case as an appellate judge in opposition to the principles in *Bakke*. In other words, he has never opposed race-conscious remedies or actions in SG briefs or in votes on the D.C. Circuit.

Moreover it is fair to say that his brief as Solicitor General in the *United Jewish Organizations v. Carey* case advocated race-conscious electoral redistricting to protect minority voting strength. Thus, in Bork's 1977 brief which preceded *Bakke*, he advocated race-conscious affirmative action in the context of a sensitive voting suit. He was at the vanguard of this civil rights action as well.

In five years on the D.C. Circuit, he never voted against or wrote a criticism of the *Bakke* decision. Once again, in terms of actions, where it really counts, the Judge has acted in full compliance with and perhaps even helped lay the groundwork for *Bakke*.

Before examining his written comments about *Bakke* itself, it is important to note that Judge Bork was a law professor at Yale University when *Bakke* was decided. His status as a law professor encouraged him to publish provocative critiques of Supreme Court opinions. He was paid to stir up intellectual dust. He did it well.

This does not mean that his opinions and procedures as a Supreme Court justice would be the same as his opinion and procedures as a law professor. In fact, these different roles have affected his thinking processes markedly—as they should. A Judge is deciding questions of life, liberty and property. He must wait for briefs, hear the facts and evidence, weigh the implications. In the judicial setting, Judge Bork's performance has been exemplary.

Recognizing again the he was writing as a law professor and not as a Justice of the Supreme Court or even as a judge, let me repeat some of his words on the *Bakke* decision: [In Bakke], "we have at bottom a statement that the 14th Amendment allows some, but not too much, reverse discrimination. Yet that vision of the Constitution remains unexplained. Justified neither by the theory that the amendment is pro-black not that it is color-blind. It must be seen as an uneasy compromise resting upon no constitutional footing of its own." Professor Bork's main point in this 1978 article was not to question the political and social merits of quotas or affirmative action, but to make the lawyer's observation that the result was not legally justified by the reasoning.

This is important to reemphasize. As a law professor, he was striving as a lawyer to find a legal basis for the conclusions reached by the Supreme Court. Even in stirring up intellectual dust, Professor Bork was a consummate lawyer.

At another time, Professor Bork stated apprehensions about the dangers of reverse discrimination. He expressed that "the thrust of Bakke is toward proportional representation. This would be a major change in American society and in what Americans have traditionally viewed as social justice. The merit of the individual and the efficiency with which society accomplishes its work will be ideals submerged in a new ethos of group entitlement. It is a thoroughly bad idea." Perhaps the best way to judge the merits of this concern would be to see if Judge Bork's legal scholarship is shared by other lawyers. Permit me to read a few quotes. First is this comment:

"Racial classifications are simply too pernicious to permit any but the most exact connection between justification and classification."

This author seem to be making the same legal criticism that Professor Bork made about the justification for some affirmative action systems. This quote was taken from Justice John Steven's dissent in the *Fullilove* decision. Next I would like to read this quote:

"Under our Constitution, the government may never act to the detriment of a person solely because of that person's race . . . Governmental action that imposes burdens on the basis of race can be upheld only where its sole purpose is to eradicate the actual effects of illegal race discrimination."

Once again, this author seems to be making a legal point similar to that made by Professor Bork about the *Bakke* case. This quote was taken from Justice Potter Stewart's dissent in the *Fullilove* decision. Justice Stewart was joined by justice Rehnquist. Perhaps one more will suffice to make the point.

"Whatever his race, [the plaintiff] had a constitutional right to have his application considered on its individual merits in a racially neutral manner . . . any state-sponsored preference to one race over another . . . is in my view invidious and violative of the [Constitution]"

Once again this author seems to be making a legal point consistent with Professor Bork's observations. This is a quote from the celebrated Justice William O. Douglas dissenting from dismissal of the *Defunis* case.

In other words, Professor Bork's legal concerns about *Bakke* are hardly out of the mainstream of legal though and criticism. Justice Douglas is popularly categorized as among the most liberal justices of our era, Justice Rehnquist amongst the conservatives, and Justices Stevens and Stewart are known as moderates. I dislike attaching political labels to judicial officers, but in this instance it demonstrates that Bork's views have been echoed by all sectors of the legal spectrum. I cannot resist just one more quote: This author is commenting directly on Powell's opinion in *Bakke*. He says: "If that is all it takes to overcome the presumption against discrimination by race, we have witnessed an historic trivilization of the Constitution. Justice Powell's opinion is thoroughly unconvincing as an honest, hardminded, reasoned analysis of an important provision of the Constitution."

This quote comes from Justice Scalia when he was a law professor. This is the same Antonin Scalia who was confirmed by a unanimous vote a few Months ago. Moreover Professor Scalia uses much of the same language and style—including the phrase "trivializing the Constitution"—which have been severely faulted in Judge Bork.

I could cite still others who share Professor Bork's opinion and style, including the revered Professor Bickel. His statement is worth repeating: "If the Constitution prohibits the exclusion of blacks and other minorities on racial grounds, it cannot permit the exclusion of whites on similar grounds, for it must be the exclusion on racial grounds which offends the Constitution, and not the particular skin color of the person excluded." *Morality of Consent* (1975). In other words, whether working in forward or reverse gear, discrimination is offensive.

It goes without saying that Professor Bork's legal views are principled concerns that are well within the mainstream of traditional constitutional jurisprudence. In fact, anyone anxious to label him as extreme on the basis of these views must be prepared to affix the same label to five esteemed present and former Supreme Court justices and Professor Bickel whose reputation is beyond reproach.

Let's return to Bork's record as a judge. Since *Bakke*, the Supreme Court has decided numerous affirmative action or reverse discrimination cases, including the *Stotts*, *Weber*, and *Fullilove* decisions to name only a few. Judge Bork has not commented either as a judge or a scholar on any of these decisions.

To recap this matter of Bork's words about *Bakke*, his actions as SG and as judge have never been out of harmony with *Bakke* and indeed may have laid the groundwork for *Bakke*. Moreover his comments—made as a law professor not a judge—were not a commentary on the political or social merits of affirmative action and quotas, but only a search for a legal justification. Finally, Judge Bork has not revisited this issue after any of the Court's subsequent decisions. Finally, and perhaps most important, Professor Bork's views are shared by at least five current and former Supreme Court justices. In this light, it is almost a laughing matter for anyone to seize on these writings from ten years ago in search of something insensitive about Judge Bork's civil rights record.

1964 CIVIL RIGHTS ACT

Mr. President. Judge Bork's significant actions in behalf of civil rights are also undervalued because of his comments nearly 25 years ago about the public accommodations portions of the 1964 Civil Rights Act. In the hearings as well as dozens of times earlier in his career, Judge Bork has stated several times that he no longer espouses these views he held as a young law professor. This ought not to arouse any concern. Every Senator, in fact, every American has probably held an opinion that they later changed.

One of the reasons that this 1963 article was criticized was because in his capacity as law professor Judge Bork criticized the Court's Commerce Clause justification for the public accommodations law. By the way, the revered Justice Black also felt that the Commerce Clause was an inadequate basis for the public accommodations law. (See Daniel versus Paul (1969)) Nonetheless, as judge or even justice of the Supreme Court, Judge Bork contends clearly that stare decisis would require him to uphold the Commerce Clause as justification for this civil rights law.

This judicious response from Judge Bork underscores once again the difference between a law professor and a judge. As a law professor, Judge Bork was paid to generate controversy and to stimulate discussion. As a judge, he has a responsibility to honor precedents and uphold the continuity and predictability of the law. Judge Bork knows that difference. It seems to me unfair, therefore, for us to have to endure endless attacks on him based solely on what he may have said 25 years ago as a young law professor. The more relevant indicator of Judge Bork's likely performance as a Supreme Court Justice is his service as Solicitor General and as judge. In those capacities he has demonstrated an extraordinary sensitivity to civil rights.

EQUAL PROTECTION

We have often heard Judge Bork's views on equal protection questioned. I would like to respond. The equal protection clause of the fourteenth amendment states that "no state shall . . . deny any person . . . the equal protection of the laws."

Application of the equal protection clause is a two-step process. A judge must first consider coverage. On that point, the amendment, by its terms, applies to "any person." Thus, everyone is covered by the equal protection clause regardless of sex, race, creed, color, or any other distinguishing characteristic. This first step is applied automatically and without question. The second step is the standard of protection to be granted. This is the question which has been extensively debated in judicial and legal circles, as well as in the hearings.

Judge Bork's view, which is shared by Justice Stevens among others, on this standard question is that the Congress or a State legislature may not treat individuals differently unless they substantially justify the distinction. As Judge Bork explained in the hearings, this means that women and minorities will receive at least as much protection as under the alternative standard. The Judge's view is also in complete harmony with the words of the fourteenth amendment which protect "any person," rather than specific groups.

The alternative view grants some groups great protection against unreasonable legislative distinctions and leaves other groups with practically no protections. This approach is difficult to reconcile with the Constitution's language guaranteeing equal protection to every person. Ironically, the equal protection clause under the alternative view is less equal because it favors some groups much more than others. Judge Bork's view does not share this infirmity.

Judge Bork's equal protection is equal. Under Judge Bork's view, an individual need only be a person to qualify for equal protection. Thus, Judge Bork gives legal force to the aspirational language of the Declaration of Independence: "We hold these truths to be self-evident that all persons are created equal and endowed by their Creator with inalienable rights. . .".

By the way, this disposes of the bogus issue that Judge Bork would not cover women under equal protection clause. As he stated time and time again during the hearings, he reads the Constitution to cover every "person." After all this is what the Constitution says.

Besides being equal, Judge Bork's reading of the equal protection clause is also fair. Under this approach, whenever an immutable trait—such as gender, which bears no relationship to one's ability or merit or inherent equal personhood—is the basis for dissimilar treatment in a statute, that statute will be invalidated as a denial of equal protection. This means that almost no laws that distinquish on the basis of race or sex will be upheld. As Justice Stevens, who is known as a champion of the rights of the disadvantaged, has written: "We do not need to apply a special standard, or to apply 'strict scrutiny' or even 'heightened scrutiny' to decide such cases." Cleborne (1985). This is because the rights of minorities and women can be and are fully protected by Judge Bork's equal protection without extending special advantages to one group over others.

Perhaps it is best to be specific. In his testimony, Judge Bork repeatedly stressed that men may not be favored over women as estate administrators, that women may not be denied service as jurors, that women may not be denied bartending licenses, that women may not be denied credentials as lawyers, and that no other form of invidious discrimination will be tolerated on the basis of sex. Incidentally, when the four examples above came before the Supreme Court, it rejected the first two instances of discrimination and permitted the latter two. Under Judge Bork's view, any State or Federal law based on outmoded stereotypes or arbitrary distinctions would be invalidated.

The reason for concern over Judge Bork's equal protection seems to be a misunderstanding, in fact, three misunderstandings. In the first place, despite Judge Bork's persistent efforts to state his position, some have jumped to the conclusion that his reasonableness test is nothing more than the old rational basis test, which was almost synonomous with a license for discrimination. This is not Judge Bork's view. Under Judge Bork's equal protection, anytime a State or the Congress wants to create a sex-based distinction, it will have a substantial burden to show why that distinction is justified. Judge Bork could only think of two possible examples of sex distinctions that might be sustained, all-male combat units and separate toilet facilities. These distincitions are so obvious as to be almost ludicrous. Yet this makes the point. Other distinctions will fall.

The second misunderstanding is that somehow Judge Bork's reliance on original intent might cause the resurrection of antiquated gender stereotypes that were prevalent during the 39th Congress. This misunderstands the nature of Judge Bork's jurisprudence. He reads the words of the Constitution, which protect "any person," and does not attempt to read the minds of men long dead. The 39th Congress wrote the equal protection clause. This is the law to be applied, regardless of whether the 39th Congress was able to live up to the principle it contained. We know that the 39th Congress did not fully live up to the principle or racial equality that it wrote into the Constitution, but the principle governs, not the personal shortcomings of men who lived over 100 years ago. As Judge Bork said in the Ollman case, "It is the task of the judge in this generation to discern how the Framer's values, defined in the context of the world they knew, apply to the world we know." Judge Bork's jurisprudence will apply the language of the Constitution in light of current values, or "the world we know."

Finally, the third misunderstanding results from a few incomplete statements made by Judge Bork in "off-the-cuff" interviews. For instance, we have often heard that Judge Bork said "the Equal Protection clause probably should be kept to things like race." We have also heard this repeatedly quoted to mean he would not cover women. It has no such meaning. Judge Bork applies the language of the Constitution and thus holds that "any person" is covered by the equal protection clause. In this quote, Judge Bork was not addressing coverage at all, but the separate question of what standard applies. Judge Bork is simply reiterating that the only group to receive a more favorable standard of scrutiny is race. All others will receive equal protection as persons under the language of the Constitution. As discussed, this means full and complete protection for women and for everyone else from arbitrary and invidious discrimination.

The reason for this misunderstanding is that Judge Bork takes for granted that all persons are covered by the equal protection clause. After all that is what the Constitution says. When he is asked a question off-the-cuff, he immediately begins to answer the more burning judicial question of the day, namely, what standard will apply. It is this second question he was addressing in this quote which some have misread. This was not a recent awakening for Judge Bork, but a view he began to espouse as early as 1971. It has simply taken considerable time for his view to be correctly understood.

I would also like to clarify why Judge Bork's equal protection is not some new notion that he conceived in order to win confirmation. The evidence suggests an entirely different view. In the now-famous 1971 Law Journal article, Professor Bork stated that equal protection requires "that government not discriminate along racial lines." The very next sentence continues to say: "But much more than that cannot be properly read into the clause." With this language, Professor Bork was clarifying again that special groups, other than race, should not receive a special standard of protection under the equal protection clause. He was not addressing coverage at all because the language of the Constitution is so obvious. His statement, however, leaves ample room for the application of a uniform reasonable basis test to every "person." Thus, his equal protection view was articulated to some degree as early as 1971.

In this connection it seems only appropriate to conclude with a recitation of Judge Bork's actual record with regard to women. This, better than anything else, indicates his level of commitment to equal rights for women.

••In Palmer versus Schultz, Judge Bork voted to extend equal pay to women in the foreign service.

••In Laffey versus N.W. Airlines, Judge Bork held that a distinction in pay levels between male pursers and female flight attendants violated the Equal Pay Act.

••In Osoky versus Wick, Judge Bork held that statistical evidence alone could suffice to prove a sex discrimination claim under Title VII.

••In Cosgrove versus Smith, Judge Bork reinstated the complaint in an equal protection action alleging unconstitutional discrimination between male and female prisoners.

••In Planned Parenthood versus Heckler, Judge Bork voted to invalidate an HHS regulation requiring federally funded family planning centers to notify parents when teenagers seek birth control services.

I could list still further cases, including his argument as Solicitor General in the General Electric versus Gilbert case that discrimination on the basis of pregnancy amounts to sex discrimination. The Supreme Court did not accept his argument. His position ultimately had to be won by a subsequent act of Congress.

The important thing to realize is that these are actual public acts with public consequences. These were not provocative musings of a professor in a scholarly journal. These are his actual actions and they, in every instance, benefit women.

In sum Judge Bork's equal protection is truly equal. On the question of coverage, Judge Bork covers every person according to the language of the Constitution. On the separate question of standard, Judge Bork provides at least as much protection for women and minorities as is currently provided by the Court. Properly understood, Judge Bork's equal protection is yet one more indication of his qualifications, sensitivity, and judicial temperament to serve on our nation's highest court.

Mr. HATCH. In conclusion, Mr. President, I believe the Senate has missed the point on this entire debate.

JUDICIAL ACTIVISM

From the opening gun of this debate, we have heard charges that Judge Bork is an extremist. As I have repeatedly stated, I think that this charge is wholly unfounded. I have spent much of my time in this debate rebutting that point. Rather than pursue that point further at this time, I will ask simply that a study entitled "Commentators Who Have Taken Positions Like Those of Judge Bork" and a listing of "Bork's Judicial Philosophy Supported by 200 Years of Supreme Court Jurisprudence" be placed in the RECORD at this point. These demonstrate once again that Judge Bork is a nominee in the finest tradition of American jurisprudence and constitutional theory.

There being no objection, the material was ordered to be printed in the RECORD as follows:

COMMENTATORS WHO HAVE TAKEN POSITIONS LIKE THOSE OF JUDGE BORK

KATZENBACH V. MORGAN

Professor Bickel of Yale wrote of *Morgan*, "if the Court's reasoning is taken seriously, Congress could bestow the vote on these groups, and on any group which it fears may be discriminated against, even though its fears are grounded solely in the fact that the group in question is deprived of the vote. There is then nothing left of any constraint on the power of Congress to set qualifications for voting in state elections. Yet the Court did not purport to vest plenary power in Congress." Bickel, *The Supreme Court and the Idea of Progress* 63 (1970). He also noted that, "[t]he Court's ground of decision purported to be limited, but was in truth not limitable." *Id.* at 76.

Although he ultimately supports the decision in *Morgan*, Professor William Cohen of Stanford noted that: "Justice Brennan's 'ratchet' interpretation of section 5 presents two problems. First, it does not satisfactorily explain why Congress may move the due process or equal protection handle in only one direction. If Congress' interpretative power is grounded on special legislative competence not possessed by courts, then congressional insistence on English language literacy as a qualification to vote would seem to involve the same special competence as the decision to extend voting rights to those literate in a foreign language. In other words, if Congress is in a better position than the Court were to make some kinds of due process fairness judgments and to balance state interests against the demand for equal protection, that competence should extend to a judgment that the courts have gone too far in expanding the scope of individual rights."

"The second and more significant problem with the ratchet theory is the difficulty in determining the direction in which the handle is turning. For example, could a congressional expansion of the power of courts to give gag orders to the press in criminal cases be justified as an enhancement of fair trial without the necessity of any judicial determination of the freedom of the press issue? Any issue involving competing claims of constitutional rights poses the dilemma of determining whether a particular decision 'enforces' or 'dilutes' constitutional rights." Cohen, *"Congressional Power to Interpret Due Process and Equal Protection."* 27 Stan. L. Rev. 603, 606-07 (1975).

CONFIRMATION OF JUDGES

Professor Kurland has written: "Allow me to make clear my position on judicial appointments. I believe that a judicial nominee's political preferences are no more relevant to a capacity to perform the judicial function than are the nominee's sex, race, national or state origin, or religion. No one should be appointed or refused appointment for such considerations. And surely every President has exercised the prerogative of choosing nominees for the bench because they are close to rather than distant from his philosophy." Chicago Trib., May 12, 1986, *reprinted in* CONG. RECORD, June 25, 1986, at 8486.

Senator Kennedy has, in the past, stated: "I believe it is recognized by most Senators that we are not charged with the responsibility of approving a man to be Associate Justice of the Supreme Court only if his views always coincide with our own. We are not seeking a nominee for the Supreme Court who will always express the majority views of the Senate on every given issue of fundamental importance. We are interested really in knowing whether the nominee has the background, experience, qualifications, temperament and integrity to handle this most sensitive, important, responsible job." Hearings on the nomination of Thurgood Marshall to the U.S. Supreme Court.

During Justice O'Connor's confirmation process Senator Biden noted that "no one, in the approximately 200 years of the Court, has been accurately able to predict what a justice of the Supreme Court would be like." Associated Press, Sept. 28, 1981, p.m. cycle.

Senator Biden was reported to "enthusiastically" support the nomination of Justice O'Connor because she "had demonstrated legal skill, moral character and judicial temperament. 'That is all I have to ask,' he said." N. Y. Times, Sept. 22, 1981, at § A, p. 1, col. 3.

In discussing the approaching hearings on the nomination of Justice O'Connor in 1981, where it was expected that she would be opposed by conservatives concerned about her views on abortion and the ERA, Senator Biden noted that: "It troubles me that we would require of a judge something beyond a profound sense of the law."

"I am a little concerned that in effect we try to get commitments from a judge on how he or she is going to vote in the future. . . . I think it is very appropriate to get a sense of the ideological perspective of a justice, but that is different from getting specifics on how he or she would rule." 39 Congressional Quarterly Weekly Report, July 11, 1981, at 1235.

Regarding the nomination of liberal Congressman Abner Mikva to the Court of Appeals for the District of Columbia Circuit, Senator Biden stated: "The necessary qualifications of a judicial nominee are somewhat different [than those required of a cabinet post]. Although a nominee's personal views on matters likely to come before him are relevant, they are not nearly as important as the more elusive qualities of demeanor and judicial temperament. The real issue with a judicial nominee is whether he is capable of performing the delicate role of objectively reviewing questions of law and fact. He must be able to put aside any personal prejudice he might have on the matters before him. Therefore, I believe, what is properly before us here as we consider Congressman Mikva's nomination is not the views he has expressed on public issues as a Member of Congress, but rather the degree to which he possesses those attributes experience has shown to be desirable in a judge, particularly the ability to be objective on the bench." CONGRESSIONAL RECORD, Sept 25, 1979, at 26029.

ROE V. WADE

Professor Gunther of Stanford Law School has stated: "The bad legacy of substantive due process and of ends-oriented equal protection involves a block to legislative ends, an imposition of judicial values as to objectives. That is something from which the Burger Court is overtly retreating—as to equal protection at least, though not as to due process, as *Roe* v. *Wade* shows." *Forum: Equal Protection and the Burger Court*, 2 Hastings Const. L. Quarterly 645, 664 (1975).

Professor Forrester of Cornell Law School has stated: "Certainly, so far as the Burger Court is concerned, you can't find a more interventionist decision in the books than *Roe* v. *Wade*, whether you agree with it or not." *Id.* at 667.

Professor Kurland of the University of Chicago has stated that *Griswold* v. *Connecticut* and *Roe* v. *Wade* are examples of "blatant usurpation(s) of the constitution making function" to be compared with the generally discredited *Lochner* v. *New York*. Kurland, *The Irrelevance of the Constitution: The Religion Clauses of the First Amendment and the Supreme Court*, 24 Villanova L. Rev. 3, 25 (1978-79).

Professor Archibald Cox of Harvard writes: "My criticism of *Roe* v. *Wade* is that the Court failed to establish the legitimacy of the decision by not articulating a precept of sufficient abstractness to lift the ruling above the level of a political judgment. . . . Constitutional rights ought not to be created under the Due Process Clause unless they can be stated in principles sufficiently absolute to give them roots throughout the community and continuity over significant periods of time, and to lift them above the level of the pragmatic political judgments of a particular time and place." Cox, *The Role of the Supreme Court in American Government* 113-114 (1976).

Professor Lyne Wardle of Brigham Young University writes: "Incorporating the doctrine of abortion privacy as part of the supreme law of the land resulted from an accident of history. The accident was that in 1973 and for more than a decade afterward a majority of the seats on the Supreme Court were occupied by persons who believd that the state should no longer be permitted to restrict abortion." Wardle, *Rethinking Roe* v. *Wade*, Brigham Young Univ. L. Rev. 231, 245 (1985).

Professor Ely of Standard wrote soon after *Roe* was decided that: "The point that often gets lost in the commentary, and obviously got lost in *Roe*, is that *before* the Court can get to the 'balancing' stage, *before* it can worry about the next case and the case after that (or even about its institutional position) it is under an obligation to trace its premises to the charter from which it derives its authority. A neutral and durable principle may be a thing of beauty and a joy forever. But if it lacks connection with any value the Constitution marks as special, it is not a constitutional principle and the Court has no business imposing it." Ely, *The Wages of Crying Wolf: A Comment on Roe* v. *Wade*, 82 Yale L. J. 920, 949 (1973).

Constitutional scholar Alexander Bickel has also criticized the Roe decision agreeing with the dissenters that the decision involved legislative not judicial action. Bickel, *The Morality of Consent* at 28-29 (1975). He argued that the Court merely asserted the result it reached, and "refused the discipline to which its function is properly subject." *Id.* at 28.

GRISWOLD V. CONNECTICUT

Professor Kurland of the University of Chicago has stated that *Griswold* v. *Connecticut* and *Roe* v. *Wade* are examples of "blatant usurpation[s] of the constitution making function" to be compared with the generally discredited *Lochner* v. *New York.* Kurland, *The Irrelevance of the Constitution: The Religion Clauses of the First Amendment and the Supreme Court,* 24 Villanova L. Rev. 3, 25 (1978-79).

In his dissent in *Griswold* v. *Connecticut* 381 U.S. 479 (1965), Justice Black began by flatly stating that: "In order that there may be no room at all to doubt why I vote as I do, I feel constrained to add that the law is every bit as offensive to me as it is to my Brethren of the majority and my Brothers Harlan, White and Goldberg who, reciting reasons why it is offensive to them, hold it unconstitutional." *Id.* at 507.

Justice Black concluded that: "The Court talks about a constitutional 'right of privacy' as though there is some constitutional provision or provisions forbidding any law ever to be passed which might abridge the 'privacy' of individuals. But there is not." *Id.* at 508. "I like my privacy as much as the next one, but I am nevertheless compelled to admit that government has a right to invade it unless prohibited by some specific constitutional provision. For these reasons I cannot agree with the Court's judgment and the reasons it gives for holding this Connecticut law unconstitutional." *Id.* at 510.

In response to Justice Goldberg's dissent, Justice Black wrote: "one would certainly have to look far beyond the language of the Ninth Amendment to find that the Framers vested in this Court any such awesome veto powers over lawmaking, either by the States or by the Congress. Nor does anything in the history of the [Ninth] Amendment offer any support for such a shocking doctrine. The whole history of the adoption of the Constitution and Bill of Rights points the other way, and the very material quoted by . . . [Justice] Goldberg shows that the Ninth Amendment was intended to protect against the idea that 'by enumerating particular exceptions to the grant of power' to the Federal Government, 'those rights which were not singled out, were intended to be assigned into the hands of the General Government [the United States], and were consequently insecure.' That Amendment was passed, not to broaden the powers of this Court or any other department of 'the General Government,' but, as every student of history knows, to assure the people that the Constitution in all its provisions was intended to limit the Federal Government to the powers granted expressly or by necessary implication. If any broad, unlimited power to hold conceives to be the '[collective] conscience of our people' is vested in this Court by the Ninth Amendment, the Fourteenth Amendment, or any other provision of the Constitution, it was not given by the Framers, but rather has been bestowed on the Court by the Court." *Id.* at 519-20

HOMOSEXUALITY

Professor Jesse Choper of Boalt Hall has stated: "In several opinions dating back to *Griswold* v. *Connecticut,* the justices have been very careful to exclude any implication that they would protect homosexuality. So I rather doubt that the Court would go that way [recognizing homosexuality as a suspect classification under the Fourteenth Amendment]." *Forum: Equal Protection and the Burger Court,* 2 Hastings Const. L. Quarterly 645, 669 (1975).

SHELLEY V. KRAEMER

Professor Wechsler wrote: "That the action of the state court is action of the state, the point Mr. Chief Justice Vinson emphasizes in the Court's opinion is, of course, entirely obvious. What is not obvious, and is the crucial step, is that the state may properly be charged with the discrimination when it does no more than give effect to an agreement that the individual involved is, by hypothesis, entirely free to make. Again, one is obliged to ask: What is the principle involved?" Wechsler, *Toward Neutral Principles of Constitutional Law,* 73 Harv. L. Rev. 1, 29 (1959).

Professor Louis Henkin of the University of Pennsylvania also noted the lack of a neutral basis for Shelley: "*Shelley* v. *Kraemer* was hailed as the promise of another new deal for the individual—particularly the Negro individual—but students of constitutional law were troubled by it from the beginning. Those alert to the responsibility of the Court to afford principled decisions, justified by language, history, and other considerations relevant to constitutional adjudication, were disturbed by an opinion of the Court which, to them, did not 'wash'." Henkin, *Shelley* v. *Kraemer: Notes for a Revised Opinion,* 110 Univ. of Penn. L. Rev. 473, 474 (1962).

Even Professor Tribe has had to admit that *Shelley's* reasoning, "consistently applied, would require individuals to conform their private agreements to constitutional standards whenever, as almost always, the individuals might later seek the security of potential judicial enforcement." Tribe, *American Constitution Law* 1156 (1978). He also recognized *Shelley's* lack of a neutral base—doctrine—and wrote: "Because the Supreme Court does not currently have access to a general theory of liberty allocating public and private responsibility, the Court can no longer derive doctrinal rules from any accommodation of the premises underlying the state action requirement. To the extent that the Court has nonetheless *attempted* to produce a state action doctrine, it is not surprising that its efforts have yielded little which does not appear to be too readily manipulable to be called doctrine: doctrine in this context is inevitably cut off from its roots. Those who simply criticize the Court's attempts are thus both correct and irrelevant. Plainly, the state action decisions fail as doctrine; the question is, do they make sense as anything else?" *Id.* at 1157.

WAR POWERS

Professor Eugene Rostow of Yale University has also stated that the limitations on Presidential power suggested in the early 1970s was an unfortunate reaction to "the bitterness and tragedy of Vietnam" and argued that "[w]e should find safer outlets . . . for the hydraulic pressure of our present discontents about Vietnam." *See Great Cases Make Bad Law: The War Powers Act,* 50 Tex. L. Rev. 833-835 (1972). He noted that "[t]he Javits Bill, [for instance], rests on a premise of constitutional law and constitutional history which is in error. Its passage would be a constitutional disaster, depriving the government of the powers it needs most to safe-guard the nation in a dangerous and unstable world." *Id.* at 836. He carefully explained the difference between the formal declaration of war and the President's inherent power to direct the use of the United States Armed Forces as Commander-in-Chief. "Congress has the last word on matters of peace and war, but the President's authority goes far beyond that to repel sudden attacks." *Id.* at 865.

In his veto of the War Powers Resolution, President Nixon noted that "the restrictions which this resolution would impose upon the authority of the President are both unconstitutional and dangerous to the best interests of our Nation." "House Joint Resolution 542 would attempt to take away, by a mere legislative act, authorities which the President has properly exercised under the Constitution for almost 200 years." The President's Message to the House of Representatives Returning H.J. Res. 542 Without His Approval, Oct. 24, 1973.

SELF-HELP AND THE BLACK COMMUNITY

In his 1968 article "Why I am for Nixon" Judge Bork argued, among other things, that the solution to the problems of blacks in our society is not unlimited increases in federal spending. The solution "requires not merely the alleviation of Negro poverty but the encouragement of black pride and independence." The Judge observed that "[o]nly through the development and expansion of black capitalism can Negroes be brought into the main economic stream, finding opportunities at all levels of business and the professions, and building the pride and independence that can come only with economic power and self-sufficiency."

These sentiments are being echoed today by many of the leaders of the black community. For instance:

Benjamin L. Hooks, the executive director of the National Association for the Advancement of Colored People, recently opened the associations annual convention with a ringing call for black self-help. "In the old days the black poor found hope and relief in work, in education, in the stability and security of a strong, extended black family structure. . . . Today, many are condemned to the debilitations of the welfare system the opium of dependence." (Chicago Tribune, July 14, 1987, at § 1, p. 12)

Leaders like Jesse Jackson, Marion Barry and Marian Wright Edelman have called for a return to the virtues of "self-discipline, education, the willingness to take responsibility for one's own actions." (Wash. Post, Aug. 9, 1987, at C5)

Harold J. Logan recently wrote, "let's stop calling those appeals [black self-help efforts] black conservatism. Let's call them what they really are: common sense." (Wash. Post, Aug. 9, 1987, at C5).

RACIAL QUOTAS

Professor Bickel once wrote: "If the Constitution prohibits exclusion of blacks and other minorities on racial grounds, it cannot permit the exclusion of whites on similar grounds; for it must be the exclusion on racial grounds which offends the Constitution, and not the particular skin color of the person excluded. The lessons of the great decisions of the Supreme Court and the lesson of contemporary history have been the same for at least a generation: discrimination on the basis of race is illegal, immoral, unconstitutional, inherently wrong, and destructive of democratic society. Now this is to be unlearned and we are told that this is not a matter of fundamental principle but only a matter of whose ox is gored. Those for whom racial equality was demanded are to be more equal than others. Having found support for equality, they now claim support for inequality under the same Constitution. Yet a racial quota derogates the human dignity and individuality of all to whom it is applied; it is invidious in principle as well as in practice." Bickel, *The Morality of Consent* 132-133 (1975).

Although he was not overly troubled by the result in *Bakke*, Professor Kurland has written: "not until racial categories are obliterated from our laws can there be even a hope for the realization of equality in our society." Kurland, *Bakke's Wake*, 60 Chicago Bar Record 66, 69 (1978).

Although he appears to support the result in *Bakke*, Professor Alan C. Dershowitz of Harvard appeared of counsel on an amicus brief filed in support of Alan Bakke's claim of reverse discrimination. The brief concluded that the position advocated by the University of California, in support of its racial quotas: "sacrifices the principle of racial equality for a short term advantage. It permits each generation to conclude that a prior generation was disadvantaged and to repair the discrimination by discriminating against members of the current generation. The process is likely to be interminable, particularly when it is caught up in campus, community and political pressures. There is no cut-off principle. Though most of the justification for the position is said to come from an effort to compensate for slavery, there is no limit in the Medical School's action to descendants of slaves; there is no limitation to blacks; the policy includes Mexican-Americans and Asian-Americans—those who were arguably wronged by the United States and those who came recently. It includes Hispanic-Americans with no real effort to distinguish among them. In short, it uses the grossest sort of stereotypes to decide who 'deserves' an advantage." Brief of American Jewish Committee *et al., Amici Curiae, Regents of the University of California* v. *Bakke*, No. 76-811, at 69 (Aug. 1977).

Another champion of equal opportunity and individual liberty, Justice William O. Douglas, was no less adamant in his rejection of race-conscious solutions. In 1974, in connection with the first case to come before the Supreme Court involving the allegedly benign use of race to allocate to minorities a certain number of places in a professional school, Justice Douglas stated: "A De Funis [and, one might add, a Bakke or a Weber] who is white is entitled to no advantage by reason of that fact; nor is he subject to any disability, no matter what his race or color. . . . The Equal Protection Clause commands the elimination of racial barriers, not their creation in order to satisfy our theory as to how society ought to be organized. . . . So far as race is concerned, *any* state-sponsored preference to one race over another. . . is in my view 'invidious' and violative of the Equal Protection Clause." *De Funis* v. *Odegaard*, 416 U.S. 312, 333, 342, 343-44 (1974) (Douglas, J., dissenting) (emphasis added).

Similarly, Jack Greenberg, Director-Counsel of the NAACP Legal Defense Fund, in urging the Supreme Court to invalidate a state statute requiring that a candidate's race be designated on each ballot, argued: "[T]he fact that this statute might operate to benefit a Negro candidate and against a white candidate. . . is not relevant. For, it is submitted the state has a duty under the Fifteenth Amendment and the Fourteenth Amendment to be 'color-blind' and not to act so as to encourage racial discrimination. . . against *any* racial group." Jurisdictional Statement Brief, *Anderson* v. *Martin*, 375 U.S. 399 (1964), p. 11-12 (emphasis added).

"Affirmative Action", when first used, had no connotation of preferential treatment or racial balance. It was first used in President John Kennedy's Executive Order No. 10925 which directed federal contractors to take "affirmative action to ensure that applicants are employed. . . without regard to their race, creed, color or national origin."

HARPER V. VIRGINIA BOARD OF ELECTIONS

Professor Bickel of Yale wrote of *Harper*: "The poll tax, said the Court, is not plausibly related to 'any legitimate state interest in the conduct of elections.' But 'the Court gives no reason,' complained Justice Black in dissent, and it did not." Bickel, *The Supreme Court and the Idea of Progress* 59 (1970).

Professor Archibald Cox, although ultimately praising the decision, has admitted that the Court's opinion in *Harper* "is strangely open to [Justice Black's and Judge Bork's] criticism," that the court has used " 'the Equal Protection Clause . . . to write into the Constitution its notions of what it thinks is good governmental policy.' " Cox, *The Warren Court: Constitutional Decision as an Instrument of Reform* 125 (1968). Professor Cox wrote that, "[e]xcept for reliance upon the Reapportionment Cases [*Harper*] seems almost perversely to repudiate every conventional guide to legal judgment." *Id.*

ORIGINAL MEANING JURISPRUDENCE

Professor Henry Monaghan, Harlan Fiske Stone Professor of Constitutional Law at Columbia University, writes: "All law, the constitution not excepted, is a purposive ordering of norms. Textual language embodies one or more purposes, and the text may be understood and usefully applied only if its purposes are understood. No convincing reason appears why purpose may not be ascertained from any relevant source, including its 'legislative history.' " Monaghan, *Our Perfect Constitution*, 56 N.Y. Univ. L. Rev. 353, 374-75 (1981).

"I think it would be an intuitive, wide shared premise that the supreme court in 1800 *should* have accorded interpretive primacy to original intent in ascertaining the 'meaning' of the constitution." *Id.* at 375.

In 1986, Senator Byrd praised Justice Scalia for following a philosophy of judicial restraint as defined in Judge Bork's opinion in *Dronenburg* v. *Zech*, 746 F.2d 1579 (1984): " '[t]he philosophy that courts ought not to invade the domain the Constitution marks out for democratic rather than judicial governance. ' " 132 *Cong. Rec.* S12838 (Sept. 17, 1986). No court, he continued, " 'should create constitutional rights: That is, rights must be derived by standard modes of legal interpretation from the text, structure, and history of the Constitution.' What a refreshing approach to constitutional interpretation. No notions of applying contemporary standards, or today's values, or 20th century notions to help us figure our constitutional meaning. Just the plain, old fashioned, lawyerly notion that the Constitution means the same thing today as it did when it was crafted by those brilliant minds almost 200 years ago."

Some 50 years ago Justice Robert Jackson, then an assistant attorney general in Franklin Roosevelt's Justice Department, stated; "Let us squarely face the fact that today, we have two Constitutions. One was drawn and adopted by our forefathers as an instrument of statesmanship and as a general guide to the distribution of powers and the organization of government . . . The second Constitution is the one adopted from year to year by the judges in their decisions . . . . The due process clause has been the chief means by which the judges have written a new Constitution and imposed it upon the American people." *See* Cooper & Lund, *Landmarks of Constitutional Interpretation*, 40 Policy Rev. 10 (1987).

Professor Berger has written that: "[f]rom Francis Bacon on, the function of a judge has been to interpret, not to make, law." Berger, *"Original Intention" in Historical Perspective*, 54 Geo. Wash. L. Rev. 296, 310-11 (1986).

Justice Harlan wrote in his dissent to *Reynolds* v. *Sims*, 377 U.S. 589, 591 (1964) that when the court ignores "both the language and history of the controlling provisions of the Constitution" to invalidate laws, its "action amounts to nothing less than an exercise of the amending power."

Thomas Cooley wrote: "In the case of all written laws, it is the intent of the lawgiver that is to be enforced. But his intent is to be found in the instrument itself." Cooley, *Constitutional Limitations* 89 (7th ed. 1903).

Justice Sutherland wrote in his dissent in *Home Building & Loan Ass'n.* v. *Blaisdell*, 290 U.S. 398, 449 (1934) that constitutional language "does not mean one thing at one time and an entirely different thing at another time." He quoted the following with approval: "But it may easily happen that specific provisions may, in unforseen emergencies, turn out to have been inexpedient. This does not make these provisions any less binding. Constitutions can not be changed by events alone. They remain binding as the acts of the people in their sovereign capacity, as the framers of Government, until they are amended . . .' " *Id.* at 451.

In *United States* v. *South-Eastern Underwriters Ass'n.*, 322 U.S. 533 (1944), Justice Black (in interpreting the Commerce Clause), wrote: "Ordinarily courts do not construe words in the Constitution so as to give them a meaning more narrow than one which they had in the common parlance of the times in which the Constitution was written. To hold that the word 'commerce' as used in the Commerce Clause does not include a business such as insurance would do just that. Whatever other meanings 'commerce' may have included in 1787, the dictionaries, encyclopedias, and other books of the period show that it included trade: business [like insurance] in which persons bought and sold, bargained and contracted."

THE INTERPRETATION OF THE NINTH AMENDMENT

In a 1983 article published in the University of Virginia Law Review, attorney Russell Caplan writes that the "historical evidence . . . suggests that the ninth amendment is not a cornucopia of undefined federal rights, but rather that it is limited to a specific function, well-understood at the time of its adoption: the maintenance of rights guaranteed by the laws of the states." Caplan, *The History and Meaning of the Ninth Amendment*, 69 VA. L. Rev. 223, 227 (1983).

Professor Francis Canavan of Fordham University also rejects the idea that the Ninth Amendment is a respository of unstated rights that the federal courts may enforce as they choose. He writes that: The Tenth Amendment states that the powers given to the federal government are delegated and limited; the Ninth states that the express declaration of certain limits on federal powers is not to be construed as meaning that those are the only limits. The other rights retained by the people are all the other limits implicit in the fact that the grant of powers to the federal government is a limited one: a power not granted to the federal government is a right retained by the people." Canavan, *Judicial Power and the Ninth Amendment*, The Intercollegiate Review 25, 27 (Spring 1987). He concludes that the "first eight amendments state expressly that certain powers are *not* contained among the federal government's delegated powers, and the Ninth explains that the failure to mention other powers as not delegated does not mean that they are delegated: silence is not to be taken as consent." *Id.* at 28.

In his dissent in *Griswold* v. *Connecticut*, 381 U.S. 521 (1965), Justice Black wrote that: "one would certainly have to look far beyond the language of the Ninth Amendment to find that the Framers vested in this Court any such awesome veto powers over lawmaking, either by the States or by the Congress. Nor does anything in the history of the [Ninth] offer any support for such a shocking doctrine. The whole history of the adoption of the Constitution and Bill of Rights points the other way, and the very material quoted . . . [Justice] Goldberg shows that the Ninth Amendment was intended to protect against the idea that 'by enumerating particular exceptions to the grant of powers' to the Federal Government, 'those rights which were not singled out, were intended to be assigned into the hands of the General Government [the United States], and were consequently insecure.' That Amendment was passed, not to broaden the powers of this Court or any other department of 'the General Government,' but, as every student of history knows, to assure the people that the Constitution in all its provisions was intended to limit the Federal Government to the powers granted expressly or by necessary implication. If any broad, unlimited power to hold laws unconstitutional because what this Court conceives to be the '[collective] conscience of our people' is vested in this Court by the Ninth Amendment, the Fourteenth Amendment, or any other provision of the Constitution, it was not given by the Framers, but rather has been bestowed on the Court by the Court." *Id.* at 519-20.

FREEDOM OF SPEECH

Criticizing the Court's decision in *Cohen* v. *California*, Professor Bickel of Yale wrote that "there is such a thing as verbal violence, a kind of cursing assaultive speech that amounts to almost physical agression . . . ." Bickel, *The Morality of Consent* 72 (1975). Like Judge Bork, Bickel distinguished between "carrying a sign in public that says, 'Down with the Draft,' and a sign that says—I bowdlerize—fornicate the Draft." *Id.*

With respect to government regulation of political speech urging lawless action Judge Learned Hand also noted that words which counsel violation of the law ought not to be considered protected speech. In *Masses Publishing Co.* v. *Pattern*, 244 Fed. 535 (S.D.N.Y. 1917), (a case involving the interpretation of the Espionage Act of 1917), he overturned the actions of the postmaster of New York in refusing to accept for mailing a magazine advocating revolution. In that case he stated: "Words are not only the keys of persuasion, but the triggers of action, and those which have no purport but to counsel the violation of law cannot by any latitude of interpretation be a part of that public opinion which is the final source of authority in a democratic state." *Id.* at 540. Judge Hand upheld the rights of the magazine publishers on the theory that "if one stops short of urging upon others that it is their duty or their interest to resist the law, it seems to me that one should not be held to have attempted to cause its violation." *Id.*

Professor Bickel has noted that the clear and present danger test: "states rather than solves a free-speech problem." Bickel, *The Supreme Court and the Idea of Progress* 77 (1970). He illustrated his point with an oft quoted passage of Professor Paul A. Freund: "The truth is that the clear-and-present danger test is an over simplified judgment unless it takes account also of a number of other factors: the relative seriousness of the danger in comparison with the value of the occasion for speech or political activity, and availability of more moderate controls than those which the state has imposed; and perhaps a specific intent with which the speech or activity is launched. No matter how rapidly we utter the phrase 'clear and present danger,' or how closely we hyphenate the words, they are not a substitute for the weighing of values." *Id.* at 77 (*quoting* P.A. Freund, *On Understanding the Supreme Court*, 27-28 (1951)).

Senator Byrd has stated on the Senate floor: "In 1983, there was an appeal before Judge Scalia's court which involved the right of protestors to sleep in Lafayette Park, across from the White House. *Community for Non-Violence* v. *Watt*, (703 F.2d 586 (1983); Rev., 468 U.S. 288 (1984)) dissenting from the court's majority decision, Judge Scalia [joined by Judge Bork] said he did not believe that, 'sleeping is or ever can be speech for first amendment purposes. That this should seem a bold assertion is a commentary upon how far judicial and scholarly discussion has strayed from common and commonsense understanding.' That, to my way of thinking, reflects the approach of a strict constructionist, in the very best sense of that term." 132 CONG. REC. 23809 (Sept. 17, 1986).

REAPPORTIONMENT—ONE MAN, ONE VOTE

Professor Bickel has criticized the Warren Court's philosophy stating that: "More careful analysis of the realities on which it was imposing its law, and on appreciation of historical truth, with all its uncertainties, in lieu of a recital of selected historical slogans, would long since have rendered the Warren Court wary of its one-man, one-vote simplicities." Bickel, *The Supreme Court and the Idea of Progress* 174 (1970).

Professor Kurland has written: "Like the cases concerned with the Negro Revolution, the reapportionment cases rested on the equal protection clause. But unlike the racial discrimination cases, the reapportionment cases were concerned more with form than they were with substance. They represent a sterile concept of equality for the sake of equality. Given the premises of 'one man-one vote' and 'one vote-one value,' the Court needed nothing more for its decision than the principle of reductio ad absurdum. There is an element of Catch-22 in the opinions in these cases. The Court has repeatedly said that justifiable deviations from the arithmetical formula will be tolerated, but it has yet to accept any justification proffered." Kurland, *Egalitarianism and the Warren Court*, 68 Mich L. Rev. 629, 677 (1970).

Professor Kurland has also noted with respect to the Reapportionment cases, "[t]hese decisions turned a slogan into a constitutional doctrine: one man-one vote." Kurland, *Equal Education Opportunity: The Limits of Constitutional Jurisprudence Undefined*, 35 Univ. of Chi. L. Rev. 583, 585 (1968).

Professor Kurland also writes that these decisions have basically succeeded "because the Court ignored the complexities that would concern political theorists about the nature of representative government and imposed a simple, easily determined, and readily observed standard: one man-one vote. The Court has displayed neither the desire nor the will to complicate its job by variations of its theme. In essence the rule is an expression of Dr. Seuss' admirable proposition that 'a person's a person, no matter how small.' The only price of simplicity is the elimination of values of ancient lineage in American political life. But then it has long been recognized that the cost of egalitarianism is the suppression of individualism. And when the Court is now prepared to go to the one extreme, as an earlier Court was prepared to go to the other, simplicity of rule is of the essence of success." *Id.* at 593.

BORK'S JUDICIAL PHILOSOPHY SUPPORTED BY 200 YEARS OF SUPREME COURT JURISPRUDENCE

Alexander Hamilton: "To avoid an arbitrary discretion in the courts, it is indispensable that they should be bound down by strict rules and precedents which serve to define and point out their duty in every particular case that comes before them." *Federalist No. 78.*

President James Madison: "I entirely concur in the propriety of resorting to the sense in which the Constitution was accepted and ratified by the nation. In that sense alone is it the legitimate Constitution. And if that not be the guide in expounding it, there can be no security for a consistent and stable, more than for fanciful exercise of its power." *Quoted in* Cooper & Lund, "Landmarks of Constitutional Intepretation," 40 *Policy Review* 10, 11 (Spring 1987).

"[If] the sense in which the Constitution was ratified by the Nation . . . be not the guide in expounding it, there can be no security . . . for a faithful exercise of its powers." 9 *The Writings of James Madison* 191 (G. Hunt ed. 1900-1910).

President Thomas Jefferson: "I had rather ask an enlargement of power from the nation, where it is found necessary, than to assume it by a [judicial] construction which would make our powers boundless. Our peculiar security is in the possession of a written Constitution. Let us not make it a blank paper by construction. . . . Let us go then perfecting it, by adding, by way of amendment to the Constitution, those powers which time and trial show are still wanting." Letter from T. Jefferson to Wilson C. Nicholas (Sept. 7, 1803), collected in 10 *The Works of Thomas Jefferson* 10-11 (P. Ford ed. 1904-05)

Chief Justice Marshall: "[I]t was said that nations are governed by political considerations, and may choose . . . to overlook conduct at which they might justly take offense, . . . but that courts of justice are bound by the law, and must inflexibly adhere to its mandates. . . ." *The Commercen*, 14 U.S. 382, 401 (1816) (dissent).

"[T]he enlightened patriots who framed our Constitution, and the people who adopted it, must be understood to have employed words in their natural sense, and to have intended what they have said. . . . [W]e know of no rules for construing [the Constitution] other than is given by the language of the instrument . . . taken in connection with the purpose for which [federal powers] were conferred." *Gibbons* v. *Ogden*, 22 U.S. 1, 188-89 (1824).

"[I]t is the province of the Court to conform its decisions to the will of the legislature if that will has been clearly expressed." *Foster & Elam* v. *Neilson*, 27 U.S. 253, 307 (1829).

Justice Story: "The questions arising upon the record . . . embrace some considerations, which belong more properly to another department of the government. It cannot, however, escape observation that this Court has a plain path of duty marked out for it, and that is, to administer the law as it finds it. We cannot enter into political considerations, on points of national policy. . . . [T]his Court can only look to the questions, whether the laws have been violated; and if they were, justice demands, that the injured party should receive suitable redress." *The Apollon*, 22 U.S. 362, 366-67 (1824).

Justice Thompson: "I certainly . . . do not claim, as belonging to the judiciary, the exercise of political power. That belongs to another branch of the government. . . . It is only where the rights of persons or property are involved, and when such rights can be presented under some judicial form of proceedings, that courts of justice can interpose relief.

"The court can have no right to pronounce an abstract opinion upon the constitutionality of a state law." *Cherokee Nation* v. *Georgia*, 30 U.S. 1, 75 (1831) (dissent).

Chief Justice Taney: "If in this Court we are at liberty to give the old words new meanings when we find them in the Constitution, there is no power which may not by this mode of construction, be conferred on the general government and denied to the states." *Smith* v. *Turner* (The Passenger Cases), 48 U.S. (7 How.) 283, 478 (1849).

Justice Curtis: "I dissent . . . from the part of the opinion of the majority of the court, in which it held that a person of African descent cannot be a citizen of the United States; and I regret I must go further, and dissent both from what I deem their assumption of authority to examine the constitutionality of the act of Congress commonly called the Missouri compromise act, and the grounds and conclusions announced in their opinion.

"The word regulate, or regulation, is several times used in the Constitution. It is used . . . in the eighth section of the first article . . . , 'Congress shall have the power to regulate commerce.'

"If, then this clause does contain a power to legislate respecting the territory, what are the limits of that power?

"To this I answer, that, in common with all the other legislative powers of Congress, it finds limits in the express prohibitions on Congress . . . contained in the Constitution.

"Besides this, the rules and regulations must be needful. But undoubtedly the question whether a particular rule or regulation be needful, must be finally determined by Congress itself. Whether a law be needful, is a legislative or political, not a judicial question. Whatever Congress deems needful is so, under the grant of power.

"The Constitution declares that Congress shall have power to make '*all* needful rules and regulations' respecting the territory belonging to the United States.

"The assertion [from which I dissent] is, though the Constitution says all, it does not mean all—though it says all, without qualifications, it means all except such as allow or prohibit slavery. . . .

"For these reasons, I am of the opinion that so much of the several acts of Congress as prohibited slavery and involuntary servitude within the part of the territory of Wisconsin lying north of thirty-six degrees thirty minutes north latitude, and west of the river Mississippi, were constitutional and valid laws." *Dred Scott* v. *Sanford*, 60 U.S. 397, 588-633 (1857) (dissent).

President Abraham Lincoln: "[T]he candid citizen must confess that if the policy of the government, upon vital questions affecting the whole people, is to be irrevocably fixed by decisions of the Supreme Court, the instant they are made, in ordinary litigation between parties in personal actions, the people will have ceased to be their own rulers, having to that extent practically resigned their government into the hands of that eminent tribunal." First Inaugural Address by Abraham Lincoln, March 4, 1861, in A. Lincoln, Speeches and Letters 171-72 (M. Roe ed. 1894)

Justice Holmes: "[A] constitution . . . is made for people of fundamentally differing views, and the accident of our finding certain opinions natural and familiar or novel and even shocking ought not to conclude our judgment upon the question whether statutes embodying them conflict with the Constitution of the United States." *Lochner* v. *New York*, 198 U.S. 45, 75-76 (1905) (dissent).

President Franklin D. Roosevelt: "In the last four years the sound rule of giving statutes the benefit of all reasonable doubt has been cast aside. The Court has been acting not as a judicial body, but as a policymaking body.

"When the Congress has sought to stabilize national agriculture, to improve the conditions of labor, to safeguard business against unfair competition, to protect our national resources, and in many other ways, to serve our clearly national needs, the majority of the Court has been assuming the power to pass on the wisdom of these Acts of the Congress—and to approve or disapprove the public policy written into these laws.

"In the case holding the New York Minimum Wage Law unconstitutional, Justice Stone said that the majority were actually reading into the Constitution their own "personal economic predilections," and that if the legislative power is not left free to choose the methods of solving the problems of poverty subsistence and health of large numbers in the community, then "government is to be rendered impotent." And two other Justices agreed with him.

"In the face of such dissenting opinions, it is perfectly clear, that as Chief Justice Hughes has said: 'We are under a Constitution but the Constitution is what the judges say it is.' [C. Hughes, Addresses 139 (1908)].

"The Court in addition to the proper use of its judicial functions has improperly set itself up as a third House of the Congress—a super-legislature, as one of the Justices has called it—reading into the Constitution words and implications which are not there, and which were never intended to be there.

"We want a Supreme Court which will do justice under the Constitution—not over it. In our Courts we want a government of laws and not of men."

"I want—as all Americans want—an independent judiciary as proposed by the framers of the Constitution. That means a Supreme Court that will enforce the Constitution as written—that will refuse to amend the Constitution by the arbitrary exercise of judicial power—amendment by judicial say-so. It does not mean a judiciary so independent that it can deny the existence of facts universally recognized." Address of President Roosevelt, broadcast from the White House (March 9, 1937).

Justice Robert Jackson: "Let us squarely face the fact that today we have two Constitutions. One was drawn and adopted by our forefathers as an instrument of statesmanship and as an instrument of statesmanship and as a general guide to the distribution of powers and the organization of government. . . . The second Constitution is the one adopted from year to year by the judges in their decisions. . . . The due process clause has been the chief means by which the judges have written a new Constitution and imposed it upon the American people." (writing as AAG in 1937)

"What role ought the judiciary to play in reversing the trend of history and setting the nation's feet on a new path of policy?

"A judgment as to when the evil of a decisional error exceeds the evils of an innovation must be based on very practical and in part upon policy considerations. When . . . such practical and political judgments can be made by the political branches of the Government, it is the part of wisdom and self-restraint and good government for courts to leave the initiative to Congress.

"Moreover, this is the method of responsible democratic government. To force the hand of Congress is no more the proper function of the judiciary than to tie the hands of Congress." *United States* v. *Underwriters Ass'n*, 322 U.S. 533, 586-95 (1943) (dissent).

Justice Frankfurter: "Disregard of inherent limits in the effective exercise of the Court's "judicial Power" not only presages the futility of judicial intervention in the essentially political conflict of forces by which the relation between population and representation has time out of mind been and now is determined. It may well impair the Court's position as the ultimate organ of "the supreme Law of the Land" in that vast range of legal problems, often strongly entangled in popular feeling, on which this Court must pronounce. The Court's authority—possessed of neither the purse nor the sword—ultimately rests on sustained public confidence in its moral sanction. Such feeling must be nourished by the Court's complete detachment, in fact and in appearance, from the political entanglements and by abstention from injecting itself into clashes of political forces in political settlements." *Baker* v. *Carr*, 369 U.S. 186, 267 (1961) (dissent).

Justice Harlan: "This Court, no less than all other branches of the Government, is bound by the Constitution. The Constitution does not confer on the Court blanket authority to step into every situation where the political branch may be thought to have fallen short. The stability of this institution ultimately depends not only upon its being alert to keep the other branches of government within constitutional bounds but equally upon recognition of the limitations on the Court's own functions in the constitutional system." *Wesberry* v. *Sanders*, 376 U.S. 1, 48 (1963) (dissent).

"When the court disregards the express intent and understanding of the Framers, it has invaded the realm of the political process to which the amending power was committed, and it has violated the constitutional structure which is its highest duty to protect." *Oregon* v. *Mitchell*, 400 U.S. 112, 203, (1970) (concurring in part and dissenting in part).

Justice Black: "While I completely subscribe to the holding of *Marbury* v. *Madison*

. . . that our Court has constitutional power to strike down statutes, state or federal, that violate commands of the Federal Constitution, I do not believe that we are granted power by the Due Process Clause or any other constitutional provision to measure constitutionality by our belief that legislation is arbitrary, capricious or unreasonable, or accomplishes no justifiable purpose, or is offensive to our own notion of 'civilized standards of conduct.' Such an appraisal of the wisdom of legislation is an attribute of the power to make laws, not the power to interpret them. The use by federal courts of such a formula or doctrine or whatnot to veto federal or state laws simply takes away from Congress and States the power to make laws based on their own judgment of fairness and wisdom and transfers that power to this Court for ultimate determination—a power which was specifically denied to federal courts by the convention that framed the Constitution." *Griswold* v. *Connecticut*, 381 U.S. 479, 513 (1965) (dissent).

Judge Learned Hand: "I venture to believe that it is as important to a judge called upon to pass on a question of constitutional law, to have a bowing acquaintance with Acton and Maitland, with Thucydides, Gibbon, and Carlyle, with Homer, Dante, Shakespeare, and Milton, with Machiavelli, Montaigne, and Rabelais, with Plato, Bacon, Hume, and Kant as with books that have been specifically written on the subject. For in such matters everything turns upon the spirit in which he approaches the question before him. The words he must construe are empty vessels into which he can pour nearly everything he will." *See* H. Abraham, *Justices & Presidents* 53 (1985).

"I often wonder whether we do not rest our hopes too much upon constitutions, upon laws, and upon courts. These are false hopes; believe me, these are false hopes. Liberty lies in the hearts of men and women; when it dies there, no constitution, no law, no court can save it; no constitution, no law, no court can even do much to help it. While it lies there it needs no constitution, no law, no court to save it." L. Hand, *The Spirit of Liberty* 189-90 (1974) (New York, Alfred A. Knopf).

Chief Justice Rehnquist: "John Marshall's justification for judicial review [in *Marbury* v. *Madison*] makes the provision for an independent federal judiciary not only understandable but also thoroughly desirable. Since the judges will be merely interpreting an instrument framed by the people, they should be detached and objective. A mere change in public opinion since the adoption of the Constitution, unaccompanied by a constitutional amendment, should not change the meaning of the Constitution. A merely temporary majoritarian groundswell should not abrogate some individual liberty truly protected by the Constitution." W. Rehnquist, "The Notion of a Living Constitution," 54 *Tex. L. Rev.* 693, 696-97 (1976).

"[T]he Constitution . . . was designed to enable the popularly elected branches of government, not the judicial branch, to keep the country abreast of the times." 54 *Tex. L. Rev.* at 699.

"Surely the Constitution does not put either the legislative branch or the executive branch in the position of a television quiz show contestant so that when a given period of time has elapsed and a problem remains unsolved by them, the federal judiciary may press a buzzer and take its turn at fashioning a solution." 54 *Tex. L. Rev.* at 700.

Columnist Anthony Lewis: "[Chief Justice Earl Warren is] the closest thing the United States had to a Platonic Guardian, dispensing law from a throne without any sensed limits of power except what was seen as the good of society. Fortunately, he was a decent, humane, honorable, democratic Guardian." G. White, *Earl Warren: A Public Life* 359 (1982).

Justice White: "The Court is most vulnerable and comes nearest to illegitimacy when it deals with judge-made constitutional law having little or no cognizable roots in the language or design of the Constitution. . . . There should be, therefore, great resistance to expand the substantive reach of those Clauses, particularly if it requires redefining the category of rights deemed to be fundamental. Otherwise, the Judiciary necessarily takes to itself further authority to govern the country without express constitutional authority." *Bowers* v. *Hardwick*, 106 S.Ct 2841, 92 L Ed 2d 140, 148 (1986).

Mr. HATCH. In reality, however, the real issue here is not whether Judge Bork is an extremist. I do not believe any Senator really believes that is the issue. If that were the issue, we would not have this debate. The reason we are having this debate is that Judge Bork is not an extremist. If he were an extremist, he would never gain the four additional votes necessary to have his views prevail amongst the extraordinary individuals who comprise that Court. If he were an extremist, his views would rarely, if ever, have an effect on the direction of legal policy. The reason we are having this debate is that Judge Bork is not an extremist. Instead he will make a difference on the Court. As my colleagues and the numerous news accounts of this issue have conceded, Judge Bork replaces Justice Powell whom many have regarded as the swing vote. This brings us to the real issue of this debate.

Judge Bork's nomination represents the first time in 30 years that a majority of the Supreme Court does not believe in the jurisprudence of judicial activism. The real issue is judicial activism versus judicial restraint. The real reason Judge Bork is under attack is that he is so much like Chief Justice Rehnquist; Justice O'Connor, the first woman Justice, Justice Scalia, whom we unanimously approved last year, and Justice White, a Kennedy nominee—Judge Bork is so much like these four in his philosophy of judicial restraint that he will help comprise a new majority. That is why we are having this debate. That is why Judge Bork's opponents have stopped at nothing to block his nomination.

In that vein, we ought to look at what is really at stake for Americans in the abstract question of judicial activism versus judicial restraint.

1. DEATH PENALTY

Capital punishment is mentioned four or five times in the Constitution, but in Furman capital punishment laws in over 30 States were struck down as being against the Constitution. This is activism.

2. SCHOOL BUSING

I am not questioning whether there ought to be redress for intentional discrimination but sending some children to distant schools simply because they are black or white was the issue decided in Brown versus Board—we must be concerned about that kind of discrimination or race-conscious remedies that the Constitution outlawed. This is activism.

3. RELIGION

No one wants a national orthodoxy but we are talking about bans on silent prayer, bans on remedial aid for students in parochial schools, questions about chaplains in Congress—this is hostility to religion not the policy of the first amendment. This is activism.

4. QUOTAS

The Constitution outlaws discrimination on the basis of race—as Harlan said in Plessy we have a color blind Constitution—yet the Court permits quotas that exclude some from workplaces or promotions because of race—Weber or Fullilove. This is activism.

5. EXCLUSIONARY RULE

The Constitution outlaws unreasonable searches but does not require us to let the criminal go free because the Constable blunders—Cardozo—even technical flaws in a warrant have released criminals. This is activism.

6. DRUG PROSECUTIONS

Drug prosecutions fail, if at all, because of the exclusionary rule and other technical legal rules—habeas corpus, Miranda—which sometimes allow guilty individuals to escape accountability. This is activism.

7. ABORTION

We all would protect privacy in the home, but that doctrine has nothing to do with 15 million abortions since the Court overturned 50 State laws on abortion in 1973. This is activism.

8. HOMOSEXUALITY

We all protect privacy and have enacted statutes to do so, but that has nothing to do with privacy to engage in homosexual conduct. Hardwick got four votes for homosexual rights in the Constitution, Bork makes the difference on this issue.

9. JUDICIAL INTERVENTION

Federal courts have first, supervised homecoming queen procedures; second, governed eligibility for summer basketball camps; third, dress codes and hair lengths for local school systems. This is activism.

10. JUDICIAL ADMINISTRATORS

Federal courts have taken over prisons or ordered new facilities built; have even ordered tax increases to pay for new prisons or school busing when the people refused to raise the money for the judge's program. This is activism.

11. PORNOGRAPHY

The Court has paralyzed local efforts to clean up their communities by constructing a difficult, complex, and constantly changing three-part test for what comprises obscenity. Roth and Miller.

This debate occurs because Judge Bork will make a difference on these issues. The real issue is judicial activism versus judicial restraint.

My only hope is that this will not be the final battle in the war. President Reagan will make another appointment if this one fails and that appointment will be another individual who stands for the proposition of judicial restraint.

QUOTES FROM JUSTICES

Mr. President, Judge Bork has been characterized as differing from every other justice in history on the question of reading the "open-ended clauses" of the Constitution to protect what the report calls the image of human dignity. In particular, Judge Bork is faulted for failing to read broad substantive content into the liberty and due process clauses and for failing to find a broad undefined privacy right. The report then proceeds to select a few quotes from a couple of Justices known for their judicial restraint as evidence that they would not agree with Judge Bork. This exercise of lifting selective quotes out of a Justice's entire career can be very misleading. We can easily select many more quotes that indicate complete agreement with Judge Bork. Apparently that exercise is necessary to show that Judge Bork is entirely in the mainstream of past Justices. He truly carries on the tradition of Holmes, Frankfurter, Harlan, Black, and others.

OLIVER WENDELL HOLMES

Far from the notion of creating new rights or enforcing "unenumerated rights"—a euphemism for unwritten and unacknowledged judge-made privileges—Justice Holmes hotly criticizes this form of judicial activism. In the Tyson case which struck down a State's attempt to fix prices for markups on theatre tickets, Justice Holmes said:

> * * * police power often is used in a wide sense to cover, as I said, to apologize for the general power of the legislature to make a part of the community uncomfortable by a change.
>
> I do not believe in such apologies. I think the proper course is to recognize that a State legislature can do whatever it sees fit to do unless it is restrained by some express prohibition in the Constitution of the United States or of the State, and that Courts should be careful not to extend such prohibitions beyond their obvious meaning by reading into them conceptions of public policy that the particular Court may happen to entertain. (273 U.S. at 446.)

FELIX FRANKFURTER

Justice Frankfurter severely questioned the Supreme Court's position as the supreme law of the land if it engaged in judicial intervention into essentially political issues. In Baker versus Carr, a reapportionment case, he noted:

> Disregard of inherent limits in the effective exercise of the Court's "judicial power" not only presages the futility of judicial intervention in the essentially political conflict of forces by which the relation between population and representation has time out of mind been and now is determined. It may well impair the Court's position as the ultimate organ of "the supreme Law of the Land" in that vast range of legal problems, often strongly entangled in popular feeling, on which this Court must pronounce. The Court's authority—possessed of neither the purse nor the sword—ultimately rests on sustained public confidence in its moral sanction. Such feeling must be nourished by the Court's complete detachment, in fact and in appearance, from the political entanglements and by abstention from injecting itself into the clash of political forces in political settlements (369 U.S. at 267.)

JOHN MARSHALL HARLAN

Judge Bork's view that the original meaning of the Constitution must guide constitutional interpretation is shaped by Justice Harlan. In Oregon versus Mitchell, involving constitutional challenges by several States to provisions of the Voting Rights Act Amendments of 1970, Justice Harlan stated:

> [W]hen the court disregards the express intent and understanding of the Framers, it has invaded the realm of the political process to which the amending power was committed, and it has violated the constitutional structure which is its highest duty to protect. (400 U.S. at 203.)

HUGO BLACK

Justice Hugo Black, noted for his stands on civil liberties, has forcefully expressed his views on applying and interpreting the Constitution according to its text as opposed to values not found therein. In his dissent in Griswold versus Connecticut, he said:

> While I completely subscribe to the holding of Marbury versus Madison * * * and subsequent cases, that our Court has constitutional power to strike down statutes, state or federal, that violate commands of the Federal Constitution, I do not believe that we are granted power by the Due Process or any other constitutional provision or provisions to measure constitutionality by our belief that legislation is arbitrary, capricious or unreasonable, or accomplishes no justifiable purpose, or is offensive to our own notions of "civilized standards of conduct." Such an appraisal of the wisdom of legislation is an attribute of the power to make laws, not of the power to interpret them. The use by federal courts of such a formula or doctrine or whatnot to veto federal or state laws simply takes away from Congress and States the power to make laws based on their own judgment of fairness and wisdom and transfers that power to this Court for ultimate determination—a power which was specifically denied to federal courts by the convention that framed the Constitution. (381 U.S. at 513.)
>
> My Brother Goldberg has adopted the recent discovery that the Ninth Amendment as well as the Due Process Clause can be used by this Court as authority to strike down all state legislation which this Court thinks violates "fundamental principles of liberty and justice," or is contrary to the "traditions and [collective] conscience of our people." He also states, without proof satisfactory to me, that in making decisions on this basis judges will not consider "their personal and private notions." One may ask how they can avoid considering them. Our Court certainly has no machinery with which to take a Gallup Poll. And the scientific miracles of this age have not yet produced a gadget which the Court can use to determine what traditions are rooted in the "[collective] conscience of our people." Moreover, one would certainly have to look far beyond the language of the Ninth Amendment to find that the Framers vested in this Court any such awesome veto powers over lawmaking, either by the States or by the Congress. Nor does anything in the history of the Amendment offer any support for such a shocking doctrine. (381 U.S. at 518.)

BYRON WHITE

In the famous abortion cases of Roe versus Wade and Doe versus Bolton, Justice White expressed his views with regard to judicial restraint:

> I find nothing in the language or history of the Constitution to support the Court's judgement. The Court simply fashions and announces a new constitutional right for pregnant mothers and, with scarcely any reason or authority for its action, invests that right with sufficient substance to override most existing state abortion statutes. The upshot is that the people and the legislatures of the 50 States are constitutionally disentitled to weigh the relative importance of the continued existence and development of the fetus, on the one hand, against a spectrum of possible impacts on the mother, on the other hand. As an exercise of raw judicial power, the Court perhaps has authority to do what it does today; but in my view its judgment is an improvident and extravagant exercise of the power of judicial review that the Constitution extends to this Court.
>
> The Court apparently values the convenience of the pregnant mother more than the continued existence and development of the life or potential life that she carries. Whether or not I might agree with that marshaling of values, I can in no event join the Court's judgment because I find no constitutional warrant for imposing such an order of priorities on the people and legislatures of the States. In a sensitive area such as this, involving as it does issues over which reasonable men may easily and heatedly differ, I cannot accept the Court's exercise of its clear power of choice by interposing a constitutional barrier to state efforts to protect human life and by investing mothers and doctors with the constitutionally protected right to exterminate it. This issue, for the most part, should be left with the people and to the political processes the people have devised to govern their affairs.

Justice White's opinion as to judicial intervention has also been joined by several other sitting Justices, Justices Powell, Rehnquist, and O'Connor, and retired Chief Justice Burger. In his discussion in Bowers versus Hardwick, dealing with the existence or absence of a constitutional right to engage in homosexual conduct, Justice White was joined by these other Justices when he said:

> The Court is most vulnerable and comes nearest to illegitimacy when it deals with judge-made constitutional law having little or no cognizable roots in the language or design of the Constitution. * * * There should be, therefore, great resistance to expand the substantive reach of [the Due Process] Clauses, particularly if it requires redefining the category of rights deemed to be fundamental. Otherwise, the Judiciary necessarily takes to itself further authority to govern the country without express constitutional authority. (106 S.Ct. at 2846.)

ANTONIN SCALIA

Justice Scalia, whom this body unanimously supported last Congress, is perhaps more stringent than even Judge Bork when it comes to the Judiciary's searching between the lines of the Constitution to find a basis for judicial activism. In the recent case of Tyler Pipe Industries, Inc. versus Washington State Department of Revenue, involving a State tax and its effects on interstate commerce, Justice Scalia stated:

> The historical record provides no grounds for reading the Commerce Clause to be other than what it says—an authorization for Congress to regulate commerce. * * * I think it beyond question that many "apprehensions" would have been "entertained" if supporters of the Constitution had hinted that the Commerce Clause, despite its language, gave this Court the power it has since assumed. As Justice Frankfurter pungently put it: "the doctrine that state authority must be subject to such limitations as the Court finds it necessary to apply for the protection of the national community * * * [is] an audacious doctrine, which, one may be sure, would hardly have been publicly avowed in support of the adoption of the Constitution." * * *
>
> In sum, to the extent that we have gone beyond guarding against rank discrimination against citizens of other States * * * the Court for over a century has engaged in an enterprise that it has been unable to justify by textual support or even coherent nontextual theory, that it was almost certainly not intended to undertake, and that it has not undertaken very well. It is astonishing that we should be expanding our beachhead in this impoverished territory, rather than being satisfied with what we have already acquired by a sort of intellectual adverse possession.

"EXTREMISM" AND JUDICIAL RESTRAINT

The well-orchestrated campaign of opposition to Judge Bork has emphasized one theme more than all others: "Robert Bork is an extremist who will take away our individual liberties." That's been the crux of the very successful campaign to scare the American people about Robert Bork—to make them worry that many of their worst fears will come true, from a resurgence of racism, to sterilization of women, to police in our bedrooms, to denial of the right to speak out against the action of our Government. It has been a masterful campaign of deceit, effectively spreading doubt, fear, hatred throughout the land.

The distortions and cynical manipulation of emotions are well-documented. I want to make a different point for a moment—one that seems to have been missed completely by those Senators who have risen to profess concern about Judge Bork's supposed "extremism" in interpreting the Constitution. Wholly apart from the falsity of that charge, there is this: One Justice believing in judicial restraint—even carrying it to an extreme—is a threat to no one.

Let's take any of the concerns that have been expressed about Judge Bork's approach to the Constitution—the first amendment, the right to privacy, the equal protection clause—any of them. And let us suppose, contrary to the weight of the evidence, that Judge Bork's interpretation of these rights really is unusually narrow. Let us suppose that Judge Bork carries judicial restraint—that is, his faithfulness to the framer's view of the Constitution—too far. Let's say he is flat wrong about how far the Constitution goes in protecting rights.

Even granting all that, I ask my colleagues, where is the threat to our liberties?

What my colleagues seem to be missing is that, even if all the rhetoric about him were true, Judge Bork could not turn back one clock, reopen one wound, deprive one liberty, or deny one right unless four other Justices, and a majority in both Houses of Congress and the President agreed with him, or unless four other Justices and a State legislature and Governor agreed with him. It simply can't happen.

You can't say that about a judicial activist, of course. He doesn't defer to the elected branches; he rests power from them. He doesn't interpret the law; he makes it up as he goes along. There isn't a Member of this body who can't cite an example where a Federal judge has taken control of something—schools, prisons, the criminal justice system—and thwarted the will of the elected legislature in his State. Sometimes, perhaps, that's good; other times it's bad. But the point is, if an advocate of judicial restraint gets it wrong when he decides a constitutional question, the elected representatives of the people serve as a check on him, a backstop. But when an activist judiciary makes up new constitutional restrictions, there is nothing the people can do about it short of changing the Constitution.

If there is doubt about this man, then let us err on the side of democracy rather than government by judiciary, and confirm him.

Of course, even before you get to the people's representatives, there is another safeguard to these liberties that are said to be in peril. In assessing the future of those liberties, we are talking about a Supreme Court of nine Justices, not one. I have never figured out how my colleagues can in the same breath say Judge Bork is "outside the mainstream" and also say he will "upset the balance" on the Supreme Court. If he's really outside the mainstream, who on the Supreme Court will vote with him on these key issues? Or, to state it the other way, if four Justices agree with him so that he is able to change the balance of the Supreme Court, how can he be outside the mainstream. Unless my colleagues here have been asleep at the switch and have confirmed a cadre of "extremists" to the Supreme Court already, this talk about Judge Bork "turning back the clock" is all nonsense. Is Chief Justice Rehnquist outside the mainstream? Is Justice O'Connor an extremist? Or Justice Scalia? Would Justice Stevens or Justice White join in "reversing decades of progress" or "reopening old wounds"? Of course not. And neither would Judge Bork. But the point is, even if he wanted to, he couldn't. That's the reality of what a Justice Bork would mean. That's the conclusion you come to if you think it through for yourself rather than buying the line that Gregory Peck is peddling.

But now let's suppose that there are four others just like Judge Bork on the Court, and all are bent—as the interest groups and some of my colleagues here tell us Judge Bork is—on reading the Constitution so narrowly as to deprive us of basic liberties. That is absurd, of course, but that's been the theme of the anti-Bork media blitz and the stampede to judgment here on the Senate floor. We've all heard it again and again. So let's say a Supreme Court majority decides not to go as far as some of us might like in carving out new rights or liberties. Do we lose those rights and liberties by virtue of that?

No. The issues will be decided in these Halls, in State legislatures, and in town halls across America. The people and their elected representatives will decide. And that's the way it should be in this free country. Whether some will be given liberties at the expense of those currently enjoyed by some others is a question that arises again and again. It is the essence of democracy that such questions are answered by those elected by, and accountable to, the people. Why should we be afraid of that?

So when you stand up on this floor and say that Judge Bork's commitment to judicial restraint is a threat to our individual liberties, be honest about what you are saying. You are saying three things, or your argument makes no sense. You are saying first, you think Judge Bork is too extreme; second, you think there are at least four others on the Court who are similarly too extreme; and third, you think at least 51 percent of the people's elected representatives are too extreme, too. That's what you are saying or you are just filling the room with empty, hollow rhetoric.

If we are serious about this, we will pause and ask, where is this charge of "extremism" coming from. Extremism is in the eye of the beholder. I don't doubt for a minute that they regard at least four other members of the Supreme Court and at least 51 percent of the American people—in fact, a much larger percentage than that—as "extremist." Those groups really do perceive a threat from Judge Bork. And it's because they have such a deep distrust of the American people.

The American people are those "extremists" who support the death penalty and who want a criminal justice system that protects them. They are the "extremist" who think parents should know when their teenage child faces the traumatic decision whether to have an abortion. The American people are the "extremist" who don't believe that society ought to be ordered along racial and gender lines through numerical quotas. They are the "extremists" who prefer traditional values to the trendy agenda of the gay rights activists or the ACLU crusade to wipe every vestige of religion from the face of our society. The American people have all these looney ideas and more. They are the ones who elected the "extremists," Ronald Reagan, in not one historic landslide, but two. Obviously, Robert Bork and his philosophy of judicial restraint poses a mortal threat to those interest groups: he would let these crazy American people run amok, leaving them free to chart their own futures and make their own laws, except where the Constitution commands otherwise.

I don't believe that 51 Members are hiding behind illogical and unrealistic slogans like "turning back the clock" and "reopening old wounds," and labels like "extremist," in an effort to mask their submission to interest group pressure.

I respect those who fear the excesses of majority rule and who look to the courts for the protection of individual rights. That is an important aspect of the judiciary's role in our constitutional system. I, of course, disagree strongly with those who think the place a judge should look for those rights is inside himself—his own values and preferences—rather than indeed the Constitution. But it is clear to me that neither approach is served by what has happened in this confirmation process. If slick, multimedia disinformation campaigns waged by special interest groups are to guide judicial selection in America, our liberties will be entrusted neither to the consensus of the majority nor to the conscience of an independent judiciary. Instead, the definition of "rights" in America will become the vaunted prize in a contest of who can yell the loudest, create the most hatred and fear, and make the most intimidating threats. This replaces majority rule with mob rule, and replaces fair-minded judges with promise-bound politicians. You may like the result today, but we will all—Bork supporters and Bork opponents—live to regret it.

My colleagues who have their sights fixed on the opinion polls may rest confidently in the knowledge that they will escape the judgments of the voters, but those who pause to ponder the verdict of history will not sit so comfortably. Unlike many of my colleagues, those who review our work in years hence will look at the record. And they will surely wonder why, when the roll was called, so many Senators were unwilling to stand up for this good and decent man, this brilliant scholar and outstanding judge, who has so much to offer the Court, and for the integrity of this process and the independence of the judiciary—independence that is vital if the judiciary is to fulfill its crucial role in our democratic society. I ask you—each of you—to think again.

A PHILOSOPHY OF JUDGING FIT FOR A KING

As I have listened to my colleagues speak in opposition to Judge Bork, I have wondered what the great democrats—little "d"—who have graced this Chamber would think about this debate. Clay, Webster, LaFollette, Dirksen, Humphrey: What would they and others who believed deeply in the political and legislative process as a means of improving society think about a U.S. Senate that said "no" to a Supreme Court nominee because he looked to the Constitution as his lodestar and resolved doubt in favor of letting the people, through their elected representatives, decide the great issues of the day?

I wonder what the architects of the New Deal and the social programs that followed it would say about this debate on the role of judges in our democratic society. Their efforts, of course, were thwarted initially by a politically conservative activist judiciary reading a host of private economic rights into the Constitution. They would be shocked, I think, to see Members of this body rushing to endow judges with broad powers to define "liberty" and manufacture "rights," and thereby chart a course for America into the future without regard for the popular will. They had faith in the people.

This debate about activism or restraint is a debate, fundamentally, about who governs America. It is a question older than the Constitution. It is older than the Republic. It goes right to the very essence of freedom. Who will choose? Who will decide? Can the people be trusted with the most profound and difficult decisions that confront our society?

As I have listened, I have wondered and am now moved to ask, "Why do my colleagues think we fought the Revolution 200 years ago?" Why did those bold visionaries who lit the torch of freedom 200 years ago go to the trouble? Did they not believe that free men and women could govern themselves better than kings could govern them? And what is a Federal judge appointed for life, accountable to no one, and unrestrained by the written law, if he is not a king?

Those courageous freedom fighters 200 years ago pledged their lives, their fortunes and their sacred honor to a cause they fervently believed was right, but which had a most uncertain future. Not only the War for Independence but the very idea, the radical notion, of democratic self-governance was revolutionary. It was a roll of the dice. It was an experiment. And it still is. Are we the people good enough; are we smart enough; are we calm enough and courageous enough and compassionate enough to govern ourselves? Jefferson put it succinctly:

> Sometimes it is said that man cannot be trusted with the government of himself. Can he, then, be trusted with the government of others? Or have we found angels in the form of kings to govern him? Let history answer this question.

History is answering that question right now, and we're making history here today. The Senator from Delaware, who chaired the hearings on this nominee, has framed the issue for us well: Are our rights to be derived from the written Constitution, through the consent of the governed, or are there natural rights—derived from a higher law—that each of us has simply by virtue of the fact that, as Senator BIDEN puts it, "we exist on this planet." That indeed is the issue before us.

My colleague from Delaware and some others here have urged upon us the latter view, and in stating their opposition to Judge Bork, they have invoked the ninth amendment to the Constitution. But let us be clear about this: The ninth amendment does not incorporate a vast, undefined body of natural law into the Constitution. It, in fact, confers no additional rights. I know my colleague from Delaware is quite taken with the theory of Professor Lawrence Tribe that the ninth amendment is a vessel into which judges may pour their morality and values and sense of what is fair and good, mix it up, and out will come a portion of properly protected "rights". But the Supreme Court has never read the ninth amendment that way—never. It was not some reactionary but Justice William Douglas who observed in 1973,

> The ninth amendment obviously does not create federally enforceable rights.

Nevertheless, we have heard Judge Bork criticized over and over during the hearings and on this floor for reading the Constitution too narrowly because he sticks to the words that are written there and enforces only the rights that flow logically from the values suggested by those words. Senator BIDEN has pronounced the negative committee vote on Judge Bork a verdict on this natural law versus written law question. I must say I find it strange, to say the least, that some of my colleagues are prepared to reflect Judge Bork as "outside the mainstream" because he refused to embrace a radical reading of the ninth amendment that has never commanded a Supreme Court majority in any case and almost certainly never will.

But, more fundamentally, if the distinguished committee chairman's framing of the basic issue here is correct, I find it not only strange but profoundly distressing that a majority of the Members of this elected body, sworn to uphold the Constitution, is prepared to cede to the judiciary the authority to go above, or beyond, the written law. If that happens, we will indeed make history here, because we will take a giant step toward making ours not a government of laws but of men. We will signal our acquiescence in an approach that will place beyond the reach of the people and their elected representatives the most difficult, controversial, and important issues that will face this country in the years ahead.

You may say that is an overstatement. But I ask my colleagues to look at the record and you will see that it is not. The chief complaint about Judge Bork—aside from the hysterical ravings of the mulitmillion-dollar disinformation campaign—is that he "reads the Constitution too narrowly." What does that mean?

Does it mean he takes it too literally? Does it mean he thinks the enduring values of the Constitution don't apply to contemporary situations? No. It cannot mean that because Judge Bork's record and his testimony don't permit that conclusion. One needs only to look at Justice Scalia's—then—Judge Scalia's—criticism of Judge Bork's position in the Ollman case to see that Judge Bork's is not the strictest view. Judge Scalia was far more rigid in his approach to interpreting the language of the Constitution, and we confimed him 98 to 0. No, when my colleagues say that Judge Bork "reads the Constitution too narrowly," one of two things are possible. Either they haven't examined the record and are just parroting the phrase in an effort to make their submission to interest group pressure, or they buy the argument of Professor Tribe, Senator BIDEN and some others that a judge ought not to be bound by the written Constitution—that he ought to be free to discover and enforce against the legislatively expressed will of the people's natural rights that we have just by virtue of being us. I'm not sure which possibility is worse.

Those who argue that judges have broad license to discern and enforce their own views of natural rights—their own moral codes—should be honest about what that means as a practical matter. As Judge Bork explained to the committee, free-wheeling judges do not create new rights; they redistribute rights. By giving rights to some, they take them away from others. The recognition of a criminal's right not to be subjected to the dealth penalty denies the rest of society the right to impose that punishment for brutal acts of violence. The right of a purveyor of pornographic magazines to sell his wares deprives the citizenry of the right to guard against the demeaning, devaluing impact of obscenity. The right of a frightened teenage child to abort her unborn baby without her parents knowing about it deprives those parents of the right to help and counsel that daughter during one of the most traumatic periods in her young life.

These are real-world examples, and I could cite many more. In the real world, there is not an endless array of natural rights out there to be plucked from the sky and bestowed on individuals at no cost to anyone else. And so the question is, "who will decide?" Who will decide about the death penalty, about pornography, about parental consent, about 100 other issues of importance to each of us.

This debate is not about whether the Government will be involved in these issues, as some would have us believe. It is about who in Government will decide: Will the choices be made by elected representatives accountable to the people or will they be made by unelected judges appointed for life and accountable to no one?

The authors of our freedom experienced the tyranny of a monarch appointed for life and accountable to no one. They sought refuge in the written law. They crafted a Constitution to define and protect our liberties, and presumably they intended it to mean something. They placed their trust in the American people, working their will through democratic processes under the rule of law. Why are my colleagues so afraid to trust the American people today?

Given the opportunity to choose between Government by judiciary and Government by the elected representatives, I have no doubt where the American people would come down. Neither do the special interests. That's why they spent millions of dollars creating a monster to scare the American people so that the real issue would not be in focus during this debate.

The American people do not want the most difficult and controversial issues we will face decided by a lawyer in a Federal courthouse or even five lawyers in the marble building across the street from here. The American people want to have a say in shaping their future and the future of their children and grandchildren. The elitist view that several hundred well-intentioned and well-read lawyers ought to be vested with the authority to determine our values and decide our destinies is one that, fortunately, Americans will never accept. Thanks to Judge Bork's courageous decision to stay in the fight, the American people finally are hearing through the din what this debate is really all about.

This is a debate about who will govern America. To whom will we entrust our liberty? We will not in our public careers confront a more fundamental question. And it is time we gave the question the calm and statesmanlike consideration it deserves. It is bad enough to defile the reputation of a fine judge and a good and decent man through an orchestrated campaign of lies and distortions. That is an injustice to one man. But if we let that insidious campaign and the politics of the moment blind us to the fundamental issues at stake here, we commit an injustice for the ages.

Judge Bork's "sin" is that he believes in judicial restraint. So do the American people and so, I believe, do a majority of Senators. We must not be intimidated by interest group pressure into a betrayal of our beliefs on this most fundamental of principles in our system of constitutional government. We must answer Jefferson's question honestly: We have not found angels in the form of kings to govern us. We place our trust in the people.

LEGISLATIVE SESSION

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate return to legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, every request that I shall make has been cleared with the distinguished Republican leader. And I am authorized to proceed without at the moment anyone being on the floor on the other side.

TRANSFER OF SILKWORM MISSILES BY THE PEOPLE'S REPUBLIC OF CHINA TO IRAN

Mr. BYRD. Mr. President, I ask unanimous consent that the Foreign Relations Committee be discharged from further consideration of Senate Concurrent Resolution 84 relating to the transfer of Silkworm missiles by the People's Republic of China to Iran, and that the Senate proceed to the immediate consideration of the resolution.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report.

The assistant legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 84) relating to the transfer of Silkworm missiles by the People's Republic of China to Iran.

There being no objection, the Senate proceeded to consider the concurrent resolution.

The PRESIDING OFFICER. The question is on agreeing to the concurrent resolution.

The concurrent resolution was agreed to.

The preamble was agreed to.

The concurrent resolution, and its preamble, are as follows:

S. Con. Res. 84

Whereas, on October 16, 1987, the American flagged tanker Sea Isle City, was struck by a Chinese produced Silkworm missile;

Whereas, as least eighteen persons aboard the Sea Isle City were injured, among them two Americans;

Whereas, on October 15, 1987, the American owned tanker Sungari was struck by a Chinese produced Silkworm missile;

Whereas China has continued to supply Silkworm missiles to Iran despite repeated official protests by the United States;

Whereas China has so far not unreservedly declared its willingness to support an arms embargo of Iran if Iran refuses to accept United Nations Security Resolution 598, passed July 20, 1987; and

Whereas the United States is engaged in significant military related technology transfers to China: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That it is the sense of the Congress that—

(a) the United States should review all transfers of United States military related technology to the People's Republic of China until the Government of the People's Republic of China indicates its willingness to support an arms embargo in the event that Secretary General Perez de Cuellar's new round of negotiations with Iran and Iraq fail to gain Iran's acceptance of Security Council Resolution 598,

(b) the administration should make a strong representation to the Government of the People's Republic of China that the continued transfer of Silkworm missiles to Iran may seriously jeopardize United States-China relations, and

(c) the administration should report to the Congress within thirty days of the enactment of this Resolution whether the representation has been made, and if so, what response has been received.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the concurrent resolution was agreed to.

I move to lay that motion on the table.

The motion to lay on the table was agreed to.

FEDERAL EMPLOYEES' RETIREMENT SYSTEM

Mr. BYRD. Mr. President, I ask unanimous consent to place on the calendar H.R. 3395, a bill dealing with the Federal Employees' Retirement System.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE CALENDAR

Mr. BYRD. Mr. President, I have an item on the calendar which has been cleared on the other side. The Republican leader has authorized me to proceed with Calendar Order No. 372.

TRANSFER OF CERTAIN LAND IN THE STATE OF ARIZONA

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Order No. 372.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 1366) to provide for the transfer of certain lands in the State of Arizona, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

The PRESIDING OFFICER. The bill is before the Senate and open to amendment. If there be no amendment to be offered, the question is on the third reading and passage of the bill.

The bill was ordered to a third reading and was read the third time, and passed.

Mr. BYRD. Mr. President, I ask unanimous consent that the motion to reconsider be laid on the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

HOUSE CONCURRENT RESOLUTION 200 INDEFINITELY POSTPONED

Mr. BYRD. Mr. President, I ask unanimous consent that Calendar Order No. 386, House Concurrent Resolution 200, be indefinitely postponed.

The PRESIDING OFFICER. Without objection, it is so ordered.

BICENTENNIAL MINUTE

OCTOBER 22, 1944: WAR MOVIES IN THE SENATE CHAMBER

Mr. DOLE. Mr. President, 43 years ago today, on October 22, 1944, the United Press uncovered a secret plan, hatched in the Senate Military Affairs Committee, to show war movies in the Senate Chamber. When confronted with this intelligence, an Army colonel, on detail to the committee, admitted that he had been involved in covert planning to place a screen in the Chamber and to test the best projection angles. He explained that committee leaders hoped that the regular showing of battle films would allow the Senate to keep better informed about current World War II developments.

Up to that point, the experiment had been kept quiet, for it was rightly seen as a radical encroachment on senatorial dignity and tradition. Earlier, when committee staff had quietly set up a screen in a empty Chamber, a representative of the Senate Sergeant at Arms raced into the Chamber shouting: "Take that thing down. Nothing like that has been in the Chamber for 100 years, and isn't going to be."

Sergeant at Arms Wall Doxey attempted to defuse this controversy in comments to a reporter. "I just told them I hoped they would get through with the experiment as quickly as possible, because that's a very expensive screen and if anything happened to it while it was hanging there, I would be responsible." Military Affairs Committee Chairman Robert Reynolds helpfully added: "'The Senate could find out as much about a matter of legislation in a minute through pictures as it could in an hour of talk."

The last that was heard of this innovative proposal, as the 1944 session drew to a close, was that it remained securely in the custody of Senate Rules Committee.

TRIBUTE TO ALASKA'S TUNDRA TIMES ON ITS 25TH ANNIVERSARY

Mr. STEVENS. Mr. President, a quarter century ago a strong but calm new voice emerged in the field of Alaska journalism.

The Tundra Times, Alaska's first state-wide newspaper covering the interests of my State's Native people, came off the presses in 1962. I had the pleasure of introducing the original sponsors of this newspaper to Alaska in 1961.

Its guiding hand was that of a gentle philosopher and artist, Howard Rock, who understood the needs and concerns of his fellow Alaska Natives.

Through the years the Tundra Times has kept Alaskans informed on issues that particularly affected the Native community. The paper has also recognized and publicized the achievements, large and small, of Alaska's Native people.

Thoughtful editorials, which have continued after Howard Rock's death, have sought balance where differences exist, and offered guidance in the ongoing struggle to maintain Native culture and traditions in a world that relies more and more on modern technology.

With only four staff members, the Tundra Times reaches thousands of Alaskans every week. A dedicated group of volunteers helps in the effort.

In my State, with more than 40 newspapers serving a half-million population, the voice of the Tundra Times commands respect.

Its young editors continue to be guided by the principles of Howard Rock, a decade after his death. They work to seek common ground among Alaska's Native people and all Alaskans.

Through tough times as well as prosperous times, the paper has rolled off the presses regularly. It is well-written, well-edited, and certainly well-read.

I congratulate the Tundra Times on its 25th anniversary. Along with all Alaskans, I look forward to its continued publication, so that it will serve our children and their children as well as it has served us.

MESSAGES FROM THE HOUSE

At 11:09 a.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 85. An act to suspend security assistance and arms export control preferences for New Zealand.

The message also announced that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 158. A concurrent resolution concerning the establishment of a South Pacific Nuclear Free Zone.

At 2:53 p.m., a message from the House of Representatives, delivered by Mr. Berry, one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 1191. An act for the relief of Jose Maria Vas.

MEASURES REFERRED

The following bill was read the first and second times by unanimous consent, and referred as indicated:

H.R. 85. An act to suspend security assistance and arms export control preferences for New Zealand; to the Committee on Foreign Relations.

H.R. 1191. An act for the relief of Jose Maria Vas; to the Committee on the Judiciary.

The following concurrent resolution was read, and referred as indicated:

H. Con. Res. 158. A concurrent resolution concerning the establishment of a South Pacific Nuclear Free Zone; to the Committee on Foreign Relations.

MEASURES PLACED ON THE CALENDAR

The following bill, previously received from the House of Representatives for concurrence, was read the first and second times by unanimous consent, and placed on the calendar:

H.R. 3395. An act making technical corrections relating to the Federal Employees' Retirement System, and for other purposes.

ENROLLED JOINT RESOLUTIONS PRESENTED

The Secretary of the Senate reported that on today, October 22, 1987, he had presented to the President of the United States the following enrolled joint resolutions:

S.J. Res. 163. Joint resolution to designate the month of November, 1987, as "National Family Bread Baking Month";

S.J. Res. 168. Joint resolution designating the week beginning October 25, 1987, as "National Adult Immunization Awareness Week"; and

S.J. Res. 198. Joint resolution to designate the week beginning on November 2, 1987, and ending on November 8, 1987, as "National Tourette Syndrome Awareness Week."

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. CRANSTON, from the Committee on Veterans' Affairs:

Special Report on Allocation of Budget Totals by the Committee on Veterans' Affairs (Rept. No. 100-205).

By Mr. LEAHY, from the Committee on Agriculture, Nutrition, and Forestry, with an amendment in the nature of a substitute:

H.R. 148. A bill to designate certain public lands in the State of Michigan as wilderness, and for other purposes (Rept. No. 100-206).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. PELL, from the Committee on Foreign Relations:

Treaty Doc. 100-5. Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America, with annexes and agreed statement, signed on April 2, 1987 (Exec. Rept. No. 100-9).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. BUMPERS (for himself, Mr. Kennedy, Mr. Hatch, Mr. Exon, and Mr. Karnes):

S. 1808. A bill to require the Secretary of Health and Human Services to determine the appropriate regulatory classification of the transitional devices of the Medical Device Amendments, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. BAUCUS (for himself and Mr. Stafford):

S. 1809. A bill to require the Environmental Protection Agency to set standards for identification and abatement of hazardous asbestos in certain buildings, and for other purposes; to the Committee on Environment and Public Works.

By Mr. PELL:

S. 1810. A bill to extend until October 1, 1988, the existing suspension of duty on p-Hydroxybenzoic acid; to the Committee on Finance.

By Mr. HEINZ (for himself, Mr. Metzenbaum, Mr. Durenberger, Mr. Riegle, Mr. Simon, and Mr. Specter):

S. 1811. A bill to provide a transitional funding method to ensure continued pension payments to steel industry retirees and to assure the viability of the private pension system, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. GRASSLEY (for himself, Mr. Durenberger, Mr. Melcher, Mr. Gore, Mr. Conrad, Mr. Burdick, Mr. Sasser, Mr. Dixon, Mr. Hecht, and Mr. Simon):

S.J. Res. 207. A joint resolution recognizing, encouraging, and supporting the National Rural Crisis Response Center; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following current resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. HELMS:

S. Res. 300. A resolution expressing support for groups working for freedom and against Communism in South West Africa [Namibia]; to the Committee on Foreign Relations.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. BUMPERS (for himself, Mr. Kennedy, Mr. Hatch, Mr. Exon, and Mr. Karnes):

S. 1808. A bill to require the Secretary of Health and Human Services to determine the appropriate regulatory classification of the transitional devices of the Medical Device Amendments of 1976, and for other purposes; to the Committee on Labor and Human Resources.

RECLASSIFICATION OF TRANSITIONAL DEVICES AMENDMENTS

● Mr. BUMPERS. Mr. President, on behalf of myself and Senators Kennedy, Hatch, Exon, and Karnes, I am pleased to send to the desk a bill designed to accomplish two major objectives: (a) allow the valuable scientific and financial resources of the U.S. Food and Drug Administration to be more sharply focused on pressing areas of public concern; and (b) remove a regulatory burden which is damaging small medical device manufacturers without conferring an offsetting benefit upon the public.

Both objectives are important. We are confronting massive Federal deficits. The resources of government, including those of the FDA, must be used where they will do the most good. One area where FDA resources have been misapplied has been with the so-called "transitional devices" set up by the Medical Device Amendments of 1976.

As a result of these transitional arrangements, which I do not believe the Congress expected to be permanent, certain essentially innocuous devices have been regulated at the class III level—the highest, most expensive, and most time-consuming level provided by the law. One example is the common rigid daily wear contact lens, but there are other similar examples. As a result, year after year the FDA has been forced to devote a disproportionate share of its valuable resources to elaborate and unnecessary regulatory reviews of products which should be regulated at a lower level of control. In the process, other devices which actually merit tighter control do not receive it because of the limitations of FDA resources.

The simple remedy would be for the "transitional devices" which do not meet the class III definition to be reclassified. They could then be regulated at a level appropriate for them. This would release FDA resources for redirection to more pressing areas of concern. Certain health foods that are fraudulently advertised for such things as herpes and cancer would be a good initial target, in my opinion.

Unfortunately, it is not so easy. The present law has made it artificially difficult to assign these "transitional devices" to their appropriate regulatory classes. This bill provides a direct and practical means to accomplish the reclassification effort. We recognized the need for this in the last Congress when a similar measure, S. 2771, was introduced by Senator HATCH and cosponsored by Senators KENNEDY, THURMOND, EXON, ZORINSKY, and myself. It was introduced too late in the session to permit hearings to be held, and no action was taken on it.

From a small business standpoint, it is the smaller firms which have suffered most under the present situation. This has been recognized in two reports issued by the Congressional Office of Technology Assessment.

In one of these reports, the OTA stated:

> (M)ajor portions of the Medical Device Amendment have not been implemented by FDA and some may not be workable. As implemented so far, the regulatory process has posed the greatest problem for small manufacturers of contact lenses.

There is additional urgency in this matter as we hear proposals for so-called "user fees" to be assessed for the premarketing review of drugs and medical devices. These new regulatory costs, if they are actually adopted, are going to be serious problems for small businesses regulated by FDA. It would be intolerable, in my view, to assess such user fees for the privilege of having FDA conduct a review which should not have to be conducted in the first place.

The FDA is responsible for regulating consumer products which collectively account for about 25 cents of each consumer dollar spent. This agency's operations are critical to the continued health and welfare of each of our citizens. We need realistic priorities and increased efficiency from this agency. What we don't need and can't afford is anticompetitive regulation which squeezes small business out of the marketplace while at the same time diverting agency resources from serious health concerns.

The reregulation which this legislation will accomplish will permit increased competition, decreased costs, and an increase in employment. It would also allow small firms to compete in the world market. I would like to submit for the record an interview with the Director of the Division of Ophthalmic Devices published in "Contact Lens Spectrum" and a breakdown of expenses and personnel of the Office of Device Evaluation provided by the Secretary of Health and Human Services. I would also like to include a letter from an ophthalmologist from the University of Arkansas for Medical Sciences. I invite the support of all my colleagues for this bill and ask unanimous consent that these materials and the text of the bill be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 1808

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Reclassification of Transitional Devices Amendments of 1987".

REQUIREMENT TO DETERMINE THE APPROPRIATE REGULATORY CLASSIFICATION OF THE TRANSITIONAL DEVICES OF THE MEDICAL DEVICE AMENDMENTS OF 1976

SEC. 2. (a) Section 520(l)(2) of the Federal Food, Drug, and Cosmetic Act is amended by inserting "(A)" before "The manufacturer or importer" and by adding at the end thereof the following new subparagraph:

"(B)(i) Within the ninety-day period beginning on the date of enactment of the Reclassification of Transitional Devices Amendments of 1987, the Secretary shall initiate a proceeding to reclassify all devices placed in class III pursuant to paragraph (1) of this subsection. Within twelve months after such date of enactment, the Secretary shall, by order, reclassify each such device into class I or II or determine that the device should remain in class III. The proceeding conducted under this clause shall be limited to a determination, based on valid scientific evidence, of whether each such device meets the criteria for inclusion in class III set forth in subclauses (I) and (II) of section 513(a)(1)(C)(ii).

"(ii) The Secretary shall not continue the classification of a device in class III unless the Secretary finds that the device meets the criteria set forth in subclauses (I) and (II) of section 513(a)(1)(C)(ii).

"(iii) A device described in paragraph (1) which has not been the subject of an order issued pursuant to clause (i) of this subparagraph and which is in class III shall be reclassified in class II. A reclassification under this clause shall take effect one year after date of enactment of the Reclassification of Transitional Devices Amendment of 1987.".

(b) Section 520(l) of such Act is amended by striking out "paragraph (2)" and inserting in lieu thereof "paragraph (2)(A)".

PEERING INTO THE 21ST CENTURY

(By Patty Sposato)

The involvement of the Food and Drug Administration in the regulation of contact lenses, solutions, and accessory products continues to be a controversial subject. What lies ahead in the twenty-first century—more or less regulatory control of the industry?

Contact Lens Spectrum spoke with Richard E. Lippman, OD, director of the Division of Ophthalmic Devices, concerning policy changes within the agency and his industry forecast for the future. These are excerpts from their discussion.

Contact Lens Spectrum: In the year 2000, will the contact lens industry be more or less regulated by the FDA?

Richard E. Lippman, OD: Currently the agency is undergoing a review by Congress. It's a ten-year device amendment review—the first that we've had covering the entire Center for Devices and Radiological Health. Part of that review process is to look at transitional devices. Prior to 1976, contact lenses were regulated as drugs. As a result of their being placed in the transitional device category, we're getting requests from congressmen and senators about the regulatory process as it pertains to contact lenses. They wonder if the current classification is appropriate.

The Waxman and Hatch bills proposed changing reclassification by one mechanism or another. If the FDA doesn't act to hold back Class III devices (in this case all soft and rigid gas permeable contact lenses, except extended wear), contact lenses automatically would fall into Class II over a two-year period.

Spectrum: How do you feel about this possibility?

Lippman: It's something that should have happened some time ago. We in the agency feel that we've had enough experience with Class III contact lenses to feel comfortable in having them downclassified.

Spectrum: What reaction do you anticipate from the Contact Lens Institute, which has gone on record as opposing reclassification?

Lippman: It's a foregone conclusion that the CLI will fight this. It's something that the CLI and the Contact Lens Manufacturers Assn. will have to battle out as we watch from the sidelines. The science can be argued from both sides as it is determined whether or not we have devices that can be downclassified because of the knowledge that we have about them.

Spectrum: Will this involve testimony by these organizations before Congress, as has occurred in the past?

Lippman: It's not inconceivable that there will be hearings, and that to some degree the FDA might become involved.

Spectrum: In regulating the contact lens industry, what are the greatest obstacles facing the FDA?

Lippman: Reclassification has been a troublesome area. We've had a major challenge to the classification. Several years ago, first the agency then the CLMA petitioned to reclassify, but the attempts were turned down. At the time, there weren't any firm data in the literature to support reclassification. Although the CLMA challenged our decision, in July, 1985, a court decision upheld the position of the FDA. While downclassification on an "active basis" seems to be out of the question for the FDA, this could be accomplished on a "passive basis."

Spectrum: What do you mean by "active" and "passive" basis?

Lippman: All the defense that's been built up through the office's general counsel in maintaining the present classification has been so imbedded in the public record that literally it would be almost impossible to reclassify these devices on an active basis, even though philosophically we believe that they could be downclassified. The Waxman and Hatch bills, however, could lead to legislation allowing the FDA to take a passive role in reclassification. That is, we would not have to actively reclassify a lens into class II since it automatically would be placed into that class over time, unless we held it back in Class III.

Spectrum: What do you foresee for the contact lens industry by the next century?

Lippman: Over the next few years, at least, we're going to see a proliferation of rigid materials more so than soft materials, the reason being that there is much more capability to control oxygen permeability. We'll also see an expansion of the solutions and accessory area, and marketing of these products will become even more competitive than it is today. Under development will be new ophthalmic preservative systems that will reduce the sensitization of patients to solutions.

Spectrum: What will be the market position of the soft contact lens in the twenty-first century?

Lippman: The biggest advantage of the soft lens is its adaptability. As a result, there always will be a heavy demand for soft materials. During the history of contact lenses, there's been a seesaw effect in the popularity of soft and rigid gas permeable materials. Although we're going through a period of relative stagnation in the soft lens market, it's only shortlived. We'll see a resurgence of soft lenses as materials continue to evolve. Newer rigid materials will be developed which approach a resemblance to the soft materials as we have them today. The difference between classic and rigid soft materials will be more difficult to define.

Spectrum: So the current emphasis on rigid gas permeable lenses will stimulate soft lens manufacturers to return to the drawing board to find something to compete with the RGP market?

Lippman: It's not only imperative, it's inevitable.

Spectrum: Prior to assuming your present post, what was your opinion (as a practitioner) of the necessity or appropriateness of the FDA regulating the contact lens industry?

Lippman: Like most of these in the practicing world, I was somewhat annoyed by these devices being regulated. Not understanding the regulatory process, I regarded it as an interference in getting new devices or medical entities into the marketplace.

Now I've come to realize that the regulatory process is an advantageous thing. The numerous medical devices are composed of many kinds of materials, each potentially toxic or harmful in other ways. It's important that materials undergo scrutiny so that they are rendered nontoxic and nonthreatening for human use.

Spectrum: Once a contact lens material is found to be safe and effective, must the FDA be concerned about design and patient compliance, or should this be the practitioner's realm?

Lippman: We've been wrestling with that question for some time. Once a material is determined to be safe, it's pretty much in the hands of the practitioner to be able to design the prescription and characteristics of the device, that is the curvatures, base curve, diameter, etc., to make it function well on the eye.

Unfortuntately, the only modality that we have to test materials for human use is the clinical trial, which is needed to determine whether the device is actually functioning as intented. We've been trying to modify those requirements to some degree, because we don't want to invade the realm of practitioners' choices.

Spectrum: How have the requirements been modified?

Lippman: We've loosened clinical trial requirements by opening up indications for use. Instead of having only myopic lenses, we've allowed clinical trials to include spherical lenses for hyperopia. In the case of toric lenses, we've allowed expansion of the parameters to include what is necessary for a particular patient, rather than what would be ideal in a clinical trial. All this can be done under one PreMarket Approval Application rather then needing separate PMAAs.

Spectrum: What other changes have taken place since you assumed office?

Lippman: Many are administrative in nature and don't have a direct impact on practitioners. These changes affect the industry and have an impact on the processing of documents by breaking out applications into fasttrack (i.e. alternate manufacturing sites, minor label changes, changes in packaging, sterility, shelf life, etc.) and normal-track applications, which include modification of design, material, indications for use, etc. Recently, we added two clinical reviewers who also are involved in protocol development for contact lenses and accessory products. James Saviola had been with the Veterans Administration program in Vancouver, Wash., and Debra Lewis was with the Air Force for five years. Both are optometrists. We also have a new chemistry reviewer on board, and we're recruiting an additional microbiologist and toxicologist.

One change that is directly related to clinical practice pertains to the expansion of parameters within a given indication. For example, if a clinical trial measured only from +4.00 diopters to −6.00 diopters, we'd expand the power range from +12.00 diopters to −20.00 diopters—the normal range of cosmetic use in those areas. We've also expanded base curves and diameters of devices so that practitioners can now assume that they are in control of the fitting criteria rather than the companies. The manufacturers will either manufacture those lenses or not, depending on their capabilities.

The other area in which we are making advances involves a materials-type approval. (We haven't yet achieved our goal, but we're well on the way.) In the case of new indications, including toric or bifocal lenses, a manufacturer, although needing to go through a limited clinical trial, will get an expeditious review. Instead of waiting a year or two for these supplemental PreMarket Approval Applications to be addressed, it will happen within 30 days.

Spectrum: What is the turnaround time for approval of PMAAs, supplements, and 510ks?

Lippman: Our processing time on PMAAs had been between 18 and 23 months. It's now down to less than 12 months, but we're striving for the six-month statutory limit. As I mentioned earlier, in the case of supplements, we've broken them down into two groups; the normal track and the fast track. We've been able to process those applications well within the six-month time frame. It's taking between one to three months.

There was a backlog of the normal-track supplements, those requiring full-blown clinical review and other reviews including microbiology, toxicology, and chemistry. Review time has been whittled down from two years to six months.

Spectrum: Critics say that many products that look good in clinical studies don't perform well in the real world. How can study sponsors avoid skewing information resulting from clinical trials?

Lippman: A couple of factors are involved here. One is that in a clinical trial, particularly one involving a significant-risk device such as extended wear, patients undergo much more scrutiny than they do once this device is approved and out of the agency, so patients are followed very closely over a period of the year. In the case of extended wear applications, most complications that may develop into serious potential problems are stopped very early. Once an application is approved for general use through prescription, follow-up routines in many practices aren't as good as those under the Investigational Device Exemption procedure. You're bound to have more problems with patient compliance and other issues. Patients don't comply very well when they're not scrutinized very closely.

Relative to skewing information, we urge companies and investigators to give us the data as accurately as they can reflect it. I think many firms feel that if they don't present the best possible picture in an application, it's not going to get approved. That's just not the case. In order to have more scientific validity, it's better to get the bad news with good news.

Spectrum: Suppose the bad news outweighs or is equal to the good news? Would this prompt the manufacturer to make improvements in the material or design, or to do more clinicals?

Lippman: Several things can happen here. We've had experience with a poorly designed study or poor follow-up care, preventing the Ophthalmic Advisory Panel from making a clinical judgment about these devices. In a couple of rare cases, the panel has asked the firms to reconstitute all or part of their clinical studies to re-evaluate the situation. If a device is bad, it's not going to benefit the company to get it approved because the firm won't be able to market or sell it.

If it appears evident that there are a lot of lens replacements or limited durability there may be a fitting problem. A high discontinuation rate may be associated with materials. There are different ways that we can analyze data to determine problem areas and help redesign studies.

Spectrum: How has the acceptance of foreign data affected new entries into the domestic marketplace? Is this a route that more and more contact lens companies are taking?

Lippman: We've had a couple of applications with foreign data, but they've had to meet our guidance standards.

Spectrum: Is this a shortcut to getting approval in the United States?

Lippman: It probably takes longer.

Spectrum: Why is that?

Lippman: More likely there will be deficiencies because of a difference in format and presentation. We can anticipate that regulatory decisions involving contact lenses are going to become more complex with time. It is my hope that the regulatory process can be simplified now, so that we can deal with the complexities later on in a more organized manner.●

JUNE 22, 1987.

Hon. DALE BUMPERS,
U.S. Senate, Dirkson Office Bldg., Room 3229, Washington, DC

DEAR SENATOR BUMPERS: I would like to ask your help on a pressing matter which affects my practice as an eye care practitioner. Specifically, an amendment to the Food, Drug and Cosmetic Act is needed to reclassify daily wear contact lenses out of class III—the most expensive and most restrictive level of regulation.

As a result of the Medical Device Amendments of 1976, certain types of contact lenses were automatically placed into class III, including the so-called rigid gas permeable (RGP) daily wear contact lens. Despite its fancy sounding name, this is essentially an improved version of the old fashioned hard contact lens which went on the market shortly after the close of World War II. Advances in technology made it possible, ten years ago, to make these lenses so that they are permeable to oxygen. This promotes superior corneal health, and the resulting RGP lens has rendered the former style of hard lens obsolete. I am confident that no qualified practitioner would dispute this.

Under an anomalous FDA interpretation of the present law, however, I can continue to prescribe the old fashioned hard lens in any configuration which the patient may need. In most cases, this is what is called a spheric lens; it has a regular hemispheric shape. Many of my patients, however, require what is known as a toric lens; i.e., one that is not quite spherical in shape. Other patients need bifocal lenses or other designs. Obviously, if the lens material is safe for use in a contact lens, there is no reason to limit its use to only certain designs.

Yet, the FDA has insisted on limiting its approvals of RGP lens materials to spheric lenses only, with only a few exceptions for some companies. This means that my practice often comes under a regulatory cloud each time I prescribe a toric or other nonspheric contact lens for a patient, despite my determination that this is what the patient needs. The contact lens laboratory is under a more pressing threat. This threat has become a real one for many contact lens laboratories, and for doctors who make their own lenses.

A recent judicial challenge to the FDA's interpretation of the law was unsuccessful; the court was sympathetic but blamed the situation on the "ironies affected by the statute." It stated that the proper remedy lies with the Congress which alone has the power to change the law. To be fair, the commissioner of FDA has himself expressed the need for a legislative remedy.

What is needed is an amendment to reclassify RGP contact lenses out of class III. With the urgent priority now placed on reducing our government's deficit, it seems incredible to me that the FDA should continue to spend its scarce resources to regulate ordinary contact lenses at the same level as heart valves and pacemakers and dictate the shape of contact lenses which I can prescribe for my patients.

I am ready to provide whatever additional details you or your staff may need. Thank your for you concern and assistance.

Sincerely,

JOHN P. SHOCK, M.D.[1]

By Mr. BAUCUS (for himself and Mr. STAFFORD):

S. 1809. A bill to require the Environmental Protection Agency to set standards for identification and abatement of hazardous asbestos in certain buildings, and for other purposes; to the Committee on Environment and Public Works.

TOXIC SUBSTANCES CONTROL ACT AMENDMENTS ACT

● Mr. BAUCUS. Mr. President, last year the Congress passed a law to protect our children from the potential hazards of asbestos in schools. This law, the Asbestos Hazard Emergency Response Act [AHERA], was the first step in addressing the potential health problems that can be caused by asbestos in buildings. Today I am introducing a bill that calls for the management of asbestos in buildings that are owned and leased by the Federal Government. Joining me as original cosponsor is Senator STAFFORD.

The health effects of exposure to asbestos fibers are will documented. When these fibers are inhaled they penetrate deep into the lungs and can cause several diseases including: asbestosis, lung cancer, and mesothelioma. These health effects may not be known for 20 to 30 years after exposure. Because children appear to be at increased risk of developing these diseases, passage of AHERA last year was an important first step in managing asbestos in buildings.

Asbestos is a generic term for a group of naturally occurring fibrous minerals. For a period of approximately 30 years, beginning in the early 1940's, asbestos materials were used extensively in constructing and renovating public buildings for fireproofing, insulation, soundproofing, and decorative purposes. Based on surveys of Federal and commercial buildings, EPA estimates that asbestos containing materials can be found in 733,000 out of 3.6 million nonschool buildings in this country.

The presence of asbestos in a building does not mean that the health of its occupants is necessarily endangered, so long as the material is in good condition and is not disturbed. Yet, when building maintenance, repair, or other activities disturb or damage the material, asbestos fibers may be released, presenting a health and environmental hazard to building occupants.

The Federal Government owns over 454,000 buildings in the United States alone. Most of these have never been inspected for potentially harmful asbestos. EPA has provided technical guidance on four general approaches to abatement of asbestos in buildings, but it has not recommended or mandated specific measures. In addition, there are no Federal requirements for inspection or abatement of asbestos in buildings other than schools.

It is important to stress that, where asbestos is in good condition in a building, it should be left undisturbed. But, where asbestos has been damaged and is friable, or is located in such an area that this is highly probable, it needs special care. It may require continued monitoring, encapsulation, or removal. The decision of which management techniques to rely upon must be made after careful inspection of a building by a trained, certified individual.

By implementing this kind of reasoned approach, we can move forward with a safe asbestos management plan for Federal buildings. It is important for the Federal Government to set a good example by assuring the health of its employees.

My bill calls for several specific actions:

First, it requires that all federally owned and leased buildings be inspected for asbestos by trained and certified inspectors.

Second, owners must develop management plans that outline the location and condition of asbestos, and response actions to be undertaken.

Third, operations and maintenance plans are to be developed and implemented to include not only documentation, but notification of building occupants as to the presence of asbestos and a description of any actions that are to be taken to abate any hazards posed by friable asbestos.

Fourth, contractor accreditation requirements are called for to cover all persons responsible for inspection and abatement activities in Federal and other buildings.

Fifth, prior to occupancy of any newly purchased or leased building to be used by the Federal Government, an inspection and current management plan must be in effect.

Finally, companies that manufactured or processed asbestos containing materials must submit information on those materials to EPA for the purposes of a clearinghouse publication.

Action is needed now to give clear guidance on the importance of providing indoor environments that are free from the hazards of damaged and friable asbestos. The inspection and management of asbestos in buildings is important to achieving this goal.

The Federal Government should take the lead by setting an example of assuring safe work environments for its employees and visitors.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1809

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Toxic Substances Control Act Amendments Act of 1987".

SEC. 2. AMENDMENT TO TOXIC SUBSTANCES CONTROL ACT.

The Toxic Substances Control Act is amended by adding at the end thereof the following:

"TITLE III—FEDERAL BUILDING ASBESTOS CONTROL ACT

"SEC. 301. SHORT TITLE.

"This title may be cited as the 'Federal Building Asbestos Control Act of 1987'.

"SEC. 302. CONGRESSIONAL FINDINGS AND PURPOSES.

"(a) FINDINGS.—The Congress finds that—

"(1) potentially hazardous asbestos is present in many Federal buildings and other buildings that are accessible to the public;

"(2) asbestos, if unrecognized or poorly managed, can cause serious adverse health effects, including lung cancer and other deadly and debilitating diseases;

"(3) though the Federal Government requires that school buildings be inspected for potentially hazardous asbestos and that appropriate response actions be implemented, there is no such requirement affecting buildings that are owned or leased by the Federal Government;

"(4) many buildings have not been inspected for hazardous asbestos, while others have been subjected to expensive abatement projects with no regulatory guidance from the Environmental Protection Agency on whether the actions are necessary, adequate, or safe; and

"(5) serious asbestos hazards continue to exist in certain buildings and some hazards actually may have been made worse due to the lack of national standards for asbestos hazards and abatement.

"(b) PURPOSES.—The purposes of this title are to—

"(1) provide for the establishment of Federal standards for the identification of and response to hazardous asbestos in Federal and other buildings; and

"(2) mandate safe and complete inspection and response in accordance with those standards.

"SEC. 303. DEFINITIONS.

"For purposes of this title, the term—

"(1) 'Administrator' means the Administrator of the Environmental Protection Agency;

"(2) 'Federal building' means any building which is owned or leased by the Federal Government;

"(3) 'non-Federal building' means any building other than a Federal building except that such term does not include any school building otherwise subject to an asbestos inspection and abatement program under Federal law, any private residential dwelling, or any commercial residential building having fewer than 10 residential units;

"(4) 'covered building' means a Federal building;

"(5) 'accredited asbestos contractor' means an individual who has successfully completed an Environmental Protection Agency approved training program, or a training program relating to asbestos inspections and abatement adopted pursuant to section 206 of this Act;

"(6) 'owner', when used in connection with a Federal building under this title, means the head of the department, agency, office, or other instrumentality of the United States having jurisdiction or control over such building;

"(7) 'asbestos' means asbestiform varieties of—

"(A) chrysotile (serpentine),

"(B) crocidolite (riebeckite),

"(C) amosite (cummingtonite-grunerite),

"(D) anthophyllite,

"(E) tremolite, or

"(F) actinolite.

"(8) 'asbestos-containing material' means any material which contains more than 1 percent asbestos by weight;

"(9) 'Guidance for Controlling Asbestos-Containing Material in Buildings', means the Environmental Protection Agency document with such title as in effect on March 31, 1986.

"(10) 'friable asbestos-containing material' means any asbestos-containing material applied on ceilings, walls, structural members, piping, duct work, or any other part of a building which when dry may be crumbled, pulverized, or reduced to powder by hand pressure. The term includes nonfriable asbestos-containing material after such previously nonfriable material becomes damaged to the extent that when dry it may be crumbled, pulverized, or reduced to powder by hand pressure.

"(11) 'most current guidance document' means the Environmental Protection Agency's 'Guidance for Controlling Asbestos-Containing Material in Buildings' as modified by the Environmental Protection Agency after March 31, 1986;

"(12) 'response action' means methods that protect human health and the environment from asbestos-containing material. Such methods include methods described in chapters 3 and 5 of the Environmental Protection Agency's 'Guidance for Controlling Asbestos-Containing Materials in Buildings'; and

"(13) 'State' means a State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and the Virgin Islands.

"(14) 'identifying characteristics' means a description of the asbestos or asbestos-containing material, including (but not limited to)—

'(A) the mineral or chemical constituents (or both) of the asbestos or material by weight or volume (or both);

"(B) the types or classes of the product in which the asbestos or material is contained;

"(C) the designs, patterns, or textures of the product in which the asbestos or material is contained; or

"(D) the means by which the product in which the asbestos or material is contained may be distinguishable from other products containing asbestos or asbestos—containing material;

"(15) 'miscellaneous material' means building material or structural components, structural members, or fixtures, such as floor and ceiling tiles; but such term does not include surfacing material or thermal system insulation;

"(16) 'surfacing material' means material in a building that is sprayed on surfaces, trowelled on surfaces, or otherwise applied to surfaces for acoustical, fireproofing, or other purposes, such as acoustical plaster on ceilings and fireproofing material on structural members; and

"(17) 'thermal system insulation' means material in a building applied to pipes, fittings, boilers, breeching, tanks, ducts, or other structural components to prevent heat loss or gain or water condensation, or for other purposes.

"SEC. 304. EPA REGULATIONS.

"(a) IN GENERAL.—Within 360 days after the date of the enactment of this title, the Administrator shall promulgate regulations as described in subsections (b) through (i). With respect to regulations described in such subsections, the Administrator shall issue an advanced notice of proposed rulemaking within 60 days after the date of the enactment of this title, and shall propose regulations within 180 days after such date. Any regulation promulgated under this section must protect human health and the environment.

"(b) INSPECTION.—The Administrator shall promulgate regulations which prescribe procedures, including the use of personnel accredited under section 206(b) and section 206(c) of this Act, and laboratories accredited under section 206(d) of this Act, for determining whether asbestos-containing material is present in a covered building under this title. The regulations shall provide for the exclusion of any covered building, or portion of such a building, if (1) an inspection of such building (or portion) was completed before the effective date of the regulations, and (2) the inspection meets the procedures and other requirements of the regulations under this title or of the 'Guidance for Controlling Asbestos-Containing Materials in Buildings' (unless the Administrator determines that an inspection in accordance with the guidance document is inadequate). The regulations shall require inspection of any such building (or portion of a building) that is not excluded by the preceding sentence.

"(c) CIRCUMSTANCES REQUIRING RESPONSE ACTIONS.—(1) The Administrator shall promulgate regulations which define the appropriate response action in a covered building under this title in at least the following circumstances:

"(A) DAMAGE.—Circumstances in which friable asbestos-containing material or its covering is damaged, deteriorated, or delaminated.

"(B) SIGNIFICANT DAMAGE.—Circumstances in which friable asbestos-containing material or its covering is significantly damaged, deteriorated, or delaminated.

"(C) POTENTIAL DAMAGE.—Circumstances in which—

"(i) friable asbestos-containing material is in an area regularly used by building occupants, including maintenance personnel, in the course of their normal activities, and

"(ii) there is a reasonable likelihood that the material or its covering will become damaged, deteriorated, or delaminated.

"(D) POTENTIAL SIGNIFICANT DAMAGE.—Circumstances in which—

"(i) friable asbestos-containing material is in an area regularly used by building occupants, including maintenance personnel, in the course of their normal activities, and

"(ii) there is a reasonable likelihood that the material or its covering will become significantly damaged, deteriorated, or delaminated.

"(2) In promulgating such regulations, the Administrator shall consider and assess the value of various technologies intended to improve the decisionmaking process regarding response actions and the quality of any work that is deemed necessary, including air monitoring and chemical encapsulants.

"(d) Response Actions.—

"(1) In general.—The Administrator shall promulgate regulations describing response actions in buildings under this title.

"(2) Response action for damaged asbestos.—In the case of a response action for the circumstances described in subsection (c)(1)(A), methods for responding shall include methods identified in chapters 3 and 5 of the 'Guidance for Controlling Asbestos-Containing Material in Buildings'.

"(3) Response action for significantly damaged asbestos.—In the case of a response action for the circumstances described in subsection (c)(1)(B), methods for responding shall include methods identified in chapter 5 of the 'Guidance for Controlling Asbestos-Containing Material in Buildings'.

"(4) Response action for potentially damaged asbestos.—In the case of a response action for the circumstances described in subsection (c)(1)(C), methods for responding shall include methods identified in chapters 3 and 5 of the 'Guidance for Controlling Asbestos-Containing Material in Buildings', unless other methods will eliminate the reasonable likelihood that the asbestos-containing material will become damaged, deteriorated, or delaminated.

"(5) Response action for potentially significantly damaged asbestos.—In the case of a response action for the circumstances described in subsection (c)(1)(D), methods for responding shall include methods identified in chapter 5 of the 'Guidance for Controlling Asbestos-Containing Material in Buildings', unless other methods will eliminate the reasonable likelihood that the asbestos-containing material will become significantly damaged, deteriorated, or delaminated.

"(e) Implementation; Notification.—(1) The Administrator shall promulgate regulations requiring the implementation of response actions in covered buildings under this title and, where appropriate, for the determination of when a response action is completed. Such regulations shall include standards for the education and protection of both workers and building occupants for the following phases of activity:

"(A) Inspection.

"(B) Response action.

"(C) Post-response action, including any periodic reinspection of asbestos-containing material and long-term surveillance activity.

"(2) In order to assure appropriate notice of affected State agencies and building occupants, the Administrator shall promulgate regulations which prescribe notification procedures prior to demolition and renovation of all Federal and non-Federal buildings prior to activities which could disturb asbestos or asbestos-containing materials.

"(f) Operations and Maintenance.—The Administrator shall promulgate regulations to require implementation of an operations and maintenance and repair program as described in chapter 3 of the 'Guidance for Controlling Asbestos-Containing Materials in Buildings' for all friable asbestos-containing material in a covered building under this title.

"(g) Periodic Surveillance.—The Administrator shall promulgate regulations to require the following:

"(1) An identification of the location of friable and nonfriable asbestos in a covered building under this title.

"(2) Provisions for surveillance and periodic reinspection of such friable and nonfriable asbestos.

"(3) Provisions for education of employees and occupants, including service and maintenance personnel, about the location of and safety procedures with respect to such friable and nonfriable asbestos.

"(h) Transportation and Disposal.—The Administrator shall promulgate regulations which prescribe standards for transportation and disposal of asbestos-containing waste material to protect human health and the environment. Such regulations shall include such provisions related to the manner in which transportation vehicles are loaded and unloaded as will assure the physical integrity of containers of asbestos-containing waste material.

"(i) Management Plans.—

"(1) In general.—The Administrator shall promulgate regulations which require each owner of a covered building to develop an asbestos management plan for covered buildings under this title, to begin implementation of such plan within 360 days after the date such building is required by section 307 to be inspected in accordance with section 304(b), and to complete implementation of such plan within 24 months. The regulations shall require that each plan include the following elements, wherever relevant to the building:

"(A) An inspection statement describing inspection and response action activities carried out before the date of the enactment of this title.

"(B) A description of the results of the inspection conducted pursuant to regulations under subsection (b), including a description of the specific areas inspected.

"(C) A detailed description of measures to be taken to respond to any friable asbestos-containing material pursuant to the regulations promulgated under subsections (c), (d), and (e), including the location or locations at which a response action will be taken, the method or methods of response action to be used, and a schedule for beginning and completing response actions.

"(D) A detailed description of any asbestos-containing material which remains in the covered building once response actions are undertaken pursuant to the regulations promulgated under subsections (c), (d), and (e).

"(E) A plan for periodic reinspection and long-term surveillance activities developed pursuant to regulations promulgated under subsection (g), and a plan for operations and maintenance activities developed pursuant to regulations promulgated under subsection (f).

"(F) With respect to the person or persons who inspected for asbestos-containing material and who will design or carry out response actions with respect to the friable asbestos-containing material, one of the following statements:

"(i) If the State has adopted a contractor accreditation plan under section 206 of this Act, a statement that the person (or persons) is accredited under such plan.

"(ii) A statement that the owner used (or will use) persons who have been accredited by another State which has adopted a contractor accreditation plan under section 206 of this Act, or is accredited pursuant to an Administrator-approved course under section 206(c) of this Act.

"(G) A list of the laboratories that analyzed any bulk samples of asbestos-containing material found in the building or air samples taken to detect asbestos in the covered building and a statement that each laboratory has been accredited pursuant to the accreditation program under section 206(d) of this Act.

"(H) With respect to each consultant who contribute to the management plan, the name of the consultant and one of the following statements:

"(i) If the State has adopted a contractor accreditation plan under section 206(b) of this Act, a statement that the consultant is accredited under such plan.

"(ii) A statement that the consultant is accredited by another State which has adopted a contractor accreditation plan under section 206(b) of this Act, or is accredited pursuant to an Administrator-approved course under section 206(c) of this Act.

"(I) An evaluation of resources needed to successfully complete response actions and carry out reinspection, surveillance, and operation and maintenance activities.

"(2) Statement by contractor.—An owner may require each management plan to contain a statement signed by an accredited asbestos contractor that such contractor has prepared or assisted in the preparation of such plan, or has reviewed such plan, and that such plan is in compliance with the applicable regulations and standards promulgated or adopted pursuant to this section and other applicable provisions of law. Such a statement may not be signed by a contractor who, in addition to preparing or assisting in preparing the management plan, also implements (or will implement) the management plan.

"(3) Warning labels.—(A) The regulations shall require that each owner who has inspected for and discovered any asbestos-containing material with respect to a building shall attach a warning label to any asbestos-containing material still in routine maintenance areas (such as boiler rooms) of the building, including—

"(i) friable asbestos-containing material which was responded to by a means other than removal, and

"(ii) asbestos-containing material for which no response action was carried out.

"(B) The warning label shall read, in print which is readily visible because of large size or bright color, as follows: 'CAUTION: ASBESTORS. HAZARDOUS. DO NOT DISTURB WITHOUT PROPER TRAINING AND EQUIPMENT.'.

"(4) Plan may be submitted in stages.—An owner may submit a management plan in stages, with each submission covering only a portion of the covered buildings under this title, if the owner determines that such action would expedite the identification and abatement of hazardous asbestos-containing material in the covered buildings of the owner.

"(5) Public availability.—A copy of the management plan developed under the regulations shall be available in the administrative offices of the building for inspection by the public.

"(6) Submission to Administrator.—Each plan developed under this subsection shall be submitted to the Administrator within 60 days following its preparation.

"(7) Asbestos Abatement in Occupied Buildings.—In any case in which asbestos abatement will occur in an occupied building subject to this Act, notice to that effect shall be prominently displayed in the lobby or other common area of the building at least 10 business days prior to such abatement or other activity.

"(j) Changes in Regulations.—Changes may be made in the regulations promulgated under this section only by rule in accordance with section 553 of title 5, United States Code. Any such change must protect human health and the environment.

"(k) Changes in Guidance Document.—Any change made in the 'Guidance for Controlling Asbestos-Containing Material in Buildings' shall be made only by rule in accordance with section 553 of title 5, United States Code, unless a regulation described in this section or section 203 of this Act dealing with the same subject matter is in effect. Any such change must protect human health and the environment.

"SEC. 305. REQUIREMENTS IF EPA FAILS TO PROMULGATE REGULATIONS.

"(a) In General.—

"(1) Failure to promulgate.—If the Administrator fails to promulgate within the prescribed period—

"(A) regulations described in section 304(b) (relating to inspection);

"(B) regulations described in section 304(c), (d), (e), (f), (g), and (i) (relating to responding to asbestos); or

"(C) regulations described in section 304(h) (relating to transportation and disposal);

each owner of a covered building under this title shall carry out the requirements described in this section in subsection (b); subsections (c), (d), and (e); or subsection (f); respectively, in accordance with the Environmental Protection Agency's most current guidance document.

"(2) Stay by court.—If the Administrator has promulgated regulations described in paragraph (1) (A), (B), or (C) within the prescribed period, but the effective date of such regulations has been stayed by a court for a period of more than 30 days, an owner of a covered building shall carry out the pertinent requirements described in this subsection in accordance with the Environmental Protection Agency's most current guidance document.

"(3) Effective period.—The requirements of this section shall be in effect until such time as the Administrator promulgates the pertinent regulations or until the stay is lifted (as the case may be).

"(b) Inspection.—(1) Except as provided in paragraph (2), the owner of a building required by section 307 to conduct an inspection in accordance with section 304(b) of this title, within 540 days after the date of the enactment of this title, shall conduct an inspection for asbestos-containing material, using personnel accredited under section 206(b) or 206(c) of this Act and laboratories accredited under section 206(d) of this Act in each covered building owned by such owner.

"(2) The owner may exclude from the inspection requirement in paragraph (1) any such building, or portion of a building, if (A) an inspection of such building (or portion) was completed before the date on which this section goes into effect, and (B) the inspection meets the inspection requirements of this section.

"(c) Operation and Maintenance.—Any such owner referred to in subsection (b)(1) shall, within 720 days after the date of the enactment of this title, develop and begin implementation of an operation and maintenance plan with respect to friable asbestos-containing material in a building designated on such schedule. Such plan shall provide for the education of service and maintenance personnel about safety procedures with respect to asbestos-containing material, including friable asbestos-containing material.

"(d) Management Plan.—

"(1) In general.—Each owner referred to in subsection (b)(1) shall—

"(A) develop a management plan for responding to asbestos-containing material in each such building,

"(B) begin implementation of such plan within 990 days after the date of the enactment of this title, and

"(C) complete implementation of such plan in a timely fashion.

"(2) Plan requirements.—The management plan shall—

"(A) include the elements listed in section 304(i)(1), including an inspection statement as described in paragraph (3) of this section,

"(B) provide for the attachment of warning labels as described in section 304(i)(3),

"(C) be prepared in accordance with the most current guidance document, and

"(D) meet the standard described in paragraph (4) for actions described in that paragraph.

"(3) Inspection statement.—Each owner referred to in section (b)(1) shall complete an inspection statement, covering activities carried out before the date of the enactment of this title, which meets the following requirements:

"(A) The statement shall include the following information:

"(i) The dates of inspection.

"(ii) The name, address, and qualifications of each inspector.

"(iii) A description of the specific areas inspected.

"(iv) A list of the laboratories that analyzed any bulk samples of asbestos-containing material or air samples of asbestos found in any building and a statement describing the qualifications of each laboratory.

"(v) The results of the inspection.

"(B) The statement shall state whether any actions were taken with respect to any asbestos-containing material found to be present, including a specific reference to whether any actions were taken in the boiler room of the building. If any such action was taken, the following items of information shall be included in the statement:

"(i) The location or locations at which the action was taken.

"(ii) A description of the method of action.

"(iii) The qualifications of the persons who conducted the action.

"(4) Standard.—The ambient interior concentration of asbestos after the completion of actions described in the most current guidance document, other than the type of action described in section 304(f) and subsection (c) of this section, shall not exceed the ambient exterior concentration, discounting any contribution from any local stationary source. Either a scanning electron microscope or a transmission electron microscope shall be used to determine the ambient interior concentration. In the absence of reliable measurements, the ambient exterior concentration shall be deemed to be—

"(A) less than 0.003 fibers per cubic centimeter if a scanning electron microscope is used, and

"(B) less than 0.005 fibers per cubic centimeter if a transmission electron microscope is used.

"(5) Public availability.—A copy of the management plan shall be available in the administrative offices of such building or otherwise prominently displayed in such building for inspection by the public. Notice as to the availability of such plan to the public, including where such plan may be obtained and the date for the completion of the implementation of such plan, shall be permanently posted in the lobby of each such building or other common area of such building.

"(6) Submission to the Administrator.—Each plan developed under this subsection shall be submitted to the Administrator within 60 days following its preparation.

"(e) Building Occupant Protection.—Such owner shall provide for the protection of covered building occupants during each phase of activity described in this section.

"(f) Transportation and Disposal.—Such owner shall provide for the transportation and disposal of asbestos in accordance with the most recent version of the Environmental Protection Agency's 'Asbestos Waste Management Guidance' (or any successor to such document).

"SEC. 306. CONTRACTOR ACCREDITATION.

"(a) Contractor Accreditation.—A person may not—

"(1) inspect for asbestos-containing material in a building under this title,

"(2) prepare a management plan for such a building, or

"(3) design or conduct response actions, other than the type of action described in sections 304(f) and 305(c), with respect to friable asbestos-containing material in such a building,

unless such person is accredited by a State or is accredited pursuant to an Administrator-approved course pursuant to section 206 (b) or (c).

"(b) Accreditation by State.—For purposes of this title, the following categories of persons shall be considered to be accredited by a State or pursuant to an Administrator-approved course, if such person has been accredited under section 206(b) or section 206(c) of this Act:

"(1) Persons who inspect for asbestos-containing material in buildings under this title, or other buildings.

"(2) Persons who prepare management plans for such buildings.

"(3) Persons who design or carry out response actions, other than the type of action described in sections 304(f) and 305(c), with respect to friable asbestos-containing material in such buildings.

"SEC. 307. FEDERAL BUILDINGS SUBJECT TO TITLE.

"Federal Buildings.—

Within 730 days after the date of enactment of this title, all Federal buildings shall be inspected in accordance with this title and regulations promulgated pursuant thereto.

"SEC. 308. FEDERAL LEASING POLICIES.

"On and after the expiration of the 24-month period following the date of the enactment of this title, any department, agency, or other entity or instrumentality of the United States entering into any purchase agreement, lease, or lease renewal, for the acquisition of real property for use by any department, agency, or other entity or instrumentality of the United States, shall not occupy such premises unless such property has been inspected in accordance with the provisions of this title and found to be free of any potentially asbestos material, or such property has been inspected and is, at the time of any such purchase or lease, subject to a valid and current asbestos management plan that is in compliance with the provisions of this title and regulations and standards promulgated pursuant thereto.

"SEC. 309. STATE AND FEDERAL LAW.

"NO PREEMPTION.—

Nothing in this title shall be construed, interpreted, or applied to preempt, displace, or supplant any other State or Federal law, whether statutory or common.

"SEC. 310. PUBLIC PROTECTION.

"(a) PUBLIC PROTECTION.—No State or the Federal Government may discriminate against a person in any way, including firing a person who is an employee, because the person provided information relating to a potential violation of this title to any other person, including a State or the Federal Government.

"(b) LABOR DEPARTMENT REVIEW.—Any public or private employee or representative of employees who believes he or she has been fired or otherwise discriminated against in violation of subsection (a) may within 90 days after the alleged violation occurs apply to the Secretary of Labor for a review of the firing or alleged discrimination. The review shall be conducted in accordance with section 11(c) of the Occupational Safety and Health Act.

"SEC. 311. ASBESTOS OMBUDSMAN.

"(a) APPOINTMENT.—The Asbestos Ombudsman appointed pursuant to section 212 of this Act shall also carry out the duties described in subsection (b).

"(b) DUTIES.—For purposes of this title, the duties of the Asbestos Ombudsman are—

"(1) to receive complaints, grievances, and requests for information submitted by any person with respect to any aspect of this title.

"(2) to render assistance with respect to the complaints, grievances, and requests received, and

"(3) to make such recommendations to the Administrator as the Ombudsman considers appropriate.

"SEC. 312. GRANTS.

"(a) FINANCIAL ASSISTANCE.—The Administrator is authorized to provide financial assistance, by grant or otherwise, to each of the several States to assist the States in defraying expenses incurred by them in carrying out certain enforcement activities under title II and this title. Such financial assistance shall be payable at such time, in such manner, and in such amount as the Administrator may determine.

"(b) AUTHORIZATION.—There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section.

"SEC. 313. TRANSITION RULES.

"Any regulation of the Environmental Protection Agency under title I which is inconsistent with this title shall not be in effect after the date of the enactment of this title. Any advanced notice of proposed rulemaking, any proposed rule, and any regulation of the Environmental Protection Agency in effect before the date of the enactment of this title which is consistent with the regulations required under section 304 shall remain in effect and may be used to meet the requirements of section 304.

"TITLE IV—ASBESTOS INFORMATION ACT OF 1987

"SEC. 401. SHORT TITLE.

"This title may be cited as the 'Asbestos Information Act of 1987'.

"SEC. 402. PURPOSE.

"The purpose of this title is to require asbestos manufacturers to submit information on their asbestos products to the Environmental Protection Agency.

"SEC. 403. SUBMISSION OF INFORMATION BY MANUFACTURER.

"Within 90 days after the date of the enactment of this Act, any person who manufactured or processed asbestos or asbestos containing material that was prepared for sale for use in a building (or whose corporate predecessor manufactured or processed such an asbestos or material) shall submit to the Administrator of the Environmental Protection Agency the years of manufacture, the type or classes of product, and all other identifying characteristics of the asbestos or material. Such person may also submit to the Administrator protocols for samples of asbestos and asbestos containing materials.

"SEC. 404 PUBLICATION.

"Within 180 days after the date of the enactment of this Act, the Administrator shall publish and make available for public use the information submitted under section 403".

SEC. 3. CONFORMING AMENDMENT TO TOXIC SUBSTANCES CONTROL ACT.

(a) CONFORMING AMENDMENT.—Section 15 of the Toxic Substances Control Act is amended in paragraph (1)—

(1) by striking out "or" before "(C)";

(2) by striking out the semicolon and inserting in lieu thereof a comma; and

(3) by adding at the end thereof the following: "or (D) any rule promulgated or order issued under title III;".

(b) TECHNICAL AMENDMENTS.—The Toxic Substances Control Act is amended by adding at the end of the table of contents in section 1 the following:

"TITLE III—FEDERAL BUILDINGS ASBESTOS CONTROL ACT

"Sec. 301. Short title.
"Sec. 302. Congressional findings and purposes.
"Sec. 303. Definitions.
"Sec. 304. EPA regulations.
"Sec. 305. Requirements if EPA fails to promulgate regulations.
"Sec. 306. Contractor and laboratory accreditation.
"Sec. 307. Federal buildings subject to title.
"Sec. 308. Federal leasing policies.
"Sec. 309. State and Federal law.
"Sec. 310. Public protection.
"Sec. 311. Asbestos ombudsman.
"Sec. 312. Grants.
"Sec. 313. Transition rules.".

"TITLE IV—ASBESTOS INFORMATION ACT OF 1987

"Sec. 401. Short title.
"Sec. 402. Purpose.
"Sec. 403. Submission of information by manufacturer.
"Sec. 404. Publication.".●

By Mr. HEINZ (for himself, Mr. METZENBAUM, Mr. DURENBERGER, Mr. RIEGLE, Mr. SIMON, and Mr. SPECTER):

S. 1811. A bill to provide a transitional funding method to ensure continued pension payments to steel industry retirees and to assure the viability of the private pension system, and for other purposes; to the Committee on Labor and Human Resources.

STEEL RETIREMENT BENEFITS FUNDING ACT

Mr. HEINZ. Mr. President, I rise today on behalf of myself and my colleagues Senators METZENBAUM, DURENBERGER, RIEGLE, SIMON, and SPECTER, to introduce legislation to solve the steel industry pension problem. While this bill addresses a problem that is nominally a steel industry problem, it is actually a problem of concern to every industry.

The steel pension problem has developed from the industry's recent economic troubles. Since 1981, domestic steelmakers have been forced to cut production in response to a drop in demand and a flood of cheap imported steel. Over this period, steelmaking capacity was reduced by 27 percent and steel employment was cut in half. In the process of downsizing, the six largest steel producers retired over 82,000 workers, one-half of them on special shutdown pensions that could not be funded in advance. The $6 billion in unfunded liabilities that has developed in steel pension plans has become a drag on steel modernization, closing off access to needed capital, and forcing some companies into bankruptcy.

More importantly for nonsteel companies, this massive steel pension underfunding is now threatening the future of the Pension Benefit Guaranty Corporation [PBGC]—the Federal agency that guarantees pension benefits for retirees. In recent years, the PBGC has had to pick up several underfunded steel pension plans when steel companies have filed for chapter 11 bankruptcy. As a result, PBGC's deficits have soared from $500 million to $4 billion in just 2 years. This first chart shows PBGC's growing deficits—80 percent of their 1986 deficit is from steel alone. It also shows that PBGC's 1986 deficit would nearly double again if the rest of the underfunded steel plans terminated.

Steel pension liabilities are not going to go away unless we do something to get rid of them. Merely doubling or tripling employer-paid premiums to the PBGC and forcing faster pension contributions, as the administration has suggested, is not going to help the underfunded steel plans. In fact, this combination could easily force the more troubled companies into bankruptcy. The pension rules reported by the Finance Committee's budget reconciliation would increase one steel company's costs by 50 percent next year. Our bill will do more than whistle in the dark about steel pensions. It will provide an opportunity and an incentive for steel companies to eliminate these liabilities and meet their obligations to their retirees without filing for bankruptcy.

This is not an attempt to let the steel companies off the hook, quite the opposite. While steel companies face the formidable task of adjustment, they must remember that they also have longtime obligations—most notably to the people they've employed. It is only right that they live up to their promises. Steelmakers must avoid moral bankruptcy, too. Leaner does not have to be meaner.

Mr. President, the Steel Retirement Benefits Act of 1987 is aimed at five objectives. The first, as I said, is to enable steel companies to deal with their pension liabilities without going through bankruptcy. The second is to provide retirees with better benefit protection than they now have when companies file for bankruptcy, terminate plans, and the PBGC cuts benefits. The third is to reduce the potential cost to the Federal Government of doing nothing and having PBGC pick up the underfunded plans. The fourth is that the companies stand behind the commitments they have made to their retirees and not be allowed to dump their obligations on the Federal Government and other employees and walk away. The fifth objective is that Federal assistance should not interfere in the marketplace—it should give steel companies an equal opportunity to reduce their unfunded liabilities, but it should not encourage companies to close facilities or reduce capacity that would otherwise have been operated profitably.

What we have developed in this bill is a novel way to enable steel companies to refinance their pension liabilities. Specifically, we would create a steel retirement authority that can immediately remove the liabilities for shutdown pension benefits from the companies books and from the pension plans. The companies will continue to maintain their pension and retiree health plans. Each year, the authority will transfer cash to the plan trustees to pay benefits, in exchange for which the companies will give the authority assets, debt, or equity of equal value. The authority would raise the cash it needs by selling shares in a fund consisting of steel company assets and Federal securities. This fund would essentially be a steel industry mutual fund with a Federal guarantee. The Federal securities would eventually be redeemed by the increase in the value of the steel assets. In 10 years the entire liability for shutdown benefits would be eliminated.

At best, this proposal would cost the Federal Government nothing. At the worst, it would cost no more than we would pay if we do nothing and steel companies continue to file for bankruptcy. For the companies, the pension plans, and plan participants it could make a big difference. Companies will have access to capital they either cannot get now or can only get at a high cost. The financial condition of companies with heavy retirement liabilities will brighten immediately, and pension funding will improve making it easier for companies to meet their pension funding requirements. To emphasize this effect I would draw your attention to a second chart which shows the underfunding in steel pension plans now and the underfunding after liabilities for shutdown benefits are transferred to the authority.

Participants will have better protection for their retirement benefits than they now have. Other steel companies will not have to compete with companies that have reduced costs by dumping liabilities in bankruptcy. Nonsteel companies will not have to pay for the guaranteed pensions of the steel company retirees. For a small amount of risk to the Federal Government we can straighten this problem out once and for all.

I am pleased that the bill is strongly supported by the steelworkers and by three of the largest steel producers. I also want to thank my colleagues who are cosponsoring today—particularly the chairman of the Senate steel caucus Senator METZENBAUM—for their help with this legislation.

Mr. President, I ask unanimous consent that the a section-by-section analysis and the full text of bill be printed in the RECORD following my statement.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 1811

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Steel Retirement Benefits Funding Act of 1987".

SEC. 2. ESTABLISHMENT OF STEEL RETIREMENT BENEFITS AUTHORITY.

(a) ESTABLISHMENT.—There is established a Steel Retirement Benefits Authority (hereinafter in this Act referred to as the "Authority") which shall consist of the Secretary of the Treasury, the Secretary of Labor, the Secretary of Commerce, the Executive Director of the Pension Benefit Guaranty Corporation, and one individual appointed by the President with experience in the steel industry.

(b) DUTIES.—It shall be the duty of the Authority—

(1) to establish and operate the steel retirement benefits program under section 3, and

(2) to establish and operate the steel retirement benefits investment fund under section 4.

(c) AUTHORITY TO MEET WITHIN 60 DAYS.—The Authority shall meet within 60 days after the date of the enactment of this Act to begin to carry out its duties under this Act.

SEC. 3. STEEL RETIREMENT BENEFITS PROGRAM.

(a) AGREEMENTS.—The Authority shall enter into a written agreement with a qualified steel corporation to pay the qualified retirement benefits of such corporation if such corporation establishes to the satisfaction of the Authority that such corporation will meet—

(1) the pension and health coverage requirements of subsection (f),

(2) the asset transfer requirements of subsection (g), and

(3) such other terms and conditions as the Authority may require to carry out the provisions of this Act.

(b) LIABILITY FOR PAYMENT; PAYMENT OF QUALIFIED RETIREMENT BENEFITS.—

(1) LIABILITY FOR PAYMENT.—The Authority shall assume the liability for payment of the qualified retirement benefits of a qualified steel corporation during the period the agreement under subsection (a) with such corporation is in effect.

(2) METHOD OF PAYMENT.—

(A) IN GENERAL.—The payments made by the Authority to a qualified steel corporation with respect to any qualified retiree shall be in 10 annual installments in amounts equal to the sum of—

(i) ⅒ of the present value of the qualified retirement benefits of such qualified retiree, plus

(ii) interest on the amount of any such installment for the period beginning on the 1st day of the 10-year period and ending on the date the installment is paid.

(B) INTEREST RATE.—The interest rate used in computing present value and interest under subparagraph (A) shall be the interest rate (as of the date the agreement takes effect) which would be used by the Pension Benefit Guaranty Corporation for purposes of determining the present value of a lump sum distribution on termination.

(C) BEGINNING OF 10-YEAR PERIOD.—The 10-year period for which payments are made under subparagraph (A) shall begin with the later of the year in which—

(i) the agreement under subsection (a) first takes effect, or

(ii) the individual becomes a qualified retiree entitled to qualified pension benefits.

(c) USE OF PAYMENTS.—

(1) IN GENERAL.—Except as provided in paragraph (2), any payment to a qualified steel corporation under an agreement under subsection (a) shall be transferred directly to the trust which is part of the qualified pension plan from which the qualified retirement benefits are paid.

(2) PAYMENTS MAY BE USED TO PAY HEALTH BENEFITS IF RETIREMENT BENEFITS ARE FULLY FUNDED.—If for any plan year—

(A) the sum of—

(i) the payments under paragraph (1) which would be made to a plan for a plan year (without regard to this paragraph), and

(ii) the actuarial value of the assets of the plan determined under section 412(c)(2) of the Internal Revenue Code of 1986 (determined as of the close of the plan year and without regard to any such payments), exceeds

(B) the plan's termination liability as of the close of the plan year,

then the agreement under subsection (a) may provide that an amount not greater than such excess may, in lieu of being transferred under paragraph (1), be transferred to a plan described in clause (ii) of subsection (f)(1)(A).

(3) TREATMENT OF PAYMENTS.—Any payment transferred to a trust or plan under paragraph (1) or (2) shall—

(A) not be treated as an asset of the trust or plan, and

(B) not be treated as a contribution made by the qualified steel corporation to the trust for purposes of section 412 of the Internal Revenue Code of 1986.

(4) Termination liability.—For purposes of this subsection—

(A) In general.—The term "termination liability" means the present value of all benefits under the plan.

(B) Certain benefits included.—For purposes of subparagraph (A), benefits to which section 411(d)(6) of the Internal Revenue Code of 1986 does not apply shall be treated as benefits under the plan.

(d) Termination of Agreement.—If an agreement under subsection (a) is terminated—

(1) all payments under such agreement shall terminate,

(2) all liabilities assumed by the Authority shall revert to the qualified steel corporation, and

(3) if—

(A) the payments under such agreement exceed the assets transferred, the corporation shall be liable to the Authority for such excess, or

(B) the assets transferred exceed such payments, such excess shall revert to the corporation.

(e) Issuance of Obligations.—

(1) In general.—The Authority shall issue and sell each fiscal year to the steel retirement benefits investment fund established under section 4 obligations which are convertible (under such terms and conditions as the obligations provide) to assets of qualified steel corporations transferred to the Authority under subsection (g) for such fiscal year.

(2) Amount of obligations issued.—The aggregate issue price of obligations issued and sold under paragraph (1) for any fiscal year shall be equal to the amount which the Authority determines necessary for such fiscal year—

(A) to make the payments under the agreements entered into under subsection (a),

(B) to pay the debt service on such obligations and obligations previously issued by the Authority, and

(C) to pay any administrative costs of the Authority or of such Fund.

Such amount shall be reduced by any amounts which the Authority receives from any other source to make such payments during such fiscal year.

(3) Direct obligations of United States; interest rates.—

(A) Direct obligations.—Obligations issued under paragraph (1) shall be direct obligations of the United States, except that such obligations shall not be subject to any limitation under section 3101 of title 5, United States Code.

(B) Interest rates.—Obligations issued under paragraph (1) shall bear interest at a rate determined by the Authority not greater than the rate for comparable United States Treasury certificates with the same maturity. The Authority may issue obligations bearing different rates.

(f) Pension and Health Coverage Requirements.—

(1) In general.—A corporation shall be treated as meeting the requirements of this subsection if such corporation has not filed a petition for bankruptcy under title 11 of the United States Code, before January 1, 1987, and—

(A) on January 1, 1987, maintained—

(i) 1 or more qualified pension plans, and

(ii) 1 or more employee welfare benefit plans which provided medical, surgical, or hospital care or benefits, or benefits in the event of sickness, to retirees of such corporation, and

(B) continues to maintain such plans.

(2) Special rules relating to bankruptcy.—

(A) Corporations filing for title 11 before January 1, 1987.—If a corporation fails to meet the requirements of paragraph (1)(A) by reason of the filing of a petition under title 11 of the United States Code before January 1, 1987, such corporation shall be treated as meeting the requirements of this subsection if the corporation—

(i) resumes operation of such plan, or

(ii) enters into an agreement with the Pension Benefit Guaranty Corporation providing for the payment of benefits under such plan (including having payments made to the Corporation under this section).

(B) Corporations filing for title 11 after December 31, 1986.—If a qualified steel corporation files a petition under title 11 of the United States Code after December 31, 1986, such corporation shall not be treated as failing to meet the requirements of paragraph (1)(B) if it continues to maintain the plans described in paragraph (1)(A) for qualified retirees.

(g) Asset Transfer Requirement.—A corporation shall be treated as meeting the requirements of this subsection if the corporation transfers (under such terms and conditions specified in the agreement under subsection (a)) to the Authority each fiscal year stock, stock warrants, or other equity instruments in, or debt or other assets of, the corporation with a value which the Authority determines is appropriate, taking into account—

(1) the obligations transferred to the Fund under subsection (e) in connection with liabilities of the corporation assumed by the Authority,

(2) the need to attract investors in the Fund established under section 4, and

(3) the availability of other sources of funds to the Authority.

(h) Agreement.—

(1) Period agreement in effect.—Any agreement under subsection (a) shall be in effect during the period—

(A) beginning on the date the agreement is entered into, and

(B) ending on the earlier of—

(i) the date specified in the agreement, or

(ii) the date on which the Authority determines the corporation fails to meet the requirements of subsection (f) or (g) or any other terms and conditions of the agreement.

(2) Time for application.—No agreement shall be entered into under subsection (a) unless the qualified steel corporation applies to enter into such an agreement and provides such information as the Authority may require within 6 months after the date of the enactment of this Act.

SEC. 4. STEEL RETIREMENT BENEFITS INVESTMENT FUND.

(a) Establishment.—The Authority shall establish a steel retirement benefits investment fund (hereinafter in this section referred to as the "Fund").

(b) Transfer of Assets.—The Authority shall transfer to the Fund—

(1) obligations sold by the Authority to the Fund under section 3(e)(1), and

(2) the assets transferred to the Authority under section 3(g).

(c) Public Offerings.—The Authority shall make available to the general public interests in the Fund. Any interests remaining unsold shall be held by the Authority.

SEC. 5. QUALIFIED RETIREMENT BENEFITS.

(a) In General.—For purposes of this Act, the term 'qualified retirement benefit' means—

(1) the portion of any pension benefit payable to a qualified retiree in the form of an annuity in an amount equal to the excess (if any) of—

(A) the amount of such benefit, over

(B) the amount of such benefit if such benefit had been actuarily reduced to reflect payments before normal retirement age under the plan, and

(2) any monthly supplemental benefit (expressed as a dollar amount) payable to a qualified retiree before such retiree attains age 62.

Such term does not include any amount payable before the date of the enactment of this Act.

(b) Qualified Retiree.—For purposes of this Act—

(1) In general.—The term "qualified retiree" means any individual who—

(A) is eligible for an annuity under the plan maintained by the qualified steel corporation upon separating from service after—

(i) attaining age 55 and completing 15 years of service,

(ii) completing 15 years of service and having a combined age and years of service of 80 or greater, or

(iii) completing 20 years of service and having a combined age and years of service of 65 or greater, and

(B) was separated from service during the period beginning on January 1, 1982, and ending on the date of the enactment of this Act.

(2) Authority to qualify additional retirees.—The Authority may, if it determines desirable and appropriate in order to further the purposes of this Act, treat as a qualified retiree any individual—

(A) who meets the requirements of paragraph (1)(A),

(B) who is separated from service during the 2-year period beginning on the date of the enactment of this Act, and

(C) with respect to whom an application to have this paragraph apply is filed before the close of the 2-year period described in subparagraph (B) by a qualified steel corporation, but only if such application is authorized pursuant to the terms of a collective bargaining agreement between such corporation and an employee representative of such individual.

(3) Beneficiaries included.—The term "qualified retiree" includes any person who is a beneficiary under the plan on or after the death of an individual described under paragraph (1) or (2).

SEC. 6. OTHER DEFINITIONS AND SPECIAL RULES.

(a) Qualified Steel Corporation.—For purposes of this Act, the term "qualified steel corporation" means a corporation described in section 212(g)(1) of the Tax Reform Act of 1986.

(b) Qualified Pension Plan.—For purposes of this Act, the term "qualified pension plan" means a plan with a trust which is exempt from taxation under section 501 of the Internal Revenue Code of 1986 and which meets the requirements of section 401(a) of such Code.

(c) Employee Welfare Benefit Plan.—For purposes of this Act, the term "employee welfare benefit plan" has the meaning given such term by section 3 of the Employee Retirement Income Security Act of 1974.

(d) Sale or Transfer of Assets.—If—

(1) a qualified steel corporation sells or transfers any facility (or substantially all of the assets of such facility) at which qualified retirees worked immediately before their separation from service, and

(2) such facility (or assets) are to be used in the production of steel,

the transferee shall be liable for the qualified retirement benefits of such qualified retirees.

The Steel Retirement Benefits Funding Act of 1987 Section-by-Section Analysis

SECTION 1: SHORT TITLE

SECTION 2: ESTABLISHMENT OF STEEL RETIREMENT BENEFITS AUTHORITY

Establishes an Authority to operate the Steel Retirement Benefits Program and to manage the investment fund.

Designates 5 members of the Authority: the Secretary of the Treasury, the Secretary of Labor, the Secretary of Commerce, the Executive Director of the PBGC, and a Presidential appointee with steel industry experience.

SECTION 3: STEEL RETIREMENT BENEFITS PROGRAM

(a) Agreements.—Empowers the Authority to enter into agreements with qualified steel companies who establish that they will continue to operate pension and retiree health plans, transfer sufficient assets to the Authority, and meet other terms and conditions set by the Authority.

(b) Liability for Payment; Payment of Qualified Retirement Benefits.—Establishes that the Authority will assume liabilities for qualified retirement benefits and that the Authority will pay the steel companies 10 annual installments, each equal to 1/10th of the present value of the benefits plus interest.

(c) Use of Payments.—Requires that payments by the Authority will go directly to the trust which pays the qualified benefits. If in a given plan year, the trust is fully funded, payments from the Authority may be made to an employee welfare benefit fund to pay retiree health benefits. Payments will not be treated as trust assets, nor as contributions made by the company for purposes of Section 412 of the Internal Revenue Code.

(d) Termination of Agreement.—Provides that if a company's agreement with the Authority is terminated, all payments by the Authority stop, and liabilities for the benefits revert to the company. At the time the agreement is terminated, the company will remain liable to the Authority for any amounts paid out which exceed the value of the assets transferred, but any excess value of the assets will revert to the company.

(e) Issuance of Obligations.—Enables the Authority to issue each year sufficient Government securities to raise revenues necessary in combination with other revenues to make required payments to the companies, pay debt service on all issued obligations, and cover administrative costs of the program. Instruments issued by the Authority will be fully backed by the Federal Government and bear an interest rate lower than or comparable to the Treasury bill rate.

(f) Pension and Health Coverage Requirement.—Requires qualified companies to continue to maintain all pension and retiree health benefit plans. For companies who have filed for bankruptcy to qualify, they must either maintain their pension and retiree health plan or enter into an agreement for the payment of these benefits with the PBGC.

(g) Asset Transfer Requirement.—Provides that the company must transfer to the Authority stock, stock warrants, or other equity instruments in, debt, or other assets of the company which have a value determined by the Authority to be sufficient to meet the Authority's obligations and attract investors to the fund, taking into account other sources of funds which may be available.

(h) Agreement.—Specifies that the agreement ends on the date specified in the agreement, or earlier if the Authority determines the company is not in compliance with the agreement. Companies must apply to enter into such agreements no later than 6 months after the date of enactment.

SECTION 4: STEEL RETIREMENT BENEFITS INVESTMENT FUND

Empowers the Authority to transfer assets obligated to the Fund and make any public offerings of the Government securities.

SECTION 5: QUALIFIED RETIREMENT BENEFITS

(a) In General.—Defines qualified benefits as those payable to a qualified retiree which are in excess of the amount of a retirement annuity that has been actuarially reduced to reflect payments before normal retirement age, and those which are monthly supplements payable to age 62.

(b) Qualified Retiree.—Defines qualified retirees as those eligible for an annuity who separated from service after: age 55 & 15 years of service; 15 yrs of service & combined age and service of 80 yrs; or 20 yrs of service & combined age and service of 65 yrs, or their survivors.

Qualified beneficiaries must have separated from service between 1/1/82 and date of enactment. The Authority may extend eligibility for those retirees who separate from service within 2 years after the date of enactment.

SECTION 6: OTHER DEFINITIONS AND SPECIAL RULES

Defines qualified steel corporations and pension plans, and holds a company liable for qualified retirement benefits when they sell or transfer steel facilities.

Mr. METZENBAUM. Mr. President, I am pleased to join Senator HEINZ in introducing the Steel Retirement Benefits Funding Act, a bill designed to avert additional bankruptcy bailouts in the steel industry. More bankruptcies are inevitable, unless we begin to respond to the underlying financial problems of the steel industry. An industry that is awash in retiree red ink cannot be allowed to use bankruptcy as a bailout.

Bankruptcies inflict substantial costs on local communities, on workers, and on the Federal Government. They leave small business suppliers and bondholders out in the cold. And they place competitors in a vulnerable position as the bankrupt company takes advantage of the cost savings resulting from the protections against creditors' claims.

We should prevent the hardships caused by the bankruptcies of LTV and Wheeling-Pittsburgh Steel from being repeated. We cannot tolerate the use of our bankruptcy laws as a means for steel companies to shed their obligations to those who built these very same companies. Therefore, it is incumbent upon the Government to provide alternatives to bankruptcy.

Under current law, companies can enter bankruptcy, terminate their pension plans, and transfer their unfunded promises to the Federal Government insurance program. This situation leaves the Government exposed to billions of dollars in liabilities. Over the next 10 years this exposure could reach as high as $7 billion. In addition, it threatens the retirement security of nearly 300,000 retirees because the Federal insurance program only insures part of the pension promises made.

One of the largest factors threatening to push other companies into bankruptcy is the enormous size of unfunded retiree obligations—pension and health insurance coverage. Today, the largest six integrated steel companies have more than $11 billion in unfunded retiree liabilities—that's more than $77,800 of unfunded liability per active worker. And that amount is growing. One projection estimates that this debt will grow to $119,500 per active worker by 1991. Much of these liabilities are a result of the substantial plant shutdowns which have already occurred—forcing workers into early retirement. The steel industry has downsized, but much of the cost remains to be paid.

This measure is designed to permit a part of the enormous retiree benefit debt to be refinanced with Government assistance, instead of allowing it to be dumped on the Government.

This bill establishes a Federal entity to assist steel companies in obtaining private sector financing to payoff the costs of early retirement benefits. Participating companies would be required to transfer stock warrants, stock, debt, or other assets to the authority equal in value to the costs of these benefits. In return, the authority would assume responsibility for paying off these pension liabilities in 10 years. The authority would in turn sell shares to the public in the portfolio containing the steel companies' obligations. The Government would stand behind these obligations which would bear an interest rate not exceeding comparable treasury certificates. In the event a company files for bankruptcy and terminates its pension plan the authority would reinstate the remaining liabilities and the company would be liable for any losses suffered by the authority.

Mr. President, this measure entails some risk to the Federal treasury. But I do not believe that this risk is any greater than the risk of permitting additional bankruptcies to take place.

Mr. President, this is the right time to address these unfunded liabilities. The steel industry's financial condition is strong enough today to attract private refinancing for these unfunded liabilities. And Congress is now considering legislation to require companies which maintain underfunded pension plans to increase their contributions. But without targeting the steel industry's pension problems, that effort cannot be fully successful.

While this proposal will not remedy every problem in the steel industry, it will contribute to its rebuilding in a way that averts the pain of a bankruptcy.

I urge my colleagues to support this measure.

Mr. SIMON. Mr. President, the pension system in our Nation's steel industry is faced with severe underfunding which hinders steel industry revitalization and drains the resources of the Pension Benefits Guarantee Corporation [PBGC]. As a member of the Steel Caucus I am proud to support my colleagues in cosponsoring a bill to establish a Steel Retirement Benefits Authority and a Steel Retirement Benefits Investment Fund to enable steel companies to refinance retirement benefits.

Currently, steel companies with unfunded liabilities must rely on chapter 11 and the transfer of pension responsibilities to the PBGC to reorganize and fund their pension plans. This current practice strains the already deficit-laden PBGC and is costly to local communities, workers, and the Federal Government. One result of this practice has been a growth of the PBGC's deficit to $4 billion and a reduction of the Nation's steel workforce over the past 10 years by 52.6 percent. In the State of Illinois, the steel-related industry's employment force has been reduced by over 50 percent and Illinois shares 11.1 percent of the total nationwide reduction in the steel work force.

The steel industry highlights a pension funding problem which effects the Nation on a whole. The current chapter 11 solution is economically unstabilizing and costly to workers in both job security and benefits. The Federal Government and the PBGC can not bear the responsibilities of the billions in unfunded liabilities. The Steel Retirement Benefits Funding Act will relieve the strain on the PBGC by creating a pension funding system which can anticipate and respond to the specifics of the steel industry. As a result, retiree benefits will be secured and protected, communities will be spared recessions and the steel industry will begin to revitalize.

The proposed system for funding pension liabilities will promote a responsible and healthy steel industry able to meet the pension needs of steel workers and retirees. It is a positive step toward protecting the benefits that this Nation's steel workers have been promised and earned through hard work.

Mr. DURENBERGER. Mr. President, I am pleased to join the distinguished Senators from Pennsylvania and Ohio, Senator HEINZ and Senator METZENBAUM, in introducing the Steel Retirement Benefits Funding Act of 1987. This legislation represents a sound effort to address the serious pension liability problems facing the steel industry. And it could serve as a model for other industries that are currently restructuring.

Mr. President, when the LTV Corp. filed a chapter 11 bankruptcy petition last year, it sent a clear signal to its domestic competitors. The message from LTV was simply that the easiest way for a steel company to cut costs was to declare bankruptcy and unload the company's pension liabilities onto the Pension Benefit Guaranty Corporation [PBGC].

As a result of LTV's bankruptcy, thousands of retirees in Minnesota, and throughout the country, found that their promised pension and health benefits were suddenly in jeopardy. Although the PBGC stepped in and picked up a large part of the company's pension liabilities, the financial health of the PBGC became jeopardized. And now Congress is forced to consider yet another premium increase to maintain PBGC's solvency.

Moreover, it is no secret that other steel companies have considered following LTV's path, in an effort to resolve their pension liability responsibilities. The threat of other steel industry bankruptcies poses a serious and continuing threat to the PBGC. The steel industry's huge unfunded pension liabilities are a reality that we cannot ignore. If the only viable alternative is the chapter 11 option, the steel companies will inevitably use that option. In the process, thousands more workers and retirees will face the same type of uncertainties that LTV's workers and retirees have faced for more than a year. And such bankruptcies will endanger the financial stability of PBGC.

Mr. President, the bill we are introducing today encourages members of the industry to continue operating and restructuring, and discourages them from filing for bankruptcy. The key element of the legislation is the proposed Steel Retirement Benefits Authority which would assume the steel companies' pension liabilities.

The companies would also transfer stock warrants and other assets to the Authority which would be used to back the issuance of convertible debt instruments. The proceeds of these bonds would be used to retire the companies' pension liabilities over 10 years. Since these debt instruments would be similar to original issue discount bonds, the Federal Government would not have to pay out any money in the first 10 years.

At the end of 10 years, the bonds would be redeemed. If the steel industry turned profitable by then, the investors could opt to convert the bonds into stock, and the cost to the Federal Government would be zero. If the company assets were insufficient to cover retirement of the debt, the Federal Government would have to pay the interest owed and make up any difference by selling the transferred assets.

Mr. President, it is important to point out that this legislation is not a bailout of the industry, nor is it risk-free to the Federal taxpayer. But unless we give the industry this option, we will surely face a crisis at the PBGC which could result in even higher taxpayer costs to bail out the agency. Moreover, if we do not adopt this legislation, we will inevitably face further bankruptcies in the industry which will cause severe shocks to the workers and retirees in the industry.

I also believe that this legislation should be crafted to ensure that independent iron ore companies are allowed the same option as the steel companies. As currently drafted, if a steel company owns an iron ore company, the iron ore retirees would receive the benefit of this legislation. However, an independent iron ore company would not receive the same benefits.

There is no reason that independent iron ore companies should be treated any differently than an iron ore company that is vertically integrated in a steel company. I hope that when the legislation is considered in committee, the members will address this aspect of the bill.

I want to commend Senator HEINZ and Senator METZENBAUM for their diligent efforts in developing this legislation. It is an experiment that is worth trying.

By Mr. GRASSLEY (for himself, Mr. DURENBERGER, Mr. MELCHER, Mr. GORE, Mr. CONRAD, Mr. BURDICK, Mr. SASSER, Mr. DIXON, Mr. HECHT, and Mr. SIMON):

S.J. Res. 207. Joint resolution recognizing, encouraging, and supporting the National Rural Crisis Response Center, to the Committee on the Judiciary.

RECOGNIZING AND SUPPORTING THE NATIONAL RURAL CRISIS RESPONSE CENTER

● Mr. GRASSLEY. Mr. President, throughout our Nation's history, individuals have stepped forward to help those in need. Our ancestors combined their ideas, talents, and labor in times of crisis to help their troubled neighbors. I am introducing a joint resolution today to commend and encourage this spirit of helping financially troubled rural America.

As we all know, during recent years our farm and rural neighbors have been struggling, and much of American agriculture is still working to overcome economic troubles. Granted, some of our rural citizens have enjoyed a recovery. But unfortunately, there are many still facing desperate times. I would like to share with my colleagues a recent article that appeared in the Des Moines Register. This article, entitled "Iowa Farmers Keep Local Hotlines Busy," states, and I quote,

> Fran Phillips, coordinator of the Rural Concern Hotline, said farmers who call for displaying a higher degree of stress coinciding with more family problems triggered by the farm crisis. Family tensions run higher the longer a farmer has been involved with bankruptcy or foreclosure procedures, she said.

Mr. President, I ask unanimous consent that the full text of this article be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Des Moines Register, Oct. 9, 1987]

IOWA FARMERS KEEP LOCAL HOTLINES BUSY

(By Tom Carney)

Although the Federal Reserve Board says an end to the farm crisis is near, distressed farmers continue to call hot lines for help with problems that are more complex than ever, say officials who run the hot lines.

"It's that old game of numbers," said Pete Brent, hot line coordinator for Prairiefire, a rural advocacy and educational organization. "You can make numbers do anything."

The recent Federal Reserve report by Emanuel Melichar, the board's agriculture economist, says the farm financial crisis has entered its final stages and the nation's mid-sized farmers have a net worth and annual income well above those of the average non-farm family.

The average mid-sized Midwestern farmer has a net worth of more than $363,000 and net income of almost $50,000, the report says.

Despite the optimistic news, Brent said Prairiefire is logging about the same number of calls as a year ago. However, he said the kinds of calls are changing. Farmers' problems with foreclosure and bankruptcy are more complicated, sometimes involving several generations and their various lenders, co-signers and loan guarantors.

LIKE SPAGHETTI

It's like a bowl of spaghetti." Brent said. "You pull one and you get a whole lot more."

He said he expects the number of calls to increase soon because the hot line usually receives more calls from farmers between December and April.

Fran Phillips, coordinator of the Rural Concern Hotline, said farmers who call are displaying a higher degree of stress coinciding with more family problems triggered by the farm crisis. Family tensions run higher the longer a farmer has been involved with bankruptcy or foreclosure procedures, she said.

Although the overall number of calls to the hotline has decreased, Phillips said the number of calls from farmers who are losing their homes has increased dramatically.

The one-year redemption period after foreclosure, which gives farmers a chance to pay off their mortgages and may give them a break from paying rent or making mortgage payments, has now expired for many farmers, Phillips said. Those who were unable to buy back their farms in that year are now being forced to leave their land, she said.

SOME STILL HURTING

"While there are some indications of recovery in the agricultural sector, there are still farm families in pain," Phillips said.

Although many farmers may not see an easing of the farm crisis, the Federal Reserve report says most agricultural banks have far fewer problem farm loans, and it predicted fewer rural bank failures.

Wes Ehrecke, a vice president of the Iowa Bankers Association, said the bankers at the association's recent convention generally confirm the report.

"We're seeing a more optimistic outlook by the banks," he said.

Iowa banks wrote off $526 million in agriculture-related debts in 1984 through 1986, he said, but Iowa farmers, partly because of better livestock prices, are reducing their debts and beginning to borrow again.

Mr. GRASSLEY. Mr. President, as this article suggests, in past times of crisis, individuals and groups have stepped forward to provide necessary support. For instance, in Iowa, Micheal Thompson, director of the Iowa Farmer/Creditor Mediation Service, expects a caseload of 4,500 cases this year. Joan Blundall of the Northwest Iowa Mental Health Center says, and I quote, "requests for assistance from community colleges, community action agencies, clergy, hospital workers, and teachers for assistance dealing with the impact of the rural condition on individuals and families" have increased. She goes on to say, "our center has found it necessary to deal with the farm crisis as a chronic condition."

Similar assistance efforts have sprung up all over America. Until now, however, there has been no means of coordinating and sharing information and expertise among these groups on a national level.

The American Family Farm Foundation, however, has now started a national Rural Crisis Response Center. The purpose of this center is to provide an information link to the many crisis organizations and advocacy groups initiated within the past years to serve rural constituents. The National Rural Crisis Response Center will be completely funded by private donations. It will help reduce duplication of effort as well as allow the sharing of vital information among assistance groups. Rural residents throughout our country will now have a place to turn when they need to locate the nearest emotional, financial, and legal assistance available.

Mr. President, I am introducing a joint resolution to commend and support the efforts of the National Rural Crisis Response Center. There is no cost in enacting this legislation, yet it will serve to remind the American people about the continuing mental and emotional crisis which continues for thousands in rural America. In short, this joint resolution encourages people to continue to help their troubled neighbors, thus keeping the American spirit of cooperation alive today.

I would like to thank my colleagues who have joined me in this effort as original cosponsors. I ask unanimous consent that the names of Senators DURENBERGER, MELCHER, GORE, CONRAD, BURDICK, SASSER, DIXON, HECHT and SIMON be included in the RECORD.

I urge the rest of my colleagues to support this joint resolution to help make our citizens aware that there is a place they can turn to for help.●

ADDITIONAL COSPONSORS

S. 39

At the request of Mr. MOYNIHAN, the names of the Senator from North Carolina [Mr. SANFORD] and the Senator from North Dakota [Mr. BURDICK] were added as cosponsors of S. 39, a bill to amend the Internal Revenue Code of 1986 to make the exclusion from gross income of amounts paid for employee educational assistance permanent.

S. 542

At the request of Mr. ARMSTRONG, the name of the Senator from Alabama [Mr. SHELBY] was added as a cosponsor of S. 542, a bill to recognize the organization known as the "Retired Enlisted Association, Inc.

S. 685

At the request of Mr. CHILES, his name was added as a cosponsor of S. 685, a bill to amend the Deficit Reduction Act of 1984 to make permanent the administrative offset debt collection provisions with respect to education loans.

S. 929

At the request of Mr. MELCHER, the names of the Senator from Arkansas [Mr. BUMPERS] and the Senator from Montana [Mr. BAUCUS] were added as cosponsors of S. 929, a bill entitled the "Volunteer Protection Act of 1987".

S. 1181

At the request of Mr. PRYOR, the name of the Senator from Colorado [Mr. WIRTH] was added as a cosponsor of S. 1181, a bill to amend the Federal Salary Act of 1967 and title 5 of the United States Code to provide that the authority to determine levels of pay for administrative law judges be transferred to the Commissions on Executive, Legislative, and Judicial Salaries.

S. 1220

At the request of Mr. KENNEDY, the name of the Senator from Minnesota [Mr. DURENBERGER] was added as a cosponsor of S. 1220, a bill to amend the

Public Health Service Act to provide for a comprehensive program of education, information, risk reduction, training, prevention, treatment, care, and research concerning acquired immunodeficiency syndrome.

S. 1429

At the request of Mr. Lautenberg the name of the Senator from Michigan [Mr. Riegle] was added as a cosponsor of S. 1429, a bill to improve the Environmental Protection Agency data collection and dissemination regarding reduction of toxic chemical emissions across all media, to assist States in providing information and technical assistance about waste reduction, and for other purposes.

S. 1489

At the request of Mr. Moynihan, the names of the Senator from Connecticut [Mr. Weicker], the Senator from Virginia [Mr. Warner], the Senator from Utah [Mr. Garn], the Senator from South Dakota [Mr. Pressler], and the Senator from California [Mr. Wilson] were added as cosponsors of S. 1489, a bill to amend section 67 of the Internal Revenue Code of 1986 to exempt certain publicly offered regulated investment companies from the disallowance of indirect deductions through pass-through entities.

S. 1519

At the request of Mr. Lautenberg, the name of the Senator from South Carolina [Mr. Hollings] was added as a cosponsor of S. 1519, a bill to authorize the President of the United States to award congressional gold medals to Lawrence Doby and posthumously to Jack Roosevelt Robinson in recognition of their accomplishments in sport and in the advancement of civil rights, and to authorize the Secretary of the Treasury to sell bronze duplicates of those medals.

S. 1572

At the request of Mr. Pell, the name of the Senator from North Dakota [Mr. Burdick] was added as a cosponsor of S. 1572, a bill to create a National Education Savings Trust; to prescribe the powers and duties of the Trust and of its Board of Trustees; to provide for advance tuition payment plan agreements; to establish an advance tuition payment fund and to provide for its administration, and for other purposes.

S. 1620

At the request of Mr. Pell, the name of the Senator from North Carolina [Mr. Sanford] was added as a cosponsor of S. 1620, a bill to reauthorize and revise the Act of September 30, 1950 (Public Law 874, 81st Congress) relating to Federal impact aid, and for other purposes.

S. 1774

At the request of Mr. Pryor, the name of the Senator from Wyoming [Mr. Simpson] was added as a cosponsor of S. 1774, a bill to promote and protect taxpayer rights, and for other purposes.

S. 1776

At the request of Mr. Armstrong, the names of the Senator from Arizona [Mr. McCain], the Senator from Illinois [Mr. Dixon], the Senator from New Hampshire [Mr. Humphrey], and the Senator from Idaho [Mr. Symms] were added as cosponsors of S. 1776, a bill to modernize United States circulating coin designs, of which one reverse will have a theme of the Bicentennial of the Constitution.

SENATE JOINT RESOLUTION 98

At the request of Mr. Hatch, the names of the Senator from North Dakota [Mr. Burdick], the Senator from South Dakota [Mr. Daschle], and the Senator from Vermont [Mr. Leahy] were added as cosponsors of Senate Joint Resolution 98, a joint resolution to designate the week of November 29, 1987, through December 5, 1987, as "National Home Health Care Week".

SENATE JOINT RESOLUTION 105

At the request of Mr. Lautenberg, the name of the Senator from Indiana [Mr. Quayle] was added as a cosponsor of Senate Joint Resolution 105, a joint resolution to designate December 7, 1987, as "National Pearl Harbor Remembrance Day" on the occasion of the anniversary of the attack on Pearl Harbor.

SENATE JOINT RESOLUTION 125

At the request of Mr. Roth, the names of the Senator from Alaska [Mr. Murkowski], the Senator from Idaho [Mr. Symms], the Senator from Hawaii [Mr. Matsunaga], the Senator from Indiana [Mr. Lugar], and the Senator from Kansas [Mrs. Kassebaum] were added as cosponsors of Senate Joint Resolution 125, a joint resolution to designate the period commencing on May 9, 1988, and ending on May 15, 1988, as "National Stuttering Awareness Week."

SENATE JOINT RESOLUTION 172

At the request of Mr. Bradley, the names of the Senator from Tennessee [Mr. Gore], the Senator from Delaware [Mr. Biden], the Senator from North Dakota [Mr. Burdick], the Senator from Idaho [Mr. McClure], the Senator from New Jersey [Mr. Lautenberg], the Senator from South Carolina [Mr. Thurmond], and the Senator from Connecticut [Mr. Dodd] were added as cosponsors of Senate Joint Resolution 172, a joint resolution to designate the period commencing February 21, 1988, and ending February 27, 1988, as "National Visiting Nurse Association Week."

SENATE JOINT RESOLUTION 188

At the request of Mr. Sarbanes, the names of the Senator from Delaware [Mr. Biden] and the Senator from California [Mr. Cranston] were added as cosponsors of Senate Joint Resolution 188, a joint resolution designating the week of November 1 through November 7, 1987, as "National Watermen's Recognition Week."

SENATE JOINT RESOLUTION 196

At the request of Mr. Packwood, the name of the Senator from California [Mr. Cranston] was added as a cosponsor of Senate Joint Resolution 196, a joint resolution to designate February 4, 1988, as "National Women in Sports Day."

SENATE JOINT RESOLUTION 203

At the request of Mr. D'Amato, the names of the Senator from California [Mr. Wilson], the Senator from Florida [Mr. Chiles], the Senator from Nevada [Mr. Hecht], the Senator from Pennsylvania [Mr. Specter], and the Senator from South Dakota [Mr. Daschle] were added as cosponsors of Senate Joint Resolution 203, a joint resolution calling upon the Soviet Union immediately to grant permission to emigrate to all those who wish to join spouses in the United States.

SENATE CONCURRENT RESOLUTION 43

At the request of Mr. Stevens, the names of the Senator from Mississippi [Mr. Stennis], the Senator from Massachusetts [Mr. Kennedy], the Senator from North Carolina [Mr. Helms], and the Senator from Tennessee [Mr. Sasser] were added as cosponsors of Senate Concurrent Resolution 43, a concurrent resolution to encourage State and local governments and local educational agencies to provide quality daily physical education programs for all children from kindergarten through grade 12.

SENATE CONCURRENT RESOLUTION 82

At the request of Mr. Lugar, the names of the Senator from Colorado [Mr. Armstrong], the Senator from Minnesota [Mr. Durenberger], the Senator from Nebraska [Mr. Karnes], the Senator from Alaska [Mr. Murkowski], and the Senator from Arizona [Mr. McCain] were added as cosponsors of Senate Concurrent Resolution 82, a concurrent resolution urging the German Democratic chief of State Erich Honecker to repeal permanently the order directing East German border guards to shoot to kill anyone who, without authorization, attempts to cross the Berlin Wall, and to issue an order to tear down the Berlin Wall.

SENATE RESOLUTION 300—EXPRESSING SUPPORT FOR GROUPS WORKING FOR FREEDOM AND AGAINST COMMUNISM IN SOUTHWEST AFRICA

Mr. HELMS submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. Res. 300

Whereas the President has expressed United States foreign policy as opposing Soviet-backed terrorist campaigns to subvert or seize control of non-Soviet countries and territories in various parts of the world, including Central America, South East Asia, the Middle East, Afghanistan, and South West Africa (Namibia);

Whereas approximately 40,000 Cuban combat soldiers and several thousand Soviet and East German advisers currently occupy Angola and lend support to the Soviet-backed terrorist campaign of the South West Africa Peoples Organization (hereafter in this resolution referred to as "SWAPO"), which, operating from bases in southern Angola, is attempting to seize control of Namibia before that territory can achieve internationally acceptable independence;

Whereas the United Nations General Assembly continues to designate SWAPO as the "sole and authentic" representative of the people of Namibia, accords SWAPO permanent observer status at the United Nations, and finances SWAPO propaganda offices and meetings throughout the world, but refuses to recognize the various Namibian parties who make up Namibia's Multi-Party Conference;

Whereas on June 17, 1985, as a result of the peaceful negotiations with Namibia's duly chosen political leaders, the Republic of South Africa voluntarily effected a complete transfer to leaders of the Namibia Multi-Party Conference of all administrative powers of local self-government that were previously exercised by the South African Administration-General for Namibia;

Whereas Namibia's chosen Multi-Party Conference political leaders, acting on behalf of the people of Namibia, immediately established an interim Namibia Transitional Government of National Unity and invited all political parties, including SWAPO, to participate in exercising the powers of local self-government enjoyed for the first time since 1884 by the people of Namibia;

Whereas Namibia's Transitional Government of National Unity has enacted laws abolishing apartheid in Namibia and imposing criminal penalties for racial discrimination, released all political prisoners, and established a democratic form of government;

Whereas SWAPO, under Soviet direction, has refused to cooperate or participate in any democratic or peaceful process leading to Namibian independence;

Whereas historic United States foreign policy encourages and supports indigenous political groups and similar organizations which seek to establish non-Soviet controlled and democratic governments in developing countries; and

Whereas Namibia's Transitional Government of National Unity and the various political parties comprising Namibia's Multi-Party Conference represent the most broad-based political organization capable of achieving peaceful independence for South West Africa (Namibia) and should be supported by the United States: Now, therefore, be it

Resolved, That it is the sense of the Senate that—

(1) the President should continue to pursue serious multilateral initiatives aimed at achieving the removal of all Cuban combat troops now occupying Angola and the closure of all SWAPO bases in southern Angola, and should withhold payment of the United States proportionate share of the annual United Nationals General Assembly budget until that organization and its affiliated agencies terminate their designation of SWAPO as the "sole and authentic" representative of the Namibian people and adopt a policy of impartiality in treatment of all Namibian political parties, including the Democratic Turnhalle Alliance, the Labour Party, the National Party, the Rehoboth Liberated Democratic Party, the South West Africa National Union, and SWAPO-Democrats; and

(2) the Department of State should immediately establish contact with the leaders of all political parties who make up the Namibia Multi-Party Conference and the interim Namibia Transitional Government of National Unity; and

(3) the President should immediately make a determination under section 311 of Public Law 99-440 to terminate economic sanctions currently applicable to Namibia; and

(4) the United States should support Namibia's interim Transitional Government of National Unity, pending internationally acceptable independence of that territory, by—

(A) establishing an interests section in Windhoek, Namibia;

(B) dispatching a delegation of officials to Windhoek for bilateral discussions with all of Namibia's duly chosen political party leaders;

(C) including Namibia among sub-Saharan African nations receiving economic, humanitarian, and military aid from the United States and from international organizations which the United States supports;

(D) establishing Peace Corps representation in Namibia;

(E) encouraging United States private investment in nongovernmental enterprises in Namibia;

(F) supporting Namibia's control of its fishing industry by demanding that other nations comply with generally recognized international rules and existing agreements;

(G) establishing a student exchange program between United States colleges and Namibia educational institutions;

(H) inviting all Namibian political parties, including Namibia's Multi-Party Conference and SWAPO, to meet in an all-parties conference to develop a consensus on the time and method for achieving independence of Namibia free from foreign control; and

(I) allocating funds provided in title II of Public Law 99-440 (measures to assist victims of apartheid) to appropriate nongovernmental organizations in Namibia.

Sec. 2. The Secretary of the Senate shall transmit a copy of this resolution to the President and to the Secretary of State.

Mr. HELMS. Mr. President, despite all the debate about sanctions against South Africa, there should be no dispute about the unreasonableness of applying sanctions under the Comprehensive Anti-Apartheid Act to Namibia. Indeed, at hearings before the Committee on Foreign Relations today, even Assistant Secretary of State Chester Crocker stated the administration position that Namibia should not have been brought under sanctions by the terms of the act.

Namibia is not part of South Africa, and never has been. We don't recognize the Government of Namibia, but we ought to. It is a multiparty, nonracial government which includes representatives of all parties except for SWAPO, the Communist-backed terrorist group which seeks total control of Namibia. The Government of Namibia has offered to enter into negotiations with SWAPO, to allow SWAPO to participate in the democratic process, and to seek an end to violence.

The Government of Namibia has already performed all the tests in the act for the lifting of sanctions. Namibia's democratic system has enacted laws abolishing all forms of apartheid in Namibia, imposed criminal penalties for racial discrimination, released all political prisoners, and established a representative form of government. No political movement is banned in Namibia, including SWAPO. And indeed SWAPO has held several public meetings in the past year.

Namibia thus meets all the tests in the Anti-Apartheid Act. There is no rational reason for continuing sanctions against Namibia. It is arbitrary, and unnecessary.

Mr. President, the Minister of Justice of Namibia, Mr. Jairetundu Kozonguizi, is here in Washington this week. He has given me a comprehensive statement that sets forth the undeniable progress that Namibia has made in eliminating all forms of apartheid. The statement of Mr. Kozonguizi demonstrates in great detail that the policy of sanctions against Namibia is unjust and wrong-headed.

Today I am submitting a comprehensive sense of the Senate resolution commending the progress in Namibia, and urging the President to lift sanctions from Namibia under the authority in the Anti-Apartheid Act.

Mr. President, the statement of Mr. Kozonguizi makes my case for this resolution better than I can do so myself, and I ask unanimous consent that it be printed in the Record.

There being no objection, the statement was ordered to be printed in the Record, as follows:

Statement of Jariretundu Kozonguizi, Minister of Justice, Information and Post and Telecommunications Transitional Government of National Unity, Windhoek, Namibia

[Presented to the Honorable Jesse Helms of North Carolina, Ranking Republican, Senate Foreign Relations Committee, October 22, 1987]

We in Namibia take, as you will understand, a particular interest in the proceedings of your subcommittee on reviewing the effects of the Comprehensive Anti-Apartheid Act of 1986 on the situation in what is defined as South Africa. We have read with care President Reagan's report to the Congress pursuant to section 501 of the act and the recent statements of administration policy on South Africa embodied in the remarks of Secretary of State Shultz before the Business Council for International Understanding on September 29, 1987, and those of Assistant Secretary Crocker at the White Plains' Conference on "South Africa in Transition", on October 1, 1987. We have also reviewed, with equal care, the statements of a considerable number of Members of the Senate and the House of Representatives of the same topics. We believe that we now understand, as far as any person outside of the foreign policy process of the

United States is capable of doing, what the great majority of American statesmen and politicians are seeking to achieve in South Africa.

Perhaps I ought to begin by indicating to you what our understanding of that objective is. We see your efforts as directed towards, as Assistant Secretary Crocker indicated on October 1, the elimination of racism, apartheid, cross-border violence, black disenfranchisement and economic exploitation, necklacing and terrorism, by any party in Southern Africa. We see them as intended to promote, as the Comprehensive Anti-Apartheid Act itself makes clear, the emergence of a non-racial, democratic form of government in South Africa. To the extent that there are differences between you, these appear to us to be limited to questions of strategy. The debate, it seems, centres on how best to achieve the goals which all relevant political actors in the United States espouse.

We are aware that the situation in South Africa is a source of concern to all Americans. The parallels with the struggle for civil and political rights in your own country is, despite the obvious differences, politically irresistible. Political leaders and indeed millions of other American citizens of both parties and many different points of view have become convinced that the United States must act in a manner consistent with its moral principles, to contribute positively in whatever way it can to hastening the demise of apartheid in South Africa.

Both President Reagan and Secretary of State Schultz delivered major policy addresses on this topic before the Comprehensive Anti-Apartheid Act was passed last year. In his speech at the White House on July 22, 1986, before an audicence of members of the World Affairs Council and the Foreign Policy Association, President Reagan identified six "necessary components of progress toward political peace" in South Africa. These were:

The establishment of a timetable for elimination of apartheid laws;

The release of all political prisoners;

The release of Nelson Mandela, to participate in the country's political process;

The unbanning of black political movements;

The commencement of a process of dialogue about constructing a political system resting on the consent of the governed where the rights of majorities, minorities and individuals are protected by law;

The protection (and development) of the South African economy as the economic locomotive of the southern Africa region.

In his testimony before the Senate Foreign Relations Committee on July 23, 1986, Secretary Shultz added to the President's catalogue, the need for the South African Government to end repressive measures, especially the state of emergency; called on black South Africans to avoid the easy descent into violence, terrorism and extremism; to demonstrate their understanding of the need for compromise; to remember that they may soon share responsibility for governing and reconstructing South Africa; and to seek out and accept realistic openings for dialogue and negotiation with the Government.

I should imagine that it would be almost impossible for a caring and responsible American, irrespective of his or her political affiliation, to find fault with these principles. In the absence of steps demonstrating good faith, a willingness to negotiate and compromise and a real desire to define and consolidate the badly eroded middle ground of South African politics, it is hard to see how a democratic, pluralist future can be secured for all South Africa's inhabitants.

Secretary Shultz noted the pervasiveness of fear in South Africa: Fear of radical change and the destruction of familiar value systems on the part of whites; fear of even greater violence and repression on the part of blacks. He called on the true friends of the people of South Africa to help show all in that society the way out of this slough of despair.

Doing this, both President Reagan and Secretary Shultz have suggested means encouraging the South African Government and the young, angry black citizens of that country to find a better future along the path they indicated. It will not have escaped the notice of many that the path suggested by Mr. Reagan and Mr. Shultz is essentially the same as that proposed by the luminaries of the Commonwealth eminent persons group, and by the European Community, whose emmissary, British Foreign Secretary Sir Geoffrey Howe, paid an extended visit to southern Africa in 1986.

Despite the failure thus far of the protagonists in the South African drama to accept the advice offered to them, it is difficult to believe that those who shape policy in the United States have any option but to continue to work toward this goal. No course other than compromise can produce peace in South—and southern-Africa; no approach other than promoting it is, I assume, consistent with American values.

It seems clear, however, that you, and your allies, will enhance the prospect of success in South Africa, if you apply the same principles more consistently in southern Africa as a whole. And there can be no doubt that you have, thus far, most regrettably, failed the test of consistency in Namibia.

Namibia, my country, a large, sparsely populated land of only 1.2 million people, lies sandwiched between the strife-torn nations of South Africa and Angola. Despite this, the continuing hysteria of the U.N. council for Namibia and the residue of an insurgency campaign waged by the Soviet and Cuban backed South West Africa Peoples Organization (SWAPO), it is a remarkably peaceful and increasingly democratic society. Governed since June 17, 1985, by a transitional government of national unity consisting of six indigenous political groups, the country has made important strides towards becoming the sort of society which you have indicated you would like to see in South Africa.

Consider the following:

1. *Elimination of apartheid:*

Namibia's Cabinet, with full executive powers outside of external defense and foreign relations, consists of eight ministers, only two of whom are white. Chairmanship of the Cabinet rotates every 3 months. Eight deputy ministers assist their Cabinet colleagues; only one is white.

The National Assembly, with full legislative power excepting in matters of external defense and foreign relations, comprises 62 members, 11 of them white.

The Constitutional Council, charged with making proposals for an independence constitution, to be submitted to the electorate in a referendum, comprised 18 members, 2 of whom were white.

On April 8, 1986, by unanimous vote of the National Assembly, it was decided that all remaining manifestations of institutionalized ethnic and racial discrimination and separation (e.g. proclamation A.G. 8 of 1980) could not simply be changed but had to be entirely removed and that the new political and administrative dispensation in Namibia, was to be based on:

". . . A geographic, that is, non-tribal and non-racial, demarcation of (the) country—organized in such a way that all sections of our national society are represented at all levels of government, local, regional and/or provincial, and national."

Proposals by the different parties to give effect to this resolution have been considered by the Constitutional Council and the Select Committee on National Unity of the National Assembly.

All other legal manifestations of apartheid (prohibition of "mixed" marriages and inter-racial sex, the "group areas" and "separate amenities" acts, the "pass laws" etc.) were abolished in Namibia between 1977 and 1981. It is a criminal offense, with prescribed penalties, to attempt to segregate on grounds of race or color in Namibia's urban areas.

2. *Release of political prisoners:*

Nelson Mandela's equivalent in Namibian terms is Herman (Andimba) Toivo Ja Toivo, a colleague of mine in the early days of the struggle for Namibia's independence, and now SWAPO's Secretary-General. He was released in 1984, following strong representations by the Multi-Party Conference (MPC), the parties represented in which, now constitute the Namibian Transitional Government of National Unity (TGNU).

Since coming to power, our cabinet has ordered the release of 22 persons, who had been sentenced to terms of imprisonment by South African and South West African courts for crimes related to their political beliefs. Seventeen of these men were serving life sentences.

Well over 50 persons detained without trial under the harsh provisions of section 5 BIS of Proclamation AG-9 of 1977, have likewise been released, as have the last six detainees under Proclamation AG-26 of 1978. Although officials of the Army and police still enjoy powers of discretionary detention up to 30 days—necessitated by SWAPO's insurgency campaign and the great distances within Namibia—no significant Namibian political figure is in prison or detention today.

3. *Unbanning of political movements:*

No political movement is banned in Namibia. Unlike Angola, Mozambique, South Africa, Zambia or Zimbabwe—all neighboring states—no state of emergency has been proclaimed in Namibia. Until 15 months ago it was held that SWAPO as an organization campaigning for the overthrow of the government by violence, and indeed prosecuting acts of terrorism and sabotage in Namibia, was prohibited—by a law based on Article 20 of the U.N. International Covenant on Civil and Political Rights—from holding meetings of more than 20 persons. In July 1986, however, a full bench of the Supreme Court ruled that SWAPO was not covered by this prohibition and the organization has held several public meetings in the year.

4. *Dialogue to promote agreement on a new comprehensive, democratic, political system, including legal protection of the rights of majorities, minorities and individuals:*

The multi-party conference unanimously adopted a full-fledged bill of fundamental rights and objectives in April 1984. At the conference's request, the rights enshrined in this bill were incorporated into the proclamation constituting the transitional government of national unity and the government's executive and legislative competence is restricted by the bill of rights. The Namibian Supreme Court is empowered to review all legislative and executive acts of the TGNU and to strike down legislation passed by the national assembly in conflict with the bill.

The cabinet introduced legislation instituting the Office of Ombudsman—a public official responsible to the National Assembly for reporting on and, where possible, rectifying instances of administrative violations of the bill of rights. The first ombudsman, a judge of the supreme court, began his term earlier this year.

The Multi-Party Conference was itself a forum, created by Namibian political leaders, for dialogue about the creation of a democratic political system responsive to the needs of all Namibians. The conference include representatives of the 11 constituent parties of the Democratice Turnhalle Alliance (DTA), the Labour Party of Namibia, the National Party of South West Africa, the Rehoboth Free Democratic Party, the South West Africa National Union (SWANU) and the Swapo-Democrats. All of these political groups are now represented in Namibia's transitional government of national unity.

The MPC sought throughout to include all Namibian political groups—including the South West Africa People's Organization (SWAPO)—in the conference. The leaders were assisted in this endeavor by Presidents Kaunda of Zambia, Houphouet-Boigny of the Ivory Coast, Bongo of Gabon, Eyedema of Togo and, to some degree, Perreira of the Republic of Cape Verde. Under President Kaunda's auspices, and with the Administrator-General of South West Africa as a co-chairman, Namibia independence talks between delegations representing the MPC and SWAPO were held in Lusaka, Zambia between May 10 and May 13, 1984. These talks broke down when SWAPO President Sam Nujoma refused, despite President Kaunda's urging, to sign the final communique. President Houphouet-Boigny, however, has continued his efforts, at the request of the transitional government, to bring the parties together for a further round of talks.

Since forming the TGNU, the MPC parties have also invited SWAPO on many occasions to join them in discussions about means of achieving national reconciliation and unity in Namibia, as a prelude to peaceful and stable independence. They have been rebuffed, chiefly because SWAPO, which enjoys the status of permanent observer at the United Nations, and is heavily funded by the world body and recognized as the "sole and authentic representative of the Namibian people" by the U.N. General Assembly, does not appear to be interested in forfeiting its unique and privileged status in the interests of Namibian national reconciliation. Instead it prefers to continue its glamorous sounding "war of national liberation"—in fact, an unsuccessful, Angola-based campaign of intimidation, sabotage and occasional low intensity guerrilla insurgency—and bask in its status as a "vanguard party". Although SWAPO is not a communist movement—it is not in fact ideologically disciplined at all—it does receive approximately 60 percent of its total assistance and about 90 percent of its military aid from Soviet-bloc countries. SWAPO President Sam Nujoma is, of course, a member of the World Peace Council and a guest speaker at every Communist Party Congress from Angola to the Soviet Union. The organization's political program aims, through prosecution of the "armed struggle," at establishing a "classless society" based on the "principles of scientific socialism."

One might assume, bearing in mind the goals of the administration and the congress in respect of South Africa, that these efforts to shape a moderate, democratic future for Namibia, would enjoy comprehensive diplomatic and practical support in the United States. Instead, under the influence of UNSCR 435 (1978) which provides for "free and fair" elections in Namibia, under U.N. auspices, the U.S. Government has held the TGNU at arm's length, refused to assist us in any way and, as a matter of conscious policy, continues to discourage any form of private investment in Namibia. "Free and fair" elections in Namibia are greatly to be desired, but they cannot be held under the aegis of the U.N. as long as the United Nations remains committed to and wholly identified with SWAPO, both in fact and in the minds of all Namibians. The implementation of UNSCR 435 is, moreover, blocked by the insistence of the U.S. administration and the South African Government on prior agreement being reached on the withdrawal of all Cuban troops from Angola.

Can Namibians do more at this stage to comply with the political standards suggested by the Congress, the administration, Commonwealth Eminet Persons' Group and the European Council of Ministers, for South Africa? How does the Congress justify the extraordinary step it took last year, in defining Namibia as part of South Africa for the purposes of the Comprehensive Anti-Apartheid Act? We are heartened by the fact that the European Communities took a completely different approach; the president of the Council of Ministers having made clear that the Namibian question was completely distinct from that of South Africa and required a different approach.

Why, however, should the United States seek to punish us for doing just what you are seeking to have South Africa do? The Namibian TGNU stands for the same values which the United States propounds; we are a moderate African government, committed to the liberation and independence of our country, but well-disposed to the United States and other Western powers. Our human rights record, even in the difficult circumstances brought on by a continuing low-level, Soviet-backed insurgency, is vastly better than that of many other African states and a considerable improvement on that of the South African administration which preceded us.

What can we do to avoid the gratuitous punishment effected by the Congress' decision to include Namibia—in defiance of geography and international law—in its definition of South Africa?

We are not in a position to force the Cubans to leave Angola. Their departure is a condition precedent to our independence established by the U.S. administration. We do not criticise you for this; the presence of more than 30,000 Cuban combat troops just to the north of us does indeed, as Assistant Secretary Crocker has noted more than once, pose a threat to the possibility of true independence for Namibia. But we cannot understand why we should be punished with economic sanctions because our independence is being delayed by the existence of a Cuban threat to the stability of this region!

The situation in Namibia in this transitional phase therefore provides the United States with an opportunity both to support democracy in Namibia and to signal the South African Government and all South African citizens that Washington is indeed prepared to support constructive moves, as Mr. Reagan and many other prominent Americans, of both parties, have suggested, down the path to a democratic South Africa. Whatever the justification for economic sanctions, and I must place on record that we have fundamental reservations about their efficacy as policy instruments in the circumstances in which the Congress has seen fit to apply them—Namibia should clearly be exempted from those applied against South Africa. This is necessary, both on the merits of the case and in order to send the proper signal to all parties.

There is undoubtedly a reservoir of political support in the Congress and in the United States as a whole, for steps to promote the end of racial discrimination and the construction of a democratic future in southern Africa. If the Government and whites of South Africa are to be encouraged to take these steps, however, and if that nation's black citizens are to be nudged toward accommodation and compromise, this administration and Congress must show that they are prepared to support and reward such a process where it is taking place in Namibia. Unless there is tangible evidence of such support, the United States cannot expect anyone in South Africa, or elsewhere in the region, to take its promises and assurances seriously. If you lack the political and moral courage to act consistently at present, the Soviet Union's interest in promoting societal polarization and revolutionary class struggle in southern Africa will go unchallenged and a bleak future awaits all of us who live our lives on the subcontinent.

NOTICES OF HEARINGS

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. JOHNSTON. Mr. President, I would like to announce for the information of the Senate and the public that an open hearing has been scheduled to continue to receive testimony on the status of the Department of Energy's efforts to address issues concerning the defense materials production reactors located in the United States.

The hearing will be held on October 29, 1987, at 2 p.m. in room SD-366 in the Dirksen Senate Office Building in Washington, DC. This hearing is a continuation of a closed hearing scheduled on October 27 at 10 a.m. in room S-407. For further information please contact Mary Louise Wagner at 202-224-7569.

Those wishing to submit written testimony for the hearing record should send it to the Committee on Energy and Natural Resources, United States Senate, Washington, DC 20510.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. JOHNSTON. Mr. President, I would like to announce for the information of the Senate and the public that the oversight hearing regarding the United States-Canada Free Trade Agreement scheduled before the Committee on Energy and Natural Resources on Tuesday, November 3, 1987, at 9:30 a.m. in room SD-366 has been canceled. In lieu of a public hearing, the committee has scheduled a closed briefing at the same time and place on the United States-Canada Free Trade Agreement and its potential effects on energy and natural resources industries. The closed briefing will be conducted by Ambassador Clayton Yeutter, U.S. Special Trade Representative, and will be open to committee members and their staffs.

COMMITTEE ON INDIAN AFFAIRS

Mr. INOUYE. Mr. President, I would like to announce that the Select Committee on Indian Affairs will be holding the following:

On Wednesday, October 28, 1987, beginning at 9 a.m., in Senate Dirksen 562, a joint hearing with the Water and Power Subcommittee of the Committee on Energy and Natural Resources on S. 1415, a bill to facilitate and implement the settlement of Colorado Ute Indian reserved water rights claims in southwest Colorado; and

On Thursday, October 29, 1987, beginning at 2 p.m., in Senate Russell 485, a markup on S. 1703, amendments to the Indian Self-Determination and Education Assistance Act; and S. 795, San Luis Rey Water Rights Settlement Act.

Those wishing additional information should contact the committee at 224-2251.

AUTHORITY FOR COMMITTEES TO MEET

SUBCOMMITTEE ON AGRICULTURAL CREDIT

Mr. BYRD. Mr. President, I ask unanimous consent that the Subcommittee on Agricultural Credit of the Committee on Agriculture, Nutrition, and Forestry be authorized to meet during the session of the Senate on Thursday, October 22, 1987, to mark up farm credit legislation.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON THE JUDICIARY

Mr. BYRD. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to hold a hearing during the session of the Senate on October 22, 1987, on Sentencing Commission guidelines.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON ENVIRONMENTAL PROTECTION

Mr. BYRD. Mr. President, I ask unanimous consent that the Subcommittee on Environmental Protection, Committee on Environment and Public Works, be authorized to meet during the session of the Senate on Thursday, October 22, to conduct a markup on S. 675, a bill to authorize appropriations to carry out the Endangered Species Act during fiscal years 1988 through 1992, and other pending legislation on fisheries and wildlife, plastics pollution and boat paints containing the chemical TBT.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON STRATEGIC FORCES AND NUCLEAR DETERRENCE

Mr. BYRD. Mr. President, I ask unanimous consent that the Subcommittee on Strategic Forces and Nuclear Deterrence of the Committee on Armed Services, be authorized to meet during the session of the Senate on Thursday, October 22, 1987, in open session to receive an overview of the Department of Energy safety oversight provisions of title I of S. 1085, a bill to create an Independent Oversight Board to ensure the safety of U.S. Government nuclear facilities, and for other purposes.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. BYRD. Mr. President, I ask unanimous consent that the Energy and Natural Resources Committee be authorized to meet during the session of the Senate on Thursday, October 22, 1987, of hearings to receive testimony on the Arctic National Wildlife Refuge legislation S. 1217, a bill to amend the Mineral Leasing Act of 1920 to authorize the Secretary of the Interior to lease, in an expeditious and environmentally sound manner, the public lands within the Coastal Plain of the North Slope of Alaska for oil and gas exploration, development, and production.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON THE JUDICIARY

Mr. BYRD. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate on October 22, 1987, to hold a hearing on judicial nominations.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON WESTERN HEMISPHERE AND PEACE CORPS AFFAIRS

Mr. BYRD. Mr. President I ask unanimous consent that the Subcommittee on Western Hemisphere and Peace Corps Affairs of the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, October 22, 1987, to hold a hearing on United States policy with respect to Panama, S. 1614

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON NUTRITION AND INVESTIGATIONS

Mr. BYRD. Mr. President, I ask unanimous consent that the Subcommittee on Nutrition and Investigations of the Committee on Agriculture, Nutrition, and Forestry, be authorized to meet during the session of the Senate on Thursday, October 22, 1987, to review the quality control and fiscal sanctions system in the Food Stamp Program.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON AFRICAN AFFAIRS

Mr. BYRD. Mr. President. I ask unanimous consent that the Subcommittee on African Affairs of the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, October 22, 1987, to hold a hearing on United States policy with respect to South Africa.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

Mr. BYRD. Mr. President, I ask unanimous consent that the full Committee on Environment and Public Works be authorized to meet during the session of the Senate on Thursday, October 22, to mark up clean air legislation.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

IRS STUDENT LOAN COLLECTIONS

● Mr. CHILES. Mr. President, I rise today to join as a cosponsor of S. 685, a bill to make permanent the Internal Revenue Service collection efforts for defaulted student loans. For the last 2 years these efforts have been functioning as a pilot program and have been an outstanding success. In these 2 years, the Department of Education has been forwarding to the Internal Revenue Service thousands of names of citizens who have walked away from their student loan obligations. Instead of receiving their tax return, these loan defaulters have received a note from Uncle Sam saying "thanks for your loan payment." This program has saved the taxpayer over a quarter of a billion dollars during its pilot stage. If we pass S. 685 and continue the program, it will save us an additional $200 million next year alone. Most importantly, this program tells student loan defaulters that "you can run but you can't hide." Uncle Sam is going to get what he is owed, one way or another.

Mr. President, I, like so many of my Senate colleagues, attended college on the GI bill through the generosity of the American taxpayer. Since the mid-1960's, our student financial aid programs, like the GI bill, have served as a crucially important engine of equal educational opportunity. As chairman of the Appropriations Subcommittee for Labor, Health and Human Services, and Education, I was pleased that the Senate recently approved my recommendations to boost funding for student financial aid by $573 million providing a total of more than $8.7 billion for fiscal year 1988. This level will include more than $5 billion in grant funds for our neediest students, $614 million in work-study funds to help our students work their way through school, and $3.1 billion for the student loan programs.

Now, more than ever, it is essential that while we seek to reduce our Federal budget deficit, we maintain our commitment to see that all able students have the opportunity to attend college. Our growing trade deficit has highlighted our need for a better trained work force. While we are in a bitter battle with the industrialized world to excel in areas of high technology, Japan, our chief competitor and a nation half our size, is graduating as many engineers as we are. Economic projections now indicate that almost all job growth in the United States will occur in occupations that require at least some postsecondary education, if not a full 4 years of college or more.

Mr. President, we cannot put at risk the privilege of a higher education because a small minority abuse this privilege and default on their loans. But we also cannot ignore the fact that the cost of student loan defaults will soon grow to more than $1.5 billion per year. This is not because the default rate has grown dramatically. In fact, since the early years of the student loan programs, the default rate has come down. The default rate for student loans remains below the rate for many other forms of Federal loans. Still, the growth in the number of students using the loan programs is driving up the default costs. The IRS collection effort reduces these costs, leaving us with sufficient funds to provide assistance to those students who take their responsibility to the taxpayer seriously.

In the last Congress, I was pleased to support S. 1965 which extended the authority for our student loan programs through 1991. The bill contained many new provisions for default prevention including enhanced student counseling and new collection procedures. It is now time to complete the job and ensure that we get back the funds we lend out to our students, one way or another. Only in this way can we be sure that we will have the resources to provide our next generation with the education they need and deserve.●

THE 10TH ANNIVERSARY OF THE SENIOR OPPORTUNITIES SERVICES PROGRAM OF RICHMOND, IN

● Mr. **QUAYLE**. Mr. President, I rise today to call attention to America's senior citizens, a group of people who are increasingly being called upon to come out of retirement and reenter the work force. As the average age of the American worker continues to climb, older people are needed to fill positions heretofore filled by younger workers.

The average age of the national work force today is approximately 27 years and it is projected that this figure will rise to 37 years by the year 2025. It is speculated that by the early part of the next decade there will be a labor shortage and a need to retain the services of those Americans 55 and older in order to make up for the shortage.

One such program that is working today to meet this challenge is the Senior Opportunties Services, Inc. [SOS], of Richmond, IN. This not-for-profit organization serves as a link between older workers and employers interested in hiring these persons for their mature services and skills.

Any individual 55 or older may join the SOS Program, which operates a service to match the experience and skills of its members with the requirements of prospective employers. SOS also operates a craft shop where over 175 senior citizens market their hand made items. Along with helping employers who are in need of labor, SOS also serves to aid older people who seek to supplement their fixed incomes and feel again like useful and productive citizens.

SOS was created in 1977 as a joint effort of the Richmond Noon Kiwanis Club and the Richmond Area Chamber of Commerce. It has received funding and recognition from the city of Richmond, as well as other private and public sources. In honor of its 10th anniversary, Mayor Frank Waltermann of Richmond has proclaimed the week beginning November 1, 1987, as Senior Opportunities Services Week.

I would like to join with Major Waltermann and the people of Richmond, IN, in honoring the SOS Program. I commend the organization on the work it is doing to help senior citizens find jobs and also to plan today for the upcoming shortage of labor. It is my hope that, by recognizing the achievements of the Senior Opportunities Services Program, other cities across America will learn by the experience of the SOS Program and start their own services to aid the deserving senior citizens in our Nation.●

LAUREL LOFTSGARD

● Mr. **BURDICK**. Mr. President, North Dakota State University is today mourning the loss of its president, Laurel Loftsgard. He died of cancer yesterday at age 61.

Loftsgard was at NDSU, Fargo's land grant college, as long as I've been in Washington, since 1958. He taught agricultural economics for many years, before becoming vice president for academic affairs.

Since 1968, when Loftsgard was named president, NDSU has grown by leaps and bounds. This beautiful campus on the north side of Fargo is best known as a center for agricultural research, but it has strong programs in every field, from engineering to home economics.

I enjoyed working with Laurel Loftsgard and considered him a personal friend. A native North Dakotan, he knew the State and its people and helped build its university into a major center for higher education.

Mr. President, I ask unanimous consent that an article from the Forum, a Fargo newspaper, written by Jim Neumann, be inserted in the RECORD. It is a tribute to this educational leader.

The article follows:

LAUREL LOFTSGARD, PRESIDENT OF NDSU, SUCCUMBS TO CANCER

(By Jim Neumann)

Laurel D. Loftsgard, president of North Dakota State University for 19 years, died late Thursday of cancer at a Fargo hospital. He was 61.

Loftsgard, who had a cancerous kidney removed last March, had been hospitalized for cancer treatment since Aug. 11. He died at 11:40 p.m. according to a nursing supervisor at St. Luke's Hospitals.

John Richardson, state commissioner of higher education, said he would appoint an acting president in the near future to serve until a new president can be selected by the Board of Higher Education.

Robert Koob, NDSU vice president of academic affairs, will serve as the university's chief administrator until an acting president is named, Richardson added.

Richardson termed Loftsgard "a fine man . . . with whom I enjoyed a close relationship."

"It's significant to note he provided leadership for the university for nearly two decades, decades marked by the university's greatest expansion in terms of enrollment and service to the people of North Dakota," Richardson said.

"He's built a major university from a relatively small college," said Koob, who served at NDSU throughout Loftsgard's tenure. "The changes were enormous and all for the good."

Loftsgard was named president of NDSU in 1968, becoming the first native North Dakotan and third-youngest person to hold that position.

A North Dakota farm boy, he was quick to assess the value of his background in presiding over an agriculture-based university in a farm state.

"I believe that persons with my kind of background are able to be more effective in getting the support and confidence across the state than someone in the liberal arts field," he said shortly after assuming the presidency. "Because the state is 80 percent rural, and because the legislative bodies and the appropriations committees are controlled by people close to the farming industry, it is important that the president be someone who knows and understands these people."

Loftsgard was born Sept 4, 1926 at Hoople, and grew up on the family farm near there.

He began his education in a rural school near Hoople, and attended high school at the Walsh County Agricultural School in Park River. He was forced to drop out briefly in his sophomore year to operate the family farm while his father was ill.

Loftsgard served in the U.S. Army in 1946–47 after graduating from high school. He was 23 years old when he enrolled at NDSU in 1949, and his college education was interrupted by another tour of duty in the Army during the Korean War from 1950 to 1951.

He married Carol June Evenson, Edinburg, N.D., at Edinburg in 1951 and returned to NDSU the same year. He graduated in 1954 with a bachelor of science degree in agricultural economics.

Loftsgard attended graduate school at Iowa State University and earned a doctorate in 1958. He returned to NDSU that year to accept a position as an assistant professor of agricultural economics.

Eight years after his return to NDSU he was appointed vice president for academic affairs.

He held that position until January 1968, when he was named acting president following the resignation of Herbert Albrecht. The state board of higher education made Loftsgard's appointment permanent six months later.

Loftsgard was the first NDSU alumnus to become the university's president.

He presided over NDSU during the social turbulence of the late 1960s and early 1970s, the enrollment boom of the late '70s and the lean economic times of the mid-1980s.

During his presidency, enrollment at NDSU rose more than 50 percent, increasing from 6,228 students in the fall of 1968 to a projected record 9,450 students this fall.

Major building and remodeling projects totaling more than $30 million were undertaken during his tenure. Among buildings constructed were the Bison Sports Arena, Music Education building, Family Life Center and additions to the Memorial Union and Library. Many of the projects were undertaken with private funds.

When money for new buildings dwindled and construction costs soared, the university remodeled or rebuilt a number of buildings from the inside out, including Old Main, Minard Hall, the old field house, Ladd Hall, Morrill Hall and the home economics and horticulture science buildings.

In 1970, Loftsgard spearheaded the creation of the NDSU Development Foundation which guided two major fund-raising projects during his presidency, including SU '75 and the Centennial Fund Drive.

Under Loftsgard's leadership, NDSU's football team won 13 North Central Conference championships and five national titles.

NDSU began participating in the Minnesota-North Dakota tuition reciprocity program in 1975. In 1979, at urging from Loftsgard and other university officials, the NDSU Development Foundation doubled its scholarship funding for freshmen.

The university this year inaugurated the Northern Crops Institute, which helps market regionally-grown crops.

Loftsgard received numerous awards and recognitions, including the school's Blue Key Doctor of Service award in 1980 and the NCC Honor Award in 1979.

He was director for the North Dakota Water Resources Research Institute in 1965-66. He was a member of the Gamma Sigma Delta and Alpha Zeta agriculture honor societies; the Department of Health, Education and Welfare Secretary's Region VIII Advisory Committee; the First National Bank and Metropolitan Federal Savings and Loan Association boards; St. Luke's Hospitals board of trustees; the Federal Home Loan Bank of Des Moines (Iowa) board; and several fraternal organizations. He was appointed civilian aide to the Secretary of the Army for North Dakota in 1975.

Loftsgard is survived by his wife, Carol, 1200 N. University Drive; a son, Bradley, who farms near Fort Ransom, N.D.; one daughter, Cynthia, Phoenix, Ariz.; two brothers, Eugene and Harvey, both Park River; and two sisters, Eleanor Jost, Goleta, Calif., and Ruth Larson, Park River.●

“CEPA—THE FED'S ACTION VIOLATES THE MORATORIUM ON NEW BANKING POWERS”

● Mr. HEINZ. Mr. President, as a member of the Banking Committee I worked for the passage earlier this year of title II of the Competitive Equality Banking Act of 1987. That title enacted a moratorium barring Federal banking agencies, including the Federal Reserve Board, from taking any action that would result in increased securities, insurance or real-estate powers for banks and bank holding companies. The purpose of the moratorium is clear. Congress needs the opportunity to decide whether bank holding company powers should be expanded before administrative agencies let the horse out of the barn.

Unfortunately, the Federal Reserve Board didn't get the message. In September, the Fed decided that the so-called South Dakota loophole exists even though a clear and recognized purpose of title II was to close the South Dakota loophole during the moratorium.

Subsequently, a coalition of insurance agent trade associations filed suit in the second circuit in New York challenging the Fed order and seeking a stay of its effective date. I joined with Chairman PROXMIRE and Senators REIGLE, DODD, D'AMATO and SHELBY in filing an amicus brief that supported the stay request and that stated plainly that the board has misinterpereted the moratorium. The court wisely granted the stay and, I am informed, has established an expedited briefing schedule for a decision of the merits.

I am, quite frankly, surprised by the Fed's action. When it issued its order, the Fed knew that the moratorium had been enacted and it knew that a fundamental purpose of the moratorium was to shut down the South Dakota loophole until March 1, 1988. And yet, throught a technical and clearly erroneous reading of title II, the Fed attempted to evade the insurance moratorium. That action is entirely wrongheaded as well as violates the spirit and intent of our legislative action.

Indeed, the events of this week have demonstrated the wisdom of the moratorium. Now is not the time to discuss the particular reasons for the stock market's massive fluctuation, or the effect recent events will have on the quest for expanded bank powers. But these last few days have demonstrated why Congress must be in the driver's seat. Only Congress, not administrative agencies, can establish fundamental national policy for bank holding companies. In a time of economic uncertainty, it is particularly important that elected Representatives, not unelected regulators, debate and decide the important issues that lie ahead. For these reasons, I hope that the second circuit will recognize, as we explained in our amicus brief, that the insurance moratorium bars the issuance of the Fed's September 10 order.

My position on the South Dakota loophole is simple: Congress should state, for once and for all, that the loophole never existed, that it doesn't exist now, and that it's not going to exist in the future. On March 10 of this year, I introduced, with Senator DODD, S. 706. S. 706 would resolve this issue by guaranteeing that bank holding companies cannot evade the purpose of the Bank Holding Company Act simply by using banking subsidiaries as the conduit for impermissible insurance activities. Additional provisions of S. 706 would, in a similar manner, clarify existing law in order to assure that congressional intent is fulfilled by Federal banking agencies.

Mr. President, I will continue to press for passage of S. 706. In the interim, I hope that the Fed will recognize its responsibilities to work with the Congress as we review the nature and scope of banking and bank holding company powers.●

INFORMED CONSENT: TENNESSEE

● Mr. HUMPHREY. Mr. President, letters from our constituents play an important role in guiding this body. They provide insight into the issues and problems that directly affect the people, and often give direction into how such issues should be dealt with. Accordingly, I take very seriously the many phone calls and letters that I receive.

As most of us would agree, among the letters that have the most impact are those which relate a personal story—about how that person has been affected by a particular problem or issue. They again remind us of the people that we were sent here to serve.

As I have been doing every day we are in session, today I bring to your attention to a letter sent to my office in support of my informed consent legislation. It tells the deeply personal story of a teenage girl whose decision to have an abortion was based not on the facts, but on the lack of them.

That girl is older now, and as the letter shows, she deeply regrets her abortion. She called it a "horrible" experience, and she says it was "rooted in misinformation"

Mr. President, that misinformation continues today, as women considering abortion are not provided with adequate information about its risks, effects and alternatives. I urge my colleagues to help correct this injustice by supporting my informed consent legislation, S. 272 and S. 273. I also ask that the letter from Tennessee be inserted into the RECORD.

The letter follows:

JUNE 27, 1986.

DEAR SIR: I would like to share with you my horrible yet all too common experience with abortion and how this experience, rooted in misinformation, so drastically affected my life.

Upon turning 18, I became pregnant. At about 10 weeks into my pregnancy, I went to Planned Parenthood to get a test. A phone call to my apartment a day later confirmed my pregnancy. I waited four more weeks. I wanted to have my baby but the staff worker discouraged me. Furthermore, this "counselor" called to warn me that I had to make up my mind or "it would be too late," meaning too late to have an abortion. I didn't know anything about abortion or pregnancy except, to quote Planned Parenthood, "abortion is safer than carrying a pregnancy to term."

I was never taught anything about fetal development nor abortion complications and techniques. I did not know there were unwed mothers' homes that would have helped me with medical care throughout my entire pregnancy. No other referrals were given. In short, all the facts were not given to me. I felt afraid and deep down I wanted someone who cared for me to help me make the right decision. Tragically, no one did. I accepted Planned Parenthood's appointment for abortion. They even arranged the financial end of it because I didn't have any money. I don't know which agency paid for by baby's death, but it was paid with U.S. tax dollars.

About 16 weeks into my pregnancy, I submitted myself to the hospital and to the horror of it all. I remember waking up in the recovery room and saying over and over "don't kill my baby." Over the past two years, I have dealt with my varied feelings—the rage and hate toward those people who misled me, and the self-hate and condemnation I have felt for so many years. I loved that baby even though the child was never born. I will have that child in my heart, in my soul, and in my memory forever. I could have given birth, I could have cared for him, and I could have made it.

Please stop the industry of killing the innocent and exploiting the vulnerable. Mothers and fathers have a right to know all the facts concerning their pre-born baby's development, the very serious and common physical complications resulting from abortions, and the emotional hell of living with the reality of "I killed my baby."

Sincerely,

CRISTINA SUTTON,
Tennessee.●

THE PLIGHT OF SOVIET JEWRY

● Mr. WILSON. Mr. President, once again I rise today for the purpose of drawing the Senate's attention to the plight of Soviet Jewry. For none of us in public life can afford to turn our backs on the men and women who languish in the gulag because they cherish their faith in God.

Within the past year, the American people have constantly heard that Mr. Gorbachev's government wants to improve Soviet communism by giving it a larger dose of Western political, economic, and scientific ideas. As a token of the Soviet's apparent good faith, Moscow has allowed a few prominent refuseniks and dissidents to leave the country or come out of internal exile. We also have written promises for the release of over 100 prisoners of conscience, and the Soviets have just recently liberalized their emigration law. Finally, monthly statistics for 1987 show that more people have received permission to leave the Soviet Union than at any other time since 1979.

These developments are encouraging; but many of them remain deeds not in support of a more humane policy toward dying men and women, but in support of Mr. Gorbachev's public relations compaign to convince the United States and its allies that the Soviet Union is a benign power threatened by the military strength of the West. Furthermore, these weak signs of optimism do not tell the whole Soviet emigration story. At the end of 1980, Jewish emigration from the U.S.S.R. stood at approximately 21,000 people. Yet 2 years into the Gorbachev era, that number had tumbled to less than 1,000. And the so-called liberalization of the Soviet emigration decree extended primarily to divided spouses, while remaining silent on the more than 90 percent of the refuseniks who want to leave for religious, humanitarian, or medical reasons. Moreover, significant numbers of longtime refuseniks still receive denials on the basis of "secret work" which is no longer classified. Finally, Soviet emigration authorities have actually closed the doors of liberty by rarely issuing visas to first-time applicants.

We have yet to hear any fanfare for the nameless people as the image of "glasnost" otherwise parades through the Western media. Their requests for marrow transplants, a peaceful place of worship, or reunification with families can go unheard because they do not undermine Mr. Gorbachev's strategy for altering American or European perceptions of Soviet foreign policy.

The suffering of these thousands, Mr. President, will continue unless the Congress and other interested organizations use every medium available to tell Mr. Gorbachev that rhetoric, promises, international summits, or even an arms control agreement will not excuse the Soviet Union from ignoring people in need of medical attention or their loved ones.

This morning, Mr. President, I would like to specifically discuss the case of Naum Kogan and his family. The Kogans seek reunification with family members living in my home State of California. Moreover, Mr. Kogan suffers a form of kidney disease and requires a form of treatment available only in the United States. Ever since 1977, the authorities in Moscow have denied the Kogan's application. Moreover, at the time of their first request to leave the Soviet Union, Mr. and Mrs. Kogan lost their jobs and remain unemployed to this day.

The tragedy of Naum Kogan and thousands of others like him is also that of the current Soviet regime. Despite Mr. Gorbachev's youth and seeming willingness to confront the economic problems of the Soviet Union, he has not implemented a genuinely new emigration policy. He has broken with precedent only in using emigration laws and political prisoners to aggressively build a new myth about himself and his government throughout the West.

But let us not confuse the Gorbachev myth with the reality of cancer patients and refusniks unable to enjoy the basic freedom of exit. For every Sakharov, Blithstein, or Nudel, there are thousands of Kogans who quietly suffer in a labor camp or on a death bed.

So I rise today bearing witness to a legacy of repression. But I also suggest that we take a few moments to celebrate the amazing endurance of faith. It was in this truth that the theologian Karl Rahner discovered the root strength of the Judeo-Christian ethic. In a hostile environment, Rahner observed, religion staggered as an institution but persevered in the prayer life of those who knew that accountability to the state was not the ultimate end of living in community.

Solzhenitsyn applied Rahner's ideal to the experience of his own people. The Soviet Government, he often wrote, could storm the temple, lock the church doors, and fill the Gulag. Yet communism only made the spirituality of its captive more forceful, and the crowded jails represented not a victory for the political order, but the very weakness of its authority. In a 1978 speech before the graduates of Harvard University, Solzhenitsyn asked: "Is it true that man is above everything?" He directed the question to his comfortable audience as well as the Soviet leadership, knowing that the pain and fortitude of his fellow believers provided the one clear answer. Solzhenitsyn went on to call for a "spiritual blaze," requiring all of us, in the words of Saint James, to "look towards the perfect law of liberty, becoming not a forgetful hearer, but a doer of the word."

Let us never give the Soviet Government an excuse to forget. I am optimistic that if we constantly remind the Soviets with our message that the world is watching and that the world cares, they will hear more than a few of the pleas of those who carry the spiritual blaze everwhere from the Baltic republics to the Siberian tundra. I appeal, then, to all of my colleagues this morning to never give up on these prisoners who refuse to give up on themselves and their God. They can still make Solzhenitsyn's hope come alive once again: That agony suffered by the just may yet bring triumph.●

ORDER FOR RECESS UNTIL 8:30 A.M. TOMORROW AND FOR ECONOMIC BUSINESS

Mr. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until the hour of 8:30 a.m. tomorrow; that following the standing order for the recognition of the two leaders, there be a period for morning business not to extend beyond the hour of 9 a.m., and that Senators be permitted to speak during the period for morning business not to exceed 5 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR RESUMPTION OF JUDGE BORK NOMINATION

Mr. BYRD. Mr. President, I ask unanimous consent that at the hour of 9 o'clock a.m. tomorrow, the Senate return to executive business and that the Senate proceed with a resumption of the Bork nomination, under the time agreement previously entered.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, under the time agreement entered a little earlier this evening anent the Bork nomination, that time agreement was as follows: That at not later than 2 p.m. on tomorrow, the Senate proceed to an up or down vote on the confirmation of the nomination of Robert H. Bork to be an Associate Justice of the Supreme Court of the United States; that there be no time for debate on a motion to reconsider the vote; that on the final disposition of the nomination, the President be immediately notified of the action of the Senate; that the Senate, without further debate or action in executive session, return to legislative session; and ordered, further, that the time between 9 a.m. and 2 p.m. tomorrow be divided, with 3 hours for the proponents, under the control of Mr. THURMOND, and 2 hours for the opponents of the nomination, the time to be under the control of Mr. BIDEN; provided, further, that from the time of the proponents the Senator from Missouri [Mr. DANFORTH] be allotted 1 hour; that from the time of the opponents, the Senator from Montana [Mr. MELCHER] be allotted not to exceed 20 minutes; that the Senator from Nebraska [Mr. EXON] be allotted not to exceed 15 minutes, and that the Senator from Alabama [Mr. HEFLIN] be allotted not to exceed 15 minutes.

That is the order that was entered.

I have changed the definite times of 20 minutes, 15 minutes and 15 minutes for Messrs. MELCHER, EXON, and HEFLIN to an order that would provide not to exceed in each case. This will allow those Senators the allotted time if they need it.

Mr. President, following the return to legislative session under the order tomorrow the Senate will proceed to consideration of the military construction appropriation bill, H.R. 2906. There is a time agreement on that military construction bill generally as follows: The debate on the bill will be limited to 30 minutes, only the specified amendments will be in order, they being as follows and under the following time limitations: An amendment by Messrs. HOLLINGS and SASSER, 10 minutes; an amendment by Messrs. DANFORTH and SASSER, 10 minutes; an amendment by Messrs. STEVENS and SASSER, 10 minutes; and an amendment by Mr. MURKOWSKI, 10 minutes.

Any rollcall votes ordered on or in relation to the military construction appropriation bill will not occur prior to Tuesday next.

I use the word "disposition" in this instance not to include any rollcall votes that may be ordered and which under the order would not occur prior to next Tuesday.

Upon the disposition then of the military construction appropriation bill tomorrow the Senate will go to Calendar Order No. 260, S. 1127, the catastrophic illness coverage legislation, and any rollcall votes that may be ordered on that measure or any other measure that may be cleared for action on tomorrow afternoon will not occur prior to next Tuesday.

The Senate will go out tomorrow and come in on next Tuesday and rollcall votes will begin early next Tuesday.

RECESS UNTIL 8:30 A.M. TOMORROW

Mr. BYRD. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the order previously entered that the Senate stand in recess until the hour of 8:30 tomorrow morning.

The motion was agreed to, and at 10:22 p.m., the Senate recessed until Friday, October 23, 1987, at 8:30 a.m.

EXTENSIONS OF REMARKS

CONGRESSIONAL SALUTE TO DANIEL L. MARCANTUONO, PRESIDENT OF THE GENERAL HOSPITAL CENTER, PASSAIC, NJ

HON. ROBERT A. ROE

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 22, 1987

Mr. ROE. Mr. Speaker, it is with great pride that I rise today to salute a New Jerseyan whose efforts to assure the economic viability of major health care institutions in our State have made an invaluable contribution to the health care delivery system in New Jersey and have bettered the lives of all those who depend on that system.

I speak of Daniel L. Marcantuono, president and chief executive officer of the General Hospital Center at Passaic, NJ, who, for nearly two decades has worked ceaselessly to guard and improve the financial stability of major health care institutions throughout the State of New Jersey.

Mr. Speaker, for his efforts, Mr. Marcantuono will be honored on Wednesday, October 28, 1987, with a dinner in Garfield, NJ, sponsored by the Passaic Heart Foundation. I cannot think of anyone more deserving of this great honor.

Daniel L. Marcantuono, who resides in Sparta, NJ, is eminently qualified for the important work he has undertaken. He received his B.S. degree from Seton Hall University in 1963 and earned his M.B.A. at George Washington University 3 years later. He did his administrative residency at Perth Amboy General Hospital in Perth Amboy, NJ, and has taken additional studies toward his doctorate at Temple University in Philadelphia, PA.

Daniel L. Marcantuono began his career as a planning associate with the Hospital and Health Council of Metropolitan New Jersey where he was responsible for reviewing more than $25 million worth of proposed hospital construction projects. It was while with the council that he founded and organized the Central Services Corp. of Metropolitan New Jersey, a nonprofit company of 14 hospitals organized to initiate a variety of shared services.

In 1970 he became assistant director of field services for the Health Facilities Planning Council for New Jersey, and his work with this organization resulted in the creation of an innovative method for the allocation of hospital beds to specific geographical areas as a means of improving the effectiveness and economy of health facilities in the State of New Jersey.

Mr. Speaker, the next two stops in Daniel L. Marcantuono's career took him to opposite ends of the State of New Jersey. From 1971 until 1979 he served as senior vice president of operations for Cooper Medical Center in Camden, where he instituted a quality care assessment program and a multiphasic management development program that greatly improved the center's entire operation. In 1979, he began a 7-year tenure with the Health Corporation of the Archdiocese of Newark, NJ, first serving as vice president of St. Michael's Medical Center, and later assuming the position of president and chief executive office of St. James Hospital.

Among his many outstanding accomplishments at St. Michael's was the implementation of systems necessary to maximize the medical center's return under a new State program of hospital reimbursement. Mr. Marcantuono also implemented programs through the medical record department to reduce the number of incomplete charts from 2,000 to 650, thereby increasing the medical center's cash-flow. And, as president of St. James Hospital, he returned that facility to a positive financial position after 3 years of operating losses. But more than that, Daniel L. Marcantuono reestablished St. James as the community's Catholic health resource through extensive community and medical staff interaction. His efforts also led the way for planning, design and implementation of a comprehensive occupational health program to serve the business and industrial community in the Newark area.

Mr. Marcantuono, who became president and chief executive officer of the General Hospital Center at Passaic in 1986, and his wife JoAnn, have three lovely children, Cheryl, Lisa, and David. Among his many professional memberships are the American College of Hospital Administrators, American Hospital Association, Catholic Health Association, New Jersey Hospital Association, New Jersey Catholic Health Association, New Jersey Hospital Association's Councils on Planning and on Governmental Relations, the Health Care Advisory Committee of Rutgers University-Camden, the Ironbound Rotary, the East Side High School Advisory Board and the Sparta Township Board of Health, of which he serves as chairman. He has also served as preceptor for graduate residency internship in health services administration for Temple University and as chairperson of the Camden County Advisory, HSA, region V.

Mr. Speaker I know that the dinner honoring Mr. Marcantuono, at which more than 500 of his friends, family and colleagues are expected, will be an outstanding affair because of the arduous planning and effort of the Passaic Heart Foundation's Dinner Committee. This fine group includes Joseph R. Russo, dinner chairman; Josephine LoRe, coordinator; Harry Antman, vice chairman; Charlotte Antman, secretary, and committee members Mel Curier, Virginia Castiglia, Millie Gatto, Frances Geraci, Frances LaCorte, Philip Birnbaum, Dennis Gero, John Lacquiniti and Ida Matrona.

Mr. Speaker, I invite you and our colleagues to join me in saluting Daniel L. Marcantuono who, for the past two decades, has worked tirelessly and made an invaluable contribution to the health care delivery system of New Jersey, a contribution that can readily be held up to the rest of the Nation as a model for helping to assure the economic viability of our health care institutions. He has helped make our health system better, not just for New Jerseyans, but for all Americans who depend on it.

TIME TO CHOOSE

HON. JOHN EDWARD PORTER

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 22, 1987

Mr. PORTER. Mr. Speaker, I would like to bring to my colleagues' attention to a statement sent to me by my constituent, Bill Zimmerman. This statement reflects the necessary recommitment to strive for democracy around the globe. I am pleased to submit his cogent remarks, and commend them to my colleagues.

The statement follows:

TIME TO CHOOSE

(By Bill Zimmerman)

One day, every uncommitted nation in this world will have to choose between atheistic Communism or Judeo-Christian Democracy.

From the beginning, the stated goal of Soviet Communism has been to dominate the world. In seventy years that has not been retracted.

Almost 2,000 years ago, the Bible tells us, Christians were commanded to spread the gospel to the four corners of the earth and, when the task was completed, Jesus Christ would return to rule the world in perfect justice and lasting peace.

As citizens of the leading Judeo-Christian Democracy, the people of the United States have a special responsibility for helping to prepare the world for the millenium.

The Soviets have long since started their campaign to Communize the world and spread oppressive totalitarian dictatorships. They have swallowed up many smaller countries since World War II. Current Soviet targets are Afghanistan, Central America, South America, Africa and the Middle East.

Besides taking over smaller countries, they are making a substantial effort, mainly through "front" organizations, to demoralize and destabilize the United States and other western democracies. That effort, among other things, is aimed at reducing or eliminating our will to resist—"better Red than dead", peace movements, etc., etc.

It is imperative that we recognize and understand what they are doing, to avoid succumbing. Beyond that, trying to counter their efforts would probably be a waste of time and accomplish little.

Our program must be more positive—to expand Judeo-Christian Democracy. This

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.
Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

job has become easier as more people perceive the failures of Communism.

Starting with the Declaration of Independence and the Constitution of the United States, supported by The Federalist papers, the Gettysburg Address and a few other documents, let us make known the terms on which we will be happy to discuss merging with other countries, especially contiguous and western hemisphere nations.

It will take time. Power-hungry leaders will probably oppose the idea. Informed citizens will, most likely, consider it favorably. As a matter of fact, some Canadians and northern Mexicans have already talked about the possibility. But it will take time for enough of the population to be so informed and make their wishes known and effective.

The situation is rather like the race of "the hare and the tortoise". The hare got off to a fast start 60 to 70 years ago. But he's running out of steam. With positive, forward progress the tortoise can still win the race, if he'll keep plugging away and not get sidetracked.

TRIBUTE TO DR. CARLTON GOODLETT

HON. MERVYN M. DYMALLY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 22, 1987

Mr. DYMALLY. Mr. Speaker, one of the wonderful experiences as a Member of Congress, are those occasions on which we can pay tribute to old friends who are truly remarkable individuals. Such has been the case for me and my relationship with Dr. Carlton Goodlett, Ph.D., M.D., of San Francisco, CA, an extraordinary man who has been at the forefront of many causes related to the advancement of African Americans.

As a determined individual who demonstrated intellectual genius, Dr. Goodlett obtained his Ph.D. in Psychology from the University of California at the youthful age of 23. His remarkable ingenuity astounded many as he succeeded in becoming an M.D. at the age of 29. Against the backdrop of his aspiring medical practice, he expanded his activities still further to become editor and publisher of the Sun-Reporter, a newspaper which brought attention to world peace activities and openly opposed the Vietnam war. Throughout the turbulent sixties, Dr. Goodlett played an instrumental role in persuading Dr. Martin Luther King, Jr., to unite the civil rights crusade in America with the antiwar and peace movement.

As a champion of civil rights and liberties, Dr. Carlton Goodlett has earned a national reputation for his lectures and publications which advocate world peace. On repeated trips to Washington, he has met with Presidents, Eisenhower, Kennedy, Johnson, Nixon, Ford, and Carter on civil rights and the role of minority newspapers in American life. Dr. Goodlett's tireless efforts at home extended abroad as he became an active participant in the international peace movement. As a member of the Presidium, World Peace Council since 1968, he has journeyed to Western and Eastern Europe, Africa, the Soviet Union, the Middle East, Latin America and the Orient on many occasions to profess peace and disarmament.

Aside from these philanthropic endeavors, Dr. Goodlett has been actively involved and has contributed significantly both to the quality of the Black press and to the increase in national advertising to the Black press. Dr. Goodlett was elected in 1973 and three times re-elected to serve as president to the National Newspaper Publishers Association with the Black Press of America. In addition, Dr. Goodlett is chairman of the Board of the New Journal & Guide of Norfolk, VA, and assistant publisher of the Big Red Newspaper of New York City.

Dr. Goodlett has demonstrated excellent leadership qualities as well as his ability to serve as an articulate and charismatic spokesperson. He has provided these services to numerous organizations in the areas of education, community service, and church organizations. Currently, he serves as president to the National Black United Fund; is a member of the board of overseers to the medical school of Morehouse College; and is a member of the board of trustees at Talladega College. He has been an active contributor to scouting as the former director of the San Francisco Council of Boy Scouts of America. In addition, his other public service commitments include memberships and affiliations to the Society of Sigma Xi, the National Committee on Africa, chairman of the California Black Leadership Conference, and former vice president in San Francisco to the Council of Churches. He is also a member of the Kappa Alpha Psi Fraternity.

It is a pleasure for me to share Dr. Goodlett's accomplishments with my colleagues in the U.S. House of Representatives. Tonight, this dedicated individual, who has served not only as a physician but as an educator and community leader, will be honored for his many years of public service by the West Coast Black Publishers. Mr. Speaker, many others share in my opinion that Dr. Goodlett has devoted his life to just causes, not only in his community but also on a national and international level. In light of his achievements and contributions to our Nation, I respectfully request that my esteemed colleagues in the House of Representatives join me in saluting him and offering our thanks and appreciation for all he has done.

DRACONIAN CUSTOMS FRAUD PROVISIONS

HON. PHILIP M. CRANE

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 22, 1987

Mr. CRANE. Mr. Speaker, as many of us in both Chambers are involved in the conference on H.R. 3, the omnibus trade bill, there is an imminent issue before us. The provision concerns customs fraud. The House bill added a provision which would bar imports by any party guilty of three separate customs violations, for 3 years. The Senate bill added a provision establishing a private right of action for customs fraud or gross negligence. Both provisions are well intentioned but threaten serious injury to the competitiveness of U.S. importers.

For educational purposes, Members should read and carefully consider the following article before taking hasty action. Although it only addresses the right-of-action provision, it offers food for thought. The article appeared in the Journal of Commerce on October 20, 1987. I urge my colleagues to become more familiar with this issue.

[From the Journal of Commerce, Oct. 20, 1987]

SUITS HURT CUSTOMS EFFICIENCY

(By Howard J. Seifert)

As the United States' trade deficit has widened, so has the school of thought suggesting that "crooked" importers are somehow to blame.

In July, the Senate even accepted this argument, approving provisions of the Omnibus Senate Bill to allow U.S. manufacturers the right to sue their importing competitors for alleged fraud. Proponents of this legislation, referred to as the "private right of action" or the "Heinz amendment," argue that the legislation will put "teeth" back into Customs enforcement laws.

But rather than increasing the enforcement powers of the Customs Service, the Heinz amendment would drain Customs resources and hamper the government's ability to prosecute customs violators. If such sweeping legislation is passed, it would unfairly penalize reputable U.S. importing companies, would cost the U.S. consumer millions of dollars and affect hundreds of thousands of jobs in the import, retail and transportation sectors. Ultimately, the impact of this proposal, which is now before the House-Senate Conference Committee on the trade bill, could have far graver consequences by reducing the competitive forces within our trading system.

Importers strongly support Customs' efforts to apprehend individuals involved in fraudulent schemes. The Heinz amendment, however, goes much farther, creating an opportunity for competitors to put each other out of business at the cost of the U.S. taxpayer. The legislation presumes that all customs violations are malicious attempts to defraud the government and that violators are "crooks."

The majority of importers are conscientious, law-abiding citizens who sometimes make mistakes because of lack of information, simple misunderstandings or inadvertencies. Intentional fraud is the exception, not the rule. Unfortunately, the Heinz amendment does not discriminate between the true offender and the importer who makes an honest mistake.

Proponents of the amendment fail to see the shortsightedness of this legislative proposal. Any firm that believes a competitor is in violation of a customs law would have the right to sue for damages. The company bringing the suit, which has no legal right to inspect shipments, will have to rely on court proceedings alleging that fraud is involved. As a result, many innocent and reputable importers would be forced to defend themselves against fishing expeditions by competitors.

In many cases, importing companies would be forced to disclose proprietary information to competitors. The impact would be particularly onerous on smaller importers, who could easily be run out of business by protracted and costly litigation.

Customs Service resources are already spread too thin. If this legislation passes, Customs will be forced to become a party to every lawsuit brought by a private U.S. company against an importing competitor. Current procedures allowing importers to resolve Customs violations by paying penalties assessed according to the degree of severity of the case will be undermined: Importers will not be willing to pay penalties if they might still face a private lawsuit over the alleged violations. In effect, the Heinz amendment, rather than adding "teeth" to the Customs Service, would usurp and weaken Customs' enforcement authority.

Importers today work under riskier circumstances than ever before. In recent years Customs has increased its emphasis on enforcement, in some cases typing personal advancement to the number of violations cited. At the same time, key compliance activities, such as the dissemination of information to importers, have been neglected.

As a result, changes in Customs regulations are not always readily available to the importer. When they are, they often take effect before the importer can change current business practices. This had made importing a far more complicated venture. Many minor violations that could have been prevented through better communication are being treated as fraud cases.

Rather than wasting time, energy and resources to create an antagonistic relationship, constructive steps could be taken to improve compliance procedures through improved communications between the Customs Service and importers.

Resources could be used to disseminate necessary information to the importers on new rules and regulations, to solicit comments as to the effect of these changes, to issue clear guidelines regarding customs policies and to improve current Customs clearance procedures through emphasis on training and education. If these steps were taken, many alleged violations would disappear and government resources could be better spent on prosecuting the true offenders of Customs laws.

THE WASHINGTON WORKSHOPS FOUNDATION CELEBRATES ITS 20TH CONSECUTIVE YEAR

HON. BENJAMIN A. GILMAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 22, 1987

Mr. GILMAN. Mr. Speaker, for the 20th consecutive year, the Washington Workshops Foundation has brought thousands of top student leaders both to Washington and New York City to study our Nation's political and business centers. In celebration of this 20th anniversary, October 25, 1987, I extend my hearty congratulations to Leo S. Tonkin, its founding director, formerly a resident of my congressional district in Suffern, NY.

Graduating from Johns Hopkins University in political science, Mr. Tonkin subsequently attended their School of Advanced International Studies, and received his law degree from Harvard University. Education and politics drew Mr. Tonkin to Washington where he served in a variety of staff and senior advisory positions with committees of the U.S. Congress. An ambitious young man, he then founded not only the successful Tonkin Associates, an educational consulting firm, but also the Washington Workshops Foundation, a nonpartisan, nonprofit educational foundation.

Through his guidance, along with many of my colleagues in Congress, I have watched thousands of America's young leaders learn firsthand about our legislative process. These students have consistently impressed Members with their intelligence and mature grasp of current issues. In this the 200th year of our Constitution, what finer tribute can we seek to the vitality and perpetuation of that document than the enthusiasm of these young people for its liberties and safeguards?

In later years, Mr. Tonkin has created additional program offerings for junior-high students in Washington, as well as indepth programs of onsite study for high school and college students in diplomacy and global affairs, and Wall Street.

Mr. Speaker, in conclusion, I am reminded of the occasion in 1974 when President Ford honored Mr. Tonkin with the Americanism Award of the Valley Forge Freedoms Foundation for outstanding achievement in bringing about a better understanding of the American way of life. Those words still ring true today for they are a part of a rich legacy of involvement and activism that Mr. Tonkin has provided for the youth of this Nation. I ask my colleagues to join in congratulating him on his 20th anniversary as founding father, and wish him every success for the future.

NURSING HOME RESIDENTS SHOULD GET THE MEDICAL CARE THEY NEED

HON. DOUG WALGREN

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 22, 1987

Mr. WALGREN. Mr. Speaker, today I am introducing, with Congressman BILIRAKIS, a bill to require nursing homes to have a registered nurse on their premises 24 hours a day.

In 1986, the Institute of Medicine's Committee on Nursing Home Regulation published a landmark study that examined the quality of care in nursing homes and concluded that despite extensive Federal regulation for some time,

> Some nursing homes can be found in every state that provide seriously inadequate quality of care and quality of life.

The study made a number of recommendations which have been incorporated in the Energy and Commerce Committee's 1987 Medicare/Medicaid reconciliation bill, now awaiting House action. Among those recommendations was the proposal,

> A nurse-supervisor should be in all facilities on all shifts. Nurse's aides should be able to consult with a professional nurse while on the job.

Unfortunately, our efforts to include a 25-hour registered nurse requirement failed on a 21 to 21 tie vote. Thus we are introducing a separate bill in hopes of continuing to pursue this reform.

Those in nursing homes are frail and sick. Nursing home patients are old; their average age is 83. They are alone; 9 out of 10 have no living spouse. They are ill, usually having multiple, chronic conditions. They are dependent, requiring assistance in their daily functioning. Only one in five will ever go home.

Nursing care in nursing homes today is shockingly inadequate. The average patient in a skilled nursing facility receives only 12 minutes of care from an RN per day and 30 seconds of care from doctors. Four out of five nursing homes do not have a RN on duty on all shifts. For much of each 24-hour period, the ratio of registered nurses to nursing home patients is 1 per 100. Of all nursing home personnel, RN's constitute only 12 percent, while licensed practical nurses comprise 16 percent and nurses' aides, 72 percent.

This means that most nursing care in nursing homes is given by individuals who have little, if any, formal training. In some cases, LPN's and nurses' aides do not even have a high school degree. According to one member of the Institute of Medicine Committee on Nursing Home Regulation,

> It is not uncommon for one nursing attendant to have 15 patients for whom to provide full care, while in the evenings, the attendants may have 15-25 patients and at night there may be 40-50 patients per attendant.

In short, 88 percent of nursing home staff have little training and they are overwhelmed.

The importance of having an RN on duty around the clock is a medical issue: RN's are trained to recognize and act on changes in a patient's condition. LPN's and aides are trained to carry out a routine. For example, RN's are trained to recognize that a change in coherence or consciousness may be a precursor to a stroke, while an untrained person might think the patient is "just senile." RN's—unlike LPN's and aides—are trained to take emergency steps to stabilize patients such as administering an IV. LPN's and aides are not. The trained nurse can make the critical difference between life and death.

Finally, we believe that by assuring the presence of professional nursing standards through a 24-hour RN requirement, we can reduce and deter neglect. Admittedly, Congress cannot legislate neglect away. But we should do what we have done in other areas—increasing the presence of professional standards and thereby increasing the insistence on appropriate care. The Veterans' Administration, for example, requires an RN on every nursing home ward around the clock.

Our proposal would require 24-hour registered nurse presence effective in 1990 for facilities with more than 90 beds and 1992 for facilities with less than 90 beds. Additionally, waivers of the requirement would be allowed if a facility demonstrates that it has been unable to employ an RN despite good faith effort on their part. The effective dates and the waiver provisions attempt to address some of the legitimate concerns of many facilities, particularly those in rural areas, the RN's are just not available in certain parts of the country and are designed to give facilities time to plan, train, and recruit.

In the mid-sixties, a proposal to require a 24-hour registered nurse presence in all acute care hospitals was defeated because it seemed impractical or unworkable. That certainly seems out of place today.

I hope my colleagues will join in supporting what is a long-overdue requirement to provide real nursing care in nursing homes. After all, that is why people enter nursing homes—to get medical care that they truly need.

HOW TO TURN BEARS INTO BULLS

HON. ROBERT J. LAGOMARSINO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 22, 1987

Mr. LAGOMARSINO. Mr. Speaker, I would like to bring to the attention of my colleagues and the American people an editorial which appeared on October 21, 1987 in the Washington Times regarding the stock market's recent roller coaster ride. As the editorial points out "the significant parallel between 1929 and 1987 is that markets were driven to despair by political initiatives that, although designed for domestic consumption, had global consequences."

Mr. Speaker, I urge my colleagues to review this editorial, particularly in light of the upcoming trade conference and reconciliation package.

How to Turn Bears Into Bulls

Wall Street lost more points in 10 days over the past couple of weeks than it gained during the year's first 10 months, then careened wildly up and down yesterday. As bewildering as this may seem, it makes some sense if you study the history of the market.

The market of 1987 bears more than a passing resemblance to the market of late 1929. Both soared throughout most of the year. And just as tax cuts have fueled this bull market, tax cuts instituted in the 1920s by Treasury Secretary Andrew Mellon had helped create a boom economy characterized by dramatic increases in personal income at all levels, increased business activity and productivity, and a booming stock market.

But Republicans in the 1929 Congress worried about the distribution of this wealth (as today's "vanishing middle class" theorists argue that the Reagan recovery is unfair). Farmers, they said, weren't getting a fair share of the pie. So, they devised the Smoot-Hawley tariff to enrich farmers. The market roller coaster in 1929 almost exactly parallels Senate debates on the tariff. When it appeared that a coalition would defeat the tariff or limit it to a few agricultural items, the market rose. When the bill seemed more likely to pass without significant amendment, the market fell.

The stock market crash of 1929 occurred after a coalition of Democrats and progressive Republicans opposing the bill parted ways amid disagreements on side issues. The collapse of the opposition ensured the passage on the Senate floor of Smoot-Hawley, which already had passed the Finance Committee, chaired by Sen. Smoot. The market responded to this news with Black Tuesday.

Still, the depression didn't begin in earnest until President Hoover announced on June 15, 1930 that he would not veto the Smoot-Hawley tariff. World markets fell apart the following day. America's trading partners, some of whom began retaliating the previous year, erected their own barriers, and the Great Depression was on. Two things consolidated that Depression: a tightening of money and dramatic increase in interest rates in 1931, and drastic tax increases in 1931—quadrupling rates at lower levels and raising the top rate to 63 percent from 25 percent. When the Federal Reserve Board refused to loosen up the money supply, citizens made a run on banks in order to get the money necessary to pay the tax bills that provided the last installment of Herbert Hoover's legacy.

Many of these same elements are around now: protectionist legislation sits before a mammoth congressional conference committee; House and Senate committees are reviewing tax bills that would take direct aim at the business sector and the Fed, under new Chairman Alan Greenspan, has increased the discount rate twice in recent months, even though the nation's money supply hasn't grown for 10 months—a sufficient condition itself for inducing recession.

Monetary policy plays a large role in the present difficulty. Since the gold window closed in 1971 and the floating exchange rate system took effect in 1973, central banks have used currency markets as vehicles for making changes in their own economies. Treasury Secretary James Baker last week announced that the United States would play tough with Germany, which just increased its interest rates, by permitting the dollar to fall further against the deutschmark. European markets promptly plunged.

The time seems ripe for another idea recently advocated by Mr. Baker—a new standard for gauging the value of money. Although many people talk about commodity baskets and other gimmicks, the most solid method still seems to be gold. Certainly the international markets, which have become almost panic-stricken by the thrusts and parries of various central banks, are ready for a standard immune to such routine and destructive manipulation. Foreign markets rallied yesterday on news that Mr. Baker and his German colleague, Finance Minister Gerhard Stoltenberg, both wanted stability in exchange rates. And Wall Street rebounded yesterday after Mr. Greenspan vowed that the Fed would provide enough liquidity—that is, loosen interest rates and increase money supply—to support the economy.

These hopeful signs show that 1987 isn't another 1929—yet. The economy is strong and, based on economic statistics due out tomorrow (and reported in today's Commentary section by columnist Warren Brookes), could grow even stronger. But the significant parallel between 1929 and 1987 is that markets were driven to despair by political initiatives that, although designed for domestic consumption, had global consequences.

The recent volatility in American and foreign markets tracks almost perfectly with the strengthening of congressional trade and tax initiatives and the recessionary tactics employed by the Fed. And despite yesterday's surge on Wall Street, congressional dalliances with protectionism and high taxes remain dangerous.

The White House thus holds the key to the market's future. The administration's bungling of the Bork nomination—including its lame efforts is now to fight in his behalf to secure the votes needed for his confirmation—helped create the recent panic by telling markets that the president may lack the clout or skill to fight off protectionism and high taxes. And White House Chief of Staff Howard Baker's statements about "wanting" a trade bill—and not wanting to veto legislation—have only deepened fears that the White House either doesn't understand what's going on, or is willing to "compromise" in Hooverian fashion on trade and taxes.

The president now should understand that equivocation has a high price, as the market's Monday plunge showed. He can restore confidence in his presidency by fighting for promises that have formed the core of his economic policy. He should vow to veto any and all protectionist measures, period; vow to veto tax increases, period; and vow to push foward now with an international monetary conference designed to bring stability to money worldwide.

This is no time for counting votes on the Hill. It is instead a time to fight vigorously and relentlessly for principles the president understands and long has upheld. The economic data destroy arguments for taxes and tariffs and against a monetary standard. But politics can destroy prosperity as surely now as it did in 1929. It's up to Ronald Reagan to turn last week's bears into next year's bulls.

HISPANIC LEADERS CALL FOR PRESCHOOL EDUCATION FOR IMPOVERISHED CHILDREN

HON. GEORGE MILLER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 22, 1987

Mr. MILLER of California. Mr. Speaker, today we see further evidence of what the New York Times refers to as "a consensus" coalescing around early childhood health and education programs. Leaders of the Nation's Hispanic community—one of the fastest growing groups in America—called on the Presidential candidates this week to support educational services for all 4- and 5-year-olds living below the poverty line.

University, medical, and research studies have repeatedly shown that education and health programs for early childhood provide the most productive and cost-effective method for preventing or ameliorating poverty's worst effects. These findings have been endorsed by business leaders, major newspapers, and the National Governor's Association. Now we see an important and rapidly growing segment of the American public calling for a greater Federal investment in children.

I urge my colleagues to read the attached Washington Post article and to listen to the growing chorus of voices calling on us to increase our investment in America's greatest future resource: our children.

[From the Washington Post, Oct. 22, 1987]

Hispanics Give Agenda to Candidates—Job Appointments, Immigration Changes, School and Housing Funds

(By Paul Taylor)

Leaders of the nation's Hispanic community yesterday called on the presidential candidates of both parties to pledge to name Hispanics to the Cabinet and Supreme Court, oppose the English-only movement, press for changes in the Simpson-Rodino Immigration Act, and increase spending on education, housing and health programs.

The list was put forward in the National Hispanic Agenda '88, a document drafted over the past several months and released yesterday by a bipartisan group of more than 100 Hispanic elected officials and community leaders from 20 states.

"We have been given less attention [in the presidential election] than our size and growth potential warrants," said Henry Cisneros, mayor of San Antonio and chairman of the task force that prepared the agenda.

There are 18.8 million Hispanics on the mainland and 3.3 million in Puerto Rico. They are the fastest growing minority group in the country. Since 1980, the U.S. Hispanic population has increased by 30 percent, compared with 6 percent for the non-Hispanic population.

The agenda is the first attempt to craft a single document for a varied community composed mainly of Mexican Americans, Cuban Americans, Puerto Ricans and Central Americans. It is being delivered to the candidates at a time when "special interest" pleading by any group is looked upon warily, especially by Democrats, who remember how Walter F. Mondale was stigmatized because he supposedly bowed to certain special interests in the 1984 presidential campaign.

"What's wrong with being a special interest?" asked Denver Mayor Federico Pena. "We are going to become a significant political force in the country and this agenda will help us speak with one voice."

Leaders of the task force said yesterday they plan to conduct forums with the Republican and Democratic candidates later this year, but noted that they did not plan, as a group, to endorse candidates.

The agenda reflected the concerns of a population whose poverty rate is nearly three times that of non-Hispanics.

It called for a National Early Childhood Education Initiative that would provide educational services to all 4- and 5-year-olds living below the poverty line; expanded dropout prevention and literacy programs, an expansion of small business programs, and an increase in funding for low-income housing.

It reiterated longstanding calls for Hispanic appointments to the Supreme Court and the Cabinet. At a meeting of the League of United Latin American Citizens earlier this year, several Democratic presidential candidates—including Massachusetts Gov. Michael S. Dukakis and former Arizona governor Bruce Babbitt—promised to appoint a Hispanic to the Cabinet, and Jesse L. Jackson said he would appoint a Hispanic to the Supreme Court.

On immigration policy, the task force report called for a phasing out of employer sanctions and an easing of rules regarding reunification of families.

On language policy, the report said that while "there is no question that English is the de facto language of the United States," English-only laws deprive non-English speaking citizens of such basic rights as voting.

"MODERN TIMES" AND THE FOREST SERVICE: MEETING CHALLENGES IN NATIONAL FORESTS NEAR MAJOR METROPOLITAN AREAS

HON. MATTHEW G. MARTINEZ

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 22, 1987

Mr. MARTINEZ. Mr. Speaker, during the past 6 years cutbacks in funding for America's national forests has caused some recreation sites to be closed and the backlog of maintenance and replacement at forests across the Nation has soared. These problems are particularly severe at Angeles National Forest. Angeles National Forest is located entirely within Los Angeles County and comprises nearly 25 percent of the county's total land area. Because the county has a population approaching 8.5 million residents and the number of available recreational areas and open space is diminishing as the population grows, it comes as no surprise that Angeles National Forest is the most heavily used national forest in the Nation, with approximately 40 million visits each year.

Maintaining public safety and preserving the natural habitat are major concerns in Angeles National Forest. In one 7-week period, deputy sheriffs made 61 felony arrests, 90 misdemeanor arrests, 89 drug-related arrests and issued 367 vehicle code citations. In addition to murders, rapes and assaults, criminal violations in the forest include shootings in unauthorized areas, poaching, defacement of trees, illegal offroad vehicle use, and the illegal dumping of trash and hazardous waste. One recent example illustrates the kind of environmental damage occurring in San Gabriel Canyon. In January of this year the local air quality management district cited the Forest Service for failing to control the dust generated by the numerous offroad vehicles in the area.

While demand for safe and affordable recreation is on the rise, it is increasingly apparent that the Forest Service lacks the financial ability to maintain and restore the heavily used recreational areas of the Angeles National Forest. Additional Forest Service personnel are needed to patrol all parts of the national forest to provide a safer environment for family visits. In addition, there is a need for more sanitation facilities and trash removal to prevent further environmental damage. Heavy use and a fragile ecology are combining to pose a serious threat to the Angeles National Forest's 21 animal species and 16 plant species listed as endangered, rare, or sensitive by the Federal Government and/or the State of California.

Congress has begun to recognize the special problems that face national forests near major metropolitan areas. On May 7, 25 Members of Congress—including the chairman of the Interior Subcommittee on National Parks and Recreation, Mr. BRUCE VENTO—sent a letter to the Appropriations Subcommittee on the Interior to draw attention to the situation in Angeles National Forest. Chairman YATES and the Appropriations Committee took an important step to improve things. They included report language with the appropriations bill for fiscal 1988 that states:

> The committee expects the Forest Service to provide increased funds to meet as many of the deficiencies as possible in funding for Angeles National Forest in such areas as recreation management, trail construction, and maintenance and law enforcement.

And my colleague from California, [Mr. LEVINE], made a powerful statement of his concern for the situation in this national forest during the floor debate on the appropriations bill and indicated his intention to review the Forest Service's future reports on this matter. These are important steps in addressing a long-term problem.

As essential as these steps are, more is needed. As our population grows and as recreational use of the forest escalates, particularly near major metropolitan areas, it is essential that the Forest Service have the flexibility and resources to meet these needs. More money must be part of the solution. I am pleased that Congress has begun to address this need and hope that this effort will continue. However, in view of the financial constraints facing America, flexible responses must also be part of the solution. Increased opportunities for cooperative agreements with State and local governments, flexible application of existing statutes, reasonable contracts with concession operators that take fully into account the needs for maintaining public safety, facility maintenance, and protecting the environment are essential. Action to ensure that those using the national forests make a modest contribution to help preserve and enhance this important national resource—as would be established on a trial basis by my proposal for a pilot project in Angeles National Forest, H.R. 563—should be part of any larger solution to this complex long-term problem.

In view of the need to ensure that the Forest Service is able to meet the demands of modern times, I would like to draw my colleagues' attention to an article that details some of the consequences of current policy in Angeles National Forest. The article was published in the Los Angeles Times on October 4, 1987.

INVASIONS BY YOUNG VANDALS FORCE CLOSURE OF CAMP AREAS

(By Lynn O'Shaughnessy)

The Palmer family suspected that their neighbors at Big Oak campground in Angeles National Forest were dealing drugs when they saw visitors exchanging money for small packages.

Their irritation increased when their 4-year-old son hurt his hand opening a broken restroom door.

To top it off, they didn't even want to be at Big Oak. The San Diego family of five had driven four hours to pitch their tents at a more scenic campground straddling a brook that tumbles down a staircase of boulders.

But an iron gate blocked their way at that campsite. It was closed. So were several other campsites scattered along the forest's winding roads.

"We are a little disgusted," Rick Palmer said.

The Palmers aren't alone. More and more campers are discovering that the wilderness experience in Angeles National Forest isn't as picturesque and relaxing as it once was.

"Rangers say there has been a sharp increase in damage to the national forest within the Saugus and Tujunga districts, which spread across 335,000 acres north of the San Fernando and Santa Clarita valleys."

Desecration of the forest "has just gone crazy," said Jim McGauley, an assistant recreation and resource officer.

Unable financially to combat the relentless destruction of property, rangers are closing campgrounds. In the Saugus district, six of the 20 campgrounds, one picnic area and about 80 miles of the 200-mile network of hiking trails have been placed off-limits to the public in the past two years. More closures are contemplated if the vandalism continues.

"In some cases we've obliterated campgrounds, torn them out," said Mike Wickman, a Saugus forest ranger.

Other sites in the Tujunga and Saugus forests have been restricted to day use to discourage vandals, many of them teenagers, from terrorizing campers and damaging the campgrounds when they party after dark.

The life expectancy of newly installed wooden signs in the forest is short. The signs—the more elaborate cost $800—are used for target practice by visitors who take machine guns, rifles and pistols with them.

The canyons where gunfire is permitted are littered with abandoned cars, water heaters, TV sets and other debris that shooters have illegally taken in to use as targets. The garbage has prompted forest employees to rename these areas the "national dump."

CARS ERODE TRAILS

Off-road-vehicle enthusiasts have eroded trails set aside for hikers and horseback riders. Graffiti abounds, and in one case, vandals broke into a cave that contained ancient Indian drawings. At a nature area for the handicapped, vandals destroyed Braille signs identifying trees.

Volunteer hosts, who live at the campsites, say they see children being harassed by bikers, drug dealing and physical assaults. Vandalism has increased as the forest's popularity has blossomed.

Angeles attracts more visitors than any other national forest in the United States. Last year, 27 million people visited there.

Gates are erected only when park employees have failed to keep vandals at bay after four or five years of trying, and closing a campground is a last resort, rangers say.

That fate befell the Zuni campground, just a short drive from the nothern reaches of the Santa Clarita Valley suburbs. After sunset, the campground became a magnet for teenagers who took along beer, drugs and radios, rangers say. The youths set bonfires on picnic tables, using wooden roof shingles and window frames from the restrooms for fuel.

They scratched obscenities in the wet concrete when the road through the campsite was paved. Someone chopped down a 30-foot ash.

The only sign the vandals did not immediately destroy reads, "Zuni campground closed due to vandalism done by youths."

The staff estimates that it would take $4,000 to make Zuni inhabitable again. There is no money in the U.S. Forest Service budget to replace broken picnic tables or stoves. Also left unrepaired are destroyed cisterns that are meant to hold water for firefighting.

Vandals are rarely caught and, when they are, the rangers never hear apologies.

"We can write a ticket, they will pay it without bating an eyelash, or their dad will pay it," Ranger Wickman said. "They will be back next weekend."

TRIBUTE TO MR. CHUCK BISHOP

HON. ROBERT A. ROE

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 22, 1987

Mr. ROE. Mr. Speaker, it is my pleasure to join the Clifton-Passaic Regional Chamber of Commerce in honoring Mr. Charles Bishop for his long and dedicated service to his community and his country. Mr. Bishop is the sort of active and participatory citizen which give our cities and communities the necessary leadership to grow and develop.

Chuck Bishop was born in the great State of Iowa and was prepared for his successful business career at that State's finest institute of higher learning, and one our Nation's leading universities, the University of Iowa. With the outbreak of World War II, he served in the Army seeing action in North Africa and Italy. The majority of Mr. Bishop's career was spent with Bright Star Industries, Inc., in Clifton, where he rose from general sales manager to President and retired with 27 years of service.

Chuck's involvement with the Chamber of Commerce began in 1972 when he was elected to the the Board of Directors. He served two terms as president, 1976–77, was chair of the Clifton Economic Development Assistance Commission from 1977–84, and vice president in charge of the Industrial Division, 1974–75.

Beyond his work with the chamber, he was also involved in many volunteer associations such as the Hackensack Medical Center, Respiratory Health Association, Urban League for Bergen County, and the Pennington Club.

Charles Bishop's active role in his community is something we can all be proud of. Mr. Speaker, it is not often we have the opportunity to honor citizens as dedicated and concerned as this outstanding gentleman. I wish him a long and satisfying retirement. It is certainly well deserved.

U.S. F-16's AND THE PAKISTANI BOMB

HON. JOHN EDWARD PORTER

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 22, 1987

Mr. PORTER. Mr. Speaker, following India's detonation of a nuclear bomb in 1974, a constant stream of reports indicate that Pakistan is inching toward the construction of their own nuclear weapon. India refuses to sign the nonproliferation treaty and therefore, so does Pakistan.

The arrest of Arshad Pervez, a Pakistani national, for trying to export specialized steel products used in nuclear weapons was only one in a long line of reports on Pakistani efforts to get the bomb.

Without a delivery system, a nuclear bomb is a limited threat. Unfortunately, new reports indicate that the Pakistanis may be modifying at least one F-16 to carry a transportable bomb. Under the watchful eye of U.S. General Dynamics employees, most F-16's are based at Sarghoda Air Base in Southern Punjab. New reports indicate that at least one F-16 is being modified to carry a bomb far from U.S. supervision, at the Kamra Airbase west of Islamabad.

Mr. Speaker, it is up to us to ensure that U.S. aircraft are not modified to deliver nuclear weapons. We may be past the point of stopping the Pakistanis from manufacturing a nuclear weapon but we can certainly prevent them from delivering them.

FREEDOM FOR MR. AND MRS. NATAN TKACH

HON. MERVYN M. DYMALLY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 22, 1987

Mr. DYMALLY. Mr. Speaker, I bring to your attention the following letter about a Russian couple who will be joining their family in the United States.

HARVARD UNIVERSITY,
DEPARTMENT OF MATHEMATICS,
Cambridge, MA, October 17, 1987.

MARINA DINI,
Office of Congressman Mervyn M. Dymally, U.S. House of Representatives, Washington, DC.

DEAR MS. DINI: I just received the best news of my life, in the most incredible way imaginable.

On Wednesday night, 10/14/1987, I was watching in my living room the ABC Special "Capitol to Capitol" which pitted American Congressmen vs. the top Soviet Government officials in a debate on human rights that was telecast live on both American and Soviet television. At the beginning of the show each side presented a short film describing its position on human rights. The ABC film included the story of my 75-year old Grandparents, Mr. and Mrs. Natan Tkach, ten-year old struggle to be reunited with me and my parents in the U.S.

After the commercial break of the ABC film a Soviet official announced that my Grandparents are being granted permission to leave!!!

It took a tremendous effort on the part of many many people of goodwill in this country and abroad to free my Grandparents, to allow them to spend their final years in the care of their family. I am deeply grateful to you and the Congressman for your very important role in the struggle.

May God bless you for your help and support, and may your family be always as happy as my family is now.

Sincerely yours,

LEONID FRIDMAN.

BORK NOMINATION

HON. PHILIP M. CRANE

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 22, 1987

Mr. CRANE. Mr. Speaker, a former intern of mine, Debbie Schlussel, recently brought to my attention a published "Letter to the Editor," which she wrote to the Detroit Jewish News in response to an anti-Bork opinion piece. Because the Senate is expected to vote any day now on the confirmation of Supreme Court nominee Robert H. Bork, I would like to share with my colleagues both the original article and the "Letter to the Editor" in its entirety. Several opposing arguments in the original editorial were conveniently left out. Miss Schlussel did an excellent job on refuting the original article, and I urge my colleagues in the Senate to heed her response when voting on the confirmation of Judge Bork in the full Senate.

The Senate Has the Authority and the Need to Reject Bork

(By Harold Norris)

Sooner or later, every major political question is presented to the Supreme Court as a constitutional one," said DeTocqueville in his historic volumes on *Democracy in America*. Such questions have been slavery and civil rights, votes for women, freedom of religion and speech, rights of business and labor. Hence a Supreme Court nominee's judicial philosophy and views on the Constitution are strategic.

President Reagan nominated Judge Robert Bork because of his judicial philosophy. If the President had nominated a more detached and open-minded person, in the mold of the exiting Justice Powell, the Senate would have been more compliant. But the President wants, and he has a right to attempt, a fundamental reorientation of the Supreme Court with Judge Bork, and the Senate, and the public, will respond proportionately.

The Senate has the equal power to consider judicial philosophy. Many close observers believe that in the present composition of the court, with Judge Bork providing the swing vote, the nation will be amending the Constitution with the appointment of one individual. Senator Alan Cranston said the Bork nomination "may be the most important vote that I and the other 99 Senators will cast during our stay in Washington."

What is the degree of authority of the President and the Senate over Supreme Court appointments?

Is there not a tradition of Senate confirmation if the nominee is generally "qualified?"

What should be the criterion for presidential, Senate, and public evaluation of a nominee?

In Article II, Section 2, the United States Constitution states that the President "shall nominate, and by and with the consent of the Senate, shall appoint judges of the Supreme Court." In this connection, the Constitution applies the principle of the separation of power. We must note that the President's nomination is subject to the Senate's "advise and consent." This combination of co-equal powers should force an approach to common counsel, compromise, and agreement. This principle of separation of powers to promote checks and balances pre-supposes public vigilance and input.

In short, the Constitution envisions that the President and the Senate shall cooperate as equals to arrive at consent on the nominee, and that the public shall be part of the monitoring of this process.

While a tradition of Senate confirmation if the nominee is generally "qualified" has been followed in many cases, it is also true that 20 percent of the presidential Supreme Court nominees have been rejected. More nominees have been rejected for the Supreme Court than for any other federal post.

The Senate has as much legal power as the president over the appointment. The Senate is not a rubber stamp. Automatic ratification in the case of non-controversial nominees may be a tradition, but it is the Constitution that governs permanently. The tradition and the Constitution do, however, raise the question of what does "qualified" mean? The United States Supreme Court is the most powerful court in the world; it has the power to declare acts of Congress and the conduct of the President as being unconstitutional.

The persons selecting such a powerful judge must be scrupulously cautious. The liberty, security, and longevity of every citizen and the nation is in the balance.

This being so, I submit the main criterion for confirmation is judicial philosophy, based on a demonstrated record of comprehensive and consistent upholding and applying of the Bill of Rights.

While the Senate should not ask questions of Judge Bork regarding his views on specifics, but it can and should ask questions about his views on specific provisions of the Constitution, particularly views on the substance of the Bill of Rights.

I believe with many that Judge Bork's record on the Bill of Rights does not merit consent by the Senate. While we know that some appointee's change some views while on the court, Bork's recorded views present a clear and present danger to the rights of little people opposed by big power. Bork's judicial philosophy promotes the conclusion that he is not now, and most probably will not be, a vigorous, dependable guardian of the Bill of Rights. Let us look at his record:

Church-State relations: Bork's record suggests that he favors state-directed worship in public schools and public tax support for sectarian schools. Bork has described Chief Justice William Rehnquist as a man "guided not by his personal philosophy but by a commitment to the commands of the Constitution." It was Justice Rehnquist, we recall, who, dissenting in a 1985 school prayer case, said "The 'wall of separation between church and state' is a metaphor based on bad history, a metaphor which has proved useless as a guide to judging. It should be frankly and explicitly abandoned."

Americans cannot afford the appointment of a justice who could make Rehnquist's misguided perspective the majority opinion on the high court. Along with Bork and Rehnquist, Justices White, O'Connor, and Scalia would give opponents of strict church-state separation a solid 5-4 edge.

It is worth noting also that Justice Brennan, the court's strongest supporter of church-state separation, is 81 years old. Justices Blackmun and Marshall, also supporters of separation, will turn 80 next year.

Abortion rights: Bork has called Roe v. Wade "an unconstitutional decision, a serious and wholly unjustifiable usurpation of state legislative authority."

One person-one vote: This principle, bork says, "runs counter to the text of the Fourteenth Amendment, the history surrounding its adoption and ratification, and the political practice of Americans from colonial times up to the day the court invented the new formula." He has also opposed the outlawing of the poll tax, and said that forcing white restaurants and hotels to serve blacks was "unsurpassed ugliness," a view he has since recanted.

Equal protection: Bork has referred to the famous clause in the Fourteenth Amendment as the "Equal Gratification" clause and would strictly limit its application. The law requires that "government not discriminate along racial lines," Bork has said. "But much more than that cannot properly be read into the clause." Equal protection for women, or Hispanics, or gays, or the handicapped would therefore not apply.

Exclusionary rule: He is in favor of letting courts admit evidence that was illegally obtained by the police. "The conscience of the court," he has said, "ought to be at least equally shaken by the idea of turning a criminal loose on society." Bork would limit the idea that our Constitution is as concerned with the means as with the ends.

Privacy: "The right of privacy strikes without warning," Bork said in a 1985 interview. "It has no intellectual structure to it, so you don't know in advance to what it applies." He has criticized the Supreme Court's decision in Griswold v. Connecticut (1965), which made it legal for married couples to use contraceptives in their homes.

Free speech: The First Amendment applies only to "explicitly political" speech, Judge Bork wrote 16 years ago. There is no basis for judicial intervention to protect scientific or literary expression. This eccentric view is almost unique to Bork. He claims to have tempered his views since then, though he remains hostile even to some political speech. For example, he has expressed some support for state action against some "subversion," a favorite subject matter of McCarthyism.

Perhaps the most telling insights into Bork's thinking are found in a speech, "Tradition and Morality in Constitutional Law," which he delivered at an American Enterprise Institute conference in 1984 in Washington. In this speech, Bork placed the power of government and the power of majorities, whether permanent or transitory, over individual liberties.

Bork said, "One of the freedoms, the major freedom, of our kind of society is the freedom to choose to have a public morality. As Chesterton put it, 'What is the good of telling a community that it has every liberty except the liberty to make laws?' "

While Judge Bork as a lower court judge has followed precedent, we must understand that as a Supreme Court justice he will making precedent. Chief Justice Marshall reminded us that the Supreme Court "decides what the law is." Judge Bork has publicly declared his dissatisfaction with "dozens" of decisions which we may conclude he will seek to change. If Judge Bork had been on the court the last 30 years and his views had prevailed our nation would have been radically different.

I agree with the conclusion of Prof. Lawrence Tribe at Harvard: "I have very little doubt that Judge Bork would help to restrict the people's civil rights and civil liberties with regard to free speech, religion, privacy, and affirmative action."

The public and the Senate should decline to consent to the nomination of Judge Bork.

SOUTHFIELD, MI, *August 30, 1987.*

"Letters to the EDITOR"

The Detroit Jewish News, Southfield, MI.

TO THE EDITOR: As an American and as a Jew, I take issue with Harold Norris' diatribe against Robert H. Bork (August 28) and his judicial philosophy, it is apparent that Norris' reservations on the Bork nomination stem from knee-jerk liberalism rather than from true concern over Bork's judicial competence.

Norris presents several of Bork's quotes, which though conveniently taken completely out of context, are cause for all of us to be all the more in favor of Bork's confirmation. Norris quotes Bork on several issues, among them abortion, equal protection, the exclusionary rule, and free speech.

As a Jew, is Norris aware that Jewish law explicitly forbids abortion, unless the mother's life is in danger. This fact was reaffirmed by a recent letter to The Jewish News by the Detroit Council of Orthodox Rabbis. Judge Bork, like most Americans possessing some degree of morality, is simply opposed to the butchering of human life. In addition, this is a states' rights matter and should be decided in the state legislatures, though Norris would have the court usurp the legislative roles of Congress and state assemblies.

With regard to equal protection, Bork has stated expressly that he will uphold existing civil rights laws. What Bork is opposed to is the current so-called "affirmative action," a perversion of the Civil Rights Act of 1964, which has led to reverse discrimination, where "minorities" are unfairly preferred over much more qualified other citizens, in our academic institutions and in the job market. Such policy was never actually legislated in the U.S. Congress, and in fact, before the Civil Rights Act was passed by Congress, the bill's floor manager, Senator Hubert H. Humphrey, told one of the bill's opponents during the Senate debate that, "If the Senator can find in the bill any language which provides that an employer will have to hire or admit on the basis of percentage of quota related to color, I will start eating the pages, one after another, because it is not there."

Concerning the exclusionary rule, apparently Norris would have the mass murderer released to kill again because a weapon or confession may have been obtained before police were able to read him several minor sentences or because of some other technicality. Bork has proven that, indeed, there is no logical Constitutional basis for this law whatsoever.

On free speech, it is apparent that Norris would rather protect government employees who release top secret information, thus jeopardizing our national security, and those who incite riots.

What Bork realizes—and Norris does not—is that while Americans are privileged to enjoy many rights, no right is absolute, and the rights of one end when they violate the rights of another—ie. the rights of the unborn states' rights, the rights of all Americans (not just certain "minorities") to equal opportunity, victims' rights, and the rights of all Americans to live in a secure nation.

By quoting Bork, again out of context, and quoting Chesterton, Norris insinuates that Bork would legislate his morality upon the American public and somehow take away from them "the liberty to make law." On the contrary, Judge Bork believes in judicial restraint—that jurists should interpret the law rather than create it. Perhaps Norris has difficulties with this because he is haunted by the specter that the high court might someday be dominated by justices who actually believe our Fonding Fathers intended something when they wrote the Constitution. In the Senate, Senators Biden and Kennedy and their liberal special interests have difficulties with this because Judge Bork would adhere to the Constitution and the laws created by Congress, whereas Messieurs Biden and Kennedy would prefer a justice who would create or destroy laws for them when they are unable to carry out such maneuvers themselves in the legislative branch of government. The judicial process is not a policy science but a way of reading the Constitution so as to leave the art of governing where it belongs—in the legislatures and executives of the nation. Very simply, Judge Bork believes that legislating should be left to the legislators.

Norris asks, "What should be the criterion for presidential, Senate, and public evaluation of a nominee?" He maintains that the President and the Senate should "cooperate as equals" on this matter, and that "the Senate has as much legal power as the President over the appointment." To the contrary, the President appoints Supreme Court Justices with the advice and consent only, of the Senate. It is not the privilege of the Senate to appoint or choose justices, but only to lend the President its advice and consent regarding his choice. That is to say, the Senate is strictly to determine whether a nominee has the moral character, legal skills, and judicial temperament necessary to be a Supreme Court Justice. Judge Bork's political views are not and should not be put on trial here. However, Senate liberals have stated that this is precisely what they intend to do, and this is, indeed, what Mr. Norris has done. They oppose Bork on the grounds that he is, in their words, "a conservative ideologue," and in Norris words, that he is not an "open-minded person." Yet, it is interesting to note that Norris, Biden, Kennedy, et al., are as ideologically bound (to the left) as they allege Bork to be. Thus, their vehement opposition to his nomination. They would best be advised to heed to the words of Judge Bork, himself. "Political outlook has nothing to do with judicial philosophy", said he.

Judge Bork is eminently qualified to sit on the U.S. Supreme Court. For over twenty years, as a professor at Yale Law School, Solicitor General, acting U.S. Attorney General, a practicing lawyer, and a U.S. federal appeals court judge, Robert Bork has ceaselessly demonstrated his legal prowess, as one of the most extraordinary legal minds of our time. During his tenure as a judge, not one of Bork's decisions has ever been reversed or overturned, and he has voted with the majority of the judges ninety-four percent of the time. In addition, the American Bar Association gave him its highest rating: "exceptionally well-qualified." In fact, former U.S. Supreme Court Justice Warren E. Burger stated, "I don't think in more than fifty years since I was in law school there has been a nomination of a man or woman any better qualified than Judge Bork." Furthermore, in a poll of federal and state judges conducted on August 1, by the National Law Journal, a whopping fifty percent of those polled stated that were the Senators today, they would definitely vote to confirm Robert Bork as a U.S. Supreme Court Justice, while only twenty-four percent would oppose his appointment. In addition, Bork was unanimously confirmed by the Senate in 1982, for his appointment as federal appeals court judge, and he was also confirmed by the Senate in 1973, for his appointment to Solicitor General. Robert H. Bork in 1973, and in 1982, is the same Robert H. Bork in 1987. After twice confirming him, unanimously the second time, why has the Senate suddenly changed its tune? Why didn't Norris and other Bork opponents speak up in 1973, and in 1982?

For those, such as Norris, who would have us believe that a U.S. Supreme Court nominee's philosophy should play a major role in confirmation, Robert Bork represents the judicial philosophy that the President (elected with the mandate of the American people) and most Americans believe in. His nomination provides a chance to change the long-term radical course of the high court into a direction long favored by a majority of the American people. Bork's strong positions on affirmative action, law and order, crime, and drugs are popular with the voters. In fact, in the latest Gallup poll, fifty-three percent of those polled nationwide stated that they felt the U.S. Supreme Court should make more conservative decisions in the future, while only twenty-three percent felt it should become more liberal. Indeed, Robert Bork will make the court more representative of the values of the Founding Fathers and the majority of Americans today.

In conclusion, Mr. Norris would be best advised to follow the counsel of New York Governor Mario Cuomo in his recent rebuke of presidential candidate and Senate Judiciary Committee Chairman Joseph Biden for his premature anti-Borkism: "It's the worst kind of irony to condemn Bork on the grounds that he's not open-minded when you yourself haven't waited for the hearings to take place!"

Sincerely,

DEBBIE K. SCHLUSSEL,
National Jewish Coalition Representative.

WELCOME TO OUR NEWLY NATURALIZED CITIZENS

HON. BENJAMIN A. GILMAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 22, 1987

Mr. GILMAN. Mr. Speaker, it is with sincere pleasure that I congratulate the residents of New York's 22d Congressional District who have chosen to become citizens of the United States with all the privileges, freedoms, and responsibilities that American citizenship entails.

Our beautiful Hudson Valley region in New York State is proud of its newest citizens, and I invite my colleagues to join me in welcoming the following newly naturalized Americans and extending to them our best wishes for a happy and prosperous life in their new homeland:

NEWLY NATURALIZED CITIZENS

Elvie Abordo.
Eva Abreu.
Maria Mercedes Abreu.
Mr. Jean-Baptiste Adeline.
Ms. Neelam Aftab Dar.
Raymonde Agnant.
Generoso Saiyngco Almarines.
Ms. Maria Angelos Papachristopoulos.
Mr. Moshe Arieli.
Charles Emnmanuel Armand.
Dr. Yolene Armand.
Zaharias Astras.
Ms. Alexandra Asuncion Rodriguez.
William David Attick.
Ms. Marie Juliette Aurelien.
Mr. Afredo Balanga Somera.
Philomene Balin.
Armand Zephirin Batiste.
Delores Maria Barnaby.
Walter Bars.
Benedetta Bartolotti.

Mohamed A. Bawayeh.
Ms. Kettly Belony.
Fred Blaise.
Abraham Heriberto Blanco.
Bernadette Bonnard.
Bina Bou.
Kurt Buck.
Brigida Bueno.
Pedro Caldevilla.
Concepcion Defensor Cambronero.
Maria Camilo.
Joubert Cantave.
Marie Yvette Cantave.
Emilia Cappiello.
Daniel Carmondy.
Anita Carribon.
Abner Celestin.
Denesto Rosal Cerbolles.
Josepito Cerbolles.
Mayra Cespedes.
Lino Chanyungco.
Soo Chapman.
Irene Denis Charles.
Simon Chayevsky.
Margareth Cheron.
Gutchard Chery.
Mr. Eugene Chilo Turnier.
Jason Chiu.
Aram Choukhachian.
Leda Chuz.
Mettelus Clerge.
Ladisla Collado.
Ramon Collado.
Fernando Colmenares.
Elena Comnea.
Anne-Marie Compas.
Joseph Benjamin Constable.
Ms. Lucy Cruseta.
Orlando D'Amil.
Mr. Aftab Bari Dar.
Dennis Davila.
Maudline Lillymay Davis.
Irma De Guzman.
Olanda De Oca.
Mr. Manuel DeJesus Luna.
Blanca DeLeon.
Arun Deshpande.
Jean Paul Dessources.
Mr. Kenny Diep Nham.
Xay Diep Nham.
Fotini Diplas.
Fernando Dos Santos.
Marie Angela Downie.
Christine Marie Marshall Dreyer.
Jean Picard Durandisse.
Zisla Dzenis.
Sherif Elbendary.
Pablo Encarnacion.
Susette Marie Engel.
Ms. Santa Ana Estrella.
Antonio Etienne.
Pierre Etienne.
Enide Febrier.
Helena Bernadette Feehan.
Lawrence Feehan.
Joseph Fider.
Jacqueline Martine Figaro.
Marie-Marthe Fils-Aime.
Mr. Frantz Fleury.
Bernice Fraser.
Mr. Bernard Freidman.
Pnina Freistadt.
Ms. Bluma Fried.
Tina Chiu Yu Fu.
Kathleen Yvonne Fuerst.
Mr. Claudel Germain.
Martin Girvan.
Ms. Mary Teresa Girvan.
Vera Goodman.
Marie Ginette Grand-Pierre.
Mr. Louis Ernst Guignard.
Philip Halpin.
Enilda Hamilton.
Yolna Hans.
Ms. Louise Jacqueline Haubourg.
Charles Havas.
Marckes Henry.
Patrick Alphonso Henry.
Chaya Hirsch.
Simon Hirsch.
Ms. Golda Hosenberg.
Laurette Diana Huggins.
Koon-Sea Hui.
Maria Po-Ping Hui.
Ms. Marie Claude Hyacinthe.
James Hyppolite.
Madeline Idal.
Sharon Antoinette Isaacs.
Ms. Marie Martine Jabouin.
Harjit Jassal.
Marie Jean-Baptiste.
Marlene Jean-Francois.
Rosemonde Jean-Paul.
Antoine Jean.
Raymond John Jenns.
Vivian John.
Marie Jorge Ifiaco Monteiro Jorge.
Mr. Peter Julmis.
Ms. Rachel Kohn.
Mireille Lapaine.
Ms. Sara Leifer.
Ms. Josette Leonard.
Ms. Josephine Lisa Letizia.
Ms. Genevieve Marie Leveille.
Roslyn Levinthal.
Anh Luong.
Mr. Dudley Manasseh Paisley.
Ms. Elizabeth Aleykutty Mathew.
Ms. Theresa Mathew.
Edner Mathieu.
Ms. Lourdes Miguelina Veras.
Ms. Ana Marie Molina.
Ms. Cargill Faith Murphy.
Mr. Parveen Kundan Nathaniel.
Ms. Nora Nelley Quaye.
Adrien Nelson.
Dennis James O'Gorman.
Francisco Antonio Obregon.
Mory Om.
Marciana Ouano Bascon.
Fernande Personna.
Martial Personna.
Ms. Safa Eskandari Popescu.
Ms. Magalie Predestin-Fong.
Mr. Tony Quoc Nguyen.
Ms. Mary Catherine Reilly.
Mr. Rodrigo Reyes Enriquez.
Mr. Abelard Reyes.
Pauline Rodriquez.
Mr. Jean-Marie Rolande.
Ms. Helene Rosman Fisher.
Mr. Juan Rufino De Jesus Molina.
Ms. Teresa Iris Salinas.
Nadege Samedi Zamor.
Ms. Miriam Sarmiento Rada-Robinson.
Ms. Maria-Victoria Sindico Pineda.
Mr. Barry Skurnik.
Ronit Skurnik.
Mr. Joseph Michael Steel.
Mr. Cesar Sutil.
Ms. Anna Maria Swammy.
Ms. Kornelia Szwarc.
Mr. Michal Szwarc.
Chay Ha Thi.
Ms. Rachel Thomas.
Mr. Pedro Pablo Trujillo.
Fotis Tsekouras.
Ms. Marie Denise Valbrun.
Anh Van Nguy.
Jean Ritzer Victorin.
Mr. Vitaly Volkov.
Ms. Zoya Volkov.
Dorothy Joan Widom.
Ms. Dennise Patricia Wint.
Kea Young Jun.

SUPPORT OF RURAL OUTREACH PROGRAM

HON. E. THOMAS COLEMAN

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 22, 1987

Mr. COLEMAN of Missouri. Mr. Speaker, in 1984 when the House Agriculture Committee was beginning consideration of the 1985 farm bill I asked the U.S. Department of Agriculture to provide information on what was happening to farm families after they had been forced to leave the farm. I was surprised when USDA responded that there was no such information about the plight of displaced farmers.

To compile critical data on the condition and future of these families, I asked the Department to prepare a study on displaced farmers. The findings of this study were deeply disturbing: At a time when these families needed all the support and assistance possible, many families were painfully isolated.

To meet the immediate needs of farm families in distress, I drafted an amendment to the 1985 farm bill to create a rural outreach program. The program, known as section 1440, received a $1.5 million Federal grant last year to begin operating in Missouri, Iowa, and Nebraska. We hope to expand this program to more States this year.

The 1440 program officially began in Missouri last February. In the span of 7 months, the program has made tremendous progress toward helping hard-pressed farm families overcome the crushing stress associated with the farm crisis and to prepare for and obtain new careers. In fact, more than 1,300 Missouri farm families have participated in the job training and crisis management counseling services that are provided through the 1440 program.

With these facts in hand, it was not hard to convince my colleagues on the House Agriculture Committee of the importance of extending this program for 3 more years; and on October 15, the committee agreed to do just that. The committee also agreed to expand the counseling services of 1440 and to include rural families in the program. The House on Monday passed this measure, H.R. 3492.

Under this program, Federal grants will be provided to develop educational, retraining, and counseling assistance for financially stressed farmers, dislocated farmers, and rural families who have been adversely affected by the current farm and rural economic crisis.

Specifically, these services, working through the Agricultural Extension Service, may include: clinical outreach counseling and crisis management assistance; individual or family financial planning and management; job search assistance and training in job-seeking skills; on-the-job training; assistance in obtaining training in basic, remedial, and literacy skills; assistance in obtaining training for operating a business or enterprise; evaluation of vocational counseling in enhancing such skills; tuition assistance, including fees, books, and other educational expenses.

Many farmers feel there is no life after farming. At 1440's career options workshops, however, farmers learn they have a great deal to offer a new employer because of the diverse skills they have developed on the farm, such as business management, budgeting, personnel management, welding, and veterinary science.

Trained professionals at the workshops also take farmers through the steps of writing a résumé and filling out job applications—tasks many farmers have never had to face. Counselors also arrange practice interviews to help alleviate the fears and trepidations of an interview. Through workshop training and counseling, many farmers have already secured new jobs while others have developed new confidence in their job hunting skills.

During the 7 months the 1440 Program has operated, 603 Missouri farm families participated in 21 workshops or used the Missouri Career Information Hotline. The response to these services was overwhelmingly positive. Following are a few case histories and comments from farm participants.

One farm couple participated in a 2-day workshop after their farm business collapsed. During the workshop they learned how to assess and evaluate the skills they used on the farm and, most important, how to apply those skills to new employment opportunities.

Upon completing the program, the wife wrote:

> I believe many farmers, because they have never written a résumé or been interviewed, somehow feel an embarrassment for not knowing how to do those things. This is where the career options program plays an important role. Confidence is built through classroom discussions, analysis of aptitude and interest tests, career counseling sessions and an opportunity to actually role play a job interview with a leading business person from the Columbia area.
>
> Our group learned that farmers have developed a vast range of abilities that we have taken for granted. What other occupation develops managerial skills, marketing skills, time-management skills and community involvement? When included in a résumé, these skills can be very impressive to a future employer.

Following the workshop, the husband contacted a graphics company where he had previously sought employment. After a series of interviews he received the job, may soon be transferred into a managerial position. He feels that without the preparation he received during the workshop, he would not have been able to market his skills effectively during the interviews.

In another case, a displaced homemaker attended a workshop in late April. Her main concern was finding some way to support herself and her children. She had very little job market experience and was concerned about leaving her children all day.

Approximately 2 weeks after the workshop, she visited the Career Planning and Placement Center for further employment assistance. She spent the afternoon visiting Columbia personnel offices with a career options staff member so that she could become more comfortable with filling out applications and talking to personnel staff.

Within 2 to 3 weeks, she secured a job with a trucking company. She found the job by making personal company contacts, as she had been taught at the workshop. She said she felt that having a résumé to submit along with her application set her off from other candidates.

Today, she is getting solid clerical and dispatching experience and has even enrolled in a college evening course with the hope of moving up quickly. Her children have adjusted to daycare and she says she enjoys the stimulating and variety her job offers.

A third example of section 1440 assistance involved a married couple who had started a small sideline landscaping business prior to attending a late April workshop. After the workshop, they decided to pursue their business on a larger scale. They worked closely with their area extension agent and also requested sources of correspondence training from Missouri Career Information Hotline and contacts for landscaping organizations. The couple reports that their business is doing very well.

This rural outreach program enabled direct crisis intervention by mental health professionals and organizations working together with Extension Service personnel. These so-called coordinators gain valuable access to distressed families by spending time in places where rural people gather to talk: cafes, coffee shops, auction barns, and grain elevators.

In addition to job hunting skills and career counseling, the 1440 Program has played a critical role in addressing stress related to the farm crisis and its impact on rural and farm families.

Under the 1440 Rural Outreach Program, mental health professionals and other organizations work with the Extension Service to provide the practical and compassionate assistance these families need in order to make the transition to new jobs and lifestyles and to deal with the pain of losing the farm or family business.

In less than 1 year, the 1440 Program has made a positive impact on hundreds of distressed farm and rural families in Missouri. I am pleased that the House has recognized the tremendous need for the services provided by this program and has authorized it through 1990.

MANDATORY NATIONAL SEROLOGIC TESTING IS AN IMPERATIVE

HON. WILLIAM E. DANNEMEYER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 22, 1987

Mr. DANNEMEYER. Mr. Speaker, I would like to submit the following article, "Mandatory National Serologic Testing is An Imperative," by Doctors Lawrence and Brian McNamee for review by my colleagues.

MANDATORY NATIONAL SEROLOGIC TESTING IS AN IMPERATIVE

(By Lawrence J. McNamee, MD, and Brian F. McNamee, MD)

AIDS has become a global pandemic in the short span of one-third of a single human generation. It has been starkly apparent since the AIDS epidemic was first recognized that public health policy has been dominated, indeed dictated, by the social interests of those infected at the expense of legitimate health concerns of society at large. And with what result? This disease has proceeded on course, on its own terms, undeflected by our collective efforts to date. Clearly, a bold national, initiative with courage and vision is essential to stop the further spread of AIDS, and this effort must be consistent with the increasingly grave threat posed by the epidemic to all society.

To appreciate the severity of this disease, it must be understood that the very fact of HIV infection is a fatal condition. Unfortunately, by the most reliable medical estimates, those currently infected will not survive the coming 10 to 15 years. Roughly 75% will be formally listed as "AIDS" victims within the underinclusive and outdated Centers for Disease Control classification. Progressive dementia from direct AIDS encephalopathy (the sole mode of presentations in fully 10% of those infected), "chronic wasting," lymphoid pneumonitis, renal and cardiac failure (as well as the many recognized infectious and neoplastic complications of HIV infection) will claim increasing numbers of those afflicted, but at an accelerating pace during the second five years following infection. Thus, for purposes of this discussion, AIDS will be considered a pathologic condition from the day of infection characterized by a symptom-free period of several years followed by progressive morbidity and eventual mortality.

The potential toll on human society is exemplified by epidemiologic data from Africa where heterosexual transmission predominates. In central and eastern Africa, 25% of the adult population is currently infected and dying, and one in every seven children in this region is now born with AIDS. The equally efficient bidirectional transmission of the AIDS virus is demonstrated by the balanced distribution of infection between men and women in Africa. In these same sections of Africa, viewed against the already high perinatal mortality rate, fatal HIV infection appears to be outstripping the viable conception rate. That is, segments of this society now appear unable to sustain or replenish themselves.

In the United States nearly one in 80 Americans is estimated to be fatally infected, with the number of cases in the heterosexual community doubling every six months. These three million infected Americans will require $420 billion in direct health care expenditures over the next 10 years. This figure discounts the substantial funds dedicated to medical research, and also ignores the enormous loss in productivity occasioned by these tragic deaths. Thus, a recent University of California study estimates that financial outlays for medical care represent only 13% of the total cost to society. If current infection rates continue, these expenditures will be dwarfed by the funds needed for the 20 to 30 million individuals estimated to be infected by the early to mid-1990s in the U.S.

On a global level Dr. Koop, the U.S. Surgeon General, agrees with the World Health Organization in conservatively predicting 100 million AIDS-related deaths by the end of this century. The predictable worldwide socioeconomic dislocation immediately facing humanity from AIDS is staggering and would seemingly eclipse the effects of a major war.

Without a vaccine or cure on the near horizon, medicine can offer no assistance toward stopping AIDS.

What then is education's role in halting AIDS? The most educated lay population in the world about the pathogenesis of any disease is the homosexual community as it concerns AIDS. However, the infection continues to spread relentlessly among their numbers accompanied by undeniable evidence of continued unrestrained "unsafe sex practices."

For example, the incidence of rectal gonorrhea is no longer declining among their ranks according to a February 1987 San Franciso health department report. Further, repeated episodes of gonococcal infection among known HIV positive homosexuals were reported in the April 25, 1987 issue of *Lancet*.

So what precisely has education accomplished? In this same much-studied gay population from San Francisco, the percentage of seropositivity rose from 12% to roughly 80% between 1982 and 1987 despite the deluge of educational campaigns.

Further, concerning heterosexual transmission, one cannot undertake to educate the species against propagation, nor reliably enlighten it as to "safe" propagation. It is naive to expect the several million infected to individually make responsible public health decisions when 90% are unaware of their infected and infectious condition. But irrespective of belief, there is no time to assess the potential efficacy of education in the face of an inescapably lethal, incurable infection of worldwide pandemic proportions.

Thus, education alone cannot realistically be expected to halt AIDS. Its primary utility lies merely in the fact that an educated populace is more likely to constrain the epidemic than an ignorant one. Our extended experience with educational programs directed to teen pregnancies, smoking and substance abuse underscore this point. More is urgently needed!

The government is empowered to act in response to a perceived societal health hazard at both federal and state levels. Any such action necessarily must be narrowly directed at control of the viral infection, and be devoid of personal prejudicial considerations.

With this in mind, it must be understood that in order to eliminate AIDS, it is first necessary to identify it (that is the infected reservoir), and then interrupt its known means of spread. Identification will require mandatory national serologic testing which only then will allow interdiction based on the modes of transmission. As Dr. Judson, Director of Denver Public Health noted recently, "Clearly, public health can do little to control a communicable disease when it doesn't know who is infected nor who is exposed."

Dr. Judson presides over a voluntary system of testing with mandatory health department reporting and contact tracing. Colorado has tested 30% more persons for HIV infection per capita under this program than California with its much touted anonymous testing and emasculated public health control procedures. In Dr. Judson's view, California's approach "is an irresponsible and irrational reaction to a deadly infectious disease. It confuses an attack on the AIDS virus with an attack on individual liberties."

There is ample legislative authority for controlling this disease. With regard to mandatory national blood testing, Section 361 of the Public Health Service Act empowers the federal government to prevent spread of diseases across state or national borders. Notwithstanding an absence of specific provisions for blood testing therein, federal legislation providing for such testing would be both a "necessary and proper" constitutional basis for governmental exercise of its responsibility under this act. Although health and welfare provisions have traditionally been a matter of state discretion, the need for a uniform national standard to ascertain application and coordinate the inevitable programs dealing with the myriad of medical, legal, financial and social aspects of this disease should be apparent.

Such legislation should initially mandate serologic testing for all people between 15 and 50 years of age, in addition to recipients of blood transfusions between 1978 and 1985. Testing beyond these age limits would not appear medically necessary since this will allow identification of virtually all persons who are both infected and likely to spread the infection further. Subsequently, periodic testing might be restricted to hospital admissions, drug addicts, prostitutes, the incarcerated, immigrants and marital license applicants in an effort to conserve and focus scarce resources.

The identity of all seropositive individuals must then be entered in a national repository and confidentially maintained under the aegis of specifically designated health department officials. This system will facilitate an organized agenda for medical research including the trial of new treatment modalities as they become available. Such an approach will be of distinct benefit to AIDS patients and should outweigh any inclination for patients to "go underground" as has been irresponsibly suggested by the media and many physicians as well.

Only through modification of behavior can AIDS be halted. We must remember that 90% of infected individuals are asymptomatic and unaware of their infectious condition (when they are most likely infectious to others). It is critical that the identity of those infected be known to themselves and designated health department officials so sexual behavior may be modified voluntarily, or mandatorally restricted where required by continued individual irresponsibility. Only when this first step has been taken can we realistically hope to blunt the yet undaunted, inexorable spread of the AIDS epidemic.

MAKING THE CONSTITUTION WORK: THE SEPARATION OF POWERS

HON. BOB McEWEN

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 22, 1987

Mr. McEWEN. Mr. Speaker, allow me to share with you one of the two winning essays from the National Bicentennial Writing Competition. It gives me great pleasure to present Sara Johnson's outstanding work for the RECORD. Her hometown of Portsmouth and all of Ohio are proud of her achievement.

Additionally, all American citizens can learn and benefit from her scholarly dissertation on the separation of powers in this the bicentennial year of our Constitution.

MAKING THE CONSTITUTION WORK: THE SEPARATION OF POWERS

(By Sara Elizabeth Johnson)

The writers of the Constitution of the United States separated the American government into three equally powerful branches—legislative, executive, and judicial—to maintain a balance of powers yet associate them closely enough to interact effectively. This separation of powers that the Constitution guaranteed two hundred years ago even today provides for a democratic government safeguarded against the potential despotism of any of its branches.

The men who framed the Constitution, having formerly been British subjects, were familiar with and influenced by Britain's parliamentary system of government, a system which involved some degree of separation of executive, legislative and judicial powers. The executive had the sole responsibility to formulate foreign policy, often involving some legislation, and he appointed the members of the judicial branch. The legislature acted as the judiciary in impeachment cases. Judges, while not given a vote, participated in legislative proceedings.

These framers of the American Constitution had read and widely respected the English philosopher John Locke and the French philosopher Montesquieu. Locke, whose writings influenced the framers' decision to establish a representative legislature, may have been the first in modern times to introduce the idea of separation of powers with his "Second Essay Concerning Civil Government." In this essay of 1690, he stated, "Tyranny is the exercise of power beyond right, to which no one can have a right." He wrote that one of the duties of the legislature is to assure that no governmental branch other than the legislature elected by the people should receive law-making power.

Montesquieu also held a deep respect for the British system of government and elaborated on the foundation that Locke had established. He wrote:

"When the separation of powers are united in the same person or body, there can be no liberty, because apprehensions arise lest the same monarch of the senate should enact tyrannical laws to execute them in a tyrannical manner."

His philosophy became the basis for the separation of powers in the United States Constitution.

As James Madison pointed out in his Federalist #47, Montesquieu in his reverence for the British system of government did not favor complete separation of powers but rather urged that each branch should have some authority to check the power of the other branches. Madison, often called the father of the Constitution, stressed in his own writings the importance of some overlapping responsibilities to prevent the domination of any single branch.

While Madison stressed the importance of a strong executive, many others equate this with the only strong executive they knew, England's King George III. Their view of the king as a tyrant made them wary of granting authority to the executive. Many called the proposed executive branch the "fetus of monarchy."

An important issue surrounding the allocation of power to the executive branch was whether the executive should have the right to veto legislative acts. Madison thought that it was important for Congress to be able to override a presidential veto. The Virginia Resolve 8 suggested that members of the executive and judicial powers jointly approve new laws. However, this resolution was opposed on the basis that courts rule on the constitutionality and interpretation of laws and, thus, that any judicial participation in law-making was inappropriate.

When the Constitution was finally ratified, the three branches of government were separate and nearly equal. The legislative branch, composed of a bicameral Congress, could override a presidential veto and would serve as the judiciary in an impeachment trial. The executive branch, with a single president, could veto laws and make judicial appointments. The judicial branch would serve to interpret the laws but was not given the express right of judicial review until 1803 when Chief Justice John Marshall assumed this right in the landmark Supreme Court decision, ***Marbury*** v ***Madison.***

The procedure for the separation of powers written two centuries ago are pertinent yet today. Through the visionary work of the Constitution's framers, the separation of powers is a living part of modern American government, and the checks and balances prescribed at the Constitutional Convention two hundred years ago provide an assurance of democracy today. Numerous examples of the successful use and application of the separation of powers can be drawn from just the last twenty years, proving that the theory of separation of powers and the Constitution itself are as efficient for democratic government as they were in 1787.

The legislature, for example, has exercised checks on both the judicial and executive branches. When the Senate refused to approve President Richard Nixon's appointments to the Supreme Court, Clement F. Haynesworth in 1969 and G. Harold Carswell in 1970, the legislative branch not only exercised control over the executive by not approving an executive choice, but also controlled the judicial branch by establishing a rigorous ethical standard to determine who could become members of the High Court.

The best example, though, of legislative check over the executive branch is probably the role of Congress in the Watergate scandal during Nixon's years in office. When low-ranking members of Nixon's re-election committee committed illegal acts by breaking into the Democratic National Committee headquarters and the Nixon administration endeavored to conceal the crimes from the public, Congress stepped in with the Senate Watergate Committee and the House Judiciary Committee and eventually even began impeachment proceedings. The threat of impeachment prompted Nixon's resignation and proved that the constitutional framework of separation of powers was capable of surviving such a crisis. The document which Madison and the other framers had created with remarkable foresight was sufficient to direct the nation through the potential trauma resulting from the loss of the executive figurehead.

The executive branch has also been able to use its powers to check the other branches. Ronald Reagan, during his first six years in office, vetoed sixty-one pieces of legislation, only seven of which were overridden. After his veto of a 1982 Supplemental Spending Bill, he said, "Any time there is an attempt to bust the budget, I will veto it." In this way he has exercised restraint of the legislature. He has had an influence on the judicial branch through his appointments of Sandra Day O'Connor and Antonin Scalia to the Supreme Court and of William Rehnquist to the position of Chief Justice of the Supreme Court by attempting to place some of his own conservative views three votes closer to passage.

The judicial branch, too, has introduced its share of checks into the system of separation of powers by ruling on the constitutionality of legislation when legislative challenges are brought before the Court, and by ruling on the constitutionality of certain executive acts. The Warren Court of the 1950's and 1960's even turned judicial review into a kind of legislation. The famous Miranda decision of 1966 went beyond declaring one law in one isolated case to be unconstitutional; it decreed a procedure for reading rights to all persons who are arrested.

The Supreme Court not only reviews legislation but has overturned laws on the basis that they violated the doctrine of separation of powers. For example, in 1986 Congress struggled to produce legislation that would reduce the national deficit. The Balanced Budget and Emergency Control Act, popularly called the Gramm-Rudman Act, became highly publicized as the product of Congressional efforts. The act provided for a Comptroller General to submit a report about federal spending and to designate which reductions would be necessary to balance the budget. The President would then automatically order these reductions. However, the Supreme Court ruled that the law was unconstitutional because it violated the separation of powers. The Court held that the Comptroller General's position was executive in nature since he was to execute the Balanced Budget Act, yet he was a legislative officer because he could be removed only by the legislature, and, therefore, the law violated the Constitution. The opinion states:

"That the federal Constitution's system of separation of powers produces conflicts, confusion, and discordance at times is inherent, but it is also deliberately so structured to assure full, vigorous, and open debate on the great issues affecting the people and to provide avenues for the operation of checks on the exercise of government."

While the separation of powers has provided fair balance of governmental control, some have attempted to abuse the doctrine for their own gain. Nixon, for example, chose to claim executive privilege when ordered to submit tapes of phone conversations to U.S. District Court Judge John J. Sirica. These recordings could have cleared up much of the Watergate confusion and provided strong evidence relevant to many of the pending criminal trials. Nixon withheld the tapes by claiming executive privilege, insisting that secrecy was necessary to national security. This claim forced a decision on whether the judiciary could subpoena the executive to submit evidence and, if so, who would enforce such a subpoena. Nixon refused to obey Sirica's order but agreed eventually to submit edited transcripts. The Supreme Court upheld Sirica's order and, in the case *United States* v. *Nixon,* ruled that the separation of powers could not exempt the President from judicial decisions:

". . . the judicial power . . . can no more be shared with the Executive branch than the Chief Executive, for example, can share with the judiciary the veto power, or the Congress with the judiciary the right to override a presidential veto."

Judicial power in this case was able to keep the executive branch from overreaching its power.

The Iran-Contra affair currently affecting the Reagan administration has proved to be another issue testing the durability of separation of powers. It seems that members of an executive committee, the National Security Council, were involved in supporting the Contra War in Nicaragua in spite of an express ruling by Congress that the Nicaraguan rebels should receive no further support from the United States. At this point in the crisis it would seem that the doctrine of separation of powers has been effective, since pressure from Congress has resulted in the dismissal of top executive aides believed responsible for the incident.

During the two centuries since the American Constitution was debated, written, and signed into life, branches of government have repeatedly confronted and clashed with one another. Drafters of the Constitution knew, first-hand, that power can breed desire for greater power. American history has fascinating examples of attempts by a single branch of government to gather more and greater power unto itself. But history also shows that the Constitution's system of separation of governmental powers has successfully thwarted those efforts and that the United States Constitution, at two hundred years of age, is lively, effective and viable in its capacity to protect its citizens from any internal governmental threats to their freedoms, just as its framers intended.

CHINA'S BRUTAL BIRTH BAN

HON. CHRISTOPHER H. SMITH

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 22, 1987

Mr. SMITH of New Jersey. Mr. Speaker, on Sunday, October 18, 1987, the Washington Post printed an insightful article by Steven W. Mosher, director of Asian Studies at the Claremont Institute.

Steven Mosher was living in China in 1979 when the Government began implementing its coercive population practices. When he returned to China in June of this year, Mr. Mosher found that coercive abortion and involuntary sterilization were still central elements of the Chinese population control program.

Mr. Speaker, a number of people have taken "sanitized tours" of China and reported that they didn't see any coercion. Steven Mosher, who speaks fluent Chinese, has lived among the people and been an eyewitness to these coercive population control practices. His findings coincide with other objective Western experts such as Michael Weisskopf, former Peking correspondent for the Washington Post and John Aird, formerly senior research specialist on China at the U.S. Bureau of the Census.

I recommend Steven Mosher's article to my colleagues and hope that all those who are concerned about human dignity will carefully ponder the implications of China's brutal practices. The article follows:

"One Family, One Child": China's Brutal Birth Ban—For Chinese Women, It's Abortion or Sterilization

(By Steven W. Mosher)

Like most women in rural China, Chen Guohan's wife wasn't content with the one child she was allowed under the state population plan. With her only child, a boy, set to enter primary school the following year and Chen himself a truck driver, on the road much of the time, she wanted another baby at home.

Sitting in the living room of his modest house in Zhuhai, a Special Economic Zone

(SEZ) in Guangdong Province designated for foreign investment, her husband recalled that he at first tried to dissuade her, reminding her of the fines, meetings and other pressures to which they would be subjected if she conceived a second child.

Chen's wife found a midwife who, for a fee of $20, stiff by Chinese standards, was willing to perform an illegal procedure: Remove the intrauterine device (IUD) that had been automatically inserted following the birth of her first child. After an anxious wait of several months, she became pregnant in September 1986.

By staying home most of the time, Chen's wife was able to hide her pregnancy from the population-control workers for several months. Her growing reclusiveness eventually made them suspicious, however, and they ordered her to go in for a pelvic examination.

Chen explained in blunt terms what that meant. "If the examination revealed that my wife was pregnant, they would order her to have an abortion." So, like millions of Chinese whose plans for a second child have aroused official ire, the Chens opted for "childbirth on the run." His wife would go to live with a cousin in a neighboring county until she gave birth.

Though Chen was expecting censure, he was taken aback by its intensity. Each day at work the vice director of his factory hounded him for information about his wife's whereabouts. Each evening at home he was visited by a birth-control delegation. After two months the factory director concluded that Chen could not be broken. He told the factory's dozen purchasing agents and sales representatives to make inquiries in the towns and villages of the surrounding district, promising a bonus to whoever located the missing wife. Chen's wife was found and brought back in February of this year. She was seven months pregnant.

The factory director ordered her confined to the factory dormitory. At least one member of the birth-control committee was with her at all times, badgering her to accept an abortion. Separated from her husband, too distraught to eat and sleep, she accepted the inevitable.

She was immediately taken to the local medical clinic and given an injection of an abortifacient drug. This shot, universally called a "poison shot" in China, causes the fetus to be born dead or dying 24 to 48 hours later. "They didn't even tell me she was in the clinic until they had already given her the shot," Chen ended ruefully.

The Chen's are only one of tens of millions of couples whose desire for another child has pitted them against a state bent on curbing China's population. The aggressive drive to enforce the "one couple, one child" limit intrudes on the intimate affairs of the family to a degree not seen in China since the Cultural Revolution.

Each year since 1980, the Chinese population-control program has prevented millions of births, scoring impressive statistical gains. For six years in succession, China has held its population increase rate to below 1.5 percent, less than half the Third World average. Its population currently stands at 1.057 billion.

I had been an eyewitness to the birth-control program in its opening stages in 1979 when I was living in a village in Guangdong province. From the beginning, Chinese officials painted themselves as driven by stark necessity. Unless a cap is put on the population, they argued, the country will remain mired in poverty for generations to come.

Although the quotas were to be met "voluntarily," the tone of the program was coercive from the first. In my village alone, 18 women resisted the two-child quota and were coerced into having abortions.

After leaving China in mid-1980, I published a detailed account of what I had seen. The Chinese authorities retaliated by branding me an "international spy" and charging that I had bribed officials. The Chinese did not deny the evidence of coercion, but claimed that it was a problem only in a few remote villages. Privately they demanded of Stanford University, where I was close to earning a doctorate in anthropology, that I be "dealt with severely." The university subsequently expelled me, citing an "erosion of the relationship of trust between faculty and student."

Chinese officials have consistently maintained that, despite the overzealousness of some control workers, education and criticism of the offending cadres has largely resolved the problem in recent years. "We oppose coercive measures of any kind," said Liang Jimin of the State Planning Commission at a June press conference in Beijing. "Even among women who are pregnant with a second child, not all will go for an abortion." Chinese officials point to slightly higher birth rates in 1986 as evidence that strictures against second births have been relaxed.

Yet not everyone finds the official protests of increased "voluntarism" convincing. Skeptics include demographer John Aird, formerly chief of the China desk at the U.S. Bureau of the Census, who testified before Congress in February of this year that "the Chinese program remains highly coercive."

Such contradictions made me anxious to see for myself when I returned to China in June of this year. What, if any, changes had occurred in the program?

In Zhuhai, the booming SEZ where the Chen family lives, even illiterate peasant women understand what has seldom been clear to outside observers: The "one couple, one child" rule is not uniformly applied across China.

"In the villages," one woman, echoed by many others, said to me, "they sometimes let you have two children. Here in the SEZ they never let you have more than one. When they set up the SEZ a few years ago they made us all city people. They are much stricter with city people."

Just how strict "they" are is clear from Central Committee Directive No. 7. Promulgated in 1983 to clear up widespread confusion over the policy on childbirth, it reads: "All state officials, workers and employees, and urban residents, except for special cases which must be approved, may have only one child per couple . . . . Those women who have already given birth to one child must be fitted with IUDs, couples who already have two children must undergo sterilization of either the husband or the wife, and women pregnant outside of the plan must adopt remedial measures [i.e., abortion] as soon as possible."

The Chinese Communist Party thus explicitly forbade the 20 percent of the population that lives in the cities from having second children, except in rare circumstances.

When the SEZ was created in 1983, the villagers—accustomed to the more relaxed policies of rural China, where couples are allowed to have their first child when they choose and to apply for a second—rebelled. Repulsed in their effort to reeducate the population into accepting the new limits, local officials dropped all pretense of "voluntarism."

Villagers recalled 1984-85 as a chilling time, when expectant mothers cried for help as they were dragged out of their homes into waiting vans and cried for help as they were taken away. These vehicles became known as "pig basket vans," after the large wicker "pig baskets" in which pigs are carted to the slaughterhouse.

It was only last year that this assault on the family subsided. The "pig basket vans" can still be seen sitting behind district offices, but they have been put to other purposes. "Nearly all women of childbearing age have been sterilized," one population worker explained, "So there is no need to deal with them." Women who remain fertile are, for the most part, deterred by the example of couples like the Chens who have been forcibly brought to heel.

Even within the controlled confines of Zhuhai, however, there are occasionally still couples who manage to bring a second child to term. Wang Dahung and his wife work in a state-run retail store. As in the case of the Chens, Wang's wife paid a midwife to illegally remove her IUD and conceived a child. She was able, however to avoid agents sent to find her and had her baby delivered outside a hospital by a midwife.

The party committee of the department store, however, fined the Wangs 3,000 renminbi, an amount equivalent to two years income. Wang's monthly income was also slashed by more than two-thirds. He was allowed to retain his meager base income, but he forfeited his SEZ cost-of-living allowance, expense allowance, bonus and the chance to earn overtime pay. The Wangs have family members in Hong Kong willing to help with the bills, Mr. Wang told me; otherwise they would starve.

There is a final note to their story. Mrs. Wang, having borne a second child, was told that under the regulations she must be sterilized. This she steadfastly refused to do. So one day the "pig basket van" pulled up in front of her house. She was taken to the hospital against her will and given a tubal ligation. She was still in the hospital recovering from this unwanted operation when I spoke with her husband.

Outside of cities, towns and SEZs, the "one couple, one child" policy has never been a hard-and-fast rule. The 1983 directive called for population-control workers to refrain from imposing the one-child limit on peasant families, merely to "vigorously advocate" it as an ideal. In the countryside, especially in remote, impoverished or minority areas, permission to have a second child could be obtained. At the same time, the directive stressed that local targets for population growth must continue to be met.

Rural officials proved by and large incapable of making the fine distinctions drawn by the new policy. They interpreted "vigorous advocacy" to mean that heavy fines, lengthy reeducation sessions, threats of infanticide and incarceration were still acceptable. Under pressure to meet their assigned targets, they forced abortions and sterilizations on women who wanted second or third children.

Worried by rising rural discontent, the government further relaxed the policy of promoting one child in the countryside in late 1984. Couples facing "real difficulties," it was announced, could apply for permission to have a second child. The "real difficulties" in question were never clearly spelled out, but were widely understood to be those experienced if the first child was a girl: namely, that she could neither support her parents in their old age nor carry on the family name.

Exemptions from the one-child rule were not to be granted indiscriminately however, Local targets on population growth were to be respected. And the couples themselves had to meet several other conditions. More than four years had to have elapsed since the birth of their first child, and they had to agree in advance that one of their number, usually the woman, would be sterilized afterwards. Those women approved for a second child would, at the appropriate time, have their IUDs removed.

Once again local officials had been handed an ambiguous policy by the central party. In their reading of "vigorous advocacy" they had erred on the side of strictness and been criticized; now in their interpretation of "real difficulties" many erred on the side of laxity. Although perfectly ready to impose uniform rules, such as those governing the spacing of births and the timing of sterilization, they balked at assuming the divisive role of granting second children to some villagers while denying others. Instead, they gave license to all to conceive and bear a second child.

As large numbers of second-child exemptions were granted, China's birthrate rose from 18 to 21 per 1,000 in 1986. Now Peking is moving to limit the number of second births to 10 percent of first births. "Indiscriminate granting of exemptions is forbidden," Shanxi Party chief Zhang Boxing warned local officials on July 10. "If they are granted, the matter will be dealt with seriously. We must strictly ban the birth of a second or further child not covered by the plan." In rural China, the pendulum is once more swinging back towards the coercive.

STRIKE UP THE BAND FOR THE "BASELINE TWO-STEP"

HON. JOHN EDWARD PORTER

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 22, 1987

Mr. PORTER. Mr. Speaker, I can hear the music starting. My colleagues across the aisle are putting on their dancing shoes in preparation for signing the "Baseline Two-Step."

It is a sadsong that goes like this: The CBO reports on the fiscal year 1988 sequestration based on last year's spending level as composed in the current CR. Then the band steps up the tempo by passing a new CR—the big one—that increases spending levels and softens the cut in fiscal year 1988.

Sequestration is calculated using last year's spending as a baseline, then, using the baseline two-step, the baselines are switched and applied to the higher fiscal year 1988 spending levels. Of course, the maximum sequestration that can be made this year is $23 billion. This bodes ill for future years.

With sequestrations being applied to higher than planned spending levels, we are not going to be cutting the deficit to the levels required in Gramm-Rudman. The result: the same old tune, further budget deficits and an increased national debt.

GOVERNMENT DISINCENTIVES AND THE MARKET CRASH

HON. PHILIP M. CRANE

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 22, 1987

Mr. CRANE. Mr. Speaker, Democrats insist that their proposed $59 billion tax package, with its antibusiness bias, had nothing to do with the free-fall experienced in the stock market last Monday. However, as this article from the New York Times suggests, experts in the market disagree. In seeking to find an explanation for Black Monday, colleagues should read Eric Berg's article, which follows:

[From the New York Times, Oct. 19, 1987]

PLAN FOR TAKEOVER TAXES STIRS FEARS IN MARKETS

(By Eric N. Berg)

Proposed changes in the tax law have thrust the merger-and-acquisition world into a state of fearful anticipation.

Worried that the changes could dramatically increase the cost of acquiring a company, a number of corporate executives have put purchase plans on hold, merger specialists say. Announced deals are being reviewed to see if they make economic sense should the law change.

"People will not secure financing and therefore will not complete deals until the tax matter is cleared up," said Guy Wyser-Pratte, director of risk arbitrage at Prudential-Bache Securities Inc.

And Charles Nathan, a senior merger specialist at Salomon Brothers Inc. observed: "I was in a negotiating session this week that fell apart, and the tax issues were talked about. They clearly were contributing factor to the breakup."

The tax bill being written by Democrats on the House Ways and Means Committee has numerous provisions pertaining to takeovers, and although many political analysts believe the bill will be amended or killed before it becomes law, the merger-and-acquisitions business is deeply concerned about three provisions. Republican members of the committee have refused to help write a tax bill, arguing that the Government should reduce spending instead. The Senate Finance Committee is also working on a tax bill, which so far does not include anti-takeover provisions.

One of the clauses in the House bill would set a $5 million limit on tax deductions for interest incurred to finance takeovers, leveraged buyouts and certain stock buybacks. Another would assess a corporate tax, to be paid by the acquirer, in the case of a successful hostile takeover. And a third would create a nondeductible 50 percent excise tax—that is, a tax to be paid in addition to regular income taxes—on profits earned from greenmail, the practice in which a company pays a premium to buy off a potential takover threat.

Merger experts noted that the takeover spree of recent years, particularly those transactions involving the high-yield, high-risk instruments known as junk bonds, had been dependent on the ability of acquirers to take tax write-offs of their interest costs.

BROAD CONSEQUENCES ANTICIPATED

These experts argue that any effort to limit interest deductions or to impose an excise tax could greatly dampen merger activity. Because many of the write-offs would come in the future, deals consummated this year, before the tax proposals are voted on, would still feel the impact if the bill passed.

"They are talking about blowing away 90 percent of the deals," said Mark Solow, the head of acquisition finance at the Manufacturers Hanover Trust Company, which finances many of the multibillion-dollar leveraged buyouts in this country. In a leveraged buyout, an investor group, often with the participation of a company's management, borrows to acquire a company, then usually sells some of the company's assets to reduce that debt.

"If this bill became law, it would require a whole restructuring of the merger-and-acquisition business," Mr. Solow said.

Arthur Feder, a tax partner at the New York law firm of Fried Frank Harris Shriver & Jacobson, noted, "It would be murderous for corporate takeovers, L.B.O.'s, and similar transactions."

One reason Congress is considering such a bill is a belief by some lawmakers that many takeovers are abusive—that they create big profits for deal makers but often result in layoffs and produce little of value for the economy.

And many conservative economists have long argued that the tax system should not subsidize mergers, as it currently does.

Nonetheless, business experts argue that if the bill becomes law, the consequences would be profound.

Of course, it is possible that if they were unable to write off interest paymens, corporate acquirers would borrow less and use more of their own cash in deals. But because that would lower returns, merger experts consider it unlikely.

The probable outcome, the experts said, is that prices of companies will fall as acquirers demand concessions for not being able to deduct interest payments. Another likely result, they said, would be an immediate plunge in the value of stocks either already involved in takeovers or viewed as likely takeover candidates.

BAKER BLAMES DEMOCRATS

Treasury Secretary James A. Baker 3d even suggested yesterday that the proposals by House and Senate Democrats to raise taxes on businesses were a major factor in last week's record fall in stock prices.

"I think the writing of these tax packages had a major effect on what has happened to the stock market over the course of the past three or four days," Mr. Baker said on the NBC News program "Meet the Press." Democratic leaders responded that the markets were reacting to the trade and budget deficits.

According to Mr. Wyser-Pratte of Prudential-Bache, the stock prices of at least three takeover candidates—Dayton Hudson, GAF and Gillett—have already dipped because of fears about the tax proposals.

Other investment experts suggested that Friday's 108.36-point plunge in the Dow Jones industrial average reflected, at least in part, concern over the tax bill's impact on takeovers.

However, the bill might actually increase the number of takeovers of United States concerns by foreign companies, since the proposals in their present form would not affect the ability of foreign companies to deduct interest payments for takeovers.

"You'd be declaring open season for foreigners to buy into the U.S.," said Mr. Feder of Fried Frank.

EXPORTS SUPPLY 4 MILLION U.S. JOBS

HON. ROBERT GARCIA

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 22, 1987

Mr. GARCIA. Mr. Speaker, Americans are a bit wary of what may happen to our economy as a result of the recent confusion in the stock market. Many are asking whether we are about to face a recession of similar caliber as the Depression of the 1930's?

I would like to shed a little light of optimism on the course of events. The volume of U.S. exports is on the rise. That means a positive effect on our Nation's trade deficit and jobs for Americans.

The October 21, 1987, issue of Journal of Commerce had two articles on exports which I found to be encouraging to my outlook on the American economy. The first article describes a report by the Census Bureau which shows that more than 4 million Americans owe their jobs to exports. The second article describes the dramatic changes made by the principal factor contributing to the increase of exports, the U.S. Export-Import Bank.

The Census Bureau's report clarifies the direct link between exports and jobs. As exports rise we can expect jobs to be created or maintained, particularly in the manufacturing sector where many have been layed off as exports declined. More than half of the jobs related to exports are in manufacturing industries.

According to the second article on the Export-Import Bank, in the past, the private banks have shied away from financing exports. But they are getting more involved as a result of the revamping of Exim programs. Conditions for U.S. exporters are changing, and Eximbank is being responsive to those changes to meet our exporters needs.

Our economy has been jolted, but the improvements in our exports indicate that recovery may be just around the corner.

[From the Journal of Commerce, Oct. 21, 1987]

EXPORTS SUPPLY 4 MILLION U.S. JOBS

WASHINGTON.—While growing sales of imported products have drawn close attention recently, more than 4 million Americans owe their jobs to exports, the Census Bureau reported Tuesday.

And more than half those jobs are in manufacturing industries, providing work for one in nine American production employees, according to the report, "Origins of Exports of Manufactured Products."

Connecticut tops the list, with 6 percent of all its workers in export-related jobs. Ohio, Massachusetts, Indiana and Michigan also rank high. The District of Columbia finished last, with only one job out of 100 related to exports.

The share of export-related employment "has a lot to do with where the state is located and the industries that comprise it," Bruce Goldhirsch of the Census Bureau noted.

In the District of Columbia, for example, publishing is the largest manufacturing business, and it accounts for very few exports, he said.

Exports are higher from the industrialized states, he went on, although it still depends on what they are building.

A state largely involved in heavy steel production tends to have a lower share of exports, for example, while one turning out high-tech products like computers do better in overseas sales, Mr. Goldhirsch said.

The study, using figures for 1983 and 1984, showed a slight increase in export-related employment between the years, from 3,961,800 to 4,096,700. Manufacturing-related export jobs rose from 2,173,200 to 2,178,500.

Figures for 1985 and 1986 are being compiled and will be published in a combined report at a date to be set.

Of the 2.2 million manufacturing jobs related to exports, half were in plants producing finished goods for export and the rest in businesses providing materials and services to those plants.

Machinery manufacturers led the export list with 408,000 jobs, followed by those making electric and electronic equipment, 381,000, and transportation equipment, 218,000.

[From the Journal of Commerce, Oct. 21, 1987]

EX-IM BANK REVAMPS ITS LENDING PROGRAM

(By Rosalyn Retkwa)

The Export-Import Bank, realizing that something had to be done to give U.S. exports a much-needed boost, has instituted a new and radically different lending program.

Overall, the thrust is to simplify and streamline approval procedures and cut red tape, so that Ex-Im Bank loan guarantees made more accessible to potential exporters and more palatable to their private commercial lenders. The changes made by Ex-Im Bank represent "the most significant overhaul of the bank's programs since 1960," according to John A. Bohn Jr., the bank's chairman and president.

For the first time, exporters have been granted equal access on medium-term loans (of less than seven years but more than a year.) That means that they can apply directly to Ex-Im Bank for loan guarantees, rather than having their commercial lenders file on their behalf. Longer-term loans, of more than seven years, had been made eligible for equal access before this. This, in turn, means that, before the commercial banks get involved, they can be sure that the exporter already has a commitment in hand from Ex-Im Bank. It also means that the banks are spared the burden of doing unnecessary paperwork on deal that failed to pan out.

At a time when many banks have by-and-large abandoned trade finance because of razor-thin spreads, that saves them time and money, cutting their costs and giving them more of a margin.

"What Ex-Im Bank is seeing is an increase in applications directly from exporters. Either their banks don't want to do it, or else, they're saying, "why don't we give this a shot directly?" ' says Richard Klein, vice president for trade finance at LaSalle National Bank in Chicago. He believes that "the exporters may force the banks back into this game" by demanding that they participate in trade financing already guaranteed by Ex-Im Bank. "It's not so much that banks have stepped up their use (of Ex-Im loan guarantees)," he continues.

"At least initially, the exporters seem to be taking the lead on this."

But the banks have become more receptive to trade financing since the new program went into effect, because they "don't have to do all that paper shuffling, and they know it's a firm transaction," he says. "They're presented with a package that's almost complete."

Between the time the new program was first announced in January and the time it went into effect in May, however, Ex-Im Bank had to make substantial changes in some of its proposals.

Most significantly, plans to abandon the guaranteed one-point spread on medium-term loans had to be scraped. Under the old program, medium-term export credit loans carried a guarantee that the banks could obtain financing at 1% below the consensus rate set by the Organization for Economic Cooperation and Development. That meant that bankers were assured that they could make at least that much on a medium-term financing.

However, Ex-Im Bank had decided that since short and long-term loans did not carry that guarantee, in the course of overhauling its programs and to make it all consistent it would eliminate the medium-term guarantees. But it quickly became apparent that if that subsidy were eliminated, it would result in a further erosion of bank support for export finance.

"On the first go-round, they were going to eliminate it, but the banks made so much noise they put it back in on a sliding scale," Mr. Klein says. There is now a three-tier subsidy in place. On the larger medium-term loans of $5 million to $10 million, the guaranteed spread is 50 basis points.

Ex-Im Bank's New Program Guidelines—Loan Amount $10 Million or Less and Repayment Term of 1-7 Years

Program Structure:

Direct Loan.—Loan from Exim to foreign buyer.

Intermediary Loan—Standby program Intermediary may borrow once from Exim during file of its loan to foreign buyer.

Guarantee.—Unconditional, transferable repayment guarantee.

Evidence of Subsidized Foreign Competition:

Direct Loan—Yes, but waived on small business loans $2.5 million or less.

Intermediary Loan.—Yes, but waived on small business loans $2.5 million or less.

Guarantee.—No.

Eligible Applicants:

For Preliminary Commitment.—

Direct Loan.—Any responsible applicant.

Intermediary Loan.—Any responsible applicant.

Guarantee.—Any responsible applicant.

For final Commitment.—

Direct Loan.—Borrower (Foreign Buyer).

Intermediary Loan.—Borrower (Intermediary Lender).

Guarantee.—Any responsible Lender or Borrower (Foreign Buyer).

Interest Rate:

Direct Loan.—OECD minimum field rate.

Intermediary Loan.—Rate charged to financial institution depends on contract value: OECD rate-150 b.p. for less than $1 million, OECD-100 b.p. for $1-5 million and OECD-50 b.p. for over $5-10 million.[1]

Guarantee.—Market rate, fixed or floating.

[1] All other intermediaries charged OECD rate. Intermediary must charge buyers OECD fixed rate and may charge fees.

Source: Export-Import Bank.

A TRIBUTE TO THE LATE HONORABLE HOWARD W. ROBISON OF NEW YORK

HON. JAMIE L. WHITTEN

OF MISSISSIPPI

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 22, 1987

Mr. WHITTEN. Mr. Speaker, I was saddened to learn of the death of our former colleague Howard W. Robison of New York. Howard was a member of the Committee on Appropriations from the 89th Congress in 1965 through the 93d Congress when he announced his retirement.

During his service on the committee, he was a member of the Treasury and Public Works Subcommittees and was ranking minority member of the Treasury Subcommittee from the 2d session of the 91st Congress through the 93d Congress.

Howard Robison was a solid, hardworking member of the committee and a gentleman in every respect. His quiet and gentle humor was missed when he left the Congress. Our sympathies go to his family.

HONORING MR. WILLIAM SHEEHAN, ADMINISTRATOR OF GODDARD MEMORIAL HOSPITAL

HON. BRIAN J. DONNELLY

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 22, 1987

Mr. DONNELLY. Mr. Speaker, I rise today to pay tribute to Mr. William Sheehan, the administrator of Goddard Memorial Hospital in Stoughton, MA. Mr. Sheehan is being honored at a reception next month in honor of his remarkable record of 29 years as administrator of Goddard Hospital.

Mr. Speaker, although not now in my district, the hospital serves my constituents who live in the Brockton area. Opened in 1959, the hospital has grown to a 236-bed acute care community hospital and is now one of the most heavily utilized medical facilities in Massachusetts. That's quite a change from 1959, when the hospital opened on a site that had been a chicken farm and served 29 patients.

Yet the hospital moved rapidly to make a name for itself. Just 1 year after its opening, in 1960, Goddard was chosen "Hospital of the Month" by the national publication Modern Hospital. Expansion was also rapid: In 1963, an intensive care unit was added. In 1966, the hospital was enlarged to accommodate 188 beds, and the emergency room and other departments were expanded. In 1968, the medical library was dedicated. Outpatient surgery was begun in 1970, and in 1979, a new expansion program was begun including a new maternity unit and an enlarged emergency room.

Running the hospital for the entire 29 years of its existence has been Bill Sheehan. Today, he can proudly take credit for helping to create one of the best run health care facilities in New England—as it is called in the Brockton area, it is a hospital with a heart. Just as impressive is the fact Bill is the only administrator that the hospital has had.

As he said on the hospital's 25th anniversary, "we have grown to become a major health resource for the 300,000 in 20 communities in three counties and have achieved a sophistication of medical, surgical, and diagnostic care that was inconceivable when the hospital was first opened." What Bill Sheehan modestly failed to mention is that none of the hospital's development would have been possible without his untiring efforts. Hospitals with a heart don't come from buildings and medical equipment. They come from leaders with a heart.

Prior to coming to Goddard Hospital, Bill worked for 3 years at St. Margaret's Hospital in my home town of Dorchester. In his tenure there, he helped direct St. Margaret's through a building program which transformed it into the largest maternity hospital in Boston.

Mr. Speaker, it is an honor for me to know Bill Sheehan and to represent the area served by Goddard Memorial Hospital. In the years ahead, I wish him and his hospital my warmest congratulations and best wishes for many more successful years.

INTIMIDATION OF WITNESSES

HON. PHILIP M. CRANE

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 22, 1987

Mr. CRANE. Mr. Speaker, I would like to share with my colleagues an article published in the Wall Street Journal on October 20, 1987 entitled "Bork and the Racists." It is unfortunate that the nomination of Robert H. Bork to the Supreme Court has made him the victim of one of the most extraordinary character assassination campaigns in recent history. It is a sad day when those who oppose a nomination not only spread disinformation about a nominee, but intimidate witnesses from testifying on that nominee's behalf. I urge my colleagues to read the following article and voice your opposition to those who do not favor the confirmation of Judge Bork based not only on misinformation, but on the impropriety of intimidating staffers.

BORK AND THE RACISTS

There is nothing left to be said about the content of the disinformation campaign against Robert Bork, especially about the slurs against his sterling record on civil rights. Senators who've read the evidence printed on this page during the past week will have some real doubts about the honesty of the anti-Bork forces.

Some senators must wonder how Judge Bork's record became so grossly distorted. One reason was the censoring of black supporters of Judge Bork. Over the weekend came news of intimidation of John T. Baker, a black law professor at Indiana University. He was not the only victim.

Jewel LaFontant was also threatened. Ms. LaFontant was the black deputy solicitor general befriended by Solicitor General Bork when she was being excluded from meetings due to her sex. She told us yesterday that the anti-Bork forces let her know that if she testified, there would be a boycott of Revlon, where she sits on the board. She said she took the threat seriously, but decided to testify anyway. "I have represented unpopular causes all my life in the practice of law," she said. "I felt so keenly about Judge Bork that no one could stop me from testifying." She says she was told about the boycott indirectly, and wouldn't comment on the source.

Professor Baker was to have been the only black law professor to speak for Judge Bork. The evening before he was to testify, he got a phone call from Linda Greene, a staff lawyer for Howard Metzenbaum, one of the fiercest Bork opponents. They had a 20-minute conversation. Ms. Greene told Professor Baker that the senators were sharpening their daggers for him. "If you come here, you become the issue," she said. She emphasized that senators would ask him detailed questions about constitutional issues beyond his expertise or the range of his testimony. "Are you sure you're prepared to deal with what this does to your professional reputation?"

The next morning Professor Baker called the White House to cancel his testimony, and returned to Bloomington. He told a friend, "I just couldn't take the heat." Last week, as rumors of witness intimidation began to spread, Ms. Greene described the conversation to Eddie Correia, a chief counsel to Senator Metzenbaum, who called Professor Baker to demand a letter from him relieving Ms. Greene of any charges of impropriety. Professor Baker complied, writing that "I bear complete responsibility for my decision."

This cover-up notwithstanding, Ms. Greene understood the import of her action. Confronted by a New York Times reporter and columnist William Safire about the intimidation, Ms. Greene asked, "What is this, some kind of shakedown?" Senator Humphrey demanded an investigation.

The LaFontant-Baker squeezes weren't the first time blacks were targeted for intimidation. Back in 1982, similar tactics were used against several blacks who planned to testify against extending certain provisions in the Voting Rights Act. Wilber Colom, a black civil-rights lawyer, told a House subcommittee that "it stopped being pressure and started being intimidation" when people began saying "vicious things" about him. Of the 12 witnesses against the bill, four complained of harassment.

Surely Linda Greene, a black, would not consider herself a racist. Yet she acted on the imperative of an unwritten rule that says all blacks must cleave to a single liberal line, that any apostates must be burned at the stake of political dogma.

Senators weighing the future of Robert Bork cannot ignore the outrages committed in the name of killing his nomination. The best way to make sure such demeaning and ultimately racist acts aren't repeated is to vote to confirm Judge Bork.

THE SOCIAL SECURITY AND MEDICARE PROTECTION AND INTEGRITY ACT OF 1987

HON. JOHN T. MYERS

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 22, 1987

Mr. MYERS of Indiana. Mr. Speaker, earlier this week, I introduced H.R. 3518, the Social Security and Medicare Protection and Integrity

Act. This legislation will protect millions of vulnerable citizens by restricting the use of the words "Social Security" and "Medicare" when used in an effort to deceive and solicit funds.

The restricted use of these words is based upon Federal law that prohibits the inappropriate use of U.S. Government insignias and names such as FBI, IRS, or FDIC.

Yesterday, I learned that an organization calling itself the Federal Social Security Center based in Washington, DC, is attempting to deceive people by passing itself off as a Government agency. This unscrupulous group misleads parents with newborn children by asking them to send $11 if they want a Social Security card for their minor children. In fact, it implies that the Government will assess a penalty for not requesting a Social Security card through this organization. Social Security cards are available for free from your local Social Security office. There is no charge for this service by the Government.

Nowhere on the official looking envelope or Government sounding name does the group indicate that it is not an agency of the Federal Government. The only disclaimer is buried in the midst of the four-page letter.

Mr. Speaker, I urge my colleagues to join with me in support of H.R. 3518, the Social Security and Medicare Protection and Integrity Act and help put ripoff artists like the Federal Social Security Center out of business.

VINKA ELLESIN—SUPERSTAR OF SERBIAN FOLK MUSIC

HON. HELEN DELICH BENTLEY

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 22, 1987

Mrs. BENTLEY. Mr. Speaker, in the 19th century the great showman Phineas T. Barnum brought to the United States a young Swedish singer by the name of Jenny Lind. With Barnum's talent for creating hoopla this young girl soon became known as the "Swedish Nightingale", as well as one of the most talked about entertainers to tour the United States during that period. Curious crowds gathered and wheelbarrows full of money flowed into Barnum's coffers. The excitement eventually ceased, however, and Miss Lind became another footnote to American culture.

Well, there is another nightingale amongst us. She is Serbian, not Swedish, and while she has no master showman to promote her and to write her name in lights, she has a deeply devoted following of her fellow Serbs—including myself—who appreciate her continued efforts to keep the culture and spirit of the Serbian nation alive.

Her name is Vinka Ellesin, and this year marks her 60th anniversary of great dedication and service to the Serbian musical heritage. She is universally regarded as a "superstar" of Serbian folk music, and this outpouring of love has earned for Vinka the title "Queen of Sevdalinka". She is seen as virtual royalty among my people, and this is in itself an achievement which immense riches could never purchase.

Vinka was born in Akron, OH, in a home that was filled with traditional Serbian values and ideals. Her love of Serbian music grew with her knowledge of the Serbian language. As a young woman she sang on radio and in nightclubs in Ohio which were frequented by many of her people. Her voice enlivened many happy memories in those who heard it—thoughts of heritage and homeland crept magically back into their minds.

The true nature of Vinka's impact can be seen in an amusing anecdote involving a motorist and a policeman. One day a policeman was pursuing an automobile which was speeding through the streets of Cleveland. When stopped, the motorist explained that he was in a great hurry, and he asked the officer for an escort. Instead of pulling up in front of a hospital, the car stopped in front of a nightclub.

"Say buddy, this is only the Black Whale," said the policeman, who was beginning to feel as if he had been duped.

However, the motorist smiled and exclaimed, "Sure, but, officer, haven't you heard? Vinka's back in town!"

From there Vinka's reputation skyrocketed. Even famed big band leader Sammy Kaye was impressed by her magical voice, and he wanted to make her the new lead singer of his band. But Vinka refused and continued performing Serbian music at picnics, concerts, and anywhere else where people could come, enjoy, and—most of all—rejoice in their heritage.

Vinka Ellesin is indeed a special lady. Her love of her Serbian heritage has touched many people—especially me. I am glad that we Serbians have our own "nightingale", one who is much more than a passing fad. Vinka Ellesin is an institution to all who take pride in their culture, and I wish her all the best. May the "Queen of Sevdalinka" reign for many more years to come.

THE BALANCED BUDGET AMENDMENT

HON. PETER W. RODINO, JR.

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 22, 1987

Mr. RODINO. Mr. Speaker, the stock market crash ought to be a signal that all is not well with our economy. There is, in my mind, no doubt that the record shattering Federal deficits of the last 5 or 6 years have contributed to the loss of investor confidence.

But I want to take strong issue with those who see a connection between the stock market crash and the proposed balanced budget amendment to the Constitution. This proposed amendment has been aptly labeled a "gimmick," "bumper strip economics," a "medicineman cure," and a "political free lunch." Amending the Constitution will not assure sound economic policies by this or any other administration. That was the clear view of four experts who testified at a hearing of the Subcommittee on Monopolies and Commercial Law last week.

One of those experts was the distinguished former Chairman of the Federal Reserve, Paul Volcker, who opposes a constitutional amendment to balance the budget. He told the subcommittee that he had "strong doubts about the wisdom and practical usefulness of trying to enforce a particular budgetary outcome by means of constitutional amendment." He emphasized that fiscal discipline must be restored now;" without waiting for a constitutional amendment."

John Rhodes, the former minority leader of this body, testified that an amendment simply would not work to balance the budget. He concludes that

> [e]ither the requirement for budget balancing must be too rigid to accommodate other imperatives; or the mechanism to suspend the requirement * * * in times of war or other emergencies must permit escape [from] the intended constitutional restraint.

Roy Ash, the former, Director of OMB in the Nixon and Ford administrations, also believes that a constitutional amendment could be easily evaded, citing the experience of the States.

Finally, Franco Modigliani, the 1985 recipient of the Nobel Prize in economics, concluded that a constitutional amendment could be "positively harmful" to the economy in recessionary periods. He challenged "any Congressman who is truly devoted to * * * cutting the deficit to apply his energies to [that] task rather than the support of the balanced budget amendment"—a pious proposal that "shifts [that task] to the future."

The expert testimony during 15 days of hearings over the past 8 years makes one thing clear: No matter what language we put in our Constitution; there must be a political will to eliminate Federal deficits. Yesterday's stock market crash was; as the New York Times has described it; a "fire alarm on Wall Street." We need to heed this alarm. The call for a constitutional amendment is only a diversionary tactic that distracts our attention away from the leadership and concrete steps necessary to resolve our deficit problem. The President and the Congress must put disagreements aside and begin immediately to cut the deficit.

TRIBUTE TO LOVEY AND MURRAY BEER ON THE OCCASION OF THE 75TH ANNIVERSARY OF THE ANTI-DEFAMATION LEAGUE

HON. ROBERT G. TORRICELLI

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 22, 1987

Mr. TORRICELLI. Mr. Speaker, it is with great pleasure that I rise today to honor Lovey and Murray Beer on the 75th anniversary of the Anti-Defamation League of B'nai B'rith. For 75 years the Anti-Defamation League has combated prejudice and discrimination against Jews and other minorities. Through its activities, the league has strengthened both the Jewish community and American democracy. Few have lived closer to the precious ideals defended by the Anti-Defamation League than Lovey and Murray Beer.

Over the years, Lovey and Murray Beer have devoted their lives to improving the human condition. They have worked on the behalf of Israel Bonds, the Jewish Community

Center on the Palisades, Temple-Emanu-El of Englewood, Hackensack Hospital, the John Harms Center for the Arts, and many more worthy institutions and charities too numerous to mention. Their caring and dedication has helped to build a better community for people of all religions and from all walks of life. Lovey and Murray Beer have never wavered in their commitment to Judaic heritage or democratic ideals. They have never said no to a person in need, and never turned a blind eye to injustice or suffering.

Tonight, among family and friends, Lovey and Murray Beer will receive the Anti-Defamation League's Torch of Liberty Award in recognition and appreciation for their many years of philanthropy and community service. I can think of no two individuals more deserving of this honor and no organization more qualified to offer its congratulations. The work of the Anti-Defamation League, and Lovey and Murray Beer, has always stood for justice and compassion. We owe both the league and the Beers our deepest gratitude.

TRIBUTE TO RON LAUDER—THE OUTSTANDING AMERICAN AMBASSADOR TO AUSTRIA

HON. TOM LANTOS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 22, 1987

Mr. LANTOS. Mr. Speaker, Ambassador Ron Lauder has represented the United States of America during the most difficult and delicate period in the long history of relations between our Nation and the Republic of Austria and its predecessor, the Austro-Hungarian monarchy. He had the unenviable task of conveying our friendship and support for the democratic people of Austria, while properly reflecting the outrage of the American people over Kurt Waldheim's shadowy past and congenital lying. His handling of this challenge was a diplomatic tour de force of the highest order.

As a regular visitor to Austria for over half a century, I could gauge the positive impact of Ambassador Lauder's service through contacts with Austrians in all walks of life. I was also able to measure his great effectiveness when I recently hosted, on behalf of the Congress of the United States, the Austrian Chancellor Franz Vranitzky, and the Austrian Foreign Minister Alois Mock.

Ambassador Lauder has represented our Nation with the utmost distinction and effectiveness in Vienna—but he did much more than that. One of his many private philanthropies during his tenure was the establishment of a Marvelous child care center, school, and athletic complex for the lonely and forlorn children of refugees from the Soviet Union.

While the Austro-Hungarian monarchy died some 70 years ago, Ambassador Lauder's philanthropy, care, and concern have embraced not only Austria, but also Hungary. His magnificent gift toward the restoration of the Great Synagogue of Budapest—once Europe's largest and most beautiful but now crumbling and in a sad state of repair—was a historic gesture.

With the full participation and partnership of his wonderful wife, Jo Carole, Ambassador Lauder has succeeded in achieving two seemingly irreconcilable goals: serving our nation with great distinction as its Ambassador while remaining true to his family's proud tradition and values. He accomplished all of this with grace, style, and impact.

As a Member of Congress and as a Democrat on the House Foreign Affairs Committee, I am delighted to salute Ambassador and Mrs. Lauder upon their return to our shores after a job well done.

NURSING HOME REFORM LEGISLATION

HON. MICHAEL BILIRAKIS

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 22, 1987

Mr. BILIRAKIS. Mr. Speaker, today I, along with my colleague, the Honorable DOUG WALGREN, introduced legislation that calls for nursing home reform that will greatly benefit many elderly residents.

Originally introduced as a budget reconciliation amendment in the Energy and Commerce Committee, the bill requires, by 1995, a registered nurse in large nursing homes 24 hours a day.

There can be no doubt but that nursing home care in our society is grossly inadequate today. In fact, recent studies have concluded that 41 percent of nursing homes in our country currently do not meet basic standards of care. I personally find this offensive and have introduced this bill which will, when enacted, hopefully help to improve this deplorable situation.

While it may be hard to believe, the fact is that in four out of five nursing homes today you will not find a registered nurse on duty. Furthermore, of all nursing personnel in nursing homes, RN's constitute only 12 percent, with licensed practical nurses comprising 16 percent, and nurses' aides, 72 percent.

Nursing home residents are elderly, frail, and very often sick. They require personnel that will be able to detect medical conditions that can often mean the difference between life and death. RN's are trained to recognize and act on changes in a patient's condition. LPN's and aides are only trained for routine care. In fact, in many cases, LPN's and nurses' aides do not even have a high school degree.

Mr. Speaker, I think our elderly deserve better. I think it is not too much to require professional nursing standards through a 24-hour RN requirement.

The bill gives facilities 8 years to recruit staff and prepare for this requirement. It also requires only a 16-hour RN presence in facilities with less than 90 beds. In addition, it allows an exception for facilities that can demonstrate, to the Secretary's satisfaction, that they have made an effort to find staff to meet the requirement but have been unable to do so.

Mr. Speaker, I hope that all my colleagues will recognize the need and merits of this legislation and do their part to facilitate appropriate nursing home care for our elderly citizens by cosponsoring this legislation.

A TRIBUTE TO MR. WILLIAM J. GREGER

HON. TONY P. HALL

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 22, 1987

Mr. HALL of Ohio. Mr. Speaker, I rise to pay tribute to Mr. William J. Greger, who will retire shortly, after having served for 37 years with the Wagner-Smith Co. in Dayton, OH.

On Friday, October 30, 1987, his friends, family, and working associates gather to recognize him as one of his company's most respected and honored civic leaders and for his dedicated service, commitment to excellence, and genuine interest in people.

As Project Engineer for Wagner-Smith for the past 20 years, Mr. Greger has been responsible for the compilation of competitive bids and the management of electrical contracting jobs won by those bids. He joined the company in 1950 as an electrician and was promoted to a management position in 1967.

As a native and lifelong resident of Dayton, OH, Mr. Greger has established a long history of active involvement and leadership in a number of civil associations. Mr. Greger has been a member of the Knights of Columbus since 1954, serving as Grand Knight and president of the Home Corp. He has been a member of Box 21 Rescue Squad since 1949, acting as assistant chief in 1977 and chief from 1978 to 1986. While chief of Box 21, Mr. Greger became coordinator of medical services for the Dayton International Air Show in 1978, a post he still retains.

Mr. Speaker, on behalf of my fellow community members, I would like to thank Mr. Greger for his many years of tireless service and to extend my best wishes for a happy and productive retirement.

TRIBUTE TO REV. J.L. BRICE

HON. RONALD V. DELLUMS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 22, 1987

Mr. DELLUMS. Mr. Speaker, I rise to the honor of a true humanitarian, Rev. J.L. Brice. Reverend Brice, founder of Mission Safe and chairman of the board has been honored with the receipt of the J.C. Penny National Golden Rules Award. Reverend Brice is 1 of 5 national finalists out of a group of 92 to receive $5,000 which will go to Mission Safe for his tireless efforts on behalf of the homeless. Reverend Brice also received the local J.C. Penny award for $1,000.

Over the past 5 years the annual rate of increase among the homeless population in our society has been approximately 25 percent per year. One of the most shocking and saddening facts facing the homeless is that, in Alameda County alone, 26 percent of shelter residents are between the ages of birth and 12 years old. In the face of such increasing numbers we, as a society, can no longer ignore the plight of the homeless and must make a collective effort to reach out to those less fortunate than ourselves.

As a longstanding advocate for the homeless, Reverend Brice founded the Mission Safe Shelter in 1983 to provide the homeless of Alameda County, CA, with shelter and supportive services to allow them to become economically and socially independent. Prior to the founding of Mission Safe, Reverend Brice housed the homeless in his own home until county moneys were made available to launch the program. In working for the homeless Reverend Brice lost his own home when he mortgaged it in an attempt to attain money to keep the Mission Safe program operating.

I would like to take this opportunity to extend my congratulations to Reverend Brice in both receiving this distinguished award and for his work with the homeless. Programs such as Mission Safe are a necessity in dealing with the problem of homelessness by providing essential services to a growing homeless population. As in the past I will continue to actively pursue legislation that shall benefit such progams to help end this social and personal injustice. Please join me in saluting him.

AMERICA'S DEBATE AND POLICY ON NICARAGUA

HON. ROBIN TALLON

OF SOUTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 22, 1987

Mr. TALLON. Mr. Speaker, the means have replaced the ends as the focus of America's debate and policy on Nicaragua. We have lost sight of any worthy goals we shared for Central America. Meanwhile the debate on America's role in the region has degenerated to a futile pattern of divisive bickering and second guessing between the supporters and opponents of Contra aid. As a result, about the only thing that's clear regarding our Central American policy is that we are sorely lacking one.

Thankfully, the Guatemala peace accords have presented us with the historic opportunity to break this spiral of mistrust and confusion. For despite their differences on the methods, those on both sides of the issue of United States aid to Nicaraguan resistance share common democratic goals—the same goals which were generally agreed to in the peace accords. They include: freedom of movement and assembly, civil and political rights, free elections, and democratic government for all Central Americans.

These are the ends that I believe we should join with the Central American people in contemplating, discussing, and implementing. That is why I am joined by Representative CHANDLER and a number of other colleagues in introducing a resolution that lays out in the most certain terms the specific reforms necessary to meet the goals of the peace agreements. Quite simply, they are the benchmarks for democratic reform—the changes which should be made if Nicaragua is to meet its commitment, as a signator of the peace accords, to promote respect for human rights and to ensure the full exercise of civil and political rights.

I believe strongly that these are the same benchmarks of freedoms on which our foreign policy for the entire region should be based. The primary object of this measure is Nicaragua not because we wish to single it out but because Nicaragua has singled itself out by its reluctance to respect essential human rights and dignities.

This resolution seeks to redirect our energies away from the tired question of Contra aid and toward our common goals of pluralism and individual freedoms. Specifically, it details the steps necessary for a free political process, media, labor movement, as well as the changes needed to ensure freedom for religion and for the campesinos and Atlantic coast peoples.

Success in realizing the democratic principles of the Guatemala agreements depends directly on our ability to clearly communicate our understanding of them. I am certain that if we can agree, really agree, on what those goals are, we will be far closer to realizing the possibilities the peace process now holds.

Democratization won't work if it remains a nebulous, fluffy concept to be touted and tossed around by policymakers. No, it has to be something real and enduring, something the Nicaraguan people can take hold of and work through. This measure is an important first step in making democracy something real and lasting for the people of Nicaragua.

The cosponsors of this resolution represent a wide spectrum of viewpoints on Nicaragua. Yet all are committed to furthering the same democratic goals as those set forth in the Central American peace plan and they recognize that communication is the key. Importantly, they share a vision not only of what can be done but also of what ought to be done.

Those of us who have pressed for efforts toward a diplomatic and political initiative in Nicaragua now have a clear responsibility to help materialize the possibilities of the Central American peace process. I urge all my colleagues to join me in accepting this responsibility by giving shape to the promise of democratization. I am optimistic that peace will break out in Central America. Let's make it a meaningful and lasting peace.

HUNGARIAN REVOLUTION

HON. BILL GREEN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 22, 1987

Mr. GREEN. Mr. Speaker, I'd like to thank my colleague, the gentleman from California [Mr. KONNYU], for organizing statements today in commemoration of the 31st anniversary of the Hungarian revolution.

On October 23, 1956, after months of vocal and written criticism of the Hungarian regime, university students organized demonstrations to show their frustration. They marched peacefully to a radio station to express their dissatisfaction through a broadcast. Minutes later, many lay dead after police opened fire on the crowd. Hours later, the movement initiated by the students had gained the support of a great number of Hungarian citizens, who battled against massive odds to regain their national sovereignty.

The freedom fighters' valiant effort to regain the liberties taken by the Soviet Union following World War II ultimately failed. Their freedom-loving principles and the impact the revolution made on history, however, survive today. Their defiance of Soviet domination should be remembered as an inspiration to the oppressed countries of the world.

This commemoration serves as a reminder to Americans of our own commitment to the ideals of liberty and democracy, and encourages us to support those countries still involved in the struggle for self-determination and freedom today. I would call on General Secretary Gorbachev to extend the Soviet policy of openness beyond its own borders to the Soviet bloc countries and recognize the basic right of all people to determine their own destiny.

HONORING BAKER MEMORIAL UNITED METHODIST CHURCH

HON. J. DENNIS HASTERT

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 22, 1987

Mr. HASTERT. Mr. Speaker, on November 1, I will join with members of Baker Memorial United Methodist Church in celebrating the sesquicentennial of Methodism in the Fox River Valley.

Methodist Circuit Riders followed the first white settlers into Illinois in the early 1800's. Within a few years the settlers organized communities, and shortly thereafter, churches and schools were built.

Those called Methodists organized the St. Charles Methodist Episcopal Church in 1837 and built their first church just 5 years later. Baker Memorial United Methodist Church is now one of the landmarks in this community. In the past 150 years, thousands of members of the church have demonstrated their faith by providing Christian education, by being active in serving the spiritual needs of the community and by supporting missions throughout the world.

At this important juncture in its history, the members of Baker Memorial United Methodist Church pause to remember those who have made it a strong religious resource in its community and to renew their dedication to continuing this work in the years ahead.

FISHING VESSEL SAFETY LEGISLATION URGENTLY NEEDED

HON. DON BONKER

OF WASHINGTON

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 22, 1987

Mr. BONKER. Mr. Speaker, commercial fishing is one of the most dangerous occupations in this country. The death rate for fishermen is seven times the national average. It is not surprising, therefore, that this industry is one of the foremost victims of the current liability insurance crisis.

I am all too familiar with the tragic stories of drownings and crippling injuries common in the Northwest's commercial fishing industry. The fact is, fishermen are often out fishing in the worst weather, seldom thinking about the possibility of a fatal accident. Many fishermen don't even know how to swim.

Subcommittees of the Merchant Marine and Fisheries Committee today reported H.R. 1841, the Commercial Fishing Industry Vessel Safety and Compensation Act of 1987 introduced by Representative STUDDS. This bill would require commercial fishing vessels to carry liferafts, survival suits, strobes, emergency radio beacons, and flares. All of these items are important and cover a wide range of potential accident scenarios.

In addition, I offered an amendment to H.R. 1841 to instruct the Secretary to consider the requirement that certain vessels, either documented or undocumented, carry a Coast Guard approved buoyant apparatus or life ring. This flotation device is particularly appropriate for vessels, like the Northwest gillnet boats that fish in close proximity to each other, or some of the smaller trollers and trawlers where fast-happening accidents render the crew members incapable of securing other safety equipment or sending a distress signal. The case of the F/V *McKinley* illustrates my point.

On August 24, 1986, the F/V *McKinley,* a 68 foot trawler out of Astoria was cut in half by a 650 foot Swedish cargo carrier. The *McKinley* had survival suits for the three men on board, and a liferaft, but there was no chance to use either. All three men went into the water in jeans and T-shirts.

The vessel had a buoyant apparatus that floated to the surface and some of the crew were able to secure themselves to the ring and avoid drowning. The life ring was equipped with flares, an EPIRB, and a strobe which the men quickly deployed. The cargo carrier saw the flares and radioed the Coast Guard for help. The liferaft was found 6 months later still in its cannister—never properly deployed.

A U.S. Coast Guard report found that 85 percent of fatal boating accidents were due to drowning. I believe we can significantly reduce the amount of fatal accidents by requiring all commercial fishing vessels to carry safety equipment appropriate to their individual fishing situation.

The proposal before us today properly addresses the problem of the high cost of liability insurance for the fishing industry. The vessel owner would be required to provide all necessary medical costs and lost wage compensation to injured employees. This approach provides an incentive to fishermen not to pursue litigation as a means of compensation for their injuries and it is hoped that this will result in lower insurance costs for the industry.

While there are certain groups that benefit from costly litigation, most of us would rather avoid it. Most of us are deeply concerned about the need for better safety regulations and reasonable injury compensation for fishermen. I encourage my colleagues to strongly support this legislation when it comes to the floor for a vote later this year.

PERSONAL EXPLANATION

HON. TOM SAWYER

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 22, 1987

Mr. SAWYER. Mr. Speaker, on Wednesday, I was unavoidably detained during the vote on rollcall No. 368, the Shaw amendment to H.R. 2939, Independent Counsel Amendments Act of 1987. Had I been present I would have voted "nay."

PAT HARRISON: A TRUE PUBLIC SERVANT

HON. DAN COATS

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 22, 1987

Mr. COATS. Mr. Speaker, I appreciate this opportunity to note the fine work of a true public servant from Fort Wayne IN, Pat Harrison.

Pat has given more than 40,000 hours as a volunteer with St. Joseph Medical Center in Fort Wayne, a remarkable amount of time equal to nearly 20 years of 40-hour weeks. She has served as the hospital's ombudsman or patient advocate, and many thousands of people over the years have found their stay at St. Joseph's brightened by Pat's care and concern.

Her work is perhaps best summarized by one of her favorite sayings; namely, "The capacity to care gives life its greatest significance."

Pat's capacity to care is extraordinary, and her life helps give significance to the life of service St. Joseph Medical Center offers to Fort Wayne.

Pat Harrison is someone who has taken to heart the spirit of voluntarism that adds such richness and depth to our land.

Mr. Speaker, I join with many in Fort Wayne and northeastern Indiana in saluting this remarkable lady.

IN SUPPORT OF LEGISLATION TO ALLOW ADVERTISEMENTS TO BE AFFIXED TO U.S. POSTAGE STAMPS

HON. MICKEY LELAND

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 22, 1987

Mr. LELAND. Mr. Speaker, I rise today in support of legislation I am introducing which will authorize the U.S. Postal Service to approve the attachment of U.S. postage stamps to advertisements which promote the products or services of private business.

The innovative proposal for advertising stamps is as follows: Businesses would purchase U.S. postage stamps at full price, affix approved advertisements to the stamps and then sell the stamps to the public at a reduced rate. The reason this bill is necessary is because there is a statute on the books, dating from 1867, that was designed to prevent counterfeiting activities which utilize imitation U.S. obligations, such as stamps, to dupe the unsuspecting. However, the advertising stamp proposal which I refer to today uses real postage stamps so there is no fear of duplication greater than that with regular stamps. In addition, the Postal Service uses highly sophisticated scanning equipment which detects the use of counterfeit stamps whether attached to advertising or not. This proposal should not facilitate counterfeiting in any way.

In further support of this legislation and the advertising stamp proposal, I might add that the proposal has already been tested by the Postal Service. Sample advertisement stamps were created, affixed to envelopes, and sent through mail processing equipment. The Postal Service determined that the stamps posed no operational problems nor do they interfere with mail processing equipment.

The benefits to be realized from allowing the production and use of advertising stamps are significant and should not be overlooked. The public benefits by getting regular first-class stamps at a reduced price. The Postal service benefits through the additional revenue generated because businesses which ordinarily spend advertising dollars in other media, will now purchase U.S. postage stamps to which they can affix advertisements designed to promote their products and services.

The Postal Service has clearly sanctioned the use of "on envelope" advertising such as meter stamp ad plates and direct mail solicitations. The sale and use of advertising stamps is the next logical step in this process. I urge my colleagues to support this measure.

H.R. 3492, THE RURAL CRISIS RECOVERY ACT OF 1987

HON. BILL EMERSON

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 22, 1987

Mr. EMERSON. Mr. Speaker, as one of the primary sponsors of H.R. 3492, the Rural Crisis Recovery Act of 1987, I am extremely pleased that the House of Representatives earlier this week saw fit to approve H.R. 3492 by a voice vote. This legislation is designed to assist our Nation's farmers and rural families cope with the personal and financial stress resulting from the downturn in the farm economy.

Our colleague KIKA DE LA GARZA, chairman of the House Agriculture Committee, deserves a special thanks for his contributions toward the introduction and passage of H.R. 3492. He should be commended on the expedient manner in which this measure was brought to the House floor for consideration.

Although there are many signs that the financial stress in some areas of the farm economy may be improving, there remains a distinct need to provide counseling and outreach programs to assist farmers, dislocated farmers, and rural families cope with farm-related stress. H.R. 3492 is particularly noteworthy because it broadens the number of those who are able to benefit from the program beyond just farmers. Other individuals not directly involved in farming, but equally impacted by farm financial problems, would be eligible for counseling services.

In fiscal year 1987, $1.5 million was made available to initiate rural assistance programs in eight States, including my home State of Missouri. Our State used its funds to put special emphasis on addressing mental health problems in rural communities.

I firmly believe that targeted counseling assistance is one of the most effective ways for the Federal Government to assist rural families during this difficult period. While the 1985 farm bill continues to work toward restoring vigor to U.S. agriculture, the Rural Crisis Recovery Act will help ensure that farmers can work through their immediate financial difficulties.

THE 10TH ANNIVERSARY OF THE CAPITOL AREA DEVELOPMENT AUTHORITY

HON. VIC FAZIO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 22, 1987

Mr. FAZIO. Mr. Speaker, I rise today to note a community achievement which gives me a great sense of personal satisfaction. Ten years ago, while I was a member of the California State Legislature, many of us in the Sacramento area were concerned about what was happening to the downtown area. As with many cities, areas of blight and urban decay existed. The Capitol Area, a neighborhood consisting of 42 square blocks adjacent to the State capitol building was in serious decline.

I sponsored legislation to allow the State of California and the city of Sacramento to create a new independent joint powers agency, the capitol area development authority [CADA]. This was a unique concept that has served as a model for civil responsibility.

In less than a decade, CADA has dramatically improved the area. The agency, which was given a legislative mandate to "run like a business," has built over 800 new housing units and attracted over $25,000,000 in private, new development funds to the neighborhood. It has constructed townhomes and apartments, housing for the elderly and the disabled and over 50,000 square feet of retail commercial space. CADA funds its own subsidized Housing Program, targeted primarily for low-income elderly and disabled tenants. Remarkably, the agency receives no tax dollars from the State or Federal Government to cover its operating costs. CADA's revenue is derived chiefly from the professional way it manages its rental properties.

This concept of an independent, self-sustaining public agency no doubt contributes to CADA's success. With all the examples we have seen of urban renewal really meaning "urban removal," it was particularly impressive that not a single low-income elderly or disabled resident has been displaced during this period of dynamic growth and progress. I believe that fact to be a tremendous tribute to the hard work and dedication of the CADA staff.

So dramatic and positive have been the changes which have occurred within this historically significant neighborhood, that on the occasion of the 10th anniversary of the Capitol Area plan, one can truly see the emergence of a new neighborhood, the "New Capitol Area."

It is therefore with great pride and satisfaction that I extend hearty congratulations to the city of Sacramento, the State of California and the board of directors and staff on the capitol area development authority for the superb job of revitalizing the Capitol Area, and for improving the quality of life for the many Sacramentans who reside there.

Below is an article which recently appeared in the Sacramento Bee about CADA. I recommend it to my colleagues.

CADA's Golden Rule: Small Is Beautiful

(By Barbara Wilcox)

Forty-two square blocks of prime downtown real estate are owned by the state but known and loved best by just one man: Ronald Rule, executive director of the Capitol Area Development Authority.

Rule and his fiercely loyal staff of 30 maintain a mixed-income community of owners and renters between 7th, 17th, N and Q streets. The thriving community was reclaimed from blighted land bought by the state between 1960 and 1962, originally for offices, and never properly used.

In 1977, the Legislature approved the Capitol Area Plan for rehabilitation of the area, created CADA to oversee it, and hired the freewheeling Rule as its director.

Today, CADA is downtown's largest landlord, It is required by its enabling legislation to set aside 25 percent of its approximately 700 rental units for low-income, elderly or disabled persons. These units must be subsidized by CADA; the agency does not receive public funds for operating expenses.

CADA's first condominium complex, the 36-unit, solar-powered Saratoga Towers, sold out in 11 hours in 1982, aided by a pet solar tax credit of Gov. Jerry Brown that virtually negated the 5 percent down payment. One-third of CADA's rentals come by word-of-mouth from current tenants; typically, only 15 market-rate units are vacant.

Recent condominium ventures, including 1986's Stanford Park complex, have met with varied success and may accelerate a shift by lenders back to rental properties.

"Development's a cycle," Rule says. "I'm into one and out of another."

To speak to Rule is to experience a Jerry Brown time warp in more ways than one. Rule's small-is-beautiful management technique, his offhand verbal style, and the European ambiance he seeks for downtown all recall Governor Moonbeam. Rule's fiscal hardheadedness does not.

"It's a meat and potatoes business," says Rule. "Very basic. We mix incomes successfully because we are fussy about who we rent to." For example, no sublets are allowed in CADA rentals.

CADA's office is unorthodox as well. It's a second-floor rental in the Park Place senior-citizen complex at 1231 N St. One passes through the building's shell-pink lobby and coffee shop to reach Rule's office, which overlooks the seniors' swimming pool. In summer, CADA staff members go out and swim alongside the pensioners.

"Ron sometimes has a salty demeanor," warns his public information officer, Harlan Antler. "He knows as much about the activities of the maintenance crew as he does about housing finance. He can crawl under a house with someone who says something can't be done and he knows better. Then he can take a shower and wash up and meet with the Redevelopment Agency and California Housing Finance and know precisely what they're talking about."

"He's not your average mindless government bureaucrat," says David Mogavero, Sacramento Old City Association president and the architect of CADA's successful 17th Street Commons cooperative apartment complex. "We've had fabulous screaming matches over various issues, notably high-rises on R Street, which Rule favors.

"But I can't stress enough how much good he's done for downtown."

Rule says CADA differs from conventional redevelopment agencies "in that it's run like a business." It retains its publicly owned land on a 59-year lease instead of selling it to developers. And it consciously mixes income levels and financing strategies to create a self-sustaining community.

"When we started out we had nothing but 10 boarded-up buildings," Rule says. "It was a real slum area."

Because the state in recent years has swapped CADA parcels with land elsewhere, 243 non-CADA apartment units in several buildings lie within CADA's boundaries. Rule says this is to CADA's advantage.

"The private owners have improved their buildings tremendously because we got in there and improved ours," he says. "Turning around the slum is our single most important achievement."

In 1982, Rule obtained streetlights for the CADA area with $500,000 in state, city and private funds. He contracted for private security patrols; CADA staff reads the crime reports every night.

"One of four parts of the Capitol Area Plan was a call for a complete economic spectrum," Rule says. "The worst thing they could have done was say, 'Put it all low income.' Then you wouldn't even have enough in the community to support the low income. So by building a complete economic structure they help support things that help support the low income."

CADA's first renovation was the Park Mansion building in 1980 at the corner of 15th and N. "That building was 42 units of slum. It was burned out and occupied by homeless people," Antler says. "It was a disaster waiting to happen."

Now luxurious, 20 percent of Park Mansion's units are occupied by people with physical handicaps. "It was the first building in Sacramento to be 100 percent (wheelchair) accessible," Rule says, "and done with such design sensitivity that the accessibility isn't even obvious. We didn't hide it in the back. Little things, like in the laundry room the shelves are lower so people in wheelchairs can use them. And the subsidized units are really paid for by the market rate tenants, ranging from $340 for a studio to $575 to $700 for a two-bedroom apartment. We structure a building (financially) so that it will carry low-income residents just as it would carry sewage fees or taxes. It's just another cost. The beautiful part of this is that it never needs government subsidy thereafter.

"Private developers go in with no land carrying costs whatsoever. Also, once we reach an agreement with them, we're all the same development team and we expedite processing through the city. The city grants us lower fee structures, and all this brings the price of the units down $10,000 to $15,000 less. The nice thing is that we get that money back over the 60-year period by very nominal monthly fees. We end up theoretically with the land still publicly owned; we've gotten paid for it, and everyone's a winner. I don't know of anybody doing that in the United States today."

To obtain good design, Rule says, "the worst thing you can do is go through a design review board. Our board of directors (named partly by the city, partly by the state) has the final say-so. Our deputy director for construction is an architect; so is our deputy director for administration. So with two architects on the staff, we have some in-house expertise.

"Creativity is allowed here," Rule asserts. "We don't like the governmental regulations: you can't do this setback, you can't do that; soon you start dictating the design of the building. We just say, 'Make it look neat.' People really do feel they have free rein here. And we're getting much better buildings."

The Capitol Athletic Club restaurant is a CADA replica of an old mortuary. "We saved the timber and the windows and everything," Rule says. CADA staff wanted to see an athletic facility downtown, and gave consideration on the restoration bids to people who said they'd build one adjacent to it. "In effect," Rule says, "the total project involving that building made the renovation possible. It solved a lot of things for us."

Rule says CADA usually asks that 10 percent street-commerical use be worked into a residential project to increase foot traffic and thus downtown safety.

"Having residential over street commercial is kind of an old concept," he says. "But we believe it's critical to bringing life back into downtown. Everyone says, 'It's got to be a 24-hour community.' But anything we can do to extend it beyond five is a real plus."

CADA in April opposed a city ordinance that would deter highrise construction on the R Street corridor.

"Nobody's going to build in the core unless you give some kind of subsidy to help purchase that land," Rule said. "Which we think the city should do. But the effect of that ordinance was that you lose billions by coming downtown."

Rules said he'd rather see incentives "so when they do build a highrise on R Street and elsewhere they kick into a pot that will help developers to build in the core."

He concedes that sales of the new Stanford Park condominiums "have been slower than some of the others." New financing to take effect in October, together with reduced down payments, will provide another 18 months of marketing time.

"It's wild," Rule said fondly. "The only vehicle I know to get the job done is the private sector. No public agency would give you $25 million to put housing downtown. And that's how much money we've attracted."

Rule is a Los Angeles native and a landscape architect by training, with four years each at the Ventura County and Los Angeles regional planning commissions. He worked in private housing finance in Southern California for 12 years.

"I was very much into high-powered land development and financing," Rule said. "The companies I was with did about $100 million a year in land development.

"I had done everything there was to do in Southern California and I wanted to go to Northern California," he said. "I took a consulting job to kind of get a feel for other communities. In that job I was able literally to review every major city in California in terms of its downtown, its low-income and problem areas, all its urban renewals, everything. I was with the California Housing Finance Corporation for a year when they first started, and helped get some of their housing rehabilitation programs off the ground.

Rule lives not downtown, but off Garden Highway in South Natomas with his large boat. He lectured at the Massachusetts Institute of Technology last year, trying to sell up-and-coming planners on the CADA financing concept. "The schools turn them out a bit too naive in some ways," he said. "They've got to learn nuts and bolts negotiation."

"It's probably one thing that helps this organization is that I've been a land developer. I can yell and scream at these guys, cuss them out, and do whatever I have to in those meetings. But you've got to get their attention, because their job is to make as much money as possible. My job is not to let them dictate."

Current projects include finishing touches on a four-unit 1908 Queen Anne Victorian rental at 1330 P St.

"This is a nice contract," Rule said. "Here we're saving something of architectural importance that's on the city's list (of historical landmarks) and at the same time we're working on new residential with our $2.3 million Courts project at 15th and N streets."

Half of CADA's staff live in CADA properties downtown.

"Why would an architect like me settle for personnel management?" asks Jacqueline Whitelam, CADA's deputy director of administration. "Because I like seeing a finished product. I remember downtown how it was (before CADA) and I like that we work with buildings whose improvement I can see, not with blueprints that may or may not ever come to fruition."

"We have direct dealings with our community," said Walter Edwards, CADA's deputy director of property management.

Rule does not insist that his management people have college degrees. "I don't because I want people with brains," he said. He does insist that everyone in the company learn the job of someone else. He moves staffers frequently and promotes from within. He thinks people in large companies tend to protect their jobs by keeping others ignorant of what they do.

"If we see anyone building any walls around themselves, we just move them some other place," Rule said.

"With largeness, you get very impersonal. That's why I always keep that pipeline open all the way down through maintenance. I'll eat with them, go out drinking occasionally, to make sure that the deputy directors here are not screwing them up. And they have valuable input.

"There are some interesting twists," Rule said. He once had a maintenance supervisor who'd been on the job about four months. It was suggested to the new supervisor that he teach someone else to make keys. But he didn't want to relinquish the privilege.

"He said, 'Let's go talk to the executive director about it,'" Rule said. "But they didn't. They forgot about it. . . . So a little while later he comes in with his vacation request. And I said, 'No. You can't go. There's no one to take your place.'"

"Beginning that day," Rule said with satisfaction, "there were two guys who knew how to make keys."

SENATE—*Friday, October 23, 1987*

(Legislative day of Friday, October 16, 1987)

The Senate met at 8:30 a.m., on the expiration of the recess, and was called to order by the Honorable KENT CONRAD, a Senator from the State of North Dakota.

PRAYER

The Chaplain, the Reverend Richard Halverson, D.D., offered the following prayer:

Let us pray.

Though I speak with the tongues of men and of angels, and have not love, I am become as sounding brass, or a tinkling cymbal. And though I have the gift of prophecy, and understand all mysteries, and all knowledge; and though I have all faith, so that I could remove mountains, and have not love, I am nothing. And though I bestow all my goods to feed the poor, and though I give my body to be burned, and have not love, it profiteth me nothing.—I Corinthians 13:1-3.

Loving Father in heaven, in the light of Paul's classic statement about love, my prayer is expressed in the words of a simple spiritual song: "Bind us together, Lord; bind us together, Lord; bind us together in love." In His name who is incarnate love. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore [Mr. STENNIS].

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, October 23, 1987.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable KENT CONRAD, a Senator from the State of North Dakota, to perform the duties of the Chair.

JOHN C. STENNIS,
President pro tempore.

Mr. CONRAD thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. Under the standing order, the majority leader is recognized.

THE PRESIDENT DISPLAYED THE RIGHT ATTITUDE

Mr. BYRD. Mr. President, the President last evening in his news conference I think displayed the right attitude as we look toward the problems that immediately afflict our country. The President had several opportunities to drop the ball, but he held on to it. It was a tough news conference. He faced a battery of tough questions dealing with the budget deficit. I think now is the time to forget the finger pointing and to be nonpartisan and to be Americans in working together to cope with this difficult problem. We can be Democrats and we can be Republicans some other time.

So I was encouraged by the President's words. I would urge the President to convene a meeting this weekend. These are unusual times. They are unusual days. And I think we have to put aside business as usual and work and work together. So I would urge the President to call us together this weekend and work through the weekend, Saturday and Sunday.

I do not know anything that would give the markets and the American people a greater shot in the arm, a greater feeling of confidence and trust that their Government really intends to govern and we intend to go out and do our work. I do not think anything could give our country a greater stimulation of encouragement and belief and confidence in the future than if the President would sit down with us tomorrow and Sunday. I do not think we have time to wait or time to waste. And I hope that the President will do that. I am willing; not only willing, but eager. Let us roll up our sleeves now and to go work and let us come together and reason together and, as the President said, leave everything on the table with the exception of Social Security, which the President correctly removed from the table.

But I take the President at his word when he indicated that he is willing to sit down and consider all the options and not have any preconditions to such a meeting.

Mr. President, I yield the floor.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business for not to extend beyond the hour of 9 a.m., with Senators permitted to speak therein for not to exceed 5 minutes each.

Mr. BYRD. Mr. President, I ask unanimous consent that the distinguished Republican leader have his time reserved.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. BYRD. Mr. President, I yield the remainder of my time to Mr. PROXMIRE.

The ACTING PRESIDENT pro tempore. The Senator from Wisconsin.

CONGRATULATIONS TO THE MAJORITY LEADER

Mr. PROXMIRE. Mr. President, I thank my good friend, the majority leader. I congratulate him on his very statesmanlike remarks this morning about cooperating with the President and the President's news conference last night. It is characteristic of our leader that he takes this kind of position.

All of us are proud of our party, but the leader, I think, properly pointed out that this is the time that we must recognize that the interests of the country must come first.

A NO VOTE ON THE BORK CONFIRMATION

Mr. PROXMIRE. Mr. President, this Senator has decided to vote against the confirmation of Robert Bork to the Supreme Court. Here's why:

I will not vote to confirm a nominee for Associate Justice of the Supreme Court who has called the 1964 Civil Rights Act, "an act of unsurpassed ugliness." This Senator has served in this body for more than 30 years. In that period the most single contribution to the advancement of justice in this country was the 1964 Civil Rights Act. This Senator would call that enactment an act of unsurpassed beauty. This Senator is proud to recall that I voted for that act. And of the more than 12,000 votes I have cast in this body, in none do I take greater pride or satisfaction. How can anyone who believes in fair and equal treatment under the law make such a demeaning judgment of a Civil Rights Act that for the first time in American history gave black Americans the same rights enjoyed by the rest of us to enter theaters, restaurants, places of culture and enlightenment, to sit freely where they want to sit in vehicles of public transportation, and enjoy the other freedoms available to all other Americans? Mr. President, this country freed

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

black slaves in 1863 with the Emancipation Proclamation. But for the next 100 years the prejudice and discrimination against our black sisters and brothers constituted an international scandal, a national shame. In 1964, the Civil Rights Act of that year went a very long way toward ending that gross unfairness. I cannot vote for the confirmation of a man to serve on the Supreme Court, a court that is the Nation's final arbiter on the civil rights of all Americans when that man has taken the view Robert Bork has taken toward a law advancing justice in America, a law passed by the Congress and signed by the President of the United States.

Mr. President, the single most cherished affirmation in our great charter, the Constitution—is the first amendment. Most Americans cherish freedom even above the abundant economic opportunities in this blessed land. And, of course, a prime reason for our freedom is the absolute guarantee set forth and spelled out in the first amendment. Yesterday, I discussed with Chairman BIDEN and placed in the RECORD a long and detailed letter from Prof. Vincent Blasi of the Law School of Columbia University. That letter documented very thoroughly the contention that led to Professor Blasi's conclusion that:

> * * * the confirmation of Robert Bork would pose a threat of uncertain proportions to * * * one of our grandest constitutional commitments, the shared understanding of the freedom of speech articulated in the opinions of Justices Oliver Wendell Holmes, Louis Brandeis, Charles Evans Hughes, John Marshall Harlan, and Lewis Powell, to name only a few of the many justices who have helped build the first amendment tradition that serves us today.

In the third place, as Chairman BIDEN spelled out masterfully in a colloquy between us on the floor of the Senate Thursday, Judge Bork would bring to the Supreme Court a view of antitrust law that would sanction price fixing by this country's massive manufacturing corporations right down to the consumer level. It would permit horizontal conglomerate mergers that would allow as few as three national competitors to control an entire market as long as none controlled more than 40 percent. In the words of Dean Pitofsky of Georgetown Law School, if Robert Bork's view should prevail,

> This would be a very different country. Large firms could behave far more aggressively against rivals without fear of monopolization charges, each industry could become concentrated by merger to the point where only two or three firms remained, and wholesalers and retailers would be under the thumb of the suppliers as to where and at what price they can sell and what brands they can carry.

Now, let's be realistic. Robert Bork would serve on a collegial body of nine members. With this antitrust expertise he could easily become the dominant court figure on antitrust. His accession to the court could have a profound effect on the competitive American economy that has served this country so well for so long.

Finally, Mr. President, this Senator is impressed that after extraordinarily thorough and meticulous examination of the Bork record by the American Bar Association, 4 of their 15 members voted that Robert Bork is not qualified. To put that vote in perspective, the Senate has never confirmed a Supreme Court nominee that has had even as much as one vote of "nonqualified" registered against him by the American Bar Association. Even more impressively, an astounding 1,925 professors at accredited law schools have signed communications to the Judiciary Committee attesting to their opposition to this nomination. That, Mr. President, represents an astonishing 40 percent of all the law professors at accredited law schools in this country. It compares with less than 100 who have told the Judiciary Committee that they favor the Bork confirmation. That 20 to 1 vote against Robert Bork by the Nation's law professors deeply impresses this Senator.

This Senator hesitated until this moment to declare his opposition to Judge Bork. I did so because I have great respect for his remarkable intellect, for his long and rich experience as a law professor, as a lawyer, as a judge, and as an enforcement official in the executive branch. There has not been a single word challenging Robert Bork's integrity. He appears to be a man of excellent personal qualities. But I oppose his confirmation because of his record on civil rights, his record on the first amendment freedoms, and his record on antitrust. In this Senator's long career in this body, I cannot recall another time when I have voted against a person whose intellect, experience, and character so clearly qualified him. Unfortunately his record overcomes all of that.

Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

SENATOR JOHN STENNIS ANNOUNCES HIS RETIREMENT

Mr. BYRD. Mr. President, 5 years ago, September 28, 1982, a reporter for the Washington Post wrote: "It's hard to imagine the Senate without JOHN C. STENNIS or JOHN C. STENNIS without the Senate." Now, the United States Senate and the the senior Senator from Mississippi face that reality. Just a few days ago, our distinguished colleague announced that he will not seek another term in the Senate.

His leaving marks the end of an era in this Chamber. He was first elected to the Senate in 1947 and brought to this Chamber the skills and temperament—temperament—acquired during a decade on the judicial bench, 1937-47. He put this experience to effective use in this Chamber as he earned a justly deserved reputation for decency—decency—and fairness.

Having observed and admired Senator STENNIS since I was elected to the Senate in November 1958, I can say emphatically that Senator STENNIS has faithfully and successfully served the people of Mississippi and the people of the United States. During his four decades in the Senate, he has been a dominating figure in this Chamber, an advisor to Presidents, and a man of enormous power, influence, and sterling, hard-as-a-rock integrity.

In 1965, in recognition of his high ethical standards, Senator STENNIS was selected as the first chairman of the Senate Committee on Standards and Conduct. In this position, he was instrumental in developing the Senate code of ethics.

From 1969 to 1981, Senator STENNIS was one of the most effective chairmen of the Armed Services Committee in the history of the Senate.

On November 15, 1985, Senator STENNIS became the second longest-serving Senator in the history of the United States. He is currently chairman of the Appropriations Committee and President pro tempore of the Senate.

However, all those accomplishments and experiences are dwarfed by the courage and strength that Senator STENNIS has continuously demonstrated during his long tenure in the Senate. In January 1973, he was shot twice during a robbery in front of his house in northwest Washington. In 1984, he lost one of his limbs to cancer.

Yet he never allowed the pain and agony of these tragic events to limit his effective work as a United States Senator. Consequently, his has been a lengthy and illustrious career and he occupies an important place in the history of the United States Senate and the history of the United States.

As we now face the reality that the United States Senate, after 1 more year, will be without JOHN C. STENNIS, we already know that we will miss his wisdom, his decency, his dignity—his quiet, unassuming dignity—and the experience accumulated during more than four decades of service in this Chamber. But I am equally sure that I personally, and the Senate as a whole, will continue to learn and profit from these sterling attributes during the remainder of Senator STENNIS' current term.

Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

CONCLUSION OF MORNING BUSINESS

Mr. BYRD. Mr. President, I ask that morning business be closed and that the Senate proceed to executive session on the Bork nomination.

The ACTING PRESIDENT pro tempore. Morning business is closed.

EXECUTIVE SESSION

The ACTING PRESIDENT pro tempore. Under the previous order, the hour of 9 a.m. having arrived, the Senate will now go into executive session to resume consideration of the nomination of Robert H. Bork to be Associate Justice of the Supreme Court. The clerk will report the nomination.

SUPREME COURT OF THE UNITED STATES

The legislative clerk read the nomination of Robert H. Bork, of the District of Columbia, to be an Associate Justice.

The Senate resumed consideration of the nomination.

Mr. DOMENICI addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, a parliamentary inquiry. Are there any time restraints on the Senator from New Mexico with reference to speaking to the nomination?

The ACTING PRESIDENT pro tempore. The proponents of the nomination of Judge Bork have 3 hours under the control of Senator THURMOND.

Mr. DOMENICI. I yield myself 15 minutes, Mr. President.

The ACTING PRESIDENT pro tempore. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, a funny thing happened to Robert H. Bork on his way to the Supreme Court.

For close to 40 years, this distinguished scholar, attorney, and jurist compiled what looked to be the perfect résumé for an Associate Justice of the Supreme Court of the United States:

He is a brilliant and provocative legal scholar.

He was as fine a Solicitor General as we have had in recent years.

He has served with distinction on the second most important court in the land.

Now Robert Bork is about to become a footnote in history.

What happened? How did a lifetime dedicated to justice and the rule of law—achievements matched at best by a handful of persons in our lifetime—turn sour?

Why are we, in the words of some of our colleagues, about to bury this gentleman?

This Senator is convinced that the Senate has just participated in a process that has added a new verb to our language: "To Bork," which means to destroy by innuendo or distortion.

Judge Bork got borked.

This is not simply my view. The Washington Post said in an editorial that the anti-Bork campaign "did not resemble an argument so much as a lynching." The Post spoke of the "intellectual vulgarization and personal savagery" of the attacks on Judge Bork, "profoundly distorting the record and the nature of the man."

Before trying to explain this tornado of terror that has swept over us, we need to review the record of Robert Bork, a record that is surely as brilliant as any the legal profession has produced.

If there is such a thing as predestination in the legal profession, Robert Bork was predestined to the Supreme Court.

Robert Bork received his undergraduate degree at the University of Chicago, where he was elected to Phi Beta Kappa.

He went on to earn a law degree at the University of Chicago, where he graduated with honors and was managing editor of the law review.

Robert Bork then went to work for the prestigious law firm of Kirkland & Ellis. He was clearly on a path upward.

He joined the faculty of the Yale University Law School, certainly one of the most august legal teaching positions in the Nation.

Robert Bork taught at Yale for a number of years until he was asked to come to Washington in 1973 to serve as Solicitor General, a position that stands very close to the pinnacle of the American legal profession.

The job of Solicitor General goes only to the very, very best legal minds. It is not a job for a political crony. Nor is it a slot for a big contributor. It is a job requiring legal excellence, maybe the most professionally demanding job in this city.

At most, a handful of attorneys can hope to qualify to become America's chief advocate, setting the strategy on cases, then arguing the most difficult ones before the Supreme Court.

When he was nominated to be Solicitor General in 1973, Robert Bork was approved unanimously by the Senate; 25 Members of the current Senate were here then and voted for Robert Bork.

Robert Bork served in that post for 4 years—4 distinguished years, 4 demanding years.

It was Mr. Bork who, as Solicitor General, fought for a broad interpretation of the Voting Rights Act, and urged the Supreme Court to outlaw employment tests and seniority systems that had discriminatory effects.

It was Mr. Bork who, as Solicitor General, concluded that the evidence against Vice President Agnew warranted his indictment on criminal charges.

It was Mr. Bork who, as Solicitor General, opposed expansion of the pocket veto, and persuaded President Ford to restrict its use.

It was Mr. Bork who, as Solicitor General, insisted on admitting to the Supreme Court that he had discovered that a key Government witness had lied in order to convict a black man on drug and tax charges.

It was Mr. Bork who, as Solicitor General, argued that the civil rights laws prevented private schools from denying admission to black students solely because of their race.

Elliot Richardson, Attorney General over Judge Bork, described him as a man of "integrity, courage, and uncommon intellectual honesty." Edward Levi, later Attorney General, termed Mr. Bork's service as "outstanding." Paul Bator, a University of Chicago law professor, testified that Mr. Bork "performed in the highest traditions of that office."

Interestingly, the Judiciary Committee report barely notices Mr. Bork's performance as Solicitor General. Remember the old law school axiom: "When the facts are against you, argue the law. When the law is against you, argue the facts." In this case, it's: "When both the law and facts are against you, ignore them both."

In 1977, Robert Bork returned to Yale Law School, holding for 2 years the chair as Chancellor Kent professor of law, then held the chair as the Alexander M. Bickel professor of public law for another 2 years.

What is the role of a professor? It is to teach, to stretch the minds of students; it is to be both learned and provocative. Of course Robert Bork offered ideas that were stimulating and challenging; that is what teaching is all about. If he had been the timid gnome some might prefer, he would have been lucky to teach at Podunk University.

America neither wants nor needs the leadership of the timid.

In 1981, Robert Bork resumed the private practice of law.

A year later, he was selected by President Reagan to serve on the U.S. Court of Appeals for the District of Columbia Circuit, the second most influential court of the Nation.

When did the Senate last have before us a Supreme Court nominee with a pedigree like this?

When Robert Bork was nominated to the circuit court, the American Bar Association rated him as "exceptionally well qualified," the highest rating for a circuit court nominee.

Seventy-three members of the current U.S. Senate were here then to approve Robert Bork, to approve him unanimously.

How did he do as a judge?

My colleagues know all the numbers and facts: Judge Bork was in the majority in 95 percent of the cases he heard. Not 1 of the more than 400 opinions that Judge Bork wrote or joined has been reversed by the Supreme Court. In the six cases where Judge Bork dissented and the Supreme Court reviewed the case, the Supreme Court agreed with Judge Bork every single time.

He voted 98 percent of the time with Justice Scalia when he was on the circuit court; he voted 82 percent of the time with his philosophical opposite, the very liberal Judge Abner Mikva.

Clearly, Judge Bork was smack in the mainstream of that court.

Judge Bork's critics say he is unlike Justice Powell, the distinguished jurist he was nominated to replace. Yet, in the 10 cases in which Judge Bork was involved and which Justice Powell reviewed, Justice Powell agreed with Judge Bork's position 9 times. In the lone remaining case, Justice Powell agreed with Judge Bork in part, disagreed with him in part.

Judge Bork was a strong defender of the first amendment. He wrote an opinion that expanded the protection journalists have from libel suits. He struck down attempts to censor political statements. He extended the first amendment protections to commercial and scientific speech, as well as cable television programming.

Some have argued that Judge Bork's notion of justice has been eccentric. Does any of that sound eccentric to you?

Judge Bork joined in a decision to protect sacred and historic Navajo sites in New Mexico. He voted to protect the rights of a prisoner beaten by a prison guard. He supported relief for a group of public housing tenants when the Federal Government failed to protect them against lead-paint hazards.

Where do these views stray from the mainstream of American legal thinking?

With such a résumé, it came as no surprise that President Reagan nominated Judge Bork to the Supreme Court.

And, for a time, it appeared that the Senate would confirm the nomination. The chairman of the Judiciary Committee had stated that he would support the nomination, no matter what kind of a fuss his liberal supporters put up.

Former President Ford, former Chief Justice Warren Burger, Supreme Court Justice John Paul Stevens, seven former Attorneys General of the United States, and eight former presidents of the American Bar Association came foward to support the nomination.

The American Bar Association proclaimed Judge Bork "well qualified," its highest rating for a Supreme Court nominee.

Clearly, Judge Bork was on his way to the Supreme Court.

Yet, now we are poised to reject the nomination.

Again, I ask, what happened?

Before seeking to examine the vitriolic campaign against Judge Bork, it might be instructive to review the Senate's role, as this Senator seeks it, in processing nominees submitted by the White House.

Under the Constitution, the Senate has the duty to offer "advice and consent" on Court nominees, as well as other Presidential appointments. That is not a power to select nominees; that responsibility goes to the person elected by the entire Nation, the President.

The Founding Fathers rejected the idea of giving the Senate the power of appointment because they were afraid of precisely what has happened here. They were afraid that partisan concerns would overshadow a candidate's merits.

The drafters of our Constitution also rejected a referendum on judges. They saw it as dangerous and impractical.

Yet the opposition to Robert Bork has achieved, in a very effective way, something those who wrote the Constitution rejected specifically. The anti-Bork leaders converted the nomination into a political referendum: My polling data versus your polling data.

My good friend from South Carolina, Mr. Hollings, reminded us recently of Winston Churchill's observation: "Nothing is more dangerous than to live in the temperamental atmosphere of a Gallup poll, always feeling one's pulse," the great British statesman said. "There is only one duty, one safe course, and that is to try to do right."

That duty, of course, is not one of blind subservience. Rather, it is to scrutinize Court nominees to determine if they possess the qualities that America has a right to expect in judges. But the Senate needs to respect a President's right to appoint qualified persons to the judiciary.

So long as a nominee is otherwise qualified, one who respects the fundamental principles of our constitutional system—particularly the separation of powers—that nominee's personal philosophy becomes irrelevant.

I have voted to confirm nominees, right and left. While I may have disagreed with their political philososphy, they were qualified.

But since he really stands in the mainstream, why all the turmoil over Judge Bork?

Part of the answer is to paraphrase a famed mountaineer: Because he was there.

He had written and said enough things about the "four corners" of the Constitution that he became a lightning rod.

Pity the next nominee, if he or she has a record.

To achieve the destruction of Robert Bork and promote a special-interest agenda, the opposition unleashed as negative a campaign as anything I have seen. It was a campaign that cost, I understand, $15 million.

Since the anti-Bork campaign could find no fault with his intellect, his experience, his morals, or his integrity, it turned to distortion for the buoyancy of the campaign.

President John Adams a long time ago wrote that "it is much easier to pull down a government * * * than to build up."

So it is with judicial nominees.

The standards of the campaign were full-page advertisements denouncing Mr. Bork in the most outrageous terms. One said Mr. Bork would likely allow States to "impose family quotas for population purposes * * * or sterilize anyone they choose." They said he would take away your privacy, that he would return blacks to the shadows of segregation, that he defended poll taxes and literacy tests that restricted the right to vote.

If it were not so serious, it would be laughable.

Behind these ads have come waves of junk-mail letters attacking Judge Bork, and, not incidentally, requesting a donation of "$25, $50, or $100" to go into the bank accounts of this or that special interest. Judge Bork, the Constitutional boogey-man, became a fundraising tool. One group raised an estimated $1.5 million spreading fear about Judge Bork.

And the TV ads! Ads as slick as anything peddling soap or soft drink, twisting a life in 30 seconds. This isn't advice and consent. This is electronic assassination.

This is a firestorm of fear. Certain special interest groups went to members of this body and threatened them with defeat if they should dare to vote to confirm Judge Bork. That may be perfectly legal. But remember what Winston Churchill said about polls and doing right.

And we have learned of the black supporter of Judge Bork who was told by a member of the committee's majority staff that his record would be dragged through the mud if he testified. He didn't.

Should we prostrate ourselves before these campaigns of excess?

The campaign portrayed Judge Bork as antiwoman, antiblack, antieverything. Look at the record; that is not the real Robert Bork. That is the Robert Bork of the advertisements financed by the merchants of fear who have taken over this issue.

The committee report made what must be the most unreal comment of all: Judge Bork's "jurisprudence fails to incorporate the ennobling concepts of the Constitution."

As a New Mexico Senator, with our wide cultural and ethnic diversity, I would be leading the campaign against Judge Bork if there was the slightest suspicion that Judge Bork would roll back the progress made in civil rights, progress that has allowed Hispanics, Indians, blacks, women, and other groups to share in the American dream.

But what has been missing in the campaign to bork Judge Bork was that precious word "perspective."

I asked Judge Bork what had bothered him the most personally about his ordeal. He told me that it was the way his views on civil rights had been distorted, painting him so unfairly as insensitive to the concerns of minorities.

This is a man with a good record on civil rights, a proud record. As a young law firm associate, he led the fight that overturned the firm's ban on hiring Jews.

While he was Solicitor General, Mr. Bork and the NAACP Legal Defense Fund on 10 occasions filed briefs on the same substantive civil rights cases; 9 times they were on the same side.

In fact, Mr. Bork argued cases before the Supreme Court on behalf of the rights of minorities more often than any nominee since Thurgood Marshall.

While he was Solicitor General, Mr. Bork filed with the Supreme Court 19 amicus briefs involving civil rights issues. What is significant about these "friend of the court" pleas is the discretion that the Solicitor General holds in deciding whether or not to enter a case as a third party. It is his call, not something he is required to do.

Out of those 19 cases, Mr. Bork urged the Supreme Court 17 times to construct broadly the law or rule so that it would favor the minority interest.

In the eight cases that came before him on the court of appeals involving substantive questions of civil rights, Judge Bork voted for the civil rights claimant in seven of the eight cases.

These involved such things as claims of racial discrimination against the Navy, sex discrimination against an airline, sex discrimination against the State Department, violations of voting rights, and equal pay. Judge Bork ruled in favor of a homosexual who had been fired illegally.

Is that a man who wants to turn back the clock? Not at all.

What about the "privacy" attack on Judge Bork? Did he really not care about our privacy, our freedom to live our own lives behind closed doors? Certainly not.

That issue deserves careful review because the "privacy" issue is the one that probably really sunk Judge Bork. It is a complex and difficult issue.

Difficult? How could a basic concept like "privacy" be difficult? It means "my home is my castle." It means "leave me alone." We know that. The public knows that.

But in the eyes of the Supreme Court, the word "privacy" has a different texture, one that never really existed until the Connecticut case involving contraceptives, and, later, the Roe versus Wade abortion ruling.

What bothered Judge Bork—as well as a great many other legal scholars—is how to define the word in its legal sense. His concern was that the Court used the word, but never articulated a principle that other courts, and later Justices, might follow to determine just what is covered by this "right."

Would it cover wife beating or child molestation in "the privacy of one's home"? I pray not, but we don't know. As long as that "right" is floating about, undefined, it is ripe for interpretation any old way that a judge might want to interpret it. That concerns this Senator, and it concerned Judge Bork.

Aspects of this debate have extracted expressions of concern from individuals as diverse as the late Justice Hugo Black, Professor Archibald Cox, the late Justice Potter Stewart, and Professor Gerald Gunther.

In discussing the privacy controversy, the editorial page editor of the Washington Post, Meg Greenfield, noted that Mr. Bork's "positions were deformed beyond recognition in the retelling."

What happened was that Judge Bork asked some tough questions, and he got clobbered for asking them.

Where was our "fairness," our "balance," our "perspective"?

On numerous occasions, Judge Bork wrote about decisions, as any scholar must, and analyzed those decisions. On many occasions, he criticized the "reasoning" for those decisions, an entirely different thing than criticizing the "results" of the decision.

It seems the critics of Judge Bork are saying this: If you engage in the debate, watch out. And you would be smart never to mention any concerns you might have for how we get to certain laudable public goals; the ends always justify the means.

Judge Bork has argued that the courts should abide by their constitutional role of interpreting the law, not making it. I agree.

Are we, as a body, going to second-guess how every Court nominee will vote on a particular issue 15 or 20 years from now? If so, we may quickly find ourselves in very dangerous waters.

Like Judge Bork, I harbor no illusions about the outcome of this debate. Yet, it is important that we examine what has gone on here, for what is at stake is the Senate's sense of decency and fair play, aspects of our civility that vanished in the rush by many to batter Bork, in hopes the next nominee will favor—or at least not object to—a special-interest agenda.

And there are other disturbing aspects of the Bork spectacle. For example, what ever happened to "debate" in what we call the world's greatest deliberative body?

Many of our colleagues will say they were willing to "debate" the Bork nomination all last week. But, by definition, a debate assumes the outcome hangs in the balance. How do you "debate" an issue on which 54 Members announced their firm opposition before a single copy of the 407-page committee report became available?

There is nothing this Senator can do to prevent my colleagues from announcing their decision whenever they want to. I had voted twice before to confirm Mr. Bork, so I was certainly predisposed to support him again, unless something came along during the committee hearings to alter that view.

I announced my own decision nearly 2 weeks ago, when it was clear that Judge Bork could not be approved. The rush to judgment had swept us aside before the process had even produced a written report.

What does all this portend for the future?

In this year of the Constitution's bicentennial, which many of us celebrated in Philadelphia not long ago, is it not ironic that the Senate, as an institution, has undermined the independence of the judiciary?

By allowing a negative media blitz to determine who we put onto our courts, we may have undone much of what was accomplished that special summer 200 years ago.

Let some fairness and truth return to our evaluation of judicial nominees before others are subjected to such injustice.

Mr. THURMOND. Mr. President, will the distinguished Senator yield?

Mr. DOMENICI. I yield.

Mr. THURMOND. Mr. President, I want to take this opportunity to commend the able Senator from New

Mexico for his outstanding presentation on behalf of Judge Bork.

The Senator from New Mexico is an able lawyer, and he knows a good lawyer when he sees one. He has searched the record of Judge Bork, he has found it satisfactory, he has found it outstanding, and he stands here today and told the Senate that Judge Bork ought to be confirmed. I commend him. I think he has made a very helpful tribute to Judge Bork.

Mr. DOMENICI. Mr. President, will the Senator yield?

Mr. THURMOND. I yield.

Mr. DOMENICI. Mr. President, I thank the distinguished former chairman of the Judiciary Committee for his words.

Let me just repeat in closing: I believe that anyone who will review Judge Bork's record as Solicitor General and on the circuit court, with reference to civil rights and the contention that he will take us backward in time, will agree with the judge, as he sat in my office and said, "The thing that saddens me most is the distortion of my civil rights record."

I believe that is true. That is what lost him this nomination. There are some little theories around—close calls and attempts to stretch this and that. But, essentially, that is what lost him this nomination. And that distortion has done this today a disservice.

Mr. BIDEN. Mr. President, before I yield time to my colleague from Nebraska, I want to take 1 minute.

The Senator from New Mexico talked about distortions. He unwittingly engaged in the most preposterous distortion I have heard—the notion that he has heard that $15 million was spent. I do not know where he heard that. Maybe God came down and whispered it in his ear.

All the evidence anyone has ever introduced is that, from all sources, all advertising, all beyond the control of any Member of this body, added up to less than $1 million. So distortions are flying rampantly here.

Mr. President, Senator ARMSTRONG's remarks about the apparent relationships between Senators in opposition to the nomination and outside groups—relationships that he surmised from reports' comments—was, at first, disturbing to me. It seemed to suggest that the events cited in reporters' stories actually established a closer relationship than I had felt existed.

But it was even more disturbing to me when I had the opportunity to read through Senator ARMSTRONG's statement yesterday in the CONGRESSIONAL RECORD. Remarks that I had taken as direct quotes from reporters were in fact characterizations of events made entirely by the speaker. And when I distilled those actual events from the characterizations, the events themselves showed far less than they had seemed—indeed, they showed nothing at all.

Let me start with the characterizations the Senator used. Plans were "actively orchestrated" among groups and Senators; there were "extensive communications"; committee aides were "most active in orchestrating and influencing"; there was "a skillful, highly organized, orchestrated nationwide campaign" against the nomination, boosted by "close interaction and support activities." Sounds convincing, doesn't it? It does until you consider that none of these characterizations came from news stories, or "outside observers" as the Senator from Colorado calls them. They came from the Senator from Colorado.

Of course, I have no doubt that he could dig up some from the other sources he did quote directly. But it is hardly a surprise, and hardly objective evidence, to find editorial statements sympathetic to the position of the Senator from Colorado in such newspapers as the Chicago Sun-Times, the New York Post, or the Wall Street Journal. Again, however, none of the characterizations I have cited—and there are more—were made by reporters or even editorialists from any newspaper.

When you look at the facts the Senator cited, they hardly justify the sweeping characterizations he made. "A Senator holds a meeting" was one. That's news. A Senator made telephone calls "to round up outside opposition." Seeking witnesses to testify on an important issue is not exactly uncommon or inappropriate in the Senate, as every Senator knows. And worst of all, we "frequently sought information" from outside groups. Is that something that Senators from the other side of the aisle never do? These actual events cited by the Senator from Colorado are entirely ordinary facets of Senate life, as he is assuredly well aware. They in no way add up to the sweeping characterizations he attaches to them.

Then finally, after having drawn the attention of the Senators in opposition to the nomination with these dramatic characterizations—this home-built evidence of a nationwide plot, this conspiracy—he draws back. "Is there something morally reprehensible or even unusual about Senators working with outside interest groups? The answer is, of course not. It is proper. then why, one might ask, are Senators so eager to disavow such an effort?"

The question I would address to the Senator from Colorado is, which effort is he speaking about? The Senators "working with outside interest groups," or the Senators "orchestrating * * * a skillful, highly organized, orchestrated nationwide campaign"? The latter description is clearly meant to concern us—although these rather sinister terms are all his own—even though it is based on the barest, most innocuous facts: "held a meeting," "round up opposition," "sought information."

But when we are asked why Senators do not claim responsibility for everything these outside groups do, suddenly this sinister, orchestrated campaign disappears. Suddenly, we're only "working with outside groups." The Senator from Colorado can't have it both ways. We can't be extensively involved in a highly organized, orchestrated nationwide campaign when our actions are being described, but only "working with" groups when we're asked why we object to being called the "orchestrators" of the supposed campaign.

Well, as the Senator from Colorado well knows, there was no "highly orchestrated campaign" among groups and Senators on this side of the aisle any more than there was on the other side. I have already detailed the extent of the massive political campaign run by right-wing groups in support of this nomination in material submitted for the RECORD on October 21, and I would simply refer interested Senators to that material, beginning on page S14723. I don't ascribe those groups' actions to a plot with Senators or the administration to support this nomination, and I have no doubt that any Senator who examines the record fairly and objectively will reach the same conclusion about Senators who oppose this nomination.

I would just close by repeating what I have said before. The Senate's decision on this nomination came from basic differences in principle between what most Senators and most Americans believe and what Judge Bork and many of his supporters believe. It was decided primarily by the testimony of Judge Bork before the Judiciary Committee, and secondarily by the testimony of other witnesses and by Judge Bork's extensive record of writings, opinions, speeches, and interviews. It was not decided by advertising, fair or unfair, pro or con. All the money spent by all the interest groups on both sides could not have paid for 1 day of the television coverage Judge Bork received in the hearings. Notwithstanding all of the charges thrown about Senators' motives in this matter, the verdict of history will be made on the same basis as the verdict in the Senate: On the merits.

Mr. President, I yield 15 minutes to the distinguished Senator from Nebraska.

Mr. EXON. I thank my colleague.

Mr. President, we continue debate today on a tragic and implausible chapter in the history of the U.S. Senate, continued confrontation for the sake of confrontation. No other purpose can be served.

This debate and subsequent vote on the Bork nomination as demanded by the nominee who has conceded, as has the President and his Senate supporters, will indeed result in certain defeat. This all defies reason and logic.

What legitimate national interest is to be served? The continued bleeding of America will be further drawn out. Right or wrong, the deeply felt racial and human rights overtones of this nomination will continue to tear at the social and political fabric of America and Americans. The procedures to begin consideration of the next nominee are being needlessly delayed.

The entire Senate is somehow perceived as responsible for some public injustices possibly done Judge Bork during the confirmation process. Baring the at-times questionable legal linen of Bork's past pronouncements supposedly will cleanse him in the Senate wash. Regardless of Bork's merit as an intellect and legal scholar of note, whether he is a good or bad man—I believe the former—the central question is whether he is the individual to join the Highest Court of the land at this juncture. Let us think for a moment. Suppose the current will of the Senate is reversed and we vote to confirm. What would happen then? Chaos, I suggest, certain chaos. Every future decision of the Court in the years ahead would be suspect by the citizens at large. The Court would be crippled beyond belief and lose further credibility with the people. As I stated here on October 7—CONGRESSIONAL RECORD pages 26848-26850—enough is enough of this exercise in futility.

This Senator was initially impressed with Judge Bork's nomination. His academic and legal credentials were impressive. I liked his law and order record. I liked his basic stated view, "the courts should not make the laws." His purported arbortion views were not unlike mine, but the National Catholic Register questioned his clarity of position even on this issue. Yet, I knew the Court made over 3,000 decisions a year and any evaluation of his merit needed a broad-based review. I wanted the confirmation process to work, and kept an open mind. As it evolved, my question was not that Judge Bork would interpret the Constitution and laws as he saw them, but whether he had 20/20 vision with or without blinders.

On Friday, October 2, at his request, I discussed this matter with the President. I was then undecided but convinced the confirmation was impossible, notwithstanding what my eventual position might be. Concerned that the "holy war" intensity of the national debate that was raging in America was not good for the country, the Court, or the Presidency, I urged withdrawal of the nomination. I was concerned then that we might needlessly be eventually involved in the confrontation that now engulfs us.

My considerable study of Judge Bork's views and his previous positions on almost everything raised as many questions as it answered. What manner of man was this that had so many changing concepts it took him within the last 4 months to announce his acceptance of the equal protection clause of the 14th amendment?

Since I never saw or heard any of the negative media commercials about him, they did not affect my judgment. Secondhand information that has come to my attention on these convinces me they were overdone and not fair. Nevertheless, supporting or opposing the nomination on what was said or not said in paid commercials of any kind would be abdicating my responsibility as a U.S. Senator.

As a Senator who earlier thought I would support the nominee—no one was more surprised than the Senate's chief vote counter ALAN CRANSTON when I declared on October 7—the final determination against was motivated primarily by Judge Bork's unbounded determination signaled early to wreck all if he could not gain what he determined was rightfully his, his seat on the Supreme Court. His personal crusade in plunging America into this further confrontation was not surprising and confirmed what I had previously determined—he lacks judicial temperament. A potential jurist who lacks that, regardless of all other attributes, should not sit on the Highest Court in the land. He seems so enmeshed in his own aspirations and so disappointed in the known outcome that he has displayed an amazing side of his own stated motto of life, "wreak yourself upon the world."

Notwithstanding Judge Bork's significant legal credentials, we do not need one with his temperament to confront on the Supreme Court. Certainly there must be others of his philosophical persuasion and intellect somewhere in the land who will serve with distinction. He cannot be the indispensable one or else the President would have nominated him ahead of previous nominees Justice O'Connor and Justice Scalia for the Court. I supported both of these nominees.

There has been an effort by some to convince the public that since the Senate previously approved Judge Bork for a lower court, there should be no discussion or indepth consideration now. Nothing is further from reality. In 1982 the Senate did approve Judge Bork to the Federal circuit court of appeals by a voice vote without discussion or debate on the Senate floor; but that does not mean we should rubberstamp him in this instance. Other than Justices to the Highest Court, there is seldom any controversy or deep penetrating examination. The point is, there is no appeal from the decision of the Supreme Court.

A recent article indicated that Judge Bork has long savored an opportunity to serve on the Supreme Court with his "friends" Justice Scalia and Justice Rehnquist. If this be true, it is reason enough to pause for contemplation. Three "friends" on the Court of nine individuals smacks of a one-third trio that might all but dictate the Court's direction and decisions. If we need independence and separation of thought anywhere, it is on the Supreme Court.

The good result of this confirmation proceeding has been that it has caused all of us to relearn some history in this 200th year of the celebration of the Constitution. Those of us who feel the Constitution is more than a historical document should read, study, and learn as we assess what is right and what is wrong, if anything, with our procedures on court confirmations. We should understand why the Founding Fathers designated the Senate to "advise and consent" as opposed to serving as a "rubberstamp" in the process of confirmation, especially with regard to judges.

They were leery of the concentration of powers in the President, particularly when the courts were involved. Why? Because they distrusted and were thus determined to limit the power of the President, not make him king, and in conjunction therewith they were very dedicated to the separation of powers between the President and the courts. In England the early immigrants to this country experienced tyranny, not only from the King, but also from the courts who were perceived as the implementors of the King's dictates.

Indeed, this cause and concern resulted in an effort in the constitutional proceedings to separate completely the executive and judicial branches of the new form of Government. Early on there was discussion that there be no Presidential involvement in the selection of judges. A compromise was struck that provided that the President nominate, but that the Senate should approve or decide on all court appointments. In this specific regard, Alexander Hamilton said in 1788 in his Federalist Paper No. 78:

> * * * Liberty can have nothing to fear from the judiciary alone, but would have everything to fear from its union with either of the departments.

Notwithstanding the wishes of the President, notwithstanding the cries of unfairness, notwithstanding the demands of the nominee that a debate and vote may "vindicate" him, I hope and expect the Senate will reach the right decision. In this Senator's view, the right decision, as politically painful as it may be, is to reject the nomination. In so doing we will send the message loud and clear to the President and future Presidents, Judge Bork and his well-meaning supporters, that true to the Founding Fathers' doctrine, the people's Senate rejects the "monarch's" dictates and those of his nominee. The system worked. The President cannot "award" a Supreme Court appointment and no one "owns" a seat. We remain a constitutional democracy.

Mr. President, I reserve the remainder of my time and yield it back to the Senator who is in charge of time, and I yield the floor.

The PRESIDING OFFICER (Mr. SANFORD). The Senator from Alabama.

Mr. HEFLIN. Mr. President, it is time to bring reason and respect back into this confirmation process. Over the past 2 weeks, I think we, as Members of the Senate, have lost sight of our original purpose. The Senate is required to either grant or withhold our consent to the nomination of Judge Robert Bork to be an Associate Justice of the U.S. Supreme Court.

This responsibility goes to the heart of our duty as U.S. Senators because, with this duty, we are asked to examine our own commitment to equality and justice.

Much has been said over the past few weeks about the politicization of the nomination process. Well, the process has been politicized. But it has been politicized by both Democrats and Republicans and outside right-wing groups and left-wing groups. Neither side or group can cast blame without first accepting it. Before the President sent up the nomination of Judge Bork he knew the confirmation fight would be fierce. The President considered Judge Bork to be the most qualified person he could nominate. Others considered Judge Bork to be the most extreme.

Many of my colleagues have been angered by the solicitations, mass media campaigns and organized efforts of "outside groups" to generate constituent calls and letters. And they have intimated that, because of these efforts, Members have been pressured and persuaded to vote a certain way.

To be honest, many factors influence how a Senator votes. Among these are: How his or her constituents feel, the views of outside groups, and the opinions of colleagues. But while these factors may influence how a Senator votes, they do not dictate how a Senator votes. My vote is mine alone. I made the ultimate decision and I stand behind it. I have to live with my conscience.

For those who are willing to listen, I would like to explain why I voted as I did in committee and how I intend to vote in the full Senate. Before the hearings began, I cautioned my colleagues to keep an open mind and not prejudge this nominee. I have been criticized by some for fence straddling and not taking a position sooner. Yet, I believe the hearing process is meaningless if the verdict is in before the nominee has a chance to speak or before all of the witnesses have had an opportunity to testify. I remained silent for two reasons: First, because I was truly undecided before and during the hearings—and second—out of respect for the process and the nominee.

In my opening statement I said:

> In determining the fitness of this nominee let no mind be closed by either blind party allegiance or rigid ideological adherence. Let no Senator approach these hearings with anything less than an awesome sense of responsibility to do what is right in his or her own mind. We must each follow the mandates of our own conscience.

Since my committee vote, many of my constituents have asked, some rather angrily, why I voted as I did. My answer is simple. Doubts were generated by a record compiled by the nominee, himself. The confirmation hearings of Judge Bork began on September 15 and Judge Bork testified for 4½ days. For the next week and a half the committee heard from 112 witnesses who either supported or opposed the nomination. I observed the demeanor of all the witnesses and especially that of the nominee. I read many of his opinions as well as his speeches and other writings. I went back and read a considerable portion of his testimony. When it was time to make my decision my mind was full of doubts about what this man would do if he was on the Supreme Court. I could not vote yes in view of my many doubts and because of the risks involved.

A life-time position of the Supreme Court is too important to risk to a person who has exhibited—and may still possess—a proclivity for extremism in spite of confirmation protestations.

Many who support Judge Bork do so because they believe that he will put an end to judicial activism and further intrusion by the Federal courts into their individual lives. I basically agree with this philosophy, but I do not want this philosophy to cause a diminution of fundamental rights of all Americans.

Judge Bork has criticized many cases that have expanded the rights of individuals in our society. He says he cannot find these rights in the Constitution. I can. The word "liberty" is subject to broad interpretation, as well as other constitutional words and terms. I believe the ninth amendment was placed in the Constitution for a purpose. I believe the Constitution is a living document that can meet the needs of a changing society. I believe in "originalism" but not in a narrow minded way.

During the hearings, I was particularly interested in Judge Bork's views of stare decisis; in other words how Judge Bork would approach past cases—even those with which he disagrees.

In his opening statement to the Judiciary Committee, Judge Bork said:

> [T]he judge must speak with the authority of the past and yet accommodate that past to the present.
>
> The past, however, includes not only the intentions of those who first made the law, it also includes those past judges who interpreted it and applied it in prior cases. That is why a judge must give great respect to precedent. It is one thing as a legal theorist to criticize the reasoning of a prior decision, even to criticize it severely, as I have done. It is another and more serious thing altogether for a judge to ignore or overturn a prior decision. That requires much careful thought.
>
> * * * [O]verruling should be done sparingly and cautiously. Respect for precedent is part of the great tradition of our law, just as is fidelity to the intent of these who ratified the Constitution and enacted our statutes.

This should be the position of a Justice of the Supreme Court. Yet, earlier, but still recent statements made by Judge Bork in his writings and speeches left me with a different impression.

In a 1985 speech at Canisius College, Judge Bork made the statement:

> I don't think that in the field of constitutional law precedent is all that important. I say that for two reasons. One is historical and traditional. The court has never thought constitutional precedent was all that important. The reason being that if you construe a statute incorrectly, the Congress can pass a law and correct it. If you construe the Constitution incorrectly Congress is helpless. Everybody is helpless. *If you become convinced that a prior court has misread the Constitution, I think it's your duty to go back and correct it.* Moreover, you will from time to time get willful courts who take an area of law and create precedents that have nothing to do with the name of the Constitution. And if a new court comes in and says "Well, I respect precedent," what you have is a ratchet effect, with original meaning, because some judges feel free to make up new constitutional law and other judges in the name of judicial restraint follow precedent. I don't think precedent is all that important. I think the importance is what the framers were driving at, and to go back to that. (Canisius College speech, October 8, 1985, quoted in committee print draft, vol. 1, at 523-24) (emphasis added.)

Judge Bork explained that this statement was made during a question and answer period and that it did not fully reflect his position on precedent.

But this statement and others were not made when Robert Bork was a professor, a lawyer, or a layman. They were made when he was a judge on the Court of Appeals for the D.C. Circuit.

In a January 1987 speech to the Federalist Society, Judge Bork stated:

> Certainly at the least, I would think an originalist judge would have no problem whatever in overruling a non-originalist precedent, because that precedent by the very basis of his judicial philosophy, has no legitimacy. It comes from nothing that the Framers intended.

I have read and reread his speech to the Philadelphia Society which some have labeled "Bork's Wave Theory of Law Reform," made in April of 1987, approximately 3 months before he was nominated. Parts of the speech reflect conservative thought, but portions of that speech read like a speech of an extremist with an agenda. While it was an after-dinner speech; nevertheless, it was a carefully prepared 15-page address that can leave a person with the impression that he is advocating a movement to sweep the debris of nonoriginalist decisions of the Supreme Court off the books and out to sea.

Judge Bork has stated that there are certain areas of the law that are so settled in the lives of the American people and the traditions of society that he would not undo those decisions. He has mentioned the commerce clause, the legal tender cases, some first-amendment protections and the application of the equal-protection clause.

But in those crucial areas of the law which guarantee people's rights, where Judge Bork has criticized past decisions, and where he cannot find a constitutional basis for those decisions, it seems to me to place Judge Bork in a difficult dilemma. For, if a judge does not believe that the law he is asked to uphold is constitutional, then the precedent itself is on very shaky ground, A judge cannot build upon a foundation he cannot find.

I am fearful that, in adhering to a rigid judicial philosophy, Judge Bork would be tempted to play havoc with these decisions. Havoc can be played in many different ways, particularly in distinguishing constitutional principles in different factual settings. A few jurists consider it an "intellectual feast" to make distinctions between distinctions in order to further their predetermined goals. If a jurist has an agenda, he can find ways to give an appearance of intellectual honesty through wordy and vague rationalizations. It is uncertain, in my mind, how he would treat essential fundamental rights.

As I said in my opening statement, the Supreme Court is indeed the people's Court. And the Court deals with real life issues that affect people. We are talking about fundamental rights—call it liberty—call it freedom—call it justice—the term can never capture the value it reflects.

I do not question Judge Bork's strong belief in the Constitution. I question his rigid adherence to a judicial philosophy that seems to ignore compassion for the individual embodied in the Constitution.

Do not misunderstand me. I do not believe in judicial activism. But I do believe a judge has a duty to stand firm behind the Constitution and this country. My Constitution finds room for those who have traveled a path far more difficult than that which I have traveled. And it allows for the growth of our Nation. The institutions of our Government must accommodate this growth. The words of Thomas Jefferson that appear on the walls of the Jefferson Memorial clearly and succinctly express my thoughts:

> I am not an advocate for frequent changes in laws and constitutions, but laws and institutions must go hand in hand with the progress of the human mind. As that becomes more developed, more enlightened, as new discoveries are made, new truths discovered and manners and opinions change, with the change of circumstances, institutions must advance also to keep pace with the times. We might as well require a man to still wear the coat which fitted him when a boy * * *

If Judge Bork is faithful to the judicial philosophy that he espouses, then that philosophy may dictate his positions in the decisions of that court which would cause me great concern.

I want conservatives on the Federal bench. I hope, in time, when tempers cool and reason prevails, people will realize that the fact I have supported all but two of President Reagan's judicial nominees will establish my record as supporting a conservative court. My opposition has come only when I had serious doubts about fairness, impartiality, and extremism.

"The die is cast." And the time has come for us to move ahead. This has been a week of both history and hysteria. We have been engaged in the Persian Gulf and we have witnessed a historic drop in the stock market. Now is not the time for this country to be divided or torn apart by emotion or anger. The battle has been fought. Some will claim victory. But, in my estimation, this week there are no winners—only survivors.

Let us vote and move on. Let the President forthwith nominate another person. I hope the next nominee will be a conservative, but not one who raises doubts about extremism and activism to the right or to the left.

Thank you, Mr. President.

The **PRESIDING OFFICER**. Who yields time?

Mr. **THURMOND**. Mr. President, how long does the Senator want?

Mr. **RUDMAN**. I wonder if the distinguished ranking member of the committee might allow me 20 minutes?

Mr. **THURMOND**. Mr. President, I approve 20 minutes.

The **PRESIDING OFFICER**. The Senator from New Hampshire.

Mr. **RUDMAN**. Thank you, Mr. President. I thank the distinguished Senator from South Carolina.

Mr. President, when I decided to come over here this morning, I intended to come over here and give a fairly lengthy dicussion of Judge Bork's record as a judge and his background, but it seems that the judge himself now wishes these proceedings to come to a close, and I certainly respect that and, thus, do not intend to speak at any length this morning.

I am glad to see that there appears to be some civility that is returning to this process. I must say, without pointing fingers at anyone in particular, that in the case of both the proponents and opponents of this nomination, I, as a lawyer, as a former attorney general in my State, as one with great reverence for that court, am not pleased with the way this matter has been handled.

I find it very unseemly—whether it was $1 or $2 million, that we have seen television ads featuring movie actors, published polls, newspaper ads on the one hand; and on the other hand statements from people who I would describe as being ultraconservative forecasting that this man would somehow change the agenda of America—and people on the talk shows saying that. That is not any kind of an atmosphere in which to confirm a Justice of the U.S. Supreme Court.

I am delighted that here on the floor of the Senate, at least, in the main the discussions have been civil. I respect each of my colleagues' right to analyze this as he or she wishes.

There are several things that have been said during the course of this debate that, it seems to me, need some further discussion. First, there has been great criticism of Judge Bork's writings as a law professor.

Well, evidently it has been a long, long time since most Members of this Chamber have been in a law school class. I would submit that if anyone here would like to go up to, let us say the Harvard Law School, and listen to either Professor Miller or Professor Nisen challenge the class with what are legally outrageous ideas—and, yes, Mr. President, convince most of those immature minds of the correctness of their positions, in many cases, for the very purpose of evoking controversy and thought, they might have a different view. As a matter of fact, I think that Judge Bork made one big mistake in his life. He is far too intellectual, writes too much, is willing to provoke argument and is willing to challenge established principle. Judge Bork, I daresay, if judged on his writings might be judged to be something other than he is. But I choose not to judge him on his extracurricular writings or his law school record as a professor. I choose to judge him only on what he has done as a judge of the United States.

Mr. President, there have been some popular misstatements, and, I think, lack of understanding of what a circuit court does in this country. I have heard over and over again that circuit courts simply follow the rule of the Supreme Court and that Judge Bork's actions on that court somehow do not mean anything. If that were true, we would not need circuit courts. We could have a district court that would make the decision and then a computer which could decide whether the decision comported with the U.S. Supreme Court holdings. The fact is that more than 80 percent of the law in this country is still being established by circuit courts. It is, in my view, in many ways more important than the Supreme Court, because it is there that most Americans who have a dispute have their final hearing. And Judge Bork has made numerous decisions on that court.

I want to discuss some of those this morning and then talk about one case which seems to be the bellringer in the minds of some of my colleagues, Brandenburg versus Ohio, and discuss it in real terms.

I want to talk about four charges about Judge Bork which, it seems to me, are totally without any foundation. The first charge is that Judge Bork is out of the mainstream on first amendment issues.

I am not going into the Ollman and Evans case at great length. I am just going to read the Judge's own words because they ought to be in the record. This is not a judge who is simply following stare decisis, the prior decisions of the U.S. Supreme Court.

In that case, a first amendment case, this is what he said:

> When we read charges and countercharges about a person in the midst of such a controversy we read them as hyperbolic, as part of the combat, and not as factual allegation whose truth we may assume.

He then went on to say that the Gertz case means that—

> * * * a statement characterized as an opinion cannot be actionable even if made with actual malice and even if it severely damages the person discussed. In such circumstances, society must depend upon the competition of ideas to correct pernicious opinions rather than on "the conscience of judges and juries."

It does not sound like a man who wants to inhibit the first amendment as I read the law.

He then went on in that case and said:

> (i)n the past few years a remarkable upsurge in libel actions, accompanied by a startling inflation of damage awards, has threatened to impose self-censorship on the press which can as effectively inhibit debate and criticism as would overt government regulation that the first amendment most certainly would not permit.

The words of an extremist? Or the words of a man who does not believe in the constitutional guarantees of free expression? I think not.

Finally, he said in that area:

> Those who step into areas of public dispute, who choose the pleasures and distractions of controversy, must be willing to bear criticism, disparagement, and even wounding assessment.

"Necessary to the preservation of that freedom," the first amendment he was speaking of "of course, is the willingness of those who would speak to be spoken to and as in this case, to be spoken about. This is not always a pleasant or painless experience, but it cannot be avoided if the political arena is to remain as vigorous and robust as the first amendment and the nature of our polity require."

You know, as I have stood on this floor and listened to the attacks on Judge Bork, that he is against free expression, the first amendment, this is not stare decisis. This is not a computer spitting out U.S. Supreme Court decisions. This is a circuit court judge writing on the Constitution.

In the case of McBride versus Merrill Dowd, Judge Bork said:

> Libel suits, if not carefully handled, can threaten journalistic independence. Even if many actions fail, the risks and the high costs of litigation may lead to undesirable forms of self-censorship. We do not mean to suggest by any means that writers and publications should be free to defame at will, but rather that suits—particularly those bordering on the frivolous—be controlled so as to minimize their adverse impact upon press freedom.

Then, of course, there is the Washington Metropolitan Transit case, which has been discussed by the committee, in which someone wished to put posters on the Washington Metro system concerning, I think, the President and other matters. There was an attempt at prior restraint and the Judge said:

> That action can be characterized as "prior restraint," which comes before us bearing a presumption of unconstitutionality.

Those are the key pronouncements of Robert Bork in the first amendment cases. I submit that they are not only mainstream but I think to the shock of his very conservative supporters, in this Senator's view, more liberal in their construction than the U.S. Supreme Court cases upon which they are written.

Then there was the question of standing. To put that in terms so that the average American can understand it, that means that if I do not like what the Congress did today that I can sue the majority leader, or if the Congress does not like what the President does in the Persian Gulf we can sue the President, or the Secretary of Defense can sue the Congress, or the Secretary of Defense might even sue the Secretary of State. That is what standing is all about, who has the right to go into court.

Let me remind my colleagues, Mr. President, that this Congress can create standing for itself any time it wishes to do so by statute. We did so in Gramm-Rudman-Hollings. We gave the Congress standing and expedited procedures. We have that right.

Judge Bork does not believe that in this society we ought to have the unseemly event of various branches suing each other. He said, among other things:

> Every time a court expands the definition of standing, the definition of interests it is willing to protect through adjudication, the area of judicial dominance grows and the area of democratic rule contracts.

What he is saying is that the people's elected representatives ought to settle disputes. Courts should not settle those disputes.

That is a very reasonable point of view. And yet Judge Bork has been beaten about the head and shoulders for the position that standing ought to be granted sparingly within the three branches of Government.

Justice Powell stated:

> I also believe that repeated and essentially head-on confrontations between the life-tenured branch and the representative branches of government will not, in the long run, be beneficial to either. The public confidence essential to the former and the vitality critical to the latter may well erode if we do not exercise self-restraint in the utilization of our power to negate the actions of the other branches.

Is that the view of an extremist? Is Justice Powell out of the mainstream?

As a matter of fact, that is the view, I believe, of a majority of thoughtful Federal judges who do not believe the proliferation of lawsuits can be brought by one branch upon the other.

Who knows what the future may hold in that area?

Another charge: Judge Bork is hostile to the minorities.

The Emory case, a circuit court decision reversing a lower court decision, in which a black naval officer asserted that the failure to promote him to the position of rear admiral was a result of racial discrimination. The court stated:

> Where it is alleged, as it is here, that the Armed Forces have trenched upon constitutionally guaranteed rights through the promotion and selection process, the courts are not powerless to act. The military has not been exempted from constitutional provisions that protect the right of individuals.

In his dissent in the Hohri case, involving Japanese Americans who were interned, Judge Bork said:

> So sweeping is the panel majority's new rule, the executive branch may remove American citizens from their homes and impound them in camps, solely on the grounds of race, and the courts will not interfere, no matter what facts are shown. So powerful is this rule that courts will not reexamine what was done even when facts establishing the absence of military necessity, or of any possible belief in its existence, become public and the period of military emergency is long past. So potent is the rule that it applies to associated actions or neglects as to which no claim of military necessity was made or could be made.

An extremist?

I will say once more that many of my conservative colleagues, I think, would have been somewhat dissapointed had Robert Bork gotten to the U.S. Supreme Court.

This has been a public relations compaign. It has had nothing to do with reality. This is the statement of a man who is sensitive to the rights of minorities. This is his word in a dissenting view. An extremist? Hardly.

As a matter of fact, I think of all the charges made against Robert Bork, the one that in my mind is the most reprehensible is that Robert Bork is a racist or insensitive to the rights of minorities. That just does not wash and people who made the charge frankly have no basis for it.

Finally, the other charge—Judge Bork would not respect precedent if he were on the Supreme Court.

What he said before the committee was:

> Overruling should be done sparingly and cautiously. Respect for precedent is a part of the great tradition of our law just as is fidelity to the intent of those who ratified the Constitution and enacted our statutes.

He went on to say:

> There is a need for stability and continuity in the law. There is a need for predictability in legal doctrine. And it is important that the law not be considered as shifting every time the personnel of the Supreme Court changes.

He did say that if he believed that the Constitution truly had been misinterpreted that it ought to be changed and the case ought to be changed. Thank goodness for that, or we would still be living under Plessey versus Ferguson, which was the law of this land for many years.

I daresay that any legal writer between Plessey versus Ferguson and Brown versus the School Board writing the extraordinary view that Brown later expressed, probably would be labeled an extremist by somebody on the floor of the Senate.

It is curious to read Justice Douglas' views, who clearly would be thought of as a liberal member of the Court. He said about this whole issue:

> The Judge remembers above all else that it is the Constitution which he swore to support and to defend, not the gloss which his predecessors have put on it. So he comes to formulate his own views, rejecting some earlier ones as false and embracing others. He cannot do otherwise unless he lets men long dead and unaware of the problems of the age in which he lives do his thinking for him.

That is as good a paraphrase of what Robert Bork said in hours of testimony on this subject before the committee.

So, Mr. President, on the matter of precedent, hostility to minorities, views out of the mainstream, and disregard of the first amendment, I think there is an overwhelming conclusion that Robert Bork as a member of the circuit court has not only faithfully followed the law but has gone, in my view, beyond what the Supreme Court has said in protecting the rights of minorities, the first amendment, and discrimination of all sorts.

Mr. President, the last thing I want to discuss—and I am sorry the chairman of the Judiciary Committee is not on the floor to hear it and I am sorry that my friend from Pennsylvania, Senator SPECTER, is not here to hear it—is a discussion of Judge Bork's views on the Brandenburg versus Ohio case.

For those who are listening and may not be lawyers, Brandenburg versus Ohio is the case that says you cannot restrain free speech unless there is a clear and present danger that can be shown, that is, that in the event, this free speech takes place, in fact there will be a threat of imminent lawlessness created.

I listened to that case being discussed in the Judiciary Committee by Judge Bork and various Members of the Senate. I have heard it discussed on the floor in a wonderfully cool atmosphere, almost discussed like a laboratory experiment.

Well, I lived with Brandenburg versus Ohio in a situation in which my actions were controlled by it and I want to put it on the RECORD so that my friends in this body can understand why Judge Bork holds the view he holds, with which I agree, and I am not for prior restraint.

I will go back to May 4, 1970, the day that the students were killed at Kent State. There is not anyone in this country or in this Chamber who does not remember that.

Four days prior to that a U.S. district court in New Hampshire, in response to a request from the trustees of the University of New Hampshire, allowed the "Chicago Three" to speak on the campus of the university. They were scheduled to speak on May 5.

On May 4, the killings took place. I was then attorney general of New Hampshire and charged with the public safety of the State including the lives of the students at the University of New Hampshire. A crowd of 7,000 people was expected. The Veterans of Foreign Wars, the American Legion intended to have a counterdemonstration in Durham. The news was full of reports of violence across the country relating to the Vietnam war. Brandenburg versus Ohio placed the burden on the State to show that imminent danger would result from that speech.

The judge followed the court and as attorney general, of course, I followed the court. The speech had to be allowed. I received literally hundreds of calls from parents of university students in fear of the lives of their children. That night at the university 7,000 students and associated folks gathered and because of the extraordinary precautions that were taken, no violence did result but, quite frankly, it was as much luck as planning.

That is what Judge Bork was concerned about in Brandenburg versus Ohio.

As a matter of fact, in a discussion with Senator LEAHY, he talked about his concerns about students who would be hurt in demonstrations on campuses and Senator LEAHY responded that he recalled that time.

Brandenburg versus Ohio places an enormously difficult test on law enforcement officials, Governors, and deans, as to whether to allow situations to go forth. Basically, I believe that first amendment restraint should be sparingly used, but I am not sure that Brandenburg is the only test. I do not have a better one and I do not think Judge Bork does yet, but all he was saying was there ought to be a better way to measure clear and present danger.

I guarantee you, had we had 100 students killed that night at the University of New Hampshire, the people of this country would have had a different view on prior restraint and I dare say so would have I.

At any rate, I thought it was a story worth telling because so many of my friends in this Chamber have talked about Brandenburg versus Ohio like it is a laboratory test. Mr. President, I lived with that. Luckily I came out of it in one piece. Luckily no young New Hampshire students were killed that night.

But the fact is that that case allowed the event to go forward under circumstances which I believed were less than prudent. That is what the Supreme Court must decide. That is what Judge Bork talked about. He has been severely criticized for his views on that. His views are not only reasonable but many in the law enforcement community and the legal community agree that the test is so severe it can never be proven by a law enforcement official.

Mr. President, let me conclude by saying that the vote will be held today. Judge Bork will not be confirmed. I hope in the future people will learn something from this debate but more than from the debate from what happened outside of this Chamber.

I will repeat at the end what I said at the beginning. I do not think that the atmosphere in which this nominating process has been conducted has been fair. It has not been reasonable. It has been conducted with hyperbole, with accusations, with falsehoods.

I say to my friend from Delaware and my friends from South Carolina, that is not directed at the Judiciary Committee or its chairman or its ranking member. I think they held a hearing that was fair. The atmosphere outside of that committee was deplorable. If we intend to turn selecting Justices to the U.S. Supreme Court into an election process, let us change the Constitution and let us elect Supreme Court Judges of the United States. Then they can be treated to the same delights that we get treated to as we campaign for reelection every 6 years.

I thank the Chair.

The PRESIDING OFFICER (Mr. GRAHAM). Who yields time?

Mr. BIDEN. I yield 5 minutes to the Senator from Michigan.

The PRESIDING OFFICER. The Senator from Delaware has yielded 5 minutes to the Senator from Michigan.

Mr. LEVIN. I thank the Senator from Delaware.

Mr. President, I will vote against the confirmation of Robert Bork to serve on the Supreme Court.

Too much of what I've seen and read of and by Judge Bork convinces me that while he may have earned a reputation as a legal scholar and a quick mind, he lacks the sense of justice and pragmatism required for service on our Highest Court.

Equal rights and equal treatment for all Americans under our laws are cornerstones of so much that is sacred and meaningful about this country we call a democracy. The Constitution is broad enough, flexible enough, artfully enough drafted, to guarantee for all Americans those basic freedoms and protections which are so essential to a free society. In fact, it is that very flexibility that has allowed us to flourish as a society for over 200 years, making it possible for us to celebrate the bicentennial anniversary of the Constitution.

Judge Bork does not seem to share that very basic understanding of the Constitution. In fact, when it is a question of protecting individual rights, Judge Bork sees the Constitution as a zero-sum game.

In 1985, Judge Bork said that "when a court adds to one person's constitutional rights, it subtracts from the rights of others." When asked last month by Senator SIMON if he believed that is always true, Judge Bork said, "yes. I think it's a matter of plain arithmetic," he said. "Plain arithmetic," the judge said. What does that mean? It means that in granting me rights under the Constitution, Mr. President, your basic rights must be lessened. What I gain, according to Judge Bork, you lose. What you gain, Mr. President, I lose. When slaves were granted liberty, he said, the slaveowners lost their liberty to own slaves.

Just what does that kind of constitutional math mean in the real world? It means, for instance, that if a woman is found by the Supreme Court to have the right under the Constitution to equal pay for equal work, the granting of that right denies someone else their right. But their right to what—to discriminate in the payment of wages based on sex? Is that a right under the Constitution? The Constitution may be silent, but that is different from granting a right to discriminate.

In 1963, Judge Bork's calculations led him to oppose the desegregation of lunch counters and other public accommodations. He was not concerned then about the rights of blacks who had been denied these basic rights for centuries, but about the supposed rights of proprietors to keep discriminating. He said then that denying the restaurant and hotel owners the right to discriminate was based on "a principle of unsurpassed ugliness." Denying a drugstore owner the right to discriminate as to whom he served a soda solely on the basis of race was to Judge Bork "a principle of unsurpassed ugliness?"

His logic was stated then with the same absolute certainty which marks more recent views. He said that "the most common popular justification of such a law is based on a crude notion of waivers: insistence that barbers, lunch counter operators, and similar businessmen serve all comers does not infringe their freedom because they 'hold themselves out to serve the public.' The statement is so obviously a fiction that it scarcely survives articulation."

He has since changed his view of public accommodations laws, he has said. But he has also reiterated his arithmetical and zero-sum view of constitutional rights, which is at odds with what this country has been all about for over 200 years. Group after group has moved dramatically closer to full equality without any real loss of rights—in the normal sense of the word—for those already enjoying the law's protection.

Judge Bork's arithmetical view of the Constitution and the fundamental rights it guarantees defies our experience and our wisdoms. We know better and, thankfully, so have the vast majority of former and current Supreme Court Justices.

It is not only Judge Bork's unpalatable and unacceptable view of the Constitution and the individual rights afforded under it that disturbs me—it is also the way he has expressed those views. He regularly accompanies his views with rhetoric which is dogmatic and injudicious, at times incendiary and extreme.

For example, Judge Bork found the Griswold decision protecting the right to privacy to be "an unprincipled decision." "Unprincipled," he said, and said further that "the Court could not reach the result in Griswold through principle." The Supreme Court decision guaranteeing one person, one vote, in his view, was based on "no reputable theory." Justice Holmes' view of the first amendment, which Judge Bork concedes has shaped the modern view of free speech guarantees, is described by him as expressing a "terrifying frivolity," and shaped a view of the first amendment which contains a "strange solicitude for subversive speech." "Terrifying frivolity." "Strange solicitude for subversive speech." Judge Bork uses these extreme descriptions and ominous hints relative to the views of one of the most revered Supreme Court Justices and his opinions, which are cornerstones of some of our most basic freedoms.

Judge Bork has said that the "first amendment, like the rest of the Bill of Rights, appears to have been a hastily drafted document upon which little thought was expended." He has said that he doubted the poll tax which limited access to the polls "had much impact on the welfare of the Nation one way or the other." He said that the minimum wage legislation was "an article of faith with collectivist liberals." He condemned the Supreme Court decision banning literacy tests as "pernicious constitutional law." He said that nondiscriminatory access to public accommodations was based on a "principle of unsurpassed ugliness."

Some of Judge Bork's opinons have changed over time. But what seems not to have changed is his inflexible view of constitutional rights. For him, unlike Justice Holmes, the life of the law is logic, not experience. His view of the Constitution allows for little accommodation to changes in technology or history. Many important Supreme Court decisions which reflect an evolving view of the Constitution—decisions, which have resulted in the protection of important rights these past three decades—are, in Judge Bork's words, "pernicious," "improper and intellectually empty," "thoroughly perverse" and even "unconstitutional." That last bit of rhetoric is not only extreme, Judge Bork's description of Supreme Court opinions as "unconstitutional" tends to breed disrespect for the law and for the law's final arbiter in this country.

Judge Bork's strong denunciation of so much of the Supreme Court's work over these past 30 years is not merely injudicious. It also reveals a mind-set that would seek to undo these decisions. Add to that chilling recent comment about "unconstitutional behavior by the Supreme Court," Judge Bork's statement in January 1987 that "Certainly, at the least, * * * an originalist judge would have no problem whatever in overruling a nonoriginalist precedent because that precedent, by the very basis of his judicial philosophy, has no legitimacy." In those clear words, Judge Bork, the nonpareil originalist judge, because of his originalist ideology, "certainly"—his word—"at the least"—his words—would "have no problem whatever"—again his words—in overturning much precedent which I believe helped us achieve gains in the protection of rights now viewed as fundamental.

Judge Bork's approach is strikingly different from that of the Supreme Court Justice whose place he would take, Justice Lewis Powell. Powell wrote: "I never think of myself as having a judicial philosophy. I try to be careful to do justice to the particular case, rather than try to write principles that will be new, or original * * *."

Justice Benjamin Kaplan of Massachusetts' Supreme Judicial Court, put it this way: "The working judge is not and never has been a philosopher. He has no coherent system, no problem solver for all seasons, to which he can straightway refer the normative issues. Indeed, if he could envision such a system for himself, he would doubt that, as a judge, he was entitled to resort to it."

Judge Bork seems to have no such doubts.

Judge Bork's approach has been consistently ideological. He has described himself at various stages of his life and professional career as a Socialist, a Libertarian, a Conservative, a strict Constructionist, an Originalist. His has been a constant quest for an overarching ideology that can govern the outcome of legal issues. His views seem to be unaffected by the anguishing complexities of a particular problem but seem governed, rather, by whatever his dogma happens to be at any particular moment. He has searched for what he calls "bright lines" to guide him—but these "bright lines" have tended to blind him to the human consequences of his logical constructs. In the words of former Judge Shirley Hufstedler, Judge Bork has been marked by a determination "to develop constitutional litmus tests" so he can "avoid having to confront the grief and untidiness of the human condition."

I cannot give my consent to this nomination not because I doubt Judge Bork's honesty or intelligence. I do not. But to me one vital aspect of judicial demeanor is a mind undominated by doctrine or ideology. I fear that Judge Bork would bring to the Supreme Court an excess of whatever ideology attracts him at the moment. Prior ideologies to which he says he had subscribed have just too often led him to ignore vital lessons of American history and experience. I do not know that his next ideology would do so, but I am not willing to chance it. We have come too far as a nation to consciously place on the Court members whose views are so contrary to the numerous and necessary social gains of recent years.

I am not saying we are a perfect nation; we are not. But we are better than we once were and we can thank the Supreme Court for many of these gains. That Court, during my lifetime, has extended rights and opportunities to Americans, to the benefit of our Nation.

Because Judge Bork's statements represent more than a legally trained mind—they reflect a mind-set quite apparently determined to clear away all those "unconstitutional" decisions he has attacked with such absolute certainty—I cannot support his nomination.

I cannot vote for the confirmation of a Supreme Court Justice whose views have so often been stated so extremely and who has consistently viewed the world around him through such a sharp ideological prism.

I thank the Chair.

The PRESIDING OFFICER. The Senator from Michigan yields the floor.

Who yields time?

Mr. BIDEN. Mr. President, I yield 5 minutes to the distinguished Senator from Massachusetts, Senator KERRY.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KERRY. I thank my colleague.

Mr. President, we are anxious to move on, I know Judge Bork himself is anxious to see this process come to a close.

Mr. President, I have been listening with great interest, when I have been able, to the debate on the floor of the Senate on the nomination of Judge Bork. Most of that debate and much of the commentary surrounding it has been centered on the assertion that "the process has been grossly and inappropriately politicized." In bitter terms some Senators have suggested this nomination will lose not on its merits but on its unfair politicization.

If the effect of these vitriolic assertions were not so depressing and injurious to the process they seek to defend, one might even find amusement in the charges.

For years, the President has made much out of his promise to appoint judges who would carry out his political agenda. His pronouncements of intent to do so have never even touched on the subtle. They have been bold, brash, even purposely provocative promises—made in the heat of campaign and for the purpose of campaigning. The President for years has politicized the entire judiciary and judicial selection process. Who among us has not heard the Presidents speeches—"What we need are judges who will do this or do that * * *" Judges who will accomplish what Reagan has been unable to carry out through the legislative process itself.

It seems apparent, Mr. President, that a few years ago, the chairman, the former chairman of the Judiciary Committee, was even requested to withdraw a questionnaire that was circulated in order to try to eliminate people in advance on the basis of questions which sought their political positions on issues.

What is clear is that when the President sent the Attorney General and Howard Baker to the Hill to consult on potential nominees a bunch of names were put in front of the leadership of the U.S. Senate. And I believe that those who knew the record of Judge Bork at that time said that his nomination would have difficulty, but there were other names on the list that would pass easily. I believe the chairman of the Judiciary Committee said that Judge Bork might create a fire storm. In fact, Mr. President, despite those warnings, it was Judge Bork's name that was sent up here, and the path of confrontation was chosen. Judge Bork was selected precisely because of his ideology not his judicial record.

To whatever degree politics and ideology have therefore been thrust into this nomination. I think it was by calculation and by purpose, and it was chosen by those who dominated.

Mr. President, I believe that a dispassionate—nonpolitically motivated analysis of the record makes it clear that Senators did not decide this nomination on the basis of pressure groups and politics though there has been exaggeration and even distortion. In many cases, Senators have decided in ways that went against their interest, against the easy route to oppose this nomination.

I do not believe that the questions asked by or the doubts expressed by the Senator from Pennsylvania or the Senator from Alabama were or are political questions or interest group doubts. These colleagues and many others have studied the record, read recent articles and cases, reread the Constitution, weighed days of testimony, and made difficult decisions.

To suggest that so many Senators decided in a different fashion is to challenge, if not insult, the integrity of a majority of this institution in a personal as well as collective way. It is to demean, in a manner unbecoming of this body, a cherished right which falls to us and only to us as U.S. Senators—the right to confirm a nomination.

Perhaps, ironically and sadly, nothing confirms the inappropriateness of this nomination more than the furor it has caused. Nothing excites extremes more than the extreme, and certainly Judge Bork has galvanized opponents and proponents alike.

This is not a choice between liberal and conservative jurist. I have no objection to the appointment of a conservative to the Supreme Court, and have voted for many of them. Out of over 100 judicial nominations by President Reagan in his second term, I have voted against only four.

But like a majority of this body, I have found this nomination to be extremely troubling. Robert Bork is not merely a conservative. He is a man who has disagreed with the Supreme Court time and time again in matters of fundamental constitutional law. These disagreements I believe, go to the heart of how we read our Constitution, and I believe his appointment would be viewed as a repudiation by the Executive who nominated him and the Senate which confirmed him of what the Supreme Court has said the Constitution means in many areas.

I believe Judge Bork should be rejected by the Senate principally for four reasons, each of which is adequate to justify his rejection.

First, there is the substantive direction of his views on a variety of constitutional issues, from first amendment to privacy to voting rights to antitrust. Second, there is Judge Bork's judicial philosophy—as opposed to ideology—which demonstrates an inappropriate deference to those with authority or power at the expense of individual liberties, not a true philosophy of "neutral principles" as he has professed. Third, there are Judge Bork's reformulations, modifications, and newly expressed doubts concerning his previous views, and leaving doubt in this Senator's mind. Fourth, there is Judge Bork's troubling statements about precedent, some as recent as this year, which are especially disturbing in light of the number of Supreme Court decisions he has said were wrong.

On many matters of substance, one has a choice to make. Either Judge Bork is wrong, or the Supreme Court has been. Moreover, the Supreme Court has on many occasions been exceedingly wrong if one agrees with Judge Bork, who has at various times called its constitutional rulings "unprincipled," "utterly specious," "improper and intellectually empty," and made according to rules of "unsurpassed ugliness"—hardly tempered observations or mainstream characterizations.

During the hearings, I was particularly struck by Judge Bork's exchanges with Senator SPECTER on the issue of "original intent" and stare decisis. In discussing the Brandenburg and Hess cases, Judge Bork claimed that he now accepts them, even though he disagrees with them. But as Senator SPECTER pointed out:

> The next case will have a shading and a nuance, and I am concerned about your philosophy and your approach. * * * If you say you accept this one, so be it. But you have written and spoken, ostensibly as an original interpretationist, of the importance of originalists not allowing the mistakes of the past to stand.

This exchange illustrates the hollowness of Judge Bork's "confirmation conversion." While he may say that he accepts cases already decided, we have no assurance that he will indeed follow those precedents in the future, when new cases and new facts arise.

And as Senator HEFLIN put in his closing statement to the committee:

> A life-time position on the Supreme Court is too important a risk to a person who has continued to exhibit—and may still posses—a proclivity for extremism in spite of confirmation protestations.

Even a cursory review of record yields numerous contradictions, and raises troubling questions.

Judge Bork has said that the Supreme Court has been wrong many times on Civil Rights. He has said the Supreme Court was wrong on ruling that the 14th amendment forbids State court enforcement of a private, racially restrictive covenant. He has said the Supreme Court was wrong to adopt the principle of one-person, one vote. He has said the Supreme Court was wrong to ban literacy tests for voting, calling its decisions that such tests were unconstitutional "pernicious." He has called the Supreme Court's outlawing of a Virginia State poll tax "wrongly decided." And when the Court held that universities may not use raw racial quotas but may consider race, among other factors, in making admissions decisions, Judge Bork disagreed and wrote a biting critique of the carefully crafted opinion written by Justice Powell.

We have a choice—the Supreme Court's position on civil rights, or Judge Bork's. I choose the Supreme Court and not Judge Bork.

We can make the same choice on matters of whether individuals have rights in connection with public education. The Supreme Court has said they do. Judge Bork has said they don't.

The Supreme Court held that public school officials may not require students to recite a State-sanctioned prayer at the beginning of each day. Judge Bork, in a 1982 speech, disagreed. Once again we can choose—the Supreme Court or Judge Bork? I choose the Court.

Judge Bork has said the Supreme Court was wrong on antitrust matters, too, wrong when it found a congressional intent under the antitrust laws to protect small businesses, and that even the Congress is wrong on antitrust, accusing Congressmen of being "institutionally incapable of the sustained rigor and consistent through that the fashioning of a rational antitrust policy requires."

I am concerned also by Judge Bork's refusal to recognize a right of privacy as implicit in the Constitution. The Supreme Court has long found such a right and this should be settled doctrine, no longer subject to dispute.

In an age of high-technology, of computerized data bases, of high-speed telecommunications, of sophisticated electronic surveillance techniques, it is absolutely essential that the privacy rights of all Americans be not only recognized, but protected. A judge who refuses to even recognize a right of privacy, is not a man whom I would feel safe entrusting with the responsibilities of protecting those rights in the late 20th century and beyond.

A full review of Judge Bork's criticisms of the Supreme Court reveal a judge who does not have minor disagreements with a few areas of constitutional doctrine. His writings, taken as a whole, suggest that he believes the Supreme Court has been seriously out of step with the Constitution. These are not political choices, nor even ideological. These are substantive judgments about judicial philosophy and attitude.

Judge Bork's elevation to the Court would constitute a decision by us to support the renunciation of much of the work the Supreme Court has done over several decades. To confirm to the Supreme Court a man who has opposed so many of the Court's past decisions, decisions which remain the law of the land, is to send by such a confirmation a clear signal to the Court and to Nation alike that we, like Judge Bork, believe those decisions have been wrong.

The second reason Judge Bork should not be confirmed is his position that individual liberties cannot exist except insofar as they can be found according to a "neutral" reading of the Constitution.

Judge Bork has described these beliefs as a consequence of the need for judicial restraint. In Judge Bork's view, a judge's role is, in his own words:

> To discern how the framers' values, defined in the context of the world they knew, apply in the world we know.

But a review of his writings and opinions suggest however, that this "value neutral" principle has not been followed by him in practice. Instead, he has shown selective allegiance to original intent jurisprudence in order to achieve the very results-oriented jurisprudence he has disavowed.

This is particularly apparent in the area of individual rights. Where he says there is a very limited scope to constitutionally protectable personal liberties, because only a few are clearly described in the text of the Constitution.

Yet in order to make this argument, Judge Bork has to ignore the plain language of the ninth amendment which says starkly that the listing of the rights in the Constitution do not disparage the people's inherent "unenumerated rights."

There is historical evidence that many of the framers were concerned that the adoption of a Bill of Rights, by its express inclusion of some rights, could be interpreted to exclude all others, and that this was the reason the ninth amendment was adopted. While there is significant scholarly debate about the meaning and purpose of the ninth amendment, it has meaning. It cannot simply be disregarded. The propounder of "neutral" jurisprudence and "original intent," Judge Bork, would do just that, relegating the ninth amendment to nothing more than, in Judge Bork's words a "water blot" on the Constitution.

I wonder how Judge Bork would justify this statement with his current view of himself as one adhering to the "original intent" of the framers, when Samuel Adams, Thomas Jefferson, John Hancock, and James Madison among others of our Founding Fathers emphasized the importance of the Bill of Rights, and urged its incorporation into the Constitution.

The third issue which merits Judge Bork's rejection is his shifts of position during his confirmation hearings. Many have remarked on the almost casual disavowal of views which he has expressed strongly and frequently in his writings. A Supreme Court Justice is a lifetime appointment, and the shifts are not on small matters.

Perhaps the most significant shift appears in the context of the first amendment. In his now famous 1971 Indiana Law Review article, Judge Bork explicitly stated that, in his view, only political speech was protected by the first amendment. When Judge Bork wrote this article, he was a full professor at Yale Law School. He wrote that constitutional protection should be given "only to speech that is explicitly political." He wrote that courts should not "protect any other form of expression, be it scientific, literary, or that variety of expression we call obscene or pornographic."

In 1979, Judge Bork reaffirmed these views in a speech in Michigan. He said that "There is no occasion * * * to throw constitutional protection around forms of expression that do not directly feed the democratic process."

This is not a mainstream view of the first amendment.

Yet in the hearings, Judge Bork for the first time disavowed all of his earlier position on that. Not only does he say that he doesn't believe it now, he says that he never really did believe it. When Chairman BIDEN asked him "When did you drop that idea?" Judge Bork responded, "Oh, in class right away." He also said that "I have since been persuaded—in fact I was persuaded by my colleagues very quickly, that a bright line made no sense." Judge Bork now tells us that "There is now a vast corpus of first amendment decisions that I accept as law. It does not disturb me. I have no desire to disturb that body of law."

Any reading of Judge Bork's statements in 1971, in 1979, in 1984, and in 1987 prior to his nomination shows us clearly that Judge Bork did advocate significant limitations on first amendment protection of speech. It is hard to accept that only now has he seen the light and that is in the context of a Supreme Court nomination that he has shifted his views so substantially from what they were before.

We come at last to the issue of precedent. As my review of Judge Bork's many disagreements with the Supreme Court indicates, there are a lot of decisions the Supreme Court has made which he never accepted. Anyone trained as a lawyer, or working in the legal system knows of the respect, indeed reverence, which must be given to precedent and to past decisions of the Supreme Court. We know that the principle of stare decisis is the cornerstone and foundation of our legal tradition.

But Judge Bork's own words cast doubt as to how much he accepts this view when it comes to constitutional issues, the heart of the difficult work of a Supreme Court Justice.

Judge Bork has argued as recently as this year that—

> The role of precedent in constitutional law is less important than it is in a proper common law or statutory model * * * [I]f a constitutional judge comes to a firm conviction that the courts have misunderstood the intentions of the founders, the basic principle they enacted, he is freer than when acting in his capacity as an interpreter of the common law or of a statute to overturn the precedent.

Judge Bork went on to say further that—

> An original judge would have no problem whatever in overruling a nonoriginalist precedent, because that precedent by the very basis of his judicial philosophy has no legitimacy.

In other words, if Judge Bork believes the Supreme Court wrongly decided a constitutional case—any constitutional case—precedent need not be respected. He would have "no problem whatever in overruling a nonoriginalist precedent," because that precedent was illegitimate.

We have seen that Robert Bork has disagreed with the Supreme Court on many constitutional matters precisely on this ground, that the rulings have been contrary to the supposed "original intent" of our Founding Fathers. Given these public pronouncements that a "constitutional judge" should feel free to overturn precedents he disagrees with, how can we do anything but take Judge Bork at his word and assume that for him such precedents are illegitimate, and may be overthrown.

For this reason particularly, I believe his confirmation by the Senate would send a signal to the Supreme Court itself that is unmistakable and unmistakably wrong. It would be that we want to change the direction of the Court, that we want the Court to rethink the fundamental meaning of the Constitution on these issues, along the lines of the thinking of Robert Bork.

Judge Bork has criticized and rejected Supreme Court precedents dating back to the beginning of this century in several important areas of law. Perhaps Judge Bork is right in all of these cases, and the Supreme Court is wrong. Perhaps courts are unable to deal with economic and other important issues. Perhaps Congress is institutionally incapable of the sustained analysis and intellectual rigor which is essential for good lawmaking. Perhaps Judge Bork's vision is clearer than that of Justices Holmes, Brandeis, Douglas, and Powell. Perhaps all of these cases should be overturned. But perhaps Judge Bork is wrong.

I, for one, am not willing to take that chance. I cannot believe that a whole body of Supreme Court precedents, in vital areas such as civil rights, free speech, privacy, and so many other areas, should be overturned. I am not willing to substitute one man's opinions for an entire body of law, a constitutional tradition of respect for precedent, which we have built in this country over the past 200 years.

There are other areas in which I also have serious problems with Judge Bork—on the War Powers Act, on his deference to the executive branch, on his rejection of congressional standing, and on his actions during Watergate. These issues have been discussed at length by my colleagues. I will not repeat all of those arguments now. But suffice it to say that the Senate has an obligation to take a very close look at this nominee, and to determine whether a man who has expressed such views throughout his legal career is a man whom we trust with the high responsibilities of an Associate Justice of the Supreme Court of the United States.

As Prof. Laurence Tribe of Harvard has written:

> There has arisen the myth of the spineless Senate, which says that Senates always rubberstamp nominations and Presidents always get their way.

This has not been true historically. It is not true today. The Senate has a duty to closely examine the views, the writings, and the character of any man or woman nominated to the bench of our highest Court. To do any less would not be true to the original intent of the framers of our Constitution.

I believe that a careful examination of Judge Bork's record reveals that he is neither a moderate, nor a conservative. He has consistently rejected precedents of the Supreme Court and settled areas of law. To place this man on the Supreme Court would be to reopen old wounds and to refight old battles. And for these reasons I oppose this nomination.

The PRESIDING OFFICER. Who yields time?

Mr. THURMOND. Mr. President, I yield 5 minutes to the distinguished Senator from Idaho [Mr. McCLURE].

The PRESIDING OFFICER. The Senator from Idaho is recognized.

Mr. McCLURE. I thank the Senator from South Carolina for yielding.

HOW THE PROGRAM OF DISINFORMATION CORRUPTED THE CONFIRMATION PROCESS

Mr. President, "there is still time for Senators to reconsider whether the brazen purveyors of disinformation deserve the reward of Judge Bork's scalp." Those are not my words. They are the concluding, hopeful words of Mr. Gordon Crovitz, who in a detailed, thoughtful article printed in the Wall Street Journal last Wednesday, October 14, 1987, exploded many of the pernicious myths about Judge Bork. He did it by examining the record, something that apparently is passe in the Senate. Nevertheless, I ask unanimous consent that it and other articles be printed in the RECORD at the conclusion of my remarks, just in case any of my colleagues are interested in reading some facts for a change.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. McCLURE. Mr. President, Mr. Crovitz is right, of course—there is still time. But is there courage? Is there integrity? Is there moral conviction? Is there statesmanship? These things would be necessary, too. And as Judge Bork himself has said, we harbor no illusions.

WHY THE FEAR OF DEBATE?

We are told that this debate is "unnecessary." Worse still, it is "political." "The will of the Senate is clear." "Don't bother me with the facts." "That nomination is history." "Let's move on." I wonder why it is that those who have declared their intention to vote against Judge Bork—and who rail against the charge they are a lynch mob—are so afraid of this debate. Are they afraid their minds will be changed? I doubt it. Are they afraid they will not be able to defend on the merits their rush to judgment? Probably. Are they afraid the truth about Judge Bork and about this process might actually get through to the American people? Absolutely.

I am frankly startled by the attitude of my colleagues who sought to avoid this debate. Except for the interest groups themselves, who are the perpetrators, almost no one has tried to deny that Judge Bork has been the target of a malicious, deceitful campaign—that an "evil caricature," as his son put it, has been created through a sophisticated and highly cynical program of disinformation. Even the Washington Post, hardly an organ of rightwing orthodoxy, was moved to comment that "there has been an intellectual vulgarization and personal savagery to elements of the attack, profoundly distorting the record and nature of the man." And that is what the Post said about it. The Post. Given the near-universal recognition that the man has been grievously wronged and slandered in the public arena during this process, I would have thought my colleagues would not resist, but instead would insist, that this debate go forward so that the man's reputation could be appropriately vindicated. Surely, if the disinformation campaign has not guided Senators' decisions on this nominee, as they contend, there could be no risk for my colleagues in having the record set straight. But there is risk—great risk.

There are Members of this body who are desperate—absolutely desperate—to keep from the American people the real story of what has happened here, just as the real record of Robert Bork has been kept from the American people. If our constituents only knew. If they only knew how few of us took the time to look at the record before leaping to opposition. If they only knew how some of us walked onto this floor and parroted the very same distortions and lies that were exploded as false during the hearings and before and after the hearings. If they only knew how cowardly the submission to interest group pressure has been. If they only knew how all the contrived excuses and rationalizations have been used to explain negative votes. If they knew, I think a lot of us wouldn't be here after the next election.

So it is vital to keep up the front. The opponents of Judge Bork have to stick by their guns and stick together: There is safety in numbers. Wolves know it, and interest groups know it, and Senators apparently know it. And so free and open, thoughtful and honest debate is not an aid but a threat. If a single Senator were moved by conscience and candor to acknowledge that the emperor has no clothes, why, other pretenders in the court might rush in to agree, lest they be classified as liars or fools. The whole scam might come unglued then, and that would be unthinkable.

I do not blame the distinguished majority leader, the distinguished Senator from Delaware—and most certainly I do not blame the Senator from Massachusetts—for wanting to put this episode quickly and quietly behind us. If I had been a party to this travesty—let alone a principal in it—I would be most anxious to "move on" without fanfare also.

But, I say to my colleagues, quite seriously, if the vote is as predicted it will make little difference from the vantage point of history whether Judge Bork's nomination goes quickly and quietly or whether the end is preceded by a loud hue and cry. What a majority of this body has already done to this confirmation process and through it, to this good and decent man, will live in infamy in the annals of the Senate.

We have a clever way in America of summing up a momentous experience or a horrendous episode in a single symbolic expression and then using that expression again and again to describe similar events. Thus, from one of the sorriest chapters in the Senate's history—one remarkably similar to this one—came the word "McCarthyism." This Senate will make its own unique contribution to the national vocabulary. When, in the future, one is victimized by demagogic attacks and men of goodwill shrink from his defense behind transparent rationalizations, we will say he "got Borked": "That's too bad old John Smith got Borked; he is a fine and decent fellow but, well, that's politics, you know."

You can just see the interest groups—liberal and conservative—plotting their opposition strategies for confirmation proceedings years hence: "Well, what do we do? The guy is at the top of his field. He's distinguished himself in every job he has ever held. There's only one way to beat him. We'll take his more controversial statements, buy some slick ads, and Bork him."

The expression may be so incomparably descriptive that judicial scholars decades from now, bemoaning the mediocrity of the once independent and respected American judiciary, will be moved to write that the loss of excellence came about because, whenever an exceptional nominee, liberal or conservative, was sent up here for confirmation, one side or the other "Borked" him.

It might be amusing if it were not such a real prospect based on what has happened here in the last 3 months. The President is right. This process has been a "political joke"—an insulting, demeaning, discrediting, bad, political joke. And the only people laughing today are the special-interest wizards and media gurus who plotted the strategy, waged the hate- and fear-mongering campaign across the country, and now are confidently poised to celebrate the lynching here in this Chamber.

They are highly amused. And I am sure they find most hilarious of all the oh-so-solemn suggestion from the other side of the aisle that nothing the interest groups did—none of their millions spent on blatantly false advertising, none of their careful orchestration of the hearings, none of their incendiary rhetoric—had any impact at all on the Members of this body. It is one of the most absurd things I have ever heard come out of my colleagues' mouths. Who do they think they are fooling?

THE DISINFORMATION CAMPAIGN IN THE SENATE AND ACROSS AMERICA

The defeat of Robert Bork, if it happens, will have been engineered—engineered—by a handful of ultraliberal Senators and their special-interest allies who developed a disinformation campaign strategy skillfully and executed it flawlessly. They used the most modern polling techniques, figured out which buttons to push in order to arouse and inflame the emotions of the American people, and then pushed them. It is that simple. And now, as even the most liberal editorial pages in the country are denouncing the scurrilous anti-Bork tactics, these same Senators stand before us and declare with all seriousness that none of that awful stuff had anything to do with the outcome of this process. I say to the gentlemen, no one is buying it. The disavowals ring more than a little hollow when one considers that hardly a week ago the committee chairman and other liberal Senators and their members were caucusing daily and plotting strategy with the very same interest groups that have so soiled the landscape with lies and distortions.

Mr. President, that is not a wild accusation, nor is it a figment of someone's imagination. Two major daily newspapers have published page 1 stories in the last 2 weeks chronicling in detail the campaign to defeat Judge Bork. They tell quite a story, and I urge every Senator to read them. I want to read the most fascinating portions into the Record, and I ask unanimous consent that the articles be printed in the Record in their entirety.

First, from the Los Angeles Times on October 8:

> The opposition * * * started its campaign * * * with a meeting on Tuesday morning, June 30, at the Washington office of the Leadership Conference on Civil Rights. It brought together representatives of roughly 45 organizations that would play central roles in the debate to come.
>
> * * * [T]he opposition quickly settled on an early strategy. It began calling reporters and Senate staff members with a single message: The Bork nomination would trigger an epic battle, and Bork could be defeated.
>
> The activity of the outside groups was coordinated with the initial activity inside the Senate. "The announcement of the nomination was made just before the July 4 recess," recalled an aide to one senior Judiciary Committee Democrat.
>
> "We were very concerned that senators would be asked about the nomination while they were home over the weekend, and that if there was not a strong alarm sounded, senators would just routinely express support for a presidential nominee" as many moderate and conservative Democrats had done a year before when William H. Rehnquist was nominated to be chief justice.
>
> To forestall that possibility Sen. Edward M. Kennedy (D-Mass.) issued a harsh statement opposing the nomination. It implied that putting Bork on the court could bring back the days of "back alley abortions" for women and segregated lunch counters for blacks. Critics called Kennedy's statement shrill, but it appears to have had the intended effect—"freezing people into place," as one aide put it.
>
> Over the next few days, only one Democrat, Sen. Ernest F. Hollings of South Carolina, said that he would vote for Bork.
>
> In the next week, the core of groups opposing Bork more than doubled. "The coalition," as members began calling it, met for a second time a few days after the nomination was announced.
>
> "I was shocked," recalled one longtime liberal activist. "I had never seen a turnout like I saw on that day." The Leadership Conference's meeting room was "filled to capacity. Ralph Nader had to stand out in the hallway." Ultimately, the coalition would encompass the entire liberal spectrum: civil rights groups, women's organizations, consumer advocates, environmentalists, labor unions.
>
> Within the Senate, Kennedy, Biden, Alan Cranston (D-Calif.), Howard M. Metzenbaum (D-Ohio) and Daniel K. Inouye (D-Hawaii) met to discuss organizing their fellow Democrats and the Senate's moderate Republicans against Bork.
>
> Inouye dropped out of a leadership role because he was chairing the Senate's Iran-contra investigating committee. The other four divided up the Senate and began personally lobbying against Bork. They asked undecided senators about their concerns and responded with briefing books and papers prepared by their staffs and law professors who had agreed to work in the anti-Bork effort.
>
> Beginning with a meeting on August 6 in Kennedy's office, Senate staff members met each Thursday afternoon with coalition representatives to map strategy and share information * * *.
>
> * * * [The] opposition was denied the usual strategy for attacking nominees. For more than half a century, the Senate had rejected presidential nominees only on grounds of ethical problems or a lack of qualifications. Bork, a former law professor now on the federal Court of Appeals for the District of Columbia, seemed immune to such attacks.
>
> That left the opposition only one choice: to challenge Bork on the basis of his judicial philosophy. The first goal was to overcome the conventional wisdom in Washington that a campaign wage on such grounds was not only futile but improper. To that end, Biden delivered a major Senate speech on July 23, and People for the American Way, the best financed of the anti-Bork groups, sponsored a radio campaign in Washington urging senators to take a "close look" at Bork's record and ideas. The advertisements were the first installment in a million-dollar campaign to rally public opposition to Bork.
>
> The next step of the campaign was to determine which parts of Bork's philosophy to emphasize. In late July, Gerald McEntee, president of the American Federation of State, County and Municipal Employees, one of the nation's largest unions and the one most active in the anti-Bork effort, met with representatives of the Leadership Conference and other anti-Bork groups to pledge $40,000 that would be used to hire a polling firm to address that question.
>
> The firm, Martilla & Kiley, which was also closely linked to Biden's presidential campaign, delivered a poll and a confidential report to anti-Bork leaders that showed a potentially fatal weakness in the Administration's campaign and pointed to two themes that Bork's opponents would exploit. * * *
>
> To defeat Bork, they said, opponents should make the public skeptical about his "fair-mindedness." Bork's "civil rights record, more than anything else in his background," could create that skepticism, they suggested.
>
> That conclusion led to what Bork's opponents now call their "Southern strategy." By emphasizing Bork's opposition at several points in his career to civil rights legislation, the campaign would play on the concern held by both southern blacks and whites about "reopening old wounds" and old battles—concern the South's conservative Democratic senators could not afford to ignore.
>
> Separately, the opposition coalition hit upon what became its "Yuppie strategy," emphasizing Bork's opposition to the idea of a constitutionally guaranteed right of privacy. That argument, opponents correctly guessed, would have particular appeal to the suburban constituents of moderate Republican senators from the Northeast and Northwest * * *.
>
> At the same time, Kennedy and Biden furiously worked the telephones to line up witnesses for the Judiciary Committee's confirmation hearings, which were set to begin September 15. "Kennedy has a very strong network of people around the country," said an aide. "He worked that network very hard."
>
> At first, "we couldn't find anybody who wanted to weigh in with a fist fight," said a Biden aide. But as the senators worked the phones, key witnesses began to fall into place * * *.
>
> After the first day of testimony, Bork supporters now say, they were worried. The second day, they say, he began to improve. But as the hearings stretched on, Bork's opponents appeared to gain confidence and sharpen their questioning.
>
> At the daily 8:30 a.m. meetings of leaders of the anti-Bork coalition at the American Civil Liberties Union, reports began to come in that increasing numbers of senators were expressing doubts about the nominee.
>
> The reports were logged into a computer that kept a record of each senator's position. Working off a continuous transcript of the hearings, lawyers for the anti-Bork effort delivered analyses to reporters covering the hearings. By the end of Bork's testimony, coalition leaders now say, the campaign against the nomination was safely on the downhill slope.

That was the L.A. Times. They did a very thorough job. So did the Washington Post on October 4:

> In early September, Michael Donilon, the president of a Boston polling firm and younger brother of a senior political adviser to Senate Judiciary Committee Chairman Joseph R. Biden, Jr., (D-Del.), drafted a strategy memo on the battle over confirmation of Supreme Court nominee Robert H. Bork.
>
> Based on polling data collected in August by another Boston firm, Marttila & Kiley, Donilon's memo, entitled, "The Bork Nomination and the South," argued that the presumption that Bork would be a popular choice among conservative southern whites was "just plain wrong."
>
> "In fact," Donilon wrote, "the potential for the development of intense opposition to

> Bork is perhaps greater in the South than in any other region."
>
> Less than a month later, the Bork nomination teeters on the brink of extinction largely because the potential opposition Donilon identified was mobilized by a massive public campaign built around three compelling themes.
>
> "Bork poses the risk of reopening race relations battles which have been fought and put to rest," Donilon wrote. "Bork flouts the southern tradition of populism. And (perhaps most surprising to some) Bork poses a challenge to a very strong pro-privacy sentiment among southern voters."
>
> With Democrats in control of the Senate Judiciary Committee, the Bork confirmation hearings were built around these themes. As a result, the battle has been fought on terms dictated by Bork's opponents, throwing him and his Republican allies on the defensive from the start * * *.
>
> Above all, it is the civil rights issues that turned the political tide against the nomination in the region of the country that held the key to the outcome. Bork, his opponents said repeatedly, threatened to "turn back the clock" to the days of turmoil and strife during the civil rights movement, out of which emerged a more stable and prosperous South.
>
> The message was directed less at blacks, whose intense opposition to Bork was assumed, than to southern whites who have benefited from the new stability and who could tip the balance against Bork across the region.

That was the strategy, and it worked. So let's be honest about it. Let us stop telling our colleagues and the American people that disinformation campaign hasn't affected this confirmation process. When you do so, you are insulting their intelligence. The plain fact is the ad campaign, the hearings, and this process in general have been choreographed down to the last detail by the same group of people. One project, one goal, and one result—period.

KNUCKLING UNDER TO INTEREST GROUP PRESSURE

Now, with all due respect to the distinguished chairman of the Judiciary Committee, I would say that he is hardly in a position to speak with credibility about the role of the interest groups in this process. In November 1986, he said, "Say the administration sends up Bork, and after our investigation he looks a lot like another Scalia. I'd have to vote for him, and if the groups tear me apart, that's the medicine I'll have to take. I'm not TEDDY KENNEDY." My colleague's investigation of Judge Bork must have been an amazingly quick one, based on those articles we just read, because the ink was barely dry on this nomination when he denounced it. Way back in July, the distinguished committee chairman said, "I don't have an open mind [because] I see no way, based on my knowledge of Bork's record, that I could vote for [him]." One newspaper reported that the distinguished Senator met with "a group of civil rights leaders and other liberal activists" and came out "pledg[ing] to lead the fight against the nomination." Presumably, they gave the Senator the same completely objective description of the Bork record that they have shared with the American people in those television ads.

If others insist on denying it, at least the interest groups know what their role has been in all this. They understand how this process really works, and they well understand why Judge Bork's nomination appears headed for defeat. Their self-congratulation over the accomplishment has been almost deafening. A smiling Mr. Neas of the Leadership Conference on Civil Rights has been so busy receiving liberal accolades for this victory—even a network's plaudit as "Person of the Week"—that he reportedly has been late for several strategy sessions on how to defeat the administration's next nominee. It is a busy, busy time for those in the special-interest disinformation business.

So when my colleagues earnestly insist to us and to the folks back home that the interest groups' shameful disinformation campaign didn't pervert this process, they are saying it with a wink. They know the interest groups won't mind. The groups know how the game must be played. If they understand anything, they understand the necessity of hoodwinking and American people. They figured that out after their candidates for President carried a total of five States in a decade's worth of national elections.

Of course, every once in a while they slip up and we see how their world really works. For example, in early July one of my colleagues protested his independence and open mind on the issue of Judge Bork, only to have one of the leaders of his State's NAACP tell the press that the Senator's vote against Judge Bork was a foregone conclusion. "I have the votes in [this State] to defeat him," the NAACP leader said of the Senator. "When I get with his staff * * *, I'll get what I want. It's strictly politics." That is exactly what the opposition to Judge Bork is—strictly politics.

TWO PHONY LINES ABOUT THE HEARINGS

Now, the distinguished committee chairman is quick to point out the consensus from both sides of the aisle that the hearings were—to use his word—"fair." There is no denying that the Chair was a model of procedural fairness and personal politeness throughout those hearings. All agree on that. I saw much of it, and I commend him. But that unfortunately is beside the point. The fairness of procedures has nothing to do with the content of the statements made to the committee—which frequently were grossly misleading—nor with the behavior of certain committee members, whose tirades directed at Judge Bork often sounded remarkably like People for the American Way newspaper ads and Gregory Peck scripts. When witnesses and Senators reject intellectual agrument for emotion appeal, as leaders of the opposition repeatedly did—when a brilliant record is dissected disingenuously and even the most well-intentioned observers lose all sense of perspective—there has not been a "fair" hearing in any realistic sense of the word.

As one columnist put it:

> There's nothing inherently wrong with a senator's voting "no" on a Supreme Court nomination because of a principled disagreement over constitutional interpretation. But there's a great deal wrong when organized pressure groups mount a public campaign of lies and slander, spreading deliberate disinformation and stirring hysteria, in order to bring political pressure on members of the Senate to vote down a nomination even though they know the charges are false.
>
> It's an even greater scandal when that campaign is run out of a "war room" (the operators' own terms) in the Senate Office Building itself, helpfully provided for the purpose by Democratic members of the Judiciary Committee, and carefully coordinated with the conduct of the committee's own hearings.

When one of the reputation and stature of former Chief Justice Warren Burger, a man not given to exaggerated rhetoric or political hyperbole, is moved to tell the committee that he has never seen a hearing "with more hype and more disinformation" (his words), you begin to get some sense of how it really was.

In addition to being told the hearings were "fair," we are told that Judge Bork failed to make his own case effectively. Well, let's not add that insult to the other injuries inflicted on Judge Bork. It is as bogus as the claim of "fairness." Judge Bork conducted himself as a judge while his opponents behaved like politicians. He gave accurate, reasoned, scholarly and lawyerly responses in the face of blatant, demagogic appeals to emotion. He wasn't successful, if success is measured by standing in the polls. (I should add parenthetically, however, that I suspect the polls are more a reflection of the low viewership of the Cable News Network which covered the hearings and of the far greater impact of the multimillion-dollar, multimedia disinformation campaign than they are a reflection on what Judge Bork had to say.) But even if that is not the case, I ask my colleagues what do we want for our judiciary—learned judges faithfully applying the law, or telegenic jurists pandering to the public and rewriting the law in order to reach the politically popular result? Do we want Oliver Wendell Holmes or Oliver Norths on the bench? I think the former.

So let us not be misled. The claim that Judge Bork was given a fair hearing and failed to make his case is just one more element in the effort to cover up what has really happened here.

THE FLOOR SPEECHES TELL THE STORY

Mr. President, if there was any doubt about the pervasive influence that the pressure groups and their well-financed disinformation program has had on this process, it was eliminated last week and the week before that when Senators were stampeded to judgment on this nomination. Senator after Senator came to this Chamber and uttered the same slogans and the same distortions that have been peddled by the disinformers. I have studied the ads and the propaganda so widely circulated by the interest groups, and I have studied the record of Judge Bork. I have also studied the statements made by Senators on the floor and in the press in announcing their opposition to this nomination. My colleagues are men and women of goodwill, but I must tell you that in the last 2 weeks their words have betrayed many of them.

Time and again charges exploded by Judge Bork and others during the hearings were repeated as fact on this floor. Time and again, the thoroughly refuted claims and empty slogans of the interest groups were parroted in this Chamber. I will not accept that my colleagues—or most of them—did that knowing Judge Bork's true record. There is no way, absolutely no way, that those Senators could have read this hearing record and studied this nominee. If they had, mere fear of embarrassment, if nothing else, would have prevented them from making many of the statements made in this Chamber during the last 2 weeks.

No, what has happened here is that many of us have been sold a bill of goods. After seeing the plans and specs written up right there in the Post on October 4 and the LA Times on October 8, we ought not have any doubt about it. The salesmen made a slick presentation, used some very sophisticated hard-sell tactics, and many of my colleagues made a hasty purchase. Now, I can understand how some might be tempted to look the other way and pretend they didn't get suckered. That's natural. But the fact of the matter is we are going to have to confront these peddlers of deceit some time, or we are going to have to pay the price. We either reject this defective merchandise now or we're going to see it again and again. The only question is, How many more good, decent and capable men and women like Robert Bork will be victimized before we finally bring quality back to our product line?

I would like to share with my colleagues some of what I have found in my review of the floor statements announcing opposition to Judge Bork. I will not name names, of course, as that would serve no productive purpose. But the quotes and the rationales given on this floor are quite illuminating.

"FEAR" AND "DIVISION"

For example, a favorite reason given for voting against Judge Bork is that his nomination is "diversive" and "polarizing". One of my colleagues on this side of the aisle said Judge Bork "stirs fear and apprehension" and causes people to "honestly fear for their rights." One on the other side of the aisle said Judge Bork's confirmation would risk "an era of internal strife and disaffection." Another declared that "the nomination of Robert Bork has divided the country as no other * * *. It has divided communities and yes, it has divided families." Still another, his voice filled with profound regret, observed, "This nomination has polarized America * * * divided groups and races, * * * triggered passion and emotion * * *. [W]e do not need someone to divide us. We need someone to bring us together."

Mr. President, with all due respect, if that is the basis on which we approach this awesome responsibility of advice and consent, we don't need someone to bring us together. We need someone to bring us to our senses. For Members of this Senate, knowing of the concerted, sophisticated campaign that has been waged to create a false fear of this nominee throughout the land, to stand here on this floor and rest their solemn judgment on the existence of fear and division and passion and emotion, is a travesty. They might as well come here and blame victims for the high crime rate.

I ask my colleagues to pause and reflect for a moment on the meaning of this, because it is profound. We claim to be the world's greatest deliberative body, and that is our legacy, but where is the deliberation? And where is the commitment to fairness and justice that have long been the Senate's hallmark?

Fear and division—of course, there is fear and division. Listen to these ads: "If your senators vote to confirm [Robert Bork], you'll need more than a prescription to get birth control. It might take a constitutional amendment." "Robert Bork threatens almost every major gain women have made since we won the right to vote." "[He would] strip[ ] privacy protections; we couldn't even choose our own relationships or living arrangements without fear of government intrusion." "The nomination of Robert Bork has * * * a lot of people worried. And with good reason * * *. Sterilizing workers. * * * Billing consumers for power they never got. * * * No privacy. * * * Turn the clock back on civil rights. * * * No day in court. * * *" "Judge Bork has consistently ruled against the interests of the people." And on and on like that.

In the face of that barrage, it is amazing all Americans aren't terror stricken. I would be terrified, too, if I thought any one of the six horribles the Senator from Massachusetts said about "Robert Bork's America" were anything more than a crude, cruel lie. Back alley abortions, midnight police raids, courthouse doors slamming shut. Of course, there's fear.

If we pause to think about it, no one could seriously suggest that the nomination of Robert Bork—a man most Americans had never heard of until July—somehow spontaneously spread fear and division throughout the land. The man believes in judicial restraint—he wants to leave decisions to the legislature where the Constitution does not command otherwise. That is hardly a frightening prospect, unless you think, like the ACLU, that the American people are terrible ogres who sanction the death penalty, want to practice religion, think pornography is a bad idea, do not like racial quotas, and have all sorts of other neanderthal ideas.

No, letting the people decide major policy questions is hardly judicial terrorism. Although, I must tell you, after watching the handling of this confirmation, I have more than a little fear myself of how this elected body does the people's business. But the philosophy of judicial restraint was not frightening when Justice O'Connor or Justice Scalia or Chief Justice Rehnquist advocated it, and it is not when Judge Bork advocates it. The only meaningful difference between those nominees and the one now before us is that Judge Bork has been the victim of a well-financed, inflammatory campaign of distortion that has had a wholly predictable effect on the body politic. To reward that cynical and vicious fear mongering by relying upon the fact of its success as a basis for a "no" vote is not only to accept, but to endorse, the wholesale corruption of this confirmation process.

TURN BACK THE CLOCK ON CIVIL RIGHTS

Running a close second to fear and division as excuses for negative votes have been the fruits of the disinformers' well-planned and well-executed Southern strategy: The ever popular "He would turn back the clock"; "he would reopen old wounds"; "he would reverse decades of progress"; "we would re-fight old battles"; "he would reverse hard-won gains." This, my friends, is waving the bloody shirt, 1980's style. By my count, nearly 2 dozen of my colleagues have invoked one or more of these well-worn cliches as reasons for opposing Judge Bork. Any good campaign manager will tell you, as did Senator BIDEN's, that it pays to do polling first. Judge Bork's opponents did, and they knew exactly what buttons to push in order to arouse passions in the South, as the Post and LA Times reported.

But have my colleagues taken the time to look at the record?

Do you understand that when this man was Solicitor General and had the perfect opportunity to try to turn back the clock on civil rights—if that was his mission in life—he not only did not, but rather sided with the NAACP in 9 of 10 civil rights cases, supported the minority or the female plaintiff in 17 of 19 cases, without a single exception pushed civil rights protections as far or farther than the Supreme Court was willing to go, and was in agreement with Justice Brennan's position more often than with Justice Rehnquist's?

Have you considered his record as an appellate judge—voting with the minority or female plaintiff in 7 of 9 substantive civil rights case?

About those writings that have been so viciously misrepresented, have you taken into account that among the critics of each Supreme Court decision whose reasoning Judge Bork has criticized stand some of the most respected and revered Justices in this history of the Court?

Have you paused to reflect how vile the charge of racism and sexism is for a man who as a young lawyer dared to challenge the discriminatory practices of his law firm, and who, as Solicitor General, responded swiftly and decisively when informed that his deputy, a black female, had been excluded from critical meetings?

Have you weighed the judgment of a President who has worked with Robert Bork, of a Chief Justice before whom he argued for 4 years, of sitting justices who have spoken out, of his colleagues, of former Attorney Generals like Griffin Bell and civil rights advocates like Lloyd Cutler?

Did the Senator who told us Judge Bork had aligned himself against remedies for discrimination in voting and education consider the judge's expansive view of the Voting Rights Act in the Sumpter County case of his congressional testimony against court-stripping bills to halt forced busing? We have the unbelievable spectacle of members who themselves voted against busing and against the Voting Rights Act just a few years ago telling us they fear Judge Bork will turn back the clock on civil rights because of views he expressed two decades ago. Have they looked at his record?

Why haven't my colleagues judged this nominee on his merits?

Mr. President, the evidence of a fervent commitment to civil rights is there in the record if we will only consider it. I challenge my colleagues to cite one statement, one action, one shred of evidence to support the scurrilous charge, parroted again and again here on this floor, that Judge Bork would turn back or reverse any civil rights gain. It just is not there.

Many of my colleagues know that, I am afraid. And so they have come here to the floor and couched their criticism in terms of uncertainty or doubt about Judge Bork's intentions. For example, we have heard:

> I am from a Southern State that for 30 years has struggled to heal the ugly wounds of racial strife. Can I vote to take a chance or a gamble with a man we do not know?

Another Senator from the South said bluntly: "It may be unfair to Judge Bork, but I can't take the risk." Well, it is unfair to Judge Bork, grossly unfair, especially since there is no risk. If the risk, the gamble, the chance is really there and those words are not just a smokescreen for a purely political vote, the Members who believe that owe it to Judge Bork and the Senate to come out from behind their rhetoric and show us where it is in the record. They won't because they can't.

STRIPPING US OF OUR PRIVACY

Mr. President, the disinformation strategists latched on to privacy as another theme to target, and their success in that is also reflected in the floor speeches. One of my colleagues, for example, actually stated: "Mr. President, I am not prepared to vote for a Supreme Court nominee who has steadfastly refused to acknowledge that the people of America have constitutional right to privacy—especially in the home." Do you suppose the Senator didn't bother to read or simply chose to ignore Judge Bork's testimony before the Judiciary Committee, in which he said:

> No civilized person wants to live in a society without a lot of privacy in it. And the Framers, in fact, of the Constitution protected privacy in a variety of ways.
>
> The first amendment protects free exercise of religion. The free speech provision of the first amendment has been held to protect the privacy of membership lists and a person's associations in order to make the free speech right effective. The fourth amendment protects the individual's home and office from unreasonable searches and seizures, and usually requires a warrant. The fifth amendment has a right against self-incrimination.
>
> There is much more. There is a lot of privacy in the Constitution. Griswold, in which we were talking about a Connecticut statute which was unenforced against any individual except the birth control clinic, Griswold involved a Connecticut statute which banned the use of contraceptives. And Justice Douglas entered that opinion with a rather eloquent statement of how awful it would be to have the police pounding into the marital bedroom. And it would be awful, and it would never happen because there is the fourth amendment.
>
> Nobody ever tried to enforce that statute, but the police simply could not get into the bedroom without a warrant, and what magistrate is going to give the police a warrant to go in to search for signs of the use of contraceptives? I mean it is a wholly bizarre and imaginary case.

The reasoning of this bizarre and imaginary case, like that of Roe versus Wade, has been widely criticized by many respected legal scholars other than Judge Bork. There is little doubt that last year we unanimously confirmed one of its critics for the Supreme Court, just as 6 years ago we confirmed Justice Sandra O'Connor, who has been quite strident in her opposition to Roe versus Wade.

But none of that matters. This judge somehow is different. He wants to invade the marital bedroom, comprehensively regulate reproduction, sterilize us, and who knows what else. That's the horrendous line that has been peddled: "Reproductive rights: You don't have any." "State-controlled pregnancy? It's not as far-fetched as it sounds." Or, as one especially inspired put it, "[S]tates could * * * impose family quotas for population purposes, make abortion a crime, or sterilize anyone they choose."

Of course, none of those hysterical ravings has had a thing to do with what has gone on inside this Chamber.

One comment by a colleague I found especially interesting. In announcing his opposition to Judge Bork, this Southern Senator said,

> I have found in Judge Bork's decisions a disturbing pattern that would sacrifice family relationships and the rights of children and parents to the perceived needs of the state.

Wow. If the Senator would step forward, I would like to take a look at those decisions because, if that is correct, I would consider a change of heart on this nomination myself. I sure do not know what the Senator is talking about. I do know that the ultraliberal groups that want to push these privacy rights to the limit and are so hysterical in their opposition to Judge Bork are not doing much to strengthen "family relationships and the rights of children and parents" when they claim that parental notification about teenage abortions violates the constitutional right to privacy, when they insist the first amendment protects pornography, or when they tell us the Constitution requires a school principal to allow a teenage boy to bring his male lover to the senior prom. I guess what is good for family relationships is in the eye of the beholder—which is why, like Judge Bork, I prefer to have elected legislators rather than unaccountable judges making these choices, especially since that's where the Constitution leaves that responsibility.

FOR BIG BUSINESS AGAINST THE LITTLE GUY

The third theme—besides civil rights and privacy—which the anti-Bork strategists targeted was the claim that Judge Bork always sides with big business against the little guy. Ralph Nader's group did a so-called study and trotted out some statistics they said supported that claim. But a response by the Justice Department showed how phony the Nader statistics were—such as including a labor union as one of the supposed business interests and so forth—and neither Ralph Nader nor anyone else tried to make much of a case for the probusiness allegation at the hearings.

But that did not keep People for the American Way from using the phony statistics in an ad under the title, "Big Business is Always Right." Nor did it keep one of my colleagues from lifting a chunk of his floor speech from the discredited Nader report. There they were again, Nader's contrived statistics and his phony conclusions, right there in the Congressional Record, offered as justification for a "no" vote on Bork: "[He] voted against individuals and workers and in favor of the Government in 26 of 28 * * * "; "in favor of business and against the executive in 8 out of 8 * * *"; "In cases where individuals sought * * * their day in court, Judge Bork voted against the individuals in 14 of 14 split cases." All contrived and demonstrably false. Drivel straight from Ralph Nader's mouth into a Senator's floor speech. As I reflect on the impact of this fight, I wonder how one explains to his Southern constituents his reliance upon Ralph Nader-sytle disinformation rather than the evidence in the record in reaching judgment on a matter of this importance to the American people.

EXTREME, RADICAL AND REACTIONARY

When you read through many of these floor speeches, you get the feeling all the speechwriters went out to lunch together or something. Maybe they even took the pollster and a representative of People for the American Way with them to make sure they didn't deviate from the central themes. There are some unusual similarities. Two floor speeches, for example, included the same colorful, but hopelessly oxymoronic phrase: Judge Bork is "extreme, radical, and reactionary." Great minds think alike—this is the world's greatest deliberative body, after all.

In one area, however, my anti-Bork colleagues are not singing from the same sheet of music. They never could make up their minds whether to brand Judge Bork a rigid, unthinking ideologue or a spineless, expedient chameleon. The possibility that he might be somewhere in between—a conscientious, thoughtful jurist, pehaps—has not weighed too heavily on anyone's mind on that side of the aisle. Thus, we have heard this: "[He] is on the extreme right." "He has reaffirmed most of his basic views." "He has displayed a feisty, iron-clad consistency * * *" "[He is] locked into an extreme and inflexible ideology." Other Senators, however, saw it a little differently: "My problem with Judge Bork is he doesn't stick with his views." "[He has an] erratic philosophical record." "[He] lacks predictability." "[He is] an unknown man with unknown beliefs." "[He] does not know himself." Can my colleagues be talking about the same man?

We have also seen the opponents of Judge Bork contend that he is an extremist who would tip the balance on the Court. Now, that's an interesting one. If he is so far out of the mainstream and so extreme, how is he going to be able to get four other votes to tip the balance of the Court?

What we have here—and my colleagues, it is as transparent as the glass on that door—is a massive amount of rationalization to cover up a massive submission to interest group pressure. What makes it all the more alarming is that almost everyone concedes the pressure has been brought to bear on us through a premeditated campaign of distortion and deceit.

I have never witnessed anything more unseemingly in my time here. Senators grasping at straws. Senators erecting straw men and then piously knocking them down. Senators trying to avoid the cleaning exercise of debate by deciding the issue on a quick straw vote. You think we're trying to make political hay out of this? We'll reap what you've sown!

THERE IS STILL TIME

My colleagues, if there ever was a possibility that the effort to roll this nominee would succeed without the American people understanding what went on here, that possibility no longer exists. Each of us will be held accountable.

The question now is, will those of us who have been misled and stampeded into joining this lynch mob pause, step back from the crowd, and reflect on the principles at stake here? Justice. The right to a fair hearing. The right to have that hearing count for something. The right to be judged by impartial men and women willing and able to discern the truth, and to apply it, even if it means confronting the angry mob.

Nothing that has been said or done up to now matters. Every Senator will have an opportunity to vote, and that vote is what will count. Our fellow citizens are watching us, and I want to share with you, in closing, a letter-to-the-editor that reveals how many of them view what we are about to do:

> It is no wonder that public opinion polls show a majority of opposition to Judge Bork's confirmation, almost surprising that he has as much support as he has, given the imagery that has been conveyed to the public at large. It is no wonder that a mob of otherwise good, decent, fair-minded senators has gathered around the willow tree, after Senator Biden's drumhead court, watching Senator Kennedy prepare the noose. As in a lynch mob, they do not yet feel a sense of shame, because of the comfort of the crowd itself.
>
> By forcing the senators to vote, to put their names in the history book, the president is forcing these good men to dig deeper into their consciences before they give the final word to Senator Kennedy to put the noose around Judge Bork's neck, and with a final shout kick the support from under him. They should have to watch their fellow citizen, knowing he is innocent of all the foul charges raised against him, dangle from the willow tree, twisting in the wind, and know that they did it to him. As with a lynch mob, a silence will follow, and these U.S. senators will have the rest of their lives to feel the gnawing guilt of what they have done.

Mr. President, there is still time.

EXHIBIT 1

THE FRANKENSTEINING OF BORK

(By L. Gordon Crovitz)

Last July, the 45 groups plotting strategy against Judge Bork assigned one member the task of spending $40,000 on an opinion poll. The Los Angeles Times reports that the survey by the American Federation of State, County and Municipal Employees found several issues that could be exploited. The best prospects for stoking apprehensions were civil rights, aimed at Southerners fearful of "reopening old wounds," and privacy rights, which the anti-Bork forces dubbed the Yuppie strategy. The campaign to defeat Judge Bork immediately became a campaign to distort his record to fit these public fears.

The special interests may not consider themselves bound to honest debate, but the Judiciary Committee senators who echoed the groups' distortions are in a bind. Judge Bork's refusal to die a death of a thousand libels means they will have to explain on the Senate floor the stark contrast between their claims and his testimony.

Civil Rights. In his summary, Sen. Edward Kennedy (D., Mass.) issued a tirade raising the specter of Jim Crow laws. Judge Bork angrily replied. "If those charges were not so serious, the discrepancy between the evidence and what you say would be highly amusing."

Judge Bork did write a magazine article in 1963 making the libertarian argument against coerced desegregation of private establishments, but he rejected this view years ago. He cited his record, "I have upheld laws that outlaw racial discrimination. I have consistently supported *Brown v. Board of Education.*" Indeed, Judge Bork called this decision desegregating schools "perhaps the greatest moral achievement of our constitutional law."

Does Judge Bork favor forced sterilization? This shocking claim was based on his unanimous ruling in *Oil, Chemical and Atomic Workers International v. American Cyanamid.* The Occupational Safety and Health Administration requires employers to prevent risks to fetuses. A pigmentation plant discovered lead levels in the air that could damage fetuses, but that could not possibly be reduced to safe levels. "Everybody conceded that the company could have said women of child-bearing age are hereby fired," Judge Bork said. "What the company did was give women a choice: You can be transferred to another department at a lower paying job, or if you want to, surgical sterilization is available."

Judge Bork said, "I think that is not a pro-sterilization opinion." Instead, "it was a sad choice these women employees had to make. It was very distressing. The only question was, should they be given a choice? And is giving them a choice a hazard? We did not think it was under the act." His ruling suggested the women instead sue for unfair labor practices or sex discrimination. The case was eventually settled on these grounds.

Equal Protection. Several senators grilled Judge Bork on the 14th Amendment, which prohibits states from denying "any person within its jurisdiction the equal protection of the laws." Sens. Biden, Kennedy and Metzenbaum insisted that he did not think the equal-protection clause applied to women.

Sen. Arlen Specter (R., Penn.) engaged Judge Bork on the issue. Judge Bork said that the amendment "applies to all persons, so that I would think that no group could be excluded." Sen. Specter then asked how much protection he would give women. Judge Bork's analysis turns out to be much more helpful to women than the current court approach.

Judge Bork criticized the Supreme Court for using different levels of scrutiny depending on the plaintiff. He prefers Justice John Paul Stevens's test that simply asks whether the law makes a reasonable distinction between classes of people. He said he knew of only one situation where discrimination by race was reasonable, a case of a prison warden who after a race riot segregated the inmates by race.

Judge Bork said this reasonable-basis test would better protect women. He disparaged a 1948 opinion upholding a law denying bartender licenses to women unless they were wives or daughters of male bar owners. "Distinctions that we made between genders in the 19th century and which we assumed to be reasonable then." Judge Bork said, "no longer seem to anybody to be reasonable." The only two Judge Bork could cite as reasonable were Congress's prohibition on women in combat and the practice of public restrooms marked Gentlemen and Ladies.

What about the sex-discrimination case? The National Women's Law Center said *Vinson v. Taylor* made Judge Bork a sexist. The group claimed that he wrote that sexual harassment couldn't have occurred if the woman subordinate consented. Actually, Judge Bork ruled only that as a procedural matter, the employer could introduce evidence of an office romance. "While hardly determinative," Judge Bork wrote that Title VII discrimination law required introduction of such evidence. The Supreme Court agreed.

Privacy. According to Sen. Alan Cranston (D., Calif.), "When he said before the committee that he found no right to privacy in the Constitution, that did him in." In fact, Judge Bork said privacy was a major preoccupation of the Constitution and a basic requirement for a government of limited powers. "No civilized person wants to live in a society without a lot of privacy in it," he said. He cited several privacy rights. The First Amendment protects exercise of religion and free speech; the Fourth Amendment protects homes and offices from unreasonable searches and seizures; and the Fifth Amendment protects against self-incrimination.

What about *Griswold v. Connecticut?* Justice William Douglas reasoned from "penumbras formed by emanations" of the Bill of Rights to invalidate a law against using contraceptives. This phrase represents an imaginative reach of the Warren Court, but one entirely unhinged from constitutional text or original intent.

Judge Bork said the 1879 law against using contraceptives was "utterly silly," but pointed out that the law had never been enforced. This was a frivolous case, not because it didn't raise a philosophical issue, but because the law was not being enforced and there was no prospect of its being enforced. The case was brought by Yale law professors who wanted to give the court a chance for a wide-ranging holding. Planned Parenthood's New Haven branch conspired with a politically friendly prosecutor to get a case brought against it for "aiding and abetting."

Judge Bork denied there could be any absolute privacy right. Is there a right to incest, wife beating or price-fixing if done in private? he asked. He said there were respectable grounds for deciding the case. The Fourth Amendment means no police would ever barge into bedrooms to check if a married couple was using contraceptives because no prosecutor would ever ask for, or a judge issue, a warrant. If a prosecutor did bring a case, Judge Bork said it would be dismissed because of "desuetude." There was no fair warning of enforcement of an antique law that "is just so out of date that it has gone into limbo."

First Amendment. The critics claim Judge Bork has a crabbed view of free speech. He testified that while he thought the Founders' main purpose was to protect political speech, other speech is also covered. He said "everybody, including the Supreme Court, starts from the political speech core, and that is the most strongly protected. . . . Moral speech and scientific speech, into fiction and so forth" are also protected. "Speech or print which is purely for sexual gratification, pornography or obscenity," has less protection.

What about school prayer? The Senate opponents cited a Washington Post report about a speech he gave in 1985 at the Brookings Institution. Judge Bork denied ever endorsing school prayer and cited a letter to the editor from Rabbi Joshua Haberman. "Your reporter was not present at the meeting. I was," Rabbi Haberman wrote. "I would have been greatly alarmed if Judge Bork had expressed any tendency to move away from our constitutional guarantee of religious freedom and equality. I heard nothing of the sort."

Pro-Business Bias. Several interest groups, including Ralph Nader's Public Citizen, published studies purporting to show that Judge Bork favors business litigants. He called these studies "very strange," noting that in a case in which we upheld a labor union against the federal labor relations agency, "they said, well, a labor union is really a business." That case, *NTEU v. FLRA*, held that a union didn't have to provide lawyers to represent non-union members to the same extent it provided counsel to members. Judge Bork testified that "if you look at my decisions on race, on women, on labor unions, on individuals vs. the government, you will find no . . . political line along which these decisions line up. They line up only according to legal reasoning."

In retrospect, there was a twisted logic to the distortion campaign. Judge Bork was first called an extremist, a right-wing ideologue. Then the flaw was that he failed to meet the critics' portrayal of him. They said he changed his views too often (he was a Marxist in his youth!) and his opinions were unpredictable because they were based on legal, not political, principles. Perhaps it's the critics' inconsistency that causes senators now to say his problem is simply that he became "divisive."

Judge Bork's alleged extremism and divisiveness are due to intentional distortions that made him appear what he is not and has never been. There is still time for senators to reconsider whether the brazen purveyors of disinformation deserve the reward of Judge Bork's scalp.

THE JIM CROWING OF BORK

(By L. Gordon Crovitz)

Who is this man a multi-million dollar ad campaign and a senator from Massachusetts said would turn back the clock on civil rights to the days of segregated lunch counters? Who is this man who would want to reopen such old national wounds?

Robert Bork was the young associate in a Chicago law firm who in 1957 demanded that the partners end their Jewish quota and hire Howard Krane. Mr. Krane is now a senior partner there, and told the Judiciary Committee that "Bob Bork is a person without prejudice against any group." U.S. Solicitor General Bork was quick to rescue Jewel Lafontant, the first black woman to be a deputy in that office, when she told him of her exclusion from meetings due to her sex. "The very next day was the beginning of my attending so many briefings," Ms. Lafontant told the senators. "I wondered to myself whether I had been wise in complaining."

The deeds of Robert Bork in his personal life are matched by the words of his professional duties as appeals court judge and solicitor general. The evidence is that the distortions of Mr. Bork's civil-rights record are nothing more—or less—than a grotesque lie.

Record as Appeals Judge. Bork opponents have tried to substitute result-oriented statistics for careful analysis of his legal reasoning to impugn Judge Bork as anti-women, pro-business, etc. Yet even on the basis of the opposition's anti-intellectual methods, Judge Bork's civil-rights record is clear. In his five years on the U.S. Court of Appeals for the District of Columbia, Judge Bork has heard eight cases involving the rights of minorities or women—and ruled in their favor in seven. In no case did he render an opinion less sympathetic to minority or women's rights than the Supreme Court. Perhaps even more telling, his opinions are among the circuit's most notable civil-rights rulings.

STEWARDESSES VS. MALE PURSERS

In this year's *Emory v. Secretary of the Navy,* Judge Bork ruled for a black Navy captain who wanted to sue the promotions board. The issue was whether the military branches are subject to judicial review where civil rights are at stake. Judge Bork held for the first time that federal courts can decide these cases. Also this year, in *Doe v. Weinberger,* Judge Bork held that a plaintiff fired from the National Security Agency due to his homosexuality was illegally denied a hearing.

Judge Bork has written or joined several opinions protecting women's rights, especially at work: *Laffey v. Northwest Airlines* (1984) demanded that stewardesses get paid as much as male pursers for comparable work; *Palmer v. Shultz* (1987) held for women foreign service officers alleging discrimination by the State Department in assignments and promotions; and *Ososky v. Wick* (1983) reversed the lower court to bring women in the Foreign Service under Equal Pay Act protections.

Record as Solicitor General. When the critics ask, where was Robert Bork during the great civil-rights victories? The best answer is that he was standing in front of the Supreme Court making the winning arguments. Indeed, perhaps the best measure of Robert Bork's civil-rights record is his four years as the government's chief litigator. Solicitors general have great freedom to file briefs weighing the claims of private parties in cases where they are not required to act as the government's defense lawyer. Mr. Bork used his position to argue more pro-civil rights cases than any Supreme Court nominee since Thurgood Marshall. In 17 of the 19 cases, Solicitor General Bork argued for the civil rights plaintiff or minority interest: the NAACP Legal Defense Fund was on his side in nine of the 10 cases where both filed briefs.

Indeed, perhaps the most lasting accomplishment of his solicitor generalship in the mid-1970s was building on the civil rights gains of the 1960s. He was ahead of the times in 1976 in Runyon v. McCrary. The issue was whether private schools can deny admission to blacks. This controversial case raised the conflict between the freedom of private groups to set their own rules and the public goal of non-discrimination. The civil-rights law, Solicitor General Bork said, "reaches the actions of private individuals not in any way facilitated by state law." The Supreme Court agreed, with Lewis Powell dissenting.

In several cases, Solicitor General Bork took the controversial position that plaintiffs do not have to prove the defendant's discriminatory intent in order to win discrimination cases. Black workers brought the 1975 case of Albemarle Paper Co. v. Moody against their employer and their union. They argued that they had been locked into low-paying jobs by testing policies and union rules. Mr. Bork successfully argued that even if the employer didn't mean to discriminate against black workers, the mere existence of a discriminatory effect entitled the plaintiffs to back pay. Solicitor General Bork tried to take the law even further. In the 1977 case of Teamsters v. U.S., the Supreme Court refused to accept his argument that a wholly race-neutral seniority system is unlawful if it perpetuates discriminatory effects.

Despite Judge Bork's record of public service to civil rights, Sen. JOSEPH BIDEN claimed that "throughout his career, Judge Bork has opposed virtually every civil rights advance." How can this be? The critics cite Mr. Bork's speculative academic writings—yet distort even these:

Brown v. Board of Education. Whatever Sen. BIDEN was referring to, it couldn't have been the landmark Supreme Court case that desegregated the public schools and gave courage to a politically deadlocked Congress to act on civil rights. Judge Bork has said that by the 1954 Brown case, "it had become abundantly apparent through repeated litigation that separate was never equal." This isn't a recent conversion: In a 1968 Fortune article, he called the ruling "surely correct."

In his 1971 Indiana Law Review article, then-Yale Prof. Bork said that the 14th Amendment "was intended to enforce a core idea of black equality against governmental discrimination." At a Federalist Society meeting this past January, Judge Bork defended Brown's reasoning against critics who insisted that the 14th Amendment was not intended to prohibit segregated schools. He said. "To have chosen separation rather than equality would have been to read the equal protection clause out of the Constitution." Judge Bork calls Brown "perhaps the greatest moral achievement of our constitutional law."

Public Accommodations. Much has been made of Mr. Bork's three-page article in The New Republic in 1963 making the libertarian case against government-coerced desegregation of private establishments. Unlike the segregationists, he was not motivated by a desire for racial separation. Indeed, he stipulated that "of the ugliness of racial discrimination there need be no argument." Instead, his purpose was to warn against the dangers of government intervention into private relations even for a cause as noble as desegregation. "It is sad to have to defend the principle of freedom in this context," he wrote, "but the task ought not to be left to those Southern politicians who only a short while ago were defending laws that enforced racial segregation."

Robert Bork long ago rejected the extreme libertarian argument. The Civil Rights Act of 1964 "did an enormous amount to bring the country together and bring blacks into the mainstream," he said at his 1973 confirmation hearings as solicitor general. "That is the way I should have judged the statute in the first place instead of on these abstract libertarian principles." Does this sound like someone who would undo racial progress?

Voting Rights. Critics of Judge Bork make the startling claim that he favors poll taxes, the device once used to deny blacks their right to vote. Judge Bork told the Judiciary Committee that he has "no desire to bring poll taxes back into existence. I do not like them myself." He has criticized *Harper v. Virginia Board of Education,* the 1966 case that invalidated state poll taxes. But the case had nothing to do with race. The high court in *Harper* explicitly said that there was no evidence of any racially discriminatory application of the $1.50 poll tax. Judge Bork told the committee that if the tax had been "applied in a discriminatory fashion, it would have clearly been unconstitutional."

Judge Bork's point was that if there is no racial discrimination, then there can be no equal-protection-clause justification to invalidate a state poll tax. The 24th Amendment, he noted, prohibited only federal poll taxes, intentionally leaving states free to assess such taxes if they chose. Judge Bork has said that a better ground for invalidating a poll tax would be if it were so high an amount that it interfered with the constitutional provision guaranteeing a republican form of government.

BLACK OPPRESSION BY ACTIVIST JUDGES

Apart from Judge Bork's extraordinary civil-rights record, there is a strong argument that minorities above all others should demand judicial restraint and an honest reading of the Constitution and its civil rights amendments. If justices of the William Brennan variety can make the Constitution mean what they like it to mean, the Supreme Court becomes another branch of government subject to buffeting by public opinion. The history of activist judges until recently is a history of black oppression; justices in *Plessey v. Ferguson* (1896) ignored the text of the 14th Amendment to create separate but equal. Judges such as Robert Bork insist that the law adhere to the Constitution, preserving a text that protects minority rights that someday could again lose popular favor.

A reading of Judge Bork's voluminous civil rights record leaves the inescapable conclusion that the partisan campaign against him was one of intentional distortion. If only the special interests had shown a fraction of the compassion for the truth as Robert Bork has shown for minorities. As it is, senators who take the time to review his record will find no honest argument that minorities or women have anything to fear from a Justice Bork.

[From The Washington Post]

THE BORK NOMINATION

The uncharacteristic silence in this space over the past couple of weeks on a hot, controversial topic has been the silence of second thoughts. When Judge Robert H. Bork was nominated to the Supreme Court, we hoped and expected to be able to support his confirmation—comfortably and unequivocally—even though his political inclinations are far from our own. Those many aspects of the campaign against him that did not resemble an argument so much as a lynching only reinforced our original instinct. But we find, at the end of a period of total immersion in the subject—the written record, the testimony for and against Judge Bork and, most tellingly, the testimony by him—that we cannot.

By now the question may of course be academic; the Bork nomination appears to be gone. The reason for this, we suspect, is not the one being offered by President Reagan's perennially disappointed conservative constituency—i.e., that the White House failed to campaign for Judge Bork as a Great Avenger of the Right, a law-and-order man who would roll back the detested tide of permissiveness. Rather it was that Judge Bork's natural and expectable support never materialized in the political middle. There was almost no real or serious resistance in this quarter to the assault from the left against him; there was instead *a lot* of uncharacteristic silence.

Why? The commonest explanations have been political—conservative southern Democrats afraid to offend the blacks who have, ironically, become the decisive constituency in the party in that region, moderate northern Republicans likewise fearful for their reelection. But behind these political weak spots has been an abscess of a different kind. On a careful reading of the evidence, a preponderance of powerful reasons to support Judge Bork was fatally undermined by a couple of even more powerful and critical reservations that finally, for us and, we suspect, for many others disposed to support him, could not be overcome.

We are not being playful when we say that much of the anti effort was almost enough to make you pro. It's not just that there has been an intellectual vulgarization and personal savagery to elements of the attack, profoundly distorting the record and the nature of the man. It is also, more important, that the dismal political and programmatic content of some of the argument against him, as heard day after day in the committee hearings, could only confirm a suspicion that the time is ripe for a rigorous challenge to the lazy and dangerous cliches that often pass for policy wisdom and juridical profundity among liberals these days. There was also something disquieting in the idea that intellectual audacity and a challenge to prevailing legal orthodoxy were automatically to be punished or at least put down.

A second factor in Judge Bork's favor was the conventional view to which we continue to subscribe and which has now fallen into such disrepute, namely that a president has a large claim to support in nominating a judge of proven competence and distinction to the court; we think there is something to currently expressed anxieties that the Bork events pave the way to a demagogic, highly politicized future where confirmation proceedings are concerned.

And finally there is the intelligence and professional achievement of the man. On the opposite page today we print a piece by Judge Bork's journalist son, expressing fury and frustration that his father has been so cruelly characterized by those fighting his appointment. Robert Bork Jr. is surely right in protesting that his father is neither a "neanderthal" nor a "racist," nor the rest of that litany, and that the man is far from being the caricature presented. Judge Bork is also, on the evidence, one of the most thoroughly schooled and knowledgeable students of constitutional law ever nominated.

What, then, is enough to overcome all this? The impression, never disturbed throughout the hearing and never refuted by the nominee no matter how many questions just *begged* for such refutation, that he did *not* change in the one respect that matters most: Judge Bork has retained from his academic days an almost frightening detachment from, not to say indifference toward, the real-world consequences of his views; he plays with ideas, seeks tidiness, and in the process does not seem to care who is crushed.

What people like ourselves needed when confronted with this impression was modest, but critical. It was not evidence that Robert Bork is a political liberal or in fact a political anything, and it was not evidence that he would have approved of everything the Supreme Court has done on matters of race, and other forms of discrimination.

[From the Los Angeles Times]

SUPPORTER OUT-MANEUVERED—A "PEP RALLY" FOR BORK SEEMS TO BE A CHARADE

(By David Lauter and Ronald J. Ostrow)

WASHINGTON.—Shortly after noon Wednesday, as Robert H. Bork entered an ornate office on the second floor of the Capitol with his wife at his side and his bearded chin jutting determination, 16 senators rose to their feet and began to cheer.

"Don't quit, don't quit," they shouted as they crowded around the stocky federal judge.

"A pep rally," one participant called it.

The senators—all Republican conservatives—kept on cheering as the meeting ended and they escorted the Borks out of the Capitol through the law library entrance. "I felt like an astronaut on 5th Avenue," said Tom C. Korologos, chief Republican lobbyist on the Bork nomination.

But the rally, if it buoyed Bork's spirits as its sponsors hoped, was an empty charade. Most of those who took part were convinced that the game already has been lost. Asked a few hours later if any chance remains, a rueful Korologos confessed: "Not any more. The thin thread is gone."

How did a Supreme Court nomination that seemed to promise everything American conservatives had dreamed about turn to ashes in just three months?

It is a story of pro-Bork strategists outthough, out-maneuvered and out-spent from the start by their liberal opponents. It is the story of a White House once again unable to resolve an internal schism that has dogged the Reagan Administration for seven years—the conflicting impulses of its ideological and pragmatic wings. And, at the end, it is the story of a weakened President hobbling headlong toward almost certain defeat.

"WRONG TIME, WRONG PLACE"

It is also a historic episode that seems likely to leave as its legacy an emboldened Democratic majority in Congress and renewed bitterness among Republican conservatives, many of whom think that the fruits of the "Reagan revolution" have been stolen from them not so much by their liberal foes as by their moderate comrades.

And beyond the bare-knuckles political struggle, the Bork nomination came to pose for many Americans—and thus for many undecided senators—some fundamental questions about the role of the Supreme Court in the life of the nation and what people might want from it in the years ahead.

The answer seemed to be that Bork—an experienced jurist of unquestioned integrity, a legal scholar of acknowleged brilliance and a man admired for his unpretentious style and personal wit—was nonetheless, in the words of Sen. Robert T. Stafford (R-Vt.), the wrong man at "the wrong time for the wrong place."

For both sides, the debate over putting Bork on the high court began months before Associate Justice Lewis F. Powell Jr. announced his retirement.

As long ago as last summer, when he nominated Judge Antonin Scalia to the court. President Reagan sent a personal promise to Bork that he would be next, Administration and Senate sources say. On the other side of the battle, liberal senators, their staffs and the outside groups that had battled Reagan on civil rights and social policy issues throughout his Administration had been expectng a Bork nomination with a mixture of dread and anticipation.

HOWARD BAKER CONSULTS

In the days after Powell's June 26 retirement, White House Chief of Staff Howard H. Baker Jr. conducted an elaborate consultation process, visiting his former Senate colleagues and presenting them with a list of names under consideration. Several senior senators, including Judiciary Committee Chairman Joseph R. Biden Jr. (D-Del.) and Majority Leader Robert C. Byrd (D-W.Va.), say they warned Baker that a Bork nomination would be controversial.

Nor were all Republicans enthusiastic about Bork. Sen. Strom Thurmond (R-S.C.), the senior Republican on the Judiciary Committee, for example, pushed the name of his former aide William Wilkins, now a federal appellate judge on the 4th Ciricuit in Richmond, Va.

Wilkins' name was submitted to the FBI for a check, along with Bork and federal appeals court judges Patrick J. Higginbotham of Dallas and J. Clifford Wallace of San Diego. But, senators later complained, Baker seemed to be soliciting their advice without heeding it. As Thurmond later was told, the President had made a promise to Bork.

Reagan redeemed that promise on July 1, a Wednesday. But the Administration was already one step-behind:

The opposition had started its campaign 24 hours earlier with a meeting on Tuesday morning, June 30, at the Washington office of the Leadership Conference on Civil Rights. It brought together representatives of roughly 45 organizations that would play central roles in the debate to come.

And, where the pro-Bork forces were divided between ideologues who wanted to make a crusade of it and moderates who wanted to pursue what they considered a more practical approach, the opposition quickly settled on an early strategy. It began calling reporters and Senate staff members with a single message: The Bork nomination would trigger an epic battle, and Bork could be defeated.

The activity of the outside groups was coordinated with the initial activity inside the Senate. "The announcement of the nomination was made just before the July 4 recess," recalled an aide to one senior Judiciary Committee Democrat.

"We were very concerned that senators would be asked about the nomination while they were home over the weekend, and that if there was not a strong alarm sounded, senators would just routinely express support for a presidential nominee" as many moderate and conservative Democrats had done a year before when William H. Rehnquist was nominated to be chief justice.

KENNEDY "FREEZES" COLLEAGUES

To forestall that possibility, Sen. Edward M. Kennedy (D-Mass.) issued a harsh statement opposing the nomination. It implied that putting Bork on the court could bring back the days of "back alley abortions" for women and segregated lunch counters for blacks. Critics called Kennedy's statement shrill, but it appears to have had the intended effect—"freezing people into place," as one aide put it.

Over the next few days, only one Democrat, Sen. Ernest F. Hollings of South Carolina, said that he would vote for Bork.

In the next week, the core of groups opposing Bork more than doubled. "The coalition," as members began calling it, met for a second time a few days after the nomination was announced.

"I was shocked," recalled one longtime liberal activist. "I had never seen a turnout like I saw on that day." The Leadership Conference's meeting room was "filled to capacity. Ralph Nader had to stand out in the hallway." Ultimately, the coalition would encompass the entire liberal spectrum: civil rights groups, women's organizations, consumer advocates, environmentalists, labor unions.

Within the Senate, Kennedy, Biden, and Alan Cranston (D-Calif.), Howard M. Metzenbaum (D-Ohio) and Daniel K. Inouye (D-Hawaii) met to discuss organizing their fellow Democrats and the Senate's moderate Republicans against Bork.

Inouye dropped out of a leadership role because he was chairing the Senate's Iran-contra investigating committee. The other four divided up the Senate and began personally lobbying against Bork. They asked undecided senators about their concerns and responded with briefing books and papers prepared by their staffs and law professors who had agreed to work in the anti-Bork effort.

Beginning with a meeting on Aug. 6 in Kennedy's office, Senate staff members met each Thursday afternoon with coalition representatives to map strategy and share information.

To all this, the pro-Bork side responded with near-total silence.

Korologos, one of the savviest of the private Republican lobbyists, had been recruited early to help Bork, but Korologos' specialty is legislative maneuvering among Washington's political insiders. As he now concedes, no one in the White House anticipated the ferocity of the public campaign against Bork.

"I plead guilty" to underestimating the opposition, Korologos said Wednesday, adding bitterly: "I thought it was going to be a fair fight."

"THAT'S NOT GOOD ENOUGH"

On the day the nomination was announced, Korologos recalled that Chief of Staff Baker asked him: " 'Do you think he can get confirmed?' And I said: 'Probably.' He said: 'That's not good enough.' And I said: 'Yes.' "

Throughout July and early August, Reagan and his top aides were occupied with the Iran-contra hearings, then Central America, the Persian Gulf and arms control.

The first White House meeting with Bork did not occur until July 13, nearly two weeks after the opposition's first session. Attending were Baker, White House counsel A.B. Culvahouse, former counsel Fred Fielding, congressional liaison William L. Ball III and A. Raymond Randolph, a Washington lawyer and friend of Bork.

When the President and his aides made public statements on Bork, it was to emphasize his belief in "judicial restraint."

Reagan said in his radio speech the Saturday after the nomination was announced that Bork "shares my belief that judges should interpret the laws, not make them." The theme reflected the belief—widely held within the Administration—that the public was fed up with activist courts, whether liberal or conservative.

Bork's opponents declined to fight the battle on those terms. "We felt it was absolutely crucial that the debate be framed on our issues," said one anti-Bork activist who asked not to be named.

DENIED USUAL STRATEGY

At the same time, the opposition was denied the usual strategy for attacking judicial nominees. For more than half a century, the Senate had rejected presidential nominees only on grounds of ethical problems or a lack of qualifications. Bork, a former law professor now on the federal Court of Appeals for the District of Columbia, seemed immune to such attacks.

That left the opposition only one choice: to challenge Bork on the basis of his judicial philosophy. The first goal was to overcome the conventional wisdom in Washington that a campaign waged on such grounds was not only futile but improper. To that end, Biden delivered a major Senate speech on July 23, and People for the American Way, the best-financed of the anti-Bork groups, sponsored a radio campaign in Washington urging senators to take a "close look" at Bork's record and ideas. The advertisements were the first installment in a million-dollar campaign to rally public opposition to Bork.

The next step of the campaign was to determine which parts of Bork's philosophy to emphasize. In late July, Gerald McEntee, president of the American Federation of State, County and Municipal Employees, one of the nation's largest unions and the one most active in the anti-Bork effort, met with representatives of the Leadership Conference and other anti-Bork groups to pledge $40,000 that would be used to hire a polling firm to address that question.

The firm, Martilla & Kiley, which was also closely linked to Biden's presidential campaign, delivered a poll and a confidential report to anti-Bork leaders that showed a potentially fatal weakness in the Administration's campaign and pointed to two themes that Bork's opponents would exploit. While about one-quarter of those polled believed that the high court had too much power, 55% said that the court's level of influence was about right and another 14% thought the court was not powerful enough.

A "campaign on the existence of a public mandate for change on the court" would not succeed, the firm reported. "When it comes to the Supreme Court, most Americans are inclined to support the status quo."

To defeat Bork, they said, opponents should make the public skeptical about his "fair-mindedness." Bork's "civil rights record, more than anything else in his background," could create that skepticism, they suggested.

That conclusion led to what Bork's opponents now call their "Southern strategy." By emphasizing Bork's opposition at several points in his career to civil rights legislation, the campaign would play on the concern held by both southern blacks and whites about "reopening old wounds" and old battles—concern the South's conservative Democratic senators could not afford to ignore.

Separately, the opposition coalition hit upon what became its "Yuppie strategy," emphasizing Bork's opposition to the idea of a constitutionally guaranteed right of privacy. That argument, opponents correctly guessed, would have particular appeal to the suburban constituents of moderate Republican senators from the Northeast and Northwest.

In the face of that strategy, Administration officials continued to emphasize Bork's academic and professional credentials—the fact, for example, that none of his opinions as an appeals court judge had been reversed.

Their campaign receive major boosts in August as Bork was endorsed by Supreme Court Justice John Paul Stevens and by Lloyd Cutler, White House counsel in the Jimmy Carter Administration. But conservatives, including many in the Justice Department, already had begun objecting that the White House was not doing enough to support the nomination.

Conservatives led by veteran Southern California Republican activist Bill Roberts announced in mid-August the formation of a pro-Bork lobbying group, We the People, pledging that it would raise $2.5 million for a national media campaign. By this week, a spokesman said, it had raised only about $250,000.

Rather than place advertising in states where key uncommitted senators lived, as groups opposed to Bork were doing, We the People devoted its initial effort to attacking Kennedy with advertisements in Massachusetts and anti-Bork Republican Bob Packwood in his home state of Oregon.

At the same time, Kennedy and Biden furiously worked the telephones to line up witnesses for the Judiciary Committee's confirmation hearings, which were set to begin Sept. 15. "Kennedy has a very strong network of people around the country," said an aid. "He worked that network very hard."

At first, "we couldn't find anybody who wanted to weigh in with a fist fight," said a Biden aide. But as the senators worked the phones, key witnesses began to fall into place.

The most eagerly sought-after witness was William T. Coleman Jr., former transportation secretary for President Gerald R. Ford, the only black member of Ford's cabinet and now head of the Washington office of Los Angeles' O'Melveny & Meyers law firm.

Administration officials had approached Coleman about testifying in Bork's favor. Declining, he indicated that he preferred not to be drawn into the debate. Throughout the month, however, Coleman was besieged with calls by Biden and was urged to testify by lawyers from the NAACP Legal Defense Fund, which he chairs. Eventually, he agreed, citing a passage from the Bible about the man who declined to intervene to prevent evil and was informed by the handwriting on the wall that "you have been weighed in the balance and found wanting."

Besides Coleman, who became the most compelling of the anti-Bork witnesses, Biden and his staff lined up a series of academic experts and attorneys whose testimony was designed to build a substantive case against Bork.

The White House counted on Bork himself to answer all the substantive charges against him and concentrated on finding prominent persons, including Ford and former Chief Justice Warren E. Burger, to serve as character witnesses. When Bork proved unable to allay committee members' doubts, the pro-Bork side had few witnesses able to respond.

After the first day of testimony, Bork's supporters now say, they were worried. The second day, they say, he began to improve. But as the hearings stretched on, Bork's opponents appeared to gain confidence and sharpen their questioning.

At the daily 8:30 a.m. meetings of leaders of the anti-Bork coalition at the American Civil Liberties Union, reports began to come in that increasing numbers of senators were expressing doubts about the nominee.

The reports were logged into a computer that kept a record of each senator's position. Working off a continuous transcript of the hearing, lawyers for the anti-Bork effort delivered analyses to reporters covering the hearings. By the end of Bork's testimony, coalition leaders now say, the campaign against the nomination was safely on the downhill slope.

(Times Staff Writers Henry Weinstein in Los Angeles and James Gerstenzang and Sara Fritz in Washington contributed to this story.)

[From the Washington Post]

BORK'S FOES BUILT STRATEGY ON SOUTH

(By Edward Walsh)

In early September, Michael Donilon, the president of a Boston polling firm and younger brother of a senior political adviser to Senate Judiciary Committee Chairman Joseph R. Biden Jr. (D-Del.), drafted a strategy memo on the battle over confirmation of Supreme Court nominee Robert H. Bork.

Based on polling data collected in August by another Boston firm, Marttila & Kiley, Donilon's memo, entitled, "The Bork Nomination and the South," argued that the presumption that Bork would be a popular choice among conservative southern whites was "just plain wrong."

"In fact," Donilon wrote, "the potential for the development of intense opposition to Bork is perhaps greater in the South than in any other region."

Less than a month later, the Bork nomination teeters on the brink of extinction largely because the potential opposition Donilon identified was mobilized by a massive public campaign built around three compelling themes.

"Bork poses the risk of reopening race relations battles which have been fought and put to rest," Donilon wrote. "Bork flouts the southern tradition of populism. And (perhaps most surprising to some) Bork poses a challenge to a very strong pro-privacy sentiment among southern voters."

With Democrats in control of the Senate Judiciary Committee, the Bork confirmation hearings were built around these themes. As a result, the battle has been fought on terms dictated by Bork's opponents, throwing him and his Republican allies on the defensive from the start.

Last week President Reagan vowed to keep fighting for confirmation. And the majority of southern Democratic senators whose votes Bork desperately needs remained officially uncommitted. But the trend against Bork in the South is clear and many think irreversible. As the first of the southern Democrats, reflecting the deepening doubts about Bork among their constituents, announced that they would oppose confirmation, Reagan's hope of adding Bork's powerful, conservative voice to the nation's highest court began to fade.

The theme that some thought would be most effective against Bork—his generally pro-business views that run counter to southern populism—turned out to be the least important. But privacy became a central issue in the confirmation fight as Bork's opponents played down the explosive issue of abortion amid more general concerns about Bork's strict interpretation of the Constitution, an interpretation that his critics said provides scant protection for unstated but implicit individual rights.

"People actually believe they have rights that are not in the Constitution," a Judiciary Committee Democratic aide said. "The focus groups and polls were right, but even without that it was just common sense.

"Everybody thinks privacy is a code word for abortion," he added. "It isn't. This guy [Bork] doesn't believe in inalienable rights."

From the beginning, Bork's opponents said that his own views—set out in a 25-year career of prolific writing and speaking—would prove unacceptably narrow to a majority of Americans. Bork cooperated with this strategy. He retracted some of his positions and modified others, but he could not recant a lifetime of seeing the Constitution through the prism of the Framers' "original intent," which leaves little room for what was called during the hearings "the evolving concept of liberty."

"I still think I was right," Bork said of his criticism of the Supreme Court's landmark "one-man, one-vote" rulings that forced the reapportionment of state legislatures and, not incidentally, transformed the politics of the South.

Above all, it is the civil rights issues that turned the political tide against the nomination in the region of the country that held the key to the outcome. Bork, his opponents said repeatedly threatened to "turn back the clock" to the days of turmoil and strife during the civil rights movement, out of which emerged a more stable and prosperous South.

The message was directed less at blacks, whose intense opposition to Bork was assumed, than to southern whites who have benefited from the new stability and who could tip the balance against Bork across the region.

Following Bork's five days of testimony, the first witnesses to appear before the Judiciary Committee were meant to dramatize this message. They included Andrew Young, the black mayor of Atlanta: Barbara Jordan, the black former Democrat congresswoman from Houston who teaches at the Lyndon B. Johnson School of Public Affairs at the University of Texas, and William T. Coleman Jr., not a southerner but a highly respected black lawyer and a Republican who was transportation secretary in the Ford administration.

"Had Judge Bork's truncated view of the First Amendment prevailed, Dr. Martin Luther King Jr. would not be a venerated national hero—he would instead be serving a jail sentence in Alabama and the nonviolent method of social change might never have found foot on American soil," Young told the committee.

"Had Judge Bork's view on personal freedom prevailed, the Public Accommodations Act would have never opened the doors of the hotel and convention industry which is now Atlanta's lifeblood and the city's largest employer. . . . Had Judge Bork's view of the Constitution prevailed over the past 30 years, my city would not be a city too busy to hate, but a city too oppressed to create."

The success of this campaign that focused on Bork's writings on civil rights and privacy issues was reflected in the corridor comments of southern Democrats and their formal statements announcing that they would vote against confirmation.

"There's a perception in Alabama—from a lot of whites as well as blacks—that Bork could bring an unsettling effect to the court," said Sen. Richard C. Shelby (D-Ala.), who has not yet announced his position. "In the South, we've made a lot of progress. We do not want to go back and revisit old issues that are settled."

Shelby said there is "surprising" opposition to Bork among conservative, white women in Alabama who invariably raised the privacy issue.

"I thought for a while abortion was primary, but now I think it's this privacy issue," said Sen. Howell Heflin (D-Ala.), who is also uncommitted.

"I am from a southern state that for 30 years has struggled to heal the ugly wounds of racial strife," Sen. David H. Pryor (D-Ark.) said in the first formal statement of opposition to Bork by a southern Democrat. "Can I vote to take a chance or a gamble with a man we do not know?"

Early Friday morning, Sen. Lloyd Bentsen (D-Tex.) a highly successful businessman before he entered politics, spoke on the Senate floor about Bork's criticism of the public accommodations section of the Civil Rights Act of 1964 at the time the bill was being debated in Congress. The year before enactment of the measure, Bentsen recalled, the first major hotel in Houston was integrated by hardheaded business leaders who recognized the inevitability of change.

"As the head of the company that owned that hotel, I find [Bork's] statement repugnant," Bentsen said.

There were other reasons for the southern Democratic tide that threatened to drown the Bork nomination. A native of Pittsburgh, he was nominated to succeed Lewis F. Powell Jr., who had been the court's lone southerner. Last year, Reagan campaigned across the South against Democratic Senate candidates, four of whom defeated their GOP rivals largely because of the overwhelming support of black voters. The Bork nomination was put in grave danger even then.

With blacks adamantly opposed to Bork and whites at best divided and moving strongly toward opposition, it was not surprising that most of the southern Democrats read the politics of the confirmation fight the same way.

"It's all bloody wrong," Tom C. Korologos, a lobbyist brought in by the administration to help win confirmation said in exasperation late last week. "He's got a good civil rights record, but we can't get that point across. They've painted him into a corner."

"Maybe this is unfair to Judge Bork," Sen. J. Bennett Johnston (D-La.) said after announcing he would vote against confirmation. "But we just cannot take a chance."

The Judiciary Committee is scheduled to vote on the nomination Tuesday. When the panel's eight Democrats and six Republicans gather, the air will be heavy with irony. Biden, the chairman, watched the collapse of his campaign for the 1988 Democratic presidential nomination during the hearings of reasons having nothing to do with Bork. Yet Biden, by most accounts, not only conducted the fair hearings he promised, he helped engineer and execute the strategy that has brought Bork so close to defeat.

Heflin, the committee's only former judge and its lone southern Democrat, was seen in the beginning as the key vote on which many of the other southerners might turn. But Heflin, typically, hesitated while others acted, reducing his visibility and his influence.

Through much of last summer, Senate Republicans complained bitterly that Biden and the Democrats were stalling by not starting hearings on the nomination until Sept. 15. But by late last week they seemed in no hurry. As the Judiciary Committee prepared to send Bork's name to the Senate floor with or without a recommendation, it was the Republicans and the Reagan administration who were playing for time.

[From the Washington Post]

BABBITT, DUKAKIS JOIN BORK OPPONENTS

(By Gwen Ifill)

NEW YORK, July 7.—Democratic presidential candidates Bruce Babbitt and Michael S. Dukakis said today at the NAACP annual convention here that they oppose confirmation of conservative Appeals Court Judge Robert H. Bork to the Supreme Court.

Bork's confirmation has become a lightning rod for criticism at the 15,000-delegate convention and is increasingly being treated by civil-rights leaders as a political litmus test for presidential candidates and elected officials.

Chicago Mayor Harold Washington, speaking today, said that if Bork wins confirmation, "affirmative action is doomed."

"Have you heard a speech or two about Robert Bork so far?" former Arizona governor Babbitt asked. "Are you ready to hear another one? Because there can't be too many speeches about this nomination."

On Monday, Rep. Richard A. Gephardt (D-Mo.), another presidential candidate, denounced the Bork nomination as "a bad choice for America." Babbitt echoed that, saying Bork's constitutional philosophy is a threat to civil rights because he believes in the letter, not the spirit, of the law.

"We must have justices whose philosophies are consistent with that calling, and Robert Bork, won't pass that test, I believe," Babbitt said.

Massachusetts Gov. Dukakis spoke briefly to a gathering of youth delegates tonight. He told reporters afterward that if he were a senator, he would not vote to confirm Bork. "I don't think you pick people who come from a very narrow ideological perspective and appoint them for life," he said.

Democratic presidential candidate Jesse L. Jackson is expected to appear here Wednesday.

NAACP executive director Benjamin Hooks said he originally invited only Babbitt and Jackson but has extended an invitation to other candidates to speak if they wish.

The first sign of the pressure the NAACP has vowed to exert on the Bork issue came today when NAACP board member and New York Democratic National Committeewoman Hazel N. Dukes introduced Sen. Daniel Patrick Moynihan (D-N.Y.) as a veteran NAACP supporter who would most certainly oppose Bork's confirmation.

Moynihan, however, said afterward that he would not say how he will vote on Bork.

"I have the votes in New York to defeat him." Dukes said when told of Moynihan's response. "When I get with his staff in New York, I'll get what I want. It's strictly politics."

New York Gov. Mario M. Cuomo, who was greeted warmly by the delegates, said, "Now today we're confronted with the possibility that the Supreme Court . . . may be about to turn back the clock."

The governor was not directly critical of Bork, but said after his speech, "It is wrong, in my opinion, for a judge to go on the Supreme court . . . bench with his mind made up on abortion or any issues. If it becomes clear that he has already made up his mind, then he should not be on the bench.

"Can you call a strike before the pitch is thrown? Cuomo asked. "How can you make a decision without reading the evidence?

Bork's record opposing high court decisions in areas from affirmative action to abortion to voting rights, and his literal interpretation of the Constitution, have stirred opposition of civil-rights and feminist groups.

These Bork opponents fear that his replacing Lewis F. Powell Jr., who was often a crucial swing vote, would ensure a conservative majority on the Supreme Court.

[From the Washington Times]

Watching the Cement Crumble Under Stress

(By Raymond Price)

There's nothing inherently wrong with a senator's voting "no" on a Supreme Court nomination because of a principled disagreement over constitutional interpretation. But there's a great deal wrong when organized pressure groups mount a public campaign of lies and slander, spreading deliberate disinformation and stirring hysteria, in order to bring political pressure on members of the Senate to vote down a nomination even though they know the charges are false.

It's an even greater scandal when that campaign is run out of a "war room" (the operators' own terms) in the Senate Office Building itself, helpfully provided for the purpose by Democratic members of the Judiciary Committee, and carefully coordinated with the conduct of the committee's own hearings.

But that's what happened to the nomination of Robert H. Bork. The organized left hijacked the confirmation process, turning it into an exercise in gutter politics and using the latest techniques of distortion and manipulation.

It was a campaign consciously aimed at circumventing the normal deliberative processes of the Senate and substituting raw pressure from the streets, with vulnerable senators' constituents whipped into hysteria by a calculated campaign of lies.

If Judge Bork does lose the final floor vote, the campaign will have claimed his scalp. But it will then be doubly important to turn it into a Pyrrhic victory rather than a precedent.

What's at stake is the integrity of the process by which we choose the nine justices of that court on which we depend for the maintenance of our liberties. In the final analysis, the moral authority of that court is the bulwark of the Constitution, just as the Constitution is the bulwark of our liberties.

The key to the court's moral authority is its insulation from the crasser forms of partisan or electoral politics. And that's why the massive multimedia campaign against Judge Bork has been such an offense against both court and Constitution.

As Judge Bork himself put it in insisting on a Senate vote, "Federal judges are not appointed to decide cases according to the latest opinion polls. They are appointed to decide cases impartially according to law." If judicial nominees are treated like political candidates, "the effect will be to chill the climate in which judicial deliberations take place, to erode public confidence in the impartiality of courts and to endanger the independence of the judiciary."

In the course of a long intellectual odyssey, Robert Bork has left a trail strewn with words on paper—articles, speeches, debates. It's the mark of his restless, inquiring mind that these are rife with contradictions; he freely discarded ideas when, having tried them, he found them wanting.

But what The New Republic has colorfully described as his "wild ideological fusillades followed by midcourse corrections" were fired in his role as a practitioner of the controversial arts, as a professor, writer and lecturer, often to provoke further thought on his own part and that of others. As solicitor general and as a Circuit Court of Appeals judge, he has been a model of meticulous, restrained jurisprudence.

His "conservatism" has consisted primarily of a firm belief that the role of judges is to interpret and apply the law, not to make it.

As a vigorous advocate of judicial restraint, his sharpest criticism of the courts has been for overstepping their bounds and arrogating to themselves authority he believed they did not properly have.

This is not the record of a zealot out to impose his own agenda. It's the mark of a constitutionalist determined to preserve the authority of the Constitution and the integrity of the rule of law.

In examining the record of Judge Bork's earlier years as intellectual provocateur, a senator might genuinely conclude that appointment to the court would entail too great a risk. This could be a principled reason, even if mistaken, to reject the nomination.

But this is not the way the game was played.

The left made it an exercise in organized pressure-group politics that tossed truth to the winds and had nothing to do with principle.

President Reagan was correct when he called the get-Bork forces a "lynch mob." This blatantly political lynching of a Supreme Court nominee, of whom no less an authority than retired Chief Justice Warren Burger said none in the past half century had finer qualifications, must not be allowed to stand unchallenged—or unavenged.

Not for the sake of retribution, but for the sake of principle and precedent.

[From the Wall Street Journal]

The Bork Disinformers

As senators decide on Judge Bork, let's understand what former Chief Justice Warren Burger meant when he told the Judiciary Committee that there's never been a confirmation hearing "with more hype and more disinformation." Or what former University of Chicago Law Dean Gerhard Caspar meant by accusing the committee of "McCarthyite distortions." If Judge Bork loses, the lesson to us, and we're sure to important and well-informed parts of the public, will be that we have a political structure in which a group of intellectual charlatans can win by peddling mendacity and deceit on a massive scale.

Joe Biden, Teddy Kennedy and other moralizing senators relied on a tactic once called the big lie. They repeated their charges so often they sounded as if they must be true, when the truth is the precise opposite. In particular, they repeated to exhaustion that Judge Bork does not believe the 14th Amendment applies to women. What Judge Bork in fact said was that the due process and equal protection clauses apply to "all persons"—women, blacks, everyone. He said there should not be "strict scrutiny" of laws applied to blacks and a lower level of review for women, that the same test should apply to all.

The American Civil Liberties Union also used sleight of hand in a news release that "Judge Bork, in a 1985 speech, said it would be a good thing if religion were reintroduced into public schools." Judge Bork did give a speech observing that the "resurgence in the political assertiveness of religion-based movements" is a reaction to the court's "deliberate and thoroughgoing exclusion of religion." But nowhere did he endorse religion or school prayer. Asked to comment, an ACLU spokesman said its claim was "merely an extrapolation" from Judge Bork's speech.

Some of this "extrapolation" is by people who truly should know better. Over the past several days we've had several discussions with Harvard Law's Laurence Tribe over the letter that appears opposite. The Biden material on which he initially relied gave an incorrect reference saying Judge Bork dismissed the Ninth Amendment as a "waterblot." In the hearings, Judge Bork did use the phrase "inkblot," as follows: "I do not think you can use the Ninth Amendment unless you know something of what it means. For example, if you had an amendment that says 'Congress shall make no' and then there is an inkblot, and you cannot read the rest of it, and that is the only copy you have, I do not think the court can make up what might be under the inkblot."

What is at issue here is Mr. Tribe's pet project of using the Ninth Amendment as carte blanche for judges to create whatever new constitutional rights fit their fancy. Judge Bork does reject the notion "that under the Ninth Amendment the court was free to make up more Bills of Rights." But it is Mr. Tribe who is out of the mainstream; he surely knows the Supreme Court has never used the Ninth Amendment in the way he advocates.

Watching the anti-intellectualism of the assault on Judge Bork, we're reminded of the campus anti-intellectualism of the 1960s. In reaction to the universities' failure to defend reason or free speech, those who treasured these values founded the neoconservative movement in this country. Significantly, many of the people who reacted to those times by embracing conservative political ideas became the men and women who stocked the brain trust of the Reagan revolution.

Whether or not Judge Bork is confirmed, this shabby treatment of the nation's most distinguished legal scholar and jurist will not soon be forgotten. Both conservatives and liberals who hold dear the ideals of rational discourse and honest scholarship will be passionate in their outrage, and that passion is likely to have lasting intellectual and political effects.

[Letters to the Editor]

THE LYNCHING OF JUDGE BORK

I'm pleased to see the president is determined to follow through on his nomination of Judge Bork to the Supreme Court, not withdrawing it even though it appears the Senate will vote against the nomination.

The climate surrounding the nomination is that of an intellectual lynch mob. Sen. Kennedy, the American Civil Liberties Union, the National Association for the Advancement of Colored People and other elements of the liberal establishment have whipped their constituents into a frenzy of hate for this good man, whom I have known for 10 years, characterizing him as almost bestial in his disregard for basic liberties, his racism, his sexism, his determination to roll back the clock to Jim Crow laws and back-room, coat-hanger abortions.

It is no wonder that public-opinion polls show a majority of opposition to Judge Bork's confirmation, almost surprising that he has as much support as he has, given the imagery that has been conveyed to the public at large. It is no wonder that a mob of otherwise good, decent, fairminded senators has gathered around the willow tree, after Sen. Biden's drumhead court, watching Sen. Kennedy prepare the noose. As in a lynch mob, they do not yet feel a sense of shame, because of the comfort of the crowd itself.

By forcing the senators to vote, to put their names in the history book, the president is forcing these good men to dig deeper into their consciences before they give the final word to Sen. Kennedy to put the noose around Judge Bork's neck, and with a final shout kick the support from under him. They should have to watch their fellow citizen, knowing he is innocent of all the foul charges raised against him, dangle from the willow tree, twisting in the wind, and know that they did it to him. As with a lynch mob, a silence will follow, and these U.S. senators will have the rest of their lives to feel the gnawing guilt of what they have done.

JUDE WANNISKI,
Polyconomics Inc.

MORRISTOWN, NJ.

The controversy surrounding Judge Bork's nomination is further proof of Newton's Law of Politics, which states: "For every action there is an equal but opposite criticism." Perhaps Judge Bork can take comfort knowing that the vehemence of his opposition is testimony to the power of his work.

WILLIAM L. BASSETT, JR.

CLEARWATER, FL.

Opponents of Judge Bork's nomination to the Surpreme Court say he is outside the mainstream of judicial thought, and will therefore wreak havoc and cause dangerous upheaval throughout the land by overturning the court's balance of philosophy.

Logically, of course, their argument means Sens. Biden and Kennedy and others believe at least four of the eight other justices will consistently vote with Judge Bork, if he is to have the impact they dread.

But how in the world can Judge Bork be outside the judicial mainstream if half the other justices share his philosophy?

By opposing his nomination on the grounds he will wield influence in the court, Sens. Biden and Kennedy and others are acknowledging that Judge Bork stands squarely within the mainstream, for common sense tells us that the only possible way he can have an impact is if the mainstream agrees with him.

After all, not even Robert Bork can turn a 1-to-8 vote into law.

DAVIS JACKSON.

NEW BRAUNFELS, TX.

Mr. McCLURE. Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Idaho has yielded the floor.

The Senator from Delaware.

Mr. BIDEN. Mr. President, I yield myself 2 minutes.

Lynch mobs—I have heard that phrase time and again here. It is preposterous. Let us talk just for the minute and a half that I have given myself about lynch mobs, public opinion polls. When the press started taking public opinion polls, Judge Bork was doing very, very well with the American public, until he testified. Then 409 million people watched him on television for 32 hours and when it was all over the press did more polls, not the Senators, and the majority of the American people in the North, the South, the East, and the West, said, "We do not like Judge Bork. He might be a fine man. We do not want him on the Court."

Senator BIDEN did not do that. The Senate did not do that. The committee did not do that.

For 32 hours he testified with the cameras on and if what the press people tell me is correct up to 40 million people watched him.

I yield myself an additional minute.

Forty million people watched him. He spoke. Time and again I raised the gavel and asked: Are you certain, Judge, you have had enough time to respond to the questions?

And when it was all over, I said to Judge Bork, Now, Judge Bork, do you think you got a fair hearing?

He said yes.

Anything else you want to say, Judge Bork?

No.

Anything at all you want to clarify?

No.

Then the public opinion polls were taken and then the American people said Judge Bork should not be on the Court.

That should not in any way direct us here how we should vote. I do not care if all the American people say he should not be on the Court, if I thought he should be I would vote for him on the Court, and vice versa.

That is my sworn responsibility.

But this notion I heard this morning, lynch mobs, and I heard from another Senator this morning, $15 million ad campaigns, where I come from they call that making things up out of whole cloth. It is bizarre. It is ridiculous.

Look at the record. Look at the polls that proponents of Judge Bork love to cite so much. We are not citing; they are citing.

After 32 hours of his testimony out of his mouth, his own words, the American public opinion polls changed.

I yield the floor. I yield to my friend from Michigan 5 minutes.

Mr. RIEGLE. I thank the chairman of the committee for yielding to me.

Mr. President, I rise today to indicate my decision to vote against Judge Bork's nomination to the Supreme Court.

A growing bipartisan majority has reached the same conclusion here in the Senate.

I find it very striking that five of our Republican colleagues have come out in opposition to Judge Bork. It was obviously very difficult for them to do so, given the fact that the nomination comes from a President in their party. I applaud them for their independence of mind and being willing to cast the vote that their conscience dictates.

But I think it is a very powerful showing of why this nomination is defective to have distinguished Senators on the other side of the aisle standing up with the rest of us to oppose Judge Bork.

Now, this is President Reagan's third nominee to the Supreme Court.

Like my colleagues I voted to confirm the first two, Sandra Day O'Connor and Antonin Scalia, both highly respected, conservative jurists.

It is significant I think that both O'Connor and Scalia were confirmed by the Senate without a single dissenting vote.

The Bork nomination, however, is profoundly different. It is highly controversial. It has split the Senate and caused great division across the country.

For the first time in history the American Bar Association's judicial screening panel was divided in its endorsement vote with several panel members finding him unqualified and voting that he not be seated.

This deep concern about Judge Bork stems from his long-held and emphatically stated views on many key subjects, including civil rights, the right to privacy, economic rights, women's rights, executive branch power, economic concentration, the environment and many others.

For example, Judge Bork does not believe that individuals have a constitutional right to privacy even in their own homes. This view could lead to a tremendous expansion of Government power into people's lives.

On civil rights his views over a lifetime show a remarkable insensitivity to minority people, and it is not surprising that these groups find the prospect of Judge Bork on the Supreme Court personally threatening.

These deep anxieties are something that Judge Bork has created himself with strongly written and spoken words over many years that do suggest that the clock be turned back to notions long since rejected by our citizenry and our legal system.

And one only needs to read the powerful testimony of William Coleman, Transportation Secretary, in a previous Republican administration, and former Congresswoman, Barbara Jordan, to understand the power of the apprehension and the soundness for that apprehension coming from people in minority circumstances.

His stated ideas about changing long-established views expressed by the Supreme Court have caused many noted individuals and national organizations to come forward to oppose his nomination. It is highly unusual to find such diverse groups as the YWCA, the Sierra Club, the National Council of Churches and the National Council of Senior Citizens joining many other groups in coming out in active opposition to a Supreme Court nominee. This is a crucial vacancy on the Supreme Court and one of extraordinary importance to every citizen of our land.

I believe this position has to be filled by someone capable of hearing and holding the confidence and support of a very broad cross-section of the American people.

I think there are many prospective nominees today who are available that could unite the country and not cause such intense division and anxiety.

Former Senator Howard Baker is just one example, but there are many others.

It is essential that the deciding vote on a divided nine-person Court be a person of extraordinary legal skill with a mind fully open to hearing and weighing the complex arguments presented to the Court, because these cases and decisions go to the very heart of what life will be like for our people now and in the future.

The Supreme Court is also unique that the judge is also a jury. As in any jury trial it is vital that a member of the jury not have a closed mind on the issue being presented before the facts in the case are even heard.

After hearing Judge Bork's testimony before the Judiciary Committee and studying his legal writings over the years, it is clear he has rigid views, in some areas very extreme views on many complex legal issues, and I have serious doubts as to whether he can give a fair evaluation to a case if he has already made up his mind on the issue.

If a judge comes to the Court with a fixed view, then the whole process of opposing sides presenting a case is rendered meaningless.

I am also concerned about his central role in the Saturday night massacre.

The **PRESIDING OFFICER**. The Senator's 5 minutes have expired.

Mr. **RIEGLE**. I ask my colleagues for 3 additional minutes.

The **PRESIDING OFFICER**. The Senator from Delaware?

Mr. **BIDEN**. I yield 1 additional minute.

Mr. **RIEGLE**. I thank the Senator.

I think his role in carrying out the firing of Archibald Cox was clearly part of an effort to obstruct justice at the time, as later events showed us.

Finally, let me say this in reference to some of the charges that have been made about the handling of this nomination:

There has been no lynch party here. None at all. This man has hung himself, and he has done it with his own words and writings of an extreme sort over many, many years. That is what has happened here. That is why there are at least five Republicans on the other side of the aisle that will vote against this nomination and an overwhelming number of the Members on this side of the aisle.

This man does not have the confidence of the American people because he is just too far out. And we cannot afford to have that on the Supreme Court, particularly at this time.

So I hope the President will send us a nomination that we can confirm. It is important that we move ahead and fill this vacancy. I am confident that, if a sensible nomination is made, it will be confirmed as we saw in the cases of O'Connor and Scalia. I am very hopeful we will see that done soon.

I thank the Chair and yield the floor.

The **PRESIDING OFFICER**. The Senator from Michigan yields the floor. Who yields time?

Mr. **THURMOND**. Mr. President, I yield 10 minutes to the distinguished Senator from Kansas.

The **PRESIDING OFFICER**. The Senator from South Carolina has yielded 10 minutes to the Senator from Kansas.

Mrs. **KASSEBAUM**. I thank the ranking member of the Judiciary Committee.

Mr. President, I want to express my support for the nomination of Judge Robert Bork as an Associate Justice of the Supreme Court. I am not a lawyer. I am not a constitutional scholar. I have not been one who has been weighing this decision for weeks of uncertainty.

I have looked at Robert Bork and have come to the conclusion he is an honest and decent man of great ability. While I disagree with some of his past views and even with some of his current thinking, I see no evidence that Judge Bork is a radical or an extremist who should be disqualified from service on the Court.

Mr. President, it goes without saying that this is a highly controversial nomination. It also is the first Supreme Court appointment to be subjected to all of the techniques we have been forced to accept in our political campaigns—30-second television ads, shallow sloganeering, distortion, innuendo, and the hysteria that can be generated only by skilled use of the mass media.

Judge Bork, a man of great intellect and substance whose views demand careful and reasoned debate, has been reduced to a symbol. Judge Bork's record, which includes genuinely controversial statements as a private citizen and complex legal decisions as an appeals court judge, has been reduced to a prop for the use of competing factors.

Mr. President, I do not question the right of each Senator to make an independent decision about a nomination of this importance—it is imperative—nor do I question the grounds other Senators have used in explaining their decisions, I am disturbed, however, by the terms of the public debate over this appointment, elements of which have shown up in our discussions in this Chamber.

One of the most troubling features of this public debate has been a profound distortion of the role of the judiciary. This distortion comes from a deliberate, or inadvertent, connection that some make between political motives and judicial decisions.

Mr. President, judges in our society frequently must make difficult and complicated decisions that clearly have political implications. It also is not unknown for a judge to apply his own political agenda to his interpretation of the law. However, we should not casually assume that any and every decision a judge makes is based on his political views.

For example, a judge might be called upon to decide whether the Nazi party, or the Communists or some other radical group, has a right to freedom of speech. In upholding that right, the judge clearly is ruling in favor of Nazis or Communists. We should not, however, make a leap to the conclusion that the judge therefore must support Nazis or Communists.

Unfortunately, Mr. President, this is the very kind of distortion that has too frequently entered the debate over Judge Bork. Some focus entirely on the result of his legal opinions and ignore or deliberately twist the legal reasoning that underlies his decisions.

In the shorthand used in this debate, if Judge Bork had ever ruled that Nazis have a right to freedom of speech, he would now be accused of supporting Nazis. The basis for such a decision—the constitutional guarantee of freedom of speech—would be ignored as legalistic or mechanistic reasoning that was used as mere window dressing for his supposed personal prejudice.

A real-life example of this kind of distortion comes from a case we all have now heard a great deal about—Griswold versus Connecticut. In this case, the State of Connecticut passed a law banning the use of contraceptives even by married couples. The Supreme Court struck down this law as an unconstitutional violation of the right of privacy and the case became a precedent for other key decisions on the right of privacy, such as Roe versus Wade.

Judge Bork has strongly disagreed with this decision. He has said the Connecticut law was nutty and he could not personally support it, but he said he could find no general right of privacy in the Constitution that would bar a State legislature from enacting such a law. In Judge Bork's view, Congress or a legislature should be free to make political, policymaking decisions so long as they do not violate a fundamental constitutional principle.

Mr. President, I am no expert on constitutional law, but I suspect we could argue the merits and demerits of Griswold versus Connecticut, and Judge Bork's view of that decision, for weeks. In fact, legal scholars have been arguing about it since it was handed down, and there are eminent, highly respected scholars on both sides of the issue.

However, in fairness to Judge Bork, and to ourselves, we should keep the debate on the real issue, not the phony issues raised in television ads and other places. It is preposterous to suggest that Judge Bork's view of Griswold demonstrates that he wants to put Federal police in every bedroom in America. It also is preposterous to say that Judge Bork believes that Americans have no right to privacy when he in fact has said that the Bill of Rights provides specific protections to our privacy.

What Judge Bork has said, as I understand it, is that there is no general constitutional provision that prohibits Government action against some types of private behavior. This certainly is a conservative view but it is not radical or extremist.

The real issue, and it is a difficult one, is where to draw the line. What is appropriate Government action and what is barred? Judge Bork believes this is a political and moral question that must be answered by our political institutions, the Congress and the legislatures, not from the bench unless government is violating protections laid down in the Bill of Rights.

This view is the core of Judge Bork's philosophy of judicial restraint. That philosophy and Judge Bork's use or misuse of it in making judicial decisions deserves full and fair examination. It also deserves more than shortcut arguments that Judge Bork believes legislatures have a right to pass nutty laws, therefore he wants more nutty laws.

In short, Mr. President, we should weigh the whole record—Judge Bork's statements, his actions as Solicitor General, and his decisions as an appeals court judge.

In such vital areas of the law as civil rights, we should not limit our analysis to Judge Bork's provocative statements in 1963 opposing the Public Accommodations Act or his criticisms of the legal reasoning used to strike down poll taxes, literacy tests, and other laws we as a society have found objectionable.

Judge Bork's past statements in this area raise legitimate concerns, but those concerns can only be addressed by carrying the analysis through to the present. We should also weigh the fact that as Solicitor General in the 1970's, Judge Bork in several Government actions argued for a broader and fuller application of our civil rights laws to root out discrimination—broader and fuller, in fact, than the Supreme Court was then willing to go.

We should also weigh his record on the bench in handing down decisions that affirmed the rights of minorities and women for equal opportunity and equal pay wherever it was denied, whether a private airline, the Department of State, or the U.S. Navy.

Judge Bork's record on civil rights is complex and may be open to fair attack, but it deserves more than distorted descriptions of him as a defender of poll taxes and an advocate for returning to the days of segregated lunch counters.

Mr. President, I believe that the best indicator we have for how a Justice Bork would proceed on the Supreme Court is his record of the past 5 years as a member of the D.C. Court of Appeals. In 1982, we elevated Judge Bork to that high bench without a single dissenting vote, despite all of the past statements, articles, and writings that now have assumed such disproportionate importance in this debate.

I am not a great fan of statistical analysis of judicial decisions, but it seems clear to me that over the past 5 years, Judge Bork has compiled some impressive statistics.

Of the 106 majority opinions written by Judge Bork, none has been overturned by the Supreme Court. Of the 295 other majority opinions Judge Bork joined, none has been overturned by the Supreme Court.

Whatever one wants to make of such statistics, I think it would be difficult to make a case that Judge Bork is a radical extremist. It would seem odd to me that a radical could vote with the circuit court majority 94 percent of the time and never be reversed by the Supreme Court.

Some dismiss these statistics as simply evidence that Judge Bork has been bound, as an appeals court judge, by Supreme Court precedents. In short, Judge Bork's record demonstrates that he has followed the law and Supreme Court rulings, with near perfect fidelity, and yet he somehow would do just the opposite if confirmed to the Supreme Court.

Mr. President, in my own experience, an extremist or an ideologue never cares at all about maintaining the status quo or guarding precedent. The essence of a radical is the belief that he, and only he, is right. He cares nothing about the status quo except to bend it to his viewpoint, regardless of who opposes him.

Judge Bork's record demonstrates that he is not such a radical or extremist. It demonstrates, instead, a clear understanding of the law and of the role of the courts and great respect for both. This record indicates that while Judge Bork is on the conservative side of the spectrum, he is clearly within the mainstream of current judicial thinking and should be confirmed by the Senate.

The PRESIDING OFFICER. Who yields time?

Mr. BIDEN. Mr. President, I yield to the distinguished Senator from Maryland, 5 minutes.

Ms. MIKULSKI. Thank you Mr. President. I rise to oppose the confirmation of Robert Bork to the Supreme Court. I do so after the most careful consideration of Mr. Bork's testimony before the Judiciary Committee. I reviewed that testimony, as well as the testimony of several of the other witnesses who appeared before the committee.

The committee hearings and report, and the debate now proceeding in this body, vividly reflect the importance of this nomination, whatever the outcome may be. We have, for several months now, been engaged in a debate about the meaning of our Constitution—about its relevance to American society as it is today, has been in the past and as we hope it will be in the future. This nomination has forced us to reexamine the great truths our forefathers held self-evident: That all persons are created equal and endowed with inalienable rights to life, liberty, and the pursuit of happiness.

Surely, the importance of this nomination is apparent from the painstaking manner in which my esteemed colleague from Delaware, Senator BIDEN, conducted the Judiciary Committee proceedings. For 30 hours, the committee took testimony from the nominee himself.

Who could possibly be in a better position than the nominee himself to explain his views and philosophy, to demonstrate his judicial temperament, to establish for all concerned his understanding of and commitment to the freedoms we all cherish: Freedom of speech, freedom from government interference in the intimate details of our lives. Mr. Bork failed to persuade me that his view of the Constitution in any way corresponded to my own.

But Mr. Bork was not alone before the committee. Overall, the committee took testimony from 112 witnesses: 62 supported the nomination, 48 opposed it, and two presented the evaluation of the American Bar Association's Standing Committee on Federal Judiciary. All told, the committee heard 87 hours of testimony. This remarkable record prompted the ranking minority member of the committee, Senator THURMOND, to acknowledge that the hearings had, indeed, been fair.

Much has been said about whether the confirmation process through which Mr. Bork has gone has been a fair one. The extraordinary efforts made by the committee to insure a fair process answer that question with a resounding yes.

I submit, Mr. President, given the record, that the only issue now remaining is the very same issue we all began with. For myself, and I believe for the majority of my colleagues, that issue always has been whether Mr. Bork, if confirmed to the Supreme Court, would preserve our basic constitutional rights, both those that are explicit and implicit in the Constitution.

Central to our system of government, and to the great compromises that gave birth to this system 200 years ago, was the principle that ours is a Government of limited power. Rights and freedoms reside in the individual, not in the Government. Mr. Bork would turn that principle on its head, and would turn back the clock on 200 years of progress on everything from civil rights to religious freedom, to worker protections.

As I indicated 3 weeks ago when I first announced my position on this nomination, my guidepost in this matter has been the Constitution. It is perhaps fitting that in this year, the 200th anniversary of that great document, we should be engaged in a great debate about what the Constitution means. This nomination has focused our attention on the core constitutional values and guarantees that define the very role of government in our society: Freedom of speech, freedom of religion, the right to privacy, and equal protection of the law.

Those same values translate the guarantees of equality and liberty on which this great Nation rests, into the rule of law by which we live.

As I see it, it is the paramount responsibility of the Supreme Court to protect and preserve the equality and liberty of which the Constitution speaks. It is the Supreme Court that breathes life into the promise of those words.

I see no place on the Court for someone who would allow an employer to force its women employees to choose between being sterilized and keeping their jobs.

I see no place on the Court for someone who would close the courthouse doors to the veteran and the handicapped, denying that they have standing to sue in a court of law.

And I see no place on the Supreme Court for someone who views equality—whether involving questions of race or gender or lineage—as an intellectual exercise rather than as a principle of profound importance.

It is for these reasons that I see no room on the Supreme Court for Robert Bork.

Of the thousands of votes I will cast as a U.S. Senator, a vote on the confirmation of a nominee for the Supreme Court is among the most important and far reaching. It is the only vote I will ever cast that is irrevocable and irretrievable.

I approached this appointment with an open mind about the nominee. I have become convinced, however, that the appointment of Robert Bork to the Supreme Court would be a tragic step backward on the long, hard road this Nation has traveled to fulfill the promise of our Constitution. I believe we cannot afford such retreat. Neither can we afford to gamble with the precious constitutional guarantees that we Americans cherish. We, you the American people, deserve better.

I yield the floor.

The PRESIDING OFFICER (Mr. ADAMS). The Senator from Maryland has yielded the floor. Who yields time? The Senator from South Carolina?

Mr. THURMOND. The Senator from South Carolina yields 10 minutes.

The PRESIDING OFFICER. The Senator yields 10 minutes. The Senator from Wisconsin is recognized.

Mr. KASTEN. I thank the distinguished Senator for yielding.

Mr. President, I support Judge Bork's nomination to the Supreme Court, as I supported his nomination to the D.C. Circuit Court 5 years ago. Five years ago I was joined by 97 of my colleagues in confirming then-Professor Bork to the circuit court. There was no opposition.

Since I have been in the Senate, I have voted to confirm two Supreme Court Justices. Both were confirmed unanimously. One was Sandra Day O'Connor. The other was Antonin Scalia.

Both O'Connor and Scalia are "conservatives." Both are advocates of judicial restraint. Both adhere to the view that it is the role of the people's elected representatives to make laws; the role of judges is to interpret the law and the Constitution.

Mr. President, what is the difference this time?

Judge Bork's intellect and incisive analysis of the Constitution on the D.C. circuit have been widely praised, even by his opponents.

Have his opinions been overruled by the Supreme Court? No—not one opinion Judge Bork has been associated with on the D.C. circuit has been overturned by the Supreme Court. Not 1 out of over 400 cases.

I am not a lawyer. I am glad to leave detailed analysis of legal issues to those who have training in that field. But I have been here long enough to know when a nominee is being judged on his qualifications and when he is not.

Judge Bork has not been. He has not even been judged on his political views or the merit of his judicial philosophy. He has been subjected to a massive, highly organized campaign designed to convince Senators of a number of things about Judge Bork which are not now and never have been true.

It has been asserted repeatedly that Judge Bork is insensitive to the civil rights of blacks; is insensitive to the rights of women; takes a narrow view of the first amendment; opposes separation of church and state; is an automatic vote for business against consumers, and for government against the individual; does not recognize constitutional protection of privacy.

The record does not support any of these contentions. Nor does the record support the much more extreme charges that have been raised in the campaign against Judge Bork: That he favors forced sterilization of women, rogue police breaking down doors in the middle of the night, back-alley abortions, and government prohibition of family planning.

The record shows that these charges can only be the products of malice or fantasy. If Judge Bork were running for political office, he could respond in kind.

But Supreme Court Justices are not politicians. This Senate should not treat nominations to the Court as occasions for political campaigns. Senators should decide on Supreme Court nominations based on the record of hearings in the Judiciary Committee and on debate here on the Senate floor.

But this has not happened. Everyone has said that the hearings in the committee were fairly conducted. But

I wonder how much significance that has.

Many Senators announced their opposition to Judge Bork within days after the hearing ended, before the report had even been published. And immediately after they announced their positions, we started hearing that the Senate debate should not take much time—after all, most Senators had already announced their positions!

The question must be asked, did Senators make up their minds based on the hearings, or in response to the public campaign against Judge Bork?

Throughout his career in private practice, in the Justice Department, and as a Federal judge, Robert Bork's primary concern has been to uphold the constitutional process. A court decision is never right or wrong to him simply because he agrees or disagrees with its conclusion—what counts above all is whether the court arrived at its conclusion for reasons soundly based on the Constitution and on the law.

Mr. President, I submit that this is precisely what the Supreme Court is supposed to do.

It would be easy to hold, as do so many of Judge Bork's detractors, that what counts is the result of a court decision—if one doesn't agree with the result, the decision is wrong and the court "insensitive." These detractors appear to have two things in common:

First. They strongly believe in policies that most Americans and their elected representatives don't agree with. Indeed, Judge Bork's most vehement critics come from the extreme of the American political spectrum. It is no surprise that they favor activist judges creating new rights and overruling the people's more conservative elected representatives. It is the only way they can win.

Second, they take the constitutional process for granted. I believe this is a chilling thought. American democracy is founded on this process. It has seen us through two centuries of democracy—a history unequalled anywhere in the world.

It makes as much sense to take the land, water or air of this country for granted as to disregard the fundamental principles of the constitutional process—respect for the intent of the framers of the Constitution and respect for the principle that when the law needs to be changed it is the job of the legislature to change it.

These are the principles that lie at the core of Judge Bork's record. Because he believes in these principles, I am sure that he will not arrive at some of the conclusions that his extreme critics would like him to. I am sure I will disagree with some of his conclusions myself.

But I am not looking for a Supreme Court Justice who will always agree with me. I am not looking for a Justice whose decisions I can predict with perfect accuracy 10 years down the road.

I am looking for the ablest, soundest, most forceful legal mind we can find to uphold the constitutional process on the Supreme Court. Mr. President, Robert Bork has that kind of legal mind.

To reject Judge Bork's nomination would do the Court no service; it would do this Senate no honor. He should be confirmed.

The PRESIDING OFFICER. Who yields time?

The Senator from South Carolina.

Mr. THURMOND. Mr. President, I yield 1 hour, or as much of that time as may be required, to the Senator from Missouri.

The PRESIDING OFFICER. The Senator from Missouri, Senator DANFORTH, is recognized for 1 hour.

Mr. DANFORTH. Mr. President, I suppose when any Senator takes the floor of the Senate he hopes that somehow his speech will be a momentous event that will change people's minds and will influence the outcome of a vote. I have no such illusions whatever. I know that most, maybe all Senators, have now taken public positions on how they are going to vote on this nomination, and that the result is a foregone conclusion.

Yet this seems to me to be an immensely important subject and, therefore, I have asked the Senate's indulgence and have asked that 1 hour be reserved for me. I want to assure everyone that I am not going to take any unnecessary time, but I do want to say what is very much on my mind.

Mr. President, I think that what has happened to the Senate and what has happened to Judge Bork is most unfortunate.

I think that it is unfortunate that we have cast aspersions on the reputation of this very good person, and I think that it is unfortunate that all of us—I am not pointing at one Senator or one side of this argument—have succeeded in transforming the nomination and the confirmation of a nominee to the U.S. Supreme Court into quite a political process in which everything goes, apparently, to win your point, either for or against Judge Bork.

It has had the earmarks of a political campaign, including 30-second television commercials and full-page newspaper ads, computerized telephone calls, and the like.

I think what has happened is unfair to Judge Bork, and I also think that it affects—threatens, really—the independence of the judiciary and particularly of the Supreme Court, and, therefore, I think it deserves our attention today.

Mr. President, when Judge Bork was first nominated by the President, I have to say I looked forward to the hearing in particular, and also the debate on the floor of the Senate, with a great deal of anticipation, because I thought that we had a real treat in store for us as a country. I thought we had the opportunity on nationwide television—because the hearings were televised gavel to gavel—to consider a very fundamental question for this country.

The question was the role and the scope and the power of the U.S. Supreme Court in particular, and of the Federal judiciary in general. I thought it was going to be a wonderful debate for several reasons. First, because Judge Bork is so bright and so articulate that I believed he would present his views with great force, with great intellectual power, and indeed he did. And I also believed that it was fitting that this debate on the role of the Supreme Court take place during the bicentennial year of our Constitution, because the fundamental constitutional question is, as it has always been, where does decisionmaking power reside in the Government? To what extent is it in the judiciary? To what extent is it in the legislative branch? To what extent is it in the executive?

I believed that this nomination and this televised hearing and this articulate spokesman for a point of view would give us an opportunity in our bicentennial year to reflect on the question of judicial power.

I believed it was an important opportunity to do that because, as Judge Bork himself wrote not too long ago, "We appear to be at a tipping point in the relationship between judicial power and democracy."

We appear to be at a tipping point because the membership of the Supreme Court, the votes on the Supreme Court are in a balance and because, increasingly, questions are raised throughout the country about the role of the judiciary and about the role of the Supreme Court. So for all of those reasons I looked forward to this process with tremendous anticipation.

Of all the people in this country, Robert Bork is perhaps the foremost advocate of the concept of judicial restraint. Now, the concept of judicial restraint is not the only position in American jurisprudence. There is a range of thinking on what restraints, if any, should exist with respect to the Supreme Court. Some people believe that desirable objectives for the country must be achieved one way or another, and if they are not to be achieved through the legislative process then the Court should be active. That is not a sinister position. That is a position that has been taken by a lot of people. It has a distinguished lineage. But Judge Bork has been a person who has advocated a restrained Federal judiciary as opposed to an active

Federal judiciary. Judge Bork has written:

> To the degree that the Constitution is not treated as law to be interpreted in conventional fashion, the clash between democracy and judicial review is real. It is also serious. When the judiciary imposes upon democracy limits not found in the Constitution, it deprives Americans of a right that is found there, the right to make the laws to govern themselves. As courts intervene more frequently to set aside majoritarian outcomes, they teach the lesson that democratic processes are suspect, essentially unprincipled and untrustworthy.

That statement is the essence of Judge Bork. He views the issue as one concerning the power of the judiciary as opposed to the power of elected officials, the legislative branch of both the Federal and the State government, to make decisions relating to the values of the country. Judge Bork believes, and has been very forceful in stating his belief, that unless it is very clear that the Constitution precludes elected officials from acting, then the will of the people should be carried out through elected officials and not by appointed judges exercising their own philosophical beliefs.

Judge Bork also wrote:

> Judges sometimes act because their conscience is shocked—even though the Constitution doesn't give them the power to act. In such cases, they're overriding democratic process in ways they are not authorized to do.

In other words, what Judge Bork has said is that it is not enough that a Federal judge is trying to be a fair person or a good person or do the right thing or the decent thing. That is not sufficient. If democracy is to work, even the most well-meaning judge must restrain himself even against the most ignorant legislature. The question is not, according to Judge Bork, the wisdom of the legislature. The question is one of power. And he believes that unelected officials, judges, should not be supplanting their own views on political matters in place of the views of people who are elected and serve in the legislative branch of Government.

That is what the debate should have been about, Mr. President, in the opinion of this Senator. That is what we should have been discussing: what is the role of the Supreme Court? What is the power, what is the restraint to be applied by the Court? If a court expands its interpretation of the Constitution, it thereby can restrict what the legislative branch can do. It was Justice Hughes who once said that the Constitution is what the Supreme Court says it is. The Court can interpret the Constitution any way it wants. We cannot do anything about it. And so the issue is the degree to which a judge is willing to replace the views of the elected officials with his own views. Will he be restrained by the words of the Constitution or, instead, will he attempt to read novel meanings into the Constitution so as to give greater latitude to its own opinions.

Now, Judge Bork's view of judicial restraint has been described as extremist, as far out, but it has a very, very distinguished heritage in our country. Justice John Marshall said that the words of the Constitution are not to be extended to, as he put it, "objects not contemplated by the founders."

Oliver Wendell Holmes said:

> I think that the proper course is to recognize that a State legislature can do whatever it sees fit to do unless it is restrained by some expressed prohibition of the Constitution of the United States or of the State, and that courts should be careful not to extend such prohibitions beyond their obvious meaning by reading into them conceptions of public policy that the particular court may happen to entertain.

Justice Felix Frankfurter wrote:

> The Supreme Court for about a quarter of a century has distorted the power of judicial review into a revision of legislative policy, thereby usurping powers belonging to the Congress and the legislatures of the several States.

With increasing frequency, a majority of the Court have not hesitated to exercise a negative power over any legislation, State or Federal, which does not conform to their economic notions.

Justice Hugo Black wrote:

> There is no provision in the Constitution which either expressly or impliedly vests the power in this Court to sit as a supervisory agency over acts of duly constituted legislative bodies and to set aside their laws because of the Court's belief that the legislative policies adopted are unreasonable, unwise, arbitrary, capricious, or irrational. The adoption of such a loose, flexible, controlled standard for holding laws constitutional, if ever it is finally achieved, will amount to a great unconstitutional shift of power to the courts which I believe and am constrained to say will be bad for the courts and worse for the country.

Mr. President, do not those various quotes from some of most distinguished people ever to sit on the Supreme Court of the United States sound very much like the basic writings of Robert Bork? That is what the debate should have been. What a debate it would have been.

Mr. President, I am absolutely convinced that had we focused our attention on the fundamental question of the power of the Court, Judge Bork would have won this nomination. He would have won the nomination because I am convinced that most Members of the U.S. Senate agree that an unfettered judiciary is a threat to democratic principles, and I believe that an overwhelming majority of our constituents share the same belief.

When just a matter of weeks ago, a U.S. district judge in Kansas City decided that he would impose taxes, both property and income taxes, on the people of the Kansas City school district to finance a desegregation plan, there was a widespread outcry—not against the idea of taxation, but against the idea of taxation without representation. Many, many people believe that the judge had extended himself beyond the proper role of the judiciary, and I believe that the basic premise of Judge Bork, the premise of judicial restraint, is one that would have resonated in this country if that debate had been allowed to go forward. But, of course, it was not. It was not allowed to go forward. It was transformed into something else, because those who wanted to defeat Judge Bork were willing to use standard political methods in order to attain his defeat.

At the beginning of this process, in fact even before Judge Bork was nominated, Kate Michelman of the National Abortion Rights Action League said, "We're going to wage an all-out frontal assault like you've never seen before on this nominee, assuming it's Bork." That is what it became. It became something other than an argument about judicial philosophy.

It became an all-out frontal assault on Judge Bork, including the ginning up of interest groups just the way we do it here in the Senate, just the way all Members of the Senate do it when, for example, we have a tax bill and you want to defeat an amendment, or you want people to support an amendment, and you try to gin up public support for your point of view. That is exactly what was done with the judicial nomination. I do not know that it has ever been done with a judicial nomination before. Maybe it has. It was done with this one—frontal attack, and a frontal attack waged by various groups. I do not deny them the right to do it. But I say that it was peculiar, I think, when it took place with respect to a judicial nomination.

There was an article several weeks ago in the Boston Globe. And the article reports that one of the most distinguished and highly respected Members of this body, a man of obvious national reputation, Senator KENNEDY, got on the phone last summer, and he made a whole series of phone calls. He made phone calls to black politicians in the South. He made phone calls to the Southern Christian Leadership Conference immediately before its convention began. He made calls to several dozen major labor leaders in the country enlisting their support in the campaign against Judge Bork.

So all of these groups were enlisted, and the basic basis I think of their opposition to Judge Bork was that he was portrayed to them as being a person who threatened the rights of blacks and the rights of women. I do not know that the words "racist" or "sexist" were ever used to describe him. I think it was probably more subtle than that. But that was the innuendo.

That was the clear meaning of the message against Judge Bork. That was the clear meaning of the newspaper ads that were taken out by the various groups that opposed him. Judge Bork will "turn the clock back." Judge Bork will "open old wounds." Judge Bork is a "judicial extremist." As Senator KENNEDY himself said, "Robert Bork's America is a land in which women would be forced into back-alley abortions, blacks would sit at segregated lunch counters, rogue police could break down citizen's doors in midnight raids, schoolchildren could not be taught about evolution, writers and artists could be censored at the whim of the Government, and the doors of the Federal courts would be shut on the fingers of millions of citizens;" usual possibly excessive statements by politicians. We all do this kind of thing all the time. But people believed it. And people were frightened by it.

Joseph Rauh, counsel to the Leadership Council on Civil Rights, wrote:

> Judge Bork has made crystal clear his positions against minority rights, women's rights, criminal defendants' rights * * * privacy generally, and abortion choice in particular.

In the words of the Judiciary Committee's report, "Judge Bork's view of the Constitution disregards this country's tradition of human dignity." And people were frightened. Blacks were frightened. A lot has been written about this, how blacks, particularly in the South, went to southern Members of the Senate and said, "We elected you, and we are calling in the chips." Women were frightened. But a lot of other people were frightened, too, because you do not have to be black and you do not have to be a woman not to want some crazy person on the Supreme Court of the United States, not to want somebody who you think may be a racist, may be a sexist, may be opening old wounds, may be an extremist. None of us want that.

So the polls—interesting, is it not, that public opinion polls are taken for a Supreme Court nominee? The polls began to turn and the momentum to shift because frightened people in this country, their fear stirred up by telephone calls and by ads, implored us, "Please don't confirm the nomination of this person who is against basic civil rights and basic human dignity."

That was the picture of Robert Bork. It was not an argument anymore about judicial activism versus judicial restraint. It was not philosophical to any degree. It was a question of, "Stop this terrible person. Stop him at all costs."

People who have known Robert Bork for years could not believe what was happening to him. Week before last, a friend of mine at law school, one of the brightest people in my class, a liberal Democrat—we both studied under Judge Bork at Yale Law School. We knew him in his early days as a professor. We knew him when we were writing all this stuff that has been criticized. This friend of mine, this bright, liberal Democrat, said to me one night: "What have they done to Bob Bork? Such a decent man."

It is really remarkable, I think, Mr. President, that that same note from people who knew him—what have they done to Bob Bork?—was repeated by so many people.

Twenty-three people in the Solicitor General's office, the people who worked with Judge Bork when he was Solicitor General, wrote a letter, and the letter they wrote said: "The Robert Bork we know bears no resemblance to the image of a closed-minded ideologue that some have sought to foster." No resemblance to the image that has been fostered about him.

The wonderful testimony of Jewel LaFontant before the committee: a black woman who was Deputy Solicitor General under Judge Bork. She said, "I must say that I do not recognize the Judge Bork I know from so much of what has been said."

Then, that beautiful op-ed piece in the Washington Post written by Robert Bork, Jr. What father would not have his heart swelled to be having a son write about him in such a way? The basic thrust of the piece was, just as my friend at law school said, what have they done to Bob Bork? What have they done to him?

Mr. President, at the same time that this picture is being painted of this grotesque person—"the Frankensteining of Robert Bork," as the Wall Street Journal put it—at the same time that this monster was being painted, the opposite position, the rebuttal, was being downplayed. Jewell LaFontant did testify in the Senate Judiciary Committee, but she testified over the lunch hour. Only two Senators asked her questions, both of them Republicans.

Then there was the New York Times story, of course, about Prof. John Baker and the phone call he received, and I am not going to dwell on it.

The St. Louis Post Dispatch this morning wrote an editorial, and the headline was, "It Was Wrong, But It Didn't Matter." Mr. President, injustice does matter. Even little bits of injustice matter.

Mr. President, the attack on Judge Bork was based very largely on Law Review articles that he wrote back when he was teaching at Yale Law School. It is the job of a law school professor to write. Their tenure depends on it, usually. It is the job of a law school professor to write articles, and it is the nature of those articles to critique opinions of the U.S. Supreme Court. That is what law school professors do. Law school professors do not write articles saying, "Well, the Supreme Court was right again." It is not done. Instead, they write articles criticizing the Supreme Court, criticizing its reasoning.

That is what Robert Bork did. He did it repeatedly. He did it very powerfully. He criticized the reasoning of the Supreme Court. He criticized the reasoning of the Supreme Court in the case of Griswold versus Connecticut, and people say, "Oh, here's a person who is against privacy." He is not against privacy. He criticized the Griswold case. Everybody criticized the Griswold case at the time.

When Griswold was decided, Mr. President, it was almost universally viewed as a very quirky case by the U.S. Supreme Court. Justice Black, for one, wrote a very strong dissent in Griswold versus Connectiut. Law review articles blossomed, criticizing the Griswold case. To criticize it, you did not have to be for beating down the doors of people's bedrooms. It had nothing to do with a matter of public policy. It was a criticism of the reasoning in Griswold. That is what law professors did. Judge Bork did it.

Roe versus Wade: I have a daughter right now who is a third-year student at Yale Law School. She takes a course called "Feminism in the Law." If you can imagine a group of people who are likely to agree with the result of Roe versus Wade, it would be students in a course called "Feminism in the Law," taught at Yale Law School. My daughter told me on the phone within the last week that even in that course, everybody dumps all over the reasoning of Roe versus Wade.

People who believe in abortion criticize the reasoning of Roe versus Wade. It does not mean that you want to have back-alley abortions. You can be for or against legalized abortion and criticize Roe versus Wade.

Baker versus Carr: Judge Bork has been attacked because he criticized the reasoning of the Supreme Court in the landmark reapportionment case of Baker versus Carr. Many people did, in its day. It is an old issue now. It is behind us. But when Baker versus Carr was decided, it overruled a previous decision of the U.S. Supreme Court—overruled the Court, itself; overruled the decision by Justice Frankfurter, who said that if the courts get in the business of drawing district lines and reapportioning legislative districts, they will, in Judge Frankfuter's words, get into the legislative thicket. Everybody criticized Baker versus Carr. Everybody did not, I guess, but it was certainly common in its time to criticize it.

It is said, with respect to the case of Harper versus Virginia Board of Elections, the poll tax, that Judge Bork is somehow for poll taxes. He is not. He said he was not. But he said he could find no legal reasoning for holding that a nondiscriminatory poll tax was unconstitutional; and in so stating, he joined the reasoning of such eminent Supreme Court Justices as Harlan, Stewart, Frankfurter, Jackson, Brandeis, Cordoza, and Black, who at one time or another decided exactly the same thing.

For a law professor to criticize the reasoning of the Court does not mean that the law professor is for poll taxes or for malapportioned legislation districts, or for back-alley abortions or for police barging into the bedroom.

But it has been said that Judge Bork is out of the mainstream.

Mr. President, if Judge Bork was out of the mainstream of American jurisprudence and American life he would not be supported in his nomination by former Chief Justice Burger and by Justice Stevens. He would not be supported by former Attorney General Griffin Bell, by former advisor to President Carter, Lloyd Cutler.

Here is a man who has never been reversed by the U.S. Supreme Court. If he was out of the mainstream we would have expected him to have been reversed a few times and if he was out of the mainstream because of articles that he wrote when he was a law professor, Mr. President, why did we confirm him 5½ years ago when he was the President's nominee for the Court of Appeals for the District of Columbia, unanimously? Members who are now on the Judiciary Committee voted for him 5 or 6 years ago when he was nominated for the court of appeals.

It is said that he would open old wounds on racial matters. Here is a man who called Brown versus Board of Education perhaps the greatest achievement of our constitutional law, and it is said, "Oh, he is going to open old wounds."

Here is a man who when his law firm in Chicago said that it was going to limit the number of Jewish lawyers it hired, Bob Bork, then a young partner at the law firm, in a vulnerable position in the law firm, went in to see the most senior partner and said that he would not tolerate this. And here is a man who, when Jewell LaFontant, the Deputy Solicitor General and a black woman, said she was being excluded from certain meetings, seethed inside and made sure that those meetings were open to her.

The description, the mental picture that has been painted of Robert Bork as being, as the Wall Street Journal said, a Frankenstein, does not square with those who have worked with him over the years.

I telephoned, Mr. President, a week or so ago the dean of Yale Law School, Guido Calabresi, and I said to him, "What do you think of what has happened to Bob Bork?" And he indicated to me on the phone that he was sick about it. And I said, "Here is a man who is going to be defeated but at the very least I think that it is important for somebody who knows the man to tell the world what he thinks of him."

Within a day, within a day, express mail, came a statement signed by a couple dozen members of the faculty of Yale Law School; more names telephoned in later. I do not know how many are now on the list, maybe 30 or so. It took no time at all to get it. Here is what his colleagues at Yale Law School say, and I quote:

> As members of the Yale Law School Faculty who were once colleagues or students of Robert Bork, we take this opportunity to comment on an important matter that may be overlooked in the present confirmation controversy: the personal quality and character of the man. As a result of our own differing views on constitutional and public policy issues, some of us supported Judge Bork's confirmation; some of us opposed it; some of us did not take a position. But all of us wish to express, on the public record, our respect for Judge Bork's decency, humanity, courage and integrity. He is known to us as a kind and honorable human being, and we will continue to look upon him that way long after the present proceedings have been completed.

John Simon, a colleague of Judge Bork at Yale Law School, a person who has long participated in the civil rights movement, the author of a book called "The Ethical Investor," which is a forerunner as far as investment in South Africa, in a letter to me wrote:

> The charge that, on matters of racial justice, Robert Bork would seek to 'turn back the clock' or would 'reopen old wounds'—charges circulated widely in mass mail campaigns and even reiterated by some Senators—do Judge Bork a grave injustice.
>
> "The facts do not support—indeed, they contradict—this charge.

And then the 25 former colleagues in the Solicitor General's office wrote:

> * * * as Solicitor General, Judge Bork displayed an abiding commitment to the rule of law and to respect for individual liberties and civil rights.

And the description of Bob Bork, the mental picture that has been painted of Robert Bork as being a person who opens old wounds, and so on, does not square with Judge Bork's record, and I am sure this has been pointed out on the floor many times.

Seventeen of the nineteen amicus briefs filed by him when he was Solicitor General on matters related to race and sex discrimination, including cases dealing with job discrimination and school desegregation, were on the side of the minority or the woman litigant.

You say, "Oh, boy, he was just acting as Solicitor General."

To my understanding, and I have had this confirmed by the Justice Department, the Solicitor General has very, very wide latitude in determining what amicus briefs are to be filed.

Seven out of eight cases that he has decided on the D.C. Court of Appeals relating to minority and female litigants have been decided for the minority or for the woman litigant.

Mr. President, I would like now to turn to the broader question of what is wrong with the process and what we have done wrong here. I think the question is not only the unfairness to Robert Bork as a person, and I think this has been unfair to him, but I believe that the thrust of this is that confirmations in the future will most likely go to either nonentities or to persons who have been nominated who have tremendous political moxie in dealing with the U.S. Senate.

If I were advising a person who has been nominated for the Supreme Court of the United States and I had no principles at all and just wanted to get the job done, I would say to this person, "Go around like a nominee for any other position, go to offices of the U.S. Senators and tell them what they want to hear."

What happened in this case was that Judge Bork has been asked not only in the committee but I believe by specific Senators and endless office interviews that he has had what his position is on particular cases, "What is your position, Judge Bork, on Roe versus Wade? Would you overrule the Supreme Court decision on Roe versus Wade? What is your position on the standing of Members of Congress to file suits? What is your opinion on the War Powers Act?" And on and on and on.

Senators are listening for the answers that they want to hear to specific matters that may or may not come before the Supreme Court.

Now, when a candidate for a Cabinet position goes around and sees Members of the Senate, he expects such questions and he expects to maybe make some promises. I do not think Supreme Court Justices should have to make promises.

And I think the other thing that is wrong with this whole process is that it says to people who aspire to some day be on the U.S. Supreme Court:

> When you decide a case, if you are now in a lower court, or when you write a Law Review article, bear in mind how it is going to be characterized during the confirmation process, bear in mind how it is going to be characterized in newspaper ads, bear in mind how it is going to be characterized in television commercials.
>
> If another American Cyanamid case comes up do not decide it on the basis of the law. If an American Cyanamid case comes up and you can find no basis in the law for imposing a fine on American Cyanamid, fine them anyhow because if you do not you will be accused of being pro-sterilization.
>
> If you are a professor and you doubt the Court's reasoning in a case like Griswold v. Connecticut or Baker v. Carr, keep your peace.

Mr. President, I would suggest that the precedent that we are setting in the U.S. Senate by our vote against Judge Bork is a precedent which is contrary to the principle of an independent judiciary and contrary to the principle of academic freedom.

I think that it is saying that we are going to judge you on the basis of characterizations of decisions, we are going to judge you on the basis of Law Review articles that you have written in your position as a professor. And if you take any position that can be characterized as against privacy or against one man, one vote or for poll taxes or for sterilization, that is going to be used against you.

It is very much like being a Member of the Senate, you know, when we come down in the well. There are countless times when Members of the Senate come down in the well to vote on an issue, and we say to ourselves: "How is this going to be characterized in a 30-second commercial in my next campaign?" How many times have we gone down to that well during a vote and asked ourselves when we were voting, not whether the amendment made sense or not, but, how is this going to turn up in the next political campaign?

And I think that the same situation, Mr. President, is going to or may exist in the future with respect to nominees or potential nominees for the U.S. Supreme Court.

One other thought. You know, we are politicians in the Senate. We are used to the battle, the combat of politics. We are used to getting into the fray. People say about politicians, "If you can't stand the heat, get out of the kitchen." Harry Truman used to say that. "If you can't stand the heat, get out of the kitchen." That is what a politician is: tough, combative.

I remember another professor of mine at law school and another former colleague of Judge Bork who once told me—I cannot even remember the context—but he said:

> You know, a lot of people who are law professors leave the practice of law and go into teaching. And they do so because they really are of a somewhat more delicate nature than the people who are practicing law. They do so because they really don't like all the tension. They don't like all the battle. They don't like the contests, the combativeness that is part of law, just as it is part of politics. They want to remove themselves from that. They want a more serene life, a more, if you please, academic or ivory-tower life than they had practicing law.

I suppose it can be said that they cannot stand the heat. But, Mr. President, are we saying, by what Judge Bork has gone through, that what we really want is people on the U.S. Supreme Court that can stand the heat; people who can take it? If you really want to destroy a person in academia, if you really want to assassinate his character, create the impression that he is an extremist. Create the impression that he is for sterilization. Create the impression that he is against minorities; that he is against women. Create that impression in the academic community and he is dead. He has been assassinated. What are we saying for future academics who may at some time be considered for the Federal judiciary?

Mr. President, what has happened to Robert Bork is wrong. It is wrong. And I am not the only one who recognizes that.

A lot of people say, "Oh, it is inflammatory to call it a lynching." I did not call it a lynching. The Washington Post did. The Washington Post that came out against Judge Bork called this a lynching.

And I have talked to Members of the Senate who have already announced that they are going to vote against Judge Bork and they are sheepish about it. I say to them, "What has happened to this man just is not right." And they nod, and a little smile comes over their face, a sheepish smile, and they say, "I know. I know."

It is wrong. And, Mr. President, we are responsible here in the Senate. The man has been trashed in our house. Some of us helped generate the trashing. Others of us yielded to it. But all of us, myself included, all of us have been accomplices to it. All of us who have not spoken out have been accomplices to it. All of us who have sat there, not just members of the subcommittee, but Members of the Senate, and let these ads go on and let this trashing go on and let this good man be characterized as some sort of a Frankenstein's monster without raising a voice against it, all of us are accomplices.

And so is the press. And so is the press. Why did not a principled paper like the Washington Post speak out against this whole mischaracterization of this human being? Why does the St. Louis Post Dispatch—a paper I often disagree with, of course, but it has a wonderful tradition of standing for principle; it says on its masthead that it will never tolerate injustice—how can it write an editorial in this morning's paper that says of this phone call to Professor Baker that it was wrong but it did not matter. It matters.

Well, Mr. President, I close by saying I would love to win. I mean, I started out this speech saying everybody who stands up on the floor of the Senate hopes that he can change votes, that he could win the vote, win his case, make his points. I would love to win. And maybe lightning will strike. Who knows? Maybe Members of the Senate will have a second thought. But I do not think so. It is not impossible, but it is very hard.

But, Mr. President, win or lose, win or lose, I hope that we would resolve, not just in the Senate but in the country, I hope that we would resolve that we are never going to let this kind of thing happen again. I hope that we would resolve that we are never going to let this kind of thing happen again. We are never again going to take the position, particularly with a judicial nomination, that any means justifies the end of confirming or defeating a nominee for the U.S. Supreme Court.

I hope that we would never again take the position that nominees are to be pinned down in advance on their positions on matters that might come before their Court. And I hope that we could again resume the debate on the role and scope and the power of the Federal judiciary and of the U.S. Supreme Court without getting sidetracked into characterizations of the motives of very good and decent people.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. Mr. President, before I yield the Senator——

Mr. THURMOND. Mr. President, could I say just a word?

Mr. BIDEN. I yield the floor.

Mr. THURMOND. I want to commend the able Senator from Missouri who has made a magnificent presentation. I do not see how any open-minded person could hear that presentation and vote against Judge Bork.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. Mr. President, before I yield 20 minutes for the unanimous-consent agreement the Senator from Montana has, I am going to yield myself 1 minute just to make two very brief comments on the speech made by my friend from Missouri.

The PRESIDING OFFICER. The Senator is recognized.

Mr. BIDEN. First, a minor point but factually inaccurate, the Senator from Delaware was there when Miss LaFontant testified. I believe—I will check the record—that there were other Democrats there also.

Second, that although none of the people who testified against Judge Bork said he was a bad man or alleged he was, as characterized by the Senator from Missouri, I should point out that 1,925 of his colleagues who teach in law school took the time to write and say: "Although a fine man, a decent, honorable man, his views should not be represented on the Supreme Court."

I would point out that 10 of his colleagues at the Yale Law School wrote and/or testified saying he was a fine, honorable, decent man, but that his views should not be represented on the Supreme Court. And 32 of the most distinguished law deans in America—although I realize, as the Senator from Missouri believes, Yale is probably the most distinguished law school—the dean of the Harvard Law School, the dean of Georgetown Law School, all fine, honorable men and women—they wrote and said: Although Judge Bork is a fine and honorable man, his views should not be represented on the Court.

I just want the record to show that at this point. I yield the floor.

Mr. DANFORTH. Mr. President, do I still have time left?

The PRESIDING OFFICER. The Senator has 6 minutes remaining.

Mr. DANFORTH. Mr. President, I just want to reiterate my fundamental point because I think it was misunderstood. I think that clearly there is room for disagreement on basic matters of judicial philosophy and clearly, law school professors disagree on matters of judicial philosophy as a matter of course. That is what law school is all about. That is not the point.

The point is this. The battle—I am not talking about the Senator from Delaware. The battle as far as the country was concerned was not waged on the issue of judicial philosophy at all. It was not waged on the basic question of judicial activism or judicial restraint, that age-old conflict on which good people have disagreed. It was waged, instead, by those who would and did characterize Judge Bork as a person who was a threat to basic values in this country. They characterized him as the Wall Street Journal said, as a Frankenstein. They characterized him as a bad person.

I just came back from my State. You talk to blacks in my State, talk to women in my State, and they were scared. They were frightened of Judge Bork. They were frightened of a person, because of a portrayal of him that the people who knew him said bore no resemblance to the human being they knew and bore no resemblance to his record as Solicitor General; bore no resemblance to his record on the court of appeals; and bore no resemblance to the countless human kindnesses and sensitivities that he showed. No resemblance at all to the man.

He was characterized as a monster. He was characterized as a threat to decency. It was done over and over again and it was done in a public way. It was done in order to frighten the American people so that it became a political issue with Members of the Senate so that the public communicated. The public said, in effect, we are scared.

Mr. BIDEN. Would the Senator yield for a question? Does the Senator think that is the reason why 2,000 law teachers——

Mr. DANFORTH. Is this on the time of the Senator from Delaware?

Mr. BIDEN. Yes. On my time, assuming you will only use a minute or so to answer—or you answer on your time, if you would.

Does the Senator believe that is the reason why so many law professors, more than any time in the history of a Supreme Court nomination, why they took the view they took?

Mr. DANFORTH. No. I do not. But I think that the dynamics of what happened in the U.S. Senate have absolutely nothing to do with what hundreds or thousands of law professors said. I do not think that that is what weighed in with Members of the Senate. I think what weighed in with Members of the Senate is that there was an extraordinary amount of heat that was generated throughout the country and the heat that was generated was in the form of fear and the fear was of a Robert Bork who was characterized as being something that bears no resemblance to the real Robert Bork.

Mr. BIDEN. Mr. President, back on my time for a moment——

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. It seems to me, and the Senator from Missouri knows and we say—we use these florid terms all the time—about I have respect for our good friend from—he knows I do respect him. I think he is one of the most respectable Members that served in this body in the 15 years that I have been here. And I mean that seriously.

It seems what the Senator is indicting is less the process than the Senate. To suggest that the—I predict 57, possibly 58—of our colleagues here today who are going to vote against Judge Bork are doing so because they have succumbed to the raw pressure, from wherever it was generated, it seems to me that is one heck of an indictment of your colleagues. Because, if you insist that that is the reason they are voting the way they did, not because of the caliber of the testimony and the people who testified against him; not because of his record; then, it seems to me, that the indictment is not so much of the system but the indictment is of the lack of courage of individual Members of the Senate. And that, to me, is an awfully, awfully, awfully strong indictment.

Mr. DANFORTH. I would only say, Mr. President, in my judgment this process has been comparable to the repeal of withholding on interest and dividends in judicial form, really.

Did we at that time hear from our constituents? Yes. And did we decide the issue on the basis of what we heard from our constituents? Yes, we did. And does that apply now? Yes, it does. And are we politicians? Yes, we are. And is that an indictment of Members of the Senate? Maybe. Maybe. But I think it is an accurate description of what happened.

Mr. BIDEN. Mr. President, on my time——

Mr. THURMOND. Mr. President, I have to object to any time being charged to our side. We are running very close. We have allocated it and we are going overtime now.

Mr. BIDEN. Mr. President, on my time I yield myself a minute.

The PRESIDING OFFICER (Mr. SHELBY). The Senator from Delaware.

Mr. THURMOND. You understand it is on your time and the response will be, too?

Mr. BIDEN. I will not ask a question. I will make a statement, Mr. President.

I would like the Senator from Missouri to be aware of what all my Republican and Democratic colleagues have pointed out to me and that is that their mail in their offices has run 10 to 1, to 20 to 1, for Bork. So, if the Senator is right, that we yield to what our constituents says, I would like to ask my staff—before the 2 o'clock vote, to roll over, literally, the boxes. We weighed them. We did not read them. We weighed them, the boxes of letters and postcards. I mean this sincerely, I instruct my staff now to go get them and I ask unanimous consent that I can pile them up here on the floor.

We are talking about who wrote to their Senators? Everyone here has said—I asked the Senator from Missouri, did he get more mail for or against Bork? Do not answer unless it is on your own time.

I ask the rhetorical question to the Senator from Mississippi: Did he get more mail for or against Bork? I ask all my colleagues here. I want them to come here and tell me, one of them, that they got more mail in their office against Judge Bork than for. And then I ask my friend the rhetorical question: How can his argument make any sense?

I yield the floor.

Mr. DANFORTH. Mr. President, in 15 seconds, the answer is that it was ginning up of interest groups. It was the interest groups' pressure and the interest groups calling in the chits.

I yield the balance of my time to my colleague from Missouri.

Mr. BOND. Mr. President, I may be the only remaining Senator who has not spoken about Judge Bork. As a freshman Member of this body I had looked forward, as my distinguished senior colleague had pointed out, to a discussion of the issues on the floor. Unfortunately the ball game was over by the time the discussion started.

I would associate myself with the very compelling arguments that my distinguished senior colleague has made, and also the arguments made by the distinguished senior Senator from Washington, the senior Senator from Alaska, the junior Senator from Mississippi. These are arguments that I believe, had they been listened to, would have influenced and would have secured the confirmation of Judge Bork. I regret that we have come to a political campaign where we are going to make a decision, apparently influenced by the power of special interest groups. I am sad that my first experience with a Supreme Court nomination has shown the way for what I fear will be a continued political campaign waged for and against the future nominees of both Democratic and Republican Presidents. I yield the floor.

Mr. MELCHER addressed the Chair.

The PRESIDING OFFICER. The Senator from Montana.

Mr. MELCHER. I understand under the agreement I have 20 minutes.

The PRESIDING OFFICER. The Senator from Montana is correct.

Mr. MELCHER. Mr. President, I have remarks to make which can be divided into three parts. First of all, the political aspects of the nomination; second, the effect that this has had on the country while this has been going on over the past 2½ months; and, third, why I must object to Judge Bork's nomination to the Supreme Court.

Mr. President, of course this is political. The Senate has to vote. Any time there is a confrontation, any time there is controversy on a vote here in the Senate, of course it can be very political.

I do not advocate that, but that is the way it started out, from the time that the representatives of the administration came up to see Senator BYRD, the majority leader, and said, "Here is a number of people that the President is looking at to select one, one of them to be the nominee for the Supreme Court candidacy."

Senator BYRD responded that if they did choose Judge Bork, it would likely be controversial and would likely take some time. The administration or the President saw fit, despite that, to send up the name of Judge Bork. I am not critical of the President for doing that. But once it started that process, it was clear that it would be controversial; that it would take some time.

There is too much time that has been spent on this nomination, and it has only taken that much time because of the political aspects of it.

I am also not critical of any group that wants to stir up the grassroots people of this country to put in their input, to say yes or no, this is how you should vote, to write to their Senator, to speak out on it. That is the political process we have and it is a very good, fine political process.

We cannot deny to the people to stir up the pot if they want to and get everybody to call if they want to do so, or write letters. That is part of the American tradition and it is constitutional. After all, who is to defy what has worked so well over the past 200 years, this system of Government?

On the easel beside me I have a copy of a full-page ad that was carried in the Helena Independent Record. Helena is our capital. The Independent is a newspaper published there daily. This appeared in this Monday's edition. I just draw your attention to what the ad says. It says:

> You can tell a Senator by the company he keeps.

This has been sent to us on a telecopier and we pieced it together.

Here is my picture. It does not show up very well from the telecopier, but I presume it is one of the pictures we have sent to the Helena Independent Record, and I presume I look pretty good in it. You cannot tell from this, though. However, that is beside the point.

What does the ad say? It says Senator JOHN MELCHER, and it lists three other Senators and a number of organizations. That is what all this is about. These are different organizations.

Well, I have heard of the American Civil Liberties Union. I have heard of the National Organization for Women. Most of these I have not heard of. Most of these 15 organizations I have not heard of. Why? Because 6 of the organizations are homosexual organizations, 6 out of the 15 are homosexual organizations.

What does it mean?

Of course, the ad also says who sponsors it, the Conservative Caucus. The ad also says that whoever reads the ad should call me and say, "Why don't you vote for Judge Bork?"

On the other side, opposite that, the ad says, "Send some money."

It is not an unusual ad, except for one thing. What is unusual about the ad is that six homosexual organizations are listed. What are they trying to demonstrate in that?

How did people react to the ad?

Well, we kept track of the calls we had in my Helena office. Helena is not a big city. It is a little over 30,000 in population. I do not know what the circulation of the newspaper is, but it is the daily newspaper in that community. Here are the results since it appeared to call my number in my Helena office listed here. Ninety-three people called and objected to the ad. Some of them said, "I do not care which way you vote." Some said to vote for Bork or vote against Bork, but they objected to the ad.

But out of all of the calls that came up until quitting time last night—I did not check to see if they had any calls today, but they have been slowing down—only 14 for any reason said, "Vote for Bork."

The reaction to the ad was bad. It is probably summarized in a very short editorial that appeared in the Helena Independent Record on Wednesday. The full-page ad was published in that newspaper Monday afternoon and by Wednesday afternoon they had a short editorial statement in the newspaper saying, "Senator MELCHER gets a bum rap." Then it goes on to say that you can have objections, but what is the reason for mentioning these various groups? They single out the gay rights groups and state, "What does this have to do with MELCHER?"

"Did they send him campaign contributions? We do not know."

I can respond. Since I have not heard of them, it is obvious none of them sent me campaign contributions and they are not likely to, as a matter of fact.

I think what the newspaper editorial has said sums it up. It is sort of a bum rap. The Senator preceding me, the distinguished senior Senator from Missouri, happened to quote that old adage that Harry Truman used to use: "If you can't stand the heat, get out of the kitchen."

Conservative Caucus, Inc., headquartered out here in Fairfax County, VA, really does not amaze me. I think it is their right to do so. But I do question, out of the hundreds of groups that have taken a position on Judge Bork, why do they have such a high percentage of gay and lesbian groups? What are they trying to say? I guess the ad is attempting to say that possibly I am one of them, and that, of course, has brought out the adverse reaction of the people who have read the ad. I think we have a lot bigger fish to fry in the Senate, in the House, the Congress, this administration. I think it is extremely important that we get on to the business of taking care of what is wrong with the U.S. economy right now than to spending a great deal of time on a cause that is lost, and so I am delighted we are getting to a final vote on Judge Bork's nomination.

I restate, as I have often stated here on the floor, as I have often stated in committee meetings or in my discussions with administration officials, I would like to work with the President. I would like to be part of the process of getting on with taking care of just what is wrong with the economy of this country. There is a lot of similarity in what our ideas are. We need to sort out the ones which do not work and get rid of them. I think it is time we face the issue of just where do we go. I cannot urge the President any more fervently than I am doing right now. Let us get beyond the question we are engaged in and get to the root of what is wrong with the economy in this country.

I hope that the next nominee the President sends up can be quickly confirmed because the economy demands our attention. I want to say emphatically that for almost 7 years I have been offering my judgment on President Reagan's overspending, my judgment of the inaction we have had in terms of our basic economy, the various factors of that including American agriculture, and other basic industries of mining, minerals, and forest products. I have attempted to work with the administration to prevent President Reagan from pursuing this suicidal policy of combining huge record-breaking Federal deficits and Federal debt and trade deficits which, if not checked, will result in the Nation's worst depression with an economic collapse that will rock the world.

President Reagan on this nomination need not accuse me of politics or need not accuse me of politics in regard to his programs. For more than 6 years I have tried to cope with the weird political philosophy and economic fallacy advanced by the Reagan administration. I have tried to work with them on that economic fallacy that they believe is good policy. I have worked to keep them from the worst of their failures and I expect to be here in the Senate after President Reagan's departure for a specific reason, to mop up this administration's legacy of economic suffering.

There is work to be done that could still alleviate the worst of it. I shall attempt in every way possible to help the administration to improve the trade deficit by exporting more U.S. agricultural commodities and cut back on the Federal deficit by strengthening agricultural prices, developing U.S. energy resources, cutting back on subsidized metal imports, and developing U.S. minerals. Although the time remaining for President Reagan and his Cabinet is only 15 months, the remaining time should be spent in a combined effort of Congress and the administration to blunt the economic chaos caused by the twin towering deficits of trade and Treasury so that the Reagan administration legacy will not be one of immediate deep recession.

While the administration will be gone in 15 months, the appointment of a Supreme Court Justice, unlike a Cabinet member, is for life. Usually that means 20 years or longer, and that puts a big responsibility on those of us who must either vote for or against the nominee to the Court. It is not for political reasons that I cast my vote against Judge Bork but because he fails to meet the fundamental test of interpreting the Constitution on the rights of Congress and citizens and the rights of States and their officials to use the Federal courts to interpret the constitutionality of the acts of Congress or the actions of the executive branch of our Government.

Mr. President, under ordinary circumstances, I would not take the Senate floor to describe my views on a pertinent point in a lawsuit of which I am the plaintiff, but these are not ordinary circumstances. My suit is now before the U.S. Court of Appeals in the District of Columbia and is under consideration by a three-judge panel appointed by the court to hear and decide the merits of the case. The briefs have been submitted. The oral arguments have been heard by the judges earlier this month. Judge Bork is a member of that appellate court, but he is not a member of the three-judge panel.

As a plaintiff, I would ordinarily refrain from comment on a significant legal point in the suit, my suit, now being considered by the three-judge panel from that appellate court. My position as a plaintiff and as a Senator, in ordinary circumstances, both out of respect for the court and in recognition of the court's prerogative to decide the case without further comment from me, would cause me to refrain from commenting on the suit while it is still being considered. In particular, I would under ordinary circumstances refrain from commenting on the significant issues in the suit. However, I have the duty as a Senator to vote on Judge Bork's nomination to the Supreme Court. Therefore, I must speak out now in my capacity as a Senator and in my responsibility as a Senator to state my views on Judge Bork's nomination and on Judge Bork's views on a particular issue. It happens that he holds a strong opinion on that issue which is also a significant issue in my suit now being heard in the appellate court. That issue is the issue of standing to bring suit in the Federal court on a constitutional matter.

Judge Bork is on record as saying Members of Congress do not have the right to bring suit to challenge the constitutionality of a law. The basis of my suit is the constitutionality of an act passed in 1935 dealing with the appointment of five members to the Federal Reserve Open Market Committee of the Federal Reserve Board. I believe this portion of the act is unconstitutional and attempts have been made to challenge its constitutionality for more than 10 years in three separate suits brought before the Federal courts, all of which were rejected in court decisions stating that the plaintiffs lacked standing to bring suit. So my suit is the fourth attempt to have the case decided on its merits and, at the Federal District Court level here in the District of Columbia, Judge Greene ruled that I as a Senator did have standing, but also ruled that the five open market committee members need not be confirmed by the Senate. The suit is now on appeal, asking the appellate court to consider the merits of the case. Justice Department and Federal Reserve Board attorneys, in their arguments to the appellate court, requested a ruling that I be denied standing.

It is on this particular point of standing to bring suit before a Federal court on a constitutional matter that I must review Judge Bork's views and decisions.

Mr. President, I have done so carefully. I voted for Judge Bork to become an appellate court judge in 1982. At that time, and in the opinions that he has given as an appellate judge from 1982 to 1985, Judge Bork's position on standing was not in violent disagreement with the views of other judges on the appellate court.

The PRESIDING OFFICER. The Senator from Montana has used the 20 minutes that he has under his control.

Mr. MELCHER. Mr. President, I ask unanimous consent for 2 additional minutes.

The PRESIDING OFFICER. The Senator may proceed.

Mr. MELCHER. Mr. President, however, in 1985 in his dissenting opinion in Barnes versus Kline, Judge Bork set himself apart from his colleagues on the court and greatly shifted his position on standing for a Member of Congress or States to bring suit on constitutional matters to be decided by the Federal courts. For me, the most disturbing aspect of Judge Bork's decision on standing of Members of Congress indicates that his future decision on standing would likely be extended to preclude the Federal courts from considering cases on basic political rights under the Constitution. That includes States or officers of States bringing constitutional questions to the courts.

President Reagan's statement regarding Senators who oppose the nomination of Judge Robert Bork to the Supreme Court as being a political decision completely misses the mark. If President Reagan wants to nominate to the Supreme Court a conservative such as Judge Bork who matches his political philosophy, I can accept President Reagan's right to his decision, and I do not criticize him for making that decision nor accuse him of just recommending Judge Bork on the basis of politics.

But, Mr. President, I cannot and I shall not accept President Reagan's nomination of Judge Bork for the Supreme Court and therefore my vote will be against the nomination.

Mr. President, I ask unanimous consent that the article from the Independent Record of Helena, MT, of Wednesday, October 21, 1987, be printed in the RECORD at this point.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Independent Record, Oct. 21, 1987]

SENATOR MELCHER GETS BUM RAP

A full page ad in the *Independent Record* Monday placed by The Conservative Caucus, Inc., carried the headline "You can tell a senator by the company he keeps."

It then named Melcher and tied him to liberal and gay rights groups.

The advertisement also said Melcher is following the wrong crowd and asked readers to urge the senator to abandon the Bork-bashers.

The inference is that Melcher supports the organizations that were named. Maybe these groups contributed to Melcher's 1982 Senate campaign. However, we have no idea whether that is the case.

In any event, it was a cheap shot.

If those who support Robert Bork's nomination to serve on the Supreme Court want to bash someone, they should go after President Reagan.

Reagan spent the month of August on vacation in California and gave Bork's opposition a big head start in the fight over Bork's nomination.

Now that 54 senators have said they will vote against Bork the conservatives are resorting to dirty tricks.

The PRESIDING OFFICER. Who yields time?

Mr. THURMOND. Mr. President, I yield as much as 10 minutes if the Senator needs that much, to the distinguished Senator from Oklahoma [Mr. BOREN].

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. BOREN. Mr. President, I thank the distinguished Senator from South Carolina.

Mr. President, several days ago, after the completion of the hearings in the Senate Judiciary Committee, I issued a brief statement indicating that after examining that record and giving long thought to the decision that I had concluded that I should vote in favor of the confirmation of Robert Bork to be an Associate Justice of the United States Supreme Court.

At that time I did not make a speech on the Senate floor. I did not call a press conference to announce my decision. I simply issued a statement indicating my own personal conclusion as an American and as a U.S. Senator charged with the responsibility to vote on this matter about the course of action which I should follow.

I did not make a long speech to my colleagues, nor hold a press conference because it was in my mind a very difficult decision to make, a very close question in terms of the judgment that I had to make. Some of the views of Judge Bork are views that I do not find myself fully agreeing with. On the other hand, he has significant qualifications and intellectual capability.

So it was a close question in my mind. It was a very difficult decision to make. I made it thoughtfully, and carefully. And I did not attempt to sway my colleagues by arguing and becoming partisan in the debate because I felt and I feel very strongly that every individual Senator should sit down with his or her own conscience, should clearly look at the record, and should make the right decision based upon the judgment of that Senator.

I felt that it was my duty to put aside all political considerations and do what I thought was fair and right. And I struggled, Mr. President, to do that. I did not attempt to engage in political horse trading, as we might do on some other issue. There is never anything wrong in protecting the interests of one's own State and constituency, trying to make sure they have the economic benefits that are available to other regions of the country. I have been known on other political issues to try to bargain for the benefit of the farmers or the independent oil producers who are so hard-pressed at this particular point in time. But on a nomination to the Supreme Court, that is not the kind of politics that should be played.

So, Mr. President, when I was asked to come down to the White House and discuss my decision with the President and with others, I declined that invitation because I felt that this was a judgment that I was charged with making for myself as an individual U.S. Senator without regard to any political consideration. Nor did I let party politics enter into my thinking. There were those who have said to me before, and have said to me since, do you feel uncomfortable being one of the few people on this side of the aisle on the Democratic side of the aisle that is going to vote for the confirmation of Judge Bork?

No. I do not. There are times in which party political considerations should be weighed. I am proud to be a member of my political party. More times than not, the majority of the time, I stand with my political party on important economic policy questions, and other policies of the day.

But confirmations of Justices to the U.S. Supreme Court are not matters that should become issues in party politics. It is not a time to consider one's self a Democrat or Republican in making that decision. It is a time to consider one's self an American, and a U.S. Senator charged with that responsibility without regard to party.

So I do not feel uncomfortable making the decision on that basis. If I had made my decision on any other basis, political horse trading, pressure from the White House, pressure from a political party, or pressure from any other corridor, I would have felt that I had not met my own individual responsibility.

Mr. President, my responsibility was not to decide if Robert Bork is the person that I would have appointed to the Supreme Court of the United States were I charged with the responsibility of making the appointment. The responsibility of a Senator is not to appoint, not to select, but to decide whether or not to consent to appoint. And I believe after reviewing the record that there was no sufficient basis for me to lodge a refusal to consent to this nomination.

Judge Bork is a person of intellectual capability. He has long professional training and background. There is no reason to question his personal integrity. And I simply felt that there was no basis upon which I, as a Senator, should refuse to consent to the nomination of Robert Bork to be a Justice of the U.S. Supreme Court.

I am convinced as both sides have talked about, that both his strongest supporters and his most critical adversaries have portrayed Judge Bork in ways that I do not think are truly accurate.

If Robert Bork ends up serving on the Supreme Court of the United States, I am convinced that he would surprise both his strongest critics and his strongest supporters by a much more modest approach than either expects. Frankly, I think there are at least three members of the U.S. Supreme Court presently serving who would take positions on matters of ideological division that would be more to the right than the positions that Judge Bork would take were he confirmed. I do not think we should allow these matters to become political litmus tests.

Anyone familiar with my record knows where I have stood on questions of civil rights. I have been committed to assuring the rights of each and every individual American, without regard to race or creed or sex or any other difference between people. Were I convinced that Robert Bork would not be sensitive to those rights and would not adequately and fairly judge every individual case before him on the basis of necessary protection of those rights, I would vote against him. But I think it is wrong to use litmus-test politics.

I have often seen the media report that this is a litmus test about civil rights, of individual rights, or of individual ideology. I reject that. Time and time again, I have seen the litmus test argument used in situations in which individuals become symbols and a fair consideration of that individual's own views and qualifications gets lost in the process.

We are not here casting a vote under some kind of litmus test. We are called upon to fairly judge an individual human being: His views, his qualifications, his integrity, his ability to impartially weigh cases, on a case-by-case basis, that come before him.

It is not right to allow individuals to become pawns in some kind of overriding political litmus test struggle. Frankly, those on both sides of the debate—both sides—have engaged in this litmus test kind of thinking that has made it more difficult for us to fairly assess Robert Bork's individual qualifications without regard to these political considerations.

The Supreme Court is charged with protecting individual rights of all Americans. We must protect the integrity of the process for selecting Supreme Court Justices. If we allow the process to become one of political litmus tests or the popularity of the views of particular individuals who might be up for confirmation, if we allow this to become a popularity contest, we will set in motion a process that will undermine the independence of the Court and the ability of the Court to protect the rights of all individuals and groups, even those that might happen to be unpopular with the general public at the moment.

Mr. President, I have watched this debate with sadness and with concern. There has been far too much polarization, just as I have watched with real concern about my country and its future, as I have seen the kind of polarization in recent days develop on matters of foreign policy, on matters of economic policy, as well as this debate.

Mr. President, the people are not watching to see if we are staying together as Democrats or Republicans. They are watching us to see if we can get together as Americans.

I hope that when the President sends forward the next name, he will do so after long consultation, so that we can repair the integrity of the process, avoid polarization, and act with unity as Americans and as U.S. Senators charged with this immense responsibility.

Mr. PELL. Mr. President, the Senate will vote shortly on the nomination of Robert H. Bork to serve as an Associate Justice of the United States Supreme Court. On October 6 I announced my intention to vote against the confirmation of Justice Bork, and I would like to briefly summarize the reasons for my vote today.

In his legal writings, judicial decisions, and testimony before the Senate Judiciary Committee, Robert Bork has proven himself to be lawyer of intelligence and technical competence, as well as an individual of unquestioned personal integrity. His legal views, however, are one-dimensional, narrowly legalistic and removed from the mainstream of contemporary American society. The Supreme Court has played a leading role in defending the rights of minorities and women. Many of the greatest civil rights advances of this century came about through important Supreme Court decisions, a number of which Judge Bork strenuously opposed while a law professor and private attorney. He has consistently taken a very narrow view of legal protections for women, and there is nothing in his record to indicate a capacity for growth and adaptation in his restricted views on these questions.

Judge Bork's narrowly legalistic views on privacy issues also contain serious implications for the future if he is confirmed. No one can predict the new areas in which the tension between individuals and government will emerge, but a Justice who fundamentally rejects the existence of constitutionally protected privacy rights will leave individual men and women less defended in their ability to control deeply personal decisions relating to marriage, child-bearing, and related issues.

There can be no question that our Nation would be a very different place today if Judge Bork had been on the Supreme Court over the past 30 years and if his views had prevailed. To attempt to reverse leading Supreme Court decisions would be divisive and destructive for our Nation. No one can predict what the landmark issues of tomorrow will be, but one can say with some degree of certainty that the new Justice we confirm to serve on the Supreme Court will influence the evolution of our society well into the next century. I have concluded that Robert Bork does not have the capacity to find a constitutional basis for the rights and liberties that most Americans believe as a part of their heritage. I would add that mine is a difficult decision as I find the pros and cons are close together. But, on balance, and it is a narrow balance, I have concluded that I should vote to oppose his confirmation to serve as an Associate Justice of the Supreme Court.

Mr. DURENBERGER. Mr. President, I will vote to confirm the nomination of Robert Bork to be an Associate Justice of the Supreme Court, for reasons that I will state in a moment. The fate of that nomination, unfortunately, is a foregone conclusion here today. The kind of Senate we are or are becoming, I fervently hope is not.

Mr. President, Abraham Lincoln said that the constitutional institutions of this country belong to the people who inhabit them. Our institution, the Senate, belongs not to the future or the past, but to us, the 100 men and women who have been chosen by our people to serve here. What we do with the institution we have inherited, and the Senate we pass on to those who will some day occupy the chairs of this Chamber, should be a matter of foremost concern to us all.

Several weeks ago, I made a statement to my Republican Caucus about the Bork nomination. I expressed my desires that a matter of the highest importance, a Supreme Court nomination, be handled in the best traditions of the Senate. By that I meant deliberation, in all the senses of that word: careful consideration of the facts; substance over style; informed and spirited debate; and in the end a consensus would be formed by the Senate, rather than an amalgamation of the views of Senators. After I finished, one of my colleagues told me that it was a good speech—for 1952. That statement crystalizes a concern that we should all share about the state of this institution.

Simply put, the Senate did not deliberate on the nomination of Robert Bork. The chairman of the Judiciary Committee reached his personal decision on the nomination within 48 hours of the President's announcement; other members of the Judiciary Committee announced their votes in the first hour of the hearings, before the nominee had uttered a single word. The judgment of the Senate was announced, not by the Presiding Officer of the Senate after a rollcall, but by the media, after compiling the results from the press releases. And as soon as U.S.A. Today announced the 51st opponent, deliberation, per se, was dead. The debate we have conducted, with the outcome predetermined, gives new meaning to the phrase "all over but the shouting." This Senator believes we have fallen short of our full constitutional responsibility.

I will not, Mr. President, join my colleagues who have attacked People for the American Way, the Leadership Conference on Civil Rights or any other group. They have done exactly what the Constitution entitles them to do. The fault lies not with the seller in this transaction, but with the buyer, which is all of us.

Special interests did not do this. Television did not do this. Mass mailings and 30-second TV spots didn't do this. We did it to ourselves by choosing to respond to the clamor, rather than the cherished traditions of this body. The cost of that decision we can only guess at, but the Senate was created to protect minorities in this society: when it suffers, eventually they suffer.

Perhaps I was naive, as my colleague suggested, to expect so much. But after the smoke finally clears I fervently hope that we as Senators will take a long hard look at ourselves and our processes in light of these events and decide that the past and the future demand more of us then we've given.

Mr. President, shortly after I was elected to the U.S. Senate in 1978 I was faced with my first judicial appointment. President Jimmy Carter had nominated Congressman Abner Mikva to the U.S. Court of Appeals for the District of Columbia. I grappled with my choice of standards for evaluating judical nominees. Article II, section 2 of the Constitution provides that the President's power to appoint important public officials is to be exercised "by and with the advice and consent of the Senate." Alexander Hamilton, in No. 76 of the Federalist Papers stated that the purpose of advice and consent was "to prevent the appointment of unfit characters." Senators have interpreted this power in different ways.

Under one standard, the Senate's role was to evaluate the nominee on the basis of his competence and integrity. This standard is premised on the view that the President, elected by all the people, was empowered by the Constitution to appoint office-holders who would further his philosophy and goals. The other standard, a distinctly minority view, was that a Senator would vote his preference on the political views of the nominee. The second standard was very tempting. Abner Mikva's views were much more liberal than mine. After careful analysis I decided that the proper standard excluded politics from the evaluation. As I stated at the time:

> The power to "advise and consent" on judicial nominations has never been viewed as authority for the Senate to substitute its judgment for the President's on the qualifications of a nominee. For two centuries that power has been regarded as authorizing rejection of nominees for only two reasons—lack of integrity or lack of competence. No judicial nominee has ever been rejected simply because the Senate disagrees with his political views.

I swallowed hard and voted to confirm Abner Mikva. I have employed that standard for every judicial nomination since. So have most of my colleagues.

As I stand here on the floor of the Senate today, a majority of my colleagues have already announced their opposition to Judge Bork and they announced their decisions weeks before Senate debate began. Whether they have so stated or not, they have changed the standard we have employed for advice and consent. This, plus the confluence of a number of unique factors have combined to defeat Judge Bork. I am deeply concerned by the precedent we, as a Senate, have set.

The judiciary occupies a unique position in our system of Government. It was designed by our Founding Fathers to be insulated from the passions of the electorate. Although it may sound melodramatic, I have in mind a scene out of an old Western movie of a feverish mob ready to string up a crook. Then, in a dramatic moment, a person dedicated to the law stands up to the crowd and stops the hanging. Later, everyone learns that they nearly lynched the wrong man. Judges perform that role in our society. The Founding Fathers recognized that it took a special person to stand up to that kind of a mob, one who would exercise independence, one who was not afraid to make waves in his community.

In an effort to attract and hold these kinds of people to the judiciary, the Founding Fathers carved out a special niche for the judiciary in our Government. Judges were given life tenure so they would not have to worry about the popular effect of their decisions. The Founding Fathers decided not to elect judges but rather to have them appointed by the President of the United States.

The process we have used in evaluating Judge Bork has not been in the spirit of the process envisioned by the Founding Fathers. The hearings were deliberately delayed to allow the public relations campaign to gear up. Millions of dollars were expended to defeat Judge Bork. The electorate was mobilized. What we had was a referendum, an election, not an appointment. Once it became an election the outcome was predetermined because it was not a contest of equals. The opponents controlled the timing and the agenda of the election. When the timing was propitious they selected the issues they wanted to discuss. Judge Bork would have liked to discuss his views on issues, for example, such as criminal law, which are no doubt popular in this country; his opponents had other plans. His opponents had all the tools of an election available to them, including fund raising and mass media. The reduction of complicated constitutional legal doctrine to 30-second television commercials unfortunately resulted in a great deal of exaggeration and distortion. Against this vast array Judge Bork was at a great disadvantage because we consider it unseemly for judges to campaign for office. Consequently, Judge Bork, who ran against a nebulous and debatable standard, instead of a flesh and blood opponent, lost the election.

Another unique factor in this confirmation was that Judge Bork has written so much on his view of the law. We have a strong tradition in this body that judges not answer questions during the confirmation process about issues that will come before the Court if they are appointed. The exception to the rule is the person who has had the courage of his convictions, taken a stand on issues and written about them. It is ironic that a person who has a written record is scrutinized far more fully than a person who has not written extensively. It will be even more ironic when the next nominee sails through the process because he won't have a record. It's sad that an unknown quantity has a better chance of confirmation than one with a known record.

Having said all this, Mr. President, let me say again that the problem I face is not the orchestrated campaigns that turned the feelings of many of my constituents against Judge Bork. I was not denied my right to argue the other side in full and open debate in a televised Senate by my constituents, or by the anti-Bork orchestration. I was denied that right by 54 of my colleagues who decided the fate of the nomination without genuine, time-consuming, exacting deliberation by the Senate.

Mr. President, the Constitution calls for the Senate to give its advice and consent to judicial nominees. That envisions a process in which we gather the evidence and then deliberate as a body to reach consensus. Instead, we have had a process in which Senators have individually come to their own judgment and then marched to a microphone to announce their vote. Since 54 of them announced their opposition before this matter came to the floor this so-called debate is meaningless. Anyone who comes to the floor to support the President's nomination—or even to reduce unresolved issues—is a sure loser. That's not a feeling conducive to deliberative decisionmaking. This is not the way the world's most deliberative body should conduct itself.

During the confirmation process I listened to many of my constituents, many of whom asked me to vote against Judge Bork's confirmation. I listened to their objections carefully. I watched the hearings, studied his writings, and scrutinized the hearing transcript. And then I met with Judge Bork. I probed vigorously on the issues my constituents were concerned about. We were outside the glare of camera lights and the pressure of a national hearing. We had an interchange of ideas not possible in the pressurized context of a hearing. I concluded that he was not an extremist. I concluded that the President's judgment deserved consent. That the only thing that could change my mind would be new facts or understanding of facts brought out by this debate. But I've heard nothing but the speculation I heard from the Senators who decided to oppose Judge Bork several weeks ago.

It is impossible to predict how a person will vote when he becomes a Supreme Court Justice. President Eisenhower believed that he was appointing conservatives when he appointed Justices Warren and Brennan. Hugo Black was a member of the Ku Klux Klan before he was appointed to the Supreme Court. If his prior affiliations had been known at the time of his confirmation he would never have been confirmed and certainly no one would have predicted that he would become one of the best friends of the Bill of Rights in the history of the Court. The prediction of doom and gloom about Judge Bork's performance on the Supreme Court must be viewed in light of these monumental miscalculations.

Mr. President, Judge Bork's real sin is not that he is too extreme but rather that he is too independent; he is not afraid to make waves. We have far too few independent thinkers in public life. Judge Bork has a powerful and curious mind. By this strange confluence of events—the orchestrated campaign, a judicial nominee who has written extensively about the law and a Senate which has seemingly lost its ability to collectively deliberate—we will have prevented him from elevation to the Supreme Court. And we have changed the process, Mr. President, for the worse, because Judge Bork's opponents, the very people who need someone to stand up to the emotions of the time to protect their interests, believe they've won the battle, but they may have lost the war. We will regret this precedent in the future.

I have been told by many that my own political "independence" requires me to "stand up to the President on this one." Mr. President, in my view independence does not require following the popular course. It requires standing on principle.

And that is why I will vote to confirm the President's nomination of Judge Robert Bork to be an Associate Justice of the Supreme Court.

Mr. GORE. Mr. President, I rise today in opposition to the nomination of Robert Bork.

This not a step I take lightly. When the nomination was announced, I promised to keep an open mind and to consider all of the evidence. I have kept that pledge.

I have listened carefully to Judge Bork and I have given his views careful scrutiny. I have concluded that Judge Bork is a man of integrity and intellect. He is neither a racist nor a bigot.

Mr. President, this nomination has generated a great deal of rhetoric from both sides. It is not my aim to add more heat to the debate. Judge Bork has asked that we lower our voices and, on that score at least, he is correct.

The fact remains, however, that Judge Bork is wrong—terribly wrong—in his conception of the Constitution and the Supreme Court. And that is why, after the Judiciary Committee voted and after I met personally with Judge Bork, I concluded that he should not be confirmed.

In 1803, John Marshall, our first great Chief Justice, declared that it is the duty of the Supreme Court to say what the law is. The capacity of the Supreme Court to carry out that task with wisdom has enormous consequences for our Nation. When the Supreme Court is wrong, as it was when it decided the Dred Scott case and Plessy versus Ferguson, it has the power to sow the seeds of social conflict and oppression. When the Supreme Court is right, as it was when it decided Brown versus Board of Education, it has the capacity to ensure justice for every American.

For me, in other words, the test of a Supreme Court nominee should turn on a simple question: Does the nominee understand the basic character of the Constitution and the special role of the Supreme Court in our system of government? I have concluded that Judge Bork lacks that essential understanding.

Consider Judge Bork's view of original intent. All of us agree that no judge should frustrate the will of the framers. But the questions still remain: Why did the framers use the broad and lasting application when they wrote the provisions that guarantee our fundamental rights? Why did the framers place words like "due process" and "liberty" in the 5th and 14th amendments?

I believe that Woodrow Wilson answered those questions when he wrote that "the Constitution of the United States is not a mere lawyers' document; it is a vehicle of life, and its spirit is always the spirit of the age." In other words, the framers knew that they were drafting a constitution; not the legal equivalent of an automobile repair manual whose directions must be followed in a mechanical fashion. The drafters of the Constitution wrote a document that was intended to be as important for future generations as for their own.

As our country has grown and matured, so has our understanding of the Constitution. We have made great strides toward eliminating injustice. We cannot reopen old wounds.

Judge Bork's blind reliance on a tortured notion of "original intent" threatens the progress we have achieved. For example, he apparently believes that the 14th amendment provides little, if any, protection against intrusions by the States into our private lives. In coming to that view, Judge Bork rejects the principled conservatism of Justice John Harlan as well as the wisdom of the man he would replace, Lewis Powell.

Similarly, Judge Bork commands us to follow the original intent while he disregards the words of the Constitution themselves. The ninth amendment states, simply and eloquently, that "the enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." Judge Bork has said, however, that this amendment has no meaning. Are we to assume that the framers wrote the ninth amendment intending it to be devoid of content? I, for one, do not think so.

These questions are not merely of academic importance. It is the right to be private that makes each person a free and autonomous individual. But our freedom would be severely tested if the Government could intrude into the intimate details of our lives. Orwell's Big Brother will not break down our doors or peer into our windows so long as the Constitution is honored.

Judge Bork says that he would rely on the legislature, not the courts, to protect privacy and liberty. And so we must ask how well the nominee himself would preserve and protect the principle of majority rule that governs our democratic society. But the answer reveals that Judge Bork has criticized in the strongest terms the Constitution's requirement of one-person/one-vote. Does Judge Bork really favor majority rights? I have regretfully concluded that his selective embrace of majoritarian principles merely favors more powerful groups at the expense of the less powerful.

Judge Bork also holds the view that Members of Congress do not have standing to sue the executive branch. That assertion, if accepted by the Supreme Court, would unconstitutionally limit the authority of the very branch of Government that best reflects the diversity of our Nation: the Congress. If, as Judge Bork contends, the legislature is the last resort for people whose rights need protection, what are we to do when an imperial executive ignores the law and tramples on the legislature?

Have we not learned by now that all Americans, even the President, must be constrained by the rule of law? Judge Bork had a firsthand view of Watergate. He should know that we cannot permit the public trust to be betrayed. The Supreme Court must hear the pleas of all aggrieved persons; it must enforce legal obligations no matter how high they reach. We cannot allow a Justice on the Supreme Court who would eschew that responsibility.

Mr. President, it is not enough for a Supreme Court Justice to be learned; a Justice must also be wise. A Supreme Court Justice must look deep into the Constitution, into our shared traditions, and into our national history. The job is not easy. It is lonely and hard.

When I look at Robert Bork; I don't see the capacity to perform that task. I see intellectual power, but not intellectual growth. I don't see a man who can—as a Justice must—step above ideological concerns.

In a very real sense, when a Supreme Court Justice dons his robes he belongs to the ages. That is why this debate must be nonpartisan. That is why this administration has a duty not to play politics with the next Supreme Court nomination.

I was very disappointed last week that President Reagan responded vindictively to the prospect that this nominee might be rejected. The President said that he would send us another nominee that would be just as objectionable as Judge Bork.

That's not right. We in the Senate will do our job. We will carefully scrutinize any nominee. But the President must do his job as well. We cannot permit the selection of a nominee to be vetoed by special interest groups. I am particularly disturbed by press reports suggesting that some candidates for the Court suffer because they have had the temerity to follow governing

Supreme Court precedent. To my knowledge, we have never before faced the possibility that a judge would be considered unworthy because he granted to the Supreme Court the respect it deserves.

Let this be clear: This Nation will never tolerate a Supreme Court dominated by close minded ideologues. We will not welcome a nominee willing to ignore time-honored precedent and hard-won individual and civil rights. We will not place 18th century lenses in front of the eyes of our Supreme Court Justices. We will not permit the clock of social justice to be turned backward.

Let the administration send us, if it wishes, a true conservative; a person who wishes to conserve our accomplishments as well as to conserve fundamental liberties. This body will respond responsibly to a responsible nominee.

For the moment, however, our duty is clear. Judge Bork should not be confirmed. Mr. President, this nomination should be withdrawn. If it is not, then it should be rejected.

Mr. HUMPHREY. Mr. President, the most important aspect of the Supreme Court's caseload is in the critical area of criminal law. Some 30 percent of the Court's cases are criminal law cases, and those cases are the ones which most directly affect the average citizen.

I have no doubt that most Americans care far more deeply about effective law enforcement against violent criminals than about whether homosexual sodomy is protected under the "generalized right of privacy"—which so many Senators seem to consider the pivotal issue of our age.

That is why it is so disturbing that consideration of this nomination has focused almost exclusively upon distortions and criticisms of Judge Bork's fine record in other areas, while all but ignoring the fact that his tough but fair approach to criminal law issues is sorely needed on the Supreme Court—and it is needed now.

It is especially disturbing that various Senators have claimed that they favor a conservative, law-and-order Justice even as they reject a nominee who fits those criteria—and also happens to be the most well-qualified judge in the country for the Supreme Court. If not Robert Bork, then whom?

These two positions—claiming to favor a conservative, law-and-order Justice on the one hand, while rejecting Judge Bork on the other—are flatly incompatible.

The current Supreme Court is evenly divided—4 to 4—on the most critical criminal law issues of the day. Incredibly, however, some Senators have attempted to create the illusion that the Court's position on law-and-order issues is securely established, and that it makes no difference if the Senate now rejects a strong nominee on criminal law issues in favor of a more liberal nominee.

For example, Senator BENTSEN made the following statement on the floor in defending his rejection of Judge Bork, and I think it is important to pay careful attention to it. After conceding that Judge Bork is a "law-and-order judge" and commending him for his "strong stand in this area," Senator BENTSEN stated:

> But look at the composition of the Court, Mr. President, and you will see that we will have a law-and-order Supreme Court with or without Judge Bork. That path is already charted. The Rehnquist court has left no doubt in this area. With law-and-order Judges like Scalia, O'Connor, and White, Robert Bork would really be a controversial fifth wheel—rather than a swing vote—on those issues.

With due respect to the Senator from Texas, this statement is directly contrary to the actual facts. After identifying the four Justices who generally vote to uphold effective law enforcement, Senator BENTSEN neglected to mention that the remaining four Justices—Brennan, Marshall, Blackmun, and Stevens—consistently vote the other way.

Let's look at the real facts. Let's look at the actual vote count in the Supreme Court's most critical law and order cases.

Last term, the Court came within one vote of reaching a decision which would have effectively outlawed capital punishment in the United States. The case was McCleskey versus Kemp. The issue was whether capital punishment must be declared unconstitutional if death sentences are not meted out in statistical proportionality in relation to the races of the victims and the perpetrators.

Four Justices who are still on the Court voted to strike down the death penalty in the McCleskey case. Only four Justices who voted to uphold capital punishment are still on the Court. The swing vote which was necessary to uphold the death penalty in that case—Justice Powell—is now gone from the Court.

Unless a strict constructionist, law-and-order judge like Robert Bork is confirmed, the votes will no longer be there to uphold the constitutionality of the death penalty—even though its constitutionality is explicitly recognized in the text of the Constitution itself and it has been a settled part of our criminal law for over 200 years.

This same pattern of 5 to 4 votes on crucial criminal law issues has been repeated in case after case. Let me list only a few examples, although they do not begin to exhaust the list of cases where the Court was one vote away from returning to the antilaw enforcement doctrines of the Warren court:

In Tison versus Arizona and California versus Brown, the Court again came within one vote of striking down valid applications of the death penalty in heinous murder cases. In each case, the vote on the current Court would be 4 to 4. These cases could easily go the other way if a judge like Robert Bork is not confirmed.

It is clear from these cases that a vote against a conservative judge like Judge Bork is the practical equivalent of a vote against the death penalty. There is no escaping it.

In Illinois versus Krull, the Court's 5 to 4 vote only narrowly upheld a perfectly good faith search by police which was based on a statute later declared unconstitutional. Again, the Court is only one vote away from a regime which would seriously obstruct our police by rejecting a good-faith exception to the flawed exclusionary rule.

In Arizona versus Mauro, the Court came within one vote of holding that an accused killer's "Miranda rights" had been violated even though the police had fully complied with Miranda, had asked no questions of the accused, but had merely recorded with the suspect's knowledge a station house conversation he had with his wife at his request.

In Burger versus Kemp, the Court came within one vote of setting aside the conviction of a Georgia murderer merely because his lawyer's partner had represented a codefendant.

And in United States versus Salerno, the Court only narrowly upheld the pretrial detention provisions of the Bail Reform Act of 1984, which are necessary to prevent the pretrial release of known terrorists and serial murderers who present a known and immediate threat to murder innocent people. Although the vote in Salerno was 6 to 3, the Court is still closely divided on this issue and the new Court nominee will play a critical role in future cases on this crucial issue.

These are only a few examples of the important criminal law decisions of the last year alone which have been decided by a sharply divided Court, and often by a single vote. So those who seek to belittle the importance of this nomination to criminal law issues are flatly wrong.

We do not have "a law-and-order Supreme Court with or without Judge Bork."

Instead, we have a Supreme Court sharply divided—four against four—on the major criminal law issues of our time. We have a Supreme Court which is evenly divided on the constitutionality of capital punishment. If a lower Federal court erroneously strikes down the death penalty for a violent murderer today—right now—the Court lacks the five votes needed to uphold a just death sentence.

So I urge my colleagues who actually support a strong law and order Court to address the issue squarely and honestly.

If they reject an impeccably qualified conservative nominee like Judge Bork, they are serving the interest of those who are desperate to destroy the narrow 5 to 4 majority which upheld law and order prior to Justice Powell's retirement. If they reject Judge Bork, they are paving the way for a Supreme Court which will overturn capital punishment, shackle effective law enforcement, and sacrifice the rights of victims and law-abiding citizens to the judicial coddling of violent criminals.

There is no escaping this fundamental issue in this debate. It is far too important to be ignored or evaded any longer.

Mr. METZENBAUM. Mr. President, I ask unanimous consent that the following letters to me from NARAL and Planned Parenthood be placed in the RECORD prior to the vote on this nomination.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

NATIONAL ABORTION RIGHTS
ACTION LEAGUE,
Washington, DC, October 20, 1987.

Hon. HOWARD METZENBAUM,
U.S. Senate, Washington, DC.

DEAR SENATOR METZENBAUM: With Judge Robert Bork's decision not to withdraw from consideration as Associate Justice to the U.S. Supreme Court, Senate deliberation on his nomination continues. Certainly, no amount of debate or discussion will change Robert Bork's record or his testimony before the Judiciary Committee.

It is his record, after all, that defeated Judge Bork. No group or groups, no newspaper ads or grassroots organizations made Bork controversial. It was Bork himself, aided and abetted by a President who first politicized the nomination process during last year's election, who created the controversy.

From the outset, the National Abortion Rights Action League (NARAL) has based its opposition to Judge Bork's elevation to the Court on his own record, writings, and criticisms of established constitutional doctrine erected to protect individual rights and liberties.

To faithfully educate the American people on Judge Bork's record and the threat it represented, NARAL and other organizations ran full page advertisements around the country. These ads asked people to involve themselves in the democratic process by contacting their Senators.

I am writing to share with you a copy of the newspaper advertisement paid for by NARAL. Attached to the copy is supporting documentation for every statement and claim made in the advertisement. This responds to allegations made by supporters of the nomination of Robert Bork, that organizations such as NARAL have deceived the American public by distorting his record. Bork supporters have claimed that NARAL and other national organizations have enacted a "campaign of deceit" through our one-day, paid advertisement printed in several of the nation's leading newspapers.

We stand firmly behind the accuracy and appropriateness of our advertisement. We hope you will review the enclosed materials and judge for yourself the substance of the advertisement.

Supporters of the nomination fail to recognize that their efforts to confirm Judge Bork have faltered, not because of the voices of the so-called "special interests", but because Bork's record speaks for itself. The White House has consciously attempted to portray Judge Bork as a moderate; they have failed. Judge Bork's supporters have resorted to a last ditch, belligerent attack on our informal campaign in a vain attempt to save a nomination the American public has already rejected.

NARAL is proud of the role we have played in this historic confirmation debate. We point with satisfaction to the successful grassroots education and mobilization campaign that NARAL has been a part of, which has involved thousands of citizens across the country in the democratic process.

Our pride is reinforced when we receive letters such as the one sent by a NARAL supporter in Washington state who told us, "I feel I've taken part *actively* in this process and it feels great. Thanks for the leadership." It is regrettable that pro-Bork forces, even while recognizing they have lost their bid to gain his confirmation, have resorted to tactics of intimidation and harassment.

We hope you find the enclosed information useful. Please contact NARAL Legislative Representative, Bob Bingaman, or me if you have any further questions about the enclosed materials.

Sincerely yours,

KATE MICHELMAN,
Executive Director.

[From the Boston Globe, Sept. 8, 1987]

WHAT WOMEN HAVE TO FEAR FROM ROBERT BORK

You wouldn't vote for a politician who threatened to wipe out every advance women have made in the 20th Century. Yet your Senators are poised to cast a vote that could do just that. Senate confirmation of Robert Bork to the Supreme Court might cost you the right to make your most personal and private decisions. His rulings might leave you no choice—in relationships, in childbearing, even your career. He must be stopped. Tell your Senators. Our lives depend on it.

If Robert Bork is confirmed to the Supreme Court, he'll be the deciding vote on questions that affect every aspect of our lives.

The fair-minded, deliberate, balanced Supreme Court we're all familiar with will be a thing of the past. A right-wing 5-4 majority will prevail for decades.

Robert Bork's writings and his record demonstrate a hostility to rights most women would consider fundamental, from personal privacy to the equality of women and men before the law. And he's threatened to overturn any Supreme Court precedent that stands in his way.

According to Bork, women can be forced to choose between sterilized and losing their jobs.

A state can declare the use of birth control illegal and invade your privacy to enforce the law.

You wouldn't even be protected against sexual harassment at work (Robert Bork doesn't believe such coercion is "discriminatory").

The fact is, Robert Bork's nomination threatens almost every major gain women have made since we won the right to vote. He would deny women the freedom, fairness and independence we've come to expect as first-class citizens.

Stripped of our most basic Constitutional guarantees of personal privacy and equal protection, women would have no defense against the "moral majority" extremists.

First to go? Your right to make a private decision about abortion. With Bork on the Court, your basic freedom to decide when, whether and under what circumstances to bear children could be taken away forever.

A state could ban both birth control and abortion—throwing women back to the age when pregnancy was, in effect, compulsory and women risked their lives to terminate a pregnancy.

Far-fetched? Far from it.

Attempts have already been made to officially permit discrimination against women who've chosen abortion—even though abortion is entirely legal. Women who made this profoundly private decision, protected by our Constitution, could be singled out and denied education and employment opportunities.

And a Supreme Court dominated by the right would do nothing to stop it.

Whatever your personal feeling about abortion, the decision must be up to you—not imposed by some political appointee.

But then, that's precisely why Robert Bork was nominated to the Supreme Court. His expedient reading of the Constitution allows "moral majority" extremists to hope they can force their dogma on the rest of us under penalty of law.

Beginning with abortion. But extending from there into every aspect of women's lives, personal and professional, as if the U.S. Constitution simply didn't apply to women.

The choice is stark.

Your Senators can confirm Robert Bork—inviting right-wing extremists to challenge every right we possess.

Or they can reject Robert Bork—and uphold the Constitutional standards of freedom and fairness.

This is your chance to determine the course of our country and the status of women in a free society. Act now.

Or a man you've never met will decide your future for you.

We're one vote away from losing our most fundamental rights . . . one Justice away from injustice. Your Senators must hear from you. Many are undecided on Bork . . . and wonder if you know how much is at stake. Mail the coupons immediately. Robert Bork must be stopped. And it's your turn to make history.

Advertisement narrative	Documentation
1. "You wouldn't vote for a politician who threatened to wipe out every advance women have made in the 20th Century. Yet your Senators are poised to cast a vote that could do just that. Senate confirmation of Robert Bork to the Supreme Court might cost you the right to make your most personal and private decisions. His rulings might leave you no choice—in relationships, in childbearing, even your career. He must be stopped. Tell your Senators. Our lives depend on it. "If Robert Bork is confirmed to the Supreme Court, he'll be the deciding vote on questions that affect every aspect of our lives. "The fair-minded, deliberate, balanced Supreme Court we're all familiar with will be a thing of the past. A right-wing 5-4 majority will prevail for decades."	1. The *Roe* v. *Wade* 7:2 majority has narrowed in recent years to 5:4 with Justice Powell casting the pivotal vote in favor of upholding the 1973 qualified right to terminate pregnancy. Since the liberal Justices are old and the conservative ones young, the new right-leaning majority could persist for a long time. Depriving women of the right to an abortion ultimately means depriving Americans of reproductive autonomy which affects every aspect of women's lives, from the most intimate to the most public. Yet Judge Bork has criticized *Roe* v. *Wade* in sweeping terms that make no mention of the required consequences for women of his judicial philosophy: "I am convinced, as I think most legal scholars are, that *Roe* v. *Wade* is, itself an unconstitutional decision, a serious and wholly unjustifiable judicial usurpation of State legislative authority I also think that *Roe* v. *Wade* is by no means the only example of such unconstitutional behavior by the Supreme Court."—Hearings before the Subcommittee on Separation of Powers of the Senate Judiciary Committee, 97th Cong., 1st Sess. p. 310 (June 1, 1981) (U.S. Gov't Serial No. J-97-16). Additional twentieth century rights, central to woman's status, which Judge Bork disparages, either because they are not enumerated in the Constitution or because he interprets statutes to exclude them, include: contraception, *Griswold* v. *Conn.*, 381 U.S. 479 (1965) [re: Bork, see infra nos. 2 and 5]; equal protection of the law, as applied to gender, *Reed* v. *Reed*, 404 U. S. 71 (1971), *Miss. Univ for Women* v. *Hogan*, 458 U. S. 717 (1982) [re: Bork, see infra no. 2]; the right to procreate, *Skinner* v. *Oklahoma*, 316 U. S. 535 (1942) [re: Bork, see *OCAW* v. *American Cyanamid*, 741 F.2d 444 (1984)]; and freedom from sexual harassment at work, *Meritor Savings* v. *Vinson*, 106 S.Ct. 2399 (1986) [re: Bork, see *Vinson* v. *Taylor*, 760 F.2d 1330 (1985) (dissenting from denial of rehearing en banc).
2. "Robert Bork's writings and his record demonstrate a hostility to rights most women would consider fundamental, from personal privacy to the equality of women and men before the law."	2. Personal privacy: "The 'penumbra' [considered to be the source of the right of privacy] was no more than a perception that it is sometimes necessary to protect actions or associations not guaranteed by the Constitution in order to protect an activity that is. The penumbral right has no life of its own as a right independent of its relationship to a first amendment freedom. Where that relationship does not exist, the penumbral right evaporates." *Dronenburg* v. *Zech*, 741 F.2d 1388, 1392 (D.C. Cir. 1984). Equality of men and women before the law: "The equal protection clause has two legitimate meanings. It can require formal procedural equality, that government not discriminate along racial lines. But much more than that cannot properly be read into the clause * * *. The Supreme Court has no principled way of saying which nonracial inequalities are impermissible." Bork, Neutral Principles and some First Amendment Problems, 47 Ind. L.J. 1, 11 (1971). Although Judge Bork wrote this article in 1971, as recently as 1985 he described it as representing his philosophy. See e.g., McGuigan, An Interview with Judge Bork, Judicial Notice, June 1986 at 1, 7-8.
3. "And he's threatened to overturn any Supreme Court precedent that stands in his way."	3. "If a court became convinced that it had made a terrible mistake about a constitutional ruling in the past, I think ultimately the real meaning of the Constitution ought to prevail over a prior mistake by the court." Testimony of Robert H. Bork, Nominee to the District of Columbia Court of Appeals, Jan. 27, 1982, p. 10 (Statement before the Senate Judiciary Committee).
4. "According to Bork, women can be forced to choose between being sterilized and losing their jobs . . ."	4. In upholding American Cyanamid's "fetal protection policy" (barring women of child-bearing age from jobs involving exposure to certain chemicals unless they consent to be sterilized), Judge Bork said: "These are moral issues of no small complexity, but they are not for us. Congress has enacted a statute and our only task is the mundane one of interpreting its language and applying its policy . . . The women involved in this matter were put to a most unhappy choice. But no statute redresses all grievances and we must decide cases according to the law." *Oil, Chemical and Atomic Workers International Union* v. *American Cyanamid* 741 F.2d 444 (1984) (reversing the OSHA invalidation or Cyanamid's policy).
5. "A state can declare the use of birth control illegal and invade your privacy to enforce the law . . ."	5. Judge Bork called Griswold (which overturned Connecticut's anti-contraception statute in 1965) "an unprincipled decision, both in the way in which it derives a new constitutional right and in the way it defines that right, or rather fails to define it." Neutral Principles, 47 Ind. L.J. at 9 (1971).
6. "You wouldn't even be protected against sexual harassment at work (Robert Bork doesn't believe such coercion is "discriminatory")."	6. "Perhaps some of the doctrinal difficulty in this area is due to the awkwardness of clarifying sexual advances as 'discrimination.'" *Vinson* v. *Taylor*. 760 F.2d at 1333, n. 7 (1985)

Advertisement narrative	Documentation
7. "The fact is, Robert Bork's nomination threatens almost every major gain women have made since we won the right to vote. He would deny women the freedom, fairness and independence we've come to expect as first-class citizens."	7. Since the 1920's the Supreme Court has recognized numerous "fundamental" rights which now allow women to participate freely and equally in society, and to take advantage of statutory gains: Freely: *Skinner* v. *Oklahoma*, 316 U.S. 535 (1942) (freedom to have children); *Griswold* v. *Conn.*, 381 v.s. 479 (1965) and *Roe* v. *Wade*, 410 U.S. 113 (1973) (freedom to control fertility and to pursue activities other than childbearing and childrearing); *Loving* v. *Virginia*, 388 U.S. 1 (1967) and *Zablocki* v. *Redhail*, 434 U.S. 374 (1978) (freedom to marry the person of one's choice); *Moore* v. *East Cleveland*, 431 U.S. 494 (1977) (freedom from arbitrary interference with family living arrangements). Equally: *Reed* v. *Reed*, 404 U.S. 71 (1971) (legal authority to administer estates); *Frontiero* v. *Richardson*, 411 U.S. 677 (1973) (differential military benefits are unsound); *Weinberger* v. *Wiesenfeld*, 420 U.S. 636 (1975) (differential social security benefits are unsound); *Kirchberg* v. *Feenstra*, 450 U.S. 455 (1981) (states may not grant exclusive authority over community property). According to Robert Bork's "original intent" jurisprudence, all of these decisions are constitutionally illegitimate.
8. "Stripped of our most basic Constitutional guarantees of personal privacy and equal protection, women would have no defense against the 'moral majority' extremists."	8. Recently completed NARAL research shows that, despite the fact that an overwhelming majority of Americans support abortion rights, the current abortion laws of 30 states are more restrictive than federal constitutional law permits. Twelve states have enacted language expressing legislative intent to restrict women's ability to choose abortion and/or to extend legal rights to developing embryos and fetuses. All of these statutes are now held at bay by the federal constitutional doctrine that is at risk.
9. "First to go? Your right to make a private decision about abortion. With Bork on the Court, your basic freedom to decide when, whether and under what circumstances to bear children could be taken away forever."	9. Chief Justice Rehnquist and Justices White, Scalia, and O'Connor all believe that it would be proper for the states to restrict abortion. Judge Bork would create a young five-person majority critical of *Roe* v. *Wade*.
10. "A state could ban both birth control and abortion—throwing women back to the age when pregnancy was, in effect, compulsory and women risked their lives to terminate a pregnancy."	10. In 1962 nearly 1,600 women were admitted to Harlem Hospital Center in New York City, for incomplete abortions; 701 women were admitted to the University of Southern California-Los Angeles County Medical Center with septic abortions. In 1965, 20% of pregnancy-related deaths nation-wide were due to illegal or self-induced abortion. Six years prior to the *Roe* v. *Wade* decision, in 1967, it is estimated that 829,000 illegal or self-induced abortions occurred nation-wide.
11. "Attempts have already been made to officially permit discrimination against women who've chosen abortion—even though abortion is entirely legal. Women who made this profoundly private decision, protected by our Constitution, could be singled out and denied education and employment opportunities."	11. The Danforth Amendment to the Civil Rights Restoration Act, S. 557/HR 1214 (now pending in Congress) would repeal longstanding regulations designed to (a) bar discrimination against a woman who has had an abortion, and (b) require institutions receiving federal aid to treat abortion in the same manner they treat pregnancy or childbirth when providing health insurance or setting leave policy.
12. "And a Supreme Court dominated by the right would do nothing to stop it."	12. For example, Justice White's future actions seem predictable since women appear in his opinions only as mothers. And he sees men (notably those who are able to influence the political process) as the ones to debate the morality of abortion: "I find nothing in the language or history of the Constitution to support the Court's judgment. The Court simply fashions and announces a new constitutional right for pregnant mothers and, with scarcely any reason or authority for its action, invests that right with sufficient substance to override most existing state abortion statutes . . . (in) a sensitive area such as this, involving as it does issues over which reasonable *men* may easily and heatedly differ, I cannot accept the Court's exercise of its clear power of choice by interposing a constitutional barrier to state efforts to protect human life and by investing mothers and doctors with the constitutionally protected right to exterminate it. This issue, for the most part, should be left with the people and to the political processes the people have devised to govern their [affairs]." *Roe* v. *Wade*, 410 U.S. at 221-22 (italic added). Judge Bork agrees with this approach: "There is no uniform national consensus concerning the moral standards that are now being imposed by the Judiciary . . . the liberty of free men, among other things, is the liberty to make laws, which is increasingly being denied . . . *Roe* v. *Wade* is the classic instance . . . When the court nationalizes morality by making up these constitutional rights, it strikes at federalism . . . in a central way." Robert Bork, "Foundations of Federalism: Federalism & Gentrification" (April 24,1982) (unpublished speech delivered to the Yale Federalist Society).

Advertisement narrative	Documentation
13. "Whatever your personal feeling about abortion, the decision must be up to you—not imposed by some political appointee."	13. As Justice Blackmun explained in *Roe* v. *Wade:* "We need not resolve the difficult question of when life begins. When those trained in the respective disciplines of medicine, philosophy, and theology are unable to arrive at any consensus, the judiciary, at this point in the development of man's knowledge, is not in a position to speculate as to the answer . . ." ". . . new embryological data . . . purport to indicate that conception is a 'process' over time . . ." "In areas other than criminal abortion, the law has been reluctant to endorse any theory that life, as we recognize it, begins before live birth . . ." "In view of all this, we do not agree that, by adopting one theory of life, Texans may override the rights of the pregnant women that are at stake." 410 U.S. at 159-62.
14. "But then, that's precisely why Robert Bork was nominated to the Supreme Court. His expedient reading of the Constitution allows moral majority extremists to hope they can force their dogma on the rest of us under penalty of law."	14. President Reagan has relied on the political support of anti-abortion extremists, and has promised that he would further their agenda. (See attached) Judge Bork has showed his agreement with President Reagan's approach to the nullification of abortion rights and is thus seen as an ideal Court appointee.
15. "Beginning with abortion. But extending from there into every aspect of women's lives, personal and professional, as if the U.S. Constitution simply didn't apply to women."	15. In Judge Bork's view, the 14th Amendment guarantee of "equal protection of the laws" does not protect women. See supra number 2.
16. "The choice is stark. Your Senator can confirm Robert Bork—inviting right-wing extremists to challenge every right we possess. Or they can reject Robert Bork—and uphold the Constitutional standards of freedom and fairness."	16. The White House has allied itself with anti-abortion extremists who have launched a deliberate campaign against *Roe* v. *Wade.* (See attached copies of letters and memorandum by the ACLU Reproductive Freedom Project following their attendance at "Reversing *Roe* v. *Wade* Through the Courts," an Americans United for Life Conference, held in Chicago on March 31, 1984.)
17. "This is your chance to determine the course of our country and the status of women in a free society. Act now."	17. The Constitution states that appointments to the Supreme Court require the "Advice and Consent" of the members of the Senate, a body of the federal government designed to be responsive in equal measure to the citizens of the many states. U.S. Const. art II, Sec. 2 [2].

PLANNED PARENTHOOD
FEDERATION OF AMERICA, INC.,
Washington, DC, October 22, 1987.
Hon. HOWARD M. METZENBAUM,
Hart Senate Office Building, Washington, DC.

DEAR SENATOR METZENBAUM: Senate supporters of the nomination of Judge Robert Bork to serve on the U.S. Supreme Court have sought to portray the nominee as an innocent victim of a political campaign by outside interests. A great deal has been made of the advertisements by two or three organizations opposing the nominations, with claims that the ads distorted the Judge's record. Our organization published one ad, headlined "Robert Bork's Position in Reproductive Rights: You Don't Have Any," which appeared in the Washington Post and several other newspapers prior to the Confirmation hearings. We wanted to be sure that you and other senators knew that the assertions made in that ad were well-founded and factual, drawn in large part from Judge Bork's own writings and opinions.

As stated by the late Justice Harlan, "The full scope of the liberty guaranteed by the Due Process Clause cannot be found in or limited by the precise terms of the specific guarantees elsewhere provided in the Constitution. This 'liberty' is not a series of isolated points picked out in terms of the taking of property; the freedom of speech, press, and religion; the right to keep and bear arms; the freedom from unreasonable searches and seizures; and so on. It is a rational continuum which, broadly speaking, includes a freedom from all substantial arbitrary impositions and purposeless restraints, . . . and which also recognizes, what a reasonable and sensitive judgment must, that certain interests require particularly careful scrutiny of the state needs asserted to justify their abridgment." *Poe* v. *Ullman,* 367 U.S. 497 at 542-43 (1961) (dissenting opinion).

Justice Harlan's language was quoted by Justice Powell, writing for the majority in *Moore* v. *City of East Cleveland,* 431 U.S. 494 at 502 (1977). In that case, a woman who lived in her home with her son and two grandsons was convicted of violating a housing ordinance of East Cleveland, Ohio, which limited occupancy of a dwelling unit to members of a single family and defined as a "family" only a few categories of related individuals, essentially parents and their children. The United States Supreme Court ruled that the ordinance violated the Due Process Clause of the Fourteenth Amendment. Justice Powell quoted the Supreme Court's statement in *Cleveland Board of Education* v. *LaFleur,* 414 U.S. 632 at 639-640 (1974), that "[t]his Court has long recognized that freedom of personal choice in matters of marriage and family life is one of the liberties protected by the Due Process Clause of the Fourteenth Amendment." Justice Powell went on to say: "A host of cases . . . have consistently acknowledged a 'private realm of family life which the state cannot enter.' " (citing *Prince* v. *Massachusetts, Roe* v. *Wade, Griswold* v. *Connecticut,* and other cases).

In *Griswold* v. *Connecticut,* 381 U.S. 479 (1965, the Supreme Court struck down a state law which made it a crime for a married couple to use contraceptives and for physicians to advise such couples about contraceptives. In his *Indiana Law Journal* article, "Neutral Principles and Some First Amendment Problems" (Fall 1971), at page 9, Judge Bork characterized the right to privacy articulated in *Griswold* as follows: "The derivation of the principle was utterly specious, and so was its definition." Bork reaffirmed this view in 1985, while sitting on the Circuit Court for the District of Columbia. He said: "I don't think there is a supportable method of constitutional reasoning underlying the *Griswold* decision." ("Judge Bork is a friend of the Constitution," *Conservative Digest* interview, October 1985, reported in the June 1986 issue of *Judicial Notice,* vol. III, No. 4) Thus, we stated in our ad: "[Judge Bork] attacks as 'utterly specious' the landmark Supreme Court decision striking down a ban by the State of Connecticut on the use of birth control by married couples in the privacy of their own homes."

Judge Bork has attacked other Supreme Court decisions involving the right to privacy. Speaking of the Court decision that a woman has a constitutional right to abortion, Judge Bork stated in a Senate subcommittee: "I am convinced . . . that *Roe* v. *Wade* is, itself, an unconstitutional decision, a serious and wholly unjustifiable judicial usurpation of state legislative authority." *The Human Life Bill: Hearings on S. 158 Before the Subcommittee on the Separation of Powers of the Senate Committee on the Judiciary,* 97th Congress, first session, page 310 (1982). Thus, our ad states: "[Judge Bork] denounces the Supreme Court decision recognizing a woman's right to choose abortion—to make a private medical decision about her own pregnancy—as 'wholly unjustifiable' and 'unconstitutional'."

In *Franz* v. *United States,* 707 F2d 582 (D.C. Cir. 1983) and 712 F.2d 1428 (D.C. Cir. 1983), the Justice Department relocated a federal witness, his wife, and her children by a former marriage, and concealed the whereabouts of the children from their natural father, who had retained visitation rights. The natural father sued for visitation rights. The majority held that the complete termination of the relationship between a non-custodial parent and his minor children, without their participation or consent, violated their right to privacy. Judge Bork issued a separate statement charging that the reasoning underlying the right to privacy doctrine was "ill-defined." Although conceding that "no doubt, there is usually [an emotional bond between the noncustodial parent and the child] and the termination of the relation between the parent and the child will cause considerable distress," Judge Bork strongly opposed the creation of any constitutional right based upon this emotional bond. And, in *Dronenburg* v. *Zech*, 741 F2d 1388 (D.C. Cir. 1984), writing for the court, Judge Bork held that the Navy's policy of mandatory discharge for homosexual conduct does not violate constitutional rights to privacy or equal protection. In his opinion, Judge Bork said: "We do well to bear in mind the concerns expressed by Justice White, dissenting in *Moore* v. *City of East Cleveland.*" Justice White dissented in *City of East Cleveland*, discussed above, on the ground that "the Court has no license to invalidate legislation which it thinks merely arbitrary or unreasonable." Justice White would have sustained the East Cleveland ordinance which ordained single-family occupancy and defined a "family" to exclude a grandmother. In his dissent, Justice White criticized the language quoted above of Justice Harlan giving a broad reading to the liberty guaranteed by the Due Process Clause. Justice White argued in support of his position that "the ordinance thus denies appellant the opportunity to live with all her grandchildren in this particular suburb; she is free to do so in other parts of the Cleveland metropolitan area." 431 U.S. at 550. Thus, we stated in our ad: "Stripped of privacy protections, we couldn't even choose our own relationships or living arrangements without fear of government intrusion. Bork agreed with a local zoning board's power to prevent a grandmother from living with her grandchildren because she didn't belong to the 'nuclear family.'"

Certainly, all of these instances support the opening statement in our ad that: "If your Senators vote to confirm the Administration's latest Supreme Court nominee, you'll need more than a prescription to get birth control. It might take a constitutional amendment. Robert Bork is an extremist who believes you have no constitutional right to personal privacy. He thinks the government is there to dictate what you can and can't do in highly personal and intimate matters such as marriage, child bearing, parenting." And, as our ad also points out, if no constitutional provision bars states from banning the use of birth control, it logically follows that there is no constitutional provision that would prevent a state from mandating the use of birth control.

Another decision by Judge Bork showing his insensitivity to human rights was *Oil, Chemical and Atomic Workers International Union* v. *American Cyanamid Company*, 741 F.2d 444 (D.C. Cir. 1984). There, the owner of a manufacturing plant was sued because the release of lead into the plant air was hazardous to the sensitive tissue of a fetus that might be carried by a pregnant employee. The company adopted a policy that gave women of childbearing age a choice of being sterilized or losing their jobs. The Secretary of Labor determined that this policy violated the Occupational Safety and Health Act, which requires every employer to furnish "to each of his employees employment and a place of employment which are free from recognized hazards." Judge Bork found that the statute did not apply to the employer's "fetus protection policy," because the various examples of hazards cited in the legislative history all referred to such things as poisons, combustibles, and explosives, whereas the employer's policy was effectuated by sterilization performed in a hospital outside the workplace and was, accordingly, not covered by OSHA. At the hearings, he justified this decision as having "given the women a choice." Thus, we stated in our ad: "In a case involving a company which produced dangerous amounts of toxic lead, Bork refused to strike down a company policy which required female employees to become sterilized, or to be fired from their jobs." And, we pointed out that he is not moved by "The pain and suffering of innocent people."

Judge Bork has also given us reason to believe that he might vote to overturn a large number of cases. In his written testimony on the Human Life Bill, Judge Bork stated: "The judiciary have a right, indeed a duty, to require basic and unsettling changes, and to do so, despite any political clamor, when the Constitution fairly interpreted demands it. The trouble is that nobody believes the Constitution allows, much less demands, the decision in *Roe* . . . or in dozens of other cases in recent years." Hearings before the Subcommittee on Separation of Powers, 1981, on "The Human Life Bill" at 315. Thus, we stated in our ad: "Bork sees the Court not as a problem-solver, guided by past decisions, but as a reckless troublemaker, aggressively seeking ways to upset past rulings he thinks are wrong." Indeed, in a speech at Canisius College in Buffalo, on October 8, 1985, Judge Bork said: "I don't think that, in the field of constitutional law, precedent is all that important . . . if you become convinced that a prior court has misread the Constitution, I think it's your duty to go back and correct it." When the tape of those remarks was played at the Senate Judiciary Committee's hearings, Judge Bork said: "Generally what I said there is correct." And he told the Attorney General's Conference in 1986 that "the Court's treatment of the Bill of Rights is theoretically the easiest to reform." It was based on such comments that we said: "If he wins a lifetime seat on the Supreme Court, Bork could radically change the way Americans live."

I hope this is helpful. If you need further information or clarification please don't hesitate to call us.

Sincerely,

WILLIAM W. HAMILTON, Jr.,
Director, Washington Office.

BORK AD SOURCE MATERIAL

1. ". . . there was never any doubt that the Constitution was to be construed so as to give effect, as nearly as possible, to the intensions of those that made it."

"When a judge finds that the amendments create a general right of privacy . . . he reaches a result far beyond anything the Framers intended . . ."—Robert H. Bork, forward to *The Constitution and Contemporary Constitutional Theory* by Gary L. McDowell, Center for Judicial Studies, Cumberland, VA. 1985, pp. v-x.

"Well, the so-called right of privacy was born in the case of *Griswold* v. *Connecticut* . . . I don't think there is supportable method of constitutional reasoning underlying the *Griswold* decision."—"An Interview with Judge Robert H. Bork", *Judicial Notice*, Vol. III, No. 4, June 1986.

Asked recently by TIME Magazine if he found a right to privacy anywhere in the Constitution, Bork's reply was unequivocal: "I do not."—*Time Magazine*, July 13, 1987, p. 11.

2. ". . . but Judge Bork's voting patterns show him to be far more conservative than the average Reagan appointee . . ."

"It has been widely reported, and acknowledged by some Administration officials, that the Reagan Administration has made a more determined effort than any in recent history to appoint judges who share the President's conservative political views and his disapproval of judicial activism."

"The two-part study was perhaps the most thorough statistical analysis yet made public of the voting patterns of Mr. Reagan's judicial appointees."—New York Times, July 28, 1987, Stuart Taylor, Jr., reporting a Columbia University Law Review Survey.

"Most strikingly, Judge Bork's voting behavior in regulation cases reflects an apparently inconsistent application of judicial restraint. In the case with dissents examined in our study, Bork consistently urged that the court defer to agency decisions when a public interest group sued the government. However, in our study, when a business group sued a government agency, Bork very often voted to reverse the agency's decision."

"Of course, the Senate must consider more than these voting patterns in evaluating a judicial nominee. We urge that Judge Bork's public statements, academic writings and judicial opinions be closely scrutinized. Still, Judge Bork will need to explain what we have identified as an apparently one-sided approach in at least a significant portion of his judicial decisions. The average Reagan judge may be within the Republican mainstream, but the President's nomination of a man with Judge Bork's record to the nation's highest court can only fuel the current debate about judicial extremism."—Columbia University, Columbia Law Review, Press Release announcing Study, July 27, 1987.

3. "I must report, however, that after careful reading of *The Antitrust Paradox*, I have reconsidered the integrity of the Bork book, and indeed, must question the intellectual forthrightness of Professor Bork's larger judicial philosophy."

"Indeed, Professor Bork candidly acknowledges that his radical views fall outside the mainstream."—ABA Committee Evaluation and Report to the United States Senate on the Qualifications of Robert H. Bork as Associate Justice of the U.S. Supreme Court. By Leonard Orland, Professor of Law, University of Connecticut School of Law to the Honorable Harold R. Tyler, Jr.

"The proposal to legalize all truly vertical restraints is so much at variance with conventional thought on the topic that it will doubtless strike many readers as troublesome, if not bizarre."—Robert H. Bork, *The Antitrust Paradox: A Policy at War with Itself*, New York: Basie Books, 1978, p. 297.

"The judiciary have a right, indeed a duty, to require basic and unsettling changes, and to do so, despite any political clamor, when the Constitution, fairly interpreted, demands it. The trouble is that nobody believes the Constitution allows, much less demands, the decision in *Roe* v. *Wade* or in dozens of other cases of recent years."—Prepared Statement of Professor Robert H. Bork, Hearings before the Subcommittee on Separation of Powers of the Senate Judiciary Committee, 97th Congress, 1st Session, p. 315 (June 1, 1981), (U.S. Government Serial No. J-97-16)

4. "Courts must accept any value choices the legislature makes unless it clearly runs contrary to a choice made in the framing of the Constitution."—Robert H. Bork, "Neutral Principles and Some First Amendments

Problems," *Indiana Law Journal*, Fall 1971, p. 11

5. "The derivation of the principle was utterly specious, and so that its definition . . ." "*Griswold*, then is an unprincipled decision, both in the way in which it derives a new constitutional right and in the way it defines that right, or rather fails to define it."—ibid., p.9

6. Robert Bork ruled in favor of a chemical company that offered its women employees a choice of being surgically sterilized or losing their jobs. A Court of Appeals decision, written by Judge Bork, held that the Occupational Safety and Health Act did not bar an employer's policy that gave fertile women working at a chemical plant with unsafe lead levels the choice of being sterilized or losing their jobs.

In the opinion Judge Bork wrote: "We may not, on the one hand, decide that the company is innocent because it chose to let women decide for themselves which course was less harmful to them, nor may we decide that the company is guilty because it offered an option of sterilization that the women might ultimately regret choosing. These are moral issues of no small complexity, but they are not for us. Congress has enacted a statute and our only task is the mundane one of interpreting its language and applying its policy. The women involved in this matter were put to a most unhappy choice. But no statute redresses all grievances and we must decide cases according to the law."

He asserted that the OSHA Act "can be read, albeit with some semantic distortion to cover the sterilization exception contained in (the company's) fetus protection policy." *O.C.A.W.* v. *American Cyanamid*, 741 F. 2d 444 (1984)

7. "I am convinced, as I think most legal scholars are, that *Roe* v. *Wade*, is, itself an unconstitutional decision, a serious and wholly unjustifiable judicial usurpation of State legislative authority. I also think *Roe* v. *Wade* is by no means the only example of such unconstitutional behavior by the Supreme Court." Hearings before the Subcommittee on Separation of Powers of the Senate Judiciary Committee, 97th Congress, 1st Session, p. 310 (June 1, 1981) (U.S. Government Serial No. J-97-16)

8. In *Moore* v. *City of East Cleveland*, Justice Powell wrote for the majority in a case involving a woman who was convicted of violating a housing ordinance which limited occupancy of a dwelling to members of a single family. "Family" was defined narrowly, so that the woman was ineligible to live with her son and grandchildren. In ruling for the family and against the city ordinance, Justice Powell cited a range of cases which have acknowledged a "private realm of family life which the state cannot enter." Powell and other justices have spoken and written of a "rational continuum which, broadly speaking, includes a freedom from all substantial arbitrary impositions and purposeless restraints . . . (Justice Harlan in *Poe* v. *Ullman*). In Contrast, Judge Bork has steadfastly insisted that no generalized right to privacy exists and that the framers could not have intended such derived rights such as that addressed in the *East Cleveland* case.

9. Prior to the *Griswold* decision in 1965, family planning clinics were closed and contraceptive use and distribution were prohibited in the State of Connecticut. Medical providers were arrested and tried in court as a result of the Connecticut statute, contrary to testimony by Judge Bork during the Senate Confirmation Hearings.—Letter to Sen. Joseph R. Biden, Jr., from Harriet F. Pilpel, Attorney at Law, Weil, Botshal and Manges, NY, NY.

10. Direct Quote, *Indiana Law Journal*, p. 3.

Asked recently by Time Magazine if he found a right to privacy anywhere in the Constitution, Bork's reply was unequivocal: "I do not."—*Time Magazine*, July 13, 1987, p. 11

11. Reasonable and rigorously logical conclusion drawn from the entire corpus of Judge Bork's legal and academic work. "State controlled pregnancy" is a legitimate reduction to absurdity of Judge Bork's view that state power is preeminent and not subject to constitutional curbs.

Mr. DODD. Mr. President, first I wish to commend the chairman of the Judiciary Committee, Senator BIDEN, and the ranking member, Senator THURMOND, for their skill and fairness in conducting the hearings. I also wish to commend the majority leader, Senator BYRD, and the Republican leader, Senator DOLE, for bringing the nomination to the floor expeditiously.

Mr. President, 2 weeks ago, I delivered a statement on this floor in which I indicated my intention to vote against the nomination of Judge Robert Bork to be an Associate Justice of the Supreme Court.

I rise today to elaborate on some of the points that I made during my earlier statement and address some additional issues.

Mr. President, as we celebrate the bicentennial of our Constitution, we are reminded that our Nation has flourished for 200 years under that glorious document and the tradition of individual liberty in which it was conceived.

For 200 years, the Supreme Court has served as the last bulwark of protection for the rights of all Americans against intrusions into the realm of individual liberty.

Justices of the Supreme Court have a unique obligation: To serve as the ultimate guardians of the Constitution, the rule of law, and the rights and liberties of every citizen.

America always has set the highest standards for our highest court. The nine individuals who sit on that Court have an awesome task. Judge Shirley Hufstedler described that task in her testimony before the Judiciary Committee. She said:

> For that awesome task, we need Supreme Court Justices who understand that the spirit and grandeur of the Constitution lies in its magnificent abstractions and its delicate ambiguities, and who are prepared for the profound work of applying that document to the untidiness of the human condition. We need Supreme Court Justices who understand and accept that "justice," "liberty," "welfare," "tranquility," "due process," "property," and "just compensation" are neither neutral nor static concepts or principles. They are words of passion. They are words of dedication. They are words that cannot be drained of their emotional content and carry any meaning.

The responsibility of preserving the meaning and content of these rights lies with the judiciary; especially, the Supreme Court.

Mr. President, after a review of Judge Bork's extensive writing, his articles and speeches, his opinions as a judge on the Court of Appeals for the District of Columbia circuit, and his testimony before the Senate Judiciary Committee, I have concluded that the judicial philosophy and approach that Judge Bork would bring to the Court are inadequate for these great responsibilities.

What is at stake in the nomination of Judge Bork is a particular conception of the ideal of equal justice under law—one that has its roots in the ideas of the original framers and was further reinforced by the Civil War era amendments, but was developed with special force by the Surpeme Court over the past 50 years.

This is the idea that the Supreme Court should interpret basic constitutional guarantees while always aiming at the ideal of a truly democratic society that seeks to respect and guarantee the liberties of all its members, especially those at the bottom and on the fringes of society.

Majoritarian institutions are essential to democracy, but left unchecked they have a tendency to exclude from full citizenship those who depart from the majority's image of itself. Throughout our history, this tendency has worked to the disadvantage of blacks and other racial groups, of immigrants, of women, of minorities in religious practice and sexual preferences, of the handicapped, of the aged, and of the poor. Historically, these groups have looked to the courts in general and the Supreme Court in particular as the branch of our Government that will listen to them when prejudice or indifference close the ears of the majority.

Americans on the whole think this a better country because the Supreme Court has condemned racial discrimination, has protected privacy, and has said that legislative elections must follow the rule of one person, one vote. These are the central values of our society.

Americans are glad that the Supreme Court, in many bold decisions, has interpreted the Constitution generously to protect individual liberty.

Judge Bork, however, has put his formidable intellect and writing skills behind a fundamental challenge to this conception of the role of the Court and a generous interpretation of the Constitution. In his view, the Court has been too egalitarian and too "permissive"—which is to say, too much concerned with the individual rights and liberties of those who may be different from the majority.

As I have said before, my concern about Judge Bork does not arise from his views about any one of two constitutional issues in isolation. We all, on occasion, disagree with particular Supreme Court decisions.

Rather, my concern is that in so many different areas of constitutional law, Judge Bork has repeatedly denounced landmark Supreme Court decisions, particularly those protecting individual rights and liberties.

What is striking about Judge Bork is that he has disagreed with such an extraordinary range of landmark Supreme Court decisions that one must seriously question whether he adequately respects the Court's basic role and adequately appreciates the Constitution's basic protections of liberty and equal justice.

In article after article, speech after speech, Judge Bork has criticized the constitutional decisions of the Supreme Court—not one, not just a few, but scores of decisions. He has called these decisions "unprincipled," "intellectually empty," and "unconstitutional."

His targets have included the Court's major decisions in matters of racial equality, free speech, freedom of religion, personal privacy, family rights, and women's rights, among others. In all of these areas of fundamental constitutional law, Judge Bork has repudiated a body of law and principles which fortunately is now well-established in America.

Judge Bork has written and spoken extensively as a constitutional theorist and commentator for nearly a quarter of a century. Some have suggested that his academic writings should be viewed simply as his effort to engage in intellectual legal debate and are not truly reflective of the positions he might take as a jurist. However, I believe that these public expressions provide an indication of the real Judge Bork—a window on his heart.

Sadly, these speeches, writings, and public expressions reflect a man whose position has been one of unrelenting opposition to the major developments in the constitutional law of individual rights over the last 25 years. Sadly, these public expressions reflect a man who has failed to appreciate how monumental the landmark decisions of the Supreme Court have been for blacks and women, how important the right of privacy has been, how significant our rights of free speech have been.

As we all know, Judge Bork modified some of his views during his testimony before the Judiciary Committee. But while Judge Bork changed his position on some matters, he reaffirmed most of his basic views, including his objection to any constitutional right of privacy.

In certain other areas, such as equal protection for women under the 14th amendment, his newly enunciated views were so vague that they could not allay the concerns created by so many years of contrary writings and speeches.

Judge Bork reads the Constitution not with Judge Learned Hand's "spirit of liberty" but in a mechanical way, as if it were a rigid legal code. When he interprets the broad majestic guarantees of individual liberty and equal protection in our Constitution, he looks for bright line answers as if he was solving a mathematical problem, and seems uncomfortable with making judgments and distinctions that reflect the fundamental traditions and ideals of our people.

The Constitution addresses Americans' deepest aspirations for liberty and equal justice, and our Justices must read it in that spirit.

In short, I have concluded that over wide and diverse areas of constitutional law, Judge Bork would either overrule settled constitutional understandings that are part of our national fabric, or apply settled understandings in a restrictive way.

I am also concerned that as new issues emerge in the years ahead, Judge Bork will approach them with the same general approach that has made him hostile to so many claims of individual rights in the past.

One cannot, of course, be altogether certain about anyone's future actions. At the very least, however, Judge Bork's long standing and forcefully expressed views raise the very serious risk that as a Justice on our Nation's highest court, he would not be sufficiently protective of individual rights and liberties under our Constitution.

We have just completed the celebration of the 200th anniversary of the Constitutional Convention in Philadelphia. We must remember, however, that the result of that convention in 1787 was not a completely just and democratic society, but only the beginning of a quest we have yet to complete.

In this day and age, can we take the risk of confirming to the Supreme Court a man who fails to recognize the expansive and evolving nature of our rights and liberties which are imbedded in the very fiber of our Constitution?

I would say no. I do not think that we should take that kind of risk and confirm a nominee who might undo much of what we now proudly identify with America and who would fail to read our Constitution expansively as the Framers must have intended so as to deal with a dynamic, ever-changing society. It is for that basic reason that I will vote against the confirmation of Judge Bork.

Mr. HELMS. Mr. President, as have others I have spoken many times, on this Senate floor and elsewhere, about my high regard for Judge Bork. I have met with him and his dear wife during this difficult time, and I can certainly understand his desire that this matter be concluded so that he can return to a degree of normalcy in his and his family's life.

There are winners and there are losers in almost every issue coming before the Senate. I am not so sure that Senators who consider themselves "winners" today may not realize down the road that they made a tragic mistake on October 23, 1987. Certainly the cause of judicial stability and dignity will lose today when a rollcall vote occurs on Bob Bork's nomination.

But it goes deeper than that. There is ultimate truth in a lot of expressions that we all use frequently. For example, I've heard all my life that we become a part of what we condone—and those who have condoned, let alone participated in, the callous attacks upon this good, decent, honorable, brilliant and dedicated man surely will one day have it on their conscience—if, indeed, they don't already do.

Another expression has come to mind many times during the vicious attacks on Judge Bork: People are known by the company they keep. While I know that some of Judge Bork's critics and opponents are well-intentioned and sincere, I believe they are sincerely wrong. But I confess grave concern at the arrogance of many groups and individuals who in this instance have successfully converted the Senate's confirmation process into a political contest.

I have at hand, for example, a copy of the October 2 issue of The Washington Blade, a homosexual newspaper, that boasts of the role played by homosexual groups in defeating Judge Bork. The front-page headline reads, "Behind the Scenes, But Not on the Witness Stand." The entire story brags that homosexuals worked with Senators behind the scenes to defeat Judge Bork.

Mr. President, I ask unanmous consent that this article be printed in the Record at the conclusion of my remarks.

And, then, Mr. President, the role of the Communist Party USA is especially revolting. On the front page of the September 17 edition of the Communist publication, World Magazine, is a drawing of a huge balled fist, with the words in enormous block letters below, reading: "Knock Out Bork!"

On page 14-A of this Communist newspaper is a story bearing the headline, "High Stakes of the Bork Confirmation Fight." Mr. President, I ask that this article also be printed in the Record at the conclusion of my remarks.

On the other hand, Mr. President, I want the record to include an article that appeared in the publication, Texas Lawyer, on October 5. This article was written by William Murchison who draws a parallel between Judge Bork and the late Senator Sam J. Ervin, Jr., with whom I had the honor of serving in the Senate during my first 2 years as a Member of this body. The article is headed, "If 'Senator Sam' Were the Nominee."

I ask unanimous consent that Mr. Murchison's article appear in the RECORD at the conclusion of my remarks.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Washington Blade, Oct. 2, 1987]

BEHIND THE SCENES, BUT NOT ON THE WITNESS STAND

(By Lisa M. Keen)

Throughout the past three weeks of confirmation hearings on the nomination of Judge Robert Bork to the U.S. Supreme Court there have been very few references to Gay rights issues, and Gays have been noticeably absent from the roster of over 100 witnesses to Bork's record.

But behind the scenes, national Gay organizations have been vigorously contacting their members around the country to lobby their senators and one group was able to provide an early dramatic assist to opponents of Bork on the Senate Judiciary Committee.

Officials of the Human Rights Campaign Fund revealed this week that is was one of their lobbyists who supplied Senator Edward Kennedy with a tape recording of a 1985 Bork lecture—a recording Kennedy played at the hearings on Bork's last scheduled day of testimony. The recording—which demonstrated Bork emphasizing his opinion two years ago that "precedent isn't all that important"—fell in stark contrast to Bork's assurances to the Committee all week long that he respects the need to uphold "long settled" Supreme Court precedents on important civil rights cases.

The dramatic impact of the recording was the focus of most media reports of that Friday hearing, and many news reports quoted key uncommitted senators as saying they were troubled by Bork's lack of consistency between past opinions and views he offered the Judiciary Committee.

Supplying that tape recording is about as close as Gay organizations got to tangible participation in the hearings.

Three organizations—HRCF, the National Gay and Lesbian Task Force, and the Lambda Legal Defense and Education Fund—requested a chance to address the Judiciary Committee about Bork's position on Gay-related rights issues. But early on, a strategy was developed by the Leadership Conference on Civil Rights—a powerful coalition of civil rights groups, including HRCF, Lambda, and the Task Force—to keep "special interest" groups off the witness stand. The theory behind the strategy, according to a number of activists, was to prevent Bork supporters from characterizing his nomination process as a battle between conservatives versus "special interests."

While activists had little choice but to go along with the strategy, they did so begrudgingly.

"I'm a little disappointed when we're not allowed to speak in our own voice," said NGLTF Executive Director Jeff Levi. He noted that while Gay groups are part of the LCCR which worked with Bork opponents on the Judiciary Committee to line up opposing witnesses, "we've not been part of that inner circle."

"The strategy might be right or might be wrong but it makes me sad," said Tom Stoddard, executive director of the New York-based Lambda group. "It reminds us that Gay people are still outside the mainstream and too fringe to discuss openly in Congress."

Leonard Graff, legal director for the San Francisco-based National Gay Rights Advocates, agreed.

"Everyone avoided mentioning the 'G'-word," said Graff, "even though one of the primary cases which illustrates Judge Bork's position on privacy rights in particular and his constitutional philosophy in general is the *Dronenburg* case. He thinks there is no right to privacy—the right doesn't exist."

The *Dronenburg* case involved a Navy sailor, James Dronenburg, who charged that the Navy violated his right to privacy and right to equal protection when it dismissed him for having engaged in homosexual acts. Judge Bork wrote the 1984 D.C. Circuit Court of Appeals panel decision saying that the Constitution has never been interpreted to include a right to engage in homosexual acts.

Senator Alan Simpson (R-Wyo.) apparently tried to underscore his support for Bork's decision in that case when on Tuesday of this week he told his fellow committee members that Bork did not like the idea of an "abstract" constitutional right to privacy that "has no inherent limits."

"Homosexual sodomy or bestiality in your bedroom," said Simpson, "those are the things he was talking about. . . . Somewhere the right to privacy doesn't mean you just lay around and shoot up and do that to the rest of the American public. . . . Is that a right to privacy? To just, you know, do that? I don't know."

BEHIND THE SCENES

Far away from the bright lights and constant camera watch of the hearing room—even long before the hearings began—Gay organizations were busy urging their constituents to call or write their senators to oppose Bork.

Starting in July, the Human Rights Campaign Fund sent a high-tech direct mail telegram asking donors to send a donation to the Gay political action committee to support its lobby effort and to write or send mailgrams to their senators. Eric Rosenthal, an official with HRCF, said the telegrams were sent to 9,723 of the PAC's most active donors and that about 750 donors indicated they did contact their senators.

One month later, the Lambda Legal Defense and Education Fund sent a letter to their 12,000 members asking that they not send money but send a letter to their senators. With its plea, Lambda sent along a copy of Bork's April 1978 memo to the Yale Law School faculty, where he was a professor, opposing a proposal that the school deny anti-Gay employers the right to recruit employees on campus.

"Contrary to the assertions made," wrote Bork, "homosexuality is obviously not an unchangeable condition like race or gender. Individual choice plays a role in homosexuality . . . and societies can have very small or very great amounts of homosexual behavior depending upon the degrees of moral disapproval or tolerance shown."

That same month, the National Gay Task Force mailed a letter to 8,900 of its members asking for financial support and letters to senators. The Task Force last month began an extensive phone campaign to call 6,700 of those members, particularly those in Arizona, Pennsylvania, and other states represented by senators who have not yet taken a stand on the Bork nomination. Thus far, the Task Force has taken in almost $200,000 as a result of the letter and has received copies of about 70 letters sent to senators.

As of Wednesday, the newly-formed Fairness Fund had recorded 2,660 mailgrams sent by Gays through a special 800-number hotline to oppose the Bork nomination. Fairness Fund leader Steve Endean said it was not yet possible to tell whether Gays were choosing one of the three mailgram messages which mentions Gay rights specifically or to which senators the mailgrams were being sent. But, he noted, the number of mailgrams being sent has begun to "fall off rather badly." Endean said he believes media reports of public opinion polls swinging against Bork may have given Gays the impression that the battle is won.

"If we allow ourselves that luxury," said Endean, "we'll let this one slip through our fingers."

But Endean said his group plans to distribute thousands of flyers at the National March on Washington next week urging Gays to send mailgrams. And the National Gay Rights Advocates announced this week that it will launch a campaign targeting its members in states represented by undecided senators.

ON THE HOMEFRONT

Meanwhile, the offices of the senators from Maryland and Virginia report that—with one exception—their senators are undecided and flooded with constituents' mail on the Bork issue.

Pete Loomis, press secretary for the Virginia Republican Senator John Warner, said Warner has been so involved with the Defense Authorization bill, he remains undecided about the Bork nomination. Loomis said Warner plans to "spend extended time" studying the Bork record before the full Senate debate on the nominee. He said his office has received "several thousand phone calls" in the past month "with the usual ebbs and flows of support and opposition, depending on who's orchestrating them at the time." Loomis said that while calls were initially "all pro-Bork," they have now evened out.

A spokesperson for Maryland Democratic Senator Barbara Mikulski's office reported calls there have run about 50-50, too; but letters are running about 60-40 against Bork. Mikulski's office has received 7,500 pieces of mail in all on Bork—3,000 of those arriving on Tuesday of this week. The Mikulski staffer said that Mikulski has not yet committed herself on the Bork vote because she wants to review his testimony and hear the debate on the Senate floor.

Maryland Democratic Senator Paul Sarbanes has also made no public statement as to where he stands on the Bork vote; but the 7,490 constitutent calls and letters to his office are running 2 to 1 against the nomination.

Only Republican Senator Paul Trible of Virginia has indicated he plans to support the Bork nomination.

The 14-member Judiciary Committee is scheduled to vote Tuesday. The full senate is expected to take up the Bork nomination in about a month.

[From People's Daily World, Sept. 17, 1987]

High Stakes of the Bork Confirmation Fight

(By James Steele)

The Bork nomination has provoked opposition that is as broad as it is intense. A multitude of mass organizations have drawn accurate conclusions from Judge Bork's judicial and political record as well as his constitutional philosophy: If confirmed, he would become the high court's "swing vote"—as in hanging judge—establishing an ultra-right majority against affirmative action, antitrust regulations, labor-management relations, civil liberties, abortion rights and other key issues. Bork, who is only 61, could be issuing "Reaganism without Reagan" rulings well into the Twenty-First century.

That's why liberal Democratic senators, united with labor, civil rights, women's civil liberties, and other mass organizations, are waging an all-out drive against Senate confirmation. Sen. Alan Cranston (D-CA) promised the toughest fight since the Senate rejection of two of President Nixon's appointees in the early 1970s "because it tips the balance of the Supreme Court and because the president has used right-wing ideology in selecting a candidate." Sen. Edward Kennedy (D-MA) called the nomination President Reagan's attempt "to impose his reactionary vision of the Constitution on the Supreme Court."

Coretta Scott King, reflecting the universal sentiment in the Afro-American community and among the broad mass movements, said "we must let our senators know that a vote against Mr. Bork is a prerequisite for our vote in the next election."

With the exception of Sen. Albert Gore (D-Tenn), who says he will wait on the hearings, all Democratic presidential hopefuls oppose confirmation.

The National Education Association, the American Federation of State, County and Municipal Employees, the United Automobile Workers, the United Electrical Workers as well as the Executive Council of the AFL–CIO demand Senate rejection. Defeating the nomination is the NAACP's number one priority—as it is for People for the American Way, National Urban League, National Organization for Women and many others. Anti-Bork coalitions are active in scores of cities and protest demonstrations have been organized with more planned to coincide with the hearings and the Senate vote.

Surely President Reagan's advisers anticipated, if not the full extent, then certainly the basic dimensions of the mass opposition. Seemingly an administration already crippled by the Iran-contra scandal would not go looking for another setback. Yet, Reagan went ahead anyway. The question is, why?

It's because the Reaganites firmly believe they can win. They aim to use the confirmation fight to deliver a strategic blow against democratic rights and regain the political initiative through the end of Reagan's term.

The Democrats' inconsistency in the congressional investigation into the Iran-contra affair has a lot to do with this comeback gambit. Instead of utilizing the Iran-contra hearings to mount a resolute defense of democracy, leading Democrats opted for "saving the presidency"—which could only have the practical effect of saving Reagan's presidency.

The very forces that organized the secret government "to carry out the President's policy" now sense a political vacuum of initiative in the failure of the Democrats to deal Reagan a knock-out punch. The Bork nomination is an attempt to fill that vacuum and overcome the administration's political paralysis.

Within the Senate Judiciary Committee, there are five sure votes against Bork, five votes for confirmation and four undecided. Since it would take eight "no" votes to block the confirmation in committee, it is likely that it will go to the full Senate.

What leads the administration to anticipate success when the Democrats hold a 54-46 Senate majority? The fact that it is dealing with a partisan, not a political majority. The shift in the Senate's political balance flowing from the 1986 elections is uneven and an on-going process that has yet to be consolidated.

Thirty-three Senate seats, involving seventeen Democratic and 14 Republican incumbents and two open seats—one held by each party—will be contested next year. This list includes six of the "swing" Democrats: Bentsen, Byrd, Chiles, DeConcini, Proxmire and Sasser; and two "swing" Republicans: Chaffee and Stafford.

The administration is mobilizing big business and other right-wing political action committees, conservative evangelical groups, so-called "right-to-life" and "law and order" activists, and other extremist forces to intimidate incumbents from "below" with the threat: either vote for Bork or face defeat in 1988.

Can the Reaganites succeed? Only if the massive anti-Bork opposition relies on the "good faith" of Democratic senators more than it relies on its own good organization and effective mobilization.

The unprecedented mass opposition to this nomination consists of thousands of national and local trade union, civil rights, religious, civil libertarian and other organizations that represent tens of millions of people. Nearly a third of the senators are firm opponents of confirmation. The joint action of all of these forces can mobilize enough Senate votes to defeat Bork. The coordination of the mass influence and political clout of these forces—combined with the role of those members of the Senate determined not to allow Reaganite extremists to become the high court's majority—can compel the Democratic and a few Republican senators to act in "good faith" by voting "no" on Judge Bork.

How? By applying the rule that what's good for the goose is good for the gander. If the ultra-right extremists and the big business PACs can target senators "from below," so can mass organizations and coalitions opposed to Bork.

A massive grassroots mobilization that gives the senators' constituents a clear understanding of what's at stake is decisive and should be brought to bear on persuading specific senators to vote against confirmation. The home and Capitol Hill offices of every senator should be flooded with telegrams, mailgrams, letters and citizens' delegations demanding Bork's rejection for his opposition to civil rights, the Bill of Rights, workers' rights, abortion rights, and his support for corporate rights. Resources should be combined to buy media time. Special and immediate attention should be focused on members of the Judiciary Committee.

Unlike the ultra/right, the people's movement does not have to resort to threats and intimidation, especially in the case of senators with whom they work on other issues. But the message should be unmistakable: the voters' and the movement's memory is not so short as to forget senators who did not oppose the confirmation of a man who would help establish an ultra-right reign on this and the next generation. This is something senators up for re-election in 1988 and 1990 can not afford to forget when it comes time to vote for or against confirmation.

[From the Texas Lawyer, Oct. 5, 1987]

If "Senator Sam" Were the Nominee

(By William Murchison)

AGREED WITH BORK

"Civil rights laws are . . . repugnant to constitutional and legal equality because they extend to minority races special privileges denied to other members of minority races. . . . Equality and freedom are in reality, irreconcilable. Government cannot extend any equality other than equality under the law to its people without infringing on freedom."

In addition to which:

"The adoption of the Equal Rights Amendment would create constitutional and legal chaos in America. It would leave the nation without valid laws adequate to regulate the actions and relationships of men and women and the responsibilities they owe to the helpless children they create."

And further:

"The role of the Supreme Court interpreter of the Constitution is simply to ascertain and give effect to the intent of its framers and the people who ratified it as that intent is revealed by its words."

At which point many would say, with resignation in their voices: Anything else, Judge Bork?

I beg to point out that this is not Robert H. Bork speaking. The foregoing is the wisdom of Sam J. Ervin Jr.—Senator Sam, American folk hero; avuncular, Bible-quoting, homily-spinning master of ceremonies for the Watergate hearings.

All America, little more than a decade ago, loved Senator Sam, looked up to him with reverence and awe as the foremost guardian of constitutional liberties. His observations on justice and the intricacies of constitutional law were retailed in every barber shop and classroom. He was our national sage.

I am beguiled just now by the thought that, were he alive today (he died in 1985), and had Ronald Reagan named him to the Supreme Court (no president ever took this highly logical step), the liberal lobby would be howling for Ervin's blood. A man critical of civil rights laws and of judicial activism—how could this great republic seat such a one on its highest court?

People for the American Way would broadcast television ads calumniating the senator. Joe Biden would accord him an arch grin; Ted Kennedy would deplore the horrible things likley to happen in "Sam Ervin's America."

I mean, they would if they used Senator Sam with the kind of arrogance and obfuscatory intent directed at Bork.

In reality, the clubbiness of the Senate probably would have protected an Ervin nomination. That's not the point. The point is that the man formerly regarded as the Senate's, and maybe America's foremost constitutionalist concurs almost point by point with Judge Bork, the man whose reputation various senators are tearing at like pit bulls.

Ervin's heyday wasn't all that long ago. What's happended to change the equation? The question is answered easily enough. Ervin, back in Watergate days, was the towering adversary of the Nixon White House.

If you were anti-Nixon—as many Americans were—you were pro Ervin.

The trouble was that many in the senator's large and diverse fan club didn't bother to examine the basis of his opposition to Nixon.

Philosophically Ervin was closer to Nixon than to some of his fellow inquisitors on the Watergate committee. Ervin's horror at the Watergate scandal proceeded from a principled dislike of raw power, seized and wielded in definance of constitutional restrictions.

Ervin loved the U.S. Constitution the way others love guns or cars or money. Indeed he titled his autobiography, whence I have drawn these various pronouncements, *Preserving the Constitution.*

"The Constitution," he wrote, "is the most precious instrument of government the earth has ever known. It is designed to secure good government to Americans and freedom from tyranny for Americans."

At Nixon's bidding, or in his name, highly placed men had violated the Constitution; that, for Senator Sam, was enough.

But the president's men weren't alone in their crimes against the Constitution. They had plenty of company. This was the point Senator Sam's liberal admirers never got through their heads.

Ervin maintained that the Constitution, like any good charter of liberty, restrained not Republican presidents alone but also judges and congressmen of all parties and philosophical dispositions.

The Constitution set metes and bounds to human power; across those lines nobody was to step. Nobody.

Ervin didn't oppose freedom for blacks; he opposed attempts to set race against race. American against American. It is interesting that Bork withdrew his early opposition to the civil rights law; Ervin never withdrew his.

Ervin was a keen and discerning critic of the same judicial activism that Bork's opponents favor. He approved of *Brown v. Board of Education*, but he condemned the judicial "usurpations" through which "activist Justices expand their own power to dictate how America is governed, and how Americans must conduct themselves in their private affairs as well as in their public activities."

"Judicial activism of the right or the left," declared Ervin, "substitutes the personal will of the judge for the impersonal will of the law."

Robert Bork never said it more pungently.

The sad truth about Bork's overheated opponents is that they see the Constitution as permitting what they want permitted and restraining what they want restrained. Bork stands for the language of the document, for the intent of its framers—and draws widespread scorn for so standing. Language, in the modern view, is what you bend, intentions are what you reshape, to fit the needs of the moment.

Sam Ervin was not flesh of the liberals' flesh any more than Robert Bork is. A pity he's not here to enliven the Bork hearings with his views of constitutional prudence and probity. There's more to it than that. Pity he's not, and never was, a member of the high court itself.

Mr. HELMS. Mr. President, I have known Judge Bork since I came to this town in 1973. I resent the transparent display of demagoguery, histrionics, hyprocrisy, distortion, and misinformation surrounding this nomination.

Before the merits of the nomination were considered, before even one witness was heard in the hearings, there came a cacophony of protest, from the usual groups across the country, threatening Senators that if they vote for Robert Bork, they will pay for it in the next election. Now we are hearing that groups opposed to Judge Bork even threatened witnesses not to testify in his behalf.

Let me say this about Robert Bork. Without question, he is one of the most knowledgeable authorities on the Constitution who has ever been nominated to serve on the Court. I have heard no one question the qualifications of Judge Bork, and even his most severe critics have said that his integrity is beyond question.

There was an impressive list of organizations and individuals, both conservative and liberal, Democrat and Republican, who stepped forward in the hearings to support Robert Bork. I was pleased to see my friend, Griffin Bell, of Georgia, who served as Attorney General during the Carter administration, step forth and testify in favor of the Bork nomination, as well as Lloyd Cutler and countless others.

But there came that cacophony of protest, raising questions that had no validity at all, and the bum's rush started. And it was fed day after day by the major news media of this country in a clear orchestration—preconceived, preplanned, and executed by the schedule.

Mr. President, there is really no question but that Judge Bork is eminently well qualified to serve as a Justice on the Supreme Court. President Reagan knows it. Judge Bork's supporters know it; and Judge Bork's opponents know it. In fact, those who represent the most liberal, far-left elements of our society—those who have protested the loudest—know it best.

Those far-left elements recognize that Judge Bork will carry out his duties to uphold the Constitution and the laws of the land as intended by our founding fathers. He will not deprive them of any constitutional rights, but he will deprive them of one thing: A justice on the Supreme Court who will attempt to implement their liberal agenda through judicial activism.

Mr. President, when one looks at the groups opposing Judge Bork, it becomes clear why. Let me give one example which demonstrates the real issue involved in this nomination. In the September issue of Ms. magazine, the following statement appears:

> * * * a coalition of civil rights and women's groups, including the NAACP, People for the American Way, and the National Abortions Rights Action League, is launching a major grass-roots effort to stop [Bork's] nomination. The battle, however, is much larger than Bork. If a Reagan nominee is rejected, there is a chance that a new President could appoint a judge even more progressive than Powell and we could begin to win back some things already lost, like gay rights and Medicaid abortion.

So the cat leaps out of the bag. It becomes clear what the liberal special interest groups opposing this nomination have been up to. They have done everything possible to defeat the nomination, regardless of Judge Bork's qualifications, in hopes that they can either prevent President Reagan from filling the vacancy on the Supreme Court or coerce the President into appointing a more liberal, activist candidate—one who will help them implement their social agenda.

I am confident that the American people will eventually learn the truth behind the campaign of disinformation that has been waged to keep one of America'a finest jurists off the Supreme Court.

Mr. President, the failure today of the Senate to confirm the nomination of Judge Robert Bork is a sad day for this body and a sad day for this country.

As a point of historical interest, in 1930 the Senate failed to confirm the Supreme Court nomination of Judge John J. Parker, a brilliant and highly respected jurist on the 4th Circuit Court of Appeals. It so happens that Judge Parker was from my hometown of Monroe, NC. Judge Parker's nomination was also the victim of lies and distortions of a small but vocal group of special interests, and the nomination was defeated due to purely political votes.

Judge John J. Parker was born on November 20, 1885. He completed his undergraduate studies at the University of North Carolina with the highest academic average at the university up to that time. He went on to finish the law program at the university with equal academic excellence.

The history of Judge Parker's nomination is summarized in "Duty and the Law: Judge John J. Parker and the Constitution," a fine book written by William C. Burris, who is an author and professor of political science at Guilford College in North Carolina.

In his book, Mr. Burris relates the distortions that were used to keep Judge Parker off the Supreme Court. Mr. Burris gives a clear example of the disingenuousness of Parker's opponents. He points out that as a politician, Parker was criticized by his political opponents as "an ambitious Republican who wanted to return the State of North Carolina to "Negro domination. * * *' " However, upon his nomination to the Supreme Court, he was opposed as "an unregenerated Southern racist who wanted to keep American blacks in bondage."

In the words of the author:

> Both charges were wrong, clearly at odds with the public record. They were based on what his detractors wanted to believe about him rather than anything he ever believed,

> said, or did in regard to the question of race and politics.

Mr. President, the charges leveled against Judge John J. Parker were generated falsely by a small group of special interests to foster hate and fear toward Judge Parker—exactly as the opponents of Judge Bork have done.

I imagine that one day a book will be written about the nomination of Judge Bork. Like "Duty and the Law," the book about Judge Bork's nomination will expose the hypocrisy that has been so evident in this debate. It will recall that as soon as the nomination was announced, Members of this body and liberal special interest groups around the country were attempting to instill fear and hatred among the people—totally divorced from the facts about the nominee or his record.

First, we heard his opponents acknowledge that his qualifications were unimpeachable, but the nomination itself was criticized because it would upset the balance of the Court.

Then Judge Bork was charged with being too extreme in his views. No mention was made of his record as an appellate court judge. And when the hearings showed that Judge Bork was not at all extreme in his views, he was accused of being unpredictable. In the last few days, several of our colleagues have said that even though they oppose Judge Bork, they really do insist on a conservative appointment to the Supreme Court—that we should have a conservative court. But they oppose Judge Bork because he has "divided" the country, or lacks "judicial temperament," or "scholarship."

I ask those Senators what happened to the so-called balance theory. If Judge Bork is not confirmed and the next nominee is considered a conservative in his political philosophy, will we start down the same road with the opposition saying he will upset the "balance" of the court?

Mr. President, I think I have adequately registered my frustration and disappointment with the manner in which the debate has been conducted. Let me offer a few quotes which I think are relevant to this debate. First, William Burris, author of "Duty and the Law," William Burris, who said:

> Judge Parker was only an "incidental," a casualty in the headlong rush of our groups to gain objectives that were more important to them than a fair and balanced evolution of a relatively unknown Federal judge.

Mr. President, that is the essence of what has happened to the nomination of Judge Bork. It has become a "casualty" in a greater struggle of radical groups to gain objectives more important to them than the fair and balanced consideration by the Senate of a Supreme Court nominee.

Next, I quote a part of an editorial from the October 15 edition of the Wall Street Journal:

> Editorialists, columnists, and several Democratic Senators are now engaged in an elaborate rationalization of this descent into political falsification. The public is asked to accept their argument that the assault on the integrity of a single American citizen by Planned Parenthood, People for the American Way, and others was beside the point. That wrongful assault, however, will survive as a lesson of the Bork nomination.
>
> The lesson is that up to now, the assault has worked. It intimidated not only Senators who spin like weather vanes, but also Senators made of sterner stuff. This was affirmed in the vote of the Senate Judiciary Committee and in thinly argued justifications for that vote. It is a new kind of politics, and it awaits the official imprimatur of 51 Senators. We hope that someone pauses to see the implications of turning the advice and consent role over to groups whose very livelihood depends on making U.S. politics feverish and false.

Finally, I quote Judge Parker. He said:

> A man who puts the welfare of his party above the welfare of his country, is, in the final analysis, either a traitor or a fool.

Mr. President, Dr. Mildred F. Jefferson is a general surgeon with Boston University Medical Center and assistant clinical professor of surgery at Boston University School of Medicine. She asked to testify during the Judiciary Committee hearings but she was told the hearing list had been finalized and was unable to appear.

That is a shame, for Dr. Jefferson is a remarkable American. Though she was not allowed to testify I ask unanimous consent to have printed in the RECORD a statement by Dr. Mildred F. Jefferson in support of the nomination of Judge Bork, and that her statement appear in the RECORD at the conclusion of my remarks.

Mr. President, a bit of background about Dr. Jefferson: She is a Texas-born daughter of a Methodist minister. She was the first black woman to be graduated from Harvard Medical School where, I might add, she was graduated magna cum laude.

She's had a career-long interest in medical jurisprudence, medical ethics and problems of the medical-law issues, especially their impact on public policy and society. A founding member of the National Right-to-Life Movement, she is currently president of Right to Life Crusade, Inc., having served in the past as chairman of the board of directors and three terms as president of the national right to life committee. She is active with many other prolife groups including Americans United for Life Legal Defense and Education Fund.

Dr. Jefferson was the first prolife leader called to the White House for an audience with President Reagan following his inauguration. She has appeared as an expert witness in key trials and significant congressional, State, and municipal hearings.

Dr. Jefferson has been awarded 26 honorary degrees by American colleges and universities. Among other honors, awards and citations, Dr. Jefferson has received the Signun Fidei Medal from La Salle College; the Bicentennial Medal of Mount Mary College; the Briar Cliff College Medal; the Sword of Loyola; and the Father Flanagan Award of Boys Town. Dr. Jefferson is also a member of the board of trustees of Saint Louis University, Loyola University, and Anna Maria College.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

DR. MILDRED F. JEFFERSON, PRESIDENT, RIGHT TO LIFE CRUSADE, INC., ASSISTANT CLINICAL PROFESSOR OF SURGERY, BOSTON UNIVERSITY SCHOOL OF MEDICINE, BOSTON, MA

Tuesday, October 6, 1987, will go down as another "Day of Infamy" in the history of our great land. In 1941, the attack came from a foreign power; in 1987, the attack has come from a force within using radical socialist dialectic and modern saturation advertising techniques to persuade nine members of the U.S. Senate Judiciary Committee to oppose a distinguished jurist because he supports a strict construction in interpreting the U.S. Constitution. By acting against the obligation of Supreme Court Justices to interpret the law and not make the law, these nine members have attempted to cause a majority of the U.S. Senate to act against the Constitution and become "enemies of the people."

Our support for Judge Bork is not new; it has not been visible because we do not have the bloated bank-accounts of our adversaries to support nationwide propaganda campaigns. I say "propaganda" instead of "public education" because the opponents of Judge Bork's confirmation have gone to extreme lengths to revise, distort and misinterpret his speeches and writing. They disregard Judge Bork's honor, integrity and scholarship and rely instead on an emotional lynching to defeat his nomination because they cannot tolerate the power of his mind or the clarity of his thinking. For those of our allies who have not yet supported his confirmation, no matter what questions you have, we are obliged to support an honorable man who is so violently opposed by our adversaries. We want Judge Bork to know that, in addition to our support and our prayers, he has our compliments for the grace and dignity he has brought to this unnecessary ordeal. Judge Bork, the High Court needs the illuminating power of your mind almost as much as it needs your great work capacity.

The member from Massachusetts on the Senate Judiciary Committee has brought an unwholesome personal assault into the confirmation process. Turning back his own words, I say to the senior Senator from Massachusetts: You are wrong about President Reagan, wrong about Judge Bork, wrong on civil rights, wrong on women's rights, wrong on privacy and wrong on the First Amendment. He is wrong on "civil rights" for using emotional intimidation to frighten those who are fighting for access to our democratic system by holding forth special quotas and reverse discrimination instead of equal opportunity for all. He is wrong on "women's rights" because he does not know true women and he does not understand that by yielding to the demand for the privilege of destroying her reproductive capability, he is denying the female of our species the right to womanhood. He is wrong on privacy because in an organized society such as ours, ruled by law and by custom, there is no constitutional "right to privacy" which will assign to the individual the private right to kill or to choose who will live and who will die. He is wrong on the First Amendment because he is apparently unable to understand why it covers us all and not just the special few who agree with him.

It is not our way to engage in character assassination as our adversaries do. However, the actions of the member from Massachusetts and the Chairman from Delaware have already assassinated any character they may have had beyond anything we might say or need to do. Such personal actions point up that the member from Massachusetts and the Chairman are morally and intellectually unqualified to sit in judgment on Judge Bork or anyone else of his integrity and professional attainments. By announcing his opposition to Judge Bork's confirmation before the hearings began, the Chairman abandoned any standard of fairness toward Judge Bork. I call upon Senator Joseph H. Biden, Jr. of Delaware to resign as Chairman of the U.S. Senate Judiciary Committee.

A few weeks ago, between 1100 and 1400 people from all walks of life and from all parts of the state of West Virginia stood for 2½ hours in the rain in Charleston appealing to Senator Byrd to be fair in his participation in the confirmation process. His negative vote betrays their trust in him to be fair. Senator Heflin of Alabama: You expressed concern that Judge Bork may Harbor "extremist" views and that when in doubt, you thought "don't" was the best course. If you are concerned about extremism, how can you face the people of Alabama voting with the most extremist member of the entire U.S. Senate, the senior Senator from Massachusetts? How will you—Senator Heflin, Senator Byrd and other Senators from the Bible Belt—face your people acting in league with those who removed prayer from the schools but who cannot remove drugs, alcohol, murder and suicide from the schools? We know that some Senators have gone through the pretense of decision-making when, in fact, if they had voted their own minds and consciences to support Judge Bork, they could never have gone home again. We know that some Senators who have indicated opposition to Judge Bork's confirmation were elected with our help. They must understand clearly: their vote with our opposition is a vote against us: when the scores are tallied, their explanations will not be there; they must appreciate the value of their vote in our opponents' efforts against us; if they vote with our enemies, we will not be there for them when they need us.

The people must decide the difficult social issues of our day. Narrow personal preferences are a poor basis for creating public policy positions. To our elected representatives we say:

You will not shunt your responsibilities as elected representatives of the people to that branch of government that does not derive its power from the consent of the governed.

You will not thrust upon us the tyranny of whim or the dictatorship of personal choice mandated by the Supreme Court of the United States.

You will not force upon us the yoke of socialist population-planning by fiat of the U.S. Supreme Court.

We need to restore the balance of powers among our designed-to-be coequal branches of government. We have gone from the Imperial President to the Imperial Court to a now-Imperial Congress. We need Judge Bork on the U.S. Supreme Court. On this, we will not compromise; in this, we will not yield.

Mr. HARKIN. Mr. President, I rise in opposition to the nomination of Robert Bork to be an Associate Justice of the Supreme Court.

Earlier this month, after studying Judge Bork's record and his testimony before the Judiciary Committee, I announced that I would not vote in favor of his confirmation. I believe that decision is still the correct one.

This is one of the most important votes that the Senate will take this year. It is not just a vote about the career of one man. It is a vote about the protection of the rights and liberties of all Americans. It is a vote about the fate of the Constitution as a living and growing document embodying bedrock American values. It is a vote about the balance of power that accounts for the strength and stability of our system of government. It is a significant and historic vote.

As I stated when I first announced that I would oppose Judge Bork's nomination, I am very concerned by his view of what constitutes liberty. This is not merely a theoretical concern. How we view liberty is at the core of how we view the relationship between the people and their Government.

Most Americans, and certainly the founders of this Nation, viewed the liberty guaranteed in the Constitution as a guarantee of personal freedom and autonomy. Most Americans believe that when a court upholds a claim of individual liberty for one citizen, it increases the liberty of all other citizens and decreases the power of Government to interfere in our private lives. Judge Bork appears to believe the opposite.

To illustrate, in 1985, Judge Bork said "When a court adds to one person's constitutional rights, it subtracts from the rights of others." When asked about this by Senator SIMON during the Judiciary Committee hearings last month, Judge Bork responded that "it's a matter of plain arithmetic."

I think that this comment reflects a very narrow vision of the Constitution. To Judge Bork, the Constitution guarantees the liberty of the majority, that is, the liberty of the Government, to make the laws. I don't believe that most Americans share this point of view. Our values and traditions instead attest to the view that the Constitution protects the liberties of individuals from the excesses of the Government. Because, unfortunately, electoral politics often silence strong voices of moral leadership in the legislative and executive branches of Government, the Supreme Court is the body that the American people have come to look to for the assurance that those constitutional protections will remain intact.

But, from his writings and testimony, it does not appear that Judge Bork holds that view and thus I fear that his elevation to the Supreme Court would weaken that body's full commitment to the safekeeping of those rights.

Judge Bork's majoritarian view of liberty leads him to reject any protection for the so-called unenumerated rights such as privacy.

Judge Bork's view of liberty compels him to interpret the due process and equal protection clauses in the narrowest way.

Judge Bork's view of liberty induces him to resolve any controversy between the executive and legislative branches in favor of the President over Congress.

And it is Judge Bork's view of liberty that prompts him, with few exceptions, to leave the protection of minority freedoms to majority will.

Judge Bork's view of liberty is, I'believe, a view of liberty that would lead him to reject the principal role of the Supreme Court as the final arbiter and guarantor of individual liberty and equality. And this is a view which is incompatible with the constitutional ideals to which our great Nation aspires.

Unlike the President and Members of Congress, the Justices of the Supreme Court do not have to answer to an electorate. The Constitution is their guide. The Court should feel free to act, but those actions should be based on a solid belief that the Constitution is an evolving document embodying the values that have served us so well for more than two centuries. In my view, Judge Bork does not share that belief or understand those values. Thus, I will oppose his nomination.

Mr. MATSUNAGA. Mr. President, it is with regret that I have reached the conclusion that I cannot support the nomination of Judge Robert Bork to the U.S. Supreme Court. The controversy over this nomination is unfortunate. The judge is an attorney of considerable attainments. But after much reflection I am unable to give my assent to his promotion to the Supreme Court; I would counsel against it.

When his nomination was first announced, I was dubious whether a jurist of his narrow constitutional views, especially in the realm of civil rights, the rights of women and minorities, could gain confirmation in the Senate. I also had reservations about his role in the so-called Saturday night massacre at the Justice Department during the last months of the Nixon administration. But I stood ready to be reassured on both counts during the course of the hearings on his nomination.

Unfortunately, the Judiciary Committee hearings, conducted with commendable fairness by the junior Senator from Delaware [Mr. BIDEN], failed to reassure me on either concern regarding Judge Bork. In fact, they had the effect of increasing my doubts. The opposition to his appointment came from a broad cross section of people in many walks of life, including outstanding members of the legal profession itself. Two were former presidents of the American Bar Association, one of whom saw fit to compare his appointment to that of Chief Justice Taney in terms of its potential for engendering civil strife for this great country of ours. Also, the judge's recollections of the "Saturday night" aftermath do not square with those who were left with the responsibility for the Watergate prosecution.

The Senate's confirmation powers should never be exercised lightly or arbitrarily, and especially in the case of a Supreme Court nominee of Judge Bork's credentials and career attainments. I am aware, of course, that the nominations of other Supreme Court Justices in our history were controversial, including several who subsequently gained the stature of greatness such as Louis Brandeis and Hugo Black. The performances of Supreme Court Justices have been known to surprise both Senators and Presidents in years past.

But in the case of Judge Bork I am convinced that the record is overwhelmingly against his becoming a "born again" champion of equal protection under the law for all. His compassion and his intellect haven't fused sufficiently in the course of his judicial career so as to overcome the concerns raised by his tenure as a provocative law professor. Indeed, there is evidence of these concerns arising as much from his opinions on the bench.

Because the hearings were nationally televised, the American people have expressed themselves on this most divisive appointment, and sentiment has been against him. There are two schools of quite divergent thought as to whether we as Senators should take public sentiment into account in our own deliberations on the matter. Appointment to the highest court in our land hardly lends itself to a popularity contest. Yet, it was said once a long time ago that Supreme Court Justices do follow the country's election returns. For my part the public opinion polls only serve to confirm my own substantial reservations about this nomination, Mr. President. I cannot in conscience support the nomination of Judge Robert Bork to the Supreme Court of our land. I will not vote to confirm him and I urge a similar course to my colleagues.

Mr. CHAFEE. Mr. President, I will vote against the nomination of Judge Robert H. Bork to the Supreme Court. After the Judiciary Committee finished its work, I gave careful consideration to Judge Bork's qualifications. I studied the committee's proceedings, including not only the testimony of Judge Bork himself, but also the views presented by the other witnesses on both sides of the nomination.

Let me first state that I take very seriously the Senate's constitutional role in passing upon Supreme Court nominees. In determining who will serve in the judicial branch of our Government, the President and the Senate each have significant responsibilities. The President's power to nominate and the Senate's power to give or withhold its consent are equally important in this process. I firmly believe it is appropriate for the Senate, when it is deliberating a judicial nomination as pivotal as this one, to base its decision on the nominee's judicial philosophy.

This has not been an easy decision. As anyone who listened to his testimony will acknowledge, Judge Bork is a constitutional thinker of the highest order. His knowledge of the Constitution, and of constitutional jurisprudence, is as broad and impressive as we have seen in any judicial branch nominee since I was first elected to the Senate in 1976. In terms of sheer intelligence, he is probably one of most outstanding nominees of the last few decades.

In addition to his evident brilliance as a student of the Constitution, Judge Bork has demonstrated his competence on the bench. He has served ably for the last 5 years as a judge on the Circuit Court of Appeals for the District of Columbia. In his current position he has respected Supreme Court precedents, and has often written decisions that I would categorize as "mainstream." I supported Judge Bork's nomination for the D.C. Circuit Court and his record there leads me to conclude that I made the right decision.

Judge Bork's nomination to the Supreme Court is, in my view, an entirely new question. As our ultimate tribunal, possessing literally the last word on constitutional questions, the Supreme Court is the place in our system of government where the Constitution must be viewed and interpreted in the clearest possible light. The decisions of the Supreme Court ring down for decades and generations in history.

Therefore, the Bork decision should be, for every Senator, a decision on whether Judge Bork's view of the Constitution is consistent with the traditions of jurisprudence that began with the founders who constituted the Supreme Court and that continues today with the current Supreme Court. I have decided, after much deliberation, that Judge Bork's views of the Constitution are at odds with what I believe to be the fundamentals of American constitutional history and traditions.

At the end of July, shortly after the announcement of the Bork nomination, I wrote a letter to Senator BIDEN, chairman of the Judiciary Committee, outlining my initial concerns about Judge Bork, and requesting that those concerns be raised in the hearings. The issues that I outlined in that letter were among the central concerns of the hearings. Therefore, I have had ample opportunity to consider the implications of the Bork nomination in the areas that most concern me.

My letter to the Judiciary Committee focused on three areas:

First, the right to privacy, and particularly the Roe versus Wade decision of 1973;

Second, the Constitution's protection of the rights of minorities and women; and

Third, the first amendment's protection of freedom of speech.

Basically, I was troubled by Judge Bork's strict adherence to the philosophy of judicial restraint, or original intent. It is my belief that the Constitution is a wondrous document, not just for the rights and freedoms it specifically grants, but also for its striking latitude. That is, the language of the Constitution is explicit enough to give definite outlines to the way society and Government function, but broad enough that the courts can address difficult—and often inequitable—situations not specifically covered in its language.

In my view, Judge Bork's rigid, literal reading of the Constitution denies the broadness—the elasticity, if you will—that is one of that document's greatest strengths. Using a complex excessively legalistic rationale, he rejects extension of important rights that I believe are protected by the Constitution, if not literally written therein 200 years ago. For example, I would point to Judge Bork's written expressions of disapproval of broad judicial protection for freedom of speech and the right to privacy. In my view, judicial protection in these areas is not only appropriate under the Constitution, but necessary. Although in the intervening years and in his testimony Judge Bork modified some of the views expressed in his writings, for example in the Indiana Law Journal article of 1971, I remain deeply troubled by those views.

Furthermore, I could not overlook Judge Bork's previously stated views on civil rights issues. He once expressed his clear opposition to such laws as the 1963 Public Accommodations Act and the 1964 Civil Rights Act. Although over the years he distanced himself from these positions, his testimony left me with serious, lingering concerns that as a Supreme Court Justice he might apply his narrow view of the Constitution to constrict current legal protections of civil rights. Throughout my career, beginning with the introduction of a fair housing bill when I served in the State legislature, I have strongly believed in the constitutionality of civil rights laws. As I see it, the significant possibility that Judge Bork would come down on the other side of this question is too important to overlook.

In summary, I believe that two of our country's most significant judicial traditions, the protection of individual rights and of minority rights, are potentially endangered by the Bork nomination.

Judge Bork is a man of great integrity and intelligence. During this nomination process his character has been maligned most unfairly, and the partisan debate on his nomination has obscured the real issues, the issues on which my decision is based. While I regret that the nomination has been transformed into an ideological sideshow, this development has not altered what, in my mind, is the essential question: Should a man with Judge Bork's view of the Constitution be approved to serve as a Supreme Court Justice? My answer is that he should not.

Mr. GRASSLEY. Mr. President, I would like to ask my good colleague from Wyoming, Senator SIMPSON, if he would yield for a question or two.

Mr. SIMPSON. I would be happy to yield.

Mr. GRASSLEY. The good Senator from Wyoming is a distinguished attorney with whom I have had the great privilege to serve on the Senate Judicary Committee.

And as the Senator from Wyoming knows, I am not a lawyer. In addition to my years in public service, I have been a farmer from Butler County, IA, most of my life.

There have been some troubling questions lingering in my mind during this debate over Judge Bork, that you as an attorney may be able to answer for me.

I have with me something entitled "1987 Selected Standards on Professional Responsibility." Among other things, this book includes the American Bar Association's Model Code of Professional Responsibility and its Model Rules of Professional Conduct.

Mr. SIMPSON. I say to my fine friend from Iowa that I am quite familiar with the ABA's Code and Rules for attorneys. The Senator from Iowa may know that these serve as guides to members of the legal profession as well as serve as a basis for disciplinary action against attorneys who violate these standards.

Mr. GRASSLEY. I appreciate that explanation, and would therefore like to share with my colleagues, most of whom are attorneys, two or three of these provisions.

The first provision I will read falls within the Code of Professional Responsibility, under Canon 8 which states, and I quote: "A Lawyer should assist in improving the legal system."

Under what is called "Ethical Consideration 8-6," it states, and I quote:

> It is the duty of lawyers to endeavor to prevent political considerations from outweighing judicial fitness in the selection of judges.

If the Senator from Wyoming would yield again. Does this provision apply to all attorneys, including lobbyists and Senators?

Mr. SIMPSON. It certainly does apply to all attorneys, but unfortunately, particularly in view of the treatment of Judge Bork, ethical considerations are only "aspirational" standards. Attorneys should follow them, but are not required to honor these ethical standards. Therefore, any violation of these ethical considerations will not be sufficient to subject an attorney to disciplinary action.

Mr. GRASSLEY. Well let me read a different section. Under the same Canon 8, there is a section on disciplinary rules. Disciplinary rule 8-102 is entitled "Statements Concerning Judges and Other Adjudicatory Officers."

Subsection (a) states, and I quote:

> A lawyer shall not knowingly make false statements of fact concerning the qualifications of a candidate for election or appointment to a judicial office.

Subsection (b) states, and I quote:

> A lawyer shall not knowingly make false accusations against a judge or other adjudicatory officer.

Would my good colleague from Wyoming tell me, do these disciplinary rules apply to all attorneys, including lobbyists and Senators alike?

Mr. SIMPSON. These disciplinary rules most certainly do apply to Senators and lobbyists who are attorneys, but Senators are insulated from disciplinary action by the "speech and debate" clause of the Constitution. Violations of these rules can subject the attorney to disciplinary action, if the attorney is not a U.S. Senator. Sometimes the violating attorney is forever disbarred and prohibited from practicing law.

Mr. GRASSLEY. I would finally like to point out that rule 8.2(a) of the ABA's "Model Rules of Professional Conduct" seems to be similar. It states, and I quote:

> A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer, or of a candidate for election or appointment to judicial or legal office.

Mr. SIMPSON. If the Senator from Iowa would yield, these rules also apply to attorneys in the jurisdictions that have adopted them. You see, these rules were adopted only relatively recently by the ABA's house of delegates. I believe it was in 1983.

Mr. GRASSLEY. I want to thank my colleague, and ask his indulgence in one last question. Who is responsible for enforcing these rules?

Mr. SIMPSON. Complaints are handled generally by local or State bar association committees. Ultimately, however, the courts are responsible for enforcing these standards.

Mr. GRASSLEY. Do you have to be an attorney to file a complaint?

Mr. SIMPSON. Absolutely not. Any citizen may file such a complaint. I would caution through, that frivolous complaints are not likely to be given serious consideration—one would need to be quite certain their facts were straight with a solid basis being formed for a complaint.

Mr. GRASSLEY. I imagine that the attorney would have ample opportunity to defend his or her actions, and in my view might obtain fairer treatment than has Judge Bork by some of his detractors.

I want to thank my friend and colleague from Wyoming again for helping explain these rules governing the actions of attorneys. It has been enlightening for me.

And hopefully, it has been at least some degree, sobering for certain attorneys who have, shall I say, been playing fast and loose with this judicial nomination process.

Mr. KERRY. Mr. President, I have been listening with great interest, when I have been able to, the debate on the floor of the Senate on the nomination of Judge Bork. Most of that debate and much of the commentary surrounding it has been centered on the assertion that "the process has been grossly and inappropriately politicized." In bitter terms, some Senators have suggested this nomination will lose not on its merits but on its unfair politicization.

If the effect of these vitriolic assertions weren't so depressing and injurious to the process they seek to defend, one might find amusement in these charges.

For years, President Reagan has made much of out of his promise to appoint judges who would carry out his agenda. His pronouncements of intent to do so have never even touched on the subtle. They have been bold, brash, even purposely provocative promises—made in the heat of campaign and for the purpose of campaigning. The President for years has politicized the entire judiciary and judicial selection process. Who among us has not heard the President's speeches—"what we need are judges who will do this or do that * * *." In recent years it was politicized to such an extent that the former GOP chairman of the Judiciary Committee had to be requested to withdraw a judicial questionnaire which overtly sought to eliminate candidates for judgeship who did not adhere to a specific set of political beliefs.

What is clear is that when the President sent the Attorney General and Howard Baker to the Hill to consult on potential nominees those who knew the Bork record were warned about the negative impact of sending Judge Bork. Other potential nominees on their list they were told would pass easily. Nevertheless they chose the path of confrontation—they sent Judge Bork.

Politics and ideology have been a factor in this nomination because the President chose to make them a factor. Judge Bork was selected precisely because of his ideology, not his judicial record.

I listened yesterday as my colleague from Utah, Senator HATCH, cited the ease with which Supreme Court nominees of other Presidents, such as President Eisenhower, were confirmed for the Supreme Court. Indeed, the contrast is striking.

But the reason it is so striking is precisely because those presidents sought accommodation and not confrontation. It is precisely because their nominees were well within the judicial mainstream—not outside of it. After all, it was President Eisenhower who gave us both Chief Justice Earl Warren and Justice William Brennan.

Mr. President, I believe that a dispassionate—nonpolitically motivated analysis of the record makes it clear that Senators did not decide this nomination on the basis of pressure groups and politics. In many cases, Senators have decided in ways that went against their interests, against the easy route to oppose this nomination.

I do not believe that the questions asked by or the doubts expressed by the Senator from Pennsylvania or the Senator from Alabama were or are political questions or interest group doubts. These colleagues and many others have studied the record, read recent articles and cases, re-read the Constitution, weighed days of testimony, and made difficult decisions.

To suggest that so many Senators decided in a different fashion is to challenge, if not insult, the integrity of a majority of this institution in a personal as well as collective way. It is to demean, in a manner unbecoming of this body, a cherished right which falls to us and only to us as U.S. Senators—the right to confirm a nomination.

Perhaps, ironically and sadly, nothing confirms the inappropriateness of this nomination more than the furor it has caused. Nothing excites extremes more than the extreme, and certainly Judge Bork has galvanized opponents and proponents alike.

Mr. President, we consider this nomination as we celebrate the 200th anniversary of our Constitution. That is obviously a time for reflection on the enduring values which that document embodies, and their meaning in our society. I believe that a majority of Senators have considered the nomination in that light.

At the outset let me make clear that this is not a choice between liberal and conservative jurists. I have no objection to the appointment of a conservative to the Supreme Court, and have voted for many of them. Out of over 100 judicial nominations by President Reagan in his second term, I have voted against only 4.

But like a majority of this body, I have found this nomination to be extremely troubling. Robert Bork is not merely a conservative. He is a man who has disagreed with the Supreme Court time and time again in matters of fundamental constitutional law. These disagreements, I believe, go to the heart of how we read our Constitution. His appointment could only be viewed as a repudiation by the Executive who nominated him and the Senate which confirmed him of what the Supreme Court has said the Constitution means in many areas.

I believe Judge Bork should be rejected by the Senate principally for four reasons, each of which is adequate to justify his rejection.

First, there is the substantive direction of his views on a variety of constitutional issues, from first amendment to privacy to voting rights to antitrust. Second, there is Judge Bork's judicial philosophy, as opposed to ideology, which demonstrates an inappropriate deference to those with authority or power at the expense of individual liberties, not a true philosophy of "neutral principles" as he has professed. Third, there are Judge Bork's reformulations, modifications, and newly expressed doubts concerning his previous views, leaving doubts in this Senator's mind. Fourth, there is Judge Bork's troubling statements about precedent, some as recent as this year, which are especially disturbing in light of the number of Supreme Court decisions he has said were wrong.

His adherence to the doctrine of stare decisis is erratic, and when combined with his unorthodox philosophy, poses a significant threat to a wide range of Supreme Court precedent protecting personal decisions and liberties which Americans, over the course of some 60 years, have come to believe are beyond governmental reproach.

On many matters of substance, one has a choice to make. Either Judge Bork is wrong, or the Supreme Court has been. Moreover, the Supreme Court has on many occasions been exceedingly wrong if one agrees with Judge Bork, who has at various times called its constitutional rulings "unprincipled," "utterly specious," "improper and intellectually empty," and made according to rules of "unsurpassed ugliness"—hardly tempered observations or mainstream characterizations.

During the hearings, I was struck by Judge Bork's exchanges with Senator SPECTER on the issue of "original intent" and stare decisis. In discussing the Brandenburg and Hess cases, Judge Bork claimed that he now accepts them, even though he disagrees with them. But as Senator SPECTER pointed out.

> The next case will have a shading and a nuance, and I am concerned about your philosophy and your approach. If you say you accept this one, so be it. But you have written and spoken, ostensibly as an original interpretationist, of the importance of originalists not allowing the mistakes of the past to stand.

This exchange illustrates the hollowness of Judge Bork's confirmation conversion. While he may say that he accepts cases already decided, we have no assurance that he will indeed follow those precedents in the future, when new cases and new facts arise.

A related point was raised by Senator HOWELL HEFLIN in his questioning of Judge Bork. As Senator HEFLIN pointed out to him.

> As an Appeals Judge, of course, some of your own personal views are restricted by certain decisions, and are narrowed to the issue that might be before you. If you are confirmed and go on to the Supreme Court, while there will be some restrictions, you will be pretty well free to express your own beliefs as you see fit to do so on the issue that is before you; is that not true?

Judge Bork's response is revealing. He said to Senator HEFLIN:

> Yes. I would not say I was free in the sense that I was free as a professor; not at all. But obviously, a Supreme Court is freer than a Court of Appeals is.

And as Senator HEFLIN put it in his closing statement to the committee:

> A life-time position on the Supreme Court is too important a risk to a person who has continued to exhibit—and may still possess—a proclivity for extremism in spite of confirmation protestations.

Even a cursory review of his record yields numerous contradictions, and raises troubling questions.

Judge Bork has said that the Supreme Court has been wrong many times on civil rights. He has said the Supreme Court was wrong on ruling that the 14th amendment forbids State court enforcement of a private, racially restrictive covenant. He has said the Supreme Court was wrong to adopt the principle of one person, one vote. He has said the Supreme Court was wrong to ban literacy tests for voting, calling its decisions that such tests were unconstitutional "pernicious." He has called the Supreme Court's outlawing of a Virginia State poll tax "wrongly decided." And when the Court held that universities may not use raw racial quotas but may consider race, among other factors, in making admissions decisions, Judge Bork disagreed and wrote a biting critique of the carefully crafted opinion written by Justice Powell.

We have a choice—the Supreme Court's position on civil rights, or Judge Bork's. I choose the Supreme Court and not Judge Bork.

We can make the same choice on matters of whether individuals have rights in connection with public education. The Supreme Court has said they do. Judge Bork has said they don't.

The Supreme Court ruled more than 50 years ago that there is a right to teach or study a modern foreign language in school. But Judge Bork, in "Neutral Principles," has argued that this case was "wrongly decided."

The Supreme Court has ruled that the Constitution gives Americans a choice when it comes to educating their children. If they wish to, they can send a child to private school. Judge Bork thinks this case too was "wrongly decided."

The Supreme Court held that public school officials may not require students to recite a State-sanctioned prayer at the beginning of each day. Judge Bork, in a 1982 speech, disagreed. Once again we can choose—the Supreme Court or Judge Bork? I choose the Court.

Judge Bork has said the Supreme Court was wrong on antitrust matters, too, wrong when it found a congressional intent under the antitrust laws to protect small businesses, and that even the Congress is wrong on antitrust, accusing Congressmen of being "institutionally incapable of the sustained rigor and consistent thought that the fashioning of a rational antitrust policy requires."

I am concerned also by Judge Bork's refusal to recognize a right of privacy as implicit in the Constitution. The Supreme Court has long found such a right. This should be settled doctrine, no longer subject to dispute.

In an age of high technology, of computerized data bases, of high-speed telecommunications, of sophisticated electronic surveillance techniques, it is absolutely essential that the privacy rights of all Americans be not only recognized, but protected. A judge whose views seem to be rooted in the world of the late 18th century, who refuses to even recognize a right of privacy, is not a man whom I would feel safe entrusting with the responsibilities of protecting those rights in the late 20th century and beyond.

Judge Bork has said the Supreme Court is wrong about the right to privacy. The Supreme Court says it's in the Constitution. Judge Bork has disagreed. The Supreme Court has ruled as a matter of constitutional law, no State has the right to prevent married couples from using contraceptives. Yet Judge Bork as recently as 2 years ago said there was "no supportable method of constitutional reasoning" to justify this decision by the Supreme Court in Griswold versus Connecticut. So once again we can choose.

I have similar doubts in the area of speech. The Supreme Court has found that the first amendment provides broad protections to our citizens. Judge Bork has taken the opposite view.

Judge Bork called the Pentagon Papers cases, "instances of extreme deference to the press that is by no means essential or even important to its role," disapproved of the Supreme Court stopping criminal prosecution of a newsman who published the name of a judge who was being secretly investigated by the State judicial review commission, criticized the Supreme Court for protecting "offensive language" and the Supreme Court should have helped the Government suppress the speech.

A full review of Judge Bork's criticisms of the Supreme Court reveal a judge who does not have minor disagreements with a few areas of constitutional doctrine. His writings, taken as a whole, suggest that he believes the Supreme Court has been seriously out of step with the Constitution. These are not political choices, nor even ideological. These are substantive judgments about judicial philosophy and attitude.

Judge Bork's elevation to the Court would constitute a decision by us to support the renunciation of much of the work the Supreme Court has done over several decades. To confirm to the Supreme Court a man who has opposed so many of the Supreme Court's past decisions, decisions which remain the law of the land, is to send by such a confirmation a clear signal to the Supreme Court and to the Nation that we, like Judge Bork, believe these decisions have been wrong.

I believe the opposite. Accordingly, I would rather that this Senate renounce Judge Bork than renounce the Supreme Court's work of the decades past.

The second reason Judge Bork should not be confirmed is his position that individual liberties cannot exist except insofar as they can be found according to a "neutral" reading of the Constitution.

Judge Bork has described these beliefs as a consequence of the need for judicial restraint. In Judge Bork's view, a judge's role is, in his own words:

> To discern how the framers' values, defined in the context of the world they knew, apply in the world we know.

But a review of Judge Bork's writings and opinions suggest however, that this "value neutral" principle has not been followed by him in practice. Instead, Judge Bork has shown selective allegiance to original intent jurisprudence to achieve the very results-oriented jurisprudence he has disavowed.

This is particularly apparent in the area of individual rights. Here Judge Bork says that there is a very limited scope to constitutionally protectable personal liberties, because only a few are clearly described in the text of the Constitution.

Yet in order to make this argument, Judge Bork has to ignore the plain language of the Ninth Amendment which says plainly that the listing of the rights in the Constitution do not disparage the people's inherent "unenumerated rights."

There is historical evidence that many of the framers were concerned that the adoption of a bill of rights, by its express inclusion of some rights, could be interpreted to exclude all others, and that this was the reason the ninth amendment was adopted. While there is significant scholarly debate about the meaning and purpose of the ninth amendment, it has meaning. It cannot simply be disregarded. The propounder of "neutral" jurisprudence and "original intent," Judge Bork, would do just that, relegating the ninth amendment to nothing more than, in Judge Bork's words a "water blot" on the Constitution.

Beyond the issue of whether or not Judge Bork is adhering to "Neutral Principles" in his rejection of the ninth amendment to the Constitution as having any meaning, there is an inherent philosophical issue. Like the Supreme Court, I believe there are fundamental liberties which are protected under the ninth amendment. Judge Bork apparently does not.

Judge Bork has even expressed views suggesting that the entire Bill of Rights does not deserve the respect given the original portion of the Constitution, calling the Bill of Rights "a hastily drafted document on which little thought was expended." To me, this is an incomprehensible statement. The Bill of Rights is one of the fundamental documents of our democracy. I wonder how Judge Bork would justify this alarming statement with his current view of himself as one adhering to the "original intent" of the framers, when Samuel Adams, Thomas Jefferson, John Hancock, and James Madison among others of our Founding Fathers emphasized the importance of the Bill of Rights, and urged its incorporation into the Constitution.

Thus, we have a choice here, too. Do we wish to reaffirm our national commitment to the Bill of Rights and to a judicial philosophy which believes that the people have inherent rights, confirmed by the ninth amendment? Or do we wish to confirm Judge Bork and repudiate these ideals?

The third issue which merits Judge Bork's rejection is his shifts of position during his confirmation hearings. Many have remarked on the almost casual disavowal of views which he has expressed strongly and frequently in his writings. A Supreme Court Justice is a lifetime appointment, and the shifts are not on small matters.

Perhaps the most significant shift appears in the context of the first amendment. In his now-famous 1971 Indiana Law Review article, Judge Bork explicitly stated that, in his view, only political speech was protected by the first amendment. When Judge Bork wrote this article, he was a full professor at Yale Law School. He wrote that constitutional protection should be given "only to speech that is explicitly political." He wrote that courts should not "protect any other form of expression, be it scientific, literary, or that variety of expression we call obscene or pornographic."

In 1979, Judge Bork reaffirmed these views in a speech in Michigan. He said that:

> There is no occasion . . . to throw constitutional protection around forms of expression that do not directly feed the democratic process. It is sometimes said that works of art, or indeed any form of expression, are capable of influencing political attitudes. But in these indirect and relatively remote relationships to the political process, verbal or visual expression does not differ at all from other human activities, such as sports or business, which are also capable of affecting political attitudes, but are not on that account immune from regulation.

This is not a mainstream view of the first amendment. It would mean that a town council ban all books by James Joyce, or Ernest Hemingway, or F. Scott Fitzgerald, without fear of challenge on first amendment grounds. It would mean that a legislature could ban books dealing with Darwin's theory of evolution, or Einstein's theory of relativity. It would mean that the works of Carl Jung or Sigmund Freud could be prohibited, because they are not "political" in nature. In Judge Bork's view, that is what the framers of the Constitution intended.

In 1984, in a letter to the ABA Journal, Judge Bork partially modified these views, saying that:

> Moral and scientific debate are central to democratic government and deserve protection.

Significantly, he did not include artistic or literary expression in this formulation. And in an interview just 3 months ago, Judge Bork reaffirmed that position, saying:

> There comes a point at which the speech no longer has any relation to those processes. When it reaches that point, speech is really no different from any other human activity which produces self-gratification.

Yet in the hearings, Judge Bork for the first time disavowed all of that. Not only does he say that he doesn't believe it now, he says that he never really did believe it. When Chairman BIDEN asked him "When did you drop that idea?", Judge Bork responded "Oh, in class right away." He also said that "I have since been persuaded—in fact I was persuaded by my colleagues very quickly, that a bright line made no sense." Judge Bork now tells us that "there is now a vast corpus of first amendment decisions that I accept as law. It does not disturb me. I have no desire to disturb that body of law."

Any reading of Judge Bork's statements in 1971, in 1979, in 1984, and in 1987 prior to his nomination shows us clearly that Judge Bork did advocate significant limitations on first amendment protection of speech. It is hard to accept that only now has he seen the light and that is in the context of a Supreme Court nomination that he has shifted his views so substantially from what they were before.

We come at last to the issue of precedent. As my review of Judge Bork's many disagreements with the Supreme Court indicates, there are a lot of decisions the Supreme Court has made which he never accepted. Anyone trained as a lawyer, or working in the legal system knows of the respect, indeed reverence, which must be given to precedent and to past decisions of the Supreme Court. We know that the principle of stare decisis is the cornerstone and foundation of our legal tradition.

But Judge Bork's own words cast doubt as to how much he accepts this view when it comes to constitutional issues, the heart of the difficult work of a Supreme Court Justice.

Judge Bork has argued as recently as this year that "the role of precedent in constitutional law is less important than it is in a proper common law or statutory model * * * if a constitutional judge comes to a firm conviction that the courts have misunderstood the intentions of the founders, the basic principle they enacted, he is freer than when acting in his capacity as an interpreter of the common law or of a statute to overturn the precedent." Judge Bork went on to say further that "an originalist judge would have no problem whatever in overruling a nonoriginalist precedent, because that precedent by the very basis of his judicial philosophy has no legitimacy."

In other words, if Judge Bork believes the Supreme Court wrongly decided a constitutional case—any constitutional case—precedent need not be respected. He would have "no problem whatever in overrulng a nonoriginalist precedent," because that precedent was illegitimate.

We have seen that Robert Bork has disagreed with the Supreme Court on many constitutional matters precisely on this ground, that the rulings have been contrary to the supposed original intent of our Founding Fathers. Given these public pronouncements that a constitutional judge should feel free to overturn precedents he disagrees with, how can we do anything but take Judge Bork at his word and assume that for him such precedents are illegimate, and may be overthrown.

For this reason particulary, I believe his confirmation by the Senate would send a signal to the Supreme Court itself that is unmistakable and unmistakably wrong. It would be that we want to change the direction of the Court, that we want the Court to rethink the fundamental meaning of the Constitution on these issues, along the lines of the thinking of Robert Bork.

Judge Bork has criticized and rejected Supreme Court precedents dating back to the beginning of this century in several important areas of law. Perhaps Judge Bork is right in all of these cases, and the Supreme Court is wrong. Perhaps courts are unable to deal with economic and other important issues. Perhaps Congress is institutionally incapable of the sustained analysis and intellectual rigor which is essential for good lawmaking. Perhaps Judge Bork's vision is clearer than that of Justices Holmes, Brandeis, Douglas, and Powell. Perhaps all of these cases should be overturned. But perhaps Judge Bork is wrong.

I, for one, am not willing to take that chance. I cannot believe that a whole body of Supreme Court precedents, in vital areas such as civil rights, free speech, privacy, and so many other areas, should be overturned. I am not willing to substitute one man's opinions for an entire body of law, a constitutional tradition of respect for precedent, which we have built in this country over the past 200 years.

There are other areas in which I also have serious problems with Judge Bork—on the War Powers Act, on his deference to the executive branch, on his rejection of congressional standing, and on his actions during Watergate. These issues have been discussed at length by my colleagues. I will not repeat all of those arguments now. But suffice it to say that the Senate has an obligation to take a very close look at this nominee, and to determine whether a man who has expressed such views throughout his legal career is a man whom we trust with the high responsibilities of an Associate Justice of the Supreme Court of the United States.

As Prof. Laurence Tribe of Harvard has written:

> There has arisen the myth of the spineless Senate, which says that Senates always rubber-stamp nominations and Presidents always get their way.

This has not been true historically. It is not true today. The Senate has a duty to closely examine the views, the writings, and the character of any man or woman nominated to the bench of our highest Court. To do any less would not be true to the original intent of the framers of our Constitution.

I believe that a careful examination of Judge Bork's record reveals that he is neither a moderate, nor a conservative. He has consistently rejected precedents of the Supreme Court and settled areas of law. To place this man on the Supreme Court would be to reopen old wounds and to refight old battles. It would not be in the best interest of the American people.

Mr. BIDEN. I would like to thank all of the staff members, both majority and minority, who have worked so hard on the nomination of Judge Robert Bork to be Associate Justice of the Supreme Court.

I submit their names for the RECORD.

Carol Allemeier, John Bentivoglio, Jane Berman, Sharon Blackman, Paul Bland, Stef Cassella, Michele de Sando, Laurie Gibson, Mark Gitenstein, Scott Green, Diana Huffman, Debra Karp, Kim Lasater, Cindy Lebow, Ron Legrand, Bill Lewis, Diane Lowe, Phil Metzger, Steve Metalitz, Tabb Osborne, Debby Pascal, Kathy Peterson, Jeff Peck, Darla Pomeroy, Tracey Quillen, Andy Rainer, Chris Schroeder, Phil Shipman, Pete Smith, Andy Tartaligno, Marc Ficco, Nanda Chitre, Jodi Tuer, Kevin Wilson, Pete Oxman, John Ungar, Evelyn Ying, Lisa Metz, Duke Short, Frank Klonoski, Melissa Nolan, Jack Mitchell, Dennis Shedd, Linda Greene, and Bill Rothbard.

Lisa Defusco, Carol Hamburger, Jeff Robinson, Michael Russell, Ann Harkins, John Podesta, Theresa Alberghini, Jody Silverman, Liz Tankersley, Larry Rasky, Leeann Inadomi, Beth Donohue, Ana Gregg, Deborah Leavy, Jennifer Nelson, Jack Suber, Kay Morrell, Nathalie Blackwell, Bill Myers, Carolyn Osolinik, Annie Rossetti, Melinda Nielsen, Mamie Mills, Deborah Walden, Gary Craig, Robert Maagdenberg, Eddie Correia, Margaret Morton, Steve Hilton, Neal Manne, Ellen Lovell, Joe Jamele, Theresa Alberghini, Jill Friedman, Marianne Baker, Meg Murphy, Lori Shinseki, Chris Dunn, Caryl Lazzaro, Cheryl Matcho, John Trasbina, Abby Kuzma, Jean Leavitt, Randy Rader, Dick Day, Jeffrey Blattner, Sandra Walker, Karen Kremer, Monique Abacherli, Gerorge Milner, Jack Foster, and Jerry Ray.

Peggy Hammrick, Jackie Agnolet, William Duran, Kelly Dermody, Peter Coniglio, Matt Johnson, George Smith, Edward Baxter, Matthew McCoy, Cecilia Swensen, Mary Hartman, Alice Finn Gartell, Kim Helper, John Somerville, Denise Addison, Ann Bishop, Grace McPherson, Jo Meuse, Jennifer Dickson, Elizabeth Gardner, Wilham "Bill" Hart, Eloise Morris, Tony Biancuzzo, Jennifer Blackman, Tom Young, Mark Kover, Tom McIsaac, Liz Capdevielle, Sam Gerdano, Dort Bigg, Darryll Fountain, Tara McMahon, Lynwood Evans, Elizabeth McFall, John Leader, Tracy Essig, George Carenbauer, Mansel Long, Joyce Biancuzzo, Roger Cole, Betty Lanier, Judith Lovell, Carolton Betenhaugh, Denise Milford, Mary Lucero, Deabea Walker, Wanda Baker, and Tricia Thornton.

JUDICIARY COMMITTEE REPORT FLAWS

Mr. HATCH. Mr. President, at the outset, I would like to restate what I have said at the conclusion of the hearings. Chairman BIDEN can be proud of the procedural fairness with which he conducted the Senate Judiciary Committee hearings on Judge Bork's nomination. At the same time, I must state that those same hearings were decidedly lacking in substantive fairness. This should not reflect negatively at all upon the Senator from Delaware because he certainly cannot control the charges, allegations, and partial truths presented over and over again by witnesses. Nonetheless many of the witnesses presented a particularly slanted view of the law and demonstrated a narrow understanding of Judge Bork's abilities and reasoning processes.

Senator BIDEN took the time to review my concerns about the substance of the Senate Judiciary Committee Report. I thank him for that. I feel that I owe him a similar courtesy. Inasmuch as I just received his views in the RECORD a few minutes ago, I shall be limited in the breadth of my response, but nonetheless I stand by my original assertion that the committee report is sophomoric and slanted.

Mr. President, permit me to elaborate. In what Senator BIDEN refers to as "Inconsistencies 3-10" he once again asserts that:

> Judge Bork's view of the liberty clauses—and his notion of the rights that I believe all Americans have—does stand alone among Justices who have sat on the Supreme Court.

The Senator from Delaware stated this same point in earlier debate on the Senate floor. In his eloquence, my colleague from Delaware said that every other Justice has crossed the Rubicon on the privacy right, for example, "But Judge Bork has not even put a boat in the water."

Mr. President, I urge my colleague to check the river banks again; there are many other boats still on Judge Bork's side of the stream. Moreover those who have launched from the safe shores of the Constitution have been swept downstream into the rapids of judicial activism and unprincipled jurisprudence.

Let us count the boats still with Judge Bork on the bank defined by the words and structure of the Constitution as amended. The first boat belongs to the first and only woman Justice—Justice O'Connor.

In her dissenting opinion in Akron, a 1983 case invalidating a State law requiring a 24-hour waiting period on abortions, Justice O'Connor said:

> Irrespective of what we may believe is wise or prudent policy in this difficult area, the Constitution does not constitute us as "Platonic Guardians" nor does it vest in this Court the authority to strike down laws because they do not meet our standards of desirable social policy, "wisdom," or "common sense."

Just last year, Justice O'Connor dissented when the Court refused to allow parents to counsel with their minor children prior to an abortion. She said then: "[t]he Court's abortion decisions have already worked a major distortion in the Constitution." Justice O'Connor also joined Justice White's opinion in the Hardwick case last year in which the Court refused to extend any general privacy right to homosexual conduct. The only woman Justice has never endorsed any application of a right to privacy in any context.

Let us count still a second boat that stays on the Constitution's side of the Rubicon: Chief Justice Rehnquist's bank. The Chief Justice dissented in Roe versus Wade, the 1973 abortion case. He reasoned that the majority's privacy opinion "partakes more of judicial legislation than it does of a determination of the intent of the drafters of the 14th amendment."

The Chief Justice also dissented in Carey versus Population Services saying:

> If those responsible for the due process clause could have lived to know that their efforts had enshrined in the Constitution the right of commercial vendors of contraceptives to peddle them to unmarried minors through such means as window displays and vending machines located in the men's rooms of truck stops, it is not difficult to imagine their reaction.

Moreover the Chief Justice has dissented in no less than six other cases based on the reasoning of the so-called privacy doctrine. One of these was the homosexual privacy case, where he said:

> The Court is most vulnerable and comes closest to illegitimacy when it deals with judge-made constitutional law having little or no cognizable roots in the language or design of the Constitution.

The Chief Justice, it is safe to say, has not left the safe shores of the Constitution.

The next boat lying beside Judge Bork's belongs to Justice White, President Kennedy's appointee. Justice White has opposed Roe versus Wade as "an improvident and extravagant exercise of the power of judicial review." He opposed seven other privacy related cases. He wrote the opinion against homosexual privacy protections. He said in that case:

> It would be difficult, except by fiat, to limit the claimed right of homosexual conduct while leaving exposed to prosecution adultery, incest, and other sexual crimes even though they are committed in the home.

He was joined in that opinion by Chief Justice Burger and Justices

Rhenquist and O'Connor. Justice White is not adrift in the rapids of judicial activism.

The next boat safely ashore on the banks of the Constitution is that of Justice Black. He dissented in the very first case to ever mention the alleged privacy doctrine, Griswold versus Conn. Justice Hugo Black stated:

> My Brother Goldberg has adopted the recent discovery that the Ninth Amendment as well as the Due Process Clause can be used by this Court as authority to strike down all state legislation which this Court thinks violates "fundamental principles of liberty and justice" or is "contrary to the collective conscience of our people." He also states, without proof satisfactory to me, that in making decisions on this basis judges will not "consider their personal and private notions." One may ask how they can avoid considering them. The Court certainly has no machinery with which to take a Gallup Poll. And the scientific miracles of this age have not yet produced a gadget which the Court can use to determine what traditions are rooted in the "[collective] conscience of our people. Moreover, one would certainly have to look far beyond the language of the Ninth Admendment to find that the Framers vested any such awesome veto powers over lawmaking, either by the States or by Congress. Nor does anything in the history of the Amendment offer any support for such a shocking doctrine. The whole history of the adoption of the Constitution and Bill of Rights points the other way.* * *

Justice Black sounds like Judge Bork. Or Judge Bork sounds like Justice Black. In any event, they are neither alone in their views.

Another Justice whose boat remains beside Judge Bork's is Justice Scalia. We must remember that Justice, then Judge, Scalia joined Judge Bork's opinion in Dronenburg that denied homosexuals any constitutional privacy right. Justice Scalia's views on privacy must not be a secret because every advertisement suggests he will be one of the four to vote with Judge Bork in future abortion cases.

Frankly Judge Bork's boat seems to be accompanied by a veritable fleet of ships unwilling to venture out into the constitutional storm that would result if the Court abandoned completely the words and structure of the document.

We must put this entire issue of privacy into context. Judge Bork and all the others we have discussed have consistently enforced the privacy rights against unreasonable searches or the privacy right to worship or the privacy right to speak or the privacy right against self-incrimination to name a few specific constitutional privacy rights. But this free-floating privacy notion that some say includes protections for homosexual conduct was not manufactured until 1965. Where was the right until then if it was not found in the Constitution?

In order to make the law fit his conclusion that all Justices are different from Judge Bork, Senator Biden twisted the record on some Justices. For example it has been said that Justice Black accepted the broad substantive due process rights notion in the Skinner sterilization case. This is not a correct reading. Skinner was decided exclusively on equal protection grounds and said absolutely nothing about substantive due process or the right to privacy. Skinner held that a State law requiring sterilization of recidivist robbers, but not embezzlers, constituted "a clear, pointed, unmistakable discrimination," and therefore offended the equal protection guarantee of the 14th amendment.

Justice Black joined this case on equal protection, not privacy or due process, grounds. In fact, Black declined to join Stone's separate opinion which was based on due process. Senator Biden takes issue with the equal protection reading of Skinner under what he calls inconsistency 15, but it is impossible to take issue with Black's refusal to join the Stone substantive due process rationale for that case.

To return to "Inconsistencies 3-10," Senator Biden clearly rests his notion that most of the current Supreme Court agree with his own private notion of substantive due process on the recent unanimous decision in Turner versus Safley. This is misleading. Turner was not about a super-protected, substantive due process right of privacy or marriage. The case arose in a prison context, raising fairly narrow questions. In Turner, State prisoners challenged the constitutionality of a prison regulation that permitted prisoners to marry only if the superintendent of the prison determined that there were compelling reasons for doing so. Obviously, the State generally permitted its citizens to marry without requiring that they show a compelling reason for doing so. One question raised, therefore, was whether this legislative classification survived equal protection scrutiny: whether the State had valid reason for adopting a different rule for prisoners. The Court reviewed the applicable prison cases and summarized the proper analysis as follows:

> When a prison regulation impinges on inmates' constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests.

Indeed, the approach of this case is similar to Judge Bork's reasonable basis test for equal protection. The clear basis for a reasonable distinction between prisons and law-abiding citizens would be "legitimate penological interests." In the case of marriage, Judge Bork would not find any reason why the prison regulation against marriage is incompatible with those "penological interests."

Even if this is a due process case the reasoning is not that of privacy. After all, prisoners of necessity are deprived of liberty after the due process of a trial. The prisoners' claims that they have lost the liberty to marry are indeed analyzed according to the established standard whether this additional liberty loss is justified by the States' interest in the orderly confinement of prisoners. A prison case, therefore, hardly suggests an adequate basis of concluding a general privacy or liberty right extends to other circumstances. Under this reasoning of equal protection reasoning, Judge Bork, too, would have joined Turner.

In sum, we need to put this entire question of constitutional rights in focus. The general privacy right questioned by Judge Bork was not manufactured by judges until 1965. This whole fanfare over Judge Bork reinforces my main point. The privacy doctrine was made by judges and can be unmade by judges. If it were actually in the Constitution, this would not be true. Judge Bork is opposed not because he is the sole voice against the general privacy notion but because he may well be the fifth and deciding vote against this exercise of raw judicial activism.

In any event, this response to my argument makes my point. The facts of the law—namely that Justice Black, nor Justice O'Connor, and other Justices I have mentioned, have not embraced substantive due process privacy rights—have been slanted or creatively "reinterpreted" to fit the desired conclusion, namely that Judge Bork is somehow isolated on this vital question.

By the way, it is interesting to note what issues the Senator from Delaware did not discuss within "Inconsistencies 3-10." I will not recite them all, but for instance he did not find any fault in No. 5. The reason is clear.

This is a classic example of sentimental, but decidedly unlegal, reasoning. The report quotes, with great fanfare, the comment of one Senator that "when you expand the liberty of any of us, you expand the liberty of all of us." This is pure nonsense. If this were true, we would have no lawsuits.

In every lawsuit, the litigants on each side of the case contend that they possess superior legal rights and liberties. Consider the following examples: one litigant asserts the right and liberty to have an abortion on demand; the competing litigant asserts the right and liberty of a parent to counsel their minor parent prior to an abortion. This is a case currently before the Supreme Court. It is not hypothetical. Regardless of how you may feel about this issue, you must concede that one set of rights and liberties will prevail and the other will not. There is no way to grant both sets of rights and liberties. By definition, to expand one litigant's rights is to contract the other.

Let us look at another example currently before the Court. One litigant asserts the right or liberty to pray silently in a public school classroom; the competing litigant asserts the right to a classroom free of all religious activity or symbolism. Again, one will prevail; one will not. It is axiomatic, however, that expanding one litigant's set of rights will have to contract the rights asserted by the other litigant.

This does not mean, as the Judiciary Committee Report asserts, that the Constitution is a zero-sum system. The Constitution can be changed to incorporate any rights the people require. It does mean, however, that the Constitution contains legal limits and laws. Those limits will acknowledge some rights and discredit others. This is obvious.

Thus any case before the Supreme Court features rights and liberties asserted by both litigants. The Court never has the luxury of saying "you are both right and we will grant both of your rights at the same time." Unfortunately the Court exists to make tough choices between rights.

The notion that "expanding the liberty of one expands the liberty of all" is a noble-sounding sentiment with no relation to the reality of the legal world.

It is also interesting to note that the Senator does not choose to quibble with No. 4. This points out that substantive due process is the unprincipled legal tool used to reach the dangerous conclusions in Dred Scott—that blacks are only property lacking rights—in Lochner—that economic rights prevent health and safety regulations—and in Roe—that unborn children have no protections.

Mr. President, the Senator from Delaware overlooks several other inconsistencies. I do not know why he found no arguments against those assertions, but he did not.

In dealing with inconsistencies 11, 14, and 12, Senator BIDEN states that my objections to his understanding of Judge Bork's views of precedent are without license. Then in the next section, he proceeds to question whether Judge Bork ultimately agreed with the imminence rationale of Brandenburg or disagreed with it, contending that "you can't find an alternative rationale" for that case. By raising the second point, Senator BIDEN proves my point in the first.

Judge Bork did not embrace at any point the reasoning of Brandenburg. He continued to question, to my understanding, both whether subversive speakers—the KKK advocating murder of blacks in this case—ought to be allowed to "have their way" and whether subversive speakers ought to be permitted to do their damage right up to the point that danger is imminent. At that point, Judge Bork noted by admitting he would offer no protection to the Nazis, it may be too late. On both points, Judge Bork had concerns. I mentioned only one in my first cursory writing. In any event that is not the point. The point is that Judge Bork did have an alternative rationale for "accepting" Brandenburg. That alternative rationale is none other than the doctrine of stare decisis. Senator BIDEN demonstrates that he did not understand the breadth and significance of Judge Bork's views on precedent by insisting that he had to choose between agreeing or disagreeing with the rationale of that case. In fact, he stuck by his opinion that the few words of the first amendment do not justify Holmes's elaborate subversive speech reasoning, yet he still found a respected legal means to "accept" the clear and present danger test. That legal means is his theory of precedent.

Senator BIDEN's report might have mentioned it, but it must have discounted it—as I earlier mentioned—if the Senator did not understand one of the fundamental applications of that doctrine in Judge Bork's jurisprudence.

What Senator BIDEN refers to as "inconsistencies 13 and 15" have been amply clarified above. I will not dwell further on those points.

With respect to inconsistency 16, Senator BIDEN assumes that my criticism of the so-called privacy doctrine is limited to the Bowers case. That assumption is incorrect. I will happily accept this opportunity to discuss some of the cases raised in defense of the so-called privacy doctrine in the report. Many of these cases have nothing to do with privacy.

In Pierce versus Society of Sisters, 1926, for example, the Supreme Court held that the liberty interest in the due process clause protected the right of parents to send their children to private schools. The opinion did not even mention the first amendment. Yet in subsequent cases, the Supreme Court has abandoned the due process rationale and rerationalized Pierce as a first amendment decision. Thus, in Griswold versus Connecticut, 1964, Justice Douglas' majority opinion referred to Pierce as a first amendment case establishing the principle that "the State may not, consistent with the spirit of the First Amendment, contract the spectrum of available knowledge." Similarly, in Wisconsin versus Yoder, 1972, the Supreme Court held that the Amish had the right to remove their children from compulsory education after the eighth grade and cited Pierce as a case protecting the free exercise rights of parents "with respect to the religious upbringing of their children." This case involved the same constitutional liberty—a parent's right to control the education of his or her child—but the rationale was wholly different from that advanced in Pierce.

Meyer versus Nebraska, 1923, which held that a State could not prohibit the teaching of foreign languages in the public schools, was originally decided under a substantive due process rationale. But in Griswold, this case, like Pierce, was also rerationalized on first amendment grounds.

According to the Court, the generalized "right of privacy" found in Griswold was rooted in a "penumbra" emanating from the first, third, fourth, and fifth amendments of the Bill of Rights. In Roe versus Wade, 1973, the Supreme Court rerationalized the privacy right as a substantive due process right "founded in the Fourteenth Amendment's concept of personal liberty."

Similarly, in Rochin versus California, 1952, the Supreme Court held that pumping a suspect's stomach to discover evidence of drug possession violated the due process clause. In Schmerber versus California, 1966, by contrast, the Court protected an individual from a coercive seizure of an individual's blood under a different rationale. In holding that the State could not compel an individual suspected of drunk driving to undergo a blood test, the Court reasoned that "[t]he overriding function of the fourth amendment is to protect personal privacy against unwarranted intrusion by the state." Similarly, in Winston versus Lee, 1985, the Court held that the State could not force a defendant to undergo surgery to remove a bullet which would have linked him to the crime. The Court held that such a search was "unreasonable" under the fourth amendment. Thus, this was the same protection under a different rationale.

Frankly, the Senator from Delaware is flatly incorrect when he attempts to establish that the only issue is the extent of the privacy right. It is this kind of misstatement that has badly distorted this process.

With regard to "Inconsistency 17," I am happy to take the chance to once again discuss Judge Bork's remarkable civil rights record.

Both as Solicitor General and as a judge on the D.C. circuit, Judge Bork has never advocated a position less sympathetic to minority or female plaintiffs than that ultimately adopted by the Supreme Court or Justice Powell. In other words, he has consistently been just as sympathetic or more sympathetic to civil rights than the current Supreme Court and the Justice he would replace. I realize that the one exception to this rule would be cases where a Federal law or policy was challenged under civil rights laws. In such cases, the Solicitor General is compelled to defend the legality of Government actions except in the most egregious cases.

Let me mention a few cases that deserve a few moments of examination. In the General Electric versus Gilbert case, Judge Bork argued for an advance in title VII law by establishing that pregnancy can be the basis for discrimination. Interestingly Justice Powell voted against Bork's position, the position favored by women, in that case.

Even though his argument was rejected by Justice Powell and the majority of the Supreme Court, Judge Bork's position is today the law of the land. Congress passed the Pregnancy Discrimination Act in 1976 to overcome the Supreme Court's restrictive reading of title VII and adopt the position you argued in the Court. In this instance, Judge Bork's position eventually prevailed but only over the objection of the Supreme Court. This is a further instance where Judge Bork was at the vanguard of the civil rights movement fighting to win important protections for women and minorities. With the case and others in mind, it is hard to understand how anyone could criticize the judge for opposing every major advance in civil rights or turning back the clock on civil rights. To the contrary, he was responsible for many of those advances and for propelling the civil rights clock forward.

Let us look at another example. In 1976, Judge Bork was responsible for the case of Washington versus Davis concerning the disparate impact on minorities of written examinations given to job applicants. Judge Bork, then Solicitor General, contended that an employment test with a discriminatory effect should be unlawful under title VII. This, too, was heralded at the time as a civil rights advance. The Supreme Court decided the case against Bork's broader reading of the law and in favor of an intent test. Justice Powell once again disagreed with Bork's reading of the civil rights law.

I would like to emphasize that I do not offer these observations as a commentary on Justice Powell's record. We all revere him as a great jurist. My point is only that it is short-sighted and misleading to resort to labels to characterize Bork's work on civil rights issues. Those labels may not tell the whole story because often his record was more sensitive on civil rights than the popular perception of Justice Powell.

Rather than list some of the rest of Bork's cases one at a time, I will mention them all together. In Beer versus United States (1976), the judge contended that a New Orleans reapportionment act violated the Voting Rights Act because it diluted black voting strength. In Teamsters versus United States (1977), he argued that a seniority system that perpetuated the effects of discrimination violated title VII. In Pasadena versus Spangler (1975), he contended that even a school district with a busing plan can be ordered to achieve even a better racial balance. In each of these cases, Justice Powell voted against Bork's effort to advance civil rights. And certainly no one would question Justice Powell's commitment to civil rights.

Nonetheless the comparison to Justice Powell—which shows that in the five cases I have just named Justice Powell was less sensitive to civil rights than Judge Bork—illustrates another danger in some techniques of classifying judges by political standards. Someone could read these five cases and conclude that Justice Powell was not in tune with the needs of minorities. The opposite is true. Yet we have often heard one or two isolated quotes—far less authoritative than these five votes—cited to question Judge Bork's record on civil rights.

Mr. President, I would like to employ one more comparison with a current Justice. In the 19 amicus briefs Judge Bork filed as Solicitor General, do you know which Justice—who is still on the Court—sided with Bork most often?

It was actually Justice Brennan. In fact, during the Bork years as Solicitor General, he filed 19 amicus briefs in civil rights cases. By the way, the Solicitor General has no obligation to file amicus briefs, but exercizes considerable personal discretion about when to intervene in these cases. This shows that Judge Bork was not "just doing his job" which would be a high compliment. Nonetheless he was exercising his own discretion in filing amicus briefs.

In those 19 cases, Bork sided with the minority or female plaintiff 17 times. In the two cases where he felt compelled by law to argue against the minority or female, the Supreme Court agreed with him. Thus, 19 out of 19 times Judge Bork was at least as sensitive to civil rights as Justice Powell and the Supreme Court and 17 of 19 times he sided with minorities and women.

In a vain attempt to respond to this outstanding record, some have said this means little because Judge Bork was only defending Government policy. As I just stated, however, a Solicitor General does not have to file amicus briefs.

Before leaving this subject, we need to examine some of the victories for civil rights Judge Bork won as Solicitor General. The classic example is the 1976 case of Runyon versus McCrary outlawing discriminatory private contracts under section 1981. This established that section 1981—a 100-year-old civil rights law—could be applied to racially discriminatory private contracts. Because Bork prevailed in this case, there now exists a Federal course of action against racially restrictive covenants. In other words, those who accuse the judge of limiting the sweep of civil rights laws have not taken into account your action to make some discriminatory contracts invalid under this old law. This makes ludicrous those allegations that he would allow racially discriminatory contracts. In fact, he was responsible for the legal means to outlaw them. This action, better than any words, indicates that he would enforce Federal laws against private activities.

Another great victory for civil rights at that time was United Jewish Organization versus Carey (1977) which established that electoral redistricting may use race-conscious methods to enhance minority voting strength. This victory might offend some who think the Constitution should be read as "color blind" because it allowed some citizens to be given preferences over others in redistricting plans. As I understand it, one of the Justices at oral argument in this case challenged Bork by suggesting that legislators should not be allowed to take race into account when drawing election district lines. You responded: "Asking legislators not to think about race when drawing district lines is like my asking you not to think of the word hippopotomas in the next five seconds." Judge Bork then waited a full 5 seconds and then proceeded with his argument. Once again, this is hardly the work of one insensitive to civil rights. This is hardly the work of a conservative judicial activist.

Judge Bork won again in Lau versus Nichols (1974). This case was a landmark in its day. It mandated bilingual education and held that title VI, and possibly even the Constitution, reached actions that were discriminatory in effect, though not in intent. Many, particularly many in President Reagan's administration, would prefer to require a showing of intent prior to imposing penalties for discriminatory actions. This is an indication of Bork's independence and dedication to the law because he is not, as some would like to make us believe, the perfect image of what President Reagan might want in a Justice. The President's administration has continually argued for intents analysis over effects analysis in these cases, yet in this case Bork was on the other side. Those who have attacked the judge's civil rights record seem to have forgotten that he blazed some of the paths that civil rights advocates take for granted today. Once again, these actions speak louder than words.

Judge Bork also won a victory for women in Corning Glass versus Brennan, the 1974 case involving the applicability of the Equal Pay Act to women who work on different shifts from men. In this victory for women, he established that the Equal Pay Act barred men from earning more than women for similar jobs on different shifts. This expanded the applicability of the Equal Pay Act—a significant advancement for the principle of equal pay for equal work. Women seeking equal economic opportunities still benefit today from Judge Bork's actions more than a decade ago.

As you can see, we could easily go on through many more great civil rights victories—actions that speak far louder than the hollow words of Bork's critics. Let's look at just one more group of cases, however. Bork also won the 1975 case of Albemarle Paper versus Moody, involving the showing an employee had to make to demonstrate that a preemployment test was discriminatory, and the 1976 case of Franks versus Bowman Transportation, involving retroactive seniority status for victims of discrimination.

In each of these cases, Judge Bork's victories made it easier for a plaintiff to prove employment discrimination by simply producing statistical evidence of discrimination. In other words, intent was not a prerequisite to civil rights enforcement. This grants broad latitude to civil rights plaintiffs.

This exercise could go on. We could examine Virginia versus United States (1975) where he required the State of Virginia to comply with special burdens imposed by the Voting Rights Act or Fitzpatrick versus Bitzer (1976) where he established that Congress can even waive sovereign immunity to enforce civil rights or many more such victories for civil rights. Frankly it is impossible to understand how Judge Bork's critics could have overlooked these actions. On the basis of these actions, Judge Bork should be acclaimed as one of the leading advocates for broad civil rights protections in our era.

To recap, the Bork record as Solicitor General is unassailable on civil rights issues. He laid many of the foundation stones for the modern civil rights movement. It is hard for me to imagine why critics would feel such antagonism toward President Reagan that they would be willing to overlook the facts in their rush to condemn the President's nominee. I am confident that as the charges are laid alongside the actual record that the false allegations will quickly be unmasked as distortions.

Mr. President, I would like to next turn to his record as a circuit judge. During his tenure on the D.C. Court of Appeals, the judge has in every instance upheld civil rights laws—including title VII, the Equal Pay Act, and the Voting Rights Act—in a manner consistent with or broader than Supreme Court precedent. In his years on the D.C. circuit, Judge Bork has had dozens of opportunities to construe civil rights statutes. In all but two of these civil rights cases, he has sided with the minority or female plaintiff. Again in both of those cases, the Supreme Court and Justice Powell agreed with Judge Bork that the law required a ruling against the minority plaintiffs. It would once again be valuable to deal in specifics, rather than speculation.

In 1983 Judge Bork participated in the Sumter County versus United State case, a South Carolina voting rights case. This was a major voting rights case. Judge Bork joined a three-judge panel which ruled that a South Carolina county had failed to show an at-large voting plan lacked discriminatory purpose or effect. Thus, the South Carolina County has to undergo preclearance procedures.

It may be of interest to the Senate to realize that Justice Powell, unlike Judge Bork, has continually criticized expansive interpretations of the Voting Rights Act. In fact, Justice Powell has voted against minority plaintiffs in 17 out of 25 voting rights cases he had decided. See, for example City of Rome versus United States (1980). I think that I am beginning to conclude that my critical colleagues would probably not confirm Justice Powell if he were before the committee today. In fact, our memory may be hazy but Justice Powell was opposed by most civil rights groups when he came before the Senate in 1971. After all, he favored many narrower constructions of civil rights laws than has Judge Bork. I mention this not to cast any cloud on the record of Justice Powell. We all revere him as a giant amongst modern jurists. I mention this only to point out the shallow analysis of those who once opposed Justice Powell's nomination and now oppose, for equally unsubstantiated reasons, the nomination of Judge Bork.

To continue, I would direct the Senate's attention to the Palmer versus Schultz case concerning gender discrimination in the Foreign Service.

In this case, the D.C. District Court had granted summary judgment to the Government in a suit by female Foreign Service officers alleging discrimination in promotions. Judge Bork voted against the Government and reinstated this Equal Pay Act case. This type of evidence was dismissed in the Judiciary Committee as an easy case and that as just an example of Judge Bork following established precedent. If this case was so easy and clearly disposed of by precedent, why did the district court rule against the women in the first instance?

In a similar case, Osoky versus Wick, Judge Bork also voted to reverse another district court case and apply the Equal Pay Act to the Foreign Service's merit system. In both of these cases, he found that inferences of intentional discrimination can be based solely on statistical evidence. This is hardly the work of a judge who walks in lockstep with the President. The judge ruled against the Government in both cases and also ruled against the Government on the basis of arguments that the President himself would probably not approve. It is clear that he was making no special effort to impress President Reagan. This is the profile of a classic independent judge, the kind we should want on the Supreme Court.

Judge Bork also decided the Laffey versus NW Airlines case concerning the applicability of the Equal Pay Act to stewardesses.

In this instance, he found that female stewardesses may not be paid less than male pursers. Thus, the airlines were found to have discriminated against the females. The Supreme Court denied certiorari in this case. Once again, it is impossible to characterize his position as insensitive to women or as "opposing every major advance in civil rights." Incidentally, he also ruled in that case that the backpay awards under the Equal Pay Act should be determined by figuring a woman's total experience. This was another significant victory for women's rights. This kind of hard evidence makes charges about Judge Bork's insensitivity to women's rights sound very hollow.

Once again a comparison to the Justice Judge Bork would replace is probably in order. Judge Bork is supposed to upset the balance on women's issues by replacing Justice Powell. And, in fact, we would all agree with women's groups that Justice Powell was very sensitive on these issues. It is interesting, however, that he voted against women in gender discrimination cases 22 of 32 times. For instance, Justice Powell voted for the Grove City case in 1983. The same cannot be said of Judge Bork who voted for women and minorities time and again.

We could examine case after case which show an inclination to uphold civil rights, including the case of Emory versus Secretary of the Navy involving the application of civil rights review to the Navy's promotion decisions.

In this case Judge Bork again reversed a district court's opinion. The district court had held that the Navy's promotion decisions were immune from judicial review for civil rights deficiency. Judge Bork stated that "The military has not been exempted from constitutional provisions that protect the rights of individuals. It is precisely the role of the courts to determine whether those rights have been violated." This is hardly language one would expect from one who has been accused of closing the courts to civil rights claimants. To the contrary, this is an opinion—reversing a lower court—opening the military to judicial scrutiny. Once again, the accusations do not seem to square with the reality of the judge's judicial record. Indeed, it is interesting to note how many of these cases—Palmer, Wick, Emory—were cases in which you voted to reverse a lower court which had ruled against the civil rights plaintiffs. The special interest groups opposing the judge purport to review his record based only on a small fraction of the cases you have heard—the nonunanimous ones. So the cases I just cited were all excluded from these reviews because the three-judge panel was unanimous—despite the fact that the lower court had ruled the other way. This only illustrates how statistics can be skewed.

We could look at other cases, such as Norris versus District of Columbia, where the judge rejected a district court's attempt to dismiss a prisoner's complaint of mistreatment or Doe versus Weinberger where he ruled against the Government and ensured that a homosexual was accorded full due process rights. In all of these instances, the judge's critics would be hard pressed to explain why he was insensitive to civil rights. In fact, they are wrong. Bork's actions speak louder than their words. He has consistently voted to preserve fundamental rights. When the facts are known, they are hard to distort.

This is the record that was overlooked by the report. When I say that the report is slanted it is because it does not tell the complete story but only selects certain facts. This judicial record on civil rights is unassailable.

Senator BIDEN again discounts this record in "Inconsistency No. 20." His point is that appellate court judges are bound by precedent and lack discretion to apply the law any differently. I do not have his exact quote, but Senator RUDMAN spoke a few minutes ahead of me today. He stated that if this were true we would not need appellate courts. As Senator RUDMAN stated, "District courts could try the cases and computers could test the trial decisions for consistency with the Supreme Court." Senator RUDMAN's comments reveal the deficiency of Senator BIDEN's comments. Judging is by its nature a process of judgment and discretion and the application of law. Judge Bork's record on these counts with regard to civil rights is unassailable.

I am glad for the opportunity to discuss in more detail the report's poll tax discussion. As I said at the time, this was a great miscarriage of the staff's professional responsibility. Senator BIDEN did not care to take issue with my main point.

The report incorporates a very deliberate and selective lie on this point. It states: And as Vilma Martinez testified:

> Among the problems with Judge Bork's disagreement with Harper is the fact that the Supreme Court in its decision expressly recognized that the Virginia poll tax was born of a desire to disenfranchise the Negro.

The last quote is grossly taken out of context. In fact, the third footnote of the Harper case in full states:

> While the Virginia poll tax was born of a desire to disenfranchise the Negro (citing an earlier case), we do not stop to determine whether on this record the Virginia Tax in its modern setting serves the same end.

The Court states itself that there is no evidence of racial discrimination before the Court. Justice Black states it even more plainly:

> * * * the Court's decision is to no extent based on a finding that the Virginia law as written or as applied is being used as a device or mechanism to deny Negro citizens the right to vote * * * 383 U.S. at 672.

For the report to repeat the outright falsehood that the Harper case was associated with discrimination is an outrageous breach of the Senate staff's professional responsibility.

Moreover, the report does not list the Justices who found that nondiscriminatory State poll taxes are legal: Hughes, McReynolds, Brandeis, Sutherland, Butler, Stone, Roberts, Cardozo, Black (Breedlove, 1937), Frankfurter, Jackson, Reed, Burton, Clark, Minton, Vinson, and again Black (Butler, 1951), Harlan, Stewart, and still a third time Black (Harper, 1966).

With regard to "Inconsistencies 22 and 23," Senator BIDEN takes issue with some minor points of my analysis. My point on one-man, one-vote remains:

Judge Bork, despite the erroneous report's insinuation, has not questioned and does not oppose the Baker versus Carr opinion. He feels that the courts should participate in the apportionment process. He would protect the "rules of the game" as Congresswoman Jordan has stated. Nowhere is this found in the report which only reports selectively what it wants.

Judge Bork's position is merely that the Constitution does not require "mathematical perfection" in adhering to a one-person, one-vote standard. Instead he would adopt the standard of Justice Stewart that would strike down any State apportionment decision that would systemically frustrate the majority will. This standard, by the way, would have remedied the situation described by former Congresswoman Jordan. Where is this found in the report?

Once again, the report does not mention the Justices who share Judge Bork's views about the flaws of using a slogan as the standard for constitutional review: Harlan, White, Rehnquist, Burger, and Powell (Kirkpatrick, 1969; Karcher, 1983).

With regard to the literacy test myth, Judge Bork's real views are not reflected in the report. Whether I happen to agree with the Supreme Court on this issue or not—which is Senator BIDEN's main point—is irrelevant. I only wish the record to show Judge Bork's actual position.

Judge Bork has stated clearly that he would invalidate any literacy test used for discriminatory purposes. In this vein, he approves of the Court's South Carolina versus Katzenbach decision.

Judge Bork's sole objection to the other Katzenbach case is that Congress presumed to outlaw nondiscriminatory literacy tests just 7 years after the Supreme Court had declared such tests constitutional. (Lassiter) This amounted to the Congress overruling the Court and changing the meaning of the Constitution by majority vote. Clearly this challenged the principle of Marbury versus Madison that the Court is the final arbiter of the Constitution.

The Supreme Court itself did not follow its Katzenbach rationale 4 years later in the Morgan case dealing with the 18-year-old vote. This much is incontrovertible and completely makes my point.

When discussing "Inconsistency No. 24-25", Senator BIDEN repeats again the misleading quotations—taken out of context—relative to the equal protection clause and women's rights.

Before undertaking an examination of Judge Bork's view, however, we need to reexamine the operation of the equal protection clause. Application of the clause is a two-step process. The first question is coverage. On that point, the amendment, by its terms, applies to "any person." Thus, everyone is covered by the equal protection clause regardless of sex, race, creed, color, or any other distinguishing characteristic. The second question is the standard of protection to be granted. This is the question which has been extensively debated in judicial and legal circles.

In the first place, this view is in complete harmony with the words of the 14th amendment which protect "any person." Frankly, the alternative view under which some groups receive great protection and others practically none is difficult to reconcile with the Constitution's language guaranteeing equal protection to every person. Ironically, the equal protection clause as read under the alternative view is less equal because it favors some groups much more than others. Judge Bork's view does not share this infirmity. Judge Bork's equal protection is equal. Under Judge Bork's view, an individual need only be a person to qualify for equal protection. Thus, Judge Bork gives legal force to the aspirational language of the Declaration of Independence: "We hold these truths to be self-evident that all persons are created equal and endowed by their Creator with inalienable rights". * * *

By the way, this disposes of the bogus issue that Judge Bork would not cover women under the equal protection clause. As he stated time and time again during the hearing, he reads the Constitution to cover every "person."

Besides being equal, Judge Bork's reading of the equal protection clause is also fair. Under this approach, whenever an immutable trait—such as gender—which bears no relationship to one's ability or merit or inherent equal personhood is the basis for discrimination, it will be held to deny equal protection. This means that almost no laws that distinguish on the basis of race or sex will be upheld. As Justice Stevens, who is known as a champion of the rights of the disadvantaged, has written: "We do not need to apply a special standard, or to apply 'strict scrutiny' or even 'heightened scrutiny' to decide such cases." Cleborne (1985). This is because the rights of minorities and women can be and are fully protected by Judge Bork's equal protection without extending special advantages to one group over others.

Perhaps it is best to be specific. In his testimony, Judge Bork repeatedly stressed that men may not be favored over women as estate administrators, Reed versus Reed, that women may not be denied service as jurors, Taylor versus LA., that women may not be denied bartending licenses, Goesart versus Cleary notwithstanding, that women may not be denied credentials as lawyers, Bradwell notwithstanding, and that no other form of invidious discrimination will be tolerated on the basis of sex. Any State or Federal law based on outmoded stereotypes or arbitrary distinctions would be invalidated by Judge Bork. In other words, Judge Bork's equal protection would afford at least as much protection as the Court's current approach against arbitrary and invidious discrimination.

Nonetheless, we have heard that Judge Bork's equal protection is more subjective or malleable than the intermediate scrutiny currently applied by the Court. The intermediate scrutiny test has not been a model of predictability and clarity because each Justice has a different grasp of how much scrutiny amounts to "intermediate scrutiny." For instance, in Mississippi University for Women versus Hogan, the Court split sharply 5 to 4 with four separate written opinions. This hardly bespeaks absolute clarity. The Congressional Research Service's analysis of the Constitution states in characteristic understatement that "adoption of [the intermediate] standard has not made easy the Court's problem of deciding gender cases." page S277. By the way, the result of the Mississippi case was that a State nursing college's policy of only admitting women was struck down. If anything, the Stevens/Bork test, fairly applied, would lead to greater predictability and coherence, with no loss of constitutional protection for minorities or women.

The reason for concern over Judge Bork's equal protection seems to be a misunderstanding, in fact, three misunderstandings. In the first place, despite Judge Bork's persistent efforts to state his position, some have jumped to the conclusion that the reasonableness test is nothing more than the old rational basis test, which was almost synonymous with an absence of scrutiny under the old three-tiered analysis. This is not the case. Judge Bork's equal protection is far more protective than the rational basis test. Under Judge Bork's equal protection, anytime a State or the Congress wants to create a sex-based distinction, it will have a substantial burden to show why that distinction is justified. Judge Bork could only think of two possible examples of sex distinctions that might be sustained, all-male combat units and separate toilet facilities. These distinctions are so obvious as to be almost ludicrous. Yet this makes the point. Other distinctions will fall.

The second misunderstanding is that somehow Judge Bork's reliance on original intent might cause the resurrection of antiquated gender stereotypes that were prevalent during the 39th Congress. This misunderstands the nature of Judge Bork's jurisprudence. He reads the words of the Constitution, which protect "any person," and does not attempt to read the minds of men long dead. The 39th Congress wrote the language "nor deny to any person the equal protection of the laws." This is the law to be applied, regardless of whether the 39th Congress was able to live up to the principle it drafted. We know that the 39th Congress did not fully live up to the principle of racial equality that it wrote into the Constitution. But the principle governs, not the personal shortcomings of men who lived over a hundred year ago. As Judge Bork said in the Ollman case, "it is the task of the judge in this generation to discern how the framer's values, defined in the context of the world they knew, apply to the world we know." Thus Judge Bork repeatedly stated, his reasonableness standard will bring at least as much, perhaps more, protection than current standards. No one has questioned his integrity and his word on this point stands.

Finally, the third misunderstanding results from a few incomplete statements made by Judge Bork in "off-the-cuff" interviews. For instance, we have often heard that Judge Bork said "the Equal Protection clause probably should be kept to things like race." We have also heard this repeatedly quoted to mean he would not cover women. As we earlier discussed, it has no such meaning. Judge Bork applies the language of the Constitution and thus holds that "any person" is covered by the equal protection clause. In this quote, Judge Bork was not addressing coverage at all, but the separate question of standard of scrutiny. Judge Bork is simply reiterating that the only group to receive a more favorable standard of scrutiny is race. All others will receive equal protection as persons under the language of the Constitution. As we have discussed, this means full and complete protection for women and for everyone else from arbitrary and invidious discrimination. The reason for this misunderstanding is that Judge Bork takes for granted that all persons are covered by the equal protection clause. After all that is what the language says. When he is asked a question off-the-cuff, he immediately begins to answer the more burning judicial question of the day: namely, what standard will apply. It is this second question he was addressing in this quote which some have misread. This was not a recent awakening for Judge Bork, but a view he began to espouse as early as 1971. It has simply taken considerable time for his view to be correctly understood.

I would also like to clarify whether Judge Bork's equal protection is some new notion that he conceived in order to win confirmation. The evidence suggests an entirely different view. In the now famous 1971 Law Journal article, Professor Bork stated that equal protection requires "that government not discriminate along racial lines." The very next sentence continues to say: "But much more than that cannot be properly read into the clause." With this language, Professor Bork was clarifying again that special groups should not receive a special standard of protection under the equal protection clause by analogizing to race. He was not addressing coverage at all because the language of the Constitution is so obvious. His statement, however, leaves ample room for the application of a uniform reasonable basis test to every "person" as the language of the Constitution dictates.

In this connection, it seems only appropriate to conclude with a recitation of Judge Bork's actual record with regard to women. This, better than anything else, indicates his level of commitment to equal rights for women.

In Palmer versus Schults, Judge Bork voted to extend equal pay to women in the foreign service.

In Laffey versus N.W. Airlines, Judge Bork held that a distinction in pay levels between male pursers and female flight attendants violated the Equal Pay Act.

In Osoky versus Wick, Judge Bork held that statistical evidence alone could suffice to prove a sex discrimination claim under title VII.

In Cosgrove versus Smith, Judge Bork reinstated the complaint in an equal protection action alleging unconstitutional discrimination between male and female prisoners.

In Planned Parenthood versus Heckler, Judge Bork voted to invalidate an HHS regulation requiring federally funded family planning centers to notify parents when teenagers seek birth control services.

We could list still further cases, including his argument as Solicitor General in the General Electric versus Gilbert case that discrimination on the basis of pregnancy amounts to sex discrimination. As we have discussed, the Supreme Court did not accept his argument. His position ultimately had to be won by a subsequent act of Congress.

The important thing to realize is that these are actual public acts with public consequences. These were not provocative musings of a professor in a scholarly journal. These are his actual actions and they, in every instance, benefit women.

In sum, Judge Bork's equal protection is truly equal. On the question of coverage, it covers every person according to the language of the Constitution. On the separate question of standard, it will provide at least as much protection for women and minorities as is currently provided by the Court. Properly understood, Judge Bork's equal protection is yet one more indication of his qualification, sensitivity, and ability to serve on our Nation's Highest Court. Unfortunately neither the report nor the Senator from Delaware presented this picture of Judge Bork's equal protection views.

My time has escaped me and I cannot take the time to refute the rest of Senator BIDEN's points in detail. One or two more, however, will serve to establish my point that the report has not been in all ways complete. In dealing with "Inconsistency No. 36," Senator BIDEN says that he was within his rights to echo the views of Judge Gordon. My problem is not that the report repeats the allegation; my problem is that he does not mention that the ABA thoroughly examined the evidence and found nothing of substance in the charges. This was from the beginning a bogus issue. Judge Bork deserved better than to have charges thrown at him without the full refutation appearing alongside.

Finally, I wish to note again that many of the issues I raised about the report were not rebutted. Perhaps there is a reason for this. For instance, I noted in my very cursory analysis of the report that:

The report cites James Iredell for the notion of the Constitution contains vast "unenumerated rights," a euphemism for legal preferences not found anywhere in the written document. This is a gross misrepresentation of history. In fact, as a Supreme Court Justice, Iredell dissented vigorously when the Court attempted to invent such unspecified dogmas. See *Calder* v. *Bull* (1796). Iredell did not ever foresee the courts in the role of manufacturing new doctrines not included in the written Constitution. He argued instead that the State constitutions and laws should be free to protect rights beyond those found in the language of the Constitution.

I return to this point in conclusion because this is the primary issue before the Senate—namely, will the Supreme Court be comprised of judicial activists who invent unspecified dogmas where none exist in the Constitution or will the Supreme Court be comprised of judges who acknowledge the role of the Constitution and the people who ordained it in defining and enforcing rights.

Thus I would conclude as before. In light of the distortions in the body of the report, the report's conclusion is likewise flawed and inaccurate. One conclusory remark is particularly revealing. The committee staff faults Judge Bork for reading the Constitution "as if it were a rigid legal code." Leaving aside the question of whether law is or is not always "rigid," Judge Bork is faulted for reading the Constitution as if it were law. The staff writers then explain why this bothers them: "There would be no right to privacy. There would be no substantive content to the liberty clause of the 14th amendment." This is indeed the issue: Whether the Constitution will be read as the law of the people reflecting the people's recitation of their rights or whether it will be read to manufacture privacy rights to abortion on demand, privacy rights to homosexual conduct, or the liberty rights of the Lochner era. The people may or may not embrace these homosexuality privacy rights or economic liberty rights, but that ought to be the people's choice, not imposed on the people by unelected judges.

The report's conclusion and Senator BIDEN's critique of my comments betray far too much. They show that Judge Bork has been faulted simply because he does not agree with certain controversial legal doctrines. This committee report betrays an effort to change the results of future Supreme Court cases by choosing only judges that agree with the committee. This severely erodes the independence and integrity of the Judiciary. This committee is attempting to remake the Supreme Court in its own image.

Mr. President, I would like to respond to the comments made on the floor yesterday by the Senator from Oregon [Mr. PACKWOOD].

Throughout the hearings, Judge Bork has indicated his disagreement with judges' using the due process clause as a means of creating new restrictions on the people's right to govern themselves. He also indicated that many decisions decided under the substantive due process rationale could be reached by proper interpretation of specific constitutional guarantees.

In this Chamber, the junior Senator from Oregon told us that, at his request, the Library of Congress had investigated whether there was any case in which the Supreme Court had rethought the rationale of a decision concerning liberty but come to the same conclusion under different constitutional reasoning. The junior Senator from Oregon reported that the Library of Congress had found no such case.

If no such rerationalization were readily discoverable in the United States Reports, it would not be surprising. Once the Supreme Court has reached a proper result based upon a particular rationale, it does not go through a constant process of issuing advisory opinions correcting its reasoning. Indeed, even when a similar case later arises, principles of stare decisis will often dictate that the Court not revisit a doctrine it has already established in applying settled law to new facts. Notwithstanding these conditions, one can readily locate several prominent examples of the Supreme Court's rerationalizing the constitutional foundation of particular liberties.

In *Pierce* v. *Society of Sisters* (1926), for example, the Supreme Court held that the liberty interest in the due process clause protected the right of parents to send their children to private schools. The opinion did not even mention the first amendment. Yet in subsequent cases, the Supreme Court has abandoned the due process rationale and rerationalized Pierce as a first amendment decision. Thus, in *Griswold* v. *Connecticut* (1964), Justice Douglas' majority opinion referred to Pierce as a first amendment case establishing the principle that "the State may not, consistent with the spirit of the first amendment, contract the spectrum of available knowledge." Similarly, in *Wisconsin* v. *Yoder* (1972), the Supreme Court held that the Amish had the right to remove their children from compulsory education after the eighth grade and cited Pierce as a case protecting the free exercise rights of parents "with respect to the religious upbringing of their children." This case involved the same constitutional liberty—a parent's right to control the education of his or her child—but the rationale was wholly different from that advanced in Pierce.

Meyer v. *Nebraska* (1923), which held that a State could not prohibit the teaching of foreign languages in the public schools, was originally decided under a substantive due process rationale. But in Griswold, this case, like

Pierce, was also rerationalized on first amendment grounds.

According to the Court, the generalized "right of privacy" found in Griswold was rooted in a "penumbra" emanating from the first, third, fourth, and fifth amendments of the Bill of Rights. In *Roe* v. *Wade* (1973), the Supreme Court rerationalized the privacy right as a substantive due process right "founded in the 14th amendment's concept of personal liberty."

Similarly, in *Rochin* v. *California* (1952), the Supreme Court held that pumping a suspect's stomach to discover evidence of drug possession violated the due process clause. In *Schmerber* v. *California* (1966), by contrast, the Court protected an individual from a coercive seizure of an individual's blood under a different rationale. In holding that the State could not compel an individual suspected of drunk driving to undergo a blood test, the Court reasoned that "[t]he overriding function of the fourth amendment is to protect personal privacy against unwarranted intrusion by the State." Similarly, in *Winston* v. *Lee* (1985), the Court held that the State could not force a defendant to undergo surgery to remove a bullet which would have linked him to the crime. The Court held that such a search was "unreasonable" under the fourth amendment. Thus, this was the same protection under a different rationale.

Senator Packwood has therefore been given erroneous information by the Library of Congress. Indeed, the Committee Report makes a similar error when it cites Rochin as a substantive due process case. As Professor Campbell has stated: "The Supreme Court today would decide Rochin on fourth amendment grounds." This is precisely Judge Bork's point. The specifically enumerated guarantees of the Bill of Rights offer adequate protection for individual liberty without inventing new, judicially created rights.

Senator Packwood asserted that the Constitution establishes the Federal courts as "common law" courts, empowered to "find" the rights of people as they exist in nature. This theory suffers from several obvious flaws.

First, if the Constitution were just a warrant for Federal courts to "find" constitutional rights as a matter of Federal common law, then there is plainly no need for a written Constitution. Under such a theory, the text of the document is meaningless—every provision in the Constitution is subject to judicial evolution as new rights are discovered under a common law method of reasoning.

Second, it is in direct conflict with settled pronouncement and practice of the Supreme Court. In *Erie Railroad* v. *Tompkins* (1938), Justice Louis Brandeis, writing for the Court, unambiguously stated: "There is no Federal general common law."

The Erie decision has never been disturbed by the Supreme Court, and Senator Packwood was seriously mistaken when he declared that in Brown versus Board of Education, "the Supreme Court was acting as a common law court." In fact, although as Senator Packwood stated, the law had not changed between Plessey versus Ferguson and Brown versus Board of Education, the disparity in result can be readily explained without resorting to a theory of Federal common law. The Court had simply overruled its decision in Plessey, upholding segregation, upon becoming convinced that the case had been wrongly decided.

Third, Senator Packwood's theory of Federal common law is rooted in an excessive faith in the wisdom of Federal judges. Senator Packwood states that the only time the Supreme Court "stumbled" in its discovery of common law rights was in the Hirobayashi and Korematsu cases, when the Court tolerated the internment of Japanese Americans during World War II. This shows a remarkable, indeed, incredible, obliviousness to some of the truly shocking and ugly missteps that the Supreme Court has taken when it has strayed from the text of the Constitution. It ignores the Dred Scott decision, in which the Court held that Congress could not stop the spread of slavery to the territories. It ignores Plessey versus Ferguson, which held that segregation was constitutional so long as facilities were separate but equal. It ignores Lochner versus New York, which held that a State could not regulate the sweatshop conditions under which its laborers toiled. If Senator Packwood sincerely wants to rely on the consciences of judges rather than the text of the Constitution to "find" the constitutional rights that we enjoy, it would be well for him to review some of the atrocities that have been committed when judges have in the past strayed from the Constitution's text. Moreover, if the Constitution is irrelevant, as Senator Packwood's argument implies, then there are no constitutional grounds for criticizing Korematsu or any other decision.

Fourth, under a common law theory of constitutional adjudication, there is no way for Congress or the people to correct the mistakes or excesses of judges. Congress cannot by statute override common law decisions with the superior force of constitutional law. And if a constitutional amendment is passed, the common law of the Constitution can simply evolve to eviscerate the force of the amendment if the Court later finds that particular rights do or do not exist as a matter of common law.

Fifth, Senator Packwood's historical argument that the Constitution cannot be read to have forsaken centuries of a common law tradition flagrantly ignores historical reality and conveniently disregards the existence of States in our federal system. The adoption of the Constitution did not eviscerate centuries of common law; rather, that tradition was explicitly perpetuated in the States by the passage of so-called "reception statutes." There was, however, no federal reception of the common law.

Throughout his remarks, the distinguished Senator from Oregon disclosed numerous private statements made by Judge Bork during the courtesy call discussions he held with the judge, including Judge Bork's personal views on abortion. With all due respect, I think that was a reckless abuse of discretion. As I am sure the distinguished Senator knows, it is customary for judicial nominees to conduct courtesy calls and express their views freely on the conditions that their remarks are "off the record." If even one Senator abuses that courtesy, then judicial nominees naturally will be less likely to speak as freely with Senators during these meetings. I think that is a detriment to all Senators and to the process itself.

Senator Packwood adopted a broad reading of the ninth amendment. According to the learned Senator, Wilson and Madison argued against the bill of rights on the ground that the enumeration of some rights might imply that the Federal Government had power to regulate all others not mentioned. As a precaution, therefore, the founders added the ninth amendment. In Senator Packwood's view, the ninth amendment means that "State legislative bodies or the Congress cannot take away any of your rights unless specifically permitted in the Constitution."

Senator Packwood's view ignores the Constitution's establishment of a federal system—one comprised of both State and national governments.

Senator Packwood is correct that Madison feared that enumeration of certain rights would imply that Congress had power over all others, thereby expanding Congress' power well beyond the specific powers granted by article II. But there is no historically respectable, or even logical, argument that the ninth amendment is a restriction on State as well as national power.

Madison made this point clearly in the very quote Senator Packwood read for a contrary proposition. According to Madison:

> It has been objected also against the bill of rights, that, by enumerating particular exceptions to the grant of power, it would disparage those rights which were not placed in that enumeration; and it might follow, by implication, that those rights which were not singled out, were intended to be assigned into the hands of the General Government, and were consequently insecure. This is one of the most plausible argu-

> ments I ever heard urged against the admission of rights into this system; but, I conceive, that it may be guarded against.

What Madison conceived of to guard against the danger he identified was the ninth amendment. The danger he and others saw in a bill of rights was that it might be implied "that those rights which were not singled out, were intended to be assigned into the hands of the General Government." The General Government. Madison said nothing of the State governments. That is because the framers were concerned exclusively with the scope and potential abuse of the powers granted to the national, or general, government.

This has been the view of the Supreme Court throughout our entire history. For example, Justice Hugo Black has written that "no serious suggestion was ever made that the ninth amendment, enacted to protect State powers against Federal invasion could be used as a weapon of federal power to prevent state legislatures from passing laws they consider appropriate to govern local affairs." Similarly, Justice William O. Douglas has written that "The ninth amendment obviously does not create federally enforceable rights." And Justice Potter Stewart said that finding enforceable substantive rights in the ninth amendment was to "turn somersaults with history."

Senator PACKWOOD's suggested reading of the ninth amendment is thus without a single shred of support in the legal or historical materials concerning that amendment. His reading would have two extreme consequences. First, it would deny all legislative power of the States, because individual rights prevail except where the Constitution "specifically" provides to the contrary. Second, as Justice Black stated: "Use of any such broad, unbounded authority would make [the Supreme] Court's members a day-to-day constitutional convention."

Judge Bork's view of the ninth amendment is thus exactly the same as that which has prevailed in the Supreme Court throughout our constitutional history, including that of every current member of the Supreme Court. It is odd, to say the least, that his position on the ninth amendment is a source of controversy.

It is Senator PACKWOOD's view of the ninth amendment that "[e]very right that you could conceivably have that is not specifically taken away, you keep." This is fine rhetoric, but it is incoherent. This means that all New Deal labor, health and social legislation at both a Federal and State level is unconstitutional since the Constitution nowhere states that it takes away individuals' rights to contract freely with one another. Certainly, the Supreme Court in Lochner versus New York thought that there was an "inherent" right for a laborer to contract to work however many hours he wanted to, and in Adkins versus Children's Hospital, the Court found an inherent right to contract to work at less than a minimum wage. Under Senator Packwood's theory there can be no conceivable argument that these cases were wrongly decided, and the State and Federal Governments could not regulate any of these activities.

Senator PACKWOOD's theory would also prohibit States from requiring doctors to notify parents when their minor children were going to have an abortion.

Senator PACKWOOD's theory would also make patently correct Professor Tribe's argument that one of the rights retained by the people and beyond the power of the States to regulate is homosexual sodomy. The Supreme Court rejected Professor Tribe's argument in Bowers versus Hardwick last year.

Under Senator PACKWOOD's view of the Constitution, all laws against drug use, incest, suicide, prostitution, and the like would be unconstitutional.

This means either that Senator PACKWOOD believes that the Constitution requires society to tolerate such conduct in its midst or that he is lying when he states that he holds this implausibly broad, though rhetorically appealing, vision of the Constitution. Perhaps, he would contend that his constitutional theory would not create such rights. But he plainly stated that it encompasses "every right that you could conceivably have," and there is no way to distinguish these "rights" from other unenumerated rights. Thus, if he seeks a judge who will rule that the unenumerated right to abortion is protected while finding no protection for a right to contract to sell one's labor at less than the minimum wage, then he seeks a judge who will simply agree with his political agenda rather than one who will decide cases according to law, or even according to Senator PACKWOOD's own alleged theory of the Constitution.

Notwithstanding recent statements to the contrary, Senator PACKWOOD's recent constitutional theorizing appears to be a pretext to mask the fact that he made the decision about Judge Bork long before the hearings began based on a single-issue litmus test—abortion. Soon after the nomination was announced, Senator PACKWOOD publicly stated that he would not only vote against Judge Bork, but also would lead a filibuster against him, unless Senator PACKWOOD was convinced "beyond a reasonable doubt" that Judge Bork would not vote to overturn Roe versus Wade. It is therefore clear beyond a reasonable doubt that Senator PACKWOOD made his decision about how to exercise the advice and consent power based on a single-issue political litmus test.

Following Senator PACKWOOD's speech, Senator BIDEN added that he had spent more than 120 hours personally researching the privacy question. According to his research, he found that every single Justice of the Supreme Court in the past 70 years "accepted a generalized right to privacy," and that Judge Bork's refusal to do so demonstrated his extremism. That is a bald-faced lie. No justice prior to 1965 accepted a generalized constitutional right to privacy, and many since have rejected finding any such right in the Constitution.

The earliest cases to which Senator BIDEN was referring are Meyer versus Nebraska, invalidating a State law restricting the teaching of German, and Pierce versus Society of Sisters, which invalidated a State requirement of public school attendance. Neither case mentions privacy. Rather, both were decided on the bais of liberty of contract—the same basis upon which the Court routinely struck down progressive social legislation, such as the minimum wage.

The first case to find a generalized right of privacy—Griswold versus Connecticut in 1965—was not unanimous. Justices Black and Stewart dissented and explicitly rejected a generalized right of privacy. As Justice Stewart wrote, "I can find no * * * general right of privacy in the Bill of Rights, in any other part of the Constitution, or in any case ever before decided by this Court." Evidently 120 hours of personal research was inadequate for Senator BIDEN to exhaust available sources, although this quote is readily available in every first-year constitutional law casebook.

If we are to accept Justice Stewart's constitutional scholarship rather than Senator BIDEN's, then no justice, rather than every justice, accepted a generalized right to privacy between 1917 and 1965.

Since 1965, morever, numerous justices have rejected a generalized right to privacy. Justices Rehnquist and White for example, dissented in Roe versus Wade. Justice O'Connor dissented in both abortion cases decided since she has been on the Court, arguing that "[t]he Court's abortion decisions have already worked a major distortion in the Constitution."

Ironically, Justice Scalia's only pronoucement in the privacy area was as a member of the Circuit Court in Dronenburg versus Zech, an opinion by Judge Bork highly critical of the Supreme Court's past privacy decisions. That case determined that there is no protected privacy right for Navy officers to engage in homosexual sodomy.

Indeed, last year, in the Court's latest, and Justice Powell's last, pronouncement on the generalized right to privacy, a majority of the Court in

Bowers versus Hardwick rejected the argument that there was a constitutional right to engage in private, consensual homesexual sodomy. That opinion was written by Justice Byron White and joined by Chief Justice Burger and Justices Powell, Rehnquist, and O'Connor.

The irony of Senator BIDEN's "privacy" argument is that most of the cases which he regards as "right to privacy" decisions have little or nothing to do with privacy. Meyer and Pierce involved instruction in the classroom. Roe versus Wade is about a woman going to a clinic to have a medical procedure. And Griswold itself, despite the rhetoric, did not involve prosecution for private conduct in the marital bedroom, but was a test case about doctor's public distribution of contraceptives.

Mr. BIDEN. Mr. President, I yield 3 minutes to the Senator from Florida.

The PRESIDING OFFICER (Ms. MIKULSKI). The Senator from Florida is recognized for 3 minutes.

Mr. CHILES. Madam President, this Member of the U.S. Senate has become well acquainted with the writings and views of Judge Robert Bork. Probably, I am more familiar with this nominee's ideas than any other in my Senate career.

I know this is also the case with many of my colleagues. Our scrutiny has occurred because of the Senate's role in advising and consenting on nominations and certainly because of the importance of this particular nomination. The degree of our knowledge is expansive because professor and later Judge Bork has written a great many articles and decisions.

Frankly, I did not thoroughly enjoy the process. As I told Judge Bork, I have not read that many law review articles and decisions since law school.

But this exercise was far more important than my law school studies and far more educational.

I not only learned about Judge Bork but I learned about myself. I was led to consider and formalize what I believe the Constitution means to me.

What I discovered in this process is that the constitutional philosophy of Judge Robert Bork is very different from that of LAWTON CHILES. It was in this consideration that I found myself unable to support Judge Bork.

Many Floridians have expressed a concern that opposition to Judge Bork means that I am opposed to the appointment of a conservative to the Supreme Court. Nothing could be further from the truth. I have and will continue to support conservative nominations. My record on such is clear.

After reading and studying Judge Bork's opinions and writings, I have come to the conclusion that he is not an advocate of constitutional conservatism. Our Constitution and our Republic was conceived, in essence, to protect the people from the excesses of Government. Our Founding Fathers understood that an all powerful Government was a threat to the individual's liberties.

The Constitution spells out clearly the powers of Government and in doing so aims to limit those powers. What it does is draw the line between the powers of Government and the individual rights of the people. The role of the Supreme Court is to apply the Constitution to ensure that this line between Government powers and individual rights is firmly drawn and our freedoms are not usurped by the Government. That to me is the conservative viewpoint, and it is my viewpoint.

My problem with Judge Bork is that he does not see it that way.

If the Congress or State legislatures enact laws that infringe on the rights of an individual, I believe the Court has the responsibility to rule accordingly. Judge Bork disagrees. In drawing the line between the powers of Government and the rights of individuals, he too often sides with the powers of Government. That disagreement strikes at the heart of the protections that the Constitution was intended to provide for all Americans.

To be more specific, I believe the Constitution is the protector of individual rights for all persons. I believe such protection extends to the family and its precious relationships.

My respect for this tradition and my belief that family rights should be just that—rights of the family—are challenged by Judge Bork's decisions and writings.

Judge Bork and I are both advocates of strong States rights. However, we part ways when he gives away certain family rights to the States.

Judge Bork rejects legal rights for noncustodial parents and grandparents to even visit their children and grandchildren.

Bork has criticized court decisions which have upheld the rights of parents to choose between public and private education for their children.

He has rejected the rights of married couples to choose to use contraceptives.

Judge Bork has criticized a Supreme Court decision which struck down a law that allowed sterilization. Bork does not believe the Constitution provides for protection against mandatory sterilization.

Judge Bork would not afford equal protection under the Constitution to illegitimate children. He contends that an illegitimate child does not have the same rights as a legitimate child to recover after the death of a parent.

Judge Bork's writings "cloud" the long standing tradition of separation of church and state in this country. He does not believe the establishment clause of the first amendment prohibits Government involvement in religion but merely forbids one religion from being favored over another by the Government.

Judge Bork also troubles this Senator by his willingness to turn his back on a century of laws and Supreme Court decisions. Antitrust is a key example.

Judge Bork's antitrust philosophy can be summed up in one sentence. Bigger is better as long as it is efficient.

Judge Bork has been outspoken in his view that efficiency is the only goal of antitrust law. Since large corporations are by Bork's analysis more efficient, their activities should go largely unchecked. Obviously, this view ignores the concerns of small business. It is often the threat of small business competitors which serve to check the potential excesses of big business. The check provided by small business was to minimize the possibility that the Federal Government would intervene in the market. Legislative history shows that these concerns prompted Congress to enact the antitrust laws in the first place.

Judge Robert Bork has repeatedly rejected legislative initiatives which protect and assist small businesses.

As a Senator who has initiated legislation and actions to protect small business, I reject Judge Bork's stand; 99.7 percent of businesses in Florida are small businesses; 55.1 percent of the work force are employed by small businesses. Judge Bork's obsession with economic efficiency in antitrust law would remove the legal protections that enable innovative new small businesses to enter the market and prosper.

Judge Bork's views on open Government laws are also fundamentally at odds with this Senator's. As a sponsor of Florida's Sunshine Act and the Senate version of the Federal Sunshine law, I am disappointed by Judge Bork's record interpreting open government statutes; statutes that carry with them a presumption of public access to the executive branch. Judge Bork's decisions reflect no hesitation to defer to a Government agency's refusal to disclose information to the public. On several occasions he has written opinions which expand the narrow circumstances under which an agency may withhold information.

In a case interpreting the Federal Government in the Sunshine Act, Judge Bork joined an opinion ruling in favor of an agency's right to withhold the minutes of its meetings simply because part of that meeting dealt with its involvment in civil litigation. I filed a brief siding with the information requester. We argued that because the litigation was over, the information should be released especially in light of the statute's presumption of openness. Judge Bork however, believes that the information should never be disclosed.

Judge Bork's position on open Government is but one example of his willingness to bend over backward to defer to the executive branch of the Federal Government at the expense of the individual interest asserted.

Judge Robert Bork also totally rejects the rights of Members of Congress to have standing to bring suit against the executive branch.

I disagree. I believe my rights as a U.S. Senator representing the people of Florida should also include my right to sue on behalf of those constituents in areas where I believe their rights are being threatened by any administration.

For example, as a U.S. Senator, I sued former Interior Secretary James Watt over the issuance of leases for phosphate mining in the Osceola National Forest in Florida. I believe such action was crucial to protecting the forest and the people of Florida's right to enjoy its unique natural beauty.

And, I filed suit against Attorney General Meese and Defense Secretary Weinberger charging them with dereliction of duty in operating the Krome North alien detention center in south Florida. As a U.S. Senator who used every legislative means available to keep convicted alien felons out of Krome, I resorted to the courts to protect the citizens of Dade County from such felons who are housed in a minimum security INS processing center.

Judge Bork has testified in opposition to a constitutional amendment to balance the budget on the grounds that it may not work or be enforceable, it may only force Congress to take action to reduce the deficit or it may result in judicial dominance in the budget process. As one who has toiled long and hard toward a reduction in the deficit and a balanced budget, I support a balanced budget amendment and would welcome any assistance toward that goal including from the judiciary.

I also disagree with Judge Bork on limits on Federal campaign spending. Judge Bork believes such limits are unconstitutional under the first amendment's protection of free speech. I disagree with Judge Bork's position and do not believe free speech protections apply to the expenditure of millions and millions of dollars on political campaigns. Such expenditures reduce the importance of the individual voter, and our Constitution should protect that voter. In fact, I have introduced legislation to limit the total amount of money political action committees [PAC's] can contribute to a candidate to $300,000 an election cycle. In my view, politics of the 1980's have been characterized by money becoming the be-all and end-all of the political process.

Mr. President, my predecessor to the U.S. Senate was Senator Spessard Holland, a man of great principle and a leading conservative in the Senate. One of his proudest achievements was the sponsorship of the constitutional amendment to eliminate the poll tax in Federal elections.

Senator Holland understood the true and dangerous purpose of a poll tax and sought to insure that no person, regardless of their economic circumstances, would face any barrier to exercising their right to vote. As a Floridian, I took pride in Senator Holland's leadership on this issue.

I thought the question of poll tax a settled issue—and therefore was troubled to find that Judge Bork remains critical of the Supreme Court decision that found a poll tax on State elections to be unconstitutional.

Finally, I would like to comment on the process under which Judge Bork was nominated by the President and considered by the Senate. Much has been made about the extensive lobbying campaign that has taken place concerning the Bork nomination.

I certainly share the view that a decision of this magnitude should not be influenced by television and newspaper advertisements, nor by postcard mailing campaigns. Unfortunately, these days almost every significant issue before the Senate—and even some that are not so significant—are accompanied by a barrage of media and mail efforts to influence the outcome.

This kind of hype is particularly inappropriate with respect to the selection of a member of the U.S. Supreme Court. My door is always open to my constituents. However, I doubt that many Senators have been influenced by the shrill campaigns of the past few weeks and I can assure you that this Senator has given them no notice.

Madam President, as I said earlier when I announced that I could not support Judge Bork's nomination to the Supreme Court, I began my advise and consent duties on this nomination as I traditionally do—hoping to confirm a President's nominee. I regret I cannot do so.

Judge Bork is his own man. This his writings clearly show. While many of his ideas do not mesh with my own, this, in itself, would not cause me to oppose his nomination. I am opposing this nomination because I do not see eye to eye with Judge Bork's constitutional philosophy. In balancing the rights of the individual against the powers of the Government, Judge Bork too often tips the scale in favor of the Government. I join with my colleagues in sincerely hoping that President Reagan will send this body a nominee who will be confirmed to respectfully serve the Court and the people of this country.

The PRESIDING OFFICER. Who yields time?

Mr. THURMOND. Madam President, I yield 2 minutes to the Senator from Nebraska [Mr. KARNES].

Mr. KARNES. Madam President, I have already submitted a long and detailed statement regarding my analysis of the nomination of Judge Robert Bork to be Associate Justice on the U.S. Supreme Court. I will not recount the factors that led me to conclude that Judge Bork is eminently qualified to serve on the Court except to say my support is as strong as ever.

Barring a dramatic change of heart of several colleagues, this nomination will fail. I only hope some of them will reconsider, but I am operating under no illusions such will happen.

I want to take this opportunity to make a few observations about the process of evaluating a judicial nominee. A couple of short comments. Some of my colleagues have felt that the Nation, the President, and the Supreme Court would be harmed by this Senate debate. They suggested Judge Bork should seek a withdrawal of his name from Senate consideration.

With all due respect to my colleagues who have expressed such a view, I disagree.

Indeed, quite to the contrary. This debate on the man, the process, the Constitution, the Court, the media involvement, the country and its future has been extraordinary in its depth of thought, analysis, perspective, and emotion.

The debate, I believe, has been helpful to provide a greater understanding, good or bad, of the process.

Also, I want to acknowledge the courage of Judge Bork, who sought his day in court, his day in the U.S. Senate, who sought a full and complete airing of the pros and cons of his nomination. He sought this debate.

This is what the nomination process is designed to do. This is our obligation as U.S. Senators.

Simply because an issue is controversial as this nomination has been is no reason for the debate not to be held. Although I disagree with the likely outcome, I believe the debate is an important step to the future. All of us as a result of the debate have been put on notice about the disturbing emerging trend of blatant media involvement in moving public opinion about nominees to the Supreme Court.

If anything, in this Senator's mind that operates a change to what the framers of the Constitution envisioned in the senatorial advise and consent process, it is the advertising campaign. This concern has not expressed as much for myself as my colleagues.

The PRESIDING OFFICER. Will the Senator withhold? The Senator from Nebraska has exceeded the 2 minutes that have been yielded to him.

Mr. KARNES. Madam President, I ask unanimous consent to have the remainder of my text printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

● Mr. KARNES. Madam President, I have already submitted a long and detailed statement relating my analysis of the nomination of Robert Bork to be an Associate Justice on the U.S. Supreme Court. I will not recount the factors that led me to conclude that Judge Bork is eminently qualified to serve on the Court, except to say that my support is as strong as ever. Barring a dramatic change of heart by several of my colleagues, the Bork nomination will fail. I can only hope that some will reconsider. The Senate will go down this road again soon with another nominee, and I want to take this opportunity to make a few observations about the Senate process of evaluating a judicial nominee.

Some of my colleagues felt that the Nation, the President, and the Supreme Court would be harmed by this Senate debate. They suggested Judge Bork seek a withdrawal of his name from Senate consideration. With all due respect to my colleagues who have expressed such a view, I disagree. Indeed, quite to the contrary, this debate on the man, the process, the Constitution, the Court, the media involvement, the country, and its future has been extraordinary in its depth of thought, analysis, perspective, and emotion. This debate, I believe, has been helpful to a greater understanding—good or bad—of the process. Also I acknowledge the courage of Judge Bork who sought his day in court—who sought a full and complete airing of the pros and cons of this nomination—who sought a debate. This is what the nomination process is designed to do, this is our obligation as U.S. Senators. Simply because an issue is controversial, as this nomination has been, is no reason for the debate not to be held. And although I disagree with the likely outcome, I believe the debate is an important step to the future. All of us as a result of the debate have been put on notice about the disturbing emerging trend of blatant media involvement in moving public opinion about nominees to the Supreme Court. If anything operates as a challenge to what the framers of the Constitution envisioned in the senatorial advice and consent process, it is this advertising campaign. This concern is not expressed as much for myself or my colleagues—such publicity is a part of the job—the concern is more for the view of Americans toward their U.S. Supreme Court. I am concerned that the high regard for the Court will be tarnished if such aggressive media efforts and partisan accusations become a common occurrence. Make no mistake, such advertising mobilizes and influences Americans, in this instance, against the nominee. I have no problem with public activism surrounding Supreme Court nominees, but I am most troubled about the distortions of this man's record. What I saw in the media is inconsistent with a fair reading of his judicial record, and is inconsistent with my personal discussions with Judge Bork.

The message to future nominees is clear: They should plan to campaign for their nominations in the same way that we campaign for elected office in the legislative branch or the executive branch, regardless of the framers' clear intent to insulate jurists from the rigors and pitfalls of the political process. They should make sure to weigh the political ramifications of their writings, and make sure that anything they say or print is bland, is as noncontroversial as possible, and most importantly, that it represents nothing that could raise the ire of any special interest group capable of mounting a sizable advertising campaign. From now on, they should weigh the cases they hear, not in terms of applying the law to the facts, but rather in terms of the political opportunity presented. And by all means, if a case presents a particularly thorny social issue that might press a judge toward a legally correct but unpopular result, he should use every legal mechanism at his disposal to duck the issue, shove the law or the Constitution aside, and find some way to render the popular result.

With the disposition of the Bork nomination, we are telling future nominees that we want them to be more like us and less like the independent triers of law and fact that they are supposed to be. I feel we are threatening the independence of the judiciary by blurring the distinction between the political legislative branch and the apolitical judicial branch. Personally, I don't know if the country or the Constitution can stand it.

Frankly, Madam President, I don't think the framers would be pleased with our performance. I believe we are about to exercise our power of advice and consent in precisely the manner in which they did not want us to, reaching the wrong result for all the wrong reasons.

Madam President, I fear the defeat of the Bork nomination will reveal that we have lost sight of our duty. Have we forgotten that our goal in considering a Supreme Court nominee is to set aside our normal predilection toward political considerations in our decisionmaking process and to make our decision on less passionate grounds of competency, character, intellectual, and legal capability? Obviously, these considerations are not the predominant factors in this debate, for if they were, Judge Bork would already have been confirmed unanimously. Other factors are at work here.

Madam President, we have a job to do as Senators. Our job is to pass judgment on a distinguished jurist who has been nominated by the President of the United States to fill a vacancy on the highest court in the land. By all accounts, he is qualified and deserving of our approval. At this point, I would refer you to the report of the Judiciary Committee, to the first page, where we find the committee's basic contention about Judge Bork. This contention is that Judge Bork's jurisprudence "* * * is fundamentally at odds with the express understanding of the Framers * * *." This is the crux of the issue. But, Madam President, who among us can deny that Judge Bork's entire career is devoted to the concept of judicial restraint, the idea that jurists should interpret the law according to the intent of the framers, not create law to fit their own personal views on how the Constitution should have been written had they been in Philadelphia to help draft the document. It is the doctrine of judicial restraint that is fundamentally at odds with the views of his detractors, and it is this aspect of Bork's career that has incurred the wrath of much of the Senate.

But there is another judgment process that is going on at the same time. Our constituents are judging our performance on this important matter, as they should. Members of this body are and should be directly accountable for the way in which we deal with the Bork nomination. The Constitution requires this obligation to the electorate. From what I can see, many of our constituents are as displeased with the process and the result of this nomination as I am. Madam President, the American people are not disinterested souls on the sideline. They are the people whose laws are subject to interpretation by the Supreme Court. They are America, this is their Senate, and this is their Constitution that we are dishonoring with a warped application of our duty to advise and consent.

The American people aren't ignorant, Madam President. They understand very clearly what is going on here. They understand that Judge Bork has fallen victim to politics. And they are right. Ultimately, it will be up to the American electorate to judge the Senate's deportment in rejecting the nomination of Robert Bork.

I will vote for Judge Bork. At this point, I would reiterate the criteria that I considered in making my decision on this nominee, the same criteria that I would look for in any judicial nominee, regardless of the administration that selects the nominee: unquestioned integrity and strong character, judicial temperament, knowledge and understanding of the law, and an ability to recognize the rights of the individual and the rights of society.

Lastly, I thank all Nebraskans who took the time to write and contact my offices—pro and con on Judge Bork—for participating in this important national debate.●

I yield the floor back and I thank my distinguished colleague from South Carolina.

Mr. THURMOND. Madam President, I suggest that you hold strictly to the time because we are running very close. Thank you.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. Madam President, I yield 3 minutes to the Senator from Virginia.

Mr. WARNER. Madam President, this is my second speech with respect to Judge Bork.

I ask unanimous consent that the remarks that I made on October 8, the day prior to his decision to "hang in," be printed in the RECORD and follow the remarks that I state today.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. WARNER. Madam President, as I pointed out in my earlier remarks and has now been confirmed by the passage of time, our system of government by which the nominees to the Supreme Court are chosen has failed in this case.

Although this Senator has remained undecided, purposely, so that he could have the benefit of the wisdom of other Senators, of constituents, and other parties interested, indeed, the remarks I am about to make and the vote that I shall cast on Judge Bork will not have an impact on this body. It is my hope that we have learned from this experience never to repeat the errors we have made in future nominations.

I understand why members of the Judiciary Committee have a duty to state their intentions at the conclusion of their hearing, but it would be my hope that in the future other Senators withhold their final judgments until such time as they have had the benefit of a full debate here on the Senate floor.

I do not think the executive branch can look upon their participation with clean hands. I was saddened to see the castigation of "lynch mob." I am devoted to this President personally and professionally. I think he is one of the finest men I have ever known in my life and I intend, as I have through these many years, to give him my full support. But that remark was unbecoming the office of the Presidency and unbecoming such a fine American as Ronald Reagan. Once this system failed the country there was no hope. But Judge Bork had the courage, as I urged on the Senate floor on October 8, 1987, to fulfill his obligation to his country and himself to call for a final vote. The dignity with which he accepted defeat will be an everlasting tribute to this man and his family.

I visited recently with Judge Bork and I showed him a statement made by the Senator from Alabama, Judge HEFLIN, which has been utilized and referred to by many Senators. I shall quote it:

> The history of Judge Bork's life and lifestyle indicates a fondness for the unusual, the unconventional and the strange. It has been said that he is either an evolving individual with an insatiable intellectual curiosity for the unique, the unknown, the different and the strange or, on the other hand, that he is an extremist with a propensity toward radicalism. His history as a young man reveals that he was first an avowed socialist—that he gave considerable attention to becoming a Marxist—then he returned to socialism, after which he moved toward libertarianism. As he grew older, he became next a "New Deal liberal" and then evolved to a strict constructionist—and more recently he has been a self-proclaimed "originalist." It now appears from his oral declarations at these hearings that he has turned another corner and is moving back towards the center.

I said, "Your Honor, I most respectfully have asked many of my colleagues where in the record is the refutation of this, if it is incorrect?"

And he said, "Some facts are accurate, others not," but he added, "I failed," and indeed others failed me not getting it complete and accurate. He is a big man, this judge. He ended: "We failed to set the record straight." That record before the Senate is incomplete as to the character of this man, the reasons for the volatility of his positions and philosophy, particularly in his early career. This record was needed to give us those benchmarks that I think many of us including this Senator needed to determine the philosophical direction this judge will go in the future sitting on the highest bench of our land.

Although I read many of his opinions, and I searched the Senate record extensively, in this violent crossfire of difference of views each Senator has to cast his own anchor to windward. I did it by going back to the opinions of another circuit judge, coincidentally who once sat on the same court as Judge Bork now sits. I was privileged to be his law clerk in 1953. I remember one time he had a landmark case that involved the Nation's Capital, as to whether or not a large portion of this city, classified as a slum was to be leveled, sold to a private developer, and then in turn resold to private people. This was a landmark case under laws of eminent domain.

I saw that judge go through the internal stresses, unlike many men in life ever have to suffer, as to what his guidance would be. The law was not clear.

I remember one day vividly getting in the car with him. He always sat in the front seat with his driver. And we drove down through this area, and while it was clearly a slum, we saw here and there small houses which were loved by the occupants, a curtain, a flower and bright paint. These are the words that he wrote:

> The hypothesis in the first phase of this consideration is an urban area which does not breed disease or crime, is not a slum. Its fault is that it fails to meet what are called modern standards. Let us suppose that it is backward, stagnant, not properly laid out, economically Eighteenth Century—anything except detrimental to health, safety or morals. Suppose its owners and occupants like it that way. Suppose they are old-fashioned, prefer single-family dwellings, like small flower gardens, believe that a plot of ground is the place to rear childen, prefer fresh to conditioned air, sun to fluoresent light. In many circles all such views are Considered "backward and stagnant". Are those who hold them "therefore blighted"? Can they not, nevertheless, own property? Choice of antiques is a right of property. Or suppose these people own these homes and can afford none more modern. The poor are entitled to own what they can afford. The slow, the old, the small in ambition, the devotee of the outmoded have no less right of property than have the quick, the young, the aggressive, and the modernistic or futuristic.
>
> Is a modern apartment house a better breeder of men than is the detached or row house? Is the local corner grocer a less desirable community asset than the absentee stockholder in the national chain or the wage-paid manager? Are such questions as these to be decided by the Government? And, if the decisions be adverse to the erstwhile owners and occupants, is their entire right to own the propety thereby destroyed?

There is one mark, when I leave this body, that I think I can turn to with pride, and that is those individuals that I have recommended to Presidents to serve as Federal judges.

Before doing so I put each to the Judge Prettyman standards as reflected in the above opinion. But as I look at this distinguished jurist against my own background in the law against Judge Prettyman whom I consider a father image, I cannot find in Judge Bork's record of compassion, sensitivity, of understanding of the pleas of the people to enable him to sit on the highest Court of the land.

EXHIBIT 1

JUDGE BORK

Mr. WARNER. Mr. President, yesterday the leadership of the Senate discussed the Bork nomination and the responsibilities of this body. I am hopeful that we will proceed to have a debate on this issue at the earliest possible date and urge the leadership this morning to renew their efforts to expedite a full floor debate.

We pride ourselves on being one of the oldest, if not the oldest, deliberative bodies here in the United States of America. The issues revolving around this nomination are being deliberated in almost every place in

America but here where that debate should take place: By the full Senate on the floor of this Chamber.

This Senator, out of respect for the traditions of this institution, the U.S. Senate, and out of respect for the nominee, has not declared his intentions as to how he would vote. I have done that for, I believe, valid reasons.

First, I have not had the opportunity, nor do I believe many others have had, to examine with care the record compiled by the Senate Judiciary Committee. While the record was given to Senators at the end of last week, there has been inadequate time to review this voluminous report.

Second, some Senators have taken the floor to read carefully prepared statements or to make remarks, but we have not looked at each other, into the whites of our eyes, and provided one another with the benefits of reasoning, argumentation, and confrontation that are essential to a full debate, debate that I think this case merits.

Third, this Senator has been engaged for some several weeks as comanager of the Senate Armed Services authorization bill for 1988. That required well over 100 hours of debate on the floor. As such, I was deprived of the opportunity to spend as much time as I would have liked to review the testimony of the witnesses who appeared before the Judiciary Committee.

The Senate's advise and consent responsibility for Presidential nominees to the judicial branch, most particularly to the Supreme Court, is one of the most important duties given to this body by the Constitution. I take this responsibility, I am certain as do others in this Chamber, very seriously and want to have the opportunity to participate in a debate of the Senate as a whole.

The constitutional responsibility under advise and consent, in conneciton with the judicial branch, I believe, is unique. It is distinguishable, I believe, from our responsibility to nominees for Cabinet posts, senior military, or ambassadorial posts. Cabinet officers are an extension of the Presidency and the Presidents choices should carry convincing weight.

I put judicial nominees in a separate category because in many respects the third branch of our Government, the judiciary, is created by a joint effort between the executive branch and the advise and consent responsibility of the Senate to approve nominations.

The judiciary is an independent third branch of our Government and the role of the Senate in helping to create this branch through its advise and consent responsibility is among the Senate's chief responsibilities under the Constitution. It requires, in my judgment, the collaborative efforts of the Senate as a whole.

The Senate should not consider itself discharged of this responsibility simply because the Committee on the Judiciary has rendered its report, and some Senators have made statements. In the case of Judge Bork, we have not had the opportunity for a full Senate debate on the floor; to exchange our views, confront one another in a manner that the Founding Fathers conceived when they established the U.S. Senate. That concerns me.

In the history of this body, there was a time when we did the advise and consent without the benefit of any committee structure. It had not been created, and Members took the floor, exchanged their views, often in heated debate, and arrived at a consensus of the Senate. We should do that in this important case.

Theoretically, and I say this without any disrespect to any of my colleagues, if each of us sought to announce ahead of a floor debate how we are going to vote on this nomination it would eclipse the necessity for that debate. A debate would be lifeless, if not useless. I feel very strongly that we would have then surrendered our responsibility.

This Senator out of respect for the traditions of this institution, the Senate acting as a whole, and out of respect for the nominee and President who made that nomination, has deliberately not made a declaration, nor am I about to announce my intention as to how I would vote. I do not make that declaration because I continue to hope that this body will proceed as I have outlined to debate as a whole to reach this decision.

Accordingly, Mr. President, I hope that the Senate leadership will soon arrive at an appropriate schedule and that we may commence this important debate. This Senator will make his declaration at an appropriate time either in the course of that debate or at the time the vote is taken.

I thank the Chair.

Mr. BIDEN. Madam President, I yield 1 minute to the Senator from Arizona.

Mr. DeCONCINI. Madam President, yesterday in my statement on the nomination of Judge Bork, I commented on an article written by Gordon Jackson that concerned my deliberations on the nomination. That article contained allegations that the writer labeled to come from the "Washington rumor mill" and that he conceded "cannot be substantiated." I was understandably upset by the use of this kind of rumor in a political analysis. It seemed to me that it must be the result of some kind of a mistake. I am pleased to be able to report to my colleagues that, indeed, it was a mistake.

Yesterday, I reported that the byline on the article was Gordon Jackson, managing editor of Policy Review, a quarterly publication of the Heritage Foundation. I have now received a letter from the Heritage Foundation completely disassociating the Foundation from the Article. The letter explains that Mr. Jackson was not authorized by the Foundation to write the article and that its publication violated the Foundation's internal clearance procedures. The letter also states that the article does not reflect the views of the Heritage Foundation.

I was not surprised to receive this letter, because I have always had the highest respect for the Heritage Foundation. I believe, that it has been a highly valuable resource for the Congress and for the country. I have also had the highest regard for its ethical standards. I have this morning accepted a personally delivered apology from the executive vice president of the Heritage Foundation and they are sending such a letter to the Arizona Republic which I am sure they would want to print. I have assured the Foundation that as far as I am concerned the incident is closed and that, as I have in the past, I look forward to working with the Heritage Foundation on other issues.

I ask unanimous consent that the letter from the Heritage Foundation be printed in the Record.

There being no objection, the letter was ordered to be printed in the Record, as follows:

The Heritage Foundation,
Washington, DC, October 22, 1987.

Hon. Dennis DeConcini,
U.S. Senate, Washington, DC.

Dear Senator DeConcini: Your statement on the floor this afternoon during debate on the Bork nomination brought to my attention an article that appeared recently in The Arizona Republic regarding your role in the confirmation process of Judge Bork.

Let me assure you in the strongest of terms that the article was not authorized by The Heritage Foundation. In disregard of our internal clearance procedures, the article had not been reviewed by the author's superiors, nor does it reflect my views or the views of anyone else here at Heritage. Rather, the article solely reflects the opinions of Gordon Jackson, former managing editor of Policy Review. Although many of us here disagree with your views on the Bork nomination, we strongly repudiate the personal attacks contained in the article.

We at The Heritage Foundation have appreciated the opportunity to work with you from time to time on issues of mutual interest, and look forward to working with you again in the future.

Sincerely,

Phil N. Truluck,
Executive Vice President.

Mr. LAUTENBERG addressed the Chair.

Mr. BIDEN. Madam President, I yield 1 minute to the Senator from New Jersey.

Mr. LAUTENBERG. Madam President, Judge Bork should not become Justice Bork.

I do not reach that decision as a lawyer. I am not a lawyer. Before I came here, I was a businessman. My work was guided by laws. I had to know what they were. But, I was not a lawyer.

But, Madam President, I do not have to be a lawyer to know what my responsibility is. The Constitution says, in article II, section II, paragraph 2, the President "shall nominate, and by and with the advice and consent of the Senate shall appoint * * * judges of the Supreme Court. * * *"

We are here to give our advice. To give or withhold our consent. We do not answer to any special interest group. We answer to the voters who sent us here. We answer to our conception of what America and its laws should be—and what kind of Supreme Court we should have—to interpret those laws, and breathe life into the rights and liberties we hold so dear.

We have a great responsibility. Just as the President is empowered to make nominations, we are entrusted with the power to reject them.

We sit in review of someone who would sit as one of nine members of a separate branch of Government. This is not some post within the executive branch, some post in the President's own administration. For that, perhaps we can give more latitude. Perhaps, we can tolerate more doubt.

We sit in review not of some nominee to a district or circuit court. For that, perhaps we can accept a wider diversity of personal views. Perhaps, we can rely on the person's obedience to precedent and the word of the higher courts.

But, we sit in review of a nominee to the highest court. The Court does not merely find the law, it shapes it. The Court can feed the growth of our liberties and the moral height of our Nation, or it can stunt them, starve them, and deny them their flowering.

We have a duty to exercise judgment. We have a duty to decide for ourselves. Is this the person the Nation needs? My answer is no.

This nominee would close the door to justice. The courts of our Nation stand as a check against the tyranny of the majority. It stands as a defender of the individual and as the protector of the rights established in the Constitution and our laws.

In America, the courts are the haven of the minority—against the tyranny of the majority. They are the defender of the rights of men and women, rights enshrined in our Constitution, rights inherent in ourselves, as people.

That concept of the courts, that concept of rights, has been at the heart of the debate about Robert Bork.

There has been a lot said about his views on particular cases. Throughout his career, he has repeatedly and consistently, criticized Supreme Court decisions.

He attacked decisions upholding the right of privacy, a right that has kept government out of some of the most intimate, personal decisions an American can make, about family, about children, about the relationship between husband and wife.

Judge Bork faulted decisions that struck down poll taxes—a tax on the vote itself, a tax that kept blacks from the polls. He said he did not see enough proof of bias by the legislature. We should defer to the legislature.

But that deference did not hold for the Congress when it outlawed literacy tests in the Voting Rights Act, to preserve the equal voting rights of blacks. Then, Judge Bork was ready to reject the majority rule. He said Congress had no business saying that literacy tests should be banned.

Judge Bork opposed the laws that stopped discrimination in accommodations. Laws that said that a motel, a restaurant, or a diner could not turn away a black, or a Jew, or some other kind they did not like. He opposed those laws because he said they intruded on individual's rights. Whose rights? The rights of blacks, Jews, and other targets of hatred? No. The rights of the bigot behind the counter.

He said he could not find women under the coverage of the equal protection clause.

He opposed the Supreme Court's decisions that upheld the principle of one man, one vote.

He opposed the Court when it upheld the right of free speech that wasn't purely political speech.

For someone who is called a conservative, he has given good cause to fear that he would set out to wreak great change. He is quoted to say, "If you become convinced that a prior court has misread the Constitution, I think it's your duty to go back and correct it. * * * I don't think precedent is all that important. I think the importance is what the framers were driving at, and to go back to that."

Of course, he has minimized that statement. He has said he would live with cases that are well settled. But, his views, his philosophy, his years of writing, give reason for concern.

In a sense, Judge Bork has been dragged slipping and sliding across the line of a legal tug of war. He has begrudgingly accepted—in some cases, for the first time at his hearing—some of the Nation's most basic rules to protect civil rights and civil liberties, to end discrimination, and to stop racial injustice.

But, more troubling than each case he would decide the other way, more troubling than each case by itself, is his general approach to our law, to our Constitution. His is a cramped and stingy view of the law. Judge Bork ties himself too closely to the semantics of a 200-year-old text, but not closely enough to the values and aspirations that gave it life, and that have grown and changed and live in us today.

What troubles me the most is his general approach to the law. And what it could mean for Americans has become clearer and clearer as the hearings and the speeches and the debate has worn on. It became clear to Americans who don't go around citing Supreme Court cases for a living. But, they're Americans who know that this is the bicentennial of our Constitution. They have a sense—by being Americans—of what the Constitution means and of the spirit that gives it life.

But, ask them the most elemental question: Do you as an American have certain inalienable rights? Do you have a right to life, liberty, and the pursuit of happiness? Those are the words right out of the Declaration of Independence. Ask any American and he'll say, "Yes, I do."

It is on this most basic principle that Judge Bork and I, and so many Americans, disagree. Judge Bork would say, if it is not in the specific words of the Constitution, it is not there. He would say, no, the people do not retain rights. So, if you cannot find the right to privacy or any other right, in the words of the document, it does not exist. Judge Bork would stand for a rigid, unyielding view of rights, when the hallmark of our Constitution and our system of laws has been its flexibility, its vitality, its ability to adapt to changing times and expanding conceptions of liberty.

I do not say Judge Bork isn't smart. He is brilliant. I do not say he is a bigot. I do not say he is not a skillful lawyer. But, because of how he approaches the law, I do not think he should sit in the ninth chair on the Supreme Court.

Now, some have objected. They say those who oppose Judge Bork have politicized the process. They say we have set a precedent, a bad one. They say Judge Bork is a victim of a special interest campaign.

It is unfortunate. Because I think, on the whole, the debate has been a good one. I think any citizen who watched any part of the hearing would have been impressed. The questions, the give and take, laid out real issues. I think the chairman of the committee deserves our praise. The hearings were fair, open, and shed light on a constitutional debate that all the Nation could see.

The Senate did not politicize the process. Let us be honest, the President did not tell his advisers, go out and find me the smartest, the best candidate for the court, and I don't care what his ideology, what his substantive views are. He chose Robert Bork because of his views. And, we cannot and should not ignore them.

As I said at the outset, few responsibilities of the Senate are as important as its duty to advise and consent on nominees to the Supreme Court. It is a duty that calls upon us to determine, not just if a candidate is intelligent, honest or learned, but whether he will breathe life into the rights and liberties of our people, enshrined in our Constitution and laws. Judge Bork passes the first test. But, I cannot place my faith in him to pass the second. So, I will vote against the confirmation of Judge Bork.

Mr. ARMSTRONG addressed the Chair.

Mr. THURMOND. Madam President, I yield 2 minutes to the distinguished Senator from Colorado.

Mr. ARMSTRONG. Madam President, I thank my distinguished friend for yielding.

ACKNOWLEDGING THE PUBLIC SERVICE OF JUDGE ROBERT H. BORK

Mr. ARMSTRONG. Madam President, I send a resolution to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. Is there objection?

Mr. BIDEN. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. ARMSTRONG. Is it in order for the clerk to state the resolution so that the Senator from Delaware may know that which he objects to?

The PRESIDING OFFICER. The Senator from Colorado will withhold. The resolution will go over, but the resolution will be stated by the clerk.

Who yields time for the clerk to read the entire resolution? The resolution does not have a title on it.

Mr. THURMOND. Madam President, I yield 2 minutes and that is all I can yield.

Mr. ARMSTRONG. I yield the time for the reading of the resolution. I am surprised, may I say to my friend, the chairman of the Judiciary Committee, that he would object to the consideration of a resolution even before he knows what it is. And, in fact, I think its content and substance is something with which he could agree.

The PRESIDING OFFICER. The clerk will read the resolution.

Mr. ARMSTRONG. I yield my time for that purpose.

The legislative clerk read as follows:

S. RES. 301

Whereas the Senate of the United States, on September 9, 1987, resolved to "avoid negative attacks calculated to impugn the character, integrity, or patriotism of a candidate"; and

Whereas an unprecedented negative campaign was launched against the nomination to the Supreme Court of Judge Bork and was fueled with millions of dollars from special interest groups, including tax-exempt organizations; and

Whereas that campaign has set a deplorable precedent for the politicization of our courts and for future attempts to control their decisions; and

Whereas the Senate has, on two previous occasions, unanimously confirmed Robert Bork to high federal office, first as Solicitor General of the United States and then to his present position on the U.S. Court of Appeals for the District of Columbia Circuit; Now, therefore, be it

Resolved, that:

(1) The Senate assures Judge Robert Bork of our admiration for the integrity and intelligence he has demonstrated in his long and distinguished career as a legal scholar, dedicated teacher, and eminent jurist.

(2) The Senate thanks Judge Robert Bork for his extraordinary testimony during his prolonged confirmation hearings, by which he focused national attention, during this bicentennial year of our Constitution, on the ideals of ordered liberty which gave life to that document.

The PRESIDING OFFICER. The clerk has used the 2 minutes allotted by the Senator from South Carolina.

Mr. ARMSTRONG. Madam President, I ask unanimous consent that the resolution be considered.

Mr. BIDEN. I object to such a factually flawed resolution being considered.

The PRESIDING OFFICER. As in legislative session, the resolution will go over.

SUPREME COURT OF THE UNITED STATES

The Senate continued with the consideration of the nomination of Robert H. Bork to be an Associate Justice.

The PRESIDING OFFICER. Who yields time?

Mr. BIDEN. Madam President, I yield 2 minutes to the Senator from New York.

Mr. MOYNIHAN. Madam President, we are now in the final hour of a constitutional debate of considerable, some would say historical importance. Just this morning the dean of one of the Nation's finest law schools offered me his view that there has not been its like since the Court packing debate of 1937, a full half century ago.

If I have one anxiety it is that in passing judgment on Judge Bork's nomination the Senate might be thought somehow to be judging his character as well. That is to say that in voting not to accept the nomination we will somehow have expressed a negative judgment of the man. Not so. Judge Bork is a personal acquaintance; I would like to think a friend. This circumstance has occasioned any number of conversations with other Senators over the past 3 months. For certain, I have invariably spoken of him in the high terms in which I regard him. But may I report to the Senate that I have never heard anything different in response. Those who also knew him as a scholar, a jurist, a public servant continued to think of him as they had done; those new to his personal and intellectual histories have simply joined us as fellow admirers.

That many of us hold different views of the Constitution is nothing unusual and nothing untoward. Our history as a state commences with just such argument. Long may it persist. It is the stuff of citizenship and community.

I have previously on October 9, announced that I cannot support the nomination. I ask unanimous consent, however, that that statement be reprinted at this point in order that it be part of this debate.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

THE NOMINATION OF JUDGE ROBERT H. BORK TO THE U.S. SUPREME COURT

Mr. MOYNIHAN. Mr. President, for more than a quarter century, Judge Robert H. Bork has been an important intellectual force in the law. He has striven to develop a coherent constitutional philosophy to guide judicial decisionmaking. He has been a formidable critic of antitrust policy. His world has been that of reflection and action, having been a lawyer, professor, Solicitor General, and Federal appellate judge.

In all this Judge Bork has commanded the respect of those who disagree with him. I am one such. And more. I have, for example, the greatest admiration for his steadfast opposition to legislative efforts to strip the Supreme Court of jurisdiction in various areas of public policy. It is thus with regret that I must oppose his confirmation as a Justice of the Supreme Court.

I share with others an unease about Judge Bork's views on such issues as equality for women. And I must admit to great disappointment that a man of his powers chose to be so muddled in his testimony skirting on the already sufficiently muddled issue of "original intent." If we are to believe the Attorney General, Supreme Court Justices, in passing on the constitutionality of statutes, must look to the original intent of the writers of the Constitution.

This is a seemingly sensible statement. But let us, as Holmes once said, wash it with cynical acid and see what remains.

Little.

To begin with, we have no transcript of the proceedings of the Philadelphia convention. The debates were closed. Some notes were taken, but fitfully and subject to all the errors that attend after-the-fact reconstructions. All we know is what the Constitution itself states. The words of the document were clearly intended, and that is as far as the idea can take us.

But the great muddle, if I may be permitted, the howler in all this is that there is one thing of which we can be absolutely certain, which is that the framers never intended, never conceived, the possibility that the Court would assert for itself the power to judge the constitutionality of laws enacted by the Congress and approved by the President. There was absolutely no precedent for this in English law. To this day it would be unthinkable, or such is my understanding, for a British court to declare an Act of Parliment unconstitutional. The concept does not exist for the British. In effect, their Constitution consists of whatever basic law parliament enacts, along with traditions of the common law.

Judicial review of federal laws, as it is known, was wholly the invention of Chief Justice John Marshall in the celebrated case of Marbury versus Madison. This was handed down in 1803, some 16 years after the Constitution was adopted in Philadelphia. In a curious twist, the practice developed much as common law develops. It was asserted, then all but fell into desuetude. Then a half century later, it was revived, in the Dred Scott decision, Scott versus Sanford, 1857. Then fell off again, then revived again, and after about a century and a half, came to be seen as an aspect of American governance. To cite Holmes in his study, the common law, "The life of the law has not been logic; it has been experience." Just so. After an extended, tentative experience, the people of the United States gradually got used to the idea that the Supreme Court could declare acts by other branches of the government to be unconstitutional, and that would be that for the time being at least. I myself have written that we are under no obligation to agree with the Supreme Court in such matters; our obligation is simply to obey it until by litigation and other lawful means we can persuade it to change its mind if indeed it is of a mind to do. Which it does all the time. So much for original intent.

I regret imposing this diversion on the Senate, but the matter, in my view, needed stating.

To return to the central issue before us, which is to say, Judge Bork's constitutional views. I must say that it is his restricted vision of privacy which troubles me most. I cannot vote for a jurist who simply cannot find in the Constitution a general right of privacy.

Talk of original intent! Which, if I may be allowed a final digression, is somehow extended to the first 10 amendments which dated from 1791, although Massachusetts, Georgia, and Connecticut did not get around to giving their assent until 1939. Sic, as lawyers write. What possibly can the Congress have intended when it resolved in amendment III that "no soldier shall in time of peace be quartered in any house, without the consent of the owner * * *"? Or, in amendment IV concerning "The right of the people to be secure in their persons, houses, papers, and effects * * * ? And amendment IX, which states that "the enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." I am no legal scholar, but surely by this time one of the most popular understanding of English common law was summed in the phrase, "the rain may come through your roof, but the King may not come through your door." Save, that is, by invitation or by warrant.

Of all the circumstances of life, privacy is perhaps that most treasured by a civilized people. The great lesson of the 20th century is that the annihilation of privacy is the ultimate goal of the totalitarian state. Any of us who have read George Orwell's 1984, will have experienced this annihilation in its "ideal" form. Any of us who have visited Moscow or Beijing will have encountered a chilling approximation.

Nor are democractic societies by any means immune.

Absent privacy, civilization loses its immume defense, the body politic is ravaged; even memory mutates.

Yet, in his 1971 essay in Indiana Law Journal, "Neutral Principles and Some First Amendment Problems," Judge Bork denies the right of privacy. Evaluating the Supreme Court's decision in Griswold, striking down a Connecticut anti-contraceptive statute, he writes:

"The truth is that the Court could not reach its result in 'Griswold' through principle. The reason is obvious. Every clash between a minority claiming freedom and a majority claiming power to regulate involves a choice between the gratification of the two groups. 'When the Constitution has not spoken, the Court will be able to find no scale, other than its own value preferences, upon which to weigh the respective claims to pleasure.' Compare the facts in 'Griswold' with a hypothetical suit by an electric utility company and one of its customers to void a smoke pollution ordinance as unconstitutional. The cases are identical.' "

That Judge Bork has persistently rejected a right of privacy is all the more puzzling in light of his recent testimony:

"Oh yes, there are several crucial protections of privacy in the Bill of Rights. The Framers were very concerned about privacy because they had been subjected to a very intrusive British Government, and they were very concerned that privacy be protected against the new national government."

Again, I find this muddled. Either there is or there is not a general right of privacy to be found in the Constitution. On the one hand Judge Bork says there is, on the other hand he says there isn't. Thus, in his testimony before the Judiciary Committee, he asks:

"Privacy to do what, Senator? You know, privacy to use cocaine in private? Privacy for businessmen to fix prices in a hotel room? We just do not know what it is."

Surely not. As Justice Stewart might say, I may not be able to define it, but I know it when I see it. To suggest that no general right on privacy exists simply because one can envision specific situations in which it might not, is logic-chopping and counter to all that experience teaches. Under such a construction, there would be no general right of free speech because we do not protect persons who shout, "Fire!" in a crowded theater, when in fact there is no fire.

The right of privacy is a fundamental protection for the individual and the family against unwarranted state intrusion. Its importance is such that I cannot support anyone for a Supreme Court appointment who would not recognize it.

I am not less troubled by Judge Bork's view that the Constitution does not bar racially restricted covenants or de jure segregation in the public schools of the District of Columbia. It is not sufficient that he is personally opposed to such practices, or that he would not overturn the cases of Shelley versus Kraemer and Bolling versus Sharpe because they are settled policy. Nor is it satisfactory that Judge Bork would bar racially restricted covenants under an interpretation of a statute—for if the legislation did not exist, then presumably he would find no prohibition against them.

Judge Bork finds the rationales in the Supreme Court's decisions to be wanting in the cases involving racially restricted covenants and de jure segregation in the public schools of the District of Columbia. But surely substantive rules of equal protection can be invoked to outlaw the former; and for that matter, the latter could be held unconstitutional because discrimination may be so unjustifiable as to violate due process.

In the context of a libel suit, Judge Bork wrote that:

"It is the task of the judge in this generation to discern how the Framers' values, defined in the context of the world they knew, apply to the world we know.

I agree. In the world we know, the Constitution will not tolerate racially restrictive covenants or de jure segregation in the public school of the District of Columbia.

We have said goodbye to all that. And without regret. Not long ago Bayard Rustin died in New York City. He who organized the great "March for Jobs and Freedom" here in Washington in the summer of 1963. The weather was glorious; the spirit was glorious. And the spirit truly was upon us. Few of my generation will ever forget Martin Luther King's address, with its great incantation: "I have a dream." Yet, at this moment on this floor I find myself thinking of Roy Wilkins' address on the same day. He was not a man of God, as ministers are described. He was a man of this world and its travail and its triumphs and he sensed triumph. The day is at hand, he said, when the black people of the Southland will be free. And so also will the white people be. That day has come. Carpe diem.

New York City Bar Association President Robert M. Kaufman spoke for many of my fellow New Yorkers when he testified that:

"Judge Bork's fundamental judicial philosophy, as expressed repeatedly and consistently over the past thirty years in his writings, public statements and judicial decisions, appears . . . to run counter to many of the fundamental rights and liberties protected by the Constitution."

I concur. I cannot consent to the confirmation of Judge Robert H. Bork as an Associate Justice of the Supreme Court.

Mr. MOYNIHAN. Madam President, I have two other documents, or rather entries, which I would also ask unanimous consent to have printed in the RECORD.

First is a statement by the Ad Hoc Committee for Principled Discussions of Constitutional Issues, which is chaired jointly by two of our most luminous and deeply patriotic scholars, Nathan Glazer and Sidney Hook. It may be objected that patriotism is an odd ascription in this context: Are we not all patriots? Indeed, I so grant. But some persons give their lives to the study of national character and purpose that goes well beyond what most can achieve, and far less aspire to.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

AD HOC COMMITTEE FOR PRINCIPLED
DISCUSSIONS OF CONSTITUTIONAL
ISSUES,
New York, N.Y., October 1987.

Hon. ROBERT C. BYRD,
Majority Leader, U.S. Senate, Washington, DC.

Hon. ROBERT DOLE,
Minority Leader, U.S. Senate, Washington, DC.

HONORABLE GENTLEMEN: The signers of the attached statement who are of varied political persuasions have different views on the substantive issues discussed by Judge Bork. But all are convinced, despite what has been said in the media and on the Senate floor, that Judge Bork's position on judicial restraint is an integral part of the mainstream of American jurisprudence, and that he is well qualified to serve as a justice of the United States Supreme Court.

The argument has been made repeatedly that the politicization of the Bork confirmation proceedings is nothing new, that the same was true of the Fortas, Thornberry, Haynesworth, and Carswell nominations. This is a gross distortion. While there was some idelogical element to those four proceedings, only a minority of Senators considered that their opposition could legitimately rest on such grounds. In all those cases, the decisive element was either a financial ethics issue or an issue of character.

In the case of both Fortas and Haynesworth, the issue was financial ethics. Fortas accepted the very large honorarium for a seminar at American University; Haynesworth had voted on one or more cases in which he had a financial interest. (The withdrawal of the Thornberry nomination was as a result of the domino effect: the withdrawal of Fortas as Chief Justice meant there was no Associate Justice vacancy for Thornberry to fill.) In the case of Carswell, the issue could be described as ability (of the sixty-seven district court judges in the Fifth Circuit with 20 appealable decisions or more, only six had a worse reversal record) and character (adherence to white supremacy).

Also in so far as ideological arguments were made against Fortas, Haynesworth, and Carswell, they were based on their judicial opinions. None of the critics have been able to find fault with Judge Bork's judicial opinions.

These are very important distinctions from the current case which need to be made forcefully. I hope someone will step forward and do it.

Sincerely,

SIDNEY HOOK,
Emeritus Professor of Philosophy, New York University; Senior Research Fellow, Hoover Institution.

AD HOC COMMITTEE FOR PRINCIPLED DISCUSSIONS OF CONSTITUTIONAL ISSUES

STATEMENT OF SUPPORT

We are witnessing an incredible assault on a distinguished nominee to the Supreme Court, unparalleled perhaps since the battle to prevent Justice Brandeis' confirmation seventy years ago. The undersigned feel that reasoned analysis is needed as an antidote to emotions which may have affected even those Senators who should guide their colleagues toward a wise judgment.

Judge Bork is assaulted for being outside the "mainstream" of American constitutional interpretation and for threatening liberties and rights confirmed by previous decisions of the Supreme Court and by federal and state legislation. This is nothing less than an effort to impose one controversial theory of constitutional interpretation as the only legitimate one, and to exclude as beyond the pale all who challenge it. For the last 15 years or more we have witnessed many 5 to 4 or 6 to 3 decisions on important issues, with majorities and minorities split in their reasoning two or three ways. What is the "mainstream" in such split decisions? It is specious to argue the 5 or 6 Justices in the majority in these decisions represent the mainstream of constitutional interpretation, and that if the decisions were to have gone 5 to 4 or 6 to 3 the other way the Republic and our liberties would be in danger.

Judge Bork stands within a legitimate mainstream of constitutional interpretation, one which includes Justice Brandeis and Justice Frankfurter and other eminent jurists, and which asserts that when the Constitution is silent the legislatures, federal and state, the democratically elected representatives of the people, have the right to speak. It is deceptive to argue that a more restrained interpretation of the liberties protected by the Constitution threatens those liberties. Our liberties have been extended as much by state legislative and congressional action in the past few decades as by interpretations of the Constitution by the Supreme Court. Our liberties, in the large, are secure, and it betrays scant confidence in the American people—who are after all the final guarantors of our liberty—to insist hysterically that one appointment to the Supreme Court, of a scholarly judge, a former professor in one of our most distinguished law schools, a man already once confirmed unanimously by the Senate for the second most important court in the country, threatens those liberties.

We do not know how Judge Bork, were he a member of the Supreme Court, would rule on the issues that seem to arouse the most anxiety: on whether the states have the right to require notice to parents on abortions for children, or whether states may require a moment of silence in school, or how far affirmative action under the Fourteenth Amendment and the relevant statutes can extend, and on other issues. But however he would rule, and however these and other matters which arouse such concern in those fiercely opposed to him come out, the major structure of our liberties will be secure with Judge Bork on the Supreme Court. The mainstream of interpretation of the Constitution includes both those who would give it the most expansive interpretation and allow judges to exercise a wide power to redress wrongs and expand rights as they see fit, and those who see a more limited role for the Court, closer to the text and intention of the framers of the Constitution and the Amendments, and who support a larger role for the democratic branches of government. To read out of the "mainstream" the latter is to shortcircuit what should be a debate over principles, and pronounce an unjustified edict of excommunication from the democratic political community.

Henry J. Abraham, University of Virginia.
Samuel Abrahamsen, CUNY, Grad. Ctr./Brooklyn College.
Howard Adelson, CUNY, City College.
Judah Adelson, SUNY, New Paltz.
Stephen H. Balch, CUNY, John Jay College.
Andrew R. Baggaley, University of Pennsylvania.
Fred Baumann, Kenyon College.
William R. Beer, CUNY, Brooklyn College.
Aldo S. Bernardo, SUNY, Binghamton.
Walter Berns, American Enterprise Institute.
Brand Blanshard, Yale University.
Thomas E. Borcherding, Claremont Graduate School.
Yale Brozen, University of Chicago,
Stanley C. Brubaker, Colgate University,
R.C. Buck, University of Wisconsin.
John H. Bunzel, Hoover Institution.
Nicholas Capaldi, CUNY, Queens College.
James S. Coleman, University of Chicago.
Werner Dannahauser, Cornell University.
Harold Demsetz, University of California, Los Angeles.
Gray Dorsey, Washington University.
William A. Earle, Emeritus, Northwestern University.
Ross D. Eckert, Claremont McKenna College.
Ward Elliott, Claremont McKenna College.
Charles Evans, CUNY, City College.
Solomon and Bess Fabricant, New York University.
Robert K. Faulkner, Boston College.
Milton Friedman, Hoover Institution.
Lowell Gallaway, Ohio University.
L.H. Gann, Hoover University.
Jules B. Gerard, Washington University.
Hilail Gildin, CUNY, Queens College.
Nathan Glazer, Harvard University.
William C. Green, Boston University.
C. Lowell Harriss, Columbia University.
Louis G. Heller, CUNY, City College.
Gertrude Himmelfarb, CUNY, Graduate Center.
Jack Hirshleifer, UCLA.
Sidney Hook, Hoover Institution.
K.D. Irani, CUNY, City College.
Erich Isaac, CUNY, City College.
Robert Kagan, University of California at Berkeley.
Howard Kaminsky, Florida International University.
Thomas Kando, California State University, Sacramento.
Benjamin Klebaner, CUNY, City College.
Benjamin Klein, University of California, Los Angeles.
Fred Kort, University of Connecticut.
Robert P. Kraynak, Colgate University.
Paul Oskar Kristeller, Columbia University.
Nino Languilli, St. Francis College.
Charles Lofgreen, Claremont McKenna College.
Herbert I. London, New York University.
Joseph A. Mazzeo, Columbia University.
John McCarthy, Stanford University.
Paul McGouldrink, SUNY, Binghamton.
Bernard D. Meltzer, University of Chicago.
Marvin Meyers, Brandeis University.
Stuart Miller, San Francisco State University.
Katharina Mommsen, Stanford University.
Aurelius Morgner, University of Southern California.
Allan Nelson, University of Waterloo.
Rev. Richard John Neuhaus, Rockford Inst./Ctr. on Religion in Society.
W.V. Quine, Harvard University.
Steven Rhoads, University of Virginia.
Ralph A. Rossum, Claremont McKenna College.
Eugene V. Rostow, Yale University.
Arnold M. Rothstein, Emeritus-CUNY, City College.
Halley D. Sanchez, University of Puerto Rico at Mayaquez.
Wolfe W. Schmokel, University of Vermont.
George Schwab, CUNY, City College.
Paul Seabury, University of California at Berkeley.
John R. Searle, University of California at Berkeley.
Frederick Seitz, Rockefeller University.
Malcolm Sherman, SUNY, Albany.
Charles Sherover, CUNY, Hunter College.
David Sidorsky, Columbia University.
Philip Siegelman, San Francisco State University.
Gerald Sirkin, CUNY, City College.
Thomas Sowell, Hoover Institution.
Edward Taborsky, University of Texas, Austin.
Miro M. Todorovich, CUNY, Bronx Community College.
Stephen J. Tonsor, University of Michigan.
Richard K. Vedder, Ohio University.
Arthur Vigdor, Emeritus-CUNY, City College.
George Weigel, Catholic Theologian,
Judy Wubnig, Cambridge, MA.
Cyril Zebot, Georgetown University.
Marvin Zimmerman, SUNY, Buffalo.

ADDENDUM

Peter Ahrensdorf, Kenyon College.
Armen A. Alchian, UCLA.
Maurice Auerbach, St. Francis College.
Ronald Berman, UCLA.
Allen Bloom, University of Chicago.
R.K. Boutwell, University of Wisconsin.
Harry Clor, Kenyon College.
Robert Greer Cohn, Stanford University.
Kirk Emmert, Kenyon College.
Arnold Harberger, UCLA.
Lawrence W. Hyman, Emeritus, CUNY, Brooklyn College.
Rael Isaac, Irvington, NY.
Pamela Jensen, Kenyon College.
Alphonse, Juilland, Stanford University.
George L. Kline, Bryn Mawr College.
David Leibowitz, Michigan State University.
Sullivan S. Marsden, Jr., Stanford University.
Arthur Melzer, Michigan State University.
A. Mizrahi, Indiana University Northwest.
Dean Mores, Columbia University.

JoAnn Morse, Barnard College.

Allan Nelson, University of Waterloo.

Norma L. Newark, CUNY, Herbert Lehman College.

Allan Ornstein, Loyola University.

Ibrahim Oweiss, Georgetown University.

Thomas L. Pangle, University of Toronto.

Jacob M. Price, University of Michigan.

Jeremy Rabkin, Cornell University.

Bogdan Raditsa, Fairleigh Dickinson University.

Harold P. Rusch, University of Wisconsin.

Edward Shils, Chicago, IL.

Dr. George Schultz, Stanford University.

Morris Silver, CUNY, City College.

Martin Trow, University of CA at Berkeley.

George J. Viksnins, Georgetown University.

Jerry Weinberger, Michigan State University.

Arthur J. Weitzman, Northwest University.

Bradford Wilson, Ashland College.

Richard M. Zinman, Michigan State University.

Rev. Joseph Zrinyi, SJ, Georgetown University.

Mr. MOYNIHAN. Finally, Madam President, I wish to have printed in the RECORD a petition signed by some 23 U.S. district judges from New York. These are eminent men, three of whom I have had the honor to recommend for appointment. They are much concerned—let me use their words—they are "disturbed by the nature of the debate that has attended the nomination of Judge Robert Bork to the Court." Herewith their petition.

There being no objection, the petition was ordered to be printed in the RECORD, as follows:

NEW YORK,
October 20, 1987.

We, the undersigned judges of the Second Judicial Circuit of the United States, are fully mindful of the fact that confirmation of Supreme Court justices is the obligation and prerogative of the Senate. However, as citizens concerned with the rule of law and the independence of the judiciary we are disturbed by the nature of the debate that has attended the nomination of Judge Robert Bork to the Court. If the process of choosing judges comes to be dominated by partisanship rather than a regard for individual learning and temperament, our courts will be left without the judicial excellence on which they vitally depend. If the process pays too much deference to outside influences, the courts will lose their integrity and Senators will become unable to perform one of their most solemn duties under the Constitution.

We hope that in the last stage of the debate over Judge Bork the participants will show respect for these principles and come to the Senate floor with minds open to arguments on the merits.

Jacob Mishler, Senior DJ; Raymond Dearie, EDNY; Peter Leisure, SDNY: Lloyd MacMahon, Senior DJ; Charles L. Brieant, CJ-SDNY; Reena Raggi, EDNY; John R. Bartels, Senior DJ; Edward R. Korman, EDNY; Howard Schwartzberg, Bkrty. NY; Charles S. Haight, SDNY; Richard J. Daronco, SDNY; William C. Conner, SDNY.

John F. Keenan, SDNY; John E. Sprizzo, SDNY; John Walker, SDNY; Thomas C. Platt, EDNY; Howard B. Munson, NDNY; I. Leo Glasser, EDNY; Mark Constantino, EDNY; Thomas P. Griesa, SDNY; Milton Pollack, Senior DJ; Shirley Kram, SDNY; Thomas J. McAvoy, NDNY.

Mr. MOYNIHAN. I would like their honors to know that I, too, am disturbed by aspects of this debate. The single most disturbing event to me was the campaign by the National Conservative Political Action Committee on behalf of Judge Bork. It is in my view a disgrace that this contemptible organization should have sought to associate itself with this honorable man, and it is lamentable—dare I say more—that the President has associated himself with this smear. Yes, I said smear. Ages ago the Earl of Chesterfield admonished his son: "Take the tone of the company you are in." I cannot doubt that were it left to Judge Bork he would want no part of the company of NCPAC. Here is their paid telephone communication as introduced into the RECORD by the distinguished Senator from Arkansas:

Mr. President, the following is a paid telephone communication that has gone into many States, from South from West. We have four affidavits stating that this was in fact the wording of the telephone conversation, done by computer. I will read this statement at this time to my colleagues:

"Senator HUMPHREY. Hello, this is Senator Gordon Humphrey. In my role as Honorary Chairman of the National Conservative Political Action Committee, I decided to speak to you by tele-computer because of the urgent need for citizens to rally behind the President, President Reagan needs your support in his effort to have Judge Robert Bork confirmed to the United States Supreme Court.

"Please hold for an important message from President Reagan.

"President REAGAN. Judge Bork deserves a careful highly civil examination of his record, but he has been subjected to a constant litany of character assassination and intentional misrepresentation. Tell your Senators to resist the politicization of our court system. Tell them you support the appointment of Judge Robert Bork to the Supreme Court.

ANNOUNCER. As the President and Senator Humphrey said, it's absolutely vital you call your Senator ——— at ——— in ——— immediately. Urge him to vote in favor of Judge Robert Bork.

"And, if at all possible, please consider making a contribution to help win this important battle. If you would like to make a contribution, please tell me your name at the sound of the tone.

"Please tell me your telephone number at the sound of the tone, so that one of our volunteers can contact you.

"Thank you for your support. Good evening."

Madam President, as Senators well know, NCPAC is, or certainly was, a lawless organization. Why do I say this? Because, as the Senate also knows, in the days when its founder the late Mr. Terence Dolan claimed to have elected a dozen or so Senators in 1980, and to have changed the composition of the Senate, he was openly contemptuous of Federal election law. If I may paraphrase, he used to say that by the time they catch up with us, "the election is over and it's too late." By this he meant, that if his vicious campaign tactics—lies, insinuations, defamation—succeeded (as evidently they often did) the defeated candidate would have small consolation in pursuing civil remedies against his tormentors; and should they fail, no great misfortune would befall Mr. Dolan's organization.

It happens that in 1982 I was "targeted" by NCPAC, that being their term. There followed a hugely distasteful sequence of illegal activities and, to say again, contemptible campaign tactics. In the end, however, my campaign was not overturned and in the aftermath I determined to take NCPAC on as a matter of principle. Contempt for the law cannot be allowed, especially election law in a representative democracy. I pursued, I pursued, I pursued.

It took 4 years.

But law prevailed.

On May 15, 1986, Judge Goettel of the Southern District of New York issued summary judgment for the Federal Election Commission against NCPAC. In order that the record should contain the complete account of the conduct of NCPAC (and its coconspirator Mr. Arthur J. Finkelstein) I ask unanimous consent that the Federal Supplement be printed in the RECORD at this point.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

FEDERAL ELECTION COMMISSION, PLAINTIFF, V. NATIONAL CONSERVATIVE POLITICAL ACTION COMMITTEE, DEFENDANT

(No. 84 Civ. 0866 (GLG))

United States District Court, S.D. New York, May 15, 1986

Federal Election Commission brought action against political action committee alleging committee illegally contributed more than $5,000 to a candidate for political office. On cross motions for summary judgment, the District Court, Goettel, J., held that committee's consultant expenditures would be deemed to be contributions to candidate's campaign, though committee claimed to act in reliance on Federal Election Committee advisory opinion, where committee's action in developing and implementing, through common political consultant, nearly identical campaign with candidate overstepped wording of advisory opinion.

Summary judgment for Federal Election Commission.

ELECTIONS 317.1

Political action committee's consultant expenditures were deemed contribution to primary candidate's campaign, resulting in violation of $5,000 limit on contributions by multicandidate political committees, though committee claimed to act in reliance on Federal Election Commission advisory opinion, where consultant's central rule in both committee and candidate's efforts, and the shared goals and parallel strategies of the two efforts, demonstrated impermissible degree of coordination which overstepped wording of advisory opinion.

Charles N. Steele, Gen. Counsel to the Federation Election Com'n, Washington, D.C. by Ivan Rivera, Asst. Gen. Counsel, Lisa E. Klein, of counsel, for the plaintiff.

Herge, Sparks, Christopher & Biondi, McLan, Va. by Robert R. Sparks, Jr., of counsel and Ford, Marrin Esposito & Witmeyer, New York City by William P. Ford, of counsel, for defendant Nat. Conservative Political Action Committee.

OPINION

Goettel, District Judge: The Federal Election Commission (the "FEC"), a federal agency empowered with exclusive jurisdiction to administer, interpret and enforce the Federal Election Campaign Act of 1971 ("FECA"; "the Act"), brought this action against the National Conservative Political Action Committee ("NCPAC") seeking declaratory and injunctive relief. NCPAC is a non-profit, nonmembership organization registered in the District of Columbia to support or oppose candidates for elective office. During the period in question (March 1981—August 1982), NCPAC was registered with the FEC as a multicandidate political committee ("MCPC").[1] The FEC contends that during the 1982 New York senatorial campaign, NCPAC contributed more than $5000 to a single candidate in violation of section 441(a)(2)(A) of the Act.[2] In failing to report these contributions, NCPAC allegedly violated section 434(b)(4)(H)(i) of the Act as well.[3] This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (1982).

Both parties now cross-move, pursuant to the Fed.R.Civ.P. 56, for summary judgment. NCPAC also moves, pursuant to Fed.R.Civ.P. 15 to amend its answer. For the purposes of this motion, the defendant's answer is deemed amended. For the reasons stated below, the plaintiff's motion for summary judgment is granted.

I. Background

The following facts are not in dispute. During the 1981-82 election cycle, NCPAC established "New Yorkers Fed Up With Moynihan," a political action committee dedicated to defeating the reelection bid of New York's United States Senator, Daniel Patrick Moynihan. NCPAC hired Arthur J. Finkelstein Associates ("Associates"), a polling and political consulting firm owned and operated by Arthur J. Finkelstein, to develop a media strategy, to conduct and analyze polls and to select election issues on which Senator Moynihan was most vulnerable. Finkelstein himself wrote the script for NCPAC's main radio commercial urging the defeat of Senator Moynihan. From April 1981 until August 1982 NCPAC funnelled $73,755 to Associates to urge Moynihan's defeat.

In March 1981, prior to the commencement of NCPAC's anti-Moynihan effort, Bruce Caputo announced his intention to seek the Republican nomination for the U.S. Senate seat in New York. On or about that time, Caputo and his political committee, the Caputo for Senate Committee (the "Committee"), retained Finkelstein, a longtime friend of the candidate, as a paid political consultant. Between March 1981 and March 1982, when Caputo withdrew from the race,[1] the Committee paid Finkelstein's firm $28,000 to assist in all of the aspects of Caputo's campaign including formulating election strategy, hiring campaign staff, and utilizing the media.

Finkelstein and NCPAC also had long been associated,[5] and, during the time NCPAC retained Finkelstein, it knew that Finkelstein who recruited Robin Martin, a Caputo campaign volunteer, to head the "New Yorkers Fed Up With Moynihan" media campaign.

In January 1982, the FEC received a complaint from the New York State Democratic Committee alleging that independent expenditures reported by NCPAC for its anti-Moynihan campaign were actually inkind contributions to Caputo and his authorized committee.[6] The complaint further alleged that these contributions exceeded section 441a(a)2)(A)'s $5,000 limit on contributions to a candidate and that NCPAC had violated section 434(b)(4)(H)(i) by failing to report the contributions. The FEC found reason to believe these allegations and, in April 1982, began an investigation.[7] In September 1983 the FEC found probable cause to believe that NCPAC had violated FECA's contribution and disclosure requirements and attempted to correct those violations through informal methods.[8] These methods failed [9] and, on February 6, 1984, the FEC brought this action to enforce the provisions of the Act.[10]

II. Discussion

Section 441a(a)(2)(A) of the Act forbids a multicandidate political committee from making a contribution "to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceeds $5000." 2 U.S.C. 441a(a)(2)(A) (1982). Expenditures made "in cooperation, consultation, or concert, with, . . . a candidate, his authorized political committees, or their agents, shall be considered to be a contribution to such candidate." [11] 2 U.S.C. § 441a(a)(7)(B)(i) (1982). FFC regulations clarify this language.[12] According to those regulations, the aforementioned definition of contribution includes any expenditure "[m]ade with the cooperation or with the prior consent of, or in consultation with, or at the request or suggestion of, a candidate or any agent . . . of the candidate. . . ." 11 C.F.R. § 109.1(b)(4) (1986). This definition, in turn, encompasses.

> [a]ny arrangement, coordination or direction by the candidate or his or her agent prior to the publication, distribution, display, or broadcast of the communication. An expenditure will be presumed to be so made when it is—
>
> (A) Based on information about the candidates plans, project's or needs provided to the expending person by the candidate, or by the candidate's agents, with a view toward having an expenditure made;
>
> (B) Made by or through any person who is, or has been, authorized to raise or expend funds, who is, or has been, an officer of an authorized committee, or who is, or has been, receiving any form of compensation or reimbursement from the candidate, the candidate's committee or agent. . . .

Id. at § 109.1(b)(4)(i). The FEC argues that the $73,755 NCPAC expended through Finkelstein, who was Caputo's agent, actually constituted contributions to the Caputo campaign. NCPAC thereby exceeded the $5,000 limit on contributions [13] and violated the corresponding disclosure provisions.

NCPAC does not dispute that, on their face, the statute and the relevant regulations forbid its conduct. It, nevertheless, maintains that it can prevail on its crossmotion for summary judgment because it relied on an FEC advisory opinion.[14] Under the Act,

> any person involved in the specific transaction or activity with respect to which [an] advisory opinion [has been] rendered . . . [and] who [has] relied upon [that] advisory opinion . . . and who act[ed] in good faith in accordance with the provisions and findings of [that] advisory opinion shall not, as a result of any such act be subject to any sanction provided by [FECA].

2 U.S.C. §§ 437f(c)(1)(A) & (2) (1982). NCPAC claims to have relied in good faith on a December 1980 advisory opinion and asserts that it would not have exceeded the $5000 contribution limit had it believed it was acting contrary to the provisions of the Act.

In December 1979, NCPAC wrote to the FEC requesting an advisory opinion with regard to certain proposed activities it was contemplating. NCPAC was particularly concerned about whether an agency relationship between a political consultant or any other vendor and a candidate would jeopardize its ability to use the same consultant or vendor to oppose the candidate's opponent.[15] NCPAC posited nine, fact-specific questions to the FEC. It now contends that it relied on the FEC's responses to two of those questions in taking the actions that are the subject of this suit.

The first question (or "situation," as NCPAC termed it) posits NCPAC hiring an advertising firm to design advertisements which advocate the defeat of a candidate campaigning for the Democratic nomination for President. This same agency is working for a candidate seeking the Republican nomination. Although the Commission did not have enough information to determine whether the firm was an "agent" of the Republican candidate, it noted that since these "are two separately distinct races . . . and the Democratic candidate and the Republican candidate are not opponents at this point" it would be permissible to retain the same advertising agency.[16] NCPAC's Memorandum of Law, Exhibit A at 4.

The eighth situation posits NCPAC contributing a poll undertaken as part of an independent expenditure campaign against a candidate for the Democratic senatorial nomination to a candidate for the Republican nomination in the same state. The FEC stated that contributing the pool results "would, of course, constitute a contribution in-kind by NCPAC to the candidate's campaign committee." *Id.* at 9-10. However, during the primary campaign, NCPAC could "communicate" with the Republican candidate.[17]

The advisory opinion contained the caveat that "an expenditure that appears to be independent on the facts presented [by NCPAC] may not in fact be so [in a different factual setting]". *Id.* at 4. Moreover, section 437f(c)(1)(B) of FECA provides that an advisory can be relied on only if the "specific transaction or activity [is] indistinguishable in all its material aspects from the transaction or activity . . . [about] which the advisory opinion [was] rendered." 2 U.S.C. § 437(c)(1)(B) (1982). Thus, NCPAC can prevail in this action only if it can establish that the situation at bar is indistinguishable from the situations reviewed in the advisory opinion.

Careful analysis reveals substantial disimilarities between the facts in issue and those posited in the FEC's advisory opinion, First, Finkelstein's role was far more crucial than that of the specified "agents" in situations 1

Footnotes at end of article.

and 8. Second, NCPAC's coordination with Caputo, through Finkelstein, far exceeded the "communication" sanctioned by the FEC. Finally, Caputo and Moynihan were more like opponents than like the candidates in "separate and distinct races" envisioned by the FEC.

A. Finkelstein's Role

In the two "situations" upon which it relies, NCPAC hypothesized an advertising firm that would simultaneously for NCPAC and for a Republican candidate and a polling concern working for NCPAC that would contribute a poll to the Republican candidate. The role of Finkelstein and his firm in both the NCPAC and Caputo efforts was far more significant than that of a vendor of advertising services or a polling concern. Finkelstein was NCPAC's key strategist. He formulated and directed the execution of NCPAC's plan to defeat Senator Moynihan. Finkelstein drafted NCPAC's radio spots and recruited the chairman of NCPAC's anti-Moynihan effort. Simultaneously, he served as the chief architect of Bruce Caputo's campaign. Finkelstein helped prepare the candidate's announcement speech and initial fundraising letter. He also chaired staff meetings, made recommendations with respect to staff assignments, and authored, in large part, the Caputo Committee's campaign commercials. Although the general questions with which NCPAC prefaced its request for an advisory opinion referred to "consultants," *see supra* n. 15, neither that general reference, nor the specific references in situations 1 or 8 to an "advertising firm" or a "poll," can reasonably be interpreted to apply to a key campaign strategist for both a candidate and a committee making independent expenditures designed to defeat that candidate's future opponent.

B. Communication v. Coordination

NCPAC asserts that it communicated with the Caputo campaign in reliance on the FEC's answer to situation 8 which stated, "During the primary election period NCPAC may communicate with the Republican candidate. . . ." *See supra* n. 17. According to NCPAC's Chairman, John T. Dolan: "We believed all communications . . . between [us] and [the] agents for the Caputo for the Senate Committee were 100 percent legal up until the time . . . Mr. Caputo got the nomination." FEC Memorandum of Law, Exhibit No. 4, Deposition of John T. Dolan at 46. In fact, NCPAC believed the advisory opinion permitted NCPAC and the Caputo committee to "coordinate" their activities. Dolan thus asserted,

> If someone can tell me the difference between communication and coordination, I would like them to tell me what it is.
>
> I can't believe when we asked this opinion the Federal Election Commission thought we meant communications discussing the weather. We were very specific in the types of information we asked about in that Advisory Opinion, and communications to any normal, rational human being, I am sure, would imply as related to political information.

FEC Memorandum of Law, Exhibit No. 4, Deposition of John T. Dolan at 53.

As part of its strategy, NCPAC commissioned a poll from Finkelstein to assess Moynihan's strengths and weaknesses and to determine the best way to oppose him. NCPAC then shared the results of its poll, which revealed Moynihan's vulnerabilities and profiled public attitudes about critical issues, with the Caputo campaign. Were this the extent of NCPAC's consultation with the Caputo committee, it might fall within the realm of communication sanctioned by the advisory opinion. But NCPAC went much further.

A comparison of the NCPAC and Caputo campaign materials evidences extensive consultation and coordination. The materials are remarkably similar in style, content and language. In Caputo's announcement speech and initial fundraising letter, for example, Senator Moynihan is said to have "voted to give away the Panama Canal" and "voted against capital punishment." Exhibits to Defendant [sic] Federal Election Commission Motion for Summary Judgment, Exhibit 22. Senator Moynihan is also labelled the "father of the runaway welfare system," rated by the American Conservative Union as "the most liberal Senator, tied with George McGovern, more liberal in fact than Ted Kennedy." Id., Exhibit 21. NCPAC's radio spot repeats these same allegations almost word for word. Moynihan is depicted therein as having "voted to give away the Panama Canal," as having "voted against capital punishment," and as "the father of our runaway welfare system." NCPAC's radio spot also refers to Moynihan's American Conservative Union rating, and contrasts Moynihan's record with those of Senators Kennedy and McGovern. Id., Exhibit 17.[18]

According to NCPAC, the advisory opinion permits communication and coordination between NCPAC and a Republican candidate, the result of which are a NCPAC "independent expenditure" campaign and a campaign for the Republican nomination that are mirror images of one another. That NCPAC overstates the scope of permissible communication is made plain by the degree of coordination that NCPAC would have the advisory opinion sanction.

C. The Primary/General Election Distinction

NCPAC's final contention is that it relied on the advisory opinion's distinction between (1) a political consultant who works for NCPAC in opposing a Democratic candidate for the nomination while also performing services for a candidate for the Republican nomination and (2) a consultant who supports the Republican candidate during the general election and, at the same time, assists NCPAC in opposing that candidate's opponent. No doubt the answers to both situations 1 and 8 recognize the primary/general election distinction. And, indeed, Moynihan and Caputo were candidates in separate primary races. However, the primary/general election distinction is blurred beyond recognition in this case. Caputo and Moynihan were, for all practical purposes, opponents. When Caputo announced his candidacy in September 1981, no other Republican was seeking that nomination.[19] Two months later, in November 1981, NCPAC announced its drive to unseat Moynihan. At that time, Moynihan was the only Democratic candidate.[20]

Finkelstein's strategy makes clear that Caputo and Moynihan were more than simply candidates in separate primaries. Before his withdrawal, Caputo was the frontrunner to win the Republican nomination. Thus, Finkelstein's strategy for Caputo was to preempt the field and make Caputo the only viable Republican candidate. Finkelstein consciously set out to make Caputo Moynihan's tacit opponent during primary period.[21] Thus, Finkelstein had Caputo open his campaign with an attack on Moynihan. NCPAC ignores the reality when it contends that Caputo and Moynihan were in two distinct races in the same sense as the hypothetical candidates in the FEC's advisory opinion. NCPAC's expenditures were not only hurting Moynihan, they were aiding Caputo. More important for our purposes, they were increasing Caputo's chances for success in any future general election confrontation with Moynihan. The FEC's concern about coordination between contributions to a candidate and expenditures against that candidate's opponent is clearly implicated by NCPAC's anti-Moynihan activities.

It matters not that Caputo never actually opposed Moynihan in a primary or general election. Had Caputo not departed the race, Moynihan and Caputo may well have remained opponents through the general election. Caputo's withdrawal prior to the primary does not negate the impact of any prior conduct that may have violated the federal election laws.

The distinctions between the facts as they actually unfolded and the facts addressed in the FEC's advisory opinion are patent. Finkelstein's central role in both the NCPAC and Caputo efforts, the obvious coordination between the two efforts, their shared goals and parallel strategies, and the posture of the Caputo/Moynihan contest together demonstrate an impermissible degree of coordination and preclude any reliance on the advisory opinion. Any such reliance would overstep the wording of the advisory opinion and contradict its underlying spirit as well. Simply put, the advisory opinion does not sanction NCPAC and a Republican candidate to develop and implement, through a common political consultant, nearly identical campaigns—regardless of whether those campaigns take place during the primary or general election season.[22]

"Issue"	Caputo campaign materials	NCPAC campaign commercial
Panama Canal	"voted to give away the Panama Canal"	"voted to give away the Panama Canal"
Capital Punishment	"voted against capital punishment"	"voted against capital punishment"
Foreign Aid	"voted for foreign aid to Communist Cambodia, Cuba, Laos and Viet Nam"	"even voted foreign aid to communist countries like Cuba, Cambodia and Vietnam"
Tax Cut	"against giving you a 10% income tax cut"	"supports increased taxes"
Welfare	"father of the runaway welfare system"	"helped develop our runaway welfare system"
Spending	"opposed the President's plan to reduce federal spending"	"opposed cutting back on government spending"
ACU Rating	"ranking him the most liberal Senator"	"the most liberal Senator"
Kennedy-McGovern Comparison	"tied with George McGovern, more liberal in fact than Ted Kennedy"	"more liberal than Ted Kennedy . . . tied McGovern for most liberal"

III. Conclusion

NCPAC's anti-Moynihan expenditures must be deemed contributions to the Caputo campaign. NCPAC thus exceeded FECA's $5000 limit on contributions by a multi-candidate political committee to a candidate or its political committee and violated the Act's disclosure requirements by failing to report its contributions. The plaintiff's motion for summary judgment is granted. The defendant's cross-motion for summary judgment is denied.

The plaintiff will enter judgment accordingly.

Footnotes

[1] Section 441a(a)(4) defines a multicandidate political committee ("MCPC") as "a political committee which has been registered for a period of not less than 6 months, which has received contributions from more than 50 persons, and . . . has made contributions to 5 or more candidates for Federal office." 2 U.S.C. § 441a(a)(4) (1982).

[2] Section 441a(a)(2)(A) restricts the amount a MCPC may contribute to a candidate as follows: "No multicandidate political committee shall make contributions—to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed $5,000." 2 U.S.C. § 441a(a)(2)(A) (1982).

[3] Section 434(b)(4)(H)(i) requires multi-candidate political committees to disclose all "contributions made to other political committees," including those to a candidate's political committee. 2 U.S.C. § 434(b)(4)(H)(i) (1982).

[4] Caputo exaggerated his military record and was forced to resign from the race after the press exposed the exaggerations.

[5] Finkelstein served on NCPAC's board of directors from May 1978 until May 1979.

[6] Section 437g(a)(1) of the Act provides, in pertinent part,

Any person who believes a violation of [FECA] . . . has occurred, may file a complaint with the Commission. Such complaint shall be in writing, signed and sworn to by the person filing such complaint . . . Within 5 days after receipt of a complaint, the Commission shall notify, in writing, any person alleged in the complaint to have committed such a violation. . . .

2 U.S.C. § 437g(a)(1) (1982).

[7] If the Commission, upon receiving a complaint . . . determines, by an affirmative vote of 4 of its members, that it has reason to believe that a person has committed, or is about to commit, a violation of this Act . . ., the Commission shall, through its chairman or vice chairman, notify the person of the alleged violation. The Commission shall make an investigation of such alleged violation. . . .

2 U.S.C. § 437g(a)(2) (1982).

[8] Sections 437g(a)(3) and 437g(a)(4)(A)(i) provide, in pertinent part,

(3) The general counsel of the Commission shall notify the respondent of any recommendation to the Commission by the general counsel to proceed to a vote on probable cause. . . .

(4)(A)(i) [I]f the Commission determines, by an affirmative vote of 4 of its members, that there is probable cause to believe that any person has committed . . . a violation of [FECA] . . . . [T]he Commission shall attempt, for a period of at least 30 days, to correct or prevent such violation by informal methods of conference, conciliation, and persuasion, and to enter into a conciliation agreement with any person involved. Such attempt by the Commission to correct or prevent such violation may continue for a period of not more than 90 days. The Commission may not enter into a conciliation agreement under this clause except pursuant to an affirmative vote of 4 of its members. . . .

2 U.S.C. §§ 435g(a)(3); 437g(a)(4)(A)(i) (1982).

[9] The New York State Democratic Committee had also alleged that the Caputo Committee had accepted in excess of $5,000 in in-kind contributions from NCPAC and had failed to report those contributions in violation of Sections 441a(a) and 434 of the Act. 2 U.S.C. §§ 441a(a) & 434 (1982). The Caputo Committee entered into a conciliation agreement with the Federal Election Commission ("the Commission") on December 2, 1983.

[10] Section 437g(a)(6)(A) provides, in pertinent part,

If the Commission is unable to [informally] correct or prevent any violation of this Act . . . the Commission may, upon an affirmative vote of 4 of its members, institute a civil action for relief, including a permanent or temporary injunction, restraining order, or any other appropriate order (including an order for a civil penalty which does not exceed the greater of $5,000 or an amount equal to any contribution or expenditure involved in such violation) in the district court of the United States for the district in which the person against whom such action is brought is found, resides, or transacts business.

2 U.S.C § 437g(a)(6)(A) (1982).

[11] The term "contribution" includes, *inter alia*, "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office. . . ." 2 U.S.C. § 431(8)(A)(i) (1982). An "independent expenditure" is defined in section 431(17) (1982) as an "expenditure by a person expressly advocating the election or defeat of a clearly identified candidate which is made without cooperation or consultation with any candidate, or any authorized committee or agent of such candidate, and which is not made in concert with, or at the request or suggestion of, any candidiate, or any authorized committee or agent of such candidate." 2 U.S.C. § 431(17) (1982). Independent expenditures are exempted from the Act's contribution limits.

[12] Section 438(a)(8) of the Act charges the Commission with prescribing "rules, regulations, and forms to carry out the provisions of [FECA.]" 2 U.S.C. § 438(a)(8) (1982). The FEC's interpretations are entitled to deference. *FEC* v. *Democratic Senatorial Campaign Committee*, 454 U.S. 27, 32, 102 S.Ct. 38, 42, 70 L.Ed.2d 23 (1981).

[13] NCPAC spent $16,500 after Caputo withdrew from the race. Since it could lawfully contribute $5,000 to Caputo's campaign, its contribution exceeded the lawful limit by $52,255.

[14] Pursuant to section 437(a)(1), the FEC, upon the request of any person, "shall render a written advisory opinion relating to [a specific transaction or activity.]" 2 U.S.C. § 437(a)(1) (1982).

[15] NCPAC prefaced its inquiry with three general questions:

1. Whether, in light of the independent expenditures regulations, NCPAC is prohibited from engaging a particular consultant or vendor of goods or services, in connection with making independent expenditures advocating defeat of a clearly identified candidate, if that consultant or vendor has also been separately engaged (1) by an opponent of that candidate, or (2) by a potential opponent of that candidate?

2. does NCPAC have an affirmative duty to inquire of prospective consultants whether or not they have been so engaged?

3. Must NCPAC impose a contractual restiction on a consultant or vendor regarding for whom they may provide services or goods?

Exhibit A at 1. NCPAC's Memorandum of Points and Authorities [hereinafter "NCPAC Memorandum"]. The Commission's response to these general questions simply reiterates the presumption of coordination detailed in the Commission's regulations. *See supra* p. 4. Neither NCPAC nor the Commission place any reliance on the Commission's response to the general questions.

[16] Situation one and the response thereto is excerpted below.

Situation 1. NCPAC proposes to engage an advertising firm for the purpose of designing the layout and text of print advertisements advocating the defeat of a candidate for the Democratic nomination for President. The firm would do all the research and creative work involved in designing the advertisements. The advertising firm has previously been engaged by the authorized campaign committee of a candidate for the Republican nomination for President. Is the advertising firm an "agent" as defined in 11 CFR 109.1(b)(5)? Would the response to that question be different if the same advertising firm renders a distinctly different type of service to the authorized campaign committee of the candidate for Republican nomination for President, e.g. operates and manages a telephone bank for the purpose of soliciting contributions to the committee?

Answer 1. The request does not present sufficient information for the Commission to determine whether the advertising firm is an agent, as defined in 11 CFR 109.1(b)(5), of the Republican candidate. Moreover, the situation presented concerns an advertising firm engaged to do work for what in 1980 are two separate, distinct races; that is, provide services for NCPAC to make independent expenditures advocating the defeat of a candidate for the Democratic nomination for President when the firm has previously provided services to the campaign committee of a candidate for the Republican nomination for President. Since these are two distrinct races the Democratic candidate and the Republican candidate are not opponents at this point. Thus, the Commission concludes that it does not appear from these facts that the prior engagement by the Republican candidate's committee of the firm would preclude NCPAC from engaging the firm to make independent expenditures in opposition to the Democratic candidate for nomination. If, however, this Republican candidate for nomination becomes the nominee, NCPAC would presumably be precluded from engaging the advertising firm to make independent expenditures during the general election. The same response applies to the activity raised in your request as an example of a different type of service.

NCPAC Memorandum, Exhibit A at 4.

[17] Situation eight and the response thereto is excerpted below.

Situation 8. NCPAC, as part of its independent expenditure program in opposition to the election of a candidate for the Democratic nomination for the Senate in State A, conducted a poll. Among other things, the poll results showed certain data relevant to a particular candidate for the Republican nomination for election to the Senate in State A. May NCPAC contribute the poll to the Republican candidate in accordance with 11 CFR 106.4(b)? May NCPAC engage in any communication with the Republican candidate or with the Republican party committee in State A?

Answer 8. The Commission is of the opinion that NCPAC may contribute poll results to a candidate for the Republican nomination for election to the Senate in State A if done in accordance with Commission regulation 106.4(b). This would, of course, constitute a contribution inkind by NCPAC to the candidate's campaign committee. During the primary election period NCPAC may communicate with the Republican candidate or with the Republican party committee in State A. However, if the Republican candidate should become the nominee, that communication could preclude NCPAC from making independent expenditures regarding the candidates in the general election in State A. Moreover, depending upon the communications NCPAC has with the Republican party committee in State A and the party committee's relationship with the Republican candidate, NCPAC could be precluded from then making independent expenditures in the general election in State A.

NCPAC Memorandum, Exhibit A at 9.

[18] The following table illustrates the similarity of the anti-Moynihan and pro-Caputo media campaigns.

FEC Memorandum of Law, Appendix A.

[19] *Senator Moynihan Gets Challenger for 1982*, N.Y. Times, Sept. 16, 1981, § 2, at B5, col. 1. Whitney North Seymour, Jr., Muriel Siebert, and Florence Sullivan thereafter entered the Republican primary—but not until at least two months after Caputo withdrew from the race. *See Seymour Begins Race for Moynihan's Seat*, N.Y. Times, May 4, 1982, § 2, at B2, col. 6; Lynn, *Muriel Siebert Joins G.O.P. Race for U.S. Senate*, N.Y. Times, May 26, 1982, § 2, at B1, col. 3; *State Legislator From Brooklyn in Bid for Senate—Florence Sullivan Seeks a 3-Party Candidacy*. N.Y. Times, June 3, 1982, § 2, at B2, at col. 1. Fed.R.Evid. 401 empowers this Court to take judicial notice of these indisputable facts.

[20] Pursuant to rule 401 of the Fed.R.Evid., this Court takes judicial notice of the fact that Moynihan was unopposed for the Democratic nomination until at least January 1982. *Klenetsky to Seek Moynihan's Job*, N.Y. Times, January 28, 1982, § 2, at B13, col. 3. No opponent presented a viable challenge for the nomination.

[21] NCPAC contends that Congressman Jack Kemp was its preferred candidate. Kemp, in fact, never entered the race.

[22] In 1980, the Commission's General Counsel recommended that the Commission adopt an interpretation of the advisory opinion in issue, which interpretation NCPAC contends is similar to that proferred by the FEC in this case. The Commission, nevertheless, declined to pursue the matter. NCPAC asserts that it relied on the Commission's rejection of its General Counsel's interpretation of the advisory opinion. However, reliance on the Commission's rejection of a particular interpretation provides no support for NCPAC's position. Nowhere does the Act sanction such reliance.

Mr. MOYNIHAN. Madam President, I do not state that the 23 Federal judges who have petitioned us were specifically disturbed by the NCPAC campaign on behalf of Judge Bork, but if they were not, they should have been. So should my friend from Utah who first introduced their petition into the debate. May I say, the Senator from Utah, Mr. HATCH, is a person of such transparent integrity that I cannot doubt he would be disturbed.

Madam President, I yield the floor.

Mr. BIDEN. Madam President, I should announce to all of my colleagues that only three more Senators will be able to speak on this side. I yield 3 minutes to the Senator from Massachusetts; I yield 6 minutes to the Senator from West Virginia, the majority leader; and I retain 6 minutes for myself.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Madam President, as this debate draws to a close, it is worth reflecting on two things—the nomination that will be rejected today, and the nomination still to come.

In choosing Robert Bork, President Reagan selected a nominee who, over the course of a highly controversial career, has demonstrated a relentless hostility to the widely accepted and indispensable role of the Constitution and the Supreme Court in protecting a broad range of individual rights and liberties.

The fundamental flaw in this nomination is that Robert Bork's constitution contains no real right to privacy for individuals against Government intrusion, no real protection for women against sex discrimination, no real support for civil rights, and no real limit on Presidential power.

The hearings on this nomination were thorough—and balanced. The national debate on the nomination was extensive—and fair. The American people have been involved—and they should have been—because it is their Constitution and their constitutional rights which are at stake, because that is what advice and consent means in the Constitution, and because that is what democracy means in America.

In rejecting Judge Bork, the Senate and the American people are making clear that the Constitution is the same living historic document of American liberty that it has been since the days of John Marshall, the greatest Justice of all.

Some have suggested that the White House attitude toward the Senate on the next nominee will be to send us the hair of the dog that bit them. I hope that President Reagan will resist that intemperate impulse. Like does not cure like. If we receive a nominee who thinks like Judge Bork, who acts like Judge Bork, who opposes civil rights and civil liberties like Judge Bork, he will be rejected like Judge Bork.

It is as simple as that. If the administration does not learn from the Bork mistake, they will repeat the Bork mistake.

President Richard Nixon made a similar error in 1970, when he submitted the nomination of G. Harrold Carswell for the Supreme Court after Clement Haynsworth was rejected by the Senate. As we all remember, Mr. Carswell was rejected too—and rightly so.

This battle has been intense, and neither side is eager to repeat it. But President Reagan should be under no illusion. The Senate of the United States will always be vigilant, and will never be too exhausted, to defend the Constitution or oppose a Supreme Court nominee when the basic rights and liberties that define democracy in America are at stake.

This has been the role of the Senate throughout our history, from the rejection of George Washington's nomination of John Rutledge in 1795, to the rejection of Robert Bork today. And that history and precedent will be high in our minds now, as we prepare to consider the next nomination that President Reagan will submit.

I urge the Senate to reject the nomination of Robert Bork.

The PRESIDING OFFICER. Who yields time?

Mr. THURMOND. Madam President, I yield 5 minutes to the senior Senator from Utah.

The PRESIDING OFFICER. The Senator from Utah has been yielded 5 minutes.

Mr. HATCH. Madam President, as far as I am concerened, this has been a deborkle. From the opening gun of this debate we have heard charges that Judge Bork is an extremist. As I repeatedly stated, I felt that charge was wholly unfounded. I spent much of my time rebutting that point and in my view Judge Bork is a nominee in the finest tradition; in theory. In reality, however, the real issue here is not whether Judge Bork is an extremist. If that were the issue, we would not have this debate. The reason we are having this debate is precisely because Judge Bork is not an extremist. If he were an extremist, he would never gain the four votes necessary to have his views prevail amongst the extraordinary individuals who comprise the Court. If he were an extremist, his views would rarely if ever have an effect on the direction of legal policy.

The reason we are having this debate is that Judge Bork is not an extremist and, I might add, he will make a difference on the Court.

As my colleagues and numerous news accounts of this issue have conceded, Judge Bork replaces Lewis Powell, whom many have regarded as the "swing vote."

This brings us to the real issue of this debate. Judge Bork's nomination represents the first time in 30 years that a majority of the Supreme Court will not believe in the jurisprudence of judicial activism. The real issue is judicial activism versus judicial restraint. The real reason Judge Bork is under attack is that he is so much like Chief Justice Rehnquist; Justice O'Connor, the first woman Justice; Justice Scalia, whom we unanimously approved last year; and Justice White, a Kennedy nominee.

Judge Bork is so much like these four in his philosophy of judicial restraint that he will help comprise a new majority and that is why we are having this debate. That is why Judge Bork's opponents have stopped at nothing to block this nomination. Because his opponents have stopped at nothing, the solemn and dignified process of advise and consent has been tarnished by innuendo and intrigue.

In my last few moments I would like to dispose of some of the remaining myths that have been employed against Judge Bork, and I will call this the deborkle, because I believe it has been that bad.

Myth one, the privacy notions. I spoke extensively on this yesterday and, frankly, I think there is no question that there are other Justices who never found this general right to privacy, including O'Connor, Rehnquist, White, Black, and Scalia; and I submit for the RECORD my remarks on that issue:

The greatest myth of this debate is that Judge Bork would be the only Judge in history to reject the privacy doctrine. In his own style the Senate Judiciary Committee chairman said that every other Justice has crossed the Rubicon, but Judge Bork has not even put a boat in the water. Frankly the chairman needs to count the boats in the marina again. Judge Bork's boat is not the only one to remain safe on the banks of the Constitution while others have launched out and been swept downstream into the rapids of judicial activism. Judge Bork is accompanied by a whole fleet:

O'Connor—the first woman Justice—has never endorsed a single application of privacy in any context. To the contrary, she said in a recent case that "the Court's abortion decisions have already worked a major distortion in the Constitution."

Rehnquist—the Chief Justice has voted 8 times against any form of so-called privacy right.

White—President Kennedy's nominee, too, has voted 8 times against privacy. He said in the Bowers case against homosexual privacy rights that "Court is most vulnerable and comes closest to illegitimacy when it deals with judge-made constitutional law having little or no cognizable roots in the language or design of the Constitution."

Black—This great Justice voted against Griswold and said "Nor does anything in the history of the amendment offer any support for such a shocking doctrine. The whole history of the adoption of the Constitution and Bill of Rights points the other way."

Scalia—our newest justice, who voted with Judge Bork 98 percent of the time on the D.C. Circuit, joined Bork in Dronenburg case against homosexual privacy rights.

This general privacy doctrine was only manufactured by judges in 1965. Yet because it was made by judges and can be undone by judges we are having this fight over Judge Bork.

Myth two is civil rights, and I submit for the RECORD my remarks on that point:

Bork has never as SG or as judge advocated a single position less favorable to minorities than the Supreme Court.

Poll Taxes—Neither Harper case nor Judge Bork approved of discriminatory poll taxes yet we hear in Judiciary Committee report that this case had something to do with "keeping minorities from voting." This is an outrageous distortion.

Literacy tests—Judge Bork never addressed literacy tests at all but only criticized the reasoning of the case that allowed Congress to change the Constitution by majority vote. In fact, he opposed the Human Life bill on this same basis.

Shelley v. *Kramer*—Judge Bork actually won the Supreme Court case providing enforcement against private racially discriminatory contracts. *Runyon* v. *McCrary*.

1-man, 1-vote—Judge Bork supports the *Baker* v. *Carr* case giving courts a major role in apportionment. Moreover, Judge Bork supports Justice Stewart's formula that strikes down state apportionments that frustrate the majority will.

Judge Bork has never, as Solicitor General or as judge advocate taken a single position less favorable to minorities than the Court. He is not for poll taxes, literacy tests, or private discriminatory contracts. He supports one man, one vote, but he does have intelligent things to say about all of those.

Myth three, women's rights. As Solicitor General and judge, he never advocated a single position less favorable to women than the Supreme Court, and submit for the RECORD my remarks on that issue:

As Solicitor General and Judge never advocated a single position less favorable to women than the Supreme Court.

Equal Protection—Judge Bork has clearly said that Equal Protection on the separate issue of what standard of review applies Judge Bork used the "reasonableness" standard of Justice Stevens.

Judge Bork struck down gender discrimination at State Department. (Palmer, Osoky)

Judge Bork won meaning for equal pay for equal work as Solicitor General. (Corning Glass) Moreover he enforced that law as Judge. (Laffey)

Judge Bork defended LaFontant, a black woman, at the justice Department.

Myth four, natural law. I will just submit for the RECORD my remarks on that issue:

Fawn Hall said there were rights beyond the Constitution and was derided. The Judiciary Committee report says one Senator claimed "My rights are not derived from the Constitution . . . they represent the essence of human dignity. and some Professors around the nation swooned in delight.

The real issue is not inherent rights. We settled that in 1776 not 1987. The real issue is whether the people themselves identify and define those rights in the Constitution and statutes or whether unelected judges identify and enforce their notions of rights regardless of what the Constitution says.

And myth five, common occurrence. We have heard that many Justices have been rejected and this is common, it was said. The Senate has confirmed 53 Justices over nearly 100 years without blatant and unabashed political campaigning like this one has had. Never before have we seen TV distortions, full-page ads with 57, 84, and 99 errors and distortions and outright lies; fundraising campaigns, telethon campaigns, distorted polls, extensive lobbying by outside groups, postcard campaigns, political threats, and counter threats.

I have had to consider a new amendment based on this proceeding. We may have to consider amending the Campaign Financing Act to include Supreme Court Justices. We may need a Fair Campaign Practices Act for Supreme Court Justices because this one has not been done right and if these campaigns are going to be political at least we need to guarantee that the politics are fair.

Finally, we stand on the brink of a great constitutional crisis. If we continue down this course, the independence and integrity of the Federal judiciary stands in jeopardy. No American wants his life, liberty, or property to depend on a judge who is primarily concerned about tomorrow's headlines or tomorrow's confirmation proceeding. No judge can be fully expected to be fully independent and faithful to the law if his own career hangs in the balance.

Madam President, I would like to restate what I have said at the conclusion of the hearings. Chairman BIDEN can be proud of the procedural fairness with which he conducted the Senate Judiciary Committee hearings on Judge Bork's nomination. At the same time, I must state that those same hearings were decidedly lacking in substantive fairness. This should not reflect negatively at all upon the Senator from Delaware because he certainly cannot control the charges, allegations, and partial truths presented over and again by witnesses. Nonetheless many of the witnesses presented a particularly slanted view of the law and demonstrated a narrow understanding of Judge Bork's abilities and reasoning processes.

Senator BIDEN took the time to review my concerns about the substance of the Senate Judiciary Committee report. I thank him for that. I feel that I owe him a similar courtesy. Inasmuch as I just received his views in the RECORD a few minutes ago, I shall be limited in the breadth of my response, but nonetheless I stand by my original assertion that the committe report is sophomoric and slanted.

Madam President, permit me to elaborate. In what Senator BIDEN refers to as "Inconsistencies 3-10," he once again asserts that "Judge Bork's view on the liberty clauses—and his notion of the rights that I believe all Americans have—does stand alone among Justices who have sat on the Supreme Court."

The Senator from Delaware stated this same point in earlier debate on the Senate floor. In his eloquence, my colleague from Delaware said that every other Justice has crossed the Rubicon on the privacy right, for example, "but Judge Bork has not even put a boat in the water."

Madam President, I urge my colleague to check the river banks again; there are many other boats still on Judge Bork's side of the stream. Moreover those who have launched from the safe shores of the Constitution have been swept downstream into the rapids of judicial activism and unprincipled jurisprudence.

Let's count the boats still with Judge Bork on the bank defined by the words and structure of the Constitution as amended. The first boat belongs to the first and only woman Justice—Justice O'Connor.

In her dissenting opinion in Akron, a 1983 case invalidating a State law requiring a 24-hour waiting period on abortions, Justice O'Connor said:

> Irrespective of what we may believe is wise or prudent policy in this difficult area, the Constitution does not constitute us as "Platonic Guardians" nor does it vest in this Court the authority to strike down laws because they do not meet our standards of desirable social policy, "wisdom," or "common sense."

Just last year, Justice O'Connor dissented when the Court refused to allow parents to counsel with their minor children prior to an abortion. She said then: "[T]he Court's abortion decisions have already worked a major distortion in the Constitution." Justice O'Connor also joined Justice White's opinion in the Harwick case last year in which the Court refused to extend any general privacy right to homosexual conduct. The only woman Justice has never endorsed any application of a right to privacy in any context.

Let's count still a second boat that stays on the Constitution's side of the Rubicon: Chief Justice Rehnquist's bank. The Chief Justice dissented in Roe versus Wade, the 1973 abortion case. He reasoned that the majority's privacy opinion "partakes more of judicial legislation than it does of a determination of the intent of the drafters of the 14th amendment."

The Chief Justice also dissented in Carey versus Population Services saying:

> If those responsible for the due process clause could have lived to know that their efforts had enshrined in the Constitution the right of commercial vendors of contraceptives to peddle them to unmarried minors through such means as window displays and vending machines located in men's rooms of truck stops, it is not difficult to imagine their reaction.

Moreover the Chief Justice has dissented in no less than six other cases based on the reasoning of the so-called privacy doctrine. One of these was the homosexual privacy case, where he said "the Court is most vulnerable and comes closest to illegitimacy when it deals with judge-made constitutional law having little or no cognizable roots in the language or design of the Constitution." The Chief Justice, it is safe to say, has not left the safe shores of the Constitution.

The next boat lying beside Judge Bork's belongs to Justice White, President Kennedy's appointee. Justice White has opposed Roe versus Wade as "an improvident and extravagant exercise of the power of judicial review." He opposed seven other privacy-related cases. He wrote the opinion against homosexual privacy protections. He said in that case: "It would be difficult, except by fiat, to limit the claimed right of homosexual conduct while leaving exposed to prosecution adultery, incest, and other sexual crimes even though they are committed in the home." He was joined in that opinion by Chief Justice Burger and Justices Rhenquist and O'Connor. Justice White is not adrift in the rapids of judicial activism.

The next boat safely ashore on the banks of the Constitution is that of Justice Black. He dissented in the very first case to ever mention the alleged privacy doctrine, Griswold versus Connecticut Justice Hugo Black stated:

> My Brother Goldberg has adopted the recent discovery that the ninth amendment as well as the Due Process Clause can be used by this Court as authority to strike down all state legislation which this Court thinks violates "fundamental principles of liberty and justice" or is "contrary to the collective conscience of our people." He also states, without proof satisfactory to me, that in making decisions on this basis judges will not "consider their personal and private notions." One may ask how they can avoid considering them. The Court certainly has no machinery with which to take a Gallup Poll. And the scientific miracles of this age have not yet produced a gadget which the Court can use to determine what traditions are rooted in the "[collective] conscience of our people." Moreover, one would certainly have to look far beyond the language of the Ninth Amendment to find that the framers vested any such awesome veto powers over lawmaking, either by the States or by Congress. Nor does anything in the history of the Amendment offer any support for such a shocking doctrine. The whole history of the adoption of the Constitution and bill of rights points the other way.

Justice Black sounds like Judge Bork. Or Judge Bork sounds like Justice Black. In any event, they are neither alone in their views.

Another Justice whose boat remains beside Judge Bork's is Justice Scalia. We must remember that Justice, then judge, Scalia joined Judge Bork's opinion in Dronenburg that denied homosexuals any constitutional privacy right. Justice Scalia's views on privacy must not be a secret because every advertisement suggests he will be one of the four to vote with Judge Bork in future abortion cases.

Frankly Judge Bork's boat seems to be accompanied by a veritable fleet of ships unwilling to venture out into the constitutional storm that would result if the Court abandoned completely the words and structure of the document.

We must put this entire issue of privacy into context. Judge Bork and all the others we have discussed have consistently enforced the privacy rights against unreasonable searches or the privacy right to worship or the privacy right to speak or the privacy right against self-incrimination to name a few specific constitutional privacy rights. But this free-floating privacy notion that some say includes protections for homosexual conduct was not manufactured until 1965. Where was the right until then if it was not found in the Constitution?

In order to make the law fit his conclusion that all Justices are different from Judge Bork, Senator BIDEN twisted the record on some Justices. For example, it has been said that Justice Black accepted the broad substantive due process rights notion in the Skinner sterilization case. This is not a correct reading. Skinner was decided exclusively on equal protection grounds and said absolutely nothing about substantive due process or the right to privacy. Skinner held that a State law requiring sterilization of recidivist robbers, but not embezzlers, constituted "a clear, pointed, unmistakable discrimination," and therefore offended the equal protection guarantee of the 14th amendment.

Justice Black joined this case on equal protection, not privacy or due process, grounds. In fact, Black declined to join Stone's separate opinion which was based on due process. Senator BIDEN takes issue with the equal protection reading of Skinner under what he calls "Inconsistency 15," but it is impossible to take issue with Black's refusal to join the Stone substantive due process rationale for that case.

To return to "Inconsistencies 3-10," Senator BIDEN clearly rests his notion that most of the current Supreme Court agree with his own private notion of substantive due process on the recent unanimous decision in Turner versus Safley. This is misleading. Turner was not about a super protected, substantive due process right of privacy or marriage. The case arose in a prison context, raising fairly narrow questions. In Turner, State prisoners challenged the constitutionality of a prison regulation that permitted prisoners to marry only if the superintendent of the prison determined that there were compelling reasons for doing so. Obviously, the State generally permitted its citizens to marry without requiring that they show a compelling reason for doing so. One question raised, therefore, was whether this legislative classification survived equal protection scrutiny: whether the State had valid reason for adopting a different rule for prisoners. The Court reviewed the applicable prison cases and summarized the proper analysis as follows: "when a prison regulation impinges on inmates' constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests."

Indeed the approach of this case is similar to Judge Bork's reasonable basis test for equal protection. The clear basis for a reasonable distinction between prisons and law-abiding citizens would be legitimate penological interests. In the case of marriage, Judge Bork would not find any reason why the prison regulation against marriage is incompatible with those penological interests.

Even if this is a due process case, the reasoning is not that of privacy. After all, prisoners of necessity are deprived of liberty after the due process of a trial. The prisoners' claims that they have lost the liberty to marry are indeed analyzed according to the established standard whether this additional liberty loss is justified by the States' interest in the orderly confinement of prisoners. A prison case, therefore, hardly suggests an adequate basis of concluding a general privacy or liberty right extends to other circumstances. Under this reasoning of equal protection reasoning, Judge Bork, too, would have joined Turner.

In sum, we need to put this entire question of constitutional rights in focus. The general privacy right questioned by Judge Bork was not manufactured by judges until 1965. This whole fanfare over Judge Bork reinforces my main point. The privacy doctrine was made by judges and can be unmade by judges. If it were actually in the Constitution, this would not be true. Judge Bork is opposed not because he is the sole voice against the general privacy notion but because he may well be the fifth and deciding vote against this exercise of raw judicial activism.

In any event, this response to my argument makes my point. The facts of the law—namely, that Justice Black, nor Justice O'Connor, and other Justices I have mentioned have not embraced substantive due process privacy rights—have been slanted or creatively reinterpreted to fit the desired conclusion, namely, that Judge Bork is somehow isolated on this vital question.

By the way, it is interesting to note what issues the Senator from Delaware did to discuss within "Inconsistencies 3-10." I will not recite them all, but for instance he did not find any fault in No. 5. The reason is clear.

This is a classic example of sentimental, but decidedly unlegal, reasoning. The report quotes, with great fanfare, the comment of one Senator that "when you expand the liberty of any of us, you expand the liberty of all of us." This is pure nonsense. If this were true, we would have no lawsuits.

In every lawsuit, the litigants on each side of the case contend that they possess superior legal rights and liberties. Consider the following examples: one litigant asserts the right and liberty to have an abortion on demand; the competing litigant asserts the right and liberty of a parent to counsel their minor parent prior to an abortion. This is a case currently before the Supreme Court. It is not hypothetical. Regardless of how you may feel about this issue, you must concede that one set of rights and liberties will prevail and the other will not. There is no way to grant both sets of rights and liberties. By definition, to expand one litigant's rights is to contract the other.

Let's look at another example currently before the Court. One litigant asserts the rights or liberty to pray silently in a public school classroom; the competing litigant asserts the right to a classroom free of all religious activity or symbolism. Again, one will prevail; one will not. It is axiomatic, however, that expanding one litigant's set of rights will have to contract the rights asserted by the other litigant.

This does not mean, as the Judiciary Committee report asserts, that the Constitution is a zero-sum system. The Constitution can be changed to incorporate any rights the people require. It does mean, however, that the Constitution contains legal limits and laws. Those limits will acknowledge some rights and discredit others. This is obvious.

Thus any case before the Supreme Court features rights and liberties asserted by both litigants. The Court never has the luxury of saying "you are both right and we will grant both of your rights at the same time." Unfortunately the Court exists to make tough choices between rights.

The notion that expanding the liberty of one expands the liberty of all is a noble-sounding sentiment with no relation to the reality of the legal world.

It is also interesting to note that the Senator does not choose to quibble with No. 4. This points out that substantive due process is the unprincipled legal tool used to reach the dangerous conclusions in Dred Scott, that blacks are only property lacking rights; in Lochner, that economic rights prevent health and safety regulations; and in Roe, that unborn children have no protections.

Madam President, the Senator from Delaware overlooks several other inconsistencies. I do not know why he found no arguments against those assertions, but he did not.

In dealing with "Inconsistencies 11, 14, and 12," Senator BIDEN states that my objections to his understanding of Judge Bork's views of precedent are without license. Then in the next section, he proceeds to question whether Judge Bork ultimately agreed with the imminence rationale of Brandenburg or disagreed with it, contending that you can't find an alternative rationale for that case. By raising the second point, Senator BIDEN proves my point in the first.

Judge Bork did not embrace at any point the reasoning of Brandenburg. He continued to question, to my understanding, both whether subversive speakers—the KKK advocating murder of blacks in this case—ought to be allowed to have their way and whether subversive speakers ought to be permitted to do their damage right up to the point that danger is imminent. At that point, Judge Bork noted by referring to the Nazis, it may be too late. On both points, Judge Bork had concerns. I mentioned only one in my first cursory writing. In any event that is not the point. The point is that Judge Bork did have an alternative rationale for accepting Brandenburg. That alternative rationale is none other than the doctrine of stare decisis. Senator BIDEN demonstrates that he did not understand the breadth and significance of Judge Bork's views on precedent by insisting that he had to choose between agreeing or disagreeing with the rationale of that case. In fact, he stuck by his opinion that the few words of the first amendment do not justify Holmes' elaborate subversive speech reasoning, yet he still found a respected legal means to accept the clear and present danger test. That legal means is his theory of precedent.

Senator BIDEN's report might have mentioned it, but it must have discounted it—as I earlier mentioned—if the Senator did not understand one of the fundamental applications of that doctrine in Judge Bork's jurisprudence.

What Senator BIDEN refers to as "Inconsistencies 13 and 15" have been amply clarified above. I will not dwell further on those points.

The PRESIDING OFFICER. Who yields time?

Mr. HATCH. I would be happy to yield 1 minute to Senator SYMMS.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. SYMMS. I thank the distinguished Senator from Utah, and I thank the distinguished Senator from Utah for the efforts that he has put into this confirmation process throughout the year.

Madam President, I made my position clear yesterday and spoke at great length on the floor in favor of Judge Bork. I ask unanimous consent today, just to restate my strong support for Judge Bork and the reasons within the RECORD yesterday, but I have discovered this morning an article which was in the Wall Street Journal, October 21, 1987, by Milton Friedman and Gerhard Casper.

The PRESIDING OFFICER. The Senator from Idaho has used his time.

Mr. SYMMS. Madam President, I ask unanimous consent that it be printed in the RECORD, and also "The Bork Trophy" from the Wall Street Journal yesterday to show how the liberal propagandists have done in this fine judge.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

People Versus Bork: Tale of Two Polls

(By Milton Friedman and Gerhard Casper)

A recent Harris Poll purports to show that a substantial majority of the American people oppose the confirmation of Judge Robert Bork to the Supreme Court. The poll actually shows how a pollster can determine the answer by the way he asks the question—as the following comparison of the actual Harris Poll and a hypothetical alternative demonstrates.

Preface: As you know, the Senate is holding hearings on whether or not to confirm President Reagan's nomination of Judge Robert Bork to be a justice of the U.S. Supreme Court. Have you seen or followed any of the hearings on TV or in the newspapers:

(1) Seen or followed (2) not seen or followed (n) (not sure).

Now let me read to you some statements about the Bork nomination. For each tell me if you agree or disagree.

HARRIS POLL

If President Reagan says that Judge Bork is totally qualified to be on the Supreme Court, then that's enough for me to favor the Senate confirming his nomination.

Bork has said: "When a state passes a law prohibiting a married couple from using birth control devices in the privacy of their own homes, there is nothing in the Constitution that says the Supreme Court should protect such married people's right to privacy." That kind of statement worries me.[1]

Judge Bork seems to be well informed about the law, and such qualifications are worth more than where he stands on giving minorities equal treatment, protecting the privacy of individuals, or other issues.

Judge Bork seems to be too much of an extreme conservative, and if confirmed, he would do the country harm by allowing the Supreme Court to turn back the clock on rights for minorities, women abortion, and other areas of equal justice for all people.

ALTERNATIVE POLL

If Senator Ted Kennedy says that Judge Bork is totally unqualified to be on the Supreme Court, then that's enough for me to oppose the Senate confirming his nomination.

Judge Bork has said: "A judge has to make sure that the accused person gets an entirely fair trial. But beyond that, I do not think the scale should be weighted on the side, unfairly weighted on the side of a criminal." That kind of statement pleases me.[2]

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[1] [In fact, Judge Bork has never made the statement. In response to a Journal inquiry, a Harris spokesperson on Monday acknowledged, "That was not a verbatim quote. We just used it to facilitate the question."—ed.]

[2] [This is a direct quote from Judge Bork's testimony to the Senate Judiciary Committee.—ed.]

Even the opponents of Judge Bork concede that he is a distinguished legal scholar, well informed about the law, having been a private lawyer, law professor, solicitor general and federal judge. These qualifications are more important than whether I agree with every opinion he has expressed.

Judge Bork has consistently opposed court decisions that substituted the political opinions of the Supreme Court for the judgment of both Congress and the Constitution. His confirmation would help to restore the kind of government—of laws, not of men—envisioned by the Founding Fathers.

All in all, if you had to say, do you think the U.S. Senate should confirm or turn down the nomination of Judge Bork to be on the U.S. Supreme Court?

Results:

(1) Confirm: 29 percent. (1) Confirm: ?

(2) Turn down: 57 percent. (2) Turn down: ?

(n) Not sure: 14 percent. (n) Not sure: ?

[From the Wall Street Journal, Oct. 22, 1987]

The Bork Trophy

As the Senate takes up Robert Bork's nomination to the Supreme Court, we would like to believe that there might be some Senators among his declared opponents with the statesmanship to admit they were initially misinformed. Sadly, the more evidence that accumulates, the more heatedly they seem to deny it.

If these deliberations are serious, the evidence on this page and elsewhere the past 2 weeks should cause some thoughtful senators to reconsider. The true record of Judge Bork could not be more different from the claims of Archie Bunker ads and Archie Bunker senators.

Contrary to the smears, Robert Bork has not been a racist, sexist, sterilizer or bedroom spy in his careers as Yale law professor, U.S. solicitor general or appeals judge. His civil-rights record? As judge, he's sided with the minority plaintiff in seven of eight cases. As solicitor general, he argued more civil-rights cases than any Supreme Court nominee since Thurgood Marshall, urging an extension of a civil right in 17 of 19 cases.

Women? Judge Bork ordered Northwest Airlines to pay stewardesses as much as male pursers for comparable jobs. He wants a new reasonable standard for the 14th Amendment that would effectively adopt the Equal Rights Amendment. Privacy? He ridicules the flighty excesses of the Warren Court, but refers to settled First, Fourth and Fifth Amendment rights to privacy.

The bloody campaign of distortion now lies dissected. Ralph Neas was already gunning for whoever was nominated to replace Lewis Powell when Teddy Kennedy rallied the troops with his outrageous speech. The lobbyists actually did a poll to find the best issues for distorting Judge Bork's views. Even Harvard's Laurence Tribe got into the game by mischaracterizing Judge Bork's Ninth Amendment views, not to mention Justice Black's.

A Howard Metzenbaum staffer successfully and possibly criminally intimidated a black law professor into canceling his testimony. Jewel LaFontant had to risk a threatened boycott of Revlon to testify for Judge Bork. A Harris Poll that includes a falsified quote from Judge Bork was trumpeted to "prove" that most Americans opposed Judge Bork.

Now, to justify supporting this assault, the supposedly statesmanlike Howell Heflin is attacking Judge Bork from the right. He told an Alabama radio station that he "was troubled by Judge Bork's extremism—an admission that he had been a socialist, a libertarian, that he nearly became a Communist, and actually recruited people to attend Communist Party meetings, and had a strange life style. I was further disturbed by his refusal to discuss his belief in God—or the lack thereof."

The liberal Advocacy Institute has scheduled a seminar for Monday on how the left beat Judge Bork. The theme is that "facts count, but symbols may count even more." With the success of this campaign, in short, it will be open season on the independence of the judiciary.

The symbols they created for Judge Bork were brazen lies about a distinguished jurist. His opponents will take the nation's finest legal scholar for mounting as a trophy. But in our experience, this is the sort of victory for which the victors eventually pay.

Mr. THURMOND. I yield 4 minutes to the able Senator from Wyoming, Senator Simpson.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. SIMPSON. Thank you, Madam President.

Well, we are ready to conclude our activities on this vote. I want to thank the majority leader for arranging the time to do this, and I am fully aware that it could have been delayed and stretched out. There was no intent on the part of the proponents of Robert Bork to do that, and I think we have proven that by reaching a time certain to vote.

What was wanted and what has been attained, regardless of the vote, is the opportunity to have this matter discussed in the U.S. Senate. For this is the arena, by constitutional fiat, that we fulfill our advise and consent role and we cannot do that in the Judiciary Committee, no matter how fairly that may have been conducted or in any other way that others may think it might have been conducted.

So the opportunity to present the matter before the Senate is what we were here for and one of the key issues in the nomination process is the role of the Supreme Court and the legislative body in our system of government. That is where we have defined the issue of separation of powers. But it is here where we are to do our advise and consent.

The important thing to me, Madam President, is that 86 persons in this Senate who were not on the Judiciary Committee were able to speak their piece. They were able to tell their side, give their interpetations of this situation and we have heard from them. We have heard, I think, some superb debate—I thought rather reasoned debate from the proponents.

Senator Danforth gave a powerful series of remarks here this morning, and who would know the man better than Senator Danforth, who was a student of his at Yale University.

Our purpose, my purpose, was to get the job done and get the full story told. The American public in years to come will have a very fine idea of a very fine man that it did not have through the distorted advertising campaign that slapped this remarkable gentleman around throughout the United States and created fear in our countrymen.

So, that is what I wanted to present, that this is a superb man, and my only regret, if it should not be, is I think we will look back with embarrassment in years to come that we rejected such a remarkable man who could have brought such yeast and vitality to the Court and would have enriched the deliberative process of the body, the interchange and intercourse of ideas and legal theories, and in an exciting and spirited way. We will have lost that.

And we will probably lose it in the future, even if a Democratic President should provide us with a Democratic nominee. I think we will have denied ourselves people of provocative views, provocative ideas, of writers of law reviews, provocative professors. But so be it. But we must think of the best interests of our country in the future and certainly of the best interests of the Supreme Court.

I thank the distinguished ranking member for yielding.

Mr. THURMOND. Madam President, I now yield 10 minutes to the able Republican leader, Senator Dole.

The PRESIDING OFFICER. The Republican leader is recognized.

Mr. DOLE. Madam President, we are going to vote in about 30 minutes. I am certain that everyone has pretty much made up their minds so that anything anybody says, or has said in the last couple of days, will really not make that much difference.

But I think it is worth reflecting on what has happened over the last few days.

I can recall Judge Bork coming to my office and a number of us, maybe 16 of us, saying that he ought to hang in there. He had already said the day before that he was under no illusion about his being confirmed by the Senate. I think he was struggling at that time to decide whether he wanted to extend this or just to drop it, to let the American people move on to something else.

But I think he was convinced, that there are principles involved and principles at stake that go far beyond the selection of one Supreme Court Justice.

There were some who have said this debate would be a waste of time and made efforts on this floor to do it in 2 hours, 3 hours, or 4 hours. They said that minds were made up, that we ought to move on to other business.

I did not agree at the time, and I think the debate has been useful. It is never a waste of the Senate's time to pause and reflect when the reputation of one of this Nation's finest public servants is on the line. The next time it might be somebody on the other side of the aisle. I would hope that we would not find ourselves in the position that, "We ought to rush the judgment because that nominee does not have a chance."

It is certainly not a waste of time if not only my colleagues but the American people now understand that the independence of the judiciary has been placed in jeopardy by a confirmation process that has, in too many respects, resembled a no-holds-barred political campaign, complete with high-powered lobbying activities and questionable radio and TV ads.

Judge Bork was not running for the Supreme Court. He was nominated. He should have gone through a confirmation process, and he did. Many of my colleagues on both sides in the Judiciary Committee spent a lot of time and a lot of effort to make certain that the process was upheld.

But at the same time, there was an extensive campaign being waged on television, radio, in the newspaper, just like a political campaign. There may have been bumper strips. I did not see any. There may have been buttons. There were a lot of advertisements.

Some were sponsored by a group called The American Way. I know some of the good people in The American Way. What The American Way—it means to me—is fairness; it means objectivity; not jumping to some conclusion; nor some slick radio ad showing a family standing there with Gregory Peck's voice in the background saying, "This man will affect your lives in the future," and on and on and on.

I think what we really have to determine, and I hope the American people now understand, is that the real debate has been over the proper philosophy of judging, debate about whether our course in the future will be charted by unaccountable judges or elected representatives of the people.

Finally, I hope that everyone now understands the real Judge Bork, the exceptional jurist and the very good and decent man whose outstanding record demonstrates he is uniquely qualified for services on our Nation's highest Court.

Some have risen during this debate to praise Judge Bork and others have risen to bury him. I rise as a former leader of the Senate to thank him.

There was a danger that the constitutional responsibility of this body, the responsibility to advise and consent, would be short circuited. But by his courageous refusal to throw in the towel and quietly walk away, Judge Bork guaranteed that the Senate would live up to its responsibilities.

Through this week's debate, many of my colleagues for the first time had the opportunity to study the committee report and the hearing record. When before, they and the public had only the intense public campaign to work from, a public campaign that the Washington Post condemned for its "intellectual vulgarization and personal savagery * * * of the attack" and for its profound distortion of the record and the nature of the man."

I think it is clear that the entire confirmation process has been colored, and in some ways compromised, by the misinformation and distortion about Judge Bork's views on key issues and about his overall record.

The L.A. Times and Washington Post accounts tell a story of how the opposition strategy was developed and implemented. I might say the Boston Globe had a good account of that, too. It was developed from the daily meetings of interest-group leaders and Senate staffers, the strategic delay before the hearings, the polling and identification of political themes that would "sell" in the South and elsewhere; the coordination of ad campaigns with the committee proceedings. We now hear that there may have been outright intimidation of witnesses at the hearings.

Madam President, in the past few days, some of my colleagues have tried to right this slanted version of Judge Bork's views. I will, very quickly, because of the shortage of time, focus on one or two of those.

First, let us look at Judge Bork's civil rights record. There has been a lot of rhetoric in this debate, but I have yet to hear a Bork opponent stand up on this floor and cite any evidence that Judge Bork wants to reverse a single civil rights gain. In fact, if you look at Judge Bork's record as Solicitor General and D.C. Circuit Judge, you see that not only did he do nothing to turn the civil rights clock back, but, to the contrary, he worked hard to push it forward, as many of us have done on the Senate floor.

During the time that Judge Bork was the Solicitor General, there were many cases in which he elected to participate as a "friend of the Court," even though the Government was not a party. Nineteen times Solicitor General Bork took this action to speak directly to a substantive issue under the Federal civil rights laws; 17 of those briefs urged the Supreme Court the relevant law and rule broadly in favor of minority and women plaintiffs. In a word, Solicitor General Bork did not retreat on civil rights.

To the contrary, he was in the forefront of the charge. In fact, in the 10 cases in which both Solicitor General Bork and the NAACP Legal Defense Fund filed briefs in the Supreme Court on substantive civil rights claims, the Legal Defense Fund agreed with Bork's position 9 of the 10 times.

A review of Judge Bork's appellate court record reveals a similar pattern. Judge Bork has never rendered or joined a decision less sympathetic to minority or women's rights than that adopted by either the Supreme Court or the Judge he would replace, Justice Powell.

We all know how easy it is in this game of politics, though he was not supposed to be in a game of politics, to hurl charges of racism or sexism and how hard it is to refute those charges, especially when the firepower of a mass media campaign is employed against you. Not only does Judge Bork's record refute the charge, but so does his personal history, as explained to the Judiciary Committee by Howard Crane, by Ms. Jewel LaFontant, and by respected friends and associates, of the Judge, like Lloyd Cutler.

I say that charge is not accurate.

We have heard a lot about the right of privacy. One of the most unfair criticisms leveled at Judge Bork suggests that he is an "extremist who believes—Americans—have no constitutional right to personal privacy." This charge is absurb on its face, since, as Judge Bork has noted, the Constitution explicitly protects certain rights of personal privacy, including, for example, the "right of people to be secure in their persons, houses, papers, and effects against unreasonable search and seizures."

What Judge Bork has found unsettling is the judicial creation of a vague, generalized right to privacy based on the "penumbras"—the vague, indefinite borderline areas—of these specific constitutional guarantees.

Now, like Justice Hugo Black, I value my privacy as much as the next person. But, also like Justice Black, I get concerned when courts start poking around in vague, borderline areas looking for new constitutional violations.

Whether or not one agrees with Judge Bork's positions on Griswold versus Connecticut or Roe versus Wade, it is simply irresponsible to label those positions as extreme or unsupported. In taking those positions, he is in good and numerous company with some of the best legal thinkers in our Nation. The brickbats that been hurled at him on this subject, therefore, are simply one more example of slogans passing for legal reasoning.

Mr. DOLE. Madam President, how much time have I remaining?

The PRESIDING OFFICER. The Senator has a minute and a half.

Mr. DOLE. I would just say in that minute and a half——

Mr. BYRD. Do you need more time?

Mr. DOLE. A couple of minutes.

Mr. BYRD. Madam President, I ask unanimous consent that the distinguished Republican leader have an additional 5 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

NOW THE VOTE

Mr. DOLE. That leaves us with the vote. Nobody is in doubt about the vote. Judge Bork is not in doubt about the vote. The President is not in doubt about the vote. Judge Bork's wife Mary Ellen, who stood by his side and listened to much of the debate, is not in doubt about the vote.

Nothing that has happened before matters. We have had time to study the record, to discuss and debate it, and to give it the sober reflection it deserves and our oath requires.

Mr. President, more than anything else, this nomination is about judicial restraint, and about an outstanding judge who adheres to that philosophy. The interest groups have spent a lot of money and twisted a lot of arms in order to keep that issue from coming into focus during this confirmation process. Had this debate not occurred, they would have succeeded. But the debate has confirmed what the minority report of the committee states so clearly: The fundamental issue involved here is who governs America.

Will our most difficult and important choices be made by judges appointed for life—accountable to no one and—as some of my colleagues would have it—unrestrained by the written law? Will we license these judges to discover rights, impose restrictions and narrow choices on their own subjective views of liberty and morality? That is one side.

On the other side, will we require that judges faithfully follow the written law and preserve for the elected representatives of free people the choices not foreclosed to them by the Constitution. The question we face is not whether Government will have a say, but rather who in Government will decide the reach of our liberties. For 200 years, the answer has generally been, if the Constitution is silent, the decision is for the people and their elected representatives.

My colleagues would not readily relinquish to the judicial branch the authority to enact statutes. Why then should we sign over to the courts the people's right to amend the Constitution? It is far more difficult to correct an error in constitutional interpretation than a misreading of a statute. In both cases, however, the basic issue is the same. Will ours be a government of laws or men?

The American people have felt the sting of judicial activism. They understand that the scales have been tilted toward the criminal because of it. They understand that they have less of a voice in how their schools are run, how their tax dollars are spent, and how their neighborhoods are protected because of it. They understand that judicial activism is a formula for denying them a say on issues like the death penalty and restrictions on pornography. Attention has been diverted from these and other fruits of judicial activism, but only temporarily.

Madam President, let me conclude by stating one final area of concern. It seems to me that, as a result of the hearings and the debate, we know a great deal about how Judge Bork may have voted on certain cases decided 10, 20, or even 80 years ago. What has not gotten much attention, in my opinion, is how Judge Bork is equipped to decide the issues that will confront the Supreme Court in the future—issues that none of us can anticipate, in areas that none of us can know.

To me, the question we ought to be asking ourselves is whether Judge Bork will face those unknown issues with fairness, intelligence, compassion, and creativity. And whether he will bring to those issues an understanding of the limitations of judicial solutions and a healthy respect for the roles of the other branches of Government.

An examination of Judge Bork's writings, record, and experience, makes the answer to that all important question quite clear. We should confirm this nominee.

We are not going to do it but we should. And again I would say thanks to Judge Bork for saving the process and I thank Senators for saving the process for the next judge. Maybe in 10, 20, 30 years it will then be a Democrat President and they will send up a liberal nominee.

That would be a little early—10, 20, 30 years.

So we have to keep in mind that history is going to move on. This one vote is important but we have saved the process. For that I think Judge Bork deserves a great deal of credit.

The PRESIDING OFFICER. Who yields time?

Mr. BIDEN. I yield 6 minutes to the majority leader.

The PRESIDING OFFICER. The distinguished majority leader.

Mr. BYRD. Madam President, we are coming to an end of a very long debate on the nomination of Robert Bork to the Supreme Court. It has not been the happiest of debates. There has been a great deal of controversy. Now, we are about to vote on the nomination. Robert Bork asked for such a vote. He deserves a vote. That is why we are elected, to go on record even though, the Senate will not consent to the nomination of Judge Robert Bork to the Supreme Court.

For the good of the country I believe it would be wise for the President and the Senate to set a new tone for the President's next nominee to the Supreme Court. Indeed, it is my very great hope that the spirit of cooperation that we are trying to build with the President on solving the budget crisis will carry over to the next choice to the Supreme Court.

I hope that we have all learned from this experience that controversial nominations breed controversy. There has been an excess of charge and countercharge. The actions of the outside interest groups, on both sides of the debate, have contributed to the controversy. But the White House knew before it proposed Judge Bork's name that his nomination would be controversial. The White House did not heed that warning. The White House began the politicization of the process at the start.

I know some Senators are disturbed by the outcome of this nomination. They may feel frustrated that they did not do enough on Judge Bork's behalf. They may have been caught off guard by the intensity of the opposition to Judge Bork. They may even feel that Judge Bork was not given a fair shake.

But if my colleagues allow those feelings to overflow into the next debate, it can only be unsettling. It will not be positive or healthy for the country, the Supreme Court, or the Senate. So, I urge my colleagues to think ahead.

We all need to begin to look down the road toward the next nominee. It is time to start the healing.

I urge the President to back away from a policy of defiance. And I urge we all back away from a policy of recrimination and retaliation.

I have tried to set the right tone on this nomination. Whether I have been successful or not, I do not know, but I have never asked any Senator on either side of the aisle to vote against Judge Bork. I have not asked any Senator how he would vote. I have not asked anybody about any vote count. I have said just the opposite in my caucuses, namely, that we ought not make this a litmus test of party loyalty. We are not electing a Democratic Court. We are not electing a Republican Court. But we are acting to fill a vacancy thereon, and we do share in the appointment. Let those who think otherwise read the Constitution. The President shall nominate and, by the advice and consent of the Senate, shall appoint Justices to the Supreme Court.

A policy of confrontation will only breed further controversy. Let us all lower our voices. I urge the President to actively engage in a new spirit of consultation with the Senate. I urge the President to put aside old animosites, to seek a new tone and a new sensitivity. Justice can only be enlarged if we work together.

The President has a right to nominate a conservative judge. No Senator denies the President the right to nominate a conservative. The Senate has not been averse to the appointment of judges who are conservative in their judicial philosophy.

Sandra Day O'Connor is a conservative judge. Chief Justice Rehnquist is a very conservative judge. Judge Scalia is a conservative judge. But none of these nominations unsettled the majority of the Senate as did Judge Bork's nomination.

I believe that whatever was going on outside the hearing room did not affect the outcome of the Judiciary Committee hearings. I believe Judge Bork was given a fair shake by the committee. The chairman of the committee, Senator BIDEN, gave every Senator, including this one, a full opportunity to probe Judge Bork's legal philosophy.

Judge Bork explained his views openly and extensively before a divided Judiciary Committee. The balance rested with four uncommitted Senators, including this Senator, who stated at the beginning of the hearings that he favored then, and I favor now, the appointment of a conservative judge to the Supreme Court.

Their commitment could just as easily have swung behind Judge Bork as against him. We were open to persuasion. We were not persuaded. Indeed, all four of the uncommitted Senators swung against him.

The majority of the full committee became unsettled by Judge Bork's overly narrow interpretation of the law. That feeling of unease reflected the unease of many Americans that there was no assurance that Judge Bork would protect their rights. This is the reason for the rejection of Judge Bork's nomination by the full Senate.

In addition, I have particular objections to Judge Bork, including his views on the right of privacy, congressional standing, and the role of the independent counsel. I am entering separate statements into the RECORD detailing my opposition.

Madam President, the Constitution, as Franklin Roosevelt once stated, is a "layman's document, not a lawyer's contract." The people of America may not know exactly what to make of all of the legalisms that they have heard during this debate. I am not sure that I understand all of the legalisms. I am pretty sure I have not. But the people do know that they have rights that are protected by the Constitution of the United States. It is a faith summed up by one great democratic assertion by the people out there in the field, in the mines, in factories, in the schoolrooms, and in the churches of America. "I have my constitutional rights." The American people do not want these rights to become a mere footnote in Judge Bork's elegant theory of the law to be expended at an "intellectual feast." Indeed when Judge Bork was asked why he wanted to serve on the Court his answer was, "It would be an intellectual feast."

The American people do not want the majesty of the Constitution reduced to a narrow legalism.

Judge Bork's judicial philosophy unsettles the faith in the Constitution that all Americans seem to share.

For all of Judge Bork's brilliance, he has not given this Senator and the majority of the Senators an assurance that he understands this basic sentiment about people's rights.

Madam President, we have heard much about pressure. We have all had pressure. And it has not been a one-way street. I had over 2,000 telephone calls in my little West Virginia office in the Hart Building in 1 day. I had over 2,400 telephone calls on another day. That might not be out of the ordinary for a large State like California, or New York. But for West Virginia with its less than 2 million people, that is a lot of calls. But by the way, the calls were not coming from West Virginia. Those calls were coming from all over the Nation. Obviously they were generated. They were organized by special interest groups around the Nation. I do not find any fault with that except that I had to rearrange my office staff and it made it difficult for West Virginia constituents to get their calls through. But that is all right. We can expect that. But let us not go hog wild over this idea there has been pressure only from one side in this debate. It has come from both sides.

Madam President, it is time to move ahead, to begin the process of clearing the air, and to look forward to filling the vacancy on the Court. Let the dead past bury its dead.

JUDGE BORK AND THE RIGHT OF PRIVACY

Mr. President, among the many concerns I have about Judge Bork's jurisprudential views none ranks higher than the unease with which I observe his constricted view of the rights all of us have. In stark briefness, Judge Bork thinks that those rights are very limited in number and subject to majority limitation. Even as to the rights which are spelled out in the Constitution and the Bill of Rights, his respect is tentative and hesitant. He once said that the Bill of Rights was a hastily drafted and ill-thought-out piece of work. With this kind of view of what is expressly set out in our basic charter, is it any wonder that he gives the back of his hand to the thought that unexpressed rights may be protected by the general provisions of the Constitution and that it is a judge's responsibility to apply history, tradition, precedent, and his perception of the community's values to discern and to protect those rights?

The framers of our Constitution did not believe with Thomas Hobbes and Blackstone and the other theorists of Government that when men enter society they yield their natural rights to the entity which they have created and that they retain only those rights which they had the forethought to write down expressly. No, the framers believed what the Declaration of Independence said:

> All men are created equal * * * endowed by their Creator with certain unalienable rights * * * among (which) are life, liberty, and the pursuit of happiness.

As many philosophers and scholars have pointed out, the propounders of the Declaration did not believe that all men were equal in ability or intelligence or opportunity; they were equal in the rights they possessed, the rights granted them by their God. "To secure these rights," the Declaration goes on, "governments are instituted among men." The natural rights which all of us possess in the natural state are not by joining together in order better to protect them made alienable at the mere whim of the majority unless we had in the charter by which we formed the Government taken infinite care to list each one, cross every "t," dot every "i," and reiterate at the end "we really mean it."

As every student of history knows, the framers at Philadelphia did not feel the necessity to include a Bill of Rights because they had not delegated to the National Government to be created the authority to infringe our rights. But the opposition rhetoric and the possibility that Government might through use of some delegated powers actually restrict those precious rights brought Madison and others to the recognition that it was prudent to add a Bill of Rights. And yet, as Madison worried, listing some rights, because it was not possible to list all, might raise the implication that only the listed ones were protected, that unlisted ones were indeed subject to the will of the majority.

No doubt exists as to the response to this concern. Madison explained it to the House of Representatives, others explained it elsewhere. No inference was to be left to be drawn. The ninth amendment was the response:

> The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

What we have in the ninth amendment is a rule of construction. Because some rights are listed, it is not open to anyone to argue that other rights are subject to the abridgment of Government. During the hearings, Judge Bork said something to this effect, that it was a rule of construction, that it was like the 10th amendment in that regard. The 10th also provides a rule for construction:

> The powers not delegated to the United States by the Constitution, nor prohibited

> by it to the States, are reserved to the States respectively, or to the people.

Now, the ninth amendment does not itself protect any rights. Contrary to the suggestion of an individual Justice here and there and to the writings of a few scholars, the ninth amendment does not operate as a limitation upon the power of government. It identifies no rights and it does not deny the Government any power. It says, instead, that there are rights in addition to those set out in the first eight amendments and the fact that these additional rights are not equally spelled out there gives the Government no warrant to take them away.

What is the implication of that rule of the ninth amendment. Obviously, the implication is that these other rights must be discerning by our reasoning applied to our history, to our traditions, to the consensus of the community with respect to the values we hold dear. And those rights are elements of our liberty. That liberty, Mr. President, is protected against abridgment by the National Government by the due-process clause of the 5th amendment and against abridgment by the States by the due-process clause of the 14th amendment. No person is to be deprived of life, liberty, or property without due process of law. That is what is meant by the phrase "substantive due process of law." No mater how elaborate the procedure that Government uses, there are some aspects of life, liberty, or property that Government simply may not take away.

A radical idea? An eccentric point of view? Hardly, Mr. President. Some of our greatest Justices followed this interpretation. It is the well-settled doctrinal position of the Supreme Court. Applying this doctrine, the Supreme Court under Chief Justice Hughes, Justice and then Chief Justice Stone, Justice Cardozo, and Justice Frankfurther, among others, applied some of the provisions of the Bill of Rights, substantive limitations on Government, to the States through the due process clause of the 14th amendment. Some guarantees applied to the States, Justice Cardozo wrote for the Court, not because they were expressly spelled out in the Bill of Rights, but because denial of the right "offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental." Certain proscriptions, he wrote, are "implicit in the concept of ordered liberty."

Justice Harlan, one of the truly conservative giants among judicial conservatives, was eloquent in Poe versus Ullman in 1961, an opinion Judge Bork would do well to study closely. Due process, wrote Justice Harlan.

> Is a discrete concept which subsists as an independent guaranty of liberty and procedural fairness, more general and inclusive than the specific prohibitions.

The liberty protected against abridgment by the due process clause, he continued, "is a rational continuum which, broadly speaking, includes a freedom from all substantial arbitrary impositions and purposeless restraints * * * and which also recognizes, what a reasonable and sensitive judgment must, that certain interests require particularly careful scrutiny of the state needs asserted to justify their abridgment."

What Justice Harlan was talking about there and what he found violative of the due process clause was Connecticut's law which prohibited the use of contraceptive devices even by married couples in the privacy of their own bedrooms. The Justice did not think, indeed he knew the contrary, that this right was expressly protected by any provision of the Bill of Rights. The right was instead a part of the liberty which the due process clause denied the power to the State to abridge, unless an extreme case existed justifying the official action. When we talk of a "right to privacy," what leaps to mind is the controverted abortion cases or the controverted homosexual rights case. Those cases are merely one element of the right of privacy and not nearly the most important one.

A long line of privacy cases, concerning one broad right subsumed in the concept of liberty protected by the due process cases, runs through the United States Reports. A State, caught up in a natavist fervor, banned the teaching to students, in public or private schools, of a foreign language. Another State banned the right of parents to educate their children in private, religious schools. The Supreme Court, applying what Justice Harlan termed, "a reasonable and sensitive judgment," held the rights abridged to be a protected liberty and struck both State actions down. A State provided for the sterilization of some convicted defendants but not others in an apparently random, purposeless listing of included and excluded crimes. The Supreme Court, recognizing the fundamental interest each of us possesses in procreation, held the law unconstitutional. A city enforced a zoning ordinance in such a way to deny a grandmother the right to have in her household two grandchildren of different sons, and the Court, in an opinion by Justice Powell, whom Judge Bork would replace, found that our history and tradition contained a respect for the existence of the nuclear family which a government could not abridge, except on a showing stronger than the one the city proffered in this case. A State enacted a statute which denied an individual who owed unpaid support payments to a child he had fathered the right to marry, and the Court, in a case Justice Powell joined, held that the right to marry was such a fundamental liberty protected by the due process clause that the statute was void.

What radical interests these decisions protected, Mr. President. The right to have your child taught a foreign language or educated in a religious school. The right not to have your powers to conceive children taken away. The right to have your grandchildren in your home. The right to marry. Are these privacy rights, these liberties, so to our values that Judge Bork finds it impossible to discern any protection for them in the Constitution? Oh, I realize, he said during the hearings that it is possible that at some time in the future when one of these rights is an issue in a case before him some litigating attorney may be able to cite some place in the Constitution where one or another liberty is protected. But as another witness observed, rights do not play peek-a-boo waiting to jump out or be pounced on. Judge Bork has been writing about some of these cases for a decade or two and the fact that he has not made the effort to identify where, if not in the places he rejects, a right may be found to be protected suggests an alarming lack of interest in these rights. And true, he did say that the views of Justices Harlan Frankfurter, Cardozo, and others about the fundamental liberties protected but not expressly set out in the Constitution constituted a "powerful tradition." That "powerful tradition" is one he has continually and strongly rejected. And true, he did say he had come to accept a large number of precedents which he had previously criticized and rejected and that he would apply them in the future. But, Mr. President, he did not say that about any of the cases I have discussed; rather, he rejects the whole concept of unenumerated rights. If the framers did not write it down in plain language, it is beyond Judge Bork's ken.

The right of privacy is itself a "powerful tradition" in our society. It does forbid Government to intrude into the relationship between husband and wife, between parents and child, without a compelling reason. Judge Bork, I am sure, along with Justice Black, "likes his privacy as well as the next person." He just does not think it rises to the level of a protected interest. I mention Justice Black for a reason. He did dissent from the Court's decision voiding the Connecticut contraceptive statute. Justice Black may well be the only Justice, at least in modern times, to have concurred in Judge Bork's view that unenumerated rights are not protected by the Constitution. Where that carried Justice Black is instructive.

We all know, Mr. President, that the Government must in order to convict a criminal defendant prove him guilty beyond a reasonable doubt. That protection against Government arbitrariness goes back into the mists of history. Government traditionally follows it. But, Mr. President, the framers did not include a clause in the Constitution saying that Government must prove criminal guilt beyond a reasonable doubt. Ordinarily, that presents no problem, because, as I said, it is traditional that Government assumes that burden. But in the Winship case in 1970 the Court had before it a situation in which a State provided for conviction of an offense on a standard less than beyond a reasonable doubt. The Court had no difficulty in finding that the reasonable doubt standard, though nowhere expressed in plain words, was a fundamental requirement of the due process clause. Justice Black dissented. Although he valued the standard of proof, if it was not expressly in the Constitution, Government could adopt a lesser standard.

Now, I do not know where Judge Bork stands on Winship. If he is consistent he should be with Justice Black. But the point is that his jurisprudential view of unenumerated rights leaves all of us at the mercy of the majority, a fact which he views with equanimity.

I believe that the right of privacy is a fundamental right, an aspect of liberty which the due process clauses protect. Our liberties will be very problematical if ever we come to the stage where Judge Bork's views become the law of the land.

JUDGE BORK AND CONGRESSIONAL STANDING

Judge Bork is known as one of the Nation's foremost exponents of judicial restraint. I concur in the sentiment. I think that our Federal courts have attempted to do too much. They have attempted to do too many things that properly are the province of the political branches. But general propositions here as elsewhere carry us only so far. There is no formula that tells us once and for all times what is too activist and what is just about right. That decision changes as circumstances change. That depends upon the facts and the particular controversy before the courts.

Certainly, it was not too activist for the Supreme Court to hold that electronic surveillance came within the strictures of the fourth amendment's search and seizure clause, even though the framers and ratifiers had no concept of telephones and telegraphs and radio and television. The fourth amendment protects a reasonable expectation of privacy and we have a reasonable expectation not to have our privacy intruded upon by electronic means. It was not too activist for the Supreme Court to hold that defamation actions could infringe upon freedom of the press, even though the framers and ratifiers knew and approved of defamation actions. The fact was that the possibility of enormous judgments awarded by juries against the press deterred the press from pursuing the truth into areas where it should have gone.

These are not my examples. Judge Bork has argued persuasively both positions. He has said that interpretation of constitutional provisions in a new way to protect against abridgment of values that are implicit in those provisions is properly the essence of the judicial function.

Judge Bork, however, is not so disposed to recognize the function of the judiciary to resolve constitutional disputes between the executive and the Congress at the behest of one or both Houses or at the behest of individual Members suing on behalf of Congress. "We ought," he wrote in Barnes versus Kline, "to renounce outright the whole notion of congressional standing." He reiterated that point several times during the hearings. "The whole notion of congressional standing" is outside the range of the conceivable.

Standing, as many of my colleagues know, is not an express constitutional requirement. That is, nowhere in article III or elsewhere does the Constitution say that before one can bring a case or controversy to court one must show that he has suffered an "injury in fact" or is to certain of suffering one as to amount to the same thing. No, standing has been derived by the courts, by the Supreme Court, from an understanding of what the judicial power is. It does not allow Federal courts to decide abstract questions of constitutional law just because someone is interested in obtaining an answer. Rather, a litigant must be actually or potentially certain of being harmed before he may ask a Federal court to rule that what has caused him harm is contrary to the Constitution.

Standing keeps the Federal courts in their place. I accept the doctrine as a constitutional construction. Even if it were not of constitutional construction the Federal courts would have to adopt a rule to that effect upon prudential grounds. The rule effectuates the doctrine of separation of powers and it enforces the presumption against judicial activism.

Viewing the matter through the prism of judicial restraint and his concern for separation of powers, Judge Bork has, I am afraid, too broadly drawn a line. He refuses to admit the possibility that Members of Congress can be injured, either personally or institutionally, by executive action, although, to be sure, in the hearings, in response to my prodding, he did suggest that in the event of a total executive-congressional impasse or some "terrible emergency" he just did not know that he would be wholly adamant. If the terrible consequences which he could foresee from granting congressional standing would not occur, he also suggested, a lot of his opposition would diminish or disappear.

I am unable to agree with Judge Bork on his refusal to recognize any form of congressional standing, not because as a man of the Senate I believe in passing the lawmaking function to the courts or believe in passing executive power to the courts. I believe there is a proper role for the courts to play in doing precisely what they were created to do: to interpret the Constitution to resolve concrete disputes between the branches. The courts do so all the time in litigation brought by private parties to challenge congressional or executive action. When Congress passes a law parties who are adversely affected by it may challenge it in court and the courts, ultimately the Supreme Court, will interpret the Constitution to determine if Congress had the power to act or if we transgressed some limitation of the Constitution in so acting. The Court did just that with Gramm-Rudman-Hollings, with the campaign finance reform laws, with the legislative veto. The Supreme Court did precisely what it was supposed to, even though there are those who think it may have come to the wrong decision in one or more of those cases.

Similarly, when President Truman seized the steel mills during the Korean war the steel companies went to the court to challenge his power to act under the Constitution or laws enacted by Congress, and they won.

The Supreme Court and the lower Federal courts are there to adjudicate concrete disputes over the meaning of constitutional provisions. They do it frequently. If there were always private plaintiffs who could come forward, we in Congress might rest easy at least in the knowledge that congressional-executive disputes would be presented to the courts and we could present our views by filing amicus briefs or by intervening. Yet, we know that there are disputes in which no private plaintiffs will have standing, because they cannot show the requisite injury.

I do not contend that just because no private party can raise a claim then automatically Congress or the House or Senate or a Member or group of Members should be able to. No, I believe that Congress or a Member must always have to show an injury, either personal or institutional. That is my understanding of what the Constitution requires. Where I part company with Judge Bork is that I totally disagree with him that the injury is a phantom. He does not believe that any dispute between Congress and the executive gives rise to an injury. He does believe however, that if any standing is recognized the flood gates are down, the tide will sweep over us, the courts will become the "most dangerous branch."

Let us look at that from a simple perspective and then move to the area that we are talking about. He is concerned about the President suing Congress, the Department of State suing the Department of Defense, lower court judges suing judges on higher courts. The "slippery slope" argument, in other words. But there are clear situations in which members of the Government can suffer injury at the hands of another branch and have been allowed to sue and should be allowed to sue.

Judges under article III of the Constitution are entitled to salaries which cannot be reduced during their term of office. A few years ago, attempting to interdict a pay increase for all Government personnel, we passed a measure preventing the increase from going into effect, but because the President did not immediately sign the measure the increase went into effect for a few hours of one day. The judges sued, claiming their pay had been reduced. They had suffered a personal injury, but also they suffered an institutional injury because the guarantee in article III was designed to protect judicial independence. They were permitted to sue and they won in the Supreme Court. The Court interpreted the Constitution and held for them, as it properly should have on its interpretation of the Constitution. Would anyone, would Judge Bork, argue that the judges should have been denied standing to bring their suit?

Now, in article II, it is also provided that the President's salary may not be reduced during his term of office. If we in Congress should pass a law, perhaps over his veto, reducing his salary, thus injuring him personally and institutionally (because the guarantee is one to assure Presidential independence), would anyone, would Judge Bork, argue that he should be denied standing to bring suit to contest this personal and institutional injury?

Obviously not. But Judge Bork would deny standing to us. Let us look at Kennedy versus Sampson and Barnes versus Kline. They both concern the so-called "pocket veto" provision of the Constitution. A bill is presented to the President and ordinarily he must sign it or return it with his veto within 10 days (Sundays excepted) to prevent it from becoming law. But if Congress by adjourning prevents the President from returning a bill with his veto it does not become law. The question is purely one of constitutional construction. What kind of adjournment prevents a bill from being returned? Is it only a final adjournment? Could it be an adjournment of a few days within a session? What if for all the adjournments except for the final adjournment of Congress both Houses leave an officer on hand to receive returns from the President?

In both cases, the President claimed a congressional adjournment prevented him from returning a bill and it was thus dead, thus pocket vetoed. In Barnes versus Kline, the adjournment was for approximately 2 months between the first and second sessions. Kennedy versus Sampson involved an intrasession adjournment of 6 days by the Senate and 7 days by the House. In both cases, each House had authorized an officer to receive messages and returns from the President. In both cases, the Court of Appeals for the District of Columbia Circuit held that Members had standing and that Congress by its adjournment had not prevented the President from returning the bills, so that his attempted pocket veto in each instance was invalid. In Barnes versus Kline, the Senate intervened as a party and the Speaker of the House and the House Bipartisan Leadership Group intervened as well.

Judge Bork, dissenting in Barnes versus Kline, rejected standing for the individual Members and he rejected standing for the Senate. "The constitutional problems would seem to be identical," he said. And, indeed, the constitutional problems are the same. The constitutional answer is the same as well, and Judge Bork, I am afraid, has gotten the answer wrong.

In both cases, it is almost inconceivable that a private plaintiff could have had standing to challenge the President's pocket veto. Kennedy versus Sampson involved a bill providing a grant program and no one could plausibly claim that he was sufficiently likely to have shared in the program as to make out an injury. Barnes versus Kline involved congressional provisions to assure observance of human rights in our assistance to El Salvador and the lack of private standing is evident. Thus, it is evident that Member or institutional standing had to exist in order to get a judicial construction of the validity of both pocket vetoes. That is, in my view, it was necessary but not alone sufficient. There had to be an injury to the Member or the institution and Judge Bork just does not see one.

The veto clauses of the Constitution create a limited exception to the Constitution's scheme of separation of powers. Under the pure doctrine, Congress would legislate and the executive would execute. But in order to protect the President against an overbearing or threatening Congress, the Constitution afforded the President a measure of defense. He could participate in the legislative process by signing a bill or, contrarily, by vetoing it and requiring Congress to pass it over his veto by a supermajority vote. In fact, the framers were adamant that the President's veto was to be limited, that he was not to have an absolute veto, because they voted down a proposal that Congress not be able to override. In order to protect Congress, the framers provided that the President had to act within 10 days; in order to protect the President, the framers provided that if Congress prevented the President from returning the bill within 10 days it was dead. The clause is carefully crafted to protect both Congress and the President. But the most important thing about the provision is that it authorized a limited Presidential intrusion into the congressional arena. To permit the President to enlarge his power beyond those limits reduces congressional power and imbalances the scale of the separation of power.

Both the cases concerned the exercise of congressional lawmaking. In both, Congress had appointed officers to receive messages from the President. In both, there would not have been a long period of uncertainty about whether a bill was to become law. In one, a matter of days and in the other a period of about 2 months were the lengths of time Congress would have had to take up a possible override of the President's veto. Yet, by his construction of what an "adjournment" is and what "prevented" him from returning a bill, the President enlarged his power in the lawmaking process and cut back on Congress' power. In both instances, the power of Congress to vote whether or not to override a veto was denied by the unilateral action of the President.

Did Congress suffer no injury? Did the Members of Congress who drafted and led the fight for the vetoed bills suffer no derivative injury? It is hard to imagine that taking away a measure of Congress' legislative authority did it and its Members no injury. Hard, perhaps, but Judge Bork sees no injury.

Now, of course, whether Congress did suffer an injury or not depends upon whose construction of the pocket veto clause is correct, Congress' or the President's. Precisely. That is absolutely the case with every such claim. The question of the merits is often inseparable from the preliminary issue of standing. In two prior cases, the Pocket Veto Case and the Wright case, in which, by the adventitious status of the kinds of bills involved, private plaintiffs did have standing because they were injured by the denial of the benefit of the bills by the pocket veto, the Supreme Court construed the pocket veto clause and determined whose construction of the clause was correct. There is nothing about the clause which removes it from judicial construction. So, here, the Congress will have its power enlarged or diminished, held to its proper scope or abridged, depending upon whose construction of the pocket veto clause is correct.

That kind of circularity is inherent in the standing inquiry. It exists frequently if not invariably in determining private plaintiff standing. Is not Congress and its Members entitled to the same rule? Are we to be treated as second class citizens, simply because it is Congress complaining?

The potential for disputes between President and Congress is legion. Most of them are suitable for political resolution and need never concern the courts. But some of them involve construction of the Constitution. Some of them involve executive branch assertion of authority (and, truly, assertions of authority by the Congress) which will diminish the power properly belonging to one or the other branch. The President may choose to commission a judge or another appointee without complying with the advice and consent requirement of submitting the name to the Senate. The President may choose to conclude an arms treaty or some other treaty as an "executive agreement" and refuse to submit it to the Senate. The point is that resolution of these disputes depends upon a proper and conclusive and definitive construction of a constitutional provision, a construction that is within the province of the courts. We should not submit everything to the courts. But neither should we keep every dispute out of the courts.

If, for example, a President's action, as in the pocket veto cases I have detailed, intrudes into congressional prerogatives and injuries congressional interests, I believe, and Judge Bork does not believe, that Congress has a right to ask the courts for their construction as to whose claim is right. I am pleased to say that that was the view of the Justice whom Judge Bork has been named to replace. In Goldwater versus Carter, Justice Powell noted that the courts, the Supreme Court, should take care not to intrude where it should not but that there was a role.

"Prudential considerations persuade me that a dispute between Congress and the President is not ready for judicial review unless and until each branch has taken action asserting its constitutional authority. Differences between the President and the Congress are commonplace under our system. The differences should and almost invariably do, turn on political rather than legal considerations. The judicial branch should not decide issues affecting the allocation of power between the President and Congress until the political branches reach a constitutional impasse." The Justice continued: "By defining the respective roles of the two branches in the enactment process, this Court will help to preserve, not defeat, the separation of powers."

Justice Powell had it right and Judge Bork, I am afraid, has it wrong. It is peculiarly the province of the Court to preserve the boundaries of separation of powers by redressing injuries done to the constitutional powers of one branch by another.

JUDGE BORK AND THE SPECIAL PROSECUTOR ACT

Mr. President, among my many difficulties with Judge Bork's view of constitutional jurisprudence, none so goes to the core of my concern as his one-sided disposition to favor the executive in separation-of-powers disputes. That the framers created a tripartite system of national government is evident and admitted, but in most instances when there is a dispute Judge Bork always seems to conclude that the executive is the first and most powerful branch of Government and deservedly so.

Judge Bork, as Solicitor General during the Watergate affair and since, has taken the position that Congress may not authorize the appointment of a special prosecutor or independent counsel. He rigidly views the functions of such a office to be inherently executive, constitutionally committed to the discretion and power of the President, and not subject for any reason to be surrounded by legislatively imposed constraints designed to serve the public interest.

Mr. President, as everyone knows, the Ethics in Government Act of 1978, which created the office of independent counsel (at first, the office of special prosecutor), may not be portrayed as one of those "turf" battlers for power between the Congress and the President. Congress was confronted with a solid fact: the existence of an untenable situation when someone high in the executive branch, perhaps in the Department of Justice, is accused of a serious criminal offense and the Department of Justice is responsible for investigating, deciding whether to prosecute, and proceeding to prosecute or to dismiss the action. At best, there is an appearance of a conflict of interest; at worst, there is a conflict of interest. This state of affairs is not unique to this administration, which has a record number of appointed independent counsels carrying on investigations; it was not unique to the Nixon administration and the Watergate affair. During the Teapot Dome scandal, a concerned Congress, questioning the ability of an executive branch in which Cabinet officers were implicated in criminal conduct to conduct an impartial investigation, authorized the President to employ special counsel to investigate and to prosecute if necessary and the President complied. The result was the conviction and incarceration of the Secretary of the Interior, among others. During the Truman administration, public pressure caused the appointment of a Special Assistant to the Attorney General to investigate charges of corruption within the administration. When the Special Assistant inquired into the Attorney General's conduct, the Special Assistant was fired, and President Truman immediately fired the Attorney General. But it was only after a new administration took office that prosecutions were successfully initiated against corrupt Truman administration officials.

In order to regularize and to rationalize the process of appointing officers independent of those who are being investigated or who are associated with those who are being investigated, Congress enacted the Ethics in Government Act of 1978. Congress did not intrude itself into the process. We have no role to play. We cannot exercise any power under the act to harm the President or anyone in the executive branch. It is not a case of Congress attempting to cross any forbidden line to claim any power we do not have.

No, Mr. President, the act is implemented by the Attorney General making a preliminary finding that an independent counsel is necessary and then the appointment is made by a special, article III court. The Constitution expressly empowers Congress to provide for such an appointment process. After providing for appointment of officers by the President with the advice and consent of the Senate, article II, section 2, clause 2 authorizes Congress to establish by law inferior offices and to "vest the appointment of such inferior officers, as [Congress] think proper, * * * in the courts of law." Moreover, in the Siebold case, in 1880, the Supreme Court expressly approved a decision of Congress to vest in the courts the appointment of officers with the responsibility to supervise Federal elections in the South, a function which looks to be as executive as investigating and prosecuting criminal offenses.

Judge Bork in his testimony before Congress sought to denigrate this authority. He argued that this part of the appointments clause was an ill-considered after-thought and Siebold a decision in which the issue I have discussed was a hasty, inadvertent, and ill-considered action by the Court. I am reminded that Judge Bork once referred to the Bill of Rights as essentially a hastily-composed and not well thought-out piece of work.

For someone who regards himself, someone who wants us to regard him, as an exponent of original intent who adheres to the literal language of the Constitution, this is a pretty strange position. The fact is that the Constitution authorizes Congress, when Congress thinks it is "proper," to vest the appointment of an inferior officer in the courts. I certainly think it is proper, and I think the consensus of views outside the executive branch of the Government thinks it is proper, to assure the American people that corruption and wrongdoing are going to be investigated and exposed and punished. I certainly think it is proper to remove from officials high up in the executive branch both the awful temptation to look the other way when they suspect an associate of wrongdoing and to provide a way in which the people of this country would not have occasion to think that coverups are taking place.

Mr. President, the necessary and proper clause of the Constitution gives Congress the power "to make all laws which shall be necessary and proper for carrying into execution" not only the specific powers given Congress but also "all other powers vested by the Constitution in the Government of the United States, or in any Department or officer thereof." There we have the word "proper" again, and we have the word "necessary." Congress cannot do just anything and everything. But it certainly can provide against corruption and coverups and conflicts of interest and the appearance of those things. It has the obligation to do so. It found that it was "necessary" and that it was "proper" to provide in specific, triggering circumstances for the appointment, by a court of law, as authorized in the appointments clause, of someone in the executive branch with statutorily assured independence to conduct investigations and to prosecute wrongdoing. We would have shirked our responsibility had we failed to do so.

And yet, Judge Bork follows an abstract, sterile line of reasoning that is not cognizant of the real world and which ignores a provision of the Constitution to which he professes rigid adherence to the conclusion that nothing can be done. He would wring his hands and say that a situation of much potential and actual harm to government simply must be endured.

I do not think so. Congress does not think so. I am sure the American people do not think so. And we should not place on the Supreme Court which eventually will have to decide the constitutional issue a man who so departs from this consensus.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. THURMOND. Madam President, I believe I have 5 minutes left.

The PRESIDING OFFICER. The Senator has 5 minutes and 55 seconds.

Mr. THURMOND. Madam President, the distinguished chairman of the committee has agreed that I could have 5 more minutes. I ask unanimous consent that be granted.

The PRESIDING OFFICER. Is there objection,

Mr. BIDEN. I did not object.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. THURMOND. I ask unanimous consent for an additional 5 minutes.

Mr. GARN. Madam President, reserving the right to object, I will not object, but I put the Senate on notice there will be no further extensions after this one. We had a time agreement to vote at 2 p.m. If people agree to time agreements, we should abide by them. I shall not object to this one, but this is the last extension of time that I will agree to.

The PRESIDING OFFICER. The Senator from South Carolina has approximately 10 minutes.

Mr. THURMOND. Madam President, the Wall Street Journal yesterday had an editorial entitled "The Bork Trophy." I want to read an excerpt from that.

> Contrary to the smears, Robert Bork has not been a racist, sexist, sterilizer, or bedroom spy in his career as a Yale law professor, U.S. Solicitor General, or appeals judge. His civil rights record? As judge——

This is very brief, it is a very pithy statement—

> as judge he's sided with the minority plaintiff in seven of eight cases. As Solicitor General, he argued more civil rights cases than any Supreme Court nominee since Thurgood Marshall, urging an extension of a civil right in 17 of 19 cases. Women? Judge Bork ordered Northwest Airlines to pay stewardesses as much as male pursers for comparable jobs. He wants a new reasonableness standard for the 14th Amendment that would effectively adopt the Equal Rights Amendment. Privacy? He ridicules the flighty excesses of the Warren court, but refers to settled First, Fourth, and Fifth Amendment rights to privacy.

Another excerpt from this editorial.

> The Liberal Advocacy Institute has scheduled a seminar for Monday on how the left——

I repeat—

> How the left beat Judge Bork. The theme is that "facts count, but symbols may count even more." With the success of this campaign, in short, it will be open season on the independence of the judiciary.
>
> The symbols they created for Judge Bork were brazen lies about a distinguished jurist. His opponents will take the nation's finest legal scholar for mounting as a trophy. But in our experience, this is the sort of victory for which the victors eventually pay.

Madam President, I wanted to read that excerpt because it sums up briefly I think the situation.

I want to remind the Senate that Judge Bork was approved by the largest bar association in the world, the American Bar Association. He recieved their highest commendation, the highest rating they could give him, for integrity, judicial temperament, and professional competence. I would remind the Senate that no one has questioned his character. He is a man of unquestioned character. He is a man of tremendous courage. He is a man of exceptional capacity. He is a man of unfailing courtesy, and he is a man of true compassion. No one has raised any point as to those qualifications.

I would remind the Senate that a former President of the United States testified for him, and even introduced him at the hearing, President Ford. Everyone in the Congress who knows President Ford has the highest esteem for him. And he would not have dared introduce him if he had not felt he was well qualified and would be fair and reasonable.

I would remind the Senate that former Chief Justice Burger testified for him, and gave him a high rating, and thought he would make an excellent judge. Chief Justice Burger has no ax to grind. He is retired now. He is chairman of the Centennial Commission on the Constitution. Everyone in the country respects him. He has been I might say in the mainstream according to most people.

I would remind the Senate that six former Attorneys General have testified for Judge Bork, former Attorney General Richardson, former Attorneys General William Smith, Edward Levi, dean of the law school in Chicago, William Rogers, under Eisenhower and Mr. Brownell under Eisenhower—all of these men of character.

I would say to you I do not know how many witnesses testified on one side or the other, but the quality of the witnesses ought to have something to do with it. If you try a case before the jury, the quality of the witnesses has something to do with it. And a judge will charge a jury, and there can be one witness over all others. In this case, we have outstanding people, outstanding Americans who are known nationwide for their character and integrity who testified here in his behalf. I would remind the Senate that one of these former Attorneys General was Griffin Bell, of Atlanta, a former circuit court judge, and appointed Attorney General by President Carter, a Democrat. And I would say to you that Judge Griffin Bell is held in high esteem by all who know him. Certainly his testimony is not biased. Why would he be biased?

I would remind the Senate that Lloyd Cutler, an able lawyer here in Washington who served under President Carter as his chief legal adviser, came and testified for this man, for Judge Bork. Why would he do that if he did not think he would be fair? He is a Democrat, called himself a liberal Democrat, yet he said this man is well qualified, and that he should be confirmed. I would remind the Senate that two Governors came and testified in person, Governor Thompson, of Illinois, and Governor Thornburgh, of Pennsylvania, and they both said he is a fine man, he is an able judge, and he ought to be confirmed.

I would remind the Senate——

Mr. BIDEN. May we have order in the Senate? The Senator is making an important statement.

The PRESIDING OFFICER (Mr. REID). The Senate will come to order.

Mr. THURMOND. Mr. President, I can yield if they wish to talk.

Mr. President, I remind the Senate that eight past Presidents of the American Bar Association, the ones who were the head of this largest bar association in the world, came and testified in person in favor of Judge Bork and said they thought he would make an exceptional Justice on the Supreme Court of the United States.

I just want to say in closing that this man has been a lawyer, a practicing lawyer, a successful lawyer. He has had that experience. He has been a law teacher for 8 years at one of the finest law schools in the United States, Yale Law School, probably next to the University of South Carolina Law School. [Laughter.]

I remind the Senate, also, that he has been Solicitor General of the United States. He has represented the President of the United States and the Justice Department in arguing cases before the Supreme Court of the United States. He has had that experience.

I remind this Senate, too, that this man has been a circuit judge, is a circuit judge, has been for 6 years. He has written 150 decisions. He has participated in over 400 decisions. Not one of those decisions has been reversed by the Supreme Court. He must be somewhat in the mainstream, or the Supreme Court would reverse him in some instance if he had not been.

Mr. President, in the 33 years I have been in the Senate, I have never known a man to come before the Judiciary Committee—and we have had hundreds come before the committee for confirmation—I have never known a man who was as qualified to be on the Supreme Court of the United States.

If we do not confirm this man, we are passing up a scholar; we are passing up a patriot; we are passing up a great judge, one who would adorn the Supreme Court with honor.

In my opinion, our Nation is going to suffer if we do not put this man on the Supreme Court. I realize that the odds are against him. I understand that 55 are going to vote against him. It is their privilege if they want to do so, but I think they will regret it—just like, a few years ago, Senator Mansfield and others who voted against Judge Haynesworth for the Supreme Court made a mistake then. Why do you not correct your mistake now? Simply because you have committed yourself, can you not change, if you think now you should change?

Mr. President, I hope the Senate will do the right thing. I hope the Senate will confirm this man, who has every qualification to make a great Supreme Court Justice, and not make the error of turning down one of the finest scholars and one of the best prospects we have ever had for the Supreme Court of the United States.

Mr. President, I previously discussed a number of false and misleading allegations brought against Judge Bork.

Today I will present additional allegations of the same nature and attempt to give the true facts and circumstances giving rise to these misleading statements.

Allegation. Judge Bork will ban the use of contraceptives by married couples.

Fact. This charge involves the case of Griswold versus Connecticut, the case invalidating Connecticut's statute banning the use of contraceptives. To put the decision in perspective, Judge Bork noted that Griswold, even in 1965, was for all practical purposes nothing more than a test case. The Griswold case arose because a doctor sought to test the constitutionality of the statute. There is no recorded case in which this 1878 law was used to prosecute the use of contraceptives by a married couple. The only recorded prosecution was a test case which occurred prior to Griswold involving two doctors and a nurse, and in that case the State itself moved to dismiss.

Judge Bork in his testimony noted that this "nutty" Connecticut statute which was held unconstitutional was never used to punish a married couple for use of contraceptives. His objection to this case was based solely on the rationale that the Court used. His principle objection to the majority opinion in this case was the Court's construction of a generalized right of privacy, not tied to any particular provision of the Constitution, to strike down a concededly "silly" law which it found offensive. This criticism was exactly the same as that of Justices Black and Stewart.

Justice Black's dissent, joined by Justice Stewart, made precisely the same point:

> While I completely subscribe to the [view] that our court has constitutional power to strike down statutes, state or federal, that violate commands of the Federal Constitution, I do not believe that we are granted power by the Due Process Clause or any other constitutional provision or provisions to measure constitutionality by our belief that legislation is arbitrary, capricious or unreasonable, or accomplishes no justifiable purpose, or is offensive to our own notions of "civilized standards of conduct." Such an appraisal of the wisdom of legislation is an attribute of the power to make laws, not of the power to interpret them.

Judge Bork has stated repeatedly that if the State had actually sought to enforce the law against a married couple, questions under the Fourth Amendment as well as under the concept of fair warning would certainly have been presented.

Again, this is an outrageous charge, which has no bearing on the actual case or Judge Bork's criticism of it.

Allegation. Judge Bork's views would lead to back alley abortions.

Fact. This preposterous charge is totally unwarranted and presumably relates to Judge Bork's comments on the court's decision in Roe versus Wade. Judge Bork has explained that the rights to privacy recognized by the Court, a right to terminate a pregnancy, is not really about privacy, but is more accurately described as a right to personal autonomy or liberty. Privacy refers to an interest in anonymity or confidentiality, whereas liberty describes freedom to engage in a certain activity. The question is whether any provision of the Constitution recognizes an individual's right to terminate pregnancy, despite State efforts to regulate it. Judge Bork testified that the Court's ruling made no attempt to ground such a right in the Constitution except to say that it was "founded in the 14th amendment's concept of personal liberty and restrictions upon State action." Judge Bork's criticism of this case is that this standard gives no guidance as to why some liberties not specified in the Constitution should be protected and others not.

In fact, Judge Bork's criticism of Roe versus Wade relates to a serious and wholly unjustifiable judicial usurpation of State legislative authority. A judge who uses the due process clause to give substantive protection to some liberties but not to others has no basis for decision other than his own subjective view of what is good public policy.

Judges should abide by their constitutionally assigned role of interpreting and applying the law, not bend and ignore the law according to their policy preferences in order to reach the results they desire.

Thus, Judge Bork's comments on Roe versus Wade related to judicial philosophy rather than result-oriented jurisprudence. On this basis, it is simply unconscionable to accuse him of promoting "back-alley abortions."

Allegation. Judge Bork views the first amendment as protecting only political speech.

Fact. Judge Bork's testimony fully answered the concern of some committee members expressed with regard to his 1971 Indiana Law Journal article where he stated that the first amendment applies only to political speech. He has long since publicly abandoned his theoretical view. Judge Bork has stated:

> As the result of the responses of scholars to my article, I have long since concluded that many forms of discourse, such as moral and scientific debate, are central to democratic government and deserve protection.

He has also indicated publicly that he believes that protection is afforded to moral speech, fiction and art. He draws the line for protection of materials which are judicially determined to be obscene or pornographic. Judge

Bork told the committee that he is comfortable with the vast body of Supreme Court decisions on the first amendment protections afforded to speech and to freedom of the press.

Judge Bork's judicial writings fully support these statements. In the case of Ollman versus Evans, a professor of political science brought a suit against two newspaper columnists claiming that they defamed him in a newspaper column with the result that he was denied a nomination for position of chairman of a department at a university. the U.S. District Court for the District of Columbia entered summary judgment in favor of the columnists and appeal was taken. The court of appeals, reversed and remanded. The U.S. District Court for the District of Columbia held that challenged statements were entitled to absolute first amendment protection as expressions of opinion, and the professor appealed. The court of appeals, in an opinion written by Circuit Judge Starr, held that these statements were constitutionally protected expressions of opinion, and the case was affirmed.

In this case in a concurring opinion Judge Bork described not only his first amendment philosophy, but also his readiness to apply constitutional values to new threats that the framers could not have possibly foreseen. Judge Bork's opinion was criticized in a dissent by Judge Scalia, whom the Judiciary Committee and the full Senate unanimously approved for Associate Justice 1 year ago. Judge Scalia sharply criticized Judge Bork for taking too expansive a view of individual liberties protected by the Bill of Rights. In Ollman, Judge Bork stated:

> We know very little of the precise intentions of the framers and ratifiers of the speech and press clauses of the first amendment. But we do know that they gave unto our keeping the value of preserving free expression and, in particular, the preservation of political expression, which is commonly conceded to be the core of those clauses. Perhaps the framers did not invision the libel action as a major threat to that freedom. . . . But if over time, the libel action become a threat to the central meaning of the first amendment, why should not judges adapt their doctrines?

Applying the constitutional values found in the first amendment to modern circumstances, Judge Bork concluded that, while existing Supreme Court decisions had already established some safeguards to protect the press from the chilling effect of libel actions. In explaining this he stated:

> In the past few years, a remarkable upsurge in libel actions, accompanied by startling inflation of damage awards, has threatened to impose a self-censorship on the press which can as effectively inhibit debate the criticism as would governmental regulation that the first amendment would almost certainly prohibit.

Accordingly, Judge Bork held that the lawsuit should be dismissed on the first amendment ground that the circumstances surrounding the allegedly defamatory statements showed them to be mere "rhetorical hyperbold" and therefore not actionable.

In McBride versus Merrell Dow Pharmaceuticals, Inc., Judge Bork vigorously applied first amendment protections against harassing libel actions in the context of scientific speech. In Brown & Williamson Tobacco versus FTC, Judge Bork joined by Judge Scalia and Judge Edwards, vacated an injunction against false and deceptive cigarette advertising because it prohibited an extremely narrow class of advertisements that the Court concluded would not be deceptive under the Government's theory. In Quincy Cable TV versus FCC Judge Bork joined Judge J. Skelly Wright's opinion invalidating a regulation requiring cable television operators to carry general television programming of local broadcasters.

In Lebron versus Washington Metropolitan Transit Authority, Judge Bork, joined by Judge Scalia and Judge Starr, ordered the Washington, DC, subway system to lease space to an artist to display a poster highly critical of President Reagan and members of the administration. He held that the subway authority's decision not to lease the space requested was based on a judgment about the content of the message and that the authority's action amounted to an impermissible prior restraint on free speech. After an independent examination of the whole record, Judge Bork rejected the subway authority's defense.

Mr. President, the charges that Judge Bork takes a narrow view of the first amendment protections afforded to speech and to the press are just not true.

Allegation. Judge Bork would overrule many of the Supreme Court's important cases.

Fact. Mr. President, again we have a distortion of Judge Bork's true views on precedent.

Judge Bork has demonstrated in testimony, writings and speeches a view of precedent that is in full accord with the dominant tradition in American jurisprudence. That tradition reflects a recognition that there will be occasions on which a reconsideration of precedent will be appropriate, but that respect for continuity and stability in the law require that overruling of prior decisions be done sparingly and cautiously.

The literature and the Supreme Court case law, indicate two distinct approaches to the role of precedent in constitutional cases. The first position is that precedent should be given no weight when the Supreme Court is convinced of prior error in interpreting the Constitution. The other, more conservative, position is that precedent must be given some, although not dispositive, effect in deciding whether to overrule a prior constitutional decision. Judge Bork adheres to the latter approach.

The Supreme Court articulated its views on the subject in Smith versus Allright, an 8 to 1 decision overruling Grovey versus Townsend, a unanimous decision handed down only 9 years earlier. The issue in these cases was the constitutionality of the white primary. Grovey has rejected the challenge, reasoning that to deny a vote in a primary was a mere refusal of party membership with which the State need have no concern. The dissent in Allright took pains to point out that "Not a fact differentiates [the prior] case from this except the names of the parties." Nevertheless, the majority felt no obligation to abide by Grovey, looking instead to the constitutional provisions dealing with the right to vote. Convinced of its prior error, the Court overruled Grovey, commenting on the role of precedent as follows:

> In reaching this conclusion we are not unmindful of the desirability of continuity of decision in constitutional questions. However, when convinced of former error, this court has never felt constrained to follow precedent. In constitutional questions, where correction depends upon amendment and not upon legislative action this Court throughout its history has freely exercised its power to reexamine the basis of its constitutional decisions. This has long been accepted practice, and this practice has continued to this day.

Judge Bork testified before the Judiciary Committee:

> Times come, of course, when even a venerable precedent can and should be overruled. The primary example of proper overruling is *Brown* v. *Board of Education*. The case which outlawed racial segregation accomplished by government action. Brown overturned the rule of separate but equal laid down 58 years before in *Plessy* v. *Ferguson*. Yet Brown, delivered with the authority of a unanimous Court, was clearly correct and represents perhaps the greatest moral achievement of our constitutional law.

This is a position which Judge Bork has maintained throughout his career. For example, in a 1968 article in Fortune magazine, he wrote:

> The history of the Fourteenth Amendment, for example, does indicate a core value of racial equality that the Court should elaborate into a clear principle and enforce against hostile official action. Thus the decision is *Brown* v. *Board of Education*, voiding public-school segregation, was surely correct.

However, Judge Bork has repeatedly stated that the mere fact that a judge regards a prior decision as incorrect is insufficient, standing alone, to justify its being overruled. At his hearings for the Surpreme Court, he stated that: "overruling should be done sparingly and cautiously. Respect for precedent is a part of the great tradition of our law * * *." Similarly, at his confirmation hearings in 1982, when he was nominated to his present position on the U.S. Court of Appeals for the District of Columbia Circuit, Judge Bork stated that:

> For example, if a court became convinced that it had made a terrible mistake about a constitutional ruling in the past, I think ultimately the real meaning of the Constitution ought to prevail over a prior mistake by the court. If that were not true, the commerce clause would still be as limited as it was in 1936. I think the value of precedent and of certainty and of continuity in the law is so high that I think a judge ought not to overturn prior decisions unless he thinks it is absolutely clear that prior decision was wrong and perhaps pernicious.

Judge Bork was asked at the recent hearings which specific factors he would weigh in deciding whether a prior decision ought to be overruled. He noted at the outset that more is required than that the prior opinion simply be judged wrongly decided:

> * * * A judge must have great respect for precedent. It is one thing as a legal theorist to criticize the reasoning of a prior decision, even to criticize it severely, as I have done. It is another and more serious thing altogether for a judge to ignore or overturn a prior decision. That requires much careful thought.

In determining whether a prior decision ought to be overruled, Judge Bork stated how he would proceed:

> I think I would look and be absolutely sure that the prior decision was incorrectly decided. That is necessary. And if it is wrongly decided—and you have to give respect to your predecessors' judgment on these matters—the presumption against overruling remains, because it may be that governmental and private institutions have grown up around that prior decision. There is a need for stability and continuity in the law. There is a need for predicability in legal doctrine. And it is important that the law not be doctrine. And it is important that the law not be considered as shifting every time the personnel of the Supreme Court changes.

Judge Bork also made a distinction at the hearings between pecedent in the area of constitutional law and precedent in the area of statutory law. As he noted in his taped remarks at Canisius College in 1985: "* * * If you construe a statute incorrectly, the Congress can pass a law and correct you. If you construe the Constitution incorrectly, Congress is helpless." A tape of these remarks was played at the hearings in an effort to challenge Judge Bork's statement of his views of precedent. During the question and answer session following this address, in making the distinction between precedent in constitutional law and precedent in statutory law, Judge Bork stated, as he has repeatedly, that a court must always be willing to reexamine prior precedent. He neglected to add, as he always had before, that many areas of law are too settled to be overturned. Much was made of this single omission—as if Judge Bork were, in one question and answer session, repudiating all his previous, and subsequent, comments about precedent—but, as Judge Bork stated at the hearing:

> Before we get off that tape, Senator, I would like to say this: you have in your hands speech after speech and interview after interview where I have said some constitutional decisions are too embedded in the fabric of the nation to overturn.

It is important to emphasize that Judge Bork was indicating only that precedent in constitutional law is less binding than precedent in statutory law. In his remarks before and during his appearance before the committee, he repeatedly identified several areas of constitutional law which he believes cannot now be overruled, regardless of whether a judge would have adopted their reasoning as an initial matter.

Mr. President, I think that Judge Bork's writings and testimony over the years demonstrates that he does have a very high degree of respect precedent and the charge that he would overrule many important decisions is absolutely baseless.

Allegation. Judge Bork committed an illegal act, when in 1973, as Acting Attorney General, he dismissed Archibald Cox.

Fact. This allegation is absolutely not accurate. Judge Bork acted in a totally legal, ethical and concerned manner in the execution of President Nixon's directive to dismiss Watergate Special Prosecutor Archibald Cox, and took all necessary efforts to ensure that the Watergate investigation continued without disruption, delay or interference. The committee heard from Judge Bork and others concerning the events of October 20, 1973, and the period thereafter. Judge Bork's action was the subject of extensive testimony in 1973 and 1982 before this committee as well as the Judiciary Committee of the House of Representatives in 1973. As with those previous examinations of Judge Bork's conduct in the so-called Saturday night massacre and its aftermath, the hearings on his nomination for the Supreme Court confirmed the reasonableness of Judge Bork's actions throughout the episode and highlighted his important contributions to the continuation and ultimate success of the Watergate investigation.

Despite the depth in which the events of October 20, 1973, had been explored in the intervening 14 years, it was apparent from the news reports before these hearings commenced that Judge Bork's opponents would attempt to draw the nominee's integrity into question through references to the Saturday night massacre. Such an attempt was made during the American Bar Association's deliberations, with notable lack of success, as reported to the committee by Judge Harold Tyler. During these hearings, the dismissal of Archibald Cox was largely a nonissue.

As he had previously testified, Judge Bork described for the committee the circumstances which resulted in his decision to carry out the Presidential order to discharge Cox as special prosecutor. It was clear to then-Attorney General Elliot Richardson, who met with the President at the White House, that Cox' dismissal was inevitable. Neither Richardson nor Judge Bork doubted that the President could lawfully order the discharge of Cox, who was an employee of the executive branch. Richardson previsously had received a legal opinion that the President had such authority. The issue, therefore, was not whether Cox could be fired, but merely who would carry out the order. Unlike Richardson, who felt he was personally bound by a congressional pledge not to dismiss Cox except for extraordinary improprieties, and Deputy Attorney General William Ruckelshaus, who regarded himself as similarly bound, Judge Bork had no such personal obligation. Judge Bork was then the Solicitor General and third and last in the Justice Department's line of succession. He thus could carry out the President's order. Judge Bork told the Judiciary Committee:

> My first thought . . . was the fact that we were in an enormous governmental crisis. I don't know if everybody remembers . . . the sense of panic and emotion and crisis that was in the air. It was clear . . . from my conversations with Mr. Richardson and Mr. Ruckelshaus that there was no doubt that Archibald Cox was going to be fired by the White House in one form or another. The only questions was how much bloodshed there was in various institutions before that happened.

Judge Bork understood that this action would be enormously unpopular, but he regarded it as clearly necessary in order to alleviate a serious governmental crisis. Forced to make a decision quickly, he acted courageously and selflessly. Although he has inclined initially to leave the Government after doing so, Judge Bork was urged not to resign by Richardson and Ruckelshaus, who regarded his remaining as Acting Attorney General crucial in order to provide leadership and continuity for the Justice Department during this critical time. Recognizing the importance of his position, Judge Bork was determined to provide the necessary leadership.

At the hearings, former Attorney General Elliot Richardson testified that:

> I believed that the President would accomplish the firing in one way or another. I believed that he had the legal right to do so. I believed that Bork was not personally subject to the same commitments I have made to Cox and the Senate Judiciary Committee, and was thus personally free to go forward with this action, and that his doing so, in the circumstances, was in the public interest.

> I was concerned that if he did not, as I said, a chain reaction would follow, meaning that if he resigned, the dominoes could fall indefinitely, far down the line, leaving the Department without a strong and adequately qualified leader. That was a very practical concern. We had a situation in which not only Ruckelshaus and I, but all my top staff, were picking up and leaving. The question really, as a practical matter was, how do you maintain the continuity and integrity of the investigation in these circumstances.

Philip Lacovara, Archibald Cox' counsel on the Watergate Special Prosecution Force, submitted a statement to the committee in which he noted his personal disagreement with the decision to dismiss Cox but stated that he was "satisfied that Judge Bork acted for what were reasoned and reasonable motives and that his conduct was in all respect honorable." The only witness actually involved in the decision to dismiss Cox and the events leading up to that dismissal, former Attorney General Richardson, testified that Judge Bork's actions were in the best interest of the Nation.

During the course of the hearing there were those who referred to the vacated district court opinion in the Nader versus Bork case as support for the allegation that Judge Bork acted "illegally" in dismissing Archibald Cox pursuant to the President's order. The opinion of Judge Gerhard Gesell in that case was never subject to appellate review because the plaintiffs chose to seek dismissal of the case rather than attempt to sustain Gesell's strained decision in the court of appeals. The court of appeals accordingly ordered Judge Gesell to vacate his ruling, and he did so, thereby rendering it of no legal consequence whatsoever.

Archibald Cox testified before Congress in November 1973, regarding the President's authority under the law to order his discharge:

> I think the President had the power to instruct the Attorney General to dismiss me, . . . and I don't question that.

Additionally, the timing of the explicit rescission of the special prosecutor regulations was, in Cox's view, at most a "technical defect." Cox did not participate in the Nader versus Bork case and stated during his congressional testimony that he "wish[ed] the suit hadn't been filed."

Judge Bork and former Attorney General Richardson explained during their testimony that neither had any doubt on October 20, 1973, that the President could lawfully direct the dismissal of Special Prosecutor Cox. As Judge Bork stated at his 1987 hearing:

> "The fact is none of us thought that regulation was a bar to a presidential order. . . . We assumed the President could do this over an Attorney General's regulation.

In Judge Bork's view, the explicit Presidential directive to the Acting Attorney General effectively rescinded the Justice Department regulations appointing Cox, and no existing court decision holds to the contrary.

Given the criticalness of the situation that existed on October 20, 1973, and the unanimous view at the time that the President's order was a lawful one, it is apparent that Judge Bork committed no "illegal" act and that the formal revocation of the regulations, as Archibald Cox stated, was nothing more than a "technical defect."

The 1975 report of the Watergate Special Prosecution Force, stated in part:

> The "Saturday Night Massacre" did not halt the work of WSPF, and the prosecutors resumed their grand jury sessions as scheduled the following Tuesday. Bork placed Assistant Attorney General Henry Petersen, head of the Criminal Division, in charge of the investigations WSPF had been conducting. Both men assured the staff that its work would continue with the cooperation of the Justice Department and without interference from the White House.

In his statement submitted for the record in 1987, Mr. Lacovara recounted that Judge Bork had assured him on the evening of Saturday, October 20, 1973, that he wanted the staff assembled by Archibald Cox to remain intact and to continue their investigations as Justice Department employees. The same message was conveyed by Judge Bork and Henry Petersen at a meeting which, Lacovara and Deputy Special Prosecutor Henry Ruth attended on Monday, October 22, 1973, and at a meeting with other members of the Watergate Special Prosecution Force on Tuesday, October 23, 1973. Judge Bork testified that he "understood from the beginning that his moral and professional life were on the line if something happened to those investigations and prosecutions, and that is why he was adamant" that the special prosecution force lawyers should continue their work.

Mr. President it is important to note that the recent Judiciary Committee hearings established that Judge Bork undertook to identify an appropriate person for the special prosecutor post early during the week following the Cox discharge, and that he recommended appointment of a new special prosecutor to the President well before the decision to do so was made at the White House. Two witnesses, Professors Dallin Oaks and Thomas Kauper, gave unrebutted testimony based on discussions each had with Judge Bork, probably Monday, October 22, but certainly not later than Tuesday, October 23, that Judge Bork was then searching for a qualified and respected person to replace Cox as special prosecutor.

As the testimony of Professor Oaks confirmed, Judge Bork focused early on Leon Jaworski as the primary choice to be the new special prosecutor. The former American Bar Association president enjoyed a widespread reputation for unimpeachable integrity, exceptional ability and professional qualities deemed essential in order to inspire public confidence and ensure the success of the Watergate prosecutions.

The Judiciary Committee's recent hearings left no doubt that, by keeping the special prosecution force intact in the wake of Cox' dismissal and by ensuring the appointment of a capable new special prosecutor with full guarantees of independence, Judge Bork made a highly significant contribution to the ultimate success of the Watergate investigations and prosecutions.

Finally, it should be noted that the efforts of Judge Bork's opponents to raise a credibility issue from insignificant differences in recollection of events after the Cox dismissal proved completely unavailing. Judge Bork testified that he assured Messrs. Ruth and Lacovara on Monday, October 22, 1973, that he wanted the Watergate investigation to proceed as they had before Cox' dismissal and that he would tolerate no interference with the investigations so long as he remained Acting Attorney General. Mr. Petersen, who was also present at the October 22, 1973, meeting, and Mr. Lacovara submitted written statements to the committee confirming that such was indeed the message conveyed by Judge Bork. While Judge Bork's recollection is that he mentioned his support for pursuit of the White House tapes at this meeting, the explicitness of the reference is unimportant. Mr. Lacovara stated that he "specifically recalled the assurances that Judge Bork and Assistant Attorney General Petersen gave that the investigations would proceed on an objective, thorough, and professional basis and would seek whatever evidence was relevant in determining guilt or innocence of the persons under investigation." Mr. Lacovara concluded that "the substance of Judge Bork's testimony * * * accurately reflects the tone and direction of these statements to the senior staff of the Watergate Special Prosecution Force in the hours and days after his dismissal of Special Prosecutor Archibald Cox."

The actions of Judge Bork during the critical events of October 1973 have withstood the most exacting kind of scrutiny over a 14-year period. The renewed inquiry into those actions by some during the recent hearings disclosed nothing that would inpugn in any way Judge Bork's integrity, judgment or commitment to the rule of law. To the contrary, what emerged from this most recent examination of Judge Bork's role in the so-called "Saturday Night Massacre" is an even clearer picture of a courageous and principled man. He was forced suddenly into a crisis not of his making, and sought to serve the national interest. He succeeded in doing so in a way that has had a lasting and beneficial impact on this country. His exemplary performance during that controversy strengthens the case for his confirmation to the Nation's highest court.

The PRESIDING OFFICER. The Senator from Delaware is recognized.

Mr. BIDEN. Mr. President, how much time do I have?

The PRESIDING OFFICER. Seven minutes.

Mr. LEAHY. Mr. President, the Senate is not in order.

The PRESIDING OFFICER. The Senate will be in order.

Mr. BIDEN. Mr. President, we have reached the end of the debate on this nomination, and I believe that 57 of my colleagues—58, counting me—are likely to vote "no." The question is why they are voting "no."

I think Senator DOLE, the minority leader, set out, without perhaps knowing it, why. He said that this debate was about the role of the Court and the role of Congress. He said—and I am paraphrasing—that the American people do not want a court yielding to criminals, yielding to subversion.

I would suggest that not only do the American people not want a court yielding to criminals, but also, they do not want a court that does not find that a grandmother has a constitutional right to live with her grandchildren, a basic right of privacy, which can only occur, that finding, if one acknowledges it exists in the Constitution, which Judge Bork does not.

I would respectfully submit that the American people think, unlike Judge Bork, that a divorced father has a constitutional right to see his blood child, as Judge Bork does not think he does, constitutionally.

I respectfully suggest that the American people believe, unlike Judge Bork, that Congress has the power to say to all States, "You cannot, under any circumstances, have a literacy test for voting."

I believe that the American people believe, unlike Judge Bork, that even a small poll tax, even a $1.50 poll tax—which would be $5 today—in Virginia, is wrong. I believe this is a debate about principle, the principle of how one interprets the Constitution.

We are about to begin our solemn duty of voting on the nomination of Robert Bork, and the principle which began these hearings for this Senator, I believe, ends the debate for this Senator.

I believe that all Americans are born with certain inalienable rights, certain God-given rights that they have, not because the Constitution says they have them. I have rights because I exist, in spite of my Government, not because of my Government. My Government does not confer upon me the right to marry, the right to procreate, the right to speak. It protects those rights. Judge Bork, like many of my colleagues, has a fundamental disagreement with that premise. He believes that the rights flow from the majority through the Constitution to individuals—a notion I reject and that I believe the vast majority of the American people reject.

I believe, as my distinguished colleague from Oregon yesterday pointed out, that these guarantees of our Constitution have their roots in the Magna Carta, right through the Declaration of Independence and the Constitution. They use terms such as "justice," "liberty," "welfare," "tranquility," "due process," "just compensation"—all in precise terms, for which Judge Bork seeks precision.

I respectfully suggest that Shirley Hufstedler, a former Secretary of Education, said it best. She said:

> They are words of passion. They are words of dedication. They are words that cannot be drained of their emotional content * * *. None can be cabined without destroying the soul of the constitution and its capacity to encompass changes in time, place, and circumstance.

They include such rights as the right to be left alone, in the words of one of our famous conservative jurists.

Or, as our former colleague Sam Ervin used to say, quoting an eloquent educator about the ties between the Magna Carta, the English petition of rights, the Declaration of Independence and the U.S. Constitution:

> These are the great documents of history. Cut them, and they will bleed with the blood of those who fashioned them and those who have nurtured them through the succeeding generations.

"Ordered liberty," "postulates of respect for the liberty of the individual," "values deeply rooted in this Nation's tradition"—these are the words of Frankfurter, Brandeis, Harlan, and Powell. There are words and phrases for which Judge Bork seeks precise meaning, resulting in his very narrow interpretation of the Constitution.

Mr. President, notwithstanding what my colleagues have said on this floor, this has been a great debate. This has been a debate about a fundamental principle:

How does one interpret the liberty clause in the Constitution? How does one view those ennobling words? Must they be the rights that we have found in the textual context of the Constitution as Judge Bork insists or are they broader?

Mr. President, I have listened attentively to this debate over the past 3 days.

In the limited time I have, I would like to respond to some of the major concerns voiced by those speaking in favor of Judge Bork's confirmation.

Last night, my good friend, the Senator from Wyoming, said that this body ought to reflect on a single question: How did this happen? Maybe one day we will find out, the Senator said.

So he doesn't have to wait. Let me offer some answers now.

I suspect Senator SIMPSON and I would disagree a little over what it is we think happened here—but I also suppose we would ultimately agree that one thing that is about to happen is that the confirmation of Judge Bork will fail.

Now, how did this happen?

It happened in this Senator's opinion, because "never before in the history of this process has there been such an indepth discussion of constitutional issues." Those are not my words, they are the words of the Senator from Alaska, who testified in favor of the confirmation.

It happened in the words of the New York Times because "those who watched the Judiciary Committee hearings saw perhaps the deepest exploration of fundamental constitutional issues ever to capture the public limelight."—(Stuart Taylor, October 19, 1987, New York Times.)

It happened because Senators listened, read, and studied the writings of Judge Bork, the record of the hearings, the committee report and the minority views.

The presentation of these constitutional issues was so extensive that I felt at the outset of the Senate's debate on the confirmation that we would not hear from any Senator charges that the hearings were biased or inadequate or failed to provide Judge Bork a fair hearing.

I am gratified that such charges have been almost entirely absent.

What criticism we have heard of the hearings is really a criticism that opponents of Judge Bork did not listen well enough to him, or did not consider fully the prestige of the witness for him or did not understand how unfounded concerns raised about him were.

But I trust my colleagues to consider and assess the evidence and the arguments.

Still, although we have heard almost no criticism of the hearings and the debate over constitutional issues in those hearings—and now on the floor—a number of other complaints have been raised, as if to explain that events or considerations other than the hearings actually dictate what is about to happen. Let's look at these.

Is it happening because the Senate has strayed outside the acceptable bounds of its responsibilities in providing advice and consent, as the Constitution provides? This was a suggestion of the Senator from Texas.

No, that is not why.

As Senator LEAHY explained yesterday, and as I have explained in several speeches I have given on the Senate's role in advice and consent, everything that the committee examined and considered is appropriate, indeed, sometimes obligatory, consideration for the Senate.

Is it happening because the Senate has failed to see that President Reagan has won electoral victories that entitle him to bend the Court to his judicial ideology?—again, an argument of the good Senator from Texas. No, that is not why.

The Senate understands that in 1986 President Reagan actively campaigned against many currently in this body, trying to keep them out of the Senate just so he could have even more latitude in appointing ideologically fixed judges. He lost that electoral test overwhelmingly, as Senators MITCHELL and INOUYE reminded us yesterday.

Is it happening because certain interest groups or other organizations mapped strategy in a "war room" and controlled each day's witnesses opposed to the confirmation by having them all say the same "big lie," as both the Senator from Iowa and the Senator from Wyoming argued?

No, that is not why.

It cannot seriously be contended that witnesses with the independence and caliber of Secretary of Transportation William Coleman, the Mayor of Atlanta Andy Young, Congresswoman Barbara Jordan, Judge Shirley Hufstedler, Vilma Martinez, Philip Kurland, and Larry Tribe can be "controlled" by anyone, or made to say anything other than what they believe.

Is it happening because, as in the view of the Senator from Iowa, these groups engaged in a so-called second hearing, outside this Chamber, a hearing in which Judge Bork and his suporters were not heard because that hearing amounted to a political campaign in which a judicial nominee cannot participate?

No, that is not why.

To be sure, the question of confirming this nominee has caught the public's attention and eye. But he was hardly unrepresented in all that public attention.

Able advocates, including several very able Senators, including Lloyd Cutler, including news personalities such as George Will, appeared regularly on television news shows, on programs like Nightline, and on the Sunday press interview shows. They gave strong presentations of Judge Bork's positions.

What is more, the nominee himself appeared in televised hearings for 32 hours.

And he had the full benefit of White House and Justice Department publicity.

And groups that favor Judge Bork's confirmation were advertising and publicizing as well—as the material I submitted for the RECORD last evening amply testifies.

Is it happening because the Senate is politicizing the confirmation process? Almost every Senator who spoke in support suggested that at the least the Senate is succumbing to political pressures and utilizing ideological and political litmus tests.

No, that is not why.

As has been ably pointed out here by several of my colleagues, the President has politicized the judicial selection process throughout his Presidency. Nowhere has that politicization been more evident than in the case of this nominee.

Judge Bork is the favorite of the ideological right. The President was warned that this appointment would be extremely controversial—he was advised by both the majority leader and myself not to politicize the process by sending his name up.

The President chose to go his own way, which is his right. It then becomes the Senate's duty to examine that nominee on the terms on which he has been offered to us—not on some kind of crass basis of counting votes for and against, but by evaluating whether the ideology of this nominee would be good for the Nation.

This, as I have said, is just what the Senate, in this Senator's view, has done.

Why, then, this outpouring of criticism, of sharp attack, of recrimination? Why are these things happening?

The answer that comes to this Senator is that the proponents of Judge Bork's confirmation are trying to ensure—if they can—that this body repudiate the principled stand it has taken to the advice and consent process and to the evaluation of this nominee—that it give up its appropriate role under the Constitution.

The idea is to make it appear that the Senate has been swayed by improper influence, that it has produced irrational fears in the minds of the American public, that it has engaged in falsification and distortion.

How else can you explain the way these inflammatory terms—falsehoods, lies, distortions, smear campaigns, slander—have been thrown around in these debates? These terms and worse have been applied recklessly throughout this debate. Statements that would ordinarily be called arguments, or summaries, or evaluations have been labeled as distortions and falsehoods. It is as if anything the proponents disagree with gains the label of a lie or a misrepresentation.

Why is this being done? To make what occurred here, what has been honorably done in the service of the Constitution, appear to be some kind of travesty, or perversion.

It is nothing short of an effort in institutional intimidation.

In this Senator's view, it will not work. The stakes are too high, the responsibilities too serious.

When we did examine the merits of Judge Bork's views, we discovered a serious disagreement, one that goes to the very heart of this country's understanding of the Constitution. I am proud to have been a part of that examination.

In the time I have left, I must remind the body of what, in my view, this process has been all about.

As I have said, I believe that the hearings before the Judiciary Committee saw, as the New York Times reported, "the deepest exploration of fundamental constitutional issues ever to capture the public limelight."

We have demonstrated the foresight of Chief Justice Marshall's reminder that:

> We must never forget that it is a constitution we are expounding * * * intended to endure for ages to come and * * * to be adapted to the various crises of human affairs.

As we are about to begin our solemn duty of voting on the nomination of Judge Bork to be an Associate Justice of the Supreme Court, I return to a matter of fundamental principle—a principle with which I started when the hearings began.

The principle is this:

I believe that all Americans are born with certain inalienable rights. As a child of God, my rights are not derived from the majority, the State or the Constitution. Rather, they were given to me and to each of our fellow citizens by the creator and represent the essence of human dignity.

It is with this spirit that the framers of our Constitution met in Philadelphia 200 years ago.

As the distinguished Senator from Oregon, Senator PACKWOOD, so eloquently described to us yesterday, the framers did not meet to write on a blank slate. They were not the first to contemplate the notion of inalienable rights, of unenumerated rights.

The framers stood in a 700-year tradition that recognized that individuals have certain inchoate rights—rights that they have because they exist, and rights that they retain unless they are specifically relinquished.

Thus, the guarantees of our Constitution have their roots in the Magna Carta's "per legem terrae." Indeed, the English courts recognized that there are certain rights "which are * * * fundamental; which belong * * * to the citizens of all free governments." And it is to secure those rights for which "men enter into society."

This tradition led the framers of our great Government to use terms that are both magnificent and ambiguous—terms such as: justice, liberty, welfare, tranquility, due process, property, just compensation."

These are grand terms—terms that to this day both stir and confound us. But let me quote from one of the most distinquished witnesses to appear before the committee: Shirley Hufstedler, a former Court of Appeals Judge and the Secretary of Education under President Jimmy Carter. This is what Judge Hufstedler had to say about these terms.

> They are words of passion. They are words of dedication. They are words that cannot be drained of their emotional content. * * * None can be cabined without destroying the soul of the Constitution and its capacity to encompass changes in time, place and circumstance.

From these "words of passion" comes a tradition of Supreme Court jurisprudence that has recognized fundamental principles of liberty. I have touched upon these principles before. They have been expressed in different ways, but we understand the message they convey:

> The right to be let alone.
>
> Ordered liberty.
>
> Postulates of respect for the liberty of the individual.
>
> Values deeply rooted in this Nation's tradition.

This is how the Supreme Court has defined concepts as old as the Magna Carta. This is how Justices Brandeis, Frankfurther, Harlan, and Powell have approached the Constitution, among many others—this is how most Americans have come to approach the Constitution.

The writings and testimony of Judge Bork show him to be at odds with this tradition and history. Indeed, had his philosophy been the governing one for this country, the Supreme Court would not have served—as we all know it has—as the last bulwark of protection for our rights when the Government has unduly intruded into the realm of individual liberty.

Senator Sam Ervin our late colleague, was fond of quoting an eloquent educator about the ties between the Magna Carta, the English Petition of Right, the Declaration of Independence and the U.S. Constitution—

> These are the great documents of history. Cut them, and they will bleed with the blood of those who fashioned them and those who have nurtured them through the succeeding generations.

Can the Senate take the risk of confirming to the Supreme Court someone who does not recognize certain fundamental rights that are imbedded in the fiber of our Constitution—that are embedded in the fiber of our Nation?

I think the answer—after detailed and extensive hearings, after a serious debate on the floor of the U.S. Senate—is clear.

The Nation cannot take that risk.

I urge the rejection of Judge Robert H. Bork to be an Associate Justice of the U.S. Supreme Court.

CONCLUSION

Finally, let me add a personal note.

There has been much talk about a smear campaign, about a personal attack on Judge Bork, about the damage that has been done to his honor and his integrity, and even about how people may be gloating or joyfully congratulating themselves about Judge Bork's defeat.

This Senator will have none of this. Throughout these proceedings, I have respected Judge Bork's honor and I have believed in his integrity. I continue to do so.

There can be no joy for this Senator in defeating a person of Judge Bork's personal caliber. Although we try not to take defeats of this kind personally—and the people in this body know the anguish of defeat well—judicial nomination battles always involve just one person at a time, and they can become intensely personal to the nominee. I find no joy in this situation.

I do have a solemn responsibility as a U.S. Senator, and I have attempted to discharge it. I could not shrink from the conflict in deep constitutional principle that I have with Judge Bork.

But let me make this clear: I do not consider what has happened here to count against Judge Bork's honor and integrity, and I hope no one in the country does. Still, it is with a heavy heart for the man and his family that I urge my colleagues to vote against Robert Bork, for I suspect this is a post he wanted very much, and I fear others might misunderstand the kind of judgment that this body is making.

For Judge Bork and his family, I ask that no one make that mistake.

And to Judge Bork and his family, I can only wish them well.

Mr. President, I can see you are about to lift your gavel and I am probably wearing on the patience of my colleagues, but I congratulate all those who have chosen to engage in the debate on principle and hope and pray the President of the United States sends us a woman or a man next upon whom we can all be in agreement.

I yield the floor.

The **PRESIDING OFFICER**. The Senator's time has expired.

The Senator from South Carolina has a minute.

Mr. **THURMOND**. Mr. President, I would like for the Presiding Officer to admonish the audience in the galleries there will be no outburst when the outcome is announced.

The **PRESIDING OFFICER**. The Senator from South Carolina is correct. The Chair advises those in the galleries expressions of approval or disapproval are not permitted and will not be tolerated. Those in the galleries are asked to refrain from audible conversations during the calling of the roll and the vote is announced.

The Senator from South Carolina has approximately 45 minutes.

Does he yield back his time?

Mr. **THURMOND**. I yield back the remainder of my time.

The **PRESIDING OFFICER**. The Senators yield back the time. All time is gone.

The question is, Will the Senate advise and consent to the nomination of Robert H. Bork, of the District of Columbia, to be an Associate Member of the Supreme Court.

Mr. **WALLOP**. Mr. President, I ask for the yeas and nays.

The **PRESIDING OFFICER**. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The **PRESIDING OFFICER**. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. **BYRD**. Mr. President, I ask that order be maintained in the Senate, that Senators remain at their seats and that the clerk repeat the responses after each response.

The **PRESIDING OFFICER**. Regular order will be followed.

The clerk will continue calling the roll.

The assistant legislative clerk resumed and concluded the call of the roll.

The result was announced—yeas 42, nays 58, as follows:

[Rollcall Vote No. 348 Ex.]

YEAS—42

Armstrong
Bond
Boren
Boschwitz
Cochran
Cohen
D'Amato
Danforth
Dole
Domenici
Durenberger
Evans
Garn
Gramm
Grassley
Hatch
Hatfield
Hecht
Heinz
Helms
Hollings
Humphrey
Karnes
Kassebaum
Kasten
Lugar
McCain
McClure
McConnell
Murkowski
Nickles
Pressler
Quayle
Roth
Rudman
Simpson
Stevens
Symms
Thurmond
Trible
Wallop
Wilson

NAYS—58

Adams
Baucus
Bentsen
Biden
Bingaman
Bradley
Breaux
Bumpers
Burdick
Byrd
Chafee
Chiles
Conrad
Cranston
Daschle
DeConcini
Dixon
Dodd
Exon
Ford
Fowler
Glenn
Gore
Graham
Harkin
Heflin
Inouye
Johnston
Kennedy
Kerry
Lautenberg
Leahy
Levin
Matsunaga
Melcher
Metzenbaum
Mikulski
Mitchell
Moynihan
Nunn
Packwood
Pell
Proxmire
Pryor
Reid
Riegle
Rockefeller
Sanford
Sarbanes
Sasser
Shelby
Simon
Specter
Stafford
Stennis
Warner
Weicker
Wirth

The **PRESIDING OFFICER**. On Rollcall No. 348, the nomination of Robert H. Bork, the yeas are 42, the nays are 58, the nomination is not confirmed.

Mr. BYRD. I move to reconsider vote by which the nomination was rejected.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The President will be immediately notified of the Senate's action.

LEGISLATIVE SESSION

MILITARY CONSTRUCTION APPROPRIATIONS, FISCAL YEAR 1988

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session to consider H.R. 2906, which the clerk will report.

The legislative clerk read as follows:

A bill (H.R. 2906) making appropriations for military construction and for the Department of Defense for the fiscal year ending September 30, 1988, and for other purposes.

The Senate proceeded to consider the bill which had been reported from the Committee on Appropriations, with amendments, as follows:

(The parts of the bill intended to be stricken are shown in boldface brackets, and the parts of the bill intended to be inserted are show in italics.)

H.R. 2906

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 1988, for military construction functions administered by the Department of Defense, and for other purposes, namely:

MILITARY CONSTRUCTION, ARMY

(INCLUDING RESCISSIONS)

For acquisition, construction, installation, and equipment of temporary or permanent public works, military installations, facilities, and real property for the Army as currently authorized by law, and for construction and operation of facilities in support of the functions of the Commander-in-Chief, **[**$908,160,000**]** *$974,630,000,* to remain available until September 30, 1992: *Provided,* That of this amount, not to exceed**[** $133,120,000**]** *$120,120,000* shall be available for study, planning, design, architect and engineer services, as authorized by law, unless the Secretary of Defense determines that additional obligations are necessary for such purposes and notifies the Committees on Appropriations of both Houses of Congress of his determination and the reasons therefor: *Provided further,* That of the funds appropriated for "Military Construction, Army" under Public Law 98-473, $6,800,000 is hereby rescinded: *Provided further,* That of the funds appropriated for "Military Construction, Army" under Public Law 99-173, $28,000,000 is hereby rescinded.

MILITARY CONSTRUCTION, NAVY

(INCLUDING RESCISSIONS)

For acquisition, construction, installation, and equipment of temporary or permanent public works, naval installations, facilities, and real property for the Navy as currently authorized by law, including personnel in the Naval Facilities Engineering Command and other personal services necessary for the purposes of this appropriation, **[**$1,380,855,000**]** *$1,505,072,000,* to remain available until September 30, 1992: *Provided,* That of this amount, not to exceed **[**$148,655,000**]** *$130,000,000* shall be available for study, planning, design, architect and engineer services, as authorized by law, unless the Secretary of Defense determines that additional obligations are necessary for such purposes and notifies the Committees on Appropriations of both Houses of Congress of his determination and the reasons therefor: *Provided further,* That of the funds appropriated for "Military Construction, Navy" under Public Law 98-473, $6,800,000 is hereby rescinded: *Provided further,* That of the funds appropriated for "Military Construction, Navy" under Public Law 99-173, $19,400,000 is hereby rescinded.

MILITARY CONSTRUCTION, AIR FORCE

(INCLUDING RESCISSIONS)

For acquisition, construction, installation, and equipment of temporary or permanent public works, military installations, facilities, and real property for the Air Force as currently authorized by law, **[**$1,115,950,000**]** *$1,179,014,000,* to remain available until September 30, 1992: *Provided,* That of this amount, not to exceed **[**$121,036,000**]** *$115,000,000,* shall be available for study, planning, design, architect and engineer services, as authorized by law, unless the Secretary of Defense determines that additional obligations are necessary for such purposes and notifies the Committees on Appropriations of both Houses of Congress of his determination and the reasons therefor: *Provided further,* That of the funds appropriated for "Military Construction, Air Force" under Public Law 98-473, $6,300,000 is hereby rescinded: *Provided further,* That of the funds appropriated for "Military Construction, Air Force" under Public Law 99-173, $18,500,000 is hereby rescinded*: Provided further, That none of the funds appropriated for planning, design, or construction of military facilities or family housing may be used to support the relocation of the 401st Tactical Fighter Wing from Spain to another country.*

MILITARY CONSTRUCTION, DEFENSE AGENCIES

(INCLUDING TRANSFER OF FUNDS)

(INCLUDING RESCISSIONS)

For acquisition, construction, installation, and equipment of temporary or permanent public works, installations, facilities, and real property for activities and agencies of the Department of Defense (other than the military departments), as currently authorized by law **[**$564,886,000**]** *$597,865,000,* to remain available until September 30, 1992: *Provided,* That such amounts of this appropriation as may be determined by the Secretary of Defense may be transferred to such appropriations of the Department of Defense available for military construction as he may designate, to be merged with and to be available for the same purposes, and for the same time period, as the appropriation or fund to which transferred: *Provided further,* That of the amount appropriated, not to exceed **[**$62,800,000**]** *$55,000,000* shall be available for study, planning, design, architect and engineer services, as authorized by law, unless the Secretary of Defense determines that additional obligations are necessary for such purposes and notifies the Committees on Appropriations of both Houses of Congress of his determination and the reasons therefor: *Provided further,* That of the funds appropriated for "Military Construction, Defense Agencies" under Public Law 98-473, $1,900,000 is hereby rescinded: *Provided further,* That of the funds appropriated for "Military Construction, Defense Agencies" under Public Law 99-173, $5,300,000 is hereby rescinded.

NORTH ATLANTIC TREATY ORGANIZATION INFRASTRUCTURE

(INCLUDING RESCISSION)

For the United States share of the cost of North Atlantic Treaty Organization Infrastructure programs **[**for the acquisition of personal property,**]** for the acquisition and construction of military facilities and installations (including international military headquarters) and for related expenses for the collective defense of the North Atlantic Treaty Area as authorized in military construction Acts and section 2806 of title 10, United States Code, **[**$376,000,000**]** *$386,000,000,* to remain available until expended: *Provided,* That of the funds appropriated for "North Atlantic Treaty Organization Infrastructure" under Public Law 99-173, $8,000,000 is hereby rescinded*: Provided further, That, of the funds appropriated in this Act for NATO infrastructure, no more than 35 per centum may be utilized to support non-construction activities.*

MILITARY CONSTRUCTION, ARMY NATIONAL GUARD

(INCLUDING RESCISSION)

For construction, acquisition, expansion, rehabilitation, and conversion of facilities for the training and administration of the Army National Guard, and contributions therefor, as authorized by chapter 133 of title 10, United States Code, and military construction authorization Acts, **[**$158,052,000**]** *$194,925,000,* to remain available until September 30, 1992: *Provided,* That of the funds appropriated for "Military Construction, Army National Guard" under Public Law 99-173, $2,500,000 is hereby rescinded.

MILITARY CONSTRUCTION, AIR NATIONAL GUARD

(INCLUDING RESCISSIONS)

For construction, acquisition, expansion, rehabilitation, and conversion of facilities for the training and administration of the Air National Guard, and contributions therefor, as authorized by chapter 133 of title 10, United States Code, and military construction authorization Acts, **[**$126,475,000**]** *$165,716,000,* to remain available until September 30, 1992: *Provided,* That of the funds appropriated for "Military Construction, Air National Guard" under Public Law 98-473, $200,000 is hereby rescinded: *Provided further,* That of the funds appropriated for "Military Construction, Air National Guard" under Public Law 99-173, $3,300,000 is hereby rescinded.

MILITARY CONSTRUCTION, ARMY RESERVE

(INCLUDING RESCISSION)

For construction, acquisition, expansion, rehabilitation, and conversion of facilities for the training and administration of the Army Reserve as authorized by chapter 133 of title 10, United States Code, and military construction authorization Acts, $95,100,000, to remain available until September 30, 1992: *Provided,* That of the funds appropriated for "Military Construction, Army Reserve" under Public Law 99-173, $1,800,000 is hereby rescinded.

MILITARY CONSTRUCTION, NAVAL RESERVE

(INCLUDING RESCISSION)

For construction, acquisition, expansion, rehabilitation, and conversion of facilities for the training and administration of the reserve components of the Navy and Marine Corps as authorized by chapter 133 of title 10, United States Code, and military construction authorization Acts, [$67,637,000] *$73,737,000*, to remain available until September 30, 1992: *Provided*, That of the funds appropriated for "Military Construction, Naval Reserve" under Public Law 99-173, $1,200,000 is hereby rescinded.

MILITARY CONSTRUCTION, AIR FORCE RESERVE

(INCLUDING RESCISSIONS)

For construction, acquisition, expansion, rehabilitation, and conversion of facilities for the training and administration of the Air Force Reserve as authorized by chapter 133 of title 10, United States Code, and military construction authorization Acts, [$69,620,000] *$79,300,000*, to remain available until September 30, 1992: *Provided*, That of the funds appropriated for "Military Construction, Air Force Reserve" under Public Law 98-473, $200,000 is hereby rescinded: *Provided further*, That of the funds appropriated for "Military Construction, Air Force Reserve" under Public Law 99-173, $1,800,000 is hereby rescinded.

FAMILY HOUSING, ARMY

(INCLUDING RESCISSIONS)

For expenses of family housing for the Army for construction, including acquisition, replacement, addition, expansion, extension and alteration and for operation and maintenance, including debt payment, leasing, minor construction, principal and interest charges, and insurance premiums, as authorized by law, as follows: for Construction, [$316,090,000] *$355,190,000*; for Operation and maintenance, [$1,267,277,000] *$1,248,277,000*; for debt payment, $2,906,000; in all [$1,586,273,000] *$1,606,373,000*: *Provided*, That the amount provided for construction shall remain available until September 30, 1992: *Provided further*, That of the funds appropriated for "Family Housing, Army" under Public Law 98-473, $900,000 is hereby rescinded: *Provided further*, That of the funds appropriated for "Family Housing, Army" under Public Law 99-173, $19,400,000 is hereby rescinded.

FAMILY HOUSING, NAVY AND MARINE CORPS

(INCLUDING RESCISSIONS)

For expenses of family housing for the Navy and Marine Corps for construction, including acquisition, replacement, addition, expansion, extension and alteration and for operation and maintenance, including debt payment, leasing, minor construction, principal and interest charges, and insurance premiums, as authorized by law, as follows: for Construction, [$244,914,000] *$194,281,000*; for Operation and maintenance, [$534,223,000] *$526,790,000*; for debt payment, $2,022,000; in all [$781,159,000] *$723,093,000*: *Provided*, That the amount provided for construction shall remain available until September 30, 1992: *Provided further*, That of the funds appropriated for "Family Housing, Navy and Marine Corps" under Public Law 98-473, $400,000 is hereby rescinded: *Provided further*, That of the funds appropriated for "Family Housing, Navy and Marine Corps" under Public Law 99-173, $8,800,000 is hereby rescinded.

FAMILY HOUSING, AIR FORCE

(INCLUDING RESCISSIONS)

For expenses of family housing for the Air Force for construction, including acquisition, replacement, addition, expansion, extension and alteration and for operation and maintenance, including debt payment, leasing, minor construction, principal and interest charges, and insurance premiums, as authorized by law, as follows: for Construction, [$166,120,000] *$139,860,000*; for Operation and maintenance, [$694,809,000] *$688,809,000*; for debt payment, $1,584,000; in all [$862,513,000] *$830,253,000*: *Provided*, That the amount provided for construction shall remain available until September 30, 1992: *Provided further*, That of the funds appropriated for "Family Housing, Air Force" under Public Law 98-473, $2,400,000 is hereby rescinded: *Provided further*, That of the funds appropriated for "Family Housing, Air Force" under Public Law 99-173, $12,300,000 is hereby rescinded.

FAMILY HOUSING, DEFENSE AGENCIES

For expenses of family housing for the activities and agencies of the Department of Defense (other than the military departments) for construction, including acquisition, replacement, addition, expansion, extension and alteration and for operation and maintenance, leasing, and minor construction, as authorized by law, as follows: for Construction, $1,186,000; for Operation and maintenance, [$19,514,000] *$18,514,000*; in all [$20,700,000] *$19,700,000*: *Provided*, That the amount provided for construction shall remain available until September 30, 1992.

HOMEOWNERS ASSISTANCE FUND, DEFENSE

For use in the Homeowners Assistance Fund established pursuant to section 1013(d) of the Demonstration Cities and Metropolitan Development Act of 1966 (Public Law 89-754, as amended), $2,800,000.

[FOREIGN CURRENCY FLUCTUATIONS, CONSTRUCTION, DEFENSE

[For foreign currency fluctuations, construction, Defense, $125,000,000, to remain available until expended.]

GENERAL PROVISIONS

SEC. 101. None of the funds appropriated in this Act shall be expended for payments under a cost-plus-a-fixed-fee contract for work, where cost estimates exceed $25,000, to be performed within the United States, except Alaska, without the specific approval in writing of the Secretary of Defense setting forth the reasons therefor.

SEC. 102. Funds herein appropriated to the Department of Defense for construction shall be available for hire of passenger motor vehicles.

SEC. 103. Funds appropriated to the Department of Defense for construction may be used for advances to the Federal Highway Administration, Department of Transportation, for the construction of access roads as authorized by section 210 of title 23, United States Code, when projects authorized therein are certified as important to the national defense by the Secretary of Defense.

SEC. 104. None of the funds appropriated in this Act may be used to begin construction of new bases inside the continental United States for which specific appropriations have not been made.

SEC. 105. No part of the funds provided in this Act shall be used for purchase of land or land easements in excess of 100 per centum of the value as determined by the Corps of Engineers or the Naval Facilities Engineering Command, except; (a) where there is a determination of value by a Federal court, or (b) purchases negotiated by the Attorney General or his designee, or (c) where the estimated value is less than $25,000, or (d) as otherwise determined by the Secretary of Defense to be in the public interest.

SEC. 106. None of the funds appropriated in this Act shall be used to (1) acquire land, (2) provide for site preparation, or (3) install utilities for any family housing, except housing for which funds have been made available in annual military construction appropriation Acts.

SEC. 107. None of the funds appropriated in this Act for minor construction may be used to transfer or relocate any activity from one base or installation to another, without prior notification to the Committees on Appropriations.

SEC. 108. No part of the funds appropriated in this Act may be used for the procurement of steel for any construction project or activity for which American steel producers, fabricators, and manufacturers have been denied the opportunity to compete for such steel procurement.

SEC. 109. No part of the funds appropriated in this Act for dredging in the Indian Ocean may be used for the performance of the work by foreign contractors: *Provided*, That the low responsive and responsible bid of a United States contractor does not exceed the lowest responsive and responsible bid of a foreign contractor by greater than 20 per centum.

SEC. 110. None of the funds available to the Department of Defense for military construction or family housing during the current fiscal year may be used to pay real property taxes in any foreign nation.

SEC. 111. No part of the funds appropriated in this Act may be used to pay the compensation of an officer of the Government of the United States or to reimburse a contractor for the employment of a person for work in the continental United States by any such person if such person is an alien who has not been lawfully admitted to the United States.

SEC. 112. The expenditure of any appropriation under this Act for any consulting service through procurement contract, pursuant to 5 U.S.C. 3109, shall be limited to those contracts where such expenditures are a matter of public record and available for public inspection, except where otherwise provided under existing law, or under existing Executive order issued pursuant to existing law.

SEC. 113. None of the funds in this Act may be used to initiate a new installation overseas without prior notification to the Committees on Appropriations.

SEC. 114. None of the funds appropriated in this Act may be obligated for architect and engineer contracts estimated by the Government to exceed $500,000 for projects to be accomplished in Japan or in any NATO member country, unless such contracts are awarded to United States firms or United States firms in joint venture with host nation firms.

SEC. 115. None of the funds appropriated in this Act for military construction in the United States territories and possessions in the Pacific and on Kwajalein Island may be used to award any contract estimated by the Government to exceed $1,000,000 to a foreign contractor: *Provided*, That this section shall not be applicable to contract awards for which the lowest responsive and responsible bid of a United States contractor exceeds the lowest responsive and responsible bid of a foreign contractor by greater than 20 per centum.

Sec. 116. The Secretary of Defense is to inform the Committees on Appropriations and Committees on Armed Services of the plans and scope of any proposed military exercise involving United States personnel 30 days prior to its occurring, if amounts expended for construction, either temporary or permanent, are anticipated to exceed $100,000.

(TRANSFER OF FUNDS)

Sec. 117. Unexpended balances in the Military Family Housing Management Account established pursuant to section 2831 of title 10, United States Code, as well as any additional amounts which would otherwise be transferred to the Military Family Housing Management Account during fiscal year 1988, shall be transferred to the appropriations for Family Housing provided in this Act, as determined by the Secretary of Defense, based on the sources from which the funds were derived, and shall be available for the same purposes, and for the same time period, as the appropriation to which they have been transferred.

Sec. 118. Not more than 20 per centum of the appropriations in this Act which are limited for obligation during the current fiscal year shall be obligated during the last two months of the fiscal year.

(TRANSFER OF FUNDS)

Sec. 119. Funds appropriated to the Department of Defense for construction in prior years are hereby made available for construction authorized for each such military department by the authorizations enacted into law during the first session of the One Hundredth Congress.

Sec. 120. The Secretary of Defense is to provide the Committees on Appropriations of the Senate and the House of Representatives with a report by February 15, 1988, containing details of the specific actions proposed to be taken by the Department of Defense during fiscal year 1988 to encourage other member nations of the North Atlantic Treaty Organization and Japan to assume a greater share of the common defense burden of such nations and the United States.

Sec. 121. For military construction or family housing projects that are being completed with funds otherwise expired or lapsed for obligation, expired or lapsed funds [shall] *may* be used to pay the cost of associated supervision, inspection, overhead, engineering and design on those projects and on subsequent claims, if any.

Sec. 122. Notwithstanding any other provision of law, the Secretaries of Defense, Army, Navy and Air Force are required to maintain legislative liaison to the House and Senate Appropriations Subcommittees on Military Construction *and budgetary and fiscal management of the Military Construction and Military Family Housing appropriations* in a manner identical to the method employed as of September 30, 1986*: Provided, That nothing in this section shall prevent the Secretaries of the Army and Navy from realigning legislative liaison and financial management for military construction to correspond with the method employed by the Air Force on September 30, 1986*.

Sec. 123. Notwithstanding any other provision of law, including the certification requirements provided in section 210 of title 23, United States Code, the Secretary of the Army is directed to provide funds for the design of access roads for the New Cumberland Army Depot, Pennsylvania and for the Tobyhanna Army Depot, Pennsylvania, within funds provided in this Act.

Sec. 124. None of the funds appropriated in this Act for use by the Department of Defense in fiscal year 1988 may be used for the purpose of the design or construction of any facilities relating, directly or indirectly, to the deactivation, relocation or transfer of any part of the 474th Tactical Fighter Wing at Nellis Air Force Base, Nevada.

Sec. 125. None of the funds appropriated in this Act for use by the Department of Defense in fiscal year 1988 may be used for the purpose of the design or construction of any facilities relating, directly or indirectly, to the deactivation, relocation or transfer of any part of the 5th Fighter Intercepter Squadron, stationed at Minot Air Force Base, North Dakota.

Sec. 126. It is the sense of the Congress that all facility construction costs associated with the relocation of the Tactical Fighter Wing at Torrejon Air Base, Spain, to another location, should be the responsibility of the North Atlantic Treaty Organization.

Sec. 127. None of the funds appropriated in this Act for planning and design activities may be used to initiate design of the Pentagon Annex.

Sec. 128. Notwithstanding any other provision of law, the Secretary of Defense shall notify the Committees on Appropriations within twenty-four hours after a determination by the President or the Secretary to utilize premobilization construction authority.

Sec. 129. None of the funds appropriated by this or any other Act for the Department of Defense may be obligated or expended for the National Test Bed Components of the National Test Facility at Falcon Air Station, Colorado, until the Strategic Defense Initiative Organization (SDIO) has begun the development of the Phase One Strategic Defense System (SDS) Architecture and the Follow-on Strategic Defense System Architecture and the Committees on Appropriations of the Senate and the House of Representatives have thereafter received an interim report from SDIO on the Phase One System Architecture and follow-on architecture that the National Test Facility will be testing and evaluating; and until SDIO has provided a detailed report to the Committees on Appropriations of the Senate and the House of Representatives on the capability of the National Test Facility and the other components of the National Test Bed to produce the simulation, evaluation, and demonstration data needed to determine whether a proposed ballistic missile defense system satisfies the criteria of technical feasibility, cost-effectiveness at the margin, and survivability: Provided, That, none of the funds appropriated by this or any other Act for the National Test Facility or any other components of the National Test Bed may be used to provide any operational battle management, command, control or communications capabilities for an early deployment of a ballistic missile defense system: Provided further, That, the goal of the National Test Facility and other components of the National Test Bed shall be to simulate, evaluate, and demonstrate architectures and technologies that are technically feasible, cost effective at the margin, and survivable.

Sec. 130. None of the funds appropriated in this Act may be obligated or expended for the purpose of transferring any equipment, operation, or personnel from the Edgewood Arsenal, Maryland, to any other facility during fiscal year 1988.

Sec. 131. In addition to the purposes for which it is now available, the property account established by section 12(b) of the Act of January 2, 1976, as amended (43 U.S.C. 1611 note) shall be available hereafter for purposes involving any public sale of property by any agency of the United States, including the Department of Defense, or any element thereof.

Sec. 132. (a) The Secretary of the Army shall permit the construction of a chapel on land under his jurisdiction at Dugway Proving Ground, Utah, by the Church of Jesus Christ of the Latter-Day Saints.

(b) The Secretary shall make available such land at the Dugway Proving Ground as the Secretary determines adequate for the construction of the chapel referred to in subsection (a).

(c) The chapel shall be constructed at no cost to the United States and shall be operated and maintained by the Church of Jesus Christ of the Latter-Day Saints at no expense to the United States.

(d) Notwithstanding any regulation, order, or directive to the contrary, the operations of the chapel shall not be subject to the supervision or control of the post chaplain.

(e) The Secretary of the Army may impose such terms and conditions on the construction, operations, and maintenance of the chapel as the Secretary determines appropriate to protect the interests of the United States.

Sec. 133. Subsection 2828(g) of title 10, United States Code, is amended:

(a) in paragraph (1), by deleting "Secretary of a military department" and inserting in lieu thereof "Secretary concerned", and by inserting after the word "constructed" the phrase "or rehabilitated to residential use",

(b) by adding the following new paragraph after paragraph (8)(B):

"(C) In addition to the contracts authorized by paragraph (7) and subparagraphs (A) and (B), the Secretary of the Army may enter into one or more contracts under this subsection for not more than a total of 3,500 family housing units, the Secretary of the Navy may enter into one or more contracts under this subsection for not more than a total of 2,000 family housing units, the Secretary of the Air Force may enter into one or more contracts under this subsection for not more than a total of 2,100 family housing units, and the Secretary of Transportation, for the Coast Guard, may enter into one or more contracts under this subsection for not more than a total of 300 family housing units.", and

(c) in paragraph (9), by deleting "September 30, 1988" and inserting in lieu thereof "September 30, 1989".

Sec. 134. Section 802 of the Military Construction Authorization Act, 1984 (10 U.S.C. 2821 note), is amended:

(a) in subparagraph (a), by (1) inserting after the word "constructed", the phrase "or rehabilitated to residential use", and (2) by deleting "Secretary of a military department," and inserting in lieu thereof "Secretary of a military department, Secretary of Transportation with regard to the Coast Guard, or Director of a Defense Agency,",

(b) in subsection (b)(3), by deleting the word "not",

(c) in subsection (b)(6), by adding at the end the phrase "unless the project is located on Government-owned land, in which case the renewal period may not exceed the original contract term",

(d) in subsection (b)(11), by deleting "military department" and inserting in lieu thereof "military department, the Secretary of Transportation with regard to the Coast Guard, or the Director of the Defense Agency", and

(e) by (1) deleting subsections "(f)" and "(g)", and (2) by relettering subsection "(h)" as subsection "(f)".

Sec. 135. (a) In General.—Subject to subsection (b) through (g), the Secretary of the Navy may lease, at fair market rental value, to the Port of Oakland, California, not more than 195 acres of real property, together with improvements thereon, at the Naval Supply Center, Oakland, California.

(b) Term of Lease.—The lease entered into under subsection (a) may be for such term as the Secretary determines appropriate, with an initial term not to exceed 25 years and an option to extend for a term not to exceed 25 years.

(c) Replacement and Relocation Payments.—The Secretary may, under the terms of the lease, require the Port of Oakland to pay the Secretary—

(1) a negotiated amount for the structures on the leased property requiring replacement; and

(2) a negotiated amount for expenses to be incurred by the Navy with respect to vacating the leased property and relocating to other facilities.

(d) Use of Funds.—(1) Funds received by the Secretary under subsection (c) may be used by the Secretary to pay for relocation expenses and constructing new facilities or making modification to existing facilities which are necessary to replace facilities on the leased premises.

(2)(A) Funds received by the Secretary for the fair market rental value of the real property may be used to pay for relocation and replacement costs incurred by the Navy in excess of the amount received by the Secretary under subsection (c).

(B) Funds received by the Secretary for such fair market rental value in excess of the amount used under subparagraph (A) shall be deposited into the miscellaneous receipts of the Treasury.

(e) Authority to Demolish and Construct Facilities.—The Secretary may, under the terms of the lease, authorize the Port of Oakland to demolish existing facilities on the leased land and to provide for construction of new facilities on such land for the use of the Port of Oakland.

(f) Report.—The Secretary may not enter into a lease under this section until—

(1) the Secretary has transmitted to the Committee on Armed Services of the Senate and of the House of Representatives a report containing an explanation of the terms of the lease, especially with respect to the amount the Secretary is to receive under subsection (c) and the amount that is expected to be used under subsection (d)(2); and

(2) a period of 21 days has expired after the date on which such report was received by such Committees.

(g) Additional Terms.—The Secretary may require such additional terms and conditions in connection with the lease authorized by this section as the Secretary considers appropriate to protect the interests of the United States.

Sec. 136. Of the amounts appropriated by this Act, where local planning resources are not sufficient, the Secretary of Defense may provide community planning assistance, not to exceed $3,000,000, in behalf of the Army Light Divisions and Navy Strategic Dispersal activities.

Mr. DOLE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The absence of a quorum has been suggested. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SASSER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The pending business is H.R. 2906.

Mr. SASSER. The military construction bill?

The PRESIDING OFFICER. Yes.

Mr. SASSER. Mr. President, the military construction bill represents a reduction in the President's budget request of $1.6 billion. I would point out to my colleagues that that is a reduction of 16 percent. No other appropriations bill approved by the Senate this year has reduced the budget request to this extent. In fact, Mr. President, in terms of outlays, the bill that we are presenting today is actually smaller than the bill the Senate approved last year. As a matter of fact, it is $14 million less and that is a real decrease in spending for this portion of the defense budget.

Mr. President, I am not proud of the fact that we have had to take such large reductions from the budget requests. I believe that there are substantial modernization and other construction needs remaining to be addressed. But we have discharged our duty to do our share toward reducing the Federal deficit.

The bill that we are recommending to the Senate today provides for the highest priority military construction needs while balancing the need to substantially moderate defense spending and addressing the problem of the budget deficit.

Mr. President, I will not unduly take the Senate's time to discuss the details of the military construction recommendation. The full Appropriations Committee reported the bill out last Friday and I believe that Members are familiar with its provisions. I will say that we have made almost 2,000 separate recommendations which affect military activities throughout the United States and, indeed, around the world.

I want to take just a few moments to point out the priorities that the committee places on securing more equitable burden-sharing from our allies.

Mr. President, I think my colleagues are aware that I have had a longstanding concern that the United States and the American taxpayer is asked to pay more than its share of the burden of defending the free world. During the last few days, we witnessed great turbulence in the stock markets around the world.

It is common wisdom that that turbulence has been created, at least in part, due to apprehension regarding the enormous Federal budget deficits here in the United States.

The budget deficit has, in turn, been fed by a relatively unrestrained period of defense spending over the past 6 years.

Many of the increases in defense spending that we have had to make in this country have been necessary because our allies simply have refused to do what we perceive to be their share in the defense burden-sharing bargain. They refuse to fully hold up their end of defending the free world, or at least paying their share of the defense of the free world.

Our European allies and Japan represent 52 percent of the free world's gross domestic product. Yet these European allies and Japan provide only 30 percent of the free world's defense spending.

It is the American taxpayer who has been forced to pay for the defense of the free world. Mr. President, that is a trend that simply cannot continue.

We must have more equity in sharing the international defense burden.

In the report that accompanies this military construction appropriations bill we have made nine separate recommendations designed to improve defense burden sharing among the allies.

Among the recommendations we have made is for the Department of Defense to provide the Congress with a study of alternative defense structures, changes in the existing force structure which will result in a net reduction in U.S. defense spending.

In my view, these changes can most effectively be brought about if our allies are forced to wake up and realize that they are not meeting their share of security and defense responsibilities.

If our allies began to pay more of their fair share and assumed a more equitable share of the military defense throughout the world, the United States will be able to reduce our Active Force structure and replace that with less expensive National Guard and Reserve unit components.

I am aware that many experts are saying that it is not reasonable to believe that our allies are going to begin paying a larger share of the common defense, and perhaps they are not. But we will never know until the full weight of the U.S Government is brought to bear on this problem.

The recommendations that we have made are designed to help bring about a friendly pressure on our allies. I hope the administration and the Department of Defense will join the Congress in pressing this issue.

Mr. President, we are awaiting the arrival of the distinguished ranking minority member of the subcommittee. I am advised that he will arrive momentarily.

Mr. President, I suggest the absence of a quorum and I ask unanimous consent that the time for the quorum call not be charged to either side.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SPECTER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SPECTER. Mr. President, I stand to support the military construction appropriations bill for fiscal year 1988 as reported by the committee.

The bill before the Senate today will provide the Department of Defense with $8.5 billion for fiscal year 1988 to operate and maintain military family housing as well as to renovate and construct housing and other facilities.

The committee bill as reported is within the allocation for budget authority and outlays as determined by our committee subject to the Budget Act.

The committee has been forced to make some very difficult decisions to stay within the allocations provided for this bill. However, I believe that the bill before us today is fair and well-balanced and that it contains the most vital projects in support of our national defense.

The bill is some $336 million in budget authority over last year's appropriation, but is $1.5 billion below the President's request. The reduction is substantial, and the need for more funding is justified. However, the economy dictates that all agencies of Government tighten their belts in order to bring down the deficit. I believe that the committee has recognized their responsibility in reporting out this bill. The bill also conforms to the authorization as passed by the Senate.

Mr. President, the distinguished chairman of our subcommittee, the gentleman from Tennessee [Mr. SASSER] has already provided the Senate with much detail on the bill, and therefore, in order to move the bill expeditiously, I will not go into any specifics.

I do, however, want to commend Senator SASSER for his fine work and leadership in getting this bill to the Senate today. He has been most cooperative with Members from both sides of the aisle to ensure that all concerns are met. I also want to thank the majority clerk of the subcommittee, Mr. Mike Walker, for his valuable assistance and cooperation in working with the minority staff.

Mr. President, as we are all aware, this bill is on the floor today under a unanimous-consent agreement with only four amendments in order. All of these, I believe are acceptable to both sides and can be adopted quickly.

I, therefore, urge my colleagues to support the reported bill and the amendments.

Mr. President, I yield the floor.

Mr. SASSER. Mr. President, I wish to express my appreciation at this time to the distinguished ranking member of the subcommittee, Senator SPECTER, for his help and support throughout the year. I look forward to continuing to work with the distinguished ranking member as we approach the conference and final action on this bill.

Mr. STENNIS. Mr. President, I am pleased to present before the Senate today the military construction appropriation bill for fiscal year 1988. This bill, which provides approximately $8.4 billion in total funding for fiscal year 1988, reflects the diligent care and able effort which our entire committee has rendered. In particular, however, it is evidence of the hard work and excellent leadership of subcommittee Chairman SASSER and the ranking minority member, Senator SPECTER. I also wish to compliment the highly skilled work of the staff of their subcommittee: Mike Walker, Jane McMullan, Rick Pierce, and Penny German.

I now wish to briefly highlight a few important items regarding this bill.

First and foremost, I am pleased to report that this bill is below the 302(b) allocation for budget authority and outlays. As I have previously indicated, this is essential for all appropriation bills which are to be taken up for consideration on the Senate floor.

Second, the committee's recommended $8.4 billion in total funding is below the President's request of $10 billion and just slightly above the House-passed level of $8.3 billion.

Finally, I would ask my colleagues to resist any further amendments adding additional funds which would violate the bill's spending ceiling set by the subcommittee's 302(b) allocation. Let me also mention that the Senate rules do not permit legislative amendments on appropriation bills.

In conclusion, I firmly support this bill and ask that it be adopted so that we can proceed to conference with our House counterparts in a timely manner.

Mr. President, I yield the floor.

Mr. SASSER. Mr. President, I ask unanimous consent that the committee amendments be agreed to en bloc, provided that no point of order shall be considered as having been waived by reason of this agreement, and that the bill, as thus amended, be considered as original text for the purpose of further amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

The committee amendments were agreed to en bloc.

Mr. DOMENICI. Mr. President, I rise in support of H.R. 2906, the fiscal year 1988 military construction appropriations bill, as reported by the full Appropriations Committee.

I commend the distinguished chairman and ranking member of the subcommittee, the Senator from Tennessee and the Senator from Pennsylvania, for reporting a bill that is consistent with the subcommittee's 302(b) allocation pursuant to the budget resolution.

Mr. President, this is the first appropriations bill that has come before the Senate since the initial sequester order under the Balanced Budget and Emergency Deficit Control Reaffirmation Act was issued by OMB on October 20.

As my colleagues know, defense programs, excluding military personnel, will be subject to a 10.5-percent across-the-board reduction if the Congress and the President do not develop the $23 billion deficit reduction package mandated in the Balanced Budget Reaffirmation Act.

The bill now before us provides a clear picture of the situation now confronting the Senate. The military construction bill is essentially at the level of the Gradison baseline from which the Gramm-Rudman sequester would occur. In other words, this bill achieves no savings toward the $23 billion in deficit reduction that we must put together to avoid the sequester on November 20.

If my colleagues would like to get a realistic look at the likely effect of the pending sequester, all they have to do is take the total new budget authority provided for the military construction projects in this bill and reduce that amount by 10.5 percent.

The estimated sequester for this bill alone is a reduction of $0.9 billion in budget authority and $0.3 billion in outlays for fiscal year 1988.

As an illustrative case, my colleagues might want to use their own State as an example. For New Mexico, $8 million of the $76.5 million provided in the bill for military construction projects could be permanently canceled if the final sequester order takes place on November 20.

We need a plan to find the $23 billion in mandated deficit reduction to avoid the across-the-board cuts that confront us in one short month. I urge us to work together to that end.

AMENDMENT NO. 1039

Mr. SASSER. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

> The Senator from Tennessee [Mr. SASSER], for Mr. HOLLINGS (for himself and Mr. SASSER) proposes an amendment numbered 1039.

Mr. SASSER. Mr. President, I ask unanimous consent that further reading of this amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the bill, add the following new section:

"SEC. . LAND CONVEYANCE, FORT JACKSON, SOUTH CAROLINA

Subsection (e)(1) of section 840 of the Military Construction Authorization Act, 1986 (Public Law 99-167), is amended—

(1) by striking "and" at the end of subparagraph (B);

(2) by striking the period at the end of subparagraph (C) and inserting in lieu thereof "; and "; and

(3) by adding at the end thereof the following new subparagraph;

"(D) for a water systems improvement project at Fort Jackson at an estimated cost of $2,300,000, and for family housing improvement projects at Fort Jackson at an estimated cost not to exceed $6,400,000.".

Mr. SASSER. Mr. President, I say to my colleagues I offer this amendment on behalf of the distinguished Senator from South Carolina [Mr. HOLLINGS]. This amendment is identical to an amendment approved by the Senate on the defense authorization bill.

Simply stated, it permits the sale of land at Fort Jackson, SC.

Under this provision, the Secretary may utilize the proceeds of this sale for a water system project on the base and for family housing improvements.

I would say to my colleagues that this amendment does not add to the spending contained in this bill.

I believe this amendment is acceptable and has been cleared with the distinguished ranking member.

Mr. SPECTER. Mr. President, the amendment is acceptable to this side of the aisle.

Mr. SASSER. Mr. President, I yield back the remainder of my time on this amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 1039) was agreed to.

Mr. SASSER. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. SPECTER. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1040

Mr. SASSER. Mr. President, I send another amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Tennessee [Mr. SASSER], for Mr. DANFORTH (for himself and Mr. SASSER) proposes an amendment numbered 1040.

Mr. SASSER. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 7, line 4, strike "$165,716,000" and insert in lieu thereof "$170,016,000"

Mr. SASSER. Mr. President, I offer this amendment on behalf of the distinguished Senator from Missouri [Mr. DANFORTH]. This amendment would provide $4,300,000 in new budget authority for the Air National Guard. These funds are provided for the construction of two projects at Lambert Field, St. Louis, MO. The projects are a munitions maintenance storage facility for $1,200,000, and $3,100,000 for alterations to the squadron operations facility.

Mr. President, these projects at Lambert Field are fully justified. They were authorized by an amendment offered on the Senate floor to the defense authorization bill.

This amendment is within the 302(b) allocation for outlays.

Mr. President, I am advised that this amendment has been cleared with the distinguished ranking member.

Mr. SPECTER. Mr. President, this amendment is acceptable.

Mr. SASSER. Mr. President, I yield back the remainder of my time on this amendment and move its adoption.

The PRESIDING OFFICER. All time having been yielded back, the question now is on agreeing to the amendment.

The amendment (No. 1040) was agreed to.

Mr. SASSER. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. SPECTER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1041

Mr. SASSER. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Tennessee, Mr. SASSER, for Mr. STEVENS (for himself and Mr. SASSER) proposes an amendment numbered 1041.

Mr. SASSER. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 4, line 23, delete "$597,865,000" and insert in lieu thereof "$602,865,000".

Mr. SASSER. Mr. President, I offer this amendment on behalf of the distinguished Senator from Alaska, Mr. STEVENS, and myself. Simply stated, this amendment would provide funds for preconstruction activities on a new facility to support the White House Communications Agency. This project is fully justified. The White House Communications Agency is a critical link in the effectiveness of White House operations. I have carefully reviewed the project and believe that the additional space and improvements are indeed needed. The project is authorized. The amendment we are offering permits the obligation of only a modest amount of outlays during fiscal year 1988. So the outlays in this bill will still be kept within the 302(b) allocation.

Mr. STEVENS. Mr. President, this amendment adds $5 million to begin site preparation and preconstruction activities for the White House Communications Agency Support Complex at Anacostia Naval Station in Washington, DC. The administration requested this facility in the budget as a priority program to alleviate serious deficiencies in communications and security for the White House Communications Agency.

The Appropriations Committee agreed with the requirement for the project, but deferred funds due to the severity of our section 302(b) budget allocation for military construction appropriations. While these funds were denied in committee, our report stipulates that this action was done "without prejudice." Subsequent to our full committee action, we have determined that site preparation and preconstruction planning for this project only requires $5 million. The outlay impact of this allowance has been determined by the Congressional Budget Office to be within the limits of the budget allocations for the military construction appropriation bill. While this amendment permits preparatory activity to begin, we expect the balance of funding required for construction will be included in the fiscal year 1989 budget request.

I am advised this amendment has been cleared on both sides and I want to thank the chairman of the Military Construction Subcommittee, Senator SASSER, for this patience and willingness to accommodate this amendment. I urge adoption of the amendment.

Mr. SASSER. Mr. President, I am advised that this amendment has been cleared with the distinguished ranking minority member.

Mr. SPECTER. Mr. President, this amendment is acceptable to the Republican side of the aisle.

Mr. SASSER. Mr. President, I move adoption of the amendment.

The PRESIDING OFFICER. All time has been yielded back. The question now occurs on agreeing to the amendment.

The amendment (No. 1041) was agreed to.

Mr. SASSER. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. SPECTER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

PERMANENT TEMPORARIES

Mr. DECONCINI. Mr. President, I would like to convey my deep respect to the chairman of the Military Construction Subcommittee for his diligent efforts to report out a bill which recommends new fiscal year 1988 appropriations of $8,492,398,000 or $1,580,559,000 under the budget request. This bill has achieved this despite the difficulties imposed by the Republican congressional inaction and delay on the defense authorization bill. In addition to the vital spending for military construction and family housing and the correlating effects of improving force readiness and improving personnel retention, this bill includes the imperative issues of defense burden sharing and the U.S. policy in the Persian Gulf.

I would also like to discuss the situation at Fort Huachuca, AZ, with the chairman. In 1942, a two-story barracks was constructed at a cost of $11,235. This facility was intended to last 5 years. Forty-five years later, it will cost double what it would in a modern building to maintain and provide utilities for this dilapidated structure. This is merely one of hundreds of such structures thereby multiplying the costs to maintain, heat, and cool these facilities. A tragic fire, one of the worst peacetime disasters on a U.S. Army base, destroyed 23 of these buildings this summer. While this bill has dealt with this fire and a reprogramming request, something must be done about these remaining facilities.

Mr. SASSER. I thank the Senator for his comments and convey my respect to him for his persistent and articulate communication on this issue. This is an issue which is imperative to address and resolve for a number of reasons, including the cost to the U.S. taxpayer. It has already become wasteful and nonproductive for us to continue to invest in these World War II dated buildings. They need to be replaced now.

Another reason for my concern, and Senator DECONCINI as a member of the Intelligence Committee has talked to me about this, is for security and safety of military intelligence. Most of the Army's technical intelligence training is accomplished at Fort Huachuca. Much of this is conducted under highly protected and insulated screens and contained devices to secure the facilities. Given today's environment, we need to assure that highly classified information does not get into the wrong hands.

Mr. DECONCINI. The Senator makes a very good point. The Army conducts a great deal of its technical training at this school at Fort Huachuca. The sad part is that much of this training is taking place in structures that may have been used by the fathers and grandfathers of today's soldiers. Many of these facilities are maintained at a bare minimum, thereby retarding the training opportunities for our soldiers. This school cannot carry out the proper mandate of preparing, educating, and training our soldiers in military intelligence until something is done about this situation. I would request that the chairman make this a priority in conference, convey this next year in bill and report language, and in the future stress this to assure our military security with respect to training our soldiers in intelligence activities. Report language a few years ago should be followed-up on.

Mr. SASSER. I say to the Senator that as chairman of this committee I will strongly support his efforts to replace the 23 buildings that were destroyed by fire, under reprogramming of funds under title X, as you have requested in this bill. Moreover, I will also strongly support his efforts to replace the remaining World War II structures at Fort Huachuca that threaten our national security, cost U.S. taxpayers double the cost of maintenance and utilities, and downgrade the teaching facilities of future soldiers in military intelligence.

Mr. DECONCINI. I thank the distinguished chairman of the Military Construction Subcommittee and look forward to working with him to address this mutual concern in the future.

Mr. QUAYLE. I rise to address my distinguished colleague, Senator SASSER, the senior Senator from Tennessee and chairman of the Appropriations Committee's Subcommittee on Military Construction. In the committee's version of the military construction appropriations bill for fiscal year 1988, H.R. 2906, I note that two military construction projects in Indiana have been deferred. A barracks complex at Fort Benjamin Harrison in Indianapolis and a weapons development and test facility at the Navy's Weapons Support Center in Crane, IN, have been deleted from the fiscal year 1988 program.

Mr. SASSER. The Senator from Indiana is correct.

Mr. QUAYLE. As I am sure my colleague can understand, these projects are important for both the military facilities concerned and the State of Indiana. I would ask my colleague whether the Appropriations Committee has knowledge of any grave problems with these projects or other pressing reasons why the projects cannot go forward.

Mr. SASSER. I can assure my colleague that there were no concerns with these projects other than strictly budgetary considerations. While the Senate Appropriations Committee did not fund these projects, the House of Representatives in its military constructions appropriations bill did allow for them. In fact, these projects are currently the subject of deliberations by the House and Senate Armed Services Committee as part of their conference on the fiscal year 1988 and 1989 Department of Defense authorization bill.

I can assure the Senator from Indiana, however, that if these projects are authorized by the Armed Services Committees, that the Senate will recede to the House Appropriations Committee positions and fund these projects in conference.

Mr. QUAYLE. I thank my colleague for that assurance, and I express to him my deep appreciation for his time and consideration.

Mr. SASSER. Mr. President, I believe there is one remaining amendment under the unanimous-consent request, an amendment by the Senators from Alaska, Mr. MURKOWSKI, and Mr. STEVENS, and once we deal with that amendment, which is acceptable to the managers, I will be prepared to yield back the remainder of my time and go to third reading.

Mr. SPECTER addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

AMENDMENT NO. 1042

(Purpose: To deny funds for projects in the United States that use the engineering, architectural, and construction services of any foreign country that does not provide such services of the United States access to the markets of the foreign country)

Mr. SPECTER. Mr. President, on behalf of Senators MURKOWSKI and STEVENS, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will read the amendment.

The assistant legislative clerk read as follows:

The Senator from Pennsylvania, Mr. SPECTER, for Mr. MURKOWSKI (for himself and Mr. STEVENS), proposes an amendment numbered 1042.

Mr. SPECTER. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the bill, add the following:

SEC. . DENIAL OF FUNDS FOR PROJECTS USING CERTAIN SERVICES OF FOREIGN COUNTRIES THAT DENY FAIR MARKET OPPORTUNITIES.

(a) IN GENERAL.—

(1) None of the funds appropriated by this Act may be used to carry out within the United States, or within any territory or

possession of the United States, any military construction project of the Department of Defense which uses any service of a foreign country during any period in which such foreign country is listed by the United States Trade Representative under subsection (c).

(2) Paragraph (1) shall not apply with respect to the use of a service in a military construction project if the Secretary of Defense determines that—

(A) the application of paragraph (1) to such service would not be in the national interest,

(B) services offered in the United States, or in any foreign country that is not listed under subsection (c), of the same class or kind as such service are insufficient or are not of a satisfactory quality, or

(C) exclusion of such service from the project would increase the cost of the overall project by more than 20 percent.

(b) DETERMINATIONS.—

(1) By no later than the date that is 30 days after the date on which each report is submitted to the Congress under section 181(b) of the Trade Act of 1974 (19 U.S.C. 2241(b)), the United States Trade Representative shall make a determination with respect to each foreign country of whether such foreign country—

(A) denies fair and equitable market opportunities for services of the United States in procurement, or

(B) fair and equitable market opportunities for services of the United States in bidding,

for construction projects that cost more than $500,000 and are funded (in whole or in part) by the government of such foreign country or by an entity controlled by such foreign country.

(2) In making determinations under paragraph (1), the United States Trade Representative shall take into account information obtained in preparing the report submitted under section 181(b) of the Trade Act of 1974 and such other information as the United States Trade Representative considers to be relevant.

(c) LISTING OF FOREIGN COUNTRIES.—

(1) The United States Trade Representatives shall maintain a list of each foreign country with respect to which an affirmative determination is made under subsection (b).

(2) Any foreign country that is added to the list maintained under paragraph (1) shall remain on the list until the United States Trade Representative determines that such foreign country does permit the fair and equitable market opportunities described in subparagraphs (A) and (B) of subsection (b)(1).

(3) The United States Trade Representative shall annually publish in the Federal Register the entire list required under paragraph (1) and shall publish in the Federal Register any modifications to such list that are made between annual publications of the entire list.

(d) DEFINITIONS.—For purposes of this section—

(1) the term "service" means any engineering, architectural, or constuction service.

(2) Each foreign instrumentality, and each territory or possession of a foreign country, that is administered separately for customs purposes shall be treated as a separate foreign country.

(3) Any service provided by a person that is a national of a foreign country, or is controlled by nationals of a foreign country, shall be considered to be a service of such foreign country.

Mr. SPECTER. Mr. President, the amendment I am offering for Senators MURKOWSKI and STEVENS is identical to one adopted by this body as part of the defense authorization bill and is being offered today because of the uncertain future of the authorization bill.

Mr. President, this amendment essentially provides that funds will not be provided for projects in the United States that use engineering, architectural, and construction services of any foreign country that does not provide such services of the United States access to the markets of the foreign country.

Mr. MURKOWSKI. Mr. President, the purpose of this amendment is to help unlock the doors that prevent U.S. firms from even bidding on public works projects in certain foreign markets.

With this amendment, we are saying: If you continue to keep your construction, architectural, and engineering markets closed to our firms, then we have no choice but to close our construction markets to your firms. Simple reciprocity.

The Senate is on record in support of this approach, Mr. President. Similar amendments attempting to achieve the same result have been adopted on the trade bill, the Department of Defense authorization bill, and the Commerce Committee markup of the Airport and Airways Improvement Act. I am grateful to my colleagues on the Appropriations Subcommittee on Military Construction and my colleagues on the full committee for their willingness to accept the amendment on this bill as well.

Today, the U.S. public works and military construction market is wide open to foreign competition. And that's the way it should be, provided our firms enjoy a reciprocal arrangement.

Quite simply, my amendment would exclude, with specified exceptions, firms from countries that close their public works markets from participating in military construction projects in the United States and its territories.

This is a message that needs to be sent, Mr. President, especially to our friends in Japan where we have made little progress in opening their markets.

As new leadership comes to power, we must send the signal that this issue remains one of the most troublesome in United States-Japan trade relations. That message is clear: We are willing to use the leverage of our markets in seeking a resolution.

American engineering, construction, and architectural firms that have tried to do business in Japan over the past 20 years know what it's like to have the door slammed in their face.

They've been told, in no uncertain terms, that foreigners need not apply to bid on public works projects in Japan.

And it's not because our firms aren't competitive—on the whole, our construction, engineering, and architectural firms are far superior in many aspects of engineering and construction technology than are the Japanese firms they would compete against.

But excellence alone hasn't opened the door to the Japanese construction market. The door to that market remains closed today—locked tight against foreign intrusion as a result of a closed Japanese bidding system that excludes all but Japanese firms.

Here in America though, Japanese firms have enjoyed free access to our construction projects.

Consider that in 1980, Japanese participation in the United States construction market totaled $50 million. Today, that figure is $2.2 billion. Meanwhile, American participation in the Japanese market is virtually nonexistent—the only case I know of where an American construction firm has been successful in Japan was the firm that built the storefronts for two Mrs. Field's Cookie Stores in Tokyo.

There's no doubt that the United States market is free and open to Japanese firms, while theirs is closed to ours.

And we have patiently sought to end this lack of reciprocity.

One of the focal points of our efforts has been the Kansai Airport project in Osaka, Japan—the first of an estimated $62 billion in public works projects the Japanese are planning to build in the coming decade.

Kansai is particularly meaningful because it has become a symbol meaning "closed to American participation."

Our Embassy in Japan has pressed the issue, as have officials from Commerce, the Office of the U.S. Trade Representative, and the U.S. industry itself. I've met with Japanese officials in Japan.

We have been assured by the Japanese that the situation would change. But it hasn't changed.

We have met, we have talked, we have been patient. But nothing has been done.

The time has come to act. And act each and every time we have the opportunity.

The Department of Defense military construction appropriations bill is just such an opportunity.

I want you to know how close to home this issue is for me. Very recently, the Army Corps of Engineers awarded a $14 million construction contract at Fort Wainwright, near Fairbanks, AK.

The contract was awarded to Konoike Gumi of Osaka, Japan—home of the Japanese airport project which has become synonymous with the term "foreigners need not apply."

Well, the irony isn't lost on this U.S. Senator, Mr. President. Fairbanks, AK is my home town, and I think it is an outrage that a firm from Osaka can win a military contract in Fairbanks, when firms from Fairbanks or any other American town can't even bid fairly on public works projects in Osaka.

It's time to change that situation, Mr. President. This amendment can help keep this from happening in the future.

It's simple. If any country won't allow American firms to bid on its Government-funded projects, then its firms can't win U.S. military construction projects here in the United States.

Let me add that the amendment also provides the Secretary of Defense the flexibility to override the requirement for reciprocity if:

First. National security considerations require otherwise;

Second. There is need for a level of service or quality that is not available in the United States or other countries with whom we enjoy reciprocity, or;

Third. The exclusion of firms from a particular nation would raise the cost of a project by more than 20 percent.

Mr. President, this is not a protectionist provision. Our domestic military construction market is wide open, and it will remain wide open to firms from countries whose markets are open to us.

My amendment is not like the provisions we sometimes insert into laws which state that we must buy American, or we must use American firms. Instead, this provision states that the U.S. military construction market is open to everybody, provided they play fair in their markets.

We are not asking the Defense Department to carry more than their fair share. We are simply asking them to do their part. The Office of the U.S. Trade Representative can't do it alone. The industry can't do it alone. The war against foreign trade barriers takes place on many fronts. The Department of Defense should not be excused from the fight.

Mr. President, we are not asking for an unfair advantage, just a level playing field.

Before us is the opportunity to send a very important message:

Vast, lucrative American military construction markets will remain open to foreign firms only as long as foreign public works construction markets are open to American firms.

That is a clear, simple, and compelling message that must be sent. The situation isn't going to get any better unless we act now.

This is the right time. This is the right bill. I urge the adoption of the amendment.

Mr. President, I am advised, as the distinguished chairman of the subcommittee has already stated for the record, there is no objection on behalf of the majority to the amendment.

Mr. SASSER. That is correct. This amendment is acceptable, Mr. President.

Mr. SPECTER. Mr. President, accordingly, I move adoption of the amendment.

The PRESIDING OFFICER (Mr. Daschle). If all time is yielded back, the question is on agreeing to the amendment.

The amendment (No. 1042) was agreed to.

Mr. SPECTER. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. SASSER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. SASSER. Mr. President, that concludes the amendments that are listed in the unanimous-consent request. I wish to again express my appreciation to the distinguished ranking minority member for his splendid cooperation during the course of developing this bill and bringing it to the floor.

Mr. President, I would ask for the yeas and nays and yield back the time remaining on the bill.

The PRESIDING OFFICER. Is there a sufficient second. There is a sufficient second.

The yeas and nays were ordered.

Mr. SPECTER addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I commend the distinguished chairman of the subcommittee, Senator Sasser. I thank him for his collegiality in working together on this bill.

The PRESIDING OFFICER. Is all time yielded back? If all time is yielded back, the bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment of the amendments and third reading of the bill.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read the third time.

Mr. SASSER. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The Chair would indicate that under the previous order the vote on final passage will occur next Tuesday.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. STEVENS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STEVENS. Mr. President, I just want to say a word about the handling of the military construction appropriations bill this year.

I think it is a most difficult problem to face the issues of how to allocate the moneys for defense in this very tight budget situation, and the two Senators in charge of this bill this year have done an admirable job.

I hope the Senate will overwhelmingly approve the recommendations of Senator Sasser and Senator Specter. This is a bill that is under the budget estimate, and it is one that I think meets the very vital needs of the country.

Having been a Senator who has managed the major bill, an appropriations bill, for several years, I am familiar with the difficulties that are faced in the military construction area, and I just want to go on record as commending these two Senators for the report that is before us and urging the Senate as a whole to approve it on Tuesday.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MURKOWSKI. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

REVIEW OF ONGOING SALES OF UNITED STATES MILITARY TECHNOLOGY TO CHINA

Mr. MURKOWSKI. Mr. President, last night the Senate adopted a resolution calling upon the administration to review ongoing sales of United States military technology to China, if China fails to support a United Nations arms embargo of Iran. It further calls upon the administration to make strong representations to China conveying the concern of the Senate over Chinese Silkworm sales.

As we all know, China has been supplying Silkworm missiles to Iran despite repeated official protests by the United States that these sales threaten the safety of international shipping in the Persian Gulf. According to published estimates, China has supplied about 30 of the missiles to Iran.

Our worst fears have now been realized. Last Thursday, a Silkworm missile hit a U.S.-owned tanker, the *Sungari*, causing major damage. Last Friday, another Silkworm hit the U.S.-flagged *Sea Isle City* inflicting 18 casualties, including two U.S. merchantmen aboard that vessel, the captain, who we understand has been blinded, and the radio operator. This week, a

Silkworm hit Kuwait's main oil terminal causing heavy damage to offloading facilities. Only good luck prevented a major conflagration in the terminal and the loss of more American lives. Tomorrow, there may well be another attack with more casualties.

Meanwhile, the United States has become an important supplier of military technology to the People's Republic of China. Most notable has been our agreement to supply 55 avionics packages to upgrade the capability of Chinese fighter aircraft, the F-18. It is time we sent a message that United States military sales to China may not continue if China continues its Silkworm sales to Iran. Since the attack, the administration has suspended efforts to ease United States technology exports to China. Passage of this resolution means that the administration and the Congress are speaking with one voice in warning China of serious consequences if Silkworm sales continue.

Recently, the Senate called upon the President to impose an arms embargo on Iran if Tehran used Silkworm missiles to attack United States ships. It is only consistent if we consider analogous sanctions on the suppliers of the Silkworms.

Mr. President, this resolution supports the United Nations by calling for actions that will persuade China to endorse a U.N.-sponsored arms embargo of Iran. It is not an anti-China initiative. It does nothing more than call for responsible action by our good neighbor China as a permanent member of the U.N. Security Council.

Mr. President, I applaud my colleagues for joining Senator Cranston and me in adopting Senate Resolution 84.

The PRESIDING OFFICER. The Senator from Kentucky.

INDEPENDENT FAA

Mr. FORD. Mr. President, I ask unanimous consent that Senator Melcher and Senator Glenn be added as cosponsors of S. 1600.

S. 1600 is a bill that develops an independent FAA. As more Senators and their staffs have an opportunity to read and study this bill, more Senators are joining as cosponsors.

I am very pleased with the response and very pleased with the questions. I am very pleased that we are moving in the direction that we are, so I encourage those that might be listening, that either they or their staffs will look at S. 1600.

KENTUCKY TOBACCO BARNS

Mr. FORD. Mr. President, they say that beauty is in the eye of the beholder. I received a letter from Pearl Campbell of Carlisle, KY. Enclosed in that letter is an article written by G.C. Myers, and it is entitled "G.C. Says: 'Some folks say I'm only a barn, but my Master says I'm his castle'."

So he reflects that, as it relates to tobacco country, how important that barn is and all that.

Mr. President, I ask unanimous consent that the letter from Pearl Campbell and the article by Mr. Meyers be included in the Record.

Mr. President, I yield the floor.

There being no objection, the material was ordered to be printed in the Record, as follows:

Carlisle, KY,
October 6, 1987.

Senator Wendell H. Ford,
Russell Senate Office Building,
Washington, DC.

Dear Senator: I have enclosed a copy of a story I thought you might be interested in reading that was published in our local weekly newspaper, "The Carlisle Mercury," Carlisle, Ky., August 27, 1987. Mr. Myers, a local merchant who owns and operates a retail drug store, the Carlisle Drug, 126 E. Main St., Carlisle, Ky. 40311, in our little town of about 1,520 people and Nicholas County of less than 8,000 souls has no degree in journalism but I think his column about "A Tobacco Barn" has merit and worthy of some type of recognition from our representation of "Our Kentucky."

I spoke with Mr. Myers about his article and he told me he paid to have it printed in our local, weekly paper but he felt like it was in his heart a column dedicated to our hard working tobacco farmers of our area. He told me they write about all kinds of houses, small, large, old, new, log, round, even "castles." So, he said, this ones for "The Farmers' Castle," his "Tobacco Barn." Hope you enjoy it.

Sincerely,

Pearl Campbell.

[From the Carlisle (KY) Mercury, Aug. 27, 1987]

G.C. Says: "Some Folk's Say I'm Only a Barn, but My Master Says I'm His Castle."

Taking that Sunday afternoon drive thru rural Kentucky, to be more precise, over the backroads of beautiful and picturesque Nicholas County (God's country you know), a strange notion struck my mind. As many times as I have traveled down these roads I never realized the warmth, beauty and individual personality of each one of these predominantly constructed buildings, commonly referred to in "our neck of the woods" as a tobacco barn.

Motoring along the Jackstown Road (my old stomping grounds in my courtin' days), in "Doc's old 1970 Buick La-Sabre, I seemed to be drawn by some sort of mysterious powers beyond my control to," pull her over and stop for a spell and "have a chat" with this lonesome looking tobacco barn (not expecting a visitor of course), and she seemed particularly pleased that I stopped.

Somewhat still under a superconscious sort of a spell, I glanced about the country side to see if their might be any witnesses to substantiate my reason for coming to such an abrupt halt with my remaining sanity leaning more toward a "look out" for a vicious dog or a landowners long barrel shotgun.

Feeling somewhat safe and secure from these catastrophes I decided to "hang loose", continue under this spell and have a "Sunday afternoon chat with this barn."

First off, I glanced around the area one more time and then proceeded to introduce myself. I told her I was just a feller' that "ran" (as we call it) a drug store in town and had passed her many times and sorry I had never stopped. She (the barn), said that's alright I've seen you drive down the road for years and thought someday he will stop for a visit. After our informal introductions, I walked around this huge and majestic standing building and felt somewhat inspired by her magnificents in size and durability. She told me, I'm only made of rough wood and have a tin roof but I withstand the hottest beams of summer Sun and the heaviest cold-windy snow storms old man winter can produce. "I've done it for years", she told me but my master tells me (words of wisdom passed down to him from higher up feller's in power, trade balance and all that stuff you know), that my days could be numbered and the future looks somewhat bleak for us tobacco barns.

I ventured, cautiously with my first question (knowing you skate on thin ice when you mention age to a lady), so, old G.C. just opened his mouth and asked, "How old are you". "I'm 110 years old", she said. "Good Lord, I would never have guessed it", (escaping that personal probe)—she certainly didn't look her age. "She asked me if I could stay a spell, she had a few things to tell me". So, I seated myself on the fender of "Doc's" La-Sabre—perked my ears—and got myself a real education. Now, she said, "have you ever seen any two tobacco barns that look alike?" Pondering on this for a minute I told her that, "Come to think of it, I don't believe I have". They all seem to look a little different in their own unique way. Some are high on a hill, some down in the valley, some well painted, some in need of, some strategically placed along the road, each one built where it's master thinks best. "You know", she told me, "many barns sit empty most of the year and earn their worth from September through December when tobacco is cut and housed." "Things will soon be buzzing around here about next week."

Tobacco became the State's first major cash crop back in 1787, when James Wilkinson negotiated with the Spanish for the privilege of shipping tobacco, hams and well cured bacon down the Mississippi to New Orleans. Now, I'm thinking in my own mind, that was a long time ago, before we became the 15th State, June 1, 1792. It's no wonder that tobacco barns (like so many things we see every day, take for granted they will always be there and don't appreciate), have become stately landmarks, a natural part of our beautiful Kentucky scenery.

She asked me if I had ever seen a round barn! I told her no (as you can tell I was not contributing much to this conversation), but that I saw a picture of one in a magazine once. She said that she had heard her master speak of one he saw in western Kentucky, Daviess County she thinks, that was over 150 years old. "Round barns," she said, "withstand the strongest of winds you know." Makes sense to me, I thought.

She told me that back in the old days, the majority of barns were painted only one color, red. Farmers mixed red iron oxide with skimmed milk and lime—and got a paint of sorts which hardened and coated the barn like a plastic. The mixture was a very red color and so known as barn red. Red sort of become the standard color, got a firm foothold on the farmer and hung on year after year, from father to son and down the line with barn red. "Of course," she said, "in the earliest settlements," it was considered "showy" and vulgar to paint a barn and coated them with a homemade wood preservative." The Virginians used lampblack to protect the wood that resulted in a coloring known as barn grey.

Realizing the time of day had gotten away from me, I told her how much I enjoyed our visit and I would stop again sometime. As I pulled off in "Doc's" La-Sabre, I glanced back at her thru the rearview mirror and the red sunset shinning on her tin roof made her sparkle like a "jewel from Tiffany's" of New York City. Driving back to town, I was thinking, what an education that visit was, and searching my mind for a word to describe this structure I had visited. Ragged—(well, maybe a little), Dirty—(no, she was too proud to be dirty), Majestic—(she must have been, or she wouldn't have drawn me to her), Proud and Honorable—(most certainly), Sympathetic, Loyal—(yes, overwhelmingly), For she was in all her glory her "Master's Castle," She was a Nicholas County Kentucky Tobacco Barn. "In God we trust". "I love Nicholas County."

Thank you

Paid for by G.C. MYERS,
Carlisle, KY.

MEDICARE CATASTROPHIC ILLNESS COVERAGE ACT

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of S. 1127. The clerk will report.

The legislative clerk read as follows:

A bill (S. 1127) to provide Medicare catastrophic illness coverage, and for other purposes.

The Senate resumed consideration of the bill.

The PRESIDING OFFICER. The pending question is on the committee amendment as modified.

The Senator from Minnesota.

Mr. DURENBERGER. Mr. President, the late President John F. Kennedy nearly 25 years ago admonished us all to turn our attention to meeting the needs of our senior citizens.

He said, in a special message to Congress: "The increase in the life span and in the number of our senior citizens presents this Nation with increased opportunities: The opportunity to draw upon their skill and sagacity and the opportunity to provide the respect and recognition they have earned. It is not enough for a great nation merely to have added new years to life—our objective must also be to add new life to those years."

Mr. President, in the spirit of this statement, many of us here are celebrating this long-overdue consideration of a catastrophic illness insurance bill in the U.S. Senate. We are * * * for thousands of elderly and disabled Americans who have suffered catastrophic illnesses in the past * * * an unfortunate 22 years late. How many American families have been devastated financially and emotionally by catastrophic illness? How many more names will be added to that list in the next year if we fail to act?

For this Senator, just one more name will be too many. This is a serious problem. This year nearly 2 million people on Medicare will spend more than $1,700 out of their own pockets, without reimbursement. Of those who are hospitalized, which represents about 8 million beneficiaries each year, the average out of pocket costs are $4,030. This is too much for most seniors to pay. We must add this protection to the Medicare Program.

There are four reasons: First, to eliminate fear; second, stop waste; third, provide protection for those who only have Medicare and no supplementary insurance either private coverage or Medicaid; and fourth, to provide cost effective protection to all 32 million beneficiaries.

The bill which we are considering and to which I will speak at greater detail in the future is a very good bill. Not only is it long overdue, Mr. President; not only does it eliminate fear; not only does it prevent waste and duplication in insurance benefits; not only does it provide protection for several million Americans currently not protected; but, Mr. President, it provides people like my parents, who are 76 and 80 years of age today, with one important element of the Medicare Program which they have never had. That is the protection against the unknown.

I have heard it said that, yes, acute care medical or medical catastrophic is fine, but there are more serious catastrophic problems facing the elderly of America and I suppose that is true. But if you, like I, have sat down with elderly parents—mine have lived now for 15 years on fixed incomes—and once a year watch their premiums rise, watch their confusion rise, and watch their fears and their concerns about their tomorrow's increase, you would know that the best place to start if you are going to provide catastrophic protection is where we start today, Mr. President: with the hospital, with the doctor, with the drugs, with all of those important elements of this medical system that if you do not have, you do not make it.

We will do long-term care. We will provide as a nation for the nursing home care and the respite care and a lot of other things that our elderly need. We will do that. But we must begin with the most important catastrophic protection, that over which they have no control: hospital, doctors, and the like.

As I indicated, this will not be the end, Mr. President, of our efforts. but merely the beginning of a very important effort to tackle the most serious problem in Medicare today.

This is a bipartisan effort, but it took a leader. Many of us have been authors of catastrophic insurance legislation almost since the time we came to the Senate. But perhaps no one but the chairman of the Finance Committee has spent as much time or committed as much effort to providing for catastrophic health insurance protection. Not just for elderly Americans but his concern is for the poor, his concern for employed Americans who suffer the same problem with potential financial catastrophe are well known to all of us who served with him on the Finance Committee.

So it is the author of this legislation who has, in so many similar occasions during the course of this year, brought us Republicans and Democrats together on an important piece of legislation to whom we should give the credit for what we are about to do.

Mr. President, as I indicated, I will have more to say on the rationale, if you will, for catastrophic in the next day or so. I think many of my colleagues are concerned about the cost of this program and many of my colleagues are concerned about whether or not we are not opening the door to some very large expanded benefits which neither we, this generation, nor our parents, nor our children will have the capacity to close.

I would just say to them, and I will have more to say on this later, that we have reached a threshold in insuring Americans with this bill because, for the first time, the beneficiaries of this particular Medicare benefit will be paying for the costs of this benefit.

In exchange for eliminating the fear and in exchange for eliminating the waste and in exchange for giving them a more sensible, more reasonable product, they will be paying, through premiums, the cost of this benefit.

And they will be paying, Mr. President, a lot less for a catastrophic feature included in the Medicare Program than 87 percent of them are now paying for separate catastrophic via television salesmen in the MediGap or supplemental market.

So as we explore these costs, as we explore this new form of burden, I think it is also appropriate to say to my parents' generation that they have decided in this legislation to shoulder a burden, not being passed on to their children, not being passed on to their grandchildren. It is their own burden, and the way this bill is constructed, they have decided to undertake it.

I think we, of all generations, have come to an appropriate conclusion about how to keep that burden light and that yoke sweet.

I think it is an opportunity that we need to seize. I think it is appropriate that the President of the United States has recognized this. He has called for catastrophic and he has worked very hard with the members of this committee in bringing us to the point where not only on this catastrophic but on some of the other amendments that will be considered, we are, as an institution, and we are, as the responsible representatives of our constituents in this National Government, pretty much of one mind. In an area usually subject to great benefits, the area of benefits to elderly Americans, Mr. President, that is unusual.

AMENDMENT NO. 1043

(Purpose: To require maintenance of effort by employers who are providing health care benefits that are duplicative of new or improved medicare benefits)

The PRESIDING OFFICER. The Senator from Michigan.

Mr. RIEGLE. Mr. President, I rise to offer an amendment for myself and Mr. GRASSLEY. I send the amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Michigan [Mr. RIEGLE], for himself and Mr. GRASSLEY, proposes an amendment numbered 1043.

Mr. RIEGLE. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place, insert the following new section:

SEC. . MAINTENANCE OF EFFORT.

(a) IN GENERAL.—During the period described in subsection (c), if an employer provides health care benefits to an employee or retired former employee (including a Federal employee or retired former employee) that are duplicative of new or improved health care benefits provided under this Act or the amendments made by this Act, the employer shall—

(1) provide additional benefits to the employee or retired former employee that are at least equal in value to the duplicative benefits; or

(2) refund to the employee or retired former employee an amount equal to the actuarial present value of the duplicative benefits.

(b) REGULATIONS.—The Secretary of Labor may issue such regulations as are necessary to carry out this section.

(c) EFFECTIVE DATE.—This section shall be effective—

(1) during the 1-year period beginning on the date of enactment of this Act; or

(2) in the case of an employer who is providing duplicative health care benefits to employees or retired former employees under a collective bargaining agreement that is in effect on the date of enactment of this Act, until the expiration of the agreement.

Mr. RIEGLE. Mr. President, I am offering this amendment for myself and Senator GRASSLEY. I have discussed this with the managers on both sides. I understand it is acceptable to both sides. I will give a brief explanation as to what it does.

Mr. DURENBERGER. Will my colleague yield?

Mr. RIEGLE. Yes.

Mr. DURENBERGER. The Senator from Michigan is correct that for those of us who have been working on this bill the Senator's amendment is not only acceptable but very appropriate. I have been advised, however, that one of the Senators on this side has not yet had the opportunity to examine the amendment so I cannot say that this side will accept it until he has had that opportunity, which I trust will happen in the next few minutes.

Mr. RIEGLE. Does the Senator expect he will do that now or in short order? Or is it something we might have to carry over?

Mr. DURENBERGER. It is my expectation we will know that within the next several minutes.

Mr. RIEGLE. Fine.

Mr. BENTSEN. Will the Senator further yield?

Mr. RIEGLE. Yes.

Mr. BENTSEN. The Senator is correct so far as this side of the aisle is concerned. It is an excellent amendment and I am quite supportive of it. Hopefully, it will be accepted this afternoon.

Mr. RIEGLE. I thank the Senator.

Before getting into an explanation, let me say that I commend very much the Finance Committee and very particularly the chairman, the Senator from Texas, for the tremendous effort the committee has made this year to move on a number of very important and difficult issues. Certainly, the trade bill falls into that category; the catastrophic insurance legislation before us falls into that category. We have had certain revenue requirements imposed upon us by reconciliation and the committee has reported that legislation. We, in addition, have been involved in the United States-Canadian trade activity. That is an area where we have been actively at work.

Leading into that have been very extensive hearings where all points of view have been sought and heard. It is not often that a committee has as many major issues to have to take up and deal with in one legislative session as we have seen in this instance this year.

I would say as a new member of the committee how impressed I am by this committee, how well it works, the leadership the chairman has given us, the staff on the committee also working through these issues, and the fact that we are here on the floor today with this catastrophic health care legislation.

So I commend the chairman and I thank him for his leadership. I think he serves the Senate enormously well and I am proud to be a member of this committee.

Mr. BENTSEN. I thank the distinguished Senator. He has entered this very complex field extremely quickly and he has mastered it well. We appreciate his contribution.

Mr. RIEGLE. I appreciate the comments of the chairman.

If I may, let me offer a brief explanation of my amendment.

The amendment that we have offered will protect millions of senior citizens who already have catastrophic benefits provided by their employers or former employers.

Our amendment would simply require those employers to continue to provide equally valuable benefits that do not duplicate the new benefits provided in the Catastrophic Health Care bill.

Under the catastrophic proposals in both the House and Senate, the burden of paying for catastrophic coverage would be shifted from employers onto the backs of retirees, who will be required to pay higher basic and supplemental premiums.

The amendment we are offering today prevents this inequity. It requires employers who are currently offering catastrophic health care benefits to maintain their effort by providing additional benefits that do not duplicate those in the bill before us today. In the absence of providing additional benefits, employers would be permitted to refund the actuarial value of the overlapping benefits.

This requirement would be transitional and would last only 1 year, or in the case of collective bargaining agreements, until those agreements expire. This should allow sufficient time for employers and retirees to adjust to the new benefits provided under the Catastrophic Health Care bill.

The duplication of benefits is a vast problem left unresolved by S. 1127, the catastrophic bill. It affects a wide cross-section of American workers and retirees. Approximately 4.3 million retirees and their dependents are covered by employer-sponsored health insurance, including 16 percent of the population over age 65.

This amendment prevents employers from gaining an unintended economic windfall at the expense of retirees. According to the Department of Labor, employers spent about $4.6 billion to provide retiree health insurance coverage in 1985, some of which duplicates the expanded Medicare coverage in S. 1127. According to the Washington Business Group on Health, 95 percent of the Fortune 500 companies provide retiree health care benefits—another study showed for smaller firms it was as high as 42 percent.

This amendment coordinates employer-sponsored health care plans, including the Federal Government and Federal retirees, with the expanded Medicare coverage so as to supplement, not duplicate, its catastrophic benefits.

I urge all of my colleagues to join with us in supporting this amendment.

I understand that the amendment now is cleared on the minority side as well.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. DURENBERGER. Mr. President, I compliment our colleague from Michigan for recognizing a problem and in dealing with it in perhaps not a permanent solution but it certainly provides for the period of time, for a year after catastrophic goes into effect, for opportunity, opportunity on the part of employees and employers in this country, to renegotiate the health insurance relationship. It certainly provides plenty of alternatives for a variety of employer-employee relationships, either the maintenance of a level of effort by paying some or all of the catastrophic premiums, or by offering the employee the opportunity to have additional alternative benefits of an equivalent amount, or to refund, if you will, or to pay to the employees involved, a dollar denominated equivalent amount in cash for the value of that benefit.

Since the employer-employee relationship is so valuable to all of us in holding down the cost of health care in this country, I certainly endorse his approach.

I must say, maybe it is the time of the day or the time of the week but I am now informed that we have another objection to the current consideration of this amendment at this particular time which, if my colleagues on the majority side will indulge me, I will try to get greater definition on. But I must at this time withhold my support for the amendment from the minority side.

Mr. BENTSEN addressed the Chair.

The PRESIDING OFFICER (Mr. WIRTH). The Senator from Texas.

Mr. BENTSEN. Mr. President, I am disappointed, of course, to hear of the delay. I must say that without this amendment, you would have a situation where employees would be paying an extra premium for catastrophic illness, particularly where they had a comprehensive insurance plan. It is a well thought out amendment and it really addresses that problem. The other side of it is you could have a windfall to the employer, of course. What you are trying to do is get a constant maintenance of effort. It is a valuable contribution to the bill, and I am personally delighted to have it.

Mr. RIEGLE. I thank the chairman.

Mr. President, perhaps if there is no other amendment that is waiting to come forward and if it looks as if we will have the clearance on the minority side shortly, maybe we can leave the amendment pending and if there is a requirement to set it aside to take up another, certainly that would be appropriate to do.

Mr. BENTSEN. Mr. President, I do not know of another amendment forthcoming at the moment.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. BENTSEN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BENTSEN. Mr. President, in further questioning, it appears that one of the Senators on the other side of the aisle cannot be here. It is understood that he has some question in mind concerning the amendment. And he urgently requested that further consideration of the amendment be put over until next Tuesday.

Under the circumstances, I do not see that we have any choice but to do that.

Mr. DURENBERGER addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. DURENBERGER. Mr. President, it is true that one of the Senators on this side initiated the concern. Because he is a member of the Finance Committee who has previously expressed a concern about exactly how this issue was going to be resolved, because we cannot communicate with him right now, I think it is appropriate to recommend this because it is a very good amendment, and I know it is not everything that the Senator from Michigan thought we ought to do. He has made some modifications from his original position that I think deserve the consideration for everyone.

I would also say, Mr. President, that since we began this discussion, others have expressed some concern not necessarily with the content of the amendment, but with the fact of it which means they just have not had the time to deal with the amendment as I know the Senator from Michigan and the chairman of the Finance Committee would like them to deal with it.

While it is regrettable that we got almost to the passage, I would recommend we take it up on Tuesday.

Mr. RIEGLE. I wonder, Mr. President, if it would be appropriate—we presented the amendment at the desk, and it has been read—if it can be set aside, and kept there so it can be brought up again presumably on Tuesday and dealt with. Is that an acceptable approach?

Mr. BENTSEN. Mr. President, I assume we do just that and when we get back to this particular piece of legislation that this amendment would be the first order of business.

The majority leader of course may have something that will precede this particular legislation.

Mr. BYRD. Mr. President, I understand then that there can be no further action on this bill today. I understand Mr. ROTH is interested in the pending amendment, and he is not here. He is on his way back to Delaware. That being the case, we will have to put this measure over until Tuesday.

Mr. President, I believe the military construction appropriations bill was advanced to third reading. Was it?

The PRESIDING OFFICER. The Senator is correct.

MR. BYRD. Was it advanced beyond third reading?

The PRESIDING OFFICER. The yeas and nays on the military construction bill have been ordered. It is the Chair's understanding that will occur on Tuesday.

Mr. BYRD. Has all time been yielded back?

The PRESIDING OFFICER. All time has been yielded back.

EXPRESSING THE SENSE OF THE CONGRESS THAT UNITED NATIONS GENERAL ASSEMBLY RESOLUTION 3379 (XXX) SHOULD BE OVERTURNED

Mr. BYRD. Mr. President, I ask unanimous consent that the Foreign Relations Committee be discharged from further consideration of Senate Joint Resolution 205 and that the Senate proceed to the immediate consideration of Senate Joint Resolution 205.

Mr. DURENBERGER. Mr. President, there is no objection on the Republican side.

The PRESIDING OFFICER. Hearing no objection, it is so ordered.

The clerk will report the joint resolution.

The assistant legislative clerk read as follows:

> A joint resolution, (S.J. Res. 205), expressing the sense of the Congress that United Nations General Assembly Resolution 3379 (XXX) should be overturned, and for other purposes.

There being no objection the Senate proceeded to consider the joint resolution.

Mr. MOYNIHAN addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

Mr. MOYNIHAN. Mr. President, I express my appreciation to the majority leader and the acting minority leader for making this possible, and especially to the distinguished chairman of the Committee on Foreign Relations and the distinguished ranking minority member, who specifically arranged that this resolution be held at the desk.

Mr. President, this is a matter of some importance. And I hope the Senate will take satisfaction, as I do, in bringing it forward. A number of Senators have spoken to me about it today, including the distinguished Senator from Arizona [Mr. McCAIN] who expressed his particular interest. I know others share that interest.

On November 10 we will have the pleasure and distinct honor of an official visit by the President of the State of Israel, the first such visit ever made. As the 40th anniversary of the founding of Israel approaches, it became increasingly anomalous that while Prime Ministers of Israel have frequently been in this country, and have, of course, been welcomed, we have never extended to Israel that final act of recognition, of acceptance, of acknowledged admission into the society of nations; that is, a state visit from the head of that state.

This anomaly seemed all the more inappropriate because our Secretary of State has been attempting to bring about international negotiations that would further resolve, to the extent that this age will permit, the situation of Israel in the Middle East.

So here on the Senate floor we unanimously adopted a resolution declaring the sense of the Senate that the President of Israel should be invited for a state visit. Happily, President Reagan has done just that. And in a short while President Chaim Herzog will be with us.

On the occasion of a state visit by President Herzog to Australia 1 year ago, the Australian House and Senate unanimously adopted a resolution calling attention to the single most grievous assault on the legitimacy of the State of Israel; which is to say, U.N. General Assembly Resolution 3379, that infamous document adopted on November 10, 1975, which declared Zionism to be a form of racism and racial discrimination.

Mr. President, that event was a horrendous and, in a way, a defining event. It was, as I said at the time, an epiphany as to the true nature of the totalitarian assault on democratic institutions. The event, although seeming to have suddenly appeared in a conference of the nonaligned nations in Mexico City, was, in fact, the culmination of a campaign that had been begun 4 years earlier by the Soviet Union in a two-part article in Pravda. This article was written by Pravda's then assistant foreign editor. In its most grim and obscene passages, it declared, for example, that the massacre of Russians of all denominations—including so very many Jews—at Babi Yar in the Ukraine was a collaboration of the SS and the Zionists. This article equated the Zionists with the Nazis and the racial doctrine of the Nazis.

A more explicitly Fascist proposition has not yet appeared. As big a lie as could be told was told; and, as Goebbels had forecast, if a lie is big enough, some will believe it. Indeed, on that day, November 10, a majority—not large, but a sufficient majority—of the members of the United Nations did in fact vote to endorse that calamity.

The Israeli Permanent Representative in the United Nations on that occasion was Chaim Herzog. He stood up and spoke with the utmost brilliance in denunciation of the act, calling attention to the fact that that date, November 10, was the very same day of "Kristallnacht" in Nazi Germany; the occasion when, for the first time, antisemitism broke out into the streets in the form of sanctioned public violence. On that day, the horrors of the Holocaust commenced their movement toward the death camps.

This was a man who could speak to such an occasion. He was a member of the Guards Armored Division in World War II. He fought his way into and across Europe, and into those very scenes. He is, if I may say, a distinguished Irishman. He was born in Belfast. He was the son of the rabbi of all Ireland. After the war he emigrated to Israel, where he was active in all manner of public services and in the publishing business. And in a ballot in the Israeli Knesset, which is a secret ballot, he was chosen President, to the surprise of some, to the joy of many in his nation, and to great satisfaction in ours.

Mr. President, having learned of the action of the Australian House and Senate, I have talked many times with President Herzog about what we might do to overturn that infamous resolution. As we said when the resolution was adopted, the United Nations would not recover; that, once done, until undone, this resolution would cast a pall over the organization. That pall is there to this day. November 10, 1975, marked a decline in the United Nations' fortunes and reputation.

Many of the nations which participated in that historic event, which was surrounded by comparable but not equal events, today realize what they have done to the United Nations. The world now looks to it, but it is a diminished and weakened institution.

The action called for by the resolution now before us is what we can do. I understand that the present Secretary General of the United Nations, Perez de Cuellar, would very much like to see this blemish erased, this fundamental defect overcome. There are many nations which would reconsider what they did.

I cannot imagine that today Mexico, for example, would vote as it did on that occasion. There are now members who have no commitment to that action. Indeed, it is more than likely that the votes can be got to overturn that resolution by formally declaring it to be invalid.

Now, how to do that? Obviously, we are talking about multilateral diplomacy. We have to get the votes in the General Assembly, as we have to get the votes on the floor of the U.S. Senate.

It occurs to me that the Australians have led the way, and that all such democratic congresses should begin to adopt the Australian resolution word for word and send it roundrobin, as you could say, from one democratic institution to another. I hope that we will pass it in the Senate here today, send it to the House, and pass it there. We would be the second nation to adopt the Australian resolution.

Then look to Ottawa; look to Dublin, where Mr. Herzog has addressed the issue. Send it to Westminster; to Paris; to Rome; to Bonn; to The Hague; to New Delhi, which could consider the mistake the Indian Government made and surely regrets; to Singapore, which was with us; to Japan, which was with us; to other nations that ought to have been and were not.

Let the countries of the world define themselves. Are they free and representative democracies or are they not? This would be the first time, to my knowledge, that something of this kind has ever been attempted. I take great heart that this resolution, which was put in just days ago in the Senate, is to be adopted unanimously, as I believe it will be, this afternoon. I look forward to its adoption in the House. I look forward to its approval by the President, who, I cannot doubt, will wish to do this.

Then I think we could consider the availability of the parliamentary unions to send it to other democracies.

We might then begin to concert our efforts in New York at the General Assembly such that a year from now, we would have the necessary votes to overturn the resolution. And we would make it plain that if this is accomplished, a new day can begin for the United Nations. If it is not, things will only grow darker.

The resolution has failed utterly to achieve any of the purposes the Soviet Union had in mind. Chief among them was to deny the legitimacy of the State of Israel and, by extension, democratic nations in the Third World and in the Second and First Worlds, if you like those terms.

The Soviet Union itself is beginning to ask about reestablishing relations with Israel. I do not preclude the possibility that the Soviets will reconsider what they did, but it is not necessary to our effort that they should so do.

We can summon a majority to support this measure. When we do, we will all have Prime Minister Hawke and our other friends in Australia to thank. But I hope the rest of the world might note that the first Parliament, the first Congress, the first representative body to follow the Australian initiative was this one.

It is with a great sense of honor and expectation, Mr. President, and in anticipation of Mr. Herzog's visit, that I move the passage of the joint resolution.

Mr. D'AMATO. Mr. President, I rise today on behalf of the joint resolution introduced by my good friend and colleague from New York, denouncing an event which occurred 12 years ago. On November 10, 1975, the United Nations passed a resolution equating Zionism with racism and discrimination.

This resolution expresses the Senate's strong indignation of U.N. General Assembly Resolution 3379. The joint resolution also states that UNGA 3379 has hurt Middle East peace efforts and has escalated religious animosity. It is totally inconsistent with the Charter of the United Nations and an unacceptable misrepresentation of Zionism.

The Senate acted on this matter 2 years ago. A joint resolution I sponsored with several of my colleagues was signed into law in the 99th Congress. That joint resolution condemned UNGA 3379 and called upon parliaments of all countries to reject it.

In 1986, I wrote our representative to the United Nations, Ambassador Vernon A. Walters, and urged him to circulate copies of Public Law 99-90 among the delegations of the United Nations and urge them to join the United States repudiation of Resolution 3379. I would like to quote from his December 19, 1986, response to this request:

> The passage of [U.N.G.A. 3379] was indeed one of the darkest days in the history of the United Nations. For my part, I subscribe in full to the position of [P.L. 99-90], and I particularly appreciate the call that the resolution makes for Parliaments of all countries that value freedom and democracy to repudiate Resolution 3379. Gradually we have been able to make some headway here at rolling back the pernicious influence of this resolution.

UNGA Resolution 3379 on Zionism singles out for slanderous attack the national movement which gave birth to the State of Israel. Worse, it provides pseudolegitimacy to anti-Semitism around the globe.

Ironically, the resolution actually promotes the very racism it purports to preclude.

Unfortunately, it is neither the beginning nor the end of a campaign by several United Nations' members to undermine the nation of Israel. The United States has repeatedly vetoed U.N. Security Council votes condemning Israel.

This joint resolution today cannot erase the tragedy of 12 years ago. It can, however, rally the opinion of this Nation which prides itself on racial and ethnic equality and opportunity and, in turn, rally world opinion. Although we are only one vote in the United Nations, we must continue to try to reverse UNGA Resolution 3379.

The President of Israel, Chaim Herzog, will be in the United States during the second week of November. This is the first visit ever by an Israeli head of State. Mr. President, this body can warmly welcome this distinguished visitor by unanimously passing this joint resolution calling for the overturn of the UNGA 3379.

Mr. President, I commend my good friend from New York for sponsoring this important joint resolution and I urge the Senate to pass it unanimously.

Thank you, Mr. President.

The PRESIDING OFFICER. If there be no further debate on the joint resolution, the question is on the engrossment and third reading of the joint resolution.

The joint resolution was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S.J. Res. 205

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress hereby—

(1) declares that United Nations General Assembly Resolution 3379 (XXX), which equates Zionism with racism—

(A) has been unhelpful in the context of the search for a settlement in the Middle East;

(B) is inconsistent with the Charter of the United Nations;

(C) remains unacceptable as a misrepresentation of Zionism; and

(D) has served to escalate religious animosity and incite anti-Semitism; and

(2) recommends that the United States Government should lend support to efforts to overturn Resolution 3379 (XXX) in the United Nations.

Mr. MOYNIHAN. Mr. President, I move to reconsider the vote by which the joint resolution was passed.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. MOYNIHAN. I thank the majority leader and the Chair and I yield the floor.

The PRESIDING OFFICER. The Senator from Wisconsin.

THE GOOD, GRAY NEW YORK TIMES IS FLUTTERING ITS EYELASHES

Mr. PROXMIRE. Mr. President, what is the most impossible situation you can imagine? Mother Teresa punching out Heavyweight Boxing Champion Mike Tyson? President Reagan declaring that what this country needs is a good, solid dose of recession, and he's going to do his best to see that it gets exactly that? Well, maybe.

But how about this? How about anybody falling in love with an economist? How about a solid, staid institution like the good, gray New York Times falling in love with an economist? Well, that is impossible. Or is it? No, indeed. In fact, it happened. Doubt it. Just listen to this from today's editorial page of that good, gray, oh so strict and straitlaced, intellectual guru of us all. Here goes:

> In awarding Robert Solow its prize in economics, the Nobel Committee cited the M.I.T. professor's research in growth theory. The Committee could have added that Mr. Solow is the economist's economist. A delightful exception in an academy that usually saves its highest honors for the narrowest of specialists.
>
> Professor Solow has had important things to say about almost every aspect of modern economics. What's more, he has the lucid writing style to make his ideas broadly accessible, as well as the political sophistication to have been a key policy adviser to President Kennedy.
>
> He is equally at home teaching freshmen economics or bantering with grad students. Something else the Nobel Committee failed to cite—

And, here it comes, Mr. President. The New York Times concluded its love note with this shaft right out of cupid's quiver. Just listen. The Times concluded:

> Those who know him say Mr. Solow is the nicest guy you're ever likely to meet.

So, Mr. President, nothing is impossible.

Mr. MOYNIHAN. Mr. President, will the distinguished Senator from Wisconsin yield?

Mr. PROXMIRE. I am happy to yield to my good friend, the distinguished Senator from New York.

Mr. MOYNIHAN. With his characteristic perspicacity and energy the Senator from Wisconsin has spotted the article in the New York Times calling our attention to Bob Solow. If you say the New York Times has fallen in love, it is because Bob Solow is about the most lovable man you will ever meet. Indeed, he is probably the smartest man you will ever meet. But that does not make for being lovable. He is just a wonderful man.

For the last 10 years it has been his turn to win this prize, although the wait never bothered him one little bit. It has come to him, as good things in life will.

He is married to Barbara, an economic historian of the greatest distinction. Her work on Irish land reform, published in 1971 and entitled "The Land Question and the Irish Economy, 1870-1903," is a model work encompassing nearly half a century of economic and political struggle.

She has recently published a new book, "British Capitalism and Caribbean Slavery: The Legacy of Eric Williams."

Bob is a great skier and a formidable sailor of small craft. He is a wonderful teacher. He is a great father, a boon companion, a magnificent economist, and, what is more, he has been part of the intellectual life behind the political career of statesman such as WILLIAM PROXMIRE.

How many times has Senator PROXMIRE stood on this floor talking of the need for education, the need for research, and the need for investment in human beings? It is, in part, due to that Wisconsin soil from which he springs, but also due to something more. It is part of a system of knowledge.

It was Robert Solow who first introduced, then proved, and has now won a Nobel Prize for demonstrating that the old notion that economic production is primarily a function of investment in land and capital is false. He disproved the assumption that the more you save, the more machines you make and the more mines you dig, the more product you will have. It is, instead, technology that drives economic growth. Technology grows out of investment in people: In their education; in their ideas; and in their science.

He has shown that the real dynamic of our age has been knowledge. It is knowledge which brings wealth. Although most might say you should get wealth in order to acquire knowledge, Bob has proven that if you get knowledge you will acquire wealth.

I thank the distinguished chairman of the Committee on Banking. It is most appropriate that he, as chairman of this distinguished committee, chooses to hear Bob Solow.

I count myself as one of those who love and admire Bob and his wife Barbara.

Mr. PROXMIRE. Mr. President, I am astonished and overwhelmed. I had no idea the Senator from New York would be here when I came over to make this little pitch about Robert Solow receiving a Nobel Prize.

I should not be a bit surprised with the remarks of the distinguished Senator from New York. Talk about a man for all seasons. I have served on the Joint Economic Committee for some 26 years, the Banking Committee for 30 years, and so forth. Here is a man who has not served on either who probably knows more about economics than the rest of us. He knew more about Robert Solow, far more than I ever dreamed anybody knew. He is my seatmate sitting next to me. I am deeply impressed, very grateful and certainly picked the right time to come to the floor.

MILITARY CONSTRUCTION APPROPRIATIONS, FISCAL YEAR 1988

Mr. PROXMIRE. Now, Mr. President, on another subject, very briefly. As I understand it, the military construction bill is still pending before this body; is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. PROXMIRE. Mr. President, I would like to commend my good friend from Tennessee, Senator SASSER, for the strong leadership he has shown in guiding the fiscal year 1988 military construction appropriations bill through the Senate. It has been an honor for me to serve on the Military Construction Appropriations Subcommittee and to work closely with Senator SASSER on this bill.

I would like to comment on section 129 of the bill the committee reported out on October 16. That section deals with reporting requirements for the National Test Facility that the Strategic Defense Initiative Organization wants to build at Falcon Air Station in Colorado. This facility would be part of the national test bed that SDI wants to build to test various ballistic missile defense systems.

I would like to thank Senator SASSER for including in H.R. 2906, at my request, this important bill language and accompanying committee report language on the National Test Facility. I also would like to recognize the important contribution my good friend from Alaska, Senator STEVENS, made in drafting this language.

By way of background, Mr. President, I believe that the national test bed, if properly run, can be an important component of the SDI research program. The test bed, according to SDI, is supposed to provide a comprehensive capability to demonstrate and evaluate alternative ballistic missile defense system architectures and technologies, including battle management, command, control, and communications.

The National Test Facility at Falcon Air Station, which SDIO says costs $100 million to build, would be a key facility for the entire national test bed, which, all told, could cost as much as $1 billion.

Indeed, it is very important that if we proceed with SDI research we have some type of facility or test mechanism to determine whether a particular SDI defense system is feasible, whether it is cost effective at the margin, and whether it is survivable against Soviet countermeasures.

If an SDI defense system doesn't meet those three important criteria, then we should not deploy that system. And the national test bed, if it is operated properly and honestly, should be able to tell us if a defense system meets those criteria.

Just as importantly, the national test bed should be simulating, testing, and evaluating the battle management computer hardware and software that would run the defense.

It doesn't do any good to build all these weapons and sensors if you can't operate and coordinate them into an effective and survivable defense system. That's the job of the battle management system, which consists largely of the computer hardware and software to run the defense.

The problem, Mr. President, is that the goals of the national test bed and the National Test Facility are vague and poorly defined at this point. Congress, for example, doesn't know whether this facility actually will be set up to test whether SDI defense systems are feasible, cost effective at the margin, or survivable.

And at this point, there is no firm architecture or architectures to guide SDIO in the development of a national test bed. In fact, the national test bed project is about a year behind schedule, largely because of the fact that SDIO has not had a clear idea of what kind architecture the test bed will be testing. An architecture is SDI's term for the blueprint it would use to set up the missile defense system.

Section 129 of the bill and the accompanying committee report address these problems. They state that none of the funds appropriated in this or any other act can be obligated or expended for National Test Bed Components of the National Test Facility until the Strategic Defense Initiative Organization has begun the development of the phase 1 strategic defense system architecture and the follow-on strategic defense system architecture and the Appropriations Committees have received an interim report from SDIO on these architectures that the test bed will be testing.

SDIO will soon begin its phase 1 system support effort, which will be developing its phase 1 SDS architecture. This would be an architecture for a first phase deployment of strategic defenses. Sometime next year, SDIO also will begin its follow-on architecture study, which will be developing an architecture for a deployment after the phase 1 deployment.

Section 129 does not delay the actual construction of the test facility at Falcon—that is, it doesn't prevent SDIO from beginning the site work for the building, laying the bricks and mortar, erecting the walls, and so forth.

Section 129, however, does prevent any funds from being spent on the national test bed components of the National Test Facility. By NTB components, we mean the computer and communications hardware and software that will be installed in the National Test Facility to make it operational.

In other words, SDIO can begin construction of the building, which isn't affected by the type of architecture the test facility will test.

But it makes no sense to begin installing and integrating the NTB components into that facility until SDIO and the Congress has a more refined architecture developed that the facility will be testing. Section 129, therefore, prevents any money from being spent on those components until development of the phase 1 SDS architecture and follow-on SDS architecture has begun and the committee has had an opportunity to conduct a preliminary review of those architectures.

Section 129 also mandates that the test bed and test facility honestly and fairly test whether SDI systems are technically feasible, cost effective at the margin, and survivable. The section states unequivocally that the goal of the National Test Facility and the national test bed shall be to stimulate, evaluate, and demonstrate architecture and technologies that meet these three criteria. Furthermore, the section requires SDIO to submit a detailed report to the committee on how the test bed and test facility will accomplish this goal.

I emphasize the word "detailed" here. SDIO should not think that it can give the committee a cursory report on how this important goal will be met.

Finally, section 129 prohibits the national test bed and the national test facility from being converted into an operational battle management center for an early deployment of strategic defenses. The committee report elaborates on this point and states further that the committee does not want to see the test bed and test facility dedicated to any type of near term or early deployment of strategic defenses. The committee believes that the test bed should support the President's objective of a long-term research program.

In other words, the committee does not want the national test bed and the national test facility to be used in any way to aid an early deployment of strategic defenses.

In summary, Mr. President, the national test bed and national test facility should be established to provide us with reliable, unbiased data on whether various defense systems are feasible, cost effective, and survivable. We should not be spending money on components of the test facility until we have a firm idea what kind of architectures will be tested. And we should not be setting up the test bed to aid early deployment of SDI.

The provisions in section 129 and the committee report ensure that these goals are met.

I think Senator SASSER has done an excellent job in the way he has handled that.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

MORNING BUSINESS

Mr. BYRD. Mr. President, I ask unanimous consent that there be a period for morning business not to extend beyond 10 minutes and that Senators may speak therein.

The PRESIDING OFFICER. Without objection, it is so ordered.

CANDACE H. BECKETT WINS LAW SCHOOL ESSAY COMPETITION FOR THE BICENTENNIAL OF THE U.S. CONSTITUTION

Mr. BYRD. Mr. President, yesterday, at 2:30 p.m., the chairman of the Commission on the Bicentennial of the U.S. Constitution and the former Chief Justice of the U.S. Supreme Court, the Honorable Warren E. Burger, presented a $10,000 check to the winner of the law school essay competition for the bicentennial of the U.S. Constitution. This very distinguished competition was open to all law school students across the United States. The winner of this competition is a very talented and successful lady, Ms. Candace H. Beckett. Ms. Beckett is presently attending the University of Maryland School of Law, and she happens to be the wife of one of my policy staff members, Mr. David A. Corbin. Ms. Beckett received her bachelors degree in sociology and history from the University of Illinois. She has a masters degree in the administration of justice from Southern Illinois University, and a masters degree in sociology from the University of Hawaii. She will graduate from law school this December and will then complete her doctorate degree in sociology from the University of Chicago. I understand that Ms. Beckett has already accepted a position for the fall of next year with the Washington, D.C., firm of Finley, Kumble, Wagner, Heine, Underberg, Manley, Myerson & Casey.

Mr. President, I commend Ms. Beckett for winning this prominent competition, and I ask unanimous consent that her essay be printed in the RECORD.

There being no objection, the essay was ordered to be printed in the RECORD, as follows:

[Essay submitted to the Commission on the Bicentennial of the United States Constitution]

LAW SCHOOL ESSAY COMPETITION

"Does the allocation of power between the federal and state governments and among the branches of the federal government contribute to the preservation of individual liberty and the functioning of our government?"

During the 200-year history of the American Constitution, the United States has evolved from 13 disunited States into the most powerful and productive country in the world. Under the framework of government designed in 1787, the United States has not merely survived, but prevailed despite a revolutionary birth, a Civil War, two World Wars, a Great Depression, and more than one constitutional crisis. All the while, the United States has maintained a democratic republic in which the rights of the people have not only been preserved, but have been increased.

Fundamental components of the successful governmental framework formulated by the Founding Fathers are the twin pillars of American constitutionalism, separation of powers[1] and federalism. It must be emphasized, however, that these are not perfect doctrines. They have been sources of folly and frustration and have created problems for officials in all levels of government, and in every branch of government. They have rendered the American government less than efficient, and, at times, have permitted abuse of individual liberties.

Opposition to separation of powers has a long, distinguished history. For two centuries its critics have pointed out that the system results in stalemate and confrontation, denies accountability, and inhibits the government in formulating and sustaining coherent policy. Skeptics of separated powers included early American giants such as Benjamin Franklin, Patrick Henry and Thomas Paine.[2]

At the turn of the twentieth century, Woodrow Wilson questioned the system. He charged that separated powers had led to congressional supremacy, and because congressional power is distributed among committees, it had resulted in government by committee.[3] Wilson later challenged the basic premise of the doctrine because it pitted the branches of government against each other. "You cannot compound a successful government out of antagonisms. * * * No living thing can have its organs offset against each other as checks, and live," he wrote.[4]

Wilson was typical of many political observers of his time. In 1920, an author noted that his contemporaries "dispute the value and even the reality of the theoretical division of governmental institutions. * * * [They consider it] largely unworkable."[5] Recently, Lloyd Cutler has called for restructuring the American political system along the lines of the British parliamentary system. He charges that because separated powers fractionalizes power, it constitutes a structural weakness in government.[6]

Federalism too, has been a source of confusion and problems. By reserving to the states the powers not granted to the federal government, there has always been the question of who has what power. For nearly four score and seven years after the founding of the nation, this produced one crisis after another as witnessed by the Virginia and Kentucky Resolutions, the Hartford Convention, and the Nullification Crisis. The Civil War determined that the national government is supreme, but the precise boudaries of state and national powers remained in dispute. For the next hundred years, the supremacy of the national government, in too many instances, particularly in the area of civil rights, was guaranteed only by federal troops.

The Supreme Court's decisions in *National League of Cities* v. *Usery*[7] and *Garcia* v. *San Antonio Metropolitan Transit Authority*[8] which deal with the question of whether state sovereignty restricts Congress in exercising its power under the commerce clause, reveal the current difficulties in deriving who has what power. Furthermore, Garcia reveals the distance the American government has traveled from the day when Alexander Hamilton wrote: "It will always be far more easy for the state governments to encroach upon the national authorities than for the national government to encroach upon the state authorities."[9] In fact, Garcia has one scholar writing of the "demise of a misguided doctrine"[10] and another pronouncing the "second death of federalism."[11]

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[1] Footnotes at end of articles.

Despite the problems of both separation of powers and federalism, however, these constitutionally ordained doctrines should be praised, not buried. So many of the features of these doctrines that have been so criticized were not merely foreseen by the Fathers, they were intended. That is, it was the Framers' intention that these doctrines, and hence, the American government, would work in the nature that they have.[12] What the Framers feared was a government that would work too effectively, that changes in law could be easy and swift.

To understand these doctrines, it must be understood that while the Constitution is the "wonderful document" that Gladstone proclaimed it to be, it is misleading to think of it as being "struck off at a given time" by the mind of man. This brilliantly formulated document was the product of history, not visionary dreams.[13] The Founding Fathers were aware that governments collapsed, as well as rose. Gibbon's classic, "The Decline and Fall of the Roman Empire" was published in 1776—the year it all began. Across the ocean, a government based on the goodness of man was degenerating into a "Reign of Terror." "Experience must be our only guide. Reason may mislead us," warned John Dickenson at the Constitutional Convention.[14]

World history as well as the failings of the states under the Articles of Confederation gave the Framers no unrealistic expectations about the goodness of man. "We have, probably, had too good an opinion of human nature in forming our confederation," noted George Washington in 1786.[15] "if men were angels, no government would be necessary," explained Madison.[16]

The Founding Fathers were not antidemocratic. They were realistic and aware of man's cruder nature, and therefore could not trust direct democracy. Consequently, they filtered the people's potentially destructive passions through elected officials.

Knowing that liberty also could be threatened by the officials the people elected, the Fathers distrusted elites as well. History showed that those in power often grow too bold and overreached, and that power often becomes concentrated in a single class or group. Therefore, the Framers opposed a system where all authority could become located in a single branch. "The accumulation of all powers, legislative, executive, and judiciary, in the same hands," Madison declared, "may justly be pronounced the very definition of tyranny."[17]

The Framers understood the oppressive nature of governments, even ones operating under written guarantees of rights. They had just fought a revolution because King George had usurped power and abused individual liberty. To insure that the government they were creating would not end up oppressing the people it was to serve, the Framers placed ultimate power in the electorate. They were unwilling, however, to trust the judgment of people alone. After acknowledging that governments were needed because men were not angels, Madison proceeded to explain: "You must first enable the government to control the governed; and in the next place oblige it to control itself. * * * [E]xperience has taught mankind the necessity of auxiliary precautions."[18]

Thus, they designed a system to block the overreach—a system of government that safeguards liberty by avoiding the entrapments of tyranny. The Framers dispersed constitutional authority among the three branches of government and between the national and state governments. To further control power, they made the different national and state officials answerable to different constituencies.

After splitting constitutional authority into pieces, they balanced the pieces against each other. "Ambition must be made to counteract ambition," wrote Madison.[19] Thus, the Fathers designed a system wherein those passions would check each other, rather than a system that would collapse under uncontrolled ambitions. Legislative power is balanced by an executive veto. The executive power of appointment is balanced by the congresssional obligation to advise and consent. The judiciary checks both the legislative and executive branches with its ability to nullify acts of either branch. These "precautions" serve to block the adoption or continuation of unwise policy.

Today, there is talk of the presidency and the Supreme Court having become "imperialistic." The fact is that throughout American history, each branch of government has alarmed different sections of the people. Some Founding Fathers most feared what James Wilson termed "legislative despotism."[20] In the 1930's, liberals wanted more power in executive branch; today, they are concerned with an "imperial presidency."[21] In the early 1930s, the Supreme Court was the conservatives best friend; in the 1950's, they came to oppose the High Court's authority. The truth also is that no branch of government is imperialistic. Thanks to the Framers' foresight, no branch can override any other.

While this is a system of separated institutions checking each other, it also is "separated institutions sharing power."[22] These shares of power were not casually distributed, they were "carefully related to the capacities of each branch, to its constituency, and to its intended role in the system," explains Donald Robinson.[23] The size and committee structure of Congress assures that the people have an institutional voice in the daily functioning of the national government. The presidency places national leadership in a single individual, and this insures that government can heed the dictates of that voice more aggressively and efficiently. The bicameral and committee structures of Congress insures that legislation will be openly derived and that involved interests will be consulted. The executive branch gives the government the ability to act energetically, directly, and, if need be, unilaterally.

By balancing one branch against another, the Framers slowed the operation of government. They frustrated the machinery of government so that foolish or sinister schemes would be exposed and defeated. That innovation or departure would be difficult without deep and broad consensus. That the accumulation of power in a single branch or by a single interest would be difficult, if not impossible. That the goals of those in government will be modest. Two branches of government must cooperate before laws destructive of liberty can be enacted. And two branches of government must cooperate in the enforcement of the law.

The "Madisonian clockwork," as Laurence Tribe describes it,[24] guaranteed friction in the workings of the government. Indeed, the relationship between the executive and legislative branches has been so combative that it has been characterized as "guerrilla warfare."[25]

This warfare has involved the judiciary as well as the executive and legislative branches. Presidents and congressmen have assailed the judiciary. "We must take action to save the Constitution from the Court and the Court from itself," exclaimed President Franklin Roosevelt.[26] In reference to *Consumer Energy Council of America* v. *FERC*, Senator SCHMITT lashed out that the D.C. Circuit Court had "an idealized conception of the separation of powers that is neither historically accurate nor has, until now, been actually applied to overturn an act of Congress."[27] On the other hand, Judge Mikva of D.C. Circuit Court has attacked Congress for "pass[ing] over the constitutional questions, leaving the hard decisions to the courts." "Such behavior by Congress," he writes, "is . . . an abnegation of its duty of responsible lawmaking."[28]

These conflicts between the branches of government and the national and state governments, however, should be viewed as good, not bad. The cooperation in government theoretically desired by so many is not, in reality, the makings of safe government. One scholar has explained:

> The notion that check and balance should involve thwarting, hampering, interfering, criticizing, opposing, will naturally seem to many a little perverse and wrong-headed. But the whole point is that it is the making of mistakes which may thus be hampered, the commission of errors thwarted, the imposition of onesided and unfair decisions interfered with, the adoption of wrong policy opposed.[29]

In other words, the friction between the branches is constructive, not destructive, of good government. "The doctrine of the separation of powers was adopted by the Convention of 1787, not to promote efficiency but to preclude the exercise of arbitrary power," wrote Justice Brandeis in *Myers* v. *United States*: "The purpose was, not to avoid friction, but * * * to save the people from autocracy."[30] Thirty years later, in *Bowsher* v. *Synar*, Chief Justice Burger noted that the division of powers "produces conflicts, confusion, and discordance at times * * * but it was deliberately so structured to assure full, vigorous and open debate on the great issues affecting the people and to provide avenues for the operation of checks on the exercise of government power."[31]

The Supreme Court's shift in approving New Deal legislation demonstrates Chief Justice Burger's point. While this reversal is commonly viewed as the Court succumbing to political pressure, it was a more complex, constructive affair that involved "full, vigorous, and open debate" on a great issue and the nation benefited. It involved an intellectual, as well as a political challenge to the High Court's interpretation of the commerce clause. No less of a constitutional scholar than Corwin warned that the country faced a "constitutional crisis of unpredictable gravity. * * * [The Court] will it have to enlarge its conception of public power to include economic power." [32]

The New Dealers delivered their own intellectual assault. In Harvard Law Review, Justice Department Solicitor General Gerald Stern challenged the Court's basis for its interpretation of the commerce clause.[33] Going back to the Framers for guidance, he argued that in the commerce clause the Founding Fathers provided the national government with the power it needed to resolve the problems of trade that the states could not solve on their own. Therefore the New Deal was consistent with the constitutional order established in 1787. In speeches and government briefs, New Dealers cited Stern's argument as they challenged the Court for a broader interpretation of the commerce clause.[34]

Thus, a "switch in time that saved nine" did come, but it was a positive, not a negative one. It involved a constitutional confrontation of the first order that brought forth the best creative instincts from the administration and the best judgment of the High Court.

The New Dealers' confrontation with the Court also illustrated the wisdom of the Framers in scattering the time frames in which the members of each branch hold office: the President for four years, Senators for six years, Representatives for two years, Supreme Court Justices for life. Rosevelt accumulated more power and held it for a longer time than any other person in American history. In 1932 and 1936, he was overhelmingly elected and reelected president, and his political party gained significant majorities in both Houses of Congress. Thus, Roosevelt and his party controlled two branches of government. But the third branch, the Supreme Court, composed of appointees of previous administrations, provided a check on swift, sweeping legislation. By the time the Court had converted to the New Deal line of thinking, another congressional election had taken place and Roosevelt's opponents in Congress had rallied, thus preventing the New Deal juggernaut from running out of control.

The "Madisonian Clockwork" allowed for New Deal reforms, but curbed the potential for legislation that may well have transformed American government and society. Furthermore, the system permitted FDR to put through the New Deal, but it blocked him when he tried to pack the Court.

Separation of powers has not always been successful in stopping abuse of power and protecting individual liberty. The system, for example, enabled Senator Joe McCarthy to trample upon the executive branch as well as upon the rights of individual Americans. For the most part, however, the system has controlled the abuse. In *Kilborn* v. *Thompson*,[35] the Court had already restricted congressional investigatory abilities by limiting its delving into the lives of private individuals, and in *Watkins* v. *United States* [36] to "expose for the sake of exposure." In *Youngstown Sheet & Tube Co.* v. *Sawyer*,[37] the Court stopped the executive branch from usurping legislative authority. In *Immigration and Naturalization Service* v. *Chadha*, the Court stopped Congress from usurping executive authority.[38]

During the most serious constitutional crisis of recent decades, even countries with democratic heritages like Western Europeans could not understand American concerns with the Nixon Administration's transgressions of power. But Americans were alarmed, and the checks and balances locomotive went into high gear. Congress investigated, the courts interpreted the law, and the press, protected by the first amendment, reported the developments that resulted in the downfall of a government.

Despite the warfare, the genius of the American separation of powers is that it does, in fact, allow for cooperation among the branches of government. The different branches do work together far more than is commonly assumed. Stephen Stathis amply documents the cooperation between the President, Congress, and the Court in investigatory matters. "One of the most significant characteristics of our constitutional system," he writes, "is that genuinely workable decisions are often reached only after inquiry, consultation, and compromise." [39] In the realm of foreign policy, Peter Schultz points out: "congressional and presidential power supplement and complement each other in a way too little appreciated." [40] Much of the "history of the separation-of-powers doctrine is also a history of accommodation," wrote Justice White in Chadha.[41]

Federalism, like separation of powers, has a valuable role in the workings of the American government and protecting liberty. While Garcia has one scholar pronouncing its "second death," [42] the fact is that federalism has had a number of obituaries. But like Mark Twain remarked, rumors of deaths can be exaggerated.[43] President Carter's anti-Washington theme and President Reagan and the "Sagebrush Rebellion" have shown that federalism, while maybe momentarily comatose as a constitutional issue, is alive and well as a political one.

In the 1840's, Alexis de Tocqueville lauded federalism for reasons taken for granted today, but weighed heavily upon world history. He explained that small nations have "always been the cradle of political liberty," and liberty is lost as they grow in size, strength, and wealth: "The history of world affords no instance of a great nation retaining the form of republican government. * * * All the passions that are most fatal to republican institutions increase with an increasing territory." But, under the "most perfect federal constitution that ever existed," as he called it, the United States had found a way to grow in size and power without succumbing to the deadly passions because federalism preserved the virtues of the smaller state. Consequently, "the Union is happy and free as a small people, and glorious and strong as a great nation." [44]

So much of what the French observed wrote still holds true today, for reasons he cited and others. Like separation of powers, federalism obliges government to control itself. Under federalism, local majorities curb the power of national majorities, thus making seizure of power by a national majority difficult. States, John Roche explains, "provide political obstacles to centralization that are far more effective than their constitutional position might indicate."[45]

Federalism provides a viable framework for reconciling majority power and minority rights. The "genius of this double system," according to James Burns, is its ability to "morselize sectional and economic and other conflicts before they become flammable. [It keeps] the great mobiles of ideological, regional, and other political energies in balance" until accommodation is achieved.[46] Therefore, the essence of the federalism has been balances and compromises, and this is vintage American politics. The system did collapse in the 1850s and 1860s, but over moral, not political or constitutional issues.

Federalism constitutes what Justice Brennan has termed a "double source of protection" for the rights of American citizens. Each level of government must heed the injunction that no person may be deprived of life, liberty or property "without due process of law," he points out. This "double protection" was revealed with the increased activism of state courts in the 1960s. Early in the decade, according to Justice Brennan, the Supreme Court enhanced individual rights and liberties as the Warren Court imposed tougher standards on states in criminal procedures, reapportionment, and civil liberties. But as the High Court began to "pull back from * * * the enforcement of the Boyd principle," state courts began extending the protections provided in their own state constitutions.[47]

Because the national government has constantly intruded into the internal affairs of states, federalism cannot be considered an equal partnership. For the most part, however, the intrusions have been in the interest of enhancing liberty. "Historically, most limitations upon personal liberties have come from the states," note Morison and Commager, and the national government has constantly striven to eliminate these denials.[48] *Brown* v. *Board of Education* [49] and *Baker* v. *Carr* [50] are well known examples of how the national government, via the Supreme Court, has guaranteed constitutional rights for minorities. The national government also has exercised its authority to abolish child labor and sweatshops, and to strengthen the freedoms of the first and fourteenth amendments.

By virtue of their own sovereign power, states still control many of the choices that immediately and directly affect the lives of its citizens. They control municipal and local governments, chart corporations, and administer civil and criminal law and the education, health, safety, and welfare of the people.

With this emphasis on local rule, federalism encourages political experimentation. States serve as "laboratories of democracy" because reforms can be attemped locally before becoming national policy, thereby reducing the cost of political reform. Failures are confined to a local basis. Successes, such as expansion of voting rights, and labor law and regulatory reforms, become national policy. "It is one of the happy incidents of the federal system that a single courageous state may . . . try novel social and economic experiments without risk to the rest of the country," Justice Brandeis explained in *New State Ice Co.* v. *Liebmann.*[51]

This emphasis on local rule gives different interests stronger voices in how their lives are governed than would be possible strictly at the national level. Furthermore, it allows for local policy in areas where uniform national policy would be disastrous, if not tyrannical. "If there is any fixed star in our constitutional constellation," wrote Justice Jackson in *West Virginia State Board of Education* v. *Barnette*, "it is that no official * * * can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion." [52] As long as federalism is alive and well—which it is—there will be no national orthodoxy.

The keystone of the constitutional process is the judiciary. The Supreme Court's role was deemed so important that the Founding Fathers gave the Justice life tenure, thus insuring the High Court's independence, although it has no separate constituency. It is the Court that insures that the Constitution, and hence, the doctrines of separated powers and federalism are properly construed.

The Court provides the valuable check upon government by giving citizens power over the laws that govern them. Since *Marbury* v. *Madison,*[53] when Justices became the interpreters of the Constitution, an individual citizen has the power, through a lawsuit, to check a law passed by Congress and approved by the President. Before becoming a Justice, Robert Jackson noted: "Lawsuits are the chief instrument of power in our system. Struggles over power that in Europe call for regiments of troops, in America call out battalions of lawyers." [54]

This instrument of power has enhanced liberty for all Americans. From the 1940's to the 1960's, black Americans found the courts to be the one branch of government willing to force America to live up to its promises to all of its citizens. Likewise, unsuccessful with the other government branches, environmental, consumer and labor groups have turned to the courts.

You cannot eat the Bill of Rights goes an old saying, and the tragic events in Europe during the 1930's revealed the reality of the phrase. In the United States, however, the three branches of government, with the Supreme Court leading the way, have shown that individual liberty and economic security need not be incompatible. While a lot of attention has been given to the Roosevelt Court's role in economic matters, less attention has been paid to its role in preserving individual liberties, and this is unfortunate. During that turbulent decade, the American government met the economic crisis without tossing aside the Constitution and the liberties it guarantees.[55] The Roosevelt Court strengthened the dicta of *Gitlow* v. *New York* which extended the Bill of Rights to the states.[56] *De Jonge* v. *Oregon*[57] expanded the right of assembly. *Herndon* v. *Lowry*[58] and *Thornhill* v. *Alabama*[59] enhanced free speech. *Chambers* v. *Florida*[60] helped guarantee fair trials to black Americans. In *Grosjean* v. *American Press Co.,*[61] the Court broaden the guarantee of the free press. "The Constitution is what the judges say it is," Chief Justice Hughes explained in his immortal phrase, "and the judiciary is the safeguard of our liberty * * * under the Constitution." [62]

The emphasis on individual rights displayed by the Roosevelt Court has been typical of the American government since Day One, 1787. The people, said Jefferson "are the only sure reliance for the preservation of our liberty." [63] "A dependence on the people is, no doubt, the primary control on the government," wrote Madison.[64]

This characteristic has separated the United States from much of the world. During periods of social convulsions or political turmoil, when so many other countries move in the direction of restricting democracy (i.e., banning elections and closing presses), the United States has moved in the direction of expanding democracy. To Americans, the ills of democracy are best cured by more, not less, democracy. This is what the Fathers intended for the Constitution begins: "We the people in order to form a more perfect Union." The people, not institutions or states, are sovereign.

In this sense, Chief Justice Warren could consider *Baker* v. *Carr*[65] the decision of his tenure of greatest consequence for all Americans.[66] Based on the equal protection clause, this landmark case further insured that each American is armed with the means to make his or her view felt. Chief Justice Warren was typical of the Supreme Court, which in recent decades has abolished the "white primary," [67] racial gerrymandering,[68] and tax as a condition for political participation.[69] The Court has been typical of the United States, in general. Through constitutional amendments, suffrage has been extended to include people without property, blacks, women, and eighteen-year olds, and the "poll tax" has been abolished. By the 1950's and 1960's, Congress was on board with the passage of legislation strengthening statutes protecting the right to vote. By 1965, the executive branch was fully on board as President Johnson appealed for federal action to guarantee every American the right to vote and hold office.

Despite their distrust of popular democracy, the Framers never questioned that government should be accountable to the people, for the people constitute the most important "precaution" against the abuse of power. The people select who will govern and throw out of office those who betray that trust. Through elections, the people evaluate and check the so-called power elite, and provide the greatest protection of their own liberties.

"We the people," through separation of powers and federalism, have prevailed. The doctrines have their faults, but they have successfully performed their most valuable tasks. Recent events have again demonstrated the sagacity of the Framers in recognizing that "men are not angels" and constructing a framework of government saturated with "precautions." For 200 years, the doctrines have been instrumental components of a Constitution that has allowed Americans to enjoy "life, liberty, and the pursuit of happiness" by providing a safe, stable government that not only guards against tyranny, but promotes liberty.

The American ship of state has sailed through some mighty rough storms and it undoubtedly will have to weather many more. But it has a solid structure thanks to the Constitution writers of 1787. The crew may get out of hand, at times, but the sturdy vessel keeps them out of the water.

FOOTNOTES

[1] Although separation of powers and checks and balances are not necessarily the same doctrines, for sake of brevity, they are treated somewhat synonymously in this paper.

[2] Sharp, "The Classical Doctrine of Separation of Powers," 2 U. Chi. L. Rev. 385, 395-96 (1935).

[3] W. Wilson, Congressional Government 28–31 (1960); J. Rohr, To Run a Constitution 60–65 (1986).

[4] W. Wilson, Congressional Government 54–57 (1911).

[5] Green, "Separation of Government Powers," 29 Yale L.J. 369, 369–70 (1920).

[6] Cutler, "To Form a Government," 59 Foreign Aff. 126 (1980).

[7] 426 U.S. 833 (1976).

[8] 105 S. Ct. 1005 (1985).

[9] The Federalist No. 17, at 112 (A. Hamilton) (O. Leigh ed. (1901).

[10] Field, *Garcia* v. *San Antonio Metropolitan Transit Authority,* 99 Harv. L. Rev. 84, 84–85 (1985).

[11] Van Alstyne, "The Second Death of Federalism," 83 Mich. L. Rev. 1709 (1985).

[12] For the Framers' intention to build efficiency into the system, *see* Fischer, "The Efficiency Side of Separated Powers," 5 J. Am. Stud. 113 (1971).

[13] For the Framers' use of history to develop and defend their product, *see* The Federalist Nos. 18 and 19 (A. Hamilton) (O. Leigh ed. 1901).

[14] L. Fischer, Constitutional Conflicts Between Congress and the President 4 (1985).

[15] G. Wood, The Creation of the American Republic, 1776–1787 472 (1969).

[16] The Federalist No. 51, at 354 (J. Madison) (O. Leigh ed. (1901).

[17] The Federalist No. 47, at 329 (J. Madison) (O. Leigh ed. (1901).

[18] Supra note 16, at 354–55.

[19] Id.

[20] Parker, "Historic Basis of Administrative Law," 12 Rutgers L. Rev. 449, 460 (1958).

[21] A. Schlesinger Jr., The Imperial Presidency (1973).

[22] R. Neustadt, Presidential Power, 33 (1960).

[23] Robinson, "The Renewal of American Constitutionalism," in Separation of Powers—Does It Still Work? 41–2 (1986).

[24] L. Tribe, American Constitutional Law 15 (1978).

[25] A. Schlesinger and A. Grazia, Congress and the Presidency, 2–3 (1967).

[26] Fireside Chat, 1937 Pub. Papers 126 (March 9, 1937).

[27] 128 Cong. Rec. S2578 (daily ed. March 23, 1982) (statement of Sen. Schmitt).

[28] A. Mikva, "How Well Does Congress Support and Defend the Constitution?", 61 N.C.L. Rev. 587, 609–10 (1983).

[29] Dexter, "Checks and Balances Today," in Congress: The First Branch of Government 83 (1967).

[30] 272 U.S. 52, 293 (1926).

[31] 106 S. Ct. 3181, 3187 (1986).

[32] Corwin, "The Constitution as Instrument and as Symbol," 30 Am. Pol. Sci. Rev. 1071, 1084–85 (1936).

[33] Stern, "That Commerce Which Concerns More States Than One," 47 Harv. L. Rev. 1325 (1934).

[34] J. Rohr, supra note 3, at 117–34.

[35] 103 U.S. 168 (1881).

[36] 354 U.S. 178, 200 (1957).

[37] 343 U.S. 579 (1952).

[38] 462 U.S. 919 (1983).

[39] Stathis, "Executive Cooperation" 3 Law & Pol. 187, 282 (1986).

[40] Schultz, "Separation of Powers in Foreign Affairs," Separation of Powers, supra note 23, at 121.

[41] 462 U.S. 919, 999 (1983).

[42] Van Alstyne, supra note 11, at 1709.

[43] For previous announcements of the death of federalism, *see* Tribe, supra note 24, at 17 n.9.

[44] A. Tocqueville, Democracy in America 160–66 (Knopf ed. 1963).

[45] J. Roche, "Constitutional Law: Distribution of Powers," in 3 Encyc. Soc. Sci. 304 (1968).

[46] J. Burns, The Vineyard of Liberty 598 (1982); Roche, supra note 4, at 302.

[47] Brennan, *State Constitutions and the Protection of Individual Rights,* 90 Harv. L. Rev. 489, 495–503 (1977).

[48] S. Morison, H. Commager, and W. Leuchtenberg, The Growth of the American Republic 517 (7th ed. 1980).

[49] 349 U.S. 294 (1955).

[50] 369 U.S. 186 (1962).

[51] 285 U.S. 262, 311 (1932).

[52] 319 U.S. 624, 642 (1943).

[53] 5 U.S. (1 Cranch) 137 (1803).

[54] R. Jackson, The Struggle for Judicial Supremacy xi (1941).

[55] The detention of Japanese aliens during World War II does not contradict this point. This unfortunate event occurred in the 1940s, not the 1930s, and was a war-time measure. *See Korematsu* v. *United States,* 323 U.S. 214 (1944).

[56] 268 U.S. 652 (1925).

[57] 299 U.S. 353 (1937).

[58] 301 U.S. 242 (1937).

[59] 310 U.S. 88 (1939).

[60] 309 U.S. 227 (1940).

[61] 297 U.S. 233 (1936).

[62] R. Jackson, supra note 54, at 3.

[63] A. Schlesinger, supra note 25, at 29.

[64] Supra note 16, at 355.

[65] 369 U.S. 186 (1962).

[66] Brennan, supra note 47, at 493.

[67] *Smith* v. *Allwright*, 321 U.S. 649 (1944).

[68] *Gomillion* v. *Lightfoot*, 364 U.S. 339 (1960).

[69] *Harper* v. *Va. Bd. Elec.*, 383 U.S. 663 (1966).

EXECUTIVE CALENDAR

Mr. BYRD. Mr. President, I ask the distinguished acting Republican leader, Mr. DURENBERGER, if Calendar Orders No. 369 through 381 of the Executive Calendar have been cleared on that side of the aisle.

Mr. DURENBERGER. The majority leader is correct. They have been cleared.

Mr. BYRD. I thank the distinguished Senator.

LEGISLATIVE SESSION

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate go into executive session to consider Calendar Orders No. 369 through 381; that those nominations be considered en bloc and agreed to en bloc; that the President be immediately notified of the confirmation of the nominees; and that the motion to reconsider be laid on the table.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The nominations considered and confirmed en bloc are as follows:

DEPARTMENT OF DEFENSE

John J. Welch, Jr., of Texas, to be an Assistant Secretary of the Air Force.

Kathleen A. Buck, of Virginia, to be General Counsel of the Department of Defense.

Stephen M. Duncan, of Colorado, to be an Assistant Secretary of Defense.

IN THE AIR FORCE

The following-named officer, under the provisions of title 10. United States Code, section 601, to be assigned to a position of importance and responsibility designated by the President under title 10, United States Code, section 601:

To be lieutenant general

Maj. Gen. Donald J. Kutyna, 339-26-1935FR, U.S. Air Force.

The following-named officer under the provisions of title 10, United States Code, section 601, to be reassigned in his current grade to a position of importance and responsibility designated by the President under title 10, United States Code, section 601:

To be lieutenant general

Lt. Gen. Richard A. Burpee, 363-30-8559FR, U.S. Air Force.

The following-named officer, under the provisions of title 10, United States Code, section 601, to be assigned to a position of importance and responsibility designated by the President under title 10, United States Code, section 601:

To be lieutenant general

Maj. Gen. James B. Davis, 505-38-3274, U.S. Air Force.

The following-named officer for appointment to the grade of lieutenant general on the retired list pursuant to the provisions of title 10, United States Code, section 1370:

Lt. Gen. James E. Light, Jr., 365-28-9187FR, U.S. Air Force.

The following-named officer for appointment to the grade of lieutenant general on the retired list pursuant to the provisions of title 10, United States Code, section 1370:

To be lieutenant general

Lt. Gen. Edward L. Tixier, 525-40-7833FR, U.S. Air Force.

IN THE ARMY

The following-named officer to be placed on the retired list in grade indicated under the provisions of title 10, United States Code, section 1370:

To be lieutenant general

Lt. Gen. Johnny J. Johnston, 458-34-3051, U.S. Army.

The following-named officer for appointment to the grade indicated, under the provisions of title 10, United States Code, section 601(a), in conjunction with assignment to a position of importance and responsibility designated by the President under title 10, United States Code, section 601(a):

To be lieutenant general

Maj. Gen. Orren R. Whiddon, 464-52-8938, U.S. Army.

The U.S. Army National Guard officers named herein for appointment as a Reserve Commissioned Officer of the Army, under the provisions of title 10, United States Code, sections 593(a), 3371 and 3384:

To be major general

Brig. Gen. James F. Fretterd, 220-26-8507.

To be brigadier general

Col. John W. Schaeffer, Jr., 574-10-9379.

Col. Simon C. Krevitsky, 527-30-3282.

The United States Army Reserve officers named herein for appointment as Reserve Commissioned Officers of the Army, under the provisions of title 10, United States Code, section 593(a), 3371 and 3384:

To be major general

Brig. Gen. Clyde R. Cherberg, 535-26-7531.

Brig. Gen. Robert C. Hope, 429-58-3609.

Brig. Gen. Alvin W. Jones, 460-38-2391.

Brig. Gen. Felix A. Santoni, 581-58-4352.

Brig. Gen. Richard E. Stearney, 353-28-7103.

Brig. Gen. Mark W. Tenney, 328-30-2237.

To be brigadier general, USAR

Col. Woodrow A. Free, 467-48-1976.

Col. Barclay O. Wellman, 084-28-9278.

Col. Stephen H. Sewell, Jr., 259-50-4403.

Col. Claude J. Roberts, Jr., 455-60-7853.

Col. Paul R. Lister, 525-90-7670.

Col. Paul N. Revis, 431-64-5006.

Col. Gene P. Hale, 425-62-3742.

Col. Roger H. Butz, 280-34-6271.

IN THE NAVY

The following-named officer to be placed on the retired list in the grade indicated under the provisions of title 10, United States Code, section 1370.

To be vice admiral

Vice Adm. William F. McCauley, 505-30-1971/1110, U.S. Navy.

Mr. BYRD. Mr. President, I ask unanimous consent that all nominations placed on the Secretary's desk in the Marine Corps, Navy, be considered en bloc and agreed to en bloc.

Mr. DURENBERGER. They have been cleared on this side.

The PRESIDING OFFICER. Without objection, it is so ordered.

The nominations considered and agreed to en bloc are as follows:

NOMINATIONS PLACED ON THE SECRETARY'S DESK IN THE MARINE CORPS, NAVY

Marine Corps nominations beginning Pedro Gutierrez, and ending John A. Wilson, Jr., which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on October 1, 1987.

Navy nominations beginning Rodolfo Llobet, and ending Robert L. Duell, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of September 30, 1987.

Navy nominations beginning Stephen A. Eilertson, and ending Earl H. Harley, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on October 1, 1987.

Mr. BYRD. Mr. President, I move en bloc that the nominations be reconsidered.

Mr. DURENBERGER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BYRD. Mr. President, I ask that the President be immediately notified of the confirmation of the nominees.

The PRESIDING OFFICER. Without objection, it is so ordered.

LEGISLATIVE SESSION

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate return to legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

BICENTENNIAL MINUTE

OCTOBER 23, 1895: CLINTON P. ANDERSON BORN

Mr. DOLE. Mr. President, 92 years ago today, on October 23, 1895, Clinton P. Anderson, a distinguished U.S. Senator and Secretary of Agriculture, was born in Centerville, SD. In 1917, gravely ill with tuberculosis, he entered a sanatorium in New Mexico. His health restored, Anderson succumbed to the attractions of New Mexico's turbulent political and business climate, and made that State his home until his death in 1975.

In 1940, following service as a regional New Deal agency administrator, Anderson won a seat in the U.S. House of Representatives. Several years later, his effective House committee investigation of wartime food shortages led President Truman to appoint him Secretary of Agriculture. In that position, he directed post-World War II programs to deal with national commodity shortages and European famine.

In 1949, Anderson began his 24-year Senate career. During those years, he served at various times as chairman of the Interior Committee, the Committee on Aeronautical and Space Sciences, and the Joint Committee on Atomic Energy. Always in fragile health, Anderson cofounded Medicare. He was also a vigorous advocate of the peaceful uses of atomic energy. The landmark 1964 Wilderness Act, of which he was a principal author, represented the culmination of his careerlong interest in resources conservation.

Senate historian Richard Baker concludes in his biography of Anderson that the New Mexico Senator:

> Served at a time when issues that traditionally had been associated with the West—those involving management of energy, land, and water resources—rapidly evolved into national issues. Anderson's distinction as a legislator came because he was able to reconcile and balance the interests of his State and region with those of the country at large. When he advocated legislation of obvious value to his State, he did so in terms that colleagues from other regions found difficult to deny.

92D ANNIVERSARY OF THE BIRTH OF SENATOR CLINTON P. ANDERSON

Mr. BINGAMAN. Mr. President, I rise to thank the distinguished minority leader for his comments on the occasion of the 92d anniversary of the birth of Senator Clinton P. Anderson. The people of New Mexico appreciate his kind words about the career and accomplishments of one of the greatest public servants New Mexico has known since its statehood in 1912. I want to take this opportunity to add a few thoughts about what all of us in this body might be able to learn from the career of Senator Anderson.

I would suspect that most of my colleagues in the Senate are familiar with the great many legislative accomplishments of Senator Anderson. But today I will only mention his accomplishments in the area of conservation. Those have been well documented in "Conservation Politics," an excellent book by the Senate historian, Richard Allan Baker. To name just a few of the public laws Senator Anderson played a key role in enacting: The Wilderness Act, the Land and Water Conservation Fund Act, the Outdoor Recreation Act, the Water Resources Act, the Upper Colorado Storage Project Act, and legislation authorizing the Navajo Indian irrigation project, the San Juan-Chama Transmountain Diversion Act, and the Public Land Law Review Commission.

Clinton Anderson's effectiveness is captured by the bottom-line words of Richard McArdle, who was Chief of the Forest Service from 1952 to 1962: "Without Clinton Anderson, there would have been no Wilderness Law."

Dr. Baker's history of Clint Anderson's Senate career is interesting not just to New Mexicans and to conservationists. As the distinguished minority leader's comments indicate, Anderson's Senate career has some instruction for all of us in the Senate today. It is a road map on how to be an effective U.S. Senator.

Of course, few of us have been lucky enough to be endowed with the great talents and personal qualities which were given to Clinton Anderson. We cannot all be blessed with his great intelligence, his creativity, his high energy, his innate sense of fairness, and his indifference to acquiring power for its own sake. But we can learn from the goals he set, the attitudes he fostered, the habits he practiced.

For example, Anderson rose above any particular region's interests, any particular State's interests, and any particular special interest. In all that he did, Clinton Anderson put the longterm interests of the Nation first. Then he strove to be sure that the interests of his own State of New Mexico matched those national interests. He strove to be sure that New Mexico received its fair share of the benefits of national policies he worked so hard to implement.

He was not an ideologue. He was principled, but he was not inflexible. He was also pragmatic. He was able to distinguish the desirable from the possible.

He was humble enough to pride himself on being a facilitator of other men's and women's ideas.

He aspired to be a mediator. He negotiated between Indians and Anglos, between residents of the San Juan and Rio Grande River basins, between State engineers and the Bureau of Reclamation, between developers and preservationists, and between the House and the Senate.

But he avoided entanglements in petty personality clashes and jurisdictional fights.

He kept his eye on long-range objectives, and fine-tuned his sense of timing about when he could take effective action on proposed legislation. When the time was right, he carefully orchestrated every step of his legislative initiatives.

He insisted that the legislation he sponsored be fully supported by the best scientific research and analysis available. He demanded that his staff spend hours doing careful study of any issue before briefing him. And staff judgments as to the political implications of staff recommendations were out of bounds. "You tell me the facts," he would tell his staff. "I will worry about the political side."

In committee work, he was always well briefed. He was on top of the substance and procedure of every issue he cared about. In command of the issues, he could persuade wavering colleagues. And as a committee chairman, he was always scrupulously fair. He strove to protect the rights and interests of every member of his committee, even when they did not fully understand what their interests were. But he also knew when committee discussion and debate should end, when it was time for his committee to act.

And on the Senate floor, he was, as always, fully prepared. He spent most of his floor time in quiet conversation with potential adversaries, using his mediation and negotiation skills. He gave very few speeches, and none was long-winded. But when Clinton Anderson did speak in floor debates, his colleagues listened, and they listened carefully.

Thanks to Dr. Baker's book, we have a model for Senate leadership we can study and emulate. Of course, it may not be a model appropriate for all Senators or for all times. But this Senate is now struggling to work with the executive branch to play its proper role in national policymaking on the truly critical issues which now face us. On this 92d anniversary of his birth, perhaps a few thoughtful minutes pondering the career of Senator Clinton P. Anderson, Democrat of New Mexico, might be a few minutes very well spent.

I yield the floor, Mr. President.

THE LOSS OF A DEAR FRIEND: PHIL McGANCE

Mr. ROCKEFELLER. Mr. President, my staff and I, the U.S. Senate and, most of all, the people of West Virginia have lost a dear friend: Phil McGance, who died yesterday morning, years before his time, at the age of 49.

Phil McGance worked in this body for 20 years, on the staff of my predecessor, Senator Jennings Randolph. Coming to Senator Randolph's staff, after graduating from West Point, and serving in the Army, Phil rose to become Senator Randolph's administrative assistant, his alter ego, his closest friend—and virtually a son.

When I came to the Senate, Phil had already made plans to join Senator Randolph in starting a consulting firm downtown. But because of his extraordinary knowledge of West Virginia and the Senate, I asked Phil if he would stay on and help me get my Senate office started. With typical generosity, good humor and a commitment to service, Phil agreed to stay on for "a few months." And with typical generosity, good humor, and commitment to service, he stayed for more than a year; sharing his experience, wisdom and insight; doing extraordinary work for the Senate and for West Virginia.

It is impossible to express how much Phil McGance worked for West Virginia—and how much West Virginia and our people meant to him. For years, Phil was involved in virtually everything that Senator Randolph worked on, and Senator Randolph was both chairman of the Environment and Public Works Committee and a ranking Democrat on the Labor and Human Resources Committee. West Virginia had a desperate need for improved infrastructure, and for 20 years, there wasn't a road, a bridge, a dam, or a sewer system that Phil McGance didn't work on, fight for, care passionately about. He knew every project: the history, the politics, what it meant to the community. Virtually every community in West Virginia benefited from Phil McGance's energy, his dedication, and his ability.

And West Virginia had a desperate need for human services: for better schools, for food stamps, for black lung benefits, for safer coal mines and other workplaces—for the whole range of services that help combat poverty and give people an opportunity to build better lives. And Phil worked on those problems with the same energy and passion, helping Senator Randolph on many of the historic pieces of legislation that came through the Labor Committee during the 1960's and 1970's.

He was the total public servant; his commitment to his work and to the people he represented was extraordinary. In early 1985, I began trying to help an ailing steel company, Wheeling Pittsburgh, survive despite going into chapter 11, and a crippling strike.

Phil McGance had worked with Wheeling Pitt since 1977. He knew the management of the company; he knew the head of the steelworkers union; he knew the key people at the agencies that had worked with Wheeling Pitt. He set up what we called a full-time Wheeling Pitt desk in our office. He worked the problem around the clock: trying to help management, workers, the Government, and the banks find solutions that would enable Wheeling Pitt to survive.

He practiced pension and bankruptcy law without a license; he helped mediate, without a title, simply because he was trusted by everyone. And because everyone knew that Phil had no other agenda but to help the company survive and save the jobs for the Ohio Valley. When we flew to Wheeling in November 1985, to celebrate the settlement of the strike which ensured the company's survival, it was one of the happiest days of Phil's life.

Above all, he was an extraordinary friend. The intensity he brought to his work coexisted with a great generosity and warmth and a terrific sense of humor. Politics is a tough business, getting things done in Government can be frustrating, and the problems Phil battled were numerous and never ending. Through it all, however, he was always optimistic, upbeat, hopeful; he never succumbed to cynicism or defeatism. He buoyed the spirits of everyone around him.

I was going to conclude by saying that the people of West Virginia would never truly know how much Phil had done for them. But one nice thing is that so many did know. He had thousands of friends—in West Virginia and in Washington, who will always think of him with affection, respect, and gratitude. We will always be disappointed that he left us much too early, but we'll always be grateful for the times we had together.

SITUATION IN TIBET

Mr. PELL. Mr. President, in a recent editorial, the New York Times addressed the tragic situation in Tibet. The Times wisely urged the Chinese to undertake a dialog with the representatives of the Tibetan people on a new relationship between China and Tibet. The Times suggested India's relations with the Himalayan nations of Nepal, Bhutan, and Sikkim as a model.

India's relationships with Nepal and Bhutan provide a good model for a future China-Tibet relationship. Both Nepal and Bhutan are sovereign nations. They are bound to India by certain treaties, which are essential for these landlocked nations, but both are nonetheless sovereign nations. Both are members of the United Nations.

Sikkim, by contrast, provides a most unhappy precedent. Sikkim was a sovereign nation until it was gobbled up by India in 1975. Today Sikkim is just a state in the Indian union, although its people—like the Tibetan people—yearn for their own country, with a government of their own choosing.

There are other parallels between Sikkim and Tibet. In both cases, citizens of the occupying power have resettled their own nationals in the Himalayan state. In both cases, the population of the occupying power far exceeds the indigenous population. As resettlement proceeds, a unique and wonderful culture is being overwhelmed.

The Himalayan peoples have the same fundamental right of self-determination as do other nations. As Princess Yangchen of Sikkim points out in her letter, we are all diminished when the "principle of self-determination is sacrificed for the demands of the moment." We must not overlook the tragic plight of Sikkim and Tibet.

Mr. President, I ask unanimous consent that the letters of Princess Yangchen and the Makranskys be printed in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

[From the New York Times, Oct. 19, 1987]

TIBETANS ARE PRISONERS IN THEIR OWN COUNTRY

SIKKIM NO MODEL

To the Editor:

"Stand Up for Decency in Tibet" was correct in criticizing the Administration's support of China's position in Tibet. However, the concluding suggestion that Sikkim could be a model for China's relations with Tibet was misguided.

In 1974, Sikkim had been virtually annexed by India. Six months later, as the fall of Saigon dominated the world's headlines, a division of Indian troops completed the job. Since then, Sikkim has been considered by India as merely another Indian state. It does not have, as Tibet does, even a nominal suggestion of autonomy.

In addition, Indian policies, while far less ruthless than those of the Chinese, have been far more effective in eradicating the culture of their new subjects. As a result, there is little to suggest that Sikkim is anything but a model to be avoided.

In this context, it is worth noting that the Reagan Administration policy on Tibet is based on the belief that Chinese-United States relations are more important than the human rights of six million Tibetans. That is shocking but not very surprising. The Sikkimese have not forgotten that the Ford Administration sat silently in support of another large power, India, while independent Sikkim was wiped off the map.

We Himalayans watch with resignation as the United States supports the aggressors in Sikkim and in Tibet, all the while championing human rights elsewhere. We hope that one day the United States will realize that the international principle of self-determination is devalued each time it is sacrificed for the demands of the moment.

YANGCHEN,
Princess of Sikkim.
New York, Oct. 12, 1987.

To the Editor:

As a research scholar in Asian studies and his wife, both speakers of the Tibetan langauge, we visited Tibet recently for a month, traveling widely and talking to many Tibetans. We returned to the United States early last month, and after having read about the demonstration in Lhasa (front page, Oct. 3), feel compelled to share some of our observations.

Before 1950, Tibet was a sovereign Buddhist country run independently by the Government of the Dalai Lama. In 1950, Tibet was invaded and seized by China, a foreign country whose inhabitants are mostly Han Chinese, an ethnic and language group separate from the Tibetans. Since then, the Communist Chinese have destroyed virtually all the religious and cultural institutions of Tibet, and one million people (of the original six million) have died by torture, execution or starvation.

Despite this, incredibly, the Chinese Government claims the Tibetans welcome the presence of the Han Chinese. It also claims Tibetans have benefited from recent policies offering economic aid and permission to rebuild monasteries. Our experience is contrary to these claims. Here is what we saw and heard:

The single most prevalent sight in Tibet's main cities is Chinese soldiers. Lhasa and Shigatse are armed camps. It is evident that the Chinese do not feel welcome. Talking with the Tibetans, we noted a pervasive fear of being overheard by informants. They changed the subject abruptly when a Chinese walked by. We were told that disappearances, beatings and executions are still going on as the Chinese response to any discussion of Tibetan autonomy, and a number of Tibetans are still serving prison sentences from the time of the Cultural Revolution.

The most common word we heard was "torsong"—destroyed. We asked about the monasteries—destroyed; religious statues, texts and art—destroyed; homes, family members—destroyed.

We saw massive number of Han Chinese in the main cities, where they now form a majority. The Peking Government began moving large numbers of Chinese into Tibet in the early 1980's. Chinese hold all positions of responsibility and authority, but we met almost none who could say even "yes" or "no" in Tibetan. Evidently, the Chinese feel no need to learn how to speak to Tibetans. They are there simply to take over. The Tibetans will soon be engulfed by the Chinese, along with their langauge and culture.

Peking makes much of the economic aid it has given Tibet in recent years, but this aid coincides with the massive influx of Chinese and the recent increase of tourism. Modern Chinese housing and facilities stand apart from the squalid quarters of the Tibetans. Aid that is used for rebuilding monasteries goes to those that serve as museums for tourists, where an admission fee generates income for the Chinese Government. We found that the few monasteries that have reopened are entirely under the control of Communist officials, not the Buddhist monks.

Every Tibetan we spoke to in depth—farmers, teachers, monks, mothers—asked, "When will the Dalai Lama return to Tibet?" and told us, "We want the Chinese out of our country." They said they are intensely bitter that the Chinese hold them prisoner in their own country and are anguished over the loss of their spiritual teachers. Men and women openly wept as they said these things.

The evidence is in. Tibet is not an "autonomous region" of China. It is a colony of China, held by military force, against the will of the Tibetan people. The last time the Tibetan people resisted the Communist Chinese, one million of them died. It is a measure of their desperation at being erased from their own land, and of their great courage, that they stand up again now. The world community must throw a floodlight on Tibet at once, and hold China strictly accountable for every action. This may be the only thing that can stop China from beginning another massive wave of executions.

JOHN J. MAKRANSKY,
BARBARA R. MAKRANSKY,
Madison, Wis., Oct. 6, 1987.

FRAUD OF THE DAY—PART 9

Mr. HEINZ. Mr. President, most of the instances of fraud I have discussed over the last few weeks have been quite substantial. Multimillion dollar steel fraud, multinational coffee fraud, and multicorporation wood fraud have all figured in these brief statements. It would be easy to deduce from these examples that customs fraud only occurs in major industries on a large scale. Today's fraud clearly dispels that notion. Customs fraud can and does strike small companies in limited areas as well as the multinational giants. No company, be it large or small, is immune from this menace lurking on our docks and in our airports.

Not long ago, I received information from a constituent alleging that a Pennsylvania company was committing customs fraud. The information claimed that the company in question was importing refractory brick from Japan, removing the country of origin markings, and marketing the product as American produced brick.

I passed this information along to the relevant Customs Service officials and was pleased to see an investigation go forward. In September 1987, a visit by customs officers to the company plant confirmed the allegations made by my constituent. A customs summons was served on corporate headquarters, and later the same month 89 pallets of refractory brick were constructively seized under 19 U.S.C. 1595(a) and (c) for violation of 15 U.S.C. 1124. Penalties in this case have yet to be assessed, and court proceedings are still pending.

This fraud may seem insignificant next to a $72 million pipe fraud or a multimillion dollar coffee fraud. The value of the goods seized in this case was slightly more than $54,000. But that $54,000 is every bit as important to domestic manufacturers in this small industry as the millions are likewise important in other cases. In every case there are real domestic producers that suffer from this criminal activity—we are not talking about hypothetical or de minimis losses. In many respects, it is all the more devastating when it happens in a small case, like the photo album industry I discussed in an earlier fraud of the day, because the domestic industry's pockets are not as deep.

The Senate provision creating a private right of action for customs fraud would provide a means of redressing these outrages. U.S. laws provide for a private right of action in other situations where the crime involved harms U.S. parties, such as in antitrust, securities, or civil rights cases. In the same way, customs fraud represents far more than simple loss of revenue to the Federal Government—it has a direct and sharp impact on domestic manufacturers—and our law should similarly provide for a private right of action in these cases to provide some tangible assistance to abused U.S. industries.

TECHNOLOGY TRANSFERS TO THE SOVIET UNION: A ROADMAP OF TREACHERY

Mr. HELMS. Mr. President, yesterday the police department of Drammen, Norway, made public its report on the Kongsberg Vapenfabrik's transfer of critical technology to the Soviet Union. Senators will recall that Kongsberg was the partner with Toshiba in the very damaging transfer of milling machines and the accompanying computer technology for the improvement of Soviet submarine propeller technology, an international crime which the Senate has already roundly condemned.

Mr. President, the Norwegian police report contains many disturbing revelations. Foremost among them is the existence of still other more serious breaches of technology security, conducted with the cooperation of firms in France, Italy, Germany, and possibly, England. The report details many of the transactions which, when considered in aggregate, amount to a roadmap of treachery.

Mr. President, these revelations, and the others contained in the police report, no doubt contain much that is embarrassing to the Government of Norway. I commend the Norwegian officials responsible for this investigation for facing up to their responsibilities. We have had indications that the Norwegians plan to implement serious measures to toughen their enforcement of their security in technology exports, and the United States should welcome those moves.

Mr. President, a troubling aspect of these revelations has emerged because of the reactions of one country, France, to the ongoing investigation in Norway. As it became clear that at least one French company would be implicated in the report, word came to the United States that the Government of France did not consider the affair worthy of serious attention. My conversations with administration officials confirmed this report, and on Wednesday, October 22, I wrote to the Ambassador of France in Washington to register my concerns.

Mr. President, I ask unanimous consent that my letter be printed at this point in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
COMMITTEE ON FOREIGN RELATIONS,
Washington, DC, October 21, 1987.

His Excellency EMMANUEL DE MARGERIE,
The Ambassador of France, Reservoir Road NW., Washington, DC.

DEAR MR. AMBASSADOR: Recent revelations of high technology machinery sales to the Soviet Union by the French company Ratier-Forest, and the mild reaction to them by the French Government, have dismayed and confused many friends of France in the United States Senate. I take this occasion to stress to you that the impact of this sale, and the steps taken to deal with it by the French Government, are of grave concern to all Americans.

I am aware that the French Government has acknowledged the sales, which took place in the mid-1970's. However, I am troubled to learn in discussions with officers of our government responsible for technology transfer that the Government of France considers these violations to be "minor and isolated," and that the violations will not "provoke a change in procedure for export authorizations" by the French Government.

Mr. Ambassador, if these reports are true, they reflect a fundamental misunderstanding of the impact which these sales had, as well as an unfortunate misjudgment with regard to the resolve of the United States to make COCOM work.

First, the Japanese company Toshiba claims that its illegal sales to the Soviets, which precipitated strong legislation in the U.S. Congress earlier this year, would never have happened had not the French sale opened the door to the Soviets. Second, the report of French satisfaction with the status quo in authorization procedures leaves an impression, however undesirable, that the French do not consider major advances in Soviet offensive weapon capability a matter for concern.

In short, Mr. Ambassador, the original sale was indeed a major breach in the defense of the West, and any attempt to conduct business as usual in light of such a breach cannot be welcomed anywhere in the West.

The Senate of the United States is on record with regard to the serious approach which the American people want us to take towards technology transfer violations. I urge your government to help us strengthen our common goal of technology security, and to reject any counsel which invites an attitude of ease and nonchalance in the face of this most important issue.

In that sense of cooperation, I request that you provide your Government's position on the answers to the attached questions concerning the Ratier-Forest transaction. This information will no doubt play a central role in our deliberations in coming months.

Please be assured of my highest considerations.

Sincerely,

Jesse Helms.

Questions Regarding Forest Company Machine Tool Exports

1. In 1979 a U.S. person observed five Forest machine tools being prepared for shipment to the Soviet Bloc. These machines were seven axis machines.

a. Where are these machines now?

b. Was a license issued for these machines? If so, why?

c. If these machines were limited to three axis capability, what efforts has the French Government taken to ensure that they were not up graded to seven axis capability?

d. How are these machines currently engaged?

e. Are there any outstanding service or parts contracts on these machines?

2. Please provide a full inventory of all Forest machine tool exports to the Soviet Bloc from 1976 to present.

Mr. HELMS. Mr. President, I have written letters to the Ambassadors of Germany, Great Britain, and Italy to ask that their Governments recognize the concern which all Americans have for the issue of technology security. This Senate is on record—on the trade bill—with regard to the actions of the Toshiba Corp., and I believe the world is aware of our desire to make sure that our technology transfers remain secure. I am gratified to receive word today from the French Embassy in Washington that the French have met with American officials in Paris yesterday, and I am told that the Government of France will shortly be making a statement about the issue of technology security.

Mr. President, I trust that the Government of France will make such a statement, and I am hopeful that all Western countries join in making our technology more secure than ever. I hope that the Norwegian police will receive full cooperation from other governments involved—France, Italy, West Germany, and Great Britain—and that their lack of cooperation up to this point, as described in the report, will quickly be supplanted by their wholehearted support of this investigation. We cannot allow the ghost of glasnost to induce a false sense of ease about this most important issue.

Finally, Mr. President, there is the question of end users in the Soviet Union. With the exception of the Baltic Naval Shipyard, the Norwegian police do not identify the end user or the use to which these sophisticated machines are being put. We can only use our imagination based on almost 70 years of experience dealing with this regime. Are these machines being used for nuclear weapon production or military jet engine production? We do not know, but it is imperative that we find out.

Mr. President, I ask unanimous consent that the Norwegian police report be printed at this point in the Record.

There being no objection, the report was ordered to be printed in the Record, as follows:

Investigation of the Transfer of Technology From Kongsberg Vapenfabrikk to the Soviet Union

In a letter dated 9 March 1987 sent to the head of the Police Security Service, the Public Prosecutor gave the following instructions with regard to the investigation:

"I take the liberty of recapitulating on the following points:

1. On Friday 27 February 1987, the Director General of Public Prosecutions was briefed on the matter by Director General B. Barth from the Ministry of Foreign Affairs.

2. That same day, following consultations with yourself, inter alia, the Director General decided that the matter would be subject to investigation.

It was further decided that the undersigned was to be in charge of the case on behalf of the prosecuting authorities.

3. On Monday 3 March 1987, I met with Director General Barth and Head of Department Magnus from the Ministry of Foreign Affairs. The purpose of this meeting was three-fold:

(a) To announce that an investigation had been instituted.

(b) To determine the Foreign Ministry's plan of action for the immediate future in connection with ongoing investigation under the Foreign Ministry.

(c) What information was to be given in response to possible inquiries from the media.

Upon my request, Mr. Ulrich, Deputy Head of Police Security Services, was also invited to attend the above meeting, and I assume that he has reported accordingly.

4. Later that day, you informed me of your decision to assign the investigation to the Chief of Police in Drammen, and that the National Security Bureau would provide the necessary assistance—to which I have no further remarks.

5. On Friday 6 March 1987, a meeting was held at the National Security Bureau where a plan for the investigation—including work progress—was drawn up and discussed in further detail.

6. I take it that I will be kept informed of the progress of the investigation at appropriate times, and that questions of particular importance will be discussed with me in advance. Whenever necessary, I shall report directly to the Director General of Public Prosecutions.

7. I emphasize the importance of maintaining close contact between the investigation group and the Foreign Ministry.

8. In conclusion, I refer to Police Adjutant Rustad's report of 6 March 1987.

I take it that this letter will be included in the criminal case file, so as to ensure that the Director General's decision to institute investigations receives sufficient priority."

The order to investigate was aimed at inquiring into the above-mentioned sale of 4 numerical controllers, model NC 2000, from Kongsberg Vapenfabrikk to Toshiba Machine Company, with the U.S.S.R. as end-user, PC 150 S programming centres, the HAL program (a special program for Toshiba MBP 110 machine tools for generating executive tapes for propellers), and the NMG program (a Computer Aided Manufacturing program intended for double-curved tool pathes, which are typical of aircraft bodies, propellers and turbine blades). The programming centres and the programs themselves were sold to the Soviet Union directly from Kongsberg Vapenfabrikk, and the contract was co-ordinated with the Toshiba contract.

During the course of the investigation, however, information was revealed indicating that Kongsberg Vapenfabrikk could also be suspected of having sold several other numerical control systems to the Soviet Union, in violation of COCOM Regulations.

This suspicion was reported by the police to the authorities. As a result, the Public Prosecutor decided, on 17 June 1987, to institute investigations into a number of other deliveries of numerical control systems to the Soviet Union.

During week 26, the Director General of Public Prosecutions decided that all deliveries of numerical control systems from Kongsberg Vapenfabrikk where the U.S.S.R. was the end-user, were to be investigated. It was further decided that the Drammen Chief of Police was to be in charge of this investigation, which was to be given top priority. The Chief of Police was consequently relieved of his normal duties, in order to concentrate his efforts exclusively on the case at hand.

In connection with this extended investigation, the Public Prosecutor issued the following instructions, dated 13 July 1987:

"The Director General of Public Prosecutions has decided that all deliveries of numerical controllers from Kongsberg Vapenfabrikk, with the U.S.S.R. as end-user, are to be investigated.

The investigation is to be assigned to the Chief of Police in Drammen and is assumed to be conducted in compliance with the directives and routines already established for the ongoing investigation of the delivery of 4 NC 2000s to Toshiba.

In the event that the investigation—and perhaps more particularly, the examination of documents—should give cause for suspicion of irregularities concerning other deliveries of high technology to the U.S.S.R., appropriate investigation must ensue.

As to deliveries to countries other than the U.S.S.R.—and which are covered by COCOM restrictions—our initial aim is merely to draw up a general survey of the number of deliveries involved, when these deliveries took place and, of course, the goods delivered.

I emphasize the importance of giving this case top priority.

I am aware that the investigation is currently concentrating on a systematic examination of all deliveries made, for which purpose the police is availing itself of data processing facilities.

It is assumed that the technical experts will be kept posted of developments at all times, and that they will continue with their own work, parallel to the police investigation.

Furthermore, the police must, as soon as possible—and, if necessary, through the Foreign Ministry—prepare to investigate the actual course of events within the COCOM itself. I await a further discussion of this final point."

Pursuant to the above instructions, and on the basis of information revealed during the investigation so far, the police has, in addition to the technology mentioned above, also investigated Kongsberg Vapenfabrikk's sale to the Soviet Union of numerical controllers of models CNC 300 and CNC 2000, PC 150 M, Repair Shop, PM 500, as well as the delivery/compromising of the numerical controllers' system program listings and necessary equipment to make use of these listings.

On Friday 2 October 1987, the Director General of Public Prosecutions received information from the Ministry of Trade regarding a contract (the FORM contract) for the sale of a computer aided designing and manufacturing system (CAD/CAM). The contract was concluded on 10 July 1986 between Kongsberg Trade and the purchasing organization KOVO i Czechoslovakia. On 2 October, Deputy Director General of Public Prosecutions, Tor Aksel Busch, informed the Drammen Chief of Police that the Director General had decided that the matter was to be investigated, and that this investigation was to be assigned to the Drammen Police Department.

This investigation order was confirmed in writing in a letter dated 5 October 1987 from the Deputy Director General of Public Prosecutions.

B. Summary of investigation results

This investigation has been directed at sales from Kongsberg Vapenfabrikk to the Soviet Union as end-user, and, in one case, to the People's Republic of China as end-user, of numerical controllers of the following models: CNC 300, NC 2000, and CNC 2000.

Mini-computer of the following model: KS 500 (which is also a part of NC 2000 and PC 150 S).

Programming centres of the following models: PC 150 S and PC 150 M.

Computer programs of the following models: HAL program and NMG program.

A Repair Shop for maintenance of NC 2000, including EPROM (Erasable programmable read-only-memory), electronic fixed wire storage of system programs, consisting of: KS 500 Test Station/Dynamic Test, Membrane—static test station, and PM 500—programming equipment.

Equipment which enables the Soviets to upgrade the NC 2000 system program, such as:

PM 500 EPROM programming equipment.

System program listing for NC 2000.

Training in the use of the system program listing and programming of KS 500.

The FORM contract with Czechoslovakia, which consists of the following main components:

NORD 505 computer from Norsk Data with peripheral equipment.

Kongsberg drafting system.

Kongsberg CAD/CAM program DMS.

Swedish finite element method program FEMPAC.

As for the numerical control systems, they have all been installed on third country manufactured machine tools.

There have been no cases involving the export of numerical control systems attached to Norwegian machine tools. The countries that have delivered such machine tools are West Germany, France, Italy, Japan and Great Britain.

In one particular case, Kongsberg Vapenfabrikk has purchased a Swedish machine tool, VBF 450, of SAJO make, fitted it with a CNC 203 numerical controller and exported it to the Soviet Union.

The investigation has shown that Kongsberg Vapenfabrikk, from May 1974 to October 1976, has delivered a total of 32 CNC 300 systems capable of operating 4–5 axes simultaneously, and one CNC 203 system capable of operating 3 axes simultaneously.

CNC numerical controllers are "freely programmable", and are therefore, according to COCOM Regulations, not allowed for export to countries of the "Eastern Bloc". An application may, however, be filed with the national authorities for permission for such exports (government may permit). In such cases, permission must be restricted to CNC control systems capable of operating a maximum of 2 simultaneous axes.

Technically speaking, therefore, all sales of CNC 300 control systems to the Soviet Union constitute a breach of COCOM Regulations. However, we shall revert in the below to the question of why Kongsberg Vapenfabrikk cannot be held liable in this respect.

During the period starting in September 1976 and ending in July 1984, Kongberg Vapenfabrikk exported a total of 105 numerical control systems of NC 2000 model, where the Soviet Union was the end-user, and 2 such systems, where China was the end-user. Of this number, 29 are capable of operating 2 axes simultaneously, and are thereby in compliance with COCOM Regulations. Of the remaining number, 55 are capable of controlling 3 axes simultaneously (with no approval of the national authorities), 7 control 4 simultaneous axes, 10 control 5 simultaneous axes, and 4 control 9 simultaneous axes, and are therefore all in violation of COCOM Regulations. There are still two remaining control systems, where we have not been able to establish with certainty the number of simultaneous axes controlled, but information gathered so far seems to indicate that these systems are according to regulations.

The investigation has also revealed that Kongsberg Vapenfabrikk sold 3 CNC 2000 control systems to France in 1978 where the Soviet Union was the end-user. According to the French import certificate, the control systems were to operate 2 axes simultaneously, but the goods actually delivered to the Soviets consisted of machine tools capable of working 6 simultaneous axes.

As part of the investigation, and in order to be able to assess the control systems' capabilities, it has been necessary to collect as much information as possible concerning the machine tools they control. The results of such investigations have led us to suspect that machine tool builders in France, West Germany, Italy and Japan have also largely violated COCOM Regulations. Data received also indicate that a company in Britain on one occasion has delivered two machine tools in violation of COCOM Regulations. For further reference, see chapter IV below.

In conjunction with the sale of NC 2000 control systems attached to Toshiba machine tools, Kongsberg Vapenfabrikk also sold two units of PC 150 S programming equipment and the HAL and NMG software programs. The investigation has established that this equipment has a computer capacity which requires the permission of Norwegian authorities for export to the "Eastern Bloc". Such permission was granted in reply to an application for export licence in this particular case, and the sale is therefore in compliance with regulations.

Where the Repair Shop sale is concerned, the investigation has shown that this delivery also included one unit of PM 500 programming equipment, that training had been given on the NC 2000 system program and that system program tapes had been provided. Since the Soviets have had access to the system program listing, this means that the NC 2000 controller is reprogrammable, and can no longer be said to be "fixed wired", as required by COCOM Regulations, and this would imply that the entire contract must be regarded as a breach of COCOM Regulations.

The investigation has disclosed that Kongsberg Vapenfabrikk has sold several pieces of PM 500 programming equipment to the Soviet Union, to Baltic Shipyard for one, in conjunction with the Toshiba delivery. Whether such sales constitute a breach of COCOM Regulations depends, however, on whether the Soviets possess the system program listing applying to the NC 2000 they wish to update, and the necessary training on the system itself. It has been established that training has been given, but there is no evidence of their having received the system program listing.

Where the FORM contract is concerned, the investigation has revealed that Kongsberg Trade delivered, on 15 or 16 March 1987, the Swedish software program FEMPAC to Czechoslovakia, without having applied to the Ministry of Trade for an export licence for this program. FEMPAC is a product for which a license is required before export can take place. This delivery took place in violation of the provisions of the Export Bans' Act.

II. COCOM REGULATIONS AND APPLICABLE STATUTORY PROVISIONS

Like many other western countries, Norway has seen fit to control the export to all Warsaw Pact countries, Albania, China, Mongolia, Vietnam and North Korea of products that may contribute to modifying the strategic balance.

This cooperation between western countries takes place within the COCOM (Co-ordinating Committee for Export Control). Countries participating on this committee include all NATO countries, except Iceland, plus Japan.

COCOM has not been established as the product of any formal agreement, and therefore does not have the status of an international organization.

Hence a violation of COCOM Regulations is not per se a punishable offence, and all resolutions and directives adopted within the committee must therefore be incorporated into the respective national legislation.

In Norway, the "Provisional Act of 13 December 1946, no. 3 on the Ban on Exports" is the act which applies in cases of violation of COCOM Regulations. The penalty limits amount to fines or imprisonment for up to 6 months, which means that the relevant statute of limitation is two years.

Another statutory provision that may apply is Section 166 of the Penal Code, which fixes a penalty of fines or imprisonment for up to two years for persons giving untruthful evidence to a public authority. In this case, the limitation period is 5 years.

In this connection, it must be emphasized that the lack of appropriate legal provisions, including the short limitation periods, has constituted a major problem with regard to punishing the persons responsible for breaches of COCOM Regulations revealed by the police investigation.

III. ACCOUNT OF THE INVESTIGATION

Immediately after the Chief of Police had been instructed, on 3 March 1987, to head the investigation of Kongsberg Vapenfabrikk's sale of the 4 numerical controllers to Toshiba, with the Soviet Union as end-user, he appointed, in consultation with the Public Prosecutor and the Head of the Police Security Service, an investigation group, consisting of police officers from the Police Security Service and Kongsberg and Drammen Police Departments. The group's headquarters were established in the Drammen Police Department.

Communication lines and reporting routines were set up between the organizations involved, and the necessary resources of technical and other equipment were obtained through the Ministry of Justice. It may be worth mentioning that, given the order to investigate all deliveries of numerical control systems from Kongsberg Vapenfabrikk, the acquisition of appropriate computer equipment was considered absolutely essential to establishing a general outline of the enormous amounts of data contained in the document seizures.

As already mentioned in the above, the object of the investigation was to inquire into the numerical control systems, the machine tools, etc, which were all quite unknown to the police investigators. It was therefore soon established that the assistance of technical experts outside the police force would be required. With the Public Prosecutor's authorization, Head of Research H.K. Johansen and Research Officer O. Garberg, both from the Norwegian Defence Research Institute, were engaged as technical experts. They have since worked as part of the investigation group and have continuously provided expert opinions based on document seizures and police interrogations.

During the initial phase of the investigation, the group's efforts were concentrated on the documents already handed over in conjunction with the investigation order, while the technical experts simultaneously gave the investigators an introduction to the technology which was to be the subject of further investigations. Such instruction was an absolutely essential preparation for further document seizures, for enabling a valid assessment of such documents and for the interrogations that would have to be conducted.

When the group felt sufficiently prepared, the case was opened by searching through, and seizing relevant documents at Kongsberg Vapenfabrikk's offices. A court order to this effect had been obtained in advance from the Kongsberg Magistrate's Court.

During the entire period covering the sale of numerical control systems, i.e. from 1974 to 1985, the department responsible for the production and sale of these controllers was the Data Systems Division. When this division was closed down at the turn of year 1984/1985, its files were transferred to the Drafting Machine Department or to Kongsberg Trade, stored in a variety of different places and, to some extent, also destroyed. Hence the investigators had considerable difficulty in finding the documents they wished to seize, and subsequently, as a result also of the extended scope of the investigation, seizures had to be carried out on a number of different occasions in several different places. Although most of the information required by the investigators has finally been found, there are still some gaps in the documentation, most probably because such documents have been destroyed.

We have found no information or any other evidence indicating that documentary evidence has been deliberately removed/destroyed in order to cover up the illegal sales that have taken place.

Following the closing down of the Data Systems Division, Kongsberg Vapenfabrikk established Kongsberg Trade, which was purely a trade organization, responsible for the sale of products from Kongsberg Vapenfabrikk and other companies to Eastern Europe.

The police has so far seized more than 250,000 document pages, which form the basis of this investigation.

During the course of the investigation so far, a total of 62 witnesses and 15 suspects have been questioned, some of them on several occasions. The interrogations have been difficult and time-consuming, due to the nature of the case, and because not all the persons questioned have been as cooperative as could have been hoped for. The witnesses' identity will not be disclosed in this report, in order to protect their personal privacy.

Already during the initial stages of the investigation, the American authorities were contacted for the purpose of obtaining more information about the case. Investigators also visited USA during week 14. Collaboration during the progress of this case has functioned as initially agreed upon.

During the course of the investigation, the police has also collaborated with the Ministry of Trade and the Foreign Ministry, which has proven especially useful in comprehending the intentions and contents of the COCOM Regulations, and in ascertaining for which goods Kongsberg Vapenfabrikk has applied for export licenses.

Since Kongsberg Vapenfabrikk has delivered its numerical controllers to machine tool builders in third countries, it has been necessary to approach the police authorities in the various countries in question, in order to draw their attention to possible violations of COCOM Regulations by machine tool builders in their countries, and to obtain the necessary material for use in the Norwegian investigation.

Already on 20 May 1987, an inquiry was made through police channels to the Japanese police authorities, and their representatives also visited Norway during week 23 as part of their own investigation of Toshiba Machine Company. Data were exchanged and plans for further cooperation established. However, we take the liberty of pointing out that we have still not received the awaited information, nor have we been granted permission to question certain Japanese citizens central to this case, something which would be of some importance to shedding full light on this part of the case.

On 20 August 1987, information was sent through police channels concerning possible violations of COCOM Regulations committed by machine tool builders in France, West Germany and Italy, and the police authorities in these countries were invited to cooperate. To date, no reply has been received either from France or Italy. On 3 September 1987, a reply was received from West Germany, stating that our communication had been received and that the information contained in it would be conveyed to the Customs Authorities.

On 2 September 1987, a further notice concerning another possible violation of COCOM Regulations on the part of the Toshiba Machine Company was sent to the Japanese police authorities, but no reply to this has so far been received.

On 12 October 1987, a second inquiry was sent to the French, German and Italian police, the reason being that investigations in Norway had revealed information indicating that machine tool builders in these countries had been in breach of COCOM Regulations in connection with a far larger number of machine tool contracts than initially assumed. The questions contained in the initial inquiry were reiterated, and a few additional questions were raised.

The fact that Norwegian police has not received the awaited information, and not been able to question the desired witnesses in Japan, coupled with the fact that some of the other countries, at least so far, have seemed very little interested in cooperating, will at best slow down the Norwegian investigation and, at worst, make it impossible to reach a full elucidation of the case, especially as concerns the distribution of responsibility within Kongsberg Vapenfabrikk itself. This is especially important in respect of the sale of NC 2000 systems, in collaboration with Japanese and French machine tool builders, and where such offences are not subject to statute of limitation according to criminal law.

The investigation has also brought to light information appearing to indicate that American companies as well may have supplied technology in breach of COCOM Regulations. This information has been conveyed to the American authorities.

As a result of the American contention regarding reduced propeller noise, etc., we have approached the Ministry of Defence in order to obtain their view on certain questions in this respect.

The investigation has now progressed so far that we are certain of the technical specifications of the technology Kongsberg Vapenfabrikk has sold.

As for the machine tools, we have established what machines have been delivered, but are still missing some technical specifications on the individual types of machines.

The other part of the investigation, namely to establish the identity of the persons at Kongsberg Vapenfabrikk responsible for what was happening has given rise to major problems, partly because the necessary documentary evidence is not available (e.g. minutes of meetings), but, even more importantly, because the persons questioned so far, and who, according to the organization chart should have been in positions of responsibility, have been somewhat uncooperative. To complicate matters even further, Kongsberg Vapenfabrikk is a company that was reorganized several times during the period in question, where the organization plan in effect at any given time is never strictly adhered to in practice, and where it has been impossible to establish who was responsible for what at any given time.

As mentioned earlier, a major problem in this case has been inadequate legislation in the field, especially with regard to the short statutes of limitation.

IV. INVESTIGATION RESULTS

A. Introduction

As mentioned at the beginning, the investigation of Kongsberg Vapenfabrikk's transfer of technology to the Soviet Union included machine tool controllers of the following models: CNC 300, NC 2000 and CNC 2000. CNC 300 controllers were sold in a number of 33 units to the Soviet Union during the period from May 1974 to October 1976.

The first of these controllers was sold directly to the Soviet Union, attached to a Swedish SAJO machine tool supplied by the company SANDEN. The remaining 32 controllers were exported to the French machine tool builders GSP and RATIER FORREST for re-export to the Soviet Union.

NC 2000 controllers were exported in a number of 107, of which 105 were re-exported to end-users in the Soviet Union and two end-users in the People's Republic of China.

These exports took place from September 1976 to July 1984. Apart from one single delivery, where we still have insufficient documentation to be able to draw a definite conclusion, and two reserve control systems, delivered directly from Kongsberg Vapenfabrikk to the Soviet Union, all these NC 2000 control systems were exported to machine tool builders in France, West Germany, Italy, Japan and Britain, for subsequent reexport to the Soviet Union and China. The machine tool builders in question are: FORREST LINE in France, SCHIESS, DORRIES and DONAUWERKE in West Germany, INNOCENTI in Italy, TOSHIBA MACHINE COMPANY in Japan and KTM in Britain.

The investigation has, moreover, been directed at the sale of PC 150 M, PC 150 S, the HAL and NMG programs, Repair Shop, PM 500 programming equipment, delivery/compromising of program system listings and the provision of relevant training. The above products have been sold directly to the Soviet Union, either as independent contracts, or as part of contracts for the sale of numerical control systems attached to machine tools from third countries.

A necessary step in the investigation of whether Kongsberg Vapenfabrikk's transfer of technology has been in violation of COCOM Regulations has also been to assess available documentary data relating to the machine tools themselves, and to question witnesses about their respective capabilities. A number of possible violations have also been ascertained in connection with the machine tools as well.

Attached to this report is an overall survey of the capabilities of the various machine tools and numerical controllers, cf. Appendix 1.

In addition, the FORM contract with Czechoslovakia has been subject to police investigation. This contract deals with the sale of DMS systems from Kongsberg Trade, also involving the delivery of a Swedish computer program, for which no export licence has been applied for.

B. Kongsberg Vapenfabrikk's CNC 300/CNC 203

As mentioned under item I,B, "Summary of investigation results" a CNC controller, like CNC 300 and CNC 203, is basically not allowed for export to "Eastern Bloc" countries, according to COCOM regulations, Item No. 1091(a)(i), in this case from 1976, which stipulates that the control system, in order to be allowed for export, must be "hardwired" (not softwired, i.e. not a Computerized Numerical Controller (CNC)). In this same Item No. 1091 Note 3 (d) of the COCOM Regulations, it is stipulated that permission may be sought to export CNC controllers to the "Eastern Bloc" (government may permit), but paragraph (i) of this Regulation clearly states that an absolute prerequisite for the granting of such a permit is that the controller does not operate more than 2 axes simultaneously.

It must therefore be concluded that all sales to the Soviet Union, in fact, constitute a violation of COCOM Regulations' Item No. 1091(a)(i), since the control systems in question are freely programmable (softwired) and capable of controlling more than 2 axes simultaneously.

When examining the individual CNC 300 delivery, it may be concluded that they, furthermore, all, in fact, violate the stipulations of COCOM Regulations' Item No. 1091(a)(ii), because:

Production no. 1080 (CNC 203), delivered to an "institute" in Moscow in May 1974 controlled 3 simultaneous axes. It is worth noting that "Government may permit" 2 simultaneous axes.

In this specific case, Kongsberg Vapenfabrikk applied for an export license, but it has been impossible to find any documents, either in the Military of Trade or a Kongsberg Vapenfabrikk, indicating whether such licence was granted or not. The documents have probably been destroyed.

Production no. 1134-1141, 1150, 1153-1170, 1174-1176, 1194 and 1203 (CNC 300) were delivered to the Soviet Union attached to machine tools from the French machine tool builders mentioned earlier, and they all controlled 4-5 axes simultaneously.

Attempts have been made to ascertain whether Kongsberg Vapenfabrikk applied for an export licence for these controllers, and, if so, what information these applications contained. This has, however, proven impossible, as all documentation of this type from the relevant period has been destroyed in the Ministry of Trade. The same is also probably true with regard to the equivalent documentation at Kongsberg Vapenfabrikk. The police, at any rate, has not been able to find these applications during its searches.

As already mentioned, investigators were also required to establish the type of machine tools the CNC 300 control systems operated, in order to support the conclusions arrived at with respect to their number of simultaneous axes.

These investigators have not revealed any information indicating that the machine tools in question violate COCOM Regulations on any other points than their nonregulation number of simultaneous axes.

COCOM Regulations Item No. 1091(b)(i)(6) allows a maximum of 3 simultaneous axes, regardless of controller.

In view of the American information that Kongsberg Vapenfabrikk, even prior to the Toshiba contract, had allegedly delivered, in cooperation with a French machine tool builder, a machine tool capable of operating 5 simultaneous axes to Baltic Shipyard, which manufactures submarine propellers, we have seen fit to deal with three of these deliveries in particular.

The documents seized showed that production no. 1165, 1166, 1167 and 1168 were delivered to Baltic Shipyard in April 1976 (3 units) and June 1976 (1 unit) respectively.

These CNC 300 controllers operated machine tools from Ratier Forrest, model OR-2-4000.

The investigation has revealed that this is a special machine used for milling marine propellers. It has a rotary table with a diameter of 4 metres, which limits the diameter of the propeller machined accordingly.

In addition, another CNC 300 control system, production no. 1169, was delivered on a Ratier Forrest machine tool, model H 800, destined for Kiev. This machine tool manufactures propeller blades.

It may be added that, of the remaining deliveries, a further 4 were delivered to Leningrad, but to which company is unknown. This applies to production no. 1170, 1174, 1175 and 1176, all attached to Ratier Forrest machine tools.

Production no. 1170 was delivered on a Ratier Forrest machine tool, model OR 500, for propeller blade machining. The other production numbers were delivered on Ratier Forrest machine tools for machining large turbine blades.

The remaining deliveries were made to "Stankoimport", and one to Kiev, but there is no information as to the names of the receiving companies.

In so far as the deliveries of CNC 300 control systems are concerned, it may be concluded that they all, in fact, violate COCOM Regulations, and that the same must be said of the machine tools they control. The question of whether Kongsberg Vapenfabrikk may be held formally liable will be dealt with in Chapter V below.

C. Kongsberg Vapenfabrikk's NC 2000

In 1976 Kongsberg Vapenfabrikk produced a new type of numerical controller with the designation CNC 2000. However, this controller was "freely programmable" (softwired), and was subsequently not allowed for sale to the "Eastern Bloc", cf. COCOM Regulations' Item No. 1091(a)(i).

It was therefore decided to produce a so-called "Eastern version" under the designation NC 2000, which was "hardwired" and capable of controlling 2 axes simultaneously, and hence in compliance with COCOM Regulations. A 3-axis version was also produced, which would have been allowed for export, if Kongsberg Vapenfabrikk had applied for, and received the authorization of the Norwegian authorities, which the investigation has shown they did not do.

As mentioned earlier, a total of 107 of these NC 2000 controllers were exported, of which 105 were to the Soviet Union as end-user, and 2 to the People's Republic of China as end-user.

Of this total number, there are 2 deliveries where there is insufficient information to draw any definite conclusion as to their compliance with regulations. 29 deliveries are legal, since NC 2000 operate 2 simultaneous axes; 55 deliveries are illegal, since NC 2000 operates 3 simultaneous axes; 7 deliveries are illegal, since NC 2000 operates ¾ simultaneous axes; 10 deliveries are illegal, since NC 2000 operates 5 simultaneous axes and 4 deliveries are illegal, since NC 2000 operates 9 simultaneous axes.

As mentioned previously, the machine tools controlled by NC 2000 have also been subject to investigation, and it may be generally concluded that the machine tools equipped with controllers operating more than 3 simultaneous axes are also, for this very reason, to be considered as illegal. In addition, a number of the machine tools operating 2 simultaneous axes are illegal because of their excessive slide travel.

Furthermore, the majority of these machine tools violate COCOM Regulations for other reasons (excessive motor power, too accurate and too many coordinated spindles).

With regard to the applications for export licenses for NC 2000, it may be generally concluded that Kongsberg Vapenfabrikk applied for, and received export licenses from the Ministry of Trade for all its deliveries. However, in the applications, Kongsberg Vapenfabrikk limited itself to merely referring to its embargo list, where NC 2000 was entered as non-strategic goods, something which referred to the original application dated 17 August 1977, whereby a NC 2000 controller, with specifications within the limits of the stipulations of the COCOM Regulations, was initially approved.

On the basis of information contained in seized documents, it would seem that Kongsberg Vapenfabrikk managed to have NC 2000 approved as a nonstrategic product, merely by entering it on the embargo list, and, in an appendix to the list, confirming that it was non-strategic. There is no information indicating that the Ministry of Trade conducted any further check prior to approving the product for export.

There is, however, no information that indicates that the specification of the NC 2000 control system originally approved were not in compliance with COCOM Regulations.

As will be accounted for in the below, the majority of NC 2000 controllers sold were not in compliance with the specifications of the application for export licence, and for which such licence was granted.

The documentation in support of each individual sale, i.e. contracts, orders, production orders, confirmations of orders, and on which each application for an export licence was founded, was often misleading in relation to the actual product delivered. We shall revert to this point when dealing with the various categories of NC 2000 control systems.

As concerns the specific NC 2000 deliveries, the following conclusions may be drawn:

NC 2000 controlling 2 axes simultaneously—29 units

This applies to production no. 4006-4011, 4013-4019, 4035, 4036, 4041, 4068, 4071, 4072, 4075, 4077-4080, 4089, 4094, 4095, 4097 and 4098. These controllers were delivered attached to machine tools from Schiess and Dorries, and it may be concluded that;

11 of the machine tools from Schiess violate COCOM Regulations, since their slide travel exceeds the allowed limit (3000 mm), cf. Item No. 1091, (b) (i) (1).

5 of the machine tools from Dorries violate COCOM Regulations, since their slide travel also exceed the stipulated 3000 mm limit. It should be pointed out that three of these are equipped with two NC 2000 controllers, each with two simultaneous axes, which is legal in so far as the controllers are concerned.

Kongsberg Vapenfabrikk applied for, and received export licenses from the Ministry of Trade for these controllers. The application stated 2 simultaneous axes, which was, in fact, what was delivered, and documentation at Kongsberg Vapenfabrikk coincides with what was delivered.

NC 2000 controlling 3 simultaneous axes—55 units.

This applies to production no. 4001-4004, 4020-4034, 4037, 4040, 4042, 4060, 4063-4067, 4069, 4073, 4081, 4082, 4087, 4088 and 4096.

These controllers operate machine tools from Innocenti, Schiess, Donauwerke, Toshiba and KTM. All of the deliveries are in breach of COCOM Regulations, since they all have 3 simultaneous axes, as opposed to the 2 allowed.

In addition to this breach of regulations, it may also be concluded that:

23 of the machine tools from Innocenti violates COCOM Regulations, because of excessive slide travel (max. allowed is 3000 mmm) and/or excessive motor power (max. allowed is 20 kw) (Item No. 1091 (b) (1) (1) and (3).

21 of the machine tools from Schiess violate COCOM Regulations, because of excessive slide travel (max. allowed is 3000 mmm) and/or excessive motor power (max. allowed is 20 kw) (Item No. 1091 (b) (1) (1) and (3).

1 machine tool from Toshiba violate COCOM Regulations, because of excessive slide travel (44000 as opposed to max. allowed 3000 mmm) and/or excessive motor power (55 kw as opposed to max. allowed 20 kw) (Item No. 1091 (b) (1) (1) and (3).

2 machine tools built by KTM/Kearner & Trecker to China may also be in violation of COCOM Regulations, since they have 3 simultaneous axes. This sale from Kongsberg Vapenfabrikk is somewhat special, as the 2 NC 2000 controllers were programmed in Britain by the British themselves. Hence, there is no information available concerning the controllers' capabilities nor the number of simultaneous axes operated. The machine tools themselves though do not appear to violate COCOM Regulations. However, there is reason to believe that the controllers also operate 3 axes simultaneously, which would, on the contrary, constitute a breach of COCOM Regulations, unless an application for their approval has been filed with the Norwegian authorities.

Kongsberg Vapenfabrikk has applied for export licenses for all of these controllers by referring to the fact that the products were non strategic according to the embargo list, i.e. they should have been restricted to 2 simultaneous axes.

From Kongsberg Vapenfabrikk's own documentation, it appears that 5 production numbers (4025, 4028, 4029, 4087, and 4088) controlled 2 axes simultaneously, whereas the goods actually delivered controlled 3 axes simultaneously; in other words the specifications contained in the documentation do not agree with the products themselves.

As regards the remaining production numbers, documents indicate that they were to control 3 axes simultaneously; in other words, the products were in keeping with the documents, but not in keeping with what Kongsberg Vapenfabrikk was licensed to export, i.e. 2 simultaneous axes according to the embargo list.

NC 2000 controlling 4 simultaneous axes—7 units

This refers to production no. 4061, 4062, 4074, 4076, 4083, 4084 and 4093 which control machine tools from Schiess and Donauwerke.

It must be concluded these NC 2000 controllers violate COCOM Regulations, because they operate 4 simultaneous axes, as opposed to 2 simutaneous axes authorized by COCOM Regulations' Item No. 1091(a)(ii). As for the machine tools, they all violate COCOM Regulations for this very reason, but, in addition, it may be ascertained that; all 5 machine tools from Schiess also violate COCOM Regulations because of their excessive slide travel, in relation to the allowed 3000mm, cf. COCOM Regulations' Item No. 1091(b)(i)(1).

As concerns the machine tools delivered from Donauwerke, these appear to be legal, apart from the fact that they operate 4 axes simutaneously.

From Kongsberg Vapenfabrikk's documentation, it appears that all these systems were to control 3 axes simultaneously, in addition to, in the majority of cases, a number of non-simultaneous additional axes; in other words, the product was not in compliance with the documents, nor with the relevant export license, which stipulated 2 simultaneous axes, according to the embargo list.

NC 2000 controlling 5 simultaneous axes—10 units

This refers to production no. 4099—4109, of which 2 controllers were delivered directly to the Soviet Union as "reserve controllers", and 8 controllers to the machine tool builder Forrest Line.

All of these NC 2000 controllers are in breach of COCOM Regulations, since they all control 5 simultaneous axes, as opposed to the 2 simultaneous axes allowed, cf. Item No. 1091(a)(ii).

On the basis of available documentation, the macine tools are illegal, since they have 5 simultaneous axes, cf. COCOM Regulations' Item 1091 (b)(2)(6).

From Kongsberg Vapenfabrikk's documentation, it appears that all the systems were to control 3 simultaneous axes, with 2 non-simultaneous additional axes; i.e. the product coincides neither with the documentation, nor with the relevant export licence, i.e. 2 simultaneous axes, according to the embargo list.

NC 2000 controlling 9 simultaneous axes—4 units

This refers to production no. 4085, 4086, 4091 and 4092, controlling machine tools from Toshiba Machine Company.

It may be concluded that these NC 2000 controllers all violate COCOM Regulations, since they operate 9 simultaneous axes, as opposed to the 2 simultaneous axes allowed.

The same conclusion may be drawn with regard to the machine tools themselves, but, in addition to this, they also violate COCOM Regulations as a result of their excessive slide travel, motor power, accuracy and two independent spindlers. It must be concluded that the milling machines are in breach of COCOM Regulations Item No. 1091(b)(i) (1), (2) (3) (4) and (6). The machine tool designation is moreover false.

From Kongsberg Vapenfabrikk's documentation, it appears that these systems were to control 2+2 axes simultaneously, with 5 non-simultaneous additional axes, i.e. the product coincides neither with the documents nor the relevant export license, i.e. 2 simultaneous axes, according to the embargo list.

On the basis of the information received from the American authorities, referred to in the introduction, we would like to draw attention to the following points:

The export of these 4 machine tools equipped with Kongsberg Vapenfabrikk's NC 2000 contollers have enabled the Soviets to manufacture propellors with a diameter of up to 11 metres, and simultaneously increased their production capacity. Furthermore, this equipment works with a higher degree of precision than allowed according to COCOM Regulations. It is, however, not correct to maintain that Kongsberg Vapenfabrikk has provided the Soviet Union with software enabling them to design the new, and extremely sophisticated propellors that have been observed on their submarines. It must therefore be concluded that where propellor manufacturing is concerned, Kongsberg Vapenfabrikk has contributed to facilitating the machining of such equipment and increased overall production capacity. Kongsberg Vapenfabrikk has not, on the other hand, contributed to simplifying the designing process nor provided designing data for such propellors.

The American questions/contentions on this point have also been linked to the sale of HAL and NMG programs. We refer to the account of said programs in the below.

D. Kongsberg Vapenfabrikk's CNC 2000—3 units

The investigation has revealed information that Kongsberg Vapenfabrikk has sold 3 CNC 2000 controllers to the French machine tool builder Ratier Forrest.

These sales refer to production no. 7006, 7032 and 7087, which were delivered to France in February, May and September 1978 respectively. The controllers were attached to French milling machines, and reexported to the Soviet Union, where two of them were installed in Volgodonsk and one in Leningrad.

CNC 2000 is entered on Kongsberg Vapenfabrikk's list of embargoed goods (strategic goods). Hence the export of this controller to an "Eastern Bloc" country constitutes a clear violation of COCOM Regulations item No. 1091(a)(1), since the control system is freely programmable (softwired, not hardwired).

Kongsberg Vapenfabrikk did, however, apply to the Ministry of Trade for an export license, enclosing the relevant import certificate from the French authorities. The import certificate stipulated that the CNC controllers were to operate 2 simultaneous axes. What was delivered to the Soviet Union, however, were machine tools equipped with controllers operating 6 simultaneous axes. Kongsberg Vapenfabrikk did not inform the Ministry of Trade that the end-user of these systems was the Soviet Union, despite the fact that this was common knowledge among the people involved at Kongsberg Vapenfabrikk.

E. Kongsberg Vapenfabrikk's PC 150 S

The principal task of a PC 150 S is to generate executive tapes for the NC 2000 system. These tapes maintain control instructions that are essential to a numerically controlled machine tool's ability to machine a workpiece according to a set of rules that are specific to each machine model.

In order to generate these executive tapes, each programming centre has a KS 500 mini-computer, with ancillary standard in/out equipment and a simple terminal (display).

The executive tapes themselves are made of a "paper tape punch" (PTP). PC 150 S has no data link with the NC 2000 system, which is something modern computer-operated control systems have, and which would have instituted a breach of COCOM Regulations.

It must therefore be concluded that PC 150 S is in compliance with COCOM Regulations (cf. Item No. 1565 Note 9 (Government may permit)). PC 150 S is included in Kongsberg Vapenfabrikk's embargo list of non-strategic goods, and is therefore authorized by the Ministry of Trade for export to the "Eastern Bloc". This equipment has been exported in large numbers and, in the cases checked, Kongsberg Vapenfabrikk has had the necessary export license.

The product was delivered in compliance with the specifications of Kongsberg Vapenfabrikk's relevant documentation.

It may therefore be concluded that PC 150 does not violate COCOM Regulations.

F. Kongsberg Vapenfabrikk's PC 150 M

PC 150 is based on a NORD 100 computer, and the investigation has shown that it does not violate COCOM Regulations. Further reference as regards this point is made in item E.

G. The HAL program

The HAL program was bought by Kongsberg Vapenfabrikk from Toshiba in connection with the sale to Baltic Shipyard of the above-mentioned milling machines with 9 simultaneous axes. The program was originally designed for machine tools equipped with 2 controllers per machine (Japanese FANUC controllers), and what Kongsberg Vapenfabrikk did was to implement the HAL program on KS 500, as a part of the programming station.

The HAL program is a CAM program (Computer Aided Manufacturing program) and is stored in the KS 500 computer, which is part of the PC 150 programming station.

When the following propellor data are known:

a. Diameter of propellor.

b. Number of blades.

c. Propellor's direction of rotation.

d. Propellor blade's shape in different cylindrical sections.

e. Angle of climb, etc.

f. Sectional speed, milling diameter, etc. the program will be subsequently compute the necessary tool paths. The program will simultaneously activate the PC 150's tape punch and produce the necessary executive tape for the machine tool.

The knowledge and technical aids available to the Soviets for determining parameters a. to f. is something we know nothing about. The HAL program is, however, useless, unless these parameters are known, and the program gives no help in determining them.

It must therefore be concluded that the HAL program is purely a CAM tool, and has nothing to do with propellor design as such.

Such sales are legal, as the 1980 COCOM Regulations placed no embargo on the sale of software.

H. Kongsberg Vápenfabrikk's NMG program

The NMG program (Numerical Master Geometry) is of British origin, and is loaded into PC 150 S in the same manner as the HAL program.

The program was sold to the Soviet Union in connection with the above-mentioned sale to Baltic Shipyard of machine tools with 9 simultaneous axes.

This program is also purely a CAM tool, which produces the executive tape for the machine tool. It requires a post-processor between NMG and the machine tool in question, which Kongsberg Vápenfabrikk has not been requested to deliver. One could therefore ask whether the NMG program has been put to use at all. NMG is particularly suited to producing tool paths for double-curved surfaces, such as propellors, turbine blades and aircraft parts.

It may be concluded that the NMG program is purely a CAM tool, and has nothing to do with propellor design as such.

The NMG program is legal, for the same reasons as indicated for the HAL program under item G.

I. KS 500 Repair Shop

In 1981, in connection with the sale of several NC 2000 controllers, Kongsberg Vápenfabrikk installed a KS 500 Repair Shop in Volgodonsk.

This Repair Shop consists of Test Station/Dynamic Test, a KS 500 computer, a Membrane station MB 2460 and PM 500 programming equipment.

Where KS 500 and the Membrane station are concerned, Kongsberg Vápenfabrikk has applied for, and received the necessary export licence. Hence, this equipment is in compliance with COCOM Regulations. Where PM 500 is concerned, however, no mention is made of this equipment in the application, and this part of the delivery has been found to constitute a breach of COCOM Regulations.

The purpose of this delivery was to enable the Soviets to do their own error detection and repair of NC 200's circuit cards, the EPROM cards. To be able to do this, all they needed were the functional diagrams for the cards and the system program tapes for EPROM programming.

To enable the Soviets to modify the individual NC 2000 controller, however, they would need to have the system program listings as well. It has been ascertained that the Soviets were supplied with at least part of the listings, and given the necessary relevant training on the equipment.

In practical terms, this means, however, that in order to be able to modify the individuals NC 2000 controller, the Soviets would need to have the system program listing of the controller in question. If they are identical, only one listing is required. It may be ascertained that in Volgodonsk, at any rate, the Soviets had sufficient listings to be able to modify all their NC 2000 controllers to function in practice as CNC controllers.

It has furthermore been revealed that the system program listings for the NC 2000 controllers delivered to Volgodonsk were, during the entire installation period, stored in a mobile workmen's shed, which was locked, but to which the Russian interpreters had a key. For this reason alone, the listings stored in such a manner must be regarded as having been compromised.

It must therefore be concluded that the Soviets, by using their Repair Shop, were capable, not only of detecting errors on the circuit cards and repairing them, but also of modifying NC 2000 in the same way in which this is feasible with CNC controllers, and is therefore a clear breach of COCOM Regulations.

NC 2000 is, however, configurated in such a way that the Soviets, with the help of the additional programming equipment they have been provided with, may more appropriately modify the system program in the EPROMs, in the same way as service technicians do, when carrying out program modifications during installation.

J. PM 500 EPROM programming equipment

Item H dealt with PM 500 particularly in relation to the sale of the Repair Shop to Volgodonsk. However, we have seen fit to deal with this equipment also in relation to the Toshiba/Kongsberg Vapenfabrikk delivery of milling machines to Baltic Shipyard in Leningrad, as these sales have been investigated as two separate matters.

NC 2000 is a "hardwired" version of CNC 2000, intended for the Eastern European market. It was launched on the market in 1977 and its program is identical to that of the earlier model, CNC 300, but is based on the KS 500 mini-computer. "Hardwired" means that the system program is burnt into a Read Only Memory (ROM). Kongsberg Vapenfabrikk has used a special ROM for NC 2000, called EPROM.

Kongsberg Vapenfabrikk has chosen EPROM for reasons of production and installation, and the system is in compliance with COCOM regulations, provided that certain precautionary measures are taken.

The program contents of the EPROM may, however, be modified and thereby the controller's capabilities, if one has the reprogramming equipment at one's disposal, sound knowledge of reprogramming procedures and the system program listing.

The investigation has been directed at establishing whether Kongsberg Vapenfabrikk has delivered these facilities, and thereby enabled the Soviets to reprogram the NC 2000 controllers delivered.

It has also been established that Kongsberg Vapenfabrikk has sold 2 pieces of EPROM programming equipment, model PM 500, together with the 2 PC 150 S systems sold to Baltic Shipyard in connection with the Toshiba delivery.

PM 500 reprogramming equipment cannot be used on PC 150 S, whereas NC 2000 is, on the other hand, prepared for such equipment.

The equipment was sold as "spare parts" for PC 150 S, and was not mentioned in the application to the Ministry of Trade for an export license.

If the Soviets also have the system program listing for NC 2000, and the necessary training in how to use it, then Item No. 1091(a)(i) has been violated.

It has been established that Kongsberg Vapenfabrikk has provided training in assembly programming on KS 500, and this could be enough to be able to read the listing, albeit with some difficulty. If they, moreover, have been given training in the structure of the program, they should have no difficulty whatsoever.

Apart from the Repair Shop sale to Volgodonsk, there is no other information that other system program listings have been deliberately supplied in conjunction with individual contracts.

There is, however, a fair chance that these listings may have been compromised; Kongsberg Vapenfabrikk personnel had to have the listings with them when travelling to the Soviet Union to complete installation work, for example, and the chance of ensuring safe storage of such listings in the Soviet Union, during fairly long stays, seems almost out of the question.

Although no decisive evidence can be produced in this respect, it may be concluded that the system program listing has been compromised, and that the Soviets are capable of upgrading NC 2000 to control any number of simultaneous axes. Any limitations in this respect lie in the capacity of the machine tools themselves.

One may, however, ask whether the Soviets really need to upgrade any of the NC 2000 controllers they have purchased, with regard to their number of axes, since the results of our investigation indicate that the Soviets have received control systems with the number of simultaneous axes required, and therefore do not need to upgrade them. The most likely assumption is that the Soviets have obtained this reprogramming equipment, so as to be able to do their own maintenance and adjustment work on the 4 NC 2000 controllers installed at Baltic Shipyard. In support of such an assumption is the fact that Toshiba/KV personnel have only installed two of the machine tools at Baltic Shipyard. The remaining two machine tools were installed by the Soviets themselves, and to do this, they needed the system program listing of the controllers in question.

The same question could also be raised in connection with the sale of NC 2000 controllers to Volgodonsk, and sale of the Repair Shop in this connection.

The Ministry of Trade has been asked whether Kongsberg Vapenfabrikk ever applied for an export license for PM 500 reprogramming equipment and, if not, whether such export would have been authorized.

In reply to this inquiry, the Ministry of Trade states that they can find no record of an export license having been granted for such equipment, which is substantiated by the investigation, in that no license has been found, and none of the parties questioned on the matter has been able to document any such application. The Ministry of Trade further states that if PM 500 enables the Soviets to upgrade NC 2000, no export license would have been granted.

K. The FORM delivery to Czechoslovakia

The FORM delivery concerns the sale of a computer aided designing and manufacturing system (CAD/CAM) from Kongsberg Trade to Czechoslovakia. This contract was signed on July 10, 1986.

The principal components of the contract are:

NORD 505 Computer with peripheral equipment.

Kongsberg drafting equipment.

Kongsberg computer program (DMS).

Swedish finite element method program (FEMPAC).

The application for an export license for a NORD 505 computer, the drafting equipment and the DMS program was filed with the Ministry of Trade on 24 February 1986. The application was submitted to the COCOM for consideration, was there approved, and the relevant export licence issued by the Ministry of Trade on 13 November 1986.

On 10 July 1986, the final contract with FORM was signed and, at this stage, the FEMPAC program had become part of the delivery.

No export license was applied for concerning this Swedish FEMPAC program and, as a result, the matter was never brought up before the COCOM.

During week 9, the implementation test (DMS/FEMPAC) was carried out at Kongsberg Vapenfabrikk.

FEMPAC was delivered on 15 or 16 March 1987, integrated with the other computer program (DMS).

Following the decision to close down Kongsberg Trade, and following the Kongsberg Vapenfabrikk board decision of 29 April 1987 to terminate all relations with the "Eastern Bloc", the implementation of this contract was put on hold.

It was obvious that other parties to take over the contract had to be found, and by July a draft agreement between Kongsberg Trade and ICAN in Horten had been drawn up concerning the take-over of the contract. The FEMPAC program was not included in this agreement, and it was provided that ICAN would apply for an export license for the program.

On 30 July last, Kongsberg Trade filed an application requesting that ICAN be authorized to take over the export license issued by the Ministry of Trade on 13 November 1986.

At this stage, it was decided that the FORM contract was to be investigated by the FFI (Norwegian Defense Research Institute) in respect of the export license.

In a report dated 1 September 1987, the FFI concludes that the application does not cover FEMPAC. The report goes on to say that FEMPAC enables finite element analysis, which would make the CAD part of the system so powerful as a designing tool that it should be considered whether this program extension ought to be submitted for renewed consideration within the COCOM.

The Ministry of Trade considered granting ICAN permission to implement the contract, but without the FEMPAC program. On 16 September last, the Ministry refused ICAN's application for an export license for the FEMPAC program.

The grounds for this refusal were that the equipment constituted a supplement to the equipment for which an export license had already been granted, and that the delivery of the program would imply a strengthening of the software which could lead to an increase of the DMS equipment's performance, and thereby go beyond the level of what had been approved by the COCOM. At the same time, ICAN was informed that the Ministry had decided not to authorize the implementation of the contract, even without the FEMPAC program.

As mentioned earlier, the prosecuting authorities were first notified of this illegal delivery on 2 October 1987.

It may be concluded that the FEMPAC program has been delivered without Kongsberg Trade's having the necessary export license, and that this system, as a supplement to the main delivery, which was legal, constitutes a breach of the premises on which COCOM's approval of said sale was based.

V. CONCLUSION IN RESPECT OF RESPONSIBILITY FOR VIOLATIONS OF COCOM REGULATIONS AND CRIMINAL LIABILITY.

This chapter will deal with the individual responsibility for violations of COCOM Regulations, as described in the preceding. Furthermore, said violations will be considered in relation to the statutory provisions that may be applied.

A breach of COCOM Regulation does not constitute a criminal offence as such. It is up to the individual COCOM country to pass national legislation aimed at combating the illegal export of strategic goods. In Norway, the "Provisional Act on the Ban on Exports of 13 December 1946 No. 30" is the legislation that primarily applies in such cases. Section 166 of the Norwegian Penal Code may also apply, if, in order to obtain an export license, false information is given in the application filed with the Ministry of Trade.

A. Machine tools

As pointed out in the above, document seizures made at Kongsberg Vapenfabrikk, and statements given by Kongsberg Vapenfabrikk employees have revealed a number of data concerning the different machine tools to which Kongsberg Vapenfabrikk's numerical control systems were attached. If these machine tools were exported to the "Eastern Bloc" with the specifications as stated in these documents, it must be ascertained that most of the machine tools were in violation of COCOM Regulations. As regards the specifications of the individual machine tool, see Appendix I.

One aspect that has not been investigated, however, is whether the authorities in the countries in question have granted permission for such exports, or possibly brought the question before the COCOM. Hence, it cannot be concluded, on the basis of the results of the Norwegian investigation, that the machine tool builders Innocenti, Schiess, Donauwerke, Dorries, KTM and Forrest Line have, in fact, violated the COCOM regulations.

The same may not be said of Toshiba Machine Company in Japan. Their sale to Baltic Shipyard in Leningrad of 4 machine tools has been investigated by Japanese police, the conclusion of which is that this sale constituted a breach of COCOM Regulations.

As mentioned previously, the police authorities in the countries involved have been approached and notified of the matter, and it must therefore be up to them to institute possible investigations in their home countries. Norwegian police has also offered to collaborate as far as possible, and to place all details concerning the machine tools at their disposal. But, as also mentioned, no response has yet come from the police authorities in France and Italy. There has been some degree of collaboration with the Japanese police, but not to the extent in which one would have hoped for. German police has sent a reply, but no formal collaboration has yet been established.

B. Kongsberg Vapenfabrikk's CNC 300/CNC 203

As already stated, this numerical control system is freely programmable (softwired, not hardwired) and, as such, constitutes a breach of COCOM Regulations' Item No. 1091(a)(i). Kongsberg Vapenfabrikk has, moreover, failed to apply for an export license, in compliance with Item No. 1091 Note 3(d) (Government may permit). Any export licence granted would have been restricted to 2 simultaneous axes, since this is the maximum number allowed, according to COCOM Regulations' Item No. 1091 Note 3(d)(i).

The question to be raised is therefore whether Kongsberg Vapenfabrikk is responsible for these factual violations of COCOM Regulations.

One of the seized documents showed that one of the deliveries pertaining to 23 CNC 300 controllers to Ratier Forrest, for re-export to the Soviet Union had been submitted to the COCOM in Paris for consideration from 21 to 23 June 1976. In order to establish which conclusions this meeting had reached, the Foreign Ministry and Ministry of Trade were requested to inquire into the matter.

From the Foreign Ministry's reply of 6 July 1987, it appears that the question of the lawfulness of this delivery had been brought up in February/March 1976 by the British and American COCOM delegates. The reply goes on to say:

"The matter was discussed at a COCOM working group meeting from 21 to 23 June 1976 (where also Norway, but not France, was represented). The rules applying to trade, between COCOM countries, of goods under embargo were brought into the discussion and it was agreed that part contractors are also separately responsible for safeguarding themselves against exports contrary to COCOM Regulations. The part contractor, or subcontractor (in this case, Norway) is, however, not responsible for the actual reporting of such matters to the COCOM, but an import certificate from the purchasing country's authorities (in this case, France) must be demanded.

The Norwegian delegate at the working group meeting stated that the Norwegian understanding of this matter had been different, and, consequently, that no import certificate had been demanded when exporting these 23 control units to France. He maintained that it had been a matter of misinterpretation on the part of the Norwegians, and that Norwegian authorities would modify their licencing routines so as to fall in line with the agreed conclusion expressed at the meeting.

He further stated that all 23 control units had already been delivered. The working group meeting appears to have made a note of this information.

As a result, the Ministry of Trade changed its licencing practice, so as to demand an import certificate from Western countries importing equipment under the COCOM embargo. This does not, however, change the fact that it is the country licencing the final sale of goods to the "Eastern Bloc"—in this case, France—that is responsible that COCOM regulations for export to proscribed countries are complied with.

The import certificate serves the following main purposes: to confirm to the exporting country that the goods are to be imported to the importing country; to confirm that re-export will not take place without the permission of the competent authorities in the importing country.

In practice, this means that an exporter of strategic goods from Norway to another COCOM country must first obtain an import certificate from the importing country's authorities. In this manner, the importing country's authorities take over responsibility for the goods in question."

The Foreign Ministry's conclusion was that the delivery of the above 23 controllers did not constitute a breach of COCOM Regulations, nor did it represent a distorted interpretation of COCOM commitments.

Following the subsequent change in licencing practices, it appeared that 2 of the above 23 controllers had, in actual fact, not been delivered. The matter was then submitted to the Norwegian authorities, who granted an export licence without, in this case, demanding a French import certificate.

In its note dated 6 July 1987, the Foreign Ministry stated as follows:

"The competent authorities' permission for an export licence for the two remaining units was, however, no longer in compliance with Norwegian licencing practice, following its modification in keeping with our new interpretation of the guidelines referring to internal COCOM trade. For a variety of reasons, the licencing authorities decided, however, to deviate from this new practice, although this did not in itself involve a breach of any formal provisions or COCOM commitments.

The decision was not, however, in keeping with the point of view expressed by the Norwegian COCOM delegate at the working group meeting of 21-23 June 1976, nor the information he had given the meeting concerning the implementation of said transactions and the changing of Norwegian licencing practices."

All the same, it seems clear that Kongsberg Vapenfabrikk cannot be reproached in this matter. The fact that France chose not to report to the COCOM this export to an end-user in the Soviet Union is quite another matter, which neither directly involves Kongsberg Vapenfabrikk, nor the Norwegian authorities. Why France failed to submit the case to the COCOM was, as already pointed to, because the French authorities did not share the American and British view that the total package came under COCOM embargo."

Since these represented the last deliveries of CNC 300 made with the Soviet Union as end-user, and, in other words, since all systems had been sold in compliance with the understanding of COCOM regulations also held by the Ministry of Trade until said COCOM meeting, it must be concluded that Kongsberg Vapenfabrikk has not violated COCOM regulations in these instances.

Hence, these sales do not constitute an offense against the Export Bans' Act or Section 166 of the Penal Code.

As for Kongsberg Vapenfabrikk's sale of a SAJO machine tool equipped with a CNC 203 controller, Norway is, in this instance, the exporting country. There is no trace of an application for an export licence for the controller, a license which should, moreover, have been refused, since this was a CNC control system with more than 2 simultaneous axes. It must therefore be concluded that this sale constitutes a breach of COCOM regulations. However, from the point of view of criminal liability, this offence is subject to statute of limitations.

C. Kongsberg Vapenfabrikk's NC 2000

As far as the deliveries of NC 2000 controllers are concerned, they will be dealt with according to the number of simultaneous axes they operate.

a. NC 2000 controlling 3 simultaneous axes

The delivery of NC 2000 capable of controlling 3 axes simultaneously may be allowed, according to COCOM Item No. 1091 Note 1(b), on the condition, however, that the relevent export licence has been granted by the Ministry of Trade, and that the machine tool operated by the controller is in compliance with COCOM Regulations.

Certain witnesses in this case seem to be of the opinion that Kongsberg Vapenfabrikk either had a general licence for exporting NC 2000 control systems capable of controlling 3 simultaneous axes, or that this number of simultaneous axes was, in fact, in compliance with COCOM Regulations. However, none of these witnesses have claimed to have certain knowledge of any such general authorization.

Nor has the police found any document where such authorization is granted, whether in general terms, or relevant to the export licences for the individual control systems.

With regard to applications for export licenses for NC 2000 control systems Kongsberg Vapenfabrikk has, during this entire period, followed the practice whereby the item "Other details" was completed with the statement "The product is non-strategic, according to list from A/S Kongsberg Vapenfabrikk dated. . . . . .".

This list refers to Kongsberg Vapenfabrikk's "Nato Embargo" list where its export products are listed—both goods freely exportable to "embargo countries", and goods subject to embargo (strategic goods).

The very first time NC 2000 was put on this list of non-strategic goods was on 17 August 1977. An appendix to the list contains comments to its contents, and the comment to NC 2000 controllers states that this is a newly developed product to which embargo regulations do not apply.

On the basis of the above information, it must be ascertained that what Kongsberg Vapenfabrikk entered on its list was an NC 2000 controller capable of operating 2 simultaneous axes only, and thereby in compliance with Item 1091(a)(ii).

The Ministry of Trade has been asked whether Kongsberg Vapenfabrikk was authorized to export NC 2000 controllers capable or operating 3 simultaneous axes, and their conclusion, in a reply dated 27 August 1987, reads as follows:

"Our conclusion is that:

the Ministry of Trade has no knowledge of any general permission having been granted to export control systems of model NC 2000. All applications for the export of NC 2000 controllers are subject to individual consideration from case to case;

no permission has been granted to export NC 2000 control systems where it has explicitly appeared that the version in question is capable of controlling 3 simultaneous axes;

Kongsberg Vapenfabrikk's product list should, as a matter of precaution have been more explicit, stating that the NC 2000 controller on said list was the version exportable under document IL-1091 (a) (except), since the version for which an export licence may be granted, under document IL-1091 Note 1, is net embargo-free, but subject to individual assessment by the Norwegian authorities, in relation to the requirements of the Note."

Based on the above, therefore, it must be concluded that all deliveries of NC 2000 controllers capable of operating 3 axes simultaneously constitute a violation of COCOM Regulations.

Objectively speaking, these sales constitute an offence against Section 5 of the Export Bans' Act and against Section 166 of the Penal Code, but in both cases the statutes of limitations have expired in respect of all the above sales of NC 2000 controllers capable of operating 3 simultaneous axes.

b. NC 2000 controlling 4 simultaneous axes

The export to the "Eastern Bloc" of numerical control systems capable of operating 4 axes simultaneously is, under all circumstances, a breach of COCOM Regulations.

One of the witnesses maintains, however, that the machine tools to which these controllers were attached only had 3 simultaneous axes, and did not, therefore, make use of the fourth simultaneous axis. He explains that, to simplify matters, an old software version was used which was programmed for 4 simultaneous axes. Without drawing any formal conclusion as to the correctness of this witness' contentions, this point cannot be regarded as having any major significance, since it has been established that the fact that a controller operates 3 axes simultaneously is enough to constitute a breach of COCOM Regulations.

As concerns the question of criminal liability, the conclusion must therefore be the same as for the NC 2000 systems controlling 3 axes simultaneously.

c. NC 2000 controlling 5 axes simultaneously

This delivery, which took place in conjunction with Forrest Line machine tools, includes the last 10 controllers that were sold, and it may be safely concluded that this sale of NC 2000 controllers capable of operating 5 axes simultaneously constitutes a breach of COCOM Regulations' Item 1091(a)(ii).

In this specific case, Kongsberg Vapenfabrikk did apply for an export license on 7 September 1983. The application to the Ministry of Trade refers to the COCOM list, and stipulates that the goods are non-strategic—a case of giving false information to a public authority, and subsequently an offence against Section 166 of the Penal Code. This offence is not subject to statute of limitations.

In January 1982, Forrest Line contacted Kongsberg Vapenfabrikk's office in France (KV-France), asking for a quotation for 8 NC 2000 controllers. The offer was drawn up on 6 March 1982, and in May 1982. Forrest Line inquired as to whether the same software as provided in CNC 300 controllers could be supplied.

It has been maintained that Bernard Green, already at this early stage, gave instructions to deliver CNC 300 software, despite his being made explicitly aware of the final result, i.e. 5 simultaneous axes.

On 7 March 1983, Forrest Line placed an order, where the axes were described as 3 simultaneous axes, with 2 non-simultaneous additional axes. A production order and a confirmation of order were drawn up by the technical manager responsible for the product, who had also taken part in the negotiations.

The control systems were subsequently manufactured with 5 simultaneous axes.

An application for an export license containing the "usual information" was sent to the Ministry of Trade on 7 September 1983, on the basis which the relevant export license was granted.

Delivery took place from September until the end of the year. The implementation test was carried out in France, and the machine tools were delivered to three factories in the Soviet Union.

Bernard Green and the above-mentioned technical manager responsible for the product will be charged with an offense against Section 166, sub-sections 1 and 2, of the Penal Code.

The Export Bans' Act is subject to statute of limitations in this respect.

On 6 June 1983, an agreement was concluded in Moscow concerning the delivery of 2 "quite similar" controllers, evidently for reserve purposes.

The contract was concluded between Kongsberg Vapenfabrikk, represented by B. Green, on the one hand, and Stankoimport, on the other. The contract stipulates three—and not two—simultaneous axes.

The relevant export license application was sent on 22 September 1983, and the control systems were delivered to two factories in Leningrad, on 21 December 1983 and 3 July 1984 respectively.

Bernard Green will also here be charged with an offense against Sections 166, subsections 1 and 2, of the Penal Code, as the export license application was worded in the "usual" manner.

The Export Bans' Act is subject to statute of limitations in this respect.

d. NC 2000 controlling 9 axes simultaneously

This applies to four NC 2000 controllers which were delivered together with machine tools from Toshiba Machine Company to Baltic Shipyard, and it may be safely concluded that this delivery constitutes a breach of Item 1091(a)(ii).

This sale also constitutes an offence against Section 5 of the Export Bans' Act, but this Act is subject to statute of limitations, and hence cannot be applied to the offence in question.

In respect to the above sale, Bernard John Green was charged, on 29 April 1987, with an offence against Section 166, sub-sections 1 and 2, of the Penal Code.

There have been questions as to why Bernard Green was the only person charged, and whether others in the Data Systems Division were aware of the existence of such unlawful practices. To this, it must be said that Green maintains that the heads of division of the Data Systems Division were acquainted with the matter. Both heads of division, however, deny having had such knowledge. The prosecuting authorities are not, however, required to consider this aspect of the matter, as both persons had left the division at the time the application for an export license was filed. Nor are there any indications that they had anything to do with the application.

A new head of division was appointed shortly after said application was sent. He maintains that he neither had any knowledge of the unlawful delivery, nor had anything to do with the export license application. Nor has any such allegation been made by any of the persons involved.

The technical personnel involved in manufacturing the equipment was aware of its capability of controlling 9 axes simultaneously. They maintain, however, that they were not familiar with the restrictions contained in the COCOM regulations, nor did they have anything to do with the export license application.

D. Kongsberg Vapenfabrikk's CNMC 200 control systems

As mentioned in chapter IV, Kongsberg Vapenfabrikk has sold 3 such CNC 2000 controllers to the machine tool builder Ratier Forrest, which reexported the controllers on their only machine tools to the Soviet Union.

As also mentioned in the above, a CNC controller is per se banned for export to the "Eastern Bloc", (cf. Item No. 1091(a)(i)). However, permission to export such controllers may be granted, provided they are restricted in such a way as to not operate more than 2 axes simultaneously. An absolute condition, however, is the Ministry of Trade's prior permission (cf. (Government may permit) Item No. 1091 Note 3(d)).

CNC 2000 is also entered on Kongsberg Vapenfabrikk's Embargo list as being a strategic product.

Enclosed with the application for an export licence sent to the Ministry of Trade was an import certificate from France, stating that the CNC 2000 system was to control 2 axes simultaneously, and an export licence was therefore granted.

The investigation has shown that there is no doubt that the persons at Kongsberg Vapenfabrikk involved in this sale were fully aware that the 3 CNC 2000 controllers were to be re-exported to the Soviet Union, and that they were to operate 5 simultaneous axes. These are facts that must also have been known at the time the application for an export licence was filed.

The matter is, however, subject to statute of limitations, both under the Export Bans' Act and Section 166 of the Penal Code.

E. Kongsberg Vapenfabrikk's PC 150 M, PC 150 S, Hal and NMG program

As regards the above equipment, it must be concluded that their export did not constitute a breach of COCOM Regulations, nor has it been possible to establish that their sale represented an offence against any Norwegian legislation in force.

F. Repair Shop

The conclusion in respect of this sale was that it was approved by the Ministry of Trade, an approval which was confirmed in the Ministry's letter of 24 September 1987. However, this same letter points to the fact that Kongsberg Vapenfabrikk, had not applied for a licence to export strategic technology, i.e. PM 500, nor would Kongsberg Vapenfabrikk have been granted such a licence, if an application had been filed.

The matter is, however, subject to statute of limitations, under the Export Bans' Act and under Section 166 of the Penal Code.

G. PM 500 EPROM programming equipment

As for this delivery, it must be concluded that there is no proof of Kongsberg Vapenfabrikk's having violated COCOM Regulations although there is very strong suspicion in this respect.

We refer, moreover, to chapter IV, item I, Repair Shop, as both items deal with the PM 500 programming equipment.

H. FORM delivery to Czechoslovakia

As for this delivery, Kongsberg Trade has applied to the Ministry of Trade, and received an export licence for a NORD 505 computer with ancillary peripheral equipment, Kongsberg drafting equipment and CAD/CAM computer programs (DMS).

However, no application has been filed for the export of the Swedish computer program FEMPAC, which should have been done. The delivery to Czechoslovakia took place in March 1987.

The export licence application was drawn up by Bernard Green, and, as mentioned in the above, did not include the FEMPAC program. On 10 July 1986, a contract, in which the FEMPAC program was included, was signed.

On 13 November 1986, an export licence was granted, following consideration by the COCOM, and based on the information contained in the application.

Bernard Green will be charged with infringement by intent of the Export Bans' Act.

The technical director will also be charged with infringement by negligence of said Act. In the prosecuting authorities' opinion, he should have checked the licences prior to delivery. It must be added, however, that he was the one who "sounded the alarm" after delivery had taken place.

I. Closing remarks

The investigation of this case has not been concluded. A number of further interrogations and documentary investigations are still to be completed, especially since Norwegian police is dependent on the collaboration of its foreign counterparts in order to complete its interrogation of important witnesses abroad.

The remaining investigations cannot, however, change the facts accounted for in this report, i.e. the technology that Kongsberg Vapenfabrikk has sold to the Soviet Union as end-user. These investigations may, however, contribute to establishing a clearer picture of the distribution of responsibility.

Drammen Police Department, 14 October 1987.

TORE JOHNSEN,
Chief of Police.

Abbreviations

Norwegian	English
Maskinregister	Register.
Anleggsnr.	Production number.
Side	Page.
Kontraktsdato	Date of contract.
Kontr.nr.	Contract number.
Styretyp	Numerical controller model.
Akser	Axes.
Sim. aks.	No. of simultaneous axes.
KV aks.	No. of axes specified in KV's documentation.
Mask.fabrikat	Machine tool builder.
Mask. type	Machine tool model.
Mask. bet	Machine tool designation.
Aks. bev	Machine tool's slide travel.
Pos. noy	Machine tool's positioning precision.
Motoreffekt	Machine tool's motor power.
Ant. spind.	No. of spindles on machine tool.
Best. sted.	Place of order.
Best. dato	Date of order.
Prod. ord	Date of production order.
Ex. soknad	Application for export licence for the machine tool.
Lev. dato	Delivery date.
OEM inst.	Date of installation of numerical controller on machine tool.
FAT	Factory acceptance tests.
Endu	End-user.
Sluttinst	Date of final installation.
IAT	Installation acceptance tests.
Res. lev	Date of delivery of spare parts.
Res. del	Spare part.
Service	Date of service.
Dok. henv	Documentary reference.
Merknader	Remarks.

THE DEATH OF JOE FLAVIN

Mr. DODD. Mr. President, it is with great sadness that I rise today to remember a good friend of mine, Joseph B. Flavin, who died recently at the age of 58. Joe was not only a skilled executive, he was a good friend and a man to whom I frequently turned for advice on the economy and other matters affecting the business of our Nation.

Joe was born in St. Louis in 1928, and received his masters degree from Columbia University's Graduate School of Business, in 1958. By this time he was already beginning his climb up the corporate ladder, with IBM World Trade Corp. There he rose to become controller, before moving on to Xerox in 1968, first as a group vice president, and later as president of international operations. In 1975 he took the helm of the Singer Co.

When Joe arrived, the company was losing $10 million a year. Joe harnessed his energy and implemented a dynamic plan to turn Singer around. Joe opened up the doors of the executive suite, he managed by walking around, and he took steps to boost morale that had been lagging prior to his arrival.

Joe also refocused Singer. When he took over, the company was a conglomerate unguided by a workable vision for the future. Joe provided that vision. He sold off unprofitable lines that Singer did not have expertise to make go, and he emphasized electronics and high technology. When Joe took over in 1975, defense electronics contributed less that 20 percent to Singer's revenues; by 1986, 80 percent of Singer's $1.73 billion in sales came from high tech.

Of course, this was not without some cost, but Joe did what he had to do. The old days had ended when the sewing machine was a fixture in every American home and the word "Singer" was a fixture on every sewing machine. Consumer tastes had changed, and Japanese firms from their manufacturing plants in Taiwan had begun to cut into Singer's market share. Last year, Joe Flavin formed a new company, SSMC, Inc., to take over Singer's sewing machine and office furniture businesses, and spun this off. Such was the cost of establishing Singer as a company with a strong future, competitive in the world marketplace.

Mr. President, Joe Flavin was an excellent example to all of us. In his work he was not afraid to meet the challenges of the ever-changing global marketplace, and in all aspects of his life he exemplified a rare energy and optimism. I know that his leadership will be greatly missed in the business community. To his family I offer my sincerest condolences. And I say again that all of us who knew Joe feel that we have lost an extraordinary friend.

APPOINTMENT BY MAJORITY LEADER

The PRESIDING OFFICER (Mr. WIRTH). the Chair announces, on behalf of the majority leader, pursuant to Public Law 96-114, as amended by Public Laws 98-33 and 99-161, his appointment of Mr. Kevin B. Campbell to be a member of the Congressional Award Board.

MESSAGES FROM THE HOUSE

At 11:14 a.m., a message from the House of Representatives, delivered by Mr. Berry, one of its reading clerks, announced that the House agrees to the amendments of the Senate to the bill (H.R. 2937) to make miscellaneous technical and minor amendments to laws relating to Indians, and for other purposes.

The message also announced that the House agrees to the following concurrent resolution, without amendment:

S. Con. Res. 64. A concurrent resolution to authorize the printing of "Guide to Records of the United States Senate at the National Archives, 1789-1989: Bicentennial Edition".

The message also announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 2939. An act to amend title 28, United States Code, with respect to the appointment of independent counsel.

MEASURES PLACED ON THE CALENDAR

The following bill was read the first and second times by unanimous consent, and placed on the calendar:

H.R. 2939. An act to amend title 28, United States Code, with respect to the appointment of independent counsel.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-2029. A communication from the Acting Under Secretary International Affairs and Commodity Programs, Department of Agriculture, transmitting, pursuant to law, a report on the initial commodity and country allocation table for food assistance under Titles I/III of Public Law 480 for fiscal year 1988; to the Committee on Agriculture, Nutrition, and Forestry.

EC-2030. A communication from the Acting Under Secretary International Affairs and Commodity Program, transmitting, pursuant to law, a report on the initial commodity and country allocation table for food assistance under Title II of Public Law 480 for fiscal year 1988; to the Committee on Agriculture, Nutrition, and Forestry.

EC-2031. A communication from the Deputy Assistant Secretary (Logistics), Department of the Air Force, transmitting, pursuant to law, a report relative to converting the grounds maintenance function at Carswell Air Force Base, Texas, to performance by contract; to the Committee on Armed Services.

EC-2032. A communication from the Principal Deputy Assistant Secretary of the Navy (Shipbuilding and Logistics), transmitting, pursuant to law, a report relative to converting the Public Work Facilities at the Naval Air Station, Cecil Field, Florida, to performance by contract; to the Committee on Armed Services.

EC-2033. A communication from the Secretary of the Navy, transmitting, pursuant to law, a report relative to transferring the obsolete submarine ex-TURBOT (ex-ss-427) to Dade County, Florida; to the Committee on Armed Services.

EC-2034. A communication from the Principal Deputy Assistant Secretary of the Navy (Shipbuilding and Logistics), transmitting, pursuant to law, a report relative to converting the Training Devices and Simulators function at Fleet Aviation Specialized Operational Training Group Detachment, Moffett Field, California; to the Committee on Armed Services.

EC-2035. A communication from the Principal Deputy Assistant Secretary of the Navy (Shipbuilding and Logistics), transmitting, pursuant to law, a report relative to converting the Training Devices and Simulators function at Fleet Aviation Specialized Operational Training Group Detachment, Barbers Point, Hawaii; to the Committee on Armed Services.

EC-2036. A communication from the Assistant General Counsel (Legal Counsel), Department of Defense, transmitting, pursuant to law, a report of individuals who filed DD form 1987, Report of DoD and Defense related Employment, for FY 1986; to the Committee on Armed Services.

EC-2037. A communication from the Chief, Program Liaison Division, Office of Legislative Liaison, Department of the Air Force, transmitting, pursuant to law, a report on experimental, developmental and research contracts of $50,000 or more, by company; to the Committee on Armed Services.

EC-2038. A communication from the Secretary, Interstate Commerce Commission, transmitting, pursuant to law, notification that the parties involved in Formal Docket No. 38301S, *Coal Trading Corporation, et al.*, v. *The Baltimore and Ohio Railroad Company, et al.*, will be unable to complete all evidentiary proceedings related to this complaint within the time period specified by law; to the Committee on Commerce, Science, and Transportation.

EC-2039. A communication from the Deputy Secretary, Department of Transportation, transmitting a draft of proposed legislation entitled "To Improve the U.S.-flag merchant marine;" to the Committee on Commerce, Science, and Transportation.

EC-2040. A communication from the Secretary of Transportation, transmitting a draft of proposed legislation entitled "To authorize the Secretary of Transportation to transfer operating responsibility, property, and assets of the Transportation Systems Center to non-Federal control;" to the Committee on Commerce, Science, and Transportation.

EC-2041. A communication from the Secretary of Energy, transmitting, pursuant to law, a report entitled "Ninth Annual Report to Congress on the Automotive Technology Development Program FY 1987;" to the Committee on Energy and Natural Resources.

EC-2042. A communication from the Associate Deputy Chief, Department of Agriculture, transmitting, pursuant to law, notification that the legal descriptions and maps of the Chugach National Forest boundary changes, as provided by ANILCA; to the Committee on Energy and Natural Resources.

EC-2043. A communication from the Secretary of Health and Human Services, transmitting, a draft of proposed legislation entitled "To amend the Social Security Act to authorize the Secretary of Health and Human Services to charge fees for receiving and responding to requests for information from the Federal Parent Locator Service, and for other purposes;" to the Committee on Finance.

EC-2044. A communication from the Secretary of Labor, transmitting, pursuant to law, a report entitled "Report to Congress on the Expenditure and Need for Worker Adjustment Assistance Training Funds Under the Trade Act of 1974;" to the Committee on Finance.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. BURDICK, from the Committee on Environment and Public Works, without amendment:

H.R. 614. A bill to designate the new U.S. courthouse in Birmingham, Alabama, as the "Hugo L. Black United States Courthouse" (Rept. No. 100-207).

H.R. 307. A bill to designate the Federal Building and U.S. Post Office located at 315 West Allegan Street in Lansing, MI, as the "Charles E. Chamberlain Federal Building and United States Post Office."

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. BOREN (for himself and Mr. NICKLES):

S. 1812. A bill to provide for the extension of the Federal Employees Health Benefits Program to certain employees and annuitants; to the Committee on Governmental Affairs.

By Mr. LEAHY:

S. 1813. A bill to reduce foodborne disease, to improve the inspection of meat, poultry, and fish, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. MELCHER (for himself and Mr. NICKLES):

S. 1814. A bill to provide clarification regarding the royalty payments owed under certain Federal onshore and Indian oil and gas leases, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. SANFORD (for himself and Mr. SIMON):

S. 1815. A bill to amend the Elementary and Secondary Education Act of 1965 to establish a program to promote more effective schools and excellence in education, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. HELMS (by request):

S. 1816. A bill to authorize the Secretary of Agriculture to recover costs of carrying out certain animal and plant health inspection programs, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. KENNEDY (for himself and Mr. PELL):

S. 1817. A bill to amend the Internal Revenue Code of 1986 to provide that gross income of an individual shall not include income from United States savings bonds which are transferred to an educational institution as payment for tuition and fees; to the Committee on Finance.

By Mr. REID:

S.J. Res. 208. A joint resolution designating June 12 to June 19, 1988, as "Old Cars Week"; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. ARMSTRONG (for himself and Mr. HELMS):

S. Res. 301. A resolution to acknowledge the public service of Judge Robert H. Bork and to affirm the Senate's commitment to the integrity of the confirmation process; ordered to lie over under the rule.

By Mr. PRESSLER:

S. Res. 302. A resolution expressing the concern of the Senate regarding the situation in Fiji; to the Committee on Foreign Relations.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. LEAHY:

S. 1813. A bill to reduce foodborne disease, to improve the inspection of meat, poultry, and fish, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

SAFE FOOD STANDARDS ACT

● Mr. LEAHY. Mr. President, I send to the desk a bill which my staff and I have been working quite hard on in the past few months. I'd like to take a few minutes to give a description of its contents. I think it addresses a critical problem facing American agriculture today.

We in American agriculture realize that we must maintain public confidence in the safety of our food. That is why, as chairman of the Senate Agriculture Committee, I am introducing today the Safe Food Standards Act of 1987.

In recent months there have been a number of media reports raising questions about the safety of the fresh meat, poultry, and fish available to our consumers. Much more important to me than these media reports are the hundreds of scientific studies that document the number of people made ill by food borne disease and the number of dollars that are lost while they are sick.

For instance, the National Research Council, the research arm of the National Academy of Sciences, has estimated that up to 4 million people get sick from salmonella each year.

The thrust of these studies has been confirmed by expert agency witnesses before our committee. Information submitted by the Food and Drug Administration indicates that there are over 9 million cases of food borne illness each year, resulting in 7,000 to 9,000 deaths annually.

Experts from the Department of Agriculture have testified that the illnesses caused by salmonella and campylobacter alone cost the American economy over $1.2 billion each year in medical and lost productivity. The total cost to the economy may be over $40 billion for all forms of food borne illnesses.

We must face the fact that fresh meat, poultry, and fish are the source of some of this contamination. As the chairman of the Senate Agriculture Committee, I cannot ignore the conclusion of the Secretary of Agriculture's food safety and inspection study that "meat and poultry products are responsible for a majority of food borne illnesses."

Make no mistake about it, American farmers and ranchers produce the best meats, vegetables, dairy products and poultry in the world. We need to insure the high quality and nutritious content of these products reaches the American consumer. It is in the producer's and in the processor's interest, to have satisfied and healthy consumers.

However, many of the inspection procedures upon which we rely today have not been substantially improved for years. The present system of visual and physical inspection of carcasses was developed decades ago.

The dedicated public inspectors just do not have the tools they need to do the job. They cannot see the bacteria or the chemical contaminants that can make you sick. It is clear that new standards are needed to better protect the public from bacteria and chemical contamination of meat and poultry.

The comprehensive legislation I am introducing today will address these problems at all levels of the food chain—from animal feed, through the packing plant, all the way to the consumer's kitchen. This bill will update our inspection procedures and help restore public confidence in the safety of our red meats, fish, and poultry. I'm hopeful that this legislation can set the stage for moving our inspection system into the 21st century.

The bill has several elements:

First, the bill establishes a voluntary program to test animal feed for contamination as well as a program to improve animal feeds.

Second, the Secretary of Agriculture is required to develop a system to trace animals back to their source so that programs can be dealt with on the farm or the feedlot when possible.

Third, at the food processing stage we must develop a set of health based standards that will reduce the public's exposure to harmful bacteria and reduce the incidence of food borne illness. The current inspection process must be supplemented with a scientific, statistical sampling system designed to detect bacteria and other harmful microbiological contaminants, as recommended by the National Research Council. These new inspection procedures will insure that the Secretaries of Agriculture and Commerce, and especially the inspector on the line, will have the tools they need to do the job. These new procedures will supplement, not replace, the existing inspection system.

Fourth, no matter how successful any new safety program is, it cannot totally eliminate bacterial contamination from fresh meat. Consumers must be educated on proper cooking and storage methods. That is why this bill funds direct education, State demonstration programs, and a consumer hotline to give the public the information they need.

Finally, this bill will provide protection to USDA line inspectors and private employees who testify about unsafe practices in civil actions involving the provisions of this act.

In summary, Mr. President, I believe that this legislation is both comprehensive and balanced. It is comprehensive because it addresses in a systematic manner, from top to bottom, the safety of the meat, poultry, and fish purchased by American consumers.

It is balanced because it recognizes that food safety is the responsibility of the food producer, food processor, and food consumer.

Last June, the Agriculture Committee held hearings on this important issue. Since that time, my staff and I have met with dozens of representatives from industry, from producer groups, consumer advocates, scientists, and Government experts. I have sifted through their ideas and advice. As I stated earlier, I think the bill I'm introducing is fair and balanced, and will ensure a safer food supply well into the 21st century.

In closing, I wish to thank the many individuals and groups whose input was so valuable in developing this legislation.

Mr. President, I ask unanimous consent that a summary and a section-by-section analysis be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

SUMMARY OF THE SAFE FOOD STANDARDS ACT OF 1987

(Offered by Senator Patrick Leahy to maintain the confidence of the American consumer in our food supply by reducing foodborne illnesses)

TESTING OF MEAT, POULTRY AND FISH PRODUCTS

To improve the safety of the meat, poultry and fish products consumed in the United States, and substantially reduce foodborne illnesses, this bill will address the problem of bacterial contamination in meats, poultry and seafood by improving current inspection procedures and programs.

Standards and programs for meat and poultry will be established by the Secretary of Agriculture. Programs for fish and fish products will be established by the Secretary of Commerce.

In establishing these standards, the Secretaries will consult with the National Research Council, the Secretary of Health and Human Services, as well as industry and public interest groups. In all cases, they must consider the potential impact on the industry and the reduction of foodborne illnesses.

(Fish and fish products under the jurisdiction of Health and Human Services or the EPA will remain under that jurisdiction).

Baselines and Initial Standards: Within fifteen months of enactment, the Secretary will establish baseline levels of contamination for each slaughtering plant and for each type of product. These standards will be established and based on levels which will result in a reduction of severe foodborne illnesses. These "baseline" levels will be used to establish initial standards.

The standards will then be published in the Federal Register for public and industry comment.

Warnings and Fines: Meat and poultry plants in violation will be targeted for further sampling during a review period of up to 120 days. If violations continue, a warning will be issued and the plant will be publicly identified. Prior to public identification, the company will have an opportunity for a review of the decision.

After identification, fines for additional violations will be $3,000 for each of the first 5 days and $10,000 for each following day.

For fish and seafood, persistent violators will be fined $10,000 for each day of violation after a warning.

Closing Slaughtering Plants: Inspection procedures for meat and poultry will be withheld from plants persistently exceeding standards or failing to pay fines, and their identity will be published.

TRACING MEAT PRODUCTS

To trace contaminated meats back to the source, the Secretary must develop procedures (records, tagging, branding etc.) so meat and poultry, and products thereof, can be traced from the packing plant back to the producer.

VOLUNTARY ANIMAL FEED INSPECTION PROGRAM

A voluntary program to test animal feed for contamination will be established and administered by the Secretary of Agriculture who will publish the standards in the Federal Register after providing opportunity for public comment.

Standards and tolerances currently established by FDA will not be superceded.

Participation: A person or company manufacturing animal feed for poultry, sheep, cattle or swine may participate in the testing program if they meet requirements established by the Secretary. Participants can display an emblem of participation on their feed products.

If contaminants are found in excess of any standard or tolerance level, the Secretary will issue a warning and prohibit use of the emblem.

ANIMAL FEED IMPROVEMENT PROGRAM

The Secretary of Agriculture will establish a program designed to provide information, advice, and instruction regarding the processing or manufacture of animal feed. $2.5 million for animal feed programs ($500,000 a year, 1988–1992) will be provided.

CONSUMER EDUCATION

Will be improved through food safety programs that include:

(1) $2.5 million ($500,000 a year, 1988–1992) for programs to disseminate information to consumers, restaurants, schools, etc.

(2) $750,000 for the USDA to establish demonstration project grants to go to states for programs on food safety.

(3) A toll-free hotline to provide the public with food safety information and advice.

(4) For each year 1988 and 1989, $500,000 is provided to study the effect of labeling fresh meats and poultry with cooking and handling instructions.

$10 MILLION FOR RESEARCH PROGRAMS

$2,500,000 is appropriated for each of the years 1988–1992 to establish a research program to develop methods for reducing foodborne illnesses.

CIVIL ACTIONS

Any person adversly affected by the failure of the Secretary to carry out the provisions of this act may file a civil action (under certain time restrictions).

EMPLOYEE PROTECTION

No employer may take action against an employee because of the employees involvement in a civil action involving the provisions of this Act, or for testimony regarding its enforcement.

This provision follows procedures currently in place pertaining to public employees in various health and safety positions.

A complaint by an employee alleging such action against him may be filed with the Secretary of Labor within 30 days after the alleged violation occurs. The Secretary must then notify the employer of the complaint and has 60 days to determine if the complaint has merit. If a violation has occurred, relief will be provided.

Once a decision has been made, either party has 30 days to request a review of the decision. The review must be completed within 120 days of filing.

SAFE FOOD STANDARDS ACT OF 1987—SECTION-BY-SECTION ANALYSIS

(Offered by Senator Patrick Leahy)

The purpose of this bill is to maintain the confidence of the American consumer in the safety of the food supply by reducing the incidence of foodborne illness in the United States. This objective will be met by increasing public awareness of the proper handling of meat, poultry and fish, implementing a scientific statistically based sampling procedure to test biological contaminants on meat and poultry, requiring Federal inspection of fish by the Department of Commerce, protecting employees of slaughtering plants that complain about violations of Federal meat and poultry inspection laws and improving the quality of animal feed.

I. TESTING OF MEAT AND POULTRY PRODUCTS

In addition to the current United States Department of Agriculture (USDA) inspection programs, meat and poultry products which have been approved for human consumption will be statistically sampled and tested for contamination by pathogenic microorganisms, such as bacteria, harmful to humans. The samples will be tested to determine whether they meet certain standards designed to protect human health.

Consultation: In deciding whether to develop a standard for a pathogenic microorganism, such as Salmonella or Campylobacter bacteria, that could be present in poultry or meat products, the Secretary of Agriculture shall consult with the National Research Council, the Secretary of Health and Human Services, industry and public interest representatives.

Reduction of Severe Foodborne Illnesses: The Secretary must design standards to substantially reduce the incidence of severe foodborne illness in the United States but must consider alternative methods of reducing such illnesses and the adverse impacts, if any, on the affected industry.

Each standard will be based on a percentage of sampled meat or poultry products, approved for human consumption, that contain pathogenic microorganism at levels determined by the Secretary that are likely to result in severe foodborne illness.

Baselines and Initial Set of Standards: Within three months after enactment, the Secretary shall develop sampling procedures to be used at each slaughtering plant, or similar establishment, to determine the levels of contamination by pathogenic microorganisms, such as *Salmonella* and *Campylobacter,* harmful to humans. These "baseline" levels of contamination shall be established at each such plant within fifteen months after enactment and shall be used in developing the initial set of standards.

Public Input on the Standards: The Secretary shall publish in the Federal Register for public and industry comment each standard at least 90 days prior to taking and testing samples under these procedures.

Warnings to Violators: If a pathogenic microorganism is found in excess of a standard, the Secretary shall notify the slaughtering plant or similar establishment and target them for additional sampling or other monitoring, beginning no earlier than 30 days after issuing the notification. The Secretary shall establish a review period not to exceed 120 days during which the slaughtering plant will be monitored. If during that monitoring the standards identified in the notification are exceeded, the Secretary shall issue a warning to the slaughtering plant and publish the identity of the establishment in the Federal Register.

Prior to publishing the name of the slaughtering plant in the Federal Register the company shall have an opportunity for an administrative review of that decision.

Federal Assistance to Improve Conditions: The Secretary shall establish a program designed to provide assistance in the form of advice or information to each slaughthering plant issued a warning.

Fines: Fines will be levied for additional violations during the 6-month period after the identity of the establishment is published in the Federal Register. For each day in which samples are in excess of the standards set forth in the Federal Register notice the establishment shall be fined $3,000 and after the fifth such day the fine will be $10,000 per day.

Closing Slaughtering Plants: The Secretary shall not provide inspection services to any slaughtering plant or similar establishment that fails to pay any fine assessed under this section within 30 days after the fine is assessed by the Secretary.

The Secretary shall design a program to monitor each establishment that is fined for such time period as the Secretary determines is appropriate considering the potential risk to human health and the number of fines assessed. The Secretary shall establish procedures to withhold inspection services to each establishment that persistently exceeds standards during the monitoring period.

The identity of each establishment undergoing this intensive monitoring shall be published in the Federal Register. The Secretary shall establish procedures for administrative review of a decision not to provide inspection services.

Reinstatement: The Secretary shall establish procedures for the reinstatement of inspection services on approval by the Secretary under such conditions as are determined appropriate by the Secretary.

II. TRACING OF MEAT PRODUCTS

The Secretary must develop procedures so that cattle, sheep and swine, and food products made from those animals, are capable of being traced from the slaughterer back to the producer. These procedures can involve recordkeeping, tagging, marking, implanting, branding, lot processing, or any other procedure approved by the Secrctary so that contamination found in meat products or animals can be traced back to its source.

In the alternative, the Secretary may permit different identification requirements that take into account industry practices or custom so long as they are designed to allow most cattle, swine, or sheep to be traced from the slaughtering plant, or similar establishment, back to the producer.

III. FISH INSPECTION BY THE DEPARTMENT OF COMMERCE

The Secretary of Commerce shall administer a program designed to detect contamination by pathogenic microorganisms, harmful to humans, found in statistically selected samples of fish, shellfish, or fish products, intended for human consumption, taken at fish processing plants and from persons who catch or grow fish commercially.

Consultation: In developing standards for pathogenic microorganisms that could be present in fish or fish products intended for human consumption, the Secretary shall consult with the National Research Council, the Secretary of Health and Human Services, the National Fish and Seafood Promotional Council, industry representatives and public interest groups.

Reduction in Severe Foodborne Illnesses: The standards must be designed to substantially reduce the incidence of severe foodborne illnesses in the United States. The Secretary must consider the appropriateness of alternative methods of reducing such illnesses and the adverse impacts on the affected industry.

Each standard shall be based on a percentage of sampled fish products intended for human consumption that contain such pathogenic microorganisms at levels determined by the Secretary that are likely to result in severe foodborne illness.

Exception: Standards can not be set regarding the adulteration or contamination by pathogenic microorganisms of fish products already being regulated, with respect to those microorganisms, by the Secretary of Health and Human Services or the Administrator of the Environmental Protection Agency.

Baselines and Initial Set of Standards: Within three months after enactment the Secretary shall develop sampling procedures to be used to determine "baseline" levels of contamination which must be determined within twelve months after enactment of this Act. These baselines shall be used in establishing the initial set of standards.

Public Input: The Secretary of Commerce shall seek public input on each standard for a pathogenic microorganism at least 90 days prior to testing samples under these requirements.

Monitoring of Water Quality: The Secretary may establish a program to monitor the quality of bodies of water in which fish are harvested on a regular basis by commercial harvesters as a substitute for testing fish or shellfish taken from those waters. In carrying out this alternative approach, the Secretary shall consult with the National Fish and Seafood Promotional Council, States, the National Research Council, the Administrator of the Environmental Protection Agency, the Secretary of Health and Human Services, the Secretary of Agriculture, public interest groups, and affected industries.

Warnings and Fines: The Secretary of Commerce must establish procedures for warning fish processors and handlers when standards are violated and for monitoring them when violations are found. These procedures are the same as for meat and poultry except that inspection services shall not be withheld for persistent violators since currently there is no mandatory Department of Commerce inspection. Persistent violators of standards can not participate in the Department's voluntary seafood inspection program. These firms are also subject to additional fines of $10,000 per day for each day that a standard is violated after the firm receives a warning and after its identity was published in the Federal Register.

Exemptions: The fish and shellfish inspection program shall exempt from inspection those processors and other fish suppliers that handle, process or sell small quantities of fish or shellfish annually and establishments that the Secretary determines, on application of such person or company, that an exemption will not impair effectuating the purposes of this Act.

IV. VOLUNTARY ANIMAL FEED INSPECTION PROGRAM

The Secretary of Agriculture shall establish and administer a program to test statistically selected samples of animal feed intended for use as feed for poultry, sheep, cattle, or swine, to detect contamination by pathogenic microorganisms or toxic chemicals which may ultimately be harmful to humans.

Public Input: The Secretary shall publish lists of standards for the pathogenic microorganisms and tolerance levels for toxic chemicals, in the Federal Register, after providing an opportunity for public comment. The Secretary shall not adopt animal feed standards or tolerances regarding pathogenic microorganisms or toxic chemicals that are regulated by other Federal agencies, although the Secretary may use those standards in this voluntary inspection program.

Consultation: In developing any standards or tolerances, the Secretary shall consult with the National Research Council, the Secretary of Health and Human Services, industry representatives and public interest groups.

Reduction of Severe Foodborne Illnesses: The Secretary shall design standards likely to reduce severe foodborne illnesses in the United States and shall consider the appropriateness of alternative methods of reducing such illnesses as well as the adverse impacts on the affected industry.

Application for Participation: A person or company that manufactures animal feed intended for use as feed for poultry, sheep, cattle or swine may apply for participation in the testing program and be accepted if they meet requirements established by the Secretary. Participants shall be allowed to display an emblem of participation on their feed products.

Warnings: If contaminants are found in excess of any standard or tolerance level, the Secretary shall notify the manufacturer, and may target the firm for additional sampling. The Secretary shall issue a warning to a participant whose animal feed continues to test in excess of the prescribed standard or tolerance level during a specified period of time established by the Secretary. The Secretary shall prohibit persons from using the emblem if samples taken continue to test in excess of the standard or tolerance level described in the notice at anytime during the review period.

V. CONSUMER EDUCATION

$2.5 Million for Additional Food Safety Programs: There is authorized to be appropriated for each of the fiscal years 1988 through 1992, $500,000 for additional programs administered by the Secretary of Agriculture to disseminate food safety information, publications, and instruction to consumers, restaurant food handlers, schools and other persons.

Toll-free Hotlines for Food Safety Information: The Secretary of Agriculture, in consultation with the Secretary of Health and Human Resources, shall establish and administer a public awareness program involving the operation of a toll-free hotline to provide food safety information and advice regarding all types of foods.

Grants to States for Food Safety Programs. There is authorized to be appropriated to the Department of Agriculture $750,000 to provide demonstration project grants to States, under terms and conditions determined by the Secretary, to assist States in providing food safety information and instructions regarding the handling and preparation of foods for human consumption.

VI. ANIMAL FEED IMPROVEMENTS PROGRAM

The Secretary of Agriculture shall establish a program designed to provide information, advice, and instructions regarding the processing or manufacture of animal feed.

Toll-free Animal Feed Hotline: The Secretary shall maintain a toll-free hotline to provide information regarding the safe processing, handling and manufacture of animal feed.

$2.5 Million Authorized: There is authorized to be appropriated to carry out an animal feed improvements program $500,000 for each of the fiscal years 1988 through 1992.

VII. $10 MILLION FOR RESEARCH PROGRAMS

The Secretary of Agriculture shall establish a research program to develop methods to reduce foodborne illnesses in the United States. The technological research funded shall include research on the development of procedures for the control and rapid detection of pathogenic microorganisms. Grants may be provided to public or private colleges or universities. To carry out this section, there is authorized to be appropriated $2,500,000 for each of the fiscal years 1988 through 1991.

VIII. REPORT ON EDUCATIONAL LABELING OF FRESH MEATS AND POULTRY

The Secretary of Agriculture shall conduct one or more pilot studies to evaluate the usefulness and effectiveness of labeling fresh meats and poultry with brief instructions on proper handling and cooking. There is authorized to be appropriated $500,000 for each of the fiscal years 1988 and 1989 for this purpose. Not later than March 1, 1989, the Secretary of Agriculture shall submit a report to the Congress on the results of these studies.

IX. CIVIL ACTIONS FOR INJUNCTIVE RELIEF

Any person aggrieved by a failure of the Secretary to perform any act or duty under a provision of the Federal Meat Inspection Act or the Poultry Products Inspection Act (or any regulation issued under those Acts) that is not discretionary with the Secretary, can file a civil action for injunctive relief. No such action may be commenced prior to 60 days after the plaintiff has given written notice of the alleged violation (accompanied by a supporting affidavit describing personal knowledge of the pertinent facts) to the Secretary. No action may be commenced later than 1 year after person is so aggrieved.

Legal Fees: A court may award costs of litigation (including reasonable attorney and expert witness fees) to a plaintiff whenever the court determines such award is appropriate unless the position of the United States taken in the action is substantially justified.

X. EMPLOYEE PROTECTION

No employer may discharge any employee or otherwise discriminate against any employee with respect to his or her compensation, terms, conditions, or privileges of employment because the employee commenced, or caused to be commenced, a civil action for injunctive relief under this bill or any other proceeding for the enforcement of the Federal Meat Inspection Act or the Poultry Products Inspection Act. Also, no employer may discharge or otherwise discriminate against any employee that testified or is about to testify in any such proceeding, or assisted or participated in such a proceeding to enforce the Federal Meat Inspection Act or the Poultry Products Inspection Act.

Complaint Filed with the Labor Department: A complaint may be filed, within 30 days after such violation occurs, with the Secretary of Labor alleging such discharge or discrimination. On receipt of the complaint, the Secretary shall so notify the employer.

Preliminary Relief: Within 60 days of the receipt of a complaint, the Secretary shall conduct an investigation to determine whether there is reasonable cause to believe that the complaint has merit. In the event the Secretary concludes that a violation has occurred, the Secretary shall issue a preliminary order providing relief.

Hearing: Within 30 days after a preliminary order is issued, the person alleged to have committed the violation or the complainant may request a hearing to contest the preliminary decision—however, any such request shall not delay any reinstatement remedy. Any such review or hearing shall be conducted within 120 days of receipt of the request.

Legal Fees and Costs: The complainant shall be entitled to legal fees and costs if the complainant is issued any relief.

Court of Appeals Review: Any final orders issued by the Secretary of Labor may be appealed to the United States Court of Appeals.

Enforcement of Orders: The Secretary of Labor or the complainant in whose favor an order was issued by the Secretary of Labor may file an action in United States District Court to enforce such order.

XI. REGULATIONS

The Secretary of Agriculture shall issue regulations to carry out the Federal Meat Inspection Act (21 U.S.C. 601 et seq.), the Poultry Products Inspection Act (21 U.S.C. 451 et seq.), and related Federal meat and poultry inspection laws in accordance with section 553 of title 5, United States Code. Prior to issuing any such regulations, the Secretary shall provide to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a copy of the regulation and a detailed statement justifying the regulation.

XII. EFFECTIVE DATE

Except as otherwise provided in this Act, this Act and the amendments made by this Act, are effective on date of enactment.●

By Mr. MELCHER (for himself and Mr. NICKLES):

S. 1814. A bill to provide clarification regarding the royalty payments owed under certain Federal onshore and Indian oil and gas leases, and for other purposes; to the Committee on Energy and Natural Resources.

NTL-5 GAS ROYALTY ACT OF 1987

● Mr. MELCHER. Mr. President, on behalf of myself and Senator NICKLES, today I am introducing a bill to address a problem relating to the determination of the value of natural gas production from certain Federal and Indian onshore oil and gas leases for royalty purposes. The bill clarifies the royalty payments owed under notice to lessees-5 [NTL-5] on these leases during the period from January 1, 1982 to July 31, 1986.

NTL-5 was originally issued by the Department of the Interior in 1977. Its provisions stated that a substantial amount of gas was to be valued for royalty purposes at the highest applicable rate established by the Federal Power Commission, interpreted to mean the FERC ceiling price. However, as the gas industry knows too well, beginning in the early 1980's, gas prices began to decline. In many instances, market price fell far below the FERC ceiling price.

Thus, it appeared that under the Department's NTL-5 rule, producers were to pay royalties based on a value amount well in excess of the market price. However, during this time Department officials advised many lessees that royalty payments would not be based on the artificially high FERC ceiling price. Earlier this year, the Department issued a proposal to modify NTL-5 retroactively in an effort to address this problem formally.

Unfortunately, the NTL-5 issue has now evolved into an extremely difficult situation. Industry, Indian tribes and allottees, and the States have conflicting expectations. Substantial sums hang in the balance. And, I regret to say, all indications point to every sorry handling of this matter by the Department of the Interior.

I, for one, simply do not believe that it is reasonable to require producers to pay royalties on the basis of the unrealistically high FERC ceiling price which was out of step with the market. This cannot be what is intended by the law. The Department of the Interior should have made this clear to all involved. However, by the same token, I believe care must be taken not to work unnecessary hardship on the States and the tribes and allottees.

That is why today I am introducing legislation which would clarify the royalty amounts owed by lessees under NTL-5. Rather than basing royalty valuation on the artificially high FERC ceiling price, my bill provides that royalties be based on the reasonable value of the production under regulations published in the Code of Federal Regulations.

My bill also provides that lessees who have already paid based on the FERC ceiling price will receive refunds. These refunds, estimated by the Department of the Interior to total $500,000, would be paid out of the Federal share of future mineral receipts. While I am advised by the Department of the Interior that refunds are unlikely to reach this amount, my bill places a cap on total refunds of $2 million. Thus, the States and tribes would not be penalized by having to pay these refunds out of their treasuries.

I urge my colleagues to join me in supporting this bill. In my view, it provides for a fair resolution to a difficult problem.

Mr. President, I ask unanimous consent that the text of the bill and section-by-section analysis be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 1814

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be referred to as the "NTL-5 Gas Royalty Act of 1987".

SEC. 2. DEFINITIONS.

For purposes of this Act:

(1) SECRETARY.—The term "Secretary" means the Secretary of the Interior or his designee.

(2) NTL-5.—The term "NTL-5" means the Notice to Lessees and Operators of Federal and Indian Onshore Oil and Gas Leases published May 4, 1977 (42 Fed. Reg. 22610).

(3) OTHER TERMS.—All other terms carry the same meanings as provided in section 3 of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. Sec. 1702).

SEC. 3. VALUATION FOR ROYALTY PURPOSES OF CERTAIN GAS PRODUCTION FROM FEDERAL AND INDIAN LANDS.

(a) APPLICABILITY.—The provisions of this section shall be used in determining the value for royalty purposes of any gas production from Federal onshore or Indian oil and gas leases during the period from January 1, 1982, through July 31, 1986, which is with of section I.A.2 or section II.A.2 of NTL-5, and for which the lessee or royalty payor provides written documentation, determined to be adequate by the Secretary and existing at or near the time the gas was sold, of receipt of less than the highest applicable price under the Natural Gas Policy Act.

(b) ROYALTY CALCULATION FOR CERTAIN FEDERAL ONSHORE OIL AND GAS LEASES.—If the gas referred to in subsection (a) of this section was produced from a Federal onshore lease, the value shall be determined in accordance with the lease terms and the regulations codified at Part 206 of Title 30 of the Code of Federal Regulations as in effect at the time of production.

(c) ROYALTY CALCULATION FOR CERTAIN INDIAN LEASES.—If the gas referred to in subsection (a) of this section was produced from an Indian lease, the value shall be determined in accordance with the lease terms and the regulations codified at Part 206 of Title 30 of the Code of Federal Regulations and sections 211.13 and 212.16 of Title 25 of the Code of Federal Regulations, as applicable and as in effect at the time of production.

(d) WRITTEN DOCUMENTATION.—The written documentation required under subsection (a) of this section may include, but is not limited to, a gas sales contract, purchase statement, receipt, or other written documentation deemed appropriate by the Secretary existing at or near the time of sale showing the actual price received.

(e) Exception.—This section shall not apply to any gas for which, in the Secretary's judgment, the lessee or royalty payor received less than the highest applicable price under the Natural Gas Policy Act due to a failure by the lessee or payor to collect amounts which the purchaser would have been required to pay under a gas sales contract providing for that price and not as a result of market conditions or considerations.

SEC. 4. REFUND OF ROYALTIES PREVIOUSLY PAID.

(a) Refund for Federal Onshore Oil and Gas Leases.—If the Secretary or a court of competent jurisdiction determines that a lessee or royalty payor on a Federal onshore oil and gas lease has paid, prior to October 1, 1987, more than the value determined under subsection 3(b) of this Act for any natural gas within the coverage of subsection 3(a) of this Act, the Secretary shall refund the amount paid in excess of the value determined under subsection 3(b) from monies received under section 35 of the Mineral Lands Leasing Act of 1920, as amended (30 U.S.C. Sec. 191), which would otherwise be deposited to miscellaneous receipts in the Treasury. The Secretary shall not recoup any portion of such refund from any State.

(b) Refund for Indian Leases.—If the Secretary or a court of competent jurisdiction determines that a lessee or royalty payor has paid, prior to October 1, 1987, more than the value determined under subsection 3(c) of this Act for any gas within the coverage of subsection 3(a) of this Act and produced from an Indian lease, the Secretary shall refund the amount paid in excess of the value determined under subsection 3(c) from monies received under section 35 of the Mineral Lands Leasing Act of 1920, as amended (30 U.S.C. Sec. 191) which would otherwise be deposited to miscellaneous receipts in the Treasury. The Secretary shall not recoup any portion of any such refund from the Indian lessor.

(c) The total amount of refunds made under this section shall not exceed two million dollars ($2,000,000).

SEC. 5. PROCEDURES.

(a) Case-By-Case Audit for Certain Federal Onshore Oil and Gas Leases.—The Secretary shall publish in the Federal Register and send to each lessee or royalty payor of record as of July 31, 1986, for any Federal onshore oil and gas lease a notice of enactment of this Act informing such lessees and royalty payors of the provisions of this Act and the terms and conditions for receiving refunds or royalty calculations under this Act. Any lessee that has reason to believe that it is entitled to a refund under this Act shall provide written notice to the Secretary in a form prescribed by the Secretary specifying the Federal onshore oil and gas lease or leases involved. The Secretary, and any State in accordance with delegations of authority under section 205 or cooperative agreements under section 202 of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1732, 1735), shall conduct a case-by-case audit of royalties for such leases and any other Federal onshore lease which the Secretary may select for examination under existing law to determine the amount of royalties due and payable under this act and other applicable law and the amount of any refund due the lessee.

(b) Case-by-Case Audit on Indian Leases.—The Secretary, and any Tribe in accordance with cooperative agreements under section 202 of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1732), shall conduct a case-by-case audit of royalties for Indian oil and gas leases on which gas was produced at any time during the period from January 1, 1982, through July 31, 1986, which is within the coverage of section I.A.2 or section II.A.2 of NTL-5 to determine the amount of royalties due and payable under this Act and other applicable law and the amount of any refund due the lessee.

(c) MMS Notice.—The Secretary shall provide a notice under this section to each lessee under a Federal onshore or Indian oil and gas lease on which an audit was performed in accordance with this section. The notice shall contain each of the following:

(1) A statement of the amount of the royalty payments made in accordance with the provisions of NTL-5.

(2) A statement of the amount of refund, if any, to which the lessee is entitled under this Act and a description of the means by which such refund will be provided.

(c) Report to Indian Tribes.—The Secretary shall provide a report to each Indian Tribe holding an Indian oil and gas lease on which gas was produced at any time during the period from January 1, 1982, through July 31, 1986, which is within the coverage of section I.A.2 or section II.A.2 of NTL-5. The report to each Tribe shall contain information for each such lease held by the Tribe stating the difference between royalties computed in accordance with NTL-5 and royalties computed in accordance with subsection 3(c) of this Act.

Sec. 6. Record Keeping Requirements.—Notwithstanding the requirements of section 103 of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. Sec. 1713), and any regulations promulgated pursuant thereto, lessees and other payors are required to maintain records related to the value of gas production to which this Act applies for the period January 1, 1982 through July 31, 1986, until the Secretary gives notice that maintenance of such records no longer is required.

Section-by-Section Analysis

Section 1 states the short title.

Section 2 sets forth definitions.

Subsection 3(a) provides that the provisions of the section 3 are to be used in determining value for royalty purposes of gas production from Federal onshore or Indian oil and gas leases during the period from January 1, 1982 through July 31, 1986, which is within the coverage of specified sections of NTL-5 and for which the lessee or royalty payor provides certain written documentation of receipt of less than the highest applicable price under the Natural Gas Policy Act.

Subsection 3(b) provides that the value for gas covered by the Act produced from Federal onshore oil and gas leases is to be determined in accordance with the lease terms and regulations at 30 CFR Part 206.

Subsection 3(c) provides that the value for gas covered by the Act produced from Indian oil and gas leases is to be determined in accordance with the lease terms and regulations at 30 CFR Part 206 and 25 CFR Sections 211.13 and 212.16, as applicable.

Subsection 3(d) describes the written documentation required by subsection 3(a).

Subsection 3(e) states that the section does not apply to gas for which the Secretary determines that the lessee or royalty payor received less than the highest applicable price under the Natural Gas Policy Act due to a failure to collect amounts under a contract and not as a result of market conditions or considerations.

Subsection 4(a) provides that if the Secretarty or a court determines that a lessee or royalty payor on a Federal onshore oil and gas lease has paid more than the value determined under subsection 3(b) the Secretary shall refund the excess amount from Federal mineral receipts. The Secretary may not recoup any portion of the refund from the States.

Subsection 4(b) provides that if the Secretary or a court determines that a lessee or royalty payor on an Indian oil and gas lease has paid more than the value determined under subsection 3(c) the Secretary shall refund the excess amount from Federal mineral receipts. The Secretary may not recoup any portion of the refund from the Indian lessor.

Subsection 4(c) provides that the total amount of refunds made under this section may not exceed two million dollars ($2,000,000).

Section 5 sets forth the procedures for providing certain notices and conducting audits required by the Act. Subsection 5(c) provides for a report to each Indian Tribe holding an Indian oil and gas lease from which gas within the coverage of the Act was produced. Such report is to contain information on the difference between royalties computed in accordance with NTL-5 and royalties computed in accordance with subsection 3(c) of the Act.

Section 6 sets forth recordkeeping requirements.●

By Mr. SANFORD (for himself and Mr. Simon):

S. 1815. A bill to amend the Elementary and Secondary Education Act of 1965 to establish a program to promote more effective schools and excellence in education, and for other purposes; to the Committee on Labor and Human Resources.

EFFECTIVE SCHOOLS DEVELOPMENT IN EDUCATION ACT

Mr. SANFORD. Mr. President, today I am introducing a bill to broaden and improve effective schools programs developed and implemented by State and local educational agencies.

The effective schools movement is based upon effective schools research and models of school effectiveness. This research shows that instructionally effective schools have five characteristics that differentiate them from ineffective schools: First, strong leadership at the school level; second, high expectations that no child will fall below minimum levels of achievement; third, an orderly school atmosphere conducive to learning and teaching; fourth, student acquisition of basic and higher order skills; and fifth, frequent and consistent evaluation of student progress.

Dr. Matthew Miles of the Center of Policy Research issued a January 1983 report on effective schools. It was prepared for the National Commission on Excellence in Education, and it noted that a representative example of an effective schools program typically is as follows:

The program is aimed at improving teaching practices, student achievement, and student behavior. In each school building, a leadership team is convened for shared decisionmaking. The team includes teachers, department heads and the principal. The principal and teachers receive intensive training in how to guide the process, which begins with the collection of hard data on student achievement and behavior, along with information on community perceptions of the school, and a review of district policies that impact on the school.

Dr. Miles went on to explain that effective schools research shows that there are many things teachers, principals, and schools do control which can serve as the means to improve student achievement, student behavior, and teaching and learning practices. The underlying assumption in effective schools programs is that all children are educable; that their education derives primarily from the nature of the school to which they are sent, as contrasted with the nature of the family or neighborhood from which they come; and that children who start out not doing well in school get further behind the longer they go to school.

Therefore, our objective must be to stop the continuous movement of children who are not prepared to do academic work and to require that students demonstrate minimum academic mastery at each of the levels of schooling, so that they will be successful.

I am impressed by the mounting evidence that the effective schools programs across this Nation are making an important contribution in improving the education climate in many of our schools, thereby effecting improvement in student achievement and student behavior.

I have been deeply disturbed by the continuing attacks on the public education institutions of this country. I have determined, therefore, that I will use a substantial amount of my energies to enhance, encourage, and support new ideas in education. The effective schools bill that I am introducing in this session of Congress is a step in that direction.

The "even start" section of the bill would make grants available from the Department of Education to implement pilot programs that combine adult basic education for parents and school readiness training for children into a single program. These grants would build upon our knowledge of the positive effects of parental involvement in student learning. Parents who are themselves illiterate or lacking a high school diploma would receive adult basic education as well as education about how to help their young children develop reading skills.

What better role for the Federal Government than to encourage the adoption of effective schools programs. Nowhere is this said with more clarity than in the National Commission on Excellence in Education's report, "A Nation at Risk." In discussing the role of the Federal Government in education, the report notes that this role includes "supporting curriculum improvement and research on teaching, learning, and the management of schools; supporting teacher training in areas of critical shortage or key national needs."

There is no doubt that more study and research is needed to determine the dynamics of program implementation and its impact in the school and in the classroom. What is clear is that effective schools programs are occurring nationwide at a significant rate, and that most of the programs are being well implemented.

What is also clear is that effective programs are showing promise for secondary school improvement as well as for elementary schools, and that this promise suggests that effective schools usage will expand appreciably over the next few years.

Mr. President, I am pleased that my distinguished colleague from Illinois has joined me in cosponsoring this bill. Senator SIMON came to the U.S. Senate with a strong commitment to education. Having been awarded 23 honorary doctoral degrees, his accomplishments are clearly well known and deeply appreciated. I consider it a privilege to have his name associated with this very important legislation.

I would also like to recognize the efforts of Congressman AUGUSTUS HAWKINS, chairman of the House Education and Labor Committee. He has introduced effective school legislation in the House. Chairman HAWKINS is truly a champion in the area of education and has been a strong supporter of the effective schools concept for several years.

Mr. President, I urge my colleagues to join in support of the "Effective Schools Development in Education Act of 1987."

Mr. SIMON. Mr. President, I am pleased to join my friend and colleague from North Carolina, [Mr. SANFORD] as a cosponsor of the bill he is introducing today entitled the "Effective Schools Development in Education Act of 1987."

Effective schools is a relatively new term, but the concept has been "effectively" experimented with for years in a number of schools across the country. Effective schools are usually headed by strong and strict school principals, and their teachers are provided with special training so that they, in turn, will set high standards for all students. This includes a high incentive and reward system for students. Specific, basic curriculums along with parental involvement are mandatory ingredients for success.

Our bill attempts to spread the use of the effective schools concept on a national basis. Research has shown that even those schools in poor areas have been successful in improving student achievement through the effective schools model. This bill will focus on school districts with the greatest number or percentages of educationally deprived children.

Effective schools require a safe and orderly school environment for students to function and flourish in. Effective schools can also include requirements that students must demonstrate a minimum academic mastery at each level of school before they can move to the next level. If we are going to expect teachers and principals to make improvements in student achievement levels, then we must allow them to gain control over their schools and students.

The general purpose of this bill is to:

First, to assist State and local education agencies in increasing school effectiveness programs;

Second, to encourage State and local education agencies to participate in effective school programs;

Third, to disseminate information on school effectiveness;

Fourth, to assist in the research and development of effective schooling practices;

Fifth, to provide technical assistance; and

Sixth, to increase the academic achievement levels through early childhood education programs.

Mr. President, I commend my colleague, Mr. SANFORD, for his foresight in introducing this legislation and in promoting a tried and true concept that has worked in the effort to improve our Nation's schools.

I would also like to commend Congressman AUGUSTUS HAWKINS, the chairman of the House Education and Labor Committee, for introducing similar legislation in the House and for incorporating this legislation into the omnibus elementary and secondary education bill passed this past summer in the House. I urge my colleagues to join in support of the Effective Schools Development in Education Act of 1987.

Mr. President, I ask unanimous consent that the article "Ingredients of a Successful Effectiveness Project," from the March 1985 issue of Education Leadership, be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

INGREDIENTS OF A SUCCESSFUL SCHOOL EFFECTIVENESS PROJECT

[Charts not printed in RECORD.]

In 1979 the local school board directed 18 elementary schools in Milwaukee to improve their achievement levels in reading, math, and language to reflect citywide or national norms. These schools were identified as the lowest achieving schools in the system. All were located in the central city and served a predominantly low-income and minority student population.

No changes were made in the administration or in teacher or student composition, and no additional monies were allocated to these schools. Yet achievement levels have increased significantly in the last five years.

FIGURE 1.—THE ESSENTIAL ELEMENTS OF EFFECTIVE SCHOOLS

School Climate

1. Strong sense of academic mission
2. High expectations conveyed to all students
3. Strong sense of student identification/affiliation
4. High level of professional collegiality among staff
5. Ongoing recognition of personal/academic excellence

Curriculum

1. Grade-level expectations and standards in reading, math, and language
2. Planning and monitoring for full content coverage

Instruction

1. Efficient classroom management through structured learning environment
2. Academic priority evidenced in increased amount of allocated time
3. Key instructional behaviors (review and homework check; development lesson, process/product check, actively monitored seatwork, related homework assignment)
4. Direct instruction as the main pedagogical approach
5. Maximizing academic engaged time (time-on-task)
6. Use of accelerated learning approach (planning for more than one year's growth)
7. Reading, math and language instruction beginning at the kindergarten level

Coordination of Supportive Services

1. Instructional approach, curriculum content, and materials of supplementary instructional services coordinated with the classroom program
2. Pullout approach used only if it does not fragment the classroom instructional program, does not result in lower expectations for some students, and does not interfere with efforts to maximize the use of time

Evaluation

1. Frequent assessment of student progress on a routine basis
2. Precise and informative report card with emphasis on acquisition of basic school skills
3. Serious attitude toward test-taking as an affirmation of individual accomplishment
4. Test-taking preparation and skills

Parent and Community Support

1. Regular and consistent communication with parents
2. Clearly defined homework policy that is explained to students and parents
3. Emphasis on the importance of regular school attendance
4. Clear communication to parents regarding the school's expectations related to behavioral standards
5. Increasing awareness of community services available to reinforce and extend students learning.

PROJECT RISE

Since 1979 these schools have participated in Project RISE, which attempts to raise student achievements by systematically implementing the essential elements of effective schooling. These elements (see Figure 1) were derived primarily from the research and literature on school and teacher effectiveness and from the reported practices of other effective schools.

By the close of the 1983-84 school year, Project RISE had been operating for five years. Figure 2 charts the percentage of elementary students in Milwaukee's 107 elementary schools who scored average and above average on standardized tests. The most significant gains occurred between 1979 and 1983 and brought the Project RISE schools to the level set by the school board.

Among the RISE schools, several distinguished themselves from the rest for their exceptional rate of gains and high levels of achievement. Specific changes made by these fast-improving schools fall into four categories: changes in staff attitude, changes in school management and organization, changes in school practices and policies, and changes in classroom practices. While each of the 18 schools in Project RISE may have made one or more of these changes, the fast-improving schools made most or all of them.

CHANGES IN STAFF ATTITUDES

Staff members verbally and behaviorally expressed the belief that all of their students could achieve regardless of socioeconomic status of past academic performance.

Inservice activities that underscored the educability of all students were offered. These sessions were designed to re-educate misinformed personnel by refuting the individual deficit and cultural deficit theories that are commonly used to explain the under-achievement of low-income and minority students. The school deficit theory was explained and the potency of school expectations emphasized.

Staff members were encouraged to meet and establish networks with practitioners from effective schools throughout the country. RISE principals and teachers visited effective schools, and practitioners from these schools came to Milwaukee to share how they had changed their schools.

Literature and reports related to the successes of schools that served low-income and minority students were disseminated among staff and reviewed on a regular basis, reinforcing the belief that low-income students can perform at high levels of achievements.

Grouping practices and programs that identified some students as low achievers were abandoned.

Staff members indicated an improvement in their sense of self-esteem and efficacy as professional educators.

Inservice activities included exchange forums wherein teachers would act as the consultants in presenting successful methods and practices to other teachers, and principals would share their successes in various domains. This contributed to a shift from depending on outside educational experts to recognizing the expertise within their own ranks. Staff members from the fast-improving schools frequently volunteered or were asked to lead these sessions.

Staff members (rather than the superintendent or central office personnel) acted as spokespersons for the school effectiveness program at local professional meetings, press conferences, university classes, and community forums. Thus, the practitioners who were responsible for the implementation and successes of the program were the ones to discuss the program and receive the recognition due.

When visitors came to the schools, the principals shared with the staff the responsibilities involved in guiding tours, explaining the program, and recognizing the accomplishments of individual staff members and students.

Staff members orchestrated their own professional development activities. Schools used their allocated funds to design their inservice, selecting the topics and presenters. A number of RISE principals and teachers led a professional education group called the League of Urban Educators. The League, which received no funding and met after school, was a voluntary group of teachers, principals, central office staff, university professors, and business and community leaders, who met monthly in a prestigious university conference center to share a potluck dinner, listen to a presentation on an issue related to urban education, and discuss the issues raised in the presentation. For the most part, the presentations focused on the essential elements of RISE. Participating members report that the League elevated their stature as professionals, united people across role and status lines, and served as a professional support group.

CHANGES IN SCHOOL MANAGEMENT AND ORGANIZATION

Principals reported a change in their role as building manager to include being an instructional leader.

Principals had the opportunity to meet with other principals from effective schools who emphasized the importance of being knowledgeable of the curriculum and of instructional practices, visiting each classroom on a daily basis and concentrating the agenda of the staff meetings on instructional issues.

Principals involved teachers in important planning and decision-making processes, thereby generating a strong sense of ownership of their school.

Principals in these schools loosened the linkages between central office and the school and strengthened the sense of school ownership, thus engendering the responsibility among staff for the school's successes or failures. One way they did this was by empowering the teachers in acting as advocates for the changes proposed by the teachers. For example, when teachers denounced the pullout approach used by supplementary programs as being disruptive and counterproductive, and recommended that all programs be conducted in their classrooms coordinated with the classroom instructional program, the principals supported the teachers in implementing this approach.

Although all of the annual improvement plans were required to include the RISE essential elements, each school decided for itself how to best reach the project goals based on the unique characteristics of the school.

School effectiveness committees assumed responsibility for making plans to improve school climate, reading and math achievement, and the school's evaluation program. Their plans were presented as recommendations at staff meetings for discussion, modification, and adoption.

Principals established grade-level teams and arranged for them to meet on a weekly basis during the school day for planning, sharing, and coordinating their efforts.

Staff members expressed their recognition of the interrelatedness of their responsibilities and the need to work together as a unified system.

During the program's five year-period, the schools operated less as a set of separate classrooms and programs and more as a unified body with interrelated and interdependent responsibilities. The principals heightened this awareness in a number of ways, for example, by emphasizing the responsibility each teacher had in seeing that students were performing at or above grade level. A 3rd grade teacher soon came to realize that all of the effort exerted to prepare her students for the 4th grade could be rendered meaningless if the following year the 4th grade teacher did not also work toward grade-level proficiency. The teacher also realized that the 2nd grade teacher's failure to prepare his students for the 3rd grade would create a burden for this 3rd grade teacher.

Behavioral expectations were developed and consistently reinforced by all staff.

Supplementary programs discontinued the pullout approach and worked with the classroom teacher within the classroom setting.

CHANGES IN SCHOOL PRACTICES AND POLICIES

A strong academic emphasis was clearly evident in the fast-improving schools, with a focus on acquiring basic skills.

Because the majority of the students were performing far below grade level in 1979, staff members expressed the need to concentrate on reading, math, and language arts as a first step in improving student achievement. In 1984, staff members in the fast improving schools reported that the majority of their students are now performing at or above grade level, and that plans are now under way to move from effectiveness to excellence. These plans include broadening and strengthening the curriculum, learning better ways of teaching higher order skills, and possibly adopting computer programs, Great Books study clubs, and critical thinking projects.

Extracurricular activities and assembly programs emphasized academic achievement by including competitive meets with the reading and math olympic teams, academic pep rallies, student recognition programs, oratorical presentations, debates, and so on.

The schools were characterized by well-maintained and orderly environments.

Behavioral expectations were developed by the staff, and a commitment was made to consistently enforce them.

The principal conveyed these behavioral expectations to the students at the opening assembly at the beginning of the school year, followed by a discussion of the expectations in each classroom.

Behavioral expectations were printed in the student handbook and distributed to every parent.

Student traffic in the hallways was reduced by the elimination of pullout programs.

Some schools substituted outdoor recess with indoor study breaks throughout the day when students could casually interact, go to the lavatory, and so on.

The schools clearly articulated grade-level objectives and minimum standards within each subject area.

Staff members were involved in the development of grade-level objectives and standards.

Grade-level standards were defined as those skills, concepts, and learnings that are prerequisite for success at the next grade level.

Grade-level standards were printed on "Yes I Can" sheets, reviewed with students, and distributed to parents.

The schools developed a schoolwide policy that expected all students to complete daily homework assignments.

The rigorous nature of the homework policies was defended as necessary to bring underachieving students to grade-level proficiency.

Principals and teachers enforced the policy by monitoring the doors at dismissal and sending empty-handed students back to their rooms to get their homework.

Parents were informed if students were not completing their homework assignments and told that the students would be retained after lunch, during recess, or after school in the "homework center" to complete missing assignments.

The schools had schoolwide policies designed to protect instructional time from unnecessary disruptions and distractions.

Some of the schools identified blocks of time in the daily schedule when the entire school would be teaching reading, math, and language arts. Interruptions such as public address announcements, requests from the office, pullout programs, and the like would not be allowed during these instructional periods.

CHANGES IN CLASSROOM PRACTICES

Teachers planned to teach the entire grade-level curriculum content to every student.

The grade-level objectives were organized into units of instruction, and teachers used content coverage schedules to plan on a yearly, weekly, and daily basis.

Adjustments in the content coverage schedules were made throughout the year as some lessons required more or less time than expected.

Lessons were usually taught to the whole class and were supplemented with small-group corrective or enrichment instruction.

Whole-class instruction was taught at the student's *grade* level, and small-group instruction was taught at the student's *performance* level.

The pullout approach for compensatory education was replaced by an in-class delivery of service. Support teachers were in classrooms during the instructional lesson, which prepared them to supplement the instruction.

Precautions were taken to avoid ostensibly identifying or labeling students as Title I students or as the "slow group."

Grouping was flexible, and outside observers commented that they were unable to identify the slow learners.

Instructional lessons were highly structured and generally included the key instructional behaviors.

These behaviors were identified as a review of the previous lesson and homework check, a developmental lesson using direct instruction, a process-product check for understanding, actively monitored seatwork, and the assignment of a related daily homework assignment.

Staff members reported that the systematic and structured instructional format helped maintain orders by minimizing the opportunity for disruptive behavior and increased the academic engagement of the students.

Teachers expected their students to perform at or above grade level, and used remedial measures to help underachieving students advance to grade-level proficiency.

Teachers used some form of accelerated learning. This was described as an intervention strategy intended to help underachieving students make more than a year's gain in a given school year. This curriculum design and instructional approach included concentrated instruction that focused on the essential content included within each of the preceding levels.

When many older students complained that they were embarrassed to carry home books that were years below their grade level and that younger students were using, the schools prepared and distributed book covers with the school's name and logo to all the students. Soon the underachieving students began bringing home the books and assignments needed to help them advance to grade-level proficiency.

CONCLUDING REMARKS

Project RISE appears to be a promising example of the successful implementation of the school effectiveness and teacher effectiveness findings. The project schools began with a clear vision of what an effective school is (one performing at or above national norms in reading, math, and language arts, with no disparity based on race or class), they used the school effectiveness correlates as a framework for developing their own plans, and they implemented these plans in a systematic and self-conscious manner.

The RISE practitioners are modest when discussing their accomplishments. They are obviously proud of the gains their students have made, but are quick to point out that becoming an effective school is only a first step. Narrowing the educational agenda was a necessary prerequisite in turning their schools around, but now they are eager to accept the challenge of converting their effective schools into excellent schools.

By Mr. HELMS (by request):

S. 1816. A bill to authorize the Secretary of Agriculture to recover costs of carrying out certain animal and plant health inspection programs, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

AGRICULTURAL PROTECTION COST RECOVERY ACT

Mr. HELMS. Mr. President, today I am introducing by request the Administration's Agricultural Protection Cost Recovery Act of 1987. In addition, I ask unanimous consent that a letter from Deputy Secretary of Agriculture Peter Myers, along with a section-by-section analysis of the bill, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 1816

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Agricultural Protection Cost Recovery Act of 1987."

TITLE I

SEC. 101. The Secretary of Agriculture may charge and collect fees for the provision of agricultural quarantine inspection services in connection with the arrival at a port in the customs territory of the United States or the preclearance or preinspection at a site outside the customs territory of the United States of a commercial vessel, commercial aircraft, commercial truck, railroad car, and each passenger aboard a commercial vessel or commercial aircraft.

SEC. 102. (a) Each person that provides transportation to a passenger for transportation by a commercial aircraft or commercial vessel into the customs territory of the United States shall—

(1) collect from that passenger the fee charged under section 101 at the time the document or ticket is issued, and

(2) identify on that document or ticket the fee charged under section 101 as an agriculture fee.

(b) If a document or ticket for transportation of a passenger into the customs territory of the United States is issued and the fee charged under section 101 is not collected at the time such document or ticket is issued, the person providing the transportation to such passenger shall collect the fee before the passenger departs from the commercial aircraft or commercial vessel and shall provide such passengers a receipt for payment of the fee.

(c) Any person who collects a fee under this section shall remit that fee to the Treasury of the United States at any time before the date that is thirty-one days after the close of the calender quarter in which the fee is collected.

SEC. 103. (a) All of the fees collected under section 101 shall be deposited in a separate no-year account within the general fund of the Treasury of the United States. Such account shall be known as the "Agricultural Quarantine Inspection User Fee Account."

(b) Upon failure to remit any fee under this Title to the Treasury of the United States, the Secretary of Agriculture shall assess a late payment penalty, and such overdue fees shall accrue interest, as required by 31 U.S.C. 3737. Any late payment penalty and any accrued interest shall be deposited to the Agricultural Quarantine Inspection User Fee Account.

(c) The Secretary of Treasury shall refund out of the Agricultural Quarantine Inspection User Fee Account to any appropriation the amount paid out of such appropriation for expenses incurred by the Secretary of Agriculture for:

(1) the administration of this Act; and

(2) all activities carried out by the Secretary of Agriculture at ports in the United States and at foreign preclearance and preinspection locations in connection with the enforcement of the plant and animal quarantine laws.

(d) The amounts which are required to be refunded under subsection (c) of this section shall be refunded quarterly on the basis of estimates made by the Secretary of Agriculture of the expenses referred to in subsection (c) of this section. Proper adjustment shall be made in the amounts subsequently refunded under subsection (c) of this section to the extent prior estimates were in excess of, or less than, the amount required to be refunded under subsection (c) of this section.

(e) The Secretary of Agriculture shall adjust the fees provided in section 101 to reflect the actual costs for the administration of this Act, the activities carried out at ports in the United States and at foreign preclearance and preinspection locations in connection with the enforcement of the plant and animal quarantine laws, and the maintenance of a reasonable balance in the Agriculture Quarantine Inspection User Fee Account.

TITLE II

SEC. 201. Section 102(b) of the Act of September 21, 1944, (7 U.S.C. 147a(e)) is amended by adding at the end thereof: "The Secretary of Agriculture is authorized to prescribe and collect fees to recover the costs of carrying out this section.".

SEC. 202. Section 306 of the Tariff Act of 1930 (19 U.S.C. 1306) is amended by redesignating subsection (c) as subsection (b) and adding a new subsection to read:

"(c) The Secretary of Agriculture is authorized to prescribe and collect fees to recover the costs of carrying out this section.".

SEC. 203. Section 7 of the Act of August 30, 1890, (21 U.S.C. 102) is amended by deleting the first sentence and inserting in lieu thereof:

"The Secretary of Agriculture is authorized to place and retain in quarantine all animals imported into the United States, at such ports as he or she may designate for such purpose, and under such conditions as he or she may by regulation prescribe."

and by adding at the end of such section

"The Secretary of Agriculture is authorized to prescribe and collect fees to recover the costs of carrying out this section.".

SEC. 204. Section 10 of the Act of August 30, 1890, (21 U.S.C. 105) is amended by deleting the last semicolon and all that follows and inserting in lieu thereof: ". The Secretary of Agriculture is authorized to prescribe and collect fees to recover the costs of carrying out this section.".

SEC. 205. Section 2 of the Act of February 2, 1903, (21 U.S.C. 111) is amended by adding at the end thereof: "The Secretary of Agriculture is authorized to prescribe and collect fees to recover the costs of carrying out the provisions of this section which relate to the importation of animals, live poultry, hay, straw, forage, or similar material or any meats, hides, or other animal products.".

SEC. 206. Section 4 of the Act of May 29, 1884, (21 U.S.C. 112) is amended by adding at the end thereof: "The Secretary of Agriculture is authorized to prescribe and collect fees to recover the costs of carrying out the provisions of this section which relate to the exportation of livestock and/or live poultry.".

SEC. 207. Section 5 of the Act of May 29, 1884, (21 U.S.C. 113) is amended by adding at the end thereof: "The Secretary of Agriculture is authorized to prescribe and collect fees to recover the costs of carrying out the provisions of this section which relate to the exportation of livestock and/or live poultry.".

SEC. 208. Section 11 of the Act of May 29, 1884, (58 Stat. 734, as amended, 21 U.S.C. 114a) is amended by inserting immediately following the first sentence: "The Secretary of Agriculture is authorized to prescribe and collect fees to recover the costs of carrying out the provisions of this section which relate to veterinary diagnostics.".

SEC. 209. Section 1 of the Act of February 2, 1903, (32 Stat. 791, as amended, 21 U.S.C. 120–121) is amended by inserting immediately following the second sentence: "The Secretary of Agriculture is authorized to prescribe and collect fees to recover the costs of carrying out the provisions of this section which relate to the exportation of livestock and/or live poultry.".

SEC. 210. The Act of July 2, 1962, (21 U.S.C. 134–134h) is amended by deleting the third sentence of section 2(c) (21 U.S.C. 134a(c)) which reads: "Such costs shall not constitute a lien against the animals, carcasses, products, or articles involved."; by amending the fourth sentence of section 2(c) (21 U.S.C. 134a(c)) to read: "Costs collected under this section, except costs related to the importation and exportation of animals, shall be credited to the current appropriation for carrying out animal disease control activities of the Department."; and by adding at the end of such Act a new section to read:

"SEC. 14. The Secretary is authorized to prescribe and collect fees to recover the costs of carrying out the provisions of this Act which relate to the importation and exportation of animals.".

SEC. 211. Section 12 of the Federal Meat Inspection Act (21 U.S.C. 612) is amended by adding at the end thereof: "The Secretary is authorized to prescribe and collect fees to recover the costs of carrying out this section and section 13 of this Act.".

SEC. 212. Section 3901 of the Act of August 26, 1983, (46 U.S.C. 3901) is amended by adding at the end thereof: "The Secretary of Agriculture is authorized to prescribe and collect fees to recover the costs of carrying out this section.".

SEC. 213. The eighth paragraph under the heading "Bureau of Animal Industry" of the Act of March 4, 1913, (37 Stat. 832, 21 U.S.C. 151–159) is amended by striking the semicolon following the last sentence of the paragraph, inserting a period following the last sentence of the paragraph, and inserting thereafter the following:

"The Secretary of Agriculture is authorized to prescribe and collect fees to recover the costs of carrying out this Act;".

SEC. 214. Any person for whom an activity is performed pursuant to section 102(b) of the Act of September 21, 1944, (7 U.S.C. 147a(e)), sections 4, 5 and 11 of the Act of May 29, 1884, (21 U.S.C. 112, 113 and 114a), sections 7 and 10 of the Act of August 30, 1890, (21 U.S.C. 102 and 105), section 3901 of the Act of August 26, 1983, (46 U.S.C. 3901), sections 1 and 2 of the Act of February 2, 1903, (21 U.S.C. 111 and 120–121), section 306 of the Tariff Act of 1930, (19 U.S.C. 1306), section 14 of the Act of July 2, 1962, sections 12 and 13 of the Federal Meat Inspection Act (21 U.S.C. 612 and 613), and the Act of March 4, 1913, (21 U.S.C. 151–159) shall be liable for payment of fees assessed. Upon failure to pay such fees, the Secretary of Agriculture shall assess a late payment penalty, and such overdue fees shall accrue interest, as required by 31 U.S.C. 3717. The Secretary shall have a lien for the fees, any late payment penalty, and any accrued interest assessed against the plant, animal, product, material, means of conveyance or establishment for which services have been provided. In the case of any person who fails to make payment when due, the Secretary shall also have a lien against any plant, animal, product or material thereafter imported, moved in interstate commerce or attempted to be exported by such person. The Secretary may, in case of nonpayment of the fees, late payment penalty or accrued interest, after giving reasonable notice of default to the person liable for payment of such assessments, sell at public sale after reasonable public notice, or otherwise dispose of, any such plant, animal, product, material, means of conveyance, or establishment upon which the Secretary of Agriculture has a lien pursuant to this section. If the sale proceeds exceed the fees due, any late payment penalty assessed, any accrued interest and the expenses of the sale, the excess shall be paid, in accordance with regulations of the Secretary, to the owner of the article sold upon the owner making application therefore with proof of ownership, within six months after such sale, and otherwise the excess shall be credited to accounts that incur the costs and shall remain available until expended without fiscal year limitation. The Secretary shall, pursuant to regulations as prescribed by the Secretary, suspend performance of services to persons who have failed to pay such fees, late payment penalty and accrued interest.

Sec. 215. All fees collected pursuant to the statutory authorities referred to in section 214 of this Act and any late payment penalties and accrued interest collected pursuant to this Title shall be credited to such accounts that incur the costs and shall remain available until expended without fiscal year limitation.

TITLE III

Sec. 301. The Secretary of Agriculture may prescribe such regulations as the Secretary deems necessary to carry out this Act.

Sec. 302. The Attorney General may bring an action for the recovery of fees, late payment penalties, and accrued interest which have not been paid in accordance with this Act against any person obligated for payment of such assessments under this Act in any United States district court or other United States court for any territory or possession in any jurisdiction in which such person is found or resides or transacts business, and such court shall have jurisdiction to hear and decide such action.

Sec. 303. (a) For purposes of this Act the term "person" means an individual, corportion, partnership, trust, association, or any other public or private entity, or any officer, employee, or agent thereof.

(b) For purposes of Title I of this Act, the term "vessel" does not include any ferry.

(c) For purposes of Title I of this Act, the term "customs territory of the United States" means the 50 States, the District of Columbia, and Puerto Rico.

(d) For purposes of Title I of this Act, the term "plant and animal quarantine laws" means one or more of the following: the Plant Quarantine Act of 1912, 7 U.S.C. 151 *et seq.;* the Federal Plant Pest Act, 7 U.S.C. 150aa *et seq.;* the Federal Noxious Weed Act of 1974, 7 U.S.C. 2801 *et seq.;* the Animal Quarantine Laws, 21 U.S.C. 101-105, 111-131, and 134-134h; the Honeybee Act, 7 U.S.C. 281 *et seq.;* section 306 of the Tariff Act of 1930, 19 U.S.C. 1306; and any other Act administered by the Secretary relating to plant or animal diseases or pests or noxious weeds.

(e) For purposes of Title II of this Act, the term "United States" means the several States of the United States, the District of Columbia, Guam, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, and all other territories and possessions of the United States.

Agricultural Protection Cost Recovery Act of 1987—Section-by-Section Analysis

Title I of the proposal authorizes the Secretary of Agriculture to assess a fee for each passenger arriving at or destined for a port in the customs territory of the United States aboard a commercial aircraft or vessel. Section 101 also authorizes the Secretary to assess fees for the arrival, or preclearance or preinspection of commercial vessels, commercial aircraft, commercial trucks, and railroad cars.

Section 102 requires persons issuing tickets for travel into the customs territory of the United States to collect the fee, and remit the fee within 31 days after the close of the calendar quarter in which the fee is collected. If the fee is not collected when the ticket is issued, the person providing transportation to the passenger must collect the fee before the passenger departs from the commercial aircraft or commercial vessel and give the passenger a receipt for the fee.

Section 103 authorizes the fees collected under section 101 to be deposited in a separate account of the Treasury to be known as the "Agricultural Quarantine Inspection User Fee Account." A penalty shall be assessed for late payments. Any late payment penalty and interest on such overdue fees will be deposited to the Agricultural Quarantine Inspection User Fee Account. From the account, the Secretary of Treasury will refund on a quarterly basis, to any appropriated account the costs incurred by the Secretary of Agriculture for the administration of the Act, and port activities or preclearance or preinspection activities carried out by the Secretary of Agriculture in connection with the enforcement of the plant and animal quarantine laws. Section 103 also requires the Secretary of Agriculture to adjust the fees provided in section 101 to reflect the actual costs for the administration of the Act, the activities carried out at ports in the United States and foreign preclearance or preinspection locations in connection with the enforcement of the plant and animal quarantine laws, and the maintenance of a reasonable balance in the Agricultural Quarantine Inspection User Fee Account.

Title II authorizes the assessment of fees for various activities relating to veterinary diagnostics, the importation and exportation of animals, animal products, and articles, the exportation of plants and plant products, and for carrying out the provisions of the Virus-Serum-Toxin Act.

Section 203, in addition to authorizing the assessment of fees to recover the costs of carrying out 21 U.S.C. 102, amends the first sentence of 21 U.S.C. 102 to authorize the Secretary of Agriculture to quarantine any animal imported into the United States at any port he or she may designate. Currently, the Secretary's authority to quarantine is limited to 21 U.S.C. 102 to ruminants and swine and in 21 U.S.C. 134c to animals which are or have been affected with or exposed to any communicable animal disease, or which have been vaccinated or otherwise treated for any communicable animal disease, or which the Secretary finds would be likely to introduce or disseminate any communicable animal disease, when the Secretary determines that the quarantine is necessary to protect the livestock or poultry of the United States.

Section 214 provides that payment of fees assessed pursuant to Title II shall be made by the person for whom an activity has been performed. The word "activity" as used in this section is intended to encompass any function performed by the Secretary for a person to enable such person to comply with requirements of the animal and plant quarantine and related laws which are amended by this title or the regulations of the Secretary promulgated pursuant to such laws. This section also authorizes the Secretary of Agriculture to assess a late payment penalty, imposes liens upon certain specified items, and authorizes the Secretary to sell items upon which the Secretary has imposed a lien, and to refuse services to persons who have not paid in full for previous services rendered. Further, any fees not paid when due shall accrue interest.

Section 215 requires the Secretary to credit all fees, any late payment penalty, or accrued interest collected pursuant to Title II to the accounts that incur the cost. The availability of such funds is to be without fiscal year limitation.

Title III authorizes the Secretary to prescribe regulations to carry out the Act.

Section 302 provides the Attorney General with authority to bring an action for recovery of assessments which have not been paid in accordance with this Act and delineates the jurisdiction and venue of the courts to hear and decide any action brought by the Attorney General pursuant to this Act.

Section 303(a) defines the word "person" as used in the Act to mean an individual, corporation, partnership, trust, association, or any other public or private entity, or any officer, employee, or agent thereof. Sections 303 (b)-(d) define, for purposes of Title I, the terms "vessel," "customs territory of the United States," and "plant and animal quarantine laws." "Vessel" is defined to exclude ferries. The "customs territory of the United States" means the 50 States, the District of Columbia, and Puerto Rico. The term "plant and animal quarantine laws" means one or more of the following: the Plant Quarantine Act of 1912, 7 U.S.C. 151 et seq.; the Federal Plant Pest Act, 7 U.S.C. 150aa et seq.; the Federal Noxious Weed Act of 1974, 7 U.S.C. 2801 et seq.; the Animal Quarantine Laws, 21 U.S.C. 101-105, 111-131, and 134-134h; the Honeybee Act, 7 U.S.C. 281 et seq.; section 306 of the Tariff Act of 1930, 19 U.S.C. 1306; and any other Act administered by the Secretary relating to plant or animal diseases or pests or noxious weeds. Section 303(e) defines the term "United States," for purposes of Title II, to mean the several States of the United States, the District of Columbia, Guam, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, and all other territories and possessions of the United States.

Department of Agriculture,
Office of the Secretary,
Washington, DC, July 7, 1987.

Hon. George Bush,
President of the Senate, Washington, DC.

Dear Mr. President: Transmitted herewith for the consideration of the Congress is a draft bill "To authorize the Secretary of Agriculture to recover costs of carrying out certain animal and plant health inspection programs, and for other purposes."

The Department of Agriculture recommends that the draft bill be enacted.

The purpose of this draft bill is to allow the Department to prescribe and collect fees to recover the costs incurred by the Department with respect to carrying out provisions of the laws which relate to veterinary diagnostics; the importation and exportation of animals, animal products and other articles; activities under the Virus-Serum-Toxin Act; port of entry, preclearance and preinspection activities; and the issuance of phytosanitary certificates for the exportation of plants and plant products. These activities, which include but are not limited to testing, inspection, certification, quarantine, examination of records, and cleaning and disinfection, benefit those persons who cause the Department to perform the activity. A 1981 report of the General Accounting Office (GAO Report CED 81-49) recommended that fees be assessed for several regulatory activities, including those relating to the importation and exportation of animals, because they are designed to aid in the orderly marketing of agricultural commodities and these activities are likely to provide special benefits to the industry. We believe the costs associated with these activities should not be borne by the general public.

In order to facilitate the collection of fees assessed, the draft bill would provide the Secretary with authority to assess a late payment penalty, impose certain liens, and refuse certain services. The draft bill would provide that overdue fees shall accrue interest.

The draft bill provides that funds collected under title II of the draft bill shall be credited to accounts that incur the costs and shall remain available until expended. Funds collected for port activities under title I of the draft bill will be credited to a special account in the Treasury from which the costs of the program will be paid. Under current procedures, most costs are financed from appropriated funds. Approximately $87.5 million in program costs will be recovered annually from the various fees should this draft bill become law.

An identical letter has been sent to the Speaker of the House.

The Office of Management and Budget advises that enactment of this proposed legislation would be in accord with the President's program.

Sincerely,

PETER C. MYERS,
Acting Secretary.

By Mr. KENNEDY (for himself and Mr. PELL):

S. 1817. An act to amend the Internal Revenue Code of 1986 to provide that gross income of an individual shall not include income from U.S. savings bonds which are transferred to an educational institution as payment for tuition and fees; to the Committee on Finance.

EDUCATION SAVINGS ACT

Mr. KENNEDY. Mr. President, for most Americans a college education is an important part of the American dream. But a recent survey found that 82 percent of the public believe that rising costs will soon put a college degree out of reach for most families.

Between 1980 and 1986, college tuition increased by 75 percent, while family income grew by 33 percent. Tuition at one of America's best colleges can easily cost $12,000 a year. For children born in 1987, the annual bill may be over $30,000 when they are ready for college. And that is just for tuition. Room, board, books, and supplies will add much more to the price. For all but the very wealthy, that is not a dream. It is a nightmare.

We cannot allow rising costs to put a college degree out of reach. Widespread access to higher education is the Nation's best hope for economic growth and social progress. Families must be able to afford the best possible education for their children.

The most effective way to do this is to encourage families to save money for future college expenses. But for many families, saving money is a difficult proposition. We are proposing, therefore, to create an incentive to save for education through the purchase of U.S. savings bonds.

We have never encouraged families to save for education. In fact, whether families put money away for a luxury cruise, a fur coat, a new car or a college education, they are taxed on their savings. That policy is out of touch with America's real priorities.

The program we propose today emphasizes the importance of saving for higher education. It is a simple, sensible way to help families save for college. It will give children security in their future, and a goal to strive for. It will not create a new Government bureaucracy or spending program.

Our plan works like this: If a family buys a U.S. savings bond and uses it to pay for their child's higher education, the interest earned on that bond will be tax free. Bonds will be turned over to an eligible higher education institution as payment for tuition. At the present time, the tax on interest earned on savings bonds is deferred until the bond is redeemed. Our plan would eliminate the tax completely, and give families an incentive to save for college expenses by investing in America.

Savings bonds are an ideal investment to help American parents invest in their children's education.

First—and most important in these uncertain times—savings bonds are a safe investment. They are backed by the full faith and credit of the U.S. Government. There is no risk that savings will be lost.

Second, our proposal does not require complex rules or new institutions. If a child does not attend college, the bond is still fully redeemable and the proceeds can be used for any purpose. The interest is then subject to tax in the normal fashion.

Third, savings bonds are a familiar way to save. According to recent surveys, lower- and middle-income families, those with children under 18, and minorities prefer savings bonds to stocks, mutual funds, and other instruments of savings. To ensure that those who most need help will be the ones who benefit, the tax exemption will be reduced beginning at an income of $75,000 and will be completely phased out at $150,000.

Fourth, savings bonds are convenient. About 50,000 companies encourage employees to purchase them through payroll deductions—an effective method to put money away for the future. Approximately 75 percent of savings bonds are now bought through payroll deductions. Bonds are also readily available at banks and other financial institutions and can even be bought through the mail. Parents would have easy access to the program—with no application to fill out or difficult choices to make.

And finally, the plan will encourage the sale of savings bonds. If the sale of savings bonds grows by 10 percent, for example, that will generate $1 billion.

Our proposal makes significant improvements over other current proposals for college saving. Some States are offering programs of their own, but they can only be used within the State. The creation of a new form of savings bonds for education has also been suggested, but we see no need for such duplication and complexity, when regular U.S. savings bonds can do the same job better.

The Federal commitment to college aid is well-established. The Reagan administration's efforts to cut back student assistance programs have failed; if anything, those efforts have solidified the Federal role. Student aid programs should be increased, not placed on the chopping block.

The Federal role is, and must remain, focused on financial resources for economically disadvantaged students, and Senator PELL and I are strong supporters of that role. But rising costs threaten to put a college degree out of reach of average families, and we must find a safe, convenient, and simple way to help them meet tuition.

We have long known the value of investing in education—and the cost of not doing so. Today we link two longstanding American institutions—the U.S. education system and U.S. savings bonds. Each will benefit the other, and make America stronger in the future.

By Mr. REID:

S.J. Res. 208. Joint resolution designating June 12 to June 19, 1988, as "Old Cars Week;" to the Committee on the Judiciary.

OLD CARS WEEK

Mr. REID. Mr. President, I am today introducing a resolution to designate June 12 to June 19, 1988, as "Old Cars Week." Let us honor those who preserve our history by engaging in the hobby of collecting, restoring, and maintaining motor vehicles of historic and special interest.

The development of the automobile is an important chapter not only in the history of transportation, but also in the history of our Nation. Cars have become a part of our way of life. Indeed, statistics indicate that 90 percent of American households have cars, with 50 percent owning more than one. In fact, Americans own 36 percent of the world's automobiles and drive about 1.6 trillion miles a year. Truly, we are a Nation on wheels.

The automobile is an integral part of American culture. Our country's highway system connects our States and promotes a national community, while affording families the opportunity to enjoy long vacations by automobile and see the beauty of our country first hand. In America we have drive-in restaurants, drive-in theaters and drive-through banks. The automobile is ingrained in our society.

For these reasons, I join my colleague in the House, Representative BOB DORNAN, in sponsoring a resolution to designate June 12-19, 1988 as "Old Cars Week."

I encourage my colleagues in the Senate to cosponsor this resolution. Let us celebrate the automobile and in doing so celebrate an important aspect of American culture and history.

ADDITIONAL COSPONSORS

S. 249

At the request of Mr. DODD, the name of the Senator from Connecticut [Mr. WEICKER] was added as a cosponsor of S. 249, a bill to grant employees parental and temporary medical leave under certain circumstances, and for other purposes.

S. 465

At the request of Mr. METZENBAUM, the name of the Senator from New York [Mr. MOYNIHAN] was added as a cosponsor of S. 465, a bill to amend chapter 44, title 18, United States Code, to prohibit the manufacture, importation, sale or possession of firearms, not detectable by metal detection and x-ray systems commonly used at airports in the United States.

S. 1085

At the request of Mr. GLENN, the name of the Senator from South Carolina [Mr. HOLLINGS] was added as a cosponsor of S. 1085, a bill to create an independent oversight board to ensure the safety of U.S. Government nuclear facilities, to apply the provisions of OSHA to certain Department of Energy nuclear facilities, to clarify the jurisdiction and powers of Government agencies dealing with nuclear wastes, to ensure independent research on the effects of radiation on human beings, and for other purposes.

S. 1109

At the request of Mr. HARKIN, the names of the Senator from Missouri [Mr. DANFORTH] and the Senator from Minnesota [Mr. DURENBERGER] were added as cosponsors of S. 1109, a bill to amend the Federal Food, Drug, and Cosmetic Act, to require certain labeling of foods which contain tropical fats.

S. 1519

At the request of Mr. LAUTENBERG, the names of the Senator from Kansas [Mr. DOLE] and the Senator from North Dakota [Mr. BURDICK] were added as cosponsors of S. 1519, a bill to authorize the President of the United States to award congressional gold medals to Lawrence Doby and posthumously to Jack Roosevelt Robinson in recognition of their accomplishments in sport and in the advancement of civil rights, and to authorize the Secretary of the Treasury to sell bronze duplicates of those medals.

S. 1522

At the request of Mr. RIEGLE, the names of the Senator from West Virginia [Mr. ROCKEFELLER] and the Senator from Maryland [Ms. MIKULSKI] were added as cosponsors of S. 1522, a bill to amend the Internal Revenue Code of 1986, to extend through 1992 the period during which qualified mortgage bonds and mortgage certificates may be issued.

S. 1578

At the request of Mr. STEVENS, the name of the Senator from Rhode Island [Mr. PELL] was added as a cosponsor of S. 1578, a bill to amend chapter 83 of title 5, United States Code, to provide civil service retirement credit for service performed under the Railroad Retirement Act, and for other purposes.

S. 1600

At the request of Mr. FORD, the names of the Senator from Maryland [Ms. MIKULSKI], the Senator from Montana [Mr. MELCHER], and the Senator from Ohio [Mr. GLENN] were added as cosponsors of S. 1600, a bill to enhance the safety of air travel through a more effective Federal Aviation Administration, and for other purposes.

S. 1663

At the request of Mr. DODD, the name of the Senator from Rhode Island [Mr. CHAFEE] was added as a cosponsor of S. 1663, a bill to reauthorize the Child Abuse Prevention and Treatment Act and other related acts, dealing with adoption opportunities and family violence.

S. 1742

At the request of Mr. DOMENICI, the names of the Senator from New York [Mr. MOYNIHAN] and the Senator from New Mexico [Mr. BINGAMAN] were added as cosponsors of S. 1742, a bill to provide for the minting and circulation of one dollar coins, and for other purposes.

S. 1752

At the request of Mr. BAUCUS, the names of the Senator from Nevada [Mr. HECHT], the Senator from Montana [Mr. MELCHER], the Senator from Minnesota [Mr. DURENBERGER], and the Senator from Alabama [Mr. HEFLIN] were added as cosponsors of S. 1752, a bill to establish a Commission to study the effects of deregulation of the airline industry.

S. 1788

At the request of Mr. TRIBLE, the name of the Senator from Michigan [Mr. LEVIN] was added as a cosponsor of S. 1788, a bill to protect the aquatic environment from certain chemicals used in antifoulant paints, and for other purposes.

SENATE JOINT RESOLUTION 172

At the request of Mr. BRADLEY, the names of the Senator from Missouri [Mr. BOND], the Senator from Mississippi [Mr. COCHRAN], the Senator from Utah [Mr. GARN], the Senator from Texas [Mr. GRAMM], the Senator from Indiana [Mr. LUGAR], the Senator from Oregon [Mr. PACKWOOD], the Senator from Washington [Mr. ADAMS], the Senator from Oklahoma [Mr. BOREN], the Senator from Arkansas [Mr. BUMPERS], the Senator from Illinois [Mr. DIXON], the Senator from Georgia [Mr. FOWLER], the Senator from Ohio [Mr. GLENN], the Senator from South Carolina [Mr. HOLLINGS], the Senator from Michigan [Mr. LEVIN], the Senator from West Virginia [Mr. ROCKEFELLER], and the Senator from Alabama [Mr. SHELBY] were added as cosponsors of Senate Joint Resolution 172, a joint resolution to designate the period commencing February 21, 1988, and ending February 27, 1988, as "National Visiting Nurse Association Week."

SENATE JOINT RESOLUTION 196

At the request of Mr. PACKWOOD, the names of the Senator from Arizona [Mr. DECONCINI] and the Senator from Indiana [Mr. QUAYLE] were added as cosponsors of Senate Joint Resolution 196, a joint resolution to designate February 4, 1988, as "National Women in Sports Day."

SENATE JOINT RESOLUTION 203

At the request of Mr. D'AMATO, the name of the Senator from Texas [Mr. GRAMM] was added as a cosponsor of Senate Joint Resolution 203, a joint resolution calling upon the Soviet Union immediately to grant permission to emigrate to all those who wish to join spouses in the United States.

SENATE JOINT RESOLUTION 205

At the request of Mr. MOYNIHAN, the names of the Senator from Illinois [Mr. SIMON], the Senator from Minnesota [Mr. BOSCHWITZ], the Senator from Michigan [Mr. LEVIN], the Senator from Massachusetts [Mr. KENNEDY], the Senator from New Hampshire [Mr. RUDMAN], the Senator from Maryland [Mr. SARBANES], the Senator from Pennsylvania [Mr. SPECTER], the Senator from Wyoming [Mr. WALLOP], the Senator from Iowa [Mr. GRASSLEY], the Senator from Indiana [Mr. QUAYLE], the Senator from South Dakota [Mr. DASCHLE], the Senator from California [Mr. WILSON], the Senator from South Carolina [Mr. HOLLINGS], the Senator from Vermont [Mr. LEAHY], the Senator from Delaware [Mr. ROTH], the Senator from Idaho [Mr. SYMMS], the Senator from Maine [Mr. MITCHELL], the Senator from Mississippi [Mr. COCHRAN], the Senator from Oklahoma [Mr. BOREN], the Senator from Delaware [Mr.

BIDEN], the Senator from West Virginia [Mr. BYRD], the Senator from Kansas [Mr. DOLE], the Senator from Rhode Island [Mr. PELL], the Senator from North Carolina [Mr. HELMS], the Senator from Colorado [Mr. WIRTH], the Senator from Nevada [Mr. HECHT], the Senator from Arizona [Mr. MCCAIN], the Senator from New York [Mr. D'AMATO], the Senator from New Jersey [Mr. LAUTENBERG], the Senator from Rhode Island [Mr. CHAFEE], the Senator from Connecticut [Mr. DODD], the Senator from Virginia [Mr. WARNER], and the Senator from Tennessee [Mr. GORE] were added as cosponsors of Senate Joint Resolution 205, a joint resolution expressing the sense of the Congress that United Nations General Assembly Resolution 3379 (XXX) should be overturned, and for other purposes.

SENATE RESOLUTION 301—ACKNOWLEDGING THE PUBLIC SERVICE OF JUDGE ROBERT H. BORK

Mr. ARMSTRONG (for himself and Mr. HELMS) submitted the following resolution; which was ordered to lie over under the rule:

S. RES. 301

Whereas the Senate of the United States, on September 9, 1987, resolved to "avoid negative attacks calculated to impugn the character, integrity, or patriotism of a candidate"; and

Whereas an unprecedented negative campaign was launched against the nomination to the Supreme Court of Judge Bork and was fueled with millions of dollars from special interest groups, including tax-exempt organizations; and

Whereas that campaign has set a deplorable precedent for the politicization of our courts and for future attempts to control their decisions; and

Whereas the Senate has, on two previous occasions, unanimously confirmed Robert Bork to high federal office, first as Solicitor General of the United States and then to his present position on the U.S. Court of Appeals for the District of Columbia Circuit: Now, therefore, be it

Resolved That:

(1) The Senate assures Judge Robert Bork of our admiration for the integrity and intelligence he has demonstrated in his long and distinguished career as a legal scholar, dedicated teacher, and eminent jurist.

(2) The Senate thanks Judge Robert Bork for his extraordinary testimony during his prolonged confirmation hearings, by which he focused national attention, during this bicentennial year of our Constitution, on the ideals of ordered liberty which gave life to that document in 1787 and give vitality to it now.

(3) The Senate extends to Judge Robert Bork, and to his family, our esteem for the grace and courage they have shown during the confirmation process just ended.

(4) The Senate affirms its determination that, in its confirmation hearings and in all other proceedings, witnesses will be accorded proper respect and need never fear intimidation or reprisal for their testimony.

SENATE RESOLUTION 302—EXPRESSING THE CONCERN OF THE SENATE REGARDING THE SITUATION IN FIJI

Mr. PRESSLER submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 302

Whereas the Nation of Fiji has entered into a period of unparalleled challenge to its democratic system;

Whereas Fiji enjoyed a government based upon free, fair and openly competitive elections from 1970 until May 14, 1987;

Whereas the recently elected Prime Minister of Fiji, Dr. Timoci Bavandra (a native Fijian), and his coalition government composed of both native Fijians and Indian Fijians have been deposed by a military coup led by Colonel Sitiveni Rambuka;

Whereas the military government of Colonel Rambuka has announced its intention to establish a political system that denies the principle of one person/one vote for all Fijians; and

Whereas the establishment and maintenance of democratic political institutions in the Pacific Ocean region is in the national interest of the United States of America: Now, therefore, be it

Resolved, That the United States Senate—

(1) supports the entitlement of the people of Fiji to democratic political institutions based upon free, fair and openly contested elections;

(2) opposes the usurpation of democracy in Fiji; and

(3) supports reconsideration of the Fijian sugar import quota by the United States Government as an expression of opposition to the violation of democratic principles and processes in Fiji.

Mr. PRESSLER. Mr. President, on May 14 of this year, the Royal Fiji Military Forces, under the direction of Col. Sitiveni Rambuka, overthrew the duly elected Government of Fiji. That action ended over 16 years of successful political democracy in that small island nation.

Since May, political, economic, and social conditions in Fiji have deteriorated seriously. Despite the entreaties and appeals of Fiji's partners in the British Commonwealth, Fiji's military rulers have refused to restore the rights guaranteed to all Fijians under Fiji's 1970 Constitutional Act. In fact, at a meeting of its members in Vancouver, Canada, last week, the Commonwealth voted to expel Fiji from the organization.

It is clear that the military regime of Col. Sitiveni Rambuka has no intention of honoring the right of nonnative Fijians to enjoy the liberties guaranteed by Fiji's constitution. In particular, the Rambuka regime is determined to unilaterally rewrite that constitution to guarantee a minority of Fijian citizens political supremacy in perpetuity.

Fiji's ethnic composition is unique. No other nation has quite the same racial circumstances. Yet, for those who honor democracy and recognize its practical worth in managing the affairs of a society of diverse peoples, those circumstances are not an acceptable excuse to violate the civil rights and liberties of full citizens. Any government based on the negative principle of minority rule by a particular ethnic group is abhorrent to a world that is gradually becoming more democratic.

Therefore, I believe the United States Senate should go on record as opposing what has occurred in Fiji. My resolution would do just that. Quite simply, it says that the United States Senate supports the restoration of democracy for all Fijians. It also expresses support for a reconsideration of Fiji's American sugar quota by the United States Government. This action would be consistent with the economic sanctions already adopted by Australia, New Zealand, and other Commonwealth nations. It is also consistent with our administration's suspension of the very small amount of assistance we provide Fiji. This regime must quickly see and feel the penalties that will fall upon all Fijians if democracy is not restored soon. The longer we delay our denunciation of the abolition of democracy in Fiji, the more encouragement it will give to the enemies of democracy.

AMENDMENTS SUBMITTED

PRICE-ANDERSON ACT AMENDMENTS

JOHNSTON (AND McCLURE) AMENDMENT NO. 1038

(Ordered to lie on the table.)

Mr. JOHNSTON (for himself and Mr. MCCLURE) submitted an amendment intended to be proposed by them to the bill (S. 748) to amend the Atomic Energy Act of 1954, as amended, to establish a comprehensive, equitable, reliable, and efficient mechanism for full compensation of the public in the event of an accident resulting from the activities undertaken under contract with the Department of Energy involving nuclear materials; as follows:

Strike all after the enacting clause and insert in lieu thereof the following:

SHORT TITLE

SECTION 1. This Act may be cited as the "Price-Anderson Act Amendments Act of 1987".

FINDING AND PURPOSES

SEC. 2. (a) The Congress finds and declares that—

(1) an equitable, efficient, reliable, and comprehensive system, established in advance of any accident involving nuclear materials subject to the Atomic Energy Act of 1954, as amended, that provides a mechanism for full compensation of the public in the event of such an accident is in the public interest;

(2) the basic framework established under section 170 of the Atomic Energy Act of 1954, as amended, and the essential elements of that approach, have achieved those fundamental objectives and, accordingly, should be retained;

(3) the responsibility of the Federal Government for the storage, disposal, and transportation of, and research and development on, radioactive waste makes it imperative that the Federal Government explicitly assume its responsibility in this Act to provide full, equitable, and efficient compensation to the public for all damages and injuries arising out of a nuclear incident relating to such activities, including activities pursuant to the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101 et seq.) and activities authorized as Waste Isolation Pilot Project (Project 77-13-f) pursuant to fiscal year 1980 Department of Energy for National Security Programs Appropriations (Public Law 96-164); and

(4) based upon the experience gained in implementing the present system of providing compensation for accidents involving nuclear materials, and in light of developments that have taken place since the Congress last extended and amended such system, it is appropriate and in the public interest for the Congress to consider such experience and developments and to make such changes as will advance the fundamental objectives set forth in clause (1).

(b) The purposes of this Act are to—

(1) establish an equitable, efficient, reliable, and comprehensive system, in advance of any accident involving nuclear materials, which provides a mechanism for full compensation of the public in the event of such an accident for both present and future nuclear material activities; and

(2) incorporate in such system the experience gained and the developments that have taken place since the Congress last extended and amended the system.

FINANCIAL PROTECTION

SEC. 3. Section 170 b. of the Atomic Energy Act of 1954, as amended, is amended to read as follows:

"b. (1) The amount of financial protection required shall be the amount of liability insurance available from private sources, except that the Commission may establish a lesser amount on the basis of criteria set forth in writing, which it may revise from time to time, taking into consideration such factors as—

"(A) the cost and terms of private insurance;

"(B) the type, size, and location of the licensed activity and other factors pertaining to the hazard; and

"(C) the nature and purpose of the licensed activity.

For facilities designed for producing substantial amounts of electricity and having a rated capacity of one hundred thousand electrical kilowatts or more, the amount of financial protection required shall be the maximum amount available at reasonable cost and on reasonable terms from private sources. Such financial protection may include private insurance, private contractual indemnities, self insurance, other proof of financial responsibility, or a combination of such measures and shall be subject to such terms and conditions as the Commission may, by rule, regulation, or order, prescribe.

"(2)(A) In prescribing such terms and conditions for licensees required to have and maintain financial protection equal to the maximum amount of liability insurance available from private sources, the Commission shall, by rule initially prescribed not later than twelve months from the date of enactment of the Price-Anderson Act Amendments of 1987, include, in determining such maximum amount, private liability insurance available under an industry retrospective rating plan providing for premium charges deferred in whole or major part until public liability from a nuclear incident exceeds or appears likely to exceed the level of the primary financial protection required of the licensee involved in the nuclear incident: *Provided*, That such insurance is available to, and required of, all of the licensees of such facilities without regard to the manner in which they obtain other types or amounts of such financial protection. The standard deferred premium which may be charged following any nuclear incident under such a plan shall be not more than $60,000,000 in 1987 dollars (but not more than $12,000,000 in 1987 dollars in any one year) for each facility required to maintain the maximum amount of financial protection.

"(B) The amount which may be charged a licensee under the industry retrospective rating plan required pursuant to subparagraph (A) of this paragraph following any nuclear incident shall not exceed the licensee's pro rata share of the aggregate public liability claims and costs arising out of the nuclear incident. Payment of any State premium taxes which may be applicable to any deferred premium provided for in this Act shall be the responsibility of the licensee and shall not be included in the retrospective premium established by the Commission. The Commission is authorized to establish a maximum amount which the aggregate deferred premiums charged for each facility within one calendar year may not exceed. The Commission may establish amounts less than the standard premium for individual facilities taking into account such factors as the facility's size, location, and other factors pertaining to the hazard.

"(C) The Commission shall establish such requirements as are necessary to assure availability of funds to meet any assessment of deferred premiums within a reasonable time when due, and may provide reinsurance or shall otherwise guarantee the payment of such premiums in the event it appears that the amount of such premiums will not be available on a timely basis through the resources of private industry and insurance. Any agreement by the Commission with a licensee or indemnitor to guarantee the payment of deferred premiums may contain such terms as the Commission deems appropriate to carry out the purposes of this section and to assure reimbursement to the Commission for its payments made due to the failure of such licensee or indemnitor to meet any of its obligations arising under or in connection with financial protection required under this subsection including without limitation terms creating liens upon the licensed facility and the revenues derived therefrom or any other property or revenues of such licensee to secure such reimbursement and consent to the automatic revocation of any license.

"(D)(i) If the aggregate annual deferred premiums assessed pursuant to paragraph (2)(A) of this subsection for a nuclear incident are insufficient to indemnify public liability claims resulting from such incident in a timely manner as such public liability claims arise, the Commission is authorized to issue, and shall request the Congress to appropriate sufficient funds for issuing, obligations to the Secretary of the Treasury for the purpose of compensating such claims, in such forms and denominations, bearing such maturities, and subject to such terms and conditions as may be agreed to by the Commission and the Secretary of the Treasury.

"(ii) The aggregate amount of such obligations, including any interest to be paid on such obligations, shall not exceed the balance of deferred premiums to be assessed pursuant to paragraph (2)(A) of this subsection for such nuclear incident.

"(iii) With respect to liability for a nuclear incident covered by an industry retrospective rating plan required pursuant to this subsection, the aggregate payments in any single year by or on behalf of persons indemnified shall not be required to exceed the amount of financial protection provided in that year pursuant to paragraph (2)(A) of this subsection.

"(iv) The funds provided by financial protection pursuant to this subsection in any year by or on behalf of such persons indemnified and, where appropriate, the funds provided as a result of the issuance of obligations pursuant to clause (i) of this paragraph, shall be the exclusive source of payments for public liability claims where such liability does not exceed the amount of financial protection required under section 170b.

"(v) The total of obligations issued pursuant to clause (i) of this subparagraph for any given nuclear incident, including any interest to be paid on such obligations, shall not exceed amounts provided in appropriation Acts.

"(vi) Redemption of obligations issued pursuant to clause (i) of this subparagraph, including any interest to be paid on such obligations, shall be made by the Commission from the balance of deferred premiums to be assessed pursuant to paragraph (2)(A) of this subsection as a result of the nuclear incident for which such obligations were issued.

"(vii) Obligations issued pursuant to clause (i) of this subparagraph shall bear interest at a rate determined by the Secretary of the Treasury, which shall not be less than a rate determined by taking into consideration the average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of the obligations under this paragraph. The Secretary of the Treasury shall purchase any issued obligations, and for such purpose the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds for the sale of any securities issued under chapter 31 of title 31, United States Code, and the purposes for which securities may be issued under such Act are extended to include any purchase of such obligations. The Secretary of the Treasury may at any time sell any of the obligations acquired by him under this paragraph. All redemptions, purchases, and sales by the Secretary of the Treasury of obligations under this pragraph shall be treated as public debt transactions of the United States.".

SEC. 4. INDEMNIFICATION AGREEMENTS FOR LICENSEES OF NUCLEAR REGULATORY COMMISSION.

Section 170c. of the Atomic Energy Act of 1954, as amended, is amended by striking "August 1, 1987" each place it appears and inserting "August 1, 2017.

INDEMNIFICATION AGREEMENTS FOR ACTIVITIES UNDERTAKEN UNDER CONTRACT WITH THE DEPARTMENT OF ENERGY

SEC. 5. Section 170d. of the Atomic Energy Act of 1954, as amended, is amended to read as follows:

"d. (1)(A) In addition to any other authority the Secretary of the Department of Energy (hereinafter in this section referred to as the Secretary) may have, the Secretary shall until August 1, 2017, enter into agreements of indemnification with its contractors for the construction or operation of production or utilization facilities or other activities under contracts for the benefit of the United States involving activities under the risk of public liability for a nuclear incident.

"(B)(i) The authority conferred upon the Secretary pursuant to subparagraph (A) to enter into agreements of indemnification with contractors shall include contracts entered into by the Secretary for the purpose of carrying out such activities as the Secretary is authorized to undertake, pursuant to this Act or any other law, involving the storage or disposal of spent nuclear fuel, high-level radioactive waste, or transuranic waste, including the transportation of such materials to a storage or disposal site or facility, and the construction and operation of any such site or facility. For all such activities, the authority conferred upon the Secretary pursuant to subsection 170 d. (1)(A) shall be the exclusive means of indemnification under this section.

"(ii) For the purpose of compensating public liability claims, as defined in section 11 w. of this Act, arising out of activities involving the storage or disposal of spent nuclear fuel, high-level radioactive waste, or transuranic waste produced as a result of the generation of electricity in a civilian nuclear power reactor, including the transportation of such materials to a storage or disposal site or facility, and the construction and operation of any such site or facility, the Secretary shall make available such funds as may be necessary, in an amount not to exceed the aggregate level of liability for a surge nuclear incident established under subsection e(1)(A), from the nuclear waste fund established pursuant to section 302 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10222).

"(iii) Public liability claims arising out of activities involving the storage or disposal of all other spent nuclear fuel, high-level radioactive waste, or transuranic waste not specified in clause (ii), including the transportation of such materials to a storage or disposal site or facility, and the construction and operation of any such site or facility, shall be compensated in accordance with the provisions of this Act, and from the same source of funds applicable to all other contractors indemnified pursuant to this subsection.

"(iv)(I) In the event of a nuclear incident that arises out of or results from or occurs in the course of activities undertaken by the Secretary in connection with the storage or disposal of spent nuclear fuel, high-level radioactive waste, or transuranic waste, including the transportation of such materials to a storage or disposal site or facility, and the construction and operation of any such site or facility, the Secretary shall determine the extent to which such incident involves materials produced as a result of the generation of electricity in a civilian nuclear power reactor, or materials resulting from other activities, or both, and based upon such determination, render a decision as to the appropriate source of funds, in accordance with clauses (ii) and (iii), to be used in compensating public liability claims.

"(II) The funds to be used to compensate public liability claims pursuant to this subparagraph shall be provided in a manner and in such amounts as are appropriate to ensure that the funds necessary to compensate such claims are shared on a pro rata basis, in accordance with the determination rendered pursuant to subclause (I). The decision on the sources of such funds shall be final and conclusive. Within ninety days of the date of enactment of the Price-Anderson Act Amendments Act of 1987, the Secretary shall promulgate standards and regulations for making the determinations required under this subparagraph.

"(2) In agreements of indemnification entered into pursuant to subsection 170 d. (1), the Secretary may require its contractor to provide and maintain financial protection of such a type and in such amounts as the Secretary shall determine to be appropriate to cover public liability arising out of or in connection with the contractual activity, and shall indemnify the persons indemnified against such claims above the amount of the financial protection required, in an amount equal to the aggregate level of liability for a single nuclear incident established under subsection e(1)(A), excluding costs of investigating and settling claims and defending suits for damage in the aggregate for all persons indemnified in connection with such contract and for each nuclear incident: *Provided*, That this amount of indemnity shall be reduced by the amount of the financial protection that the Secretary requires of the contractor.

"(3) Notwithstanding paragraph (2) of this subsection, if the maximum amount of financial protection required of licensees pursuant to subsection 170 a. is increased by the Commission, the amount of indemnity, together with any financial protection required of the contractor, shall at all times remain equal to the maximum amount of financial protection required of licensees pursuant to subsection 170 a. The amount of indemnity provided contractors pursuant to this subsection shall not, at any time, be reduced in the event that the maximum amount of financial protection required of licensees is reduced.

"(4) In the case of nuclear incidents occurring outside the United States, the amount of the indemnity provided by the Secretary pursuant to this subsection shall not exceed $100,000,000.

"(5) The provisions of this subsection may be applicable to lump sum as well as cost type contracts and to contracts and projects financed in whole or in part by the Secretary.

"(6) A contractor with whom an agreement of indemnification has been executed and who is engaged in activities connected with the underground detonation of a nuclear explosive device shall be liable, to the extent so indemnified under this section, for injuries or damage sustained as a result of such detonation in the same manner and to the same extent as would a private person acting as principal, and no immunity or defense founded in the Federal, State, or municipal character of the contractor or of the work to be performed under the contract shall be effective to bar such liability.

"(7) The amounts of indemnity for public liability under this subsection, together with the amount of any financial protection required, shall apply to any and all agreements of indemnification under which the Secretary or his predecessor may be required to indemnify any person, and all such agreements of indemnification shall be deemed to have been so modified as of the effective date of the Price-Anderson Act Amendments Act of 1987.

"(8) Any public liability claims arising in connection with agreements entered into pursuant to section 170 d. (1) and resulting from a nuclear incident involving nuclear material that has been illegally diverted from its intended place of confinement or intended transportation route shall be compensated in accordance with the provision of this subsection, in the event that:

"(A) the Secretary has title to such nuclear material; or

"(B) title to such material cannot be identified."

"(9) The Funds provided in accordance with agreements of indemnification under paragraph (1) shall be the exclusive source of payments for public liability claims where such liability does not exceed the aggregate level of liability established under subsection e(1)(A).".

AGGREGATE LIABILITY FOR A SINGLE NUCLEAR INCIDENT

SEC. 6. Section 170 e. of the Atomic Energy Act of 1954, as amended, is amended to read as follows:

"(e)(1)(A) With respect to nuclear incidents involving

"(i) licensees required to have and maintain financial protection equal to the maximum amount of liability insurance available from private sources, and

"(ii) contractors with whom the Secretary has entered into an agreement of indemnification, pursuant to subsection 170 d., the aggregate liability for a single nuclear incident of persons indemnified, including the reasonable costs of investigating and settling claims and defending suits for damage shall not exceed the maximum amount of financial protection required of licensees pursuant to subsection 170 a.: *Provided, however*, That the aggregate liability for nuclear incidents involving contractors with whom the Secretary has entered into an agreement of indemnification, pursuant to subsection 170 d.; shall not, at any time, be reduced in the event that the amount of financial protection required of licensees required to have and maintain financial protection equal to the maximum amount of liability insurance available from private sources is reduced.

"(B) With respect to nuclear incidents involving licensees other than those specified in subsection 170 e. (1)(A)(i), the aggregate liability for a single nuclear incident of persons indemnified, including the reasonable costs of investigating and settling claims and defending suits for damage, shall not exceed (i) the sum of $500,000,000 together with the amount of financial protection required of the licensee, or (ii) if the amount of financial protection required of the licensee exceeds $60,000,000, such aggregate liability shall not exceed the sum of $560,000,000 or the amount of financial protection required of the licensee, whichever amount is greater.

"(C) In the event of a nuclear incident involving damages in excess of the amount of aggregate liability, the Congress will thoroughly review the particular incident, in accordance with the procedures set forth in subsection 170 i., and will in accordance with such procedures, take whatever action is necessary, including approval of appropriate compensation plans, to compensate the public in full for all public liability claims resulting from a disaster of such magnitude.

"(2) With respect to any nuclear incident occurring outside of the United States to which an agreement of indemnification entered into under the provisions of subsection 170 d. is applicable, such aggregate liability shall not exceed the amount of $100,000,000 together with the amount of financial protection required of the contractor.".

CONGRESSIONAL REVIEW OF COMPENSATION PLANS

SEC. 7. Section 170 i. of the Atomic Energy Act of 1954, as amended, is amended to read as follows:

"i. (1) After any nuclear incident that will probably require payments by the United States under this section, the Secretary or the Commission as appropriate, shall make a survey of the causes and extent of damage, and shall submit such report forthwith to the Congress, to the Congressmen of the affected districts, to the Senators of the affected States, and, except for information which would cause serious damage to the national defense of the United States, to the public, to the parties involved, and to the courts. The Secretary and the Commission shall report annually to the Congress on the operations under this section.

"(2) Upon a determination by a court, pursuant to subsection 170 o., that public liability from a single nuclear incident may exceed the aggregate liability under subsection 170 e., the President of the United States shall, within ninety days after such determination, submit to the Congress—

"(A) a report setting forth the causes and extent of damage and the estimated requirements for full, equitable, and efficient compensation and relief of all claimants;

"(B) one or more compensation plans, containing a recommendation or recommendations as to the relief to be provided; and

"(C) any additional legislative authorities necessary to implement such compensation plan or plans.

"(3) Any compensation plan transmitted to the Congress pursuant to paragraph (2) shall bear an identification number and shall be transmitted to both Houses of Congress on the same day and to each House while it is in session.

"(4) No such compensation plan may be considered approved for purposes of subsection 170 e. (1) unless between the date of transmittal and the end of the first period of sixty calendar days of continuous session of Congress after the date on which such action is transmitted to such House, each House of Congress passes a resolution described in paragraph 6 of this subsection.

"(5) For the purpose of paragraph 4 of this subsection—

"(A) continuity of session is broken only by an adjournment of Congress sine die; and

"(B) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the sixty-day calendar period.

"(6)(A) This paragraph is enacted by Congress—

"(i) As an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of resolutions described by clause (B) and it supersedes other rules only to the extent that it is inconsistent therewith; and

"(ii) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of the House.

"(B) For purposes of this paragraph, the term 'resolution' means only a resolution of either House of Congress the matter after the resolving clause of which is as follows: "That the approves the compensation plan numbered submitted to the Congress on , 19 .", the first blank space therein being filled with the name of the resolving House and the other blank spaces being appropriately filled; but does not include a resolution which specifies more than one compensation plan.

"(C) A resolution once introduced with respect to a compensation plan shall immediately be referred to a committee (and all resolutions with respect to the same compensation plan shall be referred to the same committee) by the President of the Senate or the Speaker of the House of Representatives, as the case may be.

"(D)(i) If the committee to which a resolution with respect to a compensation plan has been referred has not reported it at the end of twenty calendar days after its referral, it shall be in order to move either to discharge the committee from further consideration of such resolution or to discharge the committee from further consideration with respect to such compensation plan which has been referred to the committee.

"(ii) A motion to discharge may be made only by an individual favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported a resolution with respect to the same compensation plan), and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

"(iii) If the motion to discharge is agreed to or disagreed to, the motion may not be renewed, nor may another motion to discharge the committee be made with respect to any other resolution with respect to the same compensation plan.

"(E)(i) When the committee has reported, or has been discharged from further consideration of, a resolution, it shall be at any time thereafter in order (even though a previous motion to the same effect has been discharged to) to move to proceed to the consideration of the resolution. The motion shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

"(ii) Debate on the resolution referred to in clause (i) of this subparagraph shall be limited to not more than ten hours, which shall be divided equally between those favoring and those opposing such resolution. A motion further to limit debate shall not be debatable. An amendment to, or motion to recommit, the resolution shall not be in order, and it shall not be in order to move to reconsider the vote by which such resolution was agreed to or disagreed to.

"(F)(i) Motions to postpone, made with respect to the discharge from committee, or the consideration of a resolution or motions to proceed to the consideration of other business, shall be decided without debate.

"(ii) Appeals from the decision of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedures relating to a resolution shall be decided without debate.".

SEC. 8. DATE OF EXEMPTION FROM FINANCIAL PROTECTION REQUIREMENT.

Section 170 k. of the Atomic Energy Act of 1954, as amended, is amended—

(1) by striking "August 1, 1987" each place it appears and inserting "August 1, 2017"

WAIVER OF DEFENSES

SEC. 9. (a) Section 170n. (1) of the Atomic Energy Act of 1954, as amended, is amended—

(1) by adding "or" at the end of subparagraph (c);

(2) by adding the following new paragraphs (d), (e) and (f).

"(d) arises out of or results from or occurs in the course of activities undertaken by the Secretary, including activities undertaken by contract, in connection with the storage or disposal of high-level radioactive waste, spent nuclear fuel, or transuranic waste, including the transportation of such materials to a storage or disposal site or facility, and the construction and operation of any such site or facility,".

"(e) arises out of or results from or occurs in the course of the construction, possession, or operation of any facility licensed under section 53, 63, or 81 of this Act, for which the Commission has imposed as a condition of the license a requirement that the licensee have and maintain financial protection pursuant to subsection 170a., or

"(f) arises out of or results from or occurs in the course of transportation of source material, byproduct material, or special nuclear material to or from any facility licensed under section 53, 63, or 81 of this Act, for which the Commission has imposed as a condition of the license a requirement that the licensee have and maintain financial protection pursuant to subsection 170 a."; and

(3) by striking all after "thereof" in clause (iii) to the end of the sentence.

(b) Subsection n. of section 170 of the Atomic Energy Act of 1954, as amended, is amended—

(1) in paragraph (1) by—

(A) inserting after "the Commission" the following: "or the Secretary, as appropriate,"; and

(B) striking out "a Commission" in clause (c) and insert in lieu thereof "a Department of Energy"; and

(2) in paragraph (2), by inserting after "the Commission" the following: "or the Secretary, as appropriate,".

JUDICIAL PROCEDURES FOR LIABILITY IN EXCESS OF FINANCIAL PROTECTION

SEC. 10. Section 170 o. of the Atomic Energy Act of 1954, as amended, is amended as follows:

(a) in paragraph (3) by inserting after "The Commission", both places such phrase appears the following: "or the Secretary, as appropriate"; and

(b) by striking out the text of paragraph (4) and inserting in lieu thereof the following: "The court shall review the costs associated with investigating, settling, prosecuting, and defending claims to determine whether such costs are reasonable and equitable and to determine whether the party seeking such costs has—

"(A) litigated in good faith;

"(B) avoided unnecessary duplication of effort with that of other parties similarly situated;

"(C) made frivolous claims on defenses; and

"(D) attempted to unreasonably delay the prompt settlement or adjudication of such claims.".

JUDICIAL REVIEW OF CLAIMS ARISING OUT OF A NUCLEAR INCIDENT

SEC. 11. (a) CONSOLIDATION OF CLAIMS.—Section 170 n. (2) of the Atomic Energy Act of 1954, as amended, is amended—

(1) in the first sentence—

(A) by striking "an extraordinary nuclear occurrence" each place it appears and inserting "a nuclear incident"; and

(B) by striking "the extraordinary nuclear occurrence" each place it appears and inserting "the nuclear incident";

(2) in the second sentence, by inserting after "court" the first place it appears the following: "(including any such action pending on the date of the enactment of the Price-Anderson Act Amendments of 1987)"; and

(3) by adding at the end the following new sentence: "In any action that is or becomes removable pursuant to this paragraph, a petition for removal shall be filed within the period provided in section 1446 of title 28, United States Code, or within the thirty-day period beginning on the date of the enactment of the Price-Anderson Act Amendments of 1987, whichever occurs later.".

(b) DEFINITION OF PUBLIC LIABILITY ACTION.—Section 11 of the Atomic Energy Act of 1954 (42 U.S.C. 2014), as previously amended by this Act, is further amended by adding at the end the following new subsection:

"hh. The term 'public liability action', as used in section 170, means any suit asserting public liability. A public liability action shall be deemed to be an action arising under section 170, and the substantive rules for decision in such action shall be derived from the law of the State in which the nuclear incident involved occurs, unless such law is inconsistent with the provisions of such section.".

(c) SPECIAL CASELOAD MANAGEMENT PANEL.—Section 170 n. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(n)) is amended by adding at the end the following new paragraph:

"(3)(A) Following any nuclear incident, the chief judge of the United States district court having jurisdiction under paragraph (2) with respect to public liability actions (or the judicial council of the judicial circuit in which the nuclear incident occurs) may appoint a special caseload management panel (in this paragraph referred to as the 'management panel') to coordinate and assign (but not necessarily hear themselves) cases arising out of the nuclear incident, if—

"(i) the United States district court having jurisdiction under paragraph (a) determines that the aggregate amount of public liability is likely to exceed the amount of primary financial protection available under subsection b.; or

"(ii) the chief judge of the United States district court (or the judicial council of the judicial circuit) determines that cases arising out of the nuclear incident will have an unusual impact on the work of the court.

"(B)(i) Each management panel shall consist only of members who are United States district judges or circuit judges.

"(ii) Members of a management panel may include any United States district judge or circuit judge of another district court or court of appeals, if the chief judge of such other district court or court of appeals consents to such assignment.

"(C) It shall be the function of each management panel—

"(i) to consolidate related or similar claims for hearing or trial;

"(ii) to establish priorities for the handling of different classes of cases;

"(iii) to assign cases to a particular judge or special master;

"(iv) to appoint special masters to hear particular types of cases, or particular elements or procedural steps of cases;

"(v) to promulgate special rules of court, not inconsistent with the Federal Rules of Civil Procedure, to expedite cases or allow more equitable consideration of claims;

"(vi) to implement such other measures, consistent with existing law and the Federal Rules of Civil Procedure, as will encourage the equitable, prompt, and efficient resolution of cases arising out of the nuclear incident; and

"(vii) to assemble and submit to the President such data, available to the court, as may be useful in estimating the aggregate damages from the nuclear incident.".

DATE OF REPORT TO CONGRESS BY NUCLEAR REGULATORY COMMISSION AND DEPARTMENT OF ENERGY

SEC. 12. Section 170 p. of the Atomic Energy Act of 1954, as amended, is amended by striking out "1983" and inserting in lieu thereof "2013, and the Secretary shall submit to the Congress by August 1, 1997, and every ten years thereafter,".

CONFORMING AMENDMENTS

SEC. 13. (a) Subsections g., h., j., and m. of section 170 of the Atomic Energy Act of 1954, as amended, are amended by inserting after "The Commission" or "the Commission" wherever they appear the following: "or the Secretary, as appropriate,".

(b) Subsection f. of section 170 of the Atomic Energy Act of 1954, as amended, is amended by striking "Commission" the first two times it appears and inserting in lieu thereof "Commission or the Secretary, as appropriate,".

PRESIDENTIAL COMMISSION ON CATASTROPHIC NUCLEAR ACCIDENTS

SEC. 14. Section 170 of the Atomic Energy Act of 1954 (42 U.S.C. 2210) is amended by adding at the end the following new subsection:

"q. PRESIDENTIAL COMMISSION ON CATASTROPHIC NUCLEAR ACCIDENTS.—(1) Not later than ninety days after the date of the enactment of the Price-Anderson Act Amendments of 1987, the President shall establish a commission (in this subsection referred to as the 'study commission') in accordance with the Federal Advisory Committee Act (5 U.S.C. App.) to study means of fully compensating victims of a catastrophic nuclear accident that exceeds the maximum amount of financial protection required of licensees covered by an industry retrospective rating plan required by subsection b., or the amount of aggregate public liability under subsection e., as appropriate.

"(2)(A) The study commission shall consist of not less than seven and not more than eleven members, who—

"(i) shall be appointed by the President; and

"(ii) shall be representative of a broad range of views and interests.

"(B) The members of the study commission shall be appointed in a manner that ensures that not more than a mere majority of the members are of the same political party.

"(C) Each member of the study commission shall hold office until the termination of the study commission, but may be removed by the President for inefficiency, neglect of duty, or malfeasance in office.

"(D) Any vacancy in the study commission shall be filled in the manner in which the original appointment was made.

"(E) The President shall designate one of the members of the study commission as chairperson, to serve at the pleasure of the President.

"(3) The study commission shall conduct a comprehensive study of appropriate means of fully compensating victims of a catastrophic nuclear accident that exceeds the maximum amount of financial protection required of licensees covered by an industry retrospective rating plan required by subsection b., or the amount of aggregate public liability under subsection e., as appropriate, and shall submit to the Congress a final report setting forth—

"(A) recommendations for any changes in the laws and rules governing the liability or civil procedures that are necessary for the equitable, prompt, and efficient resolution and payment of all valid damage claims, including the advisability of adjudicating public liability claims through an administrative agency instead of the judicial system;

"(B) recommendations for any standards or procedures that are necessary to establish priorities for the hearing, resolution, and payment of claims when awards are likely to exceed the amount of funds available within a specific time period; and

"(C) recommendations for any special standards or procedures necessary to decide and pay claims for latent injuries caused by the nuclear incident.

"(4)(A) The Chairperson of the study commission may appoint and fix the compensation of a staff of such persons as may be necessary to discharge the responsiblities of the study commission, subject to the applicable provisions of the Federal Advisory Committee Act (5 U.S.C. App.) and title 5, United States Code.

"(B) to the extent permitted by law and requested by the chairperson of the study commission, the Administrator of General Services shall provide the study commission with necessary administrative services, facilities, and support on a reimbursable basis.

"(C) The Attorney General, the Secretary of Health and Human Services, and the Director of the Federal Emergency Management Agency shall, to the extent permitted by law and subject to the availability of funds, provide the study commission with such facilities, support, funds and services, including staff, as may be necessary for the effective performance of the functions of the study commission.

"(D) The study commission may request any Executive agency to furnish such information, advice, or assistance as it determines to be necessary to carry out its functions. Each such agency is directed, to the extent permitted by law, to furnish such information, advice, or assistance upon request by the chairperson of the study commission.

"(E) Each member of the study commission may receive compensation at the maximum rate now or hereafter prescribed by law for each day such member is engaged in the work of the study commission. Each member may also receive travel expenses, including per diem in lieu of subsistence under sections 5702 and 5703 of title 5, United States Code.

"(F) The functions of the President under the Federal Advisory Committee Act (5 U.S.C. App.) that are applicable to the study commission, except the function of reporting annually to the Congress, shall be performed by the Administrator of General Services.

"(5) The final report required in paragraph (3) shall be submitted to the Congress not later than the expiration of the two-year period beginning on the date of the enactment of the Price-Anderson Act Amendments of 1987.

"(6) The study commission shall terminate upon the expiration of the two-month period beginning on the date on which the final report required in paragraph (3) is submitted.".

LIABILITY OF LESSORS

SEC. 15. Section 170 of the Atomic Energy Act of 1954, as amended by this Act, is further amended by adding at the end the following new subsection:

"r. LIMITATION ON LIABILITY OF LESSORS.—No person under a bona fide lease of any utilization or production facility (or part thereof or undivided interest therein) shall be liable by reason of an interest as lessor of such production or utilization facility, for any legal liability arising out of or resulting from a nuclear incident resulting from such facility, unless such facility is in the actual possession and control of such person at the time of the nuclear incident giving rise to such legal liability.".

DEFINITIONS

SEC. 16. (a) Subsection s. of section 11 of the Atomic Energy Act of 1954, as amended, is amended by adding at the end thereof the following: "In the event that the Secretary of Energy, in carrying out any activity that the Secretary is authorized or directed to undertake pursuant to this Act or any other law involving the risk of public liability for a nuclear incident as a result of the storage or disposal of, or research and development on, spent nuclear fuel, high-level radioactive waste, or transuranic waste (including the transportation of such materials to a storage or disposal site or facility, and the construction and operation of any such site or facility), undertakes such activity in a manner that involves the actual physical handling of spent nuclear fuel, high-level radioactive waste, or transuranic waste by the Secretary, the Secretary shall be considered as if he were a contractor with whom an indemnity agreement has been entered into pursuant to subsection 170 d. of this Act.".

(b) Subsection t. of section 11 of the Atomic Energy Act of 1954, as amended, is amended in clause (1) by inserting after "and any other person" the following: ", as defined in subsection (s),".

(c) Section 11 of the Atomic Energy Act of 1954, as amended, is amended by adding at the end thereof the following new subsection:

"ee. As used in section 170, the term '1987 dollars' means in any year an amount that is adjusted to reflect the effects of inflation for the period between such year and the year of the enactment of the Price-Anderson Act Amendments Act of 1987. The rate of inflation shall be measured by the percentage change in the implicit price deflator for the Gross National Product published by the United States Department of Commerce.".

PUNITIVE DAMAGES

SEC. 17. Section 170 of the Atomic Energy Act of 1954, as amended, is further amended by adding a new subsection 170 s. as follows:

"s. (1)(A) No court may award exemplary or punitive damages under State law in any action with respect to a nuclear incident against a person on behalf of whom the United States is obligated to make payments under an agreement of indemnification covering such incident.

"(B) Subparagraph (A) applies to any nuclear incident or evacuation covered by an agreement of indemnification under—

"(i) subsection 170 c. with a licensee of the Commission that is required to maintain less than the maximum amount of financial protection;

"(ii) subsection 170 d.; and

"(iii) subsection 170 k.

"(2) Nothing in this subsection affects the authority of any court to award exemplary or punitive damages under State law in any instance other than an instance subject to paragraph (1).".

PRECAUTIONARY EVACUATIONS

SEC. 18. (a) COSTS INCURRED BY STATE GOVERNMENTS.—Section 11 w. of the Atomic Energy Act of 1954 is amended by inserting after "nuclear incident" the first place it appears the following: "or precautionary evacuation (including all reasonable additional costs incurred by a State, or a political subdivision of a State, in the course of responding to a nuclear incident or a precautionary evacuation)".

(b) DEFINITION.—Section 11 of the Atomic Energy Act of 1954, as previously amended by this Act, is further amended by adding at the end the following new subsection:

"ff. The term 'precautionary evacuation' means an evacuation of the public within a specified area near a nuclear facility, or the transportation route in the case of an accident involving transportation of source material, special nuclear material, byproduct material, high-level radioactive waste, spent nuclear fuel, or transuranic waste to or from a production or utilization facility, if the evacuation is—

"(1) the result of any event that is not classified as a nuclear incident but that poses imminent danger of bodily injury or property damage from the radiological properties of source material, special nuclear material, byproduct material, high-level radioactive waste, spent nuclear fuel, or transuranic waste, and causes an evacuation; and

"(2) initiated by an official of a State or a political subdivision of a State, who is authorized by State law to initiate such an evacuation and who reasonably determined that such an evacuation was necessary to protect the public health and safety.".

(c) LIMITATION.—Section 170 of the Atomic Energy Act of 1954 is amended by adding at the end the following new subsection:

"t. LIMITATION ON AWARDING OF PRECAUTIONARY EVACUATION COSTS.—No court may award costs of a precautionary evacuation unless such costs constitute a public liability.".

CIVIL PENALTIES

SEC. 19. The Atomic Energy Act of 1954, as amended, is further amended by adding a new section 234A as follows:

"Section 234A. CIVIL MONETARY PENALTIES FOR VIOLATIONS OF DEPARTMENT OF ENERGY REGULATIONS.—a. Any person who has entered into an agreement of indemnification under subsection 170 d. (or any subcontractor or supplier thereto) who violates (or whose employee violates) any rule, regulation or order related to nuclear safety prescribed or issued by the Secretary of Energy pursuant to this Act (or expressly incorporated by reference by the Secretary for purposes of nuclear safety) shall be subject to appropriate enforcement action or a civil penalty of not to exceed $100,000 for each such violation. If any violation under this subsection is a continuing one, each day of such violation shall constitute a separate violation for the purpose of computing the applicable civil penalty.

"b. (1) The Secretary shall have the power to compromise, modify or remit, with or without conditions, such civil penalties and to prescribe regulations as he may deem necessary to implement this section.

"(2) In determining the amount of any civil penalty under this subsection, the Secretary shall take into account the nature, circumstances, extent, and gravity of the violation or violations and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require.

"c. (1) Before issuing an order assessing a civil penalty against any person under this section, the Secretary shall provide to such person notice of the proposed penalty. Such notice shall inform such person of his opportunity to elect in writing within thirty days after the date of receipt of such notice to have the procedures of paragraph (3) (in lieu of those of paragraph (2)) apply with respect to such assessment.

"(2)(A) Unless an election is made within thirty calendar days after receipt of notice under paragraph (1) to have paragaph (3) apply with respect to such penalty, the Secretary shall assess the penalty, by order, after a determination of violation has been made on the record after an opportunity for an agency hearing pursuant to section 554 of title 5, United States Code, before an administrative law judge appointed under section 3105 of such title 5. Such assessment order shall include the administrative law judge's findings and the basis for such assessment.

"(B) Any person against whom a penalty is assessed under this paragraph may, within sixty calendar days after the date of the order of the Secretary assessing such penalty, institute an action in the United States court of appeals for the appropriate judicial circuit for judicial review of such order in accordance with chapter 7 of title 5, United States Code. The court shall have jurisdiction to enter a judgment affirming, modifying, or setting aside in whole or in part, the order of the Secretary, or the court may remand the proceeding to the Secretary for such further action as the court may direct.

"(3)(A) In the case of any civil penalty with respect to which the procedures of this paragraph have been elected, the Secretary shall promptly assess such penalty, by order, after the date of the receipt of the notice under paragraph (1) of the proposed penalty.

"(B) If the civil penalty has not been paid within sixty calendar days after the assessment order has been made under subparagraph (A), the Secretary shall institute an action in the appropriate district court of the United States for an order affirming the assessment of the civil penalty. The court shall have the authority to review de novo the law and facts involved, and shall have jurisdiction to enter a judgment enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part, such assessment.

"(C) Any election to have this paragraph apply may not be revoked except with consent of the Secretary.

"(4) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order under paragraph (2), or after the appropriate district court has entered final judgment in favor of the Secretary under paragraph (3), the Secretary shall institute an action to recover the amount of such penalty in any appropriate district court of the United States. In such action, the validity and appropriateness of such final assessment order or judgment shall not be subject to review.

"d. The provisions of this section shall not apply to:

"(1) The University of Chicago (and any subcontractors or suppliers thereto) for activities associated with Argonne National Laboratory;

"(2) The University of California (and any subcontractors or suppliers thereto) for activities associated with Los Alamos National Laboratory, Lawrence Livermore National Laboratory, and Lawrence Berkeley National Laboratory;

"(3) American Telephone and Telegraph Technologies, Inc. (and any subcontractors or suppliers thereto) for activities associated with Sandia National Laboratory;

"(4) Universities Research Association, Inc. (and any subcontractors or suppliers thereto) for activities associated with FERMI National Laboratory;

"(5) Princeton University (and any subcontractors or suppliers thereto) for activities associated with Princeton Plasma Physics Laboratory;

"(6) The Associated Universities, Inc. (and any subcontractors or suppliers thereto) for activities associated with the Brookhaven National Laboratory; and

"(7) Battelle Memorial Institute (and any subcontractors or suppliers thereto) for activities associated with Pacific Northwest Laboratory.".

CRIMINAL PENALTIES

SEC. 20. Section 223 of the Atomic Energy Act of 1954, as amended, is further amended by adding a new subsection c. as follows:

"c. Any individual director, officer or employee of a person indemnified under an agreement of indemnification under section 170d. (or of a subcontractor or supplier thereto) who, by act or omission, knowingly and willfully violates or causes to be violated any section of this Act or any nuclear safety-related rule, regulation or order issued thereunder by the Secretary of Energy (or expressly incorporated by reference by the Secretary for purposes of nuclear safety), which violation results in or, if undetected, would have resulted in a nuclear incident as defined in subsection 11 q. shall, upon conviction, be subject to a fine of not more than $25,000, or to imprisonment not to exceed two years, or both. If the conviction is for a violation committed after the first conviction under this subsection, punishment shall be a fine of not more than $50,000, or imprisonment for not more than five years, or both.".

OFFICE OF INSPECTOR GENERAL FOR NUCLEAR PROGRAMS

SEC. 21. The Department of Energy Organization Act (Public Law 95-91, as amended) is amended by adding a new section 208A as follows:

"OFFICE OF INSPECTOR GENERAL FOR NUCLEAR PROGRAMS

"SEC. 208A. (a)(1) There shall be established within the Department an Office of Inspector General for Nuclear Programs to be headed by an Inspector General for Nuclear Programs, who shall be appointed by the President, by and with the advice and consent of the Senate, solely on the basis of integrity and demonstrated ability in management of duties assigned to the Inspector General for Nuclear Programs in this section and without regard to political affiliation. The Inspector General for Nuclear Programs shall report to, and be under the general supervision of, the Secretary or, to the extent such authority is delegated, the Deputy Secretary, but shall not be under the control of, or subject to supervision by, any other officer of the Department.

"(2) There shall also be in the Office a Deputy Inspector General for Nuclear Programs who shall be appointed by the President, by and with the advice and consent of the Senate, solely on the basis of integrity and demonstrated ability in management of duties assigned to the Inspector General for Nuclear Programs in this section and without regard to political affiliation. The Deputy shall assist the Inspector General for Nuclear Programs in the administration of the Office and shall during the absence or temporary incapacity of the Inspector General for Nuclear Programs, or during a vacancy in that Office, act as Inspector General for Nuclear Programs.

"(3) The Inspector General for Nuclear Programs or the Deputy may be removed from office by the President. The President shall communicate the reasons for any such removal to both Houses of Congress.

"(4) The Inspector General for Nuclear Programs shall, in accordance with applicable laws and regulations governing the civil service, appoint an Assistant Inspector General for Audits and an Assistant Inspector General for Investigations.

"(5) The Inspector General for Nuclear Programs shall be compensated at the rate provided for level IV of the Executive Schedule under section 5315 of title 5, United States Code, and the Deputy Inspector General for Nuclear Programs shall be compensated at the rate provided for level V of the Executive Schedule under section 5316 of title, 5, United States Code.

"(b) It shall be the duty and responsibility of the Inspector General for Nuclear Programs—

"(1) to supervise, coordinate and provide policy direction for auditing and investigative activities relating to the promotion of health, safety and sound environmental management in the administration of the nuclear programs and operations of the Department;

"(2) to recommend policies for, and to conduct, supervise, or coordinate other activities carried out or financed by the Department for the purpose of promoting health, safety and sound environmental management in the administration of its nuclear programs and operations;

"(3) to recommend policies for, and to conduct, supervise, or coordinate other relationships between the Department and other Federal agencies, State and local governmental agencies, and nongovernmental entities with respect to (A) all matters related to the promotion of health, safety and sound environmental management in nuclear programs and operations administered or financed by the Department, and (B) the identification and prosecution of violations of nuclear safety-related rules, regulations, or orders prescribed or issued by the Secretary (or expressly incorporated by reference by the Secretary for purposes of nuclear safety); and

"(4) to keep the Secretary and Congress fully and currently informed, by means of the reports required by subsection (c) and otherwise, concerning serious problems or deficiencies relating to health, safety or environmental management in the administration of nuclear programs and operations administered or financed by the Department, to recommend corrective action concerning such problems and deficiencies, and to report on the progress made in implementing such corrective action.

"(c)(1) The Inspector General for Nuclear Programs shall, not later than May 31 and November 30 of each year submit to the Secretary and the Congress semiannual reports summarizing the activities of the Office during the immediately preceding six-month periods ending March 31 and September 30. Such reports shall include, but need not be limited to—

"(A) a description of significant problems and deficiencies relating to the administration of programs and operations of the Department disclosed by such activities during the reporting period;

"(B) a description of the recommendations for corrective action made by the Office during the reporting period with respect to significant problems or deficiencies identified pursuant to subparagraph (A);

"(C) an identification of each significant recommendation described in previous reports under this subsection on which corrective action has not been completed;

"(D) a summary of violations of nuclear safety-related rules, regulations or orders prescribed or issued by the Secretary (or expressly incorporated by reference by the Secretary or purposes of nuclear safety) identified and brought to the attention of proper authorities and the disposition of these matters at the time of the report; and

"(E) information concerning the numbers and types of audit reports completed by the Office during the reporting period.

"(2) Within sixty days of the transmission of each semiannual report to the Congress, the Secretary shall make copies of such report available to the public upon request and at a reasonable cost.

"(d) The Inspector General for Nuclear Programs shall report immediately to the Secretary and to the appropriate committees and subcommittees of Congress whenever the Office becomes aware of particularly serious or flagrant problems or deficiencies relating to health, safety and sound environmental management in the administration of nuclear programs and operations of the Department. The Deputy and Assistant Inspectors General for Nuclear Programs shall have particular responsibility for informing the Inspector General for Nuclear Programs of such problems or deficiencies.

"(e) The Inspector General for Nuclear Programs—

"(1) may make such additional investigations and reports relating to the administration of the nuclear programs and operations of the Department as are, in the judgment of the Inspector General for Nuclear Programs, necessary or desirable;

(2) shall respond in a timely fashion to any request from either House of Congress or from a committee thereof for an investigation relating to health, safety or environmental problems with the administration of nuclear programs or operations of the De-

partment by carrying out the investigation requested and submitting a report to the Secretary and to Congress thereon or by stating in writing the reasons why the Inspector General for Nuclear Programs does not believe the investigation requested is justified; and

"(3) shall provide such additional information or documents as may be requested by either House of Congress or, with respect to matters within the jurisdiction, by a committtee or subcommittee thereof.

"(f) Notwithstanding any other provision of law, the reports, information, or documents required by or under this section shall be transmitted to the Secretary and to Congress, or committees or subcommittees thereof, by the Inspector General for Nuclear Programs without further clearance or approval. The Inspector General for Nuclear Programs shall insofar as feasible, provide copies of the reports required under subsection (c) to the Secretary sufficiently in advance of the due date for the submission to Congress to provide a reasonable opportunity for comments of the Secretary to be appended to the reports when submitted to Congress.

"(g) In addition to the authority otherwise provided by this section, the Inspector General for Nuclear Programs, in carrying out the provisions of this section, is authorized—

"(1) to have access to all records, reports, audits, reviews, documents, papers, recommendations, and other material available to the Department which relate to programs and operations with respect to which the Inspector General for Nuclear Programs has responsibilities under this section;

"(2) to require by subpoena the production of all information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence necessary in the performance of the functions assigned by this section, which subpoena, in the case of contumacy or refusal to obey, shall be enforceable by order of any appropriate United States district court; and

"(3) to have direct and prompt access to the Secretary when necessary for any purpose pertaining to the performance of functions under this section.

"(h) In carrying out the responsibilities specified in subsection (b)(1), the Inspector General for Nuclear Programs may obtain services, including services of experts and consultants, as authorized by section 3109 of title 5, United States Code, at rates not to exceed the daily rate prescribed for grade GS-18 of the General Schedule under section 5332 of title 5, United States Code, for persons of Government service employed intermittently.

"(i) In carrying out his duties and responsibilities under this section, the Inspector General for Nuclear Programs shall—

"(1) give particular regard to the activities of the Inspector General under section 208 with a view toward avoiding duplication and insuring effective coordination and cooperation; and

"(2) report expeditiously to the Attorney General whenever the Inspector General for Nuclear Programs has reasonable grounds to believe there has been a violation of Federal criminal law.

"(j)(1) The Office of the Inspector General for Nuclear Programs may receive and investigate complaints or information from an employee of the Department (or an employee of any person under contract with the Department) concerning the possible existence of an activity constituting a violation of nuclear safety-related rules, regulations or orders prescribed or issued by the Secretary (or expressly incorporated by reference by the Secretary for purposes of nuclear safety).

"(2) The Inspector General for Nuclear Programs shall not, after receipt of a complaint or information from such an employee, disclose the identity of the employee, unless the Inspector General for Nuclear Programs determines such disclosure is unavoidable during the course of the investigation.

"(3) Any employee of the Department (or an employee of any person under contract with the Department) who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority, take or threaten to take any action against any employee as a reprisal for making a complaint or disclosing information to the Office of the Inspector General for Nuclear Programs, unless the complaint was made or the information disclosed with the knowledge that it was false or with willful disregard for its truth or falsity.

"(k) Any request for appropriations for the Department submitted to Congress shall identify in a detailed budget justification the portion of such request intended for support of the Office of the Inspector General for Nuclear Programs, and shall include the comments of the Inspector General for Nuclear Programs on the differences, if any, between the amounts requested and the assessment of the Inspector General for Nuclear Programs of the budgetary needs of the Office.".

REVIEW OF DEPARTMENT OF ENERGY NUCLEAR ACTIVITIES

SEC. 22. (a)(1) The President shall, as soon as practicable but not later than one hundred and twenty days after the date of enactment of this Act, appoint a panel of five independent, highly-qualified individuals to make recommendations to Congress for regulation and oversight of Department of Energy nuclear activities.

(2) The recommendations shall include alternative and/or additional regulatory regimes applicable to the Department of Energy's nuclear programs that would provide for—

(A) reasonable assurance of the public health and safety,

(B) public confidence in the Department of Energy's management,

(C) increased accountability for management and operations,

(D) efficient and effective oversight, and

(E) timely discovery and reporting of potential problems.

(3) Based on the panel's evaluation carried out according to subsection (b), the panel shall report by January 20, 1989, to the President and Congress with specific recommendations for legislation, regulations, policies, and procedures that would achieve the goals set out in paragraph (2).

(b) The panel established by subsection (a) shall—

(1) review regulations of health, safety, and environmental aspects of the Department of Energy nuclear facilities and operations, including laboratories, production facilities, waste management facilities, and transportation programs;

(2) evaluate existing regulatory regimes (including, but not limited to, those of the Nuclear Regulatory Commission, Environmental Protection Agency, Department of Transportation, and Occupational Safety and Health Administration) for potential application to the Department of Energy nuclear programs. Such evaluation shall assess the relevance of these regimes to the Department of Energy's nuclear programs, including the feasibility of their application to the Department's nuclear programs, the potential impact of their application on achievement of the goals of these programs, and the impact on programs affecting national security.

(c)(1) The Secretary shall designate one member of the panel who shall serve as chairman and who shall set the dates of hearings, meetings, and other official panel functions in carrying out the purposes of this section. The panel, in developing its recommendations, is authorized to hold hearings as it deems advisable.

(2) The panel members shall be selected based on their expertise in areas including but not limited to health and safety, Department of Energy contractor operations, physical sciences, environmental regulations, waste management, national security, and weapons technology.

(3) Members of the panel shall receive no pay on account of their service on the panel, but while away from their homes or regular places of business in the performance of services for the panel, members shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5, United States Code.

(4) DIRECTOR AND STAFF.—(A) The panel shall have a director who shall be appointed by the panel and who shall be paid at a rate not to exceed the minimum rate of basic pay payable for level GS-16 of the General Schedule.

(B) The panel may appoint such additional staff personnel as the panel considers appropriate and may pay such staff at rates not to exceed the minimum rate of basic pay payable for level GS-15 of the General Schedule.

(C) Except as otherwise provided in this paragraph, such director and staff—

(i) shall be appointed subject to the provisions of title 5, United States Code, governing appointments in the competitive service; and

(ii) shall be paid in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

(5) Subject to such rules as may be adopted by the panel, the panel may procure temporary and intermittent services from experts and consultants to the same extent as is authorized by section 3109(b) of title 5, United States Code, but at rates determined by the panel to be reasonable.

(6) Upon request of the panel, the head of any Federal agency may detail, on a reimbursable basis, any of the personnel of such agency to the panel to assist the panel in carrying out the panel's duties.

(7) The panel is authorized to secure from any department, agency or individual instrumentality of the Executive Branch of Government any information it deems necessary to carry out its functions under the Act and each such department, agency, and instrumentality is authorized and directed to furnish such information to the panel upon request made by the chairman.

(8) The chairman of the panel shall request the head of each Federal department or independent agency which has an interest in or responsibility with respect to the matters under evaluation by the panel to

appoint a liaison officer who shall work closely with the panel and its staff. These departments or agencies shall include, but not be limited to, the Nuclear Regulatory Commission, the Environmental Protection Agency, the Department of Transportation, the Department of State, the Occupational Safety and Health Administration, and the Department of Energy.

(9) The panel shall terminate within sixty days after submission of the report set forth in subsection (a).

(d) There are hereby authorized to be appropriated such sums as may be necessary to carry out the purposes of this section.

● Mr. JOHNSTON. Mr. President, today I am submitting with my colleague and ranking minority member, Senator McCLURE, comprehensive legislation to reauthorize and extend the Price-Anderson Act. The Price-Anderson Act provides a system for public compensation in the event of a nuclear accident. There is an urgent need to act on this legislation.

On July 30, the House of Representatives passed H.R. 1414 to modify and extend Price-Anderson. H.R. 1414 is pending on the Senate calendar, as is S. 748, the bill that was reported by the Committee on Energy and Natural Resources in June. The Senate must act on this important legislation. We cannot afford to wait any longer.

Existing authority under the Price-Anderson Act expired on August 1, and we must take action quickly to renew the act. We delayed taking action on S. 748 or H.R. 1414 prior to the August recess at the request of other Senators. The Environment and Public Works Committee has completed action on a Price-Anderson bill but no report has been filed. Far too much time has elapsed. We must clear one of these pending bills for action.

Today we are introducing an amendment to S. 748 that will continue the Price-Anderson system for compensating victims for damages resulting from a nuclear accident at our Nation's nuclear power reactors licensed by the Nuclear Regulatory Commission and at facilities operated by the Department of Energy. S. 748, as reported by the Energy and Natural Resources Committee, addressed only the portions of the Price-Anderson Act relating to public liability coverage for DOE contractors activities. The amendment we are introducing today is a substitute for S. 748, which attempts to combine the best elements of our bill with those of the bill produced by the Environment and Public Works Committee.

The Price-Anderson system is a comprehensive, compensation-oriented system of liability insurance for DOE contractors and NRC licensees operating nuclear facilities. Under Price-Anderson, there is a ready source of funds that would be available to compensate the public for damages resulting from a nuclear accident. Without Price-Anderson, there would not be such a pool of funds available.

In the absence of Price-Anderson, compensation to victims of a nuclear accident would likely be seriously limited. Existing nuclear power reactors licensed by NRC will continue to be covered under the current Price-Anderson system for the term of their operating licenses, but the public compensation pool would be limited to about $700 million. Our legislation would increase that pool of funds to almost $7 billion.

The need to extend the Price-Anderson Act is perhaps even more important as it relates to DOE contractor activities.

DOE contractors are covered under the Price-Anderson indemnity provisions of current contracts, but with expiration of the act, DOE has lost its authority to indemnify contractors under Price-Anderson in new contracts. Therefore, any existing indemnity agreements will expire at the end of the term of the existing contracts and cannot be renewed. Two of these agreements have already expired. If the act is not renewed, DOE contractors—those involved in atomic energy defense, uranium fuel preparation, and nuclear waste disposal—will be without the comprehensive, no-fault liability insurance system provided by Price-Anderson. Congress must act quickly to preserve this public compensation system that would be employed in the event of a catastrophic nuclear accident resulting from these essential activities carried out by the Federal Government.

The Federal Government will not shut down these essential activities simply because it cannot indemnify its contractors under the Price-Anderson system. Contractors will continue to do work for the Department of Energy. The Department has the authority under Public Law 85-804 to indemnify its contractors, and it will do so. The Department has already renewed contracts for operation of two major facilities using its indemnity authority under Public Law 85-804.

So there is an urgent need to extend and reauthorize the Price-Anderson Act not to protect the contractors or the nuclear utilities but to protect the public. Public protection in the case of a catastrophic nuclear accident is far superior under a renewal of the Price-Anderson system. In the absence of Price-Anderson for DOE contractor activities, compensation for victims would be less predictable, less timely, and potentially inadequate compared to the compensation that is available under the current system.

The amendment to S. 748 that we are introducing today would extend authority for the Price-Anderson indemnification system for DOE contractors for 30 years. It would increase the amount of public compensation immediately available after an accident to $6.8 billion per incident. In the event that damages exceed the $6.8 billion cap, the legislation establishes an expedited mechanism for congressional action on additional compensation measures.

In addition, the bill adds new authority to provide for greater accountability of contractors, subcontractors, and suppliers in the performance of their duties under contract with the Department of Energy for nuclear activities. The Energy and Natural Resources Committee felt that exercise of this authority by DOE could reduce the likelihood of serious nuclear incidents.

S. 748 grants the Secretary of Energy new authority to impose civil and criminal penalties on contractors for violations of DOE rules, regulations, and orders related to nuclear safety. This authority parallels that provided to the Nuclear Regulatory Commission in the Atomic Energy Act with respect to NRC licensees. S. 748 provides for civil penalties of up to $100,000 per day for violations of DOE nuclear safety rules, regulations, or orders. The bill also provides authority for criminal penalties in the case of knowing or willful violations of these rules, regulations, or orders on the part of individual directors, officers, or employees of DOE contractors.

Additional mechanisms for ensuring safe operations by DOE contractors included in S. 748 are the establishment of an inspector general for nuclear programs and the establishment of an independent panel of make recommendations for permanent regulation and oversight of DOE nuclear activities. These provisions are positive steps toward ensuring continued safe operation of DOE facilities.

It is important that the Senate extend the Price-Anderson Act. The compensation system established by this act has been a good one, and we must extend the act to allow that system to continue.

I ask unanimous consent that a section-by-section analysis be printed in the RECORD.

There being no objection, the Section-by-Section analysis was ordered to be printed in the RECORD, as follows:

SECTION-BY-SECTION ANALYSIS—SUBSTITUTE FOR S. 748 PRICE-ANDERSON ACT AMENDMENTS ACT OF 1987

SECTION 1

This section sets forth the short title of the bill, the "Price-Anderson Act Amendments Act of 1987".

SECTION 2

This section contains the findings and purposes of the Act. The purposes include establishment of an equitable, efficient, reliable, and comprehensive system, in advance of any accident involving nuclear materials, which provides a mechanism for full compensation of the public in the event of such an accident for both present and future nuclear activities.

SECTION 3

This section amends subsection 170 b. of the Atomic Energy Act of 1954 to provide that licensees of the Nuclear Regulatory Commission operating facilities of 100,000 kilowatts or more of electrical capacity, will pay a retrospective premium following a nuclear accident of up to $60 million per facility (but not more than $12 million in any one year). These amounts would be adjusted to account for inflation. Total coverage in any nuclear accident, assuming 110 licensed nuclear reactors, would be $6.76 billion, including the $160 million in private insurance that each licensee must carry.

This section also authorizes the Commission to borrow from the U.S. Treasury for the purpose of compensating claims up to the overall level of protection in the event that the annual deferred premiums are insufficient to provide for valid claims. Commission borrowings would be repaid with interest from the balance of the deferred premiums paid.

SECTION 4

This section amends subsection 170 c. of the Atomic Energy Act of 1954 to extend until August 1, 2017 the authority of the Commission to indemnify licensees.

SECTION 5

This section amends subsection 170 d. of the Atomic Energy Act of 1954 to extend until August 1, 2017 the authority of the Secretary of Energy to indemnify contractors to the Department engaged in nuclear activities under the risk of public liability. The Secretary is required to indemnify contractors for claims up to the aggregate level of liability established for accidents at facilities of Commission licensees. Assuming 110 licensed reactors, this limit would be set at $6.76 billion.

The section extends the coverage under the Act to activities involving storage, transportation or disposal of nuclear waste and to accidents involving nuclear material that has been stolen.

SECTION 6

This section amends subsection 170 e. of the Atomic Energy Act of 1954 to establish the aggregate level of liability for a nuclear accident at not to exceed the total of funds that would be made available through the deferred premium system for Commission licensees plus the amount of required private insurance. The amount would be $6.76 billion assuming 110 licensed reactors. In the event of an accident involving damages in excess of the amount of aggregate liability, Congress, would review the incident in accordance with procedures set forth in subsection 170 i. of the Act and take whatever action is necessary.

SECTION 7

This section amends subsection 170 i. of the Atomic Energy Act of 1954 to provide for the submission of compensation plans to Congress whenever it appears that public liability from a nuclear incident may exceed the aggregate liability limit set under subsection 170 e. Such compensation plans would be considered by Congress under expedited procedures set forth in the new subsection.

SECTION 8

This section extends subsection 170 k. of the Act until August 1, 2017. Subsection 170 k. authorizes the Commission to indemnify licensees engaged in educational or nonprofit activities.

SECTION 9

This section amends subsection 170 n. to remove the statute of limitations on damage claims from a nuclear incident, leaving only the requirement in existing law of a three-year discovery rule.

SECTION 10

This section amends subsection 170 o. to provide for court review of legal costs paid in actions under the Act.

SECTION 11

This section amends subsection 170 n. to provide for consolidation of claims in actions under the Act following a nuclear incident. Existing law provides for such consolidation only in the event of an extraordinary nuclear occurrence. Subsection 170 n. is also amended to provide for the appointment of a special caseload management panel to coordinate and assign cases arising out of a nuclear incident.

SECTION 12

This section amends subsection 170 p. to provide for the submission to Congress of reports by the Commission and by the Secretary of Energy prior to the new expiration date for the Act.

SECTION 13

This section contains conforming amendments.

SECTION 14

This section establishes a Presidential Commission on Catastrophic Nuclear Accidents to study means of fully compensating victims of a catastrophic nuclear accident.

SECTION 15

This section absolves from liability from a nuclear incident any person who has a lease interest in the facility where the incident occurs that person is in possession and control of the facility at the time of the incident.

SECTION 16

This section provides that when the Secretary of Energy undertakes activities in connection with the management of nuclear waste involving the handling of waste by employees of the Secretary, the Secretary will be considered as if he were a contractor under the Price-Anderson Act for purposes of liability actions.

The section also describes the calculation of the inflation adjustment to be used in the Act.

SECTION 17

This section prohibits the awarding of punitive damages under the Act in actions where the United States must pay the damages.

SECTION 18

This section extends the coverage of the Act to include precautionary evacuations that are ordered even though no nuclear incident occurs.

SECTION 19

This section authorizes the Secretary of Energy to assess a civil penalty on a contractor covered by the Act who violates any Departmental rule, regulation or order related to nuclear safety.

SECTION 20

This section makes any individual employed by a contractor under the Act eligible for criminal penalties for a knowing and willful violation of any Departmental rule, regulation or order related to nuclear safety.

SECTION 21

This section establishes within the Department of Energy an Inspector General for Nuclear Programs to supervise auditing and investigative activities related to the promotion of health, safety, and sound environmental management of the Department's nuclear activities.

SECTION 22

This section establishes an independent panel to review alternative methods for regulating the nuclear activities of the Department of Energy. The panel is required to report its recommendations to Congress and the President by January 20, 1989.●

Mr. McCLURE. Mr. President, I am pleased to join my colleague, Senator JOHNSTON, in cosponsoring this long-overdue legislation.

Our amendment is comprehensive legislation to renew and amend the Price-Anderson Act, which expired on August 1 of this year. It is comprehensive in that it addresses renewal of the Price-Anderson Act for contractors of the Department of Energy as well as for commercial nuclear power licensees. Its enactment is crucial to assure prompt and adequate compensation to potential victims in the unlikely event of a nuclear accident.

S. 748, reported out of the Energy and Natural Resources Committee last March, addressed only those aspects of the Price-Anderson statute affecting the Department of Energy contractor activities. Meanwhile, a parallel effort by the Environment and Public Works Committee produced a bill in August, yet to be filed by that committee, which addressed primarily the commercial nuclear powerplants licensed by the Nuclear Regulatory Commission.

Speaking for myself and, I believe, also for Senator JOHNSTON, we would prefer not to deal with Price-Anderson renewal on the Senate floor in a piecemeal fashion. Rather, we would like to combine the best elements of each committee's bill into a single vehicle for floor consideration. Unfortunately, efforts to do so have proven unsuccessful. Therefore, Senator JOHNSTON and I have chosen to submit this proposed compromise which merges features from both measures.

The reason for this comprehensive approach is quite obvious: Any victim of a catastrophic nuclear accident, should it occur, would not care from what facility the radiation was released. He would only be concerned about receiving prompt compensation for damage to his property or to his health. We need to provide any such potential victims adequate protection, no matter what kind of facility might be involved in the accident.

This leads me to another point that should not go unnoticed. As I have previously stated, the current Price-Anderson Statute has already expired. Meanwhile, nuclear plants are still running, the Department of Energy is still contracting for its work, and no one is panicking. So why all the hoopla about Price-Anderson renewal, when Congress has so much other pressing business to attend to?

The answer is quite revealing. On the one hand, our present complement of commercial powerplants is grandfathered into the present Price-Anderson indemnity coverage, which would provide for a pooling of nuclear plant retrospective premiums, combined with $160 million of private insurance, to make available to the public approximately $700 million in compensation in the event of a nuclear accident. The only threat to the commercial nuclear industry posed by a failure to renew Price-Anderson legislation is in connection with future plants. Since orders for new plants do not appear to be imminent, I see no reason why this generation of nuclear plants should be overly anxious about Price-Anderson renewal.

On the other hand, the impact of Price-Anderson expiration on DOE contractors is somewhat different. What once was characterized as an impending crisis within DOE has so far turned out to be a nonevent. Prior to the Price-Anderson expiration date, we were hearing that contractors would be unable to renew their contracts with the Department absent the indemnity provisions of Price-Anderson. But what we also were hearing was that the Department would not allow these important defense-related activities to cease, and that somehow, the Federal Government would find a way to continue this work, even if it had to use Federal employees to get the job done.

The Department has, in fact, found a way, and it is Public Law 85-804. This statute provides the Department with authority, very similar to that found in Price-Anderson, to indemnify its contractors for third-party liability arising from hazardous undertakings in support of national security. And that statute has already replaced Price-Anderson in the recent renewal of a crucial contract with the University of California for operation of two very key laboratories—Lawrence Livermore and Los Alamos. And it appears that this statute will also provide sufficient protection to EG&G Measurements, Inc., to allow them to renew their contract, at the end of this year, for activities at the Nevada Test Site. So it seems that, so far, atomic defense contractors with DOE are comfortable with the provisions of Public Law 85-804, and that DOE will be able to continue conducting "business as usual."

Mr. President, I can assure you that, despite the fact that our commercial nuclear plants and our nuclear-related defense activities at DOE laboratories are surviving quite well without Price-Anderson, we are not wasting our time here in attempting to get this Price-Anderson renewal legislation enacted into law. The reason we are not wasting our time is quite simple—it centers around the potential victims' ability to receive prompt and adequate compensation for any injuries or damages suffered if a nuclear accident should occur.

We must ask ourselves, what is better from the victims' compensation perspective: if an accident occurred at one of our commercial nuclear plants, would victims be better off having the $700 million of indemnification available under the present law, or the $7 billion under the legislation we offer you now, with additional compensation funds made available, if necessary, under expedited congressional procedures? If an accident occurred at a Department of Energy facility, would victims be better off with $500 million of indemnification coverage now available under the present Price-Anderson law, or would they be better off with $7 billion under the legislation we propose to you now—again with expedited congressional procedures to obtain additional funds, if necessary?

Or alternatively, if a DOE contractor now indemnified under Public Law 85-804 experiences an accident, would the victims receive adequate relief under Public Law 85-804, where all defenses are made available to the defendant, and no streamlined procedure is available for setting the claims? I doubt it. Clearly a victim would be better off under the Price-Anderson provisions that we propose to renew in our bill; that is, waiver of all defense for the defendant, and streamlined procedures for victims' compensation and settlement of claims.

From a victims' compensation perspective, Price-Anderson coverage under the bill we offer is not only desirable but preferable to the alternatives. So if we care about these potential victims, and if we care about a responsible, balanced, and comprehensive piece of legislation to take care of these potential victims, then we should adopt this bill to renew and amend the Price-Anderson Act.

I urge my colleagues to support Senator Johnston and myself in our effort to enact a balanced and comprehensive piece of legislation to bring back and expand upon the provisions in Price-Anderson that have served us so well in the past, and that can best protect us in the future.

MILITARY CONSTRUCTION APPROPRIATION, FISCAL YEAR 1988

HOLLINGS (AND SASSER) AMENDMENT NO. 1039

Mr. SASSER (for Mr. Hollings, for himself and Mr. Sasser) proposed an amendment to the bill (H.R. 2906) making appropriations for military construction for the Department of Defense for the fiscal year ending September 30, 1988, and for other purposes; as follows:

At the end of the bill, add the following new section:

"SEC. . LAND CONVEYANCE, FORT JACKSON, SOUTH CAROLINA.

Subsection (e)(1) of section 840 of the Military Construction Authorization Act, 1986 (Public Law 99-167), is amended—

(1) by striking "and" at the end of subparagraph (B);

(2) by striking the period at the end of subparagraph (C) and inserting in lieu thereof "; and"; and

(3) by adding at the end thereof the following new subparagraph;

"(D) for a water systems improvement project at Fort Jackson at an estimated cost of $2,300,000, and for family housing improvement projects at Fort Jackson at an estimated cost not to exceed $6,400,000.".

DANFORTH (AND SASSER) AMENDMENT NO. 1040

Mr. SASSER (for Mr. Danforth, for himself and Mr. Sasser) proposed an amendment to the bill H.R. 2906, supra; as follows:

On page 7, line 4, strike "$165,716,000" and insert in lieu thereof "$170,016,000".

STEVENS (AND SASSER) AMENDMENT NO. 1041

Mr. SASSER (for Mr. Stevens, for himself and Mr. Sasser) proposed an amendment to the bill H.R. 2906, supra; as follows:

On page 4, line 23, strike "$597,865,000" and insert in lieu thereof "$602,865,000".

MURKOWSKI (AND STEVENS) AMENDMENT NO. 1042

Mr. SPECTER (for Mr. Murkowski, for himself and Mr. Stevens) proposed an amendment to the bill H.R. 2906, supra; as follows:

At the end of the bill, add the following:

SEC. . DENIAL OF FUNDS FOR PROJECTS USING CERTAIN SERVICES OF FOREIGN COUNTRIES THAT DENY FAIR MARKET OPPORTUNITIES.

(a) In General.—

(1) None of the funds appropriated by this Act may be used to carry out within the United States, or within any territory or possession of the United States, any military construction project of the Department of Defense which uses any service of a foreign country during any period in which such foreign country is listed by the United States Trade Representative under subsection (c).

(2) Paragraph (1) shall not apply with respect to the use of a service in a military construction project if the Secretary of Defense determines that—

(A) the application of paragraph (1) to such service would not be in the national interest.

(B) services offered in the United States, or in any foreign country that is not listed under subsection (c), of the same class or kind as such service are insufficient or are not of a satisfactory quality, or

(C) exclusion of such service from the project would increase the cost of the overall project by more than 20 percent.

(b) Determinations.—

(1) By no later than the date that is 30 days after the date on which each report is submitted to the Congress under section 181(b) of the Trade Act of 1974 (19 U.S.C. 2241(b)), the United States Trade Representative shall make a determination with respect to each foreign country of whether such foreign country—

(A) denies fair and equitable market opportunities for services of the United States in procurement, or

(B) fair and equitable market opportunities for services of the United States in bidding,

for construction projects that cost more than $500,000 and are funded (in whole or in part) by the government of such foreign country or by an entity controlled by such foreign country.

(2) In making determinations under paragraph (1), the United States Trade Representative shall take into account information obtained in preparing the report submitted under section 181(b) of the Trade Act of 1974 and such other information as the United States Trade Representative considers to be relevant.

(c) Listing of Foreign Countries.—

(1) The United States Trade Representative shall maintain a list of each foreign country with respect to which an affirmative determination is made under subsection (b).

(2) Any foreign country that is added to the list maintained under paragraph (1) shall remain on the list until the United States Trade Representative determines that such foreign country does permit the fair and equitable market opportunities described in subparagraphs (A) and (B) of subsection (b)(1).

(3) The United States Trade Representative shall annually publish in the Federal Register the entire list required under paragraph (1) and shall publish in the Federal Register any modifications to such list that are made between annual publications of the entire list.

(d) Definitions.—For purposes of this section—

(1) The term "service" means any engineering, architectural, or construction service.

(2) Each foreign instrumentality, and each territory or possession of a foreign country, that is administered separately for customs purposes shall be treated as a separate foreign country.

(3) Any service provided by a person that is a national of a foreign country, or is controlled by nationals of a foreign country, shall be considered to be a service of such foreign country.

CATASTROPHIC ILLNESS COVERAGE

RIEGLE (AND GRASSLEY) AMENDMENT NO. 1043

Mr. RIEGLE (for himself and Mr. Grassley) proposed an amendment to the bill (S. 1127) to provide for Medicare catastrophic illness coverage, and for other purposes; as follows:

At the appropriate place, insert the following new section:

SEC. —. MAINTENANCE OF EFFORT.

(a) In General.—During the period described in subsection (c), if an employer provides health care benefits to an employee or retired former employee (including a Federal employee or retired former employee) that are duplicative of new or improved health care benefits provided under this Act or the amendments made by this Act, the employer shall—

(1) provide additional benefits to the employee or retired former employee that are at least equal in value to the duplicative benefits; or

(2) refund to the employee or retired former employee an amount equal to the actuarial present value of the duplicative benefits.

(b) Regulations.—The Secretary of Labor may issue such regulations as are necessary to carry out this section.

(c) Effective Date.—This section shall be effective—

(1) during the 1-year period beginning on the date of enactment of this Act; or

(2) in the case of an employer who is providing duplicative health care benefits to employees or retired former employees under a collective bargaining agreement that is in effect on the date of enactment of this Act, until the expiration of the agreement.

NOTICES OF HEARINGS

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. JOHNSTON. Mr. President, I would like to announce for the public that hearings have been scheduled before the full Committee on Energy and Natural Resources.

The hearings will take place Monday, November 9, and Tuesday, November 10, 1987, at 9:30 a.m. in room SD-366 of the Senate Dirksen Office Building in Washington, DC.

The purpose of this hearing is to receive testimony concerning the Greenhouse Effect and Global Climate Change.

Those wishing to submit written statements should write to the Committee on Energy and Natural Resources, U.S. Senate, Room SD-364, Senate Dirksen Office Building, Washington, DC 20510-6150. For further information, please contact Leslie Black at (202) 224-9607.

SUBCOMMITTEE ON WATER AND POWER

Mr. INOUYE. Mr. President, I would like to announce for the information of the Senate and the public the postponement of a joint hearing before the Subcommittee on Water and Power of the Committee on Energy and Natural Resources and the Select Committee on Indian Affairs.

The hearing regarding S. 1415, the Colorado Ute Indian Water Rights Settlement Act of 1987, which was previously scheduled for October 28, 1987, will be rescheduled for a later date. Notification of the Senate and the public will be made as soon as a new date is selected.

AUTHORITY FOR COMMITTEES TO MEET

SUBCOMMITTEE ON GOVERNMENT EFFICIENCY, FEDERALISM, AND THE DISTRICT OF COLUMBIA

Mr. BYRD. Mr. President, I ask unanimous consent that the Subcommittee on Government Efficiency, Federalism, and the District of Columbia, of the Committee on Governmental Affairs, be authorized to meet during the session of the Senate on Friday, October 23, 1987, to resume open hearings on the Office of Surface Mining's Abandoned Mine Land Program.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON PRIVATE RETIREMENT PLANS AND OVERSIGHT OF THE INTERNAL REVENUE SERVICE

Mr. BYRD. Mr. President, I ask unanimous consent that the Subcommittee on Private Retirement Plans and Oversight of the Internal Revenue Service of the Committee on Finance be authorized to meet during the session of the Senate on October 23, 1987, to hold a hearing on Small Business Retirement and Benefit Extension Act, S. 1426.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON IMMIGRATION AND REFUGEE AFFAIRS

Mr. BYRD. Mr. President, I ask unanimous consent that the Subcommittee on Immigration and Refugee Affairs of the Committee on the Judiciary, be authorized to meet during the session of the Senate on October 23, 1987, to hold a hearing on S. 1611, Legal Immigration Reforms.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. BYRD. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Friday, October 23, 1987, to hear Defense Secretary Weinberger testify on the current situation in the Persian Gulf.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

U.S. ASSISTANCE TO NSZZ SOLIDARNOSC

● Mr. SYMMS. Mr. President, both the Senate and the House of Representatives are now on record in support of providing $1,000,000 to the Polish Independent Trade Union, NSZZ Solidarnosc, for fiscal year 1988.

The House, at the urging of New York Congressman Jack Kemp, has added language to the foreign operations appropriations bill for fiscal year 1988. The Senate has, by voice vote, approved an amendment to the

State Department authorization bill setting aside $1,000,000 from the economic support fund for fiscal years 1988 and 1989 for the exclusive use of NSZZ Solidarnosc. A similar amendment will shortly be offered to the appropriations bill on the Senate side, either in subcommittee or on the floor.

I believe we have, through our support of Solidarity, struck a tremendous blow for freedom in Poland. I am particularly gratified that Congress has gone on record so decisively against giving in to the various threats which have emanated from the Jarulzelski regime. Moreover, that regime should understand that Congress is willing to stand beside Solidarnosc in its continuing fight for freedom.

Mr. President, I ask that a letter to Congressman JACK KEMP from the clandestine executive leadership of Solidarity, the Temporary Coordination Commission [TKK], be printed in the RECORD.

The letter follows:

GDANSK, SEPTEMBER 20, 1987.

Hon. JACK F. KEMP,
U.S. Representative,
Washington, DC.

DEAR SIR: Authorized by the clandestine executive leadership of NSZZ "Solidarnosc" in Poland—the Temporary Coordinating Commission (TKK), I would like to express our warm thanks for you continuing support for our struggle. Your help—and that of your colleagues—gives us not only the means to struggle, but more importantly the hope to succeed.

Our request for aid from abroad in the 1988 calendar year totals 1,360,000 dollars. This includes: support for each of the ten regional NSZZ "Solidarnosc" organizational structures and for the central body headed by our President, Lech Walesa; for the purchase of printing and communication equipment from abroad; for financial, medical and legal aid on a regular basis to jailed and economically repressed persons and their families; for the continued operation of our Coordinating Office Abroad in Brussels, and for the maintenance of a fund designed to aid independent publications and organizations which cooperate with our Union and request our support. All these needs are listed in the enclosed document entitled "The NSZZ 'Solidarnosc' Budget for Aid From Abroad in 1988" dated 26 June 1987.

The TKK accepts responsibility for receipt and disbursement of foreign donations to NSZZ "Solidarnosc" via the Coordinating Office in Brussels directed by Jerry Milewski, who is designated to represent our Union in the West. More specific guidelines applied by the TKK in connection with the donations are described in the enclosed document entitled "Guidelines Concerning Aid From Abroad for NSZZ 'Solidarnosc' " dated 4 October 1986, which was reconfirmed at a recent TKK meeting.

For more than five years the authorities of Poland and their allies have failed to supress NSZZ "Solidarnosc" either by dampening its vitality or by disintegrating its organization. Their vehemence is one measure of our success. More important measures are: the support of our members, the involvement of our activists and the growing help from our sympathizers abroad.

Please accept our gratitude for your very meaningful initiative in the United States Congress to appropriate one million dollars for our Union in the upcoming 1988 fiscal year.

Sincerely yours,

——— ———.

THE NSZZ "SOLIDARNOŠČ" BUDGET FOR AID FROM ABROAD IN 1988

	Thousands
1. Aid fund:	
1.1. Financial and legal aid on a regular basis to repressed persons and their families	$50
1.2. Reserves	10
Subtotal	60
2. Organizational fund:	
2.1. The national leadership:	
2.1.1. The central body	30
2.1.2. The secretariat	20
2.2. The regional structures:	
2.2.1 Dolnošlaski (Wroclaw)	30
2.2.2. Slasko-Dabrowski (Katowice)	30
2.2.3. Malopolska (Krakòw)	30
2.2.4. Gdańsk	30
2.2.5. Mazowsze (Warsaw)	30
2.2.6. Ziemia Lòdzka (Lòdż)	20
2.2.7. Pomorze Zachodnie (Szczecin)	20
2.2.8. Wielkopolska (Poznań)	20
2.2.9. Toruńsko-Bydgoski (Toruń)	20
2.2.10. Środkowo-Wschodni (Lublin)	20
2.3. Reserves (new structures)	20
Subtotal	320
3. Equipment fund (purchase and transport from abroad):	
3.1. Printing equipment	360
3.2. Spare parts and printing materials	160
3.3. Communication and computer equipment	60
3.4. Other equipment	20
Subtotal	600
4. The Brussels office fund	180
5. Support fund:	
5.1. Support for independent organizations, groups and individuals not assoicated with NSZZ "Solidarnošč"	100
5.2. Support for independent press and publishing houses not associated with NSZZ "Solidarnošč	100
Subtotal	200
Total	1,360

June 26, 1987.

TEMPORARY COORDINATING COMMISSION [TKK] OF NSZZ "SOLIDARNOŠČ."●

HONORING FLOYD J. McCREE AND LEEBERTA McCREE

● Mr. RIEGLE. Mr. President, I rise today to pay tribute to Floyd and Leeberta McCree. They have given much, in time and energy dedication to make Flint, my hometown, and Genesee County, MI, a better place for those who live there. Their dedication is an inspiration for all of us.

Mr. McCree, who has served as mayor and as a city council member, became aware of the useful role of politics in our society through his father who was a precinct captain in his birthplace of Webster Groves, MO. Floyd attended political meetings and helped in campaigns during his youth. This early experience sparked his interest in public service and his acceptance of leadership roles—both of which continue today.

Following his service in World War II, Floyd McCree came to Flint and, after a short period at Chevrolet, he was employed by the Buick Foundry. Within United Auto Workers Local 599, he was elevated by his fellow workers to the highest of local and statewide union offices. He was upgraded to supervisor of Buick Foundry Maintenance before taking his present position as Genesee County Register of Deeds.

In the area of government service, he was appointed to the Genesee County Board of Supervisors in 1956. In 1958, he was elected City Commissioner of the Third Ward, and held that position for many years without opposition. In 1964, his fellow commissioners elected him Mayor pro tem, and in 1966, elevated him to Mayor. Other names may be more familiar, but Floyd McCree was the very first black mayor of a major city.

The McCree family includes Floyd's wife, Leeberta, their children, Anita, Byron, Marsha, and Melvin. Melvin has carried on the McCree tradition of service to their city as a member of the Flint City Council.

Floyd and Leeberta McCree and their family are truly an important and vital resource to the Flint community and I am pleased to join in honoring them. Their early and unwavering support for my career are something I will always personally cherish.

Floyd McCree and his family—always involved, always concerned, and always there to help—are and always will be one of Flint's first families.

Mr. President, I ask unanimous consent that the list of Mr. McCree's affiliations be included in the RECORD after my remarks.

The list follows:

OTHER PAST AND PRESENT AFFILIATIONS

Committeeman—Buick Foundry.

Executive Board, UAW Local 599.

Member, UAW's Michigan Foundry Council.

Secretary, Genesee County Democratic Party.

Chairman, Genesee County Democratic Party.

Delegate Democratic National Convention.

President Parkland P.T.A.

Divisional Superintendent, Metropolitan Baptist Church Sunday School.

Board of Directors Urban League of Flint.

President of Urban League of Flint.

Trustee National Urban League.

Central City Optimist Club.

Board of Directors, Economic Development Corp.

Community Civic League.

Chairman, County Government, United Fund Drive.

National Association of Register of Deeds.

N.A.C.O.—National Association of Counties.

Chairman Citizens Probation Authority.

Register of Deeds—Genesee County—First Black elected County Officer.

Former Member—United States Council of Mayors.

Chairman Genesee County Action Program.

Board of Directors—NAACP.

Foreman General Motors Foundry.

Tall Pine Council.

Former Board Member Genesee County Federation of the Blind.

Genesee County Plat Board.

Member Metropolitan Church.

Member Urban Coalition.

Mayor of the City of Flint—first Black Mayor in the State of Michigan.

Board Member of Flint Retirement Homes Inc.

Board of Directors of Big Sisters, former president.

Two time co-chairman Education Millage renewal drive.

President of Model Cities EDC and M.C.D.C.

Flint Compensation Commission.

Member of Flint General Hospital Board of Trustees.

Board of Directors Visually Impaired, former President.

FEMMA Board of Directors.

Emergency Services Council.

Sub Committee Planning United Way.

J.O.B.S. for Flint, Chairperson.

Member of United Way Emergency Allocation Committee.

Former member of Board of Directors of Genesee Township Economic Development.

Board of Directors Foss Avenue Christian Church School.

Member of Vehicle City Lodge No 1036 (Elks).

Member of Rose of Sharon Lodge (Masons).

Member VFW Post 3791.

And many many more.●

THE LEGACY OF H.R. GROSS

● Mr. GRASSLEY. Mr. President, in September, we on Capitol Hill lost a friend and colleague, former Iowa Congressman H.R. Gross. He was a remarkable man, whose commitment and tenacity as a public servant earned him a legendary reputation.

Henry Lane Hull, writing for the Rappahannock Record in Kilmarnock, VA, recently recalled for his readers the legend that is H.R. Gross. Though he had never met H.R., Mr. Hull writes, "It was impossible not to know of him."

I ask, Mr. President, that Mr. Hull's column be included in the RECORD.

The column follows:

EXCERPTS

(By Henry Lane Hull)

Last week while in Washington I read in the newspaper the obituary of former Republican Congressman H.R. Gross of Iowa, who died on Tuesday after a long battle with Alzheimer's Disease. My mind immediately returned to the 50's and 60's when I used to walk over to the House Chamber from the Library of Congress, where I was doing research or writing papers, to sit in on the debates. There was no question but that Harold Royce Gross was the star of the show on the floor of the House.

I never met Congressman Gross, but living in Washington during the 26 years of his reign in Congress, it was impossible not to know of him. He was an Iowa farm boy who served his country in the Mexican border war and in the First World War until he was discharged for disability after being badly gassed. He then studied journalism and became a reporter. Later he worked in radio with future President Ronald Reagan, and was first elected to Congress in 1948, the year of the Truman upset, a tide he balked to win.

Mr. Gross stayed in the House for 13 terms until he decided to retire at age 75. He was 88 when he died, and recalling my delight in watching him in action a quarter of a century ago, I decided to attend his funeral at Fort Myer Chapel in Arlington National Cemetery.

H.R. Gross was born in the last century and he embodied values of an earlier America. He was a rural Midwesterner who looked for ways to promote economy in government, and above all, to discharge waste and wastemakers. He saw a basic trust between the taxpayers—the governed, and the taxspenders—those in government who readily spent what they collected. For his time in Congress he put himself in between the two.

Probably no member of Congress ever cast as many "no" votes. To do that, Mr. Gross positioned himself on the floor during debate. He saw the work of Congress to be there rather then in committees or junketeering at the taxpayer's expense. Closest to his heart was the desire for a balanced federal budget, and attendant to it was the goal of making a start towards systematic repayment of the federal deficit.

Those goals of course, he never reached, and when he died last week our country owed debts even beyond his greatest fears. His funeral was a simple service devoid of pomp and waste, just as he would have liked. His casket was taken to the grave in a hearse rather than on the military caisson pulled by horses. That probably saved the taxpayers as well.

Senator Charles Grassley of Iowa was there, along with a handful of retired Congressmen, but symbolic of Mr. Gross' failure to obtain a balanced budget, the leadership of the House was absent, along with that of the Executive branch, both seeming to have forgotten the man who tried to stand in the way of waste for so many years.

There will probably never be a monument to H.R. Gross in Washington, nor will his name ever again be a household word as it was during his days of lonely battling on the floor of the House. For years Congress designated his bill for the balanced budget as "H.R. 144." The "H.R." stood both for Harold Royce, Mr. Gross' first names, and for House of Representatives. The "144" stood for a gross, which is 12 times 12. The symbolism was subtle, but profound.

If we ever do succeed in balancing the federal budget, that would be H.R. Gross' enduring monument, for it would show that this feisty old Midwesterner's values and dreams were indeed the stuff of which America was made.●

NEGOTIATING WITH THE PRESIDENT

● Mr. ADAMS. Mr. President, all of us are obviously pleased by the President's announcement yesterday that he is personally willing to discuss deficit reduction with the Congress and that, in those discussions, everything but Social Security is on the table. That is, of course, good news.

But I do want to comment about the tone of the remarks the President made in his press conference last night. Let me quote one of his statements. In response to one question, the President of the United States of America declined to indicate what he would propose because "for about a quarter of a century I was doing some negotiating for a union against the employers. And you don't talk in advance about strategy or about what you will or won't do, or there's no point in having the negotiations."

Now hold on just a minute. Even labor and management don't approach negotiations that way any more. Most have recognized the need to approach discussions from a less confrontational point of view. Maybe the spirit of secrecy and strategy the President invoked last night are appropriate when he goes to a foreign capitol to talk about arms control with the Soviet Union. But Capitol Hill isn't a foreign capitol—It is the home of a co-equal branch of our Government.

I half expected when I came in today to have someone introduce a resolution suggesting that the Congress not adopt any appropriations bills or consider reconciliation legislation for fear that it would "undercut the President during the delicate negotiations she is beginning." We get those sorts of resolutions every time we talk to the Soviets in Geneva and, given the President's remarks last night, I thought that someone might offer such a resolution today. The fact that it hasn't been done is a hopeful sign: it indicates that the Congress, at least, recognizes that the executive and legislative branches are not adversaries but partners in the process of creating a budget and resolving the deficit problems which threaten all of us.

Let me make three brief additional comments about the tone of the President's remarks last night.

First, he continues to blame the Congress in general and the Democrats in particular for deficit spending. Please let us remember that no President ever had $200 billion a year deficits until this President took office—and he took office with a Republican controlled Senate and he kept control of the Senate for 6 years.

Second, the President persists in claiming that the Congress "wouldn't even look at" the budget he had developed and submitted. In truth, we all know that the Congress had an up and down vote on his budget, as submitted, earlier this year. It got 18 votes in the U.S. Senate.

Third, and finally, the President suggested that the Congress and the Executive look at the budget-making process differently. He said that he talks with the "men and women who have to run the programs * * * deciding how much money they require * * *." And I suspect the President does it just that way. The way the Congress does it is different. We don't just talk with the men and women who run the programs, we also talk with the men and women who depend on those programs. And they tell us that the people who run the programs have no idea about the impact that their requests would have on the ability of kids to get a decent education; on the ability of our society to clean up the environment; on the ability of our industry to become more competitive; and the ability of our people to get decent health care; on the ability of youngsters to get the kind of training they need to hold decent jobs; on the ability of our country to become what it should be—a great and generous land which builds for the future while protecting the needs of all of its citizens in the present.

Mr. President, I support the idea of a meeting between the President and the Congress. But we ought not have a "summit" meeting and we ought not be engaged in "negotiations." We ought to have a meeting, a discussion, between two co-equal branches of Government who have mutual concerns and a mutual interest in developing a workable program for dealing with our problems. I hope that is the way the President will approach his budget meetings with the congressional leadership on this issue. Then, perhaps the President might approach other issues in the same way, perhaps he will decide that he might talk with us—instead of trying to walk around us—on a host of other issues where he has decided to ignore the need to work with the Congress. He could talk with us about the Persian Gulf as required by law; he could talk with us about the way to interpret the ABM Treaty to which we gave our advice and consent; he could talk with us about who he will nominate to the Supreme Court before he decides to send up a name rather than sending up a name designed to offend us as much as the last one.

We have budget problems, yes. But we have some process problems as well. And I hope we will address both in the next few weeks.●

S. 1575, THE AIDS FEDERAL POLICY ACT OF 1987

● Mr. CHAFEE. Mr. President, I am pleased to join a number of my distinguished colleagues in cosponsoring S. 1575, the AIDS Federal Policy Act of 1987. By providing funding for voluntary, confidential AIDS testing and counseling, as well as protection against discrimination, this measure represents the solid commitment of this Congress to address the AIDS epidemic with effective and thoughtful action.

As of January 12, 1987, 16,667 Americans had died of AIDS. As of October 12, 1987—just last week—the death toll was 24,698. It is now estimated that 1.5 million Americans are infected with the AIDS virus. Among this latter group, the risk of developing AIDS rises with each year that passes after infection. Experts estimate that by the end of 1991, the total number of cases in this country will reach 270,000—with a staggering 179,000 deaths, unless better treatments are found. In the year 1991 alone, it is estimated that 54,000 people will die of AIDS, a figure roughly equal to the American death toll of the entire Vietnam war.

Americans have been calling for a national response to this crisis. This is a call I have heard. Last June I worked with my Republican colleagues to develop an education, treatment, and research bill for AIDS. Later, this bill was incorporated into a bipartisan measure, S. 1220, of which I am a cosponsor. Yet, this bill only addresses part of the issue. As I said last June, "we have a long way to go * * * we must have a sensible approach to testing and counseling through funding of voluntary confidential testing * * * (and) assure that the civil rights of those who have or will develop the disease will not be violated."

I am pleased to say that S. 1575 does just that.

S. 1575 provides for $400 million for each of the next 4 years to establish and support AIDS testing and counseling centers throughout the United States. While testing is still not accurate enough to be termed "an answer" for this disease, it has been shown that testing for the AIDS virus accompanied by appropriate counseling on preventative behavior is effective in slowing the spread of the disease.

This measure mandates strict confidentiality of test results, while still giving physicians and counselors the discretion to disclose information on a limited basis where there is genuine medical need. Results can be disclosed to blood banks, the State health officer, spouses and other known sexual contacts, and health care workers.

The final segment of the bill establishes Federal prohibitions against discrimination on the basis of antibody status or diagnosis in employment, housing, public accommodations, and government services, except when there is a bona fide medical justification for discrimination as prescribed by the Centers for Disease Control to prevent transmission.

S. 1575 is, in my view, a crucial component in the much-needed Federal response to the AIDS crisis. This legilsation has been supported by the American Medical Association, the Centers for Disease Control, and the U.S. Surgeon General. It has the backing of virtually every professional health organization. Most importantly, it answers the urgent need for leadership in the midst of this epidemic. And the answer is thoughtful, compassionate, and effective.

The challenge we face is immense. To rise to it, we must provide for a national effort to fund research for vaccines and cures. We must provide education, both through the media and directly to individuals through counseling and testing in a concerted effort to prevent further infections. We must care for those already sick. We must unite in this effort, preventing nonmedical based discrimination.

The combined provisions of S. 1220 and S. 1575 address all of these goals. Together they make up the most comprehensive Federal response to this epidemic to date. I am proud to be part of this response, and I urge my colleagues on both sides of the aisle to join in meeting the challenge posed by AIDS.●

THE LEONID YUSEFOVICH FAMILY OF MOSCOW

● Mr. BURDICK. Mr. President, when I was in Israel a few months ago, I was privileged to meet a former Soviet geophysicist who had just recently emigrated to Israel, and now lives at Kibbutz Kfar Blum. This man's deep appreciation for life in a free land made a powerful impression on me, and strengthened my resolve to do what I can to help Soviet Jews who wish to emigrate.

During my uplifting visit to Kfar Blum, members of the community expressed their concern for the Leonid Yusefovich family of Moscow. Leonid and his family had applied to emigrate in 1980. Their determination to join family members in Israel was so great that Leonid suffered through a 36-day hunger strike last spring. Like many Soviet Jews, Leonid Yusefovich was willing to pay a very high price for freedom. In this particular case, his suffering was not in vain. I was informed on Monday that Leonid, his wife and their young children have received permission to emigrate.

Mr. President, the happy resolution of the Yusefovich case gives me hope that the spirit of glasnost will mean eventual freedom for the thousands of Soviet Jews who wish to emigrate. There are encouraging signs—prisoners of conscience have been released, exit visas have been granted to some prominent refuseniks, and there has been an increase in the overall level of emigration. But, while progress has been made in some areas, it is also true that harassment of activists continues, and the Soviet Government continues to ignore its obligations under the Helsinki accords.

So, Mr. President, while I am pleased to share with my colleagues the good news about the Yusefovich family, I would also like to take this opportunity to urge my colleagues to take full advantage of the current climate in United States-Soviet relations, and redouble their efforts on behalf of Soviet Jews. We simply cannot let this opportunity slip by. Too many families are counting on our help.●

S. 1811—THE STEEL RETIREMENT BENEFITS FUNDING ACT OF 1987

● Mr. QUAYLE. Mr. President. As a U.S. Senator from the largest steel-producing State in the Nation, I would like to commend the Senators from Pennsylvania and Ohio for their thoughtful legislation designed to alleviate the burden that pension benefits present to the steel industry. Pension benefits and shutdown benefits are, indeed, a serious and expensive problem for the steel industry, just as they are for the manufacturing industry generally. I thank the sponsors of this legislation for giving me an opportunity to review the legislation prior to its introduction and I am flattered that they have asked me to cosponsor the bill, though for reasons stated below, I must decline to do so at this time.

The Steel Retirement Benefits Funding Act would transfer responsibility for so-called shut-down benefits from the steel companies' pension plans to a Steel Retirement Benefits Authority which would receive certain equity or debt instruments from the steel companies. The impact of this bill on the companies, pension plans, workers and the Federal Government is difficult to assess and I have asked affected parties to supply me with the necessary data to make such an assessment possible. None of the data has been supplied and I am unable to form a position on the bill.

Specifically, I asked for the following information:

First. What is the maximum amount of liability of each steel pension fund that could be transferred to the Steel Retirement Benefits Authority?

Second. What is the funded status of each company's pension plans both before and after such transfers occurred?

Third. Would the steel companies support the stronger funding standard for pensions contained in the Finance or Labor and Human Resources Committee's reconciliation packages if this steel-specific legislation is passed.

Fourth. It is alleged that this solution will be less expensive to the taxpayers and pension plan premium payers than current law, assuming the Pension Benefit Guaranty Corporation takes over a number of seriously underfunded pension plans. What is the projected cost of current law and this proposal under (a) a favorable prognosis for the steel industry; and (b) under an unfavorable prognosis.

Though I have requested answers to these questions, I have received answers neither from the steel companies nor from other supporters of this legislation. As a responsible elected official, I cannot cosponsor this legislation until such time as I have the necessary data to enable me to assess the impact of this proposal.●

NAUM MEIMAN

● Mr. SIMON. Mr. President, imagine, if you will, walking through the zoo on a beautiful autumn day. The sun is shining and you walk at your own pace, with family or friends, looking at the animals as you pass them. Then, as you are walking past the monkey cage, you notice one monkey that seems to be trying to leave his cage, but he can't, he is locked in. And you walk by, with the freedom you are given because you are a human being. An American human being.

There are places in the world, however, where people are treated like those animals in cages; they are "locked in" and cannot leave. The refuseniks in the Soviet Union are a prime example of a people "locked in," like animals, unable to leave. And we, as Americans, walk by.

Naum Meiman wants to leave the Soviet Union. He should be allowed to leave. We, as humans, must do all we can to help him emigrate to Israel. Action must be taken now. We cannot keep "walking by."

I urge my colleagues to work on behalf of Naum and others like him. I urge Soviet officials to grant him an exit visa immediately, so he can spend the remainder of his life in Israel.●

THE RETURN OF THE PORK-BARREL CONGRESS

● Mr. NICKLES. Mr. President, as my colleagues know, the President in his news conference last night released the final deficit figure for fiscal year 1987. The amount, $148 billion, though well below the previous year's devastating $221 billion, is still a far cry from a balanced budget.

Unfortunately, next year's deficit is now expected to skyrocket mostly because Congress can't stop old spending habits. I would like to submit an article about this problem that recently appeared in the Wall Street Journal in case any of my colleagues missed it. The article was written by Tom Miller, editor of the annual Competitive Enterprise Index, which rates Congress on its votes on issues of competition and free-market principles.

I hope this article will give each of us pause to consider the choices we are going to have to make this year to seriously work on bringing down the deficit before it brings us down.

The article follows:

[From the Wall Street Journal, Sept. 11, 1987]

The Return of the Pork-Barrel Congress

(By Tom Miller)

Congressmen have returned from their August recess and are on their way to confirming fears that last November's election would usher in particularly profligate times vis-a-vis the home folks.

A review of 18 "pork-barrel and subsidy" votes in the House and 10 such votes in the Senate this year reveals a 100th Congress that is snout deep in feeding frenzy at taxpayers' expense.

The latest PBS (Pork Barrel and Subsidies) Index compiled by the Competitive Enterprise Institute finds House members resisting the spending lure, mostly for projects and grants for their districts, only 27% of the time, and senators "just saying no" only 30% of the time. Both figures are down from last year's PBS ratings of 36% for the House and 47% for the Senate.

When House Speaker Jim Wright and Senate Majority Leader Robert Byrd resolved last January to set a new tone in Congress, with the Senate back in Democratic control and the Reagan administration weakened by the Iran-Contra investigation, they weren't kidding. The House and Senate displayed their priorities right off the bat by overriding presidential vetoes of "clean-water" and highway reauthorization bills bulging with special-interest construction projects.

Since then, the House has rejected efforts to increase national park fees, curtail Army Corps of Engineers water projects, eliminate low-priority highway demonstration projects, trim spending for the Economic Development Administration and Amtrak, reduce Small Business Administration loans, cut energy-research boondoggles, impose Coast Guard user fees on recreational boaters, consider closing unneeded military bases, and limit elevator-operator featherbedding in House office buildings.

The Senate's record includes rejection of efforts to terminate Urban Development Action Grants, end the legal protection of agricultural marketing orders, delete "urgent" supplemental funding for a weed study center, derail creation of an international debt-relief organization aimed at bailing out big banks, limit trade adjustment assistance entitlements, and block tariff rebates for certain sugar importers.

The spirit of a Congress that passes the pork then asks for second helpings was best illustrated in May when Pennsylvania Democrat Joseph Kolter (PBS rating of 0) circulated a form among his colleagues on the House Public Works Subcommittee "inviting" them to contribute pet projects to a list of airport improvements in specified congressional districts that he intended to offer as an "enhanced discretionary authority" amendment. In defense of Mr. Kolter, California Democrat Doug Bosco (PBS of 8) explained, "As far as I can see, there's really only one basic reason to be on the Public Works Committee. I want to bring home projects for my district. . . . [It is] certainly not for intellectual stimulation."

The same could be said of the current Congress as a whole. In the House, 111 members sport "Perfect Porker" scores of 0. Leading them are House Majority Leader Thomas Foley, Majority Whip Tony Coelho, Budget Committee chairman William Gray, Ways and Means Committee chairman Dan Rostenkowski, Energy and Commerce Committee chairman John Dingell, Public Works Committee chairman James Howard, and presidential candidate Richard Gephardt. Republicans Frank Horton, Robert Davis and Robert Livingston lend some bipartisan flavor to this bottom rung of the House pig pen, but the average House Republican PBS score is 53, compared with the average House Democrat score of 9.

A similar partisan division appears among senators. The average Senate Democrat PBS score is 8, while the average rating among Senate Republicans is 57. Twenty-eight Democratic senators reside in the Hog Heaven of "0" scores, paced by porkmeister general Robert Byrd and presidential contenders Joseph Biden, Albert Gore and Paul Simon. At the bottom of Republican Senate ranks, one finds the ever-reliable Lowell Weicker (10), Charles Grassley (20) and John Heinz (25).

To be sure, there are a few exceptional members of Congress who curb their appetites when it comes to pork-barrel spending and special-interest subsidies. Republicans Phil Gramm and Don Nickles sport perfect PBS scores of 100 in the Senate. Republicans Don Lungren (94) and Dick Armey (89) top the House. Responsible Democrats include Charles Stenholm (61) and Buddy MacKay (50) in the House, and William Proxmire (50) in the Senate.

But with an election year coming up, and spending restraint seemingly thrown to the winds on what should be "easy" budget cuts, these recent trends appear ominous.●

COMMENDING JOSEPH BRODSKY ON SELECTION AS THE WINNER OF THE 1987 NOBEL PRIZE FOR LITERATURE

● Mr. D'AMATO. Mr. President, I rise today to call to the attention of my colleagues and of all Americans the award of the 1987 Nobel Prize for Literature to Joseph Brodsky. Mr. Brodsky, who was expelled from the Soviet Union in 1972, is an American citizen and a resident of New York City.

The academy selected Brodsky for this most prestigious award for his "all-embracing authorship, imbued with clarity of thought and poetic intensity." The award was announced at 1 p.m. local time, on October 22, 1987, in Stockholm, Sweden, by Prof. Sture Allen, permanent secretary of the Swedish Academy.

Brodsky is a prominent figure in New York's literary circles and is well known and widely respected around the world. Indeed, it is reported that he was at lunch in London with his friend John le Carre, the famous espionage novelist, when a friend rushed in to announce that Brodsky had won the Nobel Prize for Literature.

I am particularly pleased that the academy has chosen to recognize Mr. Brodsky's literary achievements. He is a unique figure, one who has attained great stature for his writing in two languages—both his native Russian and his adopted English.

At this time in the evolving relationship between the United States and the U.S.S.R., it is timely to examine the treatment of the Soviet Union's great writers. There have been five Soviet Nobel laureates in literature: Ivan Bunin in 1933, Boris Pasternak in 1958, Mikhail Sholokhov in 1965, and Alexandr Solzhenitsyn in 1970.

Their achievements are one measure of the creative potential of the people of the Soviet Union. Their treatment by the Government is one measure of the level of civilization the Soviet Union has attained.

Pasternak was not permitted to receive his award, and his novel, "Dr. Zhivago," was not published. Solzhenitsyn, while permitted to receive his award, was exiled to the West, and his book, "The Gulag Archipelago," was also not published.

Brodsky, the newest laureate, has only had four of his poems officially published in the Soviet Union. His works circulate in illegal underground samizdat efforts. Like Solzhenitsyn, Brodsky was expelled from the Soviet Union.

Two of these laureates, Solzhenitsyn and Brodsky, now reside in the United States. The Soviet Union's loss is our gain. But the Soviet Union's loss is also the world's loss, because we cannot know how many other brilliant, creative minds have been cowed, stifled, or killed by repressive Soviet cultural, literary, and political policies. These minds could have made a great contribution to world culture and the world as a whole is poorer for their silence or enforced mediocrity.

I take note of this situation because, as a former chairman of the Commission on Security and Cooperation in Europe, better known as the Helsinki Commission, I have spent years pressing for improved Soviet compliance with their promises concerning cultural rights in the Helsinki Final Act. The Soviet regime of censorship and repression, which is only now beginning to loosen somewhat under Gorbachev's glasnost, must come to an end for the Soviet Union to become a fully respected member of the community of nations.

At such Helsinki process events as the Budapest Cultural Forum and the Vienna review meeting of the Conference on Security and Cooperation in Europe, speakers from many western and neutral states have documented extensive and pervasive Soviet violations of their Helsinki accords commitments. The reported planned publication of "Dr. Zhivago" and of some of Joseph Brodsky's work shows that the Soviet authorities are now beginning to correct some of these violations.

We cannot and must not be satisfied, however, until literary giants like Pasternak, Solzhenitsyn, and Brodsky are as honored in the land of their birth as they are here. When that time comes, we can have much more confidence that any trust and understanding which has been built up between our two societies can not be swiftly swept away by some Kremlin ukase.

While we in the United States argue about freedom of speech, our arguments are not about the core of this basic right. Freedom of speech is a fundamental part of the fabric of our society, of our politics, our economy, our Government, and our religious life. We fight about issues along the margins of the right of freedom of speech—commercial speech, obscenity, prior censorship, the clash between personal privacy and the media's coverage of newsworthy people.

When the Soviet Union accepts and respects the core of the right to freedom of speech, then we can have increased respect for their Government's views. Once there is freedom of speech, writers will not be forced into exile and works will not be banned.

The Soviet regime's inability to tolerate diverse or opposing views shows the lack of maturity of their society. If you believe mere words can hurt you, you must be very insecure indeed—insecure in ways nuclear weapons, tank armies, and fleets of warships and bombers cannot cure. They have made progress under glasnost, but glasnost is hardly a Soviet version of the first amendment.

Even if the Soviet Union were to adopt our first amendment as an amendment to the Soviet Constitution, it would still only be a step in the right direction. In theory, limited freedom of speech is already protected in the Soviet Union. But that protection is only theoretical, because both their actual official practices and their interpretations of their constitution, statutes, and regulations are arbitrary, capricious, and under the direct political control of the Communist Party of the Soviet Union.

I look forward to the day when "Socialist legality" in the Soviet Union becomes equal justice under law. I look forward to the day when the KGB is as tightly leashed as the FBI. I look forward to the day when we are no longer forced to use the occasion of awards to great writers and poets to point out the shortcomings of the Soviet system and press for Soviet compliance with their international human rights and humanitarian affairs obligations.

Mr. President, I think it is important for our colleagues and all Americans to realize the magnitude of the loss the Soviet Union suffered when they expelled Joseph Brodsky, and the magnitude of our good fortune when he decided to become an American citizen and a resident of New York. In a New York Times article by Frances X. Clines entitled "Poet Reflects on Fortunes of Literature," which appeared in today's edition on page 10, Brodsky is quoted as saying:

> I'm the happiest combination you can think of. I'm a Russian poet, an English essayist and a citizen of the United States.

I ask unanimous consent the article I just mentioned and two other New York Times articles from today's edition be printed in the RECORD immediately following my remarks. One of these articles is entitled "Exiled Soviet Poet Wins Nobel Prize in Literature," by Howell Raines, and the other is entitled "Some Basic Brodsky In Poetry and Prose." I also ask unanimous consent that two articles from today's edition of the Washington Post, both by David Remnick, be printed in the RECORD immediately following my remarks. One is entitled "Soviet Exile Wins Nobel for Literature," and the other is entitled "Joseph Brodsky's Art of Darkness."

The material follows:

[From the New York Times, Oct. 23, 1987]

EXILED SOVIET POET WINS NOBEL PRIZE IN LITERATURE

(By Howell Raines)

STOCKHOLM, October 22,—Joseph Brodsky, an exiled Soviet-born poet who writes in Russian and English, won the Nobel Prize in Literature today.

The Swedish Academy in its formal announcement cited both Mr. Brodsky's essays and the poetry for which he is better known in honoring him "for an all-embracing authorship, imbued with clarity of thought and poetic intensity."

In its press release, the academy also paid tribute to Mr. Brodsky's heroic commitment to his art, noting that as a young underground poet in Leningrad he was imprisoned in an Arctic work camp for "parasitism," and was later deported from the Soviet Union in 1972. He now lives in New York and teaches for part of the year at Mount Holyoke College in Massachusetts.

"I'm sort of doubly proud as a Russian and as an American," Mr. Brodsky said today after learning of the award while lunching in London with John le Carre, the British novelist.

HOPES TO SEE SON

The 47-year-old poet and essayist expressed the hope that the award, coupled with the new policy of glasnost or openness, might create an opportunity for him to see his 20-year-old son, Andrel, who lives in Leningrad.

"Obviously the whole situation in the country has considerably improved compared with what I left 15 years ago," he said with a laugh, "but I got the prize for literature, not politics."

In announcing the selection, Prof. Sture Allen, permanent secretary of the Swedish Academy, insisted there was no political message in it for the Soviet Union, where Mr. Brodsky's works are banned. But a member of the five-person selection committee, Goran Malmqvist of Stockholm University, struck a defiant note.

Professor Allen said he didn't know what the Soviet political leadership would say, "but that is something we don't bother about."

"They may raise their eyebrows as they did with Solzhenitsyn and Pasternak, but they would be silly to do so because here is a very, very fine writer who was brought up and started writing in Russia," he said.

ANOTHER OPINION FROM SOVIET

Today in Moscow, Gennadi I. Gerasimov, a Soviet Foreign Ministry spokesman, said "the tastes of the Nobel Prize committee are somewhat strange sometime," and added that he would have preferred V.S. Naipaul, the novelist born in Trinidad, as a winner.

The 18-member Swedish Academy was said by a variety of sources to be determined this year to select a laureate who had an international reputation, indisputable artistic standing and productive years still ahead. The academy has been the subject of ridicule here for choosing a series of laureates who were elderly or obscure.

Mr. Brodsky is the second youngest person to win the literature prize. Albert Camus was 44 when he won in 1957. This year's prize carries a cash award of about $330,000. The formal presentation for Nobel laureates from all fields is Dec. 10.

Although the deliberations are secret, an academy member confirmed that Mr. Brodsky was a finalist last year when Wole Soyinka, a Nigerian poet, won. This year, according to some accounts, Mr. Brodsky won out over a list of finalists including Mr. Naipaul, Octavio Paz, a Mexican critic and poet, and the reputed runner-up, Camilo Jose Cela, a Spanish poet born in 1916.

A RAPTUROUS RECEPTION

Today, the Swedish Academy seemed to have achieved its goal of avoiding the sarcastic response that has greeted selections such as that in 1984 of Jaroslav Seifert, an 83-year-old Czechoslovak poet. The reaction to Mr. Brodsky's selection from the critical and academic communities was rapturous.

"He is the best living Russian poet," said Susan Amert, an assistant professor of Russian literature at Yale University.

"There are a small number of writers at any given moment who are going to be part of literature and he's one of them," said the writer and critic Susan Sontag. "Not every great writer gets a Nobel Prize and not every Nobel Prize goes to a great writer. This is an example of the Nobel Prize going to a really serious, committed, great writer."

Mr. Brodsky's award was announced here in the traditional way. As a clock chimed the hour at 1 P.M., Professor Allen stepped into a crowded meeting room in the stock exchange building in the Old Town. His back pressed against the door and his face trembling slightly with excitement, he said Mr. Brodsky's name and a cheer went up, indicative of the following the author has among the literati here.

"A DIVINE GIFT"

"For Brodsky, poetry is a divine gift," said the biographical statement distributed to reporters. It noted the "luminous intensity" of his language and his "quite amazing mastery of the English idiom" in a collection of poems published in 1986, "History of the Twentieth Century."

That collection and a 1986 essay collection, "Less Than One," also in English, served to cement Mr. Brodsky's claim. But the poetry on which he built his reputation, first published in the West in 1967, is written in Russian and translated by him and friends into English.

"I haven't shifted language," Mr. Brodsky said today. "I'm writing in English because I like it. I'm a sucker for the language, but the good old poems I'm still writing in Russian."

Born into a Jewish family in Leningrad on May 24, 1940, Mr. Brodsky dropped out of school at 15 and worked as a laborer and at sea, as a stoker. He was also teaching himself Polish and English, writing poetry and developing his gift for dramatic recitations that are described as verging on musical performances.

Scholars place him in the Russian modernist tradition of Osip Mandelstam, who died in Stalin's death camps, and Anna Akhmatova, a towering figure in Russian poetry who led the campaign that got Mr. Brodsky released from prison in 1965 shortly before her death. In English, his influences range from John Donne to the modern poets W. H. Auden and Robert Lowell.

ADVOCATE OF HUMAN RIGHTS

Auden and Lowell both became friends and sponsors after Mr. Brodsky arrived in the West—drawn to him by the conviction, often expressed by admirers, that Mr. Brodsky was "the real thing."

"His rise was meteoric. Beginning from the first poems, everybody was sure that this is the best Russian poet living," said Tomas Venclova, an assistant professor of Russian literature at Yale, who met Mr. Brodsky 20 years ago.

While Mr. Brodsky prefers to be known as a poet rather than as a critic of the Soviet Union, he has been a prominent advocate of human-rights causes and press freedom. One of his most powerful essays deals with the Soviet authorities' refusal to let him visit his parents in Leningrad before his mother, a translator, died in 1983, and his father, a photographer, died in 1984.

Today, there was the first hint of a thawing attitude toward Mr. Brodsky in the land that, according to friends, he still loves passionately. Mr. Gerasimov and the publisher Roger Straus confirmed that the Soviet literary magazine Novy Mir was seeking permission to publish some of Mr. Brodsky's poems.

He first saw print in that journal in 1963 when it published his epigram to a poem by Miss Akhmatova.

[From the New York Times, Oct. 23, 1987]

SOME BASIC BRODSKY IN POETRY AND PROSE

Columns of grandsons, stiff at attention;
gun carriage, coffin, riderless horse.
Wind brings no sound of their glorious Russian
trumpets, their weeping trumpets of war.
Splendid regalia deck out the corpse:
thundering Zhukov rolls toward death's mansion.

"On the Death of Zukhov (1974), written in London, translated by George L. Kline, and reprinted in "A Part of Speech"

It's not the statue itself that matters here, because Comrade Lenin is depicted in the usual quasi-romantic fashion, with his hand poling into the air, supposedly addressing the masses; what matters is the pedestal. For Comrade Lenin delivers his oration standing on the top of an armored car. It's done in the style of early Constructivism, so popular nowadays in the West, and in general the very idea of carving an armored car out of stone smacks of a certain psychological acceleration, of the sculptor being a bit ahead of his time. As far as I know, this is the only monument to a man on an armored car that exists in the world. In this respect alone, it is a symbol of a new society. The old society used to be represented by men on horseback.

"A Guide to a Renamed City" (1979), describing a statue of Lenin outside the Finland Station in Leningrad, in "Less Than One: Selected Essays"

In the autumnal blue of your church-hooded New England, the porcupine sharpens its golden needles against Bostonian bricks to a point of needless blinding shine.
White foam kneels and breaks on the altar. People's eyes glitter inside the church like pebbles splashed by the tide.
What is Salvation, since a tear magnifies like glass a future perfect tense? The choir, time and again, sings in the key of the Cross of Our Father's gain, which is but our loss.
There will be a lot, a lot of Almighty Lord,
Should I say that you're dead?
You touched so brief a fragment of time. There's much that's sad in the joke God played.
I scarcely comprehend the word "you've lived"; the date of your birth and when you faded in my cupped hand are one, and not two dates.
Thus calculated, your term is, simply stated, less than a day.

"The Butterfly" (1973), translated by George L. Kline, in "A Part of Speech"

The eastern tip of the Empire dives into night;
cicadas fall silent over some empty lawn;
on classic pediments inscriptions dim from the sight as a final cross darkens and then is gone like the nearly empty bottle on the table.
From the empty street's patrol car a refrain of Ray Charles' keyboard tinkles away like rain.

"Lullaby of Cape Cod" (1975), translated by Anthony Hecht, in "A Part of Speech"

[From the New York Times, Oct. 23, 1987]

POET REFLECTS ON FORTUNES OF LITERATURE

(By Francis X. Clines)

LONDON, October 22—"Life has a great deal up its sleeve," said Joseph Brodsky, who was exiled from the Soviet Union as a "social parasite" 15 years ago and lauded today as the winner of the Nobel Prize in literature.

Smoking a cigarette, sipping some whisky, listening intently to each bit of praise and curiosity flowing his way, Mr. Brodsky displayed a gentle mix of pride, surprise and love of life itself as he sought to account for his fortune.

"What provides you with subject matter is your own language—and that's all," he said, heading off cliché notions that the turmoil of the Soviet Union itself is a crucible for great poetry.

"It sort of coils in your mind, that sort of thing, and dictates something to you," said the poet, obviously savoring his own experiences with language. "A writer is a tool of the language rather than the other way around."

The 47-year-old Mr. Brodsky had just sat down to have lunch at a Chinese restaurant with the novelist John le Carré when someone ran in with the news of the award. He admitted to delight and couched that in humor: "A big step for me, a small one for mankind." And through the day he repeated the hope that the prize would signal to the world the fine quality of modern Russian poetry.

"It's Russian literature that got it," he said. Then he added with a smile: "And it's an American citizen that got it."

RECALLS OTHER RUSSIAN WINNERS

He recalled the pride of past Nobel awards to Pasternak and Solzhenitsyn. "I hope the good people back home feel that way now," said the Nobel laureate, who has had only four poems legally published in the Soviet Union but countless others in well-thumbed bootleg versions. He has been negotiating lately with Soviet publishing officials who have asked to publish some more.

Mr. Brodsky declined to draw any broad political conclusions about the day. When asked whether the award would assist the glasnost campaign to open Soviet society, he said simply, "It won't hurt." When asked how far the Soviet Government still had to go toward freeing artists, he thought a moment, apologized in advance for his rudeness and said: "They have a long way to go. Imagine England under Cromwell. That's about it."

Still, he carefully made it clear that any suffering he had had to bear for resisting the dictates of the Soviet literary bureaucracy had provided no special strength to him as a poet.

"It's a great mistake to think that way," he said, "Oppression, the attendant hardships, can (A) stifle you (B) simply kill you, and (C) misdirect your fervor, take much of your energy so that you may become a more accomplished ethical writer than esthetical writer."

"Literature invents its own rules," he said at another point, emphasizing that language itself is its own reward.

THE HAPPIEST COMBINATION

For himself, the poet admitted to longing to see his son, last glimpsed 15 years ago in the Soviet Union when he was 5 years old. But he said that while the hunger to see Russia again did come upon him at times, it was not "paramount" in his life. "I don't allow my imagination to travel in that direction," he said, his smile fading.

"I'm the happiest combination you can think of," he insisted. "I'm a Russian poet, an English essayist and a citizen of the United States."

His own taste in literature, he said, ranges beyond the classical Russian poets to modern Polish poets, English metaphysical poets, Faulkner, Proust, Melville and W. H. Auden.

He said literature remains a great moral force in the Soviet Union. "If I've been any good, it's because of the fierce competition," he said.

"But more than a moral force it is an esthetic force," he went on, trying to describe the Soviet audience for poetry. "It's sort of the medium that creates a certain mental, intellectual and ultimately linguistic plane of recourse, and that's what is great about it."

"Well, of course, there's a peculiar help almost in reverse fashion on the part of a centralized state," he added. This is because a good poet, one way or another, almost becomes "a national property," he said, in reaching "a certain linguistic plateau above which you may rise."

Mr. Brodsky thought a moment and, as if recalling his own path through the language, continued, "The moment you rise above it you get noticed by the reading public, but also by the watchdogs."

He sipped his whisky, as if toasting some unstated idea. "I'm a clear-cut case of a condition which is called exile," said the poet.

[From the Washington Post, Oct. 23, 1987]

SOVIET EXILE WINS NOBEL FOR LITERATURE

(By David Remnick)

Exiled poet Joseph Brodsky won the Nobel Prize for Literature, just days after the official theoretical journal of the Soviet Communist Party renounced its "cowardly, mistrustful" treatment of creative artists for the past 50 years.

Though only 47, Brodsky has been considered a master of the Russian language and a poet of the highest rank since he was a young man in Leningrad. In 1963, Soviet authorities sent him to a work camp in the Arctic Circle for the crime of "parasitism" and then exiled him to the West in 1972. Brodsky, who has been a citizen of the United States since 1977, lives in New York and teaches at Mount Holyoke College.

While Brodsky was having lunch yesterday with spy novelist John Le Carre at a Chinese restaurant in London, a friend burst in to tell the poet that the Swedish Academy had given him the $340,000 award.

Brodsky ordered a whiskey.

"I'm delighted and slightly bewildered," he said in a telephone interview. "I don't really know how it will play in Moscow. Though I must tell you, I think they can survive it."

The reaction in Moscow was divided. Soviet Foreign Ministry spokesman Gennadi Gerasimov said it was "a good thing" that the award would focus attention on 20th-century Russian verse, but as for Brodsky himself, Gerasimov said, "The tastes of the Nobel committee are strange sometimes."

Andrei Sakharov, who won the Nobel Peace Prize in 1975, called the award "a very good sign," and novelist Fazil Iskander said Brodsky "is a truly great poet who made a great step forward in Russian literature."

Some artists were more reticent. Poet Andrei Voznesensky, who has returned to official favor in recent times, said, "I had better say nothing" about the award.

Future official reaction may reveal about the course of *glasnost*. This week, Kommunist, the party's theoretical-journal, published an unsigned editorial saying, "The mightier the Soviet state became, the more cowardly, mistrustful and often suspicious were the departments and official organs in charge of culture."

Of the editorial, Brodsky laughed and said, "it's about time."

The academy cited Brodsky for his "all-embracing authorship, imbued with clarity of thought and poetic intensity." For his own part, Brodsky said he had hoped the prize would go to Trinidadean-born novelist V.S. Naipaul.

Brodsky's work has long appeared in underground publications—or *samizdat*—but the Soviet government has not, until now, allowed his poetry to appear in the official journals. However, Brodsky said the journal Novy Mir will print some of his poems in December.

Brodsky is the fifth Russian-born author to win the Nobel Prize, following Ivan Bunin in 1933, Boris Pasternak in 1958, Mikhail Sholokhov in 1965 and Alexander Solzhnitsyn in 1970.

Soviet officials did not permit Pasternak to accept the Nobel Prize and did not allow the publication of his novel "Doctor Zhivago." The novel will be published soon. Solzhenitsyn accepted the award, but officials did not allow publication of his "literary investigation" into the Soviet prison camps, "The Gulag Archipelago," and he was exiled to the West.

"The strangeness of that group is pretty typical of the course of what happens to literature from where I come from," Brodsky said.

Brodsky said he hoped his award would draw attention to the Russian poets he admires most, including friends such as Yevgeny Rein, who lives in Leningrad, and poets of the past such as Osnip Mandelstam, Marine Tsvetaeva and Anna Akhmatova.

"I don't want to appear modest," he said, "but this award should be looked on as a prize for the true poets of this century." He said his only regret was that some of the great writers of the century—James Joyce and Marcel Proust among them—have been overlooked by the academy.

Asked by reporters in London what he would do with the prize money, Brodsky made one of his rare grammatical errors in English. "To spend," he said.

(Moscow correspondent Celestine Bohlen contributed to this report.)

[From the Washington Post, Oct. 23, 1987]

JOSEPH BRODSKY'S ART OF DARKNESS

(By David Remnick)

NEW YORK.—Already poets and readers across Russia are calling one another to celebrate Joseph Brodsky's Nobel Prize as if it were their own. "I'm celebrating, too," the poet said in London yesterday. "I'm going out to get smashed."

And Soviet officials will celebrate the fact that after decades of repressing and, perhaps more cruelly, not publishing the greatest living poet of the Russian language, they are permitting the official journal Novy Mir to print some of Brodsky's work in December. "About that, I will not celebrate too much," Brodsky says.

Only those Russians who have read his books in underground editions or attended Brodsky's legendary readings in the communal apartments of Leningrad before the government exiled him 15 years ago know the unique pitch of his voice and his turn of mind, his "Elegy for John Donne" and "Lullaby of Cape Cod."

And yet, in a long interview at his home in New York before he left for England, Brodsky expressed only a bitter disinterest, a profound sort of boredom: Glasnost, Gorbachev, once-forbidden art exhibits and movie screenings—all the new "this and that, I'm not interested."

"Poems, novels—these things belong to the nation, to the culture and the people. They've been stolen from the people and now the stolen things are being returned to their owners, but I don't think their owners should be grateful to receive them," Brodsky says. He sits in the back-yard garden of his building in the West Village. His cat Mississippi springs on and off his lap. "How do I feel? Robert Frost once said, in a similar context, in one of his poems, that to be social is to be forgiving. But I'm not terribly social."

Brodsky speaks with the weary darkness of a dying man. Part of his bearing, the rolling eyes and condescending, stagy sighs, derives from a lifelong sense of drama and performance, but it is authentic, too. Literary and personal suppression, an 18-month term in a work camp, exile, the lack of serious readers—all of it wears on him. You can even see it in his face. Brodsky is 47 but looks 10, 15 years older. His health is bad as well. He has undergone two by-pass operations and last spring doctors cleared a clogged artery with a surgical wire.

When he talks of old age Brodsky says, "That's not a subject I worry over." He has not quit smoking. "I just can't seem to do it." He goes through pack after pack of cigarettes with the dumb I'll-live-forever abandon of a teen-ager. Friends worry if he has surrendered, if there is something even suicidal in his behavior. He greets a photographer at the door with, "Do you have cigarettes? I'm dying for cigarettes." He is a man who knows his sentences.

Brodsky has learned to abandon certain hopes. As he was leaving the Soviet Union in 1972—leaving behind a son, parents, friends, readers, his cherished city of Leningrad—Brodsky wrote a letter to the Soviet leader, Leonid Brezhnev: "Dear Leonid Ilich . . . A language is a much more ancient and inevitable thing than a state. I belong to the Russian language. As to the state, from my point of view, the measure of a writer's patriotism is not oaths from a high platform, but how he writes in the language of the people among whom he lives . . . Although I am losing my Soviet citizenship, I do not cease to be a Russian poet. I believe that I will return Poets always return in flesh or on paper."

It seems now that Brodsky will return only on paper. Physical return is a hope abandoned. For years he lobbied the Soviet government to let his parents visit him. His appeals were ignored, and now even those disembodied voices from Leningrad are denied him—Alexander and Maria Brodsky are dead. Brodsky would still like to see a few friends from home, but "quite frankly I'd rather they came here to see me."

"My poems getting published in Russian doesn't make me feel in any fashion, to tell you the truth. I'm not trying to be coy, but it doesn't tickle my ego. If anything, I feel a little bit fastidious toward all this, I'm used to my condition, being on my own, totally autonomous. I don't want to dive into that mud slide, which is what I consider the literary process.

"I don't believe in that country any longer. I'm not interested. I'm writing in the language, and I like the language. I really don't know how to explain it to you. Country is . . . it's people, basically. And I'm one of them. And I'm more or less enough for myself. What's happening in Russia now is devoid of autobiographical interest for me. Maybe it's egocentric, Whatever it is, feel free to use it. When Thomas Mann arrived in California from Germany, they asked him about German literature. And he said, 'German literature is where I am.' It's really a bit grand, but if a German can afford it, I can afford it.

"Now I am quite prepared to die here. It doesn't matter at all. I don't know better places, or perhaps if I do I am not prepared to make a move."

Once upon a time there was a little boy. He lived in the most unjust country in the world. Which was ruled by creatures who by all human accounts should be considered degenerates. Which never happened . . .

Early in the morning when the sky was still full of stars, the little boy would rise and, after having a cup of tea and an egg, accompanied by a radio announcement of a new record in smelted steel, followed by the army choir singing a hymn to the Leader, whose picture was pinned to the wall over the little boy's still warm bed, he would run along the snow-covered granite embankment to school.

. . . It is a big room with three rows of desks, a portrait of the Leader on the wall behind the teacher's chair, a map with two hemispheres, one of which is legal. The little boy takes his seat, opens his briefcase, puts his pen and notebook on the desk, and prepares himself to hear drivel.—From Brodsky's essay "Less Than One"

The little boy, Brodsky, was the son of middle-class Jewish parents. His father was discharged from the navy, Brodsky says, "in accordance with some seraphic ruling that Jews should not hold substantial military rank." The family got by mainly on the earnings of Brodsky's mother Maria, and the three of them lived in a communal apartment, a space described in Proustian detail in the essay, "In a Room and a Half."

Brodsky was precocious both in literature and political disgust. Mornings he would sit in school and try to avoid the gaze of Lenin, whose portrait was on every classroom wall, in every textbook, on postage stamps and ruble notes. It wasn't so much ideology as the numbing images that grated on the boy: "There was baby Lenin, looking like a cherub in his blond curls. Then Lenin in his twenties and thirties, bald and uptight, with that meaningless expression on his face which could be mistaken for anything, preferably a sense of purpose. This face in some way haunts every Russian and suggests some sort of standard for human appearance because it is utterly lacking in character." Trying to ignore those images, Brodsky writes, "was my first attempt at estrangement."

One winter morning when he was 15, he could stand it no longer, not the monotonous teaching, not the gaze of the Leader. He walked out of class and never returned. It was time to begin an education: literary and sentimental. Reading the classics of Russian and English when he could—Dostoevsky, Platonov, Frost and Auden among his favorites—Brodsky began to work.

"I got caught up in the proletariat the way Marx describes it." He worked as a stoker, a photographer, a sailor, as a geologist's assistant traveling to the Tien Shan Mountains and Central Asia. He worked with the dead. "I had this fantasy of becoming a neurosurgeon. You know, the normal Jewish boy fantasy, but I wanted to be a neurosurgeon for some reason. So I started in this unpleasant way. I was an assistant to the coroner, opening up corpses, taking the innards out, opening skulls, taking the brains out."

At around the same time as he began his physical labor, he started his literary work, learning English to translate John Donne, learning Polish in order to translate the poems of Czeslaw Milosz—an eventual Nobel Prize winner who would one day nominate Brodsky. And he began to write his own poems, too, publishing a few of them in a fringe publication, *Sintaksis*. Some of those early efforts won the approval of Anna Akhmatova, a fellow Leningrader and one of the century's great poets.

In his early twenties Brodsky was already considered an original. The mark of his poetry has always been an extraordinary command of rhythm and sound; scholars have written of Brodsky's poems as musical scores. He is a technical genius. Of Brodsky, poet and critic Robert Hass writes, "In America, a metrical poem is likely to conjure up the idea of the sort of poet who wears ties and lunches at the faculty club. In Russia it suggests the moral force of an art practiced against the greatest personal odds, as a discipline, solitary and intense."

Brodsky's sensibility, too, is stubbornly individual, cosmopolitan—something that annoys some of his countrymen, who would prefer he hail Pushkin a bit more than Frost, the motherland more than Cape Cod. From the start, Brodsky's politics were the politics of the individual mind at play. His music was his own.

"I knew Joseph from the old days when we were young," says Lev Loseff, an emigre now teaching literature at Dartmouth College. "Old St. Petersburg was the seat of opposition and artistic refinement, but during Stalin's time the city was downgraded to a provincial place and there was not much to distinguish it culturally. Then there appeared, as if from nowhere, a young man who looked like he'd completely missed the dreariness of socialist realism. He was the incarnation of the city's noble, refined poetic tradition of Pushkin. Suddenly poetry was alive again in Joseph Brodsky."

Clearly, Brodsky was a poet of consequence, for by 1963 a Leningrad paper was denouncing the 23-year-old as "a drone of literature," a "semiliterary parasite whose pornographic and anti-Soviet poetry" was corrupting the young. The paper said that the young man affected "velvet trousers" and had once tried to steal an airplane and fly to the West. He was harassed by the police and twice thrown into a mental hospital. To avoid the authorities, he slept in the home of a different friend every night. By 1964, Brodsky's KGB file was getting fat.

"Every life has a file, if you will," he says now. "The moment you get a little bit well known, they open a file on you. The file begins to get filled up with this and that, and if you write your file grows in size all the faster. It's a sort of Neanderthal form of computerization. Gradually, your file occupies too much space on the shelf and simply a man walks into the office and says, 'This is a big file. Let's get him.' "

They got him.

Judge: "What is your profession?"

Brodsky: "Translator and poet."

Judge: "Who has recognized you as a poet? Who has enrolled you in the ranks of poets?"

Brodsky: "No one. Who enrolled me in the ranks of human beings?"

Judge: "Did you study for it?"

Brodsky: "What?"

Judge: "To be a poet. Didn't you try to take courses in school where one prepares for life, where one learns?"

Brodsky: "I didn't believe it was a matter of education."

Judge: "How is that?"

Brodsky: "I thought that it came from God."—from a smuggled transcript of Brodsky's 1964 trial

For the crime of "parasitism," a soviet judge, one Mrs. Saleleva, sentenced Brodsky to five years at a state farm near Arkhangelsk on the White Sea. The origins of the charge are still not known precisely, but it is likely that many of the party-line writers of Leningrad at the time wanted no part of such an independent, talented figure.

During the day Brodsky crushed stones, chopped wood and shoveled manure. At night he read Louis Untermeyer's anthology of American and British verse. From the book's tiny photographs of his heroes—Frost, Auden, Hardy—he tried to imagine what sort of men they were. As an exercise in language and imagination, he would read the first and last stanzas of their poems and "try to imagine what would come between."

"I was quite happy in Arkhangelsk," he says, "because, well you see, I used to live in communal apartments all the time. I'm not trying to be ridiculous or funny, but it was rather pleasant to find yourself in isolation, in solitary. Subsequently, I was sent to a village. I liked it in its own way because it sounded to me very much like the tradition of a hired man in any world-class poem. That's what I was, a hired man. I was working for a collective farm. The hired man's duties were my duties. I was doing all sorts of agricultural work, and it felt, in a rough way, pastoral.

"It's rather an exhilarating feeling. It's 6 or 7 when you get up and go out into the fields wearing your Wellingtons or high boots. You know that at this very hour half the nation does the same thing, which gives you, with the benefit of hindsight, a satisfaction in doing those things, too, a knowledge, a sense of the nation. I was a city boy until then. If they had wanted to punish me, they should have kept me in a communal apartment. Then I would have become a wreck."

After 18 months of protests from artists inside the country and abroad, Soviet officials let Brodsky come home to Leningrad. The harassments, though, continued and he was denied permission to publish or travel abroad.

Finally, in 1971, Brodsky received two invitations to emigrate to Israel. Though Jewish by birth, Brodsky has never been observant or a refusenik. He has distanced himself from Western Jewish groups and he never saw Jerusalem as his home. "I'm 100 percent Jewish by blood, but by education I'm nothing. By affiliation I'm nothing. I'm neither Catholic not Protestant. Protestant sounds good but I don't think I am.

"It turned out that I'm a bad Jew," he says. "I'm a bad Jew, a bad Russian, a bad everything."

When the Ministry of the Interior asked Brodsky why he did not accept the invitations to Israel—by now they were eager to be rid of him—the poet said he had no desire to leave the Soviet Union. He was then told that if he valued his life, he would go. On June 4, 1972, Brodsky was given a visa, relieved of a stack of manuscripts and put on a plane to Vienna. There he was met by the late Carl Proffer, founder of Ardis Publishers and professor of Russian literature at the University of Michigan. Proffer acted as Brodsky's Virgil, arranging for a meeting with W.H. Auden near Vienna and for a job in Ann Arbor as the university's poet-in-residence.

The next year, Harper & Row published Brodsky's "Selected Poems," translated by George L. Kline. Auden wrote the introduction, praising Brodsky as an artist "with an extraordinary capacity to envision material objects as sacramental signs, messengers from the unseen."

Auden's blessing was as powerful in the West as Akhmatova's had been in the Soviet Union. Unlike Solzhenitsyn, who resists learning the language and life of his new country, and unlike many émigrés who are frustrated by the small audience for their work in the West, Brodsky has thrived here, first in Ann Arbor and now in New York. Farrar, Straus, & Giroux has published translations of "A Part of Speech" and will soon issue "To Urania."

"I wondered whether I would understand the people," Brodsky says. "In Russia, the moment a person opens his mouth you know where he's from. There's the uniformity of experience of an individual in Russia. When you're about 7 years old you get into school and you get put in this factory of this bureaucracy or whatever. The options are computable. Here it's tremendously diverse."

He is famous in New York not only as a poet, but as a romancer and a literary celebrity not quite in spite of himself. He can be helpful to his émigré friends—he has helped boost the reputation of such novelists as the author of "Kingaroo," Yuz Aleshkovsky. But he can play tough, too, recommending that a publisher not bother with Vassily Aksyonov's novel, "The Burn."

Brodsky has no idea how lucky he is. A spoiled darling of fate, he fails to appreciate it and sometimes mopes. It is time that he understood that a man who walks the streets, the key to his own door in his pocket has been well and truly let at liberty—from Nadezhda Mandelstam's "Hope Abandoned"

Nadezhda Mandelstam was not alone in her impatience with Brodsky. People would rather see him more humble, more active in this society and that cause. He insists, however, that the way he lives his life revolves around writing. He gets up early and tries to work. "If I can get somewhere, I'm all right. If not, I'm miserable."

In the exile tradition of Dante or Ovid, Brodsky, as he writes in a poem, "survives like a fish in the sand: crawls off into the bush, and getting up on crooked legs,/walks away (his tracks like a line of writing)/into the heart of the continent." His strange condition, his "apartness," suits him.

"You see, I don't want to be either the *crème de la crème* or a martyr. I'd rather be a novelty, especially in a democracy that doesn't understand the language I wrote in. I'm an ultimate novelty and I think that's the most appropriate position for a poet in society. In order to say or comprehend any truth about existence you have to get yourself out of the fray. You have to more or less listen to yourself.

"A man should know about himself two or three things: whether he is a coward; whether he is an honest man or given to lies; whether he is an ambitious man. One should define oneself first of all in those terms, and only then in terms of culture, race, creed."

Politics, to him, is a kind of noise. Sometimes the noise registers and becomes part of the poetic material, but more often Brodsky's material is deep within himself. His poems "begin with a kind of hum," with the sort of pleasure a bird feels when he sings for the sake of singing. The ferment in the Soviet Union feels too distant, too vulgar to dominate song.

"See, I grew up in the sort of cultural milieu that always regarded conversations about the political discourse as tremendously low-brow. The government, the state, they're just objects of jokes rather than serious consideration. I can't possibly take them seriously." As a poet, Brodsky says, "I don't have principles. I have nerves."

"In general, in this country, every discourse in literature in 15 minutes degenerates into a conversation about ethics, morality and this and that. The Holocaust and the consequences of it. Well, I find it terribly boring, predictable and unimportant, because what matters about literature is esthetic achievement."

Brodsky's pessimism embraces not just Moscow, but the entire planet:

"I think the day will come when everything will be published. Because I think in no time the Soviets are going to realize that it really matters very little what's published and not published. They are bound to realize what the West realized long ago, that there are far worse fates for books than not being published or burned. It's that books are not being read.

"In the West you have every opportunity for civilization to triumph. But what do you do with the opportunities? This is a large issue. The species goofed long ago. One has a choice, either to learn or not to learn. And invariably the bulk of human beings choose not to learn. It's as simple as that.

"It's partly the fault of the institutions of education. But it's partly the decision to be relieved of responsibility. Literature is simply the most focused form of the demands on the evolution of the species. It imposes a certain responsibility, moral, ethical and esthetic responsibility, and the species simply doesn't want to oblige.

"Literature sort of makes your daily operation, your daily conduct, the management of your affairs in the society a bit more complex. And it puts what you do in perspective, and people don't like to see themselves or their activities in perspective. They don't feel quite comfortable with that. Noboby wants to acknowledge the insignificance of his life, and that is very often the net result of reading a poem."

Brodsky's English is good enough for complicated conversation and elegant prose, but he writes his most ambitious and best verse in Russian. Often the translations are muddy. Even poems that mostly work in English end up with wretched lines such as "Therefore, sleep well. Sweet dreams. Knit up that sleeve. Sleep as those only do who have gone pee-pee." Reading some of the translations in the collection "A Part of Speech," Robert Hass writes, "is like wandering through the ruins of a noble building."

Such clumsiness hurts. Language is the house that Brodsky lives in. The table in his back yard is cluttered with an old Russian typewriter, pencils, pens, yellow manuscript pages. He is writing a long love poem and wants to be rid of his guests and get back to it.

"What really motivates me is specifically my sense of the Russian language. It lives its own life within me and sometimes just sort of pops up to the surface, yeah?" By writing his poems, he ensures that no oppressor, no heart attack, even the last one, can defeat him in the end. *"What gets left of a man amounts to a part. To a part of speech."*

He says goodby to his guests and then walks to the corner candy store for a few packs of cigarettes.●

INFORMED CONSENT: TEXAS

● Mr. HUMPHREY. Mr. President, many times a day, in clinics across this Nation, women are consenting to abortion without first being fully informed of the risks, effects, and alternatives. My office has received hundreds of letters testifying to this reality, a reality that has led to many cases of serious depression and other negative effects. I ask unanimous consent that one such letter from the State of Texas be inserted into the RECORD at the conclusion of my statement.

Mr. President, this injustice should not be allowed to continue. My informed consent legislation, S. 272, and S. 273, would require that women considering abortion be provided with sufficient information to make an informed choice. I urge my colleagues to support the legislation, and help bring an end to this unjust discrepancy in medical practice.

The letter follows:

FEBRUARY 10, 1987.

DEAR SENATOR HUMPHREY: Thirteen years ago I became pregnant at the age of twenty. I was not married and the father of my baby refused to marry me. He did, however, make me an appointment with a "Problem Pregnancy" clinic in Houston. I know my meeting with the man at the clinic did not last more than fifteen minutes. The man assured me that having an abortion was the easiest, quickest and wisest solution to my "problem". Other alternatives were not even discussed. Do you suppose he received a "kickback" for each abortion he arranged? This man convinced me that if I were to have a baby I would disgrace myself and my family.

An appointment was set up for me with the doctor who performed the abortion. Absolutely nothing was explained to me about the abortion procedure. I remember crying the moment I laid down on the table and the nurse patted my hand and told me it would be "over in a minute".

If only I had gone to an alternative counseling center, such as a Pro-Life Crisis Pregnancy Center. They are the people who truly offer counseling and options.

The nurse who told me it would be over in a minute was wrong! I have lived with the grief of my murdered baby for thirteen years. I have two children now and I wonder how they would feel about their Mommy if they knew what I had done.

No one told me about the guilt and shame I would suffer for the rest of my life if I did have the abortion.

Thank you, sir, for your concern for women who are considering abortions. May God bless you as you prepare to introduce an informed consent bill.

Respectfully yours,

MRS. TOMMY VASEK,
Texas.●

UNANIMOUS CONSENT AGREEMENT

Mr. BYRD. Mr. President, I have previously been authorized by the Senate to proceed to Calendar Order No. 374, H.R. 2890, Department of Transportation appropriations bill after consultation with the minority leader. I have consulted with the minority leader and, upon the disposition of the catastrophic illness legislation, it is my plan to proceed to the consideration of the Department of Transportation appropriation bill.

The Republican leader knows that I am about to make this request, and it has his approval.

Mr. President, I ask unanimous consent that upon the disposition of the Medicare catastrophic illness legislation bill, the Senate proceed to the consideration of the Department of Transportation appropriations bill.

The PRESIDING OFFICER. Is there objection? The Chair hears none. It is so ordered.

Mr. BYRD. Mr. President, the order that the majority leader, after consultation with the minority leader, is authorized at any time to proceed to the consideration of that bill, the Department of Transportation appropriations bill, still stands, does it not, as an order of the Senate?

The PRESIDING OFFICER. The Senator is correct.

Mr. BYRD. And it will so be the order, still, following going to that measure on Tuesday or Wednesday following the disposition of the catastrophic illness bill?

The PRESIDING OFFICER. The Senator is correct.

ORDERS FOR TUESDAY, OCTOBER 27, 1987

RECESS UNTIL 9 A.M.

Mr. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until the hour of 9 o'clock on Tuesday next.

The PRESIDING OFFICER. Is there objection?

Mr. DURENBERGER. There is no objection on our side.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. That being Tuesday morning.

VOTE ON THE MILITARY CONSTRUCTION APPROPRIATION BILL

Mr. BYRD. Mr. President, I ask unanimous consent that on Tuesday next, all time having expired on the military construction appropriation bill, H.R. 2906, that action on the bill be resumed, and that the vote occur on passage of the bill at 9:15 a.m.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. BYRD. Mr. President, that requires a waiving of paragraph 4 of rule XII. I ask that rule be waived.

The PRESIDING OFFICER. Is there objection? Hearing none, it is so ordered.

RESUMPTION OF CONSIDERATION OF THE MEDICARE CATASTROPHIC ILLNESS COVERAGE LEGISLATION

Mr. BYRD. Mr. President, I ask unanimous consent that upon the disposition of the military construction appropriation bill on Tuesday next, without further action and debate or motion, the Senate then resume consideration of the Medicare catastrophic illness coverage bill, S. 1127.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, at that time the status of the measure will be precisely as the status of this moment; the pending amendment as of this moment will then be the pending amendment.

THE DOT APPROPRIATION BILL

Mr. BYRD. Mr. President, it will be my intention upon the disposition of the military construction bill and the disposition of the catastrophic illness bill on Tuesday next to go to the Department of Transportation appropriation bill. I have the authorization by previous order to proceed to that bill after consultation with the minority leader.

RESERVATION OF LEADER TIME

Mr. BYRD. Mr. President, I ask unanimous consent that after the two leaders or their designess have been recognized under the standing order on Tuesday next, there be a period for morning business with Senators being permitted to speak therein for not to exceed 5 minutes each to extend until the hour of 9:30 a.m.

The PRESIDING OFFICER. Is there objection?

Mr. DURENBERGER. There is no objection.

The PRESIDING OFFICER. The Chair hears none. It is so ordered.

MILITARY CONSTRUCTION VOTE RESCHEDULED FOR 9:30 A.M.

Mr. BYRD. Mr. President, I ask that the previous order entered for the vote to begin on final passage of the military construction appropriations bill, which was ordered for 9:15 a.m., I ask that that be changed to 9:30 on Tuesday next.

The PRESIDING OFFICER. Without objection, it is so ordered.

THIRTY-MINUTE ROLLCALL VOTE

Mr. BYRD. Mr. President, I ask unanimous consent that that rollcall vote, which has been ordered, be a 30-minute rollcall vote, and that the call for the regular order be automatic at the conclusion of 30 mimutes, and that there be no quorum call prior thereto.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DURENBERGER. There is no objection to that.

Mr. BYRD. I believe, Mr. President, that the order has already been entered for the resumption of the Medicare catastrophic illness bill upon the disposition of the military construction appropriations bill on Tuesday next. Am I correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. BYRD. I thank the Chair.

PROGRAM

Mr. BYRD. Mr. President, the Senate will come in at 9 o'clock on Tuesday morning next.

After the two leaders have been recognized under the standing order, a period for morning business will extend until 9:30 a.m. Senators will be permitted to speak during that morning business for not to exceed 5 minutes each.

At 9:30 a.m., the Senate will proceed, without a quorum call, to vote on the final passage of the military construction appropriation bill. That will be a 30-minute rollcall vote with the call for the regular order automatically occurring at the expiration of the 30 minutes.

Upon the disposition of the military construction appropriation bill, and without any further intervening action or debate, the Senate will go to the catastrophic illness bill—some action has been taken on that bill. The Senate will resume where it left off today. There is an amendment pending by Mr. RIEGLE.

Upon the disposition of the catastrophic illness bill the Senate will take up the transportation appropriation bill, Mr. President. So there will be several rollcall votes on Tuesday.

RECESS ON TUESDAY AT 12:45 P.M. UNTIL 2 P.M.

Mr. BYRD. I add this request, Mr. President, that the Senate stand in recess on Tuesday at the hour of 12:45 p.m. until the hour of 2 o'clock p.m. to accommodate the two party conference.

Mr. DURENBERGER. Reserving the right to object, and I shall not, I would remind the majority leader and my colleagues that during that period of recess it is my expectation that the Minnesota Twins will be at lunch in some dining room in the Capitol and the majority leader, the Presiding Officer and everyone here will be invited to share in the joy of winning the World Series.

Mr. BYRD. I thank the distinguished Senator.

The PRESIDING OFFICER. Without objection, the request of the majority leader is ordered.

Mr. BYRD. Mr. President, does the distinguished Senator have any further statement he would like to make or any further business to conduct?

THE WORLD SERIES

Mr. DURENBERGER. I think we have made our point. I would certainly invite the majority leader and anyone else who is interested, who has not had the opportunity to enjoy what we call the homer dome, to enjoy baseball in Minnesota in that special way in which we in Minnesota have come to enjoy it.

I also have, if you have not noticed, one of those famous homer hankies in my pocket. If the majority leader would promise to come to the final game which we now expect to be on Sunday rather than Saturday, I would be happy to provide the majority leader with my homer hankie which worked very well in the first two games of the Series and which I expect to work very well in the last two as well.

Mr. BYRD. Mr. President, I thank the distinguished Senator. He is very generous and considerate, I must say. However, I must say that, while I will be watching the seventh game of the Series Sunday on television, I have attended only three baseball games in 35 years. I have been in Washington 35 years as a Member of Congress. I attended three baseball games here in Washington when the Washington Senators were here. Two of those games were on the same afternoon, a doubleheader. I took a troop of boys to the game.

Incidentally, I have gone to one football game in 35 years in the Washington area. That was at halftime to crown the queen when West Virginia played Maryland. I might finish the story by saying I have been to one movie in 35 years here, and I walked out of that one before it was over.

I have enjoyed good movies like those that Alistair Cooke used to produce that involved British actors—such as "Elizabeth R", "The Six Wives of Henry the Eighth," "The Gambler," "Jude the Obscure," "The Last of the Mohicans."

I have seen one good movie since I have been in Washington over these 35 years. That was "Patton," I saw it twice. Once at the White House, and once on television.

Mr. DURENBERGER. If the leader would yield not on the point of movies but on the point of baseball, I would make the observation that I might not be standing here today if it had not been for the fact that a Minnesotan moved the last baseball team out of Washington and moved it to another State, which will go nameless, but which is full of braggarts about the size of their State and a lot of other things that go on in a large Southern State, sort of in the middle of the country, bordering on Mexico. It will otherwise go nameless.

But the person who had the audacity to take baseball from Washington, DC, then had the audacity in 1978 to stand for election to the U.S. Senate. He was fortunate enough to be able to survive a very difficult primary of the majority leader's party in my State. But he lost in the general election by a rather substantial margin.

I would say that I was aided in my victory that year, at least in some small part, by the many people who, unlike the majority leader, had become devotees of baseball and resented the idea that this particular individual would take this pastime away from Washingtonians.

I will make a second observation. That is that if you come from a State that is big league in baseball, it is much easier to find yourself wrapped up in the sport. I would say probably that West Virginians, while they do not have the opportunity to participate in the big leagues in baseball so that their senior Senator does not have the same opportunity that I might have to attend a game, they certainly get their big league in politics, in government, as the majority leader has indicated on so many occasions, not only to West Virginians but to people all over the country.

So I would once again renew my offer that despite the lack of past association that the majority leader might have with baseball and despite the lack of a major league baseball team in West Virginia or other opportunities that might in the past have presented the majority leader, this is a unique year in baseball. This is one of the youngest teams, certainly one of the most Cinderellaish of baseball teams, and the experience of enjoying that sport under a roof in a State like Minnesota, with a whole lot of people, including their Senators, standing around waving their homer hankies, so to speak, is really something that this body and its leader ought not to pass up.

Mr. BYRD. I thank the distinguished Senator. I used to like to play a little baseball myself back in the days when we could not afford to buy a good catcher's mitt and mask. I liked to play the position of catcher in sandlot baseball. I watched the Cardinals last night put it over the Minnesota Twins.

Mr. DURENBERGER. Reserving the right to object.

Mr. BYRD. And I watched them on the previous day do the same, and I am kind of pulling for them on tomorrow because I do want to watch on Sunday the seventh game of the series.

I know West Virginia does not have a big league baseball team. West Virginians do like to watch baseball. They like football and they like basketball. They are also sharpshooters. Of course, we have all heard of Mary Lou Retton. But at the same time Mary Lou Retton was winning her honors, we had a young West Virginian by the name of Ed Etzel who won the award in shooting. Of a possible score of 600—60 rounds, 10 points on each round, he hit the bull's eye for 10 points each on 59 of them, and got nine points on the 60th one, a total score of 599. So West Virginians not only like politics, but they are also good marksmen. I would be so bold as to say that it would take 50 Soviet divisions and they still would not be able to take West Virginia, if it just depended on infantry, cavalry, and artillery.

Incidentally, as a footnote, in World War II, West Virginians were, as to the percentage of the eligible male population serving, No. 5 among the States, and in VIETNAM AND Korea, West Virginia was No. 1 in casualties as to the percentage of the total eligible male population. So we take seriously our politics, and West Virginians generally like sports. I do not mean to say I do not like sports. I like boxing I like baseball, and I like football, but I just cannot do everything else that I do and go to the games.

I have never played a game of golf in my life, but I have done a few other things. I have read all of Shakespeare's plays within the last year, 37 of them. I read the entire Old Testament, 853 pages of the King James Version of the Bible, during the August recess, and I just finished the New Testament last Saturday, the last word thereof being the word "amen." I have read most of "Plutarch's Lives" within the last year, and am on my second turn at reading Webster's Abridged Dictionary. I also find time to read poetry and play the fiddle.

But I do not say that my interests need to be the interests of every other person. Some people like to go the ball games, some like to watch TV, and some like to play the fiddle. All of these are really good American "sports" whatever else we may call them.

So I say to the distinguished Senator that on the seventh game I will be pulling with him for the Twins to show that I am even-handed. I like to feel that I have a balanced approach to things. I pulled for the Cardinals when they were behind. Now, in order to see the seventh game on Sunday, because tomorrow I have to go back to the Mountain State and be at a Jefferson-Jackson Day dinner, I will not get to see that game. So I am hoping the Cards will win tomorrow. Let us see. If they win tomorrow, how many will that make them?

Mr. DURENBERGER. If the distinguished majority leader will yield, if they win tomorrow, he will not have the opportunity to pull for the Twins on Sunday. So why doesn't he just forget about tomorrow, and I will take care of tomorrow. With him pulling for the Twins on Sunday, that will be the best I have been able to get of the majority leader in 9 years. [Laughter.]

Mr. BYRD. OK. That is a deal.

RECESS UNTIL 9 A.M., TUESDAY, OCTOBER 27, 1987

Mr. BYRD. Mr. President, if there be no further business to come before the Senate, and if the distinguished Senator has no further statement concerning the Twins or other advice, or any other business he would like to transact, I move that the Senate stand in recess until the hour of 9 o'clock a.m. on Tuesday.

The motion was agreed to; and, at 5:06 p.m., the Senate recessed until Tuesday, October 27, 1987, at 9 a.m.

CONFIRMATIONS

Executive nominations confirmed by the Senate October 23, 1987:

DEPARTMENT OF DEFENSE

JOHN J. WELCH, JR., OF TEXAS, TO BE AN ASSISTANT SECRETARY OF THE AIR FORCE.

KATHLEEN A. BUCK, OF VIRGINIA, TO BE GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE.

STEPHEN M. DUNCAN, OF COLORADO, TO BE AN ASSISTANT SECRETARY OF DEFENSE.

THE ABOVE NOMINATIONS WERE APPROVED SUBJECT TO THE NOMINEES' COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.

IN THE AIR FORCE

THE FOLLOWING-NAMED OFFICER, UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 601, TO BE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY DESIGNATIED BY THE PRESIDENT UNDER TITLE 10, UNITED STATES CODE, SECTION 601:

To be lieutenant general

MAJ. GEN. DONALD J. KUTYNA, 339-26-1935FR, UNITED STATES AIR FORCE.

THE FOLLOWING-NAMED OFFICER UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 601, TO BE REASSIGNED IN HIS CURRENT GRADE TO A POSITION OF IMPORTANCE AND RESPONSIBILITY DESIGNATED BY THE PRESIDENT UNDER TITLE 10, UNITED STATES CODE, SECTION 601:

To be lieutenant general

LT. GEN. RICHARD A. BURPEE, 363-30-8559FR, U.S AIR FORCE.

THE FOLLOWING-NAMED OFFICER, UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 601, TO BE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY DESIGNATED BY THE PRESIDENT UNDER TITLE 10, UNITED STATES CODE, SECTION 601:

To be lieutenant general

MAJ. GEN. JAMES B. DAVIS, 505-38-3274, U.S. AIR FORCE.

THE FOLLOWING-NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF LIEUTENANT GENERAL ON THE RETIRED LIST PURSUANT TO THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 1370:

LT. GEN. JAMES E. LIGHT, JR., 365-28-9187FR, U.S. AIR FORCE.

THE FOLLOWING-NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF LIEUTENANT GENERAL ON THE RETIRED LIST PURSUANT TO THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 1370:

LT. GEN. EDWARD L. TIXIER, 525-40-7833FR. U.S. AIR FORCE.

IN THE ARMY

THE FOLLOWING-NAMED OFFICER TO BE PLACED ON THE RETIRED LIST IN THE GRADE INDICATED UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 1370:

To be lieutenant general

LT. GEN. JOHNNY J. JOHNSTON, 458-34-3051, U.S. ARMY.

THE FOLLOWING-NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED, UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 601(A), IN CONJUNCTION WITH ASSIGNMENT TO A POSITION OF IMPORTANCE AND RESPONSIBILITY DESIGNATED BY THE PRESIDENT UNDER TITLE 10, UNITED STATES CODE, SECTION 601(A):

To be lieutenant general

MAJ. GEN. ORREN R. WHIDDON, 464-52-8938, U.S. ARMY.

THE U.S. ARMY NATIONAL GUARD OFFICERS NAMED HEREIN FROM APPOINTMENT AS A RESERVE COMMISSIONED OFFICER OF THE ARMY, UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 593(A), 3371 AND 3384:

To be major general

BRIG. GEN. JAMES F. FRETTERD, 220-26-8507.

To be brigadier general

COL. JOHN W. SCHAEFFER, JR., 574-10-9379.
COL. SIMON C. KREVITSKY, 527-30-3282.

THE UNITED STATES ARMY RESERVE OFFICERS NAMED HEREN FOR APPOINTMENT AS RESERVE COMMISSIONED OFFICERS OF THE ARMY, UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTIONS 593(A), 3371 AND 3384:

To be major general

BRIG. GEN. CLYDE R. CHERBERG, 535-26-7531.
BRIG. GEN. ROBERT C. HOPE, 429-58-3609.
BRIG. GEN. ALVIN W. JONES, 460-38-2391.
BRIG. GEN. FELIX A. SANTONI, 581-58-4352.
BRIG. GEN. RICHARD E. STEARNEY, 353-28-7103.
BRIG. GEN. MARK W. TENNEY, 328-30-2237.

To be brigadier general, USAR

COL. WOODROW A. FREE, 467-48-1976.
COL. BARCLAY O. WELLMAN, 084-28-9278.
COL. STEPHEN H. SEWELL, JR., 259-50-4403.
COL. CLAUDE J. ROBERTS, JR., 455-60-7853.
COL. PAUL R. LISTER, 525-90-7670.
COL. PAUL N. REVIS, 431-64-5006.
COL. GENE P. HALE, 425-62-3742.
COL. ROGER H. BUTZ, 280-34-6271.

IN THE NAVY

THE FOLLOWING-NAMED OFFICER TO BE PLACED ON THE RETIRED LIST IN THE GRADE INDICATED UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 1370:

To be vice admiral

VICE ADM. WILLIAM F. MCCAULEY, 505-30-1971/1110, U.S. NAVY.

IN THE MARINE CORPS

MARINE CORPS NOMINATIONS BEGINNING PEDRO GUTIERREZ, AND ENDING JOHN A. WILSON, JR., WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD OF OCTOBER 1, 1987.

IN THE NAVY

NAVY NOMINATIONS BEGINNING RODOLFO LLOBET, AND ENDING ROBERT L. DUELL, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPREARED IN THE CONGRESSIONAL RECORD OF SEPTEMBER 30, 1987.

NAVY NOMINATIONS BEGINNING STEPHEN A. EILERTSON, AND ENDING EARL H. HARLEY, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD OF OCTOBER 1, 1987.

REJECTION

Executive nomination rejected by the Senate October 23, 1987:

SUPREME COURT OF THE UNITED STATES

Robert H. Bork, of the District of Columbia, to be an Associate Justice of the Supreme Court of the United States.

HOUSE OF REPRESENTATIVES—*Monday, October 26, 1987*

The House met at 12 noon.

The Chaplain, Rev. James David Ford, D.D., offered the following prayer:

We earnestly pray, O God, that out of the competing voices in our world, we will hear Your voice calling us to a unity of spirit and of mind. As we represent a diversity of ideas, so may we also share the bond of integrity and trust that is the mark of Your people. As truth is spoken through personality keep us ever aware of those values and goals that are our heritage. In Your name we pray. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Hallen, one of its clerks, announced that the Senate had passed without amendment a bill of the House of the following title:

H.R. 1366. An act to provide for the transfer of certain lands in the State of Arizona, and for other purposes.

The message also announced that the Senate had passed bills, a joint resolution, and a concurrent resolution of the following titles, in which the concurrence of the House is requested:

S. 1397. An act to recognize the organization known as the Non Commissioned Officers Association of the United States of America;

S. 1748. An act to prohibit the import into the United States of all products of Iran;

S.J. Res. 194. Joint resolution to require a comprehensive review of United States policy and commitments in the Persian Gulf region; and

S. Con. Res. 84. Concurrent resolution relating to the transfer of Silkworm missiles by the People's Republic of China to Iran.

THE 1987 WORLD BASEBALL CHAMPIONS

(Mr. VENTO asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. VENTO. Mr. Speaker, they are dancing in the streets of St. Paul and Minneapolis, in fact, all over Minnesota and beyond, as the Twins blew the lid off the Hubert H. Humphrey dome in the great World Series of 1987.

Certainly, we Members of Congress from Minnesota and beyond want to offer our hearty congratulations to a great team, a team of history, led by Coach Tom Kelly, and certainly the wonderful fans, and what a gang they were.

The St. Louis Cardinals did their best. They made us sweat. But out came those homer hankies and they did the rest. We cheered them on and they met the challenge, and today we hail the Minnesota Twins as the world champions. At this time, I would like to share with my colleagues two odes to the Minnesota Twins:

THE STORY OF THE TWINS

There once was a team,
Well-known at home;
Men who played baseball
In a place called "Humphrey dome";
There they were, all fit and ready;
Baylor, Straker, and Smalley,
Hrbek and Gaetti;
Playing to win and playing for fun,
Knocked out Detroit, now Cardinals were on the run;
Deserving respect and looking for their share,
Puckett and Gladden in outfield, pitcher: Juan Berenguer;
Working hard winning the best of seven,
Viola, Reardon, and Laudner, Gagne and Blyleven;
Off to a fast start by the end of game one,
The score was Twins 10, St. Louis 1;
Making the grade and earning their fame,
End of the second game, the winners: the same;
The Cardinals fought back hoping the Twins were done,
But back in Minnesota, it was the Birds on the run;
There was no doubt the games were high stakes,
But St. Louis met its match,
In the "Land of 10,000 Lakes."

MINNESOTA VICTORY RAP

Well Kelly's men have won the games
Boogie, Juan, Boogie
The Twins scored more, there's none the same
Pitch it, Frankie, Pitch it
We watched the homer hankies wave
Grand Slam, Kent and Dan!
The Whistling Wives deserve to rave
So slide, Timmie, Slide
The fans—they broke the richter scale
Steal, Randy, Steal
and if the Cardinals' ball did sail
Say catch it, Bruno, catch it
The Terminator and the G-Men stomp
upon the field of Red
As Kirby, Roy and Neuman romp
We saw the Bird was dead
And Sassy Bert dint let them run
say, Reach, Lombo, Reach!
And Humphrey saw us number one
We're not Twinkies anymore!
We've proved that we can score
Not Twinkies anymore
Better than Bunyan lore
Not Twinkies anymore!

THE TRAUMA CARE AND EMERGENCY MEDICAL SERVICES PLANNING AND DEVELOPMENT ACT OF 1987

(Mr. BATES asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BATES. Mr. Speaker, on August 5, 1987, with Congressman HENRY WAXMAN as principal cosponsor, I introduced H.R. 3133, the Trauma Care and Emergency Medical Services Planning and Development Act of 1987.

Millions of dollars are wasted each year because accident victims do not receive the proper medical care. Medical complications and prolonged hospital treatment caused by inadequate trauma care constitute a major drain on our Nation's medical resources. Poor coordination, planning, and communication are the primary obstacles preventing injured Americans from receiving proper medical attention.

In my own district in San Diego County, trauma care centers were established 3 years ago. Since then thousands of lives have been saved due to the immediate attention that patients have received at these centers. H.R. 3133 represents a significant step toward the creation of effective, coordinated trauma care centers across the Nation.

I urge my colleagues to support this measure and make trauma care available to all Americans.

MR. GORBACHEV, STOP PLAYING GAMES

(Mr. RICHARDSON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. RICHARDSON. Mr. Speaker, General Secretary Gorbachev's decision to link SDI and space defense once again with the INF Treaty is deeply disappointing. The entire world was ready for a summit and the signing of the INF Treaty but Gorbachev is stalling.

Did Gorbachev raise up the ante simply because he is lying about his true intentions? Does he think he can get more out of the United States because of President Reagan's recent troubles?

If anything, he has been playing games.

These and other questions will be answered in the next few days. Nonetheless, this about-face will undoubtedly be costly to the General Secretary's image as a peacemaker and a golden boy on the international scene.

A majority of the European Continent already mesmerized by Gorbachev will be undoubtedly less trusting of his intentions. What he has done is united critics of the President, like myself, and Europeans who have been suspicious of his intentions with a view that each initiative of his must be viewed with caution.

Mr. Gorbachev, do you want arms control or do you want to play games? You have made a major miscalculation and it is best for the entire world that you correct it.

CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST CO. IS BACK IN THE NEWS

(Mr. ST GERMAIN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ST GERMAIN. Mr. Speaker, Continental Illinois Corp.—the bank holding company for Continental Illinois National Bank and Trust Co.—is back in the news.

News reports suggest that the holding company has pumped millions of dollars into a subsidiary—First Options of Chicago, Inc.—that is a leading lender to stock options traders. The reports indicate the subsidiary may have lost substantial sums in the wake of last week's massive drops in stock markets.

The Banking, Finance and Urban Affairs Committee conducted extensive hearings into the multibillion-dollar Federal rescue of Continental Illinois in 1984. The Federal Government, as the result of that bailout, still owns 60 percent of the Continental stock.

Now we learn that this federally assisted corporation is off to new adventures in the options market—with disastrous results.

Mr. Speaker, this incident reminds us once again of the volatility of the stock markets, the difficulty of maintaining solid walls between subsidiaries in a holding company, and the ultimate role of the Federal Government in picking up the pieces.

Mr. Speaker, the regulators have a responsibility to protect the Federal Government's stake in Continental Illinois. We intend to find out what the rationale is for allowing the holding company to leap off into these risky uncharted waters.

TRADE DEFICIT: ONE OF THE CAUSES OF THE STOCK MARKET CRASH

(Mr. ALEXANDER asked and was given permission to address the House for 1 minute and to revise and extend his remarks, and include extraneous matter.)

Mr. ALEXANDER. Mr. Speaker, Minnesota is not the only team that has twin hitters. Washington does as well, the twin hitters of the budget deficit and the trade deficit.

I hope in your meeting today with the President that discussion is focused upon the trade deficit as well as the budget deficit. A national energy policy could address both. A national energy policy where America becomes energy independent would save our Nation about $40 billion annually in imported oil costs. It would save about $12 billion in Federal budget deficit costs that are now paid for farm price support payments, and for storage on farm products that are in surplus. That surplus could be converted into energy, thus creating a new market for farmers and simultaneously reducing the budget deficit.

Mr. Speaker, thank you for your leadership, and I look forward to hearing a report of your meeting at the economic summit with the President.

□ 1210

CONGRATULATIONS TO THE MINNESOTA TWINS

(Mr. PENNY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PENNY. Mr. Speaker, less than 2 weeks ago I came to the House floor and predicted that the Twins would make believers of fans all across the country. They did.

The Minnesota Twins met the odds. Just 6 months ago the odds were 150 to 1 against the Twins winning the World Series. Just 2 weeks ago the Detroit Tigers were favored to win the American League pennant, and in besting the St. Louis Cardinals, the Twins again beat the odds to become the only team ever to win the world title with four victories at home.

The Twins did what many said could not be done. We congratulate them and we thank them.

Minnesotans are not used to winning the big ones. In sports and in politics we have been close, we have been contenders, we have played well, but the big win has always eluded us.

The Minnesota Twins are now baseball's world champions. Thanks, Twins, we needed that.

REPORT ON H.R. 3545, OMNIBUS BUDGET RECONCILIATION ACT OF 1987

Mr. FOLEY, from the Committee on the Budget, submitted a privileged report (Rept. No. 100-391) on the bill (H.R. 3545) to provide for reconciliation pursuant to section 4 of the first concurrent resolution on the budget for fiscal year 1988, which was referred to the Union Calendar and ordered to be printed.

CONGRATULATIONS TO THE MINNESOTA TWINS (WASHINGTON SENATORS)

(Mr. RHODES asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. RHODES. Mr. Speaker, my two colleagues from Minnesota have spoken to us about the success of the Minnesota Twins last night in winning the World Series and ending the longest drought in baseball history between World Series victories.

I think it is important to note for the record that in fact the baseball team that won the World Series last night was the Washington Senators, thereby ending really the longest drought.

And as I, a lifelong fan, Mr. Speaker, of the Chicago Cubs, the team which now owns the longest drought between World Series victories, I am looking forward to 1988 and to the opportunity to stand here in the well of the House 1 year from now and to congratulate the Chicago Cubs upon their victory.

But I do join in congratulating the Washington Senators, sometimes known as the Minnesota Twins, for their great victory last night.

COMMUNICATION FROM THE CHAIRMAN OF THE COMMITTEE ON GOVERNMENT OPERATIONS

The **SPEAKER** pro tempore (Mr. RICHARDSON) laid before the House the following communication from the chairman of the Committee on Government Operations:

COMMITTEE ON
GOVERNMENT OPERATIONS,
Washington, DC, October 20, 1987.

Hon. JIM WRIGHT,
The Speaker, The House of Representatives, Washington, DC.

DEAR MR. SPEAKER: I have previously notified you of the receipt of a subpoena issued by the United States District Court for the Western District of Missouri. The subpoena calls for testimony and the production of documents relating to the nonpublic investigatory activities of the Subcommittee on Environment, Energy, and Natural Resources of the Committee on Government Operations.

After consultation with the General Counsel to the Clerk, pursuant to Rule

L(50) of the rules of the House of Representatives, I have determined that compliance with the subpoena would not be consistent with the privileges and precedents of the House. I, therefore, request that the General Counsel to the Clerk be authorized to seek judicial relief from the subpoena.

Sincerely,

JACK BROOKS,
Chairman.

CREDIT CARD INTEREST RATE CAP AMENDMENT

The **SPEAKER** pro tempore. Under a previous order of the House, the gentleman from Illinois [Mr. ANNUNZIO] is recognized for 5 minutes.

Mr. ANNUNZIO. Mr. Speaker, on Wednesday the Members of this body will have an opportunity to vote on my credit card interest rate cap amendment to H.R. 515.

This amendment will cap credit card interest rates at 8 percentage points above the yield on 1 year Treasury securities. The rate would be adjusted quarterly. If it were in effect today, the rate would be 15.03 percent. This amendment gives Members a chance to do something about high credit card interest rates. Consumers are paying tens of millions of dollars in excess interest charges as banks seek to make consumers pay for bank lending follies in the commercial and foreign markets.

While other interest rates have fallen, credit card interest rates remain high. Indeed, credit card interest rates in many cases are more than double the prime rate.

It is time to bring credit card interest rates down to a level where banks can profit, not profiteer. My amendment will do so.

American consumers overwhelmingly support a credit card interest rate cap. An NBC news poll showed that by an almost 4-to-1 margin, consumers want a credit card interest rate cap.

My amendment is supported by all major U.S. consumer interest groups: Consumer Federation of America, Consumers Union, U.S. Public Interest Research Group, Public Citizen's Congress Watch, and the American Association of Retired Persons.

Since this amendment is so important, I want to be sure all Members have a chance to examine it before the vote on Wednesday.

AMENDMENT TO H.R. 515, AS REPORTED, OFFERED BY MR. ANNUNZIO OF ILLINOIS

Page 10, after line 21, add the following new section:

SEC. 3. CREDIT CARD INTEREST RATE CEILING.

(a) IN GENERAL.—Chapter 1 of the Truth in Lending Act (15 U.S.C. 1601 et seq.) is amended by inserting after section 109 the following new section:

"SEC. 110. LIMITATIONS ON CREDIT CARD INTEREST RATES.

"(a) IN GENERAL.—During any calendar quarter, no creditor may impose a finance charge under any open end credit plan involving a credit card which results in an annual percentage rate greater than 8 percentage points over the yield on 1-year securities in the Treasury constant maturity series for the second month of the preceding calendar quarter.

"(b) CERTAIN PROVISIONS OF STATE NOTICE LAW SUPERSEDED.—Notwithstanding any State law which requires a creditor to provide notice to any person to whom credit has been extended before the creditor may increase the rate used to compute the finance charge imposed on such credit, a creditor may increase such rate for any calendar quarter by the amount by which the maximum allowable rate determined for such calendar quarter under subsection (a) exceeds the rate in the preceding calendar quarter.

"(c) STATE CEILINGS NOT SUPERSEDED.—Except as provided in subsection (b), this section shall not permit the imposition of any finance charges in excess of any limitation on finance charges determined under applicable State law.".

(b) CLERICAL AMENDMENT.—The table of sections for chapter 1 of the Truth in Lending Act is amended by inserting after the item relating to section 109 the following new item:

"110. Limitations on credit card interest rates.".

STRATEGY AND MILITARY EDUCATION: CONCERNS, TRENDS, AND UNANSWERED QUESTIONS

The **SPEAKER** pro tempore. Under a previous order of the House, the gentleman from Missouri [Mr. SKELTON] is recognized for 30 minutes.

Mr. SKELTON. Mr. Speaker, the frustrating experience of Vietnam probably affected the American military more than any other institution in our society. The United States committed its prestige, its resources, and its sons to a struggle for freedom in Southeast Asia that was ultimately lost. The strange fact about that tragic war was that the Americans who saw action in Vietnam won every battle they fought—from the Ia Drang Valley in 1965, to the Tet offensive in 1968, to the Easter offensive of 1972. And yet, the war was lost; American strategists struck out.

One of the fundamental causes of United States failure of Vietnam was the lack of strategic thinking on the part of United States military leaders that took place at the end of World War II. Simply put, strategic thinking atrophied after 1945. In many ways the legacy of Hiroshima and Nagasaki had convinced many leaders, both military and civilian, that the nuclear age had rendered obsolete the ideas and thoughts associated with classical military strategy. Sun-Tzu, Clausewitz, Mahan, and Mackinder had little to offer in the era of missiles and megatons, or so it was thought. Consequently the study of military history and military studies went into decline in the professional military schools of the United States—the Army, Navy, and Air War Colleges and the National War College. The bitter experience of Vietnam sent American military men back to the books. Complacency gave way to introspection and concern.

MILITARY EDUCATIONAL SYSTEM

Before describing some of the changes that have taken place at the war colleges since Vietnam, let me provide an outline of the military educational system as it stands today. The military services provide officers the opportunity to go back to school at various points during their careers.

At the first tier are those schools that provide junior officers further opportunity to refine the combat arms skills that they have practiced in operational units at home and overseas. For the Marine Corps it is the Amphibious Warfare School; for the Army, the various branch schools; for the Air Force, Squadrons Officers School; and for the Navy, the schools for submarine, surface, or aviation.

The second tier schools consist of the various command and staff colleagues that provide field grade officers the skills to work as staff officers. Each of the four services has its own command and staff college. They properly emphasize tactics, doctrine, and logistic support. A fifth school, the Armed Forces Staff College located at Norfolk, VA, prepares officers from each of the four services to work as staff officers on joint staffs, those staffs that include elements from more than one service.

The five war colleges—the National War College, the Industrial College of the Armed Forces, and the Navy War College, the Air War College, and the Navy War College—are the crown jewels of the military educational system. Their purpose is embedded in their name: They exist to study war. For 1 year, around the 20-year point in their military careers, the best of our senior officers are supposed to attend one of these senior service schools. It is here that we should expect to find the profound military thinkers of today and tomorrow.

All five colleges prepare students to participate in national security affairs. Four of the five, however, are specialized. Only the National War College, under the jurisdiction of the Chairman of the Joint Chiefs of Staff as part of the National Defense University, stresses "joint and combined high-level policy, command, and staff functions in the planning and implementation of national strategy." The Industrial College of the Armed Forces emphasizes "the management of resources." The other three war colleges stress service-specific themes in conformance with missions—either land warfare, naval strategy and operations, or air power.

Basic topics cover organization, roles and missions, doctrine, strategy, tactics, and logistics. Recent emphasis over the past few years has included joint operations and what is called operational art, that area of military operations between national strategy at one level and tactics at the other.

WAR COLLEGES CRITICIZED

Even before the end of the American involvement in Vietnam, dissatisfaction with the performance of the war colleges was evident. Adm. Stansfield Turner, president of the Naval War College from 1972-74, instituted a far-reaching transformation of that institution. In a speech he gave shortly after arriving at the institution in July 1972, Admiral Turner charged the war colleges with "creeping intellectual divitalization." He believed that the schools overemphasized current events which would soon be outdated, offered too many lectures on too wide a range of subjects, failed to study any subject in depth, and needed a qualified faculty that taught. In effect he aimed to return the study of war, strategy, and operations to the heart of the institutions curriculum.

This is what he had to say about what a war college should aim to achieve:

> War colleges are places to educate the senior officer corps in the large strategic and military issues that confront America in the late 20th century. They should educate these officers by a demanding intellectual curriculum. * * * Above all the war colleges should broaden the intellectual and military horizons of the officers who attend, so that they have a conception of the larger strategic and operational issues that confront our military and our Nation.

Elsewhere, Deputy Secretary of Defense William Clements formed the Department of Defense Committee on Excellence in Education in 1973. In addition to Secretary Clements the committee included the three service secretaries and the Assistant Secretary of Defense for Manpower and Reserve Affairs. Their charter was to look at the performance of the senior service colleges. A lengthy memo issued 2 years later repeated many of the same criticisms that Admiral Turner had enunciated when he took over the Naval War College.

In its final report the Clements committee directed the three war colleges to refocus two thirds of their curriculum to the study of warfare—land warfare by the Army War College, naval warfare by the Naval War College, and air warfare by the Air War College. The committee also advised the schools to improve the quality of the facility—by upgrading the career status of military faculty members, by reducing faculty turnover, and by hiring qualified civilian professors.

RECENT DEVELOPMENTS

Since the Turner "revolution" of 1972 and the work of the Clements committee in 1975, matters on the education front at the war colleges have not been quiet. To a greater or lesser extent all the war colleges have put the study of war and military history back into the war college curricula. Whether they form the heart of the curricula is another matter. Williamson Murray, an Ohio State University military history professor who has taught at the Naval War College, West Point, and the Air War College, contends that the colleges have too many courses in international relations, management, and the social sciences. In his opinion, war tends to be crowded out of the curriculum. This is less true of the Naval War College and more so, in varying degrees, of the others.

The enactment of the Goldwater-Nichols Department of Defense Reorganization Act in 1986 has spurred greater interest in military education. Title IV of the act, which deals with Joint Officer Personnel Policy, places greater emphasis on professional military education. The schools of professional military education, especially the command and staff colleges and the war colleges, are envisioned by the bill as playing a crucial part in promoting the concept of jointness—the integrated employment of land, sea, and air forces in military operations.

In response to the enactment of the reorganization act the Department of Defense has taken a number of actions dealing with the issue of professional military education. Retired Air Force Gen. Russell Dougherty, a former commander of the Strategic Air Command, chaired a panel to look at the matter of professional military education in joint matters. The panel submitted its recommendations in early May. The key recommendation calls for making the five war colleges and four service command and staff colleges joint schools by revamping their curricula and strengthening faculty.

Another effort concerns the teaching of strategy and foreign policy at the senior war colleges. Eugene Rostow, former head of the Arms Control and Disarmament Agency, and Dr. John Endicott, Director of the Institute for National Strategic Studies at the National Defense University were asked to look into this important topic by Dr. Fred Ikle, the Undersecretary of Defense for Policy, late last year. They submitted their joint report in June. They recommended that only probable candidates for promotion to general or admiral be selected to attend the war colleges, that faculties be strengthened, and that the war colleges give greater emphasis to the study of "grand strategy."

And just last month Lt. Gen. Bradley Hosmer, President of the National Defense University, submitted a lengthy memorandum to the Vice Chairman of the Joint Chiefs of Staff. In it, he set out in detail a proposed educational program to prepare officers for joint duty and the joint specialty as defined by the Goldwater-Nichols legislation. General Hosmer's effort, in essence, fleshed out the details of the general recommendations made by the Dougherty panel.

PAST AS PROLOGUE

Not too long ago the war colleges had to contend with institutional inertia, a nonintellectual tradition, and indifference among senior military leaders. The war colleges were a wasted resource. Such is not the case today. These various efforts—at the war colleges themselves, within the Pentagon, and on Capitol Hill—indicate that the matter of professional military education has taken a higher profile in the deliberations of policymakers.

Attention to such issues as faculty quality, course offerings, academic evaluation, student selection, length of study are just some of the topics military leaders are examining as a result of the Goldwater-Nichols legislation. These matters need to be addressed in such a way as to ensure the formation of military leaders steeped in the knowledge of strategy and military history.

Teaching, similar to any other skilled job, requires both knowledge and experience. Here are some questions that need to be looked at during this period of examination. First, is the present policy at some of our war colleges to appoint military instructors for a 2-year period enough time? If not, what are the consequences of increasing the time from 2 years to 3 or 4 years? Second, which is better for the development of the well-rounded senior officer, the Naval War College's emphasis on a few core subjects or the philosophy of some of the other war colleges to emphasize a broader range of subjects—for example, in economics, politics, and international relations? Third, what should the war colleges devote more effort to, matters to be learned or ways to think? And fourth, in this era of greater attention to joint operations, do we want all five war colleges to produce joint specialists or is it sufficient to produce officers from the three service war colleges having just a greater awareness of joint issues? These are just some of the difficult questions that need to be examined, questions that will require tough choices in the near future.

Admiral Nimitz once remarked that the Pacific campaigns of World War II were won in the gaming studies of the Naval War College in the 1930's. There can be no doubt that the future of our country's role in the world, and the military-political policies that we formulate, will be decisively influenced by the educational programs of our senior war colleges.

This return to fundamentals cannot succeed, however, unless there is strong support from the Department of Defense, the Joint Chiefs of Staff, and the individual services. Congressional interest is important, and thus, Congress has an important role in promoting support for proper military education. Both civilian leaders and military leaders working together will determine the future caliber of our military educational system, which is the basis for future strategic thinking.

This concludes the second of five speeches I will give on the topic of strategy and military education.

□ 1225

FINAL REPORT ON THE DEFENSE OF THE PRIVILEGES AND IMMUNITIES OF THE HOUSE AND OF MY OWN INTEGRITY AND HONOR

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Texas [Mr. GONZALEZ] is recognized for 60 minutes.

Mr. GONZALEZ. Mr. Speaker, I rise by way of summing up and wrapping up what I have called my final report on the defense of the privileges and immunities of the House and of my own integrity and honor.

Previously, in the months of July and August, I had spoken about the fact that being accused, and I can say by way of parenthesis to my colleagues that there is no worse or more awesome experience than to be falsely accused; it is not the first time this has happened to me as I have ventured into politics and have held politically elective office since 1953 and, in fact, it was in my second year as a member of the city council of San Antonio that an abominable attempt was made to, in the words of the city attorney at that time, to "scare that little Mexican off the city council"; and inclusion with one of the powerful daily newspapers at that time would have succeeded for I was alone, relatively powerless; the only member of Mexican descent on the city council at that time was a breakthrough so to speak and the attempt might have succeeded for frankly I had never envisioned happening what did happen as I assumed that office on May 1, 1953.

And, of course, the following 2 years were, in the words of a local political historian, the most turbulent, the most disorderly, the most passionate in the 20th century of municipal history of the city of San Antonio. And that is saying a lot, because San Antonio has a most colorful history. But it so happened that what it did was anger me to think that my name, which is all I have ever had and have now for after 35 years, almost, in public elected office I have no more, no less, wealth than I had when I started out. I am not richer, I am not poorer.

And literally by standards accepted today, I am poor.

But I never had any confusion in that respect. So the only thing I have been so sensitive, as in the defense of my country, I am willing to die in defense of my honor because that is all I really have. And I made up my mind when, not having planned it, I entered into politics that that was one thing I would never accept as a price for political office-holding or, for that matter, any other type of office, private or public.

So that when last year on December 4, as was my custom, in fact, that was the fifth morning in a row that I had had a breakfast meeting with constituents at a very prominent, very historic restaurant which I have been patronizing for over 40 years, Earl Abel's, and having as my guest a veteran retired Army sergeant major who had served heroically in Korea and in Vietnam, who had retired on October 16 last year at a retirement ceremony at Fort Sam Houston, which is in the middle of my district, but since we were closing out the 99th Congress, I had to be here and I could not attend there.

So I finally arranged to have breakfast with him so I could present to him a memento from his Congressman as testimony to his heroic, his loyal, his outstanding service as a really heroic serviceman in the service of the U.S. Army.

He was with his brother who happens to be a staff member on my San Antonio staff, a young attorney, by the way.

We got there at 8 a.m. in the morning. At about 9:30 the conversation had been so interesting and I listened to what he had to say, the sergeant major, that is, that before we realized it was 9:30 and the dining hall was empty. When at 9:30, exactly three individuals walked in from the other side of the dining room and out of 20 tables picked the one right next to the table we were sitting at. Immediately I heard some mention of my name, "Henry B." and I heard the word "communist." But two waitresses had come up and had diverted my attention by asking for advice. One had a very serious problem. Her mother had just been determined to have Alzheimer's disease. The nursing home was wanting to kick her out. She and her husband, who are really submarginally employed, had just been handed a $10,000 bill by the doctor and they needed help.

□ 1240

However, we were discussing it there and found that she did not live in my district, so I gave her all the information as to my next-door neighbor's office and how to get hold of his assistants in San Antonio, and over that conversation I heard this, but naturally I was not aware that it was being directed to me at that point. However, my aide did, and I heard him say, "Look, mister, you're all wrong."

But again the second waitress came up and asked me another question relative to her son, having to do with a case that I had been dealing with her on for more than 3 years.

So to make a long story short, because to a certain extent when I got up, this was the first time and only time there was discussion on this, and this came out after the judge in whose court the case had been filed—and unbelievably, it was on the county level, a district attorney case, and there is not a case of this nature that ever gets to that range. These cases go to municipal or police court or to a justice of the peace at the worst.

However, it seems to me that even then it was difficult to believe and it was strange that at 9:30, out of 20 tables to pick from, three men would seek to be seated right next to our table. But the thought did not occur to me in a serious vein until the next day when the newspapers reported the incident.

Now, I think the main thing to point out is that the newspaper account was from the individual who was involved in this altercation. It was his account because he is the one that went to the newspapers. But it was not until 3 days after that account that the story that he initially gave was changed somewhat.

Mr. Speaker, I am going to place into the RECORD a story that appeared in the press. This was 3 days after the event was placed on the wire by UPI and circulated outside of San Antonio and printed in the New York Times on December 7, because it is a very good example of the outright distortion and falsification of the event that was never, never corrected by the newspapers, either locally or outside, with the exception of one which is not a daily newspaper but a weekly newspaper and published outside of San Antonio, TX. So at this point I would like for the RECORD to show how distorted this report was, and that it never was corrected.

The newspaper account is as follows:

[From the New York Times, Dec. 7, 1986]

CONGRESSMAN, 70, RESPONDS TO A BAR CRITIC WITH HIS FIST

SAN ANTONIO, December 7.—Representative Henry B. Gonzalez, a Texas Democrat who is 70 years old, responded in a bar to a man who called him a Communist by punching him, and the man said later that he was too shocked to do anything but sit there.

"If I wanted to cold-cock him, I could have," said Mr. Gonzalez, admitting he had "clipped" Bill Allen, 40, in a San Antonio restaurant at 9:30 A.M. Thursday. Mr. Gonzalez added that he had placed second in boxing at the University of Texas in 1937.

Mr. Allen, who had a black eye and a cut over his eyebrow, said Friday he planned to file charges.

He said Mr. Gonzalez approached his table after a conversation between Mr. Allen and two friends apparently was overheard.

"He said, 'Did you say I was a Communist?'" Mr. Allen said, "and I just looked him right in the eye, and said, "Yeah, in my opinion, you're a Communist.' He just went to shaking."

He said that then as Mr. Gonzalez drew back, "I knew it was coming, but I didn't believe it."

Mr. Allen said he was "absolutely shocked" by Mr. Gonzalez's response, and

> remained seated. "The way I was raised, there's two things you don't do," he said. "You don't hit a woman, and you don't hit an old man."

Mr. Speaker, if I had known at the time who it was that had directed these men to that table, I would have known immediately that it was a setup, because in the employment there at Earl Abel's there are several employees who have been very hostile because they have belonged to some of the local extreme groups, some of them having an association with the so-called Aryan Brotherhood, which incidentally has been holding maneuvers of a military type in an adjacent county, and the accuser in this case, the one who actually made the remarks, is actually involved actively with that kind of group, including that of an acquaintance with the police officer, Smith, who was killed by another police officer, Tucker, in San Antonio, giving rise to one of the most publicized cases in the whole country, if not internationally, and which incidentally resulted in the accused officer having been absolved. But the officer who was killed was involved with some of these groups. When the police went to his household, they discovered a literal armament.

Now, in our part of the country that has been going on for some years. We have had groups that have paramilitary practices, going back as far as 1961, in which they have even used machineguns and automatic rifles, in one case the recoilless 90-millimeter rifles. This is heavy equipment, this means heavy business, and this is a paramilitary group that identifies with what some people call the extreme right wing but which actually gives us examples of the thinking of groups that we have always had in our society, as our history will show.

In any event, nobody seemed to think that it was much, even by this accuser's account, because his first version was: "Well, the old man can't hit. I was surprised he would strike me." He kept saying these things, and he changed his story later on to say that I had left the restaurant and had reentered, which, of course, is a base lie. However, the newspapers to this day and the columnists in San Antonio will still write as if that was a fact.

I must point out that the reason this version came out was that this man was the one who went to the newspapers to report it. What actually happened was that when I got up, realizing that it was almost 10 a.m. and I had to be in the office because I had an appointment, I heard loud and plain the charge, "This is the No. 1 leading damned Communist around here." At that time my two guests had reached a point that they were 3 yards across the entrance leading to a little passageway leading to the cashier. So I went up to them and said, "I'll pay the check in a minute."

I had picked up the car keys and the bill was in my left hand. So certainly if I had had any intention of striking anybody, I certainly would not have gone about it in that condition.

So I thought I would ask this group, "What brings this up? Why are you yelling in such a manner? Why are you obviously attempting to create some disorder?"

Two of the men shook their heads negatively and said, "We didn't," and this one, Clint Eastwood style, looking down and holding on to the table's edge, not eating, said, "I did, because you are the No. 1 damned leading Communist."

So with that I said, "Look, get up and look me in the eye."

Then I noticed that he had a hunting knife in his scabbard. Under Texas statutes, it is a felony to carry that type of a knife in a public place. It was what we used to call a deer-gutting knife. When my brothers used to go deer hunting, they would have one. And this was in excess of 9 inches.

However, as I approached him and got closer, I noticed in his left pocket he had one of these new dangerous, deadly so-called plastic guns. Now, when I say, "plastic," I do not mean a toy gun. The plastic that is being developed nowadays is the kind of plastic that is being used to build automobiles. It is as hard as steel. It is dangerous, it is murderous, and I saw it.

When I said, "Stand up and look me in the eye," he pushed back again Clint Eastwood style, like you see in the movies when you see the quick draw and all of a sudden he has gunned down eight people. He dropped his hand to the scabbard and his left arm to the pocket. I then hit him on the right cheek. I did not punch; I pulled my punch because I did not want to hit him at any other than that which would cause him to restrain that movement of moving toward that knife. But at that same moment, as he started to continue, the sergeant major came up and grabbed me by the shoulder and said, "Congressman, you don't need any of this."

When this man saw the two friends coming up, he then stayed sitting. But I am sure that if he had not been there, I would have had to have proceeded further in defense of my own personal safety.

I have been exposed to dangers. I have been fired at; I have had knives pulled on me. I was chief juvenile probationary officer for Bexar County after the war, exactly 40 years ago, 43 years ago, 41 years ago, and I have had experiences and have had exposures to violence. I have had men killed right 3 yards from where I was at one of the nicest dances and social events anybody could have ever thought of. So violence is part and parcel of our day and time. When you are so inured to our public life, you know that the unexpected is the thing that you can expect.

But in this case it was not any other thing than the fact that he made the draw that led me to punch him on the right cheek. There was no way I could have hit his left eye because I came up on his right side. He never looked up at me.

Second, there was no way I could have cut his face, for I wear no rings. Yet to my astonishment the newspapers printed—and this was 4 days later—that he had been given a black eye that nobody has ever seen. There was no witness to the fact that he had a black eye because he hid out for 10 days. But in the meanwhile two very, very loud radio talk shows that are extremist to say the least picked him up and decided to push his case.

Also in the meanwhile nobody was calling me to find out the exact sequence of events, even though one of the reporters had talked to the two witnesses who were with me, and both had said that the man had this kind of a weapon on him, that is, the knife, because actually it was not until I was right by him that I noticed the gun. But the knife was obviously visible to anybody who was in that room.

So the fact was that it was early in the time that I could see the contentiousness of this. The two witnesses that came in with the accuser never uttered a word. The newspaper never, never mentioned their names. On the other hand, they repeatedly printed the names of the two guests I had with me. They even quoted the accuser as having referred to them as "goons."

So we will go into more of that as we go into the future, because they are private individuals. They are not public officials, and both the radio stations, as well as the press, might have to face something there in the way of accountability. What I am saying is that there was no question that it was a setup.

What could not be understood, even in the beginning month of January and then in February, when the new district attorney took office, was why there was any question about it, and in the meanwhile it was not until after March 5, which is when I introduced the impeachment resolution of President Reagan, that there was any kind of a pattern in the newspaper reports emanating from and quoting sources from the district attorney's office, mostly sustaining either the statements of the first assistant or one of the subalterns, one of the assistants. Now, who would conceive that anybody speaking in that capacity would not have been speaking with the direct consent and instruction of the chief himself, the district attorney?

Then the district attorney in April decided that he would call some friends, and then he would call my son, who is an attorney, and would say, "Look, I'm under terrible pressure by the newspaper to do something about this case.

"Give me something that I can hang my hat on." This was his quoted expression with three different individuals, including my son, that he spoke with.

So in the meanwhile here I am wondering why it was that there was no contact either from the police or from the district attorney's office contacting me to get a written statement. So finally, the second time that district attorney called my son, I asked my son, I said, "Look, I think the point has been reached where we ought to have counsel. We have got to have somebody that is going to have to be prepared here. I don't want to get sandbagged."

□ 1255

After all, I have been sandbagged and attempted to be sandbagged all through the years I have served in public office from the San Antonio area.

I do not know how different it is in San Antonio from any other jurisdiction. All I know is that I have always had my guard up.

There have been repeated attempts to try to find something on me, as one former mayor said, "What can we get on him?"

They have delegated the chief of detectives on one occasion, and that was the second year in the county I spoke of.

They had four different detective agencies through the course of the years working on that. In each case there was no question about it because first I was born and have lived in San Antonio all along, and I have never been arrested for anything even though I grew up in a very, very troubled and difficult area where every one of my playmates that I started out with ended up having a record of some kind or another.

I might say that I was the only one in a 3-mile radius of there that ended up in finishing high school in the 1930's. I had to fight even then because one cannot stick out like a sore thumb too much in anything, and I think my colleagues here are quick to realize the significance of that statement.

To make a long story short, the district attorney filed charges almost 6 months after the incident. He filed what we define in Texas as a class A misdemeanor because that is the only basis upon which he could hold jurisdiction on a county level.

In order to do that they would have to strain quite a bit. They would have to allege actual physical harm.

The individual said he had been hit in the eye, which was not true. That was lie No. 1.

Lie No. 2, 1 month after the event he tells one of the reporters on the phone, because no other witness ever saw him when he had a black eye, even after 10 days when he finally went to file charges which in themselves was unusual.

It started with the police who took the charges. Let me say that never, by their own admission have they handled that kind of a case that way, by their very own admission, the very police officer that took that complaint told me that he saw nothing on his face.

This was 10 days after the affair. Exactly 10 days.

Yet when I said that if the police are going to take the complaint, I want to file a complaint also for his carrying a prohibited weapon, which is a felony in Texas.

The police officer said, "Oh, no, I cannot do that."

I said, "Why not?"

He said, "Well, too much time has gone by."

On the other hand, it was the same transaction, it was the same day, the same event.

So that actually there was no question that it was a setup.

When I took the floor under these orders, though I could have done it on a point of personal privilege, since when the case was filed it was filed in one of the few, and one of the newest, Republican judge's courts. That is the way he defined himself. He never said that he is just a judge, he is one of what he calls Republican judges. He had on prior occasions when he worked for the district attorney himself in years past manifested bias and prejudice against me as a public official even then.

So what a coincidence that the case would be filed there. The district attorney by his admission said that he was goaded into filing because I had called him a coward, a moral and political coward.

Why did I do that? Because that is exactly what he was revealing himself to be to everybody that he discussed the case with.

He himself intervened and dealt with the accuser, and not one time did he even have his assistants or investigators talk to me. Yet, he had his investigators going out publically saying that if anybody wants that Congressman brought in handcuffed, dead or alive, I am the man to do it.

Now, that never has been explained or clarified for me. I think that is pretty bloodthirsty language and I think coming from that source and from a superior who is saying that he is handling the case objectively, that it calls for accountability. But then in April, that began what turned out to be a steady drumbeat of reports emanating from the reporters in the courthouse, with pictures and all, saying that this is a serious case, we are looking into it still, and so on. However, we have all the makings of a serious case and it looks bad, and so on.

But in the meanwhile, nobody had gotten our side. Nobody had called. Nobody had requested us to respond to questions.

Finally, one of the assistant district attorneys who was a personal friend of my son, called my son and said, "Why not get sworn affidavits from your father and the two men who were with him and bring them to me?"

My son did that. Yet, when the district attorney filed charges, he said, and he was quoted in the newspaper as saying, "I never heard from Gonzalez."

Given that scenario, should it be any wonder that the judge then begins to have press conferences saying that this looks like a case that is going to require a bigger chamber than the one I preside over so I am making arrangements to borrow a hearing room from one of the district judges that will be going on vacation this summer.

Now, why that?

Then the next thing, 2 days after the filing he announces a gag order. It is unprecedented anywhere that we could find by our research, in Texas or American Corpus of Precedents and Jurisprudence that such an order has been issued on a misdemeanor level.

This was ironic, since the most publicized, the most passionately discussed case had just been completed and that was the homicide involving police officer Tucker who killed police officer Smith in what he said was self-defense but which was enshrouded in all kinds of mystery, and it was publicized and nobody was suggesting, the judge or anybody else, that there be a change of venue because of undue publicity.

Suddenly, here is this judge, Timothy Johnson, saying "I am going to move this trial, and in the meanwhile I am issuing a gag order prohibiting the parties involved from speaking."

In the meanwhile, the judge forgot that in effect he was invading the constitutional prerogatives of the U.S. House of Representatives. That is when I took the House floor.

Now, my colleagues, I think that I would be remiss if I were to take the time and the privilege of what we call special orders and not do it under personal privilege which I could have done today, I could have done that easily. Still I was criticized. I was venomously attacked through cartoons, editorials, columnists in both newspapers in San Antonio for having taken special orders. They pictured it as defiance of the gag order.

It was no such thing. It was merely saying the judge has not read the Con-

stitution, he is overreaching his judicial power, he is invading the prerogatives and immunities of the U.S. House of Representatives as reflected in article I, section 6 of the U.S. Constitution, and I am not going to let him set a precedent.

How important was that? My colleague, the gentleman from Tennessee [Mr. FORD] was under charges in his home State and he had said that the political forces of the Republican administration in his State were trying to get at him.

The judge in his case, was a Federal district judge. The charges were felonious in nature. In his case the judge issued a gag order.

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It was our pleadings that we drew up later that set the precedents that led to the appellate court, the appellate jurisdiction in Tennessee to absolve that order, using almost the same language that we did in what we called our recusal motion, which incidentally I was pleased in having two of the most exceptional, fine gentlemen lawyers in the whole United States or in any jurisdiction, Mr. Pat Maloney, Sr., and Mr. Jack Paul Leon, great individuals.

Mr. Speaker, I include in the RECORD this motion for recusal, because it is historical, it is ironic that in this year we are celebrating the writing of the U.S. Constitution I should have been put and singled out to defend that which only the Constitution has been able to give us.

The document referred to follows:

THE STATE OF TEXAS v. HENRY B. GONZALEZ, SR.

[In the County Court at Law No. 5, Bexar County, TX, No. 389448]

MOTION FOR RECUSAL OF TRIAL JUDGE

To the Judge of Said Court: Comes now Henry B. Gonzalez, Sr., Defendant in the above styled and numbered cause, and respectfully moves Timothy F. Johnson, the Judge of said Court, to recuse himself from further proceedings in this cause, and to permit the parties to attempt to agree upon a special Judge to try and to hear all pending matters in this cause in accordance with the provisions of Article 30.03, Texas Code of Criminal Procedure. In support of this motion, the Defendant, Henry B. Gonzalez, Sr., would show the Court that the said Timothy F. Johnson has a personal bias and prejudice as against the Defendant, such that his impartiality might reasonably be questioned. More specifically, the Defendant would show the Court as follows:

1. The Defendant is a prominent member of the community in San Antonio and is a member of the United States House of Representatives, where he has served for approximately twenty-six years. In addition to lengthy and faithful service on behalf of his constituents, Henry B. Gonzalez, Sr., has not been afraid to take a stand, regardless of whether that stand was popular or unpopular with regard to the party in power. He is a life-long Democrat, and as such, has been frequently at odds with the present Ronald Reagan Republican administration, as well as with prior Republican administrations.

2. Judge Timothy F. Johnson is a Republican. He was elected as a Republican in the general election of 1986 in a county-wide election. In that election, his primary support came from the northern portions of Bexar County, which are predominantly Anglo. Congressman Gonzalez, however, represents a district which encompasses only a portion of Bexar County, and is populated primarily by persons of Mexican descent. Congressman Gonzalez is himself of Mexican descent. Judge Timothy F. Johnson is Anglo, and though elected to a county-wide office, can fairly be said to have received the major portion of his support other than from the area of Bexar County comprising Congressman Gonzalez' district.

3. While Congressman Gonzalez is well thought of within his district, and has consistently been re-elected every two years in the general election, he has fierce critics, both in Bexar County and nationally, with such critics being primarily members of the present national Ronald Reagan Republican administration, as well as fierce critics within the local, Bexar County Republican party and within the northern portions of Bexar County, from which Judge Timothy F. Johnson drew his primary support in the general election of 1986.

4. Heretofore, Judge Timothy F. Johnson has attempted to prevent Congressman Gonzalez from carrying out his duty to his constituents, and to explain the nature of the present cause, which is surely a matter of relevance and importance about which his constituents should be informed, and about which he should be entitled, as a public figure, to comment, in order to counter-act the falsehoods and misinformation which has been disseminated in the local Bexar County media, and by the Bexar County Republican establishment, by ordering Congressman Gonzalez not to comment publicly upon the case. As a consequence, Congressman Gonzalez has been faced with false accusations in the media to which he cannot respond, and thus, his constituents have been forced to rely upon false and misleading media reports, and as such, have been denied the right guaranteed to them under the First Amendment to the Constitution to receive information concerning their elected Representative, so that they may fairly determine whether his conduct is such that he merits their continued support.

Notwithstanding Judge Johnson's efforts to deprive Congressman Gonzalez' constituents of the truth concerning the incident giving rise to this cause, Congressman Gonzalez, in the exercise of his privilege to speak freely from the floor of the House of Representatives of the United States, has addressed the incident giving rise to this cause, and has spoken the truth concerning the matter, as was not only his right but his duty with respect to his constitutents, because his constituents have a right to be informed as to the actions of their elected Representatives in Congress. Notwithstanding Congressman Gonzelez's exercise of his right and of the right of his constituents to be informed, and notwithstanding the 200-year old provision in the Constitution permitting him to do so, the lawful exercise by Congressman Gonzalez of his right and the right of his constituents to be informed has infuriated and enraged Judge Timothy F. Johnson who, being a Republican and dependent upon a constituency primarily hostile to Congressman Gonzalez, has taken steps to deprive Congressman Gonzalez of a fair and impartial trial in the County in which he has resided during his entire life.

5. Specifically, Judge Timothy F. Johnson has entered an order, without hearing evidence, and without any semblance of due process, stating as fact (yet not based on any evidence, and without request either of the Defendant or of the State) that, "It appears to the court that a trial, alike fair and impartial to be accused and to the State, cannot be had in this county." (See Order of July 31, 1987). That such an order would or could have been entered without the slightest evidentiary basis and without motion made either by the State or by Congressman Gonzalez, in and of itself, demonstrates a bias, hostility and prejudice on the part of the Judge of this Court such as to require his recusal.

6. The Texas Court of Criminal Appeals sitting with all judges present, as is done for cases of special significant rather than in the usual panel of only three judges, has held that requiring a defendant to proceed to trial before a judge who has a bias or prejudice such that his impartiality could reasonably be questioned constitutes a violation of the right, not only of Congressman Gonzalez, but of all citizens of the State of Texas and of the United States, to due process of law such being guaranteed under the provision of the Fifth and Fourteenth Amendments to the Constitution of the United States and the provisions of Article 1, Section 19 of the Constitution of the State of Texas. See McClenan v. State, 661 S.W.2d 108 (Tex. Crim. App., 1983, en banc). The case before the Court is not merely one in which a Democrat is appearing before a Republican judge.

Congressman Gonzalez is no ordinary Congressman. Recognizing that President Ronald Reagan has enjoyed extreme popularity nationwide, and that President Reagan was elected in two landslides, Congressman Gonzalez has nevertheless had the courage to stand up and to attempt to tell the people of the United States that President Reagan is wrong, and showing the courage of his convictions, and willing to take an unpopular stand for what he perceives to be the best interest of the country which he loves so much, Congressman Gonzalez has even offered a resolution within the House of Representatives calling for the impeachment of President Ronald Reagan. As would be expected, taking on the power of the presidency and the power, might and money of the Republican party has not won the Congressman any friends in either the Reagan Administration or within the Republican party, and especially so in the Republican strongholds of northern Bexar County, Texas.

As such, he has become a target of right-wing extremists, the John Birch Society, and other hate groups who have embarked upon a "holy war" to remove him from office and to discredit him, by any means available to them. Given that Judge Timothy F. Johnson was and is dependent upon the same Republican party for his electoral as well as his financial support, his ability to be fair and impartial would naturally be called into question. But, more importantly, Judge Timothy F. Johnson has himself demonstrated that his actions in this case so far, although ostensibly done for the protection of the rights of the party to this case, have in fact been done with a view to, and have had the effect of prejudicing Congressman Gonzalez in the preparation and presentation of his defense.

Specifically, although Judge Johnson has attempted to gag Congressman Gonzalez and to prevent him from communicating with his constituents, the Judge himself has not felt himself bound by any such "gag order" and has commented freely upon this case to the media. Surely, if Judge Johnson were intent upon insuring a fair trial, he would not enter an order attempting to restrict Congressman Gonzalez from informing his constituents, and thus depriving his constituents of their right to information, but, at the same time, freely commenting upon this case in the media.

7. The pinnacle, however, is demonstrated by Judge Timothy F. Johnson's entry of an order finding without hearing any evidence, that the State and the Defendant could not receive a fair trial in Bexar County, without even being asked to do so by either the State or Congressman Gonzalez!

8. The right to a trial in one's home area (called in the law, the right to trial in the vicinage) is, like the privilege of free speech upon the floor of the House of Representatives, as old as the Constitution itself, which provides, in Article III, Section 2, that criminal trials shall take place in the State where the offense is alleged to have been committed, and in the Sixth Amendment to the Constitution which provides that all persons accused of criminal offenses have the right to a speedy and public trial by an impartial jury of the State and district wherein the crime is alleged to have occurred.

9. The Courts of Appeals for the United States have recognized that the right to trial in one's home area (or vicinage) is an important right of a defendant, and that "Venue requirements are imposed to prevent the government from choosing a favorable tribunal or one which may be unduly inconvenient for the defendant." United States v. Rivera, 388 F.2d 545, 548 (2nd Cir. 1968). The United States Court of Appeals for the Eleventh Circuit has recognized that the right to trial in the vicinage is intended to reduce the difficulties to a defendant that would be caused by trial at a distance from his home and friends as follows:

"The venue provisions also seek to avoid the prejudice to a defendant's case that might result from facing trial in a place where it would be difficult for him to obtain witnesses in preparation for trial. Lastly, since most crimes usually take place in the district where the defendant resides, the venue provisions try to reduce the difficulties to the defendant that would be caused by a trial at a distance from his home and friends." United States v. DiJames, 731 F.2d 758 at 762 (11th Cir. 1984).

Further, the United States Court of Appeals for the Second Circuit has recognized that the right of trial in the vicinage exists for the very purpose of guaranteeing to a defendant in a criminal case the right to be tried where he is known. In so holding, the Court stated: "One (purpose) although by no means the only purpose of the insistence on trial in the vicinage both in Article III, § 2 and in the Sixth Amendment must have been to entitle a defendant to trial where he is known * * *" United States v. McMann, 435 F.2d 813, at 817 (2nd Cir. 1970).

No fair and impartial judge would, without hearing evidence and without having been requested to do so by the State, unilaterally seek to deprive a defendant of his precious right to be tried in his home area. Yet, given the background of Judge Timothy F. Johnson as a Republican, and his rage and displeasure at Congressman Gonzalez' efforts to inform his constituents so that they can freely judge his conduct and intelligently exercise their right to vote, cannot fairly and impartially sit in judgment in this cause.

10. The First Amendment rights of free speech and free press protect not only the right of the citizen to speak and be heard, but just as importantly, protect the rights of the citizenry to receive information and ideas. e.g., Stanley vs. Georgia, 394 U.S. 557, 564, 22 L.Ed. 2d 542, 89 S.Ct. 1243 (1969); Griswold vs. Connecticut, 381 U.S. 479, 85 S.Ct. 1678, 14 L.Ed. 2d 510 (1965). As the United States Supreme Court stated in Griswold vs. Connecticut, supra: "The right of freedom of speech and press includes not only the right to utter or print but the right to distribute, the right to receive, the right to read. . . ."

Thus, when Congressman Gonzalez is deprived of his right to inform his constituents and to explain to them his conduct, not only is his right of free speech abridged, but more importantly, the First Amendment right of his constituents (the 526,000 citizens of the Twentieth Congressional District of Texas of which 62% are of Mexican descent) to receive information has been abridged and denied. Thus, Judge Johnson's attempt to silence Congressman Gonzalez has had the effect of depriving each and everyone of the Congressman's constituents of their right to be fully informed as to the conduct of their elected representative. Ours is a representative democracy.

We elect from among ourselves representatives who as members of Congress pass laws which bind us all. The choosing of those who will represent all of us in Congress is not to be taken or made lightly. Members of Congress must be persons of the highest and utmost integrity; and their constituents must not and can not lawfully be deprived of information necessary to enable them to judge the character and integrity of those who serve as their elected representatives.

Yet, the actions taken in this cause by Judge Timothy F. Johnson, in attempting to gag Congressman Gonzalez have not only deprived his constitutents of the right to receive information so as to enable them to intelligently exercise their right of ballot, but more importantly, the Congressman's constituents have been provided with only one version of the facts, which has been presented from a slanted, biased, one-sided point of view, filled with falsehood and misinformation. That, in and of itself, coming from a partisan judge such as Judge Timothy F. Johnson, should, alone, warrant his recusal. However, when the Judge's attempt to silence Congressman Gonzalez is viewed together with an arbitrary and capricious finding and decision to move the trial to where Congressman Gonzalez must be judged by strangers, such a view warrants and compels but one conclusion and that is that Judge Johnson cannot judge fairly and impartially in this cause and in the interest of justice should recuse himself.

Wherefore, premises considered, the Defendant prays that the said Judge Timothy F. Johnson recuse himself from further proceedings in this cause.

Respectfully submitted,
PAT MALONEY, Sr.,
Law Offices of Pat Maloney, P.C.,
San Antonio, TX.
JACK PAUL LEON,
Leon & Bayless,
San Antonio, TX.
Attorneys for Defendant.
(By Jack Paul Leon).

CERTIFICATE OF SERVICE

I certify that a true copy of the foregoing was hand delivered to the office of Fred Rodriguez, Criminal District Attorney, Bexar County Courthouse, San Antonio, Bexar County, Texas 78205, on the 12th day of August, 1987, by delivering a copy addressed to Mr. John Wondra, Assistant Bexar County Criminal District Attorney, in the office of the Bexar County Courthouse.

JACK PAUL LEON.

THE STATE OF TEXAS v. HENRY B. GONZALEZ, SR.

[In the County Court at law No. 5, Bexar County, TX]

MOTION IN OPPOSITION TO UNILATERAL JUDICIAL ATTEMPTS TO CHANGE VENUE

To the Judge of Said Court: Comes now Henry B. Gonzalez, Sr., Defendant in the above styled and numbered cause, and respectfully files this his motion in opposition to the notice of the Court in his pre-trial order and in his public media pronouncements to the effect that the Court is considering a change of venue to some other county other than Bexar County, Texas, and files this his motion in opposition to such unilateral judicial attempts to deprive this Defendant of a fair trial by an impartial jury under the Federal and State Constitutions and the Code of Criminal Procedure of the State of Texas. In support of this motion, the Defendant will show the Court as follows:

I.

The minimal constitutional standard of fairness requires that a defendant have a panel of impartial, indifferent jurors and that the entire atmosphere in which the trial is conducted be impartial. Depriving the Defendant of this right to an impartial jury and trial violates this Defendant's right to due process as guaranteed to him by the Fourteenth Amendment of the Constitution of the United States of America.

An impartial jury is defined as one which does not favor a party or an individual because of the emotions of the human mind, heart, or affections. It means that the Defendant, the cause, and the issues involved in the cause must not be prejudiced. United States Constitution Amendment VI; Texas Constitution, Article 1, Section 10; Vernons Annotated Code of Criminal Procedure, Article 1.05.

II.

The Defendant has neither requested nor desires a change of venue in this cause. The Defendant demands that he be accorded his constitutional and historical right to a trial in one's home are (called in the law, the right to trial in the vicinage). This right to a trial in one's home area is as old as the Constitution itself which provides, in Article III, Section 2, that criminal trials shall take place in the State where the offense is alleged to have been committed, and in the Sixth Amendment to the Constitution which provides that all persons accused of criminal offenses have the right to a speedy and public trial by an impartial jury of the State and District wherein the crime is alleged to have occurred.

The Courts of Appeals for the United States have recognized that the right to trial in one's home area (or vicinage) is an important right of a defendant, and that "Venue requirements are imposed to prevent the government from choosing a favorable tribunal or one which may be unduly inconvenient for the defendant." United States v. Rivera, 388 F.2d 545, 548 (2nd Cir. 1968). The United States Court of Appeals for the Eleventh Circuit has recognized that the right to trial in the vicinage is intended to reduce the difficulties to a defendant that would be caused by trial at a distance from his home and friends as follows:

"The venue provisions also seek to avoid the prejudice to a defendant's case that might result from facing trial in a place where it would be difficult for him to obtain witnesses in preparation for trial. Lastly, since most crimes usually take place in the district where the defendant resides, the venue provisions try to reduce the difficulties to the defendant that would be caused by a trial at a distance from his home and friends." United States v. DiJames, 731 F.2d 758 at 762 (11th Cir. 1984).

Further, the United States Court of Appeals for the Second Circuit has recognized that the right of trial in the vicinage exists for the very purpose of guaranteeing to a defendant in a criminal case the right to be tried where he is known. In so holding, the Court stated: "One (purpose) although by no means the only purpose of the insistence on trial in the vicinage both in Article III, § 2 and in the Sixth Amendment must have been to entitle a defendant to trial where he is known . . ." United States v. McMann, 435 F.2d 813, at 817 (2nd Cir. 1970).

III.

The State has not sought nor does it claim that a fair trial cannot be accorded to the State or the Defendant in Bexar County, Texas. Absent such a request, this Court, on its own, unilaterally, and without being requested by either the State or the Defendant has asserted that he is considering a change of venue to another district even though such district is not the district where the crime allegedly occurred. Defendant hereby strenuously objects to such a change of venue to any district other than Bexar County, Texas. He hereby asserts his right to a fair trial be guaranteed by a jury of his peers, constituents and others who have the constitutional right to judge his conduct.

IV.

Historical case precedent has established those rare and unusual circumstances under which venue of a trial should be changed from the district where such alleged crime occurred. Defendant contends that none of those circumstances are present in the instant case. The Courts of this State and of the United States have historically opposed the movement of a case out of the county where the alleged crime occurred except in those rare circumstances where an absolute finding occurred that a fair and impartial trial could not be had in such county. There is no evidence of the existence of such a fact in the record in this case and Defendant contends that such evidence is not obtainable and cannot be produced to satisfy the heavy burden required by the Courts of the State of Texas and of the United States of America.

Pre-trial publicity alone does not establish prejudice or require a change of venue. See Dobbett v. Florida, 432 U.S. 282, 302-303, 53 L.Ed.2d 344 97 S.Ct. 2290 (1977). If the Defendant claimed that he was entitled to a change of venue, he would be charged with a "heavy burden" of proving that the likelihood of his obtaining a fair and impartial trial was doubtful. See James v. State, 546 S.W. 2d 306, 309 (Crim. App. 1977). This Court should also satisfy the same "heavy burden" before even considering such a change.

No attempts have been made to question or qualify a jury panel and until a jury panel has been empaneled and jury selection attempted and unsuccessful, should such a change be considered. This Defendant avers that in a county as large as Bexar County, Texas, the area from which the panel would be drawn, that six (6) fair and impartial jurors who can be alike fair and impartial both to the State and the Defendant can be chosen and that such an effort and attempt to select a jury will be successful in this case.

Publicity in this case has been minimal in comparison to such infamous and notorious trials where venue was not changed. Such examples are (and there are many others far too numerous to list here), the trial of Jack Ruby in Dallas; the trial by Mr. Fred Rodriguez, the present Bexar County District Attorney, of Karl Hammond in the early part of this year; and the more recent trial of police officer, Tucker, in Bexar County, Texas. Such trials, like many others too numerous to mention, have generated extensive publicity, locally, statewide and nationally.

V.

The Defendant objects to any proposed order of this Court changing venue from Bexar County to any other county. Such an attempt to change is politically motivated and is an attempt to deprive Congressman Henry B. Gonzalez, Sr., of a fair and impartial trial. In this connection, the Defendant would show the Court as follows:

1. The Defendant is a prominent member of the community in San Antonio and is a member of the United States House of Representatives, where he has served for approximately twenty-six years. In addition to lengthy and faithful service on behalf of his constituents, Henry B. Gonzalez, Sr., has not been afraid to take a stand, regardless of whether that stand was popular or unpopular with regard to the party in power. He is a life-long Democrat, and as such, has been frequently at odds with the present Ronald Reagan Republican administration, as well as with prior Republican administrations.

2. Judge Timothy F. Johnson is a Republican. He was elected as a Republican in the general election of 1986 in a county-wide election. In that election, his primary support came from the northern portions of Bexar County, which are predominantly Anglo. Congressman Gonzalez, however, represents a district which encompasses only a portion of Bexar County, and is populated primarily by persons of Mexican descent. Congressman Gonzalez is himself of Mexican descent. Judge Timothy F. Johnson is Anglo, and though elected to a county-wide office, can fairly be said to have received the major portion of his support other than from the area of Bexar County comprising Congressman Gonzalez' district.

3. While Congressman Gonzalez is well thought of within his district, and has consistently been re-elected every two years in the general election, he has fierce critics, both in Bexar County and nationally, with such critics being primarily members of the present national Ronald Reagan Republican administration, as well as fierce critics within the local, Bexar County Republican party and within the northern portions of Bexar County, from which Judge Timothy F. Johnson drew his primary support in the general election of 1986.

4. Heretofore, Judge Timothy F. Johnson has attempted to prevent Congressman Gonzalez from carrying out his duty to his constituents, and to explain the nature of the present cause, which is surely a matter of relevance and importance about which his constituents should be informed, and about which he should be entitled, as a public figure, to comment, in order to counteract the falsehoods and misinformation which has been disseminated in the local Bexar County media, and by the Bexar County Republican establishment, by ordering Congressman Gonzalez not to comment publicly upon the case. As a consequence, Congressman Gonzalez has been faced with false accusations in the media to which he cannot respond, and thus, his constituents have been forced to rely upon false and misleading media reports, and as such, have been denied the right guaranteed to them under the First Amendment to the Constitution to receive information concerning their elected Representative, so that they may fairly determine whether his conduct is such that he merits their continued support. The Defendant avers that this is the reason that Judge Johnson is attempting to change venue in this cause.

Notwithstanding Judge Johnson's efforts to deprive Congressman Gonzalez' constituents of the truth concerning the incident giving rise to this cause, Congressman Gonzalez, in the exercise of his privilege to speak freely from the floor of the House of Representatives of the United States, has addressed the incident giving rise to this cause, and has spoken the truth concerning the matter, as was not only his right but his duty with respect to his constituents, because his constituents have a right to be informed as to the actions of their elected Representative in Congress. Notwithstanding Congressman Gonzalez' exercise of his right and of the right of his constituents to be informed, and notwithstanding the 200-year old provision in the Constitution permitting him to do so, the lawful exercise by Congressman Gonzalez of his right and the right of his constituents to be informed has infuriated and enraged Judge Timothy F. Johnson who, being a Republican and dependent upon a constituency primarily hostile to Congressman Gonzalez, has taken steps to deprive Congressman Gonzalez of a fair and impartial trial in the County in which he has resided during his entire life.

5. Specifically, Judge Timothy F. Johnson has entered an order, without hearing evidence, and without any semblance of due process, stating as fact (yet not based on any evidence, and without request either of the Defendant or of the State) that, "It appears to the court that a trial, alike fair and impartial to the accused and to the State, cannot be had in this county." (See Order of July 31, 1987). That such an order would or could have been entered without the slightest evidentiary basis and without motion made either by the State or by Congressman Gonzalez, in and of itself, demonstrates a bias, hostility and prejudice on the part of the Judge of this Court such as to require his recusal.

6. The Texas Court of Criminal Appeals sitting with all judges present, as is done for cases of special significance rather than in the usual panel of only three judges, has held that requiring a defendant to proceed to trial before a judge who has a bias or prejudice such that his impartiality could reasonably be questioned constitutes a violation of the right, not only of Congressman Gonzalez, but of all citizens of the State of

Texas and of the United States, to due process of law, such being guaranteed under the provisions of the Fifth and Fourteenth Amendments to the Constitution of the United States and the provisions of Article 1, Section 19 of the Constitution of the State of Texas. See McClenan v. State, 661 S.W.2d 108 (Tex. Crim. Appl., 1983, en banc). The case before the Court is not merely one in which a Democrat is appearing before a Republican judge.

Congressman Gonzalez is no ordinary Congressman. Recognizing that President Ronald Reagan has enjoyed extreme popularity nationwide, and that President Reagan was elected in two landslides, Congressman Gonzalez has nevertheless had the courage to stand up and to attempt to tell the people of the United States that President Reagan is wrong, and showing the courage of his convictions, and willing to take an unpopular stand for what he perceives to be the best interest of the country which he loves so much, Congressman Gonzalez has even offered a resolution within the House of Representatives calling for the impeachment of President Ronald Reagan.

As would be expected, taking on the power of the Presidency and the power, might and money of the Republican party has not won the Congressman any friends in either the Reagan Administration or within the Republican party, and especially so in the Republican strongholds of northern Bexar County, Texas.

As such, he has become a target of right-wing extremists, the John Birch Society, and other hate groups who have embarked upon a "holy war" to remove him from office and to discredit him, by any means available to them.

Given that Judge Timothy F. Johnson was and is dependent upon the same Republican party for his electoral as well as his financial support, his ability to be fair and impartial would naturally be called into question.

But, more importantly, Judge Timothy F. Johnson has himself demonstrated that his actions in this case so far, although ostensibly done for the protection of the rights of the party to this case, have in fact been done with a view to, and have had the effect of prejudicing Congressman Gonzalez in the preparation and presentation of his defense.

Specifically, although Judge Johnson has attempted to gag Congressman Gonzalez and to prevent him from communicating with his constituents, the Judge himself has not felt himself bound by any such "gag order" and has commented freely upon this case to the media. Surely, if Judge Johnson were intent upon insuring a fair trial, he would not enter an order attempting to restrict Congressman Gonzalez from informing his constituents, and thus depriving his constituents of their right to information, but, at the same time, freely commenting upon this case in the media.

7. The pinnacle, however, is demonstrated by Judge Timothy F. Johnson's entry of an order finding without hearing any evidence, that the State and the Defendant would not receive a fair trial in Bexar County, without even being asked to do so by either the State or Congressman Gonzalez!

8. The right to a trial in one's home area (called in the law, the right to trial in the vicinage) is, like the privilege of free speech upon the floor of the House of Representatives, as old as the Constitution itself, which provides, in Article III, Section 2, that criminal trials shall take place in the State where the offense is alleged to have been committed, and in the Sixth Amendment to the Constitution which provides that all persons accused of criminal offenses have the right to a speedy and public trial by an impartial jury of the State and district wherein the crime is alleged to have occurred.

VI.

A change of venue in this cause would have the practical effect of depriving not only the Defendant, HENRY B. GONZALEZ, SR., but, more importantly, the citizens of Bexar County and of the Twentieth Congressional District of their right to a public trial. The right to a public trial is guaranteed both to the accused and to the citizenry in general. The United States Supreme Court has held that not only does the accused have the right to demand a public trial, but the public and the press also has a guaranteed constitutional right to attend public trials. Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555, 580, 100 S.Ct. 2814, 2829, 65 L.Ed.2d 973 (1980).

In that case, Chief Justice Burger discussed the history of the right of the public to observe criminal trials, and found that the right of the public to attend criminal trials has been codified in American law as early as 1677 and traces its roots back to the days of the Norman conquest of England. Mr. Justice Burger quoting from an address to the inhabitants of the Canadian Province of Quebec by a committee approved by the First Continental Congress of the United States on October 26, 1774, which described the advantages of the then English constitutional form of government, in which the right of public trial was described as follows:

"[One] great right is that of trial by jury. This provides, that neither life, liberty nor property can be taken from the possessor, until twelve of his unexceptionable countrymen and *peers of his vicinage*, who from that neighbourhood may reasonably be supposed to be acquainted with his character, and the characters of the witnesses, upon a fair trial and full enquiry, face to face, *in open court*, before as many of the *people* as *choose to attend*, shall pass their sentence upon oath against him. . . . ." (Quoted in *Richmond Newspapers, Inc.* vs. Virginia, supra at 448 U.S. 555, 568) (emphasis added).

Various commentators have passed upon the precious part of our heritage which is the right of the citizenry to a public trial. The following is but a sampling:

As was stated by Mr. Justice Hugo Black:

"[W]e have been unable to find a single instance of a criminal trial conducted in camera in any federal, state, or municipal court during the history of this country. Nor have we found any record of even one such secret criminal trial in England since abolition of the Court of Star Chamber in 1641, and whether that court ever convicted people secretly is in dispute. . . .

This nation's accepted practice of guaranteeing a public trial to an accused has its roots in our English common law heritage. The exact date of its origin is obscure, but it likely evolved long before the settlement of our land as an accompaniment of the ancient institution of jury trial." *In re Oliver*, 333 U.S. 257, 266, 92 L.E. 682, S.Ct. 499 (1948) (Black, J.) (footnotes omitted)."

Justice Felix Frankfurter likewise recognized that the press and the public have an inherent and inalienable right to public access to the Courts:

"One of the demands of a democratic society is that the public should know what goes on in courts by being told by the press what happens there, to the end that the public may judge whether our system of criminal justice is fair and right." *Maryland* v. *Baltimore Radio Show, Inc.*, 338 U.S. 912, 920, 94 L.Ed. 562. 70 S.Ct. 252 (1950) (Frankfurter, J., dissenting from denial of certiorari)."

Mr. Justice Clark also recognized this valuable right of the public:

"It is true that the public has the right to be informed as to what occurs in its courts, . . . reporters of all media, including television, are always present if they wish to be and are plainly free to report whatever occurs in open court. . . ." *Estes* v. *Texas*, 381 U.S. 532, 541-542, 14 L.Ed.2d 543, 85 S.Ct. 1628 (1965) (Clark, J.)

The principle that justice cannot survive behind walls of silence has long been reflected in the 'Anglo-American distrust for secret trials.' *Sheppard* v. *Maxwell*, 384 U.S. 333, 349 16 L.Ed.2d 600, 86 S.Ct. 1507, (1966) (Clark, J.)."

Thus, imminent jurists, both of conservator and liberal persuasion have unanimously recognized the inherent value in a democratic society of the public to subject those who administer the criminal justice system to public scrutiny.

In any criminal case, there is a public interest in a public trial. However, in the case of the public figure, and especially one charged with the responsibility of representing his constituents with respect to the making of laws, the public's interest is even greater than in an ordinary criminal case. At issue in the trial of such a public figure is not only the simple question of guilt or innocence of the charges alleged, but also, at issue is the public's right to see, observe and form their independent opinions as to the validity or lack thereof of the issues litigated at trial. Yet, if a change of venue is granted in this cause, Congressman Gonzalez' constituents will effectively have been deprived of their right to be present and to observe that which is not merely the business of the Court but which is their business as citizens of Bexar County and of the Twentieth Congressional District.

Wherefore, premises considered, Defendant prays that this Court grant him his constitutional and statutory rights to be tried by a jury of his peers in his home county, Bexar County, Texas, and that venue stay and remain in Bexar County, State of Texas.

Respectfully submitted,
LEON & BAYLESS,
Attorneys at Law, San Antonio, TX.
Attorneys for Defendant.
(By) Jack Paul Leon.

CERTIFICATE OF SERVICE

I certify that a true copy of the foregoing was hand delivered to the office of Fred Rodriguez, Criminal District Attorney, Bexar County Courthouse, San Antonio, Bexar County, Texas 78205, on the 12th day of August, 1987.

JACK PAUL LEON.

Mr. Speaker, I ask my colleagues if you in your time will, and I hope never, but if you will also bear up with both of your strong, powerful, daily locals through cartoons ridiculing, saying that I was alleging a conspiracy, which incidentally came to full light after the recusal hearing where the local county Republican chairman had his picture taken with the accuser and said, oh, yes, we have been working together, and I have been getting him all of the vote record of GONZALEZ, and of course, of course we have been working together.

Now, when I said that in the special order that I had, the first one in which I was raising the issue of the privileges and immunities of the House, what I got was ridicule, contumely, venomous, venomous slander, in effect, this from newspapers who themselves should be more restrained in their bitter rivalry. But why so? Why these allegations that we made in our recusal?

Incidentally, I insisted on a recusal motion. My two attorneys felt that it would be useful because no judge would be wanting to recuse another in this brotherhood or confraternity of judges, of judgedoms. It is true, there is the tendency for one, like doctors stick together and lawyers stick together, so do these judges. However, I felt I had more faith than that, and I felt that this judge had acted so far-reaching, had overreached his own bounds, had gone so far as to reveal his bias when he did another thing. He clearly indicated that at the preliminary hearing he was going to demand cause to show why he should not move the case out. What the press never covered was that he did not mean that he was going to change venue for the case to go to some other judge in an adjacent county. Under Texas law and procedure there were only four counties that he could go to in the immediate area surrounding San Antonio, but those four counties are all predominantly Republican, and they are all predominantly very conservative. I think I ought to know, and I think everybody else that knows knows. But the reason the judge was doing this is that in civilian practice, civil practice, when a plaintiff's attorney has a personal injury suit against a big corporation defending the rights to or attempting to have a poor Mexican-American or a poor black or a poor white, what the defense lawyers do is ask for a change of venue and take it out of Bexar County where these poor people will have at least a chance by being judged by a jury of their peers and move them to these counties. So this is where this judge got that notion.

But in this case he was not playing around with somebody who did not know his rights, and not only that, he was not playing around with an unprepared or an amateurish attorney. So we had our recusal motion.

Mr. Speaker, I ask that it be printed in the RECORD at this point because it is historical. One of these days, and I know that it was referred to, if I had not stood up and resisted this what would have been the outcome, because you would be surprised how the research attorneys look for every case of similar nature that has happened anywhere. And I think that this is historical. The two attorneys, and Mr. Leon in particular, did such an outstanding job, together with his associates, Mr. Bayless, in researching.

Now there is another more ancient, fundamental right going back to England and the 13th and the 12th centuries, and what is that right? It was that right that old King John had to concede in writing to those barons at Runnymede, the Magna Carta, and that is that an Englishman accused should have the right to be tried by his peers. What did the word "peers" mean? It meant fellow citizens of the voisinage, that is the historical word that I suggested and which was researched.

The folly and the bias and the prejudice and the hate-filled thoughts and actions of this Judge Johnson were revealed because he was unilaterally asking for a change. The State was not asking for a change of venue. He certainly would not.

So how could he, on unsupported evidence, he had no evidence, to indicate that he was justified in seeking to move it into one of these four counties where the record is plain as to what happens in civil cases with guys with last names like mine. And besides, if, as he alleged, it was because to avoid undue publicity, every one of these counties, each one of them is within the publicity impact range of San Antonio, TV, radio, newspapers, every one of them.

So the falsity of this idea was manifest to all who cared to scrutinize this thought and this notion.

But there was more than that, the desire of this judge as well as the district attorney, as reflected by his subordinate, this investigator, whose name I mentioned here on the floor at the time, and that was to humiliate, handcuff me, fingerprint me. And what a coincidence that the newspapers carried the story that the judge had said that he had recalled a warrant of arrest that had been mistakenly issued. That is a falsehood. The judge was lying in his teeth. The intention was to have me arrested, for the first attorney in this case called my wife—I was on my way to Washington—to advise her that if a police officer arrived to just not answer the door. Now what kind of nonsense is that? We are not living in a police state, though I think that we are near it, and in this case I shudder to think what the criminal justice system in Bexar County holds for some poor, impoverished, weak, helpless, friendless defendant. Once these men make up their minds they are going to have to make a case on it.

I was able to defend myself, but only after great exertion and after resisting the almost daily barrage through cartoons, through editorials, through columnists ridiculing me, holding me up to contempt, contumely, ridiculing the fact that I should think I was not guilty of anything for they had already found me guilty. If the name of this individual instead of being Bill Allen had been Pancho Gonzalez, there would not have been one of them who would not have believed that he had a knife on his person.

This is the absurd and unjust environment in which one develops his role as a public official. True, the district attorney may be also of the same descent, but I have been one of those who has never believed in other than the limits of ethnicity and racism in our country. I will fight those on all fronts, and they exist among all groups. Virtue does not reside in all one set of people. But the venom of the district attorney was revealed clearly after the uproar in the recusal hearing.

We go to the recusal hearing. This judge walks in. He has had three different—while he has had the gag order on everybody—he has three different press conferences, he has two different feature stories, the last one right immediately before the hearing on August 18, which shows where he has and wears a pistol, and there were four other judges that also said they were in the habit of carrying pistols on the bench. I cannot think of anything more antithetical to a judge, to a sober-minded judicious-minded individual pretending to be a judge than to be carrying a gun in the courtroom. Who is he going to shoot, the bailiff?

Yet, I did not see any editorials in these two great dailies taking this judge in particular, because on that particular morning of August 8, when he walked in, despite the fact that a subpoena had been issued, we issued a subpoena because the recusal hearing of a necessity was being presided over by another county court at law judge. He walked in, told the judge when he inquired that he had not actually been handed a subpoena, though he knew one was out, but that he was there on his own. He had a pistol under his coat.

In the meanwhile we were prepared to show him polls that had been taken, we had hired professional pollsters to show that the opinion in Bexar County was that a fair trial could be held in Bexar County. We were able to bring the mayor of the city, an outstanding personality known throughout the whole country, young, vibrant; one of the Supreme Court Justices and the Attorney General of Texas, all of whom had practiced law at one time or another, or handled cases in Bexar County, except the mayor, who was not an attorney. But all were there merely to testify that we could have a fair trial in Bexar County, but not under Judge Johnson, and that therefore we wanted him recused and we combined the recusal motion with our motion against a change of venue.

That was before Judge Ferro, the independent judge selected by the district presiding judge of the Judicial District of Texas from Victoria, TX, who actually was the person who would select the judge to hear the recusal motion. And I will say this, that Judge Ferro, to his everlasting credit and glory, I am sure assumed it with no enthusiasm, none of the others wanted it, they were ducking it, but he handled it in an intelligent way and in a capacity clearly revealing that he is a competent judge.

But no sooner did we get started in that than Judge Johnson erupted in the middle of the courtroom shouting, pointing his finger at me, his coat is flapping and I am seeing the gun, wild-eyed in his looks, and he said, "I'm not going to stay here one minute longer, I'm leaving. I recuse myself."

At this point I insert for the Record the transcript from the court proceedings of that particular interim in the proceedings:

The document referred to follows:

Timothy F. Johnson. Judge, I've got work to do. And I don't need this grief.

I'll recuse myself. And you can give it to whoever you want to.

The Court. Just a moment. Just a moment, Wait a minute. Wait a minute. Wait a minute.

Everybody sit down. Just a moment. Let me gather my thoughts on this now.

Judge Johnson, please step forward.

Timothy F. Johnson. Your Honor, it has become apparent to me that this Defendant will use any means within his power to bend the law, to bend the procedure and——

Pat Maloney, Sr. Well, Judge, we object to this.

Timothy F. Johnson. Mr. Maloney, I have a right——

Pat Maloney, Sr. This is terribly prejudicial and inflammatory——

The Court. This is before the Court, Mr. Maloney.

Pat Maloney, Sr. I know. But it's so unfair. And it's the kind of of comment we expected.

The Court. Let's go into chambers.

Timothy F. Johnson. I refuse to go to chambers. I have a right to make a statement on the record. And I insist on that right at this time.

As I was saying, it's a shame that when someone in this position can attempt to bend the law and bend the procedures to his own will and attempt, through innuendo, through character assassination and whatever other means that they are going to use to pick the judge that they want to try this case.

Frankly I don't feel that our system should be perverted in this way. I don't feel that your court should be tied up, that my court should be tied up, and tied up to hear this particular matter.

I have nine prisoners sitting in a holding cell that are waiting for me to hear their cases. I'm sure that they would be happy to have me as a judge.

And since these gentlemen don't want me as a judge at this point in time I will recuse myself.

Pat Maloney, Sr. He could have done this weeks ago.

The Court. It is so ordered. The Court will stand in recess.

So with that, the presiding judge said, just a minute, let's withdraw to chambers, and he said, "I will not. This is nothing but a crock of crap."

What kind of judicial behavior is that? Yet the newspapers the next day reported it as if we had bent the law. And of course, they are so politically antagonistic both to myself as well as to the attorney general. They left the mayor alone. I notice they did not whack at him. They left the Supreme Court judge alone, but they whacked at the attorney general because politically they have been strongly against him.

This is the ridiculous nature of things that happen when passions fly high. I have selected today carefully because time has gone by, passions have subsided, and my story had yet to be told because at no time, in fact even after the event, but what happened after the recusal and the judge recusing himself was interesting in itself. All of a sudden the question was who can hear the case.

So the lawyers went around looking for precedents, and they found one precedent down in Brownsville, TX, where a judge had recused himself or had been recused. They found that the county commissioners could appoint somebody. They said no, that is not the precedent in point. There is a statute that says that in the cases somewhat like this that something else can happen.

So they were in the midst of that when my son, Stephen, who lives and works in the adjacent county from which incidentally this individual comes from, called me and said, "Dad, this fellow Allen just called me and he said that he fully understood, didn't blame you at all for hitting him, that he was sick and tired of this, that he had been pushed so far, that it had gotten out of control, and that he never thought it would go this far."

□ 1320

And that he wanted it all over with but that the district attorney had called him just that morning to say, "If you don't withdraw, if you don't withdraw we will push this to the end."

So my son said, "Look, I don't know what I can tell you except——," and he said, "Well, I will be glad to talk to your Dad and I want to drop everything. It is getting to the point where my friends won't talk to me and my family." Well, in the meantime we were also prepared to show a very, very bad record of violence in this man's past. I will not present this here now, even though I have the affidavits going all the way down to the former sheriff in Brazoria County and the incident there. But I did tell my son, I said, "There is only one thing to do. You give me a statement as to what transpired," and the witness to the fact that this was indeed this individual, the garage owner at which place my son was having his car repaired, that is a patrol car, when this man called.

So I would like to place into the Record at this point the statement made by my son, Stephen Gonzalez, with respect to this incident on August 19, that is the day after the recusal brouhaha which the papers could not hide the fact that the judge had made a fool of himself because TV cameras had pictured, him, and everything else. But they did know how to come out and show that, "Well, we were to blame too, because we were" what? Bending the law.

The statement referred to is as follows:

To the best of my knowledge, the following is a telephone conversation that I, Stephen Gonzalez, had with Bill Allen August 19, 1987 at about 4:00 P.M. at the APCO Communications Company off of Highway 97 just outside of Jourdanton, Texas.

On August 19, 1987 at about 4:00 P.M., I was at the APCO Communications Company getting my Sheriff's Department radio repaired. I was there for about ten minutes when the owner, Jim Davis, told me that there was someone on the telephone that wanted to talk to me.

I answered the phone and the subject on the telephone said, "Steve, this is Bill Allen and I want you to know that I'm very sorry about this mess with me and your father. I always thought a lot of you and think that you're a terrific cop. I'm real sorry that this has gotten as far as it has. I hope that there is no hard feelings with you toward me."

I answered, "Bill, he is my father and I'm also sorry that it has gotten this far. My father feels like he was in the right by taking up for himself in the way he did."

Bill then said, "Sure, I feel that he was in the right for hitting me for calling him what I did. I believe if someone is bad mouthing somebody, they should be hit. But, Steve, I wasn't screaming it out or hollering across the road, I was just talking in a low tone to the people at my table. Next thing I know, your dad walks up to us and says that one of his colleagues told him that someone at this table called him a Communist and then he asked which one of ya'll did. I told him that I did. The next thing I knows, he hit me. Steve, this thing got way out of hand. I don't blame your dad for getting mad at me for saying that, but he didn't have to say that about my mother. That made me so mad, I was just going to let it be, but I talked to the District Attorney and he said that he will take this case and go to the extreme if you tell me that you will not drop the charges. I told the District Attorney that if the Congressman apologizes to me about what he said about my mother, I will shake his hand and go my way. Steve, I don't blame him for not apologizing for hitting me but he should on what he said about my mother. I didn't say anything about his family. Steve, I'm telling you this has gotten way out of hand. I feel like an old country dog that's laying in the road. Some people throw rocks at him to go away and some people just try to run over him. This has been very embarrassing for me too."

I said, "Bill, I feel this thing has got way out of hand but my dad feels that he is in the right and is ready to go to court."

Bill answered, "Well, I don't think it has to go out of town but I think that they ought to get a judge from out of town. Perhaps from somewhere up north."

I asked Bill, "Are you living back in Jourdanton or in the county?"

Bill said, "Steve, I don't know what your feelings are toward your ex-wife but I don't want to be anywhere close to that bitch of mine. I don't even want to see her riding around close to where I'm at. Anyway Steve, I want to apologize again and I tried to get a hold of you before but you don't have a home telephone so I'm glad that I made contact with you today. I think you're a hell of a good guy. Talk to Jim Davis for me down there and let me talk to him again please."

I handed Jim Davis the telephone and they talked for a few moments and then hung up.

When Jim got off the phone, Jim said to me, "You know Bill is a whole lot like your dad, just says what he wants to say. They remind me of two bulls butting heads and no one giving in."

I picked up my radio and finished at the radio shop and got back into my patrol car and told my partner, Dorothy Harris, "You wouldn't believe who I was talking to on the phone there, Bill Allen."

She said, "What did he want?"

I answered, "He wanted to say that I was a nice guy and that he was sorry about this whole mess and he didn't blame my dad for hitting him for what he said but doesn't think that my dad should have said those things about his mother."

Dorothy said, "Well, why is he taking him to court then?"

I answered, "He said that everything just got way out of hand."

To the best of my knowledge, the above conversation is true and correct.

STEPHEN GONZALEZ.

So then apparently the district attorney realized what he was up against. So he then asked to meet with one of our lawyers for the first time. After that it took a little time but finally they agreed. Remember that the thing that caused me to accuse that district attorney of being a political and moral coward was that he had proposed to the attorney then, if I offered a unilateral apology, he would drop the case, he would drop it, mind you. And that is when I lashed out.

So here now there is no talk of me apologizing to this man, but the district attorney was more interested in getting some kind of statement that I would kind of apologize for having called him a moral and political coward.

Well, I did not exactly do that and I did not apologize to the individual. Yet he moved to dismiss the case.

The newspapers carried it as if an apology had been made, on the headline, until you read the text of the article.

So I rise today, because after all this and 1 week after dismissal the newspaper, the San Antonio Express, carried a front page story in which they attempted to show that this man Allen finally breaks silence, and to have this story, which I ask to print in the RECORD because it reveals better than anything else the character of the individual involved.

The newspaper article referred to is as follows:

[From the San Antonio Express, Sept. 1, 1987]

ALLEN BREAKS SILENCE, RAPS HBG

(By James McCrory)

The voting record of U.S. Rep. Henry B. Gonzalez shows "an unwillingness to uphold the Constitution," Bill Allen asserted Monday.

Allen's statement came afer an assault charge he had brought against the veteran San Antonio congressman was dismissed by County Court-at-Law Judge Tony Ferro at 10:30 a.m. Monday, in what the judge considered routine business.

The dismissal came after attorneys for Gonzalez, 71, worked out a compromise with Allen, 40, in which Gonzalez apologized to his constituents for an incident at Earl Abel's Restaurant on Dec. 4, in which Gonzalez punched Allen in the left eye after learning Allen said Gonzalez "sounded like a communist."

GAG ORDER LIFTED

Allen had withheld comment to the news media because of a gag order issued earlier in the case. With the dismissal of the charge he brought, Allen considered the gag order dead.

Now that he is free to speak, Allen said, he would have preferred that all the facts in the case come out truthfully in court. But he explained that it appears all efforts to bring the case to trial would have resulted in increasing the already large expense to the taxpayers.

"Congressman Gonzalez has used his position and circus antics to distort and cover up the facts in this case," Allen complained.

Gonzalez was said to be on vacation and unavailable for comment on Allen's remarks.

However, Gonzalez's Washington office released a written statement Monday after Allen released a short, written statement to the media.

"This is Jacob's voice, but the hands are the hands of Esau; meaning the release is through the voice of poor ole Billy Wayne Allen, but the hand that wrote it is Knoxious (sic) Duncan's, frustrated Republicrat chairman," the Gonzalez statement said.

Knox Duncan is chairman of the Bexar County Republican Party.

In his Friday written apology, Gonzalez said, "no further discussion of this incident, on my part, will be forthcoming."

During a personal interview Monday. Allen explained what he said really happened at the restaurant.

Allen said he was sitting at a table with two associates near a table occupied by Gonzalez and two of his associates. He said he heard Gonzalez loudly refer to President Reagan as an SOB, which he considered obscene. He said he "commented" quietly to his associates that Gonzalez sounded like a communist.

He pointed out that Gonzalez never heard the comment, but it was related to him by one of his companions after they left the restaurant.

Gonzalez then returned and punched Allen in the eye. Allen said he suffered a cut over the left eye and was treated at a clinic.

While he has been called a "spikey right wing type." Allen said, in truth he believes in the Constitution and believes elected officials are sworn to uphold it. While he normally votes Republican, Allen said he considers himself an independent, voting for the best man, regardless of party.

"Whenever you deal with a figure such as Henry B. Gonzalez, recent events have shown that it's difficult to get into the courtroom to bring a case to trial," Allen said.

Allen produced the knife he carries in a leather case on his left hip, attached to his belt.

Gonzalez said he believed Allen was reaching for a knife when he punched him. The knife is three inches long, with two blades, one of which is a screw driver. The other blade is two and nineteen-twentieths inches long.

Allen is right-handed, 5 feet 8 inches tall, and weighs 190 pounds. He weighed 165 pounds at the time of the incident.

A former oil field man, Allen now "plays the stock market." He has lived here since August 1986, coming to the Alamo City from farther south in Texas. Divorced, Allen has two children.

Allen said he believes the working people, the producers, are tired and fed up to the teeth with "government's grand scheme of redistributing wealth."

"I believe it is patently wrong to take hard-earned money from people who produce and redistribute it to non-producers," he said. "If that makes me spikey, combative and a right wing type, then I plead guilty."

He said all he wants from government is to be left alone.

Observing that Gonzalez's record on welfare issues is renowned, Allen complained that the wagon pullers are getting tired while more and more people are jumping on the wagon to be pulled.

He said much good has come from the case, causing citizens from the 20th congressional district and around the state "to take a good hard look" at Gonzalez, a Democrat.

Allen thanked District Attorney Fred Rodriguez, assistant District Attorney Nelson Atwell and DA investigators Dan Garcia and Brian Price for their professionalism, efficiency, dedication and impartiality in connection with the case.

Also, the editorial of September 1, mind you, mind you here are the newspapers saying, "Oh, gee, at last it is over with," even though they should have seen that it made them look so ridiculous that no sober minded, fair minded, reasonably minded citizen—and after all, that is the only citizen I have ever appealed to and to whom I owe everything—would think anything else but that they had been manifestly out to conduct a judicial lynching in Bexar County.

Now please do not get me wrong, I do not like to denigrate my birthplace, but the sad tale is that in the past, Bexar County can blushingly and ashamedly show where you have had some judicial lynchings.

I had thought that since before the war and especially after the war that had not happened.

So I ask that the editorial of Tuesday, September 1 in the San Antonio Light entitled "Reflecting On Gonzalez" be placed in the RECORD so that my colleagues can get a better idea.

The editorial referred to is as follows:

REFLECTING ON GONZALEZ

> The matter of the Henry B. Gonzalez misdemeanor assault charge mercifully has been laid to rest—nearly nine months after it should have been.
>
> This is a tale which, at almost every branch in the road, required that the other path should have been taken.
>
> It was not prudent for Bill Allen, a private citizen, to call the congressman a communist.
>
> It was even less prudent for Henry B. to return to make the second-hand comment a matter of honor.
>
> The district attorney was correct in treating the incident as he would have treated that involving any other citizen.
>
> The matter then became blown out of proportion when if became the subject of nationally televised speeches and entries in the Congressional Record by Gonzalez this spring and summer.
>
> The snowball kept rolling when Gonzalez said he could not get a fair trial from a Republican judge and when the Texas attorney general announced Gonzalez was legally justified in his actions because he had been called a communist.
>
> It became obvious at this point that the citizens of this city had had enough.
>
> Republicans, justifiably, loved it as their telephones rang with angry complaints.
>
> Democrats did not love it when their telephones rang with the same complaints.
>
> It isn't clear what brought this all to a halt, but we applaud whatever brought a streak of common sense to the situation.
>
> Now we are left to ponder:
>
> With the serious national problems to be dealt with in Washington, did the congressman serve us well this spring by devoting his time to this issue?
>
> Are we well served by an attorney general who provides such off-the-cuff opinions on behalf of a political crony?
>
> Has a serious precedent been set which will allow Democrats facing trial to pick a Democratic judge and Republicans, likewise, to pick a Republican judge?
>
> In leisure, we reflect on the answers.

I will sum up by saying there is no question, the attempt was first to try to tear me down. I want to point out to the editor of the San Antonio Light who was saying, "We hope that all the time spent on this didn't detract from our duties," that my presence in the 100th Congress is 100 percent. I have not missed any votes. And in the 26 years that I have had the honor to serve in the House of Representatives, my presence is 99.9 percent. So that despite all the efforts made to humiliate me, mostly, mostly to give me a record that would make me vulnerable to lack of credibility for ever and a day, being that for 30 years nothing has been found, just when I think I made a fool of myself, the idea was they would picture me as an old, senile man losing control of himself, striking a man just because he called him a Communist. They even went back 25 years when I had an argument with a colleague but never struck, never struck, never hit. Yet I had to bear the humiliation and the embarrassment again, of false accusations.

And I very much want to remind my colleagues of what I said at the outset, that the most trying, the most difficult experience of any man is to be falsely accused. And given the fact that you can have combinations of powerful factors in our society, there can be grave injustices committed. And I repeat I feel for the impoverished, the helpless, the weak, the unprotected individuals.

I was fortunate I could get, mostly through the generosity of their hearts because with my limited financial means I could have been bankrupt, but thanks to these two great individuals, Jack Leon and Pat Maloney, Sr., I was able to find the defense that we take for granted in American justice. We have this great motto at the Supreme Court, "Equality before justice" but that is not true. Today you do not get justice if you do not have money and if you do not have powerful, powerful friends.

I hate to say that, but it is true. If you want any proof of that, my colleagues, just look at the list of those that have been executed in my State of Texas, which incidentally is either equal or runner up in the leading execution States, and see who it is; see who commit the same gravamen of offense but do not get executed and you will see those that are rich and powerful and can hire the able and the intrepid and the outstanding legal counsels of this country. I do not think that is good, I think it reflects ill on us. And I think that my record shows that I have been fighting against that since I was a juvenile probation officer in Bexar County. I was the one that chased out the coyotes that used to lurk in the courthouse, victimizing the poorest of the poor. I was the one that emptied the local correctional institution and the State correctional institution and yet could point to a reduction of 36.6 percent in the volume of cases reversed where police would refer 75 percent of the cases to the Bexar County juvenile court that by the time I got through it was 25 percent and we had 75 percent family, private, personal referrals which meant that we had gained the confidence of the people who needed some help somewhere but could not get it and are not getting it today.

I want to say that it is a horrible experience to see yourself falsely accused and in the paws of the punitive and malicious, for indeed this was a malicious prosecution, it was politically motivated and I thought with the advent of change after World War II that Bexar County would have ended. Before World War II there was one jurist, the only criminal court justice, Judge W.W. McCrury who, if he had the greatest virtue of all, it was that he would not allow a political case in his court. I remember he was judge and I remember him throwing out the district attorney time after time.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. SKELTON) to revise and extend their remarks and include extraneous material:)

Mr. ANNUNZIO, for 5 minutes, today.

Mr. OWENS of New York, for 5 minutes each day, on October 26, 27, 28, 29, and 30.

Mr. GAYDOS, for 60 minutes, on October 27.

The following Member (at the request of Mr. GONZALEZ) to revise and extend his remarks and include extraneous material:

Mr. HAWKINS, for 60 minutes, on November 2.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

(The following Members (at the request of Mr. RHODES) and to include extraneous matter:)

Mr. MADIGAN in two instances.

Mr. LENT.

Mr. BUECHNER in two instances.

Mr. LEWIS of California.

(The following Members (at the request of Mr. SKELTON) and to include extraneous matter:)

Mr. HALL of Ohio.

Mr. ANDERSON in 10 instances.

Mr. GONZALEZ in 10 instances.

Mr. BROWN of California in 10 instances.

Mr. ANNUNZIO in six instances.

Mr. JONES of Tennessee in 10 instances.

Mr. SKELTON in two instances.

Mr. TRAXLER in two instances.

Mr. BONIOR of Michigan.

Mr. MATSUI.

Mr. COLEMAN of Texas.

SENATE BILL, A JOINT RESOLUTION AND A CONCURRENT RESOLUTION REFERRED

A bill, a joint resolution, and a concurrent resolution of the Senate of the following titles were taken from the Speaker's table and, under the rule, referred as follows:

S. 1397. An act to recognize the organization known at the Non Commissioned Officers Association of the United States of America; to the Committee on the Judiciary.

S. Con. Res. 84. Concurrent resolution relating to the transfer of Silkworm missiles by the People's Republic of China to Iran; to the Committee on Foreign Affairs.

S.J. Res. 194. Joint resolution to require a comprehensive review of United States policy and commitments in the Persian Gulf region; to the Committees on Foreign Affairs and Rules.

ENROLLED BILLS SIGNED

Mr. ANNUNZIO, from the Committee on House Administration, reported that that committee had examined and found truly enrolled bills of the House of the following titles, which were thereupon signed by the Speaker:

H.R. 799. An act to designate a segment of the Kings River in California as a wild and scenic river, and for other purposes;

H.R. 2893. An act to reauthorize the Fishermen's Protective Act; and

H.R. 3325. An act to designate the segment of Corridor V in the State of Alabama as the Robert E. (Bob) Jones, Jr. Highway.

ADJOURNMENT

Mr. GONZALEZ. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 1 o'clock and 35 minutes p.m.), the House adjourned until tomorrow, Tuesday, October 27, 1987, at 12 noon.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

2294. A letter from the Comptroller General of the United States, transmitting a review of the two revised deferrals reported in the President's sixth special impoundment message for fiscal year 1987, pursuant to 2 U.S.C. 685 (H. Doc. No. 100-121); to the Committee on Appropriations and ordered to be printed.

2295. A letter from the Secretary of Education, transmitting a copy of final regulations and final selection criteria for the student assistance general provisions, pursuant to 20 U.S.C. 1232(d)(1); to the Committee on Education and Labor.

2296. A letter from the Secretary of Health and Human Services, transmitting the annual report for fiscal year 1986 of the activities and accomplishments of programs for persons with developmental disabilities, and for the first time, the Protection and Advocacy for Mentally Ill Individuals Program, pursuant to 42 U.S.C. 6006(c); to the Committee on Energy and Commerce.

2297. A letter from the Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting copies of international agreements, other than treaties, entered into by the United States, pursuant to 1 U.S.C. 112b(a); to the Committee on Foreign Affairs.

2298. A letter from the Associate Deputy Chief, Forest Service, Department of Agriculture, transmitting notification that the legal description and maps of the Chugach National Forest boundary changes, as provided by the Alaska National Interest Lands Conservation Act, have been sent directly to the chairman of the House Committee on Interior and Insular Affairs, and notice of availability is being published in the Federal Register, pursuant to 16 U.S.C. 3103(b); to the Committee on Interior and Insular Affairs.

2299. A letter from the Deputy Secretary of Transportation, transmitting a draft of proposed legislation to improve the U.S.-flag merchant marine; to the Committee on Merchant Marine and Fisheries.

2300. A letter from the Comptroller General, General Accounting Office, transmitting a report on the examination of the Office of the Attending Physician's statement of accountability for appropriation and expenditures for the year ended September 30, 1986; including the report on internal accounting controls and compliance with laws and regulations, pursuant to Public Law 94-59, title III (89 Stat. 283); jointly, to the Committee on Government Operations and Appropriations.

2301. A letter from the Comptroller General, General Accounting Office, transmitting a report of the agency's qualified opinion on the Panama Canal Commission's financial statements for the years ended September 30, 1986 and 1985; separate reports on the commission's internal accounting controls and on its compliance with laws and regulations follow the opinion (GAO/AFMD-87-45; September 1987); jointly, to the Committees on Government Operations and Merchant Marine and Fisheries.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

[Pursuant to the order of the House on Oct. 22 1987, the following reports were filed on Oct. 23, 1987]

Mr. CONYERS: Committee on the Judiciary. H.R. 3483. A bill to amend title 18, United States Code, to improve certain provisions relating to imposition and collection of criminal fines, and for other purposes; with amendments (Rept. 100-390). Referred to the Committee of the Whole House on the State of the Union.

Mr. WHEAT: Committee on Rules. House Resolution 291. Resolution providing for the consideration of H.R. 2224 a bill to authorize appropriations for fiscal year 1988 for the Panama Canal Commission to operate and maintain the Panama Canal, and for other purposes. (Rept. 100-389). Referred to the House Calendar.

[Submitted Oct. 26, 1987]

Mr. GRAY of Pennsylvania: Committee on the Budget. H.R. 3545. A bill to provide for reconciliation pursuant to section 4 of the concurrent resolution on the budget for the fiscal year 1988 (Rept. 100-391). Referred to the Committee of the Whole House on the State of the Union.

Mr. UDALL: Committee on Interior and Insular Affairs. H.R. 17. A bill to identify, commemorate, and preserve the legacy of historic landscapes of Frederick Law Olmsted, and for other purposes; with an amendment (Rept. 100-392). Referred to the Committee of the Whole House on the State of the Union.

Mr. UDALL: Committee on Interior and Insular Affairs. H.R. 1223. A bill entitled the "Indian Self-Determination Amendments of 1987"; with an amendment (Rept. 100-393). Referred to the Committee of the Whole House on the State of the Union.

Mr. UDALL: Committee on Interior and Insular Affairs. H.R. 1839. A bill to amend the Wild and Scenic Rivers Act to designate a segment of the Rio Chama River in New Mexico as a component of the National Wild and Scenic Rivers System; with amendments (Rept. 100-394). Referred to the Committee of the Whole House on the State of the Union.

Mr. UDALL: Committee on Interior and Insular Affairs. H.R. 2952. A bill to increase the amount authorized to be appropriated for acquisition at the Women's Rights National Historical Park (Rept. 100-395). Referred to the Committee of the Whole House on the State of the Union.

Mr. de la GARZA: Committee on Agriculture. H.R. 3337. A bill to amend the Food Stamp Act of 1977 to reform the Food Stamp Program, and for other purposes; with an amendment (Rept. 100-396). Referred to the Committee of the Whole House on the State of the Union.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. GRAY of Pennsylvania:

H.R. 3545. A bill to provide for reconciliation pursuant to section 4 of the concurrent resolution on the budget for the fiscal year 1988.

By Mr. LENT (for himself and Mr. Duncan) (both by request):

H.R. 3546. A bill to amend title XXI of the Public Health Service Act establishing the National Vaccine Injury Compensation Program, to amend the National Childhood Vaccine Injury Act of 1986, and for other purposes; to the Committee on Energy and Commerce.

By Mr. MADIGAN:

H.R. 3547. A bill to amend the Federal Food, Drug, and Cosmetic Act to require the Secretary of Health and Human Service to impose fees under that act for the review of applications for marketing approval for new human drugs, antibiotics, medical devices, and biological products, and for other purposes; to the Committee on Energy and Commerce.

H.R. 3548. A bill to amend title XVIII of the Social Security Act to provide for expanded voluntary private alternative coverage for Medicare beneficiaries, and for other purposes; jointly, to the Committees on Ways and Means and Energy and Commerce.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

[Submitted Oct. 26, 1987]

H.R. 537: Mr. Hochbrueckner, Mr. Udall, Mr. Gilman, Mr. Hayes of Illinois, and Mr. Gray of Illinois.

H.R. 633: Mr. Hammerschmidt.

H.R. 792: Mr. Barton of Texas.

H.R. 1782: Mr. Foley, Mr. Ortiz, Mrs. Patterson, Mrs. Saiki, Mr. Applegate, Mr. Crane, Mr. St Germain, Mr. Emerson, Mr. Brennan, Mr. Kostmayer, Mr. Jacobs, Mr.

Dwyer of New Jersey, Mr. Wilson, Mr. Jeffords, and Mr. Kanjorski.

H.R. 2667: Mr. Moakley, Mr. de Lugo, Mr. Lagomarsino, Mr. Fauntroy, Mr. Lipinski, Mr. Conyers, Mr. Bennett, Ms. Kaptur, Mr. Fawell, Mr. Campbell, and Mr. Owens of Utah.

H.R. 2690: Mr. Edwards of Oklahoma.

H.R. 2934: Mr. Robinson.

H.R. 2950: Mr. Smith of New Jersey.

H.R. 3159: Mr. Morrison of Washington.

H.R. 3160: Mr. Sabo and Mr. Jeffords.

H.R. 3171: Mr. Robinson, Mr. Ackerman, Mr. Lipinski, Mrs. Johnson of Connecticut, Mr. Ford of Michigan, Mr. Waxman, Mr. Vander Jagt, Mr. Dixon, Mr. Studds, and Mr. Brown of California.

H.R. 3250: Mr. Lehman of California and Mr. Thomas of California.

H.R. 3291: Mr. Lewis of Georgia, Mr. Gray of Illinois, Mr. Clinger, Mr. Frost, Mr. Gonzalez, Mr. Saxton, Mr. Robinson, Mr. Borski, Ms. Snowe, Mr. Annunzio, Mr. Wolpe, Mr. Mrazek, Mr. Edwards of California, Mr. Yatron, Mr. St Germain, Mr. Crockett, Mr. Jones of North Carolina, Mr. Moakley, Mr. Gilman, and Mr. Campbell.

H.R. 3312: Mr. Pursell.

H.R. 3433: Mr. Downey of New York, Mr. Fazio, Mrs. Boxer, Mr. Bates, Mr. Martinez, and Mr. Frost.

H.R. 3467: Mr. Gallo.

H.R. 3478: Mr. Carper, Mr. Regula, and Mr. Neal.

H.R. 3501: Mr. Lent.

H.J. Res. 332: Mr. Bevill, Mr. Boucher, Mr. Chandler, Mrs. Collins, Mr. Coughlin, Mr. Dicks, Mr. Fazio, Mr. Feighan, Mr. Frank, Mr. Gradison, Mr. Lowry of Washington, Mr. MacKay, Mr. Moakley, Mr. Saxton, Mr. Schaefer, Mr. Wolf, and Mr. Young of Florida.

H.J. Res. 374: Mr. Smith of Florida, Mr. Horton, Mr. Lagomarsino, Mr. Hughes, Mr. Wilson, Mr. Fazio, Mr. Dicks, Mr. Conyers, Mr. Solarz, Mr. Boucher, Mr. Miller of Washington, Mr. Wyden, Mr. Kostmayer, Mr. Rodino, Mr. McDade, Mr. Dornan of California, Mr. Donnelly, Mr. Hayes of Louisiana, Mr. Courter, and Mr. Hayes of Illinois.

H. Con. Res. 68: Mr. Hertel.

H. Con. Res. 192: Mr. Evans, Mr. Ford of Michigan, Mr. Hayes of Illinois, and Mr. Owens of New York.

H. Con. Res. 201: Mr. Buechner and Mr. Stump.

H. Res. 114: Mr. Young of Florida.

H. Res. 269: Mr. Lancaster, Mr. Kolbe, Mr. Bustamante, Mr. Blaz, and Mr. Swindall.

H. Res. 271: Mr. Frenzel, Mr. Stenholm, Mr. Ballenger, Mr. Stratton, Mr. Edwards of Oklahoma, Mrs. Johnson of Connecticut, Mr. Armey, Mr. Penny, Mr. Upton, Mr. Barton of Texas, Mr. Weldon, Mr. Boehlert, Mr. Walker, Mr. Boulter, Mr. Denny Smith, Mr. Smith of Texas, Mr. Bunning, Mr. Chandler, Mr. Shays, Mr. Coble, Mr. Saiki, Mr. Dannemeyer, Mr. Schaefer, Mr. Davis of Michigan, Mrs. Roukema, Mr. Duncan, Mr. Rogers, Mr. Fawell, Mr. Rhodes, Mr. Hastert, Mr. Ravenel, Mr. Pursell, Mr. Oxley, Mr. Hefley, Mrs. Morella, Mr. Holloway, Mr. Inhofe, Mr. Miller of Ohio, Mr. Miller of Washington, Mr. Gallegly, Mr. Gilman, Mr. Grandy, Mrs. Meyers of Kansas, Mr. Herger, Mr. Donald E. Lukens, Mr. Lightfoot, Mr. Kasich, Mr. Konnyu, Mr. Latta Mr. Lent, and Ms. Snowe.

PETITIONS, ETC.

Under clause 1 of rule XXII, petitions and papers were laid on the Clerk's desk and referred as follows:

86. By the SPEAKER: Petition of the Executive Committee, Florida Electric Power Coordinating Group, Inc., Tampa, FL, relative of Federal regulation of acid rain; to the Committee on Energy and Commerce.

87. Also, petition of the Ambassador, Embassy of Nicaragua, Washington, DC, relative to a copy of the first and second report of the Government of Nicaragua to the International Verification and Follow-up Commission on the implementation of the Esquipulas II accords; to the Committee on Foreign Affairs.

88. Also, petition of the Secretary General, North Atlantic Assembly, Brussels, Belgium, relative to the texts of the policy recommendations adopted at the 33d Annual Session of the Assembly, held in Oslo from 20 to 25 September 1987; to the Committee on Foreign Affairs.

EXTENSIONS OF REMARKS

THE DEATH OF A HERO

HON. BARNEY FRANK

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Monday, October 26, 1987

Mr. FRANK. Mr. Speaker, I've spoken earlier in the House about the debt we all owe to firefighters. These brave people perform on a daily basis one of the most dangerous jobs in our society, and we do not, in my judgment, compensate them adequately for the danger and difficulty of their work.

The people in Fall River, MA, received a tragic reminder of the danger which daily confronts firefighters last week when Lt. Paul R. Bernard, an 11-year veteran of the Fall River Fire Department, died while fighting a fire in Fall River.

As fire department chaplain Rev. John R. Folster said in his eloquent eulogy, "The firefighter is called to save his neighbor and that involves the giving of self and that was what Paul did. He gave himself * * *. He gave of himself for another."

Mr. Speaker, I join with the people of Fall River in mourning this brave man who died in the service of his fellow and sister citizens. I extend my very sincere condolences to Lieutenant Bernard's family, and to his brother firefighters who join with his family in grieving at our loss.

Mr. Speaker, the funeral of Paul Bernard was very well reported in the Fall River Herald News by Fred Rhines, and the significance of his death was eloquently discussed by Herald News Columnist Bernard F. Sullivan. I ask that the articles by these two gentlemen on the death of this heroic man be printed here.

[From the Fall River Herald, Oct. 24, 1987]

FIREFIGHTERS BID FAREWELL TO LIEUTENANT BERNARD

(By Fred Rhines)

Nearly 2,000 firefighters from more than 50 cities and towns across the state and neighboring Rhode Island bid a solemn farewell Friday to a Fire Lt. Paul R. Bernard.

Bernard, an 11-year-veteran of the Fire Department, died Tuesday morning in a smoky mill fire at Roma Color Inc, on Quequechan Street.

A hush fell over the hundreds of people who gathered along South Main Street when the flag-draped casket was taken from Hebert's Funeral Home and lifted aboard Engine 4. The fire engine was draped in black bunting. A black-draped Maltese Cross (St. George's Cross) was mounted on the grill of the fire truck.

Two-blocks, away, across from St. Anne's Church, nearly hundreds of firefighters from across the state and nearby Rhode Island were lined up four deep on the sidewalk.

American flags and the brightlightly colors banners of several fire department honor guards provided a variety on hues, the contrast broken only by a single black MIA flag.

The muffled sound of a drum signalled the arrival of the color guard from the Boston Fire Department, soon all was in readiness for the funeral cortege to begin the short march to St. Anne's Church where the funeral Mass was to be celebrated.

The sun broke through as Boston Fire Capt. Terrance Koen's drum set the proper military cadence for the procession and the color guard stepped off, followed by Mayor Vivieros and Fire Chief Louis Shea.

Police Chief Ronald J. Andrade and Deputy Police Chief Kenneth Freeborn flanked Fire Department Chaplain Rev. John R. Folster who delivered the eulogy at the Mass.

The entourage included state Commissioner of Public Safety Charles Barry, Deputy Public Safety Commissioner Barbara Kopans; Steven Cohen, director of the Massachusetts Firefighting Academy, Tony Motta of the Rhode Island Fire Marshall's Office and a number of other state and local officials.

Lt. Bernard's engine company from Candeias Station marched in double file in front of the largest single gathering of off-duty firefighters in the city, all in full-dress dark blue uniforms.

Engine 4 with Lt. Bernard's casket aboard brought up the line of march.

As the funeral cortege neared St. Anne's Church, the silence was broken by the sound of heels clicking together and arms raised in the traditional hand salute as the huge delegation came to attention.

City and state dignitaries joined Lt. Bernard's engine company in forming an honor guard in the street, in front of the church.

A double line of firefighters lined the church steps as an honor guard to salute the casket bearing the body of their fallen comrade as it was lifted down from Engine 4 and carried up the stairs into the church where it was met by Father Folster.

Every available seat in the church was quickly filled once Lt. Bernard's family was seated in the front pews.

During the Mass, scripture readings were given by Chief Shea and firefighters Gerald Comeau and Maurice Maltais, who had worked Tuesday's mill fire with Lt. Bernard.

Father Folster recalled Bernard's skill as a firefighter, his leadership and "the tenacity of his own opinion," during a eulogy that touched on spirit of brotherhood evident by the huge turnout of firefighters.

"Fall River, look around, look at the spirit of brotherhood that is around us today," he said. He likened Bernard to the seven astronauts who lost their lives when the space shuttle exploded. "They knew and accepted the risks," he said, "because it was important to our country and to mankind."

Father Folster said: "Paul did that too. "He knew the risks and accepted them. It is part of the holocaust of being a firefighter. Get lost? Yep, we're all very much likely to get lost. People get lost in their homes after living in them for 40 years. They don't know how to get out."

Folster also said, "the firefighter is called to save his neighbor and that involves the giving of self and that was what Paul did. He gave of himself. When that fire bell rings there's no holding back of the giving of self. He gave of himself for another."

Bishop Daniel A. Cronin presided at the Mass; Folster and Rev. Rene Gauthier, pastor of St. Jean Baptiste, of Bernard's parish, were concelebrants.

The mass was followed by a simple service in Ascension Chapel at Notre Dame Mausoleum, attended by Bernard's family and an over-flow gathering of firefighters, police, and city and state dignitaries.

[From the Providence Journal, Oct. 26, 1987]

PAUL BERNARD DIED A HERO, TRUE TO A FIREMAN'S CALLING

(By Bernard F. Sullivan)

Paul Bernard died a hero.

The people of the city and his fellow firefighters from all over New England came to Fall River on Friday to bid him farewell.

The funeral services were a moving tribute to the young man who had given his life while serving in a profession whose ranks are routinely filled by men and women willing to face death to save others.

Lt. Paul R. Bernard, 44, died when he was overcome by the acrid smoke that filled the Roma Color Co. with a murky blackness Tuesday.

Paul went into the building to save lives and lost his own.

He ran out of air in his pack and became disoriented. His body was found only 10 feet from a door.

But if his life had been saved, if he had found that door that was so close, Paul would have willingly risked his life again and again. Any time a fire alarm sounded.

Heroism is the vocation of the firefighter.

That is why we owe Paul and every firefighter our respect and gratitude.

That is why each firefighter earns a special place in the Valhalla that awaits those who die with dignity and for a cause.

"It was like losing a son," Fall River Fire Chief Louis A. Shea said as we talked in his office Thursday about the tragedy of Paul's death. "We're a close-knit family and, as chief, I feel responsible for all my firefighters and for what happens to them."

GENUINE SENSE OF LOSS

You could see the hurt in the deep-set blue eyes of the veteran firefighter. Louis was busy making plans for the funeral services the next day, but he couldn't forget the sight of the fallen hero who lay on a stretcher after giving, on behalf of all of us, the ultimate sacrifice.

I talked with firefighter Bob Cashman on Thursday at the Candeias station. That's the station where Paul was assigned only two weeks before his death. Bob was helping to prepare Engine 4 for Paul's funeral the next day. The flag-draped casket would be bourne atop the yellow engine Paul commanded.

"Tuesday night after Paul died I was working here and an alarm came in for the old Mount St. Mary's Convent and, let me tell you, I was shell-shocked," Bob said. "I

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

wondered if this was it for me. Was I going to have to go into the vacant convent and would I get lost and not be able to find my way out?"

Ah, but Bob Cashman jumped on the engine and left Candeias. And so did every firefighter at every fire since Tuesday's blaze at Roma Color Inc. And so will every firefighter at every alarm that beckons for bravery and heroism.

It is the nature of the job.

They are willing to be lost.

The Rev. John Folster, pastor of St. Anne's Church and the chaplain of the Fall River Fire Department, said in his homily at Paul's funeral that firefighters are people willing to be lost.

He compared their heroism to the heroism of the early explorers who sailed unknown waters in search of new lands and new discoveries, at the risk of being lost. He compared the vocation of the firefighter to the astronaut who is willing to explore space despite the memory of the Challenger and its ill-fated crew.

TRIBUTE TO GALLANTRY

On the wall inside the Fall River Fire Department headquarters on Pine Street, there is a painting depicting an early fire company. The title of the picture is *The Gallant Ones.*

That title could have been written above South Main Street Friday as firefighters from many communities walked toward the steps of St. Anne's Church.

Fall River firefighters are the finest you will find anywhere in the country. They have fought some colossal holocausts without the loss of firefighters or private citizens.

"They lean on each other for life," Father Folster said. "Paul is not just another guy to firefighters. He is a brother."

My sympathy goes out to Marguerite, Paul's wife, and his two daughters, Michelle and Nicole. I didn't know Paul, but from all I have heard about this hero, I wish I had been his friend. In the midst of your sorrow, you must find immense pride.

In time, that pride should bring you peace.

PERSONAL EXPLANATION

HON. JACK BUECHNER

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Monday, October 26, 1987

Mr. BUECHNER. Mr. Speaker, I rise today to explain my absence for rollcall Nos. 372 and 373 regarding the Independent Counsel Act—H.R. 2939. Due to unavoidable business in my district, I was unable to record my remaining votes on October 22, 1987. Let me assure you that my intended vote was in support of the Shaw amendment that sought to strike language stating that sought to include Members of Congress under the statute. Had I been present I would have voted "aye." Likewise, my intended vote for rollcall No. 373, was in opposition to final passage of H.R. 2939, to amend title 28, United States Code, with respect to the appointment of independent counsel. Had I been present I would have voted "nay."

Likewise, I was unable to record my votes on October 23, 1987, due to extended business in my district. Let me assure you that my intended votes on rollcall Nos. 374, 375, and 376 were all nays, as related to S. 640, the Water and Power Authorization Act.

FDA USER FEE LEGISLATION

HON. EDWARD R. MADIGAN

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Monday, October 26, 1987

Mr. MADIGAN. Mr. Speaker, today I am introducing legislation that will require the Federal Government to assess fees under the Food, Drug, and Cosmetic Act for the review of applications for marketing approval for drugs, antibiotics, medical devices, and biological products. I am introducing this legislation at the request of the administration which has determined that this is one way that the Food and Drug Administration could have the resources necessary to reduce approval time substantially for new product applications. The ability to charge user fees would allow the Federal Government to shift some of the approval costs from the taxpayers to the manufacturers who receive profits from the products approved by the FDA.

I would like to note that this legislation provides for waivers and reduction of fees in exceptional cases that are in the public interest. I also note that the fees collected for each type of review affected by this legislation could be used only for the costs connected with carrying out that activity.

Mr. Speaker, I view the introduction of this bill as the starting point for discussions between representatives of the administration, representatives of the affected manufacturers, and legislators to develop a policy that will assure FDA is receiving adequate funding for prompt and thorough premarket reviews.

One of the objections raised by the manufacturers of products that would be subject to user fees is that there is no guarantee that the fees would be used for expediting review of applications. I am quite sympathetic to this concern and pledge to work with the administration and the affected manufacturers to assure that the user fee will directly benefit the user. I am also sympathetic to the argument raised by some affected parties that, as user fee revenues increase, appropriations will decrease. Again, I am committed to assisting the affected parties in assuring that Congress' commitment to the FDA will not diminish as other sources of revenue are used.

I sincerely hope that the administration of this legislation can begin a process which will result in a solution that will satisfy all affected parties.

TRIBUTE TO SGT. JOSEPH ALLEN HALL

HON. IKE SKELTON

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Monday, October 26, 1987

Mr. SKELTON. Mr. Speaker, I rise today to pay tribute to Sgt. Joseph Allen Hall. He died tragically in a training accident at Fort Leonard Wood, MO, on October 9, 1987.

Sergeant Hall joined the Army in 1979 and was a carpentry-masonry specialist. After completing basic training and advanced training at Fort Leonard Wood he served at Fort Rucker, Fort Lewis, and Korea. In May of 1986 Sergeant Hall became a drill sergeant at Fort Leonard Wood. He received the Army Achievement Medal, and two Army commendation medals. I am sure Sergeant Hall's friends join me in extending my sincerest sympathies to his family.

The tragic training accident that took the life of this young soldier is still under investigation, but perhaps some good will emerge from this tragedy. Hopefully the hard lessons we learn will spare other servicemen's families the pain the Halls must now endure.

HON. HOWARD ROBISON

HON. E de la GARZA

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 20, 1987

Mr. DE LA GARZA. Mr. Speaker, I was deeply saddened by the announcement of the passing of our former colleague, Howard Robison, and I would like to take this opportunity to say a few words about our late colleague.

While he left these Chambers 13 years ago, Howard Robison is a man with whom it was a privilege to serve, and those of us who did have lost a good friend.

As I reflect I think that the key to Howard Robison's success in accomplishing so much was his total dedication to the causes for which he worked and in which he completely believed. The State of New York can be proud of its record in sending many fine men to Congress and I believe that Howard Robison can justifiably be included among that number of outstanding individuals who have come to Washington and left it and the country a better place by having served here.

Indeed an outstanding public servant Howard Robison's contributions to his Nation, his State and to the Congress have been many. They will long be remembered, and I am proud to have been one of Howard Robison's colleagues. He will be missed.

SENIOR SOFTBALL

HON. DAVID E. BONIOR

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Monday, October 26, 1987

Mr. BONIOR of Michigan. Mr. Speaker, I rise today to pay tribute to a spirited group of Americans who recently returned from a goodwill mission to the United Kingdom in order to introduce senior softball to that part of the world. Senior softball is a popular sport in my home district in Michigan, as well as in many other parts of the country. In fact, Clinton Township in Michigan is the site of the National Association of Senior Citizen Softball [NASCS] World Tournament.

Delegations from across our Nation participated in the trip to the United Kingdom, including two teams fielded from Michigan. There were 226 players and spouses involved in this first annual Pan Am Softball Classic.

The teams played "round robin" tournaments in eight cities throughout the United Kingdom. The trip lasted from September 18 to October 3, 1987. I especially want to highlight the efforts of Ms. Jackie Kwiatek and Mr. Ken Maas of the NASCS in Michigan. Jackie and Ken work tirelessly each year to organize the world tournament, and they added to their responsibilities this year by setting up the Softball Classic in the United Kingdom.

I was happy to be of assistance to the NASCS in their efforts to coordinate their trip to the United Kingdom. I understand that these American ambassadors of senior softball received a warm welcome in the host country and have been invited back for next year. Senior softball is a wonderful sport that keeps participants young in spirit. The Softball Classic served an important purpose in spreading this national pastime to the international scene.

I would also like to congratulate senior softball players from Michigan who recently captured a gold medal at the first World Senior Olympics in St. George, UT. I am especially proud that many members of the Michigan team came from my home district.

LATIN AMERICAN EXCHANGE

HON. JOHN EDWARD PORTER

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Monday, October 26, 1987

Mr. PORTER. Mr. Speaker, with the current deluge of stories on AIDS, we hear less and less about the ongoing drug problems with our Nation's youth. Fortunately, this critical topic is being addressed by a distinguished group of eight visiting Latin American diplomats who recently arrived in Washington, DC. With financial support provided by a U.S. Information Agency grant, the Youth Network Council of Chicago, directed by Gary Leofanti and Denis Murstein, will serve as host for the group.

The group will spend more than 3 weeks in the United States, participating in our successful youth service programs in Illinois and meeting with experts in Washington to discuss Federal options on drug treatment and prevention programs that are geared toward our youngsters.

The five Latin American countries represented are Colombia, Peru, Panama, Bolivia, and Ecuador. They have all experienced the terrible effects that drug abuse can have on a nation's young people. While the focus may have switched away from drug abuse the problem persists and is probably growing.

Mr. Speaker, this exchange provides an excellent opportunity for combating this international problem. The representatives have been active in drug abuse prevention for several decades. They are internationally known for their expertise and professionalism in fighting drug abuse in their countries.

During their stay in Washington, the group will meet with Dr. Ian McDonald, Special Assistant to President Reagan on Substance Abuse. The House Foreign Affairs Committee will host a luncheon in their honor on Tuesday, graciously hosted by our colleague BEN GILMAN. On Thursday evening the Embassy of Peru will host a reception in their honor. Clearly, the Washington community has extended a warm welcome to our Latin American friends. Several area restaurants and touring groups have opened their doors in the hope of making this trip educational and entertaining.

Substance abuse by our Nation's youth is an ongoing crisis. These exchanges and the effort of youth service organizations, such as the Youth Network Council, are striving to slow the tide of abuse. Their goal is urgent, and deserves this country's full support.

BEST WISHES TAIWAN

HON. JACK BUECHNER

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Monday, October 26, 1987

Mr. BUECHNER. Mr. Speaker, a few of my colleagues and I visited the Republic of China on Taiwan during the August recess. While we were there we met with a number of government officials representing Taiwan's Board of Foreign Trade, business executives of large and small corporations, and legislators of the ruling Kuomintang and the opposition party. Our briefings were informative and educational; we learned about Taiwan's political movements, economy, and especially their many, many efforts in reducing their trade surplus with the United States.

Our hosts advised us of their "buy American" mission to the United States and of their latest purchase of Boeing jetliners for a total of $1.7 billion. They wanted to know why the United States was not happy with a 25-percent appreciation of their currency since late 1985 and why the United States seemed to discourage Taiwan's economic future.

While we did not have quick answers to their questions, we strongly sensed their sincerity. Lowering of tariff rates and elimination of trade barriers have been significant steps taken by Taiwan—illustrating their commitment to free and fair international trade.

During our trip we learned that despite differences over trade matters, Taiwan remains an ally of the United States, and we must not hasten to punish them for economic success. Instead, we must diplomatically discuss our differences. Since today's economy is global, anything we or the Taiwanese do will severely affect the interests of the other country and indirectly the world economy.

Mr. Speaker, in the month of Taiwan's 76th birthday, I urge that we send them our greetings and best wishes as well as our hope that both the United States and Taiwan will work jointly toward each other's economic interests and prosperity.

MEDICARE EXPANDED CHOICE ACT

HON. EDWARD R. MADIGAN

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Monday, October 26, 1987

Mr. MADIGAN. Mr. Speaker, on behalf of the administration, I am introducing a bill today to expand voluntary private health insurance coverage for Medicare beneficiaries. This bill would permit the Health Care Financing Administration [HCFA] to contract with "employment based plans" [EBP's] to provide health care services to retired employees and their families directly—by meeting the criteria for competitive medical plans [CMP's]—or by subcontracting with a Health Maintenance Organization [HMO] or CMP. Unlike current law, the Secretary of Health and Human Services [HHS] would determine the capitated payment amount for these groups on the basis of the experience of the retirees who enroll. In addition, this legislation makes several changes to the Medicare HMO statute in order to make the HMO option more available and attractive to Medicare beneficiaries.

In introducing this legislation, I am aware of concerns that have been raised regarding the bill's provision allowing the Secretary to experience rate the per-capita payment for employment based plans. Because HCFA currently determines the capitated payment amount for HMO's on the basis of what Medicare would otherwise pay for health services under the fee for service system, the experience-rated capitated payments to EBP's could very well exceed comparable payments to HMO's in the same area. I do not intend for this to occur, and in further developing this initiative, I plan to work with my colleagues in Congress and the administration to rectify this potential problem.

It is my understanding that this concept will soon be tested under HCFA's demonstration authority. The Secretary of HHS announced on October 14, 1987, that HCFA has signed a cooperative agreement with the Amalgamated Life Insurance Co. to provide its retirees the option of continuing to receive health benefits under the same managed health care system they utilized as workers. The Secretary anticipates this 4-year demonstration project will test the innovative concepts which underlie the bill that I am introducing on his behalf today.

If Medicare is to remain solvent over the long term, Congress must be willing to explore alternatives such as this one. This program could very well reduce Medicare overall costs through greater administrative efficiencies, by providing prospective payments on an experience rated basis and by shifting the risk assumption for health benefits to an underwriter other than the Federal Government. The Medicare Expanded Choice Act provides retirees greater choice, less red tape, and possibly increased benefits.

TRIBUTE TO PVT. KEITH JONES

HON. IKE SKELTON

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Monday, October 26, 1987

Mr. SKELTON. Mr. Speaker, I rise today to pay tribute to Pvt. Keith Jones. He died tragically in a training accident at Fort Leonard Wood, MO, on October 9, 1987.

Private Jones had just completed his third week of basic training and was by all accounts well on his way to becoming a fine soldier in the U.S. Army. He was awarded the Army Achievement Medal posthumously and is survived by his parents Margaret and Henry. I am sure everyone who knew Private Jones joins me in extending my sincerest sympathies to his family.

The tragic training accident that took the life of this young soldier is still under investigation, but perhaps some good will emerge from this tragedy. Hopefully the hard lessons we learn will spare other servicemen's families the pain the Joneses must now endure.

KCKC RADIO OPENS NEW FACILITY

HON. JERRY LEWIS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, October 26, 1987

Mr. LEWIS of California. Mr. Speaker, I rise today to recognize an important part of the 35th District of California—KCKC radio station—and the people behind its operation. On November 4 of this year, a very special ceremony will take place to honor the new building from which KCKC broadcasts, where the newest and most advanced broadcasting equipment is used. I'd like to take this time to say a few words about the station and the driving forces behind it, Jerry Maltz and Jim Markham.

For 23 years, KCKC has been the country station for the Inland Empire. During that time, other stations have come and gone. KCKC plays a blend of country favorites from the 1950's right up to the country hits of today, always with an emphasis on the more traditional aspects of country music. Listeners are treated to country music from Buck Owens, Hank Williams, and Patsy Cline to the latest hits from Dwight Yoakum, George Strait, and Reba McEntire.

In addition to being dedicated to country music, KCKC is committed to community service. KCKC devotes much time and energy to coverage of news and events affecting the lives of its listeners. The award-winning KCKC news department is recognized as the primary source for up-to-the-minute accurate information, whether it be the latest news headlines or the weather from the mountains to the high desert.

Jerry Maltz is the chairman of the board of General Broadcasting Corp., the company which owns KCKC and seven other stations in nearby cities. Jerry's ambition is "to show that media can be a force for good as well as for profit." Indeed, GBC stations have devoted hundreds of hours of programs to charity, social problems, health, medicine, and public affairs.

Jim Markham is now the president of General Broadcasting Corp. and all its affiliates. Jim has been a long-time resident of Grand Terrace and has served in the broadcasting field in every capacity.

Mr. Speaker, I ask that you join me in saluting KCKC radio station and all those who work to maintain its reputation as a quality station. I feel that KCKC is an outstanding example for all those involved in the media. I congratulate this station for its excellence and wish it continued success for years to come.

A $23 BILLION IN DEFICIT REDUCTION NOT ENOUGH

HON. RONALD D. COLEMAN

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Monday, October 26, 1987

Mr. COLEMAN of Texas. Mr. Speaker, today marks the first time that the President will sit down with the elected leaders of Congress from both parties to begin serious discussions about reducing the Federal budget deficit. Congressional leaders have advocated this comprehensive, bipartisan budget summit all year, and although it is disappointing that it took the crash of 1987 to bring the President to his senses, I am nevertheless hopeful that a compromise can be reached and a budgetary deadlock—with all its perils for the economy and the markets—can be avoided.

But despite this encouraging first step, the President and congressional leaders must go beyond the $23 billion deficit reduction contained in the so-called new Gramm-Rudman fix. When this fix was passed by the Congress and signed into law by the President, over my objections, I said that now is not the time to relax our deficit reduction goals. The need to stick to at least the original Gramm-Rudman deficit reduction targets is greater than ever, and the negotiations between the President and congressional leaders should return to those original, tougher targets. At the very least, we should reach the original Gramm-Rudman deficit reduction target of $144 billion instead of the loosened target of $156 billion, an action that would require $35 billion in deficit reduction instead of the $23 billion currently under discussion.

I'm not yet sure that $35 billion is the unique number, but it seems at this point to be a more desirable target than the minimum figure of $23 billion.

To reach these goals, we must all share in the pain and we must all contribute our sacrifices to the national effort required to reduce the Federal deficit. With the sole exception of Social Security, every group and every kind of individual will be expected to contribute their fair share.

Mr. Speaker, I am leery about a spending "freeze" for the same reason I opposed the relaxation of the original Gramm-Rudman targets. A freeze would be as uncourageous a move as sequestration and across-the-board cuts because once again, it would allow the President and the Congress to get off the hook by avoiding the tough, individual spending choices that must be made to reduce the deficit.

And in many cases, such as the defense budget, a freeze would not really be a freeze because defense spending is slated to increase steadily at current levels of spending, while domestic programs have already been frozen.

Although I am a strong supporter of ensuring our national security, the true foundation of security is a strong and healthy economy. A freeze that would allow actual increases in defense spending while reducing domestic programs would undercut the political support needed for a strong defense and could inflame public opinion against defense programs that really are vital to our national security. Any compromise solution to the budget crisis must make each part of the budget shoulder its fair share, and that goes for defense as well as domestic spending.

Mr. Speaker, the American people and the national and world economy are holding their collective breaths while we await the outcome of these negotiations. Nothing could send a stronger signal to the world than a courageous stand on deficit reduction, one in which the President joins leaders of Congress from both parties in real, tough decisions. Telling the world that we intend to reach the original Gramm-Rudman deficit reduction targets instead of the loosened ones would give our economy the best shot in the arm it would have received all year, and I urge the President and the congressional leaders to do so.

FCC PLANNING TO IMPLEMENT RULE IMPOSING ACCESS CHARGE ON ESP'S

HON. EDWARD J. MARKEY

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Monday, October 26, 1987

Mr. MARKEY. Mr. Speaker, the Federal Communications Commission [FCC] is planning to implement a rule which could cripple the U.S. information services industry. The FCC has issued a notice of proposed rule making, FCC Docket No. 87-215, which would in effect impose an access charge on all enhanced service providers [ESP's]. I urge all Members of Congress to oppose this action.

ESP's supply computer based information services to business and residential users. Customers access these services via telephone lines. The FCC proposal would expand the existing access charge to include all ESP's.

The proposed access charge could be as high as $5 per online user hour, a 100- to 500-percent increase. This will have a devastating effect on the information services industry. We are just beginning to realize the amazing potential of this new industry; the new technology has provided this Nation with capabilities previously limited to the realm of science fiction. This access charge threatens to stall this burgeoning success.

As a member of the Massachusetts delegation, I have seen first hand the wonders of the information services industry. In my district alone, companies on and around Route 128 are offering services never even dreamed of, and they're doing it at affordable prices so the whole population can be a part of this revolution.

Access charges would make future development too costly and would stifle one of America's most innovative and exciting industries. The FCC has recognized this problem. When access charges were imposed, on common carriers after the AT&T breakup, the FCC exempted ESP's. The Commission feared that "rate shock" would stunt growth in this new industry. This same Commission has now determined that the rate shock is no longer a concern. The industrial revolution took over 50 years; the FCC believes the information revolution took less than 4.

ESP's will be forced to pass the access charge on to their customers, many of whom will not be able to afford this huge increase and will drop out of the information market. Residential and nonprofit users, such as libraries, universities, and hospitals, will be hardest hit by the proposal. This access charge would shut them out of the information services market and effectively create a two-tiered, information rich, information poor society. This is nothing less than a threat to our democratic society.

The Subcommittee on Telecommunications and Finance recently held a hearing on this subject. At the hearing, Chairman Patrick was given an opportunity to express his views and listen to the opinions of those opposing the rule.

Witnesses testified about the devastating effects the rule would have on nonprofit users. John Stuckey, director of academic computing at Northeastern University, stated that this would limit student access to information services, and more importantly, hinder any further development in computer assisted education. Richard tenEyck of the Boston Computer Society said that the free flow of information has much more than trickle-down benefits for the rest of society, it has a flood of benefits, likening it to tax dollars spent on public education. Jacquelline Bastille, director of the health sciences library at Massachusetts General Hospital, stated that the proposal could seriously affect the quality of health care by limiting the availability of information to health professionals.

Philip Gross of Quantum Computers, a provider of low-cost data bases, testified that the charge would force them to abandon the consumer market. Ivan Seidenberg of NYNEX stated that the local phone companies do not have an exact method of distinguishing between voice and data communications and between inter- and intrastate communications. In addition, representatives from Telenet and Adapso testified that the access charge would have no noticeable effect on local telephone rates.

Access charges would hurt U.S. trade relations. The National Telecommunications and Information Administration [NTIA], the administration's arm for telecommunications policy is trying to convince foreign governments that information services are not common carriers, but the FCC is now going to regulate the two industries under the same system. It seems as though the right hand does not know what the left hand is doing. This prompted the NTIA, along with several other Government agencies, to file against the FCC proposal.

According to the FCC, this is a matter of fairness: Everybody who uses the local network should pay for it. Unfortunately, it is not that simple. Aside from the public policy implications which the Commission fails to consider, the proposal is inequitable. ESP's will be forced to pay for the whole local line, even though they do not use the more expensive trunk side, only the line side, and ESP's will have to pay terminating charges even though there is usually no termination, only a connection. ESP's will be paying more than their fair share.

The FCC access charge proposal has no up side. It can cripple growth in a vital industry, force nonprofit users out of the market, and hurt the U.S. trade balance. Perhaps this is why over 2,000 people have written the subcommittee opposing the rule, and why comments to the FCC have overwhelmingly been opposed to the proposed rule. I urge my colleagues to oppose the FCC in this matter.

A TRIBUTE TO THE CAMELLIA SYMPHONY

HON. ROBERT T. MATSUI

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, October 26, 1987

Mr. MATSUI. Mr. Speaker, it is with great pleasure that I rise today to pay tribute to a distinguished group of musicians, the Camellia Symphony, on the occasion of their 25th anniversary of excellent and entertaining performances.

For the past 25 years, the citizens of Sacramento have had the pleasure of being entertained by a truly unique and dedicated crew of performers. Under the baton of veteran conducter and composer Dr. Daniel Kingman, the Camellia Symphony has offered to its patrons a hardy blend of American composers, outstanding yet seldom heard compositions, challenging new works, and of course, traditional symphony fare.

This season promises to be a special one. To celebrate their silver anniversary, the Camellia Symphony has chose to honor the bicentennial of the U.S. Constitution. Each four season concerts will be dedicated to a particular aspect of the Constitution including: the Federalist period, women's sufferage, the Civil War amendments, and as a grand finale, a performance of campaign song medley's spanning from the 1800's to the present.

Mr. Speaker, on behalf of the people of Sacramento and the State of California, I want to congratulate the Camellia Symphony on a job well done. I offer them my warmest wishes on the occasion of their silver anniversary and I want to thank them for providing the people of our community with superb and memorable entertainment.

AMENDMENTS TO THE NATIONAL CHILDHOOD VACCINE INJURY ACT OF 1986

HON. NORMAN F. LENT

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, October 26, 1987

Mr. LENT. Mr. Speaker, I am pleased to announce, along with my colleague Mr. DUNCAN, the introduction, by request, of the President's bill "To amend title XXI of the Public Health Service Act establishing the National Vaccine Injury Compensation Program, to amend the National Childhood Vaccine Injury Act of 1986, and for other purposes."

Compensating those who suffer injuries as a result of a childhood vaccine is a critical component of this Nation's overall commitment to ensure that children are protected against dread childhood diseases. Those few children who do suffer vaccine related injuries ought to be fully, fairly, and swiftly compensated.

Last season, in enacting Public Law 99-660, the Congress recognized that the current tort system is ill-suited to accomplishing these purposes, because it compensates too few, costs too much, and takes too long. Moreover, the tort system, varying as it does from State to State and from jury to jury, interposes a degree of uncertainty that has had the effect of dramatically increasing the costs of vaccines attributable to liability. As a result, manufacturers have ceased manufacturing childhood vaccines altogether and those that remain in the market have been forced to dramatically increase the cost of the vaccines.

What is needed is a predictable and equitable system of vaccine compensation, one that treats the child injured in Illinois the same as the child injured in Mississippi. Current law attempts to meet these goals but contains serious deficiencies. The bill that we are introducing today provides a viable alternative to correct these deficiencies and would leave us with an affordable system that we can all be proud of—a system that fully, fairly, and swiftly compensates all persons who suffer childhood vaccine related injuries.

Our bill would provide for the following amendments:

The basic provisions of current law regarding eligibility for compensation and the types of economic injuries to be compensated would be retained, with minor revisions.

Manufacturers would be required to purchase insurance, or to self-insure, to provide compensation for vaccine-related injuries.

The program would be based upon the workers' compensation model, a program in effect in all 51 jurisdictions and the Federal Government. Since there is already an enormous body of experience under those programs, we know that vaccine manufacturers will be able to purchase the required insurance, thus protecting both themselves and individuals receiving the vaccines, and the need will be eliminated for taxpayer subsidies of compensation. Additionally, a strong incentive will be placed upon the manufacturer to produce the safest vaccines possible, since the cost of securing the required insurance will be a function in each case of the manufacturer's prior compensation experience.

The draft bill would establish a new administrative entity, the Vaccine Compensation Board, to adjudicate claims for compensation that cannot be resolved by the individual and the insurer. Placing the factfinding and baseline adjudicatory functions for this specialized class of cases in a specially constituted Board will facilitate prompt and fair compensation.

The compensation program would be the exclusive remedy in all but the limited classes of cases involving willful misconduct or medical malpractice. This approach would greatly increase the predictability of compensation costs, thus making vaccines insurable, protecting the supply and stabilizing the price. Such an approach has been successfully inplemented in the State of North Carolina where the cost of DTP vaccine has dropped dramatically.

Recent action taken by the House Committees on Energy and Commerce and Ways and Means to fund the compensation program has highlighted the problems contained in the current law and underscore the need to take a revised approach. Current law together with the reconciliation provisions reported by the House Budget Committee represent a costly and potentially inequitable experiment. It is costly because it retains the tort option—the culprit that caused the crisis in the first place. It is inequitable because it treats those who are injured before the effective date of the legislation as second-class victims providing them with only a fraction of the compensation available to those injured after its effective date.

Even so, we would be required to appropriate $320 million over the next 4 years for retroactive compensation and impose a substantial excise tax on childhood vaccines to cover the cost of prospective compensation. And, this excise tax would not even be truly revenue generating over time, because the Federal Government purchases about one-third of all such childhood vaccines.

Provisions in the House reconciliation bill would render current law permanently inoperative if more than 150 claims for prospective cases were paid out over a 12-month period. In short, not only would this approach retain the uncertainty of the tort system, but it has an added uncertainty—the compensation program may cease to exist under its own terms.

Moreover, I am advised the current law could be unconstitutional. By vesting, as it does, the responsibility for administering the compensation program in the district courts, the law runs afoul of the "case and controversy" requirement of article III of the Constitution.

We believe there is a better, fiscally responsible approach to providing compensation to vaccine injured children—the approach that is embodied in the President's bill, which we commend to our colleagues' attention.

PROTECT COST-EFFECTIVE PROGRAMS FOR CHILDREN

HON. GEORGE MILLER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, October 26, 1987

Mr. MILLER of California. Mr. Speaker, as we prepare for a budget summit, let's keep in mind the advice of the New York Times last weekend:

> Temptation is strong to cut back everywhere on the theory that All Must Share the Burden. Yes, but not the children.

Drawing on findings of the House Select Committee on Children, Youth and Families, the Times identified selected targeted cost-effective programs for children that not only should not be cut, but should be expanded to cover more eligible children.

As we make critical decisions about the 1988 budget, let us heed the warning of the New York Times which is confirmed in the results of university, medical and research studies even by this administration: "There are investments that America cannot afford not to make."

[From the New York Times, Oct. 18, 1987]

THE PRESIDENT AND THE CHILDREN

Children are a nation's greatest future resource; that's why America is heading for trouble. In the next 12 weeks, President Reagan will either seize—or forfeit—his last chance to do something about it.

At this moment, his Office of Management and Budget is constructing the 1989 Federal budget, for his last full year in office. The usual strains of budget-making are intensified by merciless pressure to cut the deficit, notably the present struggle to bring the 1988 budget within Gramm-Rudman's mandatory targets. Temptation is strong to cut back everywhere, on the theory that All Must Share the Burden. Yes, But not the children.

Many American children, and the number is rising, need help, especially in early childhood. More than 20 percent of children are now growing up poor; in 1970 it was 15 percent. The nation has developed programs that work to prevent or ameliorate poverty's worst effects. A new consensus is coalescing around early childhood health and education; people are coming to recognize that insuring a fair chance for every child saves future and also millions, in increased productivity, decreased crime and dependence.

The judgment Mr. Reagan passes on five programs especially will do much to establish how he is remembered when today's toddlers become adults.

WIC (WOMEN-INFANTS-CHILDREN)

By providing supplemental food to those at nutritional risk, this program helps reduce infant mortality and increases birthweight. It has the greatest effect on pregnant women: every dollar spent on the prenatal component saves three in short-term hospital costs. Now funded at about $1.7 billion, it serves less than half those eligible.

PRENATAL CARE

Several programs, including a block grant for maternal and child health and Medicaid, provide prenatal services to low-income women. Investing one dollar in prenatal services saves $3.38 in the cost of care for low-birthweight infants. Every dollar spent on comprehensive prenatal care for Medicaid recipients saves $2 in care during a baby's first year. Still, in 1985, nearly 25 percent of mothers did not begin prenatal care in the critical first trimester. Congress has approved an increase of $27 million in the maternal and child health block grant. That could provide complete prenatal care services to 40,000 more women.

CHILDHOOD IMMUNIZATION

Each dollar spent to immunize young children saves $10 in later medical costs. Yet in 1985, one of four children between ages 1 and 4 was not immunized for rubella, mumps, polio or measles and 13 percent lacked immunization for diptheria, tetanus and pertussis. Congress would increase funding by about $20 million, enough to immunize 600,000 more youngsters.

PRESCHOOL EDUCATION

Enriched preschool programs increase later school success. Head Start, the celebrated Federal contribution to this effort, is now funded at about $1.1 billion, enough to serve barely one of every five eligible children. Congress contemplates an increase that could cover 28,000 more children.

REMEDIAL EDUCATION

Since 1965, the Federal Government has provided remedial services to educationally disadvantaged children. A year of such service costs about $600. Compare that with the $4,000 it costs taxpayers when a child must repeat a grade. Congress would add about $350 million for remedial education, targeting most of it to the poorest students. That could allow school districts to serve another half-million children.

Big funding increases for child welfare programs may be unrealistic at a time of huge deficits. But the modest Congressional increases approved so far are well within Gramm-Rudman's budgetary limits. They make progress toward 100 percent coverage of those eligible. If the President cares about poor children, he'll do well to continue these modest but steady gains. These are investments that America cannot afford not to make.

LONG-TERM TIMBER CONTRACTS IN ALASKA

HON. ROBERT J. MRAZEK

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, October 26, 1987

Mr. MRAZEK. Mr. Speaker, I had the opportunity to travel to southeast Alaska in August to assess the management practices of the U.S. Forest Service in our Nation's largest national forest, the Tongass National Forest. You may be aware that last March, I introduced the Tongass Timber Reform Act (H.R. 1516), a bill to restore fiscal accountability to the Tongass. Currently, the Tongass Timber Reform Act is pending before the House Interior Subcommittee on Energy and the Environment, where 2 days of hearings have been held.

H.R. 1516 is designed to bring the Tongass back into the annual appropriations process along with the rest of the U.S. Forest Service. Under section 705 of the Alaska National Interest Lands Conservation Act, the Treasury is required to provide an open-ended appropriation of "at least $40 million annually or as much as the Secretary of Agriculture finds is necessary" to enable the Forest Service to achieve its timber supply goal of 4.5 billion board feet of timber per decade from the Tongass. Unlike virtually all other Federal expenditures, including expenditures for national defense, these funds are not subject to deferral or recision by the administration, nor are they subject to the annual appropriations process in Congress.

While in Alaska, I met with representatives of the Tongass-dependent timber industry, Native and independent loggers, fishermen, local conservationists, representatives of the tourist industry, people dependent on subsistence uses and mill workers. In addition, I visited a pulp and saw mill, commercial fishing operations, and many of the cities and rural villages in southeast Alaska. Throughout my travels, I found that there was strong support for Tongass timber reform. Furthermore, I became convinced that H.R. 1516 does not go far enough in solving the management problems in the Tongass.

I am introducing a bill that addresses some of the problems associated with resource management in Alaska, particularly the Tongass, that were not addressed in H.R. 1516. The Alaskan Timber Contract Modification Act is an attempt to put all purchases of timber from Alaska's national forests on an equal footing. This bill will terminate timber sale contracts in the State of Alaska. I believe this bill will return to the U.S. Forest Service full control of management of our Nation's largest forest. In addition, this bill will, for the first time, make balanced multiple-use management of the Tongass possible.

Since the Tongass became a national forest in the early part of the century, the U.S. Forest Service has pursued a unique experiment designed to foster the development of a large-scale pulp mill industry in southeast Alaska. The purpose was to stabilize the local economy, promote industrial expansion, provide local jobs, further the development of the State of Alaska and to settle part of the last frontier. To attract pulp mills to southeast Alaska, a remote and economically forbidding region, the U.S. Forest Service offered unprecedented long-term timber contracts to potential bidders in the 1950's. The terms of these contracts give the purchasers virtually unfettered control over the national forest, sole access to a huge portion of the annual allowable timber harvest, and great competitive advantages that amount to monopoly power in the local market. While these contracts may have served a purpose in the 1950's when they were signed, they no longer make sense.

In fact, Alaskan long-term timber contracts have interfered with normal free market mechanisms and are barriers to competition. For example, timber contracts have been used to manipulate the market and to eliminate competition. In a case entitled *Reid Bros. Logging* v. *Ketchikan Pulp Co.* (No. C75-165SR W.D. Washington 1981), antitrust violations by the contract holders, under sections 1 and 2 of the Sherman Act, were found to have resulted in the elimination of existing independent mills and the payment of artificially low prices to loggers, thus eliminating the independent businessmen.

In addition, Alaskan long-term timber contracts antedate all major environmental and resources management laws pertaining to the national forests, including the Multiple-Use and Sustained-Yield Act of 1960, the Wilderness Act of 1964, the National Environmental Policy Act of 1969, and the National Forest Management Act of 1776. These laws have never been fully implemented for the Tongass. As a result, the existence of these long-term timber contracts impairs the ability of the United States, the State of Alaska, and other responsible parties to properly manage non-timber resources in Alaska.

It is important to realize that the termination of these contracts will not impede in any way any timber operator from competing for timber supplies from national forests located in Alaska. In fact, this bill will enhance competition within the timber industry.

I strongly believe that for these stated reasons, the contracts no longer further their original goals and their continued existence damages other Alaskan industries dependent on access to natural resources. I ask my colleagues in the House to join me in support of the Alaskan Timber Contract Modification Act.

THE GATHERING STORM

HON. CHARLES E. BENNETT

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Monday, October 26, 1987

Mr. BENNETT. Mr. Speaker, I read with great interest the comments of Representative JIM COURTER in the fall 1987 issue of Policy Review entitled "The Gathering Storm." Mr. COURTER is an able man and has outlined some facts that every thoughtful American should read and consider. Certainly the facts he points out indicate that our national defense should be strengthened. Although I am more conservative than he on the funding levels for SDI at this point, his emphasis on the need for strengthening conventional abilities of our country, I heartily endorse.

At this point I include the following article:

THE GATHERING STORM: ARE THE SOVIETS PREPARING FOR WORLD WAR III?

(By Representative Jim Courter)

Justly celebrated for his warnings about the Nazis, Winston Churchill is less well remembered for those he made about Soviet power and expansionism. One of his most astute and vivid predictions came as early as March 14, 1919, at a time when many observers believed the Bolsheviks could not even govern Moscow, let alone reforge an empire from the ruins of Russia. To his friend and prime minister, Lloyd George, Churchill penned this warning against withdrawing British help for non-Communist forces in the Russian civil war:

"When the Bolshevik frontier in Siberia is limited only by whatever line the Japanese choose to keep for themselves, when the whole of the Caucasus and Trans-Caspia have fallen into Bolshevik power, when their armies are menacing Persia and Afghanistan and their missionaries are at the gates of India, when one after another the Border States in the West have been undermined by want and propaganda or overborne by criminal violence, not only the League of Nations but the British Empire, with which we are particularly concerned, will wake up to the fact that Russia is not a negligible factor in world politics."

Japan, which had destroyed the Russian navy in 1895 at Tsushima Straits, is all but undefended today; its meager military resources could be crippled by Soviet air attack. Because Persia (Iran) cannot even defeat small and war-weary Iraq, much less resist a Soviet invasion, it is extremely vulnerable, and is said to be contemplating the suffocating embrace of a "Friendship Treaty." Afghanistan, while not entirely controlled, has been smashed and occupied. The border states in Eastern Europe were indeed undermined and, where necessary, overborne by criminal violence. Terrorism has been used continuously against the new border states, those of Western Europe. The Marxist missionaries are only at the gates of India, but thousands of their technicians and military experts, together with all their tanks and advanced fighter aircraft, have long since passed inside, where they enjoy influence so great that it has effectively compromised Indian sovereignty.

The Soviet military presence became truly global in the 1970s, as American power around the world receded. Americans, even President Jimmy Carter, began to awake to the dangerous new correlation of forces in 1979, a disastrous year that saw the fall of Afghanistan and the hasty escape of a powerful pro-Western dictator from Iran, the construction of a Soviet submarine base in Cuba (which received two diesel submarines for its own navy as well), and the replacement of a pro-American regime by a Soviet proxy in Nicaragua.

American senators learned that year that a Red Army combat brigade was resident in Cuba. Soviet client state Vietnam used the world's fourth largest army to consolidate its occupation of Cambodia (begun in December 1978); Cam Ranh Bay and Da Nang in Vietnam soon provided the Soviet empire its long-coveted warm water ports. Out-of-area ship days for the Soviets' expanding Pacific fleet jumped from 5,800 a year to 8,550, while in the Mediterranean, two new carriers, the Kiev and the Minsk, exercised for the first time. Also that year, for the first time Soviet arms transfers to the non-Communist Third World exceeded those of the United States, as they have in subsequent years.

REAGAN'S INSUFFICIENT BUILDUP

The brazen invasion of Afghanistan signaled Soviet recognition of declining American preparedness and of the irresolution of our leadership. The concern caused by these events was in part what swept President Carter from office. The electorate replaced him with a man who promised, and undertook, to rebuild American military strength.

But seven years into the Reagan administration, the United States still clearly lacks the capability to defeat the Soviet Union if the USSR should begin a war. Victory over the aggressor is not even a stated American objective. Our national objective, formally stated, is to terminate hostilities on favorable terms. Those are the U.S. Armed Forces' orders. Whether we have given our forces the material resources to carry out those orders remains highly questionable.

The first term of the Reagan administration saw substantial improvements in American armed forces—in the modernization of our strategic missile forces, in troop readiness and morale, in the procurement of weapons platforms, in the marked upgrading of our National Guard and Reserves.

Today's American forces could easily prevail over the U.S. forces of 1980. Unfortunately, the enemy is not our old selves, but a Soviet military that is itself vastly improved.

The Reagan buildup created a wave of optimism about our capabilities and an illusion, shared by admirers and critics of the president alike, that America has been restored to her greatness. We are said to be "standing tall." Liberal members of Congress, eager to cut the defense budget, were given unwitting support by conservatives' premature declarations of marital recovery. What only recently was national consensus for increased defense spending has disappeared. Actual outlays have been quietly falling; down 4 percent in fiscal year 1986, down 2.5 percent in 1987, and, if the Senate takes the advice of the House this year, down another 5 percent in 1988.

MOSCOW'S NEXT MEAL

The Reagan Doctrine of promoting democratic resistance movements around the world has also been oversold. The history books will recall the foundation of this U.S. aid program as both moral and strategically useful to the cause of democracy. But pronouncements by the administration about "having the Soviets on the run" are totally unwarranted. None of the targeted Communist regimes is closer to defeat now than it was three years ago, and all continue to receive massive Soviet military aid.

To be sure, no new country has been engulfed by Communism on this president's watch. But an empire—even an empire that spans 12 time zones from the River Elbe to the Sea of Japan and the Bering Straits—expands only in stages. It will expand again when it it ready. It will expand again unless it is defeated. The 1980s must assimilate the enormous gains of the 1970s. As Winston Churchill said of the pause that followed Hitler's swallowing of Austria and preceded his dismemberment of Czechoslovakia, "After the boa constrictor has devoured its prey, if often has a considerable digestive spell." Then its appetite returns. It does no good for us to boast about every sign that the beast is in discomfort after devouring so many different foreign foods; it is wiser to contemplate whence his next meal comes.

Unless the politicians in this country do their constitutional duty to preserve, protect, and defend the Constitution and provide for the common defense, and point to the perils we now face; unless lovers of freedom lose their complacency about the size of the defense buildups unless the country shakes itself and, taking new notice of the enemy's programs and plans, returns to national defense the emphasis it once had and still requires; them the dangers to democracy will redouble as our hard-won improvements are undone.

STALIN'S HEARTLAND

In a landmark study of geopolitics published two years before World War I, Halford J. Mackinder wrote that the focal point of world strategic power lay in "The World Heartland," the greater, northern part of Asia, extending as far west as the Baltic Sea. Mackinder believed that this region could determine world history. And of course, the borders of the USSR subsequently and swiftly encompassed the entire Heartland. Mackinder claimed that he "who rules East Europe"—the broad, low plan giving access to Russia—"commands the Heartland." Though Germany tried and failed twice to seize both Europe and the Heartland, after 1945 it was the Heartland, the Soviet Union, that seized and held the East European border states one by one. Over four subsequent decades these border states' human and material resources have supplied the frame and musculature of the Soviet empire.

While American optimists wait for a democratic uprising in Poland, Polish shipyards and farms yield amphibious landing craft and trainloads of food for Soviet citizens. While our professors and defense analysts expatiate upon the potential for East German noncooperation in a Soviet invasion of Western Europe, East Germany already hosts 19 Soviet divisions, and more than 2,300 East German military experts as well as large numbers of intelligence and police advisors carry out "proletarian internationalist duties" in a dozen countries and a half-dozen guerrilla wars. Romania, the Warsaw Pact member credited with "an independent foreign policy," remains a producer of modern tanks for the Warsaw Pact and an important political link to socialist countries such as China. Hungary, interwoven in the Soviet economic net, would provide the Warsaw Pact with ample supplies of corn and wheat in event of war. Czechoslovak industry helps supply Soviet foreign economic and military aid to Cuba and Southeast Asia, and Czech explosives have been found in terrorist arsenals and bomb sites in Europe and the Middle East. The Bulgars, feared by empire builders of older times, are so slavishly obedient to the Kremlin that they may anticipate, rather then merely follow, its commands.

Today, 2.7 million Warsaw Pact troops are ranged across the East European approaches to Mackinder's Heartland. Their cooperation with, if not their affection for, the Soviet master is guaranteed by countless intelligence and police agents and the other painful realities of totalitarian life. Enrolled in the Soviet armed forces alone are 5.8 million men. There are another 9 million in the reserve system who have been on active duty within the past five years.

At the disposal of these forces is an immense conventional arsenal, the product of the largest peacetime military buildup in history. Available to the Pact are some 54,000 armored personnel carriers, 42,000 artillery tubes, 52,000 main battle tanks, many hundreds of bombers, almost 700 reconnaissance aircraft, 2,800 fighter interceptors and almost as many interceptors for strategic air defense, 2,600 fighter-bomber and ground attack aircraft, and 970 attack helicopters. In all but the last two of these categories, American and NATO forces are outnumbered, often several times over.

THE WIDENING GAP

Little wonder that General Bernard Rogers, who just retired as Supreme Allied Commander in Europe, has characterized a treaty proposing the withdrawal of intermediate-range U.S. nuclear weapons from Europe as an act that would make Europe safe for conventional war. There is no solace to be had in Rogers' declaration that his views do not differ from those of any other commander in any NATO country. In the meantime, as the storm gathers, the defense budget cuts continue in Britain and Belgium. The latter is letting its air defenses wither with age. There is not even fuel for the adequate training of Belgian pilots, or adequate practice ammunition and warm uniforms for Belgian troops in Germany. Canada, though it commits a small force to Europe, spends so little for defense that its own territories are vulnerable to a very limited Soviet attack. The overall picture is as General Rogers recently painted it: the gap between NATO and the Warsaw Pact "grows wider each year."

Behind the Iron Curtain and afloat at sea is a Soviet intercontinental ballistic missile (ICBM) force that grew by more than 3,000 missiles and submarine-launched ballistic missiles (SLBMs) between 1975 and 1986. We deactivated 50 of our most powerful ICBMs during that same period, unilaterally withdrew some 2,400 nuclear weapons from Europe, modernized some missile forces, and built 10 new ICBMs and more than 800 SLBMs. Today we have fewer nuclear weapons than at any time in the last two-and-a-half decades, and their total megatonnage is smaller than at any time since 1955. And yet the Soviet stockpile continues to grow. Last year the Soviets deployed new missiles of intercontinental range, impressive accuracy, and, because they are mobile, decreasing vulnerability.

At sea, a Soviet navy that long was little more than a large coast guard has evolved into a wide-ranging, blue water power. Operating from new Soviet bases (like those in the Kola Peninsula and from foreign bases and ports in Southeast Asia, the Middle East, southern Africa, and now Central America and the Caribbean), Warsaw Pact naval forces have proven retired Admiral Sergei Gorshkov's 1968 prediction that "sooner or later, the United States will have to understand it no longer has mastery of the seas." By 1981, the U.S. Chief of Naval Operations acknowledged that we had lost our maritime superiority.

Perhaps the most satisfying attainment of this administration's defense efforts is the rebuilding of a 600-ship navy. We will have it soon. The Soviets already deploy that many active, major warships and submarines, and have 1,200 other combat ships and 300 auxiliaries as well. In the Soviet Pacific fleet there are almost as many ships as we have in our entire navy. The Soviet merchant marine, a useful auxiliary in peacetime and a necessary one in war, contains more than 7,000 ships. More aircraft—over 1,600—are attached to Soviet naval forces than there are in most of the world's air forces. These craft enjoy the use of the Kremlin's new airfields in Cambodia, Angola, and other distant countries.

GORBACHEV'S IRON TEETH

The Kremlin is not satisfied with the strategic revolution it has worked. When he came to power 27 months ago, Mikhail Gorbachev was approvingly depicted by a Kremlin associate as possessed of "a nice smile but iron teeth." Some people immediately forgot the second half of that remark. But the evidence is unmistakable: the new emperor is pressing ahead with the Soviets' old agenda. The Afghan war is being prosecuted with grim determination. A much-heralded troop withdrawal of last October was only an elaborate fraud. New counterinsurgency tactics have made brutalities against the unarmed very common. Bombings in public places in western Pakistan over the past year by the KGB-trained Afghan secret police, or KhAD, highlight a new dimension of an enduring Soviet policy of using terror as a strategic tool.

Conventional wisdom in the West has it that the work force and infrastructure of the Communist bloc are exhausted. Nevertheless, under Gorbachev the USSR and its Warsaw Pact allies continue to pump billions of dollars of economic and military aid into Ethiopia, Angola, Nicaragua, Mozambique, and Indochina. Nicaragua alone has received more than one billion dollars in

Soviet bloc weaponry since Gorbachev took power. Domestic economic reform may indeed be a priority, but the Kremlin never echoes the westerners who say that reform will decrease "proletarian internationalism."

Under Gorbachev, Soviet war production is pushing on at its usual high pace. *Jane's Fighting Ships* noted several years ago that the new powers of the Red banner Navy had already surpassed what considerations of defense could possibly require. In March 1985, as Gorbachev took power, Admiral Gorshkov declared that the fleet had enough weaponry to wipe out enemy targets on a global scale. Four months later he said that the Soviet navy's submarine and aviation forces were expanding. Today the Warsaw Pact still outproduces NATO in combat ships.

Our Defense Department forecasts that the number of Soviet nuclear weapons will continue to grow, from 10,000 now to 12,000 in 1990. The Warsaw Pact produces approximately 3,700 tanks per year, almost four times as many as NATO does. Soviet-bloc bomber and fighter-bomber production remains greater than our own even now as our supersonic B-1 bomber has begun to roll off production lines. We turn out 25 anti-aircraft artillery guns in one year and none in another, while the Pact builds more than 300 annually. Two hundred fifty to 300 units of self-propelled artillery is a good year for NATO; our enemies routinely turn out four times as many.

It would be easy to focus American attention on such production rates if they reflected dramatic increases or feverish preparation for war. Everyone would take notice if the chart lines were shooting upward at 25 percent a year. Instead, Soviet military production is pressed forward quietly over many years. Then one finds—if it occurs to one to look—that in the past decade America only produced 43 submarines to track the Soviets' 90 new attack and missile submarines, or that we made 16,200 surface-to-air missiles (SAMs) for theatre and tactical use, no insignificant number, while the Soviets built 140,000 SAMs over the same period. The Kremlin's spending does not frighten because the annual increases are small. What we forget is that these expenditures are additions to a production base so enormous that the factories' annual yield is already shockingly large.

The Soviets would not be building so many strategic and tactical forces, in the face of all their well-known economic constraints, if their goal was simply to achieve parity with the United States. They achieved that many years ago; they said so; they behave accordingly; and they continue to build. They want, and are achieving, unquestioned superiority. They may intend war and complete victory. They may prefer to seek the fruits of war without risking the cost of full-scale conflict. They may continue as they are, fighting fierce local wars for one country at a time. What we must consider is that the choice is theirs.

PREPARING FOR SURPRISE ATTACK

The Soviets may be steady in the buildup of their forces, but their military doctrine reflects an obsession with surprise. General S. P. Ivanov wrote in *The Initial Period of War* that victory can be won by "using such factors as surprise attack [and] superiority in forces and weapons" to overwhelm the first echelons, and then through speedy offensives proceed "into the depth of the territory to complete the defeat of the enemy before he would be able to mobilize and utilize his military potential and economic capabilities." Similarly, the monthly *Soviet Military Review* published an article last year on "The Formula for Victory," which stated that surprise and "time discipline" have become essential to modern combat, and much rests upon the ability to "know what weapons the enemy has," where they are located and how they will be used, and to develop "an original combat plan" to "inflict a surprise blow at the most vulnerable place."

At sea, surprise would mean sudden attack upon U.S. naval assets, especially missile-bearing submarines. The USSR has three times as many attack subs as does the United States. American subs are quieter, and thus less detectable. Their technological edge is disappearing, though, a consequence of the John Walker spy ring and the Soviet habit of pilfering and exploiting the technical achievements of the West. This April, well before the Toshiba scandal exposed direct Japanese and Norwegian sales of special propeller milling technology to Soviet submakers, then-Secretary of the Navy John Lehman said that the new generation of Soviet subs poses the biggest single threat to the Navy. Today the Kremlin is producing or testing nine classes of submarines, most of them nuclear powered.

Our submarines constitute the least vulnerable leg of the American strategic triad. If they can be defeated under the sea or bombed in their bases and repair yards, America will be in grave danger. It is already well known that our landbased ICBMs, being immobile, are vulnerable to a crippling first strike by ever more accurate Soviet ICBMs. And it should be known, if it is not already, that our fleets of aging B-52 bombers with their nuclear cruise missiles could be targeted as they lay at rest on their airfields by preemptive strikes from submarine-launched cruise missiles or by bombers, perhaps with cruise missiles, flying on short notice over the Arctic, from Cuba, or elsewhere.

Surprise in a European land war would mean the swift occupation of neutral nations and the underequipped NATO countries, whose geographical position makes them inevitable victims. In the last world war, even after repeated warnings, Norway mobilized 48 hours after the Nazis invaded, and her defenses were subdued in a matter of weeks. Norway could be overwhelmed in as little time today by the numerous Soviet, East German, and Polish amphibious and airborne forces. Modest amounts of pre-positioned supplies and a U.S. commitment will not prevent the aggression; U.S. troops may arrive too late, and if friendly forces do not control the air corridors they may not arrive at all. Norway's 10 minesweepers date almost to the last world war; its coastal defense artillery does date to the war, though it is at last being replaced. Jane's Fighting Ships find that the 1,500 men spread out in defense of the northeastern border are insufficient, and that the nearby British Royal Marines, while magnificently trained, lack sufficient sea transport to come to Norway's defense.

Both Norway and Sweden have suffered incursions by hostile submarines. The interest shown by the Pact in Sweden is nothing less than extraordinary. Both large submarines and the midget varieties capable of infiltrating frogmen have been found repeatedly in Swedish waters during this decade. In 1983, Swedish officials complained of these "preparatory phases of military operations." This August, the head of the intelligence and security section of Stockholm's coastal defenses was silenced by his superior after declaring that during ice-free months as many as 10 Soviet incursions take place each day. Swedish pilots and officials from civilian and military air services find that Warsaw Pact pilots are in a heightened state of readiness, going so far as to lock their radars for live anti-aircraft missiles onto passing tourist flights.

BRIDGES TO WAR

There are other indications of Soviet offensive intentions and capability to effect surprise attack in Europe;

(1) The stockpiling of 27,000 meters of bridging equipment. The Pack has displayed ingenuity and ability in the design and production of mobile bridge-building equipment, little or none of which would be necessary in defending the homeland.

(2) Introduction of pipeline-laying vehicles. These can lay down 50 miles of pipe per day, or nearly enough to sustain the daily military advance of 60 miles called for by the Soviet doctrine of the offensive. Some 9,000 miles of reserve pipe are available for the European theatre.

(3) Motor transport units that are kept loaded with ammunition and fuel during peacetime.

(4) More than 3 million metric tons of ammunition that have been pre-stocked in the Warsaw Pact's Western theatre—a poor place to store it if attack by, rather than on, NATO were expected. There are also millions of tons of fuel, oil, and lubricants.

(5) Seven air assault brigades that have been formed.

(6) Some 30 unmanned mobilization divisions that the Soviets have staffed at very low levels and provided with certain equipment, making them more ready for rapid mobilization.

(7) Production of biological and chemical weapons, as well as the deployment of some 60,000 Soviet Chemical Troops in all echelons. These have no relation to offensive U.S. chemical capabilities, which barely exist. U.S. defenses, where they are available, are known to be so inadequate that it is assumed that 50 percent of the troops wearing protective suits would perish or be incapacitated.

(8) Meticulous plans for overland invasion. Each year in the normal course of commerce, 350,000 trucks from Warsaw Pact countries make their way into Western Europe. Drivers have been sighted measuring the gauge of bridges, exploring roads off their routes, photographing military installations, and performing other varieties of reconnaissance. There is also a discernible rise in truck and canal traffic from Eastern Europe to the West during large-scale Pact exercises, suggesting coordination between the Pact's conventional forces and spies or special forces doing reconnaissance under cover of trade. During one 1985 exercise, the West German Defense Military actually intercepted radio communications that showed a Soviet tank division using the undisguised names of West German cities and towns in a simulated sweep into the West.

SPETSNAZ TERROR

A final element of surprise would come by land, by sea, and by air, before and during the battle. They are *Spetsnaz*, Soviet special forces that operate under the command of military intelligence, and they have increased in numbers and become more arrogant about operations in Europe in peacetime. At present there are 20,000 to 30,000 of these experts, all highly trained in remote regions of the Soviet interior of skills from parachute jumping to demolition to foreign languages. Their missions are not confined to wartime, and encompass assassination; abduction; disruption of the enemy's rear areas, lines of communication, and command and control centers; and demolition of military targets and public utility grids. *Spetsnaz* work at the beginning of war bears remarkable resemblances to what terrorists do in peacetime, a fact that students of terrorism and its Soviet-bloc ties have too long overlooked.

The most important *Spetsnaz* mission is suggested by the literature on surprise: the destruction of the Allies' nuclear weapons and precision-guided munitions (PGMs) in their storage areas before they can be deployed and used. *Spetsnaz* are already being used in Afghanistan to infiltrate critical targets and implant passive radar receivers that guide PGMs launched by Soviet aircraft. According to *Jane's Defense Weekly*, elaborate information from defectors and intelligence officials points to a regular rotation of female *Spetsnaz* agents through the protesters at Britain's Greeham Commons cruise missile sites. The testimony of one defector, Oleg Lyalin, has already led to the arrest, trial, and conviction by British courts of Soviet clandestine agents with special operations assignments.

Without suggesting that proof is available, it would make no sense to dismiss the thought that *Spetsnaz* troops may be among the aforementioned trans-European truck drivers. They may be behind the "pollsters" and "art salesmen" who turn up more regularly at the doors of Swedish active and reservist pilots than they do at the average Swede's home. They could be responsible for the disappearance of a Swedish scientist, Svante Oden, who was conducting classified work on submarine detection. His boat was found stripped of its sensitive equipment. *Spetsnaz* may have had a role in the deaths, disappearances, and unexpected suicides during the past year of British scientists doing classified work on underwater warfare or strategic defense.

NO ESCAPE FROM GRIM REALITIES

Escape for those who seek to avoid these grim realities takes many intellectual forms. The invasion of Afghanistan ruined the once-common refrain that "Whatever the Soviets may do, they have at least remained within their postwar borders." But other excuses for inaction remain and proffer comfort. Three will be mentioned here. The first is in a maxim, said to be venerated by strategists, that an aggressor requires a two, three, or even five to one advantage to successfully wage the offensive. This maxim implies that the frightening imbalance on the NATO/Pact front is no cause for alarm after all.

Unfortunately this maxim is more reassuring than it is true. At the beginning of World War II, the French and Allied forces of 3.4 million men and 3,373 tanks were enveloped and smashed by a Nazi force of three million men and 2,445 tanks. The Nazis suffered from distinct numerical *disadvantages* in almost every military category except air power, and yet prevailed easily. History offers many similar examples, including the battles of Hannibal and Napoleon. So if the untutored citizen's imagination should reel at the thought of trying to protect Europe with 20,000 tanks when the Warsaw Pack has more than twice as many, with 280 anti-tank guns when the Pact has 1,550, and with 1,800 anti-tank missiles as against 3,500, he does not deserve patronizing reassurance from an expert on "the unfavorable force ratios associated with the attack."

SOVIET TECHNICAL CAPABILITIES

The second form of escapism is the idea that the West enjoys a considerable technological edge over its totalitarian adversary. Indeed we do. But the Soviet bloc, especially the satellite states of Eastern Europe, has become especially adept at stealing or buying our scientists' inventions. Aggressive deployment of these acquisitions keeps the Soviets abreast, or even ahead, of us in many areas. "Reactive armor," which makes many of our anti-tank weapons obsolete, may have been developed in the West, but it was the Soviets who put it to use. Many of the Soviet tanks in East Germany now have this equipment, leaving American designers rushing to redesign, manufacture, and deploy a successor to the TOW anti-tank missile.

And the Pact has immense and original technological capabilties of its own. According to the Defense Department's 1987 book *Soviet Military Power*, the USSR has the largest national research and development resource base in the world, spending half of all its R&D investment on military projects. The Soviet aircraft industry "is in the midst of a technological revolution." Improved range, payload, and avionics capacities have dramatically improved Soviet air defense capabilities. The Halo helicopter is the world's largest for combat, and carries 85 troops. The new Hokum attack craft is a double-rotor machine with no Western equivalent, capable of speeds of 350 miles per hour, 50 mph faster than our Apache. The Soviet Union carries out an average of 10 times as many space launches as we do each year, most of them for military purposes.

The Soviets already deploy the world's only functional anti-satellite system, and protect their capital with land-based strategic defense missiles. They spend a billion dollars a year on laser research and have developed a ground-based beam that may already be capable of interfering with our satellites. The Soviets lead the world in the production and utlization of military air-cushion vehicles. Their artillery is newer, primarily self-propelled, and enjoys improved range, warhead lethality, and survivability. The Kremlin fields an anti-aircraft gun, the ZSU 23, that is the envy of American battlefiled commanders. *Jane's Fighting Ships* has published a capsule history of Western criticism of the Soviets' titanium hull submarines that makes the critics look foolish and the submarines very good, indeed. It is delusory to think that Commuists are second-rate engineers, just as it was delusory before World War II to imagine that the Japanese were not inventors and that they poorly understood what they copied.

THE ILLUSION OF A SHORT WAR

The third illusion that has made it seem safe to leave Western Europe underdefended is the belief that any war will be short, fast, and nuclear. Reactive armor, radical imbalances in weaponry, and other elements of Soviet conventional superiority are therefore thought to be almost irrelevant. But this could be a self-fulfilling prophecy. If we do not build a proper conventional defense, then the first sweeping advance by Pact armor will present us with only two alternatives: abandon Europe in a Dunkirk-style retreat, or escalate to nuclear weapons, after which the Soviets would incinerate the cities of Western Europe (if they had not already done so). It has never been U.S. polcy to take a retreat or a holocaust for granted. We have relied instead upon "Flexible Response," a ladder of escalation by which retaliation is promised against each greater level of aggression.

The notion of a short war has covered for innumerable sins. While it is common knowledge that NATO has too few soldiers in the lines to turn back a Warsaw Pact attack, it is less well known that the scandalous ammunition shortages of 1979 and 1980 are still being redressed. The United States had then, and has now, only three to four weeks' worth of munitions at best. In some categories there is far less. This is true both on land and at sea. Nor can our forces rely upon Europe; some of our NATO allies literally have only a few-days supply of common munitions. Gearing up the munitions factories and filling the pipeline with their products takes nine to 12 months. For that reason we had a nine-month reserve in the 1950s. The effect of the current shortfall could be decisive in wartime.

Other problems of "sustainability"—or ability to carry on fighting after the initial days of combat—remain unaddressed in 1987. Ironically, some of these were important to candidate Reagan in 1980 and President Reagan in 1981. Our mineral stockpiles, necessary for the surge of production in the first weeks of war, are wholly insufficient. Initially, President Reagan made modest additions to the reserve: cobalt, bauxite, beryllium, iridium, nickel, titanium, etc. Then, like past presidents, he stole the savings for general revenues. Budget Director David Stockman was prepared, in part because of a "short war" scenario obtained from the National Security Council, to sell almost everything. The reserve is now worth approximately $8 billion. Its insufficiency can be judged by the fact that during a peacetime year like 1984 we required $253 billion worth of minerals in various forms for manufacturing.

OUR VANISHING MERCHANT MARINE

Another account that candidate Ronald Reagan promised to square was our endangered merchant marine fleet, the only viable means of moving supplies to Europe for the fourth, fifth, sixth, and subsequent weeks of full-scale war. Mr. Reagan expressed concern in September 1980 because we had only 524 active deep-sea ships; as of March 1987 we have 164 fewer capable merchant ships. It is worth recalling that in the first seven months of 1942 alone the Allies lost 624 merchant ships to far fewer submarines than the Soviets possess today.

Even if we had enough ships, we could not gather the necessary skilled crews, who have drifted into other work as the industry declines. If we resolved tommorrow to train crews and to build the necessary ships, we would initially back the necessary industrial base: One-third of our building and repair yards closed between 1982 and 1986, affecting 24 percent of the country's skilled ship workers. Subsequently, another yard, employing 500, ceased operation, and five more filed under Chapter 11 of the Federal Bankruptcy Code.

Of course, even if we had the ships and the crews, we still would have to get them to Europe. Today, without the aid of several allies, we cannot even keep clear of mines certain parts of a relatively small body of water named the Persian Gulf. Yet the Soviet Union has stockpiled some 350,000 mines. If cut off from its European allies, the United States would not even be able to clear its own home waters. In all of NATO there are barely 200 minesweeping vessels, as well as small numbers of helicopters. Yet in 1942, 804 minesweepers were required merely to keep open the seas around the British Isles.

MINIMUM REQUIREMENTS FOR DETERRENCE

Such wartime realities as these, rather than pleasing illusions about the enemy's disinclination to use his powers, are the only basis for sound planning. We must choose whether to allow the Soviets to enjoy world military supremacy, with all the frightening consequences for liberty that would bring. Only the strong leadership of a strong democratic world can make a barrier too formidable for Soviet commanders and commissars to surmount. To ensure our freedom, the United States, at the bare minimum, needs to immediately:

Commence work on a serious air defense of the American homeland against bomber and fighter-bomber attack by building surface-to-air missile sites in the United States, beginning in Alaska and the northeastern and southeastern United States. Increase continental U.S. deployments of our "look-down-shoot-down" radar-equippped F-15s, our finest air defense interceptor.

Deploy strategic defense (SDI) technologies already at hand like Lockheed's ERIS interceptors. Even initial SDI defenses would complicate Soviet targeting and increase the survivability of U.S. vital facilities and nearby population centers. We must press forward simultaneously with work on a more comprehensive, multilayered system that could render senseless a plan to stage a nuclear strike against us.

Develop an anti-tactical ballistic missile defense for our forces and allies in Europe, Israel, Japan, and South Korea. Such defenses could radically decrease the utility of Soviet shorter-range missiles of various types and warheads and concomitantly increase the security of our allies.

Obtain a commitment from Congress to double the budget for munitions in the next year, and not by bleeding other areas of the defense budget.

Build a much larger strategic minerals reserve, making the acquisitions necessary for our security at favorable times and prices.

Obtain new funds to increase the Operations and Maintenance budget, which is the financial basis for our forces' readiness. We still experience spare parts shortages and we still cannibalize aircraft, and the problem will only get worse when our expensive and complex new weapons platforms begin to age.

Turn over the regular distribution of aid to democratic resistance movements to the Department of Defense. This would remove the Central Intelligence Agency from control of the operational roles it dislikes and for which it is institutionally unsuited. It is the necessary first step for institutionalizing the Reagan Doctrine.

Double aid to the Nicaraguan resistance and, where possible, provide more assistance to the Indochinese, Angolan, and Afghan movements. President Reagan was absolutely correct when he declared that "Their fight is our fight." We choose not to commit troops to these battles for national independence and democracy, but it makes eminent strategic sense to supply generously those who do.

Develop a tough, coherent policy to address Soviet violations of existing arms control treaties and to assure that violations of present and future treaties will be addressed in a militarily significant manner. Britain's dismissal of Nazi violations of security and arms control treaties now appears as folly, and folly of the most dangerous kind. How will our own acts of dismissal appear under the lamp of history?

Present to the American people, as the Reagan administration formerly did with a conviction merited by the facts, the patterns of Soviet and East European sponsorship of terrorism. Cease the naive practice of sharing intelligence on terrorism and narcotics trafficking with Communist governments.

After all, you can't expect the American taxpayer to make the sacrifices necessary for defense if you pretend the enemy has gone into hibernation.

SENATE COMMITTEE MEETINGS

Title IV of Senate Resolution 4, agreed to by the Senate on February 4, 1977, calls for establishment of a system for a computerized schedule of all meetings and hearings of Senate committees, subcommittees, joint committees, and committees of conference. This title requires all such committees to notify the Office of the Senate Daily Digest—designated by the Rules Committee—of the time, place, and purpose of the meetings, when scheduled, and any cancellations or changes in the meetings as they occur.

As an additional procedure along with the computerization of this information, the Office of the Senate Daily Digest will prepare this information for printing in the Extensions of Remarks section of the CONGRESSIONAL RECORD on Monday and Wednesday of each week.

Any changes in committee scheduling will be indicated by placement of an asterisk to the left of the name of the unit conducting such meetings.

Meetings scheduled for Tuesday, October 27, 1987, may be found in the Daily Digest of today's RECORD.

MEETINGS SCHEDULED

OCTOBER 28

9:30 a.m.

Energy and Natural Resources
Business meeting, to consider pending calendar business.
SD-366

Small Business
Rural Economy and Family Farming Subcommittee
To hold hearings on the effect of airline deregulation on the rural economy.
SR-428A

Joint Economic
To hold hearings on the implications of U.S. trade trends.
SD-628

10:00 a.m.

Finance
To resume hearings on welfare reform.
SD-215

Foreign Relations
To hold hearings on the United Nations role in the Persian Gulf.
SD-419

Labor and Human Resources
Business meeting, to mark up S. 1366, Family Planning Amendments of 1987.
SD-430

2:00 a.m.

Commerce, Science, and Transportation
To hold hearings on the nominations of Francis J. Ivancie, of Oregon, to be a Federal Maritime Commissioner, and Francis H. Fay, of Alaska, and William W. Fox, Jr., of Florida, both to be Members of the Marine Mammal Commission.
SR-253

Foreign Relations
To hold hearings on the nominations of James B. Moran, of Virginia, to be Ambassador to the Republic of Seychelles, Robert Maxwell Pringle, of Virginia, to be Ambassador to the Republic of Mali, and David H. Shinn, of Washington, to be Ambassador to Burkina Faso.
SD-419

Judiciary
Courts and Administrative Practice Subcommittee
To hold hearings on S. 1630, to provide for retirement and survivors' annuities for bankruptcy judges and magistrates.
SD-226

OCTOBER 29

9:30 a.m.

Commerce, Science, and Transportation
Business meeting, to consider pending calendar business.
SR-253

Energy and Natural Resources
Business meeting, to consider pending calendar business.
SD-366

Environment and Public Works
Nuclear Regulation Subcommittee
To hold hearings on S. 14, S. 100, S. 1769, and S. 1770, bills to reorganize the functions of the Nuclear Regulatory Commission and to establish an Office of Inspector General in the NRC.
SD-406

Joint Economic
Education and Health Subcommittee
To resume hearings on the competitiveness and quality of the American work force.
2359 Rayburn Building

10:00 a.m.

Judiciary
Business meeting, to consider pending calendar business.
SD-226

Labor and Human Resources
Children, Family, Drugs, and Alcoholism Subcommittee
To resume hearings on S. 249, to grant employees parental and temporary medical leave under certain circumstances.
SD-430

2:00 p.m.

Energy and Natural Resources
To resume hearings on the status of the Department of Energy's efforts to address issues concerning the defense materials production reactors located in the United States.
SD-366

Judiciary
To hold hearings on S. 1523, Racketeering Influence and Corruption Organization Act.
SD-226

Select on Indian Affairs
Business meeting, to consider S. 1703, to strengthen the self-determination as-

pects of contracting, as contained in the Indian Self-Determination and Education Assistance Act (P.L. 93-638), by clarifying that Federal procurement laws and Federal acquisition regulations do not apply to Indian self-determination contracts, S. 795, to provide for the settlement of water rights claims of the La Jolla, Rincon, San Pasqual, Pauma, and Pala Bands of Mission Indians in San Diego County, California, and other pending calendar business.
SR-485

OCTOBER 30

9:30 a.m.
Commerce, Science, and Transportation
Aviation Subcommittee
To hold oversight hearings on activities of the Federal Aviation Administration and the Military Airlift Command to ensure the safe operation of flights carrying military personnel.
SR-253

Joint Economic
To hold oversight hearings on long term costs of U.S. trade deficits and the U.S. foreign debt.
SD-628

10:00 a.m.
Finance
Health Subcommittee
To hold hearings to examine the effects of the current nursing shortage on health care.
SD-215

NOVEMBER 2

10:00 a.m.
Special on Aging
To hold hearings on the proposed Medicare Part B premium increase.
SD-628

NOVEMBER 3

9:30 a.m.
Armed Services
Conventional Forces and Alliance Defense Subcommittee
To hold hearings on conventional arms control in Europe.
SR-222

Energy and Natural Resources
Closed briefing on the U.S.-Canada Free Trade Agreement and its potential effects on energy and natural resources industries.
SD-366

2:00 p.m.
Energy and Natural Resources
Public Lands, National Parks and Forests Subcommittee
To hold hearings on S. 708, to require annual appropriations of funds to support timber management and resource conservation on the Tongass National Forest, Alaska.
SD-366

NOVEMBER 4

9:00 a.m.
Select on Indian Affairs
To hold hearings on S. 1684, to settle Seminole Indian land claims in Florida.
SR-485

9:30 a.m.
Energy and Natural Resources
Business meeting, to consider pending calendar business.
SD-366

10:00 a.m.
Commerce, Science, and Transportation
To resume hearings on safety and reregulation of the airline industry.
SR-253

Environment and Public Works
Water Resources, Transportation, and Infrastructure Subcommittee
To resume hearings to review infrastructure issues.
SD-406

3:00 p.m.
Conferees
On the education provisions of H.R. 3, Omnibus Trade and Competitiveness Act of 1987.
SD-430

NOVEMBER 5

9:30 a.m.
Energy and Natural Resources
Business meeting, to consider pending calendar business.
SD-366

Joint Economic
To hold hearings to evaluate the prospects for U.S. exports and imports.
SD-628

2:00 p.m.
Energy and Natural Resources
Public Lands, National Parks and Forests Subcommittee
To resume hearings on S. 708, to require annual appropriations of funds to support timber management and resources conservation of the Tongass National Forest, Alaska.
SD-366

Select on Indian Affairs
To hold oversight hearings on the implementation of Title IV, Part C of the Omnibus Drug Act (P.L. 99-570).
SR-485

NOVEMBER 6

9:30 a.m.
Finance
Taxation and Debt Management Subcommittee
To hold hearings on S. 639 and S. 1099, bills to empower states to require out-of-state vendors to collect state sales and use taxes.
SD-215

NOVEMBER 9

9:30 a.m.
Energy and Natural Resources
To hold hearings on the greenhouse effect and global climate change.
SD-366

NOVEMBER 10

9:00 a.m.
Select on Indian Affairs
To hold oversight hearings on implementation of the Indian Child Welfare Act (P.L. 95-608).
SR-485

9:30 a.m.
Energy and Natural Resources
To continue hearings on the greenhouse effect and global climate change.
SD-366

NOVEMBER 12

9:00 a.m.
Commerce, Science, and Transportation
Communications Subcommittee
To hold oversight hearings on the public broadcast system.
SR-253

10:00 a.m.
Foreign Relations
To hold hearings to reexamine the War Powers Resolution with a view to possibly revising the law.
SD-419

1:00 p.m.
Select on Indian Affairs
To hold hearings on S. 1722, to establish the National Museum of the American Indian, Heye Foundation within the Smithsonian Institution, and to establish a memorial to the American Indian, and S. 1723, to establish certain regional exhibition facilities as part of the National Museum of the American Indian.
SR-301

NOVEMBER 16

2:00 p.m.
Select on Indian Affairs
To resume hearings on S. 1722, to establish the National Museum of the American Indian, Heye Foundation within the Smithsonian Institution, and to establish a memorial to the American Indian, and S. 1723, to establish certain regional exhibition facilities as part of the National Museum of the American Indian.
SR-301

NOVEMBER 18

10:00 a.m.
Commerce, Science, and Transportation
To resume hearings on safety and reregulation of the airline industry.
SR-253

NOVEMBER 19

9:30 a.m.
Commerce, Science, and Transportation
Business meeting, to consider pending calendar business.
SR-253

2:00 p.m.
Select on Indian Affairs
To hold oversight hearings to review Federal agency actions related to the implementation of the Department of the Interior's Garrison Unit Joint Tribal Advisory Committee final report recommendations, and on proposed legislation to implement the report recommendations.
SR-485

DECEMBER 2

9:00 a.m.
Select on Indian Affairs
To hold hearings on S. Con. Res. 76, to acknowledge the contribution of the Iroquois Confederacy of Nations to the development of the United States Constitution and to reaffirm the continuing government-to-government relationship between Indian tribes and the United States established in the Constitution.
SR-428

DECEMBER 3

9:00 a.m.
Select on Indian Affairs
To hold hearings on S. 1236, authorizing funds for certain programs of the Navajo-Hopi Relocation program.
SR-485

CANCELLATIONS

NOVEMBER 5

9:30 a.m.

Commerce, Science, and Transportation
Aviation Subcommittee

To hold oversight hearings on activities of the Federal Aviation Administration, Department of Transportation.

SR-253

NOVEMBER 10

9:30 a.m.

Commerce, Science, and Transportation
Aviation Subcommittee

To resume hearings on S. 1600, to create an independent Federal Aviation Administration.

SR-253

NOVEMBER 12

9:30 a.m.

Commerce, Science, and Transportation
Aviation Subcommittee

To resume hearings on S. 1600, to create an independent Federal Aviation Administration.

SR-253

HOUSE OF REPRESENTATIVES—*Tuesday, October 27, 1987*

The House met at 12 noon.

The Chaplain, Rev. James David Ford, D.D., offered the following prayer:

As we experience the events of our world remind us, gracious God, that we do not face the fears and hopes of life alone, for You have promised to be with us and Your loving presence is always above us, assuring us, comforting us, and guarding us.

When we know travail or anxiety, You are with us; when we miss the mark, You forgive us; and when our faith needs strengthening, You remind us of the way, the truth and the life. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

MESSAGE FROM THE SENATE

A message from the Senate, by Mr. Hallen, one of its clerks announced, that the Senate has passed a Joint Resolution of the following title, in which the concurrence of the House is requested:

S.J. Res. 205. Joint resolution expressing the sense of the Congress that United Nations General Assembly Resolution 3379 (XXX) should be overturned, and for other purposes.

The message also announced that pursuant to Public Law 96-114, as amended by Public Laws 98-33 and 99-151, the Chair on behalf of the majority leader, appoints Kevin B. Campbell, from private life, as a member of the Congressional Award Board.

WE MUST STRENGTHEN OUR DOMESTIC ECONOMY NOW

(Mr. WHITTEN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WHITTEN. Mr. Speaker, when the lender of last resort, the Farmers Home Administration, set up years ago to assist farmers when they could not get credit elsewhere, by act of the Farmers Home Administration, set out, not to make loans, but to collect all past debts in 1 year, much of it caused by withholding farm products off world markets by embargo, the FDIC, Federal Deposit Insurance Corporation, which supervised Federal and other banks, realizing the effect on rural banks, began to crack down on farm loans, the Farm Credit System followed, then the insurance companies, 437 banks failed and 373 savings and loans went broke, some helped by Japan.

Now 67 million acres of land lay idle. Despite the fact that our Committee on Appropriations has held appropriations bills below the President's recommendations, is it any wonder that the United States debt has increased from $977 billion in 1981 to $2,300,000,000 or that we are being financed largely by Japan and Japanese and West Germany and Germans?

The Under Secretary of Agriculture is making a study to reduce land values, though authorization has run out; to reduce land values so that whoever buys it will get an even greater bargain.

The Farm Credit System not only followed with foreclosures, but many local land banks not only refuse to give farm owners priority to buy, but refuse to sell to his or her kinfolks.

With regard to perishable commodities, the administration has opened the gates to imports, $348 billion deficit in 1 month.

In our investigation, 600 trucks of agriculture products came across in 1 day at one crossing from Mexico.

At the present rate of change, it is said that in the next 5 years, 90 percent of American jobs will be service jobs. That would amount to trying to make a living by taking in each other's laundry.

Mr. Speaker, all this commotion about getting other countries to let our products in is really an effort to cover up the fact that our Nation will not use existing laws to protect our industry, our labor, and our agriculture as other countries do theirs.

Trade does not have to be foreign to be good. We have close to $200 billion of domestic trade we could make available to our suppliers. Instead, we buy imports on credit largely furnished by Japan and West Germany.

Mr. Speaker, I am not talking about protectionism, I am talking about common sense-ism.

The hour is late. Waving a big stick has been tried and found wanting. We must strengthen our domestic economy now for the hour is late.

PRC ARMS SALES RESOLUTION

(Mr. SOLOMON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SOLOMON. Mr. Speaker, I am introducing today a concurrent resolution that addresses the continuing sales by China of Silkworm missiles to Iran. This resolution is identical to Senate Concurrent Resolution 84, which was passed unanimously in the other body this past Thursday. I intend to ask the Committee on Foreign Affairs to expedite the consideration of this resolution so that the full House may soon have the opportunity of going on record with our colleagues in the other body.

Mr. Speaker, this resolution calls for all transfers of militarily related technology from the United States to the People's Republic of China to be placed under review until such time as the PRC indicates its willingness to support in good faith the international efforts that are aimed at ending the Iran-Iraq war. Specifically, China would have to support an international arms embargo against Iran if the U.N.-sponsored negotiations with Iran and Iraq do not succeed in getting Iran's acceptance of the cease-fire resolution that was adopted by the U.N. Security Council last July.

The administration, moreover, would be directed by my resolution, to make a "strong representation" to the Government of the PRC on the subject of Silkworm missile sales to Iran. Only a concerted international effort can bring about an end to the madness in the Persian Gulf—and it is high time that the PRC became a part of that effort. For as this resolution warns, "* * * the continued transfer of Silkworm missiles to Iran may seriously jeopardize United States-China relations."

The carnage has gone on long enough—and China should stop being a party to it. I welcome cosponsors to this resolution and trust that it will be considered soon by the full House.

RESIGNATION AS MEMBER OF THE EISENHOWER CENTENNIAL COMMISSION

The SPEAKER laid before the House the following resignation as a member of the Eisenhower Centennial Commission:

House of Representatives,
Washington, DC, October 13, 1987.

Hon. Jim Wright,
Speaker, House of Representatives, Washington, DC

Dear Mr. Speaker: By means of this letter, I ask that you accept my resignation

☐ This symbol represents the time of day during the House proceedings, e.g., ☐ 1407 is 2:07 p.m.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

from the Eisenhower Centennial Commission to which I was appointed earlier this year. I do so because of time demands which make it impossible to give the Commission the full attention it deserves.

With best regards,

DAN GLICKMAN,
Member of Congress.

The SPEAKER. Without objection, the resignation is accepted.

There was no objection.

APPOINTMENT AS MEMBER OF SELECT COMMITTEE ON HUNGER

The SPEAKER. Pursuant to the provisions of section 103 of House Resolution 26, 100th Congress, the Chair appoints the gentleman from Maine [Mr. BRENNAN] to the Select Committee on Hunger to fill the existing vacancy thereon.

APPOINTMENT OF MEMBER TO DWIGHT DAVID EISENHOWER CENTENNIAL COMMISSION

The SPEAKER. Pursuant to the provisions of section 4 of Public Law 99-624, The Chair appoints, on the part of the House, the gentleman from North Carolina [Mr. PRICE] to the Dwight David Eisenhower Centennial Commission to fill the existing vacancy thereon.

APPOINTMENT OF CIVILIAN MEMBERS TO ALIEN YOUTH EDUCATION OPPORTUNITY PANEL

The SPEAKER. Pursuant to section 1361 of Public Law 99-498, the Chair appoints the following members from private life to the Alien Youth Education Opportunity Panel on the part of the House:

Dr. Piedad Robertson of Miami, FL; and

Mr. Bradley A. Woodruff of Elgin, IL.

NATIONAL TAX AMNESTY

(Mr. BIAGGI asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BIAGGI. Mr. Speaker, as the bipartisan budget summit enters its second day, I wish to reiterate my call for inclusion of a program which could raise sufficient revenues to meet Gramm-Rudman targets without raising the taxes of one single person.

I refer to a national tax amnesty along the lines of legislation I have authored in each of the past two Congresses.

My legislation would set up a one time, 6-month national tax amnesty. It allows those who have not paid or who have underpaid their taxes to come clean—pay the full amount but with lesser penalties.

After the 6 months my bill would authorize a doubling in both the penalties for nonpayment and in the number of IRS agents to find those not paying.

There is one basic and compelling reason to consider tax amnesty at this time: As a viable alternative to the slashing of critical human needs programs which will occur on November 20 unless we act.

At this time in the United States we have a "tax gap" approaching $100 billion. A 6-month amnesty according to the most conservative estimates could recoup as much as 20 to 25 percent—or $20 to $25 billion. The Gramm-Rudman target is $23 billion.

State experiences with amnesty have been spectacular. As of January 1987, 13 States had raised $700 million in new State revenues from amnesty.

Some criticize amnesty as being a reward for nonpayment of taxes. Think about the hollowness of that argument 1 month from today when senior citizens are turned away from meal programs, homeless away from shelters, students away from colleges—all because of the 8.5-percent cuts required by Gramm-Rudman.

Let us reconsider tax amnesty as an emergency measure to cope with this time of great emergency. Current proposals may reduce the deficit but they will increase the suffering for the poor and needy of our Nation.

□ 1210

THE WRONG TIME FOR PARTISAN RECONCILIATION

(Mr. LATTA asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LATTA. Mr. Speaker, I find it difficult to figure out why you are insisting on scheduling the Democrats' reconciliation bill for House floor action this Thursday. The last week and one-half has vividly demonstrated how interrelated our world financial markets and global economies really are, and they are all watching us. Economic decisionmakers around the world are saying that this Government, Congress together with the President, must do something promptly to reduce our fiscal deficit in an orderly manner. That is the only way to get the trade deficit down.

In response, serious negotiations will begin in just a few hours, at 3 p.m., and I commend you, Mr. Speaker, for your efforts in getting these negotiations underway.

These negotiations depend on nonpartisan, mutual efforts to find spending cuts to accompany revenue increases. The time is over for more business as usual. The time is over for the usual smoke and mirror cuts from inflated baselines.

That is why the Democrat leadership's decision to call up a strictly partisan reconciliation bill this week is so puzzling. It is not going to become law and runs counter to all the negotiations now underway to put together a bipartisan bill which can become law.

This pending reconciliation bill consists almost entirely of tax increases and new user fees. Although it contains only $1 billion of real deficit reductions, these savings are washed out by nearly $1.5 billion in entitlement increases, including a major welfare expansion program. The remainder of the package consists of moving 3.75 billion dollars' worth of spending from fiscal 1988 to future years.

People on Wall Street, in London, Tokyo, Hong Kong, and elsewhere are skeptical. Pushing ahead with this lopsided tax bill, even while in other rooms of the Capitol Building we will be hopefully making a bona fide effort to reach a nonpartisan package, will be a signal that Congress is once again moving toward more smoke and mirrors, more political confrontations, and more business as usual.

So, therefore, Mr. Speaker, those of us who are searching for solutions rather than seeking confrontations respectfully urge you not to further confuse the market by bringing a bill to the floor which is not going anywhere. Why not wait for the real thing, which hopefully can be ready for floor action in a matter of days.

SUMMITS: NO TIME FOR TRICK OR TREATING

(Mr. LANTOS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LANTOS. Mr. Speaker, it seems Halloween came early to Moscow this year. Mr. Gorbachev decided to go trick or treating on Mr. Reagan. This led to a summit that is on again and off again, and who knows where again. This is a spooky way to run top level contacts between the superpowers.

Washington and Moscow have got to stop seeing summits as doing each other a favor. They are as vital a mechanism to maintaining world peace as is the hot line. Summits must be a fixed annual event just like Halloween.

Mr. Gorbachev's soaping of the windows this week is all the more reason to make summits less iffy.

Regular meetings would free the leaders from the feeling that they must act like ghostbusters, performing all sorts of miracles. Summits would take on a little of the mundane look and feel of the yearly economic summits among leaders of the Western industrialized democracies.

Turning summits into routine annual affairs is no panacea, but they are a better way to conduct top-level talks between Moscow and Washington. They could reduce the chances for miscalculation. They could prevent the superpowers from stumbling in the night like a bewildered trick or treater, into catastrophe.

GLICKMAN CONCERNED ABOUT NATIONAL FARM BUREAU BUDGET POLICY

(Mr. GLICKMAN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GLICKMAN. Mr. Speaker, I want to alert my colleagues to an incredible letter we all just received from the American Farm Bureau Federation. That letter urges Members to oppose the budget reconciliation package because it contains a revenue component.

The letter was sent 1 day after the President said everything was on the table with respect to a budget package. The letter further says that sequestration with its 8½ percent cuts in farm program benefits is preferable to a budget reconciliation package.

I want to quote from the letter. It says: "Our opposition to tax increases outweighs our concern about a spending policy for agriculture."

I do not like tax increases either, but as part of a spending reduction plan they may be necessary to save the economy of this great country of ours as well as preserving the structure of family farming in America. Thousands of Kansas farmers and tens of thousands of American farmers could face financial ruin if the American Farm Bureau Federation is followed exactly as stated in the letter. Their letter suggests an ideological rigidity which I am afraid will hamper our ability to work cooperatively and pragmatically toward the goals of reducing Federal deficits.

I am pleased to see that the President of the United States has not taken the Farm Bureau position to heart. His position has been a lot more flexible and pragmatic than their national organization has been. I would hope they would reevaluate their opposition to a responsible deficit reduction package.

WE NEED TO STOP PRETENDING OUR GOVERNMENT HAS RESPONSIBILITY TO MAKE EVERYONE HAPPY

(Mr. DELAY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DELAY. Mr. Speaker, there seems to be little disagreement that the stock market has pressured us, the managers of the Federal Government, to finally get our economic house in order. But, let's view this strong economic warning as an opportunity to review and reorganize our Federal priorities. It's time for us to define the proper role of this Government. We need to pursue policies that promote equality of opportunity and abandon our wasteful policies which try in vain to promote equality of outcome. We need to realize that people pay taxes to support a government which will protect them and which will promote a healthy, competitive, and safe environment in which they can make their own ways. I encourage the members of our national economic summit to recognize that we don't need new taxes, we can't survive new taxes; what we need is to stop pretending that our Government has a responsibility to make every one happy. Our responsibility is to protect our citizenry and promote opportunity for all, period.

Mr. Speaker, it would also give my mother a very happy birthday today.

□ 1225

THE HORROR ON WALL STREET

(Mr. TRAFICANT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. TRAFICANT. Mr. Speaker, the President's first promise was to balance the budget by the fall of 1983. He later confessed and said it would be the fall of 1984. I say the only target he will hit will be the fall of Wall Street. Look around, record business failures, bank failures, budget deficits, trade deficits, and the American President says, "Don't worry, we have to work this little problem out on Wall Street."

This President has gone from Disney to Spielberg, Looney Tunes to outer space. And he is not finished yet.

I predict his next production will be a Stephen King thriller, "The Horror On Wall Street."

Let us make sure now around here we find a few extra billion dollars before we may go under so that we can get that money to NATO and give it to foreign aid. Because just think if we go under, these people overseas will not be able to take care of themselves. They really depend on us.

Do not worry about districts like mine and other Rust Belt cities in America and Americans. We are last on the list anyway. Our people will not even notice.

THE EFFECTS OF REAGANOMICS

(Mr. MILLER of California asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MILLER of California. Mr. Speaker, for millions of Americans, the effects of Reaganomics has little to do with the direction of the Dow Jones average. Their lives have become ones of poverty, homelessness, illness, and malnutrition. And all they get from the President is glib optimism and homilies.

A new report, just issued by the Physician Task Force on Hunger in America, finds that 20 million Americans go hungry every day despite 58 months of economic expansion. Especially hard hit are infants, the elderly, and blue collar workers whose jobs have been lost.

The report focuses on hard-hit regions like Louisiana and Texas, where the oil boom has burst; Minnesota and Iowa, which are reeling under the family farm crisis, which also is not over; Pennsylvania, Ohio, and West Virginia, where the lunch bucket has been replaced by the rust bucket.

These conclusions should come as no surprise to those who seriously study budget policy.

Just this year, President Reagan's budget proposed a massive rescission in the temporary emergency food program; advocated underfunding the Women, Infants and Children Feeding Program by 50,000 people; endorsed a cut of up to 40,000 from the Commodity Supplemental Food Program which serves children, the elderly and mothers; and demanded over a billion-dollar reduction in food stamp and child nutrition programs.

We don't need Herbert Hoover, and we don't need "Poor Richard." We need leadership from the President and from the Congress to attack the real issues underlying our fiscal misfortune.

And while we spend so much time worrying about the Dow Jones, let's not forget Mr. and Mrs. Jones—tens of millions of working class and poor Americans who have endured Mr. Reagan's voodoo economics for the past 7 years while the stock market soared.

WELFARE REFORM

(Mrs. KENNELLY asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. KENNELLY. Mr. Speaker, as we debate welfare reform this week, let us keep in mind one appalling fact: one child in five in America lives in poverty today. And let's keep asking which proposal, budget reconciliation or the Republican substitute, is best for children.

For child care, the choice is clear. The budget reconciliation bill is superior to the Republican substitute. Finding reliable, safe, and affordable child care is one of the biggest obstacles facing a single mother who wants to hold a job and get off welfare. The bill guarantees that a family will get real help with child care expenses for

6 months after the family has left the welfare rolls. This isn't a long time, but it is a sure thing.

The Republican substitute does not guarantee that child care help will be there at the time it is needed. It does not set aside a specific revenue for child care. By setting an unrealistically low cap on expenditures and an unrealistically high mandatory participation rate, the substitute forces the States into a catch 22 on child care. As greater numbers of AFDC recipients manage to become independent of welfare, child care assistance will have to be spread more and more thinly—if child care is available at all.

If you care about children, the budget reconciliation child care provisions are superior.

THE NOTCH PROBLEM WILL NOT GO AWAY

(Mr. WALGREN asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. WALGREN. Mr. Speaker, I take this time today to call the attention of the Congress back to the problem of the discrimination against those born between 1917 and 1921 as they reach retirement under Social Security.

The most basic principle that runs throughout our Constitution that has guided our history as a nation is that Government must not treat people differently without good cause. That one person is born December 31, 1916, and others after January 1, is no reason why they should suffer a substantial reduction in their retirement security under the Social Security system.

This Congress recently provided $20,000 to each Japanese American wrongly imprisoned during the difficult days of WWII. But what about the obligation we have to the generation who made the greatest sacrifice in that war? Don't they deserve at least equal treatment form their Government under the Social Security system compared to others?

The time has come to recognize that the change in benefits we enacted in 1977 has discriminated terribly against a generation of Americans that deserve our greatest consideration. We should pass H.R. 1917 to right a wrong that, if left undone, will be a true black mark on our history.

Mr. Speaker, the movement to correct the notch in Social Security benefits will continue to grow. It will not go away. On October 5 the council of the city of Pittsburgh passed a resolution urging the Congress to pass H.R. 1917 and I include the full text of that resolution in the RECORD:

RESOLUTION

Whereas, an estimated 14 million individuals born between 1917 and 1921, eligible for Social Security, are known as "notch babies"; and

Whereas, due to an Act of Congress in 1977, "notch babies" are paid less each month in Social Security benefits than individuals born 1916 and earlier. Some reductions are as high as $250 a month; and

Whereas, a number of bills are in the Congress which would correct the "notch", the most notable of these being House Bill 1917 which would provide a recalculation of benefits and provide retroactive benefits; and

Whereas, the bills before the House have been referred to the Ways and Means Subcommittee on Social Security: Now, therefore, be it

Resolved, That the Council of the City of Pittsburgh respectfully requests that the Ways and Means Subcommittee on Social Security convene a hearing on the "notch", and be it further

Resolved, That the Council of the City of Pittsburgh supports the passage of House Bill 1917 which will correct this inequity to a group of people who have done so much for this country.

TODAY IS SOVIET REFUSENIK BEN CHARNY'S BIRTHDAY

(Mr. ATKINS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ATKINS. Mr. Speaker, today is a special day for American and Soviet citizens alike. Today is Ben Charny's birthday. Ben Charny is a refusenik who has been repeatedly denied permission to leave the Soviet Union. Ben Charny is also a dying man.

He suffers from cancer and an extremely weak heart. Despite his worsening condition, Soviet doctors will not perform the simple surgery he needs, surgery that is frequently done in the West. Last spring Soviet officials told Dr. Charny not to reapply until 1995. This is the equivalent of a death sentence.

Through the efforts of Ben Charny's brother Leon and his daughter Anna, the public is increasingly aware of Dr. Charny's plight. But the Soviet authorities still refuse to grant him permission to emigrate. This is not a political issue, it is a humanitarian concern. It is shameful that Ben Charny has not been released.

I take the occasion of Ben Charny's birthday to urge my colleagues to redouble their efforts to win his freedom and to urge Soviet authorities to grant him permission to emigrate. I can think of no better birthday present for Dr. Charny than an exit visa and a plane ride to freedom.

THE SEARCH FOR THE $23 BILLION SHOULD START AT THE SHORES EDGE

(Mrs. BENTLEY asked and was given permission to address the House for 1 minute and to revise and extent her remarks.)

Mrs. BENTLEY. Mr. Speaker, in the next 3 weeks, we, in Congress, and the President will have to make some very hard choices.

From where is the $23 billion coming to satisfy the mandates of Gramm-Rudman? Finding $23 billion is not like looking for a needle in a haystack. That is a large chunk of money, and broad solutions are needed. We must not be afraid to look for answers. But when we look, for the answers, we must remember some key facts: The United States is spending over $100 billion annually to maintain our troops overseas; that other nations, with strong economies, are benefiting from U.S. troop commitments; and that other nations are not accepting their fair share of the burden.

In the Persian Gulf, the United States is protecting Japanese and European oil. The beneficiaries of our protection should share the cost.

It is not right the U.S. taxpayer always has to take it in the pocket while our allies take a relatively free ride.

User fees from the beneficiaries of our protection would certainly help raise a good portion of the $23 billion.

EXPRESSIONS OF SADNESS AND OUTRAGE AT THE MURDER OF HERBERT ANAYA

(Ms. PELOSI asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. PELOSI. Mr. Speaker, I am saddened and outraged at the murder of Herbert Anaya, the president of the private Salvadoran Human Rights Commission. Mr. Anaya was a man of dignity and courage, who was committed to work for peace in his own war-torn country. He knew of the life-threatening risk that came with being president of the human rights commission. Only 4 years ago, the president who preceded him was murdered. Herbert Anaya took the risk in the name of an unrelenting quest for peace.

I grieve for his family, his friends, and the people of El Salvador who look to leaders such as Herbert Anaya to give them hope and to help bring peace to their country.

As the Central American countries are struggling to achieve regional peace, the murder of Herbert Anaya could undermine this delicate process. Today, we send a message to the murderers of Herbert Anaya. We demand an end to the senseless murders of the innocent. For every one you strike down, their are thousands more who will rise to defend their rights to liberty and to a peaceful existence. We will not be stopped by your acts of violence. You will be found and prosecuted and in the end, the triumph of peace will crush the promoters of death and war.

Mr. Speaker, it is essential that the Central American leaders continue their efforts to accomplish their goals in the name of regional peace and in the name of Herbert Anaya.

TWO UTAH FIGHTER WINGS SHOOT FOR THE STARS

(Mr. HANSEN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. HANSEN. Mr. Speaker, today I have the dual honor of congratulating two fighter wings in my district—the 388th Tactical Fighter Wing and the 419th Tactical Fighter Reserve Wing—for their outstanding achievements during the Air Force's recent competition of "Gunsmoke."

Gunsmoke, which is held at Nells Air Force Base in Nevada, pits the best against the best from across the Tactical Air Force. The competition puts hours and hours of training into practice and then recognizes those who stood out from among the rest.

Flying the F-16 Fighting Falcon, the 388th was awarded first place in the air-to-ground gunnery competition, and right behind them, also flying the F-16, was the 419th Reserve Wing, Gunsmoke's second-place winner. Both wings are located at Hill Air Force Base in Utah.

Mr. Speaker, I believe it is essential for every American to understand and appreciate the importance of the role the men and women who serve our country play in defense preparedness. There is no substitute for their hard work and dedication. No matter how many fighter planes we have—no matter how advanced these planes may be—they can never take the place of the pilots who fly them, or the support personnel who maintain them. These individuals are, indeed, "top guns."

It is an honor to have these two outstanding wings in my congressional district. I hope my colleagues in Congress will join me in congratulating the men and women of the 388th and the 419th for a job well done.

NO MILITARY INTERVENTION IN SOUTH KOREAN POLITICS

(Mr. FEIGHAN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. FEIGHAN. Mr. Speaker, today the people of South Korea have taken another important step toward genuine democracy by approving a new constitution—a constitution which will allow direct elections to take place for the first time in the history of the Republic of Korea.

This is tremendously good news.

But I want to call your attention this afternoon to another section in South Korea's new constitution. Not only does the new constitution call for direct elections—but it also calls for the South Korean military to stay out of South Korean politics. South Korea has never known peaceful and democratic political change. And signs coming from the South Korean military during this Presidential campaign have been less than satisfactory. Last July, the South Korean Army chief hinted darkly that "something unhappy" would happen if South Korean opposition leader Kim Dae-jung ran for President.

Direct Presidential elections are scheduled for December 20. We must, from the Congress and from the administration, send strong, consistent signals to the Chun government that a military coup, the imposition of martial law, and threats against Presidential candidates are unacceptable. South Korea stands at a crossroads. Its choice lies between democracy and dictatorship. The South Korean people clearly want democracy. We should help them reach that goal.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mrs. KENNELLY). Pursuant to the provisions of clause 5, rule I, the Chair announces that she will postpone further proceedings today on each motion to suspend the rule on which a recorded vote or the yeas and nays are ordered or on which the vote is objected to under clause 4 of rule XV.

Such rollcall votes, if postponed, will be taken at the conclusion of the legislative business today.

VETERANS' EMPLOYMENT AND TRAINING ACT OF 1987

Mr. MONTGOMERY. Madam Speaker, I move to suspend the rules and pass the bill (H.R. 3460) to amend chapter 41 of title 38, United States Code, with respect to veterans' employment and training as amended.

The Clerk read as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Veterans' Employment and Training Act of 1987".

SEC. 2. LOCAL VETERANS' EMPLOYMENT REPRESENTATIVES.

(a) IN GENERAL.—Section 2004 of title 38, United States Code, is amended to read as follows:

"§ 2004. Local veterans' employment representatives

"(a) There shall be assigned by the administrative head of the employment service in each State local veterans' employment representatives, preferably eligible veterans or eligible persons, on the staffs of local employment service offices.

"(b) Such representatives shall—

"(1) functionally supervise the providing of services to eligible veterans and eligible persons by the local employment service staff;

"(2) maintain regular contact with community leaders, employers, labor unions, training programs, and veterans' organizations for the purpose of (A) keeping them advised of eligible veterans and eligible persons available for employment and training, and (B) keeping eligible veterans and eligible persons advised of opportunities for employment and training;

"(3) provide directly, or facilitate the provision of, labor exchange services to eligible veterans and eligible persons in local employment services offices, including intake and assessment, counseling, testing, job search assistance, and referral and placement;

"(4) encourage employers and labor unions to employ eligible veterans and eligible persons and conduct on-job training and apprenticeship programs for such veterans and persons;

"(5) promote, facilitate, and monitor the participation of veterans in Federal and federally funded employment and training programs, and monitor the listing of vacant positions with the United States Employment Service by Federal agencies as required by section 3327 of title 5;

"(6) monitor the listing of job and subsequent referrals of qualified veterans as required by section 2012 of this title;

"(7) work closely with appropriate Veterans' Administration personnel engaged in providing counseling or rehabilitation services under chapter 31 of this title, and cooperate with employers in identifying disabled veterans who have completed or are participating in a vocational rehabilitation training program under such chapter and who are in need of employment;

"(8) refer eligible veterans and eligible persons to training, supportive services, and educational opportunities, as appropriate;

"(9) assist, through electronic data processing, in securing and maintaining current information regarding available employment and training opportunities;

"(10) cooperate with the staff of programs operated under section 612A of this title in identifying and assisting veterans who have readjustment problems and who may need employment placement assistance or vocational training assistance; and

"(11) when requested by a Federal or State agency, a private employer, or a service-connected disabled veteran, assist such agency, employer, or veteran in identifying and acquiring prosthetic and sensory aids and devices which enhance the employability of disabled veterans.

"(c) Each local veterans' employment representative shall be administratively responsible to the manager of the employment service local office and shall provide periodic reports to the manager of such office and to the Director for Veterans' Employment and Training regarding compliance with Federal law and regulations with respect to special services and priorities for veterans and other eligible persons.

"(d)(1) The Secretary, acting through the Assistant Secretary for Veterans' Employment and Training, shall make available during each fiscal year for use in each State under this section an amount sufficient to support—

"(A) one-third of a full-time local veterans' employment representative for every 1,400 eligible veterans and eligible persons who were registered for assistance with a local employment service office in such State at the end of the program year immediately preceding the fiscal year for which funding is being determined;

"(B) one-third of a full-time local veterans' employment representative for every 25,000 veterans who were residing in such State at the end of the previous fiscal year; and

"(C) one-third of a full-time local veterans' employment representative for every local employment service office in such State at the end of the previous fiscal year;

except that during fiscal year 1988, an amount shall be made available in each State sufficient to support at least the number of local veterans' employment representatives in that State on April 1, 1987.

"(2) For purposes of determining the number of local veterans' employment representatives in a State under paragraph (1)—

"(A) each fraction less than one-half of a full-time local veterans' employment representative resulting from the application of the formula in paragraph (1) of this subsection shall be rounded up to the nearest one-half; and

"(B) each fraction more than one-half of a full-time local veterans' employment representative resulting from the application of such formula shall be rounded up to the nearest whole number.

"(3) The assignment of local veterans' employment representatives to local employment service offices within a State shall be made by the head of the employment service in the State after consultation with the Director for Veterans' Employment and Training.

"(4) For the purposes of this subsection, an individual shall be considered to be registered for assistance with a local employment office during a program year if the individual—

"(A) registered, or renewed such individual's registration, for assistance with the office during that program year; or

"(B) registered or renewed such individual's registration with such office during a previous program year and, in accordance with regulations which the Secretary shall prescribe, is counted as still being registered for administrative purposes.".

(b) DEFINITION.—Section 2001 of such title is amended by adding the following at the end:

"(7) The term 'local employment service office' means a service delivery point which has an intrinsic management structure and at which employment services are offered in accordance with the Wagner-Peyser Act.".

(c) CLERICAL AMENDMENT.—The item for section 2004 in the table of contents for chapter 41 of such title is amended to read as follows:

"2004. Local veterans' employment representative.".

SEC. 3. ADMINISTRATION.

(a) IN GENERAL.—Section 2002A of title 38, United States Code, is amended—

(1) by inserting "(a)" before "There"; and

(2) by adding at the end the following new subsections:

"(b) The Secretary shall—

"(1) carry out all provisions of this chapter and chapter 43 of this title through the Assistant Secretary of Labor for Veterans' Employment and Training and shall administer, through such Assistant Secretary, all programs under the jurisdiction of the Secretary for the provision of employment and training services designed to meet the needs of disabled veterans, veterans of the Vietnam era, and all other eligible veterans and eligible persons;

"(2) in order to make maximum use of available resources, encourage all such programs and all grantees under such programs to enter into cooperative arrangements with private industry and business concerns (including small business concerns), educational institutions, trade associations, and labor unions;

"(3) ensure that maximum effectiveness and efficiency are achieved in providing services and assistance to eligible veterans and eligible persons under all such programs by coordinating and consulting with the Administrator with respect to programs conducted under other provisions of this title, with particular emphasis on coordination of such programs with readjustment counseling activities carried out under section 612A of this title, apprenticeship or other on-job training programs carried out under section 1787 of this title, and rehabilitation and training activities carried out under chapter 31 of this title;

"(4) ensure that job placement activities are carried out in coordination and cooperation with appropriate State public employment service officials;

"(5) monitor and supervise on a continuing basis the distribution and use of funds provided for use in the States under this chapter;

"(6) monitor the appointment of disabled veterans' outreach specialists and the assignment of local veterans' employment representatives in order to ensure compliance with the provisions of sections 2003A and 2004 of this title; and

"(7) promote, facilitate, and monitor participation of qualified veterans and eligible persons in employment and training opportunities under the Job Training Partnership Act and other Federal and federally funded employment and training programs.

"(c)(1) The distribution and use of funds under sections 2003A(a) and 2004 of this title shall be subject to the continuing supervision and monitoring of the Secretary and shall not be governed by the provisions of any other law, or any regulations prescribed thereunder, that are inconsistent with this section or section 2003A or 2004 of this title.

"(2) In determining the terms and conditions of a grant or contract under which funds are made available in a State in order to carry out section 2003A or 2004 of this title, the Secretary shall take into account the results of the monitoring carried out under this section.

"(d)(1) The Secretary shall assign to each region for which the Secretary operates a regional office a representative of the Veterans' Employment and Training Service who shall be an eligible veteran to serve as the Regional Administrator for Veterans' Employment and Training in such region.

"(2) Each such Regional Administrator shall be responsible for—

"(A) ensuring the promotion, operation, and implementation of all veterans' employment and training programs and services within the region;

"(B) ensuring proper veterans' employment under Federal contracts within the region;

"(C) protecting and advancing veterans' reemployment rights within the region; and

"(D) coordinating, monitoring, and providing technical assistance on veterans' employment and training programs with respect to all entities receiving grants from the Department of Labor within the region.

"(e) There is established within the Department of Labor the position of Deputy Assistant Secretary of Labor for Veterans' Employment and Training within the Senior Executive Service. Any person appointed to such position shall be an eligible veteran. The Secretary shall appoint, no later than the beginning of program year 1989, such Deputy Assistant Secretary in accordance with section 3393 of title 5.".

(b) BUDGETING.—Section 2006(a) of such title is amended—

(1) in the fifth sentence—

(A) by striking out "to fund the disabled veterans' outreach program under section 2003A" and inserting in lieu thereof "in all of the States for the purposes of sections 2003A, 2004, and 2009 and to fund the National Veterans' Employment and Training Service Institute under section 2009 of this title";

(B) by striking out "such section" and inserting in lieu thereof "such sections"; and

(2) by striking out the sixth sentence and inserting in lieu thereof the following: "Each budget submission with respect to such funds shall include separate listings of the amount for the National Veterans' Employment and Training Service Institute and of the proposed numbers, by State, of disabled veterans' outreach program specialists appointed under section 2003A of this title and local veterans' employment representatives assigned under section 2004 of this title, together with information demonstrating the compliance of such budget submission with the funding requirements specified in the preceding sentence.".

(c) USE OF ADMINISTRATIVE FUNDS.—Section 2006(d) of such title is amended by striking out ", except that" and all that follows through "purposes".

(d) REPORTING REQUIREMENTS.—Section 2007(c) of such title is amended to read as follows:

"(c) Not later than December 1 of each year, the Secretary shall report annually to the appropriate committees of the Congress on the success during the preceding program year of the Department of Labor and its affiliated State employment service agencies in carrying out the provisions of this chapter and programs for the provision of employment and training services to meet the needs of veterans. The report shall include—

"(1) specification, by State, of the numbers of eligible veterans, veterans of the Vietnam era, disabled veterans, special disabled veterans, and eligible persons who registered for assistance with the public employment service system and, of each such categories, the numbers referred to and placed in jobs, the numbers referred to and placed in jobs and job training programs supported by the Federal Government, the number of counseled, and the number who received some reportable service;

"(2) a comparison of the job placement rate for each of the categories of veterans and persons described in paragraph (1) of this subsection with the job placement rate for nonveterans registered for assistance with the public employment system in each State;

"(3) any determination made by the Secretary during the preceding fiscal year under section 2006 of this title or subsection (a)(2) of this section and a statement of the reasons for such determination;

"(4) a report on activities carried out during the preceding fiscal year under sections 2003A and 2004 of this title; and

"(5) a report on the operation during the preceding fiscal year of programs for the provision of employment and training services designed to meet the needs of veterans, including an evaluation of the effectiveness of such programs during such fiscal year in meeting the requirements of section 2002A(b) of this title, the efficiency with which services were provided under such programs during such year, and such recommendations for further legislative action relating to veterans' employment and training as the Secretary considers appropriate.".

(e) CONFORMING AND CLERICAL AMENDMENTS.—(1) Section 2003A of such title is amended—

(A) by striking out paragraph (5) of subsection (a); and

(B) by striking out subsection (d).

(2) Section 2006(a) of such title is amended by striking out the last sentence.

(3)(A) The section heading of section 2002A of such title is amended to read as follows:

"§ 2002A. Assistant Secretary of Labor for Veterans' Employment and Training; Regional Administrators; Deputy Assistant Secretary of Labor for Veterans' Employment and Training".

(B) The table of contents of chapter 41 of such title is amended by striking out the item for section 2002A and inserting in lieu thereof the following:

"2002A. Assistant Secretary of Labor for Veterans' Employment and Training; Regional Administrators; Deputy Assistant Secretary of Labor for Veterans Employment and Training.".

SEC. 4. RESPONSIBILITIES OF DIRECTORS FOR VETERANS' EMPLOYMENT AND TRAINING AT STATE LEVEL.

Section 2003(c) of title of title 38, United States Code is amended—

(1) in clause (1), by inserting "(A) functionally supervise the provision of services to eligible veterans and eligible persons by such system and such program and their staffs, and (B)" after "(1)";

(2) in clause (11), by striking out "and" at the end;

(3) in clause (12), by striking out the period and inserting in lieu thereof a semicolon; and

(4) by adding at the end the following new clauses:

"(13) monitor the implementation of Federal laws requiring veterans preference in employment and job advancement opportunities within the Federal Government; and

"(14) monitor the listing of vacant positions with the United States Employment Service by Federal agencies as required by section 3327 of title 5.".

SEC. 5. NATIONAL VETERANS' EMPLOYMENT AND TRAINING SERVICE INSTITUTE.

(a) ESTABLISHMENT OF INSTITUTE.—Section 2009 of title 38, United States Code, is amended to read as follows:

"§ 2009. National Veterans' Employment and Training Service Institute

"In order to provide for such training as the Secretary considers necessary and appropriate for the efficient and effective provision of employment, job-training, counseling, placement, and related services to veterans, the Secretary shall, through the Assistant Secretary of Labor for Veterans' Employment and Training, establish and make available such funds as may be necessary to operate a National Veterans' Employment and Training Service Institute for the training of disabled veterans' outreach program specialists, local veterans' employment representatives, Directors for Veterans' Employment and Training, and Assistant Directors for Veterans' Employment and Training, and such other personnel involved in the provision of employment, job-training, counseling, placement, or related services to veterans as the Secretary considers appropriate, including travel expenses and per diem for attendance at the Institute.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 41 of such title is amended by striking out the item for section 2009 and inserting in lieu thereof the following:

"2009. National Veterans' Employment and Training Service Institute.".

SEC. 6. SECRETARY'S COMMITTEE ON VETERANS' EMPLOYMENT.

Clause (1) of section 2010(b) of title 38, United States Code, is amended—

(1) by redesignating subclauses (D), (E), and (F) as subclauses (E), (F), and (G), respectively;

(2) by inserting after subclause (C) the following new subclause:

"(D) the Secretary of Education;"

(3) by striking out "and" at the end of subclause (F) (as so redesignated);

(4) by adding at the end the following new subclauses:

"(H) the Postmaster General;

"(I) the Director of the ACTION Agency; and".

SEC. 7. WAIVER OF RESIDENCY REQUIREMENT FOR DIRECTORS AND ASSISTANT DIRECTORS FOR VETERANS' EMPLOYMENT AND TRAINING AT THE STATE LEVEL.

Section 2003(b)(1) of title 38, United States Code, is amended—

(1) by inserting "(A)" after "(1)";

(2) by redesignating clauses (A) and (B) as clauses (i) and (ii), respectively;

(3) in clause (i), as redesignated by clause (2) of this section, by striking out "be an eligible veteran" and inserting in lieu thereof ", except as provided in subparagraph (B) of this paragraph, be a qualified veteran"; and

(4) by adding at the end the following new subparagraph:

"(B) If, in appointing a Director or Assistant Director for any State under this section, the Secretary determines that there is no qualified veteran available who meets the residency requirement in subparagraph (A)(i), the Secretary may appoint as such Director or Assistant Director any qualified veteran.".

SEC. 8. REVISIONS OF NOMENCLATURE.

(a) SECRETARY OF LABOR.—(1) Section 2001 of title 38, United States Code, is amended by adding at the end the following new paragraph:

"(8) The term 'Secretary' means the Secretary of Labor.".

(2) Sections 2002A, 2003 (a) and (b)(2), 2003A(a), 2005, 2006 (a) 2007, 2008, and 2010(b) of such title are amended by striking out "Secretary of Labor" each place it appears except where preceded by "Assistant" and inserting in lieu thereof "Secretary".

(3) The first sentence of section 2010(b) of such title is amended by striking out "The" and inserting in lieu thereof "Notwithstanding section 2002A(b) of this title, the".

(b) ASSISTANT SECRETARY OF LABOR FOR VETERANS' EMPLOYMENT AND TRAINING.—Sections 2000(2), 2002, 2002A, 2003A(a), and 2010(b) of such title are amended by inserting "and Training" after "Assistant Secretary of Labor for Veterans' Employment" each place it appears.

(c) DIRECTORS FOR VETERANS' EMPLOYMENT AND TRAINING AT STATE LEVEL.—(1) Sections 2003 and 2003A(b)(2) of such title are amended by striking out "State Director for Veterans' Employment", "State Directors for Veterans' Employment", "Assistant State Director for Veterans' Employment" and "Assistant State Directors for Veterans' Employment" each place those terms appear and inserting in lieu thereof "Director for Veterans' Employment and Training", "Directors for Veterans' Employment and Training", "Assistant Director for Veterans' Employment and Training", and "Assistant Directors for Veterans' Employment and Training", respectively.

(2)(A) The heading of section 2003 of such title is amended to read as follows:

"§ 2003. Directors and Assistant Directors for Veterans' Employment and Training at State level".

(B) The item relating to such section in the table of sections at the beginning of chapter 41 of such title is amended to read as follows:

"2003. Directors and Assistant Directors for Veterans' Employment and Training at State level.".

SEC. 9. EFFECTIVE DATE.

The amendments made by this Act shall apply to fiscal year 1988 and fiscal years thereafter.

The SPEAKER pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from Mississippi [Mr. MONTGOMERY] will be recognized for 20 minutes and the gentleman from New York [Mr. SOLOMON] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Mississippi [Mr. MONTGOMERY].

(Mr. MONTGOMERY asked and was given permission to revise and extend his remarks.)

GENERAL LEAVE

Mr. MONTGOMERY. Madam Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill presently under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Mississippi?

There was no objection.

Mr. MONTGOMERY. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, H.R. 3460 was unanimously ordered reported by the Committee on Veterans' Affairs. The bill would improve the service delivery system for employment programs administered by the Department of Labor and the Veterans' Administration.

I want to commend the very able chairman of our Subcommittee on Education, Training and Employment, my colleague from Mississippi, WAYNE DOWDY, for the work he has done since being elected chairman early this year. WAYNE DOWDY has been an aggressive chairman. He has held numerous hearings in Washington and around the country to get a better feel of what needs to be done to help veterans get jobs. This is the second major bill he has brought to the floor that would enhance the employment opportunities for veterans. Earlier the House passed his bill that would extend the Veterans Job Training Act.

I, also, want to commend the gentleman from New Jersey, Mr. CHRIS SMITH, the ranking minority of the subcommittee for his leadership and work on the subcommittee. The gentleman has made a major contribution to the bill, with his amendments during the committee markup.

Of course, I want to thank the distinguished gentleman from New York [Mr. SOLOMON], the ranking minority member of the full committee for his cooperation in getting this bill to the floor.

The gentleman from New York [Mr. SOLOMON] is always working to make certain that veterans are given the priority they deserve.

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Madam Speaker, I yield such time as he may consume to the distinguished chairman of our Subcommittee on Education, Training and Employment, the gentleman from Mississippi [Mr. DOWDY], for an explanation of the bill.

Mr. DOWDY of Mississippi. Madam Speaker, I thank the gentleman for yielding this time to me.

Madam Speaker, on October 14, the Committee on Veterans' Affairs voted unanimously to order reported H.R. 3460. This bill, referred to as the Veterans' Employment and Training Act of 1987, would improve the service delivery system for veterans' employment programs as provided under chapter 41 of title 38, United States Code.

The distinguished ranking minority member of the subcommittee, Mr. CHRIS SMITH of New Jersey, offered two amendments which were approved by the Subcommittee on Education, Training and Employment. These provisions would: First, require the Secretary of Labor to report to Congress annually, based on the preceding program year, regarding the success of the Department of Labor and State employment security agencies in carrying out the provisions of chapter 41; and second, allow a waiver of the current 2-year residency requirement for Directors for veterans' employment and training in the event that a qualified veteran in the State cannot be found to fill this position.

Additionally, the major provisions of H.R. 3460 would:

First, clearly define the responsibilities of local veterans' employment representatives [LVERS].

Second, provide a formula, based on need, establishing the staffing level for LVERS.

Third, clarify the role of the Assistant Secretary of Labor for veterans' employment and training as the official in the Department of Labor with primary responsibility for veterans' employment and training programs.

Fourth, codify the position of Regional Administrator for veterans' employment and training.

Fifth, codify the position of Deputy Assistant Secretary of Labor for veterans' employment and training.

Sixth, establish the national veterans' employment and training service institute, and.

Seventh, clarify and expand the responsibilities of the Directors and Assistant Directors for veterans' employment and training.

I believe that H.R. 3460, the Veterans' Employment and Training Act of 1987, will go a long way toward making the delivery system for veterans' employment and training programs more efficient. Duties and responsibilities of the individuals involved in veterans' employment services will be clarified and accountability of those individuals reinforced.

Madam Speaker, I want to thank the chairman of the full committee, my good friend and colleague from Mississippi, G.V. (SONNY) MONTGOMERY and the distinguished ranking minority member of the full committee, JERRY SOLOMON, for their leadership and support. I also want to thank CHRIS SMITH and all members of the Subcommittee on Education, Training and Employment, for their assistance and cooperation.

I urge my colleagues to support H.R. 3460.

Mr. SOLOMON. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, as ranking member of the Veterans' Affairs Committee, I rise in strong support of H.R. 3460, a bill to improve veterans' employment and training programs administered by the Department of Labor.

This legislation has been summarized by my esteemed colleagues, Mr. MONTGOMERY, chairman of the full committee, and Mr. DOWDY, chairman of the Subcommittee on Education, Training and Employment, and I commend them for the fine work they have done with this measure in behalf of veterans.

Also, I commend Mr. SMITH of New Jersey, ranking member of the subcommittee, for the important contributions he made to the bill in the form of two amendments unanimously adopted by the full committee. Mr. SMITH's very sensible amendments changed the reporting requirements from the fiscal year to the Department of Labor's program year to save administrative costs, and liberalized residency requirements for State directors of veterans' employment services to allow nonresident, qualified candidates to be considered if there are no qualified resident candidates.

Madam Speaker, it has for some time appeared to me that several of the shortcomings in the State veterans' employment services have resulted from a lack of clear statutory definition and direction. H.R. 3460 would go a long way as a remedy.

The responsibilities of local veterans employment representatives have not been as clearly spelled out as they should be in the law. As a result, the ways in which they have been utilized have on occasion not served to help veterans as specifically as they should have.

Instead, some LVER's have drifted or have been directed into more general employment work, and the goal of improving veterans' employment has been deemphasized in some instances. Fortunately, I do not see any evidence that this has been widespread. While I sympathize with the budgetary pressures being felt by State employment services, they must use federally funded positions in accordance with Federal law. To the extent Federal law may have been too general, H.R. 3460 would clear up any misconceptions about the direction of LVER's. State employment services which do not comply run the risk of having to pay back their Federal funding.0

The role of the Assistant Secretary of Labor for Veterans' Employment and Training [ASVET] also is not as clear as it should be in chapter 41 of title 38. Again, H.R. 3460 would remedy this with more precise language. I do not mean to imply that the ASVET, Donald Shasteen, is not doing a good job, because I believe that, in fact, he is doing an outstanding job. But while we are improving this statute, we might as well address everything which needs it.

One of the most notable successes during Mr. Shasteen's tenure as ASVET has been the establishment of the National Veterans' Employment and Training Institute. By all accounts, its training programs have been highly effective, both informationally and motivationally. To protect the institute, which is an administrative creation, from the well-known vagaries of the budget process, the committee believes it should be permanently authorized by statute, and would do so with this bill.

Finally, Madam Speaker, the position of deputy to the ASVET has been administratively created as well and has proved to be so useful that the committee believes it ought to be codified as a senior executive service position. Thus, the deputy ASVET, as a career employee, would provide program continuity in top management and an invaluable institutional memory. The deputy would also be required to be a veteran.

Madam Speaker, while I have not discussed each provision of the bill, I fully support it in its entirety and I urge my colleagues to act favorably on this bipartisan veterans' legislation.

Madam Speaker, I yield such time as he may consume to the ranking member of the subcommittee, the gentleman from New Jersey [Mr. Smith].

Mr. SMITH of New Jersey. Madam Speaker, I would like to take this opportunity to commend the chairman of our subcommittee, the Honorable Wayne Dowdy, for his outstanding leadership as we crafted this legislation. Mr. Dowdy has been tenacious and diligent in promoting better training and employment programs for veterans. I would also like to thank the chairman and ranking minority member of the full committee, Mr. Montgomery and Mr. Solomon, for their efforts in bringing this bill to the floor.

Again, I believe that H.R. 3460 offers practical solutions to many of the shortcomings of the Veterans' Job Service Program. I urge my colleagues to vote on behalf of our Nation's veterans and support H.R. 3460.

Madam Speaker, as the ranking minority member of the Veterans' Affairs Subcommittee on Education, Training and Employment, I rise in strong support of H.R. 3460, the Veterans' Employment and Training Amendments of 1987. H.R. 3460 contains various provisions to improve the administration and implementation of veterans' job service and employment programs administered by the Department of Labor.

Though job service programs have been responsible for job placement of many of our Nation's vets, there continues to be a number of eligible veterans who to date, have not received adequate job counseling or training and consequently have not been able to obtain or hold down a job.

Hearings held by our subcommittee earlier this year revealed the need for some reform in veterans' employment programs. Many of the expert witnesses raised concerns regarding the role of the "local veterans employment representative [LVER]." LVER's are responsible for carrying out the job service programs and have the closest contact with veterans seeking employment. It is their responsibility to provide the VA benefit to see that the employment needs of veterans are met. According to testimony received by our subcommittee, confusion regarding specific LVER duties and responsibilities were interfering with the successful delivery of job services to veterans.

H.R. 3460 addresses this problem by establishing a formula for determining the number of LVER's needed in each job service office and sets forth a standard job description which clarifies their duties and responsibilities. These changes will help ensure that veterans are given the attention they deserve and are treated uniformly nationwide.

Additionally, H.R. 3460 contains provisions that will help to secure veterans preference throughout the Job Service Program. The bill requires that certain employees be veterans themselves and gives certain administrators the authority to monitor veterans preference in employment offices.

Madam Speaker, during a markup of this legislation the Subcommittee on Education, Labor, and Employment adopted two amendments I offered to further improve the job service program. The first amendment requires that a yearly report from the Department of Labor to appropriate congressional committees, regarding the success of veterans' job service programs, be based on a program year rather than a fiscal year. This change will allow for comparisons of veterans' programs with other existing job service programs currently evaluated on a program year basis.

The second amendment adopted by the subcommittee would help to ensure that the best qualified veteran be appointed as State director and assistant State director for veterans' employment and training. Currently, candidates for these positions must fulfill a 2-year residency requirement in order to be considered for appointment as director or assistant director within their respective State. Several veterans' organizations oppose this residency rule and have repeatedly called upon our subcommittee for its elimination. This amendment would enable the Secretary to appoint any qualified veteran as director or assistant director if there is no qualified veteran available in that State who meets the residency requirement.

Mr. SOLOMON. Madam Speaker, I yield such time as he may consume to the former ranking member of the Committee on Veterans' Affairs, the gentleman from Arkansas [Mr. Hammerschmidt], who is a great friend of the veteran.

Mr. HAMMERSCMIDT. Madam Speaker, I rise in strong support of H.R. 3460, a bill to improve veterans' employment and training programs administered by the Department of Labor.

I wish to thank Mr. Montgomery, the esteemed chairman of the Veterans' Affairs Committee and Mr. Solomon for their fine work on this measure, as well as Congressmen Wayne Dowdy and Chris Smith, the chairman and ranking member of the Subcommittee on Education, Training and Employment.

Madam Speaker, although I strongly support all of the provisions of this legislation and am proud to be a cosponsor of the bill, I wish to emphasize one particular aspect of this legislation. The enforcement of the veterans' preference provision of title 5 is strengthened. Veterans' preference of course is now a matter of law. The Veterans' Affairs Committee fully expects this to be observed and, when necessary, enforced.

H.R. 3480 would require the State directors for veterans employment and training to monitor the observance of veterans' preference by Federal departments and agencies as part of the overall effort to secure the greatest possible employment opportunities for veterans. This is just one very important provision of H.R. 3480, and I urge my colleagues to support the bill.

Mr. MONTGOMERY. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, I also want to commend the gentleman from Arkansas [Mr. Hammerschmidt] for his hard work and for paying attention to veterans affairs and matters of interest to all veterans. I again want to commend the gentleman from Mississippi [Mr. Dowdy], the gentleman from New Jersey [Mr. Smith], and the gentleman from New York [Mr. Solomon] for their work on this legislation. It is good work, Madam Speaker, and we certainly hope that all Members will support this legislation, H.R. 3460.

Madam Speaker, there is one other matter that I want to touch on today. This is a great day for veterans. This morning the gentleman from Texas [Mr. Brooks], chairman of the Committee on Government Operations, and the ranking minority member of that committee, the gentleman from New York [Mr. Horton], held hearings on H.R. 3471 which elevates the Veterans' Administrator to Cabinet-level status. The gentleman from New York [Mr. Solomon] has been the leader in pushing this legislation forward. The legislation has a great deal of merit, and we would hope that this bill would be on the floor in the next few days.

Madam Speaker, I yield to the gentleman from New York [Mr. Solomon], who has been the chief sponsor of the Solomon legislation, and I refer to the legislation that the gentleman from Texas [Mr. Brooks] and the gentleman from New York [Mr. Horton] have introduced and that is before the Congress at this time.

Mr. SOLOMON. Madam Speaker, I certainly thank the chairman of the full committee for his remarks, and I thank him for yielding.

Yes, it has been a great day for the Montgomery-Solomon bill which would elevate the Veterans' Administrator to cabinet level.

We have achieved, I think, a milestone today because for the last 25 years we have never before been able to get a hearing on this important measure. As the Members know, our Veterans' Affairs Committee does not have jurisdiction over that legislation. We do not even have dual jurisdiction. So we do thank the chairman of the Committee on Government Operations, the gentleman from Texas [Mr. BROOKS], and the ranking minority member, the gentleman from New York [Mr. HORTON], for bringing this bill before a hearing. All of the major veterans' organizations were there this morning and testified on behalf of it. We certainly hope that we will get that bill on the floor, get it passed, and get it over to the Senate and eventually enacted into law. It is long overdue.

Madam Speaker, I certainly do appreciate all the gentleman's fine work, and I also thank the staffs on both sides of the aisle for all the fine work they have done on this legislation.

Mr. MONTGOMERY. Madam Speaker, I would point out that this is the first time in the number of years that we have been in the Congress that we have had a hearing on any type of bill such as this. Again I extend my congratulations to the gentleman from New York.

Mr. GILMAN. Madam Speaker, I rise in strong support of H.R. 3460, the Veterans Employment and Training Act of 1987. I also would like to commend the gentleman from Mississippi, Mr. DOWDY, as well as the distinguished chairman, Mr. MONTGOMERY, and the ranking member from New York, Mr. SOLOMON, for bringing this measure before us today, and for their leadership in making veterans affairs a priority of this Congress.

As we rapidly approach Veterans Day, it is only appropriate that we pay tribute to our Nation's veterans in the most meaningful way, by providing programs that compensate them for their distinguished service to our Nation. The Veterans Employment and Training Act maximizes employment opportunities for veterans. H.R. 3460 creates a formula for allocating and funding local veterans' employment representatives [LVER's] appointed to State and Federal employment services. This is intended to strengthen and enhance the current Federal/State partnership. The bill deems a veteran to be registered for assistance if the veteran was registered or has renewed registration during the previous program year and has not been contacted to determine if assistance is no longer necessary. It adds a veterans preference requirement for LVER appointments.

The Veterans Employment and Training Act also clarifies the role and responsibilities of Labor personnel involved in veterans' employment and training services; creates within the Department of Labor the National Veterans' Employment and Training Service Institute to train Labor personnel in the delivery of employment and training services; and expands the Committee on Veterans' Employment to include representatives designated from Education, U.S. Postal Service, and ACTION. These provisions will provide for a more expansive and efficient program for our veterans.

Madam Speaker, H.R. 3460 was adopted unanimously by the Veterans' Affairs Committee. Accordingly, I ask my colleagues to join me in support of this cost-efficient and worthwhile program, the Veterans Employment and Training Act of 1987.

Mr. MONTGOMERY. Madam Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. SOLOMON. Madam Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mrs. KENNELLY). The question is on the motion offered by the gentleman from Mississippi [Mr. MONTGOMERY] that the House suspend the rules and pass the bill, H.R. 3460, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

EXPRESSING SUPPORT OF CONGRESS FOR IMPLEMENTATION OF ACCORD WITH RESPECT TO SRI LANKA

Mr. SOLARZ. Madam Speaker, I move to suspend the rules and agree to the concurrent resolution (H. Con. Res. 196) expressing the support of the Congress for the implementation of the July 29, 1987, accord with respect to Sri Lanka as the best hope for peace.

The Clerk read as follows:

H. CON. RES. 196

Whereas the Congress and the American people support the sovereignty and territorial integrity of Sri Lanka and its democratic form of government;

Whereas the accord signed on July 29, 1987, by Sri Lankan President Junius Jayewardene and Indian Prime Minister Rajiv Gandhi represents the best hope of achieving a just and lasting solution to the ethnic conflict which has troubled Sri Lanka;

Whereas President Jayewardene and Prime Minister Gandhi demonstrated great courage and statesmanship in reaching this accord and in seeking to win broad political and popular support for the terms of the accord; and

Whereas recent attacks by Tamil militant groups have threatened the implementation of that accord: Now, therefore, be it

Resolved by the House of Representatives (the Senate concurring), That the Congress—

(1) commends President Jayewardene and Prime Minister Gandhi for their leadership in successfully negotiating the July 29, 1987, accord and in recognizing that a peaceful solution to the ethnic conflict in Sri Lanka is in the best interest of both Sri Lanka and India;

(2) calls on all parties to the accord to adhere fully to its terms;

(3) urges the militants to lay down their arms and to seek to settle their differences through peaceful means;

(4) calls on those responsible for the maintenance of law and order in Sri Lanka to fulfill their responsibilities diligently and ensure the protection of the human rights of all Sri Lankans; and

(5) calls on the President to work with other nations to establish an international fund or other multilateral effort to provide substantial additional resources for the rehabilitation and reconstruction of Sri Lanka, particularly in those areas most seriously affected by the conflict.

The SPEAKER pro tempore (Mr. MONTGOMERY). Pursuant to the rule, a second is not required on this motion.

The gentleman from New York [Mr. SOLARZ] will be recognized for 20 minutes and the gentleman from Iowa [Mr. LEACH] will be recognized for 20 minutes.

The Chair recognizes the gentleman from New York [Mr. SOLARZ].

Mr. SOLARZ. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this resolution was introduced by the very distinguished gentleman from California [Mr. DYMALLY]. It is cosponsored by my very good friend, the gentleman from Massachusetts [Mr. ATKINS] and also by the very able ranking minority member of the Subcommittee on Asian and Pacific Affairs, the gentleman from Iowa [Mr. LEACH], and myself. The resolution enjoys the support of the administration.

In essence, Mr. Speaker, what this resolution does is to express the support of the Congress for the historic agreement entered into last summer by Prime Minister Gandhi of India and President Jayewardene of Sri Lanka to bring to an end the ethnic conflict in that country which was threatening to undo and unravel one of the most durable democracies in the developing world.

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The ethnic conflict in Sri Lanka between the majority Sinhalese community and the minority Tamil community has over the course of the last several years resulted in the deaths of literally thousands of Sri Lankans from both communities, many of whom have been slaughtered in the most brutal fashion imaginable. Given the trend of events in that country, there was a very real possibility if the conflict continued, not only that democracy would be destroyed but that the social fabric of the nation would be completely undone.

At the last minute, in an act of surpassing statesmanship, Prime Minister Gandhi and President Jayewardene acted. In spite of substantial domestic pressures in both of their countries against an agreement which would be compatible with the territorial integrity of Sri Lanka and the legitimate aspirations of the Tamil community within that country, President Jayewardene and Prime Minister Gandhi were willing to brave the wrath of their countrymen in an effort to promote the cause of peace. As we speak, Indian peacekeeping forces in Sri Lanka are in the process of putting down a rebellion against the agreement on the part of militants within the Tamil community.

This resolution which expresses the support of the Congress for the historic agreement on the future of Sri Lanka calls upon all of the people of that country to abide by and respect the terms of this accord. It also indicates that as a consequence of the agreement that the United States should be willing to explore with other countries the possibility of establishing an international fund for the rehabilitation and reconstruction of Sri Lanka, particularly in those areas most seriously affected by the conflict.

Mr. Speaker, Sri Lanka to most Americans is a distant nation, but it has been a good friend of the United States. I doubt that there are many among us who have ever been there, but it is a country of some considerable importance in the Third World. It is among a handful of democracies in the developing countries of the world. It was a nation which had adopted social and economic policies which were a model for wise and equitable development.

If democracy and social tranquility in Sri Lanka cannot be sustained, it would have the most unfortunate consequences for the perceived viability of democracy as a model for social and economic development throughout the third world. Given the extent to which our Nation is so deeply committed to the preservation of democracy where it exists, and to the spread of democracy where it does not, the fate and future of democracy in Sri Lanka is a matter of considerable importance to the United States.

Mr. Speaker, I want to compliment the gentleman from California [Mr. DYMALLY] for introducing this resolution, and the gentleman from Massachusetts [Mr. ATKINS] for also taking a leadership role in calling this to the attention of the House. It would have been truly unfortunate if we had permitted one of the most remarkable diplomatic achievements in the history of our times to go completely unnoticed and unremarked. I believe that the timely adoption of this resolution today will send a strong signal of encouragement to the forces of reason and responsibility in both Colombo and New Delhi that are committed to the full and equitable implementation of this historic accord and the return of peace and prosperity to all of the people of Sri Lanka.

Mr. LEACH of Iowa. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, it is always difficult for people of one society to comment on the internal affairs of another state. In this particular case we have problems of democracy, problems of tolerance and problems of violence. Americans who have come to understand the democratic values and the institutions that have been developed in the beautiful island republic of Sri Lanka are deeply saddened by what has happened. The gentleman from New York [Mr. SOLARZ], the chairman of the Subcommittee on Asian and Pacific Affairs, is entirely right when he talks about one of the most remarkable accords in the history of modern diplomacy. This country must remark upon that. This country as well has to recognize that the most promising means of bringing about an end to the bloodshed is the accords that have been developed as of July 29. There are problems with the Tamil population that reflect very legitimate concerns. Certainly the Tamils are a group of people for whom all Americans have a great deal of sympathy.

On the other hand, there appears to be an excess of violence on both sides of this dilemma that all of us are going to have to be cautious about commenting upon.

In any regard, this particular resolution is one that is carefully crafted; it reflects the great respect of the American people for the people of Sri Lanka. I personally would like to congratulate the gentleman from California [Mr. DYMALLY] for bringing it to the attention of this body.

Mr. Speaker, I would urge unanimous support for this resolution.

Mr. LAGOMARSINO. Mr. Speaker, will the gentleman yield?

Mr. LEACH of Iowa. Mr. Speaker, I am happy to yield to the gentleman from California.

Mr. LAGOMARSINO. Mr. Speaker, I thank the gentleman for yielding and I want to commend the gentleman from California [Mr. DYMALLY] for bringing this resolution before us. The situation changes very rapidly in that troubled land but one thing stands out and that is the courage and the statesmanship of the president of Sri Lanka. He certainly is a man to be admired and emulated. He has gone the extra mile and I just hope that this works out to the advantage of the Sri Lanka people who are among the foremost democrats with a small "d" in the world today.

I want to again commend the sponsor of this resolution and the gentleman from New York [Mr. SOLARZ], the chairman of the Subcommittee on Asian and Pacific Affairs, and the gentleman from Iowa [Mr. LEACH], the ranking member of the subcommittee for bringing this forward.

Mr. SOLOMON. Mr. Speaker, will the gentleman yield?

Mr. LEACH of Iowa. Mr. Speaker, I am happy to yield to the gentleman from New York.

Mr. SOLOMON. Mr. Speaker, I thank the ranking member for yielding to me.

Mr. Speaker, I am pleased to support this resolution as well which would declare our support for the agreement between India and Sri Lanka as the best hope for peace in the struggle to put an end to the Tamil insurgency in Sri Lanka. It has been reported just today that Indian peacekeeping forces have finally entered the rebel stronghold in the city of Jaffna. Both Prime Minister Gandhi and President Jayewardene should be commended for their bravery in putting the cause of peace before political risk.

It is especially unfortunate that the rebels have not laid down their arms in accord with the peace agreement, making the Indian military campaign necessary in the first place. It is entirely appropriate therefore that we express our commendation for the leaders who commenced the peace process and express our total support of the plan and reconstruction of violence-torn areas in that country.

I applaud the sponsors of this resolution, especially the gentleman from New York [Mr. SOLARZ], the chairman of the Subcommittee on Asian and Pacific Affairs; the gentleman from Iowa [Mr. LEACH], the ranking member of the subcommittee; as well as the gentleman from California [Mr. DYMALLY] and the gentleman from Massachusetts [Mr. ATKINS] for bringing this matter to the attention of the Congress.

Mr. LEACH of Iowa. Mr. Speaker, I have no more requests for time, and I yield back the balance of my time.

Mr. SOLARZ. Mr. Speaker, I yield such time as she may consume to the gentlewoman from Maryland [Mrs. BYRON].

Mrs. BYRON. Mr. Speaker, I am not going to take much time.

Because I think this is such an important issue, I did want to give a few thoughts on it as one who has visited that area on several occasions. I have watched the growth of that country from the early 1970's to where we are now. We realize so often that the case is that with an internal conflict of the magnitude of this that it is not always easy to solve it on our own, and therefore I think the gentleman from California [Mr. DYMALLY], who has taken the time of this body to recognize the progress that has been made by the two countries involved, India and Sri Lanka, should be commended and I want to go on record in support of anything that we can do as a nation to resolve a situation that has gone on too long in a country that is so very important to national security.

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Mr. DYMALLY. Mr. Speaker, the July 29, 1987, agreement between Indian Prime Minister Rajiv Gandhi and Sir Lanka's President Junius Jaywardene came as a welcome surprise to those of us in Congress who have been concerned about the ethnic war in that country as expressed by the gentleman from New York, chairman of the Asian and Pacific Affairs Subcommittee, my colleagues on that subcommittee such as the gentleman from Massachusetts, and many others in Congress. Even more importantly, it came as welcome news to a nation that has long been divided by this ethnic conflict.

Both the predominantly Hindu Tamil minority and the Buddhist Sinhalese majority have suffered greatly as they witnessed their country slowly burn, their economy sink deeper into trouble, and their lives jeopardized. There was no end in sight for the ethnic violence until Prime Minister Gandhi together with President Jaywardene were able to reach a pacific settlement of this seemingly intractable conflict.

The agreement establishes the basis for a federation between the northern and eastern provinces of Sir Lanka, traditionally a Tamil area, and the rest of the country. It also restores the Tamil language as an official one, thus eliminating a longstanding grievance of the Tamil community. Additionally, it provides amnesty to all Tamil separatists and political detainees, allows for the repatriation of all Sri Lankan refugees in India, and creates a new ministry for the reconstruction of facilities damaged or destroyed by ethnic violence.

Mr. Speaker, this agreement constitutes a realistic foundation for resolving the ethnic conflict on a just, and lasting basis. Thus it is a milestone in accomplishing world peace. I stongly believe that we should commend both Prime Minister Gandhi for his statesmanship and his willingness to stand firm in implementing this agreement to the benefit of all the people of Sri Lanka, and President Jayewardene for his ability to bring an end to this conflict despite opposition within his own community.

Recently, we have heard of a new round of violence in Sri Lanka as Indian peacekeeping troops try to implement the terms of the agreement and disarm the militants. This new bloodshed is regrettable, and not advocated by anyone, certainly not the Indian peacekeepers or the Tamil civilians. However, I want to go on record to indicate that the Indian government has shown great restraint in its battle with those intransigent militants. The Indian peacekeeping troops have incurred larger losses because of their reluctance to use heavy shelling or air power against militant strongholds for the fear of incurring civilian casualties.

Mr. Speaker, I urge my colleagues to support House Concurrent Resolution 196 and thereby send a message of support to all the people of Sri Lanka who are tired of war and destruction because this agreement constitutes the last chance for peace in that long-troubled land.

This agreement is the only hope for peace. We in Congress, can help by commending its architects and by extending a pledge to the people of Sri Lanka: Tamils and Sinhalese, that we stand by them in their quest for peace and promise that together with the rest of the International community we will help them rebuild their own shattered lives.

Mr. Speaker, in conclusion, I am pleased to report that Prime Minister Rajiv Gandhi, expressed support for the relocation of the Tamil families back to their homes. Mr. Gandhi responded in the presence of the leadership breakfast with Members of Congress.

Following is the agreement signed this afternoon between His Excellency the President and His Excellency the Prime Minister of India.

(A) INDO-SRI LANKA AGREEMENT TO ESTABLISH PEACE AND NORMALCY IN SRI LANKA

The President of the Democratic Socialist Republic of Sri Lanka, his Excellency Mr. J.R. Jayewardene, and the Prime Minister of the Republic of India, his Excellency Mr. Rajiv Gandhi, having met at Colombo on July 29, 1987.

Attaching utmost importance to nurturing, intensifying and strengthening the traditional friendship of Sri Lanka and India, and acknowledging the imperative need of resolving the ethnic problem of Sri Lanka, and the consequent violence, and for the safety, well-being and prosperity of people belonging to all communities in Sri Lanka.

Have this day entered into the following agreement to fulfill this objective.

In this context,

1.1 Desiring to preserve the unity, sovereignty and territorial intergrity of Sri Lanka:

1.2 Acknowledging that Sri Lanka is a multi-ethnic and a multi-lingual plural society consising, inter alia, of Sinhalese, Tamil's, Musliams (Moors), and Burghers:

1.3 Recognising that each ethnic group has a distinct cultural and linguistic identity which has to be carefully nurtured:

1.4 Also recognising that the northern and the eastern provinces have been areas of historical habitation of Sri Lankan Tamil speaking peoples, who have at all times hitherto lived together in this territory with other ethnic groups:

1.5 Conscious of the necessity of strengthening the forces contributing to the unity, sovereignty and territorial intergrity of Sri Lanka, and preserving its character as a multi-ethnic, multi-lingual and multi-religious plural society in which all citizens can live in equality, safety and harmony, and prosper and fulfil their aspirations:

2. Resolve that:

2.1 Since the Government of Sir Lanka proposes to permit adjoining provinces to join to form one administrative unit and also be a referendum to separate as may be permitted to the northern and eastern provinces as outlined below:

2.2 During the period, which shall be considered an interim period, (i.e. from the date of the elections to the provincial council, as specified in para 2.8 to the date of the referendum as specified in para 2.3, the northern and eastern provinces as now constituted, will form one administrative unit, having one elected provincial council. Such a unit will have one governor, one chief minister and one board of ministers.

2.3 There will be a referendum on or before 31st December, 1988 to enable the people of the eastern province to decide whether:

(A) The eastern province should remain linked with the northern province as one administrative unit, and continue to be governed together with the northern province as specified in para 2.2. or

(B) The eastern province should constitute a separate administrative unit having its own distinct provincial council with a separate governor, chief minister and board of ministers.

The President may, at his discretion, decide to postpone such a referendum.

2.4 All persons who have been displaced due to ethnic violence, or other reasons, will have the right to vote in such a referendum. Necessary conditions to enable them to return to areas from where they were displaced will be created.

2.5 The referendum, when held, will be monitored by a committee headed by the chief justice, a member appointed by the President, nominated by the Government of Sri Lanka, and a member appointed by the President, nominated by the representatives of the Tamil speaking people of the eastern province.

2.6 A simple majority will be sufficient to determine the result of the referendum.

2.7 Meetings and other forms of propaganda, permissible within the laws of the country, will be allowed before the referendum.

2.8 Elections to provincial councils will be held within the next three months, in any event before 31st December 1987. Indian observers will be invited for elections to the provincial council of the north and east.

2.9 The emergency will be lifted in the eastern and northern provinces by August 15, 1987. A cessation of hostilities will come into effect all over the island within 48 hours of the signing of this agreement. All arms presently held by militant groups will be surrendered in accordance with an agreed procedure to authorities to be designated by the Government of Sri Lanka.

Consequent to the cessation of hostilities and the surrender of arms by militant groups, the army and other security personnel will be confined to barracks in camps as on 25 May 1987. The process of surrendering of arms and the confining of security personnel moving back to barracks shall be completed within 72 hours of the cessation of hostilities coming into effect.

2.10 The Government of Sri Lanka will utilise for the purpose of law enforcement and maintenance of security in the northern and eastern provinces same organizations and mechanisms of government as are used in the rest of the country.

2.11 The President of Sri Lanka will grant a general amnesty to political and other prisoners now held in custody under the prevention of terrorism act and other emergency laws, and to combatants, as well as to those persons accused, charged and/or convicted under these laws. The Government of Sri Lanka will make special efforts to rehabilitate militant youth with a view to bringing them back into the mainstream of national life. India will co-operate in the process.

2.12 The Government of Sri Lanka will accept and abide by the above provisions and expect all others to do likewise.

2.13 If the framework for the resolutions is accepted, the Government of Sri Lanka will implement the relevant proposals forthwith.

2.14 The Government of India will underwrite and guarantee the resolutions, and cooperate in the implementation of these proposals.

2.15 These proposals are conditional to an acceptance of the proposals negotiated from 4-5-1986 to 19-12-1986. Residual matters not finalised during the above negotiations shall be resolved between India and Sri

Lanka within a period of six weeks of signing this agreement. These proposals are also conditional to the Government of India co-operating directly with the Government of Sri Lanka in their implementation.

2.16 These proposals are also conditional to the Government of India taking the following actions if any militant groups operating in Sri Lanka do not accept this framework of proposals for a settlement, namely,

(A) India will take all necessary steps to ensure that Indian territory is not used for activities prejudicial to the unity, integrity and security of Sri Lanka.

(B) The Indian Navy/Coast Guard will co-operate with the Sri Lanka Navy in preventing Tamil militant activities from affecting Sri Lanka.

(C) In the event that the Government of Sri Lanka requests the Government of India to afford military assistance to implement these proposals the Government of India wil co-operate by giving to the Government of Sri Lanka such military assistance as and when requested.

(D) The Government of India will expedite repatriation from Sri Lanka of Indian citizens to India who are resident here, concurrently with the repatriation of Sri Lankan refugees from Tamil Nadu.

(E) The Goverments of Sri Lanka and India will co-operate in ensuring the physical security and safety of all communities inhabiting the northern and eastern providences.

2.17 The Government of Sri Lanka shall ensure free, full and fair participation of voters from all communities in the northern and eastern provinces in electoral processes envisaged in this agreement. The Government of India will extend full co-operation to the Government of Sri Lanka in this regard.

2.18 The offiicial language of Sri Lanka shall be Sinhala. Tamil and English will also be official languages.

3. This agreement and the annexure thereto shall come into force upon signature.

In witness whereof we have set our hands and seals hereunto.

Done in Colombo, Sri Lanka, on this the twenty ninth day of July of the year one thousand nine hundred and eighty seven, in duplicate, both texts being equally authentic.

JUNIUS RICHARD JAYEWARDENE,
President of the Democratic Socialist Republic of Sri Lanka.

RAJIV GANDHI,
Prime Minister of the Republic of India.

(B) ANNEXURE TO THE AGREEMENT

1. His Excellency the President of Sri Lanka and the Prime Minister of India agree that the referendum mentioned in paragraph 2 and its sub-paragraphs of the agreement will be observed by a representative of the Election Commission of India to be invited by his Excellency the President of Sri Lanka.

2. Similarly both heads of government agree that the elections to the provincial council mentioned in paragraph 2.8 of the agreement will be observed by a representative of the Government of India to be invited by the President of Sri Lanka.

3. His Excellency the President of Sri Lanka agrees that the home guards would be disbanded and all para-military personnel will be withdrawn from the eastern and northern provinces with a view to creating conditions conducive to fair elections to the council.

The President, in his discretion, shall absorb such para-military forces, which came into being due to ethnic violence, into the regular security forces of Sri Lanka.

4. The President of Sri Lanka and the Prime Minister of India agree that the Tamil militants shall surrender their arms to authorities agreed upon to be designated by the President of Sri Lanka. The surrender shall take place in the presence of one senior representative each of the Sri Lanka Red Cross and the Indian Red Cross.

5. The President of Sri Lanka and the Prime Minister of India agree that a joint Indo-Sri Lanka observer group consisting of qualified representatives of the Government of Sri Lanka and the Government of India would monitor the cessation of hostilities from 31 July 1987.

6. The President of Sri Lanka and the Prime Minister of India also agree that in terms of paragraph 2.14 and paragraph 2.16 (C) of the agreement, an Indian peace keeping contingent may be invited by the President of Sri Lanka to guarantee and enforce the cessation of hostilities, if so required.

(C) EXCHANGE OF LETTERS

President of Sri Lanka

JULY 29, 1987.

His Excellency Mr. J.R. JAYEWARDENE,
President of the Democratic Socialist Republic of Sri Lanka, Colombo.

EXCELLENCY, Please refer to your letter dated the 29th of July 1987, which reads as follows:

Excellency, conscious of the friendship between our two countries stretching over two millenia and more, and recognizing the importance of nurturing this traditional friendship, it is imperative that both Sri Lanka and India reaffirm the decision not to allow our respective territories to be used for activities prejudical to each other's unity, territorial integrity and security.

2. In this spirit, you had, during the course of our discussions, agreed to meet some of India's concerns as follows:

(I) Your Excellency and myself will reach an early understanding about the relevance and employment of foreign military and intelligence personnel with a view to ensuring that such presences will not prejudice Indo-Sri Lanka relations.

(II) Trincomalee or any other ports in Sri Lanka will not be made available for military use by any country in a manner prejudicial to India's interests.

(III) The work of restoring and operating the Trincomalee oil tank farm will be undertaken as a joint venture between India and Sri Lanka.

(IV) Sri Lanka's agreements with foreign broadcasting organizations will be reviewed to ensure that any facilities set up by them in Sri Lanka are used solely as public broadcasting facilities and not for any military or intelligence purposes.

3. In the same spirit, India will:

(I) Deport all Sri Lankan citizens who are found to be engaging in terrorist activities or advocating separatism or secessionism.

(II) Provide training facilities and military supplies for Sri Lankan security forces.

4. India and Sri Lanka have agreed to set up a joint consultative mechanism to continuously review matters of common concern in the light of the objectives stated in para 1 and specifically to monitor the implementation of other matters contained in this letter.

5. Kindly confirm, Excellency, that the above correctly sets out the agreement reached between us.

Please accept, Excellency, the assurances of my highest consideration.

Yours sincerely,

RAJIV GANDHI.

His Excellency Mr. RAJIV GANDHI,
Prime Minister of the Republic of India, New Delhi.

This is to confirm that, the above correctly sets out the understanding reached between us.

Please accept, Excellency, the Assurance of my highest consideration.

J.R. Jayewardene
President.

Mr. SOLARZ. Mr. Speaker, I have no further request for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. MONTGOMERY). The question is on the motion offered by the gentleman from New York [Mr. SOLARZ] that the House suspend the rules and agree to the concurrent resolution, H. Con. Res. 196.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the concurrent resolution was agreed to.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. SOLARZ. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on the concurrent resolution just agreed to.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

SENSE OF THE HOUSE IN SUPPORT OF EFFORTS TO FORGE POLITICAL COMPROMISE IN FIJI

Mr. SOLARZ. Mr. Speaker, I move to suspend the rules and agree to the resolution (H. Res. 248) expressing the sense of the House of Representatives in support of efforts to forge a political compromise in Fiji which preserves its traditions of parliamentary constitutional democracy and guarantees the rights of its citizens, as amended.

The Clerk read as follows:

H. RES. 248

Whereas on May 14, 1987, members of the Royal Fiji Military Forces forcibly ousted the democratically elected Bavadra administration and seized control of the government;

Whereas the Royal Fiji Military Forces disbanded Parliament and held its members under house arrest;

Whereas on September 25, 1987, members of the Royal Fiji Military Forces staged a second coup that prevented the implementation of a comprehensive agreement that would have led to the establishment of an interim government and the drafting of a new constitution;

Whereas the former Governor General of Fiji, Ratu Sir Penaia Ganilau, made major efforts in the wake of these coups to foster dialogue and compromise among the various parties in Fiji in an effort to restore parliamentary constitutional democracy;

Whereas members of the deposed Bavadra government have exercised restraint in their reaction to the military coup; and

Whereas Fiji has enjoyed a successful 16 year history of parliamentary constitutional democracy with respect for civil and human liberties: Now, therefore, be it

Resolved, That the House of Representatives—

(1) supports a resolution of the present political crisis in Fiji which—

(A) preserves parliamentary constitutional democracy, and

(B) recognizes the rights of all the people, regardless of their color, creed, race, or ethnicity; and

(2) opposes any unilateral action to solve the present political crisis in Fiji which is not representative of all of the people of Fiji.

The SPEAKER pro tempore. Is a second demanded?

Mr. LEACH of Iowa. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from New York [Mr. SOLARZ] will be recognized for 20 minutes and the gentleman from Iowa [Mr. LEACH] will be recognized for 20 minutes.

The Chair recognizes the gentleman from New York [Mr. SOLARZ].

Mr. SOLARZ. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, over a century ago in the Dartmouth College case Daniel Webster, who was pleading on behalf of that institution of higher learning, said before the Supreme Court, "It is a small college, but there are those who love it." I would submit, Mr. Speaker, that Fiji may be a small country, but there are those who love it, and among them is my very good friend, the gentleman from California [Mr. DORNAN], the author of this resolution who is clearly deeply devoted to the cause of democracy in Fiji.

This seems to be a day when we are considering the plight of small island countries that are rent by ethnic conflicts and engaged in efforts to protect and preserve the fundamental principles of democracy upon which our country was founded over two centuries ago.

Last spring, elements of the Fijian military, led by Colonel Rabuka, seized power and overthrew the duly elected democratic government of that country. Subsequent to the coup, discussions were held involving the Governor General and representatives of the various political parties of Fiji in an effort to forge a solution to the crisis which would be compatible with the preservation of democracy and the protection of the rights of the different communities on that island country.

Unfortunately, just before an agreement was about to be achieved, Colonel Rabuka staged another coup in late September and once again seized power. It is clear that the retention of power by Colonel Rabuka appears incompatible with the restoration of democracy on Fiji. The resolution before us today, introduced by the gentleman from California [Mr. DORNAN], expresses the support of the House of Representatives for a resolution of the current political crisis on Fiji which would preserve constitutional democracy in that country, and recognize the rights of all of the people of Fiji, regardless of their color, creed, race, or ethnicity.

As my colleagues may know, Mr. Speaker, there are fundamentally two ethnic communities on Fiji. There are the indigenous Fijians, who constitute slightly less than 50 percent of the population. There is also an Indian community which traces its origins on Fiji back for several generations now, well over a century, which also constitutes somewhat less than 50 percent of the population. Surely it ought to be possible to devise a solution to the current crisis which preserves the principles of democracy while at the same time responding to the fears and concerns of the Fijian community in particular but those of the Indian community as well.

It would be a sad day for democracy around the world if political pluralism on Fiji were fatally compromised and forever lost. And to the extent that the views of this institution, which perhaps more than any other parliament in the world embodies the hopes and aspirations of people who yearn to be free, can through the adoption of this resolution contribute in some small way to the restoration of democracy on Fiji, we will have earned our pay.

So I pay tribute to my friend from California, Mr. DORNAN, for introducing this resolution which is supported by the administration, and I urge its adoption by the House.

Mr. LEACH of Iowa. Mr. Speaker, I yield 5 minutes to the gentleman from California [Mr. DORNAN], whose resolution we are considering, and which certainly reflects mine and this body's appreciation for his leadership and his concern on this issue.

Mr. DORNAN of California. Mr. Speaker, I think that my first order of business today while considering House Resolution 248, has to be to thank the chairman of the Subcommittee of Asia and Pacific Affairs for expediting consideration of this resolution. Events have been changing daily in Fiji which made expedited consideration important.

I would also like to mention that the bipartisan manner in which House Resolution 248 was handled at the subcommittee level and the full Foreign Affairs Committee level has been exemplary. I only wish that all the legislation before this great body could be so bipartisan in nature. Finally, I would like to bring to the attention of my colleagues the amendment offered by the gentleman from New York [Mr. SOLARZ] which in effect updates my resolution to reflect more accurately current events; namely, the resignation of the Governor General of Fiji, effectively leaving prospects for the restoration of parliamentary constitutional democracy very remote.

For those of who may not be following events in the Pacific Archipelago of Fiji, a brief update of events might be in order. At the time I drafted House Resolution 248 there was reason to hope that the efforts of the Governor General, Ratu Sir Penaia Ganilau, would prevail. The anticipated result was to have been comprehensive political settlement between the Royal Fiji Military Forces and the deposed Bavadra government. Unfortunately, Col. Sitiveni Rabuka, head of the Fijian Army, derailed hard-won progress by heading a second coup on September 25. His publicly stated intention is to insure that the Fijian Parliament stays under the perpetual control of indigenous Fijians—"Fiji for Fijians" as he would say. Unfortunately this unilateral action disenfranchises the island's ethnic Indian community which slightly outnumbers the native Fijian population.

In an effort to underscore United States dissatisfaction with the loss of parliamentary constitutional democracy in Fiji, the administration suspended economic and miltiary aid. United States policy in Fiji has been consistently supportive of continued dialog and efforts to foster a national reconciliation satisfactory to both ethnic communities. House Resolution 248 merely articulates clearly our position.

It is imperative, Mr. Speaker, that the United States make it clear to the Royal Fijian Military Forces that we do not support any solution to the current political crisis which exacerbates racial tensions and legislates racial inequality. I can understand nationalist or ethnic pride on the part of the Fijian community. What I cannot support are unilateral actions by one ethnic group to disenfranchise another politically and economically.

There are several models throughout the world, Mr. Speaker, such as Trinidad, which my good friend from California, [Mr. DYMALLY], suggested where different ethnic groups have resolved political representation questions in a peaceful and orderly manner. What it happening in Fiji today though, is quite the reverse. The Royal Fijian Military Force, led by Colonel Rambuka is attempting to constitutionally make the Indian population in Fiji second-class citizens.

Prior to Rabuka's September 25 coup, the people of Fiji, both Indian and native Fijian alike, had displayed remarkable patience and trust in the Governor General's efforts to peacefully resolve a potentially explosive situation. The Governor General's mediation effort had succeeded in forming an interim government including 10 members of the Coalition Party and 10 members of the Alliance Party. Colonel Rabuka had previously indicated support for the Governor General's compromises but his fear that Indians would be represented in equal number to native Fijians apparently motivated his second coup. It is ironic that the coup occurred just hours prior to the Governor General's radio announcement declaring the successful formation of a transition government. Rabuka has snatched anarchy from the jaws of victory.

Tragically we are now faced with a situation in which a national reconciliation in Fiji appears to the tragic victim selfish vested interests to the detriment of national interests. I do not believe Mr. Speaker, that an authorization form of government in Fiji is in the interest of this country nor does it express the will of the Fijian population.

My resolution, Mr. Speaker, recognizes that a settlement of the current political crisis is well within the capabilities of the people of Fiji. My bill, House Resolution 248 is an attempt to express a policy with three unambigious objectives:

First, to preserve parliamentary constitutional democracy; second, to recognize the rights of all the people, regardless of their color, creed, race, or ethnicity; and third, to oppose any unilateral action to solve the present crisis in Fiji which is not representative of all the peoples of Fiji.

Mr. Speaker, I am confident that my resolution will have a positive effect on the Fijian political crisis. To stand silently by and say nothing is to endorse the demise of representative democracy. The administration has a long series of successes in facilitating transitions from authoritarian forms of government to representative democracies in Latin America and Asia. I think that my colleagues will agree that Fiji should be no exception.

Mr. Speaker, my good friend and colleague, the gentleman from California [Mr. DYMALLY], born on the beautiful Caribbean island in another lovely paradise, has given us all the benefit of the island nation of his birth as an example where they worked out in a very rational and intelligent way, to represent different ethnicities of the population. I hope that Trinidad and Tobago as an island grouping and nation will be an example to the Archipelago of Fiji. I see my good colleague is on the floor, and anyone who wants to ask him how they worked it out in Trinidad can ask him. I am hoping he will go to Fiji and give them the benefit of the counsel of the land of his birth.

Mr. Speaker, I thank my chairman for the bipartisan way in which this has been handled. I only wish we could approach the budget with the same spirit of camaraderie that we have displayed in an effort to help Fiji to see the light, and reinstitute constitutional government and democracy.

Mr. SOLARZ. Mr. Speaker, I yield 5 precious minutes of my limited time to my very good friend, the distinguished gentleman from California [Mr. DYMALLY].

Mr. DYMALLY. Mr. Speaker, in response to the comments by my very good friend, the gentleman from California [Mr. DORNAN] about the island of Trinidad and Tobago, I was once asked by Prime Minister Manley how are things in Trinidad and I said the Afros own it and the Indians own it.

After 30 years of this dual relationship, both the Afros and Indians decided they wanted to both own it and run it, and so they developed a coalition, and they defeated the government in power which had this dual system of governance, and the coalition now runs Trinidad and Tobago by a 33-to-3 majority.

So these coalitions are effective, they have worked in other places and could very well have worked in Fiji.

Mr. Speaker, as the representative of approximately 1,200 Indo-Fijian families who are concerned about their relatives and friends in Fiji, I wish to raise my serious concerns regarding the human rights violations occurring in this region. Since the first coup in Fiji on May 14, 1987, I have had an opportunity to meet and discuss human rights issues with the democratically elected, now deposed, prime minister of Fiji, Dr. Bavadra and various human rights committees concerned for democracy in Fiji.

Mr. Speaker, I have documentary evidence of approximately 85 specific instances of human rights violations by the military. During the early stages of the coup, the military arrested the police commissioner and his deputy and searched their homes without any reason. Numerous homes of farmers were raided by the military and personal belongings looted. Several University of South Pacific lecturers have been arrested for practicing free-speech and association. Additionally, Indo-Fijians have been arrested for exercising their freedom of religion. One Australian tourist has been assaulted with a knife and a Canadian professor was arrested without reason.

During the second coup on September 25, 1987, two Supreme Court Justices were arrested for denouncing human rights violations by the military. Even the Governor General was placed under house arrest and subsequently forced to resign his executive authority in Fiji. Mr. Speaker, the capricious demand by Rabuka to arbitrarily amend the constitution so as to have political dominance over the Indo-Fijians is transgressing along a similar policy we find in South Africa. We in the United States of America cannot support any government that legislates racial inequalities and political injustice. We should condemn any attempt in Colonel Rabuka's part to make Indo-Fijians second class citizens in Fiji.

Mr. Speaker, the message from the U.S. Government to Colonel Rabuka should be simple and clear. If Fiji is to have any form of continued relationship with the United States, parliamentary constitutional democracy should be restored and the military should return immediately to the barracks. It is also imperative that the U.S. Government make it clear if democracy is not restored, there is a strong possibility that economic sanctions will be directed against Fiji. Congress should immediately advise the Secretary of State to impose conditional economic sanctions on Fiji, until Rabuka returns to the bargaining table with Bavadra. The United States Government should condemn any country that supplies arms and ammunition to Rabuka in Fiji. We should follow a prudent approach and work closely with the State Department to ensure that our policy is firm toward Fiji until democracy is restored and equality is granted for all its citizens.

Mr. Speaker, given that the Commonwealth has already suspended Fiji's membership, we should join Canada, Australia, New Zealand, India, and other nations in returning democracy in Fiji.

Mr. Speaker, I am deeply concerned about the grave nature of the political crisis in Fiji and I urge my colleagues to support House Resolution 248 as a first step in assisting the Fijian peoples to return constitutional democracy in Fiji.

In conclusion, Mr. Speaker, yesterday I had the privilege of meeting with the Secretary of the British Commonwealth, Mr. Ron Paul, who asked that I place in the RECORD the Commonwealth statement on Fiji, and I include that at this point with my remarks.

The statement referred to follows:

STATEMENT ON FIJI

Commonwealth leaders acknowledged that, on the basis of established Commonwealth conventions, Fiji's membership of the Commonwealth lapsed with the emergence of the Republic on 15 October. They viewed with sadness the developments in Fiji and hoped for a resolution of the problem by the people of Fiji on a basis consistent with the principles that have guided the Commonwealth. They agreed that the Commonwealth would, if requested, be ready to offer its good offices towards such a resolution and, on such basis, if the circumstances warrant, to consider the question of Fiji's membership of the Commonwealth if asked to do so.

VANCOUVER, *October 16, 1987.*

□ 1320

Mr. LEACH of Iowa. Mr. Speaker, I yield 5 minutes to the distinguished gentleman from California [Mr. LAGOMARSINO].

Mr. LAGOMARSINO. Mr. Speaker, I commend the primary sponsor of this resolution, the gentleman from California [Mr. DORNAN] for bringing this issue before us, and also of course the chairman and ranking member of this subcommittee for having this resolution here today so that we can express our opinion on it.

Mr. Speaker, I rise in support of this resolution with mixed feelings. We have enjoyed a close relationship with Fiji for many years and it is unfortunate that we have before us a resolution due to events which are inconsistent with the ideals that we have shared in the past. In 1838, the U.S. Congress authorized a scientific and exploratory expedition to the South Pacific, to gather information regarding the people, and the flora and fauna of the islands.

The extremely difficult and lengthy voyage was led by Naval Commander Wilkes, whose success was not measured strictly in terms of the volume of scientific data obtained, but for the new relationships established with the people of the South Pacific. The U.S. fleet was warmly received in many of the islands. The elaborate ceremonial reception of Commander Wilkes by the Fijians was the centerpiece of the recent Smithsonian exhibition, "the Magnificent Voyagers." In Samoa, Wilkes obtained a concession for the regular use of Pagopago Harbor, which began the relationship which later developed into the 1878 Treaty of Friendship and Commerce with Samoa and ultimately into the territory of American Samoa.

It is important to remember that Fiji has been an active supporter of the United States and has cooperated in many ways, politically, economically and militarily. During World War II, a large number of our troops spent time in Fiji, enjoying the support of the people. Fiji has participated in the United Nations peacekeeping efforts in Lebanon and the Sinai, where a number of Fijian soldier have been injured or killed. While other countries in the South Pacific have closed their ports to our naval vessels, Fiji has welcomed our ships. Our presence in the South Pacific has benefited from our relationship with Fiji.

Fiji at one time was a country that the United States held up as an example of democracy in a newly developing country. It is sadly ironic that the movement and people involved in the coup in Fiji have been outspoken supporters of the United States, an advocate of democracy and freedom.

While the actions taken to end the constitutional government in Fiji cannot be condoned, the United States must show forebearance, in order not to injure the people of Fiji, who have been such steadfast friends. Fiji's problems need to be worked out internally and the United States should play an attentive role in encouraging the formation of a new government that ensures a peaceful environment for all the people of Fiji, regardless of their race or religion. The indigenous Fijians have a remarkable complex traditional culture which promotes strong family ties, caring for others, and respect for the elderly and authority. These are commendable qualities that should be encouraged while recognizing that respect for the rights of the individual must always be protected.

I commend the gentleman from California for his effort to introduce this resolution regarding Fiji. It is the collective interest and work of Members of Congress concerning issues affecting the Pacific Islands that will enable the United States to remain an effective and influential friend in the Pacific Region.

Mr. LEACH of Iowa. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I also rise in support of this resolution which seeks to reflect congressional support for restoration of democracy in Fiji in the wake of two recent military coups.

For most Americans, Fiji seemed an unlikely place for military coups. Since this island republic gained its independence from the British 17 years ago, it has enjoyed a parliamentary system of democracy. Fiji and the United States have enjoyed particularly warm ties, highlighted by the visit to Washington of former Prime Minister Ratu Mara in 1984.

However, on May 14 of this year, Colonel Rabuka of the Royal Fiji Military Forces toppled the newly elected government of Prime Minister Bavadra, citing concerns over the emergence in those elections of political dominance by the ethnic Indian population which may now slightly outnumber the native Fijians.

In the wake of that coup, the Governor General of Fiji, Ratu Sir Penaia Ganilau, mounted a major effort to bring all political factions in Fiji together to set up an interim government which could then work on constitutional changes to address the concerns of the native Fijians.

However, before that process could fully play itself out, Colonel Rabuka intervened a second time and brought reconciliation efforts to a halt. He has since declared Fiji a republic and plans to make changes in the political system to ensure Fijian dominance in the political process. The Governor General has subsequently resigned.

In the wake of the coups, the United States has expressed its distress over the use of military force to topple democratically elected governments and its support for a broadly based solution to Fiji's political crisis which will protect the rights of all of Fiji's people. Under the law, United States assistance to Fiji has been suspended.

Mr. Speaker, the United States can ill-afford new instability and political unrest in this vital region of the South Pacific. More profoundly, it should be understood that we do not support democracy for sentimental reasons. Governments of whatever stripe cannot long survive if they do not enjoy popular support. When governments run roughshod over the human rights of their citizens and attempt to rule by military decree, they endanger political stability throughout the world.

The resolution before us today appropriately pays tribute to the efforts of the former Governor General and his efforts to craft a compromise acceptable to all political interests in Fiji. Above all, it makes clear to all Fijians that the United States stands behind the principle of democracy. Let there be no mistake: Colonel Rabuka's use of military force to topple a democratically elected government in Fiji is not lightly countenanced by the American people.

I urge the adoption of House Resolution 248.

Mr. BROOMFIELD. Mr. Speaker, events have taken a very difficult turn in Fiji.

In this important South Pacific nation, Army officers have taken control of the Government in an attempt to secure the rights of the native Fijian ethnic group. This occurred after Indian-dominated parties for the first time took the majority in Parliament.

In Fiji, ethnic Indians who immigrated to Fiji for agricultural and commercial purposes during the period of the British protectorate now constitute nearly half the total population. They outnumber the Fijian ethnic group, which has dominated the Fiji Parliament since independence.

The 1970 Constitutional Act of Fiji attempted to balance the political and legal claims of these two groups. Continued Fijian dominance of land tenure was provided for, as was a complex voting system that allowed for both communal and at-large representation.

In the aftermath of the parliamentary victory by Indian-dominated parties, questions were raised about whether the constitutional protections for native Fijians would prove adequate. But in fact the real issue appears to have been the psychological jolt suffered by the Fijians when for the first time political control passed to the Indian plurality.

Despite the provisions of the 1970 Constitution which created a democratic mechanism under which power could pass from one party to another, there was an expectation among native Fijians that parties dominated by their ethnic group would remain in power.

Mr. Speaker, I support this resolution, which would take note of the recent developments in Fiji and state our support for recognition of the rights of all the people of Fiji through a parliamentary constitutional democracy. The resolution would also state our opposition to unilateral actions which are not representative of all the peoples of Fiji.

I applaud Mr. DORNAN for his introduction and sponsorship of this resolution. I am also pleased that, in subcommittee, the resolution was amended along the lines suggested by Mr. LAGOMARSINO. His amendment removed a reference in the resolving clause to the 1970 Constitutional Act of Fiji. Such reference was inappropriate in view of the fact that the current problems in Fiji arose under the 1970 Constitution and that that act will doubtless be changed in some respects as a result of the current political crisis.

It is well that we adopt this resolution to declare the support of the House of Representatives for democratic principles in Fiji. I believe that we should also, however, forebear from extreme reactions to the situation there.

The United States has little historical link to Fiji, which was a British Commonwealth. Our primary interest there is democratic and humanitarian.

The situation in Fiji has some similarities to situations in other Pacific Island countries, particularly in Melanesia. In the final analysis, the situation in Fiji will only be resolved by the actions of the people there.

It is my hope that a solution can be found to the current crisis in Fiji that is supported by all its peoples. Such a solution should be consistent with democratic principles while at the same time accord due protection and recognition to the indigenous Fijians.

Mr. LEACH of Iowa. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. SOLARZ. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. MONTGOMERY). The question is on the motion offered by the gentleman from New York [Mr. SOLARZ] that the House suspend the rules and agree to the resolution, H. Res. 248, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the resolution, as amended, was agreed to.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. SOLARZ. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the resolution just adopted.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

ENCOURAGING PROVISION OF QUALITY DAILY PHYSICAL EDUCATION PROGRAMS FOR ALL CHILDREN

Mr. MARTINEZ. Mr. Speaker, I move to suspend the rules and agree to the concurrent resolution (H. Con. Res. 97) to encourage State and local governments and local educational agencies to provide high quality daily physical education programs for all children in kindergarten through grade 12.

The Clerk read as follows:

H. CON. RES. 97

Whereas physical education is essential to the development of growing children;

Whereas physical education helps improve the overall health of children by improving their cardiovascular endurance, muscular strength and power, and flexibility, and by enhancing weight regulation, bone development, posture, skillful moving, active lifestyle habits, and constructive use of leisure time;

Whereas physical education increases children's mental alertness, academic performance, readiness to learn, and enthusiasm for learning;

Whereas physical education helps improve the self-esteem, interpersonal relationships, responsible behavior, and independence of children;

Whereas children who participate in high quality daily physical education programs tend to be more healthy and physically fit;

Whereas physically fit adults have significantly reduced risk factors for heart attacks and strokes;

Whereas the Surgeon General, in Objectives for the Nation, recommends increasing the number of school mandated physical education programs that focus on health-related physical fitness;

Whereas the Secretary of Education in First Lessons—A Report on Elementary Education in America, recognized that elementary schools have a special mandate to provide elementary school children with the knowledge, habits, and attitudes that will equip the children for a fit and healthy life; and

Whereas a high quality daily physical education program for all children in kindergarten through grade 12 is an essential part of a comprehensive education: Now, therefore, be it

Resolved by the House of Representatives (the Senate concurring), That the Congress encourages State and local governments and local educational agencies to provide high quality daily physical education programs for all children in kindergarten through grade 12.

The SPEAKER pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from California [Mr. MARTINEZ] will be recognized for 20 minutes and the gentleman from Vermont [Mr. JEFFORDS] will be recognized for 20 minutes.

The Chair recognizes the gentleman from California [Mr. MARTINEZ].

Mr. MARTINEZ. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, we all know our schools build habits that last a lifetime. In too many cases our schools are contributing to America's youth fitness crisis. If we take a serious look at the physical fitness of today's young people there is good reason to worry.

Let me give a few examples:

In the 50-yard dash, today's 10-year-old girls are significantly slower than those tested 10 years ago.

Approximately 40 percent of boys ages 6 to 12 cannot do more than one pullup. One out of four cannot do any. Of the girls tested, 70 percent could do no more than one pullup and 55 percent could not do any.

40 percent of children ages 5 to 8 are exhibiting obesity, elevated blood pressure, high cholesterol levels, and inactivity. These are factors closely tied to coronary risk.

Faced with serious budgetary strains, physical education has often become the expendable part of our school systems.

Only a third of all students participate in physical education daily—many students get as little as 1 hour of such activity a week. Only 17 States require any physical education. And only one State—Illinois—requires all students in grades K–12 to take physical education every day.

America cannot afford the Alfred E. Newman "what me worry" approach to physical education.

America's children need the opportunity to learn how to keep themselves healthy and maintain a basic level of physical fitness.

Physical fitness is important to individuals and to the country as a whole. Studies show that physical education has a positive impact on a child's academic performance and self-esteem.

Physical education programs belong in elementary schools not only because they promote health and well-being, but because they contribute to academic achievement. Researchers in France, Australia, Israel, and the United States have all found that youngsters who partake in a structured program of vigorous exercise possess greater mental acuity and a stronger interest in learning than those who do not. This news is not new: More than 2 millenniums ago the Greeks emphasized this balance of mind and body as an essential component of education.

The habits we learn as children often stay with us a lifetime.

And we must keep this in perspective. The generation of Americans now in school are likely to be the longest living generation this world has ever known. That means that the habits and hearts and lungs and legs and backbones developed today will have consequences for half a century and more.

The collapse of physical education programs in many of our schools undercuts our children's opportunity to obtain a balanced education. It is also a long-term crisis in public health. Like the man in the ad for oil changes, says "You can pay me now, or you can pay me later." If we've learned anything from the current budget crisis, we have learned the value of relatively inexpensive preventive programs rather than costly after-the-fact remedial projects. Or to paraphrase Ben

Franklin, "A stretch in time saves on the bottom line."

House Concurrent Resolution 97 is an exercise to encourage greater fitness. This resolution encourages State and local governments and local educational agencies to provide quality daily physical education programs for all children from kindergarten through grade 12.

Many Members have expressed enthusiastic support for this resolution. The gentlewoman from Maryland has done a superb job in developing this legislation and in bringing the importance of this issue to the attention of Congress.

This important resolution has been endorsed by a wide range of groups including the American Medical Association and the American Heart Association.

I encourage all Members to join me in supporting House Concurrent Resolution 97.

Mr. JEFFORDS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I speak in support of the proposal before us today, House Concurrent Resolution 97. Quality education for our youth is comprised not only of mental activity, but physical activity as well.

With competitiveness as the operative word these days, we are looking to our schools to provide the education necessary to retain our place as a world leader. We are experiencing a resurgence and demand for quality education programs for our students. Many local schools and States have instituted education reform programs. Our efforts, to date, have been to focus on the mental activities of our youth.

This concentration is well founded and reasonable, but if we ignore the physical attainment of our youth, we are performing a disservice. Our youth are not physically competitive. Few of our children are physically fit. The studies have shown that in some ways youngsters of today are even less fit than those of 10 years ago. The proportion of obese children has increased notwithstanding all-out talk about diet.

Not only do these statistics contribute in real costs to the diminished learning capacity of many of our students, but it is a price we can ill-afford to pay in the future, especially given the rising costs of health care. Good health cannot be bought. An inactive youngster, is generally an inactive adult. Physical exercise, health education and fitness is an inexpensive, cost-effective way to promote good health in our children. As we demand greater time be given in our schools to the "basics"—mathematics, English, science, reading—we should give consideration to encouraging schools to get back to the fitness basics as well.

I admit that I am somewhat concerned about the language of this resolution which calls for daily physical education programs for all children in grades kindergarten through 12. I would hope that the proponents of this resolution will acknowledge that daily activity may not be possible in all schools, but that encouraging regular physical activity, including informal physical activity, should be a corresponding goal of this resolution.

We need to look at the whole child in our education process. To assign the physical development of our children less priority, may have costly, long-term consequences for the overall competitiveness and surely, for the health of this country. We are sending the schools of this country a signal with this resolution. It is a message that we should all heed.

Mr. Speaker, I have no further requests for time and I yield back the balance of my time.

Mr. MARTINEZ. Mr. Speaker, I yield such time as she may consume to the gentlewoman from Maryland [Mrs. Byron].

Mrs. BYRON. Mr. Speaker, I rise in support of House Concurrent Resolution 97.

Mr. Speaker, last April, I introduced House Concurrent Resolution 97 to encourage State and local governments and local educational agencies to provide high-quality daily physical education programs for all children in kindergarten through grade 12.

As I am sure you know, physical education helps improve a child's overall health by increasing cardiovascular endurance, muscular strength and power, mental alertness, bone development, and posture. Studies have shown that physical education has a positive impact on a child's academic performance and self-esteem.

I have also found that with a child involved in physical education there is less likelihood of a disciplinary problem.

Mr. Speaker, in light of current budgetary strains, however, physical education has become an "expendible" part of our school systems. According to the American Alliance for Health, Physical Education, Recreation and Dance, only four States require all students to take physical education for a specific amount of time in grades kindergarten through 12.

□ 1335

Only a third of all students participate in physical education classes daily. Many get as little as 1 hour per week.

Unfortunately, these cutbacks are coming at at time when the overall physical fitness of our children is decreasing. Today the temptations of television, junk food, and computer games present formidable obstacles to physical education. Over the past decade, the prevalance of obesity, high-blood pressure, and elevated blood cholesterol levels has grown among young Americans. If not taught to take care of themselves, these problems in youngsters can develop into very serious problems in their adult lives.

I would like to talk a little bit about a program that we instigated in Maryland. It was called "Project Superfit." It was a statewide effort to measure physical fitness from the health perspective of all the students in our county schools. We discovered that the average student reaches their peak of conditioning between the ages of 10 and 12. Too many of our students are adopting a sedimentary life. They are becoming, as we term them, "couch potatoes," and it is a very disturbing trend. They should be reaching the peak of their physical fitness when they are young adults, not at the 11- to 12-year-old stage.

I would like to point out that this resolution has 117 cosponsors in the House, and it is expected to come up on the floor of the other body soon where it has 70 cosponsors. It is also supported by the President's Council on Physical Fitness, the American Heart Association, and the American Medical Association.

For the sake of our Nation's health, I think we need to insure that our children today understand the importance of health and fitness, and I strongly urge my colleagues to support this resolution and show their commitment to the development of our next generation as strong and healthy Americans.

Mr. MARTINEZ. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, in closing, just let me say that I commend George Allen, the former Washington Redskins coach, who has been instrumental in his efforts to get this resolution adopted, and again I wish to commend the gentlewoman from Maryland [Mrs. Byron].

Mr. GOODLING. Mr. Speaker, I rise in support of House Concurrent Resolution 97 which affirms our commitment to encourage State and local governments and local educational agencies to provide high quality physical education programs for all children from kindergarten through the 12th grade. A strong body can be as important to a child's educational development as a strong mind. For years we have recognized the importance of a good nutritional program for students; their physical well being directly impacts on their ability to learn. A good education program will balance the rigors of academics with the fun of physical exercise.

When I was a high school coach, I realized that physical education games and exercises not only developed the child's physical well being but, taught students leadership, and taught them how to win and how to lose, and taught them how to be good team players. All of these are essential attributes for growing into adulthood.

Again, I rise in support of this resolution and urge my colleagues to join me in support of its passage.

Mr. MARTINEZ. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. Montgomery). The question is on the motion offered by the gentleman from California [Mr. Martinez] that the House suspend the rules and agree to the concurrent resolution, H. Con. Res. 97.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the concurrent resolution was agreed to.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. MARTINEZ. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on H. Con. Res. 97, the concurrent resolution just agreed to.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

POULTRY PRODUCERS FINANCIAL PROTECTION ACT OF 1987

Mr. STENHOLM. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 3457) to amend the Packers and Stockyards Act, 1921, to provide financial protection to poultry growers and sellers, and to clarify Federal jurisdiction under such act, as amended.

The Clerk read as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE

This Act may be cited as the "Poultry Producers Financial Protection Act of 1987".

SEC. 2. DEFINITIONS.

Section 2(a) of the Packers and Stockyards Act, 1921 (7 U.S.C. 182), is amended—

(1) in paragraph (5) by striking "and" at the end;

(2) by redesignating paragraph (6) as paragraph (11); and

(3) by inserting after paragraph (5) the following:

"(6) the term 'poultry' means chickens, turkeys, ducks, geese, and other domestic fowl;

"(7) the term 'poultry product' means any product or by-product of the business of slaughtering poultry and processing poultry after slaughter;

"(8) The term 'poultry grower' means any person engaged in the business of raising and caring for live poultry for slaughter by another, whether the poultry is owned by such person or by another, but not an employee of the owner of such poultry;

"(9) The term 'poultry growing arrangements' means any growout contract, marketing agreement, or other arrangement under which a poultry grower raises and cares for live poultry for delivery, in accord with another's instructions, for slaughter;

"(10) the term 'live poultry dealer' means any person engaged in the business of obtaining live poultry by purchase or under a poultry growing arrangement for the purpose of either slaughtering it or selling it for slaughter by another, if poultry is obtained by such person in commerce, or if poultry obtained by such person is sold or shipped in commerce, or if poultry products from poultry obtained by such person are sold or shipped in commerce; and".

SEC. 3. UNLAWFUL PRACTICES.

Section 202 of the Packers and Stockyards Act, 1921 (7 U.S.C. 192), is amended—

(1) by striking "It shall be unlawful with respect to livestock, meats, meat food products, livestock products in unmanufactured form, poultry or poultry products for any packer or any live poultry dealer or handler to: " and inserting "It shall be unlawful for any packer with respect to livestock, meats, meat food products, or livestock products in unmanufactured form, or for any live poultry dealer with respect to live poultry, to: "; and

(2) in subdivision (c) by striking "Sell or otherwise transfer to or for any other packer or any live poultry dealer or handler, or buy or otherwise receive from or for any other packer or any live poultry dealer or handler, any article for the purpose or with the effect of apportioning the supply between any such packers," and inserting "Sell or otherwise transfer to or for any other packer or any live poultry dealer, or buy or other wise receive from or for any other packer or any live poultry dealer, any article for the purpose or with the effect of apportioning the supply between any such persons,".

SEC. 4. STATUTORY TRUST ESTABLISHED.

The Packers and Stockyards Act, 1921 (7 U.S.C. 181 et seq.), is amended by inserting after section 206 the following:

"Sec. 207. (a) It is hereby found that a burden on and obstruction to commerce in poultry is caused by financing arrangements under which live poultry dealers encumber, give lenders security interest in, or place liens on, poultry obtained by such persons by purchase in case sales or by poultry growing arrangements, or on inventories of or receivables or proceeds from such poultry or poultry products therefrom, when payment is not made for the poultry and that such financing arrangements are contrary to the public interest. This section is intended to remedy such burden on and obstruction to commerce in poultry and protect the public interest.

"(b) All poultry obtained by a live poultry dealer, by purchase in cash sales or by poultry growing arrangement, and all inventories of, or receivables or proceeds from such poultry or poultry products derived therefrom, shall be held by such live poultry dealer in trust for the benefit of all unpaid cash sellers or poultry growers of such poultry, until full payment has been received by such unpaid cash sellers or poultry growers, unless such live poultry dealer does not have average annual sales of live poultry, or average annual value of live poultry obtained by purchase or by poultry growing arrangement, in excess of $100,000.

"(c) Payment shall not be considered to have been made if the cash seller or poultry grower receives a payment instrument which is dishonored.

"(d) the unpaid cash seller or poultry grower shall lose the benefit of such trust if, in the event that a payment instrument has not been received, within 30 days of the final date for making payment under section 410, or within 15 business days after the seller or poultry grower has received notice that the payment instrument promptly presented for payment has been dishonored, the seller or poultry grower has not preserved his trust under this section. The trust shall be preserved by giving written notice to the live poultry dealer and by filing such notice with the Secretary.

"(e) For the purpose of this section, a cash sale means a sale in which the seller does not expressly extend credit to the buyer.".

SEC. 5. LIABILITY AND ENFORCEMENT.

Section 308(a) of the Packers and Stockyards Act, 1921 (7 U.S.C. 209(a)), is amended by inserting "the purchase or sale of poultry, or relating to any poultry growing arrangement," after "livestock,".

SEC. 6. RECORDS AND RESPONSIBILITY.

Sections 401 and 403 of the Packers and Stockyards Act, 1921 (7 U.S.C. 221, 223), are each amended by striking, "or any live poultry dealer or handler," each place it appears and inserting ", any live poultry dealer,".

SEC. 7. POWERS OF FEDERAL TRADE COMMISSION AND SECRETARY OF AGRICULTURE.

Section 406 of the Packers and Stockyards Act, 1921 (7 U.S.C. 227), is amended—

(1) in subsection (b)—

(A) in the first sentence of paragraph (2)—

(i) by striking "or poultry products"; and

(ii) by striking "or" before "livestock products in unmanufactured form."; and

(B) by amending paragraph (3) to read as follows:

"(3) Over all transactions in commerce in margarine, oleomargarine, or poultry products and over retail sales of meat, meat food products and livestock products in unmanufactured form.";

(2) by amending subsection (d) to read as follows:

"(d) The Secretary of Agriculture shall exercise power or jurisdiction over oleomargarine or retail sales of meat, meat food products, or livestock products in unmanufactured form only when he determines, in any investigation of, or any proceeding for the prevention of, an alleged violation of this Act, that such action is necessary to avoid impairment of his power or jurisdiction over acts or transactions involving livestock, meat, meat food products, livestock products in unmanufactured form, or poultry other than retail sales thereof. In order to avoid unnecessary duplication of effort by the Government and burdens upon the industry, the Secretary shall notify the Federal Trade Commission of such determination, the reasons therefor, and the acts or transactions involved, and shall not exercise power or jurisdiction with respect to acts or transactions involving oleomargarine or retail sales of meat, meat food products, or livestock products in unmanufactured form if the Commission within 10 days from the date of receipt of such notice notifies the Secretary that there is pending in the Commission an investigation of, or proceeding for the prevention of, an alleged violation of any Act administered by the Commission involving the same subject matter.";

(3) by redesignating subsection (e) as subsection (f);

(4) by inserting after subsection (d) the following:

"(e) The Secretary of Agriculture shall exercise jurisdiction over poultry products only in a proceeding brought under section

207 or section 410 when such action is necessary to avoid impairment of his jurisdiction."; and

(5) in subsection (f), as so redesignated, by striking "and (d)" and inserting ", (d), and (e)".

SEC. 8. AUTHORITY OF SECRETARY TO REQUEST INJUNCTIVE RELIEF.

Section 408 of the Packers and Stockyards Act, 1921 (7 U.S.C. 228a), is amended by inserting after "unmanufactured form," the following: "or live poultry, or has failed to pay any poultry grower what is due on account of poultry obtained under a poultry growing arrangement,".

SEC. 9. PROMPT PAYMENT FOR PURCHASE OF POULTRY.

The Packers and Stockyards Act, 1921 (7 U.S.C. 181 et seq.), is amended—

(1) by redesignating sections 410 and 411 as sections 414 and 415, respectively; and

(2) by inserting after section 409 of the following:

"SEC. 410. (a) Each live poultry dealer obtaining live poultry by purchase in a cash sale shall, before the close of the next business day following the purchase of poultry, and each live poultry dealer obtaining live poultry under a poultry growing arrangement shall, before the close of the fifteenth day following the week in which the poultry is slaughtered, deliver, to the cash seller or poultry grower from whom such live poultry dealer obtains the poultry, the full amount due to such cash seller or poultry grower on account of such poultry.

"(b) Any delay or attempt to delay, by a live poultry dealer which is a party to any such transaction, the collection of funds as herein provided, or otherwise for the purpose of or resulting in extending the normal period of payment for poultry obtained by poultry growing arrangement or purchased in a cash sale, shall be considered an 'unfair practice' in violation of this Act. Nothing in this section shall be deemed to limit the meaning of the term 'unfair practice' as used in this Act.

"(c) For the purpose of this section, a cash sale means a sale in which the seller does not expressly extend credit to the buyer.

"SEC. 411. (a) Whenever the Secretary has reason to believe that any live poultry dealer has violated or is violating any provision of section 207 or section 410 of this Act, he shall cause a complaint in writing to be served upon the live poultry dealer, stating his charges in that respect, and requiring the live poultry dealer to attend and testify at a hearing at a time and place designated therein, at least 30 days after the service of such complaint; and at such time and place there shall be afforded the live poultry dealer a reasonable opportunity to be informed as to the evidence introduced against him (including the right of cross-examination), and to be heard in person or by counsel and through witnesses, under such regulations as the Secretary may prescribe. Any person for good cause shown may, on application, be allowed by the Secretary to intervene in such proceeding, and appear in person or by counsel. At any time prior to the close of the hearing, the Secretary may amend the complaint; but in case of any amendment adding new charges, the hearing shall, on the request of the live poultry dealer, be adjourned for a period not exceeding 15 days.

"(b) If, after such hearing, the Secretary finds that the live poultry dealer has violated, or is violating, any provisions of section 207 or section 410 of this Act covered by the charges, he shall make a report in writing in which he shall state his findings as to the facts, and shall issue and cause to be served on the live poultry dealer an order requiring such live poultry dealer to cease and desist from continuing such violation. The testimony taken at the hearing shall be reduced to writing and filed in the records of the Department of Agriculture. The Secretary may also assess a civil penalty of not more than $20,000 for each such violation. In determining the amount of the civil penalty to be assessed under this section, the Secretary shall consider the gravity of the offense, the size of the business involved, and the effect of the penalty on the person's ability to continue in business provided, however, that in no event can the penalty assessed by the Secretary take priority over or impede the ability of the live poultry dealer to pay any unpaid cash seller or poultry grower. If, after the lapse of the period allowed for appeal or after the affirmance of such penalty, the person against whom the civil penalty is assessed fails to pay such penalty, the Secretary may refer the matter to the Attorney General, who may recover such penalty by an action in the appropriate District Court of the United States.

"(c) Until the record in such hearing has been filed in a court of appeals of the United States, as provided in section 412, the Secretary, at any time, upon such notice and in such manner as he deems proper, but only after reasonable opportunity to the live poultry dealer to be heard, may amend or set aside the report or order, in whole or in part.

"(d) Complaints, orders, and other processes of the Secretary under this section may be served in the same manner as provided in section 5 of the Act entitled 'An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,' approved September 26, 1914.

"SEC. 412. (a) An order made under section 411 shall be final and conclusive unless within 30 days after service the live poultry dealer appeals to the court of appeals for the circuit in which he has his principal place of business, by filing with the clerk of such court a written petition praying that the Secretary's order be set aside or modified in the manner stated in the petition, together with a bond in such sum as the court may determine, conditioned that such live poultry dealer will pay the costs of the proceedings if the court so directs.

"(b) The clerk of the court shall immediately cause a copy of the petition to be delivered to the Secretary, and the Secretary shall thereupon file in the court the record in such proceedings, as provided in section 2112 of title 28, United States Code. If before such record is filed the Secretary amends or sets aside his report or order, in whole or in part, the petitioner may amend the petition within such time as the court may determine, on notice to the Secretary.

"(c) At any time after such petition is filed, the court, on application of the Secretary, may issue a temporary injunction, restraining, to the extent it deems proper, the live poultry dealer and his officers, directors, agents, and employees, from violating any of the provisions of the order pending the final determination of the appeal.

"(d) The evidence so taken or admitted, and filed as aforesaid as a part of the record, shall be considered by the court as the evidence in the case. The proceedings in such cases in the court of appeals shall be made a preferred cause and shall be expedited in every way.

"(e) The court may affirm, modify, or set aside the order of the Secretary.

"(f) If the court determines that the just and proper disposition of the case requires the taking of additional evidence, the court shall order the hearing to be reopened for the taking of such evidence, in such manner and upon such terms and conditions as the court may deem proper. The Secretary may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken, and he shall file such modified or new findings and his recommendations, if any, for the modification or setting aside of his order, with the return of such additional evidence.

"(g) If the court of appeals affirms or modifies the order of the Secretary, its decrees shall operate as an injunction to restrain the live poultry dealer, and his officers, directors, agents, and employees from violating the provisions of such order or such order as modified.

"(h) The court of appeals shall have jurisdiction which upon the filing of the record with it shall be exclusive, to review, and to affirm, set aside, or modify, such orders of the Secretary, and the decree of such court shall be final except that it shall be subject to review by the Supreme Court of the United States upon certiorari, as provided in section 1254 of title 28, United States Code, if such writ is duly applied for within 60 days after entry of the decree. The issue of such writ shall not operate as a stay of the decree of the court of appeals, insofar as such decree operates as an injunction, unless so ordered by the Supreme Court.

"SEC. 413. Any live poultry dealer, or any officer, director, agent, or employee of a live poultry dealer, who fails to obey any order of the Secretary issued under the provisions of section 411, or such order as modified—

"(1) after the expiration of the time allowed for filing a petition in the court of appeals to set aside or modify such order, if no such petition has been filed within such time;

"(2) after the expiration of the time allowed for applying for a writ of certiorari, if such order, or such order as modified, has been sustained by the court of appeals and no such writ has been applied for within such time; or

"(3) after such order, or such order as modified, has been sustained by the courts as provided in section 412;

shall on conviction be fined not less than $1,000 nor more than $20,000. Each day during which such failure continues shall be deemed a separate offense.".

SEC. 10. REPEALER.

Title V of the Packers and Stockyards Act, 1921 (7 U.S.C. 218-218d), is repealed.

SEC. 11. CONSTRUCTION.

(a) GENERAL RULE.—The amendments made by this Act to the Packers and Stockyard Act, 1921 shall not be construed to limit or otherwise affect the power or jurisdiction of the Federal Trade Commission under the Federal Trade Commission Act to prevent the use of—

(1) unfair methods of competition in or affecting commerce, and

(2) unfair and deceptive acts or practices in or affecting commerce,

involving poultry products.

(b) SECRETARY'S AUTHORITY.—Subsection (a) shall not be construed to limit or otherwise affect the authority of the Secretary of Agriculture under section 406(e) as amended, of the Packers and Stockyard Act, 1921.

SEC. 12. EFFECTIVE DATE.

This Act and the amendments made by this Act shall take effect 90 days after the date of the enactment of this Act.

The SPEAKER pro tempore. Is a second demanded?

Mr. JEFFORDS. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Texas [Mr. STENHOLM] will be recognized for 20 minutes and the gentleman from Vermont [Mr. JEFFORDS] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Texas [Mr. STENHOLM].

Mr. STENHOLM. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in strong support of the compromise legislation, H.,R. 3457, which is before us today. Moreover, the Poultry Producers Financial Protection Act of 1987 amends the Packers and Stockyards Act of 1921 to extend similar financial protection to poultry producers as enjoyed by redmeat producers since 1976. It will also clarify a longstanding dispute over the jurisdiction of the Packers and Stockyards Administration with respect to poultry and poultry products.

Currently, poultry producers are not afforded prompt payment and trust protection comparable to that provided to livestock producers under the act. Other segments of agriculture have similar protection. The Perishable Agricultural Commodities Act of 1984 provided trust protection for fresh fruit and vegetable growers. The Bankruptcy Reform Act of 1984 provided payment assurance for grain producers in case of grain elevator bankruptcy. Finally the 1984 supplemental appropriations bill was amended to require the Government to pay poultry processors within 7 days for poultry products. Poultry growers both want and need this type of protection.

Since 1982, six live poultry dealers have declared bankruptcy owing 1,983 growers approximately $14.3 million. In some cases this money has been recouped by the grower but not for several months or years and in many of these cases the settlement has been a fraction of the amount owed. Currently a poultry grower's status is that of an unsecured creditor in the event of a failure of the integrator or buyer. This legislation would change that. It would provide for a live poultry deal in trust provision for the benefit of all unpaid poultry growers and sellers.

Concern has been expressed over the extent to which live poultry dealers are able to force growers to carry them financially by failing to pay in a timely manner. In some cases, growers have waited 45 days or even up to 3 months for payment while their bills and payments continue to come due. This is unfair and this bill would correct this inequity by requiring that all poultry growers under a growout contract must be paid for their products or services by the 15th day following the week in which the poultry is slaughtered. However, in the case of a cash sale, payment must be made by the close of the next business day—the same requirement as exists for red meat.

This bill would provide the Packers and Stockyards Administration the administrative authority to enforce only the prompt payment and trust provisions. This will expedite the process of enforcing these provisions, and is similar to the authority provided to the Packers and Stockyards Administration for the red meat industry.

With regards to other live poultry transactions, the Packers and Stockyards Administration will retain jurisdiction as the act currently provides. These transactions include things like weighing practices and contract compliance. The Packers and Stockyards Administration must continue to enforce these provisions through U.S. district court.

Finally, the bill clarifies that the Federal Trade Commission and not the Packers and Stockyards Administration would have jurisdiction over the marketing practices of poultry products like the Federal Trade Commission's jurisdiction over virtually all other food products. There has been longstanding uncertainty regarding which agency has jurisdiction over poultry products and this uncertainty has led to costly litigation over the jurisdictional issue. It is logical for the Federal Trade Commission to regulate poultry products, like other food items, in an effort to avoid duplicative regulations.

As I mentioned earlier, this compromise bill will correct the problems which poultry producers and poultry processors are facing today. Its quick enactment will remove the possibility of any more poultry producers suffering financial losses caused by failure of their buyers. I would encourage my colleagues to support the legislation.

Mr. JEFFORDS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I also rise in support of H.R. 3457. First of all, I want to commend the gentleman from Pennsylvania [Mr. GEKAS] for brining this matter to our attention. We certainly appreciate the effort that he put into this bill.

Our Nation's poultry industry has been changing rapidly from a mostly live market industry in the late forties and early fifties, to one of the most highly integrated agricultural processing businesses in the United States today.

Laws governing such items as prompt guaranteed payment to poultry producers and redefining areas of jurisdiction for the Federal Trade Commission and the Packers and Stockyards Administration need to be updated to properly address these changes.

I believe H.R. 3457 does those things.

Mr. Speaker, I would also report to my colleagues that the administration has no objection to enactment of H.R. 3457.

Mr. Speaker, I am happy now to yield to the gentleman from Pennsylvania [Mr. GEKAS].

Mr. GEKAS. Mr. Speaker, I thank the gentleman for yielding, and I thank the gentleman from Texas [Mr. STENHOLM] for bringing this bill to the floor.

I would like to just make a couple of comments that accompany my feeling of pride to some extent in the fact that we have reached the floor with this piece of legislation. In the last session we introduced such a piece of legislation, and it seemed to go two steps forward and then one step back, and then two steps forward and then three steps back, but eventually we were able to convince all parties involved that this is really just a measure to bring up to date for one segment of our agricultural community what had already been established for other sectors and had been working well for other sectors.

So in working in conjunction with farmer groups in my home district who saw the need for this and who explained where they were in the history of this kind of legislation, I was smart enough to heed their request and to bring the matter to the attention of the House of Representatives.

This goes to show two things: First, that I, who am not a farm boy, can learn something by listening very carefully to our farm organizations and by attending meetings like the Northeast Agricultural Caucus which the gentleman from Vermont heads. I learned much from attending those meetings about agriculture, about our commodities, about our banking problems, and about a whole host of things that are attached to the agricultural arena. I could go on for hours expressing my gratitude for that.

It was that compendium of advice and counsel and learning experiences that brought this measure, in my judgment, to the floor, along with the cooperation of the gentleman from Texas and along with others who had input and impact on this legislation. All I can do now is report back to my farm groups that taught this city boy something about the farm world, and I am glad that I have responded in such a way that I can feel proud that I did so.

As I pass out my thank-yous, I look forward to the next step and hope that the other body and the President see fit to be as optimistic about the legislation as we are on the floor today.

Mr. JEFFORDS. Mr. Speaker, I thank the gentleman from Pennsylvania for his words. He does point out what we on the Agriculture Committee recognize and realize, that we have to spend more time with our urban brothers and educate them on the great need for their assistance to agriculture. I enjoyed hearing those words, I appreciate them very much, and I also commend my chairman of the subcommittee for his activity not only in this but in other matters on which we have worked together so closely.

Mr. Speaker, I yield back the balance of my time.

Mr. STENHOLM. Mr. Speaker, I yield such time as he may consume to the chairman of the Committee on Agriculture, the gentleman from Texas [Mr. de la Garza].

Mr. de la GARZA. Mr. Speaker, I thank my colleague for yielding time to me, and I rise in support of H.R. 3457, as amended.

Mr. Speaker, I rise today in support of H.R. 3457, as amended, the Poultry Producers Financial Protection Act of 1987. This bill was considered by the Agriculture Committee on October 15 and was ordered favorably reported to the House for consideration today.

H.R. 3457, as amended, would provide similar financial protections to U.S. poultry producers that fresh fruit and vegetable producers and red meat producers have enjoyed for some time. In addition, H.R. 3457, as amended, would clarify the jurisdiction of the Packer and Stockyards Administration and the Federal Trade Commission with respect to poultry and poultry products.

Specifically, the Poultry Producers Financial Protection Act would require that prompt payment for poultry and for services to provide poultry be made to producers within certain time limits. This is necessary because, in some cases, growers have been forced to wait up to 3 months for payment from live poultry dealers, while their own payments continue to come due. H.R. 3457, as amended, would correct this inequity by requiring that all poultry growers operating under a growout contract be paid for their products by the 15th day following the week in which the poultry is slaughtered. For cash sales, payment would be required by the close of the next business day.

H.R. 3457, as amended, would also establish a statutory trust to provide security for poultry producers in the event that a poultry dealer should go bankrupt. Since 1982, nearly 2,000 poultry growers have been affected by dealer bankruptcies that resulted in losses of nearly $15 million. Although some poultry producers have recouped their losses, the settlements have often taken months and even years. The creation of a trust under the provisions of H.R. 3457, as amended, would place producers in the position of a secured creditor and protect their interests in the event of future poultry processor bankruptcies.

The bill would also authorize the Packers and Stockyards Administration to enforce the prompt payment and trust provisions through U.S. District Courts. This would allow the Packers and Stockyards Administration to continue investigations of matters that may disrupt live poultry transactions, similar to the Agency's current activities related to the red meat industry.

Finally, H.R. 3457, as amended, would reaffirm the jurisdiction of the Packers and Stockyards Administration over live poultry, and clarify that the Federal Trade Commission has jurisdiction over the marketing of poultry products. I believe that this is a logical division of responsibilities and will serve to avoid duplicative regulations.

The Poultry Producers Financial Protection Act was formulated with the cooperation of a broad range of agricultural groups who represent most of the Nation's poultry producers. In addition, the bill enjoys broad congressional support.

Mr. Speaker, this bill is not controversial. It provides long overdue financial protection to poultry producers and clarifies questions with regard to the reponsibilities of the two administrative agencies with jurisdiction over poultry production and poultry marketing. I urge my colleagues to support the immediate passage of H.R. 3457, as amended.

Mr. ALEXANDER. Mr. Speaker, I rise today in support of H.R. 3457, the Prompt Payment to Poultry Producers Act.

This bill would improve the cash-flow of poultry producers in Arkansas and across the Nation by requiring poultry dealers to pay producers within a specified timeframe.

Prompt payment is particularly important to farmers, because credit is the life's blood of agriculture.

A poultry producer, or any farmer for that matter, who is not paid in a timely manner finds that he cannot pay his debts and obtain the new credit he needs to continue to operate.

The bill also contains trust provisions that will guarantee payment to poultry producers who are owed money by a bankrupt dealer.

The poultry producers of Arkansas' First Congressional District produce more than 50,000,000 broilers each year. A vibrant poultry industry is important to the prosperity of Arkansas and America.

By ensuring prompt payment for poultry producers, H.R. 3457 will help keep the poultry industry healthy. I commend the Committee on Agriculture for bringing the bill forth, and I urge its passage.

Mr. STENHOLM. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Texas [Mr. Stenholm] that the House suspend the rules and pass the bill, H.R. 3457, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. STENHOLM. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on H.R. 3457, the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

SEMICONDUCTOR CHIP PROTECTION ACT EXTENSION

Mr. KASTENMEIER. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 1951) to amend section 914 of title 17, United States Code, regarding certain protective orders for semiconductor chip products, as amended.

The Clerk read as follows:

H.R. 1951

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. FINDINGS AND PURPOSES.

(a) Findings.—The Congress finds that—

(1) section 914 of title 17, United States Code, which authorizes the Secretary of Commerce to issue orders extending interim protection under chapter 9 of title 17, United States Code, to mask works fixed in semiconductor chip products and originating in foreign countries that are making good faith efforts and reasonable progress toward providing protection, by treaty or legislation, to mask works of United States nationals, has resulted in substantial and positive legislative developments in foreign countries regarding protection of mask works;

(2) the Secretary of Commerce has determined that most of the industrialized countries of the world are eligible for orders affording interim protection under section 914 of title 17, United States Code;

(3) the World Intellectual Property Organization has commenced meetings to draft an international convention regarding the protection of integrated electronic circuits;

(4) these bilateral and multilateral developments are encouraging steps toward improving international protection of mask works in a consistent and harmonious manner; and

(5) it is inherent in section 902 of title 17, United States Code, that the President has the authority to revise, suspend, or revoke, as well as issue, proclamations extending mask work protection to nationals, domiciliaries, and sovereign authorities of other countries, if conditions warrant.

(b) Purposes.—The purposes of this Act are—

(1) to extend the period within which the Secretary of Commerce may grant interim protective orders under section 914 of title 17, United States Code, to continue this incentive for the bilateral and multilateral protection of mask works; and

(2) to codify the President's existing authority to revoke, suspend, or limit the protection extended to mask works of foreign

entities in nations that extend mask work protection to United States nationals.

SEC. 2. AUTHORITY TO ISSUE PROTECTIVE ORDERS.

Section 914(e) of title 17, United States Code, is amended by striking out "three years after such date of enactment" and inserting in lieu thereof "on July 1, 1991".

SEC. 3. AUTHORITY TO ISSUE PROCLAMATIONS.

Section 902(a)(2) of title 17, United States Code, is amended by adding at the end thereof the following: "The President may revise, suspend, or revoke any such proclamation or impose any conditions or limitations on protection extended under any such proclamation.".

SEC. 4. REPORT TO CONGRESS.

Section 914(f) of title 17, United States Code, is amended by adding at the end the following: "Not later than July 1, 1990, the Secretary of Commerce, in consultation with the Register of Copyrights, shall transmit to the Committees on the Judiciary of the Senate and the House of Representatives a report updating the matters contained in the report transmitted under the preceding sentence.".

The SPEAKER pro tempore. Is a second demanded?

Mr. MOORHEAD. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Wisconsin [Mr. KASTENMEIER] will be recognized for 20 minutes and the gentleman from California [Mr. MOORHEAD] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Wisconsin [Mr. KASTENMEIER].

Mr. KASTENMEIER. Mr. Speaker, approximately 3 years ago, the Congress passed and the President signed the Semiconductor Chip Protection Act of 1984. The Chip Act, as it has come to be known, was crafted over a 6-year period by my subcommittee—the Subcommittee on Courts, Civil Liberties and the Administration of Justice—the full Committee on the Judiciary, and our counterpart committee in the Senate. We had much help: Congressmen DON EDWARDS and NORM MINETA were the chief sponsors. The ranking minority member of my subcommittee, CARLOS MOORHEAD, was very supportive, as was Congressman DAN LUNGREN. Senators LEAHY and MATHIAS took the lead in the Senate.

The act broke new ground in the field of intellectual property law and established a form of legal protection for the mask works used to create semiconductor chip products. Tailored to the unique needs of both the semiconductor industry and the public, the act drew on the richness of both our copyright and patent laws. It struck a balance between the proprietary interests of the semiconductor industry and the public interest in assuring access to benefits of technology.

When we wrote the Chip Act, we realized that the semiconductor industry was increasingly international. We also knew that the act fell neither under the Universal Copyright Convention nor the Paris Convention for the Protection of Industrial Property. We, therefore, decided to conduct a 3-year experiment by providing transition provisions intended to encourage the rapid development of a new worldwide regime for the protection of semiconductor chips. The 3-year experiment is over on November 8, 1987.

We structured the experiment by codifying an international transition provision in section 914 of the act. Section 914 provides that the Secretary of Commerce may issue orders that make foreign nationals, domiciliaries and sovereign authorities eligible to obtain protection if certain statutory criteria are met. The three statutory conditions are: First, that the foreign nation in question is making progress—either by treaty negotiation or legislative enactment—toward a regime of mask work protection generally similar to that under the act; second, that its nationals and persons controlled by them are not engaging in, and have not in the recent past engaged in, chip piracy; and third, that entry of the Secretary's order would promote the purposes of the act and facilitate international comity in mask work protection.

I am proud to say that the experiment has been a success. It may provide us with a model which can be replicated elsewhere, especially where bilateralism among nations with mutual concerns is to be emphasized.

Section 914 has been responsible for the development of bilateral relations between the United States and 18 foreign countries. Let me take the time to list the countries: Japan, Sweden, Australia, Canada, Switzerland, Finland and the member states of the European Economic Community—France, the Federal Republic of Germany, Italy, Belgium, Spain, Portugal, Denmark, Greece, Ireland, Luxembourg, the Netherlands, and the United Kingdom.

Two countries, Japan and Sweden, have enacted laws similar to our own. The passage of statutes in several other countries is imminent.

The United Nations, through the World Intellectual Property Organization located in Geneva, Switzerland, is in the process of developing an international treaty. After three drafting sessions, the United States has proposed the holding of a diplomatic conference during late 1988 in Washington, DC. The findings in H.R. 1951 specifically applaud these developments and implicitly encourage the holding of a diplomatic conference to draft a treaty sometime in the near future.

Bilateral relations are advantageous, standing alone. But, more importantly, they pave the way for multilateralism. And multilateralism is a much preferred and more advantageous form of protection: for not only the United States but also for the world community. It is my hope that the Secretary of Commerce may not need the multiyear extension contemplated by H.R. 1951, because sometime during that time period, the United States will ratify a multilateral treaty with the 18 countries mentioned above and several others.

In conclusion, section 914 has been good public policy and should be extended. There is widespread support for such an extension, and there is no known opposition.

Under the leadership of Senator LEAHY, the Senate has already passed a bill. After passage of H.R. 1951, as amended, I intend to take the Senate passed bill (S. 442) from the desk, insert the text of the House bill, and send it back to the Senate. The Senate hopefully will accept the House bill and send it directly to the President for his signature before November 8, 1987, the date on which the interim authority of the Secretary of Commerce expires.

I ask your support not only for H.R. 1951, as amended, but also for this parliamentary procedure. Our country, including both the semiconductor industry and the public, and 18 other countries, are relying on us to accomplish our task.

Mr. Speaker, I include herewith a letter from the delegation of the European Communities, as follows:

DELEGATION OF THE COMMISSION
OF THE EUROPEAN COMMUNITIES,
October 20, 1987.

Hon. ROBERT W. KASTENMEIER,
Chairman of the House, Subcommittee on Courts, Civil Liberties and the Administration of Justice, Washington, DC.

MR. CHAIRMAN: I am writing in support of H.R. 1951, currently before Congress. This legislation, which has already been marked up by the House Committee on the Judiciary, would extend the authority of the Secretary of Commerce to issue interim protection to foreign mask works under the Semiconductor Chip Protection Act of 1984.

The enactment of this legislation before November 8, 1987, seems to us very important, not only in order to avoid a gap in protection or at least a time of considerable legal uncertainty, but also to allow time for setting up mutual unlimited protection to be established between the European Community and the United States.

As you know, the purpose of that interim protection was to encourage foreign States to offer reciprocal protection to mask works of U.S. origin. The Semiconductor Chip Protection Act of 1984, and in particular its provisions allowing interim protection, have proved to be a good basis for working towards increased legal protection in the field of semiconductor chips, an objective shared by both the U.S. and the European Community.

As you are aware, on 16 December 1986, the Community adopted a Directive on the legal protection of topographies of semiconductor products. The Member States of the Community are currently in the process of

> adopting the necessary legal provisions to implement this Directive.
>
> In addition, and based on the consideration that the United States will continue to make available the protection under the Semiconductor Chip Protection Act to mask works from the European Community, the Council of the European Community is currently considering a Commission proposal for an extension of protection in favour of topographies of semiconductor products from the United States for a limited period.
>
> The Delegation of the Commission of the European Community expresses its hope that the necessary modification of the American law can be enacted in time to allow a prolongation of the interim orders issued under Section 914 of the Semiconductor Chip Protection Act in favour of the European Community.
>
> The Delegation of the Commission of the European Community is convinced that an early adoption of the necessary amendment to the Semiconductor Chip Protection Act would be understood as a clear sign to honour and encourage the efforts undertaken to provide for legal protection in the Community and to make this protection available for the States on a reciprocal basis.
>
> Sincerely,
>
> ROY DENMAN.

□ 1350

Mr. Speaker, I reserve the balance of my time.

Mr. MOORHEAD. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in strong support of H.R. 1951, the Semiconductor Chip Protection Act Extension of 1987. I would like to concur in the remarks of the gentleman from Wisconsin [Mr. KASTENMEIER] and join him in recognizing the efforts of Congressmen EDWARDS, MINETA, and LUNGREN on behalf of the original Chip Act. Three years ago under the leadership of the gentleman from Wisconsin [Mr. KASTENMEIER] the Semiconductor Chip Protection Act of 1984 was carefully tailored to the unique properties of semiconductor technology. Since its passage the act has worked well, especially the international transition provisions provided for in section 914.

To date 18 countries have earned transitional protection under section 914 which permits the Secretary of Commerce to extend interim protection to chips made in countries making good faith progress toward a law protecting American chip designs. Last November, in their report to Congress on the international transition provisions, the Register of Copyrights and the Commissioner of Patents and Trademarks highlighted the fact that:

> The International transitional provisions of the Act have encouraged rapid and substantial progress toward developing international comity in mask work protection among the semiconductor chip producing nations of the world.

The need to extend the Secretary's authority to issue interim protection under section 914 is important by virtue of the fact that many of the 18 countries that have already qualified will not have completed their work by the end of the current 3-year transitional period. By the same token, extending the transitional provisions as provided for in H.R. 1951, will serve as an inducement to those countries who have been contemplating initiatives in this area, but have yet to act.

I would just like to note that with regard to the issue of protection for semiconductor chips significant efforts are underway by WIPO [World Intellectual Property Organization] to create a new multilateral treaty for the protection of lay out designs of integrated circuits. I am hopeful that these efforts will continue and ultimately prove successful. For as the House report notes: "Clearly bilateralism should pave the way for multilateralism. And, in the view of the committee, multilateralism is to be preferred."

Accordingly, I urge my colleagues' support for the passage of H.R. 1951, which is supported by the administration and is without any additional costs to the Government.

At this time, I have some questions I would like to address to the gentleman from Wisconsin.

If all goes well, President Reagan will sign this legislation before the November 8 "sunset." This, however, does not give the Secretary of Commerce much time to consider extension orders for existing interim orders. Can you describe how this legislation will affect the Secretary's discretion?

Mr. KASTENMEIER. Mr. Speaker, will the gentleman yield?

Mr. MOORHEAD. I yield to the gentleman from Wisconsin.

Mr. KASTENMEIER. Mr. Speaker, I thank the gentleman for yielding to me.

The gentleman asks a good question, but one that I think can be accommodated by the section 914 process itself. If the Commissioner of Patents and Trademarks—acting for the Secretary—believes that it will promote the development of international comity in the protection of semiconductor mask works, then he could simply extend all the existing orders for a period sufficient to conduct an effective and fair review of each country's progress and determine how each country should be treated.

In view of the directive from the European Economic Community, I expect several European countries to enact chip legislation in the very near future. The PTO, U.S. industry, and the public will need some time to evaluate that legislation and gain experience in working with it.

In view of all of these factors, perhaps a 6-month blanket extension would be about right. This would permit a public hearing to be held in the first quarter of 1988, after which the Commissioner could decide whether to extend or terminate any existing orders.

As a result of such a hearing, the Commissioner might determine that it would be appropriate to initiate a proceeding to recommend to the President whether a more permanent proclamation—under section 902 of the act—should be issued. I understand that regulations to provide a public process for the consideration and issuance of section 902 proclamations are being drafted. I hope that you agree that such regulations are necessary.

Mr. MOORHEAD. I certainly do agree. I thank the gentleman for that response.

I have another question raised by the fact that H.R. 1951 was called up with an amendment. I presume that the amendment was jointly worked out with the Senate in order to resolve the differences—few in number—between H.R. 1951 and S. 442. Could you give a brief explanation of the amendment?

Mr. KASTENMEIER. Yes; I would be glad to explain the amendment. Before doing so, I would note that the House and Senate bills were very similar, and the differences were not significant.

Our compromise resolves three differences in the bills: First, the duration of the extension of the Secretary's authority; second, findings and purposes; and third, a clarifying amendment to section 902 of the act.

First, as regards the duration of the extension of the Secretary's authority, the House bill extended the authority for 4 years, until November 8, 1991. The Senate bill provided for a 3-year extension, until November 8, 1990. The compromise extended the Secretary's authority until July 1, 1991, roughly a 3-year and 8-month extension. The compromise ensures that the matter of another extension will be considered during the 1st session of the 102d Congress. A further aspect of the House-Senate compromise is that not later than July 1, 1990—1 year before the new sunset of the extended authority—the Secretary of Commerce, in consultation with the Register of Copyrights, shall transmit to the House and Senate Judiciary Committees a report updating the matters contained in a previously submitted report required by section 914 of the act. See report on the operation of the international transitional provisions of the Semiconductor Chip Protection Act of 1984—November 7, 1986.

Second, the compromise contains the House findings and purposes, including reference to the bilateral developments that have occurred since enactment of the act, the multilateral actions taken by the World Intellectual Property Organization in Geneva, Switzerland, and the conclusion that these bilateral and multilateral developments are encouraging steps toward improving intellectual protection of mask works in a consistent and harmonious manner. Incorporation of these provisions in the compromise manifests a commitment by the U.S. Congress to support movement toward an international treaty. Hopefully, in early 1991 instead of examining another extension of the section 914 authority, Congress will be considering, or will already have considered during a previous Congress, ratification of a treaty.

Third, the compromise contains the Senate amendment to the Presidential proclamation section—section 902—of the Semiconductor Chip Protection Act of 1984. Section 902(a)(2) authorizes the President to issue proclamations confering full protection under the act to foreign mask works provided that certain conditions are met. The Senate clarified that once a Presidential order is entered the President may revise, suspend, or revoke the proclamation or impose any conditions or limitations on protection under a proclamation. The House report stated that current section 902—which is derived form a parallel provision in copyright law—would allow revocation of a proclamation should the nature and level of protection afforded U.S. mask works in a foreign country change dramatically. In order to avoid statutory ambiguity on this point, the compromise opts for the statutory language set forth in the Senate bill. Due to adoption of the Senate language on this point, the findings and purpose section of the compromise is conformed to refer to the amendment.

In a nutshell, that explains the amendment and the proposed House-Senate compromise. We have a good bill, and I hope that President Reagan signs it before November 8.

Mr. MOORHEAD. I thank the gentleman for the explanation. I agree that we have produced a good bill. The original Semiconductor Chip Protection Act of 1984 was an excellent piece of legislation, one that our subcommittee can be very proud of. I am pleased to see it so well implemented. I would like specifically to recognize the Commissioner of Patents and Trademarks, Donald Quigg, and the public servant in his office, Michael Keplinger, who have done yeoman work on the act. Last, but certainly not least, the record should reflect the hard work of the Register of Copyrights, Ralph Oman, and an individual assigned responsiblity for the act in the Copyright Office, Melissa Dadant, for their administration of the registration provisions in the act.

Mr. KASTENMEIER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I want to join the gentleman from California [Mr. Moorhead] in acknowledging the work that the original cosponsors of the Chip Act put into it.

I refer specifically to the gentleman from California [Mr. Edwards], the gentleman from California [Mr. Mineta], and the gentleman from California [Mr. Lungren].

Mr. Speaker, I yield such time as he may consume to the gentleman from California [Mr. Edwards], the principal author of the bill.

Mr. EDWARDS of California. Mr. Speaker, I thank the gentleman from Wisconsin for yielding to me.

Mr. Speaker, I wish to thank the gentleman from Wisconsin [Mr. Kastenmeier], the chairman, and the gentleman from California [Mr. Moorhead], the distinguished ranking minority member, for their courtesy and their dedication to this very important enterprise that is a part of this legislation that was enacted back in 1984, and which has been implemented so successfully in the international community.

I should add, Mr. Speaker, that enacting this legislation in 1984 was not an easy task. For years there was a lot of controversy and a lot of opposition, not only from certain foreign countries, but from American corporations that really did not want the patents on semiconductor chips subject to the copyright.

The gentleman from Wisconsin [Mr. Kastenmeier] and the gentlemen from California [Mr. Moorhead and Mr. Lungren] and other Members worked with the gentleman from California [Mr. Mineta] and me and other Members interested in the project for years, not just months.

The gentleman from California [Mr. Mineta] and I do represent major portions of Silicon Valley where the lifeblood of the various industries are the semiconductor chips.

It is really very wonderful for the gentleman from California [Mr. Mineta] and I to stand here today and to realize that 18 countries have joined in the copyright protection, and that others are on their way to joining the international community in providing this copyright protection.

This is the way international trade should be, honestly and above board with copyright protection.

I would hope the countries that have not come aboard, would promptly; because the semiconductor chip is the key to modern scientific and industrial development. So, I am just very pleased that today we are going to move ahead and extend the authority of the Commerce Department to take the steps necessary to protect these rights.

I want to again thank all of the members on the subcommittee, and the very excellent subcommittee.

It is the ideal bipartisan cooperative arrangement for the betterment of American and international business.

Mr. Speaker, I rise in strong support of H.R. 1951, and I compliment Congressman Kastenmeier, the distinguished chairman of the Judiciary Committee's Subcommittee on Courts, Civil Liberties, and the Administration of Justice, for bringing this bill before the full House today.

H.R. 1951 extends the authority of the Commerce Department, under the 1984 Semiconductor Chip Protection Act, to take the steps necessary to protect semiconductor chip copyrights.

The original law has worked very well. Seventeen nations, including Japan, have changed their laws to afford copyright protection for these fundamental components of our high-tech society.

It was my honor and pleasure to work with the gentleman from Wisconsin, as well as Congressman Mineta, in developing the original 1984 Semiconductor Chip Protection Act. I am happy to join them today in saying that the law has proven itself.

Extension of the Commerce Department's authority is necessary to continue the progress we've been achieving in this area so critical to our future. We can do this by passing H.R. 1951. I urge our colleagues to vote for this legislation.

☐ 1405

Mr. KASTENMEIER. Mr. Speaker, I yield such time as he may consume to the gentleman from California [Mr. Mineta], one the coauthors of the original Semiconductor Chip Protection Act.

Mr. MINETA. Mr. Speaker, I want to thank very much the gentleman from Wisconsin [Mr. Kastenmeier] for yielding me this time.

Mr. Speaker, I rise in strong support of H.R. 1951, a bill designed to extend intellectual property protections for semiconductor chips.

As one of the original cosponsors of this bill, I would like to commend both the esteemed chairman of the Subcommittee on Courts, Civil Liberties, and the Administration of Justice, Mr. Kastenmeier, and the ranking Republican, Mr. Moorhead, and my distinguished colleague and good friend, Mr. Edwards, for their leadership in moving this important measure through the Judiciary Committee and on to the floor of the House for consideration today.

Three years ago, these same distinguished colleagues were instrumental in passing the Semiconductor Chip Protection Act of 1984, a measure which it was my privilege to support.

That bill extended copyright-type protection to semiconductor mask designs, creating a much-needed new form of intellectual property protection tailored to the specific needs of the semiconductor industry.

That act was passed in recognition of the significant investments of time, talent, and money that are required to produce the design masks for semiconductor chips, and was intended to provide a legal framework to protect those investments. The passage of that act, and its subsequent signing into law, marked an important victory in the battle to bring our somewhat antiquated system of copyright and patent laws up to date and into the age of high technology.

When the original Semiconductor Chip Protection Act was formulated, it was apparent that, to be successful, any system of intellectual property protections for semiconductor products would have to be international in scope. this was in recognition of the truly global nature of the semiconductor industry and the accompanying fierce international competition.

It was also apparent, however, that existing international accords based on traditional copyright and patent protections would be inadequate to meet the needs of the altogether new system of protections that needed to be established for semiconductor products. For that reason, it was envisioned that a wholly new multilateral treaty arrangement between the world's semiconductor chip producers would be needed.

It was expected that negotiating such a multilateral treaty among all of the various nations involved in the semiconductor marketplace would be a long and delicate process. In the meantime, therefore, the 1984 Chip Protection Act contained a provision to authorize the extension of international protections for semiconductor masks on a bilateral basis, temporarily, between the United States and individual countries.

Essentially, what we did was to offer our trading partners an updated, high tech version of the Golden Rule—do unto us as you would have us do unto you. The United States would recognize the intellectual property rights of semiconductor chip makers from any country that either formally protected the corresponding rights of U.S. chipmakers, or was making a good faith effort to create the necessary laws to do so.

This was done for two reasons: First, it was intended that a successful program of bilateral accords would encourage and hasten the development of a new worldwide, multilateral system of intellectual property protections for semiconductor chip masks. Second, these bilateral agreements would provide much-needed interim protection for U.S. chipmakers against mask piracy until a multilateral accord could be reached.

On both of these counts, the bilateral protections authorized in section 914 of the Semiconductor Chip Protection Act have been a success. In the 3 years since the act's enactment, bilateral accords have been reached with 17 different countries, paving the way for an eventual multilateral treaty. At the same time, there is currently no evidence of U.S. chip masks being misappropriated in these countries.

However, the authority provided by section 914—allowing the President to honor intellectual property rights for semiconductor chips on a bilateral basis—was granted by Congress only temporarily, in order to ensure continued congressional oversight. That authority is set to expire on November 7, 1987—10 days from today. And while there has been significant progress made in the last 3 years toward reaching a new multilateral accord on intellectual property protections for semiconductor masks, that goal has not yet been reached.

For that reason, it is important that House Resolution 1951 be approved today, to amend the Semiconductor Chip Protection Act and allow the continued authorization of bilateral semiconductor mask protection accords between the United States and other chip producing countries. House Resolution 1951 would extend this authority for 4 years, after which time it is expected that a more permanent multilateral mask protection system will be in place.

By approving this bill, this Congress will ensure that American semiconductor makers continue to enjoy international legal protections for both their past and future investments in new semiconductor designs and devices—an important step in improving and sustaining the vitality of this critical industry.

Mr. MOORHEAD. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. KASTENMEIER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, before yielding back the balance of my time, I would like to further acknowledge the work of our staff, and in particular the work of Michael Remington of the Committee on the Judiciary who has been acknowledged universally and internationally as an expert in this area. His contribution to the passage of this act as well as this bill before us is notable.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. SPEAKER pro tempore (Mr. MONTGOMERY). The question is on the motion offered by the gentleman from Wisconsin [Mr. KASTENMEIER] that the House suspend the rules and pass the bill H.R. 1951, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The title of the bill was amended so as to read: "A bill to amend chapter 9 of title 17, United States Code, regarding protection entities."

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. KASTENMEIER. Mr. Speaker, I asked unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill just passed.

Mr. SPEAKER pro tempore (Mr. MONTGOMERY). Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

Mr. KASTENMEIER. Mr. Speaker, I ask unanimous consent that the Committee on the Judiciary be discharged from further consideration of the Senate bill (S. 442), to amend section 914 of title 17, United States Code, regarding certain protective orders, and ask for its immediate consideration.

The Clerk read the title of the Senate bill.

Mr. SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

The Clerk read the Senate bill as follows:

S. 442

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 914(e) of title 17, United States Code, is amended by striking out "three years after such date of enactment" and inserting in lieu thereof "on November 8, 1990".

SEC. 2. Section 902(a)(2) of title 17, United States Code, is amended by adding at the end thereof the following: "The President may revise, suspend, or revoke any such proclamation or impose any conditions or limitations on protection under a proclamation."

MOTION OFFERED BY MR. KASTENMEIER

Mr. KASTENMEIER. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. KASTENMEIER moves to strike all after the enacting clause of the Senate bill, S. 442, and insert in lieu thereof the text of the bill, H.R. 1951, as passed by the House.

The motion was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed.

The title of the Senate bill was amended so as to read: "A bill to amend chapter 9 of title 17, United States Code, regarding protection extended to semiconductor chip products of foreign entities."

A motion to reconsider was laid on the table.

A similar House bill (H.R. 1951) was laid on the table.

CRIMINAL FINE IMPROVEMENTS ACT OF 1987

Mr. CONYERS. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 3483) to amend title 18, United States Code, to improve certain provisions relating to imposition and collection of criminal fines, and for other purposes, as amended.

The Clerk read as follows:

H.R. 3483

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Criminal Fine Improvements Act of 1987".

SEC. 2. DUTIES OF THE DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS IN RELATION TO FINES.

Section 604(a) of title 28, United States Code, is amended—

(1) by redesignating paragraph (17) as paragraph (18); and

(2) by inserting after paragraph (16) the following new paragraph:

"(17) Establish procedures and mechanisms within the judicial branch for processing fines, restitution, forfeitures of bail bonds or collateral, and assessments;".

SEC. 3. SPECIAL ASSESSMENTS.

Section 3013 of title 18, United States Code, is amended by adding at the end the following:

"(c) The obligation to pay an assessment ceases five years after the date of the judgment.

"(d) For the purposes of this section, an offense under section 13 of this title is an offense against the United States.".

SEC. 4. DEFINITION OF PETTY OFFENSE.

(a) In General.—Chapter 1 of title 18, United States Code, is amended by adding at the end the following new section:

"§ 19. Petty offense defined

"As used in this title, the term 'petty offense' means a Class B misdemeanor, a Class C misdemeanor, or an infraction.".

(b) Technical Amendment.— The table of sections for chapter 1 of title 18, United States Code, is amended by adding at the end the following new item:

"19. Petty offense defined.".

(c) Clarifying Amendment to Earlier Technical Provision.—Section 38(a) of the Criminal Law and Procedure Technical Amendments Act of 1986 is amended by striking out "section 23" and inserting in lieu thereof "section 34(a)".

SEC. 5. ELIMINATION OF OBSOLETE PROVISION.

Subsection (b) of section 3559 of title 18, United States Code, is amended by striking out "except that:" and all that follows through the end of the subsection and inserting in lieu thereof ", except that the maximum term of imprisonment is the term authorized by the law describing the offense.".

SEC. 6. AUTHORIZED FINES.

Section 3571 of title 18, United States Code, is amended to read as follows:

"§ 3571. Sentence of fine

"(a) In General.—A defendant who has been found guilty of an offense may be sentenced to pay a fine.

"(b) Fines for Individuals.—Except as provided in subsection (e) of this section, an individual who has been found guilty of an offense may be fined not more than the greatest of—

"(1) the amount specified in the law setting forth the offense;

"(2) the applicable amount under subsection (d) of this section;

"(3) for a felony, not more than $250,000;

"(4) for a misdemeanor resulting in death, not more than $250,000;

"(5) for a Class A misdemeanor that does not result in death, not more than $100,000;

"(6) for a Class B or C misdemeanor that does not result in death, not more than $5,000; or

"(7) for an infraction, not more than $5,000.

"(c) Fines for Organizations.—Except as provided in subsection (e) of this section, an organization that has been found guilty of an offense may be fined not more than the greatest of—

"(1) the amount specified in the law setting forth the offense;

"(2) the applicable amount under subsection (d) of this section;

"(3) for a felony, not more than $500,000;

"(4) for a misdemeanor resulting in death, not more than $500,000;

"(5) for a Class A misdemeanor that does not result in death, not more than $200,000;

"(6) for a Class B or C misdemeanor that does not result in death, not more than $10,000; and

"(7) for an infraction, not more than $10,000.

"(d) Alternative Fine Based on Gain or Loss.—If any person derives pecuniary gain from the offense, or if the offense results in pecuniary loss to a person other than the defendant, the defendant may be fined not more than the greater of twice the gross gain or twice the gross loss, unless imposition of a fine under this subsection would unduly complicate or prolong the sentencing process.

"(e) Special Rule for Lower Fine Specified in Substantive Provision.—If a law setting forth an offense specifies a fine that is lower than the fine otherwise applicable under this section and such law, by specific reference, exempts the offense from the applicability of the fine otherwise applicable under this section, the defendant may not be fined more than the amount specified in the law setting forth the offense.".

SEC. 7. IMPOSITION OF A SENTENCE OF FINE AND RELATED MATTERS.

Section 3572 of title 18, United States Code, is amended to read as follows:

"§ 3572. Imposition of a sentence of fine and related matters

"(a) Factors To Be Considered.—In determining whether to impose a fine, and the amount, time for payment, and method of payment of a fine, the court shall consider, in addition to the factors set forth in section 3553(a)—

"(1) the defendant's income, earning capacity, and financial resources;

"(2) the burden that the fine will impose upon the defendant, any person who is financially dependent on the defendant, or any other person (including a government) that would be responsible for the welfare of any person financially dependent on the defendant, relative to the burden that alternative punishments would impose;

"(3) any pecuniary loss inflicted upon others as a result of the offense;

"(4) whether restitution is ordered or made and the amount of such restitution;

"(5) the need to deprive the defendant of illegally obtained gains from the offense;

"(6) whether the defendant can pass on to consumers or other persons the expense of the fine; and

"(7) if the defendant is an organization, the size of the organization and any measure taken by the organization to discipline any officer, director, employee, or agent of the organization responsible for the offense and to prevent a recurrence of such an offense.

"(b) Fine Not To Impair Ability To Make Restitution.—If, as a result of a conviction, the defendant has the obligation to make restitution to a victim of the offense, the court shall impose a fine or other monetary penalty only to the extent that such fine or penalty will not impair the ability of the defendant to make restitution.

"(c) Effect of Finality of Judgment.—Notwithstanding the fact that a sentence to pay a fine can subsequently be—

"(1) modified or remitted under section 3573;

"(2) corrected under rule 35 and section 3742; or

"(3) appealed and modified under section 3742;

a judgment that includes such a sentence is a final judgment for all other purposes.

"(d) Time, Method of Payment, and Related Items.—A person sentenced to pay a fine or other monetary penalty shall make such payment immediately, unless, in the interest of justice, the court provides for payment on a date certain or in installments. If the judgment permits other than immediate payment, the period provided for shall not exceed five years, excluding any period served by the defendant as imprisonment for the offense.

"(e) Alternative Sentence Precluded.—At the time a defendant is sentenced to pay a fine, the court may not impose an alternative sentence to be carried out if the fine is not paid.

"(f) Responsibility for Payment of Monetary Obligation Relating to Organization.—If a sentence includes a fine, special assessment, or other monetary obligation (including interest) with respect to an organization, each individual authorized to make disbursements for the organization has a duty to pay the obligation from assets of the organization. If such an obligation is imposed on a director, officer, shareholder, employee, or agent of an organization, payments may not be made, directly or indirectly, from assets of the organization, unless the court finds that such payment is expressly permissible under applicable State law.

"(g) Security for Stayed Fine.—If a sentence imposing a fine is stayed, the court shall, absent exceptional circumstances (as determined by the court)—

"(1) require the defendant to deposit, in the registry of the district court, any amount of the fine that is due;

"(2) require the defendant to provide a bond or other security to ensure payment of the fine; or

"(3) restrain the defendant from transferring or dissipating assets.

"(h) Delinquency.—A fine is delinquent if a payment is more than 30 days late.

"(i) Default.—A fine is in default if a payment is delinquent for more than 90 days. When a fine is in default, the entire amount of the fine is due within 30 days after notification of the default, notwithstanding any installment schedule.".

SEC. 8. REVISION OF MODIFICATION OR REMISSION PROVISION.

(a) In General.—Section 3573 of title 18, United States Code, is amended by adding at the end the following new subsection:

"(c) Petition of the Government for Modification or Remission.—Upon petition of the Government showing that reasonable efforts to collect a fine or assessment are not likely to be effective, the court, in the interest of justice, may—

"(1) remit all or part of the fine or special assessment, including interest and penalties;

"(2) defer payment of the fine or special assessment to a date certain or pursuant to an installment schedule; or

"(3) extend a date certain or an installment schedule previously ordered.

A petition under this subsection shall be filed in the court in which sentence was originally imposed, unless the court transfers jurisdiction to another court.".

(b) Technical Amendment.—The subsection heading for subsection (a) of section 3573 of title 18, United States Code, is amended by inserting after "Petition" the following: "by the defendant".

SEC. 9. RECEIPT OF FINES—INTERIM PROVISIONS.

(a) November 1, 1987, to April 30, 1988.—Notwithstanding section 3611 of title 18, United States Code, a person who, during the period beginning on November 1, 1987, and ending on April 30, 1988, is sentenced to pay a fine or assessment shall pay the fine or assessment (including any interest or penalty) to the clerk of the court, with respect to an offense committed on or before December 31, 1984, and to the Attorney General, with respect to an offense committed after December 31, 1984.

(b) May 1, 1988, to October 31, 1988.—(1) Notwithstanding section 3611 of title 18, United States Code, a person who during the period beginning on May 1, 1988, and ending on October 31, 1988, is sentenced to pay a fine or assessment shall pay the fine or assessment in accordance with this subsection.

(2) In a case initiated by citation or violation notice, such person shall pay the fine or assessment (including any interest or penalty), as specified by the Director of the Administrative Office of the United States Courts. Such Director may specify that such payment be made to the clerk of the court or in the manner provided for under section 604(a)(17) of title 28, United States Code.

(3) In any other case, such person shall pay the fine or assessment (including any interest or penalty) to the clerk of the court, with respect to an offense committed on or before December 31, 1984, and to the Attorney General, with respect to an offense committed after December 31, 1984.

SEC. 10. RECEIPT OF FINES—PERMANENT PROVISION.

(a) In General.—Section 3611 of title 18, United States Code, is amended to read as follows:

"§ 3611. Payment of a fine

"A person who is sentenced to pay a fine or assessment shall pay the fine or assessment (including any interest or penalty), as specified by the Director of the Administrative Office of the United States Courts. Such Director may specify that such payment be made to the clerk of the court or in the manner provided for under section 604(a)(17) of title 28, United States Code.".

(b) Effective Date.—The amendment made by this section shall apply with respect to any fine imposed after October 31, 1988. Such amendment shall also apply with respect to any fine imposed on or before October 31, 1988, if the fine remains uncollected as of February 1, 1989, unless the Director of the Administrative Office of the United States Courts determines further delay is necessary. If the Director so determines, the amendment made by this section shall apply with respect to any such fine imposed on or before October 31, 1988, if the fine remains uncollected as of May 1, 1989.

SEC. 11. COLLECTION AMENDMENTS.

(a) Notification of Receipt and Related Matters.—Section 3612(a) of title 18, United States Code, is amended to read as follows:

"(a) Notification of Receipt and Related Matters.—The clerk or the person designated under section 604(a)(17) of title 28 shall notify the Attorney General of each receipt of a payment with respect to which a certification is made under subsection (b), together with other appropriate information relating to such payment. The notification shall be provided—

"(1) in such manner as may be agreed upon by the Attorney General and the Director of the Administrative Office of the United States Courts; and

"(2) within 15 days after the receipt or at such other time as may be determined jointly by the Attorney General and the Director of the Administrative Office of the United States Courts.

If the fifteenth day under paragraph (2) is a Saturday, Sunday, or legal public holiday, the Attorney General shall provide notification not later than the next day that is not a Saturday, Sunday, or legal public holiday.".

(b) Information To Be Included in Judgment.—Section 3612(b) of title 18, United States Code, is amended to read as follows:

"(b) Information To Be Included in Judgment; Judgment To Be Transmitted to Attorney General.—(1) A judgment or order imposing, modifying, or remitting a fine of more than $100 shall include—

"(A) the name, social security account number, mailing address, and residence address of the defendant;

"(B) the docket number of the case;

"(C) the original amount of the fine and the amount that is due and unpaid;

"(D) the schedule of payments (if other than immediate payment is permitted under section 3572(d));

"(E) a description of any modification or remission; and

"(F) if other than immediate payment is permitted, a requirement that, until the fine is paid in full, the defendant notify the Attorney General of any change in the mailing address or residence address of the defendant not later than thirty days after the change occurs.

"(2) Not later than ten days after entry of the judgment or order, the court shall transmit a certified copy of the judgment or order to the Attorney General.".

(c) Technical Amendments.—

(1) Section 3612(d) of title 18, United States Code, is amended by striking out "section 3572(i)" and inserting in lieu thereof "section 3572(h)".

(2) Section 3612(e) of title 18, United States Code, is amended by striking out "section 3572(j)" and inserting in lieu thereof "section 3572(i)".

(d) Interest on Fines.—Section 3612(f) of title 18, United States Code, is amended to read as follows:

"(f) Interest on Fines.—

"(1) In general.—The defendant shall pay interest on any fine of more than $2,500, unless the fine is paid in full before the fifteenth day after the date of the judgment. If that day is a Saturday, Sunday, or legal public holiday, the defendant shall be liable for interest beginning with the next day that is not a Saturday, Sunday, or legal public holiday.

"(2) Computation.—Interest on a fine shall be computed—

"(A) daily (from the first day on which the defendant is liable for interest under paragraph (1)); and

"(B) at a rate equal to the coupon issue yield equivalent (as determined by the Secretary of the Treasury) of the average accepted auction price for the last auction of fifty-two week United States Treasury bills settled before the first day on which the defendant is liable for interest under paragraph (1).

"(3) Modification of interest by court.—If the court determines that the defendant does not have the ability to pay interest under this subsection, the court may—

"(A) waive the requirement for interest;

"(B) limit the total of interest payable to a specific dollar amount; or

"(C) limit the length of the period during which interest accrues.".

(e) Penalty for Delinquent Fine; Waiver of Interest or Fine by Attorney General.—Section 3612 of title 18, United States Code, is amended by adding at the end the following new subsections:

"(g) Penalty for Delinquent Fine.—If a fine becomes delinquent, the defendant shall pay, as a penalty, an amount equal to 10 percent of the principal amount that is delinquent. If a fine becomes in default, the defendant shall pay, as a penalty, an additional amount equal to 15 percent of the principal amount that is in default.

"(h) Waiver of Interest or Penalty by Attorney General.—The Attorney General may waive all or part of any interest or penalty under this section if, as determined by the Attorney General, reasonable efforts to collect the interest or penalty are not likely to be effective.

"(i) Application of Payments.—Payments relating to fines shall be applied in the following order: (1) to principal; (2) to costs; (3) to interest; and (4) to penalties.".

SEC. 12. RECEIPT OF RESTITUTION PAYMENTS BY COURTS.

Section 3663(f)(4) of title 18, United States Code, is amended by inserting "or the person designated under section 604(a)(17) of title 28" after "Attorney General".

SEC. 13. EFFECTIVE DATE.

This Act shall take effect on the date of the enactment of this Act, except that the amendments made by section 10 of this Act shall take effect as provided in such section and the amendments made by sections 4, 5, 6, 7, 8, 11, and 12 shall take effect on the date of the taking effect of section 212(a)(2) of the Sentencing Reform Act of 1984.

The SPEAKER pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from Michigan [Mr. Conyers] will be recognized for 20 minutes and the gentleman from California [Mr. Moorhead] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Michigan [Mr. Conyers].

Mr. CONYERS. Mr. Speaker, I yield myself such time as I may consume.

(Mr. CONYERS asked and was given permission to revise and extend his remarks.)

Mr. CONYERS. Mr. Speaker, this bill is the product of work undertaken by the Judiciary Committee in conjunction with the Department of Justice and the Administrative Office of the U.S. Courts.

The criminal fine provisions currently in effect were enacted by the Criminal Fine Enforcement Act of 1984. That bill was the product of work by the House and Senate Judiciary Committees, the Department of Justice, the Administrative Office of the U.S. Courts and the U.S. Parole Commission. The Criminal Fine Enforcement Act was developed independently of and was enacted after the Sentencing Reform Act of 1984, which also contained criminal fine provisions.

At the time of enactment, the interested parties agreed that the Criminal Fine Enforcement Act's fine provisions were superior to those of the Sentencing Reform Act. However, because it was so close to the end of the 98th Congress, there was not enough time to merge the two bills. Both bills were therefore enacted. The Criminal Fine Enforcement Act's provisions have been in effect since then, but are scheduled to be repealed on November 1 when the Sentencing Reform Act takes effect.

At the time the bills were enacted, the interested parties agreed that before the Sentencing Reform Act took effect, its fine provisions would be replaced by the Criminal Fine Enforcement Act's. This legislation carries out this understanding. The purpose of the bill is to amend the Sentencing Reform Act before it takes effect on November 1 to conform its fine provisions with the Criminal Fine Enforcement Act's. The bill also modifies some current law provisions in areas where the interested parties have agreed that changes are needed. I urge my colleagues to support this bill.

□ 1415

Mr. MOORHEAD. Mr. Speaker, I yield such time as he may consume to the gentleman from Pennsylvania [Mr. GEKAS].

Mr. GEKAS. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, the gentleman from Michigan [Mr. CONYERS] has quite adequately described the content of the bill, and in a way the whole thrust of this legislation is to return to the good old days.

It was at one point the custom and usage and actually operation of law that collection of fines was a duty imposed upon the clerk of courts in our Federal criminal justice system. Since then, a whole series of things happened that changed that to place the collection of fines in the U.S. attorney's office. That created a whole series of new problems. I do not know what it cured by taking it from the clerk of the courts to the U.S. attorney's office, but whatever curing was done was also accompanied by a lot of different new problems that did not exist when the clerk of court was the chief collector, as it were.

This piece of legislation brings us back to, as I said, the good old days, and allows the clerk of court, which historically has been an office which had the duty of administering everything that went on in each individual courthouse, so in reverting back to the historical good times we are, we believe, cleaning up our act.

Mr. MOORHEAD. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 3483. This legislation is noncontroversial and represents an agreement between the Department of Justice and the Administrative Office of the U.S. Court as to how criminal fines shall be collected.

The bill is totally supported by the administration. It is a fine compromise that has been worked out, and I commend the gentleman from Michigan [Mr. CONYERS] and the gentleman from Pennsylvania [Mr. GEKAS] for the work that they have done on this legislation, and I ask for an "aye" vote.

Mr. Speaker, I yield back the balance of my time.

Mr. CONYERS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I want to thank all of my colleagues on the subcommittee, particularly the gentleman from Pennsylvania [Mr. GEKAS], the ranking minority member, as well as the gentleman from California [Mr. MOORHEAD], and all of the staff. They have worked this out. We think it is for the definite improvement of the criminal justice system.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The **SPEAKER** pro tempore (Mr. MONTGOMERY). The question is on the motion offered by the gentleman from Michigan [Mr. CONYERS] that the House suspend the rules and pass the bill, H.R. 3483, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. CONYERS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on H.R. 3483, the bill just passed.

The **SPEAKER** pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

INCREASING AUTHORIZATION FOR ACQUISITION AT WOMEN'S RIGHTS NATIONAL HISTORICAL PARK

Mr. VENTO. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 2952) to increase the amount authorized to be appropriated for acquisition at the Women's Rights National Historical Park.

The Clerk read as follows:

H.R. 2952

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. AUTHORIZATION OF APPROPRIATIONS FOR ACQUISITION.

Subsection (i) of section 1601 of the Act entitled "An Act to provide, with respect to the national park system: for the establishment of new units; for adjustments in boundaries; for increases in appropriation authorizations for land acquisition and development; and for other purposes" (16 U.S.C. 410ll(i)) is amended by striking out "$490,000" and inserting in lieu thereof "$700,000".

The **SPEAKER** pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from Minnesota [Mr. VENTO] will be recognized for 20 minutes and the gentleman from California [Mr. LAGOMARSINO] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Minnesota [Mr. VENTO].

GENERAL LEAVE

Mr. VENTO. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to extend their remarks on H.R. 2952, the bill presently under consideration.

The **SPEAKER** pro tempore. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

Mr. VENTO. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 2952, a bill to increase the amount authorized to be appropriated for acquisition at the Women's Rights National Historical Park was introduced by our colleague FRANK HORTON. This bill has bipartisan support, and makes only a small increase in the amount authorized.

Nearly 140 years ago, some 300 people—women and men—gathered in Seneca Falls, NY, to consider the status and needs of women. The 1848 Seneca Falls Convention, as it came to be known, marks the formal beginning of the struggle for women's rights in this country. The "declaration of sentiments" proclaimed there called for women to be treated as full citizens of this country.

Today, Women's Rights National Historical Park, established in 1980, preserves and interprets those events and their consequences. The park includes the Wesleyan Chapel, site of the convention, the home of Elizabeth Cady Stanton—one of its key organizers—and several other homes and structures.

Women's Rights National Historical Park is now engaged in a design competition for the Wesleyan Chapel so that the historic fabric that remains will be saved and the chapel itself will serve to educate and inspire visitors. Located next door to the historic chapel is a modern movie theater which is a major intrusion in the historic scene. By raising the authorization for appropriations, H.R. 2952 makes the acquisition of that movie theater possible.

At the hearing on H.R. 2952, witnesses emphasized that this very American park illustrates the growth of representative government with the recognition that women should be fully treated as citizens. Certainly that recognition is a theme most appropriate to this year of the bicentennial of the Constitution.

Mr. Speaker, I believe that this legislation will assist the Women's Rights National Historical Park to preserve and interpret the history of the effort to gain women's right in this country. H.R. 2952 will make possible the appropriate development of Women's Rights National Historical Park.

Mr. Speaker, I endorse this legislation and urge its passage.

Mr. LAGOMARSINO. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 2952, to increase the amount of funding authorized for appropriations for acquisition at the Women's Rights National Historical Park from $490,000 to $700,000.

This increase is needed for the National Park Service to acquire additional properties of historical significance that were proposed for inclusion in the park when it was established in 1980. These primarily include a movie theater located in a core area of the park. Under the general management plan for the park, the theater is to be acquired and removed to allow for the development of this area as an integrated historic site. The owners of the property are willing to sell to the National Park Service. In addition, the necessary funds for acquisition have already been earmarked within the Park Service budget. The only remaining obstacle to acquisition is the land acquisition ceiling.

Although it is estimated that the ceiling only needs to be increased by $40,000, rather than $200,000, to enable the proposed acquisition, the additional authorization provides a cushion to allow for acquisition of other historical properties which may be needed in the future to round out the park. Furthermore, since nearly all of the properties proposed for inclusion in the park have been acquired, it is assumed that H.R. 2952 will enable completion of the park without any future increases in the authorized land acquisition ceiling.

Mr. Speaker, the Women's Rights National Historical Park is located in Seneca Falls, NY, where the equal rights struggle began at the first women's rights convention in 1848. It is our only national park devoted to women's history and is clearly central in providing an understanding of the evolving role of women in our country. H.R. 2952 will enable the development and completion of this significant park at a minimal expense to the Federal Government.

I would like to commend the sponsor of H.R. 2952, my colleague from New York, Representative HORTON, for his interest in and efforts on behalf of the Women's Rights Park. In addition, I would like to thank the subcommittee chairman, Representative VENTO, for moving this legislation forward expeditiously.

Mr. Speaker, I urge all of my colleagues to approve H.R. 2952.

Mr. Speaker, I yield such time as he may consume to the gentleman from New York [Mr. HORTON], the author of the legislation.

Mr. HORTON. Mr. Speaker, I thank the gentleman for yielding me this time, and for his strong statement in support of this legislation.

Mr. Speaker, I rise in strong support of H.R. 2952. I want to thank the chairman of the subcommittee, the gentleman from Minnesota [BRUCE VENTO] as well as the ranking minority member, the gentleman from Montana [RON MARLENEE] for their outstanding efforts to bring this bill to the floor so quickly.

We are all very fortunate to have these two men overseeing our country's park system. In addition, I want to thank the chairman and ranking member of the full committee, Mr. UDALL and Mr. YOUNG of Alaska, for their willingness to press forward on this important matter.

I also want to thank my colleague, the gentlewoman from New York [LOUISE SLAUGHTER] from the 30th District, for her cosponsorship of this legislation.

Mr. Speaker, this legislation merely increases the property purchase authorization ceiling from its current level of $490,000 to $700,000. Park officials have been successful in their efforts to purchase important property for inclusion in the park. So successful, in fact, that they are at the purchase ceiling authorization established in the original legislation. This increase will allow park officials to expand the park to include historical sites around the park that have not yet been acquired. But they don't need the actual money—that will be reprogrammed from within the National Park Service annual budget. They simply need the authority to purchase, and that's what my bill will do.

I have had the honor of representing the Women's Rights National Historical Park since the 1982 elections. Located in Seneca Falls, NY, this site was the host of the first women's rights convention, held nearly 140 years ago. During that 2-day convention, the now-famous Declaration of Sentiments was brought forth. That declaration included a statement that all men and women were created equal, and that women deserved the right to vote—rebellious ideas for the mid-1800's. Elizabeth Cady Stanton, one of the principal organizers of that convention, called it "the inauguration of the greatest rebellion the world has ever seen."

When the park was created in 1980, its specific intent was to preserve and interpret the significant sites associated with the first women's rights convention and the history of the women's rights movement. Currently included in the park are the Wesleyan Chapel, the actual site of the convention; the recently restored home of Elizabeth Cady Stanton; the Hunt house in nearby Waterloo, where the convention was planned; and the McClintock house, the site where the Declaration of Sentiments was actually written.

Mr. Speaker, these are all important historical sites. But other areas, such as a movie theater adjacent to the historic Wesleyan Chapel, are essential to the planned renovation of the park. Without passage of this bill, the Women's Rights Historical Park envisioned in the enacting legislation can never become a reality.

Many of you are familiar with some of the problems that this park has had. It is currently operating on a budget estimated by some to be barely more than half what is needed for barebones operation. The park needs approximately $400,000 per year to operate productively. To operate at its most effective and efficient level, the park will require $700,000 per year. It currently has $242,000, just enough to keep its doors open. While this legislation does not address the critical question of funding levels, it does make a statement that the Women's Rights National Historical Park is an important asset to our National Park System, and should be treated accordingly. I remain hopeful that sufficient operating levels will come as the park continues to mature and expand.

Mr. Speaker, H.R. 2952 does not appropriate 1 cent. It is a responsible bill that is much needed to allow this important park to meet its present needs and future goals. Thank you again for your prompt consideration. I stand ready to answer any questions you may have.

Mr. VENTO. Mr. Speaker, will the gentleman yield?

Mr. HORTON. I am glad to yield to the gentleman from Minnesota.

Mr. VENTO. Mr. Speaker, I commend the gentleman. I am well aware of his strong support for this park, and I think that is one of the reasons it has had the success that it has experienced.

I am also aware and I know the gentleman would want to join me in commending Mrs. Charlotte Conable, the chair of the Advisory Commission, who has worked so hard, as well as the many volunteers who have worked in this park and helped cause its success. We can pass legislation here, but the heart and soul of this park is the advisory committees, the people that have worked on it, and the gentleman from New York and his colleagues who are so interested in this park and that really make it the success that it has become. So I commend the gentleman and others in that community who have shown the intense interest they have in this, and have made it really the success that it is.

Mr. HORTON. I certainly would agree with the gentleman's comments and want to support what the gentleman has said, especially with regard to Mrs. Conable.

□ 1430

Charlotte Conable is, as you said, the head of the advisory committee. That advisory committee works all the time to provide the input to make it possible for the park to continue. She did testify on this bill and I was very pleased that she was able to be present and to testify.

As we know, she is the wife of our former colleague, Barber Conable and he too is very much interested in this park.

Mr. VENTO. Mr. Speaker, I am aware of this particular fact and I am also aware that she is a pretty diligent and capable scholar and historian in her own right.

Mr. HORTON. That is correct.

Mr. VENTO. And I am certain that our predecessor in this body benefitted immensely from her assistance and still does.

Mr. HORTON. I thank the gentleman and yield back the balance of my time.

Mr. VENTO. Mr. Speaker, I yield such time as she may consume to the gentlewoman from New York [Ms. Slaughter].

Ms. SLAUGHTER of New York. I thank the gentleman for yielding time to me.

Mr. Speaker, before I start I would also like to say that my colleague, the gentleman from New York [Mr. Horton], also benefits greatly from the strong support and help he currently is getting from his wife, Nancy. She has been very helpful in this matter as well.

Mr. Speaker, I rise in strong support of H.R. 2952, and wish to commend my colleague, Frank Horton, for his leadership on this legislation. The Women's Rights National Historical Park in Seneca Falls, NY, is an important monument to the hard-won rights of American women. As the only woman representative from the State of New York currently serving in Congress, I am proud to be a cosponsor of the gentlemen's bill.

The Women's Rights National Historical Park is dedicated to the men and women of the Seneca Falls convention of 1848 and the Declaration of Sentiments they produced, boldly declaring that "all men and women are created equal" and demanding that women be allowed the right to vote.

Mr. Speaker, H.R. 2952, will allow for the realization of the park's original intent. When enabling legislation was passed by Congress in 1980, the purpose was to preserve the sites of Seneca Falls that were important to the convention and the women's rights movement. To date, a significant amount of property has been purchased, however, there are still a few properties of great historical importance yet to be included in the park. This legislation would authorize these important purchases without appropriating any new funds. As my colleague, Mr. Horton has pointed out, the money for these purchases would be reallocated from existing funds in the National Park Service budget.

In closing, I wish to share with my colleagues a document which hangs on the wall of my office and I would like to welcome my colleagues to drop by my office anytime to read the full text of the statement. In March of 1848, four months before the historic women's rights convention at Seneca Falls, a group "of 44 ladies of Genesee and Wyoming" counties in upstate New York presented the New York State Assembly with a petition that stated, in part:

> Your laws, after depriving us of property, of the means of acquiring it, and even of individuality, [still] require the same obedience from us as from free citizens.
>
> We therefore think common justice and humanity would dictate that when you class us—and our privileges—with those of idiots and lunatics, you should do the same with regard to our responsibilities; and as our husbands assume responsibility for our debts and trespasses, they should also [be held responsible] for our misdemeanors and crimes; for justice can never hold lunatics, idiots, infants or married women, (as the law now [stands]), accountable for their conduct.
>
> Our numerous and yearly petitions for this most desirable object having been disregarded, we now ask your august body to abolish all laws which hold married women more accountable for their acts than infants, idiots, and lunatics.

In the spirit of these "44 ladies of Genesee and Wyoming" counties, I urge my colleagues to vote in favor of this legislation.

Mr. LAGOMARSINO. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. VENTO. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. Montgomery). The question is on the motion offered by the gentleman from Minnesota [Mr. Vento] that the House suspend the rules and pass the bill, H.R. 2952.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

OLMSTED HERITAGE LANDSCAPES ACT OF 1987

Mr. VENTO. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 17) to identify, commemorate, and preserve the legacy of historic landscapes of Frederick Law Olmsted, and for other purposes, as amended.

The Clerk read as follows:

H.R. 17

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Section 1. This Act may be cited as the "Olmsted Heritage Landscapes Act of 1987".

Sec. 2. The Congress finds and declares that—

(a) Frederick Law Olmsted, Senior, was the premier American landscape architect during the nineteenth century and is considered the father of landscape architecture in the United States;

(b) Olmsted's philosophy and designs influenced the development of landscapes through the Nation, including national, State, and local parks, forests, parkways, gardens, college campuses, cities and planned communities, and publicly and privately owned estates, institutions, cemeteries, and recreation areas;

(c) Olmsted's associates and sons carried out his philosophy and designs well into the twentieth century and with the achievements of Olmsted himself have left a tremendous legacy of historic landscapes and a philosophy that continues to benefit the American people and people throughout the world; and

(d) existing Federal programs relating to parks, recreation, and historic preservation should be utilized to assist the efforts of State and local governments and private organizations in preserving the Olmsted legacy for the use and enjoyment of present and future generations.

Sec. 3. As used in this Act—

(a) The term "Secretary" means the Secretary of the Interior.

(b) The term "Olmsted heritage landscape" means any designed landscape, including, but not limited, to parks, forests, parkways, gardens, scenic reservations, college campuses, planned communities, estates, institutions, cemeteries, or recreation areas designed by Frederick Law Olmsted, Senior, his sons and partners, and his associates Calvert Vaux, Charles Eliot, Warren Manning, Jacob Weidenmann, Horace W.S. Cleveland, William Hammond Hall, and George Kessler.

(c) The term "historic landscape" means any landscape included in, or eligible for, inclusion in the National Register of Historic Places.

(d) The term "State outdoor recreation liaison officer" means the State officer designated as such under the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-4-4601-11).

(e) The term "documentation" includes drawings, blueprints and other plans, photographs, and other available records.

As used in this Act, the terms "preservation", "State historic preservation officer", "State", and "local government" have the same meaning as when used in the National Historic Preservation Act (16 U.S.C. 470-470t).

Sec. 4. The Secretary, acting through the Director of the National Park Service, in exercising his authority to maintain the National Register of Historic Places, and with the participation of State historic preservation officers, State outdoor recreation liaison officers, organizations representing local elected officials and local governments, concerned public and private organizations, academic institutions, professional associations, and interested individuals, shall encourage States to identify, and nominate, in accordance with criteria for determining eligibility for listing on the National Register, historic landscapes in general and Olmsted heritage landscapes in particular. The Secretary shall determine the eligibility of each site for listing on the National Register. In researching the nomination of historic landscapes to the National Register, the Secretary shall retain the research materials for all historic landscapes on a State-by-State basis and ensure that such material is available to the public.

Sec. 5. The Secretary shall—

(a) develop and make available to States and interested public and private entities nominations to the National Register of Historic Places that will assist in carrying out the provisions of section 4;

(b) develop and make available to States and interested public and private entities guidelines for applying the Secretary's Standards for Historic Preservation Projects to historic landscapes;

(c) provide technical assistance to other Federal agencies, State and local governments, private organizations, and interested individuals, on the identification, commemoration, and preservation of historic landscapes;

(d) conduct and submit to the Congress, within 5 years after the enactment of this Act, a thematic study of historic landscapes to identify landscapes (including Olmsted heritage landscapes) which would qualify as national historic landmarks;

(e) encourage the use of the Frederick Law Olmsted National Historic Site in Brookline, Massachusetts, as a center for research, conferences, fellowships, and related activities on historic landscapes.

Sec. 6. Sections 106, 109(a) and 301(5) of the National Historic Preservation Act (16 U.S.C. 470-470t) are each amended by inserting "landscape," after "structure,". Section 101(a)(1)(A) of such Act is amended by inserting "landscapes," after "structures,". Sections 201(a)(9) and 301(13)(B) of such Act are each amended by inserting "landscape architecture," after "architecture,". Section 301(12)(B) and 301(13)(A) of such Act is amended by inserting "landscape architecture," after "architectural history,".

Sec. 7. The Secretary shall encourage maximum public participation in all aspects of the implementation of this Act, including the identification, commemoration, and preservation of any Olmsted heritage landscape.

Sec. 8. There is hereby established an advisory commission to advise the Secretary on the preservation of the Frederick Law Olmsted National Historic Site and other historic landscapes. The Commission shall be composed of the Secretary of the Interior ex-officio, and 12 additional members, to be appointed by the Secretary, as follows:

(a) 2 members to be appointed from recommendations submitted by national organizations concerned with Olmsted heritage landscapes, Olmsted papers, and other Olmsted history.

(b) 2 members to be appointed from recommendations submitted by national organizations concerned with landscape architecture.

(c) 2 members to be appointed from recommendations submitted by national organizations concerned with historic preservation.

(d) 1 member to be appointed from recommendations submitted by the State Historic Preservation Officers.

(e) 1 member to be appointed from recommendations submitted by American Planning Association.

(f) 2 members who represent owners of privately owned historic landscapes.

(g) 2 members who represent owners of publicly owned historic landscapes.

Sec. 9. In order to commemorate the Olmsted achievements and influence on American life, the Secretary, in consultation with the Librarian of Congress, the Secretary of the Smithsonian Institution, and the Advisory Council on Historic Preservation, land with the participation of government agencies, concerned public and private organizations, academic institutions, professional associations, and interested individuals, shall coordinate appropriate activities during the period of 1987 to 1995.

Sec. 10. Nothing in this Act shall change the rights enjoyed by any owner of private property.

Sec. 11. There are hereby authorized to be appropriated $2,500,000 to carry out the purposes of this Act.

The SPEAKER pro tempore. Is a second demanded?

Mr. MARLENEE. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Minnesota [Mr. Vento] will be recognized for 20 minutes and the gentleman from Montana [Mr. Marlenee] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Minnesota [Mr. Vento].

GENERAL LEAVE

Mr. VENTO. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill presently being considered.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

Mr. VENTO. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 17 was initially introduced by our former colleague John Seiberling. In this Congress, it was introduced by the chairman of the Committee in Interior and Insular Affairs, Morris Udall. It seeks to encourage the preservation of historic landscapes. Historic landscapes include not only those landscapes designed by professionals such as Frederick Law Olmsted, but also vernacular or "common" landscapes and prehistoric ones. Historic landscapes have received less recognition and protection than other parts of our Nation's cultural heritage. Only gradually have preservationists come to see that historic landscapes also need preservation.

The Committee on Interior and Insular Affairs adopted an amendment in the nature of a substitute that makes several changes in the bill as introduced. As amended, H.R. 17 firmly links the preservation of historic landscapes with other historic resources as part of the National Historic Preservation Act. For example, it clarifies that landscapes are included in the National Historic Preservation Act. They have been included as historic districts or sites but not fully recognized in their own right as they should be. It directs the Secretary of the Interior to encourage the States to identify and nominate historic landscapes to the National Register of Historic Places. The bill calls for a landmark theme study on historic landscapes so that the National Park Service will study and select exemplary historic landscapes for greater protection. H.R. 17 establishes an advisory commission to advise the Secretary on historic landscapes to assist the Secretary with expertise in the particular needs of historic landscapes. Finally, an authorization of appropriations of $2,500,000 has been added. This amount is intended as additional funding to assist the National Park Service in its responsibilities for historic landscapes.

These changes are intended to resolve some of the controversy that has accompanied this bill and should go far in making historic landscapes recognized as fully part of the cultural resources we preserve. The bill very clearly reinforces the principles of historic preservation that have developed these last decades. It is not intended to supplant or change those principles, but to clarify them. For example, rights property owners currently have under historic preservation law are retained but no new rights are given them.

H.R. 17 is intended to fit within the framework of historic preservation law, so that we will be better able to recognize and preserve these historic landscapes that both provide the setting for other historic resources and have significance in themselves as evidence of our past. If we do not know and understand our Nation's past, we will have greater difficulty in charting its future. The preservation of historic landscapes assists us in that knowledge.

Mr. Speaker, I endorse this bill, and urge its passage.

Mr. Speaker, I reserve the balance of my time.

Mr. MARLENEE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, when I first became aware of this legislation, I remarked that it sounded like "urban wilderness legislation" because it had preservation as its goal. We in the West have found out what preservation means through millions of acres of wilderness. We also find that people in the cities, particularly eastern cities, are eager to designate even more wilderness in the West in order to preserve areas for their idea of recreation. Very little consideration is given to the people who are trying to make a living in these areas where Congress has designated millions of acres of wilderness. That is why I find it interesting that property owners who are affected by H.R. 17 are suddenly realizing what the word "preservation" means. I have been sympathetic to their concerns because I understand the consequences of preservation legislation whether it is for Forest Service lands in the West or for historic buildings, landmarks, or landscapes in the cities.

Mr. Speaker, it is because of the concerns I have with preservation legislation that I, along with Congressman Joe DioGuardi, introduced H.R. 2931 as an alternative to H.R. 17.

I still believe that H.R. 2931 is a better bill because it is limited to historic landscapes which Olmsted Sr. actually designed, he himself actually designed. Moreover, under my bill Olmsted landscapes are limited to public parks to ensure that private property owners are not affected in any way by the legislation.

Because of these limitations, H.R. 2931 is a much less costly alternative to H.R. 17. Furthermore, if it is our intent to commemorate the work of Frederick Law Olmsted, Sr., then it is appropriate to limit this legislation before us to Olmsted Sr. By contrast, H.R. 17 includes any designed landscape including "parks, forests, parkways, garden, scenic reservations, college campuses, planned communities, estates, institutions, cemeteries or recreation areas designed by Frederick Olmsted Sr., his sons, partners, and seven associates." Because of this overly broad scope, H.R. 17 will include over 5,000 landscapes that will take several years and much money to evaluate. The legislation proposed by Mr. DioGuardi and myself would only involve some 750 landscape sites which include the most famous Olmsted sites.

Although I am still in favor of my bill, the substitute adopted by the interior committee is better than the legislation originally proposed by H.R. 17 because it is patterned after the administration's proposal, note I said "patterned." I must commend the subcommittee chairman, Mr. Vento, for recognizing the potential problems and for adopting this measure in that it makes a significant change to H.R. 17 by requiring the Park Service to use its existing authority to identify and nominate historic landscapes to the National Historic Register rather than create a separate inventory process as originally proposed by H.R. 17.

Finally, I would like to point out that even though some may portray this legislation as the administration's bill, it is not the proposal recommended by administration through the Park Service. There are significant changes to the administration's proposal, including the addition of an advisory committee which always costs money. As a consequence of these changes the administration is opposed to the bill. I would hope these problems can be worked out in the other body.

Mr. Speaker, although I am not supporting this bill, I am not opposing this bill and each Member of this body will have to make his own decision on whether to support the measure based on budgetary constraints.

Mr. Speaker, I reserve the balance of my time.

Mr. VENTO. Mr. Speaker, I have no further requests for time.

Mr. MARLENEE. Mr. Speaker, I yield such time as he may consume to my colleague, the gentleman from Pennsylvania [Mr. Walker].

Mr. WALKER. I thank my colleague for yielding.

If he would, I would appreciate if the gentleman would answer a couple of questions for me about the bill.

As he pointed out, the administration does oppose enactment of this bill in its present form.

Mr. MARLENEE. That is correct.

Mr. WALKER. Do I also understand that there is already a Frederick Law Olmsted National Historic Site in Massachusetts that was established only for the purpose of honoring the work of the gentleman that this bill is designed to further honor?

Mr. MARLENEE. That is correct. And in addition if I may, this bill goes beyond Frederick Olmsted, Sr., and takes in his associates, seven associates, his son and a number of other people.

Mr. WALKER. I understood the gentleman to be saying that and what struck me as he was saying it is that there is only $2.5 million—I say "only"; that is a lot of money—but we have $2.5 million that is in this bill for the purposes of the act.

Now the gentleman is saying that we are going to have to catalog 5,000 sites to meet the mandates under this bill. That is going to cost considerably more than $2.5 million, is it not?

Mr. MARLENEE. I would suppose that the additional workload that we put on the Park Service and on the bureaucrats will in fact cost us a great deal more money than is outlined in this legislation.

Mr. WALKER. Is that going to come out of the Park Service's hide? If we have $2.5 million that is allocated in the bill, it seems to me that somebody is going to have to pick up those additional costs. Where will they come from?

Mr. VENTO. Mr. Speaker, will the gentleman yield?

Mr. WALKER. I yield to the gentleman from Minnesota [Mr. Vento].

Mr. VENTO. I thank the gentleman for yielding.

Mr. Speaker, I think the gentleman has pointed out some concerns that I would like to respond to. First of all, of course, the requirement here for the Park Service is that a thematic study be made. It is quite true there is an Olmsted Historic Site that has been made a part of the National Park Service.

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The point, with Olmsted, of course, is that Olmsted is the father really of American landscape architects, and it is impossible to separate some of his work from that of his associates. What the legislation does is it says we are going to have the Park Service do a thematic study on this particular issue, and what we are going to have is, we will encourage the States to come back to us with recommendations for the National Register of Historic Places. So we have a framework in place already. This does not, of course, force anyone in fact to accept that type of designation.

Mr. WALKER. Mr. Speaker, if the gentleman will allow me to reclaim my time for a moment, is the money for the State study coming out of the $2.5 million?

Mr. VENTO. Not necessarily. The dollars for the operation of the State historic offices, if the gentleman will yield further to me, comes generally from the historic preservation fund. We provide a certain amount of money each year for the States. The State's historic preservation officer, incidentally, has the job of administering the State historic preservation programs, and, frankly, I might take this opportunity to state that probably this is the best dollars we have ever spent in terms of trying to provide a focus at the State level for some of his roles.

Mr. WALKER. Mr. Speaker, I would tend to agree with the gentleman, if I may reclaim my time for a moment, but it is also this gentleman's observation, at least so far as it works in Pennsylvania, that these historic preservation offices are pretty well overburdened at the present time. They are insufficiently funded at the present time in many instances. They are trying to do an awful lot with scarce resources. It appears to me, if this $2.5 million is not going to cover their administrative work, that we are now imposing another new duty on them and perhaps new costs on them based upon the studies that would be required under the bill. I am not certain that is exactly fair if we are really trying to accomplish something real here.

Mr. VENTO. Mr. Speaker, if the gentleman will yield, I could not agree more that we are adding responsibilities to the States at a time when it is difficult for them. Of course, this does not require the States do that but encourages them to do this type of surveyt of the properties in the area. I think that ought to be clear. Plus the hope is that we would, in the future, appropriate more of the authorized money out of the historic preservation fund for the historic preservation officers so that they could more adequately do their job. They would actually like more than just administrative money out of that, as the gentleman knows. They would like some money so they could actually get in and preserve some of the buildings and some of the other sites that are important to their State.

Mr. WALKER. Mr. Speaker, if I might reclaim my time again for a moment, one of the problems this gentleman has is that in about 15 minutes all the leaders of this body and the other body are going to get together on the idea of how we are going to cut back programs. One of the suggestions being tossed around is the idea that we may go to a real freeze in spending. So every one of these bills we pass that imposes new duties on people who have scarce resources to begin with means that they may find their resources becoming scarce as a result of some of the actions that this body and the other body are likely to take in the next few days, and I have to question whether or not we are doing the kind of good that is outlined in some of these bills.

The intent is certainly meritorious. It is hard to quarrel with what the committee is trying to do, and certainly with what the administration said in its original bill it wanted to do, but this gentleman simply has to ask along the way, where do we get money for all of this? The fact is that we do not have sufficient money at the present time. Where in the world are we coming up with the money to do all these good things we would love to do?

I would simply suggest, since the administration opposes this bill, that there is a need in this gentleman's mind to begin addressing that question concerning a lot of things we do around here.

Mr. MARLENEE. Mr. Speaker, will the gentleman yield?

Mr. WALKER. I am happy to yield to the gentleman from Montana.

Mr. MARLENEE. If 435 Members came up with similar pieces of legislation, that would only mean $900 million. I say that facetiously.

Mr. WALKER. I understand. The problem is that the other day we had a bill with a few million here for Dickinson, ND, and so on. That bill was known as the greased pig bill around here because it is pork on a fast track.

We end up with an awful lot of these things out here, and no one knows where they are going to get the money for them. I would just say to the gentleman that I am concerned that here is another thing where we have no idea where the money is going to come from.

Mr. MARLENEE. Mr. Speaker, will the gentleman yield further?

Mr. WALKER. I am glad to yield to the gentleman from Montana.

Mr. MARLENEE. Mr. Speaker, I know the gentleman from Pennsylvania has concerns about the bill, as I do, and we have raised those concerns and raised the red flag. The legislation does have some merit, and I think we should continue to consider it. We have raised those issues and we have raised those concerns, and it is our hope that with the passage of the bill here in the House, those differences and those concerns could be addressed on the Senate side.

Mr. WALKER. Mr. Speaker, I thank the gentleman, and I will join him in that.

I do not think we are going to stop this bill in the House today, but I would join him in saying that I hope, insofar as he is concerned in a conference with the Senate and insofar as the subcommittee chairman is concerned in the conference with the Senate, some of these problems can be addressed, because I think there are real concerns here.

Mr. VENTO. Mr. Speaker, if the gentleman will yield, I just want to point out that I think we have been very careful in terms of what the requirements are. Obviously we want to accomplish the objectives in this legislation. I think it has been very artfully crafted so that we are spending a minimal amount of dollars. We are putting some dollars in here for the Park Service in terms of authorization. We want to have the opportunity to plead the case before the Appropriations Committee, but I do not think we ought to shoot beyond what the policy objectives are and what has been accomplished here in terms of historic preservation.

I think there is every opportunity here to involve the professional landscape architects, which is a considerable group, and other nonprofit groups to build on that particular expertise and have really minimal government involvement or Federal involvement, I might say, involvement of both the national and State governments, and using the technical expertise of the Park Service that is in place, the existing historic preservation law, and really doing, I think, an outstanding job in terms of policy in accomplishing what the objectives are.

So I think the amounts here are really comparatively small. I understand the sincerity of the gentlemen from Pennsylvania. I share that concern, but I think in this case we balance that off against the way this policy has been crafted, and I think it comes out as being a well-done job by my subcommittee and by the gentleman from Montana and others who have worked so hard on this measure. I hope that we win the gentleman's support on this legislation.

Mr. WALKER. Mr. Speaker, I thank the gentleman. I would point out to the gentleman that there are some people who have some reservations about the advisory committee process as well. It seems cumbersome, and it attempts to meld in all the groups, as the gentleman mentioned, and perhaps we are going to end up in an advisory committee process that would be somewhat cumbersome to administer. I hope that some of these difficulties can be addressed in the future.

Mr. MARLENEE. Mr. Speaker, if the gentleman will yield, I would like to again commend the gentleman from Minnesota [Mr. VENTO] for adopting the substitute and for recognizing some of the problems in the legislation. I think that any further differences can be ironed out with the other body.

Mr. VENTO. Mr. Speaker, if the gentleman will yield, I thank the gentleman from Montana for his comments, and I thank both gentlemen for their questions. I think the discussion has been useful.

Mr. MARLENEE. Mr. Speaker, I yield back the balance of my time.

Mr. VENTO. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Minnesota [Mr. VENTO] that the House suspend the rules and pass the bill, H.R. 17, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

DESIGNATING A SEGMENT OF THE RIO CHAMA RIVER IN NEW MEXICO AS A WILD AND SCENIC RIVER

Mr. VENTO. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 1839) to amend the Wild and Scenic Rivers Act to designate a segment of the Rio Chama River in New Mexico as a component of the National Wild and Scenic Rivers System, as amended.

The Clerk read as follows:

H.R. 1839

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DESIGNATION OF RIO CHAMA RIVER.

Section 3(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1274(a)) is amended by adding the following new paragraph at the end:

"( ) RIO CHAMA, NEW MEXICO.—The segment extending from El Vado Ranch launch site (immediately south of El Vado Dam) downstream approximately 30.75 miles to elevation 6283.5 feet above mean sea level; to be administered by the Secretary of Agriculture and the Secretary of the Interior. For purposes of compliance with the planning requirements of subsection (d), the Cooperative Management Plan for the river prepared by the Secretary of Agriculture and the Secretary of the Interior may be revised and amended to the extent necessary to conform to the provisions of this Act. The segment of the Rio Chama beginning at the El Vado Ranch launch site downstream to the beginning of Forest Service Road 151 shall be administered as a wild river and the segment downstream from the beginning of Forest Service Road 151 to elevation 6,283.5 feet shall be administered as a scenic river. In accordance with section 10(b), nothing in this paragraph shall be construed to affect or impair the application of the Wilderness Act to lands within the boundaries of the river which are also components of the national wilderness preservation system."

SEC. 2. MANAGEMENT OF OTHER RIVER SEGMENT AND FOREST SERVICE LANDS.

The Secretary of the Interior, acting through the Bureau of Land Management, and the Secretary of Agriculture, acting through the Forest Service shall manage the segment of the Rio Chama River in New Mexico from elevation 6,283.5 feet above mean sea level downstream to elevation 6,235 feet above mean sea level, together with the adjacent Forest Service lands not included in the Chama River Canyon Wilderness. Such management shall be pursuant to—

(1) the Preferred Alternative for the proposed Santa Fe National Forest Plan (as of January 1986), and

(2) the "Interim Rio Chama River Management Plan," dated May 1986 (as that plan may be revised in the "Final Rio Chama River Management Plan").

Nothing in this section shall be construed to prohibit operation of Abiquiu Dam for purposes authorized by law as of the date of enactment of this Act.

The SPEAKER pro tempore. Is a second demanded?

Mr. MARLENEE. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Minnesota [Mr. VENTO] will be recognized for 20 minutes and the gentleman from Montana [Mr. MARLENEE] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Minnesota [Mr. VENTO].

GENERAL LEAVE

Mr. VENTO. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill presently under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

Mr. VENTO. Mr. Speaker, H.R. 1839 would designate an approximately 31-mile segment of the Rio Chama River in New Mexico as a component of the National Wild and Scenic Rivers System. The legislation was introduced by our friend and colleague BILL RICHARDSON with the cosponsorship of fellow New Mexican, MANUAL LUJAN.

The Rio Chama is considered one of the finest scenic and recreational streams in New Mexico. The high-resource values of the river have been recognized in the national rivers inventory prepared by the National Park Service and by the State of New Mexico's designation of this segment of the Rio Chama as the State's only "scenic and pastoral river." Additionally, the river boundary includes a BLM wilderness study area and the congressionally designated Chama River Canyon Wilderness Area.

The Rio Chama is presently jointly administered by the BLM and the U.S. Forest Service under an interim river management plan prepared in 1986. Both BLM and Forest Service land management plans for the area have found this segment of the river eligible for national wild and scenic designation.

Mr. Speaker, I want to commend our colleagues from New Mexico for bringing forth a worthy river conservation measure. It was obvious from the hearing held before the Subcommittee on National Parks and Public Lands that there is significant local support in protecting this river segment. The legislation before us reflects the particular management actions needed to both preserve and utilize this river in a responsible manner. H.R. 1839 specifically does not impact existing authorized water resource developments and its management will be carried out under a cooperative framework that recognizes the many resources this river has to offer.

The Rio Chama will make a fine addition to the National Wild and Scenic River System and will be of benefit not only to New Mexico but to the country as well.

Mr. Speaker, I reserve the balance of my time.

The SPEAKER pro tempore. The Chair recognizes the gentleman from Montana [Mr. MARLENEE].

Mr. MARLENEE. Mr. Speaker, I also have concerns with this legislation, and, therefore, I am going to reserve the balance of my time until the author of the legislation has had an opportunity to speak.

Mr. VENTO. Mr. Speaker, I yield such time as he may consume to the sponsor of this legislation, the able gentleman from New Mexico [Mr. RICHARDSON]. In doing so, I might add that the gentleman has done an outstanding job in presenting this matter. He has done his spade work, this is an outstanding river in his area, and I congratulate the gentleman for his efforts and his success.

Mr. RICHARDSON. Mr. Speaker, first of all, I would like to thank the chairman of the subcommittee and the ranking minority member for their assistance in developing this legislation.

As the chairman of the subcommittee mentioned, this is a bipartisan bill that was introduced in the House by myself and the gentleman from New Mexico [Mr. LUJAN], and in the other body by both members of the Senate delegation on a bipartisan basis. It has support in the State of New Mexico, thorough hearings have been conducted, and I hope the legislation will be enacted shortly.

The Rio Chama, as has been stated, is in my district in New Mexico. The bill has substantial support from all sectors of the New Mexico community, ranchers, farmers, and public officials across the board.

During the hearings on this bill, the Subcommittee on National Parks and Public Lands learned of the widespread support for this bill among the people of New Mexico, including local landowners, conservation groups, and other citizens who appreciate the unique character of the Rio Chama. H.R. 1839 is the result of a cooperative effort among these local groups. It is especially important to the local landowners who could lose access to their land and the ranchers whose pastures would be flooded if the present management of the river were changed.

The Rio Chama is managed jointly by the U.S. Forest Service and the Bureau of Land Management. Both agencies recommend this section of the Rio Chama for wild and scenic designation in their forest and resource area plans. The New Mexico Legislature designated this same 31-mile segment of the Rio Chama as the State's only "Scenic and Pastoral River" in 1977 and encouraged wild and scenic designation.

A National Park Service study stated: "In terms of total recreation usability, [the Rio Chama] is the most important and valuable river in the State, being less than 3 hours driving time from three quarters of the State's population." Federal wild and scenic designation will protect the bald eagle which winters on the river, preserve archaeological sites and protect ancient fossils. It will also increase tourism and boost small businesses in the area.

Mr. Speaker, H.R. 1839 not only protects the Rio Chama, but has been carefully drafted to accommodate existing, authorized uses of the river. It preserves the recreation, wildlife, wilderness, grazing and private land ownership rights now existing between El Vado Dam and Abiquiu Reservoir. It has no effect on the operation of either the El Vado Dam or Abiquiu Dam and Reservoir as currently authorized by law. I support the recreational use of Abiquiu Reservoir and want to emphasize that this bill does not diminish current uses such as motorboats or future lakeside development.

Mr. Speaker, once again I wish to commend the subcommittee chairman for this bill. Any problems that were encountered early on were developed and resolved through a combined effort of the New Mexico congressional delegation. Specifically, I speak of some of the water concerns that were expressed in the hearings. Language has been adopted that would insure the protection of land owners and access to water.

Mr. Speaker, I believe this bill now enjoys widespread support.

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Mr. MARLENEE. Mr. Speaker, I yield myself such time as I may consume.

The Abiquiu Reservoir was originally built for flood control and for irrigation purposes, storing water?

Mr. RICHARDSON. Mr. Speaker, will the gentleman yield?

Mr. MARLENEE. I yield to the gentleman from New Mexico.

Mr. RICHARDSON. Mr. Speaker, I thank the gentleman for yielding.

The gentleman is correct.

Mr. MARLENEE. Is it the intent of the author that this legislation preclude the expanding of that reservoir capacity?

Mr. RICHARDSON. It is not intended to affect reservoir capacity under current law.

Mr. MARLENEE. To accommodate flood control, is it not the gentleman's intention?

Mr. RICHARDSON. That is correct.

Mr. MARLENEE. I wish to make that clear, because that is one of the concerns. It is not the gentleman's intention to disallow the expansion of that reservoir body?

Mr. VENTO. Mr. Speaker, will the gentleman yield?

Mr. MARLENEE. I yield to the gentleman from Minnesota.

Mr. VENTO. Mr. Speaker, I thank the gentleman for yielding.

We had, of course, comment in the subcommittee on this issue in terms of consulting; and to the extent that it is authorized by law, this legislation will not interfere.

If we were to come back and change policies, there could be a conflict between this designation and any new changes that occur; but to the extent authorized by law, this legislation does not impact on that particular project.

Mr. MARLENEE. Then it is the intention of the legislation, and the subcommittee chairman, that the reservoir will be utilized as authorized by law to that point without any expansion beyond what is authorized?

Mr. VENTO. That would be correct. If there was expanded capacity, there would have to be a review of that expanded capacity or any type of proposals.

Right now we know of no proposals. We consulted with the community of Albuquerque; and the gentleman well knows that there is no anticipation or conflict with what their plans are and what is authorized by law.

If there are changes in terms of plans, in terms of authority that is sought, then, of course, that would have to be reconciled with the basic law that the Organic Act with regard to the impact on the wild and scenic river at that point.

Mr. MARLENEE. I again emphasize that the authorized capacity, this legislation would not affect?

Mr. VENTO. The gentleman is absolutely correct.

Mr. MARLENEE. Mr. Speaker, if the author of the legislation would respond to a few questions, we have the El Vado Dam, and we have the Abiquiu Reservoir on the south, it appears, and in between we have six parcels of private property.

Is it the intent of the author of this legislation to impact that private property to preclude any development on that private property?

Mr. RICHARDSON. Mr. Speaker, will the gentleman yield?

Mr. MARLENEE. I yield to the gentleman from New Mexico.

Mr. RICHARDSON. Mr. Speaker, I thank the gentleman for yielding to me.

There is no development planned. As I mentioned in my remarks, the legislation does not diminish any current uses at Abiquiu such as motorboats or future lakeside development.

Mr. MARLENEE. That is a concern in this legislation, because anytime we create a wild and scenic river or an area that is wild and scenic, we preclude development of those private landholdings within that area, and we have gone through that before.

Mr. VENTO. Mr. Speaker, will the gentleman yield?

Mr. MARLENEE. I yield to the gentleman from Minnesota.

Mr. VENTO. Mr. Speaker, I thank the gentleman for yielding to me.

Insofar as there would be no pattern of ownership change here, obviously existing use is what the gentleman from New Mexico is referring to which would be permitted.

Insofar as changed development, of course, it could well be affected by the wild and scenic designation, as the gentleman knows, by law that would be affected here.

While this is no authority, about 98 percent of this land along this corridor, of course, is in fact publicly owned, so there are only small inholdings, and one is a monastery.

They have indicated their support for the river.

Mr. MARLENEE. Suppose an individual wanted to establish some kind of a tourist facility, and a facility to cater to the travelers on the wild and scenic river within the boundaries of this wild and scenic legislation, would he be precluded by law?

Mr. VENTO. Mr. Speaker, if the gentleman will continue to yield, he could be affected by wild and scenic designation in terms of limitation in terms of development; but he may be affected by the New Mexico law that has already designated this segment itself, so I do not know that this legislation, or if it is State legislation already that has precluded him, but that could impact on him.

The answer is, it could.

Mr. MARLENEE. I have serious reservations about the legislation if in fact it does preclude property rights, because it is a confiscation of property rights.

I know it is written, so that it allows the present use to continue on that land.

Mr. VENTO. The point here, of course, if it is loaned in a certain way today; in other words, they would retain that particular right.

In other words, there is no authority in this legislation and the organic law, this high percentage of national ownership along a river for condemning in fee, there is no authority; but the point is, what the gentleman is suggesting, are there new rights granted, and if there are new rights, obviously they could constitute a problem, and the gentleman is setting up a conflict.

Right now they only can, of course, purchase an easement in these particular instances; but we are not taking away any right.

Mr. MARLENEE. Mr. Speaker, reclaiming my time, the subcommittee chairman is surely aware of the recent court decisions where the court found that individuals who were deprived of their property right by regulation or law were entitled to remuneration and damages for that property that they could not use, so we are creating a situation here that gives us some exposure.

Mr. VENTO. Mr. Speaker, will the gentleman yield?

Mr. MARLENEE. I yield to the gentleman from Minnesota.

Mr. VENTO. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, I am somewhat familiar with those cases; but I would be happy to review them.

The key in terms of those court cases which are so important is the fact that there was an existing facility that was present, and there was a development right that was present, and then retroactively that was attempted to be removed without payment.

In this case we are talking about in terms of the scenic and wild river designation, we are talking about existing rights would be preserved; but if, for instance, there are new rights to be exercised or added to those existing rights, therein lies the problem, so then it would have to be compatible with the designation we are providing here.

We cannot anticipate what that might be.

Mr. MARLENEE. Nor could we anticipate what the property owners had in their minds for the potential of future use of that property; and therefore, in fact we may be confiscating the potential profits that, No. 1, may have been realized when he invested in that property or hung onto that property.

Mr. RICHARDSON. Mr. Speaker, will the gentleman yield?

Mr. MARLENEE. I yield to the gentleman from New Mexico.

Mr. RICHARDSON. Mr. Speaker, on that point, let me say that the private landowners alongside the river, the Jicarilla Apache and the monastery that the chairman mentioned, they have no future development plans.

Second, they strongly support the bill, so in practical terms, and I understand the gentleman's concern in principle and in practical terms, and I do not think we have got a problem.

Mr. MARLENEE. Mr. Speaker, with those assurances by the gentleman from New Mexico, I yield back the balance of my time.

Mr. VENTO. Mr. Speaker, I yield myself such time as I may consume.

Under any circumstances, when the National Government would affect development rights in these particular areas, they cannot take property under the Constitution without providing fair compensation, so that, of course, if there is a development right, or if there is a right that is exercised, the National Government would stand ready to deal with that at that time; and it is done on a routine basis.

There is a very small percentage of private ownership in this particular corridor; and as the gentleman from New Mexico has stated, the gentleman has done his work on this particular legislation, and it deserves passage by this House.

Mr. VENTO. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. MONTGOMERY). The question is on the motion offered by the gentleman from Minnesota [Mr. VENTO] that the House suspend the rules and pass the bill, H.R. 1839, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

INDIAN SELF-DETERMINATION ACT AMENDMENTS OF 1987

Mr. RICHARDSON. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 1223) entitled the "Indian Self-Determination Amendments of 1987," as amended.

Mr. LAGOMARSINO. Mr. Speaker, I rise to comment on H.R. 1839, to designate a 31-mile segment of the Rio Chama River in New Mexico as wild and scenic.

This segment is located between the El Vado Dam and the Abiquiu Reservoir which are both U.S. Army Corps of Engineers projects. Under the bill's provisions, the river segment would be jointly managed by the Secretaries of Agriculture and Interior since portions of the river lie within Forest Service and Bureau of Land Management Areas. An interagency agreement currently exists for river outfitting and special recreation permits.

H.R. 1839 also states that it can in no way prohibit operation of the Abiquiu Dam for its authorized purposes. This dam was originally authorized in 1941 and provides flood and sediment control benefits as well as Federal San Juan-Chama project water for the city of Albuquerque. Although H.R. 1839 prohibits interference with present uses of the dam, the Corps of Engineers is concerned that the bill will, in effect, preclude additional water storage beyond the current capacity of the dam since such storage would inundate a designated portion of the river. Furthermore, the legislative history is unclear as to the actual authorized capacity of the dam. Therefore, it is uncertain whether this provision would allow for expansion of the reservoir capacity in the future should additional water storage be necessary to meet water demands in the arid west.

While I do have some concerns regarding the effect of H.R. 1839 on Abiquiu Dam, I do believe the segment of the Rio Chama proposed for wild and scenic designation possesses outstanding natural, ecological and recreational values which deserve protection. This segment of the river has been designated as a State scenic and pastoral river by the New Mexico Legislature. The river is also extremely important in terms of recreation since it is very close to a major population area of the State.

I would like to commend my colleague on the Interior Committee, the gentleman from New Mexico [Mr. RICHARDSON], for his efforts in sponsoring and moving this legislation forward. I would also like to thank the subcommittee chairman, Representative VENTO, for acting on H.R. 1839 in an expeditious manner.

Although I do have some reservations about this legislation, I believe that this river segment is worthy of wild and scenic designation. Therefore, I urge my colleagues to approve H.R. 1839. Thank you, Mr. Speaker.

The Clerk read as follows:

H.R. 1223

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Indian Self-Determination Act Amendments of 1987".

SEC. 2. The Congress finds that:

(a) The Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) (hereinafter referred to as the "Act") has furthered the development of local self-government and education opportunities for Indian tribes, but its goal and progress have been impeded by lack of clarity and direction on the part of Federal agencies regarding their role in implementing the Federal policy of Indian self-determination;

(b) the Federal responsibility for the welfare of Indian tribes demands effective self-government by Indian tribal communities;

(c) contracts and grants made pursuant to sections 102 and 103 of the Act should not be treated as regular Federal procurement contracts but should be considered as intergovernmental trust responsibility agreements in which a tribal organization agrees with the Federal government to assume some of the Federal procurement, acquisition, and contracting laws and regulations should be applicable to such contracts and grants; and

(d) additional legislation is necessary to assure that Indian tribes have an effective voice in the planning and implementation of programs for the benefit of Indians.

SEC. 3. Section 4 of the Act is amended by—

(a) striking the period at the end of subsection (f) and inserting, in lieu thereof, a semi-colon;

(b) redesignating subsection (f) as subsection (e); and

(c) adding the following new subsections:

"(f) 'construction' means the planning, design, construction, repair, improvement, and expansion of buildings or facilities;

"(g) 'contract support costs' means the reasonable costs for activities which must be carried on by a tribal organization as a contractor to ensure compliance with the terms of the contract and prudent management, but which—

"(1) normally are not carried on by the respective Secretary in his direct operation of the program; or

"(2) are provided by the Secretary in support of the contracted program from resources other than those under contract; and

"(h) 'contract' shall also refer to cooperative and grant agreements made pursuant to sections 102 and 103 of this Act.".

Sec. 4. Subsection (a) of section 102 of the Act is amended by—

(a) inserting the phrase "including construction programs," after the phrase "administer programs," and

(b) inserting, after the phrase "subsequent thereto" the following:

"including—

"(1) any program or portion thereof, including construction programs, administered by the Secretary for the benefit of Indians for which appropriations are made to agencies other than the Department of the Interior; and

"(2) any program, or portion thereof, for the benefit of Indians without regard to the agency or office of the Department of the Interior within which it is performed.".

Sec. 5. Subsection (a) of section 103 of the Act is amended by inserting a comma after the phrase "as amended" and the following:

"or any program, or portion thereof, which the Secretary is authorized to administer for the benefit of Indians, including—

"(1) any program, or portion thereof, administered by the Secretary for the benefit of Indians for which appropriations are made to agencies other than the Department of Health and Human Services; and

"(2) any program, or portion thereof, for the benefit of Indians without regard to the agency or office of the Department of Health and Human Services within which it is performed.".

Sec. 6. Subsection (e) of section 105 is amended by deleting the phrase "on or before December 31, 1988,".

Sec. 7. (a) Subsection (a) of section 106 is amended by changing the period at the end of subsection (a) to a colon and adding the following proviso at the end thereof: *"Provided further,* That the Office of Federal Procurement Policy Act (Public Law 93-400, Act of August 30, 1974, 88 Stat. 796) and Federal acquisition regulations promulgated thereunder shall not apply to contracts entered pursuant to sections 102 and 103 of this Act.";

(b) Subsection (c) of section 106 of the Act is amended by striking the words "may not exceed three years and".

(c) Subsection (e) of section 106 of the Act is amended by striking the period at the end thereof and inserting, in lieu thereof, a colon and the following: *"Provided,* That, at his discretion, the appropriate Secretary may transfer title to the Indian tribes of any personal property found to be in excess to the need of the Bureau of Indian Affairs or the Indian Health Service.".

Sec. 8. Subsection (h) of section 106 of the act is amended to read as follows:

"(h)(1) The amount of funds provided under the terms of contracts entered into pursuant to this Act shall be no less than the appropriate Secretary would have otherwise provided for his operation of the programs or portion thereof for the period covered by the contract.

"(2) To the amount available under subsection (h)(1) of this section shall be added the negotiated contract support costs.

"(3) Whenever the appropriate Federal agency and the tribal contractor cannot agree on the amount of funds available pursuant to subsection (h)(1) of this section, the appropriate Secretary shall provide such tribal contractor with a hearing on the record, under such rules and regulations as he may promulgate, and the opportunity for appeal on the objections raised.

"(4) Costs incurred by the contracting agency in monitoring contracts shall not be subtracted from the amount of funds provided under subsection (h)(1).

"(5) Contract support costs shall be awarded for all programs for which a tribal organization has contracted pursuant to sections 102 and 103 of this Act.

"(6) Except for general assistance grants, once contract and grant obligations are negotiated, the contract or grant amount may be decreased only with the consent of the contractor or grantee or to reflect a reduction in congressional appropriations from the previous fiscal year as reflected in the appropriation line item from which the contract or grant funds are derived.

"(7) Any savings realized by the contractor or grantee in the operation or administration of such contract or grant shall be used to provide additional services or benefits under the contract or grant and shall be carried over to the succeeding fiscal years without any reduction in the funding to which the contractor or grantee is otherwise entitled.

"(8) The appropriate Secretary shall provide supplemental reports to the Congress on or before March 15 of each year identifying any deficiency of funds needed to provide required contract support costs and indirect costs to all contractors for that fiscal year.

"(9) The appropriate Secretary shall advise the Congress in annual budget requests of the amount of funds which should have been appropriated in the preceeding fiscal year in order to have funded at the full amount the indirect costs and contract support costs negotiated by tribal organizations pursuant to this Act. The appropriate Secretary shall also provide the Congress with an estimate of the indirect costs and contract support costs that will be needed for new contracts in the fiscal year covered by the budget request.

"(10) At the request of any Indian tribe, the appropriate Secretary shall disclose to such tribe the current amount of funds allocated, obligated, and expended for any program, or portion thereof, administered for the benefit of such tribe.".

Sec. 9. Title I of the Act is amended by adding a new section 111 as follows:

"Sec. 111. The appropriate Secretary shall give written notice of any disallowance of costs based on an audit report within one year of the date of receiving a final audit report and shall provide for an appeal and hearing to the appropriate officials on such disallowance. Any right of action or other remedy relating to any such disallowance shall be barred unless notice has been given within the designated period.".

Sec. 10. Title I of the Act is further amended by adding a new section 112 as follows:

"Sec. 112. (a) Whenever an indirect cost rate is negotiated annually between a tribe or tribal organization and the cognizant federal agency, that rate shall be applicable to all contracts and grants made with such tribe or tribal organization pursuant to Sections 102, 103, and 104 of this Act.

"(b) Where a contractor's allowable indirect cost recoveries are below the level of indirect costs that the contractor should have received for any given year pursuant to its approved indirect cost rate, and such shortfall is the result of lack of full indirect cost funding by any Federal, state, or other agency, such shortfall in recoveries shall not form the basis for any theoretical under or over-recovery or other adverse adjustment to any future years' indirect cost rate or amount for such contractor, nor shall any agency seek to collect such short fall from the contractor.

"(c) Indian tribal governments shall not be held liable for amounts of indebtedness attributable to theoretical or actual under-recoveries or over-recoveries of indirect costs, as defined in Office of Management and Budget Circular A-87, incurred for fiscal years prior to fiscal year 1988.".

Sec. 11. Title 1 of the Act is further amended by adding a new section 113 as follows:

"Sec. 113. All contracts, grants and cooperative agreements entered into or issued pursuant to this Act shall be subject to the Contract Dispute Act of 1978 (Public Law 95-563), and the Federal district courts shall have concurrent jurisdiction with the United States Court of Claims over all disputes arising from or relating to such contracts, grants and cooperative agreements.".

Sec. 12. Section 8 of the Act is amended by—

(1) striking the word "and" after the word "obligated" and inserting in lieu the word "or",

(2) striking the word "and" after the word "obligation" and inserting in lieu the word "or", and

(3) adding at the end thereof the following new language:

"If the funds are to be expended in the succeeding fiscal year under a contract or grant for the purpose for which they were originally contracted or granted, no additional justification or documentation of such purposes need be provided by the tribal organization to the agency as a condition of receiving and expending such funds.".

The SPEAKER pro tempore. Is a second demanded?

Mr. MARLENEE. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from New Mexico [Mr. Richardson] will be recognized for 20 minutes and the gentleman from Montana [Mr. Marlenee] will be recognized for 20 minutes.

The Chair recognizes the gentleman from New Mexico [Mr. Richardson].

Mr. RICHARDSON. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this is a piece of legislation introduced by the gentleman from Arizona [Mr. Udall], the chairman of the Committee on Interior and Insular Affairs, and myself.

Mr. Speaker, the purpose of H.R. 1223 is to amend the Indian Self-Determination Act of 1975 so as to facilitate and streamline the contracting process between the Indian tribes and the Federal Government.

Public Law 93-638, the Indian Self-Determination Act, was first enacted in 1975. The purpose of the Act was to promote tribal self-government and self-determination by encouraging the Indian tribes to contract for the administration of Federal programs which previously had been administered by the Bureau of Indian Affairs and the Indian Health Service.

However, since the act was first passed, tribes have encountered many problems in the administration of these contracts. Generally tribes have had two major complaints about the act. First, they feel that because many of the costs associated with the efficient performance of these contracted programs are not reimbursed by the Federal agencies, they have had to incur additional expenses in order to implement the Federal policy of self-determination. Second, the tribes feel that the Federal contracting requirements and bureaucratic regulations are too rigid and burdensome and as a result, tribes have not been able to implement their own priorities and agenda in achieving their own tribal self-determination.

H.R. 1223 attempts to remedy these problems by providing tribes with an adequate level of funding for contract support costs. In addition, the bill waives certain Federal contracting and procurement laws and regulations in an attempt to redefine these contracts, not as procurement contracts but more in terms of intergovernmental agreements.

Mr. Speaker, this bill will make it easier for Indian tribes to achieve and implement their own self-determination and I urge my colleagues to support the bill.

Mr. Speaker, I reserve the balance of my time.

Mr. MARLENEE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would ask the gentleman from New Mexico [Mr. RICHARDSON], my colleague, to respond to a question.

Is there anything in this legislation which deals with Indian taxation of non-Indian properties?

Mr. RICHARDSON. Mr. Speaker, will the gentleman yield?

Mr. MARLENEE. I yield to the gentleman from New Mexico.

Mr. RICHARDSON. Mr. Speaker, I thank the gentleman for yielding.

None whatsoever.

Mr. MARLENEE. Mr. Speaker, I thank the gentleman for answering that question.

We have a great concern because of the taxation without representation that is going on within the reservations; and if this legislation, and I emphasize if this legislation, dealt with that and further exacerbated that problem, I would strongly urge a vote against this legislation.

However, not having anything to do with Indian taxation, and more to do with bureaucracy and the tribes' self-determination efforts, I will not oppose the legislation.

Mr. RHODES. Mr. Speaker, Public Law 93-638, the Indian Education and Self-Determination Act, was enacted in 1975 with the stated purpose of promoting tribal self-government. The cornerstone of this bill was to permit tribes to "contract" for Bureau of Inidan Affairs and Indian Health Service programs at the local level thus allowing greater local control of governmental services.

Many Indian programs were set to replace services, which if a tribe had the financial and structural ability would be provided by the Tribe—such as law enforcement or local utilities. Unfortunately, many tribes have needed the help of the BIA and the IHS. "638" allows tribes to regain that local control.

The primary obstacle to tribal contracting has been a reluctance upon the entrenched bureaucracy of the respective agencies to work with tribes to turn over the programs. H.R. 1223 is intended to correct some structural deficiencies of the programs and provide guidance to the agencies for increasing contracting.

H.R. 1223 is similar to legislation passed by the House on two separate occasions last Congress. An extensive hearing record has been made in the 99th and 100th Congresses and I urge my colleagues to support H.R. 1223.

Mr. MARLENEE. Mr. Speaker, I yield back the balance of my time.

Mr. RICHARDSON. Mr. Speaker, I yield back the balance of my time.

Mr. SPEAKER pro tempore. The question is on the motion offered by the gentleman from New Mexico [Mr. RICHARDSON] that the House suspend the rules and pass the bill, H.R. 1223, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

□ 1315

ESTABLISHING A U.S. COMMISSION ON IMPROVING THE EFFECTIVENESS OF THE UNITED NATIONS

Mr. YATRON. Mr. Speaker, I move to suspend the rules and pass the joint resolution (H.J. Res. 112) to establish a U.S. Commission on Improving the Effectiveness of the United Nations, as amended.

The Clerk read as follows:

H.J. RES. 112

Whereas on December 19, 1986, the Forty-first Session of the United Nations General Assembly approved major reforms in the budget decisionmaking process, the administration, and the management of the United Nations;

Whereas President Reagan characterized this achievement as "an historic step to adopt sweeping reforms of its organization and methods of operation";

Whereas the United States Permanent Representative to the United Nations, Ambassador Vernon Walters, has stated that the adoption of these reforms is "the beginning, not the end, of a process of reforming and improving the United Nations in the interests of all its members";

Whereas the cooperation of many other member states of the United Nations as well as the United Nations Secretary General was indispensable to this historic accomplishment;

Whereas the United Nations (of which the United States is a member by treaty) was established for the purposes, as enunciated in the Charter, of maintaining international peace and security, developing friendly relations among nations based on respect for equal rights and self-determination, achieving international cooperation in solving economic, social, cultural, and humanitarian problems, and promoting respect for human rights;

Whereas the United Nations has also, on occasion, strayed from its original purposes and has served as a forum for irresponsible rhetoric and politicization, such as the adoption by the General Assembly in 1975 of Resolution 3379 equating Zionism with racism;

Whereas in spite of such grave lapses, the United States remains committed to the United Nations and the purposes of the Charter, not only as a member of the United Nations and one of its earliest leaders and supporters, but also as host to the United Nations headquarters;

Whereas testament to the continued relevance of the United Nation's purposes and principles can be found in the President's addresses to the United Nations General Assembly, in which he declared that "the vision of the U.N. Charter—to spare succeeding generations this scourge of war—remains real" and that the United States, "which has always given the United Nations generous support, will continue to play a leading role in the effort to achieve its noble purposes"; and

Whereas this is an appropriate time for the United States public and its representatives in Congress to participate in the ongoing United Nations reform process and to recommend means of making that institution more effective and responsible, consistent with the national interests of the United States: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ESTABLISHMENT OF COMMISSION.

The United States Commission on Improving the Effectiveness of the United Nations (hereafter in this joint resolution referred to as the "Commission") is hereby established.

SEC. 2. PURPOSES OF THE COMMISSION.

(a) PURPOSES.—The purposes of the Commission shall be to—

(1) examine the United Nations system as a whole and identify and evaluate its strengths and weaknesses; and

(2) prepare and submit to the President and to the Congress recommendations on ways to improve the effectiveness of the United Nations system and the role of the United States in the United Nations system, including the feasibility of and means for implementing such recommendations.

(b) SPECIAL ATTENTION.—In carrying out its responsibilities under subsection (a), the Commission shall pay special attention to the following:

(1) The mechanisms and procedures within the United Nations system for peacekeeping and conflict-resolution and ways in

which they may be expanded or improved, examining in particular the functions of the Secretary General, the role of the Security Council, the use of the International Court of Justice, potential third-party dispute-solving mechanisms (as in the establishment of a Untied Nations Mediation and Conciliation Service), the possible creation of standing United Nations peacekeeping forces of antiterrorism units, the role of United Nations institutions in factfinding, and potential verification and inspection services to assist in enforcing compliance with international arms control agreements.

(2) Formal and informal decisionmaking procedures in the United Nations system and recommendations to modify those procedures which have emerged from various interested parties, examining in particular the role of consensus decisionmaking, the feasibility and advisability of weighted voting (including the so-called "binding triad" formula requiring multiple concurrent majorities based on one-nation-one-vote along with population and contibutions), the possible modification of the Security Council veto, and the relationship of the principles of universality and democracy to decisionmaking procedures.

(3) The cost-effectiveness and administrative efficiency of the United Nations system, examining in particular the recently adopted budgetary, management, and administrative reforms, the role of the major donors in budget decisionmaking, the prioritization of programs, adjustments in assessments, potential alternative nongovernmental sources of revenue, salaries, benefits, hiring of consultants, contracts for goods and services, and appointment of staff in the Secretariat.

(4) The economic, social, and humanitarian role of the United Nations system, examining in particular the optimum coordination of economic development programs, the short-term and long-term response to crises and natural disasters, population health issues, refugee relief, the protection of the environment, narcotics control, the implementation of international human rights law, and the potential creation of a United Nations High Commissioner for Human Rights.

(5) United States participation in the United Nations system, examining in particular the strengths and weaknesses of United States performance, United States policy toward the International Court of Justice and international law, provisions in United States law relating to the United Nations system, ways in which the United States can better use the United Nations system to advance its national interests, the state of public opinion with regard to the United States role in the United Nations system, United States voluntary and assessed contibutions, and the hiring of United States citizens in the United Nations system.

(6) Strategies and actions for promoting the implementation of recommended reforms in the United Nations system and the United States role in the United Nations system.

(7) Abuses of the United Nations personnel system, including the practices of—

(A) accepting officials of national governments on secondment for positions with the United Nations Secrtariat and secretariats of international organizations within the United Nations system,

(B) permitting member governments to require such officials and others of their nationals serving with the United Nations and its agencies to pay a portion of their salaries to their home governments, and

(C) allowing member states a pattern of nominating for service with the United Nations individuals who are intelligence officers or agents of intelligence agencies.

(8) The number of personnel assigned by United Nations member governments to serve at their missions to the United Nations in New York City and the extent to which such personnel are actually engaged in legitimate functions related to representation of their governments at the United Nations and its specialized agencies located in New York City.

(9) The patterns of behavior by personnel accredited by their governments as representatives to the United Nations or its specialized agencies while in the United States, with particular reference to abuse of diplomatic privileges by such personnel with regard to violations of the laws of the United States or its States or localities, use of the diplomatic pouch, or involvement in domestic political affairs.

(10) The methods in which member governments fulfill their financial obligations to the United Nations and its specialized agencies, in particular the extent to which certain governments make payment in nonconvertible currencies, and the effect of such methods on the operations of the United Nations and its agencies.

(11) The performance of the United Nations and its specialized agencies in attracting and retaining for employment with the secretariat qualified United States citizens in numbers corresponding to the role of the United States in supporting the United Nations and forwarding its purposes, in line with proper equitable geographical distribution of staff positions.

(c) Consultation Regarding Other United Nations Reform Efforts.—In carrying out this section, the Commission shall make every effort to consult, where appropriate, with other public and private institutions and organizations engaged in efforts to reform the United Nations system, including efforts being made directly under the auspices of the United Nations.

SEC. 3. MEMBERSHIP OF THE COMMISSION.

(a) Members.—

(1) Number and appointment.—The Commission shall be composed of 18 members, appointed as follows:

(a) Two members of the Senate, one appointed by the President pro tempore of the Senate and one appointed by the minority leader of the Senate.

(B) Two Members of the House of Representatives, one appointed by the Speaker of the House and one appointed by the minority leader of the House.

(C) Eight individuals from the private sector, two appointed by the President pro tempore of the Senate, two appointed by the minority leader of the Senate, two appointed by the Speaker of the House, and two appointed by the minority leader of the House.

(D) Six individuals appointed by the President, not more than three of whom may be from the same political party.

(2) Criterion for appointments.—Individuals appointed purusant to subparagraphs (C) and (D) of paragraph (1) shall be representative, to the maximum extent possible, of the full range of American society.

(3) Appointments to be made promptly.—All appointments pursuant to paragraph (1) shall be made no later than 60 days after the date of enactment of this joint resolution.

(4) Vacancies.—Any vacancy in the membership of the Commission shall be filled in the same manner as the original appointment was made.

(b) Advisors.—Former United States Permanent Representatives to the United Nations who are not appointed to the Commission shall be invited by the Commission to serve as advisors to the Commission.

(c) Compensation and Travel Expenses.—

(1) Compensation in general.—Except as provided in paragraph (2), each member of the Commission may be compensated at not to exceed the daily equivalent of the annual rate of basic pay in effect for grade GS-18 of the General Schedule under section 5332 of title 5, United States Code, for each day during which that member is engaged in the actual performance of the duties of the Commission.

(2) Government personnel.—Members of the Commission who are full-time officers or employees of the United States or Members of the Congress shall receive no additional pay on account of their service on the Commission.

(3) Travel expenses.—While away from their homes or regular places of business in the performance of services for the Commission, and Advisors serving pursuant to subsection (b), shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of title 5, United States Code.

(d) Chairman and Vice Chairman.—The Chairman and Vice Chairman shall be elected by the Commission from among the members of the Commission.

(e) Quorum.—Ten members of the Commission shall constitute a quorum for purposes of transacting business, except that four members shall constitute a quorum for holding public hearings.

SEC. 4. POWERS OF THE COMMISSION.

(a) In General.—For the purpose of carrying out this joint resolution, the Commission may hold such hearings (subject to the requirements of subsection (b)) and sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers necessary to fulfill the purposes specified in section 2. The Commission may administer oaths and affirmations to witnesses appearing before the Commission.

(b) Meetings.—

(1) Minimum number of public hearings.—The Commission shall hold a minimum of 5 public hearings.

(2) Open meetings.—Section 552b of title 5 of the United States Code shall apply with respect to the Commission.

(3) Calling meetings.—The Commission shall meet at the call of the Chairman or a majority of its members.

(c) Delegation of Authority.—When so authorized by the Commission, any member or agent of the Commission may take any action which the Commission is authorized to take by this section.

(d) Information From Federal Agencies.—The Commission may secure directly from any Federal agency information necessary to enable it to carry out this joint resolution. Upon request of the Chairman of the Commission, the head of any such Federal agency shall furnish such information to the Commission, to the extent authorized by law; except that the head of any Federal agency to which a request for information is provided pursuant to this subsection may deny access to such information, or make access subject to such terms and conditions as the head of that agency may prescribe, on the basis that the information in question is classified and the Commission does not have adequate procedures to safeguard the information in question, or that the Commission does not have a need to know the classified information. In addition, a Federal agency may not provide the Commission with information that could disclose intelligence sources or methods without first securing the approval of the Director of Central Intelligence.

SEC. 5. STAFF.

(a) Staff Members and Consultants.—Subject to such rules as may be adopted by the Commission, the Chairman of the Commission, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classifications and General Schedule pay rates, may—

(1) appoint a Director who shall be paid at a rate not to exceed the rate of basic pay in effect for Level V of the Executive Schedule under section 5316 of title 5, United States Code;

(2) appoint and fix the compensation of such other staff personnel as the Chairman considers necessary; and

(3) procure temporary and intermittent services to the same extent as is authorized by section 3109(b) of title 5, United States Code.

(b) Detailing of Government Personnel.—Upon request of the Commission, the head of any Federal agency may detail, on a reimbursable basis, any of the personnel of that agency to the Commission to assist it in carrying out this joint resolution.

SEC. 6. REPORT.

The Commission shall transmit to the President and to the Congress a report containing a detailed statement of the findings, conclusions, and recommendations of the Commission, including minority views. This report shall be transmitted not later than 18 months after the first date on which all members of the Commission have been appointed.

SEC. 7. FUNDING FOR THE COMMISSION.

(a) Commission To Be Privately Funded.—The Commission may accept and use contributions from private United States sources to carry out this joint resolution. No Federal funds may be made available to the Commission for use in carrying out this joint resolution.

(b) Limitation on Size of Contributions.—The Commission may not accept contributions from any single source which have a value of more than—

(1) $100,000, or

(2) 20 percent of the total of all contributions accepted by the Commission,

whichever is larger.

(c) Commission Approval of Certain Contributions.—The Commission may accept contributions having a value of $1,000 or more from a single source only if more than two-thirds of the members of the Commission have approved the acceptance of those contributions.

(d) Disclosure of Contributions.—

(1) Periodic reports to congress.—Every 30 days, the Commission shall submit to the chairman of the Committee on Foreign Affairs of the House of Representatives, and to the chairman of the Committee on Foreign Relations of the Senate, a list of the source and amount of each contribution accepted by the Commission during the preceding 30 days.

(2) Final report.—The source and amount of each contribution accepted by the Commission shall be listed in the report submitted pursuant to section 6.

SEC. 8. GENERAL ACCOUNTING OFFICE AUDITS OF THE COMMISSION.

The provisions of subchapter II of chapter 7 of title 31 of the United States (relating to the general duties and powers of the General Accounting Office) shall apply with respect to the programs and activities of the Commission, including the receipt, disbursement, and use of funds contributed to the Commission, to the same extent as those provisions apply with respect to other agencies of the United States Government.

SEC. 9. TERMINATION OF THE COMMISSION.

The Commission shall cease to exist 60 days after submitting its report pursuant to section 6.

The **SPEAKER** pro tempore (Mr. Montgomery). Is a second demanded?

Mr. **SOLOMON**. Mr. Speaker, I demand a second.

The **SPEAKER** pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The **SPEAKER** pro tempore. The gentleman from Pennsylvania [Mr. Yatron] will be recognized for 20 minutes and the gentleman from New York [Mr. Solomon] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Pennsylvania [Mr. Yatron].

Mr. **YATRON**. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, House Joint Resolution 112, sponsored by our colleague Congressman Leach, seeks to establish a U.S. Commission on improving the effectiveness of the United Nations.

The purposes of the Commission are to examine the U.N. system as a whole and to identify its strengths and weaknesses, with a special focus on the mechanisms and procedures within the U.N. system for peacekeeping and conflict resolution. This legislation would complement the ongoing U.N. budgetary reform process initiated by the administration.

Upon completion of its work, the Commission would submit a report to the President and the Congress with recommendations on ways to improve the effectiveness of the U.N. system, as well as U.S. policy toward this international body.

Mr. Speaker, it is very important to note that this commission would be cost free to the American taxpayer. In fact, the legislation prohibits the Commission from receiving Federal funding.

Based on several thoughtful recommendations made by Congressman Bonker last year when the subcommittee considered a similar initiative in the 99th Congress, House Joint Resolution 112 would place a limit on the size of any contribution to the Commission of $100,000 or 20 percent of all contributions accepted by the Commission, whichever is larger. Further, any contributions of $1,000 or more any single source would have to be approved by more than two-thirds of the Commission's members. These restrictions are designed to deter any private interest from exercising undue influence over the Commission's deliberations.

Mr. Speaker, this Commission would be bipartisan. It would be composed of 18 members, including 2 Members of the Senate and the House representing both parties, 8 individuals from the private sector appointed by the congressional leadership from both sides of the aisle, and 6 individuals appointed by the President.

In considering this resolution, the Foreign Affairs Committee adopted several noncontroversial amendments which restrict access to classified information, authorize the Commission to write a minority report, and calls upon the Commission to include in its study an investigation of abuses of the U.N. personnel system.

House Joint Resolution 112 was adopted by an overwhelming majority of the House Foreign Affairs Committee on October 14 and was adopted unanimously by the Senate recently during consideration of the State Department authorization bill not in conference.

This resolution seeks to strenghten our efforts to make the United Nations a more effective forum to advance global peace and U.S. interests. It is consistent with the Reagan administration's ongoing efforts to obtain U.N. security council support for an end to the Persian-Baghdad war. Finally, Mr. Speaker, I want to commend Chairman Fascell, Congressmen Broomfield, and Congressman Solomon for their cooperation and support of House Joint Resolution 112. In particular I want to commend the gentleman from Iowa [Mr. Leach] for his unwaivering commitment to multilateral diplomacy and international organizations.

Mr. Speaker, I reserve the balance of my time.

Mr. SOLOMON. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the legislation now before us is something I could not support in its original form because the Study Commission envisioned by this bill would have been funded by public money. However, the chief sponsor of this bill, Mr. Leach, accommodated the concerns of other Members and myself in this regard, and the bill was amended to provide for voluntary, private funding.

Mr. Speaker, I have always been somewhat skeptical concerning the value of study commissions; however, I cannot oppose the establishment of this one, because the conduct of American foreign policy is an issue that is important to all of us. And, certainly, there is a role that we can play at the United Nations. If the Study Commission to be established by this bill comes forth with some practical recommendations on how American interests can be strengthened by our involvement in the United Nations, then a constructive purpose will have been served.

If I might make one recommendation myself, speaking as a veteran of the 40th session of the United Nations General Assembly, I would like to see the Study Commission explore ways in which the language and terminology used in United Nations proceedings can somehow be infused with some sense of meaning. I was thinking about this the other day when reading A.M. Rosenthal's piece in the New York Times.

Without, in any way, belittling the ideals that attended the United Nations' founding, Mr. Rosenthal noted that the United Nations has become the "world center of diplomatic hypocrisy." By way of illustration, he cited the impoverishment of language: "Dictatorships call themselves democratic Republics." "States that live by terrorism talk about the principles of freedom." "Nations engaged in cutting each other's economic throats make solemn pronouncements about free trade." "Ambassadors from countries that routinely torture their unfortunate citizens are invited to dinner and called Your Excellency."

So if this Study Commission can come up with ways to work around this problem, and apply a much needed dose of reality therapy in the process, it will have made an important contribution, indeed. I am not looking for any kind of an ultimate answer—commissions or committees never come up with that; but I am willing to give it a try and see what this Commission can do.

Mr. Speaker, I am happy to yield such time as he may consume to the gentleman from Michigan [Mr. Broomfield], the ranking member of the full Committee on Foreign Affairs.

Mr. BROOMFIELD. Mr. Speaker, I rise in support of this resolution.

I originally had some reservations concerning this resolution. Over the years the United Nations has been much studied, but there has been little improvement in its performance.

Significant cuts in the U.S. contribution did cause some changes in administrative procedures in the last few years. But even these limited improvements are already threatened, since a majority of U.N. members are pushing to return to the old ways.

There have, nevertheless, been some serious calls for an increased role for the United Nations in peacekeeping and other measures to resolve regional security issues. Perhaps this resolution can advance this discussion.

The committee accepted two amendments which, I believe, have strengthened the resolution.

The first amendment added five new items to the list of things that the Commission should study. These important changes include:

Assignment of national officials to the U.N. Secretariat;

The number of foreign officials operating in New York as representatives to the U.N.;

The behavior of such national officials, especially the abuse of diplomatic immunity;

The practice of certain governments of meeting financial obligations toward the United Nations with nonconvertible currency; and

The hiring and retention of Americans, giving due regard to the principle of equitable geographic distribution.

The second amendment dealt with security matters. It makes clear that when the new Commission requests information which is classified from executive branch agencies, it would be up to the agency to decide whether to provide it. In the case of intelligence information, the Director of Central Intelligence would make the decision.

I only note that the administration would prefer authority for the President to appoint a majority of the commissioners.

With these changes the resolution has been improved. I am sure that the new Commission will make a positive contribution to the current debate concerning the role and performance of the United Nations. I congratulate the author of the bill, Mr. Leach from Iowa, Chairman Yatron and Congressman Solomon for bringing this legislation to the floor for consideration.

Mr. SOLOMON. Mr. Speaker, I yield such time as he may consume to the gentleman from Iowa [Mr. Leach], the distinguished sponsor of this legislation.

Mr. LEACH of Iowa. Mr. Speaker, I particularly want to thank the gentleman from Pennsylvania [Mr. Yatron] who has been as fine a friend and thoughtful a colleague as I have ever had in this body. I want to express my particular appreciation to him.

Mr. Speaker, this bill is not intended in any sense to be philosophically biased. It is neither liberal nor conservative. It is not intended to be unrealistic or naive. It is intended to help this country look at the United Nations in new and different ways both from the perspective of how the United Nation itself operates and how the policy of the United States of America should be addressed toward that particular institution.

□ 1525

As we look at the issue of international diplomacy, it is clear that the United Nations has had a number of successes. It has helped eradicate smallpox; it has helped decolonize the world; it has helped in a very few instances in peacekeeping.

It is also very clear that the United Nations has had a number of dramatic disappointments. It has not played as large a role in peacekeeping as any of us would like. It has not lived up to the expectations of civilized dialog, not only in the General Assembly but in many of its ancillary institutions.

So what this particular resolution is designed to do is to be self-critical and at the same time to be supportive. It also is designed to suggest to the United States of America that we have to look at our own policies in new and different ways.

For many years, in fact the first two decades of United Nations history, we not only led the United Nations, we were the principal participant in that body. We not only were never on the losing side of any particular issue, we led every particular cause that came before that body. Increasingly, that is no longer the case. Increasingly, our attitudes have come to reflect the attitudes of other members, and one of the great questions of our time is whether we are wise to dish out as we are dished or whether we are wiser to be above the fray.

My own sense is that now is the time to return to Adlai Stevenson's kind of diplomacy versus a more confrontational rhetoric, but in so doing we are going to have to expect more from other participants as well.

In any regard, Mr. Speaker, I think, as the events of the last week to 10 days have indicated so profoundly, whether it be in the economic sphere of a market meltdown, whether it be in the challenging sphere of the potential of peacekeeping problems in the Persian Gulf, whether it be in the area of arms control where the United Nations plays a very central role, that we are going to have to look at international diplomacy, international negotiations with an understanding that no country can go it alone. Just as no man is an island, no nation-state is insular to the concerns of others.

So I would hope in that spirit this particular resolution can be adopted, and we can go forth with a study of the United Nations that is deep, that is principled, and at the same time that is critical in a substantive and positive way.

Mr. YATRON. Mr. Speaker, I thank the gentleman from Iowa [Mr. Leach] for his kind remarks, as well as the gentleman from New York [Mr. Solomon], the gentleman from Michigan [Mr. Broomfield], and others. I commend the gentleman from Iowa [Mr. Leach] for the leadership he has given in this area. I am sure that this Commission will be the vehicle in order to improve the workings of the United Nations.

Mr. SOLOMON. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. YATRON. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. MONTGOMERY). The question is on the motion offered by the gentleman from Pennsylvania [Mr. YATRON] that the House suspend the rules and pass the joint resolution, H.J. Res. 112, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the joint resolution as amended, was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. YATRON. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on H.J. Res. 112, the joint resolution just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

SENSE OF CONGRESS REGARDING INABILITY OF AMERICAN CITIZENS TO MAINTAIN REGULAR CONTACT WITH RELATIVES IN THE SOVIET UNION

Mr. YATRON. Mr. Speaker, I move to suspend the rules and agree to the concurrent resolution (H. Con. Res. 68) expressing the sense of Congress regarding the inability of American citizens to maintain regular contact with relatives in the Soviet Union.

The Clerk read as follows:

H. CON. RES. 68

Whereas millions of United States citizens, including members of national and ethnic groups such as Armenians, Byelorussians, Estonians, Germans, Jews, Latvians, Lithuanians, Poles, Russians, and Ukrainians, have relatives in the Soviet Union;

Whereas the Soviet Union, as a signatory of the 1975 Final Act of the Conference on Security and Cooperation in Europe, commonly known as the Helsinki Accords, committed itself to "favourably consider applications for travel with the purpose of allowing persons to enter or leave their territory temporarily, and on a regular basis if desired, in order to visit members of their families.";

Whereas in that same document the Soviet Union pledged that "applications for temporary visits to meet members of . . . families will be dealt with without distinction as to country of origin or destination . . .; cases of urgent necessity—such as serious illness or death—will be given priority treatment.";

Whereas the Soviet Union has ratified the United Nations Charter and signed other international human rights documents such as the International Covenant on Civil and Political Rights, documents which clearly protect the right to leave one's country and return thereto;

Whereas in anticipation of the Geneva Summit Conference of November 1985, President Reagan stated, ". . . the cause of peace would be served if more individuals and families . . . could come to know each other in a personal way.";

Whereas home visits would immeasurably aid our understanding of the Soviet people and improve relations with the Soviet Union, since family visitation is one of the most basic forms of cultural exchange;

Whereas it is not proper for governments to decide which relationships constitute close family ties for the purpose of determining which relatives should be allowed to visit each other;

Whereas the present policies of the Soviet Union make it virtually impossible for the millions of relatives in the two countries to exchange visits in their homes, and relatives who have used other forms of communication, such as mail, telephone, telegraph, and gift parcels have experienced enormous difficulties;

Whereas because of restrictive Soviet policies, less than 1,000 of the many thousands of Americans who visited the Soviet Union in 1986 were allowed a private visa to stay with relatives in their homes; and only about 1,500 Soviet citizens were allowed to visit their relatives in the United States;

Whereas many Americans who have been frustrated by delay or denial in obtaining private visas to visit family members in their homes in the Soviet Union have resorted to joining package tours to the Soviet Union as a means of seeing their family members;

Whereas relatives should be able to comfort and assist each other in the event of medical emergencies such as those which resulted from the Chernobyl disaster, or when specialized medical treatment is not available in a particular country;

Whereas in the case of serious illness or death the victim's relatives should be guaranteed expeditious determination of their visa applications;

Whereas family visitation is an issue which transcends political differences, and governments which permit normal and regular family visitation demonstrate a commitment to basic values of decency and fairness which are shared by all mankind; and

Whereas at the Vienna Conference on Security and Cooperation in Europe Follow-up Meeting, the United States delegation enumerated the inappropriate restrictions placed by Soviet authorities on Soviet citizens who wish to travel abroad and on United States citizens who wish to visit family members in the Soviet Union: Now, therefore, be it

Resolved by the House of Representatives (the Senate concurring, That it is the sense of the Congress that—

(1) the promotion of unrestricted family visits between related people of the United States and the Soviet Union is an essential part of American policy toward the Soviet Union; and

(2) the President, the Secretary of State, and other members of the administration should raise the issue of family visitation at all appropriate opportunities in discussions with the leadership of the Communist Party and the Government of the Soviet Union.

The SPEAKER pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from Pennsylvania [Mr. YATRON] will be recognized for 20 minutes and the gentleman from New York [Mr. SOLOMON] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Pennsylvania [Mr. YATRON].

Mr. YATRON. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in strong support of House Concurrent Resolution 68, regarding the inability of American citizens to maintain regular contact with relatives in the Soviet Union. The Foreign Affairs Committee approved this measure without dissent and it was warmly endorsed by the administration.

I want to commend the bill's sponsor, Congressman CHRIS SMITH, for his outstanding leadership and tireless efforts to promote respect for human rights in the Soviet Union.

As chairman of the House Foreign Affairs Subcommittee on Human Rights and International Organizations, I have been closely monitoring recent developments in the Soviet Union with respect to human rights. While I welcome the positive gestures the Soviet Government has taken in certain human rights areas, the Kremlin is still far from meeting its international commitments under the Helsinki Final Act, the U.N. charter and other such covenants to which it is a signatory.

Family visitations and contacts is a universally recognized fundamental right. Unfortunately, the Soviet Union continues to make it virtually impossible for millions of relatives in our two countries to exchange visits. Soviet authorities also erect substantial obstacles to other forms of communication, such as mail, telephone, and telegraph.

Further, only a fraction of Soviet citizens were permitted to visit relatives in the United States, and a small portion of Americans visiting the Soviet Union in 1986 were allowed a private visa to stay with relatives in their homes.

House Concurrent Resolution 68 sends an important signal to Soviet authorities. By maintaining that unrestricted family contacts is an essential policy toward the Soviet Union, and by calling on the administration to raise this issue at all appropriate opportunities, House Concurrent Resolution 68 ensures that we will continue to pressure the Soviet Government to comply with its international human rights commitments.

Approval of House Concurrent Resolution 68 is certainly warranted by the present circumstances and deserves the support of every Member of this Chamber.

Mr. SOLOMON. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, first I want to again thank the subcommittee chairman, the gentleman from Pennsylvania [Mr. YATRON], for helping to bring this legislation to the floor.

I rise in strong support of this resolution; and in doing so, I would like to salute its chief sponsor, Mr. SMITH of New Jersey, for his continued yeoman service in bringing to the attention of the House, important issues of this kind. Mr SMITH has been tireless in his efforts to hold the Soviets' feet to the fire—to hold them accountable to the commitments they made at Helsinki.

It is no accident, either, that the two issues that concern all of us the most, do involve families and freedom of religion. And these issues will be with us for as long as the Soviet authorities insist on maintaining the idolatry of the State. In the final analysis, there are only two forces that can compete with the State's claim to absolute loyalty: Fidelity to one's family, and faith in the God and creator of us all. Since 1917, the Soviet State has sustained the greatest assault on the family unit and the Judeo-Christian ethic that the world has ever witnessed.

Mr. Speaker, I will be yielding to Mr. SMITH in just a moment so that he can explain his resolution in detail. Suffice for me to say that this resolution lays out the wretched history of the Soviet Union's despicable policy of breaking up families and preventing loved ones from maintaining contact with each other.

I cannot help but think of the "Capital to Capital" broadcast on "Nightline" a few nights ago in which the freely and openly elected representatives of the American people debated our supposed counterparts in the supreme Soviet. In truth, of course, we were debating the appointed flunkies of the ruling elites in the Communist Party Secretariat. But that is beside the point, anyway. When I raised the issue of family visitation and freedom of movement, the Soviets responded by saying "We don't have an Iron Curtain. * * * There is no wall." If that is anything other than a hollow lie, there would not be a need for us to pass this resolution.

And so I urge that this resolution be passed unanimously. It makes an important statement, and it will keep reminding the Soviets of the solemn pledges they signed at Helsinki—pledges they have continued to break. Above all, the innocent people who suffer under these inhumane practices will know that we are standing with them.

Mr. Speaker, I yield such time as he may consume to the very distinguished gentleman from New Jersey, Mr. CHRIS SMITH, the sponsor of this legislation. Again I thank him for bringing it to the attention of this Congress and the world.

Mr. SMITH of New Jersey. Mr. Speaker, I thank my good friend, the gentleman from New York, GERRY SOLOMON, for that very very powerful statement, and also commend the chairman of the Subcommittee on Human Rights and International Organizations, the gentleman from Pennsylvania, GUS YATRON, for his leadership on the Human Rights Committee. We have had a number of hearings this year from diverse areas and from around the globe, from Chile to Tibet. We have had human rights hearings that have really focused on what is truly occurring in the world, and the Soviet Union, of course, has been one of our prime focuses on the committee. Again I want to commend my good friend for his effective leadership on behalf of human rights. It is recognized on both sides of the aisle as well as in the world.

Mr. Speaker, the House has before it today a resolution which addresses the right of family members to maintain unfettered contact with their relatives, and is of importance to all who advocate human rights and, a deep and asiding concern to the thousands of families who are adversely affected by current Soviet policy. With 236 cosponsors, House Concurrent Resolution 68 enjoys broad, bipartisan support, has been given a very favorable recommendation by the administration, and an identical measure, introduced by Senator DECONCINI, was approved in the Senate on July 29.

Throughout the years, Mr. Speaker, Congress, the administration, clergy, human rights organizations, and others have emphasized the Soviet Union's disregard for basic human rights such as the right to practice one's religious beliefs, the right to emigrate and live in the country of one's own choosing, and the right to free political and civil expression. Keeping focus on these points is fundamental to our interaction and dealing with the Soviet Union and other countries of the world. Certainly, as a member of the Helsinki Commission, there are principles of the Helsinki accords that I have stressed repeatedly in meetings in this country and abroad with the Soviets, Romanians, Czechoslovakians, and others in the Warsaw Pact.

One aspect of the Helsinki accords which has not received adequate attention is the provision requiring the signatory nations to, in the specific language of the Helsinki accords, "favorably consider applications for travel with the purpose of allowing persons to enter or leave their territory temprarily, and on a regular basis if desired, in order to visit members of their families."

It is estimated that about 5 million Americans have familial ties in the U.S.S.R. For some the relatives are distant, but for many others the ties are more immediate—a brother or sister, a mother or father, a grandparent. The number of individuals who have emigrated from the U.S.S.R. to the United States over the last 15 to 20 years alone is approximately 200,000. Almost without exception, emigres leave loved ones behind. Many of them are then denied permission to see each other. Mr. Speaker, I believe Andrei Sakharov summarized the issue well when he said simply, "It is the inalienable right of all human beings to see their families."

For those contemplating emigration from the Soviet Union, prohibiting the exercise of this "inalienable right" can be a deciding factor not to attempt emigration at all. It can have a chilling effect on the decision to emigrate. In effect, emigres who are not allowed to return for visits have been condemned to a form of "exile"—they are forced to choose between their adopted residence and their cherished family ties.

Mr. Speaker, I believe the issue of family visits is a human rights issue which the Soviets can and must live up to. And it behooves us to vigorously press the point, particularly in this era of so-called openness or glasnost.

Mr. Speaker, the evidence is clear that for those wishing to visit relatives in the Soviet Union, the process can be quite lengthy despite the new visa regulations which came into effect on January 1, 1987. As with any visitor to the U.S.S.R. individuals must submit the application for a visitors visa. Too often applicants have had denials, especially among the emigre community. The new Soviet regulations suggest that such applications should be reviewed within 1 month while visa requests for funerals, family illnesses, or other emergencies would be reviewed within 3 days. Because Soviet citizens are prohibited to have foreigners staying in their home withour permission, a private visa must be obtained prior to departure, should the visitor wish to stay with relatives. In 1986, less than 1,000 Americans were allowed private visas by Soviet officials.

The new regulations look good on paper but results have been disappointing. The cumbersome, bureaucratic delays and thousands of rejections are especially frustrating for Soviet citizens seeking the necessary exit visa to travel outside the U.S.S.R. As an example, for the past 11 years, Yelena Sofronitskava, an 87-year-old woman living in Moscow applied for and was denied an exit visa twice each year. She was unable to come to the United States to visit her daughter and grandchildren. Finally, after several rejections, her daughter was granted a tourist visa allowing her into the Soviet Union. Nonetheless, unable to obtain a private visa, the daughter was forced to stay in a nearby hotel instead of in her mother's home. Mr.

Speaker, unfortunately there have been thousands of other similar stories.

Mr. Speaker, the President put the issue well in his pre-Geneva summit speech in 1985, "* * * the cause of peace would be well served if more individuals and families * * * could come to know each other in a personal way." For some this has meant simply facilitating cultural and scientific exchanges. Mr. Speaker, I believe it would be mutually beneficial for the same emphasis to be placed on contacts among siblings, and other family exchanges. Isn't it ironic that the trend of the eighties has been one of closer person to person ties with Soviet citizens and yet there are parents and grandparents who are regularly and routine denied a personal exchange with their sons and daughters and grandchildren?

Mr. Speaker, in order for this aspect of the Helsinki Accords to be given the focus needed to engage the Soviets, I introduced a resolution requesting that a coordinated and clear policy be stressed by the President, the Secretary of State and all administration negotiators and officials dealing with the Soviets. A few days later, Senator DECONCINI introduced the identical resolution. As noted in the executive comment requested for House Concurrent Resolution 68 there has been a "slight improvement in 1987 in Soviet performance on private travel and family visitation (but) it remains very difficult to exchange family visits." The administration welcomes this resolution and is mutually committed to working toward a resolution.

I am pleased to inform the House, Mr. Speaker, that the issue of family visits has been on the agenda for the ongoing Helsinki meeting now in progress in Vienna. The deliberators in Vienna have given consideration to a proposal dubbed WT24, which reiterates the commitments found in basket III of the accords. The proposal which is still under review calls upon the signatories to deal favorably and expeditiously with all applications for travel, particularly for humanitarian reasons.

I hope and trust that the House will overwhelmingly approve House Concurrent Resolution 68. The time has come to allow families to see each other without Big Brother objecting. As Ambassador to the human contacts meeting held in Bern, Switzerland, last year, Michael Novak said, "We look forward to the day when ordinary families are no longer victimized by the ebb and flow of political considerations." The right to visit one's family is elemental and will be another test of Soviet commitment to human rights and glasnost.

□ 1540

Mr. Speaker, I yield back the balance of my time.

Mr. SOLOMON. Mr. Speaker, I yield to another valuable member of the Committee on Foreign Affairs, the gentleman who has been foremost in the effort to hold, again, the Soviets' feet to the fire when it comes to human rights violations.

Mr. Speaker, he joined me on the program the other night, Capitol to Capitol, and asked some very penetrating questions of the Soviet politburo members that they could not answer because they could not defend the terrible human rights violations of the Soviet Union.

Mr. Speaker, I yield such time as he may consume to the gentleman from New York [Mr. GILMAN].

Mr. GILMAN. Mr. Speaker, I thank the gentleman from New York for his kind remarks and for yielding and I commend the gentleman from Pennsylvania [Mr. YATRON], the distinguished chairman of the Human Rights Subcommittee, and the gentleman from New York [Mr. SOLOMON], the committee's ranking member, for bringing this measure to the floor at this time.

I am pleased to rise in support of House Concurrent Resolution 68 which reaffirms the need for our Nation to do all that it can to assure that the basic and fundamental right of visiting one's loved ones will not be denied by the Soviet Government. In this country there are millions who have relatives in various parts of the Soviet Union. No government or person respecting the dignity of man could wish to keep mother from son or brother from sister.

In spite of the numerous international commitments of the Soviet Union to respect human rights, including family unification and emigration, only a small fraction of those wishing to see their relatives are permitted to do so. Many in the United States want to have a more productive relationship with the Soviet Union. Recent progress on arms control has been encouraging. But there can be no fundamental transformation in Soviet-American relations as long as the Soviet Government does not show a much greater appreciation of human rights.

This resolution appropriately urges the President and Secretary of State to continue to raise the issue of family visitation with the Soviet authorizaties at all appropriate opportunities. Accordingly, I urge my colleagues to support this resolution to make it clear that the American Government and the American people are unanimous in supporting the human right to family visitations.

Mr. YATRON. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I want to take this opportunity to commend and thank my ranking minority member, the gentleman from New York [Mr. SOLOMON], for his cooperation and hard work in trying to forge a bipartisan foreign policy.

I also want to commend the sponsor of the resolution, Mr. SMITH of New Jersey, for his leadership in this area and the hard work that he has put in on the subcommittee, and also our very good friend, the gentleman from New York [Mr. GILMAN], who has worked tirelessly in this area.

Mr. Speaker, I have no further requests for time and I yield back the balance of my time.

Mr. SOLOMON. Mr. Speaker, before yielding back the balance of my time, I yield myself such time as I may consume, and I yield once again to the sponsor of the resolution, the gentleman from New Jersey [Mr. SMITH].

Mr. SMITH of New Jersey. I thank the gentleman for yielding.

Mr. Speaker, I just want to alert the Members of the House that I will be asking for a recorded vote. This is an oft-neglected human rights issue and I think by having a recorded vote we bring additional attention to the family visitation issue. I certainly hope my colleagues would be amenable to that suggestion.

Mr. PORTER. I rise in support of House Concurrent Resolution 68 concerning unrestricted visits between people in the United States and their relatives in the Soviet Union. I want to commend my colleague, Mr. SMITH of New Jersey, for his leadership on this resolution and human rights issues in general. As a member of the Helsinki Commission, the Human Rights Subcommittee, and the Human Rights Caucus, his commitment to helping those in need is evident.

House Concurrent Resolution 68 touches upon a very important issue. Despite numerous international commitments by the Soviet Union, Soviet policies still prohibit U.S. citizens from visiting their relatives living in the U.S.S.R., and those policies also prevent those relatives from visiting the United States. For example, Maya Kabakov emigrated from the Soviet Union with her husband and son in 1978. For the past 3 years, she has attempted to get a visa for her mother to visit her and her family in the United States.

Maya's 69-year-old mother lives alone and is in poor health. Although she talks to her family on the phone, it is not the same as seeing them in person. I have written to Soviet and American authorities requesting a visitation visa for Mrs. Kabakov and will continue my efforts until her visa is granted.

Unfortunately, Mrs. Kabakov's plight is not an isolated one. Millions of American citizens have relatives in the Soviet Union. I encourage my colleagues to support House Concurrent Resolution 68 and send a strong message to the Soviet authorities: they must adopt a more favorable attitude toward Soviet citizens wishing to travel abroad.

Mr. HOYER. Mr. Speaker, I rise in strong support of House Concurrent Resolution 68, expressing the sense of the Congress regarding the inability of American citizens to maintain regular contacts with their families in the

Soviet Union. I commend our colleague and fellow member of the Helsinki Commission CHRIS SMITH for his leadership in sponsoring this resolution and his tireless efforts in promoting human rights issues.

In agreeing to the Helsinki Final Act, the 35 signatory states, including the Soviet Union, committed themselves to "favorably consider applications for travel with the purpose of allowing persons to enter or leave their territory temporarily, and on a regular basis if desired, in order to visit members of their families." Unfortunately, despite recent steps forward, the Soviet Union has not adhered to the family visits provision of the Final Act.

While the number of Soviet citizens allowed to visit the United States has more than doubled in recent months, many Soviet citizens still face considerable obstacles in attempting to get governmental permission to visit their family in the United States. As a result, many Soviet citizens, due to governmental restrictions, cannot visit their relatives who are ill or even dying. They are not able to share times of family remembrance of sorrow, or, for that matter, times of family joy and celebration. They are prevented from spending private moments or share reminiscences with brothers, sisters, sons or daughters, parents or cousins. Even when permission to travel for family visits is granted, rarely are entire families allowed to travel together. In essence, one part of the family is held hostage to ensure the traveler's return.

Considerable difficulties also exist for those Americans who wish to visit relatives in the Soviet Union. Many Americans have been frustrated by delay or denial in obtaining private visas to visit family members in their homes and have had to resort to joining package tours to see their relatives. These tours only stop in a limited number of Soviet cities, forcing the Soviet relatives to sometimes travel long distances to meet with their United States relatives. Thus they often act as a brake to normal family contact.

Mr. Speaker, I also welcome this resolution in my capacity as chairman of the Helsinki Commission and vice chairman of the U.S. delegation to the ongoing Vienna CSCE followup meeting. Passage of House Concurrent Resolution 68 will signal to the delegations at the Vienna meeting, including the Soviet delegation, the strong, bipartisan concern of the U.S. Congress on the family visits issue and strengthen the efforts of the West to include strong family visits and travel language in any concluding document that may ultimately be adopted at Vienna. While we welcome recent positive developments by the Soviet Government in the area of family visits, we must continue to emphasize the importance we attach to unrestricted family visits. This resolution, Mr. Speaker, reinforces our commitment to this end. I urge my colleagues to support passage of House Concurrent Resolution 68.

Mr. SOLOMON. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The **SPEAKER** pro tempore (Mr. MONTGOMERY). The question is on the motion offered by the gentleman from Pennsylvania [Mr. YATRON] that the House suspend the rules and agree to the concurrent resolution, H. Con. Res. 68.

The question was taken.

Mr. SMITH of New Jersey. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The **SPEAKER** pro tempore. Pursuant to the provisions of clause 5, rule I, and the Chair's prior announcement, further proceedings on this motion will be postponed.

GENERAL LEAVE

Mr. YATRON. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the concurrent resolution just considered.

The **SPEAKER** pro tempore. Is there objection to the request of the gentleman from Pennslvania?

There was no objection.

ORGAN TRANSPLANT AMENDMENTS ACT OF 1987

Mr. WAXMAN. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 3097) to amend the Public Health Service Act to revise and extend the program of assistance to organ procurement organizations, and for other purposes, as amended.

The Clerk read as follows:

H.R. 3097

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Organ Transplant Amendments Act of 1987".

SEC. 2. ASSISTANCE FOR ORGAN PROCUREMENT ORGANIZATIONS.

(a) ADDITIONAL GRANT AUTHORITY.—Section 371(a) of the Public Health Service Act (42 U.S.C. 273(a)) is amended—

(1) in paragraph (2), by inserting "consolidation," after "operation,";

(2) by redesignating paragraph (3) as paragraph (4) and inserting after paragraph (2) the following new paragraph:

"(3) The Secretary may make grants for special projects designed to increase the number of organ donors."; and

(3) in paragraph (4) (as redesignated in paragraph (2) of this subsection)—

(A) by striking "and" at the end of subparagraph (A);

(B) by striking the period at the end and inserting ", and"; and

(C) by adding at the end the following new subparagraph:

"(C) with respect to carrying out paragraph (3), give special consideration to proposals from existing organ procurement organizations.".

(b) LIMITATIONS ON ADDITIONAL GRANT AUTHORITY.—Section 374(b)(3) of the Public Health Service Act (42 U.S.C. 274b(b)(3)) is amended in the first sentence by striking "section 371" and all that follows through "organizations" and inserting "paragraphs (2) and (3) of section 371(a)".

(c) DESCRIPTION OF ORGAN PROCUREMENT ORGANIZATION.—Section 371(b) of the Public Health Service Act (42 U.S.C. 273(b)) is amended—

(1) in paragraph (1)(E)—

(A) by striking "will include" and all that follows through "year" and inserting the following: "the organization can reasonably expect to procure organs from not less than fifty donors each year";

(2) in paragraph (2)(C), by striking "372(b)(2)(D)," and inserting the following: "372(b)(2)(E), including arranging for testing with respect to preventing the acquisition of organs that are infected with the etiologic agent for acquired immune deficiency syndrome,";

(3) in paragraph (2)(E)—

(A) by inserting "equitably" after "organs"; and

(B) by striking "centers and"; and (4) in paragraph (2)—

(A) by striking "and" at the end of subparagraph (I);

(B) by striking the period at the end and inserting ", and"; and

(C) by adding at the end the following new subparagraph:

"(K) assist hospitals in establishing and implementing protocols for making routine inquiries about organ donations by potential donors.".

(d) AUTHORIZATIONS OF APPROPRIATIONS.—Section 371(c) of the Public Health Service Act (42 U.S.C. 273(c)) is amended to read as follows:

"(c) For grants under subsection (a), there is authorized to be appropriated $5,000,000 for each of the fiscal years 1988 through 1990.".

SEC. 3. ORGAN PROCUREMENT AND TRANSPLANTATION NETWORK.

(a) DUTIES.—Section 372(b)(2) of the Public Health Service Act (42 U.S.C. 274(b)(2)) is amended—

(1)(A) by redesignating subparagraphs (B) through (H) as subparagraphs (C) through (I), respectively; and

(B) by adding after subparagraph (A) the following new subparagraph:

"(B) establish membership criteria and medical criteria for allocating organs and provide to members of the public an opportunity to comment with respect to such criteria,";

(2) in subparagraph (D) (as redesignated in paragraph (1)(A) of this subsection), by striking "organs which" and all that follows and inserting "organs,";

(3) in subparagraph (E) (as redesignated in paragraph (1)(A) of this subsection), strike "organs," and insert the following: "organs, including standards for preventing the acquisition of organs that are infected with the etiologic agent for acquired immune deficiency syndrome,";

(4) in subparagraph (F) (as redesignated in paragraph (1)(A) of this subsection), by striking "basis," and inserting the following: "basis (and, to the extent practicable, among regions or on a national basis),"; and

(5)(A) by striking "and" at the end of subparagraph (H) (as redesignated in paragraph (1)(A) of this subsection);

(B) by striking the period at the end and inserting ", and"; and

(C) by adding at the end the following new subparagraph:

"(J) carry out studies and demonstration projects for the purpose of improving procedures for organ procurement and allocation.".

(b) CONSIDERATION OF CRITICAL COMMENTS.—Section 372 of the Public Health Service Act (42 U.S.C. 274) is amended by adding at the end the following new subsection:

"(c) The Secretary shall establish procedures for—

"(1) receiving from interested persons critical comments relating to the manner in which the Organ Procurement and Transplantation Network is carrying out the duties of the Network under subsection (b); and

"(2) the consideration by the Secretary of such critical comments.".

SEC. 4. REQUIREMENT OF ESTABLISHMENT OF BONE MARROW REGISTRY.

(a) In General.—Section 373 of the Public Health Service Act (42 U.S.C. 274a) is amended—

(1) by inserting "(a)" after the section designation; and

(2) by adding at the end the following new subsection:

"(b)(1) Not later than October 1, 1988, the Secretary shall, by grant or contract, establish a registry of voluntary bone marrow donors.

"(2) For the purpose of carrying out paragraph (1), there are authorized to be appropriated $1,500,000 for fiscal year 1989 and $1,600,000 for fiscal year 1990.".

(b) Conforming Amendment.—Section 373 of the Public Health Service Act (42 U.S.C. 274a) is amended in the title by inserting "AND BONE MARROW REGISTRY" after "REGISTRY".

SEC. 5 ADMINISTRATION.

Section 357 of the Public Health Service Act (42 U.S.C. 274c) is amended—

(1) in the matter preceding paragraph (1), by striking "1985, 1986, 1987, and 1988," and inserting "1985 through 1990,"; and

(2) in paragraph (4), by striking "one year" and all that follows through "annual report" and inserting the following: "not later than April 1 of each of the years 1988 and 1990, submit to the Congress a report".

SEC. 6. REPORT.

Section 376 of the Public Health Service Act (42 U.S.C. 274d) is amended by striking "shall annually" and inserting the following: "shall, not later than October 1 of each year,".

The SPEAKER pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from California [Mr. Waxman] will be recognized for 20 minutes and the gentleman from California [Mr. Moorhead] will be recognized for 20 minutes.

The Chair recognizes the gentleman from California [Mr. Waxman].

GENERAL LEAVE

Mr. WAXMAN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on H.R. 3097, the bill presently under consideration.

Mr. SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. WAXMAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the purpose of H.R. 3097 is to extend the authorization of appropriations for the programs which comprise the National Organ Transplant Act. This act, originally passed in 1984 by a vote of 396-6, responded to public demand for a more equitable and efficient process of organ donation and transplantation.

Since 1984, we have seen further breakthroughs in the field of human organ transplantation. Heart and liver transplantation have been proven to be effective in saving lives of patients with otherwise fatal diseases. For patients suffering from chronic kidney disease, kidney transplants can both improve a patient's quality of life and save the government money by eliminating the need for long-term maintenance dialysis. Bone marrow transplantation is now the treatment of choice for certain blood diseases.

The initiatives created under the 1984 act have improved access, enhanced fairness, and increased the success rates of organ transplantation. Unfortunately, much remains to be done. There are literally hundreds of patients suffering from liver, heart, or kidney disease waiting for the phone call that signals the availability of a donor organ. Tragically, many of these patients will die of their illness before a donor organ becomes available. We simply must do a better job.

H.R. 3097 was reported by the Committee on Energy and Commerce with broad bipartisan support. Briefly, the legislation would:

First, extend for 3 fiscal years the authorization of appropriations for the programs and activities of the Department of Health and Human Services' Office of Organ Transplantation. These programs include grants for the development of community-based organ procurement organizations;

Second, improve the operation of the organ procurement and transplantation network, which is a national computer network charged with facilitating the equitable allocation of donated organs among patients in need; and

Third, provide for establishment of a bone marrow registry to support bone marrow research and transplantation programs.

Mr. Speaker, I urge support for H.R. 3097.

Mr. Speaker, I reserve the balance of my time.

Mr. MOORHEAD. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I join the chairman of the Subcommittee on Health and the Environment in supporting H.R. 3097. This legislation reauthorizes for 3 fiscal years grants to organ procurement organizations and makes improvements to the current authority for the national organ procurement and transportation network and the Office of Organ Transplantation within the Department of Health and Human Services.

Because organ transplantation is an evolving science, I think it is important for Congress to continually evaluate the most appropriate Federal role in organ procurement and transplantation. Currently the public health service, in addition to awarding grants to organ procurement organizations, contracts for a computer registry of individuals in need of organs, and maintains a scientific registry of data on the health status of organ transplant recipients. H.R. 3097 is in large measure a simple extension of these activities.

It is my understanding that the administration has no objection to House passage of H.R. 3097. I urge my colleagues to support this bill.

Mr. Speaker, I reserve the balance of my time.

Mr. WAXMAN. Mr. Speaker, I will yield to a very important and distinguished member of our subcommittee who has played an invaluable role in crafting this and many other pieces of legislation.

Mr. Speaker, I yield such time as he may consume to the gentleman from Oregon [Mr. Wyden].

Mr. WYDEN. Mr. Speaker, I rise in support of the legislation and I thank the gentleman for yielding.

Mr. Speaker, I want to commend the chairman of the subcommittee, Mr. Waxman, who, as on so many other pieces of legislation, has put together a very good piece of legislation.

I also want to commend the staff for a very, very good job and something that I think is going to really make a difference in health care in this country.

In particular, Mr. Speaker, these amendments in my view will serve as a lifetime to needy patients from coast to coast. There is a tremendous need in this country to have a system to find and match bone marrow donors. A temporary program was set up at the Navy in 1986. It seems to me that it is time to move the Navy program to the public service where it belongs.

This legislation does that and, in addition, it authorizes $1.5 million for the bone marrow registry in fiscal 1989.

Mr. Speaker, this legislation has particular significance for the citizens of our State because David Frohnmayer, who is our attorney general, and his family have been searching for some time for this kind of assistance for their youngsters. It is a very sad situation.

Many Oregonians have been anxious to try to help.

It seems to me that with approaches like the bone marrow registry that this legislation provides it is going to be easier for families around this country, such as the Frohnmayers, who so richly deserve this assistance, to find it and in the process help secure the health of our young people.

So I very much appreciate the work of Chairman Waxman. I think it is a fine bill.

I urge my colleagues to support it and yield back the balance of my time.

Mr. YOUNG of Florida. Mr. Speaker, I rise in strong support of H.R. 3097, the Organ Transplant Amendments Act of 1987, and in particular a provision of the legislation which would authorize the establishment of a National Bone Marrow Donor Registry under the direction of the Secretary of Health and Human Services.

Bone marrow transplantation is an increasingly successful medical procedure that annually saves the lives of thousands of children and adults suffering from a number of blood disorders and cancer. The most commmon bone marrow transplants are of the matched-sibling type where marrow is donated by one family member to another. It is estimated, however, that as many as 70 percent of the potential bone marrow transplant patients do not have a sibling donor.

Bone marrow transplants using unrelated donors require a complex array of blood and tissue typings to find an acceptable match. This is virtually impossible without a computerized network of potential bone marrow donors. In fact, of the 1,200 to 1,500 bone marrow transplants performed each year, all but a few are of the matched sibling type where bone marrow is donated by a family member. Locating a nonsibling donor is a difficult and time consuming procedure requiring hundreds of calls by doctors and hospitals usually in a futile effort to locate a suitable match. Unfortunately, matched donors are successfully found in only about 10 percent of these cases. The other patients often die without a bone marrow transplant or must undergo a painful procedure where their own bone marrow is withdrawn, treated with toxic doses of radiation and chemicals, and reintroduced into the patient.

I became familiar with this unusual medical procedure when a very brave 10-year-old girl named Brandy Bly, from Pinellas County, FL, required a bone marrow transplant but had no sibling donor. The hospital where she was treated, after a lengthy search, was also unable to find an unrelated donor. The only recource left for her doctors to pursue was a transplantation of her own bone marrow. Brandy survived the procedure, which many patients do not, and put up a valiant struggle for her life. Her struggle lasted 3 months when she died of complications associated with her surgery. The bone marrow transplant succeeded, but she died of complicatons associated with the powerful drugs used in conjunction with the procedure.

Brandy's family and doctors tell me that her chances for survival would have been significantly better, and she could be alive today, if they had been able to identify a compatible unrelated bone marrow donor in a timely manner. According to medical experts I've discussed this matter with, the quicker a donor is identified and the transplantation is completed, the better the chance is for a patient's recovery. Brandy's experiences, and those of her family, made me aware of the need for a National Bone Marrow Donor Registry that could in the future save the lives of many children and adults, like Brandy, whose chances for survival are bleak without it.

Although it is not widely know, a national registry is now being established under the jurisdiction of the Department of Defense to fill this void in our Nation's health care system. It was at the direction of the Appropriations Committee I serve on, that the Navy Medical Research Institute in 1986 contracted with the American Red Cross, the American Association of Blood Banks, and the Council of Community Blood Centers to work with more than 50 blood banks and blood centers to establish a computerized base that one day will instantly have access to more than 100,000 potential unrelated bone marrow donors. In the first year of this project, more than 17,000 donors have registered to be part of this network and this month the first search of the data bank for donors were undertaken. The Defense Appropriations Committee last week approved my request to provide $2.1 million to fund the second year of a 3-year contract to maintain the registry and it is in this second year of the contract that doctors expect to see the first successful matches and transplants from this system.

In response to my questions during our committee's hearings earlier this year, Vice Adm. Lewis Seaton, Surgeon General of the Navy, said the registry is a very valuable national health program that should be continued but that its responsibility should be transferred to a more appropriate Federal agency. The most logical agency is the Department of Health and Human Services, where a registry could be incorporated into a number of areas of research conducted at the National Institutes of Health. It was during a hearing of the Energy and Commerce Subcommittee of Health, chaired by my colleague from California, Mr. WAXMAN, that I urged the Department of Health and Human Services to undertake a project to establish and maintain a national registry. H.R. 3097, the legislation before us today, would shift the responsibility for the registry from the Navy to the Department of Health and Human Services to be managed by the department deemed most appropriate by the Secretary. The transfer would not disrupt the ongoing work of the registry and would allow it to be used for the treatment of patients and to facilitate research.

At the request of the Energy and Commerce Committee, and in response to my testimony earlier this year, the Office of Technology Assessment earlier this month completed a report which strongly supports the work of the registry and indicates that greater successes in unrelated bone marrow transplants can be expected with improvements in the matching of donors and recipients, with reductions in the waiting period for transplants, and with other improvements in the procedure using research based on the registry.

As a member of the Health Appropriations Committee, I want to commend the chairman of the committee, for his efforts to ensure that the smooth transition of this program takes place and I want to pledge my commitment to see that the appropriate funding is made available next year to continue the registry's work. A national bone marrow registry, with a permanent home in the Department of Health and Human Services, will give hope to thousands of people by providing a fast and readily accessible means to locate an unrelated bone marrow donor. Ultimately, the national registry will have on file at any one time 100,000 potential donors. With bone marrow transplant now considered an acceptable medical practice and being studied as a treatment for a wide variety of diseases, the registry could help save thousands of lives each year.

Mr. Speaker, although it is too late to help 10-year-old Brandy Bly, she should be credited in part for helping to see that the National Bone Marrow Registry becomes a very important segment of our many national health programs under the jurisdiction of the Department of Health and Human Services. As a member of the Appropriations Subcommittee on Health, I look forward to working with the Department to see that the registry becomes fully operational and in following its progress that will result in the saving of thousands of lives and the generation of important new research that unlocks the mystery of hundreds of diseases.

I commend the chairman for his efforts and strongly urge the adoption of this important legislation.

Mr. FAZIO. Mr. Speaker, I wholeheartedly support H.R. 3097, the Organ Transplant Amendments Act, and commend the chairman of the Energy and Commerce Health Subcommittee, Congressman HENRY WAXMAN, for his efforts on behalf of this legislation.

This important bill authorizes a total of $18.1 million in fiscal years 1988 through 1990 for grants to develop or operate organ transplant programs under the National Organ Transplant Act. It also calls for the creation of a bone marrow donor registry to be overseen by the Department of Health and Human Services.

I am particularly interested in and pleased by the inclusion of provisions relating to a national bone marrow registry to be used for matching donors for bone marrow transplants. Bone marrow transplantation has been particularly effective when performed under certain circumstances and is a lifesaving treatment for several blood diseases. However, for the transplant to be successful, the blood characteristics of the donor and the recipient must be carefully matched. As a result, most transplants have been done between siblings or other family members. Unfortunately, only about one-third of the patients who would benefit from a bone marrow transplant have such an appropriate donor within the immediate family.

Despite the small numbers of individuals who have relatives available to serve as donors, there is promising news that more of those in need of bone marrow transplants can receive them through unrelated donors. According to a recent report by the Office of Technology Assessment, a national registry of volunteer potential donors would facilitate improvements and would expedite appropriate research. With advances in bone marrow transplants between parties who are not related but whose blood characteristics are appropriately matched, such a registry is of considerable importance.

The first steps toward an effective national registery has begun with the establishment of a national bone marrow registry by the Naval

Medical Research Institute of the U.S. Navy. The Office of Naval Research has coordinated a national registry of bone marrow donors whose primary purpose is to support civilian bone marrow transplant programs. This Office has contracted with a consortium of organizations to develop and maintain the registry by working with a group of over 50 local blood banks and blood centers that have established lists of tissue-type blood donors. Although the Navy is willing to maintain the registry through fiscal year 1988, it has indicated that it would prefer not to continue the registry after that date.

In light of this situation, the Secretary of Health and Human Services would be required under H.R. 3097 to establish a registry of voluntary bone marrow donors, under contract or grant with an appropriate organization or organizations, no later than October 1, 1988. Under this program, the legislation would authorize appropriations of $1.5 million in fiscal year 1988 and $1.6 million in fiscal year 1990 for this purpose. Furthermore, it will be up to the Secretary of Health and Human Services to determine the appropriate balance between the treatment of patients and facilitating research into this area, both of which are deemed important functions. Because I believe that such a program is an important priority and represents a worthwhile and important contribution in expanding availability and technology of bone marrow research and transplants, I offer my strong support for H.R. 3097.

Mr. MOORHEAD. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. WAXMAN. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California [Mr. WAXMAN] that the House suspend the rules and pass the bill, H.R. 3097, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

□ 1555

REGULATORY FAIRNESS ACT

Mr. SHARP. Mr. Speaker, I vote to suspend the rules and pass the bill (H.R. 2858) to provide for refunds pursuant to rate deceases under the Federal Power Act, as amended.

The Clerk read as follows:

H.R. 2858

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Regulatory Fairness Act".

SEC. 2. REFUNDS IN PROCEEDINGS UNDER SECTION 206 OF THE FEDERAL POWER ACT.

Section 206 of the Federal Power Act (16 U.S.C. 824e) is amended as follows:

(1) At the end of subsection (a) insert:

"Any complaint or motion of the Commission to initiate a proceeding under this section shall state plainly, to the extent practicable, the change or changes to be made in the rate, charge, classification, rule, regulation, practice, or contract then in force, and the reasons for any proposed change or changes therein. The public utility shall file with the Commission an answer to such motion or complaint and shall specify therein its reasons for disagreement, if any, with the motion or complaint. If, after review of any motion or complaint and answer, the Commission shall decide to hold a hearing, it shall fix by order the time and place of such hearing and shall specify the issues to be adjudicated.".

(2) Designate subsection (b) as (c) and insert the following new subsection after subsection (a):

"(b) Whenever the Commission institutes a proceeding under this section, the Commission shall establish a refund effective date. In the case of a proceeding instituted on complaint, the refund effective date shall not be earlier than the date 60 days after the filing of such complaint nor later than 5 months after the expiration of such 60-day period. In the case of a proceeding instituted by the Commission on its own motion, the refund effective date shall not be earlier than the date 60 days after the publication by the Commission of notice of its intention to initiate such proceeding nor later than 5 months after the expiration of such 60-day period. In any proceeding under this section, the burden of proof to show that any rate charge, classification, rule, regulation, practice, or contract is unjust, unreasonable, unduly discriminatory, or preferential shall be upon the Commission or the complainant. At the conclusion of any proceeding under this section, the Commission shall order the public utility to make refunds of any amounts paid, for the period subsequent to the refund effective date, in excess of those which would have been paid under the just and reasonable rate, charge, classification, rule, regulation, practice, or contract which the Commission orders to be thereafter observed and in force, unless the Commission determines that such refund would adversely affect the public interest. The refunds shall be made, with interest, to those persons who have paid those rates or charges which are the subject of the proceeding.".

SEC. 3. FEES UNDER SECTION 205.

Section 205 of the Federal Power Act is amended by adding the following new subsection at the end thereof:

"(g) FILING FEES.—The Commission shall not charge any fee in connection with any filing under this section proposing to decrease the amount of any rate or charge made, demanded or received by a public utility.".

The SPEAKER pro tempore (Mr. MONTGOMERY). Pursuant to the rule, a second is not required on this motion.

The gentleman from Indiana [Mr. SHARP] will be recognized for 20 minutes and the gentleman from California [Mr. MOORHEAD] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Indiana [Mr. SHARP].

Mr. SHARP. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 2858 cures an unfair imbalance in the Federal Power Act that has been on the books for half a century. In brief, the Regulatory Fairness Act rectifies some of the disparity between the procedures for a utility's rate increase application, and the procedures for a wholesale purchaser's rate decrease application.

Under current law, rate increase applications go into effect almost immediately, subject to refund only at the end of an administrative process which takes an average of 2 years to complete. Rate decrease applications, by contrast, do not go into effect until the end of the administrative process, and at that time prospectively only. The Regulatory Fairness Act ensures that the wholesale buyer will get relief retroactive to approximately the date the rate reduction application was filed.

Mr. Speaker, I salute the efforts of the gentleman from Illinois [Mr. BRUCE] and the gentleman from Connecticut [Mr. GEJDENSON] in support of this legislation since the beginning of the 100th Congress. I also thank the gentleman from California [Mr. MOORHEAD] for his sponsorship and vigorous assistance on behalf of the bill. We are very pleased that the legislation has garnered a broad basis of support by both the private and public power interests in the country as a reasonable and fair proposition, which we think bodes well for consumers of wholesale power in this country.

Mr. MOORHEAD. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 2858, the Regulatory Fairness Act, a bill on which I am an original cosponsor. This act rectifies a long standing inequity in the Federal Power Act and permits utility wholesale customers and their ratepayers to receive refunds of rates that have been paid when the Federal Energy Regulatory Commission determines that the rates have been too high and that, therefore, refunds are warranted.

Since 1920, when the Federal Power Act was enacted, utility wholesale suppliers have been able to put rate increases into effect automatically, after a brief suspension period. Utility wholesale customers, however, have not been able to receive equivalent treatment for rate decreases. Instead, rate decreases go into effect only after the Federal Energy Regulatory Commission has completed its hearing process. This hearing process usually takes 2 to 4 years. Thus, during the time the rate decrease is pending before FERC, utility wholesome customers and their ratepayers are paying a rate that may well be too high. Moreover, even if FERC determines that the rate is too high, the Federal Power Act does not permit FERC to grant a refund. This inability to be awarded a refund for a rate determined to be too high is the inequity corrected by H.R. 2858.

Enactment of this legislation will help my constituents in southern California where electricity demand is experiencing a relatively high growth rate. Enhancing the attractiveness of wholesale power purchases by permitting refunds when rates are too high will help utilities in my area meet this load growth at lower costs, thus benefiting my constituents. Similarly, this legislation will help other areas of the country where utilities engage in wholesale power purchases. Thus, I encourage my colleagues to support H.R. 2858.

I would like to take this opportunity to commend the fine work of my colleague on the Energy and Power Subcommittee, Mr. BRUCE, in bringing the legislation to this point and in working with the many parties who have an interest in the bill. I would also like to commend my colleagues, Mr. SHARP and Mr. DINGELL, respectively the chairman of the Energy and Power Subcommittee and chairman of the Energy and Commerce Committee, in presiding over the expeditious and helpful handling of this legislation. Finally, I would like to commend Richard Lehfeldt of Mr. SHARP's staff and Larry Clinton of Mr. BRUCE's staff, and Jessica Laverty of my staff for all of their work on this legislation.

I urge my colleagues to support H.R. 2858.

Mr. SHARP. Mr. Speaker, I yield 5 minutes to the distinguished gentleman from Illinois [Mr. BRUCE], who is one of the staunch advocates of this measure on our committee and one of the original cosponsors of the bill.

Mr. BRUCE. Mr. Speaker, I would first of all like to thank the gentleman from Indiana [Mr. SHARP], the gentleman from California [Mr. MOORHEAD], and the gentleman from Michigan [Mr. DINGELL] for their assistance in bringing this Regulatory Fairness Act to the floor so quickly. I would also like to thank the gentleman from Connecticut [Mr. GEJDENSON] who helped us so ably throughout the whole process, and also my thanks go to the staff members, Richard Lehfeldt, majority counsel, and Jessica Laverty, each of whom has helped me a great deal in getting over the specific language requirements we had.

One of the first bills I was involved in as a member of the Energy and Commerce Committee was the repeal of the Fuel Use Act. In that instance groups and interests for several different perspectives were able to compromise, and in so doing pass a bill that had been pushed for many years.

I think we have been able to do the same in regard to the Regulatory Fairness Act. Consumers have been seeking legislation like the Regulatory Fairness Act for over a decade. The bill which we will be voting on today is the product of extensive negotiations including interested Members from both sides of the aisle, the Federal Energy Regulatory Commission, and all the various interests who would be effected by passage of this measure.

The result is a compromise, a consensus bill which has been agreed to by the American Public Power Association, the National Rural Electric Cooperative Association, the Edison Electric Institute, the Consumer Federation of America, Environmental Action, the National Association of State Utility Consumer Advocates, and the American Paper Institute. The bill has also been endorsed by a number of State regulatory agencies including the Illinois State Commerce Commission.

The essential purpose of the Regulatory Fairness Act is to allow consumers to receive just and reasonable rate reductions in a similar way to the method used when utilities receive just and reasonable rate increase.

When utility costs go up due to increased fuel costs, increased construction costs, higher interest rates, or even higher taxes, the utility deserves a rate adjustment so that they continue to receive their costs and a reasonable return on their investment. Under the current system, which we do not change through this bill, they receive these justified rate increases between 2 to 7 months after they are requested.

However, when these same economic factors go in the other direction consumers deserve just and reasonable rate reductions. But under the current system, they need to wait up to 3 years to receive these rate reductions, and when the FERC grants these justified rate reductions they are granted only prospectively, not retrospectively.

That means that consumers receive no relief, no refund for paying years of utility rates which are objectively determined to be unjust and unreasonably high. The Regulatory Fairness Act remedies this situation.

H.R. 2858 will simply set the refund effective date for consumers at a period between 2 and 7 months after the wholesale consumer has petitioned the FERC for the reduction. This is essentially the same system used to grant rate increases.

We do not change the criteria used to determine a just and reasonable rate, nor do we alter the body which makes this determination. We simply stop the current process which forces consumers to pay several years of rates which are too high.

Moreover the Regulatory Fairness Act provides for additional specificity in the complaint process and clearly stipulates that the burden of proof is on the complaintants in these cases, thus providing increased assurance that we will not have frivolous complaints.

In addition, we have added language which states that refunds shall not be granted if FERC deems them to be contrary to the public interest which will assure that utilities will not be left financially devastated by an unreasonable rate case decision.

In short I believe that we have now constructed a bill which serves the needs of the consumers, the wholesale distributors and the large investor owned utilities.

It would not have been possible to craft such a bill without the help of the APPA, the NRECA, the FERC, the chairman and ranking member of the Energy and Power Subcommittee, the 20 consponsors of the Regulatory Fairness Act who sit with us on the Energy and Commerce Committee and the 40-plus other Members of the House who have also cosponsored the Regulatory Fairness Act and of course once again I would like to thank our chairman, Mr. DINGELL, for bringing this matter to such speedy action here in full committee.

Mr. SPEAKER, my constituents in central and southern Illinois pay some of the highest utility rates in the Nation. Many parts of my district are still suffering the effects of a recession that began in 1980. In difficult economic times such as these, it is unconscionable that elderly, unemployed, or even your average utility consumers should have to pay millions of dollars in unjust utility costs, without rate relief and without the possibility of refund yet that is exactly what the current law has forced them to do. By voting for the Regulatory Fairness Act we will put an end to this. I urge my colleagues to vote for H.R. 2858.

Mr. SHARP. Mr. Speaker, I yield 4 minutes to the gentleman from Connecticut [Mr. GEJDENSON], who was one of the original cosponsors and one of the strong advocates of this legislation and one who actually helped us to advance it.

Mr. GEJDENSON. Mr. Speaker, I am pleased to rise in support of H.R. 2858, the Regulatory Fairness Act of 1987, a bill to provide refunds for rate decreases for utility customers. This legislation represents an attempt to make the current regulatory process more equitable, giving electric customers the same protections and considerations that supplying utilities currently receive. The regulation of electric utilities should give both consumers and utilities a fair deal. Utilities should receive and consumers should pay, a just and reasonable rate for electricity. When costs are rising, as they were during the late 1960's and 1970's, utilities should be able to recover those costs in a timely fashion and the current regulation provides for this. However, when costs go down, the process is not as fair.

Under current law, consumers are obligated to pay for rate increases shortly after the increase is filed. The regulatory process for rate increases takes about a year, at which time, if the rates are found by the Federal Energy Regulatory Commission [FERC] to be too high, the customer gets a refund. Clearly this system works well for the supplying utilities because they can collect the proposed higher rate during most of the regulatory process. However, if the customer files for a rate decrease, he is taking a gamble. The regulatory process takes twice as long as for increases and the cost of litigating is often more expensive than the potential savings from the decrease. During the process, the customer never sees the benefits of the rate reduction. The customer can only see the benefits of a rate reduction prospectively, after the whole regulatory process is completed.

Given the dramatic changes in economic conditions that we have seen since the early 1980's, it is obvious that the regulatory process for wholesale electricity rate reductions is not fair. This amendment to the Federal Power Act gives the Federal Energy Regulatory Commission the power to return balance and fairness to the regulatory process, a power that they currently do not have.

Mr. Speaker, allow me to give my colleagues an example from my own State. In January, the Connecticut Consumer Counsel filed a complaint with the Federal Energy Regulatory Commission claiming that Connecticut Light & Power's rate of return for wholesale power is too high. And though the Federal Energy Regulatory Commission issued their decision expeditiously, Consumer Counsel James Meehan nonetheless estimates that customers lost upwards of $1.8 million during the regulatory process from overcharges while the decision was being made. This is money that there is no prospect of ever seeing, even though rates were determined to have been excessive.

The Regulatory Fairness Act will provide wholesale electric customers refund protection. Under this legislation the Federal Energy Regulatory Commission would set a refund effect date so that any decrease in wholesale rates would cover the overcharge. H.R. 2858 does not change the rate-setting standards, nor does it change the current regulatory process. This legislation simply ensures that rate decrease proceedings are handled in the same manner and afforded the same consideration as rate increases. This legislation would not only give the consumers more control over electric rates that they are being charged but it will make it easier for the customer utilities to charge lower, more economically responsive utility rates and will give the consumers the same advantages that supplying utilities have when requesting a change in rates.

Mr. SHARP. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. MOORHEAD. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Indiana [Mr. SHARP] that the House suspend the rules and pass the bill, H.R. 2858, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

SMALL SOLAR POWER PRODUCTION FACILITIES EXTENSION ACT

Mr. SHARP. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 2818) providing exemption from certain Federal and State laws for solar small power production facilities, as amended.

The Clerk read as follows:

H.R. 2818

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the amendments made by section 643(b) of the Energy Security Act (Public Law 96-294) and any regulations issued to implement such amendment shall apply to qualifying small power production facilities (as such term is defined in the Federal Power Act) using solar energy as the primary energy source to the same extent such amendments and regulations apply to qualifying small power production facilities using geothermal energy as the primary energy source, except to the extent that the Federal Energy Regulatory Commission may otherwise subsequently provide by regulation in order to encourage the development of such solar or geothermal facilities.

The SPEAKER pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from Indiana [Mr. SHARP] will be recognized for 20 minutes and the gentleman from California [Mr. MOORHEAD] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Indiana [Mr. SHARP].

Mr. SHARP. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in strong support of H.R. 2818, a bill which is intended to encourage the further development of the solar small power industry.

While the bill which we consider today looks like an arcane amendment to the Energy Security Act, we are in fact witnessing today another chapter in the matriculation of solar power from a fledgling industry into an equal partner in the Nation's energy spectrum. When the Public Utility Regulatory Policies Act was enacted in 1978, nobody dreamed that solar power technology would develop so quickly into a power source eligible for the full 80 megawatts of exemption that other sources such as geothermal currently enjoy. Today, we celebrate the rapid growth of solar thermal technology to the point which warrants and requires the statutory amendment we are taking up today.

I want to express special thanks to the gentleman from California, the ranking minority member of the subcommittee, Mr. MOORHEAD, to the gentleman from California, Mr. WAXMAN, and to the gentleman from Alabama, Mr. BEVILL, for their support and hard work on behalf of this important piece of legislation.

□ 1610

Mr. MOORHEAD. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 2818, a bill of which I am an original cosponsor. H.R. 2818 would raise from 30 megawatts to 80 megawatts the capacity of solar energy facilities qualifying under the Public Utility Regulatory Policies Act for exemptions from regulation under the Federal Power Act, the Public Utility Holding Company Act, and certain State law and regulations governing electric utilities. Advances in solar energy technology have made this increase in capacity possible with the result that solar energy should be able to compete more readily with electricity generated from other types of energy. In my own State of California, we have seen aprticularly impressive strides made in solar energy technology, especially in the Mojave Desert where four separate solar projects generate over 100 megawatts of electricity.

I believe this country needs a diverse energy resource mix, with renewable resources such as solar energy a necessary and beneficial component of such a mix. Enactment of this legislation will strengthen the ability of solar energy to compete with other energy sources such as geothermal, biomass, and cogeneration. Thus, enactment of this legislation will assist this country's ability to achieve a diverse energy resource mix.

I wish to thank my colleagues who worked on this bill and particularly the chairman of our subcommittee, Mr. SHARP, for their efforts.

I encourage my colleagues to support H.R. 2818.

Mr. SHARP. Mr. Speaker, I yield 3 minutes to the gentleman from California [Mr. BERMAN], who has been a very staunch advocate of this legislation and helped bring it to the attention of our subcommittee.

Mr. BERMAN. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, I rise in strong support of H.R. 2818, and want to acknowledge the leadership and fine work of Chairman SHARP and my California colleague, Congressman MOORHEAD, for their efforts in bringing this important bill before the House today.

The passage of this bill will greatly enhance the future of the solar power industry by raising the size limit for solar facilities from 30 to 80 megawatts. Increasing the size of solar facilities will bring the law into conformity with the strides made in solar technology, and is absolutely critical to making solar power a competitive alternative energy source in the immediate future.

Mr. Speaker, I also support this bill because it is critical to the future survival of an Israeli company in southern California, the Luz Corp. It is because of the state-of-the-art advances made by Luz that we are here debating this bill.

The Luz Corp. has built five solar generating facilities in Southern California which currently supply 103 megawatts of power to Southern California Edison to help meet the utility's peak and near-peak energy load requirements. Luz and Southern California Edison plan to increase that number to 500 megawatts by the early 1990's. Luz has developed the necessary technological innovations to meet this goal, but the current law, which limits solar facilities to 30 megawatts, does not make this economically feasible.

H.R. 2818 would allow Luz to increase the size of its facilities, and thereby gain the benefit from the economies of scale associated with operating at 80 megawatts. Luz estimates its costs would be 25 percent lower when operating at 80 megawatts compared to 30 megawatts. This dramatic savings would make future projects commercially viable not only for Luz, but similar solar power facilities all across the country.

Mr. Speaker, the primary focus of this bill is simple: it acknowledges the technological advances made by the Luz Corp. and gives them and other solar facilities the opportunity to become commercially competitive. The bill will benefit Luz, Southern California Edison, California ratepayers, and other States where the technology is in place. I believe this is the reason that the California Energy Commission, the California Utilities Commission, and Southern California Edison all support the bill.

Finally, Mr. Speaker, there is a broader public policy that would be advanced if this legislation is enacted. It would ensure the continued development of solar power as a secure, noninterruptible source of energy. In light of the fact that the United States imported 33 percent of its oil last year, and there are indications that the percentage will rise this year, there is a sound public policy basis for promoting energy alternatives. Depending upon oil as our primary source of energy increases our vulnerability to a supply disruption and potentially undermines our national security. Solar technology has matured rapidly and is an energy source that is both freely available and noninterruptible. From a national energy policy standpoint, H.R. 2818 makes eminently good sense.

Mr. Speaker, I want to once again commend both Congressman SHARP and Congressman MOORHEAD for their work on this legislation. I urge adoption of the bill.

Mr. FAZIO. Mr. Speaker, I rise in support of H.R. 2818. This legislation would remove a regulatory impediment to the development of solar electric generating facilities. Under current law, solar projects of 30 megawatts or less are exempt from burdensome utility regulation. This legislation would increase to 80 megawatts the size solar facility that may be exempt from these requirements.

Solar electric power generation has been possible because of a national energy policy that created both a regulatory incentive—the Public Utility Regulatory Policies Act of 1978—and a tax incentive, in the form of tax credits for renewable energy projects.

With the passage of Tax Reform last year, these tax credits are scheduled to be phased out by the end of next year. While the regulatory incentives under PURPA still exist, solar projects will be hardpressed to remain economically viable unless they are able to benefit from cost reductions that result from operating at larger sizes.

Although many of the benefits of PURPA are available today to solar facilities up to 80 megawatts, exemption from utility regulation is limited to projects of 30 megawatts or less. This legislation would raise the size limitations for these exemptions to 80 megawatts, conforming the size limitation for exemptions to the size limitation that governs other PURPA benefits for solar projects.

□ 1920

At a time when our national attention is not focused on energy policy or energy security, it is easy to lose sight of the importance of diversifying our energy mix. In California, experience with solar electric generation has been very encouraging. Costs have been declining, reliability has been excellent, and continued development promises further progress. Without this legislation, further development, at least in the area of solar thermal electric generation, where the most progress has been made to date, will be stymied.

I applaud the Committee on Energy and Commerce for reporting this legislation and bringing it to the full House today. This is an unusual opportunity to accomplish sound energy policy without creating a burden either to the taxpayer or the ratepayer. The track record for larger scale solar projects is limited to the California experience, where the California Public Utilities Commission and the California Energy Commission support this legislation. The Congressional Budget Office has reviewed the legislation and concluded that there is no cost to the Federal Treasury.

I urge my colleagues to vote in favor of H.R. 2818 which is critical to the immediate future of solar electric generation.

Mr. WAXMAN. Mr. Speaker, I rise in strong support of H.R. 2118, which would exempt small solar power production facilities of not more than 80 megawatts from the Federal Power Act, the Public Utility Holding Act, and most State laws on electric utilities. Under current law, only small solar power production facilities of not more than 30 megawatts are exempt from these laws.

To encourage the development of alternative energy sources, the Public Utility Regulator Policies Act of 1978 [PURPA] exempted certain small power producers from Federal and State laws. However, while the law exempted geothermal and biomass facilities of up to 80 megawatts and cogeneration facilities of all sizes from Federal and State laws, it only exempted solar power plants of up to 30 megawatts.

Technological breakthroughs, which have made solar power more efficient to develop at declining costs, have rendered the 30-megawatt limitation on solar power facilities obsolete. While the cost per kilowatt installed for a 13.8-megawatt solar facility was $4,220 in 1984, the cost for a 30-megawatt facility to be constructed in 1988 will only be $2,700. The projected cost for an 80-megawatt facility is even less at $2,020. In addition an 80-megawatt plant can produce three times more electricity than three 30-megawatt plants at only twice the cost. The total operation and maintenance costs of an 80-megawatt plant.

The need for the Federal Government to encourage the development of alternative energy forms is as urgent today as it was during the energy crisis of the 1970's. This important legislation will remove an arbitrary obstacle to more efficient development of solar energy and allow this clean and unlimited energy source to mature and become more competitive. I commend Chairman SHARP's leadership on this issue and urge all of my colleagues to support H.R. 2818.

Mr. LEWIS of California. Mr. Speaker, I rise today in strong support of H.R. 2818, a bill which would amend section 210 of the Public Utility Regulatory Policies Act of 1978 [PUPRA], and the rules of the Federal Energy Commission [FERC] implementing that section, to further encourage solar energy production.

Luz International Limited is a California company that designs, builds, and manages solar electric generating systems. At the present time, Luz has placed in service 133 megawatts of generating capacity at five locations in my district in the Mojave Desert, which is sold to Southern California Edison.

However, due to changes in the economic situation surrounding solar energy, the future of this important industry is largely dependent upon this legislation. The expiration of Federal solar energy tax credits at the end of 1988, and the transition in California from long-term fixed price contracts to quarterly adjusted contracts will undoubtedly have a detrimental effect on the industry. It is, therefore, imperative that H.R. 2818 be approved to increase the size of solar facilities from 30 to 80 megawatts. It is the key ot the continued development of solar thermal electric generation in the immediate future because of savings from power block efficiencies and reduced operation and maintenance costs. This will amount to a 25 percent cost reduction overall.

By increasing to 80-megawatt size solar facilities eligible for exemption from utility regulation, this legislation would treat solar the same as geothermal energy, which is already eligible for exemption up to 80 megawatts. H.R. 2818 has received endorsement from the California Public Utilities Commission and the California Energy Commission, and I urge the entire House to approve this legislation under suspension of the rules.

On a final note, I wish to express my appreciation for the efforts of the chairman of the Energy and Power Subcommittee, the Honorable PHIL SHARP, together with the ranking member and my good friend, the Honorable CARLOS MOORHEAD. Under the direction of these two distinguished members, the Energy and Power Subcommittee expeditiously considered this legislation, moving it out of committee and bringing it to the floor in rapid fashion. Without their leadership, this important legislation would not have received such prompt and thorough consideration.

Mr. MOORHEAD. Mr. Speaker, I yield back the balance of my time.

Mr. SHARP. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. MONTGOMERY). The question is on the motion offered by the gentleman from Indiana [Mr. SHARP] that the House suspend the rules and pass the bill, H.R. 2818, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF H.R. 515, FAIR CREDIT AND CHARGE CARD DISCLOSURE ACT OF 1987

Mr. WHEAT, from the Committee on Rules, submitted a privileged report (Rept. No. 100-403) on the resolution (H. Res. 292) providing for the consideration of the bill (H.R. 515) to provide for more detailed and uniform disclosure by credit card issuers with respect to information on interest rates and other fees which may be incurred by consumers through the use of any credit card, which was referred to the House Calendar and ordered to be printed.

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF H.R. 3100, INTERNATIONAL SECURITY AND DEVELOPMENT COOPERATION ACT OF 1987

Mr. WHEAT, from the Committee on Rules, submitted a privileged report (Rept. No. 100-404) on the resolution (H. Res. 293) providing for the consideration of the bill (H.R. 3100) to authorize international security and development assistance programs and Peace Corps programs for fiscal years 1988 and 1989, and for other purposes, which was referred to the House Calendar and ordered to be printed.

PANAMA CANAL COMMISSION AUTHORIZATION ACT, FISCAL YEAR 1988

Mr. WHEAT. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 291 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 291

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 1(b) of rule XXIII, declare the House resolved into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 2224) to authorize appropriations for fiscal year 1988 for the Panama Canal Commission to operate and maintain the Panama Canal, and for other purposes, and the first reading of the bill shall be dispensed with. After general debate, which shall be confined to the bill and which shall not exceed one hour, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Merchant Marine and Fisheries, the bill shall be considered for amendment under the five-minute rule. It shall be in order to consider the amendment in the nature of a substitute recommended by the Committee on Merchant Marine and Fisheries now printed in the bill as an original bill for the purpose of amendment under the five-minute rule and each section shall be considered as having been read. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and any Member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or to the committee amendment in the nature of a substitute. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

The SPEAKER pro tempore. The gentleman from Missouri [Mr. WHEAT] is recognized for 1 hour.

Mr. WHEAT. Mr. Speaker, for purposes of debate only, I yield 30 minutes to the gentleman from Tennessee [Mr. QUILLEN], pending which I yield myself such time as I may consume.

Mr. Speaker, House Resolution 291 is an open rule providing for the consideration of H.R. 2224, the Panama Canal Commission Authorization Act of Fiscal Year 1988. The rule provides for 1 hour of general debate to be divided equally between the chairman and ranking minority member of the Committee on Merchant Marine and Fisheries and makes in order as original text an amendment in the nature of a substitute which is recommended by the Committee on Merchant Marine and Fisheries and is now printed in the bill. The substitute shall be considered for amendment under the 5-minute rule and each section shall be considered as having been read.

Finally, Mr. Speaker, the rule provides for one motion to recommit, with or without instructions.

H.R. 2224 authorizes $467.05 million for expenses for the Panama Canal Commission in fiscal year 1988. Included in the authorization is $37 million for capital expenditures; $302 million for transit expenses; $64 million for support expenses; $88 million for administrative expenses and such sums as may be necessary for increases in fuel costs, salary, pay, and retirement benefits.

Mr. Speaker, H.R. 2224 is a measure which enjoys support from both sides of the aisle. I urge that we adopt the rule so that we may proceed to consideration of this legislation.

Mr. QUILLEN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, not too many years ago the Panama Canal was an issue which produced heated debate. But that is behind us now and this bill has become routine.

According to the letter from the chairman of the Merchant Marine and Fisheries Committee, a rule was requested because the Democratic Steering and Policy Committee has established a limit of $100 million on bills that may be brought under suspension.

Mr. Speaker, this is a straight authorization bill. It does not make any changes in permanent law. It provides a total of $467.05 million for the expenses of the Panama Canal Commission in fiscal year 1988.

The amount in the bill is equal to the President's request and represents an increase of $28 million over last year's appropriations.

Mr. Speaker, the rule before us now is an open rule. There are no waivers of the House rules and no waivers of the Budget Act.

I support this rule so that the House may proceed to consider the Panama Canal Commission Authorization Act.

Mr. Speaker, I support this rule, although I would like to see it reduced $28 million.

Mr. Speaker, I have no requests for time, and I yield back the balance of my time.

Mr. WHEAT. Mr. Speaker, this is an important matter. I urge that the House adopt the rule, so we may proceed to consideration of the legislation.

Mr. Speaker, I have no further requests for time, and I move the previous question on the resolution.

The previous question was ordered.

The SPEAKER pro tempore. The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. QUILLEN. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 404, nays 1, not voting 28, as follows:

[Roll No. 377]

YEAS—404

Ackerman
Akaka
Alexander
Anderson
Andrews
Annunzio
Applegate
Archer
Armey
Aspin
Atkins
AuCoin
Badham
Baker
Ballenger
Barnard
Bartlett
Barton
Bateman
Bates
Beilenson
Bennett
Bentley
Bereuter
Berman
Bevill
Bilirakis
Bliley
Boehlert
Boggs
Boland
Bonior
Bonker
Borski
Bosco
Boucher
Boulter
Boxer
Brennan
Brooks
Broomfield
Brown (CA)
Brown (CO)
Bruce
Bryant
Buechner
Bunning
Burton
Bustamante
Byron
Callahan
Campbell
Cardin
Carper
Carr
Chandler
Chapman
Chappell
Cheney
Clarke
Clinger
Coats
Coble
Coelho
Coleman (MO)
Coleman (TX)
Collins
Combest
Conte
Cooper
Coughlin
Courter
Coyne
Craig
Crane
Crockett
Daniel
Dannemeyer
Darden
Daub
Davis (IL)
Davis (MI)
de la Garza
DeFazio
DeLay
Dellums
Derrick
DeWine
Dickinson
Dicks
Dingell
DioGuardi
Dixon
Donnelly
Dorgan (ND)
Dornan (CA)
Dowdy
Downey
Dreier
Duncan
Durbin
Dwyer
Dymally
Dyson
Early
Eckart
Edwards (CA)
Edwards (OK)
Emerson
English
Erdreich
Espy
Evans
Fascell
Fawell
Fazio
Feighan
Fields
Fish
Flake
Flippo
Florio
Foglietta
Foley
Ford (TN)
Frank
Frenzel
Frost
Gallegly
Gallo
Garcia
Gaydos
Gejdenson
Gekas
Gibbons
Gilman
Glickman
Gonzalez
Goodling
Gordon
Gradison
Grandy
Grant
Gray (PA)
Green
Gregg
Guarini
Gunderson
Hall (OH)
Hall (TX)
Hamilton
Hammerschmidt
Hansen
Harris
Hastert
Hatcher
Hawkins
Hayes (IL)
Hayes (LA)
Hefner
Henry
Herger
Hertel
Hiler
Hochbrueckner
Hopkins
Horton
Houghton
Howard
Hoyer
Hubbard
Huckaby
Hughes
Hunter
Hutto
Hyde
Inhofe
Ireland
Jacobs
Jeffords
Jenkins
Johnson (CT)
Johnson (SD)
Jones (NC)
Jones (TN)
Jontz
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Kasich
Kastenmeier
Kennedy
Kennelly
Kildee
Kleczka
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Lagomarsino
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Lewis (CA)
Lewis (FL)
Lewis (GA)
Lightfoot
Lipinski
Lloyd
Lott
Lowery (CA)
Lowry (WA)
Lujan
Luken, Thomas
Lukens, Donald
Lungren
Mack
MacKay
Madigan
Manton
Markey
Marlenee
Martin (IL)
Martin (NY)
Martinez
Matsui
Mavroules
Mazzoli
McCandless
McCloskey
McCollum
McCurdy
McDade
McGrath
McHugh
McMillan (NC)
McMillen (MD)
Meyers
Mfume
Mica
Michel
Miller (CA)
Miller (OH)
Miller (WA)
Mineta
Moakley
Molinari
Mollohan
Montgomery
Moody
Moorhead
Morella
Morrison (CT)
Morrison (WA)
Mrazek
Murphy
Murtha
Myers
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Nelson
Nichols
Nielson
Nowak
Oakar
Oberstar
Obey
Olin
Ortiz
Owens (NY)
Owens (UT)
Oxley
Packard
Parris
Pashayan
Patterson
Pease
Pelosi
Penny
Perkins
Petri
Pickett
Pickle
Porter
Price (IL)
Price (NC)
Pursell
Quillen
Rahall
Rangel
Ravenel
Ray
Regula
Rhodes
Richardson
Ridge
Rinaldo
Ritter
Roberts
Robinson
Rodino
Roe
Rogers
Rose
Rostenkowski
Roth
Roukema
Rowland (CT)
Rowland (GA)
Roybal
Russo
Sabo
Saiki
Savage
Sawyer
Saxton
Schaefer
Scheuer
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Schroeder
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Schumer
Sensenbrenner
Sharp
Shaw
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Shumway
Shuster
Sikorski
Sisisky
Skaggs
Skeen
Skelton
Slattery
Slaughter (NY)
Slaughter (VA)
Smith (FL)
Smith (NE)
Smith (NJ)
Smith (TX)
Smith, Denny (OR)
Smith, Robert (NH)
Snowe
Solomon
Spratt
St Germain
Staggers
Stallings
Stangeland
Stark
Stenholm
Stokes
Stratton
Studds
Stump
Sundquist
Sweeney
Swift
Swindall
Synar
Tallon
Tauke
Tauzin
Taylor
Thomas (GA)
Torres
Towns
Traficant
Traxler
Udall
Upton
Valentine
Vander Jagt
Visclosky
Volkmer
Vucanovich
Walgren
Walker
Watkins
Waxman
Weber
Weiss
Weldon
Wheat
Whittaker
Whitten
Wilson
Wise
Wolf
Wolpe
Wortley
Wyden
Wylie
Yates
Yatron
Young (FL)

NAYS—1

Hefley

NOT VOTING—28

Anthony
Biaggi
Bilbray
Clay
Conyers
Ford (MI)
Gephardt
Gingrich
Gray (IL)
Holloway
Kaptur
Kemp
Leland
Livingston
McEwen
Panetta
Pepper
Roemer
Schulze
Smith (IA)
Smith, Robert (OR)
Solarz
Spence
Thomas (CA)
Torricelli
Vento
Williams
Young (AK)

□ 1635

Mr. MOLLOHAN changed his vote from "nay" to "yea."

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

The SPEAKER pro tempore (Mr. MONTGOMERY). Pursuant to House Resolution 291 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 2224.

□ 1643

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 2224) to authorize appropriations for fiscal year 1988 for the Panama Canal Commission to operate and maintain the Panama Canal, and for other purposes, with Mr. MOAKLEY in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the first reading of the bill is dispensed with.

Under the rule, the gentleman from Louisiana [Mr. TAUZIN] will be recognized for 30 minutes and the gentleman from Texas [Mr. FIELDS] will be recognized for 30 minutes.

The Chair recognizes the gentleman from Louisiana [Mr. TAUZIN].

Mr. TAUZIN. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, H.R. 2224 is a straightforward, noncontroversial authorization bill for the Panama Canal Commission. These funds are derived from canal tolls, and do not cost the U.S. taxpayers a single penny.

The Panama Canal Act of 1979, Public Law 96-70, implementing the Panama Canal Treaty of 1977, established a U.S. Government agency to operate the Panama Canal. This act requires that before the toll moneys and other service charges collected from the users of the canal can be spent, the U.S. Congress must authorize an appropriation of these funds. The act further stipulates that tolls not be prescribed at rates calculated to produce a profit. If there is a profit at the end of the fiscal year, by treaty, the profits belong to the Republic of Panama. Therefore, if Congress reduces the appropriation below the level of revenues, the unspent revenues will be transferred to the Treasury of Panama.

The legislation before us today reflects a budget of spending levels equal to the projected revenues for fiscal year 1988. H.R. 2224 authorizes appropriations of $467,050,000 for use by the Panama Canal Commission for maintenance and operation of the canal.

The bill also enumerates certain ongoing categories of operating expenses that are required by law to be specifically authorized each year, such as procurement of expert services and large heavy-duty passenger-carrying sedans.

Out of the $467,050,000 appropriations, $37 million is authorized for capital outlays which may remain available until expended for capital requirements of the Commission.

Finally, Mr. Chairman, the bill provides authorization for supplemental appropriations, if required, to cover payments to Panama; increases in salary, pay, retirement, or other employee benefits determined by law or authorized by administrative action pursuant to law; and for increased costs for fuel expenses. The payment to Panama is based on 31 cents per Panama Canal net ton of cargo transiting the canal, and is required to be paid by article XIII paragraph 4(a) of the treaty of 1977.

The purpose of this provision is to decrease the time required for obtaining supplementals for these specific cost increases, the occurrence of which is beyond the control of the agency. Increased costs would create current obligations which must be covered by available operating funds until a supplemental appropriation is received. This, in turn, could force a curtailment of canal maintenance and other essential programs. The risk of this happening will be reduced by expediting the supplemental appropriations process.

H.R. 2224 is noncontroversial. The authorization level is the same as requested by the administration. The authorization level is equivalent to the projected revenue level. I see no problems or objections to this bill and urge its passage.

Mr. Chairman, I reserve the balance of my time.

□ 1650

Mr. FIELDS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise in support of H.R. 2224, the Panama Canal Commission Authorization Act of 1987.

As my distinguished colleague has indicated, this bill will authorize the Panama Canal Commission to spend $467 million for the operation and maintenance of the Panama Canal.

Mr. Chairman, as you know, the Panama Canal Commission is a United States Government agency which was created in 1979 for the purpose of operating the Panama Canal until the year 2000, at which time the Republic of Panama will assume complete operational control.

As they have since 1979, the PCC has submitted a budget which represents their best estimate of how much money they will need to efficiently run the canal in fiscal year 1988. And if history is any guide, then I believe the $467 million is fairly close to the mark. In fact, it is interesting to note that the Commission has only missed their exact level of expenditures by a total of $8.9 million over the past 7 years. This level of accuracy is remarkable and there is more than one Federal agency which could learn a valuable accounting lesson from the Panama Canal Commission.

This unique Federal agency is required by law to operate the canal on a break-even yearly basis without the benefit of U.S. taxpayer money. The $467 million authorized by this bill represents the self-generated revenues which the Commission will obtain from the users of the canal.

While there has been an increasing amount of civil unrest and violence within the Republic of Panama, fortunately the canal has not been directly affected. It remains in excellent operating condition.

The fact that the canal has not been adversely affected is not merely a coincidence but is to a large degree due to the outstanding leadership of Mr. Bill Gianelli and Mr. Dennis P. McAuliffe. These two men have done a remarkable job, under extraordinary conditions, of keeping the canal separate from the internal political problems facing that country. This Nation owes them and the thousands of Americans still working for the Commission a great debt of gratitude.

Mr. Chairman, although the canal continues to be a vibrant center of international commerce, these latest internal political problems have once again highlighted the need for a fundamental change in the financial structure of the Panama Canal Commission.

It is my firm belief that we should move forward on legislation which allows the Commission greater flexibility to respond to changing business or other conditions without giving up complete congressional control over the financial workings of this agency.

While the administration's revolving fund concept is still in its formative stages, the time is right to move forward with this innovative idea. I am pleased that the Panama Canal Subcommittee will be holding further hearings on this issue in the very near future.

Mr. Chairman, I am hopeful that we will enact this simple, straightforward reauthorization bill without a long drawn-out debate on the internal political problems facing the Republic of Panama.

Mr. Chairman, I reserve the balance of my time.

Mr. MACK. Mr. Chairman, today as the House of Representatives votes upon reauthorization of the Panama Canal Commission, I believe all Americans should once again take a hard look at one of the greatest foreign policy blunders of our time—giving away the Panama Canal.

When the Panama Canal Treaty was presented to the American people, we were told that ratifying the treaty would find us friends in the region. We were told that this treaty would show America's good intentions of peace and brotherhood.

We may have seen our actions as a sign of noble aspirations, but the enemies of freedom saw this move as a clear and unmistakable signal of our weakness and lack of resolve. These enemies of freedom knew the United States no longer understood the strategic nature of Central America, and they knew the time to act was at hand.

In less than 2 years after the treaty ratification in 1978, the world witnessed the establishment of the first Cuban-style Marxist state in Central America, just 100 miles north of Panama in Nicaragua. Not only did the United States lose a friend to communism, it lost its credibility with its southern neighbors, to the point where the leadership of Panama, while receiving large amounts of United States aid, refuses to heed United States prompting toward real democracy and freedom.

Today, if a recorded vote is ordered, I will vote against reauthorizing the Panama Canal Commission. I realize that the United States has already entered into this treaty agreement, and that the real solution is to have never given up the canal at all. However, since I did not have the opportunity to vote on the Canal Treaty itself, I feel I must cast my vote against authorizing the Commission designated to implement this flawed policy.

Mr. DAVIS of Michigan. Mr. Chairman, I rise in support of H.R. 2224, the Panama Canal Commission Reauthorization.

This legislation reauthorizes the operation of the Panama Canal, one of the world's greatest engineering marvels, and ensures its continued operation through the 1988 fiscal year.

As reported from the Merchant Marine Committee, H.R. 2224 reauthorizes the Panama Canal Commission for fiscal year 1988 at a level of $467,050,000. Since the canal operates solely on tolls and other revenues generated by the canal operations, no direct taxpayer money is being authorized for use in this legislation.

This year has been a difficult one in the Republic of Panama. But even during this year's political turmoil in Panama, the Panama Canal Commission has managed to keep apart from the political actions of the country and has kept the canal running smoothly and efficiently.

I am pleased that the Merchant Marine Committee has managed to report to the House a clean bill without any controversial, extraneous sections making changes to Public Law 96-70, the Panama Canal Act of 1979. However, the committee is considering several minor technical changes to that act. I hope these matters will be taken up and approved expeditiously.

Again, Mr. Chairman, I fully support this reauthorization for the Panama Canal Commission and hope that all of my colleagues will join me in voting to pass this legislation.

Mr. TAUZIN. Mr. Chairman, I have no further requests for time, and I yield back the balance of my time.

Mr. FIELDS. Mr. Chairman, I have no further requests for time, and I yield back the balance of my time.

The CHAIRMAN. Pursuant to the rule, the committee amendment in the nature of a substitute, now printed in the reported bill shall be considered as an original bill for the purpose of amendment and each section shall be considered as having been read.

The Clerk will designate section 1.

The text of section 1 is as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Panama Canal Commission Authorization Act, Fiscal Year 1988".

The CHAIRMAN. Are there any amendments to section 1?

Mr. TAUZIN. Mr. Chairman, I ask unanimous consent that the committee amendment in the nature of a substitute be printed in the RECORD and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from Louisiana?

There was no objection.

The text of the remainder of the committee amendment in the nature of a substitute is as follows:

SEC. 2. OPERATING EXPENSES.

There is authorized to be appropriated from the Panama Canal Commission Fund to the Panama Canal Commission (hereafter in this Act referred to as the "Commission") for the fiscal year beginning October 1, 1987, not to exceed $467,050,000, for necessary expenses of the Commission incurred under the Panama Canal Act of 1979 (Public Law 96-70; 22 U.S.C. 3601 et seq.), including expenses for—

(1) the hire of passenger motor vehicles and aircraft;

(2) the purchase of passenger motor vehicles as may be necessary for fiscal year 1988, the number and price of which shall not exceed the amount provided in appropriation Acts; except that large heavy duty passenger sedans used to transport Commission employees across the Isthmus of Panama may be purchased for fiscal year 1988 without regard to price limitations set forth in applicable regulations of any department or agency of the United States;

(3) official receptions and representation expenses, except that not more than $43,000 may be made available for such expenses, of which (A) not more than $10,000 may be made available for such expenses of the Supervisory Board of the Commission, (B) not more than $5,000 may be made available for such expenses of the Secretary of the Commission, and (C) not more than $28,000 may be made available for such expenses of the Administrator of the Commission;

(4) the procurement of expert and consultant services as provided in section 3109 of title 5, United States Code;

(5) a residence for the Administrator of the Commission;

(6) uniforms, or allowances therefor, as authorized by section 5901 and 5902 of title 5, United States Code.

(7) disbursements by the Administrator of the Commission for employee recreation and community projects; and

(8) the operation of guide services.

SEC. 3. CAPITAL OUTLAY.

Of any funds appropriated pursuant to section 2 of this Act, not more than $37,000,000 (which is authorized to remain available until expended) may be made available for the acquisition, construction, replacement and improvements of facilities, structures and equipment required by the Panama Canal Commission.

SEC. 4. AUTHORIZATION OF ADDITIONAL APPROPRIATIONS.

In addition to the amount authorized to be appropriated by section 2 of this Act, there are authorized to be appropriated to the Commission for the fiscal year 1988 such amounts as may be necessary for—

(1) increases in salary, pay, retirement, and other employee benefits provided by law;

(2) covering payments to Panama under paragraph 4(a) of Article XIII of the Panama Canal Treaty of 1977, as provided by section 1341(a) of the Panama Canal Act of 1979 (22 U.S.C. 3751(a)); and

(3) increased costs for fuel.

SEC. 5. EFFECTIVE DATE.

This Act is effective on October 1, 1987.

The CHAIRMAN. Are there any amendments to the bill?

AMENDMENT OFFERED BY MR. WALKER

Mr. WALKER. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. WALKER: On page 4, after line 12 add the following new section and renumber accordingly:

SEC. 5. REQUIRED REPORT.

Out of the funds authorized to be appropriated under this Act, the Commission shall report to the Congress in the following areas: (1) the condition of the Panama Canal and potential adverse effects on United States shipping and commerce, (2) the effect on canal operations of the military forces under General Noriega, and (3) its evaluation of the effect on canal operations if the Panamanian Government continues to withhold its consent to major factors in the U.S. Senate's ratification of the Panama Canal Treaties,

Mr. WALKER (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

Mr. WALKER. Mr. Chairman, this amendment adds to the bill a required report. This report would ask that the Commission report to the Congress in three different areas.

The first area is on the condition of the Panama Canal and any potential adverse affect on the United States shipping and commerce that that condition might have. This particular report I think is necessary because there have been recent discussions that the Panama Canal is in deteriorating condition. I understand the Panama Canal Commission believes differently than that. If in fact the condition of the canal is in good shape, this particular report can allow them to say that. But if in fact we have a situation where deterioration is taking place, then that could have a potential adverse effect on United States shipping and commerce and I think Congress ought to be aware of that.

So it would require a report in that area.

Secondly, it would require a report on the effect and canal operations of the military forces under General Noriega. Noriega has in fact put in place down there a cruel and corrupt dictatorship. It is having an impact on operations with the arrest of Commission personnel and other kinds of situations which it seems to me are detrimental to the future operation of that canal.

I think that this Congress ought to have a report from the Commission with regard to those kinds of problems that result from the military dictatorship of General Noriega.

Finally, the third part of this report would ask for an evaluation by the Commission of the effect on canal operations if the Panama Canal or the Panama government continues withholding its consent to major factors in the U.S. Senate ratification of the Panama Canal Treaty.

In particular, Mr. Chairman, there was in fact a reservation known as the DeConcini reservation that passed the U.S. Senate that was instrumental in a ratification of the treaty.

Many people feel as though that was a condition that the United States placed upon our approval of the treaty and the Panamanian Government has yet to accept that particular reservation. So this particular report would require that any of those kinds of things which were major factors in the U.S. Senate ratification of the United States Panama Canal Treaty ought to be reported on if they are going to have some impact on canal operations, either presently or in the future.

Since this is a report I think it is fairly noncontroversial in nature but I would hope that the House would approve it so that we could get this report on these rather important areas.

Mr. FIELDS. Mr. Chairman, will the gentleman yield?

Mr. WALKER. I yield to the gentleman from Texas [Mr. FIELDS].

Mr. FIELDS. I thank the gentleman for yielding.

Mr. Chairman, on the minority side we are prepared to accept the amendment of the gentleman. I just want to congratulate the gentleman, because I think he shows great restraint in the way he has worded his amendment. I know there is tense feeling and passion. I think he worded this so as not to inflame anyone but to get a good report in these particular areas. So on this side, Mr. Chairman, we are prepared to accept the amendment.

Mr. WALKER. I thank the gentleman and thank him for the work of he and his staff in trying to draft language here that would be helpful.

Mr. TAUZIN. Mr. Chairman, will the gentleman yield?

Mr. WALKER. I would be glad to yield to the gentleman from Louisiana [Mr. TAUZIN].

Mr. TAUZIN. I thank the gentleman for yielding.

Mr. Chairman, I, too, congratulate the gentleman from Pennsylvania on his cooperation in the wording of the amendment in a manner that is acceptable to this side and to our committee and I have no objection to his amendment.

Mr. WALKER. I thank the gentleman. The gentleman and his staff also have worked with me to try to come up with the language. I appreciate that.

Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Pennsylvania [Mr. WALKER].

The amendment was agreed to.

The CHAIRMAN. Are there other amendments to the bill?

If not, the question is on the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly the Committee rose; and the Speaker pro tempore [Mr. COELHO] having assumed the chair, Mr. MOAKLEY, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 2224) to authorize appropriations for fiscal year 1988 for the Panama Canal Commission to operate and maintain the Panama Canal, and for the other purposes, pursuant to House Resolution 291, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on the amendment to the committee amendment in the nature of a substitute adopted by the Committee of the Whole? If not, the question is on the amendment.

The amendment was agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. TAUZIN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Louisiana?

There was no objection.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to the provisions of clause 5, rule I, the Chair will now put the question on the motion to suspend the rules on which further proceedings were postponed.

The vote will be taken on House Concurrent Resolution 68.

SENSE OF CONGRESS REGARDING INABILITY OF AMERICAN CITIZENS TO MAINTAIN REGULAR CONTACT WITH RELATIVES IN THE SOVIET UNION

The SPEAKER pro tempore. The pending business is the question of suspending the rules and agreeing to the concurrent resolution H. Con. Res. 68.

The Clerk read the title of the concurrent resolution.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Pennsylvania [Mr. YATRON] that the House suspend the rules and agree to the concurrent resolution, H. Con. Res. 68, on which the yeas and nays are ordered.

The vote was taken by electronic device, and there were—yeas 405, nays 0, not voting 28, as follows:

[Roll No. 378]

YEAS 405

Ackerman
Akaka
Alexander
Anderson
Andrews
Annunzio
Applegate
Archer
Armey
Aspin
Atkins
AuCoin
Badham
Baker
Ballenger
Barnard
Bartlett
Barton
Bateman
Bates
Beilenson
Bennett
Bentley
Bereuter
Berman
Bevill
Bilbray
Bilirakis
Bliley
Boehlert
Boggs
Boland
Bonior
Bonker
Borski
Bosco
Boucher
Boulter
Boxer
Brennan
Brooks
Broomfield
Brown (CO)
Bruce
Bryant
Buechner
Bunning
Burton
Bustamante
Byron
Callahan
Campbell
Cardin
Carper
Carr
Chandler
Chapman
Chappell
Cheney
Clarke
Clinger
Coats
Coble
Coelho
Coleman (MO)
Coleman (TX)
Collins
Combest
Conte
Cooper
Coughlin
Courter
Coyne
Craig
Crane
Crockett
Daniel
Dannemeyer
Darden
Davis (IL)
Davis (MI)
de la Garza
DeFazio
DeLay
Dellums
Derrick
DeWine
Dickinson
Dicks
DioGuardi
Dixon
Donnelly
Dorgan (ND)
Dornan (CA)
Dowdy
Downey
Dreier
Duncan
Durbin
Dwyer
Dymally
Dyson
Early
Eckart
Edwards (CA)
Edwards (OK)
Emerson
English
Erdreich
Espy
Evans
Fascell
Fawell
Fazio
Feighan
Fields
Fish
Flake
Flippo
Florio
Foglietta
Foley
Ford (MI)
Frank
Frenzel
Frost
Gallegly
Gallo
Garcia
Gaydos
Gejdenson
Gekas
Gibbons
Gilman
Gingrich
Glickman
Gonzalez
Goodling
Gordon
Gradison
Grandy
Grant
Gray (PA)
Green
Gregg
Guarini
Gunderson
Hall (OH)
Hall (TX)
Hamilton
Hammerschmidt
Hansen
Harris
Hastert
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Hawkins
Hayes (IL)
Hayes (LA)
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Hochbrueckner
Hopkins
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Houghton
Howard
Hoyer
Hubbard
Huckaby
Hughes
Hunter
Hutto
Hyde
Inhofe
Ireland
Jacobs
Jeffords
Jenkins
Johnson (CT)
Johnson (SD)
Jones (NC)
Jones (TN)
Jontz
Kanjorski
Kasich
Kastenmeier
Kennedy
Kennelly
Kildee
Kleczka
Kolbe
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Lukens, Donald
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MacKay
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Manton
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Marlenee
Martin (IL)
Martin (NY)
Martinez
Matsui
Mavroules
Mazzoli
McCandless
McCloskey
McCollum
McCurdy
McDade
McGrath
McHugh
McMillan (NC)
McMillen (MD)
Meyers
Mfume
Mica
Michel
Miller (CA)
Miller (OH)
Miller (WA)
Mineta
Moakley
Molinari
Mollohan
Montgomery
Moody
Moorhead
Morella
Morrison (CT)
Morrison (WA)
Mrazek
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Murtha
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Nichols
Nielson
Nowak
Oakar
Oberstar
Obey
Olin
Ortiz
Owens (NY)
Owens (UT)
Oxley
Packard
Parris
Pashayan
Patterson
Pease
Pelosi
Penny
Pepper
Perkins
Petri
Pickett
Pickle
Porter
Price (IL)
Price (NC)
Pursell
Quillen
Rahall
Rangel
Ravenel
Ray
Regula
Rhodes
Richardson
Ridge
Rinaldo
Ritter
Roberts
Robinson
Rodino
Roe
Rogers
Rose
Rostenkowski
Roth
Roukema
Rowland (CT)
Rowland (GA)
Roybal
Russo
Sabo
Saiki
Savage
Sawyer
Saxton
Schaefer
Scheuer
Schneider
Schroeder
Schuette
Schumer
Sensenbrenner
Sharp
Shaw
Shays
Shumway
Shuster
Sikorski
Sisisky
Skaggs
Skeen
Skelton
Slattery
Slaughter (NY)
Slaughter (VA)
Smith (FL)
Smith (NE)
Smith (NJ)
Smith (TX)
Smith, Denny (OR)
Smith, Robert (NH)
Snowe
Solomon
Spratt
St Germain
Staggers
Stallings
Stangeland
Stark
Stenholm
Stokes
Stratton
Studds
Stump
Sundquist
Sweeney
Swift
Swindall
Synar
Tallon
Tauke
Tauzin
Taylor
Thomas (GA)
Torres
Towns
Traficant
Traxler
Udall
Upton
Valentine
Vander Jagt
Vento
Visclosky
Volkmer
Vucanovich
Walgren
Walker
Watkins
Waxman
Weber
Weiss
Weldon
Whittaker
Whitten
Wilson
Wise
Wolf
Wolpe
Wortley
Wyden
Wylie
Yates
Yatron
Young (FL)

NOT VOTING—28

Anthony
Biaggi
Brown (CA)
Clay
Conyers
Daub
Dingell
Ford (TN)
Gephardt
Gray (IL)
Holloway
Kaptur
Kemp
Leland
Livingston
McEwen
Panetta
Roemer
Schulze
Smith (IA)
Smith, Robert (OR)
Solarz
Spence
Thomas (CA)
Torricelli
Wheat
Williams
Young (AK)

□ 1705

Mr. SHAYS changed his vote from "nay" to "yea."

So (two-thirds having voted in favor thereof) the rules were suspended and the concurrent resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

□ 1720

ANNOUNCEMENT OF FILING OF RULE ON RESOLUTION PROVIDING FOR CONSIDERATION OF H.R. 3100, INTERNATIONAL SECURITY AND DEVELOPMENT COOPERATION ACT OF 1987

(Mr. PEPPER asked and was given permission to address the House for 1 minute.)

Mr. PEPPER. Mr. Speaker, I rise to inform the House that today the Committee on Rules reported and filed House Resolution 293, a resolution providing for the consideration of H.R. 3100, the International Security and Development Cooperation Act of 1987.

The rule provides that all amendments to the bill must be printed in the CONGRESSIONAL RECORD on or before November 10, 1987, the day on which we anticipate consideration of the bill will begin.

This rule has bipartisan support from the Committee on Foreign Affairs as was reported from the Committee on Rules with the support of our minority members.

The purpose of this announcement therefore is to give timely notice to the Members of the House that any amendments Members may wish to offer to H.R. 3100 must be printed in the RECORD by November 10, 1987.

I thank the Members for their attention.

AUTHORIZING INVESTMENT OF PRIVATE FUNDS FOR CONSTRUCTION OF KOREAN WAR VETERANS MEMORIAL

Ms. OAKAR. Mr. Speaker, I ask unanimous consent for the immediate consideration of the bill (H.R. 1454) to amend Public Law 99-572 to authorize the Secretary of the Treasury to invest private funds contributed to the American Battle Monuments Commission for the construction of the Korean War Veterans Memorial in public debt securities, and ask for its immediate consideration.

The Clerk read the title of the bill.

The SPEAKER pro tempore (Mr. COELHO). Is there objection to the request of the gentlewoman from Ohio?

Mr. FRENZEL. Mr. Speaker, reserving the right to object, I yield to the distinguished gentlewoman from Ohio [Ms. OAKAR] to describe the bill.

Ms. OAKAR. Mr. Speaker, I thank the gentleman for yielding to me.

Mr. Speaker, Public Law 99-572 provided that the American Battle Monuments Commission be authorized to solicit and accept private contributions, for the purposes of establishing the Korean War Veterans Memorial. The Commission was also directed to establish an account into which these private funds be deposited and to maintain documentation for such contributions.

However, the act did not include the provisions required for investment purposes of these collected funds. The Commission has been forced to watch their contributions stagnate, losing valuable dividends and interest for the account.

Mr. Speaker, section 1 of H.R. 1454 corrects this situation and allows for the Treasury to invest private contributions collected by the American Battle Monuments Commission for the establishment of the Korean War Veterans Memorial.

The bill provides that the Secretary of the Treasury shall invest any portion of the fund that, as determined by the Chairman of the Commission, is not required to meet current expenses. Each investment shall be made in an interest-bearing obligation of the United States or an obligation guaranteed as to principal and interest by the United States that, as determined by the Chairman of the Commission, has a maturity suitable for the fund. Section 2 and 3 are technical and conforming amendments.

Mr. Speaker, it is imperative we pass this bill so the American Battle Monuments Commission can begin to see their contributions collect interest and dividends.

Mr. FRENZEL. Mr. Speaker, further reserving the right to object, I yield to the gentleman from Mississippi [Mr. MONTGOMERY], the distinguished chairman of the Committee on Veterans' Affairs.

Mr. MONTGOMERY. Mr. Speaker, I thank the gentleman for yielding to me.

Mr. Speaker, I rise in support of H.R. 1454, legislation which would authorize the Secretary of the Treasury to invest the funds collected for the establishment of the Korean War Veterans Memorial.

Mr. Speaker, when Congresswoman OAKAR held hearings last year and later ordered reported legislation to establish a Korean War Veterans Memorial, H.R. 2205, I commended her leadership for bringing this matter to the attention of the House. For too many years Korean war veterans seemed to be forgotten.

During the 3-year period of the Korean conflict, 5.7 million Americans served in the military forces. Of that number, approximately 54,000 were killed, 103,000 were wounded, and 8,200 were classified as missing in action.

H.R. 2205 gave long overdue recognition to our Korean war veterans, our silent veterans, the ones who served and then slipped back into civilian life practically unnoticed.

It is anticipated that this memorial will take approximately 5 years to construct. The highly respected and capable chairwoman of the Subcommittee on Libraries and Memorials, is monitoring this very closely and she is bringing before us today a measure that would enhance the American Battle Monuments Commission's ability to raise the funds to complete the construction. H.R. 1454 is a well-thought-out measure which will maximize the returns on the contributions by allowing them to be invested wisely until such funds are expended.

Mr. Speaker, I urge the support of my colleagues on this very worthy bill.

Mr. FRENZEL. Mr. Speaker, further reserving the right to object, I yield to the gentleman from Arkansas [Mr. HAMMERSCHMIDT], the distinguished former vice chairman of the Committee on Veterans' Affairs.

Mr. HAMMERSCHMIDT. Mr. Speaker, I rise in strong support of H.R. 1454, a bill authorizing the Treasury of the United States to invest donations for the construction of the Korean War Memorial. Last year the U.S. Congress approved legislation authorizing the construction of the Korean War Memorial to be paid for through private contributions. The estimated cost of the memorial is $6 million. To date, a little more than $1.5 million has been raised. This includes a $1 million contribution from Hyundia Motor America, the Korean automobile company, and a sizable contribution from the Veterans of Foreign Wars.

The purpose of this legislation is simply to allow the funds collected for the memorial to be deposited in an interest accuring account.

Over 5 million Americans are alive today who served in the Armed Forces during the Korean war. They deserve recognition of their efforts, which contributed so significantly to the stability, economic advancement and growth of democracy that has characterized South Korea in the past few decades.

It is the intent of the U.S. Congress to eliminate forever the stigma from America's so-called forgotten war and erect a memorial which will provide a lasting remembrance to the courage, sacrifice and achievements of America's Korean war veterans, and give them the long-overdue recognition they so richly deserve. I respectfully request that all of my colleagues strongly support this most important legislation.

Mr. FRENZEL. Mr. Speaker, further reserving the right to object, I yield to the gentleman from New Jersey [Mr. FLORIO].

Mr. FLORIO. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, I express my support for this legislation as a sponsor of the original legislation to authorize the establishment of this long-overdue monument.

This proposal will enable us to maximize the funds that will be available and is something that is desirable.

Mr. Speaker, I commend the gentlewoman from Ohio for bringing it forward.

Mr. Speaker, I rise in support of H.R. 1454 which will allow the American Battle Monuments Commission to invest funds raised for the Korean War Veterans Memorial. The interest earned, which will be deposited in the fund, can then be used toward the building of this important memorial.

Last Congress, I introduced legislation to establish a memorial in Washington, DC, to honor the servicemen who sacrificed their lives for their country and for peace in the Korean war. The bill was signed into law with the active bipartisan support of my colleagues and all of the major veterans' service organizations.

Mr. Speaker, over 5.7 million Americans served in the military forces during the 3-year Korean war. Of this number, 33,600 were killed in action; 103,000 were wounded; 21,400 died of nonbattle causes. The total of 55,000 service deaths was increased by the 8,200 servicemen who were missing in action.

And yet, there is no national memorial to honor these fallen heroes. There is no memorial to this large group of patriots who answered their Nation's call and fought for peace and democracy.

The passage of this law last Congress set in motion the dream of the war's survivors, their families, and friends to see these heroes honored and to ensure that their memory lives on in future generations.

An advisory board made up of eminent Korean war veterans has been appointed and has begun the process of raising funds, selecting a site and a design. With the impeccable leadership of the American Battle Monuments Commission, over $1.6 million in private funds has already been raised. However, we will need over $5 million for this memorial.

H.R. 1454, introduced by Mr. PARRIS, one of the cosponsors of our efforts last Congress, will allow the American Battle Monuments Commission to invest the private moneys that are raised and add the interest earned to the fund.

I would like to commend Mr. PARRIS for his foresight in introducing this legislation. I would also like to commend the chairwoman of the Subcommittee on Libraries and Memorials, Ms. OAKAR, and the chairman of the Committee on House Administration, Mr. ANNUNZIO, for bringing this timely legislation to the floor.

In addition, I wish to express my appreciation to the chairman of the Committee on Veterans' Affairs, SONNY MONTGOMERY, and the ranking minority member, Mr. SOLOMON, whose tireless efforts will make the Korean War Veterans Memorial a reality.

I urge my colleagues to support this effort.

Mr. FRENZEL. Mr. Speaker, further reserving the right to object, I should have noted in my introduction that the gentleman from New Jersey [Mr. FLORIO] was the sponsor of the original bill.

Mr. Speaker, further reserving the right to object, I yield to the gentleman from Virginia [Mr. PARRIS], a sponsor of this bill.

Mr. PARRIS. Mr. Speaker, I thank the gentleman for yielding to me.

Mr. Speaker, I first would like to thank the gentleman from Ohio and the gentleman from Minnesota [Mr. FRENZEL] for their support and assistance in moving this legislation through the committee process, and also thank the committee staff for their hard work.

The only deficiency of the bill regarding this memorial was that the funds collected were required to be deposited in a non-interest-bearing account of the U.S. Treasury.

About $1.5 million has been solicited and collected, and the inability to earn interest on those contributions means that about $10,000 each month in earnings, potential earnings, is being lost; and that is obviously a significant sum of money for this purpose.

I support this legislation.

Mr. Speaker, I would first like to thank the gentlelady from Ohio [Ms. OAKAR] and the distinguished gentleman from Minnesota [Mr. FRENZEL] for their support and assistance in moving this important bill so quickly through the committee process. I would also like to thank the committee staff for their fine work on this matter.

As has been stated, Mr. Speaker, this legislation will permit the American Battle Monuments Commission to, with some fairly obvious restrictions of, course, invest the private contributions received for the design and construction of the Korean War Veterans Memorial.

Last year, this Congress passed legislation authorizing the construction of a memorial in Washington to the 5.7 million veterans of the Korean war. In that legislation we purposefully gave the ABMC, a federal agency, the responsibility of collecting and managing the private contributions. The one deficiency was, however, that we required the funds collected to be deposited in a non-interest-bearing account with the U.S. Treasury. The purpose of this bill is to correct that oversight.

At the present time, the ABMC has collected over $1.5 million in contributions toward the design and construction of the memorial. The inability to earn interest on that balance means we are losing in excess of $10,000 each month in earnings—and that's a significant sum of money for this purpose.

The need for this corrective legislation is patently clear and, once again, I thank the committee for rising to the occasion and moving H.R. 1454, as amended to the floor. I support fully the amendment in the nature of a substitute and urge passage of the bill.

Mr. FRENZEL. Mr. Speaker, further reserving the right to object, I yield to the gentleman from New York [Mr. SOLOMON], the vice chairman of the Committee on Veterans' Affairs.

Mr. SOLOMON. Mr. Speaker, I thank the gentleman for yielding to me.

Mr. Speaker, on October 28, 1986, 33 years after the end of the Korean war, President Reagan signed into law legislation authorizing the American Battle Monuments Commission to erect a memorial here in Washington honoring the members of the United States Armed Forces who served during the Korean war.

The legislation we are considering today, H.R. 1454, would allow the private contributions collected for the building of the Korean War Memorial to be placed into an interest-bearing account. The $1½ million contributed thus far for the construction of the memorial has not accrued interest. Allowing these funds to earn interest is simply good business practice, and I am pleased the American Battle Monuments Commission has brought this to the attention of the Congress.

During the relatively short duration of the Korean war over 55,000 Americans were either killed in action or died of nonbattle causes. More than 103,000 Americans were wounded during the Korean war. By comparison, there were a total of only 3,000 more deaths during the 10-year period of the Vietnam war. And although much has been said about the 2,500 missing in action of Vietnam, not too many are aware that there were 5,700 more than that number missing in action in Korea.

I am very proud of the contributions made thus far by the Hyundai Motor Co. of America, the Korean automobile company. I am also proud of the contributions made by the Veterans of Foreign Wars. However, much more can and should be done to recognize the contributions of America's Korean war veterans.

In the very near future, America's major corporations and unions will receive a letter signed by many Korean war era Members of Congress requesting them to contribute to the construction of the Korean War Memorial. Their contributions will pay tribute to the over 5½ million Americans who served in our Armed Forces during the 3-year period of the Korean war.

I urge my colleagues to support H.R. 1454.

Mr. FRENZEL. Mr. Speaker, I withdraw my reservation of objection.

The **SPEAKER** pro tempore. Is there objection to the request of the gentlewoman from Ohio?

There was no objection.

The Clerk read the bill, as follows:

H.R. 1454

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 3(a) of Public Law 99-572 is amended by striking the last sentence and inserting the following: "The Commission is directed to establish an account with the Treasurer of the United States into which these private funds shall be deposited and maintain documentation of these contributions. The Secretary of the Treasury shall invest the portion of this account which in the judgment of the Chairman of the Commission is not required to meet current withdrawals. Such investments shall be in public debt securities with maturities which are suitable to the needs of the account as determined by the Chairman of the Commission, and which earn interest at a rate equal to the current market yield on outstanding marketable obligations of the United States of comparable maturities. The interest earned on such investments shall be credited to and form a part of the account."

AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MS. OAKAR

Ms. OAKAR. Mr. Speaker, I offer an amendment in the nature of a substitute.

The Clerk read as follows:

Amendment in the nature of a substitute offered by Ms. Oakar:

Strike out all after the enacting clause and insert:

SECTION 1. TEMPORARY INVESTMENT IN GOVERNMENT SECURITIES OF AMOUNTS CONTRIBUTED FOR THE KOREAN WAR VETERANS MEMORIAL

(a) In General.—Section 3(a) of the Act entitled "An Act to authorize the erection of a memorial on Federal land in the District of Columbia and its environs to honor members of the Armed Forces of the United States who served in the Korean war", approved October 28, 1986 (40 U.S.C. 1003 note), is amended by adding at the end the following new paragraphs:

"(2) There is established in the Treasury a fund which shall be available to the American Battle Monuments Commission for expenses of establishing the memorial. The fund shall consist of (A) amounts deposited, and interest and proceeds credited, under paragraph (3), and (B) obligations obtained under paragraph (4).

"(3) The Chairman of the Commission shall deposit in the fund such amounts from private contributions as may be accepted under paragraph (1). The Secretary of the Treasury shall credit to the fund the interest on, and the proceeds from sale or redemption of, obligations held in the fund.

"(4) The Secretary of the Treasury shall invest any portion of the fund that, as determined by the Chairman of the Commission, is not required to meet current expenses. Each investment shall be made in an interest bearing obligation of the United States or an obligation guaranteed as to principal and interest by the United States that, as determined by the Chairman of the Commission, has a maturity suitable for the fund.

"(5) If, upon payment of all expenses of establishment of the memorial as provided by law, there remains a balance in the fund, the Chairman of the Commission shall deposit the amount of the balance in the general fund of the Treasury as a miscellaneous receipt.".

(b) Technical Amendments.—Section 3 of such Act is amended—

(1) by striking out "Sec. 3. (a)" and inserting in lieu thereof "Sec. 3. (a)(1)";

(2) in subsection (a)(1), as so redesignated by paragraph (1) of this subsection, by striking out the last sentence; and

(3) by striking out subsection (c).

SEC. 2. CORRECTION OF SUPERSEDED CROSS REFERENCE.

The second sentence of section 1 of the Act entitled "An Act to authorize the erection of a memorial on Federal land in the District of Columbia and its environs to honor members of the Armed Forces of the United States who served in the Korean war", approved October 28, 1986 (40 U.S.C. 1003 note), is amended by striking out "the provisions of" and all that follows through the end of the sentence and inserting in lieu thereof "the Act entitled 'An Act to provide standards for placement of commemorating works on certain Federal lands in the District of Columbia and its environs, and for other purposes', approved November 14, 1986 (40 U.S.C. 1001 et seq.).".

SEC. 3. CLARIFICATION OF RELATED PROVISION.

The first sentence of section 3(a) of the Act entitled "An Act to provide standards for placement of commemorative works on certain Federal lands in the District of Columbia and its environs, and for other purposes", approved November 14, 1986 (40 U.S.C. 1003(a)) is amended by striking out "Act of Congress" and inserting in lieu thereof "law".

Ms. OAKAR (during the reading). Mr. Speaker, I ask unanimous consent that the amendment in the nature of a substitute be considered as read and printed in the Record.

The **SPEAKER** pro tempore. Is there objection to the request of the gentlewoman from Ohio?

There was no objection.

The **SPEAKER** pro tempore. The question is on the amendment in the nature of a substitute offered by the gentlewoman from Ohio [Ms. Oakar].

The amendment in the nature of a substitute was agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, as passed.

TITLE AMENDMENT OFFERED BY MS. OAKAR

Ms. OAKAR. Mr. Speaker, I offer an amendment to the title.

The Clerk read as follows:

Title amendment offered by Ms. Oakar: Amend the title so as to read: "A bill to permit certain private contributions for construction of the Korean War Veterans Memorial to be invested temporarily in Government securities until such contributed amounts are required for disbursement for the memorial.

The title amendment was agreed to.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Ms. OAKAR. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on H.R. 1454, the bill just passed.

The **SPEAKER** pro tempore. Is there objection to the request of the gentlewoman from Ohio?

There was no objection.

RECOGNIZING NATIONAL FALLEN FIREFIGHTERS' MEMORIAL AS OFFICIAL NATIONAL MEMORIAL TO FIREFIGHTERS WHO DIE IN LINE OF DUTY

Ms. OAKAR. Mr. Speaker, I ask unanimous consent that the Committee on House Administration be discharged from further consideration of the joint resolution (H.J. Res. 328) to recognize the National Fallen Firefighters' Memorial on the campus of the National Fire Academy in Emmitsburg, MD, as the official national memorial to career and volunteer firefighters who die in the line of duty, and ask for its immediate consideration.

The Clerk read the title of the joint resolution.

The **SPEAKER** pro tempore. Is there objection to the request of the gentlewoman from Ohio?

Mr. FRENZEL. Mr. Speaker, reserving the right to object, I yield to the distinguished gentlewoman from Ohio [Ms. Oakar].

Ms. OAKAR. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, I want to thank the gentleman for his cooperation as well on all of these resolutions.

Mr. Speaker, this joint resolution provides recognition for the existing Firefighter Memorial in Emmitsburg, MD.

It seems obvious why this memorial should receive national recognition. The memorial has been established since 1981 on the grounds of the National Fire Academy where thousands of firefighters are trained annually.

The memorial recognizes both career and volunteer firefighters—providing a national symbol to members of the fire service and their families.

The memorial has also been enthusiastically endorsed by all 11 member organizations of the Joint Council of National Fire Service.

Mr. Speaker, as you can see, there is strong support to provide national status for this memorial. Furthermore, this legislation will provide no additional cost to the Federal Government and has been amended to clarify the intent of the legislation.

Mr. Speaker, I want to pay special tribute to the gentlewoman from

Maryland [Mrs. BYRON] for her work on this.

I do not think the legislation would have come about without the gentlewoman's leadership on it, and I want to compliment her as well.

Mrs. BYRON. Mr. Speaker, I thank the gentleman for yielding to me.

Mr. Speaker, I rise in support of House Joint Resolution 328.

Mr. Speaker, this resolution recognizes the National Fallen Firefighters' Memorial on the campus of the National Fire Academy in Emmitsburg, MD, as the official national memorial to career and volunteer firefighters who die in the line of duty. As the author of this resolution, I know that the monument, though modest in size, is extremely significant to the firefighting community and its families. The men and women honored by the memorial willingly accepted the responsibility as firefighters to protect the lives and property of others. For some, this dedication led them into dangerous situations which ultimately claimed their lives.

As a representative of dozens of small communities, many times I have heard a fire siren and witnessed a virtual transformation of a town. Men and women, without hesitation, rush from their jobs and families to protect others. I can think of few professions, and an even smaller number of volunteer activities, which demand this unselfish attitude by both the participant and their families. Although the memorial lists only the names of the fallen firefighters, we know that without the support of their families, we would not have a devoted fire service.

I am extremely grateful for the support of this resolution by my distinguished colleague and chairman of the Libraries and Memorials Subcommittee, Chairwoman MARY ROSE OAKAR. Without her interest and the assistance of her staff, this resolution would not have been possible. In addition, I would like to thank the chairman of the Committee on House Administration, Chairman ANNUNZIO, and the ranking minority members of both the subcommittee and the full committee, Mr. GINGRICH and Mr. FRENZEL.

With this resolution, we are nationally recognizing the heroic act and courage of the fallen firefighters. May we continue to appreciate the dedication and strengths of our fire service communities signified by this memorial.

□ 1735

Mr. FRENZEL. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore (Mr. COELHO). Is there objection to the request of the gentlewoman from Ohio?

There was no objection.

The Clerk read the joint resolution, as follows:

H.J. RES. 328

Whereas the National Fallen Firefighters' Memorial, located on the campus of the National Fire Academy in Emmitsburg, Maryland, honors the approximately 160 volunteer and career firefighters who die each year in the line of duty while protecting American lives and property;

Whereas over 100,000 volunteer and career firefighters are also injured each year in the line of duty; and

Whereas such memorial serves as a symbol of the courage and dedication of past, present, and future firefighters in their efforts to protect human life and property; Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. RECOGNITION OF MEMORIAL.

The memorial known as the National Fallen Firefighters' Memorial, located on the campus of the National Fire Academy in Emmitsburg, Maryland, shall be recognized as the official national memorial to volunteer and career firefighters who die in the line of duty.

SEC. 2. CERTAIN RESPONSIBILITIES VESTED IN DIRECTOR OF FEDERAL EMERGENCY MANAGEMENT AGENCY.

Notwithstanding the provisions of this joint resolution or any other provision of law, responsibility for the maintenance and operation of such memorial shall be vested in the Director of the Federal Emergency Management Agency.

AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MS. OAKAR

Ms. OAKAR. Mr. Speaker, I offer an amendment in the nature of a substitute.

The Clerk read as follows:

Amendment in the nature of a substitute offered by Ms. OAKAR: Strike out all after the resolving clause and insert in lieu thereof the following:

That the memorial known as the National Fallen Firefighters' Memorial, located on the campus of the National Fire Academy in Emmitsburg, Maryland, is recognized as the official national memorial to volunteer and career firefighters who die in the line of duty.

The SPEAKER pro tempore. The question is on the amendment in the nature of a substitute offered by the gentlewoman from Ohio [Ms. OAKAR].

The amendment in the nature of a substitute was agreed to.

The joint resolution was ordered to be engrossed.

AMENDMENT TO THE PREAMBLE OFFERED BY MS. OAKAR

Ms. OAKAR. Mr. Speaker, I offer an amendment to the preamble.

The Clerk read as follows:

Amendment to the preamble offered by Ms. OAKAR: Amend the preamble to read as follows:

Whereas the National Fallen Firefighters's Memorial, located on the campus of the National Fire Academy in Emmitsburg, Maryland, honors the approximately 160 volunteer and career firefighters who die each year in the line of duty; and

Whereas the memorial serves as a symbol of the courage and dedication of past, present, and future firefighters in their efforts to protect life and property: Now, therefore, be it

The amendment to the preamble was agreed to.

The joint resolution was ordered to be read a third time, was read the third time, and passed.

TITLE AMENDMENT OFFERED BY MS. OAKAR

Ms. OAKAR. Mr. Speaker, I offer an amendment to the title.

The Clerk read as follows:

Title amendment offered by Ms. OAKAR: Amend the title so as to read: "Joint resolution recognizing the National Fallen Firefighters' Memorial at the National Fire Academy in Emmitsburg, Maryland, as the official national memorial to volunteer and career firefighters who die in the line of duty."

The title amendment was agreed to.

A motion to reconsider was laid on the table.

RECOGNIZING INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS AND NATIONAL FALLEN FIRE FIGHTER MEMORIAL IN COLORADO SPRINGS, CO

Ms. OAKAR. Mr. Speaker, I ask unanimous consent that the Committee on House Administration be discharged from further consideration of the concurrent resolution (H. Con. Res. 87) to recognize the International Association of Fire Fighters and the National Fallen Fire Fighter Memorial in Colorado Springs, CO, and ask for its immediate consideration.

The Clerk read the title of the concurrent resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from Ohio?

Mr. FRENZEL. Mr. Speaker, reserving the right to object, I yield to the distinguished gentlewoman from Ohio [Ms. OAKAR].

Ms. OAKAR. Mr. Speaker, this concurrent resolution commemorates the Nation's career firefighters who have died in the line of duty by recognizing the prestigious firefighter memorial and plaza located in Colorado Springs, CO.

Mr. Speaker, I commend the IAFF Local No. 5 in Colorado Springs, CO, for their efforts in bringing to fruition this memorial and the valuable concept behind its establishment. This memorial is not just to the memory of those we've lost, but an ongoing commitment of the sponsors to provide support and recognition to the surviving families of these firefighters.

Mr. Speaker, there will be no additional cost to the Federal Government for this memorial. The land, architectural design, maintenance, and utility costs are all being donated by the city. Expenses for the statue are being paid for by funds raised by the International Association of Fire Fighters.

Mr. Speaker, it was agreed by all parties concerned, including the sponsoring Members in the House and the other body, that the IAFF's firefighter memorial be recognized with the commemorative language that the committee amendments have provided. The importance of this legislation is not changed in any way by these technical amendments.

Mr. FRENZEL. Mr. Speaker, further reserving the right to object, I yield to the gentleman from Colorado [Mr. HEFLEY], the distinguished author of the bill.

Mr. HEFLEY. Mr. Speaker, today the House will consider legislation I introduced—House Concurrent Resolution 87—which will give much deserved congressional recognition to the International Association on Fire Fighters [IAFF] Fallen Fire Fighter Memorial in Colorado Springs, CO. This legislation, commemorating the Nation's firefighters who have died in the line of duty, would not be possible if not for the hard work and dedication by the International Association of Fire Fighters' Local No. 5 in Colorado Springs along with other local groups of the IAFF from across the country.

An amazing fact about this memorial is that it comes with no cost or administrative responsibility to the Federal Government. IAFF firefighters from across the country have been raising money to pay for all the expenses associated with the statute, and the land, architectural design work, maintenance, and utility costs have all been denoted by various local agencies.

The statue is a magnificent piece of art work. The actual height of the firefighter, which is rescuing an infant, is 9 feet, and the overall height of the statue is 17 feet. It will stand in the heart of Colorado Springs and have the majestic Peak as its background. I cannot think of a better place for this memorial and I applaud the IAFF members from across our Nation for choosing this beautiful site.

The Colorado Springs firefighters intend to illuminate the memorial and fly the American flag at all times. Upon notification of a firefighter's death, an honor guard will lower the American flag to half mast. This flag will be presented to the widow or other close relative of the fallen firefighter.

I commend the initiative of the firefighters to dedicate a memorial to their fallen peers, and I would like to thank the 78 colleagues who cosponsored this legislation to recognize and honor the firefighters who have sacrificed their lives in the performance of their duties.

Mr. FRENZEL. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore (Mr. COELHO). Is there objection to the request of the gentlewoman from Ohio?

There was no objection.

The Clerk read the concurrent resolution as follows:

H. CON. RES. 87

Whereas fire fighters have dedicated their lives to protecting communities;

Whereas the working environment of firefighters, entails hazards beyond the normal limits of other occupations, including exposure to unknown toxic elements;

Whereas nearly 1,200 fire fighters have died in the line of duty since 1977;

Whereas the Colorado Springs, Colorado, affiliate of the International Association of Fire Fighters is building a permanent memorial in recognition of fire fighters who have given the ultimate sacrifice while performing their duties;

Whereas the Colorado Springs Fire Fighters Association has commissioned sculptor Gary Coulter to produce a "Heroic Bronze" entitled "Somewhere Everyday" to permanently commemorate fallen fire fighters;

Whereas fire fighters from around the country are raising funds to pay for the statue;

Whereas the city of Colorado Springs had donated the land for the statue and surrounding plaza and will provide perpetual care and maintenance of the memorial grounds;

Whereas the statue has been unanimously approved by the Arts in Public Places Commission;

Whereas the Fallen Fire Fighter Memorial is centrally located to give fire fighters from all over the country an opportunity to visit the memorial; and

Whereas the International Association of Fire Fighters adopted a resolution at its 1986 convention endorsing the Fallen Fire Fighter Memorial in Colorado Springs, Colorado, as the National Fallen Fire Fighter Memorial of the International Association of Fire Fighters: Now, therefore be it

Resolved by the House of Representatives (the Senate concurring), That the Congress recognizes the Fallen Fire Fighters Memorial in Colorado Springs, Colorado, as the International Association of Fire Fighters National Fallen Fire Fighter Memorial.

AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MS. OAKAR

Ms. OAKAR. Mr. Speaker, I offer an amendment in the nature of a substitute.

The Clerk read as follows:

Amendment in the nature of a substitute offered by Ms. OAKAR: Strike out all after the resolving clause and insert in lieu thereof the following:

That the Congress recognizes the memorial to be built in Colorado Springs, Colorado, in honor of fire fighters who have died in the line of duty, as the International Association of Fire Fighters Fallen Fire Fighter Memorial.

The SPEAKER pro tempore. The question is on the amendment in the nature of a substitute offered by the gentlewoman from Ohio [Ms. OAKAR].

The amendment in the nature of a substitute was agreed to.

The concurrent resolution was agreed to.

AMENDMENT TO THE PREAMBLE OFFERED BY MS. OAKAR

Ms. OAKAR. Mr. Speaker, I offer an amendment to the preamble.

The Clerk read as follows:

Amendment to the preamble offered by Ms. OAKAR: Amend the preamble to read as follows:

Whereas fire fighters dedicate their lives to protecting communities;

Whereas the working environment of fire fighters entails hazards, including exposure to unknown toxic elements, beyond the normal limits of other occupations;

Whereas nearly 1,200 fire fighters have died in the line of duty since 1977;

Whereas the Colorado Springs, Colorado, affiliate of the International Association of Fire Fighters is establishing a memorial to honor fire fighters who have made the ultimate sacrifice;

Whereas sculptor Gary Coulter has been commissioned to produce a heroic bronze statue entitled "Somewhere Everyday" for the memorial;

Whereas the city of Colorado Springs, Colorado, has donated land for the statue and a surrounding plaza and will provide perpetual care and maintenance of the memorial;

Whereas fire fighters throughout the Nation are raising funds to pay for the statue;

Whereas its central location will give fire fighters from throughout the Nation an opportunity to visit the memorial; and

Whereas the International Association of Fire Fighters adopted a resolution at its 1986 convention endorsing the Fallen Fire Fighter Memorial: now, therefore, be it

The amendment to the preamble was agreed to.

TITLE AMENDMENT OFFERED BY MS. OAKAR

Ms. OAKAR. Mr. Speaker, I offer an amendment to the title.

The Clerk read as follows:

Title amendment offered by Ms. OAKAR: Amend the title so as to read: "Concurrent resolution recognizing the International Association of Fire Fighters Fallen Fire Fighter Memorial in Colorado Springs, Colorado."

The title amendment was agreed to.

A motion to reconsider was laid on the table.

Ms. OAKAR. Mr. Speaker, I ask unanimous consent that the Committee on House Administration be discharged from further consideration of the Senate concurrent resolution (S. Con. Res. 38) which recognizes the Fallen Fire Fighters Memorial in Colorado Springs, CO, as the International Association of Fire Fighters National Fallen Fire Fighter Memorial, and ask for its immediate consideration.

The Clerk read the title of the Senate concurrent resolution.

The SPEAKER pro tempore (Mr. COELHO). Is there objection to the request of the gentlewoman from Ohio?

Mr. FRENZEL. Mr. Speaker, reserving the right to object, I yield to the gentlewoman from Ohio [Ms. OAKAR] for an explanation.

Ms. OAKAR. Mr. Speaker, this concurrent resolution, as introduced by the other body, is the same as the resolution just passed. It provides recognition for the International Association of Fire Fighters Fallen Fire Fighter Memorial in Colorado Springs, CO.

It has been agreed by all parties concerned to accept the language of the House version of this resolution.

Mr. FRENZEL. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection of the request of the gentlewoman from Ohio?

There was no objection.

The Clerk read the Senate concurrent resolution, as follows:

S. CON. RES. 38

Whereas the working environment of fire fighters entails hazards beyond the normal limits of other occupations, including exposure to unknown toxic elements;

Whereas nearly 1,200 fire fighters have died in the line of duty since 1977;

Whereas the Colorado Springs, Colorado, affiliate of the International Association of Fire Fighters is building a permanent memorial in recognition of fire fighters who have given the ultimate sacrifice while performing their duties;

Whereas the Colorado Springs Fire Fighters Association has commissioned sculptor Gary Coulter to produce a "Heroic Bronze" entitled "Somewhere Everyday" to permanently commemorate fallen fire fighters;

Whereas fire fighters from around the country are raising funds to pay for the statue;

Whereas the city of Colorado Springs has donated the land for the statue and surrounding plaza and will provide perpetual care and maintenance of the memorial grounds;

Whereas the statue has been unanimously approved by the Arts in Public Places Commission;

Whereas the Fallen Fire Fighter Memorial is centrally located to give fire fighters from all over the country an opportunity to visit the memorial; and

Whereas the International Association of Fire Fighters adopted a resolution at their 1986 convention endorsing the Fallen Fire Fighter Memorial in Colorado Springs, Colorado, as the National Fallen Fire Fighter Memorial of the International Association of Fire Fighters: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That the Congress recognizes the Fallen Fire Fighters Memorial in Colorado Springs, Colorado, as the International Association of Fire Fighters National Fallen Fire Fighter Memorial.

MOTION OFFERED BY MS. OAKAR

Ms. OAKAR. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Ms. OAKAR moves to strike all after the resolving clauses of S. Con. Res. 38 and insert in lieu thereof the provisions of H. Con. Res. 87 as agreed to by the House.

The motion was agreed to.

MOTION OFFERED BY MS. OAKAR

Ms. OAKAR. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Ms. OAKAR moves to strike the preamble of the Senate concurrent resolution, S. Con. Res. 38, and insert in lieu thereof the preamble of H. Con. Res. 87 as agreed to by the House.

The motion was agreed to.

The Senate concurrent resolution was concurred in.

A motion to reconsider was laid on the table.

A similar House concurrent resolution (H. Con. Res. 87) was laid on the table.

□ 1745

CIVIC ACHIEVEMENT AWARD PROGRAM

Ms. OAKAR. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the joint resolution (H.J. Res. 309) providing support for the Civic Achievement Award Program in Honor of the Office of Speaker of the House of Representatives, with a Senate amendment thereto, and concur in the Senate amendment.

The Clerk read the title of the joint resolution.

The Clerk read the Senate amendment, as follows:

Senate amendment: Page 6, lines 9 and 10, strike out "such sums as may be necessary for each of the five succeeding fiscal years" and insert "$680,000 for the fiscal year ending September 30, 1089".

The SPEAKER pro tempore (Mr. COELHO). Is there objection to the request of the gentlewoman from Ohio?

Mr. FRENZEL. Mr. Speaker, reserving the right to object, I yield to the gentlewoman from Ohio [Ms. OAKAR].

Ms. OAKAR. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, this legislation creates the civic achievement award program, a nonpartisan program to recognize civic learning and skill development.

The program is designed to inspire nationwide learning of essential information relating to American history, government, geography, economics, and current events among students in the fifth, sixth, seventh, and eighth grades.

The program would be in honor of the Office of the Speaker of the House of Representatives and would be coordinated through the Library of Congress and administered by the closeup foundation, the country's largest Government studies program, and the National Association of Elementary School Principals.

Mr. Speaker, this legislation originally passed the House on July 21, 1987. The other body has amended the resolution with a reduction in the dollar amount and a reduction in the length of time for the requested appropriations.

Mr. Speaker, all parties concerned concur in the amended version.

Mr. Speaker, I want to pay special tribute to the gentleman from California [Mr. COELHO] for his fine work in this area. He may want to say a few words about this issue, but I especially want to compliment the gentleman.

Mr. FRENZEL. Mr. Speaker, further reserving the right to object, I yield to the distinguished majority whip, the gentleman from California [Mr. COELHO].

Mr. COELHO. Mr. Speaker, I thank the gentleman for yielding, and I thank the chairman of the subcommittee and the ranking minority member for their help in getting this legislation through.

Mr. Speaker, when I and our colleagues speak before high schools in our districts, we always stress how important a good education in social studies is for our system of government. We remind our audiences of Georges Santayana's warning about learning the lessons of history and how the corner-stone of democracy is an informed electorate. Yet, in this Nation only half the registered voters actually cast their ballots, and our "voters in training,"—our high school grads are startingly deficient in their understanding of basic government, geography, economics, and current events.

That is why this body must act to encourage a solid civics education in our Nation's schools. House Joint Resolution 309 would be a tremendous step in the right direction. Our legislation would set up the Civic Achievement Award Program in the name of the Office of the Speaker of the House. The program would send certificates to students, classes, and schools that have demonstrated excellence in the field of social studies.

House Joint Resolution 309 would authorize that the Speaker of the House and the minority leader to appoint an 11-member panel that would exist under the auspices of the Close Up Foundation. The panel would oversee the operation of the program, design standards and skill tests for the awards, and distribute information about the program to schools and libraries.

Our Government currently runs the Presidential Physical Fitness Awards Program in our schools because it puts great stock in the physical health of our young Americans. This program has proved to be very successful. Just as this Government should encourage our youngsters to get in good physical shape, we should encourage our students to keep in good civic shape. House Joint Resolution 309 is an excellent tool to hone their civic understanding of our Nation's Government.

Mr. FRENZEL. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore (Mr. ESPY). Is there objection to the request of the gentlewoman from Ohio?

There was no objection.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Ms. OAKAR. Mr. Speaker, I ask unanimous consent that on all of the legislation that I have had the privilege of floor managing today Members may have 5 legislative days in which to revise and extend their remarks.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from Ohio?

There was no objection.

HOUR OF MEETING ON TOMORROW

Mr. FOLEY. Mr. Speaker, I ask unanimous consent that when the House adjourns tonight to adjourn to meet at noon tomorrow.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from Washington?

There was no objection.

FURTHER MESSAGE FROM THE SENATE

A further message from the Senate by Mr. Hallen, one of its clerks, announced that the Senate agrees to the amendments of the House to the bill (S. 1158) entitled "An act to extend the authorization of appropriations for programs and activities under title III of the Public Health Service Act, to establish a National Health Service Corps Loan Repayment Program, to otherwise revise and extend the program for the National Health Service Corps, and for other purposes," with an amendment.

NATIONAL QUALITY FIRST DAY

Mr. DYMALLY. Mr. Speaker, I ask unanimous consent that the Committee on Post Office and Civil Service be discharged from further consideration of the joint resolution (H.J. Res. 365) designating October 1, 1988, as "National Quality First Day," and ask for its immediate consideration.

The Clerk read the title of the joint resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

Mrs. MORELLA. Mr. Speaker, reserving the right to object, I do not object, but would like the body to know that the minority has no objection to the legislation.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

The Clerk read the joint resolution, as follows:

H.J. RES. 365

Whereas the production of quality commercial products and goods and the provision of services of the highest quality are fundamental to the success of the United States in the world marketplace, to the improvement of the standard of living of the American people, and to the national security of the United States;

Whereas the United States has been a world leader in producing quality goods and services, and this leadership has provided us with a world-wide market for our products;

Whereas in recent years, that leadership role has been challenged by foreign competition, and the productivity of the United States has fallen behind the productivity of those competitors;

Whereas the economy of Japan was in ruins after World War II;

Whereas the high quality and efficiency of Japanese industry has resulted in a dramatic increase in the Japanese standard of living and the advancement of Japanese industrial and financial leadership in the world;

Whereas Dr. W. Edwards Deming, an American financial philosopher and economic consultant, promoted his 14 points of industrial management to Japanese industry, which widely adopted and applied his philosophies;

Whereas Dr. Deming's 14 points, which have produced such outstanding results, may be summarized as follows:

(1) Create a CONSISTENCY OF PURPOSE toward the never-ending improvement of public services and all the processes which provide them in order to increase taxpayer satisfaction and to create of the best-managed educational system possible. We will strive to provide a quality education for all through ever-improving efficiency, competence, and sensitivity.

(2) Adopt a NEW PHILOSOPHY. We are in a new economic and managerial age. We can no longer live with commonly accepted styles of American management, or commonly accepted levels for performance and programs.

(3) We presently determine the inadequacies of our system after the fact: through audits, grievances, complaints, failures, lawsuits, crises, taxpayer/voter revolts, investigations, or studies of past activities. We must learn, instead, to DESIGN QUALITY PROCESSES IN THE PLANNING STAGE and to keep monitoring and improving the quality of those processes thereafter. The shift of focus must be from management of crises and corrective action to management of quality systems and preventive actions.

(4) END THE PRACTICE OF AWARDING BUSINESSES ON THE BASIS OF THE PRICE TAG. This will require us to examine generic low price buying. The quality of material must be examined.

(5) IMPROVE CONSTANTLY every activity of the educational system to improve quality productivity and thus decrease costs to citizens.

(6) INSTITUTE TRAINING AND EDUCATION ON THE JOB, INCLUDING RETRAINING FOR MANAGEMENT.

(7) IMPROVE SUPERVISION. Supervision belongs to the system and is the responsibility of the management. Supervisors need to help people on the job and bring consistency of purpose to the individual employee to help everyone do a better job.

(8) DRIVE OUT FEAR so that everyone may work effectively for the organization.

(9) BREAK DOWN BARRIERS between departments, grade levels, staff, teachers, administrators, and board members. All must work as a team to foresee problems and needs of the educational community.

(10) Eliminate slogans, exhortations, and performance or productivity measures aimed at the workforce, as these only create adversarial relationships. MOST CAUSES OF LOW QUALITY AND PRODUCTIVITY ARE SYSTEM PROBLEMS OVER WHICH THE WORKFORCE HAS NO CONTROL. People need information on what management is doing to implement these 14 points.

(11) ELIMINATE WORK STANDARDS THAT SET QUOTAS, or measured day work. The goal of work standards must not be to merely increase the quantity of goods produced but to produce quality goods. Focus on helping people do a better job. Everyone must understand the purpose of the organization and how his job relates to that purpose.

(12) Remove barriers that rob staff and management of their RIGHT TO PRIDE IN WORKMANSHIP. This is done through a mutual striving for quality among staff and management.

(13) Institute a VIGOROUS PROGRAM OF PROFESSIONAL DEVELOPMENT. People must be secure about their jobs in the future, and must know that the organization will facilitate their acquisition of new positions and responsibilities.

(14) Put EVERYBODY in the organization to work in teams to accomplish the transformation.

Whereas the Quality Management Philosophy which is derived from these 14 points may be summarized as follows:

(1) Our commitment must be to "Do it right the first time" in all that we do.

(2) Problems are not caused by the worker, but are controllable by management.

(3) Management must stop blaming the workers and start solving problems with the workers.

(4) Fear must be driven out so that the workers will tell what the problems are so they can be fixed.

(5) Management must listen.

(6) Management must take a leadership role.

(7) Management must not feel threatened.

(8) Quality cannot be inspected in.

(9) Inspection admits that the process has made defects.

(10) Defects and reworks cost money.

(11) Making it right the first time is the only way to get the highest possible quality and value.

Whereas in June 1984 the Chamber of Commerce of Kingsport, Tennessee, recognized that its local economy required substantial and fundamental improvement in the production of quality goods in order to improve competitiveness;

Whereas Kingsport's city government and industries instituted Dr. Deming's quality production philosophy as the basis for their "Quality First" project because of the outstanding results its application produced;

Whereas in June 1985 the Appalachian Quality Council was formed as a consortium of 15 technical and professional societies in the Kingsport region to promote awareness and to provide resources to area government, business, industry, and educational leaders in the management of quality as the way to assure community excellence and organizational competitiveness;

Whereas this coalition was formed to coordinate quality control teams within each individual company which would initiate the "Quality First" project by instilling into all employees Dr. Deming's 14 points and the Quality Management Philosophy, with emphasis on improving management-labor cooperation and communication in order to promote a unified team effort;

Whereas the "Quality First" project is based fundamentally on management and labor working together as a team dedicated to the production of products of the highest quality;

Whereas to date, 36 successful teams in the Kingsport area have, through the application of these principles, saved their companies over $5,000,000 and have improved sales;

Whereas the American Society of Quality Control organized a chapter in the northeast Tennessee area to maintain "Quality First" in the previously established areas and to expand "Quality First" to businesses not yet involved in the project;

Whereas communities throughout the United States should be informed of the precedent set by Kingsport because the "Quality First" project has demonstrated its ability to improve the overall quality and efficiency of American industry, and to increase the competitiveness of American production in the international market;

Whereas in the past, October has been designated as "National Quality Month" by Congress, and the theme of "Quality First" re-emphasizes the idea that quality must be an integral part of the processes that produce goods and services;

Whereas the industrial and service quality improvements made by the city of Kingsport and its industries should be recognized by Congress in order to inform all Americans about this successful program and to thereby encourage its nationwide application: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That October 1, 1988, is designated as "National Quality First Day", and the President is authorized and requested to issue a proclamation calling on the people of the United States to observe that day with appropriate ceremonies and activities.

The joint resolution was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

NATIONAL WOMEN VETERANS RECOGNITION WEEK

Mr. DYMALLY. Mr. Speaker, I ask unanimous consent that the Committee on Post Office and Civil Service be discharged from further consideration of the Senate joint resolution (S.J. Res. 171) designating the week beginning November 8, 1987, as "National Women Veterans Recognition Week," and ask for its immediate consideration.

The Clerk read the title of the Senate joint resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

Mrs. MORELLA. Mr. Speaker, reserving the right to object, I yield to the gentleman from Florida [Mr. BILIRAKIS], the chief sponsor of House Joint Resolution 43, designating the week of November 8, 1987, as "National Women Veterans Recognition Week."

Mr. BILIRAKIS. Mr. Speaker, I thank the gentlewoman from Maryland for yielding.

Mr. Speaker, as the House sponsor of House Joint Resolution 43, the House Companion bill designating the week of November 8 as "National Women Veterans Recognition Week," I wish to thank Chairman DYMALLY for his favorable action. In addition, I wish to thank Chairman FORD and the ranking members, Congressman GENE TAYLOR and Congresswoman CONNIE MORELLA, for their assistance and cooperation.

Mr. Speaker, over 230 of my colleagues sponsored my resolution which commemorates the more than 1,200,000 women veterans in this country. This represents over 4.2 percent of the total veteran population. I am delighted that a majority of the House has joined me to honor these brave women for their untold sacrifices and hardships. This resolution will create greater public awareness and recognition to our women veterans, express our country's appreciation, and reinforce our commitment to the needs of America's women veterans.

And finally, I wish to thank all of my colleagues in the House who cosponsored House Joint Resolution 43, and our Senate counterparts for their support of the Senate resolution, and urge a "yes" vote for Senate Joint Resolution 171 honoring all of the women who served in our Armed Forces.

Mrs. MORELLA. Mr. Speaker, further reserving the right to object, I commend the gentleman from Florida [Mr. BILIRAKIS] for introducing this very important resolution of which I am a cosponsor. I think it is very important that we recognize women who have served our country.

Mr. Speaker, further reserving the right to object, I yield to the gentleman from California [Mr. DYMALLY].

Mr. DYMALLY. Mr. Speaker, I thank the gentlewoman for yielding.

Mr. Speaker, I wish to commend the sponsors of Senate Joint Resolution 171, and its House companion measure, House Joint Resolution 43 authored by the gentleman from Florida [Mr. BILIRAKIS]. These resolutions designate the week beginning November 8, 1987, as "National Women Veterans Recognition Week."

Although women account for only 4.2 percent of the total veterans population, women veterans may very well be the fastest growing group of veterans in the future due to the increasing number of young women who have embarked on careers in the Armed Forces.

I am proud to join in commemorating this special week of November to honor our women veterans. The celebrations will recognize both the struggle of our pioneer women soldiers as well as the achievements of the women who followed.

Adopting this resolution also should be a reminder to Members of Congress of the inadequate attention given to the special needs of women veterans in our veterans programs.

This problem is common among all minority veterans groups.

Although steps have been taken to improve the adequacy of these veterans programs, I do not believe that simply adjusting these programs is enough.

The veterans population will continue to grow, and in my estimation has outgrown the Federal Government's attention.

Since Congress will inevitably have to modify veterans programs to meet future needs, why not begin with the agency responsible for administering these programs? That seems to be the most logical step.

Mr. Speaker, as we honor our women veterans and all veterans during the month of November, I call on you and my colleagues to consider reorganizing the Veterans' Administration. If we are really concerned about our veterans, let us properly show our appreciation by improving the administration of our veterans programs.

Mrs. MORELLA. Mr. Speaker, further reserving the right to object, I yield to the gentleman from New York [Mr. SOLOMON], vice chairman of the Veterans' Affairs Committee.

Mr. SOLOMON. Mr. Speaker, I certainly thank the gentlewoman from Maryland for yielding. Let me commend both the gentlewoman from Maryland [Mrs. MORELLA] and the gentleman from California [Mr. DYMALLY] for bringing this legislation before this body. Most of all I want to commend the sponsor of the legislation, the gentleman from Florida [Mr. BILIRAKIS] a very valuable member of our Veterans' Affairs Committee, and an outstanding Member for sponsoring the legislation.

Mr. Speaker, it is most deserving for the hundreds of thousands of women who have served in the various branches of our military. I had the privilege of serving in the U.S. Marine Corps with many of these women during the Korean war. Believe me, they were women in a true sense of the word serving with the U.S. Marines.

Over the course of this past summer I had the opportunity also to observe in the Army, Navy, Marine Corps, and Air Force depots for military recruits a cross-section of America, both men and women serving today in our military, and they are individuals that we can really be proud of. So not only will this resolution honor the deserving women who have served in the past, but also those that might serve in the future.

Again I commend the gentleman from Florida [Mr. BILIRAKIS] for bringing the resolution before us, and I thank the gentlewomen from Maryland for yielding.

Mrs. MORELLA. Mr. Speaker, further reserving the right to object, I yield to the gentleman from California [Mr. DORNAN].

Mr. DORNAN of California. Mr. Speaker, I thank the gentlewoman for yielding.

Mr. Speaker, every now and then a resolution or a bill comes along and you say what took us so long. Here from Molly Pitcher standing at her wounded husband's side at the Battle of Monmouth, NJ, through a Medal of Honor winner, Dr. Nancy Walker in the Civil War and, of course, during some spasm of chauvinism we took the medal away from her only to have Congress give it back to her, probably posthumously, to the nurses at Corregidor, to the nurses that were captured in the European theater, to the women who ferried our airplanes all over during the Second World War, to the courageous nurses I used to witness in my eight trips to Vietnam serving not only our young men there, but working on the captured enemy, wounded patients and giving them the same devotion to save their lives that they gave to our own men, right down to today at the Vietnam Memorial where the names of eight woman are upon that wall, to the young women flying supersonic training aircraft that have died in combat, training of our young pilots, male and female, to the young lady that landed a big C-5 that I flew over into Germany a couple of months ago that greased in a landing so smoothly that I did not even know we were on the ground. This massive, world's biggest airplane just sort of settled on the landing gear, she was such an excellent pilot.

We forget when someone dies they are also a veteran, that when someone retires from 20, 25, or 30 years of service, a women serving her country, she is a veteran, not just a retiree. I think that it is a mystery that it has taken someone like the gentleman from Florida [Mr. BILIRAKIS], you lucky fellow, to stumble on something so excellent and so obvious that we say why did this not happen in 1946.

So I commend the gentleman. I hope I am on there as an original cosponsor, and if not, please take care of that. I commend everybody speaking on this resolution, and it is high time that we recognize these great heroes.

Mrs. MORELLA. Mr. Speaker, further reserving the right to object, I agree, it is high time.

Mr. Speaker, further reserving the right to object, I yield to the distinguished gentlewoman from Ohio [Mrs. OAKAR].

Ms. OAKAR. Mr. Speaker, I thank my friend for yielding.

Mr. Speaker, I simply wanted to congratulate the major sponsor and all the sponsors of this legislation and to indicate that we just passed some amendments assisting in getting the Korean War Veterans Memorial constructed. That was one of the pieces of legislation that we passed last year.

We also passed the legislation relating to blacks who served in the Revolutionary War for our country, and they had never been honored.

We also passed a piece of legislation last year that I introduced honoring women who served in the military.

Through the hearings that we had, which my friend from California [Mr. DORNAN] was one of the witnesses, as I recall, and said that one of those women had saved his life in one of the wars he had been witness to, through these courageous women really our country is freer, and through the hearings that we had we found that, as my friend from California, Mr. DYMALLY, indicated, women who have served in the military since the Revolution have had real problems in terms of getting equal access to various forms of health care and equal status, pay and retirement, and some who had served in World War II who had been promised, who were flyers and who were promised that they would get military status for the benefit of pension and et cetera and were not given that status until a few years back. So we really ought to commemorate them now.

Mr. Speaker, I wanted to take just a few seconds to talk a little bit about the memorial because as my colleagues know that will be on Federal land. Hopefully it will be on the Mall along with the other memorials. Money must be raised for this purpose. The Federal Government does not provide money and there are various oganizations, in fact all of the veterans' organizations are committed to this effort.

□ 1800

A woman by the name of June Wilenz is in charge of the overall umbrella to raise the money to build the memorial.

But I was chagrined last week, for example, when I saw that the planning commission of Washington, DC, refused to allow a woman to be placed with the memorial devoted to Vietnam.

I thought that that would have been nice to see a nurse, who are always on the front lines, who served in the military, joining her brothers who had served in Vietnam. But since that did not happen, and that was rejected, I hope that people around the country will remember that there are some people trying to raise some funds for a women's memorial which is really, frankly, symbolic of saying, "thank you" to the thousands and thousands of women who have served and will serve in the military and continue to make our country the greatest country in the world.

Mr. Speaker, I thank the gentlewoman for yielding.

Mrs. MORELLA. Mr. Speaker, I concur with the gentlewoman from Ohio.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore (Mr. ESPY). Is there objection to the request of the gentlemen from California?

There was no objection.

The Clerk read the Senate joint resolution, as follows:

S.J. RES. 171

Whereas there are about one million two hundred thousand women veterans in this country, representing 4.2 per centum of the total veteran population;

Whereas the number and proportion of women veterans will continue to grow as the number and proportion of women serving in the Armed Forces continue to increase;

Whereas women veterans through honorable military service often involving hardship and danger have contributed greatly to our national security;

Whereas women veterans continue to contribute greatly to our society in civilian life, bringing with them their valuable military service experience and expertise;

Whereas the contributions and sacrifices of women veterans on behalf of this Nation deserve greater public recognition and appreciation;

Whereas the special needs of women veterans, especially in the area of health care, have in the past been overlooked or inadequately addressed by the Federal Government;

Whereas this lack of attention to the special needs of women veterans was among the factors that tended to discourage or prevent women veterans from taking full advantage of the benefits and services to which they are entitled as veterans of the United States Armed Forces;

Whereas important steps have been taken to improve the accessibility and quality of health care for women veterans, yet women veterans are still far less likely than male veterans to utilize their Veterans Administration benefits; and

Whereas recognition of women veterans by the Congress and the President through enactment of legislation declaring the week beginning on November 8, 1987, as "National Women Veterans Recognition Week" would serve to create greater public awareness and recognition of the contribution of women veterans, to express the Nation's appreciation for their service, to inspire more responsive care and services for women veterans, and to continue and reinforce important gains made in this regard in the last three years as a result of the designation of the first, second, and third National Women Veterans Recognition Weeks in November of 1984, 1985, and 1986: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the week beginning on November 8, 1987, is designated "National Women Veterans Recognition Week". The President is requested to issue a proclamation calling upon all citizens, community leaders, interested organizations, and Government officials to observe that week with appropriate programs, ceremonies, and activities.

The Senate joint resolution was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. DYMALLY. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the several joint resolutions just considered and passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

REFORMING THE REFORMERS

(Mr. DICKINSON asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. DICKINSON. Mr. Speaker, I would like to enter into the RECORD a recent newspaper editorial by Fred Reed on the subject of the "military reform" movement.

The major point of Mr. Reed's article is that many of the "evangelical reformers of the military" focus on nonexistent problems with the military, which distracts attention from the many real problems that need to be addressed.

He says that the so-called reformers often display a disregard for the truth, a taste for parody, and a lack of adherence to even high school standards of research. Despite this, he says the media tends to accept the views of the reformers as gospel, because reporters believe that the critics are engaged in public service work.

But Reed contends that the behavior of the reformers is inconsistent with the goals of giving our boys the best, as the reformers themselves might put it. He says that "you don't help our boys by making essentially random charges about a highly complex subject whose fundamentals you have made no attempt to master. In fact, it is hard to think of a better way to get troops killed."

Mr. Speaker, the defense debate today, in the Congress as well as in the media suffers from too much sensationalism and too little genuine effort to learn the facts. I believe Mr. Reed's article goes a long way toward redirecting the focus of that defense debate in the proper direction.

LET'S REFORM THE MILITARY REFORMERS

(By Fred Reed)

Many and grave things are wrong with the American military, about which nothing will be done; these defects could easily lose us a big war. A major reason why we will do nothing to remedy them is that a few evangelical critics of the military, by focusing on defects which do not exist, have distracted attention from defects that do exist. Not to mince words, much of what prominent adversaries of the military write is absolute, verifiable nonsense—yet Washington takes it seriously. This is an inadequate approach to the mangement of a heavily armed world.

A few examples of the work of these people, who invariably call themselves Military Reformers:

Dina Rasor, archenemy of the M1 tank, head of the Project on Military Procurement, and so frequently on talk-shows as to seem part of their furniture, has over the years released all sorts of information purporting to show the manifold shortcomings of the M1. Rather less attention has been paid to the manifold shortcomings of Rasor, the unconscious assumption in much of Washington being that anything derogatory to the military must be true.

In 1985 she published a book, a risk which few Reformers should take. In the book ("The Pentagon Underground"), she tells of going with a congressional delegation to Fort Hood, Texas, in 1981 to see the M1. She tells of getting into the driver's seat, low in the front of the hull, and discovering—lo! The Army had designed the tank for midgets! There wasn't enough room for people of normal size. For example, her head bumped against the turret. Why, she gasped, one of our boys might be knocked out.

Ever vigilant, Rasor ferreted out another manifestation of the tanks excessive tininess. She is only 5'6" tall, she writes, yet "I later had a crew member close the hatch while I was in the driver's seat. In order to fit, I had to dig my chin into my chest and put myself in an almost impossible driving position."

I had the same problem until I adjusted the seat.

At 5'11" I fit comfortably into the tank. Not only didn't Rasor know about the adjustable seat, she apparently wasn't interested: The book was published in 1985, and the trip made in 1981, allowing ample time to make a telephone call. Her whole book is full of such tales. Thus do we influence policy in Washington.

Ignorance of such august dimensions is customary among Reformers. When I first became a military columnist for the Washington Times in 1982, I was given a briefing by Pierre Sprey, a Reformer and universal expert, about the defects of the tank. Sprey proceeded to tell me many terrible things about the M1. Much of it struck me as implausible: I grew up on a research base (Dahlgren Naval Weapons Laboratory) and graduated in 1966 from the Marine Corps light-armor school at Camp Pendleton. Spreys' notions bore no relation either to the military I had been in or to the engineers I had lived with. On the other hand, I didn't trust the Army. While the services had done little if any actual lying to me, on many occasions they had er, interpreted vigorously.

Having been duly "Spreyed," I showed up at Fort Knox with my own stopwatch and tape measure. I was determined that the Army wasn't going to fool me with a rigged acceleration test. I proceeded to badger the Army into letting me actually use the beast: drag-race it over a 50-foot course, fire it on the move and the rest. In evey case I could personally verify, from acceleration to effectiveness of turret stabilization, the Army's version proved correct.

Sprey had told me for example that the M1 was so dependent on its electronics that, should they fail, the tank couldn't fire. This is typical Reformery: Anything technically more advanced than the weaponry of World War II doesn't work. I turned the engine off, cut the master power, turned the turret with the hand cranks, aimed the auxiliary sight and twisted the manual firing handle. The tank fired.

All of these steps are explained in the crews manual (as is seat adjustment) with drawings. Why didn't Sprey and Rasor know these things? Because they had not tried to find out. Before leaving Washington I had asked Rasor's office for the manual. They didn't have one and had never read it: The tanks' premier critics hadn't bothered to read the instruction book. There are genuine questions to be asked about the tank, fairly interesting ones actually, but you won't hear of them because of Reformers keep the discussion at the level of clowning.

One begins to notice a pattern in the writings of the evangelical Reformers: First, a robust disregard for truth. Second, a taste for parady. Observe that the Reformers do not accuse the military merely of bureaucratic ineptitude, poor judgment, and inattention in the expenditure of other people's money—the normal foibles of federal agencies. Instead soldiers are accused of absurdity, of serious unfamiliarity with their profession, of behavior explainable only by clinically substandard intelligence. This is not analysis. It is caricature.

Consider another common example of comedic criticism: the assertion that the Army builds combat vehicles of flammable armor. The M2 Bradley, a sort of armored personnel carrier, uses aluminum armor. Various objections may be raised to aluminum armor, particularly in naval use (the Navy uses it extensively), and there are serious reasons for doubting whether the class of vehicles in general or the Bradley specifically is militarily advisable—but these are grown-up questions. The Reformers, seeking to lampoon rather than to describe, have decided that aluminum *burns.* (Ha ha—dumb ole Army, makes incendiary vehicles.)

From "The Pathology of Power," an unremarkably silly book of Reformism by Norman Cousins: "But under the right conditions—namely, a square hit by a mortar shell, a land mine, or even the right kind of grenade—this aluminum armor might ignite and burn fiercely, incinerating the occupants. The thicker such armor, the more intense and devastating the conflagration it would fuel." I have seen this notion in a dozen places. The New York Times, the grey mother of journalism, editorialized that the Bradley would go up "in a fireball."

Now, let's break with all tradition and think about this. Aluminum is an extremely common material whose properties are perfectly understood. If it burns, the Army is deliberately building crematoria for itself to ride in. I like to imagine the decision being made:

"What'll we build it of, general? Firewood?"

"Naw. Gotta paint it."

"How about . . . bundles of highway flares?"

"No, the troops would suspect."

"Well . . . aluminum?"

"The very thing! Goes up in a fireball!"

Does aluminum, burn? Of course not. My wife cooks often in an aluminum wok on a gas stove, and that wok has yet to go up in a fireball. Put a beer can on a gas stove—I did, for this article—and see whether it burns (the paint will smell up your kitchen). Ever wrap a potato in aluminum foil and put it in a camp fire? Were you incinerated by the intense conflagration? The publication of such stuff suggests a weird idea of servicemen and a non-existent grasp of chemistry.

The media often seem to accept this stuff without question, perhaps because reporters believe the Reformers to be engaged in public-service work. They aren't, exactly. Rasor for example works for a non-profit organization that depends on grants and direct mail solicitations for its income. Cousins isn't directly paid for his advocacy but, of course, book royalties depend on sales. Measured discussion of the design of armor don't sell books or attract donations. Splashy allegations do. Gary Hart's Reformist fulminations (in "America Can Win," a tract by Hart and Bill Lind) were going to be used, one supposes, to position him as a defense-minded presidential candidate before the self-destructed. Further, the attractions of attention are not without weight in Washington, and many reformers would never again go on television if they ceased to deal in sensational charges. The evangelicals are not without agendas of their own.

Another charcteristic of Reformist writing is heavy reliance on the fact that much of their nonsense is obvious only to specialists. For example, (I could provide pages of this) Cousins speaks of the Hellcat missile (it's the Hellfire, actualy, but why bother about details)? and worries that electronic jamming might make a descending ICBM fly back to destroy its country of origin (this would require repeal of the laws of physics), talks of the superiority of aiming a tank gun with the naked eye (flatly impossible), and admires the virtues of the Belgian Leopold tank (apparently he had heard of King Leopold and figures a Belgian tank must be a Leopold, as indeed it might be if the Belgians built a tank. Really it was a Belgian-owned German Leopard).

With equal insight, Rasor claims to have found that the M1 doesn't need a laser range finder because the optical range-finder works just as well; unfortunately the M1 doesn't have an optical range-finder (unless you count reticles on the auxiliary sight, which she wasn't using). She says the tank uses four gallons of fuel per mile, roughly correct; Lind and Hart say more than nine. (One number is about like any other, especially if you know that nobody will check it.) Yes, these are details. But if I wrote of politics with equal inattention to detail—speaking perhaps of a Rep. Ted Kennedy of Kentucky, who chaired a nonexistent committee—I would be laughed out of town. The Reformers get away with it.

The lack of adherence even to high-school standards of research is astonishing, but monotonously observable, in many Reformers whose intellectual credentials would lead one to expect better. Consider the DIVAD antiaircraft gun as described in "America Can Win." Lind is a bright and charming fellow, but makes himself comic by an inability to distinguish between what he knows and what he does not know. Hubris is an occupational disease of Reformers. Lind asked me to read the manuscript before it went to the publisher. In it was the familiar story of DIVAD's radar aiming its gun at a latrine fan (again, note the love of the comedic). I had looked into the tale with some care and concluded that it didn't happen. Noting this, I wrote that I assumed Lind had verified the tale.

In the published version the story became, "In another demonstration, a DIVAD's radar reportedly mistook a nearby fan in a latrine for a helicopter and aimed the cannon at it." Cute: "Reportedly" allows retention of the derogatory thrust—many readers will of course assume that what has been reported must be true—yet he is covered if anyone calls him on it. This is sheer intellectual dishonesty. It is not an isolated instance: In writing of the Navy's Aegis antiaircraft cruisers, he says, "The Navy reportedly rigged the tests." If true, the charge is very serious; it not, wildly irresponsible. No evidence is given.

A clever rhetorical technique of the Reformers, again exploiting the public unfamiliarity with the military, is the formulation of an amusing charge in one sentence which cannot be answered in less than a dense paragraph. Few will read the paragraph, and the answerer invariably sounds defensive as he endeavors to explain.

Take, for example, the rebuttal to the story of the latrine fan: DIVAD used a Doppler radar, which picks up only objects in motion. In particular it was intended to pick up helicopter rotors—i.e., large fans. Depending on such things as size of the fan, wave length of the radar, and so forth, DIVAD might well have been able to see a latrine fan. Radars pick up what's out there, not just what you are looking for. Naval radars see islands, for example. No malfunction is involved. Fine. But doesn't the foregoing explanation have a tone of trying to explain why one has been caught with one's hand in the cookie jar?

All of this chicanery might be tolerable provided that the prescriptions of the Reformers held up. They frequently don't. As a brief example, from Sprey and others I learned that a good tank should not weigh 60 tons, or have a laser range-finder, a fire-control computer, stabilized turret, or automatic transmission (these all being characteristics of the M1). What does one find on Israel's home-brew tank, the Merkava? All of these things. The same is true of German tanks, British tanks, and increasingly of Soviet tanks. Personally I would hesitate to instruct the Israelis in armored warfare. The Reformers are less timid.

Why do the Reformers do these things? They will tell you they want to Give Our Boys the Best, to promote the national security, to be sure the taxpayer gets what he pays for. (The defense contractors say the same thing. Purity runs in the streets in Washington.) Yet their behavior is inconsistent with these ends. You don't help our boys by making essentially random charges about a highly complex subject whose fundamentals you have made no attempt to master. In fact it is hard to think of a better way to get troops killed.

The approach of the Reformers is not gauged to persuade but rather to anger. But, by their relentless sloppy research and cultivated ignorance, they make themselves appear as lightweights, which in fact they are, so that any useful ideas they might have are easily ignored. This is not politically serious behavior.

Why, then, do they behave as they do? Chiefly, I think, because they are not aware that they are dealing in nonsense. The Reformers are zealots of the classic variety, with the usual self-righteousness and the usual hermetically-sealed minds. Having become frantically partisan over years of polemical trench-warfare, having partitioned the world into Themselves and The Enemy, they are perfectly unconscious of the rolling non sequiturs and athletic leaps of logic that constitute their conversation. If the cause is good, the details aren't important. It doesn't matter whether the armor burns as long as your heart's in the right place, and if the tank isn't really too small for humankind, well, it would be just like the Army if it were, and that's close enough.

(Fred Reed writes "Soldiering," a nationally syndicated column on military affairs, and is a Washington editor of Harper's.)

ENERGY INDEPENDENCE: ATTACKING THE TWIN ECONOMIC DILEMMAS

(Mr. ALEXANDER asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. ALEXANDER. Mr. Speaker, I was impressed yesterday with the observations of Dr. Lawrence Chimerine, president of Chase Econometrics, in observing the reasons for the stock market crash last week. Dr. Chimerine said that America is failing to address some of the fundamental problems that face our Nation. We are spending money on the wrong things. One of the things that we are spending money on that is wrong is importing foreign energy.

As a matter of the National Alcohol Fuel Commission a decade ago, I learned that America has both the technology and the resources to become energy independent.

Mr. Speaker, we lack only the policy. We could save $40 billion a year in energy costs and we could save $12 billion in farm program costs by adopting a national energy policy.

I hope that the President will consider including the trade deficit as part of the economic summit, and I hope that the summit discussions will provide serious attention to the formation of a national energy policy.

Mr. Speaker, a national energy policy would address the twin dilemmas that were the fundamental causes of the stock market crash: the budget deficits and the trade deficits. Use of blended motor fuels utilizing ethanol, methanol, and gasoline from domestic sources would reduce oil imports and save billions of dollars in farm program costs.

Last week, I wrote a letter to President Reagan commending him for agreeing to the economic summit with congressional leaders. In urging the President to include the trade deficits on the summit's agenda, I quoted a recent observation from the chairman of the board for one of the Nation's largest Wall Street firms:

> The trade deficits combined with the budget deficits are making the United States a nation owned by foreigners.

A substantial amount of the trade deficit—$40 billion—is imported foreign energy. In an atmosphere in which confidence in the economy has been shaken to its foundations, America can no longer afford such a massive volume of foreign energy imports.

We have an alternative to this deluge of foreign energy. A national energy policy establishing a blended fuel combining quantities of ethanol from grains, methanol from coal and/or natural gas, and gasoline from petroleum would have a series of interlocking benefits:

Not only would it dramatically diminish the trade deficit by reducing our dependence on foreign oil, it would also clean the air, cut farm program costs, and revive the economies of the agricultural, coal, natural gas, and oil-producing areas.

Mr. Speaker, the United States has the advanced technology and abundant resources to produce a blended fuel that requires no adjustment to automobiles. For example, the race cars at the Indianapolis 500 are run on alcohol fuel. We have the resources and the technology; we lack only the policy.

The NEP would not only attack the trade deficits problem, it would reduce the need to risk American lives and treasure protecting the flow of oil through the far-off Persian Gulf. On October 15, Secretary of Energy John Herrington reported to the Nation from Cairo that the United States must keep the sea lanes open so that foreign oil can flow freely to America. As an alternative to that dependence on foreign oil, I urge the administration to follow the strategy suggested by recent congressional efforts to strive for energy independence.

Several bills now in Congress would move toward expanded use of alcohol fuels. My bill, H.R. 2031, would require that half of the Nation's gasoline supply would use 10 percent ethanol, and the other half would use 5 percent methanol and 2.5 percent ethanol. Another bill, H.R. 3399, that I am cosponsoring with my distinguished colleague, PHILIP SHARP of Indiana, and other Members, would encourage the production and use of vehicles that run on alternative fuels. The latter bill has been unanimously approved by the Energy and Commerce Committee.

Development of alternative energy sources is now receiving strong support from a broad coalition, including people from agricultural areas interested in creating new markets for farmers, people in urban areas who are concerned about reducing air pollution, and people throughout the country who realize the great need to strengthen U.S. energy security while reducing the soaring trade and budget deficits.

An example of the broad use of the energy independence coalition took place at the National Conference on Fuel Alcohol and Oxygenates in Washington on October 1, when I shared the platform with Congressman RICHARD DURBIN of Illinois and Senator BOB DOLE of Kansas. People from all regions and both parties gathered at that conference to demonstrate their support for alternative energy sources.

The poignant memories of the oil shocks in the 1970's are a powerful force behind the coalition's burgeoning strength. We all vividly recall that the oil supply disruptions of the 1970's fueled runaway inflation and rudely awakened the United States from the sweet dream of cheap, limitless energy. Sadly, the Persian Gulf war again raises the threat of devastating oil price shocks reminiscent of the Arab oil embargo of the 1970's, with one disturbing difference: This time, the lives of American sailors and airmen are being endangered in order to keep the sea lanes open.

Mr. Speaker, we need to rely on energy from the heartland of America, not from the Persian Gulf. Let us remember that you don't have to reflag a grain truck or a boxcar full of coal.

The benefit of energy independence in the realm of reducing the trade deficits and strengthening energy security are clear enough. What has often been overlooked, however, is that alternative fuels would also be one step toward reducing the other of the twin terrors that caused the turbulence in the stock markets: the budget deficit.

In creating a new demand for farm products of between 2.6 and 2.7 billion bushels of grain per year, the price of corn would rise to between $3 and $3.35 per bushel—a level above the target price in the 1985 farm bill, thus saving almost all of the approximately $15 billion a year USDA anticipates spending on feed grain programs between 1988 and 1991. The loss of money to the highway trust fund caused by gasohol's exemption from 6 cents of the 9 cents Federal excise tax is about $3.12 billion, leading to a net reduction of the budget deficit by $12 billion.

I do not pretend that energy independence would solve the gargantuan problem of the budget deficits. By itself, it clearly would not do so. But with the fate of our economy at stake, we must utilize all available means to reduce the deficits. The savings in USDA costs would be one step in reducing the deficits, and we should not falter in taking that step.

Mr. Speaker, we cannot fail this time to attack the twin dilemmas in a bipartisan, statesmanlike quest to solve the problems, and not merely to veil them behind a smokescreen of rhetoric. A national energy policy would be one essential step toward reviving America's economic health. If we can embark upon a strategy that will enable us to make a genuine declaration of energy independence, we can show to the world that our commitment to address the trade deficits and the budget deficits is real, and not just hollow words.

PLEASE KEEP TERRY ANDERSON AND THE OTHER EIGHT HOSTAGES IN YOUR THOUGHTS AND PRAYERS

(Ms. SLAUGHTER of New York asked and was given permission to address the House for 1 minute and to revise and extend her remarks and include extraneous matter.)

Ms. SLAUGHTER of New York. Mr. Speaker, I rise today, saddened by the fact that Terry Anderson will spend yet another birthday in captivity. I want my colleagues to be reminded that today, Terry Anderson turns 40 years old.

Three years ago, Terry, the chief Middle East correspondent for the Associated Press, was abducted from the streets of Beirut by Moslem extremists. He has been held the longest of the eight Americans hostages still in captivity in Lebanon.

There are many things this 40-year-old man has had to go without, like the embrace of his 2½-year-old daughter who was born 3 months after his abduction or knowing of the deaths of his father and brother.

In my statement today, I have included an article written by Andy Rooney who writes of a morning spent looking out his window at the tulips below, taking a warm shower, a breakfast of fresh orange juice, coffee, and toast, and friends and family he'd be surrounded by all day. And then he thinks of the hostages and what they would give for a glimpse of those tulips.

Mr. Speaker, it is too easy for some to forget these men and their families because it has been so long. On Terry Anderson's 40th birthday and with the current state of affairs in the Persian Gulf, I ask my colleagues to remember a man who risked his life to inform us, the citizens of this Nation, about the bloody battles going on in the Middle East, about the symptoms and causes of terrorism, about America's role in this conflict.

I ask you, please keep Terry Anderson and the other eight hostages in your thoughts and in your prayers.

TERRORISM IN BLOOM

(By Andy Rooney)

There are times when I don't have much control over which thoughts come into my head, or when. The American hostages of the terrorists in Lebanon showed up, unbidden, in my head this morning when I got up at 5:40.

It is almost, but not quite, light at that hour now, and if I don't turn the bathroom light on, I can leave the shade up and still not be seen. This enables me to look down on our pretty back yard while I'm toweling off.

There are tulips in front of the hedgerow and the magnolia tree is in bloom. It was while I was looking out the second-floor window that the captives came to my mind. The pleasant thoughts I was having flew out of my head.

What would the hostages give for a glimpse of the tulips? For the warm shower I'd just had? For my breakfast of fresh orange juice, coffee, and toast? For the friends and family I'd be surrounded by all day long?

It is sickeningly sad to contemplate these eight Americans cooped up in some miserably hot, dark, lifeless place, chained perhaps, with only their hope to live on. That hope has failed them so often, it must be difficult for them to continue having it. Even the eternal spring must run dry.

The hostages are intelligent and educated men, although the fact that they're intelligent and educated shouldn't make their situation any sadder. They are held, as best we know, in small rooms with almost nothing to do. They get no news, hear nothing from their friends, or families, and, in all likelihood, despair of ever being released alive. It is far worse that a criminal's prison life.

You wonder what their captors think of them. Some personal relationships must have developed with the people who guard them and bring them food.

Their captors must know now that these Americans are decent, intelligent, innocent people. The captors are almost certainly deeply religious people. The Middle Eastern wars are basically religious wars. Do the captors feel any guilt, any remorse, over what they have done to these innocent individuals? Do they feel any compassion for their prisoners?

It is likely these zealots feel the sacrifice of their hostages' freedom is serving a higher cause. There is no fervor like religious fervor.

It would be a simple matter for the terrorists to murder their captives. There's no one to stop them. No one need know for weeks. You wonder whether the captors keep the hostages alive and feed them because of some sense of decency or merely because their prisoners are worth something to them alive and nothing to them dead.

Suicide must certainly come to the hostages' minds, but it is likely that even voluntary death is not an option available to them.

What is it the terrorists want again? We hardly remember—if we ever knew. Whatever it is, it is likely that the demand is nothing within the United States' power to grant.

The terrorists are not ordinary criminals. You should think that it must occur to them that it is a cruel thing they are doing. Our government did a foolish and dangerous thing when it offered weapons to the Iranians in exchange for hostages, while vowing, at the same time, not to negotiate. Paying off the terrorists makes hostages worth their taking. Every hostage taken from that day on can blame the people who made a deal. The eight hostages now held are held because of the hope our negotiators gave their captors that we're willing to pay ransom in the form of weapons and money.

There isn't time in our lives to feel sorry for everyone who ought to be felt sorry for. I just wished this morning that Terry Anderson, Thomas Sutherland, Frank Reed, Joseph Cicippio, Edward Tracy, Alann Steen, Jesse Turner, and Robert Polhill could have looked out on our garden with its tulips and then gone to work.

REPORT ON MY VISITS TO CDC AND NIH

The **SPEAKER** pro tempore. Under a previous order of the House, the gentleman from California [Mr. DORNAN] is recognized for 5 minutes.

Mr. **DORNAN** of California. Mr. Speaker, last week on the floor during the discussion and debate on pornographic comic books that were ostensibly printed to teach people about safer—with accent on the letter "r"—safer sex, I said that I would be going on Friday to the Centers for Disease Control in Atlanta, GA, and that I would also be going to the National Institutes of Health.

I did go to Georgia on Friday and I was most impressed with what I saw. And I did go this morning to the National Institutes of Health. I just cannot tell my colleagues and the American people how dedicated these men and women are.

At the six centers in Atlanta, and some of those centers are in other places in the country, what we call Centers for Disease Control—and I finally found out why that word is pluralized—I learned this morning there are 12 institutes in National Institutes of Health.

All of that discussion up there on The Mall a couple of weeks ago, all that gnashing of teeth and fist-shaking, misplaced anger at people in our Federal Government, the doctors, the research workers, the lab technicians, right down to the newest young male or female nurse in those sections, people that work with the children who are victims of cancer, and people in the Cancer Institute itself which I learned is part of the National Institutes of Health. Well, like 98 percent of our fellow Americans, I had always separated the Cancer Institute from NIH and all the other institutes. These people are so dedicated that everybody who rails against them is blowing a lot of foolish hot air into a hurricane.

You cannot find on this planet better people than the men and women we have working at CDC and NIH.

As far as this House allocating more money, certainly they can use a few more millions of dollars in research, but we have already put up over a billion to fight this now always-fatal plague of AIDS. And the amount that they are getting, given what happens in our conference committee between the other body and this Chamber will be somewhere in the neighborhood of $470 million, $478 million.

Where there is an arbitrary call, arbitrary for the Members of this and the other body, is in the education area. Nobody knows what the magic figure is to put the money out there for national health spots on television, to take ads in magazines, to lean on the Advertising Council for free spots, to get comic books that are not pornographic, down into what level of school? That is a decision we leaders at the Federal level will have to make.

Dr. Koop is the finest Surgeon General we have ever had. He is dedicated. I agree with him on about 98 percent of what he is saying. Just some of the fine tuning tears me up, that we have to introduce little third graders who have not had a sexual thought in their lives. I do not care what Sigmund Freud went to his grave saying, to introduce them to some of the bizarre and violent forms of conduct by sodomites in our society and then try to explain what is the safe way to do something they never even thought of doing, that a majority of our Judeo-Christian population thinks is immoral from the beginning. These people that criticize these two bodies—and there have been moments when I thought maybe they were not being loud enough or vocal enough for pushing hard enough to make the country aware of what was happening—the truth is that although they have leaned sometimes on the best scenario side instead of leveling with us as to what the worst scenario possible is going to be, other than that one little difference in judgment, they have been trying to reach us through the media. The media dragged its feet for awhile because they are intimidated by political pressure groups. But now the media is fully, as far as I can tell, 100 percent with a program of trying to let the American people and the world know the dimensions of the HIV virus and this AIDS plague, and it is up to the average American to open up his or her ears and listen to what they are being told by our dedicated health authorities and by the media.

It is rare that I get up here and refer to the fourth estate and say they are ahead of us on anything but I will have to say that the American mass media, electronic and print, is way ahead of the U.S. Senate, way ahead of the U.S. House of Representatives.

I have said on this floor before, I am tired of sponsoring luncheons and having three or four people show up, always the same three or four people. Every Member of this House of Representatives is going to be in town hall meetings next year and he is going to be asked for specifics about this AIDS plague. And you had better have the answers.

Come to my next luncheon which will be soon.

PROGRESS IN THE AREA OF WORKER RIGHTS

The **SPEAKER** pro tempore. Under a previous order of the House, the gentleman from Ohio [Mr. PEASE] is recognized for 5 minutes.

Mr. **PEASE**. Mr. Speaker, I rise today to bring to the attention of the House some progress that has been made in the area of worker rights. As Members will recall 3 years ago when the House voted to extend the Generalized System of Preferences Program, the House included in that bill, and the Senate agreed, language which says that nations, Third World nations seeking tariff-free entry into the U.S. market must give some consideration to the rights of the workers in those nations. We defined as internationally recognized worker rights: freedom of association, the right to organize and bargain collectively, freedom from forced labor, some minimum age for the employment of children and considering the economic level of development of a nation, considerations of health and safety, minimum wage, and so on.

Well, in the trade bill that passed the House last year, we went a step further in defining denial of recognized worker rights as an unfair trade practice which can be complained against under section 301 of our Trade Act.

I want to tell the Members of the House that that language last year that we put in 3 years ago which we enacted, and this year that we have in our trade bill is paying off. It has come to my attention, for example, there has been a lot of progress in the Republic of Korea just this year. Korea used to have the most repressive trade laws and the most repressive enforcement of those laws of almost any country. And yet Korea is a major trading partner of the United States. In the last several months, Korea has amended its restrictive trade laws to make it possible for the Korea Federation of Labor to act in an unimpeded fashion to encourage labor organizing.

Many unions that try to organize in foreign-owned firms in Korea found in the past that they were repressed. The Korean Government has repealed those laws also.

Many times the Korean Government would define certain industries as essential to the national economy and ban union-organizing altogether in those industries. That list has been revised. The Korean Government has set a timetable for establishing a minimum wage.

And, very importantly, in the wave of labor unrest that hit Korea this summer, the Korean Government made it clear for the first time that it would not interfere with labor union organizing as long as it was not violent organizing. And indeed the Korean Government has helped to facilitate some of the dispute settlements that have gone on.

That is on the good side.

On the bad side I must say that not everything is perfect in South Korea. It has come to my attention that an independent union was organized at the Hyundai plant which is flooding the United States with automobiles, an independent union was organized this summer at long last to represent the workers of the Hyundai plant.

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Unfortunately, the two leaders of that union have been arrested and put in jail. This is a throwback to the old South Korea. It does not set well with the new South Korea, which is facing democratic elections this year and which is trying to refurbish its image for the upcoming Olympics.

I would just hope the Korean Government would rethink its position, free those labor leaders, and have a consistent pattern of enlightened labor policies. But all of this, I remind my colleagues, has come about, I believe, because in the United States we have taken care to establish worker rights as a criterion for whether or not we will extend tariff-free trade treatment to countries like South Korea.

Mr. Speaker, when we get our trade bill on the floor in a couple of weeks, that provision will be in it, and I hope our Members will support it with pride.

AN EXAMINATION OF THE DEPARTMENT OF JUSTICE'S POSITION ON CIVIL RICO REFORM

The **SPEAKER** pro tempore (Mr. Espy). Under a previous order of the House, the gentleman from Michigan [Mr. Conyers] is recognized for 5 minutes.

Mr. CONYERS. Mr. Speaker, the Subcommittee on Criminal Justice, which I am privileged to Chair, has been carefully looking into calls for civil RICO reform by various segments of the business community, chiefly the securities and banking industries and the accounting profession. I rise to discuss the development and rationale behind the current untenable position of the Department of Justice in this most important debate.

I

On September 30, 1985, Phillip D. Brady, acting Assistant Attorney General, of the Department informed me by letter that a prior criminal conviction requirement would not be "the best approach to limiting the scope of civil RICO."

On July 22, 1986, Assistant Attorney John R. Bolton, of the Department informed by letter the Honorable Thomas P. O'Neill, Jr., Speaker, House of Representatives, that a prior criminal conviction requirement "would best respond to the increasingly troublesome issues that civil RICO" has raised.

What accounts for the dramatic turn-around in the official position of the Department?

No new facts came to light between September and July, as these remarks will demonstrate.

No new policy considerations were identified between September and July, as these remarks will demonstrate.

The best explanation lies in a change of personalities—the substitution at the position of the Deputy Attorney General in the Department for J.D. Lowell Jensen, a widely experienced Federal and State prosecutor, of Arnold I. Burns, a prominent New York corporations and securities lawyer.

What is the significance of these conflicting recommendations?

II

In 1970, we enacted the Organized Crime Control Act, title IX of which is known as the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961-68 [RICO]. The act grew out of hearings held by the late Senator John L. McClellan, who was, along with Senator Roman L. Hruska, and Congressman Richard L. Poff, now a justice of the Virginia Supreme Court, principal sponsors of the 1970 legislation. The McClellan committee's hearings in the Senate demonstrated beyond serious argument that existing Federal and State law was inadequate in dealing with the illicit activities of the Mafia, particularly as it had corrupted or taken over legitimate businesses, unions, and units of State and local government.

In light of those hearings, the President's Crime Commission, in 1967 recommended that antitrust-type civil remedies be adapted to the activities of the underworld. Similarly, the American Bar Association, after careful study, called for the authorization of treble-damage relief for private parties suing under RICO. The National Chamber of Commerce and the Judicial Conference of the United States also voiced support for RICO. The President, too, endorsed the concept of private treble-damage actions. For these reasons, the 1970 act included provisions, not only for Government criminal and civil actions, but also private claims for treble damages for victims of specified conduct—termed predicate offenses—involving violence, the provision of illegal goods and services, governmental and union corruption and, last but not least, commercial and other forms of criminal fraud.

After vigorous debate, we specifically decided not to limit the 1970 act to the activities of organized crime figures. The inadequacies of Federal and State law identified in the study of Mafia prosecutions existed in all cases involving sophisticated forms of criminal behavior. Then-Congressman Poff observed:

> [E]very effort . . . [has been] made to produce a strong and effective tool with which to combat organized crime—and at the same time deal fairly with all who might be affected . . . [by the] legislation—whether part of the crime syndicate or not. (116 Cong. Rec. 25,204 (1970).)

Since 1970, 27 States have enacted similar legislation; it is pending in another half dozen legislatures.

The Department of Justice has now recommended to us, however, that private civil RICO suits be circumscribed by the unprecedented device of a prior criminal conviction limitation; that is, before a person actually injured in his business or property by a violation of RICO could civilly sue for treble damages, he would have to show that the defendant had already been prosecuted and convicted criminally of either RICO or at least two of its predicate offenses. I note, too, that provisions in bills introduced by our distinguished colleagues Congressman Frederick Boucher (H.R. 2983) and Senator Howard Metzenbaum (S. 1523), would similarly make the recovery of treble damages under RICO subject to the showing of a prior criminal conviction on the part of the defendant.

These remarks consider and reject as profoundly unwise these legislative recommendations.

The Supreme Court in *Sedima S.P.R.L.* v. *Imrex Co. Inc.* (473 U.S. 479, 490 n.9 (1985)) aptly summarized the crucial objections to the criminal conviction limitation:

> It arbitrarily restricts the availability of private actions, for law breakers are often not apprehended and convicted. Even if a conviction has been obtained, it is unlikely that a private plaintiff will be able to recover for all of the acts constituting an extensive "pattern", or that multiple victims will all be able to obtain redress. This is because criminal convictions are often limited to a small portion of the actual or possible charges. The . . . [limitation] would also create peculiar incentives for plea-bargaining to non-predicate-act offenses so as to ensure immunity from a later civil suit. If nothing else, a criminal defendant might plead to a tiny fraction of counts, so as to limit future civil liability. In addition, the dependence of potential civil litigants on the initiation and success of a criminal prosecution could lead to unhealthy private pressures on prosecutors and to self-serving trial testimony, or at least accusations thereof. Problems would also arise if some or all of the convictions were reversed on appeal. Finally, the compelled wait for the completion of criminal proceedings would result in pursuit of stale claims, complex statute of limitations problems, or the wasteful splitting of actions, with resultant claim and issue preclusion complications.

It is important for the development of sound legal policy, however, to review in detail the justifications offered by the Department for its new recommendations and to set out why they should be rejected. It will follow, too, that the similar recommendations contained in H.R. 2983 and S. 1523 ought to be rejected.

III

Assistant Attorney General John R. Bolton submitted on July 22, 1986, a proposed bill to the Senate and the House to amend section 1964(c) of title 18, United States Code—the provision in the Racketeer Influenced and Corrupt Organizations Act [RICO], which permits Federal treble damage suits for injuries caused by RICO violations. The Department's recommendations are contained in S. 635 in this Congress. The text of Mr. Bolton's letter follows these remarks. The proposed legislation would amend RICO to require proof of a prior criminal conviction as an essential element of a private civil RICO suit for treble damages. Mr. Bolton suggests that this approach will best respond to the "troublesome issues" that civil RICO litigation has raised over the past several years.

Mr. Bolton is profoundly wrong. While reform may be needed of aspects of civil RICO litigation, Mr. Bolton's proposal is a remedy that far exceeds in scope any demonstrated abuse. Those who suggest that civil RICO litigation reflects abuse have the burden of proving that:

First, a substantial number of abusive suits are being filed;

Second, existing safeguards against such suits are not adequate to remedy them;

Third, new safeguards against such suits that are adequate cannot be designed; and

Fourth, the detriment from these suits outweighs the benefit from legitimate suits.

None of these burdens has been met. (See Goldsmith, "Civil RICO Abuse: The allegations in Context," 1968 Brigham Young University Law Rev. 55, 103 ("Upon review * * * RICO abuse is not a serious problem for our legal system so long as counsel and courts appreciate the utility of existing remedial procedures. Accordingly * * * Congress * * * should recognize that abuse arguments are more likely motivated by hostility to the RICO remedy").)

Mr. Bolton's recommendations would apply to all private civil RICO litigations, not just that which may be "troublesome." A prior criminal conviction requirement would, in effect, eliminate virtually all private claims for relief under civil RICO. It would deny to all deserving plaintiffs—as well as those who might abuse the statute—their most effective remedy. As such, it should be rejected.

IV

A. Civil RICO does not discriminate on the basis of ethnic or social position; anyone who engages in the elements of criminal fraud can and should be sued under section 1964(c):

> First, private RICO suits have not achieved their intended purpose as supplements to the federal government's criminal enforcement efforts against organized crime . . . Fewer than ten percent of private civil RICO actions have been based on what is ordinarily considered to be organized crime activity. Instead, the vast majority of actions has arisen out of commonplace commercial transactions allegedly involving fraud on the part of businesses and individuals that have no connection to organized crime.

Mr. Bolton's assertion that few private RICO actions are based on "what is ordinarily considered to be organized crime" has about it a touch of ethnic and class bias; it also displays a lack of understanding of "organized crime." No person's name need end in a vowel or his collar be blue to violate RICO. As Justice White pointed out in the Supreme Court's Sedima decision, "(L)egitimate' * * * enterprises * * * enjoy neither inherent incapacity for criminal activity nor immunity from its consequences" (473 U.S. at 499).

During the RICO enactment debates, Congressman Poff responded to a query concerning the lack of references in RICO to organized crime by stating:

> The gentleman [Congressman Mikva] inquired rhetorically as to why no effort was made to define organized crime in this bill. It is true that there is no organized crime definition in many parts of the bill. This is, in part, because it is probably impossible precisely and definitively to define organized crime. But if it were possible, I ask my friend, would he not be the first to object to such a system? (116 Cong. Rec. 35,204 (1970)).

Dishonest corporate officials and securities dealers are just as capable of larcenous conduct as Mr. Bolton's "mobsters," and their victims are just as deserving of relief under civil RICO. Victims of such crime rightly care little that their life savings are stolen by mobsters wearing black shirts and white ties or by accountants while dressed in Brooks Bros. suits and white collars. RICO was consciously written to apply equally to anyone who violated it.

No one ought to deny that major corporations in fact engage in illegal practices, including fraud. A survey of 1,043 major corporations between 1970 and 1980 indicated that 117 had significant convictions or consent decrees for 98 antitrust violations; 28 cases of kickbacks, bribery, or illegal rebates; 21 instances of illegal political contributions; 11 cases of fraud; and 5 cases of tax evasion. (Ross "How Lawless Are Big Companies" Fortune, Dec. 1, 1980, at 57.)

Commercial fraud is a serious national problem, one that costs businesses and consumers billions of dollars every year. (United States Chamber of Commerce, "White Collar Crime: Everybody's Loss" (1974)). All too often, it is a "commonplace commercial transaction," and combating it is one of the most important uses for civil RICO.

Writing in 1967, the President's Crime Commission, the studies of which lead to RICO, observed:

> [W]hite-collar crime, is now commonly used to designate those occupational crimes committed in the course of their work by persons of high status and social repute * * * [who] are only rarely dealt with through the full level of criminal sanctions * * *.
>
> During the last few centuries economic life has become vastly more complex. Individual families or groups of families are not self-sufficient; they rely for the basic necessities of life on thousands or even millions of different people, each with a specialized function, many of whom live hundreds or thousands of miles away.
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> * * * * *
>
> Serious erosion of morals accompanies [the] violation[s] of [white collar offenders]. [Those who so] flout the law set an example for other business and influence individuals, particularly young people, to commit other kinds of crime on the ground that everybody is taking what he can get. (The Challenge of Crime in a Free Society 47-48 (1967))

The Commission also commented:

> [F]raud is * * * [an] offense whose impact is not well conveyed by police statistics. * * * Fraud is especially vicious when it attacks, as it so often does, the poor or those who live on the margin of poverty. Expensive nostrums for incurable diseases, home

> improvements frauds, frauds involving the sale or repair of cars and other criminal schemes create losses which are not only sizable in gross but are also significant and possibly devastating for individual victims" (*Id.* at 33-34.)

See also ***Furman*** v. ***Cirrito,*** 741 F. 2d. 524, 528-29 (2nd Cir. 1984) (Pratt, J.):

> Despite the clarity of congress's language [in drafting RICO] defendants argue that since RICO's primary purpose is to eradicate organized crime, it is [not] directed * * * against businessmen engaged in garden variety fraud * * *. While RICO's primary focus may have been on organized crime, when considering the statute congress also recognized that fraud is a persuasive problem throughout our society * * * which causes billions of dollars in loss each year * * * Congress further acknowledged that existing state and federal law was not capable of dealing with this problem.

* * * * *

> When congress provided severe penalties, both civil and criminal, for conducting the affair of an "enterprise" through a "pattern of racketeering activity," it provided no exceptions for businessmen, for white collar workers, for bankers, or for stockbrokers. If the conduct of such people can sometime fairly be characterized as "garden variety fraud," we can only conclude that by the RICO statute congress has provided an additional means to weed that "garden" of its fraud.

B. Stories of Civil RICO abuse are exaggerated; existing safeguards can eliminate specious suits; more safeguards can be implemented. A few instances of abuse do not justify effectively eliminating the claim for relief.

> * * * unanticipated applications of the statue have occurred in cases involving claims of sexual harassment, disputes over the leadershp of a synagogue, and routine divorce controversies.

Mr. Bolton trots out exceptional horror stories about the misuse of civil RICO, without telling us that such specious claims are usually disposed of at the pleadings stage. In fact, Department of Justice studies show that 61 percent of all RICO cases prior to July 1985 were decided in favor of defendants. (Testimony of Assistant Attorney General Stephen S. Trott, Oversight on Civil RICO, Hearing before the Senate Judiciary Committee, 99th Cong. 1st Sess. at 127 (1985) (hereinafter Trott)). If anything, these data show, not only that existing remedies for abuse are working, but also that district courts are manifesting a hostility to civil RICO litigation not warranted by its text, legislative history, or purpose. Particular classes of claims, moreover, could be excluded from RICO without excising other claims that are more substantial. Each of Mr. Bolton's "troublesome" categories could be excepted from the act's jurisdiction without impact on the general operation of the statute. How then may Bolton's general attack on RICO be justified, unless he is more concerned about giving victims remedies, which might curtail corporate abuse, than curtailing plaintiffs, who might abuse civil RICO?

Plaintiffs may, of course, seek to abuse civil RICO, as they may seek to abuse any statute, including the antitrust or securities statutes, but there are mechanisms already available to curtail such abuse—in the Model Code of Professional Responsibility, the Federal Rules of Civil Procedure, and in the tort law claim of abuse of process. The solution to meritless litigation lies, therefore, not in imposing additional requirements for establishing plaintiff's prima facie case, but in using existing rules and procedures to discourage abusive litigation. If the existing rules are inadequate, the appropriate solution is to reform the remedies, not redraft RICO, because the problem of meritless actions—whatever its scope—extend beyond RICO to all civil actions. (See ***Hoover*** v. ***Ronwin*** 104 S.Ct. 1989, 2012 (1984) (Stevens, J. dissenting) ("Frivolous cases should be treated as exactly that, and not as occasions for fundamental shifts in legal doctrine. Our legal system has developed procedures for speedily disposing of unfound claims; if they are inadequate to protect [individuals] from vexatious litigation, then there is something wrong with those procedures, not with the law.")) Mr. Bolton, however, would eliminate civil RICO abuse through a prior criminal conviction requirement. Many argue that personal injury lawyers file specious claims, but no one seriously suggests that a defendant should first be convicted of murder before anyone could sue him for wrongful death. Perspective is called for. Our society knows no mark of shame more stigmatizing than that of Cain, yet homicide may be both murder and wrongful death. (*Halberstam* v. *Welch,* 705 F2d 472 (D.C. Cir. 1983)). Traditionally, civil recovery for wrongful death having criminal characteristics may be obtained without showing a prior criminal conviction or meeting an increased burden of proof. (See, e.g., *Louisville Evansville and St. Louis R.R.* v. *Clarke,* 152 U.S. 230, 235-42 (1984) ("wholly civil in character"). See ***Watson*** v. ***Adams,*** 187 Ala. 490, 494, 65 So. 528, 533 (1914) (wrongful death) ("Great as the love of money may be in some human beings, it cannot be presumed that to be held liable for damages is, to the ordinary man, the equivalent of the impending, unless diverted, exaction of his freedom or his life * * *")). Similarly, murder may be an issue in the imposition of a constructive trust or the voiding of bequest, yet a conviction is not required, and the homicide may be shown by a preponderance of the evidence. See, e.g., *Small* v. *Rockfeld,* 66 N.J. 231, 245, 330 A.2d 335, 343 (1974) (no conviction required); *Burns* v. *United States,* 200 F.2d 106, 107 (4th Cir. 1952) (acquittal in criminal case not defense in civil case where murder at issue); Uniform Probate Code 2-803(e) (1983) (conviction for murder not required and killing may be shown by preponderance of the evidence); Restatement of the Law of Restitution § 187, comment f. (1937) No sound reason exists for circumscribing RICO in a fashion that no other claims for relief in Federal law are similarly circumscribed, including anti-trust and securities.

C. Civil RICO's use against business fraud is entirely consistent with the language of the statute and with congressional intent.

> [S]ection 1964(c) * * * has lead to the unnecessary and unwise federalization of an area of the law that is best reserved to the states * * *. We do not believe that, when it enacted RICO, Congress thought it necessary to create a general federal remedy for fraud, or that it intended to do so.

Mr. Bolton makes a completely unsubstantiated claim that Congress did not intend RICO to be a general federal fraud remedy. He should read the statute. "The language of * * * [RICO] * * * [is] the most reliable evidence of [congressional] intent * * * (*United States* v. *Turkette,* 452 U.S. 576,593 (1981)). Congress included mail fraud, wire fraud, travel fraud, and bankruptcy fraud in its list of RICO's predicate offenses. Then under section 1964(c), it granted a civil claim for relief to "any person injured in his business or property * * *." through the commission of those offenses in violation of RICO. The statement of findings and purposes of Pub. L. 91-452 specifically stated that sophisticated forms of "crime in the United States * * * annually drain [* * *] billions of dollars from America's economy by * * * the illegal use of force, fraud, and corruption * * *." (84 Stat. 922-236 (1970)).

Mr. Bolton should also have looked at the legislative history of the bill. Some of the Congressmen, who voted against RICO, shared his objections to it—that its application was not limited to "organized crime," and that it extended federal jurisdiction to commercial fraud cognizable under State law. Congressman Mikva, for example, pointed out "[w]hat we have done in one fell swoop * * * is incorporated as a part of the Federal law all of the offenses which heretofore have traditionally been treated as under State and local jurisdictions." (116 Cong. Rec. 35,205 (1970)). Mr. Bolton's federalism concerns would not ring false if he were not also one of the principal forces behind Federal tort reform and similar national efforts to circumscribe local products liability litigation. He is consistent in his principles only to the degree that he always wishes to undercut plaintiff's rights to recover for their injuries with the best remedy and forum possible. It is abundantly clear that Congress fully intended, after specific debate, to have RICO apply beyond any limiting concept like "organized crime" or "racketeering" and, over specific objections raising issues of Federal-State relations and crowded court dockets, Congress deliberately extended RICO to the general field of commercial and other fraud.

D. Civil RICO is an important safeguard for the general public; other criminal and civil sanctions are often inadequate.

> * * * There is no need for a general federal fraud remedy. Persons who engage in serious fraud can be, and frequently are, prosecuted for criminal offenses under both federal and state statutes. In addition, federal laws and judicial decisions afford civil redress for specific types of fraudulent conduct, such as securities fraud, and state statutes and common law principles permit civil recovery for those species of fraud not covered by federal law. We know of no shortcomings in these various provisions such as would warrant adoption of a broad federal remedy for fraud.

Notwithstanding Mr. Bolton, a dire need exists for a general Federal fraud remedy. Congress enacted civil RICO knowing full well that traditional remedies were inadequate. (See 84 Stat. 923 (1970) ("the sanctions and remedies available * * * are unnecessarily limited in scope and impact")).

For example, bank fraud, particularly by insiders, is deeply disturbing. In the 1980-81 period, the failure of 105 banks and savings and loans cost $1 billion. Roughly one-half of the bank failures and one-quarter of the savings and loan collapses had as a major contributing factor criminal activities by insiders, few of whom, according to the findings of a study of the Subcommittee on Commerce, Consumer and Monetary Affairs, chaired by our distinguished colleague, DOUG BARNARD, were adequately sanctioned, criminally or civilly. (See Federal Response to Criminal Misconduct and Insider Abuse in the Nations' Financial Institutions, H.R. Rep. No. 1137 98th Cong. 2d Sess. 5 (1984).) The Barnard committee observed:

> Despite enormous losses, neither the banking nor the criminal justice systems impose effective sanctions for punishment to deter white-collar bank fraud. The few insiders who are singled out for civil sanctions by the banking agencies are usually either fined de minimis amounts or simply urged to resign. The few who are criminally prosecuted usually serve little, if any, time in prison for thefts that often cost millions of dollars.

Most banks, in fact, do not have the financial resources or the expertise to protect themselves from sophisticated schemes to defraud, according to recent testimony of the FDIC before the Senate Judiciary Committee. (Testimony of Daniel W. Persinger, Deputy General Counsel, Federal Deposit Insurance Corporation, Oversight on Civil RICO Suits, Hearings before the Senate Judiciary Committee, 99th Cong. 1st Sess. at 216 (1985)). Ninety-seven percent of the federally insured banks have assets of less than $500 million; 84 percent less than $100 million; 66 percent less than $50 million.

Ultimately, many of these costs of fraud are passed on to the rest of us. Insurance fraud, for example, annually costs $11 billion, and since the typical insurance company must generate $1.25 in premiums for every dollar it pays out, the bill that the Nation must meet amounts to $13.75 billion. (N.Y. Times, July 6, 1980, at 17, col. 1) Indeed, the "insurance crisis" that is leading legislators to rewrite our liability laws to curtail litigation abuse might be better dealt with by enforcing vigorously our laws against fraud. (See generally N.Y. Times, March 2, 1986, at 20, col. 1 (industry said to lose $5.5 billion or make $1.7 billion); The Explosion in Liability Lawsuits Is Nothing But a Myth, Bus. Wk., April 21, 1986, at 24, col. 1)

Leaving aside the question of Mr. Bolton's "serious" fraud (as opposed to what?), it is clear that white-collar criminals are rarely prosecuted, and seldom convicted, for a plethora of reasons completely unrelated to their guilt or innocence: lack of prosecutorial resources, plea-bargaining, defendants turning states evidence, and legal technicalities. J. Conklin, Illegal But Not Criminal: Business Crime in America 129 (1977) rightly concludes:

> [T]he criminal justice system treats business offenders with leniency. Prosecution is uncommon, conviction is rare, and harsh sentences almost non existent. At most, a businessman or corporation is fined; few individuals are imprisoned and those who are serve very short sentences. Many reasons exist for this leniency. The wealth and prestige of businessmen, their influence over the media, the trend toward more lenient punishment for all offenders, the complexity and invisibility of many business crimes, the existence of regulatory agencies and inspectors who seek compliance with the law rather than punishment of violators all help explain why the criminal justice system rarely deals harshly with businessmen. This failure to punish business offenders may encourage feelings of mistrust toward community morality, and general social disorganization in the general population. Discriminatory justice may also provide lower class and working class individuals with justifications for their own violation of the law, and it may provide political radicals with a desire to replace a corrupt system in which equal justice is little more than a spoken idea.

Indeed, skillfully plea bargaining can easily circumvent the treble damage provision entirely. Ivan Boesky, the most egregious insider trader in history, pled guilty not to insider trading—a securities law predicate offense under RICO—but to conspiracy to file a false statement with the SEC, 18 U.S.C. §§ 371, 1001 which is not a RICO predicate offense.

Should Mr. Bolton's proposal—or Congressman BOUCHER's—or Senator METZENBAUM's—pass, a variety of factors could protect an otherwise guilty defendant from a treble damage civil RICO claim, and often leave deserving plaintiffs with remedies that allow recovery only for actual damages. That way, at worst, the defrauder would have to return what he had taken. Compared to the deterrent value and adequate compensation features of the treble damages provision of civil RICO, current law—without RICO—would in fact have serious shortcomings.

E. Civil RICO does not undermine other remedies; it buttresses them.

> * * * The increasing use of section 1964(c) as a federal fraud remedy threatens to undermine carefully crafted and well established federal statutory schemes that have been developed to regulate the securities, commodities, banking, accounting, and savings and loan industries.

In arguing that section 1964(c) undercuts the Securities Act of 1933, the Securities Exchange Act of 1934, and other Federal statutes, Mr. Bolton, as in the case of others, who should know better, simply misreads the law. For an impression is apparently widespread, particularly among the securities industry, that RICO simply "overlaps" all securities fraud. Justice Marshall in dissent in Sedima expressed a similar concern (473 U.S. at 505) ("virtually eliminates decades of legislative and judicial developments of private civil remedies under the Federal securities laws"). Nothing could be further from the truth. RICO says "offenses" involving "fraud in the sale of securities" "punishable under any law of the United States." 18 U.S.C. 1961 (1)(D) (1982). "Offenses" means criminal offenses. (Black's Law Dictionary at 975 (5th ed. 1979). See *Trane* v. *O'Connor Securities*, 701 F.2d 26, 29 (2d Cir. 1983) ("obviously refers to criminal punishment"); *Dan River, Inc.* v. *Icahn*, 701 F.2d 278, 291 (5th Cir. 1983) ("criminal intent is * * * necessary in either mail fraud or securities fraud [under RICO.]"). Accordingly, only the criminal fraud provisions of the securities acts fall within RICO. (See, e.g., Securities Act of 1933, 15 U.S.C. § 77x (1982) ("willfully"); Securities Exchange Act of 1934, 15 U.S.C. § 78ff (1982) ("willfully"). Merely negligent conduct or a transaction that only operates as a fraud does not fall within the statute. (See *Aaron* v. *Securities and Exchange Comm.*, 446 U.S. 681, 701-02 (1980) (intent to defraud rather than negligence in 10(b) ('34) or 17a(1) ('33), but not untrue statements or admission or transactions that operate as a fraud 17(a)(2) or (3) ('33)). Such an overlap between statutes is neither "unusual nor unfortunate." (*S.E.C.* v. *National Securities, Inc.*, 393 U.S. 453, 468 (1969)). Indeed, the securities acts themselves envision it. (See, e.g., Section 28(a) of the Securities and Exchange Act of 1934, 15 U.S.C. 78 bb(a) (1982) ("rights and remedies" "in addition" to "all other" that might exist)). RICO, too, recognizes the overlap. (84 Stat. 947 (1970) ("Nothing in this title shall supersede any provision of Federal, State or other law imposing criminal penalties or affording civil remedies in addition to those provided for in this title")).

That RICO supplements our basic securities laws, more over, is hardly lamentable. The funding of the Securities and Exchange Commission, for example, has increased since 1979, but its staffing has decreased, and its pending investigations are down. Yet the number of shares traded on the New York Stock Exchange has shot up 300 percent 1977; the number of first time registrants has increased by 260 percent. Even among legitimate brokerage firms, the incentive structure for commissions encourages a fraud known as "churning," trading stock without regard for investment objectives. Similarly, the futures industry in the United States has grown tremendously in recent years. The 139.9 million futures contracts traded in 1983 represents a level of trading activity 15 times greater than that reached on 1968. The value of contracts traded exceeds $5 trillion a year. Nevertheless, the resources of the Commodities Futures Trading Commission have remained relatively constant. It has been suggested, that the industry is a scandal waiting to happen, for the Commission "is thoroughly out-gunned in the ongoing battle against commodity fraud." Senate Comm. on Governmental Affairs, Commodity Investment Fraud, S. Rep. No. 97-495, 97th cong., 2d Sess. 10 (1983).

In addition, accounting firms, once thought to play the role of outside watchdogs, are under heavy competitive pressure to go along with questionable annual reports, and they are increasingly losing their independence, since they also offer management consulting advice. (See, All Eyes on Accountants, Time, April 21, 1986 p. 61.) "After a spectacular string of corporate failures and financial scandals in recent years, the industry that is supposed to audit company books and sniff out chicanery" (Id.) is itself coming under close scrutiny. Since 1980, the Big Eight have had to pay more than $180 million to settle liability suits. No wonder that the accounting profession is a major contributor to the political campaigns of those in the forefront of the effort to exonerate RICO. (See, Rolling Back RICO, National Journal, Sept. 6, 1986 p. 2114-2115.) Indeed, Theodore C. Barreaux, vice president of the American Institute of Certified Public Accountants, attributes the Department of Justice's switch to a series of meetings between accounting institute lawyers and Department officials. (Id. at 2115.)

Joseph Connor, chairman of Price Waterhouse acknowledges: "We've failed in our public duty. We should sound the drum when a company is on the brink of disaster." (Time, supra note 16, at 61.) Spectacular failures include the collapse of E.S.M. Government Securities Inc., which fell after falsified books that concealed millions of dollars of losses from investors were made possible by a bribed accounting firm auditor. Investors with accounts at the firm, including as many as a dozen municipalities, lost as much as $315 million. The collapse of E.S.M. also led to the insolvency of Home State Savings Bank in Ohio and the shutdown of 69 privately insured thrift institutions. The accounting firm of Grant Thornton recently reached a $22.5 million settlement with the American Savings and Loan Association, which lost $55.3 million; it also reached a $50 million settlement with 17 municipal government, which sued under RICO. (New York Times, Sept. 17, 1986, p. 48 col. 6). More than a little historical irony is present in Mr. Bolton's defense of the securities statutes. Like RICO, when the 1933 act was passed, it, too, was attacked as antibusiness. (See, J. Seligman, "The Transformation of Wall Street" 79 (1983), quoting then-Prof. Felix Frankfurter: "The leading financial law firms who have been systematically carrying on a campaign against [the Securities Act of 1933] have been seeking—now that they and their financial clients have come out of their storm cellar of fear—not to improve but to chloroform the act. They evidently assume that the public is unaware of the sources of the issues that represent the boldest abuses of fiduciary responsibility.") History repeats itself.

F. Civil RICO does not threaten legitimate businesses; it works against businesses who engage in criminal fraud and protects law abiding businesses from illegal acts by others.

> Equally serious is the threat of civil RICO liability to legitimate businesses engaged in purely commercial transactions. Section 1964(c) permits virtually any legitimate business enterprise to be charged with "racketeering" and threatened with a judgement for treble damages and attorneys' fees, simply on the basis of an ordinary commercial dispute. Civil RICO skews dispute resolution in commercial cases, extorts settlements and increases legal fees, which cost ultimately will be passed on the purchasers of the goods or services.

Mr. Bolton speaks of civil RICO's "threat" to "legitimate" business. To refer to a business as "legitimate" without inquiring into the truth of charges brought against it, begs the question (*See Myers* v. *Bethlehem Shipbuilding Corp.*, 303 U.S. 41, 51-52 (1938) (Brandeis, J.) ("Lawsuits * * * often prove to [be] groundless but no way has been discovered for relieving a defendant from the necessity of a trial to establish the fact.")) Similarly, the second circuit suggested that civil RICO suits against "respected and legitimate enterprises" where "extraordinary, if not outrageous." (*Sedima S.D.R.L.* v. *Imrex Co., Inc.*, 741 F.2d 482, 495-96 (2nd Cir. 1984), rev'd, 473 U.S. 479 (1985)). Included among the cited legitimate enterprises was E.F. Hutton. (But see "Why the E.F. Hutton Scandal May Be Far From Over," (Hutton pleads guilty to 2,000 counts of mail fraud in a multi-million dollar bank scam); *Haroco Inc.* v. *American National Bank and Trust Co.*, 747 F.2d 384, 395 n.14 (7th Cir. 1984), aff'd, 473 U.S. 606 (1985) ("[T]he White-collar crime alleged in some RICO complaints against 'legitimate' business is in some ways at least as disturbing. * * * ")

Contrary to Mr. Bolton's statement, civil RICO does not, however, apply to "ordinary commercial disputes," but rather to criminal fraud. While the scope of mail and wire fraud statutes is wide, no honest person need fear a civil suit under RICO based on those offenses, for both require fraudulent intent and good faith is a complete defense. (*Durland* v. *United States*, 161 U.S. 306,314 (1986)) *United States* v. *Martin-Irigona*, 684 F.2d. 485, 492-493 (7th Cir. 1982); *Dan River Inc.* v. *Icahn*, 701 F.2d 278, 289-91 (4th Cir. 1983)). RICO does not provide for constructive fraud, negligence or strict liability.

If, on the other hand, businessmen engage in fraud in the course of "purely commercial transactions," civil RICO can and should be used against them. Section 1964(c) does permit any "legitimate" business enterprise to be charged with "racketeering," but an honest businessman need not settle at the sight of a civil RICO suit; the plaintiff must still prove his case. The treble damage provisions in civil RICO do not, in short, "extort" settlements, they simply put a plaintiff with a good case in a good position. If our society authorizes the recovery of not only actual damages for deliberate antisocial conduct engaged in for profit, it lets the perpetrator know that if he is caught, he need only return the misappropriated sums. If he is not caught, he may keep his ill-gotten gains, and if he is caught and sued, he knows that he may be able to defeat part of the damage claims or at least compromise it. The balance of economic risk under traditional simple damage recovery provides, therefore, little disincentive to those who engage in such conduct. Indeed, the seventh circuit was closer to the mark when it observed in *American National Bank and Trust Co. of Chicago* v. *Haroco* that "the delays, expense and uncertainties of litigation often compel plaintiffs to settle completely valid claims for a mere fraction of their value. By adding to the settlement value of such valid claims in certain cases clearly involving criminal conduct, RICO may arguably promote more complete satisfaction of plaintiff's claims without facilitating indefensible windfalls." (747 F.2d 384, 399 n.16 (7th Cir. 1984, aff'd, 479 U.S. 606 (1985). See generally Block, Nold, and Sidak, The Deterrent Effect of Anti-Trust Enforcement, 89 Journal of Political Economy 429, 440 (1981) ("Neither imprisonment nor monetary penalties pose [* * *] a credible threat to colluding firms * * * [T]he deterrent effect * * * [comes] from * * * the likelihood of an award of private treble damages")).

Studies of the antitrust statutes show that most antitrust suits are settled now at close to actual damages. Ironically, it may be necessary to authorize treble damages to assure that deserving victims receive actual damages in the RICO area.

Justice Marshall in Sedima (473 U.S. at 506) also suggests that "a prudent defendant, facing ruinous exposure [under RICO] will decide to settle even a case with no merit." Accordingly, civil RICO lends itself, he argued, to the very extortive purpose "it was designed to combat." Justice Marshall cites as authority for this extraordinary proposition the Report of the Ad Hoc Civil RICO Task Force of the ABA Section of Corporations, Banking and Business Law, 69 (1985). The Ad Hoc Task Force, in turn, conducted a survey of 3,200 corporate and litigation lawyers, of whom only 350 responded. Two factors, however, undermine the scientific credibility of the general results of the survey: First, the population questioned was unrepresentative of the bar, and second, the response rate was insufficient to warrant broad generalizations. More to the point here, the survey did not ask each of the respondents a carefully phrased question calling for their opinion or experience with RICO as a settlement weapon. Instead, the opinion relied upon by Justice Marshall was volunteered by only two of the 350 respondents as grounds for repealing RICO. In fact, it is the experience of a majority of seasoned litigators in the RICO area that adding a RICO claim to a suit does not facilitate settlement; it inhibits it, particularly when a legitimate business is involved. (See A Comprehensive Perspective on Civil and Criminal RICO Legislation and Litigation: A report of the RICO Cases Committee, ABA criminal justice section 121-23 (1985)).

Generally, businesses wrongfully accused of "racketeering" will not settle suits—even those that should be compromised—as long as the racketeer label is the litigation. Indeed, it is difficult to understand how Justice Marshall could believe that a suit with "no merit" faces a defendant with "ruinous exposure." If the plaintiff's suit has no merit, his chance of success is zero, and zero multiplied by three—or any number—is still zero. It is doubtful, in short, that responsible corporate or other defendants are paying off strike suits in the RICO—or any other area—at more than their settlement value, no matter what the theory of the complaint is. Neither the racketeer label nor the threat of treble damages will convince prudent managers lightly to surrender scarce resources merely because another files a suit. No matter how colorful it is phrased, the claim that such managers act against their own interests is not credible.

Mr. Bolton's concern over the costs of civil RICO passed along to consumers is ironic, since every year the American public pays bills for commercial fraud that can only be described in Carl Sagan terms. Just as importantly, Mr. Bolton completely overlooks the fact that civil Rico can provide honest businessmen with a powerful weapon against dishonest competitors. As Senator Hruska pointed out when he introduced one of RICO's forerunners, S. 1623:

> * * * [T]he bill also creates civil remedies for the honest businessman who has been damaged by unfair competition from the racketeer businessman. Despite the willingness of the courts to apply the Sherman Anti-trust Act to organized crime activities, as a practical matter, the legitimate businessman does not have the adequate civil remedies available under the Act. This bill fills the gap. (115 Cong. Rec. 6993 (1969)).

Most of S. 1623's provisions were subsequently incorporated in RICO. In fact, many large corporations have used section 1964(c) suits, including IBM, Crocker National Bank, Standard Oil of Indiana, Armco Steel, Pepsi-Cola Bottling Co., Banker's Trust Co., AETNA Casualty and Surety Co., Allstate Insurance Co., and State Farm Fire and Casualty Co. IBM, for example sued Hitachi Ltd. under RICO for the theft of computer software; the suit was settled for upwards of $200 million. Similarly, the Crocker litigation against Lehman Brothers, Rockwell International, and Singer, Hunter, Levine and Sussman of New York, a law firm, involved an alleged $225 million computer leasing fraud; it was settled for $65 million.

G. Civil RICO suits are only a minute fraction of the Federal civil case load; considerations of judicial economy do not justify the effective elimination of the section 1964(c) claim for relief.

> It is no exaggeration to say that there has been an explosion of private civil RICO lawsuits over the past several years, nor does it seem unreasonable to predict a continuation of this trend * * *.

Mr. Bolton makes dire predictions about an explosion of new Federal litigation, as if litigation of any proportion would be unjustified if the victims could establish their allegations. Nevertheless, the "explosion" in private civil RICO suits in recent years hardly justifies a rhetoric of black powder. In fact, less than 500 were brought between 1970 and 1985. (Trott at 126, 141 ("weight of these burdens may not be as great as is claimed")). Even if it were to increase to 500 suits a year and then be multiplied tenfold, section 1964(c) claims would still constitute only 2 percent of all Federal cases. (Statement of the National Association of Attorneys General and National District Attorneys Association, Oversight on Civil RICO, Hearings before the Senate Judiciary Committee, 94th Cong. 1st Sess. at 425 (1985)). Approximately 275,000 civil cases are filed each year. "Annual Report of the Director of the Administrative Office of the United States Courts" 11 (1985). 118,000 of the civil cases involve the United States as a plaintiff or defendant; private litigation embraces approximately 160,000 filings, of which 60 percent is Federal question and 40 percent is diversity litigation. Id. at 11. The principal areas of litigation are recovery and overpayments and enforcement of judgments (47,000), prisoner petitions (30,000), Social Security (25,000), civil rights (20,000), and labor (11,000). Id. at A-12-13. Antitrust includes 959 civil filings, id. at A-12, and 47 criminal cases. Id. at A-47. Securities, commodities and exchange-related civil filing make up 3,200, id. at A-13, and 13 criminal cases. Id. at A-46. Fraud-related civil filings make up 1,700. Id. at A-12. Accordingly, if most securities and fraud-related cases were also RICO cases, RICO filing would not exceed 5,000; not more than 2 percent of all Federal filings. How many wholly new pieces of litigation, particularly in the fraud area, RICO will draw into the Federal courts cannot be reliably determined. It is doubtful, however, that the number will be relatively high, as most significant comerical litigation is now in the Federal courts under other Federal statutes or diversity jurisdiction. In fact, recent data on Civil RICO filing, presented to the Subcommittee on Criminal Justice, indicates that in 1986, only 1069 cases were filed—not thousands—and 294 were terminated. As such, according to Judge Pamela A. Rymer, "the perceived problem of civil RICO case load is exaggerated * * *." (2 Civil RICO Report No. 34 at 3 (Feb. 4, 1987)). Mr. Bolton, therefore, grossly exaggerates the "heavy burden" civil RICO cases place on Federal courts. Since almost two-thirds of civil RICO suits could be heard in the Federal courts on other grounds, (Trott at 127) "the practical consideration" of the Federal caseload is not a crucial issue.

H. Civil RICO abuse can be substantially reduced by measures that would not unduly restrict plaintiffs' access to the courts.

> Several legislative approaches to civil RICO reform have been suggested. A common element of each proposal is that each would retain civil RICO's private enforcement mechanism, while limiting the circumstances to which it could apply * * *. We have concluded that a requirement for a "prior criminal conviction" as a prerequisite to private civil RICO suits, is the preferable approach. If this approach is adopted, the vast majority of abusive and vexatious civil RICO litigation will be eliminated * * *.

Apparently, Mr. Bolton has not studied the effect a prior criminal conviction remedy would have, not only on the "vast majority of abusive and vexatious private civil RICO suits," but also on valid claims as well. In the antitrust area, 959 civil actions are filed each year, while only 47 criminal actions are brought. Under securities and related laws, 3,200 civil actions are filed each year, while only 13 criminal actions are brought. "Annual Report of the Director of the Administrative Office of the United States Courts," A-12, A-47, A-13, A-46 (1985). A prior criminal conviction requirement would effectively eliminate these remedies, just as it would eviscerate private civil RICO. That, in short, is Mr. Bolton's true objective.

I. Civil RICO applies to all people who violate its criminal provisions.

> Private civil RICO has not succeeded in providing an effective weapon against organized crime. Indeed, one of the most significant aspects of civil RICO has been its virtual neglect by those for whose benefit the private remedy was provided—the victims of organized crime. Our proposed amendment would remedy these problems by ensuring that private civil RICO actions would be brought against only convicted criminals, the group that Congress intended to reach.

The key problem with Mr. Bolton's analysis of section 1964(c) lies in his fundamental misunderstanding of organized crime. Anyone, not just machinegun toting mobsters, can engage in organized crime. including M.B.A. bankers in Brooks Brothers suits, who defraud banks, brokers, however dressed, who churn away their clients' portfolios, or other fiduciaries, who similarly misuse other peoples money. Wrongly, Mr. Bolton thinks that civil RICO should apply only to the archetype gangsters, not to legitimate businessmen, who act illegally. We specifically considered and rejected Mr. Bolton's suggested criminal conviction limitation in 1970. Congressman Mikva, for example, in 1970 called to the attention of the House that "[t]here need not be a conviction under any of these laws for it to be racketeering." (116 Cong. Rec. 35,342 (1970)). It is too late now to suggest that we really intended otherwise. Only a small percentage of suspected criminal activities, moreover, can be investigated thoroughly, and only a fraction of those investigated can be effectively prosecuted. Since white-collar criminals often manage to evade prosecution and conviction, Mr. Bolton's amendment would deny the victims of white-collar crime one of their most effective remedies. Civil RICO suits should not be brought only against convicted criminals, but also against criminals who plea-bargain, turn states evidence, or get off on a technicality.

Private civil RICO, moreover, has not failed against organized crime. Indeed, it is in danger of becoming a victim of its own success. RICO has merely reached a more monied class of criminals, a class who apparently is now able to make its voice heard at the highest levels in the Department of Justice. Nevertheless, the best answer to Mr. Bolton's position is found in the testimony of Assistant Attorney General Trott:

> [I]t is true, of course, that the deterrent value of private civil RICO enforcement does not seem very significant when judged in terms of the number of private actions that have been brought against known or suspected members of organized crime. On the other hand, in gauging the overall deterrent value of auxiliary enforcement by private plaintiffs, the deterrence provided by the mere threat of private suits must be added to the deterrence supplied by the suits that are actually filed. Furthermore, as the federal government's enforcement efforts continue to weaken organized crime and dispel the myth of invulnerability that has long surrounded and protected its members, private plaintiffs may become more willing to pursue RICO's attractive civil remedies in organized crime contexts. It should be remembered, too, that civil RICO has significant deterrent potential when used by institutional plaintiffs, such as units of state and local governments, which are not likely to be intimidated at the prospect of suing organized crime members. Finally, civil RICO's utility against continuous large-scale criminality not involving traditional organized crime elements should be kept in mind. These considerations suggest that private civil RICO enforcement in area of the organized criminality may have had a greater deterrent impact than is commonly recognized, and that both the threat and the actuality of private enforcement might be expected to produce even greater deterrence in the future. (Trott pp. 140-41.)

J. If fraud is a serious national problem and civil RICO relief should be available to the federal government without a prior criminal conviction requirement, state and local units of government and private citizens should have exactly the same remedy.

> * * * we recommend that the statute be amended to clarify the federal government's ability to obtain monetary redress for organized criminal activity that causes injury to the United States. Adoption of this proposal could provide significant benefits to the government, and substantially enhance the deterrent impact of civil RICO.

Paradoxically, no sooner has Mr. Bolton finished arguing for the elimination of civil RICO actions for private parties, including State and local units of government, absent a prior criminal conviction, than he proposes to except the Federal Government from the limitation. Indeed, he makes an excellent case for governmental use of civil RICO: the protection of the public treasury through "the recovery of Federal funds * * * fraudulently obtained or misused * * *." Conceding that other existing fraud remedies are inadequate, he quite properly points out that "the possibility of recovering treble damages under RICO might make litigation worthwhile in situations in which the recovery of compensatory damages might not be cost effective, but where important governmental interests should nevertheless be vindicated." Further, he argues that "the possibility of a treble damage suite by the Government could have a significant deterrent effect on persons contemplating fraudulent acquisition or misuse of Government funds."

Unfortunately, Mr. Bolton displays a distressing lack of knowledge of how the Federal Government works and how it relates to State and local units of government. First, he seems to assume that the only fraud practiced against the Government is in contract procurement. In fact, many Government programs operate through grant-in-aid or provider reimbursement devices, where the Government, as such, is not injured. Incomprehensively, the language of Mr. Bolton's proposal would not protect, by civil RICO suits, these kinds of "Government" programs from fraud. The victims of this kind of fraud will often be, in fact, State and local units of government, which Mr. Bolton's proposal would not except. In addition, many government programs are implemented through the mechanisms of Government chartered corporations, including the Federal Deposit Insurance Corporation, Federal Saving and Loan Insurance Corporations, the Tennessee Valley Authority, etc. These programs, too, would fall outside of the language of the Bolton proposal. These results are, of course, indefensible, even under Mr. Bolton's rationale; they could only be the result, therefore, of poor staff work. As such, they call into question his entire proposal.

Second, no rationale can be offered why State and local units of government ought not have precisely the same right to use civil RICO to protect their own programs from fraud. Prosecutions going on in New York City right now by the Federal Government, for example, are using criminal RICO to root out municipal corruption. Not all of the culpable parties, particularly corrupt business people, will be prosecuted; many will be offered immunity to testify against corrupt public officials. Should these equally guilty parties be free of civil responsibility under RICO, too? If it is appropriate for the

Federal Government to concern itself with corruption at the State and local level of government—and it is—it can hardly be suggested that the Federal courts, open for criminal suits, ought to be closed for civil suits on behalf of Government victims. Mr. Bolton has offered no rationale to justify this result. It, too, calls into question Mr. Bolton's entire proposal. It is hard to understand how Mr. Bolton fails to recognize that civil RICO serves the same laudable purposes in the private sector. For the private citizens' interest "in an effective effort against organized, systematic illegality" is no less vital than the Federal Government's or that of State and local units of government. Mr. Bolton believes that the Government should have effective tools to fight fraud. It would be anomalous to deny those same tools to State and local units of government—or to private citizens.

CONCLUSION

In ancient Egypt, the scales were first used to symbolize impartiality, that balance of Re, the Sun god, in which he weighed ma-at, justice. (J. Nooham Bribes 7 (1984)). That justice was not always evenhanded at the beginning of civilization also may be seen in that it was necessary for Holy Scripture to issue its ancient injunction: "Prosecute the rich not merely the penniless; strong-armed men as well as those who are powerless." (Job 36:19) The desire of the rich and the strong-armed to put their thumb on the scale of justice remains with us.

Civil RICO builds upon the experience of the last half-century in the antitrust and securities areas and generalizes it across the marketplace. As the antitrust acts seek to maintain economic freedom in the marketplace, RICO seeks, in the fraud area, to promote integrity in the marketplace. As such, RICO properly applies to racketeering activity, no matter who engages in it. The rich and the strong-armed must not be allowed to win their special pleas and to place their thumb on the scales of justice. RICO is neither antibusiness nor probusiness. It is provictim. Mr. Bolton's proposal should be rejected.

Mr. Speaker, I include a copy of Mr. Bolton's letter in the RECORD following my remarks:

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AND
INTERGOVERNMENTAL AFFAIRS,
Washington, DC, July 22, 1986.

Hon. GEORGE BUSH,
President, U.S. Senate, Washington, DC.

DEAR MR. PRESIDENT: Enclosed for your consideration and appropriate reference is a bill to amend section 1964(c) of title 18, United States Code—the provision in the Racketeer Influenced and Corrupt Organizations ("RICO") Act that permits federal treble damage suits for injuries caused by RICO violations. The proposed bill would amend the statute to require proof of a prior criminal conviction as an essential element of a private civil RICO suit for treble damages. This restriction would not apply to civil RICO suits brought by the United States when it has just been injured by RICO violations. The Department of Justice believes that this approach would best respond to the increasingly troublesome issues that civil RICO litigation has raised over the past several years.

The need for civil RICO reform is clear. Recent Congressional hearings, court decisions, and studies by the Department of Justice and others have made it plain that private civil RICO enforcement is severely flawed in two fundamental respects. First, private RICO suits have not achieved their intended purpose as supplements to the federal government's criminal enforcement efforts against organized crime. Second, private uses of the statute have created clear and substantial dangers to other important federal interests.

When it enacted section 1964(c) as part of the Organized Crime Control Act of 1970, Congress hoped that private civil suits would assist in preventing infiltration of legitimate business by organized crime. That hope has not been realized. Fewer than ten percent of private civil RICO actions have been based on what is ordinarily considered to be organized crime activity. Instead, the vast majority of actions has arisen out of commonplace commercial transactions allegedly involving fraud on the part of businesses and individuals that have no connection to organized crime. Other unanticipated applications of the statute have occurred in cases involving claims of sexual harassment, disputes over the leadership of a synagogue, and routine divorce controversies. Civil RICO has been used to attack an undercover FBI investigation of corruption in the Cleveland municipal court system.

The unexpected evolution of section 1964(c) into "something quite different from the original conception of its enactors," see *Sedima, S.P.R.L.* v. *Imrex Co., Inc.*, 105 S. Ct. 3275, 3287 (1985), has lead to the unnecessary and unwise federalization of an area of the law that is best reserved to the states, and has had other significant detrimental consequences as well.

We do not believe that, when it enacted RICO, Congress thought it necessary to create a general federal remedy for fraud, or that it intended to do so. More to the point, there is today no valid reason to permit civil RICO's continued use in this manner, and every good reason for declining to do so.

To begin with, there is no need for a general federal fraud remedy. Persons who engage in serious fraud can be, and frequently are, prosecuted for criminal offenses under both federal and state statutes. In addition, federal laws and judicial decisions afford civil redress for specific types of fraudulent conduct, such as securities fraud, and state statutes and common law principles permit civil recovery for those species of fraud not covered by federal law. We know of no shortcomings in these various provisions such as would warrant adoption of a broad federal remedy for fraud.

Moreover, private civil RICO litigation has had a number of serious repercussions. First, the increasing use of section 1964(c) as a federal fraud remedy threatens to undermine carefully crafted and well established federal statutory schemes that have been developed to regulate the securities, commodities, banking, accounting, and savings and loan industries. In the securities area, for example, a plaintiff alleging fraud will always have an incentive to seek treble damages under civil RICO rather than, or in addition to, pursuing a claim for compensatory damages under the Securities Act of 1933 or the Securities Exchange Act of 1934, or under state law.

Second, the availability of section 1964(c) as a general federal fraud remedy undercuts standing limitations and procedural requirements that have been developed over fifty years to restrict access to federal courts. The Securities Act of 1933 and the Securities Exchange Act of 1934 provide express and implied causes of action for violations of each Act. These statutes, however, strictly limit standing to sue by imposing a purchaser/seller requirement; they also impose stringent requirements of proof regarding "causation," "materiality," and "reliance." Private civil RICO plaintiffs who allege securities fraud can now completely circumvent these federal securities law limitations. Because approximately 40 percent of private civil RICO actions involve claims of securities fraud, and because civil RICO permits the evasion or undermining of carefully crafted statutory schemes in other areas as well, civil RICO has the potential to undermine legal doctrines that have evolved over decades to adjudicate claims in each of these areas.

Equally serious is the threat of civil RICO liability to legitimate businesses engaged in purely commercial transactions. Section 1964(c) permits virtually any legitimate business enterprise to be charged with "racketeering" and threatened with a judgment for treble damages and attorneys' fees, simply on the basis of an ordinary commercial dispute. Civil RICO skews dispute resolution in commercial cases, extorts settlements and increases legal fees, which costs ultimately will be passed on to the purchasers of the goods or services.

Finally, absent any need for a pervasive federal fraud remedy it is inconsistent with the nation's constitutional principles to exert federal jurisdiction over forms of conduct that traditionally and appropriately have been regarded solely as matters of state concern. The observance of sound principles of federalism is not merely a theoretical imperative. The approach of leaving to the states all matters regarding which there is not a persuasive and constitutionally justifiable reason for federal involvement is dictated by practical considerations as well. Chief among these is the inappropriate and increasingly heavy burden that private civil RICO suits impose on the federal courts. It is no exaggeration to say that there has been an explosion of private civil RICO lawsuits over the past several years, nor does it seem unreasonable to predict a continuation of this trend as the statute's unusually attractive civil remedy becomes more widely understood and as efforts are made to apply it to an ever expanding range of conduct. Indeed, the recent emergence of a "Civil RICO Bar," replete with specialized reporting services, seminars, and practical courses of instruction, virtually ensures this result.

The unintended and undesirable evolution of section 1964(c) into a general federal fraud remedy requires an unequivocal Congressional response which accommodates important federal interests. These interests include maintaining the federal government's successful use of RICO's criminal provisions against large-scale organized criminal activities and enhancing the government's ability to make effective use of RICO's civil provisions. Other federal interests that should be taken into account include observance of sound principles of federalism, eliminating burdensome litigation, and assuring the fair operation of our federal courts.

Several legislative approaches to civil RICO reform have been suggested. A common element of each proposal is that each would retain civil RICO's private enforcement mechanism, while limiting the circumstances to which it could apply. Over the past year, we have carefully considered each of these proposals in light of the federal interests discussed above. We have concluded that a requirement for a "prior criminal conviction" as a prerequisite to private civil RICO suits, is the preferable approach. If this approach is adopted, the vast majority of abusive and vexatious civil RICO litigation would be eliminated and ordinary state law fraud cases would remain in state court where they belong.

By contrast, changes in the definition of "pattern of racketeering activity" could also make it more difficult to obtain criminal convictions, while doing little to relieve federal courts of the burden of having to interpret and apply a general federal fraud remedy. A "fraud plus" requirement might not interfere directly with criminal prosecutions under RICO, but could limit the government's ability to use civil RICO effectively and would not be responsive to federalism concerns.

The fundamental problem with section 1964(c), lies in its underlying premise—that civil suits by private litigants—in the absence of a prior criminal conviction—can reasonably be expected to discourage organized crime's efforts to infiltrate legitimate businesses. Experience and logic show this principle to be untenable. Private civil RICO enforcement has not succeeded in providing an effective weapon against organized crime. Indeed, one of the most significant aspects of civil RICO has been its virtual neglect by those for whose benefit the private remedy was provided—the victims of organized crime. No doubt many potential plaintiffs have foregone private suits out of fear of physical retaliation, a consequence for which not even the prospect of treble damages and attorneys' fees could compensate. Moreover, even the most courageous victim might conclude that he could never collect a judgment for damages, either because potential individual defendants had no assets or because potential corporate defendants had been assessed heavy fines or had forfeited their assets to the government in the wake of a successful criminal prosecution. Our proposed amendment would remedy these problems by ensuring that private civil RICO actions are brought only against convicted criminals, the group that Congress intended to reach.

The Supreme Court, in the *Sedima* case, explicitly recognized this basic flaw in civil RICO, and just as plainly invited Congress to correct it:

"It is true that private civil actions under this statute are being brought almost solely against [respected and legitimate enterprises], rather than against the archetypical, intimidating mobster. Yet this defeat—if defeat it is—is inherent in the statute as written, and its correction must lie with Congress. It is not for the Judiciary to eliminate the private section in situations where Congress has provided it simply because plaintiffs are not taking advantage of it in its more difficult applications." (105 S. Ct. at 3287) [footnote omitted].

Given private civil RICO's failure as a useful weapon against organized crime, we believe that private enforcement should be modified to require a prior conviction before further damage is done to important federal interests. Such a course will not impair the legitimate interests of plaintiffs who can now use civil RICO in lieu of remedies provided by state law and other federal statutes. Those other state and federal remedies will continue to be available. Moreover, if individual states believe that an additional remedy, comparable to that now provided by section 1964(c), is needed to protect their interests or those of their citizens, they are free to take appropriate legislative action.

Concurrently with amendment of private civil RICO suits, we recommend that the statute be amended to clarify the federal government's ability to obtain monetary redress for organized criminal activity that causes injury to the United States. In the belief that such authority already exists, we filed such a suit last year in the Middle District of Florida. The court in that case has sustained our view, but because the question is not entirely free from doubt we think it would be wise to amend the statute so that it explicitly allows the United States to file damage suits for injuries suffered by it as a result of civil RICO violations.

The government already has authority to sue for injunctive relief on behalf of others and, presumably, on its own behalf as well. Thus, it would be anomalous to deny it the right to sue for damages when the United States has been injured by a RICO violation. Such suits could provide a particularly valuable method of protecting the public treasury from fraudulent misuse of federal funds. Damage suits by the United States would make possible the recovery of federal funds—provided either through government programs or government contracts—that have been fraudulently obtained or misused, as well as the recovery of other losses suffered by the government. For example, in the Florida case just referred to, the government is attempting to recover more than $47 million from two businessmen and three companies previously convicted of criminal RICO fraud against the government in connection with the awarding of Department of Defense contracts.

The option to sue under such a provision would provide other benefits as well. For example, the possibility of recovering treble damages under RICO might make litigation worthwhile in situations in which the recovery of compensatory damages might not be cost effective but where important governmental interests should nevertheless be vindicated. Second, the possibility of a treble damage suit by the government could have a significant deterrent effect on persons contemplating fraudulent acquisition or misuse of government funds. With all of the recent revelations of possible fraud in the area of government contracts, such added deterrence would certainly be welcome. In this connection, it is important to remember that the federal interest in an effective effort against organized, systematic illegality—whether manifested by fraud against the government or other conduct detrimental to the United States—is, in essence, an interest in a result. We believe that the government should have effective tools to achieve that result in appropriate cases.

Adoption of this proposal could provide significant benefits to the government, and substantially enhance the deterrent impact of civil RICO. At the same time, because the Department currently screens and controls these cases as carefully as it oversees the uses of RICO's criminal provisions, and would continue to do so in the future, there would be no basis for criticisms such as are now being generated by irresponsible uses of the civil RICO statute by private plaintiffs.

The attached bill would amend 18 U.S.C. § 1964(c) as discussed above by requiring a prior criminal conviction for racketeering activity under section 1962 before a private party (which under the statute includes state and local governments) would be permitted to maintain a civil action. Suits by the United States are exempted from this restriction and expressly authorized by a new subsection (d). Finally the private cause of action is also limited by a new, two year statute of limitations, running from the date of the latest criminal conviction.

This is a most significant proposal which would respond in a sensible and effective manner to increasingly serious problems that have arisen in the interpretation and application of an important federal statute directed at the menace of organized crime. I would request that it be given careful and speedy consideration.

As explained above, the Department of Justice believes that, by helping to alleviate burdensome and vexatious litigation, enactment of this bill would have a salutary effect on the workload of the federal courts.

A TIME FOR COURAGEOUS ACTION

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New York [Mr. HOUGHTON] is recognized for 5 minutes.

Mr. HOUGHTON. Mr. Speaker, it is late in the day, and I had not originally intended to talk, but I think it is important that when anyone who is a freedom-loving individual, particularly a Member of this House, has an opportunity, he should stand up and say one thing. The conditions under which we live today are entirely different than the conditions under which we lived 2 weeks ago.

It is not just Wall Street, it is not just the Bourse, or it is not just the exchanges in Sydney or in Tokyo or in London. We are living in a different age. For months, maybe years, we have had an overhang, and the numbers have not added up. It makes no difference why the collapse on Black Monday took place. There is blame to go all around. Is it the overvaluation of stocks? Is it the incredible amount of money which people in the financial district are making? Is it the President? Is it the Senate? Is it the House, or is it businessmen? Is it poor trading laws? It makes no difference, things are different.

I think it behooves every single one of us as citizens to say one thing: we must act, and we must act big. We must act fast, and we should do the thing which our constituents and our friends are saying: forget about the politics; forget about the previous positions or the principles or the status of various stands that we have had. When there is a crisis, it is critical that the crisis be met, and that is by leadership. It is not recrimination, and it is not all stand-pat principles. It is something new and fresh and invigorating.

Mr. Speaker, this is what we need, and we can do it. The question is whether we have the will, and I pray to God that we have it now.

MORE CHANGES AT FADA

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Rhode Island [Mr. ST GERMAIN] is recognized for 5 minutes.

Mr. ST GERMAIN. Mr. Speaker, Robert Axley is resigning this week as general counsel of the Federal Asset Disposition Association. This is the latest in changes at FADA in recent weeks in wake of a continuing investigation by the House Banking Committee.

No official reason is being given for the departure of Mr. Axley, who served not only as general counsel but also as the right hand man to Ms. Roslyn Payne, the recently deposed CEO of FADA. But, in reviewing Mr. Axley's role in FADA—a sizable one since the agency was launched 18 months ago—I believe Mr. Axley's departure is long overdue.

For one thing, Mr. Axley failed to file a financial disclosure form with FADA until January 26, 1987, nearly 10 months after he joined the FADA staff on April 1, 1986. When he joined FADA's staff, Mr. Axley failed to note his involvement with a piece of Texas real estate which had been paid for with a loan from an Arkansas S&L. The S&L, First South Savings and Loan, was later closed by the FSLIC on December 4, 1985—with FADA assigned to manage a substantial portion of the S&L's assets.

Prior to the assignment of the assets, FSLIC's Office of General Counsel, brought to FADA's attention that Mr. Axley had an interest in several loans made by First South. The loans related to a 2,200 acre tract of undeveloped property in Plano, TX, referred to as Preston Meadows. Because of the appearance of a conflict, FSLIC staff recommended that the Preston Meadow project not be transferred to FADA's control, but rather be assigned to the First South receivership.

What is important here is that prior to the decision to close First South and assign a substantial portion of its assets to FADA, Mr. Axley had neither informed the FSLIC of his dealings with First South or filed a financial disclosure statement. The first written notice of this relationship was on December 3, 1986, when Mr. Axley wrote a memo to Roslyn Payne entitled "Savings and Loan System Involvement."

In that memo, Mr. Axley describes his prior involvement in Realty Development Corp. [RDC] from December 1979 to February 1984. The major partner in RDC was Richard Strauss. While the full range of RDC's business transactions are not known to the committee, Mr. Axley's statement of December 3, 1986, is noteworthy:

> With respect to my involvement with RDC * * * I resigned from RDC and its affiliated corporations for several reasons, among them my uneasiness with the way the institutions involved conducted business * * * Subsequent to my resignation from RDC * * * because of my concern with the manner of operation of RDC and any potential liability I might have as an owner of assets in partnership with RDC, I conveyed my interest * * * into limited partnerships in an attempt to limit liability * * *.

Mr. Axley showed good business judgment by limiting his personal liability in this situation. I say this because committee staff have informed me that three of the S&L's which RDC used to finance its adventures are now insolvent. Four RDC projects of which committee staff have knowledge have all resulted in significant losses for the S&L's which provided financing. While Mr. Axley was able to limit his personal liability, the federally insured savings and loans with which RDC did business were not able to escape the crush of their unfortunate dealings with RDC.

I understand that Mr. Axley's interest in Preston Meadows is in a limited partnership, and that his interest in the project is currently less than his original interest. In his statement to Ms. Payne, he says that he conveyed his interest in Preston Meadows and another property into a blind trust on November 20, 1986. Again, this is over 7 months after joining FADA and after planning for First South's closing had been underway. In addition, the blind trust is in trustee with Aiken, Gump, & Strauss, a Texas law firm with one of the principals being Robert Strauss. This is the same Robert Strauss whose son, Richard, went into the Texas land deal with Mr. Axley.

Aiken, Gump has provided FADA assistance as well. We know that this firm was retained by FADA to prepare for litigation by a vocal critic. This effort went astray when detectives began harassing the critic. Committee staff have also been told that Aiken, Gump attorneys counseled FADA officials, including board chairman William McKenna, on how best to deal with the Banking Committee's inquiry.

Mr. Speaker, FADA's mission is to help the FSLIC recover the maximum from assets picked up from troubled and failed savings and loans. It is essential that this mission be carried out efficiently and in a manner that merits the public's confidence.

It is important that there not be conflicts of interest or the appearance of conflicts between FADA's public role and the private relationships of its officers and employees.

FADA must start now with a top to bottom review of its personnel files, financial disclosure forms and related data to make certain that conflicts and appearances of conflicts of interest do not exist. Where they do, steps must be taken to eliminate the problem. I have today written the Chairman of the Federal Home Loan Bank Board, Danny Wall, asking that he pursue this issue vigorously with FADA.

During the committee's hearing on October 15, Chairman Wall promised that the problems at FADA would be cleaned up. It is my intention that this committee continue its oversight and make certain there are fundamental changes that truly represent a clean up at all levels of FADA's operations. If this cannot be accomplished, then clearly outright abolishment of the agency must be considered.

INTRODUCTION OF U.S. MARSHALS SERVICE ACT OF 1987

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Wisconsin [Mr. KASTENMEIER] is recognized for 5 minutes.

Mr. KASTENMEIER. Mr. Speaker, today, I am pleased to introduce the U.S. Marshals Service Act of 1987, a comprehensive effort to modernize and consolidate existing statutory provisions relating to the Marshals Service and to provide a clear statutory basis for its current responsibilities. It is legislation which will promote both good Government and effective law enforcement.

During the 98th Congress, a similar bill was considered and passed by the House, but not the Senate. In the 99th Congress, a similar proposal entitled the "U.S. Marshals Service Act of 1985" was introduced, but neither House acted on it prior to adjournment. While the bill I am introducing today contains many of the same provisions as those earlier proposals, I believe that it also represents a significant improvement in a number of respects.

Since 1789, U.S. marshals have operated under the broadest jurisdictional mandate of any Federal law enforcement agency: to execute all lawful precepts issued under the authority of the United States. As a result, the marshals have always performed—and continue to perform—an extraordinary variety of law enforcement duties. Today, the U.S. Marshals Service occupies a central position in the Federal justice system: Safeguarding the judiciary and endangered witnesses, executing court orders, apprehending fugitives, taking custody of and transporting prisoners, and managing seized criminals assets.

Yet, most of those duties have been performed without the benefit of specific statutory guidelines, and the marshals have had to rely largely on their longstanding posse comitatus authority—the power, now found in 28 U.S.C. section 569(b), to "command all necessary assistance to execute their duties."

The U.S. Marshals Service Act of 1987 would provide explicit statutory authority for many current functions of the Service, including the authority to carry firearms and make arrests; to conduct fugitive investigations; to protect Federal witnesses and their families; to enter cooperative agreements with State and local authorities to obtain jail space for Federal prisoners; and to enter contracts to provide for security guards and service of process in noncriminal proceedings.

The act would formally establish the Marshals Service as a Bureau of the Department of Justice, as the Service currently exists only by order of the Attorney General. It provides for appointment of the Director of the Service by the President, with the advice and consent of the Senate, which would eliminate the anomaly of an Attorney General appointee supervising the activities of 93 Presidentially appointed marshals. In addition, the act would provide the administrative and management authority necessary for the efficient and effective operation of the Service.

The act underscores the Marshals Service's traditional and premier responsibility of providing security for the Federal courts and executing court orders. It explicitly authorizes the Service to provide personal protection to judges, U.S. attorneys, and other Federal officials, which is frequently necessary in light of the constantly increasing number of serious threats leveled against those involved in the judicial process.

In a significant change from the 1985 proposal, the act now retains the existing language of 28 U.S.C. section 569(a), relating to the presence of marshals at sessions of court. Retention of the existing provision reflects the commitment of the Marshals Service and the judiciary to working together in the area of court security. Also, the act now provides for a realistic level of payment for court bailiffs, in order to assure the courts of appropriate personnel to attend to the non-law-enforcement requirements of judicial proceedings.

A major provision of the act is the establishment of a separate Office of U.S. Marshal for the Superior Court of the District of Columbia. The Marshals Service's responsibilities in the District of Columbia are unique among the 94 Federal judicial districts, in that it serves not only the Federal courts but also the superior court, which is the local or municipal court for the District of Columbia. As both the nature and volume of the superior court workload differ fundamentally from that of the Federal courts, the creation of a separate marshal's office for the superior court would ensure that both the Federal and local court systems in the District of Columbia receive the levels of attention they require.

The act contains other provisions which have good sense from the standpoint both of efficient governmental operation and effective law enforcement. For instance, it authorizes the Attorney General to set realistic fees for the service of non-Federal process, based on actual costs as opposed to the inflexible—and wholly inadequate—$3 fee now prescribed by statute. The act also authorizes the Attorney General to exempt the procurement of goods and services under the Department of Justice Assets Forfeiture Fund from the lengthy and technical Federal Acquisition Regulations, in recognition of the unique aspects of the fund.

Mr. Speaker, it is most appropriate that we consider this legislation as the U.S. marshals approach the observance of their bicentennial in 1989. For while the central mission of the U.S. marshals has remained basically the same for nearly 200 years, the methods by which they accomplish that mission have changed and multiplied greatly. The U.S. Marshals Service Act of 1987 will help to ensure that the Marshals Service can continue to fulfill its many responsibilities to the Federal justice system. I therefore urge my colleagues to join me in supporting this legislation.

I am submitting for insertion in the RECORD immediately following my remarks a section-by-section analysis of the act. Those interested in the bill should contact the Subcommittee on Courts, Civil Liberties and the Administration of Justice, 2137B Rayburn House Office Building, Washington, DC 20515, (202) 225-3926.

SECTION-BY-SECTION ANALYSIS—U.S. MARSHALS SERVICE ACT OF 1987

Section 2. This section amends existing provisions of Chapter 37 of Title 28, United States Code.

Amended section 561 establishes the United States Marshals Service as a bureau within the Department of Justice under the authority and direction of the Attorney General. Although the U.S. Marshals have been statutorily under the supervision of the Attorney General for more than 100 years, the Marshals Service exists only by virture of an Attorney General directive. The section provides for a Director appointed by the President, with the advice and consent of the Senate, and establishes the administrative and management authority necessary for the efficient and effective operation of the Service. Presidential appointment of the Marshals Service director would be in keeping with the similar status accorded Assistant Attorneys General and heads of other major Department of Justice divisions. Moreover, this amendment would eliminate the anomaly of an Attorney General appointee supervising the activities of 93 Presidentially appointed Marshals.

Section 561 would also provide for establishment of an office of United States Marshal for the Superior Court of the District of Columbia. Currently, the U.S. Marshal for the District of Columbia provides support and executes court orders for the Federal court and, in addition, provides law enforcement support for the "municipal" D.C. Superior Court. Moreover, the Superior court workload exceeds that of even the largest federal judicial districts. With the establishment of a separate office of U.S. Marshal for the D.C. Superior Court, we can assure that both the District Court and the Superior Court receive the levels of attention they require.

Administrative authorities provided in the amended section 561 relate to the selection and appointment of law enforcement and staff support personnel in accordance with applicable Federal personnel regulations, and the supervisory authority of the director.

Section 561 further provides for the accounting for funds collected by the marshals and for the appropriation of such sums as may be necessary to carry out the responsibilities of the U.S. Marshals Service.

Amended section 562 provides for the appointment of an Acting Marshal by the Attorney General in the case of a vacancy in such office. It also assures the temporary nature of such interim appointment by prohibiting the designation of any person whose appointment by the President to that office has been rejected by the Senate and by providing for the automatic termination of such interim appointments under specified circumstances.

Amended section 563 prescribes the oath of office for the director, U.S. marshals and deputy marshals.

Amended section 564 restates the historic authority of U.S. Marshals, in executing the laws of the United States, to exercise the same powers as a sheriff of a State. The change from current law modifies the language to explicitly provide that such authority is also shared by the other law enforcement officials of the Marshals Service.

Amended section 565 consolidates into one section the various functional responsibilities for which the Service is authorized to expend funds. These include the "actual and necessary" expenses associated with the operation of Marshals Service offices in all federal judicial districts; the expense of transporting prisoners; the acquisition, maintenance and operation of law enforcement vehicles, vessels and aircraft; expenses associated with the custody of Federal prisons in non-federal institutions; expenditures for firearms, ammunition, and activities associated with the development of expertise in their use; the payment of rewards and the purchase of evidence; the costs of facilities used for protected witness safesites; and expenses for personal services contracts and cooperative agreements, as authorized by the Attorney General, for security guards and the service of summons, subpoenas and notices.

Amended section 566 specifies the various "Powers and Duties" of the Service. It restates the historic function of marshals as the marshal of the courts and incorporates the language of the current section 569(a), which authorizes the court to require the marshal's attendance at court proceedings. The amended section 566 also mandates the execution by the Marshals Service of all lawful writs, process and orders issued by the courts, and authorizes it to "command all necessary assistance" to execute its duties. It also authorizes law enforcement officials of the Service to carry firearms and to make arrests, and it authorizes the Service to provide personal protection to judges and other Federal officials and to conduct fugitive investigations, domestic and foreign, as directed by the Attorney General.

Furthermore, amended section 566 restates the existing requirements concerning the deposit of public monies into the Treasury; provides for the transfer of prisoners and unserved process from departing marshals and deputy marshals to their successors; and provides for the payment by marshals of U.S. Attorneys' office expenses as may be directed by the Attorney General.

Section 3 of the bill further amends Title 28 by authorizing the Attorney General to exempt the procurement of goods and services under the Department of Justice Assets Forfeiture Fund from the requirements of the Federal Acquisition Regulations (FAR). The high volume of activity occurring within the national asset seizure and forfeiture program is generating a significant demand for the services of qualified experts in various fields to assure the accurate identification and immediate, secure management of a wide range of assets seized by federal law enforcement agencies from individuals allegedly engaged in drug trafficking and other illicit activities. The requirements imposed by the Federal Acquisition Regulations were not designed to address the need for speed and confidentiality in securing such assistance. This exemption is necessary to permit the expeditious hiring of qualified private sector individuals or firms to perform title searches on properties targeted for seizure and to provide interim management for seized businesses to prevent deterioration. This exemption would also prevent the public release of confidential information concerning the impending seizure or continuing maintenance of an asset, thus compromising an ongoing criminal investigation.

Section 3 also would amend section 755 of title 28, U.S.C., by permitting compensation for court bailiffs not to exceed the rate of pay provided for employees performing comparable work under the General Schedule. Although current law authorizes each marshal, with the approval of the judge, to employ up to four bailiffs for each district judge, the wage is arbitrarily limited to not more than $6.00 per day, thus effectively precluding the hiring of individuals to act as crier, messengers and bailiff for the court.

This section also makes the necessary renumbering changes to title 38 and repeals those other sections which have been consolidated into sections 565 and 566, above.

Section 4 amends section 1921 of Title 28, United States Code, to allow the Attorney General to set fees collected from non-Federal entities by United States Marshals in civil and criminal matters at levels reflecting the actual cost of the service provided. Under current law such fees are set at an artificially low level, well below the actual cost to the government, thus subsidizing at taxpayer's expense the service of non-Federal government process.

Section 5 amends Chapter 301 of Title 18, United States Code, to provide specific authorization for payment from appropriated funds the costs of necessary clothing and medical care for Federal prisoners in non-Federal institutions and for the payment of rewards in connection with the capture of Federal fugitives. It also provides and codifies the authority for the Cooperative Agreement Program under which the Service provides funds for state and local jail construction or modernization in exchange for the housing of Federal prisoners in those facilities.

Congressional and administration initiatives leading to increased numbers of arrests of drug violators and other criminals require a significant expansion of available jail space for their short-term incarceration. This secure housing is obtained for the Federal government through the Marshals Service Cooperative Agreement Program.

Section 6 would amend section 5315 of title 5, U.S.C. by adding the Director to those for whom compensation at Executive Level IV is authorized.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. THOMAS of California (at the request of Mr. MICHEL), for today, and the balance of the week on account of illness in the family.

Mr. GRAY of Illinois (at the request of Mr. FOLEY), for today, on account of illness in the family.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

Mr. HOUGHTON, for 5 minutes, today.

(The following Members (at the request of Mr. DORNAN of California) to revise and extend their remarks and include extraneous material:)

Mr. HANSEN, for 5 minutes each day, on November 4 and November 18.

Mr. GREGG, for 60 minutes, today.

Mr. DORNAN of California, for 5 minutes, today.

(The following Members (at the request of Mr. CONYERS) to revise and extend their remarks and include extraneous material:)

Mr. PEASE, for 5 minutes, today.

Mr. CONYERS, for 5 minutes, today.

Mr. ST GERMAIN, for 5 minutes, today.

Mr. ANNUNZIO, for 5 minutes, today.

Mr. KASTENMEIER, for 5 minutes, today.

Mr. FLAKE, for 5 minutes, today.

Mr. FRANK, for 60 minutes, today.

Mr. GRAY of Pennsylvania, for 60 minutes, on October 28.

Mr. FRANK, for 60 minutes each day, on October 28 and 29.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

(The following Members (at the request of Mr. DORNAN of California) and to include extraneous material:)

Mr. KONNYU.

Mr. MOORHEAD.

Mr. SOLOMON.

Mr. WOLF.

Mr. GALLO.

Mr. CLINGER.

Mr. MACK in two instances.

Mr. HERGER.

Mr. FISH.

Mr. DANNEMEYER.

Mr. DUNCAN.

Mr. SCHUETTE.

Mr. FIELDS.

Miss SCHNEIDER.

Mr. LEWIS of California.

Mr. TAUKE.

Mr. GRADISON.

Mr. GREEN.

Mr. HORTON.

Mr. PORTER.

(The following Members (at the request of Mr. CONYERS) and to include extraneous matter:)

Mr. TRAXLER in three instances.

Mr. ROSTENKOWSKI.

Mr. SOLARZ in two instances.

Mr. BARNARD.

Mr. RODINO.

Mr. MATSUI.

Mr. LEHMAN of Florida.

Mrs. BOGGS.

Mr. FLORIO in two instances.

Mr. ALEXANDER.

Mr. THOMAS A. LUKEN.

Mr. HARRIS.

Mr. DONNELLY.

Mr. ROE.

Mr. HAWKINS.

Mr. KANJORSKI in two instances.

Mr. DIXON.

Mr. WISE.

Mr. FASCELL in four instances.

Mr. ST GERMAIN.

Mr. HOYER in two instances.

Mr. TORRICELLI.

Mr. FLORIO.

Mr. WEISS.

Mr. KOLTER.

Mr. RANGEL.

Mr. SMITH of Florida.

Mr. DINGELL.

Mr. BERMAN.

Mr. DORGAN of North Dakota.

ENROLLED BILLS SIGNED

Mr. ANNUNZIO, from the Committee on House Administration, reported that that committee had examined and found truly enrolled bills of the House of the following titles, which were thereupon signed by the Speaker:

H.R. 1366. An act to provide for the transfer of certain lands in the State of Arizona, and for other purposes, and

H.R. 2937. An act to make miscellaneous technical and minor amendments to laws relating to Indians, and for other purposes.

ADJOURNMENT

Mr. HOUGHTON. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 6 o'clock and 22 minutes p.m.), under its previous order, the House adjourned until tomorrow, Wednesday, October 28, 1987, at 12 noon.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

2302. A letter from the Secretary, Department of Agriculture, transmitting the Department's annual report on the Nation's agricultural research and education (extension and teaching) activities for 1986, pursuant to 7 U.S.C. 3125; to the Committee on Agriculture.

2303. A letter from the Staff Director, Installation Services and Environmental Protection, Defense Logistics Agency, transmitting an overview of the standard design of conforming storage facilities at certain military installations; to the Committee on Armed Services.

2304. A letter from the President and Chairman, Export-Import Bank of the United States, transmitting the Board of Directors notification that as of September 30, 1987, the value of the total capital stock and retained earnings of the Bank has fallen below 50 percent of the value of those items as of September 30, 1983, pursuant to 12 U.S.C. 6351-2; to the Committee on Banking, Finance and Urban Affairs.

2305. A letter from the Assistant Secretary of State for Legislative and Intergovernmental Affairs, transmitting notification of proposed antiterrorism training courses to law enforcement agencies of the Government of Cyprus, pursuant to 22 U.S.C. 2349aa-3(a)(i); to the Committee on Foreign Affairs.

2306. A letter from the Deputy Assistant Secretary of Defense (Administration), transmitting notice of a proposed new Federal records systems, pursuant to 5 U.S.C. 552a(o); to the Committee on Government Operations.

2307. A letter from the Deputy Secretary of Transportation, transmitting the Department's report on the Idaho primary highway truck demonstration project, pursuant to Public Law 97-424, section 131(i)(4) (96 Stat. 2122); to the Committee on Public Works and Transportation.

2308. A letter from the Comptroller General of the United States, transmitting a report on the study of the shortages of skilled personnel in the EPA as it concerns the Superfund Program (GAO/RCED-88-1; October 1987), pursuant to Public Law 99-499, section 118(d) (100 Stat. 1656); jointly, to the Committees on Government Operations, Energy and Commerce, and Public Works and Transportation.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. DE LA GARZA: Committee on Agriculture. H.R. 3457. A bill to amend the Packers and Stockyards Act, 1921, to provide financial protection to poultry growers and sellers, and to clarify Federal jurisdiction under such Act; with an amendment (Rept. 100-397). Referred to the Committee of the Whole House on the State of the Union.

Mr. JONES of North Carolina: Committee on Merchant Marine and Fisheries. H.R. 2210. A bill to prohibit the use of certain organotin-based antifoulant paints and the use of organotin compounds, purchased at retail, used to make such paints; with an amendment (Rept. 100-400). Referred to the Committee of the Whole House on the State of the Union.

Mr. UDALL: Committee on Interior and Insular Affairs. H.R. 2639. A bill to repeal the Brown-Stevens Act concerning Indian tribes in the State of Nebraska; with an amendment (Rept. 100-401). Referred to the Committee of the Whole House on the State of the Union.

Mr. UDALL: Committee on Interior and Insular Affairs. H.R. 2839. A bill to correct historical and geographical oversights in the establishment and development of the Utah component of the Confederated Tribes of the Goshute Reservation, to unify the land base of the Goshute Reservation, to simplify the boundaries of the Goshute Reservation, and for other purposes; with amendments (Rept. 100-402). Referred to the Committee of the Whole House on the State of the Union.

Mr. FROST: Committee on Rules. House Resolution 292. Resolution providing for the consideration of H.R. 515. A bill to provide for more detailed and uniform disclosure by credit card issuers with respect to information on interest rates and other fees which may be incurred by consumers through the use of any credit card. (Rept. 100-403). Referred to the House Calendar.

Mr. HALL of Ohio: Committee on Rules. House Resolution 293. Resolution providing for the consideration of H.R. 3100 a bill, to authorize international security and development assistance programs and Peace Corps programs for fiscal years 1988 and 1989, and for other purposes (Rept. 100-404). Referred to the House Calendar.

Ms. OAKAR: Committee on House Administration. H.R. 1454. A bill to amend Public Law 99-572 to authorize the Secretary of the Treasury to invest private funds contributed to the American Battle Monuments Commission for the construction of the Korean War Veterans Memorial in public debt securities; with amendments (Rept. 100-405). Referred to the Committee of the Whole House on the State of the Union.

Mr. ROE: Committee on Science, Space, and Technology. S. 1667. An act to authorize certain atmospheric and satellite programs and functions of the National Oceanic and Atmospheric Administration, and for other purposes; with an amendment (Rept. 100-406). Referred to the Committee of the Whole House on the State of the Union.

REPORTS OF COMMITTEES ON PRIVATE BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. FRANK: Committee on the Judiciary. H.R. 3295. A bill for the relief of Nancy L. Brady; with amendments (Rept. 100-398). Referred to the Committee of the Whole House.

Mr. FRANK: Committee on the Judiciary. H.R. 3319. A bill for the relief of Susan A. Sampeck; with amendments (Rept. 100-399). Referred to the Committee of the Whole House.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. DORGAN of North Dakota (for himself and Mr. JOHNSON of South Dakota):

H.R. 3549. A bill to provide indemnity payments to sunflower producers for the 1988 crop; to the Committee on Agriculture.

By Mr. BROOKS:

H.R. 3550. A bill to recognize the Cabinet status of the Director of the Office of Management and Budget, and for other purposes; to the Committee on Post Office and Civil Service.

By Mr. KASTENMEIER (for himself and Mr. MOORHEAD):

H.R. 3551. A bill to amend chapters 37 and 123 of title 28, United States Code, and chapter 301 of title 18, United States Code, with respect to U.S. marshals; to the Committee on the Judiciary.

By Mr. MACK:

H.R. 3552. A bill to amend the Internal Revenue Code of 1986 to reduce the maximum capital gains rate to 15 percent; to the Committee on Ways and Means.

By Mr. MATSUI (for himself, Mr. ANDREWS, Mr. DUNCAN, Mr. LANTOS, and Mr. AKAKA):

H.R. 3553. A bill to amend the Internal Revenue Code of 1986 to extend the energy investment credit for geothermal property; to the Committee on Ways and Means.

By Mr. MOORHEAD:

H.R. 3554. A bill to require the Secretary of Defense and the Secretaries of the military departments, when transporting rocket fuel or other hazardous substances, to use routes through the least populated areas and to notify local government officials about such transportation; to the Committee on Armed Services.

H.R. 3555. A bill to amend the Immigration and Nationality Act to authorize the Immigration and Naturalization Service to accept volunteer services; to the Committee on the Judiciary.

By Mr. MRAZEK:

H.R. 3556. A bill to amend the Alaska National Interest Lands Conservation Act to terminate 50-year timber sale contracts in the State of Alaska, and for other purposes; to the Committee on Interior and Insular Affairs.

By Mr. TRAFICANT:

H.R. 3557. A bill to reform the system for filing and hearing protests arising out of Federal procurement practices; to the Committee on Government Operations.

By Mr. WISE:

H.R. 3558. A bill to amend title XVI of the Social Security Act to make certain that no individual is determined to be ineligible for SSI benefits for any month solely because his or her income for that month is received on a weekly or biweekly basis; to the Committee on Ways and Means.

By Mr. SOLOMON:

H. Con. Res. 207. A Concurrent resolution relating to the transfer of Silkworm missiles by the People's Republic of China to Iran; to the Committee on Foreign Affairs.

By Mr. HAMILTON (for himself and Mr. CHENEY):

H. Res. 294. Resolution providing that the Select Committee to Investigate Covert Arms Transactions with Iran shall make its final report to the House not later than November 13, 1987; to the Committee on Rules.

MEMORIALS

Under clause 4 of rule XXII, memorials were presented and referred as follows:

236. By the SPEAKER: Memorial of the Legislature of the State of Maine, relative to denials of home health care services; to the Committee on Ways and Means.

237. Also, memorial of the Senate of the Commonwealth of Pennsylvania, relative to the Low Income Home Energy Assistance Program; jointly, to the Committees on Energy and Commerce and Education and Labor.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 192: Mr. FOGLIETTA.

H.R. 276: Mr. MATSUI.

H.R. 303: Mr. EDWARDS of Oklahoma, Mr. ROSE, Ms. PELOSI, Mr. SWIFT, and Mr. ROYBAL.

H.R. 355: Mr. FROST, Mr. DE LUGO, Mr. CLINGER, Mr. GRAY of Illinois, and Mr. EDWARDS of Oklahoma.

H.R. 567: Mr. ASPIN and Mr. KASTENMEIER.

H.R. 612: Mr. SHAYS, Mr. DOWNEY of New York, Mr. DYMALLY, Mr. GOODLING, Ms. OAKAR, Mr. BROWN of California, Mr. STALLINGS, Mr. FISH, Mr. WILSON, Mrs. BENTLEY, Mr. HUBBARD, Mr. LEHMAN of Florida, and Mr. FEIGHAN.

H.R. 709: Mr. BEILENSON.

H.R. 759: Mr. SHAYS.

H.R. 792: Mr. MFUME.

H.R. 1016: Mr. BURTON of Indiana and Mr. McEWEN.

H.R. 1038: Mr. DORNAN of California, Mr. MOORHEAD, and Mr. ROWLAND of Connecticut.

H.R. 1052: Mr. BRYANT.

H.R. 1105: Mr. LEWIS of Florida.

H.R. 1433: Mr. HYDE and Mr. SCHEUER.

H.R. 1438: Mr. STALLINGS.

H.R. 1536: Mr. HOLLOWAY.

H.R. 1554: Mr. CLINGER.

H.R. 1580: Mr. SOLARZ, Mr. MAVROULES, Mr. CAMPBELL, Mr. BRENNAN, Mr. WISE, Mr.

Bustamante, Mr. Kildee, Mr. Matsui, and Mrs. Schroeder.

H.R. 1766: Mr. Gallo.

H.R. 1782: Mr. Rhodes.

H.R. 1789: Mr. Dannemeyer, Mr. Dornan of California, and Mr. Crane.

H.R. 1801: Mr. Sikorski.

H.R. 1802: Mr. Flake.

H.R. 1992: Mrs. Collins.

H.R. 2114: Mr. Hansen.

H.R. 2148: Mr. Lancaster, Mr. Perkins, Mr. Beilenson, and Mr. Moakley.

H.R. 2173: Mr. Espy, Mr. Lewis of Georgia, and Mr. Fauntroy.

H.R. 2238: Mr. Hall of Ohio.

H.R. 2248: Mr. Atkins and Mr. Synar.

H.R. 2376: Mr. Fish

H.R. 2378: Mr. Hyde and Mr. Coble.

H.R. 2500: Mr. LaFalce.

H.R. 2532: Mr. Frank and Mr. Foley.

H.R. 2647: Mr. Sawyer.

H.R. 2717: Mr. Kolter, Mr. Cooper, Mr. Dixon, Mr. Sikorski, Mr. Mfume, Mr. Gejdenson, and Mr. Shays.

H.R. 2793: Mr. Upton, Mrs. Vucanovich, Mr. Thomas of California, and Mr. Gallo.

H.R. 2879: Mr. DeFazio.

H.R. 2929: Mr. Jeffords and Mr. Slattery.

H.R. 2997: Mr. Saxton, Mr. Herger, Mr. Mrazek, Mr. Ballenger, Mr. Ridge, and Mrs. Johnson of Connecticut.

H.R. 2998: Mr. Saxton, Mr. Herger, Mr. Mrazek, Mr. Ballenger, Mr. Ridge, and Mrs. Johnson of Connecticut.

H.R. 3005: Mr. Towns and Mr. Frost.

H.R. 3009: Mr. Atkins, Mr. Kolbe, and Mr. Jeffords.

H.R. 3018: Mr. Oberstar and Mr. Durbin.

H.R. 3133: Mr. Bilirakis, Mr. Richardson, Mr. Matsui, Mr. de Lugo, Mr. McMillen of Maryland, Mr. Howard, Mr. Roe, Mr. Conyers, Mr. Owens of New York, Mr. Lewis of Georgia, Mr. Crockett, Mr. Biaggi, Mr. Eckart, Mr. Fazio, Mr. Frost, Mr. Alexander, and Mr. Cardin.

H.R. 3160: Mr. Mollohan and Mr. Spratt.

H.R. 3169: Mr. St Germain.

H.R. 3193: Mr. Stokes, Mr. Hoyer, and Mr. Frost.

H.R. 3200: Mr. Stangeland.

H.R. 3214: Mr. Edwards of Oklahoma, Mr. Fish, and Mr. Atkins.

H.R. 3250: Mr. Skeen.

H.R. 3259: Mr. Ortiz, Mr. Wolf, Mr. Lagomarsino, Mr. Lewis of Georgia, Mr. Matsui, Mr. Bilbray, Mr. Young of Alaska, and Mr. Smith of Florida.

H.R. 3288: Mr. de la Garza and Mr. Fawell.

H.R. 3296: Mr. McCollum, Mr. Inhofe, Mrs. Vucanovich, Mr. Bilirakis, Mr. Sweeney, Mr. Solomon, Mr. Montgomery, Mr. Walker, Mr. Donald E. Lukens, Mr. Stump, Mr. Bartlett, Mr. Boulter, Mr. Smith of New Hampshire, Mr. Marlenee, and Mr. Barton of Texas.

H.R. 3311: Mr. Clinger and Mr. Martinez.

H.R. 3312: Mr. Price of North Carolina and Mr. Nowak.

H.R. 3332: Mr. Smith of Florida, Ms. Kaptur, Mr. Bryant, Mr. Fauntroy, Mr. Marlenee, Mr. Torricelli, Mr. Wilson, Mr. Traficant, Mr. Jacobs, Mr. Howard, Mr. Rahall, Mr. Levin of Michigan, and Mr. DeFazio.

H.R. 3334: Mrs. Bentley, Mr. de Lugo, Mr. Boehlert, Mr. Jontz, Mr. Martinez, and Mr. Bustamante.

H.R. 3343: Mr. Miller of California.

H.R. 3355: Mr. Crockett, Mr. Edwards of California, Mr. Weiss, Ms. Slaughter of New York, and Mr. Bustamante.

H.R. 3399: Mr. Fascell, Mr. Olin, Mr. Regula, Mr. Lagomarsino, Mr. Conyers, Mr. Lewis of California, Mr. Penny, Mr. Tauke, Mr. Owens of Utah, Mr. Gejdenson, Mr. Henry, Mr. Bilbray, Mr. Neal, and Mr. Glickman.

H.R. 3440: Mr. Lewis of Georgia and Mr. Fauntroy.

H.R. 3452: Mr. Staggers and Mr. Mollohan.

H.R. 3478: Mr. Smith of Florida and Mr. Courter.

H.R. 3482: Mr. Clay, Mr. Gray of Illinois, Mr. Staggers, Mr. Leland, Mrs. Collins, Mr. Howard, Mr. DeFazio, Mr. Fauntroy, Mr. Lewis of Georgia, and Mr. Matsui.

H.R. 3485: Mr. Lagomarsino and Mr. Horton.

H.R. 3512: Mr. Quillen, Mr. Young of Florida, Mr. Jeffords, Mr. Lagomarsino, Mr. Lujan, Mr. Dornan of California, and Mr. Tauke.

H.R. 3515: Mr. Saxton and Mr. Dwyer of New Jersey.

H.R. 3516: Mr. Dwyer of New Jersey.

H.R. 3517: Mr. Howard, Mr. Oxley, Mr. Lagomarsino, Mr. Gallo, Mr. Boehlert, Mrs. Martin of Illinois, Mr. Sharp, Mr. Dornan of California, Mr. Hastert, Mr. Wortley, and Mr. Lipinski.

H.R. 3524: Mr. Coleman of Texas.

H.J. Res. 43: Mr. Gejdenson, Mr. Gephardt, Mr. Grant, Mr. Pashayan, Mr. Craig, Mr. de la Garza, Mr. Bilbray, Mr. Sweeney, Ms. Pelosi, Mr. Aspin, Mr. Cheney, Mr. Feighan, Mrs. Johnson of Connecticut, and Mr. Espy.

H.J. Res. 303: Mr. McGrath, Mr. Quillen, Mr. Pickle, Mr. Perkins, Mr. Vander Jagt, Mr. Hammerschmidt, Mr. Upton, Mr. Waxman, Mr. de Lugo, Mr. Bilbray, Mr. Regula, Mr. Emerson, Mr. Bliley, Mr. Dowdy of Mississippi, Mr. Levine of California, Mr. Boucher, and Mrs. Vucanovich.

H.J. Res. 311: Mr. Ridge.

H.J. Res. 329: Mr. Fuster, Mr. Ford of Tennessee, Mr. Solarz, Mr. Coyne, Mr. Spence, and Mr. Rose.

H.J. Res. 330: Mr. Bustamante, Mr. Fish, and Mr. Scheuer.

H.J. Res. 336: Mr. Guarini, Mr. Gilman, Mr. Erdreich, Mr. Gunderson, Mr. Ackerman, Mr. Bilirakis, Mr. Dingell, Mr. Grandy, Mr. Kolter, Mr. Mfume, Mr. Richardson, Mr. Roth, Mr. Regula, Mr. Early, Mr. Yates, and Mr. McGrath.

H.J. Res. 339: Mr. Robinson, Mr. Dicks, Mr. Bates, Mr. Roberts, Mr. Owens of Utah, Mr. Clarke, Mr. Richardson, Mr. Hatcher, Mr. de la Garza, Mr. LaFalce, Mr. Craig, Mr. Martinez, Mr. Olin, Mr. Hochbrueckner, Mr. Burton of Indiana, Mr. Atkins, Mr. Baker, Mr. McCloskey, Mr. Carper, Mr. Hyde, Mr. Morrison of Connecticut, Mr. Madigan, Mr. Weiss, Mr. Sabo, Mr. Gregg, Mr. Jacobs, Mr. Gingrich, Mr. Hoyer, Mr. Hansen, and Mr. DeFazio.

H.J. Res. 368: Mr. Bates, Mr. Roe, Mr. Gordon, Mr. Dixon, Mr. Hatcher, Mr. Frenzel, Mr. Mavroules, Mr. Garcia, Mr. Dornan of California, Mr. Hansen, Mr. Dwyer of New Jersey, Mr. Akaka, Mr. Dyson, Mr. Mineta, Mr. Borski, Mr. Wortley, Mr. Torricelli, Mr. Levine of California, Mr. Sawyer, Mrs. Bentley, Mr. Bonior of Michigan, Mr. Rose, Mr. Murphy, Mr. Traficant, Mr. Hefner, Mr. Erdreich, Mr. Espy, Mr. de la Garza, Mr. Brooks, Mr. Jontz, Mr. Skelton, Mr. Kolter, Mr. Waxman, Mr. Coats, Mr. Hawkins, Mr. Bosco, Mr. Foglietta, Mr. Henry, Mr. Gonzalez, Mr. Davis of Illinois, Mr. Applegate, Mr. Owens of New York, Mr. Price of Illinois, Mr. Smith of Florida, Mr. Spratt, Mr. Staggers, and Mr. Ackerman.

H.J. Res. 373: Mr. Kostmayer, Mr. Owens of New York, Mr. Florio, Mr. Chapman, Mr. Horton, Mr. Fazio, Mr. Sabo, Mr. Oberstar, Mr. Lewis of Georgia, and Mr. Matsui.

H.J. Res. 375: Mr. McEwen, Mr. Fish, Mr. Lancaster, and Mr. Roth.

H.J. Res. 376: Mrs. Morella, Mr. DeLay, Mr. Martinez, Mr. Dornan of California, Mr. Miller of Washington, Mr. Waxman, Mr. Florio, Mr. Brown of California, Mrs. Johnson of Connecticut, Mr. Saxton, Mr. Levine of California, Mr. Archer, and Mr. Bustamante.

H.J. Res. 377: Mr. Bilbray, Mr. Guarini, Mr. Hayes of Louisiana, Mr. Henry, Mr. Hoyer, Mr. Jacobs, Mr. Jones of North Carolina, Mr. Kostmayer, Mr. Kennedy, Mr. Leath of Texas, Mr. Lehman of Florida, Mr. Murphy, Mr. Neal, Mr. Roe, Mr. Lagomarsino, Mr. McCollum, Mr. Bustamante, Mr. Crockett, Mr. Stokes, Mr. Dymally, and Mr. Carr.

H.J. Res. 380: Mr. Chapman, Mr. Fascell, Mr. Fauntroy, Mr. Horton, Mr. Ravenel, and Mr. Sharp.

H.J. Res. 384: Mr. Flippo, Mr. Hayes of Illinois, Mr. Wilson, Mr. Sweeney, Mr. Mrazek, Mr. Blaz, Mr. Fazio, Mr. Livingston, Mr. Daub, Mr. McGrath, Mr. Lipinski, and Mr. Garcia.

H.J. Res. 385: Mr. Broomfield, Mr. Boland, Mr. Frank, Mr. McHugh, Mr. Solarz, Mr. Ravenel, Mr. Moody, Mr. Weiss, Mr. Roe, Mr. Hoyer, Mrs. Saiki, and Mr. Horton.

H. Con. Res. 30: Mr. Espy.

H. Con. Res. 87: Mr. Solomon and Ms. Oakar.

H. Con. Res. 186: Mr. Edwards of Oklahoma, Mr. Bustamante, Mr. Bilirakis, Mrs. Martin of Illinois, Mr. Shaw, Mr. Dannemeyer, Mr. Miller of Washington, Mr. Lipinski, Mr. Dymally, Mrs. Morella, Mr. Fazio, Mrs. Bentley, Mr. Frost, Mr. Smith of New Hampshire, Mr. Fish, Mr. McEwen, Mr. Myers of Indiana, Mr. Howard, Mr. Sikorski, Mr. Goodling, Mr. Wise, Mr. Horton, Mr. Weiss, Mr. Bateman, Mr. Yatron, Mr. Lagomarsino, Mr. Hochbrueckner, Mr. Lowery of California, Mr. Holloway, Mr. Price of Illinois, and Mr. DioGuardi.

H. Con. Res. 205: Mr. Frank, Mr. Ackerman, Mr. Mrazek, Mr. Fauntroy, Mr. Moody, and Mrs. Patterson.

H. Res. 185: Mr. Erdreich, Mr. Nielson of Utah, and Mr. Stenholm.

H. Res. 210: Mr. Bilirakis, Mr. Pashayan, and Mr. Edwards of Oklahoma.

H. Res. 225: Mr. Badham, Mr. Baker, Mr. Dreier of California, Mr. Emerson, Mr. Grandy, Mr. Mollohan, Mr. Sweeney, Mr. Wyden, and Mr. Young of Florida.

H. Res. 276: Mr. Hunter, Mr. Schuette, Mr. Herger, Mr. Kolbe, Mr. Badham, Mr. Martinez, Mr. Chapman, Mr. Smith of Texas, Mr. Stump, Mrs. Bentley, Mr. Edwards of Oklahoma, and Mr. Thomas of Georgia.

PETITIONS, ETC.

Under clause 1 of rule XXII,

89. The SPEAKER presented a petition of Rodney D. Strand Cle Elum, Washington, relative to a redress of grievances; which was referred to the Committee on the Judiciary.

AMENDMENTS

Under clause 6 of rule XXIII, proposed amendments were submitted as follows:

H.R. 515

By Mr. VENTO:

—Page 7, after line 5, insert the following new subsection:

"(d) DISCLOSURE OF CREDIT CARD ACCOUNT RENEWAL FEES.—

"(1) DISCLOSURE REQUIRED.—In the case of any credit card account under an open end consumer credit plan, no annual or other fee may be imposed by any creditor for the continued availability of credit in connection with such account unless the creditor notifies the cardholder, at least 30 days before the date on which such fee will be charged against the account (or otherwise imposed), of the amount of such fee and the date on which such fee will be imposed.

"(2) NO PENALTY FOR CLOSING ACCOUNT.—During the 30-day period referred to in paragraph (1), a cardholder may cancel the credit card account described in such paragraph without penalty.

"(3) OUTSTANDING BALANCE.—The repayment by the consumer of any outstanding balance in a credit card account described in paragraph (1) at the time the account is canceled under paragraph (2) shall be subject to the terms and conditions in effect at the time the account was canceled.".

Page 2, line 10, strike out "subsection" and insert in lieu thereof 'subsections".

Page 7, line 5, strike out the closing quotation marks and the second period.

H.R. 3545

By Mr. BROWN of Colorado:

—In subsection (h)(6) of the proposed new section 416 (Page 829, lines 21 through 23), strike out ". . . the current pay scale for that position, or, if there is no current pay scale for that position,".

—Strike the entire subsection (h)(8) in the proposed new section 416 (page 831, lines 2 through 24).

—Strike the entire subsection (j)(1)(B) in the proposed new section 416 (page 830, lines 13 through 25, and page 840, lines 1 through 13).

—Strike subsection (a)(1)(B) of section 9111 (Page 859, lines 4 through 9).

SENATE—*Tuesday, October 27, 1987*

(Legislative day of Friday, October 16, 1987)

The Senate met at 9 a.m., on the expiration of the recess, and was called to order by the Honorable THOMAS A. DASCHLE, a Senator from the State of South Dakota.

The PRESIDING OFFICER. Our prayer today will be offered by Rev. Ward M. Satterlee, Church of the Nazarene, Spencer, SD.

PRAYER

The Reverend Ward M. Satterlee, Church of the Nazarene, Spencer, SD, offered the following prayer:

Let us worship in prayer.

In the name of the Father, the Son, and the Holy Spirit. Father, we call upon Thee this very day and hour, that You, "our Father," will hear our request, for we are a most needy people.

Within the walls of this great Senate Chamber, O God, are here gathered our elected officials, to conduct the legal and official business for the future of our great Nation.

Dear God, as only You would understand their needs to the fullest, I, as one of Your many servants, would ask that You undergird these Senators and their staffs, in spirit, mind, and love, so that harmony and understanding, with great integrity, would unite and strengthen their leadership, for a greater and stronger America. Now, Father, the task of this day's work lies before these elected officials, our Senators.

May Your providential guidance be upon them, in thought, word, and deed this day. May we, as citizens of this blessed Nation, hold them daily in sincere prayer before You. Help us, O God, that we will honor and respect them, to which high office they have been elected.

We would remember, O Father, this day our President and his wife in their sorrow, due to death in the family. Remember our Vice President and Members of the House and all who have a part to play in the administration of this great Government. May Your healing touch be upon the Senate Chaplain, Dr. Halverson.

All of these needs and favors we ask in Your most worthy name. God bless each one of us. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore [Mr. STENNIS].

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, October 27, 1987.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable THOMAS DASCHLE, a Senator from the State of South Dakota, to perform the duties of the Chair.

JOHN C. STENNIS,
President pro tempore.

Mr. DASCHLE thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. Under the standing order, the majority leader is recognized.

CONDOLENCES TO MRS. REAGAN

Mr. BYRD. Mr. President, I am sure that all of our sympathies and condolences go out to Mrs. Reagan today on the loss of her mother.

I want to say that, personally, Erma and I extend our condolences.

PRESIDENT REAGAN AND CONGRESSIONAL LEADERS DISCUSS THE ECONOMIC SITUATION

Mr. BYRD. Mr. President, the President and the joint leadership of the two parties and on both sides of the Hill met yesterday to discuss the economic situation and the need for prompt, solid action in dealing with the budget deficits.

I was encouraged, as we came out of that meeting, that there was a clear understanding on the part of all that politics would take a holiday; that it is not important at this point to be Democrats or Republicans so much as it is to be Americans, dedicated to the need for achieving a product, in the final analysis, that will encourage and give strength to and confidence in the markets, in the economy, and in the ability of this Government to govern.

The Members of the team that have been decided upon to participate, on this side of the aisle, would be Senator STENNIS, chairman of the Committee on Appropriations; Senator JOHNSTON, a member of the Committee on Appropriations; Senator BENTSEN, chairman of the Committee on Finance; Senator CHILES, chairman of the Budget Committee. Senator DOLE has selected corresponding Members on his side of the aisle. The Speaker and the Republican leader in the House have selected corresponding Members from that body.

These Members will all sit down together today, at 3 p.m., to begin their work in hammering out, with representatives of the President, a package which, hopefully, will meet our goals or even exceed them.

We are all agreed that the Members in those meetings will avoid, as much as they possibly can, laying out the details after each day's meetings. I think we all are in agreement that the final product is what counts, not so much the play-by-play account as the teams march down the field. It is what goes on the scoreboard at the end of the plays that counts.

We have all agreed that politics is out the window; that we will all leave all options on the table, with the exception of Social Security; and that we will seek, as a minimum, the $23 billion which we have to reach. It is vital that we avoid a sequester, and the reconciliation bill which is on its way through the House can be, and probably will be, the vehicle into which we hope to include the final product in this body. That has the built-in time limitation, so that we can avoid a filibuster and meet or beat the deadline of November 20.

It is absolutely vital that we not have a sequester, and it is equally vital that we do what we can to focus on the $23 billion. We can hope to do even better and give to the markets all over the world and in, particular, the American people, a sense of confidence that the two political parties are working together and that this Government and its leaders can and will respond to the needs.

So, actions, not words, should be the order of the day. I hope that our Members on both sides of the Hill, each day, as they work together, will keep these things in mind, avoiding always the temptation to be political, not looking backward, but looking forward, realizing that this is not only a vital problem but also an unusual opportunity for us all to have an impact upon the course of our economy and our Government, not only for today but also for the days to come.

● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

RECOGNITION OF THE REPUBLICAN LEADER

The ACTING PRESIDENT pro tempore. The Republican leader is recognized.

NANCY REAGAN'S STRENGTH

Mr. DOLE. Mr. President, first of all, as the distinguished majority leader stated, we certainly all extend our sincere sympathies to our First Lady, Nancy Reagan, on the death of her mother.

Mrs. Reagan has gone through some difficult days recently. But, she has handled these adversities with the grace and serenity she always displays. All Americans, regardless of their politics, have great admiration and respect for Nancy Reagan. The outpouring of their concern was evident during her recent illness. Happily she appears to be well on the way to a complete recovery. And if anything good comes from the problems of others, Nancy Reagan's example of having regular medical checkups and early treatment, should convince millions of Americans that the surest way to beat cancer is with early detection.

Just as her courage and strength helped her through this recent illness, I know it will serve her now with the loss of her mother, Mrs. Edith Davis.

I know, as my distinguished colleague, Senator Byrd, has already indicated, all of our colleagues join us in extending our condolences to the Davis family and to the President and Mrs. Reagan.

THE ECONOMY

Mr. DOLE. Mr. President, I would also underscore the remarks of the distinguished majority leader about the serious economic problem we have before us, and I think Senator Byrd said it well yesterday: Let us forget about the past. Let us look ahead and in looking ahead we have not only a problem but an opportunity, all of us.

I think the American people agree that it is time for action—nonpartisan, bipartisan action; that we need to deal with the deficit; that everybody may have to give some ground; that long-held views may go out the window, because the world changed about 7 to 8 days ago and the economy is threatened.

I do not know the precise cause of the collapse of the stock market. But there is a perception, and it is probably more than a perception, that part of it is due to the inability of the President and the Congress to come to grips on deficit reduction.

So at 3 o'clock today, as Senator Byrd indicated, there will be a meeting. The White House representatives will be Howard Baker, the chief of staff; Jim Baker, Secretary of the Treasury; Jim Miller, the OMB Director, and I understand Frank Carlucci will also be with them.

It is my understanding that, if the leaders are not able to be present at all times, we may be permitted to have someone there, sort of a liaison for myself, Senator Byrd, and others. But, in any event, the important thing is the meetings will begin. No one knows how long it will take. I just hope the meetings will lead to action that is bold enough and soon enough to reassure the markets and reassure the American people.

I guess I am reminded, with the distinguished Senator from South Dakota in the chair this morning, that we have gone through some of this in the Midwest. We have seen land prices drop from $2,400 an acre to $600, $700 an acre. We have seen the American agricultural economy go through the wringer. Now it is looking a little better.

But, in any event, what affects the market will sooner or later affect all of us. It will affect the economy across the country. It will affect jobs, interest rates, and inflation. So we certainly want to do what we need to do, and to do it very quickly.

I want to thank the distinguished majority leader for his leadership in this area. He certainly has set the example for the rest of us by encouraging us to leave politics at the door when the meeting starts today at 3 o'clock.

SENATOR JOHN S. McCAIN

Mr. DOLE. Mr. President, yesterday marked the anniversary of a milestone event in the life of our good friend and colleague from Arizona, John McCain.

On October 26, 1967, 20 years ago today, while most Americans were watching news reports of the Vietnam war in the comfort of their living rooms, John McCain was piloting his Skyhawk jet over Hanoi—his 23d mission over North Vietnam.

Suddenly his plane was hit by a Russian Sam missile the size of a telephone pole. As his plane went into an inverted, almost straight-down spin, John pulled the ejection handle and was immediately knocked unconscious by the force of the ejection, which also broke his right leg, left arm, and right arm in three places.

YEARS OF CAPTIVITY

After dragging him out of a lake, his North Vietnamese captors thrashed him mercilessly, then tossed him on the floor of a small cell in Hanoi's main prison. It was only the beginning of an experience that most of us, even in our worst nightmares, could not imagine.

John McCain was tortured, beaten, and interrogated constantly. The prison officers refused to treat his injuries, unless he would provide them with military information.

Despite this inhumane treatment, John McCain didn't break.

When the North Vietnamese offered to free him in 1968, at a time when his father was assuming command of the Pacific Fleet, John adhered to the code of conduct and refused the offer, citing that other men captured before him should be released first.

Over the years of torture, starvation, and solitary confinement, the "Crown Prince"—as his captors called him—stubbornly resisted any offer of special treatment, and all efforts by the North Vietnamese to use him as a propaganda tool.

ASSISTING FELLOW POW'S

John McCain had the courage and conviction to hang on to his beliefs and, at the same time, encourage his fellow POW's to keep fighting throughout their ordeal. To keep up morale, John would risk beatings to tap messages on his cell wall and flash signals with his toothbrush to other American prisoners.

Even though he was kept in solitary confinement for most of his 5½ years of captivity, he kept his mind sharp by thinking about the meaning of life. John thought about his duties as an American citizen, the course our country was taking and how he could improve things. At times of greatest despair, he never lost hope; he never lost faith; and he never lost conviction in his strong political beliefs.

INTROSPECTIVE

I believe John's own words on his experience provides a valuable insight into this great man:

> I had a lot of time to think over there and came to the conclusion that one of the most important things in life—along with a man's family—is to make some contribution to his country.

Lt. Comdr. John McCain made countless sacrifices for the cause of freedom 20 years ago, and Senator John McCain continues to make tremendous contributions in his outstanding service to our country today.

AMERICAN HERO

Mr. President, John McCain is a genuine American hero—awarded the Silver Star, the Bronze Heart, the Distinguished Flying Cross, the Purple Heart, and the Legion of Merit. I am proud to serve in this Chamber with him.

NCOA AWARD TO SENATOR WARNER

Mr. DOLE. Mr. President, as a former recipient, I am pleased to announce that our colleague, the senior Senator from Virginia, John Warner, has been selected by the Non-Commissioned Officers Association to receive the "L. Mendel Rivers Award for Legislative Action" for 1987.

The award is the most prestigious honor the 170,000-member association can bestow upon an elected representative of the people. The NCOA's members are active duty and retired noncommissioned or petty officers of our Armed Forces. Not only is the association a leader in representing our servicemen and women here on the Hill, but they also conduct tremendous services ranging from voter registration drives to veterans employment services.

WARNER AWARD

Senator Warner has earned this honor for legislative leadership in several areas. He was one of the first elected Members of the U.S. Senate to recognize the exodus of talent in the uniformed services during the late 1970's. Having been an enlisted member of the U.S. Navy, an officer in the Marine Corps, and a Secretary of the Navy, he knew that the loss of experienced noncommissioned and petty officers could be reversed only if Congress took strong and positive action to rectify the situation. Senator Warner's successful legislative initiatives in the early 1980's began the road back to the quality force that we have today.

In addition, Senator Warner has remained in the forefront as an advocate of fair and adequate compensation for our Armed Forces members and has carried the standard for military retirees, insisting they be treated with dignity by the very Government that asked them to offer most of their young adult lives to the defense of our beloved Nation.

RIVERS AWARD

These are but a few of the many ways Senator Warner has endeared himself to the military community. It was these actions that sparked the NCOA to choose him to be its 16th recipient of an award named in honor of the late U.S. Representative from South Carolina, the Honorable L. Mendel Rivers. Through his devotion to the military's uniformed ranks, Representative Rivers became their symbol of all things good in our system of elected representation.

Senator Warner, however, makes a good case for himself. His dedication, patriotism, and zeal for fairness and justice, place him in a class with the best of those who work passionately for those who are defending America on a daily basis. He joins a noteworthy list of our distinguished colleagues who have been so honored in the past, such as Bill Armstrong, Bill Cohen, Sam Nunn, Strom Thurmond, and John Tower, now retired.

Mr. President, I congratulate Senator Warner on his selection for this high honor and encourage his colleagues to share its presentation at the 15th annual NCOA congressional reception tomorrow, October 28.

Mr. THURMOND. Mr. President, I am pleased to follow the distinguished Republican leader in paying tribute to my colleague and friend, Senator John Warner. The senior Senator from the great Commonwealth of Virginia joins six of his Senate colleagues who are prior recipients of the Non-Commissioned Officers Association of the USA [NCOA] "L. Mendel Rivers Award for Legislative Action." One of the Senate honorees, the Honorable John Tower, is now retired from this august body.

I am also pleased to say that my friend, Senator Warner, is truly deserving of this award. Senator Dole has told you of many of his virtues. Those who may follow me will tell you of others.

Most important is his allegiance to the men and women who serve and have served in our Armed Forces and the personal sacrifices the Senator has unselfishly made for his country and flag. Few, if any, can say they served in two wars, as a Secretary of a military department, and as a member of the Senate Armed Services Committee. These, by themselves, should suffice as good and sound reasons why anyone, any group or any organization should offer an award to Senator Warner.

Senator Warner will be the 16th recipient of the NCOA honor. I was privileged to have been the first to receive the award. Fortunately for me, I was also one of the first to recognize the young and upcoming organization that recently celebrated its 27th birthday this September past. I was most happy to take up a few of its earlier causes and I remain pleased that the association continues to recognize me as one of its friends and ardent supporters.

Retired Senator John Tower was the third recipient of the NCOA award. He was recognized for his support of the Armed Forces enlisted ranks and was, himself, a senior enlisted member of the U.S. Naval Reserve. He also was a dues-paying member of the association.

Senator Dole, our distinguished Republican leader, was the next Senator to receive the NCOA salute. Among his many outstanding accomplishments as a Member of this body, NCOA also recognized his endeavors in the area of veterans affairs.

The senior Senator from Colorado, Senator Bill Armstrong, was the fourth U.S. Senator to be so honored. Probably unknown to many of us, but long-remembered by NCOA, was the Senator's tenacity, in late 1979 and early 1980, to have Congress recognize the difficulty then besetting our Armed Forces. Senator Armstrong continued his quest for a reasonable increase in military pay until this body awoke to the fact and took positive steps to rectify the problem.

Senator Bill Cohen became the fifth recipient. It was Senator Cohen who first recognized the need for a new GI education bill. He introduced the first of such proposals offered in the U.S. Senate, and played a major part in having Congress adopt a new GI bill in 1984.

The sixth recipient of the NCOA award was Senator Sam Nunn, the distinguished chairman of the Armed Services Committee. The Senator received his salute for, among other widely known accomplishments, the Nunn-Warner legislation which was adopted in 1980. Coauthored with Senator Warner, this congressional action did more than any other effort to halt the late 1970's exodus of talent from the Armed Forces of the United States.

Tomorrow, the Non-Commissioned Officers Association, with Senator Sam Nunn as a cohost, will present our seventh colleague, Senator John Warner, with its most prestigious award. All of you are invited to come by and congratulate him for his dedication and devotion to our Nation and its uniformed military personnel. I hope to be present when the association's president, retired Army Command Sgt. Maj. Walter W. Krueger, and the association's chairman of the board, "Chuck" Jackson, make the award to my distinguished colleague.

Mr. ARMSTRONG. Mr. President, I take this moment to salute our colleague, Senator John Warner. He has been chosen by the Non-Commissioned Officers Association of the USA [NCOA] to receive the association's "L. Mendel Rivers Award for Legislative Action."

I am pleased to extend my congratulations to the senior Senator from Virginia. His concern for and interest in the well-being of our military servicemembers uniquely qualifies him for this distinctive honor, and it is appropriate that NCOA has chosen him for it's most prestigious award—named in honor of the late distinguished South Carolinian, Congressman L. Mendel Rivers.

Mr. Rivers during his distinguished services as chairman of the House Committee on Armed Services, concerned himself and his committee with the plight of our servicemembers, particularly those serving in the enlisted ranks. His effort and success in persuading Congress to address the issues affecting military personnel are legendary. He continues today to be highly revered by the men and women of the Armed Forces of the United States.

His successor, F. Edward Hebert of Louisiana, was the first Member of Congress to introduce the NCOA "L. Mendel Rivers Award." On Tuesday, May 25, 1971, Mr. Hebert told his colleagues:

> The attentiveness to legislative action by the NCOA is encouraging to me, as I am certain it is also to many of my colleagues. Being acutely aware of our actions through their legislative committee, [NCOA] has initiated an annual award to be presented to

the legislator who, in their opinion, is most worthy of recognition for his, or her, efforts in furthering the ideals of democracy, freedom and patriotism on behalf of our beloved Nation.

That, my friend, describes our colleague John Warner. He stands for those ideals. He is a firm believer in democracy and freedom. He is a patriot. Additionally, he has proven himself to be a friend of the military, especially to those who serve within its ranks.

I believe the spirit of Mr. Rivers lives on in the public service of men like Senator Warner. He certainly deserves to be recognized for his dedication and service to the Nation and its uniformed servicemembers.

As a previous recipient of this distinguished award, I am pleased that the Non-Commissioned Officers Association of the USA [NCOA] has selected Senator Warner to receive this honor tomorrow evening, October 28. I invite all of you to drop by the Senate Caucus Room, between 5:30 and 7:30 p.m. to congratulate the senior Senator from Virginia.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order there will now be a period for the transaction of morning business for not to extend beyond 9:30 a.m. with Senators permitted to speak therein for not to exceed 5 minutes.

WEINBERGER PROPOSED TRIDENT TESTS TORPEDO ARMS CONTROL

Mr. PROXMIRE. Mr. President, in an editorial on October 12, the New York Times vigorously challenges the Secretary of Defense on his proposal to test submarine launched missiles carrying 12 nuclear warheads. This challenge goes right to the heart of an arms control agreement with the Soviet Union reducing strategic warheads on both sides. If Secretary Weinberger proceeds with his proposed testing of missiles carrying 12 warheads, he might, in the process of doing so, torpedo the proposed, widely hailed arms control proposal by both superpower leaders. Both President Reagan and Secretary Gorbachev have proposed a treaty that would require each country to cut their respective strategic nuclear arsenals in half. That is, each side would reduce their present roughly 10,000 strategic warheads down to 5,000. The administration has called this proposal the most far reaching and significant arms control agreement ever seriously considered. This Senator disagrees. The reduction of warheads would have only a modest significance. If the technology of concealing and delivering these warheads continues at the hectic pace of the past, 5,000 or even 1,000 nuclear warheads on each side would provide stunning deterrence. Still the reduction of nuclear warheads would, at least, constitute a useful precedent, a beginning that might eventually lead to an adequate but safer level of deterrence.

Why does the Weinberger proposal diminish this arms control opportunity? Here's why: As the New York Times points out, testing lies at the heart of any effective verification agreement that includes the deployment of submarine launched missiles. How does either side determine the number of nuclear warheads deployed in their submarines? It's not easy. Many of the submarines spend months at sea. The very essence of their deterrent strength is that the other side cannot track them. They are quiet. They move very fast. They are invisible. They can hide 6 miles under the ocean. They disappear under the ice cap at the South or North Pole, or anywhere in the three quarters of the Earth covered by the ocean. It is their very invisibility and mobility that makes them far less vulnerable as a deployment mode for the nuclear deterrent. So how does the other side determine if the adversary is complying with a limitation on submarine deployed nuclear warheads? It can, over time, determine the number of submarines in the other side's arsenal. It can then assume that the other side is carrying the maximum number of missiles it is designed to carry and the maximum number of warheads it has ever tested in one missile. This means that if the Trident II missile—also called the D-5—has been tested with a maximum of 8 warheads per D-5 missile, and if each Trident submarine can carry a maximum of 24 missiles, then each Trident can carry at most 192 warheads. If, as the New York Times hypothesizes, the treaty should limit the U.S. submarine launched deterrent to 3,500 strategic warheads, then since we have to date tested a maximum of 8 warheads per D-5 missile we could carry 18 Trident submarines in our arsenal. But once we test the D-5 with 12 warheads, we will be limited to 12 Trident submarines.

This is based on the necessary assumption that each side is carrying the maximum number of warheads per missile that it has tested for that missile. The assumption is necessary because it would be impossible to apply any other effective system of verifying compliance. Certainly neither side can or should be expected to reveal the location of all of its subs at all times so that the other side could engage in unannounced inspection to assure compliance. Any time the adversary knows the location of our submarines, our deterrent is in mortal danger.

It is ironic that Secretary Weinberger, the President's most faithful and meticulously loyal follower is pursuing a testing policy that seems certain to destroy that great arms control dream of his President. The only other logical conclusion from this Weinberger decision to test his D-5 missiles with 12 warheads instead of 8 is that the Defense Secretary would be willing to reduce the number of Trident submarines in our arsenal from 18 to 12. The New York Times argues that even 18 may be too few. Certainly 12 is unsatisfactory, as the Secretary of Defense must fully understand. Our submarines carry 50 percent of our strategic nuclear deterrent. They constitute far and away the most secure and reliable part of our strategic triad. The number of the submarines is as important an element of their deterrent strength as their mobility, their quietness and their invisibility. Sure it is unlikely that the Soviets could track all 12 of our Tridents and simultaneously destroy them all. But it is at least conceivable. On the other hand the prospect that the Soviets could know precisely where each of our fleet of 18 Tridents are at all times and for sure would be a very long shot, indeed.

Mr. President, I ask unanimous consent that the editorial to which I have referred from the October 12, 1987, New York Times be printed in the Record.

There being no objection, the editorial was ordered to be printed in the Record, as follows:

Trident Mischief, or Worse

It makes no sense for the Pentagon to test the new Trident submarine missile with more and more warheads. Yet that is precisely what Defense Secretary Weinberger has ordered. Perhaps his decision represents a mischievous effort to complicate nuclear arms talks. Perhaps worse, he may not realize that the Soviet Union would benefit more from his ploy than the United States.

The Trident testing issue is no mere technical question for strategic experts. It raises basic policy choices on arms control and force structure. The White House and Congress would be well advised to reverse Mr. Weinberger's call.

The initial version of the Trident II missile, also called the D-5, is set for deployment on Trident submarines in 1989. Each missile will carry eight warheads of sufficient accuracy and explosive power to destroy a Soviet missile in a hardened silo. The Trident sub can hold 24 such missiles for a total of 192 warheads per sub. That number was generally considered to be a sufficient concentration of force on one sub.

Mr. Weinberger apparently felt otherwise. In September, he ordered the D-5 to be tested with 10 warhead places. Now he wants to extend that to 12, and right away, though this version of the D-5 is not set for deployment until 1993.

Testing the D-5 with 12 warheads any time soon would create substantial verification problems in the strategic arms reduction talks with Moscow. Both sides have proposed significant reductions in missile warheads. Until now, the only way adequately to verify such a scheme has been to apply a simple counting rule: If a type of missile is tested with as many as, say, 16 warheads, all missiles of that type will be considered to hold 16 warheads. Thus, if the D-5 is to be tested with 12 warheads, all D-5's will be counted as carrying 12 warheads—even though some or even most would carry only eight.

Mr. Weinberger, who drags his heels on arms control generally, doesn't like the rule. He wants warheads on each missile to be counted individually. The only way to do that, however, is by the cumbersome process of inspecting every missile with a can opener. Conceivably, Moscow would let Americans look inside its missiles. But American experts certainly would not want to reciprocate. U.S. technology is better and they rightly don't like the idea of showing Moscow how to improve its missiles.

In all likelihood, both sides will agree to stick by the old counting rule. In that case, Mr. Weinberger invites an even more serious problem—a sharply reduced number of Trident subs, the most survivable and reliable of all U.S. retaliatory forces. If the new treaty ends up limiting the U.S. to 3,500 submarine-launched ballistic missiles, and if each D-5 counts for eight warheads, the U.S. could field about 18 Trident subs. But if each D-5 counts for 12 warheads, the U.S. could have only 12. Many American experts consider 18 too few for a secure retaliatory force, let alone 12.

A lot rides on the D-5 testing decision—progress on a strategic arms treaty and U.S. retaliatory capability. Secretary Weinberger seems unaware of the stakes. Is the President?

Mr. PROXMIRE. I yield the floor.

The PRESIDING OFFICER (Mr. PROXMIRE). The distinguished Senator from South Dakota is recognized.

THE GUEST CHAPLAIN

Mr. DASCHLE. Mr. President, as I indicated as we opened up the Senate today, Rev. Ward Satterlee was our Chaplain for today. Reverend Satterlee is from Spencer, SD, a rural community about 70 miles west of Sioux Falls. He is the pastor of the Church of the Nazarene in Spencer.

The Satterlee family is no stranger to the people of our country. The first Satterlees came to the United States more than 350 years ago.

Reverend Satterlee served in the Salvation Army for the first 15 years of his professional life but since then has served in the ministry for more than 35 years, most of which has been served in our State of South Dakota.

Reverend Satterlee, who retired several years ago, was called back to Spencer when they had no pastor. He served without compensation in the Church of the Nazarene in Spencer for all the years in his retirement, and I must say now serves four other churches besides the Church of the Nazarene.

He is a pillar in the community of Spencer. He is a person with whom all of us have tremendous respect. He is a person that I am very proud to present to the U.S. Senate.

He and his family are in the gallery today, and we are delighted that h [illegible] a part of our session today.

I thank the President, and I yield the floor.

MILITARY CONSTRUCTION APPROPRIATIONS BILL, FISCAL YEAR 1988

Mr. LAUTENBERG. Mr. President, I rise in support of the fiscal year 1988 military construction appropriations bill. The bill would fund military construction projects that are critical to the defense of our Nation, and the security of our people.

The bill also includes funding for a number of projects of importance not only to the Nation, but to my own State of New Jersey, and to New Jerseyites who work at the Philadelphia Naval Shipyard.

I am pleased that the bill contains $18.6 million that will permit dredging the Sandy Hook Channel to provide access to the Earle Naval Weapons Station pier. Funding for this dredging is essential to enable the relocation to Earle of two fast combat support ships [AOE's] currently homeported in Norfolk, VA.

These ships are refueling off a Navy pier in Norfolk under an explosive safety waiver administered by the Explosive Safety Board of the Department of Defense. Ships refueling from the Navy pier in Norfolk are not within the explosive safety quantity distance arc as properly required by the Department of Defense. The bill also contains $250,000 for development of alternate disposal plans for dredged material from the expansion of the channel that provides access to the station pier at Earle. This money is needed because the Navy's planned dredging project will produce a large quantity of beach quality material. Nearby there is a significant beach erosion problem involving the impending loss of millions of dollars in property development at Sea Bright and Monmouth Beach.

Disposal of this material on these beaches would be very helpful in reducing the risk of this property loss. However, $250,000 is needed to develop such an alternative disposal plan. Once such a plan is completed, I am informed that the State of New Jersey would be prepared to contribute funding for the additional costs of disposal.

In addition, the Army Corps of Engineers has an ongoing final engineering study of an authorized beach erosion project that includes not only these beaches, but others between Sandy Hook and Barnegat Inlet. Initiation of construction of the beach erosion control project is anticipated in 1991. The corps also maintains the Sandy Hook Channel that the Navy plans to expand. Last year the Congress authorized the corps to pay half of the extra cost of disposing beach quality sand from and to projects under their jurisdiction.

I strongly believe that the Navy's project should proceed in concert with the Army corps project. The Navy-dredged sand, once deposited on the beaches, would be subject to erosion if not properly combined with repairs and other measures contemplated in the Army project. It would be an unfortunate waste of public funds, if the Navy-dredged sand were deposited on the beaches—at a significant cost to the State—only to be washed away because of inadequate coordination between the Navy and the Army.

In addition to supporting the funding for the dredging and the study, I am pleased that the report accompanying this bill includes report language that directs the Navy to coordinate its efforts with the Army corps. I cannot emphasize the importance that the restoration of these beaches have to our coastal environment, and the local economies in my State.

The bill also contains $4.2 million for a new 800-person armory at Fort Dix. Such an armory would provide much-needed facilities for training of the Army National Guard.

This facility would be used to serve the training missions of the units assigned to the base, and is required to house the Headquarters and Headquarters Company of the 50th Armor Division, the 50th Military Police Company, the 50th Chemical Company, the 2d Forward Support Battalion, and the 194th Medical Detachment, with an authorized strength of 835. The facility will provide space for the conduct of indoor training, the storage of equipment, and the carrying out of administrative functions related to improving proficiency in unit/personnel training to achieve assigned readiness objectives.

The facility will be located within Fort Dix, in a 21-acre site licensed to the State of New Jersey. The Headquarters and Headquarters Company, 50th Armor Division and 50th Military Police Company presently occupy a 600-person armory in Somerset. These two units will be replaced by Headquarters and Headquarters Company, 50th Armor Division Support Command and a personnel services company currently located in the obsolete and inadequate East Orange Armory.

The East Orange Armory was built in 1912, and is obsolete and inadequate in accommodations to meet unit training commands. The occupation of the East Orange facility has an adverse impact on troop morale, operation and training, and recruitment and retention of personnel.

This bill contains $1.5 million for an upgrade of the McGuire Air Force Base Physical Fitness Center, which would provide a place for all Air Force members to maintain their physical fitness.

The current fitness center was built in 1957, when the base population was much smaller than it is today, and when few females were in the Air Force. Severe overcrowding exists as a result of the growth since 1957.

Female personnel have inadequate locker and shower facilities. Only one small area exists for weight training and Nautilus machines. Further, the single basketball court, used for all base teams and intramural indoor sports, severely limits the number of programs and participation level. The main court is the only available space for conducting exercise classes, further limiting its use for team sports. The facility is presently open 18 hours a day in a futile attempt to alleviate congestion. The building systems are in need of major upgrade.

Finally, I am pleased that the bill includes money for a much-needed water distribution system improvements project at the Philadelphia Naval Shipyard, where over 3,000 of my constituents work. This project, entailing repairs and replacements in the water distribution system, is extremely important to the safety and health of thousands of active duty and civilian personnel at the Philadelphia Naval Shipyard. The existing system at the shipyard is inadequate for fire protection and for supplying potable water for many of the shipyard's activities.

Mr. President, I applaud the chairman of the subcommittee, Senator Sasser, and the ranking Republican member, Senator Specter, for their work in bringing this bill to the floor. I urge the passage of this bill.

ORDER OF PROCEDURE

Mr. BYRD. Mr. President, I ask that morning business be closed and that the rollcall vote on final passage of the military construction appropriation bill begin. The rollcall vote will extend until 10 o'clock, in any event.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. If there is no further business, morning business is closed.

MILITARY CONSTRUCTIONS APPROPRIATIONS, FISCAL YEAR 1988

The Senate resumed consideration of the bill.

The ACTING PRESIDENT pro tempore. The bill having been read the third time, the question is, Shall it pass? The yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Illinois [Mr. Dixon], the Senator from Connecticut [Mr. Dodd], the Senator from Tennessee [Mr. Gore], the Senator from Michigan [Mr. Riegle], and the Senator from Illinois [Mr. Simon] are necessarily absent.

Mr. SIMPSON. I announce that the Senator from Mississippi [Mr. Cochran] and the Senator from Oregon [Mr. Packwood] are necessarily absent.

The ACTING PRESIDENT pro tempore. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 93, nays 0, as follows:

[Rollcall Vote No. 349 Leg.]

YEAS—93

Adams
Armstrong
Baucus
Bentsen
Biden
Bingaman
Bond
Boren
Boschwitz
Bradley
Breaux
Bumpers
Burdick
Byrd
Chafee
Chiles
Cohen
Conrad
Cranston
D'Amato
Danforth
Daschle
DeConcini
Dole
Domenici
Durenberger
Evans
Exon
Ford
Fowler
Garn
Glenn
Graham
Gramm
Grassley
Harkin
Hatch
Hatfield
Hecht
Heflin
Heinz
Helms
Hollings
Humphrey
Inouye
Johnston
Karnes
Kassebaum
Kasten
Kennedy
Kerry
Lautenberg
Leahy
Levin
Lugar
Matsunaga
McCain
McClure
McConnell
Melcher
Metzenbaum
Mikulski
Mitchell
Moynihan
Murkowski
Nickles
Nunn
Pell
Pressler
Proxmire
Pryor
Quayle
Reid
Rockefeller
Roth
Rudman
Sanford
Sarbanes
Sasser
Shelby
Simpson
Specter
Stafford
Stennis
Stevens
Symms
Thurmond
Trible
Wallop
Warner
Weicker
Wilson
Wirth

NOT VOTING—7

Cochran
Dixon
Dodd
Gore
Packwood
Riegle
Simon

So the bill (H.R. 2906), as amended, was passed.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. FORD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. SASSER. Mr. President, I move that the Senate insist on its amendments and request a conference with the House, and that the Chair be authorized to appoint the conferees on the part of the Senate.

The motion was agreed to; and the Acting President pro tempore appointed Mr. Sasser, Mr. Inouye, Mr. Proxmire, Mr. Reid, Mr. Stennis, Mr. Specter, Mr. Garn, Mr. Stevens, and Mr. Hatfield conferees on the part of the Senate.

MEDICARE CATASTROPHIC ILLNESS COVERAGE ACT

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now resume consideration of S. 1127, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 1127) to provide for Medicare catastrophic illness coverage, and for other purposes.

The Senate resumed consideration of the bill.

Pending:

Riegle Amendment No. 1043, to require maintenance of effort by employers who are providing health care benefits that are duplicative of new or improved medicare benefits.

AMENDMENT NO. 1043

The ACTING PRESIDENT pro tempore. The pending question is on the Riegle Amendment No. 1043.

Mr. HEINZ addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Pennsylvania is recognized.

Mr. HEINZ. Mr. President, parliamentary inquiry: The Riegle amendment has not yet been disposed of; is that correct?

The ACTING PRESIDENT pro tempore. The Senator is correct.

Is there further debate on the Riegle amendment?

Mr. BENTSEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mr. BENTSEN. Mr. President, as I recall, as we recessed on Friday, the pending business was the Riegle amendment.

It is my understanding that it is before us now. We had an objection on the Republican side of the aisle by one member who is out of town. It is my understanding that that objection may have been taken care of.

I ask the manager of the bill on the minority side to comment on that, if he will.

Mr. DURENBERGER addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Minnesota.

Mr. DURENBERGER. Mr. President, as the chairman of the Finance Committee has indicated, one of the members of the Finance Committee on our side who is out of town had a concern about the Riegle amendment. I am informed that that concern has been satisfied. There is no longer any objection to the amendment on this side of the aisle.

As I indicated in my remarks on Friday, I think it is a very good amendment, and it is appropriate that we recommend passage.

Mr. BENTSEN. If I may ask the Senator a question about his amendment, I would like to be clear about the intent of the amendment: Specifically, private sector health plans take many very different forms, including indemnity style plans, HMO's, PPO's, reimbursement plans and so forth. In addition, many different arrangements exist for funding health plans. Some plans contain a mix of employees covered under Medicare and employees not covered under Medicare. I understand that the amendment is worded specifically with the intent of giving employers maximum flexibility to respond to the new Medicare coverage in ways the employers and employees determine are most suitable for their individual situations. There is no intent that rigid guidelines or rules be promulgated in carrying out this amendment. Is my understanding correct?

Mr. RIEGLE. The Senator's understanding is very correct.

Mr. BENTSEN. If I may ask one additional question: This amendment will affect only companies which currently are providing the type of benefits to their employees that the Congress in this bill has determined are needed by the general Medicare population. These employers have already gone an extra mile in providing these benefits on their own. It is my understanding that in no case would it be the intent of the amendment that an employer already providing these benefits would incur additional costs in meeting the amendment's terms. Is my understanding correct?

Mr. RIEGLE. The Senator's understanding is very correct. This amendment will not result in increased costs to employers but rather will prevent an unintended windfall for employers at the expense of our Nation's retirees.

Mr. ROTH. Mr. President, the legislation we are considering today attempts to deal with an important issue for our elderly citizens—catastrophic health care costs. I share the desire of my colleagues to protect our elderly population from the devastating effect of catastrophic health care expenses. There are actually three different and distinct areas where need exists—catastrophic protection, nursing home or long-term care, and prescription drug coverage. Because of the high cost involved in each of these, it is important that we progress carefully.

Any action we take should be well conceived and financially sound—in other words, programmed for success. Any proposal that is not fiscally sound well into the future will raise false expectations among our elderly citizenry. Eventually, when push comes to shove and we face a financial crisis, we will be forced to resort to some type of stopgap action like appointing a special commission to review the situation and make recommendations for remedying the problem. In the meantime, while the commission is undertaking its charge, we will cause panic among the very people we intended to help. For anyone who would suggest this is an unlikely scenario, I would remind them it was not too long ago that just such a situation existed in the Social Security Program because benefits were increased without sufficient financing to provide them. Fortunately, we were able to take action and solve the financial problems of the Social Security system well into the future. However, this was not accomplished without some cost to older Americans—the months of fear and doubt about their future financial stability. I would hope that we would make sure our older Americans never again have cause for doubt, worry and fear that can be avoided by careful and thoughtful action.

I joined the majority of my colleagues on the Finance Committee who voted to report the Medicare Catastrophic Loss Prevention Act of 1987 to the Senate floor. I did so because I believe we need to begin to address the need for catastrophic protection. But I did so with reservations. I was concerned about the major departure this bill was making in the financing of Medicare benefits.

During the past 2 months, my reservations have grown, not diminished. I have received letters and phone calls from hundreds of senior citizens from my home State of Delaware urging me to oppose the bill and hundreds more urging me to oppose the prescription drug amendment. In addition, I have heard from some of our local chapters of the American Association of Retired Persons expressing opposition to this legislation. The following are excerpts from that correspondence:

> At our regular monthly meeting on September 10, 1987, a motion was made and passed by our organization to oppose the subject Bill in its present form.
>
> Those of our membership in opposition to both the Senate and House bills believe that their present coverage for costs not covered by Medicare benefits are either provided by company health care programs or by some type of "medigap" policy purchased by them at rates under those proposed in the Bills and with better coverage.
>
> We request that you and your colleagues give S. 1127 (and House Bill 2470) a careful review with the hope of arriving at a more satisfactory approach to catastrophic health care legislation.—Alfred S. Patterson, President, Claymont Chapter 175, AARP.

> The Catastrophic Illness Health Insurance will be coming up for a vote in the Senate when it reconvenes in September after its summer recess. A similar bill has already passed the House. The AARP has been urging approval of some form of insurance and thus our first reaction was to go along with the recommendations, but after reading some very enlightening articles and comments in the Wilmington papers, we have to reluctantly say "no way"!
>
> Both bills will drastically increase premium payments for enrollees in the system (which means everyone covered by Medicare). Government and military retirees who are already covered for catastrophic illness would be paying for something they do not need. Likewise, those of us in the private sector who are covered by health insurance provided by our employers would be similarly affected. Unless changes are made to allow for this, we cannot and will not support the bills as now written.—Mario Salgado, Legislative Committee Chairman, Southeastern Deleware Chapter, AARP Newsletter.

Additional concerns have been raised regarding the effect the bill would have on Federal retirees. Recently, the Governmental Affairs Committee, Subcommittee on Federal Services, Post Office and Civil Service held hearings on this issue. At the hearing, it became clear that this legislation really boils down to a "double whammy" for Federal retirees who already have catastrophic protection. As Mr. Laurence E. Ide, a resident of Delaware and a Federal retiree so aptly expressed the situation in a letter to me:

> It is basically unfair to require those of us so situated to be included in an additional catastrophic health care coverage under Medicare, with substantial and in some cases prohibitive additional premiums, which would duplicate similar coverage which we already have.

As a result of hearing these and similar concerns from so many of my senior citizen constituents, I had my staff conduct a survey of the retiree health benefits provided by the largest 20 employers in Delaware. The survey indicated that the vast majority provide health insurance equal to or superior to the provisions of S. 1127. In addition, many already include coverage for prescription drugs. Thus, it appears for many senior citizens this legislation will raise the premium they pay for "new" coverage that actually duplicates existing coverage.

The cost of those premiums is also cause for concern. The bill we have before us raises the basic part B premium at a flat rate of $4 per month for all beneficiaries. In addition, it requires a supplemental premium in the form of a surtax. For each $150 of tax liability, the part B enrollee will pay an additional $12.20 annual premium up to a cap of $800 per person per year. The following table, released by the Heritage Foundation and based on CBO's projections shows the projected increase in the basic part B premium and the supplemental premium or surtax:

Premium Increases

The following table shows how the current Part B monthly premium is projected to increase between now and 1992 and, based on CBO's projections, how S. 1127 will add to that premium.

PROJECTED PART B MONTHLY PREMIUMS

	1987	1988	1989	1990	1991	1992
Current part B premium	$17.90	$22.00	$22.90	$23.90	$24.90	$26.00
Additional premium in S. 1127		4.00	4.60	5.10	5.90	6.70
Total	17.90	26.00	27.50	29.00	30.80	32.70

The following table, based on CBO's projections, shows how the surtax (supplemental premium) in S. 1127 will increase during the first five years of the program.

PROJECTED INCREASES IN SURTAX RATES

	1988	1989	1990	1991	1992
Additional tax per $150 of income tax liability	$12.20	$14.26	$15.66	$17.89	$20.47
Surtax rate	8.1	9.5	10.4	11.9	13.6

These tables indicate that over the next 5 years, the basic monthly premium for Medicare part B will have to be raised each year resulting in a premium of $32.70 per month in 1992. That represents an 85-percent increase in 5 years. Similarly, the surtax which is set at $12.20 for every $150 of tax liability or a rate of 8.1 percent will increase each year resulting in a premium of $20.47 for each $150 of tax liability or a rate of 13.6 percent in 1992. That represents an increase of 67 percent in the same 5 years. In my view, the combined effect of these increases would put a real financial burden on the very people we are supposed to be helping.

In addition, these projections raise real questions about the long-term effect of this bill. It is certainly predictable that ever-increasing premiums for duplicative coverage will cause beneficiaries to opt out of part B. Such a reduction in the participation rate would threaten financial soundness of the program in years to come. The bill is intended to be self-financed and subsequently budget neutral. However, in as little as 5 years, the prospect for continued budget neutrality is, at best, questionable.

Further, the addition of an amendment for prescription drug coverage will intensify these problems. Premiums will be even higher and the threat to long-term solvency will be even greater. I find it ironic that we are considering a new program, without a sound financial base, at the very time that we are endeavoring to reduce the Federal deficit.

In sum, Mr. President, my initial reservations have been borne out and in fact, have increased to the point that, regrettably, I cannot support this legislation in its current form. While I believe that action is needed to protect our older Americans from catastrophic health care costs, I cannot support legislation that will duplicate existing coverage provided in the private sector, that will balloon costs for our senior citizens and that will jeopardize the solvency of the Medicare trust fund.

Mr. BENTSEN. Mr. President, we had a further check on this side of the aisle. We again have no objection to it.

Mr. President, this is a good amendment. I hope the Senate will adopt it.

The PRESIDING OFFICER (Mr. BREAUX). Is there further debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from Michigan [Mr. RIEGLE].

The amendment (No. 1043) was agreed to.

Mr. BENTSEN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MITCHELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MITCHELL. Mr. President, I yield to the distinguished Senator from Pennsylvania for the purpose of offering an amendment.

The PRESIDING OFFICER. The Senator from Pennsylvania.

AMENDMENT NO. 1044

Mr. HEINZ. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

> The Senator from Pennsylvania [Mr. HEINZ], for himself, Mr. MITCHELL, Mr. CHAFEE, Mr. DASCHLE, Mr. KENNEDY, Mr. SIMON, Mr. RIEGLE, and Mr. DURENBERGER, proposes an amendment numbered 1044.

Mr. HEINZ. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The text of the amendment is printed later in today's RECORD under "Amendments Submitted.")

Mr. HEINZ. Mr. President, the amendment I have sent to the desk is one that I am offering on behalf of a number of my colleagues: First, the Senator from Maine [Mr. MITCHELL], the chairman of the Health Subcommittee; the Senator from Rhode Island [Mr. CHAFEE], who has been a very active participant in our many meetings on the subject; the Senator from South Dakota [Mr. DASCHLE], who likewise has been deeply involved; the Senator from Minnesota [Mr. DURENBERGER], the ranking member and for some 6 years, if my memory serves me correctly, the previous chairman of the Health Subcommittee; and the Senator from Massachusetts [Mr. KENNEDY], chairman of the Committee on Labor and Human Resources. They all join in this amendment to the Catastrophic Health Care Act.

The amendment covers the major costs of prescription drugs under the Medicare Program.

A lot of people worked very long and hard, both on and off Capitol Hill, in developing this amendment. It is fair to say that what our amendment does is to represent a reasoned and sensible compromise with input and, in general, a broad consensus not only among colleagues on both sides of the aisle but also from people like the Pharmaceutical Manufacturers Association, the administration, and concerned advocacy groups like the American Association of Retired Persons, and others.

As is necessarily the case, not every contending group was able to get everything they wanted. But we believe that, on balance, all the interested parties are quite satisfied that we and our working group and the committee have accommodated virtually all the major concerns.

Mr. President, I hope to get everybody to focus on what we are talking about. What we are talking about is the contents of containers like the one I have in my hand, a prescription bottle. It is a familiar sight to most Americans. Literally millions of these vials are filled each year with pills that will cure strep infection, will control diabetes, will numb the pain of cancer.

This is an age of medical miracles, of artificial hearts, and mechanical lungs, and there is probably no greater miracle than the drugs used in combating and controlling disease. The irony is that for millions of older Americans, this miracle becomes a nightmare of costs.

Let me take, for example, one of my constituents who we will call Mr. N., from my hometown of Pittsburgh, PA. He recently wrote me that his modest income from Social Security was "devastated by the costs of prescription drugs." Why? Because he was having to spend an average of $180 a month for the past year, and he knows of many others whose limited means are similarly being ravaged.

Mr. President, $180 a month is nearly $2,000 per year, and Mr. N. is one of the 5 million senior citizens who spend more than $600 annually for prescription drugs.

Older Americans, who, by the way, represent about 12 percent of the population, nonetheless consume, understandably, some 30 percent of all prescription drugs. One out of every four seniors has five or more of these drug vials in a medicine cabinet or at the bedside table, prescribed by their doctor, at any given time. Of the $9 billion that older Americans spend for prescription drugs, as they did in 1986, $7.3 billion, or more than $4 out of every $5, came out of their own pockets.

It does not take an acute catastrophic illness to have catastrophic drug costs. Chronic conditions, such as arthritis, which affects some 11.5 million of our elderly, or hypertension, which afflicts nearly 9.5 million, can lead to thousands of dollars in drug costs annually.

A General Accounting Office report released this July found that for three of every four elderly persons, prescription drugs are the largest out-of-pocket health care expense. More alarming than the amount that older people pay for the drugs is the fact that many people do not get the medication they need, for a very significant reason—namely, because of cost.

In a recent AARP survey, cost was given as the second most important reason for failure to fill a prescription. In an earlier study, as many as 36 percent of elderly patients with moderate to severe hypertension reported economic barriers to purchase of antihypertensive drugs, both new and refilled.

Therefore, it is a simple equation of need. Subtract essential living costs from an elderly person's income, and very little, if anything, remains for the medications to keep a person functioning and able to participate, let alone enjoy life.

Mr. President, for the record and for my colleagues, I want to give an idea of just what high drug costs can mean to a typical older American today.

Let us take a widowed woman, the not atypical Social Security beneficiary, living alone, and on a fixed income from Social Security of, say, $460 a month, about $5,520 a year. Using national averages for spending by Americans age to 65 and over, we can assume that this average Mrs. Smith will spend about $152 a month on shelter and utilities, which is about one-third; $78 on food, about 17 percent of the budget; $19 a month on clothing, about 4 percent; $74 on transportation and miscellaneous expenses, about 16 percent; $51 for uncovered doctors' bills and drugs, 11 percent; and $35 on a MediGap policy. Her total monthly expenses come to $409, assuming that Mrs. Smith is in relatively good health.

However, the harsh reality is that our average Mrs. Smith has a four out of five chance—I repeat, a four out of five chance—of suffering from one or more chronic conditions, even if she has not experienced an acute illness requiring medication.

A typical combination of chronic conditions would be angina and hypertension, diabetes, and arthritis.

The monthly cost for prescription drugs to correct these conditions might average $100. A bill for a year's medication would come to over $1,200.

Therefore, for Mrs. Smith and the millions of older Americans like her who have to pay these costs, not just once in a year but every year, these health-related costs are a financial catastrophe. The failure to take drugs may actually raise the costs of other medical care. Unnecessary hospitalization, even death, certainly unwarranted suffering and pain all have been tied to the failure to take prescription drugs.

Mr. President, the bottom line here is that any bill presuming to protect Medicare beneficiaries against catastrophic costs is an imposter without a provision to cover prescription drugs. The addition of this drug provision to the catastrophic health bill will extend coverage for catastrophic out-of-pocket costs to what we estimate will be some 5 million older Americans annually.

We have seen the potential for high drug expenses and we have seen the catastrophic impact of these costs on seniors.

The tragedy. Mr. President, is that neither public nor private insurance coverage currently available provides any real protection against these costs.

Medicare, for example, costs only about 3 percent of the total cost of prescription drugs and then only for a very limited category of treatment. Seventy-two percent of MediGap policies offer no coverage for prescription drugs whatsoever. Even if private insurance companies offered prescription drugs coverage, and most do not, the cost would be at least two to three times the monthly premiums and costs associated with our proposal.

The amendment my colleagues and I are introducing today would cover 80 percent of the Medicare beneficiary's drug expenses exceeding $600 a year. With this benefit we will reduce the average out-of-pocket expense for those of more than $600 of drug costs anually from 68 to 24 percent with Medicare picking up 47 instead of 3 percent of the costs.

This is a careful and targeted approach. We designed a three-step phase in to allow Medicare time to prepare administratively for full coverage of prescription drugs.

Most beneficiaries only will be covered for catastrophic drug costs of those over $600 per year.

With this deductible and by requiring beneficiaries to pay 20 percent of the cost, we have given them a strong incentive to be comparative consumers and avoid unnecessary purchases.

Mr. President, let me add that this is also a fair and equitable approach because the program will be fully funded by premiums paid by the elderly themselves. We will not need to cut corners or raise dollars elsewhere.

The supplemental premium is structured to adjust payments in proportion to individual's income.

The program will rely heavily on participating pharmacists who agree to keep records of beneficiaries purchases, assist them with their inquiries and submit bills directly through Medicare through a state of the art electronic claims systems for prescription of single-source drugs, those with no generic substitute or those where the physician will testify that no substitutes are allowed. Pharmacists will receive their actual charge or the average wholesale price plus administrative allowance of $4.50 whichever is lower. For multisource drugs, that is to say those with chemically-equivalent substitutes and meeting FDA standards for purety and effectiveness, the pharmacist would receive their actual charge or 150 percent of the average wholesale price of the lowest-priced generic drug, $4.50 whichever is lower.

Mr. President, the CBO estimates that the entire package contained in this amendment would cost $145 million in 1990, $740 million in 1991, and $1.4 billion in 1992. The cost will be divided between Medicare part B, so-called flat premium, and the new supplemental premium that is linked to income. CBO projects a flat increase of 60 cents a month in 1990, $1.40 in 1991, $2.20 in 1992, and $3.80 in 1993.

One provision of this amendment suggested by the administration, I might add, is particularly significant for controlling the costs of the catastrophic drug benefit. This provision would provide the Secretary of Health and Human Services with carefully designed authority to control overall programmed costs to keep monthly part B premiums under maximum ceilings, and for the record, those ceilings starting in 1991 would be $2, $3.50 in 1992, and $4.80 in 1993 when the drug benefit will be fully phased in.

States would be required to use all Medicare savings resulting from this new benefit to increase Medicaid benefits for low-income elderly. In addition, States will have the option of providing additional drug coverage to people with incomes up to 200 percent of the poverty line.

Mr. President, we have worked out a large number of critical details of the amendment with key members of the administration and while there are still certain technical issues that at least as of this moment we have not been able to resolve, I think it is fair to say that the administration is willing to support not only the catastrophic bill with my drug amendment that my colleagues and I are offering today, but they will support it on the condition that the technical concerns about the drug amendment that we have here before us will be worked out in conference.

I will have more to say about that in a moment, but I particularly want to commend not only Secretary Bowen and Joe White for their great work and help in this, but I want to commend the beneficiaries groups, the American Association of Retired Persons, and the National Council of Senior Citizens, who have worked closely with all of us and the committee and who have been strong supporters of this effort.

Of course, in the final analysis, the significance of the amendment is twofold. This is an insurance program. It provides to older Americans on a very cost-efficient basis a benefit that the private sector simply cannot, does not, or up to now will not make available.

It is the way we have written it, I believe, a reasonable balanced workable solution to a catastrophic threat to these millions of older Americans.

Second, in recognizing that the year in, year out out-of-pocket cost of $1,200 or $1,400 amounts to just as big a financial catastrophe as a surge of illness in 1 year, that would exceed the $1,850 threshold in the basic underlying catastrophic legislation, what we are all saying, the administration, my colleagues on both sides of the aisle, and the beneficiary groups and others is that having a chronic condition necessitating prescription drugs and of a costly nature year in and year out both financially and physically amounts to the same kind of catastrophy that the President originally proposed to address in the so-called catastrophic health care legislation that we have before us.

I would at this point, Mr. President, like to yield to my friend and colleague, Senator MITCHELL, who has been deeply involved in working on this. He has performed, I must say, admirably. He has chaired, as chairman of the Health Subcommittee, what seemed both to him and to myself an unending series of meetings, but I must say that, although some of us were pessimistic that we could bring points of view as diverse as those of senior citizens and the Office of Management and Budget together, the Senator from Maine was patient, he was persevering, he was tireless, and most of all he did a very good job in keeping all of us focused on the issues to the very best of our ability, and I think we achieved it, until we resolved them, and that is why we are here today.

Mr. President, I yield the floor.

Mr. MITCHELL. Mr. President, I thank the Senator from Pennsylvania for his kind words. What we are doing now would not have been possible but for the participation of the Senator from Pennsylvania who, as the former chairman of the Senate Committee on Aging, has been deeply concerned about the problems of the elderly generally, and this specific problem.

As he indicated in his remarks, over the past several weeks, I have chaired a lengthy series of meetings involving not only the Senator from Pennsylvania but also the distinguished Senator from Minnesota—who for 6 years served as chairman of the Senate Health Subcommittee—the Senator from Rhode Island, Senator CHAFEE; and the Senator from South Dakota, Senator DASCHLE; all of whom participated with the Secretary of Health and Human Services, his staff, and Mr. Wright of the Office of Management and Budget, to reach what I believe is a responsible, sensible compromise in an important but difficult area.

In its present form, the Medicare Catastrophic Loss Prevention Act of 1987, the basic bill being considered here, represents one of the most important changes in the Medicare Program since its inception over 20 years ago.

However, if Medicare is to serve as a comprehensive insurance program for older Americans, there are still major gaps that must be closed. Foremost among them is the cost of prescription drugs.

The elderly make up 12 percent of our population, yet consume 30 percent of all prescription drugs. While many elderly Medicare beneficiaries have some form of supplemental drug coverage through Medicaid or Medigap policies, 59 percent of beneficiaries have no supplemental coverage and must pay for the total costs of prescription drugs out of their own pockets.

Clearly, for many elderly persons this is a difficult burden to bear, given their limited resources. But for a small percentage of the elderly, it is more than that—it is a genuine catastrophe.

The cost of prescription drugs for the elderly is unlike the costs incurred for hospitalization or physician visits. Often those expenses are isolated—once the problem is treated it may be months or years before that person returns to the doctor's office or is hospitalized.

But the pattern of prescription drug use is often "continuing" and may be required to treat multiple acute and chronic illnesses. In fact, the drugs most frequently prescribed for elderly patients are those intended to treat chronic disease. The use of cardiovasculars, diuretics and psychotherapeutics represent about 45 percent of all prescription drug use by ambulatory elderly Americans.

The administration has estimated that over 20 percent of the elderly have prescription drug expenses of more than $600 per year. The average cost for those elderly persons who do have expenses over $600, is nearly $1,200.

Therefore, for an elderly person with chronic illness who has an income of $10,000 per year, out of pocket expenses for drugs can easily exceed 15 or even 20 percent of their income, year after year. Unlike catastrophic costs for hospitalization which is often an isolated expense, prescription drugs are often a life support system for the elderly which must be maintained as long as a person lives.

While such facts are important in defining the problem, they do not make clear the actual burden imposed on those low-income elderly who require high cost prescription drugs. A significant number of such persons are reported to go without needed medications because of their inability to pay for the prescription. Others are forced to choose between prescription drugs and essential food or shelter.

At presaent Medicare does not cover 1 cent of this cost. The drug amendment that is now before the Senate, introduced by Senator HEINZ, myself, Senator DURENBERGER, and others, will reduce these catastrophic out of pocket expenses for prescription drugs to a more tolerable level for the small percentage of Medicare beneficiaries who currently spend more than $600 per year out-of-pocket on prescription drugs.

I share my colleagues' concern about any expansion of Medicare in light of our current fiscal situation. However, the amendment being offered, like the underlying catastrophic bill, was developed with the current deficit situation clearly in mind.

I would like to focus attention on a number of aspects of this amendment that demonstrate our concern with the potential cost of this coverage.

First, the prescription drug benefit is, like the overall catastrophic bill, budget neutral. All of the benefit expansion will be financed by the beneficiaries themselves.

Drug expenses rarely occur in the absence of other medical expenses. By setting the deductible at $600, we have insured that the benefit will serve only those with catastrophic expenses. Furthermore, we have chosen an indexing method which best maintains the same proportion of individuals qualifying for the benefit in future years.

A very important feature of the bill, strongly supported by the administration, is a defined limit on the costs of the benefit. This is accomplished by allowing the Secretary of Health and Human Services to limit the scope of the drug benefit, to an amount that is fully financed within a premium cap defined in the amendment.

The Health Care Financing Administration raised major concerns about the administrative problems associated with the provision of a drug benefit. We share those concerns. To permit the maxium preparation for the implementation of this program, the amendment proposed would delay any drug benefit until 1990.

In that year, coverage would be limited to cancer chemotherapeutic agents, immunosuppressive drugs and antibiotics administered by infusion as part of a home care program.

In 1991, a second group of drugs will be phased in and will cover prescription drugs used in the treatment of cardiovascular disease. Following 2 years of experience with this benefit, a full benefit will be added in 1993, again subject to the cost limit set forth in the amendment.

The reimbursement and cost containment measures contained in the amendment balance the needs of the pharmacists and manufacturers, with protection for the elderly, both as taxpayers and consumers.

The Congressional Budget Office estimates that the cost savings to Medicare beneficiaries contained in amendment will offset essentially all the costs of administration of the benefit. If this is true, the amendment will not add a single cent to the costs of prescription drugs of the elderly. It will, as any well designed insurance program should, distribute catastrophic costs more equitably.

The amendment is financed in a manner similar to the provisions of the basic bill, S.1127. This financing mechanism, divided between a basic premium similar to the part B Medicare premium, and an income related supplemental premium, is both equitable and reasonable.

Despite all the checks and controls contained in our proposal, there are still some who feel that a drug benefit is "too costly." I ask my colleagues to reflect for a moment on what is meant by the words "too costly." We are not creating new costs with this amendment. The elderly already pay the costs of prescription drugs.

But without this benefit some unfortunate elderly and disabled persons must pay thousands of dollars out of their pockets for prescription drugs. Is the total burden of drug costs on the elderly really going to increase simply by spreading the present costs over a larger group? Clearly the answer is "No." In fact, the burden imposed by catastrophic drug expenses will be lessened by adoption of our amendment at little or no additional cost to the elderly, and at no cost to other taxpayers.

The amendment that we offer recognizes both the current need of the elderly for protection from the catastrophic costs of prescription drugs, as well as the need for insuring that the financing does not add to the Federal debt now, or in the future. I urge my colleagues to join with me in supporting this important addition to the Medicare Catastrophic Insurance Loss Prevention Act of 1987.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. DURENBERGER. Mr. President, I rise to support the amendment of my colleague from Pennsylvania and to compliment him and the other original cosponsors of this amendment, and the chairman of Health Subcommittee, the chairman of the Senate Finance Committee, and others who were supportive of this effort.

Mr. President, after the President of the United States in his State of the Union Message in January of 1986 called for the country to give some attention to catastrophic health insurance, not just for the elderly but for all Americans, I served my colleagues as the Senate's representative on the Health and Human Service Secretary's task force on catastrophic.

I ended up being, along with my colleague, Congressman STARK, from the House and the person who was then President of the American Association of Retired Persons, the only three people who did not sign the final report of that committee. Not that we did not agree with the work the committee undertook, nor that we did not agree with many of the conclusions or the priorities, but I did not sign it, principally because I did not think that the report adequately stressed the value to consumers of Medicare as an insurance program when supplemented by a more realistic Medigap or supplemental health insurance program. We do not have that today.

Today we have a Medicare insurance program which is divided, in part, into a hospital insurance for doctors and medical.

It does not all make sense because it does not all have a catastrophic feature and it does not have one of the more important benefits, medical requirements—drugs.

So, as a result there has grown out there, largely around retired movie actors and actresses, a whole business in supplementing the needs of elderly and disabled Americans for supplements to this Medicare insurance program. While the financial needs of Americans have generally been met by this variety of insurance programs, it has been at such an incredible cost to these beneficiaries we have come to the time when we need catastrophic health care insurance protection built into medical.

So I have supported during the course of this Congress a more reasonable approach to catastrophic insurance, which begins with providing acute care protection in Medicare for the elderly and the disabled. Hopefully, it will be followed by acute care protection for all Americans: those who work, those who are self-employed, people outside this system—again using some of the insurance mechanisms that I think are going to come on the market once we at the Medicare level deal with this program.

Then, third, we need to address what is a growing perception on the part of elderly and disabled Americans, that the cost of long-term nonmedical care is getting out of hand. The nonmedical side of care for disabled persons and the frail elderly in our society is reaching the same dollar proportions as hospital and doctor care and that is unconscionable and needs to be dealt with. But it cannot be dealt with by just adding a new part D, C, E, F—something, to Medicare.

So I rise to compliment my colleagues in this body, those who have already spoken and those who will speak, for the many contributions that they have made over the last several months to a responsible approach to the reform of the Medicare Insurance Program.

I felt, Mr. President, from the beginning, that the three main criteria for doing this business right was: That we approach catastrophic as a financial catastrophe; that is different, and we have done it here.

Second, it is a generational issue, a very serious generational issue and my colleagues have already spoken to that. The beneficiaries of this program should and want to and will pay for the benefit.

Then, third, that it be responsible. Responsibility is not something that this Medicare Program has been known for in the last 22 years. Thus, as a result, a lot of its beneficiaries have been accused of being irresponsible, overutilizing the system, using too many doctors, too many hospitals, buying up the pills and putting them up on the shelves and never using them, excess demand all over the place.

I do not think it is appropriate that the elderly and the disabled in this country take the heat for an entitlement mentality when, in effect, we have had an insurance program in effect, social insurance program in effect, that sort of advocates, if you will, excess utilization in the system.

So my third criterion, and the one I sense is shared by a lot of my colleagues here and people on the outside who are the beneficiaries of this program, is that if we move to catastrophic and we add other benefits that relate to catastrophic, we ought to do it in a reasonable fashion.

As we put the bill together in the Finance Committee, several of the components that we are beginning to add to this system deal with care or case management or utilization of the system.

If you move to a catastrophic program that says all the bills over $1,700 a year are going to be paid, there is a concern that once somebody reaches $1,700 in payments a year, they are going to spend the rest of the year in a doctor's office or in a hospital. So, built into the catastrophic proposal, underlying the drug amendment which is before us today, is a series of demonstrations of how we can do care and case management through the Medicare system. This is important. This is extremely important. So that is built in there.

A variety of other utilization controls are built in there. We have the peer review organization built into the bill already, and each year that goes by on the reconciliation we do some modification on the role that peer review plays in the screening, through peer admissions screenings and other programs modifying our behavior as we continue in the system. It is not a right we have, to get sick in America and then a right to use whatever we please in this system. It is a right to act responsibly.

So the drug benefit as it comes before us has to meet, at least in my opinion, Mr. President, the same kind of tests we set up for catastrophic: that it relates to a genuine financial need; that the beneficiaries, in effect, will be responsible for making the decisions with regard to the utilization of the benefit and they will take the responsibility to pay for that benefit as well; also, that it be responsible and that it encourage responsible behavior.

I would suggest to those of my colleagues who, by force of the way the place works, have not been able to participate in the evolution of this drug benefit—from the what I might characterize as the Congressman CLAUDE PEPPER version that went very quickly through the House and left a lot of people with the impression that, hey, there they go again adding one of these multibillion dollar give-away programs to Medicare that is going to redound to the benefit of the elderly and to the payroll tax suffering, if you will, of the young: This drug benefit has taken a remarkable and a very different course here in the Senate.

As my colleagues have already pointed out, there have been built into this program a 5 or 5½ year, depending on when we pass this, phase-in of the benefit. It is not there tomorrow on January 1, all prescription drugs paid for. It is not there with a deductible and a copay on January 1 of next year. You do not reach the ultimate of all prescription drugs, however that might be defined, until January 1 of 1993. And then there are a lot of hurdles to be crossed before we get there.

Each of those hurdles has been constructed in a way to make sure that the beneficiaries who are going to be paying for this benefit get a reasonable benefit that is not being wasted in either a financial sense or in a real sense.

There are built into this amendment a variety of studies that have to be conducted by the Secretary of Health and Human Services. There are built into it a variety of other protections that require utilization controls that can be put in place by the Secretary to make sure that the benefit is not overutilized or that the cost of the benefit gets out of control.

As my colleagues have already indicated one of the most unique things that is in this particular amendment that we must hold onto in conference with the House, providing our colleagues agree with us that this is a responsible way to go, is the concept not of a defined benefit that we are adding to this program, but a benefit that is defined by a dollar-denominated premium.

Mr. President, when I think about the fact that some of our colleagues are meeting at the White House on the crisis over deficits and so forth, a lot of people seem to look at the deficit of this country as just a checkbook issue, a question between what we spend and what we pay out. I am glad I sit on the Finance Committee and I am glad I have an opportunity such as we have here today to see that the way in which we are actually beginning to deal with the costs of government in this country is not simply by freezing spending or raising taxes, but by finding more sensible, more logical, more realistic, more responsible ways to provide for the income security of the people of this country.

I think we all know that almost 50 percent of all Federal spending is largely nonincome tested transfers of money from people who work to people who do not work. It is part of the buildup of the income security system of this country. It is here on this bill that the people of this country can see for the first time, perhaps, some evidence not only from this body but from our constituents, beneficiaries, the American Association of Retired Persons, and a lot of other people, a much more responsible approach to the issue of providing for the income security of retired, elderly, disabled Americans.

That defined premium is very significant, very significant. It means that in 1990 we are going to meet the most pressing drug needs of elderly Americans and disabled Americans with immunosuppressant drugs, cancer, and chemotherapy drugs, and certain kinds of intravenous drugs, and then in 1991, 4 years from now, we move to some of the drugs for some of our most chronically ill people, who we have moved out of expensive hospital settings, at home, at work, with drugs, cardiovascular drugs, diuretic drugs, perhaps as the Secretary may determine some other more important drugs. The life support systems through prescription drugs for these people comes on line in 1991, 3½ years from now, after the Secretary determines with more knowledge than we have here today that there might be a better way to do this. They then come on line.

Then only in 1993 do we go to what was here described as full prescription drug benefits, with the benefit of 6 years of experience and of studies and with the financial parameters of an $8.10 a month premium, described in the bill as a $4.05 premium, plus a supplementary premium for the other 50 percent of these benefits.

So, Mr. President, I began as a very reluctant supporter of this benefit. I did that because I have spent now 15 years with retired parents dealing with the Medicare Program, and I have spent 9 years with my colleagues on the Senate Finance Committee dealing with what at one point was a bankrupt Medicare system. But I have been most impressed by the efforts of my colleagues and the administration, and, I must add, efforts which the beneficiary organizations have put into redesigning this drug benefit, making it a more realistic benefit, making it one that I think in the years to come, as we supplement it, take the actions we need to take to supplement this benefit, will be one that we can say was probably one of the landmarks here of real reform in the way of the Medicare system operating.

I would encourage assistance from all of my colleagues. I know there will be questions about this and certainly there will be, appropriately, questions—I know I have heard some on our side—about the supplemental side of this premium. For the first time, we are income testing part of the social insurance program and a lot of people are scratching their heads, I am sure, trying to figure out first of all how did you get by with it and, second, how is this going to work so that it does not at some point discourage certain people from utilization of this benefit.

I do not know that I have all of the answers, and I do not know that any of us have all of the answers, but I can say to my colleagues this has been a nonpartisan, bipartisan, apolitical effort on this on both sides with the folks who have been involved in this issue to do right by the chronically ill, to do right by the elderly, to do right by the disabled, both in terms of providing a benefit and in terms of holding the cost of that benefit low enough so that they will not be faced with catastrophic costs generated by out-of-control premiums to finance this program.

The PRESIDING OFFICER. Who seeks recognition?

Mr. DASCHLE addressed the Chair.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. DASCHLE. Mr. President, I rise in strong support of the amendment. I commend the distinguished Senator from Pennsylvania, the Senator from Maine, and certainly the Senator from Minnesota for their leadership on this issue. I subscribe wholeheartedly to the criteria the Senator from Minnesota has set out by which we judge the success and our support ultimately for this amendment, this approach to catastrophic health care as it relates to drugs.

I also must say that at a time when bipartisanship has been stressed on other matters this week, it is especially important to note the bipartisan nature of this legislative effort.

For the past several weeks on a bipartisan basis we have met with great regularity in working directly with White House officials and others in this administration to come to the point where we are today. As a result, we can wholeheartedly support an effort to address catastrophic illness as it relates to drug coverage.

Mr. President, the issue here is very simple: Prescription drugs are a major expense for the elderly, and ought to be covered under Medicare.

The elderly spend about $9 billion a year on drugs, and 5 million elderly have drug expenses of at least $600 a year, clearly a catastrophic amount. 6.7 million take 3 or more drugs regularly. It is very easy for a person with no acute health problems to spend over a $1,000 a year on drugs.

Insurance coverage for prescription drugs is not commonly available, and so right now, the elderly pay 81 percent of their drug costs themselves. Medicaid pays 9.5 percent, and private insurance pays 9.3 percent. Prescription drugs constitute the largest out-of-pocket health expense for three-fourths of the elderly, and a recent GAO report shows that 15 percent of the elderly are unable to pay for the drugs they are prescribed. That is why Medicare coverage is so important. Our amendment would not replace existing private sector services because very few MediGap policies cover prescription drugs.

Mr. President, I will discuss the cost of this program, but before I do, I would like to point out that coverage of this type also has the potential to save money. Prescription drugs are a cost-effective form of treatment, so when people do not take them because they cannot afford them, we may end up paying more for higher doctor and hospital costs that are covered by Medicare. A University of Texas study of States with prescription drug programs concluded that "the costs of outpatient drug reimbursements appear to be offset by reduced inpatient hospital service expenditures."

I believe we have created a fiscally responsible, cautious program that only helps people with the most critical needs, and encourages cost containment by everyone involved.

The basic outlines of our amendment have already been described by others. First, in 1990, Medicare would cover cancer chemotherapeutic, immunosuppressives, and home intravenous drugs. In 1991, we would add cardiovascular drugs and diuretics. Together, these two classes of drugs constitute about 40 percent of the elderly's drug costs. Finally, in 1993, all drugs would be covered.

In 1990, the deductible would be $600, and that figure will be indexed to the drug program's Medicare charges. In that way, the percentage of people who collect benefits under this amendment will remain constant over time. The Congressional Budget Office estimates that once the full benefit is implemented, about 14 percent of Medicare beneficiaries will receive help.

The amendment will improve medical coverage for the low-income elderly even further. States will be required to spend their Medicaid savings on additional benefits, and they will be allowed to provide additional drug coverage to people with incomes of up to 200 percent of poverty.

This program would be financed, as has been said, in a manner that is consistent with the principles of the rest of the catastrophic bill: it is 100 percent financed by the elderly themselves, and those who have more financial resources are asked to contribute more. About half will be paid with an increase in the flat premium of $1.40 per month in 1991, and $2.20 in 1992, and $3.30 in 1993, the first full year of the program. The other half will be paid via the progressive supplemental premium. Nobody who is exempt from the supplemental under the basic catastrophic package would be added. The cap on the supplemental premium would remain the same. Only the rate would go up.

Some people have raised the specter of a runaway Federal program that costs the elderly hundreds or thousands of dollars, and adds billions to the Federal deficit. But because of the way the program has been set up, that is not possible. Specially designed economic incentives keep costs down, and there are preset limits beyond which the premiums cannot rise. I am very confident of these cost control mechanisms, and I would like to focus on them for just a moment.

First, even after they have met the $600 annual deductible, beneficiaries will continue to pay 20 percent of the cost of their drugs. As a result, they will have a strong financial incentive to shop at the lowest priced pharmacy, ask for generic substitutes, and avoid unnecessary use.

Second, this package strongly encourages the use of generic drugs, which are FDA approved and generally cost less than half of the name brand. For example, in one recent survey, 100 capsules of Valium cost $27.47, while the chemically equivalent generic—diazepam—cost only $8.49. We encourage the use of generics by reimbursing the pharmacist only for the price of the generic, unless the physician writes that the name brand is "medically necessary." CBO estimates that this provision alone saves the program 7.5 percent, or over $100 million a year.

Third, the proposal allows the Secretary of HHS, after consultation and study, to lower reimbursements to high volume pharmacies that buy their drugs at big discounts.

Finally, the amendment strictly limits the premiums. Under the law, the premiums cannot increase beyond $2 in 1991, $3.50 in 1992, and $4.80 in 1993. If the Secretary of HHS calculates that the premiums would need to be higher, then he or she is required to take whatever steps are necessary to reduce the costs to the legally required levels. In other words, the premiums cannot skyrocket, because by law the benefits and reimbursements must change to prevent it.

Nonetheless, this program does involve a lot of money. In 1993, it would involve about $2 billion. But we must always remember that this money is already being spent by the elderly. They will be spending this $2 billion on prescription drugs whether or not this amendment passes. But if this amendment passes, then people with catastrophic drug costs will not suffer quite as much, and people with lower incomes will get a little help with their burdens. That's what good insurance is supposed to do, and that's what a good government program is supposed to do.

That is why, Mr. President, I feel so strongly about this amendment. it is a valuable contribution to the whole catastrophic package. It will deal with one of those issues with which the elderly have dealt, unfortunately, unsuccessfully for many years. It provides them with greater confidence, with greater ability, and with greater opportunity to look with confidence to the future. I again strongly support that amendment and I urge its adoption. I yield the floor.

Mr. HEINZ addressed the Chair.

The PRESIDING OFFICER (Mr. HARKIN). The Senator from Pennsylvania.

Mr. HEINZ. Mr. President, I will be brief. I send to the desk two technical corrections to modify this legislation. The first is on page 11 and concerns an accounting rule for determining what is and is not counted as revenue to the catastrophic drug insurance trust fund. The second is a change to the underlying catastrophic bill that literally changes one date from March 1988 to January 1988. I request that my amendment be modified in accordance with the changes I have submitted.

The PRESIDING OFFICER. The Senator has the right to modify his amendment.

The modifications are as follows:

On page 96, between lines 20 and 21, insert the following new subsection:

"(f) The Secretary of the Treasury shall, from time to time, transfer from the general fund of the Treasury to the Federal Catastrophic Drug Insurance Trust Fund amounts equal to the aggregate drug premium rate adjustment paid pursuant to subsection (b)(2)(B)(iii) of this section.

Such transfer shall be appropriately adjusted to the extent that prior transfers were in excess of or less than the amounts required to be transferred.".

On page 97, insert after line 23 the following new section:

SEC. 6A. ESTABLISHMENT OF FEDERAL CATASTROPHIC DRUG INSURANCE TRUST FUND.

Part B of title XVIII is amended by inserting after section 1841 the following new section:

"(C) The term 'payment calculation period' means the 12-month period beginning with January of each year (after 1989).

"(10)(A) Notwithstanding any other provision of this subsection, subject to subparagraph (B), if the Secretary determines that the monthly catastrophic drug benefit premium amount (as determined under section 1839(g)(3)(A)(i)) will exceed the limit imposed by section 1839(g)(3)(A)(ii) for a calendar year, the Secretary shall institute such cost-control measures as are necessary to ensure that such premium does not exceed such limit.

"(B) In carrying out subparagraph (A), the Secretary shall not—

"(i) except as provided in the last sentence of this subparagraph, exclude from coverage or limit payment for any specific covered outpatient drug or specific class of covered outpatient drugs; or

"(ii) change the methodology for calculating whether for a calendar year an individual has met the requirement of paragraph (1)(A).

The Secretary may, in carrying out subparagraph (A), exclude from coverage all drugs listed in a major classification of the most recently issued version of the Veterans' Administration Medication Classification System.

$300 of the amount of such deductible and 15 percent of any such coinsurance amounts.".

(c) EFFECTIVE DATE.—The amendments made by this section apply to payments under title XIX of the Social Security Act for calendar quarters beginning on or after January 1, 1990, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date, with respect to medical assistance for—

(1) monthly premiums under title XVIII of such Act for months beginning with January 1990, and

(2) items and services furnished on and after January 1, 1990.

On page 127, line 6, strike "8" and insert in lieu thereof "7A".

On page 126, strike lines 24 and 25.

On page 127, strike lines 1 and 2.

Mr. HEINZ. Mr. President, let me state for the record, and then I will yield the floor because I know the Senator from Oklahoma wants to debate the bill, I said earlier I would discuss the White House position on this legislation in more detail. I am authorized to say, after discussion with Joe Wright of the Office of Management and Budget, that the White House supports the underlying bill, S. 1127, the chairman's catastrophic bill, together with the drug amendment which, by the way, makes changes in that underlying bill, S. 1127, to make it acceptable to the administration. Their support is on the RECORD with two technical concerns about the drug amendment that I have agreed to help them work out in conference.

Let me say it is very much in our interest, Senator MITCHELL's and mine, our cosponsors, and the White House, to make sure that the drug trust fund is in fact actuarially sound. As to the changes that we want to work for and with the White House on, the first is a concern about some accounting issues, most importantly the adequacy and timing of what is known as the contingency reserve buildup in the drug trust fund. Second is a concern that the premium cap may be too high after the contingency fund has built up and the program is fully implemented in 1994. And, third—and I say third despite their support for the amendment—the administration feels there is a need for a separate catastrophic health insurance trust fund. I am pleased with the specific pledge and manifestation of support, but I wanted to put it on the Record in detail so there would not be any misunderstanding.

Mr. President, I yield the floor.

Mr. NICKLES addressed the Chair.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Mr. President, I wonder if my colleagues either from Pennsylvania or Minnesota, possibly from Maine, or any of the principal sponsors of the legislation, would be willing to enter into a discussion and hopefully clarify some of the concerns I have with this legislation.

First, I wish to compliment them. I know they have worked hard on this legislation. It is a very complicated piece of legislation. When you are talking about a major new Federal program to pay for drugs for senior citizens, you are talking about an extensive program.

As a matter of fact, this amendment is 58 pages long. I have not had an opportunity to thoroughly review the amendment, so possibly if they would answer some of these questions, it would help alleviate some of the concerns I have about the cost of the program.

I think we have had the program explained, and again I compliment my colleague, Senator DURENBERGER, for his efforts at cost containment and control, the phasing in of the program, that makes it more affordable in the initial years. Most of my concerns deal with the years 1993 and beyond, because that is where I see an enormous potential for escalation in costs of the program and therefore a financial burden on the very senior citizens we are trying to help.

I might ask my friend and colleague from Pennsylvania who is still on the floor. If I understood him correctly, he said 5 million people would be eligible to receive some benefit from this amendment because they are currently paying drug bills in excess of $600 per year.

Mr. HEINZ. The Senator is correct.

Mr. NICKLES. Would that mean 80 percent of senior citizens would not receive a benefit from this amendment?

Mr. HEINZ. We estimate that in the first year the benefit would become fully effective, that roughly 15 percent of Medicare beneficiaries would be over the threshold of $600 and would be entitled therefore to 80 percent reimbursement of their drug costs above that $600 threshold.

The question of how many senior citizens will benefit from this legislation over a period of time is a little bit more difficult calculation to figure because we are talking about people who may benefit from it for 1 or 2 or 3 years, people who may benefit from it for 5 or 6 or 7 years. And nobody knows who those beneficiaries, including the beneficiaries themselves, are going to be in the future.

It is, as I have said, clearly an insurance program. And the purpose of insurance is very simple. It is to ensure one's self against the risk that one may be part of an adversely affected group that one cannot predict. But the best estimate is that at any one time roughly 15 percent, or approximately 5 million or so senior citizens will benefit from the program.

Mr. NICKLES. I appreciate the Senator's response. I also heard one or more colleagues mention the CBO estimates and what the cost of this program would be through the year 1992. The big expansion of the program is in 1993 basically when all drugs would be eligible. Do we have any estimates from CBO, and also do we have estimates from OMB on what the bill would cost for the years say 1990 through the year 1995? Are those figures available?

Mr. MITCHELL. The Congressional Budget Office only estimates a 5-year cycle. So 1992 is the last period. To deal with the problem of uncertainty of costs beyond that, those of us involved on the Senate side, both Democrat and Republican in the negotiation, accepted the administration's suggestion for a specific premium cap. So that if in future years the total cost of the program would exceed the amount of money raised by assessing that premium cap on all the beneficiaries, then the cost of the program will be reduced by the Secretary who is given the broad power to do so in this legislation to bring it down to the level of the premium cap.

The cost uncertainty which the Senator correctly identifies as a real concern is what led us to accept the premium cap figure.

Mr. NICKLES. I appreciate the Senator's response. Can he tell me what the premium cap is for the year 1993, 1994, and 1995?

Mr. MITCHELL. The premium cap? I will read them for the entire period responding more fully than the Senator has asked, but just giving the benefit of all the information we have. The cap is set at $2 in 1991; $3.50 in 1992;

$4.80 in 1993. After 1993, the premium cap is indexed to increase with the average beneficiary of the total spending for drugs. So the figures are specified in the bill as I have stated, $2, $3.50, $4.80 and thereafter indexed.

If I may, I would add to the response. The Congressional Budget Office estimates, at least as far as they exist through the 5-year period, that the premium cap will not be reached in any year. The problem we had in constructing this was that there was a wide variance in estimates of cost between the Congressional Budget Office on the one hand, and the Health Care Finance Administration, a part of the administration, on the other hand. And that is why we accepted the premium cap concept.

So if we accept CBO's figures, the total cost of the program will be such through this period that the premium cap will not be reached. That is the total cost of the program will produce a premium lower than the cap. If we accept HCFA's figures, the cap will be reached and therefore that will impose an overall total spending limit on the program.

Mr. NICKLES. The second part of my question is, what is HCFA's estimates on the cost of the program for the next several years? I think they went to the extent of giving estimates in the program year 2000, and 2010. My main concern is not just cost of the program when it is beginning but after 1993 when all drugs are eligible. I see there being an enormously large potential for an escalating cost provision.

Do we have HCFA's estimates on what the cost of the program will be in the out-years?

Mr. MITCHELL. I do not have them with me. I will attempt to get them. I will simply note of course that HCFA supports this provision and this amendment. The President, the White House, the Office of Management and Budget, the Secretary of Health and Human Services, and the Health Care Finance Administration all support this amendment.

Mr. NICKLES. I say not necessarily in response, but I can see this as an amendment that was agreed to by those who were working on this issue as an attempt at cost limitation. The people who are running HCFA, and the people down at OMB are going to be long gone when this part of the program becomes a reality.

Some of us may well be here. That remains to be seen. But a lot of us and the American taxpayers, and the senior citizens in this case, are going to be paying a very hefty bill.

I am concerned when I look down and see cost estimates for the first couple of years when the program is really not even beginning, and then it says January 1, 1993 we are going to pay for all drugs. It has a cost. As the Senator from Maine alluded to, the cap will not increase any more than the index and the index is based on the cost of drugs compared to the previous 12 months. It could be feeding on a very high engine of inflation.

As the Senator from Minnesota alluded to earlier, we may have this use potential, high use, overuse. People say, wait a minute, I have crossed the $500 threshold or is it the $600 threshold? The Senator modified his amendment to make it a little more acceptable.

Mr. HEINZ. The $600 threshold has been the threshold for quite some time.

Mr. NICKLES. So we are at a $600 threshold. I wonder how many senior citizens are going to be in the situation of singing "You know what? I have been paying the premium on this, and I have been paying this $3 or $4 a month." Maybe, depending on their income, they have been paying an income supplemental on top of that. I will move into that income supplemental at a later time. I have some questions about it. But they may cross that threshold and say, "You know what? Last year, I did not cross the threshold; last year I only spent a couple hundred dollars; the year before that, $400; this is kind of ridiculous. I am going to go out this year and buy enough drugs for 3 years. I am going to go out and buy $1,200 worth of drugs and then next year I will not cross the threshold and it is no big deal."

We may have a lot of people storing of prescription drugs in their cabinets as an effort to get around the deductible. Is that a fair assumption, I ask my friend from Maine? Can that happen under this bill?

Mr. MITCHELL. I suppose it could happen. I think it is extremely unlikely that it would occur. I think it suggests a certain state of mind among the American elderly that I do not think exists. And I frankly doubt that senior citizens, particularly very elderly, very frail and very sick people, are going to go out and spend the kind of money the Senator suggests.

Just take the example the Senator cited, a person spending only $200 a year, say, would go out and spend $1,200. That means that elderly sick persons have to spend $400 more of their own money to get to the threshold. Now, is a person going to triple his own out-of-pocket expense to accumulate drugs for future years, particularly when that person's lifespan may be uncertain, particularly when the beneficial use of the drugs may not last more than a stated period of time, and particularly when, in this area, new, improved, or cheaper drugs may become available within the stated period of time. I think it would be very unwise and personally expensive, and therefore most unlikely to occur.

Mr. NICKLES. Will the Senator agree that a lot of people, senior citizens included, when they are filing their income tax at the end of the year, may move in December to reduce the tax bill and may look at this as somewhat the same thing—that they crossed the deductible? I am not impugning anybody's honesty. I am saying that right now I do not see anything in the bill that would stop that type of circumstance.

I have heard a lot of different case scenarios in explaining the need for the bill, which I appreciate. I think probably every person in this Chamber has family members who would be significantly affected by this bill.

This bill has a lot of potential, politically and otherwise, but I think it has the potential to cost a lot of money as well.

Right now, as the sponsors of the amendment have drafted it—and correct me if I am wrong—they have drafted it in a fashion that the people who are going to be paying for this are Medicare beneficiaries, persons over the age of 65. Can persons under the age of 65 qualify for benefits under this bill?

Mr. HEINZ. The law is that one can qualify for Medicare in two ways: If one is disabled, under the Social Security bill, and after 2 years one is determined to be disabled, one then does qualify for medical, and the other is if you turn age 65. In both cases, you must be an eligible beneficiary, meaning that you must have paid into the Social Security trust fund for a requisite number of quarters, which is a minimum of 44 quarters.

Mr. MITCHELL. With respect to the earlier question by the Senator with regard to the stockpiling of drugs, I call to his attention, first, that a physician must prescribe the drug, under the bill.

Second, the bill explicitly limits the purchase to a 90-day supply.

So, while it is conceivable that someone could, in December, as the Senator states, accumulate drugs, they could accumulate them only for a 90-day period.

The Senator said he sees the potential of a big, costly program. The word "costly" has been used several times. Let us understand that the elderly are now paying the cost. This does not change that in any way. The elderly will still pay the cost. All this bill does is attempt to redistribute the cost through an insurance program.

If I might take the example of fire insurance, we have 100 Senators. The fire insurance actuaries could tell us that over the next 5 years, the home of—to use a hypothetical—one Senator would burn down, and we do not know which one it is. So we adopt the social principle of insurance by saying if everybody pays an allotted amount annually, it goes into a central fund; and when that home burns, which none of us can identify, that person would not sustain what would otherwise be a catastrophic economic loss.

So, without altering the cost, we simply redistribute it in a manner that protects someone from suffering a catastrophic loss.

Mr. NICKLES. Let me follow up on that comment.

I am glad to know that there is a provision that prescriptions must be prescribed by a physician, limited to a 90-day supply. I think that is a good provision.

On the issue of fire insurance or the redistribution of the cost for senior citizens, that is a provision that bothers this Senator. If you are talking about fire insurance for the Senators, this Senator is not in such an economic status that he particularly wants to insure a lot of other of his colleagues who possibly are a little better off financially, and I am not sure I want to insure their homes. Maybe their home is in excess of a million dollars.

This bill does not have a means test. Am I correct? In other words, you could have a provision under this bill, under this amendment, that senior citizens will be insuring other senior citizens regardless of their income. So you could have, quite frankly, the multimillionaire——

Mr. MITCHELL. I do not know whether the Senator——

Mr. NICKLES. Let me finish my point.

So you may have a person with a lot of wealth—I do not know if I want to mention names—and, frankly, in no need of this amendment in any way, shape, or form. Yet, you are going to be requiring senior citizens from across the country to be paying and providing for the benefit that they will be receiving. Is that not correct?

Mr. MITCHELL. First, on the fire insurance, I do not know where the Senator lives or what insurance company he insures with, but I assure him that he is contributing to the insurance of a number of homes whose values are different from his. You do not buy insurance based on the fact that everybody's home costs the same. The premium is affected by the value of the home.

In this bill, both the basic bill and the drug amendment, 50 percent of the costs will come from a basic premium which would be paid by all beneficiaries. The remaining 50 percent will come from a supplemental premium payment which is income based.

Mr. NICKLES. There is a big difference here, and this is what I was alluding to. When you are talking about means tests—and I heard it alluded to in two or three different ways—it is still not a means test. What you have is an escalating premium based on income. So you have an income redistribution scheme, but you do not have a means test. You do not have a means test which says that if you have an income two or three times the national average, you do not receive the benefit or you have to pay for your own benefit.

The Senator from Maine alluded to the fact that these costs are being incurred—$9 billion is paid for prescription drugs. That $9 billion is being paid right now, and it is being paid for by the beneficiaries, and they are doing it on a means test, because they have the means or they come up with the means, or possibly they are under Medicaid or receive assistance from the private sector. But there is a big difference. It is not a means test program just because you have a redistribution scheme—the more you make, the more you will have to put into this fund. No insurance scheme I am aware of—and I know a little about the insurance industry—says that.

Let us put this in the same category of house insurance——

Mr. HEINZ. Mr. President, will the Senator yield?

Mr. NICKLES. Not now.

Mr. HEINZ. At an appropriate point.

Mr. NICKLES. The main difference I want to make is that a lot of people made the assumption this is a means-tested program; and if you make more, you are going to be paying more; you pay a lot more premiums; but it has nothing whatsoever to do with any benefits you may or may not receive.

Mr. HEINZ. Mr. President, will the Senator yield?

Mr. NICKLES. I yield.

Mr. HEINZ. I just want to comment on several things that the Senator from Oklahoma and the Senator from Maine have discussed, to try to put them in perspective.

Let me just say, though, in a word about the subject of means testing or something that is quite different from means testing which is the element of this legislation where a part of it, half of the cost, is progressively funded. They are not the same. I do not think anybody disagrees.

I would, however, strongly argue that health care charges in this country are somewhat strongly correlated with ability to pay, that people with more money go to more expensive doctors, people with less money go to cheaper doctors.

What we have tried to do in this legislation in a very modest way is to take into account that people with money are probably going to use something more in the way of drugs than people without money. Indeed, we know that people who are downscale on the income rate now are not doing a very good job of taking the medication that the doctors prescribe for a number of reasons, but the second most important one of which is they do not have the money, they cannot afford their prescription drugs.

So I do not think it should offend anybody's sense of fairness that people who tend to be relatively high-cost producers should be relatively higher-cost payers. Indeed, it seems to me that it is a lot better doing it the way we have done it than the normal alternative which would be putting everything on a flat premium which people would pay without regard to income and utilization whatsoever.

But I would like to make one or two other observations in three areas: First, the subject of cost control, which the Senator has raised as a central point. Second, the question of value, and that is to say what people are getting out of this program as compared to what they are paying for it. And third, whether there is any element in this program that represents some kind of forced choice on the part of the beneficiaries.

As the Senator from Maine has indicated, there is a real laundry list of important cost controls. The first is the threshold which is indexed to program cost after it becomes effective, the $600 which rises and it rises indexed to the program cost so that we can keep control of the number of people in the program, and we estimate, both OMB and ourselves, that that system will keep the percentage of Medicare beneficiaries participating in the program constant. You will not see runaway participation; you will not see declining participation. That is the purpose of indexation of the $600 threshold.

In order to control utilization we have a copay, 20 percent. There is no copay in most aspects of the Medicare program other than for doctors, part A. Once you get past the deductible a cost of a day in the hospital, there is no copay.

Here we have what is of a relatively radical nature, a 20-percent copay once you get above the threshold.

In addition, we have to ensure that there are not further costs. As kind of a double insurance policy against runaway costs, we have capped the cost of the program by saying that the supplement, that the premium the part B premium, which is a reflection of half the cost of the program, and that half the cost of the program at all times can never rise above certain specified limits, starting at $2 and rising under the legislation the Senator from Maine has described, and we do that so that we can come to the floor and say to our colleagues if we are wrong on everything else we have done, there cannot be runaway costs in this program.

And as has been stated on several occasions, it is the elderly, the Medicare beneficiaries themselves, of course, who bear the entire costs of this insurance program, which leads me to the second point responsive to what the Senator said earlier, which is what is the value? Is this a good deal for the senior citizen?

We in an effort to establish that went around to Blue Cross and Blue Shield and we gave them the benefit package of this legislation and we said to them, "What would you charge for this benefit package, including the $600 deductible and the 30 percent copay and all the elements of this program?"

And they came back to us and they said "Were we to offer this, and we have no intention of doing it, it would cost about $20 a month, $20 a month."

Mr. NICKLES. In what year?

Mr. HEINZ. When fully effective.

Mr. NICKLES. 1993.

Mr. SYMMS. Mr. President, will the Senator yield for a question?

Mr. HEINZ. If I may finish for a moment.

Mr. SYMMS. I think that is an important point, though.

Mr. HEINZ. Now, if this program were to cost $20 a month, that would mean there would be $10 in cost furnished by the supplemental premium and $10 a month paid for by the part B premium. Under this program, the best estimate we have of cost is a $3.80 per month premium in 1993. We have capped it at $1 above that, at $4.80.

So what we are offering senior citizens we believe is a value of an insurance policy on prescription drugs that because of the variety of cost control and containment and utilization techniques we are able to employ here, only some of which we have fully discussed. We can get this insurance for them at half or maybe, if we are really fortunate, one-third the cost of what it might cost if it were available, and it is not, through Blue Cross and Blue Shield.

I appreciate the Senator being generous in yielding to me. The last point is, are we forcing anyone to do anything? The answer is no. If someone does not like what we are proposing, he does not have to subscribe. This is a voluntary program. We do not make it a mandatory program in this legislation. We specifically decline to do that. And as a result if someone feels that there is something unfair about the program he does not have to participate in it.

It seems to me, after all I have said, that that is the final protection for those who think that we are doing something that is not a good deal for them, but I think it is a very good deal.

Mr. SYMMS. Who has the floor?

Mr. NICKLES. I have the floor.

The PRESIDING OFFICER. The Chair will advise the Senator from Oklahoma has the floor.

Mr. HEINZ. I thank the Senator for yielding.

Mr. NICKLES. I thank the Chair.

I know my friend from Idaho wants to say something.

I have to clarify the point that the Senator from Pennsylvania just made. He said this is a voluntary program. He is saying it is voluntary because it is tied to part B, and a participant may elect to opt out of part B which is three-fourths subsidized by the Federal Government. He did not draft this amendment in such a manner to make it a voluntary insurance program to stand alone by itself to allow participants to be in or out.

Mr. HEINZ. The Senator is correct. As I say it is part B and it is a part of part B and part B is a voluntary program. He is absolutely correct.

Mr. NICKLES. If the Senator so desired he could draft this particular voluntary program outside of the part B.

Mr. HEINZ. The Senator is correct.

Mr. NICKLES. He would find a lot of people would opt out.

Mr. SYMMS. I thank my colleague for yielding.

He touched on one of the points I wanted to make earlier, and that is where volunteerism versus mandatory participation. For example, there is a bit of difference between fire insurance in McLean, VA, or in any other area. If a person does not want to buy fire insurance for their house, and unless they have a loan where they are required to have fire insurance, then they probably would not have to have fire insurance if they don't mind taking that risk. There is a big difference.

I want to ask a question of the Senator from Oklahoma or any other of my colleagues on the floor who wish to comment. In view of what has happened recently in the stock market, we need to build confidence, not only in the American dollar, but in American investments around the world. We need to show confidence to foreign investors where we are dictated to a degree by the willingness they have to invest in our markets and to lend us money which will drive the interest rate, the value of stocks, and so forth. It has a spill-off effect on whether we are going into a deep recession, a recession at all, continued economic growth, depression, or whatever the state of the economy.

I want to quote from what Senator ARMSTRONG says on page 38 of the committee report.

Before I read this, I might say that I will join with my colleague from Oklahoma in complimenting the members of the committee who I know have worked long and hard on this. I am not trying to come in here and just throw ice water on all of their efforts, because I recognize there is a need for some kind of assistance so people won't have to lose the farm, the house, the pickup, and whatever else if they get a catastrophic illness. But the concerns the Senator from Oklahoma brought up are worthy of a question that should be debated here on this floor. The Senator from Oklahoma has expressed our concern of how much this is going to cost in 1993. They charge $20 a month and now Congress is passing a cap of $2.50 a month. I know my colleague from Oklahoma knows there is no free lunch, so someone is going to pay for this somewhere down the road. We ought to get this up on the stage now.

I want to quote Senator ARMSTRONG:

> History supports these concerns. Medicare was created in 1966, supposedly on a sound footing. The program cost $64 million that year. Just 2 years later, the cost quadrupled to $4.7 billion and, in the face of financial trouble, payroll taxes were increased.

Payroll taxes are one of my colleague from Minnesota's favorite subjects:

> Five years later, they were increased again. The cost of Medicare has constantly exceeded projections. At its 20 year anniversary, the program was eight times its original projections. When President Reagan took office in 1981, Medicare cost $32 billion. This year, the cost will be more than double that, $73 billion. By 1990, the program will exceed $100 billion. Congress has clearly demonstrated its inability to control Medicare expenditure, and will probably do so again.
>
> The result, in the not too distant future, will be as follows: catastrophic care payments will greatly exceed expectations and revenues will fall short. The HI trust fund, which already faces bankruptcy in the 1990s, will suffer further, along with the overall Federal budget deficit.

Senator ARMSTRONG goes on to say:

> But once this program assumes its inevitable sacred cow status, there'll be little chance of curbing benefits.

I will not read on any further. The question I want to ask my colleagues here on the floor is: In view of what is happening in world financial markets, where they are looking to a bipartisan group of the President and the leadership of Congress to really come in with a deficit reduction program and some meaningful cuts in spending while trying to rid ourselves of some sacred cows, is this bill, it it is passed at this time, going to be positive or negative to the economy of the United States against the free world next year? What does my colleague from Oklahoma think about that?

Mr. NICKLES. I appreciate the Senator's concern.

I checked the market to see what it was going to do today. Thank goodness, it is up a little bit.

Mr. SYMMS. They have not heard about the debate on the floor yet.

Mr. NICKLES. I doubt that the market is waiting. When I heard deficit reduction, I doubt that the market or the financial wizards are for a tax increase. I think they would like to see some fiscal responsibility. Some people have said that this bill is fiscally responsible and that it would not add to the deficit. I am trying to get some answers from my colleagues to find out whether or not that is the case.

Mr. SYMMS. I want to ask a question of my colleague from Oklahoma. The Senator from Pennsylvania said that the private companies that took a look at this proposition said they would have to charge $20 a month. And we are talking about a cap of $2.50 a month; is that correct?

Mr. NICKLES. I will correct the Senator. I think the Senator from Pennsylvania said that the private sector said it would cost $20 a month in 1993. Under the bill's provision, it would provide for a cap of $9.60. So, in other words, about half.

Mr. SYMMS. Where is the other $10.40 coming from?

Mr. NICKLES. I appreciate your concern and I share that concern. I would guess that the private sector's estimate is going to be very much on target.

Mr. SYMMS. I am looking. Is the money in here somewhere or in a cigar box, as Senator Goldwater used to say?

Mr. NICKLES. I think the demands for this program will be such that the costs will greatly exceed the thoughts of the sponsors or anyone else. I would like to get OMB's estimates on costs. I do not believe we have them yet. I know that they were principal players in negotiations with the Senators from Minnesota and Maine. I would like to have—I think it is important to have for the Record—their thoughts on what the cost of this program would be in the next several years and include that for the Record. It is awfully important that we have it. We do not have it today.

Mr. DURENBERGER. Would my colleague yield for a statement?

Mr. NICKLES. Yes.

Mr. DURENBERGER. I do not want to try to answer everything.

Mr. NICKLES. For 1993.

Mr. DURENBERGER. I will give my recollection, because I do not have the figures either. I think it is appropriate that we try to find the figures. We will put them in the Record.

I would do it, though, with this qualifier: that is, that in all of the negotiations it has been quite clear to me, as one who has worked with the Health Care Financing Administration for 9 years now, that in some particular cases their estimate of cost is skewed in the direction of their estimate of value of the policy and/or the associated problems with the policy. And it is always premised on available data.

So my recollection in this particular case is that from the beginning we were dealing with what at least I viewed as somewhat unrealistic estimates on the part of the Health Care Financing Administration.

I will just give you a figure so that you can see one of the reasons why we thought it was unrealistic. In the year 1993, when, as I recall, the Congressional Budget Office was estimating a total average monthly premium to cover all costs of the $600 deductible, 80 to 20 cost sharing, all prescription drug premiums, to be about $8.10 a month, on the average, for everyone who signed up.

HCFA, via the administration, was estimating that in the neighborhood of $24.80 or $24.70 or something like that. And we work, as you know from your own negotiations, working with an administration estimator on one hand and a CBO estimator on the other hand.

Each of these was so widely divergent that at times there was a sense that maybe both of them were somewhat unrealistic, which is why this Senator at least thought it would be most appropriate to deal with a fixed premium, dollar denominated premium, like $8.10, where we could just use the then CBO estimate and say that is what you are going to get out of it.

The reason that is important to all of us is that you are not going to necessarily get all prescription drugs in 1993. You are not going to necessarily try to shoehorn every drug that every doctor might prescribe in 1993 into an $8.10 premium, but you are going to try. And in trying that, you are going to experiment with a variety of changes in the way the program operates in order to do it.

In other words, you might try 80 to 20 cost sharing for certain kinds of drugs and some other cost sharing for some other kind of drugs. You might have a fully paid drug benefit for certain kinds of drugs and something else for another. That is the reason to move in the direction of a dollar denominated benefit rather than a specific benefit described as all prescription drugs.

Mr. HEINZ. Will the Senator yield?

Mr. NICKLES. I think I have the floor. I am going to try to go through a series of questions to point out some of the problems and concerns in the bill and I think some of this is very good for the Record.

Mr. HEINZ. Would the Senator yield to respond to the Senator's questions regarding costs from private insurers? This is significant. I would like to add to Senator Durenberger's explanation, if I may.

Mr. NICKLES. Certainly.

Mr. HEINZ. And that is because the private insurance companies want to be safe rather than sorry, therefore, they estimate relatively high premium costs. They also are forced to estimate, when they get up to $15 or $20 a month, they also have to estimate adverse selection. Because they realize that the elderly people at those prices who will subscribe to a prescription drug benefit are those who need it. And, of course, under the proposal we have, because we expect most people, as we have discussed, to continue to participate in part B, we solve the problem of adverse selection because there would be broad participation.

As a result, the insurance companies, because of the nature——

Mr. NICKLES. I appreciate your comment.

Mr. HEINZ. Because of the nature of adverse selection, cannot offer what we can offer.

Mr. NICKLES. Let me go through a few more items, if I may, and fairly quickly. Then I will be happy to yield the floor. I am not trying to dominate the floor, but I think there are a lot of things that yet are not known about the program.

I want to move into a segment that we have not heard much about. The Senator from Maine is not here, but he was talking about drug benefits for those on the lower end of the scale. I am thinking now of the supplemental premium, and I am wondering if the drug benefit that we have, and if I understand it correctly—and please correct me if I am wrong—but the drug benefit under the Senator's amendment, half of it is paid for by a fixed premium and half of it is based on an income-based premium. There is a limitation under the underlying bill for the supplemental premium. I think it is $800 in the year 1988.

Is this drug provision on top of that $800? Or is it included in that?

Mr. HEINZ. The half of the costs of the drug provision is funded by supplemental premium. The other half is funded by the part B premium. The cost of both the supplemental premium and the part B premium is capped. They are capped because, under the formula, since 50 percent of program cost is necessarily picked up by the part B premium, any premium cap necessarily caps the costs of the supplemental premium as well as the part B premium.

Mr. NICKLES. We also have an additional cap on the supplemental premium of $800, and then it goes up to $1,000.

Is the drug provision included in that? Basically it is a tax on income, $1.02 per $150 worth of tax liability is the tax surcharge on senior citizens.

Mr. HEINZ. Everybody, irrespective of the prescription drug amendment, whether it is adopted or not, will be protected by the supplemental premium cap the Senator just mentioned.

Mr. NICKLES. So that cap is inclusive of the drug benefit amendment.

Mr. HEINZ. Yes.

Mr. NICKLES. I appreciate that.

Here is a very important question. If I can get the attention of the Senator from Minnesota as well as Pennsylvania and Maine. On the supplemental premium cap, the $800 for 1988, the tax right now under the bill, it is $1.02—$1.02 per $150 worth of tax liability. That is capped at $800.

As I am reading the bill, my question is: Is that $800 per spouse? Or is it $800 per couple?

Mr. DURENBERGER. If the Senator would yield, it is my impression that it is $800 per taxpayer and that means that in the normal situation you are going to have $800 for a husband and $800 for a wife.

Mr. NICKLES. I think we need to clarify that a little. You said taxpayer. If you had one income earner, husband and wife, one wage earner that earned, say, $70,000, would you pay the tax one time or would you pay it twice?

Mr. MITCHELL. With the Senator's permission, could I ask unanimous consent that the Senator from Ohio, Senator METZENBAUM, be added as a cosponsor to the pending amendment on drug provision?

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MITCHELL. I thank the Senator.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. DURENBERGER. If my colleague from Oklahoma would yield for a clarification of my response?

Mr. NICKLES. I thank you.

Mr. DURENBERGER. The appropriate response is $800 per enrollee in the part B Medicare program; not per taxpayer, which I stated incorrectly.

I would say further, perhaps in anticipation, because I admire the logic of my colleague from Oklahoma, in anticipation of his next question which is, given the $800 cap per enrollee on catastrophic, is it possible that this amendment contemplates adding the income-tested half of the drug benefit on top of the $800 or in additional of the $800 per enrollee per year, the answer to that is in the negative. The $800 per enrollee is the cap per year for the two additional income-tested benefits on catastrophic and drugs.

I would add one other thing because it is a thick amendment. The income-tested portion of the catastrophic, and I trust this includes, then, the income-tested portion of the drug benefit as well, is deductible as a medical expense on the taxpayer's tax return in that section of the return in which medical expenses that exceed 7.5 percent of the adjusted gross income are deductible.

Mr. NICKLES. I appreciate the Senator's clarification. If I can get all the sponsor's attention, I hope that they will contemplate changing that provison because, under the language as you have it and as explained by my good friend and colleague from Minnesota, if you have a couple that pays an income tax libility of $15,000—whatever income would take to do that, $60,000, $70,000, $100,000, whatever, if they pay $15,000 worth of income tax liability, their cost under the supplemental is $2,000 per year. So this is a very expensive provision.

I have read the language in the bill and, frankly, I think it could be interpreted either way. I read it to where that income, if you only had, say, one wage earner that earned, say $75,000 and his tax liability, or her tax liability, is $15,000, I read it in one mind thinking that their maximum tax under the supplemental would be $1,000. But I think the Senator from Minnesota has explained it correctly, that it would be $2,000 under the bill as written. This is a very expensive provision. It is on the underlying bill. It is not in the Senator's amendment, as I understand it.

But it is a concern that I have and it is one that is very, very important and I guess the Senator's amendment dealing with drugs aggravates it a little bit more on this question of whether or not there will be enough money to pay for this bill.

I have a feeling that there are a lot of senior citizens that do make a significant amount of income. I do not know where that level would be. I am not one to say. But let us say it is $75,000 and they have not invested it in tax-exempt areas and so they pay $15,000 in taxes.

If we tell them and say well, congratulations, not only is your monthly part B going to escalate by a few dollars for drugs and few dollars for the hospitalization provisions but also your income tax on a yearly basis just went up $2,000, and we appreciate your contribution to this income redistribution system that we have set up, I have a feeling a lot of them are going to be concerned.

Very few people, I think, have paid much attention to the income based—I cannot call them premiums—the income-based surcharge to finance this program. It is one that really concerns this Senator, and I would hope that the sponsors would think about it and, hopefully, would offer a perfecting amendment. I may try to do so at one time, but I would prefer that the sponsors would look at it and say, "Wait a minute, we were not anticipating this to have that significant of an impact."

Maybe you would make it a tax per taxpayer so that if you had one wage earner under that circumstance, say it is a pension with senior citizens who are on one income then you could make this surcharge apply only to that one income.

Actually, the way it is written, you would have one income—say an individual happens to make $75,000. He is 70 years old. Right now you are going to have the surcharge hitting twice. And the surcharge, in the Senator's amendment to pay for the drug in the first year, if I read it correctly, goes from $1.02 per $150 to $1.08 per $150. It is left wide open for the Secretary to determine whatever amount is necessary to come up with the 50 percent of the total cost of the program. And if the cost of the program escalates as much as I, and others think it will, you are going to find this increasing substantially. You say, "Well, we have a cap in it to solve that." And the cap starts at $800 and by 1992 it is $1,000.

Then if someone could explain to me, possibly the sponsors of the amendment, if you look on page 93 of the bill where it has the cap for the supplemental that goes from $800 to $1,000, it also has some kind of limitation beyond the year 1992. To just read it to my colleagues it says:

> The applicable supplemental premium for any individual shall not exceed an amount equal to 65 percent of the product of the number of months.

Number of months is not the problem—

> The excess of the sum of 200 percent of the monthly actuarial basic rate for enrollees age 65 or over and the monthly per enrollee actuarial comprehensive catastrophic benefit amount for such calendar year.

Could one of the sponsors explain what type of limitation we have on the total cap beyond the year 1992?

Mr. MITCHELL. Could I respond to the Senator's earlier question and then we will try to catch up with this one because he has asked a series of them.

On the question of income and the cap, according to the Joint Tax Committee, in order to reach the cap, the income of an elderly family would have to exceed $100,000 a year and of those who paid the supplemental premium, it is estimated that 3 percent of them will reach the cap.

That responds to the Senator's earlier comments and questions and we will now attempt to catch up to the most recent question, I am sorry, I was trying to respond to the earlier one so I did not get the last one. Will the Senator repeat the question.

Mr. NICKLES. Let me dwell on the answer of my friend from Maine. He said 3 percent of senior citizens will reach the cap, or is estimated will reach the cap.

Mr. MITCHELL. No, I did not say that. I said that of those who pay the supplemental premium, 3 percent of them will reach the cap, and since those who pay the supplemental premium are in the minority of the elderly, that means there is a much smaller percentage, a tiny fraction of the total number of elderly who will reach the cap. It is estimated by——

Mr. NICKLES. Do we have the number of people who are estimated to pay the cap? Is that 1 million? Is it a half million?

Mr. DURENBERGER. Less than 1 million.

Mr. NICKLES. It seems to me, if there are a lot of senior citizens who pay $15,000 a year in income tax liability, that is the basis of a surcharge on tax liability and I think the numbers may be fairly high.

Mr. MITCHELL. It may be a lot in absolute numbers, but it is a very small portion of the total number of the elderly.

Let me restate what I said because I do not want to go beyond the information I have been provided that comes from the Joint Tax Committee, and that is that in order to reach the cap, it is estimated that the income would have to be in excess of $100,000 a year. Of those who pay the supplemental premium—my understanding is they are less than a majority of all senior citizens, all beneficiaries, and I will get the Senator the exact number in a moment—but of those who pay the supplemental premium, 3 percent of them will have income tax liabilities sufficient to reach the cap. I will try to get the absolute numbers here in a moment.

Mr. NICKLES. Let us work on that, and I think it is also important to understand, I do not want people to be misled by this $100,000 figure. I think it is quite possible for people to have income significantly less than $100,000 to pay a cap. The $100,000 may be an average but I think individuals have incomes as low as $75,000 and pay $15,000 a year in taxes. A lot would depend on what they would have in investments, whether they had it in tax exempts and so on, but a lot of people do not. A lot of people have not gone to a great deal of estate planning, to where they hide income or have tax exempt income and therefore would be bearing the brunt of the expense of the program.

Mr. MITCHELL. If I could provide the one additional statistic, in response to the Senator's question, it is estimated that 36.4 percent of the enrollees will pay the supplemental premium. That means that approximately two-thirds of the elderly cost will be just the base of the premium. Of the one-third or slightly more than one-third, 36.4 percent of enrollees who will be called upon to pay the supplemental, of that total, 3 percent of them it is estimated will reach the cap. So it is 3 percent of 36 percent.

Mr. NICKLES. So the Senator is saying only 1 percent of those who are in the Medicare system would pay the cap?

Mr. MITCHELL. I prefer to state it as I have stated it because that is the only information I have.

Mr. NICKLES. Let me ask an additional question on the same line of thought. If two-thirds are exempt from the supplemental premium, where is the threshold cutoff for individuals to begin paying the supplemental premium, or the income tax surcharge?

Mr. MITCHELL. I want to correct a statement I made because I am advised that one of the problems with dealing with percentages of percentages is I misstated the percentage. The 3 percent is of the total enrollees. Of those who pay the supplemental premium, it is 8 percent. So the 3 percent figure I gave reached the cap, of the total enrollees.

Mr. NICKLES. Of the total number of enrollees, 3 percent would reach the cap.

Mr. MITCHELL. Three percent will reach the cap.

Mr. NICKLES. If I understand 26 million people are under the Medicare system?

Mr. MITCHELL. It is more than that. It is 31 million, I believe.

Mr. NICKLES. Thirty-one million?

Mr. MITCHELL. Yes.

Mr. NICKLES. So you have what, 3 percent of the 31 million would be paying a cap or would max out?

Mr. MITCHELL. Would be at the cap, right.

Mr. NICKLES. That means we would have approximately 1 million people who would be paying the cap.

Mr. MITCHELL. And just so I can state the correct figures again, approximately 36.4 percent of the enrollees would pay the supplemental premium and of that figure, 8 percent of them would reach the cap.

Mr. NICKLES. I appreciate the clarification. To repeat the last question, where is the threshold for beginning to pay the supplemental premium, the supplemental tax surcharge? I have a hard time seeing how we should call the second part of this a premium. Basically, it is a tax, it is a surcharge on the income taxes to pay half the benefit of this program.

Mr. MITCHELL. It is tax liability of $150. You see what has happened is the Senator, as he has every right to do, of course, is discussing the basic catastrophic program. We were here on the drug provision.

Mr. NICKLES. I understand.

Mr. MITCHELL. So we have to get the information for that.

Mr. NICKLES. I want to make sure because the Senator from Minnesota and the Senator from Pennsylvania made a very important clarifying point. They said, "Well, this is included in the overall cap." And the overall cap, the $800 to $1,000, that is included in, not in addition to. I also want to get my colleagues' attention on the fact that I think it is vitally important to make sure that the tax surcharge only applies once on that income and not twice as is presently described, because unless that is changed again for that 8 percent of the persons who are paying the supplemental premium or the 1 percent who are under the Medicare system, something close to that figure or close to 1 million people will be paying, if they have joint incomes, $2,000 per year for this new benefit that we are giving.

I do not think they are going to be very happy recipients of that gift. I also would like an answer to my question on what the caps would be in the years following 1992. There is some complicated language on page 93 of the bill that I have not been able to exactly figure out. But there is a limitation in the years 1988-92?

Mr. MITCHELL. Yes. I am advised that the response to the Senator's question is that half is set at 65 percent of the value of the program at that time. That is the value to the enrollee and the insurance purchased is set at 65 percent of that.

Mr. NICKLES. So in the first 4 years of the program it is 50 percent, 50 percent part B flat premium and 50 percent income supplemental premium or tax surcharge, and then beyond 1992 and the years 1993 and after two-thirds or 65 percent would be paid or could be paid on the income side of the equation?

Mr. MITCHELL. That is what the cap is set at. That is right, in those future years. I now have one additional piece of information on another of the Senator's earlier questions.

Mr. NICKLES. Let me finish this one. So you have one-third of the Medicare beneficiaries paying the supplemental, but by the year 1993 the only cap they will have is one that can cost them up to $1,000 per person or $2,000 per couple in the year 1992. In the year 1993, it can escalate up to two-thirds of the total cost of the drug program.

Mr. MITCHELL. No. The cap is set at 65 percent of the value of the program to the enrollee; that is, if you take what the actual cost of the insurance purchased for that person would be, the cap is 65 percent of that total.

Mr. NICKLES. I do not want to put my words in the Senator's mouth, but I do not think that is correct because the cap in 1992 is $1,000 per enrollee. The Senator's explanation is that we are liable to be looking at a program of $20 or $30 per month. We would not be looking at the cap at a low figure. We would be looking at escalating the cap from $1,000 to something. I am trying to figure out how much of an increase that may be.

Mr. MITCHELL. That depends, of course, upon the value of the program to the enrollee at the time. That cannot now be stated.

Mr. NICKLES. The value of the program to the enrollee is going to be substantially less than $1,000. So it cannot be 65 percent of the value of the program. It must be related to the cost of the program.

Mr. MITCHELL. No. I will read it to the Senator now. It is 63 percent of the actuarial value of the subsidized portion of the Part B Catastrophic and Drug Program.

I have the drug amendment here. Is the Senator reading the drug amendment or the basic bill?

Mr. NICKLES. What page is the Senator on?

Mr. MITCHELL. I have it right here. I am not on any page at the moment. Is the Senator reading from the basic bill?

Mr. NICKLES. I am looking at S. 1127.

Mr. MITCHELL. Let me get a copy of that for just a moment.

Mr. NICKLES. While the Senator is looking at that, I might ask my friend and colleague from Idaho. But first I have a couple of questions concerning what drugs would be involved.

The Senator from Minnesota said, that under the bill all drugs are eligible in the year 1993. I will state in all likelihood there will not be enough money to pay for all prescription drugs in the year 1993. Would the Senator agree with that?

Mr. DURENBERGER. If the Senator agreed with that, I would not be in this body. I would be selling my services making out-year estimates on Medicare programs. If I were accurate at it I could make an awful lot of money.

It is accurate to characterize the Senator from Minnesota as being in doubt about the ability to provide all prescription drugs at a $600 deductible index after 1990, and at 20-percent copay, and the other features of this for $8.10, or $9.60, whatever the right number is here in terms of the premium cap. That is a personal doubt on my part. But I cannot tell the Senator that my doubt is factual. I would not go to the stock market with that.

Mr. NICKLES. Let me ask a couple of questions. I am interested in this. The cost or estimate is $9.60, half of the flat and half of the income. So you multiply. There is an available pot of money. This money is all put in a separate trust fund and cannot be comingled with other Medicare costs. Is that accurate?

Mr. DURENBERGER. That is accurate. That is one of the conditions that the administration wanted. They have some questions about how well the amendment has accomplished that. There might be an amendment here to clarify that. But that is the purpose of the amendment. That is separate funds to avoid comingle.

Mr. NICKLES. I say to the Senator from Pennsylvania, did he send that amendment to the desk? Is that part of the pending amendment having a separate trust fund for the drugs?

Mr. HEINZ. The Senator is correct.

Mr. NICKLES. So we have a separate trust fund for catastrophic and a separate trust fund for the drug provision as well?

Mr. HEINZ. The Senator is correct.

Mr. NICKLES. That is correct?

Mr. HEINZ. Yes.

Mr. DURENBERGER. My understanding is that there are separate accounts. We started out with the notion of trust fund. That was the suggestion made by the administration. As everyone around here well knows, we have an aversion to multiplicity in trust funds.

So my understanding is that currently we have constructed in catastrophic a separate account called the catastrophic health insurance account or something like that, and then there is another account, separate account for the drug premium collections that go against the drug premium benefit.

Mr. NICKLES. Under the drug amendment provisions are these accounts able to be comingled? In other words, if the catastrophic drug amendment as proposed by the able sponsors is successful but it underestimates the cost, the demand is very large for the program and the Secretary has not taken such steps as maybe he has the discretion to do, money can be taken from the catastrophic hospitalization provision, and it can be taken from the Medicare trust funds to provide for the benefits? Is that allowable?

Mr. DURENBERGER. No. The Senator asks a very appropriate question. This was addressed in the negotiation. No. You cannot. The whole purpose of having the separate accounts is to make sure you cannot comingle funds.

One of the issues in that regard that we are all facing right now with regard to the increase in the part B premium may be why the Senator raises the issue, and is what kind of contingency do we build into the separate trust funds as reflected in an advanced premium that has to try to anticipate what the benefits might be in the future years.

So as I understand those who put the final touches to this amendment, they negotiated with the administration over the amount of a contingency which would go into that fund, and the effort here was to try to make that contingency adequate to make sure that in the fund each year was enough money in anticipation for benefits that would be drawn down. I defer to my colleague from Pennsylvania.

Mr. HEINZ. I think the Senator states it accurately. I would like to correct a slight confusion on the record. There in fact is a prescription drug trust fund but there is no catastrophic health insurance trust fund in the legislation. But what the Senator from Minnesota says is correct. There is segregated accounting in both cases. The question of whether there should be a catastrophic health insurance trust fund has been an issue in contention between the original sponsor of the catastrophic bill and the administration. And in my earlier remarks about the qualified nature of the White House support, I indicated that the administration feels there still needs to be a catastrophic health insurance trust fund. There is not one of those in this bill.

Mr. NICKLES. But there is for the drug provision?

Mr. HEINZ. There is. In both cases there is segregated accounting.

Mr. NICKLES. I appreciate that. Let me ask the sponsor of the amendment. Can any moneys be used, if the demand on the drug provision exceeds the moneys available in the trust fund; is it able to use other Medicare moneys?

Mr. HEINZ. Under our amendment, no.

Mr. NICKLES. Under the House provision?

Mr. HEINZ. I cannot answer for the House provision.

Mr. NICKLES. Let me ask an additional question. Again, this kind of goes to the crux of the issue. I see a great demand for very expensive drugs, and I am shocked. I am not an expert in this area. But a lot of drugs are extremely expensive. I have been involved in some cases, cancer cases and others, and have been shocked by the drug expense.

My guesstimate is that this bill is not going to have enough money for the demand. The demand is going to be very large. I asked some of the sponsors of the amendment privately whether the drug commonly used now in treating AIDS can be covered by the amendment. Would persons who are Medicare eligible, not necessarily 65, but have had the disease possibly for 2 years and receiving AZT, be covered under the provisions of the bill in 1993?

Mr. HEINZ. The answer to that is "Yes." AZT?

Mr. MITCHELL. If the cap is not exceeded, and the Secretary determines that the funds available would provide for all drugs and determines that these drugs should be included, the answer is "Yes."

Mr. HEINZ. There is a qualification I would like to make so the record is clear if the Senator will permit me.

Mr. NICKLES. Yes.

Mr. HEINZ. I think what the Senator is asking in effect is how does this legislation interact with AIDS and people suffering from AIDS. Is that not correct?

Mr. NICKLES. I am asking the question more or less in the prospective. You have to, to some extent, and we really have not clarified the issue. I have not given up on it. I want some clarification on what the caps are going to be in the year 1993, 1994, and

1995, because that is where the program really is opened up.

The program as designed by the sponsors is limited in its application in the first couple of years, but very broad. The biggest expansion is in 1993 and it says all prescription drugs. The cost of that seems to be enormous.

I mentioned AZT because I know the cost of the drug is like $10,000 to $12,000 per year. That is one example of a very expensive drug, and that I am afraid unfortunately is going to have a very high demand not only this year but by the year 1993.

I am concerned about what the Secretary of HHS is going to do when he has all this demand for the program and he has premiums going up at an enormous rate. The whole Medicare Program went from $71 billion to an estimate this year of $81 billion, and this is without any of these new programs. Looking at AZT, it is not so much what AIDS will do, but it is a relevant question. It is an expensive provision.

Mr. DURENBERGER. Mr. President, will the Senator yield?

Mr. NICKLES. I yield.

Mr. DURENBERGER. Let me try to answer it, and the chief proponent of this amendment might clarify it.

First, with respect to the specifics of any one drug, the answer to that is that the Secretary will make that basic determination. The intent is that all prescription drugs be covered. The purpose of having 2 years of studies, to phase in the defined premium, and then arming the Secretary with certain authorities, is to give him the responsibility for making certain of those decisions. It is difficult to make a specific determination in advance, except for immunosuppressive and certain IV's and then perhaps cardiovascular, diuretic, or equivalent life-support systems.

With regard to the AIDS specific, that would cover people with cancers, with heart disease, with other disabling or chronic illnesses, who survived the first 24-month waiting period; if they are under 65 years of age, survived that waiting period, and become eligible for Medicare benefits.

As I understand it, currently, with regard to AIDS, after the 24-month waiting period—I think we all know that most patients with AIDS die within the 24-month period of time. There are currently, I understand, about 200 to 300 AIDS patients who are Medicare eligible. I doubt that many of those live much beyond the 24 months. If you are thinking of the dollar consequences of this one specifically, that is the best framework I can give.

Mr. NICKLES. Will the Senator agree with me that with the demographics of the AIDS problem, it is estimated that a couple of million people are carrying the virus and that number could double by 1990, 1991, or 1992?

The estimates are from the Centers for Disease Control that in those years, 1991 or 1992, we are talking about probably, unfortunately, 50,000 deaths per year. Will the Senator agree that progress has been made and that under some drugs, AZT and other replacement drugs, coming along, which may be more successful in prolonging individual's lives, those drugs are also extremely expensive? If we are going to have 2, 3, 4, or 5 million people who are carrying the virus and who may be trying to stay out of progressive or frank AIDS status of the drug and the disease, they may well be seeking or soliciting this drug. I see the demand for it being enormous.

Mr. DURENBERGER. I could not disagree with my colleague, because we have already had the experience of Alzheimer's. We have had the experience of a number of very serious chronic illnesses and diseases in this country from which people used to die within a relatively short period of time—just 5, 6, 7, or 8 years ago—and today, because of the creation of a variety of life-saving or life-improving drugs, they are able to survive those crucial early periods of time, and they live relatively long lives.

So I say to my colleague that that certainly is true, and there probably are more drugs coming along that will accomplish the same thing.

Mr. NICKLES. Mr. President, I have held the floor for a long time, and it is not my purpose to monopolize it. I have asked pertinent questions that deal with escalations allowable under the cap, and I see that the Senator from Texas is here. That cap goes from $800 to $1,000 by 1992. There are escalating provisions beyond 1992, and I hope we can get clarification as to how much that cap might increase.

Also, in the course of the discussion of this issue, we have heard that the tax on the supplemental boils down to per enrollee. So if a couple has one income of, let us say, $100,000 and their tax liability is $15,000, both spouses would have to pay the maximum, which would be $1,000 per person or $2,000 in addition to the increase in the monthly.

I find that to be quite expensive. I would hope that the Senator, either through our deliberations on the bill, on the floor, or in conference, or at some time, would make that applicable to one tax per income—in other words, not have both the husband and the wife subjected to a $2,000 tax and with a rapid escalation.

I understand the statement of the Senator from Maine that the escalation of the cap beyond the year 1992, beyond those years, could be enormous, in the years 1993 and on, and 1993 and on is when the program is really opened up to all drugs. That is a very expensive provision for a lot of citizens.

Mr. BENTSEN. Mr. President, I say to the Senator from Oklahoma that there is a great deal of work being done with respect to this.

We set it up at a $4 basic premium and then $1.02 for $150 worth of taxes paid. We have now moved the cap from $1,700 to $1,850, and we have moved the supplemental from $1.02 to $1.08. Then what you have, of course, is the $800 cap in the way of expenditures that you can make before paying for this benefit.

We have reduced the law of averages to the individual. It is quite correct that this would move up to $1,000; and beyond that, it moves up to something else.

None of us can totally anticipate what the future holds in these things; but you have to realize, as you talk about that, that it also means health costs are rising at the same time, and that is a part of the result of all this.

What you are trying to do is to say to these people: "We are going to give you, in effect, an insurance policy that will protect you at what we think is the lowest policy minimum you can pay." I used to be in this business, and we cannot repeal the law of economics.

I can understand that this is going to be burdensome. All these things are burdensome. We are trying to cut the amount of the burden as much as we can.

In addition to that, the explanation of the Senator from Maine so far as getting to 65 percent of the benefit as a maximum, that is correct, too. So what you have in effect, I think, is a good deal.

The other point we put in this is quite opposed to the House—as we have said, optional. If you do not want it, you do not have to take it. I think anyone who does not take it would be foolish in the extreme. We are saying to these people: "We are trying to get you the best possible deal you can get, so that your life's saving will not turn to dust, and that of your kids who might support you." I think this is what the President was proposing in the State of the Union Address.

We have lost a lot of time in trying to negotiate. The distinguished Senator from Maine, the Senator from South Dakota, the Senator from Pennsylvania, and my friend from Minnesota have all worked at that, but they have put together on prescription drugs about as good a package as I think could be accomplished. If we had tried to fight it out on the floor earlier, I do not think we would have had as good a result, and we are working together with the administration in trying to accomplish it.

Mr. NICKLES. The Senator from Texas stated that the supplemental surcharge was based on $1.02 and now $1.08 per $150 in tax liability.

My point is, should they not just be taxed once on that income? If a retired couple has $15,000 worth of tax liability, should they have to pay the surcharge on that income once or should they have to pay it twice?

Mr. MITCHELL. Because there are two persons who receive the health insurance benefits, they pay the premiums twice.

Mr. NICKLES. I want the Senator from Texas to answer it, because I hope he will agree with me that you are really very punitive in the fact that for the year 1992 under the Senate bill, and earlier in the House bill, you are talking about a supplemental surcharge of $2,000 and more per year.

Mr. MITCHELL. But that purchases for each of those persons health insurance coverage.

Mr. NICKLES. For $10 a month. That is not a very good deal.

Mr. MITCHELL. May I finish my answer?

Mr. NICKLES. Yes.

Mr. MITCHELL. It purchases for those persons health insurance coverage that, even for those who pay the cap, is really 35 percent more than they are paying.

Second, if the Senator's suggestion is that there be only a single premium for a married couple, then he is proposing discrimination against elderly widows and widowers who would in effect by paying the same amount for coverage for one person that their neighbors would be paying for two persons. Therefore, the Senator is saying that a single elderly widow should subsidize the health insurance costs of those who are fortunate enough to still have both spouses.

When you purchase health insurance, the cost depends upon the number of persons who are the beneficiaries of the insurance coverage. It seems to me simple logic that if you have two persons benefiting from insurance coverage, if either becomes sick, they are fully covered, and their costs should be higher than if you have one person benefiting from the coverage.

Mr. BENTSEN. If I may supplement, please, I think you blow all the expert assumptions if you tax otherwise, because those were the assumptions that were made to arrive at those rates and you are not taxing income twice. If you have one income and that person gets up to the maximum there, that is the maximum.

If you have two incomes, then they have to go to the maximum of each to finally reach a cap.

The assumptions were made that way or you would not have that kind of a rate. You would not have a $4 rate plus $1.80.

Let me say, if I may further say, in working out this kind of a compromise, the administration has endorsed both the underlying and have also endorsed the supplemental and it has been a very tough job of negotiating, trying to bring that about and they probed and checked and the very things that concern the Senator, and I can understand where he is coming from, and I would have that kind of a basic question in the beginning of our negotiations, but this is the end result of all those actuarial assumptions based on doing it this way.

Mr. NICKLES. I appreciate the Senator's statement. Let me clarify it.

I heard the Senator from Texas once or twice state what I thought it should be in that the tax would be on the income.

Take a hypothetical example. If your have a couple who pay $15,000 worth of tax, a joint income, does the Senator from Texas believe that that maximum tax should be paid twice? He is talking about if they paid $15,000 in tax, he basically is assuming $150. That would be $1,000 in tax per person. So the Senator is saying that you want to increase their taxes $2,000 to provide this benefit? Is that correct?

Mr. BENTSEN. What we are saying is if you have two enrollees and two people earning income.

Mr. NICKLES. No. If you only had one income. You have two people but one income.

Mr. BENTSEN. Two people with one income only, only one wage earner in effect.

Mr. NICKLES. That is correct.

Mr. BENTSEN. That is what the Senator is saying to me?

Mr. NICKLES. Yes.

Mr. BENTSEN. The actuarial assumption was based on there being two enrollees under those circumstances, and they both then are covered by the one cap.

Mr. NICKLES. Both are covered by the one cap?

Mr. BENTSEN. That is right.

Mr. NICKLES. In other words, both have to pay the $1,000 in taxes or the $1,000 in taxes would only apply once between the two people? If you think this is confusing, you ought to read the bill. The bill is just as confusing.

But I would like to make sure we are together, then. If we are not together, and the Senator from Maine and I, I think, have come to the conclusion that you have to pay the $1,000 twice based on if you had that kind of liability. Both people, both enrollees, would have to pay the cap even though there is only one income?

Mr. HEINZ. Mr. President, will the Senator yield?

Mr. BENTSEN. That is correct. You have two enrollees; that is right.

Mr. NICKLES. Two enrollees; one income.

Mr. BENTSEN. That is right. That is where the actuarial assumptions were made.

Mr. NICKLES. Let me make one final comment now and I think we have clarified what the bill says. You will greatly increase the number of people who opt out on part B.

Now, my concern would be, as the Senator from Texas correctly alluded to, on part B you do not have the option—correct me if I am wrong—you do not have the option to opt out under the House bill.

Mr. BENTSEN. That is correct.

Mr. NICKLES. You do under the Senate bill.

Mr. BENTSEN. That is correct.

Mr. NICKLES. If you come back from conference with that option to opt out, which I am afraid you will come back in that position, then, basically, you have really put what I think is an overly progressive tax on a significant percentage of senior citizens. Eight percent of those who would be paying the supplemental premium would be at the maximum or the cap amount. You put on a very significant supplemental premium that is in the thousands of dollars. We have heard people talk about how catastrophic it is for drug costs and so on.

Mr. BENTSEN. Will the Senator yield? When we get into the outyears at some point, and none of us can tell you with any specificity exactly what it is going to be out there, but if that is happening it is because hospital care costs are going up that much and the alternatives they have available to them will be just as difficult.

Mr. NICKLES. I am not even debating the bill yet. I am just trying to get a few of the facts out and make sure the people understand it.

But the essence of it is that you have a very expensive bill by the year 1993. You have potentially two-thirds or 65 percent of the cost of the bill being paid for in this income supplement which will be primarily paid for by the upper one-third income people of the senior citizens group. That goes up into the thousands and thousands of dollars per year.

Mr. BENTSEN. If you are saying that, that is still going to be the best deal in town and they better take it. Because they are still going to have a situation where 65 percent of it is taken care of.

Mr. MITCHELL. If I could make a point on the point the chairman is making. The first point you remember is the circumstance which the Senator from Oklahoma describes would apply to 3 percent of the total number of medical care eligible beneficiaries. That would be 3 percent with the very highest incomes, all with incomes in excess of $100,000 a year.

Mr. NICKLES. I think you need to clarify that again. I think there are a lot of people with less than $100,000 a year that will be maxed out.

Mr. MITCHELL. I am repeating what we have been told by the Joint Tax Committee. If you have a different view, we welcome that. And people can make their choice as to which figure to accept.

Let me go on to say, it is the 3 percent of the elderly with the highest income, whatever the threshold is, certainly. You agree with that.

Mr. NICKLES. Yes.

Mr. MITCHELL. And, as to those 3 percent, the maximum they can ever pay is 65 percent of the value of the benefits under the program that they are going to receive. That is, if you actuarially calculate what the cost of that health insurance program to them is, they will then pay no more than 65 percent of that total. So you are dealing with the highest 3 percent in income among the elderly and what they are getting is a health insurance program at 65 percent of the cost.

Now, if you think that is unfair, that is, of course, a judgment which you are prepared to make, and you make a very forceful argument on it. Other Senators must consider whether they feel that is unfair or whether that is not a good deal for them and contributes to a successful program that eliminates the fear of catastrophic expenses for all of the elderly.

Mr. NICKLES. I want to clarify one thing. Again, I am not trying to monopolize the floor. I am trying to get from the Senator from Texas an idea of what the cap is going to be in the year 1993 and beyond. It goes from $800 in the first year to, I think, $1,000 in the year 1992. The Senator from Maine just said again that the amount of the supplemental premium is maxed at 65 percent of the actuarial equivalent of the value as they as an individual would be receiving. That is significantly less than $1,000.

We heard the Senator from Pennsylvania say the cost in the private sector is $20. That is $240 a year.

Mr. MITCHELL. No, because 65 percent of the part B insurance program goes to them and it is really calculated on the basis that is expected to continue the progress of the increase that is specified in the bill. Although no one can say precisely because no one can know what the total medical costs will be in those years and, therefore, what the value of insurance purchased to cover those costs would be, it is calculated that this would be approximately $1,050 in the year after it takes effect.

RECESS UNTIL 2 P.M.

The PRESIDING OFFICER. Under the previous order, the hour of 12:45 having arrived, the Senate will stand in recess until the hour of 2 p.m.

Thereupon, the Senate, at 12:45 p.m., recessed until 2 p.m.; whereupon, the Senate reassembled, when called to order by the Presiding Officer (Mr. REID).

The PRESIDING OFFICER. The Senator from Maine.

Mr. MITCHELL. Mr. President, when we concluded earlier this afternoon, the Senate was considering the amendment offered by the Senator from Pennsylvania, myself, and others, to provide a prescription drug benefit within the catastrophic health legislation. I strongly support the prescription drug provision, the pending amendment. I have already spoken on it. Senator HEINZ has spoken on it. We will be pleased to hear further comments by any other Member who wishes to be heard on this subject.

I note the presence of the Senator from Pennsylvania.

Mr. HEINZ. Will the Senator yield? I know at least two other Senators who want to be heard on the subject. Senator SYMMS I know has a number of questions and comments and Senator SHELBY just indicated his interest in speaking on the amendment.

I think we had a very good and constructive debate this morning and I suspect there will be further illumination, both of our amendment on prescription drugs and the catastrophic health insurance benefit.

Mr. President, if the Senator from Idaho is seeking recognition, I will gladly yield the floor.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. SYMMS. Mr. President, I seek recognition for myself.

The PRESIDING OFFICER. The Senator is recognized.

Mr. SYMMS. I thank the distinguished Presiding Officer.

Mr. President, I first want to say that I thought that the debate this morning was most enlightening. I thought our distinguished colleague from Oklahoma, who is not a member of this committee, asked some very penetrating questions and I thought that the members of the committee, the authors of this amendment, certainly tried to make their case in a very able way. It is obvious they worked long and hard to arrive at the conclusions that they have with respect to this amendment.

I still have some problems with the amendment. One of the problems that concerns me is that there are some 30 million people—if I heard the debate right—that will qualify, but maybe only 5 million will really get to take advantage of it. I wonder if it is going to end up opening up incentives to pour more benefits into catastrophic costs in the future. My question is: Will it lead to price controls?

I just want to go on and say a little bit to my colleagues on the committee that are here, Senator HEINZ and Senator MITCHELL. In my State hospitals have a very difficult problem facing them. They have been burdened with Federal bureaucracy and regulations by this same type of involvement on the part of the Federal Government. Over the years, regulatory care in medicine has been driven by Federal expenditures and reimbursement policies. Hospitals have become very dependent on the Federal Government.

Our program started expanding and costs rose. The answers came down from Washington in the form of DRG's and so forth. Trying to restrain the growth of spending in the Medicare Program, we simply have small communities that end up with one hospital to take care of everyone. They get involved in some of these programs and they lost money on the treatment because Medicare or Medicaid, whichever the case may be, does not pay the entire cost of the treatment that they are trying to dispense.

That is one of the questions that I would hope to pose to my colleagues. Will this, again, ultimately lead to price controls and rationing of the available medical products to the users of those products?

I might just direct that question to my colleagues from Maine and my colleague, Senator DURENBERGER, from Minnesota, if they would entertain it.

What I am concerned about is our small country hospitals, and to a large degree hospitals, large and small, in all parts of the country. Over a gradual period of many, many years, because of the Federal Government's involvement in medicine, they are now very dependent on Government payments for medicine. Then when we start capping price controls and they end up in a situation where they are virtually having to ration out medicine. They are being forced into a price control, rationing situation.

What do you believe will happen with the pharmaceutical drug amendment in the future, say, beyond 1993, if this becomes a cost containment program? Are we going to end up with price controls being imposed on these? What is the answer to that? Any one of you. I want to keep the floor, but I would like to hear someone comment on that.

Mr. HEINZ. I would be pleased to try to respond to the Senator from Idaho.

The one concern, I think, all of us have and which we have tried to responsibly address, Mr. President, is the issue, not of price control, because speaking for myself we want to avoid either direct or backdoor price controls; it is the issue of cost control. There is a big difference between cost control and price control.

As I indicated, as the Senator from Idaho, I think, was present for a good part of the debate this morning, we have a variety of cost control mechanisms built into the amendment.

First, there is the threshold which moves over time, in order to control the number of people participating in the program. There is the copayment, the 20 percent. There is the premium cap. Finally, and most importantly, there is the authority given to the Secretary to withhold or even to withdraw categories of drugs—and we are not talking about any so-called formulary. The Secretary could withdraw entire categories of drugs. There are some two dozen major categories, as I understand it, for cost control purposes.

We have indicated, I think, time and again, that the way we want the Secretary to control the costs of this program, if the program gets up to the so-called defined premium cap, is principally by withholding, or withdrawing as the case may be, drugs.

Mr. SYMMS. Let me be a little more specific in the question and get it more in layman's terms.

I think we all agreed in the Congress that we had to do something to control costs of Medicare and Medicaid because it was getting out of control. The program was designed for X procedures, appendectomy or whatever, and paid a flat fee for it. Then you end up where, if the payment is not enough to cover the costs, the local hospital has to eat the difference, if they have a patient that is receiving the Government benefit.

What I am wondering is are we going to end up, 10 or 15 years from now, in the same situation we are in today with Federal involvement and the Federal Government paying for the medical procedures programs?

Because of this some physicians are just simply saying: "We will not accept any patients. We will not accept any medical payment. We bill our patients and they have to pay us or we will just not accept them."

Well, that is fine in some areas where maybe there is a big choice. If you go back out, let us say, to some out-of-the-way place like Ketchum, ID, or Bellevue or Hailey or Pocatello, it may be a little harder for people to do that. If there is only one hospital in town, it is rather difficult for people to get these medical benefits.

Is there any way we will not end up in the future that some high-priced pharmaceutical product for someone who is in a very bad health situation will be prescribed for them but the Government will not pay enough to give them enough medicine to treat them, so they will just have to ration it out and say you can only get three-quarters of a dose or whatever it is per patient?

Mr. HEINZ. If the Senator will yield——

Mr. SYMMS. Do you see what my question is?

Mr. HEINZ. I understand the question, and the question is, are we likely to repeat with prescription drugs the kind of experience we have had with hospital coverage under Medicare which started with a cost reimbursement system, the so-called prospective method, and has ended up with a Government fixed price for each diagnosis.

To be honest with the Senator, although I think our amendment is structured in a way that the Medicare Program never was to control costs, to control utilization, to give the beneficiary a great interest in the wise use of drugs through the establishment of the defined premium cap, to have an overall limit on the program's cost running away, despite all the things that I have talked of earlier, despite giving the Secretary discretion to adjust if absolutely necessary thresholds or copays to make sure that utilization does not run away, in spite of the careful phasing in of this program over what amounts to a 4-year period, of the study that is made in 1991-92 to make sure that the program is an affordable program without coming back to the Congress, as the case may be, for any additional authority, the answer to the Senator's question is that none of us can guarantee, in spite of our very best efforts to put every possible safeguard into the program, that at some future point the Congress and therefore the administration might not come back with some attempt to directly control prices.

That is always a risk when the Government is involved in the financing of a program, and it is not the answer that we seek. But to be honest with the Senator, the history of Government in this country and every other is that the governments are sorely tempted to do what the Senator says.

Mr. SYMMS. I thank my colleague very much for that very candid answer. I also would like to say again, Mr. President, that having worked on the Finance Committee for the first 6 years I was in this Chamber, I have the highest respect for the three Senators now on the floor, Pennsylvania and Minnesota and Maine. I respect their work in trying to come up with this compromise through this amendment. I am not sure but I may vote against this amendment. If I choose to vote against it, or against the whole bill, it will not be because I am not concerned with the problem that some Americans face with catastrophic illness; that one family member might wreak havoc with the family savings. I think the motive is very noble. I think the problem, in the bigger context, is a question that none of us seem to want to address.

I noted with great interest yesterday that the distinguished leader of the Senate, the Speaker of the House, and the minority leaders of the House and Senate were at the White House for a grand compromise to work out some kind of a solution to the crisis that faces financial markets around the world because of the uncertainty of the U.S. Federal deficit and other spending programs. I suppose most of us would say that President Reagan is at least as conservative as any President that has been elected in modern times based on his background and his philosophy. But we have a problem of developing a giant sacred cow. I noticed that in the compromise the first thing the President said was that we will put everything on the table but Social Security. I wonder why we would not include catastrophic medical insurance. I think that would be even a bigger sacred cow than Social Security. Certainly we all know there are some people who receive Social Security who could probably afford to help reduce the Federal deficit more than others.

Mr. DURENBERGER. Would my colleague like a suggested answer to that?

Mr. SYMMS. Yes.

Mr. DURENBERGER. I think it is probably because when we get through with this debate, which is very helpful, I trust, in understanding what it is we are up to, for the first time somebody is going to discover out there that for the first time we have added a benefit for a large number of Americans without passing the cost of that benefit on to Americans in general in the form of increased general taxation or expanded payroll taxes; that for the first time since the social insurance program I think in this country you have a major new benefit being added to the social insurance program with all of the costs of that benefit being borne by those who benefit from it.

Now, that might well be the reason the President has decided that this catastrophic bill should not be taken off the table, because it is a signal this place is ready to do things differently than it has in the past.

Mr. SYMMS. I thank my colleague very much. I think that is a very good point.

Of all the programs that the Government participates in, and if there is a role for the Government in medical care, then one can make a better argument for some kind of a cost sharing on catastrophic health than for many of the other programs.

I might say, Mr. President, I urge all my colleagues to read the additional views of Senator ARMSTRONG to this committee report. One cannot draw a conclusion from reading the report whether he is going to vote for or against this proposition. In fact, Senator ARMSTRONG is quite generous in praise of members of the committee who have constructed this bill and the methodology with which they went about it. But I want to skip a couple of paragraphs from the sacred cow comment about curbing benefits to where he went on to say that: "There will also be considerable pressure to raise revenues from any source—payroll taxes, general revenues, excise taxes—to pay for benefits. When that occurs, the hope this problem would remain self-financing and budget-neutral would fade away."

I believe the intentions laid out here are as clear as can be. This is not going to be a program that is self-financed, although that is the intention now in 1987. In 1993, when everybody learns how to use this program—and as our distinguished chairman from Texas said, that the incentive will be for everyone to participate even though it is an option—they would be rather foolish not participate because of the benefits they could get back. I do not know what will happen here. I quote from Senator ARMSTRONG's views of this: "Again, history is instructive. Since 1965, the Federal Government has spent $517 billion on Medicare and another $346 billion on other Federal health care programs. From 1987 to 1992, another $602 billion will be spent on Medicare and $302 billion on other health care under existing reimbursement policies. What have we gotten for the $850 billion spent over the past 20 years? What will we get for the $900 billion that would be spent by 1992 even without this bill? Many elderly citizens have far greater access to health care than in 1965, and that is surely a great accomplishment. But it is clear that the Nation has faced rampant inflation in health care, largely driven by Federal expenditures and reimbursement policies, and gained a huge health care regulatory bureaucracy on which hospitals and doctors have become ensnared and dependent."

That goes back to my question. In a more specific case, if this amendment then is going to add one more little facet, self-funded we hope, I am not sure I got the answer.

Is it two separate trust funds or only one trust fund?

Mr. DURENBERGER. There are two separate accounts and there will be an amendment on the floor later today as I understand it to create a catastrophic trust fund. I believe I am correct.

Mr. MITCHELL. Would the Senator yield to permit me to respond to the earlier request?

Mr. SYMMS. Certainly. I would love to hear the Senator's comments.

Mr. MITCHELL. I heard the Senator from Idaho invoke the President's name on several occasions. I think it bears repeating that the reason catastrophic illness legislation is now before the Senate and is likely to be enacted this year is that the President has recommended that it occur. There has been much discussion over several years about catastrophic health insurance. But it was not until President Reagan in the State of the Union address a year ago directed his Secretary of Health and Human Services to study the problem and propose a remedy that took on the prospect of realistically being enacted into law. It was Secretary Bowen that precipitated the current legislation and debate.

So in fairness to the President, he deserves commendation from those who believe catastrophic legislation is important, and I am one of them. He deserves thanks from the American people for making this a realistic possibility.

So I note that but for the President's active support and encouragement for this legislation, we would not be where we are today, and he supports the bill and he supports the drug amendment.

So I think that should be made clear since the Senator has invoked the President's name.

Mr. SYMMS. I thank my good friend from Maine on that point. I think I could pretty much share and agree with everything the Senator from Maine says here. I think this is a very important issue. I think it is something that you wonder why it took 25 years to get to catastrophic health? Why did we not start with catastrophic instead of having this other program where we are spending billions and billions of dollars? That is a good question to ask. In the context of the current economic situation, I am not sure catastrophic is now beneficial. I think there are Senators who will decide to vote against this entire proposition, although most of those Senators would be in favor of doing something about catastrophic. They are questioning, as I do, what the cost will be to the Federal budget, and what the perception will be in the country and around the world. They're all concerned with whether or not the United States is going to get control of its budget and hence control of its destiny, and whether this adds or detracts from that eventual proposition.

I think markets are looking to the United States, to the Congress in particular, and to the administration to come together, bury all the political hatchets, and get on with solving the budget problem so we do not end up in some kind of broader, deeper recession. Whether this is helpful or harmful, I do not know. But I am concerned, Mr. President, that the seeds of destruction are already planted. It is just, by the way, to look at the record of other Federal involvement in medical care. We started out with a very simple idea. Maybe we would be better off to set this amendment aside, do it on some other piece of legislation in 2 or so years from now, and just have a simple catastrophic bill not opened to pharmaceutical products. Maybe we should not make catastrophic any broader than necessary, but just make it one-step and slow down the process so we can see where we are going in costs. Maybe that would be a better, more responsible proposition.

I think if the President, Senator BYRD, and others want to send a strong signal to the market then a good, responsible position would be to take this bill off the floor of the Senate now without prejudice, and say once we have solved our problem with the budget then this will have first priority.

I think that might not be a bad proposition. The fact is I probably would favor that because I would like to be in a position to vote for this proposition. I do not see how we can in good conscience tell the world we are going to balance our budget, bring spending under control, and continue to pass huge entitlement programs.

I know the intention of this amendment is that it is going to be self-funded. But I also think that if we ever get to the point that it is not completely self-funded we will want to avoid rationing and price controls. We will want to try to restrict the growth of medical bureaucracy and regulations imposed upon the people, or we will end up having a high-cost proposition. That is my real concern.

I hope my colleagues can address that because certainly their work is commendable. I say I do not consider voting against this proposition lightly because I personally thought for years that one place we might be able to share costs and reduce risks to people would be in an area of coverage for catastrophic illness.

But when we start opening it up to pharmaceutical products I wonder if we are not just putting the camel's nose under the tent, and by 1993 or 1994 there will be a Congress in here wondering how they are going to pay for it, and looking for the means to raise the revenue.

That I think is a question that we all have to address.

Mr. MITCHELL. If I may respond to the Senator, as he acknowledged briefly in this statement, this legislation does not add to the Federal deficit. This is budget-neutral legislation. So any implication or suggestion that this contributes to the deficit at a time when we are struggling to control it is of course incorrect.

Mr. SYMMS. Could the Senator finish on that? That is in the next 2 or 3 years. How about beyond 1993?

Mr. MITCHELL. It is by its very terms self financing in perpetuity. If the costs of the program in the future exceed the specific premium cap stated in the legislation, then the Secretary is directed to reduce the cost of the program to bring them within the amount of money raised by the premium. So this is budget-neutral legislation. No one should be under the mistaken impression that this is going to add to the deficit now or at any time in the future.

Second, as to the so-called signal, I think the Senator from Minnesota made a very effective point. Here we are for the first time in Medicare's history adding a major benefit which is self-financed. This represents a departure from past practices. If signals are what are being sought, this sense of signal is that for the first time we are going to break with the pattern of the past. All of the figures read by the Senator into the RECORD may well have been accurate. But they relate to a past practice which is being changed in this legislation.

So if there is a signal to go forward, it is that this is a responsible amendment, breaks with the practice of the past, is revenue neutral, and hopefully will send a positive signal. So I think a very valid argument can be made that we ought to proceed with this legislation precisely for the reasons that the Senator from Idaho suggested that we should not.

Mr. DURENBERGER. Would my colleague from Idaho yield for an additional point?

Mr. SYMMS. Certainly. I would be happy to.

Mr. DURENBERGER. My constituents who have expressed concern about what we are doing have expressed the concern very similar to the Senator's. It turns out that their memories of what we are likely to do in the future are predicated on some of the things that were done around here for one reason or another through the sixties and the seventies, and perhaps into the eighties and done for a variety of, at that time, very good reasons. But I think if you will examine the record of the last several years on the issue of do we as policymakers give in to the pressure to shift the burden of the insurance program for the beneficiaries to the general taxpayers, you will find that we have not. You will find that the part B premium which had slipped below 25 percent of program costs was a pull back up of 25 percent of program costs. You will find that by January 1st of this year some of your constituents will be complaining about the fact that this premium is going up a big jump from $17.90 to $24.80. They are now probably asking the Senator questions about that already. But it is going to go, because those are the actual costs of part B.

When you and I came here a few years ago, I recall that the deductible on part A was $220 or $250, and that is on its way up to $540 or $590. We could have stopped that.

There has been pressure on the House side, in particular, to go to mandatory assignment for physician payments: Let us force the physicians to take a flat fee, because we cannot afford, as beneficiaries, to pay the part they charge us over a reasonable, customary, or prevailing amount. We have resisted that because we want the doctors to be in small communities, such as in Idaho and Minnesota. They are told they can get $3 or $5 for a visit. We want them to earn a living.

People do not understand why they have to go in for their surgery in the morning and come out in the afternoon, that they cannot go in the day before and stay for a week after.

A lot of changes that could cause pressure on this place to cave in have been resisted, not because we have such great moral courage in this place, but because the support for what we have done is in the larger communities, including the elderly, the disabled, and other beneficiaries. I believe the support is there for what we are doing and the way we are doing it today. So when 1992 or 1993 comes around, I think that is the part that will be greater. I premise that not just on an instinct from 1987 but from what has actually happened in this place the last 4 or 5 years. The record is there: we have been responsible.

Mr. SYMMS. I thank the Senator from Minnesota for that answer. I will ask him one more question, and then I will yield the floor. It is not my intention to slow down the bill. I do have some questions, and I do have another committee meeting I need to go to. I am sorry I am not still a member of this committee so that I could have been working on this more.

I want to now quote the last paragraph from Senator MALCOLM WALLOP's additional views on this bill, and then I will ask a question. He said:

> I would like to reiterate a recent statement by Dr. Bowen. It is a challenge to design an acute care benefit that is affordable to beneficiary, taxpayer and government alike—a program that needs no new taxes, no new bureaucracy, is budget neutral and does not exacerbate the deficit or problems of the Medicare trust funds.

I think that statement sounds as though it would be impossible to do.

Senator WALLOP goes on:

> The Finance Committee bill does a respectable job of meeting this challenge. Adding unrelated baggage during Senate debate or adopting provisions in the House bill in Conference would most likely sink this proposal or the country. The Senate, in this bicentennial session, has yet to demonstrate that as a body it is committed to fiscal responsibility. Our actions on S. 1127 will demonstrate how serious we are about legislating in a responsible fashion.

In a very short answer, does the Senator believe that his modified version—and I take it that the pending amendment is not the same amendment that my State was flooded with newspaper ads that people opposed—does it meet the Wallop test or the Bowen test, I guess it should be?

Mr. DURENBERGER. As someone who was not an original advocate of major expansion of benefits and who was persuaded by the process we have gone through with the leadership of our colleagues from Pennsylvania and Maine, I would say that we have substantially proved that he was out on a limb when he said no new taxes, no new bureaucracy, budget neutral, the problems of the Medicare trust funds. He was out on the edge of a limb, and I think we have pulled him pretty well back up against the trunk of the tree, where it is going to be hard to saw it off. If anybody tries to saw it off, both of us will see they do not.

Mr. HEINZ. If the Senator will yield, I should like to answer his question and augment what the Senator from Minnesota has said.

The amendment that is pending at the desk not only has the prescription drug amendment, but also has quite a series of improvements in the Finance Committee bill. Both the prescription drug amendment and the improvements were worked out and negotiated with the administration over the last month. One of the differences is the setting of a slightly higher limit on the catastrophic aspect. Under the committee bill, it was $1,700, and under this it is $1,850.

There is an indexation of that limit. Originally, it was indexed at the cost of living index. It is now indexed to program charges that will keep the participation in the program constant.

We have kept a hospital deductible. As a matter of fact, let me withhold comment on the hospital deductible.

We have, in addition, made a number of other changes of a more technical nature that the administration has asked us to make.

In brief, therefore, I think that to the extent that Senator WALLOP felt our bill was respectable, it is a good deal more respectable if this amendment is adopted.

Mr. MITCHELL. May I also respond to that question?

The Senator from Idaho has read a series of standards for judging this legislation, and he described it as the Bowen test, as they were first enunciated by Secretary Bowen.

I submit that the person best able to judge whether or not the legislation meets the Bowen test is Dr. Bowen, and he supports the bill and the amendment.

Mr. SYMMS. I thank my colleagues. Again, I compliment them on the hard work they have done.

I think that in terms of where the country is with respect to the economy and the long-range goal of where we are going, I question whether it is advisable that we even be considering passing this legislation at the current time because of the signals and the perception it sends. On one side we are saying that we have to restrain the growth of spending of the Federal Treasury and get the budget under control, on the other hand we are passing another big entitlement program.

So I think that is a psychological and a timely question, not that they have not worked very hard to come up with some kind of solution.

So I would say it has been most enlightening for this Senator to have the opportunity to hear his able colleagues answer these questions. I thought that the line of questions that Senator NICKLES asked were penetrating and difficult. I think the questions I pose are difficult for all of us, and each Senator will have to grapple with that.

Would we be better off to have Congress sit down and work on the Federal budget for the next 2 weeks and pass a true restraint of growth of the Federal deficit? We could send a signal to the world that our Federal deficit will be zeroed-out in, say, 3 years, and that we do have control of our destiny. Perhaps we should set these kinds of propositions aside until after that budget message has been sent.

Mr. DURENBERGER. As the Senator concludes, let me say that I used to miss him on the Finance Committee, because if he were still there, I would be managing this bill, not working the minority side of it.

The Senator has demonstrated in this discussion his own grasp and his concern for the fact that we make policy the right way around here, and I complement him for engaging in this series of questions. It sharpens all of us and keeps us mindful of what our responsibility is, and I want to say that we miss him.

Mr. SYMMS. I thank the Senator, and I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I rise in support of the amendment to provide a drug benefit to Medicare beneficiaries under the catastrophic insurance program we are considering today.

I want to commend Senator BENTSEN and the other members of the Finance Committee for their efforts to embrace and expand Secretary Bowen's path-breaking proposal.

By their efforts and the efforts of those in the House, the Congress has already signaled that this is more than minor tinkering with the existing program, and that we have an historic opportunity to deal with the major inadequacies of Medicare that continue to plague millions of elderly Americans.

The bill before us improves the Bowen plan in significant respects, but it does not go far enough. This is our best chance since Medicare was enacted to make the program what it ought to be, and it is an opportunity that will not soon come again.

The amendment we are considering today adds outpatient drugs to the list of services covered by Medicare. Outpatient drugs are critical to basic medical care and are a major element of the high medical costs not addressed by the current bill.

Coverage under Medicare is especially important because it is typically not available in private policies.

An elderly person suffering from chronic ailments common among the elderly such as arthritis, hypertension, angina, and ulcers, could easily spend in excess of $1,000 a year for essential medication.

While we all know that outpatient drug coverage is essential to good medical care and can be costly, what is not well-known is that coverage of outpatient drugs is also essential to a decent program of catastrophic protection.

Indeed, if we are to provide genuine catastrophic protection to senior citizens, we must expand the services covered by Medicare, not just put a limit on out-of-pocket costs for covered services. Almost half—46 percent—of the costs of seniors with catastrophic expenses is for services not covered by Medicare. And that does not even include long-term care. The largest single category of expense for non-Medicare services is outpatient drugs.

Drugs account for one-fifth of all acute care catastrophic costs experienced by our seniors.

Enactment of this amendment—will, I believe, give us legislation that will make a major difference to millions of senior citizens. Without these amendments, the bill before us cannot pass the truth-in-labelling test, because it does not genuinely protect our seniors at the level they need and deserve.

CONCLUSION

When I first came to the Senate in 1962, Congress was in the final stages of the long and successful battle to insure the elderly against the intolerable burden of serious illness. Medicare made a vast difference in the health and security of the elderly, but it needs reinforcing now. The senior citizens of America look to us to keep the promise of Medicare. This is the year, and this is the Congress to make that promise a reality.

I urge a favorable vote on this amendment.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. CHAFEE. Mr. President, before discussing the drug amendment, I pay tribute to Senator MITCHELL, Senator DURENBERGER, Senator HEINZ, and Senator DASCHLE, all of whom worked extremely hard on this. I was privileged to be part of that group. I commend each of them, especially Senator MITCHELL for the leadership he gave in the position he was placed as chairman of the subcommittee from the Finance Committee and in working with Dr. Bowen. It all came out I believe very successfully.

So each of those Members did a good job. I am proud to be associated with them.

I just listened with interest to the discussion that has taken place on the floor with regards to the out-patient prescription drugs, the general discussion with regard to the need for catastrophic attention, to the burden that many of our senior citizens have in terms of the payment of a very significant amount of their limited incomes to afford out-patient drugs.

I must say, Mr. President, that what I understood both the Medicare program to be and what I understand the attempt of the Finance Committee to be is to try and develop an insurance program.

The better part of our private insurance programs today provide for this very kind of service, this very kind of attention.

This amendment has been changed many times, Mr. President, over the past few months and these changes represented the efforts of the five sponsors to address the concerns we heard from the administration, the elderly, the drug industry, and countless individuals and organizations who shared their concerns with us.

I believe that the amendment that we have before us today is a fair and reasonable compromise.

All of us have been hearing from our constituents over the past years since we have been in the Senate about the issue of catastrophic health insurance. We have been particularly hearing about it since January when the administration proposal was originally presented.

It is clear that the elderly have two overriding concerns. First, the cost of long-term care and when they address that, it is not principally hospital care. It is long-term care in a nursing home. Second, the cost of prescription drugs.

Unfortunately, we have had to put off action on long-term care in nursing homes because of the complexity and the potential cost of dealing with the issue. We are doing something about long-term care in the hospital, but frankly we recognize that is but a small part of the total problem.

However, we are able to deal with the coverage of the cost of prescription drugs. This is a defined problem. We know what we are doing when we are dealing with that and although it is complex, we do have the information we need to act today.

Because of the cost of prescription drugs, it places an enormous strain on the elderly, especially those with moderate incomes. And I believe we have to act and we ought to act this year to mitigate some of that burden.

We are not relieving the elderly of the entire burden. There is a minimum cost the elderly must incur every year of $600. So this is no gravy train. This is no giveaway program.

Now those aged 65 or older represent only 12 percent of the population, but they consume 30 percent of all prescription drugs. But it even goes further than that. Over 75 percent of the elderly use prescription drugs but amongst those with chronic health conditions, the proportion who use prescription drugs of the elderly rises to 90 percent.

I call the Chair's attention to these extraordinary figures. In 1985, the total expenditure for out-patient drugs amounted to nearly $29 billion. Of that amount, $22 billion was paid directly by the patient, $4 billion was paid by private insurers, and $2.7 billion was paid by Federal programs. So by far the largest proportion of drug expenditures are paid by the individual.

For a Medicare beneficiary, for somebody over 65, who must purchase drugs in order to treat an illness or a chronic health problem, not being able to pay for that treatment for the drugs is truly catastrophic. It can result in just plain not buying the prescriptions. And that indeed frequently happens. They say, "We can't afford it. There are other demands on our limited amount of income from Social Security and so we are not going to buy these prescription drugs."

So what that does is it lowers what we might call the quality of life. But that is not a strong enough term. It lowers the ability of that individual to function in an effective manner, to be able to not just get the most out of life, but to be able to serve in a healthy fashion in life and to meet his or her responsibilities and to be able to be of assistance to others and to be able to just plain feel well.

So that is the first downside. It impedes the ability of that individual to effectively function and indeed can result in premature death in some instances.

But another factor is also involved and that is that the lack of having the proper drugs sometimes results in that individual going into a hospital for extended care that would not have been required if the individual had had the proper drugs.

Especially is this true for those with chronic conditions such as arthritis, high blood pressure, angina, hypertension, heart conditions, diabetes, and ulcers. Any one of those that requires a constant steady prescription, if the individual does not take it, by golly, the affliction comes back and can result in the person going to the hospital.

I strongly believe that adding a drug benefit to this bill will go a long way toward meeting potential catastrophic situations. In other words, this is legitimately a part of catastrophic health insurance.

The amendment we are proposing today, ideally, would phasein Medicare coverage of prescription drugs over a 4-year period starting in 1990. In 1990, as has been pointed out, the immunosuppressive would come in and the home intravenous drugs would be covered. In 1991 and 1992, diuretics and cardiovascular drugs would be covered. We go upward in this. That was in the negotiating process with the administration. You start with a limited number of drugs in 1990. In 1991, you increase those available and do the same in 1992. You stick with a group, 1991, 1992, and then in 1993, all prescription drugs would be covered and there would be this $600 deductible that I mentioned previously. And that is indexed. That will go up.

Now, I prefaced my brief definition of the benefit because in crafting this amendment and in working with the administration and all the concerned parties, we were well aware of all the worst-case scenarios that have been discussed on this floor. I mean, we went through these. As has been pointed out by many of those who question this legislation, is the cost just going to run away? We recognize that.

The most pressing concern from the beginning has been about the possibility of the cost of the program escalating at an unreasonable rate. And, frankly, what we were concerned about was what was called disenrollment. In other words, when we pass this legislation, as I hope we will, it will require the beneficiary to buy his regular part B premium, which the individual pays now, plus the Medicare extended care hospital care, the catastrophic, if you will, premium that is an addition, and on top of that the drug premium. So it is going to cost some added money. As many of the elderly point out, the part B premium is going up already next year by a considerable amount. But we did not want these costs to be so high that the elderly would say, "I am getting out of the whole business."

One of the wonderful things about the part B premium now is that 97 percent of the elderly subscribe to it; take that insurance that covers their medical bills, to a considerable extent, 97 percent. And we want that high percentage to take this additional coverage we are providing for hopefully today.

So in order to address these concerns so there would not be this disenrollment, we built in the amendment stopgap measure to ensure that costs do not run out of control and that the beneficiaries will not have to pay an unaffordable amount in premiums. We have included what we call a premium cap. This means that in any year, if the premium the administration estimates would be necessary to fund the benefit exceeds the cap we have placed in the bill, then the Secretary will have broad authority to bring the costs of the program down. And in that authority we have given him a great deal of power, I must say. It shows our confidence in Secretary Bowen. I am confident that same assuredness will lie with the future Secretaries of HHS. He or she, or whoever it might be in the future, will have the broad authority to bring the cost of the program down, including limiting the categories of drugs covered, increasing the deductible, the $600 I mentioned before, and/or the copayments, which are 20 percent, and limiting reimbursement at reasonable levels.

Some have expressed concern that this will be too expensive for the elderly to bear. I would like to point out a Medicare beneficiary would be hard pressed to find any kind of coverage like this in the private sector.

I am confident that these premiums, although they will be greater, obviously, than they are now, could not be met in the private sector. And that principally comes because there will be so many participating in the program—hopefully, 97 percent—that will share the costs. And any Medicare beneficiary who believes that better protection can be found elsewhere, of course, can opt out of the program. It is voluntary.

I am confident that the program which we begin under this amendment is reasonable and necessary. I believe it is an essential part of any catastrophic bill that this body approves.

I urge my colleagues to join in supporting the amendment.

Mr. DURENBERGER. Will the Senator yield before he concludes?

Mr. CHAFEE. Yes.

Mr. DURENBERGER. Mr. President, I would like to say that one of the things I remember most by my predecessor in this job from Minnesota, Hubert Humphrey, is that wonderful statement that I am sure is carved in granite and/or concrete or stone around here, that the real test of a public servants is the sensitivity that he or she may have to those who are in the dawn of life; namely, children, and those in the twilight of life, the elderly.

I just want to say, not just because of the statement but because of the contribution that our colleague from Rhode Island has made to both the catastrophic bill and to the drug bill, that it is important that I remind my colleagues and a lot of other people that he has this special sensitivity to children and he has this extra special sensitivity that he has demonstrated here today to the elderly. He has certainly been a very important part of the process of coming to a conclusion on this amendment. I am very grateful to him.

Mr. MITCHELL. If the Senator will yield, I would like to comment on that as well. As the chairman of the subcommittee and one who was charged with the responsibility of developing this compromise amendment, I can say that Senator CHAFEE's contributions were invaluable. He was a regular participant at the lengthy series of meetings that we held with the administration's representatives. Without his efforts, we would not have reached the point where we are today. And also all the other Members who participated. There are actually five of us, the four present on the floor here and Senator DASCHLE. It was a very good team effort, totally nonpartisan. I think it has produced a good result.

Mr. HEINZ. If the Senator would yield further, I am not one given to great, fulsome compliments but, not only do I second what Senators DURENBERGER and MITCHELL have said, I would like to be more specific.

In our meetings—and there were many—Senator CHAFEE was a consistent advocate for the benefits that he felt would be most important to senior citizens and was equally concerned about structuring a program that would be affordable, that would be self-financing, and, therefore, that would be responsible.

If the test of the ability of the public servant, to paraphrase Hubert Humphrey, is their sensitivity, I think Senator CHAFEE has gone one better by mixing sensitivity together in equal parts with responsibility.

Mr. CHAFEE. I want to thank my colleagues very much for those kind comments. Again, I want to repeat that I want to pay tribute to them for what they did in those negotiations with Dr. Bowen and Mr. Wright from the Budget Office. It was an arduous process and every single one of them—and I know that Senator DASCHLE is not here, but he was a key player here also.

I do want to thank Senator MITCHELL, who, as I say, was our leader in all of this, plus Senator DURENBERGER and Senator HEINZ.

I yield the floor.

Mr. SHELBY. Mr. President $11.46 was the average cost of a prescription drug in my home State of Alabama in 1986, $11.46. Sounds high doesn't it? And yet, the cost of a prescription in Alabama is $0.38 lower than the national average.

Mr. President, I have stood before this body several times talking about my interest in this issue of catastrophic protection for our elderly. For years now many of the cognizant policymakers here in Washington have been focusing on the need for expanded Medicare coverage for some of the astronomically high medical costs faced by the elderly.

I join them in my concern and in my support for a more comprehensive effort in this regard.

In January 1987, during his State of the Union address, we first received word of the President's intention to offer a catastrophic health care proposal. While the administration's proposal was a welcomed first step, I am happy to see that in the months since that announcement we have made significant progress to direct meaningful expansion of the program.

One of the more obvious provisions inherent in a comprehensive plan is more expansive prescription drug coverage. Validity of the need for inclusion of a prescription drug proposal in any major plan considered rests on three simple points.

First, all available statistics indicate that persons over age 65 use, on the average, three times the number of prescriptions used by those in the under age 65 population.

Second, persons over age 65 generally live on fixed incomes.

And finally, there is relatively little private prescription drug insurance for this group.

What conclusions can we draw from these principles? Like many of the problems we face, we can clearly identify the need. The solution, however, will be more difficult to reach. Sometimes, we need to look at facts and figures to help us determine to what extent we need to modify our current approach to the problem.

In the United States, the elderly make up 12 percent of the population. In 1985, approximately 14 million people across the country received Medicaid assistance to purchase their prescription drugs—a good many of these individuals were senior citizens.

Added to these figures are statistics which indicate that some 6.7 million older Americans are taking three or more medications daily and one third of the patients in nursing homes receive eight or more drugs daily. Survey results provided by the American Association of Retired People reveal that 55 percent of the Nation's elderly receive no assistance from insurance or other coverage to help pay for their prescriptions. And yet, prescription drug prices have been skyrocketing since 1981 and far outpace other items considered in the consumer price index.

Between 1981 and 1985, prescription drug prices rose at twice the rate of most other products.

These facts, although startling, lead to an even more unpleasant reality. The increasing cost of prescription drugs has left many of our elderly with no other choice than to lessen their dosage. This unconscionable situation will become less the exception and more the rule in the coming years as both the over age 65 population experiences significant growth and the ever increasing cost of medication dictates life-threatening choices to this vulnerable group.

Mr. President, in consideration of the inclusion of a prescription drug benefit to this proposal, I reviewed the testimony from a recent Special Committee on Aging hearing on this very subject. It strikes me that sometimes the figures, statistics, and numbers mean nothing if we have no understanding of their effect on a personal level.

That is why we need to hear the stories of people like Mrs. Cleo Lovell of Trussville, AL who was kind enough to share with the Aging committee her experience with the high cost of prescription drugs. Mrs. Lovell's story is representative of what is going on all over this country. It is the story of a daughter caring for her elderly mother the best way she can and sacrificing years of her own savings to meet her mother's medical needs. And people all over the country do this sort of thing—asking nothing in return—sometimes obligated through blood—more often, by nothing more than the desire to help someone in need.

Mr. President it is these personal stories that bring home the need for a prescription drug inclusion in this bill. After a great deal of thought, studying, and talking with seniors in Alabama I have decided to support the amendment of my colleague, Senator HEINZ, and the other distinguished Senators who have worked very hard on this measure.

Mr. President, there are two primary reasons why I support prescription drug inclusion. First, we will be reaching as many as 5 million beneficiaries with prescription costs in excess of $600 per year.

Therefore, this proposal addresses those prescription drug costs which are truly catastrophic.

Second, by helping our elderly to receive the medication they need in the amounts they need, we are countering unnecessary hospitalization from improperly taken medication. We are taking the right steps to insure that the elderly stay healthy longer.

I urge all my colleagues to support this measure which I believe will truly expand coverage and insure that our elderly never again need to choose between prescription drugs and survival.

I yield back the balance of my time.

The PRESIDING OFFICER (Mr. DIXON). The Senator from Minnesota.

Mr. DURENBERGER. Mr. President, just a couple of observations on the arguments. Not all of the arguments, I would not attempt that, but particularly on the arguments made in the questions by our colleague from Oklahoma, Senator NICKLES, this morning. They were all very, very good and I thought all of the questions here today were extremely helpful to understanding. But I have the sense that my mother out there is a little bit confused.

I often say when I am back home, not in such a public forum, my mother worries a lot about my father and my dad worries a lot about himself. Every year my mother comes to me and says: "Well, what kind of Medicare coverage can I get for your dad?" She assumes she is not going to get sick; he is. That sort of thing. And it is an annual exercise in responsibility that has brought me to this stage today.

What bothered me, I guess, most about the impression she may have gained from the argument of our colleague from Oklahoma is that somehow or other we were going to discourage people who are above a certain level of income and retired from purchasing Medicare.

It struck me, as I stood here, one Republican listening to another, that it is sort of surprising how much Republicans want income testing in the income security program until they actually have to face it and then all of a sudden it becomes difficult for them to understand. The difficulty expressed by our colleague from Oklahoma is with the subsidy that is in the current Medicare insurance premium. The part B premium has a very substantial public subsidy in general income taxes which covers about 75 percent of the cost of the program.

Before you retire and you have to buy your own health insurance, you pay about $1.05 or $1.10 to get a dollar's worth of coverage. That is sort of the way insurance works, and then you do not really get a dollar's worth but 76 cents worth, because they have to pay to process the claim and stuff like that.

With Medicare part B, in particular, you pay 25 cents for a dollar's worth of coverage and the general taxpayer picks up the other 75 percent.

When we add to that coverage a catastrophic feature and we ask the beneficiaries themselves to pay 100 percent of the cost of that feature and none of it goes to the general taxpayer, we are, in effect, diluting, slightly, for everyone, the value of that big subsidy that is in part B, to which this is being attached. If we assess the same dollar premium, $4 per person to all the beneficiaries, then all of their subsidy would be diluted by approximately the same amount. But that is not exactly the way we have done it and that is not exactly the way income testing a benefit works here and will work in the future if we ever endeavor to add it to other benefits.

What we have done here is to say that the subsidy—half of the cost of the new benefit, in the form of a $4 premium, will be paid by all of the beneficiaries. And so their subsidy against the cost of what they get will be diluted evenly by about $4 a month.

With regard to the other half of the costs of this new catastrophic premium, and the same thing applies to drugs, that is the part that gets income tested. That is the part where the premium gets paid with your income tax return. And so for 60 to 64 percent of the people, most of whom did not file an income tax return because they are not taxed on Social Security and or they pay less than $150, they will get by just with the $4 a month dilution to their subsidy or add-on to their account. But for the other 36.5 percent, if I have that figure approximately correct, including my mother and dad, whom I assume are somewhere in the $15,000 to $30,000 a year income category—and I apologize to them for talking about their annual finances in public, but to them there will be once a year an extra premium, and to the degree that they have a larger tax liability they will pay a larger premium.

The total part B premium for persons in the category $15,000 to $20,000 with a basic premium of $24.80, which is the next year part B premium, plus the $4.50, which will be next year's catastrophic premium, plus a $4.58 supplemental which is on the tax return, equals $33.88 per month.

Now, for the sake of the argument that I am making relative to the subsidy, the add-on is $4.58 a month at the $15,000 to $20,000 a year level, it is $6.42 at the $20,000 to $30,000 a year level, it is $13.67 a month at the $30,000 to $50,000 level and it is $42.33 a month over $50,000.

Now, to the degree that you have greater income and you pay a greater supplementary premium, the value of this underlying subsidy is diluted, but it does not mean that you are going to get priced out of the insurance market. It only means that the value of your public subsidy is less than that 60 percent of the people who pay only the $4 or the $4.50 per month. So that argument our colleague from Oklahoma was making that all these people were going to be paying $800 a year or $1,000 a year may well be true for a certain small number of people, but the benefit that they get from that is still going to exceed the benefit that they would get from investing that same amount of money in the private Medicap supplemental market because of the size of the subsidy.

If they went out and tried to buy all of the benefits that they can get under the current part B plus catastrophic, plus the drug benefit, they could not get it for $800 a month. My mother out there pays $88 a month between my mother and father, $2,052 a year for their current supplemental, and that wraps around their part A and their part B, so she is already out $2,052 for the two of them and the $800 per person supplemental is a better deal for her than she currently has.

So, that, Mr. President, is by way of saying as someone else indicated here earlier we are in the insurance business. We would like to get out of it, but as long as we are in it, we would like to do the best job we possibly can. We would also like the private insurance market, which supplements what we do to be more realistic. We would like to make it possible for my mother to make this purchase this year without calling me because it is quite clear with her she has catastrophic so if she is suffering from cancer or heart attack or some chronic illness she has the coverage in Medicare. She can then add on whatever insurance she needs by way of copayment coverage, but today she makes that $88 a month buy because she is afraid of a catastrophic financial event.

And if we can take that fear out of her life and if we can add, as we do through this amendment, a responsible, an efficient drug benefit as well, as an alternative to expensive hospitalization, medical and doctors' bills which we already cover in Medicare, I think we have gone a long way toward changing the nature of the conversations that my mother and I have to have relative to this particular benefit.

I am grateful to my colleague from Pennsylvania and everyone else who has spoken to this, but in particular my colleague from Pennsylvania who has been trying to tell us I think from the beginning that times have changed, that things are different, and that we can do a major benefit change on this catastrophic bill in a way that will be responsible and we can be proud that we have it.

I am certainly proud of the role that he has played in getting us to this point as well.

Mr. HEINZ addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. HEINZ. Mr. President, I think it is fair to say that in a very short time we will vote on this amendment. I think the amendment will pass, and I think it will pass overwhelmingly. We have said a great deal about the amendment. We have had a very good debate. In listening to my friend, Senator Durenberger, I think he is right; we have done such a good job of explaining the amendment perhaps people no longer understand what it does and does not do.

And I brought a chart to specifically illustrate what the amendment does. Inasmuch as there are a large number of people, we estimate as many as 5 million senior citizens each year who have drug costs in excess of $600 a year, and for them the average out-of-pocket drug cost is around $1,400. The way I think to explain what this amendment does with all its ramifications is to look at this chart. Right now on the left the average Medicare beneficiary spends some 68 percent out of pocket to pay for prescription drugs. Medicare today only picks up 3 percent of all the out-of-pocket costs of prescription drugs. The remaining 29 percent comes from some employer coverage and a few other covered sources such as that. There is, however, to the best of my knowledge other than employer provided no private prescription drug coverage available.

So right now 68 percent of all out-of-pocket drug costs comes out of the beneficiary, only 3 percent out of Medicare. But with the Heinz-Mitchell-Chafee-Durenberger-Daschle amendment the 68 percent will be dropped to 24 percent or nearly cut by two-thirds. Medicare instead of picking up 3 percent of the cost will pick up 47 percent of the cost. That is a vast improvement for our senior citizens. That is what this amendment is about. But to leave it at what is in it for the beneficiary would not clearly spell out what this amendment is about in the larger sense.

It has been pointed out that this amendment is budget neutral. At no point does it ever increase the budget deficit. Indeed, we anticipate that under some circumstances it will actually run a small surplus because it must have some kind of a modest contingency fund, a cushion in the early years. There will be some positive effect on the budget. And this legislation is therefore truly pay as you go. It represents senior citizens helping themselves as well as each other. And it fulfills that prescription, no pun intended, that was given to us many years ago by the first Republican President of the United States, Abraham Lincoln, who at one point said that it was the legitimate function of government to do for people what they cannot do or cannot do nearly as well for themselves.

What we are doing in terms of prescription drugs and equally catastrophic health cannot be achieved nearly as well and in some cases in the case of prescription drugs at all by the typical senior citizen that this legislation would benefit. But what this legislation also achieves I think is a milestone of a different kind as well.

It strikes me that what we have been trying to do for the last 6 or 7 years—and we have not been alone, there are other countries, Great Britain and France, even Sweden that have been so engaged—is to redefine the role of government, redefine it away from the notion of the all-encompassing welfare state which is all things to all people to a government that more properly serves the people and gives them at the same time a legitimate service that they cannot otherwise find for themselves greater incentive for personal responsibility and individual initiative.

The personal responsibility under this legislation is absolute. The people who will benefit from this legislation pay for it. That is absolute. And the incentive for individual initiative I think is contained in the underlying fact that the part B program is a voluntary program, and if you want to take initiative and the risk, and not participate in the program, you are free to do so. And if you decide to participate, well you have to put your money up. And that is a risk too because you may not be one of the ones who ends up needing this benefit.

I think this legislation therefore is consistent with what many of us believe is the necessity in the most modern and sensitive and careful way of redefining what the role of government should be in an era where we understand government must not only be more efficient and more affordable but it must leave room for the individual to grow as well.

There is one other aspect of this legislation that I would like to touch on. And that is that unlike the part A program, the hospital part of the Medicare Program, and unlike what has been up until now the part B, the doctor part if you will, of Medicare, both parts of which have been linked to acute illnesses as indeed is the catastrophic part of this legislation, the prescription drug part of this legislation is truly a historic effort to meet a problem that we have never before begun even to approach. And that is the issue of how we assist when people confront chronic illnesses.

I emphasize again that the Medicare Program, including the catastrophic proposal that is before us as a bill, and as proposed by Otis Bowen, you have to have been hospitalized with in effect a siege of illness in order to qualify either for the catastrophic coverage or for Medicare part A benefits.

This prescription drug amendment is available to anybody whether or not they have been hospitalized. All you have to do is cross a threshold of cost, one above which we believe people, most of them develop very serious financial needs. And as such, this legislation is the first commitment that we have ever made to addressing the cost of chronic illness and long-term care. We all know that there is some confusion about the so-called catastrophic health insurance. Some people think that it deals with the issue of long-term care. But we know better than that. It does not. It does not deal with the issue of long-term care because we do not know how to design a program that would pay for the cost of nursing home care. We know that there are many people who need it, who cannot get it, and paying for that and making sure that we do not have runaway costs, and that we could match facilities with needs, is a series of issues and questions that we have yet been able to come to grips with, although we all want to.

We have not even gotten, as much as it is needed, a support mechanism for home health care. Home health care is even more in demand for the benefit of chronically ill seniors than is nursing home care. And as yet, although there are a number of improvements that we seek to make, and indeed at the margin that this legislation will make in home health care, nonetheless there is no either on the books or in this legislation home health care benefit for chronically ill people.

But the prescription drug benefit is for chronically ill people and part of the reason that we have worked so long and so hard even as we have been debating this legislation on the floor we have been making improvements in it, is if we do a good job in structuring a benefit, controlling its costs in ways that we have never used before, we will have laid the necessary groundwork for other long-term care needs to be met. And that is why at least in my judgment this legislation is historic.

It is the first commitment of any administration or of any Congress to address chronic illness and long-term care.

Mr. President, at this point, I have concluded my wrap-up, except for one last comment, and that is to commend Senator MITCHELL and Senator DURENBERGER for what I believe has been an exceptionally good job of managing the floor during the pendency of this amendment, and especially both of them for their extraordinary contributions in helping all of us refine, polish, manipulate, change, and ultimately massage this amendment into something on which we have reached broad agreement on what were initially difficult and contending points of view.

I yield the floor.

Mr. MITCHELL. Mr. President, in a very few minutes, we will vote on this legislation. As previous speakers have noted, it has been the product of lengthy debate and discussion.

Much credit has been assigned for the point we have now reached, and properly so. I should like to mention two persons, one of whom I mentioned earlier and one of whom I think is principally responsible for this legislation.

The first person who deserves credit is the President of the United States. Frequently, in debate in the Senate, the President's policies are criticized as part of the competitive debate that occurs in our democracy. Those of us who from time to time have criticized the President's policies in some respects, I believe, out of fairness, must make a special effort to recognize those occasions in which the President's policies deserve special recognition and support.

Over many years, there has been discussion about the serious problems faced by elderly Americans who incur very high medical expenses. The rising cost of medical care; the amazing miracles of modern science which contribute to new technology, yet very expensive methods of care; the increasing longevity of Americans; and the fact that almost all Americans have come to regard adequate health care as a fundamental right—all have combined to create circumstances in which literally millions of elderly Americans are confronted with medical expenses wholly beyond their resources, their ability to pay for them.

Over the years, there has been debate and discussion in this country about how best to deal with that. But because, as so often happens in public policy debates, there was a direct collison of objectives between the need to deal with this problem and the difficulty in paying for it, we were unable to reconcile those objectives and arrive at a solution.

In his State of the Union address a year ago, the President directed the Secretary of Health and Human Services to make a special study of this problem and to recommend a solution. The Secretary did just that, recommended a solution, the President endorsed it, sent it to Congress, the House has acted on it, and the Senate is now acting on it.

The amendment we are now dealing with is in addition to the President's original proposal. It calls for a prescription drug benefit. That was not included when the President made his initial proposal, and his reaction to its addition was initially negative. But during the course of the past several weeks, we have had extensive discussions with the President's representatives, including the Secretary; and I am pleased that the President has now seen fit to support this amendment, because it does reconcile in a reasonable way the conflicting objectives to which I have just referred. It is a special effort to deal with the problem, but in a way that will not incur runaway costs in future years.

So I commend the President for getting this process started and for agreeing now to support this additional provision.

The second person, and the one who deserves the most credit, is the Secretary of Health and Human Services, Dr. Bowen. Over the course of the past year, since becoming chairman of the Subcommittee on Health, I have had the pleasure of working closely with Dr. Bowen. We do not always agree. That is understandable and to be expected. But I must say that his concern, his passion, his dignity, and his persistence have made this basic catastrophic legislation possible; and his openmindedness and willingness to consider other points of view have made this drug benefit amendment possible. So the American people owe a great debt of gratitude to Secretary Bowen.

This is an important provision. There are now 31 million Americans who are eligible beneficiaires under Medicare. The number will rise. The fastest-growing group in our population by percentage are persons aged 85 or older.

The cost of medical care is rising rapidly, and this is an effort to provide some assurance to those millions of elderly Americans who will face truly catastrophic medical expenses—medical expenses far beyond their ability to deal with them—that they will not be financially devastated and the remainder of their lives ruined as the result of those expenses. So it is a reasonable, moderate compromise provision that I think will go a long way to dealing with what is a serious problem.

Having said that, it is of critical importance that the American people, particularly the elderly, understand what this bill does not do. It deals with prescription drugs; that is the amendment we are now considering. The basic bill deals with acute care medical expenses. But the bill does not provide Medicare coverage for long-term nursing home care.

The use of the word "catastrophic" is important to describe the provisions of this bill. But the use of that term may mislead elderly Americans into thinking that any catastrophic medical expense is covered by this, and thereby create an illusion as to their future expenses.

The major part of the problem remains unsolved. The major part of the problem will test our commitment in the future. The major part of the problem remains uncovered, and no one should be under any illusion in that regard. Long-term nursing care is not covered, and that is what we are going to have to deal with in the near future.

One of the great failures of national leadership in our society over the past half century—and it is a failure that has occurred throughout Government, in both Houses of Congress, both parties, and all branches of Government—has been to make clear to the American people what is not included in the great social insurance programs—Social Security, Medicare.

We have to make clear that the use of the term "catastrophic," while it is accurate as to those measures which are included in this bill, does not cover all medical expenses and specifically does not cover what is the major part of the problem—long-term nursing home care. That does not denigrate or minimize the substance of what we are doing. These are very significant steps forward, and this amendment is a significant step forward. It is merely to make clear the context and the scope of the coverage of this amendment.

Having concluded the debate, we will very shortly vote on this amendment and before we do, Mr. President, in order that I may discuss the final elements with my colleagues, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

NATIONAL HEALTH SERVICE CORPS AMENDMENTS ACT

Mr. BYRD. This matter has been cleared on the other side. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on S. 1158.

The assistant legislative clerk laid before the Senate the amendments of the House of Representatives to the bill (S. 1158) to extend the authorization of appropriations for programs and activities under title III of the Public Health Service Act, to establish a National Health Service Corps Loan Repayment Program, to otherwise revise and extend the program for the National Health Service Corps, and for other purposes.

(The amendment of the House is printed in the Record of September 9, 1987, beginning at page H7381.)

Mr. KENNEDY. Mr. President, I rise to speak on the Public Health Service Amendments of 1987. As reported unanimously by the Senate Committee on Labor and Human Resources and recently considered by the House of Representatives, S. 1158 authorizes appropriations for programs and activities under title III of the Public Health Service Act for fiscal years 1988 through 1990. These programs include the National Center for Health Services Research and Health Care Technology Assessment, the National Center for Health Statistics, the Council on Health Care Technology, Grants for Preventive Health Projects for Immunizations, Grants for Preventive Health Projects for Tuberculosis, Additional Programs Relating to Tuberculosis, the National Health Service Corps, the National Health Service Corps Scholarship Program, Designation of Health Manpower Shortage Areas, and Special Loans for Corps Members to Enter Private Practice. S. 1158 also contains technical amendments concerning specialized training in geriatrics, and professional review activities.

The National Center for Health Services Research and Health Care Technology Assessment, the National Center for Health Statistics, and the Council on Health Care Technology are important resources in the effort to collect and analyze data on the health status of our population. It is my feeling, along with members of the Senate Committee on Labor and Human Resources and the House Subcommittee on Health and Environment, that the National Center for Health Services Research and Health Care Technology Assessment has supported high quality research which has lead to an improvement in health care in this country. As such, the Center ought to remain within the Office of the Assistant Secretary of Health. In addition, to improve the usefulness of the National Advisory Council on Health Care Technology Assessment the Secretary for Health and Human Services should review the function and purpose of this Council.

Programs for treatment and control of tuberculosis are reauthorized at higher levels than in the past. The growing number of cases of tuberculosis justifies expanded program activities in this area. Because many of these cases involve strains of tuberculosis which are resistant to traditional therapy, intensified efforts to control this disease are extremely important.

Authorization of programs which provide immunizations against diphtheria, pertussis, tetanus, polio, measles, mumps, rubella and hemophilus influenza are included. Immunization against these serious disease, which claimed the lives of many children and adults earlier in the 20th century, have lead to their near eradication. Funds to allow purchase of sufficient vaccine to ensure a 6-month stockpile, and purchase of new vaccines that may be approved after passage of this bill are provided. In addition, this bill provides for funding of the National Vaccine Injury Compensation Act. Support for all of these programs is vitally important in maintaining the health of the American public.

A key part of this legislation is reauthorization of the National Health Service Corps. Since its initiation in 1970, the corps has facilitated access of health care for thousands of Americans living in health manpower shortage areas. Community and Migrant Health Centers and the Indian Health Service have relied heavily on corps health care providers. At its peak in 1986, the corps had 3,127 health care providers in the field. Despite the argument citing an aggregate surplus of physicians, many rural and urban areas in the United States are without health care providers. The need for continuation of the National Health Service Corps is clearly evident.

In addition, a National Health Service Corps Loan Repayment Program has been included. This provision will allow the Secretary for Health and Human Services to enter into contracts with health care providers to commit to practice in health manpower shortage areas for a specified number of years, in return for repayment of educational debt. A provision has also been included allowing States to conduct similar loan repayment programs, and funds have been authorized to assist States in this effort. These provisions will greatly enhance the supply of corps personnel and improve access to health care services in shortage areas.

Contained in the original Senate version of S. 1158 was a reauthorization of programs aimed at treatment and control of such sexually transmitted diseases such as gonorrhea and syphilis. The current version of S. 1158 does not contain this reauthorization; these programs will need to have reauthorizing legislation as soon as possible.

In total, this legislation will allow the Public Health Service to continue program efforts vital to the health of the Nation. I would like to thank the members of the Senate Committee on Labor and Human Resources and the House Subcommittee on Health and Environment for their support and hard work on behalf of this bill.

Mr. HATCH. Mr. President, in a few minutes, this body will have an opportunity to vote on legislation which I introduced on May 6, 1987, reauthorizing a number of key Federal health programs. I want to thank the chairman of the Committee on Labor and Human Resources, Senator KENNEDY, for his role in perfecting this legislation and steering it toward passage.

The Senate unanimously approved another version of this bill on July 23, 1987. The version we are voting on today reflects a compromise worked out with the other body and should enable us to reauthorize these programs expeditiously.

The programs reauthorized in this legislation include the Immunization Program, the National Center for Health Statistics Program, the Tuberculosis Program, and the National Health Service Corps. It is imperative that Congress act to continue these programs since each will soon expire. In addition, this legislation creates several new programs including a new loan repayment program for the National Health Service Corps and a program which I have proposed, a State demonstration scholarship and loan repayment program.

This legislation is by no means exhaustive of the committee's responsibilities, and much more work remains to be done. There are over 20 health programs which the Committee on Labor and Human Resources must reauthorize this fiscal year, but enactment of S. 1158 will be an important first step. I urge my colleagues to join with Senator KENNEDY and myself in voting for this important piece of health legislation. The following is a brief explanation of this legislation.

THE IMMUNIZATION PROGRAM REAUTHORIZATION

The Immunization Program reauthorization continues the existing Federal effort to provide our Nation's citizens with protection against preventable infectious diseases. As currently authorized, the program is designed to assist States and communities in establishing and maintaining preventive health service programs to immunize individuals against diseases preventable by vaccine, including measles, rubella, poliomyelitis, diphtheria, pertussis, tetanus, and mumps.

The last reauthorization of this program in 1984 extended the authority through fiscal year 1987. It also amended the authority to extend eligibility in the program to include children and adults.

The ability to control and eliminate both preventable diseases and the high economic and personal costs associated with these diseases have been well demonstrated. Because of a vaccine, we have eradicated smallpox from the Earth. Because we provide children with DPT vaccines where appropriate, we have essentially eliminated these diseases in children in the United States. And we are on the verge of eliminating measles because of our efforts against this disease.

The economic savings or our Federal immunization program are impressive. According to the Department of Health and Human Services, about $1 billion per year is saved because of immunization against polio. But no person can estimate the amount of human suffering that has been prevented.

This legislation simply reauthorizes this fine program and adds demonstration authority. The funding level of $94 million represents an increase for fiscal year 1988, and such sums as may be necessary for fiscal years 1989 and 1990. The increased funds for fiscal year 1988 also including $5 million to increase the vaccine stockpile from an average of 16.6 weeks toward the goal of a 6-month supply.

I do not think there is any question that immunization programs make an important contribution to health care cost containment efforts as well as contributing to the quality of life for the people and communities served. We save about $1 billion per year of polio treatment costs, and $500 million per year of measles treatment costs. Since 1963, over 62 million cases of measles and 20,500 cases of mental retardation related to measles have been averted. And, the lives of 6,200 children have been saved of measles immunization.

I urge my colleagues to support the reauthorization of this program. It means we can maintain the high immunization levels of children entering school. We can increase age-appropriate immunization levels of preschool children. We can continue research on the safety, efficacy, and appropriate use of vaccines. We can educate society on who should and should not be vaccinated against certain preventable diseases.

NATIONAL CENTER FOR HEALTH STATISTICS PROGRAM

The National Center for Health Statistics [NCHS] is the Federal Government's principal health statistics agency. NCHS data systems cover a variety of issues in the health field, including overall health status, life style, and exposure to unhealthy influences. The funding levels are sufficient to permit the Center to proceed on schedule with the various surveys they have planned for fiscal year 1988.

Over the Center's 26-year history, we have learned the important role NCHS has played in providing data and research on critical health issues. Today, it maintains over a dozen data systems involving everything from personal interviews to physical examinations and labor testing. Also, it maintains review of hospital, nursing home, and physician records.

Many in Congress and the administration use this data. Medical researchers and others in the health community have also shared with me their support for the reauthorization of this program. I have found several NCHS publications particularly helpful in reviewing and developing health legislation. One in particular, Health, United States, provides the most recent data on specific health care trends in our society and has proven extremely beneficial.

I urge my colleagues to support the reauthorization and continuance of the National Center for Health Statistics.

TUBERCULOSIS CONTROL PROGRAM REAUTHORIZATION

This reauthorizes our national effort to combat tuberculosis—TB. This legislation authorizes $24 million for fiscal year 1988, $31 million for 1989, and $36 million for fiscal year 1990. This increase in authorization is in response to the increase in TB in our society, especially with TB infections in AIDS patients.

Until the discovery of antibiotics, TB—not heart disease, not cancer, not strokes—was the leading cause of death in this country. With today's antibiotics, TB has been fairly well controlled—at least until the last few years.

Over the last several years, however, the incidence of this life-threatening disease has increased. This increase has been especially great in patients infected with multiple resistant strains of TB—TB that is difficult, if not impossible, to treat.

We are also starting to see an increase in the number of AIDS patients with TB. By reauthorizing this program, we can be assured that our efforts to control and prevent TB will not languish and the disease will not become more prevalent.

SCHOLARSHIP AND LOAN REPAYMENT PROGRAMS; STATE PROGRAM

This new program allows the Secretary of Health and Human Services to make grants to States for the purpose of assisting the States in addressing the needs of medically underserved areas. States are required to make a 25-percent match to the Federal funds received. This program is intended to give each State the maximum amount of flexibility possible to meet its health manpower needs while still preserving the Federal Government's commitment in this area. The authorization for this program is $1 million in fiscal year 1988 and such sums as necessary in fiscal years 1989 and 1990.

NATIONAL HEALTH SERVICE CORPS LOAN REPAYMENT PROGRAM

This new program allows the Secretary to pay up to $20,000 of the principal and interest of a health care provider's student loans in exchange for service in medically underserved areas. This program should provide increased flexibility in meeting the needs of underserved areas because it only requires planning for 1 or 2 years in advance, instead of the 7 or 8 years required under the current scholarship program.

Because of the unique needs of the Indian Health Service, it is given priority under this program. In addition, we are attempting to emphasize again that addressing the medical needs of the homeless is an appropriate use of National Health Service Corps personnel. Authorization for this program is such sums as necessary in fiscal years 1988, 1989, and 1990.

MISCELLANEOUS

There are also a number of technical corrections included in this legislation. We are clarifying that departments of geriatrics in existence on the date of enactment are eligible for the geriatric medicine training projects authorized under section 788 of the Public Health Service Act. Since it has been the intent of Congress to educate all appropriate physicians in the needs of the geriatric population and not to encourage a new specialty in geriatrics, Congress has chosen to limit these grants to geriatric programs which are in existence at the time of enactment.

We continue to believe that these programs which provide training to health care providers from the broadest background should be given funding priority under this program.

I urge my colleagues to continue the tradition of bipartisan support for the reauthorizations included in this omnibus measure. The continued funding of these health programs is vital to our country's commitment to provide our society with important health research, prevention, and treatment.

AMENDMENT NO. 1045

Mr. BYRD. Mr. President, I move that the Senate concur in the amendments of the House with an amendment which I send to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from West Virginia [Mr. BYRD] for Mr. KENNEDY proposes an amendment numbered 1045.

Mr. BYRD. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The text of the amendment is printed later in today's RECORD under "Amendments Submitted.")

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. HEINZ. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

MEDICARE CATASTROPHIC ILLNESS COVERAGE ACT

The Senate resumed consideration of the bill (S. 1127) to provide for Medicare catastrophic illness coverage and for other purposes.

AMENDMENT NO. 1044

Mr. HEINZ. Mr. President, parliamentary inquiry. Is the pending business now the Heinz-Mitchell amendment?

The PRESIDING OFFICER. The Senator is correct.

Mr. HEINZ. Mr. President, I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. Is there further debate on the amendment? The majority leader.

Mr. BYRD. Mr. President, I ask unanimous consent with the concurrence of all present if they do concur, in view of the fact that there will be a briefing in room S-407 by Secretary Shultz, upon the disposition of this amendment, the Senate stand in recess for 30 minutes so as to accommodate the Members here who may want to go to the briefing.

The PRESIDING OFFICER. Is there objection to the request by the majority leader? Without objection, it is so ordered.

Mr. BYRD. Mr. President, I thank all Senators.

Mr. HELMS. Mr. President, I am obliged to oppose the amendment of the Senator from Pennsylvania [Mr. HEINZ]. After serious reflection, I am convinced that adding drug benefits to the pending bill is like buying a budgetary ticket on the Titanic.

Mr. President, although I do not presume to speak for other Senators, I assume they, like I, have been flooded with calls and letters supporting this amendment or any other amendment adding drug costs to the Medicare system. At first blush, many elderly may believe adding drug benefits will be in their best interest. But, Mr. President, I have enough faith in the American people and especially in our senior citizens that few, if any, would support this amendment if they were told the facts.

How much will this benefit cost our elderly? Do they really need Medicare coverage of drugs? These are two questions which must be answered, in my opinion, before we—in our usual helter-skelter fashion—vote on this amendment.

If I understand this amendment, all drugs will be eventually phased into the Medicare system. Who knows, Mr. President, how much this will cost? No one really knows. There's a very important cost factor that many don't know about—or don't want to talk about—and it deals with AIDS. If this amendment is adopted, the elderly will eventually be subsidizing not only the cost of their drugs but the cost of drugs for the disabled on Medicare, including the AZT drug for AIDS patients.

As most Senators know, Mr. President, 2 years after an individual begins receiving disability insurance, he or she becomes eligible for Medicare, and with this amendment, coverage for prescription drugs. As more and more AIDS patients join the Medicare rolls, more and more patients will have Medicare pick up the tab for their drugs, a drug which costs approximately $10,000 per year per patient.

By 1991 there are estimates that as many as 270,000 cases of AIDS, with approximately 180,000 individuals alive during that year. The number of these individuals who would qualify for Medicare remains unclear, but certainly, the elderly have the right to know this fact before we go dipping into their pockets in the name of good government and their best interest.

I said at the outset, Mr. President, that we need to ask ourselves if there is a real need for this amendment. I don't think so. The Department of Health and Human Services estimates that 50 percent of the elderly will spend less than $175 on drugs in 1989 and 20 percent will spend nothing. These are certainly not the types of costs that should be considered "catastrophic."

These costs, in many cases, are already borne by other sources. According to information provided by the Pharmaceutical Manufacturers Association and the Health Care Financing Administration, over 40 percent of our Nation's elderly has prescription drug coverage through Medicaid, private insurance or retirement benefits. Forty-eight States require Medicaid to pay for prescription drugs for low-income beneficiaries. Thirty percent of nonmedicaid beneficiaries have medigap policies with at least some prescription drug coverage. Nine States offer specific pharmaceutical assistance programs for the elderly above Medicaid eligibility standards.

Although all will pay, few of our elderly will reap any benefits from the drug benefit, Mr. President. According to an economic analysis by ICF Inc., only 13 percent—or 1 in 7—will receive benefits in excess of their premiums, and less than 10 percent will receive as much as $100 in excess of their premiums. It doesn't make good sense, Mr. President, to force all the elderly to pay when so few will realize any financial gain from this benefit.

Mr. President, I don't intend to consume more of the Senate's time on this issue, but I reiterate: Adding a drug benefit at this time is not in the best interest of our Nation's elderly. It will only be to their detriment. We don't know the cost of the program and the vast majority of the elderly don't have catastrophic drug costs.

Mr. KENNEDY. Mr. President, the Senator from North Carolina's suggestion that the provisions of this amendment will somehow subsidize people with AIDS is simply not true.

Under current law, individuals under 65 years are eligible for Medicare based on a permanent disability, but only after a 29-month waiting period. Unfortunately, our experience with people with AIDS has been that the vast majority do not live a year beyond their diagnosis. Despite the fact that we are hopeful about the benefits of AZT, results thus far indicate an increased life expectancy of less than a year. Therefore, even if all people with AIDS are fortunate enough to qualify for these benefits, their chances of surviving long enough to receive significant Medicare support are tragically slim.

In addition, under the phase-in provision of the amendment, no one with AIDS, whether over 65 or disabled, will qualify for AZT benefits until 1993.

Should we be fortunate enough to discover beneficial treatment programs which extend the life of people with AIDS long enough to take advantage of the Medicare disability option, we will need to reevaluate our plans for coverage of medical treatment. However, this is not the time, the place, or the means by which to take that step. Exclusion of individuals from medical coverage because they suffer from a particular disease is a dangerous precedent that should not be accepted.

Senator Helms would withhold assistance from people with AIDS. Is he likewise prepared to deny help to patients with lung cancer, because the majority of Americans are not cigarette smokers? Such a step would be bad medical policy and bad health policy. It would be lacking in compassion and an unacceptable principle of public policy. Let us not be complacent as Senator Helms again attempts to confuse the issue. Instead let us adopt this amendment, and renew our commitment to stand by the disabled and the elderly in the true spirit of the Medicare Program.

Mr. GRASSLEY. Mr. President, I intend to support this amendment.

We have heard a great deal, in the course of the debate on this legislation, to the effect that we are really missing the mark with this legislation, that the real catastrophic health care costs are those associated with the long-term-care needs of the old, and particularly those costs associated with nursing home care.

Although it is true that the long-term-care needs of older people, and particularly the tremendous costs of nursing home care, constitute the greatest threat of catastrophic outlays facing the elderly for health care, it is not true that long-term-care costs pose the only such threats.

One other expense related to health care incurred by most of the elderly is that for prescription drugs. Although most older people do not incurr what most of us would accept as catastrophic outlays for prescription drugs, a minority of them do incur very heavy expenses in order to provide themselves with the prescription drugs called for by their physicians.

ICF, Inc., in a study conducted for the Pharmaceutical Manufacturers Association, estimated that, in 1989, some 80 percent of Medicare beneficiaries will have expenditures for prescription drugs. They estimated that 1 percent of enrollees will spend $2,000 or more, 2 percent will spend between $1,500 and $1,999, 5 percent will spend between $1,000 and $1,499 and 5 percent will spend between $750 and $999.

These costs might not be burdensome for well-to-do older people, but for those with lower incomes such outlays can create serious hardship.

The amendment before us, Mr. President, will provide protection from these kinds of catastrophic outlays for prescription drugs. After a beneficiary meets a $600 deductible in any year, and pays a premium which will be small for most beneficiaries, and be larger only as a beneficiaries ability to pay is larger, Medicare will pay 80 percent of any additional out-of-pocket expenses for prescription drugs.

It is important to keep in mind that this program has an insurance aspect. Some have complained that most beneficiaries will pay into the program in the way of premiums more than they will take out in the way of benefits. Although this may be true for any particular individual in any particular year, over time, expecially as an individual becomes older, that same individual may have progressively greater need for the protection offered by this Prescription Drug Program. The principle is the same as that for auto insurance or any other kind of insurance—we pay for protection for that catastrophe which may never happen to us, but which, if it were to happen, would be devastating.

The negotiations over the structure of this program have provided some protection also to the Federal Treasury and the taxpayer. The program established by this amendment will be budget neutral. Whereas in earlier versions, the program was almost certainly underfunded, in the version we are considering today, several features will give the Congress and the administration a tighter grip on the overall cost of the program.

In the first place, the deducible and premiums for the program are indexed to the increase in the cost of the program. Thus, income to the program should keep pace with outlays of the program. The indexing methodology is designed to keep the percentage of people benefiting from the program, those who pay $600 or more for prescription drugs, constant. Thus, this should not be a program which constantly expands to benefit ever larger numbers of people.

The program will have separate accounting for the Prescription Drug Program and for the basic catastrophic progam. This should enable us to have a clear picture of the income and outlays associated with each program.

Furthermore, the deductible for prescription drugs and the out-of-pocket cap in the basic program, now raised to $1850, will be computed, and met, separately. This should have the effect of reducing the cost of the program, and hence, the cost to the medicare beneficiaries who are paying for the program.

The program will be phased in over several years, and will provide the Secretary with considerable discretion to take the necessary steps to limit the scope of the program so as to keep the program's cost within a defined limit.

This last point on the discretion available to the Secretary of Health and Human Services is relevant to the concern which has been raised in some quarters, including by some of my constituents, about the possibility that the drug maintenance needs of people with AIDS could conceivably be eventually met through this program. At the present time, this does not appear to be a real danger in that very few people with AIDS have both the requisite number of Social Security quarters, and have lived the 24 months after becoming eligible for Social Security disability required to become eligible for Medicare. Should the incidence of AIDS increase, as most experts assume it will, and should we eventually have drugs which forestall the effects of the disease, allowing people with active AIDS to live longer, as most experts, again, assume will come to pass, large numbers of people with AIDS could come to be eligible for this Medicare prescription drug benefit. Given the way this prescription drug benefit is financed—entirely by Medicare beneficiaries, most of whom are old and living on modest incomes—the older Medicare beneficiary could come to pay for the drug maintenance needs of people with AIDS. Or at least that is the fear.

Now, I should hasten to add that I am not calling into question the established policy under which people with AIDS become eligible for Medicare under certain circumstances, which I outlined above. Nor am I saying that the health care of people with AIDS is not a public problem in the broadest sense. I think anyone who understands the potential dimensions of the AIDS problem, or who understands the financial devastation which can be visited upon someone with active AIDS realizes that the public sector must have, like it or not, a role in the health care of people with AIDS.

What I do believe is that it would not be a good policy to have mostly older Medicare beneficiaries pay for the drug maintenance needs of people with AIDS few of which are over 65 years old.

However, as this program is designed, the drugs covered by it will be phased in in three phases, and the Secretary will have discretion to reduce the scope of benefits if the cost of the program exceeds the defined cap. Therefore, the Secretary will be able to control the overall cost of the program, keeping it within the established cap. Furthermore, the Secretary has broad powers in the bill to control the types of drugs which can be reimbursed in the program. I do not believe that the Secretary will permit a situation to arise in which older Medicare beneficiaries are paying for the drug maintenance needs of people with AIDS. And the Congress, most certainly, will not permit such a situation to arise.

The major concern I have as we go forward with this legislation is that the Congress will not stick to its guns over the next several years as the cost of this program escalates. There may well come a point, in the not too distant future, when the program is fully established and the Congress comes under great pressure to either enlarge the program by turning to general revenues—the taxpayer—for support for the program, or to engage in an orgy of cost-containment in ways that essentially turn drug manufacturers and pharmacists into extensively regulated businesses, as we have done with hospitals and appear to be gearing up to do to the medical profession.

I must make one final point, Mr. President. And that is that I support this Prescription Drug Program, and, indeed the basic program of S. 1127, because, on balance, the new program established by this legislation is reasonable and responsible. However, we must still go to conference with the House of Representatives. It is probably safe to say that we have never had a House-Senate conference on a piece of legislation in which both Houses did not come away with some of their provisions accepted by the conference. It is also the case, in my opinion, that the House legislation, H.R. 2971, is not a bill I could support. Therefore, if the managers of this bill, S. 1127, come back to us with a conference report that alters the legislation we have accepted here in the Senate to make it more like the House-passed legislation, I reserve the right not to support that conference report.

That is all I have to say at this time, Mr. President.

Mr. METZENBAUM. I am a cosponsor of this amendment for a very simple reason—a prescription drug benefit is a necessary component of a catastrophic health care plan for this Nation's elderly. Those age 65 and older constitute only 12 percent of the population, yet they consume 30 percent of the Nation's prescription drugs. More importantly, prescription drugs represent the second largest out-of-pocket health care cost for the elderly. No one should have to choose between filling a much needed prescription or paying rent, buying food, or heating one's home. But today that is all too frequently the choice some elderly citizens face.

I am, however, concerned about one provision of this amendment. In the last few days, the provision of this amendment that establishes the reimbursement formula for pharmacists has been changed in a way that is most troubling. I believe this provision, in its current form, will ultimately discourage the use of generic drugs and will result in a higher price tag for the catastrophic package. I understand that the National Council of Senior Citizens and the American Association of Retired Persons are also concerned with this new language.

Specifically, the new reimbursement provision will reimburse a pharmacist who fills a multisource prescription at the lower of the usual and customary price of 150 percent of the lowest average wholesale price. The practical impact of this formula is that a pharmacist will almost always be reimbursed for filling a brand name prescription at his usual price. In contrast, if he fills the prescription with a generic, he will be reimbursed at a rate substantially below his usual retail price. In short, a pharmacist will benefit financially every time he fills a prescription with the name brand drug; and, in relative terms will lose every time he supplies the same drug in its generic form.

Pharmacists have played an important role in educating the public about the safety of generic drugs and the costs savings associated with use of generics. If this provision is enacted, instead of customers being counseled to ask the doctor to prescribe generically whenever possible, the pharmacist may decline to offer such advice since he will be financially disadvantaged as a result.

The real loser under this reimbursement formula is the American taxpayer. From the start, every effort has been made to contain the costs of the catastrophic bill to a point where the plan can be funded by those it insures. To succeed, it is important that every effort be made to encourage the use of generic drugs instead of their higher priced name brand counterparts. The reimbursement formula in this amendment fails that test.

In contrast, the House bill offers a reimbursement formula that does encourage generic substitution. I would encourage the Senate conferees to look very closely at the House provision when this bill is conferenced. We know generic drugs are safe. We know they are effective. And we know they save money. Any reimbursement formula contained in the final bill must take these three facts into account.

Mr. THURMOND. Mr. President, I rise today in support of this legislation.

Many of us know family, friends, or neighbors who have suffered a devastating acute care illness that has destroyed their financial security. Such an illness requires treatment so costly that families can only pay for it by impoverishing themselves. A catastrophic illness is financially devastating and requires personal sacrifices that can haunt families for the rest of their lives.

Elderly Americans require more medical care than younger persons. According to recent statistics, average health care spending for an elderly person is approximately $4,200, compared to $1,100 for a person under 65. Moreover, unpredictable health care expenses loom large in the personal budgets of the elderly.

Unfortunately, there are gaps in Medicare as currently structured for acute care expenses. Hospital coverage is limited. After 60 days of hospital care, a Medicare patient begins to make increasingly costly payments—rising from $130 per day for days 61 through 90, to $260 per day for days 91 through 150, to the full cost of care for more than 150 days in the hospital. On top of this, there is a required 20 percent copayment for all physician services covered by Medicare. The Medicare Program, then, requires the greatest payments from those with the most serious health problems. President Reagan is to be commended for calling attention to this serious problem, and for his efforts toward reaching a fiscally responsible solution.

This legislation will cap the total out-of-pocket expenses a Medicare beneficiary will have to pay. No longer will the elderly have to worry about medical expenses totally wiping out their life savings. This measure will give them the security they deserve.

Mr. President, at this time I also wish to commend Secretary Bowen for the important contributions he has made in seeking solutions to this problem. I have been impressed with the fine leadership he has provided the Department of Health and Human Services.

Mr. President, I urge my colleagues to support this measure.

Mr. SIMPSON. Mr. President, this is a very important step we are taking today—creating an entire new benefit structure under the Medicare Program. I would take a moment to reflect on the ramifications of this new program.

Almost all of the elderly use prescription drugs. However, recent studies have shown us that drug expenses do not usually represent truly catastrophic costs. I indeed know there are many individual cases where elderly persons have enormous prescription drug costs and those persons should receive our full assistance. But the majority of the elderly are not as adversely affected by these high costs. It is estimated that 50 percent of the elderly will spend less than $175 on drugs in 1989 and 20 percent will spend nothing. For those who spend the most, other sources are used to pay for the costs—such as private health insurance and Medicaid; 30 percent of non-Medicaid beneficiaries have MediGap policies with at least some prescription drug coverage.

Yet we are now considering a new across-the-board benefit for which all Medicare beneficiaries will have to pay. Under one version of a prescription drug program, the Health Care Financing Administration estimated that the new benefit could add $15 per month to the part B premium in 1989. This could make the premium nearly unaffordable for some beneficiaries.

Other costs would be involved in implementing a new benefit. Administrative problems of designing and implementing a drug benefit would be immense. A complex and costly administrative system would have to be established. Medicare would have to process around 300 million claims a year and monitor about 67,000 pharmacies. Developing an adequate payment mechanism would be costly and difficult, involving extensive surveys, data gathering and auditing.

And yet this is supposed to protect the elderly from high medical care costs. I stress that—protecting the elderly—from the high cost of medical care. We should not add to that burden. Adding a prescription drug benefit may well add to that burden by dramatically raising costs. The drug benefit will be a very expensive and costly expansion. That is the fashion in which medical inflation has worked in the past.

Furthermore, whenever some third party is paying the bill, an increase in use of the benefit occurs. This overutilization will only add to the high cost of the program.

A prescription drug benefit is not a bad idea at all, if medication would be made available to those who would otherwise not be able to afford it. However we are talking about an across-the-board entitlement. all beneficiaries will be included and will have to pay the premiums. In addition, the costs will assuredly grow for other reasons. They always have.

The costs will grow because of the increase in the number of elderly. The elderly are the fastest growing population in the country. Furthermore, a complex and costly administrative system will have to be implemented—estimated to cost around $500 million a year. By leaps and bounds the benefit will expand. That is the history of new benefits added to the Medicare system. In 1972, we added the kidney dialysis benefit to Medicare. Costs for that benefit went far beyond anyone's possible predictions and eventually had to be curbed. And the cost of drugs for AIDS patients will also cause heavy increases in the cost of the program. I am concerned about the financial drain on a program that was not designed to cover AIDS victims. We should identify other and more appropriate methods to treat those with AIDS.

In addition, the cost of the program will be high for everyone, elderly beneficiaries and other taxpayers as well. Even if a drug benefit were to be budget neutral, there would be pressure at a later date to look to general revenues to subsidize the benefit, rather than face the politically difficult choice of increasing the beneficiary premium to keep pace with inflation.

I am not stating that we do not require a prescription drug program for the elderly. Some of the elderly cannot afford their medication—and we need to assist these people. The catastrophic bill which my distinguished colleagues in the Finance

Committee have assembled begins the process by which we can address the issue of prescription drugs. The bill mandates a study of the drugs which should be covered by a prescription drug benefit. We need to have a better understanding of the problem, to find solutions which will not add to the Nation's debt or threaten the financing of existing programs. A program which will target—and assist—those most in need.

Although I have real reservations about the costs of any new drug benefit, I am going to vote for this amendment at this time because it is presently a controlled measure which has curbs on costs in the beginning. I am convinced we can keep the costs of the program reined in, for now. But we will have to watch it so very carefully in order to assure that it proves to be the right way to proceed.

Finally, we will have to keep the costs of this and other programs clearly in mind as we continue in the days and months ahead to address the overwhelming deficit problem. We will need to show the American public that we are quite serious about our work as we attempt to meet the targets set by the Gramm-Rudman-Hollings mandate.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Mr. President, while I have my colleagues and sponsors of the amendment on the floor, I will endeavor not to take too much of their time, but a few questions were raised this morning. I would like a little further clarification. One is the split method of paying for this. Correct me if I am wrong, but I heard Senators say that half of the premium would be fixed and the other half would be an income tax surcharge. Is that correct?

Mr. HEINZ. Mr. President, the answer is that that is true for the catastrophic legislation; the so-called supplemental premium might be characterized more or less as an income tax surcharge.

The PRESIDING OFFICER (Mr. CONRAD). The Senator from Oklahoma.

Mr. NICKLES. Am I correct in saying that the 50-50 division continues beyond the year 1993? Half the premium will be raised in a fixed amount and half would be, as I characterize it, an income tax surcharge?

Mr. HEINZ. The Senator is correct on the 50-50 split as well.

Mr. NICKLES. Beyond the year 1993, I was having a little problem. I asked staff to help clarify what was meant by 65 percent of whatever beyond the year 1993, and I wanted to make sure that we had that correct.

I see the Senator from Colorado. I have a couple of other quick comments and then I am going to make a few general comments concerning the bill.

The scenario which I described, as I understand the bill, if there are not sufficient funds to pay for all the drugs and all the demands for prescription drugs under the bill, am I correct that the Secretary of HHS will have to determine what drugs would qualify and what drugs would not qualify?

Mr. HEINZ. The Senator is correct with this clarification, that the Secretary may not establish what is called a formulary. To the extent he chooses to exclude drugs, and he would if the costs of the program exceeded the so-called premium cap, he would have to either eliminate or withhold inclusion of medically defined categories of drugs. There are some two dozen of these categories.

Mr. NICKLES. It is kind of a long answer. The Secretary would have discretion to determine which drugs would come under the program?

Mr. HEINZ. He may not withhold coverage of a specific drug. He must go by categories of drugs, as established, I believe it is, by the Veterans' Administration.

Mr. NICKLES. He could not discriminate between companies so much as a particular——

Mr. HEINZ. The Secretary could exclude from coverage all drugs listed in major classification of the most recently issued version of the Veterans' Administraiton medical classification system.

Mr. NICKLES. He could exclude entire categories of drugs then?

Mr. HEINZ. That is right. For example, he could decide to exclude the category of antiviral drugs. That is one of some two dozen categories under this established classification system. We chose this system because it does exist, it seems to work well. There was broad consensus, both among the manufacturers and the administration, that it would work and would not prejudice anybody.

Mr. NICKLES. One final question. Could the Secretary determine that he would pay for generic drugs but would not pay a higher price?

Mr. HEINZ. No. That classification is explicity not one that is covered under the VA classification system. That would also, I might add, be doing indirectly what we specifically preclude, which is the establishment of a formulary.

We preclude the establishment of a formulary by indicating, on page 34, that he may not exclude from coverage or limit payment for any specific covered outpatient drug or specific class of covered patient drug.

Mr. NICKLES. One final question. I asked two or three times if we had OMB cost estimates for the years 1993, 1994, and 1995, the year 2000. Do we happen to have those?

Mr. HEINZ. I do not.

Mr. NICKLES. Does the Senator from Maine or possibly the Senator from Minnesota? Do we have some concrete estimates from OMB? I think we heard something from CBO. I am interested in that for the drug benefit portion.

We did not have any cost estimates from CBO, I believe, for the year 1993 and beyond, and I am looking for some type of cost estimate from OMB and CBO.

Mr. MITCHELL. We do not have them. We have requested them and they will be placed in the RECORD when they are received.

Of course, the Senator used the phrase "concrete estimates." If they are estimates they are not concrete and the further one goes into the future the less concrete they become.

Mr. NICKLES. I appreciate that.

Mr. President, I am going to make a few general comments concerning the bill and I appreciate the cooperation of the sponsors of the amendment. I see the majority leader is looking at the time. Has Secretary Shultz' briefing already started?

Mr. BYRD. The briefing will begin, if the Senator would yield, at 4:15.

Mr. NICKLES. I hope not to detain the Senate. It is my intention to participate in that briefing as well, but I do have a few comments pertaining to this amendment.

Mr. BYRD. If the Senator would yield? If he could indicate approximately what amount of time he would need I would know better how to proceed with regard to the vote because the earlier order will not allow anybody to get to that briefing in time to hear much of it.

I thought we would begin voting earlier. If the Senator could indicate about how much time he would need then I might be able to change the order.

Mr. NICKLES. I will be happy to cooperate. My guess is I will probably spend 10 minutes, probably not more than 15.

Mr. BYRD. Very well.

Mr. President, I ask unanimous consent that the Senator speak for not to exceed—10 minutes?

Mr. NICKLES. I said I do not expect I would spend more than 15.

Mr. BYRD. Not to exceed 15 minutes, at which time the Chair recess the Senate until the hour of 5 o'clock p.m.

Is that agreeable? And that the vote then begin at 5 o'clock p.m.

Mr. ARMSTRONG. Mr. President, reserving the right to object, would the leader be willing to split his request into two parts? It seems to me the first part, that the Senate would recess after the Senator from Oklahoma has concluded his remarks would facilitate the meeting but it may be that others will want to speak on the matter as well, so if we would leave open the question of whether the vote will begin promptly at 5 or others want to speak, that would be helpful, I would think.

Mr. BYRD. It would be agreeable to do that. Is there some indication of how long others may wish to speak?

Mr. NICKLES. If the Senator will yield, there may well be some other Senators who wish to be heard on the amendment. I do not have a list of other Senators. I do not think there is any desire to prolong the debate.

Mr. BYRD. Would this be agreeable: that we recess at the close of the remarks by Mr. Nickles to extend not beyond 15 minutes; that we recess then until 5 o'clock p.m., and that further debate be limited to not to exceed 20 minutes to be equally divided between Mr. MITCHELL and Mr. DURENBERGER?

Mr. ARMSTRONG. Mr. President, reserving the right to object. I would not want to appear to be uncooperative. I do not know that I want to speak. I first want to hear what the Senator from Oklahoma says and based on that I will determine whether I want to speak. I have heard that in the last 24 hours there has been an attempt to bring a lot of people together and it may well be that the amendment is agreeable to everyone. In my own mind, I may not speak at all, but if I do it may not be a long period.

Mr. BYRD. Mr. President, I ask unanimous consent that the previous order be vitiated.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. NICKLES addressed the Chair.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Mr. President, I appreciate, one, the cooperation of the majority leader and also the sponsors of the amendment that we have before us today. They have been cooperative. They have endeavored to answer some very important questions that I think need to be answered if we pass one of the largest increases in entitlement programs in this country.

It is interesting to know when the question was asked, and asked repeatedly this morning and as late as a few minutes ago, how much is this going to cost, no one knew. We asked the question, "Well, does OMB have statistics, and has CBO done an analysis?"

The amendment has either changed of late or really the correct answer, and the Senator from Maine gave this answer, is that no one knows.

I would like to put in a few forecasts or at least guesstimates that the cost of the provision will greatly exceed the expectation of any one estimate that has been before us today, will greatly exceed. Not slightly exceed, but greatly exceed, because we are talking about expanding a program.

It is interesting to note when we talk about program expansions what we are doing. We are talking about picking up drug costs for senior citizens and then I have heard people say, "Well, it is revenue neutral and deficit neutral because it is not going to increase the deficit," when, in effect, it will greatly increase the out-of-pocket costs for a majority of senior citizens, for a strong majority of senior citizens.

As a matter of fact, I think we heard from the sponsors of the amendment that an estimated 15 percent of those on Medicare would qualify and receive the benefit from this drug amendment.

That means 85 percent will be primarily paying the bill, and the bill is very large.

We are talking about increasing an entitlement program under Medicare which happens to be, for the interest of Senators, the largest, most rapidly growing entitlement program that we have in our country today.

The Presiding Officer is aware, and I have the pleasure of serving with him on the Budget Committee, that last year the total amount of money spent increased. We spent about $989 billion in fiscal year 1986. In the year just completed we spent $1.010 trillion. That is the smallest rate of increase that we have had in a long time.

But, yet, in this year alone, in fiscal year 1988, we are looking at increased spending for Medicare alone from $71 billion to $81 billion. That is before we talk about adding on a drug benefit. Senators are aware that we do not add on drugs in 1988 or 1989. What we do is kind of open the door and say, "Well, the big expenses are going to come in 1993."

So the Senator from Maine was exactly right, we do not have any idea what this is going to cost in 1993. Likewise, we cannot tell the senior citizens what it is going to cost them in 1993 because they are going to be paying the bill, and they are going to be paying a very significant amount. Half of the premium will be coming in a fixed, flat tax. That will be a maximum of $4.80 that year, in 1993. Beyond that, that flat premium escalates with an index.

What is the tax on the other side of the equation, the supplemental tax? I call it a tax. Some people will call it a supplemental premium. I have a hard time seeing how you can call it a premium when it is basically a tax surcharge. It says for every $150 of tax you pay you are going to have to pay a tax surcharge. They do not tell you what that tax surcharge will be in 1993 because no one knows. The tax surcharge in 1988 will be $1.08 under the Senator's amendment. For every $150 of tax in 1988 you will pay a tax premium surcharge, whatever you want to call it, of $1.08.

Let us take a hypothetical. We talked about a $100,000 income. A lot of people say, "That will not affect me so it does not bother me." Let us look at something closer to home.

Let us take a retired couple with an income of $40,000, and their tax bill is $7,500. Maybe that is high and maybe it is not high, I am not sure. We will use that for an example. Their tax surcharge under this bill would be about $540. I may be a little over, but I think that is pretty close. It will be $540 in 1988. I will tell you in 1993 it will be significantly higher because the Secretary of HHS is going to have to come up with a lot more money, and that surcharge, which is $1.08 per $150 as specified in the legislation for the year 1988, is not specified in the year 1989, 1990, 1991, 1992, and 1993. It will be significantly higher. It may be $2 for every 150 dollars' worth of liability. It may be $3. It may be $4. But the Secretary is charged with the responsibility of raising half of the money to pay for the program.

So we have given the Secretary of HHS an enormous amount of not only responsibility but basically we have given him the power to raise taxes because he has to come up with that assessment. I am not sure how constitutional that is.

I might yield to my colleagues who serve on the Finance Committee, the committee responsible for raising revenue, and ask, how can we give the Secretary that kind of discretion to set the income tax surcharge? The only year that I can find—and if I am incorrect, I hope to be corrected—the only year that specifies a surcharge is for calendar year 1988 and that is $1.08.

We have talked about the cost of the program. I think a lot of us have very legitimate concerns about the cost of drugs and the cost that that imposes on senior citizens and would like to help them in a constructive manner.

So I have asked some questions today thinking, well, I would like to support the amendment. I know it might be popular.

What I am saying today might be quite unpopular. I have not taken a poll as such. But I am concerned about the message that we are sending, saying, well, we do not know how much it is going to cost, but we are limiting this taxation system just on senior citizens, like that is OK. A lot of senior citizens are concerned about making ends meet and they might be a little concerned if they heard statements such as, "Well, did you know this thing could cost you a couple thousand dollars a year?" This $1,000 limitation on the supplemental tax surcharge in 1990, that is $1,000 to the husband and wife. That is $2,000. So you are not only paying maybe the $4.80 per month, or $60, say, for that basic premium. That is not the half of it for them. They may well end up paying an additional $2,000, and that $2,000 can escalate substantially in the outyears as well.

So I do not know that I want to go to my constituents and say, "Yes, I know drugs are a problem so we devised a system to pay for it. Oh, yes, there is a little income tax surcharge that may cost you a couple thousand dollars or more in the outyears."

And what about the situation in 1993 when this legislation opens up and says all prescription drugs are to be covered? It is phased in. We will not see a dramatic impact, if the Senate bill is actually passed by Congress in 1988 or 1989, but in 1990 it starts getting a little expensive, in 1991 a little more so, and in 1992, and in 1993 it says all prescription drugs are covered by the amendment. Now you are talking about real money. Then you are talking about the biggest expansion in an entitlement program, in my opinion, probably since 1965.

Then you are talking about a situation where I guess we could come up with a scenario where the Secretary of HHS is not going to have enough money, no matter how high these taxes are—and I have already said they can be pretty high, a couple thousand dollars per couple—in 1993, 1994 there is not going to be enough money. The Secretary of HHS is going to have to do something. What is he going to do? Well, he is going to be faced with some decisions. Maybe he is going to have to deny several categories, maybe not individual drugs but several categories of drugs will not be covered. That is going to be a difficult proposition. This drug might not be licensed and this drug might not be licensed and he is going to have to play God? Who is going to be making these decisions?

I raised the case of AIDS. It is an issue probably most Senators have spoken on. Every Senator has to be concerned because it is probably one of the biggest health crises our country has faced. In my estimation it will cost a million American lives by the turn of the century. A million American lives will be lost due to AIDS by the turn of the century. That is scary. That is frightening. And it is also expensive. How are we going to pay for it? We really have not debated those questions openly. I asked the question, are drugs such as AZT covered in the legislation? The answer is yes. As a matter of fact, I do not remember but the Senator from Minnesota mentioned there is some number of people who are receiving money out of Medicare right now for the treatment of AIDS with AZT. AZT is very expensive. The follow-on drugs may be more expensive. I hope not. I hope they are significantly less.

I look at the number of people that will be receiving and demanding some kind of treatment. Right now there is no cure for it but they can take a drug such as AZT, maybe a follow-on drug that they have been developing to prolong life. They have not found anything to cure the disease. It is still a deadly disease. As the virus progresses into the AIDS, frank AIDS stage, it is deadly. Dr. Koop estimated they would not find anything to cure it by the turn of the century. So what about 1993 when we say all drugs are eligible? Right now we have 2 million people who are carrying the virus, estimated I think by CDC, the Centers for Disease Control, and others. A significant percentage of those will have progressed into the deadly stage. My colleague said a lot of people, unfortunately, do not live beyond the 2 years in qualification. If they are below age 65, they will not live that long so therefore they will not qualify for the benefit. But everyone in this room knows there is an amendment pending which says we will lower the requirement, we will take the 2-year period and make it 6 months. It has been proposed. I do not know if it is going to pass. That is a pretty large exposure, if not to the Treasury, to the senior citizens, to be picking up the cost of that drug. The drug is $10,000 per year.

Again, that is a problem, but do we really want to say we want all the senior citizens to have to pick up the cost of that drug? Enormous demand. I am sure the demand for this program would be quite large. People will be saying, "Yes, we need to have the drugs." And they will have a good cause—it means the difference between life and death and so they say, "please, cover my drug." The Secretary would have a hard time saying no. So he will probably come back to Congress and say, "Let's help."

That is all given without any real expansion on the Senate bill. The Senate bill is not nearly as expensive as the House bill. The House bill basically goes into effect next year. It is going to cost $6 billion additional by the year 1993, significantly more. Again, these are cost estimates; people do not know. They have not used them. So I guess we are kind of saying well, we do not know. We are for drugs for senior citizens so we are for this bill but we have no idea of how much it is going to cost. We say, well, we will use a fixed amount, it only costs $4.80 by the year 1993 but in reality we have a variable out there that is an income tax surcharge that can cost several thousands of dollars.

Now, I think we are creating a program that is very well-intentioned; the sponsors are very sincere in their interest in helping senior citizens and others, but I just wonder if senior citizens, when they find out they are going to be paying such an enormous amount, are going to come up and say, "Well, wait a minute. That deductible is too large. I cannot qualify with a $600 deductible. Won't you please offer an amendment to reduce that? let's reduce it down to—$500 is too large. Let's get it to $200. $200 is too large. Let's get it down to $100. Let's help people. Let's really help people. If you really care about senior citizens, let's lower that deductible. Why have a 20-percent cost share? That's too much." And so there will be a lot of pressure to reduce it, a lot of political pressure, a lot of pressure by people saying, "Help me; I can't afford to pay for it." And therefore you are going to continue the escalation of the cost on the other 85 percent of the people who would not qualify for the benefit in any regard.

So we are looking at a program that is escalating between fiscal year 1987 and fiscal year 1988 of 13 or 14 percent. That is without catastrophic hospitalization. That is without drug benefits. That is without acute care.

I have heard several Senators mention, "This is only a beginning; we need to have acute care treatment. We need to be able to help people in their nursing homes. We need to be able to help people below age 65. If we are going to be helping people over age 65, my land, we ought to be doing something for the child with cancer that is 8 years old, who has to spend months in the hospital. Shouldn't we be helping them as much? Shouldn't we be picking up those drug costs? Shouldn't we be reaching out to touch those people who have cancer or a heart problem that also is going to be very expensive? If we are going to be helping people over 65, shouldn't we be doing much more for those under 65?"

Mr. President, my reason for raising these questions is not that I have any hope or expectation of defeating this amendment. It is quite obvious there is a lot of bipartisan support for the amendment. That does not make the amendment responsible. That does not make the amendment affordable. That does not help senior citizens 5 years from now pay the bills. I have a feeling that a majority of senior citizens groups may think, as they do in the Senate, that this is a pretty good bill. I have a feeling 5 years from now a lot of those senior citizens may be saying, "Boy, I didn't know you would be socking it to me." Maybe they do not know.

A lot of people do not know how part B premiums work but a lot of people do. As a matter of fact, there is a part B premium increase this year of 20 some percent. It went from $17.90 to $24, almost $25, a $7 monthly increase in part B because the cost is going through the roof. Yet we are getting ready to expand that program at a much greater pace than ever before.

Maybe I am wrong. I may be wrong. But I would like to think we can be responsible. I have heard I do not know how many Senators in the last couple of weeks, certainly since last Monday, a week ago Monday after the stock market crash, say that we need to do more about the deficit. We need to get the deficit down. We need to send the signal to the marketplace that we are serious about getting the deficit down.

I kind of doubt that the people we are seeing on Wall Street today are looking for a brand new expensive expansion of an entitlement program as the solution. I may be wrong. But I kind of doubt that they think this is the solution that we need.

I heard today some of our leaders and others saying we need to make some reductions. We need to reduce defense, nondefense, we need to reduce entitlements, and we need revenues. I have heard several people mention this, and it takes the entire equation to make a real significant reduction.

I, for one, would like to make a real significant deficit reduction. But I do not see a major, major expansion in entitlement programs as being a real step in that direction. As a matter of fact, I see it as a step in the opposite direction.

I hope my colleagues will consider the cost of this bill, the cost of the provision not just in the flat permium but also in the income tax surcharge, as some of my friends who are sponsors of the legislation do not like it called, a supplemental premium income base, but it is an income tax surcharge that says that you will pay $1.08 for every $150 worth of tax that you have paid which will go into this fund or into this account. That is an income tax surcharge. It will not just affect those people who make incomes above $100,000. It will affect people who make $30,000 a year and $40,000 a year And the load will be increasing on their shoulders.

I hope my colleagues will consider that. I hope the administration when they look at the cost of the House bill and realize that after this provision passed, and my friends and colleagues who are interested in maintaining some type of control over the program, are dealing with an almost impossible battle in the House of Representatives. I hope they will consider it. I hope the administration will consider that as well.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on the Heinz amendment No. 1044 as modified. The yeas and nays have been ordered.

Mr. MITCHELL addressed the Chair.

The PRESIDING OFFICER. The Senator from Maine.

Mr. MITCHELL. I suggest the absence of a quorum briefly.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MITCHELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The question is on agreeing to the amendment of the Senator from Pennsylvania [Mr. HEINZ] No. 1044, as modified. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Connecticut [Mr. DODD], the Senator from Indiana [Mr. GORE], and the Senator from Illinois [Mr. SIMON] are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 88, nays 9, as follows:

[Rollcall Vote No. 350 Leg.]

YEAS—88

Adams
Baucus
Bentsen
Biden
Bingaman
Bond
Boschwitz
Bradley
Breaux
Bumpers
Burdick
Byrd
Chafee
Chiles
Cochran
Cohen
Conrad
Cranston
D'Amato
Danforth
Daschle
DeConcini
Dixon
Dole
Domenici
Durenberger
Evans
Exon
Ford
Fowler
Garn
Glenn
Graham
Gramm
Grassley
Harkin
Hatch
Hatfield
Hecht
Heflin
Heinz
Hollings
Inouye
Johnston
Karnes
Kasten
Kennedy
Kerry
Lautenberg
Leahy
Levin
Lugar
Matsunaga
McCain
McConnell
Melcher
Metzenbaum
Mikulski
Mitchell
Moynihan
Murkowski
Nunn
Packwood
Pell
Pressler
Proxmire
Pryor
Quayle
Reid
Riegle
Rockefeller
Rudman
Sanford
Sarbanes
Sasser
Shelby
Simpson
Specter
Stafford
Stennis
Stevens
Thurmond
Trible
Wallop
Warner
Weicker
Wilson
Wirth

NAYS—9

Armstrong
Boren
Helms
Humphrey
Kassebaum
McClure
Nickles
Roth
Symms

NOT VOTING—3

Dodd
Gore
Simon

So the amendment (No. 1044), as modified, was agreed to.

Mr. DURENBERGER. I move to reconsider the vote by which the amendment was agreed to.

Mr. MITCHELL. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Order in the Chamber, please.

The Senator from Maryland.

The Senator will suspend for one moment.

Mr. BYRD. Will the distinguished Senator from Maryland yield?

Ms. MIKULSKI. I am happy to yield.

Mr. BYRD. Mr. President, I have discussed with the two managers and with the distinguished Republican leader the outlook for the evening. It is the intention to press on and hopefully finish the bill this evening. I think both managers concur in that effort. I thought I should make that announcement at this point.

There will be other rollcall votes.

I thank the Senator for yielding.

The PRESIDING OFFICER. Please, if we can have order in the Chamber so the Senator can be heard.

The Senator from Maryland.

Ms. MIKULSKI. Thank you, Mr. President.

AMENDMENT NO. 1046

(Purpose: To add Medicaid provisions to protect income and resources of couple for maintenance of community spouse)

Ms. MIKULSKI. Mr. President, on behalf of myself, Senator MITCHELL, and Senator KENNEDY, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Maryland [Ms. MIKULSKI], for herself, Mr. MITCHELL, and Mr. KENNEDY, proposes an amendment numbered 1046.

Ms. MIKULSKI. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 112, strike lines 11 through 14 and insert in lieu thereof the following:

(B) to increase the minimum monthly maintenance needs allowance under section 1921(d)(3)(B) of the Social Security Act.

On page 113, between lines 16 and 17, insert the following new section:

SEC. 14A. PROTECTION OF INCOME AND RESOURCES OF COUPLE FOR MAINTENANCE OF COMMUNITY SPOUSE.

(a) IN GENERAL.—Title XIX is amended—

(1) by redesignating section 1921 as section 1922, and

(2) by inserting after section 1920 the following new section:

"TREATMENT OF INCOME AND RESOURCES FOR CERTAIN INSTITUTIONALIZED SPOUSES

"SEC. 1921. (a) SPECIAL TREATMENT FOR INSTITUTIONALIZED SPOUSES.—

"(1) SUPERSEDES OTHER PROVISIONS.—In determining the eligibility for medical assistance of an institutionalized spouse (as defined in subsection (h)(1)), the provisions of this section supersede any other provision of this title (including sections 1902(a)(17) and 1902(f)) which is inconsistent with them.

"(2) NO COMPARABLE TREATMENT REQUIRED.—Any different treatment provided under this section for institutionalized spouses shall not, by reason of paragraph

(10) or (17) of section 1902(a), require such treatment for other individuals.

"(3) Does not affect certain determinations.—Except as this section specifically provides, this section does not apply to—

"(A) the determination of what constitutes income or resources, or

"(B) the methodology and standards for determining and evaluating income and resources.

"(4) Application in certain states and territories.—

"(A) Application in states operating under demonstration projects.—In the case of any State which is providing medical assistance to its residents under a waiver granted under section 1115, the Secretary shall require the State to meet the requirements of this section in same manner as the State would be required to meet such requirement if the State had in effect a plan approved under this title.

"(B) No application in commonwealths and territories.—This section shall only apply to a State that is one of the 50 States or the District of Columbia.

"(b) Rules for Treatment of Income.—

"(1) Separate treatment of income.—During any month in which an institutionalized spouse is in the institution, no income of the community spouse shall be deemed available to the institutionalized spouse.

"(2) Attribution of income.—In determining the income of an institutionalized spouse or community spouse, after the institutionalized spouse has been determined to be eligible for medical assistance, except as otherwise provided in this section and regardless of any State laws relating to community property or the division of marital property, the following rules apply:

"(A) Non-trust property.—Subject to subparagraphs (C) and (D), in the case of income not from a trust, unless the instrument providing the income otherwise specifically provides—

"(i) if payment of income is made solely in the name of the institutionalized spouse or the community spouse, the income shall be considered available only to that respective spouse;

"(ii) if payment of income is made in the names of the institutionalized spouse and the community spouse, one-half of the income shall be considered available to each of them; and

"(iii) if payment of income is made in the names of the institutionalized spouse or the community spouse, or both, and to another person or persons, the income shall be considered available to each spouse in proportion to the spouse's interest (or, if payment is made with respect to both spouses and no such interest is specified, one-half of the joint interest shall be considered available to each spouse).

"(B) Trust property.—In the case of a trust—

"(i) except as provided in clause (ii), income shall be attributed in accordance with the provisions of this title (including sections 1902(a)(17) and 1902(k)), and

"(ii) income shall be considered available to each spouse as provided in the trust, or, in the absence of a specific provision in the trust—

"(I) if payment of income is made solely to the institutionalized spouse or the community spouse, the income shall be considered available only to that respective spouse;

"(II) if payment of income is made to both the institutionalized spouse and the community spouse, one-half of the income shall be considered available to each of them; and

"(III) if payment of income is made to the institutionalized spouse or the community spouse, or both, and to another person or persons, the income shall be considered available to each spouse in proportion to the spouse's interest (or, if payment is made with respect to both spouses and no such interest is specified, one-half of the joint interest shall be considered available to each spouse).

"(C) Property with no instrument.—In the case of income not from a trust in which there is no instrument establishing ownership, subject to subparagraph (D), one-half of the income shall be considered to be available to the institutionalized spouse and one-half to the community spouse.

"(D) Rebutting ownership.—The rules of subparagraphs (A) and (C) are superseded to the extent that an institutionalized spouse can establish, by a preponderance of the evidence, that the ownership interests in income are other than as provided under such subparagraphs.

"(c) Rules for Treatment of Resources.—

"(1) Computation of spousal share at time of institutionalization.—

"(A) Total joint resources.—There shall be computed (as of the beginning of a continuous period of institutionalization of the institutionalized spouse)—

"(i) the total value of the resources to the extent either the institutionalized spouse or the community spouse has an ownership interest, and

"(ii) a spousal share which is equal to ½ of such total value.

"(B) Assessment.—At the request of an institutionalized spouse or community spouse, at the beginning of a continuous period of institutionalization of the institutionalized spouse and upon the receipt of relevant documentation of resources, the State shall promptly assess and document the total value described in subparagraph (A)(i) and shall provide a copy of such assessment and documentation to each spouse and shall retain a copy of the assessment for use under this section. If the request is not part of an application for medical assistance under this title, the State may, at its option as a condition of providing the assessment, require payment of a fee not exceeding the reasonable expenses of providing and documenting the assessment.

"(2) Attribution of resources at time of initial eligibility determination.—In determining the resources of an institutionalized spouse at the time of application for benefits under this title, regardless of any State laws relating to community property or the division of marital property—

"(A) except as provided in subparagraph (B), all the resources held by either the institutionalized spouse, community spouse, or both, shall be considered to be available to the institutionalized spouse, and

"(B) resources shall not be considered to be available to an institutionalized spouse, to the extent that the amount of such resources does not exceed the amount computed under subsection (f)(2)(A) (as of the time of application for benefits).

"(3) Assignment of support rights.—The institutionalized spouse shall not be ineligible by reason of resources determined under paragraph (2) to be available for the cost of care where—

"(A) the institutionalized spouse has assigned to the State any rights to support from the community spouse;

"(B) the institutionalized spouse lacks the ability to execute an assignment due to physical or mental impairment but the State has the right to bring a support proceeding against a community spouse without such assignment; or

"(C) the State determines that denial of eligibility would work an undue hardship.

"(4) Separate treatment of resources after eligibility for benefits established.—During the continuous period in which an institutionalized spouse is in an institution and after the month in which an institutionalized spouse is determined to be eligible for benefits under this title, no resources of the community spouse shall be deemed available to the institutionalized spouse.

"(5) Resources defined.—In this section, the term 'resources' does not include—

"(A) resources excluded under subsection (a) or (d) of section 1613,

"(B) resources that would be excluded under section 1613(a)(2)(A) but for the limitation on total value described in such section, and

"(C) resources which are necessary to produce income that is made available to the community spouse or for the family allowance under subsection (d), subject to the greater of the limit under subsection (d)(3)(B) or (d)(5).

"(d) Protecting Income for Community Spouse.—

"(1) Allowances to be offset from income of institutionalized spouse.—After an institutionalized spouse is determined to be eligible for medical assistance, in determining the amount of the spouse's income that is to be applied monthly to payment for the costs of care in the institution, there shall be deducted from the spouse's monthly income the following amounts in the following order:

"(A) A personal needs allowance (described in section 1902(p)(1)), in an amount not less than the amount specified in section 1902(p)(2).

"(B) A community spouse monthly income allowance (as defined in paragraph (2)), but only to the extent income of the institutionalized spouse is made available to (or for the benefit of) the community spouse.

"(C) A family allowance, for each family member, equal to at least ⅓ of the amount by which the amount described in paragraph (3)(A)(i) exceeds the amount of the monthly income of that family member.

"(D) Amounts for incurred expenses for medical or remedial care for the institutionalized spouse that are not subject to payment by a legally liable third party.

In subparagraph (C), the term 'family member' only includes minor or dependent children, dependent parents, or dependent siblings of the institutionalized or community spouse who are residing with the community spouse.

"(2) Community spouse monthly income allowance defined.—In this section (except as provided in paragraph (5)), the 'community spouse monthly income allowance' for a community spouse is an amount by which—

"(A) except as provided in subsection (e), the minimum monthly maintenance needs allowance (established under and in accordance with paragraph (3)) for the spouse, exceeds

"(B) the amount of monthly income otherwise available to the community spouse (determined without regard to such an allowance).

"(3) Establishment of minimum monthly maintenance needs allowance.—

"(A) In general.—Each State shall establish a minimum monthly maintenance needs allowance for each community spouse which, subject to subparagraph (B), is equal to or exceeds—

"(i) 122 percent of 1/12 of the nonfarm income official poverty line (defined by the Office of Management and Budget and revised annually in accordance with sections 652 and 673(2) of the Omnibus Budget Reconciliation Act of 1981) for a family unit of 2 members; plus

"(ii) an excess shelter allowance (as defined in paragraph (4)).

A revision of the official poverty line referred to in clause (i) shall apply to medical assistance furnished during and after the second calendar quarter that begins after the date of publication of the revision.

"(B) Cap on minimum monthly maintenance needs allowance.—The minimum monthly maintenance needs allowance established under subparagraph (A) may not exceed $1,500 (subject to adjustment under subsections (e) and (g)), or, if greater, the amount determined under State law, practice, or policy or the State plan (whether approved or not).

"(4) Excess shelter allowance defined.—In paragraph (3)(A)(ii), the term 'excess shelter allowance' means, for a community spouse, the amount by which the sum of—

"(A) the spouse's expenses for rent or mortgage payment (including principal and interest), taxes and insurance and, in the case of a condominium or cooperative, required maintenance charge, for the community spouse's principal residence, and

"(B) the standard utility allowance (used by the State under section 5(e) of the Food Stamp Act of 1977) or, if the State does not use such an allowance, the spouse's actual utility expenses,

exceeds 30 percent of the amount described in paragraph (3)(A)(i), except that, in the case of a condominium or cooperative, for which a maintenance charge is included under subparagraph (A), any allowance under subparagraph (B) shall be reduced to the extent the maintenance charge includes utility expenses.

"(5) Court ordered support.—If a court has entered an order against an institutionalized spouse for monthly income for the support of the community spouse, the community spouse monthly income allowance for the spouse shall be not less than the amount of the monthly income so ordered.

"(e) Notice and Fair Hearing.—

"(1) Notice.—Upon—

"(A) a determination of eligibility for medical assistance of an institutionalized spouse, or

"(B) a request by either the institutionalized spouse, or the community spouse, or a representative acting on behalf of either spouse,

each State shall notify both spouses (in the case described in subparagraph (A)) or the spouse making the request (in the case described in subparagraph (B)) of the amount of the community spouse monthly income allowance (described in subsection (d)(1)(B)), of the amount of any family allowances (described in subsection (d)(1)(C)), of the method for computing the amount of the community spouse resources allowance permitted under subsection (f), and of the spouse's right to a fair hearing under this subsection respecting ownership or availability of income or resources, and the determination of the community spouse monthly income or resource allowance.

"(2) Fair hearing.—If either the institutionalized spouse or the community spouse is dissatisfied with a determination of—

"(A) the community spouse monthly income allowance because the amount of the minimum monthly maintenance needs allowance (established under subsection (d)(3)) is not adequate to support the community spouse without financial duress;

"(B) the amount of monthly income otherwise available to the community spouse (as applied under subsection (d)(2)(B));

"(C) the computation of the spousal share of resources under subsection (c)(1);

"(D) the attribution of resources under subsection (c)(2); or

"(E) the determination of the community spouse resource allowance (as defined in subsection (f)(2));

such spouse is entitled to a fair hearing described in section 1902(a)(3) with respect to such determination. If either such spouse establishes that the minimum monthly maintenance needs allowance or the community spouse resource allowance (in relation to the amount of income generated by such an allowance) is not adequate to support the community spouse without financial duress, there shall be substituted, for the minimum monthly maintenance needs allowance in subsection (d)(2)(A) (or for the community spouse resource allowance under subsection (f)(2)), an amount adequate to support the community spouse without financial duress.

"(f) Permitting Transfer of Resources to Community Spouse.—

"(1) In general.—An institutionalized spouse may, without regard to section 1917, transfer to the community spouse (or to another for the sole benefit of the community spouse) an amount equal to the community spouse resource allowance (as defined in paragraph (2)), but only to the extent the resources of the institutionalized spouse are transferred to (or for the sole benefit of) the community spouse. The transfer under the preceding sentence shall be made not later than one year after the date of the initial determination of eligibility or such time as is necessary to obtain a court order under paragraph (4) (whichever is longer)

"(2) Community spouse resource allowance defined.—In paragraph (1), the 'community spouse resource allowance' for a community spouse is an amount (if any) by which—

"(A) the greatest of—

"(i) $12,000 (subject to adjustment under subsection (g)), or, if greater, the amount determined under State law, practice, or policy or under the State plan (whether approved or not);

"(ii) the lesser of (I) the spousal share computed under subsection (c)(1), or (II) 4 times the amount described in clause (i);

"(iii) the amount established under subsection (e)(2); or

"(iv) the amount transferred under a court order under paragraph (3),

exceeds

"(B) the amount of the resources otherwise available to the community spouse (determined without regard to such an allowance).

"(3) Transfers under court orders.—If a court has entered an order against an institutionalized spouse for the support of the community spouse, section 1917 shall not apply to amounts of resources transferred pursuant to such order for the support of the spouse or a family member (as defined in subsection (d)(1)).

"(g) Indexing Dollar Amounts.—For services furnished during a calendar year after 1988, the dollar amounts specified in subsections (d)(3)(B) and (f)(2)(A)(i) shall be increased by the same percentage as the percentage increase in the consumer price index for all urban consumers (all items; U.S. city average) between September 1987 and the September before the calendar year involved.

"(h) Definitions.—In this section:

"(1) The term 'institutionalized spouse' means an individual who—

"(A) is in a hospital, skilled nursing facility, or intermediate care facility, or who (at the option of the State) is described in section 1902(a)(10)(A)(ii)(VI), and

"(B) is married to a spouse who is not in a hospital, skilled nursing facility, or intermediate care facility;

but does not include any such individual who is not likely to meet the requirements of subparagraph (A) for at least 30 consecutive days.

"(2) The term 'community spouse' means the spouse of an institutionalized spouse.".

(b) Taking into Account Certain Transfers of Assets.—Subsection (c) of section 1917 (42 U.S.C. 1396p) is amended to read as follows:

"(c)(1) In order to meet the requirements of this subsection (for purposes of section 1902(a)(49)(B)), the State plan must provide for a period of ineligibility in the case of an institutionalized individual (as defined in paragraph (3)) who, at any time during the 26-month period immediately before the individual's application for medical assistance under the State plan, disposed of resources for less than fair market value. The period of ineligibility shall begin with the month in which such resources were transferred and the number of months in such period shall be equal to (A) the total uncompensated value of the resources so transferred, divided by (B) the average cost, to a private patient at the time of the application, of nursing home care in the State or, at State option, in the community in which the individual is institutionalized.

"(2) An individual shall not be ineligible for medical assistance by reason of paragraph (1) to the extent that—

"(A) the resources transferred were a home and title to the home was transferred to—

"(i) the spouse of such individual;

"(ii) a child of such individual who is under age 21, or (with respect to States eligible to participate in the State program established under title XVI) is blind or permanently and totally disabled, or (with respect to States which are not eligible to participate in such program) is blind or disabled as defined in section 1614;

"(iii) a sibling of such individual who has an equity interest in such home and who was residing in such individual's home for a period of at least one year immediately before the date of the individual's admission to the medical institution; or

"(iv) a son or daughter of such individual (other than a child described in clause (ii)) who was residing in such individual's home for a period of at least two years immediately before the date of such individual's admission to the medical institution, and who (as determined by the State) provided care to such individual which permitted such individual to reside at home rather than in an institution;

"(B) the resources were transferred to (or to another for the sole benefit of) the community spouse, as defined in section 1921(h)(2), or the individual's child who is blind or permanently and totally disabled;

"(C) a satisfactory showing is made to the State (in accordance with any regulations promulgated by the Secretary) that (i) the individual intended to dispose of the resources either at fair market value, or for other valuable consideration, or (ii) the resources were transferred exclusively for a purpose other than to qualify for medical assistance; or

"(D) the State determines that denial of eligibility would work an undue hardship.

"(3) In this subsection, the term 'institutionalized individual' means an individual who—

"(A) is an inpatient in a hospital, skilled nursing facility, or intermediate care facility, and

"(B) is required, as a condition of receiving services in such institution under the State plan, to spend for costs of medical care all but a minimal amount of the individual's income required for personal needs.

"(4) A State may not provide for any period of ineligibility for an institutionalized individual due to transfer of resources for less than fair market value except in accordance with this subsection.".

(c) CONFORMING AMENDMENT.—Section 1902(a) (42 U.S.C. 1396a(a)) is amended—

(1) in paragraph (10)(C)(i)(III), by striking "the same" each place it appears and inserting "no more restrictive than the";

(2) by striking "and" at the end of paragraph (47);

(3) by striking out the period at the end of the paragraph (48) and inserting "; and", and

(4) by inserting after paragraph (48) the following new paragraph:

"(49)(A) meet the requirements of section 1921 (relating to protection of community spouses), and (B) meet the requirement of section 1917(c) (relating to transfer of assets)."; and

(6) by adding at the end the following new sentence: "For purposes of paragraph (10), methodology is considered to be 'no more restrictive' if, using the methodology, additional individuals may be eligible for medical assistance and no individuals who are otherwise eligible are made ineligible for such assistance.".

(d) STUDY OF MEANS OF RECOVERING COSTS OF NURSING FACILITY SERVICES FROM ESTATES OF BENEFICIARIES.—The Secretary of Health and Human Services shall study the means for recovering amounts from estates of deceased medicaid beneficiaries (or the estates of the spouses of such deceased beneficiaries) to pay for the medical assistance for skilled nursing facility or intermediate care facility services furnished, under title XIX of the Social Security Act, to such medicaid beneficiaries. The Secretary shall report to Congress, not later than December 31, 1988, on such means, and include appropriate recommendations for changes in legislation.

(e) EFFECTIVE DATE.—(1) Except as provided in paragraphs (2) and (3), the amendments made by this section shall apply to payments under title XIX of the Social Security Act for calendar quarters beginning on or after January 1, 1988, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act.

(3)(A) Subsection (c) of section 1921 of the Social Security Act (as inserted by subsection (a)) shall apply only to institutionalized individuals who begin continuous periods of institutionalization on or after January 1, 1988.

(B) The amendments made by subsection (b) shall apply with respect to resources transferred on or after January 1, 1988.

Ms. MIKULSKI. Mr. President, this amendment is very simple, but very far reaching. It provides that when one spouse must have long-term nursing home care, the other spouse does not have to become fully poverty stricken before Medicaid will help out.

The Mikulski-Mitchell-Kennedy amendment provides a safety net to the people who all their lives played by the rules: to the savers who planned for their own retirement and who always were ready to help themselves before asking for help from others. This bill will help the nursing home widows and widowers. Having faced the need to place a husband or wife in a nursing home, these people should not be forced into poverty in order to pay for such care. This adds insult to injury.

This is an important amendment. Let me explain how current law works. Current law requires a couple to become impoverished before the Government will help with the cost of nursing home care.

Let me show by an example. Take the average middle-class couple. They have played by the rules all their lives. They planned for their future and built up some modest savings to help them in retirement. But they are faced with financial ruin if one of them enters a nursing home for long-term care.

Medicare does not pay for long-term nursing home care, except in very limited circumstances. So the couple has no choice but to turn to Medicaid, which will cover such costs. In order to qualify for Medicaid, they must first spend down their joint life's savings until they have only $2,700 in assets.

At the same time, all of the institutionalized spouses' income is taken to pay for the nursing home. If the community spouse has no income of his or her own, then he or she is allowed to keep a small monthly allowance—less than $300; $300 a month to keep their household going, to meet the special needs most elderly have, whether it's a special diet or just a little extra heat in the winter. The poverty line for a single person 65 years and older is $433 a month.

The problem is particularly acute for older women. These women generally have little or no income of their own, perhaps a small Social Security annuity. All their lives, there was no his and her income, just our income. Just a family income. Not, though, when it comes to Medicaid. It is these women, the nursing home widows, who are left without sufficient income to meet even their most basic needs.

So that's the way it works now. You save all your life, and need a little help from your Government when the unexpected, and for many the unthinkable, happens. And we'll help you out. But you have to go broke first.

Mr. President, to put it simply: This makes no sense at all. Our programs and policies should help people to help themselves; not drive them into financial ruin. This amendment stands for family responsibility—not family bankruptcy.

This amendment brings some reasonableness to this situation. With this amendment, we would raise the monthly allowance to $750 a month. The community spouse whose own income was less than $750 a month would be entitled to an allowance from her partners income to bring her up to that minimum. In addition, a spouse outside the nursing home could keep at least $12,000 of the couple's assets. So when the roof needs to be fixed or the old stove finally breaks down, the community spouse has the resources necessary to keep the household going. And States could set that level even higher if they wished.

Mr. President, this is a modest and balanced amendment. This amendment is long overdue, and responds to a very real and urgent need. I urge the Senate to adopt it.

We face this situation in my own family. My father is in the final stage of nursing care for Alzheimer's disease. We turned to nursing home care after we exhausted family resources, after we had used dependent care. To treat an Alzheimer's patient, it costs up to $4,000 a month in long-term care. Very few American families can sustain that. They can only turn to Medicaid.

Mr. President, my family and so many other families, face this situation. Not every family has a Congressperson or a Senator to help them out with this situation. We must provide a safety net.

In closing, Mr. President, I want to thank Senator MITCHELL, who has been working on this problem for many years. Indeed, this amendment is a mix of bills he and I have each introduced. I also want to thank Senator KENNEDY who has also played a key role in getting this provision to the floor today.

The PRESIDING OFFICER (Mr. ROCKEFELLER). The Senator from Massachusetts.

Mr. KENNEDY. First of all, I want to commend Senator MIKULSKI and

Senator MITCHELL for very significant work they have done in this area for spousal impoverishment.

Senator MIKULSKI has made this an issue not only since her first days here in the U.S. Senate but this is an area in which she has provided strong leadership in the House of Representatives as a Member of Congress. I think her efforts, along with those of the Senator from Maine, have really moved us into a more humane policy toward the 150,000 spouses that will be bankrupt, lose all of their life savings, unless this amendment or something very close to it is actually accepted as part of this bill.

Mr. President, here I have just a few charts for the benefit of the Members. As we see from the first chart over here, when we are talking about catastrophic expenses, out of pocket over $2,000, that figure is somewhat, actually, less in this bill as it has moved through, but close to the $2,000 figure.

The area where there is the greatest pressure in terms of individuals is in the areas of nursing homes. Some pressure in terms of dental care, drug care, the hospital care, and physician care. But, by and large, the expenses which are draining, in terms of the families of this country, is in the nursing home care.

I had the good opportunity to make a presentation to the Finance Committee. I am grateful for their attention. I felt strongly that we ought to in this bill make a down payment on the out-of-pocket expenses for prescription drugs and that we ought to make a down payment in terms of nursing home care. The cost in this area is very, very significant and the steps that have been taken by the Finance Committee have been, I think, useful steps. I would certainly hope that this body will come back and address those, expand those protections in future legislation in the very next year.

This chart here, Mr. President, demonstrates the period of time that individuals would be in long-term care before they are put into position of effectively bankruptcy, that is an income level below the Medicaid level.

We find out that married individuals, 37 percent of all the married individuals in long-term care are effectively bankrupted within 13 weeks; 57 percent are effectively bankrupted within 52 weeks.

This demonstrates the enormous kinds of pressure on a lifetime of savings for families, the elderly married couples who are going to need long-term health care.

Now what we find for an individual monthly allowance that would be allowed for a spouse should be some $458, if we are going to meet the poverty level. Today that national average is $327. Our State is somewhat higher than that. But the national average does not even move up to the $458 level and even though there are protections for homes that exist under the current statute, the amount that is going to be retained or reserved for the individual is so small that the first thing that goes is the home which this family has built or has saved for to hold onto during their golden years.

Some States are down to $145. This, versus the $458—so it is virtually impossible to have any meaningful life, to be able to provide even in the meanest kind of existence for that individual to survive.

The provisions now which have been fashioned in the Mikulski amendment would ensure, with those revenues, that individuals would be able to provide at least for their spouse for a period of time, and then be able to effectively have sufficient income so that they would be able to live in respect and in dignity and be able to own their home and the essential aspects which are necessary for a life of dignity.

This is, I think, an enormously important amendment.

We are dealing not only with the figures and costs here, Mr. President, but what we are basically talking about is fear and anxiety. We do not put a dollar sign in this institution, on the anxiety factor, or the fear factor. But it is a very real one and it is one that I would hope that the Members of this body would understand and would appreciate.

Every family, every senior citizen, married couple, when they know that their loved one goes to the nursing home, they know there is a countdown, and every night they go to bed they are caught between the enormous drain on their savings and the well-being of their loved one. That is a very real fact in American life, and it is a very real fear of our seniors, who have built this country and have survived and fought in the wars and have made it the great Nation that it is.

It seems to me, Mr. President, that in this area we will be giving a down payment, an important down payment, for the spouses who are going to require the long-term care, and providing sufficient funds, savings, or reservations for those individuals so they will be able to live in peace and dignity.

I think it is an extremely important amendment. I think it is a significant addition to this legislation. I am hopeful that over a period of time we are going to summon up the will and the strength of this body to begin to deal with the basic problem of long-term care.

This is not the time to do it, but I think that the area which the good Senator from Maryland has selected is a targeted program meeting a very significant and important human need. It has been reviewed in very considerable detail by the Senate Finance Committee. I am very hopeful that this body will embrace it. I think when we do we are making at least, again, partially good on the great pledge and promise that has been made to our seniors to ensure that their health care and needs were going to be provided for under the Medicare program.

Mr. REID. Mr. President, I ask unanimous consent that my name be added to the amendment as a cosponsor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Ms. MIKULSKI. Mr. President, I ask unanimous consent that Senator PRESSLER, Senator GRAHAM, and Senator LEVIN be added as cosponsors of my amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. Today, Mr. President, I would like to relate to my colleagues the plight of a woman in Carson City, NV, that was recently related to me. Myrna, who is now 69, moved to Nevada to retire with her husband several years ago. In 1985, Myrna suffered a stroke that left her with sight in only one eye. During her recuperative period at home, she began to notice some changes in her husband's behavior. The dramatic, and sometimes frightening, changes in his character culminated in his hospitalization and diagnosis as a victim of Alzheimer's in the spring of this year.

For the next 3 months, Myrna struggled to care for her husband at home. At times, she said, he was uncontrollable, and she frequently fought with him over the car keys. During one of these confrontations, she was thrown to the floor and broke an arm. He wrecked both of their cars and ran up enormous bills at several area stores without Myrna's knowledge.

Finally, the Veterans' Administration made arrangements for her husband to spend 6 months in a private nursing home at VA expense. Between now and February when the nonrenewable contract with the VA expires, Myrna is using both of their incomes to pay her husband's hospital and other bills, car repairs, and regular monthly expenses. When Myrna is forced to take over the nursing home care payments, she will have to sacrifice all of her husband's income and assets to pay the bills. Their savings account already depleted to pay doctor bills, Myrna will receive a monthly Social Security check for $358. With this, she has to pay a $213 car payment, $165 mobile home lot payment and utilities. These expenses alone exceed her monthly income, leaving her without a penny to pay for food, clothing, or her own medical care.

For months, Mr. President, legislators, staff persons, and others representing the interests of our Nation's elderly have worked to craft a piece of legislation that will help protect our seniors from catastrophic health care expenses at a cost they can afford. In doing so, they have grappled with a variety of important issues. Questions of inconsistently administered eligibility criteria, gaps in coverage, and quality of care were among those raised with respect to Medicare's current program. In addition, countless hearings and meetings have been conducted to address issues of critical importance to the expansion of Medicare benefits. Financing concerns, the duplication of benefits, and the tremendous need for coverage of long-term care were focal points of much analysis and discussion.

Nevada has experienced extraordinary growth of its senior population over the last decade. It is anticipated to increase another 285 percent from the period of the last census to the year 2000. As a spokesman for this State and a member of the Special Committee on Aging, I am particularly sensitive to the need for this legislation. There is no simple solution to the problem of catastrophic health care costs. I commend my colleague from Texas, Senator BENTSEN, and the other members of the Finance Committee for developing the Medicare Catastrophic Loss Prevention Act that we have before us. It is not a "cure-all;" it is not a "quick-fix." But, it does represent a positive first step in the right direction.

The tremendous cost of long-term nursing home care poses the most financially devastating problem. Thousands of senior citizens, who have worked and saved their entire lives to provide for a comfortable and independent retirement, have watched their savings and assets rapidly deteriorate to pay an average of $22,000 per year for nursing home care. S. 1127 does not provide for long-term care coverage. However, it does lay the groundwork for the development of programs and policy to remedy this desperate state of affairs. Specifically, S. 1127 increases Medicare coverage of skilled nursing facility days from 100 days per benefit period to 150 days per calendar year. It also eliminates the 3-day prior hospitalization requirement for nursing home care. Furthermore, it increases from 21 to 45 days the period during which a beneficiary may receive daily home health care. Most important, S. 1127 requires the Insititute of Medicine to study both public and private options for financing long-term care.

Inextricably tied to the cost of nursing home care is the phenomenon of spousal impoverishment. Spousal impoverishment results when one spouse has to enter a nursing home and the couple must forfeit their life savings in order to qualify for Medicaid coverage of the institutional care. Far too frequently, this leaves the spouse who remains in the community with very little monthly income and almost no assets to sustain him or herself. In many States, the income that these spouses are allowed to keep is so inadequate that they are forced to seek welfare and other forms of assistance. Spousal impoverishment protection is essential if we are to assist people like Myrna, the women I spoke of earlier.

Although some of the particular circumstances surrounding Myrna's dilemma are unique, her crisis is not. Spousal impoverishment strikes thousands of senior citizens every year.

I commend my colleagues, Senators MIKULSKI, MITCHELL, and KENNEDY, for this amendment.

I would also like to take a brief minute, Mr. President, to comment on Senator MIKULSKI and the work she has done in this area.

We have been in the Senate together some 11 months, but we in the Senate are all beginning to realize, as we in the House realized for a long time, that Senator MIKULSKI has a unique view of the problems of the people who need help. How many people have worked, in effect, on the streets, as she did as a social worker? She really understands the plight of those who need help.

I would like to take this opportunity to commend and applaud my colleague from the State of Maryland for the excellent work she has done on this amendment and the work she has done in the Senate in the short time she has been here. I commend Senators MIKULSKI, MITCHELL, and KENNEDY for proposing this amendment intended to allow our Nation's older Americans with spouses in nursing homes to retain enough of the couple's income and assets to live with dignity.

AMENDMENT NO. 1047

(Purpose: To provide a special income attribution rule for institutionalized spouses in certain States)

Mr. REID. Because I feel it is essential, Mr. President, that we provide spousal impoverishment protection to all those individuals with spouses in nursing homes at costs that threaten their pauperization, I offer an amendment, which I send to the desk and ask for its immediate consideration. This amendment is sponsored by myself and Senator BINGAMAN, the junior Senator from New Mexico.

The PRESIDING OFFICER. The amendment of the Senator from Maryland is pending. This is an amendment to that amendment?

Mr. REID. It is, Mr. President.

The PRESIDING OFFICER. Then the clerk will report.

The legislative clerk read as follows:

The Senator from Nevada [Mr. REID], for himself and Mr. BINGAMAN, proposes an amendment numbered 1047.

Mr. REID. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of section 1921(b) of the Social Security Act, as added by the amendment, insert the following new paragraph:

"(3) SPECIAL INCOME ATTRIBUTION RULE FOR INSTITUTIONALIZED SPOUSES IN CERTAIN STATES.—In determining the income of an institutionalized spouse at the time of application for benefits under this title, in the case of any community property State that does not provide coverage under the State plan for medically needy individuals, the amount of income considered to be available to such spouse shall be an amount equal to ½ of the combined income of such spouse and the community spouse."

Mr. REID. Mr. President, I offer this amendment to eliminate the discrepancy between this measure's treatment of almost all of the States and its treatment of those few community property States with no medically needy programs. This would apply to the States of Nevada, Idaho, and New Mexico. My amendment achieves this goal by providing for the equal division of community income between two spouses at the time the institutionalized spouse applies for Medicaid assistance.

The community property principle simply states that all of the income and assets of two spouses belong to the "community." In States operating under this principle, income and assets determined to belong to the community are to be divided equally between the spouses when one is forced to enter a nursing home. In most cases, a community property division of this kind leaves the spouse who remains in the community with enough income and assets to survive independently.

Unfortunately, the Health Care Financing Administration refuses to recognize State community property laws. Instead, this agency requires that the "name on the instrument"—that is a term of art—rule be applied when determining if a nursing home patient is eligible for Medicaid assistance.

In the overwhelming majority of cases, almost all of a couple's income and assets are in the name of one spouse. If the spouse with the income and assets in his name is the one requiring institutional care, he is obligated to use all of those assets to pay the nursing home care bills until he has less than the Medicaid limit of $1,700 in assets left.

In addition, this spouse must also qualify under the Medicaid special income limit. Income is usually constant. Therefore, if his income exceeded the Medicaid special income limit before his assets were depleted, his income will probably always exceed the Medicaid special income limit, preventing him from ever qualifying for financial assistance.

My colleagues' amendment, as presently written, does not provide spousal impoverishment protection to the community spouse until after the institutionalized spouse qualifies for Medicaid assistance. I am concerned that in community property States, like Nevada, many needy and deserving individuals will not benefit from this protection because of the Health Care Financing Administration's disregard for State law. My amendment would rectify this serious problem.

I would like to make clear that my amendment does not apply to all community property States, but only those community property States—and I am advised they are three States, again I repeat, Idaho, Nevada, and New Mexico—with no medically needy programs. The majority of community property States have medically needy programs in place to assist those seniors unable to qualify for Medicaid, but in need of financial help nonetheless. Only three community property States lack medically needy programs for those seniors who fall through the cracks of their State Medicaid programs. My amendment provides a much-needed financial safety net for the spouses of nursing home patients in States that currently offer no other alternative.

I submit, Mr. President, because of the demographics in Nevada and most other States, the individual who usually winds up hurt is the widow more often that the widower.

The Congressional Budget Office estimated the cost of this amendment at $5 million per year. That is only an additional $5 million per year to make this very important spousal impoverishment protection available to seniors in all States.

For months, Mr. President, my colleagues have focused their efforts on the development of a spousal impoverishment protection package to weaken the bond that has developed between nursing home care and the financial devastation of the community spouse. I urge support for my amendment and the spousal impoverishment protection measure my colleagues have put forward.

Mr. MITCHELL. Mr. President, I am pleased to join my colleagues in offering the underlying amendment which will protect the welfare of spouses of institutionalized individuals under the Medicaid Program. The amendment offered by Senator MIKULSKI on behalf of herself, Senator KENNEDY, and myself, is an amendment to address what is now an inequitable situation where one spouse remains in the community and the other spouse is institutionalized under Medicaid.

So long as the husband and wife reside together, their income and assets are counted together and "deemed" available to each other for the purposes of determining eligibility for Medicaid benefits. It is only when one spouse enters a nursing home that the question of income distribution arises.

Under current law, each State establishes a monthly allowance that the spouse who remains in the community is allowed to keep to live on. While these allowance amounts vary from State to State, the nationwide average is from $320 to $340 per month. This amount is clearly inadequate for most persons to support themselves. Under current law, almost everything else, except the home, must go to pay for the nursing home costs.

Those most commonly affected by this Medicaid law are elderly women who have been homemakers most or all of their lives, and have little or no income in their own name. A March 6, 1986 New York Times article titled, "Nursing Costs Force Elderly To Sue Spouses," described a number of well-publicized cases of women who have become paupers under the current Medicaid regulations and who are then forced to sue their spouses.

I ask unanimous consent that the article be inserted in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. MITCHELL. Mr. President, earlier this year, I introduced legislation to address the issue of spousal impoverishment under Medicare. Senator MIKULSKI also introduced a bill to correct this problem. She has been an outstanding leader on this issue, pursuing it with vigor and persistence.

Because each State has approached this problem from its own legal perspective, it has been difficult to craft a bill that addresses the concerns of all 50 States. But we believe we have developed a reasonable compromise that attempts to resolve as many State concerns as possible.

The amendment will raise the minimum allowance before the noninstitutionalized spouse to $750 per month, with an upward adjustment for those with excessive housing costs.

The amendment will also protect one-half of accumulated assets of community spouses with a minimum of $12,000 and a ceiling of $48,000. Upward adjustments in assets protection will be available to community spouses who have less than $750 per month in income but may have assets that can generate income up to that amount.

The catastrophic bill saves money in Medicaid since some costs currently being borne by Federal and State Medicaid programs will be paid for by Medicare. The savings that result were assumed in the budget resolution to be applied to Medicaid improvements such as the improvements that would follow if this amendment were adopted. In addition, in this amendment we have made several improvements designed to tighten up on the administration of the benefit.

As chairman of the Health Subcommittee, I am deeply concerned about the issue of long-term care for the elderly, the principal unaddressed problem that will remain after enactment of the catastrophic health bill. This amendment represents a first step at addressing the most blatant inequity in programs which provide care to the Nation's elderly.

This amendment is intended and will put an end to elderly women being forced to divorce their husbands in order to sue for support payments. No longer will women, who have contributed to a marriage all of their lives as homemakers, be forced to live out their lives in poverty, with the accompanying misery that occurs when their spouses must enter an institution. This is above all else a humane amendment.

I urge my colleagues to support this amendment.

EXHIBIT 1

Like thousands of elderly couples who have lived frugal and productive lives, the Hafners discovered that when one spouse goes into a nursing home, the other is often left impoverished.

That is because few couples can afford the $45,000 to $64,000 a year that nursing home care costs. The only insurance for nursing home is provided by the Medicaid health program for the poor, which is financed by the Federal, state and local governments.

In most cases, this means that the savings and pensions that couples have accumulated over a lifetime are largely drained, often leaving spouses at home with little more than $400 a month and food stamps to live on, which is the poverty level Medicaid generally sets before it pays for care in nursing homes.

The only alternative for some elderly women in New York is to sue their spouses for support in Family Court, according to Sam Sadin, an authority on the rights of the elderly. This is because state law provides that such support payments cannot be included by Medicaid when it calculates how much of a couple's assets and retirement income can be taken.

"It broke my heart to do it because I love my husband very much," said Mrs. Hafner, who visits her husband every day at Beth Abraham Hospital in the Bronx.

Each state sets its own eligibility rules for Medicaid reimbursement of nursing home care. Virtually all require recipients to reach the poverty level to qualify.

New Jersey has virtually the same poverty level as New York. Connecticut's is more liberal, allowing a spouse of a nursing home patient receiving Medicaid assistance to keep at least $649 a month, in addition to allowances for such things as housing and medical expenses.

"Our systems do not really address this problem," said Thomas M. Russo, the New Jersey Medicaid director. "Elderly impoverishment when nursing home care is involved is always going to be a problem in this country until we come up with a different concept of financing such care."

Richard T. Cody, New York State's Medicaid director, acknowledged that the state should allow spouses to keep more money. But he said that such increases would amount to hundreds of millions of dollars in New York and that such financing by the Legislature was unrealistic.

Although support suits are having a growing impact in New York City, they do not appear to have established a trend in New Jersey or Connecticut.

WHERE BURDEN FALLS HARDEST

Like most women who began raising families 50 or so years ago, Mrs. Hafner stayed at home while her husband worked. Thus, she and other women of her generation are financially dependent on their husbands' Social Security and pension benefits.

The result is that the impoverishment required by Medicaid generally falls hardest on them. Medicare, the Federal health insurance program for the elderly, has consistently opposed paying for long-term nursing home care on the ground that such costs would bankrupt it.

Other women who are facing life alone for the first time are threatened with eviction from apartments in which many have lived most of their lives.

PARKINSON'S DISEASE PATIENT

"It's an outrage," said Mr. Sadin, executive director of the Institute on Law and Rights of Older Adults, a part of the Brookdale Center on Aging at Hunter College.

Mr. Hafner, who is 77 years old, suffers from Parkinson's disease. He worked as a Post Office supervisor while his wife, 75, raised two daughters in a three-room apartment in the Pelham Park section of the Bronx. His retirement income was eight times as large as hers.

Mrs. Hafner cared for her husband at home for 10 years. But when she injured herself, she was finally forced to place him in Beth Abraham Hospital, a private, nonprofit institution for chronic disease that charged them $64,800 a year.

Before Mrs. Hafner's court-ordered support judgment, Medicaid had left her with $424.20 a month, an amount just above the poverty threshold in New York City.

MOST OF SAVINGS DEPLETED

Medicaid said she could could keep her $222.60-a-month Social Security benefit check and $201.60 of her husband's $1,665.60 monthly income from Social Security and his Post Office pension.

Medicaid said the remaining $1,464 of her husband's monthly income and $14,600 of the $22,000 in savings that had been accumulated during 50 years of scrimping would have to be paid to the nursing home to help offset the cost of caring for Mr. Hafner.

Medicaid rules allowed the Hafners to keep $4,400 of their savings and a $1,500 burial fund for each, along with $40 a month for Mr. Hafner's personal needs at the nursing home.

All told, Mrs. Hafner's monthly expenses come to $342 a month, leaving her $53 a month for food and household items, according to Medicaid records.

"They offered me food stamps," Mrs. Hafner said. "But I told them I'd starve first."

AWARD FROM FAMILY COURT

In Mrs. Hafner's case, Family Court in the Bronx last November awarded her $1,099 a month from her husband's retirement income and her own, or more than twice the amount Medicaid officials had allowed her.

Had Mrs. Hafner anticipated her husband's institutionalization two years earlier, she could have spent their $22,000 in savings or given it to their children. Medicaid does not seek to take any assets that had been transferred two years before a patient qualified for Medicaid.

According to Medicaid officials, many couples who are legally knowledgeable protect large sums by giving the money to their children or by creating trusts that are protected from Medicaid.

Moreover, if the Hafners owned and lived in a home or a cooperative apartment, Medicaid would not count it as part of their wealth—even if it were worth $1 million.

SOME RESORT TO DIVORCE

A consent order signed by the city and state requires Medicaid and nursing home officials to advise everyone seeking nursing home care that Medicaid financing cannot be denied patients even though their spouses refuse to contribute their own assets and income, if they need them to live on.

Taken together, the Federal consent order and an important decision in Family Court in Queens last year that established the legal precedent for support orders such as the one won by Mrs. Hafner, are cited by advocates of the elderly as important legal grounds that will help many people escape destitution when a spouse enters a nursing home.

In the Queens case, the plaintiff was a frail, 72-year-old woman identified by the court as Rose S. She had taken care of her husband in their Forest Hills apartment until the ravages of Alzheimer's disease forced him to be admitted to a nursing home.

LEFT WITH $400 A MONTH

The husband qualified for Medicaid, but not before almost all of his $1,200 in monthly Social Security and pension benefits was applied to the cost of his care.

As a woman who had stayed at home all her life, Rose S. was left only with her own Social Security check of about $400 a month. According to her attorney, Ellice Fatoullah, a Manhattan lawyer who specializes in geriatric law, Medicaid had placed Rose S. in a cruel and impossible position. For example, she said, Rose S.'s monthly rent alone was $410.

So with Miss Fatoullah's help, Rose S. sought an order of support from Judge Jeffry H. Gallet of Family Court. As in the Hafner suit Miss Fatoullah was to handle later, the real test of the case was Medicaid. the city's Medicaid program was named as a defendant in the suit.

Judge Gallet on Jan. 5, 1985, awarded Rose S. $1,125 of her husband's monthly pension and Social Security benefits.

CITY DECLINES TO APPEAL

Initially, the city said it would appeal the decision. However, Reginald Foster, the city's Medicaid director, said the city had reversed itself and "has now made a judgment not to appeal."

In his ruling, Judge Gallet noted that women such as Rose S. historically were economically dependent on their husbands.

In such cases, he said "Women will be forced from their homes, deprived of even their modest life styles and relegated to a life of grinding poverty."

Mr. BENTSEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas.

Mr. BENTSEN. Mr. President, the Senator from Maine has not only shown compassion but he has also shown I think his pragmatic approach to the problem. And it is a problem that very much needs attention and I am sympathetic to it. I strongly urge the passage of the amendment.

Mr. DURENBERGER addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. DURENBERGER. Mr. President, I ask unanimous consent that I might be made a cosponsor of the Mikulski-Mitchell, et al., amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DURENBERGER. Mr. President, I was an original cosponsor of the Medicaid Community Spousal Protection Act of 1987 introduced by our colleague from Maine in March of this year. I strongly support his efforts and those of our colleague from Maryland and a variety of other people who have been the leaders in this issue.

I would like to briefly comment in particular on what our new colleague from Maryland has contributed to the discussion of this issue.

Back in 1981 on this side, I was the author of something called the Economic Equity Act which today is S. 1309 and of which my colleague is an original cosponsor. On the House side she was an original cosponsor of that same bill. We have never passed this bill. Yet so much legislation which eliminates built-in discrimination against women in America, young, old, all kinds of women, has passed this body in the intervening 6 years. And we are here with this amendment to the catastrophic bill again passing another major portion of the Economic Equity Act and I am most grateful to my colleague from Maryland for the opportunity to stand here today and to recommend to all of my colleagues in this body and to my colleagues on this side of the aisle that they support passage of this amendment.

It is long overdue. We all know the problems. We hear them in every nursing home. We hear them in every small community. We hear them wherever we go in our constituency. Only today have we had the opportunity to do something about it. And I strongly recommend passage of this bill.

As long as we are talking about long-term care, I also say one other thing, and that relates to what we are doing on catastrophic. That is the whole matter of financing long-term care. I had intended an amendment to the catastrophic bill which would alter tax policy as it relates to individual retirement accounts, inside buildup on life insurance and so forth. But I knew that would drive the chairman of the Finance Committee through the wall or the ceiling if I did that. However, I think it would have been the sort of thing that would have appealed to a lot of members in this committee and a lot of Members I know on the House side who would like to go beyond acute care, catastrophic and cover some other issues like spousal impoverishment, and like long-term care decisions.

I will not put that kind of amendment today even though I know it would move us in the right direction. But I congratulate all who have decided in the name of catastrophic health care to take on some of the real catastrophes that we have visited because of poor public policy, that we have visited on a lot of our constituents and particularly on the women of this country.

Ms. MIKULSKI. Will the Senator from Minnesota yield?

Mr. DURENBERGER. I yield the floor.

Ms. MIKULSKI. I would like to thank the Senator from Minnesota for his remarks in support of this legislation and for his leadership over the years on the women's Economic Equity Act, particularly on this issue related to spousal impoverishment because I think if we pass this amendment we will do an enormous amount to help women who are in nursing homes to have the safety net that they, themselves, saved for. And I thank the Senator for his cooperation and for his leadership in this.

If I may, I ask unanimous consent that the Senator from Michigan [Mr. Riegle] also be added as a cosponsor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DURENBERGER. I thank my colleague from Nevada who also made a valuable contribution to this issue. I look forward to his amendment at least on this side. It is an important clarification of the underlying amendment.

The PRESIDING OFFICER. Is there further debate on the amendment?

Mr. BENTSEN. Mr. President, do I understand on clarification that essentially it affects three States? Is that it?

Mr. REID. That is right, Mr. Chairman, the State of Idaho, New Mexico, and Nevada.

Mr. BENTSEN. Mr. President, with that understanding, I have no objection to the amendment and would urge its adoption.9

Mr. DURENBERGER. Mr. President, I ask unanimous consent that the Senator from Rhode Island, Senator Chafee, be added as a cosponsor of the Mikulski-Mitchell, et al., amendment on spousal impoverishment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GRASSLEY. Mr. President, I intend to support the amendment of the Senator from Maryland.

I believe it is widely understood that the spend-down phenomenon under Medicaid and the related problem of spousal impoverishment constitute one of the truly grotesque problems faced by older people. Some of my colleagues have already described in some detail the kind of experience that some older people have had to face when a spouse goes into a nursing home. Truly this is a problem we must address. This is primarily, although not always, a woman's problem, since they more often than men remain in the community when their spouse goes into a nursing home. I am very pleased that this amendment has been offered to S. 1127.

Although we are unable to act this year on the general problem of long term care and the spend-down phenomenon, with this amendment we will take a very important step forward.

One concern I have had to address in considering this amendment is the cost to the State of Iowa's Medicaid Program. I have recently received figures from the Iowa Bureau of Finance which provide some estimates of the costs and the savings to the State of Iowa as a consequence of the House and Senate catastrophic health care protection bills. The total savings to the State Medicaid Program attributable to the House bill are in the neighborhood of $12 million. Most of that is attributable to the prescription drug benefit. With the passage of the prescription drug amendment to S. 1127, the State of Iowa should realize savings of roughly comparable magnitude to those realized under provisions of the House bill. It seems to me that these savings can be used to help finance this spousal impoverishment program.

Therefore, Mr. President, I am pleased to support this amendment.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from Nevada [Mr. Reid].

The amendment (No. 1047) was agreed to.

The PRESIDING OFFICER. Is there further debate on the amendment of the Senator from Maryland?

Mr. BENTSEN. Mr. President, I know of no one asking for recognition on this side.

Mr. DURENBERGER. There is none on this side, Mr. President.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Maryland [Ms. Mikulski]. The amendment (No. 1046) was agreed to.

Ms. MIKULSKI. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. DURENBERGER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1048

(Purpose: To expand the scope of the qualified examination treated as an out-of-pocket medical expense financed on the basis of an increase in the monthly catastrophic coverage premium and supplemental premium in such proportion as is otherwise determined under the bill)

Mr. GRAHAM. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Florida [Mr. Graham], for himself and Mr. Dodd, Mr. Durenberger, Mr. Chafee, Mr. Gore, and Mr. Melcher proposes an amendment numbered 1048.

Mr. GRAHAM. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 82, strike "qualified" on line 1 and all that follows through "cancer" on line 2 and insert in lieu thereof "qualified services for the prevention of illness or injury".

One page 82, lines 3 and 4, strike "examinations" and insert in lieu thereof "services".

On page 82, strike lines 5 through 20 and insert in lieu thereof the following:

"(4)(A) A service that is provided with respect to an individual covered by the insurance program under part B shall be treated as a 'qualified service for the prevention of illness or injury' if—

"(i) the service is—

"(I) glaucoma screening by tonometry,

"(II) cholesterol screening,

"(III) an exfoliative cytology (Papanicolaou) test for the detection of cervical cancer,

"(IV) a mammogram for the detection of breast cancer,

"(V) an immunization or a booster for tetanus, influenza, or bacterial pneumonia,

"(VI) a test of the stool for occult blood, or

"(VII) tuberculosis sensitivity testing;

"(ii) the service has not been provided to the individual during the preceding 12 months; and

"(iii) the service is performed as part of or pursuant to an examination that meets the requirements of subparagraph (B).

"(B) An examination meets the requirements of this subparagraph if the examination—

"(i) is performed by a physician;

"(ii) includes where appropriate (as determined under guidelines established by the Secretary) a comprehensive review of past medical history, family and genetic history, social history, current medical problems and treatments, immunization history, and organ system functioning; and

"(iii) meets such other requirements as the Secretary may by regulation prescribe (including requirements to ensure a comprehensive approach for preventive health services).

"(C) Not later than January 1, 1988, the Secretary shall establish appropriate utilization guidelines for the services described in subparagraph (A)(i).".

Mr. GRAHAM. Mr. President, I offer this amendment on behalf of myself and the Senator from Connecticut, Senator DODD, the Senator from Minnesota, Senator DURENBERGER, the Senator from Rhode Island, Senator CHAFEE, the Senator from Tennessee, Mr. GORE, and the Senator from Montana, Mr. MELCHER.

Mr. President, while we are today considering a catastrophic health care bill, it is the very fact that we are focusing on the enormous human and economic cost of health care for older Americans that causes us to recognize that we must begin to move toward some more fundamental reorientation of our national health care policy for older Americans. The prevention of illness should be the major preoccupation of our national health care. For too long we have focused on acute care, on catastrophic care. As our society ages and as we live longer, we are increasingly preoccupied with long-term health care.

Preventive care can obviate the need for our overemphasis on catastrophic and long-term care. Our attitude about health in this Nation should focus on wellness and the extension of our productive years.

One way to keep people well is by screening for common, potentially disabling, conditions.

Mr. President, some fundamental things have happened since Social Security and its health care component, Medicare, came into our national public policy. For one, Americans are living longer. Social Security was developed on a system which had assumed that relatively few Americans would live much beyond the age of retirement, 65. We know today that a person who reaches the age of 65 has 11 or more years of life expectancy; that an American born today has a life expectancy of over 80 years.

Americans are growing older. By the end of this century, over 13 percent of our total population will be over the age of 65. We are increasing in our technological knowledge of human anatomy and physiology and the ability to sustain life for longer and longer periods. Those older Americans have the ability to increase their healthy years, to avoid early incapacitation and institutionalization; and in a small way, this amendment would commence us toward shifting our emphasis from medical crisis to medical prevention.

Under our present Medicare Program, the costs for preventive health screenings are nonreimbursable. The other Senators and I who offer this amendment are proposing that selected screenings for health problems be counted toward the Medicare cap if a catastrophic illness should occur.

This simply means that a Medicare patient can elect to pay for certain tests and apply the cost of those screenings to their deductible should they fall seriously ill within 12 months.

It has the effect of encouraging older Amercians to actively work to maintain their own health and alerts them to major health problems while they can be treated successfully.

It makes sense to shift our focus from illness to wellness by appealing first to older Americans. Many of them are most vulnerable to degenerative disease or chronic conditions, and they are primary users of our existing health care systems.

In previous debate today, we heard the statistics that an American over the age of 65 can be expected to utilize two to three times more health care services per year than an American under 65. So every step we can encourage the older American to take on his or her own behalf to reduce the likelihood of crippling illness or disease is not only to their benefit and quality of life but also has tremendous financial implications for this Nation.

A passion for wellness should be a national obsession—with nutritional education, abstention from smoking, moderate consumption of alcohol, and regular checkups and screenings available to all Americans.

We can begin to reflect the importance of healthy lifestyles and affordable medical care in our existing system by offering optional plans to help prevent the tragedy and expense of unnecessary illness.

Preventive screenings eligible under the program are: glaucoma screenings, cholesterol screenings, PAP tests, mammography, colo-rectal cancer screening, tuberculosis screening, and immunizations or booster for tetanus, influenza, or bacterial pneumonia.

The early warnings from such screenings could prevent strokes, blindness, diabetes, cancer, and other potentially disabling diseases. The investment in prevention is relatively minor, the return on that investment—in extended, productive, independent lives as well as in savings on catastrophic health care costs—is potentially enormous.

Mr. President, the Nation has recently shared in the tragedy—and now in the great hope of full recovery—of our First Lady, Mrs. Ronald Reagan. Her case illustrates the importance of the type of investment in personal health care which this amendment seeks to encourage among all older Americans.

An individual who is diagnosed with breast cancer while it is still in a local condition has 90 percent likelihood of 5 years or more of survival. If that detection is deferred until the local condition has become regional and has reached the chest wall or axilla, the chance of survival for 5 years or more is reduced to approximatley 60 percent. If it has become extensive throughout the body, the chance of survival for 5 years or more is less than 1 in 5.

An early investment in effective screening, and then the preventive steps that screening can indicate are appropriate, has enormous savings in terms of life and enormous savings in terms of economics. The individual who is identified while the cancer is still local in nature is estimated to have a cost of treatment $12,000 less than the individual who waits until it has become a regional disease.

Passage of this legislation will signal our intent to create a healthier, more productive, more independent America.

Mr. President, we have an obligation to work for a well and vigorous America.

We cannot shortchange our older citizens—whose resources are limited—by limiting their health care to the catastrophic or to permanent confinement. Including the screenings in the Medicare Program is a small step, but a necessary first step toward achieving our national health care goals.

(By request of Mr. GRAHAM, the following statement was ordered to be printed in the RECORD:)

● Mr. DODD. Mr. President, along with my colleague from Florida, Senator GRAHAM, I am offering an amendment to the Medicare Catastrophic Loss Prevention Act which would build on the preventive health program already contained in the bill and provide important incentives to promote disease prevention for seniors. We are pleased to have as cosponsors of the amendment, Senators DURENBERGER, CHAFEE, MELCHER, and GORE.

As my colleagues know, the bill reported out of the Finance Committee would allow Medicare beneficiaries to count toward the $1,850 cap of out-of-pocket expenses, payments for two extremely important procedures aimed at early detection and prevention of cancer.

Specifically, under the committee bill, female Medicare beneficiaries aged 55 or older may apply to the cap, expenses for a mammography examination every 3 years and Medicare beneficiaries aged 65 or older may apply to the cap, expenses for a colorectal examination every year.

I strongly support this provision in the committee bill. Both the mammography and the colorectal examination are well-established procedures which have proven to be highly successful in detecting cancer at an early stage and thus helpful in preventing the onset of catastrophic and costly illness.

However, if we are to truly build a significant preventive health care component into the Medicare catastrophic legislation, and I believe that we must, we must go a bit farther. Our amendment would do just that.

The amendment would allow Medicare beneficiaries to apply toward the out-of-pocket expenses cap, payments for additional early detection and preventive health care measures, including screenings and examinations for glaucoma, high cholesterol, cervical cancer, and tuberculosis, as well as immunizations or boosters for tetanus, influenza, or bacterial pneumonia. In order for the above-stated tests and screenings to be applied to the cap, they must be done in conjunction with an examination performed by a physician under guidelines set by the Secretary of Health and Human Services. This process effectively promotes a comprehensive and coordinated approach to preventive health care. The cost of the examination performed by the physician cannot be applied to the out-of-pocket expense cap.

Mr. President, until recently, the dominant focus of health care delivery in this country has reflected the traditions and practices of modern medical treatment. Over the years, health care professionals and the public at large have come to equate good health care with sophisticated, highly technical interventions developed to cure or repair. But this happens to be a very costly approach for each of us individually, as well as for society as a whole. The time has come for us to broaden our definition of health care to include actions that prevent the occurrence of disease or disability, preserve health, and improve the quality of life.

It is essential that we begin to incorporate into the Medicare Program incentives to promote disease prevention for seniors. We all have heard the statistics regarding the aging of our population—that elderly persons aged 65 years and older are the fastest growing segment of the population of the United States. We know that the elderly are more likely to suffer from long-term chronic illnesses and to require costly medical care than are younger persons.

In view of these considerations, providing preventive health care to the elderly must be a major concern of both primary care physicians and our health care system, including the Medicare system. The improvements in health during the past few decades, manifested by extensions of life expectancy, are increasingly considered due to prevention.

Mr. President, the preventive services included in our amendment all are relatively inexpensive, yet they are extremely cost effective in identifying disorders before they mature into catastrophic illness, resulting in overall, long-term savings in the Medicare Program due to the early detection of illness.

For example, Mr. President, our amendment would allow medical beneficiaries to apply the cost of an immunization or booster shot for tetanus, influenza, or bacterial pneumonia toward the out-of-pocket expense cap.

Medical authorities estimate that infectious diseases for which vaccines already exist kill 70,000 Americans a year and strike hundreds of thousands more—costing tens of billions of dollars in medical care and lost work.

It is curious that while Americans are more interested in their health today than ever before, they are neglecting the most powerful preventive measure in medicine. Immunizations have saved countless lives since childhood vaccines became widely used. There were 200,000 U.S. cases of diphtheria reported in 1921—none in 1986. Polio struck around 57,000 persons in 1952—only 2 last year.

However, no more than one in five adults whose life would be jeopardized by a vaccine preventable infectious disease get immunized against it.

Influenza and pneumonia are the two most threatening diseases among the elderly for which vaccines are available. These conditions are the fourth leading cause of death of the elderly, accounting for a mortality rate of 170 per 100,000 elderly persons. Nationally, pneumonia accounts for more than 50,000 deaths per year, more than half of which occur in people over 65 years of age. The elderly are more susceptible to infections, due in part to a decreased immune response and the presence of other medical conditions.

The highest incidence of tetanus in the United States occurs among the elderly, over half of whom do not have sufficient serum level protection. Mortality from tetanus among the elderly is as high as 80 percent, yet tetanus is easily prevented by immunization. The Centers for Disease Control has continually noted the cost effectiveness of immunization programs for measles, polio, and influenza. I believe we would find that a program for tetanus immunization under Medicare also would be highly cost effective.

Our amendment also would allow Medicare beneficiaries to count toward the cap, expenses associated with three screenings for the early detection of cancer: The mammography for the detection of breast cancer, the pap smear test for the detection of cervical cancer, and the colorectal exam for the detection of colon cancer.

Cancer is the second leading cause of death among the elderly. While there is no known method of preventing many cancers, early detection and treatment can sometimes eradicate the disease, or at least prolong the patient's life.

Detection of cancer in its early stages, providing a better opportunity for cure, long has been a pillar of cancer control. In setting cancer control objectives for the year 2000, the National Cancer Institute is properly depending heavily on preventing much of the cancer that now causes about one-fifth of all deaths.

Relatively inexpensive technology for cancer detection is rapidly improving, and medical authorities are urging its widespread application.

Breast cancer remains a common and deadly disease. This year, 130,000 American women will be diagnosed—and 41,000 will die. Still, about a million women who have had the disease are still alive, and the survival rates are improving.

Breast cancer tends to strike older women. Fifty percent of all breast cancers occur in women over the age of 65, and both incidence and mortality increase with advancing age. However, the survival rate for older women who are treated is as good as it is for young women, and recent studies have shown that screening programs are most effective among elderly women.

Mammography is the best method for catching breast cancer early, when it is most likely to be curable. Indeed, studies show that deaths from breast cancer are up to 30 percent lower among women who have had mammography than among those who have not been screened. One survey by the American Cancer Society and the National Cancer Institute involving 280,000 women showed that regular mammograms improved breast cancer survival among women over 50; 81 percent were still alive 8 years after diagnosis, compared with the national survival rate of 65 percent.

Cancers of the female reproductive tract are the fourth leading cause of cancer deaths among women in this country. One-fourth of the cases of cervical cancer occur in women aged 65 years and older, and 41 percent of all cervical cancer deaths occur in this elderly population.

The Pap smear test is an inexpensive procedure with no discernible morbidity, is easily obtained, and has the potential for a high degree of case finding. There is overwhelming evidence that Pap smear screening has been instrumental in reducing both the incidence and mortality rates of cervical cancer as a result of the earlier detection and successful treatment of precancerous lesions. Nevertheless, 16,000 new cases of cervical cancer are diagnosed every year.

While mortality from cervical cancer is decreasing overall, elderly women are likely to be lifelong nonusers or underusers of Pap smear testing, and mortality has not declined for older women. Therefore, cancer experts suggest that cervical cancer screening through the Pap smear test should continue beyond 65 years of age if women have not received regular prior screening.

Colorectal cancer has the highest incidence of cancer mortality for men and women over the age of 75. The guaiac test, a laboratory test for blood in the stool, is one method of screening for colorectal cancer in its early, localized stage. For persons over age 50, the American Cancer Society recommends an annual guaiac test.

It should be noted that despite the indications of the value of early detection for some cancers, many of the elderly are not regularly screened. For example, one study showed that only 27 percent of persons over age 70 get the guaiac screening test for colorectal cancer.

Our amendment also would allow Medicare beneficiaries to apply toward the out-of-pocket expense cap, expenses associated with screening for high cholesterol.

An elevated cholesterol level has been identified as a major, controllable risk factor for the No. 1 killer in America: coronary heart disease. The National Institutes of Health have proven that high cholesterol is a major cause of heart attacks. Every day, more than 1,330 people die from coronary heart disease. That adds up to 550,000 deaths each year, more than from all forms of cancer combined. Heart disease is the leading cause of death of the elderly.

Heart disease accounts for more than half of all deaths in persons aged 70 and above. While males have a higher risk of heart disease than females, this difference tends to disappear among the elderly.

Fortunately, there are easy, accurate ways to test cholesterol levels. Moreover, there are ways to control high-blood cholesterol and reduce the risk of coronary heart disease should high cholesterol be detected.

Our amendment would allow beneficiaries to apply toward the cap, expenses associated with screening for glaucoma.

Glaucoma is a disorder often responsible for serious visual problems in the elderly population. Defective vision significantly decreases the mobility, safety, and life satisfaction of elderly persons and ultimately can result in a loss of independence.

Yet, glaucoma is a disorder at least partly remediable with early detection and treatment. Unfortunately, it is estimated that only a few percent of the visually impaired elderly people in this country receive adequate vision services. Medical experts say that primary care physicians should do routine screening for visual defects such as glaucoma in their elderly patients every 1 to 2 years.

Mr. President, in order for the above-stated tests and screenings to be applied to the out-of-pocket expense cap, they must be performed in conjunction with a physical examination. This process effectively promotes a comprehensive and coordinated approach to preventive health care. The cost of the physical examination cannot be applied to the cap.

Mr. President, CBO has estimated that the cost of counting the seven screening tests toward the out-of-pocket expense cap of $1,850 would involve increasing the total Medicare premium only by pennies a month. Specifically, according to CBO, the total premium, that is the basic part B and the supplemental premium added together, would be raised by a total of 2 cents a month in 1988, 17 cents a month in 1988 and 1989, and 18 cents a month in 1990 and 1991.

However, I am convinced that the Preventive Health Care Program contemplated by our amendment actually would result in long-term savings in the Medicare system as well as significant improvements in the quality of life of our Nation's elderly.

The amendment promotes and motivates individuals to identify early potentially devastating illness, thus helping to avoid a true catastrophic event. Thus, the amendment has the potential of actually reducing the Federal Government's financial burden in terms of catastrophic health care dollars because as a result of early detection of disorders, fewer people would suffer serious illness, and fewer people would exceed the out-of-pocket expense cap.

The amendment also allows for sharing between the Federal Government and the Medicare beneficiary in the financial burden of health care expenditures. The individual bears the initial cost of the health care screening tests, but if stricken with a catastrophic illness, the expended dollars are applied to the out-of-pocket expense cap.

Our amendment will provide an incentive for Medicare beneficiaries to seek preventive services. Experience has indicated that those beneficiaries who take advantage of preventive measures increase the likelihood of improving their health and quality of life, reducing health costs, and lowering their risk of disability and death.

Admittedly, our amendment represents only a small step toward what I hope will utltimately be a truly comprehensive Preventive Health Care Program under Medicare. Ideally, Medicare should provide for direct reimbursement for the expenses associated with these preventive services.

However, our amendment is significant in that, if enacted, it would represent the first time that a preventive health care component, potentially the most effective of all cost-control strategies, would be a part of the Medicare system.

The amendment is endorsed by the American College of Preventive Medicine, the National Foundation for Infectious Diseases, the American College of Obstetricians and Gynecologists, and the American Public Health Association.

Mr. President, I urge my colleagues to support the amendment.●

The PRESIDING OFFICER. Who seeks recognition?

Mr. DURENBERGER. Mr. President, I support the amendment of the Senators from Florida and Connecticut, and others, and compliment them on bringing the amendment forward.

Even though I had a similar proposal on the table for several years, in the process of negotiating the catastrophic markup in the Finance Committee, I must plead guilty to sort of stopping short. After I took care of the Reagan diseases, we were able to do colorectal examinations because of the publicity the President had, and then mammograms, even in advance the publicity that Mrs. Reagan recently received.

I think that everyone on the Finance Committee who has dealt with these health issues before I got there, which I am sure includes the chairman and others, have been sensitive to the fact that Medicare has never provided reimbursement or even indirect recognition of the fact that prevention saves money.

It is sort of a sign of the times that in this body and across the country we are beginning to change our view of what health really means. We have tended to glorify health in terms of technology and technological repair systems, very expensive hospital, high-technology drugs, doctors, and so forth. We have forgotten that the best health is that which each of us practices and which keeps us out of hospitals and out of doctor's offices.

So I think there is no question that this amendment—while perhaps the ideal step would be to provide reimbursement for certain tests—takes a step in that direction, as did my original addition to this bill, which covered mammography and colorectal examinations.

I was reminded again that it is not just Presidents these things happen to. Yestereday, I was in a small hospital in Monticello, MN, and I greeted an elderly gentleman who was standing at the cashier's counter—what they used to call waiting rooms, They do not call them that in hospitals any more—reception room, I guess.

I said, "What are you doing here?"

He said, "My wife is in for a colorectal examination."

I said, "When was the last time you had one?"

He said, "Never."

I said, "How old are you?"

He said, "39" and then chuckled and admitted to being 68.

I said, "Well, why is she having one?"

"She had some experience with polyps, and so forth, and we are afraid they might be cancerous."

I said, "You never had an examination?"

"No, I have never had an examination."

I said, "How did you know then that you never had that problem. You know, your Senator here is much younger than you and he just had a colorectal examination, found a little polyp. Fortunately it was benign. They snipped it out," so forth.

I asked him why?

He said, "Well, because I did not think there was anything wrong with me and I did not have the insurance for it."

So, I think what we are doing here in this bill besides just providing for the catastrophic remedies that will make elderly Americans and disabled Americans better buyers of health care are a few of these very unique giant steps forward in reidentifying what health is to all Americans.

I think in all the argument about spending money in the Medicare system, here is an area in which we are going to save money by encouraging people to do for themselves what they might otherwise not do.

I appreciate very much what our colleague from Florida has given us the opportunity to act on and urge the adoption of this amendment.

Mr. BENTSEN. Mr. President, I understand that a change has been made in the amendment to make it effective in 1989. Is that correct?

Mr. GRAHAM. That is correct.

Mr. President, I wish to ask unanimous consent the amendment be modified so that on page 3, line 11 where it refers to the date by which the Secretary shall establish appropriate utilization guidelines, that date be changed from January 1, 1988 to January 1, 1989.

I ask unanimous consent that the amendment be modified so as to reflect that change in date.

The PRESIDING OFFICER. The Senator has the right, then, at this point to modify the amendment.

Is there objection to the Senator's modification?

The amendment is so modified.

The modified amendment is as follows:

On page 82, strike "qualified" on line 1 and all that follows through "cancer" on line 2 and insert in lieu thereof "qualified services for the prevention of illness or injury".

On page 82, line 3 and 4, strike "examinations" and insert in lieu thereof "services".

On page 82, strike lines 5 through 20 and insert in lieu thereof the following:

"(4)(A) A service that is provided with respect to an individual covered by the insurance program under part P shall be treated as a 'qualified service for the prevention of illness or injury' if—

"(i) the service is—

"(I) glaucoma screening by tonometry,

"(II) cholestrol screening,

"(III) an exfoliative cytology (Papanicolaou) test for the detection of cervical cancer,

"(IV) a mammogram for the detection of breast cancer,

"(V) an immunization or a booster for tetanus, influenza, or bacterial pneumonia,

"(VI) a test of the stool for occult blood, or

"(VII) tuberculosis sensitivity testing;

"(ii) the service has not been provided to the individual during the preceding 12 months; and

"(iii) the service is performed as part of or pursuant to an examination that meets the requirements of subparagraph (B).

"(B) An examination meets the requirements of this subparagraph if the examination—

"(i) is performed by a physician;

"(ii) includes where appropriate (as determined under guidelines established by the Secretary) a comprehensive review of past medical history, family and genetic history, social history, current medical problems and treatments, immunization history, and organ system functioning; and

"(iii) meets such other requirements as the Secretary may by regulation prescribe (including requirements to ensure a comprehensive approach for preventive health services).

"(C) Not later than January 1, 1989, the Secretary shall establish appropriate utilization guidelines for the services described in subparagraph (A)(i).".

Mr. BENTSEN. Mr. President, Medicare generally does not get into preventive services, and what you are seeing is a seawave of change here taking place.

I frankly believe it does result in not just a great saving to the taxpayers ultimately and certainly to the individual, but all the emotional problems that might be incurred by this and all the physical suffering.

So I think it is a positive contribution and what the distinguished Senator from Florida has done is added some seven preventive procedures that can take place and would qualify for adding to the cap.

I also want to say to the distinguished Senator from Minnesota his time has come. He has been working at this for a long time. He made a very positive contribution to the bill with what he did in the way of mammograms and colorectal cancer examinations.

We were very pleased to accept it in the committee. I think that his joining in with the Senator from Florida is a positive contribution, and urge adoption of the amendment.

The PRESIDING OFFICER (Mr. Fowler). Is there further debate? If not, the question occurs on the amendment offered by the Senator from Florida [Mr. Graham].

The amendment (No. 1048), as modified, was agreed to.

Mr. DURENBERGER. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. BENTSEN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Arkansas [Mr. Pryor].

AMENDMENT NO. 1049

(Purpose: To provide an adjustment to the supplemental premium and the Federal tax liability used in computing the supplemental premium for any individual with less than the average social security benefit)

Mr. PRYOR. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Arkansas [Mr. Pryor], for himself and Mr. Domenici, Mr. Chiles, Mr. Sasser, Mr. Sarbanes, Mr. Trible, Mr. Warner, Mr. McCain, Mr. Gore, Mr. Burdick, Ms. Mikulski, Mr. Stevens, Mr. Matsunaga, Mr. Bingaman, Mr. Moynihan, Mr. Pell, Mr. Hollings, Mr. Levin, Mr. Wirth, Mr. Durenberger, Mr. Inouye, Mr. Conrad, Mr. Adams, Mr. Glenn, Mr. Fowler, Mr. Heinz, Mr. DeConcini, Mr. Grassley, Mr. Breaux, and Mr. Bumpers proposes an amendment numbered 1049.

Mr. PRYOR. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 90, line 19, insert "adjusted" before "Federal income".

On page 91, line 2, strike "$1.08" and insert in lieu thereof "$1.09".

On page 95, after line 24, insert the following:

"(2)(A) For purposes of this section, the term 'adjusted Federal income tax liability' means an amount equal to Federal income tax liability, reduced by the excess (if any) of—

"(i) 15 percent of the lesser of—

"(I) the qualified social security exclusionary amount, or

"(II) the amount received as an annuity (whether for a period certain or during 1 or more lives) under a governmental plan (as defined in the first sentence of section 414(d) of the Internal Revenue Code of 1986) which is includible in gross income under section 72 of such Code for the taxable year, over

"(ii) the amount of the credit allowable under section 22 of such Code for such taxable year.

"(B)(i) For purposes of subparagraph (A)(i)(I), the term 'qualified social security exclusionary amount' means the excess (if any) of—

"(I) $6,000 ($9,000 in the case of individuals described in subsection (b)(4)(C)), over

"(II) the social security benefits (as defined in section 86(d) of the Internal Revenue Code of 1986) received during the taxable year.

"(ii) For any taxable year beginning after December 31, 1988, each dollar amount contained in clause (i)(I) shall be increased by an amount equal to—

"(I) such dollar amount, multiplied by

"(II) the cost-of-living adjustment determined under section 215(i) for the calendar year in which the taxable year begins.

On page 96, line 1, strike "(2)" and insert in lieu thereof "(3)".

Mr. PRYOR. Mr. President, today Senator DOMENICI and I are offering an amendment to S. 1127, the Medicare Catastrophic Loss Prevention Act of 1987. Mr. President, as cosponsors of this amendment are 28 of our colleagues. Mr. President, those include Senators DOMENICI, CHILES, SASSER, SARBANES, TRIBLE, WARNER, MCCAIN, GORE, BURDICK, MIKULSKI, STEVENS, MATSUNAGA, BINGAMAN, MOYNIHAN, PELL, HOLLINGS, LEVIN, WIRTH, DURENBERGER, INOUYE, CONRAD, ADAMS, GLENN, FOWLER, HEINZ, DECONCINI, GRASSLEY, BREAUX, BUMPERS, and myself.

I would like to commend, Mr. President, Senator BENTSEN for his very splendid work that he has done in putting this major piece of legislation together in bringing it before this body at this time.

Also, I would like to thank Senator BENTSEN and others, especially Senator DOMENICI, for the opportunity of working with these two fine Senators in recognizing a problem that is in the presently drafted bill and working on a solution to that particular problem.

Mr. President, as you may have heard from your constituents in the past few weeks, this bill as passed by the House and also as presently written would have the unforeseen effect of placing a very heavy financial burden on certain individuals, namely retirees who worked for Federal, State, or local entities, which are excluded from Social Security coverage. Under S. 1127 as currently drafted, these retirees would pay significantly more for the same catastrophic benefits than other retirees.

On September 23, Mr. President, I chaired a hearing in which we heard the expressions from many groups and organizations representing these particular retirees that this amendment addresses today. The problem arises because the financing mechanism to support the proposed Medicare catastrophic coverage is tied to an individual's taxable income. Social Security benefits are generally excluded from taxation and, for the most part, they will not be considered in the calculation of the supplemental premium. However, most of the annuity for retirees who worked for Social Security-exempt employers is excluded in taxable income and will be taken into account when computing the supplemental premium.

Mr. President, Senator DOMENICI and I have been working very closely over the past several weeks with the Finance Committee and our respective staffs to correct this inequity.

Our amendment simply allows retirees who worked for Social Security exempt entities to equalize their retirement annuities for the purpose of calculating the supplemental premium. The method is very simple which we use in this amendment. Prior to computing the supplemental premium, these retirees would make an adjustment to their Federal tax liability—for premium calculations only—to reflect the average Social Security benefit.

This change, Mr. President, will ensure that Federal, State, and local retirees would pay the same for catastrophic health benefits as Social Security recipients. This is only fair. This amendment speaks to fairness.

We also believe that our amendment will help guarantee the integrity of the new system. By equalizing their financial obligation, these Federal, State, and local retirees are more likely to continue to participate in Medicare part B and catastrophic coverage.

Mr. President, I urge my colleagues to support this amendment to provide fair and equitable treatment to all retirees.

Mr. President, I ask unanimous consent before I yield that the amendment be considered in order at this time.

The PRESIDING OFFICER. Is there an objection? Hearing none, it is so ordered.

The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I ask unanimous consent that Senator CHAFEE be added as an original cosponsor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOMENICI. Mr. President, I have a statement explaining this situation concerning Government retirees and how we have corrected it with this amendment.

Mr. President, Federal retirees, and some State and local retirees, will pay higher premiums than other retirees for the same protection under S. 1127, the Medicare Catastrophic Loss Prevention Act of 1987. The amendment which Senator PRYOR and I offer today will correct this clearly inequitable situation.

The problem arises because the supplemental premium required by the bill is based on an individual's tax liability. Most Social Security benefits are not taxed, but almost all Government retiree benefits are taxed. Consequently, the premium schedule in S. 1127 extracts a higher payment from Government retirees than from other retirees.

Let me use a concrete example.

Retiree "A" has Social Security benefits of $6,000 per year and other retirement income of $8,000 per year for a total of $14,000. His supplemental premium would be $24 per year.

Retiree "B," a Federal retiree, also has $14,000 in income, but all from the Federal Retirement Program. His premium would be $61 per year.

These two individuals with the same income, getting the same level of catastrophic protection, would pay very different premiums.

The Domenici-Pryor amendment would correct this inequity by adjusting the supplemental premium formula to put Federal retirees on an equal footing with all other retirees.

It would exclude from the premium calculation for Government retirees an amount equal to an average Social Security benefit. The tax liability for Government and nongovernment retirees would be made equal for purposes of the calculation, and the premiums would be equal, too.

The two retirees in my previous example would each pay the same premium amount, $24 per year, for the same catastrophic coverage.

Mr. President, the purpose of this amendment is fairness and equality among retirees. The Congress should not make one group of retirees pay more than another group for the same protection just because some benefits come from the Social Security trust fund, some from the Federal retiree trust fund, and some from the military retiree trust fund.

I urge my colleagues to support this amendment in the Senate and in the conference. The House-passed catastrophic bill has a similar problem, only the inequality is much greater.

Mr. President, I ask unanimous consent to have printed in the RECORD a "Dear Colleague" letter, dated October 14, 1987; a table of supplemental premiums under S. 1127 and under the Pryor-Domenici amendment; and a list of group endorsements.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

U.S. SENATE, COMMITTEE ON GOVERNMENTAL AFFAIRS, SUBCOMMITTEE ON FEDERAL SERVICES, POST OFFICE, AND CIVIL SERVICE,
Washington, DC, October 14, 1987.

DEAR COLLEAGUE: During the consideration of S. 1127, the Medicare Catastrophic Loss Prevention Act of 1987, we plan to offer an amendment to address a serious concern which has arisen recently regarding this bill. As you may have heard from your constituents in the last few weeks, an unforeseen effect of this bill has been identified. Federal, and some state and local retirees will pay higher premiums than other retirees for catastrophic health insurance due to a technical problem in S. 1127, the Medicare Catastrophic Loss Prevention Act of 1987.

This occurs because the premium payment required by the bill is tied to an individual's federal income tax liability. Social Security benefits are excluded for the most part in the calculation of taxable income. However, most of the annuity for retirees who worked for social security exempt employers, such as federal, and some state and local entities, is included in an individual's taxable income. Consequently, the premium schedule in S. 1127 extracts a higher premium from these retirees.

Our amendment will provide equitable treatment to retirees who receive the majority of their income from a taxable source. This will provide not only fair treatment, but by reducing their financial obligation, these retirees would be far less likely to opt out of Medicare Part B and catastrophic coverage. This will work to protect the integrity of the catastrophic health benefits program.

If you would like more information on any of this amendment or would like to join us as a cosponsor, please contact Ms. Denise Boerum at 224-2254 or Mr. Michael Carozza at 224-0564.

Sincerely,

David Pryor.
Pete V. Domenici.

SUPPLEMENTAL PREMIUMS UNDER S. 1127, THE CATASTROPHIC HEALTH LOSS PREVENTION ACT OF 1987

Yearly income level	Yearly supplemental premium			
	S. 1127, as reported		Domenici-Pryor amendment	
	Federal retirees	Other retirees	Federal retirees	Other retirees
$10,000	0	0	0	0
$12,000	$24	0	0	0
$14,000	61	$24	$24	$24
$16,000	98	49	49	49
$18,000	135	73	73	73
$20,000	159	98	98	98
$25,000	233	159	171	159
$30,000	343	245	282	245
$50,000	800	747	734	747
$55,000	800	800	800	800

LIST OF COSPONSORS

Senators Domenici, Pryor, Chiles, McCain, Sasser, Sarbanes, Trible, Warner, Gore, Burdick, Mikulski, Stevens, Matsunaga, Bingaman, Moynihan, Pell, Hollings, Levin, Wirth, Inouye, Durenberger, Conrad, Adams, Glenn, Fowler, Heinz, DeConcini, Grassley, Chafee, and Roth.

List of Group Endorsements

National Association of Retired Federal Employees (NARFE); American Association of Retired Persons (AARP); Federation for Assuring an Independent Retirement (FAIR), a coalition of 28 Federal and postal worker and retiree groups; National Federation of Federal Employees (NFFE); American Postal Workers Union (APWU); National Association of Letter Carriers (NALC); Service Emloyees International Union; and National Treasury Employees Union (NTEU).

Mr. DOMENICI. Mr. President, I ask unanimous consent that Senator Roth of Delaware be added as an original cosponsor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOMENICI. Mr. President, this is an amendment that is just absolutely necessary. It is nothing but fairness.

If you look at the situation with the House-passed bill, with reference to Government retirees whose income is not primarily from Social Security, they receive a more unfair treatment than in the Senate bill.

Let me give you an example: If you were a retiree with Social Security benefits of $6,000 a year and your other retirement income of $8,000, for a total of $14,000, you would pay $24 a year for the new coverage. If you are a Federal retiree and you receive $14,000 in income, and if that is all from your Federal retirement, you would pay $61 a year for the same coverage. You are buying into a new program which is supposed to be totally self-financing, yet the disparity between Government retirees and other retirees would be almost 2½ to 1.

What we have done is to make that more equal. Under the circumstances that I have just described, we have made an assumption with reference to taxable income that indicates that you treat some of your Government pension as if it was Social Security income. That gives all retirees the same treatment.

We have had to add one penny of cost per unit of coverage in order to make this amendment totally budget neutral. I think it is worth that penny for everyone to be treated fairly.

I thank the cosponsors, but most important, I thank my friend, Senator Pryor, with whom I have worked for the last couple of weeks. The National Association of Retired Federal Employees and the American Association of Retired Persons support this amendment. They have been very helpful in bringing this issue to a just conclusion.

I hope the Senate will adopt it.

I yield the floor.

Mr. DURENBERGER. Mr. President, under S. 1127, the Bentsen bill, Federal retirees with fully taxable retirement income will pay more for catastrophic coverage through the supplemental premium than their private sector counterparts at identical income levels. Private sector retirees will pay less because of the total or partial exemption of their Social Security income. For example, under S. 1127, a civil service retiree with an annuity of $14,000 per annum would incur a supplemental premium charge of approximately $7 per month, $84 per year. A private sector retiree with a $14,000 pension—$6,000 of Social Security, $8,000 from private plan—would pay a supplemental premium of only $1 per month, $12 per year. The Federal retiree will pay seven times more than the private sector retiree with identical income for identical insurance protection.

In addition, retired Federal employees obtain health insurance coverage through the Federal Employee Health Benefits [FEHB] Program. The coverage duplicates some of what the Medicare Program covers, nevertheless, retirees buy FEHB coverage because it acts as a MediGap policy—it covers Medicare's deductibles and cost sharing. Federal employees will get less for their FEHB premiums if S. 1127 were enacted without this very important, very significant amendment by our colleagues from Arkansas and New Mexico.

I urge its adoption.

The PRESIDING OFFICER. Is there further debate?

Mr. BENTSEN. Mr. President, I ask unanimous consent to be added as an original cosponsor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BENTSEN. Mr. President, let me commend Senator Pryor and Senator Domenici for what they have done here. They have recognized an inequity that was in the bill. There was a glitch in it.

What we have done with that supplemental premium is we based it on income. And what finally ended up happening when we got into the question of governmental employees, they were, in effect, subject to something of a double hit. So I support this amendment and I support it because it is fair.

More importantly, I think it identifies the serious inequity that is in the House version of the catastrophic bill. This amendment will place the unique issues surrounding the governmental retirees squarely within the conference on this particular bill.

So, once again, let me commend the distinguished Senator from Arkansas and the distinguished Senator from New Mexico and urge the adoption of the amendment.

Mr. PRYOR. Mr. President, I ask unanimous consent that the distinguished Senator from Florida, Senator Graham, and the distinguished Senator from Alabama, Senator, Heflin, be added as cosponsors.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DURENBERGER addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. DURENBERGER. I thank the Chair for his recognition of my constituency.

Mr. President, I first ask unanimous consent that Senator Wilson be added as a cosponsor of this amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. PRYOR. Mr. President, the distinguished Senator from Tennessee, Mr. Sasser, is on his way. In fact, Senator Sasser has just entered the Chamber and I understand he wants to make a short statement.

Mr. STEVENS. Mr. President, I ask unanimous consent that the Senator from Virginia, Mr. Warner, be added as cosponsor to the Pryor amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STEVENS. Mr. President, I know that the distinguished Senator from Tennessee wants to speak, so let me just be brief in stating that I will be offering a companion amendment to that offered by the Senator from Arkansas. We have worked together in this area on the Government Affairs Subcommittee dealing with Federal employees. I congratulate him on this amendment, of which I am a cosponsor. We have attempted to bring about this result for Government employees before. I hope we are successful this time.

As soon as his amendment is disposed of, I will attempt to offer the companion amendment to ensure that those who are currently paying for these benefits will have their rates reduced. Senator PRYOR will be a cosponsor of that amendment. But the two, in my judgment, fit together and protect those Federal employees and annuitants who are currently in the bind so ably described by the manager of the bill, the Senator from Texas, Senator BENTSEN.

Ms. MIKULSKI addressed the Chair.

The PRESIDING OFFICER. The Senator from Maryland, Ms. MIKULSKI.

Ms. MIKULSKI. Mr. President, I rise in support of the Pryor, et al., amendment. I think it is an important step in correcting a situation in this bill which would have unintended but very negative consequences on Federal employees.

The catastrophic health insurance legislation pending before the Senate is a good idea, except if you are a Federal employee.

There are a great many Federal and military retirees living in Maryland and I believe I have heard from most of them during the last 2 months about this legislation. They feel that they will be unfairly overcharged in their premiums as a result of this legislation. They feel that they will have to get duplicative benefits and pay a higher premium.

The National Association of Retired Federal Employees tells me that a $600-a-month Social Security survivor benefit would incur no supplemental premium, and yet a $600 civil servant survivor or annuitant would incur a $90 premium.

Mr. President, that is the utility bill for a month, or it might provide other important services to a senior citizen. I have poignant letters from constituents and would like to read a paragraph from one constituent in Annapolis.

> The increase coming in our Federal health plans coupled with this increase will have to come out of our food budget and we will be practically starving. We do not think the penny coatum will cover the increased cost for retirees. Anything you can do to help Federal employees have a decent standard of living would be appreciated.

I believe the Pryor amendment is a significant step in correcting the concerns that Federal employees have. Federal employees nationwide have often been wrongly accused of double dipping. Now their own Government is going to double dip in terms of their taxation on them for the benefits they receive.

The legislation, as written, changes the rules of the game and I think that is wrong. The Pryor-Domenici amendment levels the field, and I think corrects a very important situation.

I urge that my colleagues support this amendment and also the amendment to be offered by the Senator from Alaska on the issue of paying the same and getting duplicative benefits. With the skimpy resources that we have, we do not need duplicative benefits.

I thank the chairman of the Finance Committee, the Senator from Texas, [Mr. BENTSEN], for the way he has worked with those of us who have Federal employees on untangling this most knotty problem. Because in solving the problem for the Federal employees, we do not want to face or create a more difficult problem in paying for catastrophic care. I think the Pryor amendment solves the problem, does not increase the financial responsibility to this legislation, and I would urge its adoption.

Mr. WIRTH. Mr. President, the establishment of a program of comprehensive catastrophic health care coverage for our Nation's elderly citizens is long overdue. I applaud the House for taking decisive action toward this goal, and I am pleased that the Senate is now considering this legislation, designed to eliminate the prospect of financial ruin that now haunts millions of America's senior citizens when they face extended hospitalization and health care needs.

I believe that as the Senate moves toward establishing the most significant expansion of benefits in Medicare since the program's creation, we owe it to Medicare beneficiaries—present and future—to create a catastrophic insurance package that is fair, self-financing, and comprehensive, and which promises no more to beneficiaries than can be delivered.

I want to voice my support today for this much needed expansion. Its benefits are needed and will make some major contributions to the well-being of our Nation's elderly citizens. But I also must voice my concern that S. 1127, in its current form, does not yet adequately satisfy all these important criteria. Both the House and Senate versions of catastrophic health insurance legislation currently contain an unintended but grave inequity in their treatment of Federal and public annuitants.

As the bill is now written, these retirees will pay more for catastrophic coverage under Medicare than will their private sector counterparts. Even worse, these individuals will be paying higher premiums for largely or fully duplicative coverage they do not need.

Fortunately, through the considerable efforts of several of my colleagues—in particular Senator PRYOR, Senator DOMENICI, Senator MELCHER, and Senator STEVENS—the Senate will have an opportunity to rectify this inequity. It is my hope that the Senate and any future conference committee will adopt the two important amendments these Senators have assembled that will address the problem regarding Federal retirees.

There is no question that the time has come for this much needed expansion of Medicare coverage. Without this legislation, elderly Americans will continue to be subject to financially devastating out-of-pocket expenses for health care. The average senior citizen will continue to spend an estimated 15 percent of his or her income on health care—a proportion similar to the average spent before Medicare was created.

Strengthening the financial stability of our Nation's senior citizens is a worthy objective. It is long past time that we improve the accessibility of quality care for those Americans who have contributed so much to our country. I congratulate those who have so tirelessly pushed for such a program; we are on the verge of enacting one this year. I commend the Finance Committee and its chairman for the diligent work that is reflected here in the bill before us.

But let us take the time and the care to act on this bill in a careful and comprehensive manner. We must create a program that is fair to all senior citizens—public and private retirees alike. We must enact a catastrophic plan that initially will be, and will remain, solvent, and that adequately and responsibly addresses the tremendous costs of prescription drugs. We must point logically and determinedly toward addressing the most catastrophic of all expenses—long-term care.

Let me return to consider the Federal and public retiree inequity problem, and discuss the well-crafted amendments that will address this problem.

Under S. 1127, catastrophic coverage will be financed through a set increase in the monthly part B premium for all beneficiaries, in addition to a supplemental premium to be based on the insured's tax liability. As civil service retiree annuities are fully taxable, while Social Security benefits are fully or partially tax free, Federal retirees will bear a disproportionate burden of the financing of the new program.

In addition, Federal retirees would pay the greater premiums despite the fact that most already have catastrophic coverage. Currently, Federal retirees participate in a comprehensive health insurance program—the Federal Employee Health Benefits Program [FEHB]—and contribute toward the costs of that program. FEHB currently serves as a Medicare supplement for any retiree who is eligible for Medicare. Thus, these Federal retirees are now participating in a well-crafted program—they participate in Medicare parts A and B, while FEHB picks up the cost of much of the care that Medicare currently does not cover—including catastrophic care.

If S. 1127, as now written, were to become law, these retirees would be faced with an untenable choice: either pay twice for the same catastrophic coverage, or forgo FEHB participation altogether. Federal retirees are understandably hesitant to leave the FEHB Program—Medicare-only coverage could be dramatically less comprehensive than their current coverage, and reenrollment in FEHB is prohibited after a retiree once elects to drop FEHB coverage.

For these reasons, passage of the Pryor-Domenici amendment and of the Pryor-Stevens-Melcher amendment is essential. First, Senators PRYOR and DOMENICI have introduced a proposal—of which I am a cosponsor—addressing the tax inequity. This amendment would allow Federal and public annuitants to deduct from their taxable income, for purposes of determining their supplemental Medicare premium, an amount approximating what they would receive in nontaxable Social Security benefits if they had been covered by that program.

In response to the problem of duplicative services, the Pryor-Melcher-Stevens amendment would require the Office of Personnel Management to develop a plan to make MediGap policies available to Medicare-eligible Federal retirees through the FEHB Program. Pending the implementation of such a plan, the FEHBP premiums of these Federal retirees would be reduced by an amount in proportion to the cost of the benefits newly assumed by the Medicare catastrophic benefit.

As committed as I am to the goals of S. 1127, I believe that Congress should enact catastrophic legislation—and I can support the bill only if—the potential unfair treatment of Federal retirees is addressed satisfactorily. I urge my colleagues to approve the two amendments I have described.

What is before us is a great need, and a proposal to meet that need. What we must do is to fashion that proposal into legislation that will directly address the need, and that will treat those who pay for it and receive its benefits fairly. Matching a program to this need is deserving of the Senate's very best effort.

I am ready to assist in this process in any way possible. Once again, I commend those who have brought this legislation this far. Our objective should be no less than to see this bill, once remedied in the respects I have noted, signed into law this year, so that our elderly citizens can begin to receive the benefits next year.

Mr. ADAMS. I commend my colleagues, Senators PRYOR and DOMENICI, for their hard work and dedication in addressing a problem with the catastrophic health care bill currently before us. I appreciate the time they have spent developing a solution and want them and the rest of my colleagues in the Senate to know that I strongly support their proposed amendment.

Our public employees and our military men and women work hard for our country and they deserve to be treated fairly and equitably when it comes to health care coverage. Unfortunately, the House-passed version of the catastrophic bill and the current Senate version don't treat Federal retirees fairly. Because the taxable status of their Government pension yields a higher tax liability figure on which premiums are based, Federal retirees will be forced to pay substantially more for catastrophic coverage than retirees in the private sector. Also, the additional Medicare coverage duplicates coverage retirees receive under the Federal Employees Health Benefits Plan [FEHBP]. The National Association of Retired Federal Employees [NARFE] has estimated that the average military and civil service retiree will pay up to seven times more for catastrophic coverage.

I know our country is in the midst of challenging economic times. I also know our Federal workers and military people have taken pay cuts and had to pay higher premiums for their health benefits. We will have to rely on the dedication of our Government workers as we continue to address our country's deficit problems. But to ask Federal retirees to take on the responsibility of paying a disproportionate share for catastrophic coverage is not right. Today, as Members of Congress, considering this amendment, we have an opportunity to correct this injustice.

The amendment currently before us, of which I am a cosponsor, would allow Government retirees to pay a more reasonable premium for their health coverage. Also, the amendment would direct the Office of Personnel Management to develop retiree health coverage that does not duplicate the coverage under the catastrophic plan. Therefore, Federal retirees will receive the coverage they deserve without paying more than they should.

Federal employees make critical contributions to our society by helping to carry out the many programs and laws that are the responsibility of our Government. They are people who deserve our gratitude and appreciation for their years of service. I believe this amendment provides a method for an equitable financing of catastrophic care and treats our Federal retirees with the respect they deserve.

I ask my colleagues in the Senate to support this amendment. Thank you.

Mr. GRASSLEY. Mr. President, I intend to support the amendment of my colleagues, Senators PRYOR and DOMENICI.

I think it is clear that Federal retirees, and some State and local retirees, will pay higher premiums for the same benefits under S. 1127 than would retirees who have some Social Security income, and I think that this is unfair to these public school retirees.

This inequity arises because individuals with retirement incomes of more than $25,000 and $32,000 for married couples filing jointly, of which some part is Social Security income, do pay taxes on that Social Security income, but in no circumstances do they pay taxes on any more than 50 percent of that Social Security income. Federal retirees and other public sector retirees, however, will be taxed on all of their Federal or other public annuity. Given that the benefits for which these public retirees become eligible in this program are exactly the same as those for which those with primarily Social Security income become eligible, there is an obvious inequity involved here.

The amendment offered by my colleagues does not make exactly equal the amounts that public sector retirees would pay in this program and the amounts which would be paid by those for whom Social Security is a substantial part of income. But the differences are not large.

I think that the modification in the program which would be made if this amendment is accepted would provide the equitable treatment for which public sector retirees are calling and I am happy to support it.

Mr. SASSER. Mr. President, I rise today to support the amendment of the distinguished Senator from Arkansas with regard to the coverage of retired Federal employees under pending catastrophic health care legislation. I am pleased to be among the original cosponsors of this amendment, which is so critical to achieving equity in the treatment of those who have devoted their careers to our Nation.

Recently I held three field hearings in Tennessee—in Nashville, Memphis, and Chattanooga—on the subject of "gaps" in pending catastrophic health care legislation. I would say to my colleagues, these were most revealing hearings. We heard from men and women whose life savings were wiped out because of the lack of catastrophic health care benefits. We heard from journalists and legal aid attorneys about medigap insurance scams that were being perpetrated on the elderly because of their fear of being financially devastated by the ravages of catastrophic illness. And we heard from the medical community about the lack of trained geriatricians who can help the elderly cope with the health problems of growing old.

The pending legislation before us, as we know, helps increase the benefits related to defraying costs associated with acute care. Yet, it does not go far enough with regard to assisting the elderly in coping with the staggering costs of long-term care, especially at a time when average annual nursing home costs often run to $22,000 a year—a sum that very quickly consumes the lifetime savings of all too many of our elderly population. So this legislation is but a first step in building a health insurance system that meets the financial needs of the elderly and their families as they cope with catastrophic health care problems.

Now, thanks to recent hearings held in the Senate Post Office and Civil Service Subcommittee chaired by my distinguished colleague, Senator DAVID PRYOR, we have uncovered yet another gap in pending catastrophic health care legislation—a gap that can be corrected if we adopt the amendment offered by Senator PRYOR today.

The new supplemental Medicare premium proposed under pending catastrophic health care legislation is based upon taxable income. As the National Association of Federal Retirees notes, the average Social Security recipient under this bill would pay a new supplemental premium of only $27, since Social Security payments are not subject to tax. Yet his counterpart, the average civil service employee retired on an annuity, would pay a supplemental premium of $109 because such annuities are taxed. Thus, the retired Federal annuitant pays a premium that is four times greater than the Social Security recipient, even though their economic circumstances are the same.

The House proposal for catastrophic health insurance would exacerbate this difference even more—calling for additional health care premiums of $560 per year for the Federal annuitant.

To compound this inequity, the Federal retiree receives no new major benefits as a result of this catastrophic health care legislation. The retiree already receives virtually all the benefits of pending catastrophic health care legislation from the Federal employee health plan benefits [FEHB] plan that he or she participates in.

In short, the Federal retiree is the subject of a new tax for which he receives no benefits whatsoever. This taxation without benefit is hardly a concept that is very appealing to Federal retirees.

But the problem does not end here. Some may suggest that the Federal retiree will just have to sacrifice and pay the extra Medicare premium that is contained in this legislation. However, the fact of the matter is that this new Medicare premium, may well force many Federal retirees out of their current employee health benefits plan.

The Office of Personnel Management, or OPM, has indicated that about 760,000 Federal retirees participate in a Federal employee health benefits plan and in the Medicare Part A and Part B Program. They continue their participation in the Federal Employee Health Benefits Program in order to fill the gaps in Medicare coverage. Currently, a retiree's health care cost is paid in the first instance by Medicare and then the balance, where covered, by the benefits under their Federal health insurance coverage.

But according to OPM, the sharp increase in Medicare premiums under Senate and House proposals could well create a major exodus from Federal health benefits plans. Such an exodus would decrease the number of enrollees in the major health benefit plans, especially the Blue Cross, Blue Shield, and Aetna plans. As the senior vice president for Federal programs of the Blue Cross and Blue Shield Association put it, in his statement to Senator PRYOR's subcommittee,

> If the Medicare-eligible participants in the FEHBP either dropped out of the program entirely, or switched to a Medicare supplemental option if one were available, or dropped their Medicare coverage, the premiums for many other people would rise.

I might note that the major Federal health benefit plans are already due to register average premium increases of more than 30 percent right after the first of the year. As Federal employees leave various health benefit plans due to these increased Medicare premiums, we will see even greater increases in Federal health insurance premiums.

Indeed, the American Postal Workers Union, in testimony before Senator PRYOR's subcommittee, indicated that this pending catastrophic health care legislation, unless revised along the lines of the Pryor amendment, could very well spell the end of the American Postal Workers Union health benefits plan.

This is not what the Congress should be doing in enacting catastrophic health care legislation. We should not be saying to 750,000 Federal retirees that they have to drop their health plan in order to participate in a catastrophic health care program. We should not be adopting a catastrophic health care plan on the one hand and, through the back door, dismantling the Federal employee health benefits plans that have been built up over the years for the Federal work force.

Yet we will, in effect, be doing just that if this Pryor-Sasser amendment is not adopted. That's what Blue Cross and Blue Shield has told us. That's what the Aetna Insurance Co. has told us. That's what Group Health Association has told us. That's what virtually every Federal health benefit plan has told the Post Office and Civil Service Committee.

So the choice is clear. If you support the Pryor-Sasser amendment, you are saying that there must be a sensible integration of Medicare and Federal health care benefits. You are saying that it is grossly unfair to impose a drastic new Medicare tax on the Federal employee for which he receives no benefit. You are saying that we don't want a catastrophic health care plan which causes deep disruptions in and possible termination of major Federal health insurance plans.

By voting for this amendment, you will in short be voting for a catastrophic health care plan that provides basic fiscal equity for the Federal retiree. I strongly urge my colleagues to support this much-needed corrective to the legislation we are considering.

Mr. HEFLIN. Mr. President, I would like to concur in the remarks by the distinguished Senator from Tennessee. I, likewise, will urge my fellow Senators to support the Pryor-Domenici amendment and to also support the amendment to be offered by the distinguished Senator from Alaska, Senator STEVENS. To me, I feel retired Federal employees have suffered in the past from action in the Congress relative to COLA's, and I would certainly want to do everything possible to see that they are not put at a disadvantage in regards to this catastrophic health care bill that is to be passed.

I concur in the remarks and I will make my remarks very short in that regard and I now yield the floor.

Mr. SARBANES. Mr. President, I join my colleagues in rising in very strong support of the amendment which is pending. I want to commend the chairman of the Subcommittee on Post Office and Civil Service, the distinguished Senator from Arkansas, and the ranking member, the distinguished Senator from Alaska, who will shortly, I understand, be offering another amendment to address yet another inequity that impacts on the Federal employees, for the role they have played in helping to shape this legislation in a more positive direction.

I do want to say that the chairman of the committee, the able Senator from Texas, recognized this problem in discussions that I and others have had with him and that these amendments that are coming are an effort to correct it.

This amendment deals, very clearly, with a pressing inequity and that is namely the Federal annuity is already subject to tax. If you calculate the premium on taxable income, they will then pay a higher premium than Social Security recipients, a portion of whose income is not subject to tax. So they are being taxed on the one hand on the full value of their annuity, and because they are being subjected to that tax which of course the Social Security recipient does not experience, the way the financing mechanism of this bill is worked out they will end up paying a higher premium.

This amendment seeks to address that inequity and I think does so in a very positive and constructive manner.

I salute my distinguished colleague's efforts to address these concerns and am pleased to join as a cosponsor of the amendment. This amendment would provide relief to Federal, State, and local employees by adjusting the tax liability of those groups prior to computing the catastrophic premium. The equalizing formula creates a deduction for retirees based on the difference between the average Social Security income and Social Security income actually received. When subtracted from the amount of taxable income, the deduction yields an adjusted tax liability for the sole purpose of computing the Medicare supplemental premium. The formula in no way affects the amount of income tax to be paid. It does provide equitable treatment to retirees who receive the majority of their income from a taxable source.

I am sure my colleagues recognize that when we break new ground in the development of landmark legislation, unintended consequences often arise that require us to refine our approach. Such is the case with this pending legislation because Medicare and FEHB, while two distinct programs, share many common elements that make them structurally interdependent. S. 1127 may have the adverse result of Federal employees and retirees pulling out of the FEHB, thus weakening the system. However, I am pleased to note that Senator Pryor's amendment addresses this problem. Since the Federal retirees' financial obligation would be reduced by the proposed formula, the likelihood of the retirees opting out of Medicare part B and catastrophic coverage—thereby weakening the FEHB—would also be reduced.

As my colleagues know, our once model FEHB program no longer keeps pace with private sector insurance plans. During the past 6 years, while Federal employees and retirees have paid more, they have gotten less in coverage. Many private companies, and even State and local health insurance programs, pay all the required premiums. Federal employees and retirees share the premium burden on a 40-60 percent split with the Federal Government. Unintentionally, the pending legislation offers FEHB another dose of bad medicine; and I would urge my colleagues to seriously look at the proposal by the Senator from Arkansas as a way to restore fairness for Federal retirees and to strengthen the Federal Employee Health Benefits Program.

I look forward to working with my colleagues to ensure that our final product fully supports the intentions of this legislation and the integrity of the Federal Employees Health Benefits Program.

The original amendment which will be offered seeks to address the fact that while you pay you do not get any coverage. In other words, you are already covered under premiums that you are paying. If you make an extra payment and no coverage results from that, that, too, is an inequity. Both of these amendments, I think, are designed to address a matter that the Senate, I think, obviously would not intend to be part of this bill, and I express on behalf of all of us our appreciation to the chairman and the ranking member of the subcommittee with jurisdiction in this matter in the Governmental Affairs Committee for working to shape this response to an important problem.

Mr. President, I yield the floor.

Mr. PRYOR. Mr. President, I ask unanimous consent that Senator Rockefeller, of West Virginia, be added as an original cosponsor to the Pryor-Domenici amendment. I thank the Chair.

The PRESIDING OFFICER. Without objection it is so ordered.

Is there any further debate? If not, the question is on agreeing to the amendment.

The amendment (No. 1049) was agreed to.

Mr. BENTSEN. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. DURENBERGER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1050

(Purpose: To reduce premium rates for medicare eligible Federal annuitants enrolled in the Federal Employees Health Benefits Program, and for other purposes)

Mr. STEVENS. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Alaska [Mr. Stevens] for himself, Mr. Pryor, Mr. Roth, Mr. Melcher, Mr. Inouye, Mr. Trible, Mr. Sasser, Mr. Warner, Mr. Bingaman, and Mr. Heflin proposes an amendment numbered 1050.

Mr. STEVENS. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 125, strike out line 3, and insert in lieu thereof the following:

SEC. 21. RATE REDUCTION FOR MEDICARE ELIGIBLE FEDERAL EMPLOYEES.

(a)(1) The Office of Personnel Management shall, in consultation with carriers offering health benefits plans contracted pursuant to section 8902 of title 5, United States Code, reduce the rates charged medicare eligible individuals participating in such health benefit plans, by the amount, prorated for each covered medicare eligible, of the estimated cost of medical services and supplies which, but for the catastrophic coverage benefits (as defined in section 1839(g)(2)(C)(i) of the Social Security Act, as added by section 5(a) of this Act) would have been payable by such plans.

(2) The reduced rates as provided under paragraph (1), shall apply as of the effective date of the medicare catastrophic coverage as provided under section 23(a).

(b) Authorization of Availability of Employee Health Benefits Fund for Rate Reduction.—Funds in the Employees Health Benefits Fund established under section 8909 of title 5, United States Code, are available without fiscal year limitation for costs incurred by the Office of Personnel Management in making rate reductions provided under this section.

(c) Definition.—For purposes of this section the term "medicare eligible individual" means any annuitant, survivor of an annuitant, or former spouse of an annuitant—

(A) who is—

(i) otherwise eligible for benefits under Chapter 89 of title 5, United States Code;

(ii) eligible for benefits under part A of title XVIII of the Social Security Act; and

(iii) covered by the insurance program established under part B of such title; and

(B) for whom benefits paid under title XVIII of the Social Security Act are the primary source of health care benefits.

SEC. 22. STUDY AND REPORTS BY THE OFFICE OF PERSONNEL MANAGEMENT ON OFFERING MEDICARE SUPPLEMENTAL PLANS TO FEDERAL MEDICARE ELIGIBLE INDIVIDUALS, AND OTHER PROGRAM CHANGES.

(a) Study and Report.—(1) No later than April 1, 1989, the Director of the Office of Personnel Management shall conduct a study and submit a report to the Committee on Governmental Affairs of the Senate and the Committee on Post Office and Civil Service of the House of Representatives regarding changes to the health benefits program established under chapter 89 of title 5, United States Code, that may be required to incorporate plans designed specifically for medicare eligible individuals and to improve the efficiency and effectiveness of the program.

(2) Any medicare supplemental plan recommended by the Director of the Office of Personnel Management shall not duplicate benefits for which payment may be made under title XVIII of the Social Security Act, however such recommndation—

(A) shall cover expenses which are not payable under such title by reason of deductibles or coinsurance amounts; and

(B) may offer additional reimbursement—

(i) where benefits under such title are limited by fee schedule; and

(ii) for benefits not covered under such title which may be of value to medicare eligible individuals.

(b) Feasibility Study and Report.—No later than April 1, 1989, the Director of the Office of Personnel Management shall report to the appropriate committees of the Congress whether it is feasible to adopt such standards as issued by the National Association of Insurance commissioners as required by section 1882 of the Social Security Act (42 U.S.C. 1395ss) for medicare supplemental policies, when providing medicare supplemental plans as a type of health benefits plan available for Federal employees pursuant to chapter 89 of title 5, United States Code.

SEC. 23. EFFECTIVE DATES.

On page 56, immediately before line 1, strike out "Sec. 21. Effective dates." and insert in lieu thereof:

Sec. 21. Rate reduction for Medicare eligible Federal employees.

Sec. 22. Study and reports by the Office of Personnel Management on offering Medicare supplemental plans to Federal Medicare eligible individuals, and other program changes.

Sec. 23. Effective dates.

On page 127, line 6, strike out "(20)" and insert in lieu thereof "(21)".

Mr. STEVENS. Mr. President, there are 2 million Federal annuitants today. Today I am joined by a number of Senators in offering an amendment on behalf of 760,000 of those retirees who are Medicare eligibles.

Because the new catastrophic benefits would be financed by a supplemental premium based upon tax liability, Medicare eligible Federal retirees would pay more for the extended Medicare coverage than their private sector counterparts whose annuities are based upon Social Security, were it not for the amendment that has just been adopted that was offered by Senator PRYOR. Having cosponsored that amendment, I am pleased that he has seen fit to address that issue.

Let me say parenthetically that I want to commend the two managers of the bill, as my colleague from Arkansas has done, for allowing those of us who have jurisdiction over the Federal programs affected by this bill to present these amendments today so that we can eliminate this critical issue of the duplication of premiums for the same benefits.

Federal annuitants are already insured in varying degrees against catastrophic medical costs through the Federal Employees Health Benefits Program. If retirees who have this coverage are required to pay for catastrophic protection under Medicare, they will pay twice for the same or similar coverage. That simply is not acceptable to the Congress, I know.

Elderly Federal employees should not be treated unfairly because they choose to spend their careers with the Federal Government and they have not been eligible for the Social Security benefits, or for very few of them.

This amendment that I am offering would require the Office of Personnel Management to reduce the rates charged Medicare eligible Federal annuitants participating in the Federal Health Benefits Program. The reductions would be flat amounts, figured programwide. This is a budget-neutral amendment. I personally have discussed it with Mrs. Horner, the Director of the Office of Personnel Management.

The rate reductions would not add to the Federal deficit or alter in any way the Medicare premium structure. OMB in consultation with the carriers, would reduce the rates charged Medicare eligible individuals by the estimated amount prorated for each covered Medicare eligible, of the estimated cost of medical services and supplies which, but for the catastrophic coverage benefits, would have been payable by the FEHB plans.

This premium reduction will help those annuitants in the short term.

For the long term, the amendment would require OMB to conduct a study and report to the appropriate committees of the Congress regarding changes that must be made to the health benefits program itself so those changes that may be required to incorporate plans designed specifically for Medicare eligible annuitants and to generally improve efficiency and effectiveness for this program.

That report would contain a specific legislative plan and would be due no later than April 1, 1989. The amendment also contains a requirement for OMB to review the standards issued by the National Association of Insurance Commissioners and to include in the report to Congress a recommendation on the feasibility of adopting such standards when developing Federal medical supplemental plans.

Mr. President, that may seem like a long time away, but those of us who lived through the revision of the civil service retirement system will understand what this direction to the OMB means is that they are now compelled to totally review the Federal employee health benefits plans so that they can, in the long run, eliminate this duplication that this amendment requires them to temporarily take care of by a flat-rate reduction.

We know that that is not totally subjectively fair, but it is the fairness concept put in immediately that everyone will have a reduction. The plans themselves must be adjusted in the long run so that each individual will pay for the coverage that he or she wants and be protected against duplicate, double premiums which were described by the distinguished Senator from Maryland [Ms. MIKULSKI].

I think those of us who are worried about these people want to make sure that the time is taken for consultation with the various organizations that carry these plans and that we will all have a chance to totally study them, that they be subject to the oversight that should be given by Congress before we venture into making a substantive, long-term change in the Federal employee health benefits plan.

As I said, the amendment is budget neutral. We believe that when it is coupled with the amendment that has already been adopted, offered by my good friend, the chairman of our subcommittee, Senator PRYOR of Arkansas, that this is an important step toward providing equitable treatment for Federal Medicare eligible annuitants.

I urge all Members of the Senate to support it.

Again, let me say that it is totally neutral in terms of the budget, and it does have, I am authorized to say, the support of the Office of Personnel Management, which is also very worried about the long-term aspects of these plans when viewed in connection with these new catastrophic benefits, which we all support. We are just trying to find the level of fairness that is required in dealing with these annuitants.

Mr. BENTSEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas.

Mr. BENTSEN. Would the Senator add me as a cosponsor of this amendment?

Mr. STEVENS. I am delighted to make that request.

The PRESIDING OFFICER. Without objection, it is so ordered.

The SPEAKER pro tempore. Mr. President, I think once again the Senator from Alaska has recognized an inequity which was not originally apparent. Again, it is the interaction of the Federal program in connection with the catastrophic program. This would bring equity.

Mr. DURENBERGER. Mr. President, the 8 years of listening to the Senator from Alaska on issues of importance to the country, and particularly to its Federal employees, does not mean that I should seek cosponsorhip of everything that he authors. In this particular case, I do ask unanimous consent that my name be added as a cosponsor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DURENBERGER. I urge my colleagues to support it.

Mr. PRYOR. Mr. President, I am pleased to join my distinguished colleagues, Senator STEVENS and Senator MELCHER in proposing an amendment to S. 1127 which addresses the issue of coordinating benefits under Medicare and the Federal Employees Health Benefits Program [FEHBP]. This longstanding problem in the FEHBP has received a great deal of attention in the last several months because of the pending catastrophic health insurance proposal before us. Our amendment mandates the development of a reasonable plan for coordinating benefits between Medicare and the Federal Employees Health Benefits Program. It requires the Office of Personnel Management [OPM] to provide Congress with a legislative plan to revise the Federal Employees Health Benefits Program by April 1, 1989. It also provides Federal annuitants subscribing to Medicare catastrophic with an interim rate reduction in FEHB premiums—equal in value to benefits which will be shifted from FEHB to catastrophic—until OPM offers MediGap policies as part of the Federal health program.

The time is ideal for us to look at the entire FEHB Program and address the issue of coordinating benefits between FEHB and Medicare. OPM has already begun that process. The solutions will not be simple because of the size and complexity of the FEHBP. The Federal Employees Health Benefits Program covers over 9 million Federal workers, retirees, and their dependents through 440 health insurance plans. Any change in the program will have serious implications for all subscribers. Rather than authorizing OPM to offer MediGap policies at this time, the most reasonable approach is to require OPM to examine the possible effects of creating Medicare supplemental policies. It's evident that Federal retirees who are Medicare eligible deserve a package of benefits that meshes with Medicare. While the FEHB Program undergoes review and restructuring, the interim rate reduction will provide Federal annuitants some monetary relief.

I believe this amendment is the rational first step toward a necessary revamping of FEHBP. I urge my colleagues to support this amendment.

Mr. MELCHER. Does the Senator from Minnesota seek the floor?

Mr. DURENBERGER. No.

Mr. MELCHER. Mr. President, for me the trip to this point on this issue has been most interesting. Federal retiree groups, locally and in Montana, earnestly requested that S. 1127 not be passed without guaranteeing to the Federal employee community the option—which they do not have—of obtaining Medicare supplemental health coverage through the Federal Employees Health Benefits Program. They were concerned that the only supplemental, or "MediGap," policy available to them would be one that was largely duplicative of the expanded Medicare coverage under this bill. I wanted to find a remedy for that problem.

To accomplish this goal, I drafted an amendment to require the Office of Personnel Management to make MediGap-type policies available through the Federal Employees Health Benefits Program, not later than January 1, 1989. Subsequently, I was persuaded to delay the deadline date to January 1, 1990, to allow ample time for problems, which might develop and which are not now anticipated.

It developed that Senator STEVENS and Senator PRYOR also had amendments. It was most gratifying that it proved possible to amalgamate those three separate and different amendments into just one amendment, acceptable to the three of us. It had a deadline of January 1, 1990.

Shortly thereafter, we were informed that the implementation of that amendment would cost the Federal Government over $500 million per year, in addition to the present cost of that program, and the additional cost to some of the participants in that program could reach as much as, or even more than, $300 million.

This problem is not caused by any inadequacies or shortcomings in the provisions of this bill relating to Medicare. It is the direct result of deficiencies in the law governing the Federal Employees Health Benefits Program, which is administered by the Office of Personnel Management. S. 1127 does not cause the problem. It merely brings the problem to light. Under current law, the Federal employee community can not obtain through the Federal Employees Health Benefits Program the same MediGap-type policies as are available to their counterparts in the private sector.

All participants in that Federal program seem to agree that the program cannot begin to offer that MediGap-type policy unless and until the whole program is completely restructured. That includes all of the organizations representing Federal employee groups, as well as the private insurance companies involved, and the Office of Personnel Management.

Therefore, the amendment was changed to provide only for studies of the problem, without fixing a deadline as to when that new policy must be available. When all of the studies are completed, including the study for which the Office of Management and Budget contracted in late September, and reports have been made to Congress, it will be necessary for Congress to take additional legislative action. Although I strongly believe that a deadline is advisable, I am supporting this amendment as the best compromise now available. I therefore urge my colleagues to support this amendment. But we should all understand that what we have is a type of Federal employees health benefits program which really does not lend itself to the Federal retirees getting a MediGap policy that is effective, efficient and does not cause the Federal Government or themselves additional burden. It is possible to have that.

This amendment only takes note of all the possibilities that are involved and asks for a study with recommendations to be completed sometime in the next couple of years. Then Congress can straighten out the mess in which we find ourselves after we try to apply MediGap policies to Federal retirees.

The PRESIDING OFFICER. Is there further debate on the amendment?

Mr. STEVENS. Mr. President, I thank my good friend from Arkansas for his gracious remarks and will comment upon what the Senator from Montana has said. I do not disagree with him except that the Federal employees have had a form of catastrophic insurance already and in drafting this Medicare catastrophic insurance on the community at large they would find themselves in a position of having to pay twice.

I understand fully his recitation of the evolution of the amendment he was to offer, and I am delighted he has seen fit to support the amendment that Senator PRYOR and I have worked out in tandem with the amendment that Senator PRYOR has already had adopted.

I urge everyone understand this, though. The amendment does in fact require the immediate reduction of premiums paid by 750,000 annuitants. That will take place now and will be a transition to the new plan that we will put into effect sometime I hope in 1989 to be effective the date that the Senator from Montana has mentioned.

We ought to have a new plan in place before the beginning of 1990. I think that can be done. I believe that the Office of Personnel Management agrees it can be done. And at that time this temporary flat rate reduction in premiums would cease.

I do thank the Senator from Montana for his support. I thank the Chair.

The PRESIDING OFFICER. The question is on agreeing to the amendment offered by the Senator from Alaska, Mr. STEVENS.

The amendment (No. 1050) was agreed to.

Mr. STEVENS. I move to reconsider the vote by which the amendment was agreed to.

Mr. DURENBERGER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1051

(Purpose: To establish a Federal Catastrophic Health Insurance Trust Fund.)

Mr. ROTH. I send an amendment to the desk on behalf of myself, Mr. WALLOP, and Mr. MCCAIN, and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Delaware (Mr. ROTH), for himself, Mr. WALLOP, and Mr. MCCAIN, proposes an amendment numbered 1051.

Mr. ROTH. Mr. President, I ask unanimous consent that we dispense with reading of the amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 88, line 3, strike "Supplementary" and all that follows through "Hospital" on line 4, and insert in lieu thereof "Catastrophic Health".

On page 88, line 12, strike "Supplementary Medical" and insert in lieu thereof "Catastrophic Health".

On page 88, line 14, strike "transferred" and all that follows through the period on line 15, and insert in lieu thereof "that are attributable to the changes under sections 2(a), 3(a), and 7(b) of the Medicare Catastrophic Loss Prevention Act of 1987 in services performed and related administrative costs incurred in such calendar year with respect to individuals who are covered under the insurance program established by part A).".

On page 89, strike lines 3 through 13 and insert in lieu thereof the following:

(b) TRANSFERS TO CATASTROPHIC HEALTH INSURANCE TRUST FUND.—Section 1841 is amended by adding at the end the following:

"(j) There shall be transferred from time to time from the Trust Fund to the Federal Catastrophic Health Insurance Trust Fund amounts from the premiums under this part that are attributable to the changes under sections 2(a), 3(a), 4, and 7(b) of the Medicare Catastrophic Loss Prevention Act of 1987 in services performed and related administrative costs incurred in a calendar year.".

On page 96, line 8, strike "Supplementary Medical" and insert in lieu thereof "Catastrophic Health".

On page 97, insert after line 23 the following new section:

SEC. 6A. ESTABLISHMENT OF FEDERAL CATASTROPHIC HEALTH INSURANCE TRUST FUND.

Title XVIII is amended by adding at the end thereof the following new section:

"FEDERAL CATASTROPHIC HEALTH INSURANCE TRUST FUND

"SEC. 1890. (a) There is hereby created on the books of the Treasury of the United States a trust fund to be known as the 'Federal Catastrophic Health Insurance Trust Fund' (hereinafter in this section referred to as the Trust Fund'). The Trust Fund shall consist of such gifts and bequests as may be made as provided in section 201(i)(1) and amounts transferred to it in accordance with sections 1841(j) and 1839A(e).

"(b) The provisions of subsections (b) through (i) of section 1841 shall apply to the Trust Fund in the same manner as they apply to the Federal Supplementary Medical Insurance Trust Fund.

"(c) Notwithstanding any other provision of this title, all payments under this title for benefits payable by reason of the enactment of the amendments made by sections 2(a), 3(a), 4, and 7(b) of the Medicare Catastrophic Loss Prevention Act of 1987 shall be made from the Trust Fund.".

Mr. ROTH. Mr. President, my amendment would establish the Federal Catastrophic Trust Fund specifically for the catastrophic health protection benefit under Medicare.

I should like to point out that a short while ago my colleagues agreed upon a separate trust fund specifically designated for the prescription drug benefit.

The new trust fund would operate exactly like the hospital insurance trust fund and the supplementary medical insurance trust fund currently under Medicare. The new trust fund would provide a precise means to measure the budget impact of the catastrophic health insurance benefit.

As the President's advisers sit down with congressional leaders to negotiate ways to reduce the deficit, it is critical that the Senate make clear its intention to control Federal spending. I believe the U.S. Senate can take action today to help assure that goal.

Many of the same reasons the Congress established the hospital insurance and supplementary insurance trust funds apply to the establishment of a separate trust fund for Catastrophic Health Insurance. Under my amendment, all new receipts received by the Federal Government due to increased premiums will be channeled into the new trust fund. And like the other trust funds operating under Medicare, all costs associated with the new benefits under the catastrophic bill will be paid from this trust fund.

As I have mentioned, I am concerned with the financing of the catastrophic bill. The projected costs of the bill, as reported out of the Finance Committee, rise steadily over the next 5 years. For our elderly on fixed incomes, rapidly rising costs are a very serious matter. Based on Congressional Budget Office projections, the basic catastrophic monthly premium for Medicare part B increases by 85 percent by 1992. Also, the supplemental premium, which is really a surtax, will increase by at least 67 percent by 1992. These increases do not even take into account the annual part B increases, such as next year's projected hike of $6.90. With the acceptance of other provisions such as comprehensive prescription drug coverage, then these costs will rise at even faster and higher rates.

In addition, other amendments accepted now, next year, or next Congress, could complicate the problem. Because these rising costs will burden the elderly of America, it is of the utmost importance that the catastrophic bill has a provision that will enable the Secretary to monitor more accurately the premiums and the cost of the benefit.

Under S. 1127, the Secretary of Health and Human Services is required to ensure that the catastrophic benefit remain deficit neutral. In addition, the Secretary must increase premiums for the years after 1992 to the extent necessary so that the revenues collected each year are equal to the amount needed to cover the liabilities incurred by the catastrophic insurance measure and related administrative costs incurred. Establishing the Catastrophic Health Insurance Trust Fund, therefore, would enhance the Secretary's capacity to oversee and maintain a deficit neutral and self-financing benefit.

Not only is the catastrophic trust fund a needed tool for the Secretary, but this unique fund will also guard the solvency of the already strained Medicare trust funds. With the new trust fund, cross program subsidization will not occur. For example, there will be no shifting of the catastrophic premiums to finance rapidly increasing part B program costs, or the reverse, using part B premiums to finance the catastrophic benefit. All the catastrophic benefit premiums, both the premium included in the monthly part B premiums and the yearly supplemental premium, will be collected and deposited into the distinct Catastrophic Health Insurance Trust Fund.

All the payments for the catastrophic benefit will then be made from the same trust fund. With the new catastrophic trust fund as a tool, the Secretary will clearly be able to gauge any changes needed for the catastrophic benefit according to the trust fund's balance. For example, any increases in the catastrophic cap on out of pocket expenses or in the premiums specifically for this benefit can be adjusted according to the new trust fund's status.

Mr. President, a separate Medicare Federal Catastrophic Health Insurance Trust Fund is needed to ensure a financially sound catastrophic benefit for our elderly. Adoption of my amendment will ensure that the fiscal impact of the new catastrophic bill is measured properly and accounted for accurately.

Mr. President, I urge adoption of my amendment.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from Delaware [Mr. ROTH].

The amendment (No. 1051) was agreed to.

Mr. ROTH. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. ROCKEFELLER. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROCKEFELLER addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia, Mr. ROCKEFELLER, is recognized.

Mr. ROCKEFELLER. Mr. President, with the consent of the distinguished chairman of the Finance Committee, Senator BENTSEN, I would like to briefly engage in a short colloquy with him about the matters of immense importance to me.

I had been planning to offer an amendment concerning an issue reflecting on Medicare buy-in for poor beneficiaries. I believe that the sponsor of the catastrophic bill, the chairman of the Finance Committee, Senator BENTSEN, maybe wanted to discuss his intention with respect to that matter when it comes to conference with the House. I know that he would prefer that we wait until conference to determine the final approach that he will take on this issue, and of course I respect that entirely. And I am happy to comply with that wish.

Before I ask my distinguished colleague to engage in a colloquy I would like to say a word or two, Mr. President, about his Medicare buy-in issue which I consider very fundamental. For some time even before the deliberations on catastrophic health care legislation got under way, I had been very personally concerned about the burden that is being placed on poor beneficiaries by Medicare's cost sharing requirements.

As we all know, every disabled and every elderly beneficiary regardless of income has to pay the same deductible, the same premiums and the same copayment to obtain Medicare coverage for this hospital stays and their physician services. For those elderly whose incomes put them below the poverty line, these cost sharing requirements are already taking a terrible toll.

Mr. President, I am a very strong supporter of the catastrophic legislation before us. I commend the chairman of the Finance Committee, Senator BENTSEN and everyone else who has been involved in this bill for very superb and careful leadership in the work. However I am really very concerned about the impact of the premium increases which we are going to vote into effect that will come from this bill, the need to draw more funds into the part B program, and the impact of all of this on those poor beneficiaries.

In fact, I think that most elderly will be able, so to speak, to handle a $4 increase in their monthly part B premium in exchange for the protection and the benefit improvements that the catastrophic bill promises. But senior citizens on the other hand who live on average yearly incomes of only $4,200, for example, beneficiaries who are therefore clearly below the poverty line, are going to be very much hurt by these increases unless we take action that gives them some kind of relief from that burden.

The purpose of my amendment had been to require States to use the funds that will be freed up through the underlying bill in an effort to pick up the Medicare cost sharing requirements of beneficiaries below the poverty line. Specifically, the amendment would have given States 5 years to phase in this coverage for beneficiaries whose income make it impossible for them to qualify for Medicaid but who fall below 90 percent of the poverty level.

I have discussed this matter with the distinguished Senator from Texas, the chairman of the Finance Committee. I know full well that he recognizes the plight of poor Medicare beneficiaries. And I would like very respectfully to inquire about his concerns or plans regarding this matter when it comes to conference with the House.

Mr. BENTSEN. I would like to say to the distinguished Senator from West Virginia that I know of his very serious concern on this issue. I share that concern. It is something that has to be addressed. The impact of Medicare's cost-sharing requirement is more severe with beneficiaries with very low incomes than it is for middle-income and the upper-income enrolled in Medicare. So we talk about his amendment and his concerns. And I must say to him I am appreciative of his agreeing to wait until conference to resolve this. But I want the Senator to understand my dedication to it because I believe it is time to act on this issue. I intend to pursue an agreement with our House conference on the catastrophic bill that will ensure buy-in coverage for poor beneficiaries.

The Senator from West Virginia has been a leader in that. He has included a phase-in. And he has set something up in the way of a Secretary waiver for States that have an undue burden who plan to achieve it. Some of those States will not need to waive it. But others will have to because of their own financial problems that they are enduring right now.

I want to assure the Senator from West Virginia, Senator ROCKEFELLER, and the other supporters of the buy-in amendment. But I hope we can achieve conference agreement along the lines of that amendment. The House has a provision that would require States to do even more. In fact, I think Senator ROCKEFELLER has constructed an approach that will be most helpful in working the final details with the House.

So I think he has made a major contribution. I compliment him for his leadership on that issue. I will do everything I can to try to address that concern in conference.

It certainly is time to provide some badly needed relief to the poor who cannot qualify for Medicaid and who can only truly benefit from Medicare through relief from the program's cost-sharing requirements.

I would be delighted to work at it.

Mr. ROCKEFELLER. I am very grateful to the distinguished chairman of the Finance Committee, the Senator from Texas, Mr. President. I think that is a very important area that we are talking about. I have full confidence that that will be worked out in conference. I am very grateful to the Senator from Texas.

Mr. President, I also strongly support the bill now before us, The Medicare Catastrophic Loss Prevention Act of 1987. With this legislation, I believe we will take an historic step forward in protecting senior citizens from the financial ruin that occurs with serious illnesses for medical problems strike.

The lead sponsor of this bill (S. 1127), and the distinguished chairman of the Senate Finance Committee, Senator BENTSEN, deserves enormous praise for his efforts to address the crisis of catastrophic medical expenses. From the time he took the helm of the committee, Senator BENTSEN carried out a process of thoroughly examining the catastrophic issue, considering ideas and options from all interested parties, and crafting a responsible legislation solution that attracted considerable bipartisan support. I appreciate his leadership and the fine work of his staff.

As a new member of the Finance Committee, I found the problem of catastrophic health care costs to be a sobering and immense challenge. Through the hearings we held on this issue, it became clear that serious gaps in coverage exist not only in Medicare, but also in other programs and for other segments of our population. Moreover, what's catastrophic in terms of medical expenses for individuals with lower incomes is not necessarily so for those with more ample financial resources. Finally, the Federal deficit places severe limits on the extent to which additional Government spending can solve the catastrophic problem.

Mr. President, this legislation attempts to make improvements in Medicare that are most urgently needed. The bills's major objective is to prevent senior citizens from incurring huge financial losses when they require long hospital stays and other services covered by Medicare that cause medical expenses to mount. Provisions are also included in S. 1127 to enhance coverage for home health and hospice care—both are areas long overdue for expansion and reform.

We tried in this legislation to do what is responsible, affordable, and truly responsible to the most critical gaps in Medicare. At the same time, I am hopeful that the floor action this week and the subsequent conference with the House will result in changes to strengthen the legislation even further. Months have passed since the Finance Committee unanimously approved the bill. There has been time to consider and develop approaches for addressing concerns such as coverage of prescription drugs, the tragic problems of spousal impoverishment, and the impact of higher premiums and beneficiary cost on the elderly below the poverty level. These issues are especially important to the senior citizens of my State of West Virginia, and I join many of my colleagues in supporting additions to the bill to address them.

I would also like to note that when discussing this bill in the Finance

Committee, the problems with Medicare's mental health benefit were discussed in some length. As I have said before, my view is that it is imperative that the benefit be expanded. I am pleased that the Finance Committee's reconciliation package includes a provision to achieve this.

When I travel back home and meet with the elderly of my State, I am reminded over and over again of the problems and worries they face that relate to medical expenses. They all know a relative or a neighbor who has been literally wiped out as a result of medical bills. Everywhere I go, senior citizens tell me abut the gaps they see in their Medicare coverage when they are forced to visit a doctor repeatedly or enter the hospital a second time in a year.

A problem that is becoming especially severe has to do with prescription drugs. In order to purchase drugs, many senior citizens are making painful choices and sacrifices.

That is why I have strongly supported the efforts to include prescription drug coverage in this legislation. I can't praise my colleagues enough who are responsible for the amendment that has come to the floor. Senators Mitchell, Heinz, Daschle, Chafee, and Durenberger have spent untold hours and days working out the details of a responsible approach for coverage of prescription drugs.

Thank to their efforts, and the help of many others, we are finally doing something about the growing problem of drug costs for so many senior citizens. When the benefit is in full effect, it will help those who need it most, and begin to lift the financial burden of prescription drug expenses when they reach intolerable proportions.

And overall, the legislation before us will ease the crisis of catastrophic medical costs. It is time to take action, and I urge all of the Senate to support this bill. It is also time to make a renewed commitment to solving the remaining problems associated with the catastrophic issue. When we complete our work on this bill, we must begin to seek out ideas and approaches to ultimately bring about true protection from unmanageable health care costs for all Americans, young and old.

Again, Mr. President, I compliment Senator Bentsen for his tremendous accomplishment on behalf of senior citizens.

Mr. President, I want to add a word about how glad I am that it appears that we are about to complete action on this catastrophic bill. I am a cosponsor of the bill because I believe in a very deep way that it responds to the most pressing issues that fall within the much broader problem of catastrophic medical expenses.

As a member of the Senate Finance Committee, Senator Bentsen has made sure that all of us have reviewed this very carefully. It is being reviewed very carefully now by the full membership of the Senate and under Senator Bentsen's leadership we decided in fact that the first step must be to modify Medicare so that it protects beneficiaries from ruinous medical bills that in fact pile up from long hospital stays and frequent visits to the doctor.

I should say also, Mr. President, there are a lot of other very important parts of this bill. Medicare coverage for home health visits are significantly improved. Medicare coverage for hospice care is significantly improved. In general, to me the point is to bring an end to catastrophic medical expenses to beneficiaries who have the misfortune of a serious illness, a serious accident, or chronic health problems.

Currently, Medicare coverage in these circumstances ends at a certain point, and the beneficiary himself or herself has to start paying for bills that literally wipe them out financially.

We have considered and accepted the prescription drug amendment. I think that is an outstanding part of this bill that I hope we are about to pass.

All of us have heard from citizens in our own States, and I have in my State of West Virginia. Seniors use much more prescription drugs than any part of our population—in fact, twice as much as any group of people 65 and below. All of this is out-of-pocket expense for them, which they are not able to afford, and therefore which they sometimes do not get. That is not acceptable in modern American society. This drug amendment is going to bring relief, and I am very glad for that.

AMENDMENT NO. 1052

(Purpose: To provide that catastrophic benefits be covered on a voluntary basis)

Mr. WALLOP. Mr. President, I send an amendment to the desk and ask that it be stated.

The PRESIDING OFFICER (Mr. Shelby) The amendment will be stated.

The legislative clerk read as follows:

The Senator from Wyoming [Mr. Wallop), for himself and Mr. Helms, proposes an amendment numbered 1052.

Mr. WALLOP. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 56, strike lines 5 and 6 and insert in lieu thereof the following:

"SCOPE OF BENEFITS FOR CERTAIN INDIVIDUALS COVERED UNDER PARTS A AND B".

On page 56, line 10, strike "shall" and insert in lieu thereof "(and who is an individual described in section 1890(a)) shall".

On page 57, line 4, strike "may" and insert in lieu thereof "(and who is an individual described in section 1890(a)) may".

On page 60, strike lines 1 and 2 and insert in lieu thereof the following:

"SCOPE OF BENEFITS FOR INDIVIDUALS COVERED UNDER PART A ONLY AND CERTAIN INDIVIDUALS COVERED UNDER PARTS A AND B".

On page 60, line 6, strike "shall" and insert in lieu thereof "(or who is covered by such program but is not an individual described in section 1890(a)) shall".

On page 61, line 6, strike "may" and insert in lieu thereof "(or who is covered by such program but is not an individual described in section 1890(a)) may".

On page 62, line 16, strike "in" and all that follows through the period on line 19 and insert in lieu thereof "(or who are covered by such program but are not individuals described in section 1890(a)) in the same manner and to the same extent as those provisions apply to individuals who are covered under both such programs (and who are individuals described in such section).".

On page 66, strike lines 17 and 18 and insert in lieu thereof the following:

"DEDUCTIBLES AND COINSURANCE FOR CERTAIN INDIVIDUALS COVERED UNDER PARTS A AND B".

On page 66, line 22, strike "during" and insert in lieu thereof "(and who is an individual described in section 1890(a)) during".

On page 68, lines 4 and 12, strike "shall" and insert in lieu thereof "(and who is an individual described in section 1890(a)) shall".

On page 71, strike lines 12 and 13 and insert in lieu thereof the following:

"DEDUCTIBLES AND COINSURANCE AMOUNTS FOR INDIVIDUALS COVERED UNDER PART A ONLY AND CERTAIN INDIVIDUALS COVERED UNDER PARTS A AND B".

On page 71, line 18, strike "shall" and insert in lieu thereof "(or who is covered by such program but is not an individual described in section 1890(a)) shall".

On page 72, line 22, strike "shall" and insert in lieu thereof "(or who is covered by such program but is not an individual described in section 1890(a)) shall".

On page 73, line 6, strike "shall" and insert in lieu thereof "(or who is covered by such program but is not an individual described in section 1890(a)) shall".

On page 73, line 14, strike "in" and all that follows through the period on line 16 and insert in lieu thereof "(or who are covered by such program but are not individuals described in section 1890(a)) in the same manner and to the same extent as those provisions apply to individuals covered under both such programs (who are individuals described in such section 1890(a)).".

On page 74, line 23, strike "in" and insert in lieu thereof "(and who is an individual described in section 1890(a)) in".

On page 75, line 20, strike "part B," and insert in lieu thereof "part B (or who is covered by such program but is not an individual described in section 1890(a)),".

On page 76, line 5, strike "shall" and insert in lieu thereof "(and who is an individual described in section 1890(a)) shall".

On page 76, line 13, strike "in" and insert in lieu thereof "(or who is covered by such program but is not an individual described in section 1890(a)) in".

On page 77, line 24, strike "entitlement" and insert in lieu thereof "with respect to an individual described in section 1890(a), entitlement".

On page 81, line 3, strike "incurs" and insert in lieu thereof "(and who is an individual described in section 1890(a)) incurs".

On page 81, line 19, strike "that" and insert in lieu thereof "(and who is an individual described in section 1890(a)) that".

On page 82, line 7, strike "shall" and insert in lieu thereof "(who is an individual described in section 1890(a)) shall".

On page 85, line 25, strike "shall" and insert in lieu thereof "(and who are individuals described in section 1890(a)) shall".

On page 87, line 1, strike "shall" and insert in lieu thereof "(and who are individuals described in section 1890(a)) shall".

On page 87, line 22, strike "for" and insert in lieu thereof "(and will be individuals described in section 1890(a)) for".

On page 88, line 5, strike "to" and insert in lieu thereof "to such".

On page 90, line 3, strike "and".

On page 90, line 5, strike the period and insert in lieu thereof "; and".

On page 90, between lines 5 and 6, insert the following new subparagraph:

"(C) is an individual described in section 1890(a).".

On page 90, line 11, strike "part," and insert in lieu thereof "part (and was an individual described in section 1890(a)),".

On page 94, line 19, strike "for" and all that follows through the period on line 21, and insert in lieu thereof "(and was an individual described in section 1890(a)) for the longer period during the taxable year (or if such period is the same for both spouses, either spouse).".

On page 94, line 24, strike "part," and insert in lieu thereof "part (and are individuals described in section 1890(a) during such year),".

On page 97, line 8, strike "for" and insert in lieu thereof "(and is an individual described in section 1890(a) of such Act) for".

On page 97, line 11, strike "months" and all that follows through "coverage" on line 12, and insert in lieu thereof "number of months".

On page 97, lines 14 and 16, strike "of coverage".

On page 98, line 14, strike "part B," and insert in lieu thereof "part B (and who is an individual described in section 1890(a)),".

On page 101, between lines 3 and 4, insert the following new section:

SEC. 9A. ELECTION TO RECEIVE CATASTROPHIC COVERAGE BENEFITS.

Title XVIII is amended by adding at the end thereof the following new section:

"ELECTION TO RECEIVE CERTAIN BENEFITS UNDER PARTS A AND B

"SEC. 1890. (a) An individual is described in this section for any period of time in which the individual elects in accordance with subsection (b) to pay the appropriate monthly catastrophic coverage premium amount under section 1839(g) and (if required for such individual) applicable supplemental premium under section 1839A.

"(b)(1) An election made under subsection (a) shall be made under procedures established by the Secretary and (subject to paragraph (2)) shall be effective with respect to any calendar year beginning after the date on which the election is made.

"SEC. 1882. (k) Nothing in this Title shall be construed as to prohibit the offering of a medicare supplemental policy which provides benefits that duplicate any benefits provided by any sections of this Title which requires voluntary participation."

Mr. WALLOP. Mr. President, the amendment is a printed amendment, so all Senators should have some familiarity with it.

Let me begin by quoting from page 4 of the committee report. The second full paragraph says:

> Fourth, the committee believed that the receipt of catastrophic coverage, and the payment of the associated premiums should be on a voluntary basis like current Part B Medicare coverage.

Mr. President, that is a lie. That is not what this bill does. This bill says that it is voluntary unless you withdraw from part B, which is a good and tested provision of the law. It misleads the public into thinking that something is voluntary when you have a pistol at your head and it is said, "If you withdraw, I'll shoot you, but you may withdraw."

The amendment I propose is an amendment to make it truly voluntary.

The Medicare catastrophic health bill is stated to be a voluntary program, but it is voluntary only to the extent that individuals who had previously voluntarily elected to participate in the part B physicians' services program will be automatically enrolled in the catastrophic coverage.

Our proposed amendment would make the catastrophic program truly voluntary by providing anyone who desired to participate to make an actual election to receive such coverage. Those who do not participate would still be able to participate in the private part B MediGap insurance.

Mr. President, the Senate is now considering a complicated and controversial proposal to expand the acute health care coverage of the Medicare Program. This program provides short term acute care insurance for senior citizens and disabled workers. The pending proposal would expand this insurance to remove the limits on acute care coverage. Simply, what we are doing is replacing the MediGap health insurance provided by private, competitive insurance companies, with Federal—that is Government—health insurance.

About 70 percent of retired individuals have purchased MediGap policies from private insurers. While the extent of benefits does vary, all medigap policies must provide a basic range of benefits as outlined in the so-called Baucus amendment. Such policies serve as a wrap around to supplement the coverage provided for Medicare. A typical policy would cover the coinsurance and deductibles required for Medicare and may provide reimbursement for hospital charges not paid in full by Medicare.

In addition to the 70 percent with private supplemental Medicare insurance, another 10 percent of the elderly are covered by Medicaid as well as Medicare which gives them comprehensive health care coverage. Of the 20 percent of our senior citizens without Medicare supplemental coverage, about half can afford a private policy but have chosen not to purchase this insurance. The remaining 10 percent of all retired cannot afford to purchase the private insurance, but have incomes too high to be eligible for Medicaid. In short we have developed this cumbersome legislation in response to a problem involving only 10 percent of our senior citizens.

We have mislabeled this legislation the Medicare Catastrophic Protection Act of 1987. Many participants will wrongly believe that they will be protected from all major medical expenses. In reality, we are simply filling in the Medicare Program.

Medicare, which covers only about one half of the medical expenses of the elderly, has focused on covering short term acute care. For instance, Medicare will only cover the first 90 days of hospital care. Any hospital stay exceeding the covered spell of illness is not reimbursed by Medicare. Even the days that are covered involve some coinsurance. What this bill does is cover a hospital stay regardless of the length of illness. Medicare coinsurance and deductible would also be covered by the new catastrophic program.

Mr. President, I ask unanimous consent that my amendment as drafted be considered in order. Apparently, there is one portion of the amendment that has already been amended.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WALLOP. Mr. President, while long-term hospital stays are a catastrophic expense no matter what type of insurance, only 1 percent of the Medicare population have such expenses in any 1 year. The catastrophic event confronting the elderly is not long hospital stays, but rather nursing home care. One recent study of senior citizens, who have out-of-pocket expenses in excess of $2,000 annually, indicated that 81 percent of their expenses were for nursing home care. Only 10 percent of their costs were for hospital bills and 6 percent were for physician services. This legislation, intended to deal with catastrophic medically expenses, will affect, at most, 16 percent of such expenses. And, for most elderly, these expenses are already covered by private or public health insurance. In short, we have once again found a solution for a nonexistent problem.

A recent survey by the health insurance association indicates that 86 percent of the policies reviewed offer the same type of expense coverage which is provided through this legislation. And, many of these private policies offer benefits not covered by Medicare nor covered by this new Medicare catastrophic provision. This includes dental and vision care, prescription drugs, and physician charges not covered by Medicare.

Mr. President, I ask unanimous consent that a recent article in Business and Health by Carl Schramm describing private sector health insurance for the elderly be included in the RECORD at the end of my remarks.

The **PRESIDING OFFICER**. Without objection, it is so ordered.

(See exhibit 1.)

Mr. **WALLOP**. Mr. President, proponents of this legislation will argue that despite the fact that 80 percent of the elderly already have the catastrophic protection provided by the bill, there is a need to help those who have no coverage. I would agree. However, large- and medium-sized employers have provided health insurance coverage to their retired employees as a supplement to Medicare. Despite congressional decisions on tax policy which have made funding of such programs very difficult, 57 percent of employees in medium and large companies will receive employer financed health care when they retire. And the number is growing every year. Of course, passage of this legislation will destroy such plans, and force these workers to pay for the same coverage out of their retirement benefits.

While we are busy expanding both Federal power and Federal taxes, we have totally missed our objective. After the passage of this legislation, we still will not have met needs for health and long-term care coverage. In fact, one liberal critic of the Senate bill has written that the financial hardships of catastrophic health care for the lower income aged may be exacerbated, not ameliorated, by this legislation. The financing mechanism is tied into the part B premium. The Social Security Administration recently announced that the basic premium is scheduled to increase by almost 40 percent in January. In addition, we will provide a further increase of 16 percent by the new premium for the catastrophic benefit. And a drug benefit will further increase the premium.

If I were a retired individual covered by an employer-provided health plan, I would be more than a little upset at the prospect of losing this coverage and then having to purchase what may be less comprehensive coverage, at a greater expense. And a retired person with a modest income will soon be struggling to meet these new charges that the Federal Government will impose upon him.

There is a fascinating article which appeared in the same journal as the Schramm article. The focus of this article is that many health needs of the elderly will go unmet even should this legislation become law.

Mr. President, I ask unanimous consent that the article by Judith Peres also be printed in the RECORD at the end of my remarks.

The **PRESIDING OFFICER**. Without objection, it is so ordered.

(See exhibit 2.)

Mr. **WALLOP**. Mr. President, an essential point is that Medicare out-of-pocket expenses for the elderly have two forms. These expenses are either for those services not covered by Medicare, or for Medicare deductibles, coinsurance, and premiums. This bill does practically nothing about the first expense. It simply addresses the costs surrounding Medicare, such as the deductible. As I have previously indicated, such expenses are already covered by private insurance or Medicaid for the largest portion of America's elderly.

I have described the purpose of the bill as primarily a duplication of existing health benefits. It is obvious that it will drive private health insurance from the field. But what will we receive in return. I voted for the bill when it was reported by the Senate Finance Committee. Since the bill was reported, we have received an update on the cost of the program. The new numbers though ameliorated by the action of the Senate earlier today are so disturbing that we should, but obviously will not, pause in our rush to pass this legislation.

The advocates of the legislation claim that the beneficiaries, our senior citizens, will pay for the entire cost of the bill. So what are the costs of this new program? Recent OMB projections show that the Senate bill's first year costs will be $2.5 billion. After 10 years, the cost will be up to $27.2 billion, but then the costs rise dramatically over the next 10 years to $142.2 billion. By correcting the indexing formula this afternoon, we will reduce costs, but nevertheless the costs will still be substantial.

The annual premiums that the elderly will pay, while beginning at a very modest $120, will double every 5 years. In 20 years, the average premium will be about $3,500 and many of today's retired citizens will be alive and purchasing their insurance mandatorily at $3,500. For those paying the supplemental premium, the charge will be much higher, averaging $5,300. The cost of this benefit will soon exceed the value of the insurance for some senior citizens.

It is clear that the supporters of this new benefit expect to use general revenues at some time to bail out the program when costs begin to escalate. However, at the same time they will be demanding a bailout for the Catastrophic Health Program, the Medicare Program in its entirety will be tottering at the brink of bankruptcy. Any new spending on Medicare will be directed toward keeping the entire program solvent, rather than subsidizing the catastrophic benefit. We will not be able to rely on general revenues, which is really a euphemism for deficit spending that draws the leadership of both parties and the White House together at this moment, to finance catastrophic benefits. People need to understand that fact before they start celebrating the passage of this expensive benefit.

Several years ago, Milton Friedman wrote a series of essays on the value of a free marketplace. This market encompassed not merely economic exchanges, but the markets of politics and ideas. He described political power as the "ability to eliminate or reduce the number of alternatives from which others are free to choose." He went on that the more competitive a political market, the more likely the goals of social efficiency, political freedom, and social equality will be attained.

The amendment I am offering today with my colleague from North Carolina, Mr. HELMS, is based on this key concept of freedom to choose. It allows program participants to make a decision as to whether they want to participate in the Catastrophic Benefit Program. We have been assured and I have read from the report that the Senate bill is a "voluntary" program.

Mr. President, let us make it a voluntary program. It is not. It misleads the seniors to say that it is, and if it is our purpose we should say that. If it is not, we should remove that from the report of the Senate and flat make it mandatory and let the public know that is what we have done. It is voluntary by virtue of being attached to the voluntary participation part B program for physician services. If an individual does not want the catastrophic coverage, then part B coverage must be dropped.

Over 95 percent of those eligible participate in the part B program. It is a wonderful bargain for the senior citizens. It provides an important health service, physician care. Administrative costs are subsidized. And, premiums are heavily subsidized by general revenues. It is doubtful that many elderly would want to give up part B coverage merely to drop catastrophic coverage.

The catastrophic benefit would be funded primarily by the participants. The opponents of a voluntary program fear that many elderly will not participate in the program. This would drive up the premiums and make the program more costly and less attractive to the elderly. However, 86 percent of those who can afford private Medigap insurance do purchase such coverage. People are aware of the need and would participate in the program if it is in their interest. My amendment would return to the people the right to choose whether they participate in a new Federal program or continue their private insurance plans.

It is probable, based on the high participation rates in the part B program, that most senior citizens will participate in the Catastrophic Health Care

Program. On the other hand, private insurers may develop a better product, and some will switch. The private insurers will not have the opportunity to develop policies if there is no free choice. That is what this amendment is all about.

In closing, I would remind you of the comment from Thomas Jefferson's first inaugural address on the limits of government. It requires a "wise and frugal government, which shall restrain men from injuring one another, which shall leave them otherwise free to regulate their own pursuits of industry and improvement." We are simply seeking to emphasize the basic right of people to make decisions for themselves rather than have the Government make decisions for them.

EXHIBIT 1

WHY RESTRUCTURING MEDICARE WILL NOT WORK

(By Carl J. Schramm)

The political appeal of current proposals to expand Medicare to include catastrophic cost protection is proving irresistible. No one can predict accurately what shape the final proposal will have or how much it will cost. What is clear, however, is that it will not cover the most expensive event that older people face today: long-term care.

A recent study, financed by the National Center for Health Services Research and Health Care Technology, determined that older people who had more than $2,000 worth of out-of-pocket expenses in a given year spent 81 cents of every dollar on nursing home care. At the same time, they spent 10 cents of every dollar on hospital bills and 6 cents on physician fees (see graph). Older Americans are spending so little of their own money on hospital and medical bills because most of them already have catastrophic hospital insurance through public and private means.

PRIVATE COVERAGE ADEQUATE FOR MOST

Today, Medicare pays a large portion of the elderly's expenses for acute illness, while private Medicare supplemental insurance, known as Medigap policies, picks up the deductibles and coinsurance that Medicare assigns to the elderly. The proposed restructuring of Medicare effectively would dismantle a partnership between government and private enterprise that has taken care of the hospital and medical needs of older people at a reasonable cost to government, insurers and the elderly themselves.

Studies conducted by the commercial insurance industry confirm that this partnership has served older Americans well. Last year, the Health Insurance Association of America (HIAA) surveyed 12 large commercial carriers that underwrite about two-thirds of the total individual Medigap business written by commercial insurers. The survey results showed that 86 percent of their policies already offer the comprehensive coverage that Congress proposes to make available through Medicare. That means they provide unlimited hospital days and pay 100 percent of all Medicare allowable hospital expenses (see BUSINESS AND HEALTH, May 1987, pp. 34-39).

The survey also showed that 93 percent of those companies' policies have unlimited coverage of other Medicare allowable expenses such as physician and surgeon fees, laboratory tests and physical therapy. In addition, most policies—92 percent—provide first dollar coverage by picking up the Medicare hospital deductible of $520, and 10 percent even pay the annual medical deductible of $75. Some Medigap policies will cover expenses that Medicare will not pay for at all, such as dental and vision care, routine checkups and hearing aids. Eighteen percent cover prescription medicine, and 22 percent cover physicians' bills that exceed Medicare allowable charges.

The policies in the survey exceed the standards found in the 1980 Baucus amendment to the Social Security Act that protects the elderly from overpriced and substandard Medigap insurance. The amendment ensures that Medigap policyholders receive protection from catastrophic hospital and medical bills (see BUSINESS AND HEALTH, April 1986, pp. 25-30). The amendment also requires all Medigap insurance policies to pay benefits for preexisting health conditions after the policy has been in force for six months.

In 1986, the U.S. General Accounting Office (GAO) investigated the effectiveness of the Baucus amendment's regulation of the Medigap insurance market and reported its findings to the House Ways and Means health subcommittee last October. After reviewing 142 policies sold by 92 commercial insurers and 13 Blue Cross and Blue Shield plans, the agency found that the elderly were being protected adequately by the Baucus amendment and made no recommendations for further regulatory control.

GAO also reported that over 60 percent of the commercial Medigap insurers surveyed with premiums under $50 million in 1984 did not meet loss ratio requirements under the Baucus amendment. However, interpreting loss ratios for a certain year may be difficult for several reasons. For instance, said GAO, the policy may be new and will experience a higher loss ratio once it matures. In addition, the plan may have a high policyholder turnover and experience low loss ratios due to the six-month exclusion of preexisting conditions for new enrollees. According to GAO, Medigap policies sold by commercial companies with more than $50 million in premiums generally met the Baucus loss ratio requirements.

LONG-TERM CARE NEEDS NOT MET

The GAO study concluded that Medigap policies shield the elderly from high medical and hospital expenses. But the report also noted that few older people ever need this much protection. Citing a Health Care Financing Administration statistic, GAO reported that only 2,000 of this country's 31 million older people spent more than 150 days in the hospital in 1984.

Today, public programs such as Medicaid and Medicare, together with private insurance, offer 80 percent of the country's elderly protection from catastrophic hosptial and medical bills. But what about those older people who cannot afford to buy private Medigap insurance and are not eligible for Medicaid? The Department of Labor reports that currently only 57 percent of employees in large- and medium-sized companies will receive employer provided health benefits that supplement Medicare when they retire. Although this percent is expected to increase, coinciding with the growing number of the elderly, the present federal tax policy keeps many employers from doing more for their retired employees. Specifically, the Deficit Reduction Act of 1984 (DEFRA) has limited the tax advantages of prefunding retiree health benefits. DEFRA sets limits on an employer's tax deductible contributions to employee trust funds. Also, investment income on an employer's retiree benefit reserves is subject to taxation. Prefunding for this coverage also would help working people prepare for the biggest catastrophic health care cost of old age—long-term care. Although the elderly generally are covered for acute care, only 1 in 10 people over age 65 is protected from the cost of a lengthy nursing home stay. According to the Department of Health and Human Services (HHS), 500,000 elderly spend down to Medicaid in nursing homes in order to get assistance with their long-term care bills. Most people do not realize the enormity of the financial risk they run when facing long-term care.

Misconceptions about Medicare coverage of long term care are echoed in popular beliefs about the role that private insurance plays in providing this kind of protection. In spite of industry educational campaigns, many older people still think that they already have long-term care coverage because they own a Medigap policy. But Medigap insurance is not long-term care insurance.

The HIAA survey found that as of June 1986, 12 large companies were offering individual long-term care indemnity policies and another 17 companies were developing them. Since that time, eight more companies have begun selling long-term care indemnity insurance. These are policies that offer a fixed amount of money per day. At least 150,000 individual long-term care indeminty policies have been sold by HIAA members in all 50 states. The survey reveals that the typical indemnity plan covers three to five years of skilled, intermediate and custodial care in a licensed nursing home. Depending on the type of coverage, daily benefits range from as low as $20 up to $100 for nursing home care, for which the average cost per day is $67 and the average stay is about two and a half years, according to HHS. About two-thirds of the policies offer a home health care benefit, which often is based on a reduced daily nursing home rate.

Private insurers have developed other kinds of long-term care policies to meet the different needs of a growing elderly population. Some of these policies are group plans that employers can offer as part of a health plan.

Insurers believe that private long-term care insurance will give the elderly an even fuller measure of security. For these reasons, health insurers are not supporting current proposals to restructure Medicare. They believe such proposals are the product of a society that is not sure of what its real needs are. And what funds exist should not be spent to replace the protection most older people can afford through private insurance.

EXHIBIT 2

ELDERLY CARE: A CASE OF CATASTROPHIC CONFUSION?

(By Judith R. Peres)

After nine months of congressional debate, there is widespread misunderstanding as to what is catastrophic coverage. It is clear that there are unmet needs for health and long-term care coverage and they will still go wanting after so-called catastrophic legislation is passed. The current confusion stems from various interpretations of what constitutes a financial catastrophe. Questions need to be asked about the current catastrophic proposals. First, what are the health care coverage gaps that result in catastrophic costs for American citizens?

Second, who will receive the benefits and who will pay its costs?

WHAT IS CATASTROPHIC TO WHOM?

Protection against financially catastrophic health care expenditures has been considered in one form or another for decades, but no consensus has been reached on the definition of catastrophic. Catastrophic medical costs are large and unpredictable health care expenses that can be measured either in flat dollar amounts, for example, $5,000 in medical costs in a 12-month period, or in percentage of gross income, generally defined as costs exceeding 10 percent gross income. What is critical in this first differentiation of catastrophic is that a medical cost of $5,000 can be devastating for a lower income family but not account for 10 percent of a more affluent family's $60,000 income. An additional difficulty in understanding this issue is that large out-of-pocket health care costs are not associated solely with rare illness events. A 1986 study using data from the 1977 National Medical Care Expenditure Survey (NMCES) found that low income and poor health insurance coverage accounted for catastrophic expenditures in four out of five families who spent 10 percent or more of their income on medical care. Therefore, there is a tension between the notion of a high cost catastrophic illness event and the severe catastrophic financial burden on a particular individual or family. Since incomes, debts and savings are unequal, one person's inconvenience can be another person's catastrophe.

The Reagan administration has focused on a flat dollar amount of out-of-pocket burden for the Medicare population in its catastrophic illness coverage proposal. Congress has modified that proposal by enhancing coverage and varying the financing by ability to pay but has not endorsed the idea of defining catastrophic as a percentage of income. Economists, such as Martin Feldstein, chairman of the Council of Economic Advisors under President Reagan, have examined this issue and concluded that a percentage of income is more equitable from a social welfare perspective.

In his November 1986 Catastrophic Illness Expenses Report to the President, Department of Health and Human Services (HHS) Secretary Otis R. Bowen found the most useful definition of catastrophic expense to be a flat dollar cap that allows for the identification of illness costs that can be borne by individuals and families without having to "significantly change their expectations of living standards in the future." It dismisses a percentage of income threshold as not satisfactory because, for extremely low income populations, it would define as catastrophic the expense levels associated with routine and normally budgetable health care costs. The report goes on to say that the problem of low income levels is different from the problem of health care expense coverage, and is dealt with appropriately by different public policies. In defining catastrophic in this way, the Bowen report fails to acknowledge financially devastating levels of out-of-pocket expenses for lower income persons and limits its discussion to acute and post-acute health care.

Bowen's recommendations addressed three major parts of the catastrophic illness coverage problem: acute care catastrophic protection for the elderly; long-term care protection alternatives; and catastrophic protection for the general population. Yet as introduced later by the President, the narrowly crafted plan only proposes to mandate improvements for Medicare. It merely "aims to improve protection for the general population and for the long-term care of the elderly" through suggestions for private industry and state governments. Nonetheless, it provided a springboard for the current catastrophic care debate.

POOR ELDERLY AT GREATEST RISK

Today, older Americans are spending a higher proportion of their incomes on health care than was the case when Medicare was first enacted in 1965. Twenty-two years later, catastrophic health care costs have been identified once again as a major problem for the nation's elderly. The real issue is in the way the root of the financial hardship is understood and approached. According to the Congressional Budget Office (CBO), not including nursing home and other long-term care, the elderly spent an average $1,055 on their own medical expenses in 1984—more than three times the amount ($310) spent by persons under age 65. Counting nursing home costs, average out-of-pocket health expenses reached $1,705 per year for the elderly—more than five times the cost experienced by others. As alarming as these figures are, they provide little insight into the distribution of economic pain experienced by this nation's seniors.

Except for nursing home needs and unusually long hospitalizations, Medicare has been an effective cornerstone in meeting daily medical needs of the elderly with incomes above $20,000. Used in conjunction with private supplemental insurance, Medicare has kept health care costs for the higher income elderly to a very manageable portion of their budgets. The opposite is true for lower income seniors. Contrary to beliefs about the greening, that is, the growing wealth of the aged, millions of older Americans are experiencing dwindling resources as a result of out-of-pocket medical costs frequently ranging from one-quarter to one-third of their incomes. This certainly is true for a large portion of the 3.3 million elderly poor. It also is the case for a substantial portion of an additional 8.1 million economically vulnerable seniors, whose incomes fall below 200 percent of the poverty line, which, for an elderly person living alone, is $5,360 per year. For these 11.4 million lower income aged, who comprise 42 percent of the elderly population, catastrophically high health care costs are common occurrences. These hardship conditions may be exacerbated, not ameliorated, by most of the pending catastrophic health care proposals.

MEDICARE GAPS WIDENING

Medicare out-of-pocket expenses fall into two categories: services that Medicare does not cover; and expenses such as deductibles, premiums and coinsurance. Medicare fails to cover a wide array of health care needs that are essential to the aged population, such as prescription drugs, dental care, basic preventive services, prosthetic devices, eye glasses and hearing aids. Chronic nursing home and other long-term care also are excluded.

Although the scope of Medicare's protection has not changed materially in recent years, in effects of its coverage gaps have been exacerbated by skyrocketing health costs. This is clearly evident for prescription drugs. The elderly account for 28 percent, or approximately $8 billion per year, of all prescription drug costs even though they constitute only 11.7 percent of the population. From January 1980 through 1985, prescription drug costs rose by 66 percent. It is not unusual now for an elderly person with a common health problem like angina, diabetes or arthritis to pay $50 or more per month for drugs. For lower income elders particularly drug costs alone can represent a very significant percentage of their income. This summer, the House of Representatives approved an amendment to the catastrophic bill that allows for some prescription drug coverage.

Also, the services that are covered by Medicare—hospital care (Part A) and physician services (Part B)—require elders to share the costs and these out-of-pocket expenditures have increased dramatically in recent years. For example, for each "spell of illness" in a hospital, Medicare requires the patient to pay a deductible of $520. This figure—up 189 percent in the last seven years—is a significant burden, especially for approximately 20 percent of beneficiaries who have no supplemental insurance.

Ironically, congressional efforts to control Medicare's hospital costs have had the unintended effect of increasing the Part A deductible and other out-of-pocket costs for elders. In 1983, Congress introduced the prospective payment system (PPS), which forced hospitals to be much more cost conscious in their patient care. As a result, hospital administrators have every incentive to discharge Medicare patients much sooner. Since PPS began, average hospital stays by Medicare patients have decreased by approximately two days. Patients discharged earlier now must shoulder a wide variety of health related costs in the home—costs that previously were picked up by Medicare's hospital coverage. In a 1987 report, the Prospective Payment Assessment Commission (ProPAC) identified a $550 million cost shift to beneficiaries as a result of PPS.

Elderly individuals also are paying a substantial amount under Part B, and pending catastrophic proposals would add to that cost sharing in the future. To receive Part B coverage, seniors must pay a premium, which has risen from $115.20 in 1981 to $215 currently—an increase of 86 percent. Once enrolled, Medicare's coverage starts only after beneficiaries pay a deductible of $75, up from $60 in 1981.

Beyond these initial costs, patients covered by Part B must pay 20 percent of all physicians' bills up to Medicare's reasonable charge levels. The federal government does not prohibit physicians from charging fees in excess of those levels, and approximately 70 percent of all physicians charge some or all of their Medicare patients higher amounts, called balance billing. These patients must pay the full amount of the excess. In fact, in Bowen's report, Health Care Financing Administration (HCFA) actuaries indicated that 22 percent of the out-of-pocket costs for beneficiaries expending $2,000 or more was a result of balance billing. The rock bottom cost experienced by a hospitalized beneficiary—involving only Medicare's deductibles and premium—is currently $810. Add to this the normal 20 percent coinsurance, plus the full brunt of physician charges above the reasonable charge level, and the expenses are likely to be considerable. When prescription drug bills and costs associated with the services uncovered by Medicare are factored in, the potential for economic catastrophe is significant.

The impact of these costs is dramatically different for lower income seniors than it is for their brethren who are better off. For the higher income aged, these out-of-pocket expenses may be an undesired irritant, but generally are a fraction of annual income.

Additionally, the vast majority of higher income seniors purchase private supplemental—that is, Medigap—insurance, which, although not usually cost-effective, insulates them against Medicare's deductibles, copayments and in some cases prescription drug costs. Thus for higher income elders, adequate protection exists if they do not need nursing home or other long-term care, and if they are not in the one percent of the aged who require hospitalization for more than 60 days a year.

CONSTRAINTS UNDER MEDICAID

Perhaps the least understood facet of lower income elderly's health cost problems, however, is the inadequacy of Medicaid, the health care program for the poor. It is mistakenly believed that Medicaid covers impoverished and economically vulnerable elders for virtually all medical costs and thereby acts as an effective wraparound policy to Medicare. Unfortunately, this assumption generally is not true. Although Medicaid provisions vary from state to state, for a majority of the aged poor, Medicaid provides no relief at all. According to the U.S. Census Bureau 1984 Current Population Survey, only 36 percent of the noninstitutionalized aged poor participate in Medicaid. This means that two out of three impoverished elderly not in nursing homes receive no Medicaid assistance, thus bearing the full brunt of Medicare's deductibles, premium, cost sharing and uncovered services.

Medicaid coverage does eliminate the out-of-pocket physician and hospitalization costs for some elderly in most states. Currently 2.8 million seniors are dual eligibles, that is, Medicare at least has purchased the Part B premium on their behalf but does not necessarily pay the deductibles and coinsurance. In general, aged Medicaid beneficiaries are likely to receive help for some of the services not covered under Medicare, such as the partial prescription drug coverage offered under Medicaid in 46 states and the District of Columbia. Thus, the potential for significant health care relief is present under Medicaid.

Usually, seniors must meet the extremely low income and liquid asset levels set for the Supplemental Security Income (SSI) program to qualify for Medicaid assistance. In most states the annual income eligibility limit for a person living alone is $4,080 and, in the minority of states that have higher limits, only three—California, Connecticut and Massachusetts—have eligibility standards above the poverty line. Additionally, an aged person fails to qualify for SSI if his or her liquid assets exceed $1,800, a standard that limits program eligibility to the financially destitute. Of those who fall within these standards, many do not participate because they are unaware of the program's existence and requirements. Hence, senior participation in SSI and in Medicaid is limited to some of the poorest of the poor. Most impoverished elders, and an even larger portion of the economically vulnerable, receive no protection from growing catastrophic health care costs.

Most Americans generally are unaware that neither Medicare nor their private Medigap insurance covers the high costs of long-term care. Of the $35.2 billion in nursing home expenditures in 1985, Medicare paid only 1.7 percent; the rest came from Medicaid and personal resources. The reason for Medicare's small contribution to financing nursing home care lies in the very nature of the program's nursing home benefit, which limits coverage to hospital extended acute care and does not include custodial care.

Although Medicare does pay for unlimited numbers of home health visits without a prior hospitalization requirement, coverage is restricted to those who are homebound and are in need of skilled nursing care, physical therapy or speech pathology under physician supervision. In addition, because it recognizes only a medical model of home health care, Medicare does not pay for many of the social support services that might allow more elderly impaired individuals to remain in their own homes.

Medicaid, on the other hand, is the largest public financing mechanism for long-term care. Accordingly, Medicaid payment for nursing home services in 1985 amounted to almost $15 billion. Added to the personal pain and suffering individuals experience as they decline in their ability to perform even the basic activities of daily life is the fact that long-term care is the leading cause of catastrophic health care expenditures. Data from CBO show that an estimated 47.5 percent of elderly receiving Medicaid in nursing homes were not eligible when they first entered. This figure alone illustrates the number of individuals who have spent down to poverty levels to receive any type of coverage for their nursing home care. Many find the notion of exhausting a lifetime of savings and applying for public assistance a severely demanding and overwhelming prospect in their old age.

PITFALLS OF CURRENT PROPOSALS

Other than financing, the catastrophic coverage plans being considered by the administration and Congress closely resemble each other in design, but none goes far enough to meet elders' needs. Under the administration's plan, beneficiaries could pay an additional $6.10—rising to $8.70 in 1992—a month above the regular Part B premium of $17.90. In return, they would be guaranteed that their out-of-pocket costs would not exceed $2,000 a year in 1988 for hospital and physician costs covered by Medicare.

Legislation proposed by the House of Representatives (H.R. 2470) and the Senate (S. 1127) also attempts to provide some insurance against catastrophic illness. The House bill sets the catastrophic cap at $1,784 in 1989. The Senate version sets the cap at $1,700. Both caps limit beneficiary cost sharing for Medicare covered services only. They differ slightly in coverage design.

And out-of-pocket cap that applies only to expenses specifically covered by Medicare does not address the burden for most beneficiaries. Only 5 percent of Medicare beneficiaries experience out-of-pocket spending in excess of $2,000. However, according to health care analysts John R. Gable and Thomas Rice, of beneficiaries experiencing out-of-pocket expenses greater than $2,000, 80 percent of cases are a result of nursing home costs. In addition, The Urban Institute has calculated that based on the March 1984 Current Population Survey data, 43 percent of all elderly had liquid assets of less than $2,000.

The major difference among these proposals is their financing. The administration's plan is financed with an across-the-board increase in the Part B premium. The House plan sets a basic premium of $1 a month and a supplemental premium or surcharge on the income of tax paying elders. Estimates indicate that in 1988 the maximum charge of a supplemental premium would be $580 and $930 in 1992. The premium would rise each year to reflect the increase in the cost of Medicare benefits. Most important, the House plan requires Medicaid to pay for all Medicare copays, deductibles and premiums for beneficiaries at or below poverty levels. The Senate bill calls for financing the program with an additional $4 a month premium and a $12 surtax on each $150 in income tax an individual may owe. In 1988, the maximum surtax would be held to $880 for an elderly couple. That limit would rise to $1,000 by 1992. The lack of mandated Medicaid protection for those beneficiaries actually may be harmed by the Senate proposal. The flat premium would be taken out of Social Security checks and would reduce Social Security benefits by $48 in 1989 and by $82 in 1992.

These proposals and the current debate on catastrophic coverage highlight the major conflict between the escalating acute and long-term care health needs of a growing elderly population. This crisis thus must be viewed as an opportunity for change. To reduce the incidence of financial catastrophe for economically vulnerable elders, caps on out-of-pocket spending must not only take income into account, but also must apply to spending for a broader range of services than Medicare now covers. At the very least, the House version, which protects poor elders by mandating Medicare out-of-pocket payments to be paid through Medicaid, offers a provision that must be maintained.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. Mr. President, I thank the Chair.

Mr. President, during my nearly 15 years in the Senate I have received literally thousands of letters from senior citizens not only from North Carolina but from around the country complaining. These are doctors, health care providers, hospital administrators. They are all upset about the Medicare system. The complaints focus on rising premiums, fee freezes, denial of coverage, premature discharge, rural-urban reimbursement differential. The list goes on and on.

Understandably the elderly and those who provide the care are equally frustrated and concerned about the viability and effectiveness of our Federal health care program.

Mr. President, S. 1127, will cause the elderly to depend even more upon the Medicare system, and I have heard Senators state on this floor and elsewhere that the coverage offered in this bill is voluntary.

Let the record be clear it is not voluntary.

If a person participates in part B coverage, which 90 percent of our senior citizens do, they must participate in catastrophic coverage or, putting it another way, if a senior citizen decides against accepting catastrophic coverage he or she cannot participate in part B.

Mr. President, few insurance policies provide the coverage now provided by part B and, therefore, our elderly will have no choice whatsoever, as the distinguished Senator from Wyoming has emphasized, but to depend even more on the Federal program.

Obviously, more benefits will mean more cost burdens on the Medicare system. It is no secret that darker days are ahead in our chase for scarce Medicare dollars. Experts say that within the next 14 years the Medicare system will be teetering on the brink of bankruptcy and S. 1127 will only accelerate this imminent disaster.

With S. 1127, we will be dumping more costs on the Medicare system, more costs to be borne by the elderly in the form of higher part B premiums and income-related premium.

So, Mr. President, the amendment by the distinguished Senator from Wyoming, Mr. WALLOP, which I am proud to cosponsor, would provide our elderly with a real choice. It would allow them to continue part B coverage without being required, forced, also to participate in the acute care coverage provided under S. 1127.

With Senator WALLOP's amendment, the elderly will be allowed to continue to participate in private sector alternatives.

And I might emphasize, Mr. President, that the private sector has served the American people well. Oh, of course, improvements could be made. The Baucus amendment may need updating, but to throw our elderly at the mercy of a Federal health insurance program simply because improvements need to be made in the private sector is not in the best interest of our senior citizens or the American taxpayer.

I commend the distinguished Senator from Wyoming on his amendment. I am happy to cosponsor it.

I yield the floor.

Mr. BENTSEN. Mr. President, I must rise to strongly oppose this amendment. This is, in effect, a gutting amendment. I think we could forget all the work that has been done over all these months. I think we could forget the President's initiative. I think we could forget what we have here in a bipartisan bill. Because what it does it gives you adverse selection and it would very substantially increase the cost of the premium.

What we have seen thus far is an estimate that if you went this route and decoupled—and, remember, the administration did not do that; they did not decouple. You have the situation where part B and catastrophic are tied together, and that is where we have given the option. But if you went this other route, the estimate is that you would increase that premium from $4.50 a month to $10.80 per month. Of course, much of that stems from the loss of the supplementary premium income and the higher cost for the remaining enrollees.

CBO estimates that 30 percent of part B enrollees would not purchase catastrophic coverage. By and large, they would be younger, healthier, and wealthier. Indeed, disenrollment would be entirely among enrollees who under S. 1127 would pay the supplementary premium. As a result, three-fourths of individuals who would pay the supplemental premium would disenroll.

Now, to illustrate how voluntary enrollment would undermine the insurance principles of this bill, compare the average benefit payment in 1989 to what it would be if healthier individuals were allowed to disenroll—now, that is currently estimated to be $132—in which case Medicare would have to pay an average benefit of $150 in 1989 for the remaining, sicker enrollees.

I think it is very difficult to set an annual actuarially sound premium with that added uncertainty over participation. If only a once in a lifetime election were allowed, that could expose beneficiaries to catastrophic costs.

Mr. President, I strongly feel that this amendment should be defeated and I urge a vote against it.

Mr. DURENBERGER. Mr. President, the chairman of the Finance Committee has well made the adverse selection argument and I think it is the argument against this amendment. It is for the reasons that he stated in terms of adverse selection that the administration has supported the approach that the Finance Committee has taken and has reinforced that support when we moved to the drug benefit.

I would add one other perspective on it. If the concern of our colleagues from Wyoming and North Carolina is that people are going to get out of the part B program or they are going to get trapped somehow in an inefficient, uneconomic part B program by having both the catastrophic and the drug benefit added to part B, I would just remind them that the total cost to the beneficiaries, even with the supplementary premiums added in here, the total cost to the beneficiaries of part B with catastrophic and with drug added is substantially less than the cost to them of buying private insurance on the outside.

This is still, by far, because it covers 30 or 31 million Americans, this is still by far the best health insurance deal in the country. Even after the catastrophic, with its beneficiary premiums, basic premium plus supplemental, and the drug benefit that we have adopted here today with its basic premium plus its supplemental premium, even after that is added to the part B program, the beneficiaries of that program will not pay more than 45 percent of the total cost of the program. You cannot run a regular insurance program that way. We run it that way in the case of Medicare because we made the decision to subsidize a portion of the part B program cost—75 percent is the current proportion for the basic cost—from general revenue. And nothing in this bill will alter that particular provision.

So, from the standpoint of fiscal responsibility, if you will, while we have improved the overall package of payments as between beneficiary payments and general revenue payments, we still have this very large, very substantial general revenue subsidy under the benefits. And, with the exception, perhaps, with the figures that I have looked at, even the people at the top, the people who pay the top 3 percent that we were talking about this morning, who would pay the $800 maximum supplemental premium, even those people, on the basis of comparisons that I have seen, get more benefit from this program than they could possibly achieve from any other kind of insurance program.

So I would certainly urge my colleague to reconsider. There is probably no point in doing that. But I would urge the rest of my colleagues to oppose this amendment because, as the chairman of the committee says, it really would gut the whole catastrophic benefit. We would not have a catastrophic benefit here to vote on if this amendment were adopted.

Mr. WALLOP. Mr. President, my friends must view America's senior citizens as foolish in the extreme. If the benefit is as good a buy as what they have described, why in heaven's name would this gut it? If it is so much cheaper and so much more comprehensive and so much more beneficial, the volunteers of America will flock to this by the millions. These people are responsive Americans, have responded all their lives to market forces. They have responded all their lives to a good deal. If this is the deal the managers of the bill say it is, in heaven's name, why would they buy anything from the private sector that costs them more, as the managers claim, and covers them less?

In point of fact, the reason why a voluntary program would gut it, which gut it it will, is because it is not as good as what they have currently in hand. And America's seniors ought to be allowed to pursue the health care coverage most satisfactory to their senior years, and they ought and they will make the choice that is best and wisest. They already select amongst options in the marketplace. And they have winnowed out companies. They have rejected the scare tactics of Jimmy Roosevelt and others with those strange little things they put in the mail.

These people are wise Americans. They are probably a damn sight wiser than most of their legislators. And if this is the bargain that the managers claim it is, they will buy it and there will be no gutting from it.

But if it is not the bargain the managers claim it is, they ought to have the right to purchase their own supplemental catastrophic insurance that is greater and more comprehensive and a better bargain. And they will do that.

My guess is that if the managers are correct, there is no worry. But it is a guess; and, so, too, is the managers', because if it is precisely as they say, people will not walk away from this.

Mr. DURENBERGER. Mr. President, just briefly in response, I have been trying to help—as I indicated earlier, I am not an expert on insurance—but I have just spent 15 years trying to help my mother and my dad. And I would not buy Medicare and then buy supplemental.

And it is not Jimmy Roosevelt that is the problem. It is fear that is the problem.

I find it pretty hard to find an insurance product that is flat out catastrophic. The problem is the products on the market are for catastrophic plus wrap-around coverage in other areas and all that sort of thing, because nobody wants to put just catastrophic on the market. And the problem is the problem of skimming.

Because nobody is going to buy a straight-out catastrophic unless they absolutely need it. When that is the case, then the fees or the premium becomes so exorbitant that nobody is going to buy it.

So you wrap catastrophic into a variety of other coverages. That is what you do out in the market. That is what we contemplate doing here.

You buy a package of benefits: doctor, hospital, drugs, and catastrophic.

Mr. WALLOP. Would the Senator yield for just a question or observation? Of course, that is what you do out in the market and that is precisely what I am saying. Here you have not got the choice. You participate in part B and you mandatorily accept the premium, whatever it escalates to and whatever coverage it provides. You do not have a choice. In the marketplace, one does.

All I am suggesting is that if this is the kind of deal that you two respected managers—and you have been working on this a long time, I do not quarrel with it—say it is, why would not the market work just as well here as in any other place?

Mr. BENTSEN. Mr. President, if I might?

The PRESIDING OFFICER. The Senator from Texas.

Mr. BENTSEN. I have answered it before but, once again, in coupling it with part B, there is a situation where Federal funds pay for 75 percent of it, the recipient pays for 25 percent of it. You put the two together and that makes the package something that is obtainable by people with relatively modest income and that is the way it has been structured. That is why it is that good a buy as compared to whatever else you might find in the marketplace.

You get the universality of approach. If you start having adverse selection, where the younger of those, the healthier of those, the wealthier of those opt out and you do not have the income from supplemental premiums, you have real trouble and the whole program is down the tube.

I would urge defeat of the amendment.

Mr. WALLOP. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. STEVENS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. STEVENS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Is there further debate on the amendment?

There being no further debate, the question is on agreeing to the amendment. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Connecticut [Mr. DODD], the Senator from Tennessee [Mr. GORE], the Senator from Massachusetts [Mr. KENNEDY], the Senator from Georgia [Mr. NUNN], and the Senator from Illinois [Mr. SIMON] are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 18, nays 77, as follows:

[Rollcall Vote No. 351 Leg.]

YEAS—18

Armstrong
Dole
Garn
Gramm
Hatch
Hecht
Helms
Humphrey
Karnes
Lugar
McClure
Nickles
Quayle
Roth
Simpson
Symms
Thurmond
Wallop

NAYS—77

Adams
Baucus
Bentsen
Biden
Bingaman
Bond
Boren
Boschwitz
Bradley
Breaux
Bumpers
Burdick
Byrd
Chafee
Chiles
Cochran
Cohen
Conrad
Cranston
D'Amato
Danforth
Daschle
DeConcini
Dixon
Domenici
Durenberger
Evans
Exon
Ford
Fowler
Glenn
Graham
Grassley
Harkin
Hatfield
Heflin
Heinz
Hollings
Inouye
Johnston
Kassebaum
Kasten
Kerry
Lautenberg
Leahy
Levin
Matsunaga
McCain
McConnell
Melcher
Metzenbaum
Mikulski
Mitchell
Moynihan
Murkowski
Packwood
Pell
Pressler
Proxmire
Pryor
Reid
Riegle
Rockefeller
Rudman
Sanford
Sarbanes
Sasser
Shelby
Specter
Stafford
Stennis
Stevens
Trible
Warner
Weicker
Wilson
Wirth

NOT VOTING—5

Dodd
Gore
Kennedy
Nunn
Simon

The amendment (No. 1952) was rejected.

Mr. BYRD. I move to reconsider the vote by which the amendment was rejected.

Mr. BENTSEN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1053

(Purpose: To add Medicaid provisions to require States to provide coverage under the Medicaid Program for certain children with extraordinary expenses for medical and remedial care)

Mr. WEICKER addressed the Chair.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. WEICKER. Mr. President, I rise to offer an amendment. I send it to the desk and ask it be read.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Connecticut, Mr. WEICKER, proposes an amendment numbered 1053.

Mr. WEICKER. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 113, between lines 16 and 17 insert the following new section:

SEC. 14A. REQUIREMENT OF COVERAGE UNDER STATE MEDICAID PLANS FOR CERTAIN CHILDREN WITH EXTRAORDINARY EXPENSES FOR MEDICAL AND REMEDIAL CARE.

(a) State Plan Requirement.—Section 1902(a)(10)(A)(i) (42 U.S.C. 1396a(a)(10)(A)(i)) is amended—

(1) by striking "or" at the end of subclause (II),

(2) by striking the semicolon at the end of subclause (III) and inserting in lieu thereof ", or", and

(3) by adding at the end thereof the following:

"(IV) who is a qualified disabled child (as defined in section 1905(r);".

(b) Definition.—Section 1905 (42 U.S.C. 1396d) is amended by adding at the end thereof the following:

"(r)(1) The term 'qualified disabled child' means an individual who—

"(A) has not attained 21 years of age,

"(B) has an acute and chronic disabling mental or physical condition (whether congenital or acquired), and

"(C) with respect to whom the family of such individual has incurred expenses for medical care or remedial care in a year that are equal to 10 percent of the family's countable income.

"(2) In the case of a family with more than one child that meets the requirements of subparagraphs (A) and (B) of paragraph (1), subparagraph (C) of such paragraph shall be applied by substituting '12½ percent' for '10 percent' in clause (i) and by substituting '$13,000' for '$10,000' in clause (ii).

"(3)(A) For purposes of paragraph (1), except as provided in subparagraph (B), a family's countable income for a year shall be an amount equal to the sum of the adjusted gross incomes of family members for the most recently completed taxable year.

"(B) For purposes of paragraph (1), in the case of a child the family of which can demonstrate to satisfaction of the State agency that the family's countable income for a year will be substantially less than its adjusted gross income for the most recently completed taxable year, the family's countable income shall be determined on the basis of the family's estimated income for the year involved.

"(C) For purposes of paragraph (1), in the case of a child that is eligible for medical assistance under a provision of this title other than section 1902(a)(10)(i)(A)(IV), the family income of the child shall, for purposes of this subsection, be determined on the basis of the same methodology that is applied in determining eligibility under such other provision.

"(4) For purposes of paragraph (1), the term 'medical care' shall have the meaning given to such term in section 213(d)(1) of the Internal Revenue Code of 1986, and an expense shall be treated as having been incurred for medical care if such expense is allowable as an expense paid for such care for purposes of section 213 of such Code (or would be allowable but for the limitation contained in subsection (a) of such section).

(c) Benefits.—

(1) Section 1902(a)(10) (42 U.S.C. 1396a(a)(10)) is amended, in the matter following subparagraph (E)—

(A) by striking "and" before "(IX)", and

(B) by inserting before the semicolon at the end the following: ", (X) the medical assistance made available to individuals described in section 1905(r)(1) shall, subject to subsection (p), include the care and services described in paragraphs (1) through (21) of section 1905(a), and the making available of such care and services to such individuals shall not, by reason of this paragraph (10), require the making available of such care and services, or the making available for such care and services in such amount, duration, and scope, to any individuals not described in such section, and (XI) in the case of individuals described in section 1905(r)(1), the care and services specified in paragraphs (1), (2)(A), and (5) of section 1905(a) shall be made available without limitation on the number of days or the number of visits, and the making available of such care and services to such individuals in such amount, scope, and duration shall not, by reason of this paragraph (10), require the making available of such care and services in the same amount, duration, and scope to any individuals not described in such section".

(2) Section 1902 is further amended—

(A) by redesignating the subsection (l) added by section 3(b) of the Employment Opportunities for Disabled Americans Act as subsection (o) and transferring such subsection after and below subsection (n), and

(B) by adding at the end thereof the following new subsection:

"(p)(1) The care and services provided to an individual described in section 1905(r)(1) shall be provided pursuant to a plan of care (for providing such care and services to such individual) that is established and periodically reviewed by a multidisciplinary care coordination team, in cooperation with the individual and his or her parents, a physician, a hospital discharge planner or social worker, a visiting nurse, and a representative of the agency administering or supervising the administration of the program (established by the State under title V of this Act) for providing services for children with special health care needs. Such plan shall be coordinated, to the maximum extent practicable, with any individualized education program or individualized family service plan established with respect to the individual under the Education of the Handicapped Act.

"(2) The plan of care established with respect to an individual pursuant to paragraph (1) shall be based upon the early and periodic screening and diagnosis of the individual (in accordance with section 1905(a)(4)(B)) and shall specify—

"(A) the care and services (described in paragraphs (1) through (21) of section 1905(a)) that are required by the individual,

"(B) the frequency and duration of such care and services,

"(C) the setting or settings in which such care and services may appropriately be provided.".

(d) Federal Medical Assistance Percentage.—Section 1905(b) (42 U.S.C. 1396d(b)) is amended by adding at the end the following new sentence: "Notwithstanding the first sentence of this subsection, the Federal medical assistance percentage shall be 90 per centum with respect to amounts expended as medical assistance for individuals described in section 1905(r)(1).".

(e) Maintenance of Effort.—Section 1902(a) (42 U.S.C. 1396a(a)) is amended—

(1) by striking the period at the end of the paragraph (47) added by section 9407(a) of the Omnibus Budget Reconciliation Act of 1986 and inserting in lieu thereof a semicolon,

(2) by striking the period at the end of the paragraph (47) added by section 11005(b) of the Anti-Drug Abuse Act of 1986 and inserting in lieu thereof "; and",

(3) by redesignating the paragraph (47) added by section 11005(b) of the Anti-Drug Abuse Act of 1986 as paragraph (48) and transferring such paragraph after and below paragraph (47), and

(4) by adding at the end thereof the following:

"(49) provide that, for the 60-month period beginning on October 1, 1987—

"(A) the standards for determining eligibility under the plan are no more stringent than the standards in effect on May 27, 1987,

"(B) if medical assistance is included under the plan for any group of individuals on May 27, 1987, the plan will continue to include medical assistance for such group during such period, and

"(C) the medical assistance included under the plan for any such group during such period is not less in amount, duration, or scope, than the medical assistance provided for such group under the plan on May 27, 1987.".

(f) Conforming Changes.—

(1) Section 1902(a)(17) (42 U.S.C. 1396a(a)(17)) is amended by inserting "and section 1905(r)" after "subsection (l)(3)".

(2) Section 1903(f)(4) (42 U.S.C. 1396b(f)(4)) is amended by striking "section 1902(a)(10)(A)(ii)(IX) or" and inserting "subsection (a)(10)(A)(i)(IV) or (a)(10)(A)(ii)(IX) of section 1902 or".

(g) Related Technical Amendment with Respect to Waivers for Home and Community-Based Services.—Section 1915(c)(3) (42 U.S.C. 1396n(c)(3)) is amended by striking "and section 1902(a)(10)(B) (relating to comparability)" and inserting in lieu thereof ", section 1902(a)(10)(B) (relating to comparability), and section 1902(a)(10)(C)(i)(III) (relating to single standard for income and resource eligibility)".

(h) Effective Date.—

(1)(A) Except as provided in subparagraph (B), the amendments made by this section shall be effective for calendar quarters beginning on or after October 1, 1987, and before October 1, 1992.

(B) The amendment made by subsection (g) shall be effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1986.

(2) The Secretary of Health and Human Services shall provide for a continuing study, during the period for which the amendments made by this section are effective (as specified in paragraph (1)), of the populations to which medical assistance is provided by reason of such amendments, of the cost effectiveness of providing medical assistance to such populations, and of the socioeconomic implications of providing such assistance. The study shall be conducted by the Secretary, in consultation with appropriate specialists. The Secretary shall report to the Congress annually on the progress of the study, and, not later than April 1, 1992, shall submit to the Congress recommendations with respect to the desirability and feasibility of extending the period for which such amendments are effective, together with any changes in law that the Secretary deems appropriate better to effectuate the purposes of such amendments.

Mr. WEICKER. Mr. President, I rise to offer an amendment to provide catastrophic health insurance coverage for children.

All across America today there are desperately ill children whose families lack sufficient coverage or resources to pay the mounting bills. Private insurance and Medicaid benefits do not provide adequate coverage for children with catastrophic illness. Whether it be the absence of any insurance whatsoever, or not enough insurance, or the costs associated with deductibles, copayments and the exclusion of some types of care—all these factors add up to overwhelming financial as well as emotional burdens on the families in question. Parents, often young and without savings, are forced to exhaust their assets only to face permanent debt to provide the care their children need.

I recently learned of a boy in Connecticut who was diagnosed with acute lymphocytic leukemia. When his disease went into remission, his doctors advised he receive bone marrow transplantation. But the hope they offered had a price tag—$100,000. The HMO the family belonged to had no provision covering such a procedure. Consider this family's predicament.

According to a recent nationwide survey, parents of leukemic children spend 38 percent of their adjusted gross income paying their child's medical bills. These out-of-pocket costs amounted to an average of $29,700 per family in 1985.

Another young child from my state had an accident at 7 months old and nearly suffocated. He survived, but his brain injuries resulted in a cerebral palsy. His father works two minimum-wage jobs to provide the boy with full-time care. His father's employer provides health insurance, but there is a fairly standard copayment of 20 percent. Out-of-pocket expenses amounted to $6,000 for the first 3 months of 1987 alone.

The dilemma these families face is not theirs alone. There are countless others like them. Remember the children with cystic fibrosis and muscular dystrophy, the children with hemophilia, sickle cell anemia, congenital heart disease, burns, spinal cord injuries, the list goes on. Some are terminal, others curable, and the cost for all is great.

Under my amendment, children with acute and chronic mental and/or physical conditions that are either acquired, congenital or traumatically caused will be eligible for Medicaid benefits provided that medically related costs exceed 10 percent of the combined child's and parent's adjusted gross annual income. The health care coverage will be mandated in all 50 States for children up to 21 years of age.

Once the child is covered, a multidisciplinary team will be assigned to establish a plan of care to meet the child's specific health care needs. The care plan shall include all required health care services, including physical and speech therapy, the anticipated duration of these services, all durable and home adaptive equipment, and prescription medications. The plan also includes respite care for parents.

Eligibility for this program will be determined by the State Medicaid office, which shall have administrative responsibility. The Secretary of Health and Human Services will be responsible for assuring State compliance with the legislation.

The Federal portion of the Federal-State funding formula will be raised for this program to 90 percent/10 percent. This is a premium match and will require that States not change either Medicaid eligibility levels or any optional services already provided at the time of this law's enactment.

The amendment also mandates a continuous study of the population served over the 5-year period, an analysis of the program's cost effectiveness, and an assessment of the psychological and social implications of catastrophic childhood illness for families.

Mr. President, I ask unanimous consent to insert a technical section-by-section analysis of the amendment into the RECORD at this point.

There being no objection, the explanation was ordered to be printed in the RECORD, as follows:

SECTION-BY-SECTION EXPLANATION OF THE WEICKER CATASTROPHIC AID FOR CHILDREN AMENDMENT

1. *Purpose:* To prevent and reduce the devastating effects on a family that result from the high costs involved in caring for a child with a disabling condition. To provide a funding source for families regardless of their combined income providing they have demonstrated proof that medically related expenses meet criteria outlined in this legislation.

2. *Eligibility:* A. Children with acute and chronic mental and/or physical conditions which are either acquired or congenitally or traumatically caused.

B. To prove eligibility, it must be demonstrated that medically related costs exceed 10% of combined child's and parent's adjusted gross annual income. For those families whose incomes are below that which require the filing of an income tax report, the state will use the same methodology in determining eligibility. Once this eligibility is established, the child(ren) is(are) deemed independent from combined family income.

1. This allowable medically related cost for purposes of this legislation will be as defined in the U.S. Tax Code.

3. *Function:* By the use of the following technical language: Section 1915(c)(3) of the Social Security Act, as amended by section 9411 of the Ombibus Budget Reconciliation Act of 1986, is amended by inserting "and section 1902(a)(10)(c)(i)(III) (relating to a single standard of eligibility determination)" after "(relating comparability)" and before the period. This provision addresses the comparability requirement of state Medicaid waivers, Medicaid coverage will be made available to those children who meet the eligibility criteria as defined in this bill.

Each state will be *required* to expand the "categorically needy" category for Medicaid. Coverage to meet the care and service needs of this population of children aged 0-21 years.

4. *Case Management and Benefit Package:* The case management for these children will be done by a multi-disciplinary team as designed by the individual state. This approach may be done either in cooperation with the parent(s), child(ren), physician, hospital discharge planner or social worker, visiting nurse, and representative of the Agency for Children with Special Health Care needs appropriate for that child. The Case Management team will be required to case find, screen and establish a plan of care to meet the child's specific needs. The plan shall be reviewed and altered on a regular basis. The care plan shall include: all required services, the anticipated duration of these services, all durable and home adaptive equipment, Rx medications. The care and service providers as well as the care setting shall be designated. This function will be based on the 1905(a) early and periodic screening and diagnosis (EPSDT) of individuals who are eligible under this plan.

The benefit package for individuals covered under this program are all those as listed in section 1905. The scope and duration of these care services and settings will be determined by the Case Management team.

5. *Administration:* Eligibility for this program will be determined by the state Medicaid office, and they shall be responsible for the entire fiscal administration of its operation.

The secretary will be responsible for assuring state compliance with this legislation and will be responsible for state reports on an annual basis to the Health Care Financing Administration.

6. *Funding:* The federal portion of the federal-state funding formula will be raised for this program to 90%. This will be a premium match and will require that states not change either Medicaid eligibility levels or any optional services already provided at the time of enactment.

7. *Also Included:* This amendment will be in effect for a five year period and will require an on-going of the population served, cost analysis/effectiveness, and assessment of socio-economic implications for the family. It is proposed that these studies should be conducted both by HCFA and by an independent academic group. Review and decisions regarding continuation and indicated changes will be made at the end of the specified five year period. H.R. 3058, the Labor-HHS appropriations bill for FY88 provides $200,000 for undertaking this study during FY88.

Mr. WEICKER. Mr. President, modern medicine has advanced to the point where catastrophically ill children who once faced the prospect of an early death can now expect to live well into adulthood. But as the prognosis has improved, the financial costs have soared. We cannot ease the emotional suffering of families with an ailing child, but we can help insure that their crisis of health does not also become a catastrophe of family finances. They deserve the protection this amendment offers.

Mr. President, I suppose that I am saying to my colleagues, if they would give me the courtesy of listening for a minute or two, these kids that I am talking about, each one of you has many of them in your State, and you know the young families that have to pay for their care. They really do not amount to a hill of beans when it comes to politics. They do not vote. Their families are probably too busy keeping matters together to even care about voting.

But it seems to me that maybe the time has come to pay a little bit of attention for those that might not exercise any particular political benefit to any one of us but in our using our power on their behalf we live up to the finest ideals that this Nation stands for. The matter came, I suppose, to national attention when the young son of Nick Boneconti, who lives in my State, was injured while playing football for Tennessee. That young man has been in a hospital in Miami, FL, slowly recovering from the injuries received in that game. He will be paralyzed to a large extent for life.

It is easy for somebody like Nick, who can afford to pay the bills. He has also the name recognition so he can use that on behalf of not only his own son, but on behalf of all young men and women who suffer from catastrophic illness. He can raise the money for it. I am as aware as anybody else, as I was told—not by the chairman, I might add, and I want to get to that in a minute. But I was told by many of the groups, "Please don't present your amendment now. This is our moment in time on the stage."

I fully support catastrophic health insurance. I support it for the elderly. But I have to tell you, as far as the dollars and cents are concerned, the impact is far more devastating for some young child who suffers from that catastrophic illness and more particularly to the parents of that child and the family of that child. I think it important that the issue be raised at this time since we are talking about catastrophic illness. Certainly the numbers are not there. The numbers are not there; those that I speak for are far less than those who will take advantage of the measures in this bill, which I support. I support the bill.

But I just find it amazing that we have money for everything or we think we do, whereas there are some very outstanding needs that we bypass in our consideration. I really have to ask the question, "Why?" I think maybe I come to the conclusion that we can bypass and there never will be any accounting for that neglect on our part.

So in any event, I present the amendment. I hope it will be adopted by the Senate.

The PRESIDING OFFICER. Is there further debate on the amendment?

Mr. BENTSEN. Let me say to the distinguished Senator from Connecticut what he points to is one of the very serious problems in our country.

What my friend from Connecticut is pointing to is one of the most serious problems that can affect a family. When you look at the problem of a young mother with a year-old child, she suddenly comes to the realization that she will never have it well, no matter how much care, nor how much love she lavishes on it. In the years past, you have a situation where you had a low-weight baby come along, with all the problems that go with that, physical disabilities that often happen, and that child did not live long. But medical science has advanced. Now that child can be expected to often live to adulthood. The incredible costs that are involved for that young family, changes in the way of life, and commitments they had never expected to have to make are problems that also have to be addressed. We are not going to resolve them tonight. We are not going to resolve them on this bill.

But next year before the Finance Committee one of the priorities has to be addressing the problems and the concerns of young families and their children, critically ill children. I, for one, as chairman of that committee will be working very hard to do that. I am most appreciative of the support that the Senator has given me in some of the things we have done in that committee.

Mr. WEICKER. I want to commend the distinguished Chairman and the staff of the Senate Finance Committee for their diligent efforts in bringing this significant bill for Senate consideration today. I know Senator BENTSEN feels as strongly as I that the well-being of our Nation is contingent upon the well-being of all of our citizens. A child's injury or illness can be as debilitating for a family as that of a grandparent. While high-cost medical care threatens the financial stability of someone on a fixed income, it is equally threatening to a young family with little time to accumulate savings. Indeed, modern medicine has advanced to the point where a catastrophically ill child who once faced the prospect of an early death can now expect to live well into adulthood. But while his prognosis has improved the financial costs have soared, and we have a basic responsibility for the integrity of the family and the needs of our children.

The PRESIDING OFFICER (Mr. ADAMS). Does the Senator from Connecticut yield the floor?

Mr. WEICKER. I am in the process of a colloquy with the distinguished Senator from Texas.

Mr. BENTSEN. I am sorry, I was interrupted.

Mr. WEICKER. I was wondering as to the Senator's views since he has been, I might add, very active investigating the facts of the catastrophic illness as it applies to our children, and I wonder if he would respond to my remarks on that count.

Mr. BENTSEN. One of the problems we have, is we do not know enough about the costs involved. I think we have to allow more time to study the concern. I am most appreciative of the Senator for cosponsoring and helping with my Commission for the Children.

Mr. WEICKER. I commend the distinguished Chairman and the staff of the Senate Finance Committee for their diligent efforts in bringing this significant bill for Senate consideration today. I know Senator BENTSEN, that you feel as strongly as I that the well being of our Nation is contingent upon the health of all its citizens. A child's injury or illness can be as debilitating for a family as that of a grandparent. While high cost medical care threatens the financial stability of someone on a fixed income, it as equally threatens a young family with little time to accumulate savings. Indeed, modern medicine has advanced to the point where a catastrophically ill child who once faced the prospect of an early death can now expect to live well into adulthood. But as prognosis has improved the financial costs have soared. We have a basic responsibility to the integrity of the family and the needs of our children.

Mr. BENTSEN. I couldn't agree with the Senator more. S. 1127 represents a strong bipartisan effort toward addressing the health care needs which have been outpaced by the advancements in medical science and their associated high costs. It is the first real significant expansion in the Medicare Program since its enactment. It is viewed as a starting point for much needed reform. The Senate Finance Committee fully recognizes urgent need to assist families of children with catastrophic illness. In fact, children with special health care needs will be central in the committee's focus next year.

Mr. WEICKER. I am pleased to hear about the committee's intentions. As my good friend Senator BENTSEN knows there is relatively little known about the segment of our population that must cope with catastrophic childhood illness. To a large extent this is due to the multiple and diverse insurance policies and particularly the wide variance among State Medicaid programs. Therefore, I included a provision in H.R. 3058 the Labor-HHS appropriations bill for fiscal 1988 to provide funding for a 1-year assessment of all families expending specified percentages of their adjusted gross income on out-of-pocket costs related to the medical care of their children. It is my hope that this information will currently define the number of American families actually confronted with financial catastrophies while caring for their ill children. And, until then it is really too difficult to project the costs of any program designed to assist them.

Mr. BENTSEN. Not only is there insufficient data in the number of families burdened by exceptionally high cost health care for their children, there is, as you know, only a limited appreciation of the scope of the problems. I thank my good friend from Connecticut for cosponsoring my Commission on Children and believe that its investigation will provide us with needed information on the overall status of American children.

Mr. WEICKER. I commend Senator BENTSEN and his staff on the design of the Commission on Children. It is comprehensive and contains an essential geographical outreach approach. Our initiatives are complimentary and will serve as a broad survey of factors affecting very sick children and their families. Therefore, I am withdrawing my amendment dealing with children's catastrophic illness at this time. I am looking forward to reviewing the facts which our studies will yield, and working with the Finance Committee in addressing the urgent need in the case of our Nation's catastrophically ill children.

Mr. President, I want to commend the distinguished Senator and the staff on the matter of the Commission on Children, which I gather is now in the process of trying to ascertain exactly what the facts are. Let me be very clear with my colleagues. The best guesstimate is the amendment as it is proposed will cost $2.8 billion. That is only a guesstimate. The distinguished Senator from Texas many months ago decided that we had to get a pretty sharp focus on the problem. Therefore, he was the one that originated the idea of the Commission on Children. He is correct when he says that, No. 1, certainly we all feel the obligation, but we cannot act properly until we have the facts in hand. My own feeling is we ought to move ahead this evening. But I also stand on the realities of the time.

Is it just this type of thing that you are waiting for before you move? In other words, I can understand not moving on this particular bill, but I am not coming back in this Chamber in 1988 and hear that we are still looking for facts, and so forth.

I see too many kids who have their whole lives ahead of them, and parents have to choose between giving them that life and giving them half a life or no life at all. I do not think that is right.

I will tell you where my priorities are: It is with the young people of the Nation. That is what has distinguished our country. We live for our children. When we live for ourselves, the children are left in the rear.

I hope we will work toward having facts from the Commission.

Mr. BENTSEN. There is no question about that. We will continue to develop the information, to try to assist in that regard. We have the General Accounting Office making a study also, and that should be available to us early in the forthcoming year.

Mr. WEICKER. I repeat that nobody has worked harder, longer, and more than the Senator on this issue—I raised it with him in private about a year ago. I know that this is a matter of enormous importance to him. With his assurance on that matter, I will withdraw the amendment at this time.

The PRESIDING OFFICER. The Senator has the right to withdraw the amendment.

The amendment is withdrawn.

Who seeks recognition?

AMENDMENT NO. 1054

(Purpose: To add a study of adult day care services.)

Mr. MELCHER. Mr. President, I send to the desk an amendment on behalf of myself and Senator BRADLEY.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Montana [Mr. MELCHER], for himself and Mr. BRADLEY, proposes an amendment numbered 1054.

Mr. MELCHER. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place in the bill, insert the following new section:

SEC. . STUDY OF ADULT DAY CARE SERVICES.

(a) SURVEY OF CURRENT ADULT DAY CARE SERVICES.—The Secretary of Health and Human Services shall conduct a survey of adult day care services in the United States to collect information concerning—

(1) the scope of such services and the extent of their availability;

(2) the characteristics of entities providing such services;

(3) licensure, certification, and other quality standards that are applied to those providing such services;

(4) the cost and financing of such services; and

(5) the characteristics of the people who use such services.

(b) REPORT.—The Secretary shall report to Congress, by not later than 1 year after the date of the enactment of this Act, on the information collected in the survey. Based on such information, the Secretary shall include in the report recommendations concerning appropriate standards for coverage of adult day care services under medicare, including defining chronically dependent individuals, defining services included in adult day care services, establishing qualifications of providers of adult day care services, and establishing a reimbursement mechanism.

(c) ADULT DAY CARE SERVICES DEFINED.—In this section, the term "adult day care services" means medical or social services provided in an organized nonresidential setting to chronically impaired individuals who are not inpatients in a medical institution.

Mr. MELCHER. Mr. President, this amendment would require the Secretary of Health and Human Services to conduct a survey and report to Congress on adult day care services being provided throughout the United States.

This report would include information about, first, the scope of adult day care services and the extent to which they are available throughout the United States; second, the characteristics of the entities which provide these services such as hospitals, community-based facilities and nursing facilities; third, licensure, certification, and other standards that are required; fourth, the costs and means of financing adult day care; fifth, the characteristics of individuals who use the services such as their need for care and levels of disability.

The reason for gathering information about existing adult day care programs is for evaluating the establishment of an adult day care benefit under the Medicare Program. The Secretary is also to make recommendations for adult day care coverage under Medicare regarding, first, who should get services; second, the type of services that should be provided; third, standards and qualifications for facilities, staff and programs; and fourth, the type of reimbursement. The report would be due to the Congress not later than a year after enactment of this act. It is expected that the Secretary would work closely with the National Institute on Adult Daycare and other organizations and individuals which have already done research, gathered information and established standards for adult day care.

As defined by the National Institute on Adult Daycare, in association with the National Council on Aging:

> Adult day care is a community-based group program designed to meet the needs of functionally impaired adults through an individual plan of care. It is a structured, comprehensive program that provides a variety of health, social and related support services in a protective setting during any part of a day but less than 24-hour care. Individuals who participate in adult day care attend on a planned basis during specified hours. Adult day care assist its participants to remain in the community, enabling families and other caregivers to continue caring for an impaired member at home.

I have long advocated the extension of services to help our elderly stay in their own home and communities rather than to be unnecessarily placed in a nursing home or other institution. Several studies have shown that adult day care not only prevents or reduces nursing home and hospital care but is very cost effective as compared to other forms of health services.

The growth of adult day care has been a true grassroots effort throughout all 50 States and the District of Columbia. Participants receive a range of individualized services under medical supervision including health assessment and monitoring, personal care, a hot meal, and often physical, speech and/or occupational therapy. Most adult day care programs are nonprofit, with funding coming from Medicaid, the social service block grant, the Older Americans Act, and out-of-pocket fees for the elderly that are not covered by Medicaid. The average cost is estimated to be $30 to $35 a day.

I strongly believe that we need to consider Medicare coverage for certain individuals in qualified adult day care programs. With the results of this study, Congress should be able to carefully examine both the advisability and specific recommendations for providing this cost-effective and humane alternative form of health care to our Nation's elderly under Medicare. I urge your support of this amendment.

Mr. BRADLEY. Mr. President, I rise as a cosponsor of the amendment offered by the Senator from Montana [Mr. MELCHER] to require the Department of Health and Human Services to conduct a comprehensive study of adult day health care in the United States, including recommendations concerning appropriate Medicare coverage standards for these services.

Mr. President, adult day health care is a flexible program of health services and activities provided in a group setting, with an individualized plan of care for each participant. Several recent studies have shown that many frail and functionally impaired elderly can stave off institutionalization and other more costly forms of health care through the appropriate use of adult day health-care services. In addition, adult day health care enables seniors to remain in their homes and communities, and decreases the isolation many frail elderly feel alone in their homes.

Though the popularity of adult day health care is growing rapidly, more research needs to be done in this area on the availability, costs, and financing of these services. The study commissioned in this amendment is designed to help fill in the gaps in our knowledge about this form of health care for the elderly.

I urge my colleagues to support the amendment.

Mr. BENTSEN. Mr. President, with respect to Medicare ventures into long-term care and coverage, this kind of information would be valuable in trying to determine what to do. I think it would be a benefit to see if we can find something less costly than full-time nursing-home care. So I support the study and the amendment, and I urge the adoption of the amendment.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment.

The amendment (No. 1054) was agreed to.

Mr. MELCHER. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. BENTSEN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1055

(Purpose: To record the position of the Senate regarding whether there should be any new tax increases of any kind)

Mr. HELMS. Mr. President, I send an amendment to the desk and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from North Carolina (Mr. HELMS) proposes an amendment numbered 1055:

Add at the end of the bill the following new section:

"SEC. . SENSE OF THE SENATE OPPOSING NEW TAXES.

"It is the sense of the Senate that the American taxpayer is already overburdened and that, notwithstanding perceived economic problems associated with trade imbalances and budget deficits, Federal tax rates should not be increased in any manner whatsoever, whether direct or indirect, and no new Federal taxes should be created: *Provided, further,* That any discussions between the President and Members of Congress concerning the Federal deficit or other economic issues should not entertain any propositions which incorporate any increase in any individual or corporate tax rate or include the addition of any new tax on the already overburdened American taxpayer".".

Mr. HELMS. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. BENTSEN. Mr. President, if the Senator will yield, will he agree to temporarily lay aside his amendment? I think we have two or three small amendments that we can accept, and then with his rollcall vote, we might go to final passage after that.

Mr. HELMS. I will agree to that. If we have rollcall votes back to back, that will save time.

Mr. BENTSEN. Mr. President, I ask unanimous consent that the amendment be set aside temporarily.

The PRESIDING OFFICER. Without objection, the amendment is set aside temporarily.

AMENDMENT NO. 1056

Mr. BRADLEY. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from New Jersey [Mr. BRADLEY] proposes an amendment numbered 1056.

Mr. BRADLEY. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the bill insert the following new section:

SEC. . TREATMENT OF GARDEN STATE HEALTH PLAN.

(a) Section 1903(m) of the Social Security Act (42 U.S.C. 1396b(m)) is amended—

(1) by adding at the end the following new paragraph:

"(6)(A) For purposes of this subsection and section 1902(e)(2)(A), In the case of the State of New Jersey, the term 'contract' shall be deemed to include an undertaking by the State agency, in the State plan under this title, to operate a program meeting all requirements of this subsection.

"(B) The undertaking described in subparagraph (A) must provide—

"(i) for the establishment of a separate entity responsible for the operation of a program meeting the requirements of this subsection, which such entity may be a subdivision of the State agency administering the State plan under this title;

"(ii) for separate accounting for the funds used to operate such program;

"(iii) for setting of the capitation rates and any other payment rates for services provided in accordance with this subsection using a methodology satisfactory to the Secretary designed to ensure that total Federal matching payments under this title for such services will be lower than the matching payments that would be made for the same services, if provided under the State plan on a fee for service basis to an actuarially equivalent population; and

"(iv) that the State agency will contract, for purposes of meeting the requirement under section 1902(a)(30)(C), with an organization or entity that under section 1154 of the Social Security Act reviews services provided by an eligible organization pursuant to a contract under section 1876 of the Social Security Act for the purpose of determining whether the quality of services meets professionally recognized standards of health care.

"(C) The undertaking described in subparagraph (A) shall be subject to approval and annual re-approval by the Secretary in the same manner as a contract under this subsection."

"(D) The undertaking described in subparagraph (A) shall not be eligible for a waiver under section 1915(b)."; and

(2) by striking out, in paragraph (2)(F), all that precedes "may restrict the period" and inserting instead the following:

"(F) In the case of—

"(i) a contract with an entity described in subparagraph (G) or with a qualified health maintenance organization (as defined in section 1310(d) of the Public Health Service Act) which meets the requirement of subparagraph (A)(ii), or

"(ii) a program operated pursuant to an undertaking described in paragraph (6) in which at least 25 percent of the membership enrolled on a prepaid basis are individuals who (I) are not insured for benefits under part B of title XVIII or eligible for benefits under this title, and (II) (but only in the case of such individuals whose prepaid payments are made in whole or in part by any government entity) had the opportunity at the time of enrollment in the program to elect other coverage of health care costs that would have been paid in whole or in part by any government entity, A State plan".

(b) Section 1902(e)(2)(A) (42 U.S.C. 1396a(e)(2)(A)) is amended by striking out "section 1903(m)(2)(G)" and inserting instead "paragraph (2)G(or (6) of section 1903(m)".

Mr. BRADLEY. Mr. President, this is a technical amendment that is time sensitive.

New Jersey has run a demonstration HMO for the past few years for some of their Medicaid recipients. Authority expired for this on July 1, 1987. Since then, no Federal funds have been provided for the HMO.

The amendment resolves legal entity and contract problems of the Garden State Health Plan HMO to enable the State of New Jersey to continue to serve low-income families. The amendment has been cleared with the Health Care Financing Administration.

Mr. President, we all know about the problems of providing health care for low-income families. We do a lousy job in reaching these people—particularly pregnant women. This HMO has improved access to health care while maintaining high quality of care in a cost effective manner. I urge adoption of this technical amendment.

The PRESIDING OFFICER. The Senator from Texas.

Mr. BENTSEN. The Senator from Texas, the manager of the bill for the majority, finds no objection to the amendment and will accept it.

The PRESIDING OFFICER. The Senator form Minnesota.

Mr. DURENBERGER. Mr. President, I do not think we have any problem over here. We think it is a good amendment and urge its acceptance.

The PRESIDING OFFICER. Is there further debate on the amendment? The question occurs on the amendment of the Senator from New Jersey.

The amendment (No. 1056) was agreed to.

Mr. BRADLEY. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. DURENBERGER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1057

(Purpose: To delay organ procurement requirements)

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. THURMOND. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from South Carolina [Mr. THURMOND] for himself and Mr. DOMENICI proposes an amendment numbered 1057.

Mr. THURMOND. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place, insert the following new section:

SEC. . DELAY IN ORGAN PROCUREMENT REQUIREMENTS.

Section 9318(b) of the Omnibus Budget Reconciliation Act of 1986, as amended by section 107(c) of the Balanced Budget and Emergency Deficit Control Raffirmation Act of 1987, is amended by striking "November 21, 1987" each place it appears and inserting in lieu thereof, December 31, 1988".

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. THURMOND. Mr. President, I rise today to offer an amendment which will delay the effective date of the "Hospital Protocols for Organ Procurement and Standards for Organ Procurement Agencies," established under section 9318 of the Omnibus Reconciliation Act of 1986. The amendment I propose would extend the effective date from November 21, 1987, to December 31, 1988.

The purpose of the legislation creating the organ procurement standards was, and still is, highly commendable. By enacting this legislation, Congress authorized the establishment of a national clearinghouse to coordinate organ procurement and transplants throughout the Nation to ensure that these delicate and lifesaving procedures are done in the most effective and efficient manner possible. Toward this end, the Department of Health and Human Services has recently awarded a contract to the United Network for Organ Sharing [UNOS] to administer this important program.

While I am supportive of the goals of this national network for organ transplant work, I have been informed that a number of hospitals throughout the Nation have found the criteria for membership in UNOS to be impractical. For example, in my home State of South Carolina, Providence Hospital in Columbia has spent hundreds of thousands of dollars over the last 2 years in an effort to establish a heart transplant center at the hospital. Unfortunately, despite the efforts of the hospital, it seems that the hospital does not meet all of the criteria of UNOS membership. Given additional time, I fully anticipate Providence will meet these requirements. Unfortunately, provisions of the Omnibus Reconciliation Act of 1986 would penalize Providence and others in their attempt to gain the necessary experience needed to meet UNOS membership requirements by revoking the hospital's participation in Medicaid and Medicare for all services, not just organ transplants. In the case of Providence Hospital, they are prepared to forgo Medicare and Medicaid reimbursement for organ transplants until it meets the UNOS requirements. Providence merely seeks additional time to meet these requirements without jeopardizing all Medicare and Medicaid reimbursement.

Mr. President, unfortunately, a number of hospitals throughout the Nation are in the same position as Providence Hospital. These hospitals have made substantial investments to establish heart and other organ transplant centers, and I believe it is only fair to extend the effective date from November 21, 1987, to December 31, 1988, to give these institutions additional time to meet the criteria for membership in UNOS.

It has been cleared on both sides. I do not think anybody objects to it.

This amendment merely delays the effective date of certain organ procurement laws to December 31, 1988. Many hospitals are attempting to meet the requirements but need additional time.

Mr. BENTSEN. Mr. President, we think the amendment is a worthwhile amendment and have no objection to it on this side.

Mr. DURENBERGER. Mr. President, I recommend adoption of the amendment.

The PRESIDING OFFICER. Is there further debate? Hearing no further debate on the amendment, the question occurs on the amendment of the Senator from South Carolina.

The amendment (No. 1057) was agreed to.

Mr. THURMOND. Mr. President, I move to reconsider the vote by which the amendment was agreeed to.

Mr. DURENBERGER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from California.

AMENDMENT NO. 1058

(Purpose: To add an additional purpose for the use of medicaid savings

Mr. WILSON. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from California [Mr. WILSON] proposes an amendment numbered 1058.

Mr. WILSON. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 112, line 10, strike "and".

On page 112, line 14, strike the period and insert in lieu thereof ", and ".

On page 112, between lines 14 and 15, insert the following new subparagraph:

(C) in the case of any State that provides coverage under section 1902(a)(10)(E) of such Act to qualified medicare beneficiaries up to an income level of 100 percent of the line described in section 1905(p)(2)(A) of such Act and provides under the State plan for a maintenance needs monthly income level for community spouses of institutionalized individuals of not less than $550 per month, to increase opportunities for elderly individuals to participate in adult day health care and other community based services.

Mr. WILSON. Mr. President, this is a simple amendment that seeks to take advantage of a very happy fact. The fact is that the State of California, having been provident with respect to the health care of elderly citizens, has through the Medicare Program been furnishing assistance of a kind that now will be paid for by the enactment of this catastrophic aid bill. That produces savings of a kind.

The purpose of this amendment is very simply to allow the State of California to do something else by way of health care for its elderly that is consistent with the intent of this legislation. It will mean that there is an improvement, an increase in the overall service to the elderly.

I am aware of no objections to it. In fact, I think there is universal support for it.

The **PRESIDING OFFICER.** Is there further debate on the amendment?

The Senator from Texas.

Mr. BENTSEN. Mr. President, we have no objection to the amendment on this side.

The **PRESIDING OFFICER.** The Senator from Minnesota.

Mr. DURENBERGER. Mr. President, any time you can catch the State of California being provident you should take advantage of it. I recommend adoption of the amendment.

The **PRESIDING OFFICER.** Is there further debate on the amendment? If there is no further debate, the question occurs on the amendment of the Senator from California.

The amendment (No. 1058) was agreed to.

Mr. DURENBERGER. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. WILSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1059

(Purpose: To add provisions to protect medicare beneficiaries enrolled in an eligible organization with a risk-sharing contract against certain practices.)

Mr. WILSON. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The **PRESIDING OFFICER.** The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from California [Mr. Wilson] for himself and Mr. McCain proposes an amendment numbered 1059.

Mr. WILSON. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The **PRESIDING OFFICER.** Without objection, it is so ordered.

The amendment is as follows:

On page 101, insert between line 23 and line 1 on page 102 the following new section:

SECT. 10A. PROTECTION OF MEDICARE BENEFICIARIES ENROLLED IN AN ELIGIBLE ORGANIZATION WITH A RISK-SHARING CONTRACT AGAINST CERTAIN PRACTICES.

(a) Notice to Medicare Beneficiaries.—

(1) Section 1876(c)(3) of the Social Security Act (42 U.S.C. 1395mm(c)(3)) is amended by adding at the end thereof the following new subparagraph:

"(F)(i) Each eligible organization having a risk-sharing contract under this section shall notify individuals eligible to enroll with the organization under this section and individuals enrolled with the organization under this section that—

"(I) the organization is authorized by law to terminate or refuse to renew the contract, and

"(II) termination or nonrenewal of the contract may result in termination of the enrollments of individuals enrolled with the organization under this section.

"(ii) The notice required by clause (i) shall be included in—

"(I) any materials described in subparagraph (C) that are distributed by an eligible organization to individuals eligible to enroll under this section with the organization, and

"(II) any explanation provided to enrollees by the organization pursuant to subparagraph (E).".

(2) The amendment made by paragraph (1) shall apply to contracts entered into (or renewed) on or after the date of the enactment of this Act.

(b) Civil Money Penalties and Intermediate Sanctions for Eligible Organizations With Risk-Sharing Contract.—

(1) Section 1876(i)(6) of the Social Security Act (42 U.S.C. 1395mm(i)(6)) is amended to read as follows:

"(6)(A) Any eligible organization with a risk-sharing contract under this section that willfully—

"(i) fails substantially to provide medically necessary items and services that are required (under law or under the contract) to be provided to an individual covered under the contract, if the failure has adversely affected (or has a substantial likelihood of adversely affecting) the individual, is subject to a civil money penalty of not more than $25,000,

"(ii) charges an individual covered under the contract a greater premium than is permitted under this section, is subject to a civil money penalty of not more than $2,000 plus double the excess amount charged (and the excess amount charged shall be deducted from that penalty and returned to the individual),

"(iii) acts to expel or to refuse to re-enroll an individual in violation of the provisions of this section, is subject to a civil money penalty of not more than $15,000, for each incident,

"(iv) engages in any practice that would reasonably be expected to have the effect of denying or discouraging enrollment with the organization (except as permitted by this section) by eligible individuals whose medical condition or history indicates a need for substantial future medical services, is subject to a civil money penalty of not more than $100,000, plus $15,000 for each individual consequently not enrolled, or

"(v) misrepresents or falsifies enrollment information that is furnished to the Secretary, to an individual, or to any other entity, or enrolls an individual without the individual's knowledge or consent or after making a material inducement to the individual, is subject to a civil money penalty of not more than $15,000 for each incident (or, in the case of enrollment information furnished to the Secretary, not more than $100,000 for each incident).

"(B) The provisions of section 1128A (other than subsections (a) and (b)) shall apply to a civil money penalty under subparagraph (A) in the same manner as they apply to a civil money penalty under that section.

"(C) If the Secretary determines that an eligible organization has committed any of the violations specified in subparagraph (A), the Secretary, in addition to, or instead of, imposing a civil money penalty, may provide for the suspension of enrollment of individuals under this section or of payment to the organization under this section for individuals newly enrolled with the organization, after the date the Secretary notifies the organization of the violation.".

"(2) The amendment made by paragraph (1) shall become effective at the end of the fourteen-day period beginning on the date of the enactment of this Act and shall not apply to administrative proceedings commenced before the end of such period.

Mr. WILSON. Mr. President, this amendment seeks to provide needed assistance to those among the elderly who are prudent enough to try to seek not just Medigap insurance of a kind that is a prudent supplement to Medicare, but who actually have been approached and are exploring the possibility of seeking to respond to their health care needs by enrollment in a health maintenance organization.

The HMO's are relatively new to a number of older Americans, but they are desirable as a way of delivering health care.

Unhappily there are some who are engaged in these HMO's who engage in some sharp practices.

This amendment would do two things.

First, it would simply state a fact of life which is that an HMO can go out of business and the enrollee can find himself or herself disenrolled, back on the market, and perhaps minus the coverage they might have from a company that has provided some Medigap supplement to their Medicare coverage.

Second, the bill imposes monetary penalties and actions on the HMO for the failure to provide medically necessary items and services that adversely affect the individual enrollee, the charging of a greater premium than permitted by the section and action by HMO's to dispel or refuse to rehire an enrollee for medical reasons and the engaging in any practice that denies or discourages an individual whose medical history or condition indicates a need for future medical services.

Mr. President, these, are, I think, simple precautions that we should take in order to make certain that those who prudently try to solve their own health problems by enrollment in an HMO do not find themselves victimized.

I think these simple precautions will assist in that without in any way injuring the marketing of wholesome and legitimate HMO services.

Mr. DURENBERGER. Mr. President, this is an important amendment, but it worries me. I have discussed those concerns with the Senator from California.

We have set out in this country to encourage not just HMO's but to encourage the expansion of what we call competitive medical plans as a preferred way for the elderly in this country to buy health care.

I come from a State where everybody is getting into these plans. So I understand the concerns that the Senator from California has expressed. I share those concerns.

When a plan decides that it is going to go out of business in a certain area it just goes out of business in a certain area. If it decides the effect of that is in effect to disenroll people in the middle of a period in which they thought they had health coverage that leaves them without an alternative.

So I think that it is appropriate that people be informed as to the nature of the plan and the rights that a plan has that they might not be able to have the doctor they thought they would have and some of this sort of thing.

The way this amendment is drafted, though, I have suggested to my colleague from California that it could use a little report language which would make it quite clear that the Secretary as he adopts the appropriate rules to implement the consumer protection portion does not scare the consumers off what might otherwise be very good products.

There are lots of terrific medical plans working in this country and we do not want people to be scared off of this product.

So I will have report language prepared to add to this bill that will achieve that end, and to that end I would have no objection to consideration of this amendment.

Mr. BENTSEN. Mr. President, I think the Senator from California has an amendment that we can accept on this side. But I do think the Senator from Minnesota has been able to put in a note of caution that will be helpful in the report.

With that understanding and with that cooperation, I am delighted to accept the amendment.

The PRESIDING OFFICER. Is there further debate on the amendment?

Mr. WILSON. Mr. President, I would simply state for the record that I think the caution expressed by the Senator from Minnesota is well taken. It is consistent with the purpose of the amendment. The purpose is not to discourage enrollment in HMO's, rather it is to encourage enrollment and to discourage those types of practices that would undermine the delivery of health care and what is a very desirable method. I quite agree.

The PRESIDING OFFICER. Is there further debate on the amendment. If there is no further debate on the amendment, the question occurs on the amendment of the Senator from California.

The amendment (No. 1059) was agreed to.

Mr. DURENBERGER. I move to reconsider the vote by which the amendment was agreed to.

Mr. BENTSEN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1060

(Purpose: To amend the Internal Revenue Code of 1986 to exclude from gross income amounts withdrawn from individual retirement plans for payment of long-term-care insurance premiums.)

Mr. DURENBERGER. Mr. President, I send an unprinted amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Minnesota (Mr. Durenberger) proposes an amendment numbered 1060.

Mr. DURENBERGER. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Is there objection? Hearing no objection, it is so ordered.

The amendment is as follows:

At the appropriate place, insert the following new section:

SEC. . EXCLUSION FROM GROSS INCOME FOR AMOUNTS WITHDRAWN FROM INDIVIDUAL RETIREMENT PLANS FOR LONG-TERM CARE INSURANCE PREMIUMS.

(a) In General.—Subsection (d) of section 408 of the Internal Revenue Code of 1986 (relating to tax treatment of distributions from individual retirement plans) is amended by adding at the end thereof the following new paragraph:

"(7) DISTRIBUTIONS FOR QUALIFIED LONG-TERM CARE INSURANCE PREMIUMS.—

"(A) IN GENERAL.—No amount (which but for this paragraph would be includible in the gross income of the payee or distributee under paragraph (1)) shall be included in gross income during the taxable year if—

"(i) the payee or distributee has attained age 59½ on or before the date of the distribution, and

"(ii) the distribution is used during such year to pay premiums for any qualified long-term care insurance policy for the benefit of the payee or distributee or the spouse of the payee or distributee if such spouse has attained age 59½ on or before the date of the distribution

"(B) DOLLAR LIMITATION.—

"(i) IN GENERAL.—The amount excluded from gross income under subparagraph (A) shall not exceed $2,000 ($1,000 in the case of a separate return by a married individual).

"(ii) COST-BY-LIVING ADJUSTMENT.—The Secretary shall adjust the dollar amounts under clause (i) for taxable years beginning in calendar years after 1988 in the same manner as under section 1(f), except that only increases in the medical component of the Consumer Price Index shall be taken into account

"(C) QUALIFIED LONG-TERM CARE INSURANCE POLICY.—For purposes of subparagraph (A)—

"(i) IN GENERAL.—Subject to clause (ii), the term 'qualified long-term care insurance policy' means an insurance policy or rider, issued by a qualified issuer, and certified by the Secretary of Health and Human Services (in accordance with procedures similar to the procedures prescribed in section 1882 of the Social Security Act (42 U.S.C. 1385ss) used in the certification of medicare supplemental policies (as defined in subsection (g)(1) of such section)) to be advertised, marketed, offered, or designed to provide coverage—

"(I) for not less than 12 consecutive months for each covered person,

"(II) on an expense incurred, indemnity, or prepaid basis,

"(III) for 1 or more medically necessary, diagnostic services, preventive services, therapeutic services, rehabilitation services, maintenance services, or personal care services, and

"(IV) provided in a setting other than an acute care unit of a hospital.

"(ii) COVERAGE SPECIFICALLY EXCLUDED.—Such term does not include any insurance policy or rider which is offered primarily to provide any combination of the following kinds of coverage:

"(I) Basic Medicare supplement coverage.

"(II) Basic hospital expense coverage.

"(III) Basic medical-surgical expense coverage.

"(IV) Hospital confinement indemnity coverage.

"(V) Major medical expense coverage.

"(VI) Disability income protection coverage.

"(VII) Accident only coverage.

"(VIII) Specified disease coverage.

"(IX) Specified accident coverage.

"(X) Limited benefit health coverage.

"(D) QUALIFIED ISSUER.—For purposes of subparagraph (A), the term 'qualified issuer' means any of the following:

"(i) Private insurance company.

"(ii) Fraternal benefit society.

"(iii) Nonprofit health corporation.

"(iv) Nonprofit hospital corporation.

"(v) Nonprofit medical service corporation.

"(vi) Prepaid health plan."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1987.

Mr. DURENBERGER. Mr. President, this amendment would amend the Internal Revenue Code to permit individuals to use up to $2,000 a year of their IRA withdrawals after age 59½ to purchase long-term care insurance premiums. It makes a lot of sense to me, Mr. President, that right now the law says that when you reach 59½ years of age, you better start spending your IRA money. In light of all of the conversation that has taken place since we began the catastrophic debate, it would seem much more appropriate that people who reach that age use the money that they have saved in their IRA's for what they are really going to need in the catastrophic sense, the long-term care that comes with nursing home care and so forth.

I think it is certainly in the public interest to encourage individuals to provide for their long-term care. This measure, together with measures introduced by some of my colleagues, would go a long way toward laying the groundwork for a major, long-term care insurance program in this country.

The cost of this program is somewhere between $100 million and $150 million per year. The benefits obviously would exceed the cost, but I would anticipate that my chairman might have an objection to its consideration at this time on that ground. If he does, I certainly would be pleased to hear what that objection might be.

The PRESIDING OFFICER. The Senator from Texas.

Mr. BENTSEN. Mr. President, I would say to my distinguished friend that this amendment comes as a surprise to me at this late hour. When we hear the amount of cost that is involved, I obviously have to object and would strenuously do so. I can understand his concern, but, under the circumstances, I would have to oppose the amendment.

Mr. DURENBERGER. Mr. President, the concern expressed by my chairman is understandable. I would be the first to understand it, having worked so closely with him in developing this bill. But, because the people on the House side who voted against catastrophic insurance expressed their preference for providing the catastrophic coverage for long-term care, and because many of them also said that if you could bring over from the Senate some kind of a groundwork for long-term care, I thought it might be appropriate that we introduce a bill like this as an amendment to this bill so they can see what the groundwork is.

I will withdraw the amendment at this point, with the full expectation that, if I do not bring it back next year, the chairman might or someone else will, because this is certainly an appropriate way and a responsible way for us to approach long-term care. I will withdraw the amendment.

The PRESIDING OFFICER. The Senator has a right to withdraw the amendment. The amendment is withdrawn.

Mr. BENTSEN. Mr. President, I appreciate the concern of the distinguished Senator from Minnesota and his long-time interest in this. I also appreciate the fact that he is prepared to withdraw it.

AMENDMENT NO. 1061

(Purpose: To provide for certain transitional rules)

Mr. DURENBERGER. Mr. President, I send an amendment to the desk on behalf of Mr. HEINZ and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Minnesota [Mr. DURENBERGER] for Mr. HEINZ proposes an amendment numbered 1061.

Mr. DURENBERGER. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Is there objection? Hearing no objection, it is so ordered.

The amendment is as follows:

On page 125, between lines 2 and 3, insert the following new section:

SEC. 20A. TRANSITIONAL PROVISIONS.

Part B of title XVIII is amended by inserting after section 1839A the following:

"TRANSITIONAL PROVISIONS

"SEC. 1839B. (a) Notwithstanding any other provision of this Act—

"(1) the monthly catastrophic drug benefit premium amount shall in no event exceed—

"(A) for 1990, $0.90; and

"(B) for 1993, $4.05,

"(2) for calendar year 1990, section 1839(g)(3)(A)(i) shall be applied by substituting '40 percent' for '50 percent', and section 1839A(b)(2)(B)(iii) shall be applied by substituting '60 percent' for '50 percent', and

"(3) for calendar year 1991, section 1839(g)(3)(A)(i) shall be applied by substituting '45 percent' for '50 percent', and section 1839A(b)(2)(B)(iii) shall be applied by substituting '55 percent' for '50 percent'.

"(b) Notwithstanding the provisions of section 1839(g)(3)(A)(i)(I), for any calendar year after 1990, if the secretary determines that—

"(1) it is appropriate to increase the contingency fund under such section so as to assure a smooth transition between cash outlays accounting to costs incurred accounting over a multi-year period, and

"(2) the monthly catastrophic drug benefit premium amount for such year as determined under section 1839(g)(3)(A) (without regard to clause (ii) of such section) is less than the limit in such clause (ii),

the Secretary may increase such premium (but in no event above the limit in such clause (ii)) by an amount no greater than 15 percent of such premium. Once such transition has been completed, the Secretary shall maintain such contingency fund on the basis of such costs incurred accounting method.".

Mr. DURENBERGER. Mr. President, this morning as we began the amending process on the S. 1127 with the consideration of the drug benefit, the administration provided us with their support for the catastrophic bill as constructed and indicated also their support for the compromise drug amendment sponsored by our colleague from Pennsylvania and others. At the time they did that, they had two reservations. It was indicated that Senator HEINZ, Senator MITCHELL, and I at that time would work with the administration to try to resolve those reservations and we have done that. We have met with OMB and HHS and we have reached an agreement on an amendment that resolves the problems regarding the drug benefit.

The resolution in the amendment before us gives the Secretary of HHS the authority to manage the drug trust fund to assure that it will remain solvent under the premium caps or the defined premium for the Drug Program. In addition, and this came as a welcome solution as far as this Senator was concerned, the agreement reached lowered the 1993 premium cap from the $4.80 in the original Heinz drug amendment to $4.05 and also places a cap of 90 cents on the premiums for 1990.

So, Mr. President, I move the adoption of that amendment.

The PRESIDING OFFICER. Is there further debate?

The Senator from Texas.

Mr. BENTSEN. Mr. President, in examining the amendment it does make the transition I think smoother and seems to me helps hold down that cap in the out years. With that understanding, I am prepared to accept the amendment. I know of no objection on this side.

The PRESIDING OFFICER. Is there further debate on the amendment offered by the Senator from Minnesota on behalf of the Senator from Pennsylvania?

The amendment (No. 1061) was agreed to.

Mr. DURENBERGER. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. BENTSEN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1062

(Purpose: To modify the provisions of the long-term care studies)

Mr. MELCHER. Mr. President, I have two amendments which deal directly with the subject matter of the last two amendments. The first that I shall offer deals with the question of long-term health care for the elderly. I send the amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Montana [Mr. MELCHER] proposes an amendment numbered 1062.

Mr. MELCHER. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Is there objection? Hearing no objection, it is so ordered.

The amendment is as follows:

On page 114, line 5, add after the comma "and determine whether such options would be effective as compared to public financing alternatives and would be beneficial to the broad spectrum of populations (including children and adults who have attained and have not attained retirement age) requiring protection.".

On page 114, line 14, insert ", quality of life provided, effect on family caregivers," after "effectiveness".

On page 114, line 17, strike "prevent the overutilization of such services, and" and insert in lieu thereof "assist beneficiaries and providers in preventing the overutilization of such services,".

On page 114, line 22, strike out the period and insert in lieu thereof ", and".

On page 114, between lines 22 and 23, insert the following new subparagraph:

(F) review the sources of financing and the coverage of long-term care services in other developed nations and the implications of these findings on the development of similar policies in the United States.

On page 115, line 4, strike "and".

On page 115, strike lines 5 through 7 and insert in lieu thereof the following new subparagraphs:

(B) the impact of the various approaches to funding, both public and private, on access to long-term services by individuals of all age groups (including children and adults who have attained and have not attained retirement age), individuals of different socioeconomic and minority groups, and women, and

(C) the effort that membership in these different groups has on the need, the ability to pay, and access to quality long-term care.

On page 116, line 9, after the period add "The study shall also consider the cost to the United States Treasury and the potential benefits to consumers, including whether the incentives would benefit all or most of the population requiring protection.".

On page 116, lines 12 and 13, strike "and providers of long-term care" and insert in lieu thereof ", providers of long-term care, and consumers".

Mr. MELCHER. Mr. President, it has unfortunately become all to obvious that the majority of Congress has concluded that we do not have an acceptable financing mechanism available to pay for a comprehensive long-term care benefit. However, the elderly and the rest of our population remain extremely vulnerable to the catastrophic costs associated with long term care services, including home health and nursing home care. To provide further information on the need for this coverage, I will be devoting the entire volume III of the Senate Special Committee on Aging annual publication "Developments in Aging" to this issue.

Similarly, rather than give up on this issue, the Finance Committee included a provision for an Institute of Medicine [IOM] study which would analyze long-term care financing alternatives and a Department of the Treasury study which would study Federal tax policies to promote private financing of long-term care. I applaud this provision but believe we can strengthen the legislative language by providing more explicit direction to both the IOM and the Department of the Treasury.

The amendment that I am offering today would help shape these studies in a number of ways. First, and perhaps most importantly, it would expand the scope of the IOM study to include the review of the long-term care needs of Americans of all ages—those over and under the age of 65, including children. My amendment would also require the IOM to examine the sources of financing and the coverage of long-term care in other developed nations and the implications of these findings on the development of similar policies in the United States. Finally, the IOM would be required to study the impact that various approaches to funding long-term care would have on the access to those services of various groups, such as minorities, women, and children.

The study that S. 1127 requires of the Department of the Treasury would be expanded under my amendment to include more consumer input and participation. I believe these additions to the studies at IOM and the Department of the Treasury will strengthen and improve their results, making them more useful to Congress and other policymakers when the time comes for us to provide the long-term care coverage needed by many Americans of all ages.

This amendment has been endorsed by the American Association of Retired Persons, the National Council of Senior Citizens, and Villers Advocacy Association. I urge all my colleagues in joining me in supporting these important changes.

The PRESIDING OFFICER. Is there any further debate on this amendment?

Mr. BENTSEN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BENTSEN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BENTSEN. Mr. President, in examining the amendment, the manager for the majority sees no objection and hears no objection from this side.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. DURENBERGER. Mr. President, we have no objection to the amendment on our side.

The PRESIDING OFFICER. Is there any further debate on this amendment? If not, the question is on agreeing to the amendment.

The amendment (No. 1062) was agreed to.

Mr. MELCHER. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. BENTSEN. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1063

(Purpose: To provide authority to lower the deductible for covered outpatient drugs)

Mr. MELCHER. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Montana [Mr. MELCHER] proposes an amendment numbered 1063.

Mr. MELCHER. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 125, between lines 2 and 3, insert the following new section:

SEC. 20. AUTHORITY TO REDUCE DEDUCTIBLE FOR COVERED OUTPATIENT DRUGS.

(a) IN GENERAL.—Section 1833 (42 U.S.C. 13951) is amended by adding at the end thereof the following new subsection:

"(p) Notwithstanding any other provision of this subsection, if the Secretary determines that sufficient revenue to pay all benefits and administrative costs, and to provide an adequate contingency margin (as determined by the Secretary) exists to do so, the Secretary may reduce the deductible under subsection (o)(1) to—

"(1) $500 in 1991;

"(2) $400 in 1992; and

"(3) $300 in 1993.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall become effective on the date of enactment of this Act.

Mr. MELCHER. Mr. President, one of the major concerns raised by both the elderly and the Pharmaceutical Manufacturers Association about prescription drug benefits with deductibles of $500 or more—such as the ones now included in the Senate and House—is that they will only benefit approximately 17 percent of the Medicare population and, therefore, will not be viewed by many older Americans as worth an increase in their Medicare premiums.

S. 1127, as reported out of the Senate Finance Committee, has a provision for coverage of immunosuppressive drugs needed for organ transplants, but does not include a needed drug benefit which covers all prescription drugs. The Heinz-Mitchell prescription drug amendment begins to address this shortcoming by providing for a transition into a comprehensive drug benefit beginning in 1993.

The amendment I am offering builds upon the Heinz-Mitchell amendment by modifying its approach and permiting the Secretary of Health and Human Services to reduce, rather than increase, the drug deductible. My amendment provides flexibility to the Secretary of Health and Human Services to adjust the deductible and premiums downward if the cost of the new benefit is lower than the revenue raised to pay for it. Currently, there are only provisions in the Heinz-Mitchell amendment that authorize the Secretary to increase the deductible and premiums. If we do not have this provision, there is no doubt in my mind that the deductible and premiums can only go up.

It is my hope that this amendment will be the first step toward finding ways to assure that we reduce the drug deductible and provide a benefit that will significantly assist our elderly. For example, a $300 deductible would benefit 10.4 million older Americans, whereby a $600 deductible will only assist 5.5 million elderly. I believe we need this improvement to assure the support of our elderly for the catastrophic health care legislation.

NEED FOR BENEFIT

There is no question that coverage for outpatient prescription drugs is needed. In the United States, those age 65 and older represent only 12 percent of the total population, yet they consume 30 percent of the prescription drugs. Moreover, prescription drugs constitute the largest out-of-pocket expense for three-fourths of our Nation's elderly. For the elderly who are chronically ill, this figure is 90 percent.

Over the past several years, the price of prescription drugs has increased astronomically. Between 1980 and 1986, the cost of prescription drugs rose 80 percent, which is 2½ times faster than the rise in consumer prices in general. Just last year, drug costs rose 8.6 percent while general inflation was only 1.9 percent. Needless to say, these price increases have had an adverse effect on older Americans' purchases of needed prescription drugs. According to the Public Health Service, 15.5 percent of the elderly population who require prescriptions say that they are unable to pay for their drugs. And in a national survey taken by the American Association of Retired Persons in 1986, the cost of drugs was cited as the second most important reason older consumers did not get a prescription filled.

The Aging Committee has received testimony that indicates that many elderly do not follow the drug regimens prescribed by their physicians—partly because many cannot afford the prescriptions they need. Too many times, these older Americans choose to allocate their limited income to pay for groceries, heating bills and other necessities, rather than for need medications. As a result, these beneficiaries oftentimes find themselves being hospitalized for much more expensive illnesses—illnesses which could have been more cheaply and effectively treated or prevented by taking the proper amounts of medications prescribed by their physician.

COVERAGE WITHIN MELCHER DRUG AMENDMENT

The amendment would not change any of the provisions of the Heinz-Mitchell drug amendment other than providing that, as we are implementing this important benefit, we can begin to implement a benefit that is worthwhile. It provides a transition formula which, just as the Heinz-Mitchell amendment, begins the coverage with a $600 deductible in 1990. However, unlike the Heinz-Mitchell formula, I would have the deductible decreased as we become more knowledgeable about this drug benefit. Therefore, my amendment would permit decreases in the deductible from $600 in 1990, to $500 in 1991, to $400 in 1992, to $300 in 1993 when the full benefit under the Heinz-Mitchell amendment goes into effect.

I urge my colleagues to support this amendment.

The PRESIDING OFFICER. Is there any further debate on this amendment?

Mr. BENTSEN. Mr. President, I have examined the amendment. I have no objection to it.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. DURENBERGER. There is no objection on our side.

The PRESIDING OFFICER. Is there any further debate on this amendment? If not, the question is on agreeing to the amendment.

The amendment (No. 1063) was agreed to.

Mr. MELCHER. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. BENTSEN. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. GLENN. Mr. President, I am pleased to join my Senate colleagues in passing S. 1127, the Medicare Catastrophic Loss Prevention Act. Similar legislation passed the House of Representatives in July. It is my hope that House-Senate conferees will be able to agree on a compromise bill in the very near future which Congress can approve and send to the President for his signature.

Passage of Medicare catastrophic legislation will provide additional protection from the burden of outpatient health care costs to many of our Nation's elderly and disabled citizens. At the same time, it is important to remember that gaps still remain in Medicare coverage—particularly protection against the costs of long-term care. Passage of this legislation must not deter us from our continued efforts to improve the Medicare Program so that it truly meets the needs of America's growing elderly population.

The legislation we have passed today is the first major expansion of the Medicare Program since it was enacted in 1965. It provides protection against catastrophic costs for Medicare-covered services by establishing an annual limit of $1,850 in 1988 on out-of-pocket expenses. This annual "cap" is indexed to the Social Security cost-of-living adjustment [COLA].

S. 1127 improves benefits for hospital care by limiting the deductible to one per year and by eliminating all hospital coinsurance payments. It improves the skilled nursing facility benefit by eliminating the 3-day prior hospitalization requirement; by increasing the allowable days from 100 to 150; and by lowering the coinsurance amounts and moving them from the 21st to 100th days to the first 10 days. Improvements are made in the home health benefit by clarifying the 21-day rule for daily visits and the homebound requirement; and by expanding the number of days, from 21 to 45, in which a previously institutionalized beneficiary can receive daily home health care. Further, this legislation makes it possible for a person qualified as terminally ill to receive the Medicare hospice benefit for as long as necessary, thus eliminating the current 210 days now allowed.

During consideration of S. 1127 on the Senate floor, I was pleased to support amendments which provide added protection to Medicare beneficiaries and which make the financing of the new protection more fair for retirees who are already paying for catastrophic coverage through their employer-sponsored health insurance plans. I am also pleased that the Senate adopted an amendment to prevent the impoverishment of the spouse of a Medicaid nursing home patient.

Medicare does not currently reimburse for the costs of outpatient prescription drugs, which are a significant out-of-pocket health care burden for older Americans—an estimated $7.3 billion in 1986. Although older Americans represent 12 percent of our population, they use 30 percent of the drugs prescribed in our country. Over 75 percent of persons over 65 use prescription drugs and this percentage increases with our "old-old" population.

An amendment passed by the Senate would phased by in a prescription drug benefit beginning in January 1990, with coverage extended to all outpatient prescription drugs on January 1, 1993. In 1990, the annual deductible for the outpatient drug amendment would be $600. After the deductible is met, beneficiaries would pay 20 percent of additional drug costs. The outpatient drug benefit is financed by an additional part B premium, which begins at 60 cents in 1990, and an additional supplemental premium based on income tax liability.

Before final passage of S. 1127, the Senate also approved an amendment, which I cosponsored, to ensure that retirees who already have catastrophic protection through their employer-sponsored health plans do not have to pay Medicare premiums for duplicate coverage. Many of these people are Federal retirees, covered by the Federal Employees Health Benefits [FEHB] Program, and State and local employees, including those in my home State of Ohio. The amendment I supported requires employers who provide benefits that duplicate those offered in the Medicare catastrophic legislation to provide, first, additional health care benefits, or second, a cash refund equal to the actuarial value of the duplicative benefits. Similar provisions in S. 1127 require coordination of new

Medicare benefits with individual medigap policies.

A second amendment which I cosponsored and which passed the Senate provided equitable treatment in the financing of the new catastrophic coverage to retirees who receive a majority of their income from a taxable source, such as a Federal, State, or local pension. Because the supplemental premium for catastrophic coverage is based on income tax liability, retirees with taxable pensions could end up paying premiums four times the amount of those paid by Social Security recipients who receive tax-free benefits. The amendment passed by the Senate changes the calculation of the supplemental premium to eliminate this inequity, thus helping to ensure the continued participation of all retirees in Medicare part B and its expanded catastrophic coverage.

The Medicare catastrophic benefits contained in S. 1127 would be financed through first, a $4 per month increase in the part B premium, which is currently $17.90 per month; and by, second, a supplemental premium based on income tax liability and collected by the Internal Revenue Service. It is estimated that one-third of beneficiaries would have to pay this supplemental premium, which would be capped at $800 in 1988.

I share the concerns of many that the financing burden of the Medicare catastrophic legislation is placed solely on retirees and about the increased part B premium, particularly in light of the fact that the administration has announced that the current part B premium will increase to $24.80 per month in January 1988. However, I believe that the provisions contained in S. 1127, as passed by the Senate, will provide important insurance for Medicare beneficiaries against catastrophic acute care and prescription drug costs. It is an important step, and one which I hope will lead to further congressional action to provide adequate health care coverage for Medicare beneficiaries, as well as for nonelderly Americans who are uninsured or have inadequate insurance for themselves and their families.

Mr. President, I just want to make 1 or 2 minutes of remarks in addition. I want to congratulate the distinguished Senator, manager of the bill, the author of this. This is something that has been needed in this country for many, many years.

I had some personal experience in this area years ago.

My dad retired. He had worked as a plumber. He had a small plumbing and heating business with very modest amounts saved and about 2 years after he retired, when they were planning to do some traveling and so on, he got cancer, cancer of the prostate.

He had all the treatments. All their savings went in about the first 1½ or 2 years. I did not have a whole lot of money myself at that time, and it was a long, old battle.

He never lacked for medical attention at that time. He got the best there was. But it was a 6-year, downhill slide. I saw what can happen to a family.

Ever since then, I thought we needed to get on to catastropic insurance. I remember Hubert Humphrey's remarks when I first got to the Senate here in some of these areas where he was so eloquent.

I can just imagine the trauma that someone goes through when they do not have the money to help a loved one like that. And it is tragic.

So I wanted to compliment the floor manager. I also wanted to compliment the distinguished Senator from Connecticut, Mr. WEICKER.

I think in this area of children's care and health care for children and concern about children's benefits and welfare he could well almost be called the conscience of the Senate, I guess. He has risen on this floor so many times and spoken about the need for help for the children. He is not on the floor now, but I want to compliment him for bringing up this issue tonight.

As Hubert Humphrey used to say, also, a society can be judged by how it takes care of its elderly and its young. I think that is as true today as it was when Hubert was still alive and in this Chamber.

I have had some experience recently with a family in Ohio where there is a cleft palate, a small child, and a hand, a birth defect. Can we not help children like that? I think we can and I know there is a study being made. But I just know from talking to the Senator from Connecticut about this, in times past, that no one feels more deeply about it than he in particular because of his personal experience within his own family.

So, when we have that kind of care and compassion and concern for the youth and the children of our country, I want to work with him and I am sure the distinguished floor manager of the bill, the author of this bill, also wants to work with him to see that we cover that end of the spectrum also.

I think, overall, it is a cost-benefit ratio. It saves the cost of more medical help later on and you get back in the nonwasted lives more; and perhaps more tax out of their productive lives by helping the youths, the children, the babies of our country that are born with certain types of defects.

So I pledge the distinguished Senator from Texas my support, along with Senator WEICKER. I hope that this will go forward. There will be a $1 trillion budget next year. If we remember our grade school arithmetic, that is 1,000 billions. In 1,000 billions we can find enough money in there somehow next year to help the other end of the spectrum also, to help people who, without our help, who do not come from advantaged families. If we can help them, nothing would be a bigger benefit to them than that. I pledge my support.

Mr. BENTSEN. I thank the distinguished Senator from Ohio for his very gracious remarks. We do have provision in reconciliation for children, to help us proceed in an intelligent way to try to meet problems and concerns.

AMENDMENT NO. 1064

(Purpose: To express the sense of the Senate regarding beneficiary costs of Medicare catastrophic insurance)

Mr. CHILES. Mr. President, I send an amendment to the desk, on behalf of myself and others, and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Florida Mr. CHILES, for himself, Mr. STAFFORD, Mr. HEINZ, and Mr. BAUCUS, proposes an amendment numbered 1064.

Mr. CHILES. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 125, between lines 2 and 3, insert the following new section:

SEC. 20A. BENEFICIARY COSTS OF MEDICARE CATASTROPHIC INSURANCE.

(a) FINDINGS.—The Senate finds that—

(1) the enactment of Medicare catastrophic insurance will provide 32,000,000 Medicare beneficiaries with important and far-reaching protection against the catastrophic costs of illness and disability, greatly reducing out-of-pocket liability for those who unfortunately incur high medical expenses,

(2) new Medicare catastrophic insurance benefits will be financed through premiums collected from all Medicare beneficiaries,

(3) the Department of Health and Human Services has announced that Medicare part B premiums will increase by 38.5 percent on January 1, 1988, because of an increase in costs of the current Medicare part B program.

(4) Medicare beneficiaries already are liable for Medicare premiums equal to 2.9 percent of their median per capita income, and

(5) it is the responsibility of Congress to ensure that additional premiums incurred for catastrophic loss protection do not reach such levels as to unreasonably increase the out-of-pocket cost burden on Medicare beneficiaries.

(b) SENSE OF THE SENATE.—

(1) It is the sense of the Senate that conferees on the Medicare Catastrophic Loss Prevention Act of 1987 take all necessary steps to ensure that cost controls on new catastrophic benefits, particularly coverage of prescription drugs, are sufficient to protect program integrity, prevent escalation of

costs, and reduce amounts required for premium financing.

(2) It is the sense of the Senate that Senate conferees on the Medicare Catastrophic Loss Prevention Act of 1987 be instructed to take all feasible steps to minimize beneficiary costs by keeping premiums at the lowest possible level, ensuring that year-to-year premium increases are gradual and predictable, ensuring that income-based supplemental premiums do not unduly burden middle-income older Americans, and ensuring that the combined basic and supplemental premiums do not exceed the value of the program to beneficiaries.

On page 127, after line 7, insert the following:

(7) Section 20A shall be effective on the date of the enactment of this Act.

Mr. CHILES. Mr. President, this is one of several amendments I have which I believe the managers will agree to.

Mr. President, this amendment would express the sense of the Senate that conferees on this bill take all necessary steps to ensure that the final bill has strong cost controls—and that the premiums beneficiaries will have to pay are fair value and as low as possible.

We have a good bill here. It will greatly reduce the out-of-pocket liability for those elderly who unfortunately have high medical expenses. The sponsors have taken steps to control costs. And the premium structure in the Senate bill is much fairer to middle-income elderly than the House version. But I want to make sure that we can preserve that advantage—and we can always do more when it comes to controlling costs.

Conferees should have these goals in mind as a first priority for every decision they make on benefits and financing. There is always going to be pressure to add more benefits—but sometimes those benefit additions are more to the advantage of those who provide them than they are to the elderly who will be paying for them.

Premiums for the Medicare part B Program are already high. And we now have a rapid growth in expenditures for physician's services—the part B costs per enrollee increased by 22 percent during the first 6 months of this year. Because of that growth, the administration has announced that we will have an unprecedented increase in the premiums in January. They will go up by 38.5 percent. Medicare beneficiaries will then be paying premium amounts equal to almost 3 percent of their median per capita income.

We have an obligation to bring these costs under control. I expect that we will be taking some further steps in that direction when we consider the reconciliation bill a little later.

But we now are embarking on the largest expansion of Medicare benefits in the history of the program. And, unlike our past actions, we are asking beneficiaries to pay for the entire cost of these new benefits. Our goal with this bill is to reduce the overall out-of-pocket liability for all Medicare beneficiaries. We have a grave responsibility to ensure that these additional premiums represent the best possible value for the benefits they buy.

My amendment would direct the conferees to minimize beneficiary costs by keeping premiums as low as possible—by ensuring that future increases are gradual and predictable—by making sure that the income-based supplemental premiums are fair to middle-income elderly—and by ensuring that the combined basic and supplemental premiums are well within the value of the program to beneficiaries.

The amendment would also direct conferees to ensure that cost controls on the new benefits—particularly coverage of prescriptions drugs—are stringent enough to prevent escalation of costs.

The PRESIDING OFFICER. Is there further debate?

Mr. BENTSEN. Mr. President, this manager of the bill has examined the amendment. The amendment is worthwhile. This will assure that we make prudent expenditures of the funds involved. I am glad to support it.

Mr. DURENBERGER. I agree with the chairman. We accept the amendment.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment.

The amendment (No. 1064) was agreed to.

AMENDMENT NO. 1065

(Purpose: To provide benefits counseling and assistance with respect to certain Medicare and Medicaid beneficiaries)

Mr. CHILES. Mr. President, I send another amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Florida [Mr. CHILES], for himself, Mr. HEINZ, and Mr. BAUCUS, proposes an amendment numbered 1065.

Mr. CHILES. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 101, between lines 3 and 4, insert the following new section:

SEC. 9A. BENEFITS COUNSELING AND ASSISTANCE FOR CERTAIN MEDICARE AND MEDICAID BENEFICIARIES.

(a) TRAINING AND TECHNICAL ASSISTANCE.—

(1) The Secretary of Health and Human Services (referred to in this section as the "Secretary") may enter into agreements with private or public nonprofit agencies or organizations for the purpose of providing training and technical assistance to prepare volunteers to provide to elderly individuals receiving benefits under title XVIII or XIX of the Social Security act counseling with respect to eligibility for such benefits and assistance in preparing such documentation as may be required to fully receive such benefits.

(2) In addition to any other forms of technical assistance provided under this subsection, the Secretary may provide—

(A) material to be used in making elderly persons aware of the availability of assistance under volunteer assistance programs under this section; and

(B) technical materials and publications to be used by such volunteers.

(b) POWERS OF THE SECRETARY.—In carrying out his responsibilities under this section, the Secretary is authorized—

(1) to provide assistance to organizations which demonstrate, to the satisfaction of the Secretary, that their volunteers are adequately trained and competent to render effective benefits counseling and assistance (as described in paragraph (1)) to the elderly;

(2) to provide for the training of such volunteers, and to assist in such training, to insure that such volunteers are qualified to provide benefits and counseling assistance (as described in paragraph (1)) to the elderly;

(3) to provide reimbursement to volunteers through such organizations for transportation, meals, and other expenses incurred by them in training or providing benefits counseling and assistance under this section, and such other support and assistance as he determines to be appropriate in carrying out the provisions of this section;

(4) to provide for the use of services, personnel, and facilities of Federal executive agencies and of State and local public agencies with their consent, with or without reimbursement therefor; and

(5) to prescribe such rules and regulations as he deems necessary to carry out the provisions of this section.

(c) EMPLOYMENT OF VOLUNTEERS.—

(1) Service as a volunteer in any program carried out under this section shall not be considered service as an employee of the United States. Volunteers under such a program shall not be considered Federal employees and shall not be subject to the provisions of law relating to Federal employment, except that the provisions of section 1905 of title 18, United States Code, shall apply to volunteers as if they were employees of the United States.

(2) Amounts received by volunteers serving in any program carried out under this section as reimbursement for expenses are exempt from taxation under chapters 1 and 21 of the Internal Revenue Code of 1986.

(d) DEFINITION.—For purposes of this section, the term "elderly individual" means an individual who has attained the age of 60 years.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for fiscal years after 1987 $2.5 million to carry out the provisions of this section.

Mr. CHILES. Mr. President, this amendment will authorize the Secretary of the Department of Health and Human Services to train volunteers to provide Medicare benefit and appeals counseling and assistance—similar to the tax counseling for the elderly program through Volunteers in Service to America—to help Medicare beneficiaries get the full benefit of the new catastrophic coverage.

Mr. President, this amendment will ease the confusion and paperwork burden elderly beneficiaries may experience if the Medicare Catastrophic Loss Prevention Act is passed.

This legislation will result in a host of new benefits and numerous accompanying regulations. Beneficiaries will be faced with a new and complicated reimbursement mechanism which will include understanding their coverages and keeping up with their own out-of-pocket costs.

A survey in Wisconsin showed that 83 percent of Medicaid recipients had difficulty filling out the necessary forms to receive benefits. Sixty-eight percent simply could not read them.

A similar study in Minnesota showed that 92 percent were unaware of or misinformed about their benefits.

The unfortunate result is that many of our elderly will pay more than they are required, underutilize the coverage for which they are qualified, or simply avoid seeking medical help.

It would be unfair to our senior citizens to implement major changes in the Medicare Program without providing the resources to assist them in adapting to the new requirements.

There are some community-based advocacy organizations which can help field questions. But support and supervision must come from the Federal level.

Currently, assistance is available to the elderly filing tax returns under the volunteer income tax assistance—tax counseling for the elderly program. Though VITA, senior volunteers are provided with training and technical assistance to aid elderly individuals in their dealings with the IRS. I have heard only good reports on the effectiveness of this program.

This system is exactly what we will need should S. 1127 pass. I cannot think of anything more appropriate than enabling our seniors to help each other.

This amendment authorizes the Secretary of Health and Human Services to train volunteers in benefit and appeals counseling and assistance. It also provides reimbursement for transportation, meals, and other expenses incurred in training or in providing services.

The IRS estimates that their program costs about $2.5 million. This amendment authorizes the same appropriation. It is my intention that these moneys would come from the amount set aside in the administrative contingency fund for implementation of catastrophic illness coverage.

The PRESIDING OFFICER. Is there further debate?

Mr. BENTSEN. Mr. President, the amendment will do its job and help the people of America. I am glad to support the amendment.

Mr. DURENBERGER. Mr. President, I certainly endorse the amendment of the Senator from Florida.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment.

The amendment (No. 1065) was agreed to.

AMENDMENT NO. 1066

(Purpose: To establish a United States Bipartisan Commission on Comprehensive Health Care)

Mr. CHILES. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Florida [Mr. Chiles], for himself, Mr. Simon, Mr. Graham, Mr. Mitchell, Mr. Kerry, Mr. Bradley, Mr. Stafford, Mr. Heinz, and Mr. Melcher, proposes an amendment numbered 1066.

Mr. CHILES. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 125, between lines 2 and 3, insert the following new section:

SEC. 20A. UNITED STATES BIPARTISAN COMMISSION ON COMPREHENSIVE HEALTH CARE.

(a) Establishment.—There is established a commission to be known as the United States Bipartisan Commission on Comprehensive Health Care (in this section referred to as the "Commission").

(b) Duties.—

(1) In general.—The Commission shall—

(A) examine shortcomings in the current health care delivery and financing mechanisms that limit or prevent access of all individuals in the United States to comprehensive health care, and

(B) make specific recommendations to the Congress respecting Federal programs, policies, and financing needed to assure the availability of—

(i) comprehensive long-term care services for the elderly and disabled,

(ii) comprehensive health care services for the elderly and disabled, and

(iii) comprehensive health care services for all individuals in the United States.

(2) Considerations in recommendations.—In making its recommendations, the Commission shall consider—

(A) the amount and sources (consistent with principles of social insurance) of Federal funds to finance the needed services, including reallocations of existing Federal program funds, and

(B) the most efficient and effective manner of administering such programs.

(3) Definitions.—In this section:

(A) The term "comprehensive health care services" includes—

(i) inpatient hospital services (including mental health services);

(ii) skilled nursing facility services, intermediate care facility services, home health services, and other long-term health care services;

(iii) physician services and other outpatient health care services (including mental health services);

(iv) periodic general physical examinations, eye examinations, hearing examinations, dental examinations, foot examinations, and other preventive health care services; and

(v) prescription drugs, eyeglasses, hearing aids, orthopedic equipment, and dentures (both complete and partial).

(B) The term "comprehensive long-term care services" includes custodial and noncustodial services in facilities, as well as home and community-based services.

(c) Membership.—

(1) Appointment.—The Commission shall be composed of 15 members appointed as follows:

(A) The President shall appoint 3 members.

(B) The President Pro Tempore of the Senate shall appoint, after consultation with the minority leader of the Senate, 6 members of the Senate of whom not more than 4 may be of the same political party.

(C) The Speaker of the House of Representatives shall appoint, after consultation with the minority leader of the House of Representatives, 6 members of the House, of whom not more than 4 may be of the same political party.

(2) Chairman and vice chairman.—The Commission shall elect a chairman and vice chairman from among its members.

(3) Vacancies.—Any vacancy in the membership of the Commission shall be filled in the manner in which the original appointment was made and shall not affect the power of the remaining members to execute the duties of the Commission.

(4) Quorum.—A quorum shall consist of 8 members of the Commission, except that 4 members may conduct a hearing under subsection e(1).

(5) Meetings.—The Commission shall meet at the call of its chairman or a majority of its members.

(6) Compensation and reimbursement of expenses.—Members of the Commission are not entitled to receive compensation for service on the Commission. Members may be reimbursed for travel, subsistence, and other necessary expenses incurred in carrying out the duties of the Commission.

(d) Staff and Consultants.—

(1) Staff.—The Commission may appoint and determine the compensation of such staff as may be necessary to carry out the duties of the Commission. Such appointments and compensation may be made without regard to the provisions of title 5, United States Code, that govern appointments in the competitive services, and the provisions of chapter 51 and subchapter III of chapter 53 of such title that relate to classifications and the General Schedule pay rates.

(2) Consultants.—The Commission may procure such temporary and intermittent services of consultants under section 3109(b) of title 5, United States Code, as the Commission determines to be necessary to carry out the duties of the Commission.

(e) Powers.—

(1) Hearings and other activities.—For the purpose of carrying out its duties, the Commission may hold such hearings and undertake such other activities as the Commission determines to be necessary to carry out its duties.

(2) Studies by General Accounting Office.—Upon the request of the Commission, the Comptroller General shall conduct

such studies or investigations as the Commission determines to be necessary to carry out its duties.

(3) Cost estimates by congressional budget office.—

(A) Upon the request of the Commission, the Director of the Congressional Budget Office shall provide to the Commission such cost estimates as the Commission determines to be necessary to carry out its duties.

(B) The Commission shall reimburse the Director of the Congressional Budget Office for expenses relating to the employment in the office of the Director of such additional staff as may be necessary for the Director to comply with requests by the Commission under subparagraph (A).

(4) Detail of federal employees.—Upon the request of the Commission, the head of any Federal agency is authorized to detail, without reimbursement, any of the personnel of such agency to the Commission to assist the Commission in carrying out its duties. Any such detail shall not interrupt or otherwise affect the civil service status or privileges of the Federal employee.

(5) Technical assistance.—Upon the request of the Commission, the head of a Federal agency shall provide such technical assistance to the Commission as the Commission determines to be necessary to carry out its duties.

(6) Use of mails.—The Commission may use the United States mails in the same manner and under the same conditions as Federal agencies.

(7) Obtaining information.—The Commission may secure directly from any Federal agency information necessary to enable it to carry out its duties, if the information may be disclosed under section 552 of title 5, United States Code. Upon request of the Chairman of the Commission, the head of such agency shall furnish such information to the Commission.

(8) Administrative support services.—Upon the request of the Commission, the Administrator of General Services shall provide to the Commission on a reimbursable basis such administrative support services as the Commission may request.

(9) Acceptance of donations.—The Commission may accept, use, and dispose of gifts or donations of services or property.

(f) Report.—

(1) Report on comprehensive long-term care services for the elderly and disabled.—The Commission shall submit to Congress a report, not later than 6 months after the date of the enactment of this Act, containing its findings and recommendations regarding comprehensive long-term care services for the elderly and disabled. The report shall include detailed recommendations for appropriate legislative initiatives respecting such services.

(2) Report on comprehensive health care services.—The Commission shall submit to Congress a report, not later than 1 year after the date of the enactment of this Act, containing its findings and recommendations regarding comprehensive health care services for the elderly and disabled and comprehensive health care services for all individuals in the United States. The report shall include detailed recommendations for appropriate legislative initiatives respecting such services.

(g) Termination.—The Commission shall terminate 30 days after the date of submission of the report required in subsection (f)(2).

(h) Authorization of appropriations.—There are authorized to be appropriated $1,500,000 to carry out this section.

On page 127, after line 7, insert the following:

(7) Section 20A shall be effective on the date of the enactment of this Act.

Mr. CHILES. Mr. President, I offer an amendment on behalf of myslf and Senators Simon, Graham, Mitchell, Kerry, Bradley, Stafford, Heinz, and Melcher, to establish a bipartisan commission on comprehensive health care. The commission would be charged with developing a comprehensive set of legislative recommendations for Congress regarding long-term care. The recommendations would be due 6 months after enactment of this bill.

The amendment also would require a second report, due 1 year after enactment, containing recommendations for congressional action on comprehensive health care for all Americans.

The House and the Senate would each appoint six of their own Members to serve on the commission, and the President would appoint three members.

This amendment is identical to a provision in the House catastrophic bill sponsored by Congressman Claude Pepper.

Mr. President, many elderly are concerned that this bill does not make adequate provision for long-term care—the single largest catastrophic health expense for many.

We have some provisions in the bill to help low-income elderly deal with these costs—Medicaid money saved by States as a result of the new Medicare catastrophic coverage would have to be reinvested in additional services for low-income elderly, including long-term care. That will be a help to many, but these provisions necessarily fall short of truly comprehensive long-term care coverage.

I would like to think that we could have included full long-term care coverage right away, in this bill. But we all realize we are not yet ready to do this. For one thing, we have not yet agreed upon a financing mechanism for long-term care—and it will be expensive.

At the same time, it is clear that the longer we avoid the issue, the bigger the problem becomes. The number of elderly increases every year. And the oldest of the elderly, those at most risk of needing long-term care for chronic conditions, constitute the fastest growing part of that population.

We are sending a signal to all elderly with the new Medicare coverage in the bill before us that Congress is ready to begin addressing the large gaps in health care coverage. This amendment will add to our message that we realize there is more to be done—and that we intend to keep working until we can come up with a firm national policy on long-term care.

The PRESIDING OFFICER. Is there further debate on the amendment?

Mr. BENTSEN. Mr. President, the manager for the majority has no objection on this side and supports the amendment.

Mr. DURENBERGER. Mr. President, I have watched reports to this body, and have found if they put their heads together for a while, they can come in with the kind of recommendations that we can use. I compliment the Senator from Florida on his amendment.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment.

The amendment (No. 1066) was agreed to.

Mr. CHILES. Mr. President, I move to reconsider the votes by which the amendments were agreed to.

Mr. BENTSEN. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Texas.

Mr. BENTSEN. Mr. President, I know of no other amendments on this side.

The PRESIDING OFFICER. The Senator from North Carolina.

AMENDMENT NO. 1055

Mr. HELMS. Mr. President, with all due respect to the distinguished managers of the bill and others, I predict that just a few years down the line, maybe no more than 3, we will see the folly of what we are doing here tonight. The outlays involved in this legislation are astronomical in the outyears.

I am reminded, in fact, of my longtime friend, Thurman Sensing, now deceased, who told the story about his being in a taxicab in Washington one afternoon, and they stopped at a traffic signal in front of the Archives Building. In marble on the front of that building are inscribed the words "What Is Past Is Prologue."

Thinking to have some fun with the taxicab driver, Thurman Sensing said, "Driver, 'what is What Is Past Is Prologue'? What does that means?" He thought it would throw the cab driver, but it did not. It did not phase him at all. Immediately he responded, "Oh, that means you ain't seen nothing yet."

Well, if we think we have problems in terms of Medicare, Medicaid, and so forth, now, just wait for 3 or 4 years.

Mr. President, I will later ask unanimous consent that a study by The Thomas A. Roe Institute for Economic Policy Studies, under the auspices of The Heritage Foundation, entitled "New Taxes To Cut the Deficit: Another Congress Bait-And-Switch Ruse" be printed in the Record.

In this study the Roe Institute discusses a number of myths that are so prevalent in this country today. Myth

No. 1 being, "Reagan's tax cuts launched the country into an era of $200 billion Federal budget deficits." Then it says, "Fact: Despite the 1981 cut in marginal tax rates, Federal revenues have not fallen. To the contrary. As predicted by the administration, lower rates can generate higher revenues. Between 1981 and 1987, Federal tax revenues have grown by $160 billion in current dollars and $70 billion in constant dollars, adjusted for inflation."

Then myth No. 2 discusses "Reagan's rebuilding of the U.S. arsenal has been excessive and unaffordable.

"Fact: The average U.S. spending on defense as a percentage of GNP between 1950 and 1980 was 8.4 percent. Today the United States spends only 6.4 percent of GNP on defense." and so on.

I think Senators, after they have voted one way or another on this bill, might enjoy reading this study in the CONGRESSIONAL RECORD tomorrow.

I ask unanimous consent, Mr. President, that that article be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. HELMS. Then there was an editorial in the Wall Street Journal this morning entitled "Reagan for President." And I commend that editorial to the consideration of all Senators. I ask unanimous consent it be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 2.)

Mr. HELMS. Mr. President, I am going to conclude my comment about the pending amendment by reading it. I will have no more to say. It speaks for itself. I think the lawyers have a term res ipsa loquitur, which means the thing speaks for itself. The amendment reads:

> Sense of the Senate opposing new taxes.
>
> It is the sense of the Senate that the American taxpayer is already overburdened and that, notwithstanding perceived economic problems associated with trade imbalances and budget deficits, Federal tax rates should not be increased in any manner whatsoever, whether direct or indirect, and no new Federal taxes should be created: *Provided, further,* That any discussions between the President and Members of Congress concerning the Federal deficit or other economic issues should not entertain any propositions which incorporate any increase in any individual or corporate tax rate or include the addition of any new tax on the already overburdened American taxpayer"."

Mr. President, I rest my case. I yield the floor.

EXHIBIT 1

NEW TAXES TO CUT THE DEFICIT: ANOTHER CONGRESS BAIT-AND-SWITCH RUSE

(By the Heritage Foundation)

Congress recently passed a fiscal 1988 Budget Resolution that would raise federal taxes by $73 billion over the next three years. The $29 billion of additional revenue in 1988 would be the largest single-year peacetime tax hike in United States history. This same resolution, meanwhile, proposes to raise domestic spending by approximately $50 billion next year. And for the second straight year, the only agency to feel the budget knife is the Pentagon. Defense programs would be cut by at least 2 percent in fiscal 1988. Remarkably, despite raising taxes and cutting military spending, the Budget Resolution's bottom line deficit figure still misses the Gramm-Rudman-Hollings deficit targets enacted by Congress less than two years ago by almost $30 billion.

In an attempt to win public support for the budget, especially for the tax increase contained in it, Democratic congressional leaders are trying to resuscitate three false but common myths about fiscal policy under the Reagan Administration. Falling for these myths would allow the liberals in Congress once again to pull their shabby bait-and-switch ruse—using fear of a deficit to get a tax hike and then using the new revenues not for deficit reduction but for new spending.

The bait-and-switch myths are:

Myth 1: Reagan's tax cuts launched the country into an era of $200 billion federal budget deficits.

Fact: Despite the 1981 cut in marginal tax rates, federal revenues have not fallen. To the contrary. As predicted by the Administration, lower rates can generate higher revenues. Between 1981 and 1987, federal tax revenues have grown by $160 billion in current dollars and $70 billion in constant dollars, adjusted for inflation.[1] Thanks to tax increases legislated during the Carter Administration, however, taxes as a percentage of Gross National Product (GNP) under Ronald Reagan have been higher than under any of the last eight presidents, with the exception of Jimmy Carter. Moreover, legislated Social Security tax increases will push the percentage to record levels by 1990, even without the new taxes proposed by Congress. What this means is 1) America is not undertaxed and 2) the Reagan tax cuts have not caused the deficits.

Myth 2: Reagan's rebuilding of the U.S. arsenal has been excessive and unaffordable.

Fact: The average U.S. spending on defense as a percentage of GNP between 1950 and 1980 was 8.4 percent. Today, the U.S. spends only 6.4 percent of GNP on defense. The new federal revenues generated since 1981 could have paid for the entire defense hike with $55 billion left over to combat federal red ink.

Myth 3: The Reagan Administration has sliced domestic programs to the bone, leaving no more room for further budget cuts.

Fact: Domestic spending has not been cut at all. Jimmy Carter's last budget spent $450 billion on domestic programs. Ronald Reagan's latest budget will spend $600 billion on domestic programs. Reagan has curtailed only the rate of growth in domestic spending; he has not stopped domestic spending growth.

Why did federal deficits erupt during the 1980s? Despite the claims by many lawmakers on Capitol Hill that the deficit is due to deep tax cuts, the facts show otherwise. As Figure 1 shows clearly, the cause of the deficit has been runaway spending. Until Congress acts to curb the escalation in federal spending, tax hikes will make no dent in the deficit. The new taxes proposed by Congress will merely add more fuel to the spending fire.

IS AMERICA UNDERTAXED?

The conventional wisdom in Congress that Reagan tax cuts have contributed to the budget deficit is contradicted by all the evidence. By every meaningful measure, the tax burden on Americans is heavier today than in any other period since World War II.

In constant dollars, federal taxes have grown steadily between 1950 and 1987. Since 1981 annual federal revenues in constant dollars will have risen by $70 billion by the end of this fiscal year.

Federal tax revenues as a share of gross national product (GNP) are also at near record highs. Of the last nine presidential terms, only Jimmy Carter's tenure has seen federal taxes that exceeded those under Ronald Reagan.

CONGRESS' HIDDEN TAX HIKES

Washington's best kept secret is that, whether or not Congress raises taxes this year, the tax burden on Americans, as a percentage of GNP as well as in constant dollar terms, will continue to mount at least through 1992. The reason for this is that previously enacted tax hikes have yet to kick in. Next year, for instance, businesses and workers will be hit with a 5.8 percent hike in the Social Security payroll taxes. This will take $14 billion out of the pockets of Americans in 1988 alone.[2]

Thus even if congress left the federal tax structure on automatic pilot, rather than pushing for even more taxes, federal taxes as a percentage of GNP would climb to 19.4 percent by 1990. By that time, Americans will be carrying a heavier tax load than during even the Carter years, which hold the record for taxing the nation. Figure 4 also shows projected taxes as a percentage of GNP between 1988 and 1991, assuming that the tax hike in the congressional Budget Resolution becomes law. By 1991 tax revenues would reach 20.2 percent of GNP. Never in peacetime have taxes been so high.

HOW CONGRESS USES SOCIAL SECURITY TO UNDERSTATE THE BUDGET DEFICIT

The federal budget contains over a dozen programs whose bills are paid for out of separate trust funds. The most important of these is Social Security, but these programs also include highway, airport, and retirement trust funds. Most Americans believe—erroneously—that tax contributions to these funds are set aside for these programs. Hence, gasoline tax money can only be used for road building, and Social Security for retirement. In fact, the funds are diverted immediately to other government programs, in return for government bonds which can later be cashed—funds permitting—from general revenues. The trust funds are simply blended into the unified budget, and thus any surplus in the funds serves to "cut" the deficit. By 1990, for instance, trust fund surpluses will reach $135 billion; this revenue will help offset the budget deficit, making it appear to be only a projected $134 billion when the deficit in that year actually would be about $270 billion.

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[1] Unless otherwise noted, the source of all numbers in this paper is: Office of Management and Budget, *Historical Tables, Budget of the United States Government: Fiscal Year 1988.* All dates in this paper refer to fiscal years.

[2] For a detailed explanation, see: Statement of Representative Harris Fawell, *Congressional Record,* March 12, 1987, pp. H1285, H1286.

This accounting slight-of-hand could have serious implications for the Social Security trust fund. The temporary large surplus in the trust fund eventually will be needed to pay off huge future liabilities as the baby-boom generation enters retirement. But Congress spends the surplus money to fund today's excessive spending on non-Social Security programs. This could bankrupt the national pension program when the federal government's IOU eventually comes due. The Congressional Research Service has estimated that by the year 2020, the Social Security Trust fund will have an accumulated paper surplus of about $10 trillion dollars.[3] But if those past surpluses have been spent by Congress, there will be no money for the Social Security Administration to draw on to pay retirees. The CRS projects that if Congress at that time has to pay obligations directly out of payroll taxes, lawmakers would have to raise Social Security taxes by about 60 percent over today's level.[4]

HOW LOWER MARGINAL TAX RATES HAVE INCREASED TAX REVENUE

How is it possible that federal tax receipts have reached record levels despite the 1981 Kemp-Roth tax cuts, which reduced the average American's tax bill by about 30 percent? The reason: "supply side" economists were correct. Reductions in marginal tax rates, the percentage paid on the last dollar earned, have stimulated business expansion and job creation. This increased the tax base so much that even at lower rates the Treasury took in more revenue.

Figure 5 shows the steady decline in the marginal tax rates on various income groups between 1975 and 1988, when the tax rate reductions from the Tax Reform Act of 1986 will be fully in effect. The figure also reveals that Kemp-Roth cut tax rates across the board for all income groups.

Most economists agree that these marginal tax reductions have been at least partially responsible for the 1982-1987 economic expansion—the longest sustained growth in U.S. peacetime history. Thanks to this expansion, over 13 million more Americans have jobs and are paying taxes than when Jimmy Carter was President. This is creating an enormous revenue windfall for the federal Treasury.

The 1981 tax cuts had not even taken full effect when Congress in 1982 passed the so-called Tax Equity and Fiscal Responsibility Act or TEFRA. This raised taxes by $150 billion over four years. This and two other major income tax hikes since 1982 have altogether eroded almost 40 percent of the 1981 Kemp-Roth cuts.[5]

Because Reagan has warned Congress that tampering with income tax marginal rates is off limits, legislators have relied on hikes in the Social Security payroll tax to fuel the federal spending binge. In 1980, wage earners and businesses paid a combined $158 billion into the Social Security trust fund: this year that figure will rise to $302 billion. By 1990 the Social Security tax will consume over three and a half times more of GNP than it did as recently as 1960, adding to labor costs, decreasing U.S. competitiveness and slowing down job creation.

DO THE AFFLUENT PAY A FAIR SHARE OF TAXES?

While the House of Representatives leadership long has made the argument that the 1981 marginal tax cuts were a boon only to the rich, Figure 7 reveals that, although the tax rates were made less progressive by the 1981 tax cuts, the affluent now pay a larger share of total taxes than they did before the new tax rates were instituted. The wealthiest 5 percent of Americans now carry 5.5 percent more of the tax load than they did in 1981, while middle and lower income Americans have had their tax burden eased by over 5 percent.

WOULD A TAX INCREASE HIKE CURB THE DEFICIT?

The House and Senate leadership claims that the $70 billion tax hike proposed in the Budget Resolution is an act of fiscal responsibility. Legislators sing the usual refrain—the new revenue will be used to trim the budget deficit.

But the tax lobby in Congress has little credibility when it comes to budget deficits. In 1982, Congress promised that the record $100 billion TEFRA tax increase could be used to cut the deficit. Three years later the deficit had risen by another $100 billion. Congress again raised taxes in 1984, citing the need to raise revenue to cut the deficit. And once again spending and the deficit rose. The lesson is clear: Congress normally regards additional federal revenues as an invitation to spend. A 1987 Joint Economic Committee study commissioned by Senator William Roth, the Delaware Republican, investigated the impact of tax hikes on the deficit since 1947.[6] Its conclusion:

"Increases in taxes, other things equal, are associated with higher deficits, with the results statistically significant. . . . A one dollar increase in taxes, other factors held constant, is estimated to lead to a 58 cent increase in the deficit, meaning a $1.58 cent increase in spending."

THE REAL CAUSE OF THE BUDGET DEFICIT: SPENDING

The motion promoted by Congress that the Reagan Administration has slashed domestic spending programs has no basis in fact. All but a handful of domestic programs survived intact the assaults of Reagan's first budget director, David Stockman. In fact, the vast majority of federal programs have much fatter budgets today than in 1981.

Figure 8 compares the growth in domestic verus defense spending since 1950 in constant dollars. The domestic spending build-up has dramatically outpaced defense spending over this period. Domestic programs have grown fivefold in size since 1960 and have more than doubled in size since 1970. Over this period, defense spending has grown only modestly. Though virtually every domestic program consumes a larger percentage of GNP today than in 1960, defense programs consume about 3 percent less.

Figure 9 shows how defense spending as a share of GNP would plummet through 1990 if the Congressional Budget Resolution became law. By 1990 the defense budget would resemble the defense spending levels of the Carter years which threatened America's preparedness and undermined Washington's ability to negotiate with the Soviets. Senator Phil Gramm, the Texas Republican, correctly has criticized this deficit reduction path as one that moves the country's national security "from vulnerability to vulnerability."

CONCLUSION

Ronald Reagan vows that "any tax-hike bill that makes it into the Oval Office won't make it out alive." He is correct in challenging the pro-tax lobby on Capitol Hill. A tax hike would not reduce the deficit. Federal revenues long have climbed steeply—in constant dollars and as a share of GNP—yet lawmakers have made sure that spending stays one jump ahead.

The chief architects of the 1988 Congressional Budget Resolution tout it as an act of fiscal responsibility. But these "responsible" lawmakers behind the proposed $70 billion tax hike are the same members who:

Voted within the last six months to override presidential vetoes of two pork barrel spending measures—the Highway bill and the water bill—with a combined price tag $20 billion over the President's request.

Voted in 1986 against the balanced budget amendment in the Senate and prevented the issue from being taken up in the House—despite the fact that about 70 percent of Americans support this amendment.

Refused to restore the enforcement mechanism to the Gramm-Rudman-Hollings deficit reduction law, even though this legislation has been the only successful tool to pare down the budget deficit.

The record indicates that lawmakers do not want new taxes out of any born-again concern over budget deficits that they themselves enacted. They want new taxes to allow them to spend more on domestic programs—indeed, spending would rise 4.5 percent under their plan.

The U.S. public has been duped twice already in this decade by hollow promises from Congress that a tax hike would be used to finance deficit reduction. Both times taxpayers got the new taxes, but not the deficit reduction. This is not the time for Americans to learn another costly bait-and-switch lesson.—Stephen Moore, Policy Analyst.

EXHIBIT 2

REAGAN FOR PRESIDENT

By now Ronald Reagan should understand fully that he is standing in the middle of a panic. As of yesterday, the panic was unstopped, with another large selloff in stock markets at home and abroad. And when fright pries the hinges off rational minds, big mistakes can be made—not only in the markets but in chanceries.

Early last week, scared officials in the administration had talked briefly of closing the stock exchanges. By week's end, Howard Baker and Jim Baker were pushing the sudden necessity of a presidential tax compromise with an ardor that startled the President. The simultaneous loss of both the Bork nomination and the INF treaty enlarges the sense among onlookers of a political system falling off its hinges. Under these conditions, the first task of a President is clear: Stop the panic, starting by bucking up the spirits and calming the nerves of his own lieutenants.

In a market panic, of course, the first order of concern is the viability of the financial system. Though the market has declined, volumes have been huge, suggesting that many participants are sorting through information and making decisions to protect their assets. However, painful this process is to watch, these asset-holders must have confidence in the financial system's willingness to honor and support their decisions. The Hong Kong fiasco described below suggests the costs borne when public officials panic and withhold support.

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[3] David Koitz, "Social Security: Its Funding Outlook and Significance for Government Finance," Congressional Research Service, June 1, 1986, p. CRS-18.

[4] Ibid., p. CRS-16.

[5] Bruce Bartlett, "A Tax Hike Is No Cure for the Deficit," Heritage Foundation Backgrounder, No. 491, March 3, 1986.

[6] Richard Vedder, Lowell Gallaway, and Christopher Frenze, "Federal Tax Increases and the Budget Deficit, 1947-1986: Some Empirical Evidence," Joint Economic Committee, 1987.

In the U.S., the Federal Reserve's assurance of adequate liquidity last Tuesday was a necessary initial response. Now, the President should seek assurances that banks won't abandon brokers as they attempt to re-establish stability between sellers and buyers. To prevent a Luddite assault on computers, which would only damage the U.S. securities market, the President can press the investigation he has authorized of such technical concerns as program trading and margin requirements, discussed in George Melloan's column nearby.

These technical steps alone, however, won't stop the panic—a lot of which stems from the feeling that the political system has spun out of control, that no one could implement a coherent policy even if everyone agreed on what it should be. "None of this would have happened if Reagan were still President," is one quip heard on and around Wall Street. A distinguished European visitor, an admirer of the President, suggested that in the absence of White House leadership, he wished the speedy arrival of Election Day 1988. These harsh appraisals, from usually sympathetic viewers, point directly at the missing ingredient: presidential credibility.

Not Beltway credibility, Presidential credibility. The distinction is important. It is evident that the instinctive advice of the President's shaken advisers, a Reagan-Rostenkowski-Byrd-Bentsen-Wright Budget Summit, can't calm the markets. Yesterday the President's Sherpas met Congress's summiteers, and the market dropped 156 points. The markets surely understand what Mr. Reagan has known for years—the odds are that Congress will welch on any spending-reduction deal it strikes with the Executive, and that so long as this reality persists little can be gained by giving on taxes.

Congress's paralysis, however doesn't mean the President can withdraw from the fields. To judge by the questioning at the President's news conference, many in Washington can't distinguish between the verbs "negotiate" and "capitulate." But this needn't be true. The President has every right to make his own demands on the Congress, including line-item veto and rescission authority to make budget cuts stick. Certainly he can demand that Congress stop fooling with protectionism and market-busting and revenue-losing taxes. The sight of the President selling out what everyone knows to be his best beliefs will be anything but reassuring to the markets.

The market's view, though, transcends economic policy. There are issues of style; the world now needs more than televised images of the President waving and smiling to shouting reporters. There are issues of personnel; while change for change's sake will scarcely help, the administration needs more energy and fight. There are issues of other policies, for example, the Gorbachev INF sellout. That treaty isn't George Shultz's creature; it's Ronald Reagan's leadership. The world wants to see what anyone would want to see—the President himself standing up to Gorbachev.

On the technical side, the Fed and market managers seem to be coping well enough, and the slide will not go on forever simply on its own momentum. The fear is that it will be fed by panic and further mistakes from the political side. To allay this concern, the markets want to see Ronald Reagan take a position, defend it and fight for it. The Founding Fathers invested great political authority in the presidency for times such as these. They hoped that when others panic, a President would still steer a stable course by calling on his own personal reserves.

The PRESIDING OFFICER (Mr. GRAHAM). The Senator yields the floor. Is there further debate?

Mr. BENTSEN. Mr. President, taxes win no political prizes. No one likes taxes. They are a necessary problem that we all face. But the President's budget itself had some $6 billion in new taxes. The President, as he looked on the debacle on Wall Street and the problems that resulted therefrom, stated that he would consider taxes, that everything would be on the table. We have set up a summit meeting between the Senate and the House and the President and the executive branch, and obviously one of those things that is going to be considered is taxes. A very substantial amount of it, of course, has to be cuts. But let us look at the realities of what would happen tonight if we were to vote against any new taxes of any type, no matter how much we cut the budget, no matter how much we cut appropriations, no matter how much we cut spending, no new taxes as part of that package. What kind of a message do you think would go out to the international markets of the world tomorrow morning? What kind of a message do you think would go to Wall Street? What kind of message would go to the people of this country? I think you would have chaos on the markets. I think the results of that would be extremely serious for our country, so I strongly urge my colleagues to vote against the amendment.

Mr. BRADLEY addressed the Chair.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. BRADLEY. Mr. President, I hope that we will vote against this amendment. As I read the language, it says tax rates should not be increased in any manner whatsoever, whether direct or indirect.

Mr. President, as I read this amendment, that means if there were a loophole to the effect that only people that made more than $1 million in income, the effect of closing that loophole would be to indirectly raise that individual's tax rate, I want to preserve that option. And so, Mr. President, I hope that we could vote against this amendment.

The PRESIDING OFFICER. Is there further debate? The Republican leader, the Senator from Kansas.

Mr. DOLE. Mr. President, as I understand the amendment, it is not directed at closing loopholes or compliance. If somebody is avoiding taxes or escaping taxes in some way by overstating their deductions or understating their income and we tighten up in that area, where there is about $100 billion a year we do not collect, this amendment is not aimed at that. I had the same question as the Senator from New Jersey. I asked the distinguished Senator from North Carolina. My view is whether you are talking about tax reform or not, if you find a loophole, you ought to close it. If it is an intended benefit, it is not a loophole. If it is an unintended benefit, then it ought to be closed.

Well, you might argue either way. It depends on who offers the amendment. But in any event, loopholes mean different things to different people. With the egregious loopholes that somewhow find their way into the Code, whatever they might be—there are lists of them getting into the billions of dollars—there is nothing in this sense of the Senate amendment that would prevent us from closing any loophole, whether it is intended, unintended, whatever.

Mr. HELMS. The Senator is absolutely right, of course.

Mr. BRADLEY addressed the Chair.

The PRESIDING OFFICER. Does the Senator from Kansas yield the floor.

Mr. DOLE. I would be happy to yield.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. BRADLEY. When there is a conflict between intent and the language, you always go with the language. The language says indirect, which means loophole closings would be outlawed.

The PRESIDING OFFICER. Is there further debate?

Mr. BENTSEN. Mr. President, I move to table the amendment.

The PRESIDING OFFICER. There is a motion to table.

Mr. HELMS. I ask for the yeas and nays.

The PRESIDING OFFICER. There is a request for the yeas and nays. Is there a sufficient second. There is a sufficient second.

The yeas and nays were ordered.

Mr. BYRD. Mr. President, I ask unanimous consent to proceed for 15 seconds.

The PRESIDING OFFICER. Without objection.

Mr. BYRD. Mr. President, this request has been cleared with both managers and the distinguished Republican leader. I ask unanimous consent that upon the disposition of the pending amendment, the Senate go without further debate or action or motion of any kind to third reading.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered. The question is on agreeing to the motion to table the amendment of the Senator from North Carolina. The yeas and nays having been ordered, the clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Connecticut [Mr. DODD], the Senator from Tennessee [Mr. GORE], and the Senator from Illinois [Mr. SIMON] are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 65, nays 32, as follows:

[Rollcall Vote No. 352 Leg.]

YEAS—65

Adams
Baucus
Bentsen
Biden
Bingaman
Boren
Boschwitz
Bradley
Breaux
Bumpers
Burdick
Byrd
Chafee
Chiles
Cohen
Conrad
Cranston
Danforth
Daschle
Dixon
Domenici
Durenberger
Evans
Exon
Ford
Fowler
Glenn
Graham
Hatfield
Heinz
Hollings
Inouye
Johnston
Kassebaum
Kennedy
Kerry
Lautenberg
Leahy
Levin
Lugar
Matsunaga
Melcher
Metzenbaum
Mikulski
Mitchell
Moynihan
Nunn
Packwood
Pell
Proxmire
Pryor
Reid
Riegle
Rockefeller
Rudman
Sanford
Sarbanes
Sasser
Shelby
Specter
Stafford
Stennis
Stevens
Weicker
Wirth

NAYS—32

Armstrong
Bond
Cochran
D'Amato
DeConcini
Dole
Garn
Gramm
Grassley
Harkin
Hatch
Hecht
Heflin
Helms
Humphrey
Karnes
Kasten
McCain
McClure
McConnell
Murkowski
Nickles
Pressler
Quayle
Roth
Simpson
Symms
Thurmond
Trible
Wallop
Warner
Wilson

NOT VOTING—3

Dodd
Gore
Simon

So the motion to table the amendment was agreed to.

Mr. BENTSEN. Mr. President, I move to reconsider the vote by which the motion to lay on the table was agreed to.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. CONRAD. Mr. President, I rise to support the Medicare Catastrophic Loss Protection Act of 1987.

This legislation is a reasoned and sensible response to the growing concern that Medicare offers no protection against catastrophic hospital and physician expenses. This bill relieves the financial and emotional burdens faced by families whose loved ones are hospitalized for unusually lengthy stays. It places a cap on Medicare-covered services for beneficiaries at $1,875 per year. It begins a prescription drug benefit. The bill addresses the growing problem of spousal impoverishment, by assuring that a spouse can maintain a measure of financial security without fear the medical costs will consume all of his or her life savings.

This bill achieves these goals, and more, yet it passes the critical test of budgetary responsibility, because it is financed by those who may benefit from its provisions. The benefits are financed by a monthly premium of $4 per month and by a supplemental premium which is income-related. This supplementary premium is progressive. It requires a payment of $1.08 per month for every $150 of tax liability. It is important to note that less than 35 percent of all elderly beneficiaries will have to pay any supplemental premium. Further, Mr. President, the supplemental premium liability will be capped at $800 per year for any Medicare participant. It is estimated that only 3 percent of those in the program will pay the maximum supplemental premium. Finally, the drug benefit provisions will be financed with a maximum payment of $2.40 per month in its first year.

Mr. President, I have been concerned about the costs to Medicare beneficiaries of this expansion of benefits, particularly in view of the proposed Medicare part B premium increases which will occur regardless of whether this bill is passed into law. But I am impressed by the funding mechanism which assures that the program costs will not spill over into the general revenue budget in the future.

In supporting this legislation, Mr. President, I do not believe that our task of assuring the financial security and health care needs of the elderly is at an end. I believe that the greatest problem confronting our Nation's elderly is the high cost of nursing-home care. While this bill contains a study of long-term care needs, I would commend to the Senate the provision in the House bill, H.R. 1127, which begins coverage for respite care. I intend to be active in the months and years ahead in addressing the problem of assuring public and private initiatives for long-term nursing-home care.

Mr. HELMS. Mr. President, a columnist from the Chicago Tribune recently wrote:

> If you're over 65 or hope to be some day or if you love someone who is or wants to be, don't be too quick to cheer for that new catastrophic health care bill speeding through Congress. However it's being hyped, the truth is that the legislation, as passed by the House, won't protect the elderly from the devastating costs of most catastrophic illness.

I agree absolutely and therefore am obligated to oppose the Senate version of the catastrophic bill, S. 1127. Though well-intended, this bill is certain to send this Nation further down the slippery slope of nationalized medicine without providing any real benefit to our Nation's elderly. Furthermore, it will impose a catastrophic tax on our Nation's middle-class elderly and will ultimately send the system into financial ruin.

All of us agree that catastrophic illness can emotionally and financially devastate a family. We have all witnessed or experienced tragic, long-term sickness of a loved one or friends. We are all acquainted with families who lacked adequate medical insurance and lost everything due to an unexpected illness.

However, before we act out of emotion, I am convinced that the Senate should step back and examine where we are heading with S. 1127. Close scrutiny will show we are indeed taking a catastrophic step—in the wrong direction.

It is a cruel hoax, Mr. President, that while many of our elderly have been led to believe they are obtaining a real benefit with S. 1127, in truth, the majority of them are receiving no benefit at all. S. 1127 merely supplants—doesn't supplement—medical costs most elderly have covered by private insurance. According to statistics provided by the Health Insurance Association of America, only 20 percent of the elderly are currently unprotected for acute care. The other 80 percent are covered through public or private supplemental coverage—70 percent have private supplemental coverage and 10 percent have Medicaid.

Medical costs currently not paid by Medicare or most private insurance would still remain uncovered under S. 1127. Even with S. 1127, the elderly will continue to be exposed to the cost of home health care, doctors' charges above the Medicare fee limits, dental care, hearing aids, eyeglasses, walking aids, and similar items which comprise about 40 percent of all medical costs for the elderly. In many instances, private policies protect our elderly more than S. 1127. Private MediGap policies cover Medicare's $520 deductible for hospital care. About one-fourth of this group are rehospitalized within a year. S. 1127 would not cover this deductible the first or second time it was incurred each year. Furthermore, according to the National Chamber Foundation, private policies cover the part B coinsurance fees and in some cases, the part B deductible. Neither are covered by S. 1127.

While not providing any net benefit to the elderly, Mr. President, we will be "sticking 'em up" with higher premiums and an additional catastrophic health tax. The Congressional Budget Office projects that both the surtax and the additional flat premium will have to increase by 67.8 percent between 1978 and 1992 to cover the costs of the additional expenditures. In contrast, CBO projects a cumulative, general inflation over the same 5-year period of only 18.5 percent. This means that both the surtax and the additional flat premium are projected to increase, in constant dollars by more than 49 percent in just the first 5 years.

These costs might drop due to a change in the indexing method, but if history has taught us anything, Mr. President, it is that we are unable to estimate the cost of Medicare. In 1965, when the program began, Medicare cost some $65 million. At its 20-year anniversary, the system costs eight times its original projections. In 1986, the program cost over $75 billion. By 1990, the program will exceed $100 billion.

Proponents of S. 1127 claim, Mr. President, that catastrophic coverage will be self-financing. The history of this program leads me to believe otherwise. As has been the case in the past, the American taxpayer ultimately pays for our fiscal mistakes. As Senators know, the taxpayer now pays 75 percent of Medicare part B. In 1986 the taxpayer paid over $50 billion into the Medicare system. After 1989, the law will prohibit the standard premium from exceeding the yearly Social Security increase. As Medicare costs exceed this threshold, Congress will be faced with two choices: first, impose a higher health tax on our elderly or, second, take the balance from general revenues. Undoubtedly, the latter will be the more politically palatable course to take.

As I stated at the outset, I am concerned that this bill, if enacted, will force this country's medical care even further down the road toward nationalized medicine. Supplanting benefits already provided by the private sector will only make our Nation's elderly more dependent on Government-provided beneifts—which have proven to be less than satisfactory—rather than individual repsonsibility and the private marketplace. With S. 1127, the camel's nose will be wedged well under the nationalized medicine tent. Long-term care paid for by the American taxpayer is not far behind. Is that the course this Senate should take? I don't think so.

In summary, Mr. President, I shall vote against this bill. S. 1127 is not, in my opinion, in the best interest of our elderly citizens or the American taxpayer. While providing no net benefit to the majority of our elderly, it will spell the death knell of the Medicare system or it will place cost burdens on the backs of our Nation's elderly or the American taxpayer. It will drive this country further down the road of socialized medicine.

I urge my colleagues to cast their vote not on the basis of politics, but on the basis of reason. We owe that at the very least, to our elderly citizens, to the American workers, and to those who will inherit the burden of our mistakes, our children.

Mr. CRANSTON. Mr. President, I rise in strong support of S. 1127, the proposed Medicare Catastrophic Loss Prevention Act of 1987. This legislation represents the most significant expansion in Medicare since the program was enacted 22 years ago—and it is long overdue.

Mr. President, in 1965, Congress passed perhaps the most significant and revolutionary legislation concerning health care in the history of our country. Laws establishing the Medicare and Medicaid Programs were enacted to help ensure that elderly and disabled citizens would have access to health-care services and that no American would go without needed medical attention because of his or her inability to pay. Those laws established the principle that we are committed to having a health-care system that is open and accessible to all Americans—rich and poor, young and old.

Although these programs, most especially Medicare, have largely been successful, our goal of equal access to health care has still yet to be realized. Millions of Americans are without health insurance, eligibility for Medicaid varies widely from State to State, and substantial gaps exist in Medicare.

Millions of senior citizens have come to depend on Medicare to provide coverage for all their medical problems. What many elderly Americans often don't realize, however, is that the program has limitations—it does not cover lengthy hospital stays, outpatient drugs, or most nursing home care.

The legislation before the Senate today is one long step toward filling those gaps and fulfilling the promise first made 22 years ago—that our senior citizens would no longer have to worry about whether they will be able to obtain needed medical care.

OUT-OF-POCKET HEALTH-CARE EXPENSES

Mr. President, Medicare was originally established to provide health insurance for Americans over age 65 who are in need of hospital care—the major medical expense involved with most illnesses and injuries. A large portion of physicians' services and other outpatient services are also covered for individuals who opt to buy into part B of Medicare. Yet, according to the American Association of Retired Persons, older beneficiaries today spend as large a portion of their income on their health care needs—at least 15 percent—as they did before the existence of Medicare. It is projected that in 1987 they will spend, on average, more than $1,900 out-of-pocket to cover the cost of their health care—including Medicare-covered services, noncovered services, and insurance premiums. That is more than five times the costs generally experienced by persons under the age of 65.

Approximately 23 percent of Medicare enrollees are admitted to a hospital at least once a year. But only 0.5 percent of enrollees—158,000—use more than 60 hospital days in a benefit period, while only 0.1 percent, or 32,000 Medicare beneficiaries, will exceed 90 days in a hospital in a benefit period. Under Medicare, once a beneficiary exceeds 90 days in the hospital, he or she has only a limited number of lifetime reserve days of coverage remaining.

During lengthy hospitalizations, copayments increase and out-of-pocket expenses rapidly accumulate. And once the lifetime reserve days are exhausted, Medicare beneficiaries must pay for the entire cost of hospital care. The financial burdens of such illnesses are clearly catastrophic. This legislation would dramatically ease the burden of beneficiaries in those situations.

Individuals with less acute illnesses may also experience catastrohpic expenses associated with their medical care. For senior citizens with lower incomes—about 42 percent of the elderly population—catastrophically high health-care costs are not rare occurrences.

Although many Medicare beneficiaries are able to purchase so-called Medigap supplemental insurance to help defray their out-of-pocket expenses, more than 20 percent of the elderly population—mostly individuals with low incomes—rely on Medicare as their only source of protection. For them, a serious illness can be totally devastating financially.

This legislation would also help ease the financial burdens of low-income Medicare beneficiaries by eliminating all hospital coinsurance and by limiting beneficiary liability to one hospital deductible annually.

FINANCING OF THE CATASTROPHIC BENEFIT

Mr. President, S. 1127 as reported addresses the need to provide a certain degree of protection against catastrophic expenses from a lengthy hospitalization while not overburdening low-income elderly individuals with premiums they cannot afford.

By combining a small flat premium that all part B recipients must pay with a supplemental premium that is income-related, this legislation provides for adequate financing of the new benefit in a manner that is designed to be affordable.

I realize that opposition to this bill has been expressed by some senior citizens groups because of concerns about the impact the increases in the part B premium would have on many Medicare beneficiaries. In light of the recent announcement that the part B premium would increase by more than one-third next year—from $17.90 a month to $24.80—those concerns are not unfounded. If a new premium to cover catastrophic health expenses is added to that increase the additional payments could be quite substantial—particularly for those on fixed modest incomes.

Nevertheless, we are faced with balancing the need to protect elderly individuals from bankruptcy because of catastrophic expenses with an equally pressing need to protect our country from bankruptcy because of the deficit. I think that the manager of the bill, the distinguished Senator from Texas [Mr. BENTSEN] has succeeded in accomplishing both goals. Those individuals who can afford to pay more to cover the cost of the insurance will do so in order that poor and near-poor senior citizens will not be forced to choose between food and medical care.

PRESCRIPTION DRUG BENEFIT

Although this legislation did not originally include a prescription drug benefit, I am pleased that the managers of the bill and the White House have come to an agreement in order to add this vitally-important component of an effective catastrophic protection program.

Senior citizens spend over $9 billion a year on prescription drugs. An AARP survey indicates that about 62 percent of individuals over the age of 65 take prescriptions drugs on a regular basis. Drugs account for about 20 percent of their total out-of-pocket medical costs.

Yet, fewer than half of elderly Americans have insurance protection for drug costs and the majority of lower income senior citizens have none. The AARP estimates that of regular prescription drug users who receive no insurance or financial assistance fully 40 percent spend more than $360 on medicines in a year. Nearly 5.5 million Medicare enrollees—almost 17 percent—incur more than $500 per year in prescription drug costs, and many average $1,000.

Prescription drugs represent one of the fastest rising expenses for senior citizens. Increases in the price of prescription drugs has far outstripped other medical components of the Consumer Price Index.

Mr. President, I have heard from hundreds of senior citizens in California who say that the prescription drug benefit is essential to providing a meaningful package of protections against catastrophic medical expenses, and I agree with them. At the same time, a significant deductible and the inclusion of cost-containment provisions would help ensure that this benefit would not be over-utilized or add too much to the deficit.

Mr. President, I would like to respond to one specific criticism of the drug benefit. Some opponents of the prescription drug benefit contend that it would result in senior citizens subsidizing the cost of drugs, such as AZT, for persons with AIDS. Frankly, that is just a totally inappropriate attempt at scaring senior citizens into opposing this amendment. Very few AIDS Patients are covered under Medicare, because tragially they generally do not live long enough to qualify. In order to be eligible for Medicare by virtue of total and permanent disability, an individual must wait 29 months after becoming disabled—and that is longer than most AIDS patients live. Medicaid, not Medicare, is the major governmental payer of AZT costs.

We have never, in the history of the Medicare program, said that individuals with a particular disease or disability should not be covered under this program. Our mission has been—and continues to be—to help ensure that people have access to life-saving treatments—not to deny it. We should not now begin to discriminate against certain individuals on the basis of their disability.

Thus, Mr. President, the opponents of this proposal should abandon these fallacious scare tactics immediately.

CONCLUSION

Mr. President, S. 1127 is a very balanced and sound bill. With a drug beneift, it would help ensure that older Americans are protected from financially-burdensome medical expenses. I am hopeful that next year the Finance Committee will address the equally pressing need to develop coverage for nursing home care in the same thoughtful manner that has characterized its work on this legislation.

I urge all my colleagues to support this landmark legislation.

Mr. McCAIN. Mr. President, I wish to make an inquiry of the distinguished managers of the bill regarding the effect that section 1921(a)(4)(A) of section 14A might have on the State of Arizona.

Mr. President, the State of Arizona is currently in the process of negotiating with the administration the terms of a 5-year waiver providing for an extension of the Medicaid demonstration project known as the Arizona Health Care Cost Containment System [AHCCCS]. Under the old 5-year waiver, which expires this year, AHCCCS did not offer long-term care for Arizona's indigents. As a condition of granting a second 5-year waiver, the administration informed Arizona that it must bring a long-term care program on line.

The State is currently in the process of negotiating the terms of the second waiver with the administration—terms which are predicated on legislation adopted by the Arizona State Legislature earlier this year.

My concern is that the section of the bill to which I just referrred might become one of the terms of the negotiations, thus forcing the State legislature to rework the legislation to provide for long-term care which it adopted earlier this year.

Mr. President, I don't believe that the authors of this language intended any negative effect on the State of Arizona or its Medicaid demonstration project.

I ask of the distinguished managers of the bill if we might have our staffs work together to explore this effect of this language on the AHCCCS progress more fully before conference.

Mr. BENTSEN. I would like to say to my friend from Arizona that I am well aware of the demonstration project in Arizona—and the good it has done in Arizona. I would be glad to explore this issue further with my colleague in anticipation of conference over this bill.

Mr. HEFLIN. Mr. President, one of the most important issues now pending in the U.S. Senate is catastrophic health care for senior citizens. In my judgment, this legislation is essential to the health and happiness of all Americans. It responds to the concern that, because of the high costs of both health care and health insurance, our Nation's elderly are unable to obtain or afford the costs of adequate treatment. When afflicted with some devastating ailment or disease, they are often being forced to choose between bankruptcy for themselves and their families, on one hand, and extended sickness or even death on the other. This sad state of affairs is unacceptable. I believe that this legislation will provide needed peace of mind to our Nation's senior citizens.

Just about everyone supports some form of catastrophic health care. President Reagan endorsed this concept in his 1986 State of the Union Address, thus providing the issue with much support and momentum. Since then, catastrophic health care has become a joint legislative effort between the administration and the Congress.

The legislation now before the Senate, unanimously approved by the Senate Finance Committee, primarily focuses on extending many of the existing areas of Medicare coverage. I believe that we must extend various coverages. However, during consideration of this bill the Congress must walk a fine line. We must first work to ensure that the citizens who would participate in this plan are not required to pay more for these benefits than they can afford. Simultaneously, we should endeavor to see that Medicare remains a self-financing program, if possible. Overall, I believe the bill now before us has many strengths.

First, I favor the cap on out-of-pocket health payments by Medicare beneficiaries. There is no cap under current Medicare law, and these expenses can be astronomical. Additionally, I agree that changes must be made relative to Medicare coverage for inpatient hospital care. Current Medicare law requires payment by the beneficiary of a deductible, upon entering the hospital for each "spell of illness," provides inpatient coverage up to 60 days, after which time, the beneficiary must make coinsurance payments. Furthermore, under present Medicare law, there is no coverage at all after 150 days.

However, a great number of elderly people are forced to go to the hospital many times in one year for what may seemingly be unrelated "spells of illness," and, therefore, may be forced to pay this deductible each time they are admitted. This is not fair, and does not adequately recognize the nature of many illnesses. Also, many people are forced to remain in the hospital for more than 150 days. This bill would require only one hospital deductable, would eliminate coinsurance payments, and would extend coverage to 365 days. I believe that this will go a long way in remedying existing holes in the Medicare coverage.

This bill would also address Medicare coverage of skilled nursing care. In order to obtain coverage for skilled nursing care under current law, a person must have a hospital stay of at least 3 days, thus incurring the hospital deductible, and is then eligible for free nursing care for 20 days, after which time a coinsurance payment is required. Coverage for skilled nursing care currently expires after 100 days. The Finance Committee bill would change the allowed number of days in such a facility from 100 days per illness to 150 days a year.

This legislation also addresses the area of home health care coverage. While I favor the extension of this coverage from intermittent home health visits, which are generally limited to five visits per week for 2 to 3 weeks, as is provided under current law, to coverage for visits 7 days per week for 21 days, with the possibility that this could be extended if the beneficiary has recently been hospitalized, as is proposed by this bill. I actually support the coverage in this area that is proposed by the House bill. The House provision would allow Medicare coverage for visits 7 days per week for 35 days, with an extension if a physician certifies that exceptional circumstances exist. I feel that this approach will provide the necessary flexibility for adequate treatment. It is impossible to limit this coverage for a certain number of days, and would, in my judgment, not respond to the needs of the individual patient.

Finally, I support the committee proposal relative to hospice care. I believe that the elimination of the 210-day current limit for this type of care will help reduce the anxiety and provide assurance to individuals who are terminally ill.

Mr. President, this year, Medicare will spend almost $80 billion on medical care for the elderly. However, out of pocket medical expenses for these individuals will be over $30 billion, not including long-term care. The cost of catastrophic illness can quickly wipe out a life-time savings, leaving huge debts to be paid. According to the report accompanying this legislation, this year it is estimated that almost one-quarter of all elderly persons are expected to spend at least 15 percent of their income on their medical bills, and over 7 percent will be forced to spend over 25 percent of their incomes on such bills.

This is not right. In my opinion, it is humane and irresponsible to simply leave these individuals and their families out in the cold, with no place to turn, when they are faced with or are suffering from a threat to their lives. I believe that we must address this issue and adopt a plan to help elderly Americans and their families face catastrophic illness with the assurance that they can afford the treatment and the care they need and deserve.

I congratulate the chairman of the Finance Committee for his work in this effort. He has had a busy year, but has performed his duties in an outstanding capacity.

Thank you, Mr. President.

Mr. BRADLEY. Mr. President, I am pleased that legislation is before the Senate to expand Medicare protection against catastrophic illnesses. This legislation is an important step toward closing the gaps in our health care system that impoverish elderly citizens when catastrophic illness strikes. I urge my colleagues to join me in supporting this important bill.

The elderly are particularly vulnerable to extended, debilitating, and expensive illnesses that require long hospital stays and extensive post-acute care. The cost of catastrophic care is astronomical and too few elderly are able to pay for it. Medicare has helped to soften the impact on the elderly of health costs that have outstripped inflation. But many seniors mistakenly believe that Medicare coverage will completely insulate them from catastrophic health care expenses. Unfortunately, this is far from the truth.

In reality, significant gaps in Medicare's coverage of acute care leave seniors completely vulnerable to devastating medical costs. In addition to a 20-percent copayment for all physician services covered by Medicare and a substantial hospital deductible, the program requires a patient to make increasingly costly payments after 60 days of hospital care. Though 65 percent of Medicare beneficiaries purchase private Medigap insurance coverage, many of these policies do not offer full catastrophic coverage. And about 20 percent of the Medicare population has no coverage beyond Medicare, including millions of poor and near-poor elderly not covered by Medicaid.

Last year, roughly 1 million Medicare beneficiaries had out-of-pocket health costs of $2,000 or more, and 100,000 beneficiaries had liabilities of almost $5,000. Many of these elderly lack adequate insurance coverage and face the frightening prospect of financial devastation. Some simply choose to forego essential medical care rather than deplete their lifetime savings or leave a spouse impoverished. As the still mostly young American population ages, this problem will become increasingly serious.

Mr. President, the catastrophic health care bill before the Senate today addresses many of the shortcomings in Medicare's acute health care coverage. Specifically, this legislation would provide unlimited free hospital care for Medicare beneficiaries after payment of an annual deductible of about $520. In addition, no Medicare beneficary would have to pay more than $1,850 in annual out-of-pocket expenses each year for Medicare covered services. This bill also increases Medicare's nursing home coverage and eliminates the current 210-day limit on hospice coverage. These measures help ensure that elderly Americans have greater access to post-hospital care.

I am especially pleased that this bill increases Medicare coverage of home care services from 21 days to 45 days per year. This expansion will enable over 250,000 elderly Americans—about 10,000 in New Jersey—to receive the home care services that they so badly need but have been denied. The bill also clarifies the definition of homebound, one of the requirements for Medicare home care coverage. The ambiguity of this definition has been a major source of inconsistency in the current Medicare policy. In fact, in some cases, homebound has been interpreted to mean bedridden, which is clearly far more restrictive than Congress intended. Clarifying this ambiguous standard will prevent the Health Care Financing Administration from arbitrarily restricting home health benefits.

I have held two hearings in New Jersey over the past 2 years to get a clearer picture of the problems the elderly face when they try to get Medicare coverage for home health services. The stories that I heard were disturbing. For example, Katherine Trimble, suffering for 8 weeks from a broken ankle, described how a home therapist taught her how to climb stairs in her home, toilet herself, and to learn to use crutches and a walker without fear or excruciating pain. Before she received this home therapy, Ms. Trimble was terrified of falling down her steps on the way out of the house. But through the encouragement, prodding, and practical advice of her therapist, Ms. Trimble learned how to cope with her ailment. Later, Ms. Trimble was denied Medicare coverage for this essential home therapy because she was not considered homebound. This rigid interpretation of Medicare requirements is ridiculous and inhumane.

The need for an expansion in home care benefits has never been greater. A huge increase in the demand for home health care services over the last several years has far outstripped the growth in Medicare home care expenditures. The GAO estimates that nearly 1.3 million elderly citizens are now doing without the help they need to get out of bed, to bathe, to prepare meals, and to perform other basic daily activities. Despite this evidence, the Health Care Financing Administration continues to squeeze down on the home care benefit by denying Medicare coverage for badly needed home care services. In fact, in just 3 years HCFA has increased its rate of denial of home care services by 300 percent.

In other words, at the very time Medicare has forced seniors out of the hospitals "quicker and sicker" because of the incentives of the new DRG reimbursement method, elderly patients are being denied desperately needed services. The number of people 85 and older will double in the next 25 years, and the need for home health services will skyrocket. The expanded home care benefit in the catastrophic bill before the Senate today takes important steps to ensure that HCFA grants these seniors the daily home care services that they need to remain independent and in their own homes.

The catastrophic benefits in this bill would be financed through a combination of a $4 monthly increase in the part B premium, along with an income-related supplemental premium for those who pay income tax. This translates into a total annual catastrophic premium of $187 for an elderly individual with an income of $20,000. Nearly 60 percent of enrollees would pay just the $4 basic monthly premium. The catastrophic proposal developed by the House of Representatives, on the other hand, requires an individual with an income of $20,000 to pay $873 each year, more than four times what they would have to pay under the Senate plan. Further, the Senate plan is tied to the part B premium and is therefore optional, the House proposal is not. In sum, the Senate plan represents a significant improvement over the House version. Because the benefit called for in this Senate bill is optional and progressively financed, only those most able and willing to pay will pick up the tab for catastrophic medical costs, shifting the cost burden away from elderly with high medical costs.

Despite the merits of this bill, the struggle to find solutions to the most pressing health care needs of our elderly is far from over. Even with the coverage offered under this bill, seniors will be left vulnerable to the single greatest source of catastrophic costs—extended nursing home stays. We must continue to search for fiscally responsible solutions that will address the serious gaps in Medicare long-term coverage.

Another shortcoming in the bill reported to the full Senate by the Finance Committee was its failure to expand Medicare prescription drug coverage. Currently, Medicare reimburses patients for drugs used in hospitals, but not for most outpatient prescription drugs. Because of this limited coverage, beneficiaries paid over $6 billion for outpatient drugs in 1986. For a large majority of the elderly, prescription drugs represent the single largest out-of-pocket expense they face. For this reason, I strongly supported the amendment offered on the Senate floor to expand Medicare to cover outpatient prescription drugs. The Senate bill now contains a prescription drug benefit, with Medicare paying 80 percent of costs over $600 a year. The program would be phased in, starting with IV antibiotics and chemotherapy, and moving to cardiovascular and diuretic drugs before full coverage in 1993.

In sum, Mr. President, our current Medicare system routinely forces elderly with large medical bills into poverty. We need a major overhaul. This bill, despite its shortcomings, takes important, meaningful steps in that direction. I hope that other Senators will join me in supporting this bill and in pledging that when it passes we will turn our efforts to crafting a comprehensive long-term care policy for our Nation's elderly. We can afford to do no less for our senior citizens.

MEDICARE CATASTROPHIC LOSS PREVENTION ACT OF 1987

Mr. BENTSEN. Mr. President, I want to express my strong support and commitment to an expansion of the mental health benefit under Medicare. During the markup on the Medicare Catastrophic Loss Prevention Act of 1987, several members of the committee expressed their interest in offering amendments to the bill which would have expanded that benefit.

I was concerned about taking legislative action on this complex issue during the markup without first hearing from affected individuals and health care providers, and therefore asked Senator MITCHELL, chairman of the Health Subcommittee, to hold a subcommittee hearing on the coverage of mental health care by Medicare and to work with interested members to develop a proposal which would improve access to needed services.

Senators MITCHELL, MATSUNAGA, DURENBERGER, DOLE, and I have worked to develop a proposal that incorporates and builds on the provisions included in S. 718, a bill introduced by Senator MATSUNAGA earlier this year.

As a longtime supporter of improved mental health care, I commend my colleagues for their efforts and supported the inclusion of such a benefit as a part of the budget reconciliation package in the Finance Committee. Since the President has indicated his willingness to work with Members of Congress to fashion a signable reconciliation measure, I do not believe it is necessary to add mental health coverage to this measure—rather let us work toward its enactment as part of reconciliation.

Mr. CONRAD. While I am pleased with what the Finance Committee has achieved in crafting catastrophic health protection legislation, I am concerned that the bill does not include a section for the provision of "respite care." The House catastrophic bill, H.R. 2470, contains a provision which would supplement the current Medicare home health benefit with certain limited respite services for the elderly. I believe that the availability of 80 hours of in-home respite care each year would reduce the need for costly nursing home care for many older Americans. Respite care would make a modest, but important contribution to addressing the critical issue of long-term care. I thank the distinguished Senator from Texas for his work on this most important legislation and, along with my distinguished colleague, Mr. SHELBY, I urge that the House provision creating a respite care benefit be seriously considered in conference.

Mr. SHELBY. I join my colleage Senator CONRAD in supporting a respite care benefit. As you know, 75 percent of the most chronically dependent elderly live not in nursing homes, but at home under the care of their families. I believe that these families deserve our credit and support for keeping an elderly family member at home. Respite care can make the difference, allowing a primary care-giver to keep an elderly family member at home and avoid institutionalization. Respite care could be an important first step in our efforts to deal realistically with the long-term care dilemma our country faces with the "graying" of the population. Mr. Chairman, I am grateful for your efforts in developing this needed improvement in Medicare coverage, and hope that the importance of respite care services can be addressed in conference.

Mr. BENTSEN. I thank my distinguished colleagues Senators CONRAD and SHELBY for raising this most important issue. We in this country are going to be facing a serious challenge as the population ages and its needs for long-term care increase. Home- and community-based services are a critical ingredient in meeting the challenge, and America's families ought to be supported in their attempts to keep family members at home when possible. While the Committee on Finance worked to craft a bill that primarily closes gaps in basic acute-care coverage through affordable monthly premiums, I agree with my colleagues that the Congress will soon be faced with the need to address the lack of a coherent national policy to deal with the problem of long-term care. I am grateful to my colleagues for their comments on the issue of respite services, which, as they point out, will be considered in conference between the House and the Senate.

Mr. HATCH. Now I would like to turn to a few clarifying points concerning this legislation. I say to Senator BENTSEN, in a situation where there are payments by an insurance company for expenses generated by a covered individual, will those payments be counted toward the catastrophic deductible?

Mr. BENTSEN. Yes. Proposals to discourage private insurance coverage of out-of-pocket expenses were rejected by members of the Senate Finance Committee.

Mr. HATCH. It is my understanding that neither the Senate version nor the House version currently contain languge limiting health insurance payments as counting toward the deductible. Do I have your assurance that such a requirement will not be included in the conference agreement, especially as it would be outside of the scope of such a meeting?

Mr. BENTSEN. Yes.

Mr. HATCH. There have been concerns raised that this catastrophic legislation will only benefit a few elderly and disabled who are in failing health. Senator BENTSEN, what percentage of Medicare eligible do you estimate will benefit from this new CHI—Catastrophic Health Insurance—Program?

Mr. BENTSEN. With the addition of the new drug benefit, we estimate 11 to 15 percent of the Medicare eligible population will receive some benefit from this new program.

Mr. HATCH. Does S. 1127 provide that part B and the new catastrophic benefits are a voluntary option that Medicare eligible individuals can choose not to participate in this program?

Mr. BENTSEN. Yes, catastrophic coverage is linked to part B which will be optional as under current law.

Mr. HATCH. I certainly hope you will do all you can to retain the voluntariness of this program during conference with the other body. Once the program becomes mandatory, many of the concerns with this bill become quite legitimate.

Mr. BENTSEN. I share your concern and agree that a voluntary program is preferable to a mandatory program.

Mr. HATCH. Since most senior citizens will assume that the legislation permits reimbursement of all outpatient prescription drugs, let us focus for a moment upon those drug classes that may be excluded from reimbursement and those instances when a drug prescribed by a specific physician or dispensed by a specific pharmacist may be denied reimbursement.

Under what circumstances may the Secretary of Health and Human Services deny reimbursement for a class of drugs?

Mr. BENTSEN. The Secretary may eliminate one or more major classes of drugs, but not individual drugs, from reimbursement if the Secretary estimates that the monthly catastrophic drug benefit premium would have to rise above the ceiling established in this amendment to provide sufficient funds for all classes of outpatient prescription drugs. By classes of drugs we mean the major classifications found in the most recently issued version of the Veterans' Administration medication classification system. However, we hope that it will not be necessary to exclude drug classes from Medicare reimbursement other than as a last resort.

Mr. HATCH. What are the major classifications in the most recently issued version of the Veterans' Administration medication classification system?

Mr. BENTSEN. There are 30 major classifications as follows:

1. Antidotes, deterrents, and poison control.
2. Antihistamines.
3. Antimicrobials.
4. Antineoplastics.
5. Antiparasitic agents.
6. Antiseptics/disinfectants.
7. Autonomic agents.
8. Blood products/modifiers/volume expanders.
9. Central nervous system medications.
10. Cardiovascular agents.
11. Dermatological agents.
12. Diagnostic agents.
13. Gastric medications.
14. Genito-urinary medications.
15. Hormones, synthetics/modifiers.
16. Immunological agents.
17. Investigational drugs/devices.
18. Irrigational/renal dialysis solutions.
19. Musculoskeletal agents.
20. Nasal and throat, topic.
21. Ophthalmic agents.
22. Dental and oral agents, topic.
23. Optic agents.
24. Pharmaceutical aids/reagents.
25. Respiratory tract agents.
26. Rectal, local.
27. Therapeutic nutrients/solutions.
28. Vitamins
29. Prosthetics/supplies/devices.
30. Miscellaneous agents.

We selected the major categories of this classification system, in order to assure that the Secretary not gerrymander the classification scheme to exclude individual drugs or new categories of pharmaceutical therapy.

Mr. HATCH. Are there any other circumstances that permit the Secretary to deny reimbursement?

Mr. BENTSEN. Yes, if the Secretary determines that a particular physician is prescribing a specific drug inappropriately, the Secretary may refuse to reimburse the prescriptions that the particular physician writes for the specific drugs. Similarly, the Secretary may refuse to reimburse a particular pharmacist for inappropriate dispensing of a specific drug. However, the Secretary may not use the instances of excessive prescribing or dispensing as grounds for denying reimbursement for a specific drug to all Medicare enrollees.

Mr. HATCH. If a physician determines that his patient needs a particular manufacturers version of a multisource drug, how can he assure that Medicare will reimburse 80 percent of the cost of the drug?

Mr. BENTSEN. The physician must handwrite "brand medically necessary" or any other phrase that conveys the same meaning that the Secretary has deemed appropriate.

Mr. HATCH. Could phrases, such as "dispense as written," "brand necessary," which are now used in State dispensing laws, be deemed appropriate by the Secretary?

Mr. BENTSEN. Yes.

Mr. HATCH. With regard to drug utilization review, I understand that the Secretary will be required to establish standards for dispensing and utilization of drugs. In setting standards, do you intend that the Secretary adopt ones that are consistent with accepted medical practice and allow for regional and local variation?

Mr. BENTSEN. Yes.

Mr. HATCH. I have some serious reservations about the potential explosion in the cost of the supplemental premium proposed by this legislation. The administration has provided me charts regarding the cost of this new benefit. They claim that under S. 1127, the average income surtax just for this benefit will be $216 in 1990, $580 in 1995, $1,046 in 2000, and $4,560 in 2010.

This premium does not include the base part B premium charge which is proposed to rise to $24.60.

Some have suggested that in 1992 or thereabout we may have to make mid-course corrections in this legislation by doing two things: making part B and the catastrophic benefit mandatory and artifically capping the premium charge. Do you believe such a change will be necessary? Can we make up the lost revenue without resorting to making part B and the catastrophic program mandatory or artificially capping the premium charge?

I want to thank my colleague for his assistance and explanations.

Mr. BENTSEN. Mr. President, I would say to my distinguished colleague that I do not anticipate a need to make the catastrophic program or Medicare part B mandatory. The Finance Committee bill caps the supplemental premium at 65 percent of the subsidy value of part B. That means that no one will have an incentive to drop out of the program, and I don't anticipate that we will have to make the program mandatory.

In response to the second part of my colleague's question, let me say that this bill writes a new chapter in the story of the Medicare Program. This catastrophic bill is fully self-financing. The Secretary of HHS is required to set provisions that cover costs. I think that this is the responsible way to write legislation. There could well be a natural tension between the level of the premiums and the costs of the programs. There will be a strong incentive for the Government to take steps to keep the costs down. We as policymakers may have to take another look at the premiums in future years if the costs rise faster than we expect. That is our job as policymakers. But I do not expect us to take any action that would cause this program to add to the budget deficit.

Mr. HATCH. Mr. President, I rise today to applaud this legislative initiative to expand Medicare to provide protection for elderly and disabled Americans who suffer from a catastrophic illness. This legislation, entitled the Medicare Catastrophic Illness Coverage Act, culminates several years of studying ways to reduce the devastating economic impact a catastrophic illness can cause. This initiative represents months of congressional oversight following President Reagan's challenge to Congress to enact such legislation. While I lend my vote to such a measure, there are still, I believe, some fundamental issues that Congress will need to resolve about this proposal.

First and foremost, I am not willing to agree that the best solution to the cost of catastrophic illness lies exclusively in Government rather than private sector financing. Second, I believe we must really look at issues of who will or should be covered and at what price. We should not force elderly to pay enormous sums for a benefit they may never receive.

Examples of financial ruin caused by catastrophic health care costs are not hard to find. We have all heard the story about an elderly family member who had a lingering illness. She was forced to sell her home to pay off her mounting hospital, physician, and prescription drug debt that was not covered by Medicare. Or the story of the family who lacked basic health insurance coverage and gave birth to a premature child. The costs exceeded $100,000 and forced the family into bankruptcy. We have to remember that these stories have real names and involve real problems.

As a matter of public record, the Senate Committee on Labor and Human Resources heard from Mrs. Cleo Boyer. Mrs. Boyer from my home State of Utah, shared the story of her family's struggle with her husband's disease, Alzheimers. Mrs. Boyer faces mounting nursing home costs and struggles to maintain her own self-sufficiency. Her nursing home costs exceed $2,000 per month for the care of her ailing husband. Mrs. Boyer watches her husband's health deteriorate and watches her long-term financial well-being dissolve. Our Nation's senior citizens deserve more.

In President Reagan's 1986 State of the Union Address, he called on the Secretary of the Department of Health and Human Services, Dr. Otis Bowen, to study how "the private sector and the Government can work together to address the problems of catastrophic health care." Dr. Bowen accepted this challenge. In fact, Dr. Bowen's final proposal contains many valuable ways of encouraging both the Government and the private sector to provide better coverage for catastrophic illness.

The legislation before us, S. 1127, will begin to assist elderly and disabled Americans. It expands the Medicare Program to cover up to 365 days of inpatient hospital care and caps out-of-pocket costs at $1,850. It addresses one aspect of the catastrophic health care issue—elderly Americans who face hospital bills and certain drug benefit bills which are not covered under Medicare. Yet, this new program establishes a variable rate premium to pay for this program. That is, all seniors will pay a flat premium and then a supplemental premium based on their adjusted gross income. I agree with the critics that this supplemental premium is a hidden tax, and I certainly share some serious reservations about the long-term consequences of this provision.

Since my election to the Senate in 1976, I have been concerned about the explosion of costs in health care and have spent a considerable amount of my time looking for ways to ensure that there is quality and affordable health care for all Americans. In addition, I have cosponsored several catastrophic health care initiatives, including S. 1590 from the 96th Congress which was similar to this legislation presented today. One thing I have learned from my tenure is that legislation benefits from public scrutiny and debate and from the consideration of substantive criticism.

One criticism launched against this legislation is that the Government will replace current private sector insurance programs commonly referred to as Medigap or supplemental policies. I hope that it does not because the private health insurance market must continue to thrive to protect against those gaps in coverage under Medicare.

We should not rush to replace our private sector program entirely. Rather, we must foster our commitment to ensure the financial viability of the Medicare Program, because it is the cornerstone in providing elderly citizens with health care. We must nevertheless develop a broad program that urges the private sector to reduce the financial woes that result when a catastrophic illness hits a family. While we must foster our commitment to ensure the financial viability of the Medicare Program, we also must support the States role in formulating health care policy for their low-income citizens through the Medicaid Program. And, we should not overtax and overspend these programs. For over 30 million Americans, they provide access to the greatest health care system in the world.

We also must provide Americans with an alternative to institutionalization for those who can be cared for in their own homes. We must and can adopt a cost-effective solution to the escalating costs of catastrophic treatment other than simply having the Government cover all expenses. I am especially pleased S. 1127 expands the availability of Medicare benefits for home health care services as well as clarifying the eligibility for home health services. I, for one, would like to explore options like home health that minimize costs instead of focusing just on how to spend more money.

I would like to commend my colleagues, Senators DURENBERGER, MITCHELL, HEINZ, and DASCHLE for designing a prescription drug benefit that provides seniors with protection against expensive drug costs while creating a fiscally responsible program. Many Utah citizens warned me that any drug benefit must not only be fiscally responsible but also modest in cost so that it does not drain the Federal Treasury. I believe this phased-in program will allow Congress to methodically monitor and correct any forseeable problems that may arise.

This bill is not the perfect answer for many Americans wanting protection from catastrophic illness. There remain many problems Congress will have to review in a few years and assess this bill's impact on the health care needs and financial woes of Americans. It is, however, an important step toward our common goal of protecting 30 million seniors from potential financial ruin that may result from catastrophic illness.

It is ironic that while we are discussing catastrophic health care benefits, other important legislation to help Americans who suffer from catastrophic illness is lingering in a House-Senate conference.

On August 6, 1987, this body approved legislation by a vote of 98 to 0 to expand the availability of health care services in the home. The program authorized $100 million for State programs to help individuals who are are sick, regardless of their age, obtain health care services in the home when they had no other way to get such services. This amendment was attached to H.R. 1451, the Older Americans Act Amendments of 1987.

Since September, staff has been negotiating on the various differences between the House and Senate versions of H.R. 1451. I am pleased to report that good agreements have been reached on all aspects of this bill except for two provisions. The two provisions include a program to provide health care in the home and a provision authored by my distinguished colleague from Rhode Island, Senator PELL, authorizing a program for clinical trials on drugs to treat Alzheimer's disease. Not only are these bipartisan supported programs likely to save lives and mitigate suffering, but the home health care program will, in the long term, save us money. Many individuals can receive better treatment at a greatly reduced cost by being cared for in their homes instead of in an institution.

Mr. President, I am frankly confused that any Member of either body would reject carefully crafted and strongly supported legislation for cost-effective programs to relieve suffering in our society. I am concerned that some want to play partisan politics with the health care of our citizens. The issues should not be who receives the credit for developing this legislation, or whether we should wait until the next Congress to take these positive steps. The issues should be who will benefit from this legislation and what will it do to help society as a whole, and can we act expeditiously to implement those programs that we know will work.

I hope that we will resolve this conference in the near future so that those suffering with Alzheimer's disease can continue to have hope for a cure and that those who can benefit from health care in the home won't continue to suffer in medical institutions.

Mr. ROTH. When the Senate began consideration of "The Medicare Catastrophic Loss Prevention Act of 1987," I explained my problems with the bill in a detailed floor statement. At that time, I expressed my intent to vote against the bill in what was then "its current form."

Since that time, there have been several amendments to the legislation. I voted for some of the amendments and against others. In fact, I offered one of the amendments that was accepted. Unfortunately, while some of the amendments are improvements, others are not.

The amendments to correct the inequitable situation or "double whammy" for Federal retirees, which I cosponsored, are certainly improvements as is the amendment which allows preventive health tests to count toward the deductible. At the same time, the amendment which adds prescription drug coverage underscores the financial concerns I had about the original bill.

I have great sympathy for the plight of our elderly citizens who face catastrophic health care expenses as well as high prescription drug expenses. However, I firmly believe this bill is not the answer to their problems. For many senior citizens this legislation will raise the premium they pay for "new" coverage that actually duplicates existing coverage. And projections indicate the premiums will continue to rise substantially over the next 5 years. In my view, the unfortunate effect will be to put a real financial burden on many of the people we are supposed to be helping.

A few months ago, the Wilmington News Journal back home in Delaware ran an editorial on catastrophic health proposals. The editorial warned, "There is significant doubt that the premiums proposed would adequately pay for the extended benefits. Medicare over the years has cost significantly more than had been anticipated. As a result, there have been a mix of premium increases and service decreases. Are we letting ourselves in for another round of raised expectations to be dashed by cost overruns and resulting cutbacks?" I ask unanimous consent that the entire editorial which suggested "the proposed overhaul may be trying to do too much too quickly" be submitted for the RECORD.

Looking to the long term, it is certainly predictable that the combined effect of ever-increasing premiums for duplicative coverage will cause beneficiaries to opt out of Medicare part B. Such a reduction in participation makes the future fiscal soundness of the program questionable at best. This new program could well turn out to be the most expensive entitlement program enacted by the Congress during the last 15 years.

I find it particularly ironic that we take this action during a time of troubling events in the world's financial markets—events that many experts attribute to the inability of this very body to effectively deal with our budgetary problems. By adopting a "tax and spend, business as usual" attitude, we are sending precisely the wrong signal to the stock market. Despite my strong belief that this legislation is ill advised from both a substance and timing standpoint, my decision to vote against it was not an easy one. In fact, it is one of the most difficult votes I have ever cast in the U.S. Senate, as I am deeply concerned about the impact of health costs on our older Americans.

Sadly, I cannot support this legislation that will duplicate existing coverage provided in the private sector, that will balloon costs for our senior citizens and that will place our financial stability in further jeopardy.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

JUST TOO LAVISH

For once, politicians' hyperbole is right on the mark. "The most significant and far-reaching expansion" of Medicare since its establishment in 1965 is how Congressman Dan Rostenkowski refers to the plan for protection against catastrophic illness. House members passed the plan last week by a resounding 302-127 vote.

Indeed, if the House bill were to become law in its present form—an unlikely event since the Senate is working on a less comprehensive measure—the nation's 31 million Medicare beneficiaries would reap considerable benefits in return for fairly modest premium increases. Also in the bill's way is the fact that President Reagan vows a veto, though he himself last February urged expansion of Medicare coverage for the exorbitant costs of catastrophic illness.

When Medicare was enacted 22 years ago, it was expected to let persons over age 65 get necessary medical care without financial suffering. It hasn't worked out that way.

Medicare coverage for hospital stays, as the seriously ill find out when they start filing claims, now is limited to 150 days, with only the first 60 days fully paid for. Medicare also pays nothing toward medications, except when a person is hospitalized, and the elderly with chronic illness can have horrendous drug bills. Medicare also pays fully only for the first 20 days of skilled nursing-home care and a pittance for the next 80, with no assist afterwards.

Each one of these shortfalls would be corrected under the House measure. There would be unlimited hospitalization coverage. For medications, after a Medicare subscriber had put out $500 in a year, the insurance would pay for 80 percent of additional medications. Skilled nursing home care would be covered more generously and for 150 days.

The above are just a sampling of the changes the House bill would make. Over five years it is estimated that the cost would be $34 billion over and above the present Medicare cost which runs into $70 billion. This additional cost, however, according to the bill writers would not come from the Treasury but would be covered by modest premium increases for all subscribers (from the present $17.90 a month to a monthly $26 by 1992). In addition, based on adjusted gross income, there would be an income tax surcharge for those above certain income levels.

There is little doubt that present Medicare coverage can leave folks in the financial hole and that changes are necessary if the intent of the 1965 legislation of ensuring adequate medical care for the elderly is to be fulfilled. But the proposed overhaul may be trying to do too much too quickly.

There is significant doubt that the premiums proposed would adequately pay for the extended benefits. Medicare over the years has cost significantly more than had been anticipated. As a result there have been a mix of premium increases and service decreases. Are we letting ourselves in for another round of raised expectations to be dashed by cost overruns and resulting cutbacks?

Would it not be better to undertake one or two benefit changes at a time rather than the close to a dozen changes in the House bill? For instance, more than 5 million beneficiaries have medicine costs over $500 a year. Many of those folks need help, and in Delaware some get that help thanks to the Nemours Foundation. Adding outpatient medication coverage would help a significant portion of the nation's elderly and should be added to Medicare.

Extended periods of hospitalization, on the other hand, affect thousands rather than millions. Perhaps that benefit should not be added at this point.

Improved coverage of skilled nursing home care, on the other hand, would benefit more persons, especially with the current move to early discharge from hospitals. Similarly, the proposed extension of home-health-care coverage would be a significant plus for a substantial number of people. Both of these items are less costly than hospitalization, so beneficiaries would get more for their premium dollar.

House and Senate conferees should review the Medicare experience of the past 22 years and evaluate where the needs are greatest. They should avoid a Christmas-tree type bill with a politically attractive tidbit for every constituent expected to cast a vote in 1988.

Mr. KASTEN. Mr. President, I rise in support of S. 1127, the Medicare Catastrophic Loss Prevention Act.

There are few things more tragic than the sight of senior citizens losing their life's savings and being driven into destitution as a result of illness or injury. Seniors struck by catastrophic illness incur costs that simply overwhelm their existing Medicare coverage. As a result, they face the grim prospect of spending the end of lives full of hard work in poverty due to forces beyond their control.

At the beginning of this year, President Reagan announced his determination to do something about this, not through another extravagant spending program, but through a deliberately limited addition to Medicare, the benefits of which would be paid for by the beneficiaries themselves.

President Reagan, along with Secretary of Health and Human Services Bowen and my colleagues on the Finance Committee, deserve the full credit for S. 1127 as it now appears.

This bill expands Medicare supplementary medical insurance, or Medicare B, coverage in cases of catastrophic illness. These expanded benefits will be of enormous assistance to senior citizens struck by such illnesses. S. 1127 contains coverage for unlimited hospital stays and up to 150 days per year at a skilled nursing facility, or SNF. It repeals the inpatient psychiatric carryover requirement, and ends the requirement of prior hospitalization for people who need extended care. It limits the inpatient hospital deductible, and reduces the SNF coinsurance requirement.

The Heinz amendment to S. 1127 adds a prescription drug benefit, to be paid for by increasing the cap on total covered expenditures to $1,800 from $1,700 in the bill as reported to the Finance Committee. Coverage of intravenous antibiotics, chemotherapy-related drugs, and immunosuppressives would begin in 1989; cardiovascular and diuretic drugs would be covered starting in 1990.

Other drugs would be covered starting in 1992, although the Secretary is given some discretion in limiting the drugs covered in order to ensure that the program remains self-financing. The bill also contains other measures to ensure that the cost of the additional benefits does not add to the deficit.

Finally, S. 1127 contains overdue provisions to prevent spousal impoverishment, and coverage for preventive procedures beginning in 1989.

While I welcome the additional benefits S. 1127 provides, and the relief they will give to so many senior citizens in Wisconsin and across the Nation, I support this legislation with some misgivings. It is important that no one harbor any illusions about two vital issues.

First, the major source of financial catastrophe for seniors is not acute illness; it is the need for long-term care, in nursing homes and other settings. Longer lifespans mean that seniors are exposed to more health conditions over a longer period of time. Frequently, they and their families must exhaust their savings in paying for costly nursing home care; after their savings are gone and their assets gone, their bills must be paid by the Government through Medicaid.

I do not criticize my colleagues for not addressing this issue in the legislation we have before us, for it is clear that the problem of providing long-term care for chronic conditions is a very difficult one that cannot be solved simply by passing a bill in Congress. An adequate solution to this problem can only come through the combined effort of our entire society; it is truly one of our great national challenges. I commend the committee for asking the Department of Health and Human Services to examine this issue.

The second issue we must all be clear on is this: we cannot address critical health-related problems at the cost of crippling our economy. The members of the Finance Committee deserve praise for devising legislation in which new benefits are paid for by the potential beneficiaries in a manner which bears some relation to each individual's ability to pay.

But history has shown that when health care is covered by insurance—whether public or private—its cost tends to rise rapidly. Extending Medicare benefits to such items as prescription drugs is a step not without some risk. I am concerned that the cost of these added benefits will eventually lead to pressure to begin paying for them out of general revenues; something we manifestly cannot afford to do.

Moreover, when the Government is confronted with rising Medicare costs, it will inevitably seek to control them through increased regulation. I am concerned that too much governmental involvement in the provision of health care will eventually lead to a deterioration in the quality of that care.

What I am saying is that the path of expanding Medicare benefits is one we must travel with great care. It is clear to me that S. 1127 is designed to be deficit neutral. For that reason, and because I believe the increased benefits it provides for will help many of our senior citizens, I support this legislation.

But I am concerned about the potential that the self-financing nature of this bill could be jeopardized in the future by skyrocketing costs. And I will not be able to support this legislation if the upcoming conference on catastrophic health adopts many of the ill-considered and irresponsible provisions in the catastrophic health bill approved by the House.

Partly because of a relatively open-ended prescription drug benefit, the House bill is estimated by the Congressional Budget Office to cost $32.4 billion over 5 years. Even if the cost of this bill is not underestimated—and history does not offer us much encouragement that this will be the case—and even if the premium increases provided for in this legislation are sufficient to cover its cost, the House bill would effectively mean a substantial increase in taxes to pay for a substantial increase in spending.

Mr. President, the House-passed catastrophic bill is too expensive. In seeking to help seniors meet their health care costs, it ignores the need to restrain the growth of government. S. 1127, by contrast, reflects an acceptable balance between these two crucial national priorities.

Mr. President, I commend the Finance Committee for bringing this bill before us, and urge its passage by the Senate.

Mr. HECHT. Mr. President, catastrophic illness can be devastating to an American family. Recently, a woman from Las Vegas wrote to me about her 82-year-old mother with Alzheimer's disease who cannot walk or feed herself. She's running out of money to continue paying the incredible cost of care for her mother. Clearly, she must be helped.

Catastrophic medical costs are broadly defined as large unpredictable health care expenses, usually associated with a major illness or serious injury. The absence of catastrophic health insurance protection has been a subject of concern for several years, and the Senate today is moving toward a solution that will provide coverage through the existing Medicare program.

As now envisioned, those who are already enrolled in the Medicare Program would be eligible for catastrophic health insurance with an upper limit placed on how much would be paid for Medicare deductibles and coinsurance. Moreover, the limit on the number of days an individual may stay in the hospital, with Medicare coverage, would be removed. Finally, these proposals would provide protection against some of the costs currently not covered by Medicare, such as prescription drugs.

Mr. President, the fear of financial catastrophe remains all too real for older Americans, who face a terrible choice between impoverishing themselves and receiving needed medical care. The bill now being considered by the Senate will offer our most vulnerable citizens a greater measure of financial protection. I agree with my colleagues that America needs an equitable catastrophic health care program and I am therefore supportive of the legislative proposal currently being considered by the Senate.

Mr. BIDEN. Mr. President, I intend to vote for passage of S. 1127, the Medicare Catastrophic Loss Prevention Act because I believe it represents a step in the right direction, not because it is a cure-all for the health care needs of Americans.

Catastrophic care is merely the tip of the iceberg—the health needs of millions of Americans are in danger of being ignored. We have a health system that is the best in the world—but only for those who can afford it. The strong cooperative relationship of the public and private sectors has rsulted in stunning advances, but skyrocketing costs and gaps in Government and private insurance coverage have rendered this superb health care inaccessible or financially ruinous to millions of Americans. I believe there are three major gaps in our national health care system which we must begin to address. The health care of our children, our poor, and the long-term care of our elderly.

First, we must address the prenatal and formative years care needs of our children. Children are being born deformed, mentally retarded, or sickly. Children are inattentive in school because of illness and poor care. These children will never gain their full potential because they have been denied the health care that other children receive. The minimum health care that is the right of all Americans. We must adopt programs to address these health care needs such as free health care for poor children up to the age of 12 and free prenatal care for all poor mothers.

Second, we must no longer ignore the needs of the 23 million working Americans who currently have no health insurance. The face of the American work force is changing. In town after town jobs have moved from the manufacturing economy to the service economy. Too often these jobs offer little or no health care benefits. One episode of illness for a person who has no insurance can push him or her onto the welfare rolls. A minimum level, "no frills" medical insurance plan for workers without private insurance must be developed to keep these hard working Americans on the job and healthy. I support the efforts of Senator KENNEDY and others who are taking the lead on this issue and I look forward to the Senate considering legislation during this Congress.

Finally, as a civilized society, we have the obligation to deal not only with the issue of catastrophic care, but also with the equally important issue of long-term care. Today over 28 million Americans are over age 65. The elderly represent the fastest growing segment of our society. Those aged 85 years and over will increase by 75 percent by the end of the century. Health care for the elderly is costly, and the biggest cost is in long-term care such such as nursing homes. In order to insure quality care for all senior citizens, we must begin to explore the alternatives to full nursing home care. Different levels of attention are required by different people and the system must be responsive to their needs as well as efficient. With over 6 million seniors requiring long-term care, many families will find themselves in the position of having an elderly member of the family dependent on them for care. Many of these families will not be able to shoulder this burden and many others will only be able to provide marginal care. Long-term care of our elderly is something we can no longer avoid.

The Reagan administration has blindly ignored questions related to access and quality by concentrating solely on cost. Despite this, the cost of health care has skyrocketed and is now consuming a larger portion of our GNP than ever before. Obviously the administration's approach of focusing on solutions in the private sector is bankrupt. Government must serve as the catalyst for change while it protects the health care needs of all Americans. This is a crisis in the making. Congress has a choice before it, it can consider the passage of this bill as a beginning or an end. If we fail to address the health care needs of all Americans, if we fail to realize the work yet to be accomplished in this area, we will be failing in our duty to our children, our poor, and our elderly.

Mr. DOMENICI. Mr. President, I am pleased to support S. 1127, the Medicare Catastrophic Loss Prevention Act of 1987, as amended. I am glad that the Congress is tackling this important health care problem.

S. 1127 addresses the catastrophic health and financial problems that millions of elderly and disabled Americans fear. It is a first step in protecting all Americans against the peril of catastrophic health expenses.

I applaud Chairman BENTSEN, ranking minority member PACKWOOD, and the Finance Committee for their hard work. I commend President Reagan and Secretary Bowen for bringing this issue to the forefront, and for making important contributions to the final package.

This is not a new issue for me. In 1979, I introduced a catastrophic health insurance bill with Senators DOLE and DANFORTH. That was a bold move and many of the issues we addressed then are still relevant today. I am happy to once again take up this issue, with such a positive outcome.

In my home State of New Mexico I spoke with citizens who had very high medical costs—$250,000 for one courageous young woman with heart disease. I talked to the elderly, health care providers, and private insurers. It is clear that catastrophic illness is not just a health problem but a financial problem as well.

Too many elderly and disabled Americans face huge medical bills that they simply can't afford to pay, even with the assistance of Medicare. It's a situation we ought to stop, and this legislation will do it.

The bill that we are debating today is similar in benefit structure to one that I introduced a few months ago with Senator DOLE and others. It will go a long way in providing acute care catastrophic protection, and peace of mind, for 30 million elderly and disabled Medicare beneficiaries.

S. 1127 limits the amount of out-of-pocket expenses an individual might pay under the Medicare Program to $1850 per year. It eliminates hospital coinsurance and removes limits on hospital days. It modestly expands home health benefits, skilled nursing benefits, and hospice care. It adds a prescription drug benefit, but implements it slowly and with due regard for the ability of older Americans to pay for this important new protection.

The bill pays for this insurance through a combined flat and income-related premium, so that all elderly will at least pay something, while those who can afford it will pay more. I am particularly satisfied that the Senate adopted my amendment to treat governmental retirees fairly in the premium calculation.

While I support this bill, we must caution ourselves against victory. One of the greatest problems facing the elderly—long-term care—is not covered by this measure. However, this bill reduces the need for expensive MediGap policies and, I believe, encourages private insurers to fill the gap for long-term care.

Before I close, Mr. President, I wish to state a few concerns. First, this bill is budget-neutral in definition and design. I wholeheartedly support the amendments adopted by the Senate to ensure that the costs are reasonable and remain reasonable. Part of my concern is for the continued solvency of the entire Medicare Program. But I am equally concerned that costs don't drive up the premiums to levels that our senior citizens just can't afford.

Second, we are all concerned about the plight of husbands and wives who must impoverish themselves to qualify a spouse for Medicaid nursing home care. My own State of New Mexico recently passed laws to help correct that problem. Any Federal solution must not disadvantage States that already have acted to retain the dignity and self support of the spouse left at home, as this bill does. The House bill does not.

Mr. President, the bill reported by the Finance Committee was a good one. The changes adopted by the Senate make it even better. Should a catastrophic illness strike, the benefits of this bill would help an older American avert financial disaster. If a catastrophic illness does not arise, the bill would still provide peace of mind and security for 309 million vulnerable Americans.

Mrs. KASSEBAUM. I want to make some brief comments about the catastrophic health insurance bill because my vote in opposition to it is not an easy one to cast. I realize that those involved in the development of this legislation have gone to great lengths to devise a moderate and thoughtful package. Certainly, the approach taken by the Senate avoids some of the most serious concerns raised about the package approved in the House. Whereas the House drug benefit, for example, holds enormous potential for allowing the cost of the program to go totally out of control, the Senate version lends some predictibility to the costs beneficiaries can expect to pay over the years.

Nevertheless, for a number of reasons, I question the wisdom of making this type of expansion of the Medicare Program.

First, it is somewhat ironic that we are approving a major expansion of entitlement spending at exactly the same time we are engaged in intensive discussions about additional spending cuts and tax increases designed to deal with turmoil in the stock market. Although there are many explanations for the current state of the market, one factor certainly is the perception that Congress is not really serious about dealing with budget questions.

Second, although I recognize the sincerity of intentions to make this program self-financing, I question our continued will to do so over the long term. It seems to me that, as the costs of the program increase, we will face enormous pressures to supplement the program with general revenues to avoid erosion of benefits. Alternatively, we will end up creating an even more complicated array of cost control mechanisms—leading to almost hopeless confusion among the elderly and health care providers alike.

Third, it seems to me that by asking the elderly to pay the higher premiums and supplemental premiums necessary to finance these benefits, we are foreclosing opportunities to finance truly catastrophic needs such as long-term care services. I recognize that addressing long-term care, such as nursing home costs, is an enormously expensive proposition beyond the scope of this bill. Moreover, I realize that Medicare beneficiaries cannot be expected to shoulder the entire burden of any long-term care proposal that may be devised in the future. Clearly, this will take a cooperative effort between the private and public sectors, and Americans of all ages will need to help foot the bill.

Nevertheless, Medicare beneficiaries will have a role. Having already presented them the bill for this legislation, we will find it extremely difficult to ask for more. Although this measure has frequently been described as a first step toward addressing the long-term care issue, I'm not convinced that this is in fact the case. Rather, I fear we are diverting resources toward programs of lesser priority when we should be reserving them to help pay for those long-term care expenses which can devastate anyone—no matter how hard they have worked to plan for retirement needs.

I do want to say that one feature of the bill which is a true first step toward meeting priority needs in the spousal impoverishment amendment offered by Senator MIKULSKI. This amendment, which permits the spouse of an individual placed in a nursing home to retain some income and assets, addresses what is one of the largest fears faced by older persons—particularly women.

Finally, I am troubled by what I see as widespread misunderstanding about what catastrophic coverage means. This is certainly not intentional, and the sponsors of this legislation have gone to great lengths to explain that it covers only acute care—not nursing home or other types of long-term chronic care. Nevertheless, I'm afraid that many elderly are going to read tomorrow's papers and believe that Medicare is going to be paying for their prescription drugs or that they will be able to continue a hospital stay as long as they want.

When the word "catastrophic" is used, people do naturally tend to think of those things which literally wipe out a family budget. Although $600 in annual drug bills—for example—can create problems in many cases, this is still not the concern that tens of thousands of dollars in nursing home care represents. This is where our efforts should be directed.

Mr. WALLOP. Mr. President, with today's vote, I have now voted twice to approve catastrophic health legislation. The first vote came in the Finance Committee, which unanimously approved the bill. As with that earlier vote, my second vote for the bill is cast with strong reservations.

One of the dismaying aspects of the legislative process is that we vote for new, cumbersome, and expensive domestic programs, close our eyes, and wish that that it will work. As with most wishful thinking, the programs cost much more than we anticipated, and seldom accomplish the noble purposes we have assigned to them. And, once we have put something in place, we find it virtually impossible to terminate the program, no matter how significant a failure. It is no wonder that we have made such meager progress on reducing the Federal deficit through spending reductions.

After the Finance Committee approved S. 1127, we finally received an accurate forecast of the cost. It was a sobering report. The most stunning cost projection was that the program would cost $142 billion in 20 years, up from a mere $5 billion next year. This resulted from a flawed indexing mechanism. If this provision had become law, we would have faced the same financial crisis as occurred in the Social Security Program back in 1978 and 1983 because of the flawed indexing formula enacted for that program in 1972. In our rush to legislate, we ignored a valuable lesson from the very recent past.

Common sense did prevail, and a correction was devised to the indexing formula. The language was included in the drug amendment. I have to admit that it was a clever strategy. While amending the bill with an expensive expansion, language was included which significantly reduced the program costs. I voted for the drug amendment because I felt the indexing correction was so important.

The drug amendment illustrates the flaws of this legislation. In the interesting discussion of the amendment, it was indicated that in the outyears, we do not know what the costs will be. I had discussed the problem of long range program costs in the supplemental views I included in the committee report. I would ask that the views be included in the Record at the end of my remarks.

The second flaw is that neither the drug benefit nor the underlying program provides catastrophic health expenses for senior citizens of moderate means. The program will have premiums, thresholds, coinsurance, and deductibles which will be out-of-pocket expenses for the elderly. Several weeks ago, I was visited by several women from Wyoming who worked with those groups of senior citizens who still will face catastrophic health expenses even after the enactment of this legislation. The choices down the road will be to reduce or eliminate the cost sharing features. There may also be pressure to expand Medicaid right now, a special legislative committee in Wyoming is investigating the Medicaid Program to determine the reasons behind substantial cost increases of the past several years. They are trying to find ways to control costs, not expand costs. The alternatives are not encouraging.

The economic disruptions of the past week have hopefully brought us back to reality on the deficit. It is awkward that we are proceeding with a new initiative at this time. It is also disturbing that those who we most need to help will still be burdened by the costs of acute health care services. Despite the problems with the legislation, the proposal is surely working its way through the Congress. I will vote for the bill. I do so with the knowledge that we will be visiting this issue again in a few years as the problems become manifest. We will have a vote on the conference report, but only if the Senate bill prevails absolutely in conference will I be able to support it. I can not vote for a conference report if the conferees make the mistake of accepting any of the budget exploding irresponsible provisions in the House of Representatives' bill.

There being no objection, the material was ordered to be printed in the Record, as follows:

Supplemental Views on Catastrophic Health Insurance Legislation, S. 1127

As the members of the Finance Committee were approving the catastrophic health insurance bill, S. 1127, the euphoria of this action distracted most members from noticing that the legendary camel was sticking his nose underneath the tent. Indeed, there never has been a larger camel's nose. While dealing with a problem 22 years late, we are building a fabulous new load on the Medicare program, and it may be that last straw that broke the camel's back (in this case, the self-financing Medicare program).

The Chairman of our Committee did a commendable job putting together an Acute Care Health Insurance Program for our retired and disabled citizens. The Committee withstood the pressure to rapidly expand its scope and, worse still, the cost of the program. It is frightening to think what will happen when this bill reaches the floor of the Senate. We side-stepped several blockbuster amendments only by agreeing that these matters will be considered during the Senate's debate or as amendments to other legislation (such as the Budget Reconciliation bill). However, there is a variety of groups and some too willing Senators who are interested in expanding this legislation into a prototype for comprehensive national health insurance.

Just as the Finance Committee was unanimous in reporting this bill, members should also present a united front in rejecting these expansionist inclinations which would destroy what is now a reasonable bill.

The history of the Social Security Act, which includes the Medicare program as Title XVIII, is one of benefit expansion. Over the 52 years of the Act's existence, the Congress has expanded benefits and has expanded the taxes to fund them. Usually, the expanded taxes have lagged behind the new benefits. The strategy has been to argue that some additional benefit is necessary or some group requires coverage under one or more titles of the Act. The cost is minimized. Once the benefit is enacted, then the Social Security Administration actuaries report that the Social Security trust funds are in danger of being bankrupted by the most recent expansion. So, we inevitably expand the taxes rather than review the new demands. Or, in the case of Medicare's Part B premium, we expand the use of General Revenues, which really means enlarging the federal budget deficit.

The Medicare program was enacted with one specific mission. Its task was to provide, on a cost-sharing basis with beneficiaries, insurance coverage for acute care hospital and physician services. It can be argued that the original focus of Medicare should have been on protecting the elderly from health care catastrophies rather than short term acute care. That is a concept we have been trying to catch up with since 1965.

Three funding sources were created for this federal acute care insurance. The hospital services, which have accounted for two thirds of program costs, are funded by a payroll tax. Physician services are funded by participants' premiums and general revenues. When Medicare became law in 1965, it was proclaimed to be on sound financial footing. The program cost $64 million in its first year. Just two years later, the cost increased to $4.7 billion. The program was in trouble, and payroll taxes were increased. Five years later, another, substantial, increase in taxes was enacted. The cost of Medicare has constantly exceeded projections. By the time we reached the 20th anniversary of the program, the costs were about eight times the original projections by the program actuaries. When President Reagan took office in 1981, Medicare cost $32 billion. This year, the cost will have more than doubled, to $73 billion. While program costs were understated by proponents to ensure passage of the original legislation, there was also a failure to truly appreciate actual cost of benefits. We may fall into that same trap with this new coverage.

The Congress has previously expanded benefits with costly results. For instance, in 1972, coverage was provided to the disabled and those receiving kidney dialysis (ESRD). Since a disabled beneficiary, on average, has costs about 30% higher than retired beneficiaries, this coverage increased costs well beyond the simple increase in participants. The ESRD benefit had an explosive and unexpected price tag. We have reined in the ESRD benefit, but only because we were forced to do so through the budget reconciliation process.

Now, we are about to provide the second major expansion of the program. Make no mistake, this is an expansion of benefits rather than participants. Many have mislabeled our legislation as a catastrophic health insurance bill. Such a label suggests that whenever a beneficiary experiences an illness requiring high cost medical care, this catastrophic insurance will pay for such care. That is the objective of those who preach an expansionist view of the Social Security program. It may be the expectation of those who take our title at face value. It will become the demand of politics and expectation.

S. 1127 does not, I repeat does not, provide catastrophic health insurance. It is simply a fill-in of the holes left in the acute care insurance that is Medicare. Medicare has cost sharing and deductibles for every length of stay in a hospital. Medicare also has a limit on the number of days in a hospital covered by this insurance. The Committee bill expands Medicare to provide unlimited days of stay in a hospital for an illness and limits the out of pocket payments by participants to the hospital and physician for their care. It is an extended acute care benefit, not a catastrophic health package.

Two points need to be emphasized. First, the expanded benefit preempts private Medigap policies which provided similar health insurance coverage. About 70% of Medicare beneficiaries now have this private insurance. This insurance provided by the marketplace will be eliminated in return for insurance provided by the federal government. Of those who had no Medigap insurance, about half are covered by Medicare. Thus, this legislation ultimately benefits only about 10% of the population who are not covered by Medicaid and have not purchased Medigap insurance. This legislation will not improve benefit coverage for most Medicare participants. Only about 3% of those covered by Medicare will actually utilize this benefit in any one year.

The second point is that this benefit is related to a hospital stay based on illness. Many Medicare beneficiaries now believe that Medicare provides a full range of health benefits, even to include nursing home care. That is a misconception which will be further enhanced by this misnamed "catastrophic" health insurance bill. Medicare only covers about 44% of the health care costs of the elderly. It does not cover prescription drugs, dental services, many mental health services, nor does it cover custodial care in a nursing home. This bill will not cover any of those services either. These are the types of services the expansionists want Medicare to provide. They want to totally replace individual responsibility and the private marketplace with government-provided care. And the cost—well, they don't worry about the cost. It can be financed by deficit spending or higher taxes.

Now that the federal government will be committeed to cover the cost of catastrophic illness, no limiting principle will define the proper role of government in providing health care. Future debates will involve how to make federal catastrophic care more comprehensive.

The bill considered by the House of Representatives has a prescription drug benefit tailing along. It would be funded by higher taxes (through increased premiums), but would have a $3 billion estimated deficit in just eight years. This would be covered by deficit spending, rhetoric on deficits notwithstanding. Long term nursing care is projected to cost between $30 and $50 billion. The premium to finance such a benefit would be astronomical.

The financing of S. 1127 will present a real challenge to fiscal responsibility. I fear the proposed financing mechanisms will prove to be inadequate to support future benefit costs. While the program costs are directly linked to premiums, as costs escalate, this linkage could be severed. Unfortunately, we already have a precedent with the Part B premium for shifting costs to General Revenues.

It is this same Part B Premium which is used to finance the new benefit. The basic premium would be increased, and a new supplemental premium, labeled a "means test", is added. Means tests are traditionally used to limit access. This supplemental premium is used to shift costs on an intragenerational basis. It is actually a progressive tax which reflects redistributive tendencies of the Congress. And, if both premiums fail to fund this benefit, we will undoubtedly revert to old habits and use General Revenues to fund Part B services.

Our ability to resist financing through General Revenues is usually found wanting, as demonstrated by past decisions to let the Part B Premium slip. Using general revenues, rather than user fees, is always a tempting political solution for providing new government services. Since the passage of the Social Security Act, there has been an effort to fund part of the entire program—retirement benefits as well as health benefits—through General Revenues.

It is not surprising that General Revenue financing is again a prospect. But, it would be wrong to allow this provision to break with self-financing and budget neutrality. I would hope that the principle of the user pays would not be violated in this legislation, but this camel's nose like Pinocchio's is predicted to grow.

The Committee has decided that this is an appropriate direction for federal health care policy. But, how do we constrain this new endeavor? Will we have reasonable and meaningful limitations on the scope of federal catastrophic care? Will we continue to recognize private insurance and savings as the bulwark of health care financing? Will we allow health care expenditures to absorb more and more of our GNP? We hope that the 100th Congress will have the correct responses to these questions.

As was demonstrated during our Committee's discussions, S. 1127 opens up a far reaching ethical, social and economic debate. That is the question of the extent to which we, as a society, will provide whatever care is necessary to prolong life. This debate was broached by a very brief discussion of the treatment of those who suffer from AIDS. It was also recently raised by the recent HCFA regulations for Medicare coverage of heart transplants. The fundamental question is whether through public policy (and public financing) we will provide whatever health care people demand regardless of cost.

What type of limits, formal and informal, will we place on health services? That is a debate we will have to face some day soon. It will most likely be one of the most difficult issues ever confronted by the Congress. The camel lying behind the nose is the expectation created that each American has the right, almost theological in its dimension, to the full scientific ability of the world to prolong his life and comfort regardless of cost. From organ transplants to mechanical transplants, from exotic rare procedures to experimental science, citizens will expect and politicians may respond.

I would like to reiterate a recent statement by Dr. Bowen. It is a challenge to design an acute care benefit that is affordable to beneficiary, taxpayer and government alike—a program that needs no new taxes, no new bureaucracy, is budget neutral and does not exacerbate the deficit or problems of the medicare trust funds. The Finance Committee bill does a respectable job of meeting this challenge. Adding unrelated baggage during Senate debate or adopting provisions in the House bill in Conference would most likely sink this proposal or the country. The Senate, in this bicentennial session, has yet to demonstrate that as a body it is committed to fiscal responsibility. Our actions on S. 1127 will demonstrate how serious we are about legislating in a responsible fashion.

Mr. GRASSLEY. Mr. President, once again I wish to review certain important points that have figured prominently in our national debate on this legislation that seem to me not to be as well understood as they should be.

In the first place, although support for long-term care needs constitute the major threat to the financial well being of older people, they are not the only health care costs that pose potentially catastrophic levels of costs for the old. I have already spoken to the potential for causing catastrophic health care expenses posed by the prescription drug needs of the elderly.

But out-of-pocket expenses for prescription drugs are not the only out-of-pocket expenses for acute health care needs which are incurred by the old. A recent study by William Scanlon, Judith Feder, and Marilyn Moon showed that some 7.7 percent of the elderly spend greater than 25 percent of their income out-of-pocket for acute health care needs, 4.8 percent spend between 20 and 25 percent of their income, and 11.3 percent spend 15 to 20 percent.

The authors show that 23.9 percent of all elderly spend more than 15 percent of their income on the costs of acute health care services, and that 37 percent of those older people with incomes of $10,000 or less spend more than 15 percent of their income on such services. The incidence of such out-of-pocket expenditures is very much affected by hospital stays. Some 39.9 percent of elderly of all incomes who have a hospital stay spend more than 15 percent of their income out-of-pocket for health care, and an astonishing 56.2 percent of older people with incomes of $10,000 or less and with a hospital stay spend 15 percent of their incomes on acute health care services.

In the second place, this legislation will provide protection from the catastrophic outlays out-of-pocket for non-long-term care health care services. The Hospital Insurance Program is reformed with elimination of the spell of illness concept, elimination of all but one hospital deductible per year and complete elimination of all hospital copayments. Furthermore, a cap is placed on out-of-pocket expenditures under part B of $1,850. Although it is the case that not all of the new costs associated with this program will count toward this cap, nevertheless that ceiling offers an additional measure of protection from potentially ruinous costs associated with health care for acute illness.

I have already discussed in earlier debate today on the prescription drug amendment the contribution that that program will make to reducing the exposure to catastrophic outlays for acute health care on the part of the elderly.

In the third place, as I noted earlier today, there is an insurance aspect to this program. Many critics of the bill have noted that many Medicare beneficiaries will pay more in the way of new premiums each year than they will receive in the way of benefits. I have no doubt that this is true. However, it is important to note that over a longer period of time, especially as a beneficiary grows older, it becomes more likely that they will take out of the progam in the way of benefits more than they put into it.

I also reviewed earlier some of the protections built into the program to keep the income of the program and the expenditures under the program in balance. These include indexing deductibles and premiums in the progam to increases in the cost of the program, providing separate accounting for both the basic program and the prescription drug program, and separate computation for the catastrophic cap and the prescription drug deductible.

With several of the amendments accepted or passed today by the Senate, the bill is, it seems to me, improved. These include the Pryor-Dominici amendment and the Stevens amendment, both of which I cosponsored, which repair the inequitable treatment of Federal retirees which would have resulted under terms of the original bill, and inclusion of Senator MIKULSKI's spousal impoverishment provision which I cosponsored and spoke to earlier at the time of its consideration. They include also the Roth amendment, which provides a separate trust fund for the catastrophic health insurance program, a provision which should help us keep clearer track of the costs and income of the program.

Frankly, Mr. President, although the program the Senate has crafted seems to me to be reasonable and responsible, I remain skeptical with respect to what the future holds for this program. As I noted earlier in my statement on the prescription drug amendment, a time could arrive when we come under pressure to expand the benefits available through this program, even though available resources have not grown appreciably, rather than adhere to the terms we have accepted for the program today. The various advocacy groups which have supported this legislation are certain to see the various coverage, premium and deductible limits contained in the bill as new targets against which to advocate further program expansion. And Congress has not exactly distinguished itself in its ability to hold the line on any benefit program. The other alternative is that we will engage in vigorous cost containment of the kind which has so alienated doctors and many hospital leaders.

Mr. President, as I noted earlier today after passage of this bill it remains to go to conference with the House of Representatives. The House has passed a catastrophic health care cost protection bill which, in my opinion is not as good as the bill we are voting on today. It would be unrealistic to expect the legislation which will emerge from conference to the unmarked, as it were, by provisions presently in the House legislation. I say once again to the managers of the bill that I reserve the right to vote against the conference report on the legislation if I feel that the legislation which returns to us after conference has become fatally flawed by addition of House provisions.

Mr. DOLE. Mr. President, this day has been a long time coming, and I for one, am pleased to see it finally arrive. As many in this Chamber may remember, we first began to discuss the need for some form of catastrophic protection under Medicare as far back as 1973, when Senator Russell Long was still chairman of the Finance Committee. In fact, I introduced my first catastrophic bill, along with Senators DANFORTH and DOMENICI back in 1979.

It is President Reagan, however, who is to be congratulated for having begun this most recent series of negotiations. Because of his leadership, we appear to have finally gained the necessary momentum needed in order to reach some type of compromise on this issue.

NEED FOR COVERAGE

Nearly all of us have had some personal experience with major health care costs, whether for ourselves, for a family member or a friend. We are therefore accustomed to the fact that Medicare, like most insurance companies, fails to cover the entire cost of an illness. For the low-income elderly in particular, this has become an increasingly difficult issue.

I believe it is time to provide some relief for our elderly and disabled citizens at a cost they can afford.

In 1983, 2.8 million Medicare beneficiaries had annual liabilities of $100 or more: of these, 800,000 had expenditures of $2,000 or more. Now this may not sound catastrophic to any of you, but if you have an income of less than $5,000, $1,000 is a lot of money. And it's the low-income elderly in particular that have us concerned.

The health policy group at Georgetown University estimates that in 1986, excluding long-term care costs, the elderly with incomes under $5,000, are estimated to have spent as much as 18 percent of their income on medical care. In fact, almost one quarter of the elderly are estimated to spend over 15 percent of their incomes on health care bills. So the issue was really more a question of what could we do rather than should we do anything.

As we have all heard, there has been considerable debate about how to best cover catastrophic costs. As we worked on these issues over the last few years and months, it also became clear that we had to determine in particular how to protect the low-income elderly, who could not afford an expensive new program.

It was clear that there were no simple or straightforward solutions—in fact—in many areas such as long-term care, we have been unable to develop a rational, affordable approach. But we have developed a feasible, workable approach to address the acute care needs of the elderly, and that is what we attempt to achieve with this bill.

PRINCIPLES OF REFORM

There are four basic principles upon which our bill was built:

First. The bill should fill in the gaps in existing Medicare acute care coverage—not add a whole new range of benefits.

Second. The funding mechanism chosen should fully cover the cost of the benefit improvements, both in the short term and the long term.

Third. All who benefit from the coverage should pay something for that coverage—but the burden should be placed on the ability to pay.

Fourth. Catastrophic coverage should be on a voluntary basis and linked to part B.

NEW FINANCING MECHANISM

In order to achieve these goals, and not place a new burden on either the Medicare trust fund or the Federal budget, the bill as reported includes a new income related premium, which in taking into account the individuals ability to pay, helps to protect the low-income. It is not perfect. Some of the more well to do elderly will pay a considerable sum for this coverage, but hopefully less than they currently pay for the combination of Medicare and Medigap insurance.

Senator WALLOP raised a very important issue earlier this evening—that is the desire on the part of many to have this be a truly voluntary program. Unfortunately his amendment was defeated, in part because of the concern of some that there would be dramatic adverse selection take place thus increasing the cost of the program, with fewer people to pay the bill. We may want to revisit this issue again. However, if there is serious objection raised by the elderly to this new program.

ADDITIONAL BENEFITS

Further, while we all recognized that there are a great many services not currently covered by the Medicare Program, the decision was made to hold back on adding new benefits, so the cost of the new program was affordable. The one issue, however, on which we have had to reach a consensus was a drug benefit. As we've all noted in the press, and as We've all heard from our constituents, this is a difficult and controversial issue. While no one doubts that the need for some relief from the costs of prescription drugs is very real, we had to move with caution so that the addition of this new benefit would not hurt those we most want to protect.

In other words, I do not want someone to have to give up all part B benefits, because they cannot afford the premium. There are many who desperately need the protection that this bill offers for in-hospital costs, especially if they have cancer or some other disease that requires frequent or long hospital stays. A substantial drug benefit had the potential to increase the premium dramatically, unless we were able to define a financing mechanism that avoids this. The final compromise attempts to address this issue by putting limits on how quickly the drug premium could grow, and gives the Secretary the flexibility to phase in drug categories as appropriate so the cost of the benefit is retained.

Let me say Mr. President, that I think this benefit needs to be watched closely. There is certainly a potential for this program to become very expensive. If in fact I learn that a number of elderly are unable to participate in Medicare because of an excessive premium, then I can assure you that I will make every effort to have these changes reconsidered and modified if necessary.

CONCLUSION

Our bill as reported unanimously by the Finance Committee, and as modified today, does not attempt to solve all the problems of the Medicare Program, but it does take a major step in the right direction. We have an affordable, useful program. I urge my colleagues not to use this opportunity to add on their favorite projects—thus putting the relief we offer out of reach of those most in need.

THE MEDICARE CATASTROPHIC LOSS PREVENTION ACT OF 1987

Mr. BYRD. Mr. President, the Senate is considering one of the most significant issues we will meet in this 100th Congress, the Medicare Catastrophic Loss Prevention Act of 1987. This bill, S. 1127, if enacted, will protect this Nation's elderly and disabled against financial ruin caused by catastrophic health-care expenses. It deserves our closest scrutiny and our enthusiastic support.

I am pleased to be an original cosponsor of S. 1127. I want to commend the chairman of the Finance Committee for crafting this legislation and guiding it through his committee with strong bipartisan support.

This legislation means added peace of mind for our Nation's older Americans.

It means insurance against their fear that hospital and doctor bills will become unmanageable. It is comparable to a homeowner's insurance policy or to an automobile insurance policy. We all buy these policies, but we do not expect to use them regularly. In fact, we hope that we will never have to make a claim against them. But we buy them, we pay for them, and if our home is ruined, or our car is involved in an accident, we know we are protected against financial liability.

This legislation provides a similar benefit. It will not help everyone eligible for Medicare. Those who have their health, who never have to depend upon its protection, can count themselves truly fortunate. But when crisis comes, this bill will assure health care protection without financial deprivation.

Since its beginning in 1966, the Medicare Program has significantly expanded access to health care by the elderly. But it has not solved all the health-care needs of this population. Medicare beneficiaries today spend 15 percent of their income on health care—the same percentage they spent before the existence of the program. And today Medicare covers less than one-half of the total elderly health-care bill, which will approach $170 billion this year. Older Americans pay over one-third of this out of their own pockets, either as direct payments or as private health insurance premiums. The precipitous rise in health-care costs has compounded the problem. As in the past several years, out-of-pocket health care expenses today are rising faster than incomes.

S. 1127 doesn't pretend to solve all of these problems. But for those in need of hospital care, S. 1127 closes many of the gaps in Medicare. Coinsurance charges and lifetime limits for hosptial days are completely eliminated by the bill. Only a single annual hospital deductible remains, equal to the cost of 1 day's stay in a hospital. This provision alone will benefit 1.1 million Medicare enrollees.

Doctors bills are an even greater burden on Medicare beneficiaries. Since 1980, beneficiaries' Medicare part B coinsurance liability—the part that covers physician's charges—has risen 170 percent. And as in most other areas of health care, these increases far outpace Social Security benefits.

S. 1127 puts a cap on the amount beneficiaries will have to pay for services covered by Medicare. It limits part A and B covered charges to $1,850 in 1988 and indexes that amount in future years.

The bill expands coverage for short term skilled nursing facility stays and makes improvements in the coinsurance charges for these stays. And for those who leave the hospital but still require close medical attention while they recover, S. 1127 would provide Medicare coverage for 45 days of daily home health care.

One major expense not covered in the committee reported bill was prescription drugs. We have remedied this by passing an amendment to provide Medicare coverage of 80 percent of the cost of outpatient prescription drugs after the Medicare enrollee has paid a $600 deductible. A need for such coverage is illustated by the following facts:

Prescription drugs are one of the four most costly health care expenses older Americans face.

Americans over the age of 65 comprise 12 percent of our population but they use 30 percent of prescription drugs.

Seventy-five percent of those aged 19 to 64 have insurance coverage for prescription drugs, but only approximately 40 percent of those over 65 have such coverage. Arguably, they are the ones most in need of protection.

Last year, the price of these drugs rose over 4 times faster than general consumer prices.

Add to this the fact that many older Americans live on fixed, modest incomes and you have a situation in which more and more people do not have their prescriptions filled because they can't afford them.

Much of the health care that older Americans need is for chronic conditions. According to the American Association of Retired Persons, a relatively healthy older person suffering from four common but chronic conditions—arthritis, high blood pressure, angina, and an ulcer—would pay over $1,000 per year in drug costs alone. While this may seem high, it's important to remember that prescription drugs are among the most cost-effective of medical treatments.

A prescription drug benefit such as my colleagues propose would be the single most important benefit to our older constituents. When the benefit reaches full implementation in a few years, nearly 15 percent of Medicare enrollees will benefit in any given year. And like the rest of the catastrophic package, an individual's chance of benefiting at age 65 may not be great, but by the time he or she reaches 80, the odds will have increased enormously.

A prescription drug benefit is nothing less than an assurance to Americans that we mean business when we say we are providing catastrophic health insurance. We owe our constituents that kind of honesty.

Together, these benefits provide a sound catastrophic package—added insurance and peace of mind for every Medicare enrollee and concrete benefits for nearly 20 percent of all enrollees in any given year. It's a package well worth providing and paying for.

S. 1127 finances catastrophic care through a combination of basic and supplemental premiums. The basic premium, paid by all enrollees, is set at $4 per month. For most enrollees this premium will be subtracted from the monthly Social Security check, as is the current practice with the part B premium. There is a guarantee, however, that this monthly premium won't become an unmanageable burden for those with low incomes. The bill prohibits any reduction in one's Social Security check as a result of this premium. To state it simply, Mr. President, no one will get a Social Security check that is lower than their monthly benefit because of this bill.

The supplemental premium, with its progressive rate structure, is based on ability to pay. As such, it is fairer and much less of a burden on middle income elderly people than the proposal adopted by the House of Representatives. Additionally, under S. 1127, when the basic and supplemental premiums are combined, each enrollee will pay between 1 percent and 2 percent of their total income for catastrophic protection. This compares very favorably to the House proposal which would require an individual with $20,000 total income to pay roughly 4 percent of his or her income.

There has been a great deal said about how much people will pay for this catastrophic benefits package. But much of the discussion has been off the mark. The insurance protection against financial ruin from health care expenses which this legislation provides is very significant.

With this legislation, health care protection for America's elderly and disabled takes a major step forward. Only if we take the leadership to provide this protection can we be sure that each and every Medicare enrollee is relieved of the anxiety and fear of financial ruin from catastrophic hospital and doctor costs.

The **PRESIDING OFFICER.** Under the previous order, the clerk will read the bill for the third time.

The bill was ordered to be engrossed for a third reading and was read the third time.

The **PRESIDING OFFICER.** The bill has been read for the third time.

The Senator from Texas.

Mr. BENTSEN. Mr. President, I ask unanimous consent that the Senate turn to Calendar Order No. 258, H.R. 2470.

The **PRESIDING OFFICER.** Without objection, it is so ordered.

The bill will be stated by title.

The legislative clerk read as follows:

> A bill (H.R. 2470) to amend title XVIII of the Social Security Act to provide protection against catastrophic medical expenses under the medicare program, and for other purposes.

The Senate proceeded to consider the bill.

Mr. BENTSEN. Mr. President, I ask unanimous consent that H.R. 2470 be amended by striking all after the enacting clause and inserting the text of S. 1127, as amended.

The **PRESIDING OFFICER.** Without objection, it is so ordered.

Mr. BENTSEN. Mr. President, I move the adoption of H.R. 2470 as so amended.

Mr. BYRD. Mr. President, I ask for the yeas and nays.

The **PRESIDING OFFICER.** Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The **PRESIDING OFFICER.** The question is on the engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read a third time.

The **PRESIDING OFFICER.** The Senate will be in order.

The majority leader.

Mr. BYRD. Mr. President, this is the last rollcall vote today.

The first rollcall vote tomorrow will begin at 10 a.m., and it will be a 30-minute rollcall vote, and the call for the regular order will be automatic.

I thank all Senators.

The **PRESIDING OFFICER.** The bill having been read the third time, the question is, Shall it pass?

The bill clerk called the roll.

The **PRESIDING OFFICER.** Are there any other Senators in the Chamber who desire to vote?

Mr. CRANSTON. I announce that the Senator from Connecticut [Mr. DODD], the Senator from Tennessee [Mr. GORE] and the Senator from Illinois [Mr. SIMON] are necessarily absent.

I further announce that, if present and voting, the Senator from Tennessee [Mr. GORE] would vote "yea."

The result was announced—yeas 86, nays 11, as follows:

[Rollcall Vote No. 353 Leg.]

YEAS—86

Adams
Baucus
Bentsen
Biden
Bingaman
Bond
Boren
Boschwitz
Bradley
Breaux
Bumpers
Burdick
Byrd
Chafee
Chiles
Cochran
Cohen
Conrad
Cranston
D'Amato
Danforth
Daschle
DeConcini
Dixon
Dole
Domenici
Durenberger
Evans
Exon
Ford
Fowler
Glenn
Graham
Gramm
Grassley
Harkin
Hatch
Hatfield
Hecht
Heflin
Heinz
Inouye
Johnston
Kasten
Kennedy
Kerry
Lautenberg
Leahy
Levin
Lugar
Matsunaga
McCain
McConnell
Melcher
Metzenbaum
Mikulski
Mitchell
Moynihan
Murkowski
Nunn
Packwood
Pell
Pressler
Proxmire
Pryor
Quayle
Reid
Riegle
Rockefeller
Rudman
Sanford
Sarbanes
Sasser
Shelby
Simpson
Specter
Stafford
Stennis
Stevens
Thurmond
Trible
Wallop
Warner
Weicker
Wilson
Wirth

NAYS—11

Armstrong
Garn
Helms
Hollings
Humphrey
Karnes
Kassebaum
McClure
Nickles
Roth
Symms

NOT VOTING—3

Dodd
Gore
Simon

So the bill (H.R. 2470), as amended, was passed.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed, as follows:

H.R. 2470

Resolved, That the bill from the House of Representatives (H.R. 2470) entitled "An Act to amend title XVIII of the Social Security Act to provide protection against catastrophic medical expenses under the medicare program, and for other purposes", do pass with the following amendment:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE; REFERENCES IN ACT; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Medicare Catastrophic Loss Prevention Act of 1987".

(b) AMENDMENTS TO THE SOCIAL SECURITY ACT.—Except as otherwise specifically provided, whenever in this Act an amendment is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Social Security Act.

(c) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; references in Act; table of contents.
Sec. 2. Scope of benefits under part A.
Sec. 3. Deductibles and coinsurance under part A.
Sec. 4. Limitation on cost-sharing.
Sec. 5. Increase in part B premium.
Sec. 6. Supplemental premium for catastrophic illness coverage.
Sec. 6A. Establishment of Federal catastrophic drug insurance trust fund.
Sec. 6B. Establishment of Federal catastrophic health insurance trust fund.
Sec. 7. Medicare coverage of home health services on a daily basis.
Sec. 7A. Coverage of home intravenous drug therapy.
Sec. 8. Clarification of requirement that individual be confined to home to be eligible for home health services.
Sec. 9. Annual notice to medicare beneficiaries.
Sec. 9A. Benefits counseling and assistance for certain medicare and medicaid beneficiaries.
Sec. 10. Adjustment of AAPCC's and contracts for risk-based eligible organizations.
Sec. 10A. Protection of medicare beneficiaries enrolled in an eligible organization with risk-sharing contract against certain practices.
Sec. 11. Coverage of catastrophic expenses for prescription drugs.
Sec. 12. Hospice care.
Sec. 13. Voluntary certification of medicare supplemental health insurance policies.
Sec. 14. Determination of medicaid savings; State plan requirement.
Sec. 14A. Determination of medicaid drug savings: State plan requirement.
Sec. 14B. Medicare cost-sharing with respect to prescription drug benefit under medicaid program.
Sec. 14C. Protection of income and resources of couple for maintenance of community spouse.
Sec. 15. Studies of long-term care.
Sec. 16. Case management demonstration projects.
Sec. 17. Repeal of authority to administer proficiency examinations.
Sec. 18. Trustee comments on actuarial soundness of basic and supplemental catastrophic benefit premiums.
Sec. 19. Technical amendment relating to waivers for home and community-based services.
Sec. 20. Technical amendments relating to New Jersey respite care pilot project.
Sec. 21. Maintenance of effort.
Sec. 22. Rate reduction for medicare eligible Federal employees.
Sec. 23. Study and reports by the Office of Personnel Management on offering medicare supplemental plans to Federal medicare eligible individuals, and other changes.
Sec. 24. Study of day care services.
Sec. 25. Treatment of Garden State health plan.
Sec. 26. Delay in organ procurement requirements.
Sec. 27. Transitional provisions.
Sec. 28. Authority to reduce deductible for covered outpatient drugs.
Sec. 29. Beneficiary costs of medicare catastrophic insurance.
Sec. 30. United States Bipartisan Commission on Comprehensive Health Care.
Sec. 31. Effective dates.

SEC. 2. SCOPE OF BENEFITS UNDER PART A.

(a) FOR INDIVIDUALS COVERED UNDER PARTS A AND B.—Section 1812 (42 U.S.C. 1395d) is amended to read as follows:

"SCOPE OF BENEFITS FOR INDIVIDUALS COVERED UNDER PARTS A AND B

"SEC. 1812. (a) The benefits provided by the insurance program under this part to an individual who is covered by such program and by the insurance program under part B shall consist of entitlement to have payment made on his behalf or, in the case of payments referred to in section 1814(d)(2) to him (subject to the provisions of this part) for—

"(1) inpatient hospital services;

"(2) extended care services for up to 150 days during any calendar year;

"(3) home health services; and

"(4) in lieu of certain other benefits, hospice care with respect to the individual during up to two periods of 90 days each and one subsequent period of 30 days with respect to which the individual makes an election under subsection (c)(1).

"(b) Payment under this part for services furnished to an individual who is covered by the insurance programs established under this part and part B may not be made for—

"(1) extended care services furnished to him during a calendar year after such services have been furnished to him for 150 days during that year; or

"(2) inpatient psychiatric hospital services furnished to him after such services have been furnished to him for a total of 190 days during his lifetime.

"(c)(1) Payment under this part may be made for hospice care provided with respect to an individual only during two periods of 90 days each and one subsequent period of 30 days during the individual's lifetime and only, with respect to each such period, if the individual makes an election under this paragraph to receive hospice care under this part provided by, or under arrangements made by, a particular hospice program instead of certain other benefits under this title.

"(2)(A) Except as provided in subparagraphs (B) and (C) and except in such exceptional and unusual circumstances as the Secretary may provide, if an individual makes such an election for a period with respect to a particular hospice program, the individual shall be deemed to have waived all rights to have payment made under this title with respect to—

"(i) hospice care provided by another hospice program (other than under arrangements made by the particular hospice program) during the period, and

"(ii) services furnished during the period that are determined (in accordance with guidelines of the Secretary) to be—

"(I) related to the treatment of the individual's condition with respect to which a diagnosis of terminal illness has been made, or

"(II) equivalent to (or duplicative of) hospice care;

except that clause (ii) shall not apply to physicians' services furnished by the individual's attending physician (if not an employee of the hospice program) or to services provided by (or under arrangements made by) the hospice program.

"(B) After an individual makes such an election with respect to a 90- or 30-day period, the individual may revoke the election during the period, in which case—

"(i) the revocation shall act as a waiver of the right to have payment made under this part for any hospice care benefits for the remaining time in such period and (for purposes of subparagraph (A), subsection (a)(4), and section 1812A(a)(4)) the individual shall be deemed to have been provided such benefits during such entire period, and

"(ii) the individual may at any time after the revocation execute a new election for a subsequent period, if the individual otherwise is entitled to hospice care benefits with respect to such a period.

"(C) An individual may, once in each such period, change the hospice program with respect to which election is made and such change shall not be considered a revocation of an election under subparagraph (B).

"(D) For purposes of this title, an individual's election with respect to a hospice program shall no longer be considered to be in effect with respect to that hospice program after the date the individual's revocation or change of election with respect to that election takes effect.

"(d) For purposes of subsection (b), inpatient psychiatric hospital services and extended care services shall be taken into account only if payment is or would be, except for this section or the failure to comply with the request and certification requirements of or under section 1814(a), made with respect to such services under this part.".

(b) FOR INDIVIDUALS COVERED UNDER PART A ONLY.—Part A of title XVIII is amended by inserting after section 1812 the following:

"SCOPE OF BENEFITS FOR INDIVIDUALS COVERED UNDER PART A ONLY

"SEC. 1812A. (a) The benefits provided by the insurance program under this part to an individual who is covered by such program but not by the insurance program under part B shall consist of entitlement to have payment made on his behalf or, in the case of payments referred to in section 1814(d)(2) to him (subject to the provisions of this part) for—

"(1) inpatient hospital services for up to 150 days during any spell of illness minus 1 day for each day of inpatient hospital services in excess of 90 days received during any preceding spell of illness (if such individual was entitled to have payment for such services made under this part unless the individual specifies in accordance with regulations of the Secretary that the individual does not desire to have such payment made);

"(2)(A) post-hospital extended care services for up to 100 days during any spell of illness, and (B) to the extent provided in subsection (f), extended care services that are not post-hospital extended care services;

"(3) home health services; and

"(4) in lieu of certain other benefits, hospice care with respect to the individual during up to two periods of 90 days each and one subsequent period of 30 days with respect to which the individual makes an election under section 1812(c)(1).

"(b) Payment under this part for services furnished during a spell of illness to an individual who is covered by the insurance program under this part but not by the insurance program under part B may not (subject to subsection (c)) be made for—

"(1) inpatient hospital services furnished to the individual during such spell after such services have been furnished to the individual for 150 days during such spell minus 1 day for each day of inpatient hospital services in excess of 90 days received during any preceding spell of illness (if such individual was entitled to have payment for such services made under this part unless he specifies in accordance with regulations of the Secretary that he does not desire to have such payment made);

"(2) post-hospital extended care services furnished to the individual during such spell after such services have been furnished to the individual for 100 days during such spell; or

"(3) inpatient psychiatric hospital services furnished to the individual after such services have been furnished to the individual for a total of 190 days during the lifetime of the individual.

"(c) If an individual is an inpatient of a psychiatric hospital on the first day of the first month for which he is entitled to benefits under this part, the days on which he was an inpatient of such a hospital in the 150-day period immediately before such first day shall be included in determining the number of days limit under subsection (b)(1) insofar as such limit applies to (1) inpatient psychiatric hospital services, or (2) inpatient hospital services for an individual who is an inpatient primarily for the diagnosis or treatment of mental illness (but shall not be included in determining such number of days limit insofar as it applies to other inpatient hospital services or in determining the 190-day limit under subsection (b)(3)).

"(d) The provisions of section 1812(c) shall apply to individuals who are covered by the insurance program under this part but not by the insurance program under part B in the same manner and to the same extent as those provisions apply to individuals who are covered under both such programs.

"(e) For purposes of subsections (b) and (c), inpatient hospital services, inpatient psychiatric hospital services, and post-hospital extended care services shall be taken into account only if payment is or would be, except for this section or the failure to comply with the request and certification requirements of or under section 1814(a), made with respect to such services under this part.

"(f)(1) The Secretary shall provide for coverage, under subsection (a)(2)(B), of extended care services which are not post-hospital extended care services at such time and for so long as the Secretary determines, and under such terms and conditions (described in paragraph (2)) as the Secretary finds appropriate, that the inclusion of such services will not result in any increase in the total of payments made under this title and will not alter the acute care nature of the benefit described is subsection (a)(2).

"(2) The Secretary may provide—

"(A) for such limitations on the scope and extent of services described in subsection (a)(2)(B) and on the categories of individuals who may be eligible to receive such services, and

"(B) notwithstanding sections 1814, 1861(v), and 1886, for such restrictions and alternatives on the amounts and methods of payment for services described in such subsection,

as may be necessary to carry out paragraph (1).".

(c) CONFORMING CHANGES.—

(1)(A) Section 1814(e) (42 U.S.C. 1395f(e)) is amended by inserting "or section 1812A" after "section 1812".

(B) Section 1861(dd)(2)(A)(iii) (42 U.S.C. 1395x(dd)(2)(A)(iii)) is amended by striking "section 1812(d)" and inserting in lieu thereof "section 1812(c)".

(C) Section 1903(g)(1) (42 U.S.C. 1396a(g)(1)) is amended by inserting "or section 1812A" after "1812".

(2)(A) Section 1811 (42 U.S.C. 1395c) is amended by striking "related post-hospital" and inserting in lieu thereof "extended care services".

(B) Section 1814(a)(2)(B) is amended—

(i) by inserting "(i)" after "(B)",

(ii) by striking the semicolon at the end thereof and inserting in lieu thereof ", and", and

(iii) by adding at the end thereof the following:

"(ii) in the case of extended care services, such services are or were required to be given because the individual needs or needed on a daily basis skilled nursing care (provided directly by or requiring the supervision of skilled nursing personnel) or other skilled rehabilitative services, which as a practical matter can only be provided in a skilled nursing facility;".

(C) Section 1814(a)(6) (42 U.S.C. 1395f(a)(6)) is amended—

(i) by inserting ", extended care services," after "inpatient hospital services" the first place it appears, and

(ii) by inserting ", further extended care services," after "inpatient hospital services" the second place it appears.

(D) Section 1861(v)(1)(G)(i) (42 U.S.C. 1395x(v)(1)(G)(i)) is amended—

(i) by striking "post-hospital extended care services" each place it appears and inserting in lieu thereof "extended care services or post-hospital extended care services", and

(ii) by striking "and such extended care services" and inserting in lieu thereof "and such services".

(E) Paragraphs (2) and (3) of section 1861(v) (42 U.S.C. 1395x(v)) are each amended by inserting ", extended care services," after "psychiatric hospital services)".

(F) For related conforming amendments to paragraphs (2) and (3) of section 1861(y) (42 U.S.C. 1395x(y)), see section 3(c)(3) of this Act.

(G) Section 1866 (42 U.S.C. 1395cc) is amended—

(i) in subsection (b)(3), by inserting ", extended care services," after "psychiatric hospital services)", and

(ii) in subsection (d), by inserting "extended care services or" after "or for".

(H) Subsections (d) and (f) of section 1883 (42 U.S.C. 1395tt) are amended by striking "post-hospital extended care services" each place it appears and inserting in lieu thereof "extended care services or post-hospital extended care services".

SEC. 3. DEDUCTIBLES AND COINSURANCE UNDER PART A.

(a) FOR INDIVIDUALS COVERED UNDER PARTS A AND B.—Section 1813 (42 U.S.C. 1395e) is amended to read as follows:

"DEDUCTIBLES AND COINSURANCE FOR INDIVIDUALS COVERED UNDER PARTS A AND B

"SEC. 1813. (a)(1)(A) Subject to subparagraph (C), the amount payable for inpatient hospital services furnished to an individual who is covered by the insurance programs under this part and part B during the individual's first period of hospitalization to begin during a calendar year shall be reduced by a deduction equal to the inpatient hospital deductible for that year or, if less, the charges imposed with respect to such individual for such services, except that, if the customary charges for such services are greater than the charges so imposed, such customary charges shall be considered to be the charges so imposed.

"(B) For purposes of subparagraph (A), the term 'period of hospitalization' means, with respect to an individual, the period beginning on the first day the individual is furnished inpatient hospital services and ending on the individual's date of discharge (as established by the Secretary for purposes of section 1886) from the hospital (or, in the case of a transfer, hospitals) involved.

"(C) In the case of an individual with respect to whom—

"(i) a period of hospitalization begins during December of any calendar year,

"(ii) an inpatient hospital deductible is imposed with respect to such period of hospitalization, and

"(iii) a period of hospitalization begins during January of the following calendar year,

no inpatient hospital deductible shall be imposed with respect to a period of hospitalization beginning in January of such following year (and such period of hospitalization shall not be taken into account in determining the application of an inpatient hospital deductible to any period of hospitalization beginning for such individual after January 31 of such following year).

"(2) The amount payable to any provider of services under this part for services furnished during any calendar year to an individual who is covered by the programs established under this part and part B shall be further reduced by a deduction equal to the cost of the first 3 pints of whole blood (or equivalent quantities of packed red blood cells, as defined under regulations) furnished to him as part of such services during that year.

"(3)(A) The amount payable for extended care services furnished in any calendar year to an individual who is covered by the insurance programs established under this part and part B shall be reduced by the coinsurance amount (promulgated under subparagraph (C) for that year) for each of the first 10 days on which he is furnished such services during any stay in a skilled nursing facility, but in no event shall a coinsurance amount be imposed under this paragraph with respect to an individual for more than 10 days in any calendar year.

"(B) Before September 1 of each year (beginning with 1987), the Secretary shall estimate the national average per diem reasonable cost recognized under this title for extended care services that will be furnished in the succeeding calendar year.

"(C) The Secretary shall, in September of each year (beginning with 1987), promulgate the coinsurance amount that shall apply to extended care services furnished in the succeeding year. Such amount shall be equal to 15 percent of the national average per diem cost estimated under subparagraph (B) for that year. If the coinsurance amount determined under the preceding sentence is not a multiple of $1, it shall be rounded to the nearest multiple of $1 (or, if it is a multiple of 50 cents but not a multiple of $1, to the next higher multiple of $1).

"(4)(A) The amount payable for hospice care shall be reduced—

"(i) in the case of drugs and biologicals provided on an outpatient basis by (or under arrangements made by) the hospice program, by a coinsurance amount equal to an amount (not to exceed $5 per prescription) determined in accordance with a drug copayment schedule (established by the hospice program) which is related to, and approximates 5 percent of, the cost of the drug or biological to the program, and

"(ii) in the case of respite care provided by (or under arrangements made by) the hospice program, by a coinsurance amount equal to 5 percent of the amount estimated by the hospice program (in accordance with regulations of the Secretary) to be equal to the amount of payment under section 1814(i) to that program for respite care;

except that the total of the coinsurance required under clause (ii) for an individual may not exceed for a hospice coinsurance period the inpatient hospital deductible applicable for the year in which the period began. For purposes of this subparagraph, the term 'hospice coinsurance period' means, for an individual, a period of consecutive days beginning with the first day for which an election under section 1812(c) is in effect for the individual and ending with the close of the first period of 14 consecutive days on each of which such an election is not in effect for the individual.

"(B) During the period of an election by an individual under section 1812(c)(1), no copayments or deductibles other than those under subparagraph (A) shall apply with respect to services furnished to such individual which constitute hospice care, regardless of the setting in which such services are furnished.

"(b)(1) The inpatient hospital deductible for 1987 shall be $520. The inpatient hospital deductible for any succeeding year shall be an amount equal to the inpatient hospital deductible for the preceding calendar year, changed by the applicable percentage increase (as defined in section 1886(b)(3)(B)) which is applied under section 1886(d)(3)(A) for discharges in the fiscal year that begins on October 1 of such preceding calendar year, and adjusted to reflect changes in real case mix (determined on the basis of the most recent case mix data available). Any amount determined under the preceding sentence which is not a multiple of $4 shall be rounded to the nearest multiple of $4 (or, if it is midway between two multiples of $4, the next higher multiple of $4).

"(2) The Secretary shall promulgate the inpatient hospital deductible and all coinsurance amounts under this section between September 1 and September 15 of the year preceding the year to which they will apply.".

(b) FOR INDIVIDUALS COVERED UNDER PART A ONLY.—Part A of title XVIII is amended by inserting after section 1813 the following:

"DEDUCTIBLES AND COINSURANCE AMOUNTS FOR INDIVIDUALS COVERED UNDER PART A ONLY

"SEC. 1813A. (a)(1) The amount payable for inpatient hospital services furnished during any spell of illness to an individual who is covered by the insurance program under this part but not by the insurance program under part B shall be reduced by a deduction equal to the inpatient hospital deductible or, if less, the charges imposed with respect to such individual for such services, except that, if the customary charges for such services are greater than the charges so imposed, such customary charges shall be considered to be the charges so imposed. Such amount shall be further reduced by a coinsurance amount equal to—

"(A) one-fourth of the inpatient hospital deductible for each day (before the 91st day) on which such individual is furnished such services during such spell of illness after such services have been furnished to him for 60 days during such spell; and

"(B) one-half of the inpatient hospital deductible for each day (before the day following the last day for which such individual is entitled under section 1812A(a)(1) to have payment made on his behalf for inpatient hospital services during such spell of illness) on which such individual is furnished such services during such spell of illness after such services have been furnished to him for 90 days during such spell;

except that the reduction under this sentence for any day shall not exceed the *charges imposed for that day with respect to such individual for such services (and for this purpose, if the customary charges for such services are greater than the charges so imposed, such customary charges shall be considered to be the charges so imposed).*

"(2) The amount payable to any provider of services under this part for services furnished during any spell of illness to an individual who is covered by the insurance program under this part but not by the insurance program under part B shall be further reduced by a deduction equal to the cost of the first 3 pints of whole blood (or equivalent quantities of packed red blood cells, as defined under regulations) furnished to him as part of such services during such spell of illness.

"(3) The amount payable for post-hospital extended care services furnished during any spell of illness to an individual who is covered by the insurance program under this part but not by the insurance program under part B shall be reduced by a coinsurance amount equal to one-eighth of the inpatient hospital deductible for each day (before the 101st day) on which the individual is furnished such services after such services have been furnished to the individual for 20 days during such spell.

"(b) The provisions of section 1813(a)(4) shall apply to individuals who are covered by the insurance program under this part but not by the insurance program under part B in the same manner and to the same extent as those provisions apply to individuals covered under both such programs.

"(c)(1) For purposes of this section, the 'inpatient hospital deductible' for a year is the inpatient hospital deductible promulgated under section 1813 for that year.

"(2) The inpatient hospital deductible for a year shall apply to—

"(A) the deduction under the first sentence of subsection (a)(1) for the year in which the first day of inpatient hospital services occurs in a spell of illness, and

"(B) to the coinsurance amounts under subsection (a) for inpatient hospital services and post-hospital extended care services furnished in that year.".

(c) Conforming Changes.—

(1) Section 1814 (42 U.S.C. 1395f) is amended—

(A) in subsection (b) by striking "sections 1813 and 1886" in the matter preceding paragraph (1) and inserting in lieu thereof "sections 1813, 1813A, and 1886", and

(B) in subsections (d) and (f) by striking "section 1813" each place it appears and inserting in lieu thereof "sections 1813 and 1813A".

(2) Section 1833(d) (42 U.S.C. 1395l(d)) is amended by inserting "or section 1813A" after "section 1813".

(3) Section 1861(y) (42 1395x(y)) is amended by striking paragraphs (2) and (3) and inserting in lieu thereof the following:

"(2)(A) Notwithstanding any other provision of this title, payment may not be made under part A for services furnished to an individual who is covered by the insurance programs under such part and part B in a skilled nursing facility to which paragraph (1) applies unless such individual elects, in accordance with regulations, for a calendar year to have such services treated as extended care services for purposes of such part; and payment under part A may not be made for extended care services—

"(i) furnished to an individual during such year in a skilled nursing facility to which paragraph (1) applies after—

"(I) such services have been furnished to him in such a facility for 30 days during such year, or

"(II) such services have been furnished to him during such year in a skilled nursing facility to which such paragraph does not apply; or

"(ii) furnished to an individual during such year in a skilled nursing facility to which paragraph (1) does not apply after such services have been furnished to him during such year in a skilled nursing facility to which such paragraph applies.

"(B) In the case of an individual who is covered by the insurance program under part A but not by the insurance program under part B, the provisions of subparagraph (A) shall be applied by substituting 'spell of illness' for 'calendar year', by substituting 'spell' for 'year' each place it appears, and by substituting 'post-hospital extended care services' for 'extended care services' each place it appears.

"(3)(A) The amount payable under part A for extended care services furnished during any calendar year in a skilled nursing facility to which paragraph (1) applies to an individual who is covered by the insurance programs established under such part and part B shall be reduced by a coinsurance amount equal to the coinsurance amount established under section 1813(a)(3)(C) for each day before the 10th day.

"(B)(i) The amount payable under part A for post-hospital extended care services furnished during any calendar year to an individual who is covered by the insurance program established under such part but not by the insurance program established under part B in a skilled nursing facility to which paragraph (1) applies shall be reduced by a coinsurance amount equal to one-eighth of the inpatient hospital deductible for each day before the 31st day on which the individual is furnished such services in a facility during such spell (and the reduction under this paragraph shall be in lieu of any reduction under section 1813A(a)(3).

"(ii) For purposes of this subparagraph—

"(I) the 'inpatient hospital deductible' for a year is the inpatient hospital deductible promulgated under section 1813 for that year, and

"(II) the inpatient hospital deductible for a year shall apply to the coinsurance amounts under clause (i) for post-hospital extended care services furnished in that year.".

(4) Section 1866(a)(2) (42 U.S.C. 1395cc(a)(2)) is amended—

(A) in subparagraph (A) by striking "section 1813(a)(1), (a)(3), or (a)(4)," and inserting in lieu thereof "paragraph (1), (3), or (4) of section 1813, paragraph (1) or (3) of section 1813A,", and

(B) in subparagraph (C) by inserting "or section 1813A(a)(2)" after "section 1813(a)(2)".

(5) Section 1886 (42 U.S.C. 1395ww) is amended by striking "section 1813" each place it appears in subsections (b)(1) and (d)(1)(A) and inserting in lieu thereof "sections 1813 and 1813A".

SEC. 4. LIMITATION ON COST-SHARING.

(a) Scope of Benefits.—Section 1832(a) (42 U.S.C. 1395k(a)) is amended—

(1) by striking "and" at the end of paragraph (1),

(2) by striking the period at the end of paragraph (2) and inserting in lieu thereof "; and", and

(3) by adding at the end thereof the following:

"(3) entitlement to have payment made to him or on his behalf (subject to the provisions of this title) for any catastrophic medical expenses (as defined in section 1861(ff)(1)) for a calendar year.".

(b) Payment of Benefits.—

(1) Section 1833(a) (42 U.S.C. 1395l(a)) is amended—

(A) by striking "and" at the end of paragraph (3),

(B) by striking the period at the end of paragraph (4) and inserting in lieu thereof "; and", and

(C) by adding at the end the following:

"(5) in the case of catastrophic medical expenses described in section 1832(a)(3), 100 percent of such expenses.".

(2) The first sentence of section 1833(b) is amended—

(A) by striking "and" at the end of clause (3), and

(B) by inserting before the period the following: ", and (5) such deductible shall not apply with respect to the benefits described in section 1832(a)(3)".

(3) Section 1833(d) (42 U.S.C. 1395l(d)) is amended by inserting "(except as provided by subsection (a)(5))" before the period.

(4) Section 1833 (42 U.S.C. 1395l) is amended by inserting after subsection (e) the following new subsection:

"(f) In applying subsection (a)(5) in the case of an organization receiving payment under clause (A) of subsection (a)(1) or under a reasonable cost reimbursement contract under section 1876 or in the case of a renal dialysis facility—

"(1) the Secretary shall provide for an appropriate adjustment in the payment amounts otherwise made to reflect, in the aggregate, the aggregate increase in payments that would otherwise be made with respect to enrollees in the organization if payments were made other than under such clause or such a contract or with respect to individuals furnished services through the facility if payments were to be made on an individual-by-individual basis, and

"(2) the organization or facility shall provide assurances satisfactory to the Secretary that the organization or facility will not undertake to charge an individual during a year for any catastrophic medical expenses (as defined in section 1861(ff)(1)) incurred for that year.".

(c) Establishment of Ceiling.—

(1) Section 1833 (42 U.S.C. 1395l) is further amended by adding at the end the following:

"(m)(1) Not later than November 15 of each year (beginning with 1987), the Secretary shall promulgate the medicare catastrophic limit under this subsection for the succeeding year.

"(2) The medicare catastrophic limit for 1988 is $1,850 and for 1989 is $2,030. The medicare catastrophic limit for any succeeding year shall be an amount equal to the medicare catastrophic limit for the preceding year increased by the percentage (as determined by the Secretary) that ensures that the percentage of individuals covered under the insurance program under part B (other than individuals enrolled with an eligible organization under section 1876 or an organization described in subsection (a)(1)(A)) whose out-of-pocket medical expenses exceed the limit under this subsection for the succeeding year equals on a perspective basis the percentage of such individuals whose out-of-pocket medical expenses exceeded such limit for calendar year 1989. Any amount determined under the preceding sentence which is not a multiple of $1 shall be rounded to the nearest multiple of $1 (or, if it is a multiple of 50 cents but not a multiple of $1, to the next higher multiple of $1).".

(2) Section 1861 (42 U.S.C. 1395x) is amended by adding at the end thereof the following:

"(ff)(1) The term 'catastrophic medical expenses' means, with respect to an individual for a calendar year (beginning with 1988), any beneficiary cost sharing amounts (as defined in paragraph (2)) incurred by an individual in the year after the individual has incurred out-of-pocket medical expenses (as defined in paragraph (3)) in the year in an amount equal to the medicare catastrophic limit established under section 1833(m) for the year.

"(2) The term 'beneficiary cost sharing amounts' means the amounts of expenses that an individual who is covered by the insurance program established under part B incurs that are attributable to—

"(A) the deductions and coinsurance amounts established under section 1813(a) and under subsection (y)(3),

"(B) the deductions established under section 1833(b), or

"(C) the difference between the payment amount provided under part B and the payment amount that would be provided if '100 percent' and '0 percent' were substituted for '80 percent' and '20 percent', respectively, each place either appears in section 1833(a), in section 1833(i)(2), in section 1835(b)(2), and in subsections (b)(2) and (b)(3) of section 1881.

"(3) The term 'out-of-pocket medical expenses' means the amounts expended by an individual who is covered under the insurance program established under part B that are—

"(A) beneficiary cost sharing amounts, and

"(B) amounts expended for qualified services for the prevention of illness or injury (in amounts not to exceed the reasonable charges for such services).

"(4)(A) A service that is provided with respect to an individual covered by the insurance program under part B shall be treated as a 'qualified service for the prevention of illness or injury' if—

"(i) the service is—

"(I) glaucoma screening by tonometry,

"(II) cholesterol screening,

"(III) an exfoliative cytology (Papanicolaou) test for the detection of cervical cancer,

"(IV) a mammogram for the detection of breast cancer,

"(V) an immunization or a booster for tetanus, influenza, or bacterial pneumonia,

"(VI) a test of the stool for occult blood, or

"(VII) tuberculosis sensitivity testing;

"(ii) the service has not been provided to the individual during the preceding 12 months; and

"(iii) the service is performed as part of or pursuant to an examination that meets the requirements of subparagraph (B).

"(B) An examination meets the requirements of this subparagraph if the examination—

"(i) is performed by a physician;

"(ii) includes where appropriate (as determined under guidelines established by the Secretary) a comprehensive review of past medical history, family and genetic history, social history, current medical problems and treatments, immunization history, and organ system functioning; and

"(iii) meets such other requirements as the Secretary may by regulation prescribe (including requirements to ensure a comprehensive approach for preventive health services).

"(C) Not later than January 1, 1989, the Secretary shall establish appropriate utilization guidelines for the services described in subparagraph (A)(i).".

(3) Subsections (c) and (g) of section 1833 (42 U.S.C. 1395l) are each amended by striking "(a) and (b)" and inserting in lieu thereof "(a), (b), and (f)".

(b) LIMITATION ON CHARGES WHERE MEDICARE CATASTROPHIC LIMIT IS REACHED.—Section 1866(a)(2)(A) (42 U.S.C. 1395cc(a)(2)(A)), as amended by section 3(c)(4) of this Act, is further amended by adding at the end the following new sentence: "A provider of services may not impose a charge under the first sentence of this subparagraph for services for which payment is made to the provider pursuant to section 1833(a)(5) (relating to catastrophic medical expenses).".

SEC. 5. INCREASE IN PART B PREMIUM.

(a) IN GENERAL.—Section 1839 (42 U.S.C. 1395r) is amended—

(1) in paragraph (1) of subsection (a), by striking all after "(a)(1)" and inserting in lieu thereof the following: "(A) The Secretary shall, during September of 1987 and of each year thereafter, determine the monthly actuarial basic rate for enrollees age 65 and over which shall be applicable for the succeeding calendar year. The monthly actuarial basic rate determined under this paragraph for a calendar year shall be the amount the Secretary estimates to be necessary so that the aggregate amount for the calendar year with respect to those enrollees age 65 and over will equal one-half of the total of the benefits and administrative costs that the Secretary estimates will be payable from the Federal Supplementary Medical Insurance Trust Fund for services performed and related administrative costs incurred in such calendar year with respect to such enrollees (excluding comprehensive catastrophic coverage benefits and related administrative costs). In calculating the monthly actuarial basic rate, the Secretary shall include an appropriate amount for a contingency margin.

"(B) For purposes of this paragraph, the term 'comprehensive catastrophic coverage benefits' means benefits payable under this title by reason of the enactment of the amendments made by sections 2(a), 3(a), 4, 7(b), 7A, and 11 of the Medicare Catastrophic Loss Prevention Act of 1987.";

(2) in paragraph (3) of subsection (a) by striking "subsection (e)" and inserting in lieu thereof "subsections (e) and (g)";

(3) by striking paragraph (4) of subsection (a) and inserting in lieu thereof the following:

"(4)(A) The Secretary shall also, during September of 1987 and of each year thereafter, determine the monthly actuarial basic rate for disabled enrollees under age 65 which shall be applicable for the succeeding calendar year. The monthly actuarial basic rate determined under this paragraph for a calendar year shall be the amount the Secretary estimates to be necessary so that the aggregate amount for the calendar year with respect to disabled enrollees under age 65 will equal one-half of the total of the benefits and administrative costs which he estimates will be payable from the Federal Supplementary Medical Insurance Trust Fund for services performed and related administrative costs incurred in such calendar year with respect to such enrollees (excluding comprehensive catastrophic coverage benefits and related administrative costs). In calculating the monthly actuarial basic rate under this paragraph, the Secretary shall include an appropriate amount for a contingency margin.

"(B) For purposes of this paragraph, the term 'comprehensive catastrophic coverage benefits' has the meaning given to such term in paragragh (1)(B).";

(4) in paragraph (1) of subsection (e) by striking "monthly actuarial rate" and inserting in lieu thereof "monthly actuarial basic rate"; and

(5) by adding at the end thereof the following new subsection:

"(g)(1) Notwithstanding any other provision of this section, except as provided in paragraph (3), the monthly premium otherwise determined under this section for an individual for each month in calendar year 1988, and for every month in any succeeding calendar year, shall be increased by an amount equal to the applicable monthly catastrophic coverage premium amount for that year and for every month in calendar years after 1989 shall be further increased by an amount equal to the monthly catastrophic drug benefit premium amount for that year.

"(2)(A)(i) The monthly catastrophic coverage premium amount for 1988 for individuals who are covered by the insurance programs under part A and this part shall be $4. The monthly catastrophic coverage premium amount for such individuals for any succeeding calendar year shall be the monthly catastrophic coverage premium amount determined under this subparagraph for the preceding calendar year, increased by the percentage equal to (I) the percentage (if any) necessary to increase the estimated total revenues collectable with respect to such succeeding year from the monthly catastrophic coverage premiums and the premiums under section 1839A (as determined without regard to subsection (b)(2)(B)(iii) of such section) by the amount by which the estimated total catastrophic coverage benefits and related administrative costs (including any administrative costs incurred for the coverage for coverage of outpatient drugs under this part) for such succeeding year exceed such revenues, plus (II) with respect to each calendar year before 1993, the percentage the Secretary determines to be necessary to ensure that before 1993 there is established a contingency fund equal to 20 percent or (if greater) a reserve fund equal to 5 percent, and, with respect to each calendar year after 1992, the percentage necessary to maintain either of such funds at such percentages. For purposes of the preceding sentence, the term 'contingency fund' means with respect to any calendar year the percentage determined by dividing the amount of unexpended premiums described in this paragraph and section 1839A (without regard to subsection (b)(2)(B)(iii) of such section) as determined at the end of such year by the actuarial comprehensive catastrophic benefit amount for the succeeding calendar year, and the term 'reserve fund' means with respect to any calendar year the percentage determined by dividing the amount of unexpended and unobligated premiums described in this paragraph and section 1839A (without regard to subsection (b)(2)(B)(iii) of such section) as determined at the end of such year by such benefit amount.

"(ii) The monthly catastrophic coverage premium amount for any calendar year for individuals who are covered by the insurance program under this part but not by the insurance program under part A shall be an amount that bears the same ratio to the monthly catastrophic coverage premium amount determined under clause (i) for such year as the actuarial part B catastrophic benefit amount for such year bears to the actuarial comprehensive catastrophic benefit amount for such year.

"(B) If any monthly premium amount determined under subparagraph (A) is not a multiple of 10 cents, such premium amount shall be rounded to the nearest multiple of 10 cents.

"(C) For purposes of this paragraph—

"(i) the term 'catastrophic coverage benefits' means benefits payable under this title by reason of the enactment of the amendments made by sections 2(a), 3(a), 4, and 7(b) of the Medicare Catastrophic Loss Prevention Act of 1987,

"(ii) the term 'actuarial comprehensive catastrophic benefit amount' means, with respect to a calendar year, the amount that the Secretary estimates will equal the total of the catastrophic coverage benefits (and related administrative costs) that will be payable from the Federal Catastrophic Health Insurance Trust Fund in such calendar year with respect to enrollees under this part, and

"(iii) the term 'actuarial part B catastrophic benefit amount' means, with respect to a calendar year, the amount the Secretary estimates will equal the total of the catastrophic coverage benefits (and related administrative costs) that will be payable from the Federal Catastrophic Health Insurance Trust Fund in such calendar year with respect to such enrollees (excluding any amounts that are attributable to the changes under sections 2(a), 3(a), and 7(b) of the Medicare Catastrophic Loss Prevention Act of 1987 in services performed and related administrative costs incurred in such calendar year with respect to individuals who are covered under the insurance program established by part A).

"(3)(A)(i) Subject to clause (ii), the monthly catastrophic drug benefit premium amount for any calendar year after 1989 for individuals who are covered by the insurance program under this part, shall be an amount equal to 50 percent of the per enrollee actuarial catastrophic drug benefit amount for such year plus—

"(I) in the case of calendar year 1990, an amount necessary to cover 7.5 percent of the per enrollee actuarial catastrophic drug benefit amount for 1991; and

"(II) in the case of any calendar year after 1990, an amount (when added to any unexpended amount determined under subclause (I) or this subclause for any preceding year) necessary to cover 7.5 percent of the per enrollee actuarial catastrophic drug benefit amount for such calendar year.

"(ii) In the case of calendar years after 1991, the monthly catastrophic drug benefit premium amount shall in no event exceed—

"(I) for 1991, $2.00;

"(II) for 1992, $3.50;

"(III) for 1993, $4.80; and

"(IV) for any succeeding year, the amount in effect under this clause for the preceding year increased by the percentage by which the part B beneficiary drug expenditure amount for the 12-month period ending in August in that preceding year exceeds the part B beneficiary drug expenditure amount for the 12-month period ending in August in the second preceding year.

"(B) If the monthly premium amount determined under subparagraph (A) is not a multiple of 10 cents, such premium amount shall be rounded to the nearest multiple of 10 cents.

"(C) For purposes of this paragraph—

"(i) the term 'catastrophic drug coverage benefits' means benefits payable under this part by reason of the enactment of the amendments made by sections 7A and 11 of the Medicare Catastrophic Loss Prevention Act of 1987,

"(ii) the term 'per enrollee actuarial catastrophic drug benefit amount' means, with respect to a year, an amount equal to the actuarial catastrophic drug benefit amount for the year divided by the total number of individuals that the Secretary estimates will be enrolled under this part for the year,

"(iii) the term 'actuarial catastrophic drug benefit amount' means, with respect to a calendar year, the amount that the Secretary estimates will equal the total of the catastrophic drug coverage benefits (and related administrative costs) will be paid in cash outlays from the Federal Catastrophic Drug Insurance Trust Fund in such calendar year with respect to enrollees under this part, and

"(iv) the term 'part B beneficiary drug expenditure amount' means, with respect to a 12-month period, the average per capita amount expended for a period on outpatient prescription drugs by such individuals who are covered by the insurance program under this part (other than individuals enrolled with an eligible organization under section 1876 or an organization described in subsection (a)(1)(A)).

"(4) For any calendar year after 1988, if an individual is entitled to monthly benefits under section 202 or 223 for November and December of the preceding year, and if the monthly premium of the individual under this section for December and for January is deducted from those benefits under section 1840(a)(1), the monthly premium otherwise determined under this section for an individual for that year shall not be increased, pursuant to paragraph (1), to the extent that such increase would reduce the amount of benefits payable to that individual for that January below the amount of benefits payable to that individual for that December (after the deduction of the premium under this section).".

(b) TRANSFERS TO CATASTROPHIC HEALTH INSURANCE TRUST FUND.—Section 1841 is amended by adding at the end the following:

"(j)(1) There shall be transferred from time to time from the Trust Fund to the Federal Catastrophic Health Insurance Trust Fund amounts from the premiums under this part that are attributable to the changes under sections 2(a), 3(a), 4, and 7(b) of the Medicare Catastrophic Loss Prevention Act of 1987 in services performed and related administrative costs incurred in a calendar year.

"(2) There shall be transferred from time to time from the Trust Fund to the Federal Catastrophic Drug Insurance Trust Fund amounts from the premiums imposed under section 1833(g)(3).".

SEC. 6. SUPPLEMENTAL PREMIUM FOR CATASTROPHIC ILLNESS COVERAGE.

(a) IN GENERAL.—Part B of title XVIII is amended by inserting after section 1839 the following:

"SUPPLEMENTAL PREMIUM FOR INDIVIDUALS COVERED BY PART B

"SEC. 1839A. (a)(1) Any individual described in paragraph (2) shall pay the applicable supplemental premium in the manner provided in subsection (c).

"(2) An individual is described in this paragraph if such individual—

"(A) is covered by the insurance program established under this part for any portion of any taxable year occurring after December 31, 1987, and

"(B) has Federal income tax liability for such taxable year in an amount not less than $150.

"(b) For purposes of this section—

"(1) The term 'applicable supplemental premium' means an amount equal to the product of—

"(A) the number of months in the taxable year during which the individual was covered by the insurance program established under this part, multiplied by

"(B) the supplemental premium.

"(2)(A) The term 'supplemental premium' means an amount equal to the product of—

"(i) the premium rate for the taxable year, multiplied by

"(ii) the amount determined by dividing—

"(I) the individual's adjusted Federal income tax liability for such taxable year, by

"(II) $150.

If any amount determined under clause (ii) is not a whole number, such amount shall be rounded to the next lowest whole number.

"(B)(i) The premium rate for any taxable year beginning before 1989 is $1.09. The premium rate for any taxable year beginning in a calendar year after 1988 is the premium rate determined under this clause for taxable years beginning in the preceding calendar year, increased or decreased by the premium rate adjustment under clause (ii) and (in the case of any taxable year beginning in a calendar year after 1989) the drug premium rate adjustment under clause (iii) for taxable years beginning in the calendar year for which the determination is made.

"(ii)(I) For purposes of clause (i), the premium rate adjustment for taxable years beginning in a calendar year after 1988 is the percentage determined under section 1833(g)(2)(A)(i).

"(II) The Secretary shall adjust the premium rate for any calendar year beginning after 1992 (without regard to this subclause) to appropriately reflect any percentage increase or decrease in the estimated average Federal income tax liability of individuals described in subsection (a)(2) for such calendar year over such average for the preceding calendar year.

"(iii) For purposes of clause (i), the drug premium rate adjustment for taxable years beginning in a calendar year after 1989 shall be an amount equal to 50 percent of the modified per enrollee actuarial catastrophic drug benefit amount for such year plus—

"(I) in the case of any taxable year beginning in calendar year 1990, an amount necessary to cover 7.5 percent of the modified per enrollee actuarial catastrophic drug benefit amount for 1991; and

"(II) in the case of any taxable year beginning in any calendar year after 1990, an amount (when added to any unexpended amount determined under subclause (I) or this subclause for any preceding year) necessary to cover 7.5 percent of the modified per enrollee actuarial catastrophic drug benefit amount for such calendar year.

For purposes of this clause, the term 'modified per enrollee actuarial catastrophic drug benefit amount' means the per enrollee actuarial catastrophic drug benefit amount (within the meaning of section 1839(g)(3)(C)(ii)), or, if the Secretary makes the adjustment under section 1883(o)(10), such amount as reestimated by the Secretary to reflect such adjustment.

"(3)(A)(i) In the case of a taxable year beginning in a calendar year after 1987 and before 1993, the applicable supplemental premium for any individual shall not exceed the amount which bears the same ratio to the amount determined under the table in clause (ii) as—

“(I) the number of months determined under paragraph (1)(A), bears to

“(II) 12.

“(ii) For purposes of clause (i)—

“If the taxable year begins in:	*The amount is:*
1988	*$800*
1989	*850*
1990	*900*
1991	*950*
1992	*1,000.*

“(B) In the case of a taxable year beginning in a calendar year after 1992, the applicable supplemental premium for any individual shall not exceed an amount equal to 65 percent of the product of—

“(i) the number of months determined under paragraph (1)(A), multiplied by

“(ii) the excess of—

“(I) the sum of 200 percent of the monthly actuarial basic rate for enrollees age 65 or over (as determined under section 1839), and the monthly per enrollee actuarial comprehensive catastrophic benefit amount for such calendar year, over

“(II) the sum of the basic and catastrophic monthly premiums for such year (as determined under section 1839 without regard to subsections (f)(2) and (g)(3) thereof).

“(4)(A) Except as provided in this paragraph, in the case of married individuals (within the meaning of section 7703 of the Internal Revenue Code of 1986)—

“(i) who file a joint return under section 6013 of such Code, and

“(ii) 1 or both of whom are described in subsection (a)(2) with respect to such taxable year,

the applicable supplemental premiums shall be determined by treating such individuals as 1 individual.

“(B) If subparagraph (A) applies, the number of months taken into account under paragraph (1)(A) (other than for purposes of paragraph (3)) shall be determined by reference to the spouse who was covered by the insurance program established under this part for the longer period during the taxable year (or if covered for the same period, either spouse).

“(C) If subparagraph (A) applies and both spouses are covered during the taxable year by the insurance program established under this part, the limitation under paragraph (3) shall be equal to the sum of the limitations computed separately under paragraph (3) for each of the spouses.

“(c)(1) Except as provided in paragraph (2), for purposes of the Internal Revenue Code of 1986 (other than section 15 of such Code), any applicable supplemental premium required to be paid under subsection (a)(1) shall be treated as an addition to the tax imposed by chapter 1 of such Code for the taxable year to which such premium relates.

“(2) Any applicable supplemental premium required to be paid under subsection (a)(1) shall not be treated as an addition to the tax imposed by chapter 1 of the Internal Revenue Code of 1986 for purposes of determining—

“(A) the amount of any credit allowable under such chapter, or

“(B) the amount of the minimum tax imposed by section 55 of such Code.

“(d)(1) For purposes of this section, the term ‘Federal income tax liability’ means—

“(A) the tax imposed by chapter 1 of the Internal Revenue Code of 1986 (without regard to this section), reduced by

“(B) the amount of the credits allowed under part IV of subchapter A of such chapter (other than sections 31, 33, and 34).

“(2)(A) For purposes of this section, the term ‘adjusted Federal income tax liability’ means an amount equal to Federal income tax liability, reduced by the excess (if any) of—

“(i) 15 percent of the lesser of—

“(I) the qualified social security exclusionary amount, or

“(II) the amount received as an annuity (whether for a period certain or during 1 or more lives) under a governmental plan (as defined in the first sentence of section 414(d) of the Internal Revenue Code of 1986) which is includible in gross income under section 72 of such Code for the taxable year, over

“(ii) the amount of the credit allowable under section 22 of such Code for such taxable year.

“(B)(i) For purposes of subparagraph (A)(i)(I), the term ‘qualified social security exclusionary amount’ means the excess (if any) of—

“(I) $6,000 ($9,000 in the case of individuals described in subsection (b)(4)(C)), over

“(II) the social security benefits (as defined in section 86(d) of the Internal Revenue Code of 1986) received during the taxable year.

“(ii) For any taxable year beginning after December 31, 1988, each dollar amount contained in clause (i)(I) shall be increased by an amount equal to—

“(I) such dollar amount, multiplied by

“(II) the cost-of-living adjustment determined under section 215(i) for the calendar year in which the taxable year begins.

“(3) For purposes of section 213(d)(1)(C) of the Internal Revenue Code of 1986, the applicable supplemental premium under subsection (a)(1) shall be treated as a premium paid under this part in the taxable year following the taxable year to which such premium relates.

“(4) For purposes of this section, the term ‘per enrollee actuarial comprehensive catastrophic benefit amount’ means, with respect to a year, an amount equal to the actuarial comprehensive catastrophic benefit amount (within the meaning of 1839(g)(2)(C)(ii)) for the year divided by the total number of individuals that the Secretary estimates will be enrolled under this part for the year.

“(e) The Secretary of the Treasury shall, from time to time, transfer from the general fund of the Treasury to the Federal Catastrophic Health Insurance Trust Fund amounts equal to the sum of—

“(1) the aggregate monthly supplemental premiums (as determined without regard to subsection (b)(2)(B)(iii)) paid pursuant to this section, plus

“(2) the amount which the Secretary estimates Federal outlays are reduced under title XIX of this Act by reason of the amendments made by sections 2(a), 3(a), 4, and 7(b) of the Medicare Catastrophic Loss Prevention Act of 1987 (after taking into account the provisions of section 14 of such Act).

Such transfer shall be appropriately adjusted to the extent that prior transfers were in excess of or less than the amounts required to be transferred.

“(f) The Secretary of the Treasury shall, from time to time, transfer from the general fund of the Treasury to the Federal Catastrophic Drug Insurance Trust Fund amounts equal to the aggregate drug premium rate adjustment paid pursuant to subsection (b)(2)(B)(iii) of this section. Such transfer shall be appropriately adjusted to the extent that prior transfers were in excess of or less than the amounts required to be transferred.”.

(c) Information Reporting.—

(1) Section 6050F(a)(1) of the Internal Revenue Code of 1986 (relating to returns relating to Social Security benefits) is amended—

(A) by striking out “and” at the end of subparagraph (B), and

(B) by inserting after subparagraph (C) the following:

“(D) the number of months any individual is covered by the insurance program established under part B of title XVIII of the Social Security Act for such calendar year, and”.

(2) Section 6050F(b) of such Code is amended—

(A) by inserting “or determining the months of coverage” after “payments” in paragraph (1), and

(B) by inserting “and the number of months of coverage,” after “reductions,” in paragraph (2).

(3) Section 6050F(c)(1)(A) of such Code is amended by inserting “and months of coverage described in subsection (a)(1)(D)” after “section 86(d)(1)(A)”.

(d) Conforming Amendment.—Subsection (a)(1) of section 1840 (42 U.S.C. 1395s) is amended by striking out “(except as provided in subsections (b)(1) and (c))” and inserting in lieu thereof “(except as provided in section 1839A(a)(2) and subsections (b)(1) and (c) of this section)”.

SEC. 6A. ESTABLISHMENT OF FEDERAL CATASTROPHIC DRUG INSURANCE TRUST FUND.

Part B of title XVIII is amended by inserting after section 1841 the following new section:

“FEDERAL CATASTROPHIC DRUG INSURANCE TRUST FUND

“Sec. 1841A. (a) There is hereby created on the books of the Treasury of the United States a trust fund to be known as the ‘Federal Catastrophic Drug Insurance Trust Fund’ (hereinafter in this section referred to as the ‘Trust Fund’). The Trust Fund shall consist of such gifts and bequests as may be made as provided in section 201(i)(1) and amounts transferred to it in accordance with sections 1841(j)(2) and 1839A(f).

“(b) The provisions of subsections (b) through (i) of section 1841 shall apply to the Trust Fund in the same manner as they apply to the Federal Supplementary Medical Insurance Trust Fund.

“(c) Notwithstanding any other provision of this title, all payments under this title for benefits payable by reason of the enactment of the amendments made by sections 7A and 11 of the Medicare Catastrophic Loss Prevention Act of 1987 shall be made from the Trust Fund.”.

SEC. 6B. ESTABLISHMENT OF FEDERAL CATASTROPHIC HEALTH INSURANCE TRUST FUND.

Title XVIII is amended by adding at the end thereof the following new section:

“FEDERAL CATASTROPHIC HEALTH INSURANCE TRUST FUND

“Sec. 1890. (a) There is hereby created on the books of the Treasury of the United States a trust fund to be known as the ‘Federal Catastrophic Health Insurance Trust Fund’ (hereinafter in this section referred to as the ‘Trust Fund’). The Trust Fund shall consist of such gifts and bequests as may be made as provided in section 201(i)(1) and amounts transferred to it in accordance with sections 1841(j) and 1839A(e).

"(b) The provisions of subsections (b) through (i) of section 1841 shall apply to the Trust Fund in the same manner as they apply to the Federal Supplementary Medical Insurance Trust Fund.

"(c) Notwithstanding any other provision of this title, all payments under this title for benefits payable by reason of the enactment of the amendments made by sections 2(a), 3(a), 4, and 7(b) of the Medicare Catastrophic Loss Prevention Act of 1987 shall be made from the Trust Fund.".

SEC. 7. MEDICARE COVERAGE OF HOME HEALTH SERVICES ON A DAILY BASIS.

(a) IN GENERAL.—Section 1861(m) (42 U.S.C. 1395x(m)) is amended by adding at the end the following: "For purposes of paragraphs (1) and (4), nursing care and home health aide services may be provided under such paragraphs seven days a week (with one or more visits per day) for a period of up to 21 days with a physician's certification of the need for such care and services on such a basis.".

(b) ADDITIONAL DAYS FOR CERTAIN INDIVIDUALS.—Section 1861(m) (42 U.S.C. 1395x(m)), as amended by subsection (a), is further amended by adding at the end the following: "In the case of an individual who is covered under the insurance program established under part B, and who is furnished nursing care and home health aide services within 30 days after being discharged from a hospital or a skilled nursing facility, the preceding sentence shall be applied by substituting '45 days' for '21 days'.".

SEC. 7A. COVERAGE OF HOME INTRAVENOUS DRUG THERAPY.

(a) IN GENERAL.—Section 1832(a)(2)(A) (42 U.S.C. 1395k(a)(2)(A)) is amended by inserting "and home intravenous drug therapy" before the semicolon.

(b) DEFINITION OF HOME INTRAVENOUS DRUG THERAPY.—Section 1861, as amended by section 4(c)(2) of this Act, is further amended by adding at the end thereof the following new subsection:

"(gg)(1) The term 'home intravenous drug therapy' means the items and services described in paragraph (2) furnished to an individual who is under the care of a physician—

"(A) in a place of residence used as such individual's home;

"(B) by a qualified home intravenous drug therapy provider (as defined in paragraph (3)) or by others under arrangements with them made by such provider; and

"(C) under a plan established and periodically reviewed by a physician.

"(2) The items and services described in this paragraph are such nursing, pharmacy, and related services (including the costs of medical supplies, delivery, and equipment) as are necessary to conduct safely and effectively an intravenously administered anti-infective or cancer chemotherapeutic drug regimen through use of a covered outpatient drug (as defined in subsection (t)(2)) or any other intravenously administered drug (that is a covered outpatient) which the Secretary (in consultation with an advisory panel of consumers, clinicians, and providers) determines may be safely provided in the home.

"(3)(A) For purposes of paragraph (1), the term 'qualified home intravenous drug therapy provider' means any home health agency that the Secretary determines meets the conditions of participation of subparagraph (B), or any entity that is certified by the Secretary as meeting such conditions.

"(B) An agency or entity meets the conditions of participation of this subparagraph if such agency or entity—

"(i) is capable of providing or arranging for the items and services described in paragraph (2);

"(ii) maintains clinical records on all patients;

"(iii) has written policies to govern the provision of services;

"(iv) makes services available (as needed) seven days a week on a 24-hour basis;

"(v) coordinates all services with the patient's physician;

"(vi) conducts a quality assessment and assurance program, including drug regimen review and coordination of patient care;

"(vii) assures that only trained personnel provide chemotherapy (and any other service for which training is required to safely provide the service);

"(viii) assumes responsibility for the quality of services provided by others under arrangements with the agency or entity; and

"(ix) meets such other conditions of participation as the Secretary may determine are necessary to assure the safe and effective provision of home intravenous drug therapy and the efficient administration of the home intravenous drug therapy benefit.".

(c) PAYMENT.—Section 1833, as amended by section 4(c)(1) of this Act, is further amended—

(1) in subsection (a)(2)(B), by striking "(C) or (D)" and inserting in lieu thereof "(C), (D), or (E)";

(2) in subsection (a)(2)(C), by striking "and";

(3) in subsection (a)(2)(D), by striking the semicolon and inserting in lieu thereof "; and";

(4) by inserting immediately after subsection (a)(2)(D) the following new subparagraph:

"(E) with respect to home intravenous drug therapy, the lesser of the actual charges for such therapy or the amount established under subsection (n);";

(5) in subsection (b), by striking "services, (3)" and inserting in lieu thereof "services and home intravenous drug therapy, (3)"; and

(6) by adding at the end thereof the following new subsection:

"(n) The Secretary shall establish by regulation before the beginning of calendar year 1990 and each succeeding calendar year a fee schedule for home intravenous drug therapy for which payment is made under this part. A fee schedule established under this subsection shall be on a per diem basis and shall be based on a study of current reimbursement for similar items and services under this title, on the customary charges for such therapy, and upon such other information as the Secretary deems appropriate.".

(d) CERTIFICATION.—Section 1835(a)(2) (42 U.S.C. 1395n(a)(2)) is amended—

(1) by striking "and" at the end of subparagraph (D);

(2) by striking the period at the end of subparagraph (E) and inserting "; and"; and

(3) by inserting after subparagraph (E) the following new subparagraph:

"(F) in the case of home intravenous drug therapy, (i) such therapy is or was required because the individual needed such therapy, (ii) a plan for furnishing such therapy has been established and is reviewed periodically by a physician, (iii) such therapy is or was furnished while the individual is or was under the care of a physician, and (iv) such therapy is administered in a place of residence used as such individual's home.".

(e) CERTIFICATION OF HOME INTRAVENOUS DRUG THERAPY PROVIDERS; INTERMEDIATE SANCTIONS FOR NONCOMPLIANCE.—

(1) Section 1863 (42 U.S.C. 1395z) is amended by striking "and (dd)(2)" and inserting in lieu thereof "(dd)(2), and (gg)(3)(B)".

(2) Section 1864(a) (42 U.S.C. 1395aa(a)) is amended—

(A) in the first sentence, by inserting "or a home intravenous drug therapy provider," after "hospice program", and

(B) in the second sentence, by striking "or hospice program" and inserting in lieu thereof "hospice program, or home intravenous drug therapy provider".

(3) Part B of title XVIII is amended by adding at the end thereof the following new section:

"INTERMEDIATE SANCTIONS FOR QUALIFIED HOME INTRAVENOUS DRUG THERAPY PROVIDERS"

"SEC. 1846. (a) If the Secretary determines that a qualified home intravenous drug therapy provider that is certified for participation under this title no longer substantially meets the conditions of participation specified in section 1861(gg)(3)(B), the Secretary may (for a period not to exceed one year) impose intermediate sanctions developed pursuant to subsection (b), in lieu of canceling immediately the certification of the provider.

"(b)(1) The Secretary shall develop and implement—

"(A) a range of intermediate sanctions to apply to qualified home intravenous drug therapy providers under the conditions described in subsection (a), and

"(B) appropriate procedures for appealing determinations relating to the imposition of such sanctions.

"(2)(A) The intermediate sanctions developed under paragraph (1) shall include—

"(i) civil fines and penalties, and

"(ii) suspension of all or part of the payments to which a qualified home intravenous drug therapy provider would otherwise be entitled under this title with respect to items and services furnished by a qualified home intravenous drug therapy provider on or after the date in which the Secretary determines that intermediate sanctions should be imposed pursuant to subsection (a).

"(B) The sanctions specified in subparagraph (A) are in addition to sanctions otherwise available under State or Federal law.

"(3) The Secretary shall develop and implement specific procedures with respect to when and how each of the intermediate sanctions developed under paragraph (1) is to be applied, the amounts of any fines, and the severity of each of these penalties. Such procedures shall be designed so as to minimize the time between identification of violations and imposition of these sanctions and shall provide for the imposition of incrementally more severe fines for repeated or uncorrected deficiencies.".

(f) EFFECTIVE DATE; PUBLICATION REQUIREMENT.—

(1) The amendments made by this section shall apply to items and services furnished on or after January 1, 1990.

(2) Not later than January 1, 1990 (and periodically thereafter), the Secretary of Health and Human Services shall publish a list of categories of drugs that the Secretary determines for purposes of section 1861(gg)(2)(A) of the Social Security Act (as added by subsection (b) of this section) are covered outpatient drugs with respect to which home intravenous drug therapy may be provided under such Act.

SEC. 8. CLARIFICATION OF REQUIREMENT THAT INDIVIDUAL BE CONFINED TO HOME TO BE ELIGIBLE FOR HOME HEALTH SERVICES.

(a) Part A.—Section 1814(a) (42 U.S.C. 1395f(a)) is amended by adding at the end thereof the following: "For purposes of paragraph (2)(C), an individual shall be considered to be 'confined to his home' if the individual has a condition, due to an illness or injury, that restricts the ability of the individual to leave his or her home except with the aid of a supportive device (such as crutches, a cane, a wheelchair, or a walker) or if the individual has a condition such that leaving his or her home is medically contraindicated. While an individual does not have to be bedridden to be considered 'confined to his home', the condition of the individual should be such that there exists a normal inability to leave home, that leaving home requires a considerable and taxing effort by the individual, and that absences of the individual from home are infrequent or of relatively short duration.".

(b) Part B.—Section 1835(a) (42 U.S.C. 1395n(a)) is amended by adding at the end thereof the following: "For purposes of paragraph (2)(C), an individual shall be considered to be 'confined to his home' if the individual has a condition, due to an illness or injury, that restricts the ability of the individual to leave his or her home except with the aid of a supportive device (such as crutches, a cane, a wheelchair, or a walker) or if the individual has a condition such that leaving his or her home is medically contraindicated. While an individual does not have to be bedridden to be considered 'confined to his home', the condition of the individual should be such that there exists a normal inability to leave home, that leaving home requires a considerable and taxing effort by the individual, and that absences of the individual from home are infrequent or of relatively short duration.".

(c) Effective Date.—The amendments made by this section shall become effective on the date of enactment of this Act.

SEC. 9. ANNUAL NOTICE TO MEDICARE BENEFICIARIES.

(a) Notice Required.—The Secretary of Health and Human Services (in this section referred to as the Secretary) shall notify each individual who is entitled to benefits under title XVIII of the Social Security Act of—

(1) the benefits that are available under the insurance programs established under such title (and the major categories of health care that are not covered under those programs),

(2) the limitations on payment (including deductibles and coinsurance amounts) that are imposed under such programs, and

(3) the ways in which such limitations differ for individuals who are covered under the program established under part B and individuals who are not covered under such program.

(b) Timing.—The Secretary shall provide the notice described in subsection (a)—

(1) when an individual applies for benefits under part A or enrolls under part B on or after January 1, 1988, and

(2) in November of 1987 and annually thereafter.

(c) Consultation Required.—The notice required by subsection (a) shall be prepared in consultation with groups representing the elderly and with health insurers.

SEC. 9A. BENEFITS COUNSELING AND ASSISTANCE FOR CERTAIN MEDICARE AND MEDICAID BENEFICIARIES.

(a) Training and Technical Assistance.—

(1) The Secretary of Health and Human Services (referred to in this section as the "Secretary") may enter into agreements with private or public nonprofit agencies or organizations for the purpose of providing training and technical assistance to prepare volunteers to provide to elderly individuals receiving benefits under title XVIII or XIX of the Social Security Act counseling with respect to eligibility for such benefits and assistance in preparing such documentation as may be required to fully receive such benefits.

(2) In addition to any other forms of technical assistance provided under this subsection, the Secretary may provide—

(A) material to be used in making elderly persons aware of the availability of assistance under volunteer assistance programs under this section; and

(B) technical materials and publications to be used by such volunteers.

(b) Powers of the Secretary.—In carrying out his responsibilities under this section, the Secretary is authorized—

(1) to provide assistance to organizations which demonstrate, to the satisfaction of the Secretary, that their volunteers are adequately trained and competent to render effective benefits counseling and assistance (as described in paragraph (1)) to the elderly;

(2) to provide for the training of such volunteers, and to assist in such training, to insure that such volunteers are qualified to provide benefits and counseling assistance (as described in paragraph (1)) to the elderly;

(3) to provide reimbursement to volunteers through such organizations for transportation, meals, and other expenses incurred by them in training or providing benefits counseling and assistance under this section, and such other support and assistance as he determines to be appropriate in carrying out the provisions of this section;

(4) to provide for the use of services, personnel, and facilities of Federal executive agencies and of State and local public agencies with their consent, with or without reimbursement therefor; and

(5) to prescribe such rules and regulations as he deems necessary to carry out the provisions of this section.

(c) Employment of Volunteers.—

(1) Service as a volunteer in any program carried out under this section shall not be considered service as an employee of the United States. Volunteers under such a program shall not be considered Federal employees and shall not be subject to the provisions of law relating to Federal employment, except that the provisions of section 1905 of title 18, United States Code, shall apply to volunteers as if they were employees of the United States.

(2) Amounts received by volunteers serving in any program carried out under this section as reimbursement for expenses are exempt from taxation under chapters 1 and 21 of the Internal Revenue Code of 1986.

(d) Definition.—For purposes of this section, the term "elderly individual" means an individual who has attained the age of 60 years.

(e) Authorization of Appropriations.—There are authorized to be appropriated for fiscal years after 1987 $2,500,000 to carry out the provisions of this section.

SEC. 10. ADJUSTMENT OF AAPCC'S AND CONTRACTS FOR RISK-BASED ELIGIBLE ORGANIZATIONS.

(a) In General.—The Secretary of Health and Human Services (in this section referred to as the "Secretary") shall—

(1) modify any adjusted average per capita cost determined under section 1876(a) of the Social Security Act for an eligible organization with a risk-sharing contract to take into account the amendments made by sections 2(a), 3(a), 4, 7(b), 7A, and 11 of this Act,

(2) modify each such contract, for portions of contract years occurring after December 31, 1987, to reflect the modifications made pursuant to paragraph (1), and

(3) require each such organization to make appropriate adjustments in the terms of its agreements with medicare beneficiaries to take into account such amendments.

(b) Effective Date.—Subsection (a) shall become effective on the date of enactment of this Act.

SEC. 10A. PROTECTION OF MEDICARE BENEFICIARIES ENROLLED IN AN ELIGIBLE ORGANIZATION WITH A RISK-SHARING CONTRACT AGAINST CERTAIN PRACTICES.

(a) Notice to Medicare Beneficiaries.—

(1) Section 1876(c)(3) of the Social Security Act (42 U.S.C. 1395mm(c)(3)) is amended by adding at the end thereof the following new subparagraph:

"(F)(i) Each eligible organization having a risk-sharing contract under this section shall notify individuals eligible to enroll with the organization under this section and individuals enrolled with the organization under this section that—

"(I) the organization is authorized by law to terminate or refuse to renew the contract, and

"(II) termination or nonrenewal of the contract may result in termination of the enrollments of individuals enrolled with the organization under this section.

"(ii) The notice required by clause (i) shall be included in—

"(I) any materials described in subparagraph (C) that are distributed by an eligible organization to individuals eligible to enroll under this section with the organization, and

"(II) any explanation provided to enrollees by the organization pursuant to subparagraph (E).".

(2) The amendment made by paragraph (1) shall apply to contracts entered into (or renewed) on or after the date of the enactment of this Act.

(b) Civil Money Penalties and Intermediate Sanctions for Eligible Organizations with Risk-Sharing Contracts.—

(1) Section 1876(i)(6) of the Social Security Act (42 U.S.C. 1395mm(i)(6)) is amended to read as follows:

"(6)(A) Any eligible organization with a risk-sharing contract under this section that willfully—

"(1) fails substantially to provide medically necessary items and services that are required (under law or under the contract) to be provided to an individual covered under the contract, if the failure has adversely affected (or has a substantial likelihood of adversely affecting) the individual, is subject to a civil money penalty of not more than $25,000,

"(ii) charges an individual covered under the contract a greater premium than is permitted under this section, is subject to a civil money penalty of not more than $2,000 plus double the excess amount charged (and the excess amount charged shall be deducted from that penalty and returned to the individual),

"(iii) acts to expel or to refuse to re-enroll an individual in violation of the provisions of this section, is subject to a civil money penalty of not more than $15,000, for each incident,

"(iv) engages in any practice that would reasonably be expected to have the effect of denying or discouraging enrollment with the organization (except as permitted by this section) by eligible individuals whose medical condition or history indicates a need for substantial future medical services, is subject to a civil money penalty of not more than $100,000, plus $15,000 for each individual consequently not enrolled, or

"(v) misrepresents or falsifies enrollment information that is furnished to the Secretary, to an individual, or to any other entity, or enrolls an individual without the individual's knowledge or consent or after making a material inducement to the individual, is subject to a civil money penalty of not more than $15,000 for each incident (or, in the case of enrollment information furnished to the Secretary, not more than $100,000 for each incident).

"(B) The provisions of section 1128A (other than subsections (a) and (b)) shall apply to a civil money penalty under subparagraph (A) in the same manner as they apply to a civil money penalty under that section.

"(C) If the Secretary determines that an eligible organization has committed any of the violations specified in subparagraph (A), the Secretary, in addition to, or instead of, imposing a civil money penalty, may provide for the suspension of enrollment of individuals under this section or of payment to the organization under this section for individuals newly enrolled with the organization, after the date the Secretary notifies the organization of the violation.".

(2) The amendment made by paragraph (1) shall become effective at the end of the fourteen-day period beginning on the date of the enactment of this Act and shall not apply to administrative proceedings commenced before the end of such period.

SEC. 11. COVERAGE OF CATASTROPHIC EXPENSES FOR PRESCRIPTION DRUGS.

(a) In General.—Section 1861 (42 U.S.C. 1395x) is amended—

(1) by amending subparagraph (J) of subsection (s)(2) to read as follows:

"(J)(i) drugs described in subsection (t)(2)(A) (that by reason of subsection (t)(2)(B)(i) are not covered outpatient drugs) used in immunosuppressive therapy furnished to an individual who receives an organ transplant for which payment is made under this title, and (ii) covered outpatient drugs (as defined in subsection (t)(2)); and", and

(2) in subsection (t)—

(A) by striking "subsection (m)(5)" and inserting "subsections (m)(5) and (s)(2)(J)(ii) and paragraph (2)",

(B) by inserting "(1)" after "(t)", and

(C) by adding at the end thereof the following new paragraph:

"(2)(A) Except as provided in subparagraph (B), the term 'covered outpatient drug' means a drug which—

"(i)(I) is approved for safety and effectiveness as a prescription drug under section 505 or 507 of the Federal Food, Drug, and Cosmetic Act, or

"(II) is recognized in the publication entitled 'United States Pharmacopeia' (and is available only under a prescription); or

"(ii) in the case of a prescription drug which is biological product, is licensed under section 351 of the Public Health Service Act.

"(B)(i) The term 'covered outpatient drug' does not include any drug or biological with respect to which payment may be made under this title on the day before the date of enactment of the Medicare Catastrophic Loss Prevention Act of 1987.

"(ii) Notwithstanding any other provision of this paragraph, the term 'covered outpatient drug' means—

"(I) for calendar year 1990, a drug described in subparagraph (A) (not excluded from the definition of covered outpatient drug under clause (i)) that is an intravenously administered anti-infective agent, a cancer chemotherapeutic agent (including a drug used to enhance the safety and efficacy or counteract the toxicity of anticancer drugs), or a drug described in subsection (s)(2)(J)(i); and

"(II) for calendar years 1991 and 1992, a drug described in subclause (I) and any cardiovascular or diuretic drug that is described in subparagraph (A) and is not excluded from the definition of covered outpatient drug under clause (i).".

(b) Deductible and Payment Amounts.—Section 1833, as amended by sections 4(c)(1) and 7A(c) of this Act, is further amended—

(1) in subsection (a)(1)—

(A) by striking "and" before "(H)", and

(B) by adding at the end the following: "(I) with respect to expenses incurred for covered outpatient drugs, the amounts paid shall be the amounts determined under subsection (o)(2), and (J) with respect to drugs described in section 1861(s)(2)(J)(i), the amounts paid shall be the amounts determined under subsection (o)(2) (without regard to the deductible established under subsection (o)(1)(A) but taking into account the deductible established under subsection (b))";

(2) in subsection (b)—

(A) in clause (1), by inserting "or for covered outpatient drugs" after "1861(s)(10)(A)", and

(B) in clause (2), by inserting ", covered outpatient drugs," after "services"; and

(3) by adding at the end the following new subsection:

"(o)(1)(A) Before applying paragraph (2) with respect to expenses incurred by an individual for covered outpatient drugs dispensed in a calendar year, the individual must establish that the individual has incurred (or has had paid on the individual's behalf) expenses for covered outpatient drugs dispensed in the year (during a period in which the individual is entitled to benefits under this part) of the amount specified under subparagraph (C) for that year.

"(B) If an individual applies to the Secretary to establish that the individual has met the requirement of subparagraph (A), the Secretary shall promptly notify the individual (and, if the application was submitted by or through a participating pharmacy, the pharmacy) as to whether or not the individual has met such requirement.

"(C)(i) The amount specified under this subparagraph for—

"(I) 1990 is $600;

"(II) for any succeeding year, is the amount specified under this subparagraph for the preceding year increased by the percentage by which the part B beneficiary drug expenditure amount (as defined in section 1839(g)(3)(C)(iv)) for the 12-month period ending in August in that preceding year exceeds such amount for the 12-month period ending in August in the second preceding year.

"(ii) Any amount determined under this subparagraph which is not a multiple of $1 shall be rounded to the next highest multiple of $1.

"(iii) In September of each year (beginning with 1990) the Secretary shall publish the deductible established under this subparagraph for the following year.

"(2)(A) Subject to the deductible established under paragraph (1)(A) (or, with respect to drugs described in section 1861(s)(2)(J)(i), the deductible established under subsection (b)) and except as provided in subparagraph (C), the amounts payable under this part with respect to a covered outpatient drug or a drug described in section 1861(s)(2)(J)(i) is equal to—

"(i) the lesser of—

"(I) the actual charge for the drug, or

"(II) subject to paragraph (11)(A), the applicable payment limit described in paragraph (3)(A) or (3)(B); minus

"(ii) 20 percent of the actual charge for the drug.

"(B) The Secretary, before each payment calculation period (as defined in paragraph (9)(C)) beginning on or after January 1, 1990, shall provide for the distribution to participating pharmacies (as defined in section 1842(i)) and to groups representing or assisting individuals entitled to benefits under this part, of information on the payment limits established under paragraphs (3)(A) and (3)(B) (and on any adjustments to such limits under paragraph (11)(A)).

"(C)(i) An organization described in clause (ii) may elect to be paid 80 percent of the reasonable cost of services described in section 1861(s)(2)(J) on behalf of individuals enrolled in such organization in lieu of the amounts provided in subparagraph (A) if the organization undertakes to charge such individuals no more than 20 percent of such reasonable cost plus any amounts payable by them as a result of paragraph (1).

"(ii) An organization described in the clause is an organization which—

"(I) provides medical and other health services (or arranges for their availability) on a prepayment basis and which has elected to receive payments under subsection (a)(1)(A), or

"(II) has a reasonable cost reimbursement contract under section 1876(h).

"(3)(A) In the case of a drug that either is not a multiple source drug (as defined in paragraph (9)(A)) or is a multiple source drug and has a restrictive prescription (as defined in paragraph (9)(B)), the payment limit for the drug under this subsection is the sum of—

"(i) the product of (I) the number of tablets (or other dosage units) dispensed and (II) the average per tablet or unit wholesale price for the drug (as determined under paragraph (4)), and

"(ii) an administrative allowance in the amount determined under paragraph (5).

"(B) In the case of a drug that is a multiple source drug but does not have a restrictive prescription, the payment limit for the drug under this subsection is the sum of—

"(i) the product of (I) the number of tablets (or other dosage units) dispensed and (II) 150 percent of the lowest of the average per tablet or unit wholesale price for the drug (as determined under paragraph (4)); and

"(ii) an administrative allowance in the amount determined under paragraph (5).

"(4)(A) For purposes of this subsection, the Secretary shall determine, with respect to dispensing of a covered outpatient drug in a payment calculation period (beginning on or after January 1, 1990), the average per tablet or unit wholesale price for the drug. Such average shall be based on the average *wholesale price for purchases in reasonable quantities.*

"(B) For purposes of paragraph (3)(A), the average per tablet or unit wholesale price for a drug with respect to a payment calculation period is the most recently published average per tablet or unit wholesale price for the drug.

"(C) For purposes of paragraph (3)(B), the average per tablet or unit wholesale price for a drug—

"(i) for the 12-month period beginning with January, 1987, is the average per tablet or unit wholesale price for the drug as of January 1, 1987; and

"(ii) for a subsequent payment calculation period, is the lesser of—

"(I) the most recently published average per tablet or unit wholesale price for the drug, or

"(II) the average per tablet or unit wholesale price for the drug established for the previous payment calculation period increased by the percentage change in the consumer price index for all urban consumers (all items, U.S. city average, as published by the Bureau of Labor Statistics) for the 12-month period ending with August of the previous period.

In the case of a covered outpatient drug which is not available as of January 1, 1987, but which is first available in a payment calculation period after such date, the Secretary shall establish the average per tablet or unit wholesale price for the drug (based on purchases in reasonable quantities) in the first month of the first payment calculation period in which it is available.

"(D)(i) In the case of any drug that is available on a national basis, the Secretary shall make the determination under this paragraph, and calculate the payment limits under paragraph (3), on a national basis.

"(ii) In the case of any drug that is not available on a national basis, the Secretary may make such determination, and calculate such payment limits, on a regional basis to take account of the availability of drug products and variations among regions in the average wholesale prices for a drug product.

"(5)(A) For drugs dispensed in the payment calculation period beginning on January 1, 1990, the administrative allowance under this paragraph is—

"(i) $4.50 in the case of any drug dispensed by a participating pharmacy; and

"(ii) $3.50 in the case of any drug dispensed by a pharmacy that is not a participating pharmacy.

"(B) For drugs dispensed in a subsequent payment calculation period, the administrative allowance under this paragraph is the administrative allowance under this paragraph for the preceding calculation period increased by the percentage change (if any) in the implicit price deflator for gross national product (as published by the Department of Commerce in its 'Survey of Current Business') over the 12-month period ending with August of such preceding period. Any allowance determined under the preceding sentence which is not a multiple of 1 cent shall be rounded to the nearest multiple of 1 cent.

"(6)(A) In order to prevent abusive practices in the prescribing or dispensing of covered outpatient drugs, the Secretary may provide that payment for covered outpatient drugs may not be made in specific instances where they have been prescribed or dispensed with excessive frequency or in excessive quantities.

"(B)(i) The Secretary shall establish a utilization review program for covered outpatient drugs to identify patterns of unnecessary or inappropriate prescribing or dispensing practices (including excessive charging in the dispensing of drugs) and to identify patterns of substandard care.

"(ii) In carrying out the program under clause (i), the Secretary shall use diagnosis and indication codes and shall establish for each covered outpatient drug standards for the prescribing, dispensing, and utilization of the drug. In establishing such standards, the Secretary may incorporate standards from such current authoritative medical references as the Secretary may select after providing notice in the Federal Register with respect to any such selection and a period of not less than 60 days for public comment thereon.

"(7) In the case of covered outpatient drugs furnished by an eligible organization (described in section 1876(b)) or an organization described in section 1833(a)(1)(A) which does not impose charges on covered outpatient drugs dispensed to its members—

"(A) for purposes of this subsection the actual charges of the organization shall be the organization's standard charges to members and other individuals not entitled to benefits with respect to such drugs, and

"(B) for purposes of meeting the deductible established under paragraph (1), there shall be taken into account the standard charges that are fully or partially prepaid for covered outpatient drugs.

"(8)(A) The Secretary shall develop, and update annually, an information guide for physicians concerning the comparative average wholesale prices of at least 500 of the most commonly prescribed covered outpatient drugs. Such guide shall, to the extent practicable, group covered outpatient drugs (including multiple source drugs) in a manner useful to physicians by therapeutic category or with respect to the conditions for which they are prescribed. Such guide shall specify the wholesale prices on the basis of the amount of the drug required for a typical daily therapeutic regimen.

"(B) The Secretary shall provide for mailing, not later than January 1 of each year (beginning with 1990), a copy of the guide developed and updated under subparagraph (A)—

"(i) to each hospital with an agreement in effect under section 1866, and

"(ii) to each physician (as defined in section 1861(r)(1)) who routinely provides services under this part.

"(9) In this subsection:

"(A) The term 'multiple source drug' means, with respect to a payment calculation period, a covered outpatient drug for which there are 2 or more drug products (or, in the case of a covered outpatient drug subject to a patent, 3 or more drug products) generally available to beneficiaries through retail pharmacies which the Secretary determines are—

"(i)(I) pharmaceutically equivalent,

"(II) bioequivalent,

"(III) adequately labeled, and

"(IV) manufactured in compliance with Current Good Manufacturing Practice regulations; and

"(ii) sold or marketed during the period.

For purposes of clause (i), drug products are pharmaceutically equivalent if the products contain identical amounts of the same active drug ingredient in the same dosage form and meet compendial or other applicable standards of strength, quality, purity, and identity and drugs are bioequivalent if they do not present a known or potential bioequivalence problem or, if they do present such a problem, are shown to meet an appropriate bioequivalence standard. For purposes of clause (ii), a drug product is considered to be sold or marketed during a period if is listed in the Food and Drug Administration's most recent publication of 'Approved Drug Products with Therapeutic Equivalence Evaluations' for the third month before the beginning of the period, unless the Secretary determines that such sale or marketing is not actually taking place.

"(B) A drug has a 'restrictive prescription' only if—

"(i) in the case of a written prescription, the prescription for the drug indicates, in the handwriting of the physician or other person prescribing the drug and with an appropriate phrase (such as 'brand medically necessary') recognized by the Secretary, that the particular drug must be dispensed, or

"(ii) in the case of a prescription issued by telephone, the physician or other person prescribing the drug (through use of such an appropriate phrase) states that the particular drug must be dispensed.

"(C) The term 'payment calculation period' means the 12-month period beginning with January of each year (after 1989).

"(10)(A) Notwithstanding any other provision of this subsection, subject to subparagraph (B), if the Secretary determines that the monthly catastrophic drug benefit premium amount (as determined under section 1839(g)(3)(A)(i)) will exceed the limit imposed by section 1839(g)(3)(A)(ii) for a calendar year, the Secretary shall institute such cost-control measures as are necessary to ensure that such premium does not exceed such limit.

"(B) In carrying out subparagraph (A), the Secretary shall not—

"(i) except as provided in the last sentence of this subparagraph, exclude from coverage or limit payment for any specific covered outpatient drug or specific class of covered outpatient drugs; or

"(ii) change the methodology for calculating whether for a calendar year an individual has met the requirement of paragraph (1)(A).

The Secretary may, in carrying out subparagraph (A), exclude from coverage all drugs listed in a major classification of the most recently issued version of the Veterans' Administration Medication Classification System.

"(11)(A) For calendar years after 1990, the Secretary may by regulation reduce either (or both) of the payment limits established under paragraphs (3)(A) and (3)(B) for any drug dispensed by a high volume pharmacy (as defined by the Secretary) based on differences between high volume pharmacies and other pharmacies with respect to operating costs, quantity discounts, and other economies. The Secretary shall consult with high volume pharmacists, elderly groups, and private insurers in making such adjustments and (notwithstanding any other provision of this title) shall allow not less than 90 days for public comment on proposed regulations.

"(B) For calendar years after 1990, the Office of Technology Assessment and the Secretary shall submit to the Congress before the beginning of the calendar year recommendations for adjustments to the payment limits established under paragraphs (3)(A) and (3)(B) (and the Secretary shall request the National Academy of Sciences, acting

through the Institute of Medicine, to enter into a contract to make such recommendations). Each shall consult with pharmacists, pharmaceutical manufacturers, elderly groups, and private insurers in making such recommendations.".

(c) PARTICIPATING PHARMACIES; CIVIL MONETARY PENALTIES.—

(1) Section 1842 (42 U.S.C. 1395t) is amended—

(A) in subclauses (III) and (IV) of subsection (c)(2)(B)(ii), by inserting "or by participating pharmacies" after "participating physicians" each place it appears;

(B) in subsection (h)(1), by inserting before the period at the end of the second sentence the following: "and, with respect to a supplier of covered outpatient drugs, is a participating pharmacy (as defined in subsection (i)(1))"; and

(C) by adding after subsection (h) the following new subsection:

"(i)(1) For purposes of this section, the term 'participating pharmacy' means an entity which is authorized under a State law to dispense covered outpatient drugs and which has entered into an agreement with the Secretary, providing at least the following:

"(A) The entity agrees—

"(i) subject to the last sentence of this subparagraph, not to refuse to dispense covered outpatient drugs items stocked by the entity to any individual entitled to benefits under this part (in this section referred to as 'medicare beneficiaries'), and

"(ii) not to charge medicare beneficiaries more for such drugs than the amount it charges to the general public.

Clause (i) shall not apply in the case of any entity which dispenses covered outpatient drugs exclusively to individuals enrolled with eligible organizations under section 1876.

"(B) The entity agrees to keep patient records (including records on expenses incurred by medicare beneficiaries) for all covered outpatient drugs dispensed to all such beneficiaries.

"(C) The entity agrees—

"(i) to assist medicare beneficiaries in determining whether or not their expenses (for covered outpatient drugs dispensed in a year) have exceeded the deductible under section 1833(o)(1)(A), and

"(ii) to certify to the Secretary with respect to such beneficiaries that their expenses for such drugs exceed such deductible and to maintain and make available the documentation upon which such certification is made.

Nothing in this subparagraph shall be construed to authorize the Secretary to require submission of the documentation with respect to prescriptions comprising such expenses other than pursuant to an audit by the Secretary, upon certification under clause (ii), or for monitoring purposes from a sample of up to 7.5 percent of such entities.

"(D) The entity agrees, upon request of a medicare beneficiary, to provide a copy of the records maintained under subparagraph (B) to another participating pharmacy or to a carrier under this section.

"(E) The entity agrees—

"(i) to offer to counsel, or to offer to provide information to (consistent with State law respecting the provision of such information), each medicare beneficiary on the appropriate use of a drug to be dispensed and whether there are potential interactions between the drug and other drugs dispensed to the beneficiary; and

"(ii) to advise the beneficiary on the availability (consistent with State laws respecting substitution of drugs) of therapeutically equivalent covered outpatient drugs.

"(F) Effective January 1, 1991, the entity agrees to submit all requests for payment under this part to carriers electronically; except that the Secretary may waive the requirement of this subparagraph (in accordance with regulations) in cases where its imposition would pose an undue hardship on an entity.

Nothing in this paragraph shall be construed as requiring a pharmacy operated by an eligible organization (described in section 1876(b)) or an organization described in section 1833(a)(1)(A) for the exclusive benefit of its members to dispense covered outpatient drugs to individuals who are not members of the organization.

"(2) The Secretary shall provide to each participating pharmacy—

"(A) a distinctive emblem (suitable for display to the public) indicating that the pharmacy is a participating pharmacy, and

"(B) before the beginning of each payment calculation period, information on the payment limits established under paragraphs (3) and (5) of section 1833(o).

"(3) The Secretary shall provide for periodic audits of participating pharmacies to assure that they do not impose charges in excess of the amounts permitted under paragraph (1)(A)(ii).

"(4) Notwithstanding subsection (b)(3)(B), payment for covered outpatient drugs may be made on the basis of an assignment described in clause (ii) of that subsection only to a participating pharmacy.".

(2) Section 1128A(a) (42 U.S.C. 1320a-7a(a)) is amended—

(A) by striking "or" at the end of paragraph (1);

(B) by striking the comma at the end of paragraph (2) and inserting in lieu thereof "; or"; and

(C) by adding at the end thereof the following new paragraph:

"(3) in the case of a participating or nonparticipating pharmacy, presents or causes to be presented to any person a request for payment for covered outpatient drugs for which the amount charged by the pharmacy is greater that the amount the pharmacy charges the general public;".

(d) LIMITATION ON LENGTH OF PRESCRIPTION.—Section 1862(c) (42 U.S.C. 1395y(c)) is amended—

(1) by redesignating subparagraphs (A) through (D) of paragraph (1) as clauses (i) through (iv), respectively;

(2) in paragraph (2)(A), by striking "paragraph (1)" and inserting "subparagraph (A)";

(3) by redesignating subparagraphs (A) and (B) of paragraph (2) as clauses (i) and (ii), respectively;

(4) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively;

(5) by inserting "(1)" after "(c)"; and

(6) by adding at the end the following new paragraph:

"(2) No payment may be made under part B for any expense incurred for a covered outpatient drug if the drug is dispensed in a quantity exceeding—

"(A) a 90-day supply in the case of an individual receiving chronic maintenance drug therapy (as defined by the Secretary); or

"(B) a 60-day supply in the case of any other individual.".

(e) USE OF CARRIERS AND FISCAL INTERMEDIARIES IN ADMINISTRATION.—

(1)(A) Section 1842(b)(3) (42 U.S.C. 1395u(b)(3)) is amended—

(i) by striking "and" at the end of subparagraph (H),

(ii) by adding "and" at the end of subparagraph (I), and

(iii) by inserting after subparagraph (I) the following new subparagraph:

"(J) if it makes determinations or payments with respect to covered outpatient drugs, will—

"(i) offer to receive requests for payments for such drugs through electronic communications, and

"(ii) respond to requests by participating pharmacies as to whether or not an individual has met the deductible requirement of section 1833(o)(1)(A) for a year;".

(B) Section 1842(b)(2) (42 U.S.C. 1395u(b)(3)) is amended by adding at the end the following new sentence: "With respect to carrying out functions relating to payment for covered outpatient drugs, the Secretary may enter into contracts with carriers under this section to perform such functions on a regional basis.".

(C) Section 1842(c) (42 U.S.C. 1395u(c)) is amended—

(i) in paragraph (2)(B)—

(I) by striking "The" in clause (ii) and inserting in lieu thereof "Except as provided in clause (iii), the", and

(II) by adding at the end thereof the following new clause:

"(iii) In the case of claims submitted with respect to payment for covered outpatient drugs, the term 'applicable number of calendar days' means 45 calendar days."; and

(ii) by adding at the end thereof the following new paragraph:

"(3)(A) Each contract under this section which provides for the disbursement of funds, as described in subsection (a)(1)(B), shall provide that no payment shall be issued, mailed, or otherwise transmitted with respect to any claim submitted under this title with respect to payment for outpatient drugs within the applicable number of calendar days after the date on which the claim is received.

"(B) In this paragraph, the term 'applicable number of calendar days' means 30 days.".

(2) Section 1816 (42 U.S.C. 1395h) is amended by adding at the end thereof the following new subsection:

"(j) With respect to carrying out functions relating to payment for home intravenous drug therapy, the Secretary may enter into contracts with agencies or organizations under this section to perform such functions on a regional basis.".

(f) MODIFICATION OF HMO/CMP PROVISIONS.—

(1) Section 1876(c) (42 U.S.C. 1395mm(c)) is amended by adding at the end the following new paragraph:

"(8) In the case of an individual who enrolls as a member of an eligible organization under this section after January 1 of a year, the organization must take into account, in computing the expenses incurred for covered outpatient drugs for purposes of meeting the deductible under section 1833(o)(1)(A) for the year, expenses incurred for covered outpatient drugs during the year while the individual was entitled to benefits under part B but before the individual so enrolled.".

(2)(A) Section 1876(e)(1) (42 U.S.C. 1395mm(e)(1)) is amended by adding at the end thereof the following new sentence: "The preceding sentence shall be applied separately with respect to covered outpatient drugs.".

(B) Section 1876(g)(3) (42 U.S.C. 1395mm(g)(3)) is amended)—

(i) in subparagraph (B), by striking "both,"; and

(ii) by adding at the end thereof the following new subparagraphs:

"(C) the reduction of the premium rate or other charges made with respect to covered outpatient drugs furnished by such organization to such members, or

"(D) all of the above.".

(g) Conforming Amendments.—The first sentence of section 1866(a)(2)(A) (42 U.S.C. 1395cc(a)(2)(A)) is amended—

(1) by inserting "1833(o)," after "1833(b)," and

(2) by inserting "and in the case of covered outpatient drugs, 20 percent of the actual charges for the drugs" after "established by the Secretary".

(h) Beneficiary Drug Cost Survey and CBO Report.—

(1)(A) The Secretary of Health and Human Services (in this subsection referred to as the "Secretary") shall conduct a statistically valid survey of expenses for covered outpatient drugs (as defined in section 1861(t)(2) of the Social Security Act) incurred by medicare beneficiaries.

(B) In developing the design of the survey, the Secretary shall consult with the Comptroller General, the Director of the Congressional Budget Office, consumer groups, and representatives of the pharmaceutical and pharmacist industries.

(C) The survey shall be designed so as to provide information on the distribution of expenses for covered outpatient drugs for medicare beneficiaries generally and, within the population of such beneficiaries, the distribution of such expenses by age, sex, income, and institutionalized status.

(D) Not later than January 19, 1989, the Secretary shall submit to Congress a report on the survey conducted under this paragraph.

(2) Not later than two months after the date on which the report of the Secretary is submitted under paragraph (1)—

(A) the Director of the Congressional Budget Office shall transmit to the Congress the Director's estimate of the expenditures which will be made (in each of fiscal years 1990, 1991, 1992, and 1993) under the medicare program for covered outpatient drugs (under the amendments made by this section); and

(B) the General Accounting Office shall report to the Congress on the validity of the survey conducted under paragraph (1) and on the extent to which pharmacies accept assignment and the barriers (if any) to such acceptance.

(i) Study of Inclusion of Additional or Alternative Drugs Under Definition of Covered Outpatient Drug.—

(1)(A)(i) The Office of Technology Assessment (in this subsection referred to as the "Office") shall conduct a study to identify additional or alternative covered outpatient drugs (as described in section 1861(t)(2)(A) of the Social Security Act) that can be included under the definition of covered outpatient drug in effect for calendar years 1991 and 1992 (as described in section 1861(t)(2)(B)(ii)(II) of such Act).

(ii)(I) The Secretary of Health and Human Services (in this subsection referred to as the "Secretary") shall request the National Academy of Sciences, acting through the Institute of Medicine (in this section referred to as the "Academy" and the "Institute", respectively), to enter into a contract under which the Institute, in consultation with representatives of appropriate research and health-care organizations, will also conduct the study described in clause (i).

(II) The Secretary shall enter into appropriate arrangements with the Academy under which the Secretary shall be responsible for expenses incurred by the Academy in connection with the study required by subclause (I).

(B) In conducting the study under subparagraph (A), the Office and the Institute shall give particular attention to those drugs that meet any or all of the following criteria:

(i) The drug is used by a large number of beneficiaries under the medicare program.

(ii) The drug can be covered under the medicare program without significant administrative difficulties.

(iii) Coverage of the drug will provide useful information with respect to utilization and cost of covered outpatient drugs under the medicare program.

(iv) Coverage of the drug will not cause an unreasonable increase in premiums under the medicare program.

(v) The drug is expensive when used as part of a chronic drug regimen.

(3)(A) Not later than six months after the date of the enactment of this Act, the Office and the Institute shall submit to the Secretary and the appropriate committees of the Congress an interim report with respect to the study required by paragraph (1). The report shall describe the manner in which the study is being conducted and may include tentative findings and recommendations based upon the study.

(B) Not later than twelve months after the date of the enactment of this Act, the Office and the Institute shall submit to the Secretary and the appropriate committees of the Congress a final report with respect to the study required by paragraph (1). The report shall include specific findings and recommendations based upon the study.

(j) Additional Studies.—

(1) The Secretary of Health and Human Services (in this subsection referred to as the "Secretary") shall conduct studies on the following issues:

(A) The extent of private or other third-party insurance coverage of covered outpatient drugs among medicare beneficiaries.

(B) The overhead costs of retail pharmacies.

(C) Potential application of new claims processing and billing technologies to payment for covered outpatient drugs.

(D) Methods for review of utilization of covered outpatient drugs.

(E) Alternative payment methodologies for covered outpatient drugs that promote greater program efficiency, including use of lower cost medications.

(F) The potential for induced demand resulting from the coverage of covered outpatient drugs under the medicare program.

(G) The possibility of including drugs which have not yet been approved under section 505 or 507 of the Federal, Food, Drug, and Cosmetic Act but which are commonly used in the treatment of cancer or in immunosuppressive therapy as covered outpatient drugs (which study shall be conducted in consultation with an advisory board of consumers, experts in the fields of cancer chemotherapy and immunosuppressive therapy, representatives of pharmaceutical manufacturers, and such other individuals as the Secretary may select).

As part of such studies the Secretary shall conduct a longitudinal study on the use of covered outpatient drugs by medicare beneficiaries with respect to medical necessity, potential for adverse drug interactions, cost (including whether lower cost drugs could have been used), and patient stockpiling or wastage. The Secretary shall submit an interim report to Congress on the results of such studies over a period ending not later than January 1, 1989, and shall submit a final report on such results not later than January 1, 1991.

(2) The Secretary and the General Accounting Office shall each conduct and periodically update a study on a comparison of published average wholesale prices and actual pharmacy acquisition costs by type of pharmacy and shall submit reports to Congress on the results of each such study and update, with the first such report being submitted no later than January 1, 1989.

(k) Simplification of Recordkeeping.—

(1)(A) Not later than October 1, 1988, the Secretary of Health and Human Services (in this subsection referred to as the "Secretary") shall enter into an agreement with two or more private entities to conduct demonstration projects to test the use of magnetic cards, electronic billing, and other technological devices in the administration of the benefit established under this section with respect to covered outpatient drugs.

(B) The Secretary shall select the private entities to conduct the demonstration projects under this paragraph from among applications submitted by such entities in such form as the Secretary may prescribe. A project shall be conducted for such period of time as the Secretary shall determine is sufficient to carry out the project. The Secretary shall report to the Congress on the results of a project not later than six months after the date on which the project is completed.

(C) The demonstration projects under this paragraph shall be conducted at statistically relevant locations and shall be used to provide quick data for projecting the total program costs of the benefit established under this section with respect to covered outpatient drugs.

(2)(A) The Secretary shall develop, in consultation with representatives of participating pharmacies under section 1842(i) of the Social Security Act (as added by subsection (c) of this section), consumers, and other interested individuals a standard receipt to be used by medicare beneficiaries in making purchases from such participating pharmacies.

(B) Not later than January 1, 1990, the Secretary shall distribute official copies of the receipt developed under subparagraph (A) to participating pharmacies and take appropriate steps to ensure that such pharmacies continue to use such receipt for the sale of covered outpatient drugs to medicare beneficiaries.

SEC. 12. HOSPICE CARE.

(a) Extension of Coverage Period.—

(1) Section 1812 (42 U.S.C. 1395d) is amended—

(A) in subsection (a)(4), by striking "and one subsequent period of 30 days" and inserting in lieu thereof ", a subsequent period of 30 days, and a subsequent extension period";

(B) in subsection (d)(1), by striking "and one subsequent period of 30 days" and inserting in lieu thereof ", a subsequent period of 30 days, and a subsequent extension period"; and

(C) in subsection (d)(2)(B), by inserting "or a subsequent extension period" after "30-day period".

(2) Section 1812A(a)(4), as added by section 2(b) of this Act, is amended by striking "and one subsequent period of 30 days" and inserting in lieu thereof ", a subsequent period of 30 days, and a subsequent extension period".

(b) Continued Certification of Terminal Illness for Extended Benefits.—Section 1814(a)(7)(A) (42 U.S.C. 1395f(a)(7)(A)) is amended—

(1) by striking "and" at the end of clause (i),

(2) by striking the semicolon at the end of clause (ii) and inserting in lieu thereof ", and", and

(3) by adding at the end the following new clause:

"(iii) in a subsequent extension period, the medical director or physician described in clause (i)(II) recertifies at the beginning of the period that the individual is terminally ill;".

(c) Effective Date.—The amendments made by this section shall apply with respect to services provided on or after the date of enactment of this Act.

SEC. 13. VOLUNTARY CERTIFICATION OF MEDICARE SUPPLEMENTAL HEALTH INSURANCE POLICIES.

(a) Free-Look Period.—Section 1882 (42 U.S.C. 1395ss) is amended—

(1) in subsection (b)(1), by striking subparagraph (B) and inserting in lieu thereof the following:

"(B) includes requirements equal to or more stringent than the requirements described in paragraphs (2) and (3) of subsection (c); and", and

(2) in subsection (c)—

(A) by striking "and" at the end of paragraph (1),

(B) by striking the period at the end of paragraph (2) and inserting in lieu thereof "; and", and

(C) by adding at the end thereof the following:

"(3) may, during a period of not less than 30 days after the policy is issued, be returned for a full refund of any premiums paid (without regard to the manner in which the purchase of the policy was solicited).".

(b) Reporting of Information Relating to Loss Ratios.—Section 1882(b)(1), as amended by subsection (a), is further amended—

(1) by striking "and" at the end of subparagraph (B),

(2) by redesignating subparagraph (C) as subparagraph (D),

(3) by inserting after subparagraph (B) the following:

"(C) provides that—

"(i) information with respect to the actual ratio of benefits provided to premiums collected under such policies will be reported to the State on forms conforming to those developed by the National Association of Insurance Commissioners for such purpose, or

"(ii) such ratios will be monitored under the program in an alternative manner approved by the Secretary; and", and

(4) in subparagraph (D), as redesignated by paragraph (2), by striking "(A) and (B)" and inserting in lieu thereof "(A), (B), and (C)".

(c) Consumer Information.—Section 1882(e) is amended—

(1) by inserting "(1)" after "(e)", and

(2) by adding at the end thereof the following:

"(2) The Secretary shall—

"(A) inform all individuals entitled to benefits under this title (and, to the extent feasible, individuals about to become so entitled) of—

"(i) the actions and practices that are subject to sanctions under subsection (d), and

"(ii) the manner in which they may report any such action or practice to an appropriate official of the Department of Health and Human Services, and

"(B) establish a toll-free telephone number for individuals to report suspected violations of the provisions of such subsection.

"(3) The Secretary shall provide individuals entitled to benefits under this title (and, to the extent feasible, individuals about to become so entitled) with a listing of the addresses and telephone numbers of State and Federal agencies and offices that provide information and assistance to individuals with respect to the selection of medicare supplemental policies.".

(d) Revision of Model Standards.—Section 1882 (42 U.S.C. 1395ss) is amended—

(1) in subsection (a) by striking "Such certification" and inserting in lieu thereof "Subject to subsection (k)(3), such certification",

(2) in subsection (b) by striking "(for so long as" and inserting in lieu thereof "(subject to subsection (k)(3), for so long as", and

(3) by adding at the end thereof the following new subsection:

"(k)(1)(A) If, within the period specified in subparagraph (B), the National Association of Insurance Commissioners (in this subsection referred to as the 'Association') amends the NAIC Model Regulation adopted on June 6, 1979 (as it relates to medicare supplemental policies) to reflect the changes in law made by the Medicare Catastrophic Loss Prevention Act of 1987, subsection (g)(2)(A) shall be applied, effective on and after the date specified in subparagraph (C), as if the reference to the Model Regulation adopted on June 6, 1979, were a reference to the Model Regulation as amended by the Association in accordance with this paragraph (in this subsection referred to as the 'amended NAIC Model Regulation').

"(B) The period specified in this subparagraph is the period beginning on the date of the enactment of the Medicare Catastrophic Loss Prevention Act of 1987 and ending on the ninetieth day after such date.

"(C) The date specified in this subparagraph is the date that is 365 days after the date (within the period specified in subparagraph (B)) on which the National Association of Insurance Commissioners announces the adoption of the amendments referred to in subparagraph (A).

"(2)(A) If the Association does not amend the NAIC Model Regulation referred to in subsection (g)(2)(A) during the period specified in paragraph (1)(B), the Secretary shall issue Federal model standards (in this subsection referred to as 'Federal model standards') for medicare supplemental policies not later than 90 days after the last day of such period. Federal model standards issued by the Secretary pursuant to this subparagraph shall reflect the changes in law made by the Medicare Catastrophic Loss Prevention Act of 1987.

"(B) Effective on and after the date that is 365 days after the date on which the Secretary issues Federal model standards pursuant to subparagraph (A), this section shall be applied as if any reference to NAIC Model Standards were a reference to the Federal model standards .

"(3) Notwithstanding any other provision of this section, on and after the date specified in paragraph (1)(C) or the date specified in paragraph (2)(B) (as the case may be)—

"(A) no medicare supplemental policy may be certified by the Secretary pursuant to subsection (a),

"(B) no certification made pursuant to subsection (a) shall remain in effect, and

"(B) no State regulatory program shall be found to meet (or to continue to meet) the requirements of subsection (b)(1),

unless such policy meets (or such program provides for the application of standards equal to or more stringent than) the standards set forth in the amended NAIC Model Regulation or the Federal model standards (as the case may be).".

(e) Effective Dates.—

(1) The amendments made by subsections (a) and (b) shall become effective on the date on which the amended NAIC Model Standards (or Federal model standards) become effective under section 1882 of the Social Security Act (in accordance with subsection (k) of such section).

(2) The amendments made by subsection (c) shall become effective on the date of the enactment of this Act.

(3) The amendment made by subsection (d) shall be effective as provided in such amendment.

SEC. 14. DETERMINATION OF MEDICAID SAVINGS; STATE PLAN REQUIREMENT.

(a) Determination of Savings; Notice to States.—Before the beginning of each fiscal year (or portion thereof) for which this section applies to a State, the Secretary of Health and Human Services (in this section referred to as the "Secretary") shall—

(1) estimate and determine, with respect to each State with a State plan approved under title XIX of the Social Security Act, the total amount that would have been expended from State funds under such plan for such fiscal year (or portion thereof) but for the amendments made by sections 2(a), 3(a), 4, and 7(b) of this Act, and

(2) notify each such State of such amount.

(b) State Plan Requirement.—

(1) Each State plan shall provide, as a condition of approval under section 1902(a) of the Social Security Act, that—

(A) an amount equal to the amount of savings that are estimated by the Secretary pursuant to subsection (a) to accrue to the State for such fiscal year (or portion thereof) by reason of the amendments made sections 2(a), 3(a), 4, and 7(b) of this Act, will be expended from State funds for such fiscal year for one or more of the purposes specified in paragraph (2), and

(B) the amounts expended pursuant to subparagraph (A) will be in addition to any amounts that would have been expended from State funds for such purposes for such fiscal year (or portion thereof) under the State plan (as in effect on the day before the date of the enactment of this Act).

(2) The purposes specified in this paragraph are—

(A) to provide coverage other than medicare cost-sharing for covered outpatient drugs under title XVIII of the Social Security Act) under the State plan, pursuant to section 1902(a)(10)(E) of the Social Security Act, for individuals described in section 1905(p)(1) of such Act,

(B) to increase the minimum monthly maintenance needs allowance under section 1921(d)(3)(B) of the Social Security Act, and

(C) in the case of any State that provides coverage under section 1902(a)(10)(E) of such Act to qualified medicare beneficiaries up to an income level of 100 percent of the line described in section 1905(p)(2)(A) of such Act and provides under the State plan for a maintenance needs monthly income level for community spouses of institutionalized individuals of not less than $550 per *month, to increase opportunities for elderly individuals to participate in adult day health care and other community-based services.*

(3) A State may provide coverage pursuant to paragraph (2)(A) without regard to section 1902(m)(3) of the Social Security Act.

(c) Effective Date.—

(1) Except as provided in paragraph (2), this section shall apply to the calendar quarter beginning on January 1, 1988, and 11 consecutive calendar quarters thereafter.

(2)(A) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirement imposed by subsection (b), the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet this additional requirement before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act.

(B) In the case of a State plan with respect to which the requirement imposed by subsection (b) first becomes effective, pursuant to subparagraph (A), for a calendar quarter beginning after January 1, 1988, this section shall apply to such calendar quarter and 11 consecutive calendar quarters thereafter.

SEC. 14A. DETERMINATION OF MEDICAID DRUG SAVINGS; STATE PLAN REQUIREMENT.

(a) Determination of Savings; Notice to States.—Before the beginning of each fiscal year (or portion thereof) for which this section applies to a State, the Secretary of Health and Human Services (in this section referred to as the "Secretary") shall—

(1) estimate and determine, with respect to each State with a State plan approved under title XIX of the Social Security Act, the total amount that would have been expended from State funds under such plan for such fiscal year (or portion thereof) but for the amendments made by sections 7A and 11 of this Act, and

(2) notify each such State of such amount.

(b) State Plan Requirement.—

(1) Each State plan shall provide, as a condition of approval under section 1902(a) of the Social Security Act, that—

(A) an amount equal to the amount of savings that are estimated by the Secretary pursuant to subsection (a) to accrue to the State for such fiscal year (or portion thereof) by reason of the amendments made by sections 7A and 11 of this Act, will be expended from State funds for such fiscal year for the purpose specified in paragraph (2), and

(B) the amounts expended pursuant to subparagraph (A) will be in addition to any amounts that would have been expended from State funds for such purposes for such fiscal year (or portion thereof) under the State plan (as in effect on the day before the date of the enactment of this Act).

(2) The purpose specified in this paragraph is to provide medicare cost-sharing under the State plan, pursuant to section 1902(a)(10)(E) of the Social Security Act, for individuals described in section 1905(p)(1) of such Act, with respect to covered outpatient drugs under title XVIII of such Act.

(3) A State may provide coverage pursuant to paragraph (2) without regard to section 1902(m)(3) of the Social Security Act.

(c) Effective Date.—This section shall apply with respect to any calendar quarter beginning on or after January 1, 1990.

SEC. 14B. MEDICARE COST-SHARING WITH RESPECT TO PRESCRIPTION DRUG BENEFIT UNDER MEDICAID PROGRAM.

(a) Medicare Cost-Sharing for Prescription Drugs.—

(1) Section 1905(p)(3) (42 U.S.C. 1396d(p)(3)) is amended by inserting immediately after subparagraph (D) the following new subparagraph:

"(E) Subject to paragraph (4), the annual deductible under section 1833(o)(1) and coinsurance under section 1833(o)(2).".

(2) Section 1905(p) (42 U.S.C. 1396d(p)) is amended by adding at the end thereof the following new paragraph:

"(4) Instead of providing to qualified medicare beneficiaries, under paragraph (3)(E), medicare cost-sharing with respect to the annual deductible for covered outpatient drugs under section 1833(o)(1), a State may provide to such beneficiaries, before charges for covered outpatient drugs for a year reach such deductible amount, benefits for prescribed drugs in the same amount, duration, and scope as the benefits made available under the State plan for individuals described in subsection (a)(10)(A)(i).".

(b) Optional Buy-in for Prescription Drug Benefit.—Section 1905(p), as amended by subsection (a) is further amended—

(1) in paragraph (2)(A), by striking "The" and inserting in lieu thereof "Except as provided in paragraph (5), the"; and

(2) by adding at the end thereof the following new paragraph:

"(5)(A) Notwithstanding paragraph (2)(A), in the case of medicare cost-sharing under paragraph (3)(E), a State may provide such cost-sharing to any individual whose income level is more than 100 percent of the poverty line described in paragraph (2)(A) (but in no event more than 200 percent of such line).

"(B) A State that exercises the option under subparagraph (A) may with respect to an individual described in such subparagraph—

"(i) whose income level does not exceed 150 percent of the poverty line described in paragraph (2)(A), require such individual to pay up to $150 of the amount of the annual deductible and up to 10 percent of any coinsurance amounts otherwise paid by the State under paragraph (3)(E); and

"(ii) whose income level exceeds 150 percent of such line, require such individual to pay up to $300 of the amount of such deductible and 15 percent of any such coinsurance amounts.".

(c) Effective Date.—The amendments made by this section apply to payments under title XIX of the Social Security Act for calendar quarters beginning on or after January 1, 1990, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date, with respect to medical assistance for—

(1) monthly premiums under title XVIII of such Act for months beginning with January 1990, and

(2) items and services furnished on and after January 1, 1990.

SEC. 14C. PROTECTION OF INCOME AND RESOURCES OF COUPLE FOR MAINTENANCE OF COMMUNITY SPOUSE.

(a) In General.—Title XIX is amended—

(1) by redesignating section 1921 as section 1922, and

(2) by inserting after section 1920 the following new section:

"TREATMENT OF INCOME AND RESOURCES FOR CERTAIN INSTITUTIONALIZED SPOUSES

"Sec. 1921. (a) Special Treatment for Institutionalized Spouses.—

"(1) Supersedes other provisions.—In determining the eligibility for medical assistance of an institutionalized spouse (as defined in subsection (h)(1)), the provisions of this section supersede any other provision of this title (including sections 1902(a)(17) and 1902(f)) which is inconsistent with them.

"(2) No comparable treatment required.—Any different treatment provided under this section for institutionalized spouses shall not, by reason of paragraph (10) or (17) of section 1902(a), require such treatment for other individuals.

"(3) Does not affect certain determinations.—Except as this section specifically provides, this section does not apply to—

"(A) the determination of what constitutes income or resources, or

"(B) the methodology and standards for determining and evaluating income and resources.

"(4) Application in certain states and territories.—

"(A) Application in states operating under demonstration projects.—In the case of any State which is providing medical assistance to its residents under a waiver granted under section 1115, the Secretary shall require the State to meet the requirements of this section in same manner as the State would be required to meet such requirement if the State had in effect a plan approved under this title.

"(B) No application in commonwealths and territories.—This section shall only apply to a State that is one of the 50 States or the District of Columbia.

"(b) Rules for Treatment of Income.—

"(1) Separate treatment of income.—During any month in which an institutionalized spouse is in the institution, no income of the community spouse shall be deemed available to the institutionalized spouse.

"(2) Attribution of income.—In determining the income of an institutionalized spouse or community spouse, after the institutionalized spouse has been determined to be eligible for medical assistance, except as otherwise provided in this section and regardless of any State laws relating to community property or the division of marital property, the following rules apply:

"(A) Non-trust property.—Subject to subparagraphs (C) and (D), in the case of income not from a trust, unless the instrument providing the income otherwise specifically provides—

"(i) if payment of income is made solely in the name of the institutionalized spouse or the community spouse, the income shall be considered available only to that respective spouse;

"(ii) if payment of income is made in the names of the institutionalized spouse and the community spouse, one-half of the income shall be considered available to each of them; and

"(iii) if payment of income is made in the names of the institutionalized spouse or the community spouse, or both, and to another person or persons, the income shall be considered available to each spouse in proportion to the spouse's interest (or, if payment is made with respect to both spouses and no such interest is specified, one-half of the joint interest shall be considered available to each spouse).

"(B) Trust property.—In the case of a trust—

"(i) except as provided in clause (ii), income shall be attributed in accordance with the provisions of this title (including sections 1902(a)(17) and 1902(k)), and

"(ii) income shall be considered available to each spouse as provided in the trust, or, in the absence of a specific provision in the trust—

"(I) if payment of income is made solely to the institutionalized spouse or the community spouse, the income shall be considered available only to that respective spouse;

"(II) if payment of income is made to both the institutionalized spouse and the community spouse, one-half of the income shall be considered available to each of them; and

"(III) if payment of income is made to the institutionalized spouse or the community spouse, or both, and to another person or persons, the income shall be considered available to each spouse in proportion to the spouse's interest (or, if payment is made with respect to both spouses and no such interest is specified, one-half of the joint interest shall be considered available to each spouse).

"(C) PROPERTY WITH NO INSTRUMENT.—In the case of income not from a trust in which there is no instrument establishing ownership, subject to subparagraph (D), one-half of the income shall be considered to be available to the institutionalized spouse and one-half to the community spouse.

"(D) REBUTTING OWNERSHIP.—The rules of subparagraphs (A) and (C) are superseded to the extent that an institutionalized spouse can establish, by a preponderance of the evidence, that the ownership interests in income are other than as provided under such subparagraphs.

"(3) SPECIAL INCOME ATTRIBUTION RULE FOR INSTITUTIONALIZED SPOUSES IN CERTAIN STATES.—In determining the income of an institutionalized spouse at the time of application for benefits under this title, in the case of any community property State that does not provide coverage under the State plan for medically needy individuals, the amount of income considered to be available to such spouse shall be an amount equal to ½ of the combined income of such spouse and the community spouse.

"(c) RULES FOR TREATMENT OF RESOURCES.—

"(1) COMPUTATION OF SPOUSAL SHARE AT TIME OF INSTITUTIONALIZATION.—

"(A) TOTAL JOINT RESOURCES.—There shall be computed (as of the beginning of a continuous period of institutionalization of the institutionalized spouse)—

"(i) the total value of the resources to the extent either the institutionalized spouse or the community spouse has an ownership interest, and

"(ii) a spousal share which is equal to ½ of such total value.

"(B) ASSESSMENT.—At the request of an institutionalized spouse or community spouse, at the beginning of a continuous period of institutionalization of the institutionalized spouse and upon the receipt of relevant documentation of resources, the State shall promptly assess and document the total value described in subparagraph (A)(i) and shall provide a copy of such assessment and documentation to each spouse and shall retain a copy of the assessment for use under this section. If the request is not part of an application for medical assistance under this title, the State may, at its option as a condition of providing the assessment, require payment of a fee not exceeding the reasonable expenses of providing and documenting the assessment.

"(2) ATTRIBUTION OF RESOURCES AT TIME OF INITIAL ELIGIBILITY DETERMINATION.—In determining the resources of an institutionalized spouse at the time of application for benefits under this title, regardless of any State laws relating to community property or the division of marital property—

"(A) except as provided in subparagraph (B), all the resources held by either the institutionalized spouse, community spouse, or both, shall be considered to be availabe to the institutionalized spouse, and

"(B) resources shall not be considered to be available to an institutionalized spouse, to the extent that the amount of such resources does not exceed the amount computed under subsection (f)(2)(A) (as of the time of application for benefits).

"(3) ASSIGNMENT OF SUPPORT RIGHTS.—The institutionalized spouse shall not be ineligible by reason of resources determined under paragraph (2) to be available for the cost of care where—

"(A) the institutionalized spouse has assigned to the State any rights to support from the community spouse;

"(B) the institutionalized spouse lacks the ability to execute an assignment due to physical or mental impairment but the State has the right to bring a support proceeding against a community spouse without such assignment; or

"(C) the State determines that denial of eligibility would work an undue hardship.

"(4) SEPARATE TREATMENT OF RESOURCES AFTER ELIGIBILITY FOR BENEFITS ESTABLISHED.—During the continuous period in which an institutionalized spouse is in an institution and after the month in which an institutionalized spouse is determined to be eligible for benefits under this title, no resources of the community spouse shall be deemed available to the institutionalized spouse.

"(5) RESOURCES DEFINED.—In this section, the term 'resources' does not include—

"(A) resources excluded under subsection (a) or (d) of section 1613,

"(B) resources that would be excluded under section 1613(a)(2)(A) but for the limitation on total value described in such section, and

"(C) resources which are necessary to produce income that is made available to the community spouse or for the family allowance under subsection (d), subject to the greater of the limit under subsection (d)(3)(B) or (d)(5).

"(d) PROTECTING INCOME FOR COMMUNITY SPOUSE.—

"(1) ALLOWANCES TO BE OFFSET FROM INCOME OF INSTITUTIONALIZED SPOUSE.—After an institutionalized spouse is determined to be eligible for medical assistance, in determining the amount of the spouse's income that is to be applied monthly to payment for the costs of care in the institution, there shall be deducted from the spouse's monthly income the following amounts in the following order:

"(A) A personal needs allowance (described in section 1902(p)(1)), in an amount not less than the amount specified in section 1902(p)(2).

"(B) A community spouse monthly income allowance (as defined in paragraph (2)), but only to the extent income of the institutionalized spouse is made available to (or for the benefit of) the community spouse.

"(C) A family allowance, for each family member, equal to at least ⅓ of the amount by which the amount described in paragraph (3)(A)(i) exceeds the amount of the monthly income of that family member.

"(D) Amounts for incurred expenses for medical or remedial care for the institutionalized spouse that are not subject to payment by a legally liable third party.

In subparagraph (C), the term 'family member' only includes minor or dependent children, dependent parents, or dependent siblings of the institutionalized or community spouse who are residing with the community spouse.

"(2) COMMUNITY SPOUSE MONTHLY INCOME ALLOWANCE DEFINED.—In this section (except as provided in paragraph (5)), the 'community spouse monthly income allowance' for a community spouse is an amount by which—

"(A) except as provided in subsection (e), the minimum monthly maintenance needs allowance (established under and in accordance with paragraph (3)) for the spouse, exceeds

"(B) the amount of monthly income otherwise available to the community spouse (determined without regard to such an allowance).

"(3) ESTABLISHMENT OF MINIMUM MONTHLY MAINTENANCE NEEDS ALLOWANCE.—

"(A) IN GENERAL.—Each State shall establish a minimum monthly maintenance needs allowance for each community spouse which, subject to subparagraph (B), is equal to or exceeds—

"(i) 122 percent of $\frac{1}{12}$ of the nonfarm income official poverty line (defined by the Office of Management and Budget and revised annually in accordance with sections 652 and 673(2) of the Omnibus Budget Reconciliation Act of 1981) for a family unit of 2 members; plus

"(ii) an excess shelter allowance (as defined in paragraph (4)).

A revision of the official poverty line referred to in clause (i) shall apply to medical assistance furnished during and after the second calendar quarter that begins after the date of publication of the revision.

"(B) CAP ON MINIMUM MONTHLY MAINTENANCE NEEDS ALLOWANCE.—The minimum monthly maintenance needs allowance established under subparagraph (A) may not exceed $1,500 (subject to adjustment under subsections (e) and (g)), or, if greater, the amount determined under State law, practice, or policy or the State plan (whether approved or not).

"(4) EXCESS SHELTER ALLOWANCE DEFINED.—In paragraph (3)(A)(ii), the term 'excess shelter allowance' means, for a community spouse, the amount by which the sum of—

"(A) the spouse's expenses for rent or mortgage payment (including principal and interest), taxes and insurance and, in the case of a condominium or cooperative, required maintenance charge, for the community spouse's principal residence, and

"(B) the standard utility allowance (used by the State under section 5(e) of the Food Stamp Act of 1977) or, if the State does not use such an allowance, the spouse's actual utility expenses,

exceeds 30 percent of the amount described in paragraph (3)(A)(i), except that, in the case of a condominium or cooperative, for which a maintenance charge is included under subparagraph (A), any allowance under subparagraph (B) shall be reduced to the extent the maintenance charge includes utility expenses.

"(5) COURT ORDERED SUPPORT.—If a court has entered an order against an institutionalized spouse for monthly income for the support of the community spouse, the community spouse monthly income allowance for the spouse shall be not less than the amount of the monthly income so ordered.

"(e) NOTICE AND FAIR HEARING.—

"(1) NOTICE.—Upon—

"(A) a determination of eligibility for medical assistance of an institutionalized spouse, or

"(B) a request by either the institutionalized spouse, or the community spouse, or a representative acting on behalf of either spouse,

each State shall notify both spouses (in the case described in subparagraph (A)) or the spouse making the request (in the case described in subparagraph (B)) of the amount of the community spouse monthly income allowance (described in subsection (d)(1)(B)), of the amount of any family allowances (described in subsection (d)(1)(C)), of the method for computing the amount of the community spouse resources allowance permitted under subsection (f), and of the spouse's right to a fair hearing under this subsection respecting ownership or availability of income or resources, and the determination of the community spouse monthly income or resource allowance.

"(2) FAIR HEARING.—If either the institutionalized spouse or the community spouse is dissatisfied with a determination of—

"(A) the community spouse monthly income allowance because the amount of the minimum monthly maintenance needs allowance (established under subsection (d)(3)) is not adequate to support the community spouse without financial duress;

"(B) the amount of monthly income otherwise available to the community spouse (as applied under subsection (d)(2)(B));

"(C) the computation of the spousal share of resources under subsection (c)(1);

"(D) the attribution of resources under subsection (c)(2); or

"(E) the determination of the community spouse resource allowance (as defined in subsection (f)(2));

such spouse is entitled to a fair hearing described in section 1902(a)(3) with respect to such determination. If either such spouse establishes that the minimum monthly maintenance needs allowance or the community spouse resource allowance (in relation to the amount of income generated by such an allowance) is not adequate to support the community spouse without financial duress, there shall be substituted, for the minimum monthly maintenance needs allowance in subsection (d)(2)(A) (or for the community spouse resource allowance under subsection (f)(2)), an amount adequate to support the community spouse without financial duress.

"(f) PERMITTING TRANSFER OF RESOURCES TO COMMUNITY SPOUSE.—

"(1) IN GENERAL.—An institutionalized spouse may, without regard to section 1917, transfer to the community spouse (or to another for the sole benefit of the community spouse) an amount equal to the community spouse resource allowance (as defined in paragraph (2)), but only to the extent the resources of the institutionalized spouse are transferred to (or for the sole benefit of) the community spouse. The transfer under the preceding sentence shall be made not later than one year after the date of the initial determination of eligibility or such time as is necessary to obtain a court order under paragraph (4) (whichever is longer)

"(2) COMMUNITY SPOUSE RESOURCE ALLOWANCE DEFINED.—In paragraph (1), the 'community spouse resource allowance' for a community spouse is an amount (if any) by which—

"(A) the greatest of—

"(i) $12,000 (subject to adjustment under subsection (g)), or, if greater, the amount determined under State law, practice, or policy or under the State plan (whether approved or not);

"(ii) the lesser of (I) the spousal share computed under subsection (c)(1), or (II) 4 times the amount described in clause (i);

"(iii) the amount established under subsection (e)(2); or

"(iv) the amount transferred under a court order under paragraph (3), exceeds

"(B) the amount of the resources otherwise available to the community spouse (determined without regard to such an allowance).

"(3) TRANSFERS UNDER COURT ORDERS.—If a court has entered an order against an institutionalized spouse for the support of the community spouse, section 1917 shall not apply to amounts of resources transferred pursuant to such order for the support of the spouse or a family member (as defined in subsection (d)(1)).

"(g) INDEXING DOLLAR AMOUNTS.—For services furnished during a calendar year after 1988, the dollar amounts specified in subsections (d)(3)(B) and (f)(2)(A)(i) shall be increased by the same percentage as the percentage increase in the consumer price index for all urban consumers (all items; U.S. city average) between September 1987 and the September before the calendar year involved.

"(h) DEFINITIONS.—In this section:

"(1) The term 'institutionalized spouse' means an individual who—

"(A) is in a hospital, skilled nursing facility, or intermediate care facility, or who (at the option of the State) is described in section 1902(a)(10)(A)(ii)(VI), and

"(B) is married to a spouse who is not in a hospital, skilled nursing facility, or intermediate care facility;

but does not include any such individual who is not likely to meet the requirements of subparagraph (A) for at least 30 consecutive days.

"(2) The term 'community spouse' means the spouse of an institutionalized spouse.".

(b) TAKING INTO ACCOUNT CERTAIN TRANSFERS OF ASSETS.—Subsection (c) of section 1917 (42 U.S.C. 1396p) is amended to read as follows:

"(c)(1) In order to meet the requirements of this subsection (for purposes of section 1902(a)(49)(B)), the State plan must provide for a period of ineligibility in the case of an institutionalized individual (as defined in paragraph (3)) who, at any time during the 26-month period immediately before the individual's application for medical assistance under the State plan, disposed of resources for less than fair market value. The period of ineligibility shall begin with the month in which such resources were transferred and the number of months in such period shall be equal to (A) the total uncompensated value of the resources so transferred, divided by (B) the average cost, to a private patient at the time of the application, of nursing home care in the State or, at State option, in the community in which the individual is institutionalized.

"(2) An individual shall not be ineligible for medical assistance by reason of paragraph (1) to the extent that—

"(A) the resources transferred were a home and title to the home was transferred to—

"(i) the spouse of such individual;

"(ii) a child of such individual who is under age 21, or (with respect to States eligible to participate in the State program established under title XVI) is blind or permanently and totally disabled, or (with respect to States which are not eligible to participate in such program) is blind or disabled as defined in section 1614;

"(iii) a sibling of such individual who has an equity interest in such home and who was residing in such individual's home for a period of at least one year immediately before the date of the individual's admission to the medical institution; or

"(iv) a son or daughter of such individual (other than a child described in clause (ii)) who was residing in such individual's home for a period of at least two years immediately before the date of such individual's admission to the medical institution, and who (as determined by the State) provided care to such individual which permitted such individual to reside at home rather than in an institution;

"(B) the resources were transferred to (or to another for the sole benefit of) the community spouse, as defined in section 1921(h)(2), or the individual's child who is blind or permanently and totally disabled;

"(C) a satisfactory showing is made to the State (in accordance with any regulations promulgated by the Secretary) that (i) the individual intended to dispose of the resources either at fair market value, or for other valuable consideration, or (ii) the resources were transferred exclusively for a purpose other than to qualify for medical assistance; or

"(D) the State determines that denial of eligibility would work an undue hardship.

"(3) In this subsection, the term 'institutionalized individual' means an individual who—

"(A) is an inpatient in a hospital, skilled nursing facility, or intermediate care facility, and

"(B) is required, as a condition of receiving services in such institution under the State plan, to spend for costs of medical care all but a minimal amount of the individual's income required for personal needs.

"(4) A State may not provide for any period of ineligibility for an institutionalized individual due to transfer of resources for less than fair market value except in accordance with this subsection.".

(c) CONFORMING AMENDMENT.—Section 1902(a) (42 U.S.C. 1396a(a)) is amended—

(1) in paragraph (10)(C)(i)(III), by striking "the same" each place it appears and inserting "no more restrictive than the";

(2) by striking "and" at the end of paragraph (47);

(3) by striking out the period at the end of the paragraph (48) and inserting "; and", and

(4) by inserting after paragraph (48) the following new paragraph:

"(49)(A) meet the requirements of section 1921 (relating to protection of community spouses), and (B) meet the requirement of section 1917(c) (relating to transfer of assets)."; and

(6) by adding at the end the following new sentence: "For purposes of paragraph (10), methodology is considered to be 'no more restrictive' if, using the methodology, additional individuals may be eligible for medical assistance and no individuals who are otherwise eligible are made ineligible for such assistance.".

(d) STUDY OF MEANS OF RECOVERING COSTS OF NURSING FACILITY SERVICES FROM ESTATES OF BENEFICIARIES.—The Secretary of Health and Human Services shall study the means for recovering amounts from estates of deceased medicaid beneficiaries (or the estates of the spouses of such deceased beneficiaries) to pay for the medical assistance for skilled nursing facility or intermediate care facility services furnished, under title XIX of the Social Security Act, to such medicaid beneficiaries. The Secretary shall report to Congress, not later than December 31, 1988, on such means, and include appropriate recommendations for changes in legislation.

(e) Effective Date.—(1) Except as provided in paragraphs (2) and (3), the amendments made by this section shall apply to payments under title XIX of the Social Security Act for calendar quarters beginning on or after January 1, 1988, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act.

(3)(A) Subsection (c) of section 1921 of the Social Security Act (as inserted by subsection (a)) shall apply only to institutionalized individuals who begin continuous periods of institutionalization on or after January 1, 1988.

(B) The amendments made by subsection (b) shall apply with respect to resources transferred on or after January 1, 1988.

SEC. 15. STUDIES OF LONG-TERM CARE.

(a) Institute of Medicine Study.—

(1) The Secretary of Health and Human Services (in this subsection referred to as the "Secretary") shall request the National Academy of Sciences, acting through the Institute of Medicine (in this subsection referred to as the "Academy" and the "Institute", respectively), to enter into a contract under which the Institute will conduct a study to—

(A) explore the options for the private funding of a portion of long-term care (including methods by which changes in Federal laws, including tax laws, could facilitate the development of such funding), and determine whether such options would be effective as compared to public financing alternatives and would be beneficial to the broad spectrum of populations (including children and adults who have attained and have not attained retirement age) requiring protection.

(B) analyze the effect that the provision of various types of private funding of long-term care would have on public funding of such care,

(C) review various options for public sector long-term care coverage, both means-tested and universal, with respect to their effects on both current and future State and Federal spending for health care,

(D) review the effectiveness, quality of life provided, effect on family caregivers, and the cost implications of community-based long-term care services, including the types of limits necessary to assist beneficiaries and providers in preventing the overutilization of such services,

(E) analyze, for each approach to the provision of long-term care, the relative payments derived from users of long-term care, non-utilizing elderly, and employed persons (including both pre-funding and pay-as-you-go payments), and

(F) review the sources of financing and the coverage of long-term care services in other developed nations and the implications of these findings on the development of similar policies in the United States.

(2) In conducting the study under paragraph (1), the Institute shall take into account—

(A) the effect that impending demographic changes (both near-term and long-term) will have on the various approaches to service utilization and funding,

(B) the impact of the various approaches to funding, both public and private, on access to long-term care services by individuals of all age groups (including children and adults who have attained and have not attained retirement age), individuals of different socioeconomic and minority groups, and women, and

(C) the effect that membership in these different groups has on the need, the ability to pay, and access to quality long-term care.

(3) The Secretary shall enter into appropriate arrangements with the Academy under which the Secretary shall be responsible for expenses incurred by the Academy in connection with the study required by paragraph (1). The Secretary shall transfer from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund amounts necessary for funding such study.

(4) Not later than October 1, 1989, the Institute shall submit to the Secretary, to the Committee on Finance of the Senate, and to the Committee on Energy and Commerce and the Committee on Ways and Means of the House of Representatives, a report that—

(A) describes the study conducted under this subsection,

(B) includes a statement of the data obtained under the study, and

(C) specifies administrative actions and changes in law that the Institute considers to be appropriate to implement the findings of the study.

(b) Study of Tax Incentives for Purchase of Coverage for Long-Term Care.—

(1) The Secretary of the Treasury (in this subsection referred to as the "Secretary") shall conduct a study of Federal tax policies to promote the private financing of long-term care. The study shall identify alternative methods of creating incentives, through the tax system, to encourage individuals to purchase insurance coverage for long-term care. The study shall also consider the cost to the United States Treasury and the potential benefits to consumers, including whether the incentives would benefit all or most of the population requiring protection.

(2) The Secretary shall conduct the study required by paragraph (1) in consultation with representatives of the insurance industry, providers of long-term care, and consumers.

(3) The Secretary shall report the results of the study required by paragraph (1) to the Congress not later than April 1, 1988, together with the Secretary's recommendations for any changes in Federal law that the Secretary determines to be appropriate to promote the private financing of long-term care.

(4) For purposes of this subsection, the term "long-term care" includes care and services provided by nursing homes, home health agencies, and other mechanisms for the delivery of long-term care services.

SEC. 16. CASE MANAGEMENT DEMONSTRATION PROJECTS.

(a) In General.—Within 12 months after the date of the enactment of this Act, the Secretary of Health and Human Services (in this section referred to as the "Secretary") shall establish not less than six demonstration projects under which a utilization and quality control peer review organization with a contract with the Secretary under part B of title XI of the Social Security Act (in this section referred to as a "PRO") agrees to provide case management services to medicare beneficiaries with selected catastrophic illnesses.

(b) Purpose of Projects.—It is the purpose of the demonstration projects established under this section to provide the Secretary and the Congress with the information necessary—

(1) to evaluate the appropriateness of providing case management services under the medicare program for individuals with catastrophic illnesses, and

(2) to determine the most effective approach to implementing a case management system under the program for such individuals.

(c) Agreement.—The agreement entered into under subsection (a) shall specify—

(1) the catastrophic illnesses with respect to which case management services will be provided under the project,

(2) the payments to be made to the PRO for carrying out the project, and

(3) such other terms and conditions as the Secretary and the PRO may agree to.

(d) Waivers.—The Secretary shall waive any provisions of part B of title XI of the Social Security Act and title XVIII of such Act that the Secretary determines would prevent the establishment of a demonstration project under this section.

(e) Duration.—

(1) Except as provided in paragraph (2), a demonstration project under this section shall be conducted for a one-year period.

(2) The Secretary may terminate a demonstration project before the end of the one-year period specified in paragraph (1) if the Secretary determines that the State conducting the project is not in substantial compliance with the terms of the agreement entered into under subsection (a).

(f) Information and Reports.—

(1) A PRO with an agreement under subsection (a) shall furnish the Secretary with such information as the Secretary determines to be necessary to evaluate the results of the project conducted by the PRO.

(2)(A) The Secretary shall submit to the Congress an interim report on the projects conducted under this section based upon information that is derived from the first six months of project operations and shall set forth any interim findings, recommendations, and conclusions that the Secretary determines to be appropriate.

(B) The Secretary shall submit to the Congress a final report on the demonstration projects conducted under this section based upon data derived from the 12 months in which the projects were in operation and shall update the findings, recommendations, and conclusions set forth in the interim report submitted under paragraph (1).

(g) Authorization To Use Certain Funds.—

(1) The Secretary shall transfer from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Insurance Trust Fund amounts not to exceed a total of $2,000,000 for the purpose of carrying out the demonstration projects under this section. Amounts shall be transferred under this paragraph without regard to amounts appropriated in advance in Appropriation Acts.

(2) Subject to paragraph (1), payments shall be made from each of the trust funds specified in paragraph (1) in such amounts as the Secretary determines to be fair and equitable.

SEC. 17. REPEAL OF AUTHORITY TO ADMINISTER PROFICIENCY EXAMINATIONS.

(a) Repeal.—Effective October 1, 1987, section 1123 (42 U.S.C. 1320a-2) is repealed.

(b) Effect of Repeal.—Nothing in the amendment made by subsection (a) shall be construed as affecting—

(1) the authority of the Secretary of Health and Human Services to conduct the program established under section 1123 of the Social Security Act prior to October 1, 1987, or

(2) the qualification of any individual, who has been determined under such program to be qualified to perform the duties and functions of a health care specialty, to perform such duties and functions.

SEC. 18. TRUSTEE COMMENTS ON ACTUARIAL SOUNDNESS OF BASIC AND SUPPLEMENTAL CATASTROPHIC BENEFIT PREMIUMS.

(a) HI Trust Fund.—Section 1817(b) (42 U.S.C. 1395i(b)) is amended by inserting "an evaluation of the extent to which the premiums collected under sections 1839(g) and section 1839A are sufficient to pay for catastrophic coverage benefits (as defined in section 1839(g)(2)(C)(i)) and related administrative expenses payable from the Trust Fund and" after "also include".

(b) SMI Trust Fund.—Section 1841(b) (42 U.S.C. 1395t(b)) is amended by inserting "an evaluation of the extent to which the premiums collected under sections 1839(g) and section 1839A are sufficient to pay for catastrophic coverage benefits (as defined in section 1839(g)(2)(C)(i)) and related administrative expenses payable from the Trust Fund and" after "also include".

(c) Effective Date.—The amendments made by this section shall apply with respect to reports submitted for fiscal year 1988 and each fiscal year thereafter.

SEC. 19. TECHNICAL AMENDMENT RELATING TO WAIVERS FOR HOME- AND COMMUNITY-BASED SERVICES.

(a) Waivers for Home- and Community-Based Services.—Section 1915(c)(3) (42 U.S.C. 1396n(c)(3)) is amended by striking "and section 1902(a)(10)(B) (relating to comparability)" and inserting in lieu thereof ", section 1902(a)(10)(B) (relating to comparability), and section 1902(a)(10)(C)(i)(III) (relating to single standard for income and resource eligibility)".

(b) Effective Date.—The amendment made by subsection (a) shall be effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1986.

SEC. 20. TECHNICAL AMENDMENTS RELATING TO NEW JERSEY RESPITE CARE PILOT PROJECT.

(a) Conditions of Agreement.—Section 9414(b) of the Omnibus Budget Reconciliation Act of 1986 is amended—

(1) by redesignating paragraphs (2), (3), and (4), as paragraphs (3), (4), and (5), respectively,

(2) by inserting after paragraph (1) the following new paragraph:

"(2) provide that the State may submit a detailed proposal describing the project (in lieu of a formal request for the waiver of applicable provisions of title XIX of the Social Security Act) and that submission of such a description by the State will be treated as such a request for purposes of subsection (g),", and

(3) in paragraph (3), as redesignated by paragraph (1) of this subsection, by striking "if the project" and all that follows through "Act" the second place it appears and inserting in lieu thereof "the State shall utilize a post-eligibility cost-sharing formula based on the available income of participants with income in excess of the nonfarm income official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981)".

(b) Definitions.—

(1) Section 9414(a) of the Omnibus Budget Reconciliation Act of 1986 is amended by striking "elderly and disabled individuals" and inserting in lieu thereof "eligible individuals".

(2) Section 9414(c) of the Omnibus Budget Reconciliation Act of 1986 is amended to read as follows:

"(c) Definitions.—For purposes of this section—

"(1) the term 'eligible individual' means an individual—

"(A) who is elderly or disabled,

"(B)(i) whose income (not including the income of the spouse or family of the individual) does not exceed 300 percent of the amount in effect under section 1611(a)(1)(A) of the Social Security Act (as increased pursuant to section 1617 of such Act), or

"(ii) in the case of an individual and spouse who are both dependent on a caregiver, whose combined incomes do not exceed such amount,

"(C) at the option of the State, who meets a resource standard established by the State,

"(D) who is at risk of institutionalization unless the individual's caregiver is provided with respite care, and

"(E) who has been determined to meet the requirements of subparagraphs (A) through (D) in accordance with an application process designed by the State; and

"(2) the term 'respite care services' shall include—

"(A) short-term and intermittent—

"(i) companion or sitter services (paid as well as volunteer),

"(ii) homemaker and personal care services,

"(iii) adult day care, and

"(iv) inpatient care in a hospital, a skilled nursing facility, or an intermediate care facility (not to exceed a total of 14 days for any individual), and

"(B) peer support and training for family caregivers (using informal support groups and organized counseling).".

(c) Provisions Subject to Waiver.—Section 9414(g) of the Omnibus Budget Reconciliation Act of 1986 is amended by inserting "section 1902(a)(10)(C)(i)(III)," after "section 1902(a)(10)(B),".

(d) Effective Date.—The amendments made by subsections (a), (b), and (c) shall be effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1986.

SEC. 21. MAINTENANCE OF EFFORT.

(a) In General.—During the period described in subsection (c), if an employer provides health care benefits to an employee or retired former employee (including a Federal employee or retired former employee) that are duplicative of new or improved health care benefits provided under this Act or the amendments made by this Act, the employer shall—

(1) provide additional benefits to the employee or retired former employee that are at least equal in value to the duplicative benefits; or

(2) refund to the employee or retired former employee an amount equal to the actuarial present value of the duplicative benefits.

(b) Regulations.—The Secretary of Labor may issue such regulations as are necessary to carry out this section.

(c) Effective Date.—This section shall be effective—

(1) during the 1-year period beginning on the date of enactment of this Act; or

(2) in the case of an employer who is providing duplicative health care benefits to employees or retired former employees under a collective bargaining agreement that is in effect on the date of enactment of this Act, until the expiration of the agreement.

SEC. 22. RATE REDUCTION FOR MEDICARE ELIGIBLE FEDERAL EMPLOYEES.

(a)(1) The Office of Personnel Management shall, in consultation with carriers offering health benefits plans contracted pursuant to section 8902 of title 5, United States Code, reduce the rates charged medicare eligible individuals participating in such health benefit plans, by the amount, prorated for each covered medicare eligible, of the estimated cost of medical services and supplies which, but for the catastrophic coverage benefits (as defined in section 1839(g)(2)(C)(i) of the Social Security Act, as added by section 5(a) of this Act) would have been payable by such plans.

(2) The reduced rates as provided under paragraph (1), shall apply as of the effective date of the medicare catastrophic coverage as provided under section 23(a).

(b) Authorization of Availability of Employee Health Benefits Fund for Rate Reduction.—Funds in the Employees Health Benefits Fund established under section 8909 of title 5, United States Code, are available without fiscal year limitation for costs incurred by the Office of Personnel Management in making rate reductions provided under this section.

(c) Definition.—For purposes of this section the term "medicare eligible individual" means any annuitant, survivor of an annuitant, or former spouse of an annuitant—

(A) who is—

(i) otherwise eligible for benefits under Chapter 89 of title 5, United States Code;

(ii) eligible for benefits under part A of title XVIII of the Social Security Act; and

(iii) covered by the insurance program established under part B of such title; and

(B) for whom benefits paid under title XVIII of the Social Security Act are the primary source of health care benefits.

SEC. 23. STUDY AND REPORTS BY THE OFFICE OF PERSONNEL MANAGEMENT ON OFFERING MEDICARE SUPPLEMENTAL PLANS TO FEDERAL MEDICARE ELIGIBLE INDIVIDUALS, AND OTHER PROGRAM CHANGES.

(a) Study and Report.—(1) No later than April 1, 1989, the Director of the Office of Personnel Management shall conduct a study and submit a report to the Committee on Governmental Affairs of the Senate and the Committee on Post Office and Civil Service of the House of Representatives regarding changes to the health benefits program established under chapter 89 of title 5, United States Code, that may be required to incorporate plans designed specifically for medicare eligible individuals and to improve the efficiency and effectiveness of the program.

(2) Any medicare supplemental plan recommended by the Director of the Office of Personnel Management shall not duplicate benefits for which payment may be made under title XVIII of the Social Security Act, however such recommendation—

(A) shall cover expenses which are not payable under such title by reason of deductibles or coinsurance amounts; and

(B) may offer additional reimbursement—

(i) where benefits under such title are limited by fee schedule; and

(ii) for benefits not covered under such title which may be of value to medicare eligible individuals.

(b) Feasibility Study and Report.—No later than April 1, 1989, the Director of the Office of Personnel Management shall report to the appropriate committees of the Congress whether it is feasible to adopt such standards as issued by the National Association of Insurance commissioners as required by section 1882 of the Social Security Act (42 U.S.C. 1395ss) for medicare supplemental policies, when providing medicare supplemental plans as a type of health benefits plan available for Federal employees pursuant to chapter 89 of title 5, United States Code.

SEC. 24. STUDY OF ADULT DAY CARE SERVICES.

(a) Survey of Current Adult Day Care Services.—The Secretary of Health and Human Services shall conduct a survey of adult day care services in the United States to collect information concerning—

(1) the scope of such services and the extent of their availability;

(2) the characteristics of entities providing such services;

(3) licensure, certification, and other quality standards that are applied to those providing such services;

(4) the cost and financing of such services; and

(5) the characteristics of the people who use such services.

(b) Report.—The Secretary shall report to Congress, by not later than 1 year after the date of the enactment of this Act, on the information collected in the survey. Based on such information, the Secretary shall include in the report recommendations concerning appropriate standards for coverage of adult day care services under medicare, including defining chronically dependent individuals, defining services included in adult day care services, establishing qualifications of providers of adult day care services, and establishing a reimbursement mechanism.

(c) Adult Day Care Services Defined.—In this section, the term "adult day care services" means medical or social services provided in an organized nonresidential setting to chronically impaired individuals who are not inpatients in a medical institution.

SEC. 25. TREATMENT OF GARDEN STATE HEALTH PLAN.

(a) Section 1903(m) of the Social Security Act (42 U.S.C. 1396b(m)) is amended—

(1) by adding at the end the following new paragraph:

"(6)(A) For purposes of this subsection and section 1902(e)(2)(A), in the case of the State of New Jersey, the term 'contract' shall be deemed to include an undertaking by the State agency, in the State plan under this title, to operate a program meeting all requirements of this subsection.

"(B) The undertaking described in subparagraph (A) must provide—

"(i) for the establishment of a separate entity responsible for the operation of a program meeting the requirements of this subsection, which such entity may be a subdivision of the State agency administering the State plan under this title;

"(ii) for separate accounting for the funds used to operate such program;

"(iii) for setting of the capitation rates and any other payment rates for services provided in accordance with the subsection using a methodology satisfactory to the Secretary designed to ensure that total Federal matching payments under this title for such services will be lower than the matching payments that would be made for the same services, if provided under the State plan on a fee for service basis to an actuarially equivalent population; and

"(iv) that the State agency will contract, for purposes of meeting the requirement under section 1902(a)(30)(C), with an organization or entity that under section 1154 of the Social Security Act reviews services provided by an eligible organizaton pursuant to a contract under section 1876 of the Social Security Act for the purpose of determining whether the quality of services meets professionally recognized standards of health care.

"(C) The undertaking described in subparagraph (A) shall be subject to approval and annual re-approval by the Secretary in the same manner as a contract under this subsection.

"(D) The undertaking described in subparagraph (A) shall not be eligible for a waiver under section 1915(b)."; and

(2) by striking out, in paragraph (2)(F), all that precedes "may restrict the period" and inserting instead the following:

"(F) In the case of—

"(i) a contract with an entity described in subparagraph (G) or with a qualified health maintenance organization (as defined in section 1310(d) of the Public Health Service Act) which meets the requirement of subparagraph (A)(ii), or

"(ii) a program operated pursuant to an understanding described in paragraph (6) in which at least 25 percent of the membership enrolled on a prepaid basis are individuals who (I) are not insured for benefits under part B of title XVIII or eligible for benefits under this title, and (II) (but only in the case of such individuals whose prepaid payments are made in whole or in part by any government entity) had the opportunity at the time of enrollment in the program to elect other coverage of health care costs that would have been paid in whole or in part by any government entity,

A State plan".

(b) Section 1902(e)(2)(A) (42 U.S.C. 1396a(e)(2)(A)) is amended by striking out "section 1903(m)(2)(G)" and inserting instead "paragraph (2)(G) or (6) of section 1903(m)".

SEC. 26. DELAY IN ORGAN PROCUREMENT REQUIREMENTS.

Section 9318(b) of the Omnibus Budget Reconciliation Act of 1986, as amended by section 107(c) of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987, is amended by striking "November 21, 1987" each place it appears and inserting in lieu thereof "December 31, 1988".

SEC. 27. TRANSITIONAL PROVISIONS.

Part B of title XVIII is amended by inserting after section 1839A the following:

"TRANSITIONAL PROVISIONS

"Sec. 1839B. (a) Notwithstanding any other provision of this Act—

"(1) the monthly catastrophic drug benefit premium amount shall in no event exceed—

"(A) for 1990, $0.90; and

"(B) for 1993, $4.05,

"(2) for calendar year 1990, section 1839(g)(3)(A)(i) shall be applied by substituting '40 percent' for '50 percent', and section 1839A(b)(2)(B)(iii) shall be applied by substituting '60 percent' for '50 percent', and

"(3) for calendar year 1991, section 1839(g)(3)(A)(i) shall be applied by substituting '45 percent' for '50 percent', and section 1839A(b)(2)(B)(iii) shall be applied by substituting '55 percent' for '50 percent'.

"(b) Notwithstanding the provisions of section 1839(g)(3)(A)(i)(I), for any calendar year after 1990, if the Secretary determines that—

"(1) it is appropriate to increase the contingency fund under such section so as to assure a smooth transition between cash outlays accounting to costs incurred accounting over a multi-year period, and

"(2) the monthly catastrophic drug benefit premium amount for such year as determined under section 1839(g)(3)(A) (without regard to clause (ii) of such section) is less than the limit in such clause (ii),

the Secretary may increase such premium (but in no event above the limit in such clause (ii)) by an amount no greater than 15 percent of such premium. Once such transition has been completed, the Secretary shall maintain such contingency fund on the basis of such costs incurred accounting method.".

SEC. 28. AUTHORITY TO REDUCE DEDUCTIBLE FOR COVERED OUTPATIENT DRUGS.

(a) In General.—Section 1833 (42 U.S.C. 1395l) is amended by adding at the end thereof the following new subsection:

"(p) Notwithstanding any other provision of this subsection, if the Secretary determines that sufficient revenue to pay all benefits and administrative costs, and to provide an adequate contingency margin (as determined by the Secretary) exists to do so, the Secretary may reduce the deductible under subsection (o)(1) to—

"(1) $500 in 1991;

"(2) $400 in 1992; and

"(3) $300 in 1993.".

(b) Effective Date.—The amendment made by subsection (a) shall become effective on the date of enactment of this Act.

SEC. 29. BENEFICIARY COSTS OF MEDICARE CATASTROPHIC INSURANCE.

(a) Findings.—The Senate finds that—

(1) the enactment of Medicare catastrophic insurance will provide 32,000,000 Medicare beneficiaries with important and far-reaching protection against the catastrophic costs of illness and disability, greatly reducing out-of-pocket liability for those who unfortunately incur high medical expenses,

(2) new Medicare catastrophic insurance benefits will be financed through premiums collected from all Medicare beneficiaries,

(3) the Department of Health and Human Services has announced that Medicare part B premiums will increase by 38.5 percent on January 1, 1988, because of an increase in costs of the current Medicare part B program,

(4) Medicare beneficiaries already are liable for Medicare premiums equal to 2.9 percent of their median per capita income, and

(5) it is the responsibility of Congress to ensure that additional premiums incurred for catastrophic loss protection do not reach such levels as to unreasonably increase the out-of-pocket cost burden on Medicare beneficiaries.

(b) Sense of the Senate.—

(1) It is the sense of the Senate that conferees on the Medicare Catastrophic Loss Prevention Act of 1987 take all necessary steps to ensure that cost controls on new catastrophic benefits, particularly coverage of prescription drugs, are sufficient to protect program integrity, prevent escalation of costs, and reduce amounts required for premium financing.

(2) It is the sense of the Senate that Senate conferees on the Medicare Catastrophic Loss Prevention Act of 1987 be instructed to take

all feasible steps to minimize beneficiary costs by keeping premiums at the lowest possible level, ensuring that year-to-year premium increases are gradual and predictable, ensuring that income-based supplemental premiums do not unduly burden middle-income older Americans, and ensuring that the combined basic and supplemental premiums do not exceed the value of the program to beneficiaries.

SEC. 30. UNITED STATES BIPARTISAN COMMISSION ON COMPREHENSIVE HEALTH CARE.

(a) ESTABLISHMENT.—There is established a commission to be known as the United States Bipartisan Commission on Comprehensive Health Care (in this section referred to as the "Commission").

(b) DUTIES.—

(1) IN GENERAL.—The Commission shall—

(A) examine shortcomings in the current health care delivery and financing mechanisms that limit or prevent access of all individuals in the United States to comprehensive health care, and

(B) make specific recommendations to the Congress respecting Federal programs, policies, and financing needed to assure the availability of—

(i) comprehensive long-term care services for the elderly and disabled,

(ii) comprehensive health care services for the elderly and disabled, and

(iii) comprehensive health care services for all individuals in the United States.

(2) CONSIDERATIONS IN RECOMMENDATIONS.—In making its recommendations, the Commission shall consider—

(A) the amount and sources (consistent with principles of social insurance) of Federal funds to finance the needed services, including reallocations of existing Federal program funds, and

(B) the most efficient and effective manner of administering such programs.

(3) DEFINITIONS.—In this section:

(A) The term "comprehensive health care services" includes—

(i) inpatient hospital services (including mental health services);

(ii) skilled nursing facility services, intermediate care facility services, home health services, and other long-term health care services;

(iii) physician services and other outpatient health care services (including mental health services);

(iv) periodic general physical examinations, eye examinations, hearing examinations, dental examinations, foot examinations, and other preventive health care services; and

(v) prescription drugs, eyeglasses, hearing aids, orthopedic equipment, and dentures (both complete and partial).

(B) The term "comprehensive long-term care services" includes custodial and non-custodial services in facilities, as well as home and community-based services.

(c) MEMBERSHIP.—

(1) APPOINTMENT.—The Commission shall be composed of 15 members appointed as follows:

(A) The President shall appoint 3 members.

(B) The President Pro Tempore of the Senate shall appoint, after consultation with the minority leader of the Senate, 6 members of the Senate of whom not more than 4 may be of the same political party.

(C) The Speaker of the House of Representatives shall appoint, after consultation with the minority leader of the House of Representatives, 6 members of the House, of whom not more than 4 may be of the same political party.

(2) CHAIRMAN AND VICE CHAIRMAN.—The Commission shall elect a chairman and vice chairman from among its members.

(3) VACANCIES.—Any vacancy in the membership of the Commission shall be filled in the manner in which the original appointment was made and shall not affect the power of the remaining members to execute the duties of the Commission.

(4) QUORUM.—A quorum shall consist of 8 members of the Commission, except that 4 members may conduct a hearing under subsection e(1).

(5) MEETINGS.—The Commission shall meet at the call of its chairman or a majority of its members.

(6) COMPENSATION AND REIMBURSEMENT OF EXPENSES.—Members of the Commission are not entitled to receive compensation for service on the Commission. Members may be reimbursed for travel, subsistence, and other necessary expenses incurred in carrying out the duties of the Commission.

(d) STAFF AND CONSULTANTS.—

(1) STAFF.—The Commission may appoint and determine the compensation of such staff as may be necessary to carry out the duties of the Commission. Such appointments and compensation may be made without regard to the provisions of title 5, United States Code, that govern appointments in the competitive services, and the provisions of chapter 51 and subchapter III of chapter 53 of such title that relate to classifications and the General Schedule pay rates.

(2) CONSULTANTS.—The Commission may procure such temporary and intermittent services of consultants under section 3109(b) of title 5, United States Code, as the Commission determines to be necessary to carry out the duties of the Commission.

(e) POWERS.—

(1) HEARINGS AND OTHER ACTIVITIES.—For the purpose of carrying out its duties, the Commission may hold such hearings and undertake such other activities as the Commission determines to be necessary to carry out its duties.

(2) STUDIES BY GENERAL ACCOUNTING OFFICE.—Upon the request of the Commission, the Comptroller General shall conduct such studies or investigations as the Commission determines to be necessary to carry out its duties.

(3) COST ESTIMATES BY CONGRESSIONAL BUDGET OFFICE.—

(A) Upon the request of the Commission, the Director of the Congressional Budget Office shall provide to the Commission such cost estimates as the Commission determines to be necessary to carry out its duties.

(B) The Commission shall reimburse the Director of the Congressional Budget Office for expenses relating to the employment in the office of the Director of such additional staff as may be necessary for the Director to comply with requests by the Commission under subparagraph (A).

(4) DETAIL OF FEDERAL EMPLOYEES.—Upon the request of the Commission, the head of any Federal agency is authorized to detail, without reimbursement, any of the personnel of such agency to the Commission to assist the Commission in carrying out its duties. Any such detail shall not interrupt or otherwise affect the civil service status or privileges of the Federal employee.

(5) TECHNICAL ASSISTANCE.—Upon the request of the Commission, the head of a Federal agency shall provide such technical assistance to the Commission as the Commission determines to be necessary to carry out its duties.

(6) USE OF MAILS.—The Commission may use the United States mails in the same manner and under the same conditions as Federal agencies.

(7) OBTAINING INFORMATION.—The Commission may secure directly from any Federal agency information necessary to enable it to carry out its duties, if the information may be disclosed under section 552 of title 5, United States Code. Upon request of the Chairman of the Commission, the head of such agency shall furnish such information to the Commission.

(8) ADMINISTRATIVE SUPPORT SERVICES.—Upon the request of the Commission, the Administrator of General Services shall provide to the Commission on a reimbursable basis such administrative support services as the Commission may request.

(9) ACCEPTANCE OF DONATIONS.—The Commission may accept, use, and dispose of gifts or donations of services or property.

(f) REPORT.—

(1) REPORT ON COMPREHENSIVE LONG-TERM CARE SERVICES FOR THE ELDERLY AND DISABLED.—The Commission shall submit to Congress a report, not later than 6 months after the date of the enactment of this Act, containing its findings and recommendations regarding comprehensive long-term care services for the elderly and disabled. The report shall include detailed recommendations for appropriate legislative initiatives respecting such services.

(2) REPORT ON COMPREHENSIVE HEALTH CARE SERVICES.—The Commission shall submit to Congress a report, not later than 1 year after the date of the enactment of this Act, containing its findings and recommendations regarding comprehensive health care services for the elderly and disabled and comprehensive health care services for all individuals in the United States. The report shall include detailed recommendations for appropriate legislative initiatives respecting such services.

(g) TERMINATION.—The Commission shall terminate 30 days after the date of submission of the report required in subsection (f)(2).

(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $1,500,000 to carry out this section.

SEC. 31. EFFECTIVE DATES.

(a) IN GENERAL.—Except as provided in subsection (b), this Act and the amendments made by this Act shall apply to items and services furnished after, and premiums for months beginning after, December 31, 1987.

(b) EXCEPTIONS.—

(1) Notwithstanding section 1813(a)(1) of the Social Security Act, as amended by section 3(a)(2) of this Act, in the case of an individual with respect to whom—

(A) a spell of illness (as defined in section 1861(a) of the Social Security Act) begins before January 1, 1988, and

(B) a period of hospitalization (as defined in section 1813(a)(1) of the Social Security Act), which is included within that spell of illness, begins on or after January 1, 1988, and before February 1, 1988,

no inpatient hospital deductible shall be imposed with respect to such period of hospitalization (and such period of hospitalization shall not be taken into account in determining the application of such deductible to any subsequent period of hospitalization beginning for such individual on or before December 31, 1988).

(2) Notwithstanding sections 1812(a)(2)(A), 1812(b)(2), and 1813(a)(3) of the Social Security Act, as amended by sec-

tions 2(a)(2)(C), 2(a)(3)(B), and 3(a)(4) of this Act, respectively, in the case of an individual with respect to whom post-hospital extended care services (as defined in section 1861(i) of the Social Security Act) are furnished on December 31, 1987, the provisions of such sections (as they applied to post-hospital extended care services furnished on December 31, 1987) shall continue to apply to such individual until the end of the spell of illness during which such services were furnished.

(3) Notwithstanding section 1861(ff)(1) of the Social Security Act, as added by section 4(c)(2) of this Act, in determining when an individual has incurred out-of-pocket medical expenses (as defined in section 1861(ff)(3) of such Act) for calendar year 1988 that are equal to the medicare catastrophic limit established under section 1833(m) of such Act for that year, only expenses incurred on or after July 1, 1988, shall be taken into account.

(4) The amendments made by section 6 shall apply to taxable years ending after December 31, 1987.

(5) Sections 7A through 20 and 22 shall be effective as provided in such sections.

(6) Sections 29 and 30 shall be effective on the date of the enactment of this Act.

Mr. DURENBERGER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BYRD. Mr. President, I ask unanimous consent that further consideration of S. 1127 be indefinitely postponed.

The PRESIDENT OFFICER. Without objection, it is so ordered.

Mr. DURENBERGER. Mr. President, I am reminded by the feeling that I experience now, which is sort of the feeling of having been through a grinder all day long, as most assistant managers of these bills feel, is sort of about the way I felt at the end of the eighth inning of the last game of the World Series when I had spent all of my energy, as had most Minnesotans, on five playoff games, six and eight-ninths of a championship series, and there was hardly any gas left in the tank to get through the last three innings of the game.

And yet, within an hour, we were all out on the streets of downtown Minneapolis with the enthusiasm of youth and the vim and the vigor of a long night's sleep. And you would not have known that all of that energy appeared to have been spent.

In a sense, that is the feeling of those of us who have been working on catastrophic health insurance ever since we came to the U.S. Senate. This may not be a particularly historic occasion, as occasions in this place go, but what we have accomplished today is something that we have been waiting 22 years to accomplish in this body. And by a rare coincidence of a President who is sensitive to the need and a bipartisan effort in the House and Senate to satisfy that need, I think the U.S. Senate has today crafted a policy, a new social insurance policy, of which we can all be proud.

I did not miss the concern on the part of my colleagues today, particularly on the Republican side, about what things are going to be like 2 or 3 or 4 years from now.

I heard a lot of their predictions that, despite the best of intentions today, both the catastrophic program and the drug program are going to be in here, pleading for general revenue assistance, or payroll tax financing.

Mr. President, if I believed that, I would not be here today. If I believed that, I probably would not be in the U.S. Senate today. I would not have made the decision that I have made to run for reelection if I really believed that things had not changed around this place.

I am very proud, as I stand here tonight, of my colleagues in the Finance Committee, particularly the chairman of that committee, Senator BENTSEN, of Texas, and ranking member Senator BOB PACKWOOD, of Oregon, for having given me the opportunity to participate in what I do believe will be a historic change in the way we make social insurance policy in this country.

I think perhaps I can sense, because I spend so much time at Medicare reform, better than others that things are different today; that there is a sense of generational equity on the part of my generation; on the part of my parents generation; and that we are deeply concerned that we might be the first generation to leave our children less well off than we were left by our parents.

My parents have left me, and my generation, very well off and I am trying to repay that in many ways.

I think I will accomplish that. But, if I expect that my generation can have, perhaps, twice as much in retirement as my parents have, I have another think coming because my children, as we have heard here tonight, are more important to me than my own welfare.

So I think we have turned the corner with this bill. I hope that our colleagues on the House side who led the way on this, but did not have the time that we had to craft it more carefully, were watching the process here to make the catastrophic bill work better and to add a drug benefit and to follow traditional insurance rules as we did it and also to follow some nontraditional insurance rules as far as American social insurance is concerned. But this program is being paid for by those who will benefit from it. It is not being paid for by others.

I think that is the change that we can point to 3 or 4 years from now and say: We were right. I think those who claim today that we might be wrong will be very happy, in 1990 or 1991 or 1992, to say we were right.

I am very grateful, as I say, to my colleagues for this opportunity and I am particularly grateful to all of the staff without whom none of us are able to craft the compromises and also seize the opportunities that we all do.

My own staff, Helen Darling, Ed Mihalski, the Republican staff, and the staff on the Finance Committee side and particularly a woman by the name of Marina Weiss, who we all have come to appreciate a great deal more now that she is in the majority and probably appreciate her a lot because she never acts like she is in the majority as we, who have had that experience, are wont to think that we act.

She has been most helpful to all of us in this process and in some related processes. Obviously our appreciation has been expressed during the course of this day to the President of the United States for launching us on this track and to the Secretary of HHS, the people at OMB, and to all the others who were part of the efforts to put this final compromise together.

I am particularly gratified by the fact that there were only two amendments that had to be voted on and on final passage only 11 of our colleagues expressed themselves differently from those of us in the majority. I think there is plenty of credit to go around for this. A great test will be in how we implement this bill in the future.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The majority leader.

Mr. BYRD. Mr. President, I thank the distinguished manager of the bill, Mr. BENTSEN, and the distinguished ranking manager of the bill, Mr. DURENBERGER, for the craftsmanship, the skill, the dedication, the vision that they have demonstrated in leading the Senate to the passage of this historic bill. I compliment them highly.

BICENTENNIAL MINUTE

OCTOBER 27, 1787: FIRST FEDERALIST PAPER PUBLISHED

Mr. DOLE. Mr. President, 200 years ago today the first letter signed "Publius" appeared in the New York Independent Journal. Actually written by Alexander Hamilton, the letter was part of a campaign to win ratification of the Constitution in New York. Collectively using the pseudonym "Publius," Hamilton, James Madison, and John Jay published 85 letters which were then collected and published as the Federalist Papers.

This remarkable piece of scholarship and public relations has been called one of the three most important documents in American history, ranking only after the Constitution and the Declaration of Independence. The courts have frequently cited the Federalist Papers as evidence of what the framers intended, and serious students of American Government still draw insights into the workings of our political system from its pages.

Two of the letters, numbers 62 and 63, written by James Madison, deal specifically with the U.S. Senate. Under the Articles of Confederation there had only been a one-body Congress. Madison argued the necessity of the Senate by noting "the propensity of all single and numerous assemblies, to yield to the impulse of sudden and violent passions, and to be seduced by factious leaders, into intemperate and pernicious resolutions." Madison anticipated that the Senate, with its longer term of service, would "possess great firmness" and resist such pressures.

Although Senators at that time were elected by State legislatures, Madison concluded that when balanced by the popularly elected House, that the Senate could never become "an independent and aristocratic body," and that it could exert its influence only by "a display of enlightened policy, and attachment to the public good."

THE SPIRIT OF DAKOTA AWARD—A TRIBUTE TO THE WOMEN OF SOUTH DAKOTA

Mr. PRESSLER. Mr. President, this Friday evening in Huron, SD, a special tribute will be held honoring the many women who helped build South Dakota. The occasion is the presentation of the first annual "Spirit of Dakota" award to Winifred Lorentson of Miller, SD.

The Spirit of Dakota award will be represented by a 9-foot statue of a pioneer woman, sculpted by Dale Lamphere, a South Dakota artist from the Black Hills. The unveiling of this statue on Friday evening is the first statewide recognition of the important role women played in shaping South Dakota. I personally feel this recognition is long overdue and commend all of those responsible for putting this event together.

Mr. President, over 70 women from across South Dakota were nominated for this prestigious award. These women are all winners in their own right. I rise today to honor Mrs. Lorentson in particular, and all of the nominees who have contributed so much to the great State of South Dakota and its citizens.

Mr. President, I ask unanimous consent that an article which appeared in the October 25, 1987, Huron Daily Plainsman be printed in the RECORD. It describes the life and many contributions of Mrs. Lorentson in further detail and includes a list of all of the nominees who were considered for this prestigious award.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

A LIFE OF GIVING TO OTHERS DESCRIBES FIRST SPIRIT WINNER—WINIFRED LORENTSON

The Spirit of Dakota sculpture portrays a pioneer woman facing the future, undaunted by adversity.

The first woman to receive an award reflecting this spirit in South Dakota is Winifred Lorentson, a former county school superintendent and single parent who still serves as a role model in the Miller community.

"I have always thought of her as the perfect lady," recalls Loretta King, who served as a teacher under Lorentson's administration.

Like the image in the sculpture, Mrs. Lorentson has been swept by the winds of the prairie and of life.

While teaching at St. Lawrence High School from 1922 until 1924 she spent 35 minutes walking from her home in Miller to the school—even through the cold winter months.

Her husband, Carl "Edwin," died early in their marriage and Mrs. Lorentson went on to raise their two sons as a single parent while serving as Hand County Superintendent of Schools for 36 years, founding the Miller Business and Professional Women's Club in 1942 and helping establish the county library.

Members of the Spirit of Dakota award committee selected the recipient from a group of 70 women nominated throughout South Dakota.

The committee included Donna Christen, chairman, and Marilyn Hoyt, vice chairman, both of Huron; Martha L. Baker, Sioux Falls; Renee Doyle, Yankton, Susan Edwards, Pierre; Carole Hillard, Rapid City; Beverly W. Lowrie, Watertown; Mary McClure, Redfield, and LInda Mickelson, Pierre.

The judging criteria required that the nominee be a "woman with roots deep in Dakota whose courage and strength of character has developed her family and community. She should also be a woman who has represented social, cultural and educational advancement for others."

The recipient was born Nov. 12, 1893, five miles south of St. Lawrence to Mr. and Mrs. William James (Lillie Williams) Davey, one of their five children. Davey came to South Dakota in 1884 and laid claim to 131 acres of land in the St. Lawrence area.

The pioneer daughter graduated from St. Lawrence Grade School in 1908. Her family later moved to Mitchell where they operated a rooming house. She graduated with a B.A. degree from Dakota Wesleyan University in 1917 and then completed post-graduate studies at the University of Chicago that summer.

Three years later she married Carl "Edwin" Lorentson while they were both teaching at Highmore High School. He became principal of Ree Heights Public School in the fall of 1921.

Due to the tuberculosis he had contracted during World War I, the couple moved to California in 1926 and then to Arizona before he died in 1930.

Mrs. Lorentson says the greatest happiness in her life was the birth of her sons, even though her first son was stillborn in 1921.

Edwin "Carl" Lorentson, born in 1926, graduated from Harvard Medical School and is a surgeon in Chicago. And William "Davey" Lorentson was born three years later. He graduated from the Unviersity of South Dakota and received an MBA degree from the University of Minnesota. He has been employed with the General Electric Company in California as a manager in finance since 1954.

Mrs. Lorentson has eight grandchildren and is looking forward to great-grandchildren in the future.

After the death of her husband, Mrs. Lorentson returned to Miller to live with her mother whom she credits with helping raise her sons.

Leaving her young sons at home, the mother began teaching home economics (her favorite subject) in Highmore in 1917 and then in Ree Heights in 1920. She then taught in St. Lawrence during 1922-24 and 1932-34.

Mrs. Lorentson received a Life Professional Diploma from the South Dakota Department of Public Instruction in 1928, the highest grade teachers credential issued by the state for individuals with a four-year degree and eight years of teaching experience.

She was elected superintendent of schools in Hand County in 1935 and was responsible for oveseeing 107 one-room schoolhouses and two parochial schools. She was honored in 1971 at the final County Superintendent's Conference in Pierre as one of two superintendents to have 36 years of service.

Her advice for today's women who are raising families by themselves is to "have a very strong church connection." Mrs. Lorentson, a member of Miller United Methodist church, says the people in her church and her faith have strengthened her.

The 93-year-old woman, who served as Sunday school superintendent for 10 years, still attends Sunday school weekly and meetings of Hope Circle. She taught Sunday school, served on the church board during two decades and served on the committee to build the new church from 1959 until the building was completed.

After more than 50 years of membership in several clubs and organizations Mrs. Lorentson, still attends meetings regularly, declaring "that every one is different."

Mrs. Lorentson has been a member of Delta Kappa Gamma Society, a society for educators, since 1950. In addition to being founding president of the BPW, she has been president of the Miller chapter of PEO, Miller American Legion Auxiliary and the Annie D. Tallent Club, as honorary society for educators.

She was worthy matron of the Miller Order of the Eastern Star Chapter and served as grand Electra of the state chapter.

Mrs. Lorentson was named delegate to the President's council on Youth, Washington, D.C., in 1950, and Merit Mother of the Year by the Miller Jaycettes in 1970.

She was admitted to Dakota Wesleyan University's Century Club in 1979 and Matthew D. Smith Club in 1976.

The educator began serving as a trustee of the Miller Public Library in 1945 and saw it converted from a city to a county library in 1948. She also served on the committee to build a new library, which was completed in 1969.

Mrs. Lorentson was presented the "Trustees of the Year" award from the South Dakota Library Association in 1978.

The community-spirited woman served as chairman for Hand County Christmas Seal Society from 1934 to 1972.

This woman of achievement credits her success as an education administrator to the loyalty and cooperation of the teachers. "The people made it as least difficult as possible. They helped in every fashion they could," recalls Mrs. Lorentson with the serenity and efficiency remembered by the teachers and pupils.

Mrs. Lorentson beams as she speaks about the country schools: "it was a wonderful learning place. A wonderful place where children learned to help each other."

One of her former students recalls "we never were afraid to have her come visit our school. In fact, we loved to have her come."

The only grimace to cross the face of Mrs. Lorentson occurs when she tells of the two-year elections required of the county superintendents.

"But it was just a formality for Mrs. Lorentson," Mrs. King praises. "No one had the nerve to run against her."

Glorian Blackburn of Miller, a former teacher, tells of how the administrator saw to the needs of her teachers. "I remember her efficiency and how she kept current in education. She provided us with workshops and updated curriculum."

James Hart of Miller grew up next door to Mrs. Lorentson who still lives in her own home, the same one she has lived in for more than 50 years.

"I remember my parents talking about her," said Hart, who was among her nominators. "They would comment on her walking to St. Lawrence every day to teach school and how she raised two outstanding sons by herself. I have never heard anyone say anything derogatory about her, in fact, when people talk about Mrs. Lorentson, all they have is praise. I have never heard her criticize anybody. She always has nothing but good to say, regardless of the situation."

The Miller woman, who has been admired by people throughout her life, says her own role model was her mother's sister. Flora Williams, who was also her schoolteacher.

Although teaching was about the only career open to young women during Mrs. Lorentson's youth, she says the teaching field still appeals to her today. "There's so many ways you can open the world up to children now."

Mrs. Lorentson is still going strong although she admits to slowing down a little during the past year. She has help with housekeeping, receives Meals on Wheels and has someone stay with her overnight as well as check on her frequently during the day.

A person whose life has and still does revolve around people, Mrs. Lorentson says she has no hobbies. What others might see as hobbies today were a matter of living for her. For example, she has always sewn. "But that was for me and my family," Mrs. Lorentson dismisses.

The award recipient is modest about receiving the Spirit of Dakota Award, the first such recognition for any woman in the state.

"You can't live to be almost 100 without doing something good," chuckles the woman who says her goal in raising her sons was to "keep them happy." And the way she has kept herself happy is "not to think of myself too much."

An incident that occurred when Mrs. Lorentson was trekking through the snow as a young teacher best expresses her perseverance and positive outlook on life.

"Sometimes the snow got awfully deep. One day I met a man who told me 'I don't think I would go any further if I were you.' I said 'If it's any worse than what I've been through I want to see it.' "

1987 "Spirit of Dakota" Award

Mrs. Carol Ahlfeldt, Volga; Marie P. Anderson, Hurley; Helen Fischer Aplan Maryhouse, Pierre; Rose Marie Austin, Centerville; Doris Becker, Humboldt; Anna Haugan Berdahl, Soux Falls; Joanne Bieber, Bowdle; Catherine Bischoff, Huron; Florence M. Bruhn, Watertown; Florence M. Carman, Carthage; Marian Cramer, Bryant; Lynne DeLano, Springfield; Lucille Disbrow, Centerville; Mrs. Lenore Foster, Golton; Adeline Gnirk, Lucas; Blanche Grossenburg, Winner; Hazel Harmon, Huron; Marie Halverson, Milbank; Linda Hasselstrom, Hermosa; Nettie R. Hauck, Mobridge; Dr. Julie Hegstram, Sioux Falls; LaVonne Hofer, Huron; Margie Hovorka, Tyndall; Mrs. Rosella Jackson, Mobridge; Willmeta Johnson, Keystone; Mildred S. Johnston, Sioux Falls; Marjorie Kittlesland, Melette; Alice Kundert, Pierre; Nancy Lammers, Madison; Frances "Peg" Lamont, Aberdeen; Virginia Lardionis, Huron; Marcella R. Ryon LeBeau, Mobridge; Mary Jewel Ledbetter, Pierre; Winifred Lorentson, Miller; Edna Lucklum, Platte; Marian Lundeen, Bristol; Jeannette C. Lusk, Huron; Mrs. Vincent Madden, Huron; Vera Marghab, Watertown; Emily Madetzke, Jasper; Carol (Martin) Mashek, Sioux Falls; Rita Matthews, Wessington; Mrs. Dwight Miller, Watertown; Donna L. Mitchell, Rapid City; Hazel Murphy, Watertown; Rose Marie McCoy, Sioux Falls; Sandra McLain, Rapid City; Arleen Dare Nelson, Watertown; Betty Noem, Bryant; Lavina Norman, Burke; Barbara B. Ohleen, Webster; Bev Paschke, Redfield; Marjory Marshall Prchal, Burke; Gladys Pyle, Huron; Mrs. Mable Read, Winner; Vivian Rearick, Wolsey; Hildegard Amanda Rother, Huron; Ester Serr, Rapid City; Mrs. Cecelia Shalley, Estelline; Virginia Driving Hawk Sheve, Rapid City; Doris J. Schumacher, Brookings; Monica Slocum, Redfield; Wynn Huybler Speece, Yanktron; Kay Riordan Steuerwald; Keystone; Margery A. Tauber, Watertown; Lucy Thingelstad, Holabird; Mrs. Hildreth Venegas, Sisseton; Mrs. Margaret Wingen, Canova; and Mrs. Eudora Zellers, Flandreau.

CONGRATULATIONS TO SENATORS GORE AND McCAIN ON ELECTION TO LEADERSHIP OF EESC

Mr. LEAHY. Mr. President, I would like to congratulate two of our colleagues, Senator Al Gore and Senator John McCain, who have been elected, respectively, Senate chairman and vice chairman of the Environmental and Energy Study Conference [EESC].

In the House, Representatives Bill Green and Bob Wise have been reelected as House chairman and vice chairman.

With this election, Senator Gore assumes formally a position he has held on an acting basis for most of this year. In the 99th Congress Al served as Senate vice chairman of the EESC with our former colleague Senator Slade Gorton, who was chairman.

Senator McCain has been a strong supporter of the EESC while serving in the House, and we welcome John to this important position in the Senate.

The services of the Study Conference have become increasingly important to Congress as the environmental problems confronting us have become increasingly complex. The energy and natural resource issues we face in Congress are often global in scale, and international in implication. Many of the decisions we make regarding these questions affect a wide range of public concerns, from our international competitiveness to our foreign policy to our public health and safety.

As chairman of the Committee on Agriculture, Nutrition, and Forestry, I see the complexity of these issues on a daily basis. Pesticide reform, for example, involves interlocking issues that range from groundwater contamination to farmer liability to data compensation to pesticide residue tolerances. The debate over this legislation has, and will continue to require an understanding of the nature and balance the various issues involved.

The Study Conference analyzes issues such as these on a daily basis for Members of Congress. The conference's weekly bulletins, special reports, and briefings for Members of Congress and their staff play an integral role in House and Senate debate on these policy questions. In addition, the availability of the EESC staff to assist Members and staff on energy and environmental-related questions is an invaluable daily service.

As a past chairman of the Study Conference, and a current member of its executive committee, I want to congratulate Senator Gore and Senator McCain on their new terms of office, and to thank them for their ongoing interest in, and commitment to, the EESC.

I would also like to congratulate and thank the newly elected members of the conference's executive committee, on which I am pleased to serve. Other current members of the conference's governing body include Senators Rudy Boschwitz, John Chafee, Christopher Dodd, Claiborne Pell, Warren Rudman, Al Gore, and John McCain. In the House, current members include: Representatives Chester Atkins, Anthony Beilenson, Hamilton Fish, Jr., George Brown, Jr., Jim Cooper, Peter DeFazio, Bob Livingston, Bill Lowery, Edward Madigan, Jan Meyers, John Miller, Mike Synar, Bruce Vento, Howard Wolpe, Ron Wyden, Bill Green, and Bob Wise.

THE OASIS

Mr. LEAHY. Mr. President, I have been in public office for more than two decades and I still share every politician's anxiety to know how the folks back home view the job I'm doing.

I can always ask my family and staff—but I suspect they're biased. My mother insists I'm always right—and my staff had better.

During election years, opponents are always full of free advice on where you've gone wrong—and their concern is so sincere—they feel compelled to make it public so you won't miss it, and can read about it in the press.

My search for a happy medium to this dilemma is the "Oasis," a cozy diner on Bank Street in my hometown of Burlington.

The proprietor of this landmark is Stratton Lines—who has supported me through good and bad times. Stratty has never hesitated to tell me when I'm wrong. And he does so in a voice loud enough to inform diners at both ends of the counter and in the farthest booth, not to mention people passing by on the far side of the street.

I'm pretty humble by the time I leave Stratty's place, but the advice is always as good as the food—and that, Mr. President, is superb.

In fact, I located my 1986 campaign headquarters within a block of Stratty's establishment, so staff wouldn't have far to go for either coffee or advice on how the election was going.

Recently, Ted Tedfold of the Burlington Free Press wrote a story about Stratty and his famous diner which serves up politics and sports as appetizers to Vermonters who love to talk about both. I ask that it be printed in the Congressional Record.

To any Senators who are thinking of visiting Vermont in the future—I recommend that you stop off at the Oasis. Not only will Stratty recognize you when you walk through the door—he'll have some advice ready for you. If you're smart—you'll take it.

I always have.

There being no objection, the article was ordered to be printed in the Record, as follows:

Diner Serves as Oasis in Time

(By Ted Tedford)

When Stratton "Stratty" Lines was a young man, he served up coffee for a dime and hamburgers for a quarter at the Oasis Diner on Bank Street.

Coffee costs 50 cents now and a hamburger is $1.90. The times, prices and Lines, 58, have changed after 34 years, but the Oasis Diner is still the same and he is still behind the counter greeting customers and talking politics and sports.

"Prices have increased, some tenfold, and it's hard to get good help anymore," said Lines, dressed in the familiar white trousers, shirt and jacket, a white short-order hat trimmed in red set firmly atop his gray hair.

It is late morning, but breakfast customers still fill the booths along the windows and occupy all the counter stools in the classic stainless steel-diner across from the South Winooski Avenue parking garage.

Waitresses are efficiently and politely taking orders and delivering coffee and juice while short-order cook David St. Amour flips pancakes and stirs bacon sizzling on the grill. Thursday's lunch special, chicken a la king, is nearly ready in the kitchen. Another day at the Oasis is moving right along.

When he was 24, Lines left his job at the General Electric plant soon after the prefabricated pieces for the diner were delivered Thanksgiving week of 1953 by its builder, Mountain View Diners of Singac, N.J. He went to work for his father, Harry Lines, in January 1954, serving customers, washing dishes, peeling potatoes and learning the business. When his father died in 1962, Stratty Lines took over.

He was no stranger to diners even then. Harry Lines, member of a Greek family that owned most of Burlington's diners and luncheonettes at one time, had worked at the Majestic Diner on Pearl Street, owned by his brother. Harry Lines later owned the Miss Burlington diner on South Winooski Avenue between the Smith Bell and Thompson building and a service station, now the site of the Nickelodeon theater. Both diners and the service station are gone.

Gone also are the days when depression hit the Burlington area in the early days of the Oasis. The American Woolen Co. mill in Winooski, the major area employer, left town in the mid-1950s and General Electic was laying off workers. There were no International Business Machines Corp. and Digital Equipment Corp. plants.

"We had to stay open until 2 in the morning to make enough money to survive," he said. Old habits die hard. It wasn't until recently that Lines closed the diner any earlier than 8 p.m. It closes now at 4:30.

On a wall behind the Oasis counter is a group of photos attesting to Lines' political status. One photo shows him shaking hands with then-President Jimmy Carter at the White House in February 1980. Another shows him sitting on a stool at the Oasis with then-Vice President Walter Mondale, who stopped in for pancakes and eggs during a campaign swing through Burlington a month later. Carter signed his photo, formally, this way: "With best wishes to Stratton Lines. Jimmy Carter."

Monday was a little more relaxed. "To Stratty, my friend and provider, regards Fritz Mondale."

"I think Pat Leahy (Vermont's junior U.S. senator) had something to do with Mondale coming here," said Lines. Leahy's photo is on the same wall.

Name a Democratic politician in Burlington and Lines has met, fed or helped out his or her campaign. He has done his bit for former Gov. Philip Hoff and Gov. Madeleine M. Kunin, who once jestingly called Lines "the real political power in town."

He denies it.

"I don't have any political power, only political know-how. Just being here you meet a lot of politicians and they come in and after awhile they ask my opinion," Lines said. "I've never even held an office."

Talk about sports, though, and Lines' eyes light up: He switched from being a longtime New York Yankee fan to rooting for the Toronto Blue Jays after his friend Tom Cheek left WVMT's Catamount Sports Network in 1977 to become the radio voice of the Blue Jays.

Lines stays with Cheek at his home near Clearwater, Fla., during spring training and this year spent three weeks there.

It's an indication that he would like to stay away from the Oasis for longer periods, "sort of wind down a bit at this point in my life," he said.

A father of four—Jon, 24, Gary, 23, Maria, 21, and David, 19—Lines said he hopes Jon, who works at the diner now, will want to take over.

"I don't know, it's a tough job, six days a week," Lines said. "It can be profitable, but it's hard work."

THE GOOD, GRAY NEW YORK TIMES IS FLUTTERING ITS EYELASHES

Mr. PROXMIRE. Mr. President, what is the most impossible situation you can imagine? Mother Teresa punching out Heavyweight Boxing Champion Mike Tyson? President Reagan declaring that what this country needs is a good, solid dose of recession, and he's going to do his best to see that it gets exactly that? Well, maybe.

But how about this? How about anybody falling in love with an economist? How about a solid, staid institution like the good, gray, New York Times falling in love with an economist? Well, that is impossible. Or is it? No, indeed. In fact, it happened. Doubt it. Just listen to this from today's editorial page of that good, gray, oh so strict and straitlaced, intellectual guru of us all. Here goes:

> In awarding Robert Solow its prize in economics, the Nobel Committee cited the M.I.T. professor's research in growth theory. The Committee could have added that Mr. Solow is the economist's economist. A delightful exception in an academy that usually saves its highest honors for the narrowest of specialists.
>
> Professor Solow has had important things to say about almost every aspect of modern economics. What's more, he has the lucid writing style to make his ideas broadly accessible, as well as the political sophistication to have been a key policy adviser to President Kennedy.
>
> He is equally at home teaching freshmen economics or bantering with grad students. Something else the Nobel Committee failed to cite—

And, here it comes, Mr. President. The New York Times concluded its love note with this shaft right out of cupid's quiver. Just listen. The Times concluded:

> Those who know him say Mr. Solow is the nicest guy you're ever likely to meet.

So, Mr. President, nothing is impossible.

Mr. MOYNIHAN. Mr. President, will the distinguished Senator from Wisconsin yield?

Mr. PROXMIRE. I am happy to yield to my good friend, the distinguished Senator from New York.

Mr. MOYNIHAN. With his characteristic perspicacity and energy the Senator from Wisconsin has spotted the article in the New York Times calling our attention to Bob Solow. If you say the New York Times has fallen in love, it is because Bob Solow is about the most lovable man you will ever meet. Indeed, he is probably the smartest man you will ever meet. But that does not make for being lovable. He is just a wonderful man.

For the last 10 years it has been his turn to win this prize, although the wait never bothered him one little bit. It has come to him, as good things in life will.

He is married to Barbara, an economic historian of the greatest distinction. Her work on Irish land reform, published in 1971 and entitled "The Land Question and the Irish Economy, 1870–1903" is a model work encompassing nearly half a century of economic and political struggle.

She has recently published a new book, "British Capitalism and Caribbean Slavery: The Legacy of Eric Williams."

Bob is a great skier and a formidable sailor of small craft. He is a wonderful teacher. He is a great father, a boon companion, a magnificent economist, and, what is more, he has been part of the intellectual life behind the political career of statesmen such as WILLIAM PROXMIRE.

How many times has Senator PROXMIRE stood on this floor talking of the need for education, the need for research, and the need for investment in human beings? It is, in part, due to that Wisconsin soil from which he springs, but also due to something more. It is part of a system of knowledge.

It was Robert Solow who first introduced, then proved, and has now won a Nobel Prize for demonstrating that the old notion that economic production is primarily a function of investment in land and capital is false. He disproved the assumption that the more you save, the more machines you make and the more mines you dig, the more product you will have. It is, instead, technology that drives economic growth. Technology grows out of investment in people: in their education; in their ideas; and in their science.

He has shown that the real dynamic of our age has been knowledge. It is knowledge which brings wealth. Although most might say you should get wealth in order to acquire knowledge, Bob has proven that if you get knowledge you will acquire wealth.

I thank the distinguished chairman of the Committee on Banking. It is most appropriate that he, as chairman of this distinguished committee, chooses to honor Bob Solow.

I count myself as one of those who love and admire Bob and his wife Barbara.

Mr. PROXMIRE. Mr. President, I am astonished and overwhelmed. I had no idea the Senator from New York would be here when I came over to make this little pitch about Robert Solow receiving a Nobel Prize.

I should not be a bit surprised with the remarks of the distinguished Senator from New York. Talk about a man for all seasons. I have served on the Joint Economic Committee for some 26 years, the Banking Committee for 30 years, and so forth. Here is a man who has not served on either who probably knows more about economics than the rest of us. He knew more about Robert Solow, far more than I ever dreamed anybody knew. He is my seatmate sitting next to me. I am deeply impressed, very grateful and certainly picked the right time to come to the floor.

JOHN McKISSICK: 36 YEARS OF EXCELLENCE

Mr. HOLLINGS. Mr. President, I rise today to salute an exceptional and exceptionally accomplished South Carolinian, John McKissick. As coach of the Summerville High School football team since 1952, he has earned not just State and national honors, but, more importantly, the esteem and affection of his community.

The fact is, Coach McKissick has served at Summerville High nearly twice as long as I have served in the Senate, and he outperforms me in another category, too: his won-loss percentage leaves mine in the dust. Heading into his 36th season, he has compiled a career record of 346 wins, 62 losses, and 13 ties. He has the most victories of any active high school coach in the United States, and more victories at a single school than any high school football coach in history. Not surprisingly, it is said of Coach McKissick that his favorite game plan is to score four touchdowns in the first quarter, then slowly pull away.

To the people of Summerville, however, the many victories and State championships are of secondary importance in their estimation of John McKissick. He is beloved, first and foremost, as a leader and teacher and role model. He has touched the lives of two generations of Summerville students, teaching them not just football, but also discipline, teamwork, and loyalty.

Indeed, John McKissick is a classic case in point of Amos Alonzo Stagg's dictum that, "No coach ever won a game by what he knows; it's what his players have learned." His greatest talents are as a teacher. Certainly, no one would claim that Summerville High has won year after year on sheer raw talent. The critical difference has been John McKissick's skills at shaping, improving, and motivating his players.

Mr. President, this Friday at 7:30 p.m., the Summerville community will formally rename their football field in honor of Coach John McKissick. I congratulate him for this very fitting and hard-earned honor. And let me say that I hope the coach's next 35 years at Summerville High will be every bit as successful as his first.

SENATOR JOHN WARNER RECEIVES THE NCOA's "L. MENDEL RIVERS AWARD FOR LEGISLATIVE ACTION"

Mr. NUNN. Mr. President, tomorrow evening my friend and colleague on the Armed Services Committee, Senator JOHN WARNER, will receive the "L. Mendel Rivers Award for Legislative Action."

This award is presented annually by the 170,000-member Non-Commissioned Officers Association of the United States. Each year the association chooses an elected legislator from the Senate or the House of Representatives whom it believes, among other attributes, is a true friend of the military and veterans' communities. Political affiliation or partisanship plays no role in the selection process.

Senator WARNER's concern for the well-being of military members and their families has been a hallmark of his service on the Armed Services Committee since he came to the Senate in 1979. He and I joined together in 1980 to address the loss of experienced noncommissioned and petty officers in the military services. The Nunn-Warner Act, as it was termed, helped to reverse the hemorrhage of military talent from the Armed Forces and to bring about a dramatic improvement in recruitment and retention of high-quality personnel in the military services.

During the tenure in the Senate, Senator WARNER has consistently fought to maintain the long-standing tax-exempt status of military allowances, to facilitate voting by military personnel stationed overseas, and to increase allowances for military people making permanent changes of station moves. Recognizing that frequent moves are the single biggest irritant of the military way of life, he has done a great deal to reduce this financial burden.

Senator WARNER has also cosponsored numerous proposals and actively supported legislation that improved the quality of life for military personnel and their families. His experiences as an enlisted member of the Navy and an officer in the Marine Corps have made him particularly sensitive to the needs of the men and women in our military services. Along with his service as a Secretary of the Navy, he brings a unique perspective and expertise to the Armed Services Committee. He constantly uses that expertise to speak out for those in the uniformed services.

Mr. President, I can't think of anyone more deserving of this recognition from the Non-Commissioned Officers Association than Senator WARNER. I know my colleagues will want to join me in congratulating Senator WARNER for receiving this award, and in commending the Non-Commissioned Officers Association for honoring our friend and colleague in such an appropriate manner.

PAIGE E. REFFE

Mr. WIRTH. Mr. President, throughout my 13 years as a Member of Congress, I have had the good fortune of having had a great number of intelligent, talented, dedicated and hard-working individuals as members of my staff. At the end of this week, I and my staff will say goodbye to Paige E. Reffe, my administrative assistant and chief of staff since 1985, who has exemplified these qualities throughout his career and, particularly, in my observation, since he joined my staff.

Mr. Reffe took over the administration of my office in the House of Representatives during a difficult and challenging time. With warmth, charm and a great measure of good humor and patience, in addition to competence, Paige guided us successfully to the U.S. Senate. Over the course of the past 10 months, he has reestablished a competent and highly professional support staff, which serves me and the people of Colorado with great distinction.

I have come to rely with great confidence on Paige's judgment and advice. While I accept and understand the need for new opportunities, I can say unequivocally and without fear of contradiction that he will be sorely missed by me, by every member of my staff, and by a great number of Coloradans who have come to regard him as their own—a remarkable achievement for a Washington-based staff member, born in New York, educated in Georgia, who has called California home.

No matter what the future holds for Paige, I am sure it will be characterized by success, determination and a continued commitment to public service. I join with my wife, Wren, my children, Christopher and Kelsey, my staff and the entire State of Colorado, which he served so well for the past 2 years, in wishing him the best and saying "thank you" to Paige Reffe for a job—frequently a hard job—very, very well done.

NOCA'S "L. MENDEL RIVERS AWARD FOR LEGISLATIVE ACTION" TO THE HONORABLE JOHN WARNER

Mr. COHEN. Mr. President, Senator WARNER has been chosen by the Board of Directors of the Non-Commissioned Officers Association of the USA to join our honored group as the 16th recipient of the association's highest award to a member of the legislative branch of Government. Senator WARNER is a strong advocate of the men and women in the All-Volunteer Force. He has been their standard bearer and, in many instances, their man of the hour.

As the ranking member of the Senate Armed Services Subcommittee on Manpower and Personnel, he became concerned in 1979 and 1980 that far too many talented career enlisted members of the Armed Forces were voting with their feet. They were leaving the military by the thousands. These once-dedicated individuals were showing their displeasure with their treatment by returning to civilian life. The Armed Forces were at one of their lowest levels of readiness since the beginning of World War II.

Senator WARNER called upon his experiences, as an enlisted man, a commissioned officer, and a former Secretary of the Navy, to determine why. It was clear that the military lacked leadership, was short on discipline, and that Congress had allowed the erosion of service member's pay and allowances.

Senator WARNER then teamed up with the subcommittee chairman, SAM NUNN, to push through to enactment the Nunn-Warner bill, which increased pay and allowances, stopped the drain of talent and turned about a rapidly declining reenlistment rate.

The high quality and experience of our military personnel can be attributed directly to Senator WARNER and his quest for fair and equitable compensation for service members. He has been a stalwart supporter of legislation favorable to the men and women in the Armed Forces. Not only has he advocated improvements in military personnel programs and issues, but he also has shown his concern for veterans. His interest in veterans' issues ranks second to none. Furthermore, he has taken an active role in seeking retention of benefits to military retirees and their families.

If someone were to ask which Senator embodies the qualities military personnel admired in the late L. Mendel Rivers, my answer would be JOHN WARNER. He cares deeply for the men and women serving in our Armed Forces. He is a man proud of his heritage, his service to this great Nation, and his elected position as representative of the people.

No better award could be given to JOHN WARNER than this one named after the Honorable L. Mendel Rivers. It is a fitting tribute to a great American.

MESSAGES FROM THE HOUSE RECEIVED DURING RECESS

ENROLLED BILLS SIGNED

Under the authority of the order of the Senate of February 3, 1987, the Secretary of the Senate, on October 26, 1987, during the recess of the Senate, received a message from the House of Representatives announcing that the Speaker has signed the following enrolled bills:

H.R. 799. An act to designate a segment of the Kings River in California as a wild and scenic river, and for other purposes;

H.R. 2893. An act to reauthorize the Fishermen's Protective Act; and

H.R. 3325. An act to designate the segment of Corridor V in the State of Alabama as the Robert E. (Bob) Jones, Jr. Highway.

The enrolled bills were subsequently signed on October 27, 1987 by the President pro tempore (Mr. STENNIS).

ENROLLED BILLS SIGNED

Under the authority of the order of the Senate of February 3, 1987, the Secretary of the Senate on today, October 27, 1987, during the recess of the Senate, received a message from the House of Representatives announcing that the Speaker has signed the following enrolled bills:

H.R. 1366. An act to provide for the transfer of certain lands in the State of Arizona, and for other purposes; and

H.R. 2937. An act to make miscellaneous technical and minor amendments to laws relating to Indians, and for other purposes.

The enrolled bills were subsequently signed by the Acting President pro tempore (Mr. DASCHLE).

MESSAGES FROM THE HOUSE

At 10:04 a.m., a message from the House of Representatives, delivered by Mr. Berry, one of its reading clerks, announced that the House has passed the bill (S. 640) for the relief of the city of Dickinson, North Dakota, with an amendment, in which it requests the concurrence of the Senate:

The message also announced that the House has agreed to the following concurrent resolutions, in which it requests the concurrence of the Senate:

H. Con. Res. 140. A concurrent resolution authorizing printing of the compilation of materials entitled "Guide to Research Collections of Former Members of the United States House of Representatives, 1789-1987";

H. Con. Res. 177. A concurrent resolution authorizing the printing of the compilation of materials entitled "Guide to Records of the United States House of Representatives at the National Archives, 1789-1989: Bicentennial Edition; and

H. Con. Res. 195. A concurrent resolution providing for filing and printing of the reports of the House and Senate select committees on Iran as a joint report.

MEASURES REFERRED

The following concurrent resolutions were read, and referred as indicated:

H. Con. Res. 140. A concurrent resolution authorizing printing of the compilation of materials entitled "Guide to Research Collections of Former Members of the United States House of Representatives, 1789-1987"; to the Committee on Rules and Administration.

H. Con. Res. 177. A concurrent resolution authorizing the printing of the compilation of materials entitled "Guide to Records of the United States House of Representatives at the National Archives, 1789-1989: Bicentennial Edition; to the Committee on Rules and Administration.

MEASURES PLACED ON THE CALENDAR

The following concurrent resolution was read, and placed on the calendar:

H. Con. Res. 195. A concurrent resolution providing for filing and printing of the reports of the House and Senate select committees on Iran as a joint report.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-2045. A communication from the Executive Director of the Japan-United States Friendship Commission, transmitting, pursuant to law, the annual report of the Commission for fiscal year 1987; to the Committee on Foreign Relations.

EC-2046. A communication from the Assistant Legal Advisor for Treaty Affairs, Department of State, transmitting, pursuant to law, a report on international agreements, other than treaties, entered into by the United States in the sixty day period prior to October 22, 1987; to the Committee on Foreign Relations.

EC-2047. A communication from the Director, Personnel, Farm Credit Banks of St. Louis, transmitting, pursuant to law, the pension plan report for the Sixth Farm Credit District Retirement Plan for plan year ended December 31, 1986; to the Committee on Governmental Affairs.

EC-2048. A communication from the Executive Director of the D.C. Retirement Board, transmitting, pursuant to law, the personal financial disclosure statements of the members of the Board for calendar year 1986; to the Committee on Governmental Affairs.

EC-2049. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a list of reports issued by the General Accounting Office during September 1987; to the Committee on Governmental Affairs.

EC-2050. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 7-83 adopted by the Council on September 29, 1987; to the Committee on Governmental Affairs.

EC-2051. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 7-88 adopted by the Council on September 29, 1987; to the Committee on Governmental Affairs.

EC-2052. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 7-87 adopted by the Council on September 29, 1987; to the Committee on Governmental Affairs.

EC-2053. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 7-85 adopted by the Council on September 29, 1987; to the Committee on Governmental Affairs.

EC-2054. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 7-84 adopted by the Council on September 29, 1987; to the Committee on Governmental Affairs.

EC-2055. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 7-82 adopted by the Council on September 29, 1987; to the Committee on Governmental Affairs.

EC-2056. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 7-78 adopted by the Council on September 29, 1987; to the Committee on Governmental Affairs.

EC-2057. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 7-79 adopted by the Council on September 29, 1987; to the Committee on Governmental Affairs.

EC-2058. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 7-80 adopted by the Council on September 29, 1987; to the Committee on Governmental Affairs.

EC-2059. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 7-81 adopted by the Council on September 29, 1987; to the Committee on Governmental Affairs.

EC-2060. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 7-86 adopted by the Council on September 29, 1987; to the Committee on Government Affairs.

EC-2061. A communication from the General Manager of the Tennessee Valley Authority, transmitting, pursuant to law, copies of three new Privacy Act systems of records; to the Committee on Government Affairs.

EC-2062. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, the annual report on actions taken to recruit and train Indians to qualify for positions which are subject to preference under Indian preference laws; to the Select Committee on Indian Affairs.

EC-2063. A communication from the Executive Director of the D.C. Retirement Board, transmitting, pursuant to law, the annual report of the Board for fiscal year 1986; to the Committee on the Judiciary.

EC-2064. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, the Report of the Interagency Committee on Spinal Cord Injury; to the Committee on Labor and Human Resources.

EC-2065. A communication from the Secretary of Labor, transmitting, pursuant to law, the annual report on the administration of the Longshore and Harbor Workers' Compensation Act for fiscal year 1986; to the Committee on Labor and Human Resources.

EC-2066. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, the annual report on the activities of the Administration of Developmental Disabilities for fiscal year 1986; to the Committee on Labor and Human Resources.

EC-2067. A communication from the Administrator of the Small Business Administration, transmitting, pursuant to law, a report on the pilot program of selling debentures guaranteed pursuant to section 503 of the Small Business Investment Act to investors other than the Federal Financing Bank; to the Committee on Small Business.

PETITIONS AND MEMORIALS

The following petitions and memorials were laid before the Senate and were referred or ordered to lie on the table as indicated:

POM-337. A resolution adopted by the House of Representatives of the Commonwealth of Pennsylvania; to the Committee on Armed Services.

"HOUSE RESOLUTION NO. 148

"Whereas, The Secretary of Defense has been empowered traditionally to provide for the religious and spiritual needs of members of the armed forces by appointing military chaplains; and

"Whereas, There exists an imbalance in the representation of various religious faiths among chaplains of the armed forces as compared to the representation of those faiths among members of the armed forces as a whole; and

"Whereas, This body is concerned that the men and women from this Commonwealth who serve with commitment and gallantry in the armed forces of this Nation should have the religious and spiritual needs which arise during the course of their military service served by a chaplain of their faith; therefore be it

Resolved, That the House of Representatives of the Commonwealth of Pennsylvania memorialize Congress to pass legislation which requires the Secretary of Defense to implement actions to appoint military chaplains in representative proportion to the different faiths represented among the total membership of the armed forces; and be it further

Resolved, That copies of this resolution be transmitted to the presiding officers of each house of Congress, to each member of Congress from Pennsylvania and to all members of the respective armed services committees of each house of Congress."

POM-338. Joint resolution adopted by the Legislature of the State of California; to the Committee on Banking, Housing, and Urban Affairs:

"ASSEMBLY JOINT RESOLUTION NO. 57

"Whereas, Seizure of United States fishing vessels, fishing within 200 miles of the coast of Mexico has previously resulted in an embargo on Mexican tuna products; and

"Whereas, The embargo of 1980 on Mexican tuna products was lifted in the spirit of cooperation with our neighbor to promote the resurgence of the badly damaged tuna industry and to alleviate acrimony; and

"Whereas, In February of 1987, the United States tuna vessel, the Laurie Ann, was boarded and seized by officials of the government of Mexico while engaged in a humanitarian rescue of another boat in distress in rough water, and both boats were detained for over two weeks and released only after payment of a fine and forfeiture of the fishing nets on the Laurie Ann, which nets were recovered only after a substantial ransom was paid; and

"Whereas, On September 2, 1987, the United States tuna vessel, the Mauritania, was seized 58 miles off the coast of Baja California, fined $30,000, and the cargo of 188 tons of fish with a value of approximately $188,000 and the fishing nets were confiscated, with a charge of $25,000 to buy back the nets and a charge of $17,000 for a license to fish within the 200-mile economic zone of Mexico; and

"Whereas, The Mexican government is clearly not acting in good faith toward resolution of fishing rights off the coasts of the United States and Mexico for the mutual benefit of both countries; now, therefore, be it

"Resolved by the Assembly and the Senate of the State of California, jointly, That the Legislature of the State of California respectfully memoralizes the President, the Secretary of State, and the Congress of the United States to reimpose an embargo on all tuna products of Mexican origin and to extend that embargo to include all Mexican fish products; and be it further

"Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, to each Senator and Representative from California in the Congress of the United States, and to the Secretary of State."

POM-339. Resolution adopted by the Florida Association of Counties favoring adjustment of the Department of the Interior five year plan to eliminate offshore drilling in the Florida Keys and Straits; to the Committee on Energy and Natural Resources.

POM-340. Joint resolution adopted by the Legislature of the State of Maine to the Committee on Finance.

"JOINT RESOLUTION

"Whereas, many of Maine's citizens are in ill health and in need of care but do not need or desire hospitalization; and

"Whereas, home health care is often the best medically advised care for these citizens; and

"Whereas, Medicare is a major payor of home health care; and

"Whereas, in recent years, the Health Care Finance Administration, without any change in the law, has administratively reduced the amount of home health care which should be funded by Medicare; and

"Whereas, Medicare home health visits have currently been reduced by ⅓ and one out of every 3 of those visits is still being denied Medicare reimbursement; and

"Whereas, this unilateral, administrative action has been arbitrary, unpredictable, capricious and in open defiance of established regulations and laws; and

"Whereas, a number of home health care providers have elected to discontinue providing services under Medicare certification; and

"Whereas, the result is that many Maine citizens who need and are entitled to home health services are unable to receive the necessary treatment; now, therefore, be it

"Resolved: That We, your Memorialists, respectfully recommend and urge the Congress of the United States to take immediate corrective action including, but not limited to:

"1. The declaration of a moratorium on the Medicare home health benefit denials process until a responsible system or review can be developed; and

"2. Enactment of strong legislation which will prohibit the Health Care Finance Commission's ability to act inconsistently with the established laws and the Congressional intent in regard to Medicare reimbursement for home health services; and be it further

"Resolved: That suitable copies of this resolution, duly authenticated by the Secretary of State, be transmitted to the President of the Senate and the Speaker of the House of Representatives in the Congress of the United States and to each Member of the Maine Congressional Delegation."

POM-341. A petition from a citizen of Concord, New Hampshire, urging passage of a balanced budget amendment to the Constitution of the United States; to the Committee on the Judiciary.

POM-342. A petition from a citizen of New London, New Hampshire, urging repeal of the Levi Guidelines and the return of the FBI to its domestic intelligence gathering responsibilities; to the Committee on the Judiciary.

POM-343. A petition from a citizen of San Francisco, California, urging passage of a balanced budget amendment to the Constitution of the United States; to the Committee on the Judiciary.

POM-344. A resolution adopted by the Willingboro, New Jersey Township Council commending Senator Bill Bradley and Senator Frank Lautenberg for taking a firm position in opposition to the nomination of Judge Robert H. Bork; ordered to lie on the table.

POM-345. A resolution adopted by the House of Representatives of the Commonwealth of Pennsylvania; ordered to lie on the table.

HOUSE RESOLUTION No. 153

"Whereas, Congress has authorized an expenditure level of $1.823 billion for the fiscal year 1988 for the Low Income Home Energy Assistance Program (LIHEAP); and

"Whereas, Congress is currently making decisions on funding levels for previously authorized programs such as LIHEAP; and

"Whereas, A United States Senate Appropriations subcommittee has proposed a $600 million, or 33%, cut in the level of funding previously authorized for LIHEAP; and

"Whereas, The proposed reduction would mean a $40 million loss of LIHEAP funds for the Commonwealth of Pennsylvania; and

"Whereas, Energy costs are continuously rising and there is now a greater need for energy assistance than at any other time; and

"Whereas, Low-income citizens pay, on the average, 15% of their income for energy, contrasted with 5% paid by the average American family; and

"Whereas, The heating costs of low-income households in Pennsylvania's climate range run substantially more than all low-income households in the nation as a whole; and

"Whereas, It is our obligation to address the needs of poor persons in our Commonwealth; therefore be it

"Resolved, That the House of Representatives of the Commonwealth of Pennsylvania memorialize the Congress of the United States to appropriate funds for Low Income Energy Assistance Block Grants for the fiscal year 1988 at previously authorized levels; and be it further

"Resolved, That copies of this resolution be transmitted to the presiding officers of each house of Congress and to each member of Congress from Pennsylvania."

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. LEAHY, from the Committee on Agriculture, Nutrition, and Forestry, without amendment:

S. Res. 304. An original resolution to increase the amount allocated to the Committee on Agriculture, Nutrition, and Forestry by S. Res. 80 relating to committee funding for fiscal year 1988 (Rept. No. 100-208); referred to the Committee on Rules and Administration.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. SPECTER:

S. 1818. A bill to make requirements for the preparation, and transmittal to the Congress, of Presidential Findings for certain intelligence operations; to provide mandatory penalties for deceiving Congress; and to establish an Independent Inspector General for the CIA; to the Select Committee on Intelligence.

By Mr. LAUTENBERG:

S. 1819. A bill to amend the National Driver Register Act of 1982 to assist in the identification of operators of aircraft who have driving problems by permitting access to the National Driver Register; to the Committee on Commerce, Science, and Transportation.

By Mr. SPECTER:

S. 1820. A bill to improve the objectivity, reliability, coordination and timeliness of national foreign intelligence through a reorganization of positions, and for other purposes; to the Select Committee on Intelligence.

By Mr. BREAUX:

S. 1821. A bill to amend the Internal Revenue Code of 1986 and the Social Security Act to provide that certain services performed by an individual in the processing of fish or shellfish are exempt from the definition of employee for Federal tax purposes; to the Committee on Finance.

By Mr. BIDEN (for himself, Mr. THURMOND, Mr. KENNEDY and Mr. HATCH):

S. 1822. A bill to make certain amendments to the Sentencing Reform Act of 1984 and to improve certain provisions relating to imposition and collection of criminal fines, and for other purposes; placed on the calendar.

By Mr. STAFFORD (by request):

S. 1823. A bill to amend title 23, United States Code, to provide for the construction of new toll highways and for other purposes; to the Committee on Environment and Public Works.

By Mr. CRANSTON:

S. 1824. A bill to amend the Federal Aviation Act of 1958 to require that capacity levels be established at certain airports; to the Committee on Commerce, Science, and Transportation.

By Mr. BYRD (for Mr. CRANSTON (for himself and Mr. D'AMATO)):

S.J. Res. 209. Joint resolution to provide for the extension of certain programs relating to housing and community development, and for other purposes; placed on the calendar.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. KENNEDY (for himself, Mr. Metzenbaum, Mr. Hatch, Ms. Mikulski, Mr. Pell, Mr. Dole, Mr. Dodd, Mr. Glenn, Mr. Cranston, Mr. Durenberger, Mr. Lautenberg, Mr. Simon, Mr. Moynihan, Mr. Conrad, Mr. Matsunaga, Mr. Chafee, Mr. Kerry, Mr. Weicker, Mr. Thurmond, Mr. Burdick, Mr. DeConcini, Mr. Levin, Mr. Adams, Mr. Warner, Mr. Inouye, Mr. Riegle, Mr. Bradley, Mr. Bond, Mr. Mitchell, Mr. Proxmire, Mr. Dixon, Mr. Stafford, Mr. Nunn, Mr. Domenici, Mr. Garn, Mr. Shelby, Mr. Pryor, Mr. D'Amato, Mr. Bentsen, and Mr. Sanford):

S. Res. 303. A resolution to commend the efforts and commitment of the organizers and participants of "Justice For All Day," November 17, 1987; to the Committee on the Judiciary.

By Mr. LEAHY; from the Committee on Agriculture, Nutrition, and Forestry:

S. Res. 304. An original resolution to increase the amount allocated to the Committee on Agriculture, Nutrition, and Forestry by S. Res. 80 relating to committee funding for fiscal year 1988; to the Committee on Rules and Administration.

By Mr. BYRD (for himself and Mr. Dole):

S. Res. 305. A resolution to direct the Senate legal counsel to represent and to authorize the production of documents by Philip Q. Cohen in the case of Moreno versus Small Business Administration, et al.; considered and agreed to.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. SPECTER:

S. 1818. A bill to make requirements for the preparation, and transmittal to the Congress, of Presidential findings for certain intelligence operations; to provide mandatory penalties for deceiving Congress; and to establish an Independent Inspector General for the CIA; to the Select Committee on Intelligence.

NATIONAL SECURITY REFORM ACT

Mr. SPECTER. Mr. President, hearings before the Senate Intelligence Committee and joint hearings before the Select Senate and House Committees on the Iran/Contra matter have demonstrated the need for significant action in order to establish the appropriate role for congressional oversight pursuant to the checks and balances contemplated by the U.S. Constitution. Notwithstanding any action which may be taken by the President by way of Executive order on this issue, legislative change is necessary to impose statutory requirements governing this or future administrations where any such Executive orders might be countermanded.

This bill has four goals:

First, to encourage timely consultation with key Members of Congress to obtain the benefit of their insights to avoid future blunders like the transaction with Iran on arms for hostages;

Second, to provide for effective congressional oversight by specific statutory requirements establishing precise time limits for notice where the President decides not to consult in advance;

Third, to establish mandatory penalties where executive branch officials make false statements to congressional committees; and

Fourth, to add an Inspector General for the Central Intelligence Agency to help assure lawful internal compliance on matters which do not come within the purview of congressional oversight.

SECTION 2

Notwithstanding the obvious failure of the executive branch to provide requisite information to Congress under the provisions of existing statutes, some have argued that there was compliance because of the vagaries of current law. In order to prevent a repetition of such conduct, the National Security Act of 1947 (50 U.S.C. 413) and section 662 of the Foreign Assistance Act of 1961 (22 U.S.C. 2422), known as the Hughes-Ryan amendment, are made more specific by this bill. Existing law prohibits the expenditure of funds by the Central Intelligence Agency for covert activities "unless and until the President finds that each such operation is important to the national security of the United States." Efforts have been made to justify the CIA's action in the Iran/Contra matter by contentions that an oral finding was sufficient and that a later written finding could retroactively justify earlier covert action.

This bill unequivocally requires that the finding be in writing and that the President shall give notice and a copy of any finding to the House and Senate Intelligence Committees contemporaneously with the finding, but in no event later than 24 hours after it is made. A limited exception is provided for an oral finding in situations where the President deems that immediate action by the United States is required to deal with the emergency situation affecting vital national interests and time does not permit the preparation of a written finding. In that event, the finding must be immediately reduced to writing after the action is orally approved, with the written finding to be completed no later than 24 hours after the making of the oral finding.

Where an oral finding is used, there is the additional requirement that the written finding shall include a statement of the reasons of the President for having first proceeded with an oral finding. This bill further provides that a finding shall be effective only with respect to operations beginning after the finding was made by the President in order to preclude any contention that the finding may retroactively cover prior CIA operations.

These statutory requirements leave no room for doubt that no covert action may be undertaken without complying with the requirements of a written finding and the requisite notice, by any personnel of the executive branch or anyone acting on its behalf including foreign governments or any individual. This specific provision would preclude any future argument that the delivery of arms to Iran was legally justified, after the fact, by a retroactive finding or that other entities or actors were not bound by the same limitations affecting the CIA.

This bill further removes any possible ambiguity in section 501(b) of the President's obligation to notify the House and Senate Intelligence Committees of covert action. Section 501(b) now provides:

> (b) The President shall fully inform the intelligence committees in a timely fashion of intelligence operations in foreign countries, other than activities intended solely for obtaining necessary intelligence, for which prior notice was not given under subsection (a) and shall provide a statement of the reasons for not giving prior notice.

The phrase "for which prior notice was not given under subsection (a)" carries the direct implication that the House and Senate Intelligence Committees should have been "fully and currently informed" of covert activities which are covered by section 501(b). It is obvious that the President did not comply with section 501(b) to inform the Intelligence Committees in a "timely fashion" where some 14 months elapsed from the time of the first covert action on the Iranian arms sales to the time that information reached the Intelligence Committees. Yet, some have contended that the exigencies of the situation excused the President from giving earlier notice so that requirements of a "timely fashion" were observed.

This bill removes any room for such future arguments by requiring the President to give notice to the Intelligence Committees contemporaneously with any written or oral finding. In order to remove any conceivable ambiguity as to the meaning of "contemporaneously," a time certain is added requiring the information to be transmitted no later than 24 hours after the making of an oral or written finding. Absent the experience of the Iran/Contra matter, it would seem unnecessary to put a 24-hour limitation after the requirement of "contemporaneously," but the recent experience that a time certain be affixed so that no one can later claim that "contemporaneously" means days, weeks, months, or even years later.

The requirement that the President shall contemporaneously inform the Intelligence Committees is intended to provide a procedure where the Intelligence Committees might be consulted in advance so that the President would have the benefit of their thinking if he so chose. The language of section 501(a)(1) to keep the Intelligence Committees "fully and currently informed of all intelligence activities" suggests a design for congressional input. Even with such contemporaneous information and the possibility of congressional input, it would remain within the President's power to proceed or not as he chooses.

There is much to recommend the availability of the institutional experience of the Senate and House Intelligence Committees. Had there been a review by the Intelligence Committees of the sale of arms to Iran, it is likely that the policy would never have been implemented. Had members of the Senate and House Intelligence Committees joined the Secretary of State and the Secretary of Defense and others in discouraging Presidential action in selling arms to Iran, the President might well have ceased and desisted on his own. Had the President declined to terminate that disastrous policy, then the Congress might have utilized its power to terminate funding through its appropriations powers, thereby ending the sale of arms to Iran.

The President's obligations on congressional oversight are further limited by excluding notice to the Intelligence Committees where the President determines that it is essential to limit such disclosure to meet extraordinary circumstances affecting the vital interests of the United States. In that event, such notice is to be given only to the chairman and ranking minority members of the Intelligence Committees, the Speaker and minority leader of the House of Representatives and the majority and minority leaders of the Senate. That more limited disclosure gives sufficient assurances of preservation of secrecy. A valid argument could be made that notice should go only to the leadership of both Houses in the interests of secrecy, but the greater familiarity of the chairmen and vice-chairmen of the Intelligence Committees warrants their being included.

SECTION 3

This bill further provides for a mandatory sentence of imprisonment for any officer or employee of the United States who provides false information to any committee or subcommittee of the Senate or House of Representatives. No matter how rigorous or exacting statutory requirements may be, the oversight function of Congress cannot be accomplished if executive branch officials present false or misleading testimony to the Congress.

This is especially problemsome where witnesses appear before the Intelligence Committees in a secret session. Where evidence is provided in a public session, there is an opportunity for others to learn of the false information and to come forward with the truth so that the congressional oversight committees can perform their functions. That is not possible where key executive officials appear in secret and provide false information to the Oversight Committees. Under those circumstances, the committees realistically have little or no opportunity to determine the truth.

While false official statements to such congressional committees are covered by section 1001 of the Criminal Code (18 U.S.C. 1001), this kind of misconduct, either in secret or public session, is so serious that it warrants a mandatory jail sentence.

While there has been experience with witnesses who return to the committee to apologize for prior testimony, such apologies fall far short of correcting the enormous damage which has been done. Obviously, there is no way to know how much false, deceptive, or misleading evidence has been presented in secret where the truthful information has never come to the attention of the committees. This mandatory jail sentence is intended to put members of the executive branch on notice that the matter is extremely serious as reflected by the heavy penalty.

It is obviously well within the ambit for any witness who appears before a congressional committee to decline to answer any question until that witness has had an opportunity to reflect on the question or to consult with his or her superior. Simply stated, it is understandable if a witness declines to answer or asks for a delay, but it is intolerable for false or deceptive answers to be made. The committee would doubtless consider not insisting on an answer where some reason was advanced for nondisclosure. Where any witness chooses to decline to answer a question, there is always an opportunity for further consideration by both the witness and the committee.

In any event, an enforceable legal obligation to answer does not arise as a practical matter until citation for contempt of Congress is obtained and the court orders an answer. It is only at this point that a witness is subject to a sanction for contempt for failing to answer.

This bill further provides that anyone who gives such false or deceptive information may recant and avoid possible criminal liability by correcting the record within 5 days. This 5-day period should be ample time for rethinking the issue and time to make the appropriate correction.

SECTION 4

The Inspector General Act of 1978, Public Law 95-452, established independent Presidentially appointed and Senate confirmed IG's in 19 Federal departments and agencies. The creation of these statutory IG's has improved the effectiveness of the Federal Government. The act also ensures that both the Congress and agency heads are receiving independent assessments of programs and operations for which they are accountable or have oversight responsibility. However, the CIA was not included.

Currently, the Inspector General for CIA is usually appointed internally. That process is not conducive to objectivity.

A prime example was the CIA's mining of the harbors of Nicaragua. The CIA official with operational responsibility for that action was next appointed to the position of Inspector General. While he disqualified himself from the ensuing IG investigation of that activity, it is difficult to calculate the objectivity of that investigation by virtue of his presence.

The Intelligence Committee has had access to some IG reports in past years, but for the most part, it has not exercised oversight over the intelligence community's IG's. That has been a responsibility of the Intelligence Oversight Board. The Iran-Contra investigations have raised serious questions about the effectiveness of that body. The Tower Commission found that (III-22): "Lieutenant Colonel North and Vice Admiral Poindexter received legal advice from the President's Intelligence Oversight Board that the restriction on lethal assistance to the Contras did not cover the NSC staff." In addition, review of Executive Order 12334, which establishes the Intelligence Oversight Board, and the operations of the Board itself reveal that the Board is not adequately staffed, that the quality of its legal counsel has been demonstrated to be less than thorough and experienced, and, finally, that its effectiveness is not held in high regard by the Intelligence Committees.

This bill would greatly increase the independence and credibility of the CIA's Inspector General by making the IG a permanent, statutory official subject to appointment by the President and confirmation by the Senate with limitations on grounds for dismissal. To increase accountability to Congress, semiannual and special reports by the Inspector General must be promptly submitted to the Intelligence Committees, as well as to the Director of the CIA.

Secrecy is provided for, as is subpoena power. While the Director may halt an audit or investigation, he may do so only if:

First, it concerns an ongoing operation;

Second, he finds it vital to national security; and

Third, he reports to the Intelligence Committees within 7 days on the reasons.

The combined effect of an independent IG, mandatory penalties for deceiving Congress, and statutory requirements on notice to Congress on covert action along with written findings are therapeutic steps which should be taken in light of our experience from the Iran/Contra matter.

After the problems were publicly disclosed on the failure of the executive branch to notify the Intelligence Committees on the sale of arms to Iran, there was an exchange of correspondence between the President and the Senate Intelligence Committee. The President wrote to Chairman Boren by letter dated August 7, 1987, expressing his support for certain key concepts recommended by the Senate Intelligence Committee. Paragraph 6 of the President's letter stated:

> In all but the most exceptional circumstances, timely notification to Congress under Section 501(b) of the National Security Act of 1947, as amended, will not be delayed beyond two working days of the initiation of a special activity.

In my judgment, where notice may not be given even in "the most exceptional circumstances" the fundamental requirement of notice is defeated because it remains with the purview of the President to determine what constitutes the "exceptional circumstances." Precise requirements are necessary as set forth in this proposed legislation.

By Mr. LAUTENBERG:

S. 1819. A bill to amend the National Driver Registration Act of 1982 to assist in the identification of operators of aircraft who have driving problems by permitting access to the National Driver Register; to the Committee on Commerce, Science and Transportation.

IDENTIFICATION OF AIRCRAFT OPERATORS WHO HAVE DRIVING PROBLEMS

● Mr. LAUTENBERG. Mr. President, I rise today to introduce a bill aimed at closing a serious loophole in our aviation safety network.

This bill would authorize individuals to provide the Federal Aviation Administration with access to the National Driver Register [NDR] in reviewing pilot applications for medical certification. It would allow the FAA to use this information to verify information provided by pilots, and to help evaluate whether the airman meets minimum medical standards prescribed by the FAA.

The FAA would not be provided access to information more than 3 years old, unless that information pertains to a revocation or suspension of a drivers license that is still in effect. The FAA would not be permitted to use the information for purposes not set out in statute.

In addition, the airman would be provided the opportunity to review the NDR information and comment on it in writing. This would protect against false identification of an applicant, and give the applicant the opportunity to provide any explanation for information in the NDR.

With enactment of this provision, it is intended that the FAA will promulgate regulations to require authorization of access to the NDR as a condition of the medical certification process.

In order to legally fly, any pilot must receive regular medical certification. The majority of the exams are performed by private physicians approved by the FAA.

There are several classes of certification. First-class certification is for airline pilots, and must be renewed every 6 months. Second-class certification is for commercial pilots, flight engineers, and flight navigators. It is renewed annually. Private pilots receive third-class certification, which must be renewed every 24 months.

Currently, the FAA requires pilots seeking certification to report drug or alcohol problems, including drunk driving convictions. This is a requirement too many do not comply with. And the FAA does not know who those people are. Therein lies the problem.

Although the majority of pilots take the responsibility that comes with their license seriously, there are those that don't. There are those who might drink and fly. There are those who would not comply with FAA's reporting requirements.

A report by DOT's inspector general in February of this year revealed that this reporting system is faulty. There are 711,648 active airmen now certified by the FAA. The inspector general found that about 10,300 of these pilots had their driving license suspended or revoked for DWI convictions in the last 7 years.

However, 7,850 of the 10,300—of 76 percent—did not report this information to the FAA.

These are the people—those who intentionally do not comply with Federal requirements—whom this bill would specifically address.

Mr. President, let me cite a few examples of where the voluntary reporting system proved lacking.

In February 1986, a commercial cargo pilot was killed when his plane crashed in Tennessee, 3 hours after leaving Milwaukee. His blood alcohol content [BAC] was found to be 0.158, four times higher than the level FAA considers the threshold of impairment.

A review of his driving record indicated a history of drunk driving; 18 months earlier, he demolished his van while driving 100 miles per hour. At that time, his BAC was 0.26. From 1981 to 1984, he had seven DWI convictions, and had his drivers license revoked.

Yet, he could still fly. And the FAA had no way of knowing about his record.

The inspector general's investigation turned up 262 first-class pilots with at least 1 drunk driving conviction. They included a pilot who had two separate DWI convictions, resulting in a 5-year revocation of his drivers license. The IG also found 29 second- and third-class pilots who had 3 or more DWI convictions since 1983. Combined, the 29 pilots had 94 DWI convictions in that time. This included 1 third-class pilot who had 3 convictions and had his license suspended for 10 years.

Yet, they all could fly, and the FAA had no way of checking into their records.

Mr. President, this is a gap we need to close. A driving record can indicate a pattern of behavior. If someone has a history of drunk driving convictions, we have a right to think about whether we want to allow that person in the cockpit of a plane.

The FAA already has the interest in knowing. Its medical certification application form asks for a great deal of information about a pilot's background. Included on that form is an inquiry about whether the applicant ever had, or now has traffic or other convictions.

But, under current law, the FAA cannot verify the information the applicant provides. The FAA should not fly blind while some pilots fly drunk. This bill would remove the obstacle that prevents the FAA from confirming pilots' backgrounds.

This change has long been endorsed by the National Transportation Safety Board, and is supported by the Department of Transportation. I would note, Mr. President, that similar provisions were included in the Rail Safety Improvement Act, which I introduced in April, and in S. 1539, the rail safety legislation subsequently reported by the Senate Commerce Committee.

I intend to offer this bill as an amendment to the Airport and Airway Capacity Expansion Act when it is considered on the Senate floor. I urge my colleagues to support this important legislation.

I ask unanimous consent that the text of this bill be printed in the Record.

There being no objection, the bill was ordered to be printed in the Record, as follows:

S. 1819

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Section 206 of the National Driver Register Act of 1982 (23 U.S.C. 401 note) is amended as follows:

(1) In subsection (a), paragraph (1) is amended by substituting the word "transportation" for "highway".

(2) In subsection (b), insert the following new paragraph immediately after para-

graph (2), and renumber paragraphs (3) and (4) as paragraphs (4) and (5), respectively:

"(3) Any individual who has applied for or received an airman's certificate may request the chief driver licensing official of a State to transmit information regarding the individual under subsection (a) of this section to the Administrator of the Federal Aviation Administration. The Administrator of the Federal Aviation Administration may receive such information, and shall make that information available to the individual for review and written comment. The Administrator shall not divulge or use such information except to verify information required to be reported to the Administrator by airmen applying for an airman medical certificate and to evaluate whether the airman meets the minimum medical standards as prescribed by the Administrator to be issued an airman medical certificate. There shall be no access to information in the Register under this paragraph if such information was entered in the Register more than three years before the date of such request, unless such information relates to revocations or suspensions which are still in effect on the date of the request. Information submitted to the Register by States under the Act of July 14, 1960 (74 Stat. 526), or under this Act shall be subject to access for the purpose of this paragraph during the transition to the Register established under section 203(a) of this Act.".

(b) Section 206(b) of the National Driver Register Act of 1982 (23 U.S.C. 401 note) is amended by adding the following sentence at the end of paragraphs (b)(1), (b)(2), and (b)(4), respectively: "Information submitted to the Register by States under the Act of July 14, 1960 (74 Stat. 526), and under this Act shall be subject to access for the purpose of this paragraph during the transition to the Register established under section 203(a) of this Act.".●

By Mr. SPECTER:

S. 1820. A bill to improve the objectivity, reliability, coordination and timeliness of national foreign intelligence through a reorganization of positions, and for other purposes; to the Select Committee on Intelligence.

NATIONAL INTELLIGENCE REORGANIZATION ACT

Mr. SPECTER. Mr. President, the bill I am introducing today would enhance considerably the objectivity and reliability of our Nation's intelligence, which the events of the past 2 years have demonstrated to be woefully lacking. It would greatly improve the management structure and control of the activities and vast resources of our country's intelligence agenices and departments.

In his Iran-Contra testimony, Secretary of State George Shultz summarized, in very clear terms, the principal problem with U.S. intelligence. [One is] the importance of separating the function of gathering and analyzing intelligence from the function of developing and carrying out policy. If the two things are mixed together, it is too tempting to have your analysis and selection of information that's presented favor the policy that you're advocating. Secretary Shultz went on to say that, long before the Iran-Contra events came to light, he already had come to have grave doubts about the objectivity and reliability of some of the intelligence he was receiving precisely because the people who supplied it were too deeply involved in advocating and carrying out policy.

In the 40 years since passage of the National Security Act the Directors of Central Intelligence have been tested repeatedly on their ability to maintain a delicate separation of two competing responsibilities. On the one hand, the Director of Central Intelligence [DCI] has been expected to provide unvarnished intelligence information to the President and other foreign policymakers. On the other hand, he has been asked to be a participant in the making and execution of foreign policy through covert actions. If history has taught us anything, it is that the desired separation cannot and has not been maintained. It is unrealistic and probably unfair to expect our Nation's senior intelligence officer to be the purveyor of objective, unbiased information upon which the President and Secretary of State may formulate a foreign policy, while at the same time charging him to influence and implement that policy in the form of covert action.

The problem is particularly acute when the DCI is a foreign policy activist. Director William Casey was not the first Director of Central of Intelligence who desired to be involved to some degree in the formulation or implementation of foreign policy, nor is he likely to be the last. Recognizing this, we should take steps to ensure, to the greatest degree possible, some structural separation of the DCI's current function. We simply cannot afford to have two Secretaries of State, two foreign policymakers who may be attempting to move the country in different directions, one overtly and the other covertly. No one is well served by this contradiction—not the President, not the Congress and not the country.

Now we have a choice, we can preserve the status quo and hope that the current Director of Central Intelligence—and each of his successors—will understand the lessons of the Iran-Contra affair. Or we can create a better system of checks and balances on covert action undertaking. It is up to the Congress to clarify in the law what we expect the Director of Central Intelligence and the CIA to do and not to do. We can do this by providing an organizational framework designed to permit the Director of Central Intelligence to provide objective, reliable and coordinated intelligence to policymakers in a timely manner. However, we must make it clear to the Director—not simply the current one but to all future ones—that it is not the DCI's function to formulate and implement foreign policy.

This bill accomplishes these purposes by:

First, amending the National Security Act of 1947 to make clear that the principal role of foreign intelligence and of the agencies who provide such intelligence is to ensure the provision of objective, reliable, coordinated and timely information upon which the President and other senior foreign policymakers may base sound foreign policy decisions;

Second, relieving the Director of Central Intelligence of the responsibility for implementing covert actions, but charging him with responsibility for overseeing the conformity of such actions with applicable laws and regulations;

Third, establishing the position of "Director of the Central Intelligence Agency" to manage the CIA on a full time basis and to implement cover actions directed by the President.

As I already have stated, this bill will greatly enhance the management of the activities and vast resources of our several intelligence departments and agencies. In 1947, President Truman, mindful of the President's need for intelligence and of Pearl Harbor's bitter lesson stemming from uncoordinated and poorly disseminated intelligence, formed an agency to centralize intelligence. The position of Director of Central Intelligence was created to head the new Central Intelligence Agency and to coordinate the activities of the intelligence entities in existence. Those entities consisted of the intelligence services of the Army and Navy, a small bureau in the State Department and remnants of the OSS. Since 1947, that coordination task has grown enormously with the addition of complex technology, the commitment of vast resources and the establishment of many large, secretive and organizationally complex departments and agencies.

Since John F. Kennedy, several Presidents have directed their Director of Central Intelligence to devote the bulk of their time to the intelligence community. For a number of reasons this has not happened. Suffice it to say that, in some cases, DCI's have found the operational role of the CIA more glamorous than managing an intelligence community composed of agencies and departments opposed to centralized direction. Events such as Watergate, congressional investigations of wrongdoings, and the turnover of DCI's, also have contributed to the neglect.

Today, the intelligence community, as it is called, consists of the Central Intelligence Agency, the Defense Intelligence Agency, the National Security Agency, the large foreign intelligence and counterintelligence elements of the Army, Navy, Air Force and Marine Corps, offices for the collection of specialized intelligence through reconnaissance, the FBI's Foreign Counterintelligence Division, the State Department's Bureau of Intelligence and Research and elements of the Treasury and Energy Departments. These organizations provide what we call national foreign intelligence. There are other elements in the Government, mostly within the Defense Department, which run a vast system of tactical intelligence nearly as complex and as expensive as that of the national foreign intelligence world. Outside of the Government, there is another world of contractors who design and develop these complex intelligence systems and, in some cases, operate them for the intelligence agencies.

Make no mistake about my remarks. These agencies and programs are critical to our national security. The country needs them. But their budgets are in the billions; their growth in terms of people is the greatest in the history of U.S. intelligence; their mission and challenges now and for the foreseeable future are so demanding, complex and interdependent that their management and leadership can no longer be accomplished by a Director of Central Intelligence who also must manage a large agency such as the CIA.

The Intelligence Oversight Committees which review the programs and budgets of the intelligence community have clearly identified management of the intelligence community as a critical issue. In 1976, the Select Committee to study Government operations with respect to intelligence—the predecessor to the Senate Select Committee on Intelligence—"found concern that the function of DCI in his roles as intelligence community leader and principal intelligence adviser to the President is inconsistent with his responsibilities to manage one of the intelligence community agencies—the CIA." The committee also expressed concern that the DCI's new span of control—both the entire intelligence community and the entire CIA—may be too great for him to exercise effective detailed supervision of clandestine activities. Those concerns are even greater today than they were 11 years ago, because of the greater challenges and costs facing intelligence, the growing competition for resources and the unacceptable risks to U.S. foreign policy.

To address this problem, the bill I am introducing today also:

Changes the title of the "Director of Central Intelligence" to the "Director of National Intelligence" to reflect the new, more important status of this position (the title is not new; it was first proposed by the Senate Intelligence Committee in 1980);

Establishes the Director of National Intelligence as the primary adviser to the President on national foreign intelligence and as the full-time manager of the intelligence community with clearly defined statutory responsibilities and authorities for the foreign intelligence effort;

Makes the Director of National Intelligence a statutory member of the National Security Council to ensure that he is aware of emerging issues for which there is an intelligence need and to ensure that there is an objective intelligence base for national security and foreign policy decisions being contemplated;

Ensures that the position of the Director of National Intelligence as leader of the intelligence community is not a hollow one, by giving the position not only the statutory authority to approve and submit the intelligence community program, resources and budget, but also to task all intelligence collection and analytical resources;

Eliminates the need for a Director of the Intelligence Community staff since that 237 person staff plus other offices and personnel would report directly to the Director of National Intelligence.

Finally, I endorse completely Judge Webster's view, recently expressed to a group of reporters, that the CIA's directorship should not change every time a new President is elected. This gives rise to charges that the position has been politicized and that there is an inadequate institutional memory of lessons learned from the past. In the past 15 years there have been 7 heads of the CIA and only 2 of these were career intelligence officers. We cannot afford a generalized loss of confidence in the CIA's objectivity and reliability, because of the politicization of its analysis such as was expressed by Secretary of State Shultz, to ensure a more professional approach to intelligence activities and analysis, to reduce the risk of politicization and to protect against the dangers of an intelligence "czar," this bill also would:

Create a fixed, 7-year tenure for the Director of the Central Intelligence Agency.

Require that at least one of the positions of Director or Deputy Director of the Central Intelligence Agency be filled by a career intelligence officer from the intelligence community.

I am not proposing that the Director of National Intelligence be tenured because I believe that the President should have the right to select individuals who are to serve as his primary advisers. I believe that with a separate and tenured Director of the CIA and with other intelligence agency heads not under the administrative control of the Director of National Intelligence—the Directors of the National Security Agency and the defense intelligence agencies are appointed by the Secretary of Defense—we would have a better system of checks and balances against politicization of intelligence.

Thank you, Mr. President.

By Mr. BREAUX:

S. 1821. A bill to amend the Internal Revenue Code of 1986 and the Social Security Act to provide that certain services performed by an individual in the processing of fish or shellfish are exempt from the definition of employee for Federal tax purposes; to the Committee on Finance.

SEAFOOD PROCESSOR TAX LEGISLATION

Mr. BREAUX. Mr. President, I would like to bring to the attention of my colleagues and ask for their assistance with an issue that has profound implications for the U.S. seafood processing industry, particularly in the Gulf of Mexico region.

Recently, the Internal Revenue Service [IRS] has announced a change in policy with regard to the Federal tax responsibilities of U.S. seafood processors. Specifically, the IRS has stated a new position that contract workers in seafood processing facilities who peel, pick, head, shuck, fillet, or otherwise process fish or shellfish, and who are compensated on the basis of the volume of seafood thus processed, are no longer to be treated as independent contractors, but as employees instead. A good example are the thousands of workers at the small "mom and pop" crab, oyster and shrimp houses that dot our gulf coast, but many analogous examples exist nationwide.

This new IRS position, which directly contradicts longstanding IRS rulings and policy, places a substantial and unjustified financial and administrative burden on the already marginal U.S. seafood processing industry. This new burden translates to a net increase in Federal tax responsibility of 7.95 percent for the seafood processors as well as a costly administrative burden of keeping detailed records on and withholding taxes from payments to a vast array of transient workers. In fact, unable to bear this new responsibility, small family-owned seafood processing businesses throughout the gulf coast have already begun to close their doors. This certainly does nothing to improve the serious unemployment situation that resulted from the oil and gas depression in this region.

The treatment of workers as independent contractors for Federal tax purposes under certain types of employment arrangements has significant statutory precedent. For example, Congress has established independent contractor status in analogous situations where workers are compensated on the goods produced (code section 3121(b)(16)—tenant farmers; code section 3121(b)(20)—fishermen), where the individuals participating in an industry are by custom or habit highly mobile (code section 3121(b)(1)—foreign migrant agricultural workers), and where the administrative burdens of treating individuals as employees would be unreasonable (code section 3121(b)(20)—fishing vessel employees; see Senate Report No. 938, 94th Cong., 2d Sess. 385–86 (1976)).

Mr. President, workers that perform the nominal processing of seafood possess these same characteristics and have thus been treated appropriately by IRS until recently. Rather than receive a fixed wage, these workers are paid on the basis of the quantity of seafood they actually process. As a matter of culture, these individuals are generally highly mobile, frequently moving around a region following what they perceive to be the most desirable employment opportunities. Further, these individuals are free to come and go at will and exercise their own discretion as to quantity and quality of work performed.

Because of the highly transient and independent work habits of these individuals, even relatively small processing facilities often find it necessary to use the services of over 100 individuals over the course of a year. Such an employment arrangement also makes it extremely impractical for a processor to keep records necessary to calculate tax obligations as an employer, and equally difficult to withhold the appropriate taxes for payment.

To address this unfortunate situation, I am introducing legislation today that would provide for those individuals who peel, pick, head, shuck, fillet, or otherwise process fish or shellfish, and who are compensated on the basis of the quantity of seafood thus processed, to be treated in a manner that is consistent with their historical treatment by IRS and with similarly situated individuals. Specifically, the legislation would have the effect of defining these workers as independent contractors by amending the definitions of "employment" in both the Federal Insurance Contributions Act and the Federal Unemployment Tax Act. I look for the support of my colleagues for this important legislation.

Mr. President, I ask unanimous consent that the full text of the legislation be printed in the Record immediately following my statement.

There being no objection, the bill was ordered to be printed in the Record, as follows:

S. 1821

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EXEMPTION OF SEAFOOD PROCESSORS FROM DEFINITION OF EMPLOYEE FOR FEDERAL TAX PURPOSES.

(a) Federal Insurance Contributions Act.—Section 3121(b) of the Internal Revenue Code of 1986 (defining employment) is amended—

(1) by striking out "or" at the end of paragraph (19),

(2) by striking out the period at the end of paragraph (20) and inserting in lieu thereof a semicolon and "or", and

(3) by adding at the end thereof the following new paragraph:

"(21) service performed by an individual under an arrangement pursuant to which—

"(A) such individual undertakes the peeling, picking, heading, shucking, filleting, or otherwise processing fish or shellfish, and

"(B) any remuneration such individual receives for such service is based on the quantity of fish or shellfish such individual, peels, picks, heads, shucks, fillets, or otherwise processes.".

(b) Federal Unemployment Tax.—Section 3306(c) of the Internal Revenue Code of 1986 (defining employment) is amended—

(1) by striking out "or" at the end of paragraph (19),

(2) by striking out the period at the end of paragraph (20) and inserting in lieu thereof a semicolon and "or", and

(3) by adding at the end thereof the following new paragraph:

"(21) service described in section 3121(b)(21).".

(c) Conforming Amendments.—

(1) Section 1402(c)(2) of the Internal Revenue Code of 1986 (defining trade or business) is amended—

(A) by striking out "and" at the end of subparagraph (F),

(B) by striking out the semicolon at the end of subparagraph (G) and inserting in lieu thereof a comma and "and", and

(C) by adding at the end thereof the following new subparagraph:

"(H) service described in section 3121(b)(21);".

(2) Section 3401(a) of such Code (defining wages) is amended—

(A) by striking out "or" at the end of paragraph (19),

(B) by striking out the period at the end of paragraph (20) and inserting in lieu thereof a semicolon and "or", and

(C) by adding at the end thereof the following new paragraph:

"(21) for service described in section 3121(b)(21).".

(3) Section 210(a) of the Social Security Act (defining employment) is amended—

(A) by striking out "or" at the end of paragraph (19),

(B) by striking out the period at the end of paragraph (20) and inserting in lieu thereof a semicolon and "or", and

(C) by adding at the end thereof the following new paragraph:

"(21) service performed by an individual under an arrangement pursuant to which—

"(A) such individual undertakes the peeling, picking, heading, shucking, filleting, or otherwise processing fish or shellfish, and

"(B) any remuneration such individual receives for such service is based on the quantity of fish or shellfish such individual, peels, picks, heads, shucks, fillets, or otherwise processes.".

(4) Section 211(c)(2) of the Social Security Act (defining trade or business) is amended—

(A) by striking out "and" at the end of subparagraph (F),

(B) by striking out the semicolon at the end of subparagraph (G) and inserting in lieu thereof a comma and "and", and

(C) by adding at the end thereof the following new subparagraph:

"(H) service described in section 210(a)(21);".

(d) Effective Dates.—The amendments made by subsections (a), (b), and (c)(3) shall apply to services performed after December 31, 1987. The amendments made by subsections (c)(1), (c)(2), and (c)(4) shall apply to taxable years ending after December 31, 1987.

By Mr. BIDEN (for himself, Mr. Thurmond, Mr. Kennedy, and Mr. Hatch):

S. 1822. A bill to make certain amendments to the Sentencing Reform Act of 1984 and to improve certain provisions relating to imposition and collection of criminal fines, and for other purposes; which was placed on the calendar by unanimous consent.

FEDERAL CRIMINAL FINES AND SENTENCING ACT

● Mr. BIDEN. Mr. President, I am pleased to introduce today, along with the committee's ranking member, Mr. Thurmond, Mr. Kennedy, and Mr. Hatch, a bill to make minor and technical amendments to the Sentencing Reform Act of 1984. These amendments will clarify and correct certain provisions of the Sentencing Reform Act that relate to the collection of criminal fines and the implementation of the new sentencing guidelines. The effective date of the Sentencing Reform Act is November 1, 1987. The passage of this bill before that date will assure a smooth transition to the guideline system.

Three years ago Congress created the Sentencing Commission and gave it the task of creating a uniform system for sentencing criminal defendants that would be rational, predictable, and fair. The guidelines promulgated by the Commission achieve those goals. They will be good for law enforcement, because they will ensure that white collar criminals and other serious offenders serve time in jail. They will be good for the criminal justice system because by ending the parole system and imposing a system of real time sentences, they will increase the credibility of the system in the eyes of the public. Most importantly, sentences will be imposed according to a set of objective criteria, not according to the whim of the sentencing judge.

The Comprehensive Crime Control Act of 1984 was the culmination of a bipartisan effort that revamped our Federal criminal justice system. Now, as one of the most important elements of the act is about to take effect, the original authors are asking our colleagues to support these amendments to ensure a smooth transition to these new sentencing procedures.

This is a consensus bill, representing the work of the Department of Justice, the U.S. Sentencing Commission, and the Administrative Office of the U.S. Courts, as well as members of the Judiciary Committees on both sides of the aisle. It is a continuation of the bipartisan cooperation we have had on the Judiciary Committee on previous crime legislation. I am hopeful that it will have the same bipartisan support in the Senate.

Mr. President, I ask unanimous consent that the text of the bill and a section-by-section description of the bill be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 1822

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Federal Criminal Fines and Sentencing Act of 1987".

TITLE I—SENTENCING AMENDMENTS

SEC. 101. SHORT TITLE.

This title may be cited as the "Sentencing Act of 1987".

SEC. 102. AMENDMENTS RELATING TO EFFECTIVE DATE OF SENTENCING REFORM ACT AND PHASE-OUT OF PAROLE.

(a) EFFECTIVE DATES AND ABOLITION OF PAROLE COMMISSION.—Section 235(b) of the Comprehensive Crime Control Act of 1984 is amended by striking out paragraphs (1) through (4) and inserting in lieu thereof the following:

"(1) Except as provided in this subsection, the amendments made by this chapter shall not apply to an offense committed before the effective dates set forth in subsection (a).

"(2) The United States Parole Commission shall be abolished effective September 30, 1992. The Parole Commission shall have no jurisdiction over an offender who is sentenced after May 31, 1992, who violates a condition of parole after that date, or who is transferred to the United States pursuant to chapter 306 of title 18, United States Code, after that date. The Parole Commission shall not revise its guidelines in effect on March 31, 1992. No later than May 15, 1992, the Commission shall set a presumptive release date pursuant to section 4206 of title 18, United States Code, for each prisoner who will be in its jurisdiction on September 30, 1992.

"(3) After September 30, 1992, the Bureau of Prisons (or, if otherwise provided by law, another designated entity within the Department of Justice) may, in accord with applicable regulations of the Parole Commission in effect on March 31, 1992, adjust the release date and impose or modify conditions of release for a prisoner who had been in the jurisdiction of the Parole Commission on September 30, 1992. The Director of the Bureau of Prisons (or the head of the designated entity) is authorized to promulgate such regulations as may be necessary to implement the provisions of this subsection. The regulations shall provide the same substantive rights to prisoners as were provided under the Parole Commission regulations in effect on March 31, 1992, but may provide different procedural mechanisms to implement those rights.

"(4) The court which imposes sentence shall set a presumptive release date and the conditions of release in accord with the applicable parole guidelines in effect on March 31, 1992, with respect to an offense committed before the effective dates set forth in subsection (a)(1)(B)(ii) in the case of—

"(A) a defendant sentenced after March 31, 1992, or

"(B) any other defendant for whom the Parole Commission has not on or before May 15, 1992, set a presumptive release date.

The determination with respect to a defendant described in subparagraph (A) shall be made at the time of sentencing. The Bureau of Prisons (or designated entity) may adjust the release date and modify the conditions of release in accord with its regulations promulgated under paragraph (3).

"(5) If a defendant who is on parole violates a condition of release after March 31, 1992, the United States district court for the district to which the defendant has been paroled may revoke parole or amend the conditions of release in accord with the regulations of the Parole Commission in effect on March 31, 1992, or may transfer jurisdiction in the interest of justice to any other district court, which may take such action as provided by this paragraph. The court may set the date of reparole and the conditions of release in accord with those regulations. The entity may adjust the release date and may impose or modify the conditions of release in accord with its regulations promulgated under paragraph (3).

"(6) The Bureau of Prisons (or designated entity) may set a presumptive release date in accord with its regulations promulgated under paragraph (3), for an offender serving a sentence of imprisonment in a foreign country for an offense committed before the effective date set forth in subsection (a)(1)(B)(ii) if the offender is transferred to the United States pursuant to chapter 306 of title 18, United States Code, after March 31, 1992. The Bureau of Prisons (or designated entity) may adjust the release date and impose or modify conditions of release for such an offender in accord with its regulations.

"(7) Notwithstanding the provisions of section 4202 of title 18, United States Code, as in effect the day before the effective date set forth in subsection (a)(1)(B)(ii), the term of office of a Commissioner who is in office on the effective date is extended through September 30, 1992. A vacancy on the Commission may be filled in accord with section 4202, except that the term of office will end September 30, 1992.".

(b) TECHNICAL AMENDMENT.—Paragraph (5) of section 235(b) of the Comprehensive Crime Control Act of 1984 is redesignated as paragraph (8) and is further amended by—

(1) striking out "until the expiration of the five year period following the effective date of this Act" and inserting in lieu thereof "from the effective date of this chapter until September 30, 1992"; and

(2) striking out "during the five-year period" both places it appears and inserting in lieu thereof "during this period".

SEC. 103. STANDARD FOR DEPARTURE.

Section 3553(b) of title 18, United States Code, is amended by inserting after the first sentence the following: "In determining whether a circumstance was adequately taken into consideration, the court shall consider only the sentencing guidelines, policy statements, and official commentary of the Sentencing Commission.".

SEC. 104. PROCEDURE FOR APPEALING SENTENCE IMPOSED BY A MAGISTRATE.

Section 3742 of title 18, United States Code, is amended by adding at the end thereof the following:

"(f) APPLICATION TO A SENTENCE BY A MAGISTRATE.—An appeal of an otherwise final sentence imposed by a United States magistrate may be taken to a judge of the district court, and the provisions of this section shall apply as though the appeal were to a court of appeals from a sentence imposed by a district court.".

SEC. 105. MODIFICATION OF STANDARD OF APPELLATE REVIEW.

Section 3742 of title 18, United States Code, is further amended in the second sentence of subsection (d) by inserting before the period "and shall give due deference to the district court's application of the guidelines to the facts".

SEC. 106. REVIEW OF A SENTENCE FOR WHICH THERE IS NO APPLICABLE GUIDELINE.

Section 3742 of title 18, United States Code, is further amended—

(1) in subsections (a)(4) and (b)(4) by inserting "plainly unreasonable or" before "greater than" and by striking ", if any,";

(2) in subsection (d) by—

(A) striking out "or" at the end of paragraph (2);

(B) striking out the period at the end of paragraph (3) and inserting in lieu thereof "; or"; and

(C) inserting after paragraph (3) the following new paragraph:

"(4) was imposed for an offense for which there is no applicable sentencing guideline and is plainly unreasonable.";

(3) in subsection (e)(2) by inserting "or was imposed for an offense for which there is no applicable sentencing guideline and is plainly unreasonable," after "is outside the range of the applicable sentencing guideline and is unreasonable"; and

(4) in subsections (e)(2)(A) and (e)(2)(B) by inserting "and" after "it shall set aside the sentence".

SEC. 107. CLARIFICATION OF BASIS FOR AFFIRMING AN APPEAL.

Section 3742 of title 18, United States Code, is further amended by amending subsection (e)(3) to read as follows:

"(3) is not described in paragraph (1) or (2), it shall affirm the sentence.".

SEC. 108. CORRECTION OF PROBATION EXCLUSION FOR ORGANIZATIONS CONVICTED OF SERIOUS OFFENSES.

Section 3561(a)(1) of title 18, United States Code, is amended by inserting "and the defendant is an individual" after "the offense is a Class A or Class B felony".

SEC. 109. EXTENSION OF MAXIMUM TERMS OF SUPERVISED RELEASE.

Section 3583(b) of title 18, United States Code, is amended—

(1) in paragraph (1) by striking out "three years" and inserting in lieu thereof "five years"; and

(2) in paragraph (2) by striking out "two years" and inserting in lieu thereof "three years".

SEC. 110. INCLUSION OF PROTECTION OF PUBLIC AS FACTOR IN DECIDING WHETHER TO IMPOSE SUPERVISED RELEASE.

Section 3583(c) of title 18, United States Code, is amended by inserting "(a)(2)(C)," after "(a)(2)(B),".

SEC. 111. CLARIFICATION OF PROCEDURE FOR MODIFYING CONDITIONS OF PROBATION.

Section 3563(c) of title 18, United States Code, is amended—

(1) by striking out "revocation or modification of probation" and inserting in lieu thereof "the modification of probation and"; and

(2) by striking out the comma after "may".

SEC. 112. CLARIFICATION OF PROCEDURE FOR EARLY TERMINATION OF PROBATION.

Section 3564(c) of title 18, United States Code, is amended by inserting ", pursuant to the provisions of the Federal Rules of Criminal Procedure relating to the modification of probation," after "may".

SEC. 113. CLARIFICATION OF PROCEDURE FOR EARLY TERMINATION OF SUPERVISED RELEASE.

Section 3583(e) of title 18, United States Code, is amended—

(1) in paragraph (1) by inserting "pursuant to the provisions of the Federal Rules of Criminal Procedure relating to the modification of probation," after "one year of supervised release,"; and

(2) in paragraph (2) by striking out "after a hearing," and by inserting "the provisions of the Federal Rules of Criminal Procedure relating to the modification of probation and" after "pursuant to".

SEC. 114. REMEDIES FOR FAILURE TO PAY RESTITUTION.

Section 3663(g) of title 18, United States Code, is amended in each of the second and third sentences by inserting "or a term of supervised release" after "probation" and by inserting "probation or" after "conditions of".

SEC. 115. DETERMINATION OF GUIDELINE SENTENCE FOR PRISONERS TRANSFERRED PURSUANT TO TREATY FROM FOREIGN COUNTRIES.

Section 4106(b) of title 18, United States Code, is amended to read as follows:

"(b)(1) An offender transferred to the United States to serve a sentence of imprisonment that is longer than the maximum period of time specified in the applicable sentencing guidelines promulgated pursuant to section 994(a)(1) of title 28, United States Code, as determined by the Bureau of Prisons upon the recommendation of the United States Probation Service, shall serve in an official detention facility the maximum period of time specified in the applicable sentencing guidelines and shall serve the remainder of the term imposed as a term of supervised release.

"(2) To the extent permitted by the applicable treaty, a final determination by the Bureau of Prisons as to whether the transferred offender shall serve a term of supervised release and the length of such term may be appealed to the United States court of appeals for the district in which the offender is imprisoned after transfer to the United States, and the court of appeals shall decide and dispose of the appeal in accordance with section 3742 as though the determination appealed had been imposed by the United States district court.

"(3) A determination by the Bureau of Prisons shall be made only after affording the transferred offender an opportunity—

"(A) to submit evidence or information as to the applicable sentencing guideline; and

"(B) for an appeal within the Bureau of Prisons of such determination by a reviewing authority established by the Director pursuant to regulations.".

SEC. 116. PROCEDURE FOR RELIEF OF LABOR DISABILITIES FOLLOWING CONVICTION.

Section 229(a) of the Comprehensive Crime Control Act of 1984 is amended by striking out "on motion of the United States Department of Justice,".

SEC. 117. PETTY OFFENSE.

(a) Elimination of Requirement for Petty Offense Guidelines.—Section 3553(b) of title 18, United States Code, is amended by adding at the end the following: "If there is no applicable sentencing guideline and the offense is classified as a petty offense, the court shall impose an appropriate sentence having due regard for the purposes of sentencing set forth in subsection (a)(2).".

(b) Conforming Amendment.—Section 994(w) of title 28, United States Code, is amended by inserting after "each sentence imposed" the following: ", except in the case of a sentence imposed for a petty offense, as defined in Title 18, U.S.C. for which there is no applicable sentencing guideline,".

SEC. 118. ELIMINATION OF REQUIREMENT OF STATING REASONS FOR CHOOSING A POINT WITHIN THE PRESCRIBED SENTENCING RANGE.

Section 3553(c) of title 18, United States Code, is amended by striking the dash and paragraph (1) and "(2)".

SEC. 119. CLARIFICATION OF AUTHORITY OF BUREAU OF PRISONS TO ACCEPT COMMITMENTS TO ITS COMMUNITY CORRECTIONS FACILITY AS CONDITION OF PROBATION OR SUPERVISED RELEASE.

Section 3563(b)(12) of title 18, United States Code, is amended by inserting after "community corrections facility" the following: ", which facility may be one maintained or contracted by the Bureau of Prisons provided that the Director indicates that adequate space and suitable programs for the defendant are available at the facility,".

SEC. 120. POSTPONEMENT OF DEADLINE FOR COMMISSION REPORT MAKING RECOMMENDATIONS ON THE GRADING AND PENALTIES FOR OFFENSES.

Section 994(r) of title 28, United States Code, is amended by striking "one year" and inserting in lieu thereof "four years".

SEC. 121. ELIMINATION OF REQUIREMENT THAT SENTENCING COMMISSION RESPOND TO DEFENDANT PETITIONS FOR GUIDELINES MODIFICATIONS.

Section 994(s) of title 28, United States Code, is amended by striking out the final three sentences.

SEC. 122. APPOINTMENT OF COUNSEL IN RELATION TO SUPERVISED RELEASE.

Section 223(e) of the Comprehensive Crime Control Act of 1984, as amended by section 103 of the Criminal Justice Act Revisions of 1986, is further amended by striking paragraph (2) and inserting in lieu thereof the following new paragraph:

(2) in paragraph (1) by striking out subparagraph (E) and inserting in lieu thereof the following new subparagraph:

"(E) is charged with a violation of supervised release or faces modification, reduction, or enlargement of a condition, or extension or revocation of a term of supervised release;".

SEC. 123. AUTHORITY OF DIRECTOR OF ADMINISTRATIVE OFFICE OF UNITED STATES COURTS TO CONTRACT FOR PSYCHIATRIC AFTERCARE.

Section 3672 of title 18, United States Code, is amended—

(1) by amending the seventh undesignated paragraph to read as follows:

"He shall have the authority to contract with any appropriate public or private agency or person for the detection of and care in the community of an offender who is an alcohol-dependent person, an addict or a drug-dependent person, or a person suffering from a psychiatric disorder within the meaning of section 2 of the Public Health Service Act (42 U.S.C. 201). This authority shall include the authority to provide equipment and supplies; testing; medical, educational, social, psychological and vocational services; corrective and preventative guidance and training; and other rehabilitative services designed to protect the public and benefit the alcohol-dependent person, addict or drug-dependent person, or a person suffering from a psychiatric disorder by eliminating his dependence on alcohol or addicting drugs, by controlling his dependence and his susceptibility to addiction, or by treating his psychiatric disorder. He may negotiate and award such contracts without regard to section 3709 of the Revised Statutes (41 U.S.C. 5)."; and

(2) by adding the following new undesignated paragraph at the end thereof:

"Whenever the court finds that funds are available for payment by or on behalf of a person furnished such services, training, or guidance, the court may direct that such funds be paid to the Director. Any moneys collected under this paragraph shall be used to reimburse the appropriations obligated and disbursed in payment for such services, training, or guidance.".

SEC. 124. EMERGENCY GUIDELINES PROMULGATION AUTHORITY.

Section 994(a) of title 28, United States Code, is amended—

(1) by striking "and" at the end of paragraph (2);

(2) by striking the period at the end of paragraph (3) and inserting in lieu thereof "; and"; and

(3) by adding a new paragraph as follows:

"(4) in the case of an invalidated guideline, the creation of a new offense or amendment of an existing offense, or for other urgent and compelling reason determined by the Commission relating to the application of a previously established guideline, a temporary guideline or amendment to an existing guideline, to remain in effect until and during the pendency of the next report to Congress pursuant to subsection (p) of this section.".

SEC. 125. APPLICATION OF RULE 35(b) TO CONDUCT OCCURRING BEFORE EFFECTIVE DATE OF SENTENCING GUIDELINES.

The amendment to rule 35(b) of the Federal Rules of Criminal Procedure made by the order of the Supreme Court on April 29, 1985, shall apply with respect to all crimes committed before the taking effect of section 215(b) of the Comprehensive Crime Control Act of 1984.

SEC. 126. SENTENCING COMMISSION STAFF DIRECTOR SALARY.

Section 995(a)(2) of title 28, United States Code, is amended to read as follows:

"(2) appoint and fix the salary and duties of the staff director of the Sentencing Commission, who shall serve at the discretion of the Commission and who may be compensated at a rate not to exceed the highest rate now or hereafter prescribed for the director of the Federal Judicial Center;".

SEC. 127. GENERAL EFFECTIVE DATE.

This title shall take effect upon the date of enactment of this title, or the date of the taking effect of the initial set of guidelines promulgated by the United States Sentencing Commission pursuant to chapter 58 of title 28, United States Code, whichever date occurs later.

TITLE II—CRIMINAL FINE IMPROVEMENTS

SEC. 201. SHORT TITLE.

This title may be cited as the "Criminal Fine Improvements Act of 1987".

SEC. 202. DUTIES OF THE DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS IN RELATION TO FINES.

Section 604(a) of title 28, United States Code, is amended—

(1) by redesignating paragraph (17) as paragraph (18); and

(2) by inserting after paragraph (16) the following new paragraph:

"(17) Establish procedures and mechanisms within the judicial branch for processing fines, restitution, forfeitures of bail bonds or collateral, and assessments;".

SEC. 203. SPECIAL ASSESSMENTS.

Section 3013 of title 18, United States Code, is amended by adding at the end the following:

"(c) The obligation to pay an assessment ceases five years after the date of the judgment.

"(d) For the purposes of this section, an offense under section 13 of this title is an offense against the United States.".

SEC. 204. DEFINITION OF PETTY OFFENSE.

(a) IN GENERAL.—Chapter 1 of title 18, United States Code, is amended by adding at the end the following new section:

"§ 19. Petty offense defined

"As used in this title, the term 'petty offense' means a Class B misdemeanor, a Class C misdemeanor, or an infraction.".

(b) TECHNICAL AMENDMENT.— The table of sections for chapter 1 of title 18, United States Code, is amended by adding at the end the following new item:

"19. Petty offense defined.".

(c) CLARIFYING AMENDMENT TO EARLIER TECHNICAL PROVISION.—Section 38(a) of the Criminal Law and Procedure Technical Amendments Act of 1986 is amended by striking out "section 23" and inserting in lieu thereof "section 34(a)".

SEC. 205. ELIMINATION OF OBSOLETE PROVISION.

Subsection (b) of section 3559 of title 18, United States Code, is amended by striking out "except that:" and all that follows through the end of the subsection and inserting in lieu thereof ", except that the maximum term of imprisonment is the term authorized by the law describing the offense.".

SEC. 206. AUTHORIZED FINES.

Section 3571 of title 18, United States Code, is amended to read as follows:

"§ 3571. Sentence of fine

"(a) IN GENERAL.—A defendant who has been found guilty of an offense may be sentenced to pay a fine.

"(b) FINES FOR INDIVIDUALS.—Except as provided in subsection (e) of this section, an individual who has been found guilty of an offense may be fined not more than the greatest of—

"(1) the amount specified in the law setting forth the offense;

"(2) the applicable amount under subsection (d) of this section;

"(3) for a felony, not more than $250,000;

"(4) for a misdemeanor resulting in death, not more than $250,000;

"(5) for a Class A misdemeanor that does not result in death, not more than $100,000;

"(6) for a Class B or C misdemeanor that does not result in death, not more than $5,000; or

"(7) for an infraction, not more than $5,000.

"(c) FINES FOR ORGANIZATIONS.—Except as provided in subsection (e) of this section, an organization that has been found guilty of an offense may be fined not more than the greatest of—

"(1) the amount specified in the law setting forth the offense;

"(2) the applicable amount under subsection (d) of this section;

"(3) for a felony, not more than $500,000;

"(4) for a misdemeanor resulting in death, not more than $500,000;

"(5) for a Class A misdemeanor that does not result in death, not more than $200,000;

"(6) for a Class B or C misdemeanor that does not result in death, not more than $10,000; and

"(7) for an infraction, not more than $10,000.

"(d) ALTERNATIVE FINE BASED ON GAIN OR LOSS.—If any person derives pecuniary gain from the offense, or if the offense results in pecuniary loss to a person other than the defendant, the defendant may be fined not more than the greater of twice the gross gain or twice the gross loss, unless imposition of a fine under this subsection would unduly complicate or prolong the sentencing process.

"(e) SPECIAL RULE FOR LOWER FINE SPECIFIED IN SUBSTANTIVE PROVISION.—If a law setting forth an offense specifies a fine that is lower than the fine otherwise applicable under this section and such law, by specific reference, exempts the offense from the applicability of the fine otherwise applicable under this section, the defendant may not be fined more than the amount specified in the law setting forth the offense.".

SEC. 207. IMPOSITION OF A SENTENCE OF FINE AND RELATED MATTERS.

Section 3572 of title 18, United States Code, is amended to read as follows:

"§ 3572. Imposition of a sentence of fine and related matters

"(a) FACTORS TO BE CONSIDERED.—In determining whether to impose a fine, and the amount, time for payment, and method of payment of a fine, the court shall consider, in addition to the factors set forth in section 3553(a)—

"(1) the defendant's income, earning capacity, and financial resources;

"(2) the burden that the fine will impose upon the defendant, any person who is financially dependent on the defendant, or any other person (including a government) that would be responsible for the welfare of any person financially dependent on the defendant, relative to the burden that alternative punishments would impose;

"(3) any pecuniary loss inflicted upon others as a result of the offense;

"(4) whether restitution is ordered or made and the amount of such restitution;

"(5) the need to deprive the defendant of illegally obtained gains from the offense;

"(6) whether the defendant can pass on to consumers or other persons the expense of the fine; and

"(7) if the defendant is an organization, the size of the organization and any measure taken by the organization to discipline any officer, director, employee, or agent of the organization responsible for the offense and to prevent a recurrence of such an offense.

"(b) FINE NOT TO IMPAIR ABILITY TO MAKE RESTITUTION.—If, as a result of a conviction, the defendant has the obligation to make restitution to a victim of the offense, the court shall impose a fine or other monetary penalty only to the extent that such fine or penalty will not impair the ability of the defendant to make restitution.

"(c) EFFECT OF FINALITY OF JUDGMENT.—Notwithstanding the fact that a sentence to pay a fine can subsequently be—

"(1) modified or remitted under section 3573;

"(2) corrected under rule 35 and section 3742; or

"(3) appealed and modified under section 3742;

a judgment that includes such a sentence is a final judgment for all other purposes.

"(d) TIME, METHOD OF PAYMENT, AND RELATED ITEMS.—A person sentenced to pay a fine or other monetary penalty shall make such payment immediately, unless, in the interest of justice, the court provides for payment on a date certain or in installments. If the court provides for payment in installments, such installments shall be in equal monthly payments over the period provided by the court, unless the court establishes some other schedule. If the judgment permits other than immediate payment, the period provided for shall not exceed 5 years, excluding any period served by the defendant as imprisonment for the offense.

"(e) ALTERNATIVE SENTENCE PRECLUDED.—At the time a defendant is sentenced to pay a fine, the court may not impose an alternative sentence to be carried out if the fine is not paid.

"(f) RESPONSIBILITY FOR PAYMENT OF MONETARY OBLIGATION RELATING TO ORGANIZATION.—If a sentence includes a fine, [special assessment, or other monetary obligation (including interest)] with respect to an organization, each individual authorized to make disbursements for the organization has a duty to pay the obligation from assets of the organization. If such an obligation is imposed on a director, officer, shareholder, employee, or agent of an organization, payments may not be made, directly or indirectly, from assets of the organization, unless the court finds that such payment is expressly permissible under applicable State law.

"(g) SECURITY FOR STAYED FINE.—If a sentence imposing a fine is stayed, the court shall, absent exceptional circumstances (as determined by the court)—

"(1) require the defendant to deposit, in the registry of the district court, any amount of the fine that is due;

"(2) require the defendant to provide a bond or other security to ensure payment of the fine; or

"(3) restrain the defendant from transferring or dissipating assets.

"(h) DELINQUENCY.—A fine is delinquent if a payment is more than 30 days late.

"(i) DEFAULT.—A fine is in default if a payment is delinquent for more than 90 days. When a fine is in default, the entire amount of the fine is due within 30 days after notification of the default, notwithstanding any installment schedule.

SEC. 208. REVISION OF MODIFICATION OR REMISSION PROVISION.

(a) OFFENSE.—Section 3573 of title 18, United States Code, is amended to read as follows:

"§ 3573. Petition of the Government for Modification or Remission

"Upon petition of the Government showing that reasonable efforts to collect a fine or assessment are not likely to be effective, the court may, in the interest of justice—

"(1) remit all or part of the unpaid portion of the fine or special assessment, including interest and penalties;

"(2) defer payment of the fine or special assessment to a date certain or pursuant to an installment schedule; or

"(3) extend a date certain or an installment schedule previously ordered.

A petition under this subsection shall be filed in the court in which sentence was originally imposed, unless the court transfers jurisdiction to another court.".

(b) TECHNICAL AMENDMENT.—The table of sections for subchapter C of chapter 227 of title 18, United States Code, is amended by striking out the item for section 3573 and inserting in lieu thereof the following:

"3573. Petition of the Government for Modification or Revision.".

SEC. 209. RECEIPT OF FINES—INTERIM PROVISIONS.

(a) NOVEMBER 1, 1987 TO APRIL 30, 1988.—Notwithstanding section 3611 of title 18, United States Code, a person who, during the period beginning on November 1, 1987, and ending on April 30, 1988, is sentenced to pay a fine or assessment shall pay the fine or assessment (including any interest or penalty) to the clerk of the court, with respect to an offense committed on or before December 31, 1984, and to the Attorney General, with respect to an offense committed after December 31, 1984.

(b) MAY 1, 1988, TO OCTOBER 31, 1988.—(1) Notwithstanding section 3611 of title 18, United States Code, a person who during the period beginning on May 1, 1988, and ending on October 31, 1988, is sentenced to pay a fine or assessment shall pay the fine or assessment in accordance with this subsection.

(2) In a case initiated by citation or violation notice, such person shall pay the fine or assessment (including any interest or penalty), as specified by the Director of the Administrative Office of the United States Courts. Such Director may specify that such payment be made to the clerk of the court or in the manner provided for under section 604(a)(17) of title 28, United States Code.

(3) In any other case, such person shall pay the fine or assessment (including any interest or penalty) to the clerk of the court, with respect to an offense committed on or before December 31, 1984, and to the Attorney General, with respect to an offense committed after December 31, 1984.

SEC. 210. RECEIPT OF FINES—PERMANENT PROVISION.

(a) IN GENERAL.—Section 3611 of title 18, United States Code, is amended to read as follows:

"§ 3611. Payment of a fine

"A person who is sentenced to pay a fine or assessment shall pay the fine or assessment (including any interest or penalty), as specified by the Director of the Administrative Office of the United States Courts. Such Director may specify that such payment be made to the clerk of the court or in the manner provided for under section 604(a)(17) of title 28, United States Code.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to any fine imposed after October 31, 1988. Such amendment shall also apply with respect to any fine imposed on or before October 31, 1988, if the fine remains uncollected as of February 1, 1989, unless the Director of the Administrative Office of the United States Courts determines further delay is necessary. If the Director so determines, the amendment made by this section shall apply with respect to any such fine imposed on or before October 31, 1988, if the fine remains uncollected as of May 1, 1989.

SEC. 211. COLLECTION AMENDMENTS.

(a) NOTIFICATION OF RECEIPT AND RELATED MATTERS.—Section 3612(a) of title 18, United States Code, is amended to read as follows:

"(a) NOTIFICATION OF RECEIPT AND RELATED MATTERS.—The clerk or the person designated under section 604(a)(17) of title 28 shall notify the Attorney General of each receipt of a payment with respect to which a certification is made under subsection (b), together with other appropriate information relating to such payment. The notification shall be provided—

"(1) in such manner as may be agreed upon by the Attorney General and the Director of the Administrative Office of the United States Courts; and

"(2) within 15 days after the receipt or at such other time as may be determined jointly by the Attorney General and the Director of the Administrative Office of the United States Courts.

If the fifteenth day under paragraph (2) is a Saturday, Sunday, or legal public holiday, the Attorney General shall provide notification not later than the next day that is not a Saturday, Sunday, or legal public holiday.

(b) INFORMATION TO BE INCLUDED IN JUDGMENT.—Section 3612(b) of title 18, United States Code, is amended to read as follows:

"(b) INFORMATION TO BE INCLUDED IN JUDGMENT; JUDGMENT TO BE TRANSMITTED TO ATTORNEY GENERAL.—(1) A judgment or order imposing, modifying, or remitting a fine of more than $100 shall include—

"(A) the name, social security account number, mailing address, and residence address of the defendant;

"(B) the docket number of the case;

"(C) the original amount of the fine and the amount that is due and unpaid;

"(D) the schedule of payments (if other than immediate payment is permitted under section 3572(d));

"(E) a description of any modification or remission; and

"(F) if other than immediate payment is permitted, a requirement that, until the fine is paid in full, the defendant notify the Attorney General of any change in the mailing address or residence address of the defendant not later than thirty days after the change occurs.

"(2) Not later than ten days after entry of the judgment or order, the court shall transmit a certified copy of the judgment or order to the Attorney General.

(c) TECHNICAL AMENDMENTS.—

(1) Section 3612(d) of title 18, United States Code, is amended by striking out "section 3572(i)" and inserting in lieu thereof "3572(h)".

(2) Section 3612(e) of title 18, United States Code, is amended by striking out "section 3572(j)" and inserting in lieu thereof "3572(i)".

(d) INTEREST ON FINES.—Section 3612(f) of title 18, United States Code, is amended to read as follows:

"(f) INTEREST ON FINES.—

"(1) IN GENERAL.—The defendant shall pay interest on any fine of more than $2,500, unless the fine is paid in full before the fifteenth day after the date of the judgment. If that day is a Saturday, Sunday, or legal public holiday, the defendant shall be liable for interest beginning with the next day that is not a Saturday, Sunday, or legal public holiday.

"(2) COMPUTATION.—Interest on a fine shall be computed—

"(A) daily (from the first day on which the defendant is liable for interest under paragraph (1)); and

"(B) at a rate equal to the coupon issue yield equivalent (as determined by the Secretary of the Treasury) of the average accepted auction price for the last auction of fifty-two week United States Treasury bills settled before the first day on which the defendant is liable for interest under paragraph (1).

"(3) MODIFICATION OF INTEREST BY COURT.—If the court determines that the defendant does not have the ability to pay interest under this subsection, the court may—

"(A) waive the requirement for interest;

"(B) limit the total of interest payable to a specific dollar amount; or

"(C) limit the length of the period during which interest accrues.".

(e) PENALTY FOR DELINQUENT FINE; WAIVER OF INTEREST OR FINE BY ATTORNEY GENERAL.—Section 3612 of title 18, United States Code, is amended by adding at the end the following new subsections:

"(g) PENALTY FOR DELINQUENT FINE.—If a fine becomes delinquent, the defendant shall pay, as a penalty, an amount equal to ten percent of the principal amount that is delinquent. If a fine becomes in default, the defendant shall pay, as a penalty, an additional amount equal to 15 percent of the principal amount that is in default.

"(h) WAIVER OF INTEREST OR PENALTY BY ATTORNEY GENERAL.—The Attorney General may waive all or part of any interest or penalty under this section if, as determined by the Attorney General, reasonable efforts to collect the interest or penalty are not likely to be effective.

"(i) APPLICATION OF PAYMENTS.—Payments relating to fines shall be applied in the following order: (1) to principal; (2) to costs; (3) to interest; and (4) to penalties.".

SEC. 212. RECEIPT OF RESTITUTION PAYMENTS BY COURTS.

Section 3663(f)(4) of title 18, United States Code, is amended by inserting "or the person designated under section 604(a)(17) of title 28" after "Attorney General".

SEC. 213. EFFECTIVE DATE.

This title shall take effect on the date of the enactment of this title, except that the amendments made by section 210 of this title shall take effect as provided in such section and the amendments made by sections 204, 205, 206, 207, 208, 211, and 212 shall take effect on the date of the taking effect of section 212(a)(2) of the Sentencing Reform Act of 1984.

CRIMINAL FINES AND SENTENCING AMENDMENTS

OVERVIEW OF TITLE I (SENTENCING AMENDMENTS)

This title contains amendments to the Sentencing Reform Act that relate directly to the implementation of the sentencing guidelines. For the most part, these amendments are technical in nature, and represent corrections and modifications to the Act which should be enacted before the guidelines take effect on November 1, 1987.

Section 102

Section 102 has three parts. The first would provide that, except for parts of the Act that are already in effect, the entire Sentencing Reform Act shall apply only to offenses committed after the effective date. Application of the sentencing guidelines to offenses committed before November 1, 1987 might violate the *ex post facto* clause of the Constitution. Other aspects of the Act are made prospective to avoid procedural confusion.

Secondly, Sec. 102 amends Sec. 235(b)(3) of the Sentencing Reform Act which directs the Parole Commission, before going out of existence, to set a release date within its guidelines for all prisoners remaining within its jurisdiction. If unchanges, Sec. 235(b)(3) would provide a windfall to the most dangerous offenders who, under current law, would never be paroled, or whose release dates would be set outside the parole guidelines. The amendment would permit the Parole Commission to set a release date for all prisoners using the same criteria that it would use if it were not going out of existence. The Justice Department believes that the *ex post facto* clause requires that this correction be made before Sec. 235(b)(5) takes effect on November 1.

Finally, Sec. 102 improves the process by which the Parole Commission is phased out. The Sentencing Reform Act currently contains no provision for administering the parole rights of prisoners after the Parole Commission is abolished. Since the sentencing guidelines will apply prospectively only, it is certain that a significant number of "old law" prisoners, who will be entitled to parole, will still be entering the system five years after the guidelines go into effect. The amendment provides for a procedure whereby an agency within the Department of Justice takes over the function of administering the parole laws, applying the regulations of the Parole Commission in effect on the date it went out of existence.

Sec. 103

Sec. 103 adds a sentence to 18 U.S.C. 3553(b) providing that in determining whether a circumstance was adequately considered by the Sentencing Commission, a court would be permitted to consider only the text of the guidelines themselves, the policy statements and the official commentary of the Commission. This would preclude defendants from attempting to subpoena members of the Commission or its records during a sentencing hearing.

Sec. 104

Sec. 104 fills a gap in the Sentencing Reform Act by providing a procedure for appealing a sentence imposed by a magistrate to the district court.

Sec. 105

Sec. 105 makes a clarification to the appellate review provisions, providing that "due deference" be given to the trial court's interpretation of mixed questions of law and fact. For example, if a given guideline directed a judge to add between two and four points to a defendant's offense level depending on the seriousness of a victim's injury, the appellate court would be required to give due deference to the trial court's decision. The amendment is not intended to curtail the power of the appellate court to review purely legal questions involving misapplications of the guidelines.

Sec. 106

Sec. 106 clarifies the defendant's right to appeal a "plainly unreasonable" sentence for an offense for which there is no applicable guideline.

Sec. 107

Sec. 107 removes an ambiguity in 18 U.S.C. 3742(e)(3) which, as currently written, might be read to create a ground for modification of sentence in addition to those grounds set forth elsewhere in the same subsection. The clarifying amendment would follow the original intent to require an appellate court to affirm a sentence if no specified ground exists for modifying it.

Sec. 108

Sec. 108 corrects an inadvertant error in the Sentencing Reform Act relating to the prohibition of probation for the most serious offenders. Because corporations and other organizational defendants cannot be imprisoned, the amendment would permit probation for such defendants.

Sec. 109

Sec. 109 would extend the maximum period of supervised release for the most serious felonies from three to five years to conform with the five year period provided for probation.

Sec. 110

Sec. 110 would correct a drafting error in the Sentencing Reform Act by including protection of the public as a factor to be considered in deciding whether to impose a term of supervised release.

Secs. 111-113

Secs. 111 through 113 make procedural modifications designed to require notice to the government when the court proposes to make changes favorable to the defendant in the conditions of probation or supervised release, and to avoid the need for a hearing if the government consents to the changes.

Sec. 114

Sec. 114 provides for a remedy for a defendant's failure to make restitution by allowing the court to revoke supervised release or modify the terms of probation.

Sec. 115

Sec. 115, relating to the implementation of current prisoner transfer treaties under the new guidelines, was passed by the Senate in nearly identical form as Sec. 70 of S. 1236 in the last Congress.

Sec. 116

Sec. 116 corrects an inequity in current law which precludes persons convicted in state court of certain labor-related offenses from seeking relief in federal court from statutory disabilities, such as exclusion from holding union office, without the consent of the Department of Justice. The amendment would remove the inequity by striking from the Sentencing Reform Act language requiring that state offenders' applications for relief be filed "on motion of the United State Department of Justice." This would allow state offenders equal access to federal courts with their federal counterparts.

Sec. 117

Sec. 117 would eliminate the requirement that the Sentencing Commission promulgate guidelines for petty offenses. Under the current version of the Sentencing Reform Act, petty offenses are treated like all other offenses. The burden of applying the guideline system, with its normal requirement of a presentence report, to the misdemeanors and infractions handled in magistrates' courts could severely and adversely affect the administration of justice in certain districts, particularly those with large federal reservations or border areas where prosecutions for illegal entry or traffic violations are commonplace.

Sentences would still have to be imposed consistent with the purposes of sentencing under the Act, and appeal would be available for a plainly unreasonable sentence. This amendment is one that is highly desirable before the guidelines take effect on November 1.

Sec. 118

Sec. 118 abolishes the requirement that judges state reasons for choosing a point *within* the prescribed sentencing range. This requirement is regarded as pointless. The amendment would not alter the requirement that judges state reasons for imposing a sentence *outside* the sentencing range.

Sec. 119

Sec. 119 would clarify that the Bureau of Prisons has authority to accept and pay for community corrections facilities, when commitment to such facilities is a condition of probation.

Sec. 120

Sec. 120 would postpone the date for the Sentencing Commission to submit a report to Congress recommending any changes in the maximum penalties applicable for offenses in the United States Code for four years. The amendment reflects the belief that the Commission will have other priorities in its first years of operation under the new guidelines.

Sec. 121

Sec. 121 would eliminate the requirement that the Sentencing Commission respond in writing in 180 days to federal prisoners who petition the Commission to alter the guidelines. Under 28 U.S.C. 994(s), defendants are permitted to petition the Commission to change the guidelines utilized in their sentences, but only "on the basis of changed circumstances unrelated to the defendant" such as a change in the community's view of the gravity of the offense. The Commission is concerned that having to respond in writing to all such petitions would create an enormous administrative burden that cannot be justified in light of the small benefit to the petitioning defendant.

The amendment would leave unchanged the requirement that the Commission give "due consideration" to such petitions, but it would eliminate the requirement that the Commission respond to each petition, and that it file an annual report to Congress analyzing these written notices.

Sec. 122

Sec. 122 would provide authority for the appointment of counsel at government expense to indigent defendants faced with a charge of a violation of supervised release or a proceeding to enlarge or revoke a term of supervised release.

Sec. 123

Sec. 123 would give the Director of the Administrative Office of the U.S. Courts authority to contract with public or private agencies for psychiatric aftercare for convicted offenders.

Sec. 124

Sec. 124 would give the Sentencing Commission authority, under certain emergency circumstances, to promulgate temporary guidelines. The emergency circumstances would include the enactment of a new criminal offense and the invalidation of an existing guideline by a court. The temporary guideline would expire at the end of the next period in which the Commission was required to report to Congress with proposed permanent changes to the guidelines (a maximum period of 18 months).

Sec. 125

Sec. 125 would provide that the repeal of Rule 35(b), Fed. R. Crim. Proc., would not apply retroactively to any sentence for conduct occurring under the "old law". Rule 35(b) allows a defendant to move for modification of sentence, and is repealed as inconsistent with "determinate sentencing" under the Sentencing Reform Act. Retroactive application of the repeal of this rule would violate the ex post facto clause.

Sec. 126

Sec. 126 would set the salary of the staff director of the Sentencing Commission at the level set for the director of the Federal Judicial Center.

Sec. 127

Sec. 127 provides that the effective date of these amendments is the date of enactment of the amendment, or the effective date of Sentencing Reform Act, whichever is later.

OVERVIEW OF TITLE II (CRIMINAL FINES AMENDMENTS)

This title would amend the Sentencing Reform Act with respect to the assessment and collection of criminal fines. If not amended, the Act, which goes into effect on November 1, 1987, will repeal current law as amended by The Criminal Fine Enforcement Act of 1984, Pub. Law 98-596, in this area.[1]

The purpose of the proposed amendments is to prevent certain aspects of current law from being repealed automatically on November 1, and to make certain other improvements in the current statutes. The provisions contained in this title represent a compromise agreed upon by the Justice Department and the Administrative Office of the Courts. Because the repeal of current law will occur automatically on November 1 if no action is taken, these amendments must be considered before that date.

Representatives of the Justice Department, the Administrative Office of the Courts, the Sentencing Commission, and majority and minority staffs of the House Judiciary Subcommittee on Criminal Justice met with Senate Judiciary Committee staff on October 7, 1987 to explain the amendments. The House is working on a bill, H.R. 3483, that contains most of the provisions of this title.

Sec. 202

Sec. 202 gives the Director of the Administrative Office of the Courts the authority to establish a procedure for the receipt of criminal fines, penalties, and special assessments. The procedure would enhance the role of the Central Violations Bureau which is already in existence.

Sec. 203

Sec. 203 amends 18 U.S.C. 3013 to give the government no more than five years to collect "special assessments". Special assessments are essentially a surcharge on criminal fines which are used to finance the Victims' Fund. The amendment would also provide for special assessments on crimes committed under the special maritime and territorial jurisdiction of the United States.

Sec. 204

Sec. 204 defines "petty offense" to mean all Class B and Class C misdemeanors and infractions—i.e. offenses for which the maximum period of incarceration is less than 6 months. This definition is necessary in light of the proposed new 18 U.S.C. 3571 which sets forth a schedule of maximum alternative fines. (See Section 206, infra.) It is possible that if the same $100,000 maximum fine were imposable on all classes of misdemeanors, defendants who are charged with petty offenses would have a right to demand a jury trial notwithstanding the short maximum period of incarceration.

Sec. 205

Sec. 205 repeals 18 U.S.C. 3559(b) which is made obsolete by the alternative fine schedule in the new 18 U.S.C. 3571.

Sec. 206

Sec. 206 sets out a schedule of maximum alternative fines as new 18 U.S.C. 3571. Alternative fines have been part of current law since 1984, see 18 U.S.C. 3623, but this provision will be repealed on November 1 when the Sentencing Reform Act goes into effect. The bill would change current law to the extent that current law does not provide for alternative fines for petty offenses.

Sec. 207

Sec. 207 carries forward current law embodied in 18 U.S.C. 3622 and 3624 regarding factors to be considered by the court in imposing fines, and in obtaining security for fines that are stayed. The current law will expire on November 1. It also makes certain improvements to current law regarding the manner in which the court may order a fine to be paid according to an installment schedule, and the liability of corporate officers for fines imposed on them personally.

Sec. 208

Sec. 208 replaces the existing 18 U.S.C. 3573 with a new statute that would permit the government to petition the court for remission of the unpaid part of any fine which the government believed it was unable to collect. This is a necessary mechanism for ridding the government's books of uncollectable fines. The old Sec. 3573, which provides for a petition for modification of a fine by a defendant, would be repealed in conformity with the repeal of Rule 35(b), Fed. R. Crim. Proc. See Sec. 125, above.

Sec. 209

The remaining sections incorporate the compromise agreement between the Justice Department and the Clerks of the Courts regarding the procedure for the receipt of criminal fines. Sec. 209 is a transition provision providing for transfer of responsibility for collecting fines from Justice to the Clerks in three steps.

Secs. 210 and 211

Secs. 210 and 211 set up the permanent provisions for the receipt of criminal fines by the Clerks as 18 U.S.C. 3611-12. Sec. 211 also contains a provision for computing interest on fines. Under current law, interest on all fines is automatic. As of November 1, however, if no change is made, there will be no provision for interest on fines. The bill provides for automatic interest on fines over $2,500.

Sec. 212

Sec. 212 authorizes the judicial branch to receive and disburse restitution payments along with the Attorney General.

Sec. 213

Sec. 213 establishes an effective date for each of the provisions of this title.●

● Mr. HATCH. Mr. President, I join my colleagues Senators BIDEN, THURMOND, and KENNEDY today in introducing a bill to make minor and technical amendments to the Sentencing Reform Act of 1984. This bipartisan bill makes changes needed to insure the smooth implementation of the Sentencing Reform Act with regard to the collection of criminal fines and the application of the new sentencing guidelines. These amendments are needed before the guidelines become effective on November 1, 1987.

Enactment and implementation of these guidelines will be one of the most important steps Congress has taken in the war on crime in America. The sentencing guidelines were authorized in the Sentencing Reform Act of 1984, which passed overwhelmingly as a part of the Comprehensive Crime Control Act of 1984. The Sentencing Reform Act was the culmination of over a decade of research directed toward overhaul of sentencing under the outmoded and discredited Federal criminal sentencing system. This bipartisan effort reestablished predictability and fairness in a faltering sentencing system which had become replete with disparity. The need for comprehensive reform was clearly evident given a sentencing scheme in which similar defendants failed to receive similar sentences and in which violent criminals were released into the public with lenient sentences or no incarceration.

Under the current system, each judge is left to apply his own notions of the purposes of sentencing. The resulting disparity in sentencing can be traced directly to the unfettered discretion the law confers on those judges and parole authorities responsible for imposing and implementing the sentence. For example, under the current system, judges can sentence a defendant convicted of a 10-year felony to the full 10 years or to no prison term whatsoever. Under the present system, 41.4 persons convicted of Federal offenses spend no time in prison, even when they are convicted for serious offenses. This sweeping discretion flows from the lack of any statutory guidance or review procedures to which courts and parole boards might look.

The sentencing guidelines prescribe rationality in the Federal sentencing process. In accordance with the authority granted in the Comprehensive Crime Control Act, the guidelines further the basic purposes of criminal punishment, that is, deterring crime, incapacitating the offender, providing just punishment, and rehabilitating the offender.

Recently, proposals for delay of implementation of the sentencing guidelines have been raised. One such proposal has been soundly defeated in the House. I am opposed to any delay of implementation of the sentencing guidelines. It is important for all of us to recognize that a vote to delay the implementation of the sentencing guidelines is merely an excuse for inaction. The groups promoting delay are the same groups who opposed the concept of sentencing guidelines at the outset. Delay is neither needed nor advisable. The technical amendments introduced today contain no delay provision, instead they make minor amendments that are supported by the Justice Department, the Administrative Office of the Courts, and the Sentencing Commission.

The provisions in this consensus package are needed for the smooth transition to adoption of the sentencing guideline system. We urge our colleagues to act quickly so that these amendments can take effect before the implementation date of the guidelines.●

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[1] The Sentencing Reform Act was passed before the Criminal Fine Enforcement Act, but because of its delayed implementation date, it would have the effect of repealing the subsequently enacted statutes that have been in effect since late 1984.

● Mr. KENNEDY. Mr. President, 3 years ago, amid overwhelming bipartisan support, Congress enacted one of the most important and needed criminal justice reforms in modern American history, the Sentencing Reform Act of 1984. The purpose of the act was straightforward: to reduce the unjustified disparity in sentences that had long plagued our Federal criminal justice system.

The cornerstone of the Sentencing Reform Act was its creation of a new U.S. Sentencing Commission. On April 13 of this year, the Commission submitted detailed sentencing guidelines to Congress which will become law on November 1. These guidelines are an excellent starting point, and establish a structure for judges that is flexible enough to assure fairness and simple enough to preclude endless procedural delays.

Congress recognized that because the act was breaking new ground, sentencing reform would be an evolutionary process—that the Commission and the Congress would review and refine as time went on. In that spirit, and now that the Commission has taken the important step of issuing detailed and workable sentencing guidelines, I am pleased to cosponsor legislation that would further improve the Sentencing Reform Act.

Although the Federal Criminal Fines and Sentencing Act of 1987 can best be described as technical in nature, it will markedly add to the effectiveness of the 1984 act. Among its important provisions, the bill would clarify the language governing when a judge may depart from the new sentencing guidelines, make the 5-year phasing out of the Parole Commission more orderly, ensure that the most dangerous offenders sentenced under prior sentencing law not be released prematurely, and permit the Sentencing Commission to issue temporary guidelines when a urgent circumstance so justifies.

The bill would also remove petty offenses from the new sentencing guidelines scheme. This change would appropriately conserve judicial resources, and would guarantee that there will be a natural delay in the implementation of the guidelines, since few defendants charged with serious offenses will present themselves for sentencing during the first months after the guidelines go into effect on November 1.

To promote a smooth transition into the new sentencing guidelines regime, it is highly desirable that this new legislation be enacted quickly.●

By Mr. CRANSTON:

S. 1824. A bill to amend the Federal Aviation Act of 1958 to require that capacity levels be established at certain airports; to the Committee on Commerce, Science, and Transportation.

AIRPORT CAPACITY LEVELS ACT

Mr. CRANSTON. Mr. President, today I am introducing legislation which addresses a practice conducted by many of the major airlines euphemistically referred to as "unrealistic scheduling" what it really should be called is "dishonest scheduling." The practice entails scheduling more flights per hour than an airport can physically accommodate during that timeframe, and it has significantly contributed to the unprecedented number of delays air passengers are currently experiencing.

Mr. President, this is a perfect example of putting the cart before the horse. It is not the FAA that determines the capacity of an airport—it is the airlines. The airlines are free to schedule as many flights as they please without any regard as to whether the airport is capable of handling that number of arrivals and departures. The FAA simply responds to the schedule set by the airlines. When sectors become saturated the FAA holds flights on the ground. This leads to delays all through the system.

Mr. President, if we don't have the capacity to handle current demand then we should admit it and move to control traffic. The FAA should determine an airport's capacity—not the airlines.

The bill I am introducing today is similar to legislation recently passed by the House. My bill instructs the Department of Transportation to establish capacity levels—that is, the number of takeoffs and landing of all aircraft—that can be accommodated at airports enplaning 5 million or more passengers a year.

These capacity levels would reflect the maximum number of arrivals and departures that DOT believes the airport can handle. The Department of Transportation in establishing these levels must consult with the local airport manager, air carriers providing air transportation at the airport, and general aviation users. In addition, capacity levels must also accommodate, to the maximum extent possible, the needs of air carriers wishing to expand their service, air carriers not providing air service to that airport that wish to provide such service, and the needs of general aviation users.

This legislation would cover approximately 25 of the Nation's largest airports, many of which serve as hub airports for the major airlines where the practice of unrealistic scheduling is creating the most havoc. Limiting traffic at the hubs should alleviate the delay problem all through the system.

Mr. President, we are facing a situation where the quality of airlines service has significantly deteriorated. Today, a plane arriving on time is the exception rather than the rule. Consumer complaints have climbed dramatically. In March and April of this year, they jumped to 3,751—an increase of more than 100 percent over the same period in 1986. DOT reports that most frequently heard complaint is that of delays and cancellations. Consumers are paying in terms of loss of time and money for late arrivals and departures, missed connections, last minute flight cancellations, lost luggage, increased anxiety, and a decreased margin of safety.

We are asking an aviation system which only 10 years ago was busy handling 240 million passengers annually in a regulated market to handle 418 million passengers in a deregulated market without providing a corresponding increase in capacity. We have fewer air traffic controllers to direct and monitor that traffic that we did in 1981. More airports and runways are needed. New technology is desperately needed. This increased capacity will take time to build; for the present we need to handle the increasing traffic flow responsibly.

This bill is intended to be a temporary measure. It would sunset 10 years after enactment. By that time I hope facilities and staffing levels of air traffic controllers will have caught up with demand eliminating the need for this legislation. In the meantime, no matter how many flights are scheduled every hour, only a certain number can be accomodated. By scheduling 40 flights to depart in a half-hour period when the airport under the best of conditions can only accomodate 30 does nothing to promote air commerce. It only causes delays throughout the system and results in irate passengers. It also places unnecessary stress on airports and air traffic controllers trying to accomodate a schedule which cannot be accomodated.

Mr. President, I believe this bill will also have a positive impact on safety. The FAA argues that this problem is one of capacity not safety—that when sectors become saturated they hold the planes on the ground and therefore never allow the system to become unsafe. But near misses are up 36.5 percent over the same period in 1986, pilot deviations, operational errors, all the safety indicators continue to rise. It doesn't take a genius to figure out that congested skies and increased near misses mean a decreased margin of safety. The exposure to risk has become unacceptable and just continues to get worse. When are we going to take action? I believe the time is now before the situation gets worse. We must cap or restrict the traffic if need be until controller staff levels are up, the NAS plan comes on line and more airports and runways are built.

By establishing capacity levels at the large airports and prohibiting airlines from scheduling arrivals and departures in excess of the established capacity, this bill will go a long way in protecting the public interest in terms of both improved airline service and improved safety.

By Mr. BYRD (for Mr. CRANSTON, for himself and Mr. D'AMATO):

S.J. Res. 209. Joint resolution to provide for the extension of certain programs relating to housing and community development, and for other purposes; placed on the calendar by unanimous consent.

EXTENSION OF CERTAIN PROGRAMS RELATING TO HOUSING AND COMMUNITY DEVELOPMENT

Mr. CRANSTON. Mr. President, I rise today with Senator D'AMATO to introduce a bill that would provide for a short-term extension of the FHA Insurance Program through November 15, 1987.

FHA, under a previous short-term extender, is now due to expire on November 1.

The Housing and Community Development Act of 1987 would provide for permanent FHA insurance authority so that we will never have a recurrence of the shameful failure that we saw in the last Congress.

Conference negotiations on the housing bill are nearly complete, and the conference agreement will be ready for floor action shortly.

This measure will ensure that there will be no short-term disruption of FHA. I urge my colleagues to pass it promptly.

Thank you Mr. President.

ADDITIONAL COSPONSORS

S. 9

At the request of Mr. CRANSTON, the name of the Senator from Illinois [Mr. SIMON] was added as a cosponsor of S. 9, a bill to amend title 38, United States Code, to increase the rates of disability compensation and dependency and indemnity compensation for veterans and survivors; to provide additional eligibility for certain educational or rehabilitation assistance to veterans and other eligible individuals with drug or alcohol abuse disabilities; to increase the maximum amount of a home loan which is guaranteed by the Veterans' Administration; to improve housing, automobile, and burial assistance programs for service-disabled veterans; and to extend and establish certain exemptions from sequestration for certain veterans' benefits; and for other purposes.

S. 27

At the request of Mr. MOYNIHAN, the name of the Senator from Georgia [Mr. FOWLER] was added as a cosponsor of S. 27, a bill to establish the American Conservation Corps, and for other purposes.

S. 39

At the request of Mr. MOYNIHAN, the names of the Senator from Alaska [Mr. MURKOWSKI] and the Senator from Wisconsin [Mr. KASTEN] were added as cosponsors of S. 39, a bill to amend the Internal Revenue Code of 1986 to make the exclusion from gross income of amounts paid for employee educational assistance permanent.

S. 444

At the request of Mr. BOSCHWITZ, the names of the Senator from Washington [Mr. EVANS] and the Senator from Oklahoma [Mr. NICKLES] were added as cosponsors of S. 444, a bill to amend the Internal Revenue Code of 1986 to retain a capital gains tax differential, and for other purposes.

S. 533

At the request of Mr. THURMOND, the name of the Senator from Montana [Mr. MELCHER] was added as a cosponsor of S. 533, a bill to establish the Veterans' Administration as an executive department.

S. 1108

At the request of Mr. MITCHELL, the name of the Senator from New York [Mr. MOYNIHAN] was added as a cosponsor of S. 1108, a bill to modify the conditions of participation for skilled nursing facilities and intermediate care facilities under titles XVIII and XIX of the Social Security Act, and for other purposes.

S. 1188

At the request of Mr. SYMMS, the name of the Senator from Wyoming [Mr. WALLOP] was added as a cosponsor of S. 1188, a bill to amend the Internal Revenue Code of 1986 to allow certain associations of football coaches to have a qualified pension plan which includes cash or deferred arrangement.

S. 1230

At the request of Mr. GRASSLEY, the names of the Senator from Maryland [Ms. MIKULSKI] and the Senator from Nevada [Mr. HECHT] were added as cosponsors of S. 1230, a bill to amend title XVIII of the Social Security Act to permit payment for services of physician assistants outside institutional settings.

S. 1426

At the request of Mr. PRYOR, the names of the Senator from Indiana [Mr. QUAYLE] and the Senator from Hawaii [Mr. INOUYE] were added as cosponsors of S. 1426, a bill to amend the Internal Revenue Code of 1986 to encourage small businesses to extend retirement and fringe benefits to all employees, and for other purposes.

S. 1489

At the request of Mr. MOYNIHAN, the names of the Senator from Delaware [Mr. BIDEN], the Senator from Florida [Mr. GRAHAM], the Senator from Alabama [Mr. HEFLIN], the Senator from Iowa [Mr. GRASSLEY], and the Senator from New Mexico [Mr. DOMENICI] were added as cosponsors of S. 1489, a bill to amend section 67 of the Internal Revenue Code of 1986 to exempt certain publicly offered regulated investment companies from the disallowance of indirect deductions through pass-thru entities.

S. 1522

At the request of Mr. RIEGLE, the names of the Senator from Alabama [Mr. HEFLIN], and the Senator from Vermont [Mr. STAFFORD] were added as cosponsors of S. 1522, a bill to amend the Internal Revenue Code of 1986 to extend through 1992 the period during which qualified mortgage bonds and mortgage certificates may be issued.

S. 1554

At the request of Mr. FOWLER, the names of the Senator from Maine [Mr. MITCHELL], and the Senator from California [Mr. CRANSTON] were added as cosponsors of S. 1554, a bill to provide Federal assistance and leadership to a program of research, development and demonstration of renewable energy and energy conservation, and for other purposes.

S. 1575

At the request of Mr. WEICKER, the name of the Senator from Rhode Island [Mr. CHAFEE] was added as a cosponsor of S. 1575, a bill to amend the Public Health Service Act to establish a grant program to provide for counseling and testing services relating to acquired immune deficiency syndrome and to establish certain prohibitions for the purpose of protecting individuals with acquired immune deficiency syndrome or related conditions.

S. 1586

At the request of Mr. KERRY, the name of the Senator from Montana [Mr. MELCHER] was added as a cosponsor of S. 1586, a bill to provide financial assistance under the Education of the Handicapped Act to assist severely handicapped infants, children, and youth to improve their educational opportunities through the use of assistive device resource centers, and for other purposes.

S. 1600

At the request of Mr. STAFFORD, his name was added as a cosponsor of S. 1600, a bill to enhance the safety of air travel through a more effective Federal Aviation Administration, and for other purposes.

S. 1757

At the request of Mr. D'AMATO, the name of the Senator from Maryland [Ms. MIKULSKI] was added as a cosponsor of S. 1757, a bill to amend the Internal Revenue Code of 1986 to provide that employer subsidies for mass transit and van pooling be treated as working condition fringe benefits which are not included in gross income.

S. 1774

At the request of Mr. PRYOR, the name of the Senator from Minnesota [Mr. BOSCHWITZ] was added as a cosponsor of S. 1774, a bill to promote and protect taxpayer rights, and for others purposes.

S. 1789

At the request of Mr. KASTEN, the names of the Senator from Texas [Mr. GRAMM], the Senator from Idaho [Mr. SYMMS], and the Senator from North Carolina [Mr. HELMS] were added as cosponsors of S. 1789, a bill to amend the Internal Revenue Code of 1986 to reduce the rate of tax on long-term capital gains of individuals from 28 to 15 percent.

S. 1798

At the request of Mr. DECONCINI, the names of the Senator from Tennessee [Mr. SASSER] and the Senator from Vermont [Mr. LEAHY] were added as cosponsors of S. 1798, a bill to prohibit the sale, lease, donation, or other transfer of Stinger antiaircraft missiles to foreign governments in the Persian Gulf region.

S. 1811

At the request of Mr. HEINZ, the names of the Senator from Maryland [Mr. SARBANES] and the Senator from Hawaii [Mr. INOUYE] were added as cosponsors of 1811, a bill to provide a transitional funding method to ensure continued pension payments to steel industry retirees and to assure the viability of the private pension system, and for other purposes.

S. 1817

At the request of Mr. KENNEDY, the name of the Senator from Vermont [Mr. STAFFORD] was added as cosponsor of S. 1817, a bill to amend the Internal Revenue Code of 1986 to provide that gross income of an individual shall not include income from U.S. savings bonds which are transferred to an educational institution as payment for tuition and fees.

SENATE JOINT RESOLUTION 181

At the request of Mr. WILSON, the names of the Senator from Indiana [Mr. QUAYLE] and the Senator from New Hampshire [Mr. HUMPHREY] were added as cosponsors of Senate Joint Resolution 181, a joint resolution designating the week beginning February 1, 1988, as "National VITA Week."

SENATE JOINT RESOLUTION 188

At the request of Mr. SARBANES, the names of the Senator from Illinois [Mr. SIMON], the Senator from New Jersey [Mr. LAUTENBERG], and the Senator from South Carolina [Mr. THURMOND] were added as cosponsors of Senate Joint Resolution 188, a joint resolution designating the week of November 1 through November 7, 1987, as "National Watermen's Recognition Week."

SENATE JOINT RESOLUTION 196

At the request of Mr. BYRD, his name was added as a cosponsor of Senate Joint Resolution 196, a joint resolution to designate February 4, 1988, as "National Women in Sports Day."

At the request of Mr. PACKWOOD, the names of the Senator from Kansas [Mr. DOLE], the Senator from Georgia [Mr. NUNN], the Senator from Mississippi [Mr. COCHRAN], the Senator from Minnesota [Mr. DURENBERGER], the Senator from Massachusetts [Mr. KERRY], the Senator from South Carolina [Mr. THURMOND], the Senator from Arkansas [Mr. PRYOR], the Senator from Tennessee [Mr. SASSER], the Senator from Tennessee [Mr. GORE], the Senator from Virginia [Mr. WARNER], the Senator from Massachusetts [Mr. KENNEDY], the Senator from Utah [Mr. HATCH], the Senator from California [Mr. WILSON], the Senator from Vermont [Mr. STAFFORD], and the Senator from South Carolina [Mr. HOLLINGS] were added as cosponsors of Senate Joint Resolution 196, supra.

SENATE JOINT RESOLUTION 201

At the request of Mr. GARN, the names of the Senator from Georgia [Mr. NUNN] and the Senator from Mississippi [Mr. COCHRAN] were added as cosponsors of Senate Joint Resolution 201, a joint resolution to designate January 28, 1988, as "National Challenger Center Day," to honor the crew of the space shuttle *Challenger.*

SENATE JOINT RESOLUTION 203

At the request of Mr. D'AMATO, the names of the Senator from Kansas [Mrs. KASSEBAUM], the Senator from Nebraska [Mr. KARNES], and the Senator from Hawaii [Mr. MATSUNAGA] were added as cosponsors of Senate Joint Resolution 203, a joint resolution calling upon the Soviet Union immediately to grant permission to emigrate to all those who wish to join spouses in the United States.

SENATE CONCURRENT RESOLUTION 43

At the request of Mr. STEVENS, the names of the Senator from Maryland [Ms. MIKULSKI], the Senator from Indiana [Mr. QUAYLE], and the Senator from Wyoming [Mr. WALLOP] were added as cosponsors of Senate Concurrent Resolution 43, a concurrent resolution to encourage State and local governments and local educational agencies to provide quality daily physical education programs for all children from kindergarten through grade 12.

SENATE RESOLUTION 275

At the request of Mr. PRYOR, the name of the Senator from Nebraska [Mr. EXON] was added as a cosponsor of Senate Resolution 275, a resolution to limit time on the motion to proceed.

AMENDMENT NO. 1043

At the request of Mr. GLENN, his name was added as a cosponsor of amendment No. 1043 proposed to S. 1127, a bill to provide for Medicare catastrophic illness coverage, and for other purposes.

SENATE RESOLUTION 303—COMMENDING THE PARTICIPANTS AND ORGANIZERS OF "JUSTICE FOR ALL DAY"

Mr. KENNEDY (for himself, Mr. METZENBAUM, Mr. HATCH, Ms. MIKULSKI, Mr. PELL, Mr. DOLE, Mr. DODD, Mr. GLENN, Mr. CRANSTON, Mr. DURENBERGER, Mr. LAUTENBERG, Mr. SIMON, Mr. MOYNIHAN, Mr. CONRAD, Mr. MATSUNAGA, Mr. CHAFEE, Mr. KERRY, Mr. WEICKER, Mr. THURMOND, Mr. BURDICK, Mr. DECONCINI, Mr. LEVIN, Mr. ADAMS, Mr. WARNER, Mr. INOUYE, Mr. RIEGLE, Mr. BRADLEY, Mr. BOND, Mr. MITCHELL, Mr. PROXMIRE, Mr. DIXON, Mr. STAFFORD, Mr. NUNN, Mr. DOMENICI, Mr. GARN, Mr. SHELBY, Mr. PRYOR, Mr. D'AMATO, Mr. BENTSEN, and Mr. SANFORD) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 303

Whereas the poverty, hunger, and homelessness that afflict this great Nation are issues of tremendous concern to all Members of the United States Senate and the citizens they represent;

Whereas the efforts to combat the tragedy of poverty should include all sectors of American society, public and private, rich and poor, liberal and conservative; and

Whereas all efforts to abolish poverty and destitution must begin with an understanding of the causes of poverty and the myths and misunderstandings that obscure the plight of Americans in poverty: Now, therefore, be it

Resolved, That the Senate—

(1) commend the efforts and commitment of the organizers and participants of "Justice For All Day", November 17, 1987; and

(2) express gratitude to all persons who work to abolish poverty and ease the suffering of the poor.

Mr. KENNEDY. Mr. President, I rise today to submit a Senate resolution commending the organizers and participants of Justice for All Day, November 17, 1987. On Justice for All Day, millions of Americans will turn their attention to the poverty and hunger that afflicts this country in an effort to promote awareness of this serious problem that continues to plague our society.

The goal of this day is widespread education on the issue of poverty. Understanding the characteristics, extent, and causes of poverty is the key to defeating poverty. We must all work to dispell the myths that obscure and confuse the issue of poverty. This is not a partisan issue: no one supports poverty and no one opposes education. While we may sometimes disagree about what methods should be used to combat poverty, I am confident that we all agree that poverty is one of the most critical problems facing the United States.

The statistics about poverty in this country are staggering. Today, 32 million Americans live in poverty, and 20 million of them are children. Millions more struggle at the edge—sacrificing essential health care or decent housing in order to feed their families. These are sacrifices that no American should have to make.

In joining this resolution, Senators are demonstrating their support for the tireless, unselfish efforts of the large number of dedicated Americans across the country to reduce poverty. These citizens are the front line, the foot soldiers, and the real heroes in the battle against poverty. They deserve our commendation and recognition. I urge my colleagues to join with me in this tribute to the commitment of Americans everywhere who believe that "Justice for All" is an idea whose time has come.

SENATE RESOLUTION 304—ORIGINAL RESOLUTION REPORTED TO INCREASE THE AMOUNT ALLOCATED TO THE COMMITTEE ON AGRICULTURE, NUTRITION AND FORESTRY BY SENATE RESOLUTION 80, RELATING TO COMMITTEE FUNDING FOR FISCAL YEAR 1988

Mr. LEAHY, from the Committee on Agriculture, Nutrition, and Forestry, reported the following original resolution; which was referred to the Committee on Rules and Administration:

S. Res. 304

Resolved, That section 3(b) of the Omnibus Committee Funding Resolution of 1987 (S. Res. 80; 100th Congress) is amended by striking out "$1,304,430" and inserting in lieu thereof "$1,434,873".

SENATE RESOLUTION 305—AUTHORIZING REPRESENTATION BY THE SENATE LEGAL COUNSEL

Mr. BYRD (for himself and Mr. Dole) submitted the following resolution; which was considered and agreed to:

S. Res. 305

Whereas, in the case of Moreno v. Small Business Administration, et al., 3-87-239, pending in the United States District Court for the District of Minnesota, the plaintiff has obtained a subpoena, addressed to Philip Q. Cohen, legislative assistant to Senator Durenberger for testimony and the production of documents at a deposition;

Whereas, pursuant to sections 703(a) and 704(a)(2) of the Ethics in Government Act of 1978, 2 U.S.C. §§ 288b(a) and 288c(a)(2)(1982), the Senate may direct its counsel to represent employees of the Senate with respect to subpoenas issued to them in their official capacities;

Whereas, by the privileges of the Senate of the United States and Rule XI of the Standing Rules of the Senate, no evidence under the control or in the possession of the Senate can, by the judicial process, be taken from such control or possession but by permission of the Senate;

Whereas, when it appears that testimony of, or production of documents by, employees of the Senate may be needed for use in any court for the promotion of justice, the Senate will take such action as will promote the ends of justice consistent with the privileges of the Senate: Now, therefore be it

Resolved, That the Senate Legal Counsel is directed to represent Philip Q. Cohen in the case of Moreno v. Small Business Administration, et al.

Sec. 2. That Philip Q. Cohen is authorized to testify and produce documents in the case of Moreno v. Small Business Administration, et al., except concerning matters which are privileged from disclosure.

AMENDMENTS SUBMITTED

CATASTROPHIC ILLNESS COVERAGE

HEINZ (AND OTHERS) AMENDMENT NO. 1044

Mr. HEINZ (for himself, Mr. Mitchell, Mr. Chafee, Mr. Daschle, Mr. Kennedy, Mr. Simon, Mr. Riegle, Mr. Durenberger, and Mr. Metzenbaum) proposed an amendment, which was subsequently modified, to the bill (S. 1127) to provide for Medicare catastrophic illness coverage, and for other purposes; as follows:

On page 80, line 8, strike "$1,700" and insert in lieu thereof "$1,850 and for 1989 is $2030".

On page 80, line 10, strike "applicable" and all that follows through "year" on line 12, and insert in lieu thereof "percentage (as determined by the Secretary) that ensures that the percentage of individuals covered under the insurance program under part B (other than individuals enrolled with an eligible organization under section 1876 or an organization described in subsection (a)(1)(A)) whose out-of-pocket medical expenses exceed the limit under this subsection for the succeeding year equals on a perspective basis the percentage of such individuals whose out-of-pocket medical expenses exceeded such limit for calendar year 1989".

On page 81, line 20, insert "and" after "amounts,".

On page 81, strike lines 21 through 25.

On page 82, line 1, strike "(C)" and insert in lieu thereof "(B)".

On page 84, line 4, insert "comprehensive" after "excluding".

On page 84, line 8, strike "term" and all that follows through the period on line 10, and insert in lieu thereof "term 'comprehensive catastrophic coverage benefits' means benefits payable under this title by reason of the enactment of the amendments made by sections 2(a), 3(a), 4, 7(b), 7A, and 11 of the Medicare Catastrophic Loss Prevention Act of 1987.".

On page 85, line 3, insert "comprehensive" after "excluding".

On page 85, line 8, insert "comprehensive" after the single quotation mark.

On page 85, line 10, strike "subsection (g)(2)(C)(i)" and insert in lieu thereof "paragraph (1)(B)".

On page 85, line 19, strike "after January".

On page 85, line 22, insert "and for every month in calendar years after 1989 shall be further increased by an amount equal to the monthly catastrophic drug benefit premium amount for that year" before the period.

On page 86, line 5, strike "(or" and all that follows through the period on line 22 and insert in lieu thereof "by the percentage equal to (I) the percentage (if any) necessary to increase the estimated total revenues collectable with respect to such succeeding year from the monthly catastrophic coverage premiums and the premiums under section 1839A (as determined without regard to subsection (b)(2)(B)(iii) of such section) by the amount by which the estimated total catastrophic coverage benefits and related administrative costs (including any administrative costs incurred for the coverage for coverage of outpatient drugs under this part) for such succeeding year exceed such revenues, plus (II) with respect to each calendar year before 1993, the percentage the Secretary determines to be necessary to ensure that before 1993 there is established a contingency fund equal to 20 percent or (if greater) a reserve fund equal to 5 percent, and, with respect to each calendar year after 1992, the percentage necessary to maintain either of such funds at such percentages. For purposes of the preceding sentence, the term 'contingency fund' means with respect to any calendar year the percentage determined by dividing the amount of unexpended premiums described in this paragraph and section 1839A (without regard to subsection (b)(2)(B)(iii) of such section) as determined at the end of such year by the actuarial comprehensive catastrophic benefit amount for the succeeding calendar year, and the term 'reserve fund' means with respect to any calendar year the percentage determined by dividing the amount of unexpended and unobligated premiums described in this paragraph and section 1839A (without regard to subsection (b)(2)(B)(iii) of such section) as determined at the end of such year by such benefit amount.".

On page 87, strike lines 17 through 22.

On page 87, line 23, strike "(iii)" and insert in lieu thereof "(ii)".

On page 88, line 7, strike "(iv)" and insert in lieu thereof "(iii)".

On page 88, between lines 15 and 16, insert the following new paragraph:

"(3)(A)(i) Subject to clause (ii), the monthly catastrophic drug benefit premium amount for any calendar year after 1989 for individuals who are covered by the insurance program under this part, shall be an amount equal to 50 percent of the per enrollee actuarial catastrophic drug benefit amount for such year plus—

"(I) in the case of calendar year 1990, an amount necessary to cover 7.5 percent of the per enrollee actuarial catastrophic drug benefit amount for 1991; and

"(II) in the case of any calendar year after 1990, an amount (when added to any unexpended amount determined under subclause (I) or this subclause for any preceding year) necessary to cover 7.5 percent of the per enrollee actuarial catastrophic drug benefit amount for such calendar year.

"(ii) In the case of calendar years after 1991, the monthly catastrophic drug benefit premium amount shall in no event exceed—

"(I) for 1991, $2.00;

"(II) for 1992, $3.50;

"(III) for 1993, $4.80; and

"(IV) for any succeeding year, the amount in effect under this clause for the preceding year increased by the percentage by which the part B beneficiary drug expenditure amount for the 12-month period ending in August in that preceding year exceeds the part B beneficiary drug expenditure amount for the 12-month period ending in August in the second preceding year.

"(B) If the monthly premium amount determined under subparagraph (A) is not a multiple of 10 cents, such premium amount shall be rounded to the nearest multiple of 10 cents.

"(C) For purposes of this paragraph—

"(i) the term 'catastrophic drug coverage benefits' means benefits payable under this part by reason of the enactment of the amendments made by sections 7A and 11 of the Medicare Catastrophic Loss Prevention Act of 1987,

"(ii) the term 'per enrollee actuarial catastrophic drug benefit amount' means, with respect to a year, an amount equal to the actuarial catastrophic drug benefit amount for the year divided by the total number of individuals that the Secretary estimates will be enrolled under this part for the year,

"(iii) the term 'actuarial catastrophic drug benefit amount' means, with respect to a calendar year, the amount that the Secretary estimates will equal the total of the catastrophic drug coverage benefits (and related administrative costs) will be paid in cash outlays from the Federal Catastrophic Drug Insurance Trust Fund in such calendar year with respect to enrollees under this part, and

"(iv) the term 'part B beneficiary drug expenditure amount' means, with respect to a 12-month period, the average per capita amount expended for a period on outpatient prescription drugs by such individuals who are covered by the insurance program under this part (other than individuals enrolled with an eligible organization under section 1876 or an organization described in subsection (a)(1)(A)).

On page 88, line 16, strike "3" and insert in lieu thereof "4".

On page 89, line 3, insert "AND CDI TRUST FUND" after "FUND".

On page 89, line 5, insert "(1)" after "(j)".

On page 89, line 13, strike the end quotation and the end period.

On page 89, between lines 13 and 14, insert the following new paragraph:

"(2) There shall be transferred from time to time from the Trust Fund to the Federal Catastrophic Drug Insurance Trust Fund amounts from the premiums imposed under section 1833(g)(3).".

On page 91, line 2, strike "$1.02" and insert in lieu thereof "$1.08".

On page 91, line 7, insert "and (in the case of any taxable year beginning in a calendar year after 1989) the drug premium rate adjustment under clause (iii)" after "(ii)".

On page 91, line 12, strike "increase" and all that follows through the period on line 16 and insert in lieu thereof "determined under section 1833(g)(2)(A)(i).".

On page 91, line 19, strike "and subclause (IV)".

On page 92, strike lines 1 through 23 and insert in lieu thereof the following new clause:

"(iii) For purposes of clause (i), the drug premium rate adjustment for taxable years beginning in a calendar year after 1989 shall be an amount equal to 50 percent of the modified per enrollee actuarial catastrophic drug benefit amount for such year plus—

"(I) in the case of any taxable year beginning in calendar year 1990, an amount necessary to cover 7.5 percent of the modified per enrollee actuarial catastrophic drug benefit amount for 1991; and

"(II) in the case of any taxable year beginning in any calendar year after 1990, an amount (when added to any unexpended amount determined under subclause (I) or this subclause for any preceding year) necessary to cover 7.5 percent of the modified per enrollee actuarial catastrophic drug benefit amount for such calendar year.

For purposes of this clause, the term 'modified per enrollee actuarial catastrophic drug benefit amount' means the per enrollee actuarial catastrophic drug benefit amount (within the meaning of section 1839(g)(3)(C)(ii)), or, if the Secretary makes the adjustment under section 1883(o)(10), such amount as reestimated by the Secretary to reflect such adjustment.

On page 96, between lines 5 and 6, insert the following new paragraph:

"(3) For purposes of this section, the term 'per enrollee actuarial comprehensive catastrophic benefit amount' means, with respect to a year, an amount equal to the actuarial comprehensive catastrophic benefit amount (within the meaning of 1839(g)(2)(C)(ii)) for the year divided by the total number of individuals that the Secretary estimates will be enrolled under this part for the year.

On page 96, line 11, insert "(as determined without regard to subsection (b)(2)(B)(iii))" before "paid".

On page 96, line 20, strike the end quotation and end period.

On page 96, between lines 20 and 21, insert the following new subsection:

"(f) The Secretary of the Treasury shall, from time to time, transfer from the general fund of the Treasury to the Federal Catastrophic Drug Insurance Trust Fund amounts equal to the aggregate drug premium rate adjustment paid pursuant to subsection (b)(2)(B)(iii) of this section.

Such transfer shall be appropriately adjusted to the extent that prior transfers were in excess of or less than the amounts required to be transferred.".

On page 97, insert after line 23 the following new section:

SEC. 6A. ESTABLISHMENT OF FEDERAL CATASTROPHIC DRUG INSURANCE TRUST FUND.

Part B of title XVIII is amended by inserting after section 1841 the following new section:

"FEDERAL CATASTROPHIC DRUG INSURANCE TRUST FUND

"SEC. 1841A. (a) There is hereby created on the books of the Treasury of the United States a trust fund to be known as the 'Federal Catastrophic Drug Insurance Trust Fund' (hereinafter in this section referred to as the 'Trust Fund'). The Trust Fund shall consist of such gifts and bequests as may be made as provided in section 201(i)(1) and amounts transferred to it in accordance with sections 1841(j)(2) and 1839A(f).

"(b) The provisions of subsections (b) through (i) of section 1841 shall apply to the Trust Fund in the same manner as they apply to the Federal Supplementary Medical Insurance Trust Fund.

"(c) Notwithstanding any other provision of this title, all payments under this title for benefits payable by reason of the enactment of the amendments made by sections 7A and 11 of the Medicare Catastrophic Loss Prevention Act of 1987 shall be made from the Trust Fund.".

On page 98, between lines 18 and 19, insert the following new section:

SEC. 7A. COVERAGE OF HOME INTRAVENOUS DRUG THERAPY.

(a) In General.—Section 1832(a)(2)(A) (42 U.S.C. 1395k(a)(2)(A)) is amended by inserting "and home intravenous drug therapy" before the semicolon.

(b) Definition of Home Intravenous Drug Therapy.—Section 1861, as amended by section 4(c)(2) of this Act, is further amended by adding at the end thereof the following new subsection:

"(gg)(1) The term 'home intravenous drug therapy' means the items and services described in paragraph (2) furnished to an individual who is under the care of a physician—

"(A) in a place of residence used as such individual's home;

"(B) by a qualified home intravenous drug therapy provider (as defined in paragraph (3)) or by others under arrangements with them made by such provider; and

"(C) under a plan established and periodically reviewed by a physician.

"(2) The items and services described in this paragraph are such nursing, pharmacy, and related services (including the costs of medical supplies, delivery, and equipment) as are necessary to conduct safely and effectively an intravenously administered anti-infective or cancer chemotherapeutic drug regimen through use of a covered outpatient drug (as defined in subsection (t)(2)) or any other intravenously administered drug (that is a covered outpatient) which the Secretary (in consultation with an advisory panel of consumers, clinicians, and providers) determines may be safely provided in the home.

"(3)(A) For purposes of paragraph (1), the term 'qualified home intravenous drug therapy provider' means any home health agency that the Secretary determines meets the conditions of participation of subparagraph (B), or any entity that is certified by the Secretary as meeting such conditions.

"(B) An agency or entity meets the conditions of participation of this subparagraph if such agency or entity—

"(i) is capable of providing or arranging for the items and services described in paragraph (2);

"(ii) maintains clinical records on all patients;

"(iii) has written policies to govern the provision of services;

"(iv) makes services available (as needed) seven days a week on a 24-hour basis;

"(v) coordinates all services with the patient's physician;

"(vi) conducts a quality assessment and assurance program, including drug regimen review and coordination of patient care;

"(vii) assures that only trained personnel provide chemotherapy (and any other service for which training is required to safely provide the service);

"(viii) assumes responsibility for the quality of services provided by others under arrangements with the agency or entity; and

"(ix) meets such other conditions of participation as the Secretary may determine are necessary to assure the safe and effective provision of home intravenous drug therapy and the efficient administration of the home intravenous drug therapy benefit.".

(c) Payment.—Section 1833, as amended by section 4(c)(1) of this Act, is further amended—

(1) in subsection (a)(2)(B), by striking "(C) or (D)" and inserting in lieu thereof "(C), (D), or (E)";

(2) in subsection (a)(2)(C), by striking "and";

(3) in subsection (a)(2)(D), by striking the semicolon and inserting in lieu thereof "; and";

(4) by inserting immediately after subsection (a)(2)(D) the following new subparagraph:

"(E) with respect to home intravenous drug therapy, the lesser of the actual charges for such therapy or the amount established under subsection (n);";

(5) in subsection (b), by striking "services, (3)" and inserting in lieu thereof "services and home intravenous drug therapy, (3)"; and

(6) by adding at the end thereof the following new subsection:

"(n) The Secretary shall establish by regulation before the beginning of calendar year 1990 and each succeeding calendar year a fee schedule for home intravenous drug therapy for which payment is made under this part. A fee schedule established under this subsection shall be on a per diem basis and shall be based on a study of current reimbursement for similar items and services under this title, on the customary charges for such therapy, and upon such other information as the Secretary deems appropriate.".

(d) Certification.—Section 1835(a)(2) (42 U.S.C. 1395n(a)(2)) is amended—

(1) by striking "and" at the end of subparagraph (D);

(2) by striking the period at the end of subparagraph (E) and inserting "; and"; and

(3) by inserting after subparagraph (E) the following new subparagraph:

"(F) in the case of home intravenous drug therapy, (i) such therapy is or was required because the individual needed such therapy, (ii) a plan for furnishing such therapy has been established and is reviewed periodically by a physician, (iii) such therapy is or was furnished while the individual is or was under the care of a physician, and (iv) such therapy is administered in a place of residence used as such individual's home.".

(e) Certification of Home Intravenous Drug Therapy Providers; Intermediate Sanctions for Noncompliance.—

(1) Section 1863 (42 U.S.C. 1395z) is amended by striking "and (dd)(2)" and inserting in lieu thereof "(dd)(2), and (gg)(3)(B)".

(2) Section 1864(a) (42 U.S.C. 1395aa(a)) is amended—

(A) in the first sentence, by inserting "or a home intravenous drug therapy provider," after "hospice program", and

(B) in the second sentence, by striking "or hospice program" and inserting in lieu thereof "hospice program, or home intravenous drug therapy provider".

(3) Part B of title XVIII is amended by adding at the end thereof the following new section:

"INTERMEDIATE SANCTIONS FOR QUALIFIED HOME INTRAVENOUS DRUG THERAPY PROVIDERS"

"Sec. 1846. (a) If the Secretary determines that a qualified home intravenous drug therapy provider that is certified for participation under this title no longer substantially meets the conditions of participation specified in section 1861(gg)(3)(B), the Secretary may (for a period not to exceed one year) impose intermediate sanctions developed pursuant to subsection (b), in lieu of canceling immediately the certification of the provider.

"(b)(1) The Secretary shall develop and implement—

"(A) a range of intermediate sanctions to apply to qualified home intravenous drug therapy providers under the conditions described in subsection (a), and

"(B) appropriate procedures for appealing determinations relating to the imposition of such sanctions.

"(2)(A) The intermediate sanctions developed under paragraph (1) shall include—

"(i) civil fines and penalties, and

"(ii) suspension of all or part of the payments to which a qualified home intravenous drug therapy provider would otherwise be entitled under this title with respect to items and services furnished by a qualified home intravenous drug therapy provider on or after the date in which the Secretary determines that intermediate sanctions should be imposed pursuant to subsection (a).

"(B) The sanctions specified in subparagraph (A) are in addition to sanctions otherwise available under State or Federal law.

"(3) The Secretary shall develop and implement specific procedures with respect to when and how each of the intermediate sanctions developed under paragraph (1) is to be applied, the amounts of any fines, and the severity of each of these penalties. Such procedures shall be designed so as to minimize the time between identification of violations and imposition of these sanctions and shall provide for the imposition of incrementally more severe fines for repeated or uncorrected deficiencies.".

(f) Effective Date; Publication Requirement.—

(1) The amendments made by this section shall apply to items and services furnished on or after January 1, 1990.

(2) Not later than January 1, 1990 (and periodically thereafter), the Secretary of Health and Human Services shall publish a list of categories of drugs that the Secretary determines for purposes of section 1861(gg)(2)(A) of the Social Security Act (as added by subsection (b) of this section) are covered outpatient drugs with respect to which home intravenous drug therapy may be provided under such Act.

On page 101, line 13, strike "and 7(b)" and insert in lieu thereof "7(b), 7A, and 11".

On page 102, strike line 1 and all that follows through line 17 on page 103 and insert in lieu thereof the following:

SEC. 11. COVERAGE OF CATASTROPHIC EXPENSES FOR PRESCRIPTION DRUGS.

(a) In General.—Section 1861 (42 U.S.C. 1395x) is amended—

(1) by amending subparagraph (J) of subsection (s)(2) to read as follows:

"(J)(i) drugs described in subsection (t)(2)(A) (that by reason of subsection (t)(2)(B)(i) are not covered outpatient drugs) used in immunosuppressive therapy furnished to an individual who receives an organ transplant for which payment is made under this title, and (ii) covered outpatient drugs (as defined in subsection (t)(2)); and", and

(2) in subsection (t)—

(A) by striking "subsection (m)(5)" and inserting "subsections (m)(5) and (s)(2)(J)(ii) and paragraph (2)",

(B) by inserting "(1)" after "(t)", and

(C) by adding at the end thereof the following new paragraph:

"(2)(A) Except as provided in subparagraph (B), the term 'covered outpatient drug' means a drug which—

"(i)(I) is approved for safety and effectiveness as a prescription drug under section 505 or 507 of the Federal Food, Drug, and Cosmetic Act, or

"(II) is recognized in the publication entitled 'United States Pharmacopeia' (and is available only under a prescription); or

"(ii) in the case of a prescription drug which is biological product, is licensed under section 351 of the Public Health Service Act.

"(B)(i) The term 'covered outpatient drug' does not include any drug or biological with respect to which payment may be made under this title on the day before the date of enactment of the Medicare Catastrophic Loss Prevention Act of 1987.

"(ii) Notwithstanding any other provision of this paragraph, the term 'covered outpatient drug' means—

"(I) for calendar year 1990, a drug described in subparagraph (A) (not excluded from the definition of covered outpatient drug under clause (i)) that is an intravenously administered anti-infective agent, a cancer chemotherapeutic agent (including a drug used to enhance the safety and efficacy or counteract the toxicity of anticancer drugs), or a drug described in subsection (s)(2)(J)(i); and

"(II) for calendar years 1991 and 1992, a drug described in subclause (I) and any cardiovascular or diuretic drug that is described in subparagraph (A) and is not excluded from the definition of covered outpatient drug under clause (i).".

(b) Deductible and Payment Amounts.—Section 1833, as amended by sections 4(c)(1) and 7A(c) of this Act, is further amended—

(1) in subsection (a)(1)—

(A) by striking "and" before "(H)", and

(B) by adding at the end the following: "(I) with respect to expenses incurred for covered outpatient drugs, the amounts paid shall be the amounts determined under subsection (o)(2), and (J) with respect to drugs described in section 1861(s)(2)(J)(i), the amounts paid shall be the amounts determined under subsection (o)(2) (without regard to the deductible established under subsection (o)(1)(A) but taking into account the deductible established under subsection (b))";

(2) in subsection (b)—

(A) in clause (1), by inserting "or for covered outpatient drugs" after "1861(s)(10)(A)", and

(B) in clause (2), by inserting ", covered outpatient drugs," after "services"; and

(3) by adding at the end the following new subsection:

"(o)(1)(A) Before applying paragraph (2) with respect to expenses incurred by an individual for covered outpatient drugs dispensed in a calendar year, the individual must establish that the individual has incurred (or has had paid on the individual's behalf) expenses for covered outpatient drugs dispensed in the year (during a period in which the individual is entitled to benefits under this part) of the amount specified under subparagraph (C) for that year.

"(B) If an individual applies to the Secretary to establish that the individual has met the requirement of subparagraph (A), the Secretary shall promptly notify the individual (and, if the application was submitted by or through a participating pharmacy, the pharmacy) as to whether or not the individual has met such requirement.

"(C)(i) The amount specified under this subparagraph for—

"(I) 1990 is $600;

"(II) for any succeeding year, is the amount specified under this subparagraph for the preceding year increased by the percentage by which the part B beneficiary drug expenditure amount (as defined in section 1839(g)(3)(C)(iv)) for the 12-month period ending in August in that preceding year exceeds such amount for the 12-month period ending in August in the second preceding year.

"(ii) Any amount determined under this subparagraph which is not a multiple of $1 shall be rounded to the next highest multiple of $1.

"(iii) In September of each year (beginning with 1990) the Secretary shall publish the deductible established under this subparagraph for the following year.

"(2)(A) Subject to the deductible established under paragraph (1)(A) (or, with respect to drugs described in section 1861(s)(2)(J)(i), the deductible established under subsection (b)) and except as provided in subparagraph (C), the amounts payable under this part with respect to a covered outpatient drug or a drug described in section 1861(s)(2)(J)(i) is equal to—

"(i) the lesser of—

"(I) the actual charge for the drug, or

"(II) subject to paragraph (11)(A), the applicable payment limit described in paragraph (3)(A) or (3)(B); minus

"(ii) 20 percent of the actual charge for the drug.

"(B) The Secretary, before each payment calculation period (as defined in paragraph (9)(C)) beginning on or after January 1, 1990, shall provide for the distribution to participating pharmacies (as defined in section 1842(i)) and to groups representing or assisting individuals entitled to benefits under this part, of information on the payment limits established under paragraphs (3)(A) and (3)(B) (and on any adjustments to such limits under paragraph (11)(A)).

"(C)(i) An organization described in clause (ii) may elect to be paid 80 percent of the reasonable cost of services described in section 1861(s)(2)(J) on behalf of individuals enrolled in such organization in lieu of the amounts provided in subparagraph (A) if the organization undertakes to charge such individuals no more than 20 percent of such reasonable cost plus any amounts payable by them as a result of paragraph (1).

"(ii) An organization described in the clause is an organization which—

"(I) provides medical and other health services (or arranges for their availability) on a prepayment basis and which has elected to receive payments under subsection (a)(1)(A), or

"(II) has a reasonable cost reimbursement contract under section 1876(h).

"(3)(A) In the case of a drug that either is not a multiple source drug (as defined in paragraph (9)(A)) or is a multiple source drug and has a restrictive prescription (as defined in paragraph (9)(B)), the payment limit for the drug under this subsection is the sum of—

"(i) the product of (I) the number of tablets (or other dosage units) dispensed and (II) the average per tablet or unit wholesale price for the drug (as determined under paragraph (4)), and

"(ii) an administrative allowance in the amount determined under paragraph (5).

"(B) In the case of a drug that is a multiple source drug but does not have a restrictive prescription, the payment limit for the drug under this subsection is the sum of—

"(i) the product of (I) the number of tablets (or other dosage units) dispensed and (II) 150 percent of the lowest of the average per tablet or unit wholesale price for the drug (as determined under paragraph (4)); and

"(ii) an administrative allowance in the amount determined under paragraph (5).

"(4)(A) For purposes of this subsection, the Secretary shall determine, with respect to dispensing of a covered outpatient drug in a payment calculation period (beginning on or after January 1, 1990), the average per tablet or unit wholesale price for the drug. Such average shall be based on the average wholesale price for purchases in reasonable quantities.

"(B) For purposes of paragraph (3)(A), the average per tablet or unit wholesale price for a drug with respect to a payment calculation period is the most recently published average per tablet or unit wholesale price for the drug.

"(C) For purposes of paragraph (3)(B), the average per tablet or unit wholesale price for a drug—

"(i) for the 12-month period beginning with January, 1987, is the average per tablet or unit wholesale price for the drug as of January 1, 1987; and

"(ii) for a subsequent payment calculation period, is the lesser of—

"(I) the most recently published average per tablet or unit wholesale price for the drug, or

"(II) the average per tablet or unit wholesale price for the drug established for the previous payment calculation period increased by the percentage change in the consumer price index for all urban consumers (all items, U.S. city average, as published by the Bureau of Labor Statistics) for the 12-month period ending with August of the previous period.

In the case of a covered outpatient drug which is not available as of January 1, 1987, but which is first available in a payment calculation period after such date, the Secretary shall establish the average per tablet or unit wholesale price for the drug (based on purchases in reasonable quantities) in the first month of the first payment calculation period in which it is available.

"(D)(i) In the case of any drug that is available on a national basis, the Secretary shall make the determination under this paragraph, and calculate the payment limits under paragraph (3), on a national basis.

"(ii) In the case of any drug that is not available on a national basis, the Secretary may make such determination, and calculate such payment limits, on a regional basis to take account of the availability of drug products and variations among regions in the average wholesale prices for a drug product.

"(5)(A) For drugs dispensed in the payment calculation period beginning on January 1, 1990, the administrative allowance under this paragraph is—

"(i) $4.50 in the case of any drug dispensed by a participating pharmacy; and

"(ii) $3.50 in the case of any drug dispensed by a pharmacy that is not a participating pharmacy.

"(B) For drugs dispensed in a subsequent payment calculation period, the administrative allowance under this paragraph is the administrative allowance under this paragraph for the preceding calculation period increased by the percentage change (if any) in the implicit price deflator for gross national product (as published by the Department of Commerce in its 'Survey of Current Business') over the 12-month period ending with August of such preceding period. Any allowance determined under the preceding sentence which is not a multiple of 1 cent shall be rounded to the nearest multiple of 1 cent.

"(6)(A) In order to prevent abusive practices in the prescribing or dispensing of covered outpatient drugs, the Secretary may provide that payment for covered outpatient drugs may not be made in specific instances where they have been prescribed or dispensed with excessive frequency or in excessive quantities.

"(B)(i) The Secretary shall establish a utilization review program for covered outpatient drugs to identify patterns of unnecessary or inappropriate prescribing or dispensing practices (including excessive charging in the dispensing of drugs) and to identify patterns of substandard care.

"(ii) In carrying out the program under clause (i), the Secretary shall use diagnosis and indication codes and shall establish for each covered outpatient drug standards for the prescribing, dispensing, and utilization of the drug. In establishing such standards, the Secretary may incorporate standards from such current authoritative medical references as the Secretary may select after providing notice in the Federal Register with respect to any such selection and a period of not less than 60 days for public comment thereon.

"(7) In the case of covered outpatient drugs furnished by an eligible organization (described in section 1876(b)) or an organization described in section 1833(a)(1)(A) which does not impose charges on covered outpatient drugs dispensed to its members—

"(A) for purposes of this subsection the actual charges of the organization shall be the organization's standard charges to members and other individuals not entitled to benefits with respect to such drugs, and

"(B) for purposes of meeting the deductible established under paragraph (1), there shall be taken into account the standard charges that are fully or partially prepaid for covered outpatient drugs.

"(8)(A) The Secretary shall develop, and update annually, an information guide for physicians concerning the comparative average wholesale prices of at least 500 of the most commonly prescribed covered outpatient drugs. Such guide shall, to the extent practicable, group covered outpatient drugs (including multiple source drugs) in a manner useful to physicians by therapeutic category or with respect to the conditions for which they are prescribed. Such guide shall specify the wholesale prices on the basis of the amount of the drug required for a typical daily therapeutic regimen.

"(B) The Secretary shall provide for mailing, not later than January 1 of each year (beginning with 1990), a copy of the guide developed and updated under subparagraph (A)—

"(i) to each hospital with an agreement in effect under section 1866, and

"(ii) to each physician (as defined in section 1861(r)(1)) who routinely provides services under this part.

"(9) In this subsection:

"(A) The term 'multiple source drug' means, with respect to a payment calculation period, a covered outpatient drug for which there are 2 or more drug products (or, in the case of a covered outpatient drug subject to a patent, 3 or more drug products) generally available to beneficiaries through retail pharmacies which the Secretary determines are—

"(i)(I) pharmaceutically equivalent,

"(II) bioequivalent,

"(III) adequately labeled, and

"(IV) manufactured in compliance with Current Good Manufacturing Practice regulations; and

"(ii) sold or marketed during the period.

For purposes of clause (i), drug products are pharmaceutically equivalent if the products contain identical amounts of the same active drug ingredient in the same dosage form and meet compendial or other applicable standards of strength, quality, purity, and identity and drugs are bioequivalent if they do not present a known or potential bioequivalence problem or, if they do present such a problem, are shown to meet an appropriate bioequivalence standard. For purposes of clause (ii), a drug product is considered to be sold or marketed during a period if is listed in the Food and Drug Administration's most recent publication of 'Approved Drug Products with Therapeutic Equivalence Evaluations' for the third month before the beginning of the period, unless the Secretary determines that such sale or marketing is not actually taking place.

"(B) A drug has a 'restrictive prescription' only if—

"(i) in the case of a written prescription, the prescription for the drug indicates, in the handwriting of the physician or other person prescribing the drug and with an appropriate phrase (such as 'brand medically necessary') recognized by the Secretary, that the particular drug must be dispensed, or

"(ii) in the case of a prescription issued by telephone, the physician or other person prescribing the drug (through use of such an appropriate phrase) states that the particular drug must be dispensed.

"(C) The term 'payment calculation period' means the 12-month period beginning with January of each year (after 1989).

"(10)(A) Notwithstanding any other provision of this subsection, subject to subparagraph (B), if the Secretary determines that the monthly catastrophic drug benefit premium amount (as determined under section 1839(g)(3)(A)(i)) will exceed the limit imposed by section 1839(g)(3)(A)(ii) for a calendar year, the Secretary shall institute such cost-control measures as are necessary to ensure that such premium does not exceed such limit.

"(B) In carrying out subparagraph (A), the Secretary shall not—

"(i) except as provided in the last sentence of this subparagraph, exclude from coverage or limit payment for any specific covered outpatient drug or specific class of covered outpatient drugs; or

"(ii) change the methodology for calculating whether for a calendar year an individual has met the requirement of paragraph (1)(A).

The Secretary may, in carrying out subparagraph (A), exclude from coverage all drugs listed in a major classification of the most recently issued version of the Veterans' Administration Medication Classification System.

"(11)(A) For calendar years after 1990, the Secretary may by regulation reduce either (or both) of the payment limits established under paragraphs (3)(A) and (3)(B) for any drug dispensed by a high volume pharmacy (as defined by the Secretary) based on differences between high volume pharmacies and other pharmacies with respect to operating costs, quantity discounts, and other economies. The Secretary shall consult with high volume pharmacists, elderly groups, and private insurers in making such adjustments and (notwithstanding any other provision of this title) shall allow not less than 90 days for public comment on proposed regulations.

"(B) For calendar years after 1990, the Office of Technology Assessment and the Secretary shall submit to the Congress before the beginning of the calendar year recommendations for adjustments to the payment limits established under paragraphs (3)(A) and (3)(B) (and the Secretary shall request the National Academy of Sciences, acting through the Institute of Medicine, to enter into a contract to make such recommendations). Each shall consult with pharmacists, pharmaceutical manufacturers, elderly groups, and private insurers in making such recommendations.".

(c) Participating Pharmacies; Civil Monetary Penalties.—

(1) Section 1842 (42 U.S.C. 1395t) is amended—

(A) in subclauses (III) and (IV) of subsection (c)(2)(B)(ii), by inserting "or by participating pharmacies" after "participating physicians" each place it appears;

(B) in subsection (h)(1), by inserting before the period at the end of the second sentence the following: "and, with respect to a supplier of covered outpatient drugs, is a participating pharmacy (as defined in subsection (i)(1))"; and

(C) by adding after subsection (h) the following new subsection:

"(i)(1) For purposes of this section, the term 'participating pharmacy' means an entity which is authorized under a State law to dispense covered outpatient drugs and which has entered into an agreement with the Secretary, providing at least the following:

"(A) The entity agrees—

"(i) subject to the last sentence of this subparagraph, not to refuse to dispense covered outpatient drugs items stocked by the entity to any individual entitled to benefits under this part (in this section referred to as 'medicare beneficiaries'), and

"(ii) not to charge medicare beneficiaries more for such drugs than the amount it charges to the general public.

Clause (i) shall not apply in the case of any entity which dispenses covered outpatient drugs exclusively to individuals enrolled with eligible organizations under section 1876.

"(B) The entity agrees to keep patient records (including records on expenses incurred by medicare beneficiaries) for all covered outpatient drugs dispensed to all such beneficiaries.

"(C) The entity agrees—

"(i) to assist medicare beneficiaries in determining whether or not their expenses (for covered outpatient drugs dispensed in a year) have exceeded the deductible under section 1833(o)(1)(A), and

"(ii) to certify to the Secretary with respect to such beneficiaries that their expenses for such drugs exceed such deductible and to maintain and make available the documentation upon which such certification is made.

Nothing in this subparagraph shall be construed to authorize the Secretary to require submission of the documentation with respect to prescriptions comprising such expenses other than pursuant to an audit by the Secretary, upon certification under clause (ii), or for monitoring purposes from a sample of up to 7.5 percent of such entities.

"(D) The entity agrees, upon request of a medicare beneficiary, to provide a copy of the records maintained under subparagraph (B) to another participating pharmacy or to a carrier under this section.

"(E) The entity agrees—

"(i) to offer to counsel, or to offer to provide information to (consistent with State law respecting the provision of such information), each medicare beneficiary on the appropriate use of a drug to be dispensed and whether there are potential interactions between the drug and other drugs dispensed to the beneficiary; and

"(ii) to advise the beneficiary on the availability (consistent with State laws respecting substitution of drugs) of therapeutically equivalent covered outpatient drugs.

"(F) Effective January 1, 1991, the entity agrees to submit all requests for payment under this part to carriers electronically; except that the Secretary may waive the requirement of this subparagraph (in accordance with regulations) in cases where its imposition would pose an undue hardship on an entity.

Nothing in this paragraph shall be construed as requiring a pharmacy operated by an eligible organization (described in section 1876(b)) or an organization described in section 1833(a)(1)(A) for the exclusive benefit of its members to dispense covered outpatient drugs to individuals who are not members of the organization.

"(2) The Secretary shall provide to each participating pharmacy—

"(A) a distinctive emblem (suitable for display to the public) indicating that the pharmacy is a participating pharmacy, and

"(B) before the beginning of each payment calculation period, information on the payment limits established under paragraphs (3) and (5) of section 1833(o).

"(3) The Secretary shall provide for periodic audits of participating pharmacies to assure that they do not impose charges in excess of the amounts permitted under paragraph (1)(A)(ii).

"(4) Notwithstanding subsection (b)(3)(B), payment for covered outpatient drugs may be made on the basis of an assignment described in clause (ii) of that subsection only to a participating pharmacy.".

(2) Section 1128A(a) (42 U.S.C. 1320a-7a(a)) is amended—

(A) by striking "or" at the end of paragraph (1);

(B) by striking the comma at the end of paragraph (2) and inserting in lieu thereof "; or"; and

(C) by adding at the end thereof the following new paragraph:

"(3) in the case of a participating or nonparticipating pharmacy, presents or causes to be presented to any person a request for payment for covered outpatient drugs for which the amount charged by the pharmacy is greater that the amount the pharmacy charges the general public;".

(d) Limitation on Length of Prescription.—Section 1862(c) (42 U.S.C. 1395y(c)) is amended—

(1) by redesignating subparagraphs (A) through (D) of paragraph (1) as clauses (i) through (iv), respectively;

(2) in paragraph (2)(A), by striking "paragraph (1)" and inserting "subparagraph (A)";

(3) by redesignating subparagraphs (A) and (B) of paragraph (2) as clauses (i) and (ii), respectively;

(4) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively;

(5) by inserting "(1)" after "(c)"; and

(6) by adding at the end the following new paragraph:

"(2) No payment may be made under part B for any expense incurred for a covered outpatient drug if the drug is dispensed in a quantity exceeding—

"(A) a 90-day supply in the case of an individual receiving chronic maintenance drug therapy (as defined by the Secretary); or

"(B) a 60-day supply in the case of any other individual.".

(e) Use of Carriers and Fiscal Intermediaries in Administration.—

(1)(A) Section 1842(b)(3) (42 U.S.C. 1395u(b)(3)) is amended—

(i) by striking "and" at the end of subparagraph (H),

(ii) by adding "and" at the end of subparagraph (I), and

(iii) by inserting after subparagraph (I) the following new subparagraph:

"(J) if it makes determinations or payments with respect to covered outpatient drugs, will—

"(i) offer to receive requests for payments for such drugs through electronic communications, and

"(ii) respond to requests by participating pharmacies as to whether or not an individual has met the deductible requirement of section 1833(o)(1)(A) for a year;".

(B) Section 1842(b)(2) (42 U.S.C. 1395u(b)(3)) is amended by adding at the end the following new sentence: "With respect to carrying out functions relating to payment for covered outpatient drugs, the Secretary may enter into contracts with carriers under this section to perform such functions on a regional basis.".

(C) Section 1842(c) (42 U.S.C. 1395u(c)) is amended—

(i) in paragraph (2)(B)—

(I) by striking "The" in clause (ii) and inserting in lieu thereof "Except as provided in clause (iii), the", and

(II) by adding at the end thereof the following new clause:

"(iii) In the case of claims submitted with respect to payment for covered outpatient drugs, the term 'applicable number of calendar days' means 45 calendar days."; and

(ii) by adding at the end thereof the following new paragraph:

"(3)(A) Each contract under this section which provides for the disbursement of funds, as described in subsection (a)(1)(B), shall provide that no payment shall be issued, mailed, or otherwise transmitted with respect to any claim submitted under this title with respect to payment for outpatient drugs within the applicable number of calendar days after the date on which the claim is received.

"(B) In this paragraph, the term 'applicable number of calendar days' means 30 days.".

(2) Section 1816 (42 U.S.C. 1395h) is amended by adding at the end thereof the following new subsection:

"(j) With respect to carrying out functions relating to payment for home intravenous drug therapy, the Secretary may enter into contracts with agencies or organizations under this section to perform such functions on a regional basis.".

(f) Modification of HMO/CMP Provisions.—

(1) Section 1876(c) (42 U.S.C. 1395mm(c)) is amended by adding at the end the following new paragraph:

"(8) In the case of an individual who enrolls as a member of an eligible organization under this section after January 1 of a year, the organization must take into account, in computing the expenses incurred for covered outpatient drugs for purposes of meeting the deductible under section 1833(o)(1)(A) for the year, expenses incurred for covered outpatient drugs during the year while the individual was entitled to benefits under part B but before the individual so enrolled.".

(2)(A) Section 1876(e)(1) (42 U.S.C. 1395mm(e)(1)) is amended by adding at the end thereof the following new sentence: "The preceding sentence shall be applied separately with respect to covered outpatient drugs.".

(B) Section 1876(g)(3) (42 U.S.C. 1395mm(g)(3)) is amended)—

(i) in subparagraph (B), by striking "both,"; and

(ii) by adding at the end thereof the following new subparagraphs:

"(C) the reduction of the premium rate or other charges made with respect to covered outpatient drugs furnished by such organization to such members, or

"(D) all of the above.".

(g) Conforming Amendments.—The first sentence of section 1866(a)(2)(A) (42 U.S.C. 1395cc(a)(2)(A)) is amended—

(1) by inserting "1833(o)," after "1833(b)," and

(2) by inserting "and in the case of covered outpatient drugs, 20 percent of the actual charges for the drugs" after "established by the Secretary".

(h) Beneficiary Drug Cost Survey and CBO Report.—

(1)(A) The Secretary of Health and Human Services (in this subsection referred to as the "Secretary") shall conduct a statistically valid survey of expenses for covered outpatient drugs (as defined in section 1861(t)(2) of the Social Security Act) incurred by medicare beneficiaries.

(B) In developing the design of the survey, the Secretary shall consult with the Comptroller General, the Director of the Congressional Budget Office, consumer groups, and representatives of the pharmaceutical and pharmacist industries.

(C) The survey shall be designed so as to provide information on the distribution of expenses for covered outpatient drugs for medicare beneficiaries generally and, within the population of such beneficiaries, the distribution of such expenses by age, sex, income, and institutionalized status.

(D) Not later than January 19, 1989, the Secretary shall submit to Congress a report on the survey conducted under this paragraph.

(2) Not later than two months after the date on which the report of the Secretary is submitted under paragraph (1)—

(A) the Director of the Congressional Budget Office shall transmit to the Congress the Director's estimate of the expenditures which will be made (in each of fiscal years 1990, 1991, 1992, and 1993) under the medicare program for covered outpatient drugs (under the amendments made by this section); and

(B) the General Accounting Office shall report to the Congress on the validity of the survey conducted under paragraph (1) and on the extent to which pharmacies accept assignment and the barriers (if any) to such acceptance.

(i) Study of Inclusion of Additional or Alternative Drugs Under Definition of Covered Outpatient Drug.—

(1)(A)(i) The Office of Technology Assessment (in this subsection referred to as the "Office") shall conduct a study to identify additional or alternative covered outpatient drugs (as described in section 1861(t)(2)(A) of the Social Security Act) that can be included under the definition of covered outpatient drugs in effect for calendar years 1991 and 1992 (as described in section 1861(t)(2)(B)(ii)(II) of such Act).

(ii)(I) The Secretary of Health and Human Services (in this subsection referred to as the "Secretary") shall request the National Academy of Sciences, acting through the Institute of Medicine (in this section referred to as the "Academy" and the "Institute", respectively), to enter into a contract under which the Institute, in consultation with representatives of appropriate research and health-care organizations, will also conduct the study described in clause (i).

(II) The Secretary shall enter into appropriate arrangements with the Academy under which the Secretary shall be responsible for expenses incurred by the Academy in connection with the study required by subclause (I).

(B) In conducting the study under subparagraph (A), the Office and the Institute shall give particular attention to those drugs that meet any or all of the following criteria:

(i) The drug is used by a large number of beneficiaries under the medicare program.

(ii) The drug can be covered under the medicare program without significant administrative difficulties.

(iii) Coverage of the drug will provide useful information with respect to utilization and cost of covered outpatient drugs under the medicare program.

(iv) Coverage of the drug will not cause an unreasonable increase in premiums under the medicare program.

(v) The drug is expensive when used as part of a chronic drug regimen.

(3)(A) Not later than six months after the date of the enactment of this Act, the Office and the Institute shall submit to the Secretary and the appropriate committees of the Congress an interim report with respect to the study required by paragraph (1). The report shall describe the manner in which the study is being conducted and may include tentative findings and recommendations based upon the study.

(B) Not later than twelve months after the date of the enactment of this Act, the Office and the Institute shall submit to the Secretary and the appropriate committees of the Congress a final report with respect to the study required by paragraph (1). The report shall include specific findings and recommendations based upon the study.

(j) Additional Studies.—

(1) The Secretary of Health and Human Services (in this subsection referred to as the "Secretary") shall conduct studies on the following issues:

(A) The extent of private or other third-party insurance coverage of covered outpatient drugs among medicare beneficiaries.

(B) The overhead costs of retail pharmacies.

(C) Potential application of new claims processing and billing technologies to payment for covered outpatient drugs.

(D) Methods for review of utilization of covered outpatient drugs.

(E) Alternative payment methodologies for covered outpatient drugs that promote greater program efficiency, including use of lower cost medications.

(F) The potential for induced demand resulting from the coverage of covered outpatient drugs under the medicare program.

(G) The possibility of including drugs which have not yet been approved under section 505 or 507 of the Federal, Food, Drug, and Cosmetic Act but which are commonly used in the treatment of cancer or in immunosuppressive therapy as covered outpatient drugs (which study shall be conducted in consultation with an advisory board of consumers, experts in the fields of cancer chemotherapy and immunosuppressive therapy, representatives of pharmaceutical manufacturers, and such other individuals as the Secretary may select).

As part of such studies the Secretary shall conduct a longitudinal study on the use of covered outpatient drugs by medicare beneficiaries with respect to medical necessity, potential for adverse drug interactions, cost (including whether lower cost drugs could have been used), and patient stockpiling or wastage. The Secretary shall submit an interim report to Congress on the results of such studies over a period ending not later than January 1, 1989, and shall submit a final report on such results not later than January 1, 1991.

(2) The Secretary and the General Accounting Office shall each conduct and periodically update a study on a comparison of published average wholesale prices and actual pharmacy acquisition costs by type of pharmacy and shall submit reports to Congress on the results of each such study and update, with the first such report being submitted no later than January 1, 1989.

(k) SIMPLIFICATION OF RECORDKEEPING.—

(1)(A) Not later than October 1, 1988, the Secretary of Health and Human Services (in this subsection referred to as the "Secretary") shall enter into an agreement with two or more private entities to conduct demonstration projects to test the use of magnetic cards, electronic billing, and other technological devices in the administration of the benefit established under this section with respect to covered outpatient drugs.

(B) The Secretary shall select the private entities to conduct the demonstration projects under this paragraph from among applications submitted by such entities in such form as the Secretary may prescribe. A project shall be conducted for such period of time as the Secretary shall determine is sufficient to carry out the project. The Secretary shall report to the Congress on the results of a project not later than six months after the date on which the project is completed.

(C) The demonstration projects under this paragraph shall be conducted at statistically relevant locations and shall be used to provide quick data for projecting the total program costs of the benefit established under this section with respect to covered outpatient drugs.

(2)(A) The Secretary shall develop, in consultation with representatives of participating pharmacies under section 1842(i) of the Social Security Act (as added by subsection (c) of this section), consumers, and other interested individuals a standard receipt to be used by medicare beneficiaries in making purchases from such participating pharmacies.

(B) Not later than January 1, 1990, the Secretary shall distribute official copies of the receipt developed under subparagraph (A) to participating pharmacies and take appropriate steps to ensure that such pharmacies continue to use such receipt for the sale of covered outpatient drugs to medicare beneficiaries.

(l) STATE ALLOCATION OF FUNDS PREVIOUSLY USED FOR PRESCRIPTION DRUG PROGRAMS.—The Secretary of Health and Human Services shall take appropriate steps to encourage States to use amounts that (but for the amendments made by this section) would have been expended by the State for a fiscal year for prescription drug programs with respect to which payment is not made under title XIX of the Social Security Act for providing health care to the elderly.

(m) EFFECTIVE DATES.—

(1) Except as provided in paragraphs (2) and (3), the amendments made by this section shall apply to drugs dispensed on or after January 1, 1990.

(2) The amendments made by subsection (e) shall take effect on the date of the enactment of this Act.

(3) The amendment made by subsection (f) shall apply to enrollments effected on or after January 1, 1990.

On page 110, line 22, insert "certain" before "medicaid".

On page 112, line 7, insert "(other than medicare cost-sharing for covered outpatient drugs under title XVIII of the Social Security Act)" after "coverage".

On page 113, between lines 16 and 17, insert the following new sections:

SEC. 14A. DETERMINATION OF MEDICAID DRUG SAVINGS; STATE PLAN REQUIREMENT.

(a) DETERMINATION OF SAVINGS; NOTICE TO STATES.—Before the beginning of each fiscal year (or portion thereof) for which this section applies to a State, the Secretary of Health and Human Services (in this section referred to as the "Secretary") shall—

(1) estimate and determine, with respect to each State with a State plan approved under title XIX of the Social Security Act, the total amount that would have been expended from State funds under such plan for such fiscal year (or portion thereof) but for the amendments made by sections 7A and 11 of this Act, and

(2) notify each such State of such amount.

(b) STATE PLAN REQUIREMENT.—

(1) Each State plan shall provide, as a condition of approval under section 1902(a) of the Social Security Act, that—

(A) an amount equal to the amount of savings that are estimated by the Secretary pursuant to subsection (a) to accrue to the State for such fiscal year (or portion thereof) by reason of the amendments made by sections 7A and 11 of this Act, will be expended from State funds for such fiscal year for the purpose specified in paragraph (2), and

(B) the amounts expended pursuant to subparagraph (A) will be in addition to any amounts that would have been expended from State funds for such purposes for such fiscal year (or portion thereof) under the State plan (as in effect on the day before the date of the enactment of this Act).

(2) The purpose specified in this paragraph is to provide medicare cost-sharing under the State plan, pursuant to section 1902(a)(10)(E) of the Social Security Act, for individuals described in section 1905(p)(1) of such Act, with respect to covered outpatient drugs under title XVIII of such Act.

(3) A State may provide coverage pursuant to paragraph (2) without regard to section 1902(m)(3) of the Social Security Act.

(c) EFFECTIVE DATE.—This section shall apply with respect to any calendar quarter beginning on or after January 1, 1990.

SEC. 14B. MEDICARE COST-SHARING WITH RESPECT TO PRESCRIPTION DRUG BENEFIT UNDER MEDICAID PROGRAM.

(a) MEDICARE COST-SHARING FOR PRESCRIPTION DRUGS.—

(1) Section 1905(p)(3) (42 U.S.C. 1396d(p)(3)) is amended by inserting immediately after subparagraph (D) the following new subparagraph:

"(E) Subject to paragraph (4), the annual deductible under section 1833(o)(1) and coinsurance under section 1833(o)(2).".

(2) Section 1905(p) (42 U.S.C. 1396d(p)) is amended by adding at the end thereof the following new paragraph:

"(4) Instead of providing to qualified medicare beneficiaries, under paragraph (3)(E), medicare cost-sharing with respect to the annual deductible for covered outpatient drugs under section 1833(o)(1), a State may provide to such beneficiaries, before charges for covered outpatient drugs for a year reach such deductible amount, benefits for prescribed drugs in the same amount, duration, and scope as the benefits made available under the State plan for individuals described in subsection (a)(10)(A)(i).".

(b) OPTIONAL BUY-IN FOR PRESCRIPTION DRUG BENEFIT.—Section 1905(p), as amended by subsection (a) is further amended—

(1) in paragraph (2)(A), by striking "The" and inserting in lieu thereof "Except as provided in paragraph (5), the"; and

(2) by adding at the end thereof the following new paragraph:

"(5)(A) Notwithstanding paragraph (2)(A), in the case of medicare cost-sharing under paragraph (3)(E), a State may provide such cost-sharing to any individual whose income level is more than 100 percent of the poverty line described in paragraph (2)(A) (but in no event more than 200 percent of such line).

"(B) A State that exercises the option under subparagraph (A) may with respect to an individual described in such subparagraph—

"(i) whose income level does not exceed 150 percent of the poverty line described in paragraph (2)(A), require such individual to pay up to $150 of the amount of the annual deductible and up to 10 percent of any coinsurance amounts otherwise paid by the State under paragraph (3)(E); and

"(ii) whose income level exceeds 150 percent of such line, require such individual to pay up to $300 of the amount of such deductible and 15 percent of any such coinsurance amounts.".

(c) EFFECTIVE DATE.—The amendments made by this section apply to payments under title XIX of the Social Security Act for calendar quarters beginning on or after January 1, 1990, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date, with respect to medical assistance for—

(1) monthly premiums under title XVIII of such Act for months beginning with January 1990, and

(2) items and services furnished on and after January 1, 1990.

On page 127, line 6, strike "8" and insert in lieu thereof "7A".

On page 126, strike lines 24 and 25.

On page 127, strike lines 1 and 2.

NATIONAL HEALTH SERVICE CORPS AMENDMENTS ACT

KENNEDY AMENDMENT NO. 1045

Mr. BYRD (for Mr. KENNEDY) proposed an amendment to the amendment of the House to the bill (S. 1158) to extend the authorization of appropriations for programs and activities under title III of the Public Health Service Act, to establish a National

Health Service Corps Loan Repayment Program, to otherwise revise and extend the program for the National Health Service Corps, and for other purposes; as follows:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Public Health Service Amendments of 1987".

(b) TABLE OF CONTENTS.—The table of contents is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. References to the Public Health Service Act.

TITLE I—HEALTH RESEARCH, TECHNOLOGY, STATISTICS, AND PREVENTIVE HEALTH PROGRAMS

Sec. 101. Establishment of certain rural programs of National Center for Health Services Research and Health Care Technology Assessment.
Sec. 102. Duties and composition of National Advisory Council on Health Care Technology Assessment.
Sec. 103. Prohibition against altering certain administrative relationships.
Sec. 104. National Center for Health Statistics.
Sec. 105. National Committee on Vital and Health Statistics.
Sec. 106. Health care reports and profiles.
Sec. 107. Requirement of peer review groups for evaluations of grant proposals.
Sec. 108. Authorization of appropriations.
Sec. 109. Requirement with respect to amount of non-Federal contributions in grant program for Council on Health Care Technology.
Sec. 110. Project grants for preventive health projects for immunizations.
Sec. 111. Project grants for preventive health projects for tuberculosis; additional grants.

TITLE II—NATIONAL HEALTH SERVICE CORPS LOAN REPAYMENT PROGRAM

Sec. 201. Establishment of loan repayment program.
Sec. 202. Technical and conforming amendments.
Sec. 203. Report and authorization of appropriations for scholarship and loan repayment programs; State programs.
Sec. 204. Special repayment provisions.
Sec. 205. Regulations.

TITLE III—NATIONAL HEALTH SERVICE CORPS

Sec. 301. Requirement of consideration of needs of Indian Health Service, certain indian tribes, and the homeless.
Sec. 302. Designation of health manpower shortage areas.
Sec. 303. Placement of physicians.
Sec. 304. Assignment of family physicians.
Sec. 305. Authorizations of appropriations for general operations of National Health Service Corps.
Sec. 306. Obligated service.
Sec. 307. Private practice.
Sec. 308. Discharge of obligations in bankruptcy.
Sec. 309. Special loans for Corps members to enter private practice.

TITLE IV—MISCELLANEOUS

Sec. 401. Geriatric medicine training projects.
Sec. 402. Professional review activities.

SEC. 2. REFERENCES TO THE PUBLIC HEALTH SERVICE ACT.

Except as otherwise specifically provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or a repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Public Health Service Act (42 U.S.C. 201 et seq.).

TITLE I—HEALTH RESEARCH, TECHNOLOGY, STATISTICS, AND PREVENTIVE HEALTH PROGRAMS

SEC. 101. ESTABLISHMENT OF CERTAIN RURAL PROGRAMS OF NATIONAL CENTER FOR HEALTH SERVICES RESEARCH AND HEALTH CARE TECHNOLOGY ASSESSMENT.

Section 305 (42 U.S.C. 242c) is amended—

(1) by redesignating subsections (c) through (i) as subsections (d) through (j), respectively; and

(2) by inserting after subsection (b) the following new subsection:

"(c) In carrying out section 304(a), the Secretary, acting through the Center, shall undertake and support research, evaluation, and demonstration projects (that may include and shall be appropriately coordinated with experiments and demonstration activities authorized by the Social Security Act (42 U.S.C. 301 et seq.) and the Social Security Amendments of 1967 (Public Law 90-248; 81 Stat. 821)) respecting the delivery of health care services in rural areas (including frontier areas), which may include projects with respect to—

"(1) the future of the rural hospital;

"(2) long-term health care for the rural elderly;

"(3) hospital care for the rural poor and uninsured; and

"(4) alternative health care delivery systems and managed health care in rural areas.".

SEC. 102. DUTIES AND COMPOSITION OF NATIONAL ADVISORY COUNCIL ON HEALTH CARE TECHNOLOGY ASSESSMENT.

Section 305(h) (as redesignated in section 101(1) of this Act) is amended—

(1) in the last sentence of paragraph (1), by striking out "shall assist the Director in developing" and inserting in lieu thereof "shall make recommendations to the Director with respect to the development of"; and

(2) by striking out paragraph (3) and inserting in lieu thereof the following new paragraph:

"(3)(A) The Secretary shall appoint to the Council—

"(i) six individuals distinguished in the fields of medicine, engineering, and science (including social science);

"(ii) four individuals distinguished in the fields of law, ethics, economics, and management; and

"(iii) two individuals representing the interests of consumers of health care services.

"(B) The Secretary shall ensure that members of the Council, as a group, are representative of professions and entities concerned with, or affected by, health care technology.".

SEC. 103. PROHIBITION AGAINST ALTERING CERTAIN ADMINISTRATIVE RELATIONSHIPS.

With respect to carrying out section 305 of the Public Health Service Act (42 U.S.C. 242c), the Secretary may not alter the administrative relationship between the Assistant Secretary for Health and the Director of the National Center for Health Services Research and Health Care Technology Assessment, as in effect during fiscal year 1986.

SEC. 104. NATIONAL CENTER FOR HEALTH STATISTICS.

Section 306(a) (42 U.S.C. 242k(a)) is amended by striking out "and supervised" and all that follows through the period and inserting in lieu thereof a period.

SEC. 105. NATIONAL COMMITTEE ON VITAL AND HEALTH STATISTICS.

(a) IN GENERAL.—Section 306(k) (42 U.S.C. 242k(k)) is amended—

(1) in paragraph (1), by striking out "fifteen" and inserting in lieu thereof "16";

(2) in the second sentence of paragraph (2)(A), by striking out "three" and inserting in lieu thereof "4"; and

(3) in paragraph (2), by striking out subparagraph (B) and inserting in lieu thereof the following:

"(B)(i) In the case of membership terms on the Committee under this subsection (as in effect prior to January 1, 1988) that expire in calendar year 1988, the appointments to three such terms in such calendar year shall be for a period of 4 years and the appointments to two such terms in such calendar year shall be for a period of 3 years, as designated by the Secretary.

"(ii) In the case of membership terms on the Committee under this subsection (as in effect prior to January 1, 1988) that expire in calendar year 1989, one such term shall be extended for an additional consecutive 1-year period, as designated by the Secretary.

"(iii) In the case of membership terms on the Committee under this subsection (as in effect prior to January 1, 1988) that expire in calendar year 1990, two of such terms shall each be extended for an additional consecutive 1-year period, as designated by the Secretary.".

(b) EFFECTIVE DATE.—The amendments made by this section shall become effective on January 1, 1988.

SEC. 106. HEALTH CARE REPORTS AND PROFILES.

(a) REPORTS.—Section 308 (42 U.S.C. 242m(a)) is amended—

(1) by striking out paragraphs (1) and (2) and inserting in lieu thereof the following new paragraphs:

"(1) Not later than March 15 of each year, the Secretary shall submit to the President and Congress the following reports:

"(A) A report on—

"(i) the administration of sections 304 through 307 and section 309 during the preceding fiscal year; and

"(ii) the current state and progress of health services research, health statistics, and health care technology.

"(B) A report on health care costs and financing. Such report shall include a description and analysis of the statistics collected under section 306(b)(1)(G).

"(C) A report on health resources. Such report shall include a description and analysis, by geographical area, of the statistics collected under section 306(b)(1)(E).

"(D) A report on the utilization of health resources. Such report shall include a description and analysis, by age, sex, income, and geographic area, of the statistics collected under section 306(b)(1)(F).

"(E) A report on the health of the Nation's people. Such report shall include a description and analysis, by age, sex, income, and geographic area, of the statistics collected under section 306(b)(1)(A).

"(2) The reports required by subparagraphs (B) through (E) of paragraph (2) shall be prepared through the National Center for Health Services Research and

Health Care Technology Assessment and the National Center for Health Statistics."; and

(2) in paragraph (3), by striking out "or (2)".

(b) National Disease Prevention Data Profiles.—The first sentence of section 404(a) of the Health Services and Centers Amendments of 1978 (42 U.S.C. 242p(a)) is amended by striking out "on December 1, 1980, and on December 1 of every third year thereafter" and inserting in lieu thereof "on March 15, 1990, and on March 15 of every third year thereafter".

(c) Effective Date.—The amendments made by subsections (a) and (b) shall apply to reports and profiles required to be submitted after November 1, 1987.

SEC. 107. REQUIREMENT OF PEER REVIEW GROUPS FOR EVALUATIONS OF GRANT PROPOSALS.

Section 308(b) (42 U.S.C. 242m(b)) is amended—

(1) in paragraph (1), by inserting before the period at the end thereof the following: "and unless a peer review group referred to in paragraph (2) has recommended the application for approval"; and

(2) by striking out paragraph (2) and inserting in lieu thereof the following new paragraph:

"(2)(A) Each application submitted for a grant or contract under section 304 or 305, in an amount exceeding $50,000 of direct costs and for a health services research, evaluation, or demonstration project, shall be submitted to a peer review group for an evaluation of the technical and scientific merits of the proposals made in each such application. The Secretary, acting through the Director of the National Center for Health Services Research and Health Care Technology Assessment (or, as appropriate, through the Director of the National Center for Health Statistics), shall establish such peer review groups as may be necessary to provide for such an evaluation of each such application.

"(B) A peer review group to which an application is submitted pursuant to subparagraph (A) shall report its finding and recommendations respecting the application to the Secretary, acting through the Director involved, in such form and manner as the Secretary shall by regulation prescribe. The Secretary may not approve an application described in such subparagraph unless a peer review group has recommended the application for approval.

"(C) The Secretary, acting through the Directors, shall make appointments to the peer review groups required in subparagraph (A) from among persons who are not officers or employees of the United States and who possess appropriate technical and scientific qualifications.".

SEC. 108. AUTHORIZATION OF APPROPRIATIONS.

Subsection (i) of section 308 (42 U.S.C. 242m(i)) is amended to read as follows:

"(i)(1)(A) For health service research, evaluation, and demonstration activities undertaken or supported under section 304 or 305, there are authorized to be appropriated $30,000,000 for fiscal year 1988 and such sums as may be necessary for each of the fiscal years 1989 and 1990. At least 20 percent of the amount appropriated under the preceding sentence for any fiscal year or $6,000,000, whichever is less, shall be available only for health services research, evaluation and demonstration activities directly undertaken through the National Center for Health Services Research and Health Care Technology Assessment, and at least 10 percent of such amount or $1,500,000 whichever is less, shall be available only for the user liaison program and the technical assistance program referred to in section 305(d)(2) and for dissemination activities directly undertaken through such Center.

"(B) For health care technology assessment activities undertaken under subsections (b)(5), (g), and (h) of section 305, the Secretary shall obligate from funds appropriated under this paragraph not less than $4,500,000 for each of the fiscal years 1988 through 1990.

"(C) For grants under section 309, the Secretary shall make available from funds appropriated under this paragraph not more than $750,000 for each of the fiscal years 1988 through 1990. Of such amounts made available, the Secretary shall, with respect to non-Federal contributions made available by grantees pursuant to section 309(a)(2)(B), obligate during each such fiscal year such amounts as may be necessary to pay the Federal share appropriate under such section as a result of such contributions.

"(D) Of the amounts appropriated under this paragraph for any fiscal year, not more than $1,500,000 may be used for grants and contracts for all the costs of planning, establishing, and operating centers under section 305(e).

"(2) For health statistical and epidemiological activities undertaken or supported under section 304 or 306, there are authorized to be appropriated $55,000,000 for fiscal year 1988 and such sums as may be necessary for each of the fiscal years 1989 and 1990.".

SEC. 109. REQUIREMENT WITH RESPECT TO AMOUNT OF NON-FEDERAL CONTRIBUTIONS IN GRANT PROGRAM FOR COUNCIL ON HEALTH CARE TECHNOLOGY.

Section 309(a)(2)(B) (42 U.S.C. 242n(a)(2)(B)) is amended by inserting before the period at the end thereof the following: ", except that for fiscal years 1988 and 1989, the Secretary may only require expenditures from non-Federal sources in an amount not less than the amount of the grant applied for".

SEC. 110. PROJECT GRANTS FOR PREVENTIVE HEALTH PROJECTS FOR IMMUNIZATIONS.

(a) In General.—Paragraph (1) of section 317(j) (42 U.S.C. 247b(j)(1)) is amended to read as follows:

"(1)(A) Except for grants for immunization programs the authorization of appropriations for which are established in subparagraph (B), for grants under subsections (a) and (k)(1) for preventive health service programs to immunize without charge individuals against vaccine-preventable diseases, there are authorized to be appropriated $94,000,000 for fiscal year 1988, and such sums as may be necessary for each of the fiscal years 1989 and 1990. Not more than 10 percent of the total amount appropriated under the preceding sentence for any fiscal year shall be available for grants under subsection (k)(1) for such fiscal year.

"(B) For grants under subsection (a) for preventive health service programs for the provision without charge of immunizations with vaccines approved for use, and recommended for routine use, after the date of the enactment of Public Health Service Amendments of 1987, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1988, 1989, and 1990.

"(C) On the implementation of subtitle 2 of title XXI, there are authorized to be appropriated for grants under subsection (a) for which appropriations are authorized in subparagraph (A) such sums as may be necessary for fiscal years 1988 through 1990 to make such grants.".

(b) Supply of Vaccines.—

(1) In General.—The Secretary of Health and Human Services, acting through the Director of the Centers for Disease Control, shall acquire and maintain a supply of vaccines sufficient to provide vaccinations throughout a 6-month period.

(2) Authorization of Appropriations.—There are authorized to be appropriated to carry out paragraph (1) $5,000,000 for fiscal year 1988, and such sums as may be necessary for each of the fiscal years 1989 and 1990.

SEC. 111. PROJECT GRANTS FOR PREVENTIVE HEALTH PROJECTS FOR TUBERCULOSIS; ADDITIONAL GRANTS.

(a) Project Grants.—Paragraph (2) of section 317(j) (42 U.S.C. 247b(j)(2)) is amended to read as follows:

"(2) For grants under subsection (a) for preventive health service programs for tuberculosis, and for grants under section subsection (k)(2), there are authorized to be appropriated $24,000,000 for fiscal year 1988, $31,000,000 for fiscal year 1989, and $36,000,000 for fiscal year 1990. Not more than 10 percent of the total amount appropriated under the preceding sentence for any fiscal year shall be available for grants under subsection (k)(2) for such fiscal year.".

(b) Additional Grants.—Section 317 is amended by adding at the end thereof the following new subsection:

"(k)(1) The Secretary may make grants to States, political subdivisions of States, and other public and nonprofit private entities for—

"(A) research into the prevention and control of diseases that may be prevented through vaccination;

"(B) demonstration projects for the prevention and control of such diseases;

"(C) public information and education programs for the prevention and control of such diseases; and

"(D) education, training, and clinical skills improvement activities in the prevention and control of such diseases for health professionals (including allied health personnel).

"(2) The Secretary may make grants to States, political subdivisions of States, and other public and nonprofit private entities for—

"(A) research into the prevention and control of tuberculosis, especially research concerning strains of tuberculosis resistant to drugs and research concerning cases of tuberculosis that affect certain populations;

"(B) demonstration projects for the prevention and control of tuberculosis;

"(C) public information and education programs for prevention and control of tuberculosis; and

"(D) education, training, and clinical skills improvement activities in the prevention and control of tuberculosis for health professionals, including allied health personnel.

"(3) The Secretary may make grants to States, political subdivisions of States, and other public and nonprofit private entities for—

"(A) research into the prevention and control of diseases and conditions;

"(B) demonstration projects for the prevention and control of such diseases and conditions;

"(C) public information and education programs for the prevention and control of such diseases and conditions; and

"(D) education, training, and clinical skills improvement activities in the prevention and control of such diseases and conditions for health professionals (including allied health personnel).

"(4) No grant may be made under this subsection unless an application therefor is submitted to the Secretary in such form, at such time, and containing such information as the Secretary may by regulation prescribe.

"(5) Subsections (d), (e), and (f) of section 317 shall apply to grants under this subsection in the same manner as such subsections apply to grants under subsection (a) of section 317.".

TITLE II—NATIONAL HEALTH SERVICE CORPS LOAN REPAYMENT PROGRAM

SEC. 201. ESTABLISHMENT OF LOAN REPAYMENT PROGRAM.

Subpart II of part D of title III (42 U.S.C. 254d et seq.) is amended—

(1) by redesignating section 338G (42 U.S.C. 254r) as section 338I;

(2) by redesignating sections 338B through 338F (42 U.S.C. 254m through 254q) as sections 338C through 338G, respectively; and

(3) by inserting after section 338A the following new section:

"SEC. 338B. NATIONAL HEALTH SERVICE CORPS LOAN REPAYMENT PROGRAM.

"(a) ESTABLISHMENT.—The Secretary shall establish a program to be known as the National Health Service Corps Loan Repayment Program (hereinafter in this subpart referred to as the 'Loan Repayment Program') in order to assure—

"(1) an adequate supply of trained physicians, dentists, and nurses for the Corps; and

"(2) if needed by the Corps, an adequate supply of podiatrists, optometrists, pharmacists, clinical psychologists, graduates of schools of veterinary medicine, graduates of schools of public health, graduates of programs in health administration, graduates of programs for the training of physician assistants, expanded function dental auxiliaries, and nurse practitioners (as defined in section 822), and other health professionals.

"(b) ELIGIBILITY.—To be eligible to participate in the Loan Repayment Program, an individual must—

"(1)(A) be enrolled—

"(i) as a full-time student—

"(I) in an accredited (as determined by the Secretary) educational institution in a State; and

"(II) in the final year of a course of study or program, offered by such institution and approved by the Secretary, leading to a degree in medicine, osteopathy, dentistry, or other health profession; or

"(ii) in an approved graduate training program in medicine, osteopathy, dentistry, or other health profession; or

"(B) have—

"(i) a degree in medicine, osteopathy, dentistry, or other health profession;

"(ii) completed an approved graduate training program in medicine, osteopathy, dentistry, or other health profession in a State, except that the Secretary may waive the completion requirement of this clause for good cause; and

"(iii) a license to practice medicine, osteopathy, dentistry, or other health profession in a State;

"(2) be eligible for, or hold, an appointment as a commissioned officer in the Regular or Reserve Corps of the Service or be eligible for selection for civilian service in the Corps;

"(3) submit an application to participate in the Loan Repayment Program; and

"(4) sign and submit to the Secretary, at the time of the submission of such application, a written contract (described in subsection (f)) to accept repayment of educational loans and to serve (in accordance with this subpart) for the applicable period of obligated service in a health manpower shortage area.

"(c) APPLICATION, CONTRACT, AND INFORMATION REQUIREMENTS.—

"(1) SUMMARY AND INFORMATION.—In disseminating application forms and contract forms to individuals desiring to participate in the Loan Repayment Program, the Secretary shall include with such forms—

"(A) a fair summary of the rights and liabilities of an individual whose application is approved (and whose contract is accepted) by the Secretary, including in the summary a clear explanation of the damages to which the United States is entitled under section 338E in the case of the individual's breach of the contract; and

"(B) information respecting meeting a service obligation through private practice under an agreement under section 338D and such other information as may be necessary for the individual to understand the individual's prospective participation in the Loan Repayment Program and service in the Corps.

"(2) UNDERSTANDABILITY.—The application form, contract form, and all other information furnished by the Secretary under this subpart shall be written in a manner calculated to be understood by the average individual applying to participate in the Loan Repayment Program.

"(3) AVAILABILITY.—The Secretary shall make such application forms, contract forms, and other information available to individuals desiring to participate in the Loan Repayment Program on a date sufficiently early to ensure that such individuals have adequate time to carefully review and evaluate such forms and information.

"(d) PRIORITY.—In determining which applications under the Loan Repayment Program to approve (and which contracts to accept), the Secretary shall give priority to applications made by—

"(1) individuals whose training is in a health profession or specialty determined by the Secretary to be needed by the Corps; and

"(2) individuals who are committed to service in medically underserved areas.

"(e) APPROVAL REQUIRED FOR PARTICIPATION.—

"(1) IN GENERAL.—An individual becomes a participant in the Loan Repayment Program only on the Secretary's approval of the individual's application submitted under subsection (b)(3) and the Secretary's acceptance of the contract submitted by the individual under subsection (b)(4).

"(2) WRITTEN NOTICE.—The Secretary shall provide written notice to an individual promptly on—

"(A) the Secretary's approving, under paragraph (1), of the individual's participation in the Loan Repayment Program; or

"(B) the Secretary's disapproving an individual's participation in such Program.

"(f) CONTENTS OF CONTRACTS.—The written contract (referred to in this subpart) between the Secretary and an individual shall contain—

"(1) an agreement that—

"(A) subject to paragraph (3), the Secretary agrees—

"(i) to pay on behalf of the individual loans in accordance with subsection (g); and

"(ii) to accept (subject to the availability of appropriated funds for carrying out sections 331 through 335 and section 337) the individual into the Corps (or for equivalent service as otherwise provided in this subpart); and

"(B) subject to paragraph (3), the individual agrees—

"(i) to accept loan payments on behalf of the individual;

"(ii) in the case of an individual described in subsection (b)(1)(A), to maintain enrollment in a course of study or training described in such subsection until the individual completes the course of study or training;

"(iii) in the case of an individual described in subsection (b)(1)(A), while enrolled in such course of study or training, to maintain an acceptable level of academic standing (as determined under regulations of the Secretary by the educational institution offering such course of study or training); and

"(iv) to serve for a time period (hereinafter in this subpart referred to as the 'period of obligated service') equal to 2 years or such longer period as the individual may agree to, in a health manpower shortage area (designated under section 332) to which such individual is assigned by the Secretary as a member of the Corps or released under section 338D;

"(2) a provision permitting the Secretary to extend for such longer additional periods, as the individual may agree to, the period of obligated service agreed to by the individual under paragraph (1)(B)(iv);

"(3) a provision that any financial obligation of the United States arising out of a contract entered into under this subpart and any obligation of the individual that is conditioned thereon, is contingent on funds being appropriated for loan repayments under this subpart and to carry out the purposes of sections 331 through 335 and sections 337 and 338;

"(4) a statement of the damages to which the United States is entitled, under section 338E for the individual's breach of the contract; and

"(5) such other statements of the rights and liabilities of the Secretary and of the individual, not inconsistent with this subpart.

"(g) PAYMENTS.—

"(1) IN GENERAL.—A loan repayment provided for an individual under a written contract under the Loan Repayment Program shall consist of payment, in accordance with paragraph (2), on behalf of the individual of the principal, interest, and related expenses on government and commercial loans received by the individual for—

"(A) tuition expenses;

"(B) all other reasonable educational expenses, including fees, books, and laboratory expenses, incurred by the individual; or

"(C) reasonable living expenses as determined by the Secretary.

"(2) PAYMENTS FOR YEARS SERVED.—

"(A) IN GENERAL.—Except as provided in subparagraph (B) and paragraph (3), for each year of obligated service that an individual contracts to serve under subsection (f) the Secretary may pay up to $20,000 on behalf of the individual for loans described in paragraph (1).

"(B) INDIAN SERVICE.—For each year of obligated service that an individual contracts under subsection (f) to serve in the Indian Health Service, or to serve in a health program or facility operated by a tribe or tribal organization under the Indian Self-Determination Act (25 U.S.C. 450f et seq.), the Secretary may pay up to $25,000 on behalf of the individual for loans described in paragraph (1).

"(C) REPAYMENT SCHEDULE.—Any arrangement made by the Secretary for the making of loan repayments in accordance with this subsection shall provide that any repayments for a year of obligated service shall be made no later than the end of the fiscal year in which the individual completes such year of service.

"(3) TAX LIABILITY.—In addition to payments made under paragraph (2), in any case in which payments on behalf of an individual under the Loan Repayment Program result in an increase in Federal, State, or local income tax liability for such individual, the Secretary may, on the request of such individual, make payments to such individual in a reasonable amount, as determined by the Secretary, to reimburse such individual for all or part of the increased tax liability of the individual.

"(4) PAYMENT SCHEDULE.—The Secretary may enter into an agreement with the holder of any loan for which payments are made under the Loan Repayment Program to establish a schedule for the making of such payments.

"(h) EMPLOYMENT CEILING.—Notwithstanding any other provision of law, individuals who have entered into written contracts with the Secretary under this section, while undergoing academic or other training, shall not be counted against any employment ceiling affecting the Department.

"(i) REPORTS.—The Secretary shall, not later than March 1 of each year, submit to the Congress a report specifying—

"(1) the number, and type of health profession training, of individuals receiving loan payments under the Loan Repayment Program;

"(2) the educational institution at which such individuals are receiving their training;

"(3) the number of applications filed under this section in the school year beginning in such year and in prior school years; and

"(4) the amount of loan payments made in the year reported on.".

SEC. 202. TECHNICAL AND CONFORMING AMENDMENTS.

(a) SECTION 303.—Section 303(d)(4) (42 U.S.C. 242a(d)(4)) is amended—

(1) by striking out "752 or 753" each place it appears and inserting in lieu thereof "338C or 338D"; and

(2) in subparagraph (A), by striking out "subpart IV of part C of title VII" and inserting in lieu thereof "subpart II of part D".

(b) SECTION 331.—Section 331 (42 U.S.C. 254d) is amended—

(1) in subsection (b), by striking out "and the Scholarship Program" and inserting in lieu thereof ", the Scholarship Program, and the Loan Repayment Program";

(2) in subsection (c), by striking out "338C" and inserting in lieu thereof "338D";

(3) in subsection (d)(2), by inserting after "Program" the following: "or the Loan Repayment Program";

(4) in subsection (f), by striking out "Scholarship Program" and inserting in lieu thereof "Scholarship Program or the Loan Repayment Program"; and

(5) in subsection (h)—

(A) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively; and

(B) by inserting after paragraph (1) the following new paragraph:

"(2) The term 'Loan Repayment Program' means the National Health Service Corps Loan Repayment Program established under section 338B.".

(c) SECTION 334.—Section 334(a)(3)(B) (42 U.S.C. 254g(a)(3)(B)) is amended—

(1) by inserting "or the Loan Repayment Program" after "Scholarship Program"; and

(2) by striking out "service under the Program;" and inserting in lieu thereof "service under the Scholarship Program or the Loan Repayment Program;".

(d) SECTION 336.—Section 336(a) (42 U.S.C. 254h-1(a)) is amended by striking out "scholarship program" and inserting in lieu thereof "Scholarship Program or Loan Repayment Program".

(e) SECTION 338E.—Section 338E (as redesignated by section 201(2) of this Act) is amended—

(1) in subsection (a)—

(A) by inserting "(1)" after the subsection designation;

(B) by redesignating paragraphs (1) through (4) as subparagraphs (A) through (D), respectively; and

(C) by adding at the end thereof the following new paragraph:

"(2) An individual who has entered into a written contract with the Secretary under section 338B and who—

"(A) in the case of an individual who is enrolled in the final year of a course of study, fails to maintain an acceptable level of academic standing in the educational institution in which such individual is enrolled (such level determined by the educational institution under regulations of the Secretary) or voluntarily terminates such enrollment or is dismissed from such educational institution before completion of such course of study; or

"(B) in the case of an individual who is enrolled in a graduate training program, fails to complete such training program and does not receive a waiver from the Secretary under section 338B(b)(1)(B)(ii),

in lieu of any service obligation arising under such contract shall be liable to the United States for the amount that has been paid on behalf of the individual under the contract.";

(2) in subsection (b)(1)—

(A) by inserting "(A)" after the paragraph designation;

(B) by striking out "338E(d)" and inserting in lieu thereof "338F(d)";

(C) by striking out "338C" each place it appears and inserting in lieu thereof "338D";

(D) by striking out "338B" each place it appears and inserting in lieu thereof "338C";

(E) by inserting "under section 338A" after "service obligation";

(F) by striking the last sentence; and

(G) by adding at the end the following new subparagraph:

"(B)(i) Any amount of damages that the United States is entitled to recover under this subsection or under subsection (c) shall, within the 1-year period beginning on the date of the breach of the written contract (or such longer period beginning on such date as specified by the Secretary), be paid to the United States.

"(ii) If damages described in clause (i) are delinquent for 3 months, the Secretary shall, for the purpose of recovering such damages—

"(I) utilize collection agencies contracted with by the Administrator of the General Services Administration; or

"(II) enter into contacts for the recovery of such damages with collection agencies selected by the Secretary.

"(iii) Each contract for recovering damages pursuant to this subsection shall provide that the contractor will, not less than once each 6 months, submit to the Secretary a status report on the success of the contractor in collecting such damages. Section 3718 of title 31, United States Code, shall apply to any such contract to the extent not inconsistent with this subsection.

"(iv) To the extent not otherwise prohibited by law, the Secretary shall disclose to all appropriate credit reporting agencies information relating to damages of more than $100 that are entitled to be recovered by the United States under this subsection and that are delinquent by more than 60 days or such longer period as is determined by the Secretary.";

(3) by redesignating subsection (c) as subsection (d);

(4) by inserting after subsection (b) the following new subsection:

"(c)(1) If (for any reason not specified in subsection (a) or section 338F(d)) an individual breaches the written contract of the individual under section 338B by failing either to begin such individual's service obligation in accordance with section 338C or 338D or to complete such service obligation, the United States shall be entitled to recover from the individual an amount equal to the sum of—

"(A) in the case of a contract for a 2-year period of obligated service—

"(i) the total of the amounts paid by the United States under section B(g)(2) on behalf of the individual for any period of obligated service; and

"(ii) an amount equal to the unserved obligation penalty;

"(B) in the case of a contract for a period of obligated service of greater than 2 years, and the breach occurs before the end of the first 2 years of such period—

"(i) the total of the amounts paid by the United States under section B(g)(2) on behalf of the individual for any period of obligated service; and

"(ii) an amount equal to the unserved obligation penalty; and

"(C) in the case of a contract for a period of obligated service of greater than 2 years, and the breach occurs after the first 2 years of such period—

"(i) the total of the amounts paid by the United States under section B(g)(2) on behalf of the individual for any period of obligated service not served; and

"(ii) if the individual breaching the contract failed to give the Secretary notice, that the individual intends to take action which constitutes a breach of the contract, at least 1 year (or such shorter period of time as the Secretary determines is adequate for finding a replacement) prior to the breach, $10,000.

"(2) For purposes of paragraph (1), the term 'unserved obligation penalty' means the amount equal to the product of the number of months of obligated service that were not completed by an individual, multiplied by $1,000, except that in any case in which the individual fails to serve 1 year, the unserved obligation penalty shall be equal to the full period of obligated service multiplied by $1,000.

"(3) The Secretary may waive, in whole or in part, the rights of the United States to recover amounts under this section in any case of extreme hardship or other good cause shown, as determined by the Secretary.

"(4) Damages that the United States is entitled to recover shall be paid in accordance with subsection (b)(1)(B).";

(5) in subsection (d) (as redesignated by clause (3) of this subsection), by inserting "or the Loan Repayment Program (or a contract thereunder)" after "thereunder)" each place it appears; and

(6) in the section heading, by inserting "OR LOAN REPAYMENT CONTRACT" after "CONTRACT".

(f) PART D OF TITLE III.—Part D of title III is amended—

(1) by redesignating subparts III and IV as subparts IV and V, respectively; and

(2) by inserting before section 338A the following:

"Subpart III—Scholarship Program and Loan Repayment Program".

SEC. 203. REPORT AND AUTHORIZATION OF APPROPRIATIONS FOR SCHOLARSHIP AND LOAN REPAYMENT PROGRAMS; STATE PROGRAMS.

Part D of title III (42 U.S.C. 247d et seq.) is amended by striking out section 338G (as redesignated by section 201(2) of this Act) and inserting in lieu thereof the following new sections:

"SEC. 338G. REPORT AND AUTHORIZATION OF APPROPRIATIONS.

"(a) REPORT.—The Secretary shall report on January 20 of each year to the Committee on Labor and Human Resources of the Senate, the Committee on Energy and Commerce of the House of Representatives, and the Committees on Appropriations of the Senate and the House of Representatives on—

"(1) the number of providers of health care who will be needed for the Corps during the 3 fiscal years beginning after the date the report is filed; and

"(2) the number—

"(A) of scholarships the Secretary proposes to provide under the Scholarship Program during such 3 fiscal years;

"(B) of individuals for whom the Secretary proposes to make loan repayments under the Loan Repayment Program during such 3 fiscal years; and

"(C) of individuals who have no obligation under section 338C and who the Secretary proposes to have as members of the Corps during such 3 fiscal years,

in order to provide such number of health care providers.

"(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary for scholarships and loan repayments under this subpart.

"SEC. 338H. STATE PROGRAMS.

"(a) GRANTS.—The Secretary may make grants to States to support the establishment by States of State programs similar to the Loan Repayment Program established under section 338B. Any State program supported with a grant under this section shall—

"(1) provide for the repayment of government and commercial loans for the tuition, educational expenses, and living expenses described in section 338B(g)(1); and

"(2) be conducted in conformance with the description of such program contained in the application required under subsection (b).

"(b) APPLICATIONS.—No grant may be made under this section for a State program unless an application therefor is submitted to the Secretary, in such form, at such time, and containing such information as the Secretary may prescribe. Each such application shall contain such standards for the designation of medically underserved areas under the State program and the determination of obligated service under the State program as may be acceptable to the Secretary.

"(c) FEDERAL SHARE.—The Federal share of the costs of any State program supported under this section shall not exceed 75 percent.

"(d) AUTHORIZATION OF APPROPRIATIONS.—To carry out this section, there are authorized to be appropriated $1,000,000 for fiscal year 1988 and such sums as may be necessary for each of the fiscal years 1989 and 1990.".

SEC. 204. SPECIAL REPAYMENT PROVISIONS.

(a) ELIGIBLE INDIVIDUALS.—

(1) IN GENERAL.—An individual who—

(A)(i) breached a written contract entered into under section 338A of the Public Health Service Act (42 U.S.C. 254l) by failing either to begin such individual's service obligation in accordance with section 338C of such Act (as redesignated by section 201(2) of this Act) or to complete such service obligation; or

(ii) otherwise breached such a contract; and

(B) as of November 1, 1987, is liable to the United States under section 338E(b) of such Act (as redesignated by section 201(2) of this Act),

shall be relieved of liability to the United States under such section if the individual provides notice to the Secretary in accordance with paragraph (2) and provides service in accordance with a written contract with the Secretary that obligates the individual to provide service in accordance with subsection (b) or (c). The Secretary may exclude an individual from relief from liability under this section for reasons related to the individual's professional competence or conduct.

(2) NOTICE BY SECRETARY.—Not later than 90 days after the date of the enactment of this Act, the Secretary of Health and Human Services shall notify in writing individuals who are described in subsection (a) of the opportunity provided by such subsection to be relieved of liability to the United States under section 338E(b) of the Public Health Service Act (as redesignated by section 201(2) of this Act). Notice sent to the last known address of such individual shall constitute sufficient notice for the purposes of this section. The Secretary may require that an individual responding to such notice make an election between service under subsection (b) or subsection (c) and provide that such election shall be binding.

(3) NOTICE BY INDIVIDUAL.—Not later than 180 days after the date of the enactment of this Act, an individual who receives a notice from the Secretary may notify the Secretary that the individual intends to enter into a written contract with the Secretary to provide service in accordance with subsection (b) or (c). The Secretary may extend the 180-day period for an individual for good cause shown.

(4) STATUTE OF LIMITATIONS.—If an individual provides notice under paragraph (3), the statute of limitations established by section 2415 of title 28, United States Code, shall be tolled from the time the Secretary receives such notice until such time as it is determined by the Secretary that such individual will not be relieved of liability to the United States under the Public Health Service Act as provided under this section.

(5) PLACEMENTS.—Any individual who enters into a contract under this subsection shall be afforded an opportunity to locate and negotiate a placement in accordance with this section, except that the Secretary shall not be required to identify a placement for any individual in a medical specialty for which the National Health Service Corps has no need.

(6) PARTIAL SERVICE.—The Secretary shall promulgate regulations that provide for the reduction of the liability under section 338F of the Public Health Service Act (as redesignated by section 201(2) of this Act) of an individual who breaches a contract entered into under this section to reflect any partial service or partial payment of liability of the individual under this section.

(b) SERVICE AT HEALTH MANPOWER SHORTAGE AREA PLACEMENT OPPORTUNITY LIST SITES.—

(1) IN GENERAL.—An individual notified under subsection (a)(2) may enter into a written contract with the Secretary to serve, in accordance with subpart II of part D of title III of the Public Health Service Act (42 U.S.C. 254d et seq.), for the period of such individual's service obligation remaining under section 338C of the Public Health Service Act (as redesignated by section 201(2) of this Act) at a site that—

(A)(i) is on the Health Manpower Shortage Area Placement Opportunity List created by the Secretary of Health and Human Services for obligated service under section 338C of the Public Health Service Act (as so redesignated) to begin in fiscal year 1988 and to which no individual who is not described in subsection (a)(1) has been assigned by a date determined by the Secretary; or

(ii) is on the Health Manpower Shortage Area Placement Opportunity List created by the Secretary of Health and Human Services for obligated service under section 338C of the Public Health Service Act (as so redesignated) to begin in fiscal year 1989; and

(B) has agreed to permit the individual to serve at such site.

(2) NUMBER OF SITES.—The Secretary shall to the extent practicable, include a total number of sites on the list referred to in paragraph (1) sufficient to provide placement to all obligors under the Scholarship Program scheduled to begin service in fiscal year 1988 or 1989 and all individuals responding to the notice provided under subsection (a) and electing service under paragraph (1).

(c) SERVICE AT SUPPLEMENTAL HEALTH MANPOWER SHORTAGE AREA PLACEMENT OPPORTUNITY LIST SITES.—An individual notified under subsection (a)(2) may enter into a written contract with the Secretary—

(1) to—

(A) serve in accordance with subpart II of part D of title III of the Public Health Service Act (42 U.S.C. 254d et seq.) for the period of such individual's service obligation remaining under section 338C of the Public Health Service Act (as redesignated by section 201(2) of this Act) at a site that is on a supplemental Health Manpower Shortage Area Placement Opportunity List created by the Secretary of Health and Human Services for obligated service under section 338C of the Public Health Service Act (as so redesignated) and that has agreed to permit the individual to serve at such site; and

(B) pay, in accordance with guidelines established by the Secretary of Health and Human Services, to the United States the sum of the amounts paid under subpart II of part D of title III of such Act to or on behalf of the individual reduced by any amount paid, before entering into the contract, by such individual to the Secretary with respect to the individual's indebtedness under such part D; or

(2) to serve in accordance with such subpart II at a site described in paragraph (1) for 150 percent of such individual's remaining service obligation under section 338C of such Act (as so redesignated).

(d) Creation of Supplemental Health Manpower Shortage Area Placement Opportunity List Sites.—In creating the supplemental Health Manpower Shortage Area Placement Opportunity List for purposes of subsection (c), the Secretary—

(1) shall include any site to which a National Health Service Corps member was previously assigned but which in fiscal year 1988 or 1989 will not have such member or a member of the National Health Service Corps to replace such member unless the Secretary of Health and Human Services determines that such site may reasonably be expected to recruit a health care professional from other than the Corps;

(2) shall include any migrant health center receiving funds under section 329 of the Public Health Service Act (42 U.S.C. 247d) or community health center receiving funds under section 330 of such Act (42 U.S.C. 254c) unless the Secretary of Health and Human Services determines that such center has been able to recruit health care professionals from other than the Corps to serve at the center and may reasonably be expected to recruit such health care professionals in the future;

(3) may include any other site selected by the Secretary; and

(4) shall designate the type of health care professional or medical specialist who is eligible to serve at the sites included on the list.

A site may be included on the supplemental list only if, at the time the list is created, the Secretary determines that the site meets the criteria prescribed by section 332 of such Act (42 U.S.C. 254e).

(e) Additional Eligible Individuals.—

(1) In general.—The Secretary of Health and Human Services may authorize an individual who is not described in subsection (a) and who is to begin to serve the individual's service obligation under section 338C of the Public Health Service Act (as redesignated by section 201(2) of this Act) in fiscal year 1988 or 1989 to serve such obligation in accordance with subsection (c) if the Secretary determines that—

(A) service by the individual in accordance with subsection (c) would be in the best interests of the National Health Service Corps; and

(B) allowing such service would alleviate a substantial hardship for such individual.

(2) Scholarship training program.—Individuals who have breached a written contract entered into under section 225 of the Public Health Service Act (42 U.S.C. 234) (as such section existed before the amendment made by section 408(b) of the Health Professions Educational Assistance Act of 1976 (Public Law 94-484; 90 Stat. 2281)) by failing to complete their service obligations and who are, as of November 1, 1987, liable to the United States under section 225(f)(1) of the Public Health Service Act (as such section so existed) may be relieved of their liability to the United States under the terms and conditions set forth in this section.

SEC. 205. REGULATIONS.

Not later than 180 days after the effective date of the amendments made by this title, the Secretary of Health and Human Services shall issue regulations for the loan repayment programs established by the amendments.

TITLE III—NATIONAL HEALTH SERVICE CORPS

SEC. 301. REQUIREMENT OF CONSIDERATION OF NEEDS OF INDIAN HEALTH SERVICE, CERTAIN INDIAN TRIBES, AND THE HOMELESS.

Section 331 (42 U.S.C. 254d) is amended—

(1) by redesignating subsection (h) as subsection (i); and

(2) by inserting after subsection (g) the following new subsection:

"(h) In assigning members of the Corps to health manpower shortage areas, to the extent practicable, the Secretary shall—

"(1) give priority to meeting the needs of the Indian Health Service and the needs of health programs or facilities operated by tribes or tribal organizations under the Indian Self-Determination Act (25 U.S.C. 450f et seq.); and

"(2) provide special consideration to the homeless populations who do not have access to primary health care services.".

SEC. 302. DESIGNATION OF HEALTH MANPOWER SHORTAGE AREAS.

Section 332 (42 U.S.C. 254e) is amended—

(1) in subsection (a)(1), by adding at the end thereof the following new sentences: "The Secretary shall not remove an area from the areas determined to be health manpower shortage areas under subparagraph (A) of the preceding sentence until the Secretary has afforded interested persons and groups in such area an opportunity to provide data and information in support of the designation as a health manpower shortage area or a population group described in subparagraph (B) of such sentence or a facility described in subparagraph (C) of such sentence, and has made a determination on the basis of the data and information submitted by such persons and groups and other data and information available to the Secretary."; and

(2) in subsection (b)(2)—

(A) by striking out "and" after "services," in subparagraph (B);

(B) by striking out the period at the end of subparagraph (C) and inserting in lieu thereof ", and"; and

(C) by adding at the end the following new subparagraph:

"(D) ability to pay for health services.".

SEC. 303. PLACEMENT OF PHYSICIANS.

Section 333 (42 U.S.C. 254f) is amended by adding at the end the following new subsection:

"(j) In determining the priority for the placement of members of the Corps under this section in medically underserved areas, the Secretary shall consider—

"(1) whether the areas are served by at least one health professional and the effectiveness of non-Federal programs in recruiting health professionals for the areas;

"(2) the geographic isolation of the areas; and

"(3) the economic need of the populations of the areas and the association of the areas with a high infant mortality rate.".

SEC. 304. ASSIGNMENT OF FAMILY PHYSICIANS.

Section 333 (42 U.S.C. 254f) (as amended by section 304 of this Act) is amended by adding at the end thereof the following new subsection:

"(k) In the assignment by the National Health Service Corps under this section of physicians specializing in family medicine, the Secretary shall—

"(1) take account of the needs of urban areas; and

"(2) place special attention on urban areas in which there are serious incidences of infant mortality, adolescent pregnancy, drug and alcohol abuse, sexually transmitted diseases, and other acute urban health care needs.".

SEC. 305. AUTHORIZATIONS OF APPROPRIATIONS FOR GENERAL OPERATIONS OF NATIONAL HEALTH SERVICE CORPS.

Subsection (a) of section 338 (42 U.S.C. 254k) is amended to read as follows:

"(a) To carry out this subpart, there are authorized to be appropriated $65,000,000 for fiscal year 1988, $65,000,000 for fiscal year 1989, and $65,000,000 for fiscal year 1990.".

SEC. 306. OBLIGATED SERVICE.

Section 338C (as redesignated by section 201(2) of this Act) is amended—

(1) in subsection (a)—

(A) by striking out "338C" and inserting in lieu thereof "338D"; and

(B) by inserting "or 338B" after "338A";

(2) in subsection (b)(1), by inserting "or 338B(f)(1)(B)(iv)" after "338A(f)(1)(B)(iv)";

(3) in subsection (b), by striking out paragraph (5) and inserting in lieu thereof the following new paragraph:

"(5)(A) In the case of the Scholarship Program, with respect to an individual receiving a degree from a school of medicine, osteopathy, dentistry, veterinary medicine, optometry, podiatry, or pharmacy, the date referred to in paragraphs (1) through (4) shall be the date on which the individual completes the training required for such degree, except that—

"(i) at the request of such an individual with whom the Secretary has entered into a contract under section 338A prior to October 1, 1985, the Secretary shall defer such date until the end of the period of time (not to exceed the number of years specified in subparagraph (B) or such greater period as the Secretary, consistent with the needs of the Corps, may authorize) required for the individual to complete an internship, residency, or other advanced clinical training; and

"(ii) at the request of such an individual with whom the Secretary has entered into a contract under section 338A on or after October 1, 1985, the Secretary may defer such date in accordance with clause (i).

"(B)(i) In the case of the Scholarship Program, with respect to an individual receiving a degree from a school of medicine, osteopathy, or dentistry, the number of years referred to in subparagraph (A)(i) shall be 3 years.

"(ii) In the case of the Scholarship Program, with respect to an individual receiving a degree from a school of veterinary medicine, optometry, podiatry, or pharmacy, the number of years referred to in subparagraph (A)(i) shall be 1 year.

"(C) No period of internship, residency, or other advanced clinical training shall be counted toward satisfying a period of obligated service under this subpart.

"(D) In the case of the Scholarship Program, with respect to an individual receiving a degree from an institution other than a school referred to in subparagraph (A), the date referred to in paragraphs (1) through (4) shall be the date on which the individual completes the academic training of the individual leading to such degree.

"(E) In the case of the Loan Repayment Program, if an individual is required to provide obligated service under such Program, the date referred to in paragraphs (1) through (4)—

"(i) shall be the date determined under subparagraph (A), (B), or (D) in the case of an individual who is enrolled in the final year of a course of study;

"(ii) shall, in the case of an individual who is enrolled in an approved graduate training program in medicine, osteopathy, dentistry, or other health profession, be the date the individual completes such training program; and

"(iii) shall, in the case of an individual who has a degree in medicine, osteopathy, dentistry, or other health profession and who has completed graduate training, be the date the individual enters into an agreement with the Secretary under section 338B."; and

(4) in subsection (c)(2), by striking out "338C" and inserting in lieu thereof "338D".

SEC. 307. PRIVATE PRACTICE.

Section 338D (as redesignated by section 201(2) of this Act) is amended—

(1) in subsection (a), by striking out "338B(a)" and inserting in lieu thereof "338C(a)";

(2) in subsection (a)(1)—

(A) by inserting after "individual" the following: "who received a scholarship under the Scholarship Program or a loan repayment under the Loan Repayment Program and"; and

(B) by inserting before the semicolon the following: "or in the case of an individual for whom a loan payment was made under the Loan Repayment Program and who is performing obligated service as a member of the Corps in a health manpower shortage area on the date of the application of the individual for such a release, in the health manpower shortage area selected by the Secretary";

(3) in subsection (a)(2), by inserting "selected by the Secretary" before the period;

(4) in subsection (b), by inserting at the end thereof the following new sentence: "The Secretary shall take such action as may be appropriate to ensure that the conditions of the written agreement prescribed by this subsection are adhered to.";

(5) in subsection (c), by inserting "or 338B" after "338A"; and

(6) in subsection (e)—

(A) by striking out paragraph (1); and

(B) by striking "(2)" before "Upon".

SEC. 308. DISCHARGE OF OBLIGATIONS IN BANKRUPTCY.

(a) IN GENERAL.—Section 338E(d)(3) (as redesignated by sections 201(2) and 202(e)(3) of this Act) is amended by inserting before the period a comma and "and only if the bankruptcy court finds that nondischarge of the obligation would be unconscionable".

(b) EXISTING PROCEEDINGS.—The amendment made by subsection (a) applies to any bankruptcy proceeding in which discharge of an obligation under section 338E(d)(3) of the Public Health Service Act (as redesignated by sections 201(2) and 202(e)(3) of this Act) has not been granted before the date that is 31 days after the date of enactment of this Act.

SEC. 309. SPECIAL LOANS FOR CORPS MEMBERS TO ENTER PRIVATE PRACTICE.

Section 338F (as redesignated by section 201(2) of this Act) is amended—

(1) by striking out subsections (a) and (b) and inserting in lieu thereof the following new subsections:

"(a) The Secretary may, out of appropriations authorized under section 338, make one loan to a Corps member who has agreed in writing—

"(1) to engage in the private full-time clinical practice of the profession of the member in a health manpower shortage area (designated under section 332) for a period of not less than 2 years which—

"(A) in the case of a Corps member who is required to complete a period of obligated service under this subpart, begins not later than 1 year after the date on which such individual completes such period of obligated service; and

"(B) in the case of an individual who is not required to complete a period of obligated service under this subpart, begins at such time as the Secretary considers appropriate;

"(2) to conduct such practice in accordance with section 338D(b)(1); and

"(3) to such additional conditions as the Secretary may require to carry out this section.

Such a loan shall be used to assist such individual in meeting the costs of beginning the practice of such individual's profession in accordance with such agreement, including the costs of acquiring equipment and renovating facilities for use in providing health services, and of hiring nurses and other personnel to assist in providing health services. Such loan may not be used for the purchase or construction of any building.

"(b)(1) The amount of a loan under subsection (a) to an individual shall not exceed $25,000.

"(2) The interest rate for any such loan shall not exceed an annual rate of 5 percent.";

(2) in the first sentence of subsection (c), by striking "grant or"; and

(3) in subsection (d)(1)—

(A) by striking "this section," and inserting "this section (as in effect prior to October 1, 1984),"; and

(B) by striking "338D(b)" and inserting "338E(b)".

TITLE IV—MISCELLANEOUS

SEC. 401. GERIATRIC MEDICINE TRAINING PROJECTS.

Section 788(e) (42 U.S.C. 295g-8(e)) is amended—

(1) in paragraph (1), by inserting after "support" the following: "(including traineeships and fellowships)";

(2) in paragraph (2)(C), by striking out "medicine;" and inserting in lieu thereof "medicine, or in a department of geriatrics in existence as of the date of enactment of the Public Health Service Amendments of 1987;"; and

(3) in paragraph (3)(A)(i), by inserting "geriatrics," after "gynecology,".

SEC. 402. PROFESSIONAL REVIEW ACTIVITIES.

(a) IN GENERAL.—Section 427 of Health Care Quality Improvement Act of 1986 (42 U.S.C. 11137) is amended—

(1) in subsection (b)(1)—

(A) by striking out "with respect to medical malpractice actions" and inserting in lieu thereof "as necessary to carry out subsections (b) and (c) of section 425 (as specified in regulations by the Secretary)"; and

(B) by adding at the end thereof the following new sentences: "Information reported under this part that is in a form that does not permit the identification of any particular health care entity, physician, other health care practitioner, or patient shall not be considered confidential. The Secretary (or the agency designated under section 424(b)), on application by any person, shall prepare such information in such form and shall disclose such information in such form."; and

(2) in subsection (c)—

(A) by inserting "(including the agency designated under section 424(b))" after "person or entity"; and

(B) by inserting "(including information provided under subsection (a)" after "part".

(b) FEES.—Section 427(b) of such Act is amended by adding at the end thereof the following new paragraph:

"(4) FEES.—The Secretary may establish or approve reasonable fees for the disclosure of information under this section or section 426. The amount of such a fee may not exceed the costs of processing the requests for disclosure and of providing such information. Such fees shall be available to the Secretary (or, in the Secretary's discretion, to the agency designated under section 424(b)) to cover such costs.".

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by subsection (a) shall become effective on November 14, 1986.

(2) FEES.—The amendment made by subsection (b) shall become effective on the date of enactment of this Act.

CATASTROPHIC ILLNESS COVERAGE

MIKULSKI (AND OTHERS) AMENDMENT NO. 1046

Ms. MIKULSKI (for herself, Mr. MITCHELL, Mr. KENNEDY, Mr. PRESSLER, Mr. REID, Mr. RIEGLE, Mr. GRAHAM, Mr. LEVIN, Mr. CHAFEE, Mr. DURENBERGER, and Mr. GRASSLEY) proposed an amendment to the bill (S. 1127) supra; as follows:

On page 112, strike lines 11 through 14 and insert in lieu thereof the following:

(B) to increase the minimum monthly maintenance needs allowance under section 1921(d)(3)(B) of the Social Security Act.

On page 113, between lines 16 and 17, insert the following new section:

SEC. 14A. PROTECTION OF INCOME AND RESOURCES OF COUPLE FOR MAINTENANCE OF COMMUNITY SPOUSE.

(a) IN GENERAL.—Title XIX is amended—

(1) by redesignating section 1921 as section 1922, and

(2) by inserting after section 1920 the following new section:

"TREATMENT OF INCOME AND RESOURCES FOR CERTAIN INSTITUTIONALIZED SPOUSES

"SEC. 1921. (a) SPECIAL TREATMENT FOR INSTITUTIONALIZED SPOUSES.—

"(1) SUPERSEDES OTHER PROVISIONS.—In determining the eligibility for medical assistance of an institutionalized spouse (as defined in subsection (h)(1)), the provisions of this section supersede any other provision of this title (including sections 1902(a)(17) and 1902(f)) which is inconsistent with them.

"(2) NO COMPARABLE TREATMENT REQUIRED.—Any different treatment provided under this section for institutionalized spouses shall not, by reason of paragraph (10) or (17) of section 1902(a), require such treatment for other individuals.

"(3) DOES NOT AFFECT CERTAIN DETERMINATIONS.—Except as this section specifically provides, this section does not apply to—

"(A) the determination of what constitutes income or resources, or

"(B) the methodology and standards for determining and evaluating income and resources.

"(4) Application in certain states and territories.—

"(A) Application in states operating under demonstration projects.—In the case of any State which is providing medical assistance to its residents under a waiver granted under section 1115, the Secretary shall require the State to meet the requirements of this section in same manner as the State would be required to meet such requirement if the State had in effect a plan approved under this title.

"(B) No application in commonwealths and territories.—This section shall only apply to a State that is one of the 50 States or the District of Columbia.

"(b) Rules for Treatment of Income.—

"(1) Separate treatment of income.—During any month in which an institutionalized spouse is in the institution, no income of the community spouse shall be deemed available to the institutionalized spouse.

"(2) Attribution of income.—In determining the income of an institutionalized spouse or community spouse, after the institutionalized spouse has been determined to be eligible for medical assistance, except as otherwise provided in this section and regardless of any State laws relating to community property or the division of marital property, the following rules apply:

"(A) Non-trust property.—Subject to subparagraphs (C) and (D), in the case of income not from a trust, unless the instrument providing the income otherwise specifically provides—

"(i) if payment of income is made solely in the name of the institutionalized spouse or the community spouse, the income shall be considered available only to that respective spouse;

"(ii) if payment of income is made in the names of the institutionalized spouse and the community spouse, one-half of the income shall be considered available to each of them; and

"(iii) if payment of income is made in the names of the institutionalized spouse or the community spouse, or both, and to another person or persons, the income shall be considered available to each spouse in proportion to the spouse's interest (or, if payment is made with respect to both spouses and no such interest is specified, one-half of the joint interest shall be considered available to each spouse).

"(B) Trust property.—In the case of a trust—

"(i) except as provided in clause (ii), income shall be attributed in accordance with the provisions of this title (including sections 1902(a)(17) and 1902(k)), and

"(ii) income shall be considered available to each spouse as provided in the trust, or, in the absence of a specific provision in the trust—

"(I) if payment of income is made solely to the institutionalized spouse or the community spouse, the income shall be considered available only to that respective spouse;

"(II) if payment of income is made to both the institutionalized spouse and the community spouse, one-half of the income shall be considered available to each of them; and

"(III) if payment of income is made to the institutionalized spouse or the community spouse, or both, and to another person or persons, the income shall be considered available to each spouse in proportion to the spouse's interest (or, if payment is made with respect to both spouses and no such interest is specified, one-half of the joint interest shall be considered available to each spouse).

"(C) Property with no instrument.—In the case of income not from a trust in which there is no instrument establishing ownership, subject to subparagraph (D), one-half of the income shall be considered to be available to the institutionalized spouse and one-half to the community spouse.

"(D) Rebutting ownership.—The rules of subparagraphs (A) and (C) are superseded to the extent that an institutionalized spouse can establish, by a preponderance of the evidence, that the ownership interests in income are other than as provided under such subparagraphs.

"(c) Rules for Treatment of Resources.—

"(1) Computation of spousal share at time of institutionalization.—

"(A) Total joint resources.—There shall be computed (as of the beginning of a continuous period of institutionalization of the institutionalized spouse)—

"(i) the total value of the resources to the extent either the institutionalized spouse or the community spouse has an ownership interest, and

"(ii) a spousal share which is equal to ½ of such total value.

"(B) Assessment.—At the request of an institutionalized spouse or community spouse, at the beginning of a continuous period of institutionalization of the institutionalized spouse and upon the receipt of relevant documentation of resources, the State shall promptly assess and document the total value described in subparagraph (A)(i) and shall provide a copy of such assessment and documentation to each spouse and shall retain a copy of the assessment for use under this section. If the request is not part of an application for medical assistance under this title, the State may, at its option as a condition of providing the assessment, require payment of a fee not exceeding the reasonable expenses of providing and documenting the assessment.

"(2) Attribution of resources at time of initial eligibility determination.—In determining the resources of an institutionalized spouse at the time of application for benefits under this title, regardless of any State laws relating to community property or the division of marital property—

"(A) except as provided in subparagraph (B), all the resources held by either the institutionalized spouse, community spouse, or both, shall be considered to be available to the institutionalized spouse, and

"(B) resources shall not be considered to be available to an institutionalized spouse, to the extent that the amount of such resources does not exceed the amount computed under subsection (f)(2)(A) (as of the time of application for benefits).

"(3) Assignment of support rights.—The institutionalized spouse shall not be ineligible by reason of resources determined under paragraph (2) to be available for the cost of care where—

"(A) the institutionalized spouse has assigned to the State any rights to support from the community spouse;

"(B) the institutionalized spouse lacks the ability to execute an assignment due to physical or mental impairment but the State has the right to bring a support proceeding against a community spouse without such assignment; or

"(C) the State determines that denial of eligibility would work an undue hardship.

"(4) Separate treatment of resources after eligibility for benefits established.—During the continuous period in which an institutionalized spouse is in an institution and after the month in which an institutionalized spouse is determined to be eligible for benefits under this title, no resources of the community spouse shall be deemed available to the institutionalized spouse.

"(5) Resources defined.—In this section, the term 'resources' does not include—

"(A) resources excluded under subsection (a) or (d) of section 1613,

"(B) resources that would be excluded under section 1613(a)(2)(A) but for the limitation on total value described in such section, and

"(C) resources which are necessary to produce income that is made available to the community spouse or for the family allowance under subsection (d), subject to the greater of the limit under subsection (d)(3)(B) or (d)(5).

"(d) Protecting Income for Community Spouse.—

"(1) Allowances to be offset from income of institutionalized spouse.—After an institutionalized spouse is determined to be eligible for medical assistance, in determining the amount of the spouse's income that is to be applied monthly to payment for the costs of care in the institution, there shall be deducted from the spouse's monthly income the following amounts in the following order:

"(A) A personal needs allowance (described in section 1902(p)(1)), in an amount not less than the amount specified in section 1902(p)(2).

"(B) A community spouse monthly income allowance (as defined in paragraph (2)), but only to the extent income of the institutionalized spouse is made available to (or for the benefit of) the community spouse.

"(C) A family allowance, for each family member, equal to at least ⅓ of the amount by which the amount described in paragraph (3)(A)(i) exceeds the amount of the monthly income of that family member.

"(D) Amounts for incurred expenses for medical or remedial care for the institutionalized spouse that are not subject to payment by a legally liable third party.

In subparagraph (C), the term 'family member' only includes minor or dependent children, dependent parents, or dependent siblings of the institutionalized or community spouse who are residing with the community spouse.

"(2) Community spouse monthly income allowance defined.—In this section (except as provided in paragraph (5)), the 'community spouse monthly income allowance' for a community spouse is an amount by which—

"(A) except as provided in subsection (e), the minimum monthly maintenance needs allowance (established under and in accordance with paragraph (3)) for the spouse, exceeds

"(B) the amount of monthly income otherwise available to the community spouse (determined without regard to such an allowance).

"(3) Establishment of minimum monthly maintenance needs allowance.—

"(A) In general.—Each State shall establish a minimum monthly maintenance needs allowance for each community spouse which, subject to subparagraph (B), is equal to or exceeds—

"(i) 122 percent of $\frac{1}{12}$ of the nonfarm income official poverty line (defined by the Office of Management and Budget and revised annually in accordance with sections 652 and 673(2) of the Omnibus Budget Reconciliation Act of 1981) for a family unit of 2 members; plus

"(ii) an excess shelter allowance (as defined in paragraph (4)).

A revision of the official poverty line referred to in clause (i) shall apply to medical assistance furnished during and after the second calendar quarter that begins after the date of publication of the revision.

"(B) Cap on minimum monthly maintenance needs allowance.—The minimum monthly maintenance needs allowance established under subparagraph (A) may not exceed $1,500 (subject to adjustment under subsections (e) and (g)), or, if greater, the amount determined under State law, practice, or policy or the State plan (whether approved or not).

"(4) Excess shelter allowance defined.—In paragraph (3)(A)(ii), the term 'excess shelter allowance' means, for a community spouse, the amount by which the sum of—

"(A) the spouse's expenses for rent or mortgage payment (including principal and interest), taxes and insurance and, in the case of a condominium or cooperative, required maintenance charge, for the community spouse's principal residence, and

"(B) the standard utility allowance (used by the State under section 5(e) of the Food Stamp Act of 1977) or, if the State does not use such an allowance, the spouse's actual utility expenses,

exceeds 30 percent of the amount described in paragraph (3)(A)(i), except that, in the case of a condominium or cooperative, for which a maintenance charge is included under subparagraph (A), any allowance under subparagraph (B) shall be reduced to the extent the maintenance charge includes utility expenses.

"(5) Court ordered support.—If a court has entered an order against an institutionalized spouse for monthly income for the support of the community spouse, the community spouse monthly income allowance for the spouse shall be not less than the amount of the monthly income so ordered.

"(e) Notice and Fair Hearing.—

"(1) Notice.—Upon—

"(A) a determination of eligibility for medical assistance of an institutionalized spouse, or

"(B) a request by either the institutionalized spouse, or the community spouse, or a representative acting on behalf of either spouse,

each State shall notify both spouses (in the case described in subparagraph (A)) or the spouse making the request (in the case described in subparagraph (B)) of the amount of the community spouse monthly income allowance (described in subsection (d)(1)(B)), of the amount of any family allowances (described in subsection (d)(1)(C)), of the method for computing the amount of the community spouse resources allowance permitted under subsection (f), and of the spouse's right to a fair hearing under this subsection respecting ownership or availability of income or resources, and the determination of the community spouse monthly income or resource allowance.

"(2) Fair hearing.—If either the institutionalized spouse or the community spouse is dissatisfied with a determination of—

"(A) the community spouse monthly income allowance because the amount of the minimum monthly maintenance needs allowance (established under subsection (d)(3)) is not adequate to support the community spouse without financial duress;

"(B) the amount of monthly income otherwise available to the community spouse (as applied under subsection (d)(2)(B));

"(C) the computation of the spousal share of resources under subsection (c)(1);

"(D) the attribution of resources under subsection (c)(2); or

"(E) the determination of the community spouse resource allowance (as defined in subsection (f)(2));

such spouse is entitled to a fair hearing described in section 1902(a)(3) with respect to such determination. If either such spouse establishes that the minimum monthly maintenance needs allowance or the community spouse resource allowance (in relation to the amount of income generated by such an allowance) is not adequate to support the community spouse without financial duress, there shall be substituted, for the minimum monthly maintenance needs allowance in subsection (d)(2)(A) (or for the community spouse resource allowance under subsection (f)(2)), an amount adequate to support the community spouse without financial duress.

"(f) Permitting Transfer of Resources to Community Spouse.—

"(1) In general.—An institutionalized spouse may, without regard to section 1917, transfer to the community spouse (or to another for the sole benefit of the community spouse) an amount equal to the community spouse resource allowance (as defined in paragraph (2)), but only to the extent the resources of the institutionalized spouse are transferred to (or for the sole benefit of) the community spouse. The transfer under the preceding sentence shall be made not later than one year after the date of the initial determination of eligibility or such time as is necessary to obtain a court order under paragraph (4) (whichever is longer)

"(2) Community spouse resource allowance defined.—In paragraph (1), the 'community spouse resource allowance' for a community spouse is an amount (if any) by which—

"(A) the greatest of—

"(i) $12,000 (subject to adjustment under subsection (g)), or, if greater, the amount determined under State law, practice, or policy or under the State plan (whether approved or not);

"(ii) the lesser of (I) the spousal share computed under subsection (c)(1), or (II) 4 times the amount described in clause (i);

"(iii) the amount established under subsection (e)(2); or

"(iv) the amount transferred under a court order under paragraph (3),

exceeds

"(B) the amount of the resources otherwise available to the community spouse (determined without regard to such an allowance).

"(3) Transfers under court orders.—If a court has entered an order against an institutionalized spouse for the support of the community spouse, section 1917 shall not apply to amounts of resources transferred pursuant to such order for the support of the spouse or a family member (as defined in subsection (d)(1)).

"(g) Indexing Dollar Amounts.—For services furnished during a calendar year after 1988, the dollar amounts specified in subsections (d)(3)(B) and (f)(2)(A)(i) shall be increased by the same percentage as the percentage increase in the consumer price index for all urban consumers (all items; U.S. city average) between September 1987 and the September before the calendar year involved.

"(h) Definitions.—In this section:

"(1) The term 'institutionalized spouse' means an individual who—

"(A) is in a hospital, skilled nursing facility, or intermediate care facility, or who (at the option of the State) is described in section 1902(a)(10)(A)(ii)(VI), and

"(B) is married to a spouse who is not in a hospital, skilled nursing facility, or intermediate care facility;

but does not include any such individual who is not likely to meet the requirements of subparagraph (A) for at least 30 consecutive days.

"(2) The term 'community spouse' means the spouse of an institutionalized spouse.".

(b) Taking into Account Certain Transfers of Assets.—Subsection (c) of section 1917 (42 U.S.C. 1396p) is amended to read as follows:

"(c)(1) In order to meet the requirements of this subsection (for purposes of section 1902(a)(49)(B)), the State plan must provide for a period of ineligibility in the case of an institutionalized individual (as defined in paragraph (3)) who, at any time during the 26-month period immediately before the individual's application for medical assistance under the State plan, disposed of resources for less than fair market value. The period of ineligibility shall begin with the month in which such resources were transferred and the number of months in such period shall be equal to (A) the total uncompensated value of the resources so transferred, divided by (B) the average cost, to a private patient at the time of the application, of nursing home care in the State or, at State option, in the community in which the individual is institutionalized.

"(2) An individual shall not be ineligible for medical assistance by reason of paragraph (1) to the extent that—

"(A) the resources transferred were a home and title to the home was transferred to—

"(i) the spouse of such individual;

"(ii) a child of such individual who is under age 21, or (with respect to States eligible to participate in the State program established under title XVI) is blind or permanently and totally disabled, or (with respect to States which are not eligible to participate in such program) is blind or disabled as defined in section 1614;

"(iii) a sibling of such individual who has an equity interest in such home and who was residing in such individual's home for a period of at least one year immediately before the date of the individual's admission to the medical institution; or

"(iv) a son or daughter of such individual (other than a child described in clause (ii)) who was residing in such individual's home for a period of at least two years immediately before the date of such individual's admission to the medical institution, and who (as determined by the State) provided care to such individual which permitted such individual to reside at home rather than in an institution;

"(B) the resources were transferred to (or to another for the sole benefit of) the community spouse, as defined in section 1921(h)(2), or the individual's child who is blind or permanently and totally disabled;

"(C) a satisfactory showing is made to the State (in accordance with any regulations promulgated by the Secretary) that (i) the individual intended to dispose of the resources either at fair market value, or for other valuable consideration, or (ii) the resources were transferred exclusively for a purpose other than to qualify for medical assistance; or

"(D) the State determines that denial of eligibility would work an undue hardship.

"(3) In this subsection, the term 'institutionalized individual' means an individual who—

"(A) is an inpatient in a hospital, skilled nursing facility, or intermediate care facility, and

"(B) is required, as a condition of receiving services in such institution under the State plan, to spend for costs of medical care all but a minimal amount of the individual's income required for personal needs.

"(4) A State may not provide for any period of ineligibility for an institutionalized individual due to transfer of resources for less than fair market value except in accordance with this subsection.".

(c) CONFORMING AMENDMENT.—Section 1902(a) (42 U.S.C. 1396a(a)) is amended—

(1) in paragraph (10)(C)(i)(III), by striking "the same" each place it appears and inserting "no more restrictive than the";

(2) by striking "and" at the end of paragraph (47);

(3) by striking out the period at the end of the paragraph (48) and inserting "; and", and

(4) by inserting after paragraph (48) the following new paragraph:

"(49)(A) meet the requirements of section 1921 (relating to protection of community spouses), and (B) meet the requirement of section 1917(c) (relating to transfer of assets)."; and

(6) by adding at the end the following new sentence: "For purposes of paragraph (10), methodology is considered to be 'no more restrictive' if, using the methodology, additional individuals may be eligible for medical assistance and no individuals who are otherwise eligible are made ineligible for such assistance.".

(d) STUDY OF MEANS OF RECOVERING COSTS OF NURSING FACILITY SERVICES FROM ESTATES OF BENEFICIARIES.—The Secretary of Health and Human Services shall study the means for recovering amounts from estates of deceased medicaid beneficiaries (or the estates of the spouses of such deceased beneficiaries) to pay for the medical assistance for skilled nursing facility or intermediate care facility services furnished, under title XIX of the Social Security Act, to such medicaid beneficiaries. The Secretary shall report to Congress, not later than December 31, 1988, on such means, and include appropriate recommendations for changes in legislation.

(e) EFFECTIVE DATE.—(1) Except as provided in paragraphs (2) and (3), the amendments made by this section shall apply to payments under title XIX of the Social Security Act for calendar quarters beginning on or after January 1, 1988, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act.

(3)(A) Subsection (c) of section 1921 of the Social Security Act (as inserted by subsection (a)) shall apply only to institutionalized individuals who begin continuous periods of institutionalization on or after January 1, 1988.

(B) The amendments made by subsection (b) shall apply with respect to resources transferred on or after January 1, 1988.

REID AMENDMENT NO. 1047

Mr. REID proposed an amendment to amendment No. 1046 proposed by Ms. MIKULSKI (and others) to the bill (S. 1127) supra; as follows:

At the end of section 1921(b) of the Social Security Act, as added by the amendment, insert the following new paragraph:

"(3) SPECIAL INCOME ATTRIBUTION FOR INSTITUTIONALIZED SPOUSES IN CERTAIN STATES.—In determining the income of an institutionalized spouse at the time of application for benefits under this title, in the case of any community property State that does not provide coverage under the State plan for medically needy individuals, the amount of income considered to be available to such spouse shall be an amount equal to ½ of the combined income of such spouse and the community spouse."

GRAHAM (AND OTHERS) AMENDMENT NO. 1048

Mr. GRAHAM (for himself, Mr. DODD, Mr. DURENBERGER, Mr. CHAFEE, Mr. GORE, and Mr. MELCHER) proposed an amendment, which was subsequently modified, to the bill (S. 1127) supra; as follows:

On page 82, strike "qualified" on line 1 and all that follows through "cancer" on line 2 and insert in lieu thereof "qualified services for the prevention of illness or injury".

On page 82, lines 3 and 4, strike "examinations" and insert in lieu thereof "services".

On page 82, strike lines 5 through 20 and insert in lieu thereof the following:

"(4)(A) A service that is provided with respect to an individual covered by the insurance program under part B shall be treated as a 'qualified service for the prevention of illness or injury' if—

"(1) the service is—

"(I) glaucoma screening by tonometry,

"(II) cholesterol screening,

"(III) an exfoliative cytology (Papanicolaou) test for the detection of cervical cancer,

"(IV) a mammogram for the detection of breast cancer,

"(V) an immunization or a booster for tetanus, influenza, or bacterial pneumonia,

"(VI) a test of the stool for occult blood, or

"(VII) tuberculosis sensitivity testing;

"(ii) the service has not been provided to the individual during the preceding 12 months; and

"(iii) the service is performed as part of or pursuant to an examination that meets the requirements of subparagraph (B).

"(B) An examination meets the requirements of this subparagraph if the examination—

"(i) is performed by a physician;

"(ii) includes where appropriate (as determined under guidelines established by the Secretary) a comprehensive review of past medical history, family and genetic history, social history, current medical problems and treatments, immunization history, and organ system functioning; and

"(iii) meets such other requirements as the Secretary may by regulation prescribe (including requirements to ensure a comprehensive approach for preventive health services).

"(C) Not later than January 1, 1989, the Secretary shall establish appropriate utilization guidelines for the services described in subparagraph (A)(i).".

PRYOR (AND OTHERS) AMENDMENT NO. 1049

Mr. PRYOR (for himself, Mr. DOMENICI, Mr. CHILES, Mr. SASSER, Mr. SARBANES, Mr. TRIBLE, Mr. WARNER, Mr. MCCAIN, Mr. GORE, Mr. BURDICK, Ms. MIKULSKI, Mr. STEVENS, Mr. MATSUNAGA, Mr. BINGAMAN, Mr. MOYNIHAN, Mr. PELL, Mr. HOLLINGS, Mr. LEVIN, Mr. WIRTH, Mr. DURENBERGER, Mr. INOUYE, Mr. CONRAD, Mr. ADAMS, Mr. GLENN, Mr. FOWLER, Mr. HEINZ, Mr. DECONCINI, Mr. GRASSLEY, Mr. BREAUX, Mr. BUMPERS, Mr. GRAHAM, Mr. BENTSEN, Mr. CHAFEE, Mr. ROTH, Mr. HEFLIN, Mr. WILSON, Mr. ROCKEFELLER, and Mr. D'AMATO) proposed an amendment to the bill (S. 1127) supra; as follows:

On page 90, line 19, insert "adjusted" before "Federal income".

On page 91, line 2, strike "$1.08" and insert in lieu thereof "$1.09".

On page 95, after line 24, insert the following:

"(2)(A) For purposes of this section, the term 'adjusted Federal income tax liability' means an amount equal to Federal income tax liability, reduced by the excess (if any) of—

"(i) 15 percent of the lesser of—

"(I) the qualified social security exclusionary amount, or

"(II) the amount received as an annuity (whether for a period certain or during 1 or more lives) under a governmental plan (as defined in the first sentence of section 414(d) of the Internal Revenue Code of 1986) which is includible in gross income under section 72 of such Code for the taxable year, over

"(ii) the amount of the credit allowable under section 22 of such Code for such taxable year.

"(B)(i) For purposes of subparagraph (A)(i)(I), the term 'qualified social security exclusionary amount' means the excess (if any) of—

"(I) $6,000 ($9,000 in the case of individuals described in subsection (b)(4)(C)), over

"(II) the social security benefits (as defined in section 86(d) of the Internal Revenue Code of 1986) received during the taxable year.

"(ii) For any taxable year beginning after December 31, 1988, each dollar amount contained in clause (i)(I) shall be increased by an amount equal to—

"(I) such dollar amount, multiplied by

"(II) the cost-of-living adjustment determined under section 215(i) for the calendar year in which the taxable year begins.

On page 96, line 1, strike "(2)" and insert in lieu thereof "(3)".

STEVENS (AND OTHERS) AMENDMENT NO. 1050

Mr. STEVENS (for himself, Mr. Pryor, Mr. Roth, Mr. Melcher, Mr. Inouye, Mr. Trible, Mr. Sasser, Mr. Warner, Mr. Bingaman, Mr. Bentsen, Mr. Durenberger, Mr. Heflin, and Mr. Grassley) proposed an amendment to the bill (S. 1127) supra; as follows:

On page 125, strike out line 3, and insert in lieu thereof the following:

SEC. 21. RATE REDUCTION FOR MEDICARE ELIGIBLE FEDERAL EMPLOYEES.

(a)(1) The Office of Personnel Management shall, in consultation with carriers offering health benefits plans contracted pursuant to section 8902 of title 5, United States Code, reduce the rates charged medicare eligible individuals participating in such health benefit plans, by the amount, prorated for each covered medicare eligible, of the estimated cost of medical services and supplies which, but for the catastrophic coverage benefits (as defined in section 1839(g)(2)(C)(i) of the Social Security Act, as added by section 5(a) of this Act) would have been payable by such plans.

(2) The reduced rates as provided under paragraph (1), shall apply as of the effective date of the medicare catastrophic coverage as provided under section 23(a).

(b) Authorization of Availability of Employee Health Benefits Fund for Rate Reduction.—Funds in the Employees Health Benefits Fund established under section 8909 of title 5, United States Code, are available without fiscal year limitation for costs incurred by the Office of Personnel Management in making rate reductions provided under this section.

(c) Definition.—For purposes of this section the term "medicare eligible individual" means any annuitant, survivor of an annuitant, or former spouse of an annuitant—

(A) who is—

(i) otherwise eligible for benefits under Chapter 89 of title 5, United States Code;

(ii) eligible for benefits under part A of title XVIII of the Social Security Act; and

(iii) covered by the insurance program established under part B of such title; and

(B) for whom benefits paid under title XVIII of the Social Security Act are the primary source of health are benefits.

SEC. 22. STUDY AND REPORTS BY THE OFFICE OF PERSONNEL MANAGEMENT ON OFFERING MEDICARE SUPPLEMENTAL PLANS TO FEDERAL MEDICARE ELIGIBLE INDIVIDUALS, AND OTHER PROGRAM CHANGES.

(a) Study and Report.—(1) No later than April 1, 1989, the Director of the Office of Personnel Management shall conduct a study and submit a report to the Committee on Governmental Affairs of the Senate and the Committee on Post Office and Civil Service of the House of Representatives regarding changes to the health benefits program established under chapter 89 of title 5, United States Code, that may be required to incorporate plans designed specifically for medicare eligible individuals an to improve the efficiency and effectiveness of the program.

(2) Any medicare supplemental plan recommended by the Director of the Office of Personnel Management shall not duplicate benefits for which payment may be made under title XVIII of the Social Security Act, however such recommendation—

(A) shall cover expenses which are not payable under such title by reason of deductibles of coinsurance amounts; and

(B) may offer additional reimbursement—

(i) where benefits under such title are limited by fee schedule; and

(ii) for benefits not covered under such title which may be of value of medicare eligible individuals.

(b) Feasibility Study and Report.—No later than April 1, 1989, the Director of the Office of Personnel Management shall report to the appropriate committees of the Congress whether it is feasible to adopt such standards as issued by the National Association of Insurance commissioners as required by section 1882 of the Social Security Act (42 U.S.C. 1395ss) for medicare supplemental policies, when providing medicare supplemental plans as a type of health benefits plan available for Federal employees pursuant to chapter 89 of title 5, United States Code.

SEC. 23. EFFECTIVE DATES.

On page 56, immediately before line 1, strike out

"Sec. 21. Effective dates." and insert in lieu thereof:

Sec. 21. Rate reduction for Medicare eligible Federal employees.
Sec. 22. Study and reports by the Office of Personnel Management on offering medicare supplemental plans to Federal Medicare eligible individuals, and other program changes.
Sec. 23. Effective dates.

On page 127, line 6, strike out "(20)" and insert in lieu thereof "(21)".

ROTH (AND OTHERS) AMENDMENT NO. 1051

Mr. ROTH (for himself, Mr. Wallop, and Mr. McCain) proposed an amendment to the bill (S. 1127) supra; as follows:

On page 88, line 3, strike "Supplementary" and all that follows through "Hospital" on line 4, and insert in lieu thereof "Catastrophic Health".

On page 88, line 12, strike "Supplementary Medical" and insert in lieu thereof "Catastrophic Health".

On page 88, line 14, strike "transferred" and all that follows through the period on line 15, and insert in lieu thereof "that are attributable to the changes under sections 2(a), 3(a), and 7(b) of the Medicare Catastrophic Loss Prevention Act of 1987 in services performed and related administrative costs incurred in such calendar year with respect to individuals who are covered under the insurance program established by part A).".

On page 89, strike lines 3 through 13 and insert in lieu thereof the following:

(b) Transfers to Catastrophic Health Insurance Trust Fund.—Section 1841 is amended by adding at the end the following:

"(j) There shall be transferred from time to time from the Trust Fund to the Federal Catastrophic Health Insurance Trust Fund amounts from the premiums under this part that are attributable to the changes under sections 2(a), 3(a), 4, and 7(b) of the Medicare Catastrophic Loss Prevention Act of 1987 in services performed and related administrative costs incurred in a calendar year.".

On page 96, line 8, strike "Supplementary Medical" and insert in lieu thereof "Catastrophic Health".

On page 97, insert after line 23 the following new section:

SEC. 6A. ESTABLISHMENT OF FEDERAL CATASTROPHIC HEALTH INSURANCE TRUST FUND.

Title XVIII is amended by adding at the end thereof the following new section:

"FEDERAL CATASTROPHIC HEALTH INSURANCE TRUST FUND

"Sec. 1890. (a) There is hereby created on the books of the Treasury of the United States a trust fund to be known as the "Federal Catastrophic Health Insurance Trust Fund' (hereinafter in this section referred to as the 'Trust Fund'). The Trust Fund shall consist of such gifts and bequests as may be made as provided in section 201(i)(1) and amounts transferred to it in accordance with sections 1841(j) and 1839(e).

"(b) The provisions of subsections (b) through (i) of section 1841 shall apply to the Trust Fund in the same manner as they apply to the Federal Supplementary Medical Insurance Trust Fund.

"(c) Notwithstanding any other provision of this title, all payments under this title for benefits payable by reason of the enactment of the amendments made by sections 2(a), 3(a), 4, and 7(b) of the Medicare Catastrophic Loss Prevention Act of 1987 shall be made from the Trust Fund.".

WALLOP (AND HELMS) AMENDMENT NO. 1052

Mr. WALLOP (for himself and Mr. Helms) proposed an amendment to the bill (S. 1127) supra; as follows:

On page 56, strike lines 5 and 6 and insert in lieu thereof the following:

"SCOPE OF BENEFITS FOR CERTAIN INDIVIDUALS COVERED UNDER PARTS A AND B".

On page 56, line 10, strike "shall" and insert in lieu thereof "(and who is an individual described in section 1890(a)) shall".

On page 57, line 4, strike "may" and insert in lieu thereof "(and who is an individual described in section 1890(a)) may".

On page 60, strike lines 1 and 2 and insert in lieu thereof the following:

"SCOPE OF BENEFITS FOR INDIVIDUALS COVERED UNDER PART A ONLY AND CERTAIN INDIVIDUALS COVERED UNDER PARTS A AND B".

On page 60, line 6, strike "shall" and insert in lieu thereof "(or who is covered by such program but is not an individual described in section 1890(a)) shall".

On page 61, line 6, strike "may" and insert in lieu thereof "(or who is covered by such program but is not an individual described in section 1890(a)) may".

On page 62, line 16, strike "in" and all that follows through the period on line 19 and insert in lieu thereof "(or who are covered by such program but are not individuals described in section 1890(a)) in the same manner and to the same extent as those provisions apply to individuals who are covered under both such programs (and who are individuals described in such section).".

On page 66, strike lines 17 and 18 and insert in lieu thereof the following:

"DEDUCTIBLES AND COINSURANCE FOR CERTAIN INDIVIDUALS COVERED UNDER PARTS A AND B".

On page 66, line 22, strike "during" and insert in lieu thereof "(and who is an individual described in section 1890(a)) during".

On page 68, lines 4 and 12, strike "shall" and insert in lieu thereof "(and who is an individual described in section 1890(a)) shall".

On page 71, strike lines 12 and 13 and insert in lieu thereof the following:

"DEDUCTIBLES AND COINSURANCE AMOUNTS FOR INDIVIDUALS COVERED UNDER PART A ONLY AND CERTAIN INDIVIDUALS COVERED UNDER PARTS A AND B".

On page 71, line 18, strike "shall" and insert in lieu thereof "(or who is covered by such program but is not an individual described in section 1890(a)) shall".

On page 72, line 22, strike "shall" and insert in lieu thereof "(or who is covered by such program but is not an individual described in section 1890(a)) shall".

On page 73, line 6, strike "shall" and insert in lieu thereof "(or who is covered by such program but is not an individual described in section 1890(a)) shall".

On page 73, line 14, strike "in" and all that follows through the period on line 16 and insert in lieu thereof "(or who are covered by such program but are not individuals described in section 1890(a)) in the same manner and to the same extent as those provisions apply to individuals covered under both such programs (who are individuals described in such section 1890(a)).".

On page 74, line 23, strike "in" and insert in lieu thereof "(and who is an individual described in section 1890(a)) in".

On page 75, line 20, strike "part B," and insert in lieu thereof "part B (or who is covered by such program but is not an individual described in section 1890(a)),".

On page 76, line 5, strike "shall" and insert in lieu thereof "(and who is an individual described in section 1890(a)) shall".

On page 76, line 13, strike "in" and insert in lieu thereof "(or who is covered by such program but is not an individual described in section 1890(a)) in".

On page 77, line 24, strike "entitlement" and insert in lieu thereof "with respect to an individual described in section 1890(a), entitlement".

On page 81, line 3, strike "incurs" and insert in lieu thereof "(and who is an individual described in section 1890(a)) incurs".

On page 81, line 19, strike "that" and insert in lieu thereof "(and who is an individual described in section 1890(a)) that".

On page 82, line 7, strike "shall" and insert in lieu thereof "(who is an individual described in section 1890(a)) shall".

On page 85, line 25, strike "shall" and insert in lieu thereof "(and who are individuals described in section 1890(a)) shall".

On page 87, line 1, strike "shall" and insert in lieu thereof "(and who are individuals described in section 1890(a)) shall".

On page 87, line 22, strike "for" and insert in lieu thereof "(and will be individuals described in section 1890(a)) for".

On page 88, line 5, strike "to" and insert in lieu thereof "to such".

On page 90, line 3, strike "and".

On page 90, line 5, strike the period and insert in lieu thereof "; and".

On page 90, between lines 5 and 6, insert the following new subparagraph:

"(C) is an individual described in section 1890(a).".

On page 90, line 11, strike "part," and insert in lieu thereof "part (and was an individual described in section 1890(a)),".

On page 94, line 19, strike "for" and all that follows through the period on line 21, and insert in lieu thereof "(and was an individual described in section 1890(a)) for the longer period during the taxable year (or if such period is the same for both spouses, either spouse).".

On page 94, line 24, strike "part," and insert in lieu thereof "part (and are individuals described in section 1890(a) during such year),".

On page 97, line 8, strike "for" and insert in lieu thereof "(and is an individual described in section 1890(a) of such Act) for".

On page 97, line 11, strike "months" and all that follows through "coverage" on line 12, and insert in lieu thereof "number of months".

On page 97, lines 14 and 16, strike "of coverage".

On page 98, line 14, strike "part B," and insert in lieu thereof "part B (and who is an individual described in section 1890(a)),".

On page 101, between lines 3 and 4, insert the following new section:

SEC. 9A. ELECTION TO RECEIVE CATASTROPHIC COVERAGE BENEFITS.

Title XVIII is amended by adding at the end thereof the following new section:

"ELECTION TO RECEIVE CERTAIN BENEFITS UNDER PARTS A AND B

"Sec. 1890. (a) An individual is described in this section for any period of time in which the individual elects in accordance with subsection (b) to pay the appropriate monthly catastrophic coverage premium amount under section 1839(g) and (if required for such individual) applicable supplemental premium under section 1839A.

"(b)(1) An election made under subsection (a) shall be made under procedures established by the Secretary and (subject to paragraph (2)) shall be effective with respect to any calendar year beginning after the date on which the election is made.

"Sec. 1882. (k) Nothing in this Title shall be construed as to prohibit the offering of a medicare supplemental policy which provides benefits that duplicate any benefits provided by any sections of this Title which requires voluntary participation."

WEICKER AMENDMENT NO. 1053

Mr. WEICKER proposed amendment to the bill (S. 1127) supra; as follows:

On page 113, between lines 16 and 17 insert the following new section:

SEC. 14A. REQUIREMENT OF COVERAGE UNDER STATE MEDICAID PLANS FOR CERTAIN CHILDREN WITH EXTRAORDINARY EXPENSES FOR MEDICAL AND REMEDIAL CARE.

(a) State Plan Requirement.—Section 1902(a)(10)(A)(i) (42 U.S.C. 1396a(a)(10)(A)(i)) is amended—

(1) by striking "or" at the end of subclause (II),

(2) by striking the semicolon at the end of subclause (III) and inserting in lieu thereof ", or", and

(3) by adding at the end thereof the following:

"(IV) who is a qualified disabled child (as defined in section 1905(r);".

(b) Definition.—Section 1905 (42 U.S.C. 1396d) is amended by adding at the end thereof the following:

"(r)(1) The term 'qualified disabled child' means an individual who—

"(A) has not attained 21 years of age,

"(B) has an acute and chronic disabling mental or physical condition (whether congenital or acquired), and

"(C) with respect to whom the family of such individual has incurred expenses for medical care or remedial care in a year that are equal to 10 percent of the family's countable income.

"(2) In the case of a family with more than one child that meets the requirements of subparagraphs (A) and (B) of paragraph (1), subparagraph (C) of such paragraph shall be applied by substituting '12½ percent' for '10 percent' in clause (i) and by substituting '$13,000' for '$10,000' in clause (ii).

"(3)(A) For purposes of paragraph (1), except as provided in subparagraph (B), a family's countable income for a year shall be an amount equal to the sum of the adjusted gross incomes of family members for the most recently completed taxable year.

"(B) For purposes of paragraph (1), in the case of a child the family of which can demonstrate to satisfaction of the State agency that the family's countable income for a year will be substantially less than its adjusted gross income for the most recently completed taxable year, the family's countable income shall be determined on the basis of the family's estimated income for the year involved.

"(C) For purposes of paragraph (1), in the case of a child that is eligible for medical assistance under a provision of this title other than section 1902(a)(10)(i)(A)(IV), the family income of the child shall, for purposes of this subsection, be determined on the basis of the same methodology that is applied in determining eligibility under such other provision.

"(4) For purposes of paragraph (1), the term 'medical care' shall have the meaning given to such term in section 213(d)(1) of the Internal Revenue Code of 1986, and an expense shall be treated as having been incurred for medical care if such expense is allowable as an expense paid for such care for purposes of section 213 of such Code (or would be allowable but for the limitation contained in subsection (a) of such section).

(c) Benefits.—

(1) Section 1902(a)(10) (42 U.S.C. 1396a(a)(10)) is amended, in the matter following subparagraph (E)—

(A) by striking "and" before "(IX)", and

(B) by inserting before the semicolon at the end the following: ", (X) the medical assistance made available to individuals described in section 1905(r)(1) shall, subject to subsection (p), include the care and services described in paragraphs (1) through (21) of section 1905(a), and the making available of such care and services to such individuals shall not, by reason of this paragraph (10), require the making available of such care and services, or the making available for such care and services in such amount, duration, and scope, to any individuals not described in such section, and (XI) in the case of individuals described in section 1905(r)(1), the care and services specified in paragraphs (1), (2)(A), and (5) of section 1905(a) shall be made available without limitation on the number of days or the number of visits, and the making available of such care and services to such individuals in such amount, scope, and duration shall not, by reason of this paragraph (10), require the making available of such care and services in the same amount, duration, and scope to any individuals not described in such section".

(2) Section 1902 is further amended—

(A) by redesignating the subsection (l) added by section 3(b) of the Employment Opportunities for Disabled Americans Act as subsection (o) and transferring such subsection after and below subsection (n), and

(B) by adding at the end thereof the following new subsection:

"(p)(1) The care and services provided to an individual described in section 1905(r)(1) shall be provided pursuant to a plan of care (for providing such care and services to such individual) that is established and periodically reviewed by a multidisciplinary care coordination team, in cooperation with the individual and his or her parents, a physician, a hospital discharge planner or social worker, a visiting nurse, and a representative of the agency administering or supervising the administration of the the program (established by the State under title V of this Act) for providing services for children with special health care needs. Such plan shall be coordinated, to the maximum extent practicable, with any individualized education program or individualized family service plan established with respect to the individual under the Education of the Handicapped Act.

"(2) The plan of care established with respect to an individual pursuant to paragraph (1) shall be based upon the early and periodic screening and diagnosis of the individual (in accordance with section 1905(a)(4)(B)) and shall specify—

"(A) the care and services (described in paragraphs (1) through (21) of section 1905(a)) that are required by the individual,

"(B) the frequency and duration of such care and services,

"(C) the setting or settings in which such care and services may appropriately be provided.".

(d) Federal Medical Assistance Percentage.—Section 1905(b) (42 U.S.C. 1396d(b)) is amended by adding at the end the following new sentence: "Notwithstanding the first sentence of this subsection, the Federal medical assistance percentage shall be 90 percentum with respect to amounts expended as medical assistance for individuals described in section 1905(r)(1).".

(e) Maintenance of Effort.—Section 1902(a) (42 U.S.C. 1396a(a)) is amended—

(1) by striking the period at the end of the paragraph (47) added by section 9407(a) of the Omnibus Budget Reconciliation Act of 1986 and inserting in lieu thereof a semicolon,

(2) by striking the period at the end of the paragraph (47) added by section 11005(b) of the Anti-Drug Abuse Act of 1986 and inserting in lieu thereof "; and",

(3) by redesignating the paragraph (47) added by section 11005(b) of the Anti-Drug Abuse Act of 1986 as paragraph (48) and transferring such paragraph after and below paragraph (47), and

(4) by adding at the end thereof the following:

"(49) provide that, for the 60-month period beginning on October 1, 1987—

"(A) the standards for determining eligibility under the plan are no more stringent than the standards in effect on May 27, 1987,

"(B) if medical assistance is included under the plan for any group of individuals on May 27, 1987, the plan will continue to include medical assistance for such group during such period, and

"(C) the medical assistance included under the plan for any such group during such period is not less in amount, duration, or scope, than the medical assistance provided for such group under the plan on May 27, 1987.".

(f) Conforming Changes.—

(1) Section 1902(a)(17) (42 U.S.C. 1396a(a)(17)) is amended by inserting "and section 1905(r)" after "subsection (l)(3)".

(2) Section 1903(f)(4) (42 U.S.C. 1396b(f)(4)) is amended by striking "section 1902(a)(10)(A)(ii)(IX) or" and inserting "subsection (a)(10)(A)(i)(IV) or (a)(10)(A)(ii)(IX) of section 1902 or".

(g) Related Technical Amendment with respect to Waivers for Home and Community-Based Services.—Section 1915(c)(3) (42 U.S.C. 1396n(c)(3)) is amended by striking "and section 1902(a)(10)(B) (relating to comparability)" and inserting in lieu thereof ", section 1902(a)(10)(B) (relating to comparability), and section 1902(a)(10)(C)(i)(III) (relating to single standard for income and resource eligibility)".

(h) Effective Date.—

(1)(A) Except as provided in subparagraph (B), the amendments made by this section shall be effective for calendar quarters beginning on or after October 1, 1987, and before October 1, 1992.

(B) The amendment made by subsection (g) shall be effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1986.

(2) The Secretary of Health and Human Services shall provide for a continuing study, during the period for which the amendments made by this section are effective (as specified in paragraph (1)), of the populations to which medical assistance is provided by reason of such amendments, of the cost effectiveness of providing medical assistance to such populations, and of the socioeconomic implications of providing such assistance. The study shall be conducted by the Secretary, in consultation with appropriate specialists. The Secretary shall report to the Congress annually on the progress of the study, and, not later than April 1, 1992, shall submit to the Congress recommendations with respect to the desirability and feasibility of extending the period for which such amendments are effective, together with any changes in law that the Secretary deems appropriate better to effectuate the purposes of such amendments.

MELCHER (AND BRADLEY) AMENDMENT NO. 1054

Mr. MELCHER (for himself and Mr. Bradley) proposed an amendment to the bill (S. 1127), supra; as follows:

At the appropriate place in the Bill, insert the following new section:

SEC. . STUDY OF ADULT DAY CARE SERVICES.

(a) Survey of Current Adult Day Care Services.—The Secretary of Health and Human Services shall conduct a survey of adult day care services in the United States to collect information concerning—

(1) the scope of such services and the extent of their availability;

(2) the characteristics of entities providing such services;

(3) licensure, certification, and other quality standards that are applied to those providing such services;

(4) the cost and financing of such services; and

(5) the characteristics of the people who use such services.

(b) Report.—The Secretary shall report to Congress, by not later than 1 year after the date of the enactment of this Act, on the information collected in the survey. Based on such information, the Secretary shall include in the report recommendations concerning appropriate standards for coverage of adult day care services under medicare, including defining chronically dependent individuals, defining services included in adult day care services, establishing qualifications of providers of adult day care services, and establishing a reimbursement mechanism.

(c) Adult Day Care Services Defined.—In this section, the term "adult day care services" means medical or social services provided in an organized nonresidential setting to chronically impaired individuals who are not inpatients in a medical institution.

HELMS AMENDMENT NO. 1055

Mr. HELMS proposed an amendment to the bill (S. 1127) supra; as follows:

Add at the end of the bill the following new section:

"Sec. . Sense of the Senate Opposing New Taxes.

It is the sense of the Senate that the American taxpayer is already overburdened and that, notwithstanding perceived economic problems associated with trade imbalances and budget deficits, federal tax rates should not be increased in any manner whatsoever, whether direct or indirect, and no new federal taxes should be created; *provided, further,* that any discussions between the President and Members of Congress concerning the Federal deficit or other economic issues should not entertain any propositions which incorporate any increase in any individual or corporate tax rate or include the addition of any new tax on the already overburdened American taxpayer"."

BRADLEY AMENDMENT NO. 1056

Mr. BRADLEY proposed an amendment to the bill (S. 1127) supra; as follows:

At the end of the bill insert the following new section:

SEC. TREATMENT OF GARDEN STATE HEALTH PLAN.

(a) Section 1903 (m) of the social Security Act (42 U.S.C. 1396b(m)) is amended—

(1) by adding at the end the following new paragraph: "(6)(A) For purposes of this subsection and section 1902 (e)(2)(A), in the case of the State of New Jersey, the term 'contract' shall be deemed to include an undertaking by the State agency, in the State plan under this title, to operate a program meeting all requirements of this subsection.

"(B) The undertaking described in subparagraph (A) must provide—

"(i) for the establishment of a separate entity responsible for the operation of a program meeting the requirements of this subsection, which such entity may be a subdivision of the State agency administering the State plan under this title;

"(ii) for separate accounting for the funds used to operate such program;

"(iii) for setting of the capitation rates and any other payment rates for services provided in accordance with this subsection using a methodology satisfactory to the Secretary designed to ensure that total Federal matching payments under this title for such services will be lower than the matching payments that would be made for the same services, if provided under the State plan on a fee for service basis to an actuarially equivalent population; and

"(iv) that the State agency will contract, for purposes of meeting the requirement under section 1902 (a)(30)(C), with an organization or entity that under section 1154 of the Social Security Act reviews services provided by an eligible organization pursuant to a contract under section 1876 of the Social Security Act for the purpose of determining whether the quality of services meets professionally recognized standards of health care.

"(C) The undertaking described in subparagraph (A) shall be subject to approval and annual re-approval by the Secretary in the same manner as a contract under this subsection."

"(D) The undertaking described in subparagraph (A) shall not be eligible for a waiver under section 1915(b)."; and

(2) by striking out, in paragraph (2)(F), all that precedes "may restrict the period" and inserting instead the following:

"(F) In the case of—

"(i) a contract with an entity described in subparagraph (G) or with a qualified health maintenance organization (as defined in section 1310(d) of the Public Health Service Act) which meets the requirement of subparagraph (A)(ii), or

"(ii) a program operated pursuant to an undertaking described in paragraph (6) in which at least 25 percent of the membership enrolled on a prepaid basis are individuals who (I) are not insured for benefits under part B of title XVIII or eligible for benefits under this title, and (II) (but only in the case of such individuals whose prepaid payments are made in whole or in part by any government entity) had the opportunity at the time of enrollment in the program to elect other coverage of health care costs that would have been paid in whole or in part by any government entity.

A State plan".

(b) Section 1902(e)(2)(A) (42 U.S.C. 1396a(e)(2)(A)) is amended by striking out "section 1903(m)(2)(G)" and inserting instead "paragraph (2)(G) or (6) of section 1903(m)".

THURMOND (AND DOMENICI) AMENDMENT NO. 1057

Mr. THURMOND (for himself and Mr. DOMENICI) proposed an amendment to the bill (S. 1127) supra; as follows:

At the appropriate place, insert the following new section:

SEC. . DELAY IN ORGAN PROCUREMENT REQUIREMENTS.

Section 9318(b) of the Omnibus Budget Reconciliation Act of 1986, as amended by section 107(c) of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987, is amended by striking "November 21, 1987" each place it appears and inserting in lieu thereof "December 31, 1988".

WILSON AMENDMENT NO. 1058

Mr. WILSON proposed an amendment to the bill (S. 1127) supra; as follows:

On page 112, line 10, strike "and".

On page 112, line 14, strike the period and insert in lieu thereof ", and".

On page 112, between lines 14 and 15, insert the following new subparagraph:

(C) in the case of any State that provides coverage under section 1902(a)(10)(E) of such Act to qualified medicare beneficiaries up to an income level of 100 percent of the line described in section 1905(p)(2)(A) of such Act and provides under the State plan for a maintenance needs monthly income level for community spouses of institutionalized individuals of not less than $550 per month, to increase opportunities for elderly individuals to participate in adult day health care and other community-based services.

WILSON (AND McCAIN) AMENDMENT NO. 1059

Mr. WILSON (for himself and Mr. McCAIN) proposed an amendment to the bill (S. 1159) supra; as follows:

On page 101, insert between line 23 and line 1 on page 102 the following new section:

SEC. 10A. PROTECTION OF MEDICARE BENEFICIARIES ENROLLED IN AN ELIGIBLE ORGANIZATION WITH A RISK-SHARING CONTRACT AGAINST CERTAIN PRACTICES.

(a) NOTICE TO MEDICARE BENEFICIARIES.—

(1) Section 1876(c)(3) of the Social Security Act (42 U.S.C. 1395mm(c)(3)) is amended by adding at the end thereof the following new subparagraph:

"(F)(i) Each eligible organization having a risk-sharing contract under this section shall notify individuals eligible to enroll with the organization under this section and individuals enrolled with the organization under this section that—

"(I) the organization is authorized by law to terminate or refuse to renew the contract, and

"(II) termination or nonrenewal of the contract may result in termination of the enrollments of individuals enrolled with the organization under this section.

"(ii) The notice required by clause (i) shall be included in—

"(I) any materials described in subparagraph (C) that are distinguished by an eligible organization to individuals eligible to enroll under this section with the organization, and

"(II) any explanation provided to enrollees by the organization pursuant to subparagraph (E).".

(2) The amendments made by paragraph (1) shall apply to contracts entered into (or renewed) on or after the date of the enactment of this Act.

(b) CIVIL MONEY PENALTIES AND INTERMEDIATE SANCTIONS FOR ELIGIBLE ORGANIZATIONS WITH RISK-SHARING CONTRACTS. —

(1) Section 1876(i)(6) of the Social Security Act (42 U.S.C. 1395mm(i)(6)) is amended to read as follows:

"(6)(A) Any eligible organization with a risk-sharing contract under this section that willfully—

"(i) fails substantially to provide medically necessary items and services that are required (under law or under the contract) to be provided to an individual covered under the contract, if the failure has adversely affected (or has a substantial likelihood of adversely affecting) the individual, is subject to a civil money penalty of not more than $25,000,

"(ii) charges an individual covered under the contract a greater premium than is permitted under this section, is subject to a civil money penalty of not more than $2,000 plus double the excess amount charged (and the excess amount charged shall be deducted from that penalty and returned to the individual),

"(iii) acts to expel or to refuse to re-enroll an individual in violation of the provisions of this section, is subject to a civil money penalty of not more than $15,000, for each incident,

"(iv) engages in any practice that would reasonably be expected to have the effect of denying or discouraging enrollment with the organization (except as permitted by this section) by eligible individuals whose medical condition or history indicates a need for substantial future medical services, is subject to a civil money penalty of not more than $100,000, plus $15,000 for each individual consequently not enrolled, or

"(v) misrepresents or falsifies enrollment information that is furnished to the Secretary, to an individual, or to any other entity, or enrolls an individual without the individual's knowledge or consent or after making a material inducement to the individual, is subject to a civil money penalty of not more than $15,000 for each incident (or, in the case of enrollment information furnished to the Secretary, not more than $100,000 for each incident).

"(B) The provisions of section 1128A (other than subsections (a) and (b)) shall apply to a civil money penalty under subparagraph (A) in the same manner as they apply to a civil money penalty under that section.

"(C) If the Secretary determines that an eligible organization has committed any of the violations specified in subparagraph (A), the Secretary, in addition to, or instead of, imposing a civil money penalty, may provide for the suspension of enrollment of individuals under this section or of payment to the organization under this section for individuals newly enrolled with the organization, after the date the Secretary notifies the organization of the violation.".

(2) The amendment made by paragraph (1) shall become effective at the end of the fourteen-day period beginning on the date of the enactment of this Act and shall not apply to administrative proceedings commenced before the end of such period.

DURENBERGER AMENDMENT NO. 1060

Mr. DURENBERGER proposed an amendment to the bill (S. 1127) supra; as follows:

At the appropriate place, insert the following new section:

SEC. EXCLUSION FROM GROSS INCOME FOR AMOUNTS WITHDRAWN FROM INDIVIDUAL RETIREMENT PLANS FOR LONG-TERM CARE INSURANCE PREMIUMS.

(a) IN GENERAL.—Subsection (d) of section 408 of the Internal Revenue Code of 1986 (relating to tax treatment of distributions from individual retirement plans) is amended by adding at the end thereof the following new paragraph:

"(7) DISTRIBUTIONS FOR QUALIFIED LONG-TERM CARE INSURANCE PREMIUMS.—

"(A) IN GENERAL.—No amount (which but for this paragraph would be includible in the gross income of the payee or distributee under paragraph (1)) shall be included in gross income during the taxable year if—

"(i) the payee or distributee has attained age 59½ on or before the date of the distribution, and

"(ii) the distribution is used during such year to pay premiums for any qualified long-term care insurance policy for the benefit of the payee or distributee or the spouse of the payee or distributee if such spouse has attained age 59½ on or before the date of the distribution.

"(B) DOLLAR LIMITATION.—

"(i) IN GENERAL.—The amount excluded from gross income under subparagraph (A) shall not exceed $2,000 ($1,000 in the case of a separate return by a married individual).

"(ii) COST-OF-LIVING ADJUSTMENT.—The Secretary shall adjust the dollar amounts under clause (i) for taxable years beginning in calendar years after 1988 in the same manner as under section 1(f), except that only increases in the medical component of the Consumer Price Index shall be taken into account.

"(C) QUALIFIED LONG-TERM CARE INSURANCE POLICY.—For purposes of subparagraph (A)—

"(i) IN GENERAL.—Subject to clause (ii), the term 'qualified long-term care insurance policy' means an insurance policy or rider, issued by a qualified issuer, and certified by the Secretary of Health and Human Services (in accordance with procedures similar to the procedures prescribed in section 1882 of the Social Security Act (42 U.S.C. 1385ss) used in the certification of medicare supplemental policies (as defined in subsection (g)(1) of such section)) to be advertised, marketed, offered, or designed to provide coverage—

"(I) for not less than 12 consecutive months for each covered person,

"(II) on an expense incurred, indemnity, or prepaid basis,

"(III) for 1 or more medically necessary, diagnostic services, preventive services, therapeutic services, rehabilitation services, maintenance services, or personal care services, and

"(IV) provided in a setting other than acute care unit of a hospital.

"(ii) COVERAGE SPECIFICALLY EXCLUDED.—Such term does not include any insurance policy or rider which is offered primarily to provide any combination of the following kinds of coverage:

"(I) Basic Medicare supplement coverage.

"(II) Basic hospital expense coverage.

"(III) Basic medical-surgical expense coverage.

"(IV) Hospital confinement indemnity coverage.

"(V) Major medical expense coverage.

"(VI) Disability income protection coverage.

"(VII) Accident only coverage.

"(VIII) Specified accident coverage.

"(IX) Specified accident coverage.

"(X) Limited benefit health coverage.

"(D) QUALIFIED ISSUER.—For purposes of subparagraph (A), the term 'qualified issuer' means any of the following:

"(i) Private insurance company.

"(ii) Fraternal benefit society.

"(iii) Nonprofit health corporation.

"(iv) Nonprofit hospital corporation.

"(v) Nonprofit medical service corporation.

"(vi) Prepaid health plan."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1987.

HEINZ AMENDMENT NO. 1061

Mr. DURENBERGER (for Mr. HEINZ) proposed an amendment to the bill (S. 1127) supra; as follows:

On page 125, between lines 2 and 3, insert the following new section:

SEC. 20A. TRANSITIONAL PROVISIONS.

Part B of title XVIII is amended by inserting after section 1839A the following:

"TRANSITIONAL PROVISIONS

"SEC. 1839B. (a) Notwithstanding any other provision of this Act—

"(1) the monthly catastrophic drug benefit premium amount shall in no event exceed—

"(A) for 1990, $0.90; and

"(B) for 1993, $4.05,

"(2) for calendar year 1990, section 1839(g)(3)(A)(i) shall be applied by substituting '40 percent' for '50 percent', and section 1839A(b)(2)(B)(iii) shall be applied by substituting '60 percent' for '50 percent', and

"(3) for calendar year 1991, section 1839(g)(3)(A)(i) shall be applied by substituting '45 percent' for '50 percent', and section 1839A(b)(2)(B)(iii) shall be applied by substituting '55 percent' for '50 percent'.

"(b) Notwithstanding the provisions of section 1839(g)(3)(A)(i)(I), for any calendar year after 1990, if the Secretary determines that—

"(1) it is appropriate to increase the contingency fund under such section so as to assure a smooth transition between cash outlays accounting to costs incurred accounting over a multi-year period, and

"(2) the monthly catastrophic drug benefit premium amount for such year as determined under section 1839(g)(3)(A) (without regard to clause (ii) of such section) is less than the limit in such clause (ii),

the Secretary may increase such premium (but in no event above the limit in such clause (ii)) by an amount no greater than 15 percent of such premium. Once such transition has been completed, the Secretary shall maintain such contingency fund on the basis of such costs incurred accounting method. ".

MELCHER AMENDMENT NOS. 1062 AND 1063

Mr. MELCHER proposed two amendments to the bill (S. 1127) supra; as follows:

AMENDMENT No. 1062

On page 114, line 5, add after the comma "and determine whether such options would be effective as compared to public financing altenatives and would be beneficial to the broad spectrum of populations (including children and adults who have attained and have not attained retirement age) requiring protection,".

On page 114, line 14, insert ", quality of life provided, effect on family caregivers," after "effectiveness".

On page 114, line 17, strike "prevent the overutilization of such services, and" and insert in lieu thereof "assist beneficiaries and providers in preventing the overutilization of such services,".

On page 114, line 22, strike the period and inset in lieu thereof ", and".

On page 114, between lines 22 and 23, insert the following new subparagraph:

(F) review the sourcs of financing and the coverage of long-term care services in other developed nations and the implications of these findings on the development of similar policies in the United States.

On page 115, line 4, strike "and".

On page 115, strike lines 5 through 7 and insert in lieu thereof the following new subparagraphs:

(B) the impact of the various approaches to funding, both public and private, on access to long-term care services by individuals of all age groups (including children and adults who have attained and have not attained retirement age), individuals of different socioeconomic and minority groups, and women, and

(C) the effect that membership in these different groups has on the need, the ability to pay, and access to quality long-term care.

On page 116, line 9, after the period add "The study shall also consider the cost to the United States Treasury and the potential benefits to consumers, including whether the incentives would benefit all or most of the population requiring protection.".

On page 116, line 12 and 13, strike "and providers of long-term care" and insert in lieu thereof ", providers of long-term care, and consumers".

AMENDMENT No. 1063

On page 125, between lines 2 and 3, insert the following new section:

SEC. 20. AUTHORITY TO REDUCE DEDUCTIBLE FOR COVERED OUTPATIENT DRUGS.

(a) IN GENERAL.—Section 1833 (42 U.S.C. 13951) is amended by adding at the end thereof the following new subsection:

"(p) Notwithstanding any other provision of this subsection, if the Secretary determines that sufficient rvenue to pay all benefits and administrative costs, and to provide an adequate contingency margin (as determined by the Secretary) exists to do so, the Secretary may reduce the deductible under subsection (o)(1) to—

"(1) $500 in 1991;

"(2) $400 in 1992; and

"(3) $300 in 1993.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall become effective on the date of enactment of this Act.

CHILES (AND OTHERS) AMENDMENT NO. 1064

Mr. CHILES (for himself, Mr. STAFFORD, Mr. HEINZ, and Mr. BAUCUS) proposed an amendment to the bill (S. 1127) supra; as follows:

On page 125, between line 2 and 3, insert the following new section:

SEC. 20A. BENEFICIARY COSTS OF MEDICARE CATASTROPHIC INSURANCE.

(a) FINDINGS.—The Senate finds that—

(1) the enactment of Medicare catastrophic insurance will provide 32,000,000 Medicare beneficiaries with important and far-reaching protection against the catastrophic costs of illness and disability, greatly reducing out-of-pocket liability for those who unfortunately incur high medical expenses,

(2) new Medicare catastrophic insurance benefits will be financed through premiums collected from all Medicare beneficiaries,

(3) the Department of Health and Human Services has announced that Medicare part B premiums will increase by 38.5 percent on Jaunary 1, 1988, because of an increase in costs of the current Medicare part B program,

(4) Medicare beneficiaries already are liable for Medicare premiums equal to 2.9 percent of their median per capita income, and

(5) it is the responsibility of Congress to ensure that additional premiums incurred for catastrophic loss protection do not reach such levels as to unreasonably increase the out-of-pocket cost burden on Medicare beneficiaries.

(b) SENSE OF THE SENATE.—

(1) It is the sense of the Senate that conferees on the Medicare Catastrophic Loss Prevention Act of 1987 take all necessary steps to ensure that cost controls on new catastrophic benefits, particularly coverage of prescription drugs, are sufficient to protect program integrity, prevent escalation of costs, and reduce amounts required for premiums financing.

(2) It is the sense of the Senate that Senate conferees of the Medicare Catastrophic Loss Prevention Act of 1987 be instructed to take all feasible steps to minimize the beneficiary costs by keeping premi-

ums at the lowest possible levels, ensuring that year-to-year premium increase are gradual and predictable, ensuring that income-based supplemental premiums do not unduly burden middle-income older Americans, and ensuring that the combined basic and supplemental premiums do not exceed the value of the program to beneficiaries.

On page 127, after line 7, insert the following:

(7) Section 20A shall be effective on the date of the enactment of this Act.

CHILES (AND OTHERS) AMENDMENT NO. 1065

Mr. CHILES (for himself, Mr. HEINZ, and Mr. BAUCUS) proposed an amendment to the bill (S. 1127) supra; as follows:

On page 101, between lines 3 and 4, insert the following new section:

SEC. 9A. BENEFITS COUNSELING AND ASSISTANCE FOR CERTAIN MEDICARE AND MEDICAID BENEFICIARIES.

(a) TRAINING AND TECHNICAL ASSISTANCE.—

(1) The Secretary of Health and Human Services (referred to in this section as the "Secretary") may enter into agreements with private or public nonprofit agencies or organizations for the purpose of providing training and technical assistance to prepare volunteers to provide to elderly individuals receiving benefits under title XVIII or XIX of the Social Security Act counseling with respect to eligibility for such benefits and assistance in preparing such documentation as may be required to fully receive such benefits.

(2) In addition to any other forms of technical assistance provided under this subsection, the Secretary may provide—

(A) material to be used in making elderly persons aware of the availability of assistance under volunteer assistance programs under this section; and

(B) technical materials and publications to be used by such volunteers.

(b) POWERS OF THE SECRETARY.—In carrying out his responsibilities under this section, the Secretary is authorized—

(1) to provide assistance to organizations which demonstrate, to the satisfaction of the Secretary, that their volunteers are adequately trained and competent to render effective benefits counseling and assistance (as described in paragraph (1)) to the elderly;

(2) to provide for the training of such volunteers, and to assist in such training, to insure that such volunteers are qualified to provide benefits and counseling assistance (as described in paragraph (1)) to the elderly;

(3) to provide reimbursement to volunteers through such organizations for transportation, meals, and other expenses incurred by them in training or providing benefits counseling and assistance as he determines to be appropriate in carrying out the provisions of this section;

(4) to provide for the use of services, personnel, and facilities of Federal executive agencies and of State and local public agencies with their consent, with or without reimbursement therefor; and

(5) to prescribe such rules and regulations as he deems necessary to carry out the provisions of this section.

(c) EMPLOYMENT OF VOLUNTEERS.—

(1) Service as a volunteer in any program carried out under this section shall not be considered services as an employee of the United States. Volunteers under such a program shall not be considered Federal employees and shall not be subject to the provsions of law relating to Federal employment, except that the provisions of section 1905 of title 18, United States Code, shall apply to volunteers as if they were employees of the United States.

(2) Amounts received by volunteers serving in any program carried out under this section as reimbursement for expenses are exempt from taxation under chapters 1 and 21 of the Internal Revenue Code of 1986.

(d) DEFINITION.—For purposes of this section, the term "elderly individual" means an individual who has attained the age of 60 years.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for fiscal years after 1987 $2.5 million to carry out the provisions of this section.

CHILES (AND OTHERS) AMENDMENT NO. 1066

Mr. CHILES (for himself, Mr. SIMON, Mr. GRAHAM, Mr. MITCHELL, Mr. KERRY, Mr. BRADLEY, MR. STAFFORD, Mr. HEINZ, and Mr. MELCHER) proposed an amendment to the bill (S. 1127) supra; as follows:

On page 125, between lines 2 and 3, insert the following new section:

SEC. 20A. UNITED STATES BIPARTISAN COMMISSION ON COMPREHENSIVE HEALTH CARE.

(a) ESTABLISHMENT.—There is established a commission to be known as the United States Bipartisan Commission on Comprehensive Health Care (in this section referred to as the "Commission").

(b) DUTIES.—

(1) IN GENERAL.—The Commission shall—

(A) examine shortcomings in the current health care delivery and financing mechanisms that limit or prevent access of all individuals in the United States to comprehensive health care, and

(B) make specific recommendations to the Congress respecting Federal programs, policies, and financing needed to assure the availability of—

(i) comprehensive long-term care services for the elderly and disabled,

(ii) comprehensive health care services for the elderly and disabled, and

(iii) comprehensive health care services for all individuals in the United States.

(2) CONSIDERATIONS IN RECOMMENDATIONS.—In making its recommendations, the Commission shall consider—

(A) the amount and sources (consistent with principles of social insurance) of Federal funds to finance the needed services, including reallocations of existing Federal program funds, and

(B) the most efficient and effective manner of administering such programs.

(3) DEFINITIONS.—In this section:

(A) The term "comprehensive health care services" includes—

(i) inpatient hospital services (including mental health services);

(ii) skilled nursing facility services, intermediate care facility services, home health services, and other long-term health care services;

(iii) physician services and other outpatient health care services (including mental health services);

(iv) periodic general physical examinations, eye examinations, hearing examinations, dental examinations, foot examinations, and other preventive health care services; and

(v) prescription drugs, eyeglasses, hearing aids, orthopedic equipment, and dentures (both complete and partial).

(B) The term "comprehensive long-term care services" includes custodial and noncustodial services in facilities, as well as home and community-based services.

(c) MEMBERSHIP.—

(1) APPOINTMENT.—The Commission shall be composed of 15 members appointed as follows:

(A) The President shall appoint 3 members.

(B) The President Pro Tempore of the Senate shall appoint, after consultation with the minority leader of the Senate, 6 members of the Senate of whom not more than 4 may be of the same political party.

(C) The Speaker of the House of Representatives shall appoint, after consultation with the minority leader of the House of Representatives, 6 members of the House, of whom not more than 4 may be of the same political party.

(2) CHAIRMAN AND VICE CHAIRMAN.—The Commission shall elect a chairman and vice chairman from among its members.

(3) VACANCIES.—Any vacancy in the membership of the Commission shall be filled in the manner in which the original appointment was made and shall not affect the power of the remaining members to execute the duties of the Commission.

(4) QUORUM.—A quorum shall consist of 8 members of the Commission, except that 4 members may conduct a hearing under subsection e(1).

(5) MEETINGS.—The Commission shall meet at the call of its chairman or a majority of its members.

(6) COMPENSATION AND REIMBURSEMENT OF EXPENSES.—Members of the Commission are not entitled to receive compensation for service on the Commission. Members may be reimbursed for travel, subsistence, and other necessary expenses incurred in carrying out the duties of the Commission.

(d) STAFF AND CONSULTANTS.—

(1) STAFF.—The Commission may appoint and determine the compensation of such staff as may be necessary to carry out the duties of the Commission. Such appointments and compensation may be made without regard to the provisions of title 5, United States Code, that govern appointments in the competitive services, and the provisions of chapter 51 and subchapter III of chapter 53 of such title that relate to classifications and the General Schedule pay rates.

(2) CONSULTANTS.—The Commission may procure such temporary and intermittent services of consultants under section 3109(b) of title 5, United States Code, as the Commission determines to be necessary to carry out the duties of the Commission.

(e) POWERS.—

(1) HEARINGS AND OTHER ACTIVITIES.—For the purpose of carrying out its duties, the Commission may hold such hearings and undertake such other activities as the Commission determines to be necessary to carry out its duties.

(2) STUDIES BY GENERAL ACCOUNTING OFFICE.—Upon the request of the Commission, the Comptroller General shall conduct such studies or investigations as the Commission determines to be necessary to carry out its duties.

(3) COST ESTIMATES BY CONGRESSIONAL BUDGET OFFICE.—

(A) Upon the request of the Commission, the Director of the Congressional Budget Office shall provide to the Commission such cost estimates as the Commission determines to be necessary to carry out its duties.

(B) The Commission shall reimburse the Director of the Congressional Budget Office for expenses relating to the employment in the office of the Director of such additional staff as may be necessary for the Director to comply with requests by the Commission under subparagraph (A).

(4) DETAIL OF FEDERAL EMPLOYEES.—Upon the request of the Commission, the head of any Federal agency is authorized to detail, without reimbursement, any of the personnel of such agency to the Commission to assist the Commission in carrying out its duties. Any such detail shall not interrupt or otherwise affect the civil service status or privileges of the Federal employee.

(5) TECHNICAL ASSISTANCE.—Upon the request of the Commission, the head of a Federal agency shall provide such technical assistance to the Commission as the Commission determines to be necessary to carry out its duties.

(6) USE OF MAILS.—The Commission may use the United States mails in the same manner and under the same conditions as Federal agencies.

(7) OBTAINING INFORMATION.—The Commission may secure directly from any Federal agency information necessary to enable it to carry out its duties, if the information may be disclosed under section 552 of title 5, United States Code. Upon request of the Chairman of the Commission, the head of such agency shall furnish such information to the Commission.

(8) ADMINISTRATIVE SUPPORT SERVICES.—Upon the request of the Commission, the Administrator of General Services shall provide to the Commission on a reimbursable basis such administrative support services as the Commission may request.

(9) ACCEPTANCE OF DONATIONS.—The Commission may accept, use, and dispose of gifts or donations of services or property.

(f) REPORT.—

(1) REPORT ON COMPREHENSIVE LONG-TERM CARE SERVICES FOR THE ELDERLY AND DISABLED.—The Commission shall submit to Congress a report, not later than 6 months after the date of the enactment of this Act, containing its findings and recommendations regarding comprehensive long-term care services for the elderly and disabled. The report shall include detailed recommendations for appropriate legislative initiatives respecting such services.

(2) REPORT ON COMPREHENSIVE HEALTH CARE SERVICES.—The Commission shall submit to Congress a report, not later than 1 year after the date of the enactment of this Act, containing its findings and recommendations regarding comprehensive health care services for the elderly and disabled and comprehensive health care services for all individuals in the United States. The report shall include detailed recommendations for appropriate legislative initiatives respecting such services.

(g) TERMINATION.—The Commission shall terminate 30 days after the date of submission of the report required in subsection (f)(2).

(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $1,500,000 to carry out this section.

On page 127, after line 7, insert the following:

(7) Section 20A shall be effective on the date of the enactment of this Act.

NOTICES OF HEARINGS

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Mr. LEAHY. Mr. President, I wish to announce that the Committee on Agriculture, Nutrition, and Forestry will hold joint hearings with the Judiciary Subcommittee on Technology and the Law on the use and regulation of biotechnology in agriculture. They will be held in SR-332 on Wednesday, November 4, 1987, at 10 a.m. and Tuesday, November 19, 1987, at 10 a.m.

The first hearing will describe the science of biotechnology, suggest directions for its development and look at America's ability to compete and retain its leadership in its field. The second will focus on the regulations of biotechnology and our Nation's infrastructure for its research.

For further information, please contact Kathleen Merrigan of the Agriculture Committee staff at 224-5207.

AUTHORITY FOR COMMITTEE TO MEET

SUBCOMMITTEE ON HAZARDOUS WASTES AND TOXIC SUBSTANCES

SUBCOMMITTEE ON ENVIRONMENTAL PROTECTION

Mr. MITCHELL. Mr. President, I ask unanimous consent that the subcommittee on Hazardous Wastes and Toxic substances and the Subcommittee on Environmental Protection, Committee on Environment and Public Works, be authorized to meet during the session of the Senate on October 27, to conduct a joint hearing on the implications of the fall expedition to investigate the Antartic ozone hole on stratospheric ozone depletion.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON WATER RESOURCES, TRANSPORTATION, AND INFRASTRUCTURE

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Subcommittee on Water Resources, Transportation, and Infrastructure, Committee on Environment and Public Works, be authorized to meet during the session of the Senate on Tuesday, October 27, beginning at 2 p.m., to conduct a hearing on pending water resource projects of the Soil Conservation Service.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Energy and Natural Resources Committee be authorized to meet during the session of the Senate on Tuesday, October 27, 1987, to receive testimony on the status of the Department of Energy's efforts to address issues concerning the defense materials production reactors located in the United States.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON STRATEGIC FORCES AND NUCLEAR DETERRENCE

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Subcommittee on Strategic Forces and Nuclear Deterrence of the Committee on Armed Services, be authorized to meet during the session of the Senate on Tuesday, October 27, 1987, at 2 p.m. in closed and open session to receive testimony on defense nuclear safety matters.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Committee on Governmental Affairs be authorized to meet during the session of the Senate on Tuesday, October 27, to hold hearings on the subject of inventory control

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

TWENTY-FIFTH ANNIVERSARY MERCHANT/IVORY/JHABVALA

● Mr. MOYNIHAN. Mr. President, it is with the greatest pleasure that I rise today to note the outstanding achievement of not only brilliant artists but also endearing friends. Director Jim Ivory, producer Ismail Merchant, and screenwriter Ruth Prawer Jhabvala have, for now some 25 years, created, as a team, films of uncompromised beauty, of enduring vitality and of unparalleled quality.

The American Film Institute, celebrating its own 20th anniversary, has been honoring, for nearly 6 weeks, these three artistic collaborators with a restrospective of their work: Recognition which follows only months after receiving eight academy awards for their magnificent recreation of E.M. Forsters' "A Room With a View."

We are in luck. Another of their masterpieces has only recently been released. "Maurice," another of Forster's novels, captures the Merchant/Ivory tradition of precise loyalty to the author's word and, most importantly, to the emotional depth of the characters and their conflicts in Edwardian England. All of this is done for something on the order of $3½ million—another remarkable characteristic of their work. Brilliant filmmaking is their hallmark and this latest pleasure is as rich and as intriguingly beautiful as any before it—a fitting tribute to their 25 years together. Congratulations. I am honored to count my name among those who know and respect this wonderful collaborative team.

Mr. President, I ask that a letter written by Jean Firstenberg, director of the American Film Institute, and which appears in an anniversary bulletin produced by the AFI be printed in the Congressional Record.

The letter follows:

A Tribute to Merchant Ivory Productions From the American Film Institute

For 20 years The American Film Institute has nurtured and supported the art of the moving image in America, in an effort to ensure the recognition of the film and television arts as vital and central elements of American cultural life.

It is a happy serendipity that in its own 20th anniversary year The American Film Institute should honor and celebrate the 25th anniversary of one of the most enduring and most fruitful collaborations in film history—the partnership of Ismail Merchant, James Ivory, and Ruth Prawer Jhabvala.

By its very longevity, this partnership acknowledges one of the great truths of filmmaking, which director Robert Wise, Chairman of the AFI Center for Advanced Film and Television Studies, has stated so well: "Film is the most collaborative of all art forms. Film is not the sole inspiration of one individual nor the experience of any one contributor, but the sum of experience of all those who participate in a project."

Coming from distant points, contributing widely different backgrounds, Merchant, Ivory, and Jhabvala have forged an artistic union of remarkable achievement and formidable output. They are bound by a respect for each other and for the work itself. Whether they are adapting the novels of Henry James, E.M. Forster, of Jhabvala herself, they understand the integrity of the written word as well as the spoken; they respect the author as well as the actor; and their first concern, to quote Ismail Merchant, is always "to make the film as good as possible."

Merchant and Ivory visited the AFI campus in Los Angeles in April of 1986 to give a master seminar at the conservatory. In that seminar, during which they were characteristically frank and open about the nature of their work, Ivory offered the following: "I'd say that with our films we've pretty much done exactly what we wanted to do . . . we've done what we wanted to do in terms of story. And this has made our films rather cranky and individualistic, I suppose, and not particularly marketable really sometimes. And not perhaps of great interest to many, many people. But they have at least the merit of being ours and reflecting our own preoccupations, and also in a way kind of mirroring or reflecting our lives as we've lived them in different parts of the world. So in that way, the films as a group are kind of joint autobiography of the three of us. That's different."

This is the philosophy which quite clearly has continued to motivate and inspire their artistic union for 25 years. AFI Executive Committee Chairman and distinguished director Franklin Schaffner articulated perhaps the best coda on the subject of collaboration, when he addressed a recent graduating class at an AFI commencement ceremony, imploring the young filmmakers to "Respect collaboration. Collaboration is the life blood of the moving image. . . . Reject playing it safe and do what you do with passion."

It is with great pride that The American Film Institute salutes 25 years of passionate, provocative filmmaking in this complete retrospective of the films of Ismail Merchant, James Ivory, and Ruth Prawer Jhabvala on the silver anniversary of their esteemed partnership.

Jean Firstenberg,
Director, The American Film Institute.●

THE GREENHOUSE EFFECT

● Mr. DOMENICI. Mr. President, an environmental emergency is developing, an emergency with far greater dimensions than we have seen so far.

This problem knows no boundaries and affects citizens of the entire world. Consequently, any solution will require the cooperation of every nation.

I am, Mr. President, referring to the issue of a global warming trend, commonly referred to as the greenhouse effect.

We know, for example, that an increase in temperature of 1 °F has occurred in the last century. It appears that if that trend continues, it could have a significant effect on the climate and agriculture of the world.

Experts believe that a large part of the warming trend comes from carbon dioxide emissions—primarily from fossil fuel combustion. The United States and the Soviet Union together represent almost 50 percent of all carbon dioxide emissions in the world. Unless we begin now to review our future energy policy, with the intent of addressing this problem, I fear we could face dire consequences.

With this thought in mind, I would like to bring to the attention of the Senate an editorial and an article, both of which appeared in the Washington Post recently.

The article focuses on three reports recently published in Nature magazine by researchers who have established a link between carbon dioxide levels and temperature changes by studying 160,000-year-old ice samples. These researchers have found that during the last two times glaciers swept south as far as St. Louis and New York City there was a drop by 40 percent of carbon dioxide levels in the atmosphere.

This evidence appears to confirm concerns that have been raised by researchers for a number of years that increases in carbon dioxide emissions could cause significant change to the climate of the world.

The editorial questions our continued reliance on the burning of coal, gas, and oil and raises the possibility of the United States shifting to greater use of nuclear power.

The editorial points out that public sentiment in this country is still very much opposed to a shift to nuclear power. But it also points out that many of the safety issues raised in the past have received close scrutiny. It points out that the Calvert Cliffs nuclear plant, operated by Baltimore Gas & Electric Co., was recently visited by an international team of safety inspectors and received very favorable reviews.

Mr. President, it is this Senator's opinion that we must continue to address reactor safety issues in order to convince the citizens of this country that we can, and must, build safe nuclear power plants. With the best minds of the international community working together to resolve these issues, it can be done.

But if we fail to aggressively pursue this course, and continue to solely rely on the burning of fossil fuels, we will only move closer to the time when the greenhouse effect becomes so severe that we have created an irreversible environmental disaster.

Mr. President, I ask that copies of the Washington Post editorial and article be printed in the Record.

The material follows:

Visitors at Calvert Cliffs

For the past three weeks, an international team of 15 safety inspectors has been going carefully through the nuclear reactors at Calvert Cliffs, Md. The audit was organized by the International Atomic Energy Agency, and it's the first time that an American plant has invited this kind of visit. The IAEA has been running safety reviews of reactors for the past four years, but most of them have been in Western Europe. The disaster at Chernobyl last year has suggested to other governments that it might be no more than self-interest to give greater attention to safety standards worldwide and to try to establish the principle that all countries open their plants to these audits. An IAEA team is to go through a Hungarian reactor next year, and the Soviets have been discussing a similar review of one of their plants.

The Calvert Cliffs reactors, operated by Baltimore Gas and Electric Co., are among the best run of the American nuclear plants, and they are apparently coming out of this review well. Most of the IAEA team are Western Europeans, but there are several Eastern Europeans as well as a Canadian and a Korean—all under the chairmanship of a West German. Most are people who have been running reactors in their own countries.

The inspection team not only carries out its critique of operations and maintenance at Calvert Cliffs but learns something from a close acquaintance with a plant that is in most respects a model. As the IAEA continues these reviews throughout the world, it will ideally produce an international consensus on good practice that all countries accept.

There are two possible futures for nuclear power. One is that public opinion will increasingly resist building reactors as too dangerous. That is the way things seem to be going at present in most of the West—with some interesting exceptions. But it's conceivable that as anxieties increase in the next decade regarding damage to the atmosphere and change in the climate, people will begin to reflect on the dangers of total reliance on burning coal, gas and oil. At that point they may begin to reconsider the technologies that can generate power without creating carbon dioxide. Only one of them so far, is capable of operating on an industrial scale. If a smoky and overheating planet begins to turn back to reactors as an environmentally preferable power source, the precedents being set at Calvert Cliffs for raising safety standards and sharing experience may prove to be an important influence for public protection in the next century.

GLOBAL WARMING TIED TO EXCESS CARBON DIOXIDE

[From the Los Angeles Times]

French and Soviet scientists, using 160,000-year-old ice samples, have obtained the strongest evidence yet to link an increase in atmospheric carbon dioxide to the warming of Earth—the potentially catastrophic "greenhouse effect."

In three reports published in today's Nature magazine, the researchers said that carbon dioxide levels in the atmosphere dropped by 40 percent and global temperatures fell by about 18 degrees Fahrenheit the last two times that glaciers swept south as far as to St. Louis and New York City.

Carbon dioxide concentrations and surface temperatures then returned to normal as the glaciers retreated.

The reports appear to confirm fears that excess carbon dioxide released into Earth's atmosphere by the burning of fossil fuels would cause a greater global warming than has ever been observed, with harmful effects on climate and agriculture.

The carbon dioxide allows the sun's light to reach Earth's surface, but absorbs heat that would otherwise be radiated back into space, thus trapping heat, as in a greenhouse.

Climatologists estimate that the Earth's surface temperature has already increased by 0.5 to 1.25 degrees Fahrenheit since 1850. This summer, scientists from the National Oceanographic and Atmospheric Administration reported that this temperature increase has been accompanied by a northward shift of rainfall.

If the trend continues, according to a 1983 report by the National Academy of Sciences, agriculture in the southern United States will require massive irrigation just to maintain present levels of production.

"Scientists have theorized about the effects of carbon dioxide on climate since the 19th century," said geologist Eric T. Sundquist of the U.S. Geological Survey in Reston, "but there was little hard evidence to back the theory."

INFORMED CONSENT: UTAH

● Mr. HUMPHREY. Mr. President, today I bring to your attention a letter from a woman in Utah in support of my informed consent legislation. It is like the many other letters I have presented to this body in the past on this issue, in that it tells a tragic personal story of what happens when proper information is not presented to women considering abortion. Without having given true informed consent, these women end up facing effects from their abortion they were never prepared for—depression, nightmares, and sometimes even sterility.

The woman who wrote today's letter says that not only was she not provided with the proper information, she says she was even lied to during the counseling prior to her abortion. This is an intolerable situation, and must not be allowed to continue.

Therefore, Mr. President, I urge my colleagues to join in support of my informed consent legislation, S. 272 and S. 273. Simply put, these bills would require medical personnel to provide truthful and complete information about the effects, risks, and alternatives to women considering abortion.

I ask unanimous consent that the letter from Utah be inserted into the RECORD.

The letter follows:

DEAR SENATOR HUMPHREY: I am writing in regards to abortion.

Thirteen years ago I found myself pregnant, and in a very scared and confused state. I did not know that abortion is painful in many ways. I went to Planned Parenthood knowing of their reputation, but also hoping for help. The only help they gave me was to advise me to have an abortion, and that it could be performed in a matter of minutes. They didn't refer to my child as a baby. They said I wasn't far enough along for it to be considered a life. That was a lie.

It was never mentioned that an abortion was physically painful, or that it would scar me emotionally for the rest of my life. No one mentioned the complications I might suffer during future pregnancies, or that I might never be able to carry another child. Never were any alternatives mentioned, like the Crisis Pregnancy Centers located all over the United States.

It has taken years to forgive myself for taking another's life. I received the only real peace I could have when I asked the Lord Jesus to forgive me and use me any way he could to help others avoid the pain I have endured because of abortion. My prayer is that men in office, men like you, will have a conviction in their hearts for these babies that are being killed. My prayer is that men like you will take a stand and stop this sin of murder.

Sincerely,

DARLENE VALADEZ, *Utah.*

SENATOR WEICKER'S REMARKS AT YALE COMPREHENSIVE CANCER CENTER

● Mr. HATFIELD. Mr. President, on September 9, 1987, my distinguished colleague from Connecticut, Senator LOWELL P. WEICKER, JR., received a singular award. The Yale Comprehensive Cancer Center, at a commemorative colloquium to mark the centennial of the National Institutes of Health, awarded Senator WEICKER the first distinguished service award from the Cancer Institute.

I am not surprised by the center's decision to present this award to Senator WEICKER. In the many years I have served with him, particularly in our capacity as members of the Senate Appropriations Subcommittee on Labor H.H.S., Education, and Related Agencies, he consistently has endeavored to improve our Nation's ability to identify, to treat, and to prevent disease and ill-health. Toward that end, he has labored tirelessly to ensure that the country maintains the necessary commitment to the National Institutes of Health, including the Institutes' involvement in cancer research and support for cancer centers.

Mr. President, I raise this matter today to bring to the attention of the Senate this honor that has been bestowed upon our colleague and to commend to the Senate his remarks upon accepting the award. Accordingly, I ask that the introductory comments of Dr. Alan Sartorelli, the director of the Yale Comprehensive Cancer Center, and the remarks of Senator WEICKER be printed in the CONGRESSIONAL RECORD following my statement.

The remarks follow:

REMARKS OF DR. ALAN C. SARTORELLI, DIRECTOR OF THE YALE COMPREHENSIVE CANCER CENTER

The Yale Comprehensive Cancer Center is one of the 20 Comprehensive Cancer Centers in the United States designated by the National Cancer Institute. The region of responsibility for our Center is the State of Connecticut. As part of the national network of Comprehensive Cancer Centers we are committed to the NCI goals to reduce mortality from cancer by 50% by the year 2000. To contribute to the attainment of these goals, the Yale Comprehensive Cancer Center has major programs in basic and clinical research, in education, in patient care, and in addition has developed a major statewide program in cancer prevention that includes, in addition to Yale University, the University of Connecticut and the Connecticut Department of Health Services.

Today, at this important event to celebrate the 100th anniversary of the National Institutes of Health, we have chosen to present the first Distinguished Service Award of the Comprehensive Cancer Center, an award designed to honor a Connecticut resident who is not a scientist, whose accomplishments have made major impact in cancer research.

In selecting the recipient of the initial Distinguished Service Award, the Directorate of the Cancer Center overwhelmingly chose to honor our own great Senator, Lowell P. Weicker, Jr.

As most of you know, Senator Weicker was chairman of the Senate Appropriations Subcommittee on Labor, Health and Human Services, Education and Related Agencies from 1983 through 1986 and is presently the ranking minority member of this subcommittee.

During his tenure as chairman and currently as ranking minority member, Senator Weicker has championed the cause of the National Institutes of Health by repeatedly rejecting attempts by the administration to cut the NIH budget and has instead recommended significant increases in NIH funding, that were always approved by Congress and signed into law by the President. The NIH budget has increased from about $4 billion in fiscal year 1983 when he took over the chairmanship of the subcommittee to more than $6 billion in fiscal year 1987.

Senator Weicker was instrumental, just this year, in ensuring that funds appropriated for NIH in fiscal year 1987 would be spent in this year. You will recall, that the administration proposed delaying $334 million of NIH funding into the 1988 fiscal year, which would have created havoc for health research.

In response to an official request from Senator Weicker, the General Accounting Office determined that such a withholding constituted impoundment and, as you know, the administration has since released these funds.

Senator Weicker has been particularly interested in cancer research and just last year, for example, recommended an increase in cancer center funding which was approved by Congress and signed into law by the President. Because of his major impact on cancer research, as well as on all biomedical research, the Yale Comprehensive Cancer Center, representing the entire State of Connecticut, is pleased to present its Distinguished Service Award to Senator Lowell Weicker.

Senator, this plaque is one of a kind, in that it represents the bronzed mold that was used to develop all future awards. It consists of the Cancer Center logo that symbolizes the interactions between basic and clinical research that we believe are necessary to achieve the discoveries that will ultimately lead to the eradication of these dreaded diseases. The inscription reads: Yale Comprehensive Cancer Center Distinguished Service Award presented to Senator Lowell P. Weicker, Jr. in recognition of contributions to cancer research, 1987.

REMARKS OF SENATOR LOWELL WEICKER, JR., COMMEMORATIVE COLLOQUIUM TO MARK THE CENTENNIAL OF THE NATIONAL INSTITUTES OF HEALTH

Good morning. It's a pleasure to be with you. Gatherings such as this give us all a chance to pause and celebrate one of the most dramatic centuries in the history of man's progress.

Indeed, this history is so dramatic most Americans don't need a grand gathering of scientists and academicians to celebrate the dividends of a unique 100-year effort. Victories over disease and the mysteries of the cell, are celebrated nearly every week in the newspapers and on the television screens of this country as medical breakthroughs have gone from the miraculous to the methodical in laboratories across the nation.

As the world's single largest biomedical research entity, today's NIH stands as a monument to the nation's commitment to health for all Americans. Consider the advances in identifying the cause of Alzheimer's disease and in testing new drug therapies. Consider the recent discovery of a gene that may well trigger a form of mental depression. Consider the discoveries related to the herpes virus. And consider the years of federally sponsored research in molecular virology, particularly work on animal retroviruses that resulted in the ability of scientists to identify, isolate and clone the AIDS virus in just a few short years.

Any one of these complex and exciting subjects is grist for a speech in itself. And yet, as dramatic and varied as each of these tales would be, each would end with the same warning: the successes of today were built on commitments of yesterday. Today there is a withering of the health infrastructure of this nation that threatens future progress on every front of disease fighting. It should give us all worry in this happy year of NIH.

Let's look back at the roots of success to date.

One hundred years ago the United States faced a yellow fever epidemic without effective prevention and control measures. Health officials, also fearful of a cholera epidemic from overseas, sent a young American doctor, Joseph Kinyoun, to Europe to study with pioneers in microbiology. Upon Dr. Kinyoun's return in 1887, he set up a bacteriological laboratory in an attic room of the Marine Hospital Service on Staten Island, New York. His facility, called the Laboratory of Hygiene, was the forerunner to the NIH as we know it today.

For its first 50 years, the agency was a freestanding government laboratory carrying out infectious disease research projects with limited resources. In 1930 Congress broadened NIH's scope of responsibility with the virtually limitless mission of "ascertaining the cause, prevention and cure of disease." The modern era of NIH, as well as of biomedical research in the United States, began during World War II when the government formed a unique partnership with academia and industry to carry out biomedical research. That partnership is very much alive today. Just down the road in West Haven, the company MicroGenesys will soon begin testing the safety of an AIDS vaccine on human beings.

The research conducted through NIH has consistently demonstrated that new knowledge of biological processes is the foundation for all progress in the health sciences. Each new finding serves as a building block in our growing understanding of who we are and how we function. This is a point none can emphasize enough. But to achieve today's breakthroughs and subsequent headlines, America has used an infrastructure built decades ago. The greatest amount of basic research upon which scientists now rely was funded years ago, the laboratories and University facilities were built years ago and the commitment to training young scientists was made years ago. We are living off harvests of the past and we are eating the seed.

For example, the nation is now in apparent consensus concerning the AIDS fight. Congress has responded to the medical community's assessments with unprecedented commitments of money and resources. Few will oppose the call for adequate AIDS spending, but beneath the headlines about a redoubled federal commitment to AIDS, there is a vigorous attempt to gut basic research to pay for the AIDS increase. Whatever succor we have provided to AIDS victims in this scenario brings violence to the lives of those who suffer or will suffer from other diseases. The National Academy of Sciences pointed out recently, and I quote, "Increases for AIDS research must be newly appropriated, not money taken from other research because the nation's general health efforts as well as those directed against AIDS need continuing progress in basic biomedical sciences on a broad front."

This year as in past years, the advocates of those afflicted with a variety of diseases argued forcefully and in most cases successfully for renewed commitment to understanding biological mysteries that bring tragedy to thousands of lives. Millions of people read and heard with wonder this summer about the discovery of potentially powerful new infection fighting agents through experiments on frogs. The discovery by Dr. Michael Zasloff at NIH was and is dramatic; the kind of stuff that makes headlines. But behind these headlines, there is disturbing evidence that the facilities of NIH as indeed the facilities at Yale, the University of Connecticut, and every academic institution in the United States are in serious, system-wide decline. I can tell you that the Appropriations subcommittee where I serve as ranking member will soon report that (quote) "research is hampered by aging and obsolescent research facilities and instrumentation." In fact, the last NIH-wide appropriation for research facilities was in 1968. Ten years later, a survey of cancer research facilities conducted by the National Academy of Sciences found that more than a third of the nation's research facilities needed remodeling and nearly one-half needed additional space. An update of that study released in 1985 concluded that (quote) "since that time, the need has grown while federal support has declined."

It is difficult to be passionate about bricks and mortar, wires and computer chips. And the politicians recognize this. The sorry state of this nation's roads and bridges remained unchanged until death and destruction captures the public's attention. I don't need to belabor the point. The analogy is all too apparent.

Last week, the Institute of Medicine conducted a conference on promoting drug development against AIDS. Predictably, the headlines from the conference concerned the difficulty of finding a quick AIDS vaccine. But the comments of panelists centered on three key problems in the AIDS fight. One of these was maintaining adequate funding, but the panelists also contended that their work could only be sustained by adequate facilities and trained personnel. No person in his or her right mind having gone through an expensive education will expose themselves to the roller coaster of federal commitment to health research. Only sustained assistance in education and the prospect of consistent basic research support at the federal level will lure the best of our young men and women into all the needed levels of health professions.

The time has come for the political leadership of this nation to educate rather than placate the American people on these issues. The results of our best biomedical efforts are easily understood, because they mean a better life for all. But the components that bring these results—the bricks and mortars, the basic research and the training—are dull subjects, they are complex, and they are expensive. Planting the seeds for the breakthroughs of the future may not make headlines, but this is Job One for the politicians, the president and the Congress, Republican and Democrat. There is no more unerring measure of a nation's priorities than its budget. When the rhetoric is over, the dollars continue to talk and they speak with precision and eloquence. I sincerely hope the celebration of NIH will be one of dollars.

We cannot hope to remain in the forefront of medical breakthroughs if we do not have the proper tools. In the next few weeks Congress will be making some choices, we will call for a study to access the facility and instrumentation needs of the biomedical community and to recommend how these needs should be met and funded.

We will continue to fight for the money to train, new and existing scientists in research areas that will have high demand in the future. We know, for example, that by the year 2000, there will be approximately twice as many people in this country over the age of 85. Twice as many will be over 65 by the year 2020. We also know that by the end of 1991, AIDS will have killed an estimated 179,000 Americans. If we already have a good idea of what the future will bring in terms of the magnitude of AIDS and diseases associated with aging, then we should be doing everything in our power to prepare. That includes money to train more health professionals in geriatrics and to fund biomedical research that will reduce the affects of diseases associated with aging. That includes money to train a cadre of scientists in specialized techniques and procedures necessary to treat, prevent and ultimately cure AIDS.

I have tried to lay out a science policy for the future in this area. If that policy is based in fact and provides vision, then its supporters must realize there is a price to be paid. That is the task in the months ahead. I commend the efforts of individuals in this nation, Jerry Lewis with Muscular Dystrophy, Eunice Shriver and Special Olympics, Elizabeth Taylor for her articulation of the AIDS problem, and my neighbor Trish VanDervere Scott for her work with schizophrenia.

But nobody can carry the ball like the United States of America (that's all of us) if the job is to be done. It is a largely mundane and day to day process. But without it, there will be few headlines of hope to read in the 1990s and beyond.

Winning these sorts of battles is the best way I know to honor NIH. You have a large role to play in helping NIH continue to conquer disease and ignorance. Your chosen professions carry a degree of credibility virtually unmatched by the American people. As important as it is to use that credibility in the world of laboratories, hospitals and universities, it is equally important to use it in shaping public policy and national priorities.

Robert Kennedy, who was no scientist but who knew much about the way of the body politic, had a message appropriate to both endeavors. He said: "Each time a man stands up for an idea, or acts to improve the lot of others, or strikes out against injustice, he sends forth a tiny ripple of hope—and crossing each other from a million different centers of energy and daring, those ripples build a current that can sweep down the mightiest walls of oppression and resistance."

As men and women who understand the intricacies of disease, you can bridge the gap between science and the public. Armed with your special knowledge, you can replace fear with compassion, ignorance with understanding. For it is only then these ripples of progress become the steady currents of health for all Americans.

Thank you.●

COERCIVE POPULATION CONTROL IN CHINA

● Mr. HUMPHREY. Mr. President, the October 18, 1987, Sunday edition of the Washington Post carried an excellent article by Mr. Steven W. Mosher of the Asian Studies Center at the Claremont Institute. The article draws from Mosher's firsthand experience and recent trips to the region. It reveals once again the brutally coercive one child policy still practiced by the Communist Chinese.

I urge my colleagues to read this article carefully. I ask that the article be entered into the CONGRESSIONAL RECORD.

The article follows:

ONE FAMILY, ONE CHILD: CHINA'S BRUTAL BIRTH BAN—FOR CHINESE WOMEN, IT'S ABORTION OR STERILIZATION

(By Steven W. Mosher)

Like most women in rural China, Chen Guohan's wife wasn't content with the one child she was allowed under the state population plan. With her only child, a boy, set to enter primary school the following year and Chen himself, a truck driver, on the road much of the time, she wanted another baby at home.

Sitting in the living room of his modest house in Zhuhai, a Special Economic Zone (SEZ) in Guangdong Province designated for foreign investment, her husband recalled that he at first tried to dissuade her, reminding her of the fines, meetings and other pressures to which they would be subjected if she conceived a second child.

Chen's wife found a midwife who, for a fee of $20, stiff by Chinese standards, was willing to perform an illegal procedure: Remove the intrauterine device (IUD) that had been automatically inserted following the birth of her first child. After an anxious wait of several months, she became pregnant in September 1986.

By staying home most of the time, Chen's wife was able to hide her pregnancy from the population-control workers for several months. Her growing reclusiveness eventually made them suspicious, however, and they ordered her to go in for a pelvic examination.

Chen explained in blunt terms what that meant. "If the examination revealed that my wife was pregnant, they would order her to have an abortion." So, like millions of Chinese whose plans for a second child have aroused official ire, the Chens opted for "childbirth on the run." His wife would go to live with a cousin in a neighboring county until she gave birth.

Though Chen was expecting censure, he was taken aback by its intensity. Each day at work the vice director of his factory hounded him for information about his wife's whereabouts. Each evening at home he was visited by a birth-control delegation. After two months the factory director concluded that Chen could not be broken. He told the factory's dozen purchasing agents and sales representatives to make inquiries in the towns and villages of the surrounding district, promising a bonus to whoever located the missing wife. Chen's wife was found and brought back in February of this year. She was seven months pregnant.

The factory director ordered her confined to the factory dormitory. At least one member of the birth-control committee was with her at all times, badgering her to accept an abortion. Separated from her husband, too distraught to eat and sleep, she accepted the inevitable.

She was immediately taken to the local medical clinic and given an injection of an abortifacient drug. This shot, universally called a "poison shot" in China, causes the fetus to be born dead or dying 24 to 48 hours later. "They didn't even tell me she was in the clinic until they had already given her the shot," Chen ended ruefully.

The Chen's are only one of tens of millions of couples whose desire for another child has pitted them against a state bent on curbing China's population. The aggressive drive to enforce the "one couple, one child" limit intrudes on the intimate affairs of the family to a degree not seen in China since the Cultural Revolution.

Each year since 1980, the Chinese population-control program has prevented millions of births, scoring impressive statistical gains. For six years in succession, China has held its population increase rate to below 1.5 percent, less than half the Third World average. Its population currently stands at 1.057 billion.

I had been an eyewitness to the birth-control program in its opening stages in 1979 when I was living in a village in Guangdong province. From the beginning, Chinese officials painted themselves as driven by stark necessity. Unless a cap is put on the population, they argued, the country will remain mired in poverty for generations to come.

Although the quotas were to be met "voluntarily," the tone of the program was coercive from the first. In my village alone, 18 women resisted the two-child quota and were coerced into having abortions.

After leaving China in mid-1980, I published a detailed account of what I had seen. The Chinese authorities retaliated by branding me an "international spy" and charging that I had bribed officials. The Chinese did not deny the evidence of coercion, but claimed that it was a problem only in a few remote villages. Privately they demanded of Stanford University, where I was close to earning a doctorate in anthropology, that I be "dealth with severely." The university subsequently expelled me, citing an "erosion of the relationship of trust between faculty and student."

Chinese officials have consistently maintained that, despite the overzealousness of some control workers, eduction and criticism of the offending cadres has largely resolved the problem in recent years. "We oppose coercive measures of any kind," said Liang Jimin of the State Planning Commission at a June press conference in Beijing. "Even among women who are pregnant with a second child, not all will go for an abortion." Chinese Officials point to slightly higher birth rates in 1986 as evidence that strictures against second births have been relaxed.

Yet not everyone finds the official protests of increased "voluntarism" convincing. Skeptics include demographer John Aird, formerly chief of the China desk at the U.S. Bureau of the Census, who testified before Congress in February of this year that "the Chinese program remains highly coercive."

Such contradictions made me anxious to see for myself when I returned to China in June of this year. What, if any, changes had occurred in the program?

In Zhuhai, the booming SEZ where the Chen family lives, even illiterate peasant women understand what has seldom been clear to outside observers: The "one couple, one child" rule is not uniformly applied across China.

"In the villages," one woman, echoed by many others, said to me, "they sometimes let you have two children. Here in the SEZ they never let you have more than one. When they set up the SEZ a few years ago they made us all city people. They are much stricter with city people."

Just how strict "they" are is clear from Central Committee Directive No. 7. Promulgated in 1983 to clear up widespread confusion over the policy on childbirth, it reads: "All state officials, workers and employees, and urban residents, except for special cases which must be approved, may have only one child per couple. . . . Those women who have already given birth to one child must be fitted with IUDs, couples who already have two children must undergo sterilization of either the husband or the wife, and women pregnant outside of the plan must adopt remedial measures [i.e., abortion] as soon as possible."

The Chinese Communist Party thus explicitly forbade the 20 percent of the population that lives in the cities from having second children, except in rare circumstances.

When the SEZ was created in 1983, the villagers—accustomed to the more relaxed policies of rural China, where couples are allowed to have their first child when they choose and to apply for a second—rebelled. Repulsed in their effort to reeducate the population into accepting the new limits, local officials dropped all pretense of "voluntarism."

Villagers recalled 1984-85 as a chilling time, when expectant mothers cried for help as they were dragged out of their homes into waiting vans and cried for help as they were taken away. These vehicles became known as "pig basket vans," after the large wicker "pig baskets" in which pigs are carted to the slaughterhouse.

It was only last year that this assault on the family subsided. The "pig basket vans" can still be seen sitting behind district offices, but they have been put to other purposes. "Nearly all women of childbearing age have been sterilized," one population worker explained, "So there is no need to deal with them." Women who remain fertile are, for the most part, deterred by the example of couples like the Chens who have been forcibly brought to heel.

Even within the controlled confines of Zhuhai, however, there are occasionally still couples who manage to bring a second child to term. Wang Dahung and his wife work in a state-run retail store. As in the case of the Chens, Wang's wife paid a midwife to illegally remove her IUD and conceived a child. She was able, however to avoid agents sent to find her and had her baby delivered outside a hospital by a midwife.

The party committee of the department store, however, fined the Wangs 3,000 renminbi, an amount equivalent to two years income. Wang's monthly income was also slashed by more than two-thirds. He was allowed to retain his meager base income, but he forfeited his SEZ cost-of-living allowance, expense allowance, bonus and the chance to earn overtime pay. The Wangs have family members in Hong Kong willing to help with the bills, Mr. Wang told me; otherwise they would starve.

There is a final note to their story. Mrs. Wang, having borne a second child, was told that under the regulations she must be sterilized. This she steadfastly refused to do. So one day the "pig basket van" pulled up in front of her house. She was taken to the hospital against her will and given a tubal ligation. She was still in the hospital recovering from this unwanted operation when I spoke with her husband.

Outside of cities, towns and SEZs, the "one couple, one child" policy has never been a hard-and-fast rule. The 1983 directive called for population-control workers to refrain from imposing the one-child limit on peasant families, merely to "vigorously advocate" it as an ideal. In the countryside, especially in remote, impoverished or minority areas, permission to have a second child could be obtained. At the same time, the directive stressed that local targets for population growth must continue to be met.

Rural officials proved by and large incapable of making the fine distinctions drawn by the new policy. They interpreted "vigorous advocacy" to mean that heavy fines, lengthy reeducation sessions, threats of infanticide and incarceration were still acceptable. Under pressure to meet their assigned targets, they forced abortions and sterilizations on women who wanted second or third children.

Worried by rising rural discontent, the government further relaxed the policy of promoting one child in the countryside in late 1984. Couples facing "real difficulties," it was announced, could apply for permission to have a second child. The "real difficulties" in question were never clearly spelled out, but were widely understood to be those experienced if the first child was a girl: namely, that she could neither support her parents in their old age nor carry on the family name.

Exemptions from the one-child rule were not to be granted indiscriminately however. Local targets on population growth were to be respected. And the couples themselves had to meet several other conditions. More than four years had to have elapsed since the birth of their first child, and they had to agree in advance that one of their number, usually the woman, would be sterilized afterwards. Those women approved for a second child would, at the appropriate time, have their IUDs removed.

Once again local officials had been handed an ambiguous policy by the central party. In their reading of "vigorous advocacy" they had erred on the side of strictness and been criticized; now in their interpretation of "real difficulties" many erred on the side of laxity. Although perfectly ready to impose uniform rules, such as those governing the spacing of births and the timing of sterilization, they balked at assuming the divisive role of granting second children to some villagers while denying others. Instead, they gave license to all to conceive and bear a second child.

As large numbers of second-child exemptions were granted, China's birthrate rose from 18 to 21 per 1,000 in 1986. Now Peking is moving to limit the number of second births to 10 percent of first births. "Indiscriminate granting of exemptions is forbidden," Shanxi Party chief Zhang Boxing warned local officials on July 10. "If they are granted, the matter will be dealt with seriously. We must strictly ban the birth of a second or further child not covered by the plan." In rural China, the pendulum is once more swinging back towards the coercive.

THE 15TH ANNIVERSARY OF GATEWAY NATIONAL RECREATION AREA

● Mr. BRADLEY. Fifteen years ago today new legislation created the Gateway National Recreation Area. Through this action, the National Park Service and the Federal Government initiated a major commitment to recreation in an urban setting. Last year, there were some 9 million visitors to Gateway. Only the Golden Gate and Great Smoky Mountain Parks see greater numbers. Two million of these visitors came to Gateway's Sandy Hook Area in New Jersey and experienced its magnificent beaches.

Gateway's 26,000 acres offer so much to people of every economic and social background. In addition to its beautiful beaches, Gateway offers visitors a historic Federal fort built to protect New York Harbor, an exhibit of aviation history at Floyd Bennett Field, birdwatching and environmental education at the Jamaica Bay Wildlife Refuge, and much more. Sandy Hook, for instance, is home to the oldest operating lighthouse in North America. Gateway stands as an oasis in the midst of America's most densely populated and developed area. The sheer volume of visitors is proof enough of the public's recognition and appreciation of the park's magnetic quality. I have asked for funds to provide additional restroom and changing facilities at Sandy Hook to meet the needs of these many visitors, and I recognize that there is more to be done.

But today is a day to celebrate all that has already been accomplished. I congratulate the Park Service and its employees for their efforts to create recreational excellence in this urban environment. Let me assure both them and my constituents that I will do whatever I can to preserve Gateway for the millions who visit it each year.●

COUNTDOWN IN NICARAGUA

● Mr. SARBANES. Members and guests of the Woman's National Democratic Club were privileged not long ago to hear the Honorable Sol Linowitz discuss the situation in Central America and the future course of U.S. policy there. Few persons are better qualified than Ambassador Linowitz to address this complex issue. Distinguished lawyer, businessman, public servant and diplomat, with long experience in Latin and Central American affairs, he presented a thoughtful and realistic outline of the problems and opportunities which currently confront the United States in Central America. Ambassador Linowitz's analysis deserves consideration, and I ask that his remarks, entitled "Countdown in Nicaragua," be printed in the RECORD.

The remarks follow:

COUNTDOWN IN NICARAGUA

(By Sol M. Linowitz)

I am going to talk with you today about a troubling and troubled country called Nicaragua. I do so with a sense of urgent concern about American policy today and where we are heading.

I have for many years been involved in U.S.-Latin American relations in both official and unofficial capacities. Twenty years ago, as the Ambassador to the Organization of America States under President Lyndon Johnson, I had responsibility for organizing the hemisphere-wide Meeting of Presidents at Punta del Este, Uruguay—a meeting which held out so much hope and promise for enhanced cooperation in the Americas.

Ten years ago, President Carter's first National Security Council meeting produced the decision to negotiate a new treaty with Panama, and I was privileged to join the late Ambassador Ellsworth Bunker in bringing those new treaties into being.

In both of those capacities, I learned how much can be gained by working closely with our Latin American friends and neighbors to solve inter-American problems together rather than trying to go it alone.

During the past five years, I have been serving as Co-Chairman of the Inter-American Dialogue. The Dialogue is a non-governmental, non-partisan group of seventy concerned leaders from throughout the hemisphere who have been working together since 1982 to develop constructive approaches to key issues in inter-American relations. We will be meeting again in a few weeks and Nicaragua will be a major focus of our discussions as it has been over the past several years.

We are at a moment of countdown in Nicaragua. As you know, the Central American peace agreement crafted by President Arias of Costa Rica was signed by all five Central American presidents on August 7th. It allows Nicaragua and the other four governments 90 days within which to achieve a ceasefire in each of the region's conflicts and to take specified steps toward democratic change. During that same period, the United States must end its support for the contras battling the government of Nicaragua.

It is obviously still very uncertain whether these objectives can be achieved within the time established—by November 7th.

Clearly, the difficulties will be compounded if U.S. cooperation is not more forthcoming than it has been; so far, our support for the negotiations has been uncertain, at best. And the Administration has not yet confronted the pivotal question. What are we up to in Nicaragua and why?

Before undertaking to answer that question, it is important to step back and try to see the situation against the backdrop of some recent history.

For seven years Nicaragua has been torn by a bitter and bloody civil war. Thousands of Nicaraguans have been killed and wounded. Through 1986, the war took the lives of 17,000 people—equivalent to nearly 1½ million deaths for a country as large as the United States. Nicaragua's economy is today in shambles. More than half the national budget is now spent on defense while the country's productive capacity has deteriorated.

In 1982, an initiative was undertaken by then President of Colombia Belisario Bentancourt toward a Central American peace treaty to be signed by the five Central American countries—Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua. The initiative was backed by Colombia, Mexico, Panama and Venezuela, and took the name "Contadora" from the Panamanian island where it was launched.

In September 1984, the Contadora countries completed their first draft of a proposed Central American peace treaty. The treaty's security provisions prohibited foreign military bases, halted arms imports, and eliminated outside support for insurgent movements. There were also provisions for reducing the number of foreign military advisors as well as limiting the size and weaponry of the region's armed forces.

Nicaragua immediately announced its intention to sign the treaty, but objections were raised by Costa Rica, El Salvador and Honduras—and by the United States. Specifically, there were strong objections to the procedures proposed for monitoring and verification which were considered too vague.

In September 1985, the Contadora Foreign Ministers circulated a new draft treaty which included more detailed provisions for implementation, verification and enforcement. This time Nicaragua objected to certain terms and conditioned its signing of the Treaty on a halt of U.S. support of the contras.

After a suspension of negotiations, the Contadora countries once more resumed their effort in January 1986, this time with the backing of the so-called South American Support Group consisting of Argentina, Brazil, Peru and Uruguay. The Contadora and Support Group countries called for a series of actions to foster peace, including bilateral talks between the United States and Nicaragua, an end to support for insurrectional movements, and steps toward national reconciliation. A month later they repeated their appeal in Washington to the United States Secretary of State. There was, however, no progress toward implementation of these proposals, and the peace process came to a standstill.

That is where things stood until several weeks ago, when two promising peace plans burst upon the horizon. The first was the "Reagan-Wright" proposal of August 4th, issued by the President and supported by House Speaker Jim Wright. It provided for an end to military aid to both Nicaragua and the contras. It sought an immediate ceasefire and suspension of emergency law in Nicaragua, followed by negotiations to establish full civil rights and free elections. The indications were that Congress would be asked to resume contra aid if agreement was not reached by September 30.

Two days after the Reagan-Wright proposal was announced, the Presidents of the five Central American countries met in Guatemala City to consider the plan of President Arias of Costa Rica. That plan called for the opening of talks between governments and unarmed opposition groups, ceasefires in each of the region's conflicts, amnesties for combatants, and movement toward full democratic rights in the five Central American countries. Regular free elections would be held in all five nations. Military and other aid to insurgent forces would be suspended. Countries would not permit their territory to be used for armed action against their neighbors and negotiations would be initiated on reducing troop strength throughout the region. Agreement on these issues was to be reached by November 7th.

To the surprise of virtually everyone, the five Central American countries agreed to the Arias plan.

The Reagan and the Arias plans both represented promising steps toward an end to the region's conflicts. Both the United States and Nicaragua made important concessions. The United States declared its willingness to reach agreement with the Sandinista regime. The President insisted that Managua open its political system and respect the rights of its citizens—but no longer demanded that the Sandinistas dismantle their government. Nicaragua for its part undertook in the Arias agreement a commitment to political reform, and agreed to lift restrictions on freedom of expression and association and to hold free elections on a regular basis. And that's where we are today.

What should the United States do now?

Let's start by recognizing that from almost any perspective, Nicaragua has been a disappointment of United States policy. For years Americans have been concerned that a Marxist government has become entrenched on the mainland of North America. Many have also been troubled by apparent U.S. violations of international law in seeking to oust the government of a tiny Central American country. It is also deeply disturbing that U.S. policy and actions toward Nicaragua have divided Congress and the American people more than any other foreign policy issue since the Panama Canal treaty debates. Moreover, United States attention has been distracted from other pressing hemispheric problems, particularly the economic and financial crisis that continues to threaten all Latin America; U.S. policy has rekindled old suspicions about the United States among the nations of the region, and thus, in itself, has become a major obstacle to better U.S.-Latin American relations; it has made our allies in Europe uncomfortable; and it threatens more conflict and possible direct United States military involvement.

Let's acknowledge some unpleasant facts:

Nicaragua is today governed by a revolutionary movement, many of whose leaders are Marxist-Leninist. The Sandinista regime is hostile to the United States and has forged close ties to the Soviet Union and Cuba. The Sandinistas have encouraged revolutionary change and supported insurgent movements in Central America. The Sandinistas are not democrats; they have restricted civil liberties and violated human rights. Their prime commitment is to revolution and not to democratic pluralism.

These facts about Nicaragua must be faced. But so must another hard fact: The policy the United States has been pursuing has not effectively met the challenges posed by Nicaragua. It has surely not made Nicaragua more democratic, conciliatory, respectful of its neighbors, or independent of the Soviet bloc than it was when the Administration's policy was adopted; as a matter of fact, it has probably reinforced contrary tendencies. And by the Administration's own admission, its policy of supporting the contras has resulted in a greater build-up of Sandinista strength and military force.

Despite the emotional and divisive debate, there is, I believe, broad agreement in this country on what the central goals of United States policy toward Nicaragua should be: To assure that Nicaragua is not a threat to our national security or to the security of its neighbors; that Nicaragua not be allowed to establish a Soviet or Cuba strategic base or to introduce Soviet or Cuba forces on its territory; that Nicaragua not promote guerrilla activity in Central America; and that democracy and human rights be supported in Nicaragua.

The debate on United States policy toward Nicaragua has fundamentally centered on how these objectives are to be achieved. Do they require that the Sandinista government be removed from power—or can they be achieved through a negotiated settlement with the Sandinistas? Must the United States rid itself of the Nicaraguan regime—or is it sufficient that we be credibly and verifiably assured that Nicaragua will not provide military advantages to the Soviet Union or Cuba, will not try to overthrow other regional governments, and will not seek to export its revolution?

The Administration's policy over the years has assumed that our objectives can be achieved only by overthrow of the Sandinista government or by its surrender of power. With these goals in mind, the United States embarked on a policy of support for the contras, hoping that they would either be able to topple the Sandinista regime or would so weaken it as to cause it to give up power at the negotiating table.

But the Administration has refused to face one important fact: There is very little possibility that the contras will be able to defeat the Sandinistas militarily. And if that is the case and if we remain committed to our position—a large and costly U.S. military operation will ultimately be necessary.

Direct U.S. military intervention in Nicaragua would not necessarily mean another Vietnam. But neither would it be a replay of Grenada. It would probably involve thousands of U.S. and Nicaraguan casualties as well as the destruction of much of Nicaragua's economy. It might take years to bring peace to Nicaragua after a U.S. invasion.

Aside from its cost in human and material terms, such a move by the United States would grievously damage our relations with Latin America and imperil any hope of rebuilding a genuinely cooperative inter-American system. Moreover, opinion polls indicate that a military operation in Nicaragua would be nearly as unpopular and divisive in this country as in Latin America. It would certainly widen the rifts within the Congress and the country.

No sensible American wants this result. Nor do we want the opposite—a repeat of the Bay of Pigs—fighting in Nicaragua to the last contra, but then abandoning the movement to humiliation and defeat.

To put it simply, we have been pursuing a primarily military approach to what is essentially a political problem without enough force to win a military victory or enough strategy to develop a political solution.

Now in the Arias plan we have an opportunity to achieve a political solution to a political problem, and it deserves our support.

There are four concrete steps that I believe we should now take:

First, we should unequivocally accept the Arias plan as the framework for negotiations. That plan bears the signatures of all five Central American leaders. It has a claim to international standing and legitimacy that the unilateral U.S. proposal cannot match. Moreover, the United States should defer to the Central American countries in their effort to find peace. Such deference is consistent with longstanding U.S. policy, reaffirmed recently by Secretary of State George Shultz when he endorsed "regional discussions designed to find an agreement."

Second, the United States should become actively engaged in the search for peace. A U.S. negotiator in Central America should immediately be appointed by the President to replace Philip Habib. We should undertake to work with the Central American and Contadora states to strengthen procedures for monitoring and verifying compliance with a future treaty. We should also resume direct talks with the Sandinista leaders in Nicaragua to make certain they fully understand our concerns and intentions and to demonstrate that we are willing to abide by a regionally negotiated peace agreement, if they are as well. Our involvement in these ways would facilitate critical decisions by our allies by reassuring them of our commitment to a negotiated settlement. It might also help reassure the contras that their interests will not be abandoned.

Third, as negotiations proceed within the Arias framework, the United States should make sure that key security issues are given proper attention. The Arias plan, as it now stands, does not offer sufficient guarantees against Nicaragua's becoming a platform for Soviet or Cuban power, and hence a threat to the hemisphere's security. Indeed, it cannot do so, because the problem is the Soviet Union, not Nicaragua. Accordingly, the United States must make clear to Moscow and Havana that we will not tolerate Soviet-bloc troops or bases in Nicaragua and that we will use force if necessary to prevent their establishment or to have them removed. We should also make plain that U.S. troops would be ready to repel an attack by Nicaragua against any of its neighbors.

The Sandinistas must commit themselves to the security provisions of the draft Contadora treaty as called for in the Arias plan. These provisions, to which they have already agreed in principle, require Nicaragua and other Central American countries to reduce the size of their armed forces, limit their arms acquisitions, remove foreign military advisers, and end any support to insurgents elsewhere. The United States must work with other countries to make these provisions as precise as possible, and to make sure that effective monitoring and verification procedures are in place. There can be no lasting peace in Central America if the security concerns of the United States and all countries in the region are not satisfied.

Fourth, the United States should start working with countries of the region and with European and Latin American allies to implement a strategy for long-term development of Central America. It will take a Herculean effort for the region to recover from prolonged war, to resume economic growth, to improve social equity and, most important, to strengthen democratic politics. A steadfast American commitment, with appropriate resources, is essential to achieving these goals—which, in turn, will provide the best insurance against future Communist intrusion in Central America.

These steps will not be sufficient, in and of themselves, to bring a secure peace to Central America. Much will depend on the attitude of Nicaragua and its Eastern bloc allies—as well as on the diplomatic skills and persistence of other Central and Latin American countries. But, inevitably, what the United States says and does in the coming weeks and months will critically shape the course of negotiations. We can and should put the full weight of our influence behind this peace process that we assisted in launching—to help it succeed and to help it endure.

Can we have confidence that the Sandinistas would abide by the terms of such a treaty? It is important to recognize that such an agreement would provide for monitoring and surveillance procedures to verify compliance. And if Nicaragua should violate its treaty obligations, the United States could then deal with the situation as may then be deemed necessary—only this time with likely bipartisan backing in this country and with support from friends and allies in Latin America and Europe.

Could we rely on the Sandinistas to allow democratic freedom in their country even if they pledge to do so?

This question must be put into proper context.

Nicaragua has never been ruled democratically, and it will not become a full democracy from one day to the next.

If democracy is to take root and grow in Nicaragua, political alternatives to the ruling Sandinista movement must be strengthened within that country. And this is precisely what the Arias plan calls for: assurances that peaceful opposition groups have the necessary freedom and independence to operate effectively. In signing the plan, Nicaragua and the other Central American nations have made formal commitments to hold free, fair, and internationally observed elections; to provide constitutional guarantees for freedom of the press and assembly; and to assure that all constitutional parties will be able to compete for office without intimidation or impediment.

Progress toward greater freedom would be significantly facilitated if the war were ended, and Soviet and Cuban personnel withdrawn. The United States could then work closely with other Latin American and European democracies to maintain international pressure on the Sandinistas for democratic change. For example, we should be prepared to provide support to the Nicaraguan groups that are vital to democratic development—the church, democratic political parties, trade unions, and business and professional associations.

Democracy will not emerge full blown in Nicaragua overnight because of a treaty or a political formula. It will take time and persistent effort to build toward democracy in Nicaragua. The Arias plan is a good and promising start, if it is properly implemented. This is where our help and cooperation can make a vital difference.

As concerned Americans ponder what to do about Nicaragua, it is worth reflecting how much more difficult our problems there might be today if we had not, through intensive negotiations, finally settled the frustrating issue of the Panama Canal.

We have recently seen violence and internal turmoil in Panama. But if Panama were today still anguished by the dominating foreign presence in its midst—then the risks involved in our present course in Central America would be even more formidable. Because the Canal is no longer endangered by Panamanian national resentment, there is far less threat of a wider and more destructive war in Central America.

When the United States—under the administrations of both Gerald Ford and Jimmy Carter—sought to resolve the emotional Panama Canal controversy, it did so by patiently seeking a negotiated solution that could engage the shared interests of the world's greatest power and one of the smallest.

The diplomatic approach succeeded in Panama, despite widespread skepticism that a new treaty could be negotiated that would preserve the security interests of the United States. The treaties that did result have proved to be in the best interests of both countries. Even at this moment of turmoil in Panama, neither country seeks to jeopardize the treaties.

Nicaragua is not Panama, of course, and protecting our interests in Central America while the Sandinistas rule in Managua will not be easy. But the only way to succeed in negotiations is to start—and then to persist.

The ultimate test in Central America is not of our power, of our will, but rather of our judgment and perspective. It is time for the United States to commit itself to an approach that can protect our security and promote our values without expanding the risk of U.S. military intervention and increasing the destructiveness of Nicaragua's civil war.

The American people want a national policy toward Nicaragua that combines strength with restraint. The Administration and the Congress should be working together, to forge such a policy—one that is developed and implemented in cooperation with our Latin American friends and neighbors, rather than against their best judgment. In short, we need a policy that is credible, sustainable, supportable—and worthy of the greatest democracy on earth.

THE DEATH OF CLARE BOOTHE LUCE

● Mr. DODD. Mr. President, it is with sadness that I rise today in remembrance of a great American and a good friend, Clare Boothe Luce, who died earlier this month. Clare was a person unafraid to meet life's challenges head-on, and overcome any obstacles that might get in the way of her attaining a goal. She genuinely enjoyed living, and she had one of those rare rapier wits which charmed many and made mincemeat of those foolish enough to oppose her. Clare was a remarkable human being, and she leaves behind her many with fond memories of her life.

Clare Boothe Luce was a self-made woman. She never received an extensive formal education, but she became a literary success. She moved rapidly up the ladder of magazine publishing, working first at Vogue, then at Vanity Fair, where she quickly became managing editor. She satirized tycoons in a book, Stuffed Shirts, coining a new phrase, and she left her mark on Broadway, with several hits to her credit. Not content to stay in New York, she became a European correspondent for a news syndicate. And of course, she had a distinguished career as a Representative from Connecticut. She opposed totalitarianism in all its forms, and during World War II she went straight to the front, flew in a bomber and fired a howitzer. She saw first hand the bodies stacked like logs at Buchenwald. Later in life she served her country with distinction as Ambassador to Italy.

In all aspects of her life, Mr. President, Clare Boothe Luce demonstrated to what heights one could soar by dint of one's own efforts. Her wit, her energy, her charm, her drive, and her devotion to serving her country are examples to us all. To her stepsons Henry and Peter and their families I express my sincerest condolences. America joins you in your sadness. Clare Boothe Luce was a rare human being who can never be replaced, and who will be sorely missed.●

FRAUD OF THE DAY—PART 10

● Mr. HEINZ. Mr. President, today's fraud is somewhat different from its predecessors in that it does not explicitly show the necessity for a private right of action in order to combat customs fraud. It most certainly does, however, demonstrate the ability of companies engaging in fraud to use their corporate structure to avoid penalties that would have a major impact. And that suggests the need for an even broader range of tactics in attacking customs fraud.

In December, 1986, Ryusho America Corp., entered a guilty plea for filing entries which falsely declared the origin of steel pipe as Japanese. The steel pipe, actually manufactured in Thailand, was falsely marked, certified, and invoiced in order to make it appear that the country of origin was Japan. The motive of the importer was to circumvent a pending steel dumping order about to be imposed on steel pipe from Thailand. The corporate guilty plea was part of a joint criminal and civil settlement, involving both 18 U.S.C. 542 and 19 U.S.C. 1592, which included the corporation's agreement to pay $279,238.07 in civil and criminal penalties. This very specific amount represented all of the available assets of the importer, which has since ceased operation.

What is important about this fraud is that the parent company is Ryusho Steel Corp. of Osaka, Japan. This firm had sales of $400 million last year and does not appear to me to be flirting with imminent bankruptcy. This is a strong, healthy firm with significant annual steel sales. The result of our inability in cases like this to reach the parent corporation is that we allow a parent company to reap benefits obtained through customs fraud committed by its subsidiary without taking any substantial risks. The Ryusho parent company stood to gain significant profits from the fraud. It was discovered, and they paid a minimal penalty—the loss of a small subsidiary.

This case demonstrates one of the dilemmas of the fight against customs fraud—the penalties are often no more than a minor cost of doing business that is far less than the potential profit to be gained by committing the fraud. Even in this case, where the penalty was in one sense substantial, since it included all the importer's assets, it will not have a significant effect on the parent company that should bear the responsibility for the fraud. Obviously, we are faced with ingenious importers capable of developing diverse and complex schemes which can seriously injure our country. It is vital that we develop effective, multifaceted means to fight customs fraud in all of its manifestations. A private right of action is one of those means.●

RELATING TO TAX PROVISIONS ON PREFERRED STOCK ISSUED BY THRIFTS

● Mr. D'AMATO. Mr. President, I rise to bring to the attention of my colleagues a problem which has come to my attention affecting the recapitalization of the thrift industry. It relates to provisions included in the revenue raising section of the reconciliation package reported by the House and Senate tax writing committees.

The provisions included language which will limit the use of consolidated returns for tax purposes. These limitations apply if a consolidation includes a subsidiary with preferred stock outstanding if such stock is not owned by members of the affiliated company. The affiliated group or parent would be limited to consolidating only a pro rata share of income and loss of a less than wholly owned subsidiary. This provision would be effective for taxable years beginning after December 31, 1987. Unfortunately, this effective date means that limitations would apply to preferred stock already issued and outstanding.

Under this bill, a thrift institution, which established a subsidiary financed with an initial infusion of common stock by the thrift parent and which subsequently issued preferred stock, could not use the income of that subsidiary to offset the losses of the parent thrift. Under current law nonvoting preferred stock is not included for purposes of consolidation. This would effectively deny the use of the parent thrift institution's net operating losses [NOL's] to offset the income generated by the subsidiary. This provision would nullify the extension of the carryover period for NOL's of thrift institutions granted only last year under the Tax Reform Act of 1986.

Enactment of this provision as written would substantially alter the cost and ability of the thrift industry to complete the recapitalization of the industry through private investment. In view of the recent enactment of the Competitive Equality Banking Act [CEBA] with its increased capital requirements for thrift institutions and recapitalization provisions for the Federal Savings and Loan Insurance Corporation [FSLIC], I question the need to shut off a vehicle which provides thrifts a private, market route to increased capitalization.

Mr. President, why do thrift institutions use subsidiaries to raise funds with preferred stock and why cannot this function be performed directly in the parent thrift? The use of a subsidiary allows the thrift institution to access the capital markets at a much more favorable rate because the subsidiary is structured to receive a AAA rating and, therefore, can borrow more cheaply than the parent. This favorable borrowing rate is enhanced by the availability of the dividends-received deduction [DRD] to corporations acquiring the preferred stock of the subsidiary. Moving the activity to the parent would lower the credit rating of the preferred stock issue and increase the cost of capital for the thrift.

While many believe the current structure provides an effective mechanism to promote the private recapitalization of thrifts, I am especially concerned that this provision is retroactive. To apply such limitations to preferred stock issued under the old rules is questionable policy. The increased cost generated by the enactment of the proposed changes would result in the call of many of the outstanding issues at considerable cost and the acquisition of replacement capital at a much higher price. To place this burden retroactively on the thrift industry is not an action Congress should take. I urge my colleagues who serve on the tax writing committees to modify these provisions and to correct this unintended effect on thrift institutions.●

FORMER JEWISH PRISONERS PLEAD FOR KHASSIN FAMILY IN MOSCOW

● **Mr. LAUTENBERG.** Mr. President, I would like to bring to my colleagues' attention an appeal that I recently received from 12 former Soviet prisoners of Zion and their families who are now living in Israel. The appeal is on behalf of one of my adopted refusenik families, the Khassins, who have been denied to emigrate from the Soviet Union for 11 years.

The Khassin family has been denied permission to emigrate on the grounds that Natasha Khassin, the mother, has secret information that, if distributed, could damage the security of the Soviet Union. Natasha had access to this so-called secret information a full 19 years ago when she worked at the Nirrte Institute of Radio Electronics Industry. That information is both old and outdated.

In their appeal, the former prisoners and their families wrote that "as soon as one of us was arrested the desperate family turned to Natasha for help. She was the focal point, and her home the center of efforts to help prisoners and their families." This is the real reason the Khassin family has been denied permission to leave to live freely in Israel. Natasha Khassin, doesn't know any state secrets. The only secret she knows is how to help the Jews in the Soviet Union that the Government tries to crush. She knows how to pressure the Government to free Jewish prisoners of Zion, and how to help the families of prisoners of Zion pick up the tattered pieces of their lives while their loved ones languish in prison.

The help and comfort Natasha Khassin provided for Tanya Edelshtein, the wife of my former adopted refusenik, Yuli Edelshtein, who was locked behind Soviet bars for nearly 3 years is telling. And it is typical of the way Natasha opened her heart and home to the families of the former prisoners who have signed this appeal on behalf of the Khassin family.

When Yuli Edelshtein was arrested on trumped up drug charges, his wife Tanya was devastated and alone. She wanted to help her husband, but she did not know what to do. But thanks to the help of Natasha Khassin, Tanya Edelshtein and her daughter received help, guidance, and support. Natasha took Tanya Edelshtein and her daughter under her wing, and provided a home for them for a half a year. Using her knowledge and experience with the Soviet system, Natasha instructed Tanya Edelshtein through every step of her fight for her husband's release. Thanks to the help of Natasha Khassin and so many others who pressured the Soviet Government, Yuli was released from prison. Now, the Edelshtein family lives in Israel.

But, Natasha Khassin and her family are not as lucky. They are forced to remain in the Soviet Union against their will. For her selfless efforts on behalf of the prisoners and families that the Soviets have tried to crush, Natasha Khassin and her family have suffered. They have been continually harassed, and she has been threatened with imprisonment. The Khassin's friends in Israel say that the KGB has a "unique, vitriolic, vindictive, hatred for Natasha."

Mr. President, congregation B'nai Israel in Rumson, NJ, has also been working hard on behalf of the Khassin family. John Zyskind, cochair of the Soviet Jewry Committee, and many in the B'nai Israel congregation have contacted me a number of times, urging me to press the Soviet Government to permit the Khassin family to emigrate. I commend the B'nai Israel congregants for the active interest they have taken in the plight of the Khassin family and of all Soviet Jews. It is activity like theirs that holds the key to freedom for Soviet Jews.

I met Natasha Khassin in September when I was in the Soviet Union. Like the people she has worked tirelessly to free from behind Soviet bars, Natasha Khassin is an extraordinary woman of rare courage and determination. It is my sincere hope that she will soon be able to join her family and friends in Israel.

Mr. President, I ask that the full text of this appeal be inserted in the RECORD. I hope that these words written by the Khassin's friends in Israel will inspire my colleagues to join me encouraging the Soviet Government to permit Natasha Khassin and her family to emigrate to Israel.

The material follows:

AN APPEAL FOR NATASHA KHASSIN TO SENATOR FRANK LAUTENBERG FROM FORMER PRISONERS AND THEIR FAMILIES

EXECUTIVE SUMMARY

We were Prisoners of Conscience in the Soviet Union. We and our families now have reached freedom in Israel. But Natasha Khassin is still in refusal in Moscow. We appeal on her behalf because throughout the last nine years she was the one who helped all prisoners, including us, more than any other person. When Ida Nudel was arrested in 1978 Natasha took her place working for the prisoners with full knowledge of the dangers involved. Because of this, because of what she did for us and for many, many others the KGB has a unique, vitriolic, vindictive hatred for Natasha. She will remain in grave danger of persecution, imprisonment and violent physical attack as long as she is within reach of the KGB. We ask that, as Natasha never rested and never feared for herself when any of us were in danger, you will continue and intensify your efforts for her; we ask that you will adopt her rescue as a personal crusade and not rest until she too reaches safety and freedom in Israel.

In many ways the Khassins' story is similar to those of other long term refuseniks: 11 long years of refusal; 6 years of separation from Gennady's mother until her death in Israel in 1983; separation since March 1987 from their daughter Ilona Khassin Dinaberg and their only grandsons, the second of whom they have never seen; the pain of watching their younger daughter Yehudit, born into refusal, growing up in an unnatural and hostile environment; persecution for their determination to practice their Jewish faith and culture; and numerous violations of Soviet legal rules and international agreements. These things that were done to the Khassins are terrible, but we will not dwell on them because they are all too common among long term refuseniks.

We do want to provide testimony about what Natasha risked for us, for the prisoners of conscience and their families, which no one else can provide and which we can provide for Natasha Khassin and for no other person.

As soon as one of us was arrested the desperate family turned to Natasha for help. She was the focal point, and her home the center, of efforts to help prisoners and their families. When Yuli Edelstein was arrested, his wife Tanya did not know what to do. She did not know who to contact, what to write or what to say. Natasha took Tanya under her wing; she and her daughter entered Natasha's home and did not leave for half a year. Natasha is a brilliant woman who through more than 9 years of study and experience has developed an extraordinary and unique expertise in the legal and procedural problems of prisoners. She instructed Tanya Edelstein in every step of her fight for her husband, Yuli.

She is a brave woman too, who risked all to help us with no regard for the danger to herself. After Mark Nashpitz was released from prison his baby was born in a Moscow hospital. Because he had not been granted a propiska to resume living in Moscow they found refuge in Natasha's home. The police came and said it was illegal for Nashpitz to be there. Natasha met them at the door and said she had a legal right to entertain him for three days. Mother, father and baby stayed for over a month.

Dina Zisserman, wife of former prisoner Vladimir Brodsky, also found in Natasha a "brilliant expert who knows a lot of details no lawyer knows." From long experience and careful analysis she told me and many others when to apply for a meeting with a husband in a labor camp or prison. She suggested to all prisoners' wives to apply for meetings at the time of the Party Congress in February 1986 and almost all were approved. (These meetings are scheduled at most a few times a year and are often cancelled, even at the last minute after family members have made the long, hard journey to Siberian labor camps.) She told us what to buy for a meeting, what to cook for a meeting, what kind of clothes to take for our husbands. She told us what to send in a package to a husband (what was most useful and what was most likely to reach him). Because of the harsh conditions in Siberian labor camps these can make the difference between life and death.

We relied on her to get our story out to the press. When Natan Sharansky was freed the world received the indelible image of Ida Milgrom's reaction to the telephone call heralding her son's freedom. That televised press conference, held by Ida Milgrom and Natan's brother, Leonid Sharansky, was organized by Natasha Khassin and took place in the Khassins' apartment. Natasha even permitted correspondents to call their bureaus from her home using her telephone, a very dangerous thing to do. Natasha's home, the center of publicity in Moscow, the center of contacts to the outside world, was always full of those from out of town. Last spring former prisoner of conscience Lev Elbert and his wife and son came from their home in Kiev and in Natasha's apartment carried out a 45 day hunger strike almost to the death. (Only in Moscow could such a hunger strike be effective because if they had carried it out in Kiev no one would have known of it.) If they had died the KGB would have imprisoned her for complicity in their deaths. But Natasha stood by them: she organized a public campaign on their behalf and now they are on their way to freedom in Israel.

These are only a few examples of Natasha's extraordinary bravery, brilliant expertise and great dedication; we could go on forever. And of course you will understand from everything we have said that Natasha must have done a great deal which if repeated would put her in great danger. She is unique in sustaining this level of activity and risk for 10 years.

For all this the KGB hates her. They have tried again and again to stop her work by intimidation and terror. She was threatened with murder by Lev Petashkin, who claimed to be connected to the KGB. In the two recent show trials where the KGB broke the refusenik defendants, they were made to denounce activists in staged courtroom confessions and television and newspaper statements. The KGB selected only two activists to be attacked by both: Viktor Fulmakt and Natasha Khassin. Natasha has repeatedly been threatened with imprisonment, been subjected to searches, had her telephone cut off, etc. In March 1986 the KGB told her "You will never leave until the year 2000 or until you are traded on that bridge like your friend Sharansky."

The reason currently given for the Khassins' refusal is "state secrets." But the KGB's vindictive strategy is demonstrated by the way they have flouted even Soviet legal norms concerning the Khassins' emigration. The reason given for the Khassins' first refusal was "insufficiently close relatives" even though Gennady's mother lived in Israel. Then they claimed Gennady possessed "state secrets" even though his work in abstract mathematics has no such applications. When members of the U.S. Congress protested the absurdity of this pretext the KGB again changed the reason and claimed Natasha possessed "state secrets". Natasha was included in the list published in the February 12, 1987 Vechernyaya Moskva (the mass circulation Moscow daily), of 8 refuseniks who would not be given permission because of state secrets (2 of the 8 have since been given permission). But this was also unjustified and when it became known that Natasha possessed no "state secrets" of any value OVIR again changed the story. They now say, once again, that the refusal is because of Gennady's secrets.

For years and years Natasha has withstood this constant pressure. She has sacrificed any quiet life with her children and grandchildren and, out of the highest sense of personal dedication, risked everything to help us when we were in danger. Dina Zisserman says "many people became frightened and retired from activity. Natasha did not." Yuli Edelstein said "Now there is lots of activity. When things get tough again most of these people will go back into their holes. Natasha will not."

Only your pressure has kept Natasha Khassin from prison. We thank you on her behalf, and on our own account for the vital help she was able to give us.

We know of your valuable work for Natasha Khassin. We want to lodge this special appeal to emphasize the value and urgency of your work, and to emphasize that only greater pressure can win the release of her family.

We ask you to take off your hat to a hero of extraordinary proportions, and to rededicate yourself to winning the freedom and safety of Natasha Khassin, who protected us.

Thank you and may you enjoy quick success.

Signed:

Yuli and Tanya Edelstein.

Mark and Ludmilla Nashpitz.

Vladimir Brodsky and Dina Zisserman.

Ida Milgrom and Leonid Sharansky (mother and brother of former Prisoner of Conscience Natan Sharansky).

Mizrukhina Kira (mother of former POC Lev Elbert's wife Inna).

Vladimir and Lisa Kanievsky.

Mikhail and Oxana Kholmiansky (brother and sister-in-law of former POC Alexander Kholmiansky).

Shimon and Lisa Shnirman.

Yosif and Fanya Berenstein.

Yanna Berenstein Dekterov and Reuven Dekterov (daughter and son-in-law of former POC Yosif Berenstein).

Lev and Lillia Roitburd.

Nehama Levinov-Lein and Mark Levinov (daughter and son-in-law of former POC Evgeny Lein).

Jerusalem, September 13, 1987.

INDEPENDENT COUNSEL REAUTHORIZATION ACT OF 1987

● Mr. LEVIN. Mr. President, on October 16, 1987, by a vote of 65 to 28, the Senate moved to begin consideration of S. 1293, the Independent Counsel Reauthorization Act of 1987, jointly introduced by Senator William Cohen and me. During the debate, Senator Hatch inserted into the Record a letter dated September 4, 1987, from the Department of Justice to the President of the Senate George Bush, detailing its concerns with the bill. Earlier today, Senator Cohen and I responded to the Justice Department letter, and I ask that this response be included in the Record, to clarify the steps we have taken to meet the concerns of the Justice Department and to explain our positions on other issues.

The letter follows:

U.S. Senate,
Committee on Governmental Affairs,
Washington, DC, October 27, 1987.

John R. Bolton,
Assistant Attorney General,
Department of Justice, Washington, DC.

Dear Mr. Bolton: This letter responds to your letter of September 4, 1987, concerning S. 1293, the Independent Counsel Reauthorization Act of 1987. During the Committee markup of the bill and subsequent floor debate, certain changes have been made in its provisions which address some of your concerns.

Fiscal Controls. First, you express concern that the fiscal controls on independent counsels are insufficient. In addition to the bill's provision requiring the special court to appoint persons who promise to conduct their investigations in a "prompt, responsible and cost-effective manner," S. 1293 now expressly limits independent counsels to "reasonable expenditures" and requires them to conduct their activities with "due regard for expense." It requires them to file bimonthly cost reports and to undergo an audit of their expenditures upon completion of their activities. It also requires the audit reports to be filed with the Congressional committees having the appropriations, authorization and oversight responsibilities for the independent counsel system. These reports will provide needed information to determine whether still more fiscal controls are appropriate.

Criminal Intent. Second, you express concern that the bill may prohibit the Attorney General's consideration of criminal intent in deciding cases under the independent counsel law. While legislation passed by the House of Representatives, H.R. 2939, does contain such a prohibition, S. 1293 does not and has not taken this blanket approach. The Senate provision, clarified still further since your letter, permits the Attorney General to consider intent, but specifies that he may not close a case in the early stages of the independent counsel process due to a perceived lack of evidence on intent, unless the Attorney General has "clear and convincing evidence" that such criminal intent is absent. This instruction to the Attorney General has been made necessary by recent cases such as those involving Edward Schmults and Ambassador Faith Whittlesey, in which the Attorney General closed the cases due to an alleged lack of evidence of criminal intent despite facts which, on their face, suggested that criminal intent might be present.

Good Cause Removal. Third, your letter expresses concern about language in S. 1293 which more fully describes when an Attorney General may remove an independent counsel from office for "good cause." This new language was proposed in response to a Justice Department statement that an independent counsel who disobeys an order by a President to grant prosecutorial immunity to the target of the investigation may be fired for "good cause." The Committee wants to make it clear that independent counsels may not be fired for disregarding Presidential orders which would violate the integrity of their investigations. A Government Affairs Committee amendment specifying that "refusal of an independent counsel to obey an order of the President is not good cause for removal if that order would compromise the independence of proceedings under this chapter or otherwise violate the purposes of this chapter," has been incorporated into S. 1293. We believe this language further clarifies the intent of this section.

We also wish to rebut several other points raised in your letter of September 4.

Access to Materials from Closed Cases. Your letter states that the law's new provisions regarding storage of records from closed independent counsel cases "places inexplicable limitations on access by the Department of Justice." In fact, the bill seeks to give the Department much greater access to these materials than it has currently. Now, materials from closed independent counsel cases are placed in the possession of the special court, and the Department is given no access to them. In contrast, S. 1293 requires the records to be placed with the Archives and then gives the Department access to them under the same standards that govern the Department's access to similar prosecutorial materials in the Archives' keeping.

Written Recusal Decisions. Your letter expresses concern that the bill requires the Attorney General to execute a written recusal decision in an independent counsel case before other Department employees may even begin to investigate or otherwise process that case. We believe the bill does not create this result. The bill's language is intended to allow lower-level Department of Justice employees to process and independent counsel case (through investigation, analysis, and so forth) without a written recusal decision, until such time that the Attorney General begins to personnally participate in the decisionmaking. It is only when the Attorney General decides that he or she needs to participate personally in the case, that the bill requires a written recusal decision to be completed by the Attorney General. We will include this explanation of the recusal provision in the legislative history of the bill to further clarify this matter.

You also mention with respect to the recusal provision, that you would prefer the Deputy Attorney General to take decisionmaking responsibility in cases where the Attorney General has exercised recusal, instead of the U.S. Attorney for the District of Columbia, as S. 1293 provides. The bill selected the U.S. Attorney for this job due to the greater appearance of independence that attaches to this official than would apply to the Attorney General's deputy.

Coverage. Another concern you express is that it is "still not clear" which campaign officers are intended to be covered by the law. You ask in particular whether campaign officers from "both campaigns" are covered and whether coverage applies to officers in the primary and general election campaigns. The Committee intends the bill to cover only those campaign officers who: (1) exercise authority at the national level; (2) work for the successful campaign (meaning the campaign whose candidate wins the election for President); and (3) are officers during the general election—not the primary—campaign. We will include these points in the bill's legislative history.

Your letter suggests that campaign officers during the primary period should also be covered by the law. Given the extended period of Presidential campaigns, which may start years before the election and which often experience personnel changes, we do not agree that the primary period should be covered. A restrictive interpretation of the provision is also more consistent with confining the law's coverage to a very narrow group of individuals. Your suggestion that all Presidential campaigns identify their top six national officers to be covered by the statute, while attractive in some ways, would also create unnecessary and perhaps burdensome paperwork and may be either overly inclusive or overly restrictive. Finally, your suggestion that campaign officers be covered for only one year after their candidate's inauguration as President provides insufficient coverage, since national campaign officials will likely be perceived as being close to the President for a considerably longer period than one year. That is also the reason the statute extends coverage over former officials from two years to five.

Triggering Mechanisms. With regard to your concern that S. 1293 is attempting to eliminate the Attorney General's discretion in deciding when an independent counsel is needed, we wish to point out that, in many ways, S. 1293 strengthens the Attorney General's decisionmaking authority in the early stages of the independent counsel process. For example, it codifies case law holding that there is no judicial review over an Attorney General's decision not to conduct a preliminary investigation in a case. It also explicitly requires independent counsels who want to expand their investigations to obtain the Attorney General's approval.

At the same time, S. 1293 amends the standards that the Attorney General must follow in determining the need for an independent counsel to ensure that allegations which warrant further investigation under this law are not incorrectly disposed of outside the independent counsel process. For example, current law says that the Attorney General should initiate a preliminary investigation of a case if there is specific information from a credible source that a covered person "has committed" a crime. S. 1293 changes "has committed" to "may have" committed a crime. This is a commonsense clarification of the language, since it is virtually impossible to determine *prior* to the preliminary investigation whether, in fact, a crime has taken place.

S. 1293 also amends the preliminary investigation standard so that the Attorney General can consider *only* whether there is specific information from a credible source that a covered person may have committed a crime. You express concern that inclusion of the word "only" would prohibit the Department from considering other obviously relevant factors, such as whether a statute of limitations has expired, making an investigation of the crime a waste of time. S. 1293 absolutely would permit the Department to consider such factors *during*—not before—the preliminary investigation. The language change in S. 1293, which limits consideration to whether there is specific information from a credible source about a crime, applies to the initial decision on whether to conduct a preliminary investigation under the law in the first place.

Next, you express concern about the bill's requirement that, in deciding whether to request an independent counsel, the Attorney General must consider Departmental policies pertaining to "criminal investigations," rather than—as current law provides—Department policies pertaining to "enforcement of criminal laws." This change does not and is not intended to eliminate the Attorney General's discretionary authority. The bill expressly requires the Attorney General to consider Department policies on investigations, so that if the preliminary investigation indicates that it is the type of case the Department would normally close, the Attorney General would not continue that case (by requesting an independent counsel) just because the targets of the allegations were high government officials.

The purpose of the wording change in S. 1293 is quite different. It is not an attempt to revoke the Attorney General's ability to consider Department policies on whether an investigation should be continued. Rather, it is a response to the Department's erroneous interpretation of current law that, prior to requesting an independent counsel, it must determine, on the basis of the preliminary investigation, whether there is a "reasonable prospect of conviction." Reports and testimony by the Department indicate that its personnel are now using that standard, because the current law requires consideration of law enforcement policies. The bill emphasizes that the Attorney General is to consider Departmental policies regarding the appropriateness of continuing the investigation (by an independent counsel), but not regarding the ability of a prosecutor, at that time, to file an indictment or obtain a conviction. To ensure proper interpretation of this section, we will include this explanation in the bill's legislative history.

Reporting Requirements. Another set of concerns raised in your letter involves reporting requirements. Current law requires the Attorney General to file a report on any case in which a preliminary investigation is conducted but no independent counsel is requested. Such reports, filed with the special court, are not routinely available. This reporting requirement is virtually the only means for ensuring the Attorney General's accountability in cases that are closed prior to appointment of an independent counsel, since the Attorney General's decision to close the case is unreviewable by any court or other body.

Your letter criticizes a new reporting requirement that attaches to investigations performed by the Attorney General *prior* to the "preliminary investigation" called for by current law. This new requirement attaches only if the investigation lasts more than 30 days and no "preliminary investigation" is later conducted. You say this new requirement is "unnecessary" since "it is rare that a determination [on whether to conduct a preliminary investigation] could not be made within the 30 days." We agree that such determinations will normally be made within the 30-day period and expect the new requirement to be rarely invoked. The Committee included it, however, due to a recent pattern of cases in which the Department conducted pre-preliminary investigations lasting months and then closed the cases without conducting the "preliminary investigations" called for by the statute, thus avoiding the reporting requirements that apply to "preliminary investigations." The purpose of the new reporting requirement, then, is to close this loophole. Such reports are essential to preserve accountability for acts taken by the Attorney General to close criminal cases in the early stages of the independent counsel process.

You also object to a new reporting requirement which requires the Department to answer limited inquiries from Congressional committees about actions taken with respect to pending cases under the independent counsel law. This provision was drafted with due regard for the extreme sensitivity of cases that arise under this law and has been narrowly drafted. It applies only to cases already known to the public and only to inquires made by Congressional committees having jurisdiction over the independent counsel process. It permits only five questions with respect to ongoing cases: whether the Department is considering the case under the independent counsel law, when the case was first opened, whether a preliminary investigation has been started, whether the Attorney General has decided to close the case before a preliminary investigation, and whether any filing has been made with the special court. It requires document production only from closed cases. The Department should be supplying such information now, but does not, saying that current law prevents them from revealing these matters. This erroneous interpretation of the statute by the Department greatly complicates effective oversight. The provision correcting the problem does so in a restrained yet effective manner.

Constitutional Concerns. Finally, your letter repeats the concerns you expressed at the March hearings about possible constitutional defects in the independent counsel law. As you know, 7 judges have considered the issue of constitutionality so far, and all 7 have found that the current law is either constitutional or likely to be held constitutional. The American Bar Association has stated that the law meets "the letter and spirit of the Constitution," a position with which many legal scholars have expressed their agreement. The matter is now before a panel of judges on the Court of Appeals for the District of Columbia Circuit, and a ruling is expected soon. Even more important than the prospect of receiving the additional views of this panel is the likelihood that the case will be appealed to the Supreme Court where the constitutionality of the law can finally be determined. The Senate and the Department of Justice are participants in that case, so that the issues raised in your letter are now being addressed in the judicial forum.

S. 1293 maintains the core elements of the current law which are the subject of the constitutional challenge; it also resolves some peripheral issues with possible constitutional implications. For example, it codifies case law which prohibits judicial review of decisions by the Attorney General not to initiate a preliminary investigation in a case. In so doing, S. 1293 codifies the legal position taken by the Justice Department in those cases. S. 1293 also newly restricts the ability of independent counsels to expand their investigations, by requiring all requests for expansion to be approved by the Attorney General. Your letter of June 15th applauded this change as a "welcome" improvement to current law.

The concerns you express in your letter and elsewhere about the appointment of independent counsels by a court, rather than by the President, and about restrictions on their removal, rather than their being removable at the will of the President, are key provisions in the law which protect the integrity and independence of the independent counsels' activities. We stand by these provisions of the law as the best means of ensuring full and fair investigations of senior Executive Branch officials.

We hope this information assists the Department in analyzing S. 1293. We remain available to discuss these and any other issues.

Sincerely,

Carl Levin,
Chairman.

William S. Cohen,
Ranking Minority Member.●

BOSTON'S MAYOR FLYNN ON IMMIGRATION REFORM

● Mr. KENNEDY. Mr. President, last Friday I chaired a hearing to review pending legislation that will bring some long-needed reform to our existing system of admitting immigrants to our country.

The lead witness before the Subcommittee on Immigration and Refugee Affairs was the distinguished mayor of Boston, Raymond Flynn. His testimony reflected the proud immigrant heritage of Boston and his pride in the many accomplishments his city administation has achieved in assisting and welcoming migrants from nearly every corner of the globe.

I would like to share Mayor Flynn's excellent statement with my colleagues, and ask that it be printed in the Record.

The statement follows:

Remarks of Mayor Raymond L. Flynn

Senator Kennedy, distinguished members of the committee: On behalf of all the people of the city of Boston, I thank you for the privilege of testifying today before the subcommittee, and for the opportunity to testify on what I believe to be a fundamental question of fairness.

I would like, first of all, to recognize and commend the leadership shown by Senator Kennedy through his authorship of Senate bill 1611 to amend the Immigration and Nationality Act; and by U.S. Representative Brian Donnelly through his companion legislation in the House. I am particularly proud that this effort to correct the inequities of the current law is due to the commitment of two distinguished sons of Massachusetts and Boston. Once again the Commonwealth and Boston—"The cradle of liberty"—join together in leading the fight for justice at the national level.

I would like to raise what, for me, are the truly compelling reasons why it is time for the Congress to amend the country's immigration law.

In the city of Boston and throughout the Commonwealth of Massachusetts, we are proud of our rich immigrant heritage. But that is also America's heritage. For as President Kennedy said, "We are a nation of immigrants." I believe that statement to be just as true today as the day it was made over 25 years ago. From the melting pot come the values, the ideals, and the energy that the world has come to know as uniquely American.

It is that very diversity that promises a future that is as rich as our past and is manifested by the phrase "e pluribus unum"—from many there is one.

And yet at the same time, the harsh reality is that there are many people living in this country today, many more who desire to come to our shores, to whom the chance to contribute is denied.

Many of those who endure the worst burdens imposed by the current law are from nations who have been contributing to the life of this Nation since its very founding. Thus, I am pleased that the legislation offered by Senator Kennedy would go a long way toward restoring a system of immigration that would again allow greater numbers of individuals from Ireland, Italy, and other European countries to enter the United States. It would allow them permanent residence without adversely impacting the gains made by other nationalities.

Mr. Chairman, the question of immigration reform is more than just a consideration of economic factors. It is a question of the social and moral substance of the Nation. Are we still the strong, proud people willing to lift the lamp besides the golden door? Or are we to regress to a narrow, closed, and weak society that again hangs that hateful sign in the window, "No Irish need apply." Or no Italians, or no Latins, or no Caribbeans?

It is my hope that this subcommittee, the full Senate, and the Nation it serves will declare themselves clearly in favor of openness, fairness, and compassion. Accordingly, I come here today as the mayor of the city of Boston to offer my fullest possible support for the balanced effort represented in S. 1611. It points directly at redressing the very serious inequities resulting from the present law.

I am an American proud of his roots and Irish heritage. As well, I take pride from the accomplishments of people of Irish background in virtually every walk of American life at every stage of our Nation's history. The generals, the Presidents, the poets, the soldiers, and the clergymen and women. The heroes and the humble, those who have dedicated their lives to America and those who have died willingly in her defense. At long last there is a measure that would provide opportunity—as well as hope—for a new generation of Irish-born men and women. People who, like those of all other nationalities, seek nothing more than a chance for a better life and to participate in our society as tax-paying and law abiding residents.

But I must also emphasize that I do not see this solely as an Irish issue. One word, and one word alone serves best to characterize why I am here today. In the Irish language the word is "ceart", in Italian the word is "guistizia", in Spanish the word is "justica", in Polish the word is "sprawiedtiwofc" and to my friends from Haiti the word is "justesse".

I am here on behalf of the people, from all these cultures who make up the United States, to ask for "justice".

It is wrong that literally tens of thousands of young people from Ireland and other nations must today live shadow-like existences in our Nation's largest cities—cities that their family members from previous generations helped to build. It is wrong that they must exist only from day to day without access to health insurance or the chance to rise to their fullest potential by utilizing the first-rate educations they received in Ireland. It is wrong above all because this is not the American way, and it is equally intolerable for me that many of the victims of the current bad law include thousands from Italy, Haiti, and other countries as well.

I am proud that in the city of Boston we have opened our doors to all immigrant people regardless of their legal status. The people of Boston have assured them access to our health care system and the best possible legal advice from our city government and the efforts of dedicated legal and refugee groups alike.

To date, since the implementation of my administration's efforts on behalf of its immigrant population on October 1, many people have come forward in search of the services we have been able to provide. But the city of Boston's humanitarian effort in this regard is no substitute for swift action on the part of Congress to correct the inherent unfairness of our immigration laws.

I would like to illustrate, with the following examples, how unfair the current immigration law actually is.

In 1950, Irish nationals comprised 8 percent of the immigrants legally entering the United States for each of the previous 21 years. Since the implementation of the 1965 Act, Irish nationals legally entering the United States have amounted to no more than two-tenths of a percent of our total entrants for any given year. How is that situation fair?

In the end, it is our Nation that is the biggest loser when we deny people the chance to be fully law-abiding and productive residents. No immigrant that I know of in Boston, from Ireland, Italy, Haiti, or any other country came with the intention of being in violation of our law. Instead, they came in search of a better life for themselves and their families as others did before them. They came to join America and to participate. We should no longer deny them access.

Our Nation suffers as well by the loss of literally hundreds of millions in tax dollars that would have been paid to our Federal and State governments had these immigrants been legalized.

We lose, as well, when we deny so many thousands of men and women the chance to reach their fullest potential in the land of the free and the home of the brave. And perhaps even of far greater importance, we lose and they lose, when so many decent and hard-working people are denied the chance to aspire to and attain the one goal that meant so much to our own immigrant ancestors; the chance to become citizens of the United States.

Because of the current law, we also deny them the opportunity to serve in the Armed Forces of the United States in defense of this republic. I point with personal pride to the fact the Irish-Americans hold the greatest number of Congressional Medals of Honor, awarded for valor in conflicts reaching back to the Civil War.

I would like to give you just two cases in point this morning of how short-sighted the current immigration law really is.

Thirty-five years ago, a hopeful young man arrived in Boston from County Mayo, Ireland. He toiled in the city of Boston and its neighborhoods in the mechanical trades and also served in our Armed Forces. Today he heads a corporation based in Massachusetts that operates the largest privately-owned hotel chain in New England, along with several of the highest-quality congregate care facilities for the elderly. In all this the combined taxes paid out to the State and Federal governments by this immigrant from Ireland, Tom Flatley, and his employees, amounted to $28 million.

In another case, the son of Italian immigrants rose from his childhood in Greater Boston to become Governor of the Commonwealth of Massachusetts, U.S. Secretary of Transportation, and Ambassador to Italy. John Volpe distinguished himself in a long career in public life as one of Massachusetts' most influential leaders.

And yet if Tom Flatley or John Volpe immigrated to the United States today, the attainment of their dreams would be impossible. They would not be legal residents and they would not be allowed to become citizens.

Let us ask ourselves: how many more potential Tom Flatleys and John Volpes are there today in America, both male and female, not just from Ireland or Italy but also from Haiti, and many other countries?

Mr. Chairman, isn't now the time, at long last, to make all the sentiments expressed during last year's Fourth of July celebrations—about America's immigrant past—a reality for today's immigrant?

I ask today that we come home to what we are when we are at our best. We are a great nation. We are a powerful nation. But by allowing greater access to the fruits of our society and greater economic opportunity to the largest number of people possible we can become an even greater nation. When we deny so many people already here as well as others who seek to come to our shores the chance for a better life, and force them into underground lives we are only short-changing America.

America is much more than a job or an address that we call home. It is an ideal. It is the ideal that fueled the movement of people from virtually every culture to our shores and across this continent. Our power and influence is far greater than the sum of our armaments, or the amount of our gross national product. Our strength lies in the diversity, the character, and the creativity of our people.

Senators, I ask you, let us not continue, by the perpetuation of an unfair immigration law, to deny our Nation the fullness of its heritage.

Let us instead, true to our birthright, provide greater access to all who wish to participate as law abiding and productive members of our society. Let us call upon the talents and the strengths of these men and women, as we continue to build America, and as we lead this Nation into the 21st century.

By such actions, we can truly honor our motto: "From many there is one."●

SENATE RESOLUTION TO OVERTURN U.N. RESOLUTION ON ZIONISM

● Mr. CHAFEE. Mr. President, I would like to express my enthusiastic support for Senate Joint Resolution 205, which was introduced by the distinguished senior Senator from New York on October 20 and which was passed by the Senate on October 23.

I cosponsored this resolution, which recommends that the U.S. Government lend its support to efforts to overturn U.N. General Assembly Resolution 3379 [XXX]. The latter resolution, adopted by the United Nations on November 10, 1975, declared that "Zionism is a form of racism and racial discrimination."

In my view, U.N. Resolution 3379 is a serious stain on the record of the United Nations, and illustrative of that body's greatest weaknesses. Although established as a forum where world problems could be rationally discussed and—ideally—solved through negotiation, the United Nations in recent years has frequently been transformed into a soapbox for opponents of Western democratic values. As a faithful supporter of the goals of the United Nations, and of international cooperation in general, I have been disappointed to observe this development.

U.N. Resolution 3379 amounts to an attack on the legitimacy of the State of Israel. Although it never mentions Israel by name, the resolution denounces Zionism, the movement for a Jewish homeland which culminated in the establishment almost 40 years ago of the State of Israel. As Senator MOYNIHAN pointed out in his statement on Senate Joint Resolution 205, this attempt in the United Nations to discredit the State of Israel may be traced to a mendacious two-part article in the Soviet publication Pravda. The Pravda article attempted to link a Nazi massacre of Russians—including many Russian Jews—with the Zionist movement, and thereby sought to equate Zionism with the ultimate racist doctrine of the 20th century, nazism.

The Pravda story should have been relegated to the ashcan where all totalitarian lies eventually wind up. Tragically, however, it gave impetus to an international attempt to paint Zionism as a racist movement. Measures introduced at two international conferences in 1975 sought to validate this picture of Zionism. One proclamation issued at the World Conference of the International Women's Year, equated Zionism with apartheid. A resolution adopted at a conference of nonaligned countries in Lima declared Zionism a "racist and imperialist ideology."

There is no validity, Mr. President, to these outrageous charges. As a firm supporter of the legitimacy of the State of Israel, and of our mutually beneficial friendship, I believe it is the Senate's duty to call for repeal of U.N. Resolution 3379, as we have now done in passing Senate Joint Resolution 205. The Moynihan resolution is almost identical to a resolution passed by the Australian House and Senate last year on the occasion of a state visit to Australia by President Chaim Herzog.

In 2 weeks President Herzog will become the first Israeli head of state to visit the United States on a state visit. It is, therefore, entirely fitting that the Senate should pass the Australian resolution, and in so doing state its repudiation of that infamous U.N. resolution equating Zionism with racism. I am proud to have been a cosponsor of Senate Joint Resolution 205, and commend Senator MOYNIHAN for successfully promoting its passage.●

ORDER FOR RECESS UNTIL 9:40 A.M. TOMORROW

Mr. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in recess until the hour of 9:40 a.m. tomorrow.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER TO PROCEED TO S. 1184 ON TOMORROW

Mr. BYRD. Mr. President, I ask unanimous consent that, following the order for the recognition of the two leaders tomorrow under the standing order, the Senate proceed to the consideration of Calendar Order No. 225, S. 1184, a bill to amend the Airport and Airway Improvement Act. That has been cleared by the distinguished Republican leader and the assistant leader is here.

The PRESIDING OFFICER. Without objection, it is so ordered.

MORNING BUSINESS

Mr. BYRD. Mr. President, I ask unanimous consent that there now be a period for morning business, that Senators may speak therein for up to 3 minutes each, and that it not extend beyond 5 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. BYRD. Mr. President, on tomorrow the Senate will convene at 9:40 a.m. After the two leaders have been recognized under the standing order, the Senate, then, will proceed to consideration of Calendar No. 225, S. 1184, a bill to amend the Airport and Airway Improvement Act.

Rollcall votes are expected on that bill during the day, and upon the disposition of that measure, there are other measures that have been cleared for action.

I call the attention of the Senate to the transportation appropriations bill, which was scheduled to follow on the passage of the catastrophic illness bill. So that bill, the transportation appropriations bill, is waiting in the wings, and there are other measures as well.

Mr. President, does my esteemed friend, Mr. SIMPSON, have anything to say or any business he wishes to transact?

Mr. SIMPSON. Mr. President, I thank the majority leader. I thank him for his usual courtesy extended to me.

Briefly, I would add my congratulations to Senator BENTSEN, Senator DURENBERGER, Senator HEINZ, and Senator MITCHELL for their extraordinary work on a tough piece of legislation which has been, indeed, around for a long time.

I know Senator DURENBERGER has spent much of his career in the Senate working on catastrophic health care, as has Senator BENTSEN. I commend them. It was a job well done. It was done with a good spirit of bipartisanship which will serve as well as we get to the heavy end of this schedule.

I thank the majority leader. I have no further remarks.

Mr. BYRD. I thank my friend.

SENATE JOINT RESOLUTION 209 PLACED ON THE CALENDAR

Mr. BYRD. Mr. President, I ask unanimous consent to introduce and place on the calendar a joint resolution on behalf of Senators CRANSTON and D'AMATO extending the FHA insurance programs through November 15, 1987.

The PRESIDING OFFICER. Without objection, it is so ordered.

S. 1822 PLACED ON THE CALENDAR

Mr. BYRD. Mr. President, I ask unanimous consent to place on the calendar S. 1822, the sentencing reform bill introduced earlier today by Senators BIDEN, THURMOND, and others.

The PRESIDING OFFICER. Without objection, it is so ordered.

SENATE RESOLUTION 305—DIRECTING SENATE COUNSEL TO TAKE CERTAIN ACTIONS

Mr. BYRD. Mr. President, I send to the desk on behalf of myself and Mr. DOLE a Senate resolution and ask unanimous consent that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

> A resolution (S. Res. 305) to direct the Senate Legal Counsel to represent and to authorize the production of documents by Philip Q. Cohen in the case of *Moreno* v. *Small Business Administration, et al.*

The PRESIDING OFFICER. Without objection, the Senate will proceed to its immediate consideration.

The Senate proceeded to consider the resolution.

Mr. BYRD. Mr. President, Phil Cohen, legislative assistant to Senator DURENBERGER, has received a subpoena in a civil case now before the U.S. District Court for the District of Minnesota. The case, Moreno versus Small Business Administration, et al., involves allegations that SBA officials improperly removed the plaintiff from his position as district director of the Minneapolis district office of the SBA. The subpoena, which was obtained by counsel the plaintiff, calls for Mr. Cohen to testify and to produce documents at a deposition.

The resolution directs the Senate legal counsel to represent Mr. Cohen and authorizes him to testify and to produce relevant documents to the extent consistent with the privileges of the Senate.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the resolution.

The resolution (No. 305) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, is as follows:

S. RES. 305

Whereas, in the case of *Moreno* v. *Small Business Administration, et al.*, 3-87-239, pending in the United States District Court for the District of Minnesota, the plaintiff has obtained a subpoena, addressed to Philip Q. Cohen, legislative assistant to Senator Durenberger for testimony and the production of documents at a deposition;

Whereas, pursuant to sections 703(a) and 704(a)(2) of the Ethics in Government Act of 1978, 2 U.S.C. §§ 288b(a) and 288c(a)(2) (1982), the Senate may direct its counsel to represent employees of the Senate with respect to subpoenas issued to them in their official capacities;

Whereas, by the privileges of the Senate of the United States and Rule XI of the Standing Rules of the Senate, no evidence under the control or in the possession of the Senate can, by the judicial process, be taken from such control or possession but by permission of the Senate;

Whereas, when it appears that testimony of, or production of documents by, employees of the Senate may be needed for use in any court for the promotion of justice, the Senate will take such action as will promote the ends of justice consistent with the privileges of the Senate: Now, therefore be it

Resolved, That the Senate Legal Counsel is directed to represent Philip Q. Cohen in the case of *Moreno* v. *Small Business Administration, et al.*

SEC. 2. That Philip Q. Cohen is authorized to testify and produce documents in the case of *Moreno* v. *Small Business Administration, et al.*, except concerning matters which are privileged from disclosure.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. SIMPSON. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

HOUSE CONCURRENT RESOLUTION 195 PLACED ON THE CALENDAR

Mr. BYRD. Mr. President, I ask unanimous consent that House Concurrent Resolution 195, a concurrent resolution relating to the printing of the reports by the Senate and House Select Committees on Secret Military Assistance to Iran and the Nicaraguan Opposition, received today from the House, be placed on the calendar.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE CALENDAR

Mr. BYRD. Mr. President, I inquire of the distinguished assistant Republican leader as to whether or not Calendar Order 392 on the Calendar of Business has been cleared on his side of the aisle.

Mr. SIMPSON. Mr. President, I will state to the majority leader that that has been cleared on this side of the aisle.

Mr. BYRD. I thank my distinguished friend.

CHARLES E. CHAMBERLAIN FEDERAL BUILDING AND U.S. POST OFFICE

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Order No. 392.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 307) to designate the Federal Building and United States Post Office located at 315 West Allegan Street in Lansing, Michigan, as the "Charles E. Chamberlain Federal Building and United States Post Office."

The PRESIDING OFFICER. Without objection, the Senate will proceed to its immediate consideration.

The Senate proceeded to consider the bill.

The PRESIDING OFFICER. Is there further debate? If not, the bill will be deemed to have been read the third time.

The bill (H.R. 307) was deemed to have been read the third time and passed.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. SIMPSON. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

PROGRAM

Mr. BYRD. Mr. President, when the bill S. 1184, the Airport and Airway Improvement Act, is laid before the Senate tomorrow morning at 10 o'clock, I shall, the Lord willing, suggest the absence of a quorum. That will be a live quorum, and there will be a vote on a motion to instruct the Sergeant at Arms. That will be a 30-minute rollcall vote.

Mr. President, I ask unanimous consent that that vote be a 30-minute vote.

The PRESIDING OFFICER. Without objection, it is so ordered.

CALL FOR REGULAR ORDER

Mr. BYRD. Mr. President, I ask unanimous consent that the call for the regular order occur automatically at the expiration of the 30 minutes tomorrow.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR YEAS AND NAYS

Mr. BYRD. Mr. President, I ask unanimous consent that it be in order to order the yeas and nays at this time on a motion which I will make tomorrow morning as heretofore stated to instruct the Sergeant at Arms.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. BYRD. The rollcall vote will occur at 10 a.m., Mr. President. Again I say it will be a 30-minute rollcall with the call of the regular order to come at the expiration of the 30 minutes. I expect a busy day and Senators will be coming in for the rollcall vote and we should get off to a good start on the airport improvement bill.

Mr. President, does my friend have anything further for this evening?

Mr. SIMPSON. Mr. President, I have nothing further. I commend the majority leader for sharing with us his schedule of what we hope to accomplish before the end of this session. I pledge to the Senator that we will certainly try to accommodate that schedule as we I think showed with this legislation as we worked together to see that the Members brought their amendments to the desk and proceeded with their work. It was a pleasure to try to assist in that.

Mr. BYRD. Mr. President, I thank the distinguished Senator for his good work and for his cooperation. I also thank the Republican leader for his.

RECESS UNTIL 9:40 A.M. TOMORROW

Mr. BYRD. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the order previously entered, the Senate stand in recess until 9:40 a.m. tomorrow.

The motion was agreed to, and at 10:01 p.m. the Senate recessed until Wednesday, October 28, 1987, at 9:40 a.m.

EXTENSIONS OF REMARKS

COMMONWEALTH HEADS OF GOVERNMENT STATEMENT ON SOUTHERN AFRICA

HON. MERVYN M. DYMALLY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 27, 1987

Mr. DYMALLY. Mr. Speaker, recently I had the privilege of meeting with His Excellency Shridath Ramphal, Secretariat, Commonwealth Heads of Government, during his United Nations visit, in New York, to discuss the worsening conditions in South Africa.

I am, therefore, pleased to submit for review by the Members of the House of Representatives "The Okanagan Statement and Programme of Action on Southern Africa."

THE OKANAGAN STATEMENT AND PROGRAMME OF ACTION ON SOUTHERN AFRICA

1. We continue to recognise the situation in Southern Africa as one of the major challenges facing the world community today. We reaffirm our shared international responsibility to work together for the total eradication of apartheid and the brutalities that it continues to inflict on its victims within and in the neighbourhood of South Africa.

2. We consider that the crisis engendered in the region by apartheid has seriously deteriorated since our last Meeting in Nassau. Repressive measures resulting in more suffering and loss of life have been intensified within South Africa, and the toll taken by acts of war and destruction directed against South Africa's neighbours in an attempt to sustain and defend apartheid has continued to rise. Southern Africa desperately needs regional peace and stability.

3. It is therefore our collective view that the urgency of international action against the intolerable situation that exists in Southern Africa has heightened and that as Commonwealth members we have the continuing obligation to make an effective contribution towards the ending of apartheid and relieving South Africa's neighbours of the burden of being forced to devote much of their resources to their resolute and determined efforts to defend their security and advance the cause of freedom and independence in their region. We recognise that these states are making intolerable sacrifices in a cause that concerns all countries and peoples.

4. We have reviewed developments in Southern Africa since our Nassau Meeting which produced the Accord on Southern Africa and reaffirmed our shared commitment to its objectives. We also recall the London Review Meeting in August 1986 which considered the Report of the Eminent Persons Group (EPG), *Mission to South Africa*, established under the Nassau Accord. The EPG was to initiate, in the context of a suspension of violence on all sides, a process of dialogue across lines of colour, politics and religion, with a view to establishing a non-racial and representative government.

5. Meeting for the first time in full session since the publication of the Report, we warmly commend the work of the EPG and agree that the EPG mission offered a real opportunity for the South African Government to initiate a negotiating process between the Government and the true representatives of the black majority, leading ultimately to a peaceful resolution of the problem of apartheid and to a break in the cycle of violence in the region. Pretoria's rejection of the "Negotiating Concept" submitted by the EPG, which was underlined by its brutal attacks against Botswana, Zambia and Zimbabwe on 19 May 1986, was nothing less than a tragedy for the region.

6. At Nassau we appealed to the authorities in Pretoria to take a number of steps in a genuine manner and as a matter of urgency if the crisis of apartheid was not to end in even greater tragedy. In spite of the Pretoria regime's increased intransigence since Nassau, we remain convinced that only through negotiations can catastrophe be averted. We are encouraged in this by the obvious yearning for peace with justice which is evident among South Africa's peoples of all races as was dramatically highlighted by the recent Dakar Meeting. Accordingly, we again call on the South African Government to accept the "Negotiating Concept" of the EPG which remains as valid today as it was when the Group put it forward.

COMMONWEALTH RESPONSE—SANCTIONS

7. With the exception of Britain we believe that economic and other sanctions have had a significant effect on South Africa and that their wider, tighter, and more intensified application must remain an essential part of the international community's response to apartheid.

8. We realise that if the sanctions and other measures we have adopted are to have maximum effect, they must be part of a wider programme of international action. While mindful of the widespread view within the international community that comprehensive and mandatory sanctions would be the quickest route to bring Pretoria to the negotiating table, we, with the exception of Britain, believe that, pending the acceptance of such a position by the international community as a whole, genuine efforts should be made to secure the universal adoption of the measures now adopted by most Commonwealth and other countries including the United States and the Nordic countries. We commit ourselves to continuing efforts to secure a more concerted application of a global sanctions programme.

9. Further, in the interest of greater effectiveness, we have decided to continue co-ordination by the Secretariat of the implementation of measures as agreed by each member and to identify any efforts to frustrate them.

10. With the exception of Britain, we agree to evaluate on a continuous basis the application of sanctions in order to assess their impact. Moreover, given the significance of South Africa's relationship with the international financial system and the need for a better understanding of developments and possibilities in this sphere, with the exception of Britain we will initiate an expert study, drawing on independent sources, to examine this aspect of the South African economy.

11. Finally, mindful of our commitment at Nassau which we reaffirm here in Vancouver, we agree that we will continue to take further action individually and collectively as deemed appropriate in response to the situation as it evolves until apartheid is dismantled, in the case of all but Britain that includes sanctions.

SOUTH AFRICA AND ITS NEIGHBOURS

12. In addition to our programme of action addressed directly to apartheid itself, we believe that the desperate plight of South Africa's neighbours calls for a comprehensive response from the international community. Substantial and invaluable help is already being provided by several Commonwealth countries through programmes of development assistance and security. However, the capacity of South Africa's neighbours to resist Pretoria's policy of destabilisation and destruction must be strengthened.

13. South Africa's aims are clear enough. In part, their actions are intended to coerce the Front-Line States into abandoning support for the black majority in South Africa, and to force them into co-existence with apartheid. They are also intended to perpetuate the dependence on South Africa of the majority of these countries whose development efforts are now being undermined by the need to confront Pretoria's aggression. Therefore, if assistance for the region's development is to be effective, the international community must also address the security needs of the Front-Line States.

14. The Commonwealth is well placed to give a lead in this field. The Commonwealth has always considered assistance to the region as an integral part of its support for the struggle against apartheid. But so far, such assistance has been directed mainly to efforts to reduce dependence on South Africa. In the face of a systematic campaign to undermine the economies of these countries, the Commonwealth should itself take—and encourage the wider community to take—a broader view of the region's needs; assistance is needed both to advance disengagement from the South African economy and to provide for its security against South African aggression.

15. Against this background, and while acknowledging the continuing value of the forms of bilateral and multilateral assistance now being provided, we have decided to initiate an enhanced programme of co-ordinated Commonwealth assistance consistent with and complementary to the objectives of SADCC and other agencies collaborating to this and with the region, including the Africa Fund. We see these efforts as directed towards the Front-Line and neighbouring states, particularly Mozambique. We further see these efforts directed to key sectors such as transporatation and communications, embracing both their rehabilitation and their physical protection. In this respect we have decided to give priority attention to the Limpopo Line and the Port of

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

Maputo. On a related matter, we propose to examine the question of transit rights of the land-locked states of the region.

16. We see Mozambique in a key geographical position in relation to the Front-Line States. If the region is to cease to be hostage to South Africa, special and urgent attention must be given to the needs of Mozambique. We have therefore decided to establish a special fund to provide technical assistance to Mozambique. We also stand ready, if requested, to embark upon a process of consultations with a view to enabling those of our members in a position to do so to make appropriate contributions to the security needs of Mozambique and other Front-Line States requiring such help.

REACHING INTO SOUTH AFRICA

17. We are agreed that the Commonwealth should give support to the victims and opponents of apartheid within South Africa.

18. We endorse individual and collective efforts to provide assistance to the victims of apartheid and we resolve to augment those efforts to the fullest extent possible. We recognise the particular value of the Nassau Fellowship Programme in providing educational opportunities to young South Africans, and intend to expand it.

19. In light of the problems created by the state of emergency and other repressive measures in South Africa, we consider the provision of humanitarian and legal assistance to detainees and their families a high priority, and those in a position to do so undertake to increase their individual efforts in this regard.

20. Recognising its growing importance, we shall also increase our support to the trade union movement in South Africa, in particular, for labour education.

21. We plan wherever possible to increase our individual contributions to economic and social development programmes in such fields as education.

22. Despite having to confirm the conclusion of the EPG that Pretoria is not prepared to negotiate fundamental change in South Africa, we believe that we should take advantage of any opportunity to promote real internal dialogue. In the absence of movement by the authorities in Pretoria, we shall increase our contacts with South Africans of differing viewpoints. We shall make an enhanced effort to give support to the opponents of apartheid through such activities as the organisation of conferences on the future of South Africa, the arrangement of visits and the publication of studies related to ending apartheid. We have agreed to consider means by which these activities could be co-ordinated and their importance highlighted.

23. The need for Commonwealth action to counteract South African propaganda and censorship by exposing the truth about apartheid has been made more pressing by the draconian curbs imposed on the press at the beginning of 1987. These amount to an all-out attempt to replace independent reporting of events in the country with its own propaganda. Largely as a result of these restrictions, much of what is happening in South Africa no longer reaches the television screens and newspapers of the outside world.

24. In view of what is at stake, we are agreed that the Commonwealth should give high priority to counteracting South African propaganda and censorship.

NAMIBIA

25. We are gravely concerned that the impasse in Namibia's progress to independence under the terms of Resolution 435 seems to have assumed the proportions of a permanent stalemate. We again stress the illegality of South Africa's presence in Namibia and we remain unanimously convinced of the view that Resolution 435 provides the only basis for an internationally acceptable settlement of the Namibian question.

26. Linking the withdrawal of Cuban forces to a settlement under Resolution 435—a linkage which we have unanimously rejected—has, in effect, provided an opening for the South African régime to continue to frustrate any progress toward implementation of the Resolution. The challenge, therefore, is to develop an effective process of negotiation leading to the Resolution's implementation.

27. At Nassau we made it clear that the action which we envisaged in the Accord on Southern Africa should be directed equally toward ensuring South Africa's compliance with the wishes of the international community on the question of Namibia. We also recall that at New Delhi we agreed that if South Africa continued to obstruct the implementation of Resolution 435, the adoption of appropriate measures under the charter of the United Nations would have to be considered. These continue to be valid conclusions.

THE WAY FORWARD

28. The unfolding—but often unseen—tragedy of South Africa impels us to ensure that the world continues to focus its attention on apartheid until we meet again in full session. With the exception of Britain, we see great value as a measure of our continuing concern in establishing a Committee of Foreign Ministers able to meet periodically to provide high level impetus and guidance in furtherance of the objectives of this statement. The Committee will comprise the Foreign Ministers of Australia, Canada, Guyana, India, Nigeria, Tanzania, Zambia and Zimbabwe and will be chaired by the Secretary of State for External Affairs of Canada.

29. We believe that this Statement provides a framework for a significant Commonwealth initiative to assist the region, and is one to which a number of Commonwealth countries, which hitherto have not been in a position to contribute to multilateral efforts, will be enabled to do so. It will require detailed consultations between both donor Commonwealth governments and the countries in question. We are instructing the Secretary-General to initiate these processes as a matter of the highest priority.

GM PRESIDENT ADDRESSES CONGRESSIONAL AUTOMOTIVE CAUCUS

HON. BOB TRAXLER

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 27, 1987

Mr. TRAXLER. Mr. Speaker, recently Mr. Robert C. Stempel, the new president of the General Motors Corp., addressed our colleagues at a meeting of the Congressional Automotive Caucus.

He told us of some very important challenges facing GM and the auto industry, involving competition, technology, workers, and safety issues.

I am sure that his comments will be of interest to all of our colleagues, and I include them in the RECORD at this point:

REMARKS BY ROBERT C. STEMPEL

I'm pleased to be in the Washington area and to have this opportunity to meet with members of the Auto Caucus and the guests who have a special interest in GM. After a few opening remarks, I will be pleased to answer your questions.

One reason for my visit is the GM new product show this evening at the Hyatt Regency. I was just over there this morning checking on final arrangements. It's an interesting show, and I hope you'll all have a chance to join us this evening and see our new 1988 cars and trucks.

We're particularly proud of the 1988 Chevrolet Corsica and Beretta which were introduced in the spring and are doing extremely well in the market. Right now, they're GM's best selling passenger cars, and they're the best selling compact cars in the U.S. The new full-size pickup trucks for Chevy and GMC that came on the market a few months ago are also getting a very fine response from customers. And this evening will be the first public showing of GM's three new mid-size coupes—the Buick Regal, Pontiac Grand Prix, and Olds Cutlass Supreme.

We have several new products out this year, and they'll be joined by many more in the near future. New products are the more obvious signs of the way GM is changing in response to the competitive challenges.

The way the total U.S. auto industry responds to today's challenges will have a profound effect on this country. The pulse of the American automobile industry often sets the beat for our national economic growth. The competitive situation in our industry has altered greatly in recent years.

The continuing technological revolution and a new global marketplace are leading all car makers into a fundamental rethinking of their long-term strategies. At the same time, forces outside our industry are drastically reshaping it.

Let me give you some perspective on change. Today the Big Three domestic manufacturers—GM, Ford, and Chrysler account for just 68 percent of the U.S. passenger car market. They were at 94 percent a little over 20 years ago—in 1965. Right now, there are 12 manufacturers—including those three domestic firms—who account for at least one percent of the U.S. car market. In 1965, only five competitors—four of them based in the U.S.—registered a one-percent or better share.

Or consider the success of foreign-owned auto assembly plants located in the U.S. Foreign-owned auto assembly plants have been a part of the American scene for just a few years—most less than five. But by 1990, these foreign-owned plants will more than triple their current capacity and turn out 2½ million vehicles. That's like adding another company with passenger car production equal to Ford North America.

On a worldwide basis, the auto industry has excess capacity and is adding more. By 1990, auto makers may be able to produce about 6 million more cars than the market requires. That excess capacity is about the same as GM's total U.S. vehicle sales today.

There are people out there who believe the American auto industry can't survive in an environment like that. Some observers predict that as many as 10 additional American assembly plants could close by the mid-

'90's. And American supplier firms might also suffer severe business contractions.

At GM, we don't buy that worst-case scenario. That's not to say that we aren't aware of the intense competitive pressures building in our industry. We're very aware of those pressures. And for nearly a decade now, we've been working on a plan for not just survival, but success in the closing years of this century and into the next.

We set our basic course several years ago. We looked to the future and determined where we had to be. Of course, we've made minor adjustments from time to time, but we're keeping our eyes on the goal. It hasn't always been easy to stay on course. We've been criticized because our decisions and actions didn't always yield the short-term results that some people demand. But short-term results aren't going to control our future. We're in this business for the long haul. And we know that our manufacturing capabilities, new products, and pursuit of customer satisfaction are going to pay off over the long term.

Let me say emphatically, we're committed to manufacturing automobiles in America. Since 1979, we've built—or are building—eight completely new assembly plants in the U.S. and refurbished 16 others in this country (as well as three in Canada). We've invested in a corporate-wide press modernization program. Only a company that is confident about its ability to manufacture and sell cars in North America makes that kind of commitment on human and financial resources.

Consistent with our plan, some outmoded plants are being closed as we bring our new facilities up to speed. That's necessary if we and our customers are going to realize the benefits of our new and refurbished plants. We know that major changes—plant openings, closings, and relocations—can cause hardships for people and communities, and we're working very closely with our employees, the union, and state and local governments to cushion the blow. I'd remind you that GM has the most extensive "safety net" for employees of any business in the U.S.

Supplemental unemployment benefits will pay eligible laid-off workers up to 95% of their straight-time pay for up to two years. And Guaranteed Income Stream payments can provide eligible workers up to 75% of their pay until retirement. Our joint training and retraining programs with the UAW are extensive. In total, we estimate the costs of these programs for a single assembly plant can add up to $100 million.

GM's strategic situation is unique in one respect. We are by far the most vertically integrated automobile manufacturing company in the world. We produce a much larger percentage of our own components than Ford or Chrysler. As you all know, we've been studying all of our assembly and components operations very intently.

Our objective is to keep our components operations competitive wherever we can. In many cases, GM components plants are competitive. We supply other auto makers with high-quality, competitively priced parts. In a few cases, becoming competitive is a big order, but that's our goal. And we're working with our people and their unions to achieve it.

We're also committed to introduce new technology into our plants and our products. The best technology is an absolute must for companies that intend to stay competitive in the future.

People who have visited our competitors (the new Mazda plant in Flat Rock, Michigan, or seen the plans for Toyota's new assembly operations in Georgetown, Kentucky) will tell you that those plants are going to utilize the latest technology.

At GM, we're currently leaders in the high-tech race. We're convinced that every American manufacturer who intends to stay in the business will have to incorporate modern technology into its operations.

When you break new ground or reach for leading-edge technology, you're bound to experience some problems and go through a learning process We learned at lot! And that learning paid off when it came time to start up completely refurbished plants like Linden, New Jersey, and Wilmington, Delaware, where the Corsica and Beretta are manufactured or our all-new truck plant in Fort Wayne. We didn't start over with those hi-tech facilities. Instead, we started a good part of the way up the learning curve.

Those plants did start well, and they're turning out very high-quality products—in part because of the new technology installed there but more importantly, because the workers were trained in the new technology.

Many of you probably use computers in your office or home now. If you remember how you felt the first day you tried to work with that computer, you have some sense of how workers on the modern assembly line feel. People who started out welding car bodies by hand are now operating robotic welders and computers. It's a real change, and as managers, we have to prepare people and help them adjust to those new tools and tasks.

At Linden and Wilmington, every single assembly-line worker took two weeks—80 hours—of classes before even starting work. That's 80 hours per person for something like 6,000 people. And for the skilled trades workers, there was even more training. Today, training is as much a part of a new plant as the building and machinery.

Two of our acquisitions—EDS and Hughes—also played a big part in the success of those plants. At Fort Wayne, engineers from Hughes and EDS helped us develop a computer model of the complete assembly operation long before startup. And that model made it possible to eliminate code errors and sequencing problems before the first full-size pickup ever rolled off the line. Technology doesn't exist in a vacuum. It's part of a total system that includes well trained people and planning.

Of course, the real measure of our success is the products that come out of our high-tech plants. If those products are good, if they offer the customers real value, our plans and vision have been successful. If GM products sell, GM workers will have jobs. That's the bottom line.

"Since the mid-'80s, we've introduced a long list of new cars: Pontiac has brought out the Fiero, Grand Am, and Bonneville; Olds—the Calais, Eight-Eight, Ninety-Eight, and Toronado; Buick—the Skylark, Electra, LeSabre, and Riviera; and Cadillac—the DeVille, Eldorado, Seville, and Allante."

We're also extremely active in the truck market. One in three vehicles sold in the U.S. today is a truck. Our mid-size vans—the Astro and Safari—have been a popular success. The Baltimore Plant—where they are produced—is running at capacity, and we're having trouble keeping up with the demand. Our small pickups—the Chevy S-10 and GMC S-15—have been quality leaders in the highly competitive small truck business ever since they were introduced. The 1987 S-10 set a sales record. And the new full-size pickups I mentioned earlier are also getting a great response in the marketplace as customers tell their friends about the features and value.

Several of our new cars and trucks will be powered by new engines. One that's already getting great reviews is the Quad 4. It will be offered on the Pontiac Grand Am, Olds Calais, and Buick Skylark. This four-cylinder engine has four valves per cylinder. That's nothing new in today's high-tech market. But it also has the horsepower of an eight-cylinder, and it's extremely fuel efficient. It's the most powerful, fuel-efficient engine built or sold in the U.S. That's new.

A lot of technology went into the design and manufacture of this Quad 4 engine. It resulted in minimum friction, very precise clearances, and controlled chamber volume resulting in very complete combustion of the fuel/air mixture. It's extremely durable. Our engineers put it through some of our most grueling tests, and it performed better than even its designers hoped it would.

So, I really hope you'll make it to the Hyatt. When you see our new mid-size cars and all the other fine GM products on display there—or when you drive a 1988 GM car—you'll know why GM is excited about the future. We had a vision for the future, and today that vision is paying off. It's paying off for our customers in better, higher-value products. In fact, about one-third of our 1988 cars are priced under comparably equipped 1987 models. If customers like and buy our cars, it in turn will pay off for our GM people in greater job security.

But, of course, GM can't do the whole job by itself. What you do here in Washington has an enormous impact. I'd like to mention some of our concerns.

First and foremost, is the budget deficit. I think everyone agrees that the deficit is the priority problem. I know you have all heard it from many business people so I won't dwell on it. Finding the solution—where to cut spending—has got to be one of the toughest challenges on Capitol Hill. I sympathize with the difficulty, but I urge you to keep trying.

We also need a reasonable regulatory environment. Let me talk about a couple of examples—safety regulations and the pending amendments to the Clean Air Act.

At GM, we're very proud of our leadership in safety. We have the world's most advanced vehicle safety and passenger protection testing facilities and programs. These help us keep GM vehicles in a leading safety position.

One issue that always comes up when safety is discussed is passive restraints. GM first demonstrated an experimental air-bag system in the spring of 1970. Following further testing and refinement, GM offered the air bag as an option on several full-size 1974, '75, and '76 model year cars. The reliability and durability of those systems were excellent. But we weren't completely convinced that an air-bag system—by itself—could offer the protection of a belt.

The industry, drawing on GM's early work, began to deliver air bags as a supplemental device to be used in conjunction with the three-point lap-and-shoulder belt. Many manufacturers began offering the air bag as an option or standard equipment to supplement belts. Now that there's increased customer demand for air bag systems as a supplemental safety feature to be used with the lap-and-shoulder belt, we also have decided to resume offering them.

This year, GM will offer an air-bag option on the Olds Delta 88. We'll have one of those vehicles on display at the Hyatt this evening. It's a demonstration model, so you'll be able to see how an air bag functions without having to get involved in a real accident!

Our plans also include installing an estimated 500,000 driver-side air bags as standard equipment on selected car lines through the 1990 model year. By the end of the 1992 model year—less than five years away—GM's cumulative production of air-bag equipped cars could exceed 3 million units. This assumes continued customer acceptance and future cost reduction as more suppliers develop lower cost, high-reliability systems.

We still have some engineering and resource studies to do before we're sure that air bags are feasible for each of the planned models. And we're pursuing that work vigorously.

In the meantime, GM continues to encourage seat-belt use. We've implemented a program called "Saved by the Belt." It recognizes GM employees and members of their families whose lives were saved or who were spared serious injury because they were wearing seat belts. Those stories are then publicized.

We have produced a film that's directed at junior high and high school students—encouraging them to wear seat belts. Another film, "Seat Belts and the Family," was cosponsored by GM and the American Medical Association. It's message is the importance of seat belts for children and pregnant women.

GM and the other U.S. auto companies have been the principal supporters of Traffic Safety Now, which has safety coalitions in all states and the District of Columbia. We also support the American Coalition for Traffic Safety which promotes national traffic safety programs. These organizations have been the driving force behind efforts to increase seat-belt use.

And we continue to promote and support safety-belt use laws. To date, 75 percent of the U.S. population—over 180 million people—are covered by such laws.

Properly enforced, we know belt laws will save lives and reduce injuries immediately. It's been proven over and over again by studies of the states where laws were enacted.

We also believe that rear-seat lap-and-shoulder belts may save lives. Based on our European experience and data base, GM started installing rear-seat lap-and-shoulder belts during the 1987 model year, and will expand their installation to all cars and passenger-carrying trucks during the 1988-89 time frame.

GM is the first American auto manufacturer to make this safety feature standard. This is another safety development where we're proud to be in the forefront.

Turning from automotive safety to air quality, we at GM are also very proud of the work we've done in reducing automotive exhaust emissions. We're the developers of the catalytic converter and leaders in the implementation of computer-controlled closed loop emission systems—the most advanced technology to do that clean-up job. We have also developed numerous other devices that control exhaust and evaporative emissions.

As a result of this control technology, hydrocarbon and carbon monoxide emissions on our vehicles have been reduced by 96 percent from uncontrolled levels, while oxides of nitrogen have been reduced by 76 percent.

There are proposals under consideration to tighten emission standards still further. We think legislative action to make exhaust emissions more stringent would be a mistake for several reasons. We continue to see improvement in overall air quality as older cars are replaced by newer models with the most up-to-date control systems. But further reductions in emissions will only come at a very high cost.

In the past, technological breakthroughs—like the catalytic converter—have enabled us to make major reductions in vehicle emissions and significant contributions to our national goal of clean air. Today, however, there are no technological breakthroughs of comparable magnitude on the horizon. And we are working on the very small fraction of remaining pollutants. The incremental gains from additional reductions will be very expensive, and it is not clear what technology could meet some of the proposed new standards.

In light of the substantial progress that has already been made in reducing automotive exhaust emissions, and given the promise of still further improvements, enactment of costly emission control legislation at this time is unwarranted. This is especially true in view of the adverse effect such legislation would produce on jobs and international competitiveness. The stability in emission standards in the last few years has let the industry concentrate on meeting them while delivering a wide array of products and providing customers with a greater selection of vehicles and power trains.

In closing, I'd just like to say that our master plan at GM is customer satisfaction. That's the key to all our goals, including job security for GM people. We're doing our part, but we need your help in a few areas, too.

I'll be glad to answer any questions you might have on these topics—or any others you'd like to ask about. Remember, our GM people here in Washington area also ready to help any time with any questions you have or information you need.

I want to extend to each of you a standing invitation to visit any of our plants across the nation. We are proud of our people who are doing some pretty exciting things, and we would like you to see them first hand. So, please visit us when your schedule permits.

Thank you, again, for giving me this time. And now, your question.

MAN AS OLD AS COAL

HON. PAUL E. KANJORSKI

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 27, 1987

Mr. KANJORSKI. Mr. Speaker, I would like to call your attention to an article from the October 10, 1987, Hazleton Standard Speaker entitled "Man as Old as Coal." The story concerns the research of one of my constituents, Ed Conrad whose findings are on exhibit in the Greater Hazleton Historical Society Museum.

As the inscription above Mr. Conrad's exhibit reads: "This is the only museum in the world where petrified bone, found between coal veins, is on display."

On behalf of my constituent, I request that this article be inserted in the RECORD.

The article follows:

WRITER'S CLAIM: MAN AS OLD AS COAL—IF CORRECT, IT WOULD DESTROY DARWIN'S THEORY

It is only a small sign, neatly dressed in a frame, and its message is not only short and sweet but also loud and clear:

"This is the only museum in the world where petrified bone, found between coal veins, is on display."

The sign hangs amid an exhibit in the Greater Hazleton Historical Society Museum in Hazleton and Ed Conrad, who discovered the specimens he insists are petrified mammalian bone, claims it is 100 percent factual.

"The microscope doesn't lie and the Haversian systems, the tell-tale evidence of bone, are clearly visible in my specimens," he explained. "Therefore, there is no question that it is bone. And, most importantly, it has been confirmed by one of the most prestigious scientific institutions of its kind in America: Yerkes Regional Primate Research Center in Atlanta, Ga."

Conrad discovered what he claims is petrified bone in spill banks removed from between veins of anthracite and, if anyone doubts they are as old or older than coal (which science claims is a minimum of 280 million years), he simply points to specimens still embedded in slate which also are on display.

"Science says coal is of Carboniferous age and it is considered of geology," he said. "But my discoveries may be much older. After all, for bone to petrify in slate means it had to exist before the material that turned into slate had hardened.

"In any event, science has long maintained that large land animals did not even exist during the time frame of the coal formations—that they wouldn't come along until many millions of years after coal was formed—but my discoveries prove that this particular theory is totally in conflict with the facts."

The discovery of bones of large land animals between coal veins would stand as a monumental scientific breakthrough in itself but it's really minor league when compared to Conrad's other discoveries.

He claims he has found human skeletal remains, petrified and also of Carboniferous age, that originally had been situated between coal veins, making them older than the topmost vein.

A newspaperman for more than a quarter-century and a member of the *Standard-Speaker* staff for the past seven years, Conrad says there is no question that his discoveries include human bone.

"Two of the world's foremost authorities in human comparative anatomy have been extremely impressed with a number of my specimens which they strongly feel are human remains," he said.

These experts are Wilton M. Krogman, author of "The Human Skeleton in Forensic Medicine," and Raymond A. Dart, M.D., the internationally acclaimed anatomist, both of whom had physically examined a number of Conrad's key specimens.

"Their very favorable opinion is documented in writing above their signatures," Conrad revealed. "And, since testing has confirmed that some of these key specimens—in particular, portions of two craniums—are indeed mammalian bone, they unquestionably are human."

And, he says, this is why scientists—in particular, anthropologists and paleontologists as well as the biggest-name scientific institutions—have given him a very difficult time over the past six or seven years.

"My discoveries of what I insist are petrified human skeletal remains, removed from between coal veins in Carboniferous strata, is the ammunition to destroy sciences flimsy version of how man originated," Conrad said.

"It's really very simple: Evolutionists insist our most remote ancestors were monkey-like, cat-size primates which existed 60 to 65 million years ago, and that we—man—climed up the ladder from that very insignificant beginning.

"Therefore, to place man on earth in almost his present form during the coal formations means that we could not possibly have evolved from these monkey-like creatures. It's impossible if or ancestors were around about 200 million years previously."

Conrad, a native of Mahanoy City who had worked at newspapers in Philadelphia, Montreal and Toronto, said his first discovery of what he says is petrified bone was nothing more than a fluke—but there have been no accidents since.

"One day back in June 1981, I just got the urge to search for leaf fossiles," he recalled. "So I drove to a slate bank but gave up in disgust after about 15 minutes when I couldn't find a single one.

"While walking back to my car, I spotted a copper-colored, peculiarly-shaped small boulder in the distance and, for some strange reason, walked over to investigate," said Conrad. "When I looked it over more closely, I got the distinct impression that it resembled a large skull and took it home."

He then sent photographs of the specimen to the University of Pennsylvania. Alan Mann, an anthropoligist, was impressed with the photograph and invited him to bring the specimen to Philadelphia.

But, after seeing the object and without performing any scientific testing, Mann told his visitor that it was nothing more than a natural formation.

Conrad then sent the same photo to the Smithsonian Institution and was invited to bring the object to Washington, D.C., so it could be examined.

This was done and the Smithsonian "experts," including an anthropologist and apaleontologist, said it was nothing more than rock, also without performing any scientific testing.

Instead of tossing the specimen over the nearest embankment, Conrad decided to probe the inside of what appeared to be a jaw and when he patiently did this over a period of several weeks, he learned to his amazement that the interior was hollow, being full of hardened mud.

He felt certain a rock shouldn't have a hollow interior and informed both Penn and the Smithsonian—but neither expressed any further interest in the specimen.

Three months later, rather disgusted about their lack of interest, Conrad accidentally broke off the portion which he felt resembled a jaw and discovered the hollow interior contained peculiar hardened protrusions. He later learned, after reading about human teeth and jaws in the library, that the interior of the jawlike area—which the "experts" at Penn and the Smithsonian claimed was nothing more than a rock—contained what he says is a portion of a human mandible as well as two humanlike teeth: a canine and a premolar, precisely where they would be expected to be found on a human dental arcade.

It should be noted that this pair of toothlike protrusions had been X-rayed much later by a veteran dentist who wrote a letter stating that the X-rays he had taken read just like teeth.

Meanwhile, Conrad insists he had gotten the fast shuffle from various "experts" to whom he had taken not only his original specimen but also a few other strange-looking objects he had found in the same general locality.

"Everybody turned thumbs down on me," he said, including the anthropologist at Penn; three experts at the Smithsonian; Roger Cuffey, a paleontologist at Penn State's main campus; Dr. Roberty Eckhardt, an anthropologist at Penn State; and Allan Walker of Johns Hopkins University in Baltimore, Md., who is considered one of the world's foremost authorities on fossilized teeth.

"All I was getting was the brushoff and only later did I realize why," said Conrad. "It was because I had been completely honest in informing them that the specimens had come from between anthracite veins.

"Since science maintains that neither man nor large land animals had existed while coal was being formed, I was shot down out of hand because they simply felt it couldn't be possible. And, besides, how could I—a nobody, who never spent five minutes in a classroom studying earth sciences, anthropology or paleontology—find something that men of great education in science never found?

"But the problem is, the anthropologists and paleontologists simply didn't know what to look for. Unfortunately, the vast, vast majority of them only know what they have read in books, or had been taught by professors who also had read it in books.

"Anybody—even third- or fourth-graders—can find fossilized bone if, for example, you take them to a place where fossilized bone has been found in the past and let them walk around the terrain for awhile," said Conrad. "This is because fossilized bone generally is white, so it's relatively easy to spot when it's sticking out of the ground.

"However, when bone petrifies and turns to a rock-like material, no one on the face of this earth—no one from Penn, the Smithsonian, Penn State or anywhere else—can say positively that a rocklike object is bone or rock, no matter how impressive its bonelike contour might be. That is, if they're basing their opinion on visual observation alone.

"This is where the microscope comes in. A ground section (a wafer-thin slice) must be cut from the specimen in question and the cell structure examined microscopically to determine if the Haversian systems—the cell structure—are visible."

Conrad said he stumbled onto this fact by a stroke of good luck.

"I had been in Montreal on other business and paid a visit to McGill University where I dropped into a geology lab to show them a few of my specimens and ask a few basic questions," he said. "While there, I casually mentioned that it would be a shame if my specimens were, in fact, petrified bone but there was no way of ever proving it.

"One of the grad students seemed shocked and immediately told me that bone is always identifiable because petrification cannot alter the cell structure. He explained that this is because bone requires oxygen and food which are supplied through miniscule canals, and these canals—the Haversian systems—always remain."

Conrad said the shame of his entire project is that neither Mann nor people from the Smithsonian, Penn State nor Johns Hopkins had revealed this information—that a conclusive determination of bone can be made with a microscope after a ground section is prepared and examined.

In any event, Conrad returned home, became a steady customer at the Hazleton Area Public Library, obtained a scientific journal entitled "Science in Archaeology," in which it clearly states precisely what the geologist had told him about bone always being identifiable no matter its age or degree of petrification.

It was then that Conrad began studying the internal structure of bone, as explained and pictured in textbooks, purchased a microscope, acquired several bones of a human cadaver and eventually determined that, under the microscope using about the very same degree of magnification, the cell structure of the specimens he had discovered between anthracite veins was totally similar.

"When I brought this to the attention of various scientists and scientific institutions, I was totally ignored and, in fact, they treated me as though I was a crackpot," he said. "And, at this point, I knew I required documentation of the cell structure in my rock-like specimens from major laboratories. However, I learned rather quickly that they simply refused to perform the testing, even though I was quite willing to pay them for their time and effort. They simply returned my specimens untested with one weak explanation or another.

"It seemed that somebody high up, who knew I possessed petrified bone of Carboniferous age and wanted me to give up in disgust, had alerted them to avoid me like the plague. This is the only answer I can give.

"Eventually I realized that, since it seemed I couldn't go in the front door to get documentation, I'd have to enter through the back door," Conrad explained. "So I sent one of my specimens to Yerkes and asked if one of their experts in the study of bone could determine if a specimen of petrified bone I would like to send them was part of a primate.

"I sent the specimen to Dr. Jeremy Dahl, who later wrote back to dismiss all possibilities that the specimen was primate—primarily because he insisted that no large primates existed on the North American continent further back than 20 million years ago, obviously admitting that, based on its petrification, that the specimen was very, very old.

"However, when he returned the specimen, Dahl referred to it as bone several times in his letter. And, best of all, he provided a drawing of the specimen from which he had cut off a slice for a ground section which was examined microscopically to determine if the cell structure of bone was visible."

Conrad also went through the back door—so to speak—while seeking a confirmation from Teledyne Istopes, one of America's largest independent testing laboratories.

He wrote to Teledyne to ask if someone there could determine if a specimen of petrified bone he would send them was mammalian or reptilian. Jonathan Powell, geochemistry manager at their facility in Westwood, N.J., became very interested and invited Conrad to send him the specimen. Much later Powell informed Conrad in writing that it appears to be more mammalian than reptilian.

"What I did was outfox the foxes," said Conrad. "I had to trick them into giving me their honest opinion and it paid off because I received the necessary confirmation that my rock-like objects were petrified bone.

"If the anthropologists and paleontologists scream and holler that my rock-like specimens are not petrified bone, they're blowing hot air. Are they going to question Yerkes' written report for example?

"All I can say is that I have everything I say I have and I have no reason to lie," said Conrad. "I have operated as a true scientist in every sense of the word. I have had all kinds of other testing done—and all at my own expense, without receiving a dollar in funding.

"This testing includes a CAT Scan on one of my human skull-like specimens which revealed impressive similarities with human skulls, and scanning electron microscope (SEM) work which revealed that the surface features of one of my specimens—which both Krogman and Dart feel may be a portion of a human tibia—are almost totally similar under 2,000-power magnification with the surface features of a human skeleton."

Conrad said he has an incredible number of specimens of human skeletal remains but his prize possession is what he insists is an almost complete human skull embedded in a boulder, with its left side protruding.

"This skull-like object dramatically resembles a human skull in contour and it is absolutely, positively, unquestionably mammalian bone because I have examined granules taken from the rind and the Haversian systems are crystal clear," he revealed.

Getting back to the display of his petrified bones at the historical museum, Conrad explained why he has done so.

"For one thing, I've been chasing all over the country for the past six or seven years—via letters and phone calls and often in my car—trying to seek out honest scientists who aren't afraid of rocking the evolutionists' boat," he said. "But I was getting nowhere, which is a total disgrace and makes a mockery of the contention of most scientists that they are always seeking the truth.

"Then Spotlight newspaper in Washington, D.C. (with an international circulation of approximately 234,000) became very interested in my discoveries and published a three-part series on me and my specimens last January. The Standard-Speaker ran a news item on their series and a few days later Harold Rinehimer, president of the museum, asked me for copies of the Spotlight stories so he could put it in a display case.

"I gave him copies, then almost completely forgot about them," said Conrad. "However, about six weeks ago, Harold flagged me down as I was walking past the museum and excitedly told me that a former college professor from Arizona, spending time in Hazleton because his car had broken down and simply killing time until it was repaired, had visited the museum the previous day and had spent almost an hour-and-a-half reading and rereading the Spotlight articles.

"The former professor was very, very impressed, Harold told me. And that's when I decided to go all the way with the historical museum because I believe everyone living in the coal region should be aware that our area plays a monumental role in man's ancestry and origin."

Conrad continued: "Look, publications like Time, Newsweek, The New York Times and The Washington Post as well as network television news program such as "60 Minutes" wouldn't even give me the time of day. That's because they realize what a sensitive, controversial issue it is, and how many enemies they'd create in established science just by giving my story some national publicity.

"But I'm not worried about making enemies—more than the very long lineup which I already have—because I'm offering mankind the evidence that Darwin's Theory is nothing more than another Aesop's fairy tale," he remarked. "And, unless the evolutionists are able to come up with the physical evidence of some lowly primate older than my specimens of petrified bone, they'll be on the outside looking in."

"I feel, if we realized that the scientific evidence is now available that we are something very, very special in the grandiose scheme of creation—that we aren't the result of a series of incredible, and always favorable, accidents of evolution—maybe it'd make this a much saner and safer world in which to live."

As for his numerous enemies in science and various scientific institutions, Conrad offers the last word by recalling what President-to-be John Adams stated very eloquently back in 1770 while a defense attorney at the Boston Massacre trial:

"Facts are stubborn things; and whatever may be our wishes, our inclinations or the dictates of our passions, they cannot alter the state of facts and evidence."

HUNGARIAN FREEDOM FIGHTERS

HON. EDWARD F. FEIGHAN

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 27, 1987

Mr. FEIGHAN. Mr. Speaker, at this time last year, we marked the 30th anniversary of the Hungarian people's uprising against their Soviet oppressors. I rise today before you, because I strongly believe that this date must be remembered year after year—on the 31st anniversary, the 32d, and beyond—so long as people are living under Soviet domination. Last Friday marked the 31st anniversary of the Hungarian freedom fighters' attempt to overthrow their Soviet oppressors and to establish a free and independent Hungary. On this 31st anniversary, we must pledge never to forget to honor and recognize their courageous efforts.

On October 23, 1956, students, workers, and intellectuals in Budapest organized a demonstration to show their support for the people of Poland. Their peaceful demonstrations spontaneously erupted into a national cry for independence, free elections, and the end of Soviet controls. Soviet troops fired into the crowds, setting off the Hungarian revolution. Although these troops were withdrawn from Budapest on October 29, days later 200,000 Soviet troops and 4,000 Soviet tanks had returned—supposedly at the request of the Hungarian government, to restore order in Budapest. Tragically, an estimated 40,000 Hungarians were killed, and the Soviets had reasserted their control over Hungary.

Mr. Speaker, Cleveland, OH has the largest Hungarian community in the world—outside of Budapest. As a representative from Greater Cleveland, I am proud to join with the Hungarian Americans from my district to commemorate the brave struggle waged by the Hungarian freedom fighters 31 years ago. Through their proud example, we can renew our own resolve to fight oppression today—whether it takes the form of the Soviet occupation of Afghanistan, its domination of Eastern Europe, or its oppression of peoples living within the Soviet Union's own borders. Indeed, the Hungarian freedom fighters' courageous struggle for freedom and democracy must never be forgotten.

TESTIMONY OF FORMER PRESIDENT OF COSTA RICA DANIEL ODUBER

HON. GEORGE MILLER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 27, 1987

Mr. MILLER of California. Mr. Speaker, on October 20, 1987, former President of Costa Rica Daniel Oduber presented testimony about the Central America peace plan before the Subcommittee on Western Hemisphere Affairs, Chaired by our distinguished colleague, Representative GEORGE CROCKETT.

Mr. Oduber's statement reflects once again the broad consensus in favor of the peace effort among current and former leaders in Central America. Mr. Oduber makes the following observations, which I believe warrant our close attention:

That "democratic Government cannot be achieved overnight," but must emerge, rather, from a process of democratization;

That the "most important accomplishment" of the peace plan is to have created a "dynamic of compromise" in the region;

That critics of the peace plan underestimate the pressures Central American leaders are bringing to bear on each other to bring about compliance with the plan's provisions;

That the United States is perceived in Latin America as having "abandoned the inter-American system" out of preference to "go it alone";

That providing support for the Contra rebels in Nicaragua after November 7 "would go againt the will of all Latin America and demonstrate a glaring disregard for the judgment of Central America's leaders about what is best for their region."

I commend former President Daniel Oduber's remarks to you for your careful consideration:

STATEMENT BY H.E. DANIEL ODUBER

Mr. Chairman, Members of the Subcommittee, I am pleased to be here today to share my thoughts about the Central American peace process.

As you know, Ambassador Elliot Richardson and I are members of the Inter-American Dialogue, an independent group of about 60 civic leaders from the United States, Canada, Latin America and the Caribbean who meet periodically to discuss and offer recommendations on major hemispheric issues. We have just completed the fifth plenary meeting of the Dialogue since its founding in 1982. Copies of our 1986 Report have been provided to you, along with a recent statement of our Central America Working Group, which Ambassador Richardson chairs.

Although I am co-Chairman of the Dialogue, along with Ambassador Sol Linowitz, I am speaking today as an individual Central American. My statement does not necessarily reflect the views of other Dialogue members, although it draws on our discussions during this week's plenary.

It is somewhat unusual for foreign visitors to testify before committees of Congress—and for good reason. We foreigners have our diplomatic missions through which we can speak to Washington. But I am glad that in this case, Mr. Chairman, you have made an exception. I am not here to duplicate the work of the Costa Rican Embassy, which is headed by an able Ambassador who has been vigorously representing my government's views. I am here, in this public forum that so well exemplifies American democracy, to tell you and the American people what I believe Central Americans are thinking today, what we hope and pray for, what we are trying to accomplish with our peace process, and why we believe it is vital to reestablish the rule of law in our region.

This is a time of optimism in Central America. In the ten weeks since the Guatemala summit, we have finally begun to move toward peace. Throughout Central America, restrictions on civil liberties are being lifted, prisoners are being released, exiled politicians are returning, and an atmosphere of diplomatic cooperation is being revived. Much remains to be done if peace is to be secured—provisions for cease-fires and amnesties must be negotiated, for example—but we have taken important first steps toward a durable peace. No one should underestimate what this means.

It is not simply by accident that this welcome progress has occurred. Since February 15, when President Oscar Arias Sanchez unveiled his regional peace plan, we Central Americans, for the first time, have taken responsibility for finding our own solutions to our region's political problems. In so doing, we have affirmed a shared belief that the continuing wars in Central America represent the single greatest threat to our people. We have signaled unmistakably greatest threat to our people. We have signaled unmistakably that we believe it is better to live at peace with all the governments of our region than to tolerate continuing support for insurgent movements that are trying to oust one government or another. And we have demonstrated our belief that diplomatic pressure is more likely to bring about peace and respect for sovereignty in Central America than is the threat or use of outside force.

In Guatemala City, the five presidents declared that the deaths, destruction of property, and displacement of persons that have occurred in Central America over the past decade must not continue. Our five small countries share a common history, deep family connections, and many common borders. Indeed, some have referred to Central America as one country with five governments. For all these reasons, the effects of a civil war in one country are inevitably felt in the other countries of the region.

In Costa Rica, this "ripple effect" takes the form of thousands of refugees pouring across our border. In Honduras, the Nicaraguan and Salvadoran wars have produced both a refugee problem and a divisive national debate over the use of Honduran territory to make war on Nicaragua. And in El Salvador and Guatemala, nascent democracies suffer from the effects of local insurgencies as well as the corruption and intrigue surrounding efforts to supply and train the anti-Sandinista rebels, the so-called "contras."

The ongoing civil wars in Central America have had a corrosive effect not only on the region's social fabric and political systems, but also on our economies. For two decades, our region was held up as an example of growth and development for other less developed countries. But now, as President Arias pointed out during his recent visit to Washington, Central America's violence has destroyed regional trade and investment, and plunged us into our worst economic depression ever. Even in Costa Rica—a stable democracy with nearly 100 years of civilian government—economic progress has been blocked by the uncertainties caused by our neighbors' struggles, as well as by falling commodity prices and painful fiscal adjustments. All Central Americans recognize that regional development will not be possible until a lasting peace is achieved.

For all these reasons—fatigue with the death and destruction of the past decade, concern about the social and political costs of the region's wars, and worry about the escalating economic effects of conflict—the Central American presidents who met last August in Guatemala City resolved to look past their differences and to work for peace.

The agreement signed in Guatemala by the five presidents is not merely a statement of objectives. It is a binding international accord calling for specific measures to end the wars in Central America and create the conditions for a durable peace. The presidents specifically stated that the Guatemala document is "a harmonious and indivisible whole," not a menu from which a country can choose those parts it finds most agreeable. The provisions for dialogue, amnesty, and democratization are inseparable from those for cease-fires, an end to support for insurgencies, and regional security negotiations.

The principal provisions of this agreement should enter into force on November 7. The Central American presidents, in signing the Guatemala document, did not presume, however, that hostilities would suddenly cease throughout the region on that date. Nor did they imagine that democracy would suddenly and miraculously emerge full-blown on November 7, or by any arbitrary date. The presidents know that building democracy is a slow internal process, rooted in each country's history, institutions, and values. This was the case in Costa Rica and the United States, and it will surely be the case in Nicaragua and El Salvador as well.

Certain steps, such as opening the media and releasing political prisoners, must be taken before movement toward democracy can begin. And for this reason, there is pressure on all Central American governments, and especially on Nicaragua, to satisfy these initial requirements by November 7. But we are also convinced that lifting a state of emergency or declaring a political amnesty cannot be seen as final goal. Rather, these steps mark the beginning of a long process of reconciliation and reconstruction that will keep Central America on a path toward peaceful and genuinely democratic development.

Because democratic government cannot be achieved overnight—or even in a year or two—the Guatemala accord specifically referred to a "democratization process." To argue, as some seem to, that the agreement requires instant and full democracy in Nicaragua is to distort the intent of the Central American presidents.

Important steps in this democratization process, in fact, have already been taken. In Nicaragua, several exiled Church leaders have returned, Radio Católica and La Prensa have reopened without censorship, and conversations between the Sandinistas and the democratic opposition parties have begun. In El Salvador, a dialogue between the government and the FMLN has resumed, and Social Christian political leader Rubén Zamora has announced his plans to return from exile. And in Guatemala, discussions held in Madrid between the government and the guerrillas show signs of a hopeful beginning.

But by far the most important accomplishment of the Guatemala agreement has been to create a dynamic of compromise in our region. Central Americans of all political tendencies are now thinking about how to strengthen themselves under the terms of the new peace agreement. Dialogue and accommodation, for the first time in recent memory, are becoming possible in Central America.

Skeptics maintain that this dynamic of compromise and peace cannot last because the Guatemala agreement contains no specific sanctions for non-compliance. That argument, however, underestimates the pressure to comply that each Central American government is exercising on its neighbors, and undervalues the importance that Central Americans place on the idea of regional unity. Throughout its colonial period Central America was a unified territory. Even today, Central Americans recognize that economic recovery depends upon reviving a regional Common Market. Because the idea of regional cooperation is so important to Central American history and commerce, there is unusually strong pressure on each of our governments to comply with their commitments. This applies to Nicaragua as much as it does to El Salvador, Guatemala, Honduras and Costa Rica.

A real chance exists that conditions for a lasting peace will be established on the basis of the Guatemala agreement, but only if the current dynamic of compromise is allowed to continue. This outcome would be good not only for all Central Americans, but also for United States.

The ongoing wars in Central America, and the prominent U.S. role in the region, have isolated the United States and shattered the old norms of hemispheric collective security. In too much of Latin America, the United States is today perceived as a country that abandoned the inter-American system and would prefer to "go it alone"—in Grenada, the Malvinas or Nicaragua—rather than work with the other democracies of the hemisphere to solve common problems. With the Guatemala agreement, we have an opportunity to remove the wedge that the Central America debate has driven between the United States and its friends and allies in the rest of the Americas. And even more importantly, we can begin to reconstruct a system of inter-American security that would protect our common interests. But to make all this possible, the United States must accept the same standards of multilateral diplomacy, compromise and accommodation that have taken hold in Central America.

You, as Members of the U.S. Congress, face a fundamental choice. Will you act with us to help sustain the regional process—a process that will not be complete by November 7, but which has already produced many positive developments? Or will you pursue a policy that would deepen divisions in Central America, guarantee continued bloodshed and destruction, and violate the principles of non-intervention, equality of states, self-determination and peaceful resolution of conflicts that are so dear to Latin America?

As I said earlier, the Guatemala agreement is not a "menu." While drawing attention to Nicaragua's obligation to continue the process of democratization it began under the terms of the Guatemala accords, the United States must not ignore provisions for ending outside support to the contra insurgency.

By supporting armed opposition after November 7, the United States would go against the will of all Latin America, including the leaders of the Contadora nations and the "support group" that emerged to strengthen Contadora's efforts. But most importantly, to renew contra aid now would demonstrate a glaring disregard for the judgment of Central America's leaders about what is best for their region.

It was the personal commitment of President Arias, and the decision of all five Central American presidents to take responsibility for their futures, that made the Guatemala agreement possible. By their efforts to comply with these accords, Central Americans have proven their commitment to making President's Arias' approach work. But the future of that agreement now depends, in large measure, upon the United States, and you in Congress.

When he was here in September, President Arias appealed to the United States to "give peace a chance." He also warned that Central America's leaders would "not fall into a trap set by someone who shows us a calendar every day, anxious to bury the last hope" for peace in our troubled region.

I come here now as a Central American citizen to ask you not to make aid to armed resistance the central issue in your debate. I urge you, if you want to help us, take contra aid off the table—and leave it there.

What we want you to do is to support our peace agreement. Negotiate your differences with Nicaragua. And help all of us in Central America rebuild our economies and societies.

If you do that, your security and ours will be assured—and the rule of law, so important to lasting inter-American security, can again become the guidepost for our relations.

THE DUGANS: THEIR IRISH EYES ARE SMILING

HON. STEPHEN J. SOLARZ

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 27, 1987

Mr. SOLARZ. Mr. Speaker, I am delighted to rise to pay special tribute to Anne and Brian Dugan on the occasion of their 50th wedding anniversary.

To celebrate this very special day, the Dugans will again exchange wedding vows in the same Catholic Church in which they wed in 1937.

Although they didn't know one another, Anne and Brian both left Ireland as young adults in 1930. Each settled in the Carroll Gardens neighborhood in Brooklyn, where they met and fell in love.

The rest, as is said, is history—four loving children, 10 wonderful grandchildren, all raised in the proud tradition and culture of Irish ethnic ethos.

The Dugans have also contributed mightily to our Nation's public policy. Their daughter, Eileen, is a member of the New York State Assembly from Brooklyn. In that capacity, she brings to Albany the fine qualities of compassion, enthusiasm, and integrity that her parents instilled in her through their own thoughts and actions.

This milestone occasion, while a source of personal joy for the extended Dugan family, is also an inspiration for all of us and well deserving of our praise and congratulations. I am pleased to extend my personal best wishes to the Dugans. I am proud to call them friends and constituents.

STATE ATTORNEYS GENERAL TAKE ACTION TO ADDRESS HAZARDOUS ATV'S

HON. JAMES J. FLORIO

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 27, 1987

Mr. FLORIO. Mr. Speaker, the Subcommittee on Commerce, Consumer Protection, and Competitiveness, which I chair, has been investigating the hazards of all-terrain vehicles [ATV's].

Over the last few years, 789 victims, many of them children, have been killed as a result of accidents involving ATV's. Last December, the Consumer Product Safety Commission [CPSC] voted two to one to declare certain ATV's as imminently hazardous and to provide consumers with the option of a refund and recall program for the dangerously unstable three-wheel ATV's and for adult size four-wheel ATV's purchased for children.

The CPSC asked the Justice Department to file a case in Federal court to achieve this remedy. Yet, 10 months after the CPSC voted, the Justice Department has yet to agree to take this important case.

As a result of the failure of the Federal Government to take prompt action to address the imminent hazards posed to consumers, State attorneys general are beginning to fill the void. The following article from the October 20 edition of the Los Angeles Times describes the efforts of attorneys general from 23 States to address the ATV problem.

HONDA FACES MEETING OVER ALL-TERRAIN VEHICLE DEATHS

(By Louis Sahagun)

Alarmed by a rising number of injuries and deaths, attorneys general in 23 states Monday gave the nation's largest manufacturer of all-terrain vehicles an ultimatum: meet with them to discuss ways of making their machines safer or face possible legal action.

Texas Atty. Gen. Jim Mattox said he and the other top law enforcement officials, including California Atty. Gen. John Van de Kamp, invited executives from Gardena-based American Honda Inc., a subsidiary of Tokyo-based Honda Motor Co. Ltd., to discuss the matter at a closed-door meeting scheduled Nov. 16 in Los Angeles. The ultimatum was made in a letter to Honda under the auspices of the National Assn. of Attorneys General.

"These vehicles are rolling death machines," said Mattox at a press conference in Austin, Tex. "There have been nearly 800 deaths and 300,000 injuries related to these machines since 1982."

SERIOUS INJURIES

In what remains a largely unregulated pastime, all-terrain vehicles have been linked to an average of 20 deaths and 7,000 serious injuries each month nationwide in the last two years, according to a federal safety agency. About half the victims are under 16.

A spokesman for American Honda, which controls about 56% of the all-terrain-vehicle market in the United States, said, "Our plans are to attend the meeting."

"We want to make certain they understand the American Honda side of the story," said William Willen, spokesman for the company. "These are not defective machines."

Willen added that improved safety training programs have resulted in a decline over the last 2½ years in the injury rate related to the use of all-terrain vehicles.

"There was a 14% decline in the first six months of 1987 compared with the same period in 1986," he said.

SHARPLY CRITICIZED

Mattox and California law enforcement officials however, said there is more to be done, and they sharply criticized the U.S. Consumer Product Safety Commission and the U.S. Justice Department for failing to take action on the problem.

"The federal government has had the information and the authority to mandate safety changes on these vehicles but has done nothing," Mattox said. "It is another example of state attorneys general teaming up to do what the Feds should have done but did not."

In January, after receiving numerous complaints from safety agencies, physicians, law enforcement officials and accident victims across the nation, the Consumer Product Safety Commission requested assistance from the Justice Department in initiating legal action that could force manufacturers to refund the cost of machines that were voluntarily returned by consumers.

Such a move could cost the four major manufacturers—Honda, U.S. Suzuki Motor Corp., Yamaha Motor Corp. and Kawasaki Motors Corp.—up to $1 billion, said a commissioner of the state Off-Highway Motor Vehicle Recreation Commission.

In April, a spokesman for the Justice Department said a decision on the commission's request was "weeks away." But on Monday, the request was still under consideration.

"It is not helpful, and [it is] unfair to criticize us when they do not have the slightest idea of what we are doing," said Robert Cynkar, spokesman for the Justice Department. "The case was not sent to us ready to go to court by a long shot. . . . For the last several months, we have been doing a legal analysis . . . of this very complex case."

Cynkar declined to say when or if the case would reach federal court.

Meanwhile, James V. Lacy, general counsel for the Consumer Product Safety Commission, argued that the attorneys general have not done enough to regulate the use of all-terrain vehicles in their own states.

"Writing letters to manufacturers is fine and good, but they have the power in their own states to require that riders wear helmets, have proper training and not ride with passengers or while intoxicated," Lacy said.

The comment drew a sharp response from Herschel Elkins, a California senior assistant attorney general based in Los Angeles.

"That's nonsense," Elkins said.

He said that delays by federal authorities investigating the all-terrain-vehicle problems "have been interminable" and that action should have been taken by now.

Elkins said the meeting with Honda officials will last two days or more and that issues discussed will include "a possible ban or recall, changes in design, responsibilities of manufacturers, warning labels . . . and the possibility of bringing our own legal action."

The attorneys general action came five days after a senior managing director of Honda Motor Co. wept on a witness stand when an attorney gave him a list containing 789 names of victims who have died in accidents involving all-terrain vehicles like those built by his company.

Tesuo Chino was the first top Honda official to testify in a personal injury lawsuit involving the company's all-terrain vehicles. The case, which is being tried in San Diego Superior Court, stems from a lawsuit filed by parents of a 14-year-old boy who was severly injured five years ago when he fell off a Honda ATC 110 three-wheel vehicle that was being driven by his 8-year-old friend.

The Product Safety Commission and other safety groups have asserted that riders of three- and four-wheel all-terrain vehicles can lose control and even flip their machines when they strike ruts in roads, rocks or ditches. Many injuries result when inexperienced riders instinctively put their feet on the ground in an attempt to stop or turn, they say. In such cases, the rear wheel is likely to run up the back of the leg, flipping the vehicle and throwing off the rider.

"Clearly, this is a very complex issue and resolution takes time," said product safety Commissioner Anne Graham on Monday. "Nonetheless, I believe the CPSC could have and should have moved more quickly to inform the public and provide reasonable recourse."

BILL PLANTE APPROACHES "SUPERJERK" STATUS OF SAM DONALDSON

HON. GERALD B.H. SOLOMON

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 27, 1987

Mr. SOLOMON. Mr. Speaker, Bill Plante of CBS is trying awfully hard to descend to the "Superjerk" status of ABC counterpart Sam Donaldson.

Plante, like Donaldson, has lost all sense of decorum and shame. He complains about the rarity of Presidential press conferences. You would think he'd be grateful at being spared opportunities to make a fool of himself shouting at the President.

So when they shouted questions at the President following a Rose Garden ceremony honoring outstanding teachers and school officials, several of the guests rebuked them as though Plante and Donaldson were unruly pupils.

But Plante since then has been given space in several newspapers, including one of the dailies in my district, to justify his obnoxious behavior. First, he has the nerve to claim the President likes being shouted at, and finally, he closes by saying the American public "deserve better" than the access President Reagan gives poor Bill and Sam.

Well, the American public got their point across in two landslide elections. No one ever elected Bill Plante and Sam Donaldson, and no one believes the wheels of democracy would grind to halt without them. Plante makes the mistake of thinking the press and the "people" are synonymous. But they don't speak or act for the "people." They represent only themselves and their liberal patrons, as every study of their attitudes and voting patterns clearly proves.

Mr. Speaker, I thought the Rose Garden confrontation was appropriate, because teachers are used to dealing with spoiled brats. Thank God our children are in the hands of teachers and officials like the ones I met that day from Shenedehowa High School and LaSalle Institute in Upstate New York, and not under the direction of "Superjerks" Bill Plante and Sam Donaldson.

A TRIBUTE TO MARY ADAMS

HON. FRANK R. WOLF

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 27, 1987

Mr. WOLF. Mr. Speaker, I would like to bring to the attention of my colleagues the passing last week of a great lady, Mary Estes Adams, a life-long Virginian.

Mary Adams represented the very finest tradition of an American citizen freely and voluntarily involved in the political process. It was my personal joy to meet her on my campaign trail to the U.S. Congress. She was a staunch supporter and worker on all my candidacies for the House of Representatives and I will always be indebted to her for those many, many hours of special effort.

She also worked actively on the campaigns of our former colleague Joel T. Broyhill and the current senior Senator from Virginia, JOHN WARNER. In addition, she worked in and on many Fairfax City and State political activities for many years. The Northern Virginia Sun, in writing about her exuberant and happy nature, once called her the Pearl Mesta of northern Virginia politics.

Mary was born in Grottoes, VA, on October 19, 1923, where she grew up and attended local schools. In 1952, she moved to the northern Virgina area with her family and for 10 years in the 1960's was in the real estate business.

She and her husband of 44 years, Lt. Col. Tom Adams, a distinguished congressional staff member who retired from the House Agriculture Committee 4 years ago, lived in retirement in Monterey, VA, where she was active in civic and conservation activities in that community. Mary had spent 25 years as an Army wife during both World War II and the Korean war.

Mary died on her 64th birthday on October 19, 1987, and her funeral service was held at the Church of Ascension in Centreville, VA. In addition to her husband, Mary is survived by eight children: Ellen Gillette of Burke, VA; Susan France of Fairfax, VA; Elizabeth Marcum of Centreville, VA; Laura Hauser of Darnestown, MD; Samuel, Joseph, and J. Benjamin Adams, all of Fairfax, VA; and Thomas E. Adams III of Blacksburg, VA, and 14 grandchildren.

I offer my sincere sympathy to Tom Adams and his family on the passing of Mary, a great lady about whom we can say that the world touched by Mary Adams is a much better place because of her.

DOING A TOUGH JOB WITH DIGNITY

HON. DEAN A. GALLO

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 27, 1987

Mr. GALLO. Mr. Speaker, law enforcement duties in a major city require a very special combination of quick reflexes and unshakable patience. It would be very easy to suffer what is commonly known as burnout in this demanding profession.

When an individual with these very special qualities—as well as the time-honored quality of leadership under pressure—provides 25 years of distinguished service to the people of his community, then his staying power in one of the toughest jobs in the world deserves our special recognition today.

Thomas Possumato, Jr., is a native son of the city of Newark, NJ, who began his law enforcement career in December 1961, as an officer assigned to foot and motor patrol.

In recognition of his abilities and his diligence, he was promoted to the rank of detective in April 1967, and was assigned to the night division where he served with distinction for more than a decade.

This was a time of great challenge to accepted values, particularly in our major cities, and our law enforcement officers were on the front lines of those struggles.

Thomas Possumato met the challenges of those trying times and was the recipient of nine commendations from the Newark Police Department and one from the Federal Bureau of Investigation in recognition of his meritorious service.

In November, 1978, he moved from the frying pan into the fire when he was elected to the presidency of the Newark Lodge No. 12 of the Fraternal Order of Police at a time when Newark faced serious divisions within its communities.

Recently, Thomas Possumato, Jr., was honored by his peers on the occasion of his 10 years of service as FOP president and his 25 years of service to the people of Newark, NJ.

I would like to quote from the list of Tom's accomplishments as published in his testimonial program:

"As President, Tom is the official union representative of over 800 City of Newark Police Officers. His primary responsibilities are negotiating the labor contracts and processing grievance arbitrations for the police officers. Tom has been successful in negotiating six (6) labor contracts which have resulted in substantial salary raises and increased benefits for his fellow officers. Tom was the first F.O.P. President to institute an emergency response team to aid officers with legal and professional advice on a twenty four hour basis. Tom's aspirations for elective officer did not end on the local level. He served as President of the New Jersey State Lodge, Fraternal Order of Police from 1982-1986. During his tenure in office, Tom was very active in the expansion of the State's membership by recruiting thirty (30) new Lodges.

"He was elected National Treasurer of the Grand Lodge, Fraternal Order of Police in August, 1985. He served in this position until August, 1987 when he was elected National Trustee. As National Treasurer, Tom was instrumental in making the Grand Lodge financially solvent.

"In 1985, Tom simultaneously held three (3) elected positions: Local Lodge President, State Lodge President and National Treasurer. A feat never before attained and one not likely to be duplicated.

"In addition to these elected offices, Tom was requested to serve on various committees. New Jersey State F.O.P. Legislative, Labor and Pension Committees, the National Expansion Committee, and the Ways and Means Committee. In April, 1984, he was a member of the New Jersey State Committee to establish the development of homicide and sudden death survivor guidelines. Tom also served on the New Jersey State Commission to deter criminal activity and the Justice Advisory Council which recommended guidelines for the drug testing of police officers."

Thomas Possumato has never refused the call of duty on behalf of the people of Newark or in service to the law enforcement community.

He continues to set an example for members of the law enforcement community who are asked to give the extra measure for the protection of lives and property every working day. He does a tough job with dignity and he deserves our recognition.

OCTOBER 23 MARKED THE ANNIVERSARY OF THE HUNGARIAN REVOLUTION OF 1956

HON. ERNEST L. KONNYU

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 27, 1987

Mr. KONNYU. Mr. Speaker, last Friday, October 23, 1987, marked the anniversary of the Hungarian Revolution of 1956. On that day, 31 years ago, over a decade of Stalinist repression and political and economic hardships in Hungary culminated in a spontaneous widespread and popular uprising against Soviet occupation and oppression.

Most Americans are already familiar with the course of events during the revolution which shaped the destiny of Hungary and the Soviet bloc. It is most important to note that the Hungarian uprising began as a peaceful demonstration by students, who presented the Communist government with a 16-point plan calling for freedom of press and speech. This demonstration and the Stalinist government's violent reaction to it sparked an all-encompassing demand for greater freedom and independence in Hungarian political life—the nation's right to determine its own future, and to have a say in the activities of its own government. An entire nation participated, regardless of age, political partisanship or religious belief—students, intellectuals, workers, professionals, even young children.

The events of the fall of 1956 were not without preamble: In the months preceding, students, writers, and intellectuals openly criticized the repressive actions of the Communist regime.

The period between October 23 and November 4, 1956, was marked by high optimism and faith for the realization of the dream of an independent neutral Hungarian state, free from Soviet influence. The Roman Catholic Primate of Hungary, Jozsef Cardinal Mindszenty, who had been sentenced to life imprisonment in 1949, was released by freedom fighters during the revolution.

The government, headed by Premier Imre Nagy, increasingly aligned itself with basic popular demands and, on November 1, 1956, declared Hungary's neutrality, its withdrawal from the Warsaw Pact, and its intention to hold free, multiparty elections.

Yet on November 4, 1956, the Soviet troops, after withdrawing from Hungary early in the revolution, returned to occupy the country once again. Tens of thousands of Hungarians perished during the revolution, including members of the popularly installed government, as well as many teenage revolutionaries. The leaders of the revolution; Premier Imre Nagy, Gen. Pal Maleter, and Miklos Gimes, among many others, were executed. To this day, over three decades after the revolution, the site of their graves has not been disclosed to their families or to the Hungarian people by the government.

The relatively high standard of living enjoyed by Hungarians today did not come about by accident. Hungarians have paid the highest price—their blood—for improvements in cultural, economic, and political liberty. The 1956 uprising gave impetus to long overdue changes and clearly showed the popular will for reform and an independent national identity.

For over 1,000 years, Hungary has aligned itself with Western cultural and religious traditions. The revolution of 1956 reaffirmed Hungary's stance on neutrality and independence from any Soviet or foreign domination. Today, Hungary's tentative steps toward strengthening its ties to Western Europe and the United States merits the full support of Congress.

A TRIBUTE TO A GOOD SAMARITAN ACT

HON. BOB TRAXLER

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 27, 1987

Mr. TRAXLER. Mr. Speaker, I rise to pay tribute to Will Dowling, a constituent of mine whose Good Samaritan act cost him his life.

Last month, Mr. Dowling witnessed a crime and was killed while he was trying to apprehend the offenders. Will Dowling was a true hero, a man of principle who sacrificed his life in pursuit of his beliefs. Will Dowling's courage should not go unnoticed. In every way, he epitomizes a man of high moral character and integrity.

In conclusion, Mr. Speaker, I would like to pay my respects to Mr. Dowling's wife Michelle, his three sons, William II, Wayne, and Willis, his parents, William and Janet Dowling, his three sisters and both grandmothers, all of whom survive this kind, brave and giving man.

I would like to share with you some insightful articles from two local newspapers in the Eighth District of Michigan:

[From the Tuscola County Advertiser (Caro, MI), Sept. 30, 1987]

BECAUSE HE CARED, A HERO IS DEAD

Real heroes are hard to find these days.

That's because they don't perform tremendous feats like Celluloid heroes. Neither do they sound like the synthesized heroes of the music industry, nor earn the money of today's tempermental sports professionals.

Real heroes make small, but significant, contributions to the quality of our lives.

Will Dowling of Silverwood is a hero.

Mr. Dowling, a 26-year-old, self-employed roofer working in Detroit, saw a crime and tried to prevent it. It wasn't a big crime. It was a purse-snatching, but wrong is wrong and right is right. Mr. Dowling believed that.

He chased the crooks in his car and, when he had them pinned down in a traffic jam, he jumped onto their car. He was thrown off the vehicle and suffered fatal head injuries.

It's too bad Mr. Dowling died because of his beliefs. Naysayers will drag out old adages about the value of "dead heroes" and will use them as weak excuses for turning their backs when involvement is called for.

We suspect nothing would have made Will Dowling madder.

In fact, his death is not without purpose if only to provide a spark of inspiration in a world graying with apathy.

In death, Mr. Dowling donated organs so others might live. He made a difference, both in life and in death.

The victim of the crime Mr. Dowling became involved in has established a fund to assist the uninsured family with medical bills incurred before his death.

[From the Mayville (MI) Monitor, Sept. 24, 1987]

SAMARITAN ACT IN DETROIT COSTS LIFE OF SILVERWOOD MAN

A "Good Samaritan" act has cost a Silverwood man his life. But even in death, Will Dowling has continued to be a hero, helping several others as his healthy organs have been donated by his family to benefit those in need.

Dowling, 26, died early Tuesday morning from head injuries he received while trying to prevent a purse snatching in Livonia last week.

A memorial service is planned for today, Thursday, September 24, at 4 pm at the Caro Church of the Nazarene, Dixon and Purdy Roads.

In addition to his wife, Michelle, he also leaves three young sons, William II, Wayne and Willis, along with his parents, William and Janet Dowling of Silverwood, three sisters and both grandmothers.

Dowling had been in intensive care at Botsford General Hospital, Farmington Hills, since the incident. He was in a coma before and after surgery performed last Tuesday.

According to an account in the Friday, September 18 Detroit Free Press, Livonia police said Dowling apparently observed a woman steal a purse from the car of Joan Hart of Brighton Township at a gas station at Eight Mile and Middlebelt Roads.

The woman reportedly fled east on Eight Mile Rd in a 1977 Buick driven by a man. Hart told police a man ran up to her and said, "Some lady just stole your purse. I'll be right back."

According to the Free Press report, witnesses told police Dowling accidentally ran into the Buick with his car in heavy traffic at the intersection of Grand River Avenue and Eight Mile Road.

Dowling reportedly got out and began pounding on the windows of the thieves' car, demanding the purse. He then got on the hood of the Buick and tried to kick in the windshield. When the driver stepped on the gas, Dowling fell off and struck his head.

The two suspects were later caught another mile away at Grand River and Beech Daly when another man continued the chase and the Buick collided with yet another vehicle.

The suspects, Dale McNeil, 26, and Deborah Brown, 25, both of Detroit, were arraigned last Thursday in 16th District Court in Livonia, charged with larceny from Hart's vehicle. McNeil was also charged with felonious driving.

It was not known Tuesday if additional charges would be sought in the case as a result of Dowling's death.

McNeil and Brown are in the Wayne County Jail since failing to post bonds of $10,000 and $3,500 respectively. Preliminary examinations had been set for Sept. 24.

Adding to the tragedy is the fact that the Dowlings had no medical insurance. Medical bills of some $50,000 have been incurred during the week's treatment.

Hart, the purse-snatching victim, along with her employer in a hair cutting business, have started a bank account in Michelle Dowling's name to help with the expenses.

Will Dowling was a 1979 graduate of Mayville High School. Classmate Marlin Kibbe, who is news director of WKYO-WIDL radio in Caro, is heading fundraising efforts locally.

LUZERNE COUNTY HALL OF FAME HONOREES

HON. PAUL E. KANJORSKI

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 27, 1987

Mr. KANJORSKI. Mr. Speaker, I am pleased to bring to your attention 24 new additions to the Luzerne County Chapter of the Pennsylvania Sports Hall of Fame. For the third consecutive year, the Luzerne County chapter is inducting those men and women who have most greatly contributed to the sports community in Luzerne County. Chosen by a screening committee of community leaders and sports enthusiasts, the new members of the Sports Hall of Fame will be presented with a plaque and will have their names submitted to the Pennsylvania State Sports Hall of Fame for consideration.

Team players and individual champions, athletes and those who provided the vital support systems necessary for our athletes, these new inductees exemplify the best spirit of sports in Luzerne County. I would like now to name the new inductees, their hometowns, and the talent they contributed to sports in the Wyoming Valley:

Walter Allabaugh, Wilkes-Barre, outstanding athlete and official in football, basketball, and baseball for 30 years; Annette Barbini, Wilkes-Barre, outstanding athlete, official, and coach; Edward and Marie Christian, Wilkes-Barre, founders of Teeners League Baseball; Frank Clause, deceased, Old Forge, professional bowler and teacher; Adam Comorosky, deceased, Swoyersville, professional baseball player for the Pittsburgh Pirates; John Kuc, Kingston, world powerlifting champion; Edmund "Stiff" Kulakowski, Kingston, football and wrestling star; Nicholas Mauriello, deceased, Exeter, billiards champion; Neil Miller, Wilkes-Barre, boxing champion; George Slinzer, Luzerne, State archery champion; "Little Bill" Phillips, deceased, Wilkes-Barre, well-loved radio sportscaster; Charles "Chuck" Sieminski, Mountaintop, professional football player and coach; John J. "Battling Gates" Brominski, deceased, Swoyersville, boxing champion; Steve Chanecka, Wilkes-Barre, basketball and golf star; Edward Chiampi, deceased, West Pittston, baseball and basketball coach; Bob Dullba, Newport Township, professional baseball player; Cyril Gallagher, deceased, Pittston, outstanding football and basketball player and coach; Edward Jefferson, Hazleton, outstanding bowler; John "Snoggy" Mergo, deceased, Plymouth, all-around athlete and basketball coach; Robert Patton, deceased, Wilkes-Barre, sportswriter for nearly 40 years; Mendy Rudolph, deceased, Wilkes-Barre, professional basketball official; Paul "Stenn" Stenko, Berwick, professional football player and official; Billy Strauss, Wilkes-Barre, boxing champion; Bob Tucker, Hazelton, professional football player.

Mr. Speaker, I am proud to share with my colleagues in the House of Representatives the accomplishments of the athletic stars of Luzerne County, PA. We can all certainly benefit from the examples of excellence and dedication shown by this year's inductees into the Luzerne County Sports Hall of Fame.

TRIBUTE TO TEMPLE NER TAMID

HON. EDWARD F. FEIGHAN

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 27, 1987

Mr. FEIGHAN. Mr. Speaker, today I would like to take the opportunity to pay tribute to Temple Ner Tamid in Euclid, OH, which will celebrate its 40th anniversary the weekend of November 13-15, 1987.

In 1947, a congregation formed and began to hold meetings in a community center. On January 16, 1950, the congregation purchased a lot at the corner of East 250th and Lakeshore Boulevard in Euclid to build a synagogue. Temple Ner Tamid was dedicated on November 27, 1955. Thirteen years later, it became affiliated with the Union of American Hebrew Congregations.

The meaning of Ner Tamid is "eternal light." For the last 40 years, the eternal light of social progress has been shining brightly at Temple Ner Tamid. It has been a place of worship, with an exemplary history of community involvement. In cooperation with an intercity church, the synagogue sponsors a food program to help the needy. Based on the nationwide concern for a more literate society, programs such as Project LEARN have been implemented by the members of the temple. Jewish Big Brothers-Big Sisters is another community-based organization supported by Temple Ner Tamid.

Under the guidance and leadership of Rabbi Bruce Abrams, the temple has made wonderful accomplishments in the community. Rabbi Abrams exudes dynamic leadership and moral courage. He has served the temple since 1981, making it an outstanding center for spiritual growth and community service. In honor of its excellence, Temple Ner Tamid was presented with the "Mayor's Award for Volunteerism in 1986."

With the bicentennial of the U.S. Constitution upon us, we are especially conscious of our freedom of religion. Temple Ner Tamid is an impressive example of this freedom. Rabbi Abrams and the members of the temple have extended their spiritual wealth and warmth throughout the community. For this, they deserve our heartfelt gratitude.

I am honored to represent Temple Ner Tamid in the 19th Congressional District of Ohio and would like to offer my sincere congratualtions and best wishes on this 40th anniversary.

BA-hatz lahah be-atid!

WHO'S LOOKING OUT FOR MR. AND MRS. JONES

HON. GEORGE MILLER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 27, 1987

Mr. MILLER of California. Mr. Speaker, the crash of the stock market last week and the continuing fall of stock prices indicate to many that the fiscal chickens of Reaganomics are coming home to roost.

For far too long, the President has escaped answering hard questions about fiscal policy by responding with a quip or a homily about how well America is doing. Apparently Wall Street does not respond indefinitely to quips and homilies.

After the drastic dislocations of the past week, the President still seems incapable of distinguishing fact from fiction.

Fiction: The President charges that Congress has done nothing to reduce deficits.

Fact: The budget we enacted slashed the deficit by over $70 billion last year, and has reduced the growth in Government spending to the lowest level in 25 years. It is a subject of continuing wonderment how the President can simultaneously claim credit for substantial deficit reductions, and then accuse the Congress—which developed and passed those reductions—of doing "nothing."

Fiction: The President charges Congress spends far more than he requests.

Fact: Budgets passed by the Congress—and signed into law by the President, it should be noted—have actually appropriated $17 billion less than requested by the President.

Fiction: The President charges Congress "wouldn't even look at" the budgets he has sent to the Congress.

Fact: Congress, on a bipartisan basis, has repeatedly looked at, and rejected, President Reagan's budgets, with both Democratic and Republican votes. That rejection is not due to partisanship or Democratic control of the Congress; in fact, his budgets were summarily rejected by the Republican-controlled Senate, too. This year, the House voted down the Reagan budget by a vote of 394 to 27; House Republicans voted nearly 6 to 1 against Mr. Reagan's budget. Last year, the vote was 312 to 12; in 1984, Republicans voted against the President's budget 155 to 1.

But no "fact" from the President is less true, or more cruel, than the opinion he offered last week, in the wake of the stock market crash: the crisis is over.

For millions of Americans, the effects of Reaganomics has little to do with the directions of the Dow Jones average. Their lives have become ones of poverty, homelessness, illness and malnutrition. And all they get from the President is glib optimism and homilies.

A new report, just issued by the Physician Task Force on Hunger in America, finds that 20 million Americans go hungry every day despite 58 months of economic expansion. Especially hard hit are infants, the elderly, and blue-collar workers whose jobs have been lost.

If Reaganomics has failed to provide confidence to the stock market after 58 months of expansion, it most certainly has failed even moreso in providing subsistence nutritional support for millions of highly vulnerable Americans. Apparently a rising tide does not raise all boats, to discount but one homily.

Prof. Larry Brown, of the Harvard University School of Public Health concurs, noting, "None of the improvements in the economy seem to have had a significant effect on diminishing hunger." That conclusion is echoed in the report itself, which states, "Economic growth has not reduced hunger in any significant way because of the nature of that growth. The economic pie has gotten bigger, but the unevenness of that growth leaves millions falling further behind."

The report focuses not only on major inner city areas, but on hard-hit regions like Louisiana and Texas, where the oil boom has burst; Minnesota and Iowa, which are reeling under the family farm crisis, which also is not over; Pennsylvania, Ohio, and West Virginia, where the lunch bucket has been replaced by the rust bucket.

These conclusions should hardly come as a surprise to those who have seriously studied this administration's budget policies.

Just this year, President Reagan's budget proposed a massive rescission in the temporary emergency food program, underfunding the Women, Infants and Children Feeding Program by 50,000 people, a cut of up to 40,000 from the Commodity Supplemental Food Program which serves children, the elderly and mothers, and over a billion-dollar reduction in Food Stamp and Child Nutrition Programs. And as a gratuitous afterthought, the President proposed ending assistance to religious and charitable groups, as well as to State and local governments, which store surplus food which is distributed to the needy.

The President's continuing emphasis on the rosy employment picture is but one indication of the duplicity of his administration's economic analysis. It is worth noting that for 7 years under Reaganomics, we tolerated an unemployment rate in excess of 7 percent, the longest stretch of unemployment since the 1930's. It should have been a signal.

The gap between affluent and poor in our country is now at the highest level in the 40 years that the Census Bureau has been collecting this information. Millions of Americans have been unable to find jobs, and over a third who have found employment are working at a fraction of their prior salaries. Last year, nearly 2 million Americans worked full time, year-round, but were still poor, a 50-percent increase from a decade ago.

Median weekly wages for full-time workers in 1986 were lower than in any year in the 1970's. Full-time minimum wage workers are now living well below the poverty line, a distinct reversal of the situation in the 1960's and 1970's. The reason is that the minimum wage has been frozen since the Reagan administration took office in 1981, while inflation has increased by 31 percent. And what has been the administration's response? A call for a subminimum wage to stimulate employment.

It seems it is time to recall the observation of one of America's great economists—if there are any left—John Kenneth Galbraith in "The Affluent Society," published nearly 30 years ago. His remarks are surely appropriate today in considering the failure of this administration to address seriously the underlying problems responsible not only for the stock market crash, but for the doubling of the national debt, the tripling of the annual deficit, and the conversion of America from greatest exporter to greatest debtor nation—all on President Reagan's watch.

Professor Galbraith wrote that some believe that "it is far, far better to have a firm anchor in nonsense than to put out on the troubled seas of thought." That observation surely captures the dream world in which the President and his administration have been living while they hurl invectives and condemnations at the Congress, and issue soothing, wishful homilies to the American people.

We don't need Herbert Hoover, and we don't need "Poor Richard." We need leadership from the president and from the Congress to attack the real issues underlying our fiscal misfortune.

And while we spend so much time worrying about the Dow Jones, let's not forget Mr. and Mrs. Jones—tens of millions of working class and poor Americans who have endured Mr. Reagan's voodoo economics for the past 7 years while the stock market soared.

GENE ROMANO: THE MUSE OF AMUSEMENT

HON. STEPHEN J. SOLARZ

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 27, 1987

Mr. SOLARZ. Mr. Speaker, I would like to pay tribute to Mr. Gene Romano and Nellie Bly Park, which he owns and operates, for entertaining and delighting Brooklyn residents for more than three decades.

Mr. Romano started Nellie Bly Park, located in the Bensonhurst section of Brooklyn, as a children's park. Throughout the years, it has remained an attraction primarily for families with young children. Mr. Romano prides himself on having made Nellie Bly a safe, clean, wholesome, and enjoyable place for children of all ages. Millions of Brooklynites have visited the park since it opened. In fact, many who enjoyed Nellie Bly's rides and games as children have since brought their children and grandchildren to the park.

I have personally been the beneficiary of Nellie Bly's delightfully funny clowns. They have performed at many of the picnics I have held in my district during the last few years.

The real Nellie Bly, whose given name was Elizabeth Cochrane, was a daring journalist at the turn of the century. Her investigative reporting led to reforms of mental institutions and sweat shops. She also made a bit of aviation history, when, at the age of 22, she circumnavigated the world alone in 72 days. The pioneering spirit that Nellie Bly embodied has been transformed into a healthy and thrilling amusement park for youngsters from throughout Brooklyn.

Nellie Bly Park has, over the years, become a Brooklyn institution. Under Gene Romano's skillful and creative leadership, it will continue to fascinate and excite youngsters for years to come.

NORTHEAST GOVERNORS WANT IMPROVED RAIL TRANSPORTATION

HON. JAMES J. FLORIO

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 27, 1987

Mr. FLORIO. Mr. Speaker, I have been a long-time supporter of rail passenger service. Intercity rail passenger service is particularly important to the densely populated Northeast, where the air lanes are especially crowded and busy.

A recent article in the New York Times discusses the efforts of several Northeastern Governors to improve Amtrak's intercity rail service in the Northeast corridor.

The article follows:

NORTHEAST GOVERNORS THINK THEY'RE ON THE RIGHT TRACK WITH TURBO TRAIN

(By Matthew L. Wald)

The trip from Boston's Back Bay to midtown Manhattan is a choice between a 35-minute flight that air and highway traffic can stretch to four and a half hours, and a ride on a train that is almost sure to arrive on schedule as promised by Amtrak—in four and a half hours.

But the 11-year-old Turbo Train, powered by an engine akin to a jet plane's, made the trip north Tuesday in 3 hours 44 minutes. And yesterday, on a return trip halted three times along the route for news conferences, it carried a dozen railroad officials and experts who held out hope that, with modest track improvements and technology gains, the time could be cut to three hours.

The latest push to improve service on the 226-mile route, which is about the same distance as the New York-to-Washington run that Amtrak's Metroliner covers in a third less time than the usual New York-to-Boston ride, comes from the Coalition of Northeastern Governors, which arranged the test of a turbine-powered train of a sort that has been in use between Albany and Grand Central Terminal since 1976.

SWIFT AND QUIET

The Turbo Train's top speed yesterday, 110 miles an hour, was not much faster than that offered by the conventional diesels. But because the turbines are lighter, the Turbo Train takes the numerous curves faster and accelerates back to cruising speed quicker. It also carries two small electric motors, avoiding the need for a change of engines in New Haven that is scheduled for 10 minutes but sometimes takes longer, trains must use electricity in the tunnel out of Manhattan, but electrification on the Boston route ends at New Haven.

Along the route through Rhode Island and Connecticut yesterday, the osprey nests and salt marshes, the ancient brick factories and junkyards, the church steeples and nuclear plants glided by quietly. There was nothing but the crazy swinging of tree branches caught in the train's wake to indicate that it was hurtling down the track at twice the adjacent highway's speed limit.

At such speeds, said W. Graham Claytor, the president of Amtrak and a passenger on Tuesday's ride, "I'm satisfied that we would more than double our New York-to-Boston ridership." Another passenger, Ross Capon, executive director of the National Association of Railroad Passengers, added, "Two and a half to three hours is your threshold for breaking into the business market in a big way."

At present, Amtrak carries only 12 percent of the combined rail and air passenger market between New York and Boston. By contrast, Mr. Claytor and Mr. Capon said, the Metroliner is already competitive with the air shuttle between Washington and New York, where full electrification and fewer curves along the route combine for a speedier rail journey than New York to Boston.

The governors, especially Michael S. Dukakis of Massachusetts, are hopeful that such service would benefit passengers at Logan and La Guardia Airports, by draining off traffic. More than a quarter of the flights from Logan are bound for New York, said Mr. Dukakis, who is promoting better train service as part of a package of alternatives to avoid the need for a second airport in Boston.

$300 MILLION URGED

"We are going to choke on our own success," the Governor said, "if we don't make some investments in highspeed rail transportation." A three-hour trip could be achieved with a one-time expenditure of $300 million, he said, contrasting that sum with a $500 million-a-year Federal effort to build the Orient Express, a plane that would fly from Washington to Tokyo in two hours. "I hate to be parochial," he said "but frankly I think we would be a lot better off with three-hour train service."

On the trip south yesterday, Mr. Dukakis was joined by Gov. Edward DiPrete in Providence and Gov. William A. O'Neill in New Haven, both of whom called for better service. Mr. Dukakis extolled the convenience and comfort of the rails over the congestion and delay of air travel. In between New Haven and New York, either to prove his point about comfort or to prepare for two Presidential campaign fund raisers last night, he napped.

Experts on board outlined several strategies for improving service on the route. Key among these was a "tilt train" that would lean into curves like a sports car, allowing the same level of comfort at speeds 15 percent greater, according to Myles B. Mitchell, a former official with the Federal Railroad Administration who has been retained by the governors as a consultant. The head of the administration, John Riley, who also made the trip yesterday, said that safety did not require such technology but that comfort did.

Some tilt trains have passenger coaches that swing like a pendulum as they round curves; others are hydraulically inclined. Massachusetts officials and others want to combine that technology with that of the turbo like the one on which they traveled yesterday, which was manufactured by Rohr, of Chula Vista, Calif., under license by ANP Industries, a French concern.

The turbo-tilt combination, they said along with small track improvement in Stamford, Conn., and New Rochelle, N.Y., where Amtrak trains are often slowed because of Metro-North commuter traffic, would shave about 40 minutes from the 3:44 running time achieved Tuesday.

HOUSE "REFORMS" WELFARE

HON. JOHN J. DUNCAN

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 27, 1987

Mr. DUNCAN. Mr. Speaker, the following editorial provides sound arguments why the issue of welfare reform should not be considered along with budget reconciliation. The cost alone, $5.3 billion over 5 years, should be enough of a reason, but such an important issue deserves more attention and debate by the full House. The editorial appeared in the Knoxville-News Sentinel on October 16, 1987.

[From the Knoxville-News Sentinel, Oct. 16, 1987]

HOUSE "REFORMS" WELFARE

In a good year Congress manages to produce one piece of legislation, transcending interest-group pressures, that truly deserves the overused label "reform." Last year was a good one, with a monumental income-tax overhaul. This year began with hopes of a similar landmark in welfare reform—but those hopes are about to be dashed.

A House committee has passed a plan that claims to reform the disastrous welfare system, but in reality would aggravate its worst features. Sponsored by Rep. Thomas Downey, D-N.Y., the bill would add more people to the welfare rolls and make it more likely that those already there would remain.

The Downey bill would discourage state governments from requiring that welfare recipients go to work. According to an analysis by Robert Rector of the Heritage Foundation, it would force about two-thirds of the states to abolish or sharply reduce their workfare programs. States could mandate only one 12-week hitch of workfare during the entire period that a recipient is receiving Aid to Families with Dependent Children (AFDC)—even if that period lasts a decade.

The bill over-emphasizes training at the expense of work. It would forbid states to require any welfare recipient to get a job until he or she has a high-school diploma. This provision is unfair to the millions of dropouts who work hard to stay off welfare; it seems to assume that all dropouts are unemployable, and that none can take evening or weekend courses. Why not let local officials decide on a case-by-case basis?

Another flaw: The bill would reduce payments to working parents who choose the "wrong" kind of day care—i.e., informal services from friends or relatives rather than institutionalized, government-licensed programs. Most single mothers with full-time jobs and pre-school children entrust their children to people they know rather than to bureaucracies, but only the bureaucracies have Washington lobbyists.

Finally, the Downey bill would bribe states to hike overall welfare benefits: It could raise AFDC costs by $4 billion a year or more. It ignores the 1970s experiments in Seattle and Denver, which found that higher benefits lessen work effort and self-sufficiency.

If higher spending actually encouraged poor people to "graduate" into real jobs, most Americans would be glad to pay. But programs should not be fattened that reinforce the very problems they are supposed to correct. The House should scrap Downey's bill and start over.

BENJAMIN CHARNY'S BIRTHDAY STRUGGLE

HON. STENY H. HOYER

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 27, 1987

Mr. HOYER. Mr. Speaker, today the distinguished Senator from Colorado and member of the Commission on Security and Cooperation in Europe, TIM WIRTH, is hosting a 50th birthday party for Benjamin Charny, a Soviet refusenik who has been stricken with melanoma, a deadly skin cancer and who also suffers from heart disease.

Benjamin Charny has been trying to emigrate from the Soviet Union for more than 8 years. In April of this year, Soviet authorities again denied Benjamin permission to seek much needed medical treatment in the West and told him not to even reapply until 1995. A callous act of cruelty, Mr. Speaker.

I recently came across a letter from Benjamin Charny in which he stated, "People like me need the peace of mind and tranquility to fight the disease. I, on the contrary, have to struggle with the authorities for my right to live and be treated where I choose, to see my brother who I brought up and who is close to me as a son. I have been separated from him all these years."

Benjamin's struggle has become an even lonelier one since the Soviet authorities granted permission for his daughter, Anna, to emigrate to the West. Now only he and his wife, Yada, languish in the Soviet Union, while repeated attempts are made by members of his family, our Congress, and other dedicated individuals, to loosen the Soviet authorities' hold on this man's life.

Let us hope, Mr. Speaker, that Benjamin Charny does not suffer the same fate as other cancer patients Soviet authorities released too late to seek proper medical treatment. Let us today join in commemorating Benjamin Charny's 50th birthday and rededicate ourselves to seek his release.

THE 150TH ANNIVERSARY OF GRACE EPISCOPAL CHURCH

HON. PETER W. RODINO, JR.

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 27, 1987

Mr. RODINO. Mr. Speaker, Grace Episcopal Church in Newark, NJ is celebrating the 150th anniversary of its organization and incorporation. This year-long celebration culminated with the Feast of Dedication at a solemn Mass on October 10.

Since the beginning of the parish in 1837, Grace Church has occupied an important role in the history of Newark and New Jersey. After worshiping at various locations, church leaders purchased property at Broad and Walnut Streets for a new permanent church. This land, where the present church was erected in 1848, was previously occupied by one of the original founders of Newark and had served as the site of the city's first courthouse.

The history of Grace Church is associated with important historical figures. Bishop George Washington Doane, an influential voice in the early religious life of the United States, helped to organize the Grace Church parish. Maj. Gen. Winfield Scott led the procession when the new church structure was dedicated in 1848.

Grace Church also contributed to the development of church music in the United States. Its choir for men and boys, organized in 1850, is the oldest in continual existence in the United States. Samuel Augustus Ward, a native of Newark, composed the music that became "America the Beautiful" while serving as Grace Church's organist. William Henry Walter, who joined Grace Church as a boy organist, worte the music in 1894 for "Rise Up Ye Saints."

An outstanding feature of Grace Church is its architecture. The church was designed by Richard Upjohn shortly after he completed work on Trinity Church in New York. At the time, Upjohn enjoyed a national reputation for his use of the Gothic style. His plans for Grace Church included an early English Gothic structure of brown freestone with massive lumbering to support the roof.

Today, scholars recognize Upjohn as one of America's finest church architects. Grace Church is a unique example of both Upjohn's work and the Gothic revival period in American design.

In addition, the beauty of the church is enhanced by 14 stained glass windows which include works by such famous artists as Charles J. Connick of the United States and England's Nathaniel Westlake. It is believed that the Westlake windows are the only intact examples of his work in the United States.

Throughout a century and a half of dedication, Grace Episcopal Church has fulfilled its mission to enhance the spiritual life of Newark and to serve its people. I want to extend my best wishes on this special anniversary to the Grace Church congregation and their rector, the Reverend George H. Bowen, and to congratulate them for continuing to build on this historic foundation.

THE HONORABLE PETER M. ELLIOTT

HON. WILLIAM E. DANNEMEYER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 27, 1987

Mr. DANNEMEYER. Mr. Speaker, it is simultaneously a great pleasure and a sad disappointment to honor the retirement of Judge Peter M. Elliott from my home State of California.

Born in Seattle, WA, on November 1, 1925, he is stepping down on the day of his birth 62 years later. After attending schools in Alaska, Washington, and Oregon, he graduated from Polytechnic High School in Los Angeles in 1943.

During the Second World War, Peter Elliott served in the merchant marine, traversing the globe in tankers. After the war, he attended Los Angeles City College while holding down a 48-hour-per-week job in a service station. While working as a deputy clerk in the U.S. district court in San Francisco, he attended the University of San Francisco Law School. Upon graduation, Peter served as law clerk to District Court Judge Oliver Carter for a year. With another former law clerk—Judge William L. Murray, retired—he traveled to Santa Ana to open a law office in Orange County in 1954.

Judge Elliott practiced law for 16 years, specializing in bankruptcy matters, until appointed referee in bankruptcy—now bankruptcy judge—on January 3, 1971. On August 18, 1981, he was appointed to the bankruptcy appellate panel for the ninth circuit, where he serves to this day.

Judge Elliott's early disability retirement on November 1, 1987, will relieve him of full-time duties only; he will continue to serve as a retired annuitant on the bankruptcy appellate panel.

I join Peter Elliott's friends, colleagues, and associates in wishing him well. He will be sorely missed. His service to the community will be difficult to match, impossible to surpass. Judge Elliott, I salute you sir, for a job well done.

RETIREMENT OF JOHN RYAN

HON. BRIAN J. DONNELLY

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 27, 1987

Mr. DONNELLY. Mr. Speaker, I rise today to pay tribute to John Ryan of Milton, MA, who has worked in my Boston district office for the past 9 years, and is now leaving in order to pursue another career.

John is a graduate of Northeastern University in Boston, and is also a veteran of World War II. During the War, he served aboard the U.S.S. *Barber* in the Pacific theatre.

Knowing very well the needs and concerns of veterans, John had dedicated much of his life to serving and helping the veterans of the 11th Congressional District of Massachusetts. After leaving the service, he served as the Veterans' Affairs director in the town of Milton, MA, for 32 years. While there, he became the supervisor of over 45 veterans' affairs directors in different towns in Massachusetts, due to the high quality and professionalism of his work.

John left his position in Milton to work for my predecessor, Congressman James A. Burke. He was the Burke's veteran's affairs coordinator for 15 years; John then worked for me in the same capacity for the past 9 years. As we all know, congressional caseworkers must know the intricacies of the agencies they work with. For 24 years, John worked closely with the Veteran's Administration as well as the veterans of the 11th District.

John is leaving my office to become the executive assistant/coordinator of prisoner transportation for the Sheriffs of the 14 counties in Massachusetts. Mr. Speaker, I will miss the loyal and dedicated years of service that John provided to me and the veterans of my district. It is an honor for me to know John, and to have had the opportunity to work with him. I wish John, his wife Jean, his daughter Nancy and his three grandchildren my best wishes for happiness and success.

A CONGRESSIONAL SALUTE TO L.V. HALL

HON. CLAUDE HARRIS

OF ALABAMA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 27, 1987

Mr. HARRIS. Mr. Speaker, I rise today to pay tribute to my constituent, Mr. L.V. Hall, a man whose many accomplishments have made our hometown a better place to live. On October 8, 1987, his lifetime of contributions was recognized with an "L.V. Hall Day."

Few citizens in our community can match or even approach his record of service. A member of the Tuscaloosa County Red Cross, the United Fund, the Southern Christian Leadership Conference, the YMCA, and the NAACP Legal Defense Fund, he has used his time and talents for the benefit of others. A graduate of Tuskegee Institutes vocational program, he has been active in its Tuscaloosa Alumnae Association, having had a lifelong appreciation for the benefits and opportunities of education, and a continuing pride in his alma mater.

Young and old have benefited from his concern. He has been a founder of the underprivileged children's program, and chairman of the local sick and shut-in organization. As an active member of the First African Baptist Church, he has served as a member of the board of deacons, chairman of the Evangelistic services, and as a member of the male chorus.

A dedicated family man, L.V. Hall and his wife, the former Mary Florence Taylor, have raised five children.

Mr. Speaker, I wanted to share with the House both the contributions of Mr. Hall and my community's appreciation for his work throughout the years. We wish him and his family much continued happiness in the years ahead.

A TRIBUTE TO GARBER HIGH SCHOOL

HON. BOB TRAXLER

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 27, 1987

Mr. TRAXLER. Mr. Speaker, I rise today to pay tribute to Garber High School of Essexville, MI. This year, Essexville Garber High School was recognized by the State of Michigan as being 1 of the top 10 high schools in the State. The Michigan State Department of Education recommended to the Federal Department of Education that Garber be considered for national recognition and Garber was selected as one of the Nation's exemplary high schools. Three very special individuals have been instrumental in Garber's development, and should also be honored and recognized; Mr. Dan Harfst, Garber's principal, Mrs. Margaret Timm, a dedicated teacher who has served the students of Garber since the school opened, and Mr. Robert Winters, superintendent of the Essexville-Hampton Public Schools. These dedicated people were recently in Washingotn, DC to receive our Nation's highest educational honor.

Twenty four years ago, the citizens of the city of Essexville and Hampton Township in Michigan created a high school with the motto, "Pattern for Excellence." Since that time, over 3,500 students have graduated and the motto hasn't changed. Although a relatively "young" school, the traditions established have made Garber a focal point which has brought together two separate political entities and one which encompasses diverse educational, recreational, cultural and civic activities. It is a source of great community pride.

In a recent editorial, the Bay City Times said that Essexville-Hampton residents' past support of their school system has been "Properly rewarded with quality schools and school programs," and that the district has earned a reputation "for providing excellent opportunities and experiences." The Times went on to say that the district has earned the respect of its taxpayers and continues to project a positive image. Garber High School is the heart and soul of its community.

The fact that more than 98 percent of the entering freshmen graduate is a tribute to the continuing relevance of the curriculum, the flexibility of the programs to sustain student interest, the care and quality of the faculty, and the ever increasing realization by the students and the entire community that a Garber education is a major step toward a more fulfilling life ahead.

Last fall, a board retreat was held and all board members, all administrators, and teacher representatives attended. The task was to look into the future and to determine the skills and qualities Garber graduates will need in order to live satisfying and productive lives in the 21st century. Objectives were developed and research has been taking place. With full knowledge that the world around them is changing, Garber is building on its foundations, looking ahead and preparing for change.

I ask my colleagues to join with me today in saluting the Essexville-Hampton community, its board of education, citizens, parents and students, as well as the faculty, administration and other employees of Garber High School. They are to be commended for their outstanding achievements.

ENLIGHTENED INITIATIVE BY CONTRA COSTA BUSINESSES

HON. GEORGE MILLER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 27, 1987

Mr. MILLER of California. Mr. Speaker, I would like to recognize the valuable contributions made by businesses and government offices in Contra Costa County which participate in the Group Load Curtailment Program sponsored by Pacific Gas & Electric Co.

The Group Load Curtailment Program is designed to prevent blackouts or rolling brownouts when the demand for electricity threatens to exceed the supply. Since 1980, large users of electrical energy have voluntarily joined together in a cooperative effort, reducing their use of electricity whenever a critical need arises. By working as a team, program participants help to ensure that vital services are delivered without electrical interruptions to Contra Costa County.

In particular, I'd like to express my appreciation to Kaiser Permanente Hospitals in Martinez and Walnut Creek; Longs Drug Stores of California, Inc.; Mount Diablo Hospital; Pacific Bell, Signode Supply Corp.; and, the U.S. Postal Service Bulk Mail Center in Richmond—all of which participate in the program.

In addition, I commend Pacific Gas & Electric Co. for sponsoring this community service program, enabling Contra Costa County to maintain a more dependable energy supply.

PIONEERS AND THE MAMMAL MARINE CENTER

HON. JAMES J. FLORIO

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 27, 1987

Mr. FLORIO. Mr. Speaker, in the wake of the past summer's experience with the consequences of inadequately regulated ocean dumping, the shores of New Jersey have had to face an extraordinary amount of garbage and sewage flooding the coastline and posing a threat to both marine and human life.

No good things have come about as a result of the consequences of ocean dumping.

Fortunately, however, the past summer's brush with the ocean dumping problem has focused more attention to the problem, and hopefully, to ways in which the problem can be successfully addressed.

In particular, the problem on the shores of New Jersey has brought much-needed attention to the Marine Mammal Stranding Center in Brigantine, NJ.

Through the efforts of many New Jersey citizens, and especially the time and money that the H.G. McCully Downstate Chapter 81 of the Telephone Pioneers of America, the Marine Mammal Stranding Center has not only been able to build the facilities to house its operations but also to educate the public in its activities and to perform research in keeping with its tradition of knowledge in the service of the environment.

Ever since the late Atlantic City Council president, Ellen Johnson, recommended that the center would benefit immensely from the participation of the Pioneers in community activities, the center and the Pioneers have enjoyed a constructive relationship, resulting in the building of a museum in 1986 to house the activities of the center.

That relationship has educated the public in the need for greater awareness of the marine environment and in the methods of preserving that environment, for the benefit of the community and marine life.

The Downstate Chapter of the Telephone Pioneers of America has consistently demonstrated an appreciation of the community's needs and the desire to play as integral a role as they can in the improvement of conditions for their family, friends, and neighbors.

With the many donations of time, effort, and money, they have performed a substantial service in bringing the needs of the Marine Mammal Center to the centerstage of community interest.

In part, the ocean dumping problem has also created an atmosphere in which the center's activities are much more immediately relevant.

Indeed, moved by a desire to learn about the effects of ocean dumping on marine life and about the possible causes of the deaths of dozens of dolphins, more and more of the community has visited the center's museum.

Focusing the community's attention on the extent of ocean dumping's consequences is the first step in the battle against illegal and harmful pollution of the Nation's water systems, including both the ocean waters and the Nation's extensive river system.

That first step is no small step, even when considering that more than 1,300 industrial and 600 municipal waste facilities are annually spewing well over 7 million metric tons of municipal sewage and 8 million metric tons of dredged material into the Nation's water systems.

The consequences of this unchecked pollution are damaging to marine life. Exposed to toxic chemicals, including PCB's and plastics, marine life has to navigate a much more dangerous course through the pollution of their aquatic homes.

In fact, because of the havoc wreaked by plastic containers and objects consumed by marine animals, an estimated 100,000 marine animals die every year.

The Telephone Pioneers and the center are performing their community service admirably, bringing a greater awareness of the dangers of ocean pollution to the public and encouraging a constructive dialog of how the public can participate in the elimination of those hazards.

In the advocacy of alternatives and answers to ocean dumping, the Pioneers have done an excellent job in raising awareness and revenues for the center.

I am including below an article from the New Jersey Bell Outlook, describing the efforts of the Telephone Pioneers on behalf of the Marine Mammal Stranding Center:

[From the New Jersey Bell Outlook, Sept. 11, 1987]

PIONEERS FIGHT TO SAVE SEA MAMMALS

(By Kathleen Rankin)

Turtles, seals, whales and dolphins are dying on New Jersey's shores. This summer, 119 marine mammals have been found stranded along the state's shoreline, most beyond help. Among them were 76 bottlenose dolphins, which have washed ashore from Long Beach Island to Delaware Bay, dead of an unkonwn cause.

The H.G. McCully Downstate Chapter 81, Telephone Pioneers of America are trying to help. They agree with Bob Schoelkopf of the Marine Mammals Stranding Center in Brigantine, who thinks the deaths are related to bacteria from garbage. Together, they are striving to make the public more aware of the problem.

To accomplish this, Schoelkopf and Pioneer Administrator Walt Robbins have designed a poster and bumper sticker featuring a picture of a dolphin, the Pioneer logo and the slogan. "Save Our Ocean. Today Us, Tomorrow You?"

Over the Labor Day weekend, Pioneer sold stickers for $1 each at various locations along the Jersey coast and asked purchasers to sign a petition that the Pioneers and Schoelkopf plan to present to the State Legislature. Ten thousand stickers have been printed and will be distributed to councils in the Downstate Chapter.

Stickers also will be sold in shopping malls and at company buildings in the Downstate area throughout September and October. All profits from sticker sales will be donated to the Marine Mammals Stranding Center, where Schoelkopf works tirelessly to nurse animals back to health or determine the cause of death.

AVID SUPPORTERS

"The Downstate Pioneers have been avid supporters of the center for more than four years now," Schoelkopf said. "They built our museum for us."

Pioneer interest in the Stranding Center was sparked by the late Ellen Johnson, a former Atlantic City Council president.

"Ellen asked me how the Pioneers could help the center," Schoelkopf recalled. "Since awareness is one of the key elements to protecting the environment, we felt a museum would be a worthwhile project."

Work on the museum began in 1983. Sadly, Johnson was killed in an automobile accident and never saw the museum completed. Schoelkopf dedicated it to her and the Pioneers at the grand opening in May, 1986.

About 2,000 people visited the museum last year and so far this year 6,000 people have been drawn to its doors. Scholkopf thinks the publicity surrounding the dolphin deaths accounts for the increase.

In an average year, the center will try to help 30 of 35 ailing or dead marine mammals. The average for only two months this summer is nearly four times that number.

ENVIRONMENTAL THREAT

"The bumper stickers and petition will help make people aware of how serious the problem is," Schoelkopf said. "People finally are waking up. It's plain to see something is threatening the environment. All that garbage has to go somewhere. It's finally hitting home and people are beginning to insist on alternatives to ocean dumping."

In fact, Downstate Chapter President Marilyn Bowcock has made it a Chapter goal to improve public awareness about the subject.

"I feel strongly that we all have to work to preserve our precious environment," Bowcock said. "We must be careful not to ruin these resources. They are too dear to waste."

Environment Chairman Jack Tagliarini echoed her concern.

"It's frightening," Tagliarini said. "We can't even enjoy our own beaches because of garbage. The Stranding Center is doing worthwhile work and deserves our support."

As autumn approaches, Schoelkopf continues to work diligently with pathologists from the University of Pennsylvania to determine why so many dolphins are dying off New Jersey's shores.

"We'll just keep searching until we come up with the cause of the dolphins' deaths," he said. "The Pioneers' donation will help us continue our work, but we can always use more volunteers."

HONORING B. FRED GERMAN

HON. JOHN J. DUNCAN

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 27, 1987

Mr. DUNCAN. Mr. Speaker, on October 31, B. Fred German of Copperhill, TN, will be celebrating his 90th birthday. Originally Fred was from Fannin County GA, where he was raised on the family farm by this grandfather. He moved to Copperhill in 1908.

After graduating from the Copperhill High School in 1916, he entered the University of Tennessee where he was in officers training when World War I ended. He ultimately completed his bachelors at UT in chemistry, and his masters in education.

Fred met his wife of 45 years, Margurite, at the university, and they returned to Copperhill where he taught high school for 24 years. Following that, he was principal at the McCaysville High School in Georgia.

He finally retired from the Tennessee Copper Co. after 25 years of service, at the age of 75.

Fred's most consuming passion, however, is UT football. He has not missed a home game in 50 years, and attends many away and bowl games as well.

I would like to take this opportunity to express my congratulations to Fred for his many years of service and dedication to the Copperhill community.

ANNA CHERTKOVA: PSYCHIATRIC PRISONER OF FAITH

HON. STENY H. HOYER

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 27, 1987

Mr. HOYER. Mr. Speaker, recently I spoke on the issue of psychiatric abuse for political purposes as practiced in the Soviet Union. In the course of my discussion, I noted that Soviet officials have given signs that this practice may be stopped. For instance, the International Association on the Political Use of Psychiatry states that for the first 6 months of 1987 there have been no internments of dissidents, and that several long-term psychiatric abuse victims were released. The Helsinki Commission hopes that such policy will be sustained for the long term.

However, the commission continues to be concerned with those who remain victims of psychiatric abuse such as Anna Chertkova, a former postal worker from Alma-Ata, Kazakhstan, and a member of the Independent Soviet Baptist Church. According to Amnesty International, which has adopted Chertkova as a Prisoner of Conscience, she was persecuted for several years because of her religious convictions and eventually arrested in 1973 for "slander against the Soviet system," an offense that Soviet authorities recently have stated will be eliminated from the criminal code. The court found that "on the basis of her religious adherence she had made antigovernment statements defaming the character of our social and political system." However, psychiatric "experts" testified that Anna Chertkova was suffering from "sluggish schizophrenia," the infamous diagnosis developed by the late Dr. Andrei Snezhnevsky and conventiently applied to political dissidents. Such diagnosis was recently characterized in the "Medical Gazette" of Moscow as manufactured: "time and time again, the same set of psychiatric experts has been manufacturing schizophrenics out of normal people."

Meanwhile, Anna Chertkova was sent to the special psychiatric hospital in Tashkent.

Such hospitals, according to Soviet law, are designated only for people who "represent a special danger to society," although there was no evidence that Anna Chertkova has ever posed such a threat.

Information on Anna Chertkova has been difficult to obtain. According to a letter written by a friend of Anna Chertkova to her mother in 1979, she was being subjected to debilitating drug injections for refusing to give up her religious beliefs. In a letter that reached the West in 1982, Chertkova wrote "I ask you all to carry me to the Lord in prayer, and that his will for me be done." In May 1986, the Helsinki Commission learned that she was transferred to the Kazan special psychiatric hospital the previous February thus, Anna Chertkova has been interned for religious faith for over 14 years.

Mr. Speaker, in August of this year, Mr. Konstantin Kharchev, chairman of the Soviet Council for Religious Affairs announced that all "prisoners of faith" would be released as of November 1987. There is reason to believe that this measure is associated with the amnesty for political prisoners promulgated in June of this year. As written, the Amnesty does not apply to "prisoners of faith" who are under psychiatric detention. The Helsinki Commission urges Mr. Kharchev and the other responsible authorities to effect the release of Anna Chertkova and the many others who have been unjustly confined to psychiatric facilities for their religious beliefs.

RULE ON H.R. 3545, GUARANTEED DEFICIT REDUCTION RECONCILIATION ACT

HON. DAN ROSTENKOWSKI

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 27, 1987

Mr. ROSTENKOWSKI. Mr. Speaker, I wish to serve notice to my colleagues that, pursuant to the rules of the Democratic Caucus, I have been instructed by the Committee on Ways and Means to seek less than an open rule for the consideration by the House of Representatives of the bill, H.R. 3545, the Guaranteed Deficit Reduction Reconciliation Act.

MOVING FORWARD INTO THE INFORMATION AGE

HON. THOMAS J. TAUKE

OF IOWA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 27, 1987

Mr. TAUKE. Mr. Speaker, I recently read an outstanding article on a topic that is vitally important to the efforts of the United States in moving forward into the information age. A large part of the American telecommunications industry is currently prohibited from providing information services to residential and business customers and from manufacturing telecommunications equipment. Furthermore, much of the regulatory process in the telecommunications industry is replete with disincentives further stifling innovation. The United States, long a world leader in telecommunications, is now looking offshore to our foreign friends who are beginning to assert leadership in creativity and innovation.

Today, I am introducing the article by David L. Wenner from the October 15, 1987, issue of the Wall Street Journal. The article presents the problems in a clear and precise manner, and it suggests some solutions that will move the U.S. telecommunications industry forward. I urge my colleagues to read the article carefully because the need for policy guidance from the Congress on these important telecommunications issues has never been more apparent.

[From the Wall Street Journal, Oct. 15, 1987]

PHONE COMPANIES OUGHT TO "BUNDLE"

(By David L. Wenner)

Judge Harold Greene has now given the regional Bell companies freedom to use their networks to distribute information services provided by other companies and has removed all constraints on their entering nontelecommunications businesses. But he continues to prohibit them from manufacturing equipment and providing long-distance services.

His key argument is that the local loop (the line that connects the customer with the telephone company's switches) is still a "bottleneck," a natural monopoly with few competitive alternatives. The regional Bells could use this bottleneck to discriminate against competitors in other telecommunications businesses, which must go through it to reach nearly all customers. Therefore, he reasons, the regional Bells must be constrained from participating in those businesses.

The judge is right about the bottleneck. Indeed, the bottleneck remains three years after he issued his AT&T breakup decree and is likely to stay in place for most customers. The local loops of the future will consist of optical fiber. The regional Bells, which are beginning to install the fiber, are the probable owners and operators of this network. And there are even fewer competitive alternatives to a local fiber network than there are to today's copper one. If Judge Greene were to review the AT&T divestiture agreement in the year 2020, he might well arrive at the same conclusion: The Bells control the bottleneck.

MASSIVE INVESTMENT NEEDED

This prospect argues for *reducing*, not increasing, constraints on the regional companies. If the bottleneck is going to stay there, then the services we receive are going to be constrained by the capabilities the companies put in their networks. We should be paying more attention to motivating them to provide the services the public wants at the best possible price.

This is an important issue. Over the next decade telephone companies could have the technology to give their networks more than 100 times their current capability for carrying services. And well before then, the phone company could offer the average residential customer a broad range of revolutionary new services, such as high-speed facsimile transmission that can replace first-class mail. These services, and many others for business customers, will require massive investment.

But the regional Bells may not make this investment even though it is clear that they could. These are huge companies, together having 2½ times the assets of IBM and an annual cash flow of over $20 billion. However, if they continue to be constrained from providing new telecommunications applications (as they are by Judge Greene's ruling on information services and by FCC rulings in similar areas), or have little incentive to take risks on speculative new capabilities (as is currently the case under rate-of-return regulation), they will spend their money on diversification. And they have already begun to do so. If the Bells do not continue to invest aggressively in their core business, many of the most basic new services won't be widely available until well into the next century.

Recent history shows us how constraints on the regional Bell companies have worked against the general public. For a number of years, they have had the capability to offer such information services as "voice mail" (a way of storing, sending and receiving spoken messages at relatively low incremental cost, if built into their networks. But regulators have not allowed them to do so, in the hopes that competitors would emerge. As it turned out, few did, and regulators are finally realizing they made a mistake.

The same kind of problem exists on the incentive side. The lengthy, cumbersome and unpredictable regulatory process is a powerful disincentive for telephone companies in pursuing new initiatives, and current rate-of-return regulations is another.

Rate-of-return regulation limits prices by holding down telephone company profits to something like those that would be achieved in a purely competitive market. It has become clear, however, that this type of indirect price regulation provides inadequate incentives for phone companies to reduce their cost or take risks in the introduction of new services.

An alternative under consideration is to negotiate the phone service prices directly and let phone companies share the benefits from more aggressive cost reduction and investment. Customers could benefit by not only getting guaranteed commitments for price declines (at least in real terms), but could also end up with lower prices and more services than they would have under rate-of-return regulation.

Under today's regulatory system, however, such new approaches are very difficult to negotiate. And once agreed upon, they may not last long, due to political pressures. For direct price regulation of intrastate services a phone company would need to negotiate an agreement acceptable to both the public service commission and the legislature in each state in which it operated—an average of seven states for each regional Bell company. In some states, the public service commissions are highly political, and in others have been known to disagree with legislatures not only on the basis for pricing, but on fundamental regulatory philosophy. In addition, the regulation of interestate services is determined by the FCC, which, in turn, often has had to deal with a balky Congress. Piecemeal approaches to pricing are much more likely to emerge from this process than is any consistent new mechanism.

It is easy to see how the prospect of continued rate-of-return regulation or piecemeal changes to it, coupled with the uncertainty of whether such changes will "stick," provide an inappropriate environment for innovation and risk taking.

Regulation must provide some constraints on the phone companies to ensure that they don't use their strong positions to the detriment of customers. But with equal fervor we should use regulation to motivate these same phone companies—the crucial bottleneck. The objective behind regulatory decisions should be the creation of "value" for the customer—the benefits offered above and beyond the costs of the service. Instead, regulators often use narrower objectives, such as limiting profits or creating competition for its own sake. Telephone companies should be allowed to enter businesses where they are likely to add significant value, even if this does not maximize competition; they should also be given greater incentive to perform, even if this means the most successful ones make more money than they now do.

France's Minitel experiment shows how an appropriate regulatory environment coupled with a clear national policy can yield great value to customers.

The French telecommunications authority (the phone company in France) established a national program that provided information terminals to all telephone subscribers free of charge, ostensibly to automate directory-assistance requests but in reality to create a broad infrastructure for the spread of information services. Because the terminals were free, the subscriber population grew explosively. With millions of accessible subscribers, information providers rushed to develop services for the system—by the thousands. And with many services available, and many other subscribers for each subscriber to communicate with, network usage grew even more explosively. Profits have increased but, more important, so has the value for the whole country.

Compare this with the chicken-and-egg problem that would have occurred had France had the same situation we face in the U.S., even with the freedom granted under Judge Greene's recent ruling.

First, the regional Bells are constrained in practice from "bundling" equipment and services. Therefore, customers themselves would have had to pay a substantial up-front price for the terminal. Initially, with few other subscribers to communicate with and few services to use, those customers would have decided that the terminal wouldn't provide enough value to justify buying (or even renting) it. Knowing this, information vendors would not have seen enough potential to justify developing new services. As a result, the whole industry would never have gotten off the ground. In fact, the chicken-and-egg problem is not purely hypothetical—it has already led to the failure of several videotex experiments.

This problem is not limited to videotex services. Most of the revolutionary new services would run into similar problems.

A NEW COMMUNICATIONS ACT

We need a new national policy on the role telecommunications should play in our society. Our current policy is still based on the Communications Act of 1934, framed when the electronic computer was still a dream. The act provided the impetus for achieving the overriding telecommunications objective of that time—universal service. But this objective has, for all practical purposes, been fulfilled. With no new objective to focus on, policy has drifted, with each regulatory body defending the interests of its own constituency.

A basic policy change would probably require the passage of a new Communications Act. That is not unthinkable: Japan and Britan have, for reasons of national interest, recently made major shifts in their governments' role in telecommunications, and changes are being debated in West Germany, France and Holland.

Somehow we are going to have to get coherent action by Congress and reforms in the regulatory apparatus to enjoy the full benefits of the information age.

DRUG-MONEY LAUNDRIES: THE FIGHT GOES ON

HON. FERNAND J. ST GERMAIN

OF RHODE ISLAND

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 27, 1987

Mr. ST GERMAIN. Mr. Speaker, 1 year ago, the President signed into law a unique comprehensive drug enforcement bill—the product of the combined efforts of 12 of this House's committees.

The Banking, Finance and Urban Affairs Committee did its part to strengthen that bill, contributing provisions attacking the multibillion-dollar money-laundering practices that are so crucial to illegal drug trafficking.

Mr. Speaker, a year has passed and it is clear that our input into the Omnibus Anti-Drug Abuse Act has had a positive impact. Progress is being made, however gradually, in the effort to make it impossible for organized crime and drug dealers to wash their dirty money in financial institutions in the United States and abroad.

We have been particularly successful, Mr. Speaker, in getting the ball rolling on increased cooperation in the international financial and law enforcement communities. This kind of cooperation is essential if we are to prevent banks from being used, wittingly or unwittingly, as quickie self-service laundromats for the high flyers of the drug industry.

Sixteen countries have formally agreed to work together to fight the war against drugs on the financial front; Interpol has expanded its powers in this area; and the U.S. Treasury plans to convene an international conference of foreign banks to work out some solutions to the problem of money laundering.

Clearly, there is still much more work to be done at the international level to suck the lifeblood—illegal funds—out of global-scale drug operations. But these developments represent a solid first step in the right direction.

In other significant areas, Mr. Speaker, such as the structuring provision of the Bank Secrecy Act and the amendment to the Financial Privacy Act, it is a little too early to judge success or failure. But we have been informed by certain divisions of the Justice Department that there are indications that these provisions will prove effective.

But they will only prove effective if we remain diligent and vigorous in our fight against a drug problem that is still growing more dangerous by the day. We may have thrown our first punches, Mr. Speaker, but the fight is far from over.

RECOGNIZING MERCK FOR ITS CONTRIBUTION IN COMBATTING THIRD WORLD DISEASES

HON. ROBERT G. TORRICELLI

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 27, 1987

Mr. TORRICELLI. Mr. Speaker, I rise today to recognize the decision of a pharmaceutical company—a decision that was guided not by a drive for profits, but by a desire to eliminate disease. Merck & Company announced that it will distribute free of charge a drug to combat onchocerciasis, better known as river blindness.

Each year, tens of millions of Africans, South Americans and Middle Easterners are at risk of contracting this disease after being bitten by the black fly. The parasitic worm that can be implanted through a black fly bite can grow to several feet and cause fevers and blindness in its victims.

Merck developed mectizan, a drug that paralyzes and sterilizes the worm. But, in recognizing that the very nations which need the drug cannot afford it, Merck decided to offer it at no charge. Until now, most efforts to reduce the risk of spread have focused on eradicating the black fly: a difficult task. Availability of mectizan promises a more efficient means of controlling the disease and should therefore encourge greater settlement of fertile lands that often host the dangerous fly.

Third World nations are strapped with the interrelated problems of disease, poverty, and lack of productivity. Although no comprehensive solution is readily apparent, these problems can be attacked individually. Merck knows this and is helping.

Mr. Speaker, I am proud to recognize this New Jesey company which has been a leader in the State's highly developed pharmaceutical industry. Merck realizes its utility is not only to its stockholders, but also to those who can benefit from its drugs; and that success is measured not just in dollars, but also in achievements.

PASS IT ON: HELPING THOSE IN NEED

HON. WILLIAM LEHMAN

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 27, 1987

Mr. LEHMAN of Florida. Mr. Speaker, I am pleased to serve on the board of directors of Pass It On, Inc., which is based in the city of North Miami in our 17th Congressional District. It is a group that is making a difference for the better in the lives of many people.

Pass It On is a nonprofit organization which collects food and clothing and distributes it to those in need. It is staffed by volunteers from churches, clubs, and community groups. The food comes from individual donations, the Daily Bread Food Bank, or is purchased with contributions.

Clients are referred to Pass It On from various government agencies and social service organizations in the community. There are a surprising number of people who run out of funds or experience emergencies who fall through the so-called safety net of government social programs. Many lack the simple necessities of life, and these are the people who seek help—and receive it—from Pass It On.

Mr. Speaker, I would like to share with my colleagues a recent article that appeared in the Miami Herald which further describes the activities of this worthwhile organization.

[From the Miami Herald, Oct. 4, 1987]

Needy Get Help, Then Pass It On—Private Agency Hands Out Food and Clothing, No Questions Asked

(By Desiree F. Hicks)

It's easy to overlook the nondescript storefront on Northwest Seventh Avenue, just outside North Miami, next door to the hair salon.

No fancy signs. Tinted windows make it impossible to see inside. The only identification is the number on its door and the stick-on letters that spell "Pass It On Inc."

It's easy to overlook the office, where four days a week volunteers give bags of groceries and clothes to the needy, unless you're one of about 800 people the nonprofit agency serves monthly.

Pass It On's mission is in its name. Volunteers pass on food, clothing and job referrals to those with nowhere to turn for their next meal. The tiny agency, which relies on donations for survival, gives people a one-time shot in the arm to help them get back on their feet.

Volunteers refer clients to other agencies for long-term assistance.

Clients vary from those who find themselves out of work, to others who come at the end of the month, hoping to get free what they couldn't afford with their monthly food stamp allotment.

Grandmothers who suddenly must provide for their children's children, abused spouses with nowhere to go—the workers at Pass It On see them all.

They come in all races, young and old, men and women.

"They people we help aren't the normal welfare people," said the Rev. Frances Pescow, Pass It On's executive director. "We want to help crisis situations, the emergencies."

Regina Knight, a 33-year-old single mother of two, said she "felt like everything crushed in on me" when she came to Pass It On for help four months ago.

INCURABLE DISEASE

She had learned that her 10-year-old son Enoch has an incurable intestinal disease. It keeps him in constant pain. Meat and potatoes are all he can eat. He must drink a high-protein beverage to supplement his diet.

Knight lives in Opa-locka on a fixed income and gets $166 a month in food stamps. It just wasn't enough to pay the bills, buy Enoch's medicine and feed her family.

"I felt like giving my son to the state because I couldn't afford it," she said.

At Pass It On, she not only got a week's worth of groceries but a listening ear, as well. "I was about to give up, but they took an extra concern. They cared."

Knight shows her gratitude by working as a volunteer at the agency. She still struggles to provide for the family, although a recent slight increase in her monthly check helps. She has found that helping others takes her mind off her own problems.

"When I sit home, I think about my problems and get depressed," she said. "When I can help other people, I forget about my problems."

People from all over Dade are referred to Pass It On by agencies such as Respect Life, Advocates for Victims, Human Resource Services, churches, even the Dade state attorney's office.

"We don't ask questions. We just give them food," Pescow said. "The clients have been referred to us, so they've already been screened and we know they are really in need.

"We don't give them the song and dance, we just feed them."

HOME BURNS DOWN

Cassandra Johnson, 26, found that to be the case one day last week when she walked into the small office at 14617 NW Seventh Ave. to get food and clothes for her four children, ages 5 to 12, after her home was destroyed by fire.

"I felt comfortable when I came in. They were really nice," she said.

Pass It On got its start in Dade about 1983 in the parking lot of the Good Shepherd Ministries church parking lot in North Miami, Pastor Robert Barber said.

"We handed out rice and beans to the poor," he said.

With the help of Joan Wainwright, whom Barber described as the "backbone that got things started," the agency grew and eventually moved to its own office.

Pescow joined the organization in November 1986 when Barber asked her to take over for Woody and Maebeth "Mom and Pop" Woodard, who had replaced Wainwright. At that time Pescow was working at the church as a referral counselor, telling people where to go for help.

She sees her job as a reversal of roles. "The only difference is that instead of giving referral slips, I now fill the requests."

PREPARED FOR WORST

Volunteers never know when they will be hit hardest, so they try to be prepared at all times. Ten freezers, two refrigerators and several shelves are usually stocked with chickens, fish, fruits and vegetables, bread and canned goods.

Most of the fresh vegetables and breads it gets for free from the Daily Bread Food Bank in Miami. Canned goods, rice and beans are purchased in bulk, as are chickens and fish.

Executive Secretary Ruby Gordon said nearly $6,000 worth of food is purchased each month to supplement what Pass It On receives free.

The food is bagged according to individual family needs. If there's a baby in the house, volunteers make sure to include diapers and formula. A few low-salt products are kept in stock.

"I try to pack according to what people will eat," said volunteer Kathleen Hozza.

Pescow said each bag of groceries is valued at $25 and families are given enough to last a week. "The food is always fresh and good. It's just not something we picked up somewhere.

"If you gave them a $25 gift certificate or voucher, you would not be able to get the kind of food needed to feed a family."

Organizers admit it's hard to keep the shelves full all the time. The workers are all volunteers, but rent, utilities and gas for a van that is used to pick up food account for much of the donations the agency gets each month.

Pass It On doesn't receive funding from United Way or federal or state governments. Support comes from churches, private grants, citizens and occasional windfalls like a $7,500 grant from the Hands Across America campaign held last year to raise money for the homeless.

Recently the agency had to close its doors for a day because it had run out of meat.

The need for food is great. Hozza said it upsets her to see large grocery chains throw away food because it's outdated but not spoiled.

"Why can't we obtain the out-of-date meats, the bags of diapers that have been opened?" she asks.

Pass It On isn't selective when it comes to donations. It can't afford to be. Sometimes it means sorting crates of fruit, throwing out the bad and keeping the good.

Hozza said she doesn't mind. "We'll take anything and I'll dive through it and sort it, if I have to."

As Pescow approaches her first anniversary as head of Pass It On, she said she's working to obtain more grants and donations. With Thanksgiving and Christmas coming up, she said there is a need for turkeys and hams.

And there is always a need for donations, large or small. So as each client walks out the door, Pescow wishes them luck and makes a plea.

"I tell them, when you get on your feet, come by with a bag of goodies. And they do."

INCREASE FEDERAL REVENUES BY REDUCING THE CAPITAL GAINS TAX RATE TO 15 PERCENT

HON. CONNIE MACK

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 27, 1987

Mr. MACK. Mr. Speaker, today I am introducing legislation to reduce the capital gains tax rate to 15 percent. A lower tax rate provides a motivation for individuals to realize their capital gains, pay tax on those gains, and thus increase revenues to the Government.

Besides increasing revenues to the Federal Treasury, a reduction in the capital gains tax rate is good for the economy in several ways. It will stimulate growth, encourage formation of new businesses, create jobs, and help restore American international competitiveness.

Right now, the Congress and the administration are engaged in a budget summit. During these negotiations to reduce the Federal deficit, every reasonable option should be on the table. A 15-percent capital gains tax rate is one important option the negotiators should keep in mind.

Mr. Speaker, we have also heard a great deal lately about panic in the financial markets. Reducing the capital gains tax rate will help restore the confidence of the business community. What we need are policies that create wealth, not policies that attempt to redistribute wealth.

The revenue that can be raised by a lower tax rate is considerable. Harvard professor Lawrence Lindsey, using a model developed by economist Martin Feldstein, estimates that a 15-percent capital gains tax rate will raise $8 billion in fiscal year 1988, $11 billion in fiscal year 1989, and $12 billion in fiscal year 1990.

Importantly, nearly 80 percent of these tax receipts would come from taxpayers with incomes over $100,000. As Mark A. Bloomfield, president of the American Council for Capital Formation, states:

> It is important to realize that the tax yield on unrealized, locked in capital gains is precisely zero. It is wrong to describe a cap-

> ital gains tax rate reduction as a "tax break for the wealthy" when in fact the taxes paid by this sector will multiply dramatically.

Virtually all outside studies conclude that the 1986 Tax Reform Act provision raising the capital gains tax rate from 20 percent to 28 percent will result in a loss of revenue to the Federal Government of between $27 billion and $105 billion over the next 5 years. These studies contradict the estimates provided by the Joint Committee on Taxation when the Tax Reform Act of 1986 was passed.

The explanation for the differences is that the Joint Committee on Taxation does not consider behavioral responses to changes in the tax law when conducting revenue estimates. While this static analysis is on occasion appropriate, it is certainly not appropriate when considering the capital gains tax. This is because the capital gains tax is a voluntary tax—individuals may choose not to realize their gains if they believe the tax penalty is too high.

Mr. Speaker, we should allow history to be our guide. When the rate was reduced from 50 percent to 28 percent in 1978, then-Treasury Secretary Blumenthal testified that the Government would lose revenues of "more than $2 billion annually." In fact, capital gains tax revenues increased from $8.1 billion in 1977 to 11.7 billion in 1979. Capital gains tax revenues were 184 percent higher in 1985 than in 1978 as the tax rate decreased from 50 percent to 20 percent.

Lower capital gains tax rates also help create venture capital. In the 1970's, annual venture capital averaged $50 million. With the lower tax rate in 1978, $600 million in venture capital was available. When the tax was further decreased in 1981, venture capital increased from $700 million in 1980 to $1.3 billion in 1981.

Finally, a reduced tax rate on capital gains fosters our international competitiveness by putting us on a more equal footing with our competitors. According to a recent study by Arthur Andersen & Co., the U.S. capital gains tax rate is higher than almost all of our competitors. Several nations, such as Japan, West Germany, and Taiwan, do not tax capital gains at all.

A reduction in the capital gains tax rate just makes good economic sense. It promotes jobs and entrepreneurship. It is a powerful revenue raiser, and the additional tax receipts will be paid by upper income taxpayers. As we strive to come up with a plan for meaningful deficit reduction, a 15-percent capital gains tax rate is certainly one of our most attractive options.

CONGRESSIONAL TRIBUTE TO CHIEF JAN MENNIG OF CULVER CITY

HON. JULIAN C. DIXON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 27, 1987

Mr. DIXON. Mr. Speaker, it is with great pride and admiration that I rise to recognize a dedicated public servant, Chief Jan C. Mennig, Culver City Police Department's commander of the administration bureau. Chief Mennig will retire on November 1, 1987, after a combined 43 years of government service at the city, State and Federal levels, of which 38 years was spent in the police service.

Chief Mennig was an honor graduate at the University of Southern California, which is located in my congressional district. His graduate work at USC and other educational institutions led to degrees at the masters and doctorate levels.

In both his professional and personal life, Chief Mennig distinguished himself as a courageous, dedicated, hard-working law enforcement officer, and true philanthropist. While in the police department, he held numerous offices, including Police Chiefs Department president, L.A. County Regional Criminal Justice Planning Board chair, and executive committee California Police Chiefs Association member. He also served on numerous other crime prevention committees and task forces.

Jan Mennig's military career spanned several decades. As a colonel in the U.S. Army Reserve, he attended many senior military educational institutions and advanced courses. He also attended and graduated from the U.S. Army Logistics Management Course, and is a certified logistician. During his military service, the chief held many positions of high trust and responsibility, receiving many decorations, citations, and awards, including the Legion of Merit. He retired from the Army in 1982.

Similarly, he has received many awards for outstanding community service to Culver City and the Los Angeles area. He is the past president of the Culver City Lions Club, past chair of the board of the Culver Palms Family YMCA, and past president of the Didi Hirsch Community Mental Health Center. He is an active board member of the Behavioral Health Services of Los Angeles.

Jan Mennig has helped to make Culver City and Los Angeles a secure, healthy place to live and work. His 43 years of commitment to his jobs and community should not go unrecognized. Now, on the eve of his retirement, I ask my colleagues in the House of Representatives to join me in congratulating Jan on his achievements, and wish him, his wife Mary, daughter Lucy Lynne, and grandchildren James, Verina and Alicia much success and happiness in their future.

CONGRESSIONAL SALUTE TO PATERSON ELKS LODGE NO. 60 ON ITS 100TH ANNIVERSARY

HON. ROBERT A. ROE

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 27, 1987

Mr. ROE. Mr. Speaker, it is with great pride that I rise today to honor an organization in my Eighth Congressional District of New Jersey which, for the past century, has been one of the most vital links in the chain of community and civic service in Passaic County. I speak of Paterson Elks Lodge No. 60, which this year is proudly celebrating the 100th anniversary of its founding.

During the past century, Paterson Elks Lodge No. 60 of the Benevolent and Protected Order of Elks has provided innumerable programs that have benefited countless thousands in the community. These have included programs such as Most Valuable Student Awards, Emergency Educational Grants, Hoop-Shoot Vocational Grant Program, Elks National Service Commission (Veterans' Programs), Elks National Home, Eagle Scout Awards, Youth Activities and Drug Awareness Program. During the past 100 years, the Paterson Elks have contributed more than $200,000 to these invaluable public service programs.

In addition, Mr. Speaker, Paterson Elks Lodge No. 60 was one of three lodges to establish the Passaic County Elks Cerebral Palsy Center on Main Avenue in Clifton and, over the past century, it has contributed more than $500,000 in support of crippled and handicapped children.

The centennial of outstanding community service by the Paterson Elks Lodge No. 60 will be celebrated Friday, October 30, 1987, with a dinner at the Wayne Manor in Wayne, NJ. Appropriately, at this dinner the lodge will donate $100,000 to the Passaic County Elks Cerebral Palsy Treatment Center.

Mr. Speaker, I would like to take this opportunity to share with you and our colleagues in the House the official history of Paterson Elks Lodge No. 60:

> Paterson Lodge No. 60—New Jersey's second Elks Lodge—was founded on Sunday, January 30, 1887 through the constant efforts of Bro. Harry Stone of New York Lodge No. 1 who became the first Exalted Ruler of Paterson 60. Twenty-seven members formed the lodge with the following additional officers. David Boyle, E.L.K.; John W. Rae, E.L.K.; Angelo Zabriskie, E.L.K.; Henry D. Oler, Esquire; John Gorman, Inner Guard; William Smith, Tiler; Charles M. King, Secretary; William Elliott, Treasurer; and John Bates, Chaplain.
>
> The meeting was in the temporary Lodge Room in the old Gledhill Building on Washington Street.
>
> After a comparatively short time enough men had signified their intention of becoming members of the new organization to warrant those at the head of the project, particularly David Boyle, to enter into negotiations with the proper authorities with a view toward having the Lodge instituted.
>
> The committee with the duty of bringing the new Lodge into official existence arrived in Paterson on the morning of Sunday, January 30, 1887. Those composing the committee were members of New York and Newark Lodges. A special train had been placed at their disposal by the officers of the Erie Railroad. The committee was met at the station by the members of the proposed Paterson Lodge and was escorted to the Lodge Hall where the Lodge was duly installed. The exercises of installation were followed that evening by a banquet. The ceremonies were conducted by Daniel M. Junk, a member of Newark Lodge, who was District Deputy Grand Exalted Ruler at that time. Paterson Lodge closed the first year with sixty three new members having been admitted during that short period. Men applied for membership to the Order in scores and were taken in large numbers until the membership figures were well over the two thousand mark.
>
> The history of Paterson Lodge would not be complete without mention of the various changes made from time to time in the location of its quarters in what was then Mar-

shall and Ball building on Main Street near Market Street.

This building was destroyed by the great fire of 1902, but prior to the fire the Lodge had moved to the Katz building on Market Street where the lodge was located during the catastrophe of February, 1902. Paterson Lodge lost everything including all its valuable records. The Lodge located temporarily in Harmony Hall at Washington and Fair Streets.

In 1904 the lodge returned to what might be termed its original home, the new Gledhill Feder building on Washington Street having been erected and quarters especially arranged for the Elks in that structure where the lodge remained until their new home at 151 Ellison Street was erected in 1908 and dedicated on October 12, 1910, during the term of Exalted Ruler Ormsby Potter. This building was described at the time as a marvel in architectural beauty and a solid structure that should stand for all time to come, barring of course, the natural elements of destruction such as fire, etc.

The cost of the new home was defrayed by the lodge members. Bonds were sold to them at par at the rate of $10 per share, bearing interest at 5 per cent. The Trustees reserving the right to name the period for which they should remain in force. This bonded indebtedness remained on the home through many years until the years 1919, 1920 and 1921. Past Exalted Rulers William L. Dill, Raymond J. Newman and Henry M. Butler made a concerted effort to clear off the indebtedness on the home, and during the term of Exalted Ruler Dill, $25,800 worth of bonds was cleared off.

During the term of Exalted Ruler Newman, $33,200 worth of bonds were cleared off and during the term of Exalted Ruler Henry M. Butler the balance of $20,800 worth of bonds were paid off and on the 35th birthday of Paterson Lodge, January 27, 1922, the then Grand Exalted Ruler of our order, William S. Mountain of Ill., applied the match to the mortgage and our home was free and clear. At that time the home of Paterson Lodge No. 60 was the rival of any building of the kind in the country.

On May 28, 1907, Paterson Lodge dedicated an "Elks Rest" at Laurel Grove cemetery. There were about 400 Elks from New York, Philadelphia, Boston and other large cities in the East at the dedication. At the Rest there stands majestically the life-size bronze Elk which marks the plot of which is known as "Elks Rest". Memorial services at the "Elks Rest" are conducted annually on Memorial Day. The plot is available to any member of Paterson Lodge who wishes to be buried there. There are over forty members who have been laid to rest there.

In February, 1954, the Elks building at 151 Ellison Street was sold to Seton Hall University for the sum of $150,000 clear, where it will remain as a seat of learning for all time to come.

In June, 1954, the Lodge took temporary quarters at 232 Broadway where they remained during the construction period of their new home on McLean Boulevard between 34th and 35th Streets. Ground was broken with the appropriate ceremony on November, 1956, followed by a great demonstration of the members and their friends at the laying of the cornerstone on March 24, 1957 which bears the inscription B.P.O.E. No. 60. A.D. 1887-1957. The new home was completed and occupied by the lodge with a great housewarming in November 1957. It was dedicated on Washington's Birthday and Elkdom's 90th Anniversary on Saturday, February 22, 1958. Charles McKenna, P.D.D. was the Exalted Ruler, John Pasquale, E.L.K.; Elmo G. Valle, E.L.K.; Charles Woods, E.L.K.; Alberino Leone, Esquire; Anthony Marino, Treasurer; Robert Worsley, Secretary; Donald Monroe, Inner Guard; Jack Wehrlen, Organist and Thomas Woods, Chaplain. Speakers on that occasion included William J. Jernick, P.G.E.R., Edward J. O'Byrne, Mayor, Raymond Rhodes, General Chairman and Frank X. Graves, P.E.R., present Mayor of the City of Paterson and State Senator of New Jersey.

Today the Lodge continues to foster the Grand Lodge and State Association programs. Paterson Lodge along with three other Lodges maintain the Passaic County Elks Cerebral Palsy Center on Main Avenue in Clifton.

In recent years the Lodge has contributed substantial sums to Elks Camp Moore having, in addition to making monetary contributions, purchased new bedding for the Camp at a cost of $18,500, and has contributed $50,000 toward the renovation of the Cerebral Palsy Center. Tonight we are donating $100,000 to the Center, representing $1000 for each year of our existence.

The Lodge continues to be active in Veterans, National Foundation, Youth, Drug Awareness and all other Grand Lodge and State Association projects.

Mr. Speaker, I would like to especially congratulate the lodge's centennial committee for an outstanding job seeing that this historic anniversary is appropriately commemorated. This group includes honorary chairmen the Honorable Frank X. Graves and John V. Campana; General Chairman John V. Galletta; ways and means members Donald Snyder, Lou Buonforte, Mel Morrison, Ken Bogert, Bill Mosca and Al Diaz; souvenir journal, Joseph LoPresti and Leo J. McLaughlin; dinner, Don McAteer; and historian, Robert Verhasselt.

I would also like to extend a special congratulations to the lodge's officers for 1987–88, including Exalted Ruler George Magzanian; Esteemed Leading Knight Bernard M. Byrne; Esteemed Loyal Knight John Galletta, Jr.; Esteemed Lecturing Knight George Trafton; Secretary George T. Triano; Treasurer Joseph J. Wallace; esquire, John Golon; chaplain, Steven W. Toth; inner guard, Mario DeMarco; Tiler, Joseph LaSpada, and Organist, Edward Fedush.

Mr. Speaker, during the past century more than 8,300 men have made their community a better place through their membership in Paterson Elks Lodge No. 60. I invite you and our colleagues to join me in saluting Paterson Elks Lodge No. 60 for a century of service to its community that have made our State and Nation a better place to live.

SUPPORT OF RURAL ECONOMIC DEVELOPMENT

HON. MIKE ESPY

OF MISSISSIPPI

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 27, 1987

Mr. ESPY. Mr. Speaker, I would like to express my support of several pieces of legislation which are important to the revitalization of the Second Congressional District of Mississippi and the rest of rural America.

While I do not like to be the bearer of bad news, I am afraid I am left with no choice. The economic situation in my congressional district in rural Mississippi is extremely bleak.

If you will allow me a few minutes, I would like to share with you with some disturbing facts about the daily lives of many of my constituents.

Twenty-three percent of the people in Jefferson County, at the southern end of my district, are unemployed. Citizens of Sharkey County, in the middle of my district, face a 24.9-percent unemployment rate. And, at the northern end, in Tunica County, 27.3 percent of the minorities are out of work.

The Second Congressional District in Mississippi is the second poorest district in this Nation. More than 154,000 of the people make less than $5,000 a year.

Almost 50 percent of the people in my district do not have a high school diploma.

One third of the rental housing in the second district lacks plumbing or is overcrowed. More than one half of the rental housing is considered deficient by HUD standards. Most of the people who live in this housing pay more than 30 percent of their income for rent.

Twenty-one percent of the households in my district receive some kind of public assistance. Twenty-seven percent of the households are supported by single women who live below the poverty level.

And, more disturbing than any of these statistics, is the fact that 12 out of every 1,000 babies in the State of Mississippi are born dead or die before their first birthday.

Now, if these facts aren't reason enough for us to start searching for ways to cure the economic ills of rural America, I don't know what is. This is reality for many people in the Second District of Mississippi.

Obviously, Congress has a role to play in improving this situation. Several pieces of legislation are now being considered which, in my opinion, are steps in the right direction.

I recently cosponsored the Rural Economy Act, introduced by Congressman ED JONES of Tennessee and Senator PATRICK LEAHY of Vermont. This bill and another bill introduced by Congressman JONES—H.R. 1800—are excellent moves toward reviving our rural areas.

Basically, these two bills would expand loan and grant funds for business capital and technical and financial assistance for rural business owners.

More importantly, H.R. 3371 would provide for $205 million annually for rural infrastructure grants to towns of less than 5,500.

We must ensure that small towns receive their fair share of Federal assistance. Towns in my district, like Shelby, Shaw, Inverness, Itta Bena, which have populations of less than 5,500 are hurting badly. We can't leave them out in the cold.

Another bill which I wholeheartedly support is H.R. 2028, which would require every Federal agency to develop a rural area business development plan to assist small businesses in rural areas with obtaining Federal contracts.

Just this week, Mayor Robert Gray of Shelby, MS, which has a population of 2,500, called me, wanting to know how I could help a small business in Shelby obtain Federal contracts.

While many rural businesses in Mississippi have been forced to declare bankruptcy, many are still struggling to survive. We must encourage investment before more and more of our rural businesses disappear. We need to give our citizens reasons to invest in rural America.

Another bill which I have cosponsored is H.R. 3363 which would establish a program similar to revenue sharing to assist communities of a certain population and income level.

Under this bill, introduced by Congressman HARLEY STAGGERS of West Virginia, communities must show not only a need, but demonstrate they have made an effort to help themselves. If a community qualifies, the funds can be used only for public health, safety, and transportation.

This legislation would require strict auditing practices and would therefore avoid any of the abuses found in the former Revenue Sharing Program. But, because the funds would be targeted to only those communities which truly need the assistance, abuses would not occur as they have in the past.

In my district, the loss of revenue sharing has created a crisis for local governments trying to provide police protection, fire protection, water and sewer services, and other basic needs for any community.

We have a responsibility to help maintain a basic, decent standard of living for those who really need the help. I believe all of these bills represent a responsible approach in meeting this commitment.

In Mississippi, the best and brightest young people leave our small towns; small- and middle-sized farms are being consolidated into ever-larger farms; the end of rail service has torn our towns apart. We have a hard time finding doctors to live in the second district, and we have a hard time keeping attorneys, accountants, and other professionals.

This type of legislation that I'm discussing today must be pushed if we are serious about saving rural America. As we celebrate the bicentennial of the U.S. Constitution, we should not forget that the spirit of the rural farmers, the rural school teacher, the rural business owner, the rural doctor, the rural minister, were the driving forces behind this great country. They are the founders of this country, and, with our help, they will be the driving force to preserve it.

THE CONTINUING CRISIS IN PRODUCT LIABILITY AND CHILDREN'S CAR SEATS

HON. JOHN EDWARD PORTER

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 27, 1987

Mr. PORTER. Mr. Speaker, the makers of children's car seats find themselves in an unfair situation regarding the regularity with which they are sued for accidents. Use of these seats is required by law, and their manufacturing and labeling specifications are stipulated by the Department of Transportation.

The liability insurance crisis is devastating to these manufacturers and future development of this highly necessary product is at stake. Almost every lawsuit pertaining to children's car seats is due to consumer misuse of the product. However, the manufacturer is often the only deep pocket and a 1-percent allocation of fault is sufficient ground for the court to loot their assets.

It is an untenable situation faced by these American manufacturers and it warrants congressional attention. I urge my colleagues to read the remarks of Jonathan Reynolds, an attorney for one U.S. car seat manufacturer, and learn for themselves how truly absurd and serious this problem is.

The remarks follow:

TESTIMONY

I am Jonathan Reynolds, Corporate Attorney for Cosco, a manufacturer of housewares and juvenile products. Prior to coming to Cosco, I was a partner in Russ and Reynolds, a California law firm involved primarily in the defense of product liability and personal injury cases.

Cosco is a 50 year old company headquartered in Columbus, Indiana that manufactures housewares and juvenile products.

This is a critical issue for Cosco. Quite honestly, the very existence of our company and our jobs are on the line. With me are other members of Cosco's management group and the President of our Union. John Moeller, our Chairman, could not be with us due to a prior business commitment. He is however vitally interested in tort reform and is currently serving as Chairman of the Coalition for Uniform Product Liability Law, one of the major tort reform coalitions in the country.

Our emphasis today will be on child car seats, our company's most serious product liability problem.

We seek justice, no more and no less. Like all Americans, we have learned quickly to sense when we are being "ripped off." We are simply not being treated justly by our present tort system. Jobs, companies, products and even tax revenues could ultimately be lost if these injustices are not corrected. The future development, and possibly the availability of domestically produced child car seats are at stake. In the current environment, valuable resources and effort that should be going into the development of this product are being diverted into defending lawsuits.

Child car seats are widely recognized as being very effective in saving lives and preventing injuries. They are mandated for use in all 50 states and the District of Columbia and are credited with saving hundreds of lives and thousands of serious injuries annually.

Child car seats have been designed, tested and manufactured to a standard issued and enforced by the U.S. Department of Transportation since 1968. The current standard, which was implemented in 1980 requires sophisticated dynamic testing. It was developed over an eight year period through the joint efforts of the U.S Department of Transportation, the University of Michigan and Cornell and other universities, numerous consumer safety groups, the medical community, academics, testing laboratories, and the child car seat manufacturers. Over the years, in addition to meeting this standard the manufacturers have worked very hard to improve upon their basic designs to make the products easier to use and to discourage misuse.

The products produced under this standard are performing very effectively in the real world. Chuck Hurley, Executive Director of the National Safety Council, has described them as "performing beyond all expectations." Department of Transportation studies also support the conclusion that child car seats are highly effective when used properly.

Unfortunately, misuse of child car seats is a major problem. U.S. Department of Transportation studies show that a great many child car seats are not being used properly and that very often the misuse is intentional despite manufacturers instructions and warnings. For example, 70% of those who faced infants improperly forward and 95% of those who did not use the harness properly did so knowingly. The manufacturers, in addition to making their products easier to use properly have been working with the American Academy of Pediatrics, the National Passenger Safety Association, the National Safety Council, other safety groups, and the National Highway Traffic Safety Administration to combat consumer misuse.

While child car seats are performing very effectively in the real world when used properly, they cannot save every life nor can they prevent every injury, and that is the hub of the problem.

Product liability is an enormous problem for the manufacturers. During 1986, the number of child car seat manufacturers decreased from twelve to nine. All of the companies who have made child car seats for a period of time are being sued for amounts exceeding the net worth of their companies or divisions. The manufacturers are not able to purchase adequate insurance coverage and many are uninsured for most claims. The viability of this industry is genuinely threatened, and ultimately the availability and affordability of this needed product is at risk.

It is wrong to assume that these products are inherently ineffective. When compared with the millions of seats sold each year and the hundreds of thousands that are in accidents, only a relative handful of claims are made, and almost all of these involve products that have been misused. These claims, however, because of their nature, the seriousness of the injuries, the current tort environment, etc. threaten the viability of this relatively small industry.

Unfortunately when confronted with product liability suits the child car seat manufacturers believe they have little choice but to settle out of court rather than attempt to take the case to a jury under the current tort environment. There are many reasons for this.

First, it is common knowledge among experienced trial attorneys that juries want to find in favor of injured children who are themselves faultless. It is also common knowledge that juries tend to view manufacturers as "rich" and very able to pay.

Second, in almost every case, the driver or drivers who caused the accident and the parents or caretakers who may have misused the child car seat do not have adequate insurance coverage. The child car seat manufacturer is often the only "deep pocket" defendant, who under joint and several liability rules, may be required to pay all damages if found as little as 1% liable for the injury. There is no true balancing of comparative fault. This has caused my company to settle suits where we truly believed we were not at fault.

Third, the pendulum has swung so far in favor of the plaintiff in the courtroom that manufacturers usually only risk a jury decision in cases where a defense verdict is virtually certain or the plaintiff's demand for settlement is grossly excessive. Under the current tort system, the manufacturer has virtually no practical defenses:

Meeting government standards is not a defense regardless of how effective or how much in the public interest those standards are.

In reality misuse is normally not a practical defense. It is only viable where the misuser has a significant amount of insurance or personal assets, or can be proven 100% at fault. Further, 20/20 hindsight unfairly extends the manufacturer's responsibility for the "foreseeable" consequences resulting from a product's use. This places on the manufacturer an unreasonable responsibility for all of the attendant hazards of every accident no matter how unusual or severe, and for almost any misuse no matter how unusual or reckless.

State-of-the-art defense is often not a practical defense. State laws vary greatly. From the viewpoint of a nationwide marketer, it is only a truly solid defense where it is impossible to technically design and manufacture a better product, regardless of cost and market price.

Fourth, the entire judicial system is geared toward forcing settlements which has resulted in expanded pre-trial discovery and increased litigation costs. Costs of defense are massive. The child car seat manufacturer can now expect to spend $200,000 to $300,000 in the defense of a major case.

Fifth, the pressure on the defendant to settle is enormous. "Surely you will settle for the cost of defense" is heard repeatedly from judges. I have personally heard this admonition in countless cases I have defended. When presented with the option of spending large amounts of money to further defend the case, coupled with the very real possibility of a large verdict, most manufacturers and insurance companies reluctantly accept settlement.

The net result is to force the child car seat manufacturers into settling suits in which the manufacturer's product was truly not responsible for the injuries. This is an intolerable situation and cannot long endure.

What tort reforms are needed? From the perspective of the child car seat manufacturer we offer the following:

First, establish a fair system of comparative fault that assesses the contribution of each actor in a situation, including persons who have acted on behalf of the plaintiff, with damages assessed only according to degree of fault. Eliminate joint and several liability. At a minimum, eliminate joint and several liability for those that have played a relatively minor role. At a minimum we urge the adoption of the 25% threshold before a defendant could be jointly and severally liable, that was part of an approved resolution by the American Bar Association House of Delegates in their report earlier this year.

Second, provide a strong misuse defense under which a defendant would not be liable if the product has been altered or modified, or if the product has been used in violation of, or contrary to, the manufacturer's express written instructions and warnings.

Third, the clarity of instructions and warnings should be judged on the basis of reasonableness, i.e. are the instructions and warnings clear to an ordinarily prudent person exercising reasonable care in the use of the product.

Fourth, a government standards defense, granting immunity from suit based on design defect providing the child car seat meets FMVSS 213, should be implemented. FMVSS 213 has proven to be a very effective standard in the real world. It is our impression that the child car seat manufacturers would support and comply with the concept of pre-market testing if necessary.

Finally, trials must be conducted on a bifurcated basis. Payments from collateral sources should reduce judgments, and all settlements and judgments should provide for periodic payments of future damages.

VALUABLE RESOURCES

We know of no other product, with the possible exception of vaccines, that has such a direct impact on the health and safety of our nation's children, yet faces such enormous liability risks. The experience and expertise of these manufacturers represent a valuable national resource that the country cannot afford to dissipate. The tort reforms outlined above are fair and just. The time for their implementation is long past due.

WALK ON THE MILD SIDE, HARLEM-STYLE

HON. CHARLES B. RANGEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 27, 1987

Mr. RANGEL. Mr. Speaker, I would like to share with you and my distinguished colleagues an article about Harlem, NY.

Harlem, as many of you know, is a neighborhood of extremes. It is, unfortunately, a neighborhood beset with crime, drugs, violence, and a troubled youth. Equally important, however, Harlem is a neighborhood rich in culture, and filled with people who have a strong sense of community.

There are many myths and misconceptions about Harlem, and it is often slighted by news reporting obsessed with negative sensationalism. But underneath all of the despair and pain that is reported, there are good people, alive with vitality, hope, and an enduring sense of humor. It is my desire that by reading the following article that you will appreciate the more positive qualities of Harlem, a neighborhood which I proudly represent.

WALK ON THE MILD SIDE, HARLEM-STYLE

Harlem is the Hollywood of the black netherworld. It is a neighborhood marinated in history and legend and myth. Of late, great changes have peeled the lid off its can. But inside the can, Harlem will always be Harlem. It will always be the Harlem of The Cotton Club and The Apollo and Mister 125 and Frank's Restaurant and splendidly dressed ladies and gents going to church services on a Sunday morning.

Of course Harlem is more than that, just like the rest of the city. This is a neighborhood besieged by gentrification, crime, drugs, despair, welfare and lost youth. But it is also a neighborhood of great hope, a place filled with people bursting with pride and confidence and multiplying with a thriving, energetic black middle class.

Yesterday on 135th Street near Lenox Avenue there was a street fair. A steel band played fusion jazz and the smell of oxtail and curried goat boogied on a sunny breeze. People danced and cops stood around so relaxed they looked like they were policing a Donny Osmond concert.

"I'm enjoying this," said a cop from the 32nd Precinct named Pat Porteus, badge No. 6157. "It's just fun. The food is good, the music is good, the people are great. And for this I get a few hours upfront OT. This is what you call real nice duty. People have the wrong idea about Harlem. There are absolutely great people here, and they're the majority."

A walk down the 135th Street was mesmerizing. Food and arts and crafts and the music and the hot sun all made for a carnival atmosphere.

This was part of the "I Love Harlem Festival" and it made the yuppified street festivals we hold downtown look like plasterboard. A guy walking on stilts with a purple veil over his face was approached by a homeboy with untied sneakers who challenged him: "Okay, sucker, but can you slam dunk?" His friends all laughed and slapped fives of every description and you could hear the laughter coming from the man on stilts.

On the corner of Lenox Terrace Place and 135th a man named Van Holten, who runs the C & J Deli at 543 Lenox Ave., smiled as he watched young girls walk by with brightly colored balloons.

"I think this is a wonderful idea," he said. "Just look at the diversification of food—not just fried chicken and fried fish but goat, and vegetables. Jamaican patties, salads, all kinds of stuff. I came down to participate because I am from Harlem. I was raised here. Everything I know I learned here. I make my living here. Harlem is my world. There are so many myths and misconceptions about Harlem. But you have to live here to understand it. Harlem is all about its people, who live with struggle and hope and humor, and they're out here today to celebrate the place and themselves. I say, right on!"

A young girl named Areia Blassingame, 10, came by selling large chocolate bars for her school, St. Catherine of Siena, for a buck. I was talking to a police sergeant from the 32nd Precinct named Roger Parrino, who made it up the ranks by the age of 26 by logging more than 200 collars as a plainclothes narco cop. As soon as the young girl approached he pulled a buck out of his pocket and the delighted young girl thanked him.

"This is good duty," he said. "This is the best part of Harlem right here. Good, hardworking people, good kids, good times. I've only been here four months and I really miss the action of narcotics investigation but, well, this is what happens when you climb the ladder. There is great community spirit here.

"But then there is also the hairy crime. Take this weekend. I mean, I responded to a 9-year-old kid who got shot in his cheek in a dispute between three adults on 145th Street. We dealt with a woman who was raped by at least four and possibly 12 kids in their early teens. And then there was a gruesome domestic homicide on 128th last night. Then we had to deal with a heavy-set middle-aged woman who took all her clothes off on Lenox and 125th, smashed on either crack or dust, and we had to literally dress her and bring her to Harlem Hospital as an emotionally disturbed person. All in eight hours. And now today I'm here at a party listening to great music and dealing with decent people. That's Harlem. That's New York. That's why I still live here in the city. You have it all, good or bad."

A young boy walked by, pulled a green toy gun from his pocket and pointed it at Parrino.

"Don't ever point a gun at a police officer," Parrino said. The boy was about seven and he sheepishly put it away and ran off. "That's the second time today I had a kid point a toy gun at me. Sometimes it makes you wonder about the mental conditioning they're getting. Well, I try to instruct them as best I can. The kids usually love us until they hit their early teens and then don't trust us again until they're 60. But you have to deal with that and try to understand and communicate with the people here through community relations. But when you see some of the stuff I've seen, sometimes you just have to play hardball."

By coincidence, Parrino talked about how he had arrested three dealers in the vicinity of a crack house at 493 Ninth Ave. earlier this year. This was the same hellhole of a crack house I wrote about a week ago in this space. All three dealers received life sentences. A cop like that coming to Harlem with sergeant's stripes can mean only good things for the good citizens who were everywhere yesterday.

I drifted through the crowd and ate curried goat and oxtail with rice and listened to the music that people who live in places like Harlem compose and play out of necessity and never hobby. I almost forgot I was working. This was a magnificent day in one of the culturally richest neighborhoods in America. There was no talk of Howard Beach or racism as whites casually mingled with blacks, eating ethnic foods, dancing to the music and simply enjoying being in New York.

"What it's all about is that this is Harlem, a place to be proud of," said Van Holten. "We need things, sure—more activities for the young people to keep them off the drugs—but Harlem is not all drugs and alcohol. It is culture and intelligence and spirit. It's more than that. It is pain and crying and a whole damn lot of laughter. Put simply, I'm here today because it is a glorious day and I love Harlem."

CELEBRATION OF CITIZENSHIP, SEPTEMBER 16, 1987

HON. LINDY (MRS. HALE) BOGGS

OF LOUISIANA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 27, 1987

Mrs. BOGGS. Mr. Speaker, on September 16, 1987, the Congress of the United States hosted on the West Front of the Capitol a historic program honoring the Bicentennial of the United States Constitution called A Celebration of Citizenship.

President Ronald Reagan, Chief Justice William H. Rehnquist, the Speaker of the House JIM WRIGHT, Majority Leader of the Senate ROBERT BYRD, retired Chief Justice Warren E. Burger, Chairman of the Commission on the Bicentennial of the U.S. Constitution, and other public officials participated in a ceremony witnessed by a live audience of over 120,000 people and by millions of Americans through a nationwide television and radio broadcast.

The goal of "A Celebration of Citizenship" was to reach America's schoolchildren with a national teach-in about our Constitution, and toward that end special educational kits were prepared and distributed to over 100,000 elementary and secondary schools abroad. The live program at the Capitol was the culmination of that outreach, and allowed all Americans to join our youth in reciting the Pledge of Allegiance and celebrating in unity the freedoms and opportunity we enjoy under our Constitution.

Mr. Speaker, I am pleased to submit for the RECORD the transcript of the "Celebration of Citizenship" program.

A CELEBRATION OF CITIZENSHIP, U.S. CAPITOL, SEPTEMBER 17, 1987

[1:30 p.m. 3rd Infantry Old Guard Fife and Drum Corps plays opening music.]

TED KOPPEL. I'm Ted Koppel. Welcome to "A Celebration of Citizenship". Over the last ten years, Americans have been doing a lot of celebrating. We've had national parties for the Declaration of Independence and the Statue of Liberty, as well as for the Olympic Games.

But today, here in Washington, there are no tall ships on the Potomac, no massive displays of flags, no spectacular fireworks. And for a good reason. The men and women and boys and girls gathered here—and in homes, factories, offices, and classrooms, across the nation—have assembled not merely to celebrate the Constitution. They've come to start something, to begin a national effort that requires dedication as well as celebration.

On this day, 200 years ago, the ink of the Constitution was still wet—and there was considerable doubt that the Constitution would ever be approved by the then imperfect union of states. Every word, every phrase, every sentence of every paragraph was examined by the delegates as if their lives depended on it. Because their lives did depend on it.

And that's as true now as it was then. But, for 200 years, it has worked so well that most of us now take it for granted. And that's what this Celebration of Citizenship is all about. We're here today not simply to honor the Constitution, but to renew our understanding and appreciation of it.

I am honored to introduce your mistress of Ceremonies, Dr. Floretta McKenzie.

FLORETTA MCKENZIE. Thank you, Ted, and welcome again, everybody. This is a star-spangled celebration. But this time, the fireworks are not outside . . . they are inside the Constitution. The Constitution doesn't make a gift of liberty . . . it assumes that we, the people, were meant to be free . . . are determined to remain free . . . and that we accept the responsibilities that freedom demands.

[Alisan Porter sings "This is My Country" with U.S. Army Band accompanying.]

FLORETTA MCKENZIE. In 1776, the Declaration of Independence spelled out how we, the people insisted on liberty. Eleven years later, in 1787, the Constitution spelled out how we were going to guarantee that liberty. The words may be two hundred years old, but they still ring as loudly and as truly as they did then.

I have the honor to present the Chairman of the Commission on the Bicentennial of the United States Constitution and Chief Justice of the United States from 1969 to 1986, Warren E. Burger.

Chief Justice WARREN E. BURGER. Two hundred years ago today, and for a good many years before that, the 13 states were in turmoil. There was very little domestic tranquility. There were conflicts between states over commercial matters. There were conflicts over boundaries. Virginia and Maryland had a serious quarrel over navigation of the Potomac River and the Chesapeake Bay. There had been a rebellion in Massachusetts that history knows as Shays' Rebellion. Shays, who had fought in the Revolution, led a small army that succeeded in closing the courts. The rebellion was put down by Massachusetts troops.

What happened there was what has happened to every victorious alliance in history. After the victory the allies began to fall out and quarrel. Americans were fighting Americans. Washington, Madison, Hamilton, Franklin and other leaders were sure that we could not prosper and be secure without a new form of government, stronger than the Articles of Confederation had given them.

Here is what they did about it at that meeting in Philadelphia. In the eloquent Preamble of the Constitution, the delegates said:

"We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America."

[Musical interlude. Emcee Floretta McKenzie introduces soloist song. Holly Robinson sings "Star Spangled Banner" accompanied by the U.S. Army Band.]

FLORETTA MCKENZIE. The National Anthem celebrates the defense of freedom. The Constitution defines the defense of freedom. The defense is equal justice under the law. We, the people, defined what laws were needed and who would make them in Article One of the Constitution. "All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives."

Ladies and gentlemen, boys and girls, I present, from West Virginia, the Majority Leader of the United States Senate, Senator Robert C. Byrd.

Senator ROBERT C. BYRD. There is a tendency to think that the Constitution is really just something we read about in our history books.

But the Constitution is not a hollowed-out dry piece of history. It is for the here and now—for Americans in 1987—for you and me. It allows us to argue to be different, to tell people what we think, to vote; ultimately to carry forward the American dream.

At the time when the Constitution was written the idea of a strong Central Government was not popular. The States did not want to give up their power. Many people wanted to protect their individual rights.

The arguments in Philadelphia went on for many weeks. Finally there was a compromise. Power would be divided and shared. The President, the Congress, and the judiciary would be separate, but equal—to check and balance each other. At a time when every country seemed to have a king, this was very different.

We take it for granted that the President and the Congress share the power. But even today we must check and balance each other. From our experience we know that when one branch of the Government gets too much power we lose control or our democracy. Usually, America has gotten hurt as a result.

Even the Congress is divided. Every State has two Senators, but big States have more Members in the House of Representatives than do the States with smaller populations. It is a compromise that works. This is what we do in the Congress. We compromise. We look for positive solutions that work for all Americans.

Above all, the Constitution is a document of political expansion and liberty—an umbrella of rights protecting all Americans. It is a document not just for the privileged, but also for the little guy as well. The Constitution is very much alive today. It lives for you and for me and, if we keep it safe, for generations yet unborn.

Floretta McKenzie. Thank you, Senator Byrd.

The creation of both a House and a Senate is another example of the checks and balances built in to the Constitution. The men who wrote the Constitution understood the importance of making the laws, and they knew that making laws was not an easy task.

From Texas, the Speaker of the House, Representative Jim Wright, Mr. Speaker.

Speaker Jim Wright. For 200 years we have been blessed by this Constitution. Because other generations have nurtured and preserved it, we have more freedom—and more abundance.

America is not just a piece of land. We are not a distinctive race of people. America is a set of ideas and ideals. We are a family found together not by blood, but by belief.

We believe first of all that each person has worth. Each of us is entitled to have his say. No one of us is entitled to get his way.

We believe that each has obligations. Nobody here is above the law. Most of all, those who govern us have a duty to respect it. In America they are our servants, not our masters.

Finally the Constitution speaks of posterity. We believe each generation should do better than the one before.

Heirs of this legacy, let us resolve to expand the reach of liberty and justice in our own time to embrace those Americans even now denied the reality of its promise.

Let us resolve to preserve its benefits intact for future generations and to honor its spirit in our lives by respecting and protecting the rights of those even with whom we disagree.

And so, 200 years from now, may its message still endure to bless the generations yet to come.

[U.S. Army Band plays "America the Beautiful"]

Floretta McKenzie.] thank you, Mr. Speaker.

The Founding Fathers assigned to the Judicial Branch the authority to interpret the Constitution. They wrote: "The judicial power of the United States shall be vested in one Supreme Court * * *"

Ladies and Gentlemen, The Chief Justice of the United States.

Chief Justice William H. Rehnquist. The framers of our Constitution wanted to make sure that the Government they established was very different from that which they as colonists had experienced under King George III of England. They hit upon the idea of separating the powers of government into legislative, executive, and judicial power, and assigning each of these powers to a separate branch of the newly created Federal Government. Each of those branches is represented here today. The Congress has the power to make laws, the President has the power to carry out the laws, and the Supreme Court and other courts have the power to decide cases arising under those laws. The reason that the framers did this was their desire that these three separate branches would check and balance one another and thus prevent the Government from becoming too powerful. Under this kind of system it sometimes takes longer for the Government to do something, because Congress and the President may not agree with one another, or because the courts may decide that a law is unconstitutional. But this very sort of friction is itself a guarantee against arbitrary or ill considered actions by the Government.

Floretta McKenzie. Thank you, Chief Justice Rehnquist.

The Constitution—as originally written—was, as Benjamin Franklin said, not a perfect document. But—through the amendment process—it is subject to improvement. Every new generation inherits the Constitution—as a part of their heritage. I believe it's in good hands.

Ladies and gentlemen, I am honored to introduce two representatives of the future of America, 17-year-old honor student Damien Atkins . . . and the winner of the 1987 National Spelling Bee, 14-year-old Stephanie Petit. And now, Stephanie Petit:

Stephanie Petit. For two hundred years now, the Constitution has safeguarded our rights. It stands behind every American tradition culture. This is especially important to young people because we are the future, and America is counting on us to preserve it. Because both of my parents were born and raised outside this country, they have taught me to appreciate and cherish the greatest of America.

Many facts taught in school are soon forgotten after the final exam is over. But the Constitution, unlike many other concepts gained through school, needs no final exam, for the American youth continue to live it every day as American citizens in all walks of life.

The Bicentennial of the Constitutions calling much well deserved attention to the document. However, this attention should not end with celebrations, because our work to build the future has just begun.

I am very honored to be here and to share my thoughts with you, and to remind all of us how great the country is we live in.

In 1971, two years before I was born, the 26th Amendment to the Constitution became law. That's the amendment that says that you have to be only 18 years old to vote. So I've got four years to wait. But Damien Atkins is 17 and he'll be able to vote next year. I don't know who he's going to vote for but we know his vote will make a difference. Damien.

Damien Atkins. Thank you, Stephanie. Thank you, everybody. The most important thing I have to say is that if you're old enough to vote—and you don't—then the guarantees of the Constitution are empty promises. The Constitution doesn't work just because of the words. It works because we believe in it. It works because we make it work. And we make it work by caring. By voting. By proving, over and over, that the real power of the Constitution is us. We, the people.

Since Article II of the Constitution was written—creating the office of the President—there have been 40 presidents. It is a privilege for me to introduce the 40th President of the United States.

The President. Thank you. When George Washington was elected as the first President of the United States, the total population of the country was nearly four million. Today, there are over five million federal employees. Times have changed.

But the basic premise of the Constitution hasn't changed. It's still our blueprint for freedom. One of our more able statesmen and constitutional lawyers, Daniel Webster, once wrote: "We may be tossed upon an ocean where we can see no land—nor, perhaps the sun or stars. But there is a chart and a compass for us to study, to consult, and obey. The chart is the Constitution."

Two hundred years ago, the very notion of free self-government was a new idea. But James Madison—a man whom many call the "Father of the Constitution"—urged his fellow citizens not to oppose the idea simply because it was new. He argued that it was the glory of the American people that they were not blindly bound to the past but were willing to rely on "their own good sense" and experience in charting the future.

It's interesting that Madison, and others, had to defend the Constitution because it was new. Times have changed. For over 200 years, we've lived with freedom under law and, perhaps, we've become complacent about it. We should never forget how rare and precious freedom is.

Active and informed citizens are vital to the effective functioning of our constitutional system. All of us have an obligation to study the Constitution and participate actively in the system of self-government that it establishes. This is an obligation we owe, not only to ourselves, but to our children and their children. And there is no better time than right now—during the next four years of the bicentennial—to rededicate ourselves to the Constitution and values it contains.

Let us never forget that the signers of the Declaration of Independence acted with "a firm reliance on the protection of divine providence. . . ." One hundred years ago, on the occasion of the centennial of the Constitution, another President—Grover Cleveland—accepted the privilege that I have been given here today. To honor the Constitution. And his words are as true now as they were then.

He said, "When we look down upon 100 years and see the origin of our Constitution, when we contemplate all its trials and triumphs, when we realize how completely the principles upon which it is based have met every national need and national peril, how devoutly should we say with Franklin 'God governs in the affairs of men.' "

And now, Stephanie, Damien, Brian, Tyese, would you join me and everybody here, and everybody watching and listening throughout the land as we recite the words that we all know by heart—the Pledge of Allegiance:

"I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one Nation under God, indivisible, with liberty and justice for all."

Ted Koppel. As I said earlier, the ceremony here today wasn't meant to be a birthday party. It was meant to start something: a national reaffirmation of the Constitution that will go on for the next four years. It's a far-reaching plan, what former Chief Justice Burger calls a national history and civics lesson for all of us. But what it really is, I think, is an invitation to all of us to get involved. As young Damien Atkins said earlier, the Constitution doesn't work because of the words. It works because we have made it work.

Floretta McKenzie. Over and over today, in one way or another, we've been asked to get involved. But how can we begin? What can we do, right now? You would think there would be an easy answer to those questions. There isn't. Each of us must find an answer. Of course, we should read the Constitution. Of course, we should vote in every election. But what else? We the People must ask ourselves how we can improve our homes, our schools, our work, our communities and our neighborhoods. And then do something about it. In short—get involved—Volunteer! The people who wrote the Constitution did—and look what they accomplished.

[Choir, crowd, viewers, and all stage participants sing "God Bless America."]

SCHOOL REFORM: COMPLETING THE COURSE

HON. AUGUSTUS F. HAWKINS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 27, 1987

Mr. HAWKINS. Mr. Speaker, the importance of properly educating our children for the future has never been more apparent. In a recent speech, Ernest L. Boyer, president of the Carnegie Foundation for the Advancement of Teaching, presents an interesting and thoughtful approach to solving some of the problems we face in education.

SCHOOL REFORM: COMPLETING THE COURSE

(By Ernest L. Boyer, president, the Carnegie Foundation for the Advancement of Teaching)

INTRODUCTION

It's been four and one-half years since the National Commission on Excellence in Education declared: "If an unfriendly foreign power had attempted to impose on America the mediocre educational performance that exists today, we might well have viewed it as an act of war."

Since that hyperbole hit the headlines, this nation has engaged in the most serious and sustained bipartisan drive for school renewal in our history. Thanks to governors, educators and legislative leaders—including many assembled in this room—education has been at the top of the national agenda, and I applaud the remarkable progress that we've made.

But with all of our achievements, which are truly great, I'm convinced the time has come to move to a still more substantive agenda. And tonight I'd like to apply a four-part test of quality against which the reform movement, ultimately, most be measured. The four back-to-basics questions we now confront are these:

First, can we attract and hold outstanding teachers?

Second, can we agree on the content to be taught?

Third, can we effectively evaluate the students?

And, finally, can we serve all children, not just the most advantaged?

I.

First, the teachers.

The quality of education in this country can be no greater than the dignity we assign to teaching and, since 1983, Americans have begun to view teachers as part of the solution, not the problem. During the past four years, teacher training has improved, certification has been tightened, national teacher organizations have constructively modified their stance, teacher salaries have gone up at twice the inflation rate. And on these points the reform movement deserves high marks—a solid B+, even A, perhaps.

But here a word of caution.

I am concerned that, even with substantial gains, the profession of teaching in the United States will remain imperiled—not because salaries or credentialing standards are too low—but because day-to-day conditions in the schools leave many teachers more responsible, but less empowered.

At the Carnegie Foundation we've just surveyed thousands of teachers from coast to coast. We discovered:

Nearly one-third say they have no role in shaping the curriculum they are asked to teach.

Over 50 percent do not participate in planning their own inservice education programs.

Seventy percent are not asked to help shape retention policies at their school.

And over 60 percent are not involved in deciding which students will be "tracked" into special classes.

And then we wonder why many of our most gifted students do not go into teaching!

There are poor teachers in the schools. And for the reform movement to succeed, the teaching profession must be much more vigorous in monitoring itself. This nation simply cannot tolerate mediocrity in the classroom.

But it's also true that no profession is made healthy by focussing only on what's bad, or by relentlessly diminishing the status of those who do the work. Indeed, if the reform movement is to succeed we must move beyond the regulations and focus more on teacher recognition.

I find it ironic that while industry now talks about involving plant workers in decisions, the school reform movement risks moving in just the opposite direction. Perhaps it's here that we can borrow something from the Japanese. In Japan, parents are intensely supportive of the schools and, in that culture, the term sensei—teacher—is a title of great honor.

I applaud the career ladders and master teacher ranks recently introduced in several states.

I applaud the fellowships, awards and special tributes being given to outstanding teachers.

However, let's also have, at every school, a teacher excellence fund, a teacher travel fund, a top-quality program of inservice education.

And let's have effective principals who work with "teacher teams," and let's grant more autonomy to the local school.

But we need federal leadership as well.

Almost 30 years ago, in response to Sputnik, President Dwight Eisenhower proposed the National Defense Education Act, a federally funded teacher program that sent a powerful signal to the nation.

What I now proposed is a 1988 version of Eisenhower's NDEA, a new legislative package—called perhaps the Teacher Excellence Act—that would, among other things, establish Teacher Institutes in every region of the country and provide fellowships to thousands of teachers from all fifty states, allowing them to spend time in libraries, in laboratories, and with other teachers—the simple things the college professors just take for granted.

The act could well include a Distinguished Teaching Fellows program in which master teachers in each state would spend a year moving from school to school, holding seminars with colleagues.

The Teacher Excellence Act should also greatly expand the Carl D. Perkins' scholarships (Public Law 98-558) that give awards to top college school students who agree to teach in public schools, the suburbs, the rural poor, and the disadvantaged in our inner cities.

And why not fund summer institutes on teaching for gifted high school students who plan to enter the profession.

Martin Luther King declared that, "Everybody can be great because everybody can serve." And may I suggest to the next President of the United States that the young people of this nation are more than ready to be inspired by a larger vision. Indeed, the next president should make teacher excellence a national crusade, and be more concerned about getting outstanding teachers into classrooms than getting weapons into space.

Only then, will the future of this nation be secure.

II.

This leads to the second basic question: Can we agree on the content to be taught?

No amount of reassuring rhetoric can conceal the fact that, in most schools, the K through 12 curriculum is still a Rube Goldberg arrangement that lacks both quality and coherence. During the past four years, we've added more Carnegie units to the requirements for graduation—and that's a plus—but what we've failed to ask is:

"What's behind the labels?"

We say "science," but what science should be studied?

History, yes. But which history?

We require English, but "English" can mean anything from Shakespeare to basic grammar.

Surely, the school curriculum must be something more than the minimalism that exists today, something more than the fragments of information, the disconnected courses.

But where do we begin?

Literacy comes first. On this point, everyone agrees. But what we can't agree upon, it seems, is the level of literacy to be accomplished. Will we settle for the simple vocabulary and word matching tests now required, even at the college level? Is this what it means to be linguistically proficient?

Recently, the National Assessment of Educational Progess reported that most young adults in the United States are literate by UNESCO standards—they can read words in passages appropriate to their age. However, the report also revealed that over 40 percent of those sureveyed had trouble drawing meaning from the message. There was word recognition, but not sufficient insight or understanding.

Literacy, if it means anything at all, means teaching students to think critically, listen with discernment, and communicate with power and precision. And this process must begin first day of school.

I propose that every district organize what might be called the Basic School, with priority on language.

From the very first, children in this school—one that combines kindergarten through grade four—would be speaking, writing, reading, listening to stories, talking about words, building a rich vocabulary, creating a climate the foreign language people like to call "the saturation method."

The goal would be to assure that every child becomes proficient in the use of English.

Let's also give priority to writing in all the grades, since it's through clear writing that clear thinking can be taught.

And, I propose that every high school senior, as a requirement for graduation, be asked to write a paper on a consequential topic. If, after 12 years of formal schooling, students cannot express themselves with clarity and coherence, cannot integrate ideas or state with cogency their conclusions, then we should close the school doors and start again.

But literacy, at its highest level, means something more. It means teaching students that language is a sacred trust.

We hear a lot of talk these days about instilling values in the schools.

Frankly, I'm not sure this can be accomplished with a separate course in morality or ethics.

I am convinced, however, that values are sustained by the honesty of our own words and by the confidence we have in the words of others.

In morality, there is no place for "plausible deniability" and, if the Iran hearings taught us anything at all, they taught us that good communication means, not just clarity, but integrity as well.

The school curriculum also should embrace cultural literacy, to use E.D. Hirsch's helpful formulation. Students need to know about our western heritage, our institutions, literature, geography, and the arts. And they also must become familiar with languages and cultures other than our own.

During our research on the American high school, we discovered that only two states require students to complete a course in non-western studies.

And two years ago, in a survey of 5,000 undergraduates, we learned that over 30 percent of today's college students said they had "nothing in common" with people in underdeveloped countries. Is this acceptable in a world that is politically, economically, and environmentally connected?

We live, today, in a global village that's ecologically imperiled:

The protective ozone layer is endangered.

Our shorelines become polluted.

The tropical rain forests are being depleted at the rate of 100,000 square kilometers every year.

And yet, for far too many students, their knowledge of nature and its resources goes about as far as the refrigerator door, the VCR knob, and the light switch on the wall. I'm suggesting that to be a responsible citizen in the twenty-first century means becoming literate in science and understanding our connections, and responsibilities, to the natural world.

But isn't it a bit ironic that nearly five years after the National Commission said, "The nation is at risk," we're still talking about what students do not know! Isn't it time for master teachers and research scholars to come together—in a kind of peacetime Manahttan Project on the school curriculum—to design, for optional state use, courses of study in language, in history, in science and propose ways, to link the content of schooling to the realities of life?

Over forty years ago, Mark Van Doren wrote that, "The connectedness of things is what the educator contemplates to the limit of his capacity." He concludes by saying that, "The student who can begin early in life to think of things as connected . . . has begun the life of learning."

In the end we need content, with connections.

III.

Next, there's the pressing question, how can we evaluate results? And on this point, the reform movement deserves a barely passing grade.

The taxpayers of the United States cannot be expected to invest $130 billion every year in public education without hard evidence that their investment is paying off. And yet, with all the talk about school renewal, we are still confused about how best to measure the results.

Part of the problem is that, in America, we want local school control, we want national results, and we're, ambivalent about how to reconcile the two.

But it's also true that, for years, many educators have been playing blind man's bluff. They've criticized public efforts to measure school performance while failing to develop yardsticks of their own.

Doubly distressing is the fact that the standardized tests now available often measure that which matters least.

There are exceptions, to be sure. The Iowa tests have provided a base line of student achievement for many years. And The National Assessment on Educational Progress holds great promise.

Some of the most useful work is being done by Howard Gardner, who, in his insightful book, "Frame of Mind", reminds us that beyond verbal intelligence, there is mathematical, social, intuitive, and aesthetic intelligence as well, and that the instruments we use in school should expand the child's potential, not restrict it.

What we need, today, is a comprehensive program of assessment, one that includes:

First, the measuring of language, mathematics, and computing skills—to verify that young children have mastered the basic tools of learning.

Second, a cluster of general education examinations at the high school level—to measure knowledge in such areas as science, civics, literature, history, and geography.

Third, a senior writing project for all students—to determine their capacity to think critically and integrate ideas.

And finally, a student portfolio of school and service projects—to evaluate the higher order aptitudes of aesthetic sensitivity, creativity, and problem solving, for example.

To monitor assessment and develop a model program to be used optionally by each state, I propose a national, nongovernmental panel—organized, perhaps, by the Education Commission of the States, the six regional accrediting associations and the Chief State School Officers, who are already bringing to the testing movement leadership and vision.

What we test determines, in large measure, what we teach. And shaping a comprehensive program of evaluation, one that enriches rather than trivializes the goals of education, is one of the most urgent challenges the reform movement now confronts.

IV.

Finally, the students. Will the reform movement reach all children, not just the most advantaged?

From the very first, this nation has understood that education and democracy are connected. And at this late hour it's almost embarrassing to ask: "Which students will be served?" Today, almost everyone agrees that excellence in education means excellence for all.

But, frankly, that's not the way the reform movement is working out. While "advantaged" schools are getting better, others remain deeply trobled institutions. And there is still an enormous gap between our rhetoric and results.

During a recent Carnegie study of urban schools, I became convinced that we have, not just a school problem, but a youth problem in this nation. Many of our children—especially those from disadvantaged backgrounds—feels unguided and unconnected to the larger world.

Today, at least 30 percent of all black high school students drop out and over 40 percent of the Mexican and Puerto Rican students leave before they are awarded a diploma.

Today, in both urban and rural schools, as many as half the disadvantaged students are absent on any given day.

Between now and the year 2000, one out of every three children in public education will be from minority populations. And these are precisely the students for whom the schools have been least successful. To make these schools effective we need: Concerned parents, smaller schools and smaller classes, better counseling and guidance, and flexible arrangements that link schools to community service and to work.

And, once again, we must have federal leadership to do the job, as the nation's corporate leaders just declared. We urgently need:

Full funding of Head Start, to encourage prekindergarten education.

Full funding of Chapter I of the Elementary and Secondary Education Act, to strengthen basic skills.

And full funding of the federal nutrition programs, to stimulate young minds.

Winston Churchill said it all when he observed that "There is no finer investment for any community than putting milk into babies." And it's an unspeakable disgrace that, since 1979, the number of poor families with children in this country—the richest country in the world—has risen 35 percent.

The harsh truth is that if poor children are "at risk" students do not become a national priority, the promise of excellence for all will remain sadly unfulfilled and our very future as a nation will be threatened.

CONCLUSION

Here, then, is my conclusion.

Since 1983, we have had one of the most sustained and consequential periods of school renewal in the nation's history.

But if we stop now, we will have failed.

To succeed:

We must make teacher excellence a national crusade.

We must define a core of common knowledge.

We must design a comprehensive program of assessment.

And, above all, we must confront the crisis of the disadvantaged, since, ultimately, the reform movement will be judged, not by what happens to students in the privileged schools, but by what happens to our poorest, and most neglected children.

Again, I salute the governors and legislators for your leadership in school reform. Thanks to your efforts, great progress has been made. But as John Gardner reminded us:

> A nation in never finished. You can't build it and leave it standing as the Pharaohs did the pyramids. It has to be recreated for each generation.

And let the future leaders of our nation clearly understand that the most urgent and compelling task this generation now confronts is the rebuilding of our schools.

CAPT. JOHN HUNT: A BRAVE AND COURAGEOUS U.S. MERCHANT MARINER

HON. JACK FIELDS

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 27, 1987

Mr. FIELDS. Mr. Speaker, one of the seamen who was seriously injured during the cowardly Iranian silkworm attack on the reflagged U.S. oil tanker, the *Sea Isle City,* was the captain of that vessel, Capt. John Hunt.

Capt. John Hunt, who is 50 years old, is a distinguished member of the International Organization of Masters, Mates, and Pilots and a veteran of many years of sailing experience.

Like the thousands of U.S. merchant mariners who have proceeded him, Captain Hunt commanded this vessel and its vital cargo with enthusiasm and skill. He is a man who personifies the U.S. merchant marine spirit and its willingness to move cargo any place, anytime regardless of the dangers or the risks to themselves or their vessels.

Mr. Speaker, this Nation owes John Hunt and all those Americans who serve in the Persian Gulf a deep sense of gratitude. It is my sincere hope that Captain Hunt will recover quickly and successfully from his injuries.

Mr. Speaker, at this point, I would like to enter into the RECORD a recent Washington Post article on Capt. John Hunt.

The text of the article follows:

[From the Washington Post, Oct. 19, 1987]

BLINDED U.S. CAPTAIN RECOVERS AFTER ATTACK—GLASS SPRAYED HEAD WHEN MISSILE STRUCK

By Patrick E. Tyler

KUWAIT, Oct. 18.—John Hunt, the American captain whose U.S.-flag oil tanker, the Sea Isle City, was mauled by an Iranian Silkworm missile Friday, awoke today in an intensive-care unit here after 54 hours of unconsciousness, his face bandaged to cover his blinded eyes and his upper body swollen under a black-thread latticework of stitches.

As physicians tended lacerated crew members at a hospital near Kuwait's oil port, shipyard workers poured over the twisted superstructure of the Sea Isle City as it sat motionless against a concrete pier in Kuwait's downtown harbor.

An American flag fluttered over its fire-blackened bridge tower, raised just before reporters were allowed on board, as Washington was deciding to retaliate against Iran for the missile strike against a U.S.-flag ship in Kuwaiti waters.

At Kuwait's Addan Hospital, the 50-year-old American captain was sleeping when four reporters were escorted to his bedside by an Egyptian medical team.

The physicians said Hunt was "fully conscious" at 2 p.m., when they weaned him off drugs used while an artificial respirator controlled his breathing during two days of recovery from marathon surgical sessions Friday.

Hunt was in "very high spirits," according to the hospital's chief of intensive care, Jalal Ghouhary, and even showed a sense of humor when he told the physician that he did not want to go back on the respirator. "Look, doctor, don't make me a zombie again," Hunt said.

But medical sources said Hunt had not yet been told that the spray of jagged glass fragments that shredded his head and torso when the powerful Silkworm warhead exploded 25 feet below the bridge had irreparably damaged his eyes.

Cotton gauze was taped over his eyes. His reddish blond hair, gray at the temples, rested against the green sheet of the hospital bed.

Hunt's left arm, in a plaster cast from the elbow down, was in traction. His right hand and forearm also were bandaged.

The hospital's chief of surgery, Mohammed Mehrez, said Hunt was in serious but stable condition and would require at least another two weeks of hospitalization.

The doctor said that when Hunt was rushed from the burning ship to the hospital by helicopter Friday morning, he was conscious and called out, "Where am I?" and "I can't see," and asked to be sedated for his pain.

In an initial five hours of surgery, the medical team dug dozens of pieces of glass out of Hunt that showed up on X-rays because of the lead in the heavy marine plate.

"The captain lost a hell of a lot of blood," Mehrez said, and it took more than 60 sutures to stitch dozens of lacerations from his waist up.

Hunt underwent surgery to dig glass fragments out of his abdominal wall and three more hours of surgery on his eyes, hospital officials said.

In a room down the corridor from Hunt, Italian Filippo Tucci, 53, captain of the Sea Isle City before it was reregistered under the U.S. flag in August, also was recovering from serious cuts and damage to his left eye.

Tucci's nurse handed him a plastic container with three large glass fragments, one of them the size of a marble, that had been removed from his eye. Medical sources said it was uncertain whether he would recover sight in that eye.

In a halting voice, Tucci told reporters that he and Hunt had been standing side-by-side on the bridge looking through the large windows. Two miles ahead was the offshore "sea island" loading terminal, about nine miles from Shuaiba Port.

The 81,283-ton tanker was moving toward the oil-laden terminal at about three miles per hour when Tucci spotted the missile right before impact.

"All we could say was, 'My God, there's a missile,' and then it hit," Tucci said. "We received a tremendous shock."

Stunned and bleeding profusely, Tucci said, "I saw Capt. Hunt was on the floor and I called to him."

Hunt replied, "Yes, Capt. Tucci, I can't see anything."

Tucci said he realized the ship was still bearing down on the oil terminal and he dragged himself to where he could shout to an engineer to turn the ship, cut power and drop anchor.

"I could imagine what kind of disaster there would be if we struck the sea island," Tucci said.

In addition to the officers, 10 crewmen were hospitalized. Three Filipino crewmen and a British engineer, the only crew member who suffered burns, remain there.

At Kuwait's downtown harbor, engineers from Kuwait Oil Tanker Co., which owns the Sea Isle City through a U.S. subsidiary, said repairs will take more than a month.

Company officials showed reporters hundreds of what they said were fragments from the Silkworm strewn over the decks and throughout the wrecked bridge tower on the stern. The fragments included pieces of twisted sheet metal from the skin of the missile, but also heavy steel fragments of the propulsion system that controlled its flight path, according to the engineers.

Some of the fragments were etched with five-digit numerals and others still bore wiring and copper coils that one engineer speculated were to ignite the warhead.

The damage inside the ship left no doubt of the missile's explosive power. The missile hit a ventilating tower on the deck just in front of the bridge, causing the warhead to detonate just before it hit the superstructure of the bridge.

The force of the blast blew out the bridge windows 25 feet above the impact point, and the warhead still had enough power to rip through steel bulkheads in the superstructure. Engineers said the shrapnel tore through 10 steel barriers before the last chunk of hot metal dug into a steel wall in the rear of the upper boiler room.

A CONVERSATION WITH WILLIAM T. COLEMAN, JR.

HON. BILL GREEN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 27, 1987

Mr. GREEN. Mr. Speaker, I want to share with my colleagues the following interview with former Secretary of Transportation William T. Coleman, Jr. I know that you will find his remarks on the interpretation of our Constitution to be of interest.

[From Ripon Forum magazine, October 1987]

A CONVERSATION WITH WILLIAM T. COLEMAN, JR.

Ripon Forum: It took the Constitution nearly a decade to develop, from 1777 when the Articles of Confederation were proposed to February 21, 1787 when the United States Congress called for a convention that would revise those Articles and "render [them] adequate to the exigencies of Government and the preservation of the Union." What were the key debates during that period and what legacy did they leave?

Coleman: The first debate was over the manner in which the federal government could raise money. The second debate dealt with the extent to which the national government could conduct foreign policy. And the third debate was concerned with whether states could impose restrictions on other states.

But it is important to remember that the original constitutional convention was called to amend the Articles of Confederation, not to write a new Constitution. That is important because there is a great risk that if we ever called a new convention, it would be open to everything. Nothing in the Constitution prohibits another constitutional convention from rewriting the entire document and that is why I've always been very opposed to calling a new convention.

Ripon Forum: If you had been a delegate to the Constitutional Convention of 1787, would you have favored the Virginia Plan, which called for a strong federal government with a bicameral legislature?

Coleman: It's hard to project what I would have called for because so much has worked out better than anyone thought. I don't know whether I would have supported the Virginia Plan, because our national government has evolved into a much stronger entity than anyone imagined. The fact that the national government came about through a process of development, rather than as stated in the original Virginia Plan, may have strengthened it.

Ripon Forum: So it wasn't inevitable that a strong national government would fill the vacuum created by a collection of states?

Coleman: It is inevitable that the country started the way it did because the process of development has given us more strength than originally intended. We wouldn't be as strong today if we started with a system like modern France, whose strong national government runs the provinces. The diversity of our states provides a tremendous resource. If everything had originally been run from Washington, I don't think we would have been as successful.

Ripon Forum: How should we view the Constitution? Is it an "organic document," as Senator Mathias alludes to elsewhere in this issue, or is it a document to whose original intent we must adhere?

Coleman: It is a document to whose original intent we must adhere, but that doesn't mean what most people say today. The original intent was in many cases to leave certain provisions intentionally vague so they could be developed in the future. Most of the great clauses did not originally say a, b, c, and d. That is one of the reasons the Constitution still serves us well today. Its vagueness is the reason it is the oldest written constitution.

Ripon Forum: But what constraints prohibit Supreme Court justices from imposing their personal views on a vague concept and perhaps taking the Constitution in a peculiar direction?

Coleman: The best confidence and proof is that with almost 200 years of history and nearly 110 justices, very few have tried to impose their own views. Most people appointed to the Supreme Court understand judicial responsibility in varying degrees: you must seek objective standards which can be measured against time.

For example, due process is a very vague concept. But there are certain objective standards to which a responsible judge would say, this is the parameter. If a judge has seen defendants always being convicted without proper defense, then he would understand due process instinctively. He or she would recognize that a good lawyer may have prevented someone from going to jail.

These are concepts with which certainly the English speaking world has struggled for many years and for which there are standards. If you deviate too far from the standards, the bar and legal scholars will object. Most people want to be within the unrestricted middle and not on either extreme.

Ripon Forum: Let's consider the 14th Amendment, which was passed after the Civil War and which ensures that no person shall be denied life, liberty or property without due process and that no person shall be denied equal protection under the law. Does that Amendment apply equally to women, Hispanics and the handicapped?

Coleman: My views on that question differ from most people. It is clear that the 13th, 14th and 15th Amendments were passed primarily to protect blacks, who had been defined as 3/5th of a citizen in the Constitution. But from the time the 14th Amendment was passed, many others received the benefits of its protection before blacks. Then as the country developed and Americans realized that most human beings aren't white, the Court went back to the Amendment's original purpose: to protect the rights of blacks.

I have no objection to women being protected by the 14th Amendment, or handicapped people, or even Iranians. But in doing so, you lose sight of the fact that if you protect, say, women, there are certain considerations that have nothing to do with race. The obvious example is the right to use a restroom facility. It doesn't offend me to have a provision that stipulates one restroom for men and another for women. But it does offend me to have one restroom for whites and another for blacks. That's completely different: when you're considering sex there is a rational basis for making a distinction in certain circumstances.

Now, today, people like Ed Meese, the attorney general, and Brad Reynolds, the assistant attorney general for civil rights, are trying to stand the 14th Amendment on its head. Consider the debate about affirmative action. The leglislative history of *Brown* v. *Board of Education*, which led to the desegregation of American public schools, makes it clear that the government should consider race irrelevant. But that doesn't mean that because a government action may adversely affect a white person, it should not be undertaken. All the Supreme Court has said is that we've spent 300 years building a system in which irrational distinctions based on race have been imbedded in the fabric of our laws and culture. You cannot expect the quality of life will be equal on the day race is mandated irrelevant.

Ripon Forum: But the 14th Amendment does not say "no black person" shall be denied due process or equal protection. It says "no person."

Coleman: Take a step back. The 14th Amendment was designed to overrule the *Dred Scott* decision which said that blacks were not persons or citizens. The first sentence of the 14th Amendment says that all persons born or naturalized in the United States are citizens of the United States. If you go back and read Roman or Greek law, when a person became a citizen of Rome or Athens they had complete respect and rights. That is what the 14th Amendment was trying to do for black people.

But, look, I don't mind any person using the 14th Amendment to protect their rights. They just shouldn't be allowed to use it at the expense of blacks, for whom the Amendment was basically adopted.

Justice Harry Blackmun's position is the next best position: we want a government and Constitution that is color blind. Of course, our society still does not operate on a color blind basis. So I think it is wrong to say that the few cases where the government or union or employer acts to ensure equal opportunity are incorrect.

Ripon Forum: Let's consider the Tenth Amendment. It reads: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the States respectively, or to the people." What meaning does that Amendment have today, particularly since the Supreme Court ruled in 1985 in *Garcia* v. *San Antonio Metropolitan Transit Authority* that the federal government can establish wage and hour regulations for state and local employees?

Coleman: Without disrespect to the court, I hope that case will be overruled in the next few years. A principle of federalism is that as state has the right to do certain things without federal intervention. The Court agreed with that principle in *Garcia*, but went off course by saying that this dispute over the exercise of power should be determined by Congress, not the Court. One reason it ruled in that manner was that every state has two senators in Congress. But that denies our whole history. Senators are national officers, not state officials. They do not necessarily protect the states' interest.

More important, what the Court really did in *Garcia* was to overrule *Marbury* v. *Madison*, which estblished the right of judicial review. It is the only instance in which the Court has ever said that even though there is a dispute between two parties and a constitutional right exists, Congress, not the Court, must make the decision. The *Garcia* case was wrongly decided because it held that the Court has no power to decide this conflict.

Ripon Forum: In establishing the doctrine of judicial review, Justice John Marshall said: "It is emphatically the province and duty of the judicial department to say what the law is." How does that comment square today with the debate over judicial activism?

Coleman: In a constitutional democracy there will be disputes between the states and disputes between the federal government and the states. Under our Constitution it is clear that the Supreme Court is ultimately to resolve such disputes. It is less clear that the Court is supposed to resolve disputes among the branches of the federal government, although over time a tradition has developed that allows for such.

This country is too diverse and would be too explosive if such difficult issues could not be submitted to a body that operates in secret and puts into writing their reasons. The Court is supposed to be more objective, so it can resolve some tough problems. Look at the New Deal legislation. The political process could not resolve all those major changes. The Court had to assess where they fit in among the Constitution's fundamental principles. I don't know if we could have gotten through that tremendous upheaval without the Court. The one time we couldn't resolve something judicially led to the Civil War.

Ripon Forum: So is the current debate over judicial activism overblown?

Coleman: What's happening is that the *real* judicial activists are the conservatives. They're the ones trying to rewrite the Constitution and impose their views which they couldn't get through federal legislation. The right to an abortion is a good example. It is difficult to read the Constitution without finding the right to privacy.

Ripon Forum: But the right to privacy isn't really explicit in the Constitution.

Coleman: I think it is; consider the right to be free of unreasonable search and seizure. It does not say search and seizure applies only to the criminal process. But even more important, civilized people have certain rights that are so fundamental you don't even put them in a document. The greatest right any American has is the right to be left alone. If you want to have sexual intercourse in your home and use a contraceptive, the government should not be able to prevent you from doing so. That would be impugning a basic right. The same thing is true about abortion. If a woman gets pregnant, she ought to have some determination over what to do with her body. The activists are the ones trying to prevent that.

Ripon Forum: As a young attorney, you were involved with the 1954 *Brown* v. *Board of Education* desegration suit. Could you take us back to those days and describe the deliberations?

Coleman: You really have to go back to the 1930s. Two lawyers were keenly involved: Dr. William Hastie, who later sat on the Court of Appeals for the Third Circuit, and Charles Houston, who had the fortune to have Thurgood Marshall as a pupil. History has never given them credit for selecting cases which would end racial segregation in America. *Missouri ex rel. Gaines* v. *Canada*, for instance, was decided in 1938 and it ruled that refusing to admit a black student to the all-white University of Missouri law school, even though the state offered to pay tuition to an out-of-state school, violated equal protection of the laws.

In similar cases, Marshall, Hastie and Houston always put the question to the Court in a way that would assure ultimate victory on the major issue, namely that segregation itself was in violation of the Constitution. Even if they didn't win on the specific question presented, they could establish that separate was not equal. Their strategy was wonderful, because by the time *Brown* was argued most people involved on our side felt that the Court would probably declare the segregation of the schools unconstitutional. The real problem was how to move from a strictly segregated society to one that was not segregated.

Ripon Forum: And how have we done?

Coleman: The country has not moved far enough or fast enough. It is building up for a big explosion. Very few people realize that by the year 2010, white Protestants will consist of only 30 percent of the population. With the new influx of immigrants from Latin America and the Far East, it will be a tragedy not to change our attitudes. We are doing better than in 1940, but we lack indignation.

I want a color blind society too, but the mechanisms which make color a detriment must be removed. That requires using the tools of government which have kept the system from being where it should.

OMNIBUS RECONCILIATION BUDGET ACT

HON. WILLIS D. GRADISON, JR.

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 27, 1987

Mr. GRADISON. Mr. Speaker, the discussions which began earlier this week between the White House and the bipartisan congressional leadership may be the only hope America has for deficit reduction in the foreseeable future.

That's why I regret that the majority leadership plans to bring a flawed reconciliation bill to the floor. My concern is that the debate on this bill, which everyone knows is for partisan political reasons, will make the compromise we must ultimately achieve even harder to reach.

Action is needed to avoid inflation, higher interest rates, and recession. Happily, the President has called the bluff of the Hill majority leadership.

We know they are ready, willing, and able to raise taxes, but that their willingness to support honest spending cuts is, to be charitable, suspect. We know, too, that for at least as long as the President has been categorical on taxes, the majority's position has been just the opposite. Theirs is the politically expedient way; the hard fact is that raising taxes is politically easier than cutting spending.

Whatever may be said about his timing, the President is absolutely correct to insist on meaningful spending cuts as the price for any new taxes. We know that the Democratic reconciliation bill isn't going to become law; it's only a pawn in a high-risk political game. The only reason for scheduling debate on it is to strengthen the hand of those who prefer to cut the deficit the easy way—with new taxes. They think they have the votes or they wouldn't be bringing the bill to the floor.

For this Member, the decision on how to vote on this bill is easy enough. I will oppose any bill which doesn't include meaningful cuts in spending, period.

The markets are telling us to stop behaving like politicians and start acting like statesmen. I think they are right. The free lunch that never was is over. The time for dogmatism and ideology is over; the time for leadership and compromise is upon us.

That meaningful deficit reduction is necessary is nothing new; on that there has long been general agreement. Now, at long last, we may have reached general agreement on the next, step—that meaningful deficit reduction will only come about with a mix of spending reductions and tax increases. Time will tell, but the problem is we don't have much time.

If I had my druthers, I would reduce the deficit by spending cuts alone, with no new taxes. But that idealistic stance has become the position of economic disaster, even if it retains much of its political appeal. With all due respect, I suggest we leave the argument, and the one that says we can grow out of our deficits, to the Presidential candidates and get on with the task at hand.

Last week, the President signaled his willingness to consider a tax component to a deficit-reduction package. We already know his position on spending. While I find it unfortunate that the recent change of mind has been so long in coming, I am, nevertheless, glad for it. It's not too late.

NO STINGERS TO THE GULF

HON. LAWRENCE J. SMITH

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 27, 1987

Mr. SMITH of Florida. Mr. Speaker, the last 2 weeks have dramatized just how prone the Persian Gulf conflict is to military escalation. Within this short period of time, two unprecedented events have taken place: Iranian employment of Silkworm missiles and direct American military strikes against one of the war's principals. This escalation is unsettling and obviously does not best serve U.S. interests in the region.

Considering the extremely unstable condition of the gulf, I am disturbed by speculation that the administration is contemplating the sale of Stinger antiaircraft missiles to the Government of Bahrain. Up until 1984, there was a consensus in the U.S. Government that these highly lethal weapons should not be introduced into the sensitive environs of the Middle East. In May 1984, however, President Reagan invoked an emergency provision of the Arms Export Control Act and authorized the sale of 400 Stinger missiles to Saudi Arabia. Congress was circumvented despite its staunch opposition to the sale of Stingers to Middle Eastern countries.

Congress did not agree with that policy then as it does not agree with it now. The further proliferation of the Stinger missiles, and other such sophisticated weaponry, can only fan the flames of the 8-year-old gulf conflict and increase the likelihood of a protracted and expanded American military involvement in the region.

Furthermore, there is a very real threat that these weapons could fall into the hands of groups hostile to Americans and American interests. The Stinger has long been heralded as the ultimate terrorist weapon due to its mobility and capability. The worst fears of many of us were realized a few weeks ago when it was discovered that Iran had acquired components of the missile system. This situation is intolerable, and preventive measures must be taken.

At a time when the number of American servicemen and military assets in the gulf are at a high point, and the prestige of America as a reliable ally is on the line, a policy of injecting more Stingers into the region could prove to be harmful, if not lethal, to our military presence.

TRIBUTE TO MICHAEL TENZER

HON. HOWARD L. BERMAN

OF CALIFORNIA

HON. HENRY A. WAXMAN

OF CALIFORNIA

HON. MEL LEVINE

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 27, 1987

Mr. BERMAN. Mr. Speaker, we rise today to pay tribute to an extraordinary individual and dear friend, Michael L. Tenzer. Michael will be honored on Sunday by the American Israel Cultural Foundation for his dedication to the promotion of the arts and culture and youth of Israel.

We know Michael and his lovely wife, Jacqui, as some of Israel's most faithful and active friends, who have devoted much of their lives to promoting a continued and closer friendship between the United States and Israel. Their devotion to professional and community service have made them an inspiration to all.

As chairman of the board, chief executive officer, president, and principal shareholder of Leisure Technology, Michael is recognized as the national leader in the design and marketing of adult and retirement housing communities. Under his guidance, new residential communities are being developed for elderly Americans which combine independent living apartments, assisted living apartments, and full nursing home services.

A founder of the Columbia National Bank, based in Santa Monica, Michael is a member of the mortgage banking committee of the National Association of Home Builders and the national policy council of the Urban Land Institute. He is a director of the National Housing Conference, a member of the policy advisory board of the Center for Real Estate and Urban Economics, and a former adviser to Presidents Ford and Carter on national housing policy.

Michael has devoted much of his time, energy, and resources to the service of the youth of the United States and of Israel. He currently serves on the executive boards of the Great Western Council and the Ocean County Council of the Boy Scouts of America. He holds the Distinguished Eagle Scout Award and the Silver Beaver Award. He is chairman emeritus of the Young Musicians Foundation, and is presently national director and chairman of the board of American-Israel Cultural Foundation.

Among his many other services to Israel, Michael is a member of the executive committee of the American Israel Public Affairs Committee [AIPAC].

His honors and awards are legion. To mention just a few, Michael received the Institute of Human Relations Civic Achievement Award from the American Jewish Committee. He has been honored by the National Jewish Center for Immunology and Respiratory Medicine with its Humanitarian Award. He is a Gold Circle Founder, and a member of the Fraternity of Friends of the Los Angeles Music Center, a national patron of the Metropolitan Opera in New York City. In 1987, he was elected a member of the board of directors of the Los Angeles Opera. He shares his love of music with his wife, Jacqui, who is a past president of the American Youth Symphony.

Michael is, in every best sense of the word, a true Renaissance man. He is accomplished in his professional, cultural, political, social, and family life. We are extremely proud to add our voices to those who will salute him this Sunday and wish him every continued success.

THE SUNFLOWER INDEMNITY ACT OF 1988

HON. BYRON L. DORGAN

OF NORTH DAKOTA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 27, 1987

Mr. DORGAN of North Dakota. Mr. Speaker, I am introducing today a bill to provide emergency assistance for farmers who grow sunflowers. Unless something is done before farmers make their planting decisions, it is likely that farmers will further reduce acreage of sunflower to avoid continued losses, despite the fact that most have no crop to grow in its place.

Many of these farmers are in desperate financial straits and may be forced out of farming, due in part to poor sunflower prices. An even more certain result of this crisis and the decline in sunflower production is the collapse of the domestic crushing industry due to insufficient seed supplies to satisfy the crushing capacity of the plants.

During the debate on the 1985 farm bill, there was active consideration of giving the sunflower industry price protection through a loan program. However, the industry was divided on the issue, and as a result no program was established at that time.

Since then, however, the industry has been buffeted by subsidized competition from Europe and the general decline in commodity prices. As recently as 1979, Europe imported 1 million tons of sunflower seed from the United States, which represents about 100 percent of current U.S. production. This year, the EEC is paying its own producers 22.5 cents per pound for seeds while subsidizing and selling oil from 175,000 tons of seed at the equivalent of 8.5 cents per pound on the world market.

The impact on the American sunflower industry has been devastating. Prices at the farmgate for North Dakota sunflower seeds have fallen from over 15 cents per pound in 1985 to about 6 cents per pound today. Planted acreage has declined from 5.5 million acres in 1979 to less than 2 million acres in 1987. This acreage decline is likely to continue if returns to production do not improve, and the end result will be the disappearance of the domestic sunflower processing industry.

In North Dakota, the farm financial crisis is most severe in areas where sunflower has been a major crop. To make matters worse, typically the only alternative crops in these areas are wheat and barley, and acreage of these crops is limited by the commodity programs. Subsidized production of sunflower seeds in Europe is literally driving American farmers out of business.

This bill would establish an indemnity program that would pay producers of oil-type sunflowers the difference between average market prices and 8 cents per pound, for the 1988 crop only. While most farmers will still not make a profit at this price, sunflower representatives feel that it may be enough to persuade farmers to plant the crop for one more year in the hope that the Government will implement more complete and more permanent protection for future crops.

The Congressional Budget Office has estimated the indemnity program for 1988 to require $18 million in budget authority for fiscal year 1988, but no outlays until fiscal year 1989.

Unless we act quickly, we are going to lose a viable new industry as a result of subsidized competition from Europe. The 1985 farm bill provides protection for most of our crops, but sunflowers are still vulnerable and as a result the industry is in jeopardy. I urge my colleagues to support this emergency legislation.

PERSONAL EXPLANATION

HON. JOHN D. DINGELL

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 27, 1987

Mr. DINGELL. Mr. Speaker, unfortunately, due to circumstances beyond my control, I was unable to make roll call vote 378, on House Concurrent Resolution 68, a bill to call upon the administration to raise the issue of family visitation in discussions with the Soviet leadership at all appropriate opportunities. If I had been able to attend the vote, I would have voted in favor of the resolution as this is a very important issue for many of my constituents who have relatives in the Soviet Union. Promotion of unrestricted family visits between people of the United States and the Soviet Union is an essential part of American policy toward the Soviet Union. It is important that relatives separated by the thousands of miles between our nations should be able to visit and correspond easily with each other and I wish I would have been able to vote in favor of the resolution.

H.R. 515, THE FAIR CREDIT AND CHARGE CARD DISCLOSURE ACT OF 1987

HON. DOUG BARNARD, JR.

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 27, 1987

Mr. BARNARD. Mr. Speaker, as we prepare to consider the bill H.R. 515, the Fair Credit and Charge Card Disclosure Act of 1987, I would like to urge Members to support the bill as it was reported from committee and to oppose any amendments imposing a rate cap.

Briefly, the legislation requires fair and simple disclosure of the important card terms. The card issuer must disclose at the time of application or preapproved solicitation, first, the annual percentage rate, or means for determining the rate if it is variable; second, any annual or other fee imposed for card availability; and third, the date by which, or period in which the consumer can avoid a finance charge by repaying any credit extended in connection with the card, known as the grace period. Additionally, the bill requires that this information be disclosed in a uniform and conspicuous manner. These are the terms most important in the consumer's decision process and enable an individual to comparison shop for the cards which best suit their needs.

The disclosure provisions outlined above are a superior and more efficient way to protect consumers. Rate caps are opposed by the Federal Reserve Board, the Federal Deposit Insurance Corporation [FDIC], and the Comptroller of the Currency.

Rate caps essentially are a price control and we have seen time and again that they simply do not work, most recently during the early 1970's when price-wage controls were imposed to fight inflation. Credit is a commodity or resource like any other. We did not impose price controls on Japanese cars that were commanding substantial premiums over list price a few years ago, and there is no economic justification to less reason to impose them on the much less profitable and high-cost credit card industry where there is already considerable competition among issuers and many new entrants into the market. As long as the price of the commodity is fully disclosed in advance, consumers are capable of deciding whether to buy.

Rate caps will raise costs for the insurers, and force them to restrict the availability of credit, especially to lower income consumers who need it the most for many retail purchases. Alternatively, merchants could raise the cost of goods to cover the increased costs of making credit available, or take other action like eliminating grace periods, raising annual fees, or increasing the fees charged to merchants. Either way, the consumer is harmed and the economy is distorted, which is important to remember when faced with our present economic uncertainties.

Consumers are intelligent enough to make the lowest cost decision when given the correct information. A stringent disclosure bill such as H.R. 515 will promote competition and keep rates down, and I again urge my colleagues to support H.R. 515 without a rate cap amendment. I also would like to share with you the editorial which appeared in today's New York Times opposing a cap and supporting disclosure as the better way for consumers to get the best deal.

CREDIT CARD INTEREST, UNMASKED

These days, creditworthy corporations pay 10 or 11 percent to borrow from banks. How come some banks charge credit card customers, even those who never miss a payment, 22 or 23 percent?

Some of the additional interest covers the cost of processing small loans. But some banks take advantage of consumers who don't have the time or initiative to shop around. That's the reason to support the sensible bill by Representative Charles Schumer of Brooklyn that requires full disclosure on credit card solicitations—and to oppose an alternative proposal to cap credit card interest.

Banks aren't fooling when they complain that it costs a lot to serve credit card customers. According to the Federal Reserve, the average profit margin on credit card loans is considerably lower than on commercial credit balances. Yet there's plenty of profit in large loans to customers who pay promptly and rarely question bills.

Representative Frank Annunzio of Chicago would limit profits by capping credit card interest at 8 percent above the prime rate, or 17 percent today. What's wrong with that? The cap would discourage banks from issuing cards to marginal credit risks, like young wage earners. It would also reduce incentives to provide extra services—long interest-free grace periods, mileage points for airlines' frequent flyer clubs. And it would almost certainly lead to higher annual fees.

Disclosure would make it easier to find low-interest credit cards and would not choke competition. Representative Schumer and the American Bankers Association would require companies soliciting credit card customers to state in plain language the interest rate, annual fee and length of the grace period. Bank would still be free to charge whatever the traffic would bear. But the traffic would know just how much it was bearing.

The House is to vote on Mr. Shumer's bill this week. The only serious obstacle is a last-ditch effort to substitute the Annunzio interest rate cap. Disclosure is the better way.

PERSONAL EXPLANATION

HON. ROBERT E. WISE, JR.

OF WEST VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 27, 1987

Mr. WISE. Mr. Speaker, last Wednesday, October 21, I missed six votes because I had to attend a reception in my district for the visiting Keidanren Trade Mission. Had I been present, I would have voted "aye" on rollcall No. 373, passage of H.R. 2939, the independent counsel law. On rollcall Nos. 368 through 372, amendments to H.R. 2939, I would have voted "nay."

GEOTHERMAL TAX INCENTIVES

HON. ROBERT T. MATSUI

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 27, 1987

Mr. MATSUI. Mr. Speaker, I am pleased to join with my colleagues, Representatives MICHAEL ANDREWS, JOHN J. DUNCAN, TOM LANTOS, and DANIEL K. AKAKA in introducing legislation which would extend the tax incentive for investment in geothermal equipment beyond their 1988 expiration date. This legislation is essential to our efforts to advance the development and commercialization of geothermal energy and accelerate the conservation of precious fossil fuel reserves.

The bill my colleagues and I have introduced would provide the geothermal industry with the assurance that tax incentives to encourage its continued growth will be available to the end of this decade. Specifically, the legislation extends the geothermal business incentives for 3 years, to 1991, at the current 10-percent level.

Geothermal energy is the natural heat of the Earth captured in reservoirs of rock-trapped fluids. Geothermal resources may be in the form of dry steam or hot water depending on conditions which exist within the underground reservoir. This energy can be tapped by drilling wells into the productive zones, and bringing the steam or hot water above ground. Geothermal energy is most frequently used to generate electricity.

Geothermal energy could supply 20,000 megawatts of generating capacity in the United States in the next two decades. That is the equivalent of about 700,000 barrels of oil per day, or 8.5 percent of daily U.S. crude oil production. As the industry makes further technological advances, the potential exists for significantly increasing this capacity in succeeding decades.

Let me offer several examples of the kind of growth I am referring to. The geysers in Sonoma and Lake Counties, CA is the largest geothermal project in the world. Today enough steam is produced at the geysers to generate 1,800 megawatts of electricity. That is enough power to supply all the electricity needs of a city of 2 million people. Continued expansion is taking place at the geysers, and ultimate capacity is now estimated to be in excess of 2,000 megawatts.

California's Imperial Valley has significant geothermal potential. Located in southeastern California, the Imperial Valley has been termed the "Saudi Arabia" of the world's geothermal resources. Beneath this rich agricultural land lie hot water geothermal reservoirs which may be capable of generating more than 3 million killowatts of electricity. The geothermal tax insentives are essential to the continued development of these domestic energy resources.

America's energy supply and economy are not so strong that we can afford to eliminate one of the only significant remaining targeted Federal incentives for alternative energy development. The ongoing instability in the Persian Gulf has demonstrated all too clearly the continuing vulnerability of the United States to an oil disruption. Additionally, recent trends point to a decline in domestic crude oil production and an increase in U.S. petroleum imports. The development of energy sources such as geothermal is critical to our economy and national security. I urge you to support this important legislation.

IM TONG-GYU OF SOUTH KOREA

HON. HAMILTON FISH, JR.

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 27, 1987

Mr. FISH. Mr. Speaker, I am concerned about the imprisonment of Mr. Im Tong-Gyu of South Korea. According to the human rights organization Amnesty International, Mr. Im is a prisoner of conscience who has not advocated or participated in violence.

Mr. Im is serving two life terms in prison for belonging to two banned political parties. He was first arrested in 1979 and charged with belonging to the banned Unification Revolutionary Party. In 1980 he was charged with being a member of the South Korean National Liberation Front and accused of having taught martial arts to other alleged members of the "front." Amnesty International says that Mr. Im stressed at his trial that he had adamantly opposed any plans to raise funds through robberies or stealing arms and had never taken part in such activities. Amnesty states further that the sole evidence against Mr. Im consisted of his confession and those of his codefendants. According to Amnesty, defendants at the trial reportedly testified that police interrogators had tortured them to extract confessions and that their statements to the prosecutor were false.

Amnesty says that Mr. Im reportedly has been suffering from internal bleeding since August 1986, allegedly as a result of physical punishment for complaining about prison conditions. I understand that Mr. Im has diabetes.

Mr. Speaker, I have long been an admirer of Amnesty International and put much faith in their findings. I support their efforts to promote and end to injustice throughout the world.

AIDS EDUCATION

HON. MIKE SYNAR

OF OKLAHOMA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 27, 1987

Mr. SYNAR. Mr. Speaker, as a cosponsor of the AIDS Federal Policy Act of 1987 (H.R. 3071), I would like to explain my vote October 20—roll No. 364—on Mr. DANNEMEYER'S instruction to the House conferees on the Labor/HHS appropriations bill.

I voted for the amendment that would prohibit the Centers for Disease Control [CDC] from funding AIDS education, information, or prevention materals or activities that "promote or encourage, directly or indirectly, homosexual sexual activities." However, I want to make it clear that this instruction should in no way intimidate health care officials into restricting the distribution of lifesaving information.

Polls indicate that acquired immune deficiency syndrome [AIDS] has become the highest priority health concern of the American people. The U.S Public Health Service has projected that by 1991 there may be 323,000 reported patients with AIDS in the United States and as many as 200,000 will have died.

The Surgeon General has said repeatedly that "our only weapon is education." Yet we have spent more time fighting about the disease than fighting the disease itself.

Given the growing dimensions of AIDS as a public health crisis, it is imperative that a national policy be established to attain the goals of prevention, treatment, and a cure. Until a vaccine and a cure are found, prevention and control of the disease must be an essential part of that policy. For the time being, the most effective weapon for fighting AIDS is education because it encourages people to modify the transmission of the HIV virus.

Of course, abstinence and monogamy are the safest ways to avoid contracting the disease and should be encouraged. However, widespread education is needed, particularly for those whose behavior puts them at risk. It is important that our educational efforts be targeted to specific communities at risk and in terms they can understand.

National columnist Ellen Goodman has aptly described the present situation in our Nation's Capital:

> The people who regard AIDS as a medical disease and those who regard it as a moral dilemma have fought each other and progress to a standstill. * * * Indeed in all likelihood you have heard more from Washington about AIDS feuds than AIDS facts.

I want the American people to know the facts that will enable us to prevent, treat, and eventually find a cure for AIDS. In the meantime, I would hate to think that my vote last Tuesday would result in any sort of censorship that would keep someone from knowing the facts.

No one denies the explosive potential of AIDS as a political issue. However, our attitudes toward sexuality, disease, and death should not render us senseless in responding to a public health crisis. After all, in the end, what we're dealing with here is a matter of life and death.

THE PLIGHT OF BEN CHARNY

HON. CHESTER G. ATKINS

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 27, 1987

Mr. ATKINS. Mr. Speaker, today is a special day for American citizens and Soviet citizens alike. Today is Ben Charny's birthday. Ben Charny is a refusenik who has been repeatedly denied permission to leave the Soviet Union. Ben Charny is also a dying man.

He suffers from cancer and a critical heart condition. Despite his worsening condition, Soviet doctors will not perform the simple surgery that is frequently done in the West. Last spring Soviet officials told Dr. Charny not to reapply until 1995. This is the equivalent of a death sentence.

Many of us in the Congress have corresponded with Soviet authorities to bring attention to the plight of Dr. Charny. I have organized letters from the Massachusetts delegation, sent telegrams, and called Dr. Charny in Moscow. Anna Charny, Ben's daughter, confronted the Soviet Ambassador with her father's plight after the recent "Capital to Capital" television show. And Ben's brother Leon has carried out an extensive publicity campaign to draw attention to Ben's worsening condition. Surely by now the Soviet leaders realize the urgency of Dr. Charny's case. This is not a political issue, it is a humanitarian concern. Still, he is refused permission to emigrate, and time is running out.

In recent months, the number of refuseniks given permission to emigrate has increased dramatically. Most recently, a group of famous refuseniks have been given permission in connection with the Soviet-Shevardnazae arms control talks. But many, many more Soviet Jews that are not so famous are still being refused exit visas for the most arbitrary of reasons. We can see that glasnost and détente have brought us closer to world peace, but have not changed the capricious nature of Soviet emigration policy.

The cynics would say that we are buying freedom for Soviet Jews, that the Soviets are selling right now at a pretty good price. But what is the price that we must pay to win Ben Charny's freedom? It is shameful that Dr. Charny continues to be refused a chance to rejoin his family and to get the medical treatment necessary for his condition.

I take the occasion of Ben Charny's birthday to urge my colleagues to redouble their efforts to win his freedom and to urge Soviet authorities to grant him permission to emigrate. I can think of no better birthday present for Dr. Charny than an exit visa and a plane ride to freedom.

CONGRESSIONAL SPENDING POLICY

HON. JOHN P. HAMMERSCHMIDT

OF ARKANSAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 27, 1987

Mr. HAMMERSCHMIDT. Mr. Speaker, this week as Congress debates the budget reconciliation package, we will once again have the opportunity to halt the trend of runaway spending which has left us in the position we are in today—a $1 trillion budget, a $2 trillion public debt, and a triple-digit deficit. We have all heard the common misperception that the Reagan fiscal policies are responsible for the current deficit situation. However, in reality it is Congress that is responsible for passing all our Nation's tax and spending bills.

In 1974, when Congress enacted the Congressional Budget and Impoundment Control Act, it was widely considered a triumph. Those who supported the legislation were convinced that the law would put an end to the trend of increasing expenditures each year, as well as provide a means by which Congress could be informed of the aggregates of expenditures and revenues that had accrued in any given fiscal year. Unfortunately this was not to be the case. In just the first 8 months of this year alone, there were 11 fiscal year 1988 appropriations bills, which have either been reported by committee, or passed by the House. Together they total a $21 billion increase over fiscal year 1987 spending.

There are those who claim that taxation must keep up with spending. History has proven that taxes are not the solution to this problem. All one has to do is look at the spending habits of Congress to see how dangerous this philosophy is. Between 1963 and 1985, Federal spending climbed from $111.3 billion to $946 billion, an increase of 144 percent in real terms. In fiscal 1985, Federal outlays rose by $94 billion, the largest 1-year increase in American history. Probably the most telling evidence of all is the fact that Congress has spent more money than it has collected in taxes for 25 of the past 26 years.

The time has come to enact a responsible fiscal policy. We can no longer permit out-of-control spending. We can no longer put off action on a deficit which will burden our children's children. It is my hope, Mr. Speaker, that when the House takes up the budget reconciliation package later on this week, this historic 100th Congress will go on record as being the one who reversed the dangerous fiscal trends of the last few decades.

A TRIBUTE TO HOWARD BOLAM

HON. JOE KOLTER

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 27, 1987

Mr. KOLTER. Mr. Speaker, I rise to honor Mr. Howard Bolam of Butler County in the Fourth Congressional District of Pennsylvania. On November 7, 1987, Mr. Bolam will be awarded the Butler County Veteran of the

Year Award from the Butler County War Veterans Committee.

Mr. Bolam is very worthy of this prestigious award. He is an honorably discharged veteran of the European theater, having served from October 1942 to November 1945. Following discharge, he continued to be involved in activities that benefit veterans. He was employed as a recreational therapist at the Veterans Administration Medical Center for 34 years and has volunteered his time at the center since his retirement in 1980. He has held both county and State offices with the American Legion Post 117, Butler, including post commander, district deputy, chaplain, and chairman of trustees.

In addition, Mr. Bolam has been active in Boy Scouts for 57 years. During his 40 years as scoutmaster he has received the Silver Beaver and Silver Chief Awards, as well as the District Award and the Scoutmaster Key. He is also a member of the Order of the Arrow.

He has been an active member of St. Paul Church of Christ since 1928, and has served as a church council member, superintendent of Sunday school, codirector of the choir, and Sunday school teacher.

For all these unselfish hours of giving and the many hours of service that he will give in the future, I an proud to honor this distinguished, respected man by informing my colleagues of his untiring efforts.

PUNJAB CRISIS WORSENS

HON. WALLY HERGER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 27, 1987

Mr. HERGER. Mr. Speaker, I rise to express my sincere disappointment that the Indian Government has chosen to trample on the religious freedoms of the Sikh people in India. Once again, the Indian Army has sealed off the sacred Golden Temple, and in the process has rejected a more measured response to internal domestic disputes.

The attack was carefully timed to take place after Rajiv Ghandi was safely on his way back to India following 2 days of talks with U.S. officials in New York and Washington, thus avoiding any possible embarrassment during the visit.

Mr. Speaker, I believe that this is one more indication that Mr. Ghandi is not seriously interested in respecting the human rights of Indian citizens. I am growing ever more concerned with the situation in the Punjab, but remain hopeful that both parties will approach this matter with caution and will refrain from further violence.

BROOKS ACT 15TH ANNIVERSARY

HON. FRANK HORTON

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 27, 1987

Mr. HORTON. Mr. Speaker, as the ranking Republican on the House Committee on Government Operations and its Subcommittee on Legislation and National Security, it is my pleasure to rise today to recognize an important anniversary.

It was on this day 15 year ago, October 27, 1972, that the Brooks architect-engineer selection law was enacted. Over the years, this landmark legislation has been supported by a broad cross section of members, Republicans and Democrats, liberals and conservatives, those from rural and urban districts and from every region of the Nation.

The Brooks Act, named for my friend and chairman, Repubican JACK BROOKS of Texas, is a qualifications-based selection method for architecture, engineering, and related services.

If time is the yardstick by which success is measured, then one must recognize that while Federal procurement law has gone through many significant changes in the past 15 years, the Brooks architect-engineer law has stood the test of time. In fact, not only has this important legislation been a fixture in Federal law, but since the time of its enactment by Congress, a majority of the States have passed mini-Brooks laws.

Patrick Henry is credited with saying, "I know of no way of judging the future but by the past." By looking at the record of the past 15 years, we witness achievement and stability with regard to a piece of legislation, and an America built by the greatest engineering minds our Nation has to offer. Each day we walk into buildings, ride on highways, travel through airports, drink clean water and do so many things that we as Americans take for granted. We have that luxury because of a law that puts an emphasis on quality in the design of structures and facilities that improve the quality of life of the American people. It is a tribute to this great Nation that we can take for granted the fact that buildings stand tall and strong, that we turn on a faucet and clean water gushes out, that safe highways get us where we need to go. The small investment we make in quality and competence in the initial architecture, engineering, and related services have paid a great dividend over time for the American people.

So as we look to the past as a way to judge the future, the record of the Brooks Act will carry us in the many years to come. In the future, there will be those who will challenge this law. There will be those who in their zeal to find some short-term corner cutting will sacrifice long-term benefit. That is why it is so important for us to pause on this anniversary and take note of the record of achievement under this law.

ROCKET FUEL TRANSPORTATION ACT

HON. CARLOS J. MOORHEAD

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 27, 1987

Mr. MOORHEAD. Mr. Speaker, today I am introducing legislation which would require the Secretary of Defense, and the Secretaries of the military departments, when transporting rocket fuel or other hazardous substances, to use routes through the least populated areas and to notify local government officials about such transportation when it occurs.

It has been the practice of the Air Force to move fuel from Arizona through Los Angeles, and much of my district, to Vandenberg Air Force Base on the west coast of California. The fuel travels by truck along some of the most heavily trafficked roads in the world.

I recognized that the Air Force has had no accidents in the 25 years of hauling fuel. This is an excellent record for which the Air Force should be commended. However, given the toxic nature of spilled rocket fuel, it would seem prudent to transport this product through less densely populated areas. It is also rational to require notification of local officials when fuel is moved.

When the Department of Defense is moving hazardous materials, it should seek out the safest, least populated route and then provide notification to local authorities. Mr. Speaker, my legislation creates sound national policy and should be pursued.

TRIBUTE TO JANIE HENDRY

HON. BILL SCHUETTE

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 27, 1987

Mr. SCHUETTE. Mr. Speaker, I am privileged to have this opportunity to bring to the attention of our colleagues a remarkable woman, Janie Hendry, and ask that they join with me and the Manton Michigan Area Chamber of Commerce in honoring her. Mrs. Hendry turned 100 in July of this year, and on Labor Day she hiked the entire 5-mile span of the Mackinaw Bridge. She completed the walk in 7 hours, one of 55,000 people participating in the annual trek across the straits. In celebration of her long life and continued zest, the Manton City Commission has proclaimed October 30 to be Janie Hendry Day in Manton.

Mrs. Hendry's life has indeed been, and contiunes to be, an active one. She has 9 children, 22 grandchildren, 54 great-grandchildren, and 37 great-great-grandchildren. She loves to fish and still goes often with her sons.

The chamber of commerce will be honoring her on Thursday, October 29, 1987, with a slide show, an Irish stew dinner, and the announcement of having had a day named in her honor. Mr. Speaker, I hope you and our colleagues will join me, and the people of Manton, in celebrating the fine, long life of a wonderful lady, Janie Hendry.

THE 1,000TH ANNIVERSARY OF THE BAPTISM OF RUS

HON. CLAUDINE SCHNEIDER

OF RHODE ISLAND

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 27, 1987

Miss SCHNEIDER. Mr. Speaker, this year we commemorate the 200th anniversary of the U.S. Constitution. In this spirit of celebration, I want to pause to reflect on another historic and significant anniversary taking place overseas next year: the millenium of Christianity in the Soviet Union.

I am proud to bring your attention to an ecumenical committee from my home State of Rhode Island which has planned a year-long series of religious, cultural, and educational events, including lectures and ecumenical worship, to celebrate this anniversary. The committee for the 1,000th Anniversary of the Baptism of Rus intends to foster not only celebration, but also a fuller understanding of Soviet church life, and its contributions to art, literature, music, culture, and Christian thought. Through visits, exchanges, and dialogs, the committee hopes to instill greater understanding between the peoples of the United States and the U.S.S.R. The committee will focus on prayer for oppressed, suffering, and persecuted persons in the Soviet Union and hopes to bring about a greater awareness of the state of religion and the church in the Soviet Union.

It is with deep pride that I commend the Committee for the 1,000th Anniversary of the Baptism of Rus for its efforts in drawing world attention to the millenium of Christianity in the Soviet Union, and I encourage other groups around the country to follow its example.

I ask you, Mr. Speaker, and other members of this body, to join me and my constituents in saluting the Committee for the 1,000th Anniversary of the Baptism of Rus.

JOHNSONBURG PUBLIC LIBRARY CELEBRATES 50TH ANNIVERSARY

HON. WILLIAM F. CLINGER, JR.

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 27, 1987

Mr. CLINGER. Mr. Speaker, congratulations are in order to the Johnsonburg Public Library which is presently celebrating its 50th anniversary. The Johnsonburg Library has been a vital part of Northridge Township and Elk County since October 4, 1937. I would like to point out that this library and all that it stands for was not established by mere luck but rather through the hard and dedicated work of the Crescent Study Club. This group of dedicated women joined together and struggled to bring the dream of a community library into a reality. With a strong and consistent effort by these women, the rest of the Johnsonburg community soon joined in and thus the library was realized.

From opening day, the Johnsonburg Library, under the leadership of Mrs. Blanche Knudsen, fulfilled its goal of meeting the community's literary needs. Today under the leadership of Librarian Virginia Thorwart, the Johnsonburg Library continues to meet and exceed its original goal. Today's library is much more indepth and intricate in its services. Children's needs are met with large print books, books on tape, study time, special tutoring for mathematics and reading. Adults in the community have their own services such as cameras for loan, weekly book reviews, adult literary classes, library education classes, and an art gallery. Johnsonburg also boasts a geneological local history collection as well as a large doll house collection.

Once again, I would like to congratulate the Johnsonburg Library and its community as a whole for making it the reputable institution that it is today. I also extend my best wishes to the staff of the Johnsonburg Library in their task of meeting the future needs of the community just as their ancestor did in the past.

THE AMERICAN RUN FOR THE END OF AIDS

HON. TED WEISS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 27, 1987

Mr. WEISS. Mr. Speaker, it is with great admiration that I rise today to offer my congratulations to a fellow New Yorker, Brent Nicholson Earle, who will soon finish a 10,000-mile run around our Nation.

Mr. Earle began the American Run for the End of AIDS when he became frustrated and angry about the deaths of many friends and colleagues due to AIDS. Knowing that, at this time, education is our only defense against this terrible epidemic, Mr. Earle saw the run as a way of increasing public awareness of this national health crisis. Since March 1, 1985, Mr. Earle has run through more than 100 communities in the United States and Canada spreading a message of hope and unity in the fight against AIDS. He has been instrumental in raising thousands of dollars for local AIDS organizations and the National AIDS Network.

Mr. Earle's historic achievement signifies to all of us how one person's commitment to a cause can truly make a difference. I am proud to have been one of the original sponsors of Mr. Earle's run and I look forward to personally welcoming him home to New York City on October 31.

Mr. Speaker, I am pleased to take the opportunity to draw the attention of my colleagues in the House of Representatives to Brent Nicholson Earle and the American Run for the End of AIDS and to pay tribute to his remarkable accomplishment.

INTRODUCTION OF FEDERAL PROCUREMENT PROTEST REFORM ACT OF 1987

HON. JAMES A. TRAFICANT, JR.

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 27, 1987

Mr. TRAFICANT. Mr. Speaker, today I am introducing legislation designed to reform the Federal contract protest procedure and provide a more equitable process for those individuals and organizations filing bid protests with the Federal Government.

I believe this legislation is long overdue, primarily because the current process is highly complex and provides unfair advantage to the Federal agency involved in the bid protest procedure. I believe equity and fairness must be restored and I hope that my colleagues will support this worthwhile legislation.

The following is a brief overview of the specific sections of the legislation:

SECTION 1.—Short Title.

SEC. 2.—This section would expand with whom a protest of an alleged procurement violation can be filed by adding the Board of Contract Appeals of the General Services Administration or a court of competent jurisdiction.

SEC. 3.—This section details the requirements that the Federal agency must meet when a protest is filed. It also details what is required to withhold the awarding of a contract and the exceptions to these rules.

SEC. 4.—This section sets up a system by which an expeditious and inexpensive resolution of protests can be carried out by the Federal agency.

SEC. 5.—This section establishes the date by which the Comptroller General, the Administrator, and the Chief Justice must issue regulations which are necessary for the expeditious decision of protests under the Act.

SEC. 6.—This section states that this Act does not provide exclusive jurisdiction to the Comptroller General, the Administrator, or any court. It also states that the court's jurisdiction is not restricted to a previous protest filing with the Comptroller General.

SEC. 7 and 8.—These sections provide definitions and technical and conforming amendments.

The following is the complete text of the Federal Procurement Protest Reform Act:

H.R. 3557

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Federal Procurement Protest Reform Act of 1987".

SEC. 2. PROTESTS BY INTERESTED PARTIES CONCERNING PROCUREMENT ACTIONS.

A protest concerning an alleged violation by a Federal agency of a Federal procurement statute or regulation in the solicitation or award of a contract for property or services—

(1) may be filed by an interested party—

(A) with the Comptroller General,

(B) with the Board of Contract Appeals of the General Services Administration, or

(C) in the form of a complaint in a court of competent jurisdiction; and

(2) shall be decided by a forum in accordance with this Act.

SEC. 3. REVIEW OF PROTESTS; EFFECT ON CONTRACTS PENDING DECISION.

(a) NOTICE.—Within 1 working day after the filing of a protest or complaint under this Act, the forum and the interested party who filed such protest or complaint shall each notify the head of the Federal agency involved, and either such notice shall be effective for the purposes of this Act.

(b) AGENCY REPORT.—

(1) IN GENERAL.—Except as provided in paragraph (4), a head of a Federal agency who receives notice from a forum or an interested party under paragraph (1) shall submit to the forum and to the interested party a report on the procurment which is the subject of such notice—

(A) within 25 working days after the date of such receipt;

(B) upon a showing by the head of such agency of special circumstances, before the end of such longer period as may be determined and explained in writing by the forum to be justified by such circumstances; or

(C) in any case determined by the forum to be suitable for decision under the expedited procedures established under section 4(a)(2), within 10 working days after the date of the receipt by the head of such agency of that determination.

(2) Content.—A report under subparagraph (A) shall include all relevant documents as to which no claim of privilege has been asserted and sustained under subparagraph (C).

(3) Claim of privilege.—Upon a claim by the head of a Federal agency that particular documents are privileged and therefore should not be required to be included in a report under subparagraph (A), the forum shall provide the interested party an opportunity to be heard—

(A) in accordance with rules 26 through 37 of the Federal Rules of civil procedure; and

(B) under expedited time limits established by the forum;

and issue a decision regarding such claim supported by written fundings.

(4) No report required after dismissal.—This subsection shall not apply to the head of a Federal agency who prior to the time limit described in paragraph (1) is notified by a forum that the protest or claim has been dismissed under section 4(a)(3).

(c) Provision of Documents to Interested Party.—Upon request by an interested party, the head of a Federal agency shall provide to such party all documents relevant to a protest or claim under this Act, including a copy of the report required by subsection (b), within such period as the forum may require.

(d) Withholding Award of Contract.—

(1) In general.—Except as provided in paragraph (2), a contract which is the subject of a protest or complaint under this Act may not be awarded after the head of the Federal agency—

(A) has received notice of such protest or complaint under subsection (b)(1); or

(B) has been served with a protest or complaint; and while such protest or complaint is pending.

(2) Award of contract.—Subject to paragraph (3), the head of the procuring activity responsible for award of a contract which is the subject of a protest or complaint under section 2 may authorize such award after—

(A) the head of such activity makes a written finding, supported by specifically documented facts, that urgent and compelling circumstances which significantly affect the substantial best interests of the United States will not permit waiting for issuance of a decision on the protest;

(B) the forum and the interested party are provided a copy of such written finding;

(C) the interested party has been afforded an expedited opportunity to be heard; and

(D) the accuracy and completeness of and support for the finding have been reviewed and sustained by the forum.

(3) Restriction on issuance of finding.—A finding shall not be made under paragraph (2)(A) unless the award of the contract is otherwise likely to occur within 30 days thereafter.

(e) Suspension of Performance.—

(1) In General.—Except as provided in paragraph (2), the head of a Federal agency, upon receipt of notice under subsection (b) within 10 working days after the date of the publication of the award of a contract which is the subject of such notice, shall immediately direct the contractor—

(A) to cease performance under the contract and to suspend any related activities which may result in additional obligations being incurred by the United States under that contract; and

(B) to not resume performance of the contract at any time while the protest is pending.

(2) Performance during protest.—Notwithstanding the filing of a protest which the head of a Federal agency has received notice of under subsection (b), the head of a procurring activity responsible for award of the contract which is the subject of such protest may authorize performance of the contract—

(A) upon a written finding by the head of such activity supported by specifically documented operative facts—

(i) that performance of the contract is in the substantial best interests of the United States; and

(ii) that urgent and compelling circumstances that significantly affect the substantial best interests of the United States will not permit waiting for a decision on the protest;

(B) after the forum and the interested party are provided with such written finding; and

(C) the accuracy and completeness of and support for that finding have been reviewed and sustained by the forum following provision to the interested party of an expedited opportunity to be heard.

(f) Delegation of Authority.—The authority of the head of a procuring agency to make findings and to authorize the award and performance of contracts under subsections (c) and (d) may not be delegated below the secretarial level.

SEC. 4. DECISIONS ON PROTESTS.

(a) Procedures.—

(1) Period for resolution.—To the maximum extent practicable, the forum shall—

(A) except as provided in paragraph (2), issue a final decision or judgment concerning a protest or complaint within 90 working days after the date the protest is filed, unless the forum states in writing the specific reasons why a longer period is required; and

(B) provide for the inexpensive and expeditious resolution of protests under this Act.

(2) Expedited procedures.—The Comptroller General and the Administrator of General Services shall each by regulation, and the Chief Justice shall in the Federal Rules of Civil Procedure, establish expedited procedures for deciding those protests and complaints which are suitable for resolution within 45 days after the date the protest is filed.

(3) Dismissal of protest.—Subject to review by a court of competent jurisdiction, a forum may dismiss a protest that is frivolous or which, on its face, does not state a valid basis for protest.

(b) Action on Contract After Determination.—

(1) Protest upheld.—Subject to section 6, if a forum determines with respect to a contract protested under this Act that the solicitation, proposed award, or award of such contract does not comply with a statute or regulation, the forum shall require the head of the Federal agency involved in the protest to—

(A) refrain from exercising any options under the contract;

(B) Recompete the contract immediately;

(C) issue a new solicitation;

(D) terminate the contract;

(E) award a contract consistent with the requirements of such statute and regulation;

(F) implement any combination of recommendations under clauses (A), (B), (C), (D), and (E); or

(G) take such other actions as the forum determines to be necessary and appropriate to promote compliance with procurement statutes and regulations.

(2) Determination notwithstanding award or performance for compelling circumstances.—If the head of the procuring activity responsible for a contract authorizes the award or performance of a contract under section 3(c)(2) or (d)(2), the forum shall make its determination under paragraph (1) without regard to any cost or disruption resulting from terminating, recompeting, or rewarding the contract, unless the President determines under the Defense Production Act of 1950 that the award or performance is critical to the national defense.

(c) Judgment.—

(1) Award.—If the forum determines that a solicitation for, or an award or proposed award of, a contract does not comply with a statute or regulation, the interested party who filed the protest shall be entitled to recover the costs of—

(A) filing and pursuing the protest, including reasonable attorneys' fees; and

(B) bid and proposal preparation, unless the interested party is awarded the contract.

(2) Payment.—Costs which a party is entitled to recover under paragraph (1)—

(A) shall be paid promptly by the Federal agency concerned out of funds available to or for the use of the Federal agency for the procurement of property and services; and

(B) shall include interest at a rate established by the Secretary of the Treasury and accruing from the date of the filing of the protest through the date of payment.

(d) Signing and Copies of Decision.—

(1) Signed.—Each decision of a forum under this Act shall be signed by the Comptroller General, the Administrator, or the Chief Justice, as appropriate.

(2) Copies.—A copy of the decision shall be made available to the parties to the protest, the head of the procuring activity responsible for the solicitation, proposed award, or award of the contract, and the senior procurement executive of the Federal agency involved.

(e) Implementation.—

(1) Report.—The head of the procuring activity responsible for the solicitation, proposed award, or award of a contract protested under this Act shall report to the Comptroller General the Administrator, or the Chief Justice, as appropriate, if the Federal Agency of which such activity is a part has not fully complied with the forum's decision within 60 days after the issuance of such decision.

(2) Continuing jurisdiction.—A forum shall have continuing jurisdiction over a protest proceeding—

(A) until the head of the Federal agency required to comply with the forum's decision fully complies with such decision; or

(B) for such shorter period as may be fixed by the forum in its decision.

(3) Report to the Congress.—Not later than January 31 of each year, the Comptroller General, the Administrator, and the Chief Justice shall each transmit to the Congress a report describing each instance during the preceding fiscal year in which a

Federal agency did not fully comply with a decision of a forum under its jurisdiction.

SEC. 5. REGULATIONS; AUTHORITY OF FORUM TO VERIFY ASSERTIONS.

(a) Regulations.—

(1) Issuance.—Not later than January 15, 1988, the Comptroller General, the Administrator, and the Chief Justice shall each issue regulations which prescribe such procedures as may be necessary for the expeditious decision of protests under this Act, including procedures for accelerated resolution of protests under expedited procedures authorized by section 4(a)(2).

(2) No delay for untimely filing.—Regulations issued under paragraph (1) shall provide that the protest process shall not be delayed by the failure of a party or a Federal agency to make a filing within the time provided for the filing.

(b) Verification.—A forum may use any authority available under—

(1) chapter 7 or chapter 35 of title 31, United States Code;

(2) the Federal Rules of Civil Procedure; or

(3) this Act;

to verify assertions made by parties in protests under this Act.

SEC. 6. OTHER PROCEEDINGS.

(a) Nonexclusive Jurisdiction.—This Act—

(1) shall not be considered to give the Comptroller General, the Administrator, or any court exclusive jurisdiction over protests to procurements by Federal agencies; and

(2) shall not affect the right of an interested party to file a protest with the contracting agency or to file a protest action in a district court of the United States or the United States Claims Court.

(b) Multiple Proceedings.—

(1) Jurisdiction of court not restricted by filing with comptroller general.—In any protest action before a court of competent jurisdiction based on a procurement or proposed procurement with respect to which a protest had been previously filed with the Comptroller General under this Act, the jurisdiction of the court to finally decide the protest and issue the reports required by sections 3(b)(2) and 4(e)(1) shall not be restricted by such previous filing.

(2) Decision of comptroller general.—

(A) In general.—Notwithstanding paragraph (1), the Comptroller General shall issue a full decision with respect to a protest described in paragraph (1) unless the court directs otherwise.

(B) Procedure.—Any review of a decision of the Comptroller General on a protest under this Act? section? shall be rendered in accordance with the procedures for reviews of administrative board decisions under section 8(g)(2) of the Contract Disputes Act of 1978 (41 U.S.C. 607(g)).

(C) Effect of decision.—Any decision of the Comptroller General under this subsection with respect to such procurement or proposed procurement—

(i) shall be advisory only for purposes of a de novo protest action before a court of competent jurisdiction; and

(ii) may be considered to be part of the evidentiary record to be introduced in the de novo protest action before a court of competent jurisdiction.

SEC. 7. DEFINITIONS.

For purposes of this Act—

(1) the term "Board" means the Board of Contract Appeals of the General Services Administration;

(2) the term "Federal agency" has the meaning given such term by section 3 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 472);

(3) the term "forum" means the tribunal with which a protest is filed under section 2(1);

(4) the term "interested party", means with respect to a contract or proposed contract described in paragraph (1), an actual or prospective bidder or offeror, or a Federal representative of such a person, whose direct economic interest would be affected by the award of such contract by a Federal agency or by the failure of a Federal agency to award such contract; and

(5) the term "protest" means a written objection or complaint for judicial relief by an interested party, to—

(A) a solicitation for bids for; or

(B) an award or proposed award of;

a contract for the procurement of property or services by a Federal agency.

SEC. 8. CONFORMING AND TECHNICAL AMENDMENTS.

(a) Title 31.—Chapter 35 of title 31, United States Code, is amended—

(1) by striking subchapter V; and

(2) in the table of sections at the beginning of such chapter by striking the items relating to subchapter V.

(b) Federal Property and Administrative Services Act of 1949.—Section 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.) is amended—

(1) by striking subsection (f); and

(2) by redesignating subsection (g) as subsection (f).

SENATE—*Wednesday, October 28, 1987*

(Legislative day of Friday, October 16, 1987)

The Senate met at 9:40 a.m., on the expiration of the recess, and was called to order by the Honorable Richard C. Shelby, a Senator from the State of Alabama.

PRAYER

The Reverend R.C. Halverson, Jr., Chesterbrook Presbyterian Church, Falls Church, VA, offered the following prayer:

Let us pray together.

Father in heaven, we know that You are a sovereign God who watches over men and nations. And Your plans for us are ultimately for good in spite of the apparent setbacks we face.

Therefore, we pray that You will perfectly guide the destiny of the Chaplain of the Senate who now rests in the hospital to undergo a minor diagnostic treatment for his heart. Return him soon, that he may continue to work here, in these crucial days, as a representative from the kingdom of heaven.

Likewise, we pray for our Nation. In recent days we have felt tremors and pains from the very heart of our country, that tell us something is wrong. Help us to wisely heed these warnings. And grant us the godly discernment to probe the soul of this land and to apply the prescription of righteousness, humility and prayer, which You have promised will heal and establish us.

We pray this in the name of Christ, the Great Physician. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore [Mr. Stennis].

The assistant legislative clerk read the following letter:

U.S. Senate,
President pro tempore,
Washington, DC, October 28, 1987.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable Richard Shelby, a Senator from the State of Alabama, to perform the duties of the Chair.

John C. Stennis,
President pro tempore.

Mr. SHELBY thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE ACTING MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The acting Democratic leader is recognized.

ORDER OF PROCEDURE

Mr. SANFORD. Mr. President, I want to yield 5 minutes to the Senator from Wisconsin, who has asked for time and is not here, and 5 minutes to the senior Senator from Washington, who is not here. They both asked for time. Until they arrive, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The acting Democratic leader has suggested the absence of a quorum. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SANFORD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. SANFORD. I yield 5 minutes to the Senator from Wisconsin.

The ACTING PRESIDENT pro tempore. The Senator from Wisconsin is recognized.

Mr. PROXMIRE. Mr. President, I thank my good friend, the distinguished acting majority leader.

WHAT $1 TRILLION FOR STAR WARS REALLY MEANS

Mr. PROXMIRE. Mr. President, in all of our discussions of the strategic defense initiative [SDI] or star wars, we never seem to make progress with our most conservative antispending brethren here in the Senate about the immense cost of this project. As I have argued on this floor many times, three former Defense Secretaries have recently testified to the Appropriations Defense Subcommittee that costs of creating the SDI that would fulfill the goal set by President Reagan would add up to $1 trillion. Somehow this body has become so jaded in talking about millions and billions and trillions that the trillion-dollar figure does not make any impression. Even when we point out that the $1 trillion would have to come from our constituents in taxes, we get no reaction. And few Senators seem impressed by the fact that only a tiny number of States—five to be exact—receive in return in SDI spending in their State as much or more than they pay to the Federal Government in taxes for the SDI project on the basis of star wars expenditures to date.

Recently the Shawano, WI, Evening Leader carried an excellent editorial on the subject in which they quoted the well-known peace activist, William Sloane Coffin, Jr., on what $1 trillion really means. It was a striking exposition of what the Congress would do if it were to proceed with the full deployment of SDI. Just listen:

> For one trillion dollars, you could build a $75,000 house, place it on $5,000 worth of land, furnish it with a $10,000 car in the garage . . . and give all this to each and every family in Kansas, Missouri, Nebraska, Oklahoma, Colorado and Iowa. Having done this you would still have enough left to build a $10 million hospital and a $10 million library for each of 250 cities and towns throughout the six state region. After having done all of that, you would still have enough left out of the trillion to put aside, at 10 percent interest, a sum of money that would pay a salary of $25,000 per year for an army of 10,000 nurses, the same salary for an army of 10,000 teachers, and an annual cash allowance of $5,000 for each and every family throughout that six state region—not for just one year—but forever.

Mr. President, I hope my 12 good friends, the Senators from each of these 6 States, will note what a bonanza their constitutents could be missing to fund star wars. The SDI project if carried out would constitute the most radical and painful economic dislocation of our economy in memory. It would mean in my State of Wisconsin our share of the taxes to pay for $1 trillion SDI would be a crushing $20 billion. We would get nothing or practically nothing back in the way of SDI employment of any kind in Wisconsin.

Some might argue that the Congress would not raise taxes to pay for SDI, it would do what comes naturally. It would pay for it by borrowing the money. Why not? We pay for much of our expenditures now by deficit spending. Here is why this would save us nothing in the not very long run. One trillion dollars added to the national debt would have two sure effects. It would impose an interest burden in the neighborhood of $100 billion each and every year to service the additional debt. No. 2, it would surely tend to increase interest rates because the $1 trillion would add greatly to the demand for credit, and therefore the price of credit. Of course, the Federal Reserve Board could accommodate this borrowing in the short run by simply increasing the supply of credit. But such a policy would be inflation-

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

ary after a year or two and then the rising prices would swiftly do what rising prices always do, they would raise interest rates.

Of course, there is one other conspicuous alternative. Congress could take the $1 trillion out of other military spending. Since star wars would take perhaps 10 or 15 years to fully deploy, the cost in each of the 10 or 15 years of completing the whole project might be something like $75 to $100 billion in 1987 dollars. Former Secretary of Defense Harold Brown is probably the most expert witness our committee heard on this subject. Brown has been not only Defense Secretary but also the director of the Livermore Lab in California where much of the SDI technology has been developed. He is a world-class physicist. Brown testified that the annual cost—each and every year—for maintenance, operation, and modernization, once SDI is fully deployed, would be between $100 and $200 billion each year in perpetuity—that is, forever and in 1986 dollars. Suppose we take that out of our military budget. Consider the consequences if the Congress took $150 billion annually from the rest of the military budget. It would mean we would cut everything else in half—cut our Navy in half, our Army in half, our Air Force in half, bring back half our troops from Europe disband half our National Guard and Reserve. This would mean a unilateral savaging of our military forces that would constitute the worst national security disaster for our country in this century.

So we cannot escape the grim fact that if we are to have SDI, we will have to pay for it. And that payment will constitute the worst economic dislocation in our country since the Great Depression.

GOV. TERRY SANFORD

Mr. PROXMIRE. Mr. President, I would like to say a word about the Senator from North Carolina. I just discovered the other day that the Senator from North Carolina was picked by a group at Harvard University, on the basis of very careful consideration, as 1 of the 10 best Governors in this century. He was considered as 1 of the 10 best with Bob La Follette from my State, a man that we, of course, greatly honor in Wisconsin. He is the greatest political figure Wisconsin has ever had. But Terry Sanford served as a remarkable Governor of North Carolina.

I did not realize that until I got the data from a person who had worked on the Duke University faculty and who told me what a real gem we have in Terry Sanford. Of course, I know that because, as the Presiding Officer also knows, we serve together on the Banking Committee and therefore as in so many other areas, Senator Sanford has shown his real quality and ability.

It is a great honor and pleasure to have a chance to serve with him. That is another reason I am so grateful to him that he yielded 5 minutes to me this morning.

Mr. President, I yield the floor.

Mr. SANFORD. I must thank my good friend, obviously good friend, from Wisconsin for his kind, if not somewhat exaggerated words. I thank the Senator very much.

Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. EVANS addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

THE FINANCIAL CRISIS

Mr. EVANS. Mr. President, about 10 days ago, we all nervously witnessed an unprecedented stock market collapse, and we have been following the market with interest each day since, not only as Senators but as citizens of the United States.

We have heard many reasons why the market has collapsed or why it has gone down so precipitously. One of the best and shortest answers I have received came from my young son, Dan, Jr., who is a beginning stock broker at Kidder-Peabody in Seattle. He, like many other young stock brokers, is going through the baptism of fear, like many in the financial community have gone through for the first time. They have not seen the kind of problems that they are now experiencing. He sent me a short message from Mr. William Gillard, director of investment policy for Kidder-Peabody. In order for the economy to recover, Gillard identifies the 10 fallen dominoes which he says must be righted:

First, the stock market collapse, which was set off by; second, a weakened bond market, which was hurt by; third, a declining dollar, which reflects; fourth, the U.S. trade deficit, bogged down by; fifth, inadequate U.S. competitiveness, resulting in part from; sixth, a weakness in capital expenditures; a symptom of; seventh, too high a capital expenditure hurdle rate, reflecting; eighth, too high a cost of capital for U.S. business, because of; ninth, too high real interest rates, which stem from the root cause; 10th, the U.S. budget deficit.

I think that is a clear, concise, and virtually complete description of the problems we face. It is probably not accurate to place the blame on the budget deficit in total but it has created a weak economic foundation for us where the uneasiness throughout the country is translated with the first whisper or breath of problems into financial catastrophe.

I recall my first budget debate on this floor in 1984. I enthusiastically supported a proposal offered by Senators Kassebaum, Grassley, and Biden, the so-called KGB freeze. We promised at the time that if everyone would sacrifice and share equally in the burden we could solve the deficit problem. We are still unfortunately offering promises. I am gratified that the President and the leadership of both Houses of Congress are getting together, and that they are working hard toward a budget solution.

Mr. President, to those who are working on this solution, the time now is to be bold and decisive, to be bipartisan or nonpartisan, to develop for all of us in this body and in the other body a package, one which we can deal with as a unity rather than placing before us a piece-by-piece solution subject to the status quo—the every day adding and subtracting of amendments to everyone's favorite cause. I hope we will be bolder than some have so far suggested.

The President said that everything was on the table except Social Security. I think everything must be on the table. It is time we had the courage to put together a package that probably should start with a freeze, a freeze in defense spending, a freeze in discretionary nondefense spending, and a freeze in entitlement programs.

I have talked to a good many people representing senior citizen organizations and senior citizens themselves who say: "Look, we don't want to give up the cost-of-living adjustments; but if everyone else does, if everyone is involved in the solution, we are prepared to do our share."

Mr. President, I think if we begin there, if we begin with a substantial freeze, and then, and only then, look to new revenues, we can convince the people of this country and convince the President, himself, that taxes will be utilized to further reduce budget deficits and not just to finance additional spending.

If there is a two-pronged approach to the problems we face economically, and the budget deficit is first, then, second, I think we ought to take the additional steps necessary to ensure a continued strong economy and to make us more competitive internationally.

In July of this year, I attended the National Academy of Sciences Conference on Science, Technology, and Competitiveness in Massachusetts, where a number of experts convincingly described the many obstacles confronting our research and development efforts and suppressing our ability to compete internationally.

A number of revisions to our Tax Code were identified that could enhance our competitive edge, such as the adoption and expansion of the permanent R&D tax credit as well as creating incentives for providing more and better education. However, Mr. President, there was near unanimity that strong tax incentives for taxpayers to invest in capital is the best move we can make—restoring capital gains.

Each time Congress reversed course and cut the tax rate on capital gains as in 1979 and 1981, Mr. President, it not only moderated the tax bite but also generated a new spirit, one more hospitable to business enterprise.

Mr. President, within the confines of the deficit reduction discussions currently underway, I have joined a number of my colleagues in urging the President to accept as a revenue-raiser the so-called 15-percent solution. According to the studies undertaken by Dr. Martin Feldstein and Harvard University Professor Lawrence Lindsey, an approximate capital gains rate of 15 percent would generate the maximum rate of revenue for the Federal Treasury over what is currently collected. They are estimating as much as $8 billion in fiscal year 1988. Such a solution would not only help us reduce the Federal budget deficit but also provide a strong incentive for capital investment.

While I support that solution, I think we can do even better. I will introduce today, on behalf of myself and Senator BOSCHWITZ, a capital gains tax program that, over a period of time, depending on the length of time you hold an investment, would reduce the capital tax gains clear to zero.

The legislation would specifically allow taxpayers to pay 100 percent exclusion of capital gains for assets held for 5 years or longer, 60 percent exclusion for 3 years, and 40 percent for assets held for a 1-year period of time.

I am confident that such a proposal would make us more competitive. It would increase the availability of venture capital when we need it desperately. It also would put us in line with many of our most progressive trading partners, most of whom have no capital gains tax whatsoever.

I hope, as we look ahead to the programs which I deeply and devoutly hope will be bipartisan in nature, for a budget deficit resolution, we also at the same time take a look at a needed revision in our current tax structure to promote investment, to promote the kind of investment that will help continue to make America strong and competitive internationally.

RESTORATION OF CAPITAL GAINS THREE-TIERED DIFFERENTIAL

Mr. EVANS. Mr. President, I rise to introduce legislation that establishes a three-tiered capital gains rate differential.

I am pleased to be joined by Senator BOSCHWITZ, who has been a leading proponent in restoring a capital gains rate and a strong advocate of a tax system which rewards those taxpayers who invest in the capital upon which our Nation's economic future is built.

Generally, this legislation would set corporate capital gains at the pre-Tax Reform Act of 1986 rate of 28 percent. It also establishes a three-tiered capital gains rate differential for individuals. Specifically, taxpayers could take a 100-percent exclusion of net capital gain for assets held for 5 years or longer; 60 percent exclusion for assets held for 3 years; and 40 percent exclusion for assets held for a 1-year period of time.

Mr. President, I supported the Tax Reform Act of 1986 [TRA] because it was good for the American worker. The TRA cut individual tax rates by unprecendented amounts. When taxpayers can keep 72 cents of every dollar earned as opposed to 50 cents under pre-1986 law, they will have an incentive to become more productive in addition to having greater opportunities for saving, investment, and consumption.

However, while Congress was focused on helping the individual taxpayer, we lost sight of the critical goal of enhancing the competitiveness of corporate America. The major culprit—the loss of preferential treatment for capital gains.

I am concerned that the loss of such preferential treatment will make us less competitive. It will reduce the amount of venture capital available to help finance new businesses which create new jobs and new technology and undertake new research and development. Many innovative but relatively risky projects might not go forward. In the past, people who were successful in risky ventures—those who invested ideas and effort and those who put up the funds—could escape the full bite of income tax. Under the terms of the Tax Reform Act of last year, these risk-takers get no preferential treatment.

Our international competitors understand the importance of capital gains. According to the American Council for Capital Formation, 11 industrialized countries including Japan, Taiwan, West Germany, Hong Kong, Italy, and South Korea impose no taxes on long-term capital gains.

In July of this year, I attended the National Academy of Sciences Conference on Science, Technology and Competitiveness in Massachusetts, where a number of experts convincingly described the many obstacles confronting our research and development efforts and suppressing our ability to compete internationally.

A number of revisions to our Tax Code were identified that could enhance our competitive edge, such as the adoption and expansion of the permanent R&D tax credit as well as creating incentives for providing more and better education. However, Mr. President, there was near unanimity that strong tax incentives for taxpayers to invest in capital is the best move we can make. Among the experts, the concept of a three-tiered capital gains rate differential garnered much support.

Each time Congress reversed course and cut the tax rate on capital gains as in 1979 and 1981, Mr. President, it not only moderated the tax bit but also generated a new spirit, one more hospitable to business enterprise.

Mr. President, within the confines of the deficit reduction discussions currently underway, I have joined a number of my colleagues in urging the President to accept as a revenue-raiser the so-called 15-percent solution. According to the studies undertaken by Dr. Martin Feldstein and Harvard University Prof. Lawrence Lindsey, an approximate capital gains rate of 15 percent would generate the maximum rate of revenue for the Federal Treasury over what is currently collected. Such a solution would not only help us reduce the Federal budget deficit but also provide a strong incentive for capital investment.

It is my hope that we will then take the next, and what I believe is a more significant step—a three-tiered capital gains policy. Such a proposal that will help us to rebuild our capital foundation and result in a more stable economy, a more reliable flow of long-term venture capital, and American entrepreneurs who continue to lead the pack in innovation and ingenuity.

Mr. President, I ask unanimous consent that a description of the legislation's provisions be printed in the RECORD immediately before the printed text of the bill.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

LEGISLATION TO ESTABLISH CAPITAL GAINS PHASE-IN

DESCRIPTION OF PROVISIONS

Section 1

Restores corporate and individual capital gains tax treatment repealed by the Tax Reform Act of 1986 (TRA).

Individual capital gains made subject to the exclusions established under the provisions of this bill.

Generally, corporate capital gains set at 28% rate (pre-TRA of 1986). Also, timber capital gains are reinstated.

Section 2

(a): Generally, allows 100% exclusion of net capital gain for assets held for 5-years or longer; 60% exclusion for assets held for 3-years; and 40% exclusion for assets held for a 1-year period.

The method of calculation prevents the possible double-counting of net gains or losses for assets held for various periods of time.

Example Calculation:

$200 gain from 5-year assets;
$100 loss from 5-year assets;
$400 gain from 3-year assets;
$100 loss from 3-year assets;
$200 gain from 1-year assets; and
$100 loss from 1-year assets.

(1)(A): ($200−$100+$400−$100+$200 - −$100) = $500 gain, or (B): ($200−$100)=$100 gain

($100 gain) x (100%) = $100 deduction

(2)(A): ($500 gain) minus $100 = $400 gain or (B): ($400−$100) = $300 gain

($300 gain) x (60%) = $180 deduction

(3)(A): ($500 gain), minus (B): ($100 gain + $300 gain) = $100 gain

($100 gain) x (40%) = $40 deduction

Total Deduction: $320

(b): Defines assets that qualify for 5-year and 3-year net capital gains.

(c): Increases the holding period for capital gains from six months (established under Deficit Reduction Act of 1984) to one year.

(d): (1) Establishes "net capital gain" as subject to minimum tax calculations.

Retains provisions that excludes the gain from the sale and exchange of a principal residence from minimum tax calculations.

Retains provisions that excludes the gain resulting from farm insolvency transactions (e.g., Bankrupcy Court order farmer to sell assets to pay off creditors; gain from such sale is excluded from capital gains taxation).

(2) & (3) Subjects to capital gains taxation certain contributions or gifts that are granted in a fashion that avoids such tax assessment.

(e): Effective date—provisions apply to taxable years after December 31, 1986.

S. 1825

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. RESTORATION OF CAPITAL GAINS DEDUCTION.

(a) In General.—Subtitles A and B of title III of the Tax Reform Act of 1986 (relating to individual and corporate capital gains treatment) are hereby repealed.

(b) Conforming Amendment.—The Internal Revenue Code of 1986 shall be applied and administered as if such subtitles A and B (and the amendments made by such subtitles A and B) had not been enacted.

SEC. 2. AMOUNT OF DEDUCTION FOR CAPITAL GAINS BASED ON HOLDING PERIOD OF ASSET.

(a) In General.—Subsection (a) of section 1202 of the Internal Revenue Code of 1986 (relating to deduction for capital gains) is amended to read as follows:

"(a) Deduction Allowed.—If for any taxable year a taxpayer other than a corporation has a net capital gain, there shall be allowed as a deduction from gross income an amount equal to the sum of—

"(1) 100 percent of the lesser of—

"(A) the net capital gain, or

"(B) the qualified 5-year net capital gain, plus

"(2) 60 percent of the lesser of—

"(A) the net capital gain, reduced by the amount taken into account under paragraph (1), or

"(B) the qualified 3-year net capital gain, plus

"(3) 40 percent of the excess (if any) of—

"(A) the net capital gain, over

"(B) the sum of the amounts taken into account under paragraphs (1) and (2).".

(b) Qualified 5-Year and 3-Year Net Capital Gain.—Subsection (c) of section 1202 of the Internal Revenue Code of 1986 is amended to read as follows:

"(c) Qualified 5-Year and 3-Year Net Capital Gain.—For purposes of subsection (a)—

"(1) Qualified 5-year net capital gain.—The term 'qualified 5-year net capital gain' means the amount of net capital gain determined for any taxable year by taking into account capital assets of the taxpayer with a holding period of at least 5 years at the time of the sale or exchange.

"(2) Qualified 3-year net capital gain.—The term 'qualified 3-year net capital gain' means the amount of net capital gain determined for any taxable year by taking into account capital assets of the taxpayer with a holding period of at least 3 years but less than 5 years at the time of the sale or exchange."

(c) Increase in Holding Period Required for Long-Term Capital Gain Treatment.—Subsection (e) of section 1001 of the Deficit Reduction Act of 1984 is amended by striking out "1988" and inserting in lieu thereof "1987".

(d) Conforming Amendments.—

(1) Section 57(a) of the Internal Revenue Code of 1986 (relating to items of tax preference) is amended by adding at the end thereof the following new paragraph:

"(8) Capital gains.—

"(A) Individuals.—In the case of a taxpayer other than a corporation, an amount equal to the net capital gain deduction for the taxable year determined under section 1202.

"(B) Principal residence.—For purposes of subparagraph (A), gain from the sale or exchange of a principal residence (within the meaning of section 1034) shall not be taken into account.

"(C) Special rule for certain insolvent taxpayers.—

"(i) In general.—The amount of the tax preference under subparagraph (A) shall be reduced (but not below zero) by the excess (if any) of—

"(I) the applicable percentage of gain from any farm insolvency transaction, over

"(II) the applicable percentage of any loss from any farm insolvency transaction which offsets such gain.

"(ii) Reduction limited to amount of insolvency.—The amount of the reduction determined under clause (i) shall not exceed the amount by which the taxpayer is insolvent immediately before the transaction (reduced by any portion of such amount previously taken into account under this clause).

"(iii) Farm insolvency transaction.—For purposes of this subparagraph, the term 'farm insolvency transaction' means—

"(I) the transfer by a farmer of farmland to a creditor in cancellation of indebtedness, or

"(II) the sale or exchange by the farmer of property described in subclause (I) under the threat of foreclosure,

but only if the farmer is insolvent immediately before such transaction.

"(iv) Insolvent.—For purposes of this subparagraph, the term 'insolvent' means the excess of liabilities over the fair market value of assets.

"(v) Applicable percentage.—For purposes of this subparagraph, the term 'applicable percentage' means that percentage of net capital gain with respect to which a deduction is allowed under section 1202(a).

"(vi) Farmland.—For purposes of this subparagraph, the term 'farmland' means any land used or held for use in the trade or business of farming (within the meaning of section 2032A(e)(5)).

"(vii) Farmer.—For purposes of this subparagraph, the term 'farmer' means any taxpayer if 50 percent or more of the average annual gross income of the taxpayer for the 3 preceding taxable years is attributable to the trade or business of farming (within the meaning of section 2032A(e)(5)).".

(2) Subparagraph (B) of section 170(e)(1) of such Code (relating to certain contributions of ordinary income and capital gain property) is amended—

(A) by striking out "40 percent" and inserting in lieu thereof "100 percent minus the percentage described in paragraph (1), (2), or (3) of section 1202(a), whichever is applicable", and

(B) by striking out "$^{28}/_{46}$" and inserting in lieu thereof "$^{28}/_{34}$".

(3) Paragraph (4) of section 691(c) of such Code (relating to deduction for estate tax) is amended by striking out "section 57(a)(9)" and inserting in lieu thereof "section 57(a)(8)".

(e) Effective Date.—The amendments made by this section shall apply to taxable years beginning after December 31, 1986.

BUDGET ACT WAIVER

Mr. BYRD. Mr. President, the business for this morning is to proceed to S. 1184, a bill to amend the Airport and Airway Improvement Act. However, there is a budget resolution that has to be adopted first.

Within the last 5 minutes, I have learned that a Senator wants a rollcall vote on the budget resolution waiving the Congressional Budget Act, and that has to be done before going to the Airport and Airway Improvement Act.

Therefore, in order to save time, and not to have two rollcall votes, I ask unanimous consent that the Senate proceed now to the consideration of Senate Resolution 242, the resolution waiving the Congressional Budget Act.

The PRESIDING OFFICER (Mr. Graham). The resolution will be stated by title.

The assistant legislation clerk read as follows:

A resolution (S. Res. 242) waiving section 303(a) of the Congressional Budget Act with respect to the consideration of S. 1184.

The PRESIDING OFFICER. Is there objection to the present consideration of the resolution?

There being no objection, the Senate proceeded to the consideration of the resolution.

Mr. BYRD. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. BYRD. Mr. President, this will be a 30-minute rollcall vote. I believe the call for the regular order is automatic at the expiration of 30 minutes.

The PRESIDING OFFICER. The question is on agreeing to the resolution. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislation clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Connecticut [Mr. Dodd], the Senator from Tennessee [Mr. Gore], and the Senator from Illinois [Mr. Simon] are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced, yeas 92, nays 5, as follows:

[Rollcall Vote No. 354 Leg.]

YEAS—92

Adams
Armstrong
Baucus
Bentsen
Biden
Bingaman
Bond
Boren
Boschwitz
Bradley
Breaux
Bumpers
Burdick
Byrd
Chafee
Chiles
Cochran
Cohen
Conrad
Cranston
D'Amato
Danforth
Daschle
DeConcini
Dixon
Dole
Domenici
Durenberger
Evans
Exon
Ford
Garn
Glenn
Graham
Gramm
Harkin
Hatch
Hatfield
Hecht
Heinz
Hollings
Humphrey
Inouye
Johnston
Karnes
Kassebaum
Kennedy
Kerry
Lautenberg
Leahy
Levin
Lugar
Matsunaga
McCain
McClure
McConnell
Melcher
Metzenbaum
Mikulski
Mitchell
Moynihan
Murkowski
Nickles
Nunn
Packwood
Pell
Pressler
Proxmire
Pryor
Quayle
Reid
Riegle
Rockefeller
Roth
Rudman
Sanford
Sarbanes
Sasser
Shelby
Simpson
Specter
Stafford
Stennis
Stevens
Symms
Thurmond
Trible
Wallop
Warner
Weicker
Wilson
Wirth

NAYS—5

Fowler
Grassley
Heflin
Helms
Kasten

NOT VOTING—3

Dodd
Gore
Simon

So the resolution (S. Res. 242) was agreed to, as follows:

S. Res. 242

Resolved, That pursuant to section 303(c) of the Congressional Budget Act of 1974, the provisions of section 303(a) of such Act are waived with respect to the consideration of S. 1184 at the levels of budget authority and outlays reported by the Committee on Commerce, Science, and Transportation. Such waiver is necessary because S. 1184 provides new budget authority for a fiscal year for which the concurrent resolution on the budget has not been agreed to, in accordance with section 301 of such Act.

AIRPORT AND AIRWAY CAPACITY EXPANSION ACT

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to the consideration of S. 1184, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 1184) to amend the Airport and Airway Improvement Act of 1982 to improve the safety and efficiency of air travel, and for other purposes.

The Senate proceeded to consider the bill which had been reported from the Committee on Commerce, Science, and Transportation, with amendments, as follows:

(The parts of the bill intended to be stricken are shown in boldface brackets, and the parts of the bill intended to be inserted are shown in italics.)

S. 1184

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Act may be cited as the "Airport and Airway Capacity Expansion Act of 1987".

Sec. 2. Section 502(a) of the Airport and Airway Improvement Act of 1982 (hereinafter referred to as "the Act") (49 App. U.S.C. 2201(a)) is amended—

(1) by redesignating paragraphs (7) through (9) as paragraphs (8) through (10), respectively;

(2) by inserting after paragraph (6) the following:

[(7)**]** *"(7)* cargo hub airports play a critical role in the movement of commerce through the airport and airway system, and appropriate provisions should be made to facilitate the development and enhancement of such hub airports;";

(3) by striking "and" at the end of paragraph (9), as so redesignated;

(4) by striking the period at the end of paragraph (10), as so redesignated, and inserting in lieu thereof "; and"; and

(5) by adding at the end thereof the following:

"(11) airport construction and improvement projects which increase the capacity of facilities to accommodate passenger and cargo traffic, thereby increasing safety and efficiency and reducing delays, should be undertaken to the maximum feasible extent.".

Sec. 3. Section 503(a) of the Act (49 App. U.S.C. 2202(a)) is amended—

(1) in paragraph (2)—

(A) in subparagraph (B), by striking "or" at the end of clause (iv), by striking "and" at the end of clause (v) and inserting in lieu thereof "or", and by adding at the end the following:

"(vi) common-use, centralized cargo inspection facilities and equipment located at an airport for the exclusive purpose of inspecting air cargo, including facilities and equipment provided for or required by the Federal inspection services; and"; and

(B) by inserting immediately before the period at the end of subparagraph (C) the following: "or any land included within an unacceptably high level noise contour and identified on a current or projected noise contour map determined acceptable by the Secretary";

(2) by redesignating paragraphs (5) through (24) as paragraphs (6) through (25), respectively, and by inserting immediately after paragraph (4) the following:

"(5) 'Cargo hub airport' means a public airport that receives in excess of 100 million pounds landed weight of all-cargo aircraft on an annual basis, as determined by the Secretary.";

(3) in paragraph (12), as so redesignated, by striking all after "have" and inserting in lieu thereof the following: "more than 10,000 passengers enplaned annually.";

(4) in paragraph (13), as so redesignated, by (A) striking "development or" and inserting in lieu thereof "development,", and (B) inserting immediately after "planning," the following: "or for carrying out noise compatibility programs or parts of such programs under section 104(c)(1) of the Aviation Safety and Noise Abatement Act of 1979 (49 App. U.S.C. 2104(c)(1)),"; and

(5) in paragraph (18), as so redesignated, by redesignating subparagraphs (B) and (C) as subparagraphs (C) and (D), respectively, and by inserting immediately after subparagraph (A) the following:

"(B) any cargo hub airport,".

Sec. 4. Section 504(d) of the Act (49 App. U.S.C. 2203(d)) is amended—

(1) by amending paragraph (2) to read as follows:

"(2)(A) The Secretary and the Secretary of Defense, in consultation with aviation users, shall jointly conduct a national review of the need and utilization of special use airspace with a view to determining its impact on civil aviation operations.

"(B) Within eighteen months after the date of enactment of the Airport and Airway Capacity Expansion Act of 1987, the Secretary and the Secretary of Defense shall report to the Congress the results of such review, together with their recommendations."; and

(2) by striking paragraph (3).

Sec. 5. (a) Section 505(a) of the Act (49 App. U.S.C. 2204(a)) is amended—

(1) by inserting "(1)" immediately before "In order"; and

(2) by adding at the end the following:

"(2) The aggregate amounts which shall be available after September 30, 1987, to the Secretary for such grants and for grants for airport noise compatibility under the Aviation Safety and Noise Abatement Act of 1979 (49 App. U.S.C. 2101 et seq.) shall be **[**$6,864,700,000**]** *$6,716,700,000* for fiscal years ending before October 1, 1988; **[**$8,564,700,000**]** *$8,416,700,000* for fiscal years ending before October 1, 1989; and **[**$10,364,700,000**]** *$10,216,700,000* for fiscal years ending before October 1, 1990.".

(b) Section 505(b) of the Act (49 App. U.S.C. 2204(b)) is amended by striking "September 30, 1987," and inserting in lieu thereof "September 30, 1990,".

(c) Section 505(c) of the Act (49 App. U.S.C. 2204(c)) is amended to read as follows:

"(c) Authorization for Liquidating Appropriations.—There are to be appropriated from the Trust Fund, to remain available until expended, such sums as are necessary to liquidate obligations incurred under this section.".

Sec. 6. (a) Section 506(a) of the Act (49 App. U.S.C. 2205(a)) is amended—

(1) by inserting "(1)" immediately after "Equipment.—";

(2) by striking "and" after "1986;"; and

(3) by striking "1987." and inserting in lieu thereof the following: "1987; $7,827,000,000 for the fiscal years ending before October 1, 1988; $9,327,000,000 for the fiscal years ending before October 1, 1989; and $11,077,000,000 for the fiscal years ending before October 1, 1990.".

(b) Section 506(b) of the Act (49 App. U.S.C. 2205(b)) is amended—

(1) by striking "and" immediately before "$193,000,000"; and

(2) by striking the period at the end of the second sentence and inserting in lieu thereof the following: "; $200,000,000 for fiscal year 1988 (of which not less than $250,000 shall be made available for equipment designed to provide improved access by handicapped persons to commercial aircraft); $200,000,000 for fiscal year 1989; and $225,000,000 for fiscal year 1990, of which not less than $25,000,000 in each such year is authorized to be appropriated for research, engineering and development regarding airport capacity improvements.".

(c) Section 506(c)(2) of the Act (49 App. U.S.C. 2205(c)(2)) is amended—

(1) by striking "and" after "1986;"; and

(2) by striking "1987." and inserting in lieu thereof the following: "1987; and an amount not to exceed the amount made available for purposes of section 505 of this title for fiscal years 1988 through 1990.".

(d) Section 506(d) of the Act (49 App. U.S.C. 2205(d)) is amended—

(1) by striking "and" after "1986;"; and

(2) by striking "1987." and inserting in lieu thereof the following: "1987; $30,000,000 for fiscal year 1988; $30,000,000 for fiscal year 1989; and $30,000,000 for fiscal year 1990.".

(e) Section 506(e)(5) of the Act (49 App. U.S.C. 2205(e)(5)) is amended by striking "September 30, 1987" and inserting in lieu thereof "September 30, 1990".

Sec. 7. (a) Section 507(a)(1) of the Act (49 App. U.S.C. 2206(a)(1)) is amended by striking "(1) Primary airports.—" and inserting in lieu thereof "(1) Primary airports: passenger enplanements.—".

(b) Section 507(a)(1)(B) is amended—

(1) by striking "1987," and inserting in lieu thereof "1990,";

(2) by striking "and" after "1986,"; and

(3) by striking "1987." and inserting in lieu thereof "1987, and 30 percent for each of the fiscal years 1988 through 1990.".

(c) Section 507(a)(1)(C) of the Act (49 App. U.S.C. 2206(a)(1)(B)) is amended—

(1) by striking "$200,000" and inserting in lieu thereof "$300,000"; and

(2) by striking "$12,500,000" and inserting in lieu thereof "$16,000,000".

(d) Section 507(a)(1)(D) and (E) of the Act (49 App. U.S.C. 2206(a)(1) (D) and (E)) is amended by striking "50 percent" each place it appears and inserting in lieu thereof "38 percent".

(e)(1) Section 507(a) of the Act (49 App. U.S.C. 2206(a)) is amended—

(A) by redesignating paragraphs (2) through (4) as paragraphs (3) through (5), respectively; and

(B) by inserting immediately after paragraph (1) the following:

"(2) Primary [airports] *airports:* cargo hub airports apportionment.—In addition to funds to which any public airport may be entitled under any other provision of this title, and notwithstanding any other limitation on funding, a 3 percent share of the total amount authorized or available under section 505 of this title shall be set aside for distribution to cargo hub airports. Such distribution will be made by the Secretary on a pro rata basis, determined by calculating the total amount of all-cargo aircraft landed weight at all qualified cargo hub airports and establishing each qualified cargo hub airport's percentage share of such total amount. Each qualified cargo hub airport shall be entitled to that percentage of the total 3 percent share of the total amount authorized or available under section 505 of this title for any fiscal year.".

(2) Section 507(a)(3) of the Act, as so redesignated, is amended by striking "October 1, 1987" and inserting in lieu thereof "October 1, 1990".

(3) Section 507(a)(4)(A) of the Act, as so redesignated, is amended by striking "and (4)" and inserting in lieu thereof "(3), and (5)".

(4) Section 507(a)(5) of the Act, as so redesignated, is amended by striking ["Paragraph] *"paragraph* (3)" and inserting in lieu thereof "paragraph (4)".

(f) Section 507 of the Act (49 App. U.S.C. 2206) is amended by adding at the end the following:

"(c) Cargo Hub Airport Calculations.—For purposes of determining the pro rata apportionment for any fiscal year under subsection (a)(2) of this section, the total all-cargo aircraft landed weight at an airport shall be based on the all-cargo aircraft landed weight for the preceding calendar year.".

(g) Section 509(e) of the Act (49 App. U.S.C. 2208(e)) is amended by striking "section 507(a)(1)" and inserting in lieu thereof "section 507(a)(1) and (2)".

Sec. 8. (a) Section 508(a) of the Act (49 App. U.S.C. 2207(a)) is amended—

(1) by striking "or (4)" and inserting in lieu thereof "(3), or (5)"; and

(2) by striking "507(a)(3)" and inserting in lieu thereof "507(a)(4)".

(b) Section 508(c) of the Act (49 App. U.S.C. 2207(c)) is amended by striking "507(a)(2)" each place it appears and inserting in lieu thereof "507(a)(3)".

(c) Section 508(d) of the Act (49 App. U.S.C. 2207(d)) is amended—

(1) by adding at the end of paragraph (1) the following: "Of such amount, $300,000 shall annually be apportioned to each primary reliever airport and be available for obligation in the fiscal year during which it was first authorized to be obligated and the succeeding fiscal year. For purposes of this paragraph, a 'primary reliever airport' is a reliever airport having the function of relieving congestion at a pacing airport, as determined by the Secretary, which (A) if located within 50 miles of a pacing airport, has 100,000 annual itinerant operations or 125,000 total annual operations and has 200 based aircraft, or (B) if located more than 50 miles from a pacing airport, has 25,000 annual itinerant operations, 150,000 total annual operations, 300 based aircraft, an air traffic control tower, and a published instrument approach.";

(2) in paragraph (2), (A) by striking "8 percent" and inserting in lieu thereof "10 percent"; (B) by striking "(A)"; and (C) by striking all from "section 104(c)" and inserting in lieu thereof "section 104(c)(1) of such Act.";

(3) in paragraph (3), (A) by striking "5.5 percent" each place it appears and inserting in lieu thereof "2 percent"; and (B) by striking "paragraph (4)" and inserting in lieu thereof "paragraph (5)"; and

(4) by redesignating paragraph (5) as paragraph (6), and inserting after paragraph (4) the following:

"(5) Not less than $250,000,000 shall be made available under section 505 for any fiscal year to be distributed to primary airports and their reliever airports for improvements which increase the capacity of facilities to accommodate passenger and cargo traffic, thereby increasing safety and efficiency and reducing delays.".

Sec. 9. Section 512 of the Act (49 App. U.S.C. 2211) is amended—

(1) in subsection (a), by striking "507(a)(1)" and inserting in lieu thereof "507(a)(1) and (2)";

(2) by redesignating subsections (b) and (c) as subsections (c) and (d), respectively; and

(3) by inserting immediately after subsection (a) the following:

"(b) Airport Development Already Accomplished.—The Secretary may approve a project grant application and make a grant to reimburse a sponsor for airport development already accomplished by the sponsor (including project formulation costs) at a primary or reliever airport if—

"(1) the airport development for which reimbursement is requested will result in a significant enhancement of systemwide capacity;

"(2) before the development was begun, the sponsor notified the Secretary of its intent to carry out the development and request reimbursement subsequent to accomplishment of the development; and

"(3) before the development was begun, the sponsor provided the Secretary with sufficient information to enable the Secretary to assure that the development would be carried out in accordance with all applicable statutory and administrative requirements imposed on sponsors in connection with projects funded under this title, including the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).".

Sec. 10. Section 513(b) of the Airport and Airway Improvement Act of the Act (49 App. U.S.C. 2212(b)) is amended—

(1) in paragraph (2), (A) by striking "Not more than the greater of (A) $200,000, or (B) 60 percent of the" and inserting in lieu thereof "The"; and (B) by striking "section 507(a)(3)" and inserting in lieu thereof "section [507(a)(4)".] *507(a)(4)";*

(2) by striking paragraph [(5).] *(5); and*

(3) by redesignating paragraph (6) as paragraph (5).

Sec. 11. Section 519 of the Act (49 App. U.S.C. 2218) is amended by adding at the end the following: "The Secretary shall propose implementing regulations with respect to the airport grant program authorized by this Act, receive and consider public comment (including possible amendments to sponsor assurances to be included in grant agreements), and promulgate final regulations not later than one year after the date of enactment of the Airport and Airway Capacity Expansion Act of 1987.".

Sec. 12. Section 529 of the Act (49 App. U.S.C. 2225) is amended by striking "October 1, 1987" and inserting in lieu thereof "October 1, 1990".

[Sec. 13. The Secretary of Transportation shall make permanent the low activity (VFR) Level I air traffic control tower contract program established under section 526 of the Airport and Airway Improvement Act of 1982 (49 App. U.S.C. 2222).

[Sec. 14. (a) Not later than September 30, 1988, the Federal Aviation Administration shall hire not less than 1,000 air traffic controllers in addition to the total air traffic controller work force level specified in Public Law 99-591.

[(b) The additional air traffic controllers hired pursuant to subsection (a) of this section shall not include air traffic assistants.]

[Sec. 15.] *Sec. 13.* The Act (49 App. U.S.C. 2201 et seq.) is amended by adding at the end the following:

"SEC. [32.] 533. DENIAL OF FUNDS FOR CERTAIN PROJECTS.

"(a) In general.—

"(1) No funds provided under this Act may be used to fund any project which uses any product or service of a foreign country during any period in which such foreign country is listed by the United States Trade Representative under subsection (c) of this section.

"(2) Paragraph (1) of this subsection shall not apply with respect to the use of a product or service in a project if the Secretary determines that—

"(A) the application of paragraph (1) to such product, service, or project would not be in the public interest;

"(B) products of the same class or kind as such product or service are not produced or offered in the United States, or in any foreign country that is not listed under subsection (c) of this section, in sufficient and reasonably available quantities and of a satisfactory quality; or

"(C) exclusion of such product or service from the project would increase the cost of the overall project contract by more than 20 percent.

"(b) DETERMINATIONS.—

"(1) By no later than the date that is 30 days after the date on which each report is submitted to the Congress under section 181(b) of the Trade Act of 1974 (19 U.S.C. 2241(b)), the United States Trade Representative shall make a determination with respect to each foreign country of whether such foreign country—

"(A) denies fair and equitable market opportunities for products and supplies of the United States in procurement; or

"(B) denies fair and equitable market opportunities for United States bidders,

for construction projects that cost more than $500,000 and are funded (in whole or in part) by the government of such foreign country.

"(2) In making determinations under paragraph (1) of this subsection, the United States Trade Representative shall take into account information obtained in preparing the report submitted under section 181 of the Trade Act of 1974 and such other information as the United States Trade Representative considers to be relevant.

"(c) LISTING OF FOREIGN COUNTRIES.—

"(1) The United States Trade Representative shall maintain a list of each foreign country with respect to which an affirmative determination is made under subsection (b) of this section.

"(2) Any foreign country that is added to the list maintained under paragraph (1) of this subsection shall remain on the list until the United States Trade Representative determines that such foreign country does permit the fair and equitable market opportunities described in subsection (b)(1) (A) and (B) of this section.

"(3) The United States Trade Representative shall annually publish in the Federal Register the entire list required under paragraph (1) of this subsection and shall publish in the Federal Register any modifications to such list that are made between annual publications of the entire list.

"(d) DEFINITIONS.—For purposes of this section—

"(1) Each foreign instrumentality, and each territory or possession of a foreign country, that is administered separately for customs purposes shall be treated as a separate foreign country.

"(2) Any article that is produced or manufactured (in whole or in substantial part) in a foreign country shall be considered to be a product of such foreign country.

"(3) Any service provided by a person that is a national of a foreign country, or is controlled by nationals of a foreign country, shall be considered to be a service of such foreign country.".

SEC. 14. The Act (49 App. U.S.C. 2201 et seq.), as amended by this Act, is further amended by adding at the end the following:

"SEC. 534. CONTRACTING FOR ENGINEERING AND DESIGN SERVICES.

"Each contract or subcontract for program management, construction management, planning studies, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping or related services with respect to a project or program authorized, reauthorized or otherwise funded under this title shall be awarded in the same manner as the selection procedures in title IX of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 541 et seq.) as in effect on the date of enactment of this section or an equivalent qualifications-based requirement prescribed for or by the procuring agency.".

SEC. 15. The Act (49 App. U.S.C. 2201 et seq.), as amended by this Act, is further amended by adding at the end the following:

"SEC. 535. STATE BLOCK GRANT PILOT PROGRAM.

"(a) PROMULGATION OF REGULATIONS.—Not later than 180 days after the date of enactment of this section, the Secretary shall promulgate regulations to implement a State block grant pilot program to become effective on October 1, 1989. Such program shall expire on September 30, 1991.

"(b) ASSUMPTION OF CERTAIN RESPONSIBILITIES.—Such regulations shall provide that the Secretary may designate not more than 5 qualified States to assume administrative responsibility for all airport grant funding available under this title, other than funding which has been designated for use at primary airports.

"(c) SELECTION.—The Secretary shall select States for participation in such program on the basis of applications submitted to the Secretary. The Secretary shall select any such State only if the Secretary determines that the State—

"(1) has an agency or organization capable of administering effectively any block grant made under this section;

"(2) uses a satisfactory airport system planning process;

"(3) uses a programming process acceptable to the Secretary;

"(4) has agreed to comply with Federal procedural and other standard requirements for administering any such block grant; and

"(5) has agreed to provide the Secretary with such program information as the Secretary may require.

Before determining that any planning process is satisfactory or any programming process is acceptable, the Secretary shall ensure that such process provides for meeting critical safety and security needs, and that the programming process ensures that the needs of the national airport system will be addressed in deciding to which projects funds will be provided.

"(d) REPORT.—The Secretary shall conduct an ongoing review of the program established under this section, and shall, not later than 90 days before its scheduled termination, report to the Congress the results of such review, together with recommendations for further action relating to the program.".

SEC. 16. The Secretary of Transportation shall make permanent the low activity (VFR) Level I air traffic control tower contract program established under section 526 of the Airport and Airway Improvement Act of 1982 (49 App. U.S.C. 2222).

SEC. 17. (a) Not later than September 30, 1988, the Federal Aviation Administration shall hire not less than 1,000 air traffic controllers in addition to the total air traffic controller work force level specified in Public Law 99-591.

(b) The additional air traffic controllers hired pursuant to subsection (a) of this section shall not include air traffic assistants.

SEC. 18. (a) It is the intention of the Congress that the authority of the Secretary of Transportation to make grants under section 104(c)(2) of the Aviation Safety and Noise Abatement Act of 1979 (49 App. U.S.C. 2104(c)(2)) to airport operators to implement noise compatibility programs that were developed prior to the promulgation of implementing regulations under such Act if the Secretary determines that such programs would further the purposes of such Act shall continue until such programs are fully implemented, notwithstanding any other provision of law and any rule or regulation promulgated pursuant to any other provision of law.

(b) In order to carry out the intent specified in subsection (a) of this section, grants may continue to be made under section 104(c)(2) of the Aviation Safety and Noise Abatement Act of 1979 (49 App. U.S.C. 2104(c)(2)) for noise compatibility programs or projects previously approved under such program, if—

(1) the operator of the airport involved submits updated noise exposure contours, as required by the Secretary; and

(2) the Secretary determines that such programs or projects are compatible with the purposes of such Act.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. FORD. Mr. President, I ask unanimous consent we might file a 302(b) alloction to this bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. FORD. Mr. President, I appreciate the efforts of many including the majority leader and our distinguished chairman, Mr. HOLLINGS, to allow us to bring this piece of legislation to the Senate floor. Let me say this in the beginning. There is one word that underlines this piece of legislation, and that is safety, airline safety.

Now, there is a lot of frustration with what is going on as it relates to lateness of flights, luggage not arriving on time, and those sorts of things as they relate to the consumer. I personally understand and I think the committee understands that frustration. But the important thing is that you as a flying passenger arrive at your destination safely, and so that is what our legislation is all about this morning. The distinguished ranking member of the committee and I are very hopeful that this piece of legislation would not get entangled with other major pieces of legislation that our committee has sent to the Senate floor. The House has sent their legislation over also.

So the preamble of what I want to say this morning is this is a safety bill. It is important to the traveling public.

Mr. President, I may take a little more time than usual this morning in explaining S. 1184 because I want my colleagues to understand what is contained in this legislation. It is important that we understand—I hope I can explain it—what we are attempting to do this morning because we as Members of Congress understand more of the problems than the normal traveling public because we are frequent fliers. And by virtue of the fact that we are frequent fliers, I think our input in this piece of legislation is important.

Mr. President, this legislation before us is to authorize expenditures from the airport and airway trust fund for aviation development for the next 3 years, principally for the Airport Improvement Program, air traffic control modernization, safety and capacity research and development, and Federal Aviation Administration operational expenses.

The Airport and Airway Capacity Expansion Act of 1987, as S. 1184 is captioned, is designed to provide $15.6 billion for aviation safety and modernization programs through fiscal year 1990. This money is badly needed to increase airport capacity, enhance aviation safety, and ease congestion in our crowded air transportation system.

S. 1184 will ensure increased utilization of the trust fund.

Now, Mr. President, one thing I want my colleagues to understand is how much money is in the trust fund. The current balance is nearly $10 billion, of which approximately $5.6 billion is surplus. These funds have been collected from air travelers. It has been collected from you and I at an 8-percent ticket tax and general aviation fuel taxes. The money in the trust fund can only be used, and I underscore only be used, for aviation development and safety programs. Yet for various reasons this surplus has been allowed to develop.

Our legislation recognizes this Nation's aviation capacity and safety needs. It uses the trust fund, to which we contribute every time we fly, to build new runways and install new computers and radar. In addition, this bill requires the FAA to supplement its air traffic control work force by hiring an additional 1,000 controllers by the end of fiscal 1988.

We need to act expeditiously, Mr. President. On September 30 the authorization expired. We have been going for some time now without any authorization and have over $3 billion in applications that are approved, ready to go. I will explain that later on in my comments. But without this authority in this particular piece of legislation we do not fund these critical programs.

A little background, Mr. President. In 1970, the airport and airway trust fund was established, and it was established for one reason and one reason only, to ensure the availability of resources to develop airport capacity and air traffic control systems—safety. In succeeding years, funding for these programs has been increased to provide for needed expansion of our aviation infrastructure.

The most recent authorization was the Airport and Airway Improvement Act of 1982. The 5-year plan provided for increased funding to develop capacity needed to handle growth in passenger traffic that resulted from airline deregulation.

This expected growth in airline traffic has materialized with passenger levels—and I think this is important—increasing from 275 million passengers in 1978 to an expected 450 million-plus passengers in 1987—9 years, more than double. However, while Federal spending on our aviation infrastructure has increased marginally, it has not been adequate, nor have the funds in the trust fund been used to handle the demand now being placed on it by aviation users. This demand has created a number of problems that we have attempted to address in this bill.

Let us look at the airport improvement program, which is a part of this legislation. First and foremost, we need increased airport capacity—simple, increased airport capacity. Last month, there was an average of 886 delayed flights of more than 15 minutes every single day—almost 30,000 delayed flights in last month alone. While not all could be alleviated by building more airports and additional runways, there is clearly a need for more concrete, to put it very simply. According to FAA estimates, there is a need for more than $24 billion in Federal airport funding over the next 10 years.

Testimony before the Aviation Subcommittee this year illustrated, I think vividly, how airport improvement and airport development has suffered because of insufficient funding. Between 1982 and 1986, the FAA was forced to turn down requests for nearly $10 billion in airport projects because of shortages in appropriated funds.

At present, over $3 billion of eligible, and I underscore eligible, grant applications for airport development are on file with the FAA simply awaiting our authorization and appropriations. Our bill addresses this need by increasing airport development funding by 60 percent over last year. It provides $1.6 billion for the Airport Improvement Program for fiscal year 1988, with that amount increasing by $100 million a year to $1.8 billion in fiscal 1990.

Let me also state, Mr. President, that in this bill we have attempted to refine the manner in which Federal airport development funds are allocated. The bill creates a program for dedicating funds to airports receiving all cargo air service.

As such, approximately 45 airports will be entitled to approximately 3 percent of total AIP funding levels under this legislation. Currently, these airports are overlooked, as funds are apportioned only based upon passenger levels.

As was stated the airport does not know whether an airplane landing has cargo or passengers.

We have established a $250 million set-aside for projects solely designed to expand systemwide capacity. And we have made it possible for airports to begin construction of critical capacity expansion projects before Federal funding is available—provided they meet all requirements for receiving AIP funds.

Many of our communities and many of our States are willing to put money up front only if they have that possibility under formal circumstances at some later date to be able to be repaid for their advancement of that money. So if you have a community in your State that wants to go ahead with airport improvements, we have given them the vehicle which will allow them to do that. I think this is a significant part of this legislation.

The bill will provide increased funding for both large and small airports. It raises the maximum amount any of the largest airports can receive from $12.5 million a year to $16 million, while also raising the cap for the smallest primary airports from $200,000 to $300,000. And an additional 146 small- and medium-sized airports will be designated as primary airports under our legislation, thus becoming eligible for formula AIP funds.

S. 1184 also increases the percentage set-aside for noise abatement projects from 8 percent of total AIP funds to 10 percent. No other issue is as universally shared by all localities, and the Federal Government must provide increased assistance to communities as a means of minimizing the future of airport noise.

Finally, under this legislation, no airport can receive AIP funds if that airport uses foreign materials or services and the providing country does not allow fair and equitable market opportunities for U.S. contractors. This provision was originally sponsored by Senator MURKOWSKI and was subsequently added by the committee to S. 1184 because of the increasing problem American firms are having in gaining access to the multibillion Kansai, Japan, airport project.

AIRWAY MODERNIZATION

The second component of the aviation system designed to ensure aviation safety and increased capacity is the FAA's air traffic control system. Like our airports, the air traffic control system has a demonstrated problem accommodating continued growth—not to mention reliability.

Current facilities and equipment are aging rapidly. We need new computers, radars, wind-shear detection systems, collision avoidance equipment, as well as navigational aids.

In 1982, Congress approved the national airspace system plan which we refer to as the NAS plan—a 10-year, $12.2 billion effort to modernize the air traffic control system. Made up of some 90 projects, the NAS plan is a massive undertaking to increase the reliability of air traffic control equipment, as well as expand capacity of airways—thereby increasing the margin of aviation safety.

According to the FAA, successful implementation of the NAS plan will save an estimated $26 billion in FAA operating and maintenance costs, and save aviation users some $37 billion through increased safety and efficiency.

The problems with the implementation of the NAS plan have been threefold: Delays in delivery of equipment because of contractor failure, overly optimistic FAA schedules, and insufficient funding have all contributed to delays in bringing new systems on-line.

The FAA has made major changes in the program—improving management and ensuring better utilization of resources. But Congress must still provide increased funding to pay for the cost of this modernization effort.

S. 1184 does that by authorizing $1.5 billion in each of fiscal years 1988 and 1989, and $1.75 billion in 1990 for new air traffic control facilities and equipment. This is a significant increase over current funding levels and is badly needed to ensure that the NAS plan continues on schedule and that projected safety and efficiency benefits are realized.

AIR TRAFFIC CONTROLLERS

With increasing traffic and growing numbers of near misses between aircraft, it is apparent that our air traffic control system is understaffed. We clearly need additional air traffic controllers. No other problem has hindered the continued vitality of our air transportation system more than the deficient air traffic controller workforce that resulted from the 1981 PATCO strike.

The recently departed Secretary of Transportation realized this by requesting funding for an additional 955 controllers and support staff earlier this summer.

Accordingly, I believe it is appropriate to continue to pursue legislative language directing the FAA to hire an additional 1,000 controllers—over and above the 15,000 mark established last year during consideration of the continuing resolution.

16,000 air traffic controllers will bring us close to prestrike levels, and given record airline traffic levels, those controllers probably should have been added years ago.

RESEARCH AND DEVELOPMENT

Mr. President, the air transportation industry is extremely dynamic. And the equipment needed to ensure its safe and efficient operation is state-of-the-art technology, some of which is yet to be developed.

We need not only concentrated research and development of this new equipment, but increased research into what steps can be taken to increase airport capacity.

S. 1184 provides the necessary funds for that effort, as it increases R&D funding to $200 million in both fiscal years 1988 and 1989, increasing to $225 million in fiscal 1990. Of that amount, we have earmarked $25 million annually for research into ways in which airport capacity can be expanded.

OPERATIONS AND MAINTENANCE

The FAA has a very large work force—totaling over 45,000 people. Historically, the majority of the funds used to pay their salaries and expenses has come from the general revenue fund. However, in enacting earlier authorization bills, Congress had to increase the percentage of O&M funds coming from the airport and airways trust fund.

This legislation maintains current law. It recognizes the need to continue funding FAA operational expenses from the trust fund.

As such, this bill continues to limit the trust fund share of O&M costs to approximately 50 percent of the total. It also retains the penalty provisions which keep OMB from diverting the majority of those funds from desperately needed capital improvement programs to pay for FAA salaries and expenses.

Mr. President, this legislation must be enacted by the Senate as expeditiously as possible. The authorization for funding has once again lapsed. This bill has been held up for weeks and weeks and weeks. The authorization for funding has lapsed two or three times—1980, and back in the mid-1970's. We have had the experience. We need not let it happen again.

Without an authorization bill, taxes are being collected, with no expenditures allowed from the trust fund. Let me repeat that sentence, Mr. President: Without an authorization bill, taxes are being collected, with no expenditures allowed from the trust fund. The public is being robbed. They are paying this 8-percent tax for one reason and one reason only—that you improve the system and you make it safer, and we must not allow this to continue. We need to enact this piece of legislation.

I believe S. 1184 is good legislation. It has the support of the Department of Transportation, and it does not bust the budget.

We must act to pass this critical legislation, but while doing so, we cannot load it up with other, more controversial provisions that might lead to a Presidential veto.

Those are my opening remarks, Mr. President. What we have here is a good bill that has been worked on for long hours to come to an agreement, and I do not want to see this bill loaded down with a lot of amendments that might make it controversial and with provisions that might lead to a Presidential veto. This bill is too important for that. I will fight to keep it free of those extraneous amendments.

The chairman of the Commerce Committee and I can assure other Senators that there will be other aviation bills—specifically, S. 1485, the Air Passenger Protection Act, and S. 724, legislation providing for labor protection provisions for certain airline employees—that will be on the Senate floor in the very near future, where we can debate those more controversial matters.

Mr. President, I urge my colleagues to support this critical legislation so that we can take it to conference and then on to the White House and thus insure enhanced development of our Nation's air transportation system.

Mr. President, no one could be more fortunate than I am to have a ranking member like the distinguished Senator from Kansas, Senator Kassebaum. She understands the system. She understands the problems. She has been supportive, and we have worked together this past year and put this package together. I am very pleased with the cooperation we have had, and I think the effort is reflected in the legislation now before the body.

The PRESIDING OFFICER (Mr. Conrad). The Senator from Kansas.

Mrs. KASSEBAUM. Mr. President, I thank the Senator from Kentucky [Mr. Ford], who has chaired the Aviation Subcommittee of the Commerce Committee. We have worked well together. He has laid out very succinctly and thoughtfully the bill before us, particularly by leading off and stressing the safety factor.

Mr. President, the pending measure, S. 1184, provides for a 3-year reauthorization of the major aviation accounts on which this Nation's airport and airway systems depend. The existing authorization for these programs expired on September 30. This bill is legislation that must be enacted.

The bill was reported by the Commerce Committee on July 1, after extensive hearings by the Aviation Subcommittee. The Senator from Kentucky [Mr. Ford] put together an exceptionally broad-based hearing schedule. The subcommittee heard from DOT, the FAA, and a wide range of commercial and general aviation user groups. On the basis of those hearings, the pending bill was prepared by the Aviation Subcommittee under Senator Ford's leadership. It was reported, without substantial change, by the full Commerce Committee.

Mr. President, today, the traveling public has serious doubts about the safety of air-travel. That lack of confidence is truly disturbing because, in reality, we have a national air transportation system that is remarkably safe. The level of safety presently built into the system has been achieved through a joint effort by all segments of the aviation community. The FAA has been—and must continue to be—at the forefront of the national air safety effort.

Mr. President, I think the FAA has done a truly remarkable job of promoting air-travel safety, under the most difficult of circumstances. Quite frankly, program accounts for the FAA have been underfunded for a number of years. Fortunately, during those years the FAA has been guided by Administrators who have perfected the art of "doing more with less."

We can not, however, expect the FAA to "do more with less" forever. The effects of program underfunding can be offset by "creative management" for only so long. Sooner or later, antiquated equipment, limited capacity, and insufficient personnel, become too great of a burden for even the most efficient of management to overcome.

S. 1184 is designed to provide the authorized levels of program activity that are required to ensure that the current level of safety in the system is maintained. The bill also lays the ground-work for safety upgrades that will be necessary to take air-travel past the turn of the century.

If we are serious about restoring public confidence in our national aviation system, we must start by setting realistic funding levels for national aviation accounts. Enactment of this legislation will demonstrate a serious commitment on the part of the Congress to improve aviation safety and capacity.

The funding levels contained in S. 1184 are adequate—but not generous. In many respects, they represent levels that are below what could actually be used—and use productively. The Senator from Kentucky outlined the specific authorization levels in the bill. I would like to reemphasize the need for those authorized levels.

The National Airspace System Plan, the comprehensive plan to modernize the air traffic control system, has fallen behind schedule. The facilities and equipment account funds our national effort to upgrade air traffic control facilities and equipment. The F&E authorization provides $1.5 billion for fiscal year 1988, increasing to $1.75 billion in fiscal year 1990. Even if the authorizations contained in this bill for the NAS Plan are fully funded, the air traffic control system will continue to be hard pressed to meet capacity demands over the next 3 years.

The bill also reauthorizes funding for the Airport Improvement Program. That program is critical to meeting future capacity needs, and provides assistance to both large and small airports nationwide. Authorized levels for the AIP program are substantially increased over current levels—beginning at $1.6 billion in fiscal year 1988 and increasing to $1.8 billion in 1990. If AIP is reauthorized at these levels, the ground work will have been laid for reducing the sizable present backlog of unfunded local airport improvement projects.

Funding for the authorizations contained in this legislation is provided through a variety of user fees assessed on the aviation community. Airline passengers pay a 8-percent tax on tickets they purchase, and airlines and general aviation pilots pay a tax on fuel, tires, and tubes. In fiscal year 1986, these taxes generated $3.9 billion which has been credited to the aviation trust fund for support of programs authorized in this bill.

S. 1184 needs to be enacted. The current authorization has expired. The House has already acted on this subject. We need to move to conference as quickly as possible, and get reauthorization legislation to the President so these important programs can go forward. For those reasons I urge my colleagues to support passage of this vital legislation.

Mr. President, I should like to reiterate that the existing authorization for these programs expired on September 30. This is "must" legislation.

I should like to reiterate what Senator FORD said: Enactment of this legislation will demonstrate a serious commitment on the part of Congress to improving aviation safety and capacity. I can think of no other bill before us that would be more important this week for us to address in a timely fashion.

There are many of us who would like to add amendments, because this is the first major aviation bill coming through. But I am very supportive of efforts to keep this reauthorization free of confusing and cumbersome amendments which will need some debate and which we will address at a later time.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. Mr. President, as the chairman of our committee, I commend the distinguished Senator from Kentucky and the distinguished Senator from Kansas.

The Senator from Kansas originally headed this Aviation Subcommittee when we had a Republican majority. Without missing a step, she has continued to lead the way, with the distinguished Senator from Kentucky, who probably has had more hearings on airline safety, airline consumer problems, and various aviation concerns we have with respect to facilities, than any aviation subcommittee has ever experienced.

They have been very, very diligent, and yet we wonder how we get by without this legislation.

In a sense, Mr. President, a miracle will occur today in that we will have over a million American passengers, around 1,200,000 will be flying today on 10,000 flights to over 10,000 destinations and do so safely. The miracle is that while they do it safely, we have had this year, through September, 857 near misses in the United States which is a 37-percent increase over last year. We will have 984 operational errors made by the air traffic controllers, which is an 8-percent increase over last year. And there have been 2,551 pilot deviations where the pilots have deviated from the Federal air regulations, an increase of almost 54 percent over last year. And we had 26,000 delayed flights last month.

Mr. President, we are in a difficult situation regarding the economy. I do not know how it has kept up. I do not know how we got by until October of 1987 before the stock market crashed, because they told us back in 1980 when we were facing a deficit—$75 billion at the termination of President Carter's term—that if we continued to run deficits that high, the economy would go into a tailspin.

I chaired the Budget Committee at the particular time, met with the President, and in a crisis situation we passed what you call now a reconciliation bill. The first spending cut of those amounts already appropriated cut the deficit back down to $57.8 billion, and ever since then for a 7-year period now I have been holding my breath each year telling everybody we are going to have a crash, it just cannot last.

We got last year up to a $221 billion deficit. And in a similar fashion here you are going to hear those who would oppose this measure say, "Oh, don't worry about it. We have a record number of safety miles traveled," and what have you, without a crash.

But the fact of the matter is we see the impending storm, and it is time now to set aside the concerns and act.

As a result, Mr. President, I am joining with Senator FORD and Senator KASSEBAUM in support of this particular bill. It is an outstanding measure. It authorizes $15.6 billion over a 3-year period.

I am a little annoyed at constantly hearing we are not spending the money. If you do not spend the money it does not help the deficit. And we will get into that if some measure is proposed about putting this aviation trust fund off budget.

This is a sort of Band-Aid type approach to make it look better, but it does not cure the ill whatsoever.

We just have not spent the money, period, because the White House and the administration has opposed it. They opposed air traffic controllers until we put in a bill, this bill we reported out in May, for a thousand of them. Then the Department of Transportation came and said, "Oh, yes, we think we need 900 or more controllers," and we have brought DOT kicking and screaming into facing up to this problem, and the problem worsens every day.

So it has not been the balanced budget. It has just been in a drive not to spend the money that you and I and the airlines are paying—the tax, that we, the traveling public, have built up. And it should be expended to make safer the facilities around the country and move forward now with controllers and improved devices throughout.

Mr. President, we have spent the better part of a year expressing our collective "concern" over the state of the Nation's air transportation system. We've vented our outrage and frustration regarding scheduling practices and the increasing number of delays in air travel. We've fretted over safety—particularly with regard to the question of whether deregulation of the airlines has made the skies less safe than they could be.

In committee and here on the Senate floor, this debate has been educational and—I would suspect—somewhat cathartic for a group of individuals who probably log as many miles in the air per year as any other group in the country. However, the time for expressing "concern" has now passed. We must now put our words into action. More specifically, it's time we ante up with the funds that will directly address these problems.

The legislation which is now before the Senate represents our opportunity to do just that. S. 1184, the Airport and Airway Capacity Expansion Act of 1987, would authorize $15.6 billion for aviation safety and the modernization of our air traffic control system over the next 3 fiscal years.

Right to the point—we simply must authorize this spending. Not only are the increased expenditures in this bill needed to expand the capacity and enhance the safety of the air transportation system, but that money comes from a trust fund—the airport and airway trust fund—which can be used only for these purposes.

We created the fund. We have taxed the users of the air transportation system. Now, we would be derelict in our duty as Senators if we did not use this fund to benefit those who have paid into it.

The airport and airway trust fund was established by Congress in 1970 to increase the airport capacity and develop our air traffic control system. It is funded by an 8-percent tax on airline tickets and a levy on general aviation fuel. That means that every time you and I purchase an airline ticket, we are paying into that fund.

Our more recent authorization bill was the Airport and Airway Improvement Act of 1982, which provided a 5-year plan for increased funding to meet the growing needs of the traveling public. This legislation expired on September 30, and until a renewal of that authorization is signed into law, the Federal Government has no authority to continue its efforts to issue grants to States and localities for airport development and expansion.

In recent years, the passenger increases and the resulting strains on the Nation's system of airports and airways have been far above and beyond what anyone could have predicted in 1982. Annual passenger loads have boomed—from 294 million 5 years ago to an expected 450 million this year.

Our current air transportation system just cannot handle this increase, as demonstrated by the more than 26,000 delayed flights experienced last month. The resulting inconveniences experienced by those who have been paying into the trust fund amount to only part of the problem we face today. More important is the effect of this capacity shortage on the margin of safety in the skies.

The question we should be asking is: "Is airline travel as safe as it can possibly be?" The obvious answer is "no."

Over the past year, we have seen a major accident in Detroit, MI—the second worst civil aviation accident in U.S. history. And while this year in no way approaches the catastrophic year that 1985 was in terms of numbers of accidents and deaths, other safety indicators are increasing dramatically.

Perhaps most concerning is the number of near-misses reported between aircraft. Through September, there have been 857 near-misses in the United States—a 37-percent increase over last year. There have been 984 operational errors made by air traffic controllers—an 8-percent increase over 1986 levels. And there have been 2,551 pilot deviations, where pilots have deviated from Federal air regulations, an increase of almost 54 percent over last year.

While all of these problems cannot be solved by simply adding capacity to our airport and airway system, it is clear that we need to direct increased resources toward building new airports and constructing additional runways. There is no disputing the fact that many of our problems with delays and congestion could be alleviated if there was more capacity at our Nation's airports.

S. 1184 would provide a significant increase in the Federal share of airport development funds—increasing funding for the Airport Improvement Program by 60 percent in fiscal year 1988. This $1.6 billion will dramatically improve the ability of airport managers at large, medium, and small airports to provide the infrastructure needed to accommodate current and future levels of air traffic.

In order to increase the capacity of our airways and ensure the utmost in safe travel, we also must step up modernization of the Federal Aviation Administration's rapidly aging air traffic control facilities and equipment. We need new computers. We need new radar systems. We need new navigational aids. These acquisitions were provided for when we approved the $12.2 billion national airspace system plan in 1982. However, implementation of this 10-year plan is behind schedule due to a variety of problems, including insufficient funding.

The FAA has taken a number of steps to alleviate problems in the national airspace system plan, but only Congress can clear the last obstacle to rapid modernization of air traffic control system by providing the funding increases needed to get the job done. And that's what this legislation before us today is designed to do.

Mr. President, as I stated earlier, funds authorized by this legislation come from a trust fund which can be used only for airport and airway development. The shame is that we have allowed this fund to accumulate an outrageous $5.6 billion surplus. Unfortunately, the folks over at the Office of Management and Budget have not been able to resist the temptation to use this trust fund surplus as a cosmetic to make our massive budget deficit look a little less frightening. For that reason, they don't want to spend the money. Meanwhile, the people who pay into that fund—the air travelers—are required to put up with the types of inconveniences and safety problems that their user taxes are meant to solve. It is a ludicrous situation.

We have clearly defined needs in our air transportation system. We have the money sitting there in the trust fund. So let us spend it. Let us solve the problems at hand.

S. 1184 would authorize the appropriation of more than $5 billion per year over the next 3 fiscal years to address our aviation capacity and safety needs. It provides for the construction of new runways, the installation of new computers and radar systems, and the hiring of an additional 1,000 air traffic controllers. In short it will enable our beleaguered air transportation system to catch up with the demands being placed on it by those who fly.

Mr. President, I want to thank our Aviation Subcommittee chairman, Senator FORD, for his efforts in preparing this legislation and working to ensure its passage. I also want to thank Finance Committee chairman, Senator BENTSEN, for his efforts to provide the revenues needed to finance these critical aviation programs. And finally, I am pleased that Senator CHILES and the Budget Committee provided the room in the fiscal year 1988 budget resolution to accommodate the increases in funding provided for by our legislation.

This legislation must be approved as expeditiously as possible. We have already missed our September 30 deadline, and the longer we delay, the longer our airports and airways will languish.

I strongly urge my colleagues to support this legislation, so that we can take it to conference with our counterparts from the House of Representatives, who have already acted on a similar bill, and finally, to the President.

This bill is our opportunity to restore public confidence in our air transportation system. It will allow for the continued development of that system. It will make it more efficient. And most importantly, it will enhance aviation safety for all air travelers.

Mr. McCAIN. Mr. President, I believe I have experienced at first hand many of the frustrations and much of the discomfort that many Americans experience while traveling on board domestic and foreign airliners since deregulation in 1979.

I will not belabor this body with stories like the one where I spent a night last winter in the Chicago airport after the planes were delayed by 3 or 4 hours from leaving National Airport, thereby missing my connection to my home in Pheonix, AZ.

I will not regale the Members of this body with the story about the time I got on an airliner that was headed to Phoenix—since discontinued, I might add. There are no direct flights from Washington to Phoenix, AZ. At the gate directly next to mine was a flight going to Denver, CO.

After everyone was on board and strapped in, it was discovered that the plane that was going to Phoenix needed to go to Denver for maintenance, and we were notified that it would be required that we all switch aircraft. There was a melee of mammoth proportions, and it resulted in a 3-hour delay.

The stories are myriad of the discomfort that people have experienced. Recently, there was a story in the media about a near riot at the airport in Miami as a result of the cancellation of a flight that was going, I believe, from Miami to New York.

The fact is that there is an enormous frustration today existing among Americans about the kind of travel they are afforded by the airlines, and this frustration is reflected in the hearings we have held and the various magazine articles and newspaper articles and in the correspondence I receive from the people I represent. I know that the other Members of this body have experienced the same frustration.

This legislation will be an important contribution in addressing these problems, as well as in promoting safety and development of the airport and airway system.

The trust fund is supported by a variety of taxes on aviation users, such as an 8-percent domestic passenger ticket tax, and various excise taxes on aviation products. This is truly a self-funded program. In fiscal year 1986, these fees, together with interest, generated $3.9 billion, all of which was credited to the trust fund.

By September 30, 1987, the cash balance of the airport and airway trust is projected to total nearly $10 billion. Of that amount, approximately $5.63 billion is estimated to be surplus, or in excess of current obligations.

This brings up one of the major points here, and one that the American people cannot understand. If there are inadequate airports and an inadequate system existing today and an inadequate number of air controllers, why in the world are we not spending the $5.6 billion that is surplus in this trust fund. I must tell my friends and colleagues that I do not understand it, either.

I cannot understand why bookkeeping requirements would somehow dictate a situation where we do not have sufficiently trained air controllers, we do not have sufficient equipment to control the aircraft on the ground, and we certainly do not have sufficient numbers of airports for these airliners to land.

I was interested one day in noting that there were some 17 aircraft that were scheduled to take off from National Airport at 8 a.m. That is a feat that not even Mr. Lindbergh could match, nor any other person who had made aviation history.

Also, I happened to note on the same day that there were some 20 aircraft to land at exactly the same time at Chicago O'Hare Airport.

This is an intolerable situation, and the American people deserve far better.

This increase in the trust fund surplus can be attributed to two factors. Since 1982, Presidential budget requests and congressional funding levels for airport and airway improvement programs have been significantly below authorized levels. The airway modernization program, has experienced funding shortfalls over the 5-year period totaling $1.6 billion.

As successful as the AIP Program has been in the most recent years, there are significant capacity shortages at the Nation's major airports. This is largely due to the fact that insufficient Federal resources have been made available for airport development, even though the airport and airway trust fund, with its surplus, could have supported substantially higher levels of Federal investment.

Despite a passenger volume increase at our Nation's airports of over 50 percent since deregulation, only one major airport has been built in the last decade.

Without this funding, the airport system will be unable to accommodate projected increases above today's record airline traffic levels. In fact, the FAA claims that 72 percent of the total airport development needed in the future is related to increasing capacity in the airport system to handle growing passenger volumes and aircraft operations. This legislation is designed to ensure that adequate Federal capital funds, contributed by aviation users, are made available to expand the capacity of our Nation's airport system to meet current and anticipate demand.

Adequate funding is critical for eliminating the current shortage of airport capacity, which is causing the FAA to delay aircraft at the point of origination until the airport at the point of destination can accomodate that aircraft. Flow control as a means of ensuring safe air travel has lengthened travel times, contributed to record levels of delayed airline flights, and cost the consumer and the airline industry billions of dollars.

This legislation is also designed to accelerate the modernization of the air traffic control system under the NAS plan. First approved in 1982, the NAS plan, which is funded through the FAA's facilities and equipment account, is designed to update, consolidate, and automate the Nation's air traffic control, navigation, and communications system.

Without significant increases in funding for FAA facilities and equipment to ensure the completion of the NAS plan, the Nation's air traffic control system will not be able to accomodate safely increasing levels of airline traffic. This legislation will provide for the necessary funding to keep the modernization program on schedule, thus ensuring the safe, efficient movement of aircraft throughout the air transportation system.

Let me emphasize that it is time to move this bill. Further delays in this legislation will only complicate the situation in our Nation's airports and airways. More importantly, it can only harm safety. There will be other opportunities to correct problems, real and imagined, on the service and labor side of our Nation's air transport system. This bill must be passed quickly, in a fashion that will ensure its immediate acceptance by the administration.

I appreciate the leadership of my distinguished colleague from Kentucky [Mr. FORD] on shaping this very important piece of legislation and the important contributions of Mrs. KASSEBAUM.

Mr. PACKWOOD. Mr. President, the Finance Committee's amendment to S. 1184 extends the various airport and airway trust fund excise taxes and provides expenditure authority from the trust fund to coincide with the authorizations provided by the Commerce Committee.

The airport and airway trust fund supports a number of vital airport and airway programs. Unfortunately, the funds from the trust fund have not been spent at the full authorized levels in each year since 1982, resulting in an excessive trust fund balance. By September 30, 1987, the Federal Aviation Administration [FAA] estimates that the cash balance of the airport and airway trust fund will be nearly $10 billion. Of that amount, over $5 billion is estimated to be surplus, in excess of current obligations.

As the Commerce Committee's report accompanying S. 1184 points out, there are two factors to which this increase in the trust fund surplus can be attributed. First, since 1982, Presidential budget requests and congressional funding levels for airport and airway improvement programs have been below authorized levels. This has been particularly true for the airway modernization program, where funding shortfalls since 1982 total $1.6 billion. Second, because annual appropriations for FAA capital improvement programs have been less than authorized, the amount of the trust fund that can be used for FAA operations has been reduced, thereby increasing the surplus.

During the Finance Committee's consideration of this matter, I offered an amendment which retains the current airport and airway trust fund excise tax levels for the next 3 years. In the fourth year, 1991, however, these excise taxes would be automatically reduced by one-half if there is an unobligated trust fund balance of more than $3 billion at the beginning of 1991. At the end of 1991, these excise taxes would expire.

By reducing the taxes in 1991 if there is an excessive surplus, my amendment would encourage the spending of trust fund moneys. I want to see this spending occur as early as possible. However, by waiting until 1991 to put the tax trigger into effect, my amendment in no way interferes with the authorizations included in the Commerce Committee's 3-year program authorization bill, and gives the Department of Transportation and the Appropriations Committees 3 years to ensure that these trust fund monies are spent—and spent effectively.

It is incompatible with the user fee philosophy to continue raising aviation user taxes if the revenues are not being spent. There appears to be broad agreement on this point. The House Ways and Means Committee included a trigger mechanism in August in their airport and airway trust fund extension legislation. The Senate Finance Committee and the full Senate approved legislation in 1982 which included a trigger mechanism for this trust fund. The tax trigger is strongly supported by the aviation community as a means of ensuring that aviation tax receipts and disbursements will be brought into better balance.

My goal is to ensure that the trust fund money, are indeed used to improve the airport and airway system. I am not, however, wedded to the specific approach taken in my amendment. I look forward to working with my Senate colleagues, the House, the Department of Transportation, and the aviation industry to develop the most effective mechanism possible to achieve this goal as this legislation progresses.

Mr. HOLLINGS. Mr. President, if it is agreeable with the distinguished chairman I will send an amendment on behalf of——

Mr. FORD. Mr. President, will the Senator withhold? I want to make one motion so we can get our committee amendment agreed to.

Mr. HOLLINGS. OK. If it is appropriate.

Mr. FORD. Mr. President, I ask unanimous consent for the purpose of further amendments that we adopt the committee amendments en bloc.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. FORD. Mr. President, I move to reconsider the vote.

Mrs. KASSEBAUM. I move to lay that motion on the table.

The PRESIDING OFFICER. It is not necessary to be reconsidered.

Mr. FORD. I want to be sure we lock those in, Mr. President. You never know what may happen down the pike.

The PRESIDING OFFICER. Is there objection?

Mr. METZENBAUM. Mr. President, do I understand the unanimous-consent request just made that a germaneness rule be adopted without the Members of the Senate knowing about it?

The PRESIDING OFFICER. No.

Mr. METZENBAUM. What did I hear about germaneness?

Mr. FORD. No.

Mr. METZENBAUM. I apologize. I thought I heard someone say that on my radio. I misunderstood. I apologize to the manager of the bill.

Mr. FORD. I will help him with the syringes.

Mr. HOLLINGS. Mr. President, another near miss.

AMENDMENT NO. 1067

(Purpose: To amend the Federal Aviation Act of 1958 to require the installation and use of collision avoidance systems in aircraft, and for other purposes)

Mr. HOLLINGS. Mr. President, I send an amendment to the desk and ask the clerk to report. It has to do with the TCAS-II collision avoidance device and transponder. I send it to the desk on behalf of the distinguished Senator from California, Senator WILSON, and the Senator from Missouri, Senator DANFORTH, the distinguished majority leader, Senator BYRD, and myself.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from South Carolina [Mr. HOLLINGS] for himself and Mr. DANFORTH, Mr. WILSON, and Mr. BYRD, proposes an amendment numbered 1067.

Mr. HOLLINGS. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the bill, add the following:

SEC. . (a) Congress finds that—

(1) the number of near midair collisions is an indication that additional measures must be taken to assure the highest level of air safety in the United States;

(2) public health and safety requirements necessitate the timely completion and installation of a collision avoidance system for use by commercial aircraft flying in the United States;

(3) the Traffic Alert and Collision Avoidance System promises to reduce the threat to life caused by midair collisions, particularly collisions between general aviation aircraft and commercial aircraft;

(4) the Traffic Alert and Collision Avoidance System will succeed only to the degree that other aircraft posing a collision threat use operating transponders with automatic altitude reporting capability; and

(5) the Federal Aviation Administration should continue at a deliberate pace the development of additional technologies, including the collision avoidance system known as TCAS-III, to ensure the safe separation of aircraft.

(b) Section 601 of the Federal Aviation Act of 1958 (49 App. U.S.C. 1421) is amended by adding at the end the following:

"COLLISION AVOIDANCE SYSTEMS

"(f)(1)(A) The Administrator shall complete development of the collision avoidance system known as TCAS-II so that such system will be operable under visual and instrument flight rules and will be upgradable to the performance standards applicable to the collision avoidance system known as TCAS-III.

"(B) The Administrator shall develop and implement a schedule for development and certification of the collision avoidance system known as TCAS-II which will result in completion of such certification not later than 18 months after the date of the enactment of this subsection.

"(C) The Administrator shall transmit to Congress monthly reports on the progress being made in development and certification of the collision avoidance system known as TCAS-II.

"(2) The Administrator shall require by regulation that, not later than 30 months after the date of certification of the collision avoidance system known as TCAS-II, such system be installed and operated on each civil aircraft which has a maximum passenger capacity of more than 20 seats and which is used to provide air transportation of passengers, including intrastate air transportation of passengers.

"(3) Within 6 months after the date of enactment of this subsection, the Administrator shall promulgate a final rule requiring the installation and use of operating transponders with automatic altitude reporting capability for aircraft operating in designated terminal airspace where radar service is provided for separation of aircraft. For terminal airspace designated under this paragraph, other than for Terminal Control Areas and Airport Radar Service Areas, the Administrator may provide for access to such airspace by non-equipped aircraft if the Administrator determines that such access will not interfere with the normal traffic flow. Such final rule shall require the installation and use of such transponders not later than 24 months after the date of enactment of this subsection.".

(c) The item relating to section 601 in the table of contents of the Federal Aviation Act of 1958 is amended by adding at the end the following:

"(f) Collision avoidance systems.".

(d) The Administrator of the Federal Aviation Administration shall complete the research and the development on, and the certification of, the collision avoidance system known as TCAS-III as soon as possible. There are authorized to be appropriated such sums as may be necessary from the Airport and Airway Trust Fund to carry out this subsection.

Mr. HOLLINGS. I thank the distinguished Chair.

Mr. President, this amendment has two parts. It would mandate the FAA to require all aircraft flying near those airports where the FAA has a radar to separate aircraft—some 180 of them—to be equipped with altitude reporting transponders.

Second, it would establish a timetable for ensuring FAA certification and installation of airborne collision avoidance systems aboard most of the commercial aircraft.

With respect to transponders, I know there is some misgiving on behalf of general aviation being required to include these. The argument would be that this device that can never be used in those areas of the country, let us say, out in the area perhaps of Wyoming and other States, where there is not an airport with radar control and people fly regularly and there is no real threat to safety.

On the other hand, the FAA requires radar control at 180 airports, yet they only require a transponder near 23.

We are seeing now aircraft flying into these congested air corridors with no warning and no accountability. As a controller, you just do not know they are there until some newspaper account after it is reported to the FAA records that we have had another near-miss.

This transponder is a $2,000 item to be included.

With respect to transponders in aviation, the amendment would require within 6 months that the Federal Aviation Administration complete a rulemaking for requiring installation of mode C altitude reporting transponders and within 24 months of the enactment each aircraft flying near those nearly 180 airports where the FAA provides radar separation—all terminal control areas, airport radar service areas and terminal radar services areas—will be required to have transponders in operation.

So they have 2½ years. It is reasonable. It is feasible.

We would all like to have them on all planes as of yesterday. But we are living in the real world and to get the notice and have the equipment, complete the installation, we say a 2½-year period is more than adequate.

There have been a record number of near misses between aircraft this year, as I mentioned a while ago—over 857 in the first 9 months, a 37-percent increase over last year.

And one of the big reasons is that many air traffic controllers do not know the precise location of most general aviation aircraft. There is clearly a need for these transponders.

Last year general aviation flew approximately 34 million miles. There are approximately 125,000 aircraft operating in this country without an altitude-reporting transponder, and the controllers have no idea where these planes are.

It is a safety issue, not a monetary one. The mode C transponders cost approximately $2,000, including installation, and it is a small price for those who fly private aircraft to these busy airports.

I would wax heavy of heart with respect to the TCAS-II. They have a TCAS-III coming on board. The TCAS-II is from the lateral, from side to side, to have warning of air collision avoidance, and the altitude up and down is the TCAS-III.

The original sponsor of this particular safety requirement is our distinguished colleague from California, and I would like to yield to him at this particular time because what we have done is join the amendment of the Senator from California together with my transponder amendment so we could vote on it at one time.

Mr. WILSON. Mr. President, I rise today in support of the amendment introduced by Senators HOLLINGS and DANFORTH, and I thank the chairman for his kind words about my part in developing this important and needed legislation. Almost 1 month ago, I introduced the Aircraft Collision Avoidance Act of 1987—legislation designed to make our skies safer by reducing the risk of midair collisions involving commercial airliners that have correctly occupied so much of the time and attention of Chairman HOLLINGS and the members of the committee. Since that time, we have combined to the legislation, as he has told you, with previously introduced transponder legislation in which I was pleased and privileged to join him as a cosponsor, and we have before us today a comprehensive attempt to make our skies safer for the traveling public.

The technologies we are discussing now—the airborne collision avoidance systems and the altitude-encoding transponder—either exist now or are well on their way to being developed. Their installation on aircraft is crucial to avoiding another midair collision of the kind that caused the air to shudder in 1978 when a PSA airliner hurdled to the Earth in San Diego; and more recently, just 14 months ago, when we saw the tragedy of the Mexican airliner at Cerritos, CA.

Mr. President, in 1978 I spent the longest day of my life. I was then mayor of San Diego and was present at the scene of that incredible carnage. It is imperative that we here do all that we can to see to it that there is never another such day in anyone's life.

I want to take a minute to talk about the portion of the amendment dealing with the airborne collision avoidance systems—the radar technology which will warn airline pilots that they are running the risk of colliding with another plane. Similar legislation has been approved by the appropriate committees of the House of Representatives and will be debated on the House floor on Monday. Our legislation mandates the Federal Aviation Administration to require the installation and use of airborne collision avoidance systems, commonly known as TCAS, in commercial aircraft. Unlike so many proposals to reform our air traffic control system, the House bill has been endorsed by all segments of the aviation industry, and our proposal is not much different.

The Federal Government, in a cooperative effort between the Congress and the FAA, must take steps to lessen the risk of flying—a risk which has risen due to a growing air travel industry and an air traffic control system which has lost the public's confidence. According to the Nation's airlines, airline passenger traffic has grown by 87 percent during the past decade, aircraft departures have increased 30 percent during that time, and, currently, U.S. air carriers have over 400 aircraft on order and have options for 500 more—this at a time when the average aircraft in the 1986 fleet is some 18 percent larger than those in service 10 years ago.

Yet, Federal spending for air traffic safety has not kept pace with this growing need. The flying public continues to pay the aviation ticket tax, shippers pay the cargo tax, and the Federal Government is sitting on $5 billion of uncommitted funds in the aviation trust fund. At the same time, there are 2,600 fewer air traffic controllers now than there were before the PATCO strike, pilot-reported near midair collision reports have grown some 25 percent in 1987 compared to last year, and passenger complaints about service, as well as safety, have become so frequent that they are replacing the weather and challenging sports as the most common topic of discussion among travelers.

The Senate Commerce Committee, on which I am privileged to serve, has done well to report out the FAA reauthorization bill which we are debating now. The committee has also debated and approved legislation dealing with aviation consumer issues, and a bill to increase criminal penalties for violators of FAA regulations. However, the committee has not yet approved legislation dealing with aviation technology and safety issues. Therefore, I am pleased to join with my chairman and ranking Republican to mandate the FAA to develop an airborne collision avoidance system for commercial aircraft—equipment to warn pilots of imminent midair collisions.

Specifically, this amendment would require that the FAA develop a collision warning system known as TCAS II. TCAS II would warn commercial pilots that their present course would result in a midair collision, and that they should either climb or descend to avoid an incident. Although collision warning systems have been in development for almost 30 years, the FAA has only recently started to test them on aircraft. This amendment would require that TCAS II be installed on all noncommuter commercial planes within 4 years. In addition, we would require that this collision avoidance system be readily upgradeable to a more sophisticated system, known as TCAS III, which would give pilots the option not just of climbing or descending, but also of turning left or right.

Just as important, this amendment would require that all airplanes flying in high traffic density areas be equipped with transmitters which automatically report the plane's location and altitude to ground controllers. TCAS II and III cannot work without this complementary equipment in general aviation and commuter aircraft. For this reason, I am pleased that we have introduced this amendment which also requires that the FAA to develop a rule that all aircraft flying near the busiest 200 airports have such equipment.

Mr. President, with the mode C altitude encoding transponder and the TCAS systems, we will be able to assure those who are flying in America's skies that they will have the benefit of the latest in technological safety devices and I am proud to offer this with my distinguished colleagues.

All segments of the aviation community must work with the Federal Government to ensure that our skies are as safe as possible. Without such cooperation, the Congress faces an even harder road leading to safer skies.

I urge my colleagues to vote for this important amendment. We must see to it that there is not, again, a San Diego, or Cerritos. That is intolerable while it remains within our power to alter the situation and make the skies safer.

Thank you, Mr. President. I yield the floor.

Mr. BYRD. Mr. President, I am pleased to join Senators HOLLINGS, DANFORTH, and WILSON as a cosponsor of this amendment. This has not been a very good year for aviation safety. While the Administration sanguinely reports that the number of actual accidents are down, all of the indicator lights are flashing yellow: Near midair collisions last month were up 36.5 percent over last year. Even more disturbing is the fact that 50 percent of these near midair collisions now involve air carriers. In addition, operational errors are up 8 percent, and pilot errors are up 53.6 percent. If we heed these warnings now, perhaps we can avoid another tragedy like the one we just experienced in Detroit.

Mr. President, this amendment will set deadlines and provide funding that will speed the introduction of a new generation of safety technology. It will require FAA to certify and commercial aircraft to install TCAS II, the state-of-the art traffic alert and collision avoidance system, in a form that can later be upgraded to TCAS III. This is a wise policy that takes advantage of the best safety technology now available without precluding even more dramatic safety improvements in the future.

But TCAS can only avoid collisions with aircraft equipped with altitude-reporting transponders. Thus, this amendment requires transponders on all aircraft operating in controlled airspace. The FAA Administrator may make exceptions to this rule only if safety can be guaranteed.

The 2-year deadline for transponders and the 4-year deadline for the installation of TCAS mean that we will see dramatic safety improvements in the near term. In the meantime, FAA will be pressing ahead to develop even more advanced systems.

I urge my colleagues to heed the warning signs and support this amendment.

MODE C TRANSPONDER REQUIREMENTS

Mr. HEFLIN. Mr. President, I rise with some reservations about the Hollings-Danforth amendment to require automatic altitude reporting transponders in all aircraft entering TCA's, ARSA's, and TRSA's.

Obviously, transponders with the so-called mode C altitude encoding capability should be required in terminal control areas due to heavy density of large air carrier aircraft. It is unreasonable, however, to require general aviation aircraft in States like Alabama to pay for this sophisticated equipment when substantial amounts of Alabama's airspace are not covered by FAA radar, and traffic density is low.

Let's not forget that the controller at Mobile and Birmingham can positively identify general aviation aircraft and obtain and monitor their altitudes because two-way radio contact is already required in that airspace and radar gives the location of aircraft, even without transponders.

S. 1184, under consideration here today, has many solutions to the problems of aircraft separation but this quick fix is not necessary or cost-effective for the occasional users of ARSA's and TRSA's.

My constituents who regularly fly under instrument flight rules, or operate in and out of truly dense airspace, already have sophisticated equipment.

Until the new computers and additional controllers can be brought on board, we may be oversaturating the controllers with unnecessary information which they can't adequately use.

Unfortunately, this amendment would cost many aircraft owners in rural States like Alabama somewhere between $500 and $2,000 for marginal, if any safety enhancement, to occasionally fly to areas like Montgomery, Mobile, and Birmingham.

While I support the sponsors' efforts to protect the traveling public, I hope we can give the FAA the flexibility to determine the necessity of mode C in ARSA's and TRSA's, taking into account the radar coverage in other airspace in rural areas, so as to not require high cost equipment for general aviation with very limited value to the user of air traffic controllers.

The PRESIDING OFFICER. Is there any further debate on this amendment?

Mrs. KASSEBAUM. Mr. President, if I may just comment for a moment because I know that there are many who have thought this through very carefully. It is an important safety issue. If I could have offered any comment it would have been perhaps that the FAA would have had broader discretion defining the areas of density and areas of travel in which the transponder would be required. But I think certainly on the whole that a lot of time has gone into this and there certainly is no objection on this side of the aisle.

Mr. FORD. Mr. President, there is no objection to the amendment on this side.

The PRESIDING OFFICER. Is there any further debate on this amendment?

Mr. HOLLINGS. Mr. President, I move the adoption of the amendment.

The PRESIDING OFFICER. Is there any further debate on this amendment? If not, the question is on agreeing to the amendment.

The amendment (No. 1067) was agreed to.

Mr. EXON addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska.

AMENDMENT NO. 1068

(Purpose: To improve air service to certain small communities)

Mr. EXON. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Nebraska (Mr. Exon), for himself, Mr. Baucus, Mr. Burdick, Mr. Rockefeller, Mr. Byrd, Mr. Melcher, Mr. Daschle, Mr. Simon, Mr. Matsunaga, Mr. Gore, Mr. Durenberger, Mr. Grassley, Mr. Mitchell, Mr. Adams, Mr. Moynihan, Mr. Wirth, Mr. Pressler, Mr. Bumpers, Mr. Conrad, Mr. Murkowski, Mr. Bingaman, Mr. Garn, Mr. Boren, Mr. Karnes, Mr. Hecht, Mr. Hatch, Mr. Boschwitz, Mr. Reid, Mr. Wallop, and Mr. Harkin, proposes an amendment numbered 1068.

Mr. EXON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the bill, add the following new section:

Sec. 19. (a) This section may be cited as the "Small Community Air Service Improvement Act of 1987".

(b) As used in this section, the term—

(1) "air carrier" has the meaning given to such term in section 101(3) of the Federal Aviation Act of 1958 (49 App. U.S.C. 1301(3));

(2) "basic air service" means, with respect to points not in the State of Alaska—

(A) two daily round trip flights occurring on six days per week, with not more than one intermediate stop between the eligible point and a hub airport, which flights are scheduled to coincide approximately with the beginning and end of the business day;

(B) convenient connecting or single plane service at the hub airport to and from a substantial number of major destinations beyond such hub airport;

(C) service provided in aircraft large enough to accommodate estimated passenger and nonpassenger traffic at an average load factor for each such class of traffic of not greater than 50 per centum, except as provided in subparagraph (G) of this paragraph;

(D) service provided in aircraft with at least two pilots and two engines, unless, after October 31, 1978, no such aircraft have been employed in scheduled airline service for more than sixty consecutive operating days at such point;

(E) service provided with pressurized aircraft for operations which regularly exceed an altitude of eight thousand feet;

(F) service at fares which are not excessive when compared to the generally prevailing fares of other air carriers for like service between similar pairs of points; and

(G) service provided by an aircraft with an effective capacity of at least 15 passengers unless, after October 31, 1978, aircraft with an effective capacity of at least 15 passengers have not been employed from the eligible point for more than 60 consecutive operating days of scheduled airline services;

(3) "basic air service" means, with respect to points in the State of Alaska, service at reasonable fares and charges that is not less than that which existed in calendar year 1976 or two round trips per week, whichever is greater, unless otherwise specified under an agreement between the Secretary and the State agency of the State of Alaska, after consultation with the community affected;

(4) "eligible point" means any airport in the United States which is more than 50 statute miles by highway from a hub airport and for which a determination of essential air transportation has been made under section 419 of the Federal Aviation Act of 1958 (49 App. U.S.C. 1389);

(5) "enhanced air service" means service whose quality exceeds basic air service to the extent that it would require payment of compensation under this section in excess of the compensation required for such basic air service;

(6) "hub airport" means an airport that annually enplanes more than 0.25 percent of the total annual enplanements in the United States;

(7) "new eligible point" means any airport which is not an eligible point that has been designated by a State or local government as a point to receive scheduled passenger air service under this section, if such State or local government has guaranteed to pay 50 per centum of the compensation paid to an air carrier for providing the air service specified by such State or local government; and

(8) "Secretary" means the Secretary of Transportation.

(c) The Secretary shall pay compensation to air carriers to the extent necessary to—

(1) assure that each eligible point receives uninterrupted basic air service;

(2) assure that each new eligible point receives air service of such type and quality as may be specified by a State or local government which has agreed to pay 50 per centum of the compensation paid to an air carrier to provide such service; and

(3) provide for enhanced air service at each eligible point whenever a State or local government or any other person has agreed to pay 50 per centum of the additional compensation paid to an air carrier to provide such enhanced air service.

(d) In selecting an air carrier to provide air service under this section, the Secretary shall give particular weight to such carrier's demonstrated reliability in providing scheduled air service and to such carrier's contractual arrangements with other air carriers to assure service beyond the hub airport in accordance with subsection (b)(2)(B) of this section. The Secretary shall pay compensation to air carriers providing air service from the hub airport to points beyond the hub airport where the Secretary determines that such compensation is necessary to assure such service. The Secretary shall also encourage the submission of joint proposals by two or more air carriers which reflect arrangements to maximize service for eligible points to and from major cities beyond the hub airport of such carriers.

(e) Arrangements for basic air service made under this section shall, to the extent otherwise consistent with this section, reflect the preferences of the actual and potential users of airline service at the eligible point. In determining such preferences, the Secretary shall give substantial weight to the views of elected officials representing such users. Any arrangement providing for enhanced air service shall include such provisions for enhancements as are prescribed by the governmental entity or other person which has agreed to pay the non-Federal share of compensation and are otherwise lawful. The Secretary may require appropriate payment in advance or such other security to assure that the non-Federal share of compensation for air service under this section is made in a timely manner.

(f) An air carrier may not terminate, suspend, or reduce air transportation to any eligible point below the level of basic air service established for such point under this section unless such air carrier has given the Secretary, the appropriate State agency or agencies, and the communities affected at least 90 days notice prior to such termination, suspension, or reduction.

(g) If an air carrier has provided notice to the Secretary under subsection (f) of such air carrier's intention to suspend, terminate, or reduce service to any eligible point below the level of basic air service to such point, and if at the conclusion of the applicable period of notice the Secretary, despite diligent efforts, has not been able to find another air carrier to provide basic air service to such point, the Secretary shall require the carrier which provided such notice to continue such service to such point for an additional 30-day period, or until another air carrier has begun to provide basic air service to such point, whichever first occurs. If at the end of such 30-day period the Secretary determines that no other air carrier can be secured to provide basic air service to such eligible point on a continuing basis, either with or without compensation, then the Secretary shall extend such requirement for such additional 30-day periods (making the same determination at the end of each such period) as may be necessary to continue air transportation to such eligible point until an air carrier can be secured to provide basic air service to such eligible point on a continuing basis.

(h) If an air carrier is required to continue to provide service under subsection (g) of this section after the end of the required notice period, such air carrier shall be paid compensation by the Secretary for service beyond such period in an amount which is sufficient to cover its fully allocated actual costs plus return on used and useful investment (at market value) attributable to the service and the reasonably demonstrable cost of opportunities foregone as a result of being obliged to provide such extended service.

(i) The Secretary may incur obligations for the purpose of carrying out the provisions of this section from appropriations made for such purpose.

(j) In carrying out the provisions of this section, the Secretary shall invite the participation and comments of affected State and local governments to the maximum extent practicable. Arrangements made under this section shall be made by and in the name of the Secretary.

(k) Section 419(g) of the Federal Aviation Act of 1958 (49 App. U.S.C. 1389(g)) is amended to read as follows:

"(g) Duration of Program.—This section shall cease to be in effect after October 1, 1988.".

(l) There is authorized to be appropriated, for fiscal year 1988, and each of the next following nine fiscal years, such sums as may be necessary for carrying out the provisions of this section.

(m) This section shall take effect on October 1, 1988, and shall remain in effect for the 120-month period following the date of its enactment.

Mr. EXON. Mr. President, along with Senators Baucus, Burdick, Rockefeller, Byrd, Melcher, Daschle, Simon, Matsunaga, Gore, Durenberger, Grassley, Mitchell, Adams, Moynihan, Wirth, Pressler, Bumpers, Conrad, Murkowski, Bingaman, Garn, Boren, Karnes, Hecht, Hatch, Boschwitz, Reid, Wallop, and Harkin, I am offering an amendment to extend and modify the essential air service law.

Mr. President, we need to continue the Essential Air Service Program. The current law will expire in 1988. About 150 communities in 35 States are served by this law for their scheduled air service. The major reason always given in support of airline deregulation is that it has resulted in lower fares for the flying public. However, as the authors of the Airline Deregulation Act of 1978 recognized, deregulation would also result in loss of basic air service to many communities. The 1978 act did not intend a situation where "the right hand giveth" in the form of lower fares but "the left hand taketh away" in the form of losing air service. It would be no consolidation to say that prices are lower, once you drive for hours to get to your nearest airline connection.

The inclusion of the essential air service provision in the 1978 deregulation act strikes an important balance. Its purpose is to provide a modest amount of Federal assistance to retain a minimum level of air service for communities all across America. Basic air service is the lifeblood of our medium sized and smaller communities. Keep in mind that in many cases, these same communities have lost both their railroad passenger service and intercity bus service in the not so distant past. Loss of basic air service would be a crippling blow to their chances for economic development at a time when many of these communities are already struggling due to the state of the agricultural economy.

The present program has been important and needs to be continued, but as I stated earlier, it also needs to be improved. The amendment follows legislation I introduced earlier this year and extends the basic program for another 10 years, just as the first EAS Program was for 10 years. Second, it makes important changes in the program. In my opinion, the present law has been interpreted by both the former Civil Aeronautics Board and now the Department of Transportation to provide only the barest minimum level of air service. Often it is poorly timed, multiple stop service, and frequently involves small, eight-passenger aircraft. This has resulted in a drop in traffic at EAS cities while other airline traffic is growing tremendously. In many of the communities now receiving EAS subsidies, the amount of the subsidies would be much less or none at all if air service in recent years had been of a higher quality and greater reliability, so as to attract and hold regular passengers. I know in Nebraska, the quality and reliability of service has been a major problem that has caused a loss of passenger traffic. Improving the quality of service will improve the traffic volume and help make more of these EAS points self-sufficient, thereby saving dollars on the cost of this program. Accordingly, the amendment provides that EAS aircraft must have at least 15 seats, 2 pilots and 2 engines, and have pressurized cabins above 8,000 feet. Also, the aircraft are to make no more than one intermediate stop between an EAS city and a hub city. Flights are to be scheduled on 6 days per week, instead of only 5 days per week as of now. The special rules applying to Alaska in this regard are not changed.

Finally, I do want to comment that I hope the administration will cooperate with our efforts to make constructive changes. The only specific criticism of the current program by the administration brought to my attention is that cities very close to hub cities should not be eligible. I could not agree more. In the spirit of cooperation, my amendment addresses this objection by the administration to the current program. Under the amendment, cities within 50 miles of a large or medium hub city will not be eligible for the Essential Air Service Program. I think this is fair, addresses the administration's concerns, and will help hold down costs.

Mr. President, I ask for the support of my colleagues on this amendment.

Mr. President, legislation very, very similar to this legislation that I brought forth and had printed in the Record some time ago, and have talked about on frequent occasions, has passed the House of Representatives overwhelmingly, only 14 or 15 votes in opposition. Therefore, I hope that we can move forward expeditiously on this matter rather than holding it up. I would hope that the Senate would quickly approve the amendment which has a substantial number of cosponsors that I have indicated who support this legislation enthusiastically.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Is there further debate?

Mr. HEFLIN. Mr. President, I rise in support of this amendment. I feel that the adoption of this legislation is vital for the continued development of many of our smaller communities.

It is easy to see that common carrier service to the small, growing communities is essential for the continued growth and maintenance of the communities. Due to the decline of rail and bus service to small communities, air service is of vital importance to the survival of these communities. Without the continuance of the Essential Air Service Program, many of the small, rural communities that don't live within driving distance to a medium or larger hub city would find it difficult to attract new business and industry.

However, the enactment of the Airline Deregulation Act of 1978 threatened to remove service from small communities. In response to this threat, Congress enacted the Essential Air Service Program. This program has helped ensure the continued air service to those cities which had air service before deregulation. This program has served the Nation well and must be continued.

Mr. President, I strongly urge my colleagues to adopt this amendment.

Mrs. KASSEBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Kansas.

Mrs. KASSEBAUM. Mr. President, I certainly understand and appreciate the interests of the Senator from Nebraska [Mr. Exon] regarding essential air service and I understand the importance of it to the State of Nebraska. It is also important to Kansas and it is important to many of the States.

Mr. President, I would like to give a little history, however, about essential air service for a moment and why I have some reservation about the expansion of the Essential Air Service Program at this time.

First, the existing authorization for essential air service does not expire until October 1, 1988, almost a year from now.

I think before we expand the program at this point we should understand a little bit about how it came into being.

EAS is an important program, and as such I believe it deserves the extensive formal consideration that can only be achieved through the normal process of committee deliberations. Unfortunately the Aviation Subcommittee has been overloaded with pressing aviation issues this year, and—as I said—because the EAS authorization does not expire until next October, the committee believed the matter could be handled next session.

It was originally authorized as a transition program when the airline industry was deregulated in 1978. The Deregulation Act permitted airlines to terminate air service without Government approval as a part of route deregulation. Because of congressional concern that some communities would lose all air service, section 419 of the act guaranteed all communities then receiving service would continue to receive that service. In cases where it would not be profitable for an airline to provide such service, Congress authorized a temporary, direct subsidy.

Essential air service was enacted to bridge a 10-year transition period from regulated to deregulated air service. That 10-year transition period will expire in October of next year.

What we need to do is make two basic decisions about essential air service.

First, do we want to convert a program that was designed as a transition program into a permanent Federal subsidy? If the answer to that question is yes, we must decide what the conditions and format of that subsidy should be.

I would think, Mr. President, that we would better serve the interests of those communities now receiving essential air service if we gave the issue more indepth consideration than it is apparently going to receive. I am concerned, for instance, that the communities in Kansas that receive essential air service subsidies really still have to pay such high air fares because there are not the numbers of people traveling by air from these communities, that while they need this type of transportation really it is not readily available to many because of the costs. I think we have to look at that as one of the considerations.

As the EAS Program currently exists, it falls far short of meeting the needs of the local communities it was designed to serve. I think the number of passengers that are carried by EAS subsidized carriers has fallen dramatically since the program began in 1978.

Having said these things, Mr. President, let me lay out my specific objections to the Exon amendment at this time. First, it makes substantial changes in the existing EAS Program without the benefit of committee deliberations, although we did have one hearing that reviewed various aspects of the program. And then reauthorizes the substantially modified program for a period of 10 years. Under this amendment, essential air service would not terminate until the first day of fiscal year 1999.

The second difficulty I think is that it greatly expands the entitlement nature of the existing program. There are currently 133 communities getting a Federal subsidy for the air service that they receive. Providing that service is currently costing the Federal Government $24 million a year—not a large sum in light of our total $1 trillion budget, that is true. The Exon amendment has the potential for greatly expanding the number of points to which service is provided, the amount of service—in terms of the number of flights—provided to any given community, and the overall cost of the program.

While I realize that the Exon amendment provides for a cost-sharing arrangement when service is increased, the increased cost to the Federal Government will still be substantial. The Congressional Budget Office estimates this proposal would increase the cost of the EAS Program by $35 to $40 million in fiscal year 1989.

Mr. President, there will be and there is sufficient justification for Congress to continue, I think, and possibly even modify, the current program. In Alaska, for example, there is little doubt that essential air service is a vital transportation link. In those areas where air service is truly essential, Congress may decide that continued subsidized service is warranted. Unfortunately, there is no easy, clear-cut way for determining that subsidized air service is truly essential and where it is simply convenient. That determination, essential service versus convenient service, must be and I think would be a primary concern of the Aviation Subcommittee if the program were reauthorized under normal committee procedures.

These are some of the concerns that I have, Mr. President.

I will raise some more as the debate continues, but I will yield the floor at this time.

Mr. BAUCUS. Mr. President, compared to some of the other issues that come before this body, the Essential Air Service Program may seem like small potatoes. But for remote communities in the heartland of this country, it is extraordinarily important.

Airline deregulation has made it harder for rural communities to attract new jobs and keep the ones they have. EAS cushions the blow. That's why it's important for us to reauthorize EAS now.

Rural America remains in the grip of an economic crisis.

We have had glittering growth rates on the coasts, but economic depression in the heartland. Farmers, ranchers, miners, and timbermen are struggling to survive.

This is an economic tragedy. As Franklin Roosevelt said, "This Nation cannot survive if it is half boom and half bust."

Part of the answser is increased exports and higher commodity prices.

But another part of the answer is helping rural communities diversify their economies, so they do not have to depend so heavily on natural resource industries.

For that, we need a good transportation system.

That does not just mean highways and railroads. In this day and age, air service is not a "frill." It is just as important to economic development as highways were 30 years ago.

Companies will not locate in places that do not have good air service. This is especially true for the tourism and high-technology industries that rural communities are trying hard to attract.

Unfortunately, airline deregulation has set us back.

In rural America, airline deregulation has been a bust.

Since deregulation, seven Montana cities have lost jet service, and air fares have risen dramatically. In 1978 you could fly from Billings to Washington, DC for $156. Today the same ticket will set you back $337, a 116-percent increase. Fares to New York, San Francisco, Denver, and Seattle have risen by similar amounts.

The same is true in rural communities across the country. Businesses face:

Flight delays and economic cancellations; reduced or abandoned service; inconvenient scheduling; decreased passenger safety; and higher fares.

These are only the direct costs. The indirect costs include:

Increased costs and inconvenience of doing business; a decreased ability to attract capital; a decreased ability to attract new businesses and industries; a decreased ability to attract Federal investment dollars; decreased tourism opportunities; and an overall decrease in the quality of life and standard of living for those who live and work in rural communities.

Since 1978, the Essential Air Service Program has provided modest funding to guarantee minimum air service to 148 rural communities. In Montana, EAS applies to Wolf Point, Sidney, Glendive, Miles City, Havre, Lewiston, Glasgow, and West Yellowstone.

Mr. President, EAS is essential.

It is an economic lifeline for the communities it serves. Without it, most would lose their air service.

This would be a major blow to rural America. The future of these EAS cities is tied to the future of EAS.

For example, Wolf Point, MT, is one of the most isolated communities served by the Essential Air Service Program. Wolf Point is located in a county that is half the size of Massachusetts. The nearest hub airport is over 325 miles away. Can you imagine having to drive from Washington to Hartford, CT, to catch a plane?

Without air service, Wolf Point would be economically isolated. In addition, medical, postal, and supply services would be dramatically curtailed.

The EAS Program is scheduled to expire next October. It is essential that we reauthorize it this year.

Air carriers, business, and community leaders need to plan for the future. It would be unwise to put these small communities through the stress and uncertainty of a race-against-the-clock reauthorization next year.

For about $40 million annually, we have cushioned the shock of airline deregulation and helped keep 148 isolated rural communities economically alive. That is money well spent.

In addition, we can improve the program to provide better scheduling, equipment, and marketing. Our amendment reforms the EAS Program to make many of these changes.

Mr. President, for Montana and many other areas in this country's heartland, air service is critical to economic development. We are charting a course for a new economic future.

An enhanced and extended program benefits Montana. It benefits rural America. It benefits all of us.

But, at the same time, I must point out that EAS is not a panacea. It only maintains the current level of service, which is not adequate to meet all of our economic needs. We need to develop other programs to bring decent air service back to rural America. But today's amendment is a start.

Now, the Senator from Kansas has raised a couple of objections. With all respect to the Senator from Kansas, I think they are fairly minor. One point the Senator from Kansas makes is that this amendment authorizes EAS to 1998. That is right, it does. In the meantime, if Congress in its wisdom thinks there should be changes, we can always cut back on EAS, we can make whatever changes we want to make.

For the sake of these small communities in America, they need the security, they need the assurance, they need to know that they can have air service so they can attract capital, so they can attract business, so they can attract tourists, so their senior citizens can travel, so they are not stranded, so they do not continue to decline. They need that assurance.

As I say again, we can always amend the legislation later on if in our judgment there should be other changes. I do not think the 10-year extension is bad. I think it is good. I think it is necessary.

Point No. 2. Maybe the current $24 million might be slightly increased by this amendment. I ask you what is so wrong with that when the service in these communities is so abysmally poor? We spent $6 billion on the metro system in Washington, DC, $6 billion. Eighty percent of that is taxpayers' funds. Only 20 percent of that is fares. If we can spend $6 billion of taxpayers' funds for a metro system in Washington, DC, I think we can spend $24 million, maybe $30 million more for rural America.

Airline service in this country needs dramatic revision. I introduced an amendment calling for a commission to study the effects of economic deregulation of the airline industry. We all know that we have to study the economic effects of the deregulation of the airline industry, and one part of that is the effect on rural America.

I strongly support the amendment of the Senator from Nebraska, and I hope the Senate resoundingly approves it. I yield the floor.

Mr. CONRAD. Mr. President, when Congress adopted the Airline Deregulation Act of 1978 it recognized the importance of providing air service to small cities in rural or isolated areas. Congress made a commitment by guaranteeing essential air service to small cities which might have otherwise lost scheduled air service. That 10-year commitment ends October 23, 1988.

Congress guaranteed essential air service in 1978 because it envisioned subsidy free air service for EAS communities by the end of the 10-year authorization. Unfortunately, that congressional commitment dissolved into indifferent administration of the program, which in turn led to indifferent service to the cities involved. The Civil Aeronautics Commission and Department of Transportation policy of providing minimum service and minimum equipment for EAS cities led to declining passenger traffic. EAS communities have not achieved subsidy free status as a result of the administration of the program. In fact, virtually all EAS cities would lose scheduled air service in 1988 because they are not self-supporting as envisioned by the original authorization.

Discontinuing EAS as it now stands was not the original intent or goal of Congress when the Airline Deregulation Act of 1978 was passed. We need to give EAS supportive administration in order that small cities have a realistic chance to develop efficient air service. Improved scheduling and proper equipment will help reach the goal of self-sufficiency and meet the commitment of Congress. A high percentage of EAS communities can become self-sufficient with proper administration and dedication to improving service for the communities.

Elimination of EAS would be disastrous to the cities involved. In North Dakota, our economy has never fully recovered from the effects of the 1982 recession. Railroad lines have been abandoned, bus services have been terminated or reduced, and all cities are feeling the crunch of reduced Federal revenues. Without essential air service, many North Dakota cities will be completely cut off from fast access to emergency medical services and other services that most of us take for granted. Many of the elderly in North Dakota will have only the automobile as their transportation means for traveling hundreds of miles.

Economically, the discontinuation of EAS could effectively sound the death knell for the North Dakota cities involved. While still reeling from the farm crisis, the loss of air service to these communities would reduce to zero their chances of recovery by attracting business development.

In an age of instantaneous communication and technological breakthroughs, it is inconceivable that we are isolating our rural communities and returning them to a bygone era. I urge my colleagues to support the continued authorization of essential air service, and to fulfill the original commitment and goal of Congress.

Mr. EXON. Mr. President, I have listened with interest to the statement and arguments by my friend and colleague, the Senator from Kansas. Anything we ever do around here, of course, can be second-guessed—some legitimate questions, some legitimate complaints. Some of those the Senator from Kansas has raised. Rather than dwell on the negative, however, I think we should dwell on the positive aspects of this program. I think we should realize what the additional costs would be, and I for one, as the introducer of this amendment, and the cosponsors, recognize that this is not necessarily free.

The answers to the questions raised in the comments by the Senator from Kansas are, No. 1, the secret to the success of this program and keeping down costs is to recognize that one of the difficulties we are experiencing right now with service that would attract the traveling public is that the Essential Air Service Program is so inadequate at the present time that it keeps passengers in rural areas from using their local airports because of the basically lousy service.

The Senator from Kansas evidently suggests that since this program is already authorized for another 2 years, why do we not just let nature take its course and make a determination later.

Mr. President, that is the wrong kind of reasoning, I suggest. And that is the reason that mayors in the rural communities of America have united unanimously, I think, almost, in support of a longer range view and outlook of this program. If we allow this program to falter along for another 2 years under its present course, the assumption will naturally be, and properly so, from the air traveling public, that that will be the end of the program. The way the matter is being handled right now, in all probability, even this Senator would agree that if we are not going to do more than what we are doing now, unless we can look further than 2 years from now, we are guaranteeing that this program will end in 2 years from now, and properly and possibly it should.

The point being made by the National Committee of Cities and States for Airline Service, of which the mayor of Scotts Bluff, NE, is a key player and had a key role in the introduction of this legislation, simply says that we need to send a clear, reasonably financed signal for a 10-year period if we are ever going to turn around the decline in passengers in substantial portions of our rural communities.

Putting that in another context, Mr. President, unless we move now to look into the future and make a commitment to the future, then I suggest that we are doing a disservice indeed to our rural communities.

With regard to cost, there has been some talk about costs of this program this morning. I want to put that in perspective. I have here in my hand a letter from the Congressional Budget Office to me where I inquired as to the cost of this program.

I ask unanimous consent that this letter from Mr. Edward M. Gramlich, Acting Director of the Congressional Budget Office, be printed in the RECORD in full immediately following my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit No. 1.)

Mr. EXON. In that letter, CBO says to this Senator:

> S. 582 would authorize a new small community air service program that would cost, when fully implemented, an estimated $10 million to $15 million more per year than the current program.

I happen to feel as do the mayors involved in this that if we can have the foresight to move ahead to a commitment for an additional 10 years that that subsidy, the CBO says would be $10 to $15 million more per year than the present program, would be considerably less than that because the idea of implementing this and look to the future with some assurance that it would improve not only the quality of service but also would attract more airlines to put the right type of equipment and have the right schedules into these airports with some degree of assurance that they could have a reasonable return on their investment over a period of years.

I would simply point out, Mr. President, that if this legislation is not passed as it has been overwhelmingly in the House of Representatives—and I would simply say that service is not going to improve, service is going to continue to wind down and deteriorate so that we would have no option a year from now and certainly not 2 years from now to rekindle the program.

What we are trying to do with this proposition is simply to say that we have a program out there that was not well designed. We have made changes in the program that may cost under the estimates by CBO but a little bit more money than the present program. I do not think it is going to be that much. But since CBO is not enthusiastically for this program, I think it would be safe to say that they have not underestimated the cost. But even going along with their cost of $10 million to $15 million more per year for this current program, even if that would happen, Mr. President, is it too much to ask that in a $1 trillion-plus budget somehow, somewhere we can find or save an additional $10 to $15 million if that becomes necessary to help assure the future of rural America that is certainly a have-not portion of our society today.

There has been some question made about how far this has been considered. I would simply say, Mr. President, that we held an extensive hearing on this in the subcommittee. It has been thoroughly discussed by the Subcommittee on Aviation, and the Commerce Committee which overwhelmingly supports it. It has been already endorsed almost unanimously by the House of Representatives. I just hope all can recognize and realize that this is something positive, a positive signal to send to rural America. And I would hope that it would be accepted by the Senate.

Mr. President, I yield the floor.

EXHIBIT NO. 1

CONGRESSIONAL BUDGET OFFICE,
U.S. CONGRESS,
Washington, DC, April 2, 1987.

Hon. J. JAMES EXON,
U.S. Senate, Washington, DC.

DEAR SENATOR: In response to your request, the Congressional Budget Office has reviewed S. 582, the Small Community Air Service Improvement Act of 1987. S. 582 would extend the current small community air service program through October 1990. The program currently expires in October 1988. In addition, the bill would authorize a new small community air service program for a period of ten years.

Relative to current law, CBO estimates that S. 582 would increase costs by about $2 million to $3 million in fiscal year 1988 and by $35 million to $40 million in 1989. CBO estimates that costs would be $40 million to $50 million annually over the following few years. Funding for this program requires appropriation, but the appropriation is considered to be mandatory.

S. 582 would authorize a new small community air service program that would cost, when fully implemented, an estimated $10 million to $15 million more per year than the current program. The new program would require that aircraft have a minimum of 15 seats, be pressurized above 8,000 feet, have an average load factor of not greater than 50 percent, and make no more than one intermediate stop between an eligible point and a hub city. There would be some minor cost savings by eliminating those points that are within an hour's drive of a hub city.

CBO's estimate is based on the assumption that it would take two years to phase in the new program, and that the phase-in period would begin early in fiscal year 1988. Therefore the full costs of the new program would not be incurred until 1990. Added costs resulting from S. 582 would also be lower in fiscal years 1988 and 1989 than in subsequent years because, under current law, the present small community air service program would continue in effect through October 1988. Therefore, the costs of S. 582 for fiscal years 1988 and 1989 would be the increase over spending for the current program, while the cost of bill in later years would be the full cost of the new program.

CBO's estimate includes some costs for enhanced air service (including basic air service to otherwise ineligible points), which are particularly difficult to estimate because they would depend entirely upon the extent to which communities would take advantage of this option. Enactment of this legislation would affect the budgets of state and local governments only to the extent that they opt for this enhanced air service, for which they would pay 50 percent of the costs.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

EDWARD M. GRAMLICH,
Acting Director.

Mr. DASCHLE. Mr. President, I am pleased to have the opportunity to rise in support of the amendment being offered by my distinguished colleague from Nebraska. As a cosponsor of this amendment, I am fully aware of the need for extending the Essential Air Service Program.

South Dakota has seven EAS communities—Aberdeen, Brookings, Huron, Mitchell, Pierre, Watertown, and Yankton. One of seven South Dakotans reside in a town affected by the EAS Program. As you can see, the impact this program carries in my State is immense.

The economic crunch being felt so severely on Wall Street the past 2 weeks has been a reality in rural America for years. The impact of the farm crisis and the recession it created, not only in my State but in the home States of many distinguished Members of this body, has been drastic on the economies of many rural State communities.

I am proud that South Dakota has taken aggressive steps to the economic challenges it faces. Last week, a Taiwan trade delegation visited our State to discuss buying South Dakota products. Further, numerous businesses are looking at South Dakota for locating their businesses. But these efforts to revitalize our battered economy will be dealt a critical blow without essential air service.

This factor was exemplified during hearings earlier this year on essential air service, when a South Dakotan from the EAS community of Brookings explained that daily reliable air service to Minneapolis was a primary factor in that city's ability to attract the 3-M company's medical product division. This example is the rule, not the exception, in economic development for rural States. The importance of the Essential Air Service Program cannot be overemphasized in this effort.

EAS is also vital to providing adequate transportation options to South Dakotans. With nonexistent passenger rail service and very limited interstate bus service, South Dakotans need and deserve the option that EAS provides.

This amendment extends the EAS Program for 10 years, and modifies provisions of the EAS Program to allow for enhancing the program in South Dakota and other rural States. I strongly urge my colleagues to support this important amendment.

Mr. BURDICK. Mr. President, I cannot emphasize enough the importance of the amendment offered by the Senator from Nebraska concerning essential air service.

This service is like lifeline for rural America. It is not an option, but rather a necessity. Essential air service is that one vital service that moves not only people, but also communication and commerce to towns in rural States.

The move to deregulate the airlines in 1978 started the push for very high priority on the busiest and most profitable routes. Essential air service ensures that small, less profitable routes are not abandoned.

The cities of Devils Lake, Jamestown, and Williston, ND, are served by essential air service. These communities are committed to quality air service and pledge their support to maintain their airports.

Many of our Nation's small towns are feeling the effects of an economic decline. In order to attract new business and new residents there must be some amount of air service.

We can ill afford to jeopardize this vital service. We must act to extend the Essential Air Service Program. I ask my colleagues to join me in support of this amendment.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from Nebraska.

Mr. FORD addressed the Chair.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. FORD. Mr. President, we have several Members that are elsewhere, at the summit and so forth, who have amendments to this bill that are acceptable to both sides. I have discussed it with the distinguished Senator from Nebraska. He is willing for us to set his amendment aside temporarily so we might take up two amendments, one by the distinguished chairman of the Finance Committee, Mr. BENTSEN, and one by the distinguished chairman of the Budget Committee, Mr. CHILES.

If the Chair will forgive me for changing the schedule, it alters the arrangement I have had with some of the other Senators. But I think they understand. So, Mr. President, I ask unanimous consent that the pending amendment be temporarily set aside.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BENTSEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas.

AMENDMENT NO. 1069

Mr. BENTSEN. First, I thank the distinguished manager of the bill, and my good friend from Nebraska for his courtesy in this regard. What I have here is an amendment that would help citizens of the Southwest region, particularly of Laredo, TX. It is in the House bill. It provides the statutory mechanism for the airport authority there to rent space at the airport at below market costs in order to establish a commercial base there.

I send the amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Texas [Mr. BENTSEN] proposes an amendment numbered 1069.

Mr. BENTSEN. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of title I of the bill, insert the following new section (and conform the table of contents of such title accordingly):

SEC. 121. RELEASE OF RESTRICTIONS.

(a) GENERAL RULE.—Subject to subsection (b), in recognition of the benefits to the public, the city of Laredo, Texas, and its successors and assigns, are hereby released from all terms, conditions, reservations, and restrictions contained in the instrument of disposal dated February 12, 1975, by which the United States conveyed the property on which the Laredo International Airport, Laredo, Texas, is located to such city to the extent that such terms, conditions, reservations and restrictions apply to the portion of such property consisting of approximately 680.1586 acres of land which is designated under the 1985 master plan and land use plan for the Laredo International Airport as being available for nonaviation purposes.

(b) CONDITIONS.—The release granted by subsection (a) shall be subject to the following conditions:

(1) All revenues derived from the property to which such release applies shall be used for development, improvement, operation, and maintenance of the Laredo International Airport.

(2) The use of property to which such release applies shall not interfere with the operation and maintenance of such airport.

(3) Property to which such release applies may only be rented or leased if the term of the rental or lease agreement is 20 years or less and if compensation which is not less than—

(A) ¼ of fair market value is received in the case of a rental or lease agreement for a term of 10 years or less; and

(B) ½ of fair market value is received in the case of a rental or lease agreement for a term of more than 10 years.

(4) Property to which such release applies may only be transferred if compensation which is equal to or more than fair market value is received.

(5) The city of Laredo, Texas, shall provide to the Administrator of the Federal Aviation Administration—

(A) an accounting and management plan acceptable to the Administrator for managing the Laredo International Airport general fund; and

(B) an explanation of the management by such city of such general fund in calendar years beginning after December 31, 1977, and ending before the date of the enactment of this Act.

(C) IMPLEMENTATION.—The administrator of the Federal Aviation Administration shall take such action as may be necessary to carry out the provisions of this section.

Mr. BENTSEN. Mr. President, I am pleased to offer an amendment to assist the citizens of the Southwest region of my State out of its economic slump. This amendment, which is in the House bill, is to eliminate certain deed restrictions applicable to the nonaviation portion of the Laredo International Airport in Laredo, TX. These deed restrictions have served to inhibit the growth in the vicinity of the airport, and this amendment is an effort to solve this problem.

Mr. President, the airport at Laredo is a former Air Force base. It was given to the city of Laredo under an agreement in which the Federal Government can reclaim title to the land. The amendment I am offering permits the lease and rental of the nonaviation portions of the airport at less than fair market value for the development of an industrial park. The bill does not permit land to be sold at below market value. It stipulates that none of the land on airport property can be sold or transferred at below market value.

The city of Laredo, along with the rest of my State, is involved in innovative economic development measures. By permitting the lease of nonaviation airport property, it will allow the city of Laredo to move forward with its plans to develop an industrial park, which will increase commerce in the area. This will have the effect of creating jobs in an area where jobs are most needed.

I should also point out that this activity will not affect airport operations in any way. All of the airports runways, tower, terminal areas, and other essential aviation portions of the airport are preserved and any interference with essential activities is prohibited. The FAA is authorized to take such action as is necessary to carry out the provisions of this amendment.

The amendment is in the House bill. It was put in the House bill by my good friend Congressman BUSTAMANTE. Mr. BUSTAMANTE has pushed this issue for several months now, and I am pleased to complement his Herculean efforts here in the Senate. It is a testament to his persistence and commitment to his constituents in the Southwest region of our State that this matter has finally come to fruition. Mr. President, the bill has been cleared on both sides.

Mr. President, I have discussed this amendment with the managers of the bill on both sides of the aisle. It is my understanding that they have no objection to it. I urge its adoption.

Mr. FORD. Mr. President, the Senator is absolutely correct. There is no objection on this side to his amendment.

Mr. GRAMM. Mr. President, I thank my distinguished colleague for yielding. I would like to join him in support of the amendment just adopted.

Being aware that our distinguished colleague in the House, ALBERT GARZA BUSTAMANTE, had taken similar action in the House, I was working toward the achievement of that goal in the Senate. It simply shows great minds working in Texas as tending to come to the same conclusions.

I am happy to join my colleague and congratulate him for his leadership, and I am grateful, as I am sure the people of Laredo are, for this new opportunity that we have as a result of this action.

The PRESIDING OFFICER. Is there further debate on the amendment?

Mrs. KASSEBAUM. There is no objection on this side of the aisle.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Texas [Mr. BENTSEN].

The amendment (No. 1069) was agreed to.

Mr. BENTSEN. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. FORD. I move to lay the motion on the table.

The motion to lay on the table was agreed to.

Mr. FORD. Mr. President, I ask unanimous consent that the amendment by the distinguished Senator from Nebraska be temporarily set aside for the purpose of taking up an amendment by the Senator from Florida [Mr. CHILES].

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 1070

(Purpose: To promote safety in navigable airspaces)

Mr. CHILES. Mr. President, I send to the desk an amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Florida [Mr. CHILES] proposes an amendment numbered 1070.

Mr. CHILES. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 2, strike out lines 15 and 16 and insert in lieu thereof the following:

(10), as so redesignated, and inserting in lieu thereof a semicolon;

On page 2, strike out line 23 and insert in lieu thereof the following:

"extent; and

"(12) it is in the national interest to insure that nonaviation usage of navigable airspace be accommodated, but not allowed to decrease the safety and capacity of the airspace and airport system this title is developing.".

On page 4, between lines 17 and 18, insert the following new sections:

"SEC. 3A. Section 504(a) of the Airport and Airway Improvement Act of 1982 (49 U.S.C. 2203(a)) is amended—

"(1) by designating the existing text as paragraph (a)(1); and

"(2) by adding at the end thereof the following new paragraph:

"(2) As soon as feasible following the date of the enactment of this paragraph, the Secretary shall, in reviewing and revising the plan, take into account tall structures which reduce safety or airport capacity. In addition, the Secretary, in carrying out such review and revision, shall make every reasonable effort to address the legitimate needs of air cargo operations, and STOL/VSTOL and rotary wing aircraft operations.".

"SEC. 3B. Section 1101 of the Federal Aviation Act of 1958 (49 U.S.C. 1501) is amended to read as follows:

"HAZARDS TO SAFE AND EFFICIENT AIR COMMERCE AND THE PRESERVATION OF NAVIGABLE AIRSPACE AND AIRPORT TRAFFIC CAPACITY

"SEC. 1101. (a) The Secretary of Transportation (hereinafter in this section referred to as the 'Secretary') shall, by rules and regulations, or by order where necessary, require all persons to give adequate public notice, in the form and manner prescribed by the Secretary, of the construction or alteration, or of the proposed construction or alteration, of any structure where notice will promote safety in air commerce as well as the efficient use and preservation of the navigable airspace, and airport traffic capacity at public-use airports.

"(b) Where the Secretary determines, according to rules and regulations, that the construction or alternation of any structure may constitute a physical obstruction in navigable airspace, the Secretary shall conduct an aeronautical study to determine the extent of the adverse impact, if any, on the safe and efficient use of the navigable airspace. Upon completion of such an aeronautical study, the Secretary shall issue a report fully disclosing the extent of the adverse impact on the safe and efficient use of the navigable airspace which the Secretary determines will result from the construction or alteration of a structure.

"(c) When conducting an aeronautical study to determine the impact of the construction or alteration of a structure, the Secretary shall thoroughly consider, according to rules and regulations, all factors relevant to the efficient and effective use of the navigable airspace, and shall specifically consider:

"(1) the impact on arrival, departure, and en route procedures for aircraft operating under visual flight rules;

"(2) the impact on arrival, departure, and en route procedures for aircraft operating under instrument flight rules;

"(3) the impact on all existing public-use airports and aeronautical facilities;

"(4) the impact on all planned public-use airports and aeronautical facilities; and

"(5) the cumulative impact resulting from the proposed construction or alteration of a structure when combined with the impact of other existing or proposed structures.

"(d) In the administration of laws relating to broadcast applications and the conduct of aeronautical studies relating to broadcast towers, the Federal Communications Commission and the Federal Aviation Administration shall take such action as may be necessary to efficiently coordinate the receipt, consideration of, and action upon such applications and the completion of associated aeronautical studies.".

Mr. CHILES. Mr. President, I offer an amendment which will help make flying safer. It will help preserve limited airspace around our crowded airports and protect airspace for planned airport expansion. For the first time, it will require the Federal Aviation Administration to consider the effects of tall towers and other tall structures not only on safety but on air system capacity. Tall structures are dangerous in two ways. The first is the obvious danger they present to aircraft. In my State we have experienced a number of tragedies, the most recent a crash near the Venice Airport last February. A veteran pilot and his two passengers were killed.

The less obvious danger is the way tall structures affect aircraft operating under both visual and instrument flight rules. Towers effectively block out a large section of surrounding airspace. Over time, the cumulative effect can be very dramatic, as low-level enroute and airport approach and departure traffic must make allowance for the towers. By crowding that traffic into smaller airspace the chance of accidents is increased.

The effect can be expensive, too. For example, a tall structure may limit the usability of an instrument landing system that was paid for with several million dollars in Federal airport grant funding. And the problem is not only with existing airports and runways. Tall structures may block planned new airports and runways needed to meet growth in air traffic. That is a real, serious problem for States like Florida, where growth is unchecked and developments is taking its toll on available property.

For that reason I have been working with interested groups, the Commerce Committee, the Federal Aviation Administration, and the Federal Communications Commission to revise the basic statutes governing FAA review of tall structures. The amendment I am offering today is the result of that work, and I would like to thank the Aircraft Owners and Pilots Association, the National Association of Broadcasters, the National Association of State Aviation Officials and the Florida Department of Transportation for their good faith efforts.

The amendment asserts that a balance should be struck between aviation and nonaviation use of the Nation's airspace. It requires the FAA to fully disclose the impact of proposed structures on the Nation's airspace system. It requires the FAA and the FCC to coordinate the review of broadcast license applications. These are sensible provisions, and I am pleased to offer them today.

Mr. FORD. Mr. President, this tall-tower amendment by the distinguished Senator is in order, and we approve it on this side.

Mrs. KASSEBAUM. It is approved on this side as well, Mr. President.

The PRESIDING OFFICER (Mr. Kerry). The question is on agreeing to the amendment.

The amendment (No. 1070) was agreed to.

Mr. CHILES. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. FORD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. FORD. Mr. President, I ask unanimous consent that the amendment of the Senator from Nebraska to temporarily set aside so that the Senator from Texas [Mr. Bentsen] may offer an amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 1071

(Purpose: To extend the Airport And Airway Trust Fund taxes, and for other purposes)

Mr. BENTSEN. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Texas [Mr. Bentsen] for himself and Mr. Packwood, proposes an amendment numbered 1071.

Mr. BENTSEN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the bill, insert the following new title:

TITLE II—AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1986

SEC. 201. SHORT TITLE; AMENDMENT OF 1986 CODE.

(a) Short Title.—This title may be cited as the "Airport and Airway Revenue Act of 1987".

(b) Amendment of 1986 Code.—Except as otherwise expressly provided, whenever in this title an amendment is expressed in terms of an amendment to a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

SEC. 202. 4-YEAR EXTENSION OF TAXES ON TRANSPORTATION BY AIR; REDUCTION OF TAXES IN 1991 IF FUNDS REMAIN UNOBLIGATED.

(a) Tax on Transportation of Persons by Air.—Section 4261(f) (relating to termination of tax on transportation by air) is amended to read as follows:

"(f) Termination; Reduction in 1991 If Funds Remain Unobligated.—

"(1) In general.—Except as provided in paragraph (2), the taxes imposed by this section shall apply with respect to transportation beginning after August 31, 1982, and before January 1, 1992.

"(2) Reduction of rate in 1991.—In the case of transportation beginning in 1991, if the unobligated balance in the Airport and Airway Trust Fund as of September 30, 1990 (as determined by the Secretary) exceeds $3,000,000,000, then—

"(A) subsections (a) and (b) shall each be applied by substituting '4 percent' for '8 percent', and

"(B) subsection (c) shall be applied by substituting '$1.50' for '$3'.

"(3) Treatment of obligations.—For purposes of determining the unobligated balance of the Airport and Airway Trust Fund under paragraph (2)—

"(A) In general.—Except as provided in subparagraph (B), an amount shall be treated as obligated when it is appropriated.

"(B) Amounts obligated under section 505 of airway improvement act.—An amount shall be treated as obligated under section 505 of the Airport and Airway Improvement Act of 1982 when such amount is authorized.".

(b) Tax on Fuels Used in Noncommercial Aviation.—

(1) In general.—Section 4041(c)(5) (relating to termination) is amended to read as follows:

"(5) Termination; reduction in 1991 if funds remain unobligated.—

"(A) In general.—Except as provided in subparagraph (B), the taxes imposed by paragraphs (1) and (2) shall apply during the period beginning on September 1, 1982, and ending on December 31, 1991.

"(B) Reduction of rate in 1991.—In the case of any sale or use during 1991, if paragraph (2) of section 4261(f) applies during 1991, then—

"(i) paragraph (1) shall be applied by substituting '7 cents' for '14 cents', and

"(ii) no tax shall be imposed under paragraph (2).".

(2) Refund of fuel taxes on noncommercial aviation.—

(A) In general.—Section 6427 (relating to fuels not used for taxable purposes) is amended by redesignating subsection (p) as subsection (q) and by inserting after subsection (o) the following new subsection:

"(p) Gasoline Used in Noncommercial Aviation During 1991.—Except as provided in subsection (k), if section 4041(c)(5)(B) applies during 1991 and—

"(1) any tax is imposed by section 4041(c)(2) or 4081 on any gasoline sold during 1991, and

"(2) such gasoline is used as a fuel in any aircraft in noncommercial aviation (as defined in section 4041(c)(4)),

the Secretary shall pay (without interest) to the ultimate purchaser of such gasoline an amount equal to the excess (if any) of the aggregate amount of tax paid under sections 4041(c)(2) and 4081 on the gasoline so used over an amount equal to 6 cents multiplied by the number of gallons of gasoline so used.".

(B) Technical amendments.—

(i) Paragraph (1) of section 6427(i) is amended by striking out "or (h)" and inserting in lieu thereof "(h), or (p)".

(ii) Clause (i) of section 6427(i)(2)(A) is amended by striking out "and (h)" and inserting in lieu thereof "(h), and (p)".

(c) Tax on Transportation of Property by Air.—Section 4271(d) (relating to termination) is amended to read as follows:

"(f) Termination; Reduction in 1991 if Funds Remain Unobligated.—

"(1) In general.—Except as provided in paragraph (2), the taxes imposed by this section shall apply with respect to transportation beginning after August 31, 1982, and before January 1, 1992.

"(2) Reduction in rate in 1991.—In the case of transportation beginning in 1991, if paragraph (2) of section 4261(f) applies during 1991, then subsection (a) shall be applied by substituting '2.5 percent' for '5 percent'.".

(d) Expenditures From Trust Fund.—

(1) In general.—Section 9502(b) (relating to transfer to Airport and Airway Trust Fund of amounts equivalent to certain taxes) is amended by striking out "January 1, 1988" each place it appears and inserting in lieu thereof "January 1, 1992".

(2) Expenditures from trust fund.—The material preceding subparagraph (A) of paragraph (1) of section 9502(d) (relating to expenditures from Airport and Airway Trust Fund) is amended by striking out "October 1, 1987" and inserting in lieu thereof "October 1, 1990".

(3) Trust fund purposes.—Subparagraph (A) of section 9502(d)(1) is amended by inserting before the semicolon "or under the Airport and Airway Capacity Expansion Act of 1987 (as such Act was in effect on the date of the enactment thereof)".

SEC. 203. EXEMPTION OF CERTAIN HELICOPTERS FROM TAX ON TRANSPORTATION OF PERSONS BY AIR.

(a) Exemption.—Subsection (e) of section 4261 (relating to exemption for certain helicopter uses) is amended by striking out "or" at the end of paragraph (1), by inserting "or" at the end of paragraph (2), and by adding after paragraph (2) the following new paragraph:

"(3) any other use if tax is imposed under section 4041(c) or 4081 on fuel used in connection with such use,".

(b) Imposition of Tax on Fuels Used by Helicopters Exempt From Tax on Transportation of Persons.—Paragraph (4) of section 4041(c) (defining noncommercial aviation) is amended by adding at the end thereof the following new sentence: "Except as provided in subsection (l), the term 'noncommercial aviation' shall include the use of any helicopter which does not take off from, or land at, a facility eligible for assistance under the Airport and Airway Development Act of 1970 or otherwise uses services provided pursuant to the Airport and Airway Improvement Act of 1982.".

(c) Technical Amendments.—Sections 4261(e) and 4041(l) are each amended by striking out "System Improvement Act" and inserting in lieu thereof "Improvement Act".

(d) Effective Date.—

(1) Exemption.—The amendments made by subsection (a) shall apply to transporta-

tion beginning after September 30, 1988, but shall not apply to any amount paid on or before such date.

(2) FUELS TAX.—The amendment made by subsection (b) shall apply to sales or uses after September 30, 1988.

Mr. BENTSEN. Mr. President, on behalf of the Finance Committee, I am offering an amendment to the Airport and Airway Capacity Expansion Act of 1987. I am joined in offering the amendment by the distinguished ranking minority member, Senator PACKWOOD. This amendment provides the financing necessary to fund the programs authorized in the Airport and Airway Expansion Act.

Presently, a variety of taxes are imposed on air travel and air freight. These include an 8-percent excise tax on air passenger tickets, a 5-percent tax on domestic air freight, a $3 tax on international passenger departures and taxes of 12 cents and 14 cents, respectively, on gasoline and other fuels used for noncommercial aviation. These taxes are paid into the airport and airway trust fund. They expire at the end of 1987.

The Finance Committee amendment would extend these taxes for 4 years, from January 1, 1988, through December 31, 1991. The amendment specifies that revenues from these taxes will go into the airport and airway trust fund during this 4-year period, and the amendment authorizes the expenditure of funds from the trust fund for these years for the purposes specified in the authorization portion of the airport and airway bill.

The Finance Committee amendment also contains one other provision which I would like to call to the attention of the Senate: the amendment provides for a reduction in tax rates if the assets in the trust fund are not expected.

Presently, a surplus of approximately $5.6 billion exists in the airport and airway trust fund, because most of the expenditures which were authorized in the 1982 authorizing legislation have not been made. It was the Finance Committee's judgment that some action should be taken to see to it that the surplus is reduced in the future. The committee felt that if special taxes were to continue to be collected on air services, those taxes either should be spent for their intended purposes, or the taxes should be reduced to reflect the surplus.

To provide an incentive to spend the trust fund balances as envisioned by the Congress, the committee amendment includes a so-called trigger mechanism proposed by Senator PACKWOOD. Under this provision, the airport and airway taxes would automatically be cut by 50 percent for fiscal year 1991 if there is an excessive surplus in the trust fund at the end of fiscal year 1990. The Finance Committee set the allowable surplus at $3 billion; a surplus bigger than that would trigger the cut in taxes. This trigger mechanism will help prevent the Government from continuing to collect aviation trust fund taxes in large amounts without spending them for the important purposes for which they are intended.

I hope the Senate will act favorably upon this amendment.

Mr. CHILES. Mr. President, the trigger provision in this amendment would halve aviation taxes if the trust fund surplus is not below $3 billion at the end of 1990. The only way this level can be met is if the Senate authorizing bill is fully appropriated and if CBO's February economics are used. Under CBO's August assumptions, appropriations would have to exceed authorized levels to draw the trust fund down to below $3 billion. Since authorizations are rarely fully appropriated, it is clear that the trigger tax will lose revenues in 1991. Preliminary CBO estimates, outlined in a staff memorandum, indicate that loss to be at least $1.4 billion.

Clearly, we want to be very careful when we consider reducing revenues. We are currently involved in serious negotiations to provide real deficit reduction. I am very concerned that we do not reduce the resources available for that effort. I therefore ask that my friend from Texas, the distinguished chairman of the Finance Committee, consider this revenue loss very carefully in conference.

Mr. President, it appears that this amendment would be a revenue loser, losing about $1.4 billion in 1991, and more in the outyears. CBO has done an analysis on that, and I have just received it.

I say to the chairman and the ranking member that I hope this is an item they will look at. I hope they will look at it in conference. I think this is something we would have to look at carefully in conference, because it is a potentially large revenue loser.

I ask unanimous consent to have the CBO analysis printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 28, 1987.

MEMORANDUM

To: Steve Hornburg.
From: Mark Dayton, Mitch Rosenfeld, and Linda Radey.
Subject: Trigger Tax.

In response to your request, we have projected the budgetary effect of the trigger tax amendment to S. 1184 adopted by the Senate Finance Committee. This amendment would reduce by one-half current aviation excise tax rates on January 1, 1991 if the uncommitted balance in the Airport and Airway Trust Fund exceeds $3.0 billion at the end of fiscal year 1990.

CBO projected the level of the uncommitted balance in the Trust Fund under eight scenarios. In every case but two, the trigger would take effect and projected tax collections would be reduced in 1991. The two legislative proposals currently before the Congress for funding aviation programs (S. 1184 and H.R. 2310) projected under the CBO February baseline assumptions, are the exceptions. If the trigger were to take effect, tax revenue would be reduced by $1.4 billion in fiscal year 1991.

Table 1 details the projected end-of-year uncommitted balance in the Trust Fund scenarios. The uncommitted balance is the portion of the cash balance that has not yet been committed. An amount is committed when it is appropriated (for the appropriated accounts) or authorized (for the grants-in-aid program).

TABLE 1.—UNCOMMITTED BALANCES IN AIRPORT AND AIRWAY TRUST FUND

[By fiscal year, in millions of dollars]

	1987	1988	1989	1990	1991	1992
August 1987 Baseline [1]	5,520	7,270	9,400	11,880	14,760	18,100
February 1987 Baseline [2]	5,200	6,740	8,500	10,570	12,970	15,730
CBO reestimate of the President's budget [3]	5,520	4,950	4,580	4,510	4,910	5,800
H.R. 2890 [4]	5,520	6,160	7,170	8,520	10,160	12,260
S. 1184 (August) [5]	5,520	5,010	4,670	4,150	(6)	(6)
S. 1184 (February) [7]	5,200	4,480	3,790	2,890	(6)	(6)
H.R. 2310 (August) [8]	5,520	4,970	4,210	3,060	2,390	2,050
H.R. 2310 (February) [9]	5,200	4,430	3,330	1,790	720	−100

[1] August 1987 baseline budget authority, outlays, revenues and interest rates.

[2] February 1987 baseline budget authority, outlays, revenues and interest rates.

[3] Administration budget authority and outlays (CBO reestimate) and August 1987 baseline revenues and interest rates.

[4] H.R. 2890 budget authority and outlays (for fiscal year 1988) and August 1987 baseline revenues and interest rates. The figures assume CBO baseline rates of inflation for fiscal years 1989–92 for the trust fund programs. Budget authority for the Grants-in-Aid Program is based on H.R. 2310 levels; the obligation ceiling for fiscal year 1988 for the Grants-in-Aid Program is based on H.R. 2890, and the obligation ceilings for fiscal years 1989–92 are based on H.R. 2310 levels. Budget authority and outlays for fiscal year 1988 for the Aviation Weather Services Program are based on H.R. 2763.

[5] S. 1184 budget authority and outlays and August 1987 baseline revenues and interest rates. The figures assume full appropriation of authorizations, and assume that the maximum amounts for the trust fund portion of FAA operations will be appropriated.

[6] S. 1184 would reauthorize trust fund programs for only 3 years, through 1990.

[7] S. 1184 budget authority and outlays and February 1987 baseline revenues and interest rates. The figures assume full appropriation of authorizations, and assume that the maximum amounts for the trust fund portion of FAA operations will be appropriated.

[8] H.R. 2310 budget authority and outlays and August 1987 baseline revenue and interest rates. The figures assume CBO baseline rates of inflation for fiscal years 1990–92 for the Research, Engineering and Development Program, which was authorized for only 2 yr. (fiscal years 1988 and 1989). The figures also assume full appropriation of authorizations, and assume that the maximum amounts for the trust fund portion of FAA operations will be appropriated.

[9] H.R. 2310 budget authority and outlays and February 1987 baseline revenues and interest rates. The figures assume CBO baseline rates of inflation for fiscal years 1990–92 for the Research, Engineering and Development Program, which was authorized for only 2 yr. (fiscal years 1988 and 1989). The figures also assume full appropriation of authorizations, and assume that the maximum amounts for the trust fund portion of FAA operations will be appropriated.

Source: Congressional Budget Office.

You should note that the projections for S. 1184 and H.R. 2310 in Table 1 are based on the assumption that all accounts are fully appropriated at their authorized levels. This results in the maximum reduction in the uncommitted balance. However, over the period 1982–1987, appropriations have only been approximately 75 percent of total authorizations.

Table 2 details the projected revenues to the Trust Fund under the August 1987 baseline and under S. 1184 (with August 1987 baseline assumptions and assuming that the trigger does take effect). Since S. 1184 only extends taxing authority through calendar year 1991, projected revenues shown for the Senate bill in 1992 only include collections based on accrued liabilities incurred during the last quarter of calendar year 1991.

TABLE 1.—EXCISE TAX REVENUE TO AIRPORT AND AIRWAY TRUST FUND

[By fiscal year, in billions of dollars]

	1987	1988	1989	1990	1991	1992
August 1987 baseline	3.2	3.5	3.9	4.2	4.5	4.9
S. 1184 (August) [1]	3.2	3.5	3.9	4.2	3.1	[2] 1.0

[1] Assumes trigger takes effect.

[2] This amount is only for the 1st quarter of the fiscal year since S. 1184 extends aviation excise taxes only through Dec. 31, 1991.

Source: Congressional Budget Office.

Mr. BENTSEN. Mr. President, I understand the concern of the distinguished chairman of the Budget Committee. I share that concern. We will work together to see what can be done to bring this deficit back into balance.

Mr. CHILES. I thank the Senator.

Mr. FORD. Mr. President, the distinguished Senator from Texas has explained this amendment adequately. It is inportant to this piece of legislation, and we on this side will accept his amendment.

Mrs. KASSEBAUM. We accept the amendment on this side.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 1071) was agreed to.

Mr. FORD. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mrs. KASSEBAUM. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. FORD. Mr. President, I thank the distinguished Senator from Nebraska for allowing us to accommodate those members of the economic summit who are vital to this piece of legislation. Their amendments have now been adopted, and we have accommodated them. I want to express my appreciation to all those who have allowed us to proceed in this fashion.

We are now back on the amendment of the Senator from Nebraska.

AMENDMENT NO. 1068

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. EXON. Mr. President, I thank the Senator from Kentucky, the chairman of the Aviation Subcommittee.

I was pleased to yield especially to the Senator from Texas and the Senator from Florida, who are key negotiators in the very important matter that is going on right now, today, on the budget. I know that they have more severe constraints than anybody else in the Senate, and I want to hasten their work any way I can. I was glad to accommodate them.

Mr. President, I have nothing further at this time. I may have additional remarks later.

I hope we can move along, as the Senator from Kentucky has suggested, and take positive action on this.

I see two of my colleagues on the floor who I anticipate want to support this, and for that purpose I yield the floor.

Mr. BENTSEN. Mr. President, I see my distinguished colleague from Texas on the floor, and I know he shares my concerns for airports. I would like to have, if we could, unanimous consent that we have continuity to our dialog referring to the amendment on the airports.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROCKEFELLER. Mr. President, I want to support the amendment of the Senator from Nebraska concerning essential air service.

When the airline industry was deregulated in 1978, it was understood at that time by the Congress that there was going to be a period of difficulty for smaller and rural communities, so the Congress at that point put in the Essential Air Service Program which they allowed to go on for 10 years.

The fact of the matter is that when there was deregulation the effect in West Virginia and many rural States was immediate and traumatic. Most of our major airports lost major carriers almost immediately. Airports which had jet service and major airports in West Virginia were reduced to propeller service almost immediately.

Now we have communities like Elkins, Morgantown, Clarksburg, Beckley, Lewisburg, and Bluefield which have been guaranteed air service and which have no other way of communicating or commuting to the outside world other than that which is supported by the Essential Air Service Program.

It is difficult, I think, for those who come from larger States or more urban areas to understand the trauma of that fact that economic development is thoroughly integrated with airline service. People have to be able to get in and out. The Essential Air Service Program was cut off. If this amendment were to fail to pass there would be no air service in many of our West Virginia communities which sustain their economic life through the commuter service which they now have.

I should point out that since deregulation which, as I indicated, had a very bad effect on West Virginia, the number of airline departures in my State has decreased by 11 percent and the number of airline seats available for West Virginia air travel has decreased by 29 percent. In addition to that, air fares in West Virginia almost immediately after deregulation doubled and then tripled.

So there really is not much that West Virginia and States like West Virginia, which are rural in nature, get from deregulation. Had I been in the Congress, I would have voted against deregulation.

Now all that props us up is the essential air service, and it is absolutely critical to seven major points in our State that essential air service be maintained.

I understand deregulation services a number of big cities very well, and it is very important, but so is West Virginia and so are the rural communities of our country.

So that is why the Exon-Baucus amendment to extend the Essential Air Service Program is absolutely essential to my State and many others in this body.

I thank the Chair.

Mr. BYRD. Mr. President, I am a cosponsor of this amendment to reauthorize the Essential Air Service Program. This program is of primary importance to small, rural States like West Virginia. No State can sustain major economic growth without good connections to America's air transportation network. Adequate air transportation is vital if small, rural States like West Virginia, are to move ahead and develop economically.

The Essential Air Service Program was initiated in 1978 when airline deregulation ended air service to many small and moderate-sized communities. The program was designed to ensure that there would not be a mass exodus of the airline industry from small and rural communities that would virtually leave these communities isolated.

Currently, five West Virginia air centers—Morgantown, Clarksburg/Fairmont, Elkins, Beckley, and Bluefield/Princeton—receive assistance under the Essential Air Service Program. Some of West Virginia's major educational and financial institutions, research facilities, industries, and tourist attractions depend upon these airports for their continued growth. Without this program, maintaining airline service would be difficult, if not impossible.

Given the economic problems that West Virginia has endured in recent years—as well as the new economic opportunities on which enterprising West Virginians are working in several parts of the State, West Virginia cannot afford to lose current levels of airline service.

The adoption of this amendment will ensure that air service continues to rural areas, and I urge my colleagues to support this amendment.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. KARNES. Thank you, Mr. President.

I would like to open by congratulating and thanking my colleague from Nebraska for the strong statement that he has made over the years as he has been in the Senate supporting this very vital service for the State of Nebraska and very vital service for all of rural America, and I join with many people from my State of Nebraska in thanking my distinguished colleague from the State of Nebraska for his leadership in this area.

Mr. President, I would like to take this opportunity to make my views known with regard to the importance of continuing the Essential Air Service Program. I know that I voice the feelings of many citizens of Nebraska and rural America when I say that the Essential Air Service Program is exactly as its name implies—essential. And it should be continued.

Rural States like Nebraska, with small towns that are relatively isolated and distant from major population centers, have experienced a real decline over the past years in available, affordable, and reliable transportation. Bus and rail service to many towns has been cut back or stopped altogether, to the point that, in Nebraska, for example, neither of these overland services, bus or rail, meet the needs of many medium-sized communities. Air service to these communities has protected the business and quality-of-life interests in our rural America. We all know that in this day and age travel is a prerequisite for economic opportunity. Communication and quick, affordable access are essential for economic success, but this requires dependable availability of facilities and services. We need to provide an environment for air carriers interested in serving small towns that will allow them to keep their service running where it is now located and, hopefully, to even expand service in the future where economic opportunity allows. Given the realities and the economics of business travel, there is no single mode of transportation that can provide such opportunity better than air service. This is, I believe, why the Essential Air Service Program was originally established, and it is a program that has proven its value to the continued vitality of many small towns in the country.

By depriving the smaller, less accessible communities in the Midwest of convenient and efficient air service, air service that has begun to show signs of growth and that has provided to EAS communities these essential opportunities, we would deprive these communities of their opportunity to grow as economic entities that may eventually be able to support air service without subsidies as I believe we are seeing now in the economics of air service.

Nebraska's experience with EAS subsidies provides a good example of the steady success of this program. Nebraska's EAS carriers currently receive nearly $0.5 million less now than they did 5 years ago. Nebraska's dependency on Federal funds to continue and improve this air service has significantly decreased. Taking into account the fact that the program experienced a startup phase during this time and the fact that Nebraska is now "up to speed" after receiving only $2.7 million under this program over the last 5 years. This $500,000 reduction is substantial and admirable.

Specific routes made available under the program in Nebraska provide excellent examples of how the funding provides direct benefits to my Nebraska citizens. Our crucial panhandle route, servicing western Nebraska, currently receives close to $375,000 down $120,000 from the level of funding in 1981. The Nebraska River route, which travels across the State, is currently funded at nearly $550,000, down almost $200,000 from its 1981 funding level. These numbers alone show us that the air service on these routes has become more efficient, less costly to the Federal Government, and are even closer to achieving economic independence of no subsidies that the program originally envisioned.

My point from all of this is that the EAS program has enabled airlines servicing the designated EAS routes in my State to grow, while the subsidy cost has decreased, significantly decreased, exactly what the program, as I said, was designed to achieve the goal of the program is to eventually eliminate Federal spending subsidies for the program, we are moving toward that goal with great progress. But now is not the time to stop EAS funding. To eliminate the program now would only cut the program short before the investment already made has a fair chance to mature by allowing the private sector to make schedule and economic decisions so that the air carriers can eventually achieve service without subsidies. The question we must ask is not "has this program been effective?" The answer is "Yes." Because it has been. Thus, termination or reduction of scheduled air service can strike a death blow to the economic growth efforts of these small towns.

The quality-of-life issue is very relevant in the State of Nebraska. I am distrubed that the population of many small towns in this country are either holding steady or even declining at the same time that the national population is increasing.

It is clear that many young people determine to leave small towns, small towns of their youth, because of the absence of economic opportunity, and I sincerely believe, having spent many of my earlier years in a town of 700 people, Fairmont, NE, that this essential air service will encourage economic opportunity for rural Nebraska and rural America, so that people will opt instead for life and employment opportunities in rural centers.

In the majority of EAS communities in Nebraska, the local populations range roughly between 6,000 and 18,000 people. The closest air hub to any of these communities is 75 miles away and many are over 160 miles away. I suspect that, without the continuation of good, reliable, and convenient air service, these populations may deteriorate even more over time.

I understand that there is a substantial cost factor that we must consider with the Essential Air Service Program. In order to meet the rigorous spending discipline that the Congress has placed itself under, it is my opinion that we should keep the EAS Program as streamlined and lean as possible if that is required to keep the program going. When we consider that a mere $32 million is currently authorized under a bill that has earmarked nearly $11 billion to our Nation's transportation needs, it seems clear that the financial burden of this program is not out of line with national transportation and economic goals. In fact, I support major cost-sharing provisions in this legislation that will ensure substantial local fiscal support for the program while affording the possibility of actually expanding the program to new air carriers, thereby increasing service and competition in otherwise non-competitive markets, which can only serve the long-term best interests of the citizens served by the program. Therefore, we should view these expenditures as prudent investments in the economic infrastructure of America.

The key is to keep reliable and regular air service to small communities, rather than let the current system expire in October 1988 as the law currently provides. Moreover, any opportunity to enhance the program would certainly aid in the development of rural America. Maintaining safe and reliable airways is difficult already, but allowing the EAS Program to expire might only make matters worse.

Mr. President, before I conclude I would like to state how important it is to continue this service for at least 10 years.

In Nebraska right now we are seeing many companies taking a look at the economic advantages of locating in a small State, a State that is right now attempting transition from agriculture to a more diversified economic base. By providing assurance to these companies, to these enterprises, that we will have available air service, we make sure that their investment that they are planning to make in rural America will be an investment that is a sound investment.

Therefore, Mr. President, I urge my colleagues to consider the impact, not only on our country but on rural America, if we end Essential Air Service next year; and, I encourage them to vote for continuing this lifeline to our smaller communities. I once again compliment my colleagues from Nebraska for taking the leadership in this very important area.

Thank you, Mr. President.

AMENDMENT NO. 1072

(Purpose: To extend section 419 of the Federal Aviation Act of 1958 through September 30, 1990, and for other purposes)

Mrs. KASSEBAUM. Mr. President, I send to the desk an amendment in the second degree to be a substitute to the Exon amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Kansas [Mrs. KASSEBAUM] proposes an amendment numbered 1072 to amendment No. 1068.

Mrs. KASSEBAUM. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Strike out the proposed language and insert in lieu thereof the following:

SEC. . (a) Section 419(g) of the Federal Aviation Act of 1958 (49 App. U.S.C. 1389(g)) is amended to read as follows:

"DURATION OF THE PROGRAM"

"(g) This section shall cease to be in effect after September 30, 1990.".

(b) Not later than September 30, 1989, the Secretary of Transportation shall report to the Congress on the desirability and feasibility of further extending the program. Such report shall make recommendations on possible program modifications including, but not limited to, modifications which would increase annual numbers of enplanements, reduce individual passenger costs, and improve program service. Such report shall also make recommendations on options for allocating the costs of providing essential air transportation, on a cost-sharing basis, between various levels of government, and shall recommend the share of such compensation that should be allocated to, and contributed by, the jurisdictions involved.

Mrs. KASSEBAUM. The substitute amendment I am offering provides for a simple 2-year reauthorization of the existing Essential Air Service Program. This would be basically a 3-year extension from now because it would not go into effect until the present authorization has expired, which is a year from now.

It does not expand the program. It does not provide for either increased service to existing communities or new service to new communities. It is truly a simple continuing resolution type of approach to the program with one major difference. The amendment also mandates a study of the program by DOT. Specifically, the Department of Transportation would be required to study the desirability and feasibility of matching requirements of the type provided for in the Exon amendment. The matching requirements study would pertain to basic service.

Under my amendment, EAS would be extended to September 30, 1989, with the Department of Transportation required to report to Congress no later than September 30, 1989. That will give Congress a full year to consider modification to the program before any further extensions would be required.

Let me just say briefly, Mr. President, I share the concerns of the Senators from Nebraska. I share the concerns of all Members who have large rural areas that are not easily accessible by rail, bus, or air. However, I would like to point to a couple of statistics which show what has happened in the 10 years since we have had essential air service subsidies.

Dodge City, KS, in 1978, when we started the Essential Air Service Program at the time of deregulation, had 6,198 passengers. In 1985, that figure was 2,653.

In Alliance, NE in 1978 there were 3,287 passengers. In 1985, the number dropped to 496 passengers.

Mr. President, I think this indicates that during the 10 years that we have had essential air service subsidies, we have not addressed the concerns of rural America in providing affordable transportation. Everyone was put on notice in 1978 that this program would only last 10 years. Now we are saying we still need it another 10 years and we need to expand it.

I think the problems will not be met, whatever the costs may be, by simply extending and expanding essential air service. We need to, I believe, force our States and our communities to look at the more creative means of addressing the real problems, and they are real, of rural transportation.

For that reason, I believe that this substitute amendment does give us time to look in a constructive and forceful manner, and I hope aggressive manner, at some definite ways that we can meet the concerns of air transportation in rural America.

Mr. EXON. Mr. President, I wonder if I might ask the Senator from Kansas, if she would like to have a vote on this to move things along, if we could, at this time, agree to a specific time for debate?

I would suggest that possibly one-half hour, equally divided with the time for the amendment controlled by the Senator from Kansas and the time against her amendment controlled by the Senator from Nebraska.

Would that seem fair and reasonable to the Senator from Kansas?

Mrs. KASSEBAUM. Mr. President, it certainly is reasonable. I am ready to vote now. We have had some debate already on this and so I am happy to have a vote at any time and will defer to the Senator from Nebraska if he wishes further time.

Mr. EXON. I appreciate the consideration of my friend from Kansas. I think there are those of us who would like to speak in opposition to this and I would like to say that I believe that we would need at least 15 minutes on our side in opposition to the amendment.

Would the Senator from Kansas agree to the time constraints that I outlined, one half hour equally divided, with the understanding, of course, that at any time anyone could yield back the time that they have remaining?

Mrs. KASSEBAUM. That remains agreeable.

Mr. EXON. I ask unanimous consent, Mr. President, on the amendment offered by the Senator from Kansas, that it now be agreed that there be one half hour equally divided with the time in support of the amendment to be controlled by the Senator from Kansas; the time of the opposition to this amendment to be controlled by the Senator from Nebraska.

Mr. PRESSLER. Reserving the right to object, and I shall not object, I wish to speak very briefly on the general subject just prior to the beginning of that half-hour.

Mr. EXON. I knew my friend from South Dakota would want to speak. I know my friend from West Virginia would like to speak. I was thinking about 5 minutes, although my friend from Montana wants to speak.

I would just say that probably, if we could agree to 3 minutes for each of the Senators who are on the floor at the present time that I know are waiting?

Mr. FORD. Will the Senator yield for a unanimous consent request?

Mr. EXON. I yield.

Mr. FORD. Mr. President, I ask unanimous consent that the distinguished Senator from South Dakota [Mr. PRESSLER] be recognized for 4 minutes; that at the end of that time there be 30 minutes of debate on the amendment equally divided between the Senator from Kansas [Mrs. KASSEBAUM] and the Senator from Nebraska [Mr. EXON].

The PRESIDING OFFICER. Without objection it is so ordered.

The Senator from South Dakota is recognized for not to exceed 4 minutes.

Mr. PRESSLER. Mr. President, I rise today in strong support of this amendment to extend and improve the Essential Air Service Program, which is scheduled to expire next year.

Over the past 9 years, airline deregulation has had a devastating impact on our Nation's smaller communities and rural areas. The only assurance that air transportation continues to be available to the less populated areas is the Essential Air Service Program, which guarantees the smaller communities a certain level of air service.

This morning in the Small Business Committee we had a hearing on the loss of air service to business development in many of our smaller communities. I have also had conversations with businesses in the smaller communities out of South Dakota. This is not a regional matter. The smaller businesses in communities in New York and elsewhere face the same problems. The air link is a vital element in every State's economic development program and is necessary for industrial expansion.

An example from my home State might be helpful. The city of Yankton, SD, is working to bring new businesses into its community. One of the biggest problems faced is the uncertain future of air service. Efficient air service is an essential criterion for any business or other major enterprise seeking to locate in a particular area.

Yankton is an EAS community. It must be able to ensure a stable airline service.

My point is that for the hundreds of Yanktons around the country, air service is a key component of any local economic development program.

Mr. President, during the consideration of this legislation in the subcommittee, I inserted a number of statistics regarding the number of boardings in different communities in my State as illustrative of the importance of having this service to help feed into some of our hub airports. Also, the impact on economic development.

Mr. President, with that, I conclude. I urge my colleagues' favorable support of this amendment which will guarantee a truly national air transportation system.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. EXON. The time agreement is now in effect and the Senator from Nebraska has 15 minutes. Is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. EXON. I yield 3 minutes to the Senator from West Virginia.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROCKEFELLER. Mr. President, the Senator from Kansas, and I know of her very deep interest in air transportation for rural States, indicates that she wants to give us time to study this matter more clearly for a period of a couple of years.

It really is not time that we need. I think it is very clear what the situation is. That is, that we need 10 more years.

It is true that in 1978 when airline deregulation passed, this was put in there as a 10-year program, the Essential Air Service Program. But we had no idea at that time—nobody had any idea at that time—of the havoc that would be created in the airline industry, particularly in rural areas.

If one goes across the floor of the Senate and talks to those Senators who were here in the Senate in 1978, who voted for deregulation, almost all of them will say if they had to do it over again, they would vote against it because they had no idea of the havoc that would be caused.

We in West Virginia, Montana, and other States, understand the havoc which has been caused. It is a truly terrible situation in West Virginia in which seven of our major communities, if they are to be without essential air service, will have an economic base that will no longer grow and will, in fact, decline. We need 10 more years.

This is not an attempt to study or think out a new approach. It is an attempt in the Exon amendment to continue the Essential Air Service Program because we need it.

Mr. President, there are 150 communities in the United States that need 10 more years. Two years will create uncertainty. In each one of the seven cities of ours, there has been at least one instance of a turnover in the airline. That is, a new airline came in resulting in deterioration of service or maintenance of aircraft, something we are all concerned about.

What we do need is stability, the stability embodied in the amendment of Senator EXON. That is a 10-year extension of the Essential Air Service Program.

I hope we will defeat the amendment of my good friend from Kansas and support the underlying amendment of the Senator from Nebraska.

The PRESIDING OFFICER. Who yields time?

Mr. EXON. Mr. President, I yield 3 minutes to the Senator from South Dakota.

Mr. DASCHLE. Mr. President, I have tremendous respect for the Senator from Kansas, but I must say that I think her amendment in this case is misguided and I would hope that we could defeat it.

I think the Senator from West Virginia said it very well. We need something other than time. In dealing with the Essential Air Service Program, more than anything else we need continuity. We need that continuity right now, especially in the upper Midwest, for two reasons: The first reason is one that has been talked about on this floor for many, many years. That is the difficult time in transition that we now go through in the agricultural communities.

The agricultural communities are going through a reconstruction period, a time within which we recognize the need for diversification in economic growth and stability. As we diversify, one of the most significant, successful tools that we have available to us is the availability of transportation, air transportation, transportation by truck and by rail.

There is no more important ingredient as we begin to make the case to come to the Midwest, to come to the rural areas, as businesses seek out new opportunities, than the availability of air service.

The second issue is one that is no stranger on this floor, and that is deregulation. During the last 10 years, our State has suffered through the pangs of deregulation. The country has prospered in many respects. Enplanements are up by more than 100 percent. We have gone from 200 million passengers to 400 million passengers in the last 10 years.

But at the very time we have seen the doubling of opportunities for enplanements nationwide, in most rural areas enplanements have been cut in half, including South Dakota, in essential air service.

As the Senator from West Virginia stated, we need continuity, we need to recognize the effect of deregulation in rural areas. By all means, we need to understand what economic diversity can do to rural areas as we try to recover from disastrous economic policies of the last several years.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. EXON. Mr. President, I yield 3 minutes to the Senator from Montana.

Mr. BAUCUS. Mr. President, all of us have the utmost respect for the Senator from Kansas. She is probably one of the most thoughtful Members of this body. We have the highest regard for her.

But I must say, Mr. President, this may be the one time, or perhaps the second time, that we should take another course.

Mr. President, I say that for this reason: These rural communities in Montana and elsewhere are hanging on by their fingertips. They are facing very difficult economic times. If they are to plan and develop, they need certainty. They need the security of knowing that they are going to have air service.

Unfortunately, if this amendment is agreed to, they will be less secure. They will not be able to go to other parts of the country, to urban markets, and say, "Look, this is what we are doing. You can count on good air service."

Some parts of our country have a Swiss-cheese economy. Some parts are doing quite well. They tend to be the coastal States. But in the hinterland areas, we find they are not doing very well. Those economies are, in sparsely settled areas, mostly agricultural. The rural communities in urban States are also not doing too well. Those are the holes in the Swiss cheese.

So it is imperative, Mr. President, that EAS first be continued—it has to be continued for 10 years to provide security—and, second, the level of air service available to these communities should be improved.

They need air services to be able to pull themselves up by their bootstraps and to grow and to prosper.

Mr. President, as taxpayers in this country spend $6 billion or 80 percent of $6 billion to build a subway system in Washington, DC—all America is paying for the Washington, DC, subway system, 80 percent of $6 billion. That is $4.8 billion—it seems to me at the very least we can give the assurance to rural America that we would provide it up to $40 million for air service to these areas. I think all of America would agree that we should make that commitment.

I very strongly urge Senators to support the amendment of the Senator from Nebraska because I think that it will provide the kind of security that rural America needs.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. EXON addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. EXON. How much time do I have remaining?

The PRESIDING OFFICER. The Senator from Nebraska has 6 minutes and 48 seconds.

Mr. EXON. I yield myself 4 minutes and ask that I be notified when that time is up.

Mr. President, the amendment offered by the Senator from Kansas is very clearly a killer amendment, and I believe it should be so labeled.

The Senator from Kansas has made an argument, and I agree with some of it, but as we have been stating since the beginning of the debate on this amendment, the question really comes down to whether we want to consider the continuation of essential air service or we want to end it.

The Senator from Kansas clearly says we have some time. The facts are we do not have time if we want to look beyond the next 2 years. This is a killer amendment, and it should be so labeled. I am doing that at this time.

Mr. President, essential air service not only is important to what we generally consider rural States but also to many States that are not generally lopped into the rural States of America. The facts are that there are important rural areas in all of our States of the Union. I just wanted to read into the RECORD at this time, Mr. President, the States that are now using the Essential Air Service Program and would be able to use them in the future if this amendment is adopted.

Those States presently using the essential air service are Alabama, Arizona, Arkansas, California, Colorado, Georgia, Illinois, Indiana, Iowa, Kansas, Maine, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming. That is quite a list.

Mr. President, I also want to say that this piece of legislation is enthusiastically endorsed by the people who know the needs of air transportation in rural areas the most. That includes, Mr. President, the National Committee of Cities and States for Airline Services. The chairman of that organization is Robert Anderson, of Minnesota. The regional vice presidents are Don Overman, of Scotts Bluff, NE; John Rabenberg, of the Montana Airport Authority; Mr. Jerry Fink, the airport manager of Beckley, WV; Tom Gustafson, the mayor of Petersberg, AK.

Practically all of the coordinators all over the United States are strongly in support of this bill. In fact, the only reason, Mr. President, for the National Committee of Cities and States for Airline Service is the continuation of the essential airline service as we have fashioned it in this particular amendment.

Mr. President, I reserve the remainder of my time.

Mrs. KASSEBAUM. Mr. President, I have made my case. I believe it is a very valid one. I greatly appreciate the respect that has been expressed. I wish I could translate it into votes.

I do not see any need on this side to further explain my amendment. I yield back the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. EXON. Mr. President, I yield whatever time is necessary and remaining on my side to the distinguished Senator from South Dakota.

Mr. PRESSLER. Mr. President, what we are doing here is very important to the smaller towns and cities and rural areas across America.

The essential air service is extremely important to business development. I have cited the importance to cities such as Yankton, SD, and others. It is just critical at this time that we continue this program. Because the transportation system is so essential to economic development, many businesses that are considering moving into my State ask: Will we have air service?

Essential air service is very critical. If we lose it, we are going to lose a lot of those businesses that are trying to come. For that reason, Mr. President, I move to table this amendment and I ask for the yeas and nays.

The PRESIDING OFFICER. The Chair informs the Senator from South Dakota that the motion to table is not in order until time for the proponents has expired.

Mr. EXON. Mr. President, I would advise the Chair that the Senator from Nebraska, who controls time on this side, intended to indicate—I thought that I did so indicate—since the time of the Senator from Kansas had already been yielded back, that at the end of the remarks by the Senator from South Dakota, all of the time in opposition to the amendment would be yielded back, and therefore I suggest to the Chair that the motion from the Senator from South Dakota is in order.

Mr. FORD addressed the Chair.

The PRESIDING OFFICER. Did the Senator from South Dakota yield back the remaining time?

Mr. PRESSLER. I ask unanimous consent to yield back all remaining time.

The PRESIDING OFFICER. Then all time having been yielded back the motion to table is in order.

Mr. PRESSLER. Mr. President, I move to table.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. FORD. Will the Senator from South Dakota yield for just a moment? We either need to set this amendment aside for 15 or 20 minutes or go to a quorum call, and I would prefer if he would withhold his motion for about 15 minutes.

Mr. PRESSLER. Mr. President, I would like to get the motion to table made so we can have it set and we agree to vote in 15 minutes.

Mr. FORD. That changes the parliamentary procedure.

The PRESIDING OFFICER. The Senator will suspend for 1 minute.

The Chair informs the Senator from South Dakota that his motion is in order. However, in keeping with the request of the Senator from Kentucky, if the Senator from South Dakota would entertain a unanimous consent request to then delay the vote, the Chair would be in a position to rule at that point.

Mr. FORD. Would the distinguished Senator object if I asked unanimous consent that the vote occur at 1:10?

The PRESIDING OFFICER. Is there objection? Hearing none, it is so ordered. The vote on the motion to table will occur at the hour of 1:10.

Is there a sufficient second on the motion to table? There is a sufficient second.

The yeas and nays were ordered.

Mr. FORD. Mr. President, is it in order to set this amendment temporarily aside so that we might take up other amendments in the next 15 or 20 minutes?

The PRESIDING OFFICER. The effect of the unanimous consent request is already to set the second-degree amendment aside. Is it the request of the Senator from Kentucky to set the first-degree amendment aside?

Mr. FORD. That is correct.

The PRESIDING OFFICER. Is there objection? Hearing none, it is so ordered.

Mr. McCAIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

AMENDMENT NO. 1073

(Purpose: To require a study of the various methods of air traffic control which might be utilized at the Grand Canyon Airport)

Mr. McCAIN. I send an amendment to the desk and request its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Arizona, Mr. McCain, proposes an amendment numbered 1073.

Mr. McCAIN. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the bill, add the following new section:

Sec. 19. The Secretary of Transportation shall study the various methods of air traffic control which might be utilized at the Grand Canyon Airport, including the possibility and feasibility of installing radar for air traffic control purposes. The Secretary shall report the results of such study, together with his or her recommendations, to the Congress on or before the expiration of the 180-day period following the date of the enactment of this Act.

Mr. McCAIN. Mr. President, I have an amendment which has been cleared by both sides. I am appreciative of the assistance of the chairman of the subcommittee, Senator Ford, and of the distinguished Senator from Kansas, Mrs. Kassebaum for agreeing to this amendment.

Mr. President, this amendment deals with the Grand Canyon. The Commerce Committee passed, as did the Congress, this year the National Parks Overflights Act. This act was signed into law by the President this August. Part of the legislation required the promulgation of a regulation at the Grand Canyon National Park to control aircraft overflights of the park, mainly the burgeoning tour industry. This was done not only because of concern that this traffic was causing a deleterious effect on the Grand Canyon experience, but because of safety concerns as well.

Mr. President, two summers ago there was a tragic midair collision over the Grand Canyon between a helicopter and an air tour aircraft that took 26 lives. It was a tragedy that none of us want to see repeated. Currently the Department of Interior and the FAA are working on this regulation and hopefully it will be in place soon.

I believe in conjunction with this effort a study should be made of how radar could compliment and perhaps improve upon the benefits sought from the Overflights Act.

The Grand Canyon, Mr. President, experienced over 50,000 flights last year. While the Grand Canyon is a very large place, 200-and-some miles long and at places as much as 20 miles wide, the fact of the matter is that most of these 50,000 flights are concentrated over a very small area. Most of the flyers, particularly the air tour operators, want to see the same basic areas. Given these two facts I would not be surprised if parts of the Grand Canyon are amongst the most heavily trafficked areas in our country without any radar control.

There is clearly a need, Mr. President, for regulation of traffic over the canyon. We are going to have a regulation promulgated by the FAA hopefully within the next few months which will provide for corridors, flight-free zones, and an orderly control of the aircraft traffic over the Grand Canyon. It will be done for two reasons: One, to preserve the Grand Canyon experience and parts of the Grand Canyon so that people who are on rafts and hiking and camping in the canyon will not be constantly subjected to the noise of both helicopters and aircraft. More importantly, these regulations will also enhance our ability to maintain a safe environment. We cannot afford a repetition of the several tragic accidents that have taken place within the Grand Canyon and taken many innocent lives in recent years.

I believe that the only way we are going to properly police the air traffic at the Grand Canyon is to have some kind of radar system so that we cannot only regulate, but also police the system. I am not seeking at this time the placement of those radars, but I am certainly seeking through this amendment that the Federal Aviation Agency study the problem and come up with recommendations so that, if appropriate, we can put radars into place and not only police the air tour operators, the civilian pilots, but also military pilots. Mr. President, speaking as a former such pilot I must tell you in all candor on numerous occasions military pilots are tempted to fly in the Grand Canyon. It is a perfectly understandable desire on their part, but one which has to be regulated and policed.

Again, I would like to thank the distinguished chairman and the ranking minority member for their assistance on this amendment. I urge its adoption.

Mr. FORD addressed the Chair.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. FORD. We have talked on this amendment on several occasions. We have discussed it in the Commerce Committee. It has been very favorably accepted. I have no problem with the acceptance of this amendment. This side will agree to it.

Mrs. KASSEBAUM. Mr. President, I would like to say the Senator from Arizona has spent a lot of time trying to address the needs of this very important issue for the Grand Canyon flights, and a lot of time and effort has gone into meeting all of the needs in this particular bill.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Arizona (Mr. McCain).

The amendment (No. 1073) was agreed to.

Mr. FORD. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. McCAIN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1074

(Purpose: To review the need and utilization of special use airspace to determine its impact on the quality of the environment)

Mr. FORD. Mr. President, I ask unanimous consent to set aside the Exon amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. FORD. Mr. President, I send an amendment to the desk for the distinguished Senator from Nevada, Senator Reid, and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Kentucky [Mr. Ford], for Mr. Reid, proposes an amendment numbered 1074.

Mr. FORD. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 4, line 25, immediately before the period, insert the following: "and on the quality of the environment".

Mr. FORD. Mr. President, this urges a study to consider the effect on the environment of the military and civilian air space use. It has been studies on both sides. There is no objection to it.

Mr. REID. Mr. President, this amendment is an important addition to S. 1184. The Commerce Committee correctly identified the need for a comprehensive review of "special use airspace" in this bill. I fully support that review by the Secretary of Transportation, the Secretary of Defense and other aviation users. The committee's vision of solving future aviation problems is laudable.

My amendment simply clarifies a study already required by section 4 of the bill. This amendment assures that environmental issues involved in "special use airspace" actions are not forgotten.

These environmental issues are key to special use airspace actions. They need to be studied.

Why include environmental issues in the study?

We need to know what direction to go in better regulating these airspace actions. Should we loosen or tighten existing regulations? Without this important environmental information, this Congress, affected agencies and civil aviation will only have partial data with which to make critical airspace decisions—decisions potentially having a tremendous impact on the environment.

Everytime a special use airspace or military training route action is taken, environmental concerns are immediately raised.

Questions such as: Does this action significantly affect the quality of the human environment? If it does, in what way? Does an environmental assessment need to be done? By which agency? Do hearings have to be held? What public involvement beyond aviation users is required? Do these special use airspace actions harm economic growth on the ground, directly under the affected airspace? Do decisions on these actions adequately balance the needs of defense, civilian aviation, and the general public? Hardly a day goes by without my Nevada constituents calling or writing to express their concerns about special use airspace or military training routes.

Inquiries about: Noise pollution; low flying aircraft, supersonic aircraft; ranchers and farmers calling on cattle and grazing animals affected; homeowners writing about broken windows due to sonic booms; major environmental groups, like the Sierra Club, asking for help after going to the courts; entire towns and communities are often involved; my family even attended and testified at hearings on the Hart military operations area expansion that directly affected Oregon and Nevada.

The proposed study by S. 1184 is a perfect vehicle to answer many of these questions. A study of special use airspace is already required by the bill. Without including environmental issues in this study, the Congress and the agencies involved will have limited ability to see the entire picture of special airspace use. We will see only pieces of the puzzle.

We need that broad look so that all groups involved in designating special use airspace have an opportunity to have their real needs identified. Only then, can a workable consensus be built to go forward and solve the airspace problems of the future.

For these reasons I offer this clarifying amendment.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from Nevada, Mr. REID.

The amendment (No. 1074) was agreed to.

Mr. FORD. Mr. President, I move to reconsider the vote by which the amendment was passed.

I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. FORD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. FORD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. FORD. Mr. President, I ask unanimous consent that the Exon amendment be temporarily set aside.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 1075

(Purpose: To release certain conditions in connection with Stapleton International Airport, Denver, Colorado)

Mr. FORD. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Kentucky, Mr. FORD, for Mr. WIRTH, (for himself and Mr. ARMSTRONG), proposes an amendment numbered 1075.

Mr. FORD. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 21, after line 21, add the following:

SEC. 19. (a) Notwithstanding section 16 of the Federal Airport Act (as in effect on the date of each conveyance referred to in this subsection) with respect to such conveyance, the Secretary is authorized, subject to the provisions of section 4 of the Act of October 1, 1949 (63 Stat. 700; 50 U.S.C. App. 1622c), and the provisions of subsection (b) of this section, to grant release—

(1) from any of the terms, conditions, reservations, and restrictions contained in each deed of conveyance under which the United States conveyed property to the city and county of Denver, Colorado, on which portions of Stapleton International Airport are located; and

(2) from any assurance made by the sponsor of such airport for a grant under the Airport and Airway Improvement Act of 1982 for a project at such airport.

(b) CONDITIONS.—Any release granted by the Secretary under paragraph (1) of this subsection shall be subject to the following conditions:

(1) The city and county of Denver, Colorado, shall agree that in conveying any interest in the property which the United States conveyed to the city and county by the deeds described in subsection (a) the city and county will receive an amount for such interest which is equal to the fair market value (as determined pursuant to regulations issued by the Secretary).

(2) Any such amount so received by the city and county shall be used by the city and county for the development, construction, and improvement of a new Denver air carrier airport and a reliever airport in the event that the operation of the new air carrier airport severely restricts the operation of the nearby reliever airport. In no event shall such amount be used for operation or maintenance of such airports.

(3) The city and county shall agree not to convey any interest in the property which the United States conveyed to the city and county by the deeds described in subsection (a) until the opening and initial operation of a primary airport to replace Stapleton International Airport, unless the Secretary determines that any such property is not essential for the operation of Stapleton International Airport.

THE DISPOSITION OF STAPLETON LANDS

Mr. WIRTH. Mr. President, I wish to urge my colleagues to support this amendment, which will benefit both Colorado and the Nation's air transportation system. This proposal would allow the Secretary of Transportation to release the city of Denver from deed restrictions and grant assurances pertaining to the property occupied by Stapleton International Airport in Denver. The funds raised from the development or disposal of this property would then be used for the construction of a new and larger aviation facility to serve the Rocky Mountain region and the Nation.

The Colorado congressional delegation, State and local officials, and the Federal Aviation Administration are all agreed on the need for a new airport. Since its construction in 1929, Stapleton International Airport has grown from a small airfield serving only a few dozen brave air passengers to the current modern facility which serves more than 30 million passengers per year. In today's deregulated aviation market, Stapleton's location at the center of the continent has contributed to its development as a hub airport essential to the successful operation of our Nation's airspace system—making it the fifth busiest facility in the world. Moreover, although Stapleton was originally designed to efficiently handle between 15 to 18 million passengers annually, last year it served more than 34 million, an increase of 16 percent over the previous year at a time when the national average rose only 3 to 5 percent. By 1995, projections show it will serve more than 50 million passengers, and, according to studies performed for Stapleton International, by 2020 more than 110 million air travelers will pass through Stapleton International annually. The need for a new airport is clear.

For many years, Stapleton was a sufficient distance from Denver to spare its citizenry from the associated noise and congestion. As the city has grown and developed, it has surrounded and constricted the airport. Significant problems of excessive noise and insufficient space have resulted and expansion of the original site was excluded as an option. Denver has proceeded to develop the only adequate solution to the space and noise problems of Stapleton—the construction of a new, modern airport outside of the city.

When Denver's primary air services are moved to a location outside of the city in the early 1990's, the current site of Stapleton International no longer will be needed for air travel purposes. While the city technically holds title, almost half of the land will revert to the Federal Government, due to provisions contained in Federal aviation funding agreements. If this happens, the property—which is a major asset of considerable potential value to the city of Denver, and to the city's efforts to develop a new airport—will be of little or no value to the city or its new airport development efforts.

The amendment I am offering today will allow the Secretary to provide clear title to the airport land to the city of Denver, so it can be either developed or sold and the resulting revenue invested in the new airport. In fact, the amendment specifically requires the city to obtain fair market value from the disposition of the property and use all such revenue for the development and construction of the new Denver air carrier facility—and a general aviation reliever airport, should one be necessary. The Congressional Budget Office has stated that this proposal will not result in any new financial outlay by the Federal Government, and therefore will have no effect on the deficit.

Mr. President, the adoption of this amendment is crucial to the successful completion of a new primary airport in Colorado. When this airport is completed, it not only will improve access to the beauty of the Rocky Mountain region, but also will make an important contribution to the capacity and efficiency of the Nation's air transportation system. All who fly to or through the Rocky Mountains will benefit, not just to the citizens of the Denver area. I urge its adoption.

In conclusion, I want to express my gratitude to my friend and colleague, Senator Armstrong; the distinguished chairman and ranking minority member of the Subcommittee on Aviation, Senator Ford and Senator Kassebaum; the distinguished chairman and ranking minority member of the full Committee on Commerce, Science and Transportation, Senator Hollings and Senator Danforth; and Majority Leader Byrd; as well as all of their able staff, for bringing this amendment before the Senate.

Mr. FORD. Mr. President, this is an amendment that conveys some land from the Denver Stapleton Airport to the city. It has been considered and found to be in order. Therefore, this side would approve the passage of this amendment.

Mr. McCAIN. Mr. President, this side has no problem with the amendment. We urge its immediate passage.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Colorado [Mr. Wirth].

The amendment (No. 1075) was agreed to.

Mr. FORD. Mr. President, I ask unanimous consent that the Exon amendment be temporarily set aside for the purpose of introducing another amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 1076

(Purpose: To authorize the Secretary of Transportation to make grants for minimum facility and safety improvements at public airports other than commercial service airports)

Mr. FORD. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Kentucky [Mr. Ford], for Mr. Stevens, proposes an amendment numbered 1076.

Mr. FORD. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the bill, add the following new section:

Sec. 19. Section 507(a)(2)(B) of the Act is amended by adding at the end thereof the following: "Notwithstanding the foregoing provisions of this paragraph, the Secretary of Transportation shall make available grants for minimum facility and safety improvements to public airports (other than commercial service airports) described in section 508(d)(3)(C).".

Mr. FORD. Mr. President, this is an amendment by the Senator from Alaska [Mr. Stevens] naming grants for Alaskan flight service stations. There is no objection on this side.

Mr. McCAIN. Mr. President, this side has no objection. We urge immediate adoption.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Alaska [Mr. Stevens].

The amendment (No. 1076) was agreed to.

Mr. FORD. Mr. President, I move to reconsider the votes by which the last two amendments were passed.

Mr. McCAIN. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. FORD. Mr. President, I ask unanimous consent that the amendment by the Senator from Nebraska [Mr. Exon], be temporarily set aside so I might send an amendment to the desk for and on behalf of the Senator from Hawaii [Mr. Inouye].

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 1077

Mr. FORD. Mr. President, I send two amendments to the desk on behalf of Mr. Inouye. I ask unanimous consent that they be considered en bloc.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendments will be stated.

The legislative clerk read as follows:

The Senator from Kentucky [Mr. Ford], for Mr. Inouye, proposes amendments en bloc numbered 1077.

Mr. FORD. Mr. President, I ask unanimous consent that reading of the amendments be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendments are as follows:

Amendment by Senator Inouye concerning the acquisition of land for the expansion of Honolulu International Airport:

Airport grant funds made available to the State of Hawaii under Section 505 may, notwithstanding any other provision of law, be used to acquire properties referred to as areas 46A and 46B of the United States General Services Administration Facility Site in Moanalua, Honolulu, Oahu, Hawaii, or to reimburse the State of Hawaii for such acquisitions.

Amendment by Senator Inouye for the release of certain conditions on use of certain airport property in Hawaii:

That (a) notwithstanding Section 23 of the Airport and Airway Improvement Act (as in effect on April 6, 1982), the Secretary of Transportation is authorized, subject to the provisions of Section 4 of the Act of October 1, 1947, 50 App., U.S.C. 1622 (c), and the provisions of subsection (b) of this section, to grant releases from any of the terms, conditions, reservations, and restrictions contained in the deed of conveyance, dated April 6, 1982, under which the United States conveyed certain property to the State of Hawaii for airport purposes.

(b) Any release granted by the Secretary of Transportation under subsection (a) of this section shall be subject to the following conditions:

(1) The property for which a release is granted under this subsection shall not exceed 2.280 acres.

(2) The State of Hawaii shall agree that, in conveying any interest in the property which the United States conveyed to the State by a deed described in subsection (a), the State will receive an amount for such interest which is equal to the fair market value.

(3) Any amount so received shall be used for airport purposes only; and

(4) In the event land or any interest therein is received in exchange for all or part of the 2.280 acres, the deed of conveyance of such land or interest will contain language mandating that:

(A) the land or interest must be used for airport purposes only; and

(B) such land or interest in land received by the State of Hawaii may not be conveyed by the State, except by approval of the Federal Government, pursuant to the authority vested in the Secretary of Transportation, under Section 4 of the Act of 1947, 50 App. U.S.C. 1622 (c); and

(C) such conveyance by the State of Hawaii shall be subject to receipt of fair market value; and

(D) the proceeds from such conveyance by the State of Hawaii shall be used for airport purposes only.

Mr. FORD. Mr. President, both these amendments apply. One concerns the acquisition and use of property and the other involves property for Honolulu International Airport. There is no problem with either amendment on this side, and we ask that the Senate approve them.

Mr. McCAIN. Mr. President, we have no objection, particularly with respect to the expansion of Honolulu Airport, given the fact that many of us have the opportunity to land there on occasion. We urge adoption of the amendments.

The PRESIDING OFFICER. The question is on agreeing en bloc to the amendments.

The amendments (No. 1077) were agreed to.

Mr. McCAIN. Mr. President, I move to reconsider the vote by which the amendments were agreed to.

Mr. FORD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. FORD. Mr. President, I ask unanimous consent that the amendment of the distinguished Senator from Nebraska [Mr. Exon] be temporarily laid aside.

The PRESIDING OFFICER. Without objection, it so ordered.

Mr. FORD. Mr. President, we have some technical corrections, and I ask unanimous consent that action on Amendment No. 1076 be vitiated.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 1078

(Purpose: To designate the Federal Aviation Administration flight service station located in Juneau, Alaska, as the "Dave Scheytt Flight Service Station")

Mr. FORD. Madam President, I send to the desk an amendment with respect to the naming of the Alaskan flight service station.

The PRESIDING OFFICER (Ms. Mikulski). The amendment will be stated.

The legislative clerk read as follows:

The Senator from Kentucky [Mr. Ford], for Mr. Stevens, proposes an amendment numbered 1078.

Mr. FORD. Madam President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the bill, add the following new section:

Sec. . The Federal Aviation Administration flight service station located in Juneau, Alaska, is designated and shall, after the date of enactment of this Act, be known as the "Dave Scheytt Flight Service Station". Any reference in a law, map, regulation, document, or other paper of the United states to such flight service station shall be held and considered to refer to the "Dave Scheytt Flight Service Station".

Mr. STEVENS. Madam. President, I am pleased to propose this amendment to name the proposed automated flight service station at Juneau, AK, after Dave Scheytt.

On June 11, 1985, a tragic helicopter crash claimed the life of Scheytt.

Scheytt, a well known professional aviator, worked with local Juneau law enforcement agencies on numerous occasions. He often performed missions that were above and beyond the call of duty.

Scheytt was best known for his daring rescue of two Alaska State troopers involved in a plane crash shortly after take off from the Juneau Airport. The airplane stalled, went into a spin and subsequently landed in a tidal pool. The pilot, Cpl. Warren Grant, was trapped inside the aircraft under water. The passenger, Trooper Nils Monsen, managed to free himself but could not free Grant.

Within minutes Scheytt was notified of the accident. He immediately piloted a helicopter to the crash site and hovered while another man dived into the icy waters and freed Corporal Grant from the wreckage. Scheytt then hovered the helicopter so that the skids were actually under water, retrieved the troopers and transported them to shore. Both troopers required hospitalization. Grant was in intensive care for nearly a month, but has made a complete recovery and is back at work.

This dramatic rescue was quitely put aside by Scheytt, who stated that he only did what had to be done.

To ensure that the memory of Dave Scheytt be continued in a meaningful way, it is appropriate that we name the new Juneau flight service station in Juneau after him.

Mr. FORD. Madam President, this is now in proper form.

Mr. McCAIN. Madam President, I support the amendment and urge its adoption.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 1078) was agreed to.

Mr. FORD, Madam President, I move to reconsider the vote by which the amendment was agreed to.

Mr. McCAIN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. EXON. Madam President, I ask unanimous consent that I be allowed 10 seconds for the purpose of adding an additional cosponsor to the amendment No. 1068.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator may proceed.

Mr. EXON. Madam President, I want to add Senator Bentsen from Texas, the 30th cosponsor of the amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 1072

The PRESIDING OFFICER. Under the previous order, the question is on agreeing to the motion to lay on the table the amendment of the Senator from Kansas [Mrs. Kassebaum].

On this question the yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Oklahoma [Mr. Boren], the Senator from Connecticut [Mr. Dodd], the Senator from Tennessee [Mr. Gore] and the Senator from Illinois [Mr. Simon] are necessarily absent.

I further announce that, if present and voting, the Senator from Tennessee [Mr. Gore] would vote "yea."

Mr. SIMPSON. I announce that the Senator from New York [Mr. D'Amato] and the Senator from Kansas [Mr. Dole] are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 57, nays 37, as follows:

[Rollcall Vote No. 355 Leg.]

YEAS—57

Adams
Baucus
Bentsen
Biden
Bingaman
Boschwitz
Breaux
Bumpers
Burdick
Byrd
Chiles
Conrad
Cranston
Daschle
DeConcini
Dixon
Domenici
Durenberger
Exon
Ford
Fowler
Glenn
Graham
Grassley
Harkin
Hecht
Heflin
Hollings
Inouye
Johnston
Karnes
Kennedy
Kerry
Leahy
Levin
Matsunaga
McConnell
Melcher
Metzenbaum
Mikulski
Mitchell
Moynihan
Murkowski
Nunn
Pressler
Pryor
Reid
Riegle
Rockefeller
Sanford
Sarbanes
Sasser
Shelby
Stennis
Stevens
Wallop
Wirth

NAYS—37

Armstrong
Bond
Bradley
Chafee
Cochran
Cohen
Danforth
Evans
Garn
Gramm
Hatch
Hatfield
Heinz
Helms
Humphrey

Kassebaum
Kasten
Lautenberg
Lugar
McCain
McClure
Nickles
Packwood
Pell
Proxmire
Quayle
Roth
Rudman
Simpson
Specter
Stafford
Symms
Thurmond
Trible
Warner
Weicker
Wilson

NOT VOTING—6

Boren
D'Amato
Dodd
Dole
Gore
Simon

So the motion to lay the amendment (No. 1072) on the table was agreed to.

Mr. FORD. Madam President, I move to reconsider the vote by which the motion to lay on the table was agreed to.

Mr. EXON. Madam President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1068

The PRESIDING OFFICER. The question is on the Exon amendment in the first degree. Is there further debate?

Mr. EXON addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. EXON. Madam President, I have visited with the Senator from Kansas and in the interest of saving time both managers of the bill feel that we should move forward. As I understand it, the Senator from Kansas is not interested in a rollcall vote at this time. To move things along, and I am not going to demand a rollcall vote on this, I will be happy to accept, in the interest of saving time, a voice vote.

Mrs. KASSEBAUM. Madam President, I would certainly concur and would move that we accept the Exon amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 1068) was agreed to.

Mr. EXON. Madam President, I move to reconsider the vote by which the amendment was agreed to.

Mr. FORD. Madam President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1079

Mr. GRAHAM. Madam President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Florida [Mr. GRAHAM] proposes an amendment numbered 1079.

Mr. GRAHAM. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Amend Section 534, page 18, line 16, by inserting after "agency", the following: "or equivalent state qualifications-based requirement. This paragraph shall apply except to the extent that a State adopts or has adopted by statute a formal procedure for the procurement of such services.

Mr. GRAHAM. Madam President, this amendment, which I have discussed with the floor managers on both sides, would place into this act the same language which we previously adopted in the mass transit bill and the slightly modified version of the highway bill relative to the procurement of professional services for planning and design. This would provide that this paragraph shall apply except to the extent that a State adopts or has adopted by statute a formal procedure for the procurement of such services.

Many States already have adopted a procedure for the regularized professional acquisition of design services, which is working well in their States as it is in my State of Florida.

This would allow those States to continue the same procedures they are currently using by statute for airports as we have previously allowed them to continue to use those procedures for highways and mass transit. I hope the amendment will be adopted.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. FORD. Madam President, as the distinguished Senator from Florida said, it brings a portion of the mass transit bill into the airport improvement trust fund legislation, allowing the States to have some specific procedures. We have no objection on this side.

Mrs. KASSEBAUM. Madam President, there is no objection on this side of the aisle.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 1079) was agreed to.

Mr. GRAHAM. Madam President, I move to reconsider the vote by which the amendment was agreed to.

Mr. FORD. Madam President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Alaska.

AMENDMENT NO. 1080

(Purpose: To authorize the Secretary of Transportation to make grants for minimum facility and safety improvements at public airports other than commercial service airports)

Mr. STEVENS. Madam President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Alaska (Mr. STEVENS) proposes an amendment numbered 1080.

Mr. STEVENS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the bill, add the following new section:

SEC. 19. Section 507(a)(2)(B) of the Act is amended by adding at the end thereof the following: "Notwithstanding the foregoing provisions of this paragraph, the Secretary of Transportation shall make available grants for minimum facility and safety improvements to public airports (other than commercial service airports) described in section 508(d)(3)(C).".

Mr. STEVENS. Madam President, this amendment would allow the State of Alaska more flexibility in the distribution among noncommercial airports of funding under the area/population funding allocation.

This amendment simply allows the State of Alaska to utilize area/population funding allocated to it under this bill for "grandfathered airports" in Alaska that would qualify for area/population funding if they were not grandfathered.

Currently, 50 airports would qualify for Alaska's allocation of area/population funding—this amendment will allow 151 additional—grandfathered—airports to also utilize these funds for "minimum facility and safety improvements."

This amendment will assure that the State can most efficiently utilize its area/population allocation to meet the minimum safety and facility needs.

This amendment will not increase Alaska allocation under the area/population formula—or increase the level of funds flowing to Alaska.

Madam President, I have discussed this amendment with the managers of the bill and I believe they are prepared to accept it.

The PRESIDING OFFICER. Is there further debate on the amendment?

Mr. FORD. Madam President, we have no objection to the amendment.

The PRESIDING OFFICER. If there is no further debate, the question is on agreeing to the amendment of the Senator from Alaska.

The amendment (No. 1080) was agreed to.

Mr. STEVENS. Madam President, I move to reconsider the vote by which the amendment was agreed to.

Mr. FORD. Madam President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1081

(Purpose: To ensure greater safety to air passengers)

Mr. METZENBAUM addressed the Chair.

Mr. WILSON addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. METZENBAUM. Madam President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The bill clerk read as follows:

The Senator from Ohio [Mr. METZENBAUM] proposes an amendment numbered 1081.

Mr. METZENBAUM. Madam President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the bill, add the following:

SEC. . (a) The Secretary of Transportation shall ensure greater safety to air passengers by issuing, within 180 days following the date of the enactment of this Act, regulations requiring:

(1) adequate, uniform life preservers, life rafts, and flotation devices for passengers, including small children and infants, on any flight of an air carrier which the Secretary of Transportation determines a part of which flight will occur over water and adequate information and instructions as to the use of such preservers, rafts, and flotation devices;

(2) as soon as feasible, but in no event later than January 1, 1993, all seats on board all air carrier aircraft to meet dynamic testing standards for crashworthiness; and

(3) prior to the expiration of the 24-month period following the date of the enactment of this Act, all air carrier aircraft to meet interior cabin flammability standards, and further require that air carrier aircraft certificated after January 1, 1993, be equipped with crash-resistant inner fuel tanks and breakaway, selfclosing fittings throughout the fuel system.

(c) The Secretary of Transportation shall report to Congress, within 90 days following the date of the enactment of this Act, on specific regulations the Secretary has adopted or intends to adopt to modernize and improve the oversight maintenance and safety-related procedures.

Mr. SARBANES. Will the Senator yield for a question?

Mr. METZENBAUM. I will, indeed.

Mr. SABRANES. I wonder, if this amendment is going to take some time, whether the Senator would be willing to allow us to offer an amendment that will take no more than 2 or 3 minutes and dispose of it.

Mr. FORD. I might state, if the Senator from Ohio will allow me, we are hoping that the distinguished Senator from Ohio, myself, and the leader can work out some kind of agreement where we would not get into long debate on this one. If the agreement cannot be reached, it would be awhile.

Mr. METZENBAUM. The amendment I am offering is the safety amendment which I think the Senator is prepared to accept.

Mr. FORD. But the Senator does not have full acceptance.

Mr. METZENBAUM. OK.

Mr. FORD. He has mine and that is not going very far on this particular amendment.

Mr. METZENBAUM. The Senator says I do not have his?

Mr. FORD. The Senator has mine but not others.

Mr. METZENBAUM. I see.

Mr. FORD. It is up to the distinguished Senator if he wants to allow his amendment to be set aside.

Mr. METZENBAUM. Madam President, I ask unanimous consent that I may yield the floor without losing my right to the floor to the distinguished Senator from Maryland for not to exceed 3 minutes.

The PRESIDING OFFICER. Is there objection?

Mr. WILSON. Madam President, reserving the right to object.

The PRESIDING OFFICER. The Senator from California.

Mr. WILSON. Madam President, let me inquire of the Senator from Ohio, I understood that when he inquired of the distinguished manager, this is not an accepted amendment that he is offering?

Mr. METZENBAUM. Perhaps the manager of the bill would care to respond.

Mr. FORD. We thought in the beginning this would be an acceptable amendment. When it was sent around, we found objections to the amendment and there will be some debate on it and possibly a vote. I am not sure whether that will happen or not. But it has run into a couple of speed bumps.

Mr. WILSON. Madam President, I was wondering if the senior Senator from Ohio, not only the Senator from Maryland but also the Senator from Maine and the Senator from California I believe all have amendments that have been accepted.

Mr. METZENBAUM. I want to say to my friend from California that it was about 4 or 5 hours ago that I was asked if I would mind stepping aside for the purpose of taking up a few noncontroversial amendments and then we ran into the Exon amendment. I do not really have any major objection, if you could confine yourself to 3 minutes each. Is that possible?

Mr. GRAHAM assumed the chair.

Ms. MIKULSKI. Reserving the right to object.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. FORD. Mr. President, reserving the right to object.

The PRESIDING OFFICER. As the new Presiding Officer, and I correct that the Senator from Ohio has the floor?

Mr. FORD. That is correct.

The PRESIDING OFFICER. The Senator from Ohio had yielded to the Senator from California for the purpose of an inquiry?

Mr. METZENBAUM. Only for the purpose of inquiry.

The PRESIDING OFFICER. Has the Senator from California completed his statement?

Mr. WILSON. Yes. If that is agreeable to the Senator from Ohio.

Mr. METZENBAUM. The manager of the bill has a position.

Mr. WILSON. I understand the Senator from Maine needs about 2 minutes. I need about 4.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. FORD. Mr. President, let us get a little order out of this. I see one, two, three, four, five Senators on the floor who have amendments which could only take about 2 minutes each. We could put them all en bloc and pass them if you want to do that, except those that may need a little debate.

I do not mind, but in order for us to have a pecking order, there must be a unanimous-consent agreement. Otherwise, it is whoever yells the loudest or who the Chair recognizes first. So I do not mind all these distinguished Senators having a little agreed-to amendment put on this bill, but I do believe we ought to have some order in which to recognize Senators.

I am perfectly willing to do that, but I think we need cooperation from everybody concerned. So if we want to get into who is next and that sort of thing, I will be glad to propose a unanimous-consent agreement if there is agreement on the floor to do that. But the Senator from Ohio has at the desk an amendment which will take some time.

Mr. SARBANES. Will the manager yield for a question?

Mr. FORD. I am delighted to yield for a question.

Mr. SARBANES. The Senator from Ohio has the floor. His amendment is pending. He is willing to defer taking up his amendment in order to dispose of the others that are on the floor with no more than 3 or 4 minutes being used on each of those amendments. Is the manager prepared to put that unanimous-consent request?

Mr. FORD. I am more than happy to, but we would have to have unanimous consent that we set aside the amendment of the Senator from Ohio for the purpose of taking up four or five amendments and then we would return, if the Senator from Ohio is agreeable.

Mr. METZENBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio has the floor.

Mr. METZENBAUM. I was agreeable to the Senators from Maryland having a 3-minute intersession, but since then it is the Senator from California, the Senator from Maine, and I see the other Senator from Maine and I see the Senator from New Jersey. Under the circumstances I just think that is a bit unreasonable. I am willing to accept unanimous consent with respect to the amendment of the Senators from Maryland for not to exceed 3 mintues without the Senator from Ohio losing his right to the floor and without prejudicing my amendment.

The PRESIDING OFFICER. The Senator offers that as a unanimous-consent request?

Mr. METZENBAUM. I do.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The Senator from Maryland.

AMENDMENT NO. 1082

(Purpose: To provide for a noise abatement study)

Mr. SARBANES. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The bill clerk read as follows:

The Senator from Maryland [Mr. SARBANES] for himself, Ms. MIKULSKI, and Mr. MITCHELL, proposes an amendment numbered 1082:

At the end of the bill, add the following new section:

SEC. 19. (a) The Administrator of the Federal Aviation Administration shall conduct a study of noise abatement proposals under consideration by airport operators and local governments for the purpose of identifying those proposals which, under existing law or administrative policy, are not currently eligible for Federal assistance and determining whether or not such proposals should be made eligible for Federal assistance.

(b) Not later than the 180th day following the date of the enactment of this Act, the Administrator of the Federal Aviation Administration shall transmit to Congress a report on the results of the study conducted under subsection (a) together with recommendations concerning modifications in existing law and administrative policy for making additional noise abatement proposals eligible for Federal assistance.

Mr. SARBANES. Mr. President, I yield myself 45 seconds because I want to defer time. I express my appreciation to my colleague from Ohio and to the other colleagues who are waiting to offer amendments and who withheld any objection.

Mr. President, this amendment, cosponsored by my distinguished colleague, Senator MIKULSKI, addresses a problem which has received broad national attention in the last few months—aircraft noise. With the dramatic increase in the number of flights at airports throughout the country, the communities in which these facilities are located have been subjected to increased noise from flight operations.

This language would require the Administrator of the Federal Aviation Administration to conduct a study of noise abatement proposals under consideration by airport operators and local governments for the purpose of identifying those proposals, which under existing law or administrative policy, are not currently eligible for Federal assistance and determining whether or not such proposals should be made eligible for Federal assistance. The Administrator is required to submit this report to the Congress not later than 180 days following the date of enactment of this act. The report must include recommendations for modifying existing law and administrative policy to make additional noise abatement programs eligible for Federal assistance.

This amendment, introduced in the House by Congressman BENJAMIN L. CARDIN, was included in the House version of the Airport Improvement bill, H.R. 2310. The purpose of the amendment is to review innovative airport noise abatement programs and their eligibility for Federal funding. The FAA is to assess these innovative proposals, to recommend whether Federal assistance should be provided for them, and what actions would be necessary to allow such Federal participation.

Mr. President, I appreciate the cooperation of the distinguished chairman and ranking minority member of the Senate Committee on Commerce, Science, and Transportation and Senators FORD and KASSEBAUM chairman and ranking minority member of the Subcommittee on Aviation, on adding this language to the bill, and I urge its adoption.

Mr. President, I understand the amendment is acceptable and I appreciate the cooperation of the chairman and the ranking member of the Subcommittee on Airports.

I yield the floor.

Ms. MIKULSKI addressed the Chair.

The PRESIDING OFFICER. The Senator from Maryland.

Ms. MIKULSKI. Mr. President, I rise in strong support of the amendment offered by my distinguished senior colleague from Maryland on the issue of noise abatement and am pleased to cosponsor it with him.

This amendment would increase the amount of discretionary funds in the airport trust fund used for noise abatement projects. It will not however, add any additional costs to the overall trust fund.

We all know that our Nation's airports need additional improvements to meet the growing demands placed upon them. These improvements will guarantee we have the infrastructure for economic development and the capacity to meet the needs of the Nation's air traveling public.

At the same time, however, noise abatement is crucial to assure those communities near our Nation's airports that airport expansion will protect the quality of life in their homes and neighborhoods.

Maryland residents will be affected in the coming years by expansion at both Baltimore-Washington and National Airports. As a result, it is essential that the necessary noise abatement measures be funded and implemented to insure these citizens that their communities will not suffer dramatically as a result.

The amendment Senator SARBANES and I are offering today would require the FAA to study a number of innovative noise abatement projects around the country, including those at BWI airport.

After reviewing them, the FAA would be required to recommend whether Federal assistance should be provided for them, and what steps are needed to insure that participation.

In short, the amendment provides the kind of thoughtful balance in planning for airport expansion that measures economic growth in both human and financial terms.

We know that in many parts of the country airports must expand because of increased demand. At the same time, this amendment will make certain that airport planners use creative means to reduce the problems created by the noise of more air traffic.

I want to commend my senior colleague from Maryland for his leadership on this issue. He is the Senate's leading advocate for responsible noise abatement programs that protect communities' quality of life while insuring economic growth can occur.

I am privileged to have the opportunity to work with him and believe that the people of Maryland are truly lucky to have him as their advocate in the Senate. His amendment is a good one and I urge my colleagues to support it.

Mr. President, we need our airports to expand but for many of those who have homes next door to airports, it is like owning a $150,000 dental chair and having continual root canal work done to you. We need to give those neighborhoods a break while our airports are expanding.

The amendment of the Senator from Maryland goes a long way in doing that.

I yield back the floor as I ask support for the amendment.

The PRESIDING OFFICER. Is there further debate? All time has expired.

The amendment (No. 1082) was agreed to.

Mr. SARBANES. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mrs. KASSEBAUM. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER (Ms. MIKULSKI). The Senator from Ohio.

AMENDMENT NO. 1081

Mr. METZENBAUM. Mr. President, I rise first to say that I think that the sponsors of this basic bill, the one that is before us, have indeed moved this Nation forward when and if it passes, and I hope that it will be today, in connection with the whole issue of airport safety and flying in the air. But there is more I believe to be done, and my amendment today is not in contradiction of that which has already been achieved in the basic bill but, rather, to address itself to some specific problems that I think can be solved with this amendment.

There is no secret about it. It is no fun to fly any more. Flying today is like playing a roulette wheel, only it is a "Wheel of Misfortune." We have long delays and flight concellations, overbookings, reroutings, and lost luggage. But poor service is not the only problem. This amendment addresses itself to the issue of safety. I have two amendments that I contemplate bringing up today. One has to do with safety and one has to do with consumer rights. This one has to do with airline safety.

There have been in recent months a record number of near misses—over 600 in the first 6 months of this year. There was the Northwest crash in Detroit this summer where there were 156 lives lost and only 1 survivor.

In August I held some hearings in Ohio about the problems with respect to air travel and what the loss of competitiveness has done to the airline industry. At that hearing a Cincinnati woman told of being on board the Delta flight when the pilot shut off the engines. The plane came very close to crashing into the ocean. But it was interesting; interesting and sad, when she told us that no one could figure out how to put on the life vests, and maybe the worst part was that there were no life vests available for small children. She talked about one mother running around the plane saying, "Where is a life vest for my child? I need a life vest for my baby." And they could not find one until finally they put on the child a life vest made for a adult, not for a child.

Since that woman testified at my hearing about the deficiencies in the life vest on her flight, I have found some alarming facts. The FAA only requires life vests on flights traveling more than 50 nautical miles from shore. Only one in four aircraft carry life vests, and over 200 airports have significant bodies of water in their approach and departure paths. And all of us can within our own recollection remember the stories of planes that have gone down as they were approaching the airport, and some have gone down as they were taking off from the airport. But the FAA does not require any safety vests unless the flight over water is more than 50 miles distant from the airport.

According to the FAA's own data 90 percent of all airplane accidents occur on or in approach/departure zones of airports. There is more to this story. The life vests that are available may not work. The person sitting next to you may have a different type of vest than you do. And, as I previously mentioned, there are not any vests to fit small children and infants. That is absolutely an absurdity.

We are not talking about major dollars. We are talking about peanuts. But those peanut dollars might be sufficient to save 1, 2, or 6, or 8, or 10 children on a flight.

I am offering an amendment today to ensure that life vests and life rafts will be available on any flight that is over water. It requires that the life vest be the same on a given flight so that they will not have a mixture of different kinds of vests, and that the airlines do a better job in explaining how to use them. And, importantly, it requries adequate flotation devices be available for small children and infants.

The amendment would also require the FAA to ensure that seats on all aircraft are crashworthy. The FAA after 20 years of delay issued a rulemaking recently to modernize the seat testing standard. Unfortunately FAA's proposal applies to only totally new aircraft types, those that are still on the drawing board—but nothing having to do with the planes that are presently flying in the sky.

The existing airplanes are exempt even when refurbished with new seats. In other words, existing planes put in new seats and they do not have to comply with the FAA rules with respect to the crashworthy safety of the seats. And aircraft built under old type certificates, a new 747 for example, would still install old, less crashworthy seats. The FAA proposal will not have much effect until well into the next century when totally new aircraft types would start constituting a large percentage of the fleet. My amendment would require a retrofit on the entire fleet, not tomorrow, not next month, but within a period of 5 years. The amendment would make certain that the interior cabin's flammability standards apply to all aircraft.

How many times have we heard about the plane that crashed and the whole plane went up in flames? That would not be the case if there were sufficient safety standards in connection with the contents of the plane.

The FAA proposed regulation in this area again would only apply to new airplanes or ones that are refurbished after 1990. Under the FAA proposal, if an airline does not refurbish a plane after 1990, it will not have to worry about the new flammability standards.

Madam President, I must say to you that is absolutely absurd. My amendment would close this loophole and require all planes after 1990 to meet interior cabin flammability standards. The ceilings, the wall panels, the cabinets, and the storage compartments would have to be made of fire-resistant self-extinguishing materials that produce low quantities of toxic gases and smoke. The amendment would ensure that commercial aircraft be equipped with crash-resistant inner fuel tanks and self-closing breakaway fuel lines to prevent possible crash fires. Military planes are already equipped with these safety features. Why, then, should not the commerical planes have within them these inner fuel tanks that are crash-resistant, self-closing, and that they break away from the plane and the fuel lines immediately upon a crash?

Finally, my amendment would require the Secretary of Transportation to report to the Congress on steps he or she will take to improve the oversight and inspection of air carriers' maintenance and safety-related procedures. By incorporating the goals, guidelines, and recommendations included in the FAA's own project safety report, the Secretary could implement better procedures for hiring and training FAA inspectors and monitor the maintenance and operation of the airlines and standardizing the procedures on how to run airlines and airplanes on a daily basis.

This amendment is the very least we can do to improve safety in air travel today. I am proud of the fact that the Airline Pilots Association and the Flight Attendants Association, both support this amendment strongly.

I hope the Senate will see fit to accept the amendment.

Mr. DANFORTH addressed the Chair.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. DANFORTH. Madam President, I wonder if the Senator from Ohio would entertain some questions on his amendment. I have to say that until about half an hour ago I never heard of this amendment. So I would like to be a little better informed on it, if I could.

Mr. METZENBAUM. Certainly. I would be very happy to respond. But I assume that my colleague from Missouri understands that I do not claim to be a technical expert.

Mr. DANFORTH. I do not either. That is one of the points. There have been times when I have introduced legislation that would be properly characterized as glorified rulemaking. For example, I once introduced a bill to provide for the high mounting of the brake lights for automobiles before NHTSA required the high mounted brake lights for the automobiles. The reason I did that was that I thought NHTSA was an agency that really dragged its heels on safety matters, that they needed to be prodded, that they were unable to get any action with respect to obvious new technologies, and Congress had to push them and, if necessary, do it themselves.

I have not had the impression that the same sort of dilatory approach was followed as a matter of course by the FAA, but is that the position of the Senator from Ohio—that FAA has just been passive and therefore there is no real hope that they will act in these areas, so we had better do it ourselves?

Mr. METZENBAUM. With respect to the flotation devices, it is my understanding that they have taken no action at all.

With respect to the safety of the cabin and the fire-resistant aspects of it, as I indicated in my remarks, they have acted, but they have made it pretty much inapplicable to the safety of the skies at the present time.

The Senator from Ohio has no intention of placing any unreasonable or undue burden on the airline carriers of this country, so we have provided the lag time for them to make the change.

With respect to the matter of the breakaway fuel supply, we are already doing that with the military, and it can be done. But there, also, the FAA has acted, but their actions are for "manana," sometimes far into the future.

In that respect, I think the Senator from Missouri and I would be in agreement that this is a way of saying to the FAA, "You haven't done enough."

Mr. DANFORTH. Have they been dilatory so far as the Senator from Ohio is concerned? Is this a case of an agency that just really is not doing its job, and here are obvious technologies that everybody has recognized for a long time that should be in place, but for some reason the agency has broken down?

Mr. METZENBAUM. I do not know that I want to be accusatory not pejorative in saying to them that they have been dilatory. The FAA, on the other hand, does drag its feet. It has taken them some 20 years to propose the seat crashworthy standards. I think we all could agree that that is far more than reasonable.

On the life preserver issue, it is my understanding that they are working on that now. But, without trying to get into a situation where I want to be confrontational with the FAA, I think they have dragged their feet on some safety issues, and I think this legislative proposal would bring about the solutions much more rapidly.

Mr. DANFORTH. Here is my problem: Even in the case of NHTSA, where I have been very critical of them over a long period of time, I would introduce a bill and then we would have hearings on the bill in the Commerce Committee. When I would introduce a bill, there would be a lot of possibilities in the process of modifying the legislation, because I could not claim to have the technical expertise, either. I wanted, if necessary, to legislate; but I would rather have a little bit of a period of time so that both Congress and the regulatory agency and interested people could come before us and say, "This is a good approach," or, "This is a bad approach."

However, here is a floor amendment that has been offered, and there has been no previous legislation introduced and there have been no hearings on these matters at all. What we are doing in this amendment if we adopt it, is to require the retrofitting of aircraft wall coverings.

Mr. METZENBAUM. Of aircraft what?

Mr. DANFORTH. Wall coverings and carpeting and fixtures, to meet new flammatory standards, and to do so within 2 years. We are requiring that new aircraft be equipped with crash resistant inner fuel tanks and breakaway, self-closing fittings throughout the fuel system. Maybe that is a great idea.

I have been very aggressive in all kinds of transportation issues. But I have to say that if that is a good idea, it is something that is not self-evident, so far as I am concerned.

Let me say with respect to crash resistant inner fuel tanks and breakaway, self-closing fittings throughout the fuel system, is this the way of preventing fire on aircraft?

Mr. METZENBAUM. I am sorry?

Mr. DANFORTH. For example, with respect to crash resistant inner fuel tanks and breakaway, self-closing fittings throughout the fuel system, is that the best technology? I am not an engineer and I know the Senator from Ohio is not, but it is not self-evident that this is the best thing to do. Yet, without any hearings at all, on the basis of a floor amendment, we are entering into the business of ordering specific technology to deal with problems.

It seems to me that this is moving into an area where we have no expertise and without any possibility at all of reflecting.

Mr. METZENBAUM. We do have expertise with respect to the breakaway fuel tanks. Our military planes are so equipped; and if it works for the military planes, it will work for the commercial aircraft.

Mr. DANFORTH. That may be so, but I am not sure. Is there some reason why these are not on domestic planes?

Mr. METZENBAUM. I think there is a cost factor, realistically speaking. I do not think it is a tremendous cost factor.

When you compare the cost factor in relation to the kind of damage suits that an airline gets after an accident, I think it is miniscule.

I say to my colleague, these amendments have all been considered, as to whether or not they are unreasonable, whether the time is too short, or whether the FAA will do it. In one instance, the FAA has already made this order, but they have done it with respect to the matter of the treatment of the inside of planes. They have done it on the basis of its being applicable only to new planes. The Senator from Missouri and I both know that the life expectancy of most planes is 20 or 25 years, and that is not adequate.

Mr. DANFORTH. How many old planes are there that would have to be retrofitted with new interiors?

Mr. METZENBAUM. I cannot give the Senator an answer as to the number, but I will say this to the Senator from Missouri: If, as this matter moves through the legislative process, it appears that the time is too short, that there ought to be some technical aspects of it taken care of, the Senator from Ohio will welcome working with the Senator to provide whatever modifications are necessary.

However, I believe this: I think we are talking about that which is causing tremendous loss of life when an airplane accident occurs, and we can save those lives. That does not mean that everybody on the plane that is in a crash is not going to be in danger of loss of life. But it does mean that you are certainly going to have a much safer plane, and you are going to have far less fire.

I read not too long ago that many more deaths can occur from the fire that breaks out in the plane than by reason of the crash itself.

Mr. DANFORTH. I say to the Senator from Ohio that if we are preventing the loss of life, I am for it.

I have worked on a number of safety issues on transportation—especially with Senator LAUTENBERG, who is now on the floor—and if it is a matter of saving lives, I am for it. It is just that what we are doing in this legislation is, for example, requiring that seats meet a testing standard which is called dynamic testing—dynamic testing standards for crashworthiness.

I wonder if we in the Senate, on the floor of the Senate, without the benefit of any kind of hearing whatever, have the expertise to come on the floor of the Senate and decide, as a regulatory agency would decide, that the testing standard for airplane seats must be something called dynamic testing standards for testing crashworthiness.

I mean how many Members of the Senate, when we come to the floor, know what dynamic testing standards for crashworthiness are? How many of us know whether those are the standards that are the best standards for airplane seats? How many of us know how many airplanes are to be retrofitted with this new equipment, what the cost is, what the benefit is, whether it is a good idea or a bad idea?

I take it that the National Transportation Safety Board would have endorsed this proposal, this amendment, if it had looked at it and believed that it was a good amendment. But it is my understanding that they have not done so. Is that right?

Mr. METZENBAUM. I do not know that they have.

I would like to read you what the head of the Airline Pilot Association said about the fires issue. He was testifying on July 24, 1987, before the Aviation Safety Commission, and he said there:

> There have been a number of cases where no crash or impact occurred, simply a cabin interior fire. However, these otherwise uninjured passengers became trapped by the ensuing fire and heat and could not evacuate the aircraft in a timely manner. In 1985 the FAA issued a notice to amend the regulations to require improved cabin materials that are slower to burn and thus allow more time for evacuation. We recommend that the FAA issue a finer rule based on the notice and require a realistic retroactive schedule.

I would say to the Senator from Missouri that it is true there have been no hearings, but that does not mean that the substance and the thrust of the amendent is wrong.

We adopted a lot of amendments out here. We had a major discussion in connection with the Exon amendment, and I do not think there were any hearings on that. I think maybe 15 Senators joined into the discussion.

Then there was a motion to table and limit it to 2 years and that failed.

So we do adopt amendments here regularly where there have not been hearings in the committee.

It is my understandiang that the chairman of the committee is prepared to accept this amendment. The dissent is coming from the Senator from Missouri, and I do not know how many others.

Mr. DANFORTH. Mr. President, I would like to respond to the Senator from Ohio.

The Senator from New Mexico is on the floor. He is now engaged in the negotiations with respect to the budget. I think he has some business he would like to transact.

So I ask unanimous consent that the Senator from New Mexico might be recognized for the purpose of——

Mr. DOMENICI. Submitting an amendment that is acceptable to both sides for which I will take no longer than 1 minute.

Mr. DANFORTH. And subsequent to the consideration of his amendment I be recognized.

The PRESIDING OFFICER. Without objection, it is so ordered. The Chair recognizes the Senator from New Mexico.

Mr. DOMENICI. I thank both the floor manager and distinguished Senator from Ohio.

AMENDMENT NO. 1083

(Purpose: To assist Sierra Blanca Regional Airport, Ruidoso, NM, in obtaining financial assistance for certain fire protection)

Mr. DOMENICI. Mr. President, I send to the desk an amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The Clerk will report the amendment.

The assistant legislative clerk read as follows:

> The Senator from New Mexico [Mr. DOMENICI] proposes an amendment numbered 1083.

Mr. DOMENICI. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

> At the end of the bill, add the following new section:
>
> SEC.   . In the administration of the Airport and Airway Improvement Act of 1982, and any rule or regulation issued or promulgated pursuant thereto, the Sierra Blanca Regional Airport, Ruidoso, New Mexico, for purposes of determining the eligibility of such airport for Federal assistance under such Act for airport development, namely fire protection, shall be considered to have scheduled commuter service with at least a 30 passenger aircraft.

Mr. DOMENICI. Mr. President, the Sierra Blanca Regional Airport near Ruidoso, NM, will open later this year. This will be a most welcome event for the region.

The Sierra Blanca Regional Airport will replace the present facility in Ruidoso. Unfortunately, the present airport has been the sight of numerous aviation accidents, including several deaths.

Federal, State, and local officials have made this new facility a priority. I have worked closely with these officials in this regard.

Airport officials are very concerned that when the new facility opens, it will lack on-site fire protection. I share that concern. The closest fire protection service capable of handling aviation emergencies will be 20 to 30 minutes away.

That is simply too long a time to be of any use for most aviation accidents.

Federal regulations require that any facility that receives scheduled service from planes with a capacity of 30 passengers or more must provide on-site fire protection.

Mesa Airlines of Farmington, NM, will provide scheduled service to Sierra Blanca from Albuquerque and Dallas, operating three flights daily, beginning December 11, 1987.

Mesa Air is a very successful commuter service, offering the only scheduled service to many communities in New Mexico. Unfortunately, Mesa does not operate aircraft carrying as many as 30 passengers.

The amendment I am offering today instructs the Federal Aviation Administration to provide fire protection assistance at Sierra Blanca. This would involve an initial cost for equipment of less than $100,000.

Local officials would be responsible for operating costs. Airport officials are currently negotiating with local fire protection authorities to provide this service.

Mr. President, many of my colleagues may ask why Sierra Blanca Airport is unusual. Many of America's small airports, including some in New Mexico, lack on-site fire protection.

The reason Sierra Blanca is unusual is because airport officials anticipate significant charter services. Ruidoso is home to an all-season resort facility. It attracts everybody from skiers to horse racing fans. This heavy—but unscheduled—passenger traffic makes on-site fire protection particularly important.

Mr. President, I am very pleased that the Sierra Blanca Regional Airport will open soon. I am proud to have played a role in the negotiations between Federal and State officials, negotiations that have made the airport a reality.

It would be unfortunate if this new facility, built to replace what the Department of Transportation has long considered to be one of the Nation's most dangerous airports, were to open without proper fire protection service.

Mr. President, I urge the adoption of the amendment.

Let me just simply state to the Presiding Officer and Senators that we have a very peculiar situation. We have a brandnew, major, original airport which will have commuter services by virtue of airplanes that only carry 24 passengers. Nonetheless, it is commuter. If they carried 30, they would be entitled to fire protection equipment as part of the assistance act that we have in place. Because those commuter airplanes are 24 rather than 30 passengers, this airport is apt to open with no fire equipment.

This amendment names that airport, a major, original airport, and merely says that since its commuter capacity is 24 per airplane, it shall be deemed as if it were 30 and eligible for exactly the same one-time fire assistance as any other airport in America. That is all it does.

I understand both sides are willing to accept it. I thank them for it.

I yield the floor.

The PRESIDING OFFICER. Is there further discussion on the amendment? All time has expired.

The question is on agreeing to the amendment of the Senator from New Mexico.

The amendment (No. 1083) was agreed to.

Mr. DOMENICI. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. DANFORTH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DOMENICI. Again I thank the distinguished floor manager and the distinguished Senator from Ohio for yielding.

AMENDMENT NO. 1081

The PRESIDING OFFICER. The Chair recognizes the Senator from Missouri.

Mr. DANFORTH. Mr. President, first to respond to the Senator from Ohio, he said that the Exon amendment was agreed to without hearings. The Exon amendment did in fact have a hearing.

But I think that the issue before us now is the degree to which the U.S. Senate should act in the manner of a regulatory agency and the circumstances under which we should do that.

This amendment is in the nature of a regulation. It is a very detailed regulation. It requires the retrofitting of aircraft with specific safety equipment. It provides for seats on aircraft to meet specific standards. Those standards are now the subject of a rulemaking, I am told, at the Department of Transportation.

It provides for the retrofitting of existing aircraft with new wall coverings, new carpeting, and new fixtures that meet the new FAA standards on flammability. It requires that new aircraft be equipped with crash restraint inner fuel tanks and breakaway self-closing fittings throughout the fuel system.

I would suggest, Mr. President, that before this amendment was offered, very few Members of the Senate, if any, had given any thought at all to whether or not crash resistant inner fuel tanks and breakaway self-closing fittings throughout a fuel system should be standard equipment on aircraft and whether that equipment should be retrofitted.

We have already heard from the Senator from Ohio that we have no idea how many aircraft there are in the domestic fleet in this country. We have no idea what the cost of this regulation is. We often say that in any safety regulation, it is a question of measuring cost and benefits. Any kind of Federal regulation is a matter of reasuring cost and benefits. Yet, we have no information before us as to what the cost is or what the benefits are.

Nobody wants to vote for people dying. Everybody wants to save lives. Everybody wants to prevent fires. Everybody wants to save lives in case of a crash.

If that is the issue then there need not be a vote. We assume that it is 100 to nothing.

But do these specific regulations make sense? Do these specific regulations do the job that they purport to do?

If the intention of the U.S. Senate is to prevent people from dying in fires and on airplanes, then what options are available to us, what methods are best, what technologies are best, to prevent people from dying in fires?

Is the proposal that has been offered by the Senator from Ohio the best technology, is this the best approach, is this the most cost-effective approach?

I do not know the answer to any of that because I had not heard of this proposal until about a half-hour ago.

I have absolutely no knowledge of it at all. I would be delighted to work with the Senator from Ohio in this regard. I would welcome the opportunity to work with him. I have done that in the past with Senator LAUTENBERG on a number of safety matters. We have moved forward with respect to aircraft and trains and truck legislation, car safety, highway safety of various kinds. But we have attempted to know what we were doing before we did it.

We have attempted to give the regulatory agencies a reasonable opportunity to act. Why? Because they do have a system, they do have the technicians, they do have the staff, they do have people who are paid to know what they are about. If they drag their feet, then Congress acts. And we have on several occasions introduced legislation; some is pending now, as a matter of fact, in highway legislation to have new standards established for trucks.

I do not have any problem at all of getting into that particular area, provided that the regulatory agencies are inactive and provided the Congress, before it acts, has an opportunity to at least have some hearings so that the experts can come in and tell us whether we are doing the right thing or the wrong thing.

But truly it is going off half-cocked to adopt an amendment on the floor of the Senate that no one has ever seen before. I think it is an unprinted amendment that no one has ever seen before. I do not think this has ever been introduced in bill form. I do not think a request has ever been made that there be a hearing on these proposals. I am sure that no hearing has ever been held.

I would really urge the Senator from Ohio to work with us in the Commerce Committee. We are most interested in this area. And if he would introduce a bill, I would assure him, as ranking member of the Commerce Committee, I would be more than willing to do everything that I can to make sure that the objectives of the Senator from Ohio are pursued and pursued very, very aggressively. But this is just absolutely the wrong way to it, in my opinion.

(Mr. WIRTH assumed the chair.)

Mr. McCAIN. Mr. President, I rise in opposition to the amendment. Let me start out by saying that I share the concern expressed by the author of this amendment and I know that our distinguished subcommittee chairman shares that concern, about all aspects of aviation safety in America today. In fact, my distinguished colleague from Kentucky has held numerous hearings on the whole issue of aviation safety, the role of the Federal Aviation Administration and all other aspects that have to do with the very serious crisis in aviation safety today. Those are not my words, those are the words of the head of the National Transportation Safety Board.

I share the deep and abiding concern of my colleague from Ohio on this issue. I am grateful that he would display the commitment and concern that he has, not only now but in the past.

Let me point out that there are a number of questions that I think need to be answered before we should proceed with such an amendment. First of all, I would be interested in why my distinguished colleague from Ohio, who is extremely well known for his indepth knowledge and study of these issues, did not choose to bring this very wide sweeping and all-encompassing amendment before the Commerce Committee as a separate bill so that we could have provided the hearings necessary in order to answer some of the questions that I will raise in the next few minutes.

Second of all, we have two major agencies, the National Transportation Safety Board, which is an independent agency, and the Federal Aviation Administration, which, if my colleague from Kentucky has his way, may become an independent agency. Both of those organizations are entrusted with these issues. To my knowledge—and I hope that perhaps my colleague from Ohio can illuminate on this—neither one of these organizations have been consulted about this amendment. I believe the reputation of both organizations are such, particularly the National Transportation Safety Board, that their input would be very important in this process, particularly in the area of how we achieve the goals as stated in this amendment.

For example, in this amendment it says that air carrier aircraft "be equipped with crash-resistant inner fuel tanks and breakaway, self-closing fittings throughout the fuel system." Those sound enormously important to me. However, I have been informed there are other forms of technology which may be superior and less expensive and in fact more safe in nature than those which are designated in this amendment. I would suggest that there are hundreds of millions of taxpayers' dollars in the case of the Federal Aviation Administration expended which are intended to provide us with the kind of expertise, knowledge, advice, and information which would be, I think, crucial and indeed all-important in shaping legislation of this nature.

I think it is important that we set some kind of handle as to the cost that would be entailed for this amendment, not only to the airlines but obviously we know that any costs incurred with the airlines would be passed on to the passenger. If there is one benefit of deregulation that the American people have enjoyed, it is that most Americans can now fly across this Nation at a lower price than they could in 1979 before the advent of deregulation. Are we going to incur such costs that that would no longer be possible? While we recognize that there are no costs which we can incur which would be too expensive in the name of safety we still have an obligation to provide the maximum safety at the lowest possible cost.

I wonder how the FAA and the National Transportation Safety Board would feel about their ability to make the dates that are prescribed here in this amendment, including no later than January 1, 1993, to perhaps change every existing commercial aircraft in America. Are they capable of bringing about these changes within that period of time? Are they capable of retrofitting existing aircraft with crash-resistant inner fuel tanks and breakaway, self-closing fittings throughout the fuel system?

I think those are questions that need to be answered. I believe that the answers can be obtained in an orderly and efficient fashion through the use of hearings, which I am convinced that my colleague from Kentucky, the distinguished chairman of the subcommittee, would not only subscribe to but heartily engage in. My colleague from Missouri, Senator DANFORTH, has just stated his commitment to involving himself in whatever hearings we can have and in sponsoring or cosponsoring whatever legislation is available in order to achieve the goals that are sought by my distinguished colleague from Ohio.

So, Mr. President, I do not think there is going to be any question that all 100 Members of this body support the thrust of the amendment of the Senator from Ohio. It is important.

A case can be made perhaps that it is long overdue. There is no doubt that there are flammable materials that are in airplanes today that should be replaced and replaced immediately. I do not think there is any doubt that it is in eveyone's interest to see that aircraft are equipped with crash-resistant fuel tanks and breakaway, self-closing fittings throughout their entire system. And perhaps those aircraft should have been manufactured that way.

But the way to address this issue is through the orderly hearing process. With the commitment of both the distinguished chairman and ranking minority member, I believe we can achieve that. And I hope that we could perhaps get a commitment from the distinguished subcommittee chairman that these issues would be addressed as soon as possible in an orderly fashion.

I yield the floor.

The PRESIDING OFFICER. Is there further discussion? The Senator from Kansas.

Mrs. KASSEBAUM. Mr. President, I would just like to say that there is no stronger advocate of consumer safety issues than the Senator from Missouri, Senator DANFORTH. His questions concerning the scope of this amendment suggest the need for hearings on this language before we commit ourselves, really, to a major bill. A bill with major requirements placed on airlines passed without analyzing what steps should be taken and the scope of those changes. Or without analyzing whether there should be, perhaps, some other ways to address the problem that could be more effective. I strongly support the request that we hold hearings at which we could better analyze the impact of the Metzenbaum amendment.

Mr. FORD. Mr. President, I say to all those who have been speaking, I do not think any one of us have any problem with attempting to improve the safety of airlines and I do not want to be placed in the position that if I happen to be opposed to this amendment I am against safety. But the point is, what is best? None of us appear to be engineers. I guess the distinguished Senator from Arizona, having been a pilot, and understanding aircraft and the dangers and safety points as they relate to air transportation, comes about as close as anyone that has discussed this amendment.

I am perfectly willing and will do everything I can to see that we have adequate hearings as it relates to the costs, to what items would be best. Do we have the best flammability standards in this legislation? Will the airlines and manufacturers meet those standards? What are the standards? And what kind of standards do we set?

We may even want to look at the smoke detectors in the rest rooms and see if they are wired direct and see if they are protected so that no fires will ensue from that.

Mr. President, I do not know what the outcome will be by the distinguished Senator from Ohio, but it appears to me that those who are very interested in this subject have given a greater deal of thought and effort, in the years I have been on the Commerce Committee, to safety and safety has been the underlying interest in this piece of legislation on the floor.

I would commit myself, not knowing the dates that I could do it right now, but would commit myself to an early hearing as it relates to the problems and recommendations as set out in this amendment.

Mr. LAUTENBERG. Mr. President, just very briefly, after having listened to the debate, the arguments going both ways, I certainly draw the conclusion that all of us support safer aviation and I commend the Senator from Ohio for having initiated this discussion and presenting this amendment.

We could argue the process involved at length. It is hard to argue against an orderly routine. But I would like to oppose, or at least ask the Senator from Ohio one question.

I doubt that any of us are arguing about adequate flotation devices. That certainly ought to be required immediately, without a lot of debate. The costs for that, I assume the airlines can absorb, even the poorest of them.

We recognize that people subject to a crash are going to probably meet their maker. But if we can prevent that occurrence by improving the material that upholsters the seats and covers the walls and ceilings of the aircraft, I think we should do that as quickly as we can.

I would ask, since it obviously is going to be burdensome to make this conversion as quickly as the Senator from Ohio suggests, whether or not the date for retrofit that is described herein as 24 months after the enactment of this act—whether that could be extended to move the process along in a more orderly fashion and give the aviation companies a chance to determine what kind of material is best suited? Perhaps that could be changed to a 48-month period following the enactment.

Mr. METZENBAUM. I think that is a reasonable suggestion but I would like to inquire of the Senator from New Jersey, perhaps we might include 24 months or such longer period as may be established by the FAA?

Mr. LAUTENBERG. I would think that 24 months from date of enactment is a hard schedule to meet. I do not want to debate 12 months or 48 months here. I think if we extended the period and perhaps if 48 months is not acceptable, maybe the Senator from Missouri or one of the others would recommend a compromise; but I certainly do not think that 24 months is a reasonable date by which we can expect this conversion to be made and I would ask if we can amend this to say not earlier than, let us say, 36 months?

Mr. METZENBAUM. I have no objection to that.

I will send an amendment to the desk modifying that particular amendment from 24 to 36 months. I will draft that promptly.

With respect to the other questions that have been raised, which basically are: Should we be enacting legislation on the floor or should we be going to hearing on it, frankly speaking I think there is a great deal of concern out there in America as to airline accidents. The basic thrust of this bill moves us strongly to address that concern.

When we are talking about breakaway fuel tanks, we know that is feasible because the military planes are using it at the moment.

With respect to the conversion of the walls and the seats and the upholstery and the carpeting to make it fire resistant, it is pretty hard to figure out how anybody could be opposed to that.

Whether the time is right or wrong is something that I have indicated a willingness to adjust.

I will further say to those who are opposed to the amendment that, in my opinion, this bill is not a finished product. Assuming the amendment were to be adopted, and the matter goes over to the House and goes to conference, and if there are persuasive reasons why some part of the language should be changed, I would have no reservation in advising the conference committee or the House, as the case may be, that it would be preferable to make some changes in the language. I would be very willing to work with them. I know of their continued concern about airline safety. I would be willing to work with the National Traffic Safety Board. I would be willing to work with the FAA.

But I think it is unequivocally a fact that permitting some things that are occurring at the present time to be a reality is endangering the lives of hundreds of thousands and maybe millions of Americans every time they fly on a plane.

So, whether or not we should have gone through the hearing process—you may have a point there. But the fact is we did not go through the hearing process and we are here. Certainly you cannot be opposed to changing the flotation devices for planes and requiring those to be onboard.

With respect to the other two items, I just mentioned I am willing to provide a longer period as far as the fire-resistant material is concerned, as suggested by the distinguished Senator from New Jersey. With respect to the breakaway aspects, I am willing, also, if necessary—if it is not technically feasible, if there is something illogical about it, if it will not work, I will be the first to say let us drop that amendment.

As a matter of fact, I would be willing to work with the Senator from Missouri and the Senator from Arizona and the Senator from Kansas to put in some language saying that: "Provided that it is technically feasible to do so," with respect to the breakaway fuel tanks. I do not want to do anything that creates a hardship for the airlines. But the FAA has not acted in the past and I think there is some imperative that we move with some dispatch.

So I am very willing to try to work with them at this point to try to draft some language to deal with the technical aspects of it or I am willing to agree that if it does not come out right and there is some reason that it should not be in, once it has been approved by this Senate, that I join with them in urging a change either in the conference committee or in the House.

The PRESIDING OFFICER. Is there further discussion?

Mr. METZENBAUM. Mr. President, I will suggest the absence of a quorum. If the Senator from Missouri will permit me, I will make a change in the amendment, changing the time.

Mr. FORD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. METZENBAUM. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. METZENBAUM. Mr. President, I send a modification of my amendment to the desk.

The PRESIDING OFFICER. The Senator from Ohio has the right to modify his amendment. The amendment is so modified.

The amendment, as modified, is as follows:

At the end of the bill, add the following:

Sec. . (a) The Secretary of Transportation shall ensure greater safety to air passengers by issuing, within 180 days following the date of the enactment of this Act, regulations requiring:

(1) adequate, uniform life preservers, life rafts, and flotation devices for passengers, including small children and infants, on any flight of an air carrier which the Secretary of Transportation determines a part of which flight will occur over water and adequate information and instructions as to the use of such preservers, rafts, and flotation devices;

(2) as soon as feasible, but in no event later than January 1, 1993, all seats on board all air carrier aircraft to meet dynamic testing standards for crashworthiness; and

(3) prior to the expiration of the 36-month period following the date of the enactment of this Act, all air carrier aircraft to meet interior cabin flammability standards, and further require that air carrier aircraft certificated after January 1, 1993, be equipped with crash-resistant inner fuel tanks and breakaway, self-closing fittings throughout the fuel system.

(b) The Secretary of Transportation shall report to Congress, within 90 days following the date of the enactment of this Act, on specific regulations the Secretary has adopted or intends to adopt to modernize and improve the oversight and inspection of air carrier maintenance and safety-related procedures.

Mr. METZENBAUM. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. METZENBAUM. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. METZENBAUM. Mr. President, we have been having some discussions with respect to this amendment, as modified. I think we have come to some agreement as to how it could be drafted so it would be acceptable all around. I therefore ask unanimous consent that the amendment be temporarily set aside.

Mr. FORD. Mr. President, reserving the right to object, and I will not object, each time we bring up an amendment we will have to set this amendment aside temporarily.

Mr. President, we have four or five amendments, and Senator LAUTENBERG has three which we can accept en bloc, which I would like to move if the Senator will change his unanimous-consent request.

Mr. METZENBAUM. Mr. President, I ask unanimous consent that this amendment be set aside for such amendments as the manager of the bill wishes to bring up in the interim, and that we return——

Mr. FORD. Let us do it this way: Whenever the Senator has his amendment perfected, he will come back to the floor and it will be considered as the next amendment.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

AMENDMENT NO. 1084

(Purpose: To permit assistance to the municipal airport of the City of Dermott, Arkansas, notwithstanding the fact that it is located on leased lands)

Mr. FORD. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Kentucky [Mr. FORD], for Mr. BUMPERS, proposes an amendment numbered 1084.

Mr. FORD. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the bill, add the following:

SEC. . In the administration of the provisions of the Airport and Airway Improvement Act of 1982, the municipal airport of the City of Dermott, Arkansas, shall not be denied eligibility for assistance under such Act on the basis that such airport is located on leased land, if such lease is for a period of at least 99 years, and if the land so leased consists of at least 25 acres.

Mr. FORD. Mr. President, this is an amendment to set out criteria for airports that might be on leased property. What we do here is under the airport owned/leased property. There are some problems as relates to be eligible for FAA funds. This clarifies this matter and takes care of the city of Dermott, AR. We have no problems with the amendment on this side.

Mr. BUMPERS. Mr. President, this amendment is very simple. It allows the city of Dermott, AR, to be eligible for Federal assistance under the Airport and Airway Improvement Act of 1982 for a municipal airport on land which is leased, rather than owned. The amendment stipulates that the land consist of not less than 25 acres, and that the lease be for a period of at least 99 years. At present, the Federal Aviation Administration [FAA] only provides Federal assistance for airport improvement for facilities which are on land owned by the city or municipality without specific legislative exceptions.

The city of Dermott, which is a small town with a small revenue base, has entered into a lease agreement with the owner of a small airstrip which it has upgraded as its municipal airport. With the help of the Arkansas Aeronautics Commission, the airstrip was paved and its capacity expanded. Dermott needs to improve and update this airport facility in order to meet the imperatives of economic development. The city continues to have a strong desire to upgrade this facility, and Federal funds may very well be required.

The owner of the land is willing to lease for 99 years at least 25 acres of land to the city of Dermott. The owner does not want to sell the land because it serves as an entrance to his farm property, and selling the land would severely decrease the value of his holdings. I sympathize with this view, and believe that in this particular instance, the FAA, with the assurance of a long-term lease of at least 99 years, should be allowed to provide assistance under the Airport and Airway Improvement Act. The amendment does not mandate Federal assistance, it simply makes Dermott eligible even though the land is not owned by the city.

The airstrip was originally built by its present owner as a private strip on which to locate planes and to operate a private agricultural spraying service. The city of Dermott approached the owner about upgrading this strip, and its improvement will benefit the community greatly and still satisfy the reasonable needs of the land's present owner.

I understand that this amendment has been cleared on both sides of the aisle, and I appreciate very much the cooperation of my colleagues in this regard. Mr. President, I move the adoption of the amendment.

The PRESIDING OFFICER. Is there further discussion?

Mrs. KASSEBAUM. Mr. President, we have not seen the amendment.

Mr. FORD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. FORD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. KASSEBAUM. Mr. President, there is no objection on this side of the aisle.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the amendment.

The amendment (No. 1084) was agreed to.

Mr. DANFORTH. Mr. President, before we finish consideration of this bill, I would like to raise one very important point with the distinguished subcommittee chairman.

The bill reported by the Commerce Committee extended the authorization only for a 3-year term. However, a number of airports have urged me very strenuously to offer an amendment extending the duration of the Airport Improvement Program for an additional 2 years, or for a total duration of 5 years. The airport managers have made a compelling case that they need a 5-year term in order to plan effectively and to keep their costs down as much as possible.

It was my intention to offer an amendment to extend this program for 2 additional years. However, let me ask the subcommittee chairman if he would be willing to recede in conference to the House bill's provision which reauthorizes the Airport Improvement Program for a 5-year term.

Mr. FORD. Mr. President, I would respond to the Senator's request by saying that I, too recognize the importance to airports of long-term planning. I, too have been contacted by airport managers who have stressed their need for sufficient time to plan and complete their projects.

I appreciate the arguments raised by the ranking member, and I will enter into conference with the House with an open mind and a willingness to consider the merits of a 5-year authorization. I am confident that we will be able to achieve a mutually agreeable outcome.

Mr. DANFORTH. Mr. President, I thank the subcommittee chairman. With that assurance, I do not feel it necessary to offer my amendment.

Mr. FORD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. METZENBAUM. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. METZENBAUM. Mr. President, sometime this afternoon and earlier this morning I had indicated to the managers of the bill that I had a consumers' rights amendment, different from the safety amendment I just brought up, which I intended to call up.

In all candor, it was very similar to a consumers' rights bill that the Senator from Kentucky has, and it is also similar to my consumers' rights bill.

In the discussions that we have had on this subject, I think there is general agreement that consumers do have certain rights that ought to be attended to by the airlines, such as when they are canceling flights, adequate notice in advance, lost luggage, keeping some records, and telling their customers how bad their service has been.

The reality is that the manager of the bill has indicated he would prefer that we not attach that amendment to this bill, and it is my understanding that the majority leader has come to some agreement with him and with me, and I do not know what others are involved, that if the amendment is not brought up at this point, the consumers' rights bill, understandably his bill will be on the floor of the Senate possibly some day this week but more likely certainly not before that.

Mr. FORD. Mr. President, will the Senator yield?

Mr. METZENBAUM. I certainly yield to the manager of the bill.

Mr. FORD. We have been working trying to keep this bill, as we would refer to it, as clean as possible so that we would be into the funding, the safety aspects, airport problems and things of that nature. The Senator is correct that I hope the so-called consumer bill would not be offered as an amendment. We worked awfully hard in our committee to put that bill together, and it is pending on the Senate calendar. The House has sent over two separate bills which we will look at and in all probability go to conference on this year.

I will not speak for the majority leader. It is my understanding, however, that he is willing to attempt to get a consumer bill up this week, and it appears there will be windows where that will be possible. I am not sure, but maybe we can get a time agreement. But there will be a good many amendments which will be offered to that consumer bill, as I understand it. So I am perfectly willing to accommodate the Senator from Ohio, and if the majority leader has been able to work it out with the other side, I think we can proceed this afternoon with the full understanding that the Senator's bill will be brought up this week.

Mr. METZENBAUM. Very good. I thank the manager of the bill. I spoke with the majority leader. I think he is working out some details with the other side.

Mr. FORD. The Senator is correct, and hopefully that can be worked out within the next little bit.

Mr. METZENBAUM. I thank the manager.

AMENDMENT NO. 1085

(Purpose: To amend the National Driver Register Act of 1982 to assist in the identification of operators of aircraft who have driving problems by permitting access to the National Driver Register.)

Mr. LAUTENBERG. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from New Jersey [Mr. LAUTENBERG] proposes an amendment numbered 1085.

Mr. LAUTENBERG. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The amendment is as follows:

At the end of the bill, add the following new section:

SEC. 19. (a) Section 206 of the National Driver Register Act of 1982 (23 U.S.C. 401 note) is amended as follows:

(1) In subsection (a), paragraph (1) is amended by substituting the word "transportation" for "highway".

(2) In subsection (b), insert the following new paragraph immediately after paragraph (2), and renumber paragraphs (3) and (4) as paragraphs (4) and (5), respectively:

"(3) Any individual who has applied for or received an airman's certificate may request the chief driver licensing official of a State to transmit information regarding the individual under subsection (a) of this section to the Administrator of the Federal Aviation Administration. The Administrator of the Federal Aviation Administration may receive such information, and shall make that information available to the individual for review and written comment. The Administrator shall not divulge or use such information except to verify information required to be reported to the Administrator by airmen applying for an airman medical certificate and to evaluate whether the airman meets the minimum medical standards as prescribed by the Administrator to be issued an airman medical certificate. There shall be no access to information in the Register under this paragraph if such information was entered in the Register more than three years before the date of such request, unless such information relates to revocations or suspensions which are still in effect on the date of the request. Information submitted to the Register by States under the Act of July 14, 1960 (74 Stat. 526), or under this Act shall be subject to access for the purpose of this paragraph during the transition to the Register established under section 203(a) of this Act.".

(b) Section 206(b) of the National Driver Register Act of 1982 (23 U.S.C. 401 note) is amended by adding the following sentence at the end of paragraphs (b)(1), (b)(2), and (b)(4), respectively: "Information submitted to the Register by States under the Act of July 14, 1960 (74 Stat. 526), and under this Act shall be subject to access for the purpose of this paragraph during the transition to the Register established under section 203(a) of this Act.".

Mr. LAUTENBERG. Mr. President, this amendment is aimed at closing a serious loophole in our aviation safety network.

It incorporates the text of S. 1819, which I introduced yesterday.

The amendment would authorize individuals to provide the Federal Aviation Administration with access to the National Driver Register in reviewing pilot applications for medical certification. It would allow the FAA to use this information for two specific, limited, but very important purposes: to verify information provided by pilots, and to help evaluate whether the airman meets minimum medical standards prescribed by the FAA.

The FAA would be provided access to information not more than 3 years old, unless that information pertains to a revocation or suspension of a divers license that is still in effect.

In addition, the airman would be provided the opportunity to review the NDR information and comment on it in writing. This would protect against false identification of an applicant, and give the applicant the opportunity to provide any explanation for information in the NDR.

It is my expectation and it is the intent of this amendment that the FAA will promulgate regulations to require authorization of access to the NDR as a condition of the medical certification process.

MEDICAL CERTIFICATION

In order to legally fly, any pilot must receive regular medical certification. The majority of the exams are performed by private physicians approved by the FAA.

There are several classes of certification. First class certification is for airline pilots, and must be renewed every 6 months. Second class certification is for commercial pilots, flight engineers, and flight navigators. It is renewed annually. Private pilots receive third class certification, which must be renewed every 24 months.

Currently, the FAA requires pilots seeking certification to report drug or alcohol problems, including drunk driving convictions. This is a requirement too many do not comply with. And the FAA does not know who those people are. Therein lies the problem.

The majority of pilots take the responsibility that comes with their license seriously. But there are those that don't. There are those who might drink and fly. There are those who would violate FAA's reporting requirement.

THE PROBLEM

A report by DOT's inspector general in February of this year revealed that this reporting system is faulty. There are 711,648 active airmen now certified by the FAA. The inspector general found that about 10,300 of these pilots had their driving license suspended or revoked for DWI convictions in the last several years.

However, 7,850 of the 10,300—or 76 percent—did not report this information to the FAA.

These are the people—those who intentionally do not comply with Federal requirements—whom this bill would specifically address.

Mr. President, let me cite a few examples of where the voluntary reporting system proved lacking.

In February 1986, a commercial cargo pilot was killed when his plane crashed in Tennessee, 3 hours after leaving Milwaukee. His blood alcohol content [BAC] was found to be 0.158, 4 times higher than the level FAA considers the threshold of impairment.

A review of this driving record indicated a history of drunk driving, 18 months earlier, he demolished his van while driving 100 mph. At that time, his BAC was 0.26. From 1981 to 1984, he had seven DWI convictions, and had his drivers license revoked.

Yet, he could still fly. And the FAA had no way of knowing about his record.

The inspector general's investigation turned up 262 first-class pilots with at least 1 drunk driving conviction. They included a pilot who had had two separate DWI convictions, resulting in a 5-year revocation of his drivers license. The IG also found 29 second- and third-class pilots who had 3 or more DWI convictions since 1983. Combined, the 29 pilots had 94 DWI convictions in that time. This included one third-class pilot who had three convictions and had his license suspended for 10 years.

Yet, they all could fly, and the FAA had no way of checking into their records.

Mr. President, this is a gap we need to close. A driving record can indicate a pattern of behavior. If someone has a history of drunk driving convictions, we have a right to think about whether we want to allow that person in the cockpit of a plane.

The FAA already has the interest in knowing. Its medical certification application form asks for a great deal of information about a pilot's background. Included on that form is an inquiry about whether the applicant ever had, or now has traffic or other convictions.

But, under current law, the FAA cannot verify the information the applicant provides. The FAA should not fly blind while some pilots fly drunk. This bill would remove the obstacle that prevents the FAA from confirming pilots' backgrounds.

This change has long been endorsed by the National Transportation Safety Board, and is supported by the Department of Transportation. I would note, Mr. President, that similar provisions were included in the Rail Safety Improvement Act, which I introduced in April, and in S. 1539, the rail safety legislation subsequently reported by the Senate Commerce Committee.

I urge my colleagues to support this amendment.

I ask unanimous consent that a summary of the inspector general's February 17, 1987, report be included in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

FEBRUARY 17, 1987.

Action: Report on Audit of Airmen Medical Certification Program, Federal Aviation Administration, Report No. AV-FA-7-018.

From: John W. Melchner, Inspecter General.

To: Federal Aviation Administrator.

Attached are two copies of our report on the audit of the Airmen Medical Certification Program. The audit (i) evaluated controls in use by the Federal Aviation Administration (FAA) to ensure against issuance of certificates to air transport, commercial, and general aviation pilots who have a history of alcohol- or drug-related problems and (ii) determined whether pilots were reporting accurate and timely information regarding alcohol and drug use. The audit was performed at FAA Headquarters; the Civil Aeromedical Institute (CAMI), Oklahoma City, Oklahoma; and the Southern, Southwest, and Western-Pacific Regional Offices.

Our review concludes that, procedurally, the Airmen Medical Certification Program is overly dependent on pilots reporting that they have drug and/or alcohol problems. Current FAA regulations do not provide for independent verification of data reported by the pilot through either medical testing for alcohol or drug use or administrative crosschecks such as driving records. The effect of over reliance upon the pilot to disclose alcohol- or drug-related problems is difficult to quantify. However, we found that of the 711,648 active airmen medically certified by FAA, approximately 10,300 had their driving license suspended or revoked for driving while intoxicated (DWI) within the past 7 years. A total of 7,850 of these pilots did not report this information to FAA on their medical applications as required. These statistics cast serious doubt on the integrity of the self-disclosure policy of FAA, particularly as it applies to these serious convictions, and denies medical examiners important information in evaluating whether these pilots are medically qualified to fly an airplane.

Also, extensive delays are experienced in suspending or revoking the licenses of pilots when information is reported that indicates possible drug and/or alcohol problems. In addition, there are no objective standards to suspend or revoke an airman's license to fly, such as a certain number of convictions for DWI.

FAA contends that the data that they have reviewed have not validated the association between adverse driving records involving alcohol and aircraft accidents. However, as a result of the audit, FAA has initiated a research study which includes the matching of available aviation accident and toxicological data with the National Driver Register (NDR) information.

Based on the results of the study, FAA will consider amending Federal regulations to establish an objective standard for revoking or suspending pilots' privileges and seeking access to the NDR. FAA indicates concurrence or concurrence in principle with all the recommendations in the report. FAA officials have initiated several actions designed to result in improvements in the Airmen Medical Certification Program. An Advance Notice of Proposed Rulemaking was recently published to receive public comment regarding more intensive efforts by both industry and FAA to identify pilots with problems involving substance abuse.

In accordance with DOT Order 8000.1B, please advise our office within 90 days of the specific actions taken on the recommendations.

Mr. LAUTENBERG. Mr. President, this amendment has been cleared with the managers on both sides and I urge my colleagues to support this amendment. I move its adoption.

The PRESIDING OFFICER. Is there further discussion of the amendment? The Chair hears none.

The amendment (No. 1085) was agreed to.

Mr. FORD. I move to reconsider the vote by which the amendment was agreed to.

Mr. LAUTENBERG. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. LAUTENBERG. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. LAUTENBERG. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 1086

Mr. LAUTENBERG. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from New Jersey, Mr. LAUTENBERG, proposes an amendment numbered 1086.

Mr. LAUTENBERG. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the bill, add the following new section:

SEC. . (a) The Secretary of Transportation shall initiate a supplementary rulemaking to require the installation and use of cockpit voice recorders and flight data recorders on commuter aircraft and other aircraft, commensurate with the recommendations of the National Transportation Safety Board.

(b) The Secretary of Transportation shall issue a notice of proposed rulemaking no later than 30 days after the date of the enactment of this Act.

Mr. LAUTENBERG. Mr. President, this amendment addresses an important safety issue: The use of cockpit voice recorders and flight data recorders in commuter aircraft.

These devices, commonly referred to as "black boxes," are vital in postaccident investigations. They provide the principal means of determining the cause of an accident, and thus in helping to prevent similar accidents.

Since 1978, the National Transportation Safety Board has requested on 10 different occasions that the Department of Transportation require the installation and use of these devices on commuter aircraft. To date, those recommendations have been largely ignored.

DOT did issue a rule in March of this year. That rule, however, did not address the important safety concerns outlined by the NTSB. The NTSB sent a lengthy letter to DOT in June, describing its continuing concerns, and urging further action. In order to take those concerns into account, it is important that DOT initiate a supplementary rulemaking.

Among the NTSB's principal concerns is the lack of black boxes on small commuter aircraft. For example, a December 1984 crash of a small commuter plane in Florida resulted in the death of 11 passengers and crew of 2. Because of the lack of black box equipment, the investigation of this crash was severely hampered. This lack of information prohibited a definitive determination of cause, and resulted in the grounding of an entire fleet of aircraft as investigators searched for clues.

Additionally, the NTSB feels that the current FAA requirements are insufficient to provide the necessary information. Significant advancements in technology have made better, more effective black boxes possible. More parameters can be monitored. More reliable information can be obtained. And costs can be brought down.

Mr. President, FAA's lack of action in this area has been a constant source of concern. We need to push for some movement.

That is the intent of this amendment. It would require that the Secretary conduct a supplementary rulemaking, and take into account the recommendations of the National Transportation Safety Board. It would require that the Secretary issue a notice of proposed rulemaking within 30 days of enactment of this act. Since the DOT has had the NTSB's recommendations for 5 months, and has heard these concerns for 9 years, this time frame is certainly reasonable.

Mr. President, I ask unanimous consent that a letter from the NTSB to the FAA be included in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See Exhibit 1.)

Mr. LAUTENBERG. Mr. President, this is an amendment that addresses an important safety issue. I believe it has been cleared with the managers, and that it is acceptable to them.

I urge adoption of the amendment.

EXHIBIT NO. 1

NATIONAL TRANSPORTATION
SAFETY BOARD,
Washington, DC. June 19, 1987.

Hon. DONALD D. ENGEN,
Administrator, Federal Aviation Administration, Washington, DC.

Since the Safety Board issued its last flight recorder recommendations in August 1982, a number of significant events have occurred, the most notable of which were the Federal Aviation Administration's (FAA) March 25, 1987, rule changes. Other events such as the technological development of solid-state flight data recorders (SFDR), the continued growth of the commuter air carrier industry, the 14 CFR Part 23 changes to provide for the definition and certification of a commuter category airplane, and the adoption of revised flight data recorder (FDR) and cockpit voice recorder (CVR) standards by the International Civil Aviation Organization (ICAO), have necessitated an update of the Safety Board's flight recorder recommendations. We believe it essential that future recorder requirements represent the best compromise among needs, design feasibility, and economic constraints. The Safety Board also believes its views, which are based on years of experience, as the ultimate user of flight recorder information for accident investigation purposes, satisfy the safety objectives of both government and industry. As a result, all existing Safety Board recommendations to the FAA regarding flight recorders will be "Closed—Superseded" or "Closed—Superseded/Unacceptable" by the new recommendations. The existing recommendations and their new classification are contained in the appendix to this letter. This will hopefully clarify the Safety Board's position on this very complex issue.

The new recommendations propose two distinct recorder groups—one for large airplanes used in air carrier operations and one for a commuter category and selected smaller aircraft operated under 14 CFR Part 91. The recommendations pertaining to large airplanes would expand the current requirements to include the Safety Board's parameter list as contained in table I on new manufactured airplanes and existing airplanes equipped with an Aeronautical Radio, Inc., (ARINC) 429 digital data bus or its equivalent. In addition, the large airplane recorder requirements would be extended to include 14 CFR Part 135 operations with aircraft capable of carrying 20 passengers or more. The second recorder group would include requirements for an 8-hour FDR and a 15-minute CVR. The 8-hour FDR requirements would apply to newly manufactured multiengine, turbine-powered aircraft capable of carrying 10 passengers or more and not currently required by 14 CFR Parts 121, 135, and 127 to have an FDR. The recommendation would require a 15-minute CVR on existing and newly manufactured multiengine, turbine-powered aircraft capable of carrying six passengers or more and requiring two pilots by certificate or operating rule and not currently required under 14 CFR Parts 121, 135, and 127 to have a CVR.

FLIGHT RECORDER REQUIREMENTS, 14 CFR PART 121

Although the Safety Board is pleased with the March 25, 1987, 14 CFR Part 121 rule changes that will eliminate the foil-type flight recorders, it is still concerned with the adequacies of the minimum standards for expanded recorders as set forth in 14 CFR Part 121, Appendix B, which was not affected by the March rule changes. The current list of required parameters was undoubtedly selected with the foresight available in 1969 when this portion of the rule was last amended. The experience acquired during the intervening 17 years has permitted the Safety Board to evaluate the usefulness of the required parameters and the potential significance of some parameters that are not required. Safety Recommendation A-82-66 addressed the need to update the mandatory parameter list and defined new parameters, improved accuracies, ranges, and sampling intervals. This recommendation is, in fact, a reaffirmation of Safety Recommendations A-78-27 through -29 issued April 13, 1978, which, in part, proposed specific changes to Appendix B. The Safety Board presented its specific concerns regarding the inadequacies of Appendix B in its formal response dated April 8, 1985, to NPRM "Flight Recorder and Cockpit Voice Recorder" and in a followup letter to the Administrator of the FAA on April 25, 1985.

The international aviation community has also become aware of the need for improved flight recorder standards as exemplified by ICAO's adoption of new flight recorder standards that would require 32-parameter FDR systems. These 32 parameters and associated accuracies and recording intervals are consistent with those recommended by the Safety Board. In addition, the European Organization for Civil Aviation Electronics (EUROCAE) has concluded its March 23, 1987, meeting of Working Group 21 (flight data recorders) that was tasked to produce a document which defines minimum operational performance standards for FDRs. The minimum standards will provide guidance material for installation, parameters recorded, data compression, data retrieval, and crash survivability testing for the next generation of recorders, and will give the Europeans the lead in recorder development.

The technological changes that have occurred since 1969 have had a significant effect on the information needed to properly analyze an accident or incident. The current list of flight recorder parameters, whether required by the FAA or recommended by the Safety Board or ICAO, has always been a compromise between desired parameters and economically feasible parameters. The new electronic display systems (i.e., "glass cockpits"), however, provide some relief to the economic constraints and, at the same time, introduce additional investigative requirements. The ARINC 429 digital data bus which is on Boeing 757, 767, and 747-400, as well as the Airbus A300-600, A310, and 320 can provide a wealth of additional data. In fact, the amount of data is so extensive that the only constraint to the FDR system appears to be the recording capacity of the FDR. On the other hand, the new electronic displays pose new investigative challenges by the nature of their operational and physical characteristics. The video display units will supply little useful information in the postaccident environment and limited information to the flightcrew whose system monitoring functioning has been taken over by the electronic centralized aircraft monitor (ECAM) on the airplane or the engine indication and crew alerting systems (EICAS) on the Boeing 757 and 767 airplanes. With the expanded role of technology in the operation of modern aircraft, a thorough knowledge of the interaction of man and machine in accident investigations has become even more critical. The introduction of the Airbus A320 with its fly-by-wire technology will present new challenges in accident investigation that will require postaccident information of the quantity and quality that goes far beyond the current minimum standards of Appendix B.

Therefore, the Safety Board believes there is a definite need for additional flight recorder parameters; that the core requirements be increased to include those recommended by the Safety Board and ICAO; and that the minimum parameter list for a particular make and model aircraft be based on any unique design or operational capability defined at the time of certification.

The economic constraints to the acquisition of the additional data are minimal. As long as the additional data are on the ARINC 429 data bus or its equivalent, they can be readily and easily recorded. The three leading manufacturers of digital flight data acquisition units (DFDAU) are producing microprocessor-based devices. Therefore, the paramenters selected for recording need only be programmed into the programmable read-only memory (PROM). The one-time cost of programming the DFDAU for the recording of selected parameters could be amortized over an operator's entire fleet of a particular make and model of aircraft. One DFDAU manufacturer placed this one-time cost at between $10,000 and $15,000 per fleet.

COMMUTER AIR CARRIER/GENERAL AVIATION FLIGHT RECORDER REQUIREMENTS, 14 CFR 135/91

The Safety Board has long been concerned by the substantial growth of the commuter air carrier fleet and the lack of FDR and, until recently, of CVR requirements. The number of passengers enplaned by commuters between 1981 and 1986 grew by 84 percent and is expected to grow at an annual rate of 8.3 percent during the next decade.[1] This growth has required the acquisition of newly manufactured aircraft designed specifically for the commuter market. The maximum takeoff weight of most of these new airplanes is in excess of 12,500 pounds, but since a significant number carry less than 30 passengers and have payloads of 7,500 pounds or less, they can be operated without flight records under the commuter rules of 14 CFR Part 135. Indeed, some airplane manufacturers have gone so far as to advertise this fact in their sales literature.

A number of these newly manufactured airplanes employ state-of-the-art avionics and control systems, such as the so-called "glass cockpit." As with their larger air carrier counterparts, these new digital systems will present some unique and potentially insurmountable problems to accident investigators. Much of the postaccident cockpit documentation, such as switch and instrument positions, that have proven so vital in past investigations will no longer be available. On the more positive side, the availability of vast amounts of pertinent information on digital data buses will greatly improve the technological and economical feasibility of installing FDR's on airplanes of this size.

The commuter air carrier industry is currently undergoing technological and operational changes comparable to that faced by the certificated air carrier industry some 17 years ago when wide-bodied jets were introduced. At that time, the existing flight recorder requirements were determined to have been inadequate, and a new set of standards was developed. Unfortunately, the new recorder standards applied only to airplanes with a type certification date subsequent to September 30, 1969, regardless of the date of manufacture of the airplane. The March 25, 1987, flight recorder rule changes are testimony to the inappropriate application of the 1969 standards. The additional expense associated with a retrofit as opposed to installation during manufacture is apparent; what is not apparent is the loss of vital accident data due to the lack of an adequate recorder system during the intervening years. It is not possible to estimate how many lives or millions of dollars could have been saved had the changes adopted on March 25, 1987, been implemented 17 years earlier. The FAA is now in a position to make a similar decision concerning CVR and FDR requirements for commuter air carriers.

The Safety Board believes that the January 15, 1987, change to 14 CFR Part 23, that defines the "commuter category" as airplanes having a seating configuration, excluding the pilot seats, of 19 or less, and a maximum certificated takeoff weight of 19,000 pounds or less, is consistent with a logical division point for the complexity and type of recorder required. An examination of commuter fleet indicates that only three airplane models have a seating capacity of from 20 to 30 passengers,[2] and a maximum payload of 7,500 pounds or less. Two of the three airplanes, the Embraer EMB-120 and Shorts 330, have a seating capacity of 30 passengers, while the third, the CASA 212, has a seating capacity of 26 passengers. The Safety Board believes that these airplanes are of sufficient size and complexity to warrant the installation of flight recorders that meet the requirements of 14 CFR Part 121. In the case of two models, the addition of a single passenger seat would require the installation of a CVR and FDR under the existing Part 121 rules. At least two models, the EMB-120 and Shorts 330 are being operated in Europe with complete FDR and CVR systems. In fact, the first Shorts 330 delivered to the United States were required by U.S. standards at the time to have an FDR and CVR.

Therefore, the airplanes that fall into the designation of commuter category, 19 or less passengers and 19,000 pounds, are distinctly different from their larger Part 135 counterparts, the maximum seating capacities of which are some 7 to 11 seats larger. The Safety Board believes that a more logical division for those airplanes requiring compliance with 14 CFR Part 121 flight recorder rules would be 20 passengers or more and not 31 as currently required. This would be more consistent with the distinct division that currently exists in the commuter fleet and would align those few airplane models of larger capacity with the intent of the 14 CFR Part 121 recorder rules.

The technological feasibility of a flight recorder for the commuter category aircraft (19 passengers or less) is no longer in question. In fact, one recorder manufacturer has developed a recorder for the general aviation market that meets the technical standards of SAE 8039.[3] In addition, the U.S. Army has just embarked on a prototype program to install 200 FDRs in its UH-64 Blackhawk helicopters. These recorders are a standard off-the-shelf version of a digital data recorder currently in use by a number of U.S. and foreign air carriers. This prototype program is a prelude to a much larger program which specifies that SFDRs be installed on the U.S. Army's entire fleet of aircraft. Also, the U.S. Air Force is currently flying F-16 and B1 airplanes equipped with SFDRs. In addition, a solid-state version of the 25-hour air carrier FDR has been proposed by one recorder manufacturer and is under development by others. Consequently, the Safety Board believes that a technological spinoff for general aviation commuter category recorders is highly probable and that these small lightweight recorders can be retrofitted into aircraft with systems similar to those generally found in the commuter air carrier fleet.

The investigations of commuter airplane accidents that have occured since the Safety Board's last recommendations continue to emphasize the need for CVRs and FDRs. On December 6, 1984, a Provincetown Boston Air (PBA) Embraer EMB-110 crashed shortly after taking off from Jacksonville, Florida. All 11 passengers and 2 crewmembers were killed and the airplane was destroyed. Although the evidence of an in-flight structural failure was obvious, the reason for the failure was not. In fact, the investigators had so few clues to work with that Emergency Airworthiness Directive 85-01-51 was issued on January 10, 1985, which essentially grounded the U.S. EMB-110 fleet until an inspection of remaining airplanes could be completed. The investigation continued for 18 months, far longer than most comparable air carrier accident investigations. In addition, the degree of certainty as to why the accident occurred would have been significantly more positive had CVR and FDR information been available. The Safety Board was able only to conclude that a pitch control problem occurred but was unable to determine the precise malfunction that caused the problem. The Safety Board is confident that, had CVR and FDR information been available, the cause would have been determined in a much more timely manner and with a precise identification of the malfunction.

During a 7-month period from August 25, 1985, to March 13, 1986, the commuter air carrier industry suffered three fatal accidents:

On August 25, 1985, Bar Harbor Flight 1808, a Beech Model 99, crashed during an instrument landing system (ILS) approach to Auburn-Lewiston Airport, Auburn, Maine. The airplane struck trees at an elevation of 345 feet mean sea level (msl) in a wings level attitude 4,000 feet from the end of the runway threshold and 440 feet to the right of the extended runway centerline; all eight persons aboard were fatally injured.[4]

On September 23, 1985, Henson Airlines Flight 1517, a Beech B99, crashed during an ILS approach to Shenandoah Valley Airport, Weyers Cave, Virginia. The airplane struck trees at an elevation of 2,400 feet msl in a wings level attitude about 6 miles east of the airports; all 14 persons aboard were fatally injured.[5]

On March 13, 1986, Simmons Airlines Flight 1746, an Embraer EMB-110P1, crashed during an ILS approach to Phelps Collins Airport, Alpena, Michigan. The airplane struck trees at an elevation of 725 feet msl in a wings level attitude about 1.5 miles from the end of the runway threshold and about 300 feet to the left of the extended runway centerline; three of the nine airplane occupants were fatally injured.[6]

In all three accidents, the flightcrews were involved in precision instrument approaches in instrument meteorological conditions. The recorded air traffic control (ATC) communications in all three instances gave no indication that the flightcrews were experiencing any mechanical or ILS navigational problems. The ensuing examinations of the airplance wreckages and navigational aids did not disclose any problems that would have caused or would have contributed to the flightcrew's wings level controlled crashes. Therefore, with the lack of any evidence to suggest mechanical malfunctions, the investigations focused on flightcrew performance.

Unfortunately, the lack of flight recorder information severely limited the scope of the flightcrew performance investigations. As a result, the investigators were confined to areas such as interviews with fellow crewmembers, training records, FAA surveillance, cockpit, standardization, and a number of additional operational factors. Although the investigative efforts produced a number of significant safety recommendations based on sound evidence of potentially hazardous conditions and practices, the specific flightcrew actions, inactions, environmental conditions, heretofore undetermined equipment failures or combinations thereof that caused the accidents could not be positively identified. Further, the lack of a definitive accident cause diminishes the effectiveness of the Safety Board's recommendations to improve safety. However, the Safety Board is confident that, had flight recorder information been available, the specific deficiencies in flightcrew performance or some heretofore unknown failure or malfunction would have been determined for these accidents.

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[1] "Regional Airline Association 1986 Annual Report," published by the Regional Airline Association, 1101 Connecticut Avenue, N.W., Washington, D.C. 20036.

[2] "Regional Airline Association 1986 Annual Report," Ibid.

[3] Society of Automotive Engineers, Inc., "Minimum Performance Standards General Aviation Flight Recorder."

[4] For more detailed information, read Aircraft Accident Report—"Bar Harbor Airlines Flight 1808, Beech B-99, N300WP, Auburn-Lewiston Airport, Auburn, Maine, August 25, 1985" (NTSB/AAR-86/07).

[5] For more detailed information, read Aircraft Accident Report—"Henson Airlines Flight 1517, Beech B-99, N339HA, Shenandoah Valley Airport, Grottoes, Virginia, September 23, 1985" (NTSB/AAR-86-07).

[6] For more detailed information, read Aircraft Accident Report—"Simmons Airlines, Flight 1746, Embraer Bandeirante EMB-110P1, N1356P, Near Alpena, Michigan, March 13, 1986" (NTSB/MAR-87/02).

Two more recent incidents further exemplify the need and benefits of FDRs and CVRs. The first incident involved a regional air carrier, operating a 42-passenger turboprop airplane.[7] During an ILS landing approach in icing conditions, control was lost and the airplane rolled abruptly to the right and left and descended 600 feet before the flightcrew could regain control. On the same day, a second airplane of the same type operated by the same operator had a similar but far less severe encounter. The FAA acted promptly to prohibit operations into forecast icing conditions until the airworthiness of the airplane could be further evaluated. The FDR from both airplanes and the CVR from the first airplane were removed and analyzed. The recorded data clearly identified the cause of the loss of control as operational rather than anything related to airworthiness and thus allowed for a prompt implementation of corrective action and the removal of the icing prohibition. This all took place within a matter of days.

In stark contrast is the March 4, 1987, fatal accident in Detroit, Michigan, involving a regional air carrier operating a 26-passenger CASA 212 that crashed inverted while on final approach to the airport. Because this airplane is certified to carry less than 30 passengers and has a maximum payload of less than 7,500 pounds, CVR and FDR information was not available nor was it required. Without the CVR and FDR information, the investigation is limited to witness statements, ground impact marks, badly damaged and burned wreckage, limited air traffic control radar data, and flight test data. During the week of March 16 through March 20, an FAA flight test team was dispatched to Madrid, Spain, to conduct a flight test in the area of stall characteristics, stall warning, directional stability, and engine-out controllability. The team determined that the natural stall warning was inadequate. An NPRM was issued on April 10 that would require the installation of an artificial stall warning system in the CASA-212. However, even with the information obtained from this flight test program, a positive determination of factors that caused the accident may never be made. The possibility of an additional flight test program in currently under review. In the interim, however, there are 29 CASA 212s in the United States and over 300 worldwide operating without restriction and without a determination as to what caused the accident or even what happened.

On May 8, 1987, another CASA-212 in scheduled commuter operation crashed on the final approach to the airport in Mayaguez, Puerto Rico. Both pilots were killed, and the four passengers aboard were injured. The airplane was destroyed. There was no CVR or FDR aboard the airplane, and Safety Board investigators are limited to information similar to that available in the Detroit accident.

As the accident record shows, the need for FDRs and CVRs on commuter category airplanes has not diminished since the last recorded recommendations were issued by the Safety Board in 1982.

COCKPIT VOICE RECORDER "HOT MIC," 14 CFR PARTS 121, 135, 25, AND 23

The Safety Board has found the performance of CVR installations where the audio signal from the boom microphone of each flight crewmember is continuously recorded on a dedicated channel, often referred to as a "hot mic," to be far superior to the standard cockpit area microphone (CAM). This conclusion was reached after the Safety Board investigated a number of accidents/incidents involving both U.S. and foreign registered airplanes equipped with CVR "hot mics." In fact, the "hot mic" has proven to be a most significant technological improvement in CVRs. The level of improvement far surpasses any technological improvements that could be achieved by state-of-the-art recording or signal processing equipment.

In contrast, the quality of the audio signal recorded by the standard CAM can generally be discribed as poor, which requires considerable time and effort to produce a transcript. Frequently, the tape contains unintelligible dialog that is important to the determination of causal factors. The high quality audio signal available from the "hot mic" would eliminate this problem for the most part, and at the same time, provide additional benefits, as follows:

a. Positive crewmember identification,

b. Redundant multichannel recordings,

c. A potential for the evaluation of crewmember incapacitation by monitoring respiration rates, and

d. Improved accuracy in determining which pilot was controlling the aircraft.

The Civil Aviation Authority (CAA) of the United Kingdom (UK) has required CVR "hot mic" since 1974. The UK Accident Investigation Branch's nearly 13 years of experience in analyzing CVR "hot mic" recording has prompted it to promote the adoption of CVR "hot mic" standards by the international aviation community. As a result, both ICAO and EUROCAE have adopted CVR "hot mic" standards. In addition, the Board of Directors of the Air Line Pilots Association voted in May 1987 to adopt a resolution to promote the use of CVR "hot mics."

The use of CVR "hot mic" may be the only means of producing an adequate CVR recording of pilot conversation for some airplanes. A good example of this was the standard CVR installation in the deHavilland Dash 7, which was found by the FAA's Flight Standards District Office in Milwaukee, Wisconsin, to be unsatisfactory. As a result, deHavilland engineers found that the only satisfactory solution was to install a "hot mic."

Although the benefits of CVR "hot mic" are numerous, the economic penalties are slight. In fact, most if not all major airplane manufacturers are now offering CVR "hot mic" as standard equipment. Therefore, a CVR "hot mic" requirement would not pose an economic penalty for operators purchasing new equipment.

GENERAL AVIATION, 14 CFR PART 91[8]

The general aviation fleet is undergoing a technological evolution similar to, and in some respect greater than, that occurring in the air carrier and commuter fleets. The technological advances in the general aviation fleet have been numerous and varied, with the introduction of composite structures, digital data buses, and advanced automatic flight control systems. An indication of how pervasive the introduction of state-of-the-art technology has become was the November 1986 release by the General Aviation Manufacturers Association (GAMA) of three digital data bus standards for general aviation aircraft. As discussed earlier, these digital systems offer both an opportunity and a challenge to future accident/incident investigations. The opportunity stems from the relative ease by which vast amounts of significant information can be accessed and recorded. The challenge will come if this opportunity is not taken, for without crash-protected information, future investigations will have even less evidence than is currently available on conventional aircraft from cockpit instruments, light bulbs, switch settings, etc. Unfortunately, it is not merely an investigative challenge that is at stake—the lives and property of future passengers and owners are also at stake.

The accident record continues to present evidence that this challenge has been formidable and costly, both in lives and property. For example, the accident/incident histories of the Mitsubishi MU-2 and the Gates Learjet Models 24 and 25 airplanes provide an appreciation for the consequences of not having flight recorder information. The accident/incident records of the Learjet and MU-2 have been well documented in previous Safety Board recommendations[9] and, therefore, need not be reiterated in detail. Briefly stated, however, both airplanes have a history of experiencing a sudden loss or reduction of control, which in many instances resulted in uncontrolled, high speed collisions with the ground.

In a recent MU-2 accident of this type, shortly before the fatal uncontrolled ground collision, the pilot radioed that the autopilot was pitching the airplane nose-down and that he could not control it. Because of this information, the Safety Board has been able to focus its investigative efforts in this accident, and other MU-2 accidents, on specific components of the Bendix M-4 autopilot system. This was accomplished by the correlation of the service difficult reports and accident/incident histories of the MU-2s and Learjet airplanes. Although these most recent investigative efforts appear to be providing some answers, it has been much too long and costly in terms of lives and property. The very long time taken to reach this point in the investigative process stems directly from the lack of information of the type provided by modern recorders. It is safe to say that had data similar to that proposed in the attached recommendation been available, a much more timely resolution of the serious safety problems could have been made which might have prevented all subsequent occurrences.

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[7] For more detailed information read, Aircraft Accident/Incident Summary Investigation No. DCA-87-IAO15.

[8] In the context of this letter, the term "general aviation" means multiengine turbine-powered aircraft.

[9] Safety Recommendations A-81-106 through -111, issued August 31, 1982, and A-86-132 through -134, issued January 9, 1987.

The benefits of flight recorder information are becoming apparent to elements of the general aviation community as voluntarily installed recorders begin to yield valuable information. An indication of this was the recent National Business Aircraft Association (NBAA) change of policy that now encourages its members to consider voluntary installation of CVRs. In stating this policy change, Mr. Jonathan Howe, president of NBAA, cited the value of CVR information in the recent investigation of a collision between a coporate jet and a small plane.[10]

SUMMARY

The aviation community and the commuter airlines in particular cannot afford to identify its safety problems by an accumulation of accidents in which the cause cannot be determined in a timely and definitive manner. The public expects and deserves a prompt and accurate determination of cause and should never be subjected to a repeat of unresolved accidents. The Safety Board is confident that, in the cases previously cited, the recommended CVR/FDR systems would have provided data of sufficient quality and quantity to determine in a much more timely manner the specific safety problems with a much higher degree of certainty.

The FAA has repeatedly cited cost as the main reason for not requiring FDRs and a retrofit of CVRs on commuter airplanes and general aviation aircraft. Although the FAA recognized the benefits of recorders, as evidenced by NPRM 85-1 "Flight Recorders and Cockpit Voice Recorders," which encouraged the voluntary installation of approved flight recorders and the soon-to-be-adopted Technical Standard Order (TSO) C-111, "General Aviation Flight Recorders," it has not seen fit to make them mandatory. The problem of implementing the Safety Board's recommendations, however, comes with the FAA's approach to determining the cost-benefit requirement as specified by Executive Order 12291. The Safety Board believes that the FAA's cost-benefit evaluation is dated and, therefore, does not truly reflect the state-of-the art in aircraft and recorder technologies. Fortunately, the aviation industry has not been waiting for the FAA's leadership in the area of flight recorders. Technology has progressed, and there are a number of SFDRs in operation on military aircraft which could be adapted for use in the commuter and general aviation fleets with little difficulty or cost.

In the past, the Safety Board recommended the prewiring of newly manufactured aircraft pending the development of a general aviation recorder which the Safety Board acknowledged was not commercially available. The Safety Board now believes that it is no longer necessary to go through the prewiring phase while waiting for the industry to develop a recorder for airplanes that have no mandatory compliance date. The Safety Board believes that the technology currently exists to permit the recorder industry to develop suitable and economically feasible flight recorders. This is not to say that a prewire phase should not precede the mandatory compliance date, thus ensuring the most comprehensive coverage without requiring a retrofit.

NEW RECORDER TECHNICAL STANDARDS, 14 CFR PARTS 91, 121, AND 135

There are a number of recorder manufacturers interested in developing SFDRs to replace the existing electromechanical digital recorders, but they are finding their efforts stymied by the lack of a suitable TSO. The existing flight recorder TSO was issued in 1958 and does not address many significant features of an SFDR. EUROCAE, currently operating under the same TSO, also has recognized the shortcomings of TSO C-51 and plans to have a new standard in about a year. The SFDRs radical departure from existing recorder technology while offering many advantages will also feature survivability requirements never envisioned by the drafters of TSO C-51. For example, the requirements to hydrostatically test a recorder have never been a problem because the memory mediums currently in use are not as vulnerable to crushing. Crush-testing, however, is important to an SFDR, because its memory chip could crush at extreme ocean depths. The recorder industry needs to know soon the crush load which the unit must be designed to withstand. To properly determine the design crush load criteria about ocean depths, as related to the probability of recovery within the life span of underwater locator beacons, recovery capabilities and costs of recovery must be established.

The new TSO must also address items such as sampling intervals, accuracies that reflect state-of-the-art sensors, and recording resolution. Recording resolution is of particular importance in defining data compression techniques and memory size. The Safety Board believes that any data compression techniques must record changes to the least significant bit, but at the same time acknowledges that the current standing for digital recorders, ARINC 573 and 717, places word size at 12 bits which for a number of parameters is larger than necessary. Therefore, the minimum word size should be determined on a parameter by parameter basis.

The verification that a recorder can retain the most recent 25 hours (14 CFR Part 121) or 8 hours (14 CFR Parts 91 and 135) of recorded data is also causing concern among recorder manufacturers. In the past, the capacity of the recorder was determined by the size of the memory medium. With an SFDR employing data compression, it is no longer a function only of memory size but also of the activity of the flight—the more active the flight the more memory required. Therefore, a standard by which a recorder's ability to retain 25 or 8 hours of data must be established. The Safety Board is willing to accept a standard that would permit the retention of less than 25 or 8 hours under extreme conditions, but not to exceed 10 percent of capacity.

EXPANDED FLIGHT RECORDER REQUIREMENTS FOR NEW AIRPLANES, 14 CFR PARTS 23 AND 25

The technological advancements in recent years and those envisioned for the future have made it impractical to require only a minimum parameter list for all new airplanes. Therefore, the Safety Board believes that any unique design or operational characteristics that affect the performance of the airplane, in the form of handling qualities and performance limitations such as take off and stopping distances or any critical autopilot configurations and, particularly, any expert artificial intelligence dedicated to a monitoring function deemed critical to airplane operation, must be evaluated at the time of airplane certification to ensure that sufficient information will be recorded from which airplane performance can be determined. Specific language must be written into the rules to address these requirements.

In past discussions between staff on this subject, the FAA has insisted that the current rules are adequate to ensure that this will be done. The Safety Board finds that this interpretation of the rule is not shared by all regions. For example, the Boeing 757s sold to Delta Air Lines and Northwest Air Lines do not record angle of attack although it is readily available on the digital data bus. The current rule lists angle of attack as a mandatory parameter "(if recorded directly)" which is somewhat confusing and subject to misinterpretation.

As a consequence of this comprehensive review of the status of flight recorders, the National Transportation Safety Board recommends that the Federal Aviation Administration:

Amend 14 CFR 121.343 to require that, after a specified date, all airplanes equipped with a 429 digital data bus or equivalent—(i.e., "glass cockpits") be retrofitted to record sufficient data to determine the parameters in table I. (Class II, Priority Action) (A-87-77)

Amend 14 CFR 121.343 to require that, after a specified date, all airplanes manufactured after that date be equipped with an approved flight recorder that records data from which the information listed in table I can be determined. (Class II, Priority Action) (A-87-78)

Amend 14 CFR Part 127, Subpart H, to require that all existing and newly manufactured rotocraft, regardless of the date of original type certificate, be equipped with one or more approved flight recorders that record data from which the information listed in table II can be determined. The recorder should retain no less than the 8 hours of aircraft operation. (Class II, Priority Action) (A-87-79)

Amend 14 CFR Part 135 to require that, after a specified date, all multiengine turbine-powered aircraft (both fixed-wing and rotocraft) capable of carrying 10 to 19 passengers, brought onto the U.S. register, be equipped with an approved flight recorder that records data from which the information listed in tables III and IV can be determined, and at a date to precede the above date, that all subject aircraft be prewired to accept a flight data recorder capable of recording data from which the information in tables III and IV can be determined. The recorder should retain no less than the 8 hours of aircraft operation. (Class II, Priority Action) (A-87-80)

Amend 14 CFR Part 135.151 to require that, after a specified date, a cockpit voice recorder be installed on all currently certificated multiengine tubine-powered aircraft (both fixed-wing and rotocraft), which are certified to carry six or more passengers and which are required by certificate or operating rule to have two pilots, used in any type of operation not currently required by 14 CFR 121.359, 135.151, and 127.127 to have a cockpit voice recorder. The cockpit voice recorder should have at least one channel reserved for voice communications transmitted from or received in the aircraft by the radio and one channel reserved for audio signals from a cockpit area microphone, and should record at least the last 15 minutes of aircraft operation. (Class II, Priority Action) (A-87-81)

Amend 14 CFR 135.2 to require that those aircraft (both fixed-wing and rotorcraft) capable of carrying 20 passengers or more to be equipped with flight data recorders that comply with 121.343 flight recorder requirements as changed to conform to Safety Recommendations A-87-77 and -78. (Class II, Priority Action) (A-87-82)

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[10] Aviation Daily, April 15, 1987.

Amend 14 CFR 135.151 to require that those aircraft (both fixed-wing and rotocraft) capable of carrying 20 passengers or more, and not currently required by 14 CFR 121.359 or 135.151 to have a cockpit voice recorder, be equipped with a cockpit voice recorder that meets 14 CFR 121.359 requirements. (Class II, Priority Action) (A-87-83)

Amend 14 CFR Part 91 to require that, after a specified date, all multiengine turbine-powered aircraft (both fixed-wing and rotocraft) capable of carrying 10 or more passengers brought onto the U.S. register, be equipped with an approved flight recorder that records data from which the information listed in tables III and IV can be determined at a date to precede the above date, and that all subject aircraft be prewired to accept a flight data recorder capable of recording data from which the information in tables III and IV can be determined. The recorder should retain no less than the last 8 hours of aircraft operation. (Class II, Priority Action) (A-87-84)

Amend 14 CFR Part 91 to require the installation of a cockpit voice recorder in all multiengine turbine-powered aircraft (both fixed-wing and rotocraft) capable of carrying six passengers or more, which require two pilots by certificate or operating rule, and which currently are not required by 14 CFR 121.359, 135.151, and 127.127 to have a cockpit voice recorder. The recorder should have at least one channel reserved for voice communications transmitted from or received in the aircraft by the radio and one channel reserved for audio signals from a cockpit area microphone, and should record during the last 15 minutes of aircraft operation. (Class II, Priority Action) (A-87-85)

Develop a technical standard order (TSO) for solid-state flight data recorders (SFDR) specifying resolution, sampling intervals, accuracies, and specify crash/fire survivability requirements to accommodate the unique design characteristics of the SFDR not currently covered by TSO C-51A. Also provide specific criteria by which the ability of the recorder to retain the most recent 25 or 8 hours of recorded data can be verified. (Class II, Priority Action) (A-87-86)

Amend 14 CFR Part 23, 25, 27, and 29 to require that all newly type-certificated aircraft be evaluated to determine any dedicated parameters that must be recorded on flight data recorders because of the unique design or operational characteristics of the aircraft. (Class II, Priority Action) (A-87-87)

Amend 14 CFR Part 23 and 25 to require that all newly manufactured aircraft and new cockpit voice recorder installations be designed such that an uninterrupted recording from the boom or mask microphones and headphones for each flight crewmember's position and from an area microphone can be made on dedicated channels of the CVR. On those aircraft requiring only two flight crewmembers, the unused channel should record the passenger address audio signal when available. A sidetone shall be produced only when the transmitter or interphone is selected, and, in addition, all audio signals received by hand-held microphones shall be recorded on the respective crewmember's channel when keyed to the "ON" position. (Class II, Priority Action) (A-87-88)

Amend 14 CFR Part 121 and 135 to require the use of boom microphones by all flight crewmembers below 18,000 feet mean sea level on those aircraft equipped to record the uninterrupted audio signals received by a boom or mask microphone. (Class II, Priority Action) (A-87-89)

Burnett, Chairman, goldman, Vice Chairman, and Lauber, Nall, and Kolstad, Members, concurred in these recommendations.

JIM BURNETT,
Chairman.

TABLE I.—PARAMETER LIST (14 CFR 121)

Parameters	Range	Accuracy (sensor input to DFRD readout)	Sampling interval (per second)
Time (GMT)	24 Hrs	±0.125 percent Per Hour	0.25 (1 per 4 seconds).
Altitude	−1,000 ft. to max certificated altitude of aircraft	±100 to 700 ft (See Table 1, TSO-C51a)	1.
Airspeed	50 KIAS to Vso, and Vso to 1.2 V^{D}	±5 percent; ±3 percent	1.
Heading	360°	±2°	1.
Normal acceleration (vertical)	−3g to +6g	±1 percent of max range excluding datum error of ±5 percent	8.
Pitch altitude	±75°	±2°	1.
Roll altitude	±180°	±2°	1.
Radio transmitter keying	On-off (discrete)		1.
Thrust/power on each engine	Full range forward	±2 percent	1 (per engine).
Trailing edge flap or cockpit control selection	Full range or each discrete position	±3° or as pilot's indicator	0.5.
Do	do	do	0.5.
Thrust reverser position	Stowed, in transit, and reverse (discrete)		1 (per engine).
Ground spoiler/speed brake selection	Full range or each discrete position	±2 percent unless higher accuracy uniquely required	1.
Marker beacon passage	Discrete		1.
Autopilot engagement	do		1.
Longitudinal acceleration	±1g	±1.5 percent max range excluding datum error of ±5 percent	4.
Pilot input and surface position-primary controls (pitch, roll, yaw)	Full range	±2° unless higher accuracy uniquely required	1.
Lateral acceleration	±1g	±1.5 percent max range excluding daum error of ±5 percent	4.
Pitch trim position	Full range	±3 percent unless higher accuracy uniquely required	1.
Glideslope devitation	±400 microamps	±3 percent	1.
Localizer deviation	do	±3 percent	1.
AFCS mode and engagement status	Discrete (5 bits necessary)		1.
Radio altitude	−20 ft. to 2,500 ft.	±2 ft. Or ±3 percent whichever is greater below 500 ft. and 5 percent above 500 ft..	1.
Master warning	Discrete		1.
Nav 1 and 2 frequency selection	Full range	As installed	0.25.
DME 1 and 2 distance	0–200 NM	do	0.25.
Main gear squat switch status	Discrete		1.
Angle of attack (if recorded directly)	As installed	do	2.
Outside air temperature	−90°C to 50°C	±2°C	0.5.
Hydraulics, each system low pressure	Discrete		0.5.
Ground speed	As installed	Most accurate system installed (INS equipped aircraft only)	1.

TABLE II.—PARAMETER LIST (14 CFR 127)

Parameters	Range	Accuracy (sensor input to DFDR readout)	Sampling interval (per second)
Time (GMT)	24 hrs.	±0.125 percent per hr.	0.25 (1 per 4 seconds).
Pressure altitude	−1,000 ft. to max certificated altitude of aircraft	±100 to ± 700 ft. (See Table I, TSO–C51a)	1.
Airspeed	As the installed measuring system	±3 percent	1.
Heading	360°	±2°	1.
Normal acceleration (vertical)	−3g to +6g	±1 percent of max range excluding datum error of ±5 percent	8.
Pitch attitude	±75°	±2°	2.
Roll attitude	±180°	±2°	2.
Radio transmitter keying	On-off (discrete)		1.
Power on each engine: Free power turbine speed and engine torque	0–130 percent (power turbine speed) full range (torque)	±2 percent	1 speed, 1 torque (per engine).
Main rotor speed	0–130 percent	do	2.
Altitude rate	±6,000 ft./min.	As installed	2.
Pilot input—primary controls (collective, longitudinal cyclic, lateral cyclic, pedal).	Full range	±3 percent	2.
Flight control hydraulic pressure low	Discrete, each circuit		1.
Flight control hydraulic pressure selector switch position, 1st and 2nd stage.	Discrete		1.
AFCS mode and engagement status	Discrete (5 bits necesssary)		1.
Stability augmentation system engage	Discrete		1.
SAS fault status	do		0.25.
Main gearbox pressure low	As installed	As installed	0.25.
Main gearbox temperature high	do	do	0.5.

TABLE II.—PARAMETER LIST (14 CFR 127)—Continued

Parameters	Range	Accuracy (sensor input to DFDR readout)	Sampling interval (per second)
Controllable stabilator position	Full range	±3 percent	2.
Longitudinal acceleration	±1g	±1.5 percent max range excluding datum error of ±5 percent	4.
Lateral acceleration	±1g	do	4.
Master warning	Discrete		1.
Nav 1 and 2 frequency selection	Full range	As installed	0.25.
Outside air temperature	−90°C to +50°C	±2°C	0.5.

TABLE III.—PARAMETER LIST (FIXED WING AIRCRAFT)

Parameters	Range	Installed system [1] minimum accuracy (to recovered data)	Sampling interval (per second)
Relative Time (from recorder on prior to takeoff)	8 hrs. minimum	±0.125 percent hour	1.
Indicated airspeed	V_{so} to V_D (KIAS)	±5 percent or ±10 kts., whichever is greater. Resolution 2 kts. below 175 KAIS.	1.
Altitude	−1,000 ft. to max. cert. alt. of A/C	±100 to ±700 ft. (see Table I, TSO C51-a)	1.
Magnetic heading	360°	±5°	1.
Vertical acceleration	−3g to +6g	±0.2g in addition to ±0.3g maximum datum error	4. (or 1 per second where peaks ref. to lg are recorded).
Longitudinal acceleration	±1.0g	±0.05g in addition to max. datum error of ±0.1g	2.
Pitch attitude	100 percent of usable range	±2	1.
Roll altitude	±60° or 100 percent of usable range, whichever is greater	±2	1.
Stabilizer trim position or pitch control position	Full range	±3 percent unless higher accuracy uniquely required	1.
Engine power, each engine:			
Fan or N_1 speed or EPR or cockpit indications used for aircraft certification.	Maximum range	±5 percent	1.
Prop. speed and torque (sampled once/sec as close together as practicable).			1 (prop speed); 1 (torque).
Altitude rate [2] (need depends on altitude resolution)	±8,000 fpm	±10 percent Resolution 250 fpm below 12,000 ft. indicated	1.
Angle of attack [2] (need depends on altitude resolution)	−20° to +40° or 100 percent of usable range	±2°	1.
Radio transmitter keying (discrete)	On/off		1.
TE flaps (discrete or analog)	Each discrete position (U,D,T/O,APP) or analog 0–100 percent range.	±3°	1.
LE flaps (discrete or or analog)	do	±3°	1.
Thrust reverser, each engine (discrete)	Stowed or full reverse		1.
Spoiler/speedbrake (discrete)	Stowed or out		1.
Autopilot engaged (discrete)	Engaged or disengaged		1.

[1] When data sources air aircraft instruments (except altimeters) or acceptable quality to fly the aircraft, the recording system excluding these sensors (but including all other characteristics of the recording system) shall contribute no more than hald the values in this column.

[2] If data from the altitude encoding altimeter (100 ft. resolution) is used, then either one of these parameters should also be recorded. If, however, altitude is recorded at a minmum resolution of 25 feet, then these two parameters can be omitted.

TABLE IV.—PARAMETER LIST (ROTORCRAFT)

Parameters	Range	Installed system [1] minimum accuracy (to recovered data)	Sampling interval (per second)
Relative Time (from recorder on prior to takeoff)	4 hrs. minimum	±0.125 percent per hour	1.
Indicated airspeed	V_{min} to V_D (KIAS) (minimum airspeed signal attainable with installed pitot-static system).	±5 percent or ±10 kts., whichever greater	1.
Altitude	−1,000 ft. to 20,000 ft. pressure altitude	±100 to ±700 ft. (see Table I, TSO C51-a)	1.
Magnetic heading	360°	±5°	1.
Vertical acceleration	−3g to +6g	±0.2g in addition to ±0.3g maximum datum error	4 (or 1 per second where peaks ref. to 1g are recorded).
Longitudinal acceleration	±1.0g	±0.05g in addition to maximum datum error of ±0.1g	2.
Pitch attitude	100 percent of usable range	±2°	1.
Roll attitude	±60° or 100 percent of usable ±2° range, whichever is greater	±2°	1.
Altitude rate	±8,000 fpm	±10 percent. Resolution 250 fpm below 12,000 ft. indicated	1.
Engine power, each engine:			
Main rotor speed	Max. range	±5 percent	1.
Free or power turbine speed	do	do	1.
Engine torque	do	do	1.
Flight control hydraulic pressure:			
Primary (discrete)	High/low		1.
Secondary—if applicable (discrete)	do		1.
Radio transmitter keying (discrete)	On/off		1.
Autopilot engaged (discrete)	Engaged/disengaged		1.
SAS status-engaged (discrete)	do		1.
SAS fault status (discrete)	Fault/OK		1.
Flight controls:			
Collective	Full range	±3 percent	2.
Pedal position	do	do	2.
Lat. cyclic	do	do	2.
Long. cyclic	do	do	2.
Controllable stabilator position	do	do	2.

[1] When data sources are aircraft instruments (except altimeters) of acceptable quality to fly the aircraft, the recording system excluding these sensors (but including all other characteristics of the recording system) shall contribute no more than half the values in this column.

APPENDIX

With the issuance of Safety Recommendations A-87-77 through -89, the following recommendations have been classified as "Closed—Superseded."

A-78-28

Draft specifications and fund research and development for a low cost FDR, CVR, and composite recorder which can be used on complex general aviation aircraft. Establish guidelines for these recorders, such as maximum cost, compatible with the cost of the airplane on which they will be installed and with the use for which the airplane is intended.

A-82-64

Amend 14 CFR 121.343 so that, after a specified date all turbojet aircraft manufactured before that date and type-certificated before September 30, 1986, be required to have installed a suitable digital recorder system capable of recording data from which the minimum following information may be determined as a function of time within the ranges, accuracies, and recording intervals specified in Table I—altitude, airspeed, heading, radio transmitter keying, pitch attitude, roll attitude, vertical acceleration, longitudinal acceleration, stabilizer trim position, engine thrust, and pitch control position.

A-82-65

At an early date and pending the effective date of the recommended amendment of 14 CFR 121.343 to require installation of digital flight data recorder systems capable of recording more extensive parameters, require that operators of all aircraft equipped with foil fight data recorders be required to replace the foil recorder with a compatible digital recorder.

A-82-66

Amend 14 CFR 121.343 so that, after a specified date, all aircraft manufactured after that date, regardless of the date of original type certificate, be equipped with one or more approved flight recorders that record data from which the information listed in Table I can be determined as a function of time. For newly type-certificated aircraft, any dedicated parameter which may be necessary because of unique features of the specific aircraft configuration and the design should also be required.

A-82-67

Amend 14 CFR 127, Subpart H, to require that all rotorcraft manufactured after a specified date, regardless of the date of original type certificate, be equipped with one or more approved flight recorders that record data from which the information listed in Table II can be determined as a function of time. For newly type-certificated rotorcraft, any dedicated parameter which may be necessary because of unique features of the specific configuration and type design should also be required.

A-82-106

Encourage timely adoption of Society of Automotive Engineers (SAE standard for "general aviation" flight recorders (intended for installation in multiengine, turbine-powered fixed-wing aircraft and rotorcraft in any type or operation not currently required by CFR 121.359, 135.151, and 127.127 to have a cockpit voice recorder and/or a flight data recorder), and issue a Technical Standard Order (TSO) covering such recorders immediately after the SAE document is approved. Include in the TSO requirements that:

(a) specify a cockpit voice recorder (CVR) of high enough audio quality to render intelligible recorded data on each of two channels which reserves one channel for voice communications transmitted from or received in the aircraft by radio, and one channel for audio signals from a cockpit area microphone;

(b) specify all flight data recorder (FDR) parameters, ranges, accuracies, and sampling intervals cited in Tables I and II (attached);

(c) specify crash and fire survivability standards for CVRs and FDRs which are at least as stringent as those of TSO-C51a for Type I (nonejectable) and Type III (ejectable) recorders as appropriate.

A-82-108

Require that all multiengine, turbine-powered, rotorcraft certificated to carry six or more passengers, manufactured on or after a specified date, in any type of operation not currently required by 14 CFR 121.127 to have a cockpit voice recorder and/or a flight data recorder, be prewired to accept a "general aviation" cockpit voice recorder (if also certificated for two-pilot operation) with at least one channel for voice communications transmitted from or received in the aircraft by radio, and one channel for audio singals from a cockpit area microphone, and a "general aviation" flight data recorder to record sufficient data parameters to determine the information in Table II (attached) as a function of time.

The following recommendations have been classified as "Closed—Superseded/Unacceptable."

A-82-107

Require that all multiengine, turbine-powered, fixed-wing aircraft certificated to carry six or more passengers manufactured on or after a specified date, in any type of operation not currently required by 14 CFR 121.343, 121.359, and 135.151 to have a cockpit voice recorder and/or a flight data recorder, be prewired to accept a "general aviation" cockpit voice recorder (if also certificated for two-polit operation) with at least one channel for voice communications transmitted from or received in the aircraft by radio, and one channel for audio signals from a cockpit area microphone, and a "general aviation" flight data recorder to record sufficient data parameters to determine the information in Table I (attached) as a function of time.

A-82-109

Require that "general aviation" cockpit voice recorders (on aircraft certificated for two-pilot operation) and flight data recorders be installed when they become commercially available as standard equipment in all multiengine, turbine-powered fixed-wing aircraft and rotorcraft certificated to carry six or more passengers manufactured on or after a specified date, in any type of operation not currently required by 14 CFR 121.343, 121.359, 121.151, and 127.127 to have a cockpit voice recorder and/or flight data recorder.

A-82-110

Require that "general aviation" cockpit voice recorders be installed as soon as they are commercially available in all multiengine, turbine-powered aircraft (both airplanes and rotorcraft), which are currently in service, which are certificated to carry six or more passengers and which are required by their certificate to have two pilots, in any type of operation not currently required by 14 CFR 121.359, 121.151, and 127.127 to have a cockpit voice recorder. The cockpit voice recorders should have at least one channel reserved for voice communications transmitted from or received in the aircraft by radio, and one channel reserved for audio signals from a cockpit area microphone.

A-82-111

Require that "general aviation" cockpit voice recorders be installed as soon as they are commercially available in all multiengine, turbojet airplanes which are currently in service, which are certificated to carry six or more passengers in any type of operation not currently required by 14 CFR 121.343 to have a flight data recorder. Requiring recording of sufficient parameters to determine the following information as a function of time (see Table I attached) for ranges, accuracies, etc.): altitude, indicated airspeed, magnetic heading, radio transmitter keying, pitch attitude, roll attitude, vertical acceleration, longitudinal acceleration, stabilizer trim position or pitch control position.

Mr. LAUTENBERG. Mr. President, this is an amendment that addresses an important safety issue. It has been cleared with the managers, and I understand it is acceptable to them.

The PRESIDING OFFICER. Is there further discussion of the amendment?

Mrs. KASSEBAUM. Mr. President, it is acceptable on this side. I would like to get a clarification from the Senator from New Jersey if I may. The amendment requires data recorders on commuter and "other aircraft." This does not cover general aviation aircraft, is that true?

Mr. LAUTENBERG. That is true.

Mrs. KASSEBAUM. I think it is important to have that reflected on the record.

I know there have been some concerns raised by the FAA regarding the language "commensurate with the recommendations of the National Transportation Safety Board." I would hope, as we review this in conference with the House, we can make sure there is a clear understanding of exactly what is intended by "commensurate with."

Mr. LAUTENBERG. I have no specific language, to respond to the Senator.

This, of course, will be monitored by the FAA. The intent is very clear on this. That is, we want commuter aircraft to have the data recorded just as we have in commercial aircraft generally. We ask that the Secretary issue a notice of rulemaking within a 30-day period after enactment of this.

We will leave it to them to handle the process as they see best fit.

Mrs. KASSEBAUM. Mr. President, there is no objection on this side of the aisle.

Mr. FORD. Mr. President, there is no objection on this side of the aisle.

The PRESIDING OFFICER (Mr. DIXON). Is there further debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from New Jersey.

The amendment (No. 1086) was agreed to.

Mr. LAUTENBERG. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. FORD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1087

(Purpose: To further air transportation safety)

Mr. WILSON addressed the Chair.

The PRESIDING OFFICER. The Senator from California is recognized.

Mr. WILSON. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from California [Mr. WILSON], proposes an amendment numbered 1087.

Mr. WILSON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the bill, add the following new section:

SEC. . (a) This section may be cited as the "Federal Aviation Act of 1958 Amendments Act".

(b) Section 901(a)(1(A) of the Federal Aviation Act of 1958 (49 U.S.C. App. 1471(a)(1)(A)) is amended by inserting "1101," immediately after the word "section" where it first appears.

(c) Section 901(a)(2) of the Federal Aviation Act of 1958 (49 U.S.C. App. 147(a)(2)) is amended by inserting the phrase ", or of section 1101, 1114, or 1115(e)(2)(B)" immediately after "XII".

(d) Section 901(a)(1) of the Federal Aviation Act of 1958 (49 U.S.C. App. 1471(a)(1)) is amended by inserting the following words immediately after "violation," where it first appears: "except that a person who operates aircraft for the carriage of persons or property for compensation or hire, other than an airman serving in the capacity of an airman, shall be subject to a civil penalty not to exceed $10,000 for each violation of title III, VI, or XII of this Act, or any rule, regulation, or order issued thereunder, and".

(e) The Federal Aviation Act of 1958 is further amended by adding immediately after section 901 a new section 901A to read as follows:

"CIVIL PENALTY ASSESSMENT DEMONSTRATION PROGRAM

"Civil Penalty

"SEC. 901A. (a) The Administrator, or his delegate, may assess a civil penalty for a violation arising under this Act or a rule, regulation, or order issued thereunder, upon written notice upon finding of violation by the Administrator, after notice and opportunity for a hearing.

"No Reexamination of Liability or Amount

"(d) In the case of a civil penalty, assessed by the Administrator in accordance with this provision, the issue of liability or amount of civil penalty shall not be reexamined in any subsequent suit for collection of such civil penalty.

"United States District Courts

"(c) Notwithstanding subsection (a) of this section, the United States district courts shall have exclusive jurisdiction of any civil penalty action initiated by the Administrator: (1) which involves an amount in controversy in excess of $100,000; (2) which is an in rem action or in which an in rem action based on the same violation has been brought; (3) regarding which an aircraft subject to lien has been seized by the United States; and (4) in which suit for injunctive relief based on the violation giving rise to the civil penalty has also been brought.

"Termination

"(d) The provisions of this section shall be in effect for 2 years following the date of enactment of this section, and shall apply to a civil penalty initiated by the Administrator on or after the date of enactment of this section, but shall not apply to a case in which the Administrator seeks a civil penalty in an amount in excess of $100,000 from a violator.".

(f) The Administrator of the Federal Aviation Administration shall report to the Congress 18 months after the date of enactment of this section. The report shall include: (1) the Administrator's views concerning the effectiveness of civil penalty levels enacted in this Act, and whether additional changes are necessary to provide an adequate safety deterrence; and (2) the Administrator's recommendation as to the effectiveness of the civil penalty assessment demonstration program authorized by section 4 of this Act and whether it should be continued.

(g) Section 902 of the Federal Aviation Act of 1958 (49 U.S.C. App. 1472) is amended by—

(1) inserting immediately after "inclusive," in subsection (o), the words "and subsection (r)"; and

(2) adding a new subsection (r) to read as follows:

"Secured Areas on Airports

"(r)(1) It shall be unlawful for any person to knowingly and willfully enter an aircraft or an airport area that serves air carriers or foreign air carriers contrary to security requirements established pursuant to sections 315 or 316 of this Act. Upon conviction thereof, such person shall be subject to imprisonment for a term not to exceed 1 year or a fine not to exceed $1,000, or both.

"(2) If any person violates paragraph (1) of this subsection with the intent to commit in the aircraft or secured area an act punishable as a felony under Federal or State law, such person shall be subject to imprisonment for a term not to exceed 10 years or a fine not to exceed $10,000, or both.".

(h) Section 313 of the Federal Aviation Act of 1958 (49 U.S.C. App. 1354) is amended by adding at the end thereof the following new subsection:

"Indemnification

"(e) The Administrator is empowered to indemnify any officer or employee of the Federal Aviation Administration against any claim or judgment against such person, provided that such claim or judgment arises out of an act or acts committed, as determined by the Administrator, within the scope of such person's official duties. The Administrator may issue such regulations as may be necessary to implement this subsection.".

(i)(1) Section 101(36) of the Federal Aviation Act of 1958 (49 U.S.C. App. 1301(36)) is amended by adding the following sentence at the end thereof: "For purposes of this definition, 'used exclusively in the service of' means, for other than the Federal Government, an aircraft which is owned and operated by a governmental entity for other than commercial purposes or which is exclusively leased by such governmental entity for not less than 90 continuous days.".

(2) Section 304(a)(6) of the Independent Safety Board Act of 1974 (49 U.S.C. App. 1903(a)(6)) is amended to read as follows:

"(6) establish by regulation requirements binding on persons reporting (A) accidents and aviation incidents subject to the Board's investigatory jurisdiction under this subsection, and (B) accidents and aviation incidents involving public aircraft other than aircraft of the Armed Forces and the Intelligence Agencies, and the Board shall report to the Congress within the 18-month period following the date of the enactment of the Federal Aviation Act of 1958 Amendments Act, its findings on public aircraft accidents and incidents.".

Mr. WILSON. Mr. President, the amendment that I am offering is a safeguard to the traveling public in ways that may not be as obvious as new radar systems or hiring more traffic controllers. The subject that the Senate needs to discuss today, Mr. President, in our focus upon air safety, is maintenance. It is the Congress' responsibility to ensure that the Federal Aviation Administration has the tools that it needs to prosecute commercial airlines and the general aviation community for violating its maintenance and other safety rules.

We have all heard the news this morning about the abysmal maintenance record alleged on the part of Eastern Airlines. It was on all the news shows this morning. The fact of the matter is that the FAA does not seem to have the ability to enforce its safety rules as well as it should. This legislation remedies this defect at least in part by providing more funds for FAA inspectors, but it goes an important step further. It gives the FAA statutory authority which will better enable them to prosecute airlines which cut corners on maintenance, to prosecute general aviation pilots who fly through restricted areas and risk not only their own lives, but more importantly, the lives of many, many others; and to prosecute those who violate airport security laws.

Overall, Mr. President, passage of this amendment is really crucial to protecting the traveling public. We as passengers do not see the myriad of hoses, switches, other equipment which must work perfectly for the planes to get off the ground, to perform flawlessly in flight, and then to land safely. This amendment provides an incentive for airlines to ensure that these systems are maintained at the highest of standards.

This amendment, Mr. President, which has been accepted by both the majority and the minority and is supported by the FAA, has six provisions which when combined will better protect the traveling public. First, the amendment increases the maximum civil penalty from $1,000 to $10,000 for safety violations by commercial air carriers, including commuter lines and charter operations. The current $1,000 civil penalty has been in effect since 1938. While the FAA believes that the $1,000 level is adequate for the vast majority of safety violations by the general aviation community, it is clear from the news this morning and from many other instances of testimony, and from the difficulty that the FAA has experienced in collecting fines, not only from Eastern, but from other airlines during the past years for the safety violations that the current $1,000 level is not adequate to deter commercial safety violations.

Hand in hand with the increase in the fine, the amendment would establish a 2-year demonstration program for the use of administrative hearings within the Department of Transportation to try and hear civil penalty cases amounting to less than $100,000. The cases which fall under this threshold are primarily violations by the general aviation community, and have to do for the most part with flying through restricted air space and other similar serious violations.

Currently, the FAA must ask the U.S. district attorney to prosecute all civil penalty offenders in U.S. district court when agreement is not reached between the parties, and the FAA itself does not have the authority to prosecute violators of these regulations. Unfortunately, many times the U.S. attorney has bigger and better things to do. I do not say that in a deprecating sense. They simply have a great deal on their agenda. The result has been that a number of these prosecutions have simply fallen by the wayside. And as a result there is clearly need for an administrative law program within the Department of Transportation which will close the holes in the FAA's safety net.

Third, this amendment would impose a maximum civil penalty of $1,000 for failing to notify the FAA of proposed construction of structures which could be a hazard to air navigation, typically those that border an airport, those that threaten by some obstruction the flight path. Currently, only criminal sanctions can be sought for such a violation, and the FAA does not want the power to ban the construction of such a structure because a building might never get liability insurance if the FAA does not give its approval for the construction. But overall, it is clearly essential that those concerned with air safety have the opportunity to be alerted before the fact rather than after so that we may remove or otherwise modify a hazard that could obstruct a flight path with obviously disastrous consequences.

Overall, Mr. President, passage of this amendment is critical for protecting the traveling public. The amendment would also make unauthorized access to airport secure areas a Federal criminal offense. Although entry would be a misdemeanor, entry with intent to commit a Federal or State felony would constitute a felony. Finally, this amendment would allow the FAA Administrator to indemnify FAA employees for judgments against them which arise out of actions which they take in the performance of their official duties.

There is a growing trend to bring suits against FAA employees, including air controllers and inspectors, and it is important to note that the indemnification would not apply to those FAA employees who are found at fault through negligence due to drug or alcohol abuse or for other reasons that amount to inexcusable negligence.

Finally, the amendment would modify in two ways the Federal Government's approach to publicly owned aircraft, such as aircraft used by police and fire units which now are not subject to much of the FAA's safety authority.

First, the definition of what constitutes a public aircraft, presently exempt from that regulation, would be amended to include more aircraft and second, the National Transportation Safety Board would be required to report to Congress in 18 months on the rate at which public aircraft accidents have occurred so as to enable the FAA to further regulate such aircraft if that seems necessary.

Clearly, Mr. President, the FAA must be given the opportunity to enforce whatever regulations are required to give the maximum assurance possible to the air traveling public that they are safe in America's skies.

As I say, there has been acceptance of this amendment by both the majority and the minority, and I move its adoption.

The PRESIDING OFFICER. Is there further debate on the amendment?

Mr. FORD. Mr. President, this amendment has been adopted by the Senate before, as I understand it. There is no objection on our side.

Mrs. KASSEBAUM. It is acceptable on this side.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 1087) was agreed to.

Mr. WILSON. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. FORD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1088

(Purpose: To provide limitations on funding and certain other activities at the Atlantic City Airport, in Pomona, New Jersey)

Mr. LAUTENBERG. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from New Jersey [Mr. LAUTENBERG] proposes an amendment numbered 1088.

Mr. LAUTENBERG. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the bill add the following new section:

SEC. 3. The Airport and Airway Improvement Act of 1982 (title V of Public Law 97-248, 96 Stat. 677), as amended, is amended by adding at the end thereof the following new section:

"SEC. 530. ATLANTIC CITY AIRPORT.

"(a) LIMITATION ON FUNDING OR TRANSFER OF PROPERTY.—

"Notwithstanding any other provision of law, with regard to the Atlantic City Airport, at Pomona, New Jersey, the Federal Aviation Administration shall not convey any interest in property (pursuant to section 516 of this title) to any municipality or any other entity operating such airport, nor shall any funds authorized by this Act be available to such municipality or entity for any planning, study, design, engineering, or construction of a runway extension, new runway, new passenger terminal, or improvements to or expansion of the existing passenger terminal at such airport, until such time as:

"(1) the Master Plan Update for Atlantic City Airport and Bader Field, prepared pursuant to Federal Aviation Administration Contract FA-EA-2656, is completed and released; and

"(2) the Administrator of the Federal Aviation Administration finds that a public entity has been created to operate and manage the Atlantic City Airport, which entity has the following characteristics:

"(A) the authority to enter into contracts and other agreements, including contracts, leases, cooperative agreements, or other transactions with any agency or instrumentality of the United States;

"(B) the standing to sue and be sued in its own name;

"(C) the authority to hire and dismiss officers and employees;

"(D) the power to adopt, amend and repeal bylaws, rules, regulations governing the manner in which its business may be conducted and the powers vested in it may be exercised;

"(E) the authority to acquire, in its own name, an interest in such real or personal property as is necessary or appropriate for the operation and maintenance of the airport;

"(F) the power to acquire property by the exercise of the right of eminent domain;

"(G) the power to borrow money by issuing marketable obligations, or such other means as is permissible for public authorities under the laws of the State of New Jersey;

"(H) adequate financial resources to carry out all activities which are ordinarily necessary and appropriate to operate and maintain an airport;

"(I) a governing board which includes (but need not be limited to) voting representatives of the city of Atlantic City, the county of Atlantic, and the municipalities which are adjacent to or are directly impacted by the airport;

"(J) a charter which includes (i) a requirement that members of the governing board have expertise in transportation, finance, law, public administration, aviation, or such other qualifications as would be appropriate to oversee the management, planning and operation of an airport; and (ii) procedures which protect the research and development mission of the Federal Aviation Technical Center at Pomona, New Jersey, and the defense functions of the Air National Guard; and

"(K) the authority to carry out comprehensive transportation planning to minimize traffic congestion and facilitate access to and from the airport.

"(b) SAFETY FUNDS NOT SUBJECT TO LIMITATION.—

"The limitation on funds set forth in subsection (a) shall not apply to any expenditure which the Administrator of the Federal Aviation Administration determines is needed for safety purposes.

"(c) EFFECTIVE DATE.—

"The restriction set forth in subsection (a) shall be applicable only to funds which are authorized for the fiscal year beginning October 1, 1987. Notwithstanding any other provision of law, the funds restricted under subsection (a) shall become available at such time as the conditions set forth in subsection (a) are satisfied.".

Mr. LAUTENBERG. Mr. President, for years, the Atlantic City International Airport has held great promise for economic growth in southern New Jersey. But, to this point, that promise has not been realized. This amendment would help the airport achieve its potential, and help bring important economic growth to the region.

This amendment incorporates the text of S. 1618, which I introduced on August 6 of this year. The companion legislation was introduced in the House by my distinguished colleague from New Jersey, BILL HUGHES, and has been included in H.R. 2310.

The intent of this legislation is simple: to get the long process of planning, designing and constructing an enhanced, expanded regional airport in south Jersey off the ground.

Currently, the Atlantic City International Airport is an under-utilized facility, located on 5,000 acres in an area of untapped potential. For some time now, there have been discussions and tentative plans to expand the airport into a modern facility capable of supporting significant commercial service. Those plans, however, have been stalemated while local officials have been unable to work out a plan for managing the airport.

This legislation would break that stalemate. It would withhold fiscal year 1988 Federal funds, except those which are safety-related, from the airport until a regional authority is created to manage the airport. The public authority would have representation from Atlantic City, Atlantic County, the municipalities impacted by the airport, and other appropriate parties.

A developed airport will be a regional facility. It should be governed by a regional authority. This legislation would ensure that this takes place.

Mr. President, there is considerable basis for Federal action at this point. The majority of the property to be used is federally owned. The airport is on the ground of the FAA's Technical Center, the Nation's premiere aviation research facility. The Federal Government has a major stake in the future of the airport, and has a right to see that an authority is in place that will manage the airport, and manage the millions of dollars of Federal funds that are likely to flow to the facility in the years to come.

I would note, Mr. President, that since the introduction of S. 1618 in early August, significant progress has been made. For the first time, all the local parties have come to the table to discuss the future of the airport. Serious proposals are finally being made.

I recently met with former Secretary of Transportation William Coleman, who is working with Atlantic City on this matter. Secretary Coleman has made tremendous progress in this effort. There have also been extensive discussions with Atlantic County officials.

I am optimistic that a workable solution to this problem can be reached, and that it will be reached. The introduction of S. 1618 and its House companion helped spur much of the progress made over the last 2 months. Adoption of this amendment will help ensure that the great untapped potential in the greater Atlantic City area does not continue to elude us.

Mr. President, I believe this amendment has been cleared, and is acceptable to the managers.

Mr. FORD. There is no objection on this side, Mr. President.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 1088) was agreed to.

Mr. LAUTENBERG. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. FORD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1089

(Purpose: To change the amended definition of "airport development" under the Airport and Airway Improvement Act of 1982)

Mr. FORD. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Kentucky [Mr. FORD] proposes an amendment numbered 1089.

Mr. FORD. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 3 of the bill, strike all on lines 1 through 12, and insert in lieu thereof the following:

"(1) in paragraph (2), by inserting immediately before the".

Mr. FORD. Mr. President, this amendment deletes language in the bill with respect to making cargo inspection facilities eligible for airport improvement funds. I think the amendment speaks for itself.

The PRESIDING OFFICER. Is there further debate?

Mrs. KASSEBAUM. There is no objection on this side of the aisle.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 1089) was agreed to.

Mr. FORD. Mr. President, I move to reconsider the vote by which the amendment was agreed to, and move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. FORD. Mr. President, I think we have perhaps two more amendments. We have the Mitchell-Cohen amendment, and I have one additional amendment that will be here shortly, which I think has been agreed upon. Then we have the discussion on the Metzenbaum amendment as it relates to consumer protection provisions. The distinguished majority leader is here. If we could move the other two amendments, we are ready to wrap it up.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. FORD. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 1090

(Purpose: To prohibit the Federal Aviation Administration from discriminating against operations of air carrier aircraft with fewer than 61 seats in establishing criteria for airport control towers and navigational aids)

Mr. FORD. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Kentucky [Mr. FORD] proposes an amendment numbered 1090.

At the end of the bill, add the following:

SEC.   . Not later than 120 days after the date of enactment of this Act, the Secretary of Transportation shall promulgate regulations to establish criteria for the installation of airport control towers and other navigational aids. In setting criteria under such regulations relating to the number of air carrier operations, the Secretary shall count operations of aircraft providing regularly scheduled commercial passenger service with fewer than 61 seats as equivalent to operations carried out by aircraft with 61 or more seats.

Mr. FORD. Mr. President, I thank the clerk for indulging me. He does such a good job.

I think the amendment speaks for itself. It relates to discriminating against operations of air carrier aircraft with fewer than 61 seats in establishing criteria for airport control towers and navigational aids.

We just want the smaller airports to have an opportunity to participate in funds for airport safety and improvement. I think this amendment has been cleared on both sides.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 1090) was agreed to.

Mr. FORD. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mrs. KASSEBAUM. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1091

(Purpose: To eliminate certain inequities with respect to airports)

Mr. COHEN. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Maine [Mr. COHEN], for himself, Mr. MITCHELL, Mr. STEVENS and Mr. MURKOWSKI, proposes an amendment numbered 1091:

At the end of the bill, add the following new section:

SEC. . Section 503(a)(9) of the Act (49 App. U.S.C. 2202(a)(9)) is amended by adding at the end thereof the following: "For purposes of this definition, the term 'passengers enplaned' also includes passengers on board international flights which transit an airport for nontraffic purposes.".

Mr. COHEN. Mr. President, my good friend and colleague from the State of Maine, Senator MITCHELL and I are offering an amendment that will amend the Airport Improvement Program [AIP] passenger enplanement formula to more equitably treat airports which handle international transit traffic.

Under current law, Airport Improvement Program [AIP] entitlement funds are distributed based on "enplanement" figures for each eligible airport. While this approach has been equitable to most airports, it results in significant underfunding of a small number of airports which service substantial volumes of international traffic landing for technical purposes, such as refueling, maintenance, and customs/INS clearance. The principal airports affected by this situation are Bangor International, in Maine, and Anchorage International, in Alaska. Although these flights utilize airport runways, hardstands, gate, terminal, and customs and immigration inspection facilities much the same as flights originating and terminating at the airport, the airport receives no AIP entitlement funds with respect to such traffic because no passengers "enplane" these flights at the technical stop airport.

In the case of one airport, Bangor International, approximately 40 percent of the passengers utilizing the facility are transiting on flights making technical landings, and are not counted for purposes of calculating Bangor's AIP funding entitlement despite the considerable demands they place on the airport's facilities. We submit there is no substantive difference between a passenger who flies into a "hub" airport and boards a connecting flight there for onward travel to final destination, and a passenger who flies into one of the specialized "technical landing" airports and subsequently departs from that airport on the same flight. In both cases, the intermediate airport serves a necessary function as the passenger is transported from point of origin to final destination. However, under existing AIP funding procedures, the first passenger is recognized as an enplanement while the second is not.

To rectify this inequity, we propose an amendment to the definition of "enplanement" to include passengers transiting an airport on an international flight landing for nontraffic purposes. This amendment is narrowly tailored to correct the unfair situation described above, while minimizing the effect on total trust fund program outlay.

We regret that this matter did not come to our attention in time to raise it during your committee's consideration of the bill. We trust you will agree, however, that current law is creating an unintended inequity with respect to funding of those airports specializing in offering technical landing services. To enable these airports to continue to provide this important function to the Nation's air transportation system, it is vital this problem be corrected.

I urge my colleagues to join Senator MITCHELL and me in supporting this amendment.

Mr. President, I allowed the clerk to read the very short amendment because it is so self-explanatory.

I am offering the amendment on behalf of myself and Senator MITCHELL, my good friend from Maine, and also Senator STEVENS of Alaska.

This really is designed to correct an inequity that currently exists.

Under the current airport improvement program the passenger enplanement formula does not take into account the kind of situation we have most particularly in the Bangor International Airport in Maine and also that in Anchorage, because under current law the entitlement funds are distributed and based on enplanement figures based on each eligible airport but does not take into account those passengers who should land on planes coming into our airports on an international basis.

For example, in Bangor we had about 146,000 passengers who landed at that airport who were not counted for enplanement purposes.

So this really is designed to accommodate the type of airport we have known not only in Maine but in Alaska that does not accommodate international traffic that is directed there not because of traffic patterns as such but because of technical needs, refueling, maintenance, indeed servicing on a customs basis.

I cleared this amendment with both the managers of the bill, and I believe it is acceptable to them.

The PRESIDING OFFICER. The Senator from Maine, Mr. MITCHELL.

Mr. MITCHELL. Mr. President, this proposal would amend the Airport Improvement Program [AIP] passenger enplanement formula to more equitably treat airports which handle international transit traffic. Bangor International Airport is a relatively small airport which competes with foreign airports in Canada and Ireland to provide refueling and related technical aviation services to North Atlantic air traffic. For calendar year 1985, the number of enplanements at the airport recognized in determining Bangor's AIP funding was 208,678. An additional 146,440 passengers, however, transited the airport on international flights, making use of Bangor's runway, hardstand, terminal, and Federal Inspection facilities, but were disregarded for purposes of calculating Bangor's AIP entitlement. To enable Bangor to continue to offer aviation facilities and services competitive with those available at alternate foreign airports which are often directly subsidized by their national governments, it is vital that the AIP passenger enplanement formula take account of the total number of passengers actually using Bangor International Airport, including the international transit passengers who make up more than 40 percent of its traffic.

Under present law, AIP funds are allocated among airports based on "enplanements." This approach has generally been satisfactory, but results in inequitable underfunding of a limited number of airports, such as Bangor and Anchorage, which handle substantial volumes of international transit traffic, that is, traffic on board international flights which land at the airport for technical purposes such as refueling, maintenance, and customs and immigration clearance.

BACKGROUND

AIP funds are allocated to airports based on passenger enplanement levels. Both the Senate and House bills—S. 1184 and H.R. 2310—adopt the following formula:

$7.80 for each of the first 50,000 passengers.

$5.20 for each of the next 50,000 passengers.

$2.60 for each of the next 400,000 passengers.

$0.65 for each additional passenger.

There is a minimum funding level of $300,000 for each eligible airport, and a miximum of $16 million.

This approach has generally proved equitable in apportioning funds according to volume of passengers using each particular airport's facilities. Since the U.S. air transportation system has evolved largely into one based on hub-and-spoke air carrier route systems, most passengers who transit an intermediate (hub) airport between their origin and destination change planes at that airport and thus are counted as an enplanement for the hub, even though their travel originated at another point. Thus, most airports which are transited between a point of origin and final destination are not shortchanged in their AIP entitlements since connecting passengers are counted not only at the airport where their travel originates, but also at the hub where they board their connecting flight. Current law recognizes transit passengers utilize the facilities of intermediate hubs, such as runways, hardstand areas, gate facilities, and common terminal areas, and therefore includes connecting passengers in counting total enplanements at hub airports for AIP purposes.

EFFECT OF AMENDMENT

A limited number of airports must handle a considerable volume of international flights which land for technical purposes such as refueling, customs/INS clearance, et cetera. Although these flights utilize airport runways, hardstands, terminals, and Federal inspection facilities much the same as flights originating at or destined to the airport, under current law none of these passengers except those inbound to the United States who clear immigration inspection at the intermediate airport are recognized for AIP funding purposes. Inbound passengers who do not clear immigration, and all passengers outbound from the United States, are disregarded in determining AIP funding. This is because as the law is presently drafted, passengers who land at an airport and subsequently depart from that airport on board the same flight are not generally considered to enplane at that airport. This anomaly is unique to the limited number of airports which function as technical landing points, most notably Bangor which serves North Atlantic air routes, and Anchorage which serves the North Pacific. The proposed amendment rectifies this inequity by treating passengers transiting airports on international flights the same as the more common case of passengers who connect from one flight to another at a hub airport and are already counted in the hub's AIP enplanement figures. There can be no rational or equitable basis for differential treatment of airports serving these two classes of passengers, neither of which is the point of origin of the passengers' travel, but both of which must make available airport facilities for use by passengers enroute to their final destinations.

Although the proposed amendment would greatly enhance the ability of the small number of affected airports to maintain their facilities for the benefit of transit passengers, its fiscal impact would be negligible. For calendar year 1986, Bangor International Airport handled 116,406 international transit passengers who were not counted as enplanements for AIP purposes. Under the proposed AIP funding formula, the amendment would increase its entitlement by $302,656, less than one-tenth of one percent of the total of $525 million to be distributed to airports. While the effect of the amendment on the overall allocation of AIP funds is obviously de minimus, allowing Bangor to receive its fair share of AIP funds will greatly assist this small airport in maintaining vital services for aircraft which make scheduled technical landings there, and those which make unscheduled diversions to Bangor due to meteorological or other emergency circumstances. The competitive posture of Bangor International Airport, a major source of employment in the economically disadvantaged Northern Maine region, vis-a-vis foreign airports which offer technical aviation services to North Atlantic air traffic, such as Gander and Goose Bay, Canada, and Shannon, Ireland, would also be enhanced by adoption of the proposed amendment.

Moreover, at a time when the airport capacity shortage is reaching crisis proportions at many of the more heavily-utilized airports, it is clearly in the national interest to promote the viability of alternate airports such as Bangor, which are ideally suited to assist in alleviating the congestion plaguing the national air transportation system. So long as the AIP funding formula disregards the substantial international transit traffic handled by Bangor, the airport is placed at a severe disadvantage in maintaining the caliber of facilities required by air carriers and the traveling public.

Mr. President, this is an important amendment for the Bangor International Airport in Maine, the second largest facility in the State and one of critical importance to the entire eastern region of our State.

I am pleased to work with Senator COHEN on this amendment. I am grateful to the managers for their acceptance of it. It will provide equitable treatment for an important facility and as explained by Senator COHEN merely takes into account the unique circumstance which exists at a relatively few number of facilities which handle large numbers of international flights.

So, I now am prepared with the consent of my colleague and the managers of the amendment.

Mr. FORD. Mr. President, I have reviewed this amendment, and I think it is well founded. Two of these airports, have unique situations and we want to accommodate them. It is a burden on both airports, I guess, particularly the one in Maine, and they are not getting any credit under the arrangements under airport improvements, so I think they are eligible. They perform a valuable service. I am prepared to accept the amendment.

The PRESIDING OFFICER. The Senator from Kansas.

Mrs. KASSEBAUM. Mr. President, I have a question for clarification purposes.

Does the language specify that it is limited to where there is a technical stop, just for refueling purposes, for instance, and not actually enplanement of passengers in large number?

Mr. COHEN. It is for nontraffic purposes; in other words, if the flights land there it is for technical needs, refueling, maintenance, and also for going through customs.

Mrs. KASSEBAUM. I want to make sure that was specified because otherwise I understand it could secure the allocation from the airport improvement program, so long as that is clearly stated.

I thank Senators and there is no objection on this side.

Mr. FORD. Mr. President, could we have the agreement of the two Senators from Maine that it does only apply to the Bangor, ME, and one in Alaska?

Mr. COHEN. My understanding is those are the two places.

Mr. FORD. That would be the legislative intent and that would be in addition to the questions by the distinguished Senator from Kansas.

The PRESIDING OFFICER. Is there any further debate on this amendment? The question is on agreeing to the amendment of the Senator from Maine.

The amendment (No. 1091) was agreed to.

Mr. MITCHELL. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. COHEN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. FORD. Mr. President, we only have two amendments remaining. One is the modification of the amendment by Senator METZENBAUM of Ohio, and I understand that is very close to being completed.

Then we have the arrangement there will be no vote or consideration of the second amendment by the Senator from Ohio [Mr. METZENBAUM]. Then we are ready to go to third reading and final passage.

As soon as that one amendment is on the floor, I might notify my colleagues who are listening that we hope to go to a vote on final passage. There will be a vote on final passage. The distinguished majority leader must be here before I can clear or I would not even attempt to clear the second amendment by the Senator from Ohio.

Under those circumstances, Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. WILSON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from California is recognized.

(The remarks of Mr. WILSON pertaining to the introduction of legislation will be found later in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. FORD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. FORD. Mr. President, I understand that we are now ready to go with the amendment that the Senator from Ohio [Mr. METZENBAUM] and the Senator from Missouri [Mr. DANFORTH] have agreed on. I would ask the Chair to recognize the Senator from Ohio to complete the parliamentary procedure so that we can get on the amendment.

The PRESIDING OFFICER. The Senator from Ohio.

AMENDMENT NO. 1092

(Purpose: to ensure greater safety to air passengers)

Mr. METZENBAUM. Mr. President, I send an amendment to the desk and ask for its immediate consideration. I ask that the pending amendment of the Senator from Ohio be withdrawn.

The PRESIDING OFFICER. The Senator has the right to withdraw his amendment.

The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Ohio [Mr. METZENBAUM] proposes an amendment numbered 1029.

Mr. METZENBAUM. I ask unanimous consent to dispense with further reading.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the bill add the following:

SEC.   . (a) The Secretary of Transporation shall ensure greater safety to air passengers by issuing, within 120 days following the date of enactment of this Act, regulations requiring adequate, uniform life preservers, life rafts, and flotation devices for passengers, including small children and infants, on any flight of an air carrier which the Secretary of Transporation determines a part of which flight will occur over water and adequate information and instructions as to the use of such preserves, rafts, and flotation devices.

(b) The Secretary of Transporation shall begin within 120 days following the date of enactment of this Act, and shall complete not later than 425 days following the date of enactment of this Act, a rulemaking—

(1) establishing regulations requiring all seats on board all air carrier aircraft to meet improved crashworthiness standards based upon the best available testing standards for crashworthiness;

(2) establishing regulations requiring air carrier interior cabins to meet improved flammability standards; and

(3) establishing regulations pertaining to aircraft design and equipment, including fuel tanks, to minimize the incidence of fire or explosion, such regulations to include, but not be limited to, considering crash resistant inner fuel tanks and breakaway, self-closing fittings throughout the fuel system.

(c) The Secretary of Transporation shall report to Congress, within 90 days following the date of enactment of this Act, on specific regulations the Secretary has adopted or intends to adopt to modernize and improve the oversight and inspection of air carrier maintenance and safety-related procedures.

Mr. METZENBAUM. Mr. President, we have had quite a bit of discussion today on the air safety of planes, and we have come to a conclusion which I think is an important one because it moves us more directly to serve the public will.

The first part of the amendment requires the Secretary to issue regulations requiring adequate uniform life preservers, life rafts, and flotation devices for passengers, including small children and infants.

That will be a major step forward.

Also, the airline will be required by the Secretary to see to it that the airline provides adequate information and instructions as to the use of such preservers, rafts, and flotation devices.

The second part of the amendment has a time lag. It requires the Secretary within 120 days to begin a rulemaking process to be concluded within 425 days—the 425 including the 120, so it is actually 305 days after that—to establish regulations requiring all seats on board all air carrier aircraft to meet improved crashworthiness standards based upon the best available testing standards for crashworthiness. This is a major improvement, and I think it will provide a greater sense of security for those who fly planes, hopefully not to be involved in a crash but if they were to be involved it would make it far safer for them as far as being in the cabin is concerned.

The second part would establish regulations requiring air carrier interior cabins to meet improved flammability standards. As the Senator from Ohio indicated earlier in the day, there have been instances in which there has been no crash but fire in the cabin has been such as to cause substantial loss of life. This I think would move us tremendously far forward. It is exactly the thing that should be done.

Next, it would establish regulations pertaining to aircraft design and equipment, including fuel tanks to minimize the incidents of fire or explosion, such regulations to include but not be limited to considering crash-resistant inner fuel tanks, so those fuel tanks could break away, and self-closing fittings throughout the fuel system.

The last part of the amendment provides that the Secretary of Transportation shall report to Congress within 90 days following the date of enactment of this act specific regulations that the Secretary has adopted or intends to adopt to modernize and improve the oversight and inspection of air carrier maintenance and safety related procedures. This amendment has been cleared by all parties, the managers on both sides, and the Senator from Missouri, who had raised some questions about it.

Mr. FORD addressed the Chair.

The PRESIDING OFFICER (Mr. FOWLER). The Senator from Kentucky.

Mr. FORD. Mr. President, the Senator from Ohio is exactly right. The Senator from Missouri has signed off. I think the Senator has now signed off. There are no objections on this side and we are ready to proceed with acceptance of the amendment.

Mr. WILSON. Mr. President, with the approval of the Senator from Missouri, there are no other objections on this side. We are prepared to accept it.

The PRESIDING OFFICER. The question is on agreeing to the amendment offered by the Senator from Ohio [Mr. METZENBAUM].

The amendment (No. 1092) was agreed to.

Mr. METZENBAUM. I move to reconsider the vote by which the amendment was agreed to.

Mr. FORD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. METZENBAUM. I thank the managers on both sides for their cooperation.

Mr. FORD. Mr. President, we have only one item remaining to work on, and that is an agreement with the Senator from Ohio and the majority leader as to the time that the consumer bill will be brought to the floor. With that understanding, the Senator from Ohio does not intend to bring up any further amendments on this particular bill, as I understand it, and we will be ready to move to third reading. I have some other things that I might do here, but I prefer to wait for the majority leader. I think he has been conferring with the minority whip in order to make a decision whether to move to one bill or the other today or tomorrow.

Mr. President, I ask for the yeas and nays on final passage.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. FORD. I suggest the absence of a quorum, Mr. President.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. FORD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. FORD. Mr. President, the distinguished majority leader is now here. I hope that he and the distinguished Senator from Ohio [Mr. Metzenbaum] will enter into a colloquy so we might proceed with final passage of this legislation.

Mr. METZENBAUM. I say to the majority leader that I had some consumer amendments I wanted to put on this bill. The manager prefers I do not do that. As long as I have assurance that there will be the consumer bill up—it does not have to be my bill; it can be Senator Ford's bill, which would probably be the normal thing to do—the Senator from Ohio would not offer his consumer amendments.

Mr. BYRD. Mr. President, I have been trying to get consent of the distinguished Republican leader today to allow me to go to the next bill. That is S. 1485, I believe. I have not been able to get that consent. I am seeking consent from the assistant Republican leader and I hope I will be able to get that. In any event, I will move to the bill, if I cannot get consent to take it up.

Mr. METZENBAUM. With the assurance of the majority leader that he will see to it that we get to the bill one way or the other, I have no reason to hold up passage of this bill.

Mr. BYRD. All right.

Mr. LAUTENBERG. Mr. President, I rise in support of S. 1184, the Airport and Airway Capacity Expansion Act.

I commend the managers of the bill, the distinguished chairman of the Commerce Committee, Senator Hollings, the distinguished chairman of the Aviation Subcommittee, Mr. Ford, and the ranking minority member of the Aviation Subcommittee, Mrs. Kassebaum, for the fine work they have done in putting together this important legislation.

This bill is of the utmost importance. Their efforts have produced a sound, strong bill that will greatly enhance our efforts to make our skies safer, and our national aviation system more effective.

S. 1184 will increase authorized funding levels for the Airport Improvement Program, the national airspace plan, and for other functions within the Federal Aviation Administration. As chairman of the Senate Appropriations Subcommittee on Transportation, I will work to see that these programs receive the funding they need.

I am pleased to note that several amendments offered by this Senator have been included in the legislation now awaiting approval by the full Senate. These amendments include provisions to require black boxes on commuter aircraft, to help identify pilots with a history of drunk driving convictions, and to promote the development of the Atlantic City International Airport. These amendments complement the bill reported by the committee, and will help improve the safety and efficiency of aviation in this country.

This bill addresses an area of great concern to my State, New Jersey. S. 1184 would increase the minimum amount of AIP funds available for noise abatement from 8 percent to 10 percent. This increased funding will help to mitigate the serious problem of airport noise, and I strongly support this provision.

Mr. President, this is an important bill. It demands the immediate attention of the Congress. I urge my colleagues to support this bill.

Mr. ADAMS. Mr. President, I rise in support of the Airport and Airway Capacity Expansion Act of 1987. This legislation is crucial because it authorizes spending from the Airport Trust Fund to improve the safety and efficiency of air travel.

Mr. President, this country has seen an enormous increase in air travel in the past 10 years. Since deregulation of the industry, the annual number of passengers has increased from 275 million in 1978 to 415 million in 1986. Unfortunately, our national aviation policies and the development of airport capacity has not kept pace with this growth in travel. The result has been congestion at our airports and in the skies leading to innumerable delays as well as record numbers of near collisions.

In Washington State, five near collisions were reported for the month of September alone; this is the highest number for a single month this year or in 1986.

Without question, the air traffic system has reached a breaking point and we must do something about it.

As a frequent traveler, I know the frustration of canceled flights, missed connections, lost bags and long delays. I have sat, with countless others, on runways waiting to take off and in airport lobbies waiting for an airplane announcement—usually a disappointing one. These frustrations and inconveniences are secondary to my main concern, however. I want to know that when I take off in that plane, I am going to land safely. I want to be sure that the Federal Aviation Administration and the aviation industry is doing everything that it should be to make that flight a safe one.

This legislation addresses safety and airport capacity problems in three ways. First, the funding provided to the Airport Improvement Program will be used to construct and extend airport runways, to improve airport lighting and taxiways, and to fund noise control projects and FAA required security projects.

Second, this bill accelerates the modernization of our air traffic control system. We cannot be satisfied with our Nation's airports being run with yesterday's outdated technology. There have been significant advances in air traffic control that can ensure the safe, efficient movement of aircraft through the system. The Airport Capacity Expansion Act provides the necessary funding to update, consolidate and automate our air traffic control, navigation and communications system.

Third, this legislation increases the number of authorized air traffic controllers by an additional 1,000 controllers. It seems readily apparent that when the traffic in our skies almost doubles, we need to increase the number of air traffic controllers to keep account of these aircraft and ensure the safety of every flight.

I am also pleased to see that this bill will include critical funds for the Essential Air Service Program. The effects of deregulation have been particularly severe in rural areas. To minimize the loss of airline service to small communities, Congress wisely established the Essential Air Service Program to guarantee the continuation of airline service to localities faced with a service cutoff. This program has been a success, and I strongly support its reauthorization.

Mr. President, there are actions we can take to improve air safety. The Airport Trust Fund is available. The cash balance in the trust fund now stands at nearly $10 billion. Of this amount, almost $5.6 billion is surplus—money available for airport improvements that has not been committed for use. We have the means, we now need to put this money to work.

Mr. HELMS. Mr. President, I was pleased to learn that section 4 of this bill requires the Secretary of Transportation and the Secretary of Defense, in consultation with aviation users, to conduct a national review of the need and utilization of special use airspace. The bill requires that they report their results and recommendations to Congress within 18 months.

Mr. President, I am pleased to see this effort being made because North Carolina is one of the States that has a large amount of the airspace designated for special use. Early in 1986 the late Senator John East and I asked the General Accounting Office to review the management of special use airspace and specifically include North Carolina in their study. I ask unanimous consent that a copy of the letter from Senator East and I be inserted in the Record at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. HELMS. Mr. President, the General Accounting Office has completed its study. I'm told that the report will be available in February or March of next year. I think the report will provide an important tool for the Secretaries of Defense and Transportation to use in their review. It will also help Congress identify some important issues that must be addressed regarding special use airspace across the country. I look forward to sharing the GAO report with my colleagues at the earliest opportunity.

EXHIBIT 1

U.S. SENATE,
Washington, DC, May 28, 1986.

Hon. CHARLES A. BOWSHER,
Comptroller General, U.S. General Accounting Office, Washington, DC.

DEAR MR. BOWSHER: Among the issues of growing significance concerning the Nation's airspace that have emerged is the need to restrict more airspace for military activities, while civil aviation needs are also expanding and changing. Although we strongly support the need for our military services to be able to carry out the aviation training and other activities essential to their missions, we are nevertheless concerned that such requirements are not being properly balanced with those of civilian aviation and economic and commercial development.

We understand over half of the airspace over the Continental United States is for special use. That is, it is reserved or restricted in some form for military use. In that regard, the Federal Aviation Administration is responsible for the management of all special use airspace and assuring that it is used efficiently and safely by systematically and periodically reviewing its use.

At our request, representatives of the General Accounting Office (GAO) recently met with our staffs to discuss this issue. At the meeting they stated that they had been aware of the problems associated with the conflicting military and civilian aviation needs and had already targeted the issue for study. Thus, we request that the study be started as soon as it is feasible and that the management of airspace used for military activities in North Carolina be included.

We would appreciate being kept advised of the progress of the study as well as any results as they become available.

Thank you for your assistance.

Sincerely yours,

JESSE HELMS,
U.S. Senator.
JOHN P. EAST,
U.S. Senator.

Mr. DOMENICI. Mr. President, I am pleased that the Senate is considering S. 1184, a bill to authorize expenditures of $15.6 billion from the airport and airway trust fund for fiscal years 1988–90.

We are all too familiar with the problems faced by commercial air travelers today. The skies are crowded, the airports are full, and airline service is less than ideal. The public is frustrated.

S. 1184 will go a long way toward correcting this situation. Authorization levels under the Airport Improvement Program will nearly double by fiscal year 1990, to $1.8 billion. This will enable the Federal Aviation Administration [FAA] to proceed with much-needed improvements to facilities throughout the Nation.

This legislation would also increase expenditures under the FAA's Facilities and Equipment Program. The national airspace system modernization plan will replace an aging computer air traffic control system, with a state-of-the-art system capable of handling more flights, with fewer manhours.

S. 1184 is very favorable to small commercial airports, and I commend the Senators who have worked so hard on this legislation.

I would like to take a few moments to discuss the outlook for New Mexico's air traffic system.

First, the minimum enplanement level for entitlement funds is reduced from the present 40,000 annual enplanements, to 10,000 annual enplanements. This will enable smaller airports to participate in this program. At least two additional airports in the State of New Mexico—Roswell and Carlsbad—will now be eligible for enplanement funds.

Second, I am also excited about the establishment of a State block grant program. At the Secretary's discretion, as many as five States may be designated to assume responsibility for grant funding for all but primary airports. Federal grants are now made directly to the airports.

A major initiative of this administration is to return many policymaking decisions to the State level, where Government officials are more familiar with their citizens' needs. This pilot program is a significant step in that direction, and I hope it will result in a more efficient use of our aviation resources.

Finally, let me just say I am excited about the prospects for New Mexico's airports.

As the Nation's fifth largest State in terms of land mass, air service is very important to New Mexico. Commercial airports and commuter service are crucial to New Mexico's economic future. This legislation has the potential to provide improvements to many of our facilities.

Several major modernization projects are already underway. At Albuquerque International, runway and taxiway reconstruction have been completed. A $100 million terminal expansion project began earlier this year, and will provide New Mexico with a modern facility capable of handling the ever-increasing passenger loads witnessed in recent years.

By the end of this year, the State expects to have the Sierra Blanca Regional Airport in operation. This facility, strongly endorsed by the Department of Transportation, will replace the present airport in Ruidoso. This will bring added safety and peace of mind to the people who fly into Ruidoso.

I am also optimistic regarding the prospects for improvements to Taos Municipal Airport. State and local officials enthusiastically support the proposed expansion to the facility. Earlier this year, Governor Carruthers and I had the opportunity to visit with then-Administrator Engen, to indicate the need for and the strong support for improvements.

I am committed to helping Taos and other local airports in New Mexico. Las Cruces, Roswell, Las Vegas, and other cities have expressed interest in improving their facilities, and this legislation will help smaller airports make improvements.

In spite of the negative news we are hearing these days about air service, I believe the public has benefited from the deregulated environment. This legislation will make air travel easier for many of us, so that all Americans can realize the benefits of our Nation's air transportation system.

Mr. SASSER. Mr. President, I am delighted that we are considering today the Airport and Airway Capacity Expansion Act reauthorizing the Airport and Airway Improvement Act.

Much-needed airport improvements and expansions are waiting on our action on S. 1184. I am sure that none of us would want a repetition of the protracted authorization lapses we have several times experienced in past years. We have too much at stake, and I am confident that every Member of Congress wants to be sure that we provide adequate funding to ensure the finest national airport and airway system we are capable of developing.

We can take justifiable pride in what has been accomplished in the past. But, now conditions in our airports and airways have been dramatically transformed in a relatively brief span of years. This swift transformation makes airport improvement and expansion vitally important to our national welfare.

Air travel has become an essential part of doing business in this country, accounting for a large part of the stunning increase in commercial air traffic. Emplanements have gone up to nearly a half a billion passengers per year, a 40-percent increase since deregulation and a 26-percent increase just since the air traffic control strike in 1981. This increase alone puts an enormous strain on our airports.

Added to that, the airlines have come to rely on a hub-and-spoke service configuration. The result is a surge of traffic, deplanings and emplanings, in every hub airport. Airport operators have had to scramble to accommodate the crowd.

In the State of Tennessee, both Nashville and Memphis Airports now have hub operations. They are major airports, and the Knoxville and Chattanooga Airports are not far behind. Their funding needs have had to be compressed into fewer years to speed up the development they have required.

Mr. President, one of the outstanding provisions of this bill grew out of the needs of the Nashville Airport. In order to proceed in an orderly fashion with the installation of an additional and necessary runway, the Nashville Airport was willing to go ahead, using its own bond financing, provided it could be promised a later Federal reimbursement. The reimbursement arrangement is now included in this bill. The Government is protected by requirements in the bill for advance notification and justifications, and we now have a well-thought out method for airports to keep up with their construction contracting schedules.

Another vital part of this legislation makes careful provision for the absolutely essential spending for airport noise compatibility. As the urbanization of our population has steadily increased, it has become physically impossible in many parts of the country to locate a major metropolitan airport without adverse noise impacts on some residential areas. In Memphis, TN, for example, as air traffic has increased, airport noise studies show that the airport is faced with a major noise compatibility program involving the potential purchase of some 1,300 residences. That alone is staggering. Airports can use other, less drastic measures, such as soundproofing homes and noise barrier construction. But, again, these all cost money.

Mr. President, this bill provides for noise abatement programs for the coming 3 years. While our airports are vital, I am delighted that we will make real efforts to assist their residential neighbors.

I am also pleased that the bill will mandate the increase of the air traffic controller work force and that it will provide funding for necessary upgrading of vital control tower and airport safety equipment.

I know all of us would like an even higher level of funding for our airport improvement program. But in the reality of our efforts to control the Federal budget, I am pleased to support the levels included in this legislation, beginning with $1.6 billion for fiscal year 1988 and rising an additional $100 million for each of the 2 remaining years of the authorization.

In short, Mr. President, this measure is an important step in coping with some of today's airport and air travel problems. I urge my colleagues to support this bill.

Mr. MURKOWSKI. Mr. President, I want to thank the Senator from Kentucky and the Senator from Kansas for the leadership they have demonstrated in the course of our debate on this bill. It is legislation of great importance to our aviation system by providing authorization for essential programs such as airport and airway improvements.

The bill incorporates legislation which I introduced to prohibit foreign firms from bidding on projects funded under the act unless their home country allows our design engineering, construction and architecture firms to participate on public works projects in their home market.

This provision, which was also included in the House version of this legislation, will provide United States negotiators with important leverage in our efforts to gain access for United States firms to participate on the $8 billion Kansai International Airport project in Japan, in addition to approximately $62 billion in other major projects which will be built in Japan over the next decade.

I thank the bill managers for their efforts to insure this provision was included in the bill when it was reported out of committee.

Mr. KERRY. Mr. President, first, I would like to take a moment to comment the subcommittee Chairman Mr. Ford for the excellent job he has done in fashioning this reauthorization of our airport and airway programs. At a time when every aspect of our Nation's aviation system—from baggage handling to air traffic control—is under tremendous strain and we hear calls for action from all quarters, the distinguished senior Senator from Kentucky has responded with a bill that truly meets the immense challenges we face and offers us the promise of improved safety and increased operating efficiency. That this was accomplished in the committee by virtual consensus is an even greater testimony to the skill of the chairman of the Aviation Subcommittee.

Anyone who flies, watches the nightly news, or reads weekly magazines knows that there is a crisis in aviation today. It is a crisis in both safety and service. This crisis was born out of the successes of deregulation, which has led to tough competition among the airlines and a massive increase in the number of people flying today. In fact, the number of airline passengers has jumped from 292 million in 1978 to 415 million last year, and it's still growing.

The solution to this crisis in aviation, however, is not wholesale new government regulation. Although some new regulatory approaches may be needed, such as those contained in the Passenger Protection Act, S. 1485, on the whole I think that most of us agree that deregulation has yielded many benefits, and we must not undertake any action that would undo those benefits. But the current mess is a crisis that government has the power to solve. The solution will cost money—billions of dollars, in fact—but it will not cost the American taxpayer one additional dime, because the money that we need is already being collected in the form of aviation user fees.

A few statistics serve to illustrate the safety crisis that has developed over the last several years. A high-speed collision between two aircraft—whether on the ground or in the air—is every pilot's worst fear. An important indicator of the risk of midair collision is the trend in near collisions, or incidents in which flying aircraft inadvertently come within 500 feet of each other. Unfortunately, the number of these near-misses has risen steadily from 311 in 1982 to 839 last year.

Another worrisome statistic is the increase in operational errors, which measure an air traffic controller's failure to maintain adequate distance between aircraft. These errors increased 18 percent, to 313, from the first quarter of 1986 to the first quarter of last year. Finally, runway incursions, which represent near-misses on the ground, jumped from 103 in 1985 to 115 last year.

There are, of course, a number of reasons for these safety problems. One is the supply of air traffic controllers. In 1981 there were 16,375 controllers, of whom 13,348 were designated fully trained. Now there are 15,089 controllers, and only 9,565 are fully trained. Over the same period of time commercial flights have increased from 4.7 to 6.2 million. We ought to have been dramatically increasing the number of controllers in the years since deregulation, not decreasing that number.

At the Boston Air Traffic Control Center, which controls the airspace for much of the region, 140 controllers work 6-day weeks in order to compensate for the fact that 170 other authorized controllers' jobs are vacant. Many controllers believe that the fatigue which results from these conditions helps contribute to near-misses. For example, on April 9 Continental and Pan American planes were assigned to the same altitude and came within 500 feet of each other over Bridgeport, CT.

There are also safety problems with regard to the maintenance of aircraft. Eastern Airlines, for example, was fined $9.5 million by the FAA last February after the agency found 78,000 violations of maintenance and safety regulations. And yet there continues to be a shortage of FAA aircraft inspectors. The number of inspectors was 1,621 in 1981, and after dropping to 1,494 in 1983 is back up to only 1,776, hardly enough to keep pace with the growth of the industry.

While the crisis in aviation is most acute with regard to safety, it affects consumer service as well. I don't think I need to reel off a long list of statistics about the increase in delays, in flight cancellations, in overbookings, and so on. I'm sure everyone here has experienced these problems at one time or another. Flying several times a week, I could fill up an entire speech with anecdotes of service problems.

Delays are perhaps the most common airline consumer problem. In 1986, delays totaled 2,500 hours per day, which some have estimated costs the Nation about $3 billion in lost productivity. Although weather accounts for many of these delays, intense competition among airlines to schedule flights during peak slots, and lack of airport capacity are critical factors in the crisis. Inadequate capacity at our Nation's airports is perhaps the fundamental cause of the delay problem, and it is one that we in Congress have the power and means to correct.

Clearly, the picture that is emerging is of an industry that is rapidly expanding and has developed a safety and service crisis as a result. The question remains—how can we solve this crisis without halting the expansion of the airline industry which is so vital to our economy and to the standard of living of our citizens.

The answer is two-fold; first, where possible we must make critically needed capacity improvements at our Nation's airports and in the air traffic control system. We must build more terminals, runways and gates, add more controllers and modernize our air traffic control system. We ought to be building the safest, most modern and most efficient airport/airway system in the world. It is particularly important that we develop added capacity in some of the smaller regional airports which serve to relieve both commercial and general aviation traffic which currently is overwhelming the largest airports in the major metropolitan areas.

Second, where we are faced with critically important airports which face real capacity constraints and cannot be expanded, we must pursue innovative ways of managing existing resources more efficiently, by encouraging airport operators, the FAA and air carriers to schedule air traffic more evenly throughout the day to avoid peak hour congestion. We also need to redouble our efforts at noise abatement at airports with adjacent residential neighborhoods to insure that unacceptable noise does not serve as a further constraint on airport capacity. Finally, we need to make facilities at reliever airports more attractive to general aviation users to draw this traffic away from the large commercial airports.

I said it before, but it's worth reemphasizing—I'm not calling for reregulation. The Government should not become an automatic pilot, dictating how much the airlines ought to charge, or who can fly which routes. We should merely help to steer the industry through the turbulence that is a byproduct of deregulation so that the competitive market can be permitted to run its course. Keeping the system flying smoothly for today's competition as well as the anticipated growth of tomorrow requires that we spend money on these critical improvements.

Well, Mr. President, I am pleased to say that these two steps are being addressed by Congress this year. The issues of scheduling and peak hour management are among the issues we will address when we consider the Passenger Protection Act. The bill we are debating today addresses the capacity and safety improvements we need to make in the Nation's airspace and airways.

We have the money for these improvements—it's sitting in our aviation trust fund. The bill before us today merely uses money that we've had available for years. Since 1970, 8 percent of the cost of every airline ticket purchased has gone into this trust fund. Last year, nearly $4 billion was generated by this and other smaller user fees, bringing the trust fund balance to $8.6 billion. But up until last year we had spent less than half of this fund, leaving almost $4.5 billion in surplus money. Moreover, that surplus is growing every year. The trust fund is fast approaching the $10 billion mark, while the uncommitted balance has grown to $5.6 billion. This is a large resource just waiting to be tapped.

Many observers have charged that the administration has intentionally maintained this trust fund surplus in order to artificially deflate the deficit. I think such a policy is extremely shortsighted, and think we ought to use the trust fund for the purpose for which it was intended. S. 1184, the Airport and Airway Capacity Expansion Act, does this. It attempts to speed up implementation of our national airspace system plan, or NAS plan, which will modernize and automate our Nation's air traffic control, navigation, and communications systems. It calls for the hiring of 1,000 new air-traffic controllers, controllers that are desperately needed if we are to shore up our air safety system.

S. 1184 also authorizes more money for grants through the Airport Improvement Program. These grants fund critical airport expansion projects, including the construction of new runways as well as noise abatement programs which are crucial for airport facilities like Logan in my State. This bill will help us build more reliever airports and improve our existing relievers and smaller commercial service airports. These small- and middle-sized airports are invaluable in our efforts to relieve congestion at our Nation's busiest airports.

Mr. President, without question, one thing that all of us agreed from the beginning was that there is a critical need for additional investment in greater airport capacity. This is a nationally recognized problem, and in Massachusetts it is no different. Logan International Airport—which sits in the heart of greater Boston in our Harbor—is the 10th busiest airport in the United States when measured in terms of passenger emplanements, which total 21 million last year. This represents more than twice the traffic Logan handled in 1970, and almost anyone who has traveled through Logan recently would find it hard to believe that the airport could handle any additional traffic. But incredible as it may seem, FAA projections indicate that by the year 2000—just 13 years away—Logan will face a demand of more than 30 million passengers a year.

Officials at the Massachusetts Port Authority believe that Logan has the potential to handle this level of traffic—but only under conditions that require substantial effort and funding to achieve. MassPort forsees not only a need for better management of traffic throughout the day rather than peak hour congestion as now prevails. Logan also requires added capital improvements, including an eventual change from a unit terminal structure to one where passengers are directed and handled initially through a central processing facility and transported to gates at satellite terminals. Most importantly, however, MassPort believes that it will be necessary to develop a truly integrated regional airport plan and commercial aviation system capable of meeting the air traffic needs of the vibrant and densely settled New England economy.

It is in this regard that I believe that the bill before us today makes one of it's most important contributions, not only by substantially increasing the overall spending level authorized by the bill and the formula grant funds available to reliever airports, but also by increasing the funds available to the FAA Administrator for discretionary airport capacity improvements grants.

Grants of this kind—particularly those made in accordance with regional airport plans developed by State officials in consultation with the FAA—offer great promise for relieving commercial air traffic in extremely crowded airports and spreading demand more evenly. An excellent example of where this kind of assistance is desperately needed is in Worcester, MA. Worcester has expanded from a passenger volume of 8,630 in 1982 to 52,700 in 1936, and this year's volume is projected to approach 110,000, more than double last year's level. Airports like Worcester, which have demonstrated an ability to absorb a greater volume, are exactly where our discretionary grant money ought to be going so that we can improve our regional airport system and pick up some slack from our overburdened hub airports. This bill provides more grant money for just this purpose.

Mr. President, this bill before us today, and its counterpart in the House, received strong bipartisan support in committee, and ought to be passed overwhelmingly here on the floor today. It is time to stop sitting around while the administration hoards our aviation trust fund, and our air-safety system is stretched to the brink of catastrophe. It's time to spend this trust fund money on repairing our airports and airways.

S. 1184 is a major step in our efforts to resolve the crisis we are facing in our Nation's aviation system. It begins to bring up-to-date an overburdened and understaffed airport/airway system, and we've got the resources to do so. Certainly, the cost of not doing anything far outweighs expense of shoring up the system. For if we continue along our present course, we will be inviting disaster—disaster, we will come to realize, that could have been prevented.

Mr. BYRD. Mr. President, I support the Airport and Airway Facilities Expansion Act of 1987, which will authorize funding for the Airport Improvement Program, the modernization of the air traffic control system, and supporting research and development efforts.

This bill increases the authorization of funding for the Airport Improvement Program from $1 billion in 1987 to $1.6 billion in fiscal year 1988 to $1.8 billion in 1990. Good air facilities are key to the economic development of an area. Without such air facilities, small, rural communities are effectively handicapped from expanding their economic base.

West Virginia, like many States, has been experiencing severe economic hardship. Steel, coal, glass, and textile industries have closed, leaving thousands of West Virginians unemployed. Communities in my State have been struggling to develop new industry, including tourism. However, it is a strange paradox that West Virginia's mountainous terrain and valleys, which hold such promise for tourism, also act as a barrier to transportation. It is not only vital that West Virginia have an adequate airport system for economic development, but it is also vital that those airports be equipped to handle airline flights during adverse weather conditions. At no time has this need for access been more apparent as it has in times of emergency when airports have provided the only access to an area—as has been the case in West Virginia during flooding.

It is estimated that West Virginia will receive $20.127 million over 5 years under the Airport Improvement Grants Program. This will fund airport improvements and development that would not be possible without Federal assistance.

This bill also requires the Federal Aviation Administration to hire an additional 1,000 air traffic controllers by the end of fiscal year 1988. Continued reports over understaffing of our Nation's air traffic control system and increasing near-mid-air collisions have been of major concern to all of us who must fly. Increasing this staffing level is one step in the right direction.

I support this measure, and I urge its adoption.

Mr. FORD. I am ready for third reading, Mr. President.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of H.R. 2310, Calendar Order No. 363.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 2310) to amend the Airport and Airway Improvement Act of 1982 for the purpose of extending the authorization of appropriations for airport and airway improvements, and for other purposes.

Mr. FORD. Mr. President, I move to strike all after the enactment clause and substitute the text of S. 1184, as amended.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the amendment and the third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time.

Mr. FORD. On this bill, Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The bill having been read the third time, the question is, shall it pass? The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Tennessee [Mr. GORE] and the Senator from North Carolina [Mr. SANFORD] are necessarily absent.

I further announce that, if present and voting, the Senator from Tennessee [Mr. GORE] would vote "yea."

Mr. SIMPSON. I announce that the Senator from Kansas [Mr. DOLE] is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 96, nays 1, as follows:

[Rollcall Vote No. 356 Leg.]

YEAS—96

Adams
Armstrong
Baucus
Bentsen
Biden
Bingaman
Bond
Boren
Boschwitz
Bradley
Breaux
Bumpers
Burdick
Byrd
Chafee
Chiles
Cochran
Cohen
Conrad
Cranston
D'Amato
Danforth
Daschle
DeConcini
Dixon
Dodd
Domenici
Durenberger
Evans
Exon
Ford
Fowler
Garn
Glenn
Graham
Gramm
Grassley
Harkin
Hatch
Hatfield
Hecht
Heflin
Heinz
Helms
Hollings
Humphrey
Inouye
Johnston
Karnes
Kassebaum
Kasten
Kennedy
Kerry
Lautenberg
Leahy
Levin
Lugar
Matsunaga
McCain
McClure
McConnell
Melcher
Metzenbaum
Mikulski
Mitchell
Moynihan
Murkowski
Nickles
Nunn
Packwood
Pell
Pressler
Pryor
Quayle
Reid
Riegle
Rockefeller
Roth
Rudman
Sarbanes
Sasser
Shelby
Simon
Simpson
Specter
Stafford
Stennis
Stevens
Symms
Thurmond
Trible
Wallop
Warner
Weicker
Wilson
Wirth

NAYS—1

Proxmire

NOT VOTING—3

Dole
Gore
Sanford

So the bill (H.R. 2310), as amended, was passed as follows:

H.R. 2310

Resolved, That the bill from the House of Representatives (H.R. 2310) entitled "An Act to amend the Airport and Airway Improvement Act of 1982 for the purpose of extending the authorization of appropriations for airport and airway improvements, and for other purposes", do pass with the following amendment:

Strike out all after the enacting clause and insert:

That the Act may be cited as the "Airport and Airway Capacity Expansion Act of 1987".

TITLE I—AIRPORT AND AIRWAY IMPROVEMENT ACT

SEC. 101. Section 502(a) of the Airport and Airway Improvement Act of 1982 (hereinafter referred to as "the Act") (49 App. U.S.C. 2201(a)) is amended—

(1) by redesignating paragraphs (7) through (9) as paragraphs (8) through (10), respectively;

(2) by inserting after paragraph (6) the following:

"(7) cargo hub airports play a critical role in the movement of commerce through the airport and airway system, and appropriate

provisions should be made to facilitate the development and enhancement of such hub airports;";

(3) by striking "and" at the end of paragraph (9), as so redesignated;

(4) by striking the period at the end of paragraph (10), as so redesignated, and inserting in lieu thereof a semicolon;

(5) by adding at the end thereof the following:

"(11) airport construction and improvement projects which increase the capacity of facilities to accommodate passenger and cargo traffic, thereby increasing safety and efficiency and reducing delays, should be undertaken to the maximum feasible extent; and

"(12) it is in the national interest to insure that nonaviation usage of navigable airspace be accommodated, but not allowed to decrease the safety and capacity of the airspace and airport system this title is developing.".

SEC. 102. Section 503(a) of the Act (49 App. U.S.C. 2202(a)) is amended—

(1) in paragraph (2), by inserting immediately before the period at the end of subparagraph (C) the following: "or any land included within an unacceptably high level noise contour and identified on a current or projected noise contour map determined acceptable by the Secretary";

(2) by redesignating paragraphs (5) through (24) as paragraphs (6) through (25), respectively, and by inserting immediately after paragraph (4) the following:

"(5) 'Cargo hub airport' means a public airport that receives in excess of 100 million pounds landed weight of all-cargo aircraft on an annual basis, as determined by the Secretary.";

(3) in paragraph (12), as so redesignated, by striking all after 'have" and inserting in lieu thereof the following: "more than 10,000 passengers enplaned annually.";

(4) in paragraph (13), as so redesignated, by (A) striking "development or" and inserting in lieu thereof "development,", and (B) inserting immediately after "planning," the following: "or for carrying out noise compatibility programs or parts of such programs under section 104(c)(1) of the Aviation Safety and Noise Abatement Act of 1979 (49 App. U.S.C. 2104(c)(1)),"; and

(5) in paragraph (18), as so redesignated, by redesignating subparagraphs (B) and (C) as subparagraphs (C) and (D), respectively, and by inserting immediately after subparagraph (A) the following:

"(B) any cargo hub airport,".

SEC. 103. Section 504(a) of the Airport and Airway Improvement Act of 1982 (49 U.S.C. 2203(a)) is amended—

(1) by designating the existing text as paragraph (a)(1); and

(2) by adding at the end thereof the following new paragraph:

"(2) As soon as feasible following the date of the enactment of this paragraph, the Secretary shall, in reviewing and revising the plan, take into account tall structures which reduce safety or airport capacity. In addition, the Secretary, in carrying out such review and revision, shall make every reasonable effort to address the legitimate needs of air cargo operations, and STOL/VSTOL and rotary wing aircraft operations.".

SEC. 104. Section 1101 of the Federal Aviation Act of 1958 (49 U.S.C. 1501) is amended to read as follows:

"HAZARDS TO SAFE AND EFFICIENT AIR COMMERCE AND THE PRESERVATION OF NAVIGABLE AIRSPACE AND AIRPORT TRAFFIC CAPACITY

"SEC. 1101. (a) The Secretary of Transportation (hereinafter in this section referred to as the 'Secretary') shall, by rules and regulations, or by order where necessary, require all persons to give adequate public notice, in the form and manner prescribed by the Secretary, of the construction or alteration, or of the proposed construction or alteration, of any structure where notice will promote safety in air commerce as well as the efficient use and preservation of the navigable airspace, and airport traffic capacity at public-use airports.

"(b) Where the Secretary determines, according to rules and regulations, that the construction or alteration of any structure may constitute a physical obstruction in navigable airspace, the Secretary shall conduct an aeronautical study to determine the extent of the adverse impact, if any, on the safe and efficient use of the navigable airspace. Upon completion of such an aeronautical study, the Secretary shall issue a report fully disclosing the extent of the adverse impact on the safe and efficient use of the navigable airspace which the Secretary determines will result from the construction or alteration of a structure.

"(c) When conducting an aeronautical study to determine the impact of the construction or alteration of a structure, the Secretary shall thoroughly consider, according to rules and regulations, all factors relevant to the efficient and effective use of the navigable airspace, and shall specifically consider:

"(1) the impact on arrival, departure, and en route procedures for aircraft operating under visual flight rules;

"(2) the impact on arrival, departure, and en route procedures for aircraft operating under instrument flight rules;

"(3) the impact on all existing public-use airports and aeronautical facilities;

"(4) the impact on all planned public-use airports and aeronautical facilities; and

"(5) the cumulative impact resulting from the proposed construction or alteration of a structure when combined with the impact of other existing or proposed structures.

"(d) In the administration of laws relating to broadcast applications and the conduct of aeronautical studies relating to broadcast towers, the Federal Communications Commission and the Federal Aviation Administration shall take such action as may be necessary to efficiently coordinate the receipt, consideration of, and action upon such applications and the completion of associated aeronautical studies.".

SEC. 105. Section 504(d) of the Act (49 App. U.S.C. 2203(d)) is amended—

(1) by amending paragraph (2) to read as follows:

"(2)(A) The Secretary and the Secretary of Defense, in consultation with aviation users, shall jointly conduct a national review of the need and utilization of special use airspace with a view to determining its impact on civil aviation operations and on the quality of the environment.

"(B) Within eighteen months after the date of enactment of the Airport and Airway Capacity Expansion Act of 1987, the Secretary and the Secretary of Defense shall report to the Congress the results of such review, together with their recommendations."; and

(2) by striking paragraph (3).

SEC. 106. (a) Section 505(a) of the Act (49 App. U.S.C. 2204(a)) is amended—

(1) by inserting "(1)" immediately before "In order"; and

(2) by adding at the end the following:

"(2) The aggregate amounts which shall be available after September 30, 1987, to the Secretary for such grants and for grants for airport noise compatibility under the Aviation Safety and Noise Abatement Act of 1979 (49 App. U.S.C. 2101 et seq.) shall be $6,716,700,000 for fiscal years ending before October 1, 1988; $8,416,700,000 for fiscal years ending before October 1, 1989; and $10,216,700,000 for fiscal years ending before October 1, 1990.".

(b) Section 505(b) of the Act (49 App. U.S.C. 2204(b)) is amended by striking "September 30, 1987," and inserting in lieu thereof "September 30, 1990,".

(c) Section 505(c) of the Act (49 App. U.S.C. 2204(c)) is amended to read as follows:

"(c) AUTHORIZATION FOR LIQUIDATING APPROPRIATIONS.—There are to be appropriated from the Trust Fund, to remain available until expended, such sums as are necessary to liquidate obligations incurred under this section.".

SEC. 107. (a) Section 506(a) of the Act (49 App. U.S.C. 2205(a)) is amended—

(1) by inserting "(1)" immediately after "EQUIPMENT.—";

(2) by striking "and" after "1986;"; and

(3) by striking "1987." and inserting in lieu thereof the following: "1987; $7,827,000,000 for the fiscal years ending before October 1, 1988; $9,327,000,000 for the fiscal years ending before October 1, 1989; and $11,077,000,000 for the fiscal years ending before October 1, 1990.".

(b) Section 506(b) of the Act (49 App. U.S.C. 2205(b)) is amended—

(1) by striking "and" immediately before "$193,000,000"; and

(2) by striking the period at the end of the second sentence and inserting in lieu thereof the following: "; $200,000,000 for fiscal year 1988 (of which not less than $250,000 shall be made available for equipment designed to provide improved access by handicapped persons to commercial aircraft); $200,000,000 for fiscal year 1989; and $225,000,000 for fiscal year 1990, of which not less than $25,000,000 in each such year is authorized to be appropriated for research, engineering and development regarding airport capacity improvements.".

(c) Section 506(c)(2) of the Act (49 App. U.S.C. 2205(c)(2)) is amended—

(1) by striking "and" after "1986;"; and

(2) by striking "1987." and inserting in lieu thereof the following: "1987; and an amount not to exceed the amount made available for purposes of section 505 of this title for fiscal years 1988 through 1990.".

(d) Section 506(d) of the Act (49 App. U.S.C. 2205(d)) is amended—

(1) by striking "and" after "1986;"; and

(2) by striking "1987." and inserting in lieu thereof the following: "1987; $30,000,000 for fiscal year 1988; $30,000,000 for fiscal year 1989; and $30,000,000 for fiscal year 1990.".

(e) Section 506(e)(5) of the Act (49 App. U.S.C. 2205(e)(5)) is amended by striking "September 30, 1987" and inserting in lieu thereof "September 30, 1990".

SEC. 108. (a) Section 507(a)(1) of the Act (49 App. U.S.C. 2206(a)(1)) is amended by striking "(1) PRIMARY AIRPORTS.—" and inserting in lieu thereof "(1) PRIMARY AIRPORTS: PASSENGER ENPLANEMENTS.—".

(b) Section 507(a)(1)(B) is amended—

(1) by striking "1987," and inserting in lieu thereof "1990,";

(2) by striking "and" after "1986,"; and

(3) by striking "1987." and inserting in lieu thereof "1987, and 30 percent for each of the fiscal years 1988 through 1990.".

(c) Section 507(a)(1)(C) of the Act (49 App. U.S.C. 2206(a)(1)(B)) is amended—

(1) by striking "$200,000" and inserting in lieu thereof "$300,000"; and

(2) by striking "$12,500,000" and inserting in lieu thereof "$16,000,000".

(d) Section 507(a)(1)(D) and (E) of the Act (49 App. U.S.C. 2206(a)(1) (D) and (E)) is amended by striking "50 percent" each place it appears and inserting in lieu thereof "38 percent".

(e)(1) Section 507(a) of the Act (49 App. U.S.C. 2206(a)) is amended—

(A) by redesignating paragraphs (2) through (4) as paragraphs (3) through (5), respectively; and

(B) by inserting immediately after paragraph (1) the following:

"(2) PRIMARY AIRPORTS: CARGO HUB AIRPORTS APPORTIONMENT.—In addition to funds to which any public airport may be entitled under any other provision of this title, and notwithstanding any other limitation on funding, a 3 percent share of the total amount authorized or available under section 505 of this title shall be set aside for distribution to cargo hub airports. Such distribution will be made by the Secretary on a pro rata basis, determined by calculating the total amount of all-cargo aircraft landed weight at all qualified cargo hub airports and establishing each qualified cargo hub airport's percentage share of such total amount. Each qualified cargo hub airport shall be entitled to that percentage of the total 3 percent share of the total amount authorized or available under section 505 of this title for any fiscal year.".

(2) Section 507(a)(3) of the Act, as so redesignated, is amended by striking "October 1, 1987" and inserting in lieu thereof "October 1, 1990".

(3) Section 507(a)(4)(A) of the Act, as so redesignated, is amended by striking "and (4)" and inserting in lieu thereof "(3), and (5)".

(4) Section 507(a)(5) of the Act, as so redesignated, is amended by striking "paragraph (3)" and inserting in lieu thereof "paragraph (4)".

(f) Section 507 of the Act (49 App. U.S.C. 2206) is amended by adding at the end the following:

"(c) Cargo Hub Airport Calculations.—For purposes of determining the pro rata apportionment for any fiscal year under subsection (a)(2) of this section, the total all-cargo aircraft landed weight at an airport shall be based on the all-cargo aircraft landed weight for the preceding calendar year.".

(g) Section 509(e) of the Act (49 App. U.S.C. 2208(e)) is amended by striking "section 507(a)(1)" and inserting in lieu thereof "section 507(a)(1) and (2)".

Sec. 109. (a) Section 508(a) of the Act (49 App. U.S.C. 2207(a)) is amended—

(1) by striking "or (4)" and inserting in lieu thereof "(3), or (5)"; and

(2) by striking "507(a)(3)" and inserting in lieu thereof "507(a)(4)".

(b) Section 508(c) of the Act (49 App. U.S.C. 2207(c)) is amended by striking "507(a)(2)" each place it appears and inserting in lieu thereof "507(a)(3)".

(c) Section 508(d) of the Act (49 App. U.S.C. 2207(d)) is amended—

(1) by adding at the end of paragraph (1) the following: "Of such amount, $300,000 shall annually be apportioned to each primary reliever airport and be available for obligation in the fiscal year during which it was first authorized to be obligated and the succeeding fiscal year. For purposes of this paragraph, a 'primary reliever airport' is a reliever airport having the function of relieving congestion at a pacing airport, as determined by the Secretary, which (A) if located within 50 miles of a pacing airport, has 100,000 annual itinerant operations or 125,000 total annual operations and has 200 based aircraft, or (B) if located more than 50 miles from a pacing airport, has 25,000 annual itinerant operations, 150,000 total annual operations, 300 based aircraft, an air traffic control tower, and a published instrument approach.";

(2) in paragraph (2), (A) by striking "8 percent" and inserting in lieu thereof "10 percent"; (B) by striking "(A)"; and (C) by striking all from "section 104(c)" and inserting in lieu thereof "section 104(c)(1) of such Act.";

(3) in paragraph (3), (A) by striking "5.5 percent" each place it appears and inserting in lieu thereof "2 percent"; and (B) by striking "paragraph (4)" and inserting in lieu thereof "paragraph (5)"; and

(4) by redesignating paragraph (5) as paragraph (6), and inserting after paragraph (4) the following:

"(5) Not less than $250,000,000 shall be made available under section 505 for any fiscal year to be distributed to primary airports and their reliever airports for improvements which increase the capacity of facilities to accommodate passenger and cargo traffic, thereby increasing safety and efficiency and reducing delays.".

Sec. 110. Section 512 of the Act (49 App. U.S.C. 2211) is amended—

(1) in subsection (a), by striking "507(a)(1)" and inserting in lieu thereof "507(a) (1) and (2)";

(2) by redesignating subsections (b) and (c) as subsections (c) and (d), respectively; and

(3) by inserting immediately after subsection (a) the following:

"(b) Airport Development Already Accomplished.—The Secretary may approve a project grant application and make a grant to reimburse a sponsor for airport development already accomplished by the sponsor (including project formulation costs) at a primary or reliever airport if—

"(1) the airport development for which reimbursement is requested will result in a significant enhancement of systemwide capacity;

"(2) before the development was begun, the sponsor notified the Secretary of its intent to carry out the development and request reimbursement subsequent to accomplishment of the development; and

"(3) before the development was begun, the sponsor provided the Secretary with sufficient information to enable the Secretary to assure that the development would be carried out in accordance with all applicable statutory and administrative requirements imposed on sponsors in connection with projects funded under this title, including the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).".

Sec. 111. Section 513(b) of the Airport and Airway Improvement Act of the Act (49 App. U.S.C. 2212(b)) is amended—

(1) in paragraph (2), (A) by striking "Not more than the greater of (A) $200,000, or (B) 60 percent of the" and inserting in lieu thereof "The"; and (B) by striking "section 507(a)(3)" and inserting in lieu thereof "section 507(a)(4)";

(2) by striking paragraph (5); and

(3) by redesignating paragraph (6) as paragraph (5).

Sec. 112. Section 519 of the Act (49 App. U.S.C. 2218) is amended by adding at the end the following: "The Secretary shall propose implementing regulations with respect to the airport grant program authorized by this Act, receive and consider public comment (including possible amendments to sponsor assurances to be included in grant agreements), and promulgate final regulations not later than one year after the date of enactment of the Airport and Airway Capacity Expansion Act of 1987.".

Sec. 113. Section 529 of the Act (49 App. U.S.C. 2225) is amended by striking "October 1, 1987" and inserting in lieu thereof "October 1, 1990".

Sec. 114. The Act (49 App. U.S.C. 2201 et seq.) is amended by adding at the end the following:

"SEC. 533. DENIAL OF FUNDS FOR CERTAIN PROJECTS.

"(a) In general.—

"(1) No funds provided under this Act may be used to fund any project which uses any product or service of a foreign country during any period in which such foreign country is listed by the United States Trade Representative under subsection (c) of this section.

"(2) Paragraph (1) of this subsection shall not apply with respect to the use of a product or service in a project if the Secretary determines that—

"(A) the application of paragraph (1) to such product, service, or project would not be in the public interest;

"(B) products of the same class or kind as such product or service are not produced or offered in the United States, or in any foreign country that is not listed under subsection (c) of this section, in sufficient and reasonably available quantities and of a satisfactory quality; or

"(C) exclusion of such product or service from the project would increase the cost of the overall project contract by more than 20 percent.

"(b) Determinations.—

"(1) By no later than the date that is 30 days after the date on which each report is submitted to the Congress under section 181(b) of the Trade Act of 1974 (19 U.S.C. 2241(b)), the United States Trade Representative shall make a determination with respect to each foreign country of whether such foreign country—

"(A) denies fair and equitable market opportunities for products and supplies of the United States in procurement; or

"(B) denies fair and equitable market opportunities for United States bidders,

for construction projects that cost more than $500,000 and are funded (in whole or in part) by the government of such foreign country.

"(2) In making determinations under paragraph (1) of this subsection, the United States Trade Representative shall take into account information obtained in preparing the report submitted under section 181 of the Trade Act of 1974 and such other information as the United States Trade Representative considers to be relevant.

"(c) Listing of Foreign Countries.—

"(1) The United States Trade Representative shall maintain a list of each foreign country with respect to which an affirmative determination is made under subsection (b) of this section.

"(2) Any foreign country that is added to the list maintained under paragraph (1) of this subsection shall remain on the list until the United States Trade Representative determines that such foreign country does permit the fair and equitable market opportunities described in subsection (b)(1) (A) and (B) of this section.

"(3) The United States Trade Representative shall annually publish in the Federal Register the entire list required under paragraph (1) of this subsection and shall publish in the Federal Register any modifications to such list that are made between annual publications of the entire list.

"(d) Definitions.—For purposes of this section—

"(1) Each foreign instrumentality, and each territory or possession of a foreign country, that is administered separately for customs purposes shall be treated as a separate foreign country.

"(2) Any article that is produced or manufactured (in whole or in substantial part) in a foreign country shall be considered to be a product of such foreign country.

"(3) Any service provided by a person that is a national of a foreign country, or is controlled by nationals of a foreign country, shall be considered to be a service of such foreign country.".

Sec. 115. The Act (49 App. U.S.C. 2201 et seq.), as amended by this Act, is further amended by adding at the end the following:

"SEC. 534. CONTRACTING FOR ENGINEERING AND DESIGN SERVICES.

"Each contract or subcontract for program management, construction management, planning studies, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping or related services with respect to a project or program authorized, reauthorized or otherwise funded under this title shall be awarded in the same manner as the selection procedures in title IX of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 541 et seq.) as in effect on the date of enactment of this section or an equivalent qualifications-based requirement prescribed for or by the procuring agency or equivalent State qualifications-based requirement. This paragraph shall apply except to the extent that a State adopts or has adopted by statute a formal procedure for the procurement of such services.".

Sec. 116. The Act (49 App. U.S.C. 2201 et seq.), as amended by this Act, is further amended by adding at the end the following:

"SEC. 535. STATE BLOCK GRANT PILOT PROGRAM.

"(a) Promulgation of Regulations.—Not later than 180 days after the date of enactment of this section, the Secretary shall promulgate regulations to implement a State block grant pilot program to become effective on October 1, 1989. Such program shall expire on September 30, 1991.

"(b) Assumption of Certain Responsibilities.—Such regulations shall provide that the Secretary may designate not more than 5 qualified States to assume administrative responsibility for all airport grant funding available under this title, other than funding which has been designated for use at primary airports.

"(c) Selection.—The Secretary shall select States for participation in such program on the basis of applications submitted to the Secretary. The Secretary shall select any such State only if the Secretary determines that the State—

"(1) has an agency or organization capable of administering effectively any block grant made under this section;

"(2) uses a satisfactory airport system planning process;

"(3) uses a programming process acceptable to the Secretary;

"(4) has agreed to comply with Federal procedural and other standard requirements for administering any such block grant; and

"(5) has agreed to provide the Secretary with such program information as the Secretary may require.

Before determining that any planning process is satisfactory or any programming process is acceptable, the Secretary shall ensure that such process provides for meeting critical safety and security needs, and that the programming process ensures that the needs of the national airport system will be addressed in deciding to which projects funds will be provided.

"(d) Report.—The Secretary shall conduct an ongoing review of the program established under this section, and shall, not later than 90 days before its scheduled termination, report to the Congress the results of such review, together with recommendations for further action relating to the program.".

Sec. 117. The Secretary of Transportation shall make permanent the low activity (VFR) Level I air traffic control tower contract program established under section 526 of the Airport and Airway Improvement Act of 1982 (49 App. U.S.C. 2222).

Sec. 118. (a) Not later than September 30, 1988, the Federal Aviation Administration shall hire not less than 1,000 air traffic controllers in addition to the total air traffic controller work force level specified in Public Law 99-591.

(b) The additional air traffic controllers hired pursuant to subsection (a) of this section shall not include air traffic assistants.

Sec. 119. (a) It is the intention of the Congress that the authority of the Secretary of Transportation to make grants under section 104(c)(2) of the Aviation Safety and Noise Abatement Act of 1979 (49 App. U.S.C. 2104(c)(2)) to airport operators to implement noise compatibility programs that were developed prior to the promulgation of implementing regulations under such Act if the Secretary determines that such programs would further the purposes of such Act shall continue until such programs are fully implemented, notwithstanding any other provision of law and any rule or regulation promulgated pursuant to any other provision of law.

(b) In order to carry out the intent specified in subsection (a) of this section, grants may continue to be made under section 104(c)(2) of the Aviation Safety and Noise Abatement Act of 1979 (49 App. U.S.C. 2104(c)(2)) for noise compatibility programs or projects previously approved under such program, if—

(1) the operator of the airport involved submits updated noise exposure contours, as required by the Secretary; and

(2) the Secretary determines that such programs or projects are compatible with the purposes of such Act.

Sec. 120. (a) Congress finds that—

(1) the number of near midair collisions is an indication that additional measures must be taken to assure the highest level of air safety in the United States;

(2) public health and safety requirements necessitate the timely completion and installation of a collision avoidance system for use by commercial aircraft flying in the United States;

(3) the Traffic Alert and Collision Avoidance System promises to reduce the threat to life caused by midair collisions, particularly collisions between general aviation aircraft and commercial aircraft;

(4) the Traffic Alert and Collision Avoidance System will succeed only to the degree that other aircraft posing a collision threat use operating transponders with automatic altitude reporting capability; and

(5) the Federal Aviation Administration should continue to a deliberate pace the development of additional technologies, including the collision avoidance system known as TCAS-III, to ensure the safe separation of aircraft.

(b) Section 601 of the Federal Aviation Act of 1958 (49 App. U.S.C. 1421) is amended by adding at the end the following:

"COLLISION AVOIDANCE SYSTEMS

"(f)(1)(A) The Administrator shall complete development of the collision avoidance system known as TCAS-II so that such system will be operable under visual and instrument flight rules and will be upgradable to the performance standards applicable to the collision avoidance system known as TCAS-III.

"(B) The Administrator shall develop and implement a schedule for development and certification of the collision avoidance system known as TCAS-II which will result in completion of such certification not later than 18 months after the date of the enactment of this subsection.

"(C) The Administrator shall transmit to Congress monthly reports on the progress being made in development and certification of the collision avoidance system known as TCAS-II.

"(2) The Administrator shall require by regulation that, not later than 30 months after the date of certification of the collision avoidance system known as TCAS-II, such system be installed and operated on each civil aircraft which has a maximum passenger capacity of more than 20 seats and which is used to provide air transportation of passengers, including intrastate air transportation of passengers.

"(3) Within 6 months after the date of enactment of this subsection, the Administrator shall promulgate a final rule requiring the installation and use of operating transponders with automatic altitude reporting capability for aircraft operating in designated terminal airspace where radar service is provided for separation of aircraft. For terminal airspace designated under this paragraph, other than for Terminal Control Areas and Airport Radar Service Areas, the Administrator may provide for access to such airspace by non-equipped aircraft if the Administrator determines that such access will not interfere with the normal traffic flow. Such final rule shall require the installation and use of such transponders not later than 24 months after the date of enactment of this subsection.".

(c) The item relating to section 601 in the table of contents of the Federal Aviation Act of 1958 is amended by adding at the end the following:

"(f) Collision avoidance systems.".

(d) The Administrator of the Federal Aviation Administration shall complete the research and the development on, and the certification of, the collision avoidance system known as TCAS-III as soon as possible. There are authorized to be appropriated such sums as may be necessary from the Airport and Airway Trust Fund to carry out this subsection.

Sec. 121. Release of Restrictions.—

(a) General rule.—Subject to subsection (b), in recognition of the benefits to the

public, the city of Laredo, Texas, and its successors and assigns, are hereby released from all terms, conditions, reservations, and restrictions contained in the instrument of disposal dated February 21, 1975, by which the United States conveyed the property on which the Laredo International Airport, Laredo, Texas, is located to such city to the extent that such terms, conditions, reservations and restrictions apply to the portion of such property consisting of approximately 680.1586 acres of land which is designated under the 1985 master plan and land use plan for the Laredo International Airport as being available for nonaviation purposes.

(b) Conditions.—The release granted by subsection (a) shall be subject to the following conditions:

(1) All revenues derived from the property to which such release applies shall be used for development, improvement, operation, and maintenance of the Laredo International Airport.

(2) The use of property to which such release applies shall not interfere with the operation and maintenance of such airport.

(3) Property to which such release applies may only be rented or leased if the term of the rental or lease agreement is 20 years or less and if compensation which is not less than—

(A) ¼ of fair market value is received in the case of a rental or lease agreement for a term of 10 years or less; and

(B) ½ of fair market value is received in the case of a rental or lease agreement for a term of more than 10 years.

(4) Property to which such release applies may only be transferred if compensation which is equal to or more than fair market value is received.

(5) The city of Laredo, Texas, shall provide to the Administrator of the Federal Aviation Administration—

(A) an accounting and management plan acceptable to the Administrator for managing the Laredo International Airport general fund; and

(B) an explanation of the management by such city of such general fund in calendar years beginning after December 31, 1977, and ending before the date of the enactment of this Act.

(C) Implementation.—The administrator of the Federal Aviation Administration shall take such action as may be necessary to carry out the provisions of this section.

Sec. 122. The Secretary of Transportation shall study the various methods of air traffic control which might be utilized at the Grand Canyon Airport, including the possibility and feasibility of installing radar for air traffic control purposes. The Secretary shall report the results of such study, together with his or her recommendations, to the Congress on or before the expiration of the 180-day period following the date of the enactment of this Act.

Sec. 123. (a) Notwithstanding section 16 of the Federal Airport Act (as in effect on the date of each conveyance referred to in this subsection) with respect to such conveyance, the Secretary is authorized, subject to the provisions of section 4 of the Act of October 1, 1949 (63 Stat. 700; 50 U.S.C. App. 1622c), and the provisions of subsection (b) of this section, to grant release—

(1) from any of the terms, conditions, reservations, and restrictions contained in each deed of conveyance under which the United States conveyed property to the city and county of Denver, Colorado, on which portions of Stapleton International Airport are located; and

(2) from any assurance made by the sponsor of such airport for a grant under the Airport and Airway Improvement Act of 1982 for a project at such airport.

(b) Conditions.—Any release granted by the Secretary under paragraph (1) of this subsection shall be subject to the following conditions:

(1) The city and county of Denver, Colorado, shall agree that in conveying any interest in the property which the United States conveyed to the city and county by the deeds described in subsection (a) the city and county will receive an amount for such interest which is equal to the fair market value (as determined pursuant to regulations issued by the Secretary).

(2) Any such amount so received by the city and county shall be used by the city and county for the development, construction, and improvement of a new Denver air carrier airport and a reliever airport in the event that the operation of the new air carrier airport severely restricts the operation of the nearby reliever airport. In no event shall such amount be used for operation or maintenance of such airports.

(3) The city and county shall agree not to convey any interest in the property which the United States conveyed to the city and county by the deeds described in subsection (a) until the opening and initial operation of a primary airport to replace Stapleton International Airport, unless the Secretary determines that any such property is not essential for the operation of Stapleton International Airport.

Sec. 124. Airport grant funds made available to the State of Hawaii under section 505: of the Airport and Airway Improvement Act of 1982, may, notwithstanding any other provision of law, be used to acquire properties referred to as areas 46A and 46B of the United States General Services Administration Facility Site in Moanalua, Honolulu, Oahu, Hawaii, or to reimburse the State of Hawaii for such acquisitions.

Sec. 125. (a) notwithstanding section 23 of the Airport and Airway Improvement Act (as in effect on April 6, 1982), the Secretary of Transportation is authorized, subject to the provisions of section 4 of the Act of October 1, 1947, 50 App., U.S.C. 1622 (c), and the provisions of subsection (b) of this section, to grant releases from any of the terms, conditions, reservations, and restrictions contained in the deed of conveyance, dated April 6, 1982, under which the United States conveyed certain property to the State of Hawaii for airport purposes.

(b) Any release granted by the Secretary of Transportation under subsection (a) of this section shall be subject to the following conditions:

(1) The property for which a release is granted under this subsection shall not exceed 2.280 acres.

(2) The State of Hawaii shall agree that, in conveying any interest in the property which the United States conveyed to the State by a deed described in subsection (a), the State will receive an amount for such interest which is equal to the fair market value.

(3) Any amount so received shall be used for airport purposes only; and

(4) In the event land or any interest therein is received in exchange for all or part of the 2.280 acres, the deed of conveyance of such land or interest will contain language mandating that:

(A) the land or interest must be used for airport purposes only; and

(B) such land or interest in land received by the State of Hawaii may not be conveyed by the State, except by approval of the Federal Government, pursuant to the authority vested in the Secretary of Transportation, under section 4 of the Act of 1947, 50 App. U.S.C. 1622(c); and

(C) such conveyance by the State of Hawaii shall be subject to receipt of fair market value; and

(D) the proceeds from such conveyance by the State of Hawaii shall be used for airport purposes only.

Sec. 126. The Federal Aviation Administration flight service station located in Juneau, Alaska, is designated and shall, after the date of enactment of this Act, be known as the "Dave Scheytt Flight Service Station". Any reference in a law, map, regulation, document, or other paper of the United States to such flight service station shall be held and considered to refer to the "Dave Scheytt Flight Service Station".

Sec. 127. (a) This section may be cited as the "Small Community Air Service Improvement Act of 1987".

(b) As used in this section, the term—

(1) "air carrier" has the meaning given to such term in section 101(3) of the Federal Aviation Act of 1958 (49 App. U.S.C. 1301(3));

(2) "basic air service" means, with respect to points not in the State of Alaska—

(A) two daily round trip flights occurring on six days per week, with not more than one intermediate stop between the eligible point and a hub airport, which flights are scheduled to coincide approximately with the beginning and end of the business day;

(B) convenient connecting or single plane service at the hub airport to and from a substantial number of major destinations beyond such hub airport;

(C) service provided in aircraft large enough to accommodate estimated passenger and nonpassenger traffic at an average load factor for each such class of traffic of not greater than 50 per centum, except as provided in subparagraph (G) of this paragraph;

(D) service provided in aircraft with at least two pilots and two engines, unless, after October 31, 1978, no such aircraft have been employed in scheduled airline service for more than sixty consecutive operating days at such point;

(E) service provided with pressurized aircraft for operations which regularly exceed an altitude of eight thousand feet;

(F) service at fares which are not excessive when compared to the generally prevailing fares of other air carriers for like service between similar pairs of points; and

(G) service provided by an aircraft with an effective capacity of at least 15 passengers unless, after October 31, 1978, aircraft with an effective capacity of at least 15 passengers have not been employed from the eligible point for more than 60 consecutive operating days of scheduled airline services;

(3) "basic air service" means, with respect to points in the State of Alaska, service at reasonable fares and charges that is not less than that which existed in calendar year 1976 or two round trips per week, whichever is greater, unless otherwise specified under an agreement between the Secretary and the State agency of the State of Alaska, after consultation with the community affected;

(4) "eligible point" means any airport in the United States which is more than 50 statute miles by highway from a hub airport and for which a determination of essential air transportation has been made under section 419 of the Federal Aviation Act of 1958 (49 App. U.S.C. 1389);

(5) "enhanced air service" means service whose quality exceeds basic air service to the extent that it would require payment of compensation under this section in excess of the compensation required for such basic air service;

(6) "hub airport" means an airport that annually emplanes more than 0.25 percent of the total annual enplanements in the United States;

(7) "new eligible point" means any airport which is not an eligible point that has been designated by a State or local government as a point to receive scheduled passenger air service under this section, if such State or local government has guaranteed to pay 50 per centum of the compensation paid to an air carrier for providing the air service specified by such State or local government; and

(8) "Secretary" means the Secretary of Transportation.

(c) The Secretary shall pay compensation to air carriers to the extent necessary to—

(1) assure that each eligible point receives uninterrupted basic air service;

(2) assure that each new eligible point receives air service of such type and quality as may be specified by a State or local government which has agreed to pay 50 per centum of the compensation paid to an air carrier to provide such service; and

(3) provide for enhanced air service at each eligible point whenever a State or local government or any other person has agreed to pay 50 per centum of the additional compensation paid to an air carrier to provide such enhanced air service.

(d) In selecting an air carrier to provide air service under this section, the Secretary shall give particular weight to such carrier's demonstrated reliability in providing scheduled air service and to such carrier's contractual arrangements with other air carriers to assure service beyond the hub airport in accordance with subsection (b)(2)(B) of this section. The Secretary shall pay compensation to air carriers providing air service from the hub airport to points beyond the hub airport where the Secretary determines that such compensation is necessary to assure such service. The Secretary shall also encourage the submission of joint proposals by two or more air carriers which reflect arrangements to maximize service for eligible points to and from major cities beyond the hub airport of such carriers.

(e) Arrangements for basic air service made under this section shall, to the extent otherwise consistent with this section, reflect the preferences of the actual and potential users of airline service at the eligible point. In determining such preferences, the Secretary shall give substantial weight to the views of elected officials representing such users. Any arrangement providing for enhanced air service shall include such provisions for enhancements as are prescribed by the governmental entity or other person which has agreed to pay the non-Federal share of compensation and are otherwise lawful. The Secretary may require appropriate payment in advance or such other security to assure that the non-Federal share of compensation for air service under this section is made in a timely manner.

(f) An air carrier may not terminate, suspend, or reduce air transportation to any eligible point below the level of basic air service established for such point under this section unless such air carrier has given the Secretary, the appropriate State agency or agencies, and the communities affected at least 90 days notice prior to such termination, suspension, or reduction.

(g) If an air carrier has provided notice to the Secretary under subsection (f) of such air carrier's intention to suspend, terminate, or reduce service to any eligible point below the level of basic air service to such point, and if at the conclusion of the applicable period of notice the Secretary, despite diligent efforts, has not been able to find another air carrier to provide basic air service to such point, the Secretary shall require the carrier which provided such notice to continue such service to such point for an additional 30-day period, or until another air carrier has begun to provide basic air service to such point, whichever first occurs. If at the end of such 30-day period the Secretary determines that no other air carrier can be secured to provide basic air service to such eligible point on a continuing basis, either with or without compensation, then the Secretary shall extend such requirement for such additional 30-day periods (making the same determination at the end of each such period) as may be necessary to continue air transportation to such eligible point until an air carrier can be secured to provide basic air service to such eligible point on a continuing basis.

(h) If an air carrier is required to continue to provide service under subsection (g) of this section after the end of the required notice period, such air carrier shall be paid compensation by the Secretary for service beyond such period in an amount which is sufficient to cover its fully allocated actual costs plus return on used and useful investment (at market value) attributable to the service and the reasonably demonstrable cost of opportunities foregone as a result of being obliged to provide such extended service.

(i) The Secretary may incur obligations for the purpose of carrying out the provisions of this section from appropriations made for such purpose.

(j) In carrying out the provisions of this section, the Secretary shall invite the participation and comments of affected State and local governments to the maximum extent practicable. Arrangements made under this section shall be made by and in the name of the Secretary.

(k) Section 419(g) of the Federal Aviation Act of 1958 (49 App. U.S.C. 1389(g)) is amended to read as follows:

"(g) Duration of Program.—This section shall cease to be in effect after October 1, 1988.".

(l) There is authorized to be appropriated, for fiscal year 1988, and each of the next following nine fiscal years, such sums as may be necessary for carrying out the provisions of this section.

(m) This section shall take effect on October 1, 1988, and shall remain in effect for the 120-month period following the date of its enactment.

Sec. 128. Section 507(a)(2)(B) of the Act is amended by adding at the end thereof the following: "Notwithstanding the foregoing provisions of this paragraph, the Secretary of Transportation shall make available grants for minimum facility and safety improvements to public airports (other than commercial service airports) described in section 508(d)(3)(C).".

Sec. 129. (a) The Administrator of the Federal Aviation Administration shall conduct a study of noise abatement proposals under consideration by airport operators and local governments for the purpose of identifying those proposals which, under existing law or administrative policy, are not currently eligible for Federal assistance and determining whether or not such proposals should be made eligible for Federal assistance.

(b) Not later than the 180th day following the date of the enactment of this Act, the Administrator of the Federal Aviation Administration shall transmit to Congress a report on the results of the study conducted under subsection (a) together with recommendations concerning modifications in existing law and administrative policy for making additional noise abatement proposals eligible for Federal assistance.

Sec. 130. In the administration of the Airport and Airway Improvement Act of 1982, and any rule or regulation issued or promulgated pursuant thereto, the Sierra Blanca Regional Airport, Ruidoso, New Mexico, for purposes of determining the eligibility of such airport for Federal assistance under such Act for airport development, namely fire protection, shall be considered to have scheduled commuter service with at least a 30 passenger aircraft.

Sec. 131. In the administration of the provisions of the Airport and Airway Improvement Act of 1982, the municipal airport of the City of Dermott, Arkansas, shall not be denied eligibility for assistance under such Act on the basis that such airport is located on leased land, if such lease is for a period of at least 99 years, and if the land so leased consists of at least 25 acres.

Sec. 132. (a) Section 206 of the National Driver Register Act of 1982 (23 U.S.C. 401 note) is amended as follows:

(1) In subsection (a), paragraph (1) is amended by substituting the word "transportation" for "highway".

(2) In subsection (b), insert the following new paragraph immediately after paragraph (2), and renumber paragraphs (3) and (4) as paragraphs (4) and (5), respectively:

"(3) Any individual who has applied for or received an airman's certificate may request the chief driver licensing official of a State to transmit information regarding the individual under subsection (a) of this section to the Administrator of the Federal Aviation Administration. The Administrator of the Federal Aviation Administration may receive such information, and shall make that information available to the individual for review and written comment. The Administrator shall not divulge or use such information except to verify information required to be reported to the Administrator by airmen applying for an airman medical certificate and to evaluate whether the airman meets the minimum medical standards as prescribed by the Administrator to be issued an airman medical certificate. There shall be no access to information in the Register under this paragraph if such information was entered in the Register more than three years before the date of such request, unless such information relates to revocations or suspensions which are still in effect on the date of the request. Information submitted to the Register by States under the Act of July 14, 1960 (74 Stat. 526), or under this Act shall be subject to access for the purpose of this paragraph during the transition to the Register established under section 203(a) of this Act.".

(b) Section 206(b) of the National Driver Register Act of 1982 (23 U.S.C. 401 note) is amended by adding the following sentence at the end of paragraphs (b)(1), (b)(2), and (b)(4), respectively: "Information submitted to the Register by States under the Act of July 14, 1960 (74 Stat. 526), and under this Act shall be subject to access for the purpose of this paragraph during the transition to

the Register established under section 203(a) of this Act.".

SEC. 133. (a) The Secretary of Transportation shall initiate a supplementary rulemaking to require the installation and use of cockpit voice recorders and flight data recorders on commuter aircraft and other aircraft, commensurate with the recommendations of the National Transportation Safety Board.

(b) The Secretary of Transportation shall issue a notice of proposed rulemaking no later than 30 days after the date of the enactment of this Act.

SEC. 134. (a) This section may be cited as the "Federal Aviation Act of 1958 Amendments Act".

(b) Section 901(a)(1)(A) of the Federal Aviation Act of 1958 (49 U.S.C. App. 1471(a)(1)(A)) is amended by inserting "1101," immediately after the word "section" where it first appears.

(c) Section 901(a)(2) of the Federal Aviation Act of 1958 (49 U.S.C. App. 1471(a)(2)) is amended by inserting the phrase ", or of section 1101, 1114, or 1115(e)(2)(B)" immediately after "XII".

(d) Section 901(a)(1) of the Federal Aviation Act of 1958 (49 U.S.C. App. 1471(a)(1)) is amended by inserting the following words immediately after "violation," where it first appears: "except that a person who operates aircraft for the carriage of persons or property for compensation or hire, other than an airman serving in the capacity of an airman, shall be subject to a civil penalty not to exceed $10,000 for each violation of title III, VI, or XII of this Act, or any rule, regulation, or order issued thereunder, and".

(e) The Federal Aviation Act of 1958 is further amended by adding immediately after section 901 a new section 901A to read as follows:

"CIVIL PENALTY ASSESSMENT DEMONSTRATION PROGRAM

"Civil Penalty

"SEC. 901A. (a) The Administrator, or his delegate, may assess a civil penalty for a violation arising under this Act or a rule, regulation, or order issued thereunder, upon written notice upon finding of violation by the Administrator, after notice and opportunity for a hearing.

"No Reexamination of Liability or Amount

"(b) In the case of a civil penalty, assessed by the Administrator in accordance with this provision, the issue of liability or amount of civil penalty shall not be reexamined in any subsequent suit for collection of such civil penalty.

"United States District Courts

"(c) Notwithstanding subsection (a) of this section, the United States district courts shall have exclusive jurisdiction of any civil penalty action initiated by the Administrator: (1) which involves an amount in controversy in excess of $100,000; (2) which is an in rem action or in which an in rem action based on the same violation has been brought; (3) regarding which an aircraft subject to lien has been seized by the United States; and (4) in which a suit for injunctive relief based on the violation giving rise to the civil penalty has also been brought.

"Termination

"(d) The provisions of this section shall be in effect for 2 years following the date of enactment of this section, and shall apply to a civil penalty initiated by the Administrator on or after the date of enactment of this section, but shall not apply to a case in which the Administrator seeks a civil penalty in an amount in excess of $100,000 from a violator.".

(f) The Administrator of the Federal Aviation Administration shall report to the Congress 18 months after the date of enactment of this section. The report shall include: (1) the Administrator's views concerning the effectiveness of civil penalty levels enacted in this Act, and whether additional changes are necessary to provide an adequate safety deterrence; and (2) the Administrator's recommendation as to the effectiveness of the civil penalty assessment demonstration program authorized by section 4 of this Act and whether it should be continued.

(g) Section 902 of the Federal Aviation Act of 1958 (49 U.S.C. App. 1472) is amended by—

(1) inserting immediately after "inclusive," in subsection (o), the words "and subsection (r)"; and

(2) adding a new subsection (r) to read as follows:

"Secured Areas on Airports

"(r)(1) It shall be unlawful for any person to knowingly and willfully enter an aircraft or an airport area that serves air carriers or foreign air carriers contrary to security requirements established pursuant to sections 315 or 316 of this Act. Upon conviction thereof, such person shall be subject to imprisonment for a term not to exceed 1 year or a fine not to exceed $1,000, or both.

"(2) If any person violates paragraph (1) of this subsection with the intent to commit in the aircraft or secured area an act punishable as a felony under Federal or State law, such person shall be subject to imprisonment for a term not to exceed 10 years or a fine not to exceed $10,000, or both.".

(h) Section 313 of the Federal Aviation Act of 1958 (49 U.S.C. App. 1354) is amended by adding at the end thereof the following new subsection:

"Indemnification

"(e) The Administrator is empowered to indemnify any officer or employee of the Federal Aviation Administration against any claim or judgment against such person, provided that such claim or judgment arises out of an act or acts committed, as determined by the Administrator, within the scope of such person's official duties. The Administrator may issue such regulations as may be necessary to implement this subsection.".

(i)(1) Section 101(36) of the Federal Aviation Act of 1958 (49 U.S.C. App. 1301(36)) is amended by adding the following sentence at the end thereof: "For purposes of this definition, 'used exclusively in the service of' means, for other than the Federal Government, an aircraft which is owned and operated by a governmental entity for other than commercial purposes or which is exclusively leased by such governmental entity for not less than 90 continuous days.".

(2) Section 304(a)(6) of the Independent Safety Board Act of 1974 (49 U.S.C. App. 1903(a)(6)) is amended to read as follows:

"(6) establish by regulation requirements binding on persons reporting (A) accidents and aviation incidents subject to the Board's investigatory jurisdiction under this subsection, and (B) accidents and aviation incidents involving public aircraft other than aircraft of the Armed Forces and the Intelligence Agencies, and the Board shall report to the Congress within the 18-month period following the date of the enactment of the Federal Aviation Act of 1958 Amendments Act, its findings on public aircraft accidents and incidents.".

SEC. 135. The Airport and Airway Improvement Act of 1982 (title V of Public Law 97-248, 96 Stat. 677), as amended, is amended by adding at the end thereof the following new section:

"SEC. 530. ATLANTIC CITY AIRPORT.

"(a) LIMITATION ON FUNDING OR TRANSFER OF PROPERTY.—Notwithstanding any other provision of law, with regard to the Atlantic City Airport, at Pomona, New Jersey, the Federal Aviation Administration shall not convey any interest in property (pursuant to section 516 of this title) to any municipality or any other entity operating such airport, nor shall any funds authorized by this Act be available to such municipality or entity for any planning, study, design, engineering, or construction of a runway extension, new runway, new passenger terminal, or improvements to or expansion of the existing passenger terminal at such airport, until such time as:

"(1) the Master Plan Update for Atlantic City Airport and Bader Field, prepared pursuant to Federal Aviation Administration Contract FA-EA-2656, is completed and released; and

"(2) the Administrator of the Federal Aviation Administration finds that a public entity has been created to operate and manage the Atlantic City Airport, which entity has the following characteristics:

"(A) the authority to enter into contracts and other agreements, including contracts, leases, cooperative agreements, or other transactions with any agency or instrumentality of the United States;

"(B) the standing to sue and be sued in its own name;

"(C) the authority to hire and dismiss officers and employees;

"(D) the power to adopt, amend and repeal bylaws, rules, regulations governing the manner in which its business may be conducted and the powers vested in it may be exercised;

"(E) the authority to acquire, in its own name, an interest in such real or personal property as is necessary or appropriate for the operation and maintenance of the airport;

"(F) the power to acquire property by the exercise of the right of eminent domain;

"(G) the power to borrow money by issuing marketable obligations, or such other means as is permissible for public authorities under the laws of the State of New Jersey;

"(H) adequate financial resources to carry out all activities which are ordinarily necessary and appropriate to operate and maintain an airport;

"(I) a governing board which includes (but need not be limited to) voting representatives of the city of Atlantic City, the county of Atlantic, and the municipalities which are adjacent to or are directly impacted by the airport;

"(J) a charter which includes (i) a requirement that members of the governing board have expertise in transportation, finance, law, public administration, aviation, or such other qualifications as would be appropriate to oversee the management, planning and operation of an airport; and (ii) procedures which protect the research and development mission of the Federal Aviation Technical Center at Pomona, New Jersey, and the defense functions of the Air National Guard; and

"(K) the authority to carry out comprehensive transportation planning to minimize traffic congestion and facilitate access to and from the airport.

"(b) Safety Funds Not Subject to Limitation.—The limitation on funds set forth in subsection (a) shall not apply to any expenditure which the Administrator of the Federal Aviation Administration determines is needed for safety purposes.

"(c) Effective Date.—The restriction set forth in subsection (a) shall be applicable only to funds which are authorized for the fiscal year beginning October 1, 1987. Notwithstanding any other provision of law, the funds restricted under subsection (a) shall become available at such time as the conditions set forth in subsection (a) are satisfied.".

Sec. 136. Not later than 120 days after the date of enactment of this Act, the Secretary of Transportation shall promulgate regulations to establish criteria for the installation of airport control towers and other navigational aids. In setting criteria under such regulations relating to the number of air carrier operations, the Secretary shall count operations of aircraft providing regularly scheduled commercial passenger service with fewer than sixty-one seats as equivalent to operations carried out by aircraft with sixty-one or more seats.

Sec. 137. Section 503(a)(9) of the Act (49 App. U.S.C. 2202(a)(9)) is amended by adding at the end thereof the following: "For purposes of this definition, the term 'passengers enplaned' also includes passengers on board international flights which transit an airport for nontraffic purposes.".

Sec. 138. (a) The Secretary of Transportation shall ensure greater safety to air passengers by issuing, within 120 days following the date of enactment of this Act, regulations requiring adequate, uniform life preservers, life rafts, and flotation devices for passengers, including small children and infants, on any flight of an air carrier which the Secretary of Transportation determines a part of which flight will occur over water and adequate information and instructions as to the use of such preservers, rafts, and flotation devices.

(b) The Secretary of Transportation shall begin within 120 days following the date of enactment of this Act, and shall complete not later than 425 days following the date of enactment of this Act, a rulemaking—

(1) establishing regulations requiring all seats on board all air carrier aircraft to meet improved crashworthiness standards based upon the best available testing standards for crashworthiness;

(2) establishing regulations requiring air carrier interior cabins to meet improved flammability standards; and

(3) establishing regulations pertaining to aircraft design and equipment, including fuel tanks, to minimize the incidence of fire or explosion, such regulations to include, but not be limited to, considering crash resistant inner fuel tanks and breakaway, self-closing fittings throughout the fuel system.

(c) The Secretary of Transportation shall report to Congress, within 90 days following the date of enactment of this Act, on specific regulations the Secretary has adopted or intends to adopt to modernize and improve the oversight and inspection of air carrier maintenance and safety-related procedures.

TITLE II—AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1986

SEC. 201. SHORT TITLE; AMENDMENT OF 1986 CODE.

(a) Short Title.—This title may be cited as the "Airport and Airway Revenue Act of 1987".

(b) Amendment of 1986 Code.—Except as otherwise expressly provided, whenever in this title an amendment is expressed in terms of an amendment to a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

SEC. 202. 4-YEAR EXTENSION OF TAXES ON TRANSPORTATION BY AIR; REDUCTION OF TAXES IN 1991 IF FUNDS REMAIN UNOBLIGATED.

(a) Tax on Transportation of Persons by Air.—Section 4261(f) (relating to termination of tax on transportation by air) is amended to read as follows:

"(f) Termination; Reduction in 1991 if Funds Remain Unobligated.—

"(1) In general.—Except as provided in paragraph (2), the taxes imposed by this section shall apply with respect to transportation beginning after August 31, 1982, and before January 1, 1992.

"(2) Reduction of rate in 1991.—In the case of transportation beginning in 1991, if the unobligated balance in the Airport and Airway Trust Fund as of September 30, 1990 (as determined by the Secretary) exceeds $3,000,000,000, then—

"(A) subsections (a) and (b) shall each be applied by substituting '4 percent' for '8 percent', and

"(B) subsection (c) shall be applied by substituting '$1.50' for '$3'.

"(3) Treatment of obligations.—For purposes of determining the unobligated balance of the Airport and Airway Trust Fund under paragraph (2)—

"(A) In general.—Except as provided in subparagraph (B), an amount shall be treated as obligated when it is appropriated.

"(B) Amounts obligated under section 505 of airway improvement act.—An amount shall be treated as obligated under section 505 of the Airport and Airway Improvement Act of 1982 when such amount is authorized."

(b) Tax on Fuels Used in Noncommercial Aviation.—

(1) In general.—Section 4041(c)(5) (relating to termination) is amended to read as follows:

"(5) Termination; reduction in 1991 if funds remain unobligated.—

"(A) In general.—Except as provided in subparagraph (B), the taxes imposed by paragraphs (1) and (2) shall apply during the period beginning on September 1, 1982, and ending on December 31, 1991.

"(B) Reduction of rate in 1991.—In the case of any sale or use during 1991, if paragraph (2) of section 4261(f) applies during 1991, then—

"(i) paragraph (1) shall be applied by substituting '7 cents' for '14 cents', and

"(ii) no tax shall be imposed under paragraph (2).".

(2) Refund of fuel taxes on noncommercial aviation.—

(A) In general.—Section 6427 (relating to fuels not used for taxable purposes) is amended by redesignating subsection (p) as subsection (q) and by inserting after subsection (o) the following new subsection:

"(p) Gasoline Used in Noncommercial Aviation During 1991.—Except as provided in subsection (k), if section 4041(c)(5)(B) applies during 1991 and—

"(1) any tax is imposed by section 4041(c)(2) or 4081 on any gasoline sold during 1991, and

"(2) such gasoline is used as a fuel in any aircraft in noncommercial aviation (as defined in section 4041(c)(4)),

the Secretary shall pay (without interest) to the ultimate purchaser of such gasoline an amount equal to the excess (if any) of the aggregate amount of tax paid under sections 4041(c)(2) and 4081 on the gasoline so used over an amount equal to 6 cents multiplied by the number of gallons of gasoline so used.".

(B) Technical amendments.—

(i) Paragraph (1) of section 6427(i) is amended by striking out "or (h)" and inserting in lieu thereof "(h), or (p)".

(ii) Clause (i) of section 6427(i)(2)(A) is amended by striking out "and (h)" and inserting in lieu thereof "(h), and (p)".

(c) Tax on Transportation of Property by Air.—Section 4271(d) (relating to termination) is amended to read as follows:

"(f) Termination; Reduction in 1991 if Funds Remain Unobligated.—

"(1) In general.—Except as provided in paragraph (2), the taxes imposed by this section shall apply with respect to transportation beginning after August 31, 1982, and before January 1, 1992.

"(2) Reduction in rate in 1991.—In the case of transportation beginning in 1991, if paragraph (2) of section 4261(f) applies during 1991, then subsection (a) shall be applied by substituting '2.5 percent' for '5 percent'.".

(d) Expenditures From Trust Fund.—

(1) In general.—Section 9502(b) (relating to transfer to Airport and Airway Trust Fund of amounts equivalent to certain taxes) is amended by striking out "January 1, 1988" each place it appears and inserting in lieu thereof "January 1, 1992".

(2) Expenditures from trust fund.—The material preceding subparagraph (A) of paragraph (1) of section 9502(d) (relating to expenditures from Airport and Airway Trust Fund) is amended by striking out "October 1, 1987" and inserting in lieu thereof "October 1, 1990".

(3) Trust fund purposes.—Subparagraph (A) of section 9502(d)(1) is amended by inserting before the semicolon "or under the Airport and Airway Capacity Expansion Act of 1987 (as such Act was in effect on the date of the enactment thereof)".

SEC. 203. EXEMPTION OF CERTAIN HELICOPTERS FROM TAX ON TRANSPORTATION OF PERSONS BY AIR.

(a) Exemption.—Subsection (e) of section 4261 (relating to exemption for certain helicopter uses) is amended by striking out "or" at the end of paragraph (1), by inserting "or" at the end of paragraph (2), and by adding after paragraph (2) the following new paragraph:

"(3) any other use if tax is imposed under section 4041(c) or 4081 on fuel used in connection with such use,".

(b) Imposition of Tax on Fuels Used by Helicopters Exempt From Tax on Transportation of Persons.—Paragraph (4) of section 4041(c) (defining noncommercial aviation) is amended by adding at the end thereof the following new sentence: "Except as provided in subsection (l), the term 'noncommercial aviation' shall include the use of any helicopter which does not take off from, or land at, a facility eligible for assistance under the Airport and Airway Development Act of 1970 or otherwise uses services provided pursuant to the Airport and Airway Improvement Act of 1982.".

(c) Technical Amendments.—Sections 4261(e) and 4041(l) are each amended by striking out "System Improvement Act" and inserting in lieu thereof "Improvement Act".

(d) Effective Date.—

(1) Exemption.—The amendments made by subsection (a) shall apply to transportation beginning after September 30, 1988, but shall

not apply to any amount paid on or before such date.

(2) Fuels tax.—The amendment made by subsection (b) shall apply to sales or uses after September 30, 1988.

Mr. FORD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. HOLLINGS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. FORD. Mr. President, I move that the Senate insist on its amendments and request a conference with the House on the disagreeing votes of the two Houses and that the Chair be authorized to appoint conferees.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Kentucky.

The motion was agreed to.

Mr. FORD. Mr. President, I ask unanimous consent to indefinitely postpone S. 1184.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. FORD. Mr. President, this has been roughly almost 9 months in the making, a little better than 8 months, in putting this bill together and taking it to the point where it is today.

Many people are entitled to a thank you, a pat on the back, whatever, for their hard work and continual help throughout the weeks and months that we have been developing this airport improvement reauthorization language.

I want to compliment the committee. Senator Kassebaum has just been great. Senator Hollings has given us his full cooperation and help.

Mr. President, we could not do these things without the help of our staff. I personally thank Martha Moloney on my staff; Steve Palmer, Ralph Everett, Patty Hahn of the committee; and Senator Kassebaum's able assistant, Guy Clough.

So, Mr. President, I am appreciative of the fine vote and hope we can appoint the conferees early and that we can have a conference soon and bring back a piece of legislation that will be in the best interest of all of us.

I yield the floor.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. BYRD. Mr. President, I add my accolades to those that have been expressed by the distinguished Senator from Kentucky. The Senator from Kentucky, the manager of the bill, and the ranking manager, Senator Kassebaum, have demonstrated fine teamwork and skilled craftsmanship and ability in bringing the bill to the floor and managing it in a way that it has been managed and brought to a successful close at this reasonably early hour in the day.

I compliment them, and I also compliment the chairman of the committee, Mr. Hollings, and the ranking member on the studiousness with which they have proceeded on legislation generally in that committee and the hearings that have been conducted.

May I say to the Senator from Kentucky and the Senator from Kansas that the Senate is in their debt.

ORDER PROCEDURE

Mr. President, it is not the intention of the leadershp to go any later than 6 o'clock, 6:30, or somewhere in that general area, today.

I have been discussing with the able Republican leader and the equally able assistant Republican leader consent to go to Calendar Order No. 283, S. 1485, which is the airline, I guess we call it, consumer bill. In any event, Mr. Metzenbaum had an amendment to the bill that has just been passed which he was going to call up and he was assured that if he would not call up that amendment to that bill, I would do everything I possibly could to take up Calendar Order No. 283 at some point this week.

So with that in mind, I ask the distinguished acting Republican leader that I could get consent at any time to go to that bill after consultation with the Republican leader or his designee, with the understanding that this afternoon and at this point, I would proceed to take up the transportation appropriation bill.

Mr. SIMPSON. Mr. President, first I express my appreciation to Senator Ford and Senator Kassebaum for their work on the airports bill, a very important measure to all of us in the United States, and I think that was done with great skill and swiftness. I contratulate them.

To the majority leader I say that I believe we are ready on this side of the aisle to give the necessary consent to deal with the measure which is S. 1485 after consultation with the minority leader or his designee as to a time certain when that will be dealt with and thus allow the majority leader to go forward with the Department of Transportation appropriation bill at this time. And that I believe can be accomplished.

Mr. BYRD. Mr. President, I thank the distinguished Senator from Wyoming and I make that unanimous consent request that the majority leader be permitted to proceed at any time to the consideration of Calendar Order No. 283, S. 1485, after consultation with the Republican leader or his designate and with the understanding that it will not be this afternoon but the Senate instead will proceed to the consideration of the transportation appropriation bill.

Mr. SIMPSON. Mr. President, might I inquire of the majority leader whether that would also mean that perhaps it might come up next week or it might be this week. In other words, we are not quite certain but after consultation it could be at either time, I understand.

Mr. BYRD. It could very well be. It would be my plan and my hope to be able to bring it up this week following the action on the transportation appropriation bill or at some point this week.

Mr. SIMPSON. Yes.

I thank the majority leader, Mr. President.

The PRESIDING OFFICER. Hearing no objection, the unanimous consent request is agreed to.

Mr. BYRD. Mr. President, I thank the distinguished assistant Republican leader.

DEPARTMENT OF TRANSPORTATION AND RELATED AGENCIES APPROPRIATIONS, FISCAL YEAR 1988

Mr. BYRD. Mr. President, I ask the Chair to lay before the Senate transportation appropriation bill H.R. 2890.

The PRESIDING OFFICER. The clerk will report the bill.

The legislative clerk read as follows:

A bill (H.R. 2890) making appropriations for the Department of Transportation and related agencies for the fiscal year ending September 30, 1988, and for other purposes.

There being no objection, the Senate proceeded to the consideration of the bill, which had been reported from the Committee on Appropriations, with amendments, as follows:

(The parts of the bill intended to be stricken are shown in boldface brackets, and the parts of the bill intended to be inserted are shown in italic.)

H.R. 2890

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the Department of Transportation and related agencies for the fiscal year ending September 30, 1988, and for other purposes, namely:

TITLE I—DEPARTMENT OF TRANSPORTATION

OFFICE OF THE SECRETARY

Salaries and Expenses

[(Including transfer of funds)**]**

For necessary expenses of the Office of the Secretary of Transportation, including not to exceed $30,000 for allocation within the Department of official reception and representation expenses as the Secretary may determine; **[**$1,100,000**]** *$1,094,000* for the Immediate Office of the Secretary; **[**$570,000**]** *$470,000* for the Immediate Office of the Deputy Secretary; **[**$6,100,000**]** *$6,076,000* for the Office of the General Counsel; **[**$8,000,000**]** *$7,971,000* for the Office of the Assistant Secretary for Policy and International Affairs; **[**$2,300,000**]** *$2,291,000* for the Office of the Assistant Secretary for Budget and Programs; **[**$2,475,000**]** *$2,466,000* for the Office of the Assistant Secretary for Governmental Affairs; **[**$23,275,000**]** *$23,020,000*, **[**of which $16,000,000 shall be derived from unobligated balances of "Payments to air carriers",] for the Office of the Assistant Secretary for Administration; [$1,525,000] *$1,520,000* for the Office of the Assistant Secretary for Public Affairs; [$835,000] *$831,000* for the Executive Secretariat; [$450,000] *$448,000* for the Contract Appeals Board; [$1,300,000] *$1,296,000* for the Office of Civil Rights; [$400,000] *$508,000* for the Office of Commercial Space Transportation; [$2,000,000] *$1,771,000* for the Office of Essential Air Service; [$670,000] *$669,000* for Regional Representatives; and [$3,850,000] *$3,169,000* for the Office of Small and Disadvantaged Business Utilization, of which [$3,000,000] *$2,322,000* shall remain available until expended and shall be available for the purposes of the Minority Business Resource Center as authorized by 49 U.S.C. 332: *Provided*, That, notwithstanding any other provision of law, funds available for the purposes of the Minority Business Resource Center in this or any other Act may be used for business opportunities related to any mode of transportation[:-*Provided further*, That 5 per centum of each sum provided under this head shall not be available for obligation until on or after the date that final rules are issued by the Department of Transportation that: (1) expand existing requirements for installation and carriage of cockpit voice recorders and flight data recorders to smaller sizes of commuter air carrier aircraft and to require cockpit voice recorder and flight data recorder retrofits on certain types of existing commuter air carrier aircraft to be determined by the Federal Aviation Administration; and (2) require installation and carriage of operating altitude-encoding radar transponders for all aircraft operating in terminal airspace where air traffic control service is provided and in all controlled airspace above a minimum altitude to be determined by the Federal Aviation Administration].

Transportation Planning, Research, and Development

(TRANSFER OF FUNDS)

For necessary expenses for conducting transportation planning, research, and development activities, including the collection of national transportation statistics, and university research and internships, to remain available until expended, [$5,000,000] *$4,900,000*, to be derived from "Payments to air carriers".

Working Capital Fund

Necessary expenses for operating costs and capital outlays of the Department of Transportation Working Capital Fund not to exceed [$135,000,000] *$134,527,000* shall be paid, in accordance with law, from appropriations made available by this Act and prior appropriation Acts to the Department of Transportation, together with advances and reimbursements received by the Department of Transportation; for necessary expenses associated with the development of the Department-wide Accounting and Information System, [$1,785,000] *$1,685,000*, to remain available until expended; and for the Department of Transportation office space reduction initiative, $215,000.

Payments to Air Carriers

For payments to air carriers of so much of the compensation fixed and determined under section 419 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1389), as is payable by the Department of Transportation, [$38,000,000] *$32,000,000*, to remain available until expended.

COAST GUARD

Operating Expenses

For necessary expenses for the operation and maintenance of the Coast Guard, not otherwise provided for; purchase of not to exceed eight passenger motor vehicles for replacement only; and recreation and welfare, [$1,879,400,000] *$1,952,731,000*, of which [$30,000,000] *$15,000,000* shall be expended from the Boat Safety Account: *Provided*, That, of the funds available under this head, not less than $447,000,000 shall be available for drug enforcement activities: *Provided further*, That the number of aircraft on hand at any one time shall not exceed two hundred and fourteen, exclusive of planes and parts stored to meet future attrition: *Provided further*, That none of the funds appropriated in this or any other Act shall be available for pay or administrative expenses in connection with shipping commissioners in the United States: *Provided further*, That none of the funds provided in this Act shall be available for expenses incurred for yacht documentation under 46 U.S.C. 12109 except to the extent fees are collected from yacht owners and credited to this appropriation.

Acquisition, Construction, and Improvements

For necessary expenses of acquisition, construction, rebuilding, and improvement of aids to navigation, shore facilities, vessels, and aircraft, including equipment related thereto, to remain available until September 30, 1992, [$260,000,000] *$270,600,000*: *Provided*, That the Secretary of Transportation shall issue regulations requiring that written warranties shall be included in all contracts with prime contractors for major systems acquisitions of the Coast Guard: *Provided further*, That any such written warranty shall not apply in the case of any system or component thereof that has been furnished by the Government to a contractor: *Provided further*, That the Secretary of Transportation may provide for a waiver of the requirements for a warranty where: (1) the waiver is necessary in the interest of the national defense or the warranty would not be cost effective; and (2) the Committees on Appropriations of the Senate and the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Merchant Marine and Fisheries of the House of Representatives are notified in writing of the Secretary's intention to waive and reasons for waiving such requirements: *Provided further*, That the requirements for such written warranties shall not cover combat damage.

Alteration of Bridges

For necessary expenses for alteration or removal of obstructive bridges, [$1,000,000] *$990,000*, to remain available until expended.

Retired Pay

For retired pay, including the payment of obligations therefor otherwise chargeable to lapsed appropriations for this purpose, and payments under the Retired Serviceman's Family Protection and Survivor Benefits Plans, and for payments for medical care of retired personnel and their dependents under the Dependents Medical Care Act (10 U.S.C., ch. 55), $386,700,000.

Reserve Training

For all necessary expenses for the Coast Guard Reserve, as authorized by law; maintenance and operation of facilities; and supplies, equipment, and services, [$66,300,000] *$65,500,000.*

Research, Development, Test, and Evaluation

For necessary expenses, not otherwise provided for, for basic and applied scientific research, development, test, and evaluation; maintenance, rehabilitation, lease and operation of facilities and equipment, as authorized by law, [$20,000,000] *$19,700,000*, to remain available until expended: *Provided*, That there may be credited to this appropriation funds received from State and local governments, other public authorities, private sources and foreign countries, for expenses incurred for research, development, testing, and evaluation.

Offshore Oil Pollution Compensation Fund

The Secretary of Transportation is authorized to issue to the Secretary of the Treasury notes or other obligations in such amounts and at such times as may be necessary to the extent that appropriations are not adequate to meet the obligations of the Fund: *Provided*, That none of the funds in this Act shall be available for the implementation or execution of programs the obligations for which are in excess of $60,000,000 in fiscal year 1988 for the "Offshore Oil Pollution Compensation Fund".

Deepwater Port Liability Fund

The Secretary of Transportation is authorized to issue, and the Secretary of the Treasury is authorized to purchase, without fiscal year limitation, notes or other obligations in such amounts and at such times as may be necessary to the extent that available appropriations are not adequate to meet the obligations of the Fund: *Provided*, That none of the funds in this Act shall be available for the implementation or execution of programs the obligations for which are in excess of $50,000,000 in fiscal year 1988 for the "Deepwater Port Liability Fund".

Boat Safety

(Liquidation of Contract Authorization)

For payment of obligations incurred for recreational boating safety assistance under Public Law 92-75, as amended, [$15,000,000] *$30,000,000*, to be derived from the Boat Safety Account and to remain available until expended: *Provided*, That none of the funds in this Act shall be available for the planning or execution of programs the obligations for which are in excess of [$15,000,000] *$30,000,000* in fiscal year 1988 for recreational boating safety assistance.

FEDERAL AVIATION ADMINISTRATION

Headquarters Administration

For necessary expenses, not otherwise provided for, of providing administrative services at the headquarters location of the Federal Aviation Administration, including but not limited to accounting, budgeting, legal, public affairs, and executive direction services for the Federal Aviation Administration, [$37,500,000] *$37,000,000.*

Operations

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses of the Federal Aviation Administration, not otherwise provided for, including administrative expenses for research and development, and for establishment of air navigation facilities, and carrying out the provisions of the Airport and Airway Development Act, as amended, or other provisions of law authorizing obligation of funds for similar programs of airport and airway development or improvement, purchase of four passenger motor vehicles for replacement only, [$3,257,550,000] *$3,236,602,000*, of which not to exceed [$786,250,000] *$851,500,000* shall be derived from the Airport and Airway Trust Fund: *Provided*, That there may be credited to this appropriation funds received from States, counties, municipalities, other public authorities, and private sources, for expenses incurred in the maintenance and operation of air navigation facilities: *Provided further*, That none of these funds shall be available for new applicants for the second career training program or for a pilot test of contractor maintenance: *Provided further*, That the immediately preceding proviso shall not prohibit the augmentation of the existing field maintenance work force if it is determined to be essential for the safe operation of the air traffic control system: *Provided further*, That section 5532(f)(2) of title V, United States Code, is amended by striking "December 31, 1987" and inserting "December 31, 1988" in lieu thereof: *Provided further*, That section 8344(h) of title V, United States Code, is amended by striking "April 1, 1986" in paragraph (2) and inserting "December 31, 1986" in lieu thereof: *Provided further*, That in the event that the Federal Aviation Administrator employs annuitants subject to section 8344(h) of title V, United States Code, not to exceed $10,000,000, to be derived from the unobligated balance of any appropriation available for obligation by the Federal Aviation Administration as of the effective date of this Act, shall be available through December 31, 1988, for the purpose of funding such employment: *Provided further*, That any such funding shall be reported to the Committees on Appropriations of the Senate and the House of Representatives.

FACILITIES AND EQUIPMENT

(AIRPORT AND AIRWAY TRUST FUND)

For necessary expenses, not otherwise provided for, for acquisition, establishment, and improvement by contract or purchase, and hire of air navigation and experimental facilities, including initial acquisition of necessary sites by lease or grant; engineering and service testing including construction of test facilities and acquisition of necessary sites by lease or grant; construction and furnishing of quarters and related accommodations of officers and employees of the Federal Aviation Administration stationed at remote localities where such accommodations are not available; and the lease or purchase of one aircraft; to be derived from the Airport and Airway Trust Fund and to remain available until September 30, 1992, [$1,170,000,000] *$1,258,000,000*: *Provided*, That there may be credited to this appropriation funds received from States, counties, municipalities, other public authorities, and private sources, for expenses incurred in the establishment and modernization of air navigation facilities: *Provided further*, That of the funds available under this head, [$4,000,000] *$8,000,000* shall be available for the Secretary of Transportation to enter into grant agreements with universities or colleges having an airway science curriculum recognized by the Federal Aviation Administration, to conduct demonstration projects in the development, advancement, or expansion of airway science curriculum programs, and such funds, which shall remain available until expended, shall be made available under such terms and conditions as the Secretary of Transportation may prescribe, to such universities or colleges for the purchase or lease of buildings and associated facilities, instructional materials, or equipment to be used in conjunction with airway science curriculum programs.

RESEARCH, ENGINEERING, AND DEVELOPMENT

(AIRPORT AND AIRWAY TRUST FUND)

For necessary expenses, not otherwise provided for, for research, engineering, and development, in accordance with the provisions of the Federal Aviation Act (49 U.S.C. 1301-1542), including construction of experimental facilities and acquisition of necessary sites by lease or grant, [$161,500,000] *$165,000,000*, to be derived from the Airport and Airway Trust Fund and to remain available until expended: *Provided*, That there may be credited to this appropriation funds received from States, counties, municipalities, other public authorities, and private sources, for expenses incurred for research, engineering, and development.

GRANTS-IN-AID FOR AIRPORTS

(LIQUIDATION OF CONTRACT AUTHORIZATION)

(AIRPORT AND AIRWAY TRUST FUND)

For liquidation of obligations incurred for airport planning and development under section 14 of Public Law 91-258, as amended, and under other law authorizing such obligations, and obligations for noise compatibility planning and programs, [$1,030,000,000] *$1,063,000,000*, to be derived from the Airport and Airway Trust Fund and to remain available until expended: *Provided*, That none of the funds in this Act shall be available for the planning or execution of programs the commitments for which are in excess of [$1,720,000,000] *$1,335,500,000* in fiscal year 1988 for grants-in-aid for airport planning and development, and noise compatibility planning and programs, notwithstanding section 506(e)(4) of the Airport and Airway Improvement Act of 1982.

AVIATION INSURANCE REVOLVING FUND

The Secretary of Transportation is hereby authorized to make such expenditures and investments, within the limits of funds available pursuant to section 1306 of the Act of August 23, 1958, as amended (49 U.S.C. 1536), and in accordance with section 104 of the Government Corporation Control Act, as amended (31 U.S.C. 9104), as may be necessary in carrying out the program set forth in the budget for the current fiscal year for aviation insurance activities under said Act.

AIRCRAFT PURCHASE LOAN GUARANTEE PROGRAM

The Secretary of Transportation may hereafter issue notes or other obligations to the Secretary of the Treasury, in such forms and denominations, bearing such maturities, and subject to such terms and conditions as the Secretary of the Treasury may prescribe. Such obligations may be issued to pay any necessary expenses required pursuant to any guarantee issued under the Act of September 7, 1957, Public Law 85-307, as amended (49 U.S.C. 1324 note). None of the funds in this Act shall be available for the implementation or execution of programs under this head, the obligations for which are in excess of $60,000,000 during fiscal year 1988. Such obligations shall be redeemed by the Secretary from appropriations authorized by this section. The Secretary of the Treasury shall purchase any such obligations, and for such purpose he may use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, as now or hereafter in force. The purposes for which securities may be issued under such Act are extended to include any purchase of notes or other obligations issued under the subsection. The Secretary of the Treasury may sell any such obligations at such times and price and upon such terms and conditions as he shall determine in his discretion. All purchases, redemptions, and sales of such obligations by such Secretary shall be treated as public debt transactions of the United States.

FEDERAL HIGHWAY ADMINISTRATION

LIMITATION ON GENERAL OPERATING EXPENSES

Necessary expenses for administration, operation, and research of the Federal Highway Administration, not to exceed [$215,350,000] *$212,248,000*, shall be paid, in accordance with law, from appropriations made available by this Act to the Federal Highway Administration together with advances and reimbursements received by the Federal Highway Administration: *Provided*, That not to exceed [$38,243,000] *$40,288,000* of the amount provided herein shall remain available until expended: *Provided further*, That, notwithstanding any other provision of law, there may be credited to this account funds received from States, counties, municipalities, other public authorities and private sources, for training expenses incurred for non-Federal employees.

[HIGHWAY SAFETY RESEARCH AND DEVELOPMENT

[(HIGHWAY TRUST FUND)

[For necessary expenses in carrying out provisions of sections 307(a) and 403 of title 23, United States Code, to be derived from the Highway Trust Fund and to remain available until expended, $7,000,000.]

HIGHWAY-RELATED SAFETY GRANTS

(LIQUIDATION OF CONTRACT AUTHORIZATION)

(HIGHWAY TRUST FUND)

For payment of obligations incurred in carrying out the provisions of title 23, United States Code, section 402, administered by the Federal Highway Administration, to remain available until expended, [$10,000,000] *$9,900,000*, to be derived from the Highway Trust Fund: *Provided*, That not to exceed $100,000 of the amount appropriated herein shall be available for "Limitation on general operating expenses": *Provided further*, That none of the funds in this Act shall be available for the planning or execution of programs the obligations for which are in excess of [$10,000,000] *$9,900,000* in fiscal year 1988 for "Highway-related safety grants".

RAILROAD-HIGHWAY CROSSINGS DEMONSTRATION PROJECTS

For necessary expenses of certain railroad-highway crossings demonstration projects as authorized by section 163 of the Federal-Aid Highway Act of 1973, as amended, to remain available until expended, [$14,000,000] *$2,470,000*, of which [$9,333,333] *$1,646,667* shall be derived from the Highway Trust Fund.

FEDERAL-AID HIGHWAYS

(LIMITATION ON OBLIGATIONS)

(HIGHWAY TRUST FUND)

None of the funds in this Act shall be available for the implementation or execution of programs the obligations for which are in excess of [$12,500,000,000]

$12,220,000,000 for Federal-aid highways and highway safety construction programs for fiscal year 1988.

Federal-Aid Highways

(Liquidation of Contract Authorization)

(Highway Trust Fund)

For carrying out the provisions of title 23, United States Code, that are attributable to Federal-aid highways, including the National Scenic and Recreational Highway as authorized by 23 U.S.C. 148, not otherwise provided, including reimbursements for sums expended pursuant to the provisions of 23 U.S.C. 308, $13,400,000,000 or so much thereof as may be available in and derived from the Highway Trust Fund, to remain available until expended.

Right-of-Way Revolving Fund

(Limitation on Direct Loans)

(Highway Trust Fund)

During fiscal year 1988 and with the resources and authority available, gross obligations for the principal amount of direct loans shall not exceed $47,850,000.

Motor Carrier Safety

For necessary expenses to carry out the motor carrier safety functions of the Secretary as authorized by the Department of Transportation Act (80 Stat. 939-940), [$24,000,000] *$23,740,000,* of which $2,000,000 shall remain available until expended, and not to exceed $300,000 shall be available for "Limitation on general operating expenses".

Motor Carrier Safety Grants

(Liquidation of Contract Authorization)

(Highway Trust Fund)

For payment of obligations incurred in carrying out the provisions of section 402 of Public Law 97-424, $50,000,000, to be derived from the Highway Trust Fund and to remain available until expended: *Provided,* That none of the funds in this Act shall be available for the implementation or execution of programs the obligations for which are in excess of [$50,000,000] *$49,465,000* for "Motor carrier safety grants".

Access Highways to Public Recreation Areas on Certain Lakes

Notwithstanding any other provision of law, there is appropriated $1,880,000 for necessary expenses of certain access highway projects, as authorized by section 155, title 23, United States Code, to remain available until expended.

[Baltimore-Washington Parkway

[(Highway Trust Fund)

[For necessary expenses, not otherwise provided, to carry out the provisions of the Federal-Aid Highway Act of 1970, for the Baltimore-Washington Parkway, to remain available until expended, $15,000,000, to be derived from the Highway Trust Fund and to be withdrawn therefrom at such times and in such amounts as may be necessary.]

Waste Isolation Pilot Project Roads

For necessary expenses in connection with the upgrading of certain highways for the transportation of nuclear waste generated during defense-related activities, not otherwise provided for, $16,320,000, to remain available until expended.

[Expressway Gap Closing Demonstration Project

[For necessary expenses to carry out a highway construction project along State Route 113 in north-central California that demonstrates methods of reducing motor vehicle congestion and increasing employment, $8,300,000, to remain available until expended.

[Intermodal Urban Demonstration Project

[(Highway Trust Fund)

[For necessary expenses to carry out the provisions of section 124 of the Federal-Aid Highway Amendments of 1974, $10,000,000, to be derived from the Highway Trust Fund and to remain available until expended.]

Highway Safety and Economic Development Demonstration Projects

(Highway Trust Fund)

For necessary expenses to carry out construction projects as authorized by Public Law 99-500 and Public Law 99-591, [$10,000,000] *$4,950,000,* to be derived from the Highway Trust Fund and to remain available until expended.

[Highway Safety Improvement Demonstration Project

[(Highway Trust Fund)

[For the purpose of carrying out a coordinated project of highway improvements in the vicinity of Pontiac and East Lansing, Michigan, that demonstrates methods of enhancing safety and promoting economic development through widening and resurfacing of highways on the Federal-aid primary system and on roads on the Federal-aid urban system, as authorized by Public Law 99-500 and Public Law 99-591, $2,000,000, to be derived from the Highway Trust Fund and to remain available until expended.

[Highway-Railroad Grade Crossing Safety Demonstration Project

[(Highway Trust Fund)

[For the purpose of carrying out a coordinated project of highway-railroad grade crossing separations in Mineola, New York, that demonstrates methods of enhancing highway-railroad grade crossing safety while minimizing surrounding environmental effects, as authorized by Public Law 99-500 and Public Law 99-591, $10,000,000, to be derived from the Highway Trust Fund and to remain available until expended.

[Bridge Improvement Demonstration Project

[For 80 percent of the expenses necessary to carry out a highway project in the vicinity of Jacksonville, Florida for the purpose of demonstrating methods of reducing traffic congestion and improving efficiency in the trans-shipment of military and civilian cargo, by construction of a bridge to Blount Island, widening State Highway 105 (Heckscher Drive) and constructing an interchange at the intersection of Heckscher Drive and the new Blount Island Bridge, $5,000,000, to remain available until expended.

[Vehicular and Pedestrian Safety Demonstration Project

[(Highway Trust Fund)

[For the purpose of carrying out a demonstration of methods of improving vehicular and pedestrian safety on roads on the Federal-aid urban and Federal-aid secondary systems, involving Route 66 in Northampton and Huntington, Massachusetts, $7,000,000, to be derived from the Highway Trust Fund and to remain available until expended: *Provided,* That all funds appropriated under this head shall be exempt from any limitation on obligations for Federal-aid highways and highway safety construction programs.

[Highway Bridge Relocation Demonstration Project

[For 80 percent of the expenses necessary to carry out a highway project involving the relocation of U.S. Highway 101 and the Queets River Bridge in the State of Washington that demonstrates methods of improving highway safety, $2,600,000, to remain available until expended.

[Highway Bypass Demonstration Project

[For 80 percent of the expenses necessary to carry out a highway project in the vicinity of Prunedale, California that demonstrates methods of accelerating the environmental studies and preliminary engineering for the construction of a highway bypass, $2,000,000, to remain available until expended.

[Highway Widening and Improvement Demonstration Project

[For 80 percent of the expenses necessary to carry out a highway project between Paintsville and Prestonsburg, Kentucky, that demonstrates the safety and economic benefits of widening and improving highways in mountainous areas, $2,500,000, to remain available until expended.]

Corridor Safety Improvement Project

(Highway Trust Fund)

For the purpose of carrying out a demonstration of methods of improving vehicular and pedestrian safety on roads on the Federal-aid urban and Federal-aid secondary systems, involving Route 1 in New Jersey, there is hereby authorized to be appropriated $50,000,000, to be derived from the Highway Trust Fund and to remain available until expended, of which $4,950,000 is hereby appropriated and to remain available until expended: Provided, That all funds appropriated under this head shall be exempted from any limitation on obligations for Federal-aid highways and highway safety construction programs.

Bridge Capacity Improvements

(Highway Trust Fund)

For the purpose of carrying out the Nashua River Bridge and Broad Street Parkway project in Nashua, New Hampshire, that crosses the Nashua River, there is hereby authorized to be appropriated $8,000,000, to be derived from the Highway Trust Fund and to remain available until expended. All funds appropriated under this head shall be exempted from any limitation on obligations for Federal-aid highways and highway safety construction programs.

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

Operations and Research

For expenses necessary to discharge the functions of the Secretary with respect to traffic and highway safety under the Motor Vehicle Information and Cost Savings Act (Public Law 92-513, as amended), and the National Traffic and Motor Vehicle Safety Act, [$65,140,000] *$58,220,000,* of which [$30,553,000] *$23,300,000* shall remain available until expended[:-*Provided,* That, of the funds available under this head, $7,000,000 shall be available to implement the recommendations of the 1985 National Academy of Sciences report on trauma research].

Operations and Research

(Highway Trust Fund)

For expenses necessary to discharge the functions of the Secretary with respect to traffic and highway safety under chapter 4, title 23, United States Code, to be derived from the Highway Trust Fund, [$31,610,000] *$31,700,000*, to remain available until expended[:-*Provided*, That, of the funds available under this head, $2,000,000 shall be available for light truck and van safety research and analysis: *Provided further*, That, of the funds available under this head, $3,000,000 shall be available to implement the recommendations of the 1985 National Academy of Sciences report on trauma research.]

Highway Traffic Safety Grants

(Liquidation of Contract Authorization)

(Highway Trust Fund)

For payment of obligations incurred carrying out the provisions of 23 U.S.C. 402, 406, and 408, and section 209 of Public Law 95-599, as amended, to remain available until expended, [$133,000,000] *$135,000,000*, to be derived from the Highway Trust Fund: *Provided*, That none of the funds in this Act shall be available for the planning or execution of programs the total obligations for which are in excess of [$121,000,000] *$124,650,000* in fiscal year 1988 for "State and community highway safety grants" authorized under 23 U.S.C. 402: *Provided further*, That none of these funds shall be used for construction, rehabilitation or remodeling costs, or for office furnishings and fixtures for State, local, or private buildings or structures: *Provided further*, That none of the funds in this Act shall be available for the planning or execution of programs the total obligations for which are in excess of [$14,400,000] *$14,245,000* for "Alcohol safety incentive grants" authorized under 23 U.S.C. 408: *Provided further*, That not to exceed $4,850,000 shall be available for administering the provisions of 23 U.S.C. 402*: Provided further, That notwithstanding any other provision of law, none of the funds in this Act shall be available for the planning or execution of programs authorized under section 209 of Public Law 95-599, as amended, the total obligations for which are in excess of $4,750,000 in fiscal years 1982, 1983, 1984, 1985, 1986, 1987, and 1988.*

FEDERAL RAILROAD ADMINISTRATION

Office of the Administrator

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses of the Federal Railroad Administration, not otherwise provided for, [$19,400,000] *$23,830,000*, of which [$8,650,000] *$12,900,000* shall remain available until expended; and in addition, all unexpended balances in "Rail service assistance" after September 30, 1987, shall be transferred to this account, to remain available until expended: *Provided*, That none of the funds in this Act shall be available for the planning or execution of a program making commitments to guarantee new loans under the Emergency Rail Services Act of 1970, as amended, and that no new commitments to guarantee loans under section 211(a) or 211(h) of the Regional Rail Reorganization Act of 1973, as amended, shall be made: *Provided further*, That none of the funds in this Act shall be available for the acquisition, sale, or transference of Washington Union Station without the prior approval of the Committees on Appropriations of the Senate and the House of Representatives: *Provided further*, That notwithstanding any other provision of law, of the funds available under this head, [$6,000,000] *$8,000,000* shall be available for necessary expenses for rail assistance authorized by section 5(q) of the Department of Transportation Act, as amended, to remain available until expended: *Provided further*, That [$3,500,000] *$5,500,000* of the fiscal year 1988 funds made available under section 5(h) shall be made available for use directly under sections 5(h)(3)(B)(ii) and 5(h)(3)(C) of the Department of Transportation Act, as amended, notwithstanding any provisions therein to the contrary: *Provided further*, That each State shall be entitled to, and no more than, $50,000 under the combined provisions of section 5(h)(2) and section 5(i), notwithstanding any provisions therein to the contrary: *Provided further*, That no State may apply for fiscal year 1988 funds available under section 5(h)(2) until such State has obligated all funds granted to it under section 5(h)(2) in the fiscal years prior to the beginning of fiscal year 1983, other than funds not expended due to pending litigation: *Provided further*, That a State denied funding by reason of the preceding proviso may still apply for and receive funds for planning purposes.

Railroad Safety

For necessary expenses in connection with railroad safety, not otherwise provided for, [$28,825,000] *$29,770,000, of which $2,530,000 shall remain available until expended.*

Railroad Research and Development

For necessary expenses for railroad research and development, [$10,000,000] *$9,775,000*, to remain available until expended.

Northeast Corridor Improvement Program

For necessary expenses for improvements to the Communication and Signal Systems at locations between Wilmington, Delaware, and Boston, Massachusetts, on the Northeast Corridor main line and between Philadelphia, Pennsylvania, and Harrisburg, Pennsylvania, on the Harrisburg line; improvements to the Electric Traction System between Wilmington, Delaware, and Newark, New Jersey; installation of baggage rack restraints, seat back guards and seat lock devices on 348 passenger cars operating within the Northeast Corridor; installation of 44 event recorders and 10 electronic warning devices on locomotives operating within the Northeast Corridor; acquisition of cab signal test boxes and installation of 9 wayside loop code transmitters for use on the Northeast Corridor; and [North Philadelphia Station platform refurbishments, building renovations, and site improvements] *necessary mechanical, electrical, and structural repair work on the North Tunnel*; [$27,000,000] *$24,730,000*, to remain available until expended.

Grants to the National Railroad Passenger Corporation

To enable the Secretary of Transportation to make grants to the National Railroad Passenger Corporation for operating losses incurred by the Corporation, capital improvements, and labor protection costs authorized by 45 U.S.C. 565, to remain available until expended, [$614,000,000] *$595,555,000*: *Provided*, That none of the funds herein appropriated shall be used for lease or purchase of passenger motor vehicles or for the hire of vehicle operators for any officer or employee, other than the president of the Corporation, excluding the lease of passenger motor vehicles for those officers or employees while in official travel status: *Provided further*, That the Secretary shall make no commitments to guarantee new loans or loans for new purposes under 45 U.S.C. 602 in fiscal year 1988: *Provided further*, That the incurring of any obligation or commitment by the Corporation for the purchase of capital improvements prohibited by this Act or not expressly provided for in an appropriation Act shall be deemed a violation of 31 U.S.C. 1341: *Provided further*, That no funds are required to be expended or reserved for expenditure pursuant to 45 U.S.C. 601(e): *Provided further*, That none of the funds in this or any other Act shall be made available to finance the rehabilitation and other improvements (including upgrading track and the signal system, ensuring safety at public and private highway and pedestrian crossings by improving signals or eliminating such crossings, and the improvement of operational portions of stations related to intercity rail passenger service) on the main line track between Atlantic City, New Jersey, and the main line of the Northeast Corridor, unless the Secretary of Transportation certifies that not less than 40 per centum of the costs of such improvements shall be derived from non-Federal sources: *Provided further*, That, notwithstanding any other provision of law, the National Railroad Passenger Corporation shall not operate rail passenger service between Atlantic City, New Jersey, and the Northeast Corridor main line unless the Corporation's Board of Directors determines that revenues from such service have covered or exceeded 80 per centum of the short term avoidable costs of operating such service in the first year of operation and 100 per centum of the short term avoidable operating costs for each year thereafter: *Provided further*, That none of the funds provided in this or any other Act shall be made available to finance the acquisition and rehabilitation of a line, and construction necessary to facilitate improved rail passenger service, between Spuyten Duyvil, New York, and the main line of the Northeast Corridor unless the Secretary of Transportation certifies that not less than 40 per centum of the costs of such improvements shall be derived from non-Amtrak sources.

Railroad Rehabilitation and Improvement Financing Funds

The Secretary of Transportation is authorized to issue to the Secretary of the Treasury notes or other obligations pursuant to section 512 of the Railroad Revitalization and Regulatory Reform Act of 1976 (Public Law 94-210), as amended, in such amounts and at such times as may be necessary to pay any amounts required pursuant to the guarantee of the principal amount of obligations under sections 511 through 513 of such Act, such authority to exist as long as any such guaranteed obligation is outstanding: *Provided*, That no new loan guarantee commitments shall be made during fiscal year 1988: *Provided further*, That, notwithstanding any other provision of law, the [Government] *Secretary of Transportation* shall sell all securities or promissory notes held by the Department of Transportation under authority of sections 502, 505-507, 509, and 511-513 of the Railroad Revitalization and Regulatory Reform Act of 1976 (Public Law 94-210), as amended: *Provided further*, That such securities or promissory notes authorized to be sold in the immediately preceding proviso shall be sold only for amounts greater than or equal to the net present value to the Government of each loan as determined by the Secretary of *Transportation in consultation with the Secretary of* the Treasury [and, if such sale is to a party other than the issuer, such sale shall be made only by the Secretary of the Treasury].

Settlements of Railroad Litigation

For the settlement of promissory notes pursuant to section 210(f) of the Regional Rail Reorganization Act of 1973 (Public Law 93-236), as amended, $38,950,246, to be derived from the proceeds of settlements of railroad litigation, to remain available until expended.

URBAN MASS TRANSPORTATION ADMINISTRATION

Administrative Expenses

For necessary administrative expenses of the urban mass transportation program authorized by the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1601 et seq.), and 23 U.S.C. chapter 1, in connection with these activities, including hire of passenger motor vehicles and services as authorized by 5 U.S.C. 3109, [$33,850,000] *$33,210,000*, of which not to exceed $625,000 shall be available for the Office of the Administrator.

Research, Training, and Human Resources

[(Including transfer of funds)]

For necessary expenses for research, training, and human resources as authorized by the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1601 et seq.), to remain available until expended, [$15,150,000, of which $4,000,000 shall be derived from unobligated balances of "Urban Mass Transportation Fund"] *$12,860,000: Provided*, That there may be credited to this appropriation funds received from States, counties, municipalities, other public authorities, and private sources, for expenses incurred for training.

Formula Grants

For necessary expenses to carry out the provisions of sections 9 and 18 of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1601 et seq.), [$1,865,000,000] *$1,780,690,000*, together with $5,000,000 to carry out the provisions of section 18(h) of the Urban Mass Transportation Act, as amended, to remain available until expended: *Provided, That notwithstanding any other provision of law, before apportionment of these funds, $20,710,000 shall be made available for the purposes of section 18 of the Urban Mass Transportation Act of 1964, as amended: Provided further, That, notwithstanding any other provision of law, of the funds provided under this Act for formula grants, no more than $847,044,097 may be used for operating assistance under section 9(k)(2) of the Urban Mass Transportation Act of 1964, as amended: Provided further, That, notwithstanding any other provision of law, of the amount available for operating assistance under this Act, no more than $563,505,567 may be used for operating assistance in urbanized areas with a population of 1,000,000 or more.*

Discretionary Grants

(Limitation on Obligations)

(Highway Trust Fund)

None of the funds in this Act shall be available for the implementation or execution of programs in excess of [$1,200,000,000] *$1,187,160,000* in fiscal year 1988 for grants under the contract authority authorized in section 21 (a)(2) and (b) of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1601 et seq.).

Mass Transit Capital Fund

(Liquidation of Contract Authorization)

(Highway Trust Fund)

For payment of obligations incurred in carrying out section 21 (a)(2) and (b) of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1601 et seq.), administered by the Urban Mass Transportation Administration, $1,100,000,000, to be derived from the Highway Trust Fund and to remain available until expended.

Interstate Transfer Grants—Transit

For necessary expenses to carry out the provisions of 23 U.S.C. 103(e)(4) related to transit projects, [$130,000,000] *$128,610,000*, to remain available until expended.

Washington Metro

For necessary expenses to carry out the provisions of section 14 of Public Law 96-184, [$201,119,500] *$183,000,000*, to remain available until expended.

SAINT LAWRENCE SEAWAY DEVELOPMENT CORPORATION

The Saint Lawrence Seaway Development Corporation is hereby authorized to make such expenditures, within the limits of funds and borrowing authority available to the Corporation, and in accord with law, and to make such contracts and commitments without regard to fiscal year limitations as provided by section 104 of the Government Corporation Control Act, as amended, as may be necessary in carrying out the programs set forth in the Corporation's budget for the current fiscal year except as hereinafter provided in the "Limitation on administrative expenses".

Limitation on Administrative Expenses

Not to exceed $2,100,000 shall be available for administrative expenses, which shall be computed on an accrual basis, including not to exceed $3,000 for official entertainment expenses to be expended upon the approval or authority of the Secretary of Transportation: *Provided*, That Corporation funds shall be available for the hire of passenger motor vehicles and aircraft, operation and maintenance of aircraft, uniforms or allowances therefor for operation and maintenance personnel, as authorized by law (5 U.S.C. 5901-5902), and $15,000 shall be available for services as authorized by 5 U.S.C. 3109.

Operations and Maintenance

(Harbor Maintenance Trust Fund)

For necessary expenses for operation and maintenance of those portions of the Saint Lawrence Seaway operated and maintained by the Saint Lawrence Seaway Development Corporation, [$11,500,000] *$11,375,000*, to be derived from the Harbor Maintenance Trust Fund, pursuant to Public Law 99-662.

RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION

Research and Special Programs

For expenses necessary to discharge the functions of the Research and Special Programs Administration, and for expenses for conducting research and development, [$12,900,000] *$13,367,000*, of which $2,020,000 shall remain available until expended: *Provided*, That there may be credited to this appropriation funds received from States, counties, municipalities, other public authorities, and private sources for expenses incurred for training.

Pipeline Safety

(Pipeline Safety Fund)

For expenses necessary to conduct the functions of the pipeline safety program and for grants-in-aid to carry out a pipeline safety program, as authorized by section 5 of the Natural Gas Pipeline Safety Act of 1968 and the Hazardous Liquid Pipeline Safety Act of 1979, [$9,200,000] *$9,400,000*, to be derived from the Pipeline Safety Fund, of which [$5,150,000] *$5,650,000* shall remain available until expended.

OFFICE OF THE INSPECTOR GENERAL

Salaries and Expenses

For necessary expenses of the Office of the Inspector General in carrying out the provisions of the Inspector General Act of 1978, [$29,300,000] *$28,828,000.*

TITLE II—RELATED AGENCIES

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Salaries and Expenses

For expenses necessary for the Architectural and Transportation Barriers Compliance Board, as authorized by section 502 of the Rehabilitation Act of 1973, as amended, [$2,000,000] *$1,970,000.*

NATIONAL TRANSPORTATION SAFETY BOARD

Salaries and Expenses

For necessary expenses of the National Transportation Safety Board, including hire of passenger motor vehicles and aircraft; services as authorized by 5 U.S.C. 3109, but at rates for individuals not to exceed the per diem rate equivalent to the rate for a GS-18; uniforms, or allowances therefor, as authorized by law (5 U.S.C. 5901-5902), [$25,400,000] *$25,000,000*, of which not to exceed $500 may be used for official reception and representation expenses.

INTERSTATE COMMERCE COMMISSION

Salaries and Expenses

For necessary expenses of the Interstate Commerce Commission, including services as authorized by 5 U.S.C. 3109, and not to exceed $1,500 for official reception and representation expenses, [$46,625,000] *$46,040,000: Provided*, That joint board members and cooperating State commissioners may use Government transportation requests when traveling in connection with their official duties as such.

Payments for Directed Rail Service

(Limitation on Obligations)

None of the funds provided in this Act shall be available for the execution of programs the obligations for which can reasonably be expected to exceed $500,000 for directed rail service authorized under 49 U.S.C. 11125 or any other Act.

PANAMA CANAL COMMISSION

Operating Expenses

For operating expenses necessary for the Panama Canal Commission, including hire of passenger motor vehicles and aircraft; uniforms or allowances therefor, as authorized by law (5 U.S.C. 5901-5902); not to exceed $10,000 for official reception and representation expenses of the Board; operation of guide services; residence for the Administrator, disbursements by the Administrator for employee and community projects; not to exceed $4,000 for official reception and representation expenses of the Secretary; not to exceed $25,000 for official reception and representation expenses of the Administrator; and to employ services as authorized by law (5 U.S.C. 3109); [$422,950,000] *$419,512,000*, to be derived from the Panama Canal Commission Fund: *Provided*, That there may be credited to this appropriation funds received from the Panama Canal Commission's capital outlay account for expenses incurred for supplies and services provided for capital projects.

Capital Outlay

For acquisition, construction, replacement, and improvement of facilities, structures, and equipment required by the Panama Canal Commission, including the purchase of not to exceed 42 passenger motor vehicles for replacement only (including large heavy-duty vehicles used to transport Commission personnel across the Isthmus of Panama, the purchase price of which shall not exceed $14,000 per vehicle); and to employ services authorized by law (5 U.S.C. 3109); [$33,250,000] *$35,120,000*, to be derived from the Panama Canal Commission Fund and to remain available until expended.

DEPARTMENT OF THE TREASURY

Rebate of Saint Lawrence Seaway Tolls

(Harbor Maintenance Trust Fund)

For rebate of the United States' portion of tolls paid for use of the St. Lawrence Seaway, pursuant to Public Law 99-662, [$10,700,000] *$10,585,000*, to remain available until expended and to be derived from the Harbor Maintenance Trust Fund, of which not to exceed $300,000 shall be available for expenses of administering the rebates.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

Interest Payments

For necessary expenses for interest payments, to remain available until expended, $51,663,569: *Provided*, That these funds shall be disbursed pursuant to terms and conditions established by Public Law 96-184 and the Initial Bond Repayment Participation Agreement.

TITLE III—GENERAL PROVISIONS

SEC. 301. During the current fiscal year applicable appropriations to the Department of Transportation shall be available for maintenance and operation of aircraft; hire of passenger motor vehicles and aircraft; purchase of liability insurance for motor vehicles operating in foreign countries on official department business; and uniforms, or allowances therefor, as authorized by law (5 U.S.C. 5901-5902).

SEC. 302. Funds appropriated for the Panama Canal Commission may be apportioned notwithstanding section 3679 of the Revised Statutes, as amended (31 U.S.C. 1341), to the extent necessary to permit payment of such pay increases for officers or employees as may be authorized by administrative action pursuant to law that are not in excess of statutory increases granted for the same period in corresponding rates of compensation for other employees of the Government in comparable positions.

SEC. 303. Funds appropriated under this Act for expenditures by the Federal Aviation Administration shall be available (1) except as otherwise authorized by the Act of September 30, 1950 (20 U.S.C. 236-244), for expenses of primary and secondary schooling for dependents of Federal Aviation Administration personnel stationed outside the continental United States at costs for any given area not in excess of those of the Department of Defense for the same area, when it is determined by the Secretary that the schools, if any, available in the locality are unable to provide adequately for the education of such dependents, and (2) for transportation of said dependents between schools serving the area that they attend and their places of residence when the Secretary, under such regulations as may be prescribed, determines that such schools are not accessible by public means of transportation on a regular basis.

SEC. 304. Appropriations contained in this Act for the Department of Transportation shall be available for services as authorized by 5 U.S.C. 3109, but at rates for individuals not to exceed the per diem rate equivalent to the rate for a GS-18.

SEC. 305. None of the funds appropriated in this Act for the Panama Canal Commission may be expended unless in conformance with the Panama Canal Treaties of 1977 and any law implementing those treaties.

SEC. 306. None of the funds in this Act shall be used for the planning or execution of any program to pay the expenses of, or otherwise compensate, non-Federal parties intervening in regulatory or adjudicatory proceedings funded in this Act.

SEC. 307. None of the funds appropriated in this Act shall remain available for obligation beyond the current fiscal year nor may any be transferred to other appropriations unless expressly so provided herein.

SEC. 308. None of the funds in this or any previous or subsequent Act shall be available for the planning or implementation of any change in the current Federal status of the Transportation Systems Center; and none of the funds in this Act shall be available for the implementation of any change in the current Federal status of the Turner-Fairbank Highway Research Center.

SEC. 309. The expenditure of any appropriation under this Act for any consulting service through procurement contract, pursuant to section 3109 of title 5, United States Code, shall be limited to those contracts where such expenditures are a matter of public record and available for public inspection, except where otherwise provided under existing law, or under existing Executive Order issued pursuant to existing law.

SEC. 310. (a) For fiscal year 1988 the Secretary of Transportation shall distribute the obligation limitation for Federal-aid highways by allocation in the ratio which sums authorized to be appropriated for Federal-aid highways and highway safety construction that are apportioned or allocated to each State for such fiscal year bear to the total of the sums authorized to be appropriated for Federal-aid highways and highway safety construction that are apportioned or allocated to all the States for such fiscal year.

(b) During the period October 1 through December 31, 1987, no State shall obligate more than 35 per centum of the amount distributed to such State under subsection (a), and the total of all State obligations during such period shall not exceed 25 per centum of the total amount distributed to all States under such subsection.

(c) Notwithstanding subsections (a) and (b), the Secretary shall—

(1) provide all States with authority sufficient to prevent lapses of sums authorized to be appropriated for Federal-aid highways and highway safety construction that have been apportioned to a State, except in those instances in which a State indicates its intention to lapse sums apportioned under section 104(b)(5)(A) of title 23, United States Code;

(2) after August 1, 1988, revise a distribution of the funds made available under subsection (a) if a State will not obligate the amount distributed during that fiscal year and redistribute sufficient amounts to those States able to obligate amounts in addition to those previously distributed during that fiscal year giving priority to those States having large unobligated balances of funds apportioned under section 104 of title 23, United States Code, and giving priority to those States which, because of statutory changes made by the Surface Transportation Assistance Act of 1982 and the Federal-Aid Highway Act of 1981, have experienced substantial proportional reductions in their apportionments and allocations; and

(3) not distribute amounts authorized for administrative expenses, the Federal lands highway program, the strategic highway research program and amounts made available under sections 149(d), 158, 159, 164, 165, and 167 of Public Law 100-17.

(d) The limitation on obligations for Federal-aid highways and highway safety construction programs for fiscal year 1988 shall not apply to obligations for emergency relief under section 125 of title 23, United States Code, obligations under section 157 of title 23, United States Code, projects covered under section 147 of the Surface Transportation Assistance Act of 1978, section 9 of the Federal-Aid Highway Act of 1981, subsections 131 (b) and (j) of Public Law 97-424, section 118 of the National Visitors Center Facilities Act of 1968, section 320 of title 23, United States Code, projects authorized by Public Law 99-500 and Public Law 99-591, or projects covered under subsections 149 (b) and (c) of Public Law 100-17.

(e) Subject to paragraph (c)(2) of this General Provision, a State which after August 1 and on or before September 30 of fiscal year 1988 obligates the amount distributed to such State in that fiscal year under paragraphs (a) and (c) of this General Provision may obligate for Federal-aid highways and highway safety construction on or before September 30, 1988, an additional amount not to exceed 5 percent of the aggregate amount of funds apportioned or allocated to such State—

(1) under sections 104, 130, 144, and 152 of title 23, United States Code, and

(2) for highway assistance projects under section 104(e)(4) of such title,

which are not obligated on the date such State completes obligation of the amount so distributed;

(f) During the period August 2 through September 30, 1988, the aggregate amount which may be obligated by all States pursuant to paragraph (e) shall not exceed 2.5 percent of the aggregate amount of funds apportioned or allocated to all States—

(1) under sections 104, 130, 144, and 152 of title 23, United States Code, and

(2) for highway assistance projects under section 104(e)(4) of such title,

which would not be obligated in fiscal year 1988 if the total amount of the obligation limitation provided for such fiscal year in this Act were utilized; and

(g) Paragraph (e) shall not apply to any State which on or after August 1, 1988, has the amount distributed to such State under paragraph (a) for fiscal year 1988 reduced under paragraph (c)(2).

SEC. 311. None of the funds in this Act shall be available for salaries and expenses of more than one hundred thirty-eight political and Presidential appointees in the Department of Transportation.

SEC. 312. Not to exceed $700,000 of the funds provided in this Act for the Department of Transportation shall be available for the necessary expenses of advisory committees.

SEC. 313. None of the funds in this or any other Act shall be made available for the proposed Woodward light rail line in the Detroit, Michigan, area until a source of operating funds has been approved in accordance with Michigan law: *Provided*, That this limitation shall not apply to alternatives analysis studies under section 21(a)(2) of the Urban Mass Transportation Act of 1964, as amended.

SEC. 314. The limitation on obligations for the Discretionary Grants program of the Urban Mass Transportation Administration shall not apply to any authority under section 21(a)(2) of the Urban Mass Transportation Act of 1964, as amended, previously made available for obligation.

SEC. 315. Notwithstanding any other provision of law, none of the funds in this Act shall be available for the construction of, or any other costs related to, the Central Automated Transit System (Downtown People Mover) in Detroit, Michigan.

SEC. 316. None of the funds in this Act shall be used to implement section 404 of title 23, United States Code.

SEC. 317. (a) SAFETY ENFORCEMENT PROGRAM PERFORMANCE.—The Secretary of Transportation shall on or before January 1 of each year transmit to the Congress a comprehensive report on the Federal Aviation Administration's prior fiscal year safety enforcement activities. The report shall include:

(1) a comparison of end-of-year staffing levels by inspector category (operations, maintenance, avionics) to staffing goals and a statement as to how staffing standards were applied to make allocations between air carrier and general aviation operations, maintenance and avionics inspectors;

(2) schedules showing the range of inspector experience by various inspector work force categories, and the number of inspectors in each of the categories who are considered fully qualified;

(3) schedules showing the number and percentage of inspectors who have received mandatory training by individual course, and the number of inspectors, by work force categories, who have received all mandatory training;

(4) a description of the criteria used to set annual work programs, an explanation of how these criteria differ from criteria used in the prior fiscal year and how the annual work programs ensure compliance with appropriate Federal regulations and safe operating practices;

(5) a comparison of actual inspections performed during the fiscal year to the annual work programs disaggregated to the field locations and, for any field location completing less than 80 percent of its planned number of inspections, an explanation as to why annual work program plans were not met;

(6) a statement of the adequacy of Federal Aviation Administration internal management controls available to ensure that field managers are complying with Federal Aviation Administration policies and procedures including those regarding inspector priorities, district office coordination, minimum inspection standards, and inspection follow-up;

(7) the status of the Federal Aviation Administration's efforts to update inspector guidance documents and Federal regulations to include technological, management, and structural changes taking place within the aviation industry, including a listing of the backlog of all proposed regulatory changes;

(8) a list of the specific operational measures of effectiveness—"best proxies" standing between the ultimate goal of accident prevention and ongoing program activities—that are being used to evaluate progress in meeting program objectives, the quality of program delivery, and the nature of emerging safety problems;

(9) a schedule showing the number of civil penalty cases closed during the two prior fiscal years, including total initial assessments, total final assessments, total dollar amount collected, range of dollar amount collected, average case processing time, and range of case processing time;

(10) a schedule showing the number of enforcement actions taken, excluding civil penalties, during the two prior fiscal years, including total number of violations cited, and the number of cited violation cases closed by certificate suspension, certificate revocations, warnings, and no action taken; and

(11) schedules showing the aviation industry's safety record during the fiscal year for air carriers and general aviation, including the number of inspections performed where deficiencies were identified compared with inspections where no deficiencies were found and the frequency of safety deficiencies per carrier as well as an analysis based on the data of the general status of air carrier and general aviation compliance with Federal Aviation Regulations.

(b) LONG-RANGE NATIONAL TRANSPORTATION STRATEGIC PLANNING STUDY.—The Department of Transportation shall undertake a long-range, multi-modal national transportation strategic planning study. This study shall forecast long-term needs and costs for developing and maintaining facilities and services to achieve a desired national transportation program for moving people and goods in the year 2015. The study shall include detailed analyses of transportation needs within six to nine metropolitan areas that have diverse population, development, and demographic patterns, including at least one interstate metropolitan area. This study shall be submitted to Congress on or before October 1, 1989.

SEC. 318. Within seven calendar days of the obligation date, the Urban Mass Transportation Administration shall publish in the Federal Register an announcement of each grant obligated pursuant to sections 3 and 9 of the Urban Mass Transportation Act of 1964, as amended, including the grant number, the grant amount, and the transit property receiving each grant.

SEC. 319. None of the funds appropriated in this Act may be used to prescribe, implement, or enforce a national policy specifying that only a single type of visual glideslope indicator can be funded under the facilities and equipment account or through the airport improvement program: *Provided*, That this prohibition shall not apply in the case of airports that are certified under part 139 of the Federal Aviation Regulations.

[SEC. 320. (a) The Federal Aviation Administration shall satisfy the following air traffic controller work force staffing requirements by September 30, 1988:]

[(1) total air traffic controller work force level of not less than 15,900;

[(2) total operational air traffic controller level of not less than 12,250;

[(3) total full performance level air traffic controllers of not less than 10,350; and

[(4) at least 70 percent of the air traffic controller work force, excluding common screen students, at each center and level 3 and above terminal shall have achieved operational controller status.

[(b) The Secretary may waive any requirement of this section by certifying that such requirement would adversely affect aviation safety: *Provided*, That such a waiver shall become effective 30 days after the Committees on Appropriations of the Senate and the House of Representatives are notified in writing of the Secretary's intention to waive and reasons for waiving such requirement.]

SEC. 320. (a) The Federal Aviation Administration shall achieve an air traffic controller workforce of not less than 15,800, of which at least 10,450 shall be full performance level controllers, as of September 30, 1988.

(b) The Secretary may waive any requirement of this section by certifying that such requirement would adversely affect aviation safety: Provided, That such a wavier shall become effective 30 days after the Committees on Appropriations of the Senate and the House of Representatives are notified in writing of the Secretary's intention to waive and reasons for waiving such requirement.

SEC. 321. Notwithstanding any other provision of law, funds appropriated in this or any other Act intended for studies, reports, or research, and related costs thereof including necessary capital expenses, are available for such purposes to be conducted through contracts or financial assistance agreements with the educational institutions that are specified in such Acts or in any report accompanying such Acts.

SEC. 322. The Secretary of Transportation shall permit the obligation of not to exceed $4,000,000, apportioned under title 23, United States Code, section 104(b)(5)(B) for the State of Florida for operating expenses of the Tri-County Commuter Rail Project in the area of Dade, Broward, and Palm Beach Counties, Florida during each year that Interstate 95 is under reconstruction in such area.

SEC. 323. None of the funds provided by this Act for any appropriation shall be available for rental payments to the General Services Administration which exceed such rental payments made during the fiscal year ending September 30, 1987[, by more than than 4 percent].

SEC. 324. Notwithstanding any other provision of law, section 144(g)(2) of title 23, United States Code, shall not apply to the Southside Bridge in Charleston, West Virginia.

SEC. 325. The portion of Oklahoma State Route 99 between the United States Highway 377 and Interstate Route I-44 which portion is on the Federal-aid primary system shall hereafter be designated as "United States Highway 377". Any reference in a law, map, regulation, document, record or other paper of the United States to such highway shall be held to be a reference to "United States Highway 377".

SEC. 326. Within 12 months of enactment, the Federal Aviation Administration shall adopt regulations requiring the installation and carriage of operating automatic altitude reporting equipment for all aircraft operating in terminal airspace where air traffic control radar service is provided, and in all controlled airspace above a minimum altitude to be determined by the Federal Aviation Administration. This regulation shall be effective on the earliest feasible date.

[Sec. 327. None of the funds appropriated or made available by this Act or any other Act shall be made available to the New York Metropolitan Transportation Authority unless, within 30 days after the date of enactment of this Act, such authority prohibits all smoking on the Long Island Railroad.

[Sec. 328. All amounts appropriated or otherwise made available by this Act not required to be appropriated or made available by law, shall be reduced by 2 percent.

[Sec. 329. (a) None of the funds appropriated by this Act to the Secretary of Transportation for airport development under the Airport and Airway Improvement Act of 1982 may be made available for airport development or airport planning at any airport which after the ninetieth day following the date of the enactment of this Act permits any air carrier to provide scheduled air transportation between such airport and any other airport with an aircraft (1) which in providing such transportation is scheduled to be in the air two hours or less, and (2) on which smoking will be permitted while such aircraft is being used to provide such transportation.

[(b) As used in this section—

[(1) the terms "air carrier" and "airport" have the meaning such terms have under section 101 of the Federal Aviation Act of 1958; and

[(2) the term "air transportation" means intrastate air transportation, interstate air transportation, overseas air transportation, and foreign air transportation, as such terms are defined under such section.]

Sec. 327. (a) Section 404 of the Federal Aviation Act of 1958 (49 U.S.C. 1374) is amended by adding at the end thereof the following subsection:

"PROHIBITION AGAINST SMOKING ON SCHEDULED FLIGHTS AND TAMPERING WITH SMOKE ALARM DEVICES

"(d)(1)(A) On and after the date of expiration of the 4-month period following the date of the enactment of this subsection, it shall be unlawful to smoke in the passenger cabin or lavatory on any scheduled airline flight in intrastate, interstate, or overseas air transportation, if such flight is scheduled for 2 hours or less in duration.

"(B) The Secretary of Transportation shall issue such regulations as may be necessary to carry out the provisions of this subsection.

"(C) The provisions of paragraph (1) of this subsection are repealed effective on the expiration of the 40-month period following the date of the enactment of this subsection.

"(2) Any passenger who tampers with, disables, or destroys any smoke alarm device located in any restroom aboard an aircraft engaged in air transportation or intrastate air transportation shall be subject to a civil penalty in accordance with section 901, except that such civil penalty may be imposed in an amount up to $2,000.".

(b) That portion of the table of contents of the Federal Aviation Act of 1958 under the heading:

"Sec. 404. Rates for carriage of persons and property; duty to provide service, rates, and divisions; foreign air transportation rates; discrimination;"

is amended by adding at the end thereof the following:

"(d) Prohibition against smoking on scheduled flights and tampering with smoke alarm devices.".

Sec. 328. All work in connection with the maintenance repair, construction, rehabilitation, renewal, replacement, and other improvements needed to restore rail passenger service on the lines between Springfield to East Northfield, Massachusetts and Brattleboro to Windsor, Vermont involved and made possible by the funds provided in Public Law 100-71 which has been performed by practice or agreement in accordance with provisions of existing contracts between representatives of the employees of the classes or crafts involved and the owner of the lines shall continue to be performed by employees subject to said contracts, including employees on furlough, and no work made possible by the use of the funds provided by this Act shall be permitted to be performed by nonowner employees unless it is established to the satisfaction of the Secretary of Labor that sufficient employees of the owner, on active service and on furlough, are unavailable, in which event the Secretary may certify the contracting of that part of the work for which the owner's employees are unavailable.

Sec. 329. Any project approval under section 106 of title 23, United States Code, shall not be withheld under sections 154(a) and 141(a) of title 23, United States Code, with respect to a highway, having a maximum speed limit of sixty-five miles per hour and located outside an urbanized area of fifty thousand population, which is either—

(1) constructed to interstate standards in accordance with section 109(b) of title 23, United States Code; or

(2) a divided four-lane fully controlled access highway constructed to design and construction standards as determined by the Secretary of Transportation which provide a facility adequate for a speed limit of sixty-five miles per hour.

Sec. 330. Sums authorized under section 17(f) of the Urban Mass Transportation Act, as amended shall also be used to cover costs incurred since 1978 by such States, bodies and agencies as a result of the discontinuation of Conrail commuter rail services under section 1136 of the Northeast Rail Services Act of 1981. Eligible cost shall include but not be limited to additional costs incurred as a result of the assumption of commuter rail service and all liabilities assumed by such States, bodies, and agencies as a result of agreements with Conrail. The Federal share of any cost covered under this provision shall be 100 percent.

Sec. 331. The Rail Passenger Services Act (45 U.S.C. 501 et seq.) is amended by inserting immediately after section 501(c)(3) the following new subsection:

"(c)(4) Commuter authorities shall be exempt from the payment of any taxes or other fees to the same extent as the corporation is exempt: Provided, That the commuter authority could have contracted with Amtrak Commuter, is a direct operator of commuter service, and that the direct operation of such service was initiated on January 1, 1983. Such exemption shall be effective as of January 1, 1983.".

Sec. 332. Section 149(b)(82) of the Surface Transportation and Uniform Relocation Assistance Act of 1987 is amended by striking "$1,800,000" and inserting in lieu thereof "$500,000" and section 149(b)(83) of the Surface Transportation and Uniform Relocation Assistance Act of 1987 is amended by striking "$500,000" and inserting in lieu thereof "$1,800,000".

Sec. 333. The portion of the Union Canal, also known as the Union Ship Canal, an appendage of the Buffalo Outer Harbor, located in the City of Buffalo, State of New York, is declared to be a nonnavigable waterway of the United States within the meaning of the General Bridge Act of 1946 (33 U.S.C. 525, et seq.) from a point two hundred feet west of Fuhrmann Boulevard east to its terminus.

Sec. 334. The Secretary of Transportation is authorized to transfer appropriated funds under "Office of the Secretary, Salaries and expenses": Provided, That no appropriation shall be increased or decreased by more than 5 per centum by all such transfers: Provided further, That any such transfer shall be submitted for approval to the House and Senate Committees on Appropriations.

Sec. 335. (a) Notwithstanding any other provision of law, with regard to the Atlantic City Airport, at Pomona, New Jersey, the Federal Aviation Administration shall not transfer any property to any municipality or any other entity operating such airport, nor shall any funds made available by this Act be available to such municipality or entity for any planning, study, design, engineering, or construction of a runway extension, new runway, new passenger terminal, or improvements to or expansion of the existing passenger terminal at such Airport, until such time as—

(1) the Master Plan Update for Atlantic City Airport and Bader Field, prepared pursuant to Federal Aviation Administration Contract FA-EA-2656, is completed and released; and

(2) the Administrator of the Federal Aviation Administration finds that a public entity has been created to operate and manage the Atlantic City Airport, which entity has the following characteristics:

(A) the authority to enter into contracts and other agreements, including contracts, leases, cooperative agreements, or other transactions with any agency or instrumentality of the United States;

(B) the standing to sue and be sued in its own name;

(C) the authority to hire and dismiss officers and employees;

(D) the power to adopt, amend and repeal bylaws, rules, and regulations governing the manner in which its business may be conducted and the powers vested in it may be exercised;

(E) the authority to acquire, in its own name, an interest in such real or personal property as is necessary or appropriate for the operation and maintenance of the airport;

(F) the power to acquire property by the exercise of the right of eminent domain;

(G) the power to borrow money by issuing marketable obligations, or such other means as is permissable for public authorities under the laws of the State of New Jersey;

(H) adequate existing capitalization to carry out all activities which are ordinarily necessary and appropriate to operate and maintain an airport;

(I) a governing board which includes voting representatives of the City of Atlantic City, the County of Atlantic, and the townships which are adjacent to or are directly impacted by the airport;

(J) a charter which includes (i) a requirement that members of the governing board have expertise in transportation, finance, law, public administration, aviation, or such other fields or disciplines as would be necessary or appropriate for the operation of an airport; and (ii) procedures which protect the research and development mission of the Federal Aviation Technical Center at

Pomona, New Jersey, and the defense functions of the Air National Guard; and

(K) the authority to carry out comprehensive transportation planning to minimize traffic congestion and facilitate access to and from the airport;

(b) The limitation on funds set forth in subsection (a) shall not apply to any expenditure which the Administrator of the Federal Aviation Administration determines is needed for safety purposes.

(c) Notwithstanding any other provision of law, the funds restricted under subsection (a) shall become available at such time as the conditions set forth in subsection (a) are satisfied.

SEC. 336. (a) Notwithstanding section 23 of the Airport and Airway Improvement Act (as in effect on April 6, 1982), the Secretary of Transportation is authorized, subject to the provisions of section 4 of the Act of October 1, 1947 (50 App, U.S.C. 1622 (c)), and the provisions of subsection (b) of this section, to grant releases from any of the terms, conditions, reservations, and restrictions contained in the deed of conveyance, dated April 6, 1982, under which the United States conveyed certain property to the State of Hawaii for airport purposes.

(b) Any release granted by the Secretary of Transportation under subsection (a) of this section shall be subject to the following conditions:

(1) The property for which a release is granted under this subsection shall not exceed 2.280 acres.

(2) The State of Hawaii shall agree that, in conveying any interest in the property which the United States conveyed to the State by a deed described in subsection (a), the State will receive an amount for such interest which is equal to the fair market value.

(3) Any amount so received shall be used for airport purposes only.

(4) In the event land or any interest therein is received in exchange for all or part of the 2.280 acres, the deed of conveyance of such land or interest will contain language mandating that—

(A) the land or interest must be used for airport purposes only; and

(B) such land or interest in land received by the State of Hawaii may not be conveyed by the State, except by approval of the Federal Government, pursuant to the authority vested in the Secretary of Transportation, under section 4 of the Act of 1947 (50 App. U.S.C. 1622 (c)); and

(C) such conveyance by the State of Hawaii shall be subject to receipt of fair market value; and

(D) the proceeds from such conveyance by the State of Hawaii shall be used for airport purposes only.

SEC. 337. Upon enactment into law of legislation to continue the authorization of title V of Public Law 97-248, airport grant funds made available to the State of Hawaii under section 505 of such law, may, notwithstanding any other provision of law, be used to acquire properties referred to as areas 46A and 46B of the United States General Services Administration Facility Site in Moanalua, Honolulu, Oahu, Hawaii, or to reimburse the State of Hawaii for such acquisitions.

SEC. 338. Notwithstanding section 127 of title 23, United States Code, the State of Wyoming may permit the use of the National System of Interstate and Defense Highways located in Wyoming by vehicles in excess of 80,000 pounds gross weight, but meeting axle and bridge formula specifications in section 127 of title 23, United States Code, through September 30, 1991. Additionally, the Secretary of Transportation shall report, by September 30, 1990, to the Senate and House Appropriations Committees, and to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the United States Senate, on the productivity and economic benefits, the safety performance, and the effects of such vehicles on the condition of the highways over which they were operated.

This Act may be cited as the "Department of Transportation and Related Agencies Appropriations Act, 1988".

Mr. LAUTENBERG. Mr. President I start by asking unanimous consent that the privileges of the floor be granted to Joseph McGrail, who is detailed to the subcommittee from GAO during the review of H.R. 2890.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LAUTENBERG. Mr. President, the fiscal 1988 transportation appropriations bill (H.R. 2890) now before the Senate balances the urgent need for improvement and restoration of the Nation's transportation infrastructure with the realities of severe budgetary constraints. It provides a total of $11.1 billion in new budget authority. This is an increase of approximately $580 million or 5.5 percent over the fiscal 1987 level, and $182.9 million over the House level.

As scored by the Congressional Budget Office, the bill is below its 302(b) allocation by $96 million in budget authority and is at the ceiling for outlays.

In addition to appropriated amounts, the bill also contains almost $15.1 billion in obligation limitations for programs funded with contract authority. Therefore, the committee's recommendations would provide total budgetary resources of $26.2 billion for transportation programs and related agencies in fiscal 1988. This represents an increase over fiscal 1987 of just under $1 billion—$994.9 million. This is the net result of providing major increases for aviation and the Coast Guard while holding the line on other important programs which the administration proposed to abolish or cripple.

AVIATION

No one in this Chamber, Mr. President, has to be reminded of the strains on our aviation system. We have far too many near midair collisions and far to few air traffic controllers and other essential personnel. We have far too many delays and far too little progress in expanding capacity.

This bill provides resources to address these deficiencies. It includes an increase of $1 billion or 22 percent for the FAA.

It requires an expansion of the controller work force by 675 positions above the level required in fiscal year 1987.

It will add 178 more safety inspectors.

It will add 325 more field maintenance technicians than the administration's request.

It will accelerate the development of the more advanced airborne collision avoidance system.

It will provide more for airport capacity research and development than was requested.

It accelerates research on windshear.

And it provides all the funding that FAA can use responsibly to modernize its equipment and facilities.

COAST GUARD

Congress has expanded and redefined the Coast Guard's mission over the last several years. The Coast Guard is now the lead agency in maritime drug interdiction. It is also called upon to enforce laws to protect the marine environment. It has been given an expanded role in the military defense of the United States. And it is expected to continue fulfilling its traditional responsibilities in search and rescue, fisheries patrol, maintenance of navigation aids, ice breaking, and marine safety.

The bill provides a total of $2.7 billion, an increase of $151 million over fiscal 1987, to support the Coast Guard's growing mission requirements. For drug interdiction alone, the bill earmarks $447 million—an increase of $74 million over the amount provided in fiscal 1987.

FEDERAL-AID HIGHWAYS

In the highway area, the committee found it necessary to set the obligation ceiling for the Federal-Aid Highway Program at $12.22 billion which is about $130 million below the fiscal year 1987 level. In the highway safety area the only program that received funding above the 1987 level was the State Safety Grant Program. It received a modest increase of 2.9 percent.

TRANSIT

In the mass transit area, the committee has had to reduce funding below what was provided in fiscal 1987 in order to fit within Transportation's 302(b) allocation. In the Section 9 Formula Grants Program, the overall level was reduced by $214.3 million, a 10.8-percent reduction from the 1987 level. Despite the reductions, the committee did freeze the amount available for the Small Urban-Rural Program at $75 million and fully funded the Rural Transit Assistance Program at $5 million.

Funding from the transit trust fund was increased by 18.4 percent—$185 million over the 1987 level. These funds, however, come from the transit trust fund which is supported by the 1-cent-per-gallon gas excise tax. Of this amount, $35 million is for the Elderly and Handicapped Program and $417 million is for the "new start" category that funds projects from Florida, to Missouri, to Colorado, to Washington.

RAIL

In the rail area, the bill contains $595.6 million for Amtrak, approximately 2 percent below the 1987 level.

The rail safety, research and development, and Northeast corridor accounts were increased specifically to address a wide gamut of issues. The programs funded would address human error, tank car integrity, track inspection, and structural and signalization work. All of these increases were dictated by recent accidents in the rail area and the followup hearings conducted by the committee.

Now, Mr. President, there is one nonfunding item that has sparked considerable controversy. I refer, of course, to the general provision—section 327—that prohibits smoking on scheduled airline flights of 2 hours or less.

The House bill included a provision that denied grants to airports unless they somehow required air carriers to enforce a 2-hour smoking ban. This is clearly both unfair to the airport authorities and, further, it is unworkable. It also makes little sense in view of our need to expand airport capacity.

In lieu of that approach, the recommended committee amendment substitutes a straightforward prohibition against smoking on 2-hour flights or less. The prohibiton would sunset after 3 years. Violators would be subject to fines of up to $1,000. In addition, because we have heard that there has been tampering with smoke detection devices, the language includes a provision making it absolutely unlawful to tamper with or disable smoke detectors with violations punishable by fines of up to $2,000. The Secretary would enforce these provisions by regulation.

Mr. President, I believe that fairly and accurately summarizes the contents of the bill.

Before proceeding further, I know that my distinguished colleague, the ranking member of the Subcommittee on Transportation, my friend from New York, has some comments that he would like to make.

The PRESIDING OFFICER. The Senator from New York, Mr. D'AMATO.

Mr. D'AMATO. Mr. President, let me first congratulate the chairman of the Appropriations Subcommittee on Transportation and Related Agencies, Senator LAUTENBERG. Mr. President, this has not been an easy task. I believe that Senator LAUTENBERG can be proud of the bill that he has brought before the Senate today. We have a bill that pays special attention to the serious safety needs of the Federal Aviation Administration and the important mission of the U.S. Coast Guard. At the same time, this bill has achieved a delicate balance that provides the funds needed for other important transportation programs such as mass transit, Amtrak, highways and bridges, railroads and many safety programs.

Second, I would like to express my thanks to the chairman's staff who worked so hard on this bill: Jerry Bonham and Patrick McCann, as well as Joe McGrail, who is on loan to the subcommittee while on a detail from the GAO; and the minority staff, headed by Anne Miano. They are true professionals who have treated all staff with courtesy and fairness. I also would like to compliment them on the fine series of hearings they helped to put together. The record produced by those hearings provided a solid framework for funding decisions made in the bill.

The funding decisions made in this bill were not easy ones, but they reflect the transportation priorities of the Nation. In fiscal year 1988, the American public wants to be assured that the Congress has provided the funds necessary to rebuild our air traffic control system and restore public confidence in the safety of that system. In addition, the Nation does not want to see the Coast Guard's important drug interdiction mission underfunded, or its search and rescue and safety duties impaired by fiscal constraints. Our bill addresses those needs without devastating the Federal Transit Program relied on by millions of transit riders, or the Federal commitment to a national passenger railroad system. That was not a simple task.

H.R. 2890 provides $3.2 billion for FAA operating expenses. This is an increase of $314.6 million over current levels and includes salaries for more air traffic controllers and safety inspectors.

Bill language also specifies that the FAA shall achieve a level of 15,800 air traffic controllers, at least 10,450 of whom shall be full performance level, as of September 30, 1988. As of August 31, 1987, the FAA had 15,302 controllers of whom 9,695 were full performance level. To assist in the critical effort to modernize the national airspace system, the FAA is provided with $1.2 billion for facilities and equipment, increase of $451.5 million. In addition, the reported bill contains an obligation ceiling of $1.335 billion for the important Airport Improvement Grant Program—an increase of $310.5 million over fiscal year 1987.

Again, our Nation has experienced an increase of millions of passengers in our airports and our skies. They certainly are entitled to the best in terms of safety.

I am pleased that the bill also contains $1.952 billion for Coast Guard operating expenses. This is an increase of $155.7 million over fiscal year 1987. Coast Guard's Drug Interdiction Program is funded at $447 million. Although we were forced to make sacrifices in other programs to address the Coast Guard's needs, it was the only reasonable approach to take. For too long the stability of Coast Guard funding has been threatened by unrealistic transportation budget requests from the administration. Each year, we receive a request that zeros out Amtrak, and slashes about two-thirds of Federal transit aid. Since Congress inevitably restores these moneys, we are hard-pressed to accommodate the Coast Guard program and still stay within our allocations. I wonder when OMB will stop playing this game with the Congress.

Other appropriations items of interest in the bill include an obligation ceiling of $12.22 billion for the Federal-aid Highways Program. Mass transit formula grants are funded at $1.78 billion. Operating aid is frozen at fiscal year 1987 levels—$847 million. An obligation ceiling of $1.2 billion will apply to the Discretionary Transit Grants Program. In addition, Amtrak is provided with $595.5 million. I am glad that we were able to provide the funds needed to assist Amtrak in providing passenger rail service.

I look forward to further discussion on other important items in this bill.

Once again, I commend the chairman and the staff for an outstanding job.

Mr. STENNIS. Will the Chair yield to me for 1 or 2 minutes?

Mr. D'AMATO. Certainly.

Mr. STENNIS. Mr. President, I thank the Senator.

I want to highly compliment the Senator from New Jersey and the Senator from New York for this important and rather difficult work, too, at times, which they did in preparing this bill and holding the hearings and going through a good, solid amount of difficult work. It is something we take for granted and nobody backs you up as to what has been done. But I want to call the attention of others, and people in the industry, to the work that they have done. It seems to me they have an excellent attitude toward that obligation.

This has grown to be a highly important bill and represents a lot of money, over $11 billion. Without their attention the amount would be way more than that, so I compliment each of you gentlemen for your work and thank you, too. I look forward to hearing of further developments.

Mr. President, I am pleased to present before the Senate today the Department of Transportation and Related Agencies appropriation bill for fiscal year 1988. This bill, which provides $11.1 billion in new budget authority for fiscal year 1988, reflects the diligent care and able effort which our entire committee has rendered. In particular, however, it is evidence of the hard work and excellent leadership of Subcommittee Chairman Lautenberg and the ranking minority member, Senator D'Amato. I also wish to compliment the highly skilled work of the staff of their subcommittee: Mr. Jerry Bonham, Mr. Patrick McCann, Mrs. Veronica Queen, Mrs. Anne Miano, and Miss Dorothy Pastis.

I now wish to briefly highlight a few important items regarding this bill.

First and foremost, I am pleased to report that this bill is below the 302(b) allocation for budget authority and outlays. As I have previously indicated, this is essential for all appropriation bills which are to be taken up for consideration on the Senate floor.

Second, the committee's recommended $11.1 billion in new budget authority is above the President's request of $8.5 billion and slightly above the House-passed level of $10.9 billion.

Finally, I would ask my colleagues to resist any further amendments adding additional funds which would violate the bill's spending ceiling set by the subcommittee's 302(b) allocation. Let me also mention that the Senate rules do not permit legislative amendments on appropriation bills.

In conclusion, I firmly support this bill and ask that it be adopted so that we can proceed to conference with our House counterparts in a timely manner.

Mr. LAUTENBERG. I thank the distinguished chairman of the Appropriations Committee for his kind remarks. His leadership has been very important. He had difficult problems to work with. As we sat down, we struggled with the 302(b) allocation because in no case was it confortable to reduce funding from any of the bills that we had. I am grateful for the level hand that he laid on the table when we so dramatically needed his guidance and his leadership. We greatly appreciate his comments, and I also would like to say at this moment that my colleague from New York, the distinguished ranking minority member of the Transportation Subcommittee was most helpful.

There were several times when we ran into what seemed to be impossible situations to take care of, and Senator D'Amato's strength in negotiating was very helpful. We got a good balance. We took cuts in places that we did not want to, but, nevertheless, we are faced with a limit on spending that we have to observe. It was his guidance and his help that helped get this bill to where it is, and I thank him for his comments.

I particularly thank him for his work, constructive work, on the Transportation Subcommittee.

Mr. JOHNSTON. I move all amendments be temporarily set aside.

The PRESIDING OFFICER. Is there objection? If not, the request is agreed to.

AMENDMENT NO. 1093

(Purpose: Transfer of Section 9 Funds.)

Mr. JOHNSTON. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Louisiana [Mr. Johnston], for himself and Mr. Breaux, proposes an amendment numbered 1093.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

An amendment to be inserted in the appropriate section of the bill.

SEC. . TRANSFER OF SECTION 9 FUNDS

"The Governor of Louisiana, after consultation with all urbanized areas with in Louisiana, may transfer not to exceed $5,000,000 of unused apportionments under Section 9 of the Urban Mass Transportation Act of 1964 to any other urbanized area for use of urban mass transportation purposes. The authority to transfer these funds expires on October 1, 1988."

Mr. JOHNSTON. Mr. President, this amendment would authorize the transfer of unused Urban Mass Transportation Act [UMTA] section 9 funds to assist the city of Baton Rouge. Specifically, the Governor of Louisiana would be able to transfer as much as $5,000,000 of unused section 9 funds to any other urbanized area for transit use. In return for this transfer authority, Louisiana could receive approximately 60 cents on each dollar to be used in maintaining its financially troubled local transit system. Currently, the city is unable to utilize the Federal section 9 funds because of the loss of transit matching funds. Timing is critical in providing assistance in order to help continue bus service in the city of Baton Rouge. There is a precedent for the transfer of section 9 funds from one urban area to another. The Surface Transportation Act of 1987 authorized such a transfer between Los Angeles, CA and Las Vegas, NV.

Again, this measure does not impact the current allocation of the transportation bill and it has been cleared by the appropriations and authorizing committees.

My colleague, Senator Breaux, who is a member of the authorizing committee, has gotten it cleared in that committee as well.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment.

The amendment (No. 1093) was agreed to.

Mr. JOHNSTON. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. BREAUX. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BREAUX. Mr. President, I ask unanimous consent that the pending amendments be set aside so that I may offer an amendment.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

AMENDENT NO. 1094

(Purpose: Technical Corrections Provision to the Surface Transportation and Uniform Relocation Assistance Act of 1987)

Mr. BREAUX. I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Louisiana [Mr. Breaux], for himself and Mr. Johnston, proposes an amendment numbered 1904.

Mr. BREAUX. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

An amendment to the Fiscal Year 1988 Transportation Appropriations bill:

Insert the followng language in the appropriate section of the bill.

Sec. . Section 149(a)(89) of the Surface Transportation and Uniform Relocation Assistance Act of 1987 is amended by striking the langauge therein and inserting in lieu thereof:

"The Secretary is authorized to carry out a project to construct a full-diamond interchange to connect Louisiana Highway 354 to Interstate Route 1-10 in East Lafayette, Louisiana."

Mr. BREAUX. Mr. President, this amendment has been discussed with the managers of the bill. It is a simple amendment.

The existing highway program calls for an access road to be constructed in Louisiana to the Interstate System. This amendment changes that terminology and allows for the construction of an interchange at that location instead of an access road.

Senator Johnston spoke in the 99th Congress about the intent that this was to be an interchange. This amendment carries out that intent. There are no additional funds which are to be authorized as a result of this amendment. It is merely changing what is going to be constructed at that particular site. I ask for favorable consideration of the amendment.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the amendment of the Senator from Louisiana.

Mr. LAUTENBERG. Mr. President, we have no problem with that amendment on our side.

Mr. D'AMATO. It has been cleared on this side, Mr. President. We have no objection.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment [No. 1094] was agreed to.

Mr. BREAUX. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. LAUTENBERG. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. LAUTENBERG. Mr. President, I withdraw my unanimous-consent request that I put forward, and I ask unanimous consent that the committee amendments be considered and agreed to en bloc, provided that no points of order under rule XVI be waived thereon and that the measure, as amended, be considered as original text for the purpose of further amendment, with the exception of the following: That is from page 55, line 23, through the end of the bill.

The PRESIDING OFFICER (Mr. REID). Is there objection?

Without objection, it is so ordered.

Mr. LAUTENBERG. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. LAUTENBERG. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LAUTENBERG. Mr. President, I would like to amend the unanimous-consent request that was just dealt with and substitute for that the following:

Mr. President, I ask unanimous consent that the committee amendments be considered and agreed to en bloc, provided, that no points of order under rule XVI be waived thereto, and that the measure, as amended, be considered as original text for the purpose of further amendment, with the exception of the following: The committee amendment appearing on page 56, line 7, down through and including page 58, line 3.

The PRESIDING OFFICER. Is there objection?

Mr. HELMS. Reserving the right to object, will the distinguished manager of the bill allow me a brief quorum call to discuss this?

Mr. LAUTENBERG. Yes.

Mr. HELMS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HELMS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HELMS. I thank the Chair and I thank the distinguished manager.

The PRESIDING OFFICER. Does the Senator from New Jersey renew his unanimous-consent request?

Mr. LAUTENBERG. The unanimous-consent request I will restate once more. I ask unanimous consent that the committee amendments be considered and agreed to en bloc, provided that no points of order under rule XVI be waived thereon and that the measure, as amended, be considered as original text the purpose of further amendment, with the exception of the following: The committee amendment appearing on page 56, line 7, down through and including page 58 line 3.

The PRESIDING OFFICER. Is there objection?

Mr. HELMS. Not at all.

The PRESIDING OFFICER. Without objection, it is so ordered.

The committee amendments were considered and agreed to en bloc, with the exception of the committee amendment on page 56, line 7, through and including page 58, line 3, as follows:

SEC. 327. (a) Section 404 of the Federal Aviation Act of 1958 (49 U.S.C. 1374) is amended by adding at the end thereof the following subsection:

"PROHIBITION AGAINST SMOKING ON SCHEDULED FLIGHTS AND TAMPERING WITH SMOKE ALARM DEVICES

"(d)(1)(A) On and after the date of expiration of the 4-month period following the date of the enactment of this subsection, it shall be unlawful to smoke in the passenger cabin or lavatory on any scheduled airline flight in intrastate, interstate, or overseas air transportation, if such flight is scheduled for 2 hours or less in duration.

"(B) The Secretary of Transportation shall issue such regulations as may be necessary to carry out the provisions of this subsection.

"(C) The provisions of paragraph (1) of this subsection are repealed effective on the expiration of the 40-month period following the date of the enactment of this subsection.

"(2) Any passenger who tampers with, disables, or destroys any smoke alarm device located in any restroom aboard an aircraft engaged in air transportation or intrastate air transportation shall be subject to a civil penalty in accordance with section 901, except that such civil penalty may be imposed in an amount up to $2,000.".

(b) That portion of the table of contents of the Federal Aviation Act of 1958 under the heading:

"Sec. 404. Rates for carriage of persons and property; duty to provide service, rates, and divisions; foreign air transportation rates; discrimination;"

is amended by adding at the end thereof the following:

"(d) Prohibition against smoking on scheduled flights and tampering with smoke alarm devices.".

Mr. LAUTENBERG. Mr. President, could we have an understanding of what the pending business is?

The PRESIDING OFFICER. The pending business is the excepted committee amendment.

Mr. LAUTENBERG. Mr. President, the pending committee amendment deals with the issue of smoking on airplanes. As frequent flyers, we are all aware of the irritation to our eyes, noses, and throats soon after the no smoking sign goes off on commercial airplanes. But, recent reports from the National Academy of Sciences and the Surgeon General make it clear that environmental tobacco smoke is more than an irritant: it is a health hazard.

I will take a few minutes to discuss the nature of the risk to health, as spelled out in some recent reports, and to explain this amendment.

The Surgeon General has been issuing reports on the health consequences of smoking since 1964. More than 50 thousand studies have demonstrated that smoking is the largest single preventable cause of premature death and disability in the United States. Faced with that evidence of the effects of cigarette smoking on smokers, scientists have also been examining a possible link between disease in nonsmokers and their exposure to the cigarette smoke of others.

In his 1986 report, the Surgeon General said, "Involuntary smoking is a cause of disease, including lung cancer, in healthy nonsmokers." He goes on to say, "* * * the time for delay is past; measures to protect the public health are required now."

In 1984, Congress directed the Secretary of Transportation to commission a study of airline cabin air quality to be performed by the National Academy of Sciences. The NAS study was completed in August 1986. It recommended that smoking be banned on commercial flights in the United States. So, let's be clear. The study has been done.

Now, is the time to act. I have proposed, and the Appropriations Committee has approved, a 3-year ban on smoking on commercial airplane flights scheduled for 2 hours or less. The House of Representatives included a similar provision in their Transportation appropriations bill. The Senate provision, however, puts the burden of responsibility on the individual, rather than on the airport managers as the House did. It also has a sunset after 3 years.

Along with the ban, the bill prohibits tampering with the smoke detectors in airplane lavatories. These are required by the FAA. The antitampering provision carries with it a substantial civil fine for violations. The maximum penalty for violations of the smoking ban would be $1,000. The maximum penalty for tampering with smoke detectors would be $2,000. That's intended to discourage passengers from taking clandestine puffs in the lavatory. It's intended to reduce the danger of fire.

Tobacco smoke in an enclosed area is an irritant. People don't like it. But, I propose a ban on smoking because of the long-term health risk. We know that tobacco smoke harms smokers, and we have evidence to back a finding that it also harms nonsmokers who are exposed to it.

How do we know? People have measured the presence in nonsmokers of certain elements found in environmental tobacco smoke. The body turns nicotine into a substance called cotinine. Cotinine stays in the blood and other body fluids for about a day. Studies measuring the amount of cotinine in the fluids of nonsmokers made an interesting finding. The amount of cotinine in the nonsmoker rose with exposure to environmental tobacco smoke.

And, Mr. President, this exposure has been connected to disease. Several studies have found an increased risk of lung cancer in nonsmokers married to smokers. And, studies have shown that the children of parents who smoke have an increased rate of respiratory problems when compared with children of nonsmoking parents.

Smoking is regulated in many everyday situations. Forty-one States restrict smoking in public places. Ten States restrict smoking in the workplace. Thirty-three States restrict smoking in public transportation. A few weeks ago, the Governor of California signed into law a ban on smoking on intrastate airplane flights. If the Federal Government does not act on a uniform ban, the airlines could face a balkanized system with 50 different sets of rules governing smoking.

The National Academy of Sciences report estimated that flight attendants are exposed to as much smoke as someone living with a pack-a-day smoker. This exposure puts the attendants at a higher risk for lung cancer than other nonsmokers. The flight attendants talk about working in a "blue haze." The haze is the visible smoke in the air, particularly around the galleys and the lavatories, which tend to be located behind the seating area for smokers. In the interests of providing a safe working environment for the airline cabin crew, smoking should be banned.

In the interests of guarding the health of all passengers, it must be banned as well. Current regulations require segregated seating for smokers and nonsmokers. And the captain has the discretion to declare all seats on a particular flight to be nonsmoking. But the Surgeon General says flatly that separating smokers and nonsmokers in the same air space does not eliminate the nonsmokers' exposure to the environmental tobacco smoke.

The Surgeon General's conclusions are particularly relevant to the airliner cabin environment. The air in the cabin is a mix of fresh outside air and recirculated air. Increasing the flow of outside air increases the use of fuel. As airplanes are equipped with more fuel efficient engines, the amount of outside air available in the cabin is being reduced. Recirculated air cannot be cleansed of all contaminants.

The ventilation rate is the amount of outside air supplied to the passengers and crew. Many factors affect the ventilation rate. These include the number of passengers and the operation of the environmental control system. The crew can select the flow rates. Often a flight will be operated at less than optimal flows. If, for instance, a plane has three environmental control systems, or packs, one may be shut off. Thus, the optimum or design specification rate may not be the actual ventilation rate provided. Since reducing the amount of outside air will not affect the cabin temperature and pressure and will save fuel, the airline has an incentive to recirculate most of the air.

The NAS study notes that recirculating air contaminated with tars from cigarette smoke can affect aircraft systems. Temperature control sensors respond more slowly when contaminated with tars and lint. Axial-flow fans have become so contaminated with tars that fan blades can stick and their bearings can fail prematurely. Maintenance personnel believe that the residue of tobacco smoke causes problems which increase the cost of maintenance.

Systems for recirculating air usually have a filter to remove particles, but gases generally pass right through the filters. The relatively low humidity of the airliner cabin adds to the irritation and discomfort caused by environmental tobacco smoke.

The NAS committee considered the health effects of passive smoking. He considered the characteristics of the airliner cabin environment. And, the NAS committee concluded that no satisfactory, economically or technically feasible ways existed to reduce environmental tobacco smoke. The only answer was to ban smoking.

Aside from its impact on health, the NAS committee found that a smoking ban would provide more pluses to the aviation industry than minuses. On the plus side, cleaning costs and the costs of replacing and repairing damaged materials would decrease. Fuel costs would drop as a result of reduced outside air requirements. Onboard fire risks would also be reduced in the long run.

Opponents of the ban point to the danger of surreptitious smoking in the lavatories which could cause fires. However, the FAA already requires smoke detectors in the lavatory and the bill prohibits tampering with them. Also limiting the ban to flights of 2 hours or less is intended to make abstinence bearable for addicted smokers.

A selection of reports from the FAA Accident/Incident reports from 1980-85 demonstrates the fire hazard under current conditions. Two examples should make the point. In one case, a passenger's lighter burst into flames and the flight attendant extinguished the fire with a substance close at hand—apple juice. In another case, a passenger's carry on bag caught fire, probably due to careless smoking. Most flight attendants can relate stories of frenzied searches around seat cushions for a dropped cigarette.

Not all airlines oppose a smoking ban or believe that it would be dangerous. In fact, one carrier, Air Canada, experienced a disastrous and deadly on-board fire several years ago. Recently, it successfully completed an experimental ban on smoking on many of its flights and has made the ban permanent.

The Appropriations Committee, by a bipartisan vote of 17 to 12, approved an amendment to ban smoking on all scheduled domestic airplane flights of 2 hours or less. The ban will sunset after 3 years, allowing Congress to review the ban, and determine whether to continue it, amend it, or expand it.

The smoking ban is not antismoking or antitobacco; it is pro-health. An airliner cabin is a special environment. You cannot open the windows at 30,000 feet to clear out the smoke. The amount of outside air in the cabin is being reduced as newer, more fuel efficient engines, which pull in less outside air, come into service. The flight attendants and passengers are entitled to work and travel in a safe environment. Prohibiting smoking is as much a safety and health requirement as fastening seat belts.

Public opinion is overwhelmingly behind this ban. A poll by the American Medical Association found 67 percent of those polled favored a ban. Other surveys have found similar or higher levels of support. The American Lung Association, the American Heart Association, the American Cancer Society, and the Association of Flight Attendants, as well as 29 other health and flight attendant organizations, all strongly support the smoking ban.

Mr. President, I ask unanimous consent to place in the RECORD at this point a list of the organizations supporting the smoking ban and a letter of support from the Coalition on Smoking or Health.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

COALITION ON SMOKING OR HEALTH,
Washington, DC, October 22, 1987.

DEAR SENATOR: When the FY88 Department of Transportation appropriations bill (HR2890) is debated on the Senate floor, we urge you to support the provision approved by the Senate Appropriations Committee to ban smoking on domestic commerical airline flights of two hours or less.

This provision is supported by the Coalition on Smoking OR Health, comprised of the American Cancer Society, the American Heart Association, and the American Lung Association, the major flight attendant unions, and close to thirty other public health and consumer advocacy organizations. In addition, public opinion polls show a majority of travelers, including 23% of smokers, support a smoking ban on airplanes. Although the massive mail campaign sponsored, paid for, and written by the tobacco manufacturers has undoubtedly deposited many identical mail-a-grams in your office, independent surveys of airline passengers conducted by the International Foundation of Airline Passenger Associations and others document the overwhelming public support for an airplane smoking ban.

The scientific evidence of the hazards posed by exposure to airborne tobacco smoke has been analyzed and confirmed by the Surgeon General and the National Academy of Sciences. A special study of the airliner passenger cabin environment issued by the National Academy of Sciences recommended that smoking be prohibited on domestic flights of *all* lengths because of the health and safety hazards posed to airplane passengers and crew by in-flight smoking. Pipe and cigar smoking have been banned since 1984.

The provision introduced by Senator LAUTENBERG and approved by the Appropriations Committee would ban smoking on flights of two hours or less for three years. In light of what we now know about the health risks of involuntary smoking, and the resounding recommendation by the National Academy of Sciences that smoking be banned on flights of all lengths, the Lautenberg provision is a sensible compromise which enacts a needed protection immediately on 80% of domestic flights while allowing for further study and consideration of the situation as additional scientific and technical information becomes available. A provision which would have the same potential effect already has been approved by the House of Representatives.

Please vote to retain the Lautenberg airplane smoking ban provision in the Senate bill.

Sincerely,

American Cancer Society; American Heart Association; American Lung Association; Aerospace Medical Association; American Academy of Family Physicians; American Academy of Otolaryngology, Head and Neck Surgery, Inc.; American Academy of Pediatrics; American Association of Dental Schools; American Association for Respiratory Care; American Chiropractic Association; American College of Chest Physicians; American College of Physicians; American Dental Association; American Diabetes Association; American Medical Association; American Medical Students Association; American Medical Womens Association; Americans for Nonsmokers Rights; American Public Health Association; American Society of Internal Medicine; American Speech-Language-Hearing Association; Association of Flight Attendants; Aviation Consumer Action Project; Citizens Against Tobacco Smoke; Consumer Federation of America, Independent Union of Flight Attendants; Joint Council on Allergy and Immunology; Joint Council of Flight Attendant Unions; Massachusetts GASP; National Perinatal Association; Oncology Nursing Society; and Virginia GASP.

ORGANIZATIONS SUPPORTING A SMOKING BAN ON AIRLINERS

American Cancer Society; American Heart Association; American Lung Association; American Academy of Family Physicians; American Academy of Otolaryngology, Head and Neck Surgery; American Academy of Pediatrics; American Assocation for Respiratory Care; American Chiropractic Association; American College of Cardiology; American College of Chest Physicians; American College of Physicians; American Diabetes Association; American Medical Association; American Medical Students Association; American Medical Women's Association; American Public Health Association; American Society of Internal Medicine;

American Speech-Language-Hearing Association; Americans for Nonsmokers' Rights; Americans for Substance Abuse, Prevention and Treatment; Action on Smoking and Health; Aerospace Medical Association; Association of Flight Attendants; Aviation Consumer Action Project; Consumer Federation of America; Independent Union of Flight Attendants; Joint Council of Allergy and Immunology; Joint Council of Flight Attendant Unions; National Perinatal Association; National alliance of Senior Citizens, Inc.; Oncology Nursing Society; Public Citizens Health Research Group; and Western Association of Children's Hospitals.

Mr. D'AMATO. Mr. President, I am not going to speak at length with respect to this provision which would ban smoking for 3 years on scheduled flights of 2 hours or less. Mr. President, such flights comprise about 80 percent of all domestic flights.

The bill also provides penalties of up to $2,000 for tampering with smoke detectors, and up to $1,000 for those who violate the ban.

The Senate amendment, is important to note, strikes the House provision known as the Durbin amendment on the same subject. Let me suggest that the House amendment is absolutely onerous, and places an unfair obligation on airport operators who refuse or are incapable of enforcing this ban, and would imperil their airport improvement grants from the aviation trust fund. That is absolutely patently unfair, punitive, and is certainly unlikely to achieve its goals. I am gratified that the Senate did not pursue that course of action.

So while I may not be in total sympathy on this issue because I have some reservations about the manner in which the temporary ban would be carried out, I certainly would suggest that it is more temperate, and certainly makes a lot more sense than the ban that was passed on the floor of the House of Representatives by a vote of 198 to 193.

I yield the floor.

Mr. SYMMS. Mr. President, will either Senator yield for a question?

Mr. LAUTENBERG. I would be happy to yield for a question.

Mr. SYMMS. I am curious about this because I have not made up my mind about this smoking ban question. But we have a small airline, Horizon. They do not allow them to smoke on that airline. It is my understanding Horizon does that. But it could be ABC Airlines.

Mr. LAUTENBERG. There is presently a rule on air carriers carrying less than 30 seats that prohibits smoking totally. That is any commuter line air taxi system, any airplane that has less than 30 seats. It is already banned under rules.

Mr. SYMMS. Is there any rule that would prohibit a private airline like one of the major airline carriers just from saying no smoking on our flights in less than 2 hours? My question is why do we have to have the Government do this? Is there any reason why the airlines cannot do it or they do not have the guts to do it? What is it?

Mr. LAUTENBERG. This we found from our discussion with the airline operators. Unless there is a firm rule to which they can point they find they are subject to all kinds of stress and tension within the cabin, with people arguing that they are arbitrary about the rules. Air Canada suspended smoking on some of its flights and found their flights are very popular but other airlines do not necessarily agree.

What they have asked us to do is be firm in the rule, supply a basis for monitoring and enforcing the rule and they would be happy to abide with it. They do not want to take, as we have heard, the initiative into their own hands and be arbitrary and competing for traffic one way or the other by banning or prohibiting smoking.

Mr. SYMMS. Did I understand the Senator to say earlier, Mr. President, that it was a $2,000 fine?

Mr. LAUTENBERG. For tampering with a device that is designed to detect smoking in airliners. Typically that is in the lavatory because it was suggested that maybe people in order to grab a puff or two would go into the lavatory and light up. That is very dangerous for one thing. Second, tampering with any smoke detector device is obviously or could be life threatening in an airliner. So we have established a fine that seems to be enough to discourage them.

Mr. SYMMS. If someone happens to smoke on the plane.

Mr. LAUTENBERG. If someone happens to smoke, they are subject in accordance with the language to a $1,000 fine for breaking the rules.

Mr. SYMMS. A $1,000 fine?

Mr. LAUTENBERG. Right, $2,000 for tampering with the smoke detector.

Mr. SYMMS. I understand what the Senator is trying to get at. I feel a little uncomfortable about $1,000 fines for people who might smoke a cigarette. Do they believe this will really improve the air quality on airplanes?

Mr. LAUTENBERG. Substantially. We have a report from the Surgeon General, as you heard me say, and a report from the National Research Council as well, that passive smoking, environmental tobacco smoke, can be injurious to one's health; $1,000 is a pretty discouraging thing, and the fine can go up to as much as $2,000 if the enforcement people recommend that.

Mr. SYMMS. I certainly do not claim to be an expert in this at all. I have been told by some people that the air in airliners in general is not what you call high-quality air. If someone smokes a cigarette, it accentuates how poor the air-conditioning is. So the airlines would like to get it off. I wonder why they would not do it themselves, and why they cannot work out some accommodation instead of asking. Once again, this is another Big Brother movement. We have had to regulate the drinking age, and the speed limit and now whether or not you can smoke a cigarette. I do not know what is next. But I feel uncomfortable personally as one Member of the Senate, and I do not smoke on airlines.

So I can appreciate the recognition that it does not do anything to improve air quality. I am not so sure that it really hurts air quality as much as the advocates of this are saying, because I think there is another side that says air quality is poor on airplanes and if you did anything that would add to the aroma, people would notice that the air-conditioning is not good, so to speak.

Mr. LAUTENBERG. The Senator is right in his comments about the fact that air quality in aircraft is subject certainly for review. We have had several discussions about examining air quality altogether. It is very poor because, as perhaps the Senator heard, planes have become more efficient, and they use less outside air. We are talking about recirculated air, and adding cigarette smoke and other contaminants in the air makes it worse.

Again, in some degree of uniformity, health groups have asked and it has been concurred in by airline operators that rules ought to be established to make it uniform throughout the system. This is the approach we took.

There is as the Senator knows in the House bill a prohibition on 2 hours of smoking. However, that was supposed to be monitored by airport authorities. That really seems unworkable. What we have done is combined their interests with a workable system, and not get the crews in gates making arrests and things of that nature but rather simply reporting it and letting the authorities take over.

Mr. SYMMS. I thank the Senator very much. It was the basic question that I originally meant to ask and I did not mean to take this much time. I apologize to my colleagues for that. The basic question is the small commuter airlines that ban smoking on smaller airliners like metroliners, others, and it is a rulemaking process. And it is not something that the airline per se has done on their own.

Mr. LAUTENBERG. That is correct.

Mr. SYMMS. I thank the Senator.

I yield the floor.

Mr. LUGAR addressed the Chair.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. LUGAR. Mr. President, I rise today to support the airport smoking ban prohibition being included by the Appropriations Committee in the Department of Transportation appropriations bill. I commend in particular the distinguished Senator from New Jersey [Mr. LAUTENBERG] who authored this provision, for taking this initiative.

I congratulate the Appropriations Committee for extraordinary courage and wisdom in attempting to sort out the rights of Americans as it pertains to this very decision. I would urge my colleagues on both sides of the aisle to carefully consider the public health ramifications of the existing regulations governing smoking on domestic commercial airlines.

As the distinguished Senator from New Jersey, and the Senator from New York pointed out, we now have three important scientific reports documenting the health hazards posed to airplane passengers and crew by inflight smoking. These reports, from the Surgeon General and the National Academy of Sciences, analyze the available scientific literature on the exposure of smokers to airborne tobacco smoke, known as involuntary or passive smoking. All three reports are consistent in their conclusions that this exposure is hazardous to health. The reports clarify that not only is involuntary smoking dangerous to the health of nonsmoking adults, but it is especially dangerous to infants and children and individuals with preexisting lung conditions who may be subjected to this smoke. The reports also state that simply separating smokers from nonsmokers in the same airspace is not sufficient to protect nonsmokers from airborne tobacco smoke exposure.

Moreover, the close proximity of passengers to one another in the cabin, the concentration of smokers in one end of the airplane, and the increasing use of air recirculation systems combine to result in the airplane passenger cabin environment being permeated with tobacco smoke. For flight attendants attempting to work in this close atmosphere, there is no door or window to open to get a breath of fresh air. The immediate effects of this tobacco smoke exposure can cause dizziness, nausea, headaches, watery eyes, and coughing. All of this could potentially hamper their capacity to react quickly and effectively in an emergency situation.

The long-term effects of this exposure are just beginning to be apparent, as only recently have flight attendants been able to make this occupation a long-term career. In addition, the available scientific evidence documenting the special susceptibility of infants and children to the adverse effects of involuntary smoking in closed environments should cause us special concern. Many more families with children are traveling by air than ever before. In addition, we should consider how the involuntary exposure to smoking affects the health of elderly and frail individuals. Many elderly individuals have preexisting health conditions or allergies which make their reactions to tobacco smoke exposure potentially life threatening. Under present conditions, many are either precluded from traveling by air completely, or suffer severe acute problems as a result.

A ban on smoking on domestic flights of 2 hours or less is a reasonable, rational response to the mounting scientific evidence demonstrating the hazards posed by involuntary smoking. This ban would benefit the health of all passengers. It is especially needed by the young, the elderly, and the frail. It would also address the special hazards which smoking poses to airplane crew members. The problem merits immediate attention. This is our opportunity. I urge my colleagues to support the committee's provision.

Mr. President, I appreciate that the issue is one of great controversy and that there are many rights to be asserted. This is an issue ultimately in which decisions must be made by Members. They must come down on the side of health and security and safety for those who are affected. At least, I would hope that is the side they come down on.

I appreciate the questions to be raised as to who the regulating authorities ought to be, and the committee, in my judgment, has tried to consider options that have been afforded to it. I would commend the solution that the committee has arrived at. It seems to me to be sensible, reasonable, and it can be said that the time has come for this type of consideration.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. Mr. President, this provision is sensible and reasonable to those who are on one side of the argument. It is not sensible and reasonable to the 200,000 small family tobacco farmers in 23 States.

I am careful to note that not one Senator has spoken in favor of this amendment who has a constituent interest. It is very easy to attack somebody else's industry in another State. So, here we go again.

First of all, I am obliged to oppose the committee amendment that would ban the use of a product, an agricultural product, that is entirely legal and lawful. There is legislation in this appropriation bill that bans the use of tobacco on airlines, but it does not say a mumbling word about people who get drunk on airlines.

I find it offensive, sometimes, when a man sitting next to me gets one drink after another; he gets talkative; he blows his breath in my face. I do not like that. Sometimes I move; sometimes I cannot move. But, no, you are not going to find a mumbling word about the liquor drinkers on airlines.

There are 200,000 small family tobacco farmers in 23 States, and I mention that for the purpose of emphasis. They work hard. They grow a crop that is entirely legal. Many of these families are carrying on a tradition that goes back to the first days of this country.

By banning this legal agricultural product, without hearings—and without debate, I might add—and strictly contrary to the rules of the Senate, we are sending a dismal message to these farmers. They have not had a chance to state their case. This was done in the Appropriations Committee, and I am going to address that in a little bit.

I have letters from distinguished leaders of my State: The Governor, Jim Martin; the Commissioner of Agriculture, Jim Graham. I have letters from the Tobacco Growers Association, the NC Farm Bureau Federation, and the NC State Grain-Tobacco Committee. I am going to ask unanimous consent in a moment that these be printed in the RECORD. I will not do so at the moment.

Mr. President, I believe that the chairman of the Committee on Commerce, Senator HOLLINGS, and the chairman of the Commerce Subcommittee on Aviation, Senator FORD, may come to the floor shortly to speak on this issue. They need not plan to come immediately, because I will speak for some time.

It is clear, Mr. President, that the Appropriations Committee has violated rule XVI of the standing rules of the Senate by legislating on an appropriation bill. But it goes further than that, and I will address that point in a minute. I realize that it is fairly standard practice to legislate on appropriation bills. It has been done in the past, it is being done now, and it will be done in the future. But most of the time when this violation of the Senate rule occurs, it is a matter of some sort of emergency, such as a farm disaster, and the rules are bent.

The interesting thing is that in the Appropriations Committee, by what really was a one-vote margin—a couple of Senators changed their minds when they saw that the issue was lost—this provision was included. Two Senators changed their minds because of the highly charged lobbying campaign that had been conducted, and I do not fault them for that. But they said: "Why should I have my hide burned by these high-powered lobbyists when it's lost anyhow?" So they changed their minds and voted for the amendment.

The interesting thing, also, is that the leaders of this provision on the Appropriations Committee had available to them a recommendation which is reasonable, which is sensible, sent to them by the distinguished Secretary of Transportation, who was attempting to handle this thing in a reasonable, sensible way, instead of cramming it down the throats of the 200,000 tobacco farmers in 23 States.

Let me read, if I may, Mr. President, what the Department of Transportation recommended that we do now. I quote the language that was suggested:

> The Secretary shall undertake, and within two years of the date of enactment of this Act complete, a study to ascertain (1) the kinds and levels of contaminants from environmental tobacco smoke and other pollutants experienced in airliner cabins, under varying flight conditions and cabin ventilation variables, and (2) the health risks associated with the observed contaminant levels to airliner cabin occupants. At a minimum, such study shall evaluate and report on the following two approaches to improving cabin air quality: (A) a partial or total ban on smoking during flights involving specified ventilation equipment, aircraft types, duration of flight, or other relevant aspects of operation; (B) performance standards for the technology employed to control cabin atmosphere. On the basis of the results of such study, the Secretary shall propose to Congress recommendations to improve air quality in airliner cabins.

Even if that was legislation on an appropriations bill, had that language been reported out, I would have supported it because—to use the language of the distinguished Senator from Indiana, Mr. LUGAR—it is reasonable and sensible. But, no, by what effectively was a one-vote margin in committee, this harsh measure with no recourse is being rammed down our throats. And, of course, Senators are reluctant to back the tremendous lobbying effort that has been orchestrated.

Mr. LAUTENBERG. Mr. President, will the Senator yield for a clarification and a question?

Mr. HELMS. Yes.

Mr. LAUTENBERG. Is the Senator aware that the final vote in the appropriations full committee was a 17-to-12 margin in favor of the smoking ban?

Mr. HELMS. I am not sure, but I do know that the change of three votes would have put it the other way. The Senator agrees with that, does he not?

Mr. LAUTENBERG. The arithmetic is correct. But this is just for the record.

Mr. HELMS. I thank the Senator.

The question is obvious, Is this legislation an emergency issue with the airline industry? How does the public feel about this ban?

Well, according to data that I have, the air traveler consumer complaint report from the U.S. Department of Transportation, fliers in the United States do not believe that this is even among the top five issues that need to be dealt with.

So, with all due respect for those who cite all sorts of opinions and that sort of thing, where is the evidence?

I have a chart, if the Chair will bear with me, showing the complaints against U.S. airlines, January to June 1987, and January to June 1986.

You see the complaints: flight problems, baggage, refunds, customer service, smoking and other.

Now, there is no cacophony of voices demanding that Senate rules be violated in order to bring this matter before the Senate.

Mr. President, at this point I ask unanimous consent that a letter addressed to me dated October 22, by the Honorable James G. Martin, Governor of North Carolina, be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

STATE OF NORTH CAROLINA,
OFFICE OF THE GOVERNOR,
Raleigh, October 22, 1987.

Hon. JESSE HELMS,
U.S. Senate, Dirksen Office Building, Washington, DC.

DEAR SENATOR HELMS: I understand that a Senate Subcommittee on Transportation will soon hear testimony concerning banning smoking on airline flights.

I am dismayed by such spirited efforts in Washington to inhibit the use of a perfectly legal crop—a crop that forms the economic base of North Carolina's agriculture. Thousands of our state's farmers would be adversely affected by such unwarranted restrictions.

In 1985, your strong leadership was instrumental in revamping the state's tobacco program. In the short time that has lapsed, the program has begun to stabilize. Actions such as those proposed by the subcommittee could result in disruption of the entire program.

I know I and the farmers of this state can depend upon your unyielding support of North Carolina's most profitable agricultural commodity.

Sincerely,

JAMES G. MARTIN.

Mr. HELMS. Mr. President, Governor Martin said:

> I am dismayed by such spirited efforts in Washington to inhibit the use of a perfectly legal crop—a crop that forms the economic base of North Carolina's agriculture. Thousands of our State's farmers would be adversely affected by such unwarranted restrictions.

And the letter goes on.

Mr. President, the North Carolina Commissioner of Agriculture is James A. Graham. I have known him all of my adult life. He is a very fine public servant. He says:

> For many years, smoking and nonsmoking on airlines has been an acceptable accommodation. I am informed that the airline complaints on smoking is a very small percentage of the complaints they receive. Efforts to ban smoking entirely is reaching a radical point, and is being promoted by people who do not wish to consider any available scientific information or the general welfare of thousands of people.

He is referring to the thousands of farmers and others who make their living growing and selling tobacco.

It may well be that after reasonable consideration, as suggested by the Department of Transportation, that all smoking would be banned. But that is not what is proposed here. They say do it now or begin to do it now because we want it done now and we are willing to violate the Rules of the Senate to do it.

Mr. President, I ask unanimous consent that the letter from Commissioner Graham be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

STATE OF NORTH CAROLINA,
DEPARTMENT OF AGRICULTURE,
Raleigh, October 24, 1987.

Hon. JESSE HELMS,
Dirksen Senate Office Building,
Washington, DC.

DEAR SENATOR: I know you share my concern relative to the effort being made to ban smoking on airlines.

For many years, smoking and nonsmoking on airlines has been an acceptable accommodation. I am informed that the airline complaints on smoking is a very small percentage of the complaints they receive. Efforts to ban smoking entirely is reaching a radical point, and is being promoted by people who do not wish to consider any available scientific information or the general welfare of thousands of people.

Tobacco is taxed to the hilt and tobacco foes continue to push for tax increases. A minimum of 200,000 farm families derive their livelihood from tobacco production. Thousands of nonfarm people are employed in manufacturing and sales of tobacco products.

Revenue generated from tobacco exceeds $9 billion in local, State, and Federal taxes. One fourth of North Carolina's gross income is generated from the production of tobacco.

Tobacco is a legal commodity. Legal to grow, manufacture, and sell to the consuming public. An attempt to ban smoking is simply denying a citizen his or her legal right. The common sense approach of smoking and nonsmoking sections on airlines or in any other place of business or public accommodation is the correct procedure that should be followed.

Senator, I earnestly ask that you use all the influence you command to prevent any legislation banning smoking on airlines.

With all good wishes.

Cordially,

JAMES A. GRAHAM.

Mr. HELMS. Then Rick Apple, who is president of the Tobacco Growers Association of North Carolina, Incorporated, said:

> I am not a good enough economist to cite data and statistics on this question, but I don't think numbers are needed. The effects of these restrictions would be obvious: Fewer cigarettes would be smoked. Consumption would decline. Manufacturers would purchase less tobacco at our auction markets. Farmer quotas would be lowered. And the economic pressure on tobacco farmers, which has just begun to ease off in the last year, would be intensified again.
>
> We don't need that. North Carolina doesn't need that. I don't see how the United States needs that, especially when I'm told that more than 80 percent of flying passengers are satisfied with the current arrangement on smoking sections on airplanes and would not want a change.

I ask unanimous consent that this letter be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

TOBACCO GROWERS ASSOCIATION OF
NORTH CAROLINA, INC.,
Raleigh, N.C., October 21, 1987.

Senator JESSE HELMS,
SD 403, Dirksen Senate Office Building,
Washington, DC.

DEAR SENATOR HELMS: I am writing to encourage you in your efforts to prevent further restrictions on commercial airline flights. I want to assure you and anyone who might have any doubts that restrictions of the type that are being proposed will have an impact outside air travel. By that I mean that they will have a negative effect on tobacco farmers like myself.

I am not a good enough economist to cite data and statistics on this question, but I don't think numbers are needed. The effects of these restrictions would be obvious: Fewer cigarettes would be smoked. Consumption would decline. Manufacturers would purchase less tobacco at our auction markets. Farmer quotas would be lowered. And the economic pressure on tobacco farmers, which has just begun to ease off in the last year, would be intensified again.

We don't need that. North Carolina doesn't need that. I don't see how the United States needs that, especially when I'm told that more than 80% of flying passengers are satisfied with the current arrangement on smoking sections on airplanes and would not want a change. Also, all reliable studies have shown that smoke on airplanes is not a health hazard, and there's never been a fire death on a major airline associated with cigarette smoking.

Please let this association know any way it can help you in turning back this proposal. Anything you can do in this area will be in the best interests of the growers.

Yours truly,

RICK APPLE,
President.

Mr. HELMS. I thank the Chair.

Then there is a letter from the Bertie County Farm Bureau. The President there is Mr. John W. Stallings, a fine citizen. I know him well.

He addresses the same problem, and there is no point in my quoting from his letter, because I am going to put it in the RECORD at this point. I ask unanimous consent that this letter be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

BERTIE COUNTY FARM BUREAU,
Windsor, NC, October 19, 1987.

Senator JESSE HELMS,
Washington, DC.

DEAR MR. HELMS: This morning's TV news carried details of a naval strike against an Iranian oil platform in the far East. News later today indicated a 250 point drop in the Dow and still going down. We live in perilous times. It's time for our representatives to lower their rhetoric and start working together for the good of our country (not personal or party politics).

This letter is to say "Thank You" for putting your country first and to ask you to continue to oppose restrictions and punitive measures against tobacco.

As you well know, eastern North Carolina farmers pay their bills with their income from tobacco. Eliminating that source of income would put over 50% of them out of farming. The proposal to ban smoking on airline flights is just another restrictive measure in a long series designed to eliminate tobacco. The proposal to double the excise tax is just another punitive approach to accomplish the same end.

Our tobacco growers commend you for your efforts in the past and ask you to continue to oppose these measures in every way you can.

Sincerely,

JOHN W. STALLINGS, *President.*

Mr. HELMS. I thank the Chair.

Now, Fred G. Bond, who is chief executive officer of the Flue-Cured Tobacco Cooperative Stabilization Corp. has written to me. He said:

> In addition to the American citizen's basic right to smoke, there are many other reasons to oppose the pending action to ban smoking on domestic airline flights. Among these are:
>
> (1) Every airline passenger is presently guaranteed a seat in the non-smoking section, even if the smoking section must be reduced or eliminated to accommodate nonsmoking passengers.
>
> (2) A 1987 Airline Pilots Asssociation poll determined that 87% of passengers believe that the current practice of separating smoking and non-smoking seating is a reasonable policy and respects the rights of all passengers.
>
> (3) The National Academy of Sciences said there is no evidence in scientific literature showing casual exposure to tobacco smoke in public places is a health risk.
>
> (4) Federal aviation agencies have considered rules for smoking aboard aircraft for decades in nearly a dozen rulemakings. All proposals to ban smoking have been rejected.

I ask unanimous consent that Mr. Bond's letter be printed in the RECORD at this point.

There being no objection, the letter was ordered to be printed in the Record, as follows:

Flue-Cured Tobacco
Cooperative Stabilization Corp.,
Raleigh, NC, August 19, 1987.

Hon. Jesse Helms,
U.S. Senate,
Washington, DC.

Dear Senator Helms: The tobacco growers you represent and all American citizens exercising their right and privilege to smoke need your help in the fight against the continuing efforts of anti-tobacco crusaders who have made it their goal to attain a smoke-free society by the year 2000.

In light of the smoking ban on flights of two hours or less which passed in the House last month, regular increases in state and federal cigarette excise taxes, attempts to ban advertising and promotion of tobacco products, and smoking restrictions in the workplace and in public areas, the numbers of people who are directly affected by such actions cannot afford to let one more right and privilege be taken from them.

Bills denying the rights of smokers are defeated in Congress with very narrow margins. Many times we see such action taken on the House floor without prior congressional hearings or substantive discussion of the issue. Since there is no limit to the tactics of anti-smoking zealots, it is imperative that aggressive action be taken by our Congressional leaders to protect the rights and livelihoods of tobacco farmers and the American public.

In addition to the American citizens' basic right to smoke, there are many other reasons to oppose the pending action to ban smoking on domestic airline flights. Among these are:

(1) Every airline passenger is presently guaranteed a seat in the no-smoking section, even if the smoking section must be reduced or eliminated to accommodate non-smoking passengers.

(2) A 1987 Airline Pilots Association poll determined that 87% of passengers believe that the current practice of separating smoking and non-smoking seating is a reasonable policy and respects the rights of all passengers.

(3) The National Academy of Sciences said there is no evidence in scientific literature showing casual exposure to tobacco smoke in public places is a health risk.

(4) Federal aviation agencies have considered rules for smoking aboard aircraft for decades in nearly a dozen rulemakings. All proposals to ban smoking have been rejected.

Your aggressive action and commitment to prevent the proposed smoking ban on domestic aircraft will be greatly appreciated by all Americans, but in particular, by those you represent who will be economically harmed and deprived of their freedom of choice.

Sincerely,

Fred G. Bond,
Chief Executive Officer.

Mr. HELMS. Mr. President, I have another letter from Bob Jenkins, W.B. Jenkins, who is president of the North Carolina Farm Bureau Federation. In it, he said:

> We believe the current restrictions provide adequate safeguards and further restrictions are unwarranted. Further, we believe the overwhelming majority of the flying public to be satisfied with the current restrictions.

I ask unanimous consent that the full text of Bob Jenkins' letter be printed in the Record at this point.

There being no objection, the letter was ordered to be printed in the Record, as follows:

North Carolina
Farm Bureau Federation,
Raleigh, NC, August 21, 1987.

Hon. Jesse Helms,
U.S. Senate,
Washington, DC.

Dear Senator Helms: It has come to my attention that the Subcommittee on Transportation of the Senate Committee on Appropriations plans to hold a hearing in the near future on the issue of banning smoking on airlines. As we view the makeup of that Subcommittee, it does not appear that the tobacco industry nor smokers can count on any of the members to be friendly toward the right of the individual to engage in his or her pleasure during commercial flights.

You are aware of the current restrictions imposed on travelers who enjoy smoking. Smoking on flights is already sharply restricted and passengers are guaranteed no-smoking seats, even if the designated smoking area has to be reduced or eliminated.

We believe the current restrictions provide adequate safeguards and further restrictions are unwarranted. Further, we believe the overwhelming majority of the flying public to be satisfied with the current restrictions.

I ask your help in getting the message to the Transportation Subcommittee that it should make no changes in the current regulations with regard to smoking on commercial airlines.

Your assistance will be greatly appreciated.

Sincerely,

W.B. Jenkins, *President.*

Mr. HELMS. John Cyrus, an important citizen from North Carolina, has been on the faculty of North Carolina State University, and has served our State and Nation well. He writes about the same subject, and he encloses a fact sheet which, as he puts it, "unquestionably shows that the current smoking and no-smoking seating areas on airlines have been very satisfactory with no discomfort to anyone."

I ask unanimous consent not only that John Cyrus' letter be printed in the Record, but also that the fact sheet which he submitted be printed in the Record.

There being no objection, the material was ordered to be printed in the Record, as follows:

Cyrus Tobacco
Consultants, Inc.,
Raleigh, NC, October 3, 1987.

Hon. Jesse Helms,
U.S. Senate, Dirksen Building, Washington, DC.

Dear Senator Helms: First, I want to thank you for your untiring efforts and good judgement in trying to serve the best interest of our great state and nation on many vital issues. I especially thank you for your diligent efforts that saved our tobacco program. There is no question that we would not have a tobacco program today were it not for your influential efforts and input.

As you are aware, tobacco leaders in North Carolina are very concerned about the proposed airline smoking ban which has been given a favorable report by the Senate Appropriations Committee. I realize that you are not a member of the Appropriations Committee; however, I urge you to use your influence with your colleagues to defeat the airline smoking ban amendment when it comes to the senate floor. I know that we can count on your influence and strong opposition to help defeat this bad amendment.

Enclosed is a "Fact Sheet" that unquestionably shows that the current smoking and no-smoking seating areas on airlines have been very satisfactory with no discomfort to anyone. Therefore, I, and the several organizations that I represent, feel very strongly that there should be no change in the current policy on airline smoking and no-smoking areas at this time.

Thank you again for your sincere efforts to represent the best interest of North Carolina and the nation as a whole in the United States Senate.

Sincerely,

John H. Cyrus,
Secretary, N.C. State Grange
Tobacco Committee.

Points to Remember About Smoking Aboard Aircraft

Legislation to ban smoking on board commercial aircraft is unwarranted and inappropriate for many reasons. Among them:

Smoking aboard aircraft is already sharply restricted; every passenger is guaranteed a "no-smoking" seat—even if a smoking section must be reduced or eliminated to satisfy that guarantee.

A 1987 Airline Pilots Association poll determined airline passengers, by a margin of 87 percent to 12 percent, believe that the "current practice of separating smoking and non-smoking passengers is a reasonable policy that respects the rights of each."

The National Academy of Sciences said late last year that there's nothing in the scientific literature showing casual exposure to tobacco smoke in public places to be a health risk. That includes airplanes.

Measurements of nicotine in aircraft cabins indicate that the amount of cigarette smoke in the nonsmoking section is so small that it would take the equivalent of 224 hours, or nine days of non-stop flying, for nonsmokers to be exposed to the "nicotine equivalent" of a single cigarette.

A smoking ban would pose serious compliance problems, and significant administrative and practical problems for airlines and passengers alike.

Some say aircraft smoking may present a "fire hazard" in the skies. But, according to National Transportation Safety Board records, since 1970, not a single airline fire has been determined to have been smoking related.

The Airline Pilots Association is particularly concerned that smoking bans may create an on-board fire hazard, by encouraging surreptitious smoking, especially in lavatories.

Federal aviation agencies have considered rules for smoking aboard aircraft for decades in nearly a dozen rulemakings. After exhaustive reviews, all proposals to ban smoking have been rejected.

Mr. HELMS. Mr. President, I thank you very much. I am going to do an unusual thing, Mr. President, I am going to send to the desk my copy of the Standing Rules of the Senate, page 10, rule XV, paragraph 5. I have it yellow overlined so the clerk can read it. I send it to the desk, and I ask unanimous consent that the clerk read it into the Record.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

From the Standing Rules of the Senate, page 10, rule XV, paragraph 5:

> It shall not be in order to consider any proposed committee amendment (other than a technical, clerical, or conforming amendment) which contains any significant matter not within the jurisdiction of the committee proposing such amendment.

Mr. HELMS. I did that for the point of emphasis, Mr. President.

And now, I raise a point of order under rule XV, paragraph 5, that this amendment is not in order.

Mr. LAUTENBERG. Would the Senator withhold that point of order for a quorum call? Is the point of order being raised?

Mr. HELMS. Yes, sir. I would like for the Chair to rule on it and then we could put in a quorum call.

Mr. LAUTENBERG. I would have to raise the defense of germaneness, Mr. President.

The PRESIDING OFFICER. The Senator will suspend.

The Senator from North Carolina is making his point of order based on rule XV, is that correct?

Mr. HELMS. Rule XV, yes, sir; paragraph 5.

The PRESIDING OFFICER. The Chair rules that the defense of germaneness is applicable to rule XVI, not rule XV.

Mr. LAUTENBERG. Mr. President, the original unanimous-consent request obviated any point of order except under rule XVI, am I not correct? Would the Parliamentarian give us a response to that?

Mr. HELMS. Mr. President, before the Chair rules, it was clearly stated to me by the manager of the bill that this provision was excepted out and that points of order would lie. And I shall be very distressed if I find that some unanimous consent other than that has been obtained.

The PRESIDING OFFICER. The Senator is correct. The amendment is an excepted amendment. No points of order have been waived. The Chair is now prepared to rule.

The Chair rules that the amendment before the Senate at this time does contain material that is under the jurisdiction of another committee and does violate the rule XV, paragraph No. 5. So the point of order is sustained.

Mr. LAUTENBERG. I appeal the ruling of the Chair.

The PRESIDING OFFICER. The Senator has a right to appeal the ruling of the Chair.

Mr. LAUTENBERG. I ask for the yeas and nays.

The PRESIDING OFFICER. The appeal is debatable.

Is there a sufficient second for the yeas and nays? There appears to be a sufficient second.

The yeas and nays were ordered.

Mr. HELMS. Now, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HELMS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

Mr. LAUTENBERG. I object.

The PRESIDING OFFICER. Objection is heard.

The assistant legislative clerk resumed the call of the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, I wonder if the Senators would be agreeable to voting on the appeal tomorrow morning at 9:30? And that that be a 30-minute rollcall vote?

The PRESIDING OFFICER. Is there objection?

Mr. HELMS. Mr. President, speaking for myself, I think that is fine. That will give the Senators a little time to think about it.

Mr. BYRD. How about the manager?

Mr. LAUTENBERG. I have no objection.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request? Hearing none, that will be the order.

Mr. HELMS. Mr. Leader, I had a memory lapse. There may be some Senators, Senator Ford, Senator Sanford who was here shortly, others, who want to speak on this.

Could we possibly move the vote up to 10 o'clock and give them time?

Mr. BYRD. Yes.

Mr. President, I ask unanimous consent that at 9:30 a.m., the Senate resume consideration tomorrow of the pending bill. The pending question at that time will be on the appeal by Mr. Lautenberg of the ruling of the Chair, which upheld the point of order raised by Mr. Helms.

I ask unanimous consent further that there be 30 minutes debate on the appeal to be equally divided between the manager of the bill, Mr. Lautenberg, and Mr. Helms, and that the vote occur—I understand that is a rollcall vote already ordered—the vote to occur, then, at 10 a.m.

The PRESIDING OFFICER. Is there objection? Hearing none, it is so ordered.

Mr. BYRD. Very well, Mr. President, there will be no more rollcall votes today.

ORDER FOR RECESS UNTIL 9 A.M. TOMORROW MORNING

Mr. BYRD. Mr. President, I ask unanimous consent when the Senate completes its business today it stand in recess until the hour of 9 o'clock tomorrow morning.

The PRESIDING OFFICER. Without objection, it is so ordered.

MORNING BUSINESS

Mr. BYRD. Mr. President, I ask unanimous consent that following the recognition of the two leaders under the standing order there be a period for morining business not to extend beyond the hour of 9:30 a.m. tomorrow and that Senators may speak during that period for not to exceed 3 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

DEPARTMENT OF TRANSPORTATION AND RELATED AGENCIES APPROPRIATIONS, FISCAL YEAR 1988

The Senate resumed consideration of the bill (H.R. 2890).

Mr. BYRD. I ask unanimous consent that the pending amendment with the appeal be set aside temporarily; that the managers may proceed with other amendments this evening before the Senate goes out. I have already announced there will be no more rollcall votes today.

Mr. HELMS. Mr. President, reserving the right to object, will the Senator indulge me just about 1 more minute? I think I had not made myself clear on one matter and I want to clarify it.

The distinguished manager of the bill, Mr. Lautenberg, raised a question about it and I think I did not give him a clear answer.

Just so that the record will be clear, I said that the amendment lost in committee by one vote. But what I meant was that the amendment would have lost if three Senators had voted the other way. I know that two of them, and I think a third one, had gone to the meeting with the intent to oppose the provision. I am fairly certain about that.

But when they got there, the vote was already going the other way. It was sort of a hot button issue, so they voted in favor of the amendment.

I wanted to make that clear, because the distinguished manager of the bill raised the question about it. I am not a member of the Appropriations Committee. I was not there. I was operating on information that had been given me and I thank the Senator.

Mr. LAUTENBERG. I thank the Senator from North Carolina.

The PRESIDING OFFICER (Mr. EXON). Is there objection to the set-aside request?

Mr. HELMS. None whatsoever.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LAUTENBERG. Mr. President, that was the point I wanted to raise.

Without objection, the amendment has been temporarily set aside as we proceed with other business.

Mr. President, we have time now to deal with some colloquies on some other amendments which we would like to move on so that when we return in the morning, the only issue that will remain is the one that we have discussed prior to this point.

AMENDMENT NO. 1095

Mr. D'AMATO. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New York (Mr. D'AMATO) proposes an amendment numbered 1095.

Mr. D'AMATO. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 40, line 4, strike $419,512,000, and insert in lieu thereof $424,050,000. And, on page 5, line 13, strike $1,952,731,000, and insert in lieu thereof $1,948,193,000.

OPERATIONS OF THE PANAMA CANAL COMMISSION

Mr. D'AMATO. Senator LAUTENBERG and I are cosponsoring a technical amendment to increase by $4.5 million the appropriation for operations of the Panama Canal Commission. It will bring the total appropriation for this item back up to $424 million—the original level reported by the Transportation Subcommittee.

This amendment is necessary to avoid triggering an unintended payment of at least $10 million under the Panama Canal Treaty to the Government of Panama. This automatic payment under the treaty would amount to nearly 30 percent of annual United States payments—about $32 million—to Panama.

This technical amendment became necessary as a result of the full Appropriations Committee's decision to cut an amount equal to 1 percent from each account in order to fund increases requested by the President for the Coast Guard and the FAA. The Panama Canal Commission was inadvertently included in the 1-percent cut.

I have opposed further economic and military aid to Panama because of the many despicable acts committed by General Noriega and his continued disregard for the rights of the people of Panama. It would be a tragedy to generate unintended profit payments under the treaty when it can easily be avoided.

The Panama Canal Treaty of 1977, article XIII, paragraph 4(c), provides that payments of up to $10 million are to be made to Panama, out of appropriations, to the extent that operating revenues exceed expenditures of the Commission. The administration requested $430 million for canal operating expenses in fiscal year 1988; however, the Commission has revised its revenue estimates and now needs only $424 million to avoid a large profit payment to Panama. Our amendment would provide that level of funding.

Since fiscal year 1980, the United States has paid Panama $6.9 million under this provision of the treaty. It recently paid an additional $2 million in profits earned by the Commission in fiscal year 1986. Moreover, the so-called profit payment is cumulative and any reduction in the appropriation request would generate a profit which would be payable to Panama in the future. There is now $73.1 million payable to Panama under the profit-payment provision. About $10 million would be added to that sum if we fail to pass this amendment.

The amendment moves $4.5 million from Coast Guard operations to canal operations—not a penny is added to the bill.

A cut of Commission funds will simply result in treaty-mandated profit payments to Panama, rather than reducing the deficit. That is why Congress exempted the Commission from the Gramm-Rudman-Hollings law.

Mr. President, this is a technical amendment to increase by $4.5 million the appropriations for the operation of the Panama Canal Commission to bring the total appropriation for this item back to the original amount reported by the Transportation Subcommittee.

Mr. President, this amendment is absolutely essential. I move its adoption.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment.

The amendment (No. 1095) was agreed to.

Mr. D'AMATO. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. LAUTENBERG. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1096

(Purpose: To provide funding for the Congressional Award Board)

Mr. D'AMATO. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER (Mr. ROCKEFELLER). The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New York (Mr. D'AMATO) proposes an amendment numbered 1096.

Mr. D'AMATO. I ask unanimous consent, Mr. President, that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 41, between lines 17 and 18, insert the following:

CONGRESSIONAL AWARD BOARD

CONGRESSIONAL AWARD PROGRAM

Notwithstanding any other provision of law, there is appropriated to the Congressional Award Board (established by Public Law 96-114; 2 U.S.C. 801) the sum of $275,000 to remain available without fiscal year limitation: *Provided*, That notwithstanding any provision of such Public Law 96-114, such sum shall be used by the Congressional Award Board in the same manner and for the same purposes, and subject to the same limitations, as are funds donated to such Board by private individuals.

Mr. D'AMATO. Mr. President, this is a noncontroversial amendment. It has been cleared on both sides of the aisle.

Mr. President, this amendment provides an emergency appropriation of $275,000 to the Congressional Award Program to pay for salaries and other administrative purposes.

The Board of Directors has made every effort to develop a broad base of financial support from the private sector, raising approximately $4.5 million during the last 7 years and will continue vigorous efforts to raise additional funds.

A funding raising campaign was launched by the national Board of Directors in the beginning of 1987 to secure renewable annual contributions from private sources. However, the lack of awareness of the program has hampered this effort.

The current fundraising efforts will not provide results in time to be of immediate assistance. Therefore, unless there is an emergency appropriation, the Board, in order to avoid incurring further debts, will have to seek the authority to close down the national office.

In order to maintain a national office until reauthorization in 1988, the Board, therefore, is seeking an appropriation of $275,000 to meet expenses and to pay off existing loans. This appropriation will also have the effect of establishing the program nationally and raise public awareness of the program to attract private sector support.

Senators BYRD, DOLE, SIMON, and WALLOP—national Board members—support this amendment.

Mr. President, I move the immediate adoption of this amendment.

Mr. LAUTENBERG. Mr. President, we have approved this amendment.

There is no objection on our side. It is a valuable program and the need for action is now.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 1096) was agreed to.

Mr. D'AMATO. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. LAUTENBERG. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. CHAFEE. I would like to engage the distinguished floor managers of the Department of Transportation and related agencies appropriations bill in a brief but very important colloquy.

There is a proposal before the Rhode Island Coastal Resources Management Council which would allow the development of a new ferry terminal in Great Salt Pond on Block Island. A major concern among my constituents is that this ferry terminal, if it becomes functional, could have an adverse impact on boating safety, both recreational and commercial, in Great Salt Pond. Large ferry boats cutting a path among hundreds of sailboats and other vessels could pose safety problems.

I would like the distinguished floor managers of the bill to strongly consider, during the House/Senate conference on this bill, requiring the Coast Guard, which has jurisdiction over boating safety considerations, to provide a detailed report addressing boating safety concerns if the proposed ferry terminal were approved.

Mr. D'AMATO. I thank the distinguished Senator from Rhode Island for raising this issue, and bringing this concern to our attention. I also am concerned that projects such as the proposed ferry terminal on Block Island take full account of safety considerations. I can assure the Senator from Rhode Island that I will give every consideration to including language in the House/Senate conference report that would require the Coast Guard to conduct a study to determine what effect the proposed ferry terminal would have on the safety of boats using Great Salt Pond.

Mr. LAUTENBERG. I share the same concerns as my colleague from New York, and concur with his statement.

Mr. CHAFEE. I thank my colleagues for their consideration.

HIAWATHA AVENUE CORRIDOR DEMONSTRATION PROJECT

Mr. DURENBERGER. Mr. President, the House-passed Department of Transportation and related agencies appropriations bill (H.R. 2890) contains $9.8 million for an intermodal urban demonstration project in Minneapolis, MN. This project, first authorization 1974, involves the upgrading of Hiawatha Avenue between Franklin Avenue and 59th Street, South.

As the chairman and ranking member may recall, the fiscal year 1986 appropriations bill contained $2.75 million for advance design and engineering of the project. Last year, in passing the fiscal year 1987 appropriations bill, my consitituents were the beneficiaries of an additional $10 million in funds of the project.

And so it is with some surprise that I note that the House-recommended funding for this project has been deleted. In light of the committees past support of this project, I wonder if the two managers could respond to a series of questions I have about the committee's action.

First, Mr. President, can the chairman explain why funds for this project were deleted.

Mr. LAUTENBERG. Mr. President, I would be delighted to. First, as the distinguished senior Senator from Minnesota knows, in an attempt to stay within its 302(b) allocation the committee was forced to delete funds for virtually every House project. Most of these projects, including the Hiawatha project, were very meritorious, and it troubled the committee to delete them. But we really had no choice.

Mr. D'AMATO. Mr. President, I want to associate myself with the chairman's comments. We had both received written and verbal communications from both of the Minnesota Senators prior to the subcommittee's markup of the legislation, a fact which made our decision even more difficult to make. But in the end, and as the chairman stated, we had no choice but to delete funds for virtually every House project.

Mr. DURENBERGER. Mr. President, I wonder if my two distinguished colleagues could indulge me in one further question. If I recall correctly, we have had similar colloquys on this project in the past. Both Senator BOSCHWITZ and myself, in our continuing efforts to serve the State of Minnesota, have sought reassurance from the subcommittee that our project would not be forgotten in conference. And while the chairman and ranking member were unable to give us an ironclad commitment to recede to the House position on this project in the past, my faith has always been restored when the conference report is filed, as funds have always been forthcoming. What I would like to ask my two colleagues at this point is whether the committee is likely to respond as it has in the past?

Mr. LAUTENBERG. Mr. President, as the new chairman of the Subcommittee on Transportation, I want to reassure my colleagues from Minnesota that, if anything, I am consistent. I place a great deal of importance on precedent, and the past support for this project is a strong precedent indeed. Accordingly, while I am unable to state unequivocally that the House position on this project will prevail in conference, I will say that if you had asked me this question 1 month ago I would have told you that this project's chances were greater than the Twins winning the World Series. In short, I will do everything I can to accommodate the needs of the World Champion Twins and their Senators.

Mr. D'AMATO. Mr. President, the chairman makes an excellent point here. First, the committee's action should not be seen as its view on the merits of the project. As our past actions indicate, we believe this is an excellent project.

Second, and on a lighter note, last July, when the Yankees were tearing through the American League West, I felt very confident that the East would represent the American League in the World Series. I did not give the Twins a chance of winning the West, let alone beating the Eastern Division champ for the right to advance to the Series. But I was wrong about the Yankees and the Twins. And I will do my best to make amends for the committee's position on this most important project when we go to conference with the House.

Mr. BOSCHWITZ. Mr. President, I want to associate myself with the comments made by all of the Senators concerned. This project is extremely important to Minnesota and it is somewhat disheartening to see it fall victim to the realities of the appropriations process in the Senate. The comments of my colleagues have made the lack of funding in the Senate bill a little easier to bear.

NORTH CHANNEL BRIDGE REPLACEMENT PROJECT

Mr. D'AMATO. I would like to engage the very distinguished chairman of the Transportation Appropriations Subcommittee in a brief colloquy concerning a very important bridge project.

Mr. LAUTENBERG. I would be pleased to join my friend in a discussion of this project, with which I am familiar.

Mr. D'AMATO. I thank my colleague. It is my understanding that the highway bill which was enacted into law earlier this year authorized $225 million annually for the discretionary Highway Bridge Replacement and Rehabilitation Program.

Mr. LAUTENBERG. The Senator is correct.

Mr. D'AMATO. It is also my understanding that historically the Federal Highway Administration is generally responsive to the views of Congress in allocating these discretionary funds, and has sometimes given preference to bridges which Congress has identified for priority treatment.

Mr. LAUTENBERG. My colleague is again correct.

Mr. D'AMATO. As the manager knows, the North Channel Bridge over Jamaica Bay in Queens, NY, is in terrible condition. It has been rapidly deteriorating over the past several years, and the drawbridge over the main channel has not been operable since 1978. This bridge, which carries about 24,000 vehicles daily, is urgently in need of replacement. In addition it provides the only access from the Queens mainland to the community of Broad Channel. Does the Senator agree that this important project should be accorded full consideration by the Federal Highway Administration?

Mr. LAUTENBERG. I understand and share the Senator's concerns with this project, which I believe deserves to be carefully reviewed by FHWA.

Mr. D'AMATO. I thank the manager for his views and his comments.

Mr. CHILES. Mr. President, each appropriations bill is subject to a spending limit known as a 302(b) allocation. As chairman of the Senate Committee on the Budget I am pleased to report that the transportation appropriations bill, H.R. 2890, is under its 302(b) budget authority ceiling by less than a million dollars and under its 302(b) outlay ceiling by $100 million. I commend the distinguished chairman of the subcommittee, Senator Lautenberg, and the ranking minority member Senator D'Amato for their success in crafting this bill.

Mr. President, I have a table from the Budget Committee showing the official scoring of the transportation appropriations bill and I ask unanimous consent that it be inserted in the Record at the appropriate point.

There being no objection, the table was ordered to be printed in the Record, as follows:

Senate Budget Committee Scoring of H.R. 2890

TRANSPORTATION—SPENDING TOTALS (SENATE-REPORTED)

[In billions of dollars]

	Fiscal year 1988	
	Budget authority	Outlays
Bill scoring:		
H.R. 2890, Senate-reported (new Budget authority and outlays)	11.1	9.9
Outlays from prior-year budget authority and permanent appropriations		17.5
Bills enacted this session: 1987 Supplemental (Public Law 100–171)		+0.1
Adjustment to conform to mandatory programs to resolution assumptions	+([1])	+([1])
Bill total	11.1	27.4
Subcommittee 302(b) allocation	11.2	27.4
Difference	−0.1	−([1])
Comparisons:		
Bill total above (+) or below (−):		
President's request	+2.6	+1.2
House-passed bill	−0.1	+([1])

[1] Less than $50 million.

Note.—Details may not add to totals due to rounding.

Source: Prepared by Senate Budget Committee.

BELLINGHAM AIRPORT MOBILE AIR CONTROL TOWER

Mr. ADAMS. Mr. President, I rise to discuss with the distinguished manager of the bill an issue of much importance to the State of Washington. The Bellingham International Airport in northwestern Washington is currently experiencing a significant increase in traffic. Since November 1985, passenger traffic has increased 260 percent. In recognition of this fact, and the safety ramifications of the increased traffic, the Department of Transportation Appropriations Act includes funds for the establishment of a mobile air traffic control tower at the Bellingham airport.

Senator Evans and I appreciate the assistance of the distinguished manager of the bill in this matter. Both of us have discussed this issue a number of times with the distinguished manager and he has always been willing to consider our concerns. Establishing an air control tower at Bellingham is of critical importance in maintaining safety and performance standards at the airport and we hope that a mobile tower could become manned and operational as soon as possible; certainly no later than April 1, 1988.

Mr. LAUTENBERG. I thank the distinguished Senators from the State of Washington for bringing this matter to my attention. We have discussed this previously and I appreciate their concern for aviation safety. I would like to assure the Senators from Washington that it is the intent of the committee that funding for mobile air traffic control towers includes funding for personnel. Because the mobile tower in question is already constructed and the funds for Bellingham would become available immediately for fiscal year 1988, I would expect that the mobile tower would be operational very shortly thereafter.

Mr. ADAMS. We thank the distinguished manager for his assistance.

PITT-GREENVILLE

Mr. SANFORD. Mr. President, I call to the manager's attention a situation in North Carolina which I find especially troubling.

In 1981 Pitt-Greenville airport was approved by the FAA for an instrument landing system. In late 1981, however, the FAA announced it would no longer install ILS systems but would instead install the more advanced microwave landing system. Due to delays in implementation of MLS, improvements in the ILS, and widespread doubts about the value of the microwave system, the FAA has on a selected basis once again begun installing the ILS.

When the FAA approved Pitt-Greenville for an ILS, the airport enplaned 4,143 passengers annually. In 1988 Pitt-Greenville estimates they will enplane almost 45,000 passengers. It seems to me that no airport which enplanes over 45,000 people ought to have to do so without the benefit of an adequate landing system.

The FAA has recently notified Pitt-Greenville airport that they are scheduled to receive an MLS in December 1988. The problem is, there are currently no airports in North Carolina equipped with the microwave system. Furthermore, Piedmont Commuter and American Eagle, the two commuter lines that fly into Pitt-Greenville, have notified airport authorities that they have no intention of installing microwave receivers in the aircraft that fly into the airport. Therefore, the MLS will provide no benefit to either the airport or the airlines.

Mr. President, in the committee report accompanying the bill under consideration the committee states that it expects FAA to monitor air traffic operations in various locations with the objective of validating the need for additional instrument landing systems.

Would the Senator from New Jersey agree that the Pitt-Greenville Airport, which received prior FAA approval for an ILS with about 4,200 enplanements a year, and now expects to have about 45,000 next year, should be included among those locations to be monitored by FAA with the objective of revalidating its need for an ILS?

Mr. LAUTENBERG. I agree with that, and I appreciate my distinguished colleague from North Carolina bringing this matter to the committee's attention.

FLINT-BISHOP

Mr. RIEGLE. Mr. President, I would like to address a question to the chairman of the Transportation Appropriations Subcommittee. The Flint-Bishop Airport, which is located in my hometown of Flint, MI, is currently undergoing expansion and modernization. One of the key features of this work involves the relocation of Bristol Road, which is the main access road to the airport.

The FAA has indicated that Bristol Road, in its current location, presents a hazard to aircraft. Indeed, there have been accidents involving aircraft in their final approach and vehicular traffic. This has caused the FAA to close 800 feet of one of the main runways. Thus, the efficiency of airport operations is severely constrained, as are any possibilities of expansion and modernization.

The FAA has further indicated that in order to permit larger aircraft, the Design Group IV models, on this runway with precision instrumentation, Bristol Road and the blast fence which is currently located there to protect traffic must both be relocated to provide for the FAA-required 1,000-

foot runway safety area and the removal of FAA part-77 penetrations.

Mr. President, I note that the committee report accompanying this bill lists a number of airports for priority consideration in the allocation of AIP discretionary funds. I would like to ask the chairman of the Transportation Appropriations Subcommittee whether it would be possible to include Flint-Bishop airport on the FAA priority list for funding projects in fiscal year 1988.

Mr. LAUTENBERG. Mr. President, the committee has reviewed this matter, and we agree with the Senator from Michigan that Flint-Bishop airport should be placed on the FAA priority list for fiscal year 1988.

Mr. RIEGLE. Mr. President, I thank the distinguished chairman of the Transportation Appropriations Subcommittee for his consideration in this regard.

Mr. LAUTENBERG. Mr. President, I think that we have completed our business for the day and I yield the floor. Tomorrow morning we will return to this bill as requested by the majority leader under his unanimous-consent request made earlier. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DURENBERGER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. GRAHAM). Without objection, it is so ordered.

THE MINNESOTA TWINS—WORLD CHAMPIONS

Mr. DURENBERGER. Mr. President, I ask unanimous consent to set aside the pending business so that I might send a resolution to the desk for immediate consideration by the Senate, a request which has been cleared on both sides of the aisle.

Mr. BYRD. Mr. President, there is no objection. It has been cleared on this side.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report.

The assistant legislative clerk read as follows:

A resolution (S. Res. 307) to recognize and congratulate the Minnesota Twins as the World Champions of baseball.

S. RES. 307

Whereas, the Stock Market has had troubles of late, there is unrest in the Persian Gulf, and the polar ice caps are melting, but there is joy in the Upper Midwest because the Minnesota Twins won the World Series October 25, 1987 by defeating the tenacious and speedy Saint Louis Cardinals in a climactic seventh game; and

Whereas, the Minnesota Twins, who last year were 20 games below .500, in 6th place, and expected to have a similarly dismal year this year, overcame these adverse projections in the truest Minnesota underdog fashion to surprise the experts and win it all; and

Whereas, the Twins have top-notch management from Carl Pohlad, the owner who provided continual support and leadership, to President Jerry Bell who brought Minnesota to the Dome, to Andy McPhail who comes from a long line of baseball leaders and recognizes talent, to Tom Kelly, the youngest manager in the major league and the fifth rookie manager to guide his team to a World Series victory and the first born in Minnesota; and

Whereas, Sunday's victory is the first World Series victory for the franchise since 1924—when the Twins were the Senators and played in Washington, D.C.; and

Whereas, fan support for the Twins during the play-off and the World Series played a key role in making the Minnesota Twins the only team in history to win the World Series without winning a game on the road and giving them the best home record in baseball; and

Whereas, Peter Ueberroth, Commissioner of Baseball, who said the Minnesota fans are the "best baseball fans I have ever seen" should have added "heard," since the roar of the fans frequently neared the decibel level of a jet taking off; and

Whereas, the Twins won the Series through a combination of well-known power, including two grand slams, and hitherto unrecognized stellar defense—the Twins had the best fielding percentage in the American League; and

Whereas, the Homer-hanky is now a household term as well as a rally flag inspiring the Twins to victory;

Whereas, a number of United States Senators, recognizing the quality of the Twins as a baseball team and the good natured enthusiasm of their fans, have accepted an offer to become honorary Minnesotans; and

Whereas, the Minnesota Twins have now shown the world what Minnesotans and citizens of the upper Midwest have known all along: they are a class act, and, along with their fans symbolizing for the world the Minnesota character: style, grace, under pressure, enthusiasm tempered by politeness, creativity and panache, and the will and determination to overcome odds of 150 to one and the doubts of basebell writers and fans alike;

Therefore, be it resolved, That the United States Senate recognizes and congratulates the Minnesota Twins as World Champions, both individually and as a team, epitomizing the highest standards of sporting competition and enthusiasm.

The Senate proceeded to consider the resolution.

Mr. DURENBERGER. Mr. President, I rise in support of the pending resolution commending and congratulating the Minnesota Twins on their first world championship. I do so with deep appreciation for and profuse congratulations to the Minnesota Twins' players, coaching staff, and management with the knowledge that I am probably about the 101st senior Senator from my State to rise in 101 consecutive years to do something similar to this, and the closest I am ever going to get to the Cooperstown Baseball Hall of Fame.

Over the last two weekends, I have had the privilege of being a part of the greatest sports crowd in history. For four exciting games, I became a part of a pulsating, throbbing, 55,000 plus throng which roared its way into the record book. Everyone who was there can attest to the enormous amount of electricity and fervor which was generated and imparted not only to the Twins' players and fans, but to the entire World Series audience. Throughout Minnesota, I saw an aura of pride and determination emanating from every face. There was a universal intuition that this year, the Twins were destined to be world champions.

The manner in which the Twins won the world championship created several new chapters in the annals of the World Series. Down 3 games to 2, having lost three consecutive games in their opponent's stadium, the Twins valiantly rallied from behind to win the final two games at the Metrodome, thereby, winning the World Series and becoming world champions. The World Series, for the first time ever, was won entirely at home.

The Twins entered the season and post-season play unjustly underestimated by baseball's seers. The seers failed to fully gage the character and competitiveness possessed by the Twins. They misjudged the energizing effect of the Metrodome generated by thousands of enthusiastic Twins fans. Consequently, they were greatly surprised when the fans they considered long suffering and stoic showed themselves to be ebullient. I could sense the electricity created by the ear-splitting din and clamor of the homer hanky waving fans inspired the Twins to invincible play.

On the road to the World Series, in the American League championship series, the Minnesota Twins stunned the Detroit Tigers by defeating the pride of the American League Eastern Conference 4 games to 1. This was the first time in 22 years that the Minnesota Twins had captured the American League pennant. This win created a showdown between the Twins and the St. Louis Cardinals, a classic confrontation between the power and youth of the Twins versus the speed and finesse of the Cardinals.

As I commend the Twins I cannot overlook the National League champions, the St. Louis Cardinals. All season long, it seems that the gremlins of mischief and misfortune conspired against the Cards. Despite plaguing adversity, the Cardinals played superb baseball, successfully fending off a late season surge by the New York Mets, to win the National League eastern division. The St. Louis Cardinals grabbed the National League pennant by defeating the powerhouse San Francisco Giants in an exciting come-from-behind seven-game play-off.

I might, as I am standing here, recognize the presence of the springtime home of the Minnesota Twins. I remind everyone that Tinker Field in Orlando, FL, is the alternative home of the Minnesota Twins. It is each spring, in the sunshine of Florida, that this talent from the North sprouts, and in this particular year became the pride of America.

The scenario for the World Series was finally set. The Twins and their fans were confident that their power and enthusiasm would prevail against Cardinal speed and finesse. In addition, the prospect of four games in the Metrodome heartened even the most cautious Minnesota Twins fans.

The 1987 World Series was one of the most exciting series of all time. Each of the seven games was filled with tension and exhilaration.

In game 1 the Twins backed the sterling pitching effort of Frank Viola with an awesome display of offensive power culminating with Dan Gladden's grand slam, the fall classic's first since 1970.

In game 2, the Twins repeated the scenario of game 1 by backing Bert Blyleven's pitching with another prodigius display of offensive might, highlighted by Gary Gaetti's and Tim Laudner's home runs and Randy Bush's headfirst slide at homeplate.

In games 1 and 2, the impact of the Metrodome crowd was undeniable. The roar we generated was so intense that the Cardinals wore earplugs. When the Twins batted, the homer hankies were vigorously waved. In game 1, the decibel level soared to unprecedented heights when the loaded basepaths were cleared by Dan Gladden's grand slam. The combined effects of the Twin's play and the Metrodome's crowd could clearly be observed as the Cardinals play grew ever more tenatative and demoralized.

However, in games 3, 4, and 5, played in St. Louis' Busch Stadium, the Cardinals regained their composure and used their superb pitching to hold the Minnesota bats at bay while reasserting their baserunning prowess. In the process, the St. Louis Cardinals beat the Twins 3 to 1, 7 to 2, and 4 to 2.

In game 3, the Twins started the underappreciated Les Straker against the Cardinal ace John Tudor. For 6 innings they dueled. In the bottom of the 7th, the Twins took a 1 to 0 lead, but the Cardinals rallied using their peerless baserunning skills to score three runs.

Game 4 was all Cardinals as the Twins were stunned by Tom Lawless' second career home run. On the bright side, a Niekro, Joe, finally pitched in a World Series game.

In the final game at St. Louis, the courageous pitching effort of Bert Blyleven could not avail against the resurgent baserunning antics of the Cardinals. Vince Coleman stole two bases and scored twice as St. Louis won in the Cardinal way 4 to 2.

The Series now headed back to Minneapolis where the Twins would test history to see if they could become the first team ever to win the World Series solely by victories at home.

Early in game 6 last Saturday, the St. Louis Cardinals took a 5 to 2 lead, taking advantage of struggling Minnesota pitching. But the Metrodome crowd would not allow the Twins to fail. With a steadily rising crescendo of crowd support, the Twins were motivated to reach down into themselves and awaken the long slumbering bats of Kirby Puckett and Kent Hrbek. In the fifth, as the decibel level rose, the Twins rallied to a 5 to 5 tie on Don Baylor's two-run homer. To the heightened din later in that inning, Steve Lombardozzi singled Tom Brunansky home for the sixth and game-winning run. Nevertheless, the outcome of the game still teetered in the balance when the Twins' Kent Hrbek smote the Cardinals' Ken Daley's first pitch deep into the centerfield seats for the Series second grand slam causing a deafening tumult. Almost as an anticlimax, the timely relief pitching of Berenguer and Reardon sealed the outcome of game 6 as a Twins victory.

The World Series championship now boiled down to a one-game confrontation. The Twins started the Series' soon-to-be announced most valuable player, Frank Viola, who endured a rocky second inning to pitch almost flawlessly through the end of the eighth. The Cardinals responded to Viola's superior pitching with one spectacular defensive play after another, particularly at homeplate, holding in check the spirited Minnesota offensive efforts. Finally, the Twins were able to breach St. Louis' defense and score the final two runs of their four run attack. The winning run was scored by Tom Brunansky as Greg Gagne beat the throw from third for an infield single. In the bottom of the eighth, the Twins scored an insurance run as Tim Laudner scored from first on Dan Gladden's double.

I can see why President Reagan was a baseball announcer and I was not.

In the top of the ninth, Twins manager Tom Kelly replaced Viola with ace reliever, Jeff Reardon, as he had done all season. From Reardon's first pitch it was clear that he had his best stuff and the "fat lady" could be heard warming up. Three outs later, pandemonium enveloped the metrodome.

Mr. President, Sunday night, the Minnesota Twins lifted a heavy burden from the souls of Minnesota sports fans by refuting the spurious reputation of Minnesota as the "home of the runner up," condemned to a Teutonic angst by Loki, the mythological nordic god of Fortune and mischief. Despite the experts' evaluations, the Minnesota Twins made believers of all of us. For once, nice guys finish first.

Mr. President, I move the adoption of the resolution.

The PRESIDING OFFICER. The question is on agreeing to the resolution.

The resolution (S. Res. 307) was agreed to.

The preamble was agreed to.

Mr. DURENBERGER. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ARMSTRONG. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE ECONOMY

Mr. ARMSTRONG. Mr. President, there are those who have a view of history that it is cyclical in nature, that it endlessly repeats itself. In fact, one of our most distinguished historians recently wrote a book which implied that history was an endless repetition of cycle after cycle, the same thing happened albeit to different people over and over again.

I do not know whether or not there are many in the Senate who believe that. I hope not; that is the pessimistic view of the situation, although if one is a keen viewer of human nature there is always plenty to be pessimistic about.

I myself hold a higher view of human capacity than to think we are obligated by some predetermined historical precedent to simply mindlessly repeat the mistakes and errors or even, for that matter, the triumphs of the past.

I think we have the ability within our hands at least to influence, if not to absolutely control, our destiny.

This comes to mind today because of the eerie parallel between what is happening in the stock market and the response of the Congress and the President with what happened this month 60 years ago.

As we all know in October of 1929 there was a cataclysmic drop in the value of stocks listed on the New York Stock Exchange and on that occasion in 1929 stocks dropped by some 52.9 percent, a parallel with our own time which is certainly, I think, a matter to give us all pause.

What concerns me, however, is that we would fail to learn from what happened in the days and weeks and years following what was then known as Black Monday when the stocks dropped by such a precipitous amount setting off a landslide resulting ultimately in a decline of about half of the value of stocks listed on the New York Stock Exchange.

What happened, which was forgotten, within a matter of a few weeks, stocks had recovered and by April in the year following not only had the New York Stock Market recovered what it had lost on Black Monday, it had actually reached a level of 30 percent above its peak in October of the year before.

What happened then and why do we associate Black Monday with the start of the Great Depression?

Mr. President, I do not think the stock market triggered the depression. I think it was a response of Congress and the President to that occasion, and that is what concerns me tonight. It is the counsel which I hear whispered around the Chamber, in the cloakrooms, and even shouted on some of the editorial pages of our country that this Congress, the 100th Congress, ought to follow the precedent established by Congress 60 years ago and that our President should do exactly what President Hoover did.

Believe it or not, the first thing that President Hoover did was to announce that he was going to sign a highly restrictive piece of trade legislation, what came to be known as the infamous Smoot-Hawley Tariff Act. Is it a strange coincidence, a strange turn of fate, that there resides in the conference committee between the House and Senate a similar piece of restrictive trade legislation?

Well, the stock market's reaction to President Hoover when he said he would sign the infamous Smoot-Hawley bill was to decline, and sharply. Investors knew that the ability of foreign persons, foreign investors in the stock market, foreign debtors to repay loans from U.S. banks, depended on their ability to export freely to this country, a situation which is paralleled in our own times.

After Smoot-Hawley became law, many countries established retaliatory tariffs and the Nation's recession grew worse. In 1930, the gross national product fell 9.8 percent. In 1931, the GNP fell another 6.7 percent. this is very much on my mind today, Mr. President, because this morning I consulted privately with an economist whose judgment I trust. He is not one of the famous names, but, in fact, he is a person who is active on Wall Street and whose record is good.

His forecast for next year has been that the economy would grow, after adjusting for inflation, by approximately 3 percent in 1988. In light of what has happened, he believes that we will do well to have a flat economy in 1988 and that we may see a real decline of as much as 1 percent. We can live with this. I hope he is too gloomy. I hope his predictions will not prove true.

But the real danger is if we react in the wrong way to the market crisis by enacting legislation which looks like Smoot-Hawley. And we have got a humdinger of a trade bill which is being worked on right now by the Senate and the House conferees. I just hope that those conferees are mindful of what happened when President Hoover signed the Smoot-Hawley bill 60 years ago.

The second thing which happened in 1930 which economists and historians believe had a major influence in creating the debacle which has come to be known as the Great Depression is that the Federal Reserve sharply constricted the money supply.

Mr. President, everybody is second guessing what happened to the market and I guess this is my turn to do so. I am personally convinced that the catalyst—if you want to single out a single factor which more than anything else was the match to the gasoline that ignited the dramatic slide in the stock market here in the last few days, it was money supply—was when the Federal Reserve tightened in the wrong way or too quickly or too much. And I am not wise enough or experienced enough in managing the Nation's money supply to really tell you what happened precisely. But it is very, very clearly that the instant that crystallized, the doubt and suspicions and fears, which have been growing in the minds of American and foreign investors, was in fact the move of the Fed to righten the money supply. And to their credit—and I do congratulate Chairman Greenspan and the others involved—the Fed had backed off of that and supplied liquidity which the market needs in order to at least tread water and hopefully regain some of the lost ground.

The third thing that happened and was parallel with our own time and one which concerns me the most—because I sense so many of my colleagues here in the Senate have been taken in by the talk of a tax increase—the third parallel is tax policy. President Hoover proposed in 1931 a series of tax increases in order to curb the Federal budget deficit. Without going into details, it is simply a matter of historical fact that Mr. Hoover, as a hard-nosed budget balancer—and I consider myself to be one, as well—thought that the way to close the gap between revenues and spending was to raise taxes, and it had exactly the opposite effect.

Now, what really happened was that business activity was dampened, profits were curtailed, confidence was eroded, the stock market fell further, factories closed, businesses failed, jobs were lost in a cycle of self-perpetuating poverty.

It is hard to understand why, in light of this experience, the clear historical record, why Senators and the press would be clammering at this time for a tax increase as the preferred way to close the gap that we new have between Federal spending and revenues. It is just confounding to me, Mr. President, that, having tried this ruinous policy on a grand scale with disastrous results, some would advocate that we do it again.

And yet, day after day what we hear is: "It is time for a tax increase. The President should come to the table and bargain for a tax increase; that unless we can have a tax increase, we cannot get any spending cut."

Mr. President, I think the record is very clear that the tax increase failed in the 1930's and that, in fact, the tax increases of the period we are just concluding, the last 5 years, have contributed materially to the stagnation of some segments of our economy.

Indeed, people whose judgment I trust say that it was the prospect of a tax increase, and especially the insidious form of the tax increase, that also contributed heavily to the decline on Wall Street and set the stage for what many people think is a serious economic crisis—and I am one who does.

As you know, the market crashed almost immediately when investors came to the realization that the Senate Finance Committee had revved up a big tax increase and that the House Ways and Means Committee had done the same thing. Investors concluded that a tax increase was likely.

As one of them put it: I think I will invest in taxes. That is what seems to be going up.

Worst of all, a tax increase at this time is bad enough under any circumstances, but worst of all there was contained in the House Ways and Means Committee version of the tax bill some highly specific provisions which, in the opinion of stock traders and investors, was just absolutely guaranteed to strike terror in the hearts of those whose business is to manage investments.

Specifically it was a provision which disallowed the carrying costs on corporate takeovers.

A lot of the economic activity of this country, whether you like it or not, has to do with that kind of trading. When the people who finance such acquisitions came to the realization that there might, in fact, be enacted into law a statute which would disallow the interest, the carrying costs on such transactions, a lot of those transactions came to a screeching halt.

Mr. President, in addition to the experience that we have just had in the last few days, mirroring that of the 1930's, we can look back over the last 4 or 5 years at a series of tax increases enacted by Congress and signed into law by the President and ask ourselves, in the light of what we have been through, what is the prospect that tax increases will actually help narrow the deficit, even if the economy could survive such tax increases?

When you think back about TEFRA and DEFRA and COBRA and OMBRA higher Social Security taxes and payroll taxes and the others, the sum total of it is that we have increased taxes by about a trillion dollars during the last 4 or 5 years and have almost completely offset the great and highly praised tax cuts of 1981.

This is one of the best kept secrets in the world today. People think that under the leadership of President Reagan that Congress has cut taxes drastically. The truth of the matter is what we have cut is the marginal rates for individuals and in the process we have actually raised taxes on many, many business concerns. Because, as business men and women know full well, payroll taxes, which have been dramatially increased by this Congress, are a much larger economic fact of life for most businesses than is the Federal income tax.

In addition, while we lowered the rates on individuals—and I support that and think it was wise for us to do so—we have changed depreciation rules in the real estate business in a way which has precipitated a depression, and it is not an exaggeration to call it that, a depression in the office rental markets and other aspects of the real estate business.

I want to send to the desk a table, for the benefit of my colleagues, which outlines the tax increases for recent years and compares it with the tax cuts which we have enacted. The long and short of it is we come up with about a trillion dollars in tax increases in 1982, 1984, 1985, 1986, and then the Social Security and gas tax increases of 1983.

Then I would also like to put in the Record a summary of the tax cuts so that my colleagues can compare where we have been and where we might want to go from here.

Mr. President, I ask that the documents be printed at the conclusion of my statement.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. ARMSTRONG. I think any careful study of this information makes it clear that we have not had a dramatic tax cut in this country.

I would also like to make this point: even if I thought a tax increase was good for business—and I believe it would be a dreadful setback for most business activities, including the stock market—there is very, very little evidence to suggest that a tax increase will have the effect of reducing the Federal budget deficit.

Some people may think that we are undertaxed, but the record, it seems to me, is pretty clear that we are overspent. I would just like to call the attention of my colleagues to some basic facts about the spending record of this Congress.

A lot of people in this Chamber and elsewhere are acting as if we have drastically reduced Federal spending, acting as if we had drastically cut back on many programs of the Government, and that it is, therefore, impossible to make further large reductions in order to balance the budget.

When this comes up, I hope my colleagues will consider that the appropriations bills already enacted by this Chamber, passed by this Chamber, exceed the request submitted by President Reagan by some $18 billion.

In addition, if you look at the record of the other body, the House of Representatives sent to us appropriations bills in this year which exceed the President's request by $14.9 billion.

The Senate version of the HUD appropriations bill alone is $5.7 billion above the President's request, and the House exceeds the President's budget by over $6 billion. The Labor-HHS bills in both the House and Senate exceed President Reagan's request by approximately $9 billion. In addition, the transportation appropriation is over by $2 billion. It is my recollection that earlier this year the Senate and House voted to override the President's veto of the clean water authorization which exceeded his recommendation by $6 billion, and to spend over his veto of the highway authorization $10 billion more than Mr. Reagan had recommended.

So I think it is time for us to face up to the fact that we have not cut anything.

In fact, we have created new programs, we have funded lavishly popular programs than have been in existence. And as recently as 24 hours ago, on the very day when our senior leaders, the chairman of the Appropriations Committee and the ranking member and their counterparts on Finance and Budget, together with the majority leader and minority leader, went into a closed meeting with their counterparts from the House to consider ways to balance the budget—on that very day the U.S. Senate celebrated the occasion by enacting or at least passing, leading perhaps to enactment, the largest increase in entitlement programs that we have seen in this country in a quarter of a century, entitlement programs whose exact cost is very much in doubt, but which is estimated to be approximately $25 billion for the next few years.

We also have revving up a number of other bills which, if enacted, would tremendously increase Federal spending this year and in years to come. There is a welfare reform bill floating around which purports to be a way to sort of straighten things out in welfare. I am led to believe that one version of it would cost about $5 billion in the next 4 years; the other, the House version, would cost over $5 billion.

We have pending—I hope it will never come into law, but it has been passed by this Chamber and it is now in conference—a new housing subsidy program, the effect of which would be to permit interest free loans to a large groups of people at an initial cost of $100 million. It undoubtedly would be expanded very quickly.

The trade bill, which contains many additional features, many programs which I personally support, also proposes to authorize at least 18 new Federal programs, State agencies, offices, advisory panels and commissions and mandates at least 165 new reports, studies and evaluations and will require between 500 and 1,000 new Federal employees to implement its provisions. The bottom line of that bill, if enacted, is $8.7 billion in new Federal spending.

One of the features which concerns me particularly about the trade bill is the new worker adjustment program, supposedly to only cost $300 million a year. In fact, I was assured when it was considered by the Senate Finance Committee it could not cost more than $300 million a year. However, when I proposed an amendment to put a cap on it at $300 million and then at $400 million I was turned off.

A tipoff of what it might actually cost is that the funding mechanism that goes with this new trade adjustment assistance program could raise as much as $4 billion per year.

Then we have an education competitiveness program getting ready, expansion of health care, the farm credit bailout, the VA housing loan extension. We have a huge 1987 supplemental. The Federal pay raise is going to cost about $1.5 billion. We are getting ready to complete a space station.

Mr. President, the list is almost endless. I judge there is not one Senator, there is not one staffer, I do not think there is one person on the face of this Earth who could honestly come before us tonight and say with any degree of accuracy or certainty the magnitude of spending bills which have been introduced and which are in committee and moving through the system, many of them, unless we take some drastic and bold action, destined to be signed into law.

So, Mr. President, I hope as we think about this situation and as we confer with our colleagues who are part of the negotiating team, we will urge them to do one thing first of all. Before they start talking about any new tax increases and even before they talk about cutting back on existing spending programs, I would like to suggest that a good place to start is to just stop dead in our tracks, just to have a standstill, just to say for the time being, for the duration, until we decide where we are going on this, we ought not pass or even take up for consideration any more new programs. If we could just do that, if we could just agree we were not going to make the situation any worse for the time being, it would be I think a worthwhile and statesmanlike direction.

Second, it seems to me at all costs we must head off a tax increase.

Third, there are many places—I have mentioned some of them tonight—where we could make large savings.

If we do that, we have a fighting chance to head off the kind of deep recession that ensued when President Hoover and the Congress enacted a tax increase, and unwise tariff legislation in a situation which I think is hauntingly familiar of our circumstance today.

Mr. President, I said at the outset that I am not a believer in some kind of mindless cycle of history. There are, of course, many parallels and every generation does face some problems that seem very similar to that faced by earlier generations, but I do not believe we are trapped. I do not believe we are just faced with a no-hope situation where because an earlier generation had to go through a great depression we have to do the same. But the outcome is in doubt. It is up to us. I just hope as we think of it we will avoid the mistakes of the past, that we will avoid a tax increase, we will avoid punitive tariff legislation, and that we will find some way to get Federal spending under control.

Mr. President, I thank the Chair and I yield the floor.

EXHIBIT 1

LEGISLATED TAX INCREASES, FISCAL YEAR 1982–90—SUMMARY

[Since 1982, Congress has legislated tax increases which will total $990.6 billion for the fiscal year 1982–90 period.] [1]

	1982	1983	1984	1985	1986	1987	1988	1989	1990	Total
TEFRA (1982)		16.6	36.0	39.2	46.7	56.8	58.8	58.2	59.9	372.2
DEFRA (1984)			.9	9.3	16.1	22.0	25.3	27.7	31.1	137.4
COBRA (1985)					.9	2.7	3.0	3.0	3.1	12.7
OMBRA (1986)						1.9	1.5	2.3	1.0	6.7
Gas tax (1983)		1.5	4.2	4.2	4.5	4.7	4.9	5.1	5.1	34.2
Social Security Amendment (1983) [1]			1.8	6.1	8.2	9.5	11.0	12.1	15.3	64.0
Social Security wage base	1.0	4.4	8.4	11.6	15.5	20.4	25.6	32.1	40.2	159.2
Social Security FICA tax hikes	.9	1.4	5.3	13.2	18.1	20.4	32.6	38.8	46.3	177.0
Railroad Revenue Act (1983)			.2	.7	1.1	1.1	1.0	1.1	1.1	6.3
Superfund (1986)						.4	.8	.9	.9	3.0
Continuing resolution (1987)						1.9	2.7	2.4	2.5	9.5
Other	.5		−.4	.1	1.2	.7	3.4	3.8	4.1	13.4
Fiscal year 1982–90 total										990.6

[1] Includes all revenue raising provisions of the 1983 SS amendments except payroll tax rate increases.

ADDENDUM

I. REVENUE LOSERS, 1982–90

	1982	1983	1984	1985	1986	1987	1988	1989	1990	Total
1981 ERTA	−35.6	−91.1	−136.8	−170.3	−209.8	−238.5	−258.7	−282.0	−309.4	−1,422.8
Interest withheld (1983)		−.1	−2.6	−2.4	−2.1	−1.7	−1.8	−2.0	−2.5	−15.2
Tax Reform (1986)						18.6	.9	−11.7	−9.0	−1.2
FERS (1986)						−.4	−.8	−.8	−.9	−2.9
Total revenue losers fiscal year 1982–90										−1,442.1
Total revenue gains fiscal year 1982–90										+990.6
Difference										−451.3

II. OUTLAYS, REVENUES, DEFICITS, 1982–90 [1]

	1982	1983	1984	1985	1986 [2]	1987	1988	1989	1990	Total
Outlays	746	810	852	946	990	1,010	1,080	1,146	1,212	8,791
Revenues	618	601	666	734	769	853	897	954	1,036	7,128
Deficit	128	209	186	212	221	157	183	192	176	1,663

[1] During this period, Congress will have spent $8.8 trillion, collected tax revenues of $7.1 trillion, and incurred a cumulative deficit of $1.7 trillion.

[2] CBO August 1987 baseline projections.

EXECUTIVE SESSION

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate go into executive session to consider Calendar Order No. 385, Richard Noyes Viets, of Florida, career member of the Senior Foreign Service, class of Career Minister, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Portugal.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the nomination.

DEPARTMENT OF STATE

The legislative clerk read the nomination of Richard Noyes Viets, of Florida, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Portugal.

Mr. PELL addressed the chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. PELL. Mr. President, I make a point of order that the nomination is not properly before the Senate because it was reported by a committee when it was not authorized to meet.

The PRESIDING OFFICER. The nomination was reported after the time that the Foreign Relations Committee was authorized to meet. The point of order is therefore well taken, and the nomination is returned to the committee.

Mr. PELL. I thank the chair.

Mr. BYRD. Mr. President, Mr. HELMS was going to make the same point of order. He indicated to me that in view of the fact that it was his understanding, as I informed him, that Mr. PELL was going to make the point order he would not remain on the floor and therefore do it himself inasmuch as it was going to be done. So I make that statement for the record.

LEGISLATIVE SESSION

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate return to legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

MORNING BUSINESS

Mr. BYRD. Mr. President, I ask unanimous consent that there be a period for morning business at this time, and that Senators may be permitted to speak therein.

The PRESIDING OFFICER. Without objection, it is so ordered.

ARMS CONTROL AND THE TRIDENT II

Mr. PELL. Mr. President, I wish to register my grave concern, which I know is shared by many other Senators, about plans of the Department of Defense to test the new Trident II missile with 12 warheads—2 more than it has carried in any previous tests and 4 more than its established operational capacity in an earlier configuration.

The problem is not just that such a test could unnecessarily complicate current negotiations of a strategic arms control treaty, but that it could lead to long-range restraints in the deployment of missile-carrying submarines.

Such restraints could result from an application of the counting rule used under previous arms control agreements whereby the maximum number of warheads tested normally becomes the assigned capacity of that missile for purposes of counting for compliance with the agreement.

If that standard were to be used as the basis for implementing a future arms control agreement and if by then the Trident II has been assigned a carrying capacity of 12 warheads, the United States might be forced to cut back on its planned deployment of 20 Ohio-class submarines by the end of the century, in order to comply with the new ceilings.

The mathematics of the situation are straight forward and compelling. Ohio-class submarines—known more familiarly as Trident submarines—can carry 24 missiles. At 8 warheads per missile the capacity of one submarine is 192 warheads; at 12 warheads per missile, the capacity is 288. If our strategic nuclear arsenal is reduced to 5,000 under the contemplated arms control agreement with the Soviet Union and if the number of warheads on submarines were to be limited to 3,500, those warheads would have to be distributed according to the assigned capacity of the missiles, with a resulting impact on the size of the Trident submarine fleet. If the assigned capacity is 12 warheads, or 288 per submarine, we could deploy no more than 12 Trident submarines. Even at the 8 warhead capacity, or 192 per submarine, we could deploy only 18 Trident submarines.

So far, 8 of the planned fleet of 20 Trident submarines have been delivered to the Navy by the Electric Boat Division of General Dynamics Corp. The 9th through 14th are presently under construction, and funding for the 15th was provided in the fiscal year 1988 Defense authorization bill which the Senate approved October 3.

The ultimate size of the Trident fleet is a critical factor, because it determines the geographical versatility of this leg of the nuclear triad. The fleet must be divided between the Atlantic and the Pacific and allowance must be made for submarines under repair and moving to and from station. As a recent editorial in the New York Times observed, many experts consider 18 Trident submarines too few for a secure retaliatory force, let alone 12.

Parenthetically, it is interesting to note that the first eight submarines are outfitted with the less accurate and less lethal Trident I missile and will have to be retrofitted between 1991 and 1997 to accommodate the Trident II's. The rest of the fleet, including those presently under construction, will be outfitted with Trident II missiles as original equipment.

As I have said on previous occasions, it is extremely important that we maintain the momentum of the Trident submarine program because the Tridents are the keystone of our strategic defense. Designed for survivability and endurance, they are virtually invulnerable to preemptive attack, and thus are a stabilizing influence in the nuclear age. They are in fact the capital ships of our modern Navy.

Surely, the long-range deployment of the Trident fleet should not be disrupted because of the premature application of an arms control limitation that could be avoided by a less hasty testing of the capacity of the Trident II missile.

Advocates of this testing program might argue that solutions to the counting problems could be found by deploying fewer missiles on Trident submarines or by gaining Soviet agreement to much more intrusive verification measures than have been possible so far. I see no merit whatsoever in either solution. The first so-called solution could undermine the continuity of the Trident program and the second could prove to be impossible to negotiate and thus frustrate our arms control efforts.

I would be less than candid if I failed to note that the Trident II missile itself—also known as the D-5—has been a source of controversy, quite apart from the question of the 12-warhead test. Since the Trident II is capable of carrying larger warheads and delivering them more precisely, it is effective against hardened targets such as missile silos and command bunkers. This has prompted apprehensions that it might be considered to be a destabilizing, first strike weapon.

It is not my intention to reignite that controversy here, but I would simply observe that it is all the more reason for not rushing into further testing of greater warhead capacity on the eve of an agreement with the Soviet Union on strategic arms control. To do so, as the New York Times article suggests, would be to "throw sand in the works" of the negotiations.

Finally, there appears to be no technical reason why the 12-warhead test has to be conducted at this time. This version of the Trident II missile is not to become operational until late 1993 or 1994, and it was tested for the first time just last month. Surely, with 6 years of leadtime, further testing, if required, could be conducted on a more measured schedule which takes all ramifications into consideration. As a recent New York Times article suggested, to press ahead at this point suggests a motive that may be more mischievous than substantive.

On all counts, the scheduled 12-warhead test of the Trident II is ill timed and unnecessary. It should be put off to a future date, at least until we know what kind of a START agreement can be reached in Geneva and what the implications of that agreement would be in terms of warhead deployment. I believe that legitimate national security interests could be undermined by proceeding with this test now, and I urge the Secretary of Defense to reconsider and call off this unwise step.

I ask unanimous consent that the article from the New York Times of October 7 entitled "U.S. Plans to Test Submarine Missile with 12 Warheads" and an editorial from the Times of October 12 entitled "Trident Mischief, or Worse" be inserted in the RECORD.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

[From the New York Times, Oct. 12, 1987]

TRIDENT MISCHIEF, OR WORSE

It makes no sense for the Pentagon to test the new Trident submarine missile with more and more warheads. Yet that is precisely what Defense Secretary Weinberger has ordered. Perhaps his decision represents a mischievous effort to complicate nuclear arms talks. Perhaps worse, he may not realize that the Soviet Union would benefit more from his ploy than the United States.

The Trident testing issue is no mere technical question for strategic experts. It raises basic policy choices on arms control and force structure. The White House and Congress would be well advised to reverse Mr. Weinberger's call.

The initial version of the Trident II missile, also called the D-5, is set for deployment on Trident submarines in 1989. Each missile will carry eight warheads of sufficient accuracy and explosive power to destroy a Soviet missile in a hardened silo. The Trident sub can hold 24 such missiles for a total of 192 warheads per sub. That number was generally considered to be a sufficient concentration of force on one sub.

Mr. Weinberger apparently felt otherwise. In September, he ordered the D-5 to be tested with 10 warhead places. Now he wants to extend that to 12, and right away, though this version of the D-5 is not set for deployment until 1993.

Testing the D-5 with 12 warheads any time soon would create substantial verification problems in the strategic arms reduction talks with Moscow. Both sides have proposed significant reductions in missile warheads. Until now, the only way adequately to verify such a scheme has been to apply a simple counting rule: If a type of missile is tested with as many as, say, 16 warheads, all missiles of that type will be considered to hold 16 warheads. Thus, if the D-5 is to be tested with 12 warheads, all D-5's will be counted as carrying 12 warheads—even though some or even most would carry only eight.

Mr. Weinberger, who drags his heels on arms control generally, doesn't like the rule. He wants warheads on each missile to be counted individually. The only way to do that, however, is by the cumbersome process of inspecting every missile with a can opener. Conceivably, Moscow would let Americans look inside its missiles. But American experts certainly would not want to reciprocate. U.S. technology is better and they rightly don't like the idea of showing Moscow how to improve its missiles.

In all likelihood, both sides will agree to stick by the old counting rule. In that case, Mr. Weinberger invites an even more serious problem—a sharply reduced number of Trident subs, the most survivable and reliable of all U.S. retaliatory forces. If the new treaty ends up limiting the U.S. to 3,500 submarine-launched ballistic missiles, and if each D-5 counts for eight warheads, the U.S. could field about 18 Trident subs. But if each D-5 counts for 12 warheads, the U.S. could have only 12. Many American experts consider 18 too few for a secure retaliatory force, let alone 12.

A lot rides on the D-5 testing decision—progress on a strategic arms treaty and U.S. retaliatory capability. Secretary Weinberger seems unaware of the stakes. Is the President?

[From the New York Times, Oct. 7, 1987]

U.S. PLANS TO TEST SUBMARINE MISSILE WITH 12 WARHEADS

(By Michael R. Gordon)

WASHINGTON, October 6.—The Pentagon plans to test the Navy's new Trident 2 missile with 12 warheads this year despite strong concerns in the Administration and Congress that such tests could complicate arms control talks with the Soviet Union and hamper military planning.

Until last month, the new Navy missile had never been tested with more than eight warheads. But the Pentagon broke that barrier in early September in a test with 10 warheads, Administration officials disclosed today. The officials said a test involving 12 warheads is scheduled for November.

CRITICISM OF WEINBERGER

The officials said Defense Secretary Caspar W. Weinberger had pushed for conducting the tests despite misgivings of the Joint Chiefs of Staff and the State Department.

Some ranking Members of Congress have also urged that the tests not go forward. Representatives Les Aspin, Democrat of Wisconsin and chairman of the House Armed Services Committee, sent a letter to Mr. Weinberger in August urging that the tests be deferred.

But supporters of Mr. Weinberger's action said the tests should not be delayed because they are needed to keep the missile program on track. Mr. Weinberger's decision to proceed with the tests was disclosed by Newsweek earlier this week.

TWO MAIN CONCERNS

There are two main concerns at the heart of the debate. One is whether the tests would complicate the task of trying to work out a treaty with the Soviet Union on long-range arms, a priority of President Reagan. The other is whether, because of possible warhead-counting arrangements in a future treaty, the tests would actually limit the Navy's flexibility in planning its strategic nuclear forces.

Under previous strategic arms agreements, each type of missile is counted as having the maximum number of warheads that it has ever been tested with. If a missile is tested with 8 warheads, for example, all missiles of that type are counted as having 8 warheads even if they are actually deployed with fewer warheads.

The Russians have insisted in the Geneva arms talks that a similar rule be included in a new treaty on long-range arms. The United States has not agreed to that approach, which it says is inadequate.

According to current plans, the Trident 2 is to carry two types of warheads.

Some Trident 2's are to carry 8 new Mk-5 warheads. That version of the missile is expected to become operational in the 1989 fiscal year. It has already been tested six times, including two tests involving 8 warheads.

Other Trident 2's are to carry 12 smaller, less powerful MK-4 warheads. Under current plans, that version of the missile is not to become operational unitl the fiscal year 1993, and was tested for the first time only in September.

The current debate centers on whether it is wise to proceed with an ambitious test program for this second version of the missile, with the smaller Mk-4 warheads.

Some critics in the Administration say there is no technical need to carry out tests with more than 8 warheads now because this version of the missile is not to be deployed until the early 1990's. They say such tests should be delayed until the issue has been worked out in the Geneva arms talks.

Stressing this point, Mr. Aspin charged today that Mr. Weinberger might want to carry out the tests to "throw sand in the works" and delay a new treaty reducing long-range arms.

The critics also assert that the tests may create a more far-reaching problem. If a future Administration decides to agree to the counting rule used in past strategic arms treaties, all the Navy's Trident 2's would be counted as having 12 warheads. This would force the Navy to cut back on the number of Trident missile-carrying submarines that it could deploy.

This is a special worry for the critics because the submarines are regarded as the most "survivable" element of the United States nuclear force.

Supporters of Mr. Weinberger reject such charges. They say that the counting rule is a vestige of the unratified strategic arms treaty of 1979, the so-called SALT II accord, which they oppose. Mr. Weinberger's supporters say the United States should not let procedures spelled out in past agreements stand in the way of important stratetic programs.

"The SALT II rule does not apply as far as we are concerned," said Fred Hoffman, the chief Pentagon spokesman, who added that the Pentagon wants to count Soviet warheads through on-site inspections.

Mr. Hoffman rejected Mr. Aspin's criticism that the testing program was an effort to obstruct the arms talks.

In the September test, a Trident-2 missile carried 9 dummy Mk-4 warheads and a package of instruments. Under the 1979 treaty, such a test is counted as involving 10 warheads.

A related issue is whether there is a better alternative to the use of counting rules to keep track of the number of warheads on new missiles.

Supporters of Mr. Weinberger's view say that the counting rules are inadequate and that on-site inspection is needed because the Russians are believed to have deployed more warheads on some types of missiles than they have actually tested on those missiles.

But some experts say counting rules are needed. "In this case, on-site inspections of deployed missiles could create more problems than they would solve," said James P. Rubin, assistant director of the Arms Control Association, a private group. Mr. Rubin said on-site inspections might never be negotiated because neither side would want the other to examine the insides of their missiles.

He added that a count based on monitoring tests, while imperfect, is a better indicator that on-site inspections because the Russians could add warheads to their missiles after the inspectors left.

BICENTENNIAL MINUTE

OCTOBER 28, 1928: JIM PRESTON, PRESS GALLERY CZAR

Mr. DOLE. Mr. President, 59 years ago today, on October 28, 1928, the Washington Evening Star paid special tribute to the "Czar of the Senate Press Gallery," James S. Preston. Old newspapermen in Washington said Preston knew more and told less than any other living person. If only he could write what he knows, said journalists, he would scoop them all. But, they concluded, "He never will write it. He can't even tell it."

Jim Preston was one of those remarkable Senate employees who devoted his entire life to this institution. Born in Washington in 1876, the son of a Washington correspondent, he became the unofficial superintendent of the Senate press gallery in 1897—the post had not yet been made official. As superintendent, he was supposed to keep the reporters' ink wells filled and supply them with writing paper. But Preston began gathering copies of bills and committee reports, and finding bits and pieces of information to help the reporters cover the Senate. He also began coaxing the

Senators to make copies of their speeches available in advance.

After 34 years as czar of the press gallery, Preston became Senate Librarian. To mark the occasion, reporters held a mock impeachment trial, finding their former superintendent "guilty of devotion, friendship, and service." In later years he transferred to the National Archives, where he helped process the Senate's historical records, and then returned again to the Senate. In the mid-1950's the Senate paid tribute to Preston in honor of his 60 years on the Senate staff.

The reporters who predicted that Preston would never write or tell the secrets he knew were correct. As an elderly man he burned his diaries and correspondence. It was a sad loss for the Senate's recorded history, but an understandable one for a man who spent his lifetime keeping secrets.

THE MEDICARE CATASTROPHIC LOSE PREVENTION ACT OF 1987

Mr. KARNES. Mr. President, the debate has subsided, the vote is in, the tally has been added and the Senate has passed so-called catastrophic health care loss prevention legislation. Many of our colleagues and certainly S. 1127's sponsors have worked hard to secure passage of this measure they believe best addresses the needs of the Nation's elderly, and I compliment their dedication. I am sure most believe the controversy surrounding this initiative has been laid to rest. Unfortunately, I am afraid it has only begun to rise.

I doubt there is a Member of the Congress who does not agree with the principal of providing assistance to the nation's seniors that are unable to meet the costs of catastrophic health care. Indeed, I am the first to agree it is our responsibility—our duty—to assist those who are suffering through such unfortunate circumstances. However, what we have just witnessed is passage of a measure that will address only a small portion of the problems that American seniors have been led to believe it will address.

The catastrophic benefit will not provide unlimited medical coverage to the elderly. This measure is not truly optional for all Medical beneficiaries. This benefit does not provide for long-term care needs. And, this benefit though supposedly self-financing, will certainly not come cheaply to the Nation's Medicare participants.

Regarding the cost of this measure, we have just witnessed the passage of a program that will spend $22 billion in the next 5 years, and yet will only benefit roughly 9 percent of Medicare beneficiaries. Turning that figure around, 91 percent of Medicare beneficiaries will not benefit from the program, even though they will pay the substantially increased premiums required under the bill. This expansion is financed through an increase in the Medicare Part B monthly premium and a surtax on about 40 percent of our senior citizens. Like the Medicare Part B premium which will jump by 38.5 percent next year, this tax is indexed to Medicare cost increases and will escalate with higher programs costs.

Mr. President, GAO and CBO conclude that by the early 1990's the program established last evening will experience a revenue shortfall of $560 million by current estimates. It is unreasonable to believe this will not challenge the solvency of the Medicare trust fund, which without this new program is already expected to have a deficit of nearly $20 billion by the year 2005. Perhaps the most disturbing aspect of this entire exercise is that, even as we considered the bill, the stability of our financial markets was held in question and desperate discussions between the White House and the Congress to drastically cut Federal deficits seemed the only answer to restoring security to the world's financial situation. Unfortunately, we responded immediately by creating yet another new entitlement program, one that is certain to be costly but is not certain to be effective. If this attitude persists, I shudder to think what our economy may look like 1 year from now.

In addition, this program attempts to offer coverage which nearly 70 percent of the Nation's seniors already have, through private insurers. Mr. President, it would appear to me that this plan is in reality, a national health insurance plan for the elderly, an idea that has been extremely controversial in the past for its resemblance to socialized medicine programs. Are we ready to enact a back-door socialized medical program? I don't think the American people have resolved that question in the affirmative.

Now, as I mentioned earlier, the concept of this measure is not without merit. Indeed, there were several provisions I believe are important cost effective benefits for our seniors. Because it was evident the program might pass, I supported efforts to include a modified and more acceptable drug benefit in the bill which is where so many of our seniors' dollars are consumed. Also, I strongly supported the initiative which sought to make the new program truly optional. If the optional amendment would have passed, those desiring catastrophic coverage could have received it, and they would have borne the expense of it. Those wishing not to participate would not have had to, and would not have been forced to pay for a benefit that they did not need, want, and in many cases is duplicative of benefits they already have. Unfortunately, the optional amendment did not pass and now if a Medicare beneficiary wishes to receive part B coverage, they are forced to also participate in the catastrophic program.

Last, I was very pleased to see the spousal impoverishment amendment added to the bill which permits the spouse of an individual placed in a nursing home to retain some assets and thus their independence. It is my feeling from communicating with my constituents that spousal impoverishment is an extremely important issue that strikes fear in the hearts of people who have worked hard all their lives to save money for retirement, only to see both spouses' assets wiped out by the illness of one member of the couple. This concept needs to be developed further in case the provisions in S. 1127 are not adequate to meet this problem.

Notwithstanding these positive aspects of the bill, when faced with final passage on this bill, I could only reach the conclusion that the flaws in the bill were so substantial and sweeping in scope that I felt it was creating as many problems as it attempted to solve. I suspect we will now discover that we have misled our constituents telling them we have resolved the problems posed by catastrophic illness in America, and that in truth, we have only saddled our older Americans with a new tax that will help few and burden all. Regardless of the support of many of my colleagues and the President's approval of the bill, I was left with no alternative but to vote against it.

Mr. President, I have worked hard for our seniors in the past and I will in the future. I want Nebraska's elderly to know right now that I intend to remain active in seniors' issues and that I will be working with my colleagues to develop real alternatives for their real catastrophic need—long-term care. Thank you.

Mr. THURMOND. Mr. President, the State of South Carolina, as well as the Nation, suffered a great loss with the death of Robert Richardson Coker who died on Monday, September 28, 1987, at the age of 82 in Hartsville, SC.

Robert Coker was one of the country's most respected and influential leaders in the field of agriculture. He lead the effort to eradicate the boll weevil from the cotton fields of the South, and achieved success in breeding pedigreed seed varieties of the South's major field crops.

Coker, who graduated from the University of South Carolina in 1928, accomplished much during his lifetime. He was named president and director of Coker's Pedigreed Seed Co., was a cofounder of the Farm Bureau, was elected president of the National Cotton Council, and was appointed

chairman of the Cotton Industries Special Committee on Boll Weevil Eradication, which led to the eventual control of this insect problem. Coker was also a member of the boards of various companies and was active in education, particularly relating to agriculture. He received numerous awards and honors for his work, including honorary degrees from the University of South Carolina and Clemson. Also, at Clemson University an endowed faculty position in the field of molecular genetics, the trustees chair, was created when Robert Coker and his wife gave a gift of $500,000 to the school. The trustees chair is the university's most prestigious faculty position.

Robert Coker's life has inspired and will continue to inspire others in the field of agriculture and agricultural research. We are saddened by his death and I join with my colleagues in extending deepest sympathy to his lovely wife, Lois, his two children, Mr. William C. Coker and Mrs. Ione Lee, and the other members of his family during this time of bereavement.

Mr. President, I ask unanimous consent that an editorial and an article on Robert Coker from The State, an editorial from the Florence Morning News, and a eulogy delivered by Dr. James A. Rogers be printed in the Record.

There being no objection, the material was ordered to be printed in the Record, as follows:

[From The State, Sept. 29, 1987]

FARMING PIONEER COKER DIES

(By Bill Hughes)

Robert Richardson Coker, former president of Coker's Pedigreed Seed Co. and a nationally known agriculturist and business executive, died Monday at a Hartsville hospital after a long illness. He was 82.

A Hartsville native, Mr. Coker was a pioneer in assembling a team of researchers that developed improved field crop varieties for the South's major field crops.

For years Coker-brand seed dominated the market for tobacco, corn, feed grains, soybeans and particularly cotton, a crop which Mr. Coker supported at a time when many believed it could no longer be grown profitably because of the boll weevil.

A 1928 graduate of the University of South Carolina, Mr. Coker returned to his hometown as an associate in the seed business started in 1902 by his father, David R. Coker.

In 1951, he was named president and director of the company, serving in those positions until 1978 when the company was sold to KWS, a West German agricultural research and distribution firm. For several years following the sale, Mr. Coker continued to serve as an adviser to the board of directors.

The operator of a KWS subsidiary, Mr. Coker had sales and development operations in Hartsville; Bay, Ark.; and Lebanon, Ind.

David Allen, Coker farm manager and a friend for 41 years, described Mr. Coker as "a real Southern gentleman who had the knack of making you feel good about your work. He'd always call us on our birthday and many times when we were having trouble with a crop, just to say he was thinking about us."

In 1944, Mr. Coker was among a small group of farmers and businessmen who organized the S.C. Farm Bureau, the state's largest agricultural organization. Mr. Coker was the first president of the Farm Bureau, which presented him with its Distinguished Service Award in 1959.

"Mr. Coker's death is certainly a great loss to the entire agricultural industry, not only in South Carolina, but nationally. He'll be missed," said S.C. Farm Bureau Vice President Tom Warren, adding that Mr. Coker was a life member of the organization's board of directors.

Mr. Coker's early education was in the Hartsville public schools and Webb School in Bell Buckle, Tenn. Although his college degree was from USC, his agricultural interests drew him close to Clemson University, whose board named him a life member in 1960.

Clemson presented Mr. Coker with the Clemson Medallion, the university's highest public service honor, in 1985.

Clemson University President Max Lennon described Mr. Coker as "one of the most respected and influential leaders of agriculture in the past 30 years" and "a man of determination, intellect and energy."

"In a meeting less than two weeks ago, the Clemson Board of Trustees adopted a resolution expressing appreciation to Dr. Coker for his service to Clemson and to agriculture. And it was at that same meeting that we announced a $500,000 gift from Bob and his wife, Lois, that will lead to the creation of a prestigious Trustees Chair in molecular genetics in our Division of Agriculture and Natural Resources," Lennon said.

"Robert Coker was a good friend and Caroline and I are saddened by his passing," said USC President James B. Holderman.

"He was a dedicated alumnus of Carolina, who, as a life trustee of Clemson University, personified the increasing collaboration and great strengths of both institutions. His concern for the quality of life in South Carolina led him to donate his time and resources toward the improvement of educational opportunities throughout the state."

State Agriculture Commissioner Les Tindal, who served with Mr. Coker on the Clemson board, said, "Robert Coker's service to both national and state agriculture and to mankind spans over half a century. His ability to anticipate the needs of the future kept him attuned to the new and innovative throughout his life. The Palmetto State has lost a brilliant mind and dedicated servant to higher education, agribusiness and industry."

It was Mr. Coker's support of cotton as a viable crop for the Southeast that caused him to play a major role in cutting farm losses due to the boll weevil, a pest that was threatening to wipe out the crop in the South.

"He always said he wanted to be the pallbearer at the last funeral of the boll weevil," said longtime Coker associate Marion Hawkins.

And as the 1987 crop is being harvested this fall, that dream is close to becoming reality, thanks to Mr. Coker's efforts in organizing the federal Boll Weevil Eradication Program.

That program, which has expanded into Georgia and part of Alabama, could have had its origin as early as 1940-1945, when Mr. Coker served as vice president of the Memphis, Tenn.-based National Cotton Council.

Mr. Coker also served as president of the council in 1963, as board chairman in 1964 and as an adviser until his death.

Mr. Coker was instrumental in an effort in the late 1950s and early 1960s which established a federal Boll Weevil Research Lab at Mississippi State University.

In 1969, he was named chairman of an industry committee on boll weevil eradication, which by 1973 had organized a pilot demonstration project that showed the insect could be controlled.

Mr. Coker later presented the results of the pilot program to U.S. Agriculture Secretary Earl Butz. When the Cotton Council established a Beltwide Action Committee on Boll Weevil Eradication to work with the USDA, Mr. Coker was named chairman.

In 1959-60, he helped organize and served as first president of the National Council of Commercial Plant Breeders—the organization largely responsible for the Federal Plant Variety Act of 1979.

Mr. Coker has served on the boards of the Hartsville Oil Mill, Hartsville Cotton Mill, Palm Oil Co. and Sonoco Products Co., all of Hartsville and the Textile Paper Tube Co. Ltd. of Romiley, England.

He also was chairman of the board of the J.L. Coker Co., the Hartsville department store, which was founded by his grandfather in 1865 and closed in 1983.

Services will be at 2 p.m. today at the First Baptist Church of Hartsville with burial in Magnolia Cemetery, directed by Brown-Pennington-Atkinson Funeral Home.

The family suggests that memorials may be made to the Robert and Lois Coker Trustee Chair in Molecular Genetics at Clemson or to Brookgreen Gardens at Litchfield Beach.

[From The State, Oct. 2, 1987]

ROBERT R. COKER

Robert Richardson Coker, a member of an illustrious Hartsville family ever dedicated to uplifting their community and society as they personally progressed, died Monday at the age of 82.

Mr. Coker, a descendant of the eminent Major James Lide Coker, was president of Coker's Pedigreed Seed Co. in Hartsville and was one of the nation's most respected agricultural leaders. He headed a staff of scientists who bred pedigreed seed varieties of the South's major field crops.

He led the war to eradicate the boll weevil. He served as president of the National Cotton Council. He helped form the South Carolina Farm Bureau and was its first president. He helped organize and served as president of the National Council of Commercial Plant Breeders.

He also was a member of the boards of various companies and was active in education, paticularly relating to agriculture. for his work, he received numerous awards and honors, including honorary degrees from the University of South Carolina and Clemson.

Mr. Coker's life of service left another example of the dedication of a family that imprinted its name on dozens of progressive enterprises.

[From the Florence Morning News, Sept. 30, 1987]

ROBERT R. COKER

Robert R. Coker who died Monday in Hartsville came from a family well-known for its industriousness and remarkable accomplishment in several areas—agriculture, business, education, science and philanthrophy.

The earlier Cokers were among the pioneers in scientific farming methods in this area of South Carolina, and that presaged a seed and plant breeding business. Coker's Pedigreed Seed Co. was started by Robert Coker's father early in this century.

Rober Coker joined the seed company after graduating from college in 1928 and became its president in 1951. The company assembled teams of plant breeders and researchers that developed improved varieties of the major field crops grown in much of the Southeast—cotton, tobacco, hybrid corns, wheat, oats and soybeans.

Cotton research was a special interest of Robert Coker's. He was quoted as saying many years ago, after the boll weevil had become a major threat to cotton farming in the South, that he wanted to be a pallbearer at the last funeral for the pest.

He almost was. The federal Boll Weevil Eradication Program, which Coker helped to launch and promote, has substantially controlled the pest through a combination of cultural practices and insecticides.

Robert Coker's list of accomplishments and professional and civic involvements runs long—a director on the boards of several companies, life trustee of Clemson University, former member of the state Commission on Higher Education, Brookgreen Gardens trustee, founder of the South Carolina Farm Bureau, recipient of several awards for distinguished service.

A man of large intellect and vision, he made good use of both in the furtherance of agriculture, education, and the numerous business, professional and civic endeavors of which he was a part.

A EULOGY AT THE FUNERAL OF ROBERT R. COKER

(By James A. Rogers)

I speak in fond memory of a friend of some 35 years who is now being memorialized by our presence here today. He was six days my junior—a fact we often talked about. For him it was a brief period during which he could claim to be a younger man than I. He would sometimes say that if he went first, he would like for me to say some words about him. I suspect he may never have conveyed that wish to his family, that instead it is but wonderful coincidence that when I visited the home yesterday afternoon, his faithful partner of many years called me aside to request that I speak some words on this occasion—I do so with both joy and sorrow—joy because of the many years we knew and cherished a mutual friendship, sorrow because he is now gone away and remains only in memory.

How do you measure the worth of a man? By what he is within himself. By what he believes with his mind and heart. By what he does with his head and his hands. By what he perceives to be that to which he must give his life. By what he achieves by his talents and resources. By what he leaves behind when he is gone to survive as a legacy for those who remain—those meaning not only his family but those also who are the people and times in which he lived and the generations that follow on.

By these measurements, his record is written in a lifetime of service on many fronts—in agriculture and industry, in business and finance, in education and institutions. For 82 years he lived in this place with his roots buried deep in the soil of his native South. From his father and his grandfather, he inherited a relief that the productivity of the land is in ratio to the quality of the seed that goes into the soil, that purity of seed is as essential to the produce of the plant in much the same way that nobility of character is the product of a well-bred and disciplined life. He was born with scientific genes in his blood. Though no trained scientist himself, he directed the affairs of a scientific operation that played a major role in transforming and revolutionizing the South's agricultural landscape. It was once said of his father, the late David R. Coker, that he was perhaps the greatest agriculturalist the South had ever produced. That legacy was passed on to his son who for more than half a century added to the contributions of his distinguished forebear.

Though Southern by birth and devotion, and somewhat of a Southern romantic, he was no Southern provincial. His involvement in educational institutions, in scientific research and experimentation, in farm organizations, in business, industry, and finance gave him a broad view of what the economy of the nation and the world is like and how no portion of it can suffer without damaging the whole.

There was a bit of the child in him and much of the man. His was a childlike faith not given to the complexities of doctrine or theology. He wondered about the mysteries of creation and the world of the spirit. Once he came to me to talk about life as he saw and experienced it, and what there is beyond the world of sight and sound. That there was this life to be lived and cherished he knew; that there was life beyond this one he had faith to believe. He was guided by a faith that went beyond the bounds of reason, that reached out into the universe and traveled the distance of the stars into the infinite unknown, and there in the unimagined reaches of space, as well as in the quiet moments of his own experience, he found the same reason to believe as when he saw the sun wooing plant from seed on the farmlands of the South.

He was my friend, and the friend of many—six days younger than I and never letting me forget during those days that he was the young and I was the old. But the young and the old survive until their day is done, and then move by faith into what lies beyond. When I visited him last in his hospital room, he was ready to move by faith, and this he has done.

CATASTROPHIC HEALTH BILL

Mr. KERRY. Mr. President, I would like to commend Senator BENTSEN and the members of the Finance Committee for their hard work in putting this package together. I believe the debate on this issue has been extremely positive and has shed light on many of the serious health care concerns facing the citizens of our Nation.

Despite the major contribution Medicare has already made to the health and well-being of the elderly and disabled, this program no longer assures protection against significant out-of-pocket costs for doctor and hospital bills resulting from a catastrophic illness. Under the current system senior citizens and others faced with the catastrophic cost of an extended illness must often exhaust their financial resources to pay for health care.

While senior citizens account for 12 percent of the population, they incur one-third of the country's total health care expenditures. Four million of these seniors live below the poverty level. This year catastrophic illness will bankrupt approximately 1 million Americans, 750,000 of whom are elderly.

This situation is intolerable and grows increasingly worse as our population ages and health care costs continue to rise. There is no question we must act immediately to solve this problem which affects such a large and disparate portion of our society.

In placing a cap on out-of-pocket expenditures by the elderly for health care services covered by Medicare, including hospitalization, doctor's services, and other out of pocket patient care, this legislation represents a historic first step in eliminating the fear of financial disaster associated with catastrophic illness.

In addition, the bill eliminates coinsurance requirements for inpatient hospital services, and expands existing Medicare benefits for home health care, hospice care and skilled nursing facilities.

I am particularly pleased with the inclusion of the prescription drug benefit. Drug costs remain the highest out-of-pocket health costs for senior citizens. People over 65 purchase over one-third of the prescription drugs sold in the United States. Almost 5 million Medicare beneficiaries spend more than $400 each year on prescription drugs, the average annual cost for this group is $927. In this great Nation we cannot have our citizens choosing between buying prescription drugs and paying for day-to-day necessities.

I am also pleased that this body is beginning to address the issue of spousal impoverishment. Currently, Medicaid rules continue to require that most of a couple's joint income be used to pay for the cost of institutional care. Far too often one's life savings, independence, and a degree of self esteem are the price one must pay to provide long-term care for a loved one.

While this legislation represents a good first step toward truly providing catastrophic coverage, it is only a first step—we must go forward and address the issue of long-term care.

Although 80 percent of catastrophic health care costs are associated with long-term care, strict limits still exist on Medicare coverage for this care. And, while this legislation touches on home health care needs and spousal impoverishment, we have yet to scratch the surface on a comprehensive policy to deal with long-term health care needs.

I am pleased to be a cosponsor of Senator CHILES' amendment to establish a Bipartisan National Commission on Comprehensive Health Care in order to address the issue of long-term care. I look forward to the recommendations of this committee and to working with my colleagues to make catastrophic coverage truly comprehensive.

We have the unique opportunity to finally take decisive action to help eliminate one of the greatest fears of millions of Americans—the inability to meet one's own or one's family's health care needs without suffering financial disaster. I support this bill and view it as a first step in the struggle to protect all Americans against a catastrophic health care disaster.

JESSICA McCLURE'S BRAVE RESCUERS

Mr. DOMENICI. Mr. President, I would like to take a moment today to honor three brave and daring men, two of which are from New Mexico.

Just 2 weeks ago, the Nation watched as little Jessica McClure tenuously clung to life wedged 20 feet underground in an abandoned well. The thoughts and prayers of the entire Nation were with her as rescuers worked around the clock to save her life.

Among these generous people who worked diligently to save Jessica, were three Federal employees of the Labor Department's Mine Safety and Health Administration. President Reagan recently saluted these three workers saying "I think we're all thankful in our hearts for the generous people who worked around the clock, through fatigue, past exhaustion, to save little Jessica."

When Wayne Kanack, manager of the southwestern division of the Mine Safety and Health Administration, heard about the emergency he immediately contacted the two most experienced hard-rock miners in the Southwest, Dave Lilly and Sid Kirk. Dave Lilly brought 32 years of mining experience to the rescue effort and Sid Kirk, 46. They are both residents of Carlsbad, NM. Together, all three of these generous men worked past the point of exhaustion to keep Jessica alive. Thankfully, they were successful.

Wayne Kanack, Dave Lilly, and Sid Kirk and all of those who helped in the rescue effort, represent the spirit of volunteerism that makes our country great. I join the McClure family, the State of New Mexico, and the rest of the country in giving them my heartfelt thanks. We are very proud of these three men and are thankful for their tremendous expertise.

Mr. President, I ask to have printed a collection of articles that appeared in the Albuquerque Journal, the Albuquerque Tribune, and People Magazine.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Albuquerque Tribune, Oct. 24, 1987]

REAGAN PRAISES N.M. MEN FOR SAVING TODDLER FROM MIDLAND WELL

WASHINGTON (AP).—President Reagan, saying "we're all very proud of you," on Friday saluted three federal mine safety agency workers—two of them from New Mexico—who helped rescue little Jessica McClure from an abandoned well in Midland, Texas, last week.

"Recently the country was riveted, as you know, all of us, to the story of tiny Jessica McClure, and I think that we all said prayers of thanks when that story had a happy ending," Reagan said.

Sitting in the front row as Reagan spoke during a jobs conference at the Labor Department were three men who were among those who rescued Jessica—Wayne Kanack, Dave Lilly and Sid Kirk. They are employees of the Labor Department's Mine Safety and Health Administration.

"I think we're all thankful in our hearts for the generous people who worked around the clock, through fatigue, past exhaustion, to save little Jessica," Reagan said. "And of course, that's why I'm happy, and I think we are, that three employees of the Department of Labor . . . are here with us today, having done their job so well."

"Wayne Kanack is the manager of the southwestern division (of the Mine Safety and Health Administration). When he heard of Jessica's plight, he called on the two best people he could think of—Dave Lilly and Sid Kirk—both experienced hard-rock miners," Reagan said, adding:

"Working closely together, they directed the rescue operation, drilling a hole parallel to the well and then digging a shaft across to reach Jessica. In fact, Dave Lilly chipped away by hand the last few inches of rock to make the first physical contact with little Jessica."

Reagan noted that Vice President George Bush had visited Midland, Texas, and presented the men with certificates of recognition following the rescue last Friday night.

The president had a private, brief visit with the three men just before he entered the Great Hall of the Labor Department for the jobs seminar.

Lilly, who lives in Carlsbad, is a special investigator with the mine safety agency's Carlsbad office.

Kirk, who also lives in Carlsbad began his career as a coal miner in 1941 and has worked for the federal government as a mine inspector and later as supervisor in the Carlsbad office since 1974.

[From The Albuquerque Journal, Oct. 24, 1987]

REAGAN TELLS 3 RESCUERS, "WE'RE PROUD"

WASHINGTON.—President Reagan Friday praised three Labor Department employees involved in getting 18-month-old Jessica McClure out of a Texas well shaft, saying, "We're all very proud of you."

"Recently the country was riveted, as you know, all of us, to the story of tiny Jessica McClure, and I think that we all said prayers of thanks when that story had a happy ending," Reagan said at a labor conference.

Sitting in the front row, as Reagan spoke were the three men who were among those who rescued Jessica—Wayne Kanack, Dave Lilly and Sid Kirk.

All three work for the Labor Department Mine Safety and Health Administration.

"I think we're all thankful in our hearts for the generous people who worked around the clock, through fatigue, past exhaustion, to save little Jessica," the president said. "And of course that's why I'm happy, and I think we are, that three employees of the Department of Labor . . . are here with us today, having done their job so well.

"Wayne Kanack is the manager of the southwestern division (of the Mine Safety Health Administration). When he heard of Jessica's plight, he called on the two best people he could think of—Dave Lilly and Sid Kirk—both experienced hard-rock miners," Reagan said.

Lilly, who lives in Carlsbad, is a special investigator with the mine safety agency's Carlsbad office. He began working in the industry as a coal miner in 1933, and has worked as an inspector and later as supervisor in the Carlsbad office since 1975.

Kirk, who also lives in Carlsbad, began his career as a coal miner in 1941 and has worked for the federal government as a mine inspector and later as supervisor in the Carlsbad office since 1974.

[From People Magazine, Nov. 2, 1987]

THE EPIC RESCUE OF JESSICA MCCLURE

It was about 9:30 a.m. on Wednesday, Oct. 14 that 18-month-old Jessica McClure, playing with four other toddlers at her Aunt Jamie Moore's home day-care center in Midland, Texas, somehow slipped into an abandoned well shaft. Exactly how she did it may never be known; neighbors and relatives say a flowerpot had been propped over the well's eight-inch opening; Jessica's mother, 18-year-old Reba (Cissy) McClure, insists that the hole had been covered with a heavy rock. Father Chip McClure, also 18, was at work. Cissy had stepped away for a moment when she heard the children screaming. Discovering what had happened, she says she was "scared, panicked, I didn't know what to do. I just ran in and called the police. They were there within three minutes, but it felt like a lifetime." Thus began baby Jessica's 58-hour ordeal. In the end her deliverance was a good, a powerful, an unforgettable memory for a lot of people in Midland—especially for her rescuers, some of whom rose to eloquence in describing the drama on the following pages to correspondents Lianne Hart and Anne Maier.

Bobbie Jo ("B.J.") Hall, 32, police officer: I was the first officer on the scene. I arrived at the same time as the first paramedics. The mother met us at the front door of the house. She was very upset, but she was able to direct us to where the child was. She yelled, "She's here in back. She fell down right here." Then she said, "I can't let my baby die! I've got to get her out!"

I went over and looked down the hole, but I couldn't see anything. I called the baby's name three or four times and didn't hear anything. Finally I got a cry in response. We didn't know how deep she was until we lowered a tape hooked to a flashlight into the hole.

Those first 15 minutes seemed like hours, but basically all we did was start calling for equipment. I said, "We gotta get her some air down there!" I told the dispatcher to get ahold of some oxygen equipment.

About that time it got very chaotic. People were arriving fast. We all called to the baby. We used our flashlights to look down the hole, but we never could get a visual on her. We didn't get one until later in the afternoon, when we lowered a video camera down there and got a side view of her.

The mother was pretty panicky. She was frantic. She was starting to go into shock, I thought. I just tried to get her talking. I told her I had children too, so I understood how she felt. I told her we weren't going to let her baby die. That's what she kept worrying about—her baby dying.

Once all the equipment started rolling in, she calmed down a little. It was wild. We tore down fences; we tore down clotheslines—all kinds of things to get that equipment in. The first thing we tried was a backhoe the city brought over. It dug down two or three feet and then hit rock. We knew we didn't have the time to dig through rock with a backhoe, so they called for this big rathole rig. That's something like an oil rig, only smaller. It's used to put in telephone poles.

I was there the first 22 hours. Then I went home to my own kids and came back Friday and stayed until they got Jessica out at 7:55 p.m. We took turns staying by the hole talking to her. Every time she'd cry or whimper, it was kind of a "Help me, I'm hurt" kind of whimper. Our hearts went up in our throats when we heard it, but not hearing her was even worse. Sometimes she would go 30 or 40 minutes without a sound, and we'd all get hysterical and start calling her again until we'd get a response. I guess she was getting tired and would fall asleep from time to time.

Andy Glasscock, 36, detective: We began to shout down the well, and Jessica responded with whimpers and cries. After listening to her for so long, I could tell her moods. At one point she was singing. At another point, when a jackhammer started up, she didn't say any words but used kind of a huffy little voice. You could tell it was an angry voice. I would say 80 percent of the time she was either crying or making some kind of noise we could hear.

When we weren't calling words of encouragement, we'd tell her to sing for us. I'll never forget her singing "Winnie-the-Pooh." We'd say, "How does a kitten go?" And she'd respond to us. We'd promise her things like a Cadillac if she'd stop crying—I don't guess she'd try to collect on that one.

David Lilly, 51 special investigator with the U.S. Mine Safety and Health Administration, rescue director: I grew up in West Virginia, and my family were all miners. Over the years I've seen it all. I've been in a lot of recovery work, lifted rock off people who were crushed, retrieved people from shafts. I've seen lots of fatalities. But I've never seen anything like this in my life.

I flew in from New Mexico Thursday morning. When I arrived on the scene, the police chief and fire chief were trying to organize the rescue, and it was total chaos. They had no experience and didn't know what they were doing. They interviewed me for about 10 minutes to see what I knew, I guess, and then put me in charge. By the time I'd got there, they had already sunk a parallel shaft about 29 feet into the ground, 30 inches wide, and they were starting on a horizontal drift toward the well that would have brought them right into where the girl was. That would have been disastrous, because they would have had to break the well in on her. So right away I changed the angle of the horizontal drift so it would break through two feet below her.

I made several changes in the way the work was being done. They'd been using some old two-inch, star-shaped bits that would wear down after just a few inches. Then they would take them up and sharpen them again. So I got in some bits that were made of tungsten carbide. Our strategy was that we would drill a series of holes in a square about 24 inches across and 18 inches down. The holes would be no more than two inches apart. Then we would take down a 45-pound jackhammer, also with a tungsten bit, and hold it there to knock out the rock. We were going at about an inch an hour. It was terribly hard rock, and it was slow going because you had to lie down on your stomach holding a 45-pound jackhammer in front of you.

But I've never seen more dedicated people. We actually had to force some of the men to quit and leave because they were about to drop. One guy was lying on the ground throwing his guts out. Another dropped from exhaustion, and we had to carry him out. It was a sight to see.

When I finally broke through into the shaft under where the girl was, I reached in and felt her foot and leg. When I had done that and heard her start crying, from that point on every time we'd go down and work for a little while, we'd have to stop because all the men, including myself, were getting so upset at hearing that baby cry. It really slowed us down, because all the men, the chippers and drillers, would start bawling.

She'd been slipping on us. She was dehydrating, so I guess as she got smaller she slipped further down. The doctors told us it was just a matter of time before she slipped farther down. That had me worried. I drilled straight across the well about two feet under her and inserted a metal rod to stop her descent. Then I inserted an industrial-strength balloon into the well under her to protect her from the dust and noise.

Paul White, 34, building contractor, volunteer driller: I've drilled a lot of granite. Granite will chip off. This stuff you had to pulverize to powder before it would let go. It would be as if someone gave you a hammer and chisel and told you to cut through a three-foot wall. The jackhammers would bounce off the rock. It was like hitting a piece of steel.

A normal guy can run a jackhammer all day long with breaks of 10 or 15 minutes. The way we were doing it, horizontally, one guy was wasted in 30 minutes, and some of these guys were built like they could outwrassle a horse. Nobody wanted to put a damper on anybody's drive, but it seemed hopeless down there. It was scary. It was like being in a grave. I hate to say that, because that was where Jessica was at. But you kind of had that feeling down there.

Every time I thought about that little girl—I remembered her from church—I could see her mischievous eyes peeking over the back of the church bench. What you had there at the site was a bunch of grown guys looking to get her out so they could all go home and cry.

David Lilly: I wouldn't let no one but me chip into the well near Jessica. See, I've got a little granddaughter 8 months old, Candace Lee, and the whole time we were fighting this I could see my granddaughter's face. I used a hydro drill, which puts out a spray of water under about 40,000 pounds of pressure. It was better for that last stretch because it couldn't hurt little Jessica. I broke out a cavity as wide as the well, 8 inches by 10 inches, and when I finally got that, I said to the paramedics, "Its up to you."

Robert O'Donnell, 30, paramedic: Me and Steve Forbes more or less volunteered ourselves because we both have children, and I've gotten kids unstuck from different situations before. At first some were saying, "Whichever driller gets there first, just grab her and pull her out." As a paramedic, I was saying, "No, that's wrong." We didn't know how she went into the well. If it was head first, she could have neck and spine damage, and any movement could have snapped the cord and we'd be bringing up a dead baby.

There must have been 10 or 12 false alarms, but finally on Friday at about 1 p.m., they said they were ready for us. I wasn't scared, but I was real apprehensive—I was going 29 feet down inside a black hole. I was wearing a mining light and a harness connected to a cable, and they lowered me slowly. Mr. Lilly was already down there, and he told me I would have to wriggle toward the well on my back or stomach like a snake. It was so tight in the tunnel it was like taking a sleeping bag and wrapping it around you. I inched along, and when I looked up, I saw Jessica's left foot dangling. Her parents had told us her nickname was Juicy, and that's what I called her. I said, "Move your foot for me, Juicy," and she'd do it. She'd whine once in a while, but she wouldn't talk words. I wanted to see what kind of physical condition she was in. I took her left leg and pressed up on it, and she didn't act like she was in pain. The main thing to do was to find out her position: Was she lying down up there? Was she in some kind of opening? I couldn't pull her down. She wouldn't move at all. I decided not to try, because I was afraid I would break her back or neck.

I knew that we couldn't get her out the way she was. There was *no way.* We're down there 40, 45 minutes, and I'm trying to be calm, but all I know is there's a baby stuck in there and there's no way to get her out without hurting her. That's the hardest thing I ever did, leaving that baby in there, and if I think about it too much, I could probably cry right now.

When I got up to the surface I told Mr. Lilly I had to have more headroom and I had to be closer to the child. While the drillers began to widen the tunnel, some of the pediatricians questioned whether I should go back in or not. They thought I was too distraught. But around 6 o'clock, after several more false starts, we went down again. We had talked about what we'd have to do this time, because we were going on 50 hours and the pressure to get Jessica out had mounted to a high in tensity. We had gotten to the point where if we had to get physical to pull her out, we were not going to worry about broken legs, broken arms, nothing—as long as we kep her back, neck and head intact. The rest could be fixed. Whatever broke, broke.

They had given me two or three more inches height-wise in the tunnel, but they didn't get me any closer to her. I had one rubber-tipped leg of a photographer's tripod with me, and when I pushed it up, she seemed to move a bit. I managed to push it all around her, so I knew she was sitting straight up in the hole with her left leg hanging straight down. I figured out that her right leg wasn't caught in a crevice, it was straight up by her head. She was in a split.

I lined the walls of the shaft with K-Y jelly and started pulling. She didn't like it at all. She had blue baby pants with snaps, and I got my hands wrapped in them pretty good and just kept pulling. She kept yelling, screaming, crying. One time she cut loose a big "No!" I kept calling her Juicy and telling her to calm down, but every time I pulled she tensed up real hard. So I'd keep a snug grip, and just when she'd relax, I'd yank even harder. Over and over I did this. When my right arm got too tired to pull any more, I'd go with my left, then back to my right.

Finally I noticed I had moved her two inches, then three inches. Then I got her into the K-Y jelly, and she started moving even better. I could move her half an inch at a time. Steve slipped the backboard to me. I pulled again and she came down. She was facing me, both arms beside her head. I said, "You're out, Juicy." I didn't have to tell her to calm down, because she was totally calm already. She wasn't moving, nothing. She was just blinking her eyes, looking around, breathing real easy. Her right leg was still up by her head, and you could see that the circulation had been cut off. They say her foot is pinking up, but when I saw it in the tunnel it was black.

Steve Forbes, 24 paramedic: After she was strapped to the backboard, I put her up against me and stood up. They lowered the cable down, and we floated on up real slow. We were face-to-face, and those big ole eyes just stared at me and I just stared back. It was a lot like Jessica was physically being born again. She came out slow, then fast, and she had that same look on her face as a newborn. Like, "Hmm, so this is it." It felt like her hands were almost in a fetal position while she was in the well.

Robert O'Donnell: I'd worked on her for an hour and 20 minutes. I was totally exhausted—totally elated too. I said prayers while I was down there, I cussed, I tried it all. I've saved other people's lives before, but there'll never be nothing like this again.

B.J. Hall: What really was touching was when they got her out, the route we took to the hospital—I was behind the ambulance. The streets were lined with people, and they were all cheering and the church bells were all ringing. It was the greatest thing I've ever seen.

Andy Glasscock: After they brought her out, I cried for two hours. They had to take me home. My kids live in another town with my ex-wife. The first thing I did was call them and tell them I love them.

Steve Forbes: Last night I couldn't go to sleep. I kept thinking about the rescue, and what I felt was joy. The best way I can describe it is, when we came up and I heard everybody screaming, well, it was the same joy that I felt three other times in my life: When I got married and after the births of my children.

David Lilly: Afterward, I just barely made it to a motel. I was caked with mud and completely exhausted. I called my wife and said, "I can only talk a minute, but you wouldn't believe what I've been doing." She told me, "I know what you've been doing, because I've been watching you on TV." I said "Noooo!" I had no idea. I told her, "I've got to take a bath and then die." But I couldn't sleep. It's funny. I slept maybe three hours that night. The rest of the time I paced the floor and smoked. I've never had such an experience.

CATASTROPHIC ILLNESS PROTECTION IS A GREAT VICTORY FOR SENIOR CITIZENS

Mr. RIEGLE. Mr. President, the catastrophic health care legislation we have passed here in the Senate is a major breakthrough in providing our senior citizens with the medical protection they need—from major hospitalized illnesses.

We know a single major illness can wipe out a person's entire lifetime savings, without warning. The six public hearings I held across Michigan gave us the testimony of thousands of people who gave personal evidence of why America needs catastrophic health care protection.

Under this bill, our Medicare beneficiaries will have their out-of-pocket health care cost capped at $1,850 a year for acute illnesses regardless of how long they are hospitalized or the amount of their doctor bills. New financial help is also provided for prescription drugs. This new medicine coverage will help protect both the health, and the savings, of our senior citizens.

Mr. President, I urge all of my colleagues to join with me in supporting passage of S. 1127, the Medicare Catastrophic Loss Protection Act. This legislation marks an important step toward providing Medicare beneficiaries with the protection they need. Although there are still major gaps in coverage for Medicare beneficiaries—especially in long-term care—this legislation is the most significant expansion of Medicare since the program was created in 1965.

Until this bill becomes law, a single serious illness can wipe out a person's lifetime savings without warning. The urgency of this problem became clear when I held six large public hearings in Michigan. Widespread public concern was demonstrated by the impressive turnout. Over 1,200 citizens attended the health hearing in the city of Warren alone. More than 200 witnesses testified at the hearings. Their testimony was stunning. I am convinced that this legislation will address many concerns that were raised at those hearings.

The bill before the Senate today primarily addresses the problems of seniors who get hit with a major, acute illness. No longer will seniors be driven into poverty by huge medical bills resulting from acute illness. The current Medicare system ceases to cover hospital stays after a limited number of days. Under the catastrophic bill, Medicare will provide for an unlimited length of stay in the hospital, as well as covering doctor bills. For all Medicare covered services, beneficiaries will be protected by an $1,850 a year limit on out-of-pocket expenses.

This legislation is needed most desperately by the 6 million Americans—about 22 percent of Medicare beneficiaries—who have no health insurance beyond Medicare. Most of these people are poor and near-poor elderly. They may be unable to afford MediGap insurance, leaving them vulnerable to catastrophic expenses.

President Reagan is to be commended for proposing catastrophic legislation. The bill before the Senate today, in response to the President's initiative, retains the principle set forth in his original proposal. The added coverage will not be paid for out of general revenues, but will be paid directly by the individuals receiving these new benefits. The coverage will be financed by an increase in the basic Medicare premium, and by a new supplemental premium based on the ability to pay.

I am pleased that the Senate accepted a key amendment which I introduced to protect millions of senior citizens who already have catastrophic benefits provided by their employers or former employers. Without my amendment, an inequity in the legislation would have required certain Medicare recipients to pay higher premiums for benefits they had already earned in their place of employment. My amendment requires that former employers provide recipients with new, additional health benefits above those provided for in the Senate catastrophic health care bill, or to refund to them the cash value of those benefits. This is a crucial protection for Michigan retirees, many of whom are beneficiaries of such employer-sponsored health care plans.

Another important addition was made to this bill when the Senate passed an amendment, of which I am an original cosponsor, which provides protection against catastrophic prescription drug expenses. Prescription drugs are crucial life-sustaining items for older Americans. Persons age 65 and older represent 12 percent of the population but consume 30 percent of all prescriptions filled in the United States. The prescription drug benefit will help control costs for people with very high drug bills, particularly for low- and moderate-income individuals who most need protection. About 5 million citizens will benefit annually from this coverage.

Mr. President, a personal tragedy was brought home by the hearings I held in Michigan: Too often, when one spouse became seriously ill, or required extensive nursing home care, the other spouse was driven into poverty before receiving help with huge medical bills under Medicaid. In Michigan, as elsewhere, lawyers are counseling senior citizens—many of whom have been married for decades—to get a divorce if one spouse suffers a catastrophic illness. Mr. President, this is a totally unacceptable requirement of Government policy. That is why I cosponsored the important amendment by Senator MIKULSKI and others, which has been adopted by the Senate, which permits couples to maintain sufficient assets and income so that they can remain married, and no spouse will be driven into poverty to allow the other to qualify for Medicaid.

Many gaps will remain open even with the passage of this catastrophic bill. The most problematic issue not covered in the new legislation is that of long-term care, including home health and nursing home care; 81 percent of the elderly's catastrophic out-of-pocket expenses are for long-term care. With the average nursing home bill running $22,000 a year, it is easy to see how long-term care needs can quickly bankrupt our senior citizens.

The catastrophic bill makes some steps toward improved coverage of long-term care. It expands coverage for skilled nursing home care from 100 to 150 days. It also includes a provision which I offered in the Finance Committee, and which was accepted by the committee, to eliminate the 3-day prior hospitalization requirement for eligibility for skilled nursing facilities. No longer will our senior citizens have to make unnecessary and costly hospital stays to qualify for needed nursing home care.

I urge the passage of this important legislation. Yet it must be remembered that there remains much more work to do before Medicare provides truly comprehensive insurance. We ought to have in place an insurance system where people are no longer put in a situation where health care needs tear their lives apart.

Nursing home care and home health care needs of the chronically ill are growing national needs that we must find new ways to address. I am determined to press ahead until we find a workable answer. This catastrophic bill is a major step in the right direction—protecting our senior citizens against financial devastation by health care costs, and protecting their dignity in the process.

MEDICARE CATASTROPHIC LOSS PREVENTION ACT

MENTAL HEALTH BENEFIT

Mr. MITCHELL. Mr. President, I would like to compliment Senator BENTSEN on his strong commitment to making changes in Medicare's mental health benefit through the budget reconciliation process. I wanted to offer a mental health amendment to S. 1127 when we marked up the bill in full committee, but because of his desire to address the issues related to the mental health needs of our elderly population through the budget reconciliation process, I agreed to wait for that process to begin.

As noted, the week of October 4-10, 1987, has been designated as Mental Illness Awareness Week. Therefore, it is most fitting that we discuss the need to change Medicare's outdated and outmoded coverage policies for those with mental and addictive disorders. Neither outpatient nor inpatient benefits have changed since the inception of the Medicare Program in the 1960's. Care in a psychiatric hospital is limited to 190 days per a beneficiary's lifetime. Outpatient psychiatric care poses an exceptionally burdensome problem for our elderly and disabled beneficiaries with a $250—after a 50-percent patient-borne copayment—limit per annum. The latter benefit has not been indexed in any way since Medicare was enacted and its value has been seriously eroded by inflation. This extreme limitation on outpatient care may, at times, encourage beneficiaries and physicians to use more expensive hospital care.

During the budget reconciliation process, let us give our elderly and disabled beneficiaries an opportunity to take advantage of some of the exciting new breakthroughs in the treatment of mental illness by changing Medicare's coverage policies for those with mental and addictive disorders. For example, researchers have documented that some cognitive deficits and memory losses associated with Alzheimer's disease may be modifiable with medication and psychotherapeutic intervention. Last, but not least, the genetic bases of many mental illnesses such as manic depression have been identified. Let us adjust Medicare in the near future to meet the challenges posed by many of the new research discoveries regarding mental illness. I once again thank Senator BENTSEN for his sincere efforts in pursuing an issue of great importance to me.

Mr. MATSUNAGA. Mr. President, as a cosponsor of Senate Joint Resolution 76, I rise to express my concern about the inadequacies of the current Medicare mental health benefit after observing "Mental Illness Awareness Week," October 4 through October 10, 1987. There are many Senators, including the chairman of the Finance Committee, Senator BENTSEN, who share this concern. I would like to express my appreciation to Senator BENTSEN and to the chairman of the Health Subcommittee, Senator MITCHELL, for holding hearings on Medicare coverage of this long-overlooked area on June 18, 1987.

Over the past few months, we have witnessed the development of a growing consensus among Members that an expansion of the Medicare mental health benefits is in order. The current $250 "cap" on outpatient mental health benefits has not been increased since Medicare was established. This amount in constant dollars buys only about $57 worth of care in 1987.

Mr. President, recently, exciting new breakthroughs in the treatment and cause of mental disorders have changed our understanding of mental disorders, and have given us the ability to treat such disorders much more effectively. Access to these advances is largely denied to beneficiaries because of current policies. Medicare's inadequate coverage dissuades many beneficiaries from seeking mental health care when it is most timely and effective; consequently there is much needless suffering and expense.

Most researchers agree that the mental health needs of elderly individuals are underserved. Between 15 and 25 percent of this population suffer from significant mental illness symptoms. As they lose spouses and loved ones, physical functioning, and meaningful work, they are placed at significant risk. These needs are often mistakenly treated as physical disorders.

On March 11, I introduced S. 718, a bill which would eliminate the limit on Medicare outpatient mental health benefits. Two other members of the Finance Committee are cosponsors of this measure, Senators ROCKEFELLER and MOYNIHAN, along with four other of our colleagues, Senators MELCHER, INOUYE, WIRTH, and BURDICK. During the Finance Committee's consideration of S. 1127, I was prepared to offer a more limited proposal to raise the outpatient services cap from $250 to $1,000 per year. This provision is in the House-passed version of the Medicare catastrophic legislation.

Mr. President, I withheld offering the amendment, in anticipation of the June hearing which produced information assisting us in weighing the options for a more comprehensive reform of Medicare policy regarding mental health. Senators MITCHELL, DURENBERGER, and I have been working together during the ensuing weeks on developing a proposal to improve the mental health coverage that will, within the bounds of financial constraints which we all recognize, best meet the unaddressed mental health needs of Medicare beneficiaries.

Once more, we will withhold offering such an amendment to S. 1127 during floor consideration, since this vital expansion was approved as part of the budget reconciliation legislation during the Finance Committee markup on October 6, 1987. As deliberations and negotiations on the fiscal year 1988 budget process, I trust that the chairman will continue to advocate this most important Medicare improvement.

Mr. MELCHER. As we consider the Medicare Catastrophic Loss Prevention Act, I would like to call attention to a particular need which has not been met in this bill. Our House colleagues voted to expand Medicare's outpatient mental health benefit so that beneficiaries with mental and addictive disorders would have expanded access to outpatient care. We have not done so within S. 1127 and I urge the Senate to make changes in Medicare's outdated and outmoded mental health benefit in another vehicle in this session of Congress.

I find it shocking that our elderly Americans are limited to the same dollar amount of outpatient mental health services under Medicare as when the legislation was first passed 22 years ago. This discriminatory cap is even more shocking when we consider the high incidence of mental illness and suicide among the elderly—illness that could be treated and lives that might be saved with appropriate medication and psychotherapy.

The field of psychiatric medicine has made dramatic advances in these 22 years of Medicare. For instance, researchers have documented that the memory loss and other cognitive deficits associated with Alzheimer's Disease may be modifiable with medication and other therapeutic interventions. By denying our senior citizens the advantage of these new treatment methods, we may also, in effect, be committing many of them to unneccessary and costly nursing home confinement. With proper mental health diagnosis and treatment, many of them could and should be happier and healthier at home.

According to these studies, the incidence of hospitalization and other health care use also decreases if mental health services are available, particularly for those over age 65. It just doesn't make sense to continue denying mental health care benefits that could be cost beneficial as well as health beneficial.

Medicare has moved along in recent years in recognizing exciting new procedures such as magnetic resonance imaging, laser cataract surgery and pacemaker implantation. Our senior citizens deserve the benefits of enhanced health and life-saving treatment under modern psychiatric medicine as well.

In this month, where we have recognized Mental Illness Awareness Week, and as a cosponsor of S. 718, The Medicare Mental Illness Non-Discrimination Act of 1987, I urge my colleagues to change Medicare's psychiatric benefit in the near future.

Mr. DURENBERGER. Like my colleagues, Senators MATSUNAGA and MITCHELL, I am absolutely committed to improving mental health coverage for Medicare beneficiaries as soon as possible.

Although almost every other technological and medical advance has been added to the Medicare benefit package, the elderly are denied access to the great improvements made in mental illness treatment.

Change is long overdue. Our Medicare mental illness payment policy is archaic. Despite advances in clinical treatment of mental illness since Medicare was enacted in 1965, the payment for outpatient treatment has stayed at $250; if the cap were extrapolated for inflation, it would be about $1,000 today. Congress has allowed the coverage originally authorized to be severely reduced.

Medicare coverage for the mental ill was developed in an era when most psychiatric patients were hospitalized. There were concerns that doctors and patients would make extensive use of long-term psychotherapy. That vision and fears of great expense to the trust fund have prevented change.

The emphasis on hospitalization of psychiatric patients resulted in a benefit design constructed around inpatient care. Today, we persist in maintaining a benefit package which limits outpatient care availability and actually encourages the use of expensive hospitalization.

Among the most striking developments in the treatment of mental illness has been in the field of psychopharmacology. Psychiatry is now supplied with a panoply of drugs which, with proper patient management, hold out renewed hope for the mentally disabled.

Despite the obvious need for care and advances in therapy design and effectiveness, most people in our Nation and especially the elderly, do not make use of mental health services. We need to remove in appropriate benefit barriers which further reduce access. We need instead to provide incentives that encourage more effective and less expensive care.

But, I am willing to wait until budget reconciliation to do it, to meet our other obligations to enact catastrophic illness coverage as soon as possible. I appreciate the commitment of the chairman of the Finance Committee to make improvement in mental health coverage a high priority in budget reconciliation legislation.

Mr. HEINZ. Mr. President, I join my colleague from Texas and others in expressing the hope that the Senate will address the need for changes in Medicare's mental health benefit.

During my 6 years as chairman of the Senate Special Committee on Aging, I saw two different snapshots of what it is like to be old in America. First was the full color glossy print of a happy couple, retired to the southern sun in the company of family and friends. Second was the stark black and white negative of an older man or woman, alone and isolated from society, suffering not just physical limitations, but mental disorientation and pain.

Unfortunately, for at least 15 to 25 percent of Americans over age 65, the second snapshot is a more realistic self-portrait. These are the millions of seniors—as many as 3 to 7 million seniors—suffering from depression and other chronic or acute mental diseases.

For too many years, Mr. President, through misunderstanding, prejudice or misplaced economies, we have restricted access to appropriate quality mental health services for these individuals under Medicare. For example, we still have the original outpatient benefit of $250, with a whopping out-of-pocket copayment of 50 percent. Most nursing homes operate without a mental health specialist—even though a substantial percentage of the elderly in nursing homes suffer from some form of mental illness.

It is indeed time, I believe, to recognize mental illness as an unmet catastrophy and change the Medicare Program appropriately. I urge my colleagues to address this problem on the most appropriate vehicle.

CATASTROPHIC PROTECTION

Mr. SHELBY. Mr. President, I am pleased to be among the 86 Senators who last night supported S. 1127, the Medicare Catastrophic Loss Prevention Act of 1987. I am happy not only with the outcome of the vote on this bill, but also, with the speed with which the work on this measure was completed. I know that many of my colleagues were as anxious as I was to address this issue and I certainly appreciate the diligence with which this task was approached. I would especially like to commend my distinguished colleague from Texas, Senator BENTSEN, for his leadership and skill in handling the negotiations on this bill. He is truly the force behind the swift passage of this most vital legislation and I thank him for his efforts.

In April of this year, I was very fortunate to be allowed to chair a field hearing in Alabama on behalf of the Special Committee on Aging on the issue of catastrophic protection for the elderly. The title of that hearing was appropriately enough "the Catastrophic State of Catastrophic Health Care Coverage"—well I am pleased to say that after last night's vote—the state of health care coverage for the elderly is much improved.

Mr. President, with each passing year the life expectancy in this country grows longer—this, I know we all agree, is a wonderful thing. Right now, according to the charts and statistics, I can expect, barring any unforseen health problems, to live another 21 years. That would place me at 74 years of age in the year 2009. But over the next 21 years there will surely be advances that may add another 3, 4, or even 5 years on life expectancy in this country. Where is this all leading? To a situation of critical importance.

Currently, 1.5 million Americans reside in nursing homes. By the year 2000 this figure is expected to jump to 2.2 million persons, and then double to 4.5 million by the year 2040. In addition, 5.2 million Americans over age 65 with a chronic condition, require some assistance in performing the activities of daily living that help them maintain their independence. Again, these figures are expected to grow substantially reaching 7.2 million persons by the year 2000 and 14.4 million by the year 2050.

Right now the greatest out-of-pocket expense for the elderly is nursing home care—which runs on the average $21,000 a year in this country. This expense amounts to just about 81 percent of the out-of-pocket expenses for the elderly.

S. 1127 did not turn out to be the vehicle by which we were to expand Medicare to include nursing home coverage. I do believe, however, that we have passed legislation that will become a building block for subsequent expansion—that will one day include long-term care coverage.

In the meantime, we can encourage and support vital community services like home health care, adult day care, and respite care. As we know or have all come to learn during the debate on this issue, 75 percent of our Nation's elderly who are at risk for nursing home care reside at home under the care of their families. I strongly believe that these families deserve our support. They are providing care that has to date significantly altered the long-term care landscape in our country. As our population ages so dramatically over the next 40 years and beyond we need to address the long-term aspects of health care. We need to formulate a realistic response to the long-term care dilemma our country will face as the so-called graying of the population takes place.

And so while some may think that our work on this catastrophic protection legislation is drawing to a conclusion, I believe we are really just beginning to formulate our response to the pressing needs of the elderly of today and the elderly of tomorrow. Our passage of S. 1127 last night was just the first step on a long road that I feel confident will one day lead to true catastrophic protection, including long-term care coverage.

Mr. President, we live in an age that is exhilarating for its progress and at the same time, frightening for its still unraveled mysteries. We at times make great breakthroughs in science and medicine and at other moments stand no closer to finding cures for many of the crippling diseases that lead to financial ruin. With the aging of our population, we meet perhaps the most significant health crisis, barring AIDS, that this Nation will face in the next century.

Our goal was to pass compassionate, comprehensive, and fiscally responsible legislation—I believe we have succeeded. However, as health professionals and medical researchers in this country work to lengthen human life—so too, we in the Senate, must work to insure quality of care and indeed, quality of life for the growing elderly population in our country. In that regard, last night's passage of the catastrophic health care legislation was only the beginning.

FLOYD McCREE: FOUR DECADES OF SERVICE

Mr. LEVIN. Mr. President, on October 26, 1987, the family, friends, and colleagues of Floyd McCree will gather in Flint, MI, to honor him for his accomplishments. It should be a long program.

After all, just listing Floyd's accomplishments takes a considerable amount of time. Floyd McCree was born in Webster Groves, MO, just outside of St. Louis. It was in the St. Louis area that Floyd first demonstrated his public speaking ability and where he won local and regional oratory contests. Floyd was also a star athlete. He attended college at Lincoln University in St. Louis but left to serve in the Army during World War II. A platoon sergeant, he spent 24 months in the Pacific front.

After his discharge Floyd relocated to Flint where he worked at the Buick Foundry. Then, as now, he was a union man and he was quickly elected to the executive board of United Auto Workers Local 599 and to the UAW's regional foundry council. He also served on local 599's education committee, on the Fair Employment Practices Committee and in key leadership positions with the Urban League and the NAACP. He was president of Parkland PTA and was divisional superintendent of the Metropolitan Baptist Church Sunday School. At the Buick Foundry, he was promoted to supervisor of maintenance.

Floyd also found the time to marry Leeberta Townsend. They have two sons and two daughters and two grandchildren.

In 1956, Floyd was appointed to the Genesee County Board of Supervisors. Two years later he was elected to the Flint City Council, the first black person to serve on the council. During 12 years on the council, he chaired—at one time or another—every single committee. From 1964-66, he was mayor pro-tempore of Flint and was elected mayor in 1966. He was Michigan's first black mayor and the first black mayor of any American city with a population above 100,000. In 1968, he led the successful drive to make Flint the first city in the United States to pass an open housing ordinance by referendum.

Since 1971, Floyd has been the Genesee County Register of Deeds, a position he first gained through appointment and to which he has been twice reelected. Floyd McCree is also a leader in the Democratic Party and has served as a precinct delegate and as secretary of the Democratic County Committee.

In short, Floyd McCree has led a life of service to his community, his State, and his Nation. Time after time, he has been called upon to assume responsibility in behalf of the greater good. And, time after time, Floyd has said "yes." He's been there—for four decades.

He has been a personal friend of mine for over 20 years. His advice and support has made a difference in my life on a number of occasions. I am glad that Floyd's legion of friends in Flint are getting together to honor him. Because, to put it simply, Floyd's life and career has honored every one of us.

ORDER FOR STAR PRINT OF S. 1721

Mr. COHEN. Mr. President, I am pleased to announce today that Senator BOREN, the chairman of the Select Committee on Intelligence; Senators INOUYE and RUDMAN, the chairman and vice-chairman of the Iran/Contra Committee; and my colleague from Maine, Senator MITCHELL, a very involved and effective member of the Iran Committee, have joined with me as co-sponsors of S. 1721, a bill I introduced on September 25, 1987, to restructure the framework for the congressional oversight of intelligence activities, including covert actions.

As I stated on that day, the Iran-Contra hearings have demonstrated there are problems in the existing framework. While the bill recognizes that there must remain a degree of flexibility in the oversight system, and, indeed, the President must be able to take appropriate actions in satisfaction of his constitutional responsibilities, the general rule should be Congress is consulted prior to covert actions being taken. Further, the decisions of the President must be documented in such a way that neither the Congress nor the executive branch has any doubt as to what is being authorized. If agencies of the executive branch other than CIA are being utilized, Congress should know it. If third parties are being utilized, Congress should know it.

It is gratifying to have the Senators I have mentioned joining me in sponsoring this legislation. They have the experience in this area, as well as the insights into what the problems are. I am delighted that they share my view that S. 1721 is at least a good place to start in resolving these concerns.

In conclusion, Mr. President, I ask unanimous consent to authorize a star print of S. 1721, to include an additionl phrase at the end of one subsection of the bill.

Mr. President, I also ask unanimous consent that Senators BOREN, INOUYE, RUDMAN, and MITCHELL be included as cosponsors of the bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Saunders, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session, the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations and a withdrawal, which were referred to the appropriate committees.

(The nominations and withdrawal received today are printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

At 12:25 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House agrees to the amendment of the Senate to the joint resolution (H.J. Res. 309) providing support for the Civic Achievement Award Program in honor of the office of the Speaker of the House of Representatives.

The message also announced that the House has passed the following joint resolution, without amendment:

S.J. Res. 171. Joint resolution designating the week beginning November 8, 1987, as "National Women Veterans Recognition Week."

The message further announced that pursuant to section 1361 of Public Law 99-498, the Speaker appoints the following members from the private sector to the Alien Youth Education Opportunity Panel on the part of the House: Dr. Piedad Robertson of Miami, Florida, and Mr. Bradley A. Woodruff of Elgin, Illinois.

The message also announced that pursuant to the provisions of section 4 of Public Law 99-624, the Speaker appoints Mr. Price of North Carolina as a member of the Dwight David Eisenhower Centennial Commission, on the part of the House, vice Mr. Glickman, resigned.

The message further announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 2952. An act to increase the amount authorized to be appropriated for acquisition at the Women's Rights National Historical Park.

The message also announced that the House has agreed to the following concurrent resolutions, in which it requests the concurrence of the Senate:

H. Con. Res. 97. Concurrent resolution to encourage State and local governments and local educational agencies to provide high quality daily physical education programs for all children in kindergarten through grade 12; and

H. Con. Res. 196. Concurrent resolution expressing the support of the Congress for the implementation of the July 29, 1987, accord with respect to Sri Lanka as the best hope for peace.

At 4:56 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House has passed the following bill, with amendments, in which it requests the concurrence of the Senate:

S. 442. An act to amend section 914 of title 17, United States Code, regarding certain protective orders.

The message also announced that the House has passed the following bills and joint resolutions, in which it requests the concurrence of the Senate:

H.R. 17. An act to identify, commemorate, and preserve the legacy of historic landscapes of Frederick Law Olmsted, and for other purposes;

H.R. 1223. An act entitled "Indian Self-Determination Amendments of 1987";

H.R. 1454. An act to amend Public Law 99-572 to authorize the Secretary of the Treasury to invest private funds contributed to the American Battle Monuments Commission for the construction of the Korean War Veterans Memorial in public debt securities;

H.R. 1839. An act to amend the Wild and Scenic Rivers Act to designate a segment of the Rio Chama River in New Mexico as a component of the National Wild and Scenic Rivers System;

H.R. 2224. An act to authorize appropriations for fiscal year 1988 for the Panama Canal Commission to operate and maintain the Panama Canal, and for other purposes;

H.R. 2858. An act to provide for refunds pursuant to rate decreases under the Federal Power Act;

H.R. 3097. An act to amend the Public Health Service Act to revise and extend the program of assistance to organ procurement organizations, and for other purposes;

H.R. 3460. An act to amend chapter 41 of title 38, United States Code, with respect to veterans' employment and training;

H.J. Res. 112. Joint resolution to establish a United States Commission on Improving the Effectiveness of the United Nations;

H.J. Res. 328. Joint resolution to recognize the National Fallen Firefighter's Memorial on the campus of the National Fire Academy in Emmitsburg, Maryland, as the official national memorial to career and volunteer firefighters who die in the line of duty; and

H.J. Res. 365. Joint resolution designating October 1, 1988, as "National Quality First Day."

The message further announced that the House agrees to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 68. A concurrent resolution expressing the sense of the Congress regarding the inability of American citizens to maintain regular contact with relatives in the Soviet Union.

MEASURES REFERRED

The following bills and joint resolutions were read the first and second times by unanimous consent, and referred as indicated:

H.R. 17. An act to identify, commemorate, and preserve the legacy of historic landscapes of Frederick Law Olmsted, and for other purposes; to the Committee on Energy and Natural Resources.

H.R. 1223. An act entitled "Indian Self-Determination Amendments of 1987"; to the Select Committee on Indian Affairs.

H.R. 1454. An act to amend Public Law 99-572 to authorize the Secretary of the Treasury to invest private funds contributed to the American Battle Monuments Commission for the construction of the Korean War Veterans Memorial in public debt securities; to the Committee on Energy and Natural Resources.

H.R. 1839. An act to amend the Wild and Scenic Rivers Act to designate a segment of the Rio Chama River in New Mexico as a component of the National Wild and Scenic Rivers System; to the Committee on Energy and Natural Resources.

H.R. 2224. An act to authorize appropriations for fiscal year 1988 for the Panama Canal Commission to operate and maintain the Panama Canal, and for other purposes; to the Committee on Armed Services.

H.R. 2858. An act to provide for refunds pursuant to rate decreases under the Federal Power Act; to the Committee on Energy and Natural Resources.

H.R. 2952. An act to increase the amount authorized to be appropriated for acquisition at the Women's Rights National Historical Park; to the Committee on Energy and Natural Resources.

H.R. 3097. An act to amend the Public Health Service Act to revise and extend the program of assistance to organ procurement organizations, and for other purposes; to the Committee on Labor and Human Resources.

H.R. 3460. An act to amend chapter 41 of title 38, United States Code, with respect to veterans' employment and training; to the Committee on Veterans' Affairs.

H.J. Res. 112. Joint resolution to establish a U.S. Commission on Improving the Effectiveness of the United Nations; to the Committee on Foreign Relations.

H.J. Res. 328. Joint resolution to recognize the National Fallen Firefighter's Memorial on the campus of the National Fire Academy in Emmitsburg, MD, as the official national memorial to career and volunteer firefighters who die in the line of duty; to the Committee on Rules and Administration.

H.J. Res. 365. Joint resolution designating October 1, 1988, as "National Quality First Day"; to the Committee on the Judiciary.

The following concurrent resolutions were read, and referred as indicated:

H. Con. Res. 97. Concurrent resolution to encourage State and local governments and local educational agencies to provide high-quality, daily physical education programs for all children in kindergarten through grade 12; to the Committee on Labor and Human Resources.

H. Con. Res. 196. Concurrent resolution expressing the support of the Congress for the implementation of the July 29, 1987, accord with respect to Sri Lanka as the best hope for peace; to the Committee on Foreign Relations.

MEASURE PLACED ON THE CALENDAR

The following concurrent resolution was read, and placed on the calendar:

H. Con. Res. 68. A concurrent resolution expressing the sense of the Congress regarding the inability of American citizens to maintain regular contact with relatives in the Soviet Union.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. NUNN, from the Committee on Armed Services, without amendment:

S. Res. 306. An original resolution authorizing supplemental expenditures for the Committee on Armed Services (Rept. No. 100-209); referred to the Committee on Rules and Administration.

By Mr. KENNEDY, from the Committee on Labor and Human Resources:

Report to accompany the bill (S. 1663) to reauthorize the Child Abuse Prevention and Treatment Act and other related Acts dealing with adoption opportunities and family violence (Rept. No. 100-210).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. EVANS (for himself and Mr. Boschwitz):

S. 1825. A bill to amend the Internal Revenue Code of 1986 to retain a capital gains tax differential, and for other purposes; to the Committee on Finance.

By Mr. WILSON:

S. 1826. A bill to improve security and control of Department of Defense supply inventories; to the Committee on Armed Services.

By Mr. REID (for himself and Ms. Mikulski):

S. 1827. A bill to designate the Federal Building located at 330 Booth Street in Reno, Nevada, as the "C. Clifton Young Federal Building"; to the Committee on Environment and Public Works.

By Mr. HATCH (for himself and Mr. Garn):

S. 1828. A bill for the relief of San Juan County Nursing Home, of Blanding, Utah; to the Committee on Labor and Human Resources.

By Mr. PELL (for himself, Mr. Inouye, Mr. Hatfield, Mr. Weicker, and Mr. Kennedy):

S. 1929. A bill to provide that a special gold medal be presented to Mary Lasker for her humanitarian contributions in the area of medical research and education, urban beautification and fine arts, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. NUNN, from the Committee on Armed Services:

S. Res. 306. An original resolution authorizing supplemental expenditures for the Committee on Armed Services; to the Committee on Rules and Administration.

By Mr. DURENBERGER (for himself, Mr. Boschwitz, Mr. Burdick, Mr. Conrad, Mr. Grassley, Mr. Pressler, Mr. Melcher, Mr. Harkin, Mr. Simpson, Mr. Dole, Mr. Fowler, Mr. Wilson, Mr. Kasten, Mr. Nickles, Mr. Daschle, Mr. Baucus, and Mr. Proxmire):

S. Res. 307. A resolution to recognize and congratulate the Minnesota Twins as the World Champions of baseball; considered and agreed to.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. EVANS (for himself and Mr. Boschwitz):

S. 1825. A bill to amend the Internal Revenue Code of 1986 to retain a capital gains differential, and for other purposes; to the Committee on Finance.

(The statement of Mr. Evans and the text of the bill appear earlier in today's Record.)

By Mr. WILSON:

S. 1826. A bill to improve security and control of Department of Defense supply inventories; to the Committee on Armed Services.

DEFENSE SUPPLIES SECURITY AND CONTROL REFORM ACT

Mr. WILSON. Mr. President, I rise today to introduce the Defense Supplies Security and Control Reform Act of 1987.

Mr. President, I want to mention, this bill and the problems it addresses are enormous and of unparalleled proportion. Nothing in the private sector compares to the massive supply system of the Department of Defense. Military supply inventories are valued at over $160 billion. That is roughly 10 times larger than the value of supply inventories owned by the top five Fortune 500 corporations combined.

Mr. President, I recognize—and I want to emphasize—that the primary mission of the Department of Defense and the armed services is readiness. It is not pure economic efficiency. Having the right weapon, part or bolt at the right time, must take precedence over a strict and unwavering adherence to minimum costs.

We do not wish to keep supplies that need to be in the field locked up in a centralized location. Obviously that will not work. This is not only a system of vast complexity and of unparalleled and incomparable magnitude, but it is obviously one the requires the highest degree of decentralization precisely because of the mission of the Armed Forces.

Nevertheless, serious supply system deficiencies do exist that are so pervasive that the opportunities for theft of sophisticated and dangerous supply items are abundant. And this condition is absolutely unacceptable.

Last year, the Senate Armed Services Committee formed a task force on inventory management which I chaired.

My good friend, the Senator from Ohio, Senator Glenn, is continuing work of that task force this year under the auspices of the Government Affairs Committee. This committee has held the first of what I hope will be several hearings in that continuing effort.

According to the task force final report, a primary reason for the deficiencies in inventory management and control can be found in insufficient command emphasis on sound business practices at all levels of the chain of command. The report also criticized the Department of Defense for inadequate physical security at logistics centers and on military installations. Military leadership has not ensured that adequate personnel and resources are reserved for logistics and security functions. And commanders have not ensured that proper practices and procedures are followed.

The task force focused, in detail, on problems relating to ammunition and explosives accountability and the theft of combat gear and other property from military installations. Inadequate physical security creates a potential for easy and undetected diversion of expensive, sophisticated, and, in some cases, dangerous supply items.

These deficiencies can only adversely affect our national security, but they also represent an inordinate cost to the taxpayer. Furthermore, the loss of control over dangerous munitions constitutes a clear threat to the public.

If these particular items fall into the wrong hands, the possibility of use for terrorism, and use by organized crime, is obvious.

The pilferage and/or diversion of supply inventories, which would be sorely needed in the event of a national emergency, degrades the readiness of our Armed Forces. Moreover, if diverted supply items are sold on the international arms market they may ultimately enhance the military capabilities of potential adversaries and terrorists threatening both military personnel and civilians, as we have painfully seen in the recent past.

The task force also identified a lack of a comprehensive plan to identify supply management deficiencies. It found that, in all too many cases, there was no causative research being performed to determine the reason for these shortcomings. The task force called out for a commitment to seek improvements, not just in the modernization of the accounting procedures, but in the commitment at the command level to the kind of attention, without which this problem will continue and, in fact, grow.

It goes without saying if we are ever to improve the inventory management at the Department of Defense to ensure that we are getting all that we should, both in the way of readiness and in terms of the maximum "bang for the buck," for our defense tax dollars, we must develop a comprehensive plan and begin to implement whatever plans are required.

Mr. President, today I am introducing legislation aimed at restoring control over the Defense Department's vast supply system. America has built a 600-ship Navy, drastically improved our conventional land forces, and started modernizing our strategic forces. But we have failed to ensure that our inventory of spare parts and other needed items are properly managed and secured.

The failure to upgrade our defense supply system affects the readiness of our Armed Forces, it affects our ability to deploy and use them during times of crisis. Moreover, during times of dire and obvious fiscal constraints, occasioned by the need for deficit reductions, when the national security interests of the United States have already suffered a sharp reduction in needed effort, and are threatened with further reductions, the fiscal implications of this waste is obvious and painful.

The legislation I am introducing will require the Department of Defense to provide a comprehensive blueprint to Congress on inventory management, its weaknesses and ways to improve the system.

The legislation will specifically require the Department of Defense to take action to improve methods for identification of and accounting for individual items of ammunition and explosives that are susceptible to pilferage. Furthermore, it will require the Department of Defense to report the theft or loss of any ammunition or explosive to the Bureau of Alcohol, Tobacco, and Firearms, which collects data on firearms and explosives for use in crime fighting. The centralized data will also assist the military in assessing its management over dangerous ammunition and explosives.

The legislation will provide direction to the Secretary of Defense on ways to modernize and enhance physical security at military installations.

Finally this legislation will enhance and clarify current law enforcement measures designed to apprehend and punish individuals who steal items from the supply system. The task force found that undercover investigations were very helpful in detecting and investigating thefts of Government property. The bill urges the Secretary to continue these undercover investigations.

In an effort to gain better control over military supplies and parts, this legislation will authorize the reduction, termination or denial of certain or all benefits upon conviction for theft of Government property. I feel it is important that those individuals convicted of stealing Government property not receive thousands of dollars in benefits.

Mr. President this is just the beginning. By no means does this legislation or the work of the task force address all of the problems associated with the control or security of the Department of Defense's vast supply inventories.

Mr. President, I thank the Chair and ask unanimous consent that the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1826

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE

This Act may be cited as the "Defense Supplies Security and Control Reform Act of 1987".

TITLE I—SUPPLY INVENTORY MANAGEMENT STUDIES, DEMONSTRATION PROJECT, AND MODERNIZATION PLAN

SEC. 101. DEFENSE INVENTORY SECURITY AND CONTROL ENHANCEMENT STUDY

(a) IN GENERAL.—Not later than one year after the date of the enactment of this Act, the Secretary of Defense shall carry out and complete a study to determine the effectiveness of Department of Defense procedures for ensuring security and control of supplies at Department of Defense depots.

(b) CONDUCT OF THE STUDY.—(1) The Secretary of Defense, in conducting the study, shall utilize personnel who are sufficiently knowledgeable about supply system accounting procedures, inventory control procedures, and inventory security procedures of the Department of Defense, and about law enforcement procedures, to ensure that the reasons for the problems of loss, theft, and mismanagement of Department of Defense supplies are identified and thoroughly examined during the study and that solutions for such problems are developed.

(2) Subject to paragraph (1), in order to carry out the study, the Secretary of Defense may use members of the Armed Forces, employees of the Department of Defense, and employees of any other department or agency of the Federal Government (with the consent of the head of such department or agency), may contract for the conduct of the study, or may use a combination of such methods.

(3) The Secretary of Defense may procure, for the purpose of carrying out the study, temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals which do not exceed the daily equivalent of the annual rate of basic pay prescribed for GS-18 of the General Schedule under section 5332 of such title.

(c) REPORT.—(1) Not later than 18 months after the date of the enactment of this Act, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the results of the study. The Secretary may submit the report in both classified and unclassified forms if the Secretary considers it necessary to do so in the interest of national security.

(2) The Secretary of Defense, at the same time as the Secretary submits the report to Congress under paragraph (1), shall transmit a copy of the report to the Comptroller General of the United States.

(d) REVIEW BY THE COMPTROLLER GENERAL.—The Comptroller General shall—

(1) review the report transmitted by the Secretary of Defense under subsection (c)(2); and

(2) submit to the Committees on Armed Services of the Senate and the House of Representatives, within 90 days after the date on which the Comptroller General receives such report, any findings and recommendations on procedures for ensuring the security and control of supplies at Department of Defense depots that the Comptroller General considers appropriate.

(e) AUTHORIZATION.—(1) There is authorized to be appropriated to the Department of Defense for fiscal year 1989, $10,000,000, to carry out this section.

(2) Amounts appropriated pursuant to the authorization in paragraph (1) shall remain available until the Secretary of Defense submits the report to Congress under subsection (c).

SEC. 102. ANALYSIS OF SALES OF SURPLUS MUNITIONS

The Secretary of Defense shall—

(1) conduct a cost-benefit analysis of the practice of selling surplus Department of Defense munitions to the public; and

(2) submit to the Committees on Armed Services of the Senate and the House of Representatives, not later than 180 days after the date of the enactment of this Act, a report containing a description and discussion of each such practice.

SEC. 103. SUPPLY TRACEABILITY ENHANCEMENT

The Secretary of Defense shall—

(1) develop improved methods for the identification of and accounting for individual items of ammunition, explosives, and other Department of Defense supplies that are susceptible to pilferage; and

(2) submit to the Committees on Armed Services of the Senate and the House of Representatives, not later than 1 year after the date of the enactment of this Act, a report containing a description and discussion of each such method.

SEC. 104. SUPPLY SYSTEM MODERNIZATION PLAN

The Secretary of Defense shall—

(1) prepare a plan for the modernization of the supply facilities and supply distribution procedures of each of the primary military departments and Defense Agencies of the Department of Defense; and

(2) not later than one year after the date of the enactment of this Act, transmit a copy of such plan to the Committees on Armed Services of the Senate and the House of Representatives.

TITLE II—SUPPLY SECURITY AND CONTROL IMPROVEMENTS

SEC. 201. SECURITY AND CONTROL OF SUPPLIES: REPORTS, FUNDING, PROCEDURES

(a) IN GENERAL.—(1) Part IV of subtitle A of title 10, United States Code, is amended by adding at the end the following new chapter:

"CHAPTER 169—SECURITY AND CONTROL OF SUPPLIES

"Sec.
"2891. Report on security and control of supplies.
"2892. Miscellaneous security and control procedures.

"§ 2891. Report on security and control of supplies

"(a) The Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives, not later than February 1 of each year, a report on security and control of Department of Defense supplies.

"(b) Each report shall contain—

"(1) a summary of each of the physical inventory program plans of the Department of Defense, the Defense Logistics Agency, and the military departments for the fiscal year in which the report is submitted;

"(2) a discussion of the deficiencies, if any, in the security and control of Department of Defense supplies in the fiscal year preceding the year in which the report is submitted and a discussion of the extent to which such deficiencies have been corrected;

"(3) a discussion of—

"(A) research and development projects carried out by the Department of Defense in such preceding fiscal year for the improvement of the inventory and recordkeeping capabilities of the Department;

"(B) any proposals for expeditious application of any new technology resulting from such projects; and

"(C) the budget needs for research and development for such purpose in the fiscal year in which the report is submitted and any subsequent fiscal year for which the budget needs have been determined;

"(4) a discussion of—

"(A) the budget authority made available to the Department of Defense for inventory control functions in the fiscal year in which the report is submitted and in each of the five fiscal years preceding such fiscal year;

"(B) the budget authority proposed for such purpose in the budget submitted to Congress under section 1105 of title 31 for the fiscal year following the fiscal year in which the report is submitted; and

"(C) the budget authority needed for such purpose in each of the five fiscal years following the fiscal year for which such budget is submitted;

"(5) an evaluation of the effectiveness of supply inventory control in the fiscal year preceding the fiscal year in which the report is submitted, the criteria used by the Secretary to make such evaluation, and the information considered by the Department in making the evaluation, including the value of supplies lost or stolen or for which accountability has otherwise been lost; and

"(6)(A) the aggregate statistics for all incidents of theft, fraud, or breach of security involving Department of Defense supplies that were investigated by military or civilian law enforcement agencies during the fiscal year preceding the fiscal year in which the report is submitted, including incidents involving munitions;

"(B) a summary description of all such incidents, including the circumstances under which the incidents occurred; and

"(C) the lessons learned by the Department of Defense from such incidents.

"§ 2892. Miscellaneous security and control procedures

"(a) The Secretary of Defense shall require an investigation of each discrepancy in an accounting for supplies of the Department of Defense involving an amount exceeding the amount determined under procedures prescribed by the Secretary. The Secretary shall prescribe procedures for randomly varying the minimum amount for which an investigation is required.

"(b) The Secretary of Defense shall require, to the extent feasible, that the supply ordering job function and supply receiving job function be performed by different offices and individuals.

"(c) The Secretary of Defense shall ensure that an individual's performance in accounting for Department of Defense supplies is taken into account—

"(1) in evaluating that individual's job performance, in the case of an employee of the Department, or in determining that individual's efficiency rating, in the case of a member of the armed forces; and

"(2) in the case of a commissioned or warrant officer in the armed forces, in determining that individual's fitness for retention, promotion, or assignment to a position of command.

"(d) The Secretary of Defense shall ensure that—

"(1) the employees of the Department of Defense and members of the armed forces assigned to manage Department of Defense supplies are skilled in the management of such supplies; and

"(2) no employee of the Department of Defense and no member of the armed forces is assigned to perform such function for disciplinary reasons.".

(2) The table of chapters at the beginning of such part and such subtitle are each amended by inserting after the item relating to chapter 169 the following new item:

"169. Security and control of supplies ...... 2891".

(b) Implementation.—(1) The Secretary of Defense shall submit the first report required by section 2891 of title 10, United States Code (as added by subsection (a)), not later than February 1, 1988.

(2) The Secretary of Defense may omit in the reports under section 2891 of title 10, United States Code, the information relating to any of fiscal years 1983 through 1988, described in subsection (b)(4)(A) of such section for which there are inadequate records, as determined by the Secretary.

TITLE III—LAW ENFORCEMENT ENHANCEMENT PROVISIONS

SEC. 301. UNDERCOVER INVESTIGATIONS

(a) Finding.—Congress finds that the use of undercover investigative techniques by the Department of Defense enhances the ability of the Department of Defense to detect and investigate thefts of Government property, including munitions, from the Department of Defense supply system.

(b) Policy.—The Secretary of Defense is urged to continue to conduct undercover investigations to detect and investigate thefts referred to in subsection (a).

SEC. 302. INVENTORY SECURITY INCIDENT REPOSITORY

The Secretary of Defense shall establish and maintain a centralized computer system for recording and organizing information on theft, fraud, and breach of security, incidents involving the loss of Department of Defense supplies, including munitions.

SEC. 303. REPORTS OF MUNITIONS LOSSES TO THE BUREAU OF ALCOHOL, TOBACCO, AND FIREARMS

(a) In General.—Chapter 44 of title 18, United States Code, is amended by adding at the end the following new section:

"§ 930. Reporting the theft or loss of military ammunition, destructive devices, and explosives

"The Secretary of Defense shall report the theft or other loss of any ammunition, destructive device, or explosive materials (as defined by section 841 of this title) from its stocks to the Secretary of the Treasury within 24 hours after the discovery of such theft or other loss.".

(b) Conforming Amendment.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 929 the following:

"930. Reporting the theft or loss of military ammunition, destructive devices, and explosives.".

(c) Effective Date.—The amendment made by subsection (a) shall take effect with respect to thefts and losses discovered more than 180 days after the date of the enactment of this Act.

SEC. 304. PROHIBITION ON DUPLICATION OF SERIAL NUMBERS USED FOR MILITARY WEAPONS

Section 922 of title 18, United States Code, is amended by adding at the end the following new subsection:

"(p) It shall be unlawful for any licensed importer, licensed manufacturer, or other person to place a United States military model designation or serial number on any firearm unless such importer, manufacturer, or other person places such designation or serial number on such firearm because the firearm is to be imported for the United States or is manufactured for the United States.".

SEC. 305. OFFENSES RELATING TO THEFT OF GOVERNMENT PROPERTY

(a) Attempted Embezzlement of Public Money, Property, or Records.—Section 641 of title 18, United States Code, is amended adding at the end the following;

"Whoever attempts to commit any offense defined in this section is punishable by imprisonment or fine or both to the extent provided for the commission of the offense which was the object of the attempt.".

(b) Clarification of the Offense of Purchase or Receipt of Military, Naval, or Veteran's Facilities Property.—Section 1024 of title 18, United States Code, is amended—

(1) by striking out "or other property furnished by the United States under a clothing allowance or otherwise, to" and inserting in lieu thereof "or other property provided by the United States for use by"; and

(2) by striking out "to any person accompanying," and inserting in lieu thereof "by any person accompanying,";

(3) by striking out "or to any former member" and inserting in lieu thereof "or by any former member"; and

(4) by striking out "or furnished by the United States under such allowance, or otherwise" and inserting in lieu thereof "or provided by the United States for any of the uses stated above".

SEC. 306. REDUCTION, TERMINATION, AND DENIAL OF CERTAIN BENEFITS UPON CONVICTION FOR THEFT OF GOVERNMENT PROPERTY

(a) In General.—Notwithstanding any other provision of law, upon the conviction of an individual for theft of property of the Federal Government—

(1) the amount of any monetary benefit payable under a Federal Government program to or for the benefit of such individual may be reduced, by the head of the department or agency paying such benefit, to the amount equal to 50 percent of the amount of such benefit otherwise payable in the case of such individual if the total value of the stolen property involved in the theft is less than $500; and

(2) the entitlement of such individual to such benefit may be terminated, by the head of the department or agency paying such benefit, if the total value of the stolen property involved in the theft is $500 or more.

(b) Definitions.—In this section:

(1) The term "benefit" includes a retirement benefit, pension, disability compensation, and educational assistance benefit.

(2) The term "conviction" means a conviction by a Federal or State court or a court-martial which has not been vacated or otherwise set aside by an appellate court or other reviewing authority, but does not include a conviction for which an individual has been pardoned by competent authority.

By Mr. REID (for himself and Ms. MIKULSKI):

S. 1827. A bill to designate the Federal building located at 330 Booth Street in Reno, NV, as the "C. Clifton Young Federal Building"; to the Committee on Environment and Public Works.

C. CLIFTON YOUNG FEDERAL BUILDING

Mr. REID. Mr. President, it is my great pleasure to today introduce legislation designating the Federal building located at 330 Booth Street in Reno, NV, the "C. Clifton Young Federal Building."

Many of my Senate and House colleagues may know or have heard of my dear and most distinguished friend. Besides being a U.S. Representative during the 83d and 84th Congresses, Cliff served in the ground forces in Europe during World War II and worked diligently in Nevada State and local politics. He is a past president of the National Wildlife Federation, a staunch defender of the environment and is currently an esteemed Justice of the Nevada Supreme Court. In short, he has been an outstanding citizen of both the country and the State of Nevada and has maintained the highest of ideals. Indeed, his many years of selfless service should—must—be recognized and I can think of no higher accolade than to designate the 330 Booth Street Federal Building located in his beloved native State as a memorial to his achievements. I urge each of you to support this bill.

Mr. President, I ask unanimous consent that the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1827

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DESIGNATION OF BUILDING.

The Federal Building located at 330 Booth Street in Reno, Nevada, shall hereafter be known and designated as the "C. Clifton Young Federal Building".

SEC. 2. LEGAL REFERENCES TO BUILDING.

Any reference in any law, regulation, document, record, map, or other paper of the United States to the building referred to in section 1 is deemed to be a reference to the "C. Clifton Young Federal Building".

By Mr. HATCH (for himself and Mr. GARN):

S. 1828. A bill for the relief of San Juan County Nursing Home, of Blanding, UT; to the Committee on Labor and Human Resources.

RELIEF OF SAN JUAN COUNTY NURSING HOME

Mr. HATCH. Mr. President, I rise to ask you all to support assistance to a small town nursing home in Blanding, UT, that has been hit hard by the increasingly complex medical industry.

The chairman of the San Juan County, UT, Commission, which has operated the county nursing home, has approached me with his dire problems. In the bill before this distinguished body, Mr. President, I seek to better not only the economic state of the home, but, more importantly, the availability of quality medical care for its patrons, and specifically those in rural Utah. For, I am sure today, that we all respect the institutions providing quality care to our Nation's senior citizens and disabled persons. And now, I ask for your assistance to help them in rural Utah.

The cause of the trouble for the nursing home has arisen because of the steady decrease in use of nursing homes in San Juan County and the increased percentage of fully paid Medicare recipients in this home. The trouble is that in 1968 the San Juan County Nursing Home agreed to provide a certain percentage of uncompensated care for a period of 20 years in order to receive an initial so-called Hill-Burton grant under the Department of Health and Human Services.

And now that the home has been sold to another party, after faithfully fulfilling their obligations for years, they seek to renegotiate the contract to reflect the amount of uncompensated services they have provided. I do believe that we should support programs that, with or without contractual obligation, provide uncompensated care. But, in this instance, most of the terms of the contract have been fulfilled. The Department of Health and Human Services is taking action to fine this program for the full amount of the obligation. This will undermine quality medical care. When the search for candidates to provide uncompensated care possibly interferes with the providing of necessary care to other patients, I can understand the usefulness of such a waiver, as I hope you all can.

Yet, this bill does not grant a total forgiveness which may run roughshod over the needs of our disadvantaged elderly. This bill also mandates that the county commissioners establish a trust, in an amount that will be negotiated with HHS, for county residents who cannot afford medical care.

My distinguished colleague from South Carolina, Mr. THURMOND, recently employed a similar bill to assist a fine medical institution in his State and I praise him for being so aware of and responsive to the needs of his region. I now ask for his support, as well as the support of all my distinguished colleagues, in passing this legislation to better the lives of many Americans while shoring up our protection of our Nation's elderly.

I ask unanimous consent that the full text of this bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1828

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) The San Juan County Commission, the successor in interest to San Juan County Nursing Home, Blanding, Utah, shall be relieved of all liability under title VI of the Public Health Service Act resulting from the sale of San Juan County Nursing Home to the Auburn Manor Holding Corporation if the San Juan County Commission complies with the provisions of this Act.

(b) The San Juan County Commission shall—

(1) establish and maintain an irrevocable trust in the amount described in section 609(d)(1)(A)(i) of the Public Health Service Act;

(2) provide that such trust will only be used to provide health care services to persons who reside in San Juan County, Utah, and who are unable to pay for such services; and

(3) provide such services to such persons during the period beginning 15 days after the date of enactment of this Act and ending on the date described in subsection (d).

(c)(1) If the Secretary of Health and Human Services determines that the San Juan County Commission has complied with the provisions of subsection (b)(1) and has entered into an agreement with the Secretary of Health and Human Services to ensure compliance with paragraphs (2) and (3) of subsection (b), the San Juan County Commission shall be permanently relieved of all liability under title VI of the Public Health Service Act resulting from the sale of San Juan County Nursing Home to the Auburn Manor Holding Corporation.

(2) Any agreement entered into under paragraph (1) shall contain appropriate provisions specifying penalties for noncompliance by the San Juan County Commission with the provisions of subsection (b).

(d) The date referred to in subsection (b)(3) is the last day of the most recent 20-year period during which the San Juan County Nursing Home was required, under section 609 of the Public Health Service Act, to remain as a public or other nonprofit hospital.

By Mr. PELL (for himself, Mr. INOUYE, Mr. HATFIELD, Mr. WEICKER, and Mr. KENNEDY):

S. 1829. A bill to provide that a special gold medal be presented to Mary Lasker for her humanitarian contributions in the area of medical research and education, urban beautification, and the fine arts, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

PRESENTATION OF A SPECIAL GOLD MEDAL TO MARY LASKER

● Mr. PELL. Mr. President, I rise today to introduce a very special piece of legislation to honor a very special human being, Mary W. Lasker. Mrs.

Lasker is, as we all know, an American citizen of unequaled compassion and achievement. This legislation would recognize Mrs. Lasker's lifelong work in the areas of medical research and education, urban beautification, and the fine arts by authorizing the President, on behalf of the Congress, to present to her a gold medal in recognition of her humanitarian efforts.

It has been Mary Lasker's lifelong philosophy that we can never do enough to enhance the health of our Nation. Her career as a philanthropist and legislative and social activist has embodied this philosophy to its fullest, and her life has been dedicated to improving the lives of others.

In the field of biomedical research and education, Mrs. Lasker's influence and leadership has been extraordinary. As cofounder with her late husband of the Albert and Mary Lasker Foundation, she has been a major contributor to the advancement of medical knowledge. The Lasker Foundation's annual award is second only in prestige to the Nobel Prize and has spurred stimulating new work in numerous areas of promising research. In addition to the Lasker Foundation, Mrs. Lasker's health-related public service includes tireless work for many outstanding organizations, including the Menninger Foundation, the Institute of Psychoanalysis, the United Cerebral Palsy Research and Education Foundation, and the American Foundation for AIDS Research.

Mary Lasker is no less tireless in her efforts with the legislative and executive branches of Government. She spearheaded the drive to establish the National Heart Institute and the National Cancer Institute, and has served on the advisory councils of both these agencies. She also played a major role in securing passage of the 1971 National Cancer Act, landmark legislation to expand the Federal research effort to combat this dreaded disease which claims some 450,000 American lives each year. In 1980, Mrs. Lasker took up a post on the advisory council to the Director of the National Institutes of Health, and she also currently serves as vice president of the Research to Prevent Blindness Committee.

Mr. President, recognition of Mary Lasker's achievements has come from many sources. Mrs. Lasker has received the Alfred Sloan Award from the American Cancer Society, as well as the distinguished Public Service Award from the Academy of Ophthalmology. In May 1984, the NIH named a research center on the Bethesda campus, the Mary W. Lasker Center for Health Research and Education, in her honor. She is also a member of the French Legion of Honor, and has received the Cross of the Officer of the Legion of Honor. Most significantly of all, in 1969 she received the highest civilian award presented in the United States, the Congressional Medal of Freedom.

Mrs. Lasker's invaluable work in medical research and education has been complemented by equally ambitious endeavors in the areas of urban beautification and the fine arts. Mary Lasker has acted as a trustee for the John F. Kennedy Center for the Performing Arts and the Museum of Modern Art in New York, among other noteworthy institutions. Through exceptional philanthropy, she has coordinated the mass plantings of trees and flowers in New York and Washington, DC. She is a past president of the Society for a More Beautiful Capital, and has received the Municipal Art Society Award for her efforts to beautify New York.

Identical legislation has been introduced in the House of Representatives by Congressman Claude Pepper. That measure was overwhelmingly passed by the House, a clear recognition of the esteem in which Mrs. Lasker is held by Members of Congress.

Clearly, Mr. President, Mary Lasker's exceptional commitment to such a wide variety of outstanding activities merits exceptional commendation. Her humanitarian contributions in the areas of medical research and education, urban beautification and the fine arts have incalculably enhanced our Nation. Mary Lasker's ability to bring about positive change is eminently worthy of the congressional gold medal.

Mr. President, I urge quick and positive consideration on this matter, and I invite my colleagues to join me as cosponsors.●

ADDITIONAL COSPONSORS

S. 444

At the request of Mr. Boschwitz, the name of the Senator from California [Mr. Cranston] was added as a cosponsor of S. 444, a bill to amend the Internal Revenue Code of 1986 to retain a capital gains tax differential, and for other purposes.

S. 703

At the request of Mr. Specter, the name of the Senator from Pennsylvania [Mr. Heinz] was added as a cosponsor of S. 703, a bill to amend title 18, United States Code, including the Child Protection Act, to create remedies for children and other victims of pornography, and for other purposes.

S. 998

At the request of Mr. DeConcini, the name of the Senator from Alabama [Mr. Shelby] was added as a cosponsor of S. 998, a bill entitled the "Micro Enterprise Loans for the Poor Act."

At the request of Mr. Karnes, his name was added as a cosponsor of S. 998, supra.

S. 1188

At the request of Mr. Symms, the name of the Senator from Nevada [Mr. Reid] was added as a cosponsor of S. 1188, a bill to amend the Internal Revenue Code of 1986 to allow certain associations of football coaches to have a qualified pension plan which includes cash or deferred arrangement.

S. 1361

At the request of Mr. DeConcini, the name of the Senator from Pennsylvania [Mr. Heinz] was added as a cosponsor of S. 1361, a bill to amend the Controlled Substances Act to suppress the diversion and trafficking of precursor chemicals and essential chemicals utilized in the illicit manufacture of controlled substances.

S. 1412

At the request of Mr. Hollings, the names of the Senator from Florida [Mr. Chiles], and the Senator from Florida [Mr. Graham] were added as cosponsors of S. 1412, a bill to amend the Coastal Zone Management Act of 1972 regarding activities significantly affecting the coastal zone.

S. 1424

At the request of Mr. Simon, the name of the Senator from Colorado [Mr. Armstrong] was added as a cosponsor of S. 1424, a bill to amend title 8, United States Code, to provide for adjustment of status of certain Polish nationals who arrived in the United States before July 21, 1984, and who have continuously resided in the United States since that date.

S. 1518

At the request of Mr. Rockefeller, the names of the Senator from South Dakota [Mr. Pressler] and the Senator from Oregon [Mr. Packwood] were added as cosponsors of S. 1518, a bill to amend the Motor Vehicle Information and Cost Savings Act to provide for the appropriate treatment of methanol and ethanol, and for other purposes.

S. 1519

At the request of Mr. Lautenberg, the name of the Senator from Florida [Mr. Chiles] was added as a cosponsor of S. 1519, a bill to authorize the President of the United States to award congressional gold medals to Lawrence Doby and posthumously to Jack Roosevelt Robinson in recognition of their accomplishments in sport and in the advancement of civil rights, and to authorize the Secretary of the Treasury to sell bronze duplicates of those medals.

S. 1561

At the request of Mr. Bond, the name of the Senator from Massachusetts [Mr. Kennedy] was added as a cosponsor of S. 1561, a bill to provide for a research program for the development and implementation of new technologies in food safety and animal health, and for other purposes.

S. 1630

At the request of Mr. Heflin, the names of the Senator from Utah [Mr. Hatch], the Senator from South Carolina [Mr. Thurmond], and the Senator from Maine [Mr. Cohen] were added as cosponsors of S. 1630, a bill to provide for retirement and survivors' annuities for bankruptcy judges and magistrates, and for other purposes.

S. 1721

At the request of Mr. Cohen, the names of the Senator from Oklahoma [Mr. Boren], the Senator from Hawaii [Mr. Inouye], the Senator from New Hampshire [Mr. Rudman], and the Senator from Maine [Mr. Mitchell] were added as cosponsors of S. 1721, a bill to improve the congressional oversight of certain intelligence activities, and to strengthen the process by which such activities are approved within the executive branch, and for other purposes.

S. 1729

At the request of Mr. Leahy, the name of the Senator from Maryland [Mr. Sarbanes] was added as a cosponsor of S. 1729, a bill to promote rural development, and for other purposes.

S. 1777

At the request of Mr. Armstrong, the names of the Senator from Idaho [Mr. Symms], the Senator from Nevada [Mr. Hecht], and the Senator from Wisconsin [Mr. Kasten] were added as cosponsors of S. 1777, a bill to amend title II of the Social Security Act to phase out the earnings test over a 5-year period for individuals who have attained retirement age, and for other purposes.

SENATE JOINT RESOLUTION 99

At the request of Mr. DeConcini, the names of the Senator from Nebraska [Mr. Karnes] and the Senator from New Mexico [Mr. Bingaman] were added as cosponsors of Senate Joint Resolution 99, joint resolution to express the sense of the Congress that the Special Supplemental Food Program for Women, Infants, and Children should receive increasing amounts of appropriations in fiscal year 1988 and succeeding fiscal years.

SENATE JOINT RESOLUTION 125

At the request of Mr. Roth, the names of the Senator from North Dakota [Mr. Conrad], the Senator from Vermont [Mr. Stafford], and the Senator from Wisconsin [Mr. Kasten] were added as cosponsors of Senate Joint Resolution 125, joint resolution to designate the period commencing on May 9, 1988, and ending on May 15, 1988, as "National Stuttering Awareness Week."

SENATE JOINT RESOLUTION 141

At the request of Mr. Nickles, the name of the Senator from New Jersey [Mr. Lautenberg] was added as a cosponsor of Senate Joint Resolution 141, joint resolution designating August 29, 1988, as "National China-Burma-India Veterans Appreciation Day."

SENATE JOINT RESOLUTION 174

At the request of Mr. Simon, the names of the Senator from Kansas [Mr. Dole], the Senator from Arkansas [Mr. Bumpers], the Senator from California [Mr. Cranston], the Senator from Arizona [Mr. McCain], the Senator from North Dakota [Mr. Burdick], the Senator from Oklahoma [Mr. Boren], the Senator from Minnesota [Mr. Durenberger], the Senator from New Jersey [Mr. Bradley], the Senator from Louisiana [Mr. Johnston], the Senator from Massachusetts [Mr. Kerry], the Senator from Texas [Mr. Bentsen], the Senator from South Carolina [Mr. Hollings], the Senator from Washington [Mr. Adams], the Senator from Hawaii [Mr. Matsunaga], the Senator from South Carolina [Mr. Thurmond], the Senator from Connecticut [Mr. Weicker], the Senator from Louisiana [Mr. Breaux], the Senator from Indiana [Mr. Quayle], the Senator from Florida [Mr. Graham], the Senator from Utah [Mr. Hatch], the Senator from Pennsylvania [Mr. Specter], the Senator from Wyoming [Mr. Wallop], the Senator from New Mexico [Mr. Domenici], the Senator from Idaho [Mr. Symms], the Senator from Delaware [Mr. Biden], and the Senator from Kentucky [Mr. Ford] were added as cosponsors of Senate Joint Resolution 174, joint resolution designating the week beginning November 15, 1987, as "African American Education Week."

SENATE JOINT RESOLUTION 181

At the request of Mr. Wilson, the names of the Senator from Virginia [Mr. Warner], and the Senator from Minnesota [Mr. Boschwitz] were added as cosponsors of Senate Joint Resolution 181, joint resolution designating the week beginning February 1, 1988, as "National VITA Week."

SENATE JOINT RESOLUTION 200

At the request of Mr. Dixon, the names of the Senator from Maryland [Mr. Sarbanes], the Senator from Rhode Island [Mr. Chafee], the Senator from South Dakota [Mr. Daschle], the Senator from Minnesota [Mr. Durenberger], the Senator from Tennessee [Mr. Gore], the Senator from Indiana [Mr. Lugar], the Senator from South Carolina [Mr. Hollings], the Senator from Pennsylvania [Mr. Heinz], the Senator from Michigan [Mr. Riegle], the Senator from Oklahoma [Mr. Nickles], the Senator from New Jersey [Mr. Bradley], the Senator from Kansas [Mr. Dole], the Senator from Connecticut [Mr. Dodd], the Senator from Missouri [Mr. Bond], the Senator from Michigan [Mr. Levin], the Senator from California [Mr. Wilson], the Senator from Arkansas [Mr. Pryor], the Senator from New York [Mr. D'Amato], the Senator from North Carolina [Mr. Sanford], the Senator from Vermont [Mr. Stafford], the Senator from Illinois [Mr. Simon], the Senator from Utah [Mr. Garn], the Senator from Hawaii [Mr. Inouye], the Senator from Missouri [Mr. Danforth], the Senator from Mississippi [Mr. Stennis], the Senator from Virginia [Mr. Warner], the Senator from Florida [Mr. Chiles], the Senator from Arkansas [Mr. Bumpers], the Senator from Maryland [Ms. Mikulski], the Senator from Massachusetts [Mr. Kerry], the Senator from Tennessee [Mr. Sasser], the Senator from Georgia [Mr. Nunn], the Senator from New Jersey [Mr. Lautenberg, the Senator from Maine [Mr. Mitchell], the Senator from New York [Mr. Moynihan], the Senator from Massachusetts [Mr. Kennedy], the Senator from North Dakota [Mr. Burdick], the Senator from Ohio [Mr. Glenn], the Senator from New Mexico [Mr. Domenici], the Senator from Idaho [Mr. McClure], the Senator from Alaska [Mr. Murkowski], the Senator from Arizona [Mr. McCain], the Senator from South Carolina [Mr. Thurmond], the Senator from Mississippi [Mr. Cochran], the Senator from Minnesota [Mr. Boschwitz], the Senator from Oregon [Mr. Hatfield], the Senator from Florida [Mr. Graham], the Senator from North Dakota [Mr. Conrad], the Senator from Rhode Island [Mr. Pell], the Senator from Arizona [Mr. DeConcini], the Senator from Delaware [Mr. Biden], were added as cosponsors of Senate Joint Resolution 200, joint resolution to designate the period commencing on November 8, 1987, and ending on November 14, 1987, as "National Food Bank Week."

SENATE JOINT RESOLUTION 203

At the request of Mr. D'Amato, the name of the Senator from California [Mr. Cranston], was added as a cosponsor of Senate Joint Resolution 203, joint resolution calling upon the Soviet Union immediately to grant permission to emigrate to all those who wish to join spouses in the United States.

SENATE RESOLUTION 306—ORIGINAL RESOLUTION REPORTED AUTHORIZING SUPPLEMENTAL EXPENDITURES FOR THE COMMITTEE ON ARMED SERVICES

Mr. NUNN, from the Committee on Armed Services, reported the following original resolution; which was referred to the Committee on Rules and Administration:

S. Res. 306

Resolved, That section 5 of Senate Resolution 80, 100th Congress, agreed to January 28, 1987, is amended by striking out

"$2,167,877" and inserting in lieu thereof "$2,447,184".

SENATE RESOLUTION 307—CONGRATULATING THE MINNESOTA TWINS AS THE WORLD CHAMPIONS OF BASEBALL

Mr. DURENBERGER (for himself, Mr. Boschwitz, Mr. Burdick, Mr. Conrad, Mr. Grassley, Mr. Pressler, Mr. Melcher, Mr. Harkin, Mr. Simpson, Mr. Dole, Mr. Fowler, Mr. Wilson, Mr. Kasten, Mr. Nickles, Mr. Daschle, Mr. Baucus, and Mr. Proxmire) submitted the following resolution; which was considered and agreed to:

S. Res. 307

Whereas, the Stock Market has had troubles of late, there is unrest in the Persian Gulf, and the polar ice caps are melting, but there is joy in the Upper Midwest because the Minnesota Twins won the World Series October 25, 1987 by defeating the tenacious and speedy Saint Louis Cardinals in a climactic seventh game; and

Whereas, the Minnesota Twins, who last year were 20 games below .500, in 6th place, and expected to have a similarly dismal year this year, overcame these adverse projections in the truest Minnesota underdog fashion to surprise the experts and win it all; and

Whereas, the Twins have top-notch management from Carl Pohlad, the owner who provided continual support and leadership, to President Jerry Bell who brought Minnesota the Dome, to Andy McPhail who comes from a long line of baseball leaders and recognizes talent, to Tom Kelly, the youngest manager in the major league and the fifth rookie manager to guide his team to a World Series victory and the first born in Minnesota; and

Whereas, Sunday's victory is the first World Series victory for the franchise since 1924—when the Twins were the Senators and played in Washington D.C.; and

Whereas, fan support for the Twins during the play-off and the World Series played a key role in making the Minnesota Twins the only team in history to win the World Series without winning a game on the road and giving them the best home record in baseball; and

Whereas, Peter Ueberroth, Commissioner of Baseball, who said the Minnesota fans are the "best baseball fans I have ever seen" should have added "heard," since the roar of the fans frequently neared the decibel level of a jet taking off; and

Whereas, the Twins won the series through a combination of well-known power, including two grand slams, and hitherto unrecognized stellar defense—the Twins had the best fielding percentage in the American League; and

Whereas, the Homer-hanky is now a household term as well as a rally flag inspiring the Twins to victory;

Whereas, a number of United States Senators, recognizing the quality of the Twins as a baseball team and the good natured enthusiasm of their fans, have accepted an offer to become honorary Minnesotans; and

Whereas, the Minnesota Twins have now shown the world what Minnesotans and citizens of the upper Midwest have known all along: They are a class act, and, along with their fans symbolizing for the world the Minnesota character: style, grace under pressure, enthusiasm tempered by politeness, creativity and panache, and the will and determination to overcome odds of 150 to one and the doubts of baseball writers and fans alike;

Therefore, be it

Resolved That the United States Senate recognizes and congratulates the Minnesota Twins as world champions, both individually and as a team, epitomizing the highest standards of sporting competition and enthusiasm.

AMENDMENTS SUBMITTED

AIRPORT AND AIRWAY CAPACITY EXPANSION ACT

HOLLINGS (AND OTHERS) AMENDMENT NO. 1067

Mr. HOLLINGS (for himself, Mr. Danforth, Mr. Wilson, and Mr. Byrd) proposed an amendment to the bill (S. 1184) to amend the Airport and Airway Improvement Act of 1982 to improve the safety and efficiency of air travel, and for other purposes; as follows:

At the end of the bill, add the following:

Sec. . (a) Congress finds that—

(1) the number of near midair collisions is an indication that additional measures must be taken to assure the highest level of air safety in the United States;

(2) public health and safety requirements necessitate the timely completion and installation of a collision avoidance system for use by commercial aircraft flying in the United States;

(3) the Traffic Alert and Collision Avoidance System promises to reduce the threat to life caused by midair collisions, particularly collisions between general aviation aircraft and commercial aircraft;

(4) the Traffic Alert and Collision Avoidance System will succeed only to the degree that other aircraft posing a collision threat use operating transponders with automatic altitude reporting capability; and

(5) the Federal Aviation Administration should continue at a deliberate pace the development of additional technologies, including the collision avoidance system known as TCAS-III, to ensure the safe separation of aircraft.

(b) Section 601 of the Federal Aviation Act of 1958 (49 App. U.S.C. 1421) is amended by adding at the end the following:

"COLLISION AVOIDANCE SYSTEM

"(f)(1)(A) The Administrator shall complete the development of the collision avoidance system known as TCAS-II so that such system will be operable under visual and instrument flight rules and will be upgradable to the performance standards applicable to the collision avoidance system known as TCAS-III.

"(B) The Administrator shall develop and implement a schedule for development and certification of the collision avoidance system known as TCAS-II which will result in completion of such certification not later than 18 months after the date of the enactment of this subsection.

"(C) The Administrator shall transmit to Congress monthly reports of the progress being made in development and certification of the collision avoidance system known as TCAS-II.

"(2) The Administrator shall require by regulation that, not later than 30 months after the date of certification of the collision avoidance system known as TCAS-II, such system be installed and operated on each civil aircraft which has a maximum passenger capacity of more than 20 seats and which is used to provide air transportation of passengers, including intrastate air transportation of passengers.

"(3) Within 6 months after the date of enactment of this subsection, the Administrator shall promulgate a final rule requiring the installation and use of operating transponders with automatic altitude reporting capability for aircraft operating in designated terminal airspace where radar service is provided for separation of aircraft. For terminal airspace designated under this paragraph, other than for Terminal Control Areas and Airport Radar Service Areas, the Administrator may provide for access to such airspace by non-equipped aircraft if the Administrator determines that such access will not interfere with the normal traffic flow. Such final rule shall require the installation and use of such transponders not later than 24 months after the date of enactment of this subsection.".

(c) The item relating to section 601 in the table of contents of the Federal Aviation Act of 1958 is amended by adding at the end the following:

"(f) Collision avoidance systems.".

(d) The Administrator of the Federal Aviation Administration shall complete the research and the development on, and the certification of, the collision avoidance system known as TCAS-II as soon as possible. There are authorized to be appropriated such sums as may be necessary from the Airport and Airway Trust Fund to carry out this subsection.

EXON (AND OTHERS) AMENDMENT NO. 1068

Mr. EXON (for himself, Mr. Baucus, Mr. Burdick, Mr. Rockefeller, Mr. Byrd, Mr. Melcher, Mr. Daschle, Mr. Simon, Mr. Matsunaga, Mr. Gore, Mr. Durenberger, Mr. Pressler, Mr. Bumpers, Mr. Conrad, Mr. Murkowski, Mr. Bingaman, Mr. Grassley, Mr. Mitchell, Mr. Adams, Mr. Moynihan, Mr. Wirth, Mr. Garn, Mr. Boren, Mr. Karnes, Mr. Hecht, Mr. Hatch, Mr. Boschwitz, Mr. Reid, Mr. Wallop, Mr. Harkin, and Mr. Bentsen) proposed an amendment to the bill (S. 1184) supra; as follows:

At the end of the bill, add the following new section:

Sec. 19. (a) This section may be cited as the "Small Community Air Service Improvement Act of 1987".

(b) As used in this section, the term—

(1) "air carrier" has the meaning given to such term in section 101(3) of the Federal Aviation Act of 1958 (49 App. U.S.C. 1301(3));

(2) "basic air service" means, with respect to points not in the State of Alaska—

(A) two daily round trip flights occurring on six days per week, with not more than one intermediate stop between the eligible point and a hub airport, which flights are scheduled to coincide approximately with the beginning and end of the business day;

(B) convenient connecting or single plane service at the hub airport to and from a substantial number of major destinations beyond such hub airport;

(C) service provided in aircraft large enough to accommodate estimated passenger and nonpassenger traffic at an average load factor for each such class of traffic of not greater than 50 per centum, except as provided in subparagraph (G) of this paragraph;

(D) service provided in aircraft with at least two pilots and two engines, unless, after October 31, 1978, no such aircraft have been employed in scheduled airline service for more than sixty consecutive operating days at such point;

(E) service provided with pressurized aircraft for operations which regularly exceed an altitude of eight thousand feet;

(F) service at fares which are not excessive when compared to the generally prevailing fares of other air carriers for like service between similar pairs of points; and

(G) service provided by an aircraft with an effective capacity of at least 15 passengers unless, after October 31, 1978, aircraft with an effective capacity of at least 15 passengers have not been employed from the eligible point for more than 60 consecutive operating days of scheduled airline services;

(3) "basic air service" means, with respect to points in the State of Alaska, service at reasonable fares and charges that is not less than that which existed in calendar year 1976 or two round trips per week, whichever is greater, unless otherwise specified under an agreement between the Secretary and the State agency of the State of Alaska, after consultation with the community affected;

(4) "eligible point" means any airport in the United States which is more than 50 statute miles by highway from a hub airport and for which a determination of essential air transportation has been made under section 419 of the Federal Aviation Act of 1958 (49 App. U.S.C. 1389);

(5) "enhanced air service" means service whose quality exceeds basic air service to the extent that it would require payment of compensation under this section in excess of the compensation required for such basic air service;

(6) "hub airport" means an airport that annually emplanes more than 0.25 percent of the total annual enplanements in the United States;

(7) "new eligible point" means any airport which is not an eligible point that has been designated by a State or local government as a point to receive scheduled passenger air service under this section, if such State or local government has guaranteed to pay 50 per centum of the compensation paid to an air carrier for providing the air service specified by such State or local government; and

(8) "Secretary" means the Secretary of Transportation.

(c) The Secretary shall pay compensation to air carriers to the extent necessary to—

(1) assure that each eligible point receives uninterrupted basic air service;

(2) assure that each new eligible point receives air service of such type and quality as may be specified by a State or local government which has agreed to pay 50 per centum of the compensation paid to an air carrier to provide such service; and

(3) provide for enhanced air service at each eligible point whenever a State or local government or any other person has agreed to pay 50 per centum of the additional compensation paid to an air carrier to provide such enhanced air service.

(d) In selecting an air carrier to provide air service under this section, the Secretary shall give particular weight to such carrier's demonstrated reliability in providing scheduled air service and to such carrier's contractual arrangements with other air carriers to assure service beyond the hub airport in accordance with subsection (b)(2)(B) of this section. The Secretary shall pay compensation to air carriers providing air service from the hub airport to points beyond the hub airport where the Secretary determines that such compensation is necessary to assure such service. The Secretary shall also encourage the submission of joint proposals by two or more air carriers which reflect arrangements to maximize service for eligible points to and from major cities beyond the hub airport of such carriers.

(e) Arrangements for basic air service made under this section shall, to the extent otherwise consistent with this section, reflect the preferences of the actual and potential users of airline service at the eligible point. In determining such preferences, the Secretary shall give substantial weight to the views of elected officials representing such users. Any arrangement providing for enhanced air service shall include such provisions for enhancements as are prescribed by the governmental entity or other person which has agreed to pay the non-Federal share of compensation and are otherwise lawful. The Secretary may require appropriate payment in advance or such other security to assure that the non-Federal share of compensation for air service under this section is made in a timely manner.

(f) An air carrier may not terminate, suspend, or reduce air transportation to any eligible point below the level of basic air service established for such point under this section unless such air carrier has given the Secretary, the appropriate State agency or agencies, and the communities affected at least 90 days notice prior to such termination, suspension, or reduction.

(g) If an air carrier has provided notice to the Secretary under subsection (f) of such air carrier's intention to suspend, terminate, or reduce service to any eligible point below the level of basic air service to such point, and if at the conclusion of the applicable period of notice the Secretary, despite diligent efforts, has not been able to find another air carrier to provide basic air service to such point, the Secretary shall require the carrier which provided such notice to continue such service to such point for an additional 30-day period, or until another air carrier has begun to provide basic air service to such point, whichever first occurs. If at the end of such 30-day period the Secretary determines that no other air carrier can be secured to provide basic air service to such eligible point on a continuing basis, either with or without compensation, then the Secretary shall extend such requirement for such additional 30-day periods (making the same determination at the end of each such period) as may be necessary to continue air transportation to such eligible point until an air carrier can be secured to provide basic air service to such eligible point on a continuing basis.

(h) If an air carrier is required to continue to provide service under subsection (g) of this section after the end of the required notice period, such air carrier shall be paid compensation by the Secretary for service beyond such period in an amount which is sufficient to cover its fully allocated actual costs plus return on used and useful investment (at market value) attributable to the service and the reasonably demonstrable cost of opportunities foregone as a result of being obliged to provide such extended service.

(i) The Secretary may incur obligations for the purpose of carrying out the provisions of this section from appropriations made for such purpose.

(j) In carrying out the provisions of this section, the Secretary shall invite the participation and comments of affected State and local governments to the maximum extent practicable. Arrangements made under this section shall be made by and in the name of the Secretary.

(k) Section 419(g) of the Federal Aviation Act of 1958 (49 App. U.S.C. 1389(g)) is amended to read as follows:

"(g) Duration of Program.—This section shall cease to be in effect after October 1, 1988.".

(l) There is authorized to be appropriated, for fiscal year 1988, and each of the next following nine fiscal years, such sums as may be necessary for carrying out the provisions of this section.

(m) This section shall take effect on October 1, 1988, and shall remain in effect for the 120-month period following the date of its enactment.

BENTSEN AMENDMENT NO. 1069

Mr. BENTSEN proposed an amendment to the bill (S. 1184) supra; as follows:

At the end of title I of the bill, insert the following new section (and conform the table of contents of such title accordingly):

SEC. 121. RELEASE OF RESTRICTIONS.

(a) General Rule.—Subject to subsection (b), in recognition of the benefits to the public, the city of Laredo, Texas, and its successors and assigns, are hereby released from all terms, conditions, reservations, and restrictions contained in the instrument of disposal dated February 21, 1975, by which the United States conveyed the property on which the Laredo International Airport, Laredo, Texas, is located to such city to the extent that such terms, conditions, reservations, and restrictions apply to the portion of such property consisting of approximately 680.1586 acres of land which is designated under the 1985 master plan and land use plan for the Laredo International Airport as being available for nonaviation purposes.

(b) Conditions.—The release granted by subsection (a) shall be subject to the following conditions:

(1) All revenues derived from the property to which such release applies shall be used for development, improvement, operation, and maintenance of the Laredo International Airport.

(2) The use of property to which such release applies shall not interfere with the operation and maintenance of such airport.

(3) Property to which such release applies may only be rented or leased if the term of the rental or lease agreement is 20 years or less and if compensation which is not less than—

(A) ¼ of fair market value is received in the case of a rental or lease agreement for a term of 10 years or less; and

(B) ½ of fair market value is received in the case of a rental or lease agreement for a term of more than 10 years.

(4) Property to which such release applies may only be transferred if compensation which is equal to or more than fair market value is received.

(5) The city of Laredo, Texas, shall provide to the Administrator of the Federal Aviation Administration—

(A) an accounting and management plan acceptable to the Administrator for managing the Laredo International Airport general fund; and

(B) an explanation of the management by such city of such general fund in calendar years beginning after December 31, 1977, and ending before the date of the enactment of this Act.

(c) IMPLEMENTATION.—The administrator of the Federal Aviation Administration shall take such action as may be necessary to carry out the provisions of this section.

CHILES AMENDMENT NO. 1070

Mr. CHILES proposed an amendment to the bill (S. 1184) supra; as follows:

On page 2, strike out lines 15 and 16 and insert in lieu thereof the following:

(10), as so redesignated, and inserting in lieu thereof a semicolon;

On page 2, strike out line 23 and insert in lieu thereof the following:

extent; and

"(12) it is in the national interest to insure that nonaviation usage of navigable airspace be accommodated, but not allowed to decrease the safety and capacity of the airspace and airport system this title is developing.".

On page 4, between lines 17 and 18, insert the following new sections:

SEC. 3A. Section 504(a) of the Airport and Airway Improvement Act of 1982 (49 U.S.C. 2203(a)) is amended—

(1) by designating the existing text as paragraph (a)(1); and

(2) by adding at the end thereof the following new paragraph:

"(2) As soon as feasible following the date of the enactment of this paragraph, the Secretary shall, in reviewing and revising the plan, take into account tall structures which reduce safety or airport capacity. In addition, the Secretary, in carrying out such review and revision, shall make every reasonable effort to address the legitimate needs of air cargo operations, and STOL/VSTOL and rotary wing aircraft operations.".

SEC. 3B. Section 1101 of the Federal Aviation Act of 1958 (49 U.S.C. 1501) is amended to read as follows:

"HAZARDS TO SAFE AND EFFICIENT AIR COMMERCE AND THE PRESERVATION OF NAVIGABLE AIRSPACE AND AIRPORT TRAFFIC CAPACITY

"SEC. 1101. (a) The Secretary of Transportation (hereinafter in this section referred to as the 'Secretary') shall, by rules and regulations, or by order where necessary, require all persons to give adequate public notice, in the form and manner prescribed by the Secretary, of the construction or alteration, or of the proposed construction or alteration, of any structure where notice will promote safety in air commerce as well as the efficient use and preservation of the navigable airspace, and airport traffic capacity at public-use airports.

"(b) Where the Secretary determines, according to rules and regulations, that the construction or alteration of any structure may constitute a physical obstruction in navigable airspace, the Secretary shall conduct an aeronautical study to determine the extent of the adverse impact, if any, on the safe and efficient use of the navigable airspace. Upon completion of such an aeronautical study, the Secretary shall issue a report fully disclosing the extent of the adverse impact on the safe and efficient use of the navigable airspace which the Secretary determines will result from the construction or alteration of a structure.

"(c) When conducting an aeronautical study to determine the impact of the construction or alteration of a structure, the Secretary shall thoroughly consider, according to rules and regulations, all factors relevant to the efficient and effective use of the navigable airspace, and shall specifically consider:

"(1) the impact on arrival, departure, and en route procedures for aircraft operating under visual flight rules;

"(2) the impact on arrival, departure, and en route procedures for aircraft operating under instrument flight rules;

"(3) the impact on all existing public-use airports and aeronautical facilities;

"(4) the impact on all planned public-use airports and aeronautical facilities; and

"(5) the cumulative impact resulting from the proposed construction or alteration of a structure when combined with the impact of other existing or proposed structures.

"(d) In the administration of laws relating to broadcast applications and the conduct of aeronautical studies relating to broadcast towers, the Federal Communications Commission and the Federal Aviation Administration shall take such action as may be necessary to efficiently coordinate the receipt, consideration of, and action upon such applications and the completion of associated aeronautical studies.".

BENTSEN (AND PACKWOOD) AMENDMENT NO. 1071

Mr. BENTSEN (for himself and Mr. PACKWOOD), on behalf of the Committee on Finance, proposed an amendment to the bill (S. 1184) supra; as follows:

At the end of the bill, insert the following new title:

TITLE II—AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1986

SEC. 201. SHORT TITLE; AMENDMENT OF 1986 CODE.

(a) SHORT TITLE.—This title may be cited as the "Airport and Airway Revenue Act of 1987".

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this title an amendment is expressed in terms of an amendment to a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

SEC. 202. 4-YEAR EXTENSION OF TAXES ON TRANSPORTATION BY AIR; REDUCTION OF TAXES IN 1991 IF FUNDS REMAIN UNOBLIGATED.

(a) TAX ON TRANSPORTATION OF PERSONS BY AIR.—Section 4261(f) (relating to termination of tax on transportation by air) is amended to read as follows:

"(f) TERMINATION; REDUCTION IN 1991 IF FUNDS REMAIN UNOBLIGATED.—

"(1) IN GENERAL.—Except as provided in paragraph (2), the taxes imposed by this section shall apply with respect to transportation beginning after August 31, 1982, and before January 1, 1992.

"(2) REDUCTION OF RATE IN 1991.—In the case of transportation beginning in 1991, if the unobligated balance in the Airport and Airway Trust Fund as of September 30, 1990 (as determined by the Secretary) exceeds $3,000,000,000, then—

"(A) subsections (a) and (b) shall each be applied by substituting '4 percent' for '8 percent', and

"(B) subsection (c) shall be applied by substituting '$1.50' for '$3'.

"(3) TREATMENT OF OBLIGATIONS.—For purposes of determining the unobligated balance of the Airport and Airway Trust Fund under paragraph (2)—

"(A) IN GENERAL.—Except as provided in subparagraph (B), an amount shall be treated as obligated when it is appropriated.

"(B) AMOUNTS OBLIGATED UNDER SECTION 505 OF AIRWAY IMPROVEMENT ACT.—An amount shall be treated as obligated under section 505 of the Airport and Airway Improvement Act of 1982 when such amount is authorized."

(b) TAX ON FUELS USED IN NONCOMMERCIAL AVIATION.—

(1) IN GENERAL.—Section 4041(c)(5) (relating to termination) is amended to read as follows:

"(5) TERMINATION; REDUCTION IN 1991 IF FUNDS REMAIN UNOBLIGATED.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the taxes imposed by paragraphs (1) and (2) shall apply during the period beginning on September 1, 1982, and ending on December 31, 1991.

"(B) REDUCTION OF RATE IN 1991.—In the case of any sale or use during 1991, if paragraph (2) of section 4261(f) applies during 1991, then—

"(i) paragraph (1) shall be applied by substituting '7 cents' for '14 cents', and

"(ii) no tax shall be imposed under paragraph (2).".

(2) REFUND OF FUEL TAXES ON NONCOMMERCIAL AVIATION.—

(A) IN GENERAL.—Section 6427 (relating to fuels not used for taxable purposes) is amended by redesignating subsection (p) as subsection (q) and by inserting after subsection (o) the following new subsection:

"(p) GASOLINE USED IN NONCOMMERCIAL AVIATION DURING 1991.—Except as provided in subsection (k), if section 4041(c)(5)(B) applies during 1991 and—

"(1) any tax is imposed by section 4041(c)(2) or 4081 on any gasoline sold during 1991, and

"(2) such gasoline is used as a fuel in any aircraft in noncommercial aviation (as defined in section 4041(c)(4)),

the Secretary shall pay (without interest) to the ultimate purchaser of such gasoline an amount equal to the excess (if any) of the aggregate amount of tax paid under sections 4041(c)(2) and 4081 on the gasoline so used over an amount equal to 6 cents multiplied by the number of gallons of gasoline so used.".

(B) TECHNICAL AMENDMENTS.—

(i) Paragraph (1) of section 6427(i) is amended by striking out "or (h)" and inserting in lieu thereof "(h), or (p)".

(ii) Clause (i) of section 6427(i)(2)(A) is amended by striking out "and (h)" and inserting in lieu thereof "(h), and (p)".

(c) TAX ON TRANSPORTATION OF PROPERTY BY AIR.—Section 4271(d) (relating to termination) is amended to read as follows:

"(f) TERMINATION; REDUCTION IN 1991 IF FUNDS REMAIN UNOBLIGATED.—

"(1) IN GENERAL.—Except as provided in paragraph (2), the taxes imposed by this section shall apply with respect to transportation beginning after August 31, 1982, and before January 1, 1992.

"(2) REDUCTION IN RATE IN 1991.—In the case of transportation beginning in 1991, if paragraph (2) of section 4261(f) applies during 1991, then subsection (a) shall be applied by substituting '2.5 percent' for '5 percent'.".

(d) Expenditures From Trust Fund.—

(1) In general.—Section 9502(b) (relating to transfer to Airport and Airway Trust Fund of amounts equivalent to certain taxes) is amended by striking out "January 1, 1988" each place it appears and inserting in lieu thereof "January 1, 1992".

(2) Expenditures from trust fund.—The material preceding subparagraph (A) of paragraph (1) of section 9502(d) (relating to expenditures from Airport and Airway Trust Fund) is amended by striking out "October 1, 1987" and inserting in lieu thereof "October 1, 1990".

(3) Trust fund purposes.—Subparagraph (A) of section 9502(d)(1) is amended by inserting before the semicolon "or under the Airport and Airway Capacity Expansion Act of 1987 (as such Act was in effect on the date of the enactment thereof)".

SEC. 203. EXEMPTION OF CERTAIN HELICOPTERS FROM TAX ON TRANSPORTATION OF PERSONS BY AIR.

(a) Exemption.—Subsection (e) of section 4261 (relating to exemption for certain helicopter uses) is amended by striking out "or" at the end of paragraph (1), by inserting "or" at the end of paragraph (2), and by adding after paragraph (2) the following new paragraph:

"(3) any other use if tax is imposed under section 4041(c) or 4081 on fuel used in connection with such use,".

(b) Imposition of Tax on Fuels Used by Helicopters Exempt From Tax on Transportation of Persons.—Paragraph (4) of section 4041(c) (defining noncommercial aviation) is amended by adding at the end thereof the following new sentence: "Except as provided in subsection (l), the term 'noncommercial aviation' shall include the use of any helicopter which does not take off from, or land at, a facility eligible for assistance under the Airport and Airway Development Act of 1970 or otherwise uses services provided pursuant to the Airport and Airway Improvement Act of 1982.".

(c) Technical Amendments.—Sections 4261(e) and 4041(l) are each amended by striking out "System Improvement Act" and inserting in lieu thereof "Improvement Act".

(d) Effective Date.—

(1) Exemption.—The amendments made by subsection (a) shall apply to transportation beginning after September 30, 1988, but shall not apply to any amount paid on or before such date.

(2) Fuels tax.—The amendment made by subsection (b) shall apply to sales or uses after September 30, 1988.

KASSEBAUM AMENDMENT NO. 1072

Mrs. KASSEBAUM proposed an amendment to amendment No. 1068 proposed by Mr. Exon (and others) to the bill (S. 1184) supra, as follows:

Strike out the proposed language and insert in lieu thereof the following:

Sec. . (a) Section 419(g) of the Federal Aviation Act of 1958 (49 App. U.S.C. 1389(g)) is amended to read as follows:

"DURATION OF THE PROGRAM

"(g) This section shall cease to be in effect after September 30, 1990.".

(b) Not later than September 30, 1989, the Secretary of Transportation shall report to the Congress on the desirability and feasibility of further extending the program. Such report shall make recommendations on possible program modifications including, but not limited to, modifications which would increase annual numbers of enplanements, reduce individual passenger costs, and improve program service. Such report shall also make recommendations on options for allocating the costs of providing essential air transportation, on a cost-sharing basis, between various levels of government, and shall recommend the share of such compensation that should be allocated to, and contributed by, the jurisdictions involved.

McCAIN AMENDMENT NO. 1073

Mr. McCAIN proposed an amendment to the bill (S. 1184) supra, as follows:

At the end of the bill, add the following new section:

Sec. 19. The Secretary of Transportation shall study the various methods of air traffic control which might be utilized at the Grand Canyon Airport, including the possibility and feasibility of installing radar for air traffic control purposes. The Secretary shall report the results of such study, together with his or her recommendations, to the Congress on or before the expiration of the 180-day period following the date of the enactment of this Act.

REID AMENDMENT NO. 1074

Mr. FORD (for Mr. Reid) proposed an amendment to the bill (S. 1184) supra, as follows:

On page 4, line 25, immediately before the period, insert the following: "and on the quality of the environment".

WIRTH AMENDMENT NO. 1075

Mr. FORD (for Mr. Wirth) proposed an amendment to the bill (S. 1184) supra; as follows:

On page 21, after line 21, add the following:

Sec. 19. (a) Notwithstanding section 16 of the Federal Airport Act (as in effect on the date of each conveyance referred to in this subsection) with respect to such conveyance, the Secretary is authorized, subject to the provisions of section 4 of the Act of October 1, 1949 (63 Stat. 700; 50 U.S.C. App. 1622c), and the provisions of subsection (b) of this section, to grant release—

(1) from any of the terms, conditions, reservations, and restrictions contained in each deed of conveyance under which the United States conveyed property to the city and county of Denver, Colorado, on which portions of Stapleton International Airport are located; and

(2) from any assurance made by the sponsor of such airport for a grant under the Airport and Airway Improvement Act of 1982 for a project at such airport.

(b) Conditions.—Any release granted by the Secretary under paragraph (1) of this subsection shall be subject to the following conditions:

(1) The city and county of Denver, Colorado, shall agree that in conveying any interest in the property which the United States conveyed to the city and county by the deeds described in subsection (a) the city and county will receive an amount for such interest which is equal to the fair market value (as determined pursuant to regulations issued by the Secretary).

(2) Any such amount so received by the city and county shall be used by the city and county for the development, construction, and improvement of a new Denver air carrier airport and a reliever airport in the event that the operation of the new air carrier airport severely restricts the operation of the nearby reliever airport. In no event shall such amount be used for operation or maintenance of such airports.

(3) The city and county shall agree not to convey any interest in the property which the United States conveyed to the city and county by the deeds described in subsection (a) until the opening and initial operation of a primary airport to replace Stapleton International Airport, unless the Secretary determines that any such property is not essential for the operation of Stapleton International Airport.

STEVENS AMENDMENT NO. 1076

Mr. FORD (for Mr. Stevens) proposed an amendment to the bill (S. 1184) supra; as follows:

At the end of the bill, add the following new section:

Sec. 19. Section 507(a)(2)(B) of the Act is amended by adding at the end thereof the following: "Notwithstanding the foregoing provisions of this paragraph, the Secretary of Transportation shall make available grants for minimum facility and safety improvements to public airports (other than commercial service airports) described in section 508(d)(3)(C).".

INOUYE AMENDMENT NO. 1077

Mr. FORD (for Mr. Inouye) proposed an amendment to the bill (S. 1184) supra; as follows;

At the appropriate place insert the following:

Airport grant funds made available to the State of Hawaii under Section 505 may, notwithstanding any other provision of law, be used to acquire properties referred to as areas 46A and 46B of the United States General Services Administration Facility Site in Moanalua, Honolulu, Oahu, Hawaii, or to reimburse the State of Hawaii for such acquisitions.

That (a) notwithstanding Section 23 of the Airport and Airway Improvement Act (as in effect on April 6, 1982), the Secretary of Transportation is authorized, subject to the provisions of Section 4 of the Act of October 1, 1947, 50 App. U.S.C. 1622(c), and the provisions of subsection (b) of this section, to grant releases from any of the terms, conditions, reservations, and restrictions contained in the deed of conveyance, dated April 6, 1982, under which the United States conveyed certain property to the State of Hawaii for airport purposes.

(b) Any release granted by the Secretary of Transportation under subsection (a) of this section shall be subject to the following conditions:

(1) The property for which a release is granted under this subsection shall not exceed 2.280 acres.

(2) The State of Hawaii shall agree that, in conveying any interest in the property which the United States conveyed to the State by a deed described in subsection (a), the State will receive an amount for such interest which is equal to the fair market value.

(3) Any amount so received shall be used for airport purposes only; and

(4) In the event land or any interest therein is received in exchange for all or part of the 2.280 acres, the deed of conveyance of such land or interest will contain language mandating that:

(A) the land or interest must be used for airport purposes only; and

(B) such land or interest in land received by the State of Hawaii may not be conveyed by the State, except by approval of the Federal Government, pursuant to the authority vested in the Secretary of Transportation, under Section 4 of the Act of 1947, 50 App. U.S.C. 1622(c); and

(C) such conveyance by the State of Hawaii shall be subject to receipt of fair market value; and

(D) the proceeds from such conveyance by the State of Hawaii shall be used for airport purposes only.

STEVENS AMENDMENT NO. 1078

Mr. FORD (for Mr. STEVENS) proposed an amendment to the bill (S. 1184) supra; as follows:

At the end of the bill, add the following new section:

SEC. . The Federal Aviation Administration flight service station located in Juneau, Alaska, is designated and shall, after the date of enactment of this Act, be known as the "Dave Scheytt Flight Service Station". Any reference in a law, map, regulation, document, or other paper of the United States to such flight service station shall be held and considered to refer to the "Dave Scheytt Flight Service Station".

GRAHAM AMENDMENT NO. 1079

Mr. GRAHAM proposed an amendment to the bill (S. 1184) supra, as follows:

Amend Section 534, page 18, line 16, by inserting after "agency", the following: "or equivalent State qualifications-based requirement. This paragraph shall apply except to the extent that a State adopts or has adopted by statute a formal procedure for the procurement of such services."

STEVENS AMENDMENT NO. 1080

Mr. STEVENS proposed an amendment to the bill (S. 1184) supra, as follows:

At the end of the bill, add the following new section:

SEC. 19. Section 507(a)(2)(B) of the Act is amended by adding at the end thereof the following: "Notwithstanding the foregoing provisions of this paragraph, the Secretary of Transportation shall make available grants for minimum facility and safety improvements to public airports (other than commercial service airports) described in section 508(d)(3)(C).".

METZENBAUM AMENDMENT NO. 1081

Mr. METZENBAUM proposed an amendment which was subsequently modified, to the bill (S. 1184) supra, as follows:

At the end of the bill, add the following:

SEC. . (a) The Secretary of Transportation shall ensure greater safety to air passengers by issuing, within 180 days following the date of the enactment of this Act, regulations requiring:

(1) adequate, uniform life preservers, life rafts, and flotation devices for passengers, including small children and infants, on any flight of an air carrier which the Secretary of Transportation determines a part of which flight will occur over water and adequate information and instructions as to the use of such preservers, rafts, and flotation devices;

(2) as soon as feasible, but in no event later than January 1, 1993, all seats on board all air carrier aircraft to meet dynamic testing standards for crashworthiness; and

(3) prior to the expiration of the 36-month period following the date of the enactment of this Act, all air carrier aircraft to meet interior cabin flammability standards, and further require that air carrier aircraft certificated after January 1, 1993, be equipped with crash-resistant inner fuel tanks and breakaway, self-closing fittings throughout the fuel system.

(c) The Secretary of Transportation shall report to Congress, within 90 days following the date of the enactment of this Act, on specific regulations the Secretary has adopted or intends to adopt to modernize and improve the oversight and inspection of air carrier maintenance and safety-related procedures.

SARBANES (AND OTHERS) AMENDMENT NO. 1082

Mr. SARBANES (for himself, Ms. MIKULSKI, and Mr. MITCHELL) proposed an amendment to the bill (S. 1184) supra; as follows:

At the end of the bill, add the following new section:

SEC. 19. (a) The Administrator of the Federal Aviation Administration shall conduct a study of noise abatement proposals under consideration by airport operators and local governments for the purpose of identifying those proposals which, under existing law or administrative policy, are not currently eligible for Federal assistance and determining whether or not such proposals should be made eligible for Federal assistance.

(b) Not later than the 180th day following the date of the enactment of this Act, the Administrator of the Federal Aviation Administration shall transmit to Congress a report on the results of the study conducted under subsection (a) together with recommendations concerning modifications in existing law and administrative policy for making additional noise abatement proposals eligible for Federal assistance.

DOMENICI AMENDMENT NO. 1083

Mr. DOMENICI proposed an amendment to the bill (S. 1184) supra; as follows:

At the end of the bill, add the following new section:

SEC. . In the administration of the Airport and Airway Improvement Act of 1982, and any rule or regulation issued or promulgated pursuant thereto, the Sierra Blanca Regional Airport, Ruidoso, New Mexico, for purposes of determining the eligibility of such airport for Federal assistance under such Act for airport development, namely fire protection, shall be considered to have scheduled commuter service with at least a 30 passenger aircraft.

BUMPERS AMENDMENT NO. 1084

Mr. BUMPERS proposed an amendment to the bill S. 1184, supra; as follows:

At the end of the bill, add the following:

SEC. . In the administration of the provisions of the Airport and Airway Improvement Act of 1982, the municipal airport of the City of Dermott, Arkansas, shall not be denied eligibility for assistance under such Act on the basis that such airport is located on leased land, if such lease is for a period of at least 99 years, and if the land so leased consists of at least 25 acres.

LAUTENBERG AMENDMENT NOS. 1085 AND 1086

Mr. LAUTENBERG proposed two amendments to the bill (S. 1184) supra; as follows:

AMENDMENT No. 1085

At the end of the bill, add the following new section:

SEC. 19. (a) Section 206 of the National Driver Register Act of 1982 (23 U.S.C. 401 note) is amended as follows:

(1) In subsection (a), paragraph (1) is amended by substituting the word "transportation" for "highway".

(2) In subsection (b), insert the following new paragraph immediately after paragraph (2), and renumber paragraphs (3) and (4) as paragraphs (4) and (5), respectively.

"(3) Any individual who has applied for or received an airman's certificate may request the chief driver licensing official of a State to transmit information regarding the individual under subsection (a) of this section to the Administrator of the Federal Aviation Administration. The Administrator of the Federal Aviation Administration may receive such information, and shall make that information available to the individual for review and written comment. The Administrator shall not devulge or use such information except to verify information required to be reported to the Administrator by airmen applying for an airman medical certificate and to evaluate whether the airman meets the minimum medical standards as prescribed by the Administrator to be issued an airman medical certificate. There shall be no access to information in the Register under this paragraph if such information was entered in the Register more than three years before the date of such request, unless such information relates to revocations or suspensions which are still in effect on the date of the request. Information submitted to the Register by States under the Act of July 14, 1960 (74 Stat. 526), or under this Act shall be subject to access for the purpose of this paragraph during the transition to the Register established under section 203(a) of this Act.".

(b) Section 206(b) of the National Driver Register Act of 1982 (23 U.S.C. 401 note) is amended by adding the following sentence at the end of paragraphs (b)(1), (b)(2), and (b)(4), respectively: "Information submitted to the Register by States under the Act of July 14, 1960 (74 Stat. 526), and under this Act shall be subject to access for the purpose of this paragraph during the transition to the Register established under section 203(a) of this Act.".

AMENDMENT No. 1086

At the end of the bill, add the following new section:

SEC. . (a) The Secretary of Transportation shall initiate a supplementary rulemaking to require the installation and use of cockpit voice recorders and flight data recorders on commuter aircraft and other aircraft, commensurate with the recommendations of the National Transportation Safety Board.

(b) The Secretary of Transportation shall issue a notice of proposed rulemaking not later than 30 days after the date of the enactment of this Act.

WILSON AMENDMENT NO. 1087

Mr. WILSON proposed an amendment to the bill (S. 1184) supra; as follows:

At the end of the bill, add the following new section:

SEC. ——. (a) This section may be cited as the "Federal Aviation Act of 1958 Amendments Act".

(b) Section 901(a)(1)(A) of the Federal Aviation Act of 1958 (49 U.S.C. App. 1471(a)(1)(A)) is amended by inserting "1101," immediately after the word "section" where it first appears.

(c) Section 901(a)(2) of the Federal Aviation Act of 1958 (49 U.S.C. App. 1471(a)(2)) is amended by inserting the phrase ", or of section 1101, 1114, or 1115(e)(2)(B)" immediately after "XII".

(d) Section 901(a)(1) of the Federal Aviation Act of 1958 (49 U.S.C. App. 1471(a)(1)) is amended by inserting the following words immediately after "violation," where it first appears: "except that a person who operates aircraft for the carriage of persons or property for compensation or hire, other than an airman serving in the capacity of an airman, shall be subject to a civil penalty not to exceed $10,000 for each violation of title III, VI, or XII of this Act, or any rule, regulation, or order issued thereunder, and".

(e) The Federal Aviation Act of 1958 is further amended by adding immediately after section 901 a new section 901A to read as follows:

"CIVIL PENALTY ASSESSMENT DEMONSTRATION PROGRAM

"Civil Penalty

"SEC. 901A. (a) The Administrator, or his delegate, may assess a civil penalty for a violation arising under this Act or a rule, regulation, or order issued thereunder, upon written notice upon finding of violation by the Administrator, after notice and opportunity for a hearing.

"No Reexamination of Liability or Amount

"(b) In the case of a civil penalty, assessed by the Administrator in accordance with this provision, the issue of liability or amount of civil penalty shall not be reexamined in any subsequent suit for collection of such civil penalty.

"United States District Courts

"(c) Notwithstanding subsection (a) of this section, the United States district courts shall have exclusive jurisdiction of any civil penalty action initiated by the Administrator: (1) which involves an amount in controversy in excess of $100,000; (2) which is an in rem action or in which an in rem action based on the same violation has been brought; (3) regarding which an aircraft subject to lien has been seized by the United States; and (4) in which a suit for injunctive relief based on the violation giving rise to the civil penalty has also been brought.

"Termination

"(d) The provisions of this section shall be in effect for 2 years following the date of enactment of this section, and shall apply to a civil penalty initiated by the Administrator on or after the date of enactment of this section, but shall not apply to a case in which the Administrator seeks a civil penalty in an amount in excess of $100,000 from a violator.".

(f) The Administrator of the Federal Aviation Administration shall report to the Congress 18 months after the date of enactment of this section. The report shall include: (1) the Administrator's views concerning the effectiveness of civil penalty levels enacted in this Act, and whether additional changes are necessary to provide an adequate safety deterrence; and (2) the Administrator's recommendation as to the effectiveness of the civil penalty assessment demonstration program authorized by section 4 of this Act and whether it should be continued.

(g) Section 902 of the Federal Aviation Act of 1958 (49 U.S.C. App. 1472) is amended by—

(1) inserting immediately after "inclusive," in subsection (o), the words "and subsection (r)"; and

(2) adding a new subsection (r) to read as follows:

"Secured Areas on Airports

"(r)(1) It shall be unlawful for any person to knowingly and willfully enter an aircraft or an airport area that serves air carriers or foreign air carriers contrary to security requirements established pursuant to sections 315 or 316 of this Act. Upon conviction thereof, such person shall be subject to imprisonment for a term not to exceed 1 year or a fine not to exceed $1,000, or both.

"(2) If any person violates paragraph (1) of this subsection with the intent to commit in the aircraft or secured area an act punishable as a felony under Federal or State law, such person shall be subject to imprisonment for a term not to exceed 10 years or a fine not to exceed $10,000, or both.".

(h) Section 313 of the Federal Aviation Act of 1958 (49 U.S.C. App. 1354) is amended by adding at the end thereof the following new subsection:

"Indemnification

"(e) The Administrator is empowered to indemnify any officer or employee of the Federal Aviation Administration against any claim or judgment against such person, provided that such claim or judgment arises out of an act or acts committed, as determined by the Administrator, within the scope of such person's official duties. The Administrator may issue such regulations as may be necessary to implement this subsection.".

(i)(1) Section 101(36) of the Federal Aviation Act of 1958 (49 U.S.C. App. 1301(36)) is amended by adding the following sentence at the end thereof: "For purposes of this definition, 'used exclusively in the service of' means, for other than the Federal Government, an aircraft which is owned and operated by a governmental entity for other than commercial purposes or which is exclusively leased by such governmental entity for not less than 90 continuous days.".

(2) Section 304(a)(6) of the Independent Safety Board Act of 1974 (49 U.S.C. App. 1903(a)(6)) is amended to read as follows:

"(6) establish by regulation requirements binding on persons reporting (A) accidents and aviation incidents subject to the Board's investigatory jurisdiction under this subsection, and (B) accidents and aviation incidents involving public aircraft other than aircraft of the Armed Forces and the Intelligence Agencies, and the Board shall report to the Congress within the 18-month period following the date of the enactment of the Federal Aviation Act of 1958 Amendments Act, its findings on public aircraft accidents and incidents.".

LAUTENBERG AMENDMENT NO. 1088

Mr. LAUTENBERG proposed an amendment to the bill (S. 1184) supra; as follows:

AMENDMENT No. 1088

At the end of the bill add the following new section:

SEC. 3. The Airport and Airway Improvement Act of 1982 (title V of Public Law 97-248, 96 Stat. 677), as amended, is amended by adding at the end thereof the following new section:

"SEC. 530. ATLANTIC CITY AIRPORT.

"(a) LIMITATION ON FUNDING OR TRANSFER OF PROPERTY.—

"Notwithstanding any other provision of law, with regard to the Atlantic City Airport, at Pomona, New Jersey, the Federal Aviation Administration shall not convey any interest in property (pursuant to section 516 of this title) to any municipality or any other entity operating such airport, nor shall any funds authorized by this Act be available to such municipality or entity for any planning, study, design, engineering, or construction of a runway extension, new runway, new passenger terminal, or improvements to or expansion of the existing passenger terminal at such airport, until such time as:

"(1) the Master Plan Update for Atlantic City Airport and Bader Field, prepared pursuant to Federal Aviation Administration Contract FA-EA-2656, is completed and released; and

"(2) the Administrator of the Federal Aviation Administration finds that a public entity has been created to operate and manage the Atlantic City Airport, which entity has the following characteristics:

"(A) the authority to enter into contracts and other agreements, including contracts, leases, cooperative agreements, or other transactions with any agency or instrumentality of the United States;

"(B) the standing to sue and be sued in its own name;

"(C) the authority to hire and dismiss officers and employees;

"(D) the power to adopt, amend and repeal bylaws, rules, regulations governing the manner in which its business may be conducted and the powers vested in it may be exercised;

"(E) the authority to acquire, in its own name, an interest in such real or personal property as is necessary or appropriate for the operation and maintenance of the airport;

"(F) the power to acquire property by the exercise of the right of eminent domain;

"(G) the power to borrow money by issuing marketable obligations, or such other means as is permissible for public authorities under the laws of the State of New Jersey;

"(H) adequate financial resources to carry out all activities which are ordinarily necessary and appropriate to operate and maintain an airport;

"(I) a governing board which includes (but need not be limited to) voting representatives of the city of Atlantic City, the county of Atlantic, and the municipalities which are adjacent to or are directly impacted by the airport;

"(J) a charter which includes (i) a requirement that members of the governing board have expertise in transportation, finance, law, public administration, aviation, or such other qualifications as would be appropriate to oversee the management, planning and operation of an airport; and (ii) procedures which protect the research and development mission of the Federal Aviation Technical Center at Pomona, New Jersey, and the defense functions of the Air National Guard; and

"(K) the authority to carry out comprehensive transportation planning to minimize traffic congestion and facilitate access to and from the airport.

"(b) SAFETY FUNDS NOT SUBJECT TO LIMITATION.—

"The limitation on funds set forth in subsection (a) shall not apply to any expenditure which the Administrator of the Federal Aviation Administration determines is needed for safety purposes.

"(c) EFFECTIVE DATE.—

"The restriction set forth in subsection (a) shall be applicable only to funds which are authorized for the fiscal year beginning October 1, 1987. Notwithstanding any other provision of law, the funds restricted under subsection (a) shall become available at such time as the conditions set forth in subsection (a) are satisfied.".

AMENDMENT NO. 1089

On page 3 of the bill, strike all on lines 1 through 12, and insert in lieu thereof the following:

"(1) in paragraph (2), by inserting immediately before the".

FORD AMENDMENT NOS. 1089 AND 1090

Mr. FORD proposed two amendments to the bill (S. 1184) supra; as follows:

AMENDMENT NO. 1089

On page 3 of the bill, strike all on lines 1 through 12, and insert in lieu thereof the following:

"(1) in paragraph (2), by inserting immediately before the".

AMENDMENT NO. 1090

At the end of the bill, add the following:

SEC. . Not later than 120 days after the date of enactment of this Act, the Secretary of Transportation shall promulgate regulations to establish criteria for the installation of airport control towers and other navigational aids. In setting criteria under such regulations relating to the number of air carrier operations, the Secretary shall count operations of aircraft providing regularly scheduled commercial passenger service with fewer than 61 seats as equivalent to operations carried out by aircraft with 61 or more seats.

COHEN (AND OTHERS) AMENDMENT NO. 1091

Mr. COHEN (for himself, Mr. MITCHELL, and Mr. MURKOWSKI) proposed an amendment to the bill (S. 1184) supra; as follows:

At the end of the bill, add the following new section:

SEC. . Section 503(a)(9) of the Act (49 App. U.S.C. 2202(a)(9)) is amended by adding at the end thereof the following: "For purposes of this definition, the term 'passengers enplaned' also includes passengers on board international flights which transit an airport for nontraffic purposes.".

METZENBAUM AMENDMENT NO. 1092

Mr. METZENBAUM proposed an amendment to the bill (S. 1184) supra; as follows:

At the end of the bill add the following:

SEC. . (a) The Secretary of Transportation shall ensure greater safety to air passengers by issuing, within 120 days following the date of enactment of this Act, regulations requiring adequate, uniform life preservers, life rafts, and flotation devices for passengers, including small children and infants, on any flight of an air carrier which the Secretary of Transportation determines a part of which flight will occur over water and adequate information and instructions as to the use of such preservers, rafts, and flotation devices.

(b) The Secretary of Transportation shall begin within 120 days following the date of enactment of this Act, and shall complete not later than 425 days following the date of enactment of this Act, a rulemaking—

(1) establishing regulations requiring all seats on board all air carrier aircraft to meet improved crashworthiness standards based upon the best available testing standards for crashworthiness;

(2) establishing regulations requiring air carrier interior cabins to meet improved flammability standards; and

(3) establishing regulations pertaining to aircraft design and equipment, including fuel tanks, to minimize the incidence of fire or explosion, such regulations to include, but not be limited to, considering crash resistant inner fuel tanks and breakaway, self-closing fittings throughout the fuel system.

(c) The Secretary of Transportation shall report to Congress, within 90 days following the date of enactment of this Act, on specific regulations the Secretary has adopted or intends to adopt to modernize and improve the oversight and inspection of air carriers maintenance and safety-related procedures.

DEPARTMENT OF TRANSPORTATION AND RELATED AGENCIES APPROPRIATION ACT, FISCAL YEAR 1988

JOHNSTON (AND BREAUX) AMENDMENT NO. 1093

Mr. JOHNSTON (for himself and Mr. BREAUX) proposed an amendment to the bill (H.R. 2890) making appropriations for the Department of Transportation and related agencies for the fiscal year ending September 30, 1988, and for other purposes; as follows:

An amendment to be inserted in the appropriate section of the bill:

SEC. . TRANSFER OF SECTION 9 FUNDS.

"The Governor of Louisiana, after consultation with all urbanized areas within Louisiana, may transfer not to exceed $5,000,000 of unused apportionments under Section 9 of the Urban Mass Transportation Act of 1964 to any other urbanized area for use for urban mass transportation purposes. The authority to transfer these funds expires on October 1, 1988."

BREAUX (AND JOHNSTON) AMENDMENT NO. 1094

Mr. BREAUX (for himself and Mr. JOHNSTON) proposed an amendment to the bill (H.R. 2890) supra, as follows:

Insert the following language in the appropriate section of the bill:

SEC. . Section 149(a) (89) of the Surface Transportation and Uniform Relocation Assistance Act of 1987 is amended by striking the language therein and inserting in lieu thereof:

"The Secretary is authorized to carry out a project to construct a full-diamond interchange to connect Louisiana Highway 354 to Interstate Route I-10 in East Lafayette, Louisiana."

D'AMATO (AND LAUTENBERG) AMENDMENT NO. 1095

Mr. D'AMATO (for himself and Mr. LAUTENBERG) proposed an amendment to the bill (H.R. 2890) supra, as follows:

"On page 40, line 4, strike $419,512,000, and insert in lieu thereof $424,050,000. And, on page 5, line 13, strike $1,952,731,000, and insert in lieu thereof $1,948,193,000."

D'AMATO AMENDMENT NO. 1096

Mr. D'AMATO proposed an amendment to the bill (H.R. 2890) supra, as follows:

On page 41, between lines 17 and 18, insert the following:

CONGRESSIONAL AWARD BOARD

CONGRESSIONAL AWARD PROGRAM

Notwithstanding any other provision of law, there is appropriated to the Congressional Award Board (established by Public Law 96-114; 2 U.S.C. 801) the sum of $275,000 to remain available without fiscal year limitation: *Provided*, That notwithstanding any provision of such Public Law 96-114, such sum shall be used by the Congressional Award Board in the same manner and for the same purposes, and subject to the same limitations, as are funds donated to such Board by private individuals.

FEDERAL CRIMINAL FINES AND SENTENCING ACT

HEFLIN AMENDMENT NO. 1097

Mr. BYRD (for Mr. HEFLIN) proposed an amendment to the bill (S. 1822) to make certain amendments to the Sentencing Reform Act of 1984 and to improve certain provisions relating to imposition and collection of criminal fines, and for other purposes; as follows:

On page 2, strike out beginning line 5 through line 23 on page 5 and insert in lieu thereof the following:

SEC. 102. PROSPECTIVE APPLICATION OF SENTENCING REFORM ACT.

(a) Section 235(a)(1) of the Comprehensive Crime Control Act of 1984 is amended by inserting "and shall apply only to offenses committed on or after the effective date of this chapter" after "date of enactment".

(b) Section 235(b)(1) of the Comprehensive Crime Control Act of 1984 is amended by striking out "convicted of an offense or adjudicated to be a juvenile delinquent" and inserting "who committed an offense or an act of juvenile delinquency".

(c) Section 235(b)(3) of the Comprehensive Crime Control Act of 1984 is amended by striking out "that is within the range that applies to the prisoner under the applicable parole guideline" and inserting "pursuant to section 4206 of title 18, United States Code" in lieu thereof.

On page 28, line 11, strike out "Attorney General" and insert in lieu thereof "clerk or the person designated under section 604(a)(17) of title 28".

NOTICES OF HEARINGS

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Mr. LEAHY. Mr. President, I wish to announce that the Committee on Agriculture, Nutrition, and Forestry will hold joint hearings with the Judiciary Subcommittee on Technology and the Law on the use and regulation of biotechnology in agriculture. They will be held in SR-332 on Wednesday, November 4, 1987, at 10 a.m. and Tuesday, November 10, 1987, at 10 a.m.

The first hearing will describe the science of biotechnology, suggest directions for its development and look at America's ability to compete and retain its leadership in this field. The second will focus on the regulation of biotechnology and our Nation's infrastructure for its research.

For further information, please contact Kathleen Merrigan of the Agriculture Committee staff at 224-5207.

AUTHORITY FOR COMMITTEES TO MEET

SUBCOMMITTEE ON COURTS AND ADMINISTRATIVE PRACTICE

Mr. BYRD. Mr. President, I ask unanimous consent that the Subcommittee on Courts and Administrative Practice of the Committee on the Judiciary, be authorized to meet during the session of the Senate on October 28, 1987, to hold a hearing on S. 1630, magistrate and bankruptcy judges retirement bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. BYRD. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet during the session of the Senate on October 29, 1987, to hold hearings on the renomination of Francis J. Ivancie, of Oregon, to be a member of the Federal Maritime Commission and the nomination of Francis H. Fay, of Arkansas, and William W. Fox, of Florida, to be members of the Marine Mammal Commission.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FINANCE

Mr. BYRD. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session of the Senate on October 28, 1987, to hold a hearing on welfare reform.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON RURAL ECONOMY AND FAMILY FARMING

Mr. BYRD. Mr. President, I ask unanimous consent that the Small Business Committee on Rural and Family Farming be authorized to meet during the session of the Senate on Wednesday, October 28, 1987 to examine the effects of airline deregulation on the rural economy.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. BYRD. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, October 28, 1987 to hold a hearing on ambassadorial nominations.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, October 28, 1987 to hear former Secretary of State Cyrus Vance and former Secretary of Defense Elliot Richardson testify on the United Nations role in the Persian Gulf.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

POLISH AMERICAN HERITAGE MONTH

● Mr. RIEGLE. Mr. President, earlier this year, the Senate unanimously passed Senate Joint Resolution 135, declaring the month of October 1987 "Polish American Heritage Month." I was proud to join with Senator SIMON in introducing that legislation, in order to pay tribute to the important role Polish Americans have played in the growth of our Nation.

It is appropriate that we should celebrate the contributions of Polish Americans during the month of October, for it is on October 11 each year that we honor one of the great Polish Americans, Casimir Pulaski. On that date in 1779, Pulaski died from wounds he suffered after leading a cavalry charge in the battle at Savannah, GA. Known as the "Father of the American Cavalry," Pulaski sacrificed his life in the fight for American independence. Another famous Polish American, Thaddeus Kosciuszko, distinguished himself as a Revolutionary War hero by helping to strengthen the fortifications at Saratoga.

These are just two individuals in a long line of outstanding Polish Americans. Today, the 8 million citizens who are part of that community, more than 800,000 of whom reside in my own State of Michigan, are living symbols of the commitment to freedom and liberty which Pulaski and Kosciuszko represented.

Members of the Polish American community, both as individuals and working as a group, have made impressive strides forward in our society. Today we find Polish Americans in important leadership positions in nearly every area of our national life, providing thoughtful direction on key national decisions.

Recently, the Polish American community honored one of its outstanding members, Aloysius Mazewski. The effectiveness of the Polish American community today is due in large part to Al Mazewski's able leadership as President of both the Polish American Congress and the Polish National Alliance. In that capacity, he has made the Polish American community a key player on our national political scene and has done much to promote the cause of freedom in the homeland.

As the community has kept pace with the changing needs and concerns of its members in today's society, it has taken greater care to safeguard the cherished Polish traditions and culture that have become an important part of our own Nation's history. As President Johnson stated on the occasion of the Polish millennium celebration in 1966, "Our national heritage is rich with the gifts of the Polish people."

The deep feelings which bind Polish Americans to the homeland have found expression in their tireless advocacy of freedom, self-determination and human rights in Poland. With the important assistance of the Polish American community, the Congress this year approved legislation to bring badly needed aid to the Polish people and to Solidarity. Due in large part to the efforts of the community, Americans today are keenly aware of the important role which Western support for the cause of self-determination in Poland can have in strengthening the hand of Solidarity and its supporters.

Mr. President, as we celebrate this "Polish American Heritage Month," we acknowledge with deep appreciation the many contributions of the Polish American community to this country. And, with them, we reaffirm our Nation's commitment to stand with the people of Poland in their struggle for freedom until it is won.●

TWO OUTSTANDING FLYING TEAMS

● Mr. GARN. Mr. President, I would like to offer my congratulations to two outstanding flying teams from Hill Air Force Base, UT.

The 388th Tactical Fighter Wing and the 419th Tactical Fighter Wing, Air Force Reserve, took first and second place, respectively, in the Gunsmoke '87 Competition. Both teams fly F-16 aircraft. The Gunsmoke competition is a worldwide Air Force air-to-ground gunnery event, which pits the country's top fighter pilots against one another. Every other year the Air Force conducts this competition to determine the "best of the best" of all fighter pilots. The competition also allows for pilots to learn new flying techniques and strategies from other top pilots in the Air Force.

The five-member team of the 388th Tactical Fighter Wing from Hill Air Force Base, defeated the defending champion, the 419th Tactical Fighter Wing, also from Hill Air Force Base, to capture the overall top honors. The 419th Tactical Fighter Wing took second place in the competition.

Members of the first place 388th Tactical Fighter Wing include, team leader Lt. Col. Robert Jones, and Capts. Tom Wingo, Joseph Hedrick, Eric Best, and Michael Brill. Members of the second place 419th Tactical Fighter Wing are, team leader Lt. Col. Tom King, and Majs. Wayne Conroy, Danny Hamilton, Kent Clark, and John Barnett.

The competition was held at Nellis Air Force Base, NV, on October 4-17, and included 90 pilots representing 18 units from all over the world. These wings were selected for the competition after demonstrating superior flying skills in local competitions. Hill Air Force Base was the only Air Force base represented by two units in Gunsmoke '87. The competition included pilots and crews from active Air Force units, Air National Guard, and Air Force Reserve.

Gunsmoke '87 featured pilots flying a variety of aircraft, including F-16's, F-4's, A-10's, and A-7's, in an exercise to demonstrate basic bomb delivery, tactical bomb delivery navigation/attack, and aircraft maintenance.

Top individual honors went to Maj. Danny Hamilton, of the 419th Tactical Fighter Wing, who was named overall top gun in the U.S. Air Force. Six of the top 10 pilots came from the 388th and the 419th Tactical Fighter Wings. Other honors went to Capt. Tom Wingo, of the 388th Wing, for top gun in the 30-degree dive bomb competition. The 388th Tactical Fighter Wing was also named the best F-16 load team. The 419th Tactical Fighter Wing crew took first place in F-16 maintenance and had the only perfect score in the static load event.

The Gunsmoke Competition, regarded as the Super Bowl for American fighter pilots, originated after World War II. There was a 19-year hiatus caused by the outbreak of war in 1962, and the competition was resumed in 1981.

Preceding the 388th Wing's victory in Gunsmoke '87 were the Colorado Air National Guard flying the A-7 in 1981, the 50th Tactical Fighter Wing of Hahn Air Base, Germany, flying the F-16 in 1983, and the 419th Tactical Fighter Wing, Air Force Reserve, Hill Air Force Base, UT, flying the F-16 in 1985.

I am proud to have both of these tactical fighter teams in Utah. I am sure my colleagues join me in commending Col. Lawrence E. Boese, wing commander of the 388th Tactical Fighter Wing, and Col. Forrest S. Winebargar, wing commander of the 419th Tactical Fighter Wing, and their premier pilots and crews, for their excellent performance and contribution to the security of the United States.●

BHOPAL: HOPE FOR A SETTLEMENT

● Mr. DODD. Mr. President, we all share a fundamental humanitarian concern to see that prompt relief is provided to the victims of disasters. And there is a certain sadness we all feel when contemplating the prospects of expensive litigation over many years following such a tragedy, diverting resources away from the victims and to the legal process. That's why we so often welcome the resolution of such complex litigation through the process of negotiation and settlement.

I bring this up in light of recent positive developments in Bhopal, India on possibly resolving the litigation there regarding the 1984 tragedy. Bhopal District Court Judge M.W. Deo has urged the Government of India and Union Carbide to reach a settlement to compensate the victims and conclude the litigation. In my view this is a positive development, and a view that I hope the parties involved share.

The fact that Judge Deo has encouraged the settlement approach suggests a real opportunity for a prompt, fair and just settlement of this international tragedy of interest to us all. Let us all hope that he is successful in his efforts.

In the September 15, 1987, Wall Street Journal, there is an article entitled, "Union Carbide, India are Urged to Settle by October 30," which affirms that a sense of cooperation is developing between the Government of India and Union Carbide to achieve a just and reasonable settlement of this most unfortunate case. Mr. President, I ask that this article be printed in the Record.

The article follows:

[From the Wall Street Journal, Sept. 15, 1987]

UNION CARBIDE, INDIA ARE URGED TO SETTLE BY OCTOBER 30

(By Elliott D. Lee)

The judge in the Bhopal poison-gas case urged Union Carbide Corp. and the Indian government to reach an out-of-court settlement by Oct. 30 to pay victims of the December 1984 disaster.

In Bhopal, India, District Court Judge M.W. Deo said he made the request because both parties indicated they want to settle. Oct. 30 is the next scheduled court hearing for the case.

In Danbury, Conn., Union Carbide said lawyers for both sides told the judge they are "earnestly seeking a compromise that they hope will led to a just and reasonable settlement of the Bhopal case." A spokesman declined further comment on any settlement negotiations.

Bruce Finzen, a Minneapolis lawyer representing Indian government interests in the Bhopal case, said, "The government's position remains the same: a fair and reasonable settlement on behalf of each and every victim." Mr. Finzen declined to comment on any settlement figure. The New Delhi government is seeking some $3 billion in damages from Union Carbide.

As previously reported, most legal and financial observers speculate that the case is likely to be settled in the range of $400 million to $600 million.

The case was filed after a gas leak at a Union Carbide pesticide plant in Bhopal killed at least 2,500 people and injured tens of thousands more.

Last month, Union Carbide offered to contribute about $4.6 million in interim aid to the gas victims, in response to a earlier request for interim victim assistance from Judge Deo.

About $1.6 million of that amount represents the proceeds from dividends the company has earned on its Indian subsidiary's stock since the incident. The chemical company also said last month it was prepared to authorize the American Red Cross to send about $3 million to the court. Union Carbide paid the funds to the relief agency in December 1985.

Mr. Finzen said the Indian government hasn't yet formally responded to Union Carbide's interim-aid offer. But he said that at the time it was made, the government said it didn't think it was sufficient.●

INFORMED CONSENT: VERMONT

● Mr. HUMPHREY. Mr. President, something must be done to ensure that women considering abortion receive complete and accurate information. In clinics across this Nation, women are making decisions on abortion without getting the information they deserve. Facts about risks, effects, and alternatives are amply provided for virtually every medical procedure, but in the case of abortion, such information is often sorely lacking.

I have received hundreds of letters from women in every State detailing the lack of informed consent regarding abortion, and today I present such a letter from Mary Pat Brooks of Vermont. As the letter clearly shows, the counselling that Mrs. Brooks received prior to her abortion did not include sufficient information to meet the level standards of informed consent, and indeed seems intended strictly to steer her toward an abortion.

Mr. President, this discrepancy in medical treatment should not be allowed to continue, and I therefore urge my colleagues to support my informed consent legislation, S. 272 and S. 273. The bills would raise the standard of information for abortion up to the level of other medical operations.

I ask that the letter from Vermont be inserted into the RECORD.

The letter follows:

BRATTLEBORO, VT.
June 23, 1986.

DEAR SENATOR HUMPHREY, My husband and I never talked about whether or not we wanted children before we married. When we had been married less than a year, we were up to our necks in debt, me with school loans, and he with whatever he had accumulated over a few years. We were both working full-time jobs, but there just was barely enough to cover our monthly expenses.

This is when my birth control failed and I became pregnant. I wanted to protect that baby as every mother does when she becomes pregnant. When I shared my not so good news with my husband, he panicked. He said he had had to leave other children because of a broken marriage, had just been off alcohol for a short time, was trying to get out of debt and the pregnancy was more than he could cope with. He was panic stricken at the thought of having a child right then.

Not knowing where to turn, I went to Planned Parenthood to seek advice from a counselor there. She told me that I was young and could certainly have more kids, and that we needed time to get on our feet. She also reminded me that I needed to make the decision fast because pretty soon this "blob of tissue" would be forming into a baby and abortion was only legal up to 12 weeks (at that time). Then she handed me an appointment card with the time and place for the following week. My mind raced about what was the "right" decision for me to make. I wanted the baby, but I wanted my husband and I honestly thought those were my choices . . . I chose my husband.

Reluctantly we found our way to the abortion clinic. I remember the faces of the women in that waiting room as if it were yesterday. I honestly don't remember too much about the procedure itself. I do recall it was painful, but it was not as painful as what I was feeling emotionally. I figured I deserved whatever physical pain I was receiving and today don't remember much about it.

I wish that I had never been in that place in my life where I had the abortion. The past, however, cannot be changed, but someone's future may be by speaking up. I know our testimonies will change hearts and I pray that people's hearts will be softened and their minds open to receive what we have to share.

Sincerely,

MARY PAT BROOKS.●

THE ASSASSINATION OF HERBERT ANAYA

● Mr. LEAHY. Mr. President, 3 months ago, Amnesty International wrote to Salvadoran President Duarte to express concern about threats by Salvadoran police against Herbert Anaya, president of the private Human Rights Commission in El Salvador. Yesterday, the Washington Post reported that Mr. Anaya was shot and killed on Monday.

Human rights groups that have monitored the political violence that has plagued El Salvador in recent years, say that of the 61,000 people killed in the civil war, 40,000 were murdered by right-wing death squads. Although murders attributed to death squads have declined dramatically since the early 1980's, Mr. Anaya is the second Human Rights Commission president to be killed. Three other commission members have disappeared and are presumed dead.

It is not yet known who was responsible for this outrageous act. But one thing is beyond dispute—it could not have come at a worse time. It could sabotage the Central American peace negotiations. What hope there was for a peaceful resolution of the war in El Salvador may have been gunned down with Herbert Anaya.

I join Amnesty International in calling for a full investigation by the Salvadoran Government. However, given that Government's abominable record of failing to prosecute members of the security forces for past human rights abuses, I do not have much hope that its investigation will be either objective or complete.

In support of its requests for aid to El Salvador, the Reagan administration has pointed to continued progress in human rights observance by the Salvadoran Government. The administration should insist on a full and independent investigation of Mr. Anaya's assassination. Given their past links to death squads, suspicion will fall on the Salvadoran security forces. Those security forces, which depend on U.S. assistance, must be shown to have had no hand in this terrible crime. Herbert Anaya's killers should not be rewarded with more U.S. dollars taken from the American taxpayers' pockets.

As a strong opponent of this administration's policy of confrontation in Central America, I welcomed the peace negotiations. Herbert Anaya's tragic death is a painful reminder of how fragile this process is, and how much harder we will all have to work to keep it going.●

WAYS AND MEANS RECONCILIATION BILL PROVISIONS AFFECTING CORPORATE MERGERS AND ACQUISITIONS

● Mr. MOYNIHAN. Mr. President, during the last week I have heard it stated that the precipitous decline in stock prices was due in part to recent congressional actions—in particular, tax provisions affecting corporate mergers and acquisitions contained in the House Ways and Means Committee's reconciliation bill.

While clearly the causes of last week's stock market "crash" go far beyond anything in a modest $12 billion revenue-raising package, I would like, nevertheless, to speak to some of the concerns that have been raised.

There are three provisions in the Ways and Means bill that are considered by many to have been the most disruptive to our capital markets. Taken together, these proposals are estimated to raise just over $400 million in the 1988 fiscal year. I believe these proposals are ill-advised. The Senate Finance Committee rightfully decided not to include them in its reconciliation package.

One provision would deny the deduction for any interest in excess of $5 million per year on debt incurred for the purposes of acquiring or redeeming a majority of the stock of a corporation. It is estimated that this provision would raise $400 million in fiscal year 1988.

Under the proposal, all large corporate acquisitions—friendly, negotiated or hostile—would be denied the deduction for the lion's share of interest on the associated debt.

The second provision would deny all interest deductions on debt incurred to acquire stock of a corporation if 20 percent or more of the stock was acquired in a "hostile" purchase.

A third provision, also concerned with hostile acquisitions of stock, would cause a capital gains tax to be triggered if a purchaser acquired 80 percent or more of the stock of a corporation in a hostile purchase. The two provisions covering hostile acquisitions would together raise no more than $7 million in fiscal year 1988.

The limitations on interest deductions for debt used in a corporate acquisition—though seemingly designed to stem the tide of debt-financed acquisitions of American corporations—would instead close off corporate acquisitions by domestic interests—leaving the field free for foreign purchasers who would still be able to deduct interest against their home country's taxes.

They also won't raise any revenue. When you remove the interest deduction for domestic taxpayers, you simply insure that they won't enter into the transactions.

The provisions aimed at reducing hostile corporate takeovers also won't raise any revenue—because the transactions just won't go forward. But they represent questionable tax policy. We should not be addressing fundamental questions of Federal policy on hostile corporate takeovers as part of a revenue-raising measure in the tax-writing committees.

I made these points last week in a Cable News Network broadcast devoted to the developments in the stock market. At that time, I sought to assure a troubled market that these provisions would not become law—that I would, at least, work to prevent it and knew that the Finance Committee had already rejected all three proposals.

I urge my colleagues in the Senate to join me in opposition to these provisions.●

● Mr. SIMON. Mr. President, yesterday was Ben Charny's 50th birthday. People celebrate 50th birthdays every day, so why was Ben's so special? Because Ben Charney, a refusenik, was remembered by people in the United States. Yesterday, the only thing separating Ben from freedom and happiness was distance. Senator Tim Wirth, along with Ben's daughter, Ana; her husband, Yuri; and their daughter, Sima; bridged the gap of distance by making a phone call to Ben.

In Moscow, Ben celebrated his birthday with his good friend, Naum Meiman. Ben Charny became friendly with Naum Meiman during their involvement with the Helsinki Watch Group some years ago. In addition, Ben shared the pains of cancer with Naum's wife, Inna, before her death earlier this year. A month ago Ben's daughter arrived in the United States without her father. Ben was refused permission to leave. He is one of the many refuseniks being forced to live out the remaining years of his life in pain without adequate medical attention.

We must continue to do all we can so that refuseniks are allowed to leave the Soviet Union and live their lives in the manner that they desire. I hope that Ben's 51st birthday is an even more special day. We must all work to see that Ben Charny, Naum Meiman, and both their families celebrate their remaining days in freedom in the United States.●

THE DEFICIT CRISIS

● Mr. DeCONCINI. Mr. President, I applaud the efforts of the White House and congressional negotiators to seriously address the deficit crisis. Unfortunately, it has taken the events on Wall Street of the last 2 weeks to awaken us to the horror we are confronting. We cannot continue to borrow on our children's future. Finally the markets have said "enough," and if we want to prevent severe economic dislocation, we must act swiftly. The President and the Congress are pursuing this in the appropriate manner—putting everything on the table. I look forward to seeing positive results from these negotiations. My own hope is that we can cut the deficit by more than the $23 billion required by Gramm-Rudman. We cannot ignore the fact that once we balance the budget, we still have an enormous debt, largely accumulated in the last 6 years, which we must pay off.

I am pleased that the President has agreed to put everything on the table. It is clear that any bipartisan solution agreed to by Congress and the White House will include some revenues. But those revenues should not be raised by changing personal income tax rates established in last year's Tax Reform Act.

During debate last night on the catastrophic health bill, I opposed the effort to table Senator Helms' amendment expressing the sense of the Senate that there should be no increase in income tax rates. Senator Helms is right. We should not be changing the rate structure agreed to last year. While I voted against final passage of the conference report of the Tax Reform Act, I believe that we would be breaking our commitment to the American taxpayer if we were to alter the agreed-upon rate structure. In no way does this prohibit, however, from pursuing the multitude of loopholes, shelters, and schemes that still exist in the Tax Code. In 1984 and 1985, President Reagan and the Treasury Department proposed a whole series of such improvements, many of which have yet to be enacted. These, along with the proposals reported by Senate Finance and House Ways and Means, deserve serious consideration in our efforts to reduce the deficit.

I look forward to reviewing the work of the White House and congressional deficit negotiators. I will oppose efforts to solve the deficit problems by raising income tax rates for Americans, but this does not mean that we cannot find added revenue in addition to substantial spending cuts.●

LEGISLATION TO EXTEND THE FEDERAL HOUSING ADMINISTRATION INSURING AUTHORITY

● Mr. D'AMATO. Mr. President, as ranking member of the Senate Housing Subcommittee, I rise today to join with the chairman of the subcommittee, Senator Cranston, in support of legislation to extend the insuring authority of the Federal Housing Authority [FHA] of the U.S. Department of Housing and Urban Development. Under this legislation, the FHA mortgage insurance authority would be extended until November 15, 1987. Currently, under Public Law 99-430, the FHA authority to insure home mortgages expires on November 1, 1987.

Both the House and the Senate have passed housing reauthorization bills including provisions for the continuation of this insuring authority. A House and Senate conference committee, of which Senator Cranston and I are members, is close to completing a final housing bill. Unfortunately, a couple remaining unreconciled provisions may take us passed the November 1 deadline for the authorization of FHA mortgage insurance. Therefore, Senator Cranston and I are sponsoring legislation today that would allow the FHA to continue, without interruption, its operating authority for the numerous mortgage insurance programs through November 15, 1987. This will give the conferees enough time to work out our differences without a threat of an FHA shut down.

As you know, Mr. President, last year the FHA insuring authority became a pawn in a larger battle between the House and Senate over a controversial reauthorization bill of all Federal housing programs. The Congress passed seven short-term extensions. However, during the course of congressional deliberations, the insuring authority was allowed to expire a shocking six times. FHA shut down its operation a total of 51 days. This caused confusion and frustration among many prospective home buyers. It threatened the housing plans of many low-, moderate-, and middle-income Americans. Furthermore, it destabilized the mortgage and housing financing system in our Nation.

This FHA extender will prevent the insuring authority from expiring on November 1, 1987, while the 1987 housing bill is in conference. The FHA will continue to run smoothly through November 15, 1987, avoiding undue hardship to home buyers, mortgage lenders, home builders, and the many individuals involved in our Nation's housing industry and financing system.

Mr. President, FHA is one of the most successful partnerships ever created between the public and private sectors. During its illustrious 53-year history, FHA has assisted more than 15 million American families realize the dream of homeownership. Let us preserve the integrity of this vital Federal agency. I urge my colleagues to join us and to support this legislation.●

INAUGURATION OF REV. EDWARD MALLOY AS PRESIDENT OF THE UNIVERSITY OF NOTRE DAME

● Mr. QUAYLE. Mr. President, today it is my pleasue to call my colleagues' attention to the beginning of a new era at the University of Notre Dame. On September 23, 1987, Father Edward A. Malloy, C.S.C., was inaugrated as the university's 16th president.

Father Malloy inherits the stewardship of an institution with a proud tradition of excellence that goes back 145 years. From its humble beginnings, the University of Notre Dame has grown into a major education and research center which offers degrees in 29 departments and institutes to a nationally diverse and exceptionally talented student body. Today, Notre Dame has an enrollment of 9,700 students, who are taught by almost 1,000 faculty members.

Beyond these mere figures, Notre Dame represents a community of alumni throughout the country and the world who share the common experience of attending an institution where the freedom of expression is carefully safeguarded in order to create every opportunity for original thinking and discussion.

Father Malloy was born in Washington, DC, and received his undergraduate and master's degrees in English from Notre Dame and went on to earn a master's degree in theology, as well as his doctoral degree in Christian ethics, before returning to teach at Notre Dame as a member of the department of theology. He has authored two books and numerous articles and reviews on a wide variety of topics from health care to economic ethics to substance abuse. He presently serves the community in a number of private and public organizations and until his election as president in November 1986 he was associate provost of Notre Dame.

I would like to congratulate Father Malloy on the occasion of his inauguration as president of the University of Notre Dame and wish him every success in his first term of office. With his background and experience, Father Malloy is an excellent choice to succeed Father Hesburgh as a president who will continue to set the tone for the high standards in academics, athletics, and community service for which Notre Dame is justly famous.

I ask that the text of Father Malloy's inaugural speech be printed in the RECORD.

The speech follows:

INAUGURAL ADDRESS BY REV. EDWARD A. MALLOY, C.S.C.

Ladies and gentlemen; members of my three families—the Malloys, the Congregation of Holy Cross, and the broad Notre Dame family; distinguished guests from the Church and the academy; friends. Welcome to Notre Dame on this joyous occasion. Institutionally and personally it is a time of passage and transition, a wonderful opportunity to celebrate our life together. I invite you to pause with me in the midst of these engaging festivities to ponder and to dream awhile about the challenges and opportunities that lie ahead.

I would like to begin these reflections with a word of tribute and praise for two extraordinary priests—Father Theodore M. Hesburgh, C.S.C. and Father Edmund P. Joyce, C.S.C. Ted Hesburgh served the University for thirty-five years as its President and chief visionary. He led us through an unprecedented era of academic and physical growth while also functioning as a moral guide for the nation and the world. Over that same span of time Ned Joyce was the indispensable person behind the scenes who husbanded the available resources, kept the institution fiscally sound, and even found time to attend a game or two. Both of these men have been a great source of support for me in recent years and I am pleased that they will continue at the University with a new set of responsibilities.

It seemed appropriate some ten months ago after my election as President to solicit from you the members of the Notre Dame community your appraisal of the strengths and weaknesses of the University at this moment in its history. In departmental and College-wide meetings, in open fora in the dormitories, in administrative sessions at all levels, through letters, reports and on-site visits, you have generously shared your hopes and concerns, your suggestions and criticisms with me and the other members of the central administration. On the basis of this cumulative evidence, as well as my own experience of the place and its people, I offer the following sketch of Notre Dame as we approach the 1990's.

These reflections will be divided into two major parts. First, at the level of institutional self-definition and identity I will make five central claims. Then, secondly I will turn to immediate needs and priorities of the institution. I hope thereby to provide both a general, philosophical perspective and a clear description of what yet remains to be achieved.

I. INSTITUTIONAL SELF-DEFINITION AND IDENTITY—FIVE PROPOSALS

Let me begin then with five proposals with regard to Notre Dame's self-understanding and identity—

(1) Notre Dame is a university. It is essentially a center for scholarship and learning.—As a university Notre Dame is an academic institution where the humanities, science and technology, the fine arts, business, the social sciences and law can all be pursued with reason and passionate intensity. There is an intrinsic worth to this task which both teachers and students can find self-validating and personally rewarding. Indeed, a university is a bold reminder that the human spirit of curiosity and wonder is irrepressible. In the laboratory, on stage, at the computer terminal, amidst a shelf full of books, wherever learners gather, a university sparkles and generates an energy that can captivate and enthrall. Clearly, its work touches the core of human meaning and purpose.

In addition to the intrinsic value of the efforts of professors and students alike, a university also serves the broader society of which it is a part. It requires high levels of expenditure and sufficient freedom to concentrate on its primary mission. At any given moment it is subject to legislation, litigation and external pressures from many sources. Surely a university cannot function well unless it musters the support, philosophical and financial, of the constituencies that have called it into being. Today this entails accreditation and periodic review, the establishment and funding of endowments, and the structuring of the collective effort for maximum effectiveness.

At Notre Dame, and throughout higher education, one of the great challenges is to find the proper balance between the demands of teaching and the demands of research. Teaching and research are indispensably linked together in a university setting. Yet each institution charts its own course and fosters a climate which may give priority to one or the other.

Teaching is best seen as a highly personal interaction between professor and students. It is not acceptable at Notre Dame to engage in it in a perfunctory or indifferent fashion. Our students deserve a total commitment of their mentors to providing a lively and stimulating educational environment. In the full sense of the term, teaching is a "vocation," a "calling." It is a privilege to be entrusted by society with responsibility for the intellectual, esthetic and moral growth of the next generation.

Research, on the other hand, is a rather solitary and unpredictable pursuit. It increasingly requires sophisticated instrumentation, high quality libraries and computing facilities, and external support for both researchers and graduate students. It is necessarily expensive and ever pressed by new problems and unpredictable lines of exploration. It is in this area of its academic life that Notre Dame has made the greatest strides in the last two decades under the leadership of Provosts James Burtchaell, C.S.C., and Timothy O'Meara. There is no turning back. We must enthusiastically embrace our potential as a major research institution and we must define those areas of scholarly pursuit where we at Notre Dame are especially well suited to make a lasting contribution. In a number of instances, it will be through our institutes and Centers that our research excellence will be most visible to the broader academic community.

As a university, teaching and research both count at Notre Dame. Our standards are high but so are the rewards.

(2) Notre Dame is a "Catholic" university. Its distinctiveness as a religious institution is its greatest strength.—In 1967 when the University moved from ownership by the Indiana Province of the Congregation of Holy Cross to a Lay Board of Control, it was specified in the Statutes of the University that "the essential character of the University as a Catholic Institution of higher learning shall at all times be maintained, it being the stated intention and desire of the present Fellows of the University that the University shall retain in perpetuity its identity as such an institution (V,e)." At that same time special encouragement was provided for a continuing and critical role for the members of the Congregation of Holy Cross in the intellectual, pastoral and administrative functions of the University.

In an earlier era the Catholicity of Notre Dame could simply be presumed. It seemed garanteed by its ownership by a religious community, by the force of its history, and by the overwhelmingly Catholic background of its students and staff. However, new circumstances have arisen and to some the rationale for Notre Dame's religious distinctiveness is not readily apparent.

In the face of these misgivings I want to assert with deep conviction that the Catholicity of Notre Dame is both a gift and a responsibility. To me there is nothing inherently incompatible between academic excellence and the life of faithful discipleship. The Church of Thomas Aquinas and Bonaventure, of Theresa of Avila and John of the Cross, of Dante, Michelangelo, Gerard Manley Hopkins, Flannery O'Connor and Walker Percy, can surely boast that it is at home with the things of the mind and the heart.

Notre Dame will continue self-consciously and proudly to proclaim itself to be a Catholic university. In one sense, this distinguishes it from secular and non-denominational colleges and universities with different missions. More pointedly, the Catholic identity builds on the historical connection to the Roman Catholic Church and its cultivation of the great transcendental values of truth, beauty, and goodness. It presupposes that a life given over to learning and scholarship can be a valid route to God.

In another sense, Notre Dame's Catholic character is a call to be a community, a kind of external family where individuals from all backgrounds and of every faith can both feel at home and be prized for the special contribution that they make. It is a call to cultivate a spirit of honest and open exchange, always in a valuing context.

Notre Dame rightly continues to maintain a core curriculum, including required courses in philosophy and theology. It provides numerous opportunities for worship, prayerful reflection and social service. Furthermore, it makes special demands on its students and those responsible for their education. This includes a proper sense of responsibility for one's conduct and for those matters which affect the common good. In all of these ways it tries to attend to the whole person—intellectual, moral and spiritual.

Notre Dame is a Catholic university. It preserves the heritage of Father Edward Sorin, C.S.C. its founder, with confidence and trust.

(3) Notre Dame is a community. It must therefore attend with care and compassion to the well-being of all its constituents.—There has always been a special feel about this place called Notre Dame. Much of its sense of community is forged initially in the residential life of the students. In fact each dorm has its unique traditions and characteristic spirit.

The mystique of Notre Dame, its pervasive spirit of togetherness, is an intangible reality. At its best, it takes the form of a priority for persons, a concern for the inner world of colleagues and companions. It is the breeding ground of life-long friendships and uncommon loyalty to the institution as a source of continuing nurturance. It is manifest most tangibly in times of celebration or crisis, the turning points of life. The creation of community at Notre Dame is a family-like thing, the wish that there be no strangers here.

Yet, like all families, we also suffer our misunderstandings and disputes. At times, we neglect the needful in our midst, we stereotype minorities, and we treat with disdain those flauntingly different. We regretfully allow gender or race or status and rank to fracture our commonality and drive us apart. In recognition of this inconsistence and harm, we ever need to acknowledge our failure and move to reform our common life.

Notre Dame is and must be a community. For only thus can it be true to its call.

(4) Notre Dame has a mission of service to society and the Church. This mission is primarily intellectual and academic, but it builds upon concrete experience and overflows from theory into committed practice.—There are presently 235 colleges and universities in the system of Catholic higher education in the United States. This is an impressive reservoir of talent, energy and research capacity. Among these institutions, Notre Dame has, I think, its own special role to play in the collective outreach to society and the Church.

Society has a right to expect from us a continual stream of thoughtful and well-trained men and women who can exercise leadership in the workplace, in the social world, and in all of those private and public organizations and agencies that promote the common good. These graduates should be literate and cultured, appreciative of the humane uses as well as the limits of science and technology, able to criticize the status quo yet knowledgeable of history and the proper function of law. As the quality of research and scholarship at Notre Dame progressively improves, we stand as a great resource for society much the same as other major universities, private and public.

In a related way, the Church should find in us a conducive environment to do its thinking. What better place to explore the mysteries of the life of faith, to preserve and interpret the testimony of Scripture and theological tradition, and to ponder the power of prayer and sacrament? We have among us exegetes and ethicists, liturgists and Church historians. There is also the ongoing witness of adult practicing Christians, married and single, grappling to make sense of sin and forgiveness, to practice in daily terms the virtuous triad of faith, hope and love, and to be responsible citizens in a complex, stressful world.

As has always been the case, the best theory is forged in the crucible of experience. Thus, we at Notre Dame have structured opportunities for concrete involvement in the social, political and ecclesial orders. Through internships and summer study, through foreign study centers, and through the umbrella of organizations affiliated with the Center for Social Concerns, we provoke the awareness of faculty and students alike. The mission of service begins in the activity of some among us. But their experience of the plaintive cry of the poor and disheartened returns to the classroom and research project to seek a better and more just way.

In the commitment to justice and peace, in efforts at spiritual and moral renewal, Notre Dame has a mission to society and the Church.

(5) Notre Dame is an open forum where diverse viewpoints can be freely and critically discussed. A unique opportunity presently exists to focus on the moral and ethical dimension of contemporary life.—The American system of constitutional government provides protection for certain freedoms deemed essential for the well-being of its citizens. Among these protected rights are freedom of speech and freedom of religious practice. In the sphere of higher education a deeply rooted tradition has developed of academic freedom with its correlative system of tenure for faculty.

At Notre Dame the "Academic Articles" of The Faculty Handbook specify explicitly that freedom of inquiry and freedom of expression are to be safeguarded. Each category of participant in the University community has both rights and obligations under this formulation. The freedom to teach and to learn, to publish and to speak, are essential components of this notion of academic freedom.

There are some risks associated with both academic freedom and faculty tenure. They can be the pretext for demogoguery, ideological carping or a lack of accountability for ongoing preparation and performance. Particularly in a religiously-affiliated institution, there can be fear that the authentic teaching of the Church will be misrepresented or subject to unsympathetic critique.

Yet it is crucial to remind all observers of this unique system of higher education in America that the life of learning and scholarship have flourished here. This includes Catholic colleges and universities which have found that a plurality of perspectives and methodologies enriches the search for more adequate ways of articulating the truth about the natural order, the human condition or the divinity. Conflict, controversy and bracing debate are often the precondition for resolution of the more harrowing and perplexing issues of the day.

Notre Dame's institutional commitment to the principle of academic freedom situates us well to focus on the moral (descriptive) and the ethical (prescriptive) dimensions of contemporary life. Here we can explicitly make reference to the central values of the Judaeo-Christian tradition—respect for life in all its forms, compassion for the neighbor in need, peacemaking, and the inviolability of marriage and family life. But we can do more than simply exhort. We can also explore the full meaning of ethical notions like personal integrity and corporate responsibility. Together we can amicably disagree about nuclear deterrence and test tube babies, economic justice and global pollution. Because we believe that the truth will prevail in a context of honest debate and good-willed searching, we can avoid forming into hostile camps or settling into the quicksand of utter moral relativism.

Notre Dame must remain an open forum where diverse viewpoints can be freely and critically discussed.

II. INSTITUTIONAL NEEDS AND PRIORITIES

I have given five proposals with regard to institutional self-definition and identify. I realize that my comments have been rather general and philosophical. In a briefer compass now I would like to convey a sense of specific institutional needs and priorities.

(1) Structure—The University has been well served by its Lay Board of Trustees and by its Alumni Board and various Advisory Councils. The Academic Council and the Faculty Senate, as well as Student Government, are further vehicles for involvement of a wide cross-section of the University community in consultation and policy formulation. We in the new administration hope to elicit even greater levels of participation through these respective structures. We will make every effort to sustain regular communication and to know people by name. There are certain prerogatives in decision-making which statutorily belong to the officers of the University. This rightful division of function should never be an excuse for an imperious style of administration. Notre Dame has been blessed through the years by a spirit of cordiality among faculty, students, staff and adminstration. We will do all we can to see that this desirable state of cooperation continues.

(2) Student Life.—Notre Dame has twenty-four dormitories and other housing for married students adjacent to the campus. For a variety of reasons, there is a real need for additional housing on campus for both undergraduate and graduate students. During the course of this academic year, a special Task Force will report back on issues related to residentiality at Notre Dame—the living facilities, the role of hall staffs, standards of conduct for students,

the quality of support service for students, and the relationship between residential life and the academic mission of the University. In a related matter another Task Force will make recommendations with regard to the use and abuse of alcohol.

I personally live in a student dormitory as do a number of other major administrators. Our students are the lifeblood of the institution. I hope that this physical and pastoral presence signals the high priority that we will give to the recommendations of these Task Forces.

(3) Minorities.—We face a servere crisis in this nation with regard to racial and ethnic minority access to, and participation, in higher education. This applies not only to students but also to faculty, staff and administration representation. Nothing but a united effort by educational, business and government leaders will ameliorate the situation. It will require a costly and emotionally wrenching change of accustomed attitudes and modes of procedure. Justice demands that we act decisively and with real conviction.

The administration is presently discussing the twelve recommendations contained in the recently issued Report of the Notre Dame Committee on Minority Students. I assure you that we will give highest priority to this matter.

(4) *Women.*—In the course of the last fifteen years, Notre Dame, a formerly all-male institution, has made a remarkably smooth transition to a fully co-educational environment. This change has brought a needed richness and diversity to the University. Over the next four years we will expand the percentage of female students in the undergraduate population. We are also working hard to recruit female faculty members in all disciplines and to promote women to positions of administrative responsibility.

But there is a related matter that we must also examine. It has to do with our understanding of gender and the roles and functions that our male and female students project for themselves after graduation. In order to help us come to grips with the sweeping societal changes already underway, including the support structures available within the University, a Task Force on Marriage, Family and Other Life Commitments will issue a Report by March of this academic year. This will be a great opportunity for all of us to think through one of the most fundamental issues facing society and the Church.

(5) *Athletics.*—Notre Dame has a proud heritage and long-established tradition of participation in inter-collegiate athletics. Today, however, we face a new world with its own set of challenges and opportunities. On September 8, 1987, I issued a Statement on Intercollegiate Athletics at a meeting of coaches, athletic and academic administrators, and student affairs personnel. The paper itself covers: our academic standards and expectations, the standards of conduct for student athletes, and the role of the coaching staffs and athletic administrators.

Let me quote from the concluding lines of the Statement, "In sum, as an institution, we will pursue a standard of achievement in athletics consistent with our overall purposes as a University. We will attempt to excel in every form of intercollegiate athletics, but not at the price of distorting our primary role as educators and moral guides. If we discover instances of misjudgment or abuse, we will strive speedily to rectify the situation.

"We remain confident that Notre Dame and other institutions with similar values and goals can lead the way and shape a worthy standard for the special enterprise of intercollegiate athletics."

(6) *The Strategic Moment Campaign.*—On the dramatic closed circuit telecast last May, which included Father Ted Hesburgh's farewell address as University President, the formal announcement was made of the Strategic Moment Campaign and its goal of three-hundred million dollars. The Campaign targets include: as the number one priority, endowment for the student financial aid; also chaired professorships; construction and renovation of facilities; and support for our institutes and Centers. Each of these goals is critical for the future wellbeing of the University. But a special word needs to be said for two less glamorous but absolutely essential goals: the major upgrading of our computer facilities and increased support for University Libraries. All of us in the administration are gratified by the success of the Campaign so far. We pledge to you that we will be relentless in our efforts to gain the desired levels of financial support.

III. CONCLUSION

There are many other needs and priorities of which I could speak. These include: a major push in the Fine Arts; an expansion of the international and intercultural dimension of our education; the role of Campus Ministry; the place of continuing education; support for Notre Dame Press and our various publications. But these will have to wait for another day.

I have spent much of my adult life at Notre Dame. As a priest of Holy Cross I have enjoyed my previous forms of service at the University. Along the way I have made most of my close friends, a number of whom are here this afternoon. I believe that Notre Dame has a providential mission to play as a Catholic university. I am deeply honored to be its President. In God's good time, under the patronage of Our Lady, Notre Dame, may our collective efforts bear fruit. Thank you very much.●

JOB TRAINING PARTNERSHIP ACT SUCCESS STORIES

● Mr. QUAYLE. Mr. President, throughout my tenure in the Senate, I have researched, authored, and followed with great personal interest the progress of the Job Training Partnership Act [JTPA]. This act was a monumental step in reshaping Federal policy and experimenting with a new concept in the job training programs: partnerships.

JTPA has been a success around the Nation, and recently, the fifth anniversary of the signing of the act was celebrated by me and many of the participants of the JTPA programs in Indiana.

In attendance at the fifth anniversary dinner were members of the Private Industry Councils, representatives of the private sector whose involvement in the partnership make the program such a success; administrators and program people, who work directly with the clients by providing counseling, job search services, and skills training; and the clients themselves, who have, as a result of their participation in the JTPA Program, found meaningful employment and economic security.

I would like to bring to the attention of my colleagues the names and personal situations of several of the participants in the JTPA Program in Indiana. One participant was selected per service delivery area. These individuals are representative of thousands more throughout Indiana and the Nation who have benefited from their involvement with JTPA.

Kankakee Valley Service Delivery Area [SDA]: Sherri R. Dunfee. Sherri first made contact with the Kankakee Valley Job Training Program in February 1986. She was having difficulty providing basic needs for herself and her daughter and had few skills to aid her in finding suitable employment. After enrolling in the Kankakee Valley's Work Experience Program, Sherri began training in secretarial word processing at Davenport College and graduated with honors. Her job search led to the Kirzman-Forge Co. in Remington, IN, where she is now successfully pursuing a career.

St. Joseph County SDA: Rhavi Tol. Rhavi was an Asian refugee who came to the United States in 1981. Not only was he economically disadvantaged, but he had to overcome the language barrier as well. While attending basic education classes, Rhavi began the Work Experience Program at the St. Joseph County Job Training Program as a maintenance worker. He earned his GED in February 1983, began vocational training in auto machanics, and graduated with honors from Indiana Vocational Technical College [IVY Tech], Northcentral, one of the vocational training schools in Indiana, in May 1985. Following graduation, Rhavi was hired by Don Medow Motors of South Bend, as a regular employee.

Nothern Indiana SDA: Robert Svanarich. Robert began working at a local rehabilitative facility in a sheltered workshop at the Cardinal Center in Warsaw, IN. In a cooperative effort with the rehabilitative facility and the JTPA staff at the Northern Indiana Job Alliance, Robert went through the necessary training and progressed from an entry level position to an on-the-job training position with P.S. Products in Warsaw, where he is currently employed making stained glass products.

North Central SDA: Cheryl Middleton. Cheryl found herself a single parent of three daughters, on AFDC and food stamps, and without a high school diploma. She decided that the only way to better her life was to further her education. With the help of a JTPA coordinator, Cheryl enrolled in GED classes and IVY Tech at Logansport. Her major was computer programming. In 1987, Cheryl obtained her GED and graduated from IVY

Tech with an Associate Degree in Computer programming. Cheryl was hired by Electrical Systems of Lakeville, IN, as a cost estimator.

Tecumseh SDA: Jerry Johnson. After some post high school education and holding several temporary jobs, Jerry, of Lafayette, IN, decided that his clear goal for the future was to be a clerical worker. He contacted the Tecumseh Area Partnership and was accepted into their General Office Training Program. Jerry spent 14 weeks in classroom training, learning typing, the use of general office equipment and business English. While in class he worked as a clerk in the Purdue University Personnel Department. After graduation, his job search led to a position as data entry clerk with the State Farm Insurance Headquarters in West Lafayette.

Madison-Grant SDA: Cheryl McPaul. Cheryl is the single mother of eight childlren and lives in Anderson, IN. She enrolled at Anderson University in September 1983 with the goal of becoming a registered nurse. She used grants and loans to cover school expenses, but was still having difficulty in making ends meet. She then enrolled in the JTPA program in May 1986. Job Source provided the additional funding needed to graduate, as well as employment counseling. Through Job Source's job service matching system, she found employment as a nurse in the psychiatric unit of St. John's Hospital in Anderson. Cheryl is now studying business administration at Anderson University.

Circle Seven SDA: Emma Walker. Emma, the mother of five children, had the goal of becoming a Certified Dietary Manager. She attended four semesters of schooling at IVY Tech and the J. Everett Light Center through the Occupational Development Center. While in school, she did babysitting, working as a biscuit maker at Hardees, and as a dietary aid at a local nursing home. Emma recently graduated from the J. Everett Light Center as a Certified Dietary Manager. She then interviewed and was selected as the new Dietary Supervisor at the Autumn Care Nursing Home in Brownsburg.

East Central SDA: John Gibson. John, an older worker and handicapped, contacted the JTPA job counseling services in 1984, which resulted in the formation of his own business, John's Janitorial Services. With combined start-up funding assistance from JTPA and the Indiana Rehabilitation Services, John's commercial janitorial service has grown substantially over the past 3 years. His business has established major contracts with restaurants, banks, and library and social service facilities, and employs four people.

Marion County SDA: Terri Mooney. Terri of Indianapolis is a portrait of courage. This mother of two was fed up with low-paying, dead-end jobs, and came to the realization that the only way to improve her living standard was to get basic academic skills and a high school diploma. Terri started by attending the Indianapolis Private Industry Council's Job Primer program for adult learners. Terri struggled the way many adults do when they return to the classroom. Adding to Terri's struggle was the death of her husband, but she was determined not to let anything stop her. Terri received her GED and found a job with GTE.

Western Indiana SDA: Harolyn Ridgeway. A divorced mother of a small child, Harolyn's only work experience was in fast food service and a grocery store. After exploring career possibilities, she decided on a career in the computer field. Through the help of the Western Indiana Job Training Program, Harolyn enrolled in computer classes at IVY Tech. While she was completing her training, a new Wal-Mart store opened in Greencastle. She was placed there as a computer operator, and is on her way to a successful career in computers.

South Central SDA: Bill Roddie. As a Columbus resident, Bill personally experienced cyclical employment with a major industrial employer for a decade. In the spring of 1985, after qualifying as a dislocated worker, he participated in the Self Employment Training Program developed and operated by the South Central Private Industry Council. In this program, Bill learned how to turn his part-time business into a full-time business venture. Roddie Janitorial Services is now successfully providing commercial and industrial cleaning services to over 35 customers in the area. In addition to developing a successful business, 10 full-time jobs and several part-time jobs were created for South Central Indiana residents.

Lake County SDA: Milovan Samardzich. Milovan, a former dislocated welder from Combustion Engineering, applied for employment and training services after he was unable to find employment in his profession. After testing and assessment, it was determined that Milovan had an aptitude for the computer and electronics fields. However, when he decided to enroll at Control Data, all of the training slots had been filled. He agreed to wait until additional slots at Control Data became available. Last year, Milovan entered a computer repair course at Control Data. His patience and hard work paid off. After graduation in August 1987, he was hired by Junction Interest Inc., as an electronic technician.

Southeastern SDA: Nina Draper. When Nina Draper came to the Rush County Occupational Development Center, she was an AFDC recipient and had completed one year of IVY Tech towards an Associate Degree in Secretarial Science. She was approved for tuition payment and needs-based payments to help offset costs of child care and transportation. In July 1987, Nina secured full-time training employment with One Call Communications. While she works in data processing, she is being trained to assume the position of assistant manager.

Hoosier Falls SDA: Valerie Bell. Valerie is the mother of two and was on AFDC and food stamps. To pay back assistance for rent from the county trustee's office, she began working in the Floyd County JTPA office. She not only worked the required hours, but volunteered as well. Her work was excellent, but she had no formal training. In January she entered the JTPA program. After completing the STEP program in June, she began working part time for Sun-Belt, Inc. She also works for the Floyd County Extension Office 3 days a week.

Shawnee Trace SDA: Linda Dillard. Linda applied for JTPA services at the Pike County Occupational Development Center [ODC] shortly after her husband left home, leaving Linda to care for three children alone. The oldest of her children is handicapped and confined to a wheelchair. Linda's only income was $290 per month from SSI. The Pike County ODC office staff provided Linda with supportive services from other community resources including food stamps. They enrolled her in a work experience component, as a program aide at the Winslow Senior Citizens Center. Based on Linda's desire to become self-sufficient and pursue a fulfilling career, the ODC executed an on-the-job training contract for her to fill the vacated position of director of the Adult Day Care Center Program. Linda successfully completed that on-the-job training contract and continues as the center director.

Southwest SDA: Janet Fisher. At one time, Janet Fisher was so depressed and unmotivated that dressing and leaving her house to go to the store was an unnerving adventure. Nevertheless, the staff of the Private Industry Council of Southwest Indiana worked with Janet on her self-esteem, motivation, and confidence. They prepared her to re-enter the job market with general administrative skills, including data entry and secretarial skills. She is now working full time with the Evansville Convention and Visitors Bureau and is providing for her two children.●

AMERICAN EX-POW'S OF GARFIELD

● Mr. LAUTENBERG. Mr. President, I want to recognize a recent accomplishment of the American Ex-Prisoners of War of Garfield, NJ. The group dedicated a new building. The State commander of American Ex-Prisoners of War, William Surka, led the dedication. I am informed that this is the first building in the United States solely dedicated to the purpose of housing events surrounding American Ex-Prisoners of War.

Chapter 3 of the American Ex-Prisoners of War includes 200 members in the Garden State area. It is proud of its new established home. The building will be used for meetings, installations, fundraisers, dinners, and dances.

Recently, I joined my colleagues in a resolution supporting the negotiations which were to take place between General Vessey and officials from Vietnam. The purpose of this mission was to determine the fate of those who are POW/MIA's. The result of Vessey's expedition was a reestablishment of the committment to find the POW's and MIA's.

The building in Garfield symbolizes a committment here at home to recognize and to assist prisoners of war. We, as a nation, are obligated to do our best to find these men and to bring them home.

I would like to commend the men in chapter 3 as well as the 28,000 other ex-prisoners of war in our country. The building in Garfield is an excellent representation of the continued recognition of their dedication to our country.●

POLITICAL PRISONERS IN THE SOVIET UNION

● Mr. LEVIN. Mr. President, American citizens of Eastern European heritage this Friday observe the "Day of the Political Prisoner" in the Soviet Union. In Warren, MI, they will gather at the Ukrainian Cultural Center to hear a very special guest speaker—Mr. Danylo Shumuk. Mr. Shumuk was recently released from prison after spending more than four decades in the Soviet gulag.

Danylo Shumuk is an extraordinary individual from whom we can learn a great deal about conditions inside the Soviet prison system and prospects for the release of other political prisoners. A remarkable interview with Mr. Shumuk appeared last month in "The Ukrainian Weekly." In this interview, conducted by a reporter from Radio Liberty, he describes his experience of the past 40 years in Soviet labor camps, prisons, and places of internal exile.

Mr. Shumuk fought with the Ukrainian Insurgent Army against the German occupation during World War II, and spent time in a German prison camp. When the Red army drove the Germans out of the Ukraine, he joined the struggle for Ukrainian independence against the Soviets. He was captured by Soviet security forces in January 1945, and sentenced to be shot. After 46 days in a death cell, he was informed that his sentence had been commuted to 20 years hard labor.

He was one of the leaders of a courageous prisoners' strike in the Norilsk labor camp in 1953. The prisoners actually took over the camp to protest against the inhumane conditions and blatant violations of Soviet law committed by the camp authorities. It was 2 months before the strike was crushed, and an entire army regiment was required to do the job.

In the "Ukrainian Weekly" interview, he describes how, in 1957 during one of his brief periods of freedom, he was presented with a terrible choice: either collaborate with the KGB and become an informer—or become a prisoner again. He refused to work for them, was arrested and was sentenced to a further 10 years imprisonment.

Mr. Shumuk was later a founding member of the Ukrainian Helsinki Monitoring Group and, in the 1970's, was designated by Amnesty International as its "senior" prisoner of conscience.

Asked by the Radio Liberty interviewer whether there was any single thing that gave him the strength to survive for so long, Mr. Shumuk replied: "The most important ideal that sustained me was honesty with myself, the avoidance of conflict with my conscience."

Under circumstances that would have broken the spirit of most people, Mr. Shumuk maintained his integrity and his full commitment to the struggle for freedom. And not just freedom for his own people—the right of the Ukrainian people to political, cultural, and religious freedom—but also freedom for all peoples. His final message in the interview, addressed to his fellow Ukrainians, was: "Today we cannot struggle separately for Ukraine's freedom as in the past. We have to join in the worldwide struggle for justice throughout our planet. There can be no lasting peace if even one nation is oppressed."

I am glad that Mr. Shumuk will be in Michigan on Friday to share his thoughts on the Soviet system and the situation of those who remain behind as prisoners of conscience. Although he was imprisoned in part for his courageous advocacy of Ukrainian national rights, Mr. Shumuk also speaks to the concerns of all Soviet political prisoners. He reminds us that if the United States is to move toward a lessening of tensions and better relations with the Soviet Union, we cannot forget those who are still denied fundamental human rights and freedoms.●

ORDERS FOR THURSDAY

RECESS UNTIL 8:30 A.M.

Mr. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until the hour of 8:30 tomorrow morning.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECOGNITION OF CERTAIN SENATORS

Mr. BYRD. Mr. President, I ask unanimous consent that after the two leaders or their designees have been recognized under the standing order, the following Senators be recognized for the times stated: Mr. PROXMIRE, 5 minutes; Mr. SANFORD, 10 minutes; Mr. SASSER, 15 minutes; and Mr. MELCHER, 10 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SIMPSON. Mr. President, will the majority leader include my request for Mr. SYMMS?

Mr. BYRD. Yes. The distinguished assistant Republican leader asks that Mr. SYMMS be included for 10 minutes. I make that unanimous-consent request.

The PRESIDING OFFICER. Without objection, it is so ordered.

REDUCTION OF LEADER TIME

Mr. BYRD. Mr. President, I ask unanimous consent that the time of the two leaders under the standing order tomorrow be reduced to 5 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

HUGO L. BLACK UNITED STATES COURTHOUSE

Mr. BYRD. Mr. President, I inquire of the distinguished assistant Republican leader if Calendar No. 393 on the Calendar of Business has been cleared on his side of the aisle.

Mr. SIMPSON. Mr. President, I advise the majority leader that that has been cleared on this side of the aisle.

Mr. BYRD. I thank my friend.

Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 393.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read as follows:

> A bill (H.R. 614) to designate the new United States courthouse in Birmingham, Alabama, as the "Hugo L. Black United States Courthouse."

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the bill was considered, ordered to a third reading, read the third time, and passed.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. SIMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

FEDERAL CRIMINAL FINES AND SENTENCING ACT

Mr. BYRD. Mr President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Order No. 395, S. 1822.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read as follows:

A bill (S. 1822) to make certain amendments to the Sentencing Reform Act of 1984 and to improve certain provisions relating to imposition and collection of criminal fines, and for other purposes.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 1097

(Purpose: To make certain technical and conforming amendments)

Mr. BYRD. Mr. President, on behalf of Mr. Heflin, I send an amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from West Virginia [Mr. Byrd], for Mr. Heflin, proposes an amendment numbered 1097.

Mr. BYRD. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 2 strike out beginning with line 5 through line 23 on page 5 and insert in lieu thereof the following:

SEC. 102. PROSPECTIVE APPLICATION OF SENTENCING REFORM ACT.

(a) Section 235(a)(1) of the Comprehensive Crime Control Act of 1984 is amended by inserting "and shall apply only to offenses committed on or after the effective date of this chapter" after "date of enactment".

(b) Section 235(b)(1) of the Comprehensive Crime Control Act of 1984 is amended by striking out "convicted of an offense or adjudicated to be a juvenile delinquent" and inserting "who committed an offense or an act of juvenile delinquency".

(c) Section 235(b)(3) of the Comprehensive Crime Control Act of 1984 is amended by striking out "that is within the range that applies to the prisoner under the applicable parole guideline" and inserting "pursuant to section 4206 of title 18, United States Code" in lieu thereof.

On page 28, line 11, strike out "Attorney General" and insert in lieu thereof "clerk or the person designated under section 604(a)(17) of title 28".

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 1097) was agreed to.

Mr. THURMOND. Mr. President, today, I rise in support of S. 1822, the Federal Criminal Fines and Sentencing Act of 1987. I am pleased to be an original sponsor of this bill along with Senator Biden, the chairman of the Judiciary Committee, and Senators Hatch and Kennedy. This bill would amend the Sentencing Reform Act of 1984 in order to provide for the smooth implementation of the sentencing guidelines which go into effect on November 1, 1987.

As many of my colleagues will recall, the Sentencing Reform Act of 1984 established the Sentencing Commission for the purpose of formulating guidelines to be used by Federal judges in the sentencing process. The major purpose of the 1984 act was to reduce the disparity in sentences when different individuals are convicted of the same crime. This act will also abolish parole and thereby ensure that the time sentenced is the time served.

Previously, we have discussed the possibility of delay of implementation of the guidelines. Since there will be no delay, it is necessary that we adopt this package before the guidelines become effective. I strongly urge my colleagues to support this package, and I hope that the House will give this bill speedy consideration.

The PRESIDING OFFICER. The bill is open for further amendment. If there be no further amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S.1822

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Federal Criminal Fines and Sentencing Act of 1987".

TITLE I—SENTENCING AMENDMENTS

SEC. 101. SHORT TITLE.

This title may be cited as the "Sentencing Act of 1987".

On page 2 strike out beginning line 5 through line 23 on page 5 and insert in lieu thereof the following:

SEC. 102. PROSPECTIVE APPLICATION OF SENTENCING REFORM ACT.

(a) Section 235(a)(1) of the Comprehensive Crime Control Act of 1984 is amended by inserting "and shall apply only to offenses committed on or after the effective date of this chapter" after "date of enactment".

(b) Section 235(b)(1) of the Comprehensive Crime Control Act of 1984 is amended by striking out "convicted of an offense or adjudicated to be a juvenile delinquent" and inserting "who committed an offense or an act of juvenile delinquency".

(c) Section 235(b)(3) of the Comprehensive Crime Control Act of 1984 is amended by striking out "that is within the range that applies to the prisoner under the applicable parole guideline" and inserting "pursuant to section 4206 of title 18, United States Code" in lieu thereof.

On page 28, line 11, strike out "Attorney General" and insert in lieu thereof "clerk or the person designated under section 604(a)(17) of title 28".

SEC. 103. STANDARD FOR DEPARTURE.

Section 3553(b) of title 18, United States Code, is amended by inserting after the first sentence the following: "In determining whether a circumstance was adequately taken into consideration, the court shall consider only the sentencing guidelines, policy statements, and official commentary of the Sentencing Commission.".

SEC. 104. PROCEDURE FOR APPEALING SENTENCE IMPOSED BY A MAGISTRATE.

Section 3742 of title 18, United States Code, is amended by adding at the end thereof the following:

"(f) Application to a Sentence by a Magistrate.—An appeal of an otherwise final sentence imposed by a United States magistrate may be taken to a judge of the district court, and the provisions of this section shall apply as though the appeal were to a court of appeals from a sentence imposed by a district court.".

SEC. 105. MODIFICATION OF STANDARD OF APPELLATE REVIEW.

Section 3742 of title 18, United States Code, is further amended in the second sentence of subsection (d) by inserting before the period "and shall give due deference to the district court's application of the guidelines to the facts".

SEC. 106. REVIEW OF A SENTENCE FOR WHICH THERE IS NO APPLICABLE GUIDELINE.

Section 3742 of title 18, United States Code, is further amended—

(1) in subsections (a)(4) and (b)(4) by inserting "plainly unreasonable or" before "greater than" and by striking ", if any,";

(2) in subsection (d) by—

(A) striking out "or" at the end of paragraph (2);

(B) striking out the period at the end of paragraph (3) and inserting in lieu thereof "; or"; and

(C) inserting after paragraph (3) the following new paragraph:

"(4) was imposed for an offense for which there is no applicable sentencing guideline and is plainly unreasonable.";

(3) in subsection (e)(2) by inserting "or was imposed for an offense for which there is no applicable sentencing guideline and is plainly unreasonable," after "is outside the range of the applicable sentencing guideline and is unreasonable"; and

(4) in subsections (e)(2)(A) and (e)(2)(B) by inserting "and" after "it shall set aside the sentence".

SEC. 107. CLARIFICATION OF BASIS FOR AFFIRMING AN APPEAL.

Section 3742 of title 18, United States Code, is further amended by amending subsection (e)(3) to read as follows:

"(3) is not described in paragraph (1) or (2), it shall affirm the sentence.".

SEC. 108. CORRECTION OF PROBATION EXCLUSION FOR ORGANIZATIONS CONVICTED OF SERIOUS OFFENSES.

Section 3561(a)(1) of title 18, United States Code, is amended by inserting "and the defendant is an individual" after "the offense is a Class A or Class B felony".

SEC. 109. EXTENSION OF MAXIMUM TERMS OF SUPERVISED RELEASE.

Section 3583(b) of title 18, United States Code, is amended—

(1) in paragraph (1) by striking out "three years" and inserting in lieu thereof "five years"; and

(2) in paragraph (2) by striking out "two years" and inserting in lieu thereof "three years".

SEC. 110. INCLUSION OF PROTECTION OF PUBLIC AS FACTOR IN DECIDING WHETHER TO IMPOSE SUPERVISED RELEASE.

Section 3583(c) of title 18, United States Code, is amended by inserting "(a)(2)(C)," after "(a)(2)(B),".

SEC. 111. CLARIFICATION OF PROCEDURE FOR MODIFYING CONDITIONS OF PROBATION.

Section 3563(c) of title 18, United States Code, is amended—

(1) by striking out "revocation or modification of probation" and inserting in lieu thereof "the modification of probation and"; and

(2) by striking out the comma after "may".

SEC. 112. CLARIFICATION OF PROCEDURE FOR EARLY TERMINATION OF PROBATION.

Section 3564(c) of title 18, United States Code, is amended by inserting ", pursuant to the provisions of the Federal Rules of Criminal Procedure relating to the modification of probation," after "may".

SEC. 113. CLARIFICATION OF PROCEDURE FOR EARLY TERMINATION OF SUPERVISED RELEASE.

Section 3583(e) of title 18, United States Code, is amended—

(1) in paragraph (1) by inserting "pursuant to the provisions of the Federal Rules of Criminal Procedure relating to the modification of probation," after "one year of supervised release,"; and

(2) in paragraph (2) by striking out "after a hearing," and by inserting "the provisions of the Federal Rules of Criminal Procedure relating to the modification of probation and" after "pursuant to".

SEC. 114. REMEDIES FOR FAILURE TO PAY RESTITUTION.

Section 3663(g) of title 18, United States Code, is amended in each of the second and third sentences by inserting "or a term of supervised release" after "probation" and by inserting "probation or" after "conditions of".

SEC. 115. DETERMINATION OF GUIDELINE SENTENCE FOR PRISONERS TRANSFERRED PURSUANT TO TREATY FROM FOREIGN COUNTRIES.

Section 4106(b) of title 18, United States Code, is amended to read as follows:

"(b)(1) An offender transferred to the United States to serve a sentence of imprisonment that is longer than the maximum period of time specified in the applicable sentencing guidelines promulgated pursuant to section 994(a)(1) of title 28, United States Code, as determined by the Bureau of Prisons upon the recommendation of the United States Probation Service, shall serve in an official detention facility the maximum period of time specified in the applicable sentencing guidelines and shall serve the remainder of the term imposed as a term of supervised release.

"(2) To the extent permitted by the applicable treaty, a final determination by the Bureau of Prisons as to whether the transferred offender shall serve a term of supervised release and the length of such term may be appealed to the United States court of appeals for the district in which the offender is imprisoned after transfer to the United States, and the court of appeals shall decide and dispose of the appeal in accordance with section 3742 as though the determination appealed had been imposed by the United States district court.

"(3) A determination by the Bureau of Prisons shall be made only after affording the transferred offender an opportunity—

"(A) to submit evidence or information as to the applicable sentencing guideline; and

"(B) for an appeal within the Bureau of Prisons of such determination by a reviewing authority established by the Director pursuant to regulations.".

SEC. 116. PROCEDURE FOR RELIEF OF LABOR DISABILITIES FOLLOWING CONVICTION.

Section 229(a) of the Comprehensive Crime Control Act of 1984 is amended by striking out "on motion of the United States Department of Justice,".

SEC. 117. PETTY OFFENSE.

(a) Elimination of Requirement for Petty Offense Guidelines.—Section 3553(b) of title 18, United States Code, is amended by adding at the end the following: "If there is no applicable sentencing guideline and the offense is classified as a petty offense, the court shall impose an appropriate sentence having due regard for the purposes of sentencing set forth in subsection (a)(2).".

(b) Conforming Amendment.—Section 994(w) of title 28, United States Code, is amended by inserting after "each sentence imposed" the following:", except in the case of a sentence imposed for a petty offense, as defined in Title 18, U.S.C. for which there is no applicable sentencing guideline,".

SEC. 118. ELIMINATION OF REQUIREMENT OF STATING REASONS FOR CHOOSING A POINT WITHIN THE PRESCRIBED SENTENCING RANGE.

Section 3553(c) of title 18, United States Code, is amended by striking the dash and paragraph (1) and "(2)".

SEC. 119. CLARIFICATION OF AUTHORITY OF BUREAU OF PRISONS TO ACCEPT COMMITMENTS TO ITS COMMUNITY CORRECTIONS FACILITY AS CONDITION OF PROBATION OR SUPERVISED RELEASE.

Section 3563(b)(12) of title 18, United States Code, is amended by inserting after "community corrections facility" the following: ", which facility may be one maintained or contracted by the Bureau of Prisons provided that the Director indicates that adequate space and suitable programs for the defendant are available at the facility,".

SEC. 120. POSTPONEMENT OF DEADLINE FOR COMMISSION REPORT MAKING RECOMMENDATIONS ON THE GRADING AND PENALTIES FOR OFFENSES.

Section 994(r) of title 28, United States Code, is amended by striking "one year" and inserting in lieu thereof "four years".

SEC. 121. ELIMINATION OF REQUIREMENT THAT SENTENCING COMMISSION RESPOND TO DEFENDANT PETITIONS FOR GUIDELINES MODIFICATIONS.

Section 994(s) of title 28, United States Code, is amended by striking out the final three sentences.

SEC. 122. APPOINTMENT OF COUNSEL IN RELATION TO SUPERVISED RELEASE.

Section 223(e) of the Comprehensive Crime Control Act of 1984, as amended by section 103 of the Criminal Justice Act Revisions of 1986, is further amended by striking paragraph (2) and inserting in lieu thereof the following new paragraph:

(2) in paragraph (1) by striking out subparagraph (E) and inserting in lieu thereof the following new subparagraph:

"(E) is charged with a violation of supervised release or faces modification, reduction, or enlargement of a condition, or extension or revocation of a term of supervised release;".

SEC. 123. AUTHORITY OF DIRECTOR OF ADMINISTRATIVE OFFICE OF UNITED STATES COURTS TO CONTRACT FOR PSYCHIATRIC AFTERCARE.

Section 3672 of title 18, United States Code, is amended—

(1) by amending the seventh undesignated paragraph to read as follows:

"He shall have the authority to contract with any appropriate public or private agency or person for the detection of and care in the community of an offender who is an alcohol-dependent person, an addict or a drug-dependent person, or a person suffering from a psychiatric disorder within the meaning of section 2 of the Public Health Service Act (42 U.S.C. 201). This authority shall include the authority to provide equipment and supplies; testing; medical, educational, social, psychological and vocational services; corrective and preventative guidance and training; and other rehabilitative services designed to protect the public and benefit the alcohol-dependent person, addict or drug-dependent person, or a person suffering from a psychiatric disorder by eliminating his dependence on alcohol or addicting drugs, by controlling his dependence and his susceptibility to addiction, or by treating his psychiatric disorder. He may negotiate and award such contracts without regard to section 3709 of the Revised Statutes (41 U.S.C. 5)."; and

(2) by adding the following new undesignated paragraph at the end thereof:

"Whenever the court finds that funds are available for payment by or on behalf of a person furnished such services, training, or guidance, the court may direct that such funds be paid to the Director. Any moneys collected under this paragraph shall be used to reimburse the appropriations obligated and disbursed in payment for such services, training, or guidance.".

SEC. 124. EMERGENCY GUIDELINES PROMULGATION AUTHORITY.

Section 994(a) of title 28, United States Code, is amended—

(1) by striking "and" at the end of paragraph (2);

(2) by striking the period at the end of paragraph (3) and inserting in lieu thereof "; and"; and

(3) by adding a new paragraph as follows:

"(4) in the case of an invalidated guideline, the creation of a new offense or amendment of an existing offense, or for other urgent and compelling reason determined by the Commission relating to the application of a previously established guideline, a temporary guideline or amendment to an existing guideline, to remain in effect until and during the pendency of the next report to Congress pursuant to subsection (p) of this section.".

SEC. 125. APPLICATION OF RULE 35(b) TO CONDUCT OCCURRING BEFORE EFFECTIVE DATE OF SENTENCING GUIDELINES.

The amendment to rule 35(b) of the Federal Rules of Criminal Procedure made by the order of the Supreme Court on April 29, 1985, shall apply with respect to all crimes committed before the taking effect of section 215(b) of the Comprehensive Crime Control Act of 1984.

SEC. 126. SENTENCING COMMISSION STAFF DIRECTOR SALARY.

Section 995(a)(2) of title 28, United States Code, is amended to read as follows:

"(2) appoint and fix the salary and duties of the staff director of the Sentencing Commission, who shall serve at the discretion of the Commission and who may be compensated at a rate not to exceed the highest rate now or hereafter prescribed for the director of the Federal Judicial Center;".

SEC. 127. GENERAL EFFECTIVE DATE.

This title shall take effect upon the date of enactment of this title, or the date of the taking effect of the initial set of guidelines promulgated by the United States Sentencing Commission pursuant to chapter 58 of title 28, United States Code, whichever date occurs later.

TITLE II—CRIMINAL FINE IMPROVEMENTS

SEC. 201. SHORT TITLE.

This title may be cited as the "Criminal Fine Improvements Act of 1987".

SEC. 202. DUTIES OF THE DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS IN RELATION TO FINES.

Section 604(a) of title 28, United States Code, is amended—

(1) by redesignating paragraph (17) as paragraph (18); and

(2) by inserting after paragraph (16) the following new paragraph:

"(17) Establish procedures and mechanisms within the judicial branch for processing fines, restitution, forfeitures of bail bonds or collateral, and assessments;".

SEC. 203. SPECIAL ASSESSMENTS.

Section 3013 of title 18, United States Code, is amended by adding at the end the following:

"(c) The obligation to pay an assessment ceases five years after the date of the judgment.

"(d) For the purposes of this section, an offense under section 13 of this title is an offense against the United States.".

SEC. 204. DEFINITION OF PETTY OFFENSE.

(a) In General.—Chapter 1 of title 18, United States Code, is amended by adding at the end the following new section:

"§ 19. Petty offense defined

"As used in this title, the term 'petty offense' means a Class B misdemeanor, a Class C misdemeanor, or an infraction.".

(b) Technical Amendment.—The table of sections for chapter 1 of title 18, United States Code, is amended by adding at the end the following new item:

"19. Petty offense defined.".

(c) Clarifying Amendment to Earlier Technical Provision.—Section 38(a) of the Criminal Law and Procedure Technical Amendments Act of 1986 is amended by striking out "section 23" and inserting in lieu thereof "section 34(a)".

SEC. 205. ELIMINATION OF OBSOLETE PROVISION.

Subsection (b) of section 3559 of title 18, United States Code, is amended by striking out "except that:" and all that follows through the end of the subsection and inserting in lieu thereof ", except that the maximum term of imprisonment is the term authorized by the law describing the offense.".

SEC. 206. AUTHORIZED FINES.

Section 3571 of title 18, United States Code, is amended to read as follows:

"§ 3571. Sentence of fine

"(a) In General.—A defendant who has been found guilty of an offense may be sentenced to pay a fine.

"(b) Fines for Individuals.—Except as provided in subsection (e) of this section, an individual who has been found guilty of an offense may be fined not more than the greatest of—

"(1) the amount specified in the law setting forth the offense;

"(2) the applicable amount under subsection (d) of this section;

"(3) for a felony, not more than $250,000;

"(4) for a misdemeanor resulting in death, not more than $250,000;

"(5) for a Class A misdemeanor that does not result in death, not more than $100,000;

"(6) for a Class B or C misdemeanor that does not result in death, not more than $5,000; or

"(7) for an infraction, not more than $5,000.

"(c) Fines for Organizations.—Except as provided in subsection (e) of this section, an organization that has been found guilty of an offense may be fined not more than the greatest of—

"(1) the amount specified in the law setting forth the offense;

"(2) the applicable amount under subsection (d) of this section;

"(3) for a felony, not more than $500,000;

"(4) for a misdemeanor resulting in death, not more than $500,000;

"(5) for a Class A misdemeanor that does not result in death, not more than $200,000;

"(6) for a Class B or C misdemeanor that does not result in death, not more than $10,000; and

"(7) for an infraction, not more than $10,000.

"(d) Alternative Fine Based on Gain or Loss.—If any person derives pecuniary gain from the offense, or if the offense results in pecuniary loss to a person other than the defendant, the defendant may be fined not more than the greater of twice the gross gain or twice the gross loss, unless imposition of a fine under this subsection would unduly complicate or prolong the sentencing process.

"(e) Special Rule for Lower Fine Specified in Substantive Provision.—If a law setting forth an offense specifies a fine that is lower than the fine otherwise applicable under this section and such law, by specific reference, exempts the offense from the applicability of the fine otherwise applicable under this section, the defendant may not be fined more than the amount specified in the law setting forth the offense.".

SEC. 207. IMPOSITION OF A SENTENCE OF FINE AND RELATED MATTERS.

Section 3572 of title 18, United States Code, is amended to read as follows:

"§ 3572. Imposition of a sentence of fine and related matters

"(a) Factors To Be Considered.—In determining whether to impose a fine, and the amount, time for payment, and method of payment of a fine, the court shall consider, in addition to the factors set forth in section 3553(a)—

"(1) the defendant's income, earning capacity, and financial resources;

"(2) the burden that the fine will impose upon the defendant, any person who is financially dependent on the defendant, or any other person (including a government) that would be responsible for the welfare of any person financially dependent on the defendant, relative to the burden that alternative punishments would impose;

"(3) any pecuniary loss inflicted upon others as a result of the offense;

"(4) whether restitution is ordered or made and the amount of such restitution;

"(5) the need to deprive the defendant of illegally obtained gains from the offense;

"(6) whether the defendant can pass on to consumers or other persons the expense of the fine; and

"(7) if the defendant is an organization, the size of the organization and any measure taken by the organization to discipline any officer, director, employee, or agent of the organization responsible for the offense and to prevent a recurrence of such an offense.

"(b) Fine not to Impair Ability to Make Restitution.—If, as a result of a conviction, the defendant has the obligation to make restitution to a victim of the offense, the court shall impose a fine or other monetary penalty only to the extent that such fine or penalty will not impair the ability of the defendant to make restitution.

"(c) Effect of Finality of Judgment.—Notwithstanding the fact that a sentence to pay a fine can subsequently be—

"(1) modified or remitted under section 3573;

"(2) corrected under rule 35 and section 3742; or

"(3) appealed and modified under section 3742;

a judgment that includes such a sentence is a final judgment for all other purposes.

"(d) Time, Method of Payment, and Related Items.—A person sentenced to pay a fine or other monetary penalty shall make such payment immediately, unless, in the interest of justice, the court provides for payment on a date certain or in installments. If the court provides for payment in installments, such installments shall be in equal monthly payments over the period provided by the court, unless the court establishes some other schedule. If the judgment permits other than immediate payment, the period provided for shall not exceed 5 years, excluding any period served by the defendant as imprisonment for the offense.

"(e) Alternative Sentence Precluded.—At the time a defendant is sentenced to pay a fine, the court may not impose an alternative sentence to be carried out if the fine is not paid.

"(f) Responsibility for Payment of Monetary Obligation Relating to Organization.—If a sentence includes a fine, [special assessment, or other monetary obligation (including interest)] with respect to an organization, each individual authorized to make disbursements for the organization has a duty to pay the obligation from assets of the organization. If such an obligation is imposed on a director, officer, shareholder, employee, or agent of an organization, payments may not be made, directly or indirectly, from assets of the organization, unless the court finds that such payment is expressly permissible under applicable State law.

"(g) Security for Stayed Fine.—If a sentence imposing a fine is stayed, the court shall, absent exceptional circumstances (as determined by the court)—

"(1) require the defendant to deposit, in the registry of the district court, any amount of the fine that is due;

"(2) require the defendant to provide a bond or other security to ensure payment of the fine; or

"(3) restrain the defendant from transferring or dissipating assets.

"(h) Delinquency.—A fine is delinquent if a payment is more than 30 days late.

"(i) Default.—A fine is in default if a payment is delinquent for more than 90 days. When a fine is in default, the entire amount of the fine is due within 30 days after notification of the default, notwithstanding any installment schedule.".

SEC. 208. REVISION OF MODIFICATION OR REMISSION PROVISION.

(a) Offense.—Section 3573 of title 18, United States Code, is amended to read as follows:

"§ 3573. Petition of the Government for Modification or Remission

"Upon petition of the Government showing that reasonable efforts to collect a fine or assessment are not likely to be effective, the court may, in the interest of justice—

"(1) remit all or part of the unpaid portion of the fine or special assessment, including interest and penalties;

"(2) defer payment of the fine or special assessment to a date certain or pursuant to an installment schedule; or

"(3) extend a date certain or an installment schedule previously ordered.

A petition under this subsection shall be filed in the court in which sentence was originally imposed, unless the court transfers jurisdiction to another court.".

(b) TECHNICAL AMENDMENT.—The table of sections for subchapter C of chapter 227 of title 18, United States Code, is amended by striking out the item for section 3573 and inserting in lieu thereof the following:

"3573. Petition of the Government for Modification or Revision.".

SEC. 209. RECEIPT OF FINES—INTERIM PROVISIONS.

(a) NOVEMBER 1, 1987 TO APRIL 30, 1988.—Notwithstanding section 3611 of title 18, United States Code, a person who, during the period beginning on November 1, 1987, and ending on April 30, 1988, is sentenced to pay a fine or assessment shall pay the fine or assessment (including any interest or penalty) to the clerk of the court, with respect to an offense committed on or before December 31, 1984, and to the Attorney General, with respect to an offense committed after December 31, 1984.

(b) MAY 1, 1988, TO OCTOBER 31, 1988.—(1) Notwithstanding section 3611 of title 18, United States Code, a person who during the period beginning on May 1, 1988, and ending on October 31, 1988, is sentenced to pay a fine or assessment shall pay the fine or assessment in accordance with this subsection.

(2) In a case initiated by citation or violation notice, such person shall pay the fine or assessment (including any interest or penalty), as specified by the Director of the Administrative Office of the United States Courts. Such Director may specify that such payment be made to the clerk of the court or in the manner provided for under section 604(a)(17) of title 28, United States Code.".

(3) In any other case, such person shall pay the fine or assessment (including any interest or penalty) to the clerk of the court, with respect to an offense committed on or before December 31, 1984, and to the Attorney General, with respect to an offense committed after December 31, 1984.

SEC. 210. RECEIPT OF FINES—PERMANENT PROVISION.

(a) IN GENERAL.—Section 3611 of title 18, United States Code, is amended to read as follows:

"§ 3611. Payment of a fine

"A person who is sentenced to pay a fine or assessment shall pay the fine or assessment (including any interest or penalty), as specified by the Director of the Administrative Office of the United States Courts. Such Director may specify that such payment be made to the clerk of the court or in the manner provided for under section 604(a)(17) of title 28, United States Code.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to any fine imposed after October 31, 1988. Such amendment shall also apply with respect to any fine imposed on or before October 31, 1988, if the fine remains uncollected as of February 1, 1989, unless the Director of the Administrative Office of the United States Courts determines further delay is necessary. If the Director so determines, the amendment made by this section shall apply with respect to any such fine imposed on or before October 31, 1988, if the fine remains uncollected as of May 1, 1989.

SEC. 211. COLLECTION AMENDMENTS.

(a) NOTIFICATION OF RECEIPT AND RELATED MATTERS.—Section 3612(a) of title 18, United States Code, is amended to read as follows:

"(a) NOTIFICATION OF RECEIPT AND RELATED MATTERS.—The clerk or the person designated under section 604(a)(17) of title 28 shall notify the Attorney General of each receipt of a payment with respect to which a certification is made under subsection (b), together with other appropriate information relating to such payment. The notification shall be provided—

"(1) in such manner as may be agreed upon by the Attorney General and the Director of the Administrative Office of the United States Courts; and

"(2) within 15 days after the receipt or at such other time as may be determined jointly by the Attorney General and the Director of the Administrative Office of the United States Courts.

If the fifteenth day under paragraph (2) is a Saturday, Sunday, or legal public holiday, the clerk or the person designated under section 604(a)(17) of title 28 shall provide notification not later than the next day that is not a Saturday, Sunday, or legal public holiday.

(b) INFORMATION TO BE INCLUDED IN JUDGMENT.—Section 3612(b) of title 18, United States Code, is amended to read as follows:

"(b) INFORMATION TO BE INCLUDED IN JUDGMENT; JUDGMENT TO BE TRANSMITTED TO ATTORNEY GENERAL.—(1) A judgment or order imposing, modifying, or remitting a fine of more than $100 shall include—

"(A) the name, social security account number, mailing address, and residence address of the defendant;

"(B) the docket number of the case;

"(C) the original amount of the fine and the amount that is due and unpaid;

"(D) the schedule of payments (if other than immediate payment is permitted under section 3572(d));

"(E) a description of any modification or remission; and

"(F) if other than immediate payment is permitted, a requirement that, until the fine is paid in full, the defendant notify the Attorney General of any change in the mailing address or residence address of the defendant not later than thirty days after the change occurs.

"(2) Not later than ten days after entry of the judgment or order, the court shall transmit a certified copy of the judgment or order to the Attorney General.".

(c) TECHNICAL AMENDMENTS.—

(1) Section 3612(d) of title 18, United States Code, is amended by striking out "section 3572(i)" and inserting in lieu thereof "3572(h)".

(2) Section 3612(e) of title 18, United States Code, is amended by striking out "section 3572(j)" and inserting in lieu thereof "3572(i)".

(d) INTEREST ON FINES.—Section 3612(f) of title 18, United States Code, is amended to read as follows:

"(f) INTEREST ON FINES.—

"(1) IN GENERAL.—The defendant shall pay interest on any fine of more than $2,500, unless the fine is paid in full before the fifteenth day after the date of the judgment. If that day is a Saturday, Sunday, or legal public holiday, the defendant shall be liable for interest beginning with the next day that is not a Saturday, Sunday, or legal public holiday.

"(2) COMPUTATION.—Interest on a fine shall be computed—

"(A) daily (from the first day on which the defendant is liable for interest under paragraph (1)); and

"(B) at a rate equal to the coupon issue yield equivalent (as determined by the Secretary of the Treasury) of the average accepted auction price for the last auction of fifty-two week United States Treasury bills settled before the first day on which the defendant is liable for interest under paragraph (1).

"(3) MODIFICATION OF INTEREST BY COURT.—If the court determines that the defendant does not have the ability to pay interest under this subsection, the court may—

"(A) waive the requirement for interest;

"(B) limit the total of interest payable to a specific dollar amount; or

"(C) limit the length of the period during which interest accrues.".

(e) PENALTY FOR DELINQUENT FINE; WAIVER OF INTEREST OR FINE BY ATTORNEY GENERAL.—Section 3612 of title 18, United States Code, is amended by adding at the end the following new subsections:

"(g) PENALTY FOR DELINQUENT FINE.—If a fine becomes delinquent, the defendant shall pay, as a penalty, an amount equal to ten percent of the principal amount that is delinquent. If a fine becomes in default, the defendant shall pay, as a penalty, an additional amount equal to 15 percent of the principal amount that is in default.

"(h) WAIVER OF INTEREST OR PENALTY BY ATTORNEY GENERAL.—The Attorney General may waive all or part of any interest or penalty under this section if, as determined by the Attorney General, reasonable efforts to collect the interest or penalty are not likely to be effective.

"(i) APPLICATION OF PAYMENTS.—Payments relating to fines shall be applied in the following order: (1) to principal; (2) to costs; (3) to interest; and (4) to penalties.".

SEC. 212. RECEIPT OF RESTITUTION PAYMENTS BY COURTS.

Section 3663(f)(4) of title 18, United States Code, is amended by inserting "or the person designated under section 604(a)(17) of title 28" after "Attorney General".

SEC. 213. EFFECTIVE DATE.

This title shall take effect on the date of the enactment of this title, except that the amendments made by section 210 of this title shall take effect as provided in such section and the amendments made by sections 204, 205, 206, 207, 208, 211, and 212 shall take effect on the date of the taking effect of section 212(a)(2) of the Sentencing Reform Act of 1984.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. SIMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

SEQUENTIAL REFERRAL OF THE NOMINATION OF JUNE GIBBS BROWN

Mr. BYRD. Mr. President, as in executive session, I ask unanimous consent that the nomination of June Gibbs Brown to be Inspector General of the Department of Defense be referred to the Committee on Governmental Affairs for a period not to exceed 20 days.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. BYRD. Mr. President, the Senate will convene tomorrow morning at 8:30 a.m. There will be various and sundry orders for the recognition of Senators.

Mr. President, suffice it to say at this point that there will be a rollcall vote at 10 o'clock tomorrow morning. As per our normal procedure, that being the first rollcall vote of the day, it will be a 30-minute rollcall vote.

I ask unanimous consent that the call for the regular order be automatic at the expiration of the 30 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, does my distinguished friend, Mr. SIMPSON, have anything further he would like to say or any further business that he would like to transact?

Mr. SIMPSON. Mr. President, I say to the majority leader that I have nothing further at this hour, except that we do have that vote at 10. It may be on a Sergeant at Arms call or it may be the issue before the body. But, in either event, the Senators know that and I have communicated that. Whether we can reach an accord on vitiating or not, at least it will be apparent that that vote will take place.

I thank the majority leader.

Mr. BYRD. I thank the Senator. He has made a very helpful explanation, and it will be clear to all Senators as to the fact that, first, there will be a rollcall vote and, second, that we do not know precisely at this moment as to whether it will be on the appeal of the ruling of the Chair or on the motion to instruct the Sergeant at Arms to request absent Senators to be here.

RECESS UNTIL 8:30 A.M. TOMORROW

Mr. BYRD. Mr. President, there being no further business to come before the Senate, I move, in accordance with the previous order, that the Senate stand in recess until the hour of 8:30 tomorrow morning.

The motion was agreed to, and at 7:15 p.m., the Senate recessed until tomorrow, Thursday, October 29, 1987, at 8:30 a.m.

NOMINATIONS

Executive nominations received by the Senate October 28, 1987:

DEPARTMENT OF DEFENSE

ROBERT W. PAGE, SR., OF TEXAS, TO BE AN ASSISTANT SECRETARY OF THE ARMY, VICE ROBERT K. DAWSON, RESIGNED.

NATIONAL ADVISORY COUNCIL ON WOMEN'S EDUCATIONAL PROGRAMS

THE FOLLOWING-NAMED PERSONS TO BE MEMBERS OF THE NATIONAL ADVISORY COUNCIL ON WOMEN'S EDUCATIONAL PROGRAMS FOR TERMS EXPIRING MAY 8, 1990:

ESTHER KRATZER EVERETT, OF NEW YORK, REAPPOINTMENT.

HELEN J. VALERIO, OF MASSACHUSETTS, REAPPOINTMENT.

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

CAROLYNN REID-WALLACE, OF THE DISTRICT OF COLUMBIA, TO BE A MEMBER OF THE NATIONAL COUNCIL ON THE HUMANITIES FOR A TERM EXPIRING JANUARY 26, 1992, VICE SAMUEL DUBOIS COOK, TERM EXPIRED.

IN THE MARINE CORPS

THE FOLLOWING-NAMED MARINE CORPS ENLISTED COMMISSIONING EDUCATION PROGRAM GRADUATE, FOR PERMANENT APPOINTMENT TO THE GRADE OF SECOND LIEUTENANT IN THE U.S. MARINE CORPS, PURSUANT TO TITLE 10, UNITED STATES CODE, SECTION 531:

MARK E. YAPP, 6180.

IN THE NAVY

THE FOLLOWING-NAMED LIEUTENANT COMMANDERS AND LIEUTENANTS IN THE LINE AND STAFF CORPS OF THE NAVY FOR PROMOTION TO THE PERMANENT GRADE OF COMMANDER OR LIEUTENANT COMMANDER AS INDICATED, PURSUANT TO TITLE 10, UNITED STATES CODE, SECTION 628, SUBJECT TO QUALIFICATIONS THEREFOR AS PROVIDED BY LAW:

MEDICAL CORPS

To be commander

ARTHUR C. BURNS
MYRON HARASYM

AVIATION DUTY OFFICER

To be lieutenant commander

LARRY D. YOUNG

MEDICAL CORPS

To be lieutenant commander

JOSEPH P. SNYDER

CIVIL ENGINEER CORPS

To be lieutenant commander

TIMOTHY J. BOND

IN THE AIR FORCE

THE FOLLOWING-NAMED OFFICERS FOR PERMANENT PROMOTION IN THE U. S. AIR FORCE, UNDER THE APPROPRIATE PROVISIONS OF SECTION 624, TITLE 10, UNITED STATES CODE, AS AMENDED, WITH DATES OF RANK TO BE DETERMINED BY THE SECRETARY OF THE AIR FORCE:

LINE OF THE AIR FORCE

To be colonel

PETER D. ABLER, 474-48-6727
JOHN F. F. ACKER, 214-44-0193
PATRICK O. ADAMS, 496-46-9010
THOMAS F. ADAMS, 441-40-2388
ROBERT S. AINSLIE, 153-30-2695
BENJAMIN F. ALFORD III, 549-62-4977
DANNY R. ALLEN, 431-92-7565
EDWARD H. ALLEN, 239-74-1427
NORMAN L. ALLRED, 518-46-9862
RUSSELL H. ALMOND, JR, 226-58-7002
CLARENCE R. ANDEREGG, 211-34-0392
EDDIE L. ANDERSON, 465-64-3473
JAMES E. ANDERSON, 476-46-6119
KELLY D. ANDERSON, 473-48-3287
ROBERT R. ANDERSON, 533-40-7979
LEOPOLD J. ANDREOLI, 190-34-3852
ROBERT S. ANDREWS, 558-82-4848
THOMAS W. ARBAUGH, 297-34-5829
ALEXANDER M. ARCHIBALD, JR, 262-62-6206
JOHN S. ARMBRUST, 515-44-0157
WILLIAM P. ARMSTRONG, JR, 568-42-7636
PAUL S. ARNESON, 474-50-9555
DANIEL E. ARNOLD, 218-44-3622
PALMER G. ARNOLD, 525-98-3826
WILLIAM R. ARNOLD, JR, 575-50-2350
GEORGE T. AROLA, 544-44-1441
EDMUND ASKLAND, JR, 102-36-0279
EDWARD J. ATKINS, 149-42-2736
WILLIAM E. AYEN, 396-46-4381
LARRY C. BAGLEY, 529-62-5197
JOSEPH A. BAILEY, JR, 324-38-0555
MAXWELL C. BAILEY, 402-64-0835
MICKEY W. BAITY, 246-56-0606
CHARLES W. BAKER, JR, 491-46-8848
JAMES R. BAKER, 234-70-4555
PAUL D. BAKER, 430-84-0279
RICHARD K. BAKI, 386-42-8649
GARY A. BALL, 091-36-0309
MICHAEL J. BALL, 055-36-2944
JAMES R. BALLARD, 261-72-8465
HENRY M. BANDY, III, 226-58-9666
THOMAS M. BANNING, III, 556-66-6566
PAUL W. BARDEN, 114-34-1057
DANIEL J. BARKER, 585-10-4066
STEPHEN E. BARNEYBACK, 550-68-7163
ROBERT S. BARNHARDT, 246-66-8185
LEROY BARNIDGE, JR, 439-70-7882
ROBERT J. BARNUM, 094-34-8579
SAMUEL L. BARRICK, JR, 270-40-9665
JAMES R. BEALE, 534-48-2396
DANNY A. BEAM, 458-74-7316
RICHARD M. BEAN, 524-66-7348
JONATHAN R. BEAR, 423-60-7401
JOHN D. BECKER, 292-40-8234
RALPH G. BECKETT, 412-68-7067
ROBERT F. BEHLER, 444-52-1612
EDWIN W. BENNETT, JR, 166-36-9044
WARREN A. BENNETT, JR, 230-60-6021
JEFFREY L. BERAN, 262-38-9068
JOHN E. BERGEN, 158-32-0799
WILLIAM E. BERRY, JR, 280-38-1878
ERIC A. BESHORE, 108-36-8616
ALEXANDER BETTINGER, 269-40-1148
WILLIAM D. BETZ, 511-46-2926
WILLIAM J. BIHNER, JR, 472-50-2601
FRANK T. BIRK, 024-34-4452
WILLIAM R. BISHOP, 248-72-9045
WALTER J. BLACK, JR, 246-72-7181
ALAN D. BLACKBURN, 092-34-4015
JAMES R. BLACKBURN, JR, 505-58-8412
WILLIAM M. BLAESING, 392-42-6739
MICHAEL D. BLANCHARD, 540-50-2167
JONAS L. BLANK, JR, 224-62-3251
TERRY O. BLIQUEZ, 484-48-1545
THOMAS F. BLISS, 204-34-8057
JOHN R. BLOCK, 325-38-0047
HERBERT J. BOASSO, JR, 439-68-7621
ARTHUR R. BODE, 498-44-8470
JAMES F. BOGGAN, 436-66-7796
MAURICE P. BOIS, JR, 003-32-9321
SAMUEL J. BOLE, 521-60-2785
PAUL S. BOLEN, 252-56-9863
CAROLYN A. BONEN, 314-40-4848
JOHN M. BORKY, 579-54-6565
DENNIS P. BORLAND, 515-44-4582
JONATHAN J. BORTNER, 165-36-4460
RONALD G. BOSTON, 561-62-4769
RONALD D. BOUVIER, 436-64-3973
WILLIAM R. BOWMAN, 457-74-3068
ALAN M. BOYCE, 291-36-1515
CRAIG S. BRADFORD, 548-62-1924
RONALD G. BRADLEY, 228-62-8099
JAMES F. BRADY, 230-56-3617
KENNETH L. BRADY, 322-34-0316
THOMAS R. BRADY, 451-66-4268
MICHAEL S. BRAKE, 156-38-4191
DOUGLAS L. BRAZIL, 212-44-7973
CHARLES W. BREWER, 236-66-1886
DONALD R. BREWER, 424-42-1753
ROBERT O. BREWER, 060-30-1696
RONALD G. BROHAMMER, 345-38-2625
JOHN W. BROOKS, 047-38-8909
WILLIAM C. BROOKS, 453-82-2633
ROBERT L. BROTZMAN, 203-34-2501
OLIVER L. BROWER, JR, 210-34-5818
CHARLES F. BROWN, JR, 185-36-7779
HENRY A. BROWN, JR, 414-74-4649
RICHARD E. BROWN, III, 447-46-8999
TOMMY G. BROWN, 536-44-7498
WILLIAM L. BROWN, 223-58-9533
JAMES D. BRUNER, 453-62-9192
JAMES A. BRUNSTING, 480-54-9362
ROBERT E. BRYAN, 336-34-9976
FLOYD BRYANT, JR, 411-70-1302
WILLIAM H. BUCHHOLTZ, III, 219-34-6519
JOHN E. BUCK, 570-58-7788
BOBBY D. BUFFKIN, 237-68-7816
JAMES J. BUNDSCHUH, 499-46-3954
RICHARD B. BUNDY, 557-68-7270
GARY F. BURCHELL, 553-64-8234
GARY L. BURHITE, 478-50-9123
DAVID K. BURKE, 542-48-8913
ROBERT F. BURKE, 043-34-4498
DAVID A. BURTT, II, 437-66-3669
HOWARD R. BUSCH, II, 282-42-5860
FREDERICK E. BUSH, JR, 569-60-0770
MICHAEL G. BYRNE, 585-09-4774
WILLIAM G. BYRNS, 498-46-7595
AL J. CALDWELL, 522-68-2862
WILLIAM R. CALDWELL, 323-36-2579
WILLIAM L. CALHOUN, 253-76-7361
THOMAS J. CALLANAN, 545-66-0921
JERROLD K. CALLEN, 278-44-3305
JOHN A. CAPUTO, 334-38-0835
THOMAS C. CARINGTON, 310-44-3012
DENNIS A. CARLSON, 533-50-6859
JOHN M. CARNEY, JR, 521-56-8503
ADELBERT W. CARPENTER, 565-58-3432
BILLIE R. CARPENTER, 573-62-5485
MICHAEL F. CARR, 224-58-7418
LEO T. CARROLL, III, 030-32-2119
DONALD R. CARSON, 057-36-2213

WILLIAM R. CARTER, 452-76-1710
WILBERTON A. CASTLEBERRY, JR, 256-74-1109
DONALD J. CAUGHLIN, JR, 569-60-8727
DANIEL B. CECIL, 288-38-3653
RICHARD J. CERVI, 226-60-0692
HARVEY L. CHADBOURNE, 553-66-3746
ROBERT K. CHADBOURNE, JR, 436-72-1075
RODNEY D. CHIAPUSIO, 393-42-3692
CHARLES R. CHRISTENSEN, 365-44-5841
WILLIAM A. CIMINO, JR, 134-34-3099
BRIAN H. CIOLI, 133-36-2188
ANTHONY T. CIRA, 496-54-6334
JOHN R. CLARK, 437-62-4538
MARK N. CLARK, 555-62-6775
PHILLIP C. CLARK, 568-56-3635
JAMES B. CLARKE, 231-62-9175
ROBERT G. CLARKSON, 524-54-4545
JERRY D. CLEARMAN, 428-76-5699
KENNETH D. CLONTS, 415-68-8294
RUFUS T. COBURN, III, 238-72-6777
ROGER L. COGSWELL, 326-38-5141
EDWARD D. COLE, 501-46-4661
ROGER T. COLGROVE, 564-58-3528
BRENT R. COLLINS, 554-66-8382
JAMES M. COLLINS, 572-54-8318
WILLIAM P. COMSTOCK, III, 524-56-2957
RICHARD S. CONIGLIARO, 489-46-8182
HUGH R. CONKLIN, JR, 046-38-7174
DANIEL V. CONNORS, 031-32-7699
ELLIOTT V. CONVERSE, III, 534-46-4757
ROBERT COOK, 294-32-0653
DANIEL A. COOLEY, 522-58-4818
DANIEL J. COONAN, III, 504-46-2656
RONALD T. COOPER, 416-64-7231
DONALD A. CORNELL, 275-40-1609
BRYAN J. CORY, 546-66-4660
STEPHEN D. COTTER, 248-84-3326
RONALD P. CRAIGIE, 094-38-4938
GREGORY L. CRANE, 541-48-4493
MICHAEL J. CREEDON, 164-34-9419
BARRY F. CREIGHTON, 219-46-4404
GEORGE J. CRICENTI, 001-34-0633
WILLIAM W. CRIMMEL, 173-38-0725
BURR L. CRITTENDEN, JR, 377-50-0814
THOMAS J. CROWLEY, 256-68-6022
DANIEL F. CRUM, 271-40-0156
HENRY G. CULBERTSON, III, 248-74-8515
WILLIAM D. CUMMINGS, 240-82-1145
FREDERICK H. CZERNER, JR, 261-68-3028
KENNETH A. DAGGETT, 543-48-1908
WILLIAM J. DALECKY, 387-50-1623
TIMOTHY E. DANFORTH, 277-44-6707
EDWARD L. DANIEL, 228-62-5918
CHARLES C. DANIELS, 448-44-6862
GEORGE H. DASH, JR, 555-60-2542
CHARLES E. DAUGHERTY, 431-78-0695
CULLEN L. G. DAVIDSON, 569-52-4417
DALE A. DAVIDSON, 515-44-6586
GORDON R. DAVIDSON, 075-34-7262
SALLY L. DAVIDSON, 520-48-9754
GEORGE A. DAVIES, JR, 226-56-5193
RAYMOND W. DAVIES, 140-38-4332
ARTHUR P. DAVIS, 559-60-8637
CURTIS A. DAVIS, 290-38-9523
DAVID C. DAVIS, 455-70-8023
JOHN L. DAVIS, 366-44-1027
PAUL B. DAVIS, JR, 241-78-4205
RICHARD S. DAVIS, JR, 240-60-0571
RICHARD W. DAVIS, 557-62-4196
DONALD J. DAWSEY, 131-34-4062
GARY L. DEAN, 511-42-5900
ANTHONY F. DEASCENTI, 094-36-9172
GARY D. DECKARD, 309-46-0878
WILLIAM F. DEEGAN, JR, 042-36-2461
GEORGE DEGOVANNI, 521-66-3309
JESSE C. DEHAY, JR, 565-62-8611
GARY L. DELANEY, 214-42-8420
SERGIO A. DELHOYO, 528-58-3966
MICHAEL D. DELIA, 050-36-6696
PETER DENEGA, 320-38-1642
CHARLES A. DENHAM, 243-70-4730
ARTHUR C. DENNE, 327-34-7904
DONALD M. DESSERT, JR, 228-62-9801
ROBIN A. DETURK, 043-34-4598
THOMAS J. DEVENNY, 058-36-4136
CHARLES F. DIBRELL, JR, 458-74-5335
EDWARD R. DIETZ, 056-36-4330
PAUL W. DILLING, 455-62-7974
KENNETH R. DIRNBERGER, 500-52-3375
JAMES B. DIUGUID, II, 407-60-0599
THOMAS W. DOBSON, JR, 262-86-8326
ALLAN M. DOMAN, 099-36-0517
JAMES H. DOOLITTLE, III, 465-66-2391
LLEWELLYN S. DOUGHERTY, 549-62-6300
JERRY M. DOUGLAS, 311-40-3750
MICHAEL H. DOWNIE, 227-74-5681
JERRY M. DRENNAN, 573-66-2464
MARC L. DRINKHAHN, 384-44-5931
LARRY W. DRISKILL, 458-72-0815
ANTHONY E. DUCKWORTH, 441-42-1457
GEORGE F. DUFFIELD, 301-38-6468
JOSEPH R. DUHON, JR, 438-62-9776
LUTHER M. DUKES, 251-80-2675
RALPH E. DUNCAN, 406-56-2693
RONALD F. DUNCAN, 461-66-9737
WILLIAM D. DUNCAN, JR, 266-86-1105
LEIF R. DUNN, 064-38-5092
MICHAEL M. DUNN, 266-88-3491
ROGER P. DUPRE, 033-28-4681
DAVID A. DURRANT, 296-40-8599
DANA C. DUTHIE, 228-62-5421
RICHARD B. DUWEL, 203-34-5382
ROBERT A. EASON, JR, 241-62-7122
DAVID W. EBERLY, 316-46-0162
JAN D. EDEBURN, 264-54-4687
MATTHEW S. EICHINGER, 330-32-7731
JOHN EKWALL, 549-68-8702
JOHN M. ELLEN, 246-72-4526
THOMAS W. ELLERS, 086-36-5801
STEPHEN M. ELLERTSON, 529-58-8456
EARNEST H. ELLIOTT, 265-70-5545
JAMES C. ELLIOTT, 205-34-2509
KENNETH R. EMERSON, 530-26-5136
GILBERT A. ENGEL, JR, 489-48-9321
JAMES T. ENGLISH, 537-38-1824
PETER J. ENGSTROM, 447-48-4826
PHILIP J. ENGSTROM, 334-36-7823
JOHN E. ESSING, 563-64-7974
WILBUR J. ETBAUER, 504-46-3519
WALTER S. EVANS, 019-32-1713
BRUCE R. FAGALEY, 400-62-8749
THOMAS A. FAGAN, III, 066-36-8196
JOSEPH L. FAIX, 264-66-4600
RICHARD C. FAST, 390-42-0665
LEROY M. FAUST, 214-42-6256
DONALD H. FELD, 482-52-7904
MARVIN E. FELDMAN, 416-58-5374
TERRY M. FENSTAD, 501-44-4125
LYNN C. FETERLE, 291-36-2432
COY D. FINK, 245-66-4925
DAVID F. FINK, 072-36-7258
SUSAN FISCHER, 102-38-0668
JEFF I. FITCH, 237-70-2854
WILLIAM E. FITZPATRICK, 463-76-0251
HENRY FIUMARA, 105-40-0922
THOMAS P. FLANAGAN, 436-74-1397
NORMAN R. FLEMENS, 467-78-0698
THOMAS O. FLEMING, JR, 259-78-0002
RODNEY D. FORD, 501-50-4536
RONALD D. FORD, 448-42-9264
RONALD G. FORRESTER, 217-40-2869
JON K. FOSTER, 004-44-3971
WILLIAM R. FOSTER, II, 304-48-8629
BERNARD H. FOWLE, IV, 212-46-1098
PETER H. FOX, 267-82-7830
RAYMOND E. FRANCK, JR, 478-58-7616
CHARLES W. FREEMAN, 214-44-0610
JAMES D. FREEMAN, 462-64-0447
ROBERT O. FREEMAN, 523-54-7316
GREGORY D. FREIX, 342-36-1505
GEORGE V. FRUSHOUR, JR, 295-40-2331
ROBERT G. FULLENKAMP, 574-14-8195
JOHN H. FULLER, JR, 012-34-2529
BRIAN R. FULLERTON, 366-42-1815
GEORGE P. GAINES, IV, 226-62-7033
GEORGE R. GALLIMORE, 309-42-3695
JOSEPH M. GARDEWIN, 279-40-6096
HUGH A. GARLAND, 261-66-9687
ROGER G. GARRETT, 195-38-5627
PETER GARRY, 006-38-8157
ROBERT W. GASKIN, 249-62-1037
EDWARD C. GASSMAN, 152-32-0583
JAMES C. GAST, 277-38-6113
ROBERT E. GATLIFF, 255-70-5475
CARL R. GAYMON, 577-56-5712
STEPHEN J. GEERTZ, 516-46-8944
JOHN A. GERMANN, 423-56-9821
GARY K. GERNHARDT, 501-48-9555
EUGENE T. GIBSON, 355-26-0802
GARY P. GIBSON, 317-46-7088
DAVID L. GIDDENS, 452-68-6505
ERIC W. GILLBERG, 034-34-1269
GREGORY L. GILLES, 508-64-6803
JOHN A. GILLIS, 013-34-7206
RALPH K. GIORDANO, 092-34-7532
RICHARD N. GIRARD, 018-36-1374
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DENNIS R. SAMIC, 278-44-3026
JAMES G. SAMPSON, 364-46-2185
RONALD T. SAMPSON, 293-40-8626
ALDEN R. SANBORN, JR, 149-32-2384
ALVIN M. SANBORN, 551-74-3492
JOHN L. SANDER, 103-36-8455
JAMES E. SANDSTROM, 389-48-8096
WILLIAM E. SAVAGE, 386-46-8970
GEORGE J. SAWAYA, 520-44-8235
THOMAS J. SCANLAN, JR, 585-20-6426
JAMES C. SCHAFFER, 210-34-8573

JOSEPH M. SCHEIMER, 552-62-0390
WILLIAM E. SCHEPENS, 428-92-1107
JOHN R. SCHMIDT, III, 449-76-1048
WINSTON R. SCHMIDT, 470-48-7342
WILLIAM O. SCHMIEDER, 140-38-4023
GARY N. SCHNEIDER, 301-40-2893
MILTON F. SCHREPEL, 512-44-1323
JOHN W. SCHUMAN, JR, 214-44-0492
TERRYL J. SCHWALIER, 586-03-1314
DENNIS C. SCRUGGS, III, 243-68-4178
MICHAEL R. SEALE, 459-68-2488
GEORGE J. SEILER, 433-64-5530
DONALD P. SELLERS, 161-36-9848
JOSEPH H. SHACKELFORD, 312-46-4148
LAWRENCE H. SHAEVITZ, 023-34-5285
DOUGLAS A. SHALE, 236-68-7887
RONALD K. SHAMBLIN, 223-60-6803
RICHARD L. SHANER, 167-34-9711
RICHARD D. SHAPIRO, 291-38-7999
TIMOTHY J. SHARKEY, 291-40-7277
JULIAN W. SHATTUCK, 585-09-7504
JAMES A. SHAW, JR, 221-30-3457
DENNIS W. SHEPHERD, 312-46-2544
MARCUS L. SHERRILL, 309-44-7183
ROBERT H. SHIPMAN, JR, 042-40-3611
HOWARD G. SHOLL, JR, 220-44-2006
JERRY G. SHUGARS, 526-52-5775
THOMAS E. SIELAND, 369-38-7773
EDWIN SIERS, JR, 458-72-5632
ARTHUR D. SIKES, JR, 553-76-1775
JAMES H. SIMMONS, 417-60-0744
ROBERT F. SIMPSON, III, 522-58-2660
TIPP SIMPSON, 558-62-5194
LARRY SIPOS, 288-40-1625
ROBERT C. SIVILLS, 428-88-7754
ERNEST M. SKINNER, 212-46-2864
WAYNE P. SKORA, 331-38-5306
RICHARD A. SLIWKA, 389-50-5976
ALAN K. SLOBE, 224-64-3148
NORMAN M. SLOCUM, 424-54-7086
KIM A. SMALLHEER, 145-42-1892
DALE O. SMITH, 375-52-4107
DALE W. SMITH, 217-42-4272
DARRELL G. SMITH, 315-46-6026
EUGENE A. SMITH, 130-36-2019
JAMES V. SMITH, JR, 237-66-4053
LANCE L. SMITH, 228-64-7660
LAWRENCE A. SMITH, 454-74-9299
RONALD C. SMITH, 468-50-4471
STEPHEN B. SNITEMAN, 228-56-1807
CALVIN S. SOEDA, 576-42-1281
SCOTT B. SONNENBERG, 015-36-6524
STEPHEN M. SOUKUP, 322-40-0942
JOSEPH B. SOVEY, 297-50-2815
MICHAEL R. SPENCE, 455-78-3634
FRED E. SPIVEY, 573-56-3340
ROBERT P. SPIVEY, 545-58-3419
STEVEN C. STADLER, 564-60-4432
RUSSELL G. STAFFORD, 241-70-6056
ROBERT S. STALEY, II, 521-66-3235
RICHARD D. STAMLER, 098-34-0644
DANNIE L. STAMP, 481-54-9108
KENNETH L. STANFORD, 532-44-3731
ANDREW M. STANLEY, JR, 576-44-1804
JOHN B. STEELE, 048-34-7174
MICHAEL F. STENFTENAGEL, 313-44-8404
RAYMOND L. STEPHENS, 460-68-1765
THOMAS A. STEVENSON, 569-68-5138
GEORGE A. STEWART, 461-64-3250
TODD I. STEWART, 397-42-1167
CHARLES F. STIRLING, 564-76-1160
LAKE R. STITH, 493-40-4422
MAURICE L. STOCKS, 225-60-9556
RICHARD W. STOKES, JR, 251-70-9354
ROBERT V. STONE, II, 515-40-7765
DONALD H. STORY, 438-64-4172
DELBERT B. STOUT, 513-40-8384
EVAN P. STOVER, III, 300-36-0140
JACK E. STRATFORD, JR, 198-34-3123
JAMES B. STREETS, 446-48-3586
GEORGE T. STRINGER, 461-72-1835
STEVEN P. STROBRIDGE, 009-32-3818
THOMAS C. STYERS, 250-64-8708
GUY P. SUMPTER, III, 240-66-3182
ERIC E. SUNDBERG, 565-62-2956
JOSEPH E. SUTTER, 264-78-9913
STEPHEN W. SUTTON, 271-38-6760
ROBERT W. SWANEY, 108-30-4350
TERRY C. TARBELL, 467-68-8224
DANIEL F. TATUM, JR, 408-68-6785
EDWARD G. TAYLOR, 349-40-7221
FRED D. TAYLOR, 241-72-8367
MICHAEL L.F. TAYLOR, 251-74-5935
WILLIAM R. TAYLOR, JR, 342-36-2495
WILLIAM W. TAYLOR, 235-70-2620
FRANK M. TERRELL, 307-38-9060
WILLIAM R. TESKE, 518-50-3365
DOUGLAS E. TESTERMAN, 288-32-4200
ALAN B. THOMAS, 523-60-6996
QUENTIN M. THOMAS, 446-42-4961
ROY E. THOMAS, 167-36-4656
RICHARD L. THOMPSON, 262-72-8944
TERENCE N. THOMPSON, 417-62-7161
THOMAS M. THOMPSON, 541-46-0643
GEORGE R. THOMSON, JR, 041-38-2922
JACK A. THORPE, JR, 553-64-5237
WILLIAM H. THURSTON, III, 126-38-5144
LARRY W. TIEMAN, 314-48-7620
RICHARD P. TILLSTROM, 384-34-0409
TEDDY G. TILMA, 512-42-2578
ANDREW TIMKO, 163-34-1623
PETER W. TKACS, 261-78-4080
MICHAEL B. TOBIN, 555-68-6561
KENNETH D. TOLLEFSON, 530-22-8087
ROBERT J. TOMASETTI, 150-34-8325
STEVEN F. TOMHAVE, 500-50-6714
MARK A. TORREANO, 521-66-3308
WILLIAM E. TOWNSLEY, 561-58-2420
DENNIS W. TRAYNOR, III, 257-70-7773
THOMAS N. TROTTA, 264-62-6849
WILLIAM M. TUCK, JR, 419-62-9382
CHARLES G. TUCKER, 461-66-1896
LONNIE D. TURNER, 240-72-5223
MICHAEL W. TURNER, 148-38-9252
JOHN T. TWILLEY, 212-48-2936
GARY R. UNDERWOOD, 567-64-6448
CARL M. UPSON, 120-36-6890
CLARENCE E. UPTEGRAPH, JR, 463-74-1578
KEITH J. URBACH, 517-46-9327
ROBERT B. VANSICE, JR, 519-50-3614
ORVILLE E. VARNER, 531-42-0536
JAMES N. VERNON, 529-52-3783
GARY L. VETTER, 551-52-1901
RAFAEL A. VEVE, 581-88-5311
ARTHUR M. VIRGIN, III, 579-54-5587
ANDREW N. VITTORIA, JR, 266-72-0692
JOHN M. VLOET, 366-50-1499
BRIAN M. WALSH, 082-34-4620
PETER WALSH, 558-64-6972
JAMES M. WALTERS, JR, 298-36-4012
TOME H. WALTERS, JR, 434-72-3355
JOHN G. WALTHER, JR, 251-74-9530
DAVID M. WANG, 471-52-3813
JAMES K. WANSACK, 271-40-6175
JOHN K. WARNER, 221-28-7549
LEE M. WARREN, 220-38-4093
JAMES C. WATKINS, 224-72-4250
ROBERT G. WATSON, 175-34-4522
LLOYD T. WATTS, JR, 266-88-4098
JERRY P. WAX, 516-44-7438
RICHARD L. WAXMAN, 132-32-2573
DAVID S. WAYMAN, 309-46-5382
WARREN I. WEAVER, 305-52-4279
EDWIN G. WEBB, JR, 573-64-2977
RODNEY O. WEEKS, 428-90-6219
LAVERN J. WEGNER, 481-54-7173
ROBERT J. WELCH, 300-38-2476
WILLIAM WELSER, III, 058-42-4623
JAY B. WELSH, 201-32-4833
JOHN W. WESTERBECK, 522-58-6286
EARL L. WESTERGOM, 558-62-1517
THOMAS A. WHAYLEN, 441-44-6287
MICHAEL I. WHEELER, 517-54-9972
CHARLES G. WHITE, JR, 251-76-0098
RICHARD H. WHITE, 223-62-4709
FREDERICK G. WHITEFORD, JR, 563-68-3692
KARL F. WHITTENBERG, 351-36-0264
JOSEPH W. WIDHALM, 357-34-0544
JOHN A. WIKHEIM, 536-40-6473
RONALD T. WILBANKS, 260-70-0649
EDWARD L. WILLIAMS, JR, 281-42-4204
GEORGE K. WILLIAMS, 524-54-7700
GEORGE N. WILLIAMS, 350-38-5397
VICTOR M. WILLIAMS, JR, 355-34-9666
JAMES M. WILLIAMSON, III, 571-58-5479
WINFORD WILLIE, 443-44-2989
THOMAS M. WILMOTTE, 304-48-8124
FRANCIS M. WILSON, 383-42-9653
LEIF P. WILSON, 137-36-6549
WOODROW WILSON, JR, 417-56-6104
JAMES D. WINKELMANN, 507-52-9895
PAUL H. WINKLER, 090-36-3406
JAMES S. WINN, 259-76-6625
LAURENCE N. WINNIK, 560-60-5164
MARK A. WINSTEL, 234-72-4935
WILLIAM M. WISE, III, 018-34-5659
JERRY A. WISEMAN, 228-56-1729
GARY H. WITHERSPOON, 317-44-8911
MERLYN J. WITT, 507-60-6582
EDWARD F. WITTEL, JR, 265-72-8674
CHARLES H. WITTROCK, 550-70-1183
JAMES G. WOOD, JR, 237-66-9829
WANDA C. WOOD, 426-94-9848
JAMES D. WOODALL, 264-72-1955
ROYCE G. W. WOODDELL, 501-52-3447
JERRY D. WOODS, 557-58-9544
RANDALL E. WOOTEN, 464-70-1244
SIMON P. WORDEN, 384-52-2998
ROWLAND H. WORRELL, III, 585-01-0332
GEORGE K. WRIGHT, 523-58-8509
TERRY C. WRIGHT, 416-60-1247
JOHN H. WYATT, 426-74-2328
THOMAS R. YARBOROUGH, 523-60-2204
JOHN G. YEAGER, 419-54-7593
ALVIN L. YOUNG, 520-44-1612
LEE R. YOUNG, JR, 461-72-9025
RICHARD A. YOUNG, 311-46-4102
FRANCIS X. ZAK, 131-36-8570
FREDERICK J. ZEHR, JR, 059-40-5610
MICHAEL E. ZETTLER, 281-42-3436
CLYDE E. ZIEGENHORN, JR, 430-78-9460
MICHAEL ZIEGLER, 288-38-4374
RICHARD H. ZIGLER, 270-40-5799
RAYMOND C. ZIMMERMANN, 499-50-7961
DAVID R. ZORICH, 416-58-9778
RICHARD D. ZWIEG, 504-48-5689

CHAPLAIN CORPS

To be colonel

CARL E. BILDERBACK, 465-48-9004
WILLIAM J. DENDINGER, 508-46-3556
ROBERT G. MAHER, 476-28-2425
GREGORY H. PELESH, 162-36-4724

JUDGE ADVOCATE

To be colonel

PAUL L. BLACK, 075-36-6667
LEWIS G. BREWER, 234-74-1865
ROBERT G. CERHA, 212-48-4515
WILLIAM R. DUGAN, JR, 248-80-6407
JOHN C. DUNCAN, JR, 156-30-8103
RICHARD J. ERICKSON, 379-42-5202
ALAN C. ERNST, 268-40-3724
ROGER D. GRAHAM, 521-56-2836
JAMES E. HEUPEL, 314-44-2689
CHARLES G. MANGIN, 428-96-8162
HARMON O. MASSEY, JR, 426-78-9020
PHILIP A. MEEK, 455-70-9432
RICHARD F. OHAIR, 359-34-3148
ROBERT E. REED, 228-68-3593
ROBERT M. SENANDER, 472-50-3167
DAVID A. TAGGART, 568-72-3613

NURSE CORPS

BENITA BROTHERS, 333-30-6613
WILLIS G. BULLARD, 506-46-0523
KATHLEEN M. GARDON, 324-38-9014
ALEDA J. GIBBS, 501-42-7287
ELIZABETH J. GOKER, 021-30-5925
ELIZABETH A. HINZE, 432-74-5796
JANICE G. HORNBROOK, 485-42-5673
JUDITH L. HUNT, 114-34-5207
LOIS E. MURRAY, 134-28-1400
HARRIETT A. PHILLIPS, 314-44-8545
HILDA J. ROSS, 466-54-3517
JUDITH A. SANDERS, 232-56-2485
LOUETTA B. TAYLOR, 244-56-2599
JACK R. WALKER, 530-26-4272

MEDICAL SERVICE CORPS

ROBERT C. ARMSTRONG, 205-32-0293
GRADEN J. CASTO, 232-60-2238
CHARLES R. HARDY, 001-32-4030
FREDERICK T. HUBERTY, 556-62-6003
ROBERT B. KENSCHAFT, 163-34-8301
JAMES D. LESLIE, III, 192-30-9904
KENNETH J. MACKIE, JR, 557-58-3306
RICHARD G. MCGOUGH, 395-42-7749
ALPHONSO J. OBUCHOWSKI, JR, 049-34-2511
GEORGE R. POWELL, 576-46-7736
RICHARD W. RUSHMORE, 214-42-6556
RALPH W. TUFTE, 503-48-5140
BERT L. VIGNES, 428-68-6381
JOSEPH T. VOCKS, SR, 490-48-5958
GLENN R. WILLAUER, 126-34-5988

BIOMEDICAL SCIENCES CORPS

SAMUEL L. BROCK, 312-52-6919
JONATHAN A. BUTH, 399-40-7608
ROBERT A. CAPELL, 127-34-8361
MIDDLETON J. COBURN, 256-66-2694
DENNIS N. GOLD, 210-32-0258
JOHN R. GREENE, JR, 559-62-5632
STEVEN G. GRUBE, 506-60-8156
WARREN R. HULL, 435-64-9912
KENNETH E. HUNDLEY, 228-52-0741
JAMES R. LARISON, 529-60-2145
JAMES E. LYNETT, 189-34-2899
JUDSON C. MINER, JR, 228-62-9846
RONALD L. SCHILLER, 486-50-9880
LARRY H. SHINGLER, 287-34-2531
WILLIAM H. STIGELMAN, JR, 019-34-5029
MARK H. STOKES, 132-30-2214
STEPHEN J. SWEENEY, 470-52-0779
WILLIAM L. TAYLOR, 461-76-9703
JAMES L. WILSON, 414-70-6372
JAMES H. WRIGHT, 449-76-2662

WITHDRAWAL

Executive nomination withdrawn from further consideration by the Senate October 28, 1987:

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

CHARLES A. MOSER, OF VIRGINIA, TO BE A MEMBER OF THE NATIONAL COUNCIL ON THE HUMANITIES FOR A TERM EXPIRING JANUARY 26, 1992, VICE SAMUEL DUBOIS COOK, TERM EXPIRED, WHICH WAS SENT TO THE SENATE ON MARCH 3, 1987.

HOUSE OF REPRESENTATIVES—*Wednesday, October 28, 1987*

The House met at 12 noon.

The Chaplain, Rev. James David Ford, D.D., offered the following prayer:

As we experience the complexities of a world come of age, cause us not to forget, O God, the importance of the witness of one person. Encourage by Your loving spirit, O God, every woman and man to see more clearly how they can take the abilities You have given and translate them into instruments of healing, of understanding and peace. This is our prayer. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

Mr. RUSSO. Mr. Speaker, pursuant to clause 1, rule I, I demand a vote on agreeing to the Speaker's approval of the Journal.

The SPEAKER. The question is on the Chair's approval of the Journal.

The question was taken; and the Speaker announced that the ayes appeared to have it.

Mr. RUSSO. Mr. Speaker, I object to the vote on the ground that a quorum is not present.

The SPEAKER. Evidently, a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 300, nays 102, not voting 31, as follows:

[Roll No. 379]

YEAS—300

Ackerman
Akaka
Alexander
Anderson
Andrews
Annunzio
Applegate
Archer
Atkins
AuCoin
Baker
Barnard
Bartlett
Bateman
Bates
Beilenson
Bennett
Bereuter
Berman
Bevill
Bilbray
Boland
Bonior
Bonker
Borski
Bosco
Boucher
Boxer
Brennan
Broomfield
Brown (CA)
Bruce
Bryant
Bustamante
Byron
Callahan
Campbell
Cardin
Carper
Carr
Chapman
Chappell
Clarke
Clinger
Coelho
Coleman (TX)
Collins
Combest
Conte
Conyers
Cooper
Coyne
Crockett
Darden
Davis (MI)
de la Garza
DeFazio
Derrick
DeWine
Dicks
Dingell
Dixon
Donnelly
Dorgan (ND)
Dowdy
Downey
Dreier
Durbin
Dwyer
Dymally
Dyson
Early
Eckart
Edwards (CA)
English
Erdreich
Espy
Evans
Fawell
Fazio
Feighan
Fish
Flake
Flippo
Florio
Foglietta
Foley
Ford (MI)
Ford (TN)
Frank
Frost
Garcia
Gaydos
Gejdenson
Gibbons
Glickman
Gonzalez
Gordon
Gradison
Grandy
Grant
Gray (PA)
Green
Guarini
Gunderson
Hall (OH)
Hall (TX)
Hamilton
Hammerschmidt
Harris
Hatcher
Hawkins
Hayes (IL)
Hayes (LA)
Hefley
Hefner
Hertel
Hochbrueckner
Holloway
Hopkins
Houghton
Howard
Hoyer
Hubbard
Huckaby
Hughes
Hunter
Hutto
Jeffords
Jenkins
Johnson (CT)
Johnson (SD)
Jones (NC)
Jones (TN)
Jontz
Kanjorski
Kaptur
Kasich
Kastenmeier
Kennedy
Kennelly
Kildee
Kleczka
Kolter
Konnyu
Kostmayer
LaFalce
Lancaster
Lantos
Leath (TX)
Lehman (CA)
Lehman (FL)
Leland
Lent
Levin (MI)
Levine (CA)
Lewis (GA)
Lipinski
Lloyd
Lowry (WA)
Lujan
Luken, Thomas
MacKay
Manton
Markey
Martin (NY)
Martinez
Matsui
Mavroules
Mazzoli
McCloskey
McCollum
McCurdy
McDade
McEwen
McHugh
McMillen (MD)
Meyers
Mica
Miller (CA)
Miller (WA)
Mineta
Moakley
Mollohan
Montgomery
Moody
Morella
Morrison (CT)
Morrison (WA)
Mrazek
Murphy
Murtha
Myers
Nagle
Natcher
Neal
Nelson
Nichols
Nielson
Nowak
Oakar
Oberstar
Obey
Olin
Ortiz
Owens (NY)
Owens (UT)
Oxley
Packard
Parris
Patterson
Pease
Pelosi
Pepper
Perkins
Petri
Pickett
Pickle
Price (IL)
Price (NC)
Pursell
Quillen
Rahall
Rangel
Ravenel
Ray
Regula
Richardson
Rinaldo
Ritter
Robinson
Rodino
Roe
Rogers
Rose
Rostenkowski
Rowland (GA)
Roybal
Russo
Sabo
Savage
Sawyer
Scheuer
Schumer
Sharp
Shaw
Shays
Shumway
Shuster
Sisisky
Skaggs
Skelton
Slattery
Slaughter (NY)
Smith (FL)
Smith (IA)
Smith (NE)
Smith (NJ)
Snowe
Solarz
Spratt
St Germain
Staggers
Stallings
Stark
Stenholm
Stokes
Stratton
Studds
Sweeney
Swift
Synar
Tallon
Tauke
Tauzin
Taylor
Thomas (GA)
Torres
Towns
Traficant
Traxler
Udall
Valentine
Vander Jagt
Vento
Visclosky
Volkmer
Walgren
Watkins
Waxman
Weiss
Wheat
Whitten
Wilson
Wise
Wolpe
Wortley
Wyden
Wylie
Yates

NAYS—102

Armey
Badham
Ballenger
Barton
Bilirakis
Bliley
Boehlert
Brown (CO)
Buechner
Bunning
Burton
Chandler
Cheney
Clay
Coats
Coleman (MO)
Coughlin
Courter
Craig
Crane
Dannemeyer
Daub
Davis (IL)
DeLay
DioGuardi
Duncan
Edwards (OK)
Emerson
Fields
Frenzel
Gallegly
Gallo
Gekas
Gingrich
Goodling
Gregg
Hansen
Hastert
Henry
Herger
Hiler
Inhofe
Ireland
Jacobs
Kolbe
Kyl
Lagomarsino
Latta
Leach (IA)
Lewis (CA)
Lewis (FL)
Lightfoot
Lott
Lowery (CA)
Lukens, Donald
Lungren
Mack
Madigan
Marlenee
Martin (IL)
McCandless
McGrath
McMillan (NC)
Michel
Miller (OH)
Molinari
Moorhead
Pashayan
Penny
Porter
Rhodes
Ridge
Roberts
Roth
Roukema
Rowland (CT)
Saiki
Saxton
Schaefer
Schneider
Schroeder
Schuette
Sensenbrenner
Sikorski
Skeen
Slaughter (VA)
Smith (TX)
Smith, Denny (OR)
Smith, Robert (NH)
Solomon
Stangeland
Stump
Sundquist
Swindall
Upton
Vucanovich
Walker
Weber
Weldon
Whittaker
Wolf
Young (FL)

NOT VOTING—31

Anthony
Aspin
Bentley
Biaggi
Boggs
Boulter
Brooks
Coble
Daniel
Dellums
Dickinson
Dornan (CA)
Fascell
Gephardt
Gilman
Gray (IL)
Horton
Hyde
Kemp
Livingston
Mfume
Panetta
Roemer
Schulze
Smith, Robert (OR)
Spence
Thomas (CA)
Torricelli
Williams
Yatron
Young (AK)

☐ 1210

Mr. LAGOMARSINO changed his vote from "yea" to "nay."

So the Journal was approved.

The result of the vote was announced as above recorded.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Hallen, one of its clerks, announced that the Senate had passed without amendment a bill of the House of the following title:

H.R. 307. An act to designate the Federal Building and United States Post Office located at 315 West Allegan Street in Lansing, MI, as the "Charles E. Chamberlain Federal Building and United States Post Office."

EDUCATION BUDGET CUTS

(Mr. PERKINS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PERKINS. Mr. Speaker, I came here today to talk about something I consider to be a national priority. I am not here to try to fix blame for what we all know is a bad situation. I am not going to talk about whether it is the Republicans' fault, the Democrats' fault, the Congress' fault or the President's fault.

☐ This symbol represents the time of day during the House proceedings, e.g., ☐ 1407 is 2:07 p.m.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

But what I am going to talk about is something that we need to do, and that is make education a priority in our Government. The Gramm-Rudman sequestration that is coming up is going to cut $1.8 billion from education programs.

In the Head Start Program we are talking about cutting over $100 million blindly from this education program. As it is, we have 80 percent of the eligible children who are not being affected by this very successful program. Only 16 to 18 percent of the children are being affected by it who are eligible for the program. What this is going to do is cut another 40,000 children from Head Start. That is not right. We need to make education and the children of our country a national priority.

I urge the Members of the House to take whatever action is necessary to see that education is not once again placed on a back burner and we just go on not prioritizing our children for our future and tomorrow.

OMNIBUS BUDGET RECONCILIATION ACT OF 1987

(Mr. MICHEL asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MICHEL. Mr. Speaker, I hold in my two hands here a copy of the two volumes of the Omnibus Budget Reconciliation Act of 1987, 2,690 pages. It is printed in photo offset, which gives it an air of impermanance and haste as if the majority threw it together without quite knowing which page should go where.

The pages still retain handwritten notes, and on page 1476 there is a handwritten note that says, "Reconciliation sections divided in pink." That note then is signed simply, "MG."

Mr. Speaker, who is this mysterious MG who color coordinates your budget proposals to deal with our budget crisis?

Is MG an interior decorator brought in at exorbitant cost by the majority to outline in pink a reconciliation bill that will leave us in the red and make us blue because we are not in the black?

Back in 1981 when the Gramm-Latta bill came to the floor the majority wept crocodile tears because of its appearance, the same as we have today in this reconciliation bill, although that one was only one-third the size of this. And the Speaker, who was then majority leader, stormed about denouncing the fact that there were handwritten notes scribbled on the pages.

So now, 6 years later, the majority brings us this color coordinated symphony in pink which asks the crucial question: Should we use real cheese on pizza?

This is a disgrace, legislatively, politically, philosophically, economically, and if I am any judge of the mysterious MG's desire to mark up Government documents in pink, esthetically as well.

This legislation also suggests the priority of the majority is not what is done but who gets the credit. Why else would we be rushing to judgment on reconciliation with all of its scribbling while bipartisan talks are going on? In my judgment, Mr. Speaker, this gives exactly the wrong signal.

Reconciliation ought to be deferred. It has no business being brought up in such a hurried fashion tomorrow, as it apparently is scheduled to be.

PRESERVING AMERICA'S RAILROAD INFRASTRUCTURE

(Mr. MOLLOHAN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MOLLOHAN. Mr. Speaker, there is one principle upon which American free enterprise is based: Success in the marketplace should depend on a businessman's ability to efficiently produce a quality product.

It's a great system. If you make something that somebody wants to buy—and you do a better job than your competitors of making this product—you will succeed.

You will succeed, that is, unless you are dependent on a railroad to market your product. Coal miners in West Virginia produce the cheapest, most plentiful energy source available in the United States today. Farmers in the Midwest seem to set productivity records every year. The best efforts of both these producers—and countless others across the country—can be rendered meaningless, however, by the arbitrary, shortsighted decisions of monopolist railroads.

In search of short-term profits, railroads across America are abandoning lines that provide the only link between producers in the heartland and their markets. While these abandonments can devastate local economies, railroads routinely go on to tear up the tracks that have been abandoned, destroying both an infrastructure that took decades to build and any hope for a return to prosperity.

Mr. Speaker, it is time to say "enough." I have introduced legislation that would stop the immediate physical destruction of rail lines following their abandonment, as well as making it tougher to abandon the lines in the first place. I invite my colleagues to join me in cosponsoring this bill.

□ 1225

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. TAUZIN). The House will welcome the Governor-elect of the State of Louisiana, the Honorable Congressman BUDDY ROEMER.

WELCOME GOVERNOR-ELECT ROEMER

(By unanimous consent, Mr. HUCKABY was allowed to proceed out of order for 2 minutes.)

Mr. HUCKABY. Mr. Speaker, last Saturday was one of the finest days, one of the brightest days in Louisiana's history.

Louisiana chose our colleague, BUDDY ROEMER, to be our next Governor.

Mr. Speaker, we have worked here in this House with BUDDY for some 7 years now. We have come to appreciate one of the finest minds in the country; we have come to appreciate one of the greatest orators in the country.

BUDDY ROEMER ran an amazing campaign in Louisiana. For 1 long solid year, BUDDY ROEMER ran fifth in a five-man race. But then people began to ask: "Why not best? Why not the best?

We started looking at and getting to know BUDDY ROEMER throughout the State, like we know BUDDY ROEMER here. And last Saturday we chose him by a large margin to be our next Governor.

We are going to miss him in this House.

My friend, your friend, our colleague, we wish the very best as Governor of the State of Louisiana, Congressman BUDDY ROEMER.

I PUT MY HEART ON THE TABLE—THANK YOU ONE AND ALL

(Mr. ROEMER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ROEMER. I want to thank the Speaker for yielding me this time. I want to thank my colleague and yours, JERRY HUCKABY, for the nice introduction he gave; he gave it just like I wrote it and I really appreciate it.

I want to thank you for letting me come back one more time and being a part of a place I really love and already miss. I want to thank my colleague, BILLY TAUZIN. He, too, ran a terrific race. It was very tough.

BOB LIVINGSTON, on the other side of the aisle, did it proud, he did it right.

I will just say that no matter where I go and no matter how hard we work in our State, it is a time of opportunity for us.

Louisiana will not be visited by most people from America. You all know us only by our reputation.

I am hoping that from Saturday night forth you will take another look. It is a good State and a great State. I want to ask you when bills come on the House floor that affect Louisiana—but anyway, I will just close by saying that I am skinny and I am tired and I am lucky.

But I want to thank you for all your love and all your concern.

I will tell you how I won: I put my heart on the table; I just put it right out on the line and the people of Louisiana picked it up.

We have got a heck of a chance. Thank you all.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. (Mr. TAUZIN). The Chair would like to extend to the Governor-elect of the State of Louisiana his heartfelt congratulations and support, as I have already done privately.

BUDDY, I want you to know that all the hard words I had for you during the campaign were then sincerely meant but are just as sincerely regretted today.

We want you to succeed because when you succeed Louisiana will succeed with you.

You have, believe me, the entire support of our delegation here in Washington in your every effort.

Congratulations and good luck.

SMALL ISSUERS RELIEF ACT

(Mr. CLINGER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. CLINGER. Mr. Speaker, today I am introducing legislation designed to help small- and medium-sized cities more easily access the municipal bond markets. The bill I am offering modifies two provisions of the Tax Relief Act of 1986 that have proven to be particularly burdensome to the great majority of our Nation's local governments.

The Tax Reform Act, in attempting to address abuses that were occurring in the municipal bond market, imposed a number of requirements on cities large and small. The net result has been not to merely right the wrongs, they've thrown a wet blanket over the market, making it extremely difficult and expensive for municipalities to issue debt.

The modifications contained in my bill: First, raises the threshold for arbitrage rebate calculations so that local governments issuing less than $25 million annually in tax-exempt bonds would be exempt for making the calculations; and second, it increases the private-purpose exemption from 10 to 25 percent for the same class of towns and cities; those issuing less than $25 million annually, again in tax-exempt bonds.

Many policymakers may not realize the bind our local governments now find themselves in. What they find particularly aggravating are the mixed signals being sent by Congress. On the one hand we reduce funding for public works purposes such as roads, bridges, and sewers, forcing towns, cities, counties, and others to rely on their own resources to pay for these very expensive projects. And on the other hand, Congress tightens up the Tax Code to the point of driving localities away from the option to self-finance, leaving them no option at all.

Mr. Speaker, modifying the arbitrage and private-purpose provisions is estimated to effect about 20 percent of the volume of municipal bonds issued annually, but interestingly, such modifications will be of significant help to over 85 percent of individual towns and cities.

So long as Congress continues to reduce funds made available to towns and cities, we ought to at least make it easier for them to self-finance their projects in the bond market.

I encourage Members to join me by cosponsoring this vitally needed legislation.

DISASTROUS GRAMM-RUDMAN AUTOMATIC SPENDING CUTS

(Mr. ACKERMAN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ACKERMAN. Mr. Speaker, if budget reductions are not adopted by November 20, the disastrous Gramm-Rudman automatic spending cuts will take effect. Many vital programs would be severely crippled by conceding Congress' budgetmaking powers to an automatic formula which disregards the critical needs of our society.

Since President Reagan took office, subsidized housing has been reduced by two-thirds, at a time when the needs of the homeless and families with children have been seriously underserved. Many families have become homeless due to a lack of affordable housing. Last summer, Congress responded to this growing crisis by passing a $725 million package of emergency aid. Ironically, sequestration would result in an estimated $1,125 million loss in funding for subsidized housing and programs which assist the homeless across the country; 10,000 fewer families will be housed in assisted units than would otherwise have been housed. Many may find themselves in the streets.

The reconciliation bill before us is a reasonable effort to address our Nation's serious budget problems, without placing an inordinate burden on low- and middle-income Americans. It includes a 1-year prohibition against the Department of Health and Human Services from issuing regulations that would discontinue over $90 million in matching funds for the homeless. I urge my colleagues to support it. We can reduce the deficit by making the carefully thought out spending decisions we were elected to make.

LET US SOLVE THE BUDGET DEFICIT PROBLEM ON A BIPARTISAN BASIS

(Ms. SNOWE asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. SNOWE. Mr. Speaker, it has long been my stated fear that the only thing that would spur Congress into action on the budget deficit would be some type of crisis. Our inaction or spurious action on the deficit in recent years only served to heighten that fear.

It has been inexcusable that this Congress has not taken responsible action to date in order to cut the deficit. And it has not been for lack of ideas or proposals: My colleagues in the 92 Group, for example, have offered sound, gimmick-free budgets in the past.

With the crash of the stock market, however, the critical event has occurred. Now, it would be well beyond irresponsible if we did not act immediately; it would be a failure of the greatest magnitude, failing our constituents, our country, and those who helped build this Nation.

The bicentennial year of our Constitution is no time to address this crisis through fiscal subterfuge and partisan bickering.

We must, and I hope we can, act responsibly, fairly and on a bipartisan basis to solve the deficit problem in the bipartisan negotiations already underway. That is why the reconciliation before this House should be deferred. It is a package that represents politics as usual and politics as usual carries with it a price tag our Nation cannot afford.

TAKE THE MX, PLEASE, SOMEBODY, TAKE THE MX

(Mr. TRAFICANT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. TRAFICANT. Mr. Speaker, the President's priorities are all screwed up. In fact, his policies are so misdirected that if he threw them at the ground they would probably miss.

He sponsored the biggest military buildup in American history and what has it gotten us? Fancy projects, no spare parts.

Take the MX, please, somebody, take the MX. Nineteen billion dollars' worth and now Les Aspin says its guidance system is flawed.

Let us face it, not only is the MX a sitting duck, it is now a drunk turkey. It cannot even fly straight.

Let us start putting our finances in order and let us start today by shooting these turkeys down—that is, Mr. Speaker, if we have anything that can shoot straight around here.

□ 1240

PRIVATE SECTOR PROTECTION FROM THE COSTS OF A CATASTROPHIC ILLNESS

(Mr. SLAUGHTER of Virginia asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SLAUGHTER of Virginia. Mr. Speaker, I opposed the so-called catastrophic illness protection legislation which passed the House earlier this year, but I favor providing our elderly with protection against the catastrophic costs associated with a long hospital stay.

Therefore, I have introduced legislation, (H.R. 3490), along with my colleague, Congressman Dan Lungren of California, that would provide protection for a significant portion of our elderly population against the costs of a long hospital stay by restructuring the Federal regulations that govern private Medicare supplement insurance policies.

About 70 percent of elderly Americans who are on Medicare also have their own policies, called Medigap policies, to supplement their Medicare coverage. Under current law, however, this coverage may be terminated before all the hospital and doctor care needed by a patient is utilized. Our bill would eliminate that possibility, requiring Medigap policies to provide unlimited hospital and doctor care after a maximum payment of $2,000 out of pocket yearly, as originally proposed by the President.

I fully recognize that the provisions contained in our legislation do not represent a complete solution to the problem of large medical bills. However, our bill could provide protection for many of the elderly, at no cost to the Federal Government and without putting any additional pressure on our already strained Medicare system, as the House-passed bill does.

DEFICIT REDUCTION IS NEEDED NOW

(Mr. JOHNSON of South Dakota asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. JOHNSON of South Dakota. Mr. Speaker, I rise today to join with my colleagues who are advocating that Congress and the President come to a bipartisan agreement, once and for all, on dealing with the budget deficits that have been racked up over the past 6 years.

In less than 1 month, if Congress and the President have still failed to do the jobs we were elected to do, the American economy, including our rural American economy, will be severely damaged by the nonprioritized cuts that will occur.

In South Dakota, where agriculture is our No. 1 industry, we stand to lose more than $60 million in farm income if the sequestration cuts take palce.

Cuts in Medicare and Medicaid, the Older Americans Act, housing for the elderly, and other essential programs will devastate our elderly population.

Furthermore, the impacts on our veterans and our students, should make sequestration unthinkable.

Let's act now, for the good of the American economy, and its people. Let's make the cuts that are needed. Let's close the tax loopholes that continue to rob our middle class for the benefit of the wealthy. Let's prove we can do the job we were elected to do.

CRISIS THREATENS, BUT BUSINESS AS USUAL

(Mr. LOTT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LOTT. Mr. Speaker, the bipartisan group of negotiators have been meeting yesterday, this morning, and again this afternoon, and they will be meeting all of this week, including Friday and probably Saturday. While no agreements have been reached, it has been basically in a bipartisan and positive spirit. Yet every time I leave those meetings and come back over here, it is business as usual, partisanship, insisting on doing things the way the Democratic leadership has planned.

While we are trying to negotiate, while the markets are looking at what is happening in those meetings, we are over here in the House going forward with business as usual, insisting on bringing up a reconciliation bill that is nothing more than a tax increase. It is not good faith to go forward and get us all locked in an acrimonious debate on this reconciliation package. I urge the leadership once again to pull that down and give the negotiators an opportunity to do the job we should be doing.

Second, in further proof of the arrogance in the way things are done around here, I have been around this institution now for 19 years and I continue to see things I never would have believed. Yesterday the Rules Committee put in the rule on the credit card disclosure bill a waiver of the rule requiring a quorum to be present to legislate. That is the final blow, Mr. Speaker. We do not even need to have the Members present to make a quorum; let us just shove it on through and let the Rules Committee waive every last rule and requirement we must have.

It is a sad commentary, Mr. Speaker. If we want to go forward in good faith, we have to stop that type of abridgment of the rights of the Members of this institution.

THE MURDER OF HERBERT ANAYA

(Mr. WEISS asked and was given permission to address the House for 1 minute.)

Mr. WEISS. Mr. Speaker, death squads are back at work in El Salvador. Two days ago, Mr. Herbert Anaya, the head of the nongovernmental human rights commission was brutally assassinated by rightwing death squads in San Salvador as he left home to drive two of his children to school.

It is the Salvadoran Government security forces which must be held responsible for the brutal murder of Herbert Anaya. Everyone knows that the security forces have never truly attempted to impede the work of the death squads. In the past, the Salvadoran military has actually worked with the death squads to terrorize innocent civilians. And if the record is any indication, Mr. Anaya's murderers, like the past death squad killers, will never be brought to justice.

Mr. Anaya is the fourth member of the human rights commission to be murdered since 1980. I call on President Duarte and the Salvadoran Government to ensure that others active in human rights work be protected from the death squads that still reign in El Salvador. I call on the Reagan administration to insist that death squad murderers be brought to justice.

MEMBERS URGED TO VOTE NO ON RULE FOR CREDIT CARD SAVINGS ACT

(Mr. DREIER of California asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DREIER of California. Mr. Speaker, we have all just congratulated our colleague, the gentleman from Louisiana [Mr. Roemer], for his spectacular campaign in that great and fair election which took place last Saturday in Louisiana. I think it is important for us to realize that the issue of fairness is one which should also be recognized here in the House of Representatives.

As my colleague, the gentleman from Mississippi [Mr. LOTT], just said, we have thrown fairness completely out the window as we begin to address this rule on what I think is very important legislation, legislation which I support, and that is the credit card bill which is due to come up. But fairness was thrown out the window, Mr. Speaker, because, unfortunately, up there in the Rules Committee they waived rule XI which requires that a quorum be present when the bill is marked up. That is the one vehicle that the minority in this House has to guarantee this degree of fairness.

Mr. Speaker, in the name of fairness, I urge a no vote on the rule when it comes up today.

SUPPORT ASKED FOR ANNUNZIO AMENDMENT TO CREDIT CARD DISCLOSURE ACT

(Mr. ANNUNZIO asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ANNUNZIO. Mr. Speaker, today, Members of the House will have an opportunity to cast a vote against high interest rates. When H.R. 515, the Credit Card Disclosure Act is debated today, I will offer an amendment that will place a cap on credit card rates and stop the big banks from charging loan shark interest rates on credit cards. If you vote against the amendment you will be voting for high interest rates and in favor of the plastic loan sharks.

My amendment is supported by every major consumer group in the country as well as the American Association of Retired Persons. The people that oppose my amendment are the big banks and the large retailers. There are more than 100 million people in this country who have credit cards and they are tired of having to pay high rates on their cards when other rates are falling. They want you to vote to stop the high rates.

Today you have an opportunity to do what your constituents want. You can vote for low interest rates and help your constituents or you can vote for high interest rates and help the banks. Your constituents are waiting for your answer.

BIPARTISANSHIP EVIDENCED IN RECONCILIATION CONSIDERATION

(Mrs. MARTIN of Illinois asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. MARTIN of Illinois. Mr. Speaker, through long years I have worked in democratic legislative bodies and enjoyed often working closely with my colleagues across the aisle, whether it was in the Illinois House, the Illinois Senate, or here. But I think bipartisanship is getting a very bad name this week, and I would like to distance myself from a concept of bipartisanship, which means that only one side gives and the other taketh away.

What we are talking about in a potential purported reconciliation bill is increasing the taxes on Americans without in any way disturbing the incredibly dreadful trend of increased spending.

Mr. Speaker, the average increases in appropriation bills that we have passed around here are about 7 percent. There are no cuts in a reconciliation bill. I urge my President as part of the leadership to meet with the Democrats. The response from our current Speaker has been a stubborn refusal to remove from the schedule a flawed bill that will further distress anyone who knows anything about economics in America. Bipartisanship is killed by the Democrats of the House.

UNREST IN PANAMA

(Mr. RICHARDSON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. RICHARDSON. Mr. Speaker, there are reports today that General Noriega, the despot that rules Panama, has been involved in providing cluster bombs to the Nicaraguan Government. This is another example of General Noriega's hostility toward the United States and peace in the region.

Last week Panama City was under a complete state of siege. In reaction to a planned demonstration by the opposition, General Noriega and his troops invaded the streets, spreading a wave of terror throughout Panama City.

Panama is under siege, and the common denominator of all the Panamanian people is simple—get Noriega out. It is clear that Noriega is desperately trying to stay in power. He has been alleged to be a drug trafficker, and has laundered money and committed a number of human rights violations. He is extremely hostile to the United States.

Mr. Speaker, the Congress and the administration must cease all aid to Noriega's government, stop all loans, and eliminate the sugar quota. "Baby Doc" is gone, Marcos is gone. Whatever the United States can do to shove Noriega out is in order.

A LETTER TO PRESIDENT REAGAN

(Mr. FIELDS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. FIELDS. Mr. Speaker, the gentleman from Idaho [Mr. CRAIG] and I have a letter we are sending to the President today, and we are going to invite our Democratic colleagues to join in this letter. So if anyone has any interest in signing, please see me or Mr. CRAIG. The letter is to the President, and it says:

> DEAR MR. PRESIDENT: At this time of economic summitry when the attention of the Nation is focused on the urgent need to reduce our budget deficits, we, the undersigned Members of Congress, strongly urge you to insist on the inclusion of a constitutional amendment mandating a balanced Federal budget in any compromise package. If this is not possible, we strongly urge you to insist on a promise from the House and Senate leadership that we will have submitted to us an up or down vote on such a balanced budget constitutional amendment prior to the enactment of any compromise package by the Congress.
>
> Mr. President, with more and more Americans now coming to understand the dire economic effects of uncontrolled government spending, this is an historic opportunity to make a balanced budget the law of the land. We urge you to seize this opportunity.

We sign it, "Sincerely."

So, Mr. Speaker, we encourage our good friends on the other side of the aisle to please sign this letter in a bipartisan fashion and send a message to President Reagan.

WELFARE REFORM BILL WOULD CORRECT CHILD SUPPORT PAYMENT PROBLEMS

(Mr. DONNELLY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DONNELLY. Mr. Speaker, during this year's debate over welfare reform, and during the hearings that the Subcommittee on Public Assistance has on that subject, one fact became painfully obvious: Many children in single-parent families are not getting the child support payments to which they are legally entitled.

The welfare reform bill, which is scheduled this week, takes one giant step toward correcting this problem. First, the bill requires that States use a uniform series of guidelines in setting child support awards.

Second, the bill contains provisions which encourage States to enact mandatory wage withholding laws. Under this concept, States would get incentives to enact laws similar to those already in place in Massachusetts and Texas, which provide for withholding payments from the noncustodial parent's wages immediately upon the entering of a child support order.

When so many children in our country live in poverty, it is inexcusable that so many of these children do not receive the child support to which they are legally entitled. Able-bodied fathers should pay for the cost of raising their children, not the taxpayer. The bill reported by the Committee on

Ways and Means will make sure that happens!

WAVING THE "TERRIBLE TAX TOWEL"

(Mr. ARMEY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ARMEY. Mr. Speaker, push has come to shove. The American people are demanding that we do something to reduce the deficit.

The great debate raging in this town is: Will we do that by decreasing spending or by increasing taxes?

We have a budget summit that addresses that issue, and we will have action here in the House that addresses that issue.

Mr. Speaker, I would like to speak for myself and for several of my colleagues in this body and say that I wish to show the Members this "terrible tax towel." We intend to wave the terrible tax towel; we do not mean to throw in the terrible tax towel.

THE OMNIBUS BUDGET RECONCILIATION ACT OF 1987

(Mr. DUNCAN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DUNCAN. Mr. Speaker, I cannot state in terms too strong the reasons why my colleagues should vote against the reconciliation package scheduled to be on this floor tomorrow. The revenue part alone is enough to warrant a "no" vote.

The revenue portion represents a huge tax increase of about $60 billion over 3 years. It would become effective at a time when the American taxpayer is most vulnerable and can least afford the burden. I merely want to highlight now one or two of the worst elements of this legislation, but I am not, by any means, implying that the others are acceptable in any respect.

One provision, merely for example, imposes a penalty on both employees and employers who have access to so-called insurance cafeteria plans. Under current law, an employee who has the option to take cash in lieu of benefits is not subject to income tax or FICA and FUTA taxes on the cash option, unless he or she elects to receive the cash in hand. The bill to be considered tomorrow would limit this rule to cafeteria plans which allow a cash option of $500 or less. If an employee elects to receive more than $500 in cash, then the entire amount received becomes subject to taxation—even if it is not actually received. This affects thousands of low income taxpayers.

I am sure that many of my colleagues already have been approached by workers and employers who would find this kind of limitation extremely damaging to their interests.

Another section that poses real problems deals with bus operators. Under current law, both private and public operators, and State and local governments, are exempt from most highway trust fund excise taxes. The committee bill repeals that exemption for private bus operators, but not State and local governments. I would guess that many of my colleagues representing rural areas would be hearing from those folks, too.

Standing out like a huge "sore thumb" in the committee bill is a section dealing with corporate takeovers. It would impose a 50-percent nondeductible excise tax on so-called greenmail gain on stocks that are held less than 2 years by certain persons. There are other penalties imposed under this section.

Now, I do not agree with a lot of the activities that have taken place in this country with respect to corporate takeovers, but I have been told by people who understand the market very well, indeed, that this one provision has accounted for much of the panic associated with "Black Monday" and "Black and Blue Tuesday."

Obviously, I could stand here and recite, on and on, other offensive parts of this legislation. I cannot do it, however, in 1 minute or less. But I think the message is clear. This is a bad bill at any time. It is a terribly bad bill at this time.

□ 1255

DEFEAT HOUSE RESOLUTION 292

(Mr. WALKER asked and was given permission to address the House for 1 minute.)

Mr. WALKER. Mr. Speaker, the rule we are about to consider has to be one of the worst in the history of the House of Representatives. Not only do we have a situation now where committees are allowed to use proxy votes to pass major legislation, but now under the rule we are about to consider we are going to say that the committees do not even have to have warm bodies in the room in order to pass out legislation. Not since the days of Uncle Joe Cannon has there been such a consistent pattern of the corrupt use of power in the House of Representatives. In my opinion the Committee on Rules should be embarrassed for what they are doing in this House.

This Speaker has consistently asked for rules that violate the spirit of the rule of law in this land and amount to the kind of exercise of power that are more characteristic of tyrannies than of democracies.

Defeat this rule. It is about time we got some sense around this place.

PROVIDING THAT THE SELECT COMMITTEE TO INVESTIGATE COVERT ARMS TRANSACTIONS WITH IRAN MAKE ITS FINAL REPORT TO THE HOUSE NOT LATER THAN NOVEMBER 13, 1987

Mr. PEPPER. Mr. Speaker, I ask unanimous consent that the Committee on Rules be discharged from the further consideration of the resolution (H. Res. 294) providing that the Select Committee to Investigate Covert Arms Transactions With Iran shall make its final report to the House not later than November 13, 1987, and ask for its immediate consideration.

The Clerk read the title of the resolution.

The SPEAKER pro tempore (Mr. TAUZIN). Is there objection to the request of the gentleman from Florida?

Mr. QUILLEN. Mr. Speaker, reserving the right to object, and I will not object to the request made by the chairman of the Rules Committee and, as the ranking Republican member of the Rules Committee I wish to express my support for this resolution to extend the reporting deadline of the Select Committee to Investigate Covert Arms Transactions With Iran until November 13, 1987. This resolution is cosponsored by the chairman and ranking Republican member of that select committee. This has been a hard-working select committee, and the 13 extra days are necessary to allow the report to be done properly.

Mr. Speaker, under my reservation, I yield to the gentleman from Florida [Mr. PEPPER], the chairman of the Rules Committee, for an explanation of the resolution.

Mr. PEPPER. Mr. Speaker, if the gentleman will yield, I would be pleased to respond to the request of the gentleman.

Mr. Speaker, House Resolution 12 was adopted by the House on January 7, 1987. That resolution established the Select Committee to Investigate Covert Arms Transactions With Iran. The resolution provided the means for appointment of members of the select committee, defined the matters which were to be considered in its deliberations, and authorized the select committee to hire staff and incur expenses related to its investigations.

In addition, paragraph (12) of House Resolution 12 directs the select committee to:

> Report to the House the final results of its investigation and study * * * as soon as practicable * * * and in no event later than October 30, 1987 unless the House directs otherwise.

The resolution also provides that following the filing of its final report, the select committee is to have 1 month's time in which to wrap up its affairs after which its authority under the resolution is to expire.

Mr. Speaker, it is my understanding that while the select committee anticipates that it will be prepared to vote on a report in the very near future, it will not be able to meet the October 30 filing deadline. House Resolution 294 merely extends the deadline, allowing the select committee to have until November 13, 1987, to submit its final report to the House. The resolution would make no changes to the provisions of House Resolution 12.

Mr. HAMILTON. Mr. Speaker, will the gentleman yield?

Mr. QUILLEN. Mr. Speaker, further reserving my right to object, I yield to the gentleman from Indiana [Mr. Hamilton].

Mr. HAMILTON. Mr. Speaker, the purpose of this resolution is very simple. House Resolution 12, the authorizing resolution of this committee, directs us to report to the House not later than this Friday, October 30, 1987. This resolution would extend the committee's filing deadline by 2 weeks to November 13, 1987. The resolution makes no other changes in the provisions of House Resolution 12.

The committee has nearly finished its final report which, when complete, will number over 1,000 pages. Due to several factors, principally the need to submit our report to the White House for declassification, we will not be able to file by October 30. The declassification process should be complete some time next week, enabling the committee to meet the November 13 deadline.

The ranking member of the committee, Mr. Cheney, joins me in requesting this extension. I should also point out that the other body has approved an identical extension for our counterpart committee.

Mr. QUILLEN. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

The Clerk read the resolution, as follows:

H. Res. 294

Resolved, That, notwithstanding House Resolution 12, One Hundredth Congress, agreed to January 7, 1987, the Select Committee to Investigate Covert Arms Transactions with Iran shall make its final report to the House not later than November 13, 1987.

The resolution was agreed to.

A motion to reconsider was laid on the table.

PROVIDING FOR CONSIDERATION OF H.R. 515, FAIR CREDIT AND CHARGE CARD DISCLOSURE ACT OF 1987

Mr. FROST. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 292 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. Res. 292

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 1(b) of rule XXIII, declare the House resolved into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 515) to provide for more detailed and uniform disclosure by credit card issuers with respect to information on interest rates and other fees which may be incurred by consumers through the use of any credit card, and the first reading of the bill shall be dispensed with. All points of order against consideration of the bill for failure to comply with the provisions of clause 2(l)(2)(A) of rule XI are hereby waived. After general debate, which shall be confined to the bill and which shall not exceed one hour, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Banking, Finance and Urban Affairs, the bill shall be considered for amendment under the five-minute rule. It shall be in order to consider the amendment in the nature of a substitute recommended by the Committee on Banking, Finance and Urban Affairs now printed in the bill as an original bill for the purpose of amendment under the five-minute rule, and each section shall be considered as having been read. It shall be in order to consider the amendment printed in the report of the Committee on Rules accompanying this resolution, by, and if offered by, Representative Annunzio of Illinois, said amendment shall be debatable for not to exceed one hour, to be equally divided and controlled by the proponent and a Member opposed thereto, and all points of order against said amendment for failure to comply with the provisions of clause 7 of rule XVI are hereby waived. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and any member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or to the committee amendment in the nature of a substitute. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instrucitons.

The SPEAKER pro tempore. The gentleman from Texas [Mr. Frost] is recognized for 1 hour.

Mr. FROST. Mr. Speaker, for purposes of debate only, I yield 30 minutes to the gentleman from Ohio [Mr. Latta] pending which I yield myself such time as I may consume.

□ 1305

Mr. Speaker, House Resolution 292 is an open rule providing for the consideration of H.R. 515, the Fair Credit and Charge Card Disclosure Act of 1987. The rule provides for 1 hour of general debate, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Banking, Finance and Urban Affairs.

Mr. Speaker, the rule includes a waiver of clause 2(l)(2)(A) of rule XI against consideration of H.R. 515. Clause 2(l)(2)(A) of rule XI prohibits the consideration of any bill reported when a quorum of the committee was not present. The Committee on Rules has reluctantly included this waiver in the rule based on the testimony presented to the committee during the hearing on the bill yesterday. At that hearing, the committee concluded that no clear evidence had been presented to the committee, either by those Members testifying or from the transcript of the Banking Committee, on whether a quorum had or had not been present at the time H.R. 515 was ordered reported. Further, because this bill had been scheduled for floor consideration for the day following the meeting of the Committee on Rules, it was not possible for the Banking Committee to reconvene and report the bill again with a quorum in attendance. Mr. Speaker, the Committee on Rules has included this waiver in the rule with great reluctance and urges every committee of the House to take great care in the future to insure that this rule of the House is not violated. The Committee on Rules wishes to stress that by granting this waiver the committee does not intend to set a precedent.

The rule also provides that during consideration of the bill for amendment, that it shall be in order to consider the amendment in the nature of a substitute recommended by the Committee on Banking, Finance and Urban Affairs now printed in the bill as an original bill for the purpose of amendment under the 5-minute rule. While the rule recommended by the Committee on Rules is an open rule allowing the consideration of any germane amendment, the committee has specifically made in order in the rule the consideration of an amendment by, and if offered by, the gentleman from Illinois [Mr. Annunzio]. The Annunzio amendment seeks to impose an interest rate cap on credit cards at 8 percent over Treasury bill rates. The amendment is technically nongermane to H.R. 515 as reported from the Banking Committee, and to permit its consideration, the rule waives clause 7 of rule XVI, the germaneness rule, against the amendment. The rule also provides that the amendment shall be debatable for 1 hour with the time equally divided and controlled by the proponent of the amendment and a Member opposed thereto.

The rule provides that at the conclusion of the consideration of the bill for amendment, the committee shall rise and report the bill to the House with such amendments as may have been adopted, and further provides that any Member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or to the committee amendment in the nature of a substitute. Finally, the rule provides that the previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

Mr. Speaker, as reported by the Banking Committee, H.R. 515 is a finely crafted legislative response to the confusion that currently exists for many consumers in the credit card marketplace. The bill, which is supported by industry and consumer groups, would require the issuers of credit cards to clearly and precisely inform consumers of the terms of the credit being offered. And, most importantly, this information would be required to be made available before a potential cardholder actually opens an account, thus affording the consumer the opportunity to shop for the best rates and terms available. The Committee on Banking is to be commended for bringing this important legislation to the House for consideration.

However, Members know that the amendment proposed by the gentleman from Illinois [Mr. Annunzio] is an amendment of some controversy. Because it is a proposal that could fundamentally change the credit card marketplace, the Committee on Rules has provided 1 hour of debate on the amendment in order that all Members may have the opportunity to hear arguments in favor and in opposition to this proposal.

Mr. Speaker, House Resolution 292 is a fair rule: Any germane amendment may be offered to the bill or to the committee substitute and the Annunzio amendment is also subject to amendment. I urge my colleagues to support the rule in order that the House may proceed to the consideration of this most important legislative proposal.

Mr. LATTA. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this is an open rule, but it includes two very significant waivers of points of order.

This rule waives the germaneness rule in order to permit consideration of the Annunzio amendment. The Annunzio amendment provides for a cap on credit card interest rates at 8 percent over the yield on 1-year Treasury securities. Mr. Annunzio's amendment deals with the regulation of interest rates on credit card purchases while H.R. 515 is a disclosure bill. There are varying interest rates charged on credit cards across this country and many people believe a cap will cause interest rates to rise to the cap where they are now below the same. In addition, many believe a goodly number of lower income people will be denied credit cards by reason of such cap. The bill as reported by the committee has the support of a broad coalition of interested parties and they fear that the granting of this waiver may damage the balance existing between the supporters and ultimately endanger passage of the bill. An effort to delete the germaneness waiver from the rule was not successful in the Rules Committee.

Mr. Speaker, the other waiver in this rule waives the requirement that a quorum must be present in order to report the bill. This is a very dangerous procedure, Mr. Speaker. If we ever get to the point where committees are routinely allowed to report bills without a quorum of members present, there is no end to the mischief which could result. It is a situation which invites abuse if a few members can meet, put together a deal which may not be in the national interest, and then obtain a rule to protect themselves from a point of order.

The requirement that a quorum be present to do business is one of the most important safeguards in a legislative body.

What is more frustrating in this case, Mr. Speaker, is that the committee report states and I quote, "the full Banking Committee, with a quorum present, ordered H.R. 515, as amended, favorably reported by a voice vote at its markup on August 6, 1987." Testimony before the Rules Committee contradicted this fact.

There was a motion from the Republican side to delete the waiver of no quorum, but it was voted down by the committee majority.

Mr. Speaker, neither waiver should be in this rule. I therefore urge defeat of the rule.

Mr. Speaker, I yield 3 minutes to the gentleman from Pennsylvania [Mr. Walker].

Mr. WALKER. Mr. Speaker, I rise in opposition to the rule for many of the same reasons the gentleman from Ohio just specified, but in particular because of the waiver with regard to the provision that we need to have a quorum to report a bill.

The committee claims that they are doing this with great reluctance. I am sorry, but I am getting a little tired of the Rules Committee coming to the floor telling us they are doing things with great reluctance. We have heard time after time that phrase used out here when we have gotten bad rules brought to the floor. But this is one of the worst, because at the very least we ought to protect the ability of committees to work with a quorum present.

This rule now takes us down the road where we are going to not even have to have warm bodies in the room. That is terribly wrong.

And I hate to raise the issue, but doggone it, in this case somebody is lying. We have got the committee report before us that says that there was a quorum present. Now we have a rule before us that says that there may not have been a quorum present. Now what is the truth? I guess I have to ask the question. Did the Rules Committee not believe the committee report? I would ask the gentleman from Texas [Mr. Frost] is the committee report in error? Did the committee not believe the Committee on Banking, Finance and Urban Affairs that there was a quorum present?

Mr. FROST. Mr. Speaker, will the gentleman yield?

Mr. WALKER. I am glad to yield to the gentleman from Texas.

Mr. FROST. Mr. Speaker, I would only comment that there was conflicting testimony during the Rules Committee by members of the committee on this question, and a proponent of the legislation, a Member of the body who was a proponent of the legislation, testified to the Rules Committee that as far as he recalled there was not a quorum present.

So I would only say to the gentleman that there was a conflict in the testimony at the time of the Rules Committee, and out of an abundance of caution the Rules Committee then put this waiver in.

We could have ignored it, that is correct. We could have said it is in the committee report, let us ignore that testimony that was given to the Rules Committee.

Mr. WALKER. But in light of the confusion about the issue, the Rules Committee instead decided to violate one of the most time honored traditions of a legislative body, and that is that you work with a quorum present. That is not a standard that I would regard as being great reluctance on the part of the Rules Committee. It seems to me that the Rules Committee has decided that the report may have been wrong, and so if the report may have been wrong what they are willing to do is roll over and allow a provision to be put in the rule that abandons the need for a quorum.

Mr. FROST. Will the gentleman yield further?

Mr. WALKER. Sure, I am glad to yield to the gentleman from Texas.

Mr. FROST. The testimony before our committee was that there was a voice vote in the committee and that in the full Committee on Banking, Finance and Urban Affairs there was no opposition at the time the voice vote was taken. So because of the ambiguity of the question of whether a quorum was present, truly present, and this was not apparently a closely contested matter within the Committee on Banking, Finance and Urban Affairs, the Rules Committee made a judgment, and I understand the gentleman's argument. The gentleman certainly has the right to make the argument.

Mr. WALKER. Let me say to the gentleman, in light of proxy voting and in light of this statement, we are in bad trouble.

Mr. LATTA. Mr. Speaker, I yield 3 minutes to the gentleman from Ohio [Mr. Wylie].

Mr. WYLIE. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, I associate myself with the remarks of Mr. Latta, and urge the defeat of this rule.

Mr. Speaker, while I strongly support the bill as reported by the Banking Committee, I cannot support the rule under which the bill is being brought before the full House. I cannot support the rule for two reasons. First, the rule waives clause 2(l)(2)(A) of rule XI—prohibiting consideration of legislation reported when a quorum of the committee was not present—against consideration of the bill. Mr. Speaker, I was present when the full Banking Committee reported H.R. 515 on August 6. Although the bill was reported unanimously on a voice vote, the transcript of those proceedings clearly shows that 32 members were present when the meeting was called to order by the chairman. The transcript further shows that no member questioned the absence of a quorum. So why are we now assuming that a quorum, in fact, was not present? Why is this waiver necessary?

If a quorum were, in fact, not present, this bill should not be brought to the House floor. A waiver of this type establishes a potentially dangerous precedent under which a small minority of committee members could bring legislation not approved by a majority of the committee's members to the House floor simply by securing a waiver.

I am also opposing the rule because it waives clause 7 of rule XVI which prohibits nongermane amendments so that my distinguished colleague from Illinois can offer an interest rate cap amendment.

Mr. Speaker, this waiver undermines the integrity of the committee system in the House. The Banking Committee concluded after extensive hearings not to include an interest rate cap in what is otherwise a disclosure bill. Where will the second-guessing of the relevant committee's expertise end?

Mr. Speaker, this rule undermines the procedures so necessary for the orderly functioning of the House and I urge my colleagues to vote "no" on the rule.

Mr. FROST. Mr. Speaker, for purposes of debate only, I yield 5 minutes to the gentleman from Illinois [Mr. Annunzio].

Mr. ANNUNZIO. Mr. Speaker, I rise in strong support of the rule. I want to thank the gentleman from Texas [Mr. Frost] and all of the members of the Rules Committee, and especially the distinguished chairman of the Rules Committee, Mr. Pepper, for structuring a rule so that I may offer my credit card cap amendment.

The amendment that I will offer is a very simple amendment. It allows Members of this body to go on record publicly as voting for or against high interest rates.

In the 23 years that I have been a Member of this body, I have heard thousands of speeches condemning high interst rates, and I have made some of those speeches. Today, however, is one of the few times that Members will actually be able to vote against high interest rates. Or, it is also an opportunity for those that are for high interest rates to let the world know their position.

Unfortunately, even though my amendment is a referendum on high interest rates, there are those who will seek to use the floor here today to disguise the true purpose of my amendment. As the author of the amendment, I want to make it clear that it has only one significance, one meaning, and one application. It is an amendment against high interest rates and for low interest rates. Regardless of what else you hear today, there can be no other interpretation placed on my amendment.

What my amendment says is that the maximum rate of interest that can be charged on a credit card is 8 points above the yield on 1-year Treasury securities. If that rate were in effect today, the maximum interest that could be charged on a credit card would be 15.03 percent, well below the national average on credit cards of nearly 18 percent. Some credit card issuers are charging rates that are 21 and 22 percent. My amendment does not place an artificial ceiling on credit card interest rates, but rather allows the rate to go up or down based on market conditions. It allows credit card companies to make a legitimate profit based on market conditions, but protects the consumer from paying artificially high credit card rates.

Mr. Speaker, this is the House of the People, and the people want a ceiling on credit card interest rates. In a recent NBC poll, nearly 80 percent of those interviewed favored a Federal cap on credit card interest rates, even if it meant that they would lose their credit cards because of higher economic standards placed on credit card ownership by credit card companies.

We will be told during debate today that we should not vote on my amendment because it is opposed by the bankers, the retailers, the banking agencies, the administration, and by some newspapers such as the New York Times. But this is the House of the People, it is not the House of the banks. It is not the House of the retailers. It is not the House of the bank regulatory agencies. It is not the House of the administration. And it is not the House of the New York Times. It is the House of the People. And the people want the Annunzio amendment.

Every major consumer group in the country including, Consumers Union, Consumer Federation of America, U.S. Public Interest Research Group, and Public Citizen's Congress Watch, support my amendment, as well as the American Association of Retired Persons. There are the people. These are the people this body represents.

This is the type of vote that every Member of this body should relish. Because this is such an important issue, newspapers across the country will be carrying the results of this vote. And those special columns that appear in all of our hometown newspapers which spotlight House Members' votes on critical issues is certain to use today's vote to show the voters in your district whether you are for or against high interest rates.

More than 100 million Americans own 700 million credit cards, and they are fed up with paying the loanshark rates being charged by the credit card companies. The House of the People has an opportunity to do something about it today. We have an opportunity to do the work of the people or the work of the banks. The banks want high interest rates, the people want low interest rates. The Annunzio amendment is what the people want, and I urge adoption of the rule so that this House can vote on the question of whether we give the people high or low interest rates.

□ 1320

And I want to say to you in conclusion that if banks cannot make money at 15½ percent interest then they should get the hell out of the banking business.

PARLIAMENTARY INQUIRY

Mr. SENSENBRENNER. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore. (Mr. Tauzin) The gentleman will state it.

Mr. SENSENBRENNER. Mr. Speaker, how many Members are present now?

The SPEAKER pro tempore. The Chair cannot respond to that as a parliamentary inquiry.

Mr. LATTA. Mr. Speaker, I yield 3 minutes to the gentleman from Indiana [Mr. Hiler].

Mr. HILER. I thank the gentleman for yielding.

Mr. Speaker, I rise in opposition to this rule. What we are going to do with this rule is to grant a waiver of the point of order against a nongermane amendment. Now the bill that we will have before us today is a bill that tries to increase the amount of disclosure that consumers will have when they apply for or are solicited by credit card companies for credit cards.

The credit card disclosure bill is, to use an overly used phrase, but it is a "very well-crafted compromise" between consumer groups and those that issued credit cards.

If we upset that carefully crafted compromise this bill will never become law and the consumers will not be helped.

So I oppose this rule because it makes in order an amendment that is nongermane, that puts at risk the future of any type of disclosure bill.

The second main reason I am opposed to this rule is because I am opposed to this amendment. The idea that somehow we ought to have price controls on interest rates at the Federal level is an idea whose time has never come and will never come. It is a bad idea. It is a particularly bad idea on credit cards. There is no free lunch. If we try to impose caps on interest rates, the cost, the legitimate cost that credit card issuers face will be passed on in some other means. It will be passed on in terms of an elimination of a grace period.

Today most people who have a credit card, if you make a purchase you have 25 days from the time you make that purchase until such time as you may have to pay for that item.

That is a time period in which no interest is charged.

Now nearly half of the people that use credit cards pay their bills on time and do not maintain any type of transaction balance, which means that for those individuals, the cost of having a credit card is going to go up even if there is a limit on the amount of credit card interest rates that could be charged.

The second thing that might happen is that the annual fees will increase. Many cards charge an annual fee of anywhere from $25 to $50.

If there is a cap placed on interest rates, then in fact the annual fees may well be increased.

Once again, for those people that never paid any interest, they are going to have the cost of the credit card go up.

Third, the merchants who accept the credit cards may well have an increase in their discount which means that the credit card issuers will charge the merchants more to process those billings.

Fourth, there may very well be a restriction of credit. Low-income individuals and moderate-income individuals will have their access to credit limited. And fifth, we may see an imposition of a processing fee for transactions.

Each and every purchase that is made with a credit card may have a processing fee.

For all these reasons we may see an increase in the other costs that go along with the credit card.

People have credit cards for a variety of reasons, only one of which is for the unsecured line of credit. During the debate we will go into more of these reasons.

Mr. LATTA. Mr. Speaker, I yield 3 minutes to the gentleman from Wisconsin [Mr. Roth].

Mr. ROTH. I thank the gentleman from Ohio for yielding.

Mr. Speaker, I am opposed to this rule. While I am all in favor of full disclosure, this present rule allows for an amendment to place a cap on interest rates which I am sure that we are all opposed to. I have served with the gentleman from Illinois and I know he is a very powerful, a very powerful Member of this body. But I did not realize until this morning just how powerful he was.

I compliment him for putting up a good fight. But this amendment is not in the best interests of our consumers or our country.

Placing a cap on credit card interest rates would not benefit the consumer.

An interest rate cap would severely restrict the amount of credit available and undoubtedly goad merchandise retailers into raising prices.

Those most dramatically affected would be the low-income consumers.

Increased prices and more stringent credit requirements could jeopardize the strength of the domestic trade sales at a critical juncture in our economy.

I realize it is easy to demagogue an issue like this, but 8 percent above prime is not exactly a cap. All it would do would be to force interest rates up to that point. So we would actually be hurting our consumers, not helping the consumer.

H.R. 515 would simply require credit card issuers to clearly print cardholder obligations. Disclosure would attain the same goal as the credit card caps by fostering increased competition between the credit card issuing institutions.

That is what we are looking for. We are looking for full disclosure so when people obtain and use a credit card they know the interest rates and what the conditions are.

Congress will erode a traditional right of the States if a credit card cap is imposed.

Historically States have regulated interest rates and charges. This past year 43 State legislatures held hearings and considered measures to regulate credit card rates and fees. Credit cards are a fact of life for the American consumer. Congress cannot tell the individuals which cards to use but we can make sure they have all the needed information on which to base an informed decision on which card to obtain.

Adoption of that amendment to limit credit card interest rates would undermine the very objective we are trying to achieve in this bill.

I urge my colleagues to vote for a reasonable disclosure requirements bill, H.R. 515, and oppose this unnecessary and damaging amendment because we want full disclosure but with this amendment this bill will not pass.

Therefore I ask the people to vote against this rule.

Mr. LATTA. Mr. Speaker, I yield 2 minutes to the gentleman from Arizona [Mr. Kyl].

Mr. KYL. I thank the gentleman for yielding.

Mr. Speaker, I rise in opposition to the resolution because of the waiver of the requirement for a quorum. A quorum as we know it is one of the most fundamental basic procedural safeguards of any deliberative body. This rule would set a bad precedent, despite the suggestion that this is the only time that we will ever do this and for sure we never want to do it again.

That is how some of these shortcuts get started, despite the fact that there may not be any bad intent here and there is simply a snafu that we have to deal with in this particular situation.

It is kind of like Lucy and the football. Every year Charlie Brown runs up to kick the football after Lucy has assured him that she will not pick it up this year and make him fall on his rear end.

But every year, having believed her, he runs up to kick the football and sure enough as soon as he gets there she picks it up and he falls down.

I think that is the problem with these kinds of waivers.

We say every time that what we are doing this time is a one-time only proposition and we never intend to do it again. But the fact of the matter is we do do it again. It is a great detriment.

We have waivers of budget resolutions even though we do not want to do that. We have waivers of legislation and appropriation bills, even though we really do not want to do that. We have waivers of points of order even though obviously we do not like to do that.

And now we are going to have a waiver of a quorum. It would be nice to believe that this is the only time it ever happens.

When I go to my town hall meeting in my district and I tell the people about how the House operates we talk about some of the most basic procedures in a deliberative body such as points of order. And I indicate to my constituents that the House of Representatives may waive points of order so that they cannot be raised, then my constituents just cannot believe it. I cannot wait to go back and explain to them that now we are waiving the requirement of a quorum. What procedural safeguards are there for a minority if we are not going to abide by our rules?

This will set a precedent. Anytime you bend the rules you set a precedent even if you hope that it will never happen again.

We hope we will never have to be able to say "We told you so," but I think the best way to prevent that result is to vote "no" on this rule.

□ 1335

Mr. LATTA. Mr. Speaker, I yield myself 2 minutes.

Mr. Speaker, I do so because of a statement that was made previously that there was some conflict in the Rules Committee as to whether or not there was a quorum present. I heard no such testimony. As a matter of fact, I have the committee hearing before me and have been going through it to find out whether or not there was anybody else besides the gentleman from Illinois who even raised the question, and I compliment the gentleman for making that admission before the Rules Committee.

I found no conflict in the record as to whether or not a quorum was present or was not present.

Mr. Speaker, I would be happy to yield to the gentleman from Texas if he could name somebody who testified before the Rules Committee that there was a quorum present when the gentleman from Illinois said there was not.

Mr. FROST. Mr. Speaker, will the gentleman yield?

Mr. LATTA. I yield to the gentleman from Texas.

Mr. FROST. Mr. Speaker first of all, let me be precise. Of course, I say to the gentleman from Ohio [Mr. LATTA] that there is a conflict between the language in the committee report which says a quorum was present and the testimony of the gentleman from Illinois [Mr. ANNUNZIO] on pages 19 and 20 of the record in which he said a quorum was not present. So there is a conflict.

I am looking through the testimony, and my recollection is that at some point there was an effort made to raise this issue with the gentleman from Rhode Island [Mr. ST GERMAIN], but I find nothing in the testimony where the gentleman from Rhode Island spoke to the question. So I may have not recalled that correctly. But clearly there is a conflict between the written committee report and the testimony of the gentleman from Illinois [Mr. ANNUNZIO] before the committee.

Mr. LATTA. Mr. Speaker, that is absolutely correct, there is a conflict between the written report and the testimony that the gentleman from Illinois [Mr. ANNUNZIO] gave before the committee. But as far as the gentleman from Rhode Island [Mr. ST GERMAIN] is concerned, he said nothing about that. He left the committee room shortly after his testimony.

I thought we ought to clear that up and point out that we did not have any conflict of witnesses, and nobody disputed the word of the gentleman from Illinois. We took him at his word.

Mr. Speaker, I yield 2 minutes to the gentleman from Texas [Mr. BARTLETT].

Mr. BARTLETT. Mr. speaker, I rise in opposition to the rule.

Several points in opposition to the rule have been made. One is that this is an amendment that should not be made in order at all, that the rules of the House should not be waived. Others have made the very valid point that it also waives the rule requiring a quorum in the committee for legislation to be passed.

But I want to bring the attention of the House to the fact that there is a worse, almost, obscure feature of this rule which has been used several times this year. Frankly, this feature of the rule is rare, it has not been done routinely in prior sessions, it is dangerous, it is irresponsible, and it is a heavy-handed provision. That is the provision in the rule which controls the debate or controls the time on the amendment offered by the gentleman from Illinois [Mr. ANNUNZIO].

The gentleman from Illinois has a valid amendment. It is one that I do not agree with, but he ought to have adequate time to debate the merits of his amendment, and the opponents ought to be able to debate their side as against the amendment.

The House normally operates in the amendment process under the 5-minute rule. I would say to my colleagues that the 5-minute rule works. It allows Members to share time, to yield to one another for time, it allows for a full debate, it is helpful in understanding information, it changes minds, and it brings out new information. The 5-minute rule causes amendments to be considered generally somewhere between 10 minutes of debate and 30 minutes of debate, sometimes an hour, sometimes 90 minutes or 2 hours, depending on the significance of the amendments.

But the Rules Committee has erred in this case in attempting to control the debate by a limit on time. What this rule does is this: It causes Members who do secure time to not yield to one another, to not share information, to not ask questions, and to not answer questions, because Members rightfully have to be concerned about getting their own statement on the record. That is not a debate, that is only speech muting, and the House is not well-served.

Mr. LATTA. Mr. Speaker, may I inquire, does the gentleman from Texas desire to yield further time?

Mr. FROST. Mr. Speaker, we reserve the customary right to close debate. We have one other request for time. We ask that the gentleman proceed now if he desires to yield further time.

Mr. LATTA. Mr. Speaker, I yield myself 2 minutes.

So that the record is clear on this matter of a quorum or no quorum, I would like to read from page 19 of the printed record of the Committee on Rules yesterday when we considered this. I am going to quote the gentleman from Illinois:

> At the time the vote occurred on my interest rate cap, a quorum was not present at the Banking Committee. Nor was a quorum present when the legislation was ultimately reported out of the Banking Committee.
>
> I could have insisted upon a quorum being present for both the vote on my amendment and final passage but, rather than subject the Members to a delay or possibly an additional meeting, I indicated that I would only ask for a voice vote and would not make a point of order that a quorum was not present.
>
> I further stated that I would offer my cap amendment on the floor.
>
> Members of the committee, including the chairman, thanked me for my cooperation. When the vote came on final passage in the committee, one committee Member asked about a roll call vote but was told by the chairman that it would not be possible since a quorum was not present.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. FROST. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the Rules Committee has attempted to be fair on this rule. The Annunzio amendment is a very controversial amendment. The Rules Committee has made that in order so that the entire House will have an opportunity to exercise its will on that amendment.

We have provided an hour for the debate. That is an adequate period of time for that amendment. It is an amendment that most Members are familiar with, and it will provide the time to crystallize the differences.

As to the question of a quorum raised quite properly by the other side of the aisle, as I mentioned in my previous statement, we acted out of an abundance of caution because, as the gentleman from Ohio [Mr. LATTA] read from the committee transcript, it is clear in the committee transcript that one of the leading proponents of this legislation testified before our committee that a quorum was not present. We could have ignored that. We could have simply referred to the committee report and not provided it at all.

I have a feeling that if we had done that, if we had ignored the testimony of the gentleman from Illinois [Mr. ANNUNZIO] and simply pointed to the language of the committee report that a quorum was present, the very clear testimony of the gentleman from Illinois [Mr. ANNUNZIO], then the Members on the other side of the aisle would have criticized us loud and long for having ignored testimony in our own committee. We chose to recognize that there was a conflict. We chose to waive the rule to accommodate this particular legislation.

I would agree with the gentleman on the other side that that is not something we should be doing in the normal course of business. We have pledged as a committee that we will not do this in the normal course of events, and that this will be done only very, very rarely. In this case there was a conflict. It was clear that the proper course of action was for us to resolve it as we did, and I urge the adoption of the resolution.

Mr. Speaker, I yield back the balance of my time, and I move the previous question on the resolution.

The previous question was ordered.

The **SPEAKER** pro tempore (Mr. Tauzin). The question is on the resolution.

The question was taken; and on a division (demanded by Mr. Walker) there were—ayes 13, noes 23.

Mr. **FROST.** Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The **SPEAKER** pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were —yeas 217, nays 198, not voting 18, as follows:

[Roll No. 380]

YEAS—217

Ackerman
Akaka
Alexander
Anderson
Andrews
Annunzio
Applegate
Aspin
Atkins
Bates
Beilenson
Bennett
Berman
Bevill
Bilbray
Boggs
Boland
Bonior
Bonker
Borski
Boucher
Boxer
Brennan
Brown (CA)
Bruce
Bryant
Bustamante
Byron
Campbell
Cardin
Carper
Carr
Chapman
Chappell
Clarke
Clay
Coelho
Coleman (TX)
Collins
Conyers
Cooper
Coyne
Daniel
de la Garza
DeFazio
Dellums
Dingell
Dixon
Donnelly
Dorgan (ND)
Dowdy
Downey
Durbin
Dwyer
Dymally
Dyson
Early
Eckart
Edwards (CA)
Espy
Evans
Fascell
Fazio
Feighan
Flake
Florio
Foglietta
Foley
Ford (MI)
Ford (TN)
Frank
Frost
Garcia
Gaydos
Gejdenson
Gibbons
Glickman
Gonzalez
Gordon
Grant
Gray (PA)
Guarini
Hall (OH)
Hamilton
Hatcher
Hawkins
Hayes (IL)
Hayes (LA)
Hefner
Hertel
Hochbrueckner
Howard
Hoyer
Hubbard
Hughes
Jacobs
Jones (NC)
Jones (TN)
Jontz
Kanjorski
Kaptur
Kastenmeier
Kennedy
Kennelly
Kildee
Kleczka
Kolter
Kostmayer
LaFalce
Lancaster
Lantos
Lehman (CA)
Lehman (FL)
Leland
Levin (MI)
Levine (CA)
Lewis (GA)
Lipinski
Lloyd
Lowry (WA)
Luken, Thomas
MacKay
Manton
Markey
Martinez
Matsui
Mavroules
McCloskey
McCurdy
McHugh
McMillen (MD)
Mfume
Mica
Miller (CA)
Mineta
Moakley
Mollohan
Montgomery
Moody
Morrison (CT)
Mrazek
Murphy
Murtha
Nagle
Natcher
Nelson
Nowak
Oakar
Oberstar
Obey
Olin
Ortiz
Owens (NY)
Owens (UT)
Patterson
Pease
Pelosi
Penny
Pepper
Perkins
Pickett
Pickle
Price (IL)
Price (NC)
Rahall
Rangel
Richardson
Rodino
Roe
Rose
Rostenkowski
Roybal
Russo
Sabo
Savage
Sawyer
Scheuer
Schroeder
Schumer
Sharp
Sikorski
Skaggs
Slattery
Slaughter (NY)
Smith (FL)
Smith (IA)
Solarz
St Germain
Staggers
Stark
Stokes
Stratton
Studds
Swift
Synar
Thomas (GA)
Torres
Torricelli
Towns
Traficant
Traxler
Udall
Valentine
Vento
Visclosky
Volkmer
Walgren
Waxman
Weiss
Wheat
Whitten
Williams
Wise
Wolpe
Wyden
Yates
Yatron

NAYS—198

Archer
Armey
AuCoin
Badham
Baker
Ballenger
Barnard
Bartlett
Barton
Bateman
Bentley
Bereuter
Bilirakis
Bliley
Boehlert
Bosco
Broomfield
Brown (CO)
Buechner
Bunning
Burton
Callahan
Chandler
Cheney
Clinger
Coats
Coble
Coleman (MO)
Combest
Conte
Coughlin
Courter
Craig
Crane
Dannemeyer
Darden
Daub
Davis (IL)
Davis (MI)
DeLay
Derrick
DeWine
Dickinson
Dicks
DioGuardi
Dreier
Duncan
Edwards (OK)
Emerson
English
Erdreich
Fawell
Fields
Fish
Flippo
Frenzel
Gallegly
Gallo
Gekas
Gingrich
Goodling
Gradison
Grandy
Green
Gregg
Gunderson
Hall (TX)
Hammerschmidt
Hansen
Harris
Hastert
Hefley
Henry
Herger
Hiler
Holloway
Hopkins
Horton
Houghton
Huckaby
Hunter
Hutto
Hyde
Inhofe
Ireland
Jeffords
Jenkins
Johnson (CT)
Johnson (SD)
Kasich
Kolbe
Konnyu
Kyl
Lagomarsino
Latta
Leach (IA)
Leath (TX)
Lent
Lewis (CA)
Lewis (FL)
Lightfoot
Livingston
Lott
Lowery (CA)
Lujan
Lukens, Donald
Lungren
Mack
Madigan
Marlenee
Martin (IL)
Martin (NY)
Mazzoli
McCandless
McCollum
McDade
McEwen
McGrath
McMillan (NC)
Meyers
Michel
Miller (OH)
Miller (WA)
Molinari
Moorhead
Morella
Morrison (WA)
Myers
Neal
Nichols
Nielson
Oxley
Packard
Parris
Pashayan
Petri
Porter
Pursell
Quillen
Ravenel
Ray
Regula
Rhodes
Rinaldo
Ritter
Roberts
Robinson
Rogers
Roth
Roukema
Rowland (CT)
Rowland (GA)
Saiki
Saxton
Schaefer
Schneider
Schuette
Sensenbrenner
Shaw
Shays
Shumway
Shuster
Sisisky
Skeen
Skelton
Slaughter (VA)
Smith (NE)
Smith (NJ)
Smith (TX)
Smith, Denny (OR)
Smith, Robert (NH)
Snowe
Solomon
Spratt
Stallings
Stangeland
Stenholm
Stump
Sundquist
Sweeney
Swindall
Tallon
Tauke
Tauzin
Taylor
Upton
Vander Jagt
Vucanovich
Walker
Watkins
Weber
Weldon
Whittaker
Wilson
Wolf
Wortley
Wylie
Young (FL)

NOT VOTING—18

Anthony
Biaggi
Boulter
Brooks
Crockett
Dornan (CA)
Gephardt
Gilman
Gray (IL)
Kemp
Panetta
Ridge
Roemer
Schulze
Smith, Robert (OR)
Spence
Thomas (CA)
Young (AK)

□ 1350

The Clerk announced the following pairs:

On this vote:

Mr. Gray of Illinois for, with Mr. Thomas of California against.

Mr. Panetta for, with Mr. Ridge against.

Messrs. NICHOLS, HARRIS, HUNTER, and LENT, Mrs. MEYERS of Kansas, and Mr. ENGLISH changed their votes from "yea" to "nay."

Mrs. BOGGS changed her vote from "nay" to "yea."

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

JOINT REFERRAL OF H.R. 3413 TO COMMITTEE ON GOVERNMENT OPERATIONS AND COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION

Mr. **HOWARD.** Mr. Speaker, I ask unanimous consent that the bill H.R. 3413 to require the Administrator of General Services to convey certain property to the Museum of the American Indian be re-referred jointly to the Committee on Government Operations and the Committee on Public Works and Transportation.

The **SPEAKER** pro tempore (Mr. Tauzin). Is there objection to the request of the gentleman from New Jersey?

There was no objection.

FAIR CREDIT AND CHARGE CARD DISCLOSURE ACT OF 1987

The **SPEAKER** pro tempore. Pursuant to House Resolution 292 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 515.

□ 1405

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 515) to provide for more detailed and uniform disclosure by credit card issuers with respect to information on interest rates and other fees which may be incurred by consumers through the use of any credit card, with Mr. Skelton in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the first reading of the bill is dispensed with.

Under the rule, the gentleman from Rhode Island [Mr. St Germain] will be recognized for 30 minutes and the gentleman from Indiana [Mr. Hiler] will be recognized for 30 minutes.

The Chair recognizes the gentleman from Rhode Island [Mr. St Germain].

Mr. ST GERMAIN. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, today we are considering H.R. 515, the Full Credit and Charge Card Disclosure Act of 1987. This legislation represents a continuation of last year's efforts when a similar bill was introduced, and later included in the Truth in Savings Act. That act, as amended, was eventually approved by the full House of Representatives last October by voice vote.

Starting in 1980, with the enactment of the Depository Institutions Deregulation and Monetary Control Act, consumers have been experiencing a number of choices from financial institutions as to where to place their deposits. The deregulation of interest rates on deposits at financial institutions requires the clearest possible disclosure to consumers in order to achieve free market discipline.

Given the equally wide variety of credit card offerings faced by consumers today, the need for such disclosure in the credit card area is just as compelling. Consumers are currently being beseiged with a smorgasbord of proposals, just as confusing as the array of deposit and savings offerings which have accompanied the deregulation of interest rates on those instruments.

Not only does free market discipline suggest the need for such disclosure, but simple equity and fairness require that consumers be given the clearest and simplest information to make informed choices on their credit cards. The ability to obtain information on the fees and interest rates on these cards is what is needed to achieve these goals and which the committee believes H.R. 515 accomplishes.

Presently, the Truth in Lending Act requires credit card issuers to provide information concerning the annual percentage rate, the annual fee, the grace period, and other terms only upon the consumer's receipt of the card. Testimony at Banking Committee hearings in 1987 emphasized that such relevant information should be available to consumers at the time they select among competing credit cards. This information will enable consumers to more effectively "shop" among credit and charge card accounts and, thus, increase the competition among card issuers.

H.R. 515 reflects the committee's efforts to provide much-needed information to consumers on the terms of their credit cards during the application process.

□ 1405

Mr. Chairman, I reserve the balance of my time.

Mr. HILER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, on August 6, 1987, the House Banking Committee unanimously approved by voice vote and without amendments, H.R. 515, the Fair Credit and Charge Card Disclosure Act. As approved, H.R. 515 requires card issuers to disclose at the time of application, the annual percentage rate, the annual fee and the grace period.

This bill should be supported as it was reported out of the full committee. The legislation provides greater disclosure of credit card information to enable consumers to compare and select credit cards that meet their personal needs. Additionally, the bill is expected to stimulate further competition between card issuers without imposing price controls.

For purposes of the Members, I would like to outline the different provisions of the bill. Section 1 of the bill states that the short title of the act is the Fair Credit and Charge Card Disclosure Act of 1987.

Section 2(a) of the bill amends section 127 of the Truth in Lending Act by adding a new subsection (c) creating additional disclosure requirements for credit card applications and solicitations. At the time of solicitation a credit card issuer would have to disclose the annual percentage rate he will be charging on outstanding balances, the annual fee or other fees imposed for the availability of the card account, and the grace period, that is the period within which a consumer may repay the credit extended without incurring a finance charge.

Section 2(a) also prescribes special rules for telephone, magazine and "take-one" solicitations as well as special disclosure rules for charge card applications and solicitations.

Section 2(b) of the act amends section 122 of the Truth in Lending Act to provide that the disclosures required by section 2(a) of the act be disclosed in tabular form.

Section 2(c) of the act amends section 111 of the Truth in Lending Act so that the provisions of the Fair Credit and Charge Card Disclosure Act shall supercede any provision of State law relating to the disclosure of information in any credit card application or solicitation.

The disclosure provisions of this bill that I have just outlined are desirable for several reasons. First, they may enhance competition among credit and charge card providers, allowing the marketplace to operate more efficiently and resulting in lower interest rates and other more favorable terms. Second, clear disclosure of key terms helps consumers to understand better what obligations they will incur under various credit card programs. Finally, this advance information will allow consumers to make better-informed comparisons among plans without the need to first complete the application process.

Later this afternoon, the House will be considering an amendment to H.R. 515 by Mr. Annunzio to impose an interest rate cap on credit cards. I oppose the interest rate cap amendment. In reporting out H.R. 515 the full Banking Committee, with bipartisan support, rejected this approach. I joined with 33 of my colleagues on the Banking Committee from both sides of the aisle in a letter opposing Mr. Annunzio's interest rate cap. Overwhelming evidence indicates that a cap on credit card interest rates will restrict overall credit—particularly credit to low- and medium-income consumers, increase annual fees, increase minimum payments, lower credit limits, limit grace periods and decrease consumer spending. I urge my colleagues to reject this amendment as it will cause great harm to the very consumers it is purported to help.

Mr. Chairman, I would like to submit for the Record four letters I have received from agency officials on H.R. 515. These are from Alan Greenspan, Chairman of the Federal Reserve Board; Robert Clarke, Comptroller of the Currency; M. Danny Wall, Chairman of the Federal Home Loan Bank Board; and L. William Seidman, Chairman of the Federal Deposit Insurance Corporation. All four of these financial institution regulatory agencies who have jurisdiction over truth-in-lending enforcement share the views of the majority of the Banking Committee in supporting disclosure legislation and opposing the imposition of any ceiling or cap on credit card interest rates. The agencies concluded that the credit card market is highly competitive, and that the imposition of interest rate ceilings could result in a decrease in credit availability—particularly to low-income individuals and families. The agencies also determined that such rate ceilings could result in an increase in other costs associated with credit cards through a rise in fees or the elimination of the grace period currently enjoyed by almost half of all cardholders. The regulators state that an interest rate cap would harm the very consumers it is designed to protect.

In conclusion, Mr. Chairman, H.R. 515 should be approved without amendments. This will benefit consumers by providing more information to compare open-ended credit plans so as to satisfy their individual financial needs.

Federal Reserve System,
Washington, DC, October 23, 1987.
Hon. John P. Hiler,
House of Representatives,
Washington, DC.

Dear Congressman: Thank you for your letter of October 1, requesting my opinion on credit card disclosure legislation currently pending in the Congress. Specifically, you asked for my views on H.R. 515, which was recently reported out of the House Banking Committee, and in particular on any provision imposing a cap on credit card interest rates which might be added to the bill during consideration by the full House.

As you know, Governor Martha Seger submitted testimony on behalf of the board on the subject of credit card disclosures and rate ceilings before the Subcommittee on Consumer Affairs and Coinage on March 18, 1987. The testimony stated the board's longstanding opposition to legislation imposing ceilings on credit card interest rates. I am in full agreement with that position.

Our opposition to a legislated rate cap is based on several concerns. The board believes that credit, including that extended under credit card plans, is allocated most fairly and efficiently where interest rates are not legislatively constrained. Imposing a legislated ceiling is likely to have undesirable and unpredictable consequences. For example, it would be likely to reduce the amount of credit available, especially to less affluent consumers who may have fewer alternative credit sources available.

A Federal cap on rates might lead credit card issuers to offset decreases in their finance charge income by raising revenues in other ways. Card issuers might impose or increase annual fees or late payment fees; they might charge for each transaction, or eliminate grace periods. Moreover, card issuers may seek to enhance revenues by charging higher merchant discount fees. Retailers probably would attempt to pass on these higher charges to all consumers, including those without credit cards, to cover their increased costs. Consequently, the board believes that the costs to the public of constraining credit card rates through Federal regulation may well outweigh any intended benefits to consumers.

I hope these comments will be helpful in your deliberations.

Sincerely,

Alan Greenspan,
Chairman.

Comptroller of the Currency,
Administrator of National Banks,
Washington, DC, October 20, 1987.
Hon. John P. Hiler,
Ranking Minority Member, Subcommittee on Consumer Affairs and Coinage, Committee on Banking, Finance and Urban Affairs, House of Representatives, Washington, DC.

Dear Mr. Hiler: We appreciate the opportunity to comment on H.R. 515, the "Fair Credit and Charge Card Disclosure Act of 1987," prior to its consideration by the House. As reported by the Committee on Banking, Finance and Urban Affairs, H.R. 515 would amend the Truth-in-Lending Act to require specified disclosures to prospective credit and charge card holders at an early stage in the decision process. Unlike the subcommittee version of the bill, it would not impose a cap on interest rates charged on account balances.

The OCC supports early and uniform disclosure to consumers of the terms and conditions applicable to credit and charge card accounts. Also, we believe that in order to avoid competitive inequalities, the disclosure provisions should apply to all issuers. By requiring disclosure by all credit and charge card issuers at the time of application or solicitation, H.R. 515 accomplishes these goals.

These disclosure provisions are desirable for several reasons. First, they may enhance competition among credit and charge card providers, allowing the marketplace to operate more efficiently and resulting in lower interest rates and other more favorable terms. Second, clear disclosure of key terms helps consumers to understand better what obligations they will incur under various credit card programs. Finally, this advance information will allow consumers to make better-informed comparisons among plans without the need to first complete the application process.

While we believe that it is appropriate to include in the legislation the terms and conditions that must be disclosed in the credit and charge card applications and solicitations, we have concerns about mandatory provisions regarding the disclosure format. As long as the basic required elements and terms are clear, we see no reason to restrict issuers to a specific format for informing customers. Many issuers provide excellent and more detailed consumer information which enhances their competitive edge. Also, format requirements may mean additional expense for issuers already providing early disclosure. Furthermore, since the market changes, the means for pricing and marketing cards may change. Flexibility should rest with the issuers and regulators to adjust formats to address these changes.

Although we support the disclosure provisions of H.R. 515, we oppose any attempt to impose a ceiling on the interest rate that could be charged on credit card balances. First, we believe that the market for credit card services is competitive. The pricing of those services, which in addition to credit includes payment services and in many cases interest-free grace periods, does respond to market forces. Some issuers are attempting to compete by lowering their credit card interest rates. However, many consumers seem to be more responsive to other product features, such as rebate programs, travel insurance, credit card registration services, and the availability of automatic teller machines and checks for cash advances, in choosing a credit card.

Second, if pricing options are limited, lenders may resort to nonprice rationing of credit. One way to do this would be to apply more stringent credit standards when evaluating applications for credit. That is likely to have a disproportionately adverse effect on certain customers, such as low-income individuals and families, seeking to obtain credit cards.

Finally, setting a ceiling on interest rates is unlikely to be effective in controlling the total price credit card users pay for the services a card provides. Just as credit is but one of those services, the interest rate is but one cost component. As a consequence of an interest rate ceiling, card issuers would be likely to increase other cost components. That could be done, for example, by raising fees or eliminating interest-free grace periods.

In summary, disclosure has long been recognized as an effective and efficient regulatory tool. Thus, we support the early disclosure approach of H.R. 515 as an aid to consumers in making comparisons when shopping for credit and charge cards. We oppose the imposition of interest rate caps as a means of reducing the cost of credit cards to the consumer.

Thank you for providing me the opportunity to share our views on these matters.

The Office of Management and Budget advises that there is no objection to the presentation of this report from the standpoint of the administration's program.

Sincerely,

Robert L. Clarke,
Comptroller of the Currency.

Federal Deposit Insurance Corp.,
Washington, DC, October 9, 1987.
Hon. John P. Hiler,
House of Representatives,
Washington, DC.

Dear Mr. Hiler: Thank you for your letter of October 1, 1987 requesting comments from the Federal Deposit Insurance Corporation on H.R. 515, the Fair Credit and Charge Card Disclosure Act of 1987.

We fully support this legislation as reported by the Committee on Banking, Finance and Urban Affairs. As to the imposition of a cap on credit card interest, we believe that the market is already highly competitive and becoming more so every day. The disclosure provisions of H.R. 515, if enacted into law, should promote further competition. Consequently, we would be opposed to a cap on credit card interest rates as both unsound in principal and unnecessary.

Thank you for the opportunity to express our views on this legislation.

With best wishes.

Sincerely,

L. William Seidman,
Chairman.

Federal Home Loan Bank Board,
Washington, DC, October 26, 1987.
Hon. John P. Hiler,
Committee on Banking, Finance and Urban Affairs,
House of Representatives,
Washington, DC.

Dear Congressman Hiler: Thank you for your letter of October 1, 1987, asking for our views on the Fair Credit and Charge Card Disclosure Act of 1987 (H.R. 515, 100th Cong., 1st Sess) (the "Disclosure Act").

We are in favor of Federal legislative programs that establish a uniform system for providing consumers with essential information about financial products offered by all financial service providers, as we believe that informed consumers will provide for a more efficient marketplace. The version of the Disclosure Act referred to the Committee of the Whole House on September 30, 1987, would amend the Truth in Lending Act to require that all credit-card issuers disclose in a uniform manner, at the time of application (for instance in solicitation brochures), the following information: (1) the annual percentage rate or means for determining the rate if it is variable, (2) any annual or other fee imposed for card availability, and (3) the date by which, or period in which, a consumer can avoid a finance charge by repaying any credit extended in connection with the card (grace period). Because the Disclosure Act, as reported on September 30, 1987, simply amends the Truth in Lending Act to provide essential information to consumers in a uniform manner at the time the consumers apply for charge-card credit, we are in favor of the Disclosure Act.

Your letter mentions, however, that the Disclosure Act may be amended to impose a cap on credit-card interest rates. We would be opposed to any such amendment. In our view, interest rates should be regulated by an efficient informed marketplace and not by means of state or Federal Government intervention. A competitive marketplace will provide for charge-card interest rates that are acceptable to consumers and that insure a fair margin of profit for credit-card issuers such as thrift institutions and banks.

If there were artificially imposed caps on interest rates it is likely that there would be times when credit-card issuers would be faced with the dilemma of having the interest income on their credit card operations be less than their related expenses (the sum of their cost of funds and operating expenses). During such times even the most well-run credit-card issuers would be forced to incur operating losses with respect to their credit-card operations. The credit-card issuer (whether a thrift, bank, or other financial service provider) would not willingly absorb such losses, but rather would attempt to cover such losses by increasing the cost of other services provided to consumers. Those credit-card issuers unable to so cover the losses could be placed in financial jeopardy. If the financially distressed credit-card issuer were a thrift insured by the Federal Savings and Loan Insurance Corporation, the Federal Savings and Loan Insurance Corporation could end up having to ultimately absorb the losses, as there could be situations where the losses suffered by the thrift place it into insolvency or an unsafe or unsound condition.

Thank you for requesting us to express our views on these matters.

Sincerely,

M. Danny Wall,
Chairman.

Mr. HILER. Mr. Chairman, I yield 5 minutes to the gentleman from Ohio [Mr. Wylie], the ranking member on the full Committee on Banking, Finance and Urban Affairs.

Mr. WYLIE. Mr. Chairman, I thank the gentleman from Indiana [Mr. Hiler] for yielding me this time.

I want to commend the gentleman for his excellent and hard work on this legislation.

Mr. Chairman, I rise in strong support of H.R. 515, the Fair Credit and Charge Card Disclosure Act of 1987. A Federal Reserve Board study estimated that in 1983, 62 percent of all U.S. families used some type of a credit card. In the $25,000 to $30,000 income bracket, this number rises to almost 4 out of 5 U.S. Families. Therefore, this bill will directly assist a majority of those who elected us.

The need for this bill is rooted in the astonishing array of credit cards plans. Some cards offer rebates, others charge interest from the day of purchase, and some cards are charge cards only and do not offer the consumer the opportunity to pay the balance off in installments. The massive array of credit card pricing schemes, the heavy volume of solicitations and the increase of new card issuers into the market demonstrates that the credit card industry is very diversified and competitive. I believe consumers are entitled to receive the information necessary to make informed choices on the wide selection of credit cards.

Enactment of H.R. 515 will ensure that consumers receive this information in a uniform and understandable format.

The bill's purpose is to give consumers timely and understandable information in order to select a credit or charge card. Credit card issuers would be required to disclose at the time of solicitation, and I emphasize that point, to disclose at the time of solicitation annual percentage rate, any fees, and the grace period. By providing the key terms concerning a credit card program in such a uniformed manner, consumers will be able to comparison shop for the card that best suits their needs.

The constructive and uniform disclosure required by this legislation will allow consumers to comparison shop without confusion for the best rate, terms, and conditions on open-ended credit plans.

□ 1415

The important and constructive contribution of this bill would, in my judgment, be undermined by a proposed amendment to cap interest rates on credit cards. My distinguished colleague and good friend, the gentleman from Illinois [Mr. Annunzio], plans to offer an amendment to H.R. 515 that would impose an interest rate cap of 8 percentage points above the 1-year Treasury bill rate on all credit cards. Disclosure will help consumers, but I am opposed to a mandated interest rate cap because I feel that such a cap would, in the end, be harmful to many, many consumers.

I think my vote against a rate cap is in the best interest of all consumers. I am concerned that history will repeat itself in this area. The Federal Reserve study, which I referred to earlier, states that following the economic disruption of the late 1970's and early 1980's "* * * credit card issuers responded to falling profits by adopting much more selective credit standards in an effort to control costs. Also, many credit card accounts were terminated because of delinquencies and payment defaults."

Credit allocation and price fixing have never worked in our free market economy. If we now impose rate limitations on credit card issuers, the result will be that millions of consumers, primarily lower income consumers who may be regarded as less creditworthy, will be denied credit cards as the card issuers become more and more selective. Is this the result we want?

While some banks and retailers are still charging too high interest rates, the trend in rates is definitely going down as consumers become aware of differences in rates. The marketplace is working efficiently without intervention.

Yesterday's cap rate would have been 15.5 percent based on the gentleman's amendment of 8 percent above the Treasury borrowing rate. The Federal Credit Union right here in the Rayburn Building has a VISA card for 12.9 percent. Several banks have credit cards with interest rates charging less than 15.5 percent.

But there is also a very practical consideration facing us. Legislation requires action by the House and the Senate, and I believe that if we adopt an interest rate cap amendment we can say goodbye to the excellent disclosure language contained in H.R. 515. In short, the amendment would probably kill the bill in the Senate. This would definitely not be a treat for consumers this Halloween. This would be an ironic O. Henry twist to an excellent measure designed to help consumers.

Therefore, I urge my colleagues to support full disclosure, support consumers and vote "no" on the Annunzio rate cap amendment.

Mr. ST GERMAIN. Mr. Chairman, I yield 6 minutes to the distinguished gentleman from Illinois [Mr. Annunzio], a member of the committee.

Mr. ANNUNZIO. Mr. Chairman, as we begin debate on H.R. 515 I would like to warn Members that they are going to see more scare tactics thrown at them during this debate than you would find in a dusk-to-dawn marathon of horror movies. You will hear stories quoted as fact that are pure fiction. All of these statements will be directed at one issue, to try to get Members to vote against the credit card cap amendment that I will offer.

Let me set the record straight about some of the smokescreens that will be thrown at you today. You will be told that an interest rate cap will hurt poor people and that they will lose their credit cards. That argument assumes that banks are handing out credit cards to poor people, and that is not the case. The 1986 Federal Reserve study of credit cards showed that fewer than one family in eight with an income under $10,000 have a bank credit card. Less than 1 family in 13 in that group have a gasoline credit card.

When Connecticut passed a rate cap bill a few years ago, those few low income families that did have credit cards did not lose their credit cards as a result of the cap, so there is no evidence that the poor will be penalized because of a rate cap.

There is a group that hopefully will suffer because of a rate cap, and that will be good news to consumers who pay their bills on time. Banks keep their credit card rates high for good reason. By keeping the rates high they can flood the market with credit card applications and they can absorb substantial losses because of people who pay their credit card bills on time. That means that people who pay their bills on time are forced to pay high interest rates to offset the losses suffered by the banks because of people who do not pay their credit card bills. If the banks would do a better job of handing out credit cards, then there would be no need for high interest rates.

Last year the banking industry made a profit of $5 billion on credit cards. The industry made this profit even though it had huge losses because of people not paying their bills. Citibank, for example, lost a million dollars a day on its credit card business. Quite clearly, those Americans who faithfully sent in their credit card payments on time every month are subsidizing the deadbeats who refuse to pay their bills. And the banks make a profit because they kept the interest rates high to offset the losses from the deadbeats.

The national average on credit card rates is nearly 18 percent. But even that is not enough for some of the big card issuers who want to grab off even more profit. New York City's Chemical Bank charges 19.5 percent, and 19.8 percent is charged by Bank One, Marine Midland, First Chicago, Bank of America, and Citibank, which you remember lost $1 million a day on credit card operations.

If these rates are not high enough, the rate at the sixth largest bank, Wells Fargo, is 20 percent. It is one thing for banks to charge 18 percent on credit cards when the prime rate is 15 or 20 percent, but it is nothing more than plastic loansharking to charge 18 percent when the prime rate is only 9 percent.

You will be told that competition among banks will bring down interest rates on credit cards. If there truly was competition in the credit card marketplace a rate cap would not be necessary, but unfortunately, there is little competition. The 10 largest bank card issuers in this country control 34 percent of the market. And out of 3,500 card issuers, the 100 largest account for 70 percent of the cards.

There is about as much competition in credit card rates as there would be in a wrestling match between Gorilla Monsoon and Tiny Tim.

You will be told that if a credit card gap is in place that everyone will raise their rates up to the ceiling. That won't happen. Those banks that are above the ceiling will be forced to come down to the ceiling, and those few card issuers who are below it will use the ceiling as a marketing tool to show how low their rates are. In fact, I predict a ceiling will set off a rate war on credit cards with everyone trying to show how far below the ceiling they can go.

If you think that statement is not true, consider what happened in Connecticut when it considered a 15-percent ceiling. A credit card rate war did happen and many issuers in Connecticut are now charging well below the 15-percent ceiling.

You will be told that a rate cap will hurt consumers. Well, I must tell you that is the most ridiculous argument. If a rate cap would hurt consumers, why is it that every major consumer group in the country supports a rate cap? Why is it that I have received thousands of letters from consumers supporting a rate cap, and not a single letter from a consumer against a rate cap? The consumers speak for themselves. They want a rate cap.

You will be told that this is not a good time to put a rate cap on credit card interest rates because of the stock market situation. I feel that a rate cap would actually help the business climate in this industry, and particularly the stock market. If consumers knew that Congress was going to take a firm stand against high interest rates, they would be far more willing to move back into the stock market.

You will be told that a rate cap amendment is Federal rate fixing. I cannot understand why some Members are opposed to Federal rate fixing but they have no problem when the major banks in the country engage in price fixing by keeping the credit card interest rates artificially high. In fact, one of the authors of the bill that we are debating today, the gentleman from New York [Mr. SCHUMER] was so concerned about price fixing that in March of this year he and I wrote to the Justice Department asking for an investigation of price fixing among credit card banks.

More than 2 years ago I held hearings on credit card interest rates. I was told at that time that if I waited for a little while rates would drop on their own. Well, I have waited for the industry to lower rates. But still the rates are high. I have waited and I have waited. But today I will wait no longer. I will offer an amendment to cap credit card interest rates at 8 points above the yield on 1-year Treasury securities. If my amendment were in effect today, the maximum rate of interest that could be charged on a credit card would be 15.03 percent. Since banks are paying only 6 percent for their money, if they cannot make a profit by relending it by more than 15 percent, then they are in the wrong business.

Without congressional action the rates will not be cut. Before banks will cut credit card interest rates across the board, you will see Hulk Hogan voted Miss America.

When it comes time to vote on my amendment, I ask that you remember one thing, there are 100 million Americans who hold credit cards. The organizations that represent these people support my amendment. The consumers have listened to all the arguments and all the rhetoric. They have listened to all the promises. They have gotten nowhere. They are now turning to the House of the People to protect them from these high rates. Your choice is simple, will you vote to stop high interest rates or will you vote to allow the credit card issuers to continue to gouge your constituents?

I am voting for the American people. I urge the Members of this body to vote the same way.

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I want to tell you in conclusion, that disclosure will not reduce interest rates one iota. Our jails today are filled with people who have been found guilty of loan sharking. Well, I am afraid there are many, many people that are guilty of loan sharking that are not behind bars.

Mr. HILER. Mr. Chairman, I yield 2 minutes to the gentlewoman from New Jersey [Mrs. ROUKEMA].

Mrs. ROUKEMA. Mr. Chairman, I rise today in strong support of H.R. 515, the credit card disclosure bill. This bill acknowledges the basic consumers' right to make an informed decision.

The disclosure requirements in this bill provide consumers the information necessary to make that choice.

For credit cards, the three key pieces of information are the interest rate, the annual fee, and the grace period. Already we have seen dramatic downward shifts in interest rates as publicity surrounding institutions which offer extremely low interest rates has soared.

The disclosure requirements in this bill are basic consumer safeguards. But, it is important to remember that the language in this bill has been carefully crafted so as not to make it unnecessarily complicated for banks and other financial institutions to readily comply with the provisions.

I think there is basic agreement on the main provisions of this bill. However, I also want to address the amendment which will be offered by my distinguished colleague from Illinois, Mr. ANNUNZIO. There is no one on the committee for whom I have more respect and I believe his goal of helping consumers is a laudable one, I strongly believe that his amendment to cap interest rates is ill advised and may have unintended consequences.

A wise man once said that for every complicated problem there is an answer which is both simple and direct and wrong. Let me suggest that an interest rate cap fits that analogy.

First, it is important to remember that there are three things that affect the cost of a credit card: interest rates, annual fees, and grace periods. Depending on a consumers' spending habits, one or the other of these factors may be more important than the others.

For example, a consumer who carries a balance over every month will seek low interest rates but may not mind a shortened or eliminated grace period. A consumer who pays the balance in full each month, and who therefore incurs no interest charges, may not be as concerned with the interest rates as long as the annual fee is low and there is a reasonable grace period.

It is important to note that because this amendment does not limit annual fees, there is nothing which would preclude a bank from doubling or tripling their annual fees, especially if an interest rate cap is imposed.

I fail to see how it is going to help consumers if one of the costs of credit is kept arbitrarily low while allowing other charges to rise without limit. At best some consumers would come out even from the change, but those consumers who do not incur interest from month to month will end up paying more for their cards as the annual fees increase.

Supporters of this amendment claim they are trying to help consumers by putting a cap on the cost of credit cards. Although we would all like to assist the consumer in making prudent credit choices, and which is why I am supporting this disclosure bill, we must face the facts that the consumers' cost of credit is not solely a matter of interest rates. Smart consumers know that there are many other factors which can be even more important.

Mr. Chairman, I strongly support this bill and oppose the Annunzio amendment. It does limit the choices that consumers have to shop wisely for their credit cards. It does not limit any of the other costs of credit cards such as the annual fee. And, finally, the amendment will restrict credit when such an action may have disastrous effects over the long term.

Mr. ST GERMAIN. Mr. Chairman, I yield 4 minutes to the gentleman from Georgia [Mr. Barnard], a member of the committee.

Mr. BARNARD. Mr. Chairman, I rise in strong support of this legislation. It is the result of much hard work and compromise on the part of industry groups, consumer groups, both majority and minority members, and passed unanimously in the Banking Committee.

It is a bill requiring the fair, simple, and uniform disclosure of the basic terms of credit cards, which are the Nation's third medium of exchange after checks and cash.

Disclosure is fundamental to a competitive economy. Credit is a resource or a commodity like any other and if the price and other relevant terms are disclosed in advance of the transaction, consumers can obtain the best product at the lowest price. When you go to purchase a TV, you look at the price and other features. Among several TV's of the same size, you may choose the cheapest with fewer features or you may pay more for a feature like remote control even though picture size and quality are the same. You also may be able to purchase that same TV cheaper at another store or you may be willing to pay more at a store that delivers or is close to home. Its your choice, and as long as you have the necessary information you can make the optimum decision for you.

The situation is no different for credit cards. Some cards offer a lower rate but no grace period. Others offer features like a grace period, merchandise rebates, travel services, and the like. If these terms are disclosed conspicuously in the same manner and location according to the type of application or solicitation, as provided by H.R. 515, then consumers can choose the card and combination of terms best for them.

Why did the Committee on Banking choose disclosure as the way to protect consumers and promote competition over other alternatives such as an interest rate cap? Let's return to the TV example. Suppose prices and features weren't always fully disclosed and Members of Congress were concerned that people were paying too much for TV's and decided to set a maximum price for TV's of certain percentage markup over the price of picture tubes. What results would follow? Manufacturers might produce only the most expensive models for a limited clientele or they might start charging their dealers more, reducing the dealer's margin and forcing the dealer to do things like charge more for delivery or service and so on. The results of a price cap would be absurd and no Member of Congress would seriously consider such a measure, especially when, from our own day-to-day experience, we know that disclosure would do the job of allowing consumers to choose the best TV with the features and price best for them. Yet we are being asked today to consider a price control on credit cards.

The stringent disclosure provisions of H.R. 515 will work and deserve a chance to prove their worth. Price controls, as we have seen time and again never work and only undermine the freedom of choice and competition that are the basis of our economic and political system.

Mr. HILER. Mr. Chairman, I yield 3 minutes to the gentleman from California [Mr. Shumway].

Mr. SHUMWAY. Mr. Chairman, I thank the gentleman from Indiana for yielding time to me.

Mr. Chairman, this is a good piece of legislation and I hope all Members of this body will be prepared to support it when we vote on it a little later this afternoon.

Mr. Chairman, we have heard of the many benefits accruing to consumers by the adoption of credit card disclosure as contemplated in H.R. 515. This legislation will not only allow for better informed choices and greater selection of consumer credit by the people of this country, but will simultaneously eliminate confusion and the opportunities for trickery and deceptive advertising on the part of certain financial institutions. The bill is a good one, and should be adopted by this body.

However, the rate cap amendment as proposed by Mr. Annunzio is extremely harmful, and promises to be extremely deleterious to consumers while masquerading behind the facade of consumerist legislation.

Proponents of the amendment would have us believe that the adoption of a rate cap will result in lower costs to consumers. Surely there are few Members of this body naive enough to believe this to be true.

On average, only 40 percent of the cost of a credit card is related to the cost of funds; the rest reflects administrative costs, such as collections and maintaining a worldwide authorization and payments system. Fraud and theft losses are also considerably higher for credit cards.

To place an arbitrary cap of 8 percent on such accounts will simply force increases in other sectors of the account. It is like squeezing a rubber ball—constricting the middle only causes the ends to bulge out.

The harmful result of imposing a draconian rate cap such as is provided by this amendment will surely include:

Restrictions on credit availability, particularly to marginal credit risks like young wage earners and lower income groups.

Reductions or elimination of grace periods, which will affect both those who pay off their monthly balances by requiring interest payments where none now arise, and those who keep a revolving balance, by making their effective rates higher.

Changes in retail card availability—many of these card programs now operate at a loss which is only covered by profits on the merchandise sold.

Increases in annual fees due to the loss of interest income.

Also, the contention that credit card issuers operate at exorbitant profit levels is erroneous. According to the Federal Reserve Board, the average net earnings of bank card plans before taxes averaged 1.9 percent of balances outstanding between 1972 and 1985. During the same period, average net returns on other major types of commercial bank lending were significantly higher: 2.3 percent on real estate and installment debt, and 2.8 percent on commercial and other loans.

Finally, and perhaps most importantly, we must remember that no one has ever been forced to make purchases on a credit card. Credit cards represent a line of revolving credit which is available as an option alternative to cash or check purchases. Every single one of Mr. ANNUNZIO's purportedly maligned debtors is free to stop making credit card purchases if he or she feels that interest rates are too high. Thirty-three members of the Banking Committee have signed a letter in opposition to the Annunzio amendment. This amendment represents the worst sort of Government intervention into free market operations, and will cause problems far greater than those it claims to cure, and I urge its defeat.

Mr. ST GERMAIN. Mr. Chairman, I yield 2 minutes to the gentleman from New York [Mr. FLAKE], a member of the committee.

Mr. FLAKE. Mr. Chairman, I rise today to speak in favor of H.R. 515, the Fair Credit and Charge Card Disclosure Act of 1987 because I believe it is intelligent, proconsumer, equitable, and good sound public policy. Let us look at what proper and adequate disclosure does for the market.

First, adequate disclosure is a fundamental prerequisite for the efficient operation of markets that enables people to make good decisions based on the alternatives available to them.

Second, with the disclosure of the annual percentage rate, the annual fee and the grace period, consumers are able to compare the cost of credit among various alternatives.

Third, with this information, consumers can determine where they will actually purchase credit based on cost and other criteria.

I believe that consumers are intelligent individuals who when given the proper information will make the decision that is in their best interest. The benefit to the overall market is that we now have an efficient system. The benefit to the consumer is lower costs. The financial industry has had a history of responding to competitive pressures and change. For example, when fixed commission rates for stock purchases were eliminated, the market responded by competitively pricing this generic product. Prices to consumers fell across the board and the entire economy benefited from a more efficient market. Today, in the marketplace, consumers can now choose a financial institution that best meets their needs based on the services that the institution might offer. In this case, additional information and a free market system provided the consumer with the knowledge needed to make good decisions.

I believe that credit card disclosure will again benefit a broad base of consumers. With H.R. 515, consumers can evaluate the cost of credit just as they evaluate the overall cost of services provided by various financial institutions. Adequate disclosure and accurate comparable information is the underpinning of an efficient market system. I have the confidence that when the consumer is provided adequate information, he or she will make the decisions that will not only benefit them but the entire economy as well. I urge my fellow colleagues to support H.R. 515 unamended.

Mr. HILER. Mr. Chairman, I yield 3 minutes to the gentleman from California [Mr. DREIER].

Mr. DREIER of California. I thank the gentleman very much for yielding time to me.

Mr. Chairman, I would like to congratulate the gentleman from Indiana for his fine leadership on this issue.

Mr. Chairman, although interest rates on most forms of credit have declined dramatically in the last few years, the average rate charged by credit card issuers remains relatively high—around 18 percent. In fact, credit card rates are so high relative to most other forms of credit that the industry has helped to reduce the stigma associated with loan sharks.

In my view, this inequity exists because consumers do not have access to enough information to make a wise choice when selecting a credit card. With access to more information about interest rates, terms, and fees, I believe credit card users can change this unfair situation and save millions of dollars in the process.

For this reason, Mr. Chairman, I support H.R. 515, the Fair Credit and Charge Card Disclosure Act. The bill would require all credit card issuers to disclose three pieces of information at the time of application: First, the annual or variable rate; second, the annual or membership fee; and third, the existence or absence of a grace period. These are the three pieces of information consumers want to know about when shopping for a credit card.

As a credit card user myself, I am angered by unsolicited credit card mailings which fail to tell me the rate of interest, annual fee, and grace period. I believe better informed consumers can make a difference because they will seek out those cards with favorable terms. This will increase credit card competition and bring interest rates down.

On the other hand, Mr. Chairman, I believe the imposition of a restrictive rate ceiling, which my colleague on the Banking Committee, Mr. ANNUNZIO, will offer as an amendment to H.R. 515, will be a serious mistake. Rather than enhancing credit card competition and affordability, a rate cap will have harmful effects on the profitability of credit card operations and the availability of credit to less creditworthy consumers.

That's because, ultimately, the cost of a credit card depends on more than just the interest rate. Most credit card issuers offset low rates by charging higher annual fees, by eliminating the grace period, or by restricting credit to the most creditworthy individuals to reduce bad debt losses.

Proponents of a rate cap also fail to adequately consider the advantages of credit cards over other forms of credit. A one-time credit application provides consumers with convenient access to credit without having to apply for that credit every time it is needed. Also, nearly half of the Nation's credit card users pay their outstanding monthly balances in full. For them, the interest rate is not relevant because they incur no finance charges.

Ultimately, if a rate cap were imposed, subsequent fee increases and the elimination of grace periods would negate any benefits that would accrue from a lower interest rate. This conclusion was substantiated earlier this year when a Federal Reserve Board study concluded that interest rate limits would lead credit card issuers to raise other charges, such as annual fees, and tighten credit requirements.

Mr. Chairman, most everyone agrees that there is plenty of room for improvement in the credit card industry. Bank and retail issuers of credit cards have not adequately responded to the call for more competitive credit card interest rates. H.R. 515 is an appropriate response. It will help to increase competition and lower interest rates without placing unreasonable burdens on credit card issues. On the other hand, a rate cap will be counterproductive, and will have dangerous consequences for the allocation of consumer credit.

Therefore, Mr. Chairman, I urge my colleagues to support H.R. 515 and oppose the controversial amendment to impose a cap on credit card interest rates.

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Mr. ST GERMAIN. Mr. Chairman, I yield 3 minutes to the gentleman from North Carolina [Mr. NEAL].

Mr. NEAL. Mr. Chairman, I rise in support of this credit card disclosure legislation and against the amendment to be offered by the gentleman from Illinois [Mr. ANNUNZIO] which would impose a credit card interest cap.

Although there is much good that can be said about this bill, I would like to comment on the cap proposal at this time because I believe it would be extremely harmful to consumers. It would be harmful because it would limit the availability of credit to high-income, good-credit-risk people. The reason that credit card interest rates are higher than many other interest rates is because credit cards are issued to a wide variety of folks. Some of these folks do not have good credit ratings, and some of them do not pay their bills, so the loss record for credit cards is much higher than it is for some other forms of credit.

Many of these people, though, would be driven to loan sharks if the credit card interest rate cap were to pass. They would be denied credit entirely from credit card issuers. In addition, an artificial cap on credit card interest rates would have an anticompetitive effect. It would drive some issuers of credit cards out of the marketplace entirely, thus reducing competition and raising rates. We also would run the very real risk that interest rates on those credit cards that offer rates below the ceiling here established would be raised to this arbitrary cap.

Mr. Chairman, I think college tuition is way too high, but I do not think we ought to have the Federal Government establish tuition rates. I think the price of cars is too high, but I do not think the Federal Government should set the price of cars. I think groceries cost too much, but I do not think the Federal Government should establish the price of groceries. We could use many examples. I do not know of any product that I buy that I wish did not cost a little bit less. But the precise difference between our economy and that of the totalitarian and other nonmarket systems is that we let the marketplace set rates, as opposed to have the Government set prices and rates.

Mr. Chairman, on the face of this, I am sure this credit card cap has a certain appeal, but the fact is that it is very anticompetitive and would be bad for consumers. It would deny credit to low- and moderate-income people. It would drive some credit card issuers out of the marketplace entirely. It would inspire those who offer interest rates that are lower than the cap to raise their rates, and it would violate the very basic principles of a free market economy.

Therefore, Mr. Chairman, I urge the defeat of the amendment.

Mr. HILER. Mr. Chairman, I yield 3 minutes to the gentleman from Florida [Mr. McCollum].

Mr. McCOLLUM. Mr. Chairman, I strongly support the legislation that is before us. I think the disclosure of information with regard to credit cards is absolutely essential for the consumer's interest, and in the past I have been known upon occasion to support some forms of a usury ceiling. But I think the ida of putting a cap on interest rates, as contained in the amendment of the gentleman from Illinois that will be introduced later today, is a bad idea. It is a bad idea fundamentally because instead of making credit more available to more people, it would actually produce the result of the opposite.

It would mean fewer opportunities for individuals to get credit in this country, particularly fewer opportunities for those who have the hardest time finding credit when they go out and look for credit, the young people, the people who have not established their creditworthiness, the people who are, therefore, at the highest risk at the credit end.

A lot of people think that our banks make a lot of money on these cards because they are charging higher interest than they charge on loans in other forms of credit around the country. The fact of the matter is that statistics show that our commercial banks in this country make substantially less on credit cards than on their regular, normal loans that they make in the course of doing business.

The fact simply is that it is a high-risk business. There are consumers out there served by these cards who will run up bills and will not pay them, the interest to which is defaulted, and somebody has to pay that cost. In the end, we have the choice of letting the interest rates run high or eliminating all of this risk category from the marketplace. I do not think Americans want to do that because that means a lot of good credit risks, simply people who have not had the chance to establish credit, would be eliminated.

It would be, as the previous speaker said, anticompetitive. It means a reduction of the number of those institutions willing to offer credit cards, and in general it means we would come back to a point in time where we were many years ago when credit card business simply was for those people who actually were at the higher end of the income scheme. Frankly, they do not need those cards. It is the people who need them that would be hurt the worst by this.

This sounds like a great consumer amendment. In reality, it is an anticonsumer provision. If we want to help the consumer, we need to pass this bill, to let disclosure occur, let the marketplace work, and let more people who need to get access to credit have it, at reasonable prices dictated by the marketplace, dictated by the same old time-honored free enterprise system that has made this country great all these many years.

So, Mr. Chairman, I urge my colleagues to look at this for what it is. Do not look at it as the popular vote that it may appear to be on the surface. The real popular vote is to vote no against the Annunzio amendment and vote for the disclosure bill.

Mr. ST GERMAIN. Mr. Chairman, I yield 2 minutes to the gentleman from Pennsylvania [Mr. Kanjorski], a member of the committee.

Mr. KANJORSKI. Mr. Chairman, I commend the gentleman from Illinois for his leadership in protecting consumer rights and for fighting to keep credit card rates reasonable. I would like to share with my colleagues, however, a few of the reasons why the committee felt that disclosure of credit card terms and rates was a better approach than an arbitrary cap on credit card rates.

If we impose an arbitrary rate cap we guarantee that consumers will be hurt in three ways:

First, many consumers will be denied credit they need and deserve. Banks will tighten eligibility standards for credit, and they will reduce cardholders' credit limits.

Second, annual fees will increase.

Third, the grace period consumers have before they are charged interest on their purchases will be reduced or eliminated.

William Dunkelberg, the dean of Temple University's business school, has sent me an excellent letter outlining the reasons why a credit card cap would be bad public policy. I would like to share with you a brief excerpt from it:

> Suppose for the moment that we are talking about fixing the price of haircuts (or linking it to the cost of electricity). Clearly, a price ceiling on haircuts would make it impossible to serve some consumers who require too much time to cut relative to what the barber would be allowed to charge. A ceiling of $10 would cause barbers to refuse to serve any customer (rich or poor) who would cost more than $10 in time and materials to cut. Also, hairstyles that were complicated would not be available. Thus, fewer haircuts would be available and the variety of hairstyles available would be reduced. This is not in the consumer's best interest.

Dean Dunkelberg also reminds us that a floating rate ceiling, as proposed in the amendment of the gentleman from Illinois, would increase the cost of disclosure to financial institutions because they would constantly have to reprint their disclosure forms and reprogram their computers. These costs would eventually be passed on to consumers. He further notes that only half the cost of providing credit card services is related to the cost of funds, and that competition in the credit card market is very strong, with the largest issuer having no more than 6 percent of the total market.

Finally, Mr. Chairman, I would like to suggest to my colleagues that with the current uncertainty and disruption in the financial markets, we would not be sending a good signal to the market place if we adopted an arbitrary rate cap. Disclosure, as provided in the committee bill, allows consumers to make an educated choice. An arbitrary rate cap, on the other hand, is unwarranted Government intervention in the economy which would send a bad message to the financial marketplace.

At this point in the Record I include the following:

TEMPLE UNIVERSITY,
SCHOOL OF BUSINESS AND MANAGEMENT,
Philadelphia, PA, October 26, 1987.
Hon. PAUL E. KANJORSKI,
Longworth House Office Building,
Washington, DC.

DEAR MR. KANJORSKI: I am writing to encourage you to oppose Rep. Annunzio's amendment that would impose a variable interest rate ceiling on credit cards issued in the United States. Let me briefly indicate why this is not in the interest of consumers. Suppose for the moment that we are talking about fixing the price of haircuts (or linking it to the cost of electricity). Clearly, a price ceiling on haircuts would make it impossible to serve some consumers who require too much time to cut relative to what the barber would be allowed to charge. A ceiling of $10 would cause barbers to refuse to serve any customer (rich or poor) who would cost more than $10 in time and materials to cut. Also, hairstyles that were complicated would not be available. Thus, fewer haircuts would be available and the variety of hairstyles available would be reduced. This is not in the consumer's best interest.

The same thing happens when we impose rate ceilings on consumer loans. A rate ceiling, fixed or floating, would cause a reduction in credit availability to consumers who are more costly to serve. The options available to consumers would also be reduced. Low rates require high annual fees, higher service or merchandise prices, and fewer "goodies" attached to the card.

Floating rate ceilings also increase the cost of disclosure, as old forms must be destroyed, new ones printed, and computer programs changed to show various balances extended under various terms. Consumers can't keep up with the changes in the rates and terms and are likely to be less aware of what the current cost of using credit cards is. Lenders, like credit unions, must predict the course of interest rates in order to decide whether or not an applicant today will be a profitable customer tomorrow when rates might fall. Being cautious with depositors' money, they are less likely to make credit available.

Finally, regulating the return on loans and financial services does not help all consumers (in fact, it doesn't even help borrowers). Every dollar in interest charges "saved" is a dollar of interest income lost to savers who supply the funds used to extend credit. Think of a credit union that lends funds to its depositors through a credit card. If the credit union can only charge 10%, then it must pay its depositors less.

Credit cards are complex financial services. Only half the cost of providing credit card services are related to the cost of funds (market interest rates). The other half of the cost has not come down. Thus, even though the price of beef might fall, the price of a hamburger may not fall because the costs of other components of providing hamburgers continue to rise. So it is with credit cards.

Competition in the credit card market is very strong. The largest issuer of bank cards probably has only 5 or 6 percent of the market. A low rate ceiling will force some providers out and increase concentration while service and options are reduced. No consumers are helped. Those who qualify for low rates will always get low rates. Those who should pay higher rates will be denied credit services that they value. Savers are penalized by rate ceilings. These effects have been documented by two decades of studies by researchers at our most prestigious universities. In light of this, I hope you will oppose the imposition of price controls in the form of interest rate ceilings on credit cards.

Sincerely,
WILLIAM C. DUNKELBERG,
Dean.

Mr. HILLER. Mr. Chairman, I yield such time as he may consume to the gentleman from Missouri [Mr. EMERSON].

Mr. EMERSON. Mr. Chairman, I wish to commend the gentleman from Pennsylvania for his very logical and persuasive argument. I wish to associate myself with the remarks of the gentleman from Pennsylvania.

Mr. HILLER. Mr. Chairman. I yield 4 minutes to the gentleman from New York [Mr. WORTLEY].

Mr. WORTLEY. Mr. Chairman, the Credit Card Savings Act is the product of lengthy public discussion and debate, and I fully support it as it was reported by myself and my colleagues on the Banking Committee. Briefly, this bill protects consumers from misleading solicitation. It requires important information to be made available. All institutions offering credit cards would be affected, including retailers and banks.

Although the Truth in Lending Act currently requires credit card issuers to provide information concerning the fees and interest rate associated with a credit card, this information is only available after the consumer takes possession of the card. What this legislation would accomplish is to inform consumers of such important facts before the consumer selects a particular card.

This bill would require that any written application or solicitation to open a credit card account must disclose the annual percentage rate applicable, any fees imposed for issuance or use of the card, and any grace period.

In addition, the bill requires that applications made available to the public in retail establishments or catalogs and magazines must be dated and contain accurate information as of that date, and they must inform the consumer that terms are subject to change.

This information should be available to consumers as they are shopping for the right credit card, not after completion of a sometimes lengthy application process.

Mr. Chairman, the issue of whether or not to impose an interest rate cap on credit card advancements will also be decided today. I cannot support such a cap because of the adverse affects it would have on all credit card users, particularly those who are on the margins of being creditworthy. There is bipartisan agreement that such a rate cap would be counterproductive which is why the Banking Committee declined to include it in the bill.

It has been well-documented, including a study by the staff of the Federal Reserve Board, that an interest rate cap would adversely affect consumers. This is because financial institutions and retailers would be pressured under a rate cap to raise fees, to deny credit to higher risk consumers, such as the lower income and the young, and to end benefits like the grace period—the period during which borrowers are not charged interest on their loan.

Furthermore, if less credit is available there will be fewer sales of goods and services and fewer jobs in the retail and manufacturing sectors of our economy.

Such a move by Congress would be blatant interference in a free market that has thousands of competitors. Like the wage and price controls of the 1970's, such action would have an equally disastrous effect. What will Congress cap next, the cost of clothing, automobiles or furniture? Of course, such caps are artificial.

I would also point out that it is not accurate to compare credit card rates to other interest rates. Credit card lending is extremely costly for a variety of reasons. Administration, transaction processing, authorization systems, monthly statements, fraud, and other factors increase a card issuer's expenses.

I would urge consumers to stop using their cards if a high rate is being charged or, better yet, to switch to a card that offers a more competitive rate. This has already had an effect as many card rates are dropping. But I oppose the heavy-handed approach of an interest rate cap.

According to the White House, if this legislation includes an interest rate cap it will be quickly vetoed. To best serve consumers, we should not risk a veto. We should pass this bill and have it enacted before the end of this year.

Mr. LAGOMARSINO. Mr. Chairman, will the gentleman yield?

Mr. WORTLEY. I yield to the gentleman from California.

Mr. LAGOMARSINO. Mr. Chairman, I appreciate the gentleman's yielding to me, and I want to commend the gentleman for his remarks and associate myself with them. I think the gentleman has pointed out very clearly why this is a good bill and why the Annunzio amendment, though well intentioned, is a very bad amendment.

Mr. WORTLEY. Mr. Chairman, I thank the gentleman from California.

Mr. ST GERMAIN. Mr. Chairman, I yield 2 minutes to the gentleman from Alabama [Mr. ERDREICH].

Mr. ERDREICH. Mr. Chairman, I appreciate receiving the time.

Mr. Chairman, I just want to remind my colleagues that we are celebrating the 200th anniversary of our Nation's Constitution this year, and it is just amazing to me that here we are arguing about an amendment to a measure that would just usurp the authority of the 50 States of our Nation which historically have regulated, if they sought to, which have placed limits, if they sought to, and which have placed credit card limits, if they sought to. In the tally that I have, it shows that we have 36 States that have some level of limits or maximums on credit cards, and 14 have none.

I have heard nothing in the Banking Committee hearings and I have heard nothing here that gives me a compelling reason or any reason why this House should move in with the heavy hand of the Federal Government and impose another requirement on our 50 States.

Let us allow the State legislators, if they wish to, move in this area. I am a strong supporter of the disclosure that is in this fundamental bill, but the idea of an amendment that would place a cap from the Federal Government and tell each State what they should do in each State is, I think, wrong. It would be a wrong step to take.

So, Mr. Chairman, I oppose the Annunzio amendment, and I urge its rejection.

Mr. HILER. Mr. Chairman, I yield 2 minutes to the gentleman from New York [Mr. GREEN].

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Mr. GREEN. Mr. Chairman, I thank the gentleman for yielding to me.

I rise in support of the pending bill, which I think is a well-thought-out, well-crafted piece of legislation, and which I hope to be able to support.

I say that I hope to be able to support it, because I oppose the Annunzio amendment; and if that were added, I should then no longer be able to support this legislation.

Though the Annunzio amendment is well-intentioned, its effects would in fact be extremely negative for those whom it seeks to help.

I should like to speak particularly from the point of view of those who in fact pay off their balances every month. It is interesting who some of those people are: There is a recently published study by the Federal Reserve Board which shows that, among credit card users with less than $10,000 per year in family income, 48 percent customarily pay off their outstanding balances each month.

Among card users in households headed by persons 65 or older, 75 percent pay off their balances in full each month.

One does not have to be a financial genius to understand that if credit card issuers have the interest rates that they can charge artificially forced down, inevitably they must find their revenues somewhere else. The way to do that is either to increase the annual charge or to eliminate the grace period.

Either of those obviously falls with heavy effect on those who now customarily pay off their balances every month. Those who do so, as I have just pointed out, and as the Federal Reserve Board has told us, are particularly those from low-income households, less than $10,000 a year income, or elderly households.

Mr. Chairman, it turns out that the Annunzio amendment, which is intended to help the "little guy" in fact is devastating to him.

Mr. ST GERMAIN. Mr. Chairman, I yield 3 minutes to the gentleman from California [Mr. LEHMAN].

Mr. LEHMAN of California. Mr. Chairman, I thank the gentleman for yielding me this time.

I rise in support of the legislation and in opposition to the amendment offered by the gentleman from Illinois [Mr. ANNUNZIO].

As a member of the Committee on Banking, Finance and Urban Affairs, and a rather prolific credit card user, I certainly appreciate the intent of capping interest rates on credit cards.

I agree that in many instances these interest rates have been unnecessarily high, and I also agree that something has to be done.

The bill, as written, however, is sufficient medicine for the illness given the current conditions.

I am not convinced that capping credit card interest rates is the best way to reduce interest rates, nor do I believe that a national credit card interest rate cap serves the best interests of credit card users or issuers.

This is especially so, since a better alternative exists, such as strong disclosure embodied in this bill.

I am familiar with disclosure legislation, being the author of the Truth in Savings Act which has already passed this House.

I am familiar with the benefits of reasonable disclosure. H.R. 515 provides that by mandating the disclosure of interest rates, terms, and conditions which can affect credit cards.

When one takes into account the varying finance charge rates, annual fees, grace periods, and other terms of pricing credit cards, you can readily see that alternatives exist for credit card issuers to increase what consumers have to pay regardless of how we cap the interest rates. And when they increase those fees, those transactions costs, or cut those grace periods, those will not be things that the consumer can immediately identify like he or she can identify an interest rate.

They will be far more hidden, but the result will be the same. At the very best, a mandated credit card usury ceiling would benefit only a small portion of cardholders, and would restrict the type of credit opportunities for the remainder of existing and potential cardholders.

Strong disclosure, however, will give everyone the tools and resources to comparison shop among all credit cards, and allow consumers to make intelligent decisions when choosing whether or not to get a credit card, and how exactly to use that card.

It should be noted that since the gentleman from New York [Mr. SCHUMER] first introduced this legislation in the 99th Congress, there have been some rather dramatic declines in credit card interest rates due to increased competition and increased exposure of this issue to the public.

There are clear signs that the mechanisms within our marketplace actually work, and they will work much better with the full disclosure mandated in this bill.

The disclosure requirements here will lend momentum to the trend in reduced credit card interest rates, and continue to make credit card opportunities available to all potential users. If abuses persist or expand, if rates do not come down, then we can always come back and take more restrictive action; but there is no question for doing that now.

I urge the Members to oppose the amendment and support the bill that the Committee on Banking, Finance and Urban Affairs has reported.

Mr. HILER. Mr. Chairman, I yield 2 minutes to the gentleman from New York [Mr. HOUGHTON].

Mr. HOUGHTON. Mr. Chairman, I thank the gentleman for yielding me this time.

Mr. Chairman, I must assume that the thrust of the credit card issue we are discussing is the end result to help the customer—the user of credit cards.

In our system, the so-called free enterprise system, competition, lots of it, drives up quality and drives down prices.

It is the basis of everything that goes on in the marketplace. It is the engine which produces the vital ingredient which is a choice when we go shopping, and that means shopping, among other things, banks, and credit unions, and traveler's checks and credit cards.

If we want to help the customer, the consumer, then we should give him the information to make a better choice. If we vote to cap the rates on credit cards, we inevitably produce an atmosphere, history says, whereby everyone reaches for that cap, sad but true.

If we want to help reduce the cost to the consumer, we can do that by permitting many a free choice and better information to exercise that choice.

The gentleman from New York [Mr. SCHUMER] is right on.

Mr. ST GERMAIN. Mr. Chairman, I yield 4 minutes to the gentleman from

New York [Mr. SCHUMER], a member of the committee.

Mr. SCHUMER. Mr. Chairman, I thank the gentleman for yielding me this time.

Mr. Chairman, I thank the chairman for the chairman's leadership on this issue, and salute the Members, including the gentleman from Indiana [Mr. HILER] for their hard work on this issue.

A few years ago we embarked on a campaign, and the campaign was to lower credit card interest rates.

At that time everywhere one would look, the rates were unduly high while interest rates in general had come down.

Mortgages were down, auto loans were down, even personal loans were down; but credit card interest rates stood stubbornly high at 18.9 percent.

The market was not working. In fact, the credit card industry had defied the basic rules of how a market should work.

Simply put, the credit card industry defied free market physics. What had gone up showed no signs of coming down, but we turned the spotlight on the industry. We let people know how high the rates were, and we pointed out to them that in little corners of America, there were a few financial institutions issuing cards at lower interest rates.

Lo and behold, the market began to work, slowly but steadily, so that now there are hundreds of banks that do not issue the credit card interest rates at 18.9 percent, but issue them at 10, 11, 12, and 13 percent because of the campaign we waged.

There is one thing that is missing, and dearly missing it is; and that is an adequate disclosure bill, because those banks with low rates are definitely showing people they have low rates.

Here is an ad from the Bank of Baltimore, and in big letters they say 13.9 percent, but here is Chase Manhattan's ad, very nice, all the special things you have, but you can look through the ad, look through the application, no indication of what the rate is.

As a result, I got together with the gentleman from Georgia and many other members of this committee; and we said, let us see if we force all of those institutions to show in big letters on every solicitation and application what those interest rates are, let us see what the consumer will do.

What do you think the consumer would do when one ad says in this so-called Schumer box which has the annual rate, the annual fee and the grace period, 19.5 percent in big clear letters, and an ad in the same magazine has 13.5 percent in big letters. Does anyone doubt that the market will crack? I believe it will.

I believe that tough disclosure will help us finally achieve the goal we set out upon years ago which was to get the market to crack and bring the rates down to the rates of other types of loans.

Some say maybe we should do it with a cap, and initially I thought the cap was the way to go. I introduced the bill that had a cap, but at that time all the banks were at 18.9 percent, and disclosure would not do much good, because everyone would be saying the same thing.

Now there is diversity in the market, and disclosure can work. It can work in a very real and significant way. On the other hand, we could beat our breasts and pass a cap amendment here today, we most certainly could; but it would probably inevitably foil any attempt to get any law and bring us to the goal we have worked so hard to get, which is interest rates down, because in the other body it is no secret.

We have all read the statements. Many of those leaders have said, you send us a bill with a cap, and there is no legislation; and of course, the White House, if we brought a cap bill, would veto it.

Let us accomplish something, get the market to crack, pass H.R. 515 and help consumers in the way they so richly deserve.

Mr. FRENZEL. Mr. Chairman, there is hardly a legislature, parliament, or council which has not had to consider some provision or other to protect borrowers by establishing interest ceilings. Apparently representatives everywhere have accepted the myth that their constituents can be protected by denying them credit.

In practice, thankfully, legislative bodies have rejected new proposals, and repealed old statutes for one reason only—interest rate ceilings hurt only the people their promoters are trying to protect. Ceilings deny credit to the poor, raise the price of credit to those who need it most, and protect only the affluent, the cash buyer.

My State, Minnesota, for years had a usury ceiling on mortgage interest, jealously guarded by consumer interests led by the big unions. When interest rates rose above the ceilings, Minnesota home buyers received unusual protection—they were prevented from buying houses.

Eventually, the guardians of consumer interests had to recant. Only then were Minnesota savings made available to Minnesota home buyers. Only market interest rates could keep Minnesota money at home.

Credit card interest is not exactly like mortgage interest, but the principle is the same. A ceiling will help only the cash buyer. The marginal credit risk won't be issued a card. All the rest of card users will pay more for the services and goods purchased on credit.

Legislating credit ceilings is like passing a bill to decree the sky shall be blue all the time, or posting a notice that the wind shall stay off the grass. The wind can't read, and there will still be clouds.

The bill, H.R. 515, is a reasonable disclosure bill which will be a genuine help to discerning consumer-borrowers. The debate over the interest rate ceilings should not be allowed to confuse the central issue. H.R. 515 is a good bill. It is only the amendment which should be defeated.

Mr. LAGOMARSINO. Mr. Chairman, I rise in support of H.R. 515 and in opposition to the amendment to impose a ceiling or cap on credit card interest rates. H.R. 515 would encourage competition through disclosure and promote shopping through information to the consumer. Every credit card company will be required to disclose the rates, fees, and grace periods applicable to the consumer.

Mr. Chairman, I am however opposed to the amendment being offered to impose a cap or ceiling on credit card interest rates for many reasons. The cap would cause the disclosure provisions to be defeated in the Senate and vetoed by the administration. This amendment is opposed by the New York Times, the Federal Reserve Board, the Federal Home Loan Bank Board, Comptroller of the Currency, and the FDIC. Furthermore, a rate cap would decrease the number of consumers who can qualify for cards, particularly low-income families and young wage earners. Finally, the cap will not decrease total costs to credit card users for services a card provides because lenders are more likely to increase other cost components such as annual fees and grace periods.

Mr. Chairman, Congress should not start imposing artificial caps on credit card interest. If this passes then it may next lead to caps on home loans, agricultural loans, or car loans. I encourage my colleagues to oppose this amendment and support H.R. 515.

Mr. GILMAN. Mr. Chairman, I rise in support of H.R. 515, the Fair Credit and Charge Card Disclosure Act of 1987. I would like to commend the author of this legislation, my distinguished colleague from New York [Mr. SCHUMER], for his efforts to craft a reasonable measure which provides urgently needed protections to credit card consumers. I also commend the chairman and the ranking minority member of the Banking Committee, Mr. ST GERMAIN and Mr. WYLIE, for bringing this measure before the full House for our consideration.

The benefit provided by H.R. 515 is a requirement for disclosure of all relevant information to the potential credit card customer. H.R. 515 will require the bank issuing a credit card to clearly state its annual percentage rate, annual fee, the grace period, and other pertinent information on all applications and solicitations for the card. This will correct a serious deficiency in existing law which requires the disclosure of this same information, but only upon actual receipt of the card, after the consumer has already completed the application. By making this change, H.R. 515 will provide the consumer with the necessary information he or she may need in order to make an informed decision.

By providing consumers with this knowledge, H.R. 515 provides for true competition in the credit card market. Disclosure will allow consumers to select among all the various credit card offerings and find a card which is particularly suited to their own personal credit needs. By providing the relevant information, disclosure will also allow consumers a true basis of comparison from which to make an informed decision. It is this information that will foster true competition in the credit card marketplace.

Mr. Chairman, much has been said about a proposed amendment to cap credit card interest rates. While this amendment makes for good political rhetoric, a more considered look reveals that the proposal makes for poor public policy. Proponents of the cap have painted the issue as clear and simple. The distinguished author of this amendment, Mr. ANNUNZIO, states that this amendment leaves for only one interpretation. He states that if you support consumers, then you should support lower interest rates, and therefore you should support his amendment. Mr. Chairman, I do not agree with that rationale.

While I support consumers and favor lower interest rates, I cannot support the Annunzio amendment. Contrary to the arguments of its proponents, I believe the interest rate cap will do more to harm consumers than to help. This amendment would close the door on many credit card customers who now enjoy free access to the credit card market. By reducing the pool of available credit, this amendment would cause banks to eliminate its high-risk accounts and "marginal" credit card customers. Consequently, many young people, elderly, and low-income groups might be denied their rightful access to the convenience of bank credit. In addition, the amendment would hurt consumers further by pressuring banks to shorten grace periods and raise annual fees. Finally, I see no compelling reason for tying interest rates to the return on 1-year Treasury bonds. In a period of low interest rates, this amendment would artificially inflate the annual percentage rate charged to credit card customers.

Mr. Chairman, it is clear that this amendment is not founded in sound economics. While I commend my good friend, the distinguished gentleman from Illinois [Mr. ANNUNZIO], for his worthy intentions of protecting consumers, I submit that the amendment does not fulfill those high aspirations. Accordingly, I urge my colleagues to support the disclosure provisions of H.R. 515 without any amendments.

Mr. McEWEN. Mr. Chairman, I rise today in support of H.R. 515, the Fair Credit and Charge Card Disclosure Act of 1987. This bill reflects the diversity of the services offered by the credit card industry and the needs of the consumer.

As my colleagues are aware, H.R. 515 requires the uniform disclosure on credit card applications of interests rates and other relevant fees to the consumer. In my view, these disclosure provisions would improve the competition among credit card providers. In addition, this would allow the marketplace to operate more efficiently and would enhance the final product for consumers. I can envision more favorable terms and lower interest rates for customers because of the limited and balanced approach of this legislation.

Also, Mr. Chairman, there has been considerable discussion regarding the imposition of a cap on credit card interest rates. I oppose this action because it is anticonsumer and does not allow the marketplace to work its will. Marginal or new credit card applicants may be denied a credit card because the interest rate cap would result in the tightening of credit standards. Currently, banks and credit card companies are more inclined to grant a credit card to these persons. This is because of the present flexibility in the marketplace and an absence of restrictions that would curtail the competitive forces in the market. I strongly urge my colleagues to oppose this cap and defeat the Annunzio amendment.

Mr. Chairman, the Fair Credit and Charge Card Disclosure Act is good for the consumer and it is good for business. The House of Representatives should approve this legislation.

Mr. HILER. Mr. Chairman, I yield myself the remaining time.

Mr. Chairman, to sum up in general debate from this side, the Members have heard of the unanimous support for increased disclosure on the terms of credit cards.

Every Member who has spoken has talked about the fact that with increased disclosure, the market system can work better, the competitive forces that are out there will continue to work better.

Mr. Chairman, there are over 3,000 issuers of credit cards in this country, over 13,000 participating financial institutions in this country.

As the gentleman from New York mentioned, if there is uniform and increased disclosure, there will be an increased and tremendous amount of competition.

The time is not right, nor will the time ever be right, to impose Federal price controls on interest rates that credit card issuers can charge.

Mr. Chairman, people have credit cards for a variety of reasons, for convenience, a substitution for cash, as unsecured lines of credit.

Some people pay them off immediately or over a period of several years. Some people have a higher tolerance for annual fees. Some people do not care if there is a grace period.

Some people do not care if they have $1,000 limit or a $500 credit limit; but the fact is that as soon, at the Federal Government level, as soon as we begin to impose the terms under which credit cards will be issued, then there will be a tendency for some users of credit cards to be blanked out of the market.

The terms that are imposed will be terms that they cannot tolerate for one reason or another, and the people that will be most affected will be those low-income individuals, those moderate-income individuals, those young people who have not established a credit history. They will be denied access to a credit card, this form of convenience.

The Federal Government should not impose price controls. I urge the Members to vote for the disclosure and against the Annunzio amendment.

Mr. ST GERMAIN. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. Pursuant to the rule, the committee amendment in the nature of a substitute now printed in the reported bill shall be considered as an original bill for the purpose of amendment, and each section shall be considered as having been read.

The Clerk will designate section 1.

The text of section 1 is as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Fair Credit and Charge Card Disclosure Act of 1987".

The CHAIRMAN. Are there any amendments to section 1?

If not, the Clerk will designate section 2.

Mr. ST GERMAIN. Mr. Chairman, I ask unanimous consent that the balance of the committee amendment in the nature of a substitute be printed in the RECORD and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from Rhode Island?

There was no objection.

The text of the remainder of the committee amendment in the nature of a substitute is as follows:

SEC. 2. CREDIT AND CHARGE CARD DISCLOSURE REQUIREMENTS.

(a) DISCLOSURE REQUIRED IN SOLICITATIONS BY CREDIT CARD ISSUERS AND IN APPLICATIONS FOR CREDIT CARDS.—Section 127 of the Truth in Lending Act (15 U.S.C. 1637) is amended by adding at the end thereof the following new subsection:

"(c) DISCLOSURE IN CREDIT CARD APPLICATIONS AND SOLICITATIONS.—

"(1) IN GENERAL.—Any written application indicating that such application can be used to open a credit card account for any person under an open end consumer credit plan, and any written solicitation or telephone solicitation by a creditor in which such creditor offers to open a credit card account for any person under any open end consumer credit plan without requiring such person to complete a written application to open such account, shall contain on or with such application or solicitation the following information, to the extent applicable:

"(A) The annual percentage rate applicable to extensions of credit under such credit plan or, in the case of extension of credit which is subject to a variable rate, the means for determining that rate.

"(B) Any annual or other fee imposed for the issuance of a credit card or availability of a credit card account, including any account maintenance fee or any monthly charge imposed when there is activity for the account during the billing cycle.

"(C) The date by which or the period within which any credit extended under such credit plan for purchases of goods or services must be repaid to avoid incurring a finance charge, and, if no such period is offered, such fact shall be clearly stated. If the length of such 'grace period' varies, the card issuers may disclose the range of days in the grace period, the minimum number of days in the grace period, or the average number of days in the grace period, if the disclosure is identified as such.

"(2) SPECIAL RULE FOR TELEPHONE SOLICITATIONS.—In the case of telephone solicitation described in paragraph (1), the creditor may elect—

"(A) to provide only the applicable annual percentage rate and annual fee in the course of such telephone solicitation; or

"(B) to provide the disclosures required by paragraph (1) in writing within 30 days after the consumer's request for the card, and not later than with the card, if—

"(i) during such telephone solicitation the consumer is informed that the consumer is not obligated to pay any charge if the consumer does not want the card or account;

"(ii) such written disclosure includes the clear and conspicuous notice that the consumer is not obligated to pay any charges if the consumer does not want the card or account; and

"(iii) the credit card is issued primarily for the purpose of purchasing property or services from the card issuer, a person related to the card issuer, or persons licensed or franchised to do business under the card issuer's business or trade name or designation.

"(3) Special rule for 'take-one' and magazine applications.—In the case of written applications described in paragraph (1) which are distributed at commercial retail establishments and other public locations and made available to the public at such locations, or which are included in any catalog, magazine, or other publication, such applications meet the requirements of paragraph (1) if either—

"(A) such applications contain, or are accompanied by—

"(i) the information required to be included in such applications under paragraph (1) and such information is accurate as of the date the applications are printed; and

"(ii) a statement, in a conspicuous and prominent location on the application, that—

"(I) the information contained in the application is subject to change; and

"(II) the applicant should contact the creditor for information on any change in the information contained in the application since the application was printed; or

"(B) such applications contain, or are accompanied by, the disclosures required by paragraphs (1) through (6) of subsection (a).

"(4) Special rule for charge cards.—

"(A) In general.—Any application or solicitation for a charge card shall disclose, clearly and conspicuously, the following information, to the extent applicable:

"(i) Any annual or other fee or charge imposed for the issuance of a charge card, including any account maintenance fee or any monthly charge imposed when there is activity for the account during the billing cycle.

"(ii) A statement that charges incurred by use of the charge card are due and payable upon receipt of and in accordance with a periodic statement of charges.

"(B) Issuers of charge cards which provide access to open end consumer credit plans.—If any charge card permits the card holder to receive an extension of credit under an open end consumer credit plan which is not maintained by the charge card issuer, the charge care issuer may provide the information described in subparagraph (A) in lieu of the information required to be provided under paragraph (1) with respect to any credit extended under such plan, if the information required to be disclosed under paragraph (1) is provided to the charge card holder by the creditor which maintains such open end consumer credit plan before the first extension of credit under such plan.

"(C) Charge card defined.—For the purposes of this subsection, the term 'charge card' means a card, plate, or other single credit device that may be used from time to time to obtain credit which is not subject to a finance charge.".

(b) Certain Information Required to be Disclosed in Tabular Form.—Section 122 of the Truth in Lending Act (15 U.S.C. 1632) is amended—

(1) in the third sentence of subsection (a), by striking out "Regulations" and inserting in lieu thereof "Except as provided in subsection (c), regulations"; and

(2) by adding at the end thereof the following new subsection:

"(c) Tabular Format Required for Disclosures Under Section 127(c).—

"(1) In general.—The annual percentage rate, annual fee or similar charge, and grace period disclosures required under paragraph (1) of section 127(c) in any written solicitation or application shall be—

"(A) disclosed in the form and manner which the Board shall prescribe by regulations; and

"(B) placed in a conspicuous and prominent location on or with any written application, solicitation, or other document or paper with respect to which such disclosure is required.

"(2) Tabular format.—

"(A) Form of table to be prescribed.—In the regulations prescribed under paragraph (1)(A) of this subsection, the Board shall require that the annual percentage rate, annual fee or similar charge, and grace period disclosures referred to in paragraph (1) shall, to the extent the Board determines to be practicable and appropriate, be disclosed in the form of a table which—

"(i) contains clear and concise headings for each item of such information; and

"(ii) provides a clear and concise form for stating each item of information required to be disclosed under each heading.

"(B) Board discretion in prescribing order and wording of table.—In prescribing the form of the table under subparagraph (A), the Board may—

"(i) list the items required to be included in the table in a different order than the order in which such items are set forth in paragraph (1) of section 127(c); and

"(ii) subject to subparagraph (C), employ terminology which is different than the terminology which is employed in section 127(c) if such terminology conveys substantially the same meaning.

"(C) Grace period.—Either the heading or the statement under the heading which relates to the time period referred to in section 127(c)(1)(C) shall contain the term 'grace period'.".

(c) Coordination With Other Laws.—Section 111 of the Truth in Lending Act (15 U.S.C. 1610) is amended—

(1) in subsection (a)(1), by striking out "Chapters 1, 2, and 3" and inserting in lieu thereof "Except as provided in subsection (e), chapters 1, 2, and 3"; and

(2) by adding at the end thereof the following new subsection:

"(e) Certain Credit Card Applications Disclosure Provisions.—The provisions of section 127(c) shall supersede any provision of the law of any State relating to the disclosure of information in any credit card application or solicitation which is subject to the requirements of section 127(c), except that any State may employ or establish State laws for the purpose of enforcing the requirements of section 127(c).".

(d) Effective Date.—Any regulation required to be prescribed by the Board under the amendments made by this section shall—

(1) take effect not later than the end of the one hundred and fifty day period beginning on the date of the enactment of this title; and

(2) apply only with respect to applications, solicitations, and other material distributed after the end of the one hundred and fifty day period beginning after the end of the period referred to in paragraph (1), except that—

(A) in the case of take-one and other applications subject to section 127(c)(3), such period shall be two hundred and forty days; and

(B) any card issuer may, at its option, comply with the provisions of this Act prior to the applicable effective date, in which case the provisions of this Act shall be fully applicable to such card issuer.

AMENDMENT OFFERED BY MR. ANNUNZIO

Mr. ANNUNZIO. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Annunzio: Page 10, after line 21, add the following new section:

SEC. 3. CREDIT CARD INTEREST RATE CEILING.

(a) In General.—Chapter 1 of the Truth in Lending Act (15 U.S.C. 1601 et seq.) is amended by inserting after section 109 the following new section:

"SEC. 110. LIMITATIONS ON CREDIT CARD INTEREST RATES.

"(a) In General.—During any calendar quarter, no creditor may impose a finance charge under any open end credit plan involving a credit card which results in an annual percentage rate greater than 8 percentage points over the yield on 1-year securities in the Treasury constant maturity series for the second month of the preceding calendar quarter.

"(b) Certain Provisions of State Notice Law Superseded.—Notwithstanding any State law which requires a creditor to provide notice to any person to whom credit has been extended before the creditor may increase the rate used to compute the finance charge imposed on such credit, a creditor may increase such rate for any calendar quarter by the amount by which the maximum allowable rate determined by such calendar quarter under subsection (a) exceeds the rate in the preceding calendar quarter.

"(c) State Ceilings Not Superseded.—Except as provided in subsection (b), this section shall not permit the imposition of any finance charges in excess of any limitation on finance charges determined under applicable State law.".

(b) Clerical Amendment.—The table of sections for chapter 1 of the Truth in Lending Act is amended by inserting after the item relating to section 109 the following new item:

"110. Limitations on credit card interest rates.".

Mr. ANNUNZIO (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the Record.

The CHAIRMAN. Is there objection to the request of the gentleman from Illinois?

There was no objection.

The CHAIRMAN. Under the rule, the gentleman from Illinois [Mr. Annunzio] will be recognized for 30 minutes and the gentleman from Indiana [Mr. Hiler] will be recognized for 30 minutes.

Mr. HILER. Mr. Chairman, I ask unanimous consent that the gentleman from New York [Mr. Schumer] be recognized for 15 minutes and that the gentleman be permitted to yield blocks of time during the debate on the Annunzio amendment.

The CHAIRMAN. Is there objection to the request of the gentleman from Indiana?

There was no objection.

The CHAIRMAN. The Chair now recognizes the gentleman from Illinois [Mr. Annunzio].

☐ 1515

Mr. ANNUNZIO. Mr. Chairman, I yield 7 minutes to the gentleman from New York [Mr. Biaggi].

Mr. BIAGGI. Mr. Chairman, I rise in total support of the Annunzio amendment to place a reasonable cap on credit care interest.

In my opinion, it comes several years too late, yet it may well happen in 1987 which as the turbulence on Wall Street has proven, may go down as the year of living too dangerously and paying for it.

Passage of the Annunzio amendment will allow us to renew our rightful role as advocates for consumers. It will also cure the greed that infected the credit card industry for the last several years, and I mean greed. This credit card business is the biggest money item that banks have.

I want to commend the gentleman from Illinois [Mr. Annunzio], the distinguished chairman of the Subcommittee on Consumer Affairs and Coinage, for his courageous leadership on this important issue. For the past couple of years he has eloquently and vigorously stated the case that the credit card industry is ripping off the American consumer through outrageously high credit card interest rates.

I am proud to join in the call for Federal intervention to correct this gross injustice.

In February 1985 I first proposed the idea of placing a reasonable cap on credit cards interest rates. At the time my bill would have lowered credit card interest rates from a national average of 18.6 percent to a far more reasonable 13 percent.

The amendment before us is slightly more modest, lowering interest rates from about 18 to about 15 percent, but would still save American consumers about $1 billion annually in credit card interest rate charges.

The problem we are facing here is a simple one. Our nation is addicted to plastic money and the credit card pushers are preying on that addiction. When people say the purchaser or the consumer has the right to choose or not to choose to use the credit card, they are flying in the face of reality. We have an American public that is addicted to credit cards. How else can we explain the fact that 100 million Americans are paying an average of 18 percent interest for the convenience of using a credit card when the banks are only paying about 6 percent for the same money and charging 18 percent. This is a 200-percent markup. It is a national disgrace.

Where is all this extra money going? The banks are quick to talk about fraud and abuse losses and high administrative costs. However, both VISA and MasterCard have recently reported dramatic declines in credit card counterfeiting and administrative costs have remained relatively stable over the last several years while credit card rates have actually gone up.

The banks say they need to charge these higher rates to make a modest profit.

They argue that if rates were lowered, consumers would lose their interest-free grace period and end up paying higher fees. However, that is simply not true. Merely consider the example of Simmons First National Bank in Pine Bluff, AK. Simmons charges only 11 percent and there is a cap in that State, and there has been for some time. As a result of that cap they charge 11 percent on their credit cards and the consumers are there. They still manage to offer their customers a 25-day grace period. They charge a modest $25 annual fee and, surprise, surprise, they even manage to make a healthy profit. In fact, they welcome out-of-state customers with open arms.

It is not the only State with a cap.

I would like to put another myth to rest. The banking industry has long stated that competition in the marketplace should be allowed to set rates. In truth, there is no real competition in the credit card industry. Banks like Simmons are the rare exception, not the rule. In fact, the 10 top issuers of bank cards account for more than one-third of all the cards issued and there is virtually no competition between the rates offered by these industry giants, in fact the average interest rate they charge is 19 percent, a full point higher than the national average.

The result: 8 of the 10 bank card issuers reported hefty earnings, increases over 1986, increases ranging from $3.2 million to $107.2 million.

Some have suggested that we leave these problems for the States to address. This is a fatally flawed argument. Consider that those States that have set reasonable credit card ceilings have seen their credit card business move to States with high ceilings or no ceilings. That is why we need a national rate cap, one that will be applied fairly and universally.

One final observation, Mr. Chairman, and I am sure I am not the only Member who has been receiving letters from credit card issuers urging support for the disclosure bill and opposition to the Annunzio amendment. But do not be fooled, the true color of the credit card industry is dollar bill green, but they know the realities just like I do. Disclosure will make consumers more aware of what they already know, that most current credit card rates are a big rip-off and if my colleagues do not think so, attend their conventions and attend the classes that talk about the money they are making on credit cards. It is the liveliest thing they have.

The only real way to slow the credit card industry moneymaking machine would come in the form of a credit card rate cap. That is what it is, pure and simple, a moneymaking machine.

We have been here a long time, and I do not have to tell my colleagues the way they effectively lobby. I am not going to go into the details now, but we are all sufficiently experienced to know what has happened. The only way out, the only way to deal effectively with this problem is to put on a cap.

Mr. Chairman, I do not know if this amendment will pass or not, but I feel it should pass. If my colleagues are talking about consumer interest, I mean real consumer interest, they will vote for it. Whatever your other considerations are, that is what we live with, but the consumers of America want it, they need it, they deserve it. The banking industry is ripping them off, taking advantage of an addiction, and my colleagues know it. We all have that addiction, the credit card addiction.

I applied to Simmons First National Bank, and I have an account from Arkansas. That is what I use, but how many people take that initiative? If they all did, the rates would come down. That is not the way it is, however, because competition does not exist among the big banks.

I say to my colleagues that they know that and I know that, because they function in their own unique way and take advantage of inertia. They take advantage of the inertia of the consumer who has the card and accepted it as a way of life. It is incumbent upon us as Members of Congress to protect the consumer against themselves and against the banking industry that continues to exploit and extort the exorbitantly high rates that they have been currently getting.

Mr. SCHUMER. Mr. Chairman, I yield 3 minutes to the gentleman from Georgia [Mr. Barnard], the lead sponsor of this bill.

Mr. BARNARD. Mr. Chairman, I thank the gentleman for yielding me this time.

Mr. Chairman, we all have great respect for the author of this amendment and for some of the supporters of it. But this is far from an emotional issue. This is an academic issue, and academics have come down on the side that it is a wrong amendment. It is a wrong amendment for the consumer. This amendment runs counter to the nearly unanimous views of the Committee on Banking, Finance, and Urban Affairs of the House, and the markup transcript shows that this amendment received only one voice vote. Moreover, 33 committee members have circulated a "Dear Colleague" letter to underscore their committee votes.

This kind of opposition from those who specialize in bank and consumer legislation should be a clear sign to the full body that we are looking at something other than "greed." I hope, my colleagues, you do not believe that we sit, figuring out ways to soak the public.

Rather, I hope, you understand we have looked at the whole issue of credit cards very closely. We have weighed studies by academics and by the regulatory agencies. We have not accepted these voluminous studies—uniformly opposed to caps—at face value. Rather, we have used our collective judgment, using a hearing record.

I am comforted the editorialists agree with us. The New York Times and the Chicago Tribune have written against this amendment.

Many of you might reel at the rates thrown around today in debate. Yet, we have carefully examined the underlying facts.

Credit cards are a multifeature service. They provide financial identification when you fly or check into a hotel or when you purchase goods away from home. If you loose them or they are stolen, under law, your maximum liability is $50 per card. You have all kinds of rights as a cardholder if you do not like the goods or services you purchased with them. The holder in due course doctrine does not apply. And on and on.

Moreover, the cardholder has many options on how expensive he wants the service to be. The holder does not have to use it for credit. In most cases, he can simply pay his monthly billing in full. Indeed, in that case, the bank gets stuck and the cardholder has gotten a financial benefit on float since the purchase. Moreover, there are cost cutting items like grace periods for payment.

In short, credit card rates really are a price for a package of services, and only a part of that package is the lending component to be.

What about the "gouging" issue? Credit cards are not excessively profitable. The latest comparative Federal Reserve summaries show that net earnings of bank card plans before taxes average 1.9 percent of balances outstanding from 1972 through 1985. This is significantly lower than the average net returns on major types of commercial bank loans for the same period: 2.3 percent on real estate mortgages, 2.4 percent on commercial and other loans.

With figures like that the committee could not just willy nilly say—you are gauging the public. We had to look further. Why do we sometimes see higher figures in some institutions and not so high figures in others. A lot has to do with administration and loss expenses. These account for about 60 percent of credit card interest rates. Losses, processing, etc.—cost.

Further, we had to consider the cost to the Federal Government in lost revenue. The full deductibility is being phased to zero. The Federal subsidy for this whole service system is about to end. Pricing the whole service will change. Competition will intensify and probably the whole charge for the service will decline.

Well, enough. Those are the things the committee had to consider. Our net balance was—no caps. Our net balance was the disclosure—not the fixed price system—is best for the consumer.

I sincerely hope the House will sustain your committee's judgment.

□ 1525

Mr. ANNUNZIO. Mr. Chairman, I yield 2 minutes to the distinguished gentleman from Illinois [Mr. LIPINSKI].

Mr. LIPINSKI. Mr. Chairman, I thank the gentleman for yielding time to me.

Mr. Chairman, I rise in strong support of the Annunzio amendment. It is time the American consumer be given a fair shake by restricting credit card companies to a legitimate profit.

Two-thirds of all credit card users carry over their finance charges. We need to reduce the bloated interest rates that have plagued consumer spending, especially in the next year when credit card users will no longer be able to deduct their interest charges from their income tax returns.

A lack of confidence in the stock market, skyrocketing credit card rates, and the loss of deductibility, make for a sluggish Christmas shopping season. Yet, this is the time when increased consumer spending gives a shot in the arm to our economy. Over one-quarter of all spending is done at this time. Lower credit card rates will spur the economy.

Mr. Chairman, I have firsthand knowledge of how important this issue is to the consumers of America. Back in my home district on the southwest side of the city of Chicago an individual who ran for the State Treasurer's job in Illinois had one single issue. That issue was that he was going to cap the credit card rates in the State of Illinois. This man ran in the primary against four other individuals. He had the least amount of financing for his campaign and he won that primary. He then ran in the general election, with an Italian name, which is not that popular in the entire State of Illinois, and was underfinanced, but once again because of this issue he won that election and he became the State Treasurer of the State of Illinois, and he has used his power and his influence in the State of Illinois with the banks to reduce the rates of interest on credit cards.

This has been extremely successful in the State of Illinois, and if it has been successful in a State which has such a mixed economy as Illinois does I think it can be very successful on the Federal level.

I understand in a nationwide survey that over 80 percent of the people that were interviewed favor this cap.

I also would like to say one other thing, too. I had an awful lot of people from my retail businesses, large companies, I will not say Sears and Roebuck, but like Sears and Roebuck, and they tell me that they have these credit card rates because it helps subsidize their materials that they sell in their stores. They charge so much on the credit card rates and they can feed that in and keep the price on shirts and ties and suits and things like that down. I have asked them to produce that information for me. Unfortunately, they have never come forward and produced that information, so I have to question their argument.

In conclusion, let me just say I want to commend the gentleman from Illinois [Mr. ANNUNZIO] for his amendment. I think he has shown outstanding leadership and foresight.

Mr. HILER. Mr. Chairman, I yield 3 minutes to the gentleman from Kentucky [Mr. BUNNING]

Mr. BUNNING. Mr. Chairman, I rise today in strong opposition to the amendment to place caps on credit card interest rates.

H.R. 515 is landmark consumer legislation that deals with disclosure of certain credit card terms that are of great importance to the American Consumer. Under the bill, consumers would receive the vital facts necessary to make an educated decision on what credit card they choose to hold.

If a consumer knows the annual interest rate, the annual fees and grace periods relative to credit card offerings, he has all of the information necessary to make an educated consumer choice about which card he wants to carry in his wallet.

However, now there is an amendment pending to take this legislation one step further. The amendment would place caps on credit card interest rates. While I strongly support the disclosure provisions of H.R. 515, I am opposed to any attempt to cap credit card interest rates.

I could go on for hours giving the reasons why we should not support this amendment, but today I want to discuss my two major objections to the amendment.

First, and foremost, this amendment is going to hurt those Americans who very desperately need credit. The picture of a credit card system with interest rate caps is not very promising for these people.

To understand what I am talking about, just look at the short history of the credit card in this country. The expansion of the credit care market has opened up new credit opportunities for groups of Americans previously ineligible.

Students, Americans without credit records, and Americans on fixed and moderate incomes can now obtain credit. Ten or fifteen years ago this was unheard of in the industry.

If a credit card interest rate cap is imposed, the bottom line is that banks will stop giving out credit cards to any one who they might consider a credit risk. Hence, honest, hardworking Americans, earning modest incomes and lacking credit histories will be denied credit.

We have come a long way in this country to give people the opportunities of improving their life. Capping credit card interest rates would amount to a giant step backward.

My second major problem with credit card interest rates deals with the importance of the disclosure provisions of H.R. 515. You don't have to be an economic genius to figure out the effect that this disclosure will have on interest rates.

If you go out to buy a car and see a sign that says that a particular car costs $14,000 and then see a sign across the street that the same car costs $13,000, which one are you going to buy.

If you say that you would buy the more expensive car, I have a nice second car with low miles that I'd like to show you.

But let's not stop there. Let's carry the scenario one step further. If you are the owner of the car dealership that offers the car for the higher price, what are you going to do to compete? It seems pretty obvious to me that you are going to lower your price and let everybody know about it.

My hypothetical of car sales is no different than the credit card market after enactment of credit card disclosure. The consumer is going to see who has the better terms and make a decision about which card best suits his needs. By the same token, if the institution with the higher rates expects to survive in the marketplace, he is going to have to become more competitive.

Competition is the basic foundation upon which a free economy is based. That is what this bill is all about. The amendment to cap credit card interest rates chips away at the very foundation of principles.

Mr. Chairman, H.R. 515 is excellent consumer legislation that will enhance America's credit system. But if here today, we cap interest we will close the lid on credit for those American's who need credit the most. Furthermore, we will be setting a bad economic example for generations to come.

I urge defeat to the amendment.

Mr. SCHUMER. Mr. Chairman, I yield 1½ minutes to the gentleman from Maryland [Mr. CARDIN].

Mr. CARDIN. Mr. Chairman, I thank my colleague for yielding me this time and I rise in opposition to the Annunzio amendment.

I also want to compliment the committee for bringing to the floor a bill that I think really will help in regards to credit cards and credit card costs.

The reason why I oppose the amendment is one word: competition. If we are going to help the consumer, then we have to encourage competition.

The bill that is before us encourages competition. It makes the necessary disclosures so that the consumer can make the choice. The amendment that is before us would restrict competition, would put a limit on one aspect of why a consumer would choose a particular credit card. It may be because of interest rates, it may be because of credit limit, it may be because of where the card is accepted or what credit requirements are necessary in order to obtain the card, or the grace period or the fee. All of those issues go into the consumer's mind as to whether he or she will accept a particular credit card.

By putting an arbitrary limit on one aspect we are restricting competition and hurting the consumer. We tried that in Maryland. It did not work. We hurt our consumers and we had to change our laws.

I urge my colleagues, if we are concerned with the consumer, if we are concerned about competition, let us pass the bill without the amendment. We have two choices. One choice is that we can pass the bill as is and enact a bill that is going to help the consumer. The other choice is to put this amendment on, load it up with an amendment that is not going to help the consumer in a bill that will never be enacted, and then we will not be doing anything for the consumer.

I urge my colleagues to defeat the Annunzio amendment.

Mr. Hiler. Mr. chairman, I yield 3 minutes to the gentleman from Georgia [Mr. SWINDALL].

Mr. SWINDALL. Mr. Chairman, I rise in support of the bill and in opposition to this amendment.

The amendment is fundamentally flawed for one basic reason. It assumes the stupidity of the American public. It assumes that once the American public has disclosed in a full, a uniform fashion how much they are paying for the credit extended to them as well as the services extended to them by virtue of a credit card that they will not have the common sense to make the right decision.

The other basic flaw that this amendment has that I would like to mention very quickly is first it is being pushed on the basis of trying to help individuals. In reality, this type of help, as other previous speakers have stated, would only cut off the very people who otherwise would be able to avail themselves of credit cards. The reason for that is there is limited credit in this country. We certainly understand that in the wake of the Wall Street Black Monday of 2 weeks ago.

What has happened is America has a very low net income that it is placing into private savings. Japan has about an 18-percent rate, we have less than a 3-percent rate. That means basically we have to dole out the credit.

When we put these types of restrictions in an otherwise competitive market we will see that those who would otherwise be able to get the credit; that is, those people that are on the margin, will lose their credit card privileges.

It also assumes that all credit cards are used exclusively for credit. In reality, they are used for a lot of other purposes, including having the bank or credit card company do your accounting for you, keep your records in order. By using a credit card, many of us know that even if we could afford to pay cash, by using a credit card we have a written receipt and we have the ability to recall those documents because someone else has done the work. We have to pay for that work.

But probably the most important point is that there is already vast competition in this area. It might make sense to put these types of price controls on if we were talking about some type of industry where there is no competition. How many of us every single day see more and more solicitations for credit cards? With full and uniform disclosure, people can make intelligent decisions.

Finally, banks are not generating excessive profit. According to the Federal Reserve bulletin of 1987, net earnings of bank credit plans before taxes average 1.9 percent of balances outstanding from 1972 through 1985. This is significantly lower than the average net returns on major types of commercial bank loans for the same period, 2.3 percent on real estate mortgages, 2.4 percent on commercial and other loans.

Let us do the American public a favor. Let us not assume that they are stupid.

Mr. ANNUNZIO. Mr. Chairman, I yield 5 minutes to the gentleman from Nevada [Mr. BILBRAY].

Mr. BILBRAY. Mr. Chairman, I rise in support of the amendment of the distinguished chairman of the Subcommittee on Consumer Affairs and Coinage. I commend the gentleman's leadership on behalf of American consumers.

I also wish to commend my colleagues who serve on the House Committee on Banking, Finance and Urban Affairs for their consideration of credit card interest rates. As a cosponsor of H.R. 515, I join in their desire to fully notify consumers of the rates and charges associated with the acceptance of open-end charge cards. But I must take issue with the notion that predicts credit card interest rates almost certainly will come down based upon disclosure alone. Sadly, that contention runs squarely against the facts.

Five years ago, the prime rate topped 20 percent. The rate of securities in the Treasury 3-year constant maturity series exceeded 16 percent, while the discount rate topped 14 percent. At that time, credit card interest rates averaged 17.8 percent.

Today Mr. Chairman, almost all interest rates have dropped to less than half of the levels seen in 1982. Yet credit card interest rates have actually increased to a level by some estimates to an average of nearly 19 percent.

And it is the middle class—the hard working men and women of our Nation—that pays this bill. Testimony before the subcommittee chaired by the distinguished gentleman from Illinois indicates that consumers owe approximately $85 billion on credit cards, a level 150 percent greater than just 4 years ago. Estimates for this year show that for the current year, consumers will pay about $15 billion in credit card interest rates and fees, or $1.25 billion monthly. Moreover, by any standard one wishes to employ, the overwhelming portion of these payments are made by the middle class.

In light of recent economic developments, we must conclude that any money that can be saved by middle-class taxpayers rather than spent in interest payments will be of critical importance in securing a pool of investment capital for further economic expansion.

In a recent NBC poll, nearly 75 percent of the American people surveyed favor a rate cap on credit card interest rates. The distinguished gentleman from Illinois provides an amendment which clearly gives the beleaguered middle-class relief from oppressive interest rates and finance charges on credit cards. Indeed, this amendment is endorsed by the American Association of Retired Persons, the Consumer Federation of America, Consumers Union, and others. His amendment would provide for a floating cap, varying upward or downward in accordance to market pressures. Since such a cap retains sensitivity to the market, credit markets remain accessible. Moneys not spent on interest payments may be free for other expenditures, including investment savings. Under the provision in question, credit markets are not "dried up."

Mr. Chairman, I again commend the distinguished gentleman from Illinois for his leadership and commitment on this issue so critical to consumers. I join the millions of middle-class Americans who thank him for assistance and desire to help make ends meet.

I urge my colleagues today to vote in favor of the Annunzio amendment.

□ 1540

Mr. ANNUNZIO. Mr. Chairman, will the gentleman yield?

Mr. BILBRAY. I yield to the chairman of the subcommittee, the gentleman from Illinois [Mr. ANNUNZIO].

Mr. ANNUNZIO. I thank the gentleman for yielding.

Mr. Chairman, let me ask the gentleman in the well: Is it true that as a major promise in his campaign he said he would work for a credit card cap? And would he have won in the State of Nevada without this promise?

Mr. BILBRAY. Well, I think I would have won anyway, but I think it was certainly a major issue. People called me over and over again and said, "Finally somebody is bringing up an issue that means a lot for the people. You are doing something for us." I thank the gentleman.

Mr. SCHUMER. Mr. Chairman, I yield such time as he may consume to the gentleman from Mississippi [Mr. ESPY].

Mr. ESPY. Mr. Chairman, I rise in opposition to the Annunzio amendment.

Mr. Chairman, I rise in opposition to the amendment offered by my colleague from Illinois, and I do it with these qualifying points. It was my first impulse to support this well-intentioned amendment with the interests of consumers in mind. But after considerable thought and discussion, I now believe that the provisions of H.R. 515, the Credit Card Savings Act, will engender more competition with the comparison of interest rates, annual fees, and interest-free grace periods. I believe that consumers will be able to shop for their best credit card service, and because of this, credit card interest rates will come down.

With more than 15,000 credit card issuers in America, the competition for new users will be tremendous, and the benefits for consumers will be twofold. First, they will benefit from more complete information on which they decide their selection of credit cards, and as credit card issuers attempt to secure a portion of the user market, the credit card holders will have lower interest rates. Second, the cost of retaining and using a credit card will be lower, providing these consumers with a little more discretionary money.

I am afraid that limiting the credit card interest rate will have too many unwanted side effects. Surely, less credit would be available in many cases, no credit would be available to marginal and young wage earners.

Mr. Chairman, I also believe that retail sales would go down. Obviously, at some point the bill must be paid, but if this short-term loan tool is restricted to the most creditworthy consumers, then a significant segment of our consuming population would be omitted. Without their purchasing power and the convenience of credit cards, retail sales would suffer.

More basic, Mr. Chairman, I do not feel that governmental intervention in restricting credit card interest rates would be an appropriate policy direction. I believe that the provisions contained in H.R. 515 will allow the market for credit cards to correct itself by more fully disclosing information on these financing products. Mr. Chairman, I urge my colleagues to join me in opposing the amendment before us.

Mr. SCHUMER. Mr. Chairman, I yield 1 minute to the gentleman from Michigan [Mr. LEVIN].

Mr. LEVIN of Michigan. I thank the gentleman for yielding.

Mr. Chairman, I rise in opposition to the amendment of Mr. ANNUNZIO. I do not want to refer to all the materials we have been receiving from economists and others but if I might I would like to refer to what seems to me to be the basic concepts here.

If the free market cannot work or is not working, Government should intervene or at least consider it seriously. Where the free market is working or can work, especially with full disclosure, we should be wary of a solution by Government decree.

In a word it seems to me it sells Americans short to say that we cannot differentiate between a 13- or 18-percent interest rate.

I think we can leave that decision up to Americans. I do not believe that we need an interest rate set for the country here in Washington.

Mr. HILER. Mr. Chairman, I yield 2 minutes to the gentleman from Virginia [Mr. BATEMAN].

Mr. BATEMAN. I thank the gentleman for yielding.

Mr. Chairman, almost 20 years ago as a freshman member of the senate of Virginia, I introduced legislation which for the first time removed the ceiling on interest rates on first mortgage secured loans.

Predictions were that this would have dire consequences, that the people who were required to borrow money would be gouged by the cold-eyed banker.

This did not prove to be the case with first mortgage secured loans. It was since duplicated by removing artificial restrictions on other types of borrowing.

What we found through our experience in recent years in all of the States throughout America who have removed ceilings is that we have done something to enhance the position of the consumer in the marketplace.

When we, or any legislative body, mandate a ceiling, it has the tendency in a competitive market to drive the rate to whatever the permissible ceiling is.

Given the amount of advertising and competition that indisputably takes place among banks in their credit card operations, what need is there of this Congress to be mandating the rate of interest that someone can charge to a consumer willing to pay it? We are not helping consumers; in my opinion, we would tend to drive rates up to a mandated ceiling because then no one would any longer have the same incentive for competition.

I might further point out that none of us in this Chamber should want a bank denied of the opportunity to be profitable. A nonprofitable depository institution can wreak havoc on any community in which that institution fails.

If the banks are denied an opportunity to make a profit on the consumer transaction, the credit card transaction, they would surely be seeking that profit in rates on other loans, producing a disadvantage for all.

Mr. ANNUNZIO. Mr. Chairman, I yield 4 minutes to the gentleman from Illinois [Mr. SAVAGE].

Mr. SAVAGE. Mr. Chairman, I am a bit puzzled at what I am hearing here, unless more of my colleagues than I realize represent very wealthy districts with big bankers living on either side of them. And if the people, representatives from such districts want to let the interest rates go higher and higher so that the big bankers can make more and greater profits, I can understand that. But if there are other Members here who like myself come from middle-class, hard-working, homeowner districts where you have schoolteachers and truckdrivers and, in my case, steelworkers, blue collar workers, postal workers, Government employees who earn less than $40,000 or $50,000 a year and who are struggling sometimes even both husband and wife having to go out to work in order to meet the needs of their family where 1 or 2 points higher in interest rates will make quite a dent in how their children might live or whether they may attend the college of their choice, I do not know how they can come here and vote for leaving these interest rates so high and go back home on the weekend and face their constituents.

How would they explain to the ordinary family? I just heard someone stand up here and say that if we go along with the Annunzio amendment that the effect would be that we would drive the interest rates up to that ceiling.

Well, let me just get a little figure straight here as I learned math.

According to the Annunzio amendment, which allows some 9 percent above the Treasury notes during the first year, which would mean at present something like 15 percent, well, my God, if the present average interest rate on credit cards is 18 percent right now, how in the world will a ceiling of 15 drive those rates up? Fifteen is lower than eighteen.

It will bring the rates down. There is some strange thinking, to me.

How can we stand up here and put profits above people and want to protect big bankers charging ordinary working people in this country an amount almost double the amount of the prime rate that the wealthy people, that so many of us are here to protect, already pay? The wealthy people get prime rates when they go to the bank.

Why do we not stand up here and speak and try to defend the ordinary worker who, when he goes to a bank, cannot get 9, 10, 11, 12 percent? Do you not know that credit cards are no longer a luxury? It is almost compulsory to have a credit card in most instances.

You go to a hotel now, they do not want cash. You go there and you want to rent a room and reach in your pocket for cash; they want plastic.

If you want to pay cash they will probably take the bar out of your room, probably will not answer your calls on room service calls.

They are outcasts.

People almost have to have credit cards.

Yet they are going to turn around and tell me that they do not deserve some protection against such usurious rates. If it is so good to have an 18-percent interest rate on credit cards then we ought to order the banks to raise their prime rate, then everybody will pay 18 percent, if you will. That makes no sense at all.

If a bank can make a profit charging wealthy people 9, 10, or 11 percent, why can they not make a profit charging ordinary people as high as 15 percent, which is what the Annunzio bill permits?

I will tell you, I am proud and I want to thank the gentleman who I consider to be one of the most courageous and concerned colleagues, FRANK ANNUNZIO, for having the guts to stand up against all those pressure calls coming from all over, from everywhere, big bankers, trying to intimidate Members of this body. Let us stand up here for the ordinary people of America.

Mr. SCHUMER. Mr. Chairman, I yield 1½ minutes to the gentleman from Arkansas [Mr. ROBINSON].

Mr. ROBINSON. Mr. Chairman, I have been to Hollywood, a couple of county fairs and one goat-roping, and I have never heard such hogwash arguments in all of my life on this House floor today.

I am a cosponsor of this bill and I am for it. However, I rise in strong opposition to the Annunzio amendment for two reasons. First, if you pass this amendment today you are going to send the most godawful shock wave to Wall Street that we have witnessed in recent weeks. Our banking community and our retail merchants are going to be in a complete state of disarray.

You are going to see their stocks nosedive.

Second, these credit card companies will simply restrict credit. Then consumers will not go out and purchase things. Then you are going to a have a recession.

And finally, having a credit card is not a constitutional right, it is a privilege.

May I repeat, it is not a constitutional right to own a credit card, it is a privilege.

My constituents sent me here to act responsibly. One of my colleagues said, “I ran on a platform that I want to cap interest rates.” Do not do what is politically expedient today, do what is responsible.

Mr. HILER. Mr. Chairman, I yield 2 minutes to the gentleman from Ohio [Mr. WYLIE], the ranking member of the Committee on Banking, Finance and Urban Affairs.

Mr. WYLIE. Mr. Chairman, I am sincere in commending the gentleman from Illinois for his leadership in bringing this issue before us today and providing this forum for debate.

I think the debate has been most illuminating.

The point has been made that price-fixing and credit allocation have never worked in our society. Put a cap on interest rates and that will be the rate.

I believe there is one other major point that needs reemphasis that can sum up the arguments against the amendment and help Members decide how to vote on this issue.

□ 1555

A credit card interest rate ceiling will restrict the amount of credit available to less affluent consumers who have fewer alternative credit sources available in the first place. Period. A restrictive rate ceiling for consumer credit has resulted in the past, and will result in the future, in tighter lending standards by creditors. If I may, I will quote the Federal Reserve again: “* * * creditors are likely to apply more accommodative credit standards when the price of credit is determined by market forces, and to use stiffer loan criteria when regulations hold rates below market-determined level * * *."

I made the point earlier that credit card interest rates are coming down and many cards are available at less than the 15.5-percent cap that would be the rate under this amendment.

Obviously, mandated disclosure of key credit card terms permits the marketplace to work by allowing consumers to select the best card plan for them. Let us give the consumer the best of both worlds—adequate and easy-to-read disclosures and a free marketplace that will give creditors flexibility in offering credit to a broad range of applicants.

Mr. Chairman, I urge a no vote on the Annunzio amendment.

Mr. ANNUNZIO. Mr. Chairman, I yield 3 minutes to the gentleman from Illinois [Mr. HAYES].

Mr. HAYES of Illinois. Mr. Chairman, the easiest thing in the world to do would probably be to sit out this debate. But as a matter of my own conscience and my concern for consumers in this country, it just would not permit me to sit idly by when I have to listen to and hear some of the arguments that are being advanced against the amendment. It has overtones and sounds much like the argument advanced by those who oppose sanctions in South Africa by saying that those of us who are for it are out to make it difficult for those people who are now working because they will lose jobs.

I cannot help but feel that the Annunzio amendment is one that will offer some protection for the people who need protection from some of the big financial interests.

I talked to a lady who is on a fixed income and who applied for a credit card and agreed to pay 15 percent interest. That is too much, but she agreed to pay it. They would not give her a credit card for that amount of interest, but they issued her one for 22 percent, which automatically restricted her buying, her right to purchase, because she could not afford to do it.

I would just like to suggest that we should support the Annunzio amendment. It is not a cure-all, not by any stretch of the imagination, but it does give some protection to those people who are now at the low end of the economic totem pole. We have that number now rising because of the lack of employment, because of being underemployed and forced to take jobs at less money than what they used to get because the jobs that now exist are mostly in the service industries and they get less money than they used to get.

Mr. Chairman, support for this amendment shows that we have some support for those people in that category. I wholeheartedly support this amendment, and I urge my colleagues to vote in favor of it.

Mr. SCHUMER. Mr. Chairman, I yield 2½ minutes to the gentleman from Maryland [Mr. McMILLEN], a member of the committee.

Mr. McMILLEN of Maryland. Mr. Chairman, I rise in reluctant opposition to the Annunzio amendment: Not because I have any doubt or remorse in speaking against a credit card cap, but because I have come to develop a great respect for the gentlemen from Illinois and his work as a colleague of mine on the Banking Committee.

In figures provided by a major department store it was revealed that almost one-half their credit cards went to customers with incomes below $18,000. This same store opened 24 percent of its new credit card accounts last year for customers with an annual income below $14,000. This gives these customers an opportunity to establish credit for the first time. If the interest cap passes, many of these families will be denied this chance. The fact that only one in eight low-income families has a bank card is a powerful argument against the Annunzio amendment. If the cap passes, banks will not offer cards to these families: they obviously hesitate to do so already. What will happen is that retailers who offer credit as a customer service, not a profitmaker, will withdraw their offerings.

Hechts, a Washington area retailer, lost $5 million in its credit operations last year. They charge 21.6 annual interest. Their average monthly balance was only $234, indicating prudent credit policies. Many of their credit cardholders do not qualify for bank credit card. If a rate cap is instituted, these low-income Americans will not even be able to get a Hechts' credit card as Hechts would be forced to restrict credit availability, eliminate free grace periods, raise prices to pass on the higher costs, and possibly only accept bank credits, totally removing low-income families from the credit market.

I am afraid that if the Annunzio amendment becomes law, there will be a lot less than one in eight families having a bank credit card and far fewer having retail credit cards.

Mr. Chairman, I know that many have made huge profits from high credit card rates. That is why I support full disclosure. Let consumers shop around, credit cards offering interest rates below the cap can be found. They will let banks know if their rates are too high by taking their business elsewhere.

I wish I could support the Annunzio amendment, Mr. Chairman, as I hold the gentleman from Illinois in such high regard. But I cannot ignore the ill effects that a credit card cap will have on the poor, the elderly and those just establishing credit if it is passed for these reasons, I urge its defeat.

Mr. SAVAGE. Mr. Chairman, will the gentleman yield for a question?

Mr. McMILLEN of Maryland. I yield to the gentleman from Illinois.

Mr. SAVAGE. Mr. Chairman, the gentleman referred to cards being sent out by these retail stores. Does the gentleman know what the interest rate is on those cards?

Mr. McMILLEN of Maryland. Mr. Chairman, with Hecht's a major Washington retailer, they were charging 21.6 percent in annual interest, but they lost $5 million last year. This was more of a marketing tool in customer service.

Mr. SAVAGE. Mr. Chairman, if the gentleman will yield further, the gentleman said it is 21 percent now. A couple of speakers before said—and I wondered if this is not really the long and short of it—that it was 18 percent. Now the gentleman is talking about 21 percent on cards, saying that American credit card operators must receive 18 to 21 percent interest unless this country will go into a recession. Does that not show a lack of confidence in the vitality of the American economy?

Mr. SCHUMER. Mr. Chairman, will the gentleman yield?

Mr. McMILLEN of Maryland. I yield to the gentleman from New York.

Mr. SCHUMER. Mr. Chairman, there are many credit card issues, even in the gentleman's own area, at much lower percentages, and what we are seeing in this legislation is, if we do some disclosure, we are going to get the people to be able to see what people are charging, and the rates will come down.

Mr. SAVAGE. Mr. Chairman, will the gentleman yield so I can respond to that?

Mr. McMILLEN of Maryland. I yield to the gentleman from Illinois.

Mr. SAVAGE. If there is that great a variance, how can the gentleman justify it? If some credit card operators can operate properly below 15 percent, here comes some at 21 percent, so what would be wrong with a cap at 15 percent?

Mr. McMILLEN of Maryland. Mr. Chairman, let me just close by saying that in Maryland where a credit card cap was instituted, our credit card operations were moved to Delaware. I think if this happens, if the Annunzio amendment passes, the same thing could happen where operations are moved offshore. Foreign banks could offer credit card operations in this country, and the point becomes moot.

Mr. SCHUMER. Mr. Chairman, I yield 1½ minutes to the gentleman from Delaware [Mr. CARPER], a member of the committee.

Mr. CARPER. Mr. Chairman, the bill before us without this amendment is a good bill. Whether you are rich, whether you are of a moderate income or poor, this is a good bill.

What this bill says is that you will have the right to know what the effective interest rate is going to be on your credit card, you will have the right to know when you will start paying that interest rate, and finally, you will have the right to know what if any annual fee is attached to that credit card.

The gentleman from Illinois [Mr. Annunzio] is trying to make a point here, and it is a point that should not be lost on us or on the banks, but I think it is premature to try to make that point. We can do a lot of good things with this legislation in a free enterprise competitive system. Let us allow that competition to work.

If we are interested in trying to make sure that young people just entering the work force have an opportunity to get a credit card and have some credit, we should vote for this bill without this amendment. If we want to make sure that poor people, low-income people, are not closed out from access to credit, we should vote for this bill without this amendment.

Mr. ANNUNZIO. Mr. Chairman, I yield 2 minutes to the gentleman from New York [Mr. Weiss].

Mr. WEISS. Mr. Chairman, I very much appreciate my distinguished friend, the gentleman from Illinois, yielding this time to me.

I really have very little to add to the debate that has been carried on so effectively on both sides of this issue. I simply want to remind Members as to where we were when these interests rates first went up. Interest rates generally across the country were extremely high, so there was in fact a perfect understanding as to why the credit card companies themselves had to charge very high interest rates. Then when the interest rates came down, the credit card interest rates did not come down. It seems to me that they are never going to come down unless the Congress in fact puts a cap on it.

What kind of a cap is it? It is 8 percent above prime. It does not seem to me that is really impinging very much on the capacity of the credit card companies to make money. At the very least, they are not going to lose any money, and my own sense is that we ought to seek the best way we can of protecting the average citizen of this country.

Mr. Chairman, I would hope that the Annunzio amendment will be agreed to.

Mr. ANNUNZIO. Mr. Chairman, I yield 2 minutes to the distinguished gentlewoman from Illinois [Mrs. Collins].

Mrs. COLLINS. Mr. Chairman, I have been in my office looking at the monitor of the debate that is going on here, and I heard a couple of things that bothered me. One is that I heard a Member say something to the effect that people ought to be able to control their spending and have a greater discipline in the use of credit cards.

I could not help but think that it is not a matter of discipline. In many instances it is a matter of need, it is a matter of want. When one wants, there is no bounds. For the poor and the needy, what they really need also has no bounds, and it just makes good sense for us to pass the Annunzio amendment, because it should not be necessary for anybody, any banker or anybody else, to charge the kind of interest rates they are charging on credit cards. It is legalized usury, if you will, in order to have these kinds of rates that we see—18 percent for spending.

Much of the credit card spending is for things that are vital to one's standard of living, for refrigerators, for televisions, and things we just have to have in order to exist in our society. There may be some people who spend their money on rings by credit cards or take wonderful trips abroad, but the vast majority of the people who use credit cards use them for food, use them for durable goods that they have to have in order to live, and it seems to me we should not put the additional burden on them of having to pay these exorbitant rates, like 18 percent interest on credit cards compounded by the month and often by the day.

I have looked at my bills many times, and I see that it shows on there that one of the big retailers compound the interest rate per day. That means the interest rate is far more than 18 percent, as stated on the bill that a person gets.

Mr. Chairman, I say that we need to vote for the Annunzio amendment. It is a good amendment, and I hope all my colleagues will agree with me.

Mr. HILER. Mr. Chairman, I yield such time as he may consume to the gentleman from Illinois [Mr. Crane].

Mr. CRANE. Mr. Chairman, I rise reluctantly in opposition to the amendment, which I deem to be well intentioned but, I think, mistaken.

Mr. Chairman, I understand that there will be an effort to offer an amendment to H.R. 515, the Credit Card Savings Act, which seeks to establish a floating credit card interest rate ceiling. It would cap credit card interest rates at 8 percentage points above the yield on 1-year Treasury securities. While this amendment will be offered with the best of intentions, I must nevertheless speak out in opposition to it for the following reasons: It is based on two false premises. It will have a negative economic impact on many firms and it will reduce the supply of credit available to consumers. It is also another disturbing attempt to interject the Federal Government into the marketplace.

Supporters of price controls on credit cards argue that financial institutions earn excessive profits on their credit card programs. But these well meaning individuals fail to recognize that banks have not been earning exorbitant profits on their credit cards. From 1972 through 1985 the annual net earnings of bank card plans before taxes averaged 1.9 percent of balances outstanding. Over the same period, average returns on other major types of commercial lending were significantly higher: 2.3 percent on real estate mortgages, 2.4 percent on consumer installment debt, and 2.8 percent on commercial and other loans. Of course there have been substantial variations in the profitability of bank cards, and in the last few years profits have increased to 4 percent. But in the future, as interest rates rise, bank card profits will surely decrease once again. It would be unwise for this body to pass an amendment which is based on a misunderstanding of the health of the bankcard industry and basic economics.

Supporters of this amendment also make the mistake of believing that the credit card industry is not competitive. Nothing could be further from the truth. In fact, the consumer credit market is among the most competitive in the Nation. No single bank or financial institution dominates the marketplace. Of the 3,000 bankcard issuers in the United States, the biggest has only 4.3 percent market share. The top 10 issuers combined have a share of only 19 percent of the market. There is no need to regulate a competitive market with a price control.

Credit card programs, moreover, are costly for retail firms to administer, in addition to the cost of funds and operating expenses, there are expenses associated with owning a credit card portfolio—fraud and counterfeiting, extension of free use of credit, bad debt, delinquent payments, and bankruptcy. These programs are so costly to administer that according to a study conducted on behalf of the National Retail Merchants Association in 1985, retail credit card plans consistently operate at a loss when profits on associated merchandise sales are not included. Should retail firms be subjected to a cap on credit rates, they will respond by adding annual fees for their credit cards and increasing the prices of many of their goods. They will also restrict credit to their least credit worthy customers. These measures will act as a disincentive for customers to purchase goods and many firms such as Macy's and J.C. Penney will experience a decline in sales.

Economists are notorious for their inability to predict economic events. Hardly anyone, for instance, predicted the recent stockmarket crash. But we must give economists their due and recognize that they have consistently been able to predict the consequences of price controls. Whether rents in New York City are controlled or gasoline is artificially kept below market prices, price controls have the unfortunate effect of reducing the supply of any commodity or service. Hence, any college freshman, who has completed his first course in economics, should be able to predict the consequences of this amendment. Banks, S&L's, and retailers will respond to this amendment by tightening credit standards.

Changes in the availability of credit would have the greatest impact on marginal credit applicants, those who meet the current minimum credit requirements. Lower income persons—including recent entrants into the job market and those with low levels of education and skills—would no longer qualify for most credit cards. These groups are usually the most in need of short-term credit since they are often unable to qualify for traditional bank loans. It would be highly unfair to artificially restrict credit to these groups and thus subject them to needless economic hardship.

In conclusion, this amendment would serve no other purpose than increasing the influence of the Federal Government over our economy. It is folly to believe that bureaucrats huddled in their Washington offices have any insight into how our economy should be managed. A large, dynamic economy is simply too intricate for any one group to manage. Our economy is in better hands with the citizens, where buyers and sellers are free to determine the price and supply of goods and services. I urge my colleagues to defeat this amendment and thus allow the free market to continue to work.

Mr. HILER. Mr. Chairman, I yield 1 minute to the gentlewoman from Illinois [Mrs. MARTIN].

Mrs. MARTIN of Illinois. Mr. Chairman, since everyone seems to be so interested in what Illinois is doing in this particular area, I called the State to find out the status of the bill that we are supposedly following today. Now, it is difficult to go against an Illinoisan in one respect as much as I do the chairman of this subcommittee, but the fact is that an amendment such as his was introduced as a bill in a Democratic Senate and changed to become the bill without the amendment that we are looking at today. It was further amendatorily vetoed by the Governor, and that veto was accepted by the Democratic House and the Democratic Senate.

So may I suggest that if we wish to follow Illinois, which seems to be the general view, we do follow the Illinois law and pass the very stringent, open disclosure bill the committee has brought to us and regrettably turn aside the amendment offered by the gentleman from Illinois [Mr. ANNUNZIO].

□ 1610

Mr. HILER. Mr. Chairman, I yield 2 minutes to the gentleman from Texas [Mr. BARTLETT].

Mr. BARTLETT. Mr. Chairman, I thank the gentleman for yielding me this time.

I rise in opposition to the amendment. I will say that I think it is a very well-intentioned amendment, and the gentleman from Illinois [Mr. ANNUNZIO], the author of the amendment, is a good legislator; and he is quite skilled.

Whether this is well-intentioned or not, that all usury ceilings and ceiling caps are well-intentioned, but they always deny credit to people who need the credit the most; and that would be the effect of this othewise well-intentioned amendment.

The concept of a usury ceiling or a cap on credit is not new. It has been tried with failure, with no success at all in State after State across this Nation.

Just on the floor this afternoon we have heard from Connecticut, Maryland, Virginia, and other States who have told the Members that when they had usury ceilings, in fact credit to individual consumers was denied.

The State of Texas just 2 years ago did the same thing, adopted a cap on credit cards; and the result was that all credit card operations left the State. The same thing would happen if we were to do this on a national basis with the same result, they would leave, go to Toronto, Tokyo, or elsewhere.

If we were to somehow try to prohibit that offshore credit card, then the result would be worse, because then that credit would be given away from credit cards, and that lending would go to nonconsumer areas, and the consumers that the author of the amendment are trying to protect would be denied credit at all.

Disclosure handles whatever problems exist. The bill is well-constructed, very tough on disclosure.

It mandates disclosure; and therefore, consumers can choose, and that is what this Congress ought to be about. That is what we ought to be constructing in legislation and regulation, is to give the consumers the choice, so they can shop, understand what is being offered them, so they can have the choice of sources of credit.

Mr. SCHUMER. Mr. Chairman, I yield 2 minutes to the gentleman from Massachusetts [Mr. FRANK], a distinguished member of the committee.

Mr. FRANK. Mr. Chairman, I thank the gentleman for yielding me this time.

I oppose the amendment from the Chicago delegation. It is nice to see the Members so united, but I wish it would be for a better cause.

Mr. ANNUNZIO. Mr. Chairman, will the gentleman yield?

Mr. FRANK. I yield to the gentleman from Illinois.

Mr. ANNUNZIO. Mr. Chairman, I thank the gentleman for yielding.

No more united than New York.

Mr. FRANK. The gentleman from New York had people from New York speak on the other side.

I am sure the gentleman, being united, is not a bad thing. I was particularly impressed with the eloquence of the gentleman from Illinois [Mr. SAVAGE], who discussed the plight of the ordinary working person trapped in his hotel room and having to order room service.

He is going to have to sacrifice and walk down to the coffee shop.

Mr. Chairman, it makes no sense to single out one piece of interest rate business for a cap. Where is the cap on what cities have to pay when they borrow things? Cities are out in the market and have to borrow. People buy automobiles, and they have to borrow.

There is a whole range of things that people borrow for. When you cap one thing, you cause distortions elsewhere.

If you put a cap on one thing, you are putting distortions elsewhere, and why are consumer purchases on credit to be the favored item?

Are they more important than what cities borrow for public works, or are they more imporant than what corporations borrow for job-producing investment, or more important than people borrowing for automobiles?

Mr. SAVAGE. Mr. Chairman, will the gentleman yield?

Mr. FRANK. I yield to the gentleman from Illinois.

Mr. SAVAGE. Mr. Chairman, I thank the gentleman for yielding.

It is not just people in hotel rooms. I have some constituents who use credit cards to buy medicine.

Mr. FRANK. Mr. Chairman, reclaiming my time, if the gentleman thought I misinterpreted what the gentleman said, the gentleman's eloquent defense of the workingman trying to get room service in his hotel room, if I misstated the gentleman, I would apologize; but I do not think it is worth this kind of intervention into the market for that particular kind of an issue.

The CHAIRMAN. At this point the gentleman from Indiana [Mr. HILER] has 1½ minutes remaining, the gentleman from New York [Mr. SCHUMER] has 3 minutes remaining, and the gentleman from Illinois [Mr. ANNUNZIO] has 4 minutes remaining.

Mr. HILER. Mr. Chairman, I believe that the Members in opposition to this amendment have the right to close debate, is that not correct?

The CHAIRMAN. The gentleman is correct. Those in opposition do have the right to close, debate.

Mr. ANNUNZIO. Mr. Chairman, I yield myself the remaining time.

The CHAIRMAN. The gentleman from Illinois is recognized for 4 minutes.

Mr. ANNUNZIO. Mr. Chairman, for 2 years, we have watched and waited to see if credit card rates would decline. They have not. The time to act has come.

My amendment would cap credit card interest rates at 8 percentage points above the yield on 1-year Treasury securities. The cap would be adjusted quarterly, based on the rate in the second month of the preceding quarter.

This formula was carefully designed to assure that card issuers could profit, not profiteer. It is based on a market rate set by open bidding. Its 1-year term closely matches the duration of credit card receivables. It is adjusted quarterly to assure that it does not lag behind current market rates. Finally, it provides an 8 percent margin, the highest of any interest rate cap bill introduced in either House. Any banker who can't make money borrowing at 7 percent and lending at 15 percent, should get out of banking and into basket weaving.

Traditionally, States have set usury limits within their own borders. In 1978, however, the Supreme Court upset that traditional State right and allowed national banks to begin to export interest rates into other States. It wasn't long before banks began dangling promises of jobs before some State legislatures in exchange for raising or eliminating interest ceilings entirely. Some States took the bait and undermined their sister State's ability to protect consumers from usurious lenders. Thus, only a Federal interest rate cap can be effective and restore the proper balance to the market.

You are sure to hear today how a credit card interest rate cap will hurt consumers. Those who say that turn the world on its head. We need only look at who supports my amendment.

The credit card interest rate cap is supported by Consumers Union, with a membership of 3.5 million.

The credit card interest rate cap is supported by Consumer Federation of America, the Nation's largest consumer advocacy organization with a membership of over 200 National, State and local consumer groups, representing 30 million individuals.

The credit card interest rate cap is supported by the American Association of Retired Persons, with a membership of more than 26 million senior citizens.

The credit card interest rate cap is supported by the U.S. Public Interest Research Group, which is the national association of State public interest research groups, with about 1 million members.

The credit card interest rate cap is supported by Public Citizen's Congress Watch, yet another prominent consumer oriented organization.

The credit card interest rate cap is supported by the Bankcard Holders of America, a national nonprofit consumer organization of credit card users.

What groups claim that a credit card interest rate cap will hurt consumers? Groups such as the American Bankers Association, the Consumer Bankers Association, the National Retail Merchants Association, Visa, and MasterCard.

Now who do you think really represents the interests of the American consumer?

Is it Consumers Union or the Consumer Bankers?

Is it the AARP or the ABA?

Is it Bankcard Holders or MasterCard?

Members should realize that this vote will count when it comes time for consumers to evaluate their consumer record. It will be hard indeed to explain how a vote against the position held by Consumers Union, Consumer Federation, Bankcard Holders, Congress Watch, and U.S. PIRG is a pro-consumer vote.

And there can be no argument that the consumer groups are out of step with consumers. An NBC News survey last year found that by the overwhelming majority of 74 to 20 percent, consumers agreed that Congress should pass legislation limiting the amount of interest credit card companies can charge.

Part of the disinformation campaign against credit card interest rate caps is the argument that creditors will be forced to tighten up their standards. The implication is that the poor will not be able to get credit cards. It may come as news to some, but creditors don't issue cards to the poor. A Federal Reserve study of credit cards last year showed that fewer than one family in eight with an income under $10,000 has a bank credit card. Less than 1 family in 13 in that group has a gasoline credit card.

The result of the loose standards used by some card issuers is a staggering increase in bad debt. Banks that have mailed out millions of preapproved credit card applications have reaped millions of dollars in bad debts losses. Citibank, the Nation's largest bank card issuer, has bad debt losses of $1 million a day. Consumers who pay their bills are forced to cover these losses. It is no wonder that Citibank cardholders pay 19.8 percent interest.

Credit card consumers have been a convenient source of funds for all sorts of bankers' follies. Citibank took a $2.6 billion loss in its second quarter earnings due to its bad foreign loans. Citibank credit card consumers pay 19.8 percent to help cushion that shock. Bank of America took a $1.1 billion loss in its second quarter. Like Citibank customers, its credit card customers also pay 19.8 percent to pay for Bank of America's past foreign follies. Mr. and Mrs. America pay, while foreign debtors dance.

Bankers have served up more reasons for high rates than McDonalds has served hamburgers. First they claimed that their cost of funds had increased, but then declining interest rates knocked the props out from under that argument. Then they claimed interest losses were to blame, but tough credit card fraud legislation passed by Congress brought fraud rates down. Then they claimed credit card counterfeiting was out of control, but counterfeiting losses decreased by so much that VISA refunded $5 million to its members from its counterfeit insurance fund, and MasterCard entirely eliminated its counterfeit assessment fee. Then we were told that administrative costs are so high. Nevertheless, banks continue to buy credit card portfolios and issue more cards.

The real reason for high credit card interest rates is simple enough. It is profits. Not ordinary profits, but high profits. Not just high profits, record high profits. And you don't need to take my word for it either.

In the spring, American Express unveiled its 13.5 percent Optima card. This card so threatened to upset the banks' gravytrain that Charles Russell, the president of VISA, immediately notified all VISA card issuing banks and urged them to call the President of American Express and voice displeasure over his decision to enter "one of (the banks) most profitable lines of service." Mr. Russell knew what kind of threat a low-interest card posed. He pointed out to the VISA issuers that "the Optima card will have a far greater effect upon your bank's profits than will the Discover card." Mr. Russell did not need to tell his members that the Discover card carries a 19.8-percent interest rate.

Card issuers will not be put out of business by a rate cap. Business is brisk in States like Arkansas, with an 11-percent ceiling, and Connecticut, with a 15-percent ceiling. Indeed, there are a number of banks that offer cards at rates of 15 percent or less.

For the vast majority of Americans, however, low rates are only a dream. The top 10 bank card issuers, with almost 35 million credit cards outstanding, charge an average rate of over 19 percent. The market for credit cards is concentrated and noncompetitive.

A credit card cap will not lead to increased fees as some will charge. In fact, some of the highest fees are charged by card issuers with the highest rates.

The issue before us today is simple. The House must decide whether it wants to allow plastic loansharking to continue. Vote for my amendment and you vote for the consumer. Vote against the amendment and you vote against the consumer.

American consumers view this issue with crystal clarity. They know the issue is simple, and where the benefit to them lies. They reject the tortured reasoning which at the bottom line says high rates are good for consumers. As you prepare to vote on this amendment, keep in mind that consumer groups and consumers support the amendment.

Mr. Chairman, I urge the Members to vote for consumers and to vote in favor of my amendment.

BANKCARD HOLDERS OF AMERICA,
Washington, DC, October 28, 1987.
Representative FRANK ANNUNZIO,
Chairman, House Subcommittee On Consumer Affairs and Coinage, Washington, DC.

DEAR CHAIRMAN ANNUNZIO: Notwithstanding our enthusiasm for disclosure amendments to the Truth-In-Lending Act, such as those contained in H.R. 515, we continue to believe that disclosure alone is likely to be insufficient to bring about lower credit card interest rates. The domination of the credit card marketplace by a handful of large issuers, all of whom charge high rates and fees, suggests that their market dominance, and therefore their price leadership, will be largely unaffected by the proposed disclosure requirements. The top twenty-five issuers account for more than fifty percent of the cards in circulation, and the rates on their cards average nearly nineteen percent.

Experience has shown that a variable cap on rates, such as the one you are proposing, allows sufficient flexibility for the banks to recover all their costs—plus a fair profit—even when rates and costs are rising. At the same time, such a cap gives consumers the assurance that during periods of declining rates they will benefit through lower borrowing costs.

Similarly, the assertion that a rate cap will restrict credit availability to the general public has also been contradicted by experience. Last year, Connecticut lowered its (fixed) rate ceiling from eighteen to fifteen percent. Since then, not one of Connecticut cardholder has had his or her card revoked as a result of the new law. Moreover, there appears to be no shortage of credit in Connecticut. It continues to be available to those who meet reasonable and normal standards of creditworthiness, just as auto loans are available nationally to a broad cross-section of the public in spite of low, competitive rates and narrow profit margins.

Thank you for your leadership on this important issue.

Sincerely,

ELGIE HOLSTEIN,
Director.

Mr. HILER. Mr. Chairman, I yield such time as he may consume to the gentleman from Virginia [Mr. PARRIS].

Mr. PARRIS. Mr. Chairman, I rise in support of the bill and in opposition to the amendment.

Mr. Chairman, I rise in opposition to the proposed amendment offered by Mr. ANNUNZIO.

I very much understand and sympathize with what the gentleman from Illinois is trying to do—capping interest rates on credit cards sounds good.

The problem is that you can't regulate the free market, or else you create problems that come back to haunt the Congress. Take last year's tax bill for example. We eliminated the tax deduction for interest on credit cards, and by default we created the proliferation of home equity loans. Now, in the reconciliation, we are trying to cap the amount one can deduct on home equity loans.

So what will happen if we try and cap interest rates on credit cards? Do you think we can do that, and nothing will change, we'll all go home and everything will be just fine? Dream on.

The cost of running a credit card business is expensive. Particularly for retailers—they do it more for public service than for profit. Most of you are familiar with the local department store, the Hecht Co. They told me that they lost $5 million on their credit card operations last year, and if the cap went into effect, they would lose $12 million.

Now unlike the Congress where $12 million is a drop in the bucket, no good businessman will stand by and lose that amount of money, and not search for alternatives to cut one's losses.

What will those alternatives be, and how will they affect consumers? First, credit will be restricted. That means millions will be dropped as credit customers, and millions more won't be granted new credit. Credit cards have become the easiest, most affordable means of credit available to millions of Americans. There are over 500 million credit cards in circulation and 42 million families have credit cards. With this kind of ceiling we will cut off an important source of easy financing available to them. Particularly for lower income families. Nearly half of all families with income under $15,000 use credit cards to purchase household goods and services. But many will likely be denied credit in a restricted credit environment created by a ceiling on interest rates. As an example, the State of Arkansas has a credit card interest rate ceiling. The Wall Street Journal recently reported that First National Bank of Pine Bluff, AR, was making a profit, even with the ceiling, how you ask? Because it is selective about who it issues the cards to. That is typical of what banks and retailers will have to do in order to continue making profits, or in some cases, simply cut losses.

A second consequence of a rate cap will be the increase in annual fees, and the elimination of interest free grace periods. These are two very important factors of a credit card operation, that often go unnoticed by consumers, but they are an important part of cost savings to the consumer. Most retailers don't charge annual fees, but I am sure that if we put a ceiling on interest rates, every card will have an annual fee. The Discover card issued by Sears does not have an annual fee, but it carries an interest rate in the area of 18 or 19 percent, but the new American Express Card, Optima, marketed for exclusive customers, has a lower interest rate, but a high annual fee. Both work out to be much the same in cost. As you can see, if we do cap the interest rates, annual fees may then become the monster that we want to control—will we have a bill next year capping the annual fee amount, what about the year after next, when will we put a stop to all of this?

The effect of this is that we injure those persons that pay off their balances right away, which the Federal Reserve Board estimates to be about 43 percent of all credit card customers. The elimination of interest free grace periods, will also hurt those that are prompt payers—these interest free periods will disappear the day we impose a cap.

Finally, a cap on interest rates will actually be a friendly form of price fixing. Once we impose a cap, all banks and retailers will surely be charging the maximum interest rate. After all, what incentive will remain to have lower rates, most rates can't go lower than where this cap forces cards to be. What we will have will be reduced competition within the credit card industry. Many won't bother issuing cards anymore, because it won't be that profitable, and so the fewer that are left will essentially be charging the same rate. In 1980, my home State of Virginia lifted an 18-percent interest rate cap that it had on credit cards, and at the time, many feared that interest rates would skyrocket, well, the opposite occurred, and interest rates fell to the point where the average interest rate on credit cards in Virginia is between 14 and 15 percent. Competition flourished in this kind of environment.

In sum, by capping interest rates we will certainly see higher annual fees and elimination of grace-free periods. We will certainly witness a reduction of competition because there won't be any profit motive among the bank cards. Therefore, once we reduce the supply, but not the demand, the bank or retailer can be more selective, and millions will not be extended credit. I wonder if we really want this to happen. I don't think my colleague from Illinois wants to see restrictions on credit—but this is clearly a case where the Congress thinks it's doing the right thing, but the effect is that we hurt everybody, and most of all those people that can least afford it.

I urge my colleagues to vote against the Annunzio amendment.

Mr. HILER. Mr. Chairman, I yield myself the balance of the time.

Mr. Chairman, a credit card issuer has several terms under which he can issue that credit card.

There is a grace period, an annual fee. There is a credit card interest rate, a merchant discount; and this can be a processing fee. Of course, there can be a restriction of credit.

If you limit the amount of interest that can be charged, one of these other areas will be affected.

Today credit card issuers compete based on those five or six factors, and consumers can pick the kind of credit card with the kind of terms that meets their particular needs.

If we put a cap on interest rates, there will be an increase in annual fees, or there will be an elimination of a grace period.

There will be an increase in the merchant discount. There might be a restriction of credit or an increase in processing fees, but there is no free lunch.

You cannot artificially restrict one of those five and not have the other four be affected, and that will impact negatively on consumers.

I urge the Members to vote against the Annunzio amendment.

Mr. SCHUMER. Mr. Chairman, I yield myself the remaining time.

Mr. Chairman, first let me extend my congratulations to the gentleman from Illinois [Mr. ANNUNZIO], the chairman of the subcommittee, for the outstandingly waged campaign, and for the gentleman's devotion to consumers, which no one doubts in this amendment.

I must rise reluctantly and very strongly in opposition to the amendment of the gentleman from Illinois.

I have spent 2 years trying to get the credit card markets to crack. The banks have not been terribly cooperative. They are indeed an oligopoly, and almost all of them, when we started this campaign, had rates at 19 and 20 percent.

At that point, disclosure would have done very little good; and it was worth trying a cap. Something has happened since then.

There are over 125 banks, most of them issuing cards nationwide, that now have rates at 10, 11, 12 percent.

American Express is issuing with all its muscle an Optima card at 13.8 percent, so finally consumers have a choice, but they do not know it.

They do not know it, because there is no disclosure; and I believe we desperately need a disclosure bill.

Then why oppose a cap amendment, I might be asked. If disclosure is good, is not a cap better? In an ideal world, the cap might work.

I do not fully agree with everything that has been said here. I am not unalterably opposed to caps, but I am a legislator, and I am proud to be a legislator, and a cap bill will not pass.

In fact, a cap bill, if this amendment passes on the floor of the House today, will mean we will get no consideration in the other body, and a certain veto in the White House.

We may all feel good saying, let us have a cap and decrying interest rates. I have certainly done it, and I agree, but we must do something real, pass a bill that can be signed into law instead of just giving a speech.

This bill will become law if this amendment fails. The bill will not become law if the amendment passes, and all the work that we have done to get that market to crack, to bring those interest rates down, will go for naught.

I sympathize with the Members who decry the high interest rates. I want to bring them down every bit as much as they do, but the way to bring them down is not to kill this bill with an amendment that sounds good but would not pass.

The way to bring them down is pass H.R. 515, get those high interest rates published in all the magazines and everywhere, and let the market crack.

I urge the Members to oppose the amendment of the gentleman from Illinois [Mr. ANNUNZIO].

Mrs. MORELLA. Mr. Chairman, I rise in support of H.R. 515, and against the Annunzio amendment.

H.R. 515, approved unanimously by the Banking Committee, would require banks, retailers, and other issuers of credit cards to disclose information to potential card holders about interest rates, fees, and other terms of credit agreement. This disclosure law would help educate credit consumers, giving them important and necessary information before they make a decision.

Many times Congress is a "bully pulpit," pushing legislation in an effort to get the marketplace to respond, or to push States into action. In this case, some credit issuers have already taken heed and have lowered their rates below the Annunzio limit.

Also, attempts to legislate limits on interest that can be charged on credit cards is a superceding of States' rights. Maryland Bank Commissioner Margie Muller has told me that, as a regulator, she is adamantly opposed to this amendment, which is "an incursion on a State's historic right to determine interest rates for the consumer."

Commissioner Muller said,

> This would distort what has been the States' prerogative: to set its own usury limits.

Disclosure, she added, would assist consumers, making them better shoppers of credit.

The amendment offered by Mr. ANNUNZIO is a price control, plain and simple. Price controls haven't worked in the past, and they won't work now. Capping interest rates could have an adverse impact on the economy. Smaller credit-issuing companies, faced with a limit on what they can charge, would either limit their credit customers, or get out of the credit market entirely. Either way, this shuts more consumers out of the marketplace, which would affect retail sales and economic growth.

In plain economic terms, if one cost decreases, another must increase. With lower interest rates, costs for existing credit holders would increase, as credit companies try to maintain their profitability. Higher cardholder fees might be imposed to cover the costs on any cardholders who stayed in a credit program.

Mr. Chairman, an unamended H.R. 515 will make for better credit consumers. I urge its adoption.

□ 1625

The CHAIRMAN. All time has expired.

The question is on the amendment offered by the gentleman from Illinois [Mr. ANNUNZIO].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. ANNUNZIO. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 56, noes 356, answered "present" 2, not voting 19, as follows:

[Roll No. 381]

AYES—56

Annunzio
Applegate
Beilenson
Bennett
Bilbray
Bonior
Brennan
Bruce
Collins
Conte
Conyers
Crockett
de la Garza
Dellums
Donnelly
Dorgan (ND)
Durbin
Early
Eckart
Edwards (CA)
Evans
Florio
Gaydos
Gejdenson
Gonzalez
Guarini
Hayes (IL)
Hertel
Hughes
Jones (TN)
Jontz
Kildee
Lipinski
Marlenee
Mfume
Miller (CA)
Moakley
Pepper
Perkins
Price (IL)
Rangel
Rodino
Roe
Rostenkowski
Roybal
Russo
Savage
Scheuer
Stark
Studds
Traficant
Weiss
Wheat
Whitten
Yates
Young (FL)

NOES—356

Ackerman
Akaka
Alexander
Anderson
Andrews
Anthony
Archer
Armey
Aspin
Atkins
AuCoin
Badham
Baker
Ballenger
Barnard
Bartlett
Barton
Bateman
Bates
Bentley
Bereuter
Berman
Bevill
Bilirakis
Bliley
Boehlert
Boggs
Bonker
Borski
Bosco
Boucher
Boxer
Broomfield
Brown (CA)
Brown (CO)
Bryant
Buechner
Bunning
Burton
Bustamante
Byron
Callahan
Campbell
Cardin
Carper
Carr
Chandler
Chapman
Chappell
Cheney
Clarke
Clay
Clinger
Coats
Coble
Coelho
Coleman (MO)
Coleman (TX)
Combest
Cooper
Coughlin
Courter
Coyne
Craig
Crane
Daniel
Dannemeyer
Darden
Daub
Davis (IL)
Davis (MI)
DeFazio
DeLay
Derrick
DeWine
Dickinson
Dicks
Dingell
DioGuardi
Dixon
Dowdy
Downey
Dreier
Duncan
Dymally
Dyson
Edwards (OK)
Emerson
English
Erdreich
Espy
Fascell
Fawell
Fazio
Feighan
Fields
Fish
Flake
Flippo
Foglietta
Foley
Ford (MI)
Ford (TN)
Frank
Frenzel
Frost
Gallegly
Gallo
Garcia
Gekas
Gibbons
Gilman
Gingrich
Glickman
Goodling
Gordon
Gradison
Grandy
Grant
Green
Gregg
Gunderson
Hall (OH)
Hall (TX)
Hamilton
Hammerschmidt
Hansen
Harris
Hastert
Hatcher
Hawkins
Hayes (LA)
Hefley
Hefner
Henry
Herger
Hiler
Hochbrueckner
Holloway
Hopkins
Horton
Houghton
Howard
Hoyer
Hubbard
Huckaby
Hunter
Hutto
Hyde
Inhofe
Ireland
Jacobs
Jeffords
Jenkins
Johnson (CT)
Johnson (SD)
Jones (NC)
Kanjorski
Kaptur
Kasich
Kastenmeier
Kennedy
Kennelly
Kleczka
Kolbe
Kolter
Konnyu
Kostmayer
Kyl
LaFalce
Lagomarsino
Lancaster
Lantos
Latta
Leach (IA)
Leath (TX)
Lehman (CA)
Lehman (FL)
Leland
Lent
Levin (MI)
Levine (CA)
Lewis (CA)
Lewis (FL)
Lewis (GA)
Lightfoot
Livingston
Lloyd
Lott
Lowery (CA)
Lowry (WA)
Lujan
Luken, Thomas
Lukens, Donald
Lungren
Mack
MacKay
Madigan
Manton
Markey
Martin (IL)
Martinez
Matsui
Mavroules
Mazzoli
McCandless
McCloskey
McCollum
McCurdy
McDade
McEwen
McGrath
McHugh
McMillan (NC)
McMillen (MD)
Meyers
Mica
Michel
Miller (OH)
Miller (WA)
Mineta
Molinari
Mollohan
Montgomery
Moody
Moorhead
Morella
Morrison (CT)
Morrison (WA)
Mrazek
Murphy
Murtha
Myers
Nagle
Natcher
Neal
Nelson
Nichols
Nielson
Nowak
Oberstar
Obey
Olin
Ortiz
Owens (NY)
Owens (UT)
Oxley
Packard
Parris
Pashayan
Patterson
Pease

Pelosi
Penny
Petri
Pickett
Pickle
Porter
Price (NC)
Pursell
Quillen
Rahall
Ravenel
Ray
Regula
Rhodes
Richardson
Rinaldo
Ritter
Roberts
Robinson
Roemer
Rogers
Rose
Roth
Roukema
Rowland (CT)
Rowland (GA)
Sabo
Saiki
Sawyer
Saxton
Schaefer
Schneider
Schroeder
Schuette
Schumer
Sensenbrenner
Sharp
Shaw
Shays
Shumway
Shuster
Sikorski
Skaggs
Skeen
Skelton
Slattery
Slaughter (NY)
Slaughter (VA)
Smith (FL)
Smith (IA)
Smith (NE)
Smith (NJ)
Smith (TX)
Smith, Denny (OR)
Smith, Robert (NH)
Snowe
Solarz
Spratt
St Germain
Staggers
Stallings
Stangeland
Stenholm
Stokes
Stratton
Stump
Sundquist
Sweeney
Swift
Swindall
Synar
Tallon
Tauke
Tauzin
Taylor
Thomas (GA)
Torres
Torricelli
Towns
Traxler
Udall
Upton
Valentine
Vander Jagt
Vento
Visclosky
Volkmer
Vucanovich
Walgren
Walker
Watkins
Waxman
Weber
Weldon
Whittaker
Williams
Wilson
Wise
Wolf
Wolpe
Wortley
Wyden
Wylie
Yatron

ANSWERED "PRESENT"—2

Martin (NY)
Sisisky

NOT VOTING—19

Biaggi
Boland
Boulter
Brooks
Dornan (CA)
Dwyer
Gephardt
Gray (IL)
Gray (PA)
Kemp
Oakar
Panetta
Ridge
Schulze
Smith, Robert (OR)
Solomon
Spence
Thomas (CA)
Young (AK)

☐ 1635

Messrs. ATKINS, BOEHLERT, DICKINSON, BROWN of California, WAXMAN, HUTTO, and KASTENMEIER changed their votes from "aye" to "no."

Mr. MFUME changed his vote from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

AMENDMENT OFFERED BY MR. VENTO

Mr. VENTO. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Vento: Page 7, after line 5, insert the following new subsection:

"(d) Disclosure of Credit Card Account renewal fees.—

"Disclosure required.—In the case of any credit card account under an open end consumer credit plan, the creditor shall notify the cardholder, at least 30 days before the date on which an annual or other fee for the continued availability of credit in connection with such account will be charged against the account (or otherwise imposed), of the amount of such fee and the date on which such fee will be imposed.

Page 2, line 10, strike out "subsection" and insert in lieu thereof "subsections".

Page 7, line 5, strike out the closing quotation marks and the second period.

Mr. VENTO (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the Record.

The CHAIRMAN. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

Mr. VENTO. Mr. Chairman, my amendment builds upon the purpose of this legislation—to provide consumers with adequate information and opportunity to make an educated decision in selecting a credit card.

While H.R. 515 addresses new credit card applications, my amendment will help the millions of Americans who already have annual fee credit cards. My amendment requires that credit card companies notify customers at least 30 days prior to the imposition of an annual fee. This notification could be a separate mailing or it could be included in the customer's monthly billing notice.

The purpose of this 30-day notice is to give consumers a timely reminder and to allow them, if they so desire, to compare rates and credit cards to make an educated choice on their credit card selection.

This 30-day notice is necessary. Most consumers are not aware of their annual renewal date until the annual fee is already charged and listed on their billing statement. By that time it is too late to shop around. My amendment, however, will make available to the millions of Americans who already have credit cards the needed benefits of H.R. 515.

I urge my colleagues to support the amendment.

Mr. HILER. Mr. Chairman, will the gentleman yield?

Mr. VENTO. I yield to the gentleman from Indiana.

Mr. HILER. Mr. Chairman, is this the same amendment the gentleman spoke to me earlier about?

Mr. VENTO. It is the same amendment that I discussed with the gentleman previously.

Mr. HILER. Mr. Chairman, this side has reviewed the amendment and has no objection to it. We accept the amendment.

Mr. VENTO. I appreciate the gentleman's support.

Mr. St GERMAIN. Mr. Chairman, will the gentleman yield?

Mr. VENTO. I yield to the gentleman from Rhode Island.

Mr. St GERMAIN. Mr. Chairman, this side has had an opportunity to look at the amendment. We are in favor of the amendment and we think the time has come to vote on the amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Minnesota [Mr. Vento].

The amendment was agreed to.

Mr. BEREUTER. Mr. Chairman, I move to strike the last word.

Mr. BEREUTER. Mr. Chairman, I rise today in support of H.R. 515, the Credit Card Disclosure Act of 1987, especially since the Annunzio amendment has been rejected.

Mr. Chairman, the bill as reported by the House Banking Committee is a pro-consumer piece of legislation because it will require greater disclosure by financial institutions and retail merchants of the rates and terms of the credit cards which they issue.

What H.R. 515 requires is simple and straightforward. Specifically, this bill requires that any written application or solicitation to open a credit card account disclose the following information in very clear and concise language: First, the annual percentage rate; second, any fees imposed for issuance or use of the card; and third, any grace period.

While the Truth in Lending Act currently requires the disclosure of this information upon the receipt of the card, this bill goes one step further by requiring the disclosure during, or prior to, the credit card application. Early disclosure will give consumers the opportunity to compare the terms and conditions of competing credit cards.

It is the intention of this bill that through earlier disclosure there will be greater competition among credit card issuers to provide better terms and lower interest rates. Early and more concise disclosure of credit card terms will inure to the benefit of consumers through lower interest rates and issuance fees.

ANNUNZIO AMENDMENT

While the bill as reported is responsible proconsumer legislation, the amendment to cap interest rates is not, despite the very good intentions of the author of that amendment. While the Annunzio amendment looks appealing, and I am absolutely sure that it is offered with the best of intentions, it would in reality increase the costs for all consumers who currently hold credit cards, and in many situations it would deny credit cards to certain groups of consumers altogether.

In general, ceilings on interest rates simply don't work, but I want to list just a few of the ways in which caps on credit card interest rates would directly affect consumers and increase their costs.

First, interest rate caps reduce the ability of card issuers to meet their costs, and accordingly, force issuers to raise revenue from other sources. In general, other services offered by a financial institution either will not be offered, or offered only at a higher cost. Where issuers cannot meet their costs from other sources, many credit card issuers may simply cease their operations altogether.

Second, if a uniform interest rate cap is mandated, credit card issuers will tighten their credit standards to reduce their losses. Tighter credit standards will have a direct and adverse impact on those who can least afford it—lower and younger income families and individuals.

Third, interest rate caps will force card issuers to charge or increase annual fees, and to do away with other services associated with their credit cards.

Fourth, imposing interest rate caps, encourages card issuers to shorten or eliminate the grace periods on their cards. By shortening or eliminating the period of time within which a consumer is not charged a finance charge, additional interest which normally would not be incurred is passed on to the consumer.

Finally, mandating interest rate caps will also result in higher retail merchandise prices. If the interest rates of credit cards issued by retail merchants are capped, merchants will raise their prices to cover their costs and compensate for lost revenues.

Again, I urge my colleagues to support H.R. 515 as reported by the House Banking Committee, and to oppose the amendment to place a cap on credit card interest rates.

Mr. KOLBE. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I rise in support of H.R. 515.

Mr. Chairman, I am pleased that the House has moved to give credit card applicants the kind of information and protection they need and deserve. H.R. 515 provides information to consumers that will allow them to comparison shop and buy credit the same way they buy a car or a half-gallon of milk.

Comparison shopping is what this bill is all about. Financial institutions providing revolving credit lines to consumers must disclose, as part of the credit application the annual percentage rate that will be charged on purchases. When multiple rates apply, this too must be disclosed, in a manner that will be understandable to a credit shopper. Additionally, credit organizations must clearly inform credit shoppers what fees or annual charges are part of the agreement.

The final piece of information consumers need to know is how long they've got to pay their bill without owing any finance charge. I am pleased that this bill has received the broad support of the credit industry. As a member of the House Banking Committee in the 99th Congress I introduced a bill very similar to H.R. 515. I believe that knowledge is power. This legislation gives consumers power to shine a light on the legalese packed into a credit application and choose the credit card that best suits their needs.

I believe an even more powerful light could have been constructed. As I suggested in my legislation introduced in the 99th Congress, we could have had the Federal Reserve package all the information required to be disclosed into one document and made that available to credit shoppers. That way folks shopping for credit could have gone down to the library and quickly compared the credit opportunities available to them. By comparison shopping the inevitable effect will be to lower credit card interest rates as consumers drop the expensive cards and move to less expensive ones.

Nonetheless, I support H.R. 515 as a long overdue step towards empowering consumers with the information they need to make thoughtful decisions about their credit needs. As Adam Smith described in the "Wealth of Nations" a long time ago, this legislation, and the information that it provides to consumers, will be the "invisible hand" that's going to bring credit card interest rates down. I think interest rates on credit cards ought to come down, and this is the way to do it—the free-market way.

The CHAIRMAN. Are there any further amendments?

The question is on the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The CHAIRMAN. Under the rule, the Committee rises.

☐ 1650

Accordingly the Committee rose; and the Speaker pro tempore [Mr. COELHO] having assumed the chair, Mr. SKELTON, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 515) to provide for more detailed and uniform disclosure by credit card issuers with respect to information on interest rates and other fees which may be incurred by consumers through the use of any credit card, pursuant to House Resolution 292, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment to the committee amendment in the nature of a substitute adopted by the Committee of the Whole? If not, the question is on the amendment.

The amendment was agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

Mr. HILER. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 408, noes 1, answered "present" 1, not voting 23, as follows:

[Roll No. 382]

AYES—408

Ackerman
Akaka
Alexander
Anderson
Andrews
Annunzio
Anthony
Applegate
Archer
Armey
Atkins
AuCoin
Badham
Baker
Barnard
Bartlett
Barton
Bateman
Bates
Beilenson
Bennett
Bentley
Bereuter
Berman
Bevill
Bilbray
Bilirakis
Bliley
Boehlert
Boggs
Bonior
Bonker
Borski
Bosco
Boucher
Boxer
Brennan
Broomfield
Brown (CA)
Brown (CO)
Bruce
Bryant
Buechner
Bunning
Burton
Bustamante
Byron
Callahan
Campbell
Cardin
Carper
Carr
Chandler
Chapman
Chappell
Cheney
Clarke
Clay
Clinger
Coats
Coble
Coelho
Coleman (MO)
Coleman (TX)
Collins
Combest
Conte
Conyers
Cooper
Coughlin
Courter
Coyne
Craig
Crockett
Daniel
Dannemeyer
Darden
Daub
Davis (IL)
Davis (MI)
de la Garza
DeFazio
DeLay
Dellums
Derrick
DeWine
Dickinson
Dicks
Dingell
DioGuardi
Dixon
Donnelly
Dorgan (ND)
Dowdy
Downey
Dreier
Duncan
Durbin
Dwyer
Dymally
Dyson
Early
Eckart
Edwards (CA)
Edwards (OK)
Emerson
English
Erdreich
Espy
Evans
Fascell
Fawell
Feighan
Fields
Fish
Flake
Flippo
Florio
Foglietta
Foley
Ford (MI)
Ford (TN)
Frank
Frenzel
Frost
Gallegly
Gallo
Garcia
Gaydos
Gejdenson
Gekas
Gibbons
Gilman
Gingrich
Glickman
Gonzalez
Goodling
Gordon
Gradison
Grandy
Grant
Gray (PA)
Green
Gregg
Guarini
Gunderson
Hall (OH)
Hall (TX)
Hamilton
Hansen
Harris
Hastert
Hatcher
Hawkins
Hayes (IL)
Hayes (LA)
Hefley
Hefner
Henry
Herger
Hertel
Hiler
Hochbrueckner
Holloway
Hopkins
Horton
Houghton
Howard
Hoyer
Hubbard
Huckaby
Hughes
Hunter
Hutto
Hyde
Inhofe
Ireland
Jacobs
Jeffords
Jenkins
Johnson (CT)
Johnson (SD)
Jones (NC)
Jones (TN)
Jontz
Kanjorski
Kaptur
Kasich
Kastenmeier
Kennedy
Kennelly
Kildee
Kleczka
Kolbe
Kolter
Konnyu
Kostmayer
Kyl
LaFalce
Lagomarsino
Lancaster
Lantos
Latta
Leach (IA)
Leath (TX)
Lehman (CA)
Lehman (FL)
Leland
Lent
Levin (MI)
Levine (CA)
Lewis (CA)
Lewis (FL)
Lewis (GA)
Lightfoot
Lipinski
Livingston
Lloyd
Lowery (CA)
Lowry (WA)
Lujan
Luken, Thomas
Lukens, Donald
Lungren
Mack
MacKay
Madigan
Manton
Markey
Marlenee
Martin (IL)
Martinez
Matsui
Mavroules
Mazzoli
McCandless
McCloskey
McCollum
McDade
McEwen
McGrath
McHugh
McMillan (NC)
McMillen (MD)
Meyers
Mfume
Mica
Michel
Miller (CA)
Miller (OH)
Miller (WA)
Mineta
Moakley
Molinari
Mollohan
Montgomery
Moody
Moorhead
Morella
Morrison (CT)
Morrison (WA)
Mrazek
Murphy
Murtha
Myers
Nagle
Natcher
Neal
Nelson
Nichols
Nielson
Nowak
Oberstar
Obey
Olin
Ortiz
Owens (NY)
Owens (UT)
Oxley
Packard
Parris
Pashayan
Patterson
Pease
Pelosi
Penny
Pepper
Perkins
Petri
Pickett
Pickle
Porter
Price (IL)
Price (NC)
Pursell
Quillen
Rangel
Ravenel
Ray
Regula
Rhodes
Richardson
Rinaldo
Ritter
Roberts
Robinson
Rodino
Roe
Roemer
Rogers
Rose
Rostenkowski
Roth
Roukema
Rowland (CT)
Rowland (GA)
Roybal
Russo
Sabo
Saiki
Savage
Sawyer
Saxton
Schaefer
Scheuer
Schneider
Schroeder
Schuette
Schumer
Sensenbrenner
Sharp
Shaw
Shays
Shumway
Shuster
Sikorski
Sisisky
Skaggs
Skeen
Skelton
Slattery
Slaughter (NY)
Slaughter (VA)
Smith (FL)
Smith (IA)
Smith (NE)
Smith (NJ)
Smith (TX)

Smith, Denny (OR)
Smith, Robert (NH)
Snowe
Solarz
Solomon
Spratt
St Germain
Staggers
Stallings
Stangeland
Stark
Stenholm
Stokes
Stratton
Studds
Stump
Sundquist
Sweeney
Swift
Swindall
Synar
Tallon
Tauke
Tauzin
Taylor
Thomas (GA)
Torres
Torricelli
Towns
Traficant
Traxler
Udall
Upton
Valentine
Vander Jagt
Vento
Visclosky
Volkmer
Vucanovich
Walgren
Walker
Watkins
Waxman
Weber
Weiss
Weldon
Wheat
Whittaker
Whitten
Williams
Wilson
Wise
Wolf
Wolpe
Wortley
Wyden
Wylie
Yates
Yatron
Young (FL)

NOES—1

Crane

ANSWERED "PRESENT"—1

Martin (NY)

NOT VOTING—23

Aspin
Ballenger
Biaggi
Boland
Boulter
Brooks
Dornan (CA)
Fazio
Gephardt
Gray (IL)
Hammerschmidt
Kemp
Lott
McCurdy
Oakar
Panetta
Rahall
Ridge
Schulze
Smith, Robert (OR)
Spence
Thomas (CA)
Young (AK)

☐ 1705

So the bill was passed.

The result of the vote was announced as above recorded.

The title of the bill was amended so as to read: "A bill to provide for more detailed and uniform disclosure by credit and charge card issuers with respect to information relating to interest rates and other fees which may be incurred by consumers through the use of any credit or charge card."

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. ST GERMAIN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks, and include extraneous material, on the bill just passed.

The SPEAKER pro tempore (Mr. OLIN). Is there objection to the request of the gentleman from Rhode Island?

There was no objection.

PERSONAL EXPLANATION

Mr. FAZIO. Mr. Speaker, due to an illness in the family, I was unable to vote on the final passage of the Fair Credit and Charge Card Disclosure Act of 1987. However, if I had been here, I would have voted "yes."

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF H.R. 1212, EMPLOYEE POLYGRAPH PROTECTION ACT

Mr. PEPPER, from the Committee on Rules, submitted a privileged report (Rept. No. 100-407) on the resolution (H. Res. 295) providing for the consideration of the bill (H.R. 1212) to prevent the denial of employment opportunities by prohibiting the use of lie detectors by employers involved in or affecting interstate commerce, which was referred to the House Calendar and ordered to be printed.

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF H.R. 3545, OMNIBUS BUDGET RECONCILIATION ACT OF 1987

Mr. PEPPER, from the Committee on Rules, submitted a privileged report (Rept. No. 100-408) on the resolution (H. Res. 296) providing for the consideration of the bill (H.R. 3545) to provide for reconciliation pursuant to section 4 of the concurrent resolution on the budget for the fiscal year 1988, which was referred to the House Calendar and ordered to be printed.

PERMISSION FOR COMMITTEE ON APPROPRIATIONS TO FILE PRIVILEGED REPORT ON BILL MAKING APPROPRIATIONS FOR THE DEPARTMENT OF DEFENSE, 1988

Mr. CHAPPELL. Mr. Speaker, I ask unanimous consent that the Committee on Appropriations may have until midnight tonight to file a privileged report on the bill making appropriations for the Department of Defense for the fiscal year ending September 30, 1988, and for other purposes.

Mr. McDADE reserved all points of order on the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

PERSONAL EXPLANATION

Mr. GILMAN. Mr. Speaker, I was unavoidably detained earlier today because I accompanied President Reagan on his trip to West Point, and as a result I was not able to cast my vote on Rollcall No. 379, on agreeing to the Journal. Had I been present, I would have voted "aye." I also was not able to cast my vote on Rollcall No. 380, on agreeing on House Resolution 292, the rule providing for consideration of H.R. 515, the Fair Credit and Charge Card Disclosure Act of 1987. Had I been present, I would have voted "aye."

ORDER OF BUSINESS

Mr. SMITH of Iowa. Mr. Speaker, I ask unanimous consent that the names of the gentleman from Indiana [Mr. JACOBS] and the gentleman from Pennsylvania [Mr. GRAY] be reversed in today's special order list.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Iowa?

There was no objection.

D.C. PRISON OFFICIAL TRIP TO CHINA

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Virginia [Mr. PARRIS] is recognized for 10 minutes.

Mr. PARRIS. Mr. Speaker, I take to the well today out of frustration, disgust or perhaps just utter amazement at a story I read on page B-7 of yesterdays Washington Post.

I was dumbfounded to read this story which informed us of the fact that the assistant director of the crisis plagued D.C. Department of Corrections left this past weekend on a $3,600, taxpayer-financed junket to China in order to "advise" that country on how to run its prison system, all this while the department is being held in contempt of court and defending law suits over prison conditions. You talk about sending in the fox to guard the chicken coop. The story indicates that the corrections department representative was invited to provide "an example of what America is doing about prisons."

Perhaps the most blatent contradiction here is the fact that for more than 12 years, the District's corrections system has been plagued by a cancer of a combination of mismanagement and nonmanagement. The result has been court imposition of prisoner population cap on nearly every one of the City's prison facilities. Just 2 weeks ago, this body got a taste of D.C.'s prison management policies when I brought to the floor a resolution overturning a new city law putting literally hundreds of violent career criminals back onto the streets of our Nation's Capital simply because the system couldn't handle them.

And now, with a tight budget on top of all of the aforementioned, this city government has the sense of humor to send one of their high-level corrections officials to a Communist country to teach them how to run their prison system. If the city had instead used that $3,600 to hire a consultant to train itself how to run its own system, that would be wonderful. If the city had sent this official to China in order to teach them how not to run their corrections system, I suppose that would be okay, too.

I have one suggestion. Perhaps this Congress should agree to fund two similar trips for Disctrict of Columbia corrections officials to the Soviet Union and to Nicaragua—I have a strong belief that if we did, we might eliminate the need for nuclear weapons and the Contras in one fell swoop. In all seriousness, I just wish the city would wake up and smell the coffee—they have simply got to get their priorities in order before the Congress decides to do it for them.

MEDICARE COVERAGE FOR MAMMOGRAPHY SCREENING

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California [Mr. STARK] is recognized for 5 minutes.

Mr. STARK. Mr. Speaker, today I am introducing legislation to cover mammography screenings under the Medicare Program.

Currently, the Medicare Program does an excellent job of covering new curative procedures and technologies. As these medical discoveries are made available, the Health Care Financing Administration [HCFA] includes them in the Medicare Program without requiring congressional approval. This system makes a great deal of sense. In this way Medicare beneficiaries become entitled to the most up-to-date medical curative procedures available in the country.

However, when it comes to preventive medical procedures, the story is very different. In general, Medicare does not now cover preventive medical services. As a result, preventive medical services are not provided through administrative procedures. Instead Congress must provide statutory authority.

This system makes no sense because as Ben Franklin said long ago, an ounce of prevention is worth a pound of cure.

For example, early detection of breast cancer through relatively inexpensive mammogram examinations can prevent the need to spend thousands of dollars on hospital costs for patients dying of breast cancer.

In 1987, according to the Office of Technology Assessment [OTA], approximately 110,000 women will be diagnosed to have new primary cases of breast cancer, and approximately 47,000 deaths from breast cancer will occur. About 48,000, 48 percent, of the new primary cases and about 24,000 of the deaths will occur in women over age 65.

Although epidemiological evidence has suggested a number of risk factors for breast cancer, the cause of the disease is not known. However, several studies show that early detection is the best means of preventing the debilitation and death associated with this disease. Computer enhancement of low-dose x rays has made the mammogram procedure for detection of breast cancer both safe and effective.

The American Cancer Society is now recommending that women receive a baseline mammogram between the ages of 35 and 40 and that beginning at the age of 40, a mammogram be taken every 1 to 2 years until the age of 50. From age 50 and thereafter one is recommended annually.

My legislation would follow the American Cancer Society's guidelines. For Medicare beneficiaries 65 and over, Medicare would be required to pay for an annual mammogram screening on an assignment-related basis. For disabled beneficiaries, Medicare would be required to pay on an assignment-related basis for a mammogram baseline screening at age 35 through 40. For disabled beneficiaries age 40 through 49, Medicare would pay for a mammogram every 2 years, except if the woman was at high risk it would pay for an annual mammogram, and for those 50 and over for an annual mammogram.

Because of ongoing research on appropriate screening guidelines, the National Cancer Institute would be required to develop guidelines for mammography screenings and report to the Secretary and Congress by January 1990. The Secretary could then revise the statutory guidelines taking into consideration the recommendations of the National Cancer Institute and also adjust the circumstances under which payment would be made.

To assure that Medicare beneficiaries receive the highest quality of care, the Secretary would be required to establish conditions of participation for facilities offering mammography procedures. Only those facilities meeting these standards and employing qualified personnel would be reimbursed.

Payment for mammogram screenings would be limited to 80 percent of the reasonable charge, up to a limit of $50 for the performance and interpretation of the mammogram. In other words, Medicare beneficiaries would never be charged more than Medicare's 20 percent coinsurance amount for the mammogram screening.

In order to assure that the payment level is appropriate, the Secretary would be required from time to time to review the amount of the limit and after 1989, adjust the amount of the limit as it applies nationally or in any area to the amount required to assure that mammograph screenings of an appropriate quality are readily and conveniently available during the year.

The cost of this legislation is estimated to be about $200 million a year. When this proposal is considered it will be reported in a budget neutral manner.

Although this legislation only covers mammogram screenings, I am equally concerned about Medicare coverage for other preventive services, especially pap tests.

I have requested the Office of Technology Assessment [OTA] conduct a study to determine the effectiveness of covering a number of preventive services for Medicare beneficiaries and plan to introduce more legislation in this area based on the results of the OTA study.

Mr. Speaker, needless deaths and debilitation can be prevented by early detection of breast cancer through mammogram screenings. It makes sense for Medicare to begin covering preventive procedures.

MANAGERS OR LEADERS: THE REPUBLICAN CRISIS IN 1987

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Georgia [Mr. GINGRICH] is recognized for 5 minutes.

Mr. GINGRICH. Mr. Speaker, I want to speak briefly tonight on what I think is the Republican crisis in 1987, which is a crisis between managers and leaders.

The stock market fall, the failure of the Bork nomination, and a number of other issues have led to a lot of attention being paid to what is going wrong. I want to suggest a fundamental failure in my party right now.

There are a lot of people who believe that it is the Republican Party's job to manage Washington, to manage the legislative branch, to manage the government. I think that is exactly wrong. Washington is a national capital based on a liberal welfare state which the country has now repudiated in five consecutive elections.

The last time a leftwing President won a clear victory was when Lyndon Johnson won in 1964. In 1968 Hubert Humphrey got 43 percent of the vote; in 1972 George McGovern got 38 percent; in 1976 Jimmy Carter beat all the liberal candidates for the Democratic nomination; in 1980, after defeating EDWARD KENNEDY in the primaries, Carter himself only got 41 percent; and in 1984 Walter Mondale got 41 percent. That is a pretty consistent 38 to 41 percent base vote for leftwing policies.

Even in the House, Ronald Reagan carried 370 congressional districts while Walter Mondale carried only 65. In the 1986 Senate races, in every Southern State which the Democrats won, they won with a dramatically lower vote than Ronald Reagan got 2 years earlier, and in two of those States, Georgia and North Carolina, they won with a vote lower than Mondale's.

□ 1720

Faced with all of this, I would suggest to the White House and the Republican leaders in the House and the other body, what the country wants is leadership, not managership.

You cannot manage a left wing national establishment and a leftwing Capitol Hill in a way which makes sense to the American people. Every time we try to apply management techniques, getting people who are fundamentally of different values together in the same room to cut a deal, we sell out the values of 49 States that voted for Reagan and the values of 370 congressional districts. We give in to what is an essentially, illegitimate power structure in this Capitol. This structure survives basically by rigging the rules, packing the incumbent Congressmen's ability to run for reelection with $1 million of incumbency advantage, and allows big labor to have all sorts of advantages in the election law process.

I hope that among the White House, and the House and Senate Republican leaders, we will look for leadership rather than managership. We will ask the question, what is it America needs rather than what will the leftwing Democrats who control Capitol Hill give us. I hope that in the future we will look to the Nation rather than the Washington Post for our direction.

HOUSE TELEPHONE SYSTEM

The Speaker pro tempore. Under a previous order of the House, the gentleman from Illinois [Mr. ANNUNZIO] is recognized for 5 minutes.

Mr. ANNUNZIO. Mr. Speaker, after Judge Green decided that the American telephone system had to be broken up, we had to make some fundamental decisions. The handsets previously manufactured for AT&T by Western Electric were no longer being made and had to be cannibalized for parts in making repairs. Telephone costs in the House were escalating while technology and new competition were cutting costs elsewhere. The older analog telephone systems, such as we had, were being rendered obsolete, while the new digital systems that also serve for computer data transmission, were being installed all over the Nation to replace them. The House was paying a lot of rent for an obsolete system.

To cut costs and bring us up to the state of the art, we have had to build a whole new telephone system here in the House. We have purchased a good system from a good company, and we are now only in the first phase of installing and testing the equipment. AT&T, the company we chose to provide and install our equipment, knows it will not be paid fully until we are satisfied with the product we bought from it. As in any new system, we anticipated there would be some initial problems that are not being resolved.

We have informed top officials of AT&T that any concerns of Members must be dealt with directly and effectively. They agree completely, and they are trying to meet this commitment right now.

I know that the telephone is the life's blood of a legislator, and I want, as much as all of you, nothing less than a totally secure and reliable communication system. And you shall have it. We are going to save a lot of money on our phone bills, and at the same time, get better service. If you have a problem, let the Clerk know about it, and I guarantee you will get quick response, and ultimately, a satisfactory resolution of the problem.

Mr. Speaker, if the Members will bear with us while the installation is going on, this new telephone system should turn out to be one of the best buys this institution has ever made. The payoff will be the same or better service than we have ever had, plus the savings of millions of dollars.

ELECTIONS IN HAITI

The SPEAKER pro tempore (Mr. OLIN). Under a previous order of the House, the gentleman from New York [Mr. OWENS] is recognized for 5 minutes.

Mr. OWENS of New York. Mr. Speaker, former President Jimmy Carter visited Haiti a few days ago, and I want to applaud the former President's concern about human rights in Haiti.

One of the problems we have with this administration is that human rights in places like Haiti and South Africa are not accorded the same attention as they are in places like Afghanistan or Poland; but the former President's trip was sponsored by the National Democratic Institute for International Affairs and the Council of Freely Elected Heads of Government in the Western Hemisphere. This is a loose federation of current and former Presidents and Prime Ministers which Mr. Carter chairs.

While in Haiti, Mr. Carter held a news conference during which he said the following:

> We met with the leaders of the National Council of Government and questioned them about their support of the Provisional Electoral Council, the CEP, in the elections process, and also about some of the attacks that had been made recently on prominent persons, some of them running for President. General Namphy and General Regala pledged to us that they intend to give full support to the decision made by the CEP to ensure that the nation remains at peace and that the elections will be carried out as scheduled.
>
> There seems to be very little communication or cooperation, however, between the National Council of Government and the CEP. And we could see very little evidence of enthusiastic investigation of the murder of Mr. Volel.

Yves Volel, a candidate for President, was murdered in front of the central police station in Haiti.

To continue with Mr. Carter's quotes, I quote again:

> However, when we talked to the candidates for President, a number of them, they all said that their campaign was being conducted enthusiastically all throughout Haiti, and that neither they nor the voters would be intimidated by the violence that has taken place here in this country.
>
> We had a long meeting with the members of the CEP. I found them to be very dedicated men, very courageous men, and our own assessment is that the full support of the Government, the religious leaders, the leaders in business and education, and the people of Haiti, should be with this body, the CEP responsible for the elections.

Mr. Carter plans a series of visits to Haiti to call attention to the elections. This is not his only trip. He intended to go back.

Again I applaud the former President for his concern. The Provisional electoral Council invited Mr. Carter and the Council of Freely Elected Heads of Government in the Western Hemisphere to observe the November 29 elections, and the inauguration ceremony next year.

A full report on Mr. Carter's visit to Haiti should be completed and disseminated by the end of this week.

We look forward to receiving a full report from Jimmy Carter on exactly what is happening in Haiti. However, Mr. Carter is in error in one respect. They are focusing on the November 29 Presidential election, but in Haiti the electoral process is going forward already. They are only 19 days away from the elections on November 15 of the new municipal and regional councils; and then after that, they will elect delegates, persons to the National Assembly, and it is on the 29th of November that they have the final climax of the election process, November 29, and that is only a month and 1 day away.

To wait until November 29, however, to begin to send teams of observers to go back to observe would be folly.

What is needed now is a set of observers in Haiti at present. The ballots are being prepared at present. People are being registered at present, and all of this is taking place in an atmosphere of basic hostility.

Late last week Haiti's Minister of Information issued a communique warning the Haitian press that it might be violating a national law—he does not say which law—but they would be violating a law if they quote or print anything that is said by U.S. State Department officials, by Senator EDWARD KENNEDY, or by others in the U.S. Congress, or anyone who calls for free and fair elections in Haiti, and said they are guilty, according to the Minister of Information, of interfering with the internal affairs of Haiti.

I put it to the Members that this is exactly what we would like to do. We would like to interfere with the internal affairs of Haiti, as they are presently constituted, because 90 percent of the Haitian people voted for a constitution and an electoral process which a very tiny minority of people who have guns, the Tontons Macoutes members and the army and the police, they have the guns, and they are the ones who are obstructing the process.

Fortunately, as a result of some of the State Department persons speaking out, and other people in the Congress speaking out, Gen. Henri Namphy, the chairman of the National Council of Government, has held a seminar and called all the Haitian Army commanders together and told them, and this is probably for show, but at least they have taken this step. They have told them that they must be on their best behavior. They must support the electoral process. They must guarantee the safety of the members of the Electoral Council.

We think that all of this represents a tiny step forward, that there is a responsiveness at this point to the outside calls for a fair election in Haiti.

We think that the people who are in charge who have the guns are going to think twice before they openly defy the electoral process.

Our only concern is that they will do things behind the scenes, that now that they know who the candidates are, we may have some mysterious disappearances of candidates, or accidents involving candidates, or candidates suddenly dropping out.

We applaud the actions of former President Carter and his organization.

TRIBUTE TO THE LATE HONORABLE H.R. GROSS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Iowa [Mr. SMITH] is recognized for 60 minutes.

GENERAL LEAVE

Mr. SMITH of Iowa. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the subject of my special order tonight.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Iowa?

There was no objection.

Mr. SMITH of Iowa. Mr. Speaker, many Members of the House were saddened to hear of the passing of H.R. Gross. Upon receiving the news, I announced it in the House and immediately numerous Members expressed admiration for his long and dedicated public service.

I remember that every time that Members came to the floor of the House, he would be near that microphone to the left of the center aisle watching and seeing what was going on and really attending to the business of the House. He was really a dedicated public servant.

I first knew of H.R. Gross when I was a small boy, and we listened to the news on the radio. H.R. Gross was without a doubt the leading radio newscaster in the Midwest. He had been in Congress several years before I was elected and established a national reputation for tenaciously and conscientiously analyzing the legislation which came to the floor of the House and exposing whatever weaknesses he perceived that it had. Even those who may not have agreed with his opinions from time to time never the less appreciated the fact that he was doing his job and serving the people he represented faithfully and diligently.

H.R. retired voluntarily after 26 years of continuous service in the House of Representatives. I am proud to say that we became personal friends and my life has been enriched by knowing him. Bea and I extend our condolences to his wife Hazel and the family.

Mr. Speaker, I yield to the gentleman from Iowa [Mr. LEACH], the gentleman from the First District of Iowa.

Mr. LEACH of Iowa. Mr. Speaker, I thank the gentleman for yielding to me.

Mr. SPEAKER, H.R. Gross was one of the most unique legislators of this century. These aspects of his public service stand out:

H.R. Gross was a conservative—in a penny-pinching, not social issue sense. He was a scholar, a researcher, a reader of fine print. No floor manager could take the floor without asking staff to prepare answers to the probing questions H.R. might ask. Fear and trepidation about such questions kept a lot of mischief from bills and caused a lot of legislators to learn the substance of statute before daring to bring it to the floor.

H.R. Gross was an investigative legislator employing journalistic techniques. He was the ultimate discloser—not behind his colleagues backs—but by shedding light on fine print, he beat the professional press at its game.

Everett Dirksen once noted: "A billion here, a billion there; pretty soon it adds up to real money."

For H.R., a thousand here, a thousand there—$10 of taxpayers dollars anywhere—matters.

It is no accident that every year H.R. introduced H.R. 144—Gross, a balanced budget amendment. He was the fiscal conservative's fiscal conservative.

The final point that distinguishes H.R. from others of his age was his special partnership with his wife Hazel. In this age of staff driven efforts, H.R. relied primarily on one partner—his wife. Together they would burn the midnight oil studying the next day's legislative calendar.

H.R. proved one voice matters and that when magnified in partnership with his wife, it took on a special strength and appeal. There has been, to my knowledge, no comparable legislative family in the history of Congress.

In sum, it is his kind of integrity, his kind of understanding of the rules and basic American common sense that is so much missed in this body.

The record of H.R. Gross—the unpretty visage and inelegant rhetoric—is the record of a genuine American folk hero.

Mr. SMITH of Iowa. Mr. Speaker, I thank the gentleman for those remarks.

Mr. Speaker, I yield to the gentleman from Iowa [Mr. GRANDY].

Mr. GRANDY. Mr. Speaker, I thank the gentleman for yielding to me.

H.R. Gross left in 1974, and I arrived in Congress in 1986, and I did not know him.

It was my privilege to meet him when I was a staff member for former Member Wiley Mayne back in 1970, and it is also my distinct privilege to represent roughly half of his district now, the Mason City area, Wright County, Cerro Gordo, and one of the things I have encountered when I am out holding town meetings is a recurring thing. Somebody will come up to me and say, "Remember, we are H.R. Gross people," and that has very clear meaning to anybody from Iowa, and that means they are fiscally conservative, and they want to know where their dollars go, and they want you to know, as their Congressman, where their dollars go.

As a new Member of this body, there is a legacy that H.R. Gross bequeaths to certainly Members of this side of the aisle, to watch where the dollars go and to make sure that the spending is equitable, and make sure that we are reasonably penurious and to make sure that Iowa gets its fair share.

□ 1735

I would just say that as somebody who used to sit up in the gallery from time to time and watch H.R. Gross hold forth, and as somebody who spent part of his career in another field, television would have loved H.R. Gross and in a way it is kind of too bad that he left here before he had the ability to project his image to millions of households around this country, because to be blunt about it, he would have been a star.

I think America would have gravitated to him, as my colleague the gentleman from Iowa [Mr. SMITH] has said, because he was a definite folk hero, although it is true his manner was roughhewn, it was honest, it was thorough and I have to just think sometimes that as we now in this body grope towards some kind of a mechanism to manage fiscal responsibility, to create some kind of a piece of equipment that will balance the budget, what a man who was obviously a fiscal mechanic like H.R. Gross would have thought of something like Gramm-Rudman. I would have loved to have heard the benefit of his remarks when that was debated not once but twice, and I know because of our deliberations on the budget now, we probably need H.R. Gross more than ever.

I hope that his tradition continues. I know it will continue in my district. I know that if I ever try to deviate from a tradition of H.R. Gross there are roughly 11 counties that are still H.R. Gross country, peopled with H.R. Gross folks, and I would just say to my colleagues that if we are saddened by the loss of H.R. Gross, I do not think we have to assume that he is still not on duty. If there is a charge for getting into heaven, Mr. Speaker, I would assume H.R. Gross is haggling over it right now.

Mr. SMITH of Iowa. Mr. Speaker, I am happy to yield now to the gentleman from Iowa [Mr. LIGHTFOOT], a Member of Congress from the Fifth District.

Mr. LIGHTFOOT. Mr. Speaker, I thank the gentleman for yielding to me, and for holding this special order this evening on Mr. Gross.

It was not my pleasure to have served with H.R. Gross, as I have only been here now in my second term, but I was quite aware of his activities and as a former broadcaster, we followed many of his activities in that particular sense. H.R. Gross was here for approximately a 28-year period. I guess he got the name as being this body's watchdog during that period of time. He challenged what he always considered as pork barrel spending and he opposed about every foreign aid package, I guess, that came down the road.

H.R. Gross was born June 30, 1899, he milked cows, and did field work on his family farm that is located near Arispe, IA.

I think an interesting thing about him is that he never finished high school but he did attend Iowa State University and the University of Missouri School of Journalism and became a radio broadcaster. He joined WHO in Des Moines, IA at a time when there was a fellow there by the name of Ronald Reagan and they both went on, I guess, to their own particular bits of fame.

He came to Congress from the Third Congressional District, which is up in north-central Iowa, and he stayed here until he retired back in 1975.

I am sure my colleague from the Des Moines area who has been here with him knows this, but I am told he reads every bill, that he knew them inside out and he came to the House floor and used his knowledge of the House rules to block or at least slow down those things he was in opposition to.

He regularly reintroduced a measure to balance the Federal budget, H.R. 144, which was a real strong demonstration I think of his commitment to fiscal sanity. He regularly bucked the party leadership, but he was a staunch anti-communist and a fiscal conservative in the highest form.

I find myself sympathetic to many of H.R. Gross' leanings basically as a law-preventer rather than a lawmaker. So many things we do here are in a manner that they tend to restrict rather than enhance personal freedoms. I tend to agree that Congress has an inability to curb its spending appetite.

H.R. Gross also rejected the notion that to get along one must go along in this body. He pretty much was a loner and did things on his own. He was a man of great wisdom and we dug out a few of his quotes, which I think would be, hopefully, a suitable epitaph for his tenure here in the House of Representatives.

In the National Observer on March 23, 1974, he said about Congress, and I quote:

> Nothing gets done. You know, we can't go on piling up debt, paying so much interest. We can't go on and maintain this form of government. If you can't retire this debt by orderly means, then it will be retired by disorderly means or unusual means.

Here in 1987 I think we should maybe pay a little more heed to those words.

Talking about the President, H.R. Gross said:

> The point is the President can't spend a goddamn dime. He can't impound a penny unless we give it to him. Congress ought to get a mirror and take a look at itself.

Again, I think that fits today.

Usually beginning his questioning on the House floor with "Well, how much will this boondoggle cost?", he is estimated to have saved the taxpayers hundreds of millions and perhaps even billions of dollars.

In June 1974 there was an article in Nation's Business, and it said:

> Two signs hang in Gross's office. One says "Nothing is easier than the expenditure of public money. It does not appear to belong to anybody. The temptation is overwhelming to bestow it on somebody". The other sign said, "There is always free cheese in a mousetrap."

H.R. Gross consistently opposed pay raises and foreign junkets by fellow Members. I understand he never took one, but on occasion his travelling colleagues sent him postcards during their travels saying, "Wish you were here."

In a different vein, I think a lot of us would like to say, "H.R., wish you were here."

Mr. SMITH of Iowa. Mr. Speaker, I think the remarks of the gentleman reflect something else that was unique about H.R. Gross. He had a sense of humor. He could do these things. He could expose shortcomings in bills without making people angry. He really was unique. There is no doubt about that.

Mr. Speaker, I am privileged to have served with H.R. Gross for those 16 years. I do represent now one of the counties that was in H.R. Gross's district. He used to carry it 4 to 1, and the people there still remember him even though it was several years ago.

Mr. Speaker, I wish to extend my thanks to all the Members for participating in my special order.

Mr. TAYLOR. Mr. Speaker, we all mourn the loss of the "conscience of the Congress," H.R. Gross, who passed away September 22, 1987.

While I had the pleasure of serving with H.R. for only one term, he was well known to me before I entered the Congress because of his fame as a balanced budget advocate, his tart wit in debate, and his opposition to many of our governments' foreign aid programs.

H.R. was always prepared. He did his homework. In fact, legend has it that H.R. would study the bills and reports in bed at night, and if he fell asleep in the process, his good wife, Hazel, would pick up the document, study it and then brief H.R. on its contents the next morning.

Gross made his impact in the House in many ways, but one of his most important was the introduction at the beginning of each session of the balanced budget amendment, which was given the number H.R. 144.

To Hazel and their two sons, we extend our deepest sympathy on the death of H.R. Gross. We know that he is resting in peace under that old oak tree in Arlington Cemetary, lying there amongst the other heroes of this great Nation.

Mr. UDALL. Mr. Speaker, I was sorry to learn of the passing of H.R. Gross, a Member of this House for 26 years.

This was a tenacious, fiercely committed man, a genuine American Original. Had there been no H.R. Gross, we would have had to invent him.

We served on quite opposite sides of the aisle, but to watch H.R. Gross in action was to certainly admire his consistency. He was dogged in his beliefs and sincere in the pursuit of public service as he saw it. And there was never any doubt about where he stood.

H.R. Gross served his fellow Iowans with a singular zeal and with dedication.

My sympathy goes to his family.

Mr. BENNETT. Mr. Speaker, I appreciate the opportunity to say a few words about my good friend, H.R. Gross. H.R. Gross was a man who followed his conscience and did what he thought right, regardless of the consequences.

I have a special feeling in my heart for H.R. Gross. He was elected to Congress the same year I was—1948. We also shared a similar philosophy of government. H.R. Gross spoke out against wasteful spending and against foreign aid. He was a conscientious, no-nonsense legislator. He was also a thorn in the side of some, so to speak, encouraging the Congress to live up to its responsibilities. He also spoke out with a vengeance against Congressional salary increases. Time magazine once described Gross as "a self-appointed caretaker of the Congressional conscience." In this time of increasing budget deficits and market instability, we would all do well to emulate H.R. Gross. A true fiscal conservative in every sense, H.R. Gross consistently questioned all proposed expenditures, whether large or small, in his personal drive "to save this country from national bankruptcy."

H.R. Gross was an exemplary American citizen. His family has much to be proud of in his accomplishments. He was a man small in physical size, but he was a giant in the qualities that count—courage, honesty, and integrity. A veteran, a Congressman, a family man and a statesman, H.R. Gross was all of these and more. Congress was blessed with his presence, and today, we need more people in Congress with his character and decency.

Mr. FORD of Michigan. Mr. Speaker, I would like to join in the eulogy for our former colleague, H.R. Gross.

Personally, even though we represented far different political persuasions, I regarded serving in Congress with H.R. Gross an honor and a privilege.

In every respect he was a gentleman who faithfully embodied the spirit of America's heartland that he so genuinely represented.

Even those who disagreed with him on policy recognized him as a spirited Member of Congress who spoke with authority for the people of his district.

It was a distinct pleasure to have served with him on the Committee on Post Office and Civil Service. And I am sure that I speak as well for present and past members of the committee when I say this.

He left a mark on Congress that will not soon be forgotten.

Mr. DE LA GARZA. Mr. Speaker, I was saddened to learn of the death of our former colleague from Iowa, H.R. Gross, and would like to take this opportunity to say a few words.

H.R. Gross was a man of ultimate integrity and courage who throughout his life strived for, and achieved, success in whatever he pursued. He was one of those rare few who excelled in whatever enterprise he undertook and who managed to do so with extraordinary modesty and grace.

Former Representative Gross was an individual intensely devoted to his constitutents—one who represented the Third District of Iowa with dedication, sound judgment and integrity. His presence and his expertise were an inspiration to all and I join with my distinguished colleague, Representative NEAL SMITH, in extending heartfelt sympathies to those he leaves behind.

Mr. QUILLEN. Mr. Speaker, I wish to join my colleagues in paying tribute to the memory of Congressman H.R. Gross of Iowa who passed away last month at the age of 88.

Congressman Gross served as a Member of the House of Representatives for 26 years until his retirement at the end of the 93d Congress. I served with Mr. Gross here in the House for 12 years and I can testify without fear of contradiction that Congressman Gross was a man who made his mark and who made a difference.

Congressman Gross represented northeastern Iowa and his views were those of a frugal fiscal conservative with a strong dash of farm-state populism. He was a blunt-talking, hard-working, serious Member of Congress who had a booming voice. He was a strong presence on the floor as he strove diligently to uncover wasteful and unnecessary Government spending. And he found a lot of it. And when he did, he'd let us know.

It has been said that Mr. Gross read every line of every bill that came to the floor for a vote. I don't know if this is literally true, but he was certainly the champion at ferreting out little items in many bills that proved embarrassing to sponsors. This had a good effect on all of us, and there is no doubt in my mind that over the years he served in the House, he saved the taxpayers of this country many millions of dollars. For this he has my gratitude and respect.

Congressman H.R. Gross will be missed by those of us who had the privilege to serve and work with him as colleagues in the House. We are saddened by his passing.

At this time of grief, I wish to extend my sympathies to is wife, Mrs. Hazel Gross, his sons, Phil and Alan, his brother, Sydney and his sister, Lillian Underwood.

Mr. RODINO. Mr. Speaker, I want to thank the gentleman from Iowa for organizing this special tribute to our friend and former colleague, H.R. Gross, who died on September 22.

H.R. Gross was a true original. His H.R. 144, which he introduced in every session during his 25 years in the House, was his trademark. H.R. spent a considerable amount of time on the House floor where he insisted on the full and fair application of the rules of the House, which he knew so well. In his desire to safeguard the national interest, H.R. considered it his duty to read every bill that came before the House. He never hesitated, in that booming voice of hiis, to ask penetrating and important questions and to make sure that everyone did their homework.

What H.R. reflected was the best of American virtues: thrift, a probing wit, attention to detail, and a commitment to public service. He was an independent spirit with deep convictions and a willingness to act on his beliefs.

H.R. Gross was respected on both sides of the aisle for his honesty and his diligence. You might not always agree with H.R., but no one ever questioned his integrity or desire to serve the best interests of the Nation. He loved Congress and in turn, he always had our genuine respect and affection.

I feel privileged to have known H.R. Gross, since we both entered Congress in 1949. His commitment and service will continue to serve as an example to us all. I send my condolences and sincere best wishes to H.R.'s wife Hazel and his entire family.

Mr. FASCELL. Mr. Speaker, I note with sadness the recent passing of one of our most esteemed former colleagues, H.R. Gross, who in 26 years of service in this chamber did a truly outstanding job of representing both his beloved home State of Iowa and our national interest.

A former colleague of mine on the Foreign Affairs Committee, H.R. set the standard for hard work and dedication. A truly independent thinker, he studied all sides of an issue before he made up his mind—and once having made his determination, he was unshakable. He was, above all, a true guardian of the National Treasury—and woe be to the member who tried to slip something past him.

Members also learned that H.R. was a reasonable man, and ever willing to listen to their legislative problems and help when he could. Partisan, doctrinary considerations were alien to his nature.

For many years, he played a major role in the activities of this body and in the affairs of this Nation. The assets he brought to this institution are sorely missed.

Mr. ANDERSON. Mr. Speaker, I would like to join my colleagues in mourning the passing of a man who loved this great Nation, and had the courage to pursue his beliefs and not simply respond to what others dictated. I speak of former Congressman Mr. H.R. Gross.

Harold Royce Gross touched each of our lives here in Washington, and over the years his tenacious, detailed oriented style left its mark on American politics, and on our Nation's legislative process. Any attempt to summarize his contributions to our great Nation fall far short of that purpose, and do not seem to serve his memory justice.

I have been proud to serve in our Nation's Capitol, and associate with great leaders like H.R. Gross, and I am as equally proud to be a part of a system that recognizes individuals like H.R. Gross. Current legislation that attempts to curb the U.S. deficit, are standing tributes to this man who realized and pursued this cause in his many years in office. I wish only to go on record as one of the many who recognized H.R. Gross, appreciated his efforts, and respected his ideals. His record speaks for itself.

LOSS OF MORE STRATEGIC TECHNOLOGY TO SOVIETS THROUGH COCOM COUNTRIES

The SPEAKER pro tempore (Mr. OLIN). Under a previous order of the House, the gentlewoman from Maryland [Mrs. BENTLEY] is recognized for 60 minutes.

Mrs. BENTLEY. Mr. Speaker, the Washington Post carried an article last Thursday stating that an investigation by the Dramman, Norway, police department had uncovered the sale of more strategic machinery to the Soviets covering a 10-year period starting in the early 1970's.

Although the investigation targeted the Norwegian firm Kongsberg—which had been found to have made sales in conjunction with the Japanese firm, Toshiba, during the 1980's—in the course of digging into the history of Kongsberg's dealings with the Russians—it was discovered that not only had Kongsberg been selling at a much earlier date, but that other firms in other countries had been also engaged in these illicit sales.

One firm is in West Germany, a French company—Ratier-Forest S.A.—was named as possibly having "multiple violations," and an English firm is being investigated for proscribed selling milling machines to China. I think that the two new companies involved in these charges should be banned from selling any of their products to this country. Even though Kongsberg has gone into bankruptcy, a ban against their products should not be removed by the Defense Department.

These violations, by companies in allied nations, continues to shock and outrage. For the last 40 years, the United States has carried the burden of defending the free world from the Soviets. We are in the midst of a budgetary crisis right now and I believe—it can be proved—that were we not carrying the defense burden for the rest of the world, we would not be in this crisis.

It is therefore 10 times more bitter to me, as an individual taxpayer, and as a Congressperson having to face the problem of the deficit, that the very people for whom we have sacrificed so much, are so untrustworthy of our confidence—so undeserving of our protection.

And in the same way, the treatment of this matter by the Washington Post, is puzzling to me. At the time of the first discovery of sales to the Soviets by Toshiba and Kongsberg, I and some of our colleagues held a press conference where we smashed a Toshiba radio with a sledgehammer.

The Post chided us in an editorial and interestingly enough, though there were several other Congress people involved, the Post chose to feature me. I was flattered. But then, they proceeded to lecture me—rather harshly—for using a bludgeon on such a delicate situation. Trade didn't need the sledgehammer approach.

□ 1745

Treason is not a trade issue. And nations which have winked at restrictions on East-West trade deserve to be attacked in some manner that is less than diplomatic.

I might point out that we have been advised both by the Japanese and from the Defense Department end that if it were not for that emphatic smashing of this small Toshiba radio, which was dramatic, yes, but if it had not been for that, nothing would have happened in the arena of getting Japan to move on trying to get an espionage law through, and they still have not. I might point out that I had a visit from some citizens from Japan last week who are trying to get an espionage law through. They feel that it is necessary, and they want to reestablish in this country confidence in Japan. But until something like that is moved, it will not happen, and that is their concern.

I might also point out that when our Defense Department initially approached Japan last December about the sale of this equipment to the Soviet Union, neither Japan nor Norway moved, not at all, not until we in Congress came down hard on the issue.

On Friday of this week, the Post did it again. Following their own newsstory which reports a senior administration official using intelligence sources as saying that equipment from the West German firm most likely was used to manufacture nuclear weapons, the Post in an editorial on Friday, suggests that the United States is somehow at fault for trying to have too many export restrictions.

I guess they are saying that we have "confused them"—in the same manner that they suggest in the original story that since all of these new infractions have been discovered, that Toshiba—in some magical manner—is less guilty for its sales to the Soviets. In other words, were I to be caught robbing a bank, then when other people rob banks, I am then less guilty.

Isn't it interesting, that in the area of foreign policy, whether it is supporting freedom fighters in Nicaragua or selling off technology in a treasonous act by foreign manufacturers—the United states is always wrong. Always at fault.

I reject hair shirts and "guilt trips." Not only have we protected all of these people for the last 40 years, we rebuilt their industrial bases with the Marshall plan and the taxes of hundreds of thousands of working men and women in this country. It is this foreign industrial power which is now turning around and biting us with the balance-of-payments deficits for all of the "free trade" items flooding our markets.

It is time for us to stop being the world's "big nice guy." The Russians are our enemies—otherwise we can cut the Defense Department by at least 50 percent. The Russians need any of our technology then can get their hands on—and they make no bones about it. At a time when we are being made more and more aware of their successes, more and more of our weapons production is being moved offshore in coproduction or in licensing agreements with our allies.

A headline in Defense News of October 5 states that the "Pentagon Targets Protectionism." The lead explains that "the U.S. Defense Department has begun a comprehensive review of its international defense trade relations and is mounting an effort to defeat trade protectionists measures in Congress."

A gentleman named Dennis Kloske has been made responsible for this activity. He currently heads up the Defense Department Cooperation Working Group, which advocates overseas procurement within the Pentagon. How, we know whom he represents—overseas manufacturers. And, Mr. Speaker, it is American manufacturers and the rest of us taxpayers, who pay his salary.

I think we can legitimately charge the Defense Department with contributing to the balance of trade deficit as well as to our operating budget deficit by its procurement overseas.

A recent Harvard University study points out that although we are talking about 12 million new jobs in this country that 8 million of them pay $7,000 or less. This means that we have lost a great amount in the manufacturing sector. The manufacturing sector pays much better than $7,000 a year. And with the money that the defense Department is spending offshore, that is going into keeping other people employed rather than Americans who could use a higher paying job and who would be contributing into the U.S. Treasury to keep the Defense Department going. We need to have people thinking that way.

In fact, we could say that the Defense Department is becoming as bad as the State Department. Despite the fact that the United States is almost bankrupt and is a debtor nation, and must go out to borrow the money to send to these foreign producers, the Defense Department thinks only of foreign producers. Maybe we should establish an American desk over there at DOD like we need to do at the State Department.

Perhaps I should not be as harsh on the Defense Department as I have been. Part of the blame rests right here in this body. We recently in committee, as I understand it, removed an amendment that would have required all development of the SDI to remain in the United States of America, none of it to go overseas. That has been plucked out. Also, there was another amendment in there, one that would have required the Defense Department, the Navy, to buy its machine tools in the United States of America and not overseas, and that has been removed from the 1988 Defense appropriation bill.

Right here in this body if those amendments were in there, then the Defense Department would have no choice, they would have to adhere to buying in this country.

Incidentally, since 42 cents of every dollar spent in America returns to State, Federal, and local taxing entities and to workmen's compensation, unemployment compensation, and Social Security—no purchase of any Government item abroad is cheaper unless it is 42 cents cheaper.

And, since every dollar recently spent by the Government is borrowed—an additional 8 to 10 percent on average must be added to that figure for paying the debt service on each dollar.

In truth then; unless every foreign item is 50 percent cheaper than its American counterpart, it is not cheaper to procure Government purchases abroad. How can we possibly continue to interpret the law on second sourcing or competitive bidding as we have thus far? Nothing is coming in from abroad at a 50 percent differential and yet hundreds of small American companies have gone bankrupt trying to compete for government contracts against these "supposedly" cheaper foreign products.

I guess the Pentagon is beginning to recruit from Harvard Business School. Their bookkeepers are looking at the quarter end statement—the near-term report instead of the long-term result.

They are forgetting that they have been charged by the Constitution to defend the country. They are to be the major strategists of our defense. Not only are they wrong on the cost effectiveness of what they are doing to themselves and to the country, but they have increasingly placed our survival in the hands of foreign nations upon whom we are to depend for everything for our defense machine, whom we have to be able to trust.

And as we see, in the stories of longtime sales of strategic technology to the Russians, the trust is seemingly misplaced. If we send our weapons technology abroad—do the countries have adequate espionage laws? In the production plants, is every worker checked for security as is done in this country? How secure a situation are we placing our state-of-the art technology?

And if secure, how much of that technology will be used to compete directly with our own producers in sales to other countries?

Currently, we are licensing the building of the F-16 to the Japanese—in a codevelopment venture. Defense News says that this venture "bring the Japanese as close as they can get to the choice they really preferred: the development and production of an indigenous aircraft."

That's right. Let's put the Japanese into the aircraft business.

Another story this week says that Mr. Kloske of the Pentagon—he who represents the interests of foreign manufacturers in DOD—is off to Europe to negotiate codevelopment and coproduction on an advanced F-16, the Agile Falcon, with Belgium, Norway, Denmark, and the Netherlands.

Absolutely wonderful! We have a balance-of-payments deficit that is strangling us. And yet, we are sending $5 million offshore this year for the preliminary work—administrative and predevelopment—of this plane, authorized under the Nunn amendment for overseas research and development with our allies.

I think we should have a spending freeze. I think all of this spending abroad should be frozen until we get our own books in order, until we get our own budget in line.

It would not only save money. It would save American jobs and of equal importance, it would save American technology.

We are negotiating—right now—to license production of the Aegis missile to the Japanese. It is my understanding, that at first we were going to build the ships which are necessary to carry the missiles—we would have at least gotten those jobs for our shipyards and we would have had the sale to help offset our balance-of-payments deficits to the Japanese.

However, I am told, that the Department of State jumped in—when the Japanese said they wanted to build the ships, instead of buying them from us—and urged that the Japanese be allowed to build their own because their shipyards are in such bad shape. What about the condition of our shipbuilding industry? I'd like to take State Department officials to look at our sad industry.

And, evidently, State carried the day, since I have heard that the deal is moving right along. The Japanese will probably have to spend as much as $200 million more—for each ship—to build them in their own shipyards than to buy them from us.

Why would they want to pay more? It is my opinion that it is in order to get the ship building know-how on high technology war ships. In the last 40 years, they have not had that capability.

It is very short sighted, I fear.

We are being told that increasingly the pie is getting smaller in the world and competition greater. The one area where we have continually excelled is in technology. Let's keep it that way! Let's keep it at home. Not only to be safer, but to guarantee that the second and third generation of that technology will give jobs to our children and their children.

I represent America—no other country—I wish some of our agency people would begin to question whom they represent.

□ 1800

REPORT ON LABOR DAY WEEKEND TRIP TO SECOND ANNUAL ASSEMBLY OF PARLIAMENTARIANS IN SANTIAGO

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Connecticut [Mr. Morrison] is recognized for 60 minutes.

Mr. MORRISON of Connecticut. Mr. Speaker, I rise tonight to speak about a delegation trip that Congressman Ted Weiss of New York and I took over the Labor Day weekend to participate in a meeting in Santiago that was a very important and impressive meeting and one I think that our colleagues and our constituents should know about.

We were invited as delegates to the second annual Assembly of Parliamentarians in support of a return to democracy in Chile. The first meeting occurred in May of 1986 and because of delays and uncertainties in planning of that meeting, no Members of the U.S. Congress had attended.

In fact, the only parliamentarians present had been from Latin America.

But with more advanced planning and a better notification of people from around the world, the second annual meeting convened in Santiago with parliamentarians from many countries around the world and in fact over 100 members of various parliamentary bodies, all freely and democratically elected, assembled in Santiago together with over 100 members, former members of the Chilean Congress, the Congress that had met continuously for well over 100 years at the time of the coup d'etat which brought General Pinochet to power in 1973.

Since 1973 the Chilean people have suffered under the yoke of a military dictatorship. And that military dictatorship has imposed on the people of Chile brutal violations of their human rights.

Now those violations of human rights have been greater and less at various times over the 14 years of the Pinochet dictatorship. But throughout that period there has been a gross violation of respected standards of human rights in Chile.

The purpose of the international assembly was to give a show of strength and solidarity to those in Chile who are fighting for a return of democratic government. And it was indeed a dramatic and moving experience to be a part of that event.

For several years here in the Congress, members of the Committee on Banking, Finance and Urban Affairs, in particular, have focused on United States policy with respect to Chile.

The Banking Committee has jurisdiction through its Subcommittee on International Development Institutions and Finance of the voting behavior of representatives of the United States in the multilateral development banks.

The multilateral development banks provide development lending to countries such as Chile. And Chile is eligible for and receives loans from both the World Bank and from the Inter-American Development Bank.

Under the Harkin amendment which was passed by the Congress and signed by the President in 1977, it is the law of the United States that our representatives to such banks are instructed to oppose, by voice and vote, the granting of loans by such development banks to countries which engage in gross violations of internationally recognized human rights.

During the Carter administration, it was the consistent policy of our representatives to vote against lending to Chile and, except for the area of loans directed to basic human needs which are exempted from the Harkin amendment, the Carter administration regularly and routinely opposed these loans on the ground that the Chilean Government was engaging in systematic violations of the human rights of the Chilean people.

During this period, this policy had relatively little effect on Chile. These were boom times for many developing countries. A lot of banks, commercial banks were happy to make loans, and large amounts of debt were run up by the Chilean Government from commercial banks and the opposition, both political and otherwise, to development lending from the multilateral international institutions did not significantly effect what went on in Chile. However, this period of ability to borrow easily from commercial banks ended in 1982 with the worldwide recession. And since that time, Chile as much as any other country has become dependent on lending from the World Bank and the Inter-American Development Bank to sustain its economy.

But another change occurred with the election of the Reagan administration, in addition to the change in the economic circumstances in Chile. And that change was that the Reagan administration ceased the previous opposition of the United States Government to World Bank and Inter-American Bank lending to Chile and the administration began to vote consistently in favor of such loans.

In 1986, we experienced some specific human rights violations that once again put before the American people and the American Congress the severity of the abuses of human rights by the Chilean Government.

A pair of young teenagers, one a resident of the United States and the other a Chilean, were severely burned in an attack by Chilean military officers.

The American resident was killed and his Chilean friend was severely burned, hospitalized for long periods of time and has been undergoing a difficult and painful recovery.

The fact that this kind of brutal attack could occur heightened the tension here in the United States to the continuing abuses of the Chilean Government and led to a reexamination of United States voting policy with respect to development loans.

More recently in the fall of 1986, the United States did in fact oppose a major structural adjustment loan being considered in the World Bank. And although the loan was approved, the United States joined with 47 percent of the voting shares in the World Bank in either opposing or abstaining from the granting of the loan.

This was an important step in the right direction in U.S. policy and it had been urged on the administration by the development bank subcommittee of the Banking Committee in hearings and consultations prior to that vote.

In our travels to Chile for the assembly in September, we had hoped to accomplish two purposes. One is to review the continued importance of United States actions with respect to the granting of economic benefits to Chile. And second, to present before the Chilean people clear demonstration that we from the United States joined with other freely elected parliamentarians from around the world in urging a return to democracy promptly and by truly free and open elections in Chile.

Now it is important to note that Chile is not a country that has routinely lived under military rule. In fact, prior to the coup in 1973, Chile had enjoyed 168 years of virtually uninterrupted democratic rule.

With two relatively minor exceptions, that entire period of Chile's history had involved regular elections and regular democratic succession, both in the legislative and the executive branch. And Chile was held out before the world as a major example of success of democracy in Latin America. During that 168 years of democratic rule in Chile, there developed an extremely strong democratic tradition and strong and active democratic parties. Chile, in fact, had many parties and a very robust political debate underlying its democratic government.

□ 1815

All of that changed with the coup in 1973 which was accompanied with executions of political leaders and also the exile of many others who were not in fact executed, and a great pall was cast over both the tradition and the practice of democracy in Chile. But in fact the flame of democratic participation and the desire for democratic government, while injured and brutally attacked throughout the last 14 years, is still very much alive in Chile, and the life that it has was very much demonstrated by the participation of former Chilean congressmen in the sessions of the assembly which we attended.

The problem which is faced by those in the opposition in Chile is of constitutional proportions. In 1980 the Chilean junta proposed and had adopted a constitution for Chile, but unfortunately this new constitution did not provide for true democratic elections nor the true return of democracy to that country. The constitution which was adopted is, in fact, a blueprint for the continued control of Chile by a single strong military leader or one whose actions can be severely circumscribed by the military. It has been clear for some time that the current military dictator, General Pinochet, is desirous of continuing in his position and using the procedures of the 1980 constitution to install himself for another term of 8 years when elections are scheduled in 1989.

The procedure of those elections, as set forth in the constitution, would permit the ruling junta of four military leaders to nominate a sole candidate to be voted upon by the Chilean people in a plebiscite, and the winner of that plebiscite, receiving a majority of yes votes, would then serve for an 8-year term.

These are not the kinds of elections that would provide for a return to democracy. Consequently, the focus of the meeting which was held and the focus of the discussions we had in Chile were on this question: How can we move this situation so that the well-formed and historic opposition parties in Chile would have a true, open opportunity to participate in free elections so that in 1989 or 1988, when the elections are convened, they can be truly democratic elections and the people of Chile will get to choose? That in fact is a goal that is well worth our pursuing with whatever leverage we can muster from the United States.

Mr. Speaker, I would like to welcome my colleague, the gentleman from New York [Mr. WEISS], and yield to him to expand upon my introduction and add to my report on our trip to Chile.

Mr. WEISS. Mr. Speaker, I thank my friend, the gentleman from Connecticut, for yielding to me at this time, and I want to commend him for having taken this special order so that we could discuss the situation in Chile.

As the gentleman has indicated, he and I participated in the Second International Assembly of International Parliamentarians in the early part of September, and the focus of that meeting, which again was a very impressive gathering of parliamentarians around the world, most especially from the European nations and the Latin American nations, was an effort to try to get international recognition and attention on the kind of dictatorial system that operates in Chile and the effort of the Chilean people to try to break loose from the yoke of Pinochet's dictatorship.

My friend had just commented on the nature of the electoral process that is about to take place under the guise or under the processes imbedded in the constitution which Pinochet himself forced through in a referendum in 1980. It is an election right out of the pages of Joe Stalin's type of election. The only chance there is, according to that system, is to either vote for the candidate, who is expected to be either Pinochet himself or somebody else the military junta will designate as the candidate, or to vote no. Well, that, it seems to me, is how Joe Stalin practiced democracy and how he managed to get 99.99 percent of the vote every time, demonstrating what a marvelous democracy he headed.

It is an insane system, assuming that because of the unity of the Chilean people—and there is tremendous unity—the thing that was so impressive in the time we spent there, I think, was how just about every element of the political picture, the political scene in Chile, with all their many political parties, seems to be united in this effort to register people in the election and to participate in the election itself. So assuming that against all odds, given that kind of setup, the rigged election they have, they are able to get a no vote to get a majority, at that point then Pinochet or Pinochet's designee stays in office for another year until there is then a contested election. Well, given Pinochet's proclivities and the junta's proclivities, we can imagine what happens in that situation. As somebody said, it is the only electoral system where the loser stays in power.

So it seems to me that what the Chilean people, the political people and the nonpolitical people, are trying to do at this point is to even out the odds a bit. What they are trying to do is pressure the Government of Chile into allowing the constitution to be amended so there will be a contested election from the very beginning. At least that will allow some opportunity for an opposition candidate to the Pinochet candidate or to Pinochet himself to have a chance to be elected and then to take office should that candidate win.

The United States ought to be paying, it seems to me, a much greater role in demonstrating that we do not appreciate as friends of the U.S. Government's or governmental leaders which deny basic democratic rights and basic human rights to their own people. It is within that context that I think the gentleman from Connecticut and I have been attempting to have the general system of preferences apply in such a fashion that the Chilean Government's violation of human rights can in fact be utilized against that dictatorial government.

The law is quite clear. The State Department ought in fact to be following the lead of our own Department of Labor, which has found that the Government of Chile denies internationally respected and accepted rights of workers. But for whatever reason, up to this point the Reagan administration has not seen fit to cut off the general system of preferences for trade purposes or the OPIC provision, the Overseas Private Investment Corporation guarantees for loans and investments in Chile. It seems to me that in a very clear way the United States of America, which has indicated its support for democracy and human rights around the globe, ought not to allow the Government of Chile in the guise of Mr. Pinochet to in essence thumb his nose or its nose at us. I think the people of Chile are looking to us, and I should say in all fairness that there are indications in recent months that the Reagan administration is beginning to look askance at how Pinochet is conducting himself.

Mr. Speaker, our hope is that we can encourage the Reagan administration to really apply the law and to cut off whatever benefits accrue to the Chilean Government which should not accrue to them because they clearly have violated the laws of our country.

Mr. MORRISON of Connecticut. Mr. Speaker, I thank the gentleman from New York for his comments, and I would just engage him for a moment in a colloquy about the importance of understanding the nature of these economic sanctions, if they might be called that, that we think ought to be applied with respect to Chile.

There are those who would claim and there are those representatives of the Pinochet government who claim that actions of this sort by the United States to oppose development bank lending, to cut off GSP benefits, and to cut off OPIC guaranteed benefits in some way would reflect inappropriate intervention by the United States in the affairs of a sovereign state, that of Chile. It seems to me important to emphasize that these are not matters of intervention or nonintervention.

The Chilean economy and the Chilean Government have taken advantage of and have asked for these benefits above and beyond whatever arm's length bargaining between nations might occur in terms of trade, and have asked for preferences, for lower tariffs, for guarantees for investments, and for loans on a subsidized basis from international institutions. And such things ought not to be available to subsidize torture, denial of democratic rights, or denial of labor rights, and in fact this is not a question of intervention but a question of whether the American people and other free people of the world should continue to subsidize the dictatorial and brutal actions of the Pinochet government.

I think it is important that we understand that in light of that understanding rather than the way it is sometimes characterized by representatives and defenders of the Pinochet regime as some attempt to reach in inappropriately from the United States and interfere in the affairs of another nation.

Mr. WEISS. Mr. Speaker, the gentleman is absolutely right. And the important thing to note is that this is not sanctions legislation that is being aimed only at Chile. The Congress of the United States passed amendments in 1984 and 1985, signed into law by President Reagan himself, which would link general standards of preference and OPIC benefits to treatment of workers and their unions in beneficiary countries. Those labor rights are very, very clear, and the obligation of the administration is very clear.

Under section 502 of the Trade and Tariff Act of 1984, the U.S. Trade Representative must deny GSP benefits to the countries "not taking steps to afford internationally recognized worker rights to workers in the country." And under section 231(a) of the OPIC Amendments Act of 1985, OPIC coverage can ony be granted to U.S. investments in countries "taking steps to adopt and implement laws to extend internationally recognized labor rights."

Again the labor rights are very clear. They are defined as the right of association, the right to organize and bargain collectively, a prohibition on the use of forced or compulsory labor, minimum age of employment for children, acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

It has been spelled out in great detail how many of these basic internationally recognized labor rights have in fact been violated by the Chilean Government. They go through the motions of pretending that in fact collective-bargaining rights exist, but they do not. So it seems to me that it is not a matter of our interfering in Chilean internal affairs; it is a matter of our living up to our own standards which we have applied under our statutes, not just to Chile but to all countries, and we expect that kind of behavior from any country to which we give these preferences.

Mr. MORRISON of Connecticut. Mr. Speaker, I thank the gentleman from New York. I think he has made that point even clearer than I had stated it by giving the specificity to these laws that are in existence for any country and that ought not to be ignored with respect to Chile.

I think that it is also important to note an important decision that faces the administration in approximately the next month when the World Bank will once again consider a major structural adjustment loan to Chile. I am pleased to note that the administration has scheduled consultations with the development bank's subcommittee in order to discuss what kind of recommendations will be made regarding the vote on that loan. We have had those consultations in the past, and I think we have been a part of the movement in the administration's approach. I think the administration has on occasion been ready to condemn the human rights abuses in Chile but to praise the economic program of the Pinochet government. Yet I think it would be fair to say that in our discussions, when we were in Chile, with opposition leaders about the economic program, the widely held view is that while the economic program has met certain standards of success that the Government has set and while some, depicting the overall picture of the growth of the economy, may paint a moderately successful picture, within Chile itself, when we look at the distributional effects of who has been made wealthy and who has been impoverished by the economic policies that have been followed by the Pinochet regime, the fact is that the income distribution in the country has suffered drastically as the very wealthiest Chileans have become even more wealthy.

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As the average middle-income Chileans have lost some ground, and the poorest 40 percent of the Chilean people have suffered drastic reductions in their standard of living, that not only do we have the problem of the abuse of labor rights and human rights that has been identified in the country's reports published by the

State Department and the like, but an economic policy which has been all too often praised by the Treasury Department, an economic program that has imposed tremendous hardship on the vast majority of Chileans.

Mr. WEISS. Mr. Speaker, will the gentleman yield?

Mr. MORRISON of Connecticut. I yield to the gentleman from New York.

Mr. WEISS. Mr. Speaker, I thank the gentleman for yielding.

The gentleman is absolutely right. We, in the course of the brief period of time that we were there, had occasion to meet with people at various cross-sections of Chilean society, academic, political and labor people; and without any question, there is great, great concern about the state of the economy and the state of the broad general populace in Chile.

There is a very tiny segment, it seems to me, of Chilean society that has benefited from Pinochet's government.

Obviously, the military have done quite well, and obviously a small sector of the upper business community has done well; but for the most part, every other sector of Chilean society has suffered economically under the Pinochet rule.

It seems to me that it is nothing that we ought to be holding up as a model or as the standard, and ought not to be approving it, human rights aside.

On the basis of human economics, the system has not worked well for the people of Chile.

Mr. MORRISON of Connecticut. It is important to note that both the gentleman from New York and I were privileged to address the Assembly of Parliamentarians in its formal sessions, and I was given the honor of participating on the Drafting Committee of the resolution which was adopted by the Assembly.

The message that came through to us loud and clear was that the opposition parties in Chile who are working day in and day out to register people to vote and to create the circumstances for a return of democracy very much reached out to Members of this Congress, and to parliamentarians from all over the world, seeking support in various ways from their own home bodies and home countries to speak with one voice that democrats from around the world were all seeking a return to democracy in Chile and stood ready to reach out a hand of friendship to a newly elected democratic government in Chile to come to assist that country in rebuilding its economic strength, and being able to deliver to the Chilean people the economic and political fruits of a return to democracy.

It seems to me that we would do well to heed that call for help, if we truly believe what we say about our concern for democracy.

Mr. WEISS. I want to commend the gentleman for his work in the drafting of that resolution and the adoption at the Second International Assembly for Democracy in Chile dated September 6, 1987.

Mr. Speaker, I ask unanimous consent that that declaration be entered into the RECORD in its entirety, together with some other materials, newspaper reports, as well as a copy of the statement that I was privileged to be permitted to make on September 4, 1987 to the International Assembly of Parliamentarians.

I submit a copy of the documents referred to as follows:

II INTERNATIONAL ASSEMBLY FOR DEMOCRACY IN CHILE "APAINDE" RESOLUTION OF FOREIGN DELEGATES

SANTIAGO DECLARATION, SEPTEMER 6, 1987

The Parliamentarians from Europe and from all the American Continent attending to the II APAINDE address the Chilean people to estiablish that their opinions, verifications, and judgements do not affect the principles of self-determination of the people, and they also specify that the struggle for Democracy and the enforcement of human rights are a common patrimony of mankind and an imperative of the civilized community of the world that all free men are devoted to defend. For this reason they inform:

First: That this II APAINDE has been characterized by the great amount of participating delegations and by the quality of the working papers and speeches;

Second: That the Chilean Government has negatively intervened in the Parliamentarian Assembly arresting two of its participants and preventing another one from entering the Chilean territory;

Third: That quotas of freedom and political consciousness have been conquered from the Chilean people through the campaign for holding Free Elections;

Fourth: That, nevertheless, there are still systematic violations to human rights with the maintenance of the state of emergency, the broadening of the competence of the militar jurisdiction, the control and censorship of mass media, arbitrary arrests and trials, torture, assassinations; and disappearances of citizens that have not been duly investigated: and the maintenance of the prohibition of entry to the country to many Chileans;

Fifth: That the improvement of some macroeconomic indexes has been possible thanks to the sacrifice of the less favoured groups while the benefits are concentrated in a small group that has the economic power thus causing situations of misery and indignity in broad strata of the population. This concentration, together with the formation of the highest external debt per capita in the world, will cause great difficulties for the future democratic government;

Sixth: That Democracy only exists with the holding of free elections submitted to guarantees that do not previously exclude any political force that accepts the democratic principles.

For all that, we, the Parliamentarians attending to this Assembly:

First: Declare our full and active support to the campaign for free elections, requesting the creation of interparliamentarian observer groups that guarantee a clean electoral process from its beginning until the counting of votes and proclamation of the results;

Second: We request a radical transformation of the legal and penal regulations to permit the effective recognition of fundamental rights and freedoms, the elimination of the present limitations to the freedom of press and opinion, and the opening of the mass media, specifically of TV, to the democratic political forces;

Third: We recommend the creation of follow-up and support groups for Democracy in Chile in our respective Parliaments that could establish among them coordination organisms divided in extensive geographical regions;

Fourth: We encourage the Parliamentarians from all democratic countries to create a bigger bilateral and multilateral economic cooperation that contributes to the development of Chile when the desires of the people of Chile can be expressed through a freely elected government and a government that guarantees the independence of the legal power and full respect to human rights.

SANTIAGO DE CHILE, *September 6, 1987.*

A CHILEAN HOMECOMING: RETURN TO EXILE

(By Ariel Dorfman)

The plainclothes policeman at the airport in Santiago punches my name into his computer with all the semblance of crisp efficiency. I have no way of knowing he has just misspelled it. Who could doubt the bureaucratic virtues of that mousey, clean-shaven face—apter for a bank teller than for a member of Investigaciones, the notorious Chilean equivalent of the FBI. I try not to let the relief show when he stamps my passport and those of my two sons, Rodrigo (20 years old) and Joaquín (eight), and wishes us a good morning. This is my sixth trip back home since my exile was lifted in 1983, but in Chile you can never tell. . . .

At customs, a pleasant gentleman with sideburns and florid cheeks demands to know if we have been to any farms lately, sown any seeds, if we are carrying anything to eat. I grudgingly produce a steak sandwich. Joaquín has been to excited to eat for the last 21 hours, but just in case I've concocted this delicacy on the last segment of the flight from Buenos Aires. We banter about the food with the customs officer. This is one of the things that I have missed during my long years in exile—the everyday talk with people who enjoy the same language, the humor, the silences, the infections. I joke that it's the best Argentine beef, it couldn't harm anybody. He jokes back: the kid eats it now. Or he doesn't eat at all. I look askance at Joaquin. In English he says: "No way. I wanna see my cousins." He can already catch a glimpse of them—the children I never saw born—jumping up and down some 50 yards away. After some more chitchat, the insubstantial, irrelevant, glorious give and take that confirms we are back home, the sandwich is solemnly handed over.

I should have kept it.

As if this were a drop for drugs in some B-Thriller, out of the corner of my vision comes swimming the same agent who stamped our passports some seven or eight minutes ago.

Would I do him the favor of accompanying him please?

It is enough to see the respectful but grim determination on his face, the three or four suave agents who flank him, the presence of passengers who are witnessing my arrest, to understand that I am not going to be jailed or beaten up or disappeared, but merely deported; a mild sanction, when you come to think of it, in a country of terror such as Chile.

Still, it was a measure I had been secretly fearing during the four years that I have been traveling to Chile in the hope of eventually settling down there— a process which had been slowed down by the fact that, each time I went back to the States, I felt the need to vocally protest General Pinochet's ravaging of my country. Like so many actions taken by dissident Chileans, it was a high-risk gamble. You hope your adversary, in order not to erode his public image and not to isolate himself even further inside and outside Chile, will calculate that he has more to lose than to gain by harming you. As the history of my land indicates, this can be a dangerous game.

My bet so far had paid off. Except that after my last seven month stay in Chile in 1986, I might have overstepped the limits by engaging in a relentless, almost obsessive campaign abroad against Pinochet, particularly denouncing the case of Rodrigo Rojas, an adolescent friend who, two days before I had left for the States, had been burned alive by a military patrol on the day of a successful general strike. Although publicly pounding away at Pinochet had led me to feel a certain giddy invulnerability, a series of vicious verbal attacks in Chile and from right-wingers in the States, had also made me wary. We had prudently postponed our new homecoming, making quiet inquiries in Santiago. A boyhood acquaintance of mine was an adviser in the Ministry of the Interior—which in Chile, by the way, manages the secret police rather than state parks. Through a common friend, he had adamantly let me know that the government had no plans to punish me for my opinions. "They won't touch you," was the unanimous echoing chorus of all my Chilean friends to my worried phone consultations. Everyone reassured me that nothing would happen: "They can't be that stupid."

What I am being taught, therefore, at this airport in Santiago, is ultimately a lesson that I should have known by now and have chosen to ignore at my peril: never underestimate the stupidity of a military government.

And yet, as they take me into custody, I am strangely calm, as if some double of mine had already lived this scene and I were watching him from some safe zone inside my body. Absurdly, I think of retrieving Joaquin's sandwich, which, if we are not to be admitted into the country, we have the right to keep after all. If it weren't for the damn sandwich, I could have made it outside, hugged the family and friends who have come to the airport to greet us—perhaps even reached the house we rashly bought and furnished last year as if to delude ourselves that we were really coming back forever.

My thoughts about the sandwich and my home may be a way of defending myself against the shock I am beginning to feel. I still find it hard to believe the government's decision. It could not have come at a worse moment. The U.S. State Department has been pressuring the Chileans for months to deport General Manuel Contreras and Colonel Pedro Espinosa, indicted in Washington, D.C., in 1978 for the car-bomb murder of Orlando Letelier and Ronni Moffett. The Chilean government has refused, saying they are no longer applying the very exclusionary law they have just used against me: the already tense relations with the U.S. will not get any better. Moreover, the only advance Pinochet can show in his human rights record over the last years—torture, political executions, arbitrary arrests, all are on the rise—is a gradual diminishment of exiles: those officially banished are now somewhere near 500, down from many thousands in 1983. This would be the first time in four years that someone who has already been allowed to return from exile has been thrown out of the country again.

The head of the Investigaciones unit at the airport is himself puzzled by my presence. Was I not told that there was a decree, dated from last year, forbidding my reentry into Chile? I insist that I have not been informed, that there must be some mistake, that I renewed my passport in the Chilean consulate in Washington just a few months ago without anyone informing me of any change in my situation. Would he please check with the authorities? He promises to ask if the secret decree against me is still valid and hopes, he adds, that everything will be satisfactorily resolved.

There is, in his manner and that of the other agents, a definite embarrassment. It is this reluctance, as if they were unclear about the role they should be playing, which makes the next eight hours—I am to be deported on the same plane on which I arrived, to the consternation of the stewardesses who bade us farewell just this morning—extremely bizarre. I am, of course, under arrest. But Rodrigo can enter the country. I ask permission to transfer the plethora of gifts I am carrying to Rodrigo's bags. As we burrow among clothes, toys, and packages, the police office is thrown into disarray. Rodrigo goes off with his luggage to inform the waiting family and then is allowed back to see me, his hands running over with papers and magazines. This carefree crossing over, this outlandish to and fro, will continue for the rest of the day: he comes to visit me, as if I were in an open prison, at least five more times before I am expelled.

It is Sunday, the worst day to organize any solidarity with my case: the courts are closed, none of the people with any influence in Chile or aboard are at their offices, the minister of the Interior himself is unavailable, and yet Rodrigo brings news that gives me hope. The radio has broken the story, the Catholic Church is on the move, the U.S. Embassy is exerting pressure, even government supporters are indignant, a friend of a friend has spoken to some high official and he has suggested that a solution may be on its way.

Through all of this, I am particularly worried about Joaqúin. He is an extremely sensitive child, born in exile, and this is his first real initiation into life under a dictatorship. Joaqúin is in shock, unable to understand that his long dreamed-of visit is over before it has even begun. The Investigaciones people agree to let him fleetingly meet his still-waiting cousins, and when he comes back, he is permitted to leave one more time to play. As for me, they bring me coffee, try to cheer me up by allowing me to catch a glimpse of the Andes for a few minutes, fill me in on life-as-a-detective for a novel I am planning. As the hour of my expulsion draws close, Rodrigo pulls, under their benevolent eye, one last surprise: into the two-by-four room where I am confined and whose only furnishings are a bedraggled pair of chairs and an ancient typewriter under lock and key so nobody can write on it without permission from the proper authorities, he leads a flock of nieces and nephews to see me, to say a protracted hello, to say a hurried goodbye. The little ones leave, the sun begins to set, Joaqúin starts a chess game with one of the plainclothesmen. It is interrupted by the news that it is time to depart.

It is only later that I realize that I have spent a whole day with the very men who haunt my fiction, invade my dreams, and dominate my reality, and that I am no nearer now than before to solving the mystery of who they are and why they repress. How to explain the excessive courtesy of people who, after all, have witnessed and probably perpetrated who knows what suffering on countless innocent people? Traditional Chilean hospitality? The awe that many lower-middle-class Chileans have always felt for those who seem important or well connected? Would they have been as deferential with a worker, with a peasant? Or were they trying to communicate to me, as hushed conversations with a few of them seemed to indicate, that their disaffection with Pinochet was more profound, that they were absolutely fed up with the role they were being asked to play? Or is the whole episode just one more example of the schizophrenia that accompanies the institutionalization of a dictatorship in a country which used to be democratic and where you will once in a while find, in the midst of the most violent and brutal confrontations, islands of well-mannered, formal, and polite relationships?

Idle speculations, I suppose. Because what matters ultimately is that these men have, as always, done their job. Thousands of returned exiles are at this very moment wondering how long they'll be allowed to stay. Anybody who goes abroad will think three times before declaring, for instance, that the U.S. should oppose further multilateral loans to Chile.

The plane heads down the runway and I await with some despair the moment when I will, once again, no longer be in physical contact with Chilean territory. Suddenly, the tension, not only of the day, but of the many years fighting the demons of distance and death, catches up with me. I feel weary, deeply sick, as if my bones wanted to vomit; repression seems to work in dizzy, circular ways, always repeating itself until you are almost ready to scream enough, enough. I give up. More than 13 years ago, on my first banishment from Chile, I took this exact route, made this same trip, sped down this identical runway. Then I was able to comfort myself with the lie that I would be back soon. Ten years passed before I saw the mountains again. How long would it be this time?

I could not anticipate, knowing Pinochet's stubbornness, his need to show himself as uncompromising in his fight against subversion and dissidence, that, as the result of incessant international pressure, coupled with an unprecedented wave of solidarity coming from all social and political sectors in Chile, I would return less than two weeks later. The same plainclothesman who had been playing chess with my son when we were ejected on August 2 will give us a VIP treatment upon our descent from the plane this time, whisking us through all the procedures. Joaquín will greet him with naïve familiarity: "Hey, when are we going to finish our game?" The same customs officer is also there. "Sorry about the sandwich, sir," he calls as we pass unmolested. "I swear I didn't eat it."

We are definitely in the insane place we call home.

And this is the first time in the 14 years since Pinochet took power that I am able to give a relatively happy ending, at least for now, to any of the stories of sorrow and struggle I have been driven to tell.

There is no ending in sight, however, happy or of any other sort, for Chile itself.

Although my intended two week visit had been reduced to a brief five days, I was in Chile long enough to realize that the mood of the country is despondent, if not despairing. Since an economic crisis had weakened the government in 1982 and drained most of its middle-class support, the opposition's strategy had been to mobilize a grass-roots coalition that, engaging in demonstrations and civil disobedience, would make the country so ungovernable that the military would be forced to negotiate a transition to democracy. Those plans have been, for the most part, shelved. Nobody I spoke to on this occasion believes Pinochet can be overthrown in the near future. What looms unavoidably on the horizon is an upcoming plebiscite, to be held before 1989, in which the citizens will be allowed to say yes or no to the candidate that the armed forces will name—in all likelihood, the General himself, who, if confirmed, would then serve out another eight years as president. Even if he loses he will retain his command over the army and veto power over any other government elected.

The prospects are therefore dismal. It is unthinkable that Pinochet could lose a referendum in which his government registers the voters, prepares the ballots, counts them, investigates irregularities, judges appeals against its own decisions. When I went to register to vote, for instance, I discovered several well-fed, soldierlike young men ahead of me in line. I knew the armed forces had already been registering their men in the barracks. How could I tell they were being registered now, as rumors have it, for a second, for a third time? Is anybody going to allow me into the barracks to review their names? In a country where terror and intimidation have continued unabated for the last 14 years? In a country where an old worker tells me that he is not sure if someone will not photograph him when he is voting, where a slum dweller informs me that she will get the roof to her hut only after Pinochet is elected?

But fraud is not the only trick up the General's sleeve. There is a worse scenario: he could win the election simply by default. If he can register the 19 percent of the country that supports him, according to his own opinion polls, and dissuade the rest from voting, he will not need to cheat. This is not as implausible as it sounds. In order to vote, one must first procure a new identity card, a relatively expensive endeavor for the 60 percent of the population who are living in extreme poverty. Many poor people with whom I spoke told me they had neither the money nor the time to waste. "I can feed my children for six days on what it takes to get that card," a woman on the minimum employment plan ($25 a month for weeding public gardens) whispered to me. "And all for what?"

The divided, fragmented opposition groups do not seem to have a clear answer to her question. They are even now bickering among themselves as to how they should confront the plebiscite. The bulk of the opposition, in the center and the left, have called for massive voter registration, in the hope that if a large number of citizens are on the rolls, the army will realize that Pinochet cannot possibly be elected and will withdraw his candidacy and agree to free, pluralistic elections. But the Communist Party has denounced such efforts as legitimizing structures that are immoral and unfair and over which people have no real control. This is not the only matter splitting the anti-Pinochet forces. Should the parties set up legal organizations adhering to a law which they themselves regard as antidemocratic? The Christian-Democrats, Chile's largest party, which recently tilted rightward at its national convention, have decided to legalize their party officially, arguing this is the only way they can exercise some control over the plebiscite. The diverse socialist groups reject this tactic, saying that this is playing into Pinochet's hands. The only hopeful sign of unity is among the youth organizations: 11 of them issued a unique ultimatum to their elders, telling them that if they did not start working together, the new generation was going to take matters into its own hand.

Behind these discussions, there is a major question that invariably crops up at the moment when any dictatorship is seeking to establish more permanent structures of repression: what limits should be placed on one's participation in a legal system which one rejects? Is it better to abstain? Or is it better to uncomfortably sabotage the system from within?

And yet, I would give the wrong impression if I suggested that these debates were raging feverishly all over the country. To the contrary, I found most of the people absorbed in their own precarious survival, extracting whatever morsel of satisfaction they could from the privacy of their hidden lives, tending to mistrust the idea that things will ever change. Even many friends who agreed that it was necessary to register to vote so Pinochet would be forced to commit fraud and could at least be denied legitimacy in his next term admitted that they had not yet done so. "Will it really make a difference?" people kept asking themselves.

I found a similar weariness in the streets. One day I stopped, in the center of town, to watch something which was not new to me: an eight-year-old girl surrounded by 30 to 40 spectators. She dipped a rag in paraffin, lit it with a match, put out the fire by swallowing the rag, repeated the operation until a man in the crowd signaled her to cease—a few pesos had been deposited in a hat on the ground. The group dispersed as if nothing had happened, as if what they had just witnessed were normal. Perhaps they knew that the girl was at least going to eat that day—others her age are less fortunate.

It was that profound apathy I found most disturbing on this trip. For years, the anti-Pinochet forces have been fighting to get a newspaper published. Since March of this year, two opposition dailies have been coming out, and I had expected them both, in a land where an overwhelming majority of the people abhor the government, to be doing splendidly. Not at all. I visited one of them. The dictatorship is trying to strangle it financially and has hit it with a lawsuit for having published an ad signed and paid for by a group of prominent Communists. "If they fine us $40,000, as well they may," one of the editors told me, "we may have to close." But what really worried him was that the paper was not selling enough copies.

"People frankly don't think that more information will change their lives," a psychologist friend said to me the night I arrived. "It's easier to close your eyes and not believe anything."

Two days before we had returned to Chile, four urban guerrillas escaped from a penitentiary in Valparaiso. I thought that this sort of exploit would be greeted by most people, whether they agreed with the revolutionaries or not, as a cause for glee; confessions had been extracted from these men by the most unspeakable torture and, besides, the government was looking extremely foolish and inefficient. But the automatic reaction I encountered most of the time I was there was of utter suspicion. People did not assume that the evasion had even taken place: here was one more deception being staged by the military to get rid of their enemies. One of my friends, a Catholic priest, reminded me that Chile has turned into a country where you cannot even believe the clouds in the sky. Back in 1984, he told me, the church had investigated the supposedly miraculous appearance in front of a child by a Heavenly Virgin—who, by a not so strange coincidence, had bitterly condemned the opposition protests. The committee discovered that "someone" (in other words, the secret police) had been spraying the clouds to provoke illusions and mirages.

Is it possible that people have begun to grow used to Pinochet, that they have started to accept his shadow as an implacable part of the scenery? An incident which occurred after a press conference organized in a bookstore by the editor of my novel *Widows* may illustrate the point. I was asked by several customers to autograph copies of my book which, thanks to the publicity generated by my expulsion and readmission, had practically sold out its first printing. In one case, a nondescript man with a prim collar and gray necktie wanted to know if I would do him the favor of signing just above my printed name in the prologue, almost as if I were filling in a form in triplicate. After he had left, my editor, noting I was puzzled by this rather atypical reader, volunteered the information that the man was a member of the secret police, a regular at news conferences. "There goes the soul of a true bureaucrat," he said, smiling. "He asked for your autograph to prove to his superiors that he had really been here. At least we got the government to pay for one more copy." More chilling than the presence of the man was the offhand, casual way in which my editor spoke of him. Repression has become so pervasive, it has persisted for so long, that I wonder if Chileans have forgotten what it means to live without it. Fear is part of the grinding, weary routine—no longer an everyday scandal.

It is as if too many people had given up the most important task of all—to dream a world without Pinochet.

Is it any wonder that many youngsters in Chile, feeling they have no real future to look forward to, have turned to violence as the only way out? My son Joaquin suffered a quick, benign detention, and he is still showing the effects of it, and may do so for years to come. While I was in Santiago, a two-year-old boy, Claudio Merino, was arrested along with his mother and grandmother, who were protesting a disappearance in the family. He was then separated from them, taken to a different precinct, and only released 14 hours later, crying with hunger, his diapers unchanged, after having been fingerprinted. Joaquin told me, after his experience, that he felt "like a tangled wire" and wondered if his mother had been killed. What has Claudio been thinking about? Or what went on, all these years, in the mind of Juan Henriquez Araya, who, at the age of 17, back in 1976, saw his Communist grandfather, the second most important union official in Chile, strung up and tortured in front of his eyes for several days? What went on in his mind for a decade as he searched for some trace of his still-missing grandfather, whose arrest the government continues to deny? What is known is that Juan Henriquez Araya ended up working with the Frente Patriotico Manuel Rodriguez, a guerilla organization with links to the Chilean Communist Party—and was executed in cold blood last June 15 after having been wounded in a shoot-out with the secret police. But what about his own small son? What is going on now in that boy's mind? And if these cases seem exceptional, what then of the kids in the shantytowns who are routinely picked up and given beatings, who have to watch their unemployed fathers, their prostituted sisters, their mothers cooking in the communal soup kitchen in order to survive?

Nor is this persecution limited to the poor. Pablo, the 19-year-old son of a close friend, told me how a specially trained police force had responded to his takeover, with 30 others, of a university building to protest the expulsion of another group of students: after a severe battering, they had been locked for three hours in a van into which an open tear gas cannister had been hurled. They were sick for a week.

Every day that passes these youngsters get more explosive, angry, and confused. they may well turn out to be Pinochet's most enduring legacy to Chile, haunting the country years after the dictator has died or—if you are optimistic—been defeated.

And yet, there are some glimmers of hope. I can still remember the relish with which the editors of APSI magazines told me of a special edition which was going on the newsstands the day after I would leave—a fictitious diary of Pinochet's last days in office. The General would appear on the cover dressed up as Louis XIV, in honor of the 14 years he has held power. It is true that the next day 30,000 copies were seized by soldiers, that the journalists responsible, Marcelo Contreras and Sergio Marras, are both in jail for "insults to the commander in chief," but it is also true that there are many people in Chile who are still willing to risk their safety for the right to protest and, what is more important, laugh at the dictatorship. Glimmers. At the very hour I was ending my short visit, Manuel Bustos, Chile's major trade union leader, who has been in jail so often that the guards say they keep one of the beds always ready for him, was proclaiming to a multitude of workers in a public plaza that a general strike was being called for October 7. And the weekend after I left my country, the opposition organized a gigantic photographic session for thousands of slum dwellers, as a way of helping them to get their identity cards so they can register to vote.

Which will prevail, the general apathy or the sporadic enthusiasm?

I want to believe that General Pinochet has not corrupted the people of Chile so deeply that they are unable to recreate the community we once had as a nation. The day I was deported, Rodrigo's bags were carried to a waiting car by an impoverished porter. Although he makes less then $100 a month, he obstinately refused to accept any payment.

This was his subtle, stubborn way of expressing solidarity, his sparse act of dissent. He had no other way of showing where he stood, what he felt about the repression he had been seeing, here at the airport, all these years.

I have no way of knowing what other acts of rebellion, large or small, that man is capable of. I do not even know if he will register to vote. Or if the will go into the streets to protest if the election is stolen.

I am sure, however, of one thing: that man's grandchildren deserve better than General Pinochet for the rest of their lives.

WEISS STATEMENT TO THE INTERNATIONAL ASSEMBLY OF PARLIAMENTARIANS, SANTIAGO DE CHILE, SEPTEMBER 4, 1987

It is a privilege for me to be here in Santiago to address the Opening Session of the Second International Parliamentary Assembly for Democracy in Chile. The mission of the Conference, to work for the restoration of democracy in Chile, is of intense interest throughout the world. As elected officials, we must remind the people of Chile—and all those citizens of the world who aspire to democracy—of our faith and belief in government by the people.

In this month of September, General Augusto Pinochet celebrates his fourteenth year of military rule. On September 11, in 1973, he foisted his regime onto a democratic society, and systematically dismantled the institutions that guaranteed the participation of its citizens. He dismissed Congress and outlawed political parties, he suspended elections and destroyed the electoral registers, and he wrote into the fundamental documents of his government the means to perpetuate his regime until 1997.

As supreme commander of the armed forces, he declared war on his own people. Only a year ago he warned: "Now the war is going to begin on our side and we are going to be tough on all those people involved in human rights and other things. They're going to be expelled from the country or locked up." In fact, during his reign, hundreds of thousands have been arrested in political cases, and many of them have been severely tortured during detention; scores of thousands have had their homes invaded by troops conducting house-to-house searches, and many have had their possessions destroyed in the process. Tens of thousands have spent years in forced exile for political reasons. And untold numbers have been shoved, kicked, bludgeoned, tear-gassed, or drenched by water cannons during street demonstrations or during aggressive patrols in city neighborhoods that are considered hostile to the regime.

When a government refuses to recognize—in fact, abuses—the rights of its citizens, respect for that government breaks down. And Chile faces this situation not only at home, but abroad.

The regime's disregard for human rights in Chile became, in other countries, disdain. According to the testimony of Major Armando Fernandez Larios, formerly of Chile's army secret police, two high-ranking officers of DINA ordered the murder of Orlando Letelier, a Chilean diplomat exiled after the 1973 coup. He was assassinated in 1976 in Washington, D.C. Despite this evidence, General Pinochet has refused to bring the implicated officials—General Contreras and Lieutenant Colonel Espinoza—to justice. And what about justice in the case of los quemados (the burned ones), Washington, DC resident Rodrigo Rojas and his companion Carmen Gloria Quintana both savagely torched and left untreated.

We here today—on Chile's traditional election day—add our voices to the country's call for a return to democracy. Whereas other societies have never known the freedoms and responsibilities that accompany democratic government, the Chilean people lived well under this most advanced form of government, and so suffer more for the deprivation.

They deserve our solidarity and support for a nonviolent and speedy restoration of civilian government as opposed to a gradual transition supposedly supervised by the military. Unlike the military, parliamentarians know that the only cure for the disunity produced by the deprivation of democracy, is more democracy. More freedom is the only cure for the discomforts of freedoms newly acquired.

When a detainee first leaves his prison, it is difficult for him to bear the light of day. The remedy, however, is not to remand him to his cell, but to accustom his eyes to the rays of the sun.

The blaze of democracy may at first bewilder a nation half-blinded by the darkness of dictatorship. But let them gaze on. Let them adjust their eyes to what has been familiar.

The majority of the democratic opposition holds this view. It has called for and united around a campaign for free and competitive elections. The People of Chile are entitled to nothing less.

General Pinochet's concept of a "yes" or "no" vote on a single candidate is straight out of the theory of democracy practiced by Joseph Stalin. Can you imagine the justifiable outcry from around the world and especially in Latin America if Daniel Ortega suggested such a process as a return of democracy to Nicaragua? Such a proposal is totally hostile to the idea of free elctions. The Campaign for Free Elections calls for Chile's potential eight millon voters to register massively and, if free elections are not obtained, to vote against the Junta's most likely candidate—General Pinochet.

As parliamentarians and members of congresses from around the world, we have a particular responsibility to support a Chilean alternative to militarized politics. As active participants in the democratic process, we know that only in a democratic society is the government's respect for individual rights reciprocated by the citizenry's respect for the government of law. The majority of the oppositon in Chile has rejected and has renounced terrorism. It is prepared to resist the regime democratically.

As Pinochet celebrates fourteen years of military rule, Chileans look back on the more than fifteen decades of democracy that precede it and toward to the end of his dictatorship.

Movement toward democracy is inevitable. Simply by looking to Chile's neighbors in the region—Argentina, Brazil and Bolivia to name a few—one can see that military rule is a phenomenon whose days are numbered.

What type of transition will take place? Will there by a peaceful, orderly change to a government of elected representatives? Or will the junta resist the inevitable and force on the Chilean people a gradual transition that is just a substitute dictatorship?

The answer depends not only on what the armed forces do, nor only on the amount of unified pressure brought to bear by the democratic opposition. The international community has an important role to play. In the United States, we must hold the Reagan administration to Section 701 of the

International Financial Institutions Act, which directs the United States executive directors of multilateral financial institutions to oppose loans to countries whose governments engage in gross violations of internationally recognized human rights. The Reagan Administration has yet to vote against a single international loan to Chile, although it has abstained on occasion.

In Congress, some of my colleagues and I have sought to remedy our government's failure to support stronger policies aimed at persuading the Pinochet government to move towards democracy. For example, Senators Kennedy and Harkin, along with Representative Feighan and Represenative Morrison, who is with us today, have introduced legislation to implement economic sanctions against the Chilean government unless it takes steps towards returning democracy to Chile.

Furthermore, during the Foreign Affairs Committee's consideration of the Foreign Assistance bill, I offered an amendment which seeks to pressure the Pinochet government to grant the Chilean people the labor rights they deserve. My amendment rules the Chilean Government ineligible for financial support from the Overseas Private Investment Corporation because of its failure to afford internationally recognized workers rights to its citizens. The Committee adopted this amendment, reflecting our commitment to promoting human rights in Chile, although final action in Congress is uncertain.

In addition to persuading and pressuring the Reagan Administration, Congress is extending its support of a return to democracy in Chile. We have passed a sense of Congress resolution supporting the National Accord, and there is currently underway a bipartisan appeal, sponsored by Senators Kennedy and Lugar, for a high level group of North Americans in support of the free elections campaign.

Of course it is the people of Chile who will play the most important role in this momentous struggle to regain democracy. The democratic opposition faces a great challenge and a great opportunity. Hopefully, it can put forward a candidate behind whom all the democratic forces can unite.

All parties stand to gain from a peaceful, legally guided transition. Through such a process, the Chilean people may once again control their own political future, and the military may return to its role as guardian, rather than enemy, of Chilean democracy. At that point, the many may take up the task of shaping a system of justice and order out of the chaos still wrought by the few.

And with them, we may next come together to commemorate and to reclaim the electoral traditions of September in Chile.

Mr. WEISS. It was a truly impressive opportunity for parliamentarians from around the world to come and participate and to be exhilarated by the people under the yoke of a dictator still struggling and striving to regain their freedom and independence.

I do not know what was expected of my participation in that conference, but I must tell the Members, I gained much more from it than I gave.

It is always inspiring to see a people struggling for its freedom; and when you have the kind of totalitarianism that the Pinochet government has been guilty of, holding these people hostage for over 14 years now, whatever we can do to help and assist the people of Chile to regain their freedom will do us as individuals and as a nation proud.

I want to express my appreciation to the gentleman from Connecticut for the gentleman's role in arranging for our participation in that conference, and for the gentleman's continued involvement and concern in trying to help this Congress and the people of the United States understand why we ought to be doing everything within our power to help the people of Chile to remove the dictator Pinochet from their necks.

Mr. MORRISON of Connecticut. Mr. Speaker, I thank the gentleman, and I commend the gentleman on his observations and his participation here in this Congress and on our trip to Chile.

The gentleman was truly an eloquent spokesman on behalf of this Congress, and on behalf of the ideals of this country.

This year that lies ahead, the year between now and a year from now, is a period during which the Chilean people will be sorely tested in their attempts to achieve a return to democracy.

The words and actions which emanate from the United States will be a very important part of their ability to succeed. I would hope Members of this body will enlist in the cause of making clear our support for a true free, open, competitive election in this process, and there will be opportunities for Members to do so.

There is pending legislation of which I am a sponsor which provides for the clarity of withdrawal of economic assistance to Chile, and I would urge people to consider cosponsorship of that legislation to send a clear message about the need for a return to democracy in Chile.

There is also a resolution offered by the gentleman from Nebraska [Mr. BEREUTER], which has attracted a very broad bipartisan show of support in support of the return to democracy in Chile, and in support of democratic elections.

I would urge the Members to look at that resolution as well, and to cosign and show their support for the spirit and the words of that resolution with respect to the situation in Chile.

I think that much will rest on the ability of our administration to make clear during the coming months that future support for the economic affairs of the Chilean people rests on the prompt establishment of truly democratic institutions in that country, and respect for the human rights of the Chilean people.

After the gentleman from New York and I had left Chile, an event occurred that ought to be entered on the record that gives an indication of what it is like to live in Chile now, lest anyone think that the problems of abuses of rights have vanished.

We were both interviewed while in Chile by an American journalist who was spending a period of time in Chile, and who in fact resides in the district of the gentleman from New York [Mr. WEISS].

He interviewed us and filed a story back here in the United States regarding our trip and regarding the Assembly that we had attended.

Shortly after we had left Chile early one morning, the house in which he was staying was attacked by a large group of military men armed with automatic weapons who kicked down the door, who came in, and who held him at gunpoint for an extended period of time, first lying flat on his face on the floor, later virtually unclothed for a long period of time at gunpoint, and finally forced to sign a waiver of any rights or complaints against the violation of his property or his person; and ultimately they left.

One wonders what would have happened had he not been a U.S. citizen. One wonders why it was that the house in which he was staying was attacked, but his investigations, as later reported, indicate that such attacks were occurring in a number of homes, because a particular Chilean colonel had been taken captive by someone.

There was no evidence to connect this gentleman to any of that. He was a journalist pursuing the affairs of a journalist, and yet he was not an American and as a journalist exempt from the dragnet of brutal techniques by which the Chilean Government seeks to intimidate and to hold at bay the people of Chile.

Mr. WEISS. Mr. Speaker, will the gentleman yield?

Mr. MORRISON of Connecticut. I yield to the gentleman from New York.

Mr. WEISS. I thank the gentleman for citing the case of Daniel Weiss, who is not related to me, though I happen to know his parents quite well. They are friends of mine and Danny Weiss himself is a friend of mine.

He is a very intelligent young man, a professional in the field of journalism; and I would ask unanimous consent to enter his report which appeared in the Sunday Boston Globe of October 4, 1987 of the ordeal which the gentleman from Connecticut just outlined.

Mr. Speaker, I submit a copy of the newspaper article, as follows:

[From the Boston Globe, Oct. 4, 1987]

LETTER FROM CHILE: CONTRADICTION IN GOVERNMENT RAID, APOLOGY

(By Daniel Weiss)

SANTIAGO, CHILE.—On the morning of Sept. 18, 10 armed men broke into my house. They arrived in eight cars, clipped the lock on the front gate and rang the doorbell.

But they did not wait for an answer.

They kicked in the door, shattering the lock and frightening the maid who was approaching the door. Surrounded by men carrying submachine guns, rifles, and pistols, she told them an American journalist was sleeping on the first floor and that no one else was home.

Four men with guns rushed into my small, darkened room, tore the sheets from my bed and led me at gunpoint to the livingroom floor. They ordered me to lie there face down, hands over my head.

In a quiet voice, a man asked me my name, my profession and the whereabouts of the owners of the house. Fortunately for her, the owner was away with her 7- and 14-year-old children.

As I lay on the floor I could see the men fan out through the house. they did not identify themselves or say why they were there.

Still in my underwear and T-shirt in the cool morning, I was finally moved to a chair. The commander said he had a search warrant but he did not produce it. I was too scared to ask for it.

At gunpoint, I was then led to my room, treated as if I were a dangerous person. They inspected my US. passport. I could see the maid as she showed the men around the two-story private house. We said nothing to each other.

Three of the raiders, dressed in civilian clothes were already going through my personal belongings. I had suspected they were from the government and were probably searching for a colonel who had been kidnapped by a revolutionary group opposed to the dictatorship of Gen. Augusto Pinochet.

They went through everything—my diary, letters, books, photographs, negatives, and clothes.

They unrolled an ace bandage, ripped open Kleenex packets and pored through my wallet and a stack of business cards.

They sneered at certain books, including a report on human rights abuses and a text on the transition to democracy in Chile. With each jab at a book, my fear increased. One man pointed to a picture I had taken and demanded to know the subject's identity. "I don't know, a student," I said.

Finally I asked my first question. "Can I call the United States Embassy?" "No," came the flat reply.

One man appeared to be carefully picking through a stack of written papers. He pulled out a few and took them from the room. I didn't know if he could read them, or if he just wanted to impress me.

Forty minutes had passed. I was taken to the dining room where the maid, white-faced, sat with the leader. "OK," he said in Spanish. "We are from the Investigation Police and as you know we have been looking for the colonel. Since we have found nothing, we will leave." These were unexpected but welcomed words.

He then showed me a copy of what he called a search warrant. Dated Sept. 1, the day the colonel was taken, it carried an official seal and law number. But my nerves kept me from reading it carefully. My main goal was to escape the raid alive and unharmed.

"But before we go we would like you to sign this statement," he continued. His words were sobering, turning my fear to resentment. A statement? It acknowledged the raid by the police; it said we had been unharmed; it negated all claims against them. I read it aloud, as he ordered, eyeing the gun at his side. I signed the statement.

I asked the chief my second and last question. "Are you searching my house or every house in the neighborhood?"

"A few houses," he said, which I took to mean only my own.

Before leaving through the door they had broken through a full hour before, one man said that I wrote "bad things about Chile." But they apologized for the raid, and said they hoped it hadn't been a bother. They even wished me a happy 18th of September. The raid took place on the 177th anniversary of Chile's independence from Spain.

And I got off easy.

By most people's accounts, a raid like this on a foreign journalist is rare. It is not, however, extraordinary for citizens who have lived under military rule. If anything, it was mild when compared to the harassment, detentions, beatings, shootings and disappearances that have characterized Pinochet's 14 years in power.

"Now you know what it's like to live in Chile!" said my Chilean friends, who offered both an apology and a mock congratulatory slap on the back.

Since the colonel's kidnapping, there have been hundreds of raids throughout Santiago, although most of them have been conducted with warrants by uniformed police or the military. But it appears that the raids are being used as an additional pretext to intimidate the press and harass the leftist opposition.

As part of one neighborhood raid, the house of an Associated Press correspondent was searched. Several days after the raid on my house, plainclothes police also visited another free-lance American journalist. He was not at home. Likewise, a Radio Chilean reporter was away when a group of unidentified men visited his home at night.

It is perhaps futile to wonder why they raided my house in such an aggressive and violent manner. It is, however, a clear example of the lawlessness and brutality of the Pinochet regime, a regime which the United States helped bring to power.

Armed men produce fear, and fear produces silence and suspicion. That has become true of the populace there and it is what the government hopes will become true of the press. Silent journalists cannot tell the truth.

Pinochet allowed two opposition dailies to open this past spring. But raids on journalists and the recent arrest of two senior magazine editors and the continued detention of an editor from a second magazine demonstrate the pervasive censorship of the Chilean press. Because there is no prior censorship and there are few established government rules, journalists in Chile are always at risk.

The raid on my house was rife with irony. The regime, like many dictatorships before it, has successfully "legalized" its lawlessness. After seizing power in 1973 by bombing the presidential palace and carrying out one of the bloodiest coups in Latin American history, the military junta rewrote the constitution to give itself broad legal powers. "I am not a dictator," Pinochet declared in August, pointing to the presence of his constitution as proof.

So while they broke into my house and ransacked my possessions, the raiders left under an air of officialdom. They had a warrant, they apologized for the disturbance, they repacked my suitcase.

And then there was "the statement." A man with a gun told me to sign it.

It is no secret that Pinochet does not like foreign journalists, for most of them write negative news. But in his efforts to suppress their reports, he cannot suppress the reality of their findings: Pinochet offers little other than negative news from this once proud democracy. This is the ultimate irony—raids like these only trigger more scathing reports.

And as I drove to the airport the next day—I had been scheduled to leave the day after the raid for unrelated reasons—I saw yet another Chilean contradiction.

As thousands of Chileans celebrated the nation's independence by flying kites and kissing in the parks, I saw also the detention of six unarmed men. Standing face to a wall in a poor part of town, their independence was celebrated at the point of a gun.

Mr. WEISS. Again the gentleman underscores the fact that in a dictatorship, nobody is secure. Danny Weiss' experience was a frightening one to him, because he had no way of knowing whether in fact he would survive that ordeal or not.

The people of Chile, especially those engaged in any kind of activity which the Pinochet government has reason to be unhappy with, whether it be in the field of religion or in the field of labor or in the field of journalism, the field of human rights, politics, all of those people live constantly not knowing when in fact the heavy hand of the dictatorship will fall upon them.

One of the items that I have asked to be put into the RECORD is the story of Ariel Dorfman, who had been exiled for years, and finally his exile had been lifted.

He went back; and as he landed with his children, he was suddenly told that he was back on the exile list, and he was again forced to leave Chile.

It just seems to me that the Pinochet government is a dictatorship in every sense of the word, and that we ought to be doing all within our power not only to make that known, but to cut off any benefits which that government receives from us, any economic benefits that it receives from us.

Mr. MORRISON of Connecticut. As the gentleman will recall, one of the individuals that we were scheduled to meet while we were in Chile who is an attorney representing the Vicariate of Solidarity, the Catholic Church and its human rights office, had left just prior to the time when we would have met with him.

He was arrested for the crime of telling the truth. We later met with him.

He was arrested for giving an interview and publishing a report in which the human rights abuses of the government were itemized and described.

It appears to be the case under the Chilean law that telling the truth is no defense.

Mr. WEISS. It is considered defamation.

Mr. MORRISION of Connecticut. The fact that he held the military up to what they described as disgrace, and indeed I think it is disgraceful that the military would engage in the kind of abuses of human rights that were reported there; but despite the fact that these statements were true, the mere fact that they damaged the image of the Chilean military caused him to be arrested, and more than that, not brought before a civilian tribunal, but brought before a military court where a majority of the members are members of the chain of command of the military, and therefore, are very much under the control of the military leadership, not in any sense an independent judiciary to judge the truth or the falsity of the charges.

Mr. WEISS. The gentleman speaks of Roberto Garreton, who is a prominent attorney in Santiago.

Part of his work is for the human rights organization to the Catholic Church, the Vicariate of Solidarity; and again when someone such as he can be plucked and placed under detention, and although he was released after about 24 hours, the case is still open and pending against him, and it means that there is no security for anyone, no matter what their station in life, no matter what their involvement in the religious life of the nation.

If the dictatorship decides that it wants to crack down on anyone, it has the absolute power to do so.

Mr. MORRISON of Connecticut. I thank the gentleman, and I would just conclude by saying that I think our opportunity to travel together, the gentleman from New York and I, to represent this body and to represent the United States, and to represent ourselves in a gathering of democratically elected parliamentarians from around the world was a great learning experience for us, and was a great opportunity for us to gather with others in a clear statement of a commitment to democratic government and the respect for human rights and the reception that we received from the Chilean people and from the other parliamentarians from around the world certainly was a strong showing that the United States puts its best foot forward in every sense of the word when it carries forward into international bodies and international meetings our longstanding commitment for democracy and human rights.

□ 1645

There can be no more positive way to promote what we believe in in this country than to live by those ideals, not just in words but in the actions we are called upon to take in this body.

Mr. WEISS. Mr. Speaker, will the gentleman yield?

Mr. MORRISON of Connecticut. I yield to the gentleman from New York.

Mr. WEISS. Mr. Speaker, I thank the gentleman for yielding.

The gentleman cited the case of Daniel Weiss and the ordeal he went through. I should like to say in that connection that I think one of the aspects of America that we can be proudest of is the role that young American journalists play in danger spots and difficult spots around the globe.

Here are people who really have only their professionalism to protect them and in many places, as Daniel Weiss' experience demonstrated, that is not always sufficient protection. Yet they undertake the risks because they are following their profession and they are living the ideals of Americanism.

I think that we have cause to be proud of them.

Mr. MORRISON of Connecticut. Mr. Speaker, I thank the gentleman for his remarks.

Mr. LAGOMARSINO. Mr. Speaker, I join today's special order on Chile to bring to the attention of my colleagues the findings of my study mission to Chile last August. Attached is the section of the report on Codel Lagomarsino which deals with Chile. I urge my colleagues to consider carefully the statements and observations of the many Chilean officials, businessmen, and politicians with whom my delegation met. Their views merit serious appraisal when we consider what direction United States should take toward Chile.

MISSION FOR DEMOCRACY: CHILE, ARGENTINA, AND PANAMA

INTRODUCTION

A delegation of four Republican Members of Congress traveled to Chile, Argentina and Panama August 10-18. The delegation was led by Mr. Robert J. Lagomarsino of California, Ranking Republican Member of the House Subcommittee on Western Hemisphere Affairs. Also present were Mr. Jerry Lewis of California, Member of the Appropriations Committee, Mr. F. James Sensenbrenner, Member of the Judiciary Committee and Mr. George Wortley, Member of the Banking, Finance and Urban Affairs Committee. Mr. Lagomarsino is also President of the National Republican Institute for International Affairs. Both Mr. Lagomarsino and Mr. Lewis are elected officers of the House Republican Leadership.

The primary objective of the delegation was to carry a message to Chile that the transition to democracy must be accomplished so there could be no disputing the Chilean people had been able to freely express their will. The entirely Republican makeup of the delegation was purposely chosen so that President Pinochet could not question either the anti-Communist credentials of the delegation or believe that these Members were enemies of Chile in the Congress. At meetings with Chilean government officials, and specifically in the meeting with President Pinochet, Mr. Lagomarsino said, "We are not 'Teddy Kennedys', but neither are we Jesse Helmses" to convery clearly that the Members of the delegation were not enemies of the Government of Chile but neither were they friends who did not want to see the continued advance toward Democratic government in Chile. The importance attached to this mission by the House Democratic Leadership is attested to by its approval of the delegation's travel and authorization of transportation by miliary aircraft.

The delegation included stops in Argentina and Panama because of recent events in both those countries: military unrest against the democratic government of President Alfonsin in Argentina and civil unrest against the repressive military regime of General Noriega in Panama. As the U.S. military aircraft flying the delegation to South America required refueling in Panama in both directions, the delegation took advantage of overnight stays there to receive briefings by the U.S. Embassy and the U.S. Southern Command on political and economic conditions in Panama, as well as the USSOUTHCOM assessments of the military situation in Argentina and Chile and of the latest Central American peace initiative.

CHILE

Background

In the September 1970 presidential election, Dr. Salvador Allende, an avowed Marxist and member of the Chilean Socialist Party was named president of Chile after having won only 36% of the vote. A coalition of socialists, communists, radicals and dissident Christian Democrats enabled Allende to secure enough support in the Chilean legislature to be named the winner after the indecisive presidential vote. Much of the military's and President Pinochet's present-day hostility to Chilean political parties is attributable to their belief that those parties betrayed the country in allowing Allende to come to power.

President Allende never enjoyed a majority in the Chilean legislature nor was he able to obtain broad support for his policies. Furthermore, he did not repudiate the extreme leftist groups that supported his government. When his policies produced severe shortages of consumer goods, food and manufactured items, massive demonstrations, general strikes and violence became the rule. Women beating on pots and Chileans throwing corn in front of the military (implying the military was chicken because it failed to act against Allende) became regular occurrences. These factors combined with the public censure of the Allende government by the Chilean Congress, judiciary and comptroller general for abuses and violations of the Constitution finally prompted the Chilean military to act.

The military coup that overthrew Allende on September 11, 1973, brought to power General Augusto Pinochet, the Commanding General of the Army, along with a ruling junta composed of commanders of the Navy, the Air Force, the Carabineros (comparable to the National Police) and a representative of the Army. The junta exercises legislative functions, but the primary authority rests with President Pinochet. There is a civilian judiciary that is supposed to be independent of the executive, but its authority has been limited in the past and sometimes subject to outside pressure.

President Pinochet is scheduled to remain in power until March 1989. According to the provisions of the 1980 Constitution, a plebiscite on a single presidential candidate nominated by the junta is to be held sometime before that date. Many have speculated that it will occur in September 1988. If the junta-nominated candidate receives a majority "yes" vote, then his eight-year term of office begins in March 1989. If he does not, then competitive presidential elections must be held within a year. President Pinochet would continue to rule as president until the new president were inaugurated following the competitive elections.

The government has approved an electoral registration law and a law governing the incorporation of political parties. The Communist Party and other Marxist parties are outlawed by the Constitution. Opposition political party leaders consider the laws to be restrictive and have been debating whether to organize under the law dealing with political parties. Opposition leaders charge also unnecessary obstacles serve to hold down the number of people registering to vote, thus slowing down the process considerably. During the course of the delegation's visit, it was learned that the regulations affecting the registration of voters was made more lenient.

Following the assassination attempt on President Pinochet in September 1986 by the Marxist-terrorist group FPMR (Manuel Rodriguez Patriotic Front), a state of siege was put into effect which lasted until January 1987. The FPMR was also the recipient of arms provided by the Cuban Government. A huge cache was discovered in August 1986. The cache included more than 3,000 M-16s and rocket launchers. Although the state of siege was lifted earlier in the year, extensive restrictions on civil liberties remain in effect. These restrictions and the persistence of human rights violations, such as torture, are the focus of great concern both inside and outside Chile.

Opposition to the military government is now focused on an effort to present a viable political opposition and to find, if possible, a single candidate around whom the opposition can rally. Many in Chile feel that time is running out to prevent Pinochet's continuation in power, and they charge he is already running for President. Though some junta members have publicly expressed doubts about the wisdom of Pinochet running in the plebiscite, many believe that it will be extremely difficult to oppose Pinochet if he is determined to be the candidate.

Central to the opposition's current political effort is the newly-founded civic group called Campaign for Free Elections (CFE). CFE is trying to influence the junta to allow free, competitive elections for president rather than the Constitutionally-required plebiscite. CFE is headed by Sergio Molina, the former coordinator of the National Accord. The Accord, which is now moribund, brought together a coalition of 11 political parties and was negotiated under the auspices of the Chilean Catholic Church.

One of the continuing problems of Chilean politics is the fractious nature and the dominance of the cult of the personality in individual parties. Internal squabbles in many parties, particularly within the Christian Democratic Party, have slowed the momentum of the CFE. The left and right are also divided, although three parties of the right and center-right recently united to form the National Renovation Party. Although some junta members have held talks with opposition leaders, the government has not responded to calls to reinitiate a dialogue and has so far ignored the Pope's call for national reconciliation issued during his April visit to Chile.

Government of President Pinochet

The delegation met with President Pinochet for almost an hour and a half after being told the President would have only 30 minutes because of an urgent commitment following the meeting. The members of the delegation explained to President Pinochet that they all had voted against legislation in the House of Representatives that would have been viewed as critical of Chile but which the Members considered would have been counterproductive to the efforts to advance the cause of democracy in Chile. Mr. Lagomarsino cited as an example the resolution offered in the House on June 24, 1986, opposing the participation of the Chilean "tall ship" Esmeralda in the July 4th Liberty Weekend Celebration. Those opposing that resolution thought it made no sense to prevent Chilean seamen from participating in an event celebrating liberty and democracy, a message worth reinforcing for the Chilean Navy.

Congressman Lagomarsino also commented on the view that at the time the Chilean military overthrew the Government of President Allende on September 11, 1973, the Chilean people and many prominent Chileans in positions of authority and respect had been urging military to take action. When Congressman Lagomarsino had previously visited Chile in 1977, he had met with a broad range of Chileans who held important positions in both the private and public sectors who firmly believed had Allende remained Chile would have become a completely Communist state. With only one exception, the groups he spoke with had endorsed the military ouster of Allende. Now, it is less clear cut with the passage of 14 years. Not many of those supporting the military's action in 1973 anticipated the amount of time that would pass before a transition to democratic government.

Mr. Lewis complimented the Chileans on the dramatic economic recovery that Chile had accomplished in recent years, particularly in comparison to other Latin nations suffering from tremendous external debt problems, massive inflation and slow economic growth. Congressman Lewis praised the government for its emphasis on promoting free market economy principles and emphasized that just as competition is necessary for a healthy economy, competition is also necessary for a healthy democracy. Mr. Sensenbrenner urged the government to provide for the broadest possible registration of all eligible voters in order to demonstrate that the result of the election or plebiscite represents the mandate of a majority of the Chilean people.

President Pinochet responded that he was confident there would be 5½ million voters registered which would ensure the legitimate expression of the will of the Chilean people. He emphasized there would be no question of free elections in Chile; they would be fair, and observers would ensure their validity. He said, however, if the discussion of free elections was intended to mean competitive elections that was something quite different. The Constitution of 1980 passed by an overwhelming majority of the Chilean people provides for a plebiscite to determine the next president who takes office in March 1989. A competitive election is not possible unless the Constitution is amended. The Constitution does provide that if the candidate in the plebiscite loses, then competitive elections would be ordered within a year.

Congressman Wortley also commended the Chilean Government for its economic progress noting the Chileans are now self-sufficient in agricultural products, going from a net importer of foodstuffs to a net exporter. In 1972, Chile was importing food, while in 1987, Chileans are feeding themselves and exporting agricultural products worth $1 billion. He also commended the Government for its initiative in establishing an Advisory Human Rights Commission and urged continued efforts in the human rights field. Mr. Lagomarsino emphasized that the U.S. Congress remains concerned about specific human rights cases such as those involving Rodrigo Rojas and Orlando Letelier and that these will continue to impact on relations between our two nations.

President Pinochet impressed the members of the delegation as a shrewd politician who believes he has a mission guided by divine intervention. He believes it was truly a miracle he escaped from the assassination attempt against his life in September 1986 and is an indication he still has a role to play in the government of his country. It is apparent to the members of the delegation, as it is to most Chileans, that President Pinochet is currently campaigning hard to become the candidate for the plebiscite to be held next year. The purpose of his campaigning now seems directly aimed at increasing his popularity in public opinion polls so that the military junta will see that Pinochet could win the plebiscite, an accomplishment many believe is unlikely if current opinion polls are correct. The delegation believes the military would be unlikely to name Pinochet as the candidate for the plebiscite if he were likely to lose because that would reflect badly on the military, something the military would not accept willingly. Reports circulating while we were in Chile, and more widely after we left, indicate an arrangement has been worked out when General Pinochet would resign as head of the Army just before being inaugurated as winner of the plebiscite, assuming he were to win the plebiscite. In that way, he would not lose the security of his position as Commander-in-Chief if he were to lose the plebiscite.

Meetings with Government officials

The delegation met with a broad range of Chilean Government officials to receive their views on the political and economic situation in Chile and to convey the same message to them as to President Pinochet about Congressional interest in the transition to democracy. Those with whom the members met included Member of the Junta General Fernando Matthei, Commander-in-Chief of the Air Force; Foreign Minister Ricardo Garcia; Mr. Orlando Poblete, Secretary General of the Government; Mr. Hernan Buchi, Minister of the Treasury; and Mr. Alberto Cardemil, Under Secretary of the Interior.

Congressman Lagomarsino explained that as practical politicians, the members of the delegation have learned certain things about foreign affairs. Often, constituents are more concerned about domestic policies than about foreign issues, and as a result, they may know little about what is happening overseas in specific countries. They also believe that Members of Congress shouldn't be interested in foreign affairs because they think it takes attention away from what's going on at home. If constituents do know what is going on overseas, their opinions are usually guided by how the national press or television is viewing the issue. That often means that unpopular countries for the media, for example South Africa and Chile, become unpopular countries for the public. In reality, Members of Congress are concerned about foreign policy issues because they directly affect domestic events, and the interests of this delegation in Chile is due to the importance of the future of Chile for the national security interests of the United States.

The delegation explained to those with whom it met that it believes that the worst thing that could happen to Chile would be for it to become a Communist state. One of the problems the Congressmen face is trying to convince their colleagues how important Chile is for the United States, and it would be easier to convince them of Chile's importance if Chile is moving toward democracy. The two greatest problems for those who are critical of Chile in the Congress are those of human rights and the continuing military government. If a military government were to continue in Chile for another eight years, Chile's critics in the Congress would undoubtedly exert every effort to increase pressure, like economic sanctions, and attempt to isolate Chile in every way possible. The delegation emphasized that it did not go to Chile to say how the government should be organized, but as friends the members would be less than candid not to be clear about the consequences of continued military rule in Chile for future U.S.-Chilean relations.

Of particular interest in these meetings were the discussions about arrangements to ensure that the plebiscite scheduled to take place next year would be carried out in such a way as to ensure the free expression of the will of the Chilean people. Some in the government expressed concern that a political vacuum continues to exist in Chile, that something was wrong with the system that permitted an avowed Marxist to be elected president with only 36% of the vote in 1970. The democratic parties left the stage and turned over the government to Allende and some say they still do not have the capacity to govern. The belief exists that political leaders have not been able to interpret what people want and put forward a leader that captures great public support.

The Chilean government officials with whom the delegation met assured the Congressmen that the plebiscite would be free and they would ensure that there would be no fraud. The day the delegation arrived, the law governing registration of voters was changed to permit registration on Saturday and Sunday, a move viewed as helpful to increase the number of voters registered. The registration process requires Chilean citizens to acquire a new identity card, which is a time-consuming, costly process for low income Chileans. The registration process is less complicated, but with more than 5 million Chileans having new I.D. cards, only 1½ million have registered. Government leaders told the members that with 7–8 million potential voters, only 2 million registered to vote would constitute obvious fraud, that is why at least 5–6 million would be registered before the plebiscite is held.

Mr. Sensenbrenner expressed his continuing concern about free and equal access to television by all political parties. He said that in condemning the role of Daniel Ortega in Nicaragua in restricting media access for the 1984 elections, he and others in the Congress could not accept restrictions on the media in Chile. As for the question of whether there should be a plebiscite or competitive elections, that issue was debated intensely before the adoption of the 1980 Constitution. While not the best choice, the plebiscite approach was the only alternative that everyone could agree on. There was some discussion among those with whom the delegation met that if polls indicate the result of the plebiscite would be an overwhelming "no" vote, then consideration might be given to having a Constitutional amendment offered by plebiscite that would provide for competitive elections.

Mr. Lewis noted with great interest the promotion of free market principles by the government. Chile is reportedly the only case where a strong authoritarian government has dismantled a state economy to promote free enterprise. The government instead of accumulating power has been dispersing it. The ratio of government owned enterprises to private ownership has reversed from a ratio of 75% state to 25% private in 1973 to 25% state and 75% private now. Furthermore, city councils have taken over responsibility for what used to be prerogatives of the national government: for example, health and education. Mr. Lagomarsino commented that the economic program of the Chilean government looks very much like the platform of the Republican Party, only the Chileans have been more successful than the Republicans.

Some government officials say that many of the opposition political parties are against the free market principles instituted by the government and wish to restore state control of many economic activities. The government says it is committed to giving people greater freedom, that there are now far greater choices through the opening of the economy than there were in the past. Private property is now respected.

Mr. Wortley expressed concern about the human rights situation in Chile. The delegation was told under General Stange, the National Police has been upgraded considerably in the past two years. There is an increased consciousness of respect for human rights. There is also increased publicity and attention given to human rights. As a result, it is difficult to know whether that means there are more violations now than before or simply a more open effort to confront human rights abuses. Unfortunately, government officials noted that not all those in control of military units share the same concern for human rights.

Economic situation in Chile

From 1970 to the present, Chile's trade balance suffered a tremendous decline due to falling prices for its exports and rising prices for its imports. In spite of those problems, the Government of Chile undertook dramatic changes in its economic policies adopting innovative free market strategies that have led to three-and-a-half years of impressive economic growth. Growth during the first quarter of 1987 was 7.6% following a 5.7% growth rate last year. The Government of Chile is trying to sustain a growth rate of 5 to 5.5% for this year and has moved to control the high growth rate of the first quarter to keep the economy on course.

With the government's effort to diversify its economy and reduce dependence on copper as the major source of foreign exchange, greater exports of agricultural and manufactured products have occurred. As the delegation was told, Chile is no longer a net food importer but is now exporting more than $1 billion in agricultural products.

Although Chile faced severe hardships in the early 1980's trying to meet IMF guidelines for restructuring its external debt, Chile has been responsible in its debt management. Total external debt is approximately $20 billion, which is roughly equivalent to Chile's GDP. The government recently signed an agreement restructuring more than $10 billion in medium and long-term debt and about $1.7 billion in short term debt. Chile has been active in debt-equity swaps, and according to Finance Minister Buchi, through this means and other programs, Chile has been able to reduce its overall foreign indebtedness by $1.7 billion.

Chile's volume of bilateral trade with the United States in 1986 totalled more than $1.7 billion. Chile presents a remarkable example for the rest of the world in that it allows almost free trade. The number of trading restrictions that Chile applies are far fewer than most other countries of the world. Chile exported $934.8 million to the U.S., with a portion of that covered by GSP benefits. Chile's GSP benefits are currently under review on worker rights grounds. As Chile continues to reduce state ownership, opportunities to increase the already $2 billion U.S. foreign investment will grow. One example cited is a U.S. firm's equity participation in one of Chile's privatized pension funds. The U.S. Overseas Private Investment Corporation has already reached in Chile its 10% self-imposed portfolio limit on OPIC coverage.

Unemployment in April 1987 was 9.1% with another 3.6% in government work programs. Chile has succeeded in reducing inflation from three digits annually to two digits, and although inflation is now less than 30% annually, it is still above the 13–15% target set for 1987. Real wages have been relatively stable over the past year. Between 1982 and 1987, real wages fell almost 20%, however, due to high inflation and unemployment.

As government officials told the delegation, the success of the economy relates directly to the promotion of free market and private enterprise principles. The members were told that the weakness and instability of Latin governments have been the result of the lack of emphasis on private enterprise. On the other hand, Chile has had a government that establishes deadlines to reduce its power and has taken action to comply with those deadlines.

The delegation met with representatives of U.S. banks in Chile and received their assessment of the economic situation. Mr. Wortley was particularly interested in the debt-equity swap and heard that it was working so well in Chile that there is pressure, especially from more liberal political parties, to change the rules affecting debt-equity swaps and to limit those sectors where it can occur. The U.S. bankers advised the delegation that there was not discrimination in the banking laws against foreign banks compared to domestic banks.

A number of the conservative parties and civic groups with whom the delegation met emphasized their interest in seeing that the free market gains promoted by the government be preserved. They believe the majority in the center of the political spectrum have progressed because of the existence of the free market economy. The fundamental picture, they say, has been progress based on a free economy. The development of the "Civic Committee" is seen as a good indication of the growing interest in getting people involved in what democracy is. Mr. Lewis commented that it is important that the people who have a stake in the future, like the businessmen of the "Civic Committee," are taking the steps necessary to provide for the future of democracy and a free economy in Chile. The market place will make the difference if the government will let it. It will be important for the "Civic Committee" to try to play a role to influence the new Chilean Congress as well to play a constructive role rather than a destructive role.

Mr. Sensenbrenner added that many members of the U.S. Congress are more sympathetic to El Salvador because they have travelled there and because they have met in Washington with many Salvadoran officials and businessmen. Chile needs to have more exposure in the United States with more contacts between legislators and Chilean officials and businessmen.

The members of the "Civic Committee" emphasized their efforts are aimed at cooperating with the Chilean Armed Forces as well, not because of a desire to advance the interest of any one individual but because they want to see the free market economy advances continue. Unfortunately, in their view, only a few of the political parties support free market economy principles. They also believe one of the factors restraining the growth of the popularity of the Communist party in Chile has been the result of the great number of workers who now own stock in companies and who have savings accounts. They are concerned, however, about the apathy of voters, especially among the young. They also believe if the elections do not create credibility outside of Chile, the economic and political advances achieved will not survive.

Opposition political parties

Codel Lagomarsino met with representatives of a number of political parties as well as organizaitons representing political movements in Chile, including: the Democratic Alliance, the Committee for Free Elections, the Christian Democratic Party, the National Party and the National Renovation Party.

The Democratic Alliance is a grouping of center and center-left parties who are in opposition to the Pinochet Government. The Christian Democratic Party has dominated the Democratic Alliance, largely because of the weight of its numbers and its tradition in Chilean politics. Other parties represented in the Alliance include the Radical Party, Republican Party, Social Democratic Party, Liberal Party, and the Popular Socialist Union. Members of the Democratic Alliance told the delegation they want to correct the errors of previous democratic governments so that Chile will never again suffer the problems it experienced which led to the coup in 1973.

Those represented in the Democratic Alliance said the current regime has the will to completely dominate the political scene. They are convinced the only way to change this is through the popular vote. They are engaged in the campaign to achieve "free elections" which will require a Constitutional change to allow for competitive elections rather than just a plebiscite. The reasons they give for supporting competitive elections are to give legitimacy to the government, to remove the Armed Forces from politics and to preclude the contradiction if a "no" vote should win the majority in the plebiscite of having President Pinochet remain in office an additional year, even though he had been rejected at the polls.

Beyond the issue of competitive elections versus a plebiscite, the Democratic Alliance insists there are four basic points to establish the elections are not tainted by fraud:

(1) a sufficient majority of the potential voters must be registered (6 million out of 8 million potential voters);

(2) no exceptions can be permitted which permits the State to manipulate the results of the elections;

(3) the people must be kept informed with opposition parties allowed free, equal and continuous access to the media, especially television;

(4) there must be independent control of the voting and counting process to guarantee the fairness of the elections.

Both with the opposition political parties and government officials, the delegation raised the question of the possibility of a consensus candidate for the plebiscite. Representatives of the Democratic Alliance said they could not accept a consensus candidate nominated by the Armed Forces because it would mean simply a continuation of the current regime. The democratic opposition might agree on a consensus candidate, but then the challenge would be to get the junta to agree. No matter what the outcome might be on a consensus candidate, there remains the necessity of reforming the Constitution because it gives the President so much power without sufficient checks and balances, the Democratic Alliance believes.

They also stated that the plebiscite would only serve to polarize further the country. It would prevent the option of a political solution and would increase the power of the extreme left which wants a violent solution. The opposition parties continually spoke of President Pinochet's objective to get rid of the Communists in Chile and that after 14 years they are as strong (if not stronger) as before and have even more followers. The opposition represented in the Democratic Alliance also complained of the impediments for advancing toward truly democratic institutions. They say the restrictions both on forming political parties and also on the registration of voters are designed to prevent a working democracy. They also claim the government has sophisticated ways of controlling every sector of society. Because of the high government employment and jobs based on patronage, anyone who appears to be supporting the political opposition is in danger of losing his job.

The opposition parties acknowledged that the role of the military will remain important in the future, not in the politics of Chile but in the defense of the nation. The opposition parties say they have no desire for revenge or persecution against the military and do not intend to pursue efforts to bring the military to justice as in Argentina.

In meeting with the Executive Committee of the Christian Democratic Party, the delegation heard again the objective of having the plebiscite replaced with free, competitive elections. The Christian Democrats also believe the Constitution should be changed to make it easier to amend the Constitution and also the Congress should be made up entirely by elected representatives, not allowing one-third of the Senate to be appointed by the President.

They believe, as do others with whom the delegation met, that if six million voters are registered it will be very difficult for the government to manipulate the election results or to carry out fraud in the election. They also believe that with six million registered, President Pinochet would not receive a majority "yes" vote in the pebiscite. The Christian Democrats believe the regime would negotiate a replacement candidate instead of Pinochet if it appears he would lose. They intend to try to reach an agreement with the broad spectrum of Chilean political life on a political program and a single consensus candidate. If the candidate for the plebiscite, whoever he may be, does not receive a majority "yes" vote, then competitive elections would be held within a year. If a single candidate in the competitive elections did not receive a majority of the vote, there would then be a run-off election between the top two candidates.

Mr. Lagomarsino asked what the Christian Democratic Party would do if the government does what it says it will do, that is, registers six million voters, allows access to television, and perhaps has President Pinochet as the candidate for the plebiscite. Would the Christian Democrats and the other opposition parties try to pick a single individual who would be the person around whom the opposition would rally? The Christian Democrats responded they would have to decide whether to participate in the plebiscite or not, to decide whether there would be guarantees that the process would be free, without the influence of the military.

The delegation also met with the Committee for Free Elections, which was established in March 1987, under the leadership of Sergio Molina. The Committee is composed of 14 members, ranging from the democratic right to the democratic left. Its objectives are to seek an open, competitive election in place of the plebiscite and to increase civic awareness by promoting voter registration and civil rights. Another task of the Committee might turn out to be that of election observer and ensuring that the voting process, whether plebiscite or open election, is free and fair.

As had others, the Committee emphasized the importance of television for reaching the Chilean population. Eighty percent of the people get the news through television. Those controlling TV control the formulation of opinion. That is why, the Committee and others say, you never see opposition leaders on television. President Pinochet on the other hand programs his activities so he is constantly on TV inaugurating projects, meeting with dignitaries and participating in other highly visible activities.

The view of the Committee is that it will be very difficult for the opposition parties to agree on a single candidate, either as a figurehead opposition in a plebiscite or a consensus candidate for the plebiscite or as a principal candidate in competitive elections. In the latter case, President Pinochet would also be free to run and probably would have a much better chance of winning. As the delegation reminded those with whom it met, "you can't beat someone with no one."

The delegation also met with two conservative political parties, the National Party and the National Renovation Party (PARENA). The National Party is the traditional conservative party of Chile. It has been caught in a squeeze between moderate center parties and the more conservative PARENA. The National Party is a member of the Committee for Free Elections and represented conservative opinion in the broad-based National Accord when it was active.

The National Renovation Party was formed in early 1987 by uniting three other parties: the National Union, the Independent Democratic Union and the National Labor Front. The National Union, before merging with PARENA, was led by Andres Allamand, a thirty-year old dynamic politician identified by the National Republican Institute for International Affairs as a leading force for conservative principles of promoting a free market economy, free trade, private investment, democratic government and anti-Communism. The National Renovation Party is considered a democratic conservative party which has gained supporters from these conservatives who have objections to the government of President Pinochet. Within PARENA, however, there are deep splits over economic policy, the plebiscite and human rights.

Human rights

The U.S. Embassy in Santiago reports that some recent improvements in human rights have occurred in Chile, although the situation continues mixed. The list of exiles has been reduced from over 3500 to 513 since January. However, many prominent figures are included in those prevented from returing. The International Red Cross has been allowed access to prisoners after a short period and the secret police have closed their detention centers. In addition, the Investigation Police now allow the Government's Advisory Human Rights Commission to verify conditions of prisoners in its custody. All these moves have led to a lessening of human rights abuses, although credible reports of these continue to surface.

When the delegation met with the members of the Human Rights Commission, established in 1986 as an advisory group to the Ministry of Interior, the American Embassy Charge George Jones raised a concern about the Embassy being prevented access to prisoners in jail, not American prisoners but others who are being held reportedly for political crimes. The Human Rights Commission was shocked to hear this report and said it would look into it at once. It urged the delegation to raise the matter with other government officials during the course of our meetings. The delegation did pursue the question in its other meetings, and although it had not been resolved at the time of the delegation's departure, the matter has been followed up through correspondence. The delegation remains strongly concerned about this matter and will continue to pursue it.

The delegation also met with the Executive Secretary of the Vicariate of Solidarity, the human rights organization of the Catholic Church in Chile, and with the head of the Legal Division of the Vicariate. It was founded in 1976 under the Archdiocese of Santiago and serves as a clearinghouse for church-sponsored social programs. It is best known for its work in the field of human rights. It has tried to remain apolitical, though its work has often brought it into conflict with the government.

The Vicariate tries to defend and promote human rights as expressed in the International Declaration of Human Rights of the United Nations. It tries to organize its priorities according to this. Its most important, and most controversial, program is the legal program. It gives support to those who ask for help. It is not an activist group going out looking for cases. There is no discrimination. Everyone who asks receives the legal support of the Vicariate. The only exception is the Vicariate does not work with cases of common crimes. It does work with cases of political crimes, but it excludes those who are terrorists, who act intentionally against the life or rights of other people. The Vicariate has determined the most effective means for its efforts in support of human rights have been through its legal office and its public denunciation of human rights abuses.

The Vicariate reports a reduction this year in massive arrests, and also the number of individuals arrested has declined. Its reports on beatings and torture show an increase which differs from the Embassy's view. The Vicariate has reports of 53 incidents of torture during the first six months of this year compared to 23 during the last year. The Vicariate confirms other reports that General Stange, head of the Carabineros (National Police) has placed strong emphasis on professional conduct by the police but that he has not been totally successful yet.

The Judiciary, which is nominally independent, has failed to punish government officials for human rights abuses according to the Embassy. The most prominent recent example of this is the case involving Rodrigo Rojas and Carmen Gloria Quintana. The officer in charge of the patrol allegedly involved in the burning death of Rojas remains free on bond and has only been charged with negligence for not procuring medical assistance for Rojas and Quintana, who was also severely burned. The delegation raised both the case of Rojas and the case of Orlando Letelier with the government officials with whom they met.

U.S.-Chile relations

U.S. policy toward Chile is to support a transition to democracy. Restoration of democracy is the most effective means to pursue the many varied interests of the United States in Chile. That includes fostering greater respect for human rights, cooperation on regional security and international issues, curbing narcotics trafficking, and promoting trade and responsible economic policies.

The United States has encouraged dialogue between the Chilean government and the democratic opposition on a transition while avoiding actions that might increase existing tensions or encourage a nationalistic backlash. A move such as imposing economic sanctions would clearly be counterproductive to the goals the United States is trying to achieve in Chile. Relations between the United States and Chile are strained due both to our strong emphasis on the need for movement toward democracy and specific disagreements, such as that involving the Letelier case where the U.S. has sought to bring Chileans implicated in this matter to trial. Relations were further damaged by President Pinochet's irresponsible suggestion of CIA involvement in last September's assassination attempt. Although, President Pinochet did not make that charge during his meeting with the delegation.

Human rights violations in Chile are a matter of serious concern to the United States, which joined in a resolution on Chile adopted by consensus at the March 1987 UN Human Rights Commission meeting in Geneva. The U.S. objective in voting for this resolution was to encourage rational and balanced discussion of what could be done in Chile to end human rights violations, such as torture, instead of having an extreme, unbalanced resolution of the type the U.S. had been unable to support in the past. The U.S. has also shown its human rights concerns regarding Chile through its abstentions on non-basic human needs loans.

The United States provides some bilateral humanitarian food aid to Chile which is administered in part by religious groups such as Catholic Relief Services and provided disaster relief following the devastating earthquake of March 1985. A $6 million private sector oriented Housing Investment Guarantee program, aimed at directly assisting Chile's poor, will begin this year. This program received thorough review from appropriate Congressional committees prior to its approval.

The United States remains interested in influencing the Chilean military toward the acceptance of the principles of professionalism and civilian control. The Chileans participate in UNITAS. Contact with the military, however, is limited due to current legislative restrictions. Arms sales, military training and security assistance were prohibited by Congress in 1976 and provision of these is now dependent on a Presidential certification that:

(1) the Government of Chile has made significant progress in complying with internationally recognized principles of human rights;

(2) the provision of military assistance, articles or services is in the national interest; and

(3) the Government of Chile is not aiding or abetting international terrorism and has taken appropriate legal steps to cooperate to bring to justice by all legal means available in the United States or Chile those indicted by a United States grand jury in connection with the murders of Orlando Letelier and Ronni Moffit.

There has been no Presidential certification. Congress did permit cash sales in 1985 of certain flight safety-related items to the Chilean Air Force and exchange visits to the United States by the Chilean Naval War College senior class were being planned at the time of the delegation's mission in Chile.

CODEL Lagomarsino press statement and press conference

Before departing Santiago, the delegation held a press conference at the U.S.-Chilean Binational Center. The following is the joint statement of the four members of the delegation and the transcript of the questions and their answers during the press conference.

CODEL LAGOMARSINO PRESS STATEMENT

COMPETITION NECESSARY FOR HEALTHY ECONOMY AND HEALTHY DEMOCRACY

SANTIAGO, August 14.—We are four Republican Members of Congress who came to Chile as strong supporters of the Reagan Administration policy in Latin America and who have long been friends of Chile. We support strong, close ties between our two countries and believe our two nations share common goals and common values. We affirm our strong support for the policies of the Reagan Administration and how they are being implemented by Assistant Secretary of State Elliott Abrams, Ambassador Harry Barnes and his colleagues at the Embassy.

We came to learn first hand more about the political process that is reaching a crucial point in Chile's timetable for democracy and also to learn more about the impressive economic advances this country is making. We do not believe that in the short time we have been in your beautiful country that we are experts on Chile. We do not presume to tell you how you should constitute your own government. We do believe that it is important for you to understand the concern the United States has about events in Chile. Our national security interests are vitally linked to the growth of viable, civilian, constitutional governments throughout the world. We believe that the best way to counter the very real Communist threat that exists in this hemisphere is to support and promote democratic government.

I am Robert J. Lagomarsino, of California and Ranking Republican Member of the Subcommittee on Western Hemisphere Affairs. I am also President of the National Republican Institute for International Affairs, an organization devoted to promoting and strengthening democratic institutions throughout the world. I am joined by Congressman Jerry Lewis, also from California, who is a member of the Foreign Operations Subcommittee of the House Appropriations Committee. Also here are Congressman James Sensenbrenner of Wisconsin, who is a member of the Judiciary Committee, and Congressman George Wortley of New York, who is a member of the Banking, Finance and Urban Affairs Committee. Congressman Lewis and I are elected members of the House Republican leadership. The voting record of the four of us in the Congress has been consistent in opposing the Communist threat in this hemisphere and elsewhere, especially in supporting President Reagan's policies in Central America, and in opposing legislation in the House of Representatives we believe would have damaged U.S. relations with Chile and that would have been counterproductive to U.S. interests in promoting a transition to democracy in Chile.

We wish to emphasize that we have come away from our meetings with Chileans, both government officials and private individuals, with a stronger appreciation for the impressive achievements that have been made, particularly in strengthening the operation of free market principles in the Chilean economy. Compared with the serious economic problems faced by other countries in this hemisphere, Chile has made remarkable progress in meeting its international debt obligations, reducing inflation, improving its trade balances, becoming self sufficient in food production, promoting free trade and reducing the role of state enterprises in the economy.

We recognize these positive advances in Chile. We believe it is important to convey the concerns that our government, both the Administration and the Congress, has about the political process and the movement toward democracy in this nation. We are hopeful about the future because we heard everyone talking about support for the democratic process and for a peaceful advance toward a freely elected government. We are pleased that there is increased political activity by a broad spectrum of political groups. There seems to be significant access to press and radio, but we discussed repeatedly the importance of greater opportunity for opposition political groups to appear on television. We urge equal, fair and continuous access to television. It also is important that there be the broadest possible registration of all eligible voters in order to demonstrate that the result of the election or plebiscite represents the mandate of a majority of the Chilean people.

It is important that Chileans understand the deep concern in the United States for the protection of human rights. We recognize that a double standard exists in judging the human rights records both of our friends and our adversaries. If it appears that the United States judges Chile by a higher standard, it is because the United States has higher expectations of Chile due to its past democractic traditions. We welcomed the information we received that serious efforts to improve respect for human rights in Chile continue. Nevertheless the United States Congress is concerned about specific incidents such as the cases involving Rodrigo Rojas and Orlando Letelier. These will continue to impact on relations between our two nations. We raised these matters during our discussions with government officials.

We enthusiastically applaud Chile's commitment to promoting competition which is the vital ingredient of a free market economy. We believe political competition is just as vital for a healthy democracy. Attention has been given to legislative proposals in the United States that would apply economic sanctions to Chile. We are confident those sanctions will not occur during the Reagan Administration if the moves toward democracy occur in Chile as we have been told they would. We want to make it absolutely clear that the best way to avoid economic sanctions is to carry out the promised democratic measures. In that way there can be no doubt in the U.S. Congress that the Chilean people have been able to determine their own government.

We wish to reiterate that we did not come to Chile to tell you how to achieve a fully functioning democracy. We are anxious to see continued, steady progress toward a viable, civilian, constitutional government in Chile. As the aspirations of the Chilean people are realized, the recent impediments to the traditional, warm ties between Chile and the United States will be removed and the full range of cooperative relations will be resumed. We urge that all possible steps be taken to provide for the free expression of the will of the people as Chile approaches its date with destiny.

Mr. PEASE. Mr. Speaker, I want to salute my colleagues, BRUCE MORRISON and TED WEISS for convening this special order about conditions in Pinochet's Chile. Both of my colleagues have steadfastly advocated that our country take a stand against the continuing brutal repression in Chile and for a return to democratic government in that beleaguered nation.

My contribution to this debate will be to appeal to the Reagan administration anew to listen to its own counsel from within the Labor Department on whether to withdraw GSP benefits for Chile. Last November 4, Ron Dobson, the Labor Department official serving on the Interagency Committee that makes recommendations to the President on GSP eligibility, circulated to his peers a memorandum regarding labor rights violations in 11 different countries whose eligibility had already been challenged by groups of concerned Americans through extensive public testimony. In that memorandum, Mr. Dobson concluded that insufficient progress had been achieved by the Government of Chile to afford workers their basic rights. He recommended last year that the President withdraw GSP beneficiary status from Chile. Sadly, Mr. Dobson's advice, coming from within that department of our Government that ought to know the most about labor conditions in Chile, was not taken. As we now know, the President decided to duck, weave, and improvise so as to allow Chile to continue to receive GSP benefits through 1987 upon which time a fresh determination would be made about labor conditions in Chile and whether to continue GSP eligibility.

I ask that that portion of this Labor Department memorandum dating from November 4, 1986, be reprinted as part of these proceedings.

Certainly there should be no question about the proper course of action to now be taken. I call upon the Reagan administration to end GSP eligibility for Chile immediately because of the Pinochet's continuing brutal and systematic denial of basic rights to the working people of Chile.

DEPARTMENT OF LABOR,
Washington, DC

Memorandum for: Members of the GSP Subcommittee.
From: Labor member.
Subject: GSP Worker Rights.

The enclosed draft paper on these issues attempts to assess progress achieved on the eleven country cases which are a part of the General Review. This assessment is burdened by a lack of information on country practices. The draft will be revised to reflect new information as it becomes available.

* * * * *

4. Find that insufficient progress has been achieved by the Governments of Chile and Romania to afford workers in those countries the required rights and recommend that the President not apply the waiver under Section 502b, thereby removing GSP beneficiary status from those countries.

* * * * *

Chile

Assessment of problems and suggested steps for improvement moved at a slower pace in this case than for others presented in the paper. Some of the information concerning GOC labor practices was either inaccurate or unavailable. Interagency agreement on a suggested course of action did not emerge until July 1986 when consultations aimed at improving GOC practices were initiated. The GOC provided a written response to the Administration in September 1986 and consultations are still ongoing on a number of major points. Consultations are expected to conclude in early November. This presentation reflects progress achieved to date.

Problems

FREEDOM OF ASSOCIATION

1. Technically, it may be legally possible for all trade unions in Chile to form an overall confederation, crossing industrial and/or professional lines, and have that confederation include the existing federations and local unions. This process is so restrictive, however, to have so far prevented the legal establishment of any labor central.

2. Restrictions in effect on freedom of assembly and speech have severaly limited the ability of trade union organizations to exercise political and civil liberties.

3. Chilean law provides for considerable oversight of trade unions by the government. Unions are required to submit their end-of-year balances to the Ministry of Interior, which can take legal action if there are discrepancies in the statement of how the union officers used member's dues during the year. Election of union officers must be certified by either the Labor Ministry or a notary public. These provisions have been used arbitrarily as a vehicle for political harassment, rather than as legitimate means for addressing improper uses of union funds or illegal union activities.

4. The government has, during declared states of national emergency and siege, interfered in trade union activities through the search of union offices, the seizure of union records, and arrest and internal banishment of trade union leaders. There have

also been substantiated reports of torture of individual union activists by security forces and allegations of government involvement in the murder of two prominent union leaders.

RIGHT TO ORGANIZE AND BARGAIN COLLECTIVELY

1. Collective Bargining is only permitted by individual unions organized at the company level. Federations and confederations are prohibited from negotiating collective bargining argreements on an industry-wide or sectoral basis, though they can and do provide expertise to affiliated unions to use in bargaining and can coordinate the bargaining of affiliated unions. This restriction harms the negotiating strength of unions and has a specially negative impact on workers in small economic units. Revisions affecting port workers (law 18.462) have hindered rather than helped trade unions activities.

2. Severe limitations on the right to strike impede the ability of workers to bargain collectively. For example, if a strike exceeds 59 days, all strikers are considered to have voluntarily resigned and forfeit any benefits.

3. Collective bargaining is prohibited in government agencies and in state-financed institutions that have over 50% of their budgets provided by the government.

4. Strikers are prohibited by law in all public utilities and the Chuquicamata copper mine ("strategic industries"). If the two sides in a dispute cannot agree on an arbitrator, the government has the right to appoint one.

Suggested Steps

1. Amendment of labor legislation to allow for establishment of national labor centrals and for easier formation of larger cross-sectoral confederations.

2. Elimination of the use of the oversight provisions of the Labor Plan, such as those providing for the auditing of union records or certification of union officials as a means to intimidate or harass trade union officials.

3. Permitting collective bargaining at a level beyond that of individual enterprises.

4. Elimination of the provisions relating to the automatic termination of employment contracts of striking workers at the end of 59 days.

5. Greater protections for collective bargaining in strategic industries denied the right to strike, such as giving unions participation in establishment of the list of arbitrators for settlement of labor disputes in these industries.

6. Allow public employees in non-sensitive government agencies to join union organizations of their choosing and to become affiliated to the federation, confederation or central of their choice.

Results

The Chilean Government responded to our concerns in letters and memoranda on September 12, 1986. They state the following:

The GOC has removed the requirement that the labor unions pay for audits of their financial records at government request. The unions are also no longer required to obtain advance government approval for their expenditures. Certification of union officials can be easily obtained. The Government has assured the USG (in a letter to Secretary Brock) that it will take, as it has in the past, all necessary steps to guarantee the normal development of labor organizations. It also does not condone harassment or seizure and any violation of this law will be prosecuted.

The GOC will submit legislation lowering quorum limits of unions to permit collective bargaining in small economic units.

The GOC proposes to submit legislation that eliminates the provisions relating to automatic termination of employment contracts of striking workers at the end of 59 days and replace this measure with a back to work order and a six month cooling off period.

The Pinochet government has reduced from 48 to 23 the list of public enterprises where strikes are not permitted. It is also claimed that selection of arbitrators is an independent process under Chilean law. The GOC permits collective bargaining in all enterprises in which the state has contributions or majority participation. Collective bargaining is not permitted in enterprises whose deficit budgets are more than 50 percent financed by the state.

Assessment

The USG is seeking clarification of statements presented by GOC and has suggested some areas that could be addressed for improvement. To date, improvements offered by the Government of Chile are modest, tentative, and designed to substantially preserve the status quo. Reduction in the list of enterprises which have been subject to mandatory arbitration is positive.

Replacement of the 59 day termination clause for striking employees with a cooling off period has the potential to be positive depending on clarification regarding renumeration which is available to workers and options for mediation in these cases. It essentially replaces one type of unnecessary state intervention in labor disputes with another and full details need to be provided. Allowing workers in small economic units to bargain collectively at a level above the enterprise is a modest improvement. Procedures in financial auditing and reporting requirements have been liberalized and do not presently seem to be a problem.

Significant deficiencies in the area of freedom of association remain. Notwithstanding GOC assertions that workers may select or form organizations of their own choosing, the facts strongly suggest that they may be severely harassed for attempting to do so. Unions in Chile are basically free to be small and exert minimal influence. Freedom of association regarding political and civil rights of workers has been substantially, and even violently, curtailed during national states of exception although other union business may have proceeded in some manner during these times. Without a clear and significant step to improve freedom of association for unions in Chile, an attempt to qualify that country's practices will encounter opposition on both worker and human rights grounds. An attempt to differentiate freedom of association for unions from the same issue in a human rights context will only serve to compound the problem, heighten the level of opposition in this case, and diminish the credibility of the Administration's treatment of the worker rights issue.

A waiver of this requirement under the national economic interest authority of the President is not suitable for this case. It would call into question the Administration's policy toward Chile on human rights grounds. A bilateral waiver on economic interest would undermine our current stance in the multilateral development institutions. It would likewise indicate to the GOC that current practices are acceptable.

GENERAL LEAVE

Mr. MORRISON of Connecticut. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the subject of my special order.

The SPEAKER pro tempore (Mr. OLIN). Is there objection to the request of the gentleman from Connecticut?

There was no objection.

THE CROSSROADS: HOW DO WE GO ABOUT DEFICIT REDUCTION?

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Georgia [Mr. SWINDALL] is recognized for 60 minutes.

Mr. SWINDALL. Mr. Speaker, recently my wife and I were on a trip from Atlanta, which is my district, to Augusta, GA. Typically, we take I-20, which is an interstate that leads directly from Atlanta to Augusta, but on this particular occasion we decided that we would go the scenic route, get off the interstate, and after having gotten off the interstate we succeeded in getting totally lost.

As we realized that we were lost, we came to various stop signs where there were directional arrows and each time we came to these stop signs in the middle of the country there would be directional arrows that would say that either way we turned we could still get to Augusta.

After having made four or five of these choices I finally became a little concerned and decided that we would stop at a small service station and ask directions. So when I came to this small service station, there is this gentleman sitting there rocking in his rocking chair minding his own business and I said, "Excuse me, sir, every time we have come to an intersection we have come to signs that say we can go left or we can go right to Augusta. Does it matter which way we go to Augusta?"

He looked at me and said, "Not to me it doesn't."

At that point I am sure he really was not trying to be humorous, but it struck me as rather humorous because I was intent in trying to get to Augusta that I had phrased the question in such a way that he gave a fairly logical explanation. But the point is that today we stand at a much more significant crossroads as a nation. The crossroad is this: How do we go about deficit reduction?

Certainly the media, Members of Congress, and the general public have consistently over the last 2 weeks since Black Monday made the statement that we need to reduce the deficit, but somehow the suggestion has been that it really does not matter how we go about reducing the deficit so long as we go about reducing the deficit.

I would suggest that it does matter very significantly how we go about reducing the deficit because our own history indicates that an understanding of why we have a deficit is absolutely critical if we are to solve the deficit.

Historically this Congress has not understood very well what causes the deficit. I say that because we have somehow believed over the course of the last 5 years that raising taxes in and of itself is curative.

The truth is that as we have raised taxes we have actually increased the deficit. I recognize that that seems somewhat illogical. Certainly if we raised taxes those additional revenues come in, logically the deficit ought to drop, but that is true only if two other things occur. One is that when you raise taxes the money that you raise goes to reduce the deficit as opposed to financing new spending. The second is that when you raise taxes it does not have a negative impact on the economy itself so that you are now imposing higher rates of taxes on a smaller yield.

We know that there is an adverse correlation between raising taxes and growth in GNP. In fact, as we raise taxes the growth in GNP declines. Probably the most important thing that we as Members of Congress, irrespective of whether we are conservatives or liberals, whether we are Democrats or Republicans, or whatever, the most important thing that we can do is to be truthful in terms of what the facts are.

Many of us want to rush to our closing arguments to make our point whether it be that we ought to raise taxes or we ought to cut spending or whatever, without first laying a foundation of fact. One thing that is fairly obvious, if you have been keeping up with various commentaries that have been on the television as well as in the newspapers, is that there is misinformation being circulated with respect to what has occurred in terms of revenues since 1981, more specifically under the Reagan administration.

There is a widely held misperception that we have cut taxes under the Reagan administration. The reason for that is in 1981 frankly more out of desperation than anything else, this Congress did agree to the Economic Recovery Act of 1981 which promised the American people $960 billion tax cuts over the course of 5 years.

The concept there was that by cutting tax rates we would fuel the economy which was at the time in a recession, and as a result we would actually increase revenues.

That did occur. We did pass a tax cut and we did fuel the economy and, in fact, revenues were up. But what has not been stated was the fact that even before the Economic Recovery Act became law, two-thirds of that $960 billion promised tax cut was completely wiped off with a Social Security tax increase and bracket creep of $660 billion.

Since that time, we have gradually increased other taxes to the point that we have wiped out the remaining $300 billion and added $30 billion more in new taxes, and specifically we have passed the TEFRA bill which was passed in 1982 that raised taxes $229 billion; we passed in 1983 the gas tax which raised taxes $16 billion; we passed in 1984 DEFRA which was a $50 billion tax increase; we passed in 1986 COBRA which was a $6 billion tax increase; and, yes, even the Tax Reform Act which passed last year with a promise of budget neutrality and revenue neutrality raised taxes we now find of $29 billion for this year alone.

So this myth, and I underscore the word myth, that we have cut taxes in the last 5 years is leading us to some very false conclusions with respect to why we have a deficit.

□ 1855

The other misperception, or myth, if you will, is that we have been cutting spending up here for the last 5 years. Once again, all you need do is look at the budget that is put out by CBO and OMB and you will find that in 1981 we have revenues of $599 billion and expenditures of $678 billion. This year, and we will get the actual hard numbers today, we have revenues of $855 billion and expenditures of $1.4 trillion. In other words, revenues have increased over the last 5 years by $256 billion or 43 percent, but at the same time expenditures have increased by $326 billion or 50 percent.

What I am saying here is we have a deficit not because of tax cuts but because, in essence, we have allowed growth in expenditures to outpace growth in revenues.

If you want to really look at that in a historical comparison, look at how much money the Federal Government has been spending historically as a percentage of GNP. In 1960, the year that John Kennedy was elected President, the Federal Government was spending 18.3 percent of GNP at the Federal level. It was also taking in revenues of about 18.3 percent, so we had a balance budget.

In 1970, one decade later, we saw that the Federal Government was spending 19.5 percent of GNP at the Federal level and our revenues were roughly 19.5 percent, still basically in a balance budget situation.

By 1980, Federal expenditures had increased as a percentage of GNP to 19.5 percent, but revenues had dropped to 19.4 percent. The real increase has occurred since 1980, because last year we were at nearly one-quarter a percentage of GNP being expended at the Federal level.

Why is that important? It is important because every one of those percentages of GNP that is going into the Federal coffers is one less dollar that is out in the private marketplace earning returns on our investment.

If you really want to boil this whole economic argument or debate, if you will, down to its essence, you will find that the essence is this: We must decide what we expect from the Federal Government. Do we expect from the Federal Government that somehow we should change hundreds of years of philosophy and see the Federal Government as a mechanism to redistribute the wealth in this country, and that is clearly what those who advocate even more tax increases beyond the $1 trillion that we have raised in the last 5 years; or do we believe, as I believe, that the role of the Federal Government, and for that matter State and local government, ought to be to create an environment in which individuals have the incentive to go out and earn their own living and create wealth? That is a very basic difference of opinion because in an environment where the Federal Government assumes the responsibility of redistributing the wealth, we are moving in essence toward socialism.

One thing that we know about socialism where it is being practiced is that it fails economically because eventually those upon whom the systems depends to create the wealth lose their incentive to create the wealth because they recognize that they are going to get the same amount whether they are productive or nonproductive, whether they are very productive or less productive. That is, in essence, why our free enterprise, self initiative type of approach has worked so much better than the socialist and communistic counterparts.

Yet what we saw in 1979, 1980, and 1981 was that as the Federal Government increased its bite of the revenues of this country to the point that we were spending over 20 percent of GNP revenues, I should say collecting, we actually got to a point where those who were productive and putting their money at risk in the marketplace ceased to do so.

We have recently created a climate where we have created 14 million new jobs in 5 years, where we saw 700,000 brand new small business startups last year, and now ever so gradually we are reversing that.

But if you look at the tax bill that we passed last year you will see that that was the beginning of the process of reversing the positive things that occurred with respect to the Economic Recovery Act of 1981 in two very specific areas. One was we raised the cost of capital. We raised it from 20 percent to 28 percent by raising the long-term capital gains rate. We know historically any time we have raised the long-term capital gains rates we have seen, understandably and predictably, a decline in the amount of money that is put at risk; that is, into capital venture.

The other thing that we did was we chose to discourage private savings in this country. We said to individuals who were putting money into individual retirement accounts that we will no longer encourage that with the type of positive tax incentives that we started earlier in this decade.

Why then are we surprised that this year we find that private savings as a percentage of net income in America has declined significantly, below 3 percent? Compare and contrast that with Japan where their net income in private savings is close to 16 percent.

The other thing I think we have to do in terms of honesty of this debate is to recognize that well intended as individual Members are when they make promises, we do know that promises to raise taxes and at the same time cut spending have not historically been satisfied. What has happened is when we have heard this Congress go on record as promising to raise taxes and cut spending that the taxes do become a part of the law but the spending cuts never do. Part of the reason for that is very simple. There is no mechanism in our budget process or our appropriation process to make the spending cuts stick.

Even if we as a Congress were to decide, let us say hypothetically, that we will raise taxes $12 billion, as the majority in this body has already stated they would like to do, and that simultaneously we will cut spending in an equal amount. Once those taxes are in place, everyone in this body knows we will not rescind them or repeal them. But what happens when we put the spending cuts in place? At the end of the fiscal year that we are in now we will come in with a supplemental appropriations bill and wipe out all of the spending cuts. We did exactly that in 1982.

In 1982, when the TEFRA bill passed this body, there was the basic promise that if we would raise taxes Congress would cut spending $3 for every $1 of new taxes. In fact, we did raise taxes but did we cut spending? The evidence, uncontrovertibly, is not only did we not cut spending $3 for every $1 we raised in taxes, but to the contrary, we actually raised spending $1.14 for every $1 in new taxes, the point being that it is ludicrous today, even if we could demonstrate that the American people were undertaxed, even if we could demonstrate that we have cut taxes over the last 5 years when clearly the evidence shows we have not, it would be foolish for us to raise taxes today believing that raising taxes will reduce the deficit. In fact, exactly the opposite will occur.

What I think we do need to do is recognize that next year, even without any new taxes, revenues will increase by more than $60 billion. That same phenomenon has been occurring for the last several years. Revenues have been increasing as a result of the healthy economy, but what have we been doing with the revenues? We clearly have not been applying them to deficit reduction or we would not be standing here in the dilemma that we find ourselves in today. We have been spending them, and all you need to do to understand how we have been spending them is to look at the budget reconciliation bill that will be brought before this House tomorrow. Contained in that budget reconciliation package is $5 billion of brandnew spending on what is called welfare reform. Why do we not just be honest and say it is not welfare reform, rather it is a major welfare increase.

Stated differently, what we are saying is we want to take what little productive income individual American families are able to retain after they work and cut it a little bit more so we can redistribute it a little bit broader.

I want to close by saying it is very, very important for us to have an honest debate about how we go about reducing the deficit, and part of that debate ought to focus on whether or not we as a Federal Government are going to continue in the direction that we have been headed for really four decades now of redistributing the wealth, guaranteeing that every American has equality of earnings, and that is certainly the target that many people have put out there, irrespective of how hard one works, irrespective of how many risks one takes with one's resources. We must look at that issue and ask whether that is really the direction we want to head or whether we are going to re-embrace the basic concept that America is unique because in America we still believe that if you work hard, if you take risks with what you do earn, you ought to be rewarded for your hard work and your risks, because I guarantee you if we continue to move away from that direction we will see a decline in productivity, we will see a decline in new business start-ups, we will see an increase in unemployment, and in short, we will see a return to the quagmire we found ourselves in in 1981 when this Congress decided decisively to change directions.

Two weeks ago when Wall Street tumbled it was sending a message, but the message was not to raise taxes. It was sending a message that we want to reverse the direction that we have been headed during this Congress.

If it were in fact a message that taxes ought to be increased, does it not seem logical that the day after President Reagan made the statement in his news conference last Thursday evening that everything was on the negotiating table except Social Security that the stock market should have skyrocketed the next day? In fact, the next day it was flat. By Monday it has plummeted to the second largest amount in its history, second only to the Monday preceding.

In other words, this market is reacting negatively to the news that we may as a Congress decide to raise taxes once more. I think the reason for that is Wall Street operates on the basic premise that it is healthy when we are going to encourage productivity, when we are going to encourage capital formation, and when we get the Federal Government out of business of redistributing the wealth.

□ 1910

Also, Congress needs to look at the fact that if we see an increase in unemployment that is going to cause our deficit to skyrocket. Most estimates say that every percentage of unemployment translates to roughly $50 billion in new deficits. That is a combination of lost taxes or revenue to the Government because of individuals not working and therefore not being able to pay Federal and Social Security taxes. But also, that triggers new benefits that immediately must be paid because these individuals are now unemployed.

That is the situation that we had back in November of 1982 when unemployment was above 11 percent. We can avoid all that but we will avoid it only if we recognize that we have a deficit today because this Congress has categorically refused not only to freeze spending but it has refused to stop increasing spending.

The President needs to send a loud and clear message, "We will not raise taxes," but more importantly we are going to call for some structural changes in our process of constitutional amendment which requires a balanced budget. Forty-two States already have it. We ought to have it here.

We ought to have a line-item veto in the interim that allows the President to go through these omnibus spending bills so that he can at least hold this body accountable line-item by line-item on the expenditures that we pass here in hopes that no one will be held accountable except in the broadest sense.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. PANETTA (at the request of Mr. FOLEY), for October 27 and the balance of the week, because of illness in the family.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. HENRY) to revise and extend their remarks and include extraneous material:)

Mr. PARRIS, for 5 minutes, today.

Mr. BURTON of Indiana, for 60 minutes, on November 3.

Mr. GINGRICH, for 5 minutes, today.

Mr. SWINDALL, for 60 minutes, today.

Mrs. BENTLEY, for 60 minutes, on November 2.

Mrs. BENTLEY, for 60 minutes, on November 3.

Mrs. BENTLEY, for 60 minutes, on November 10.

(The following Members (at the request of Mr. SMITH of Iowa) to revise and extend their remarks and include extraneous material:)

Mr. STARK, for 5 minutes, today.

Mr. ANNUNZIO, for 60 minutes, today.

Mr. GAYDOS, for 60 minutes, today.

Mr. GONZALEZ, for 60 minutes, on November 2.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

(The following members (at the request of Mr. HENRY of Michigan) and to include extraneous matter:)

Mr. JEFFORDS.
Mr. CHANDLER.
Mr. SOLOMON in two instances.
Mr. CLINGER.
Mr. DONALD E. LUKEN.
Mr. MCCOLLUM.
Mr. CRANE in four instances.
Mr. LOTT.
Mr. SAXTON.
Mr. DANNEMEYER.
Mr. GRADISON.
Mr. RINALDO.
Mr. BROOMFIELD in three instances.
Mr. HOUGHTON.
Mr. RITTER in two instances.
Mr. BEREUTER.
Mr. DUNCAN in two instances.
Mr. GILMAN in three instances.

(The following Members (at the request of Mr. SMITH of Iowa) and to include extraneous matter:)

Mr. LEHMAN of Florida.
Mr. SMITH of Florida.
Mr. APPLEGATE in two instances.
Mr. CLARKE.
Ms. SLAUGHTER of New York.
Mrs. SCHROEDER.
Mr. LIPINSKI.
Mr. RODINO.
Mr. ROE.
Mr. HAWKINS.
Mr. SCHEUER.
Mr. HAMILTON in two instances.
Mr. TALLON.
Mr. LELAND in two instances.
Mr. ERDREICH.
Mr. ORTIZ.
Mr. LEVINE of California.
Mr. YATRON in two instances.
Mr. THOMAS A. LUKEN.
Mr. DELLUMS in two instances.
Mr. MCMILLEN of Maryland in two instances.
Mr. KILDEE.
Mr. RICHARDSON in two instances.
Mr. LANTOS.
Mr. SCHUMER.
Mr. CLAY.
Mr. FAZIO.

SENATE ENROLLED JOINT RESOLUTION SIGNED

The SPEAKER announced his signature to an enrolled joint resolution of the Senate of the following title:

S.J. 171. Joint resolution designating the week beginning November 8, 1987, as National Women Veterans Recognition Week."

BILLS PRESENTED TO THE PRESIDENT

Mr. ANNUNZIO, from the Committee on House Administration, reported that that committee did on the following days present to the President, for his approval, bills of the House of the following titles.

On October 27, 1987:

H.R. 799. An act to designate a segment of the Kings River in California as a wild and scenic river, and for other purposes;

H.R. 2893. An act to reauthorize the Fishermen's Protective Act; and

H.R. 3325. An act to designate the segment of Corridor V in the State of Alabama as the Robert E. (Bob) Jones, Jr. Highway.

On October 28, 1987:

H.R. 1366. An act to provide for the transfer of certain lands in the State of Arizona, and for other purposes, and

H.R. 2937. An act to make miscellaneous technical and minor amendments to laws relating to Indians, and for other purposes.

ADJOURNMENT

Mr. SWINDALL. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 7 o'clock and 12 minutes p.m.), the House adjourned until tomorrow, Thursday, October 29, 1987 at 10 a.m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

2309. A letter from the Acting Secretary of the Army, transmitting the Secretary's determination and findings for other than full and open competition for the acquisition of water, Fort Drum, NY, pursuant to 10 U.S.C. 2304(c)(7); to the Committee on Armed Services.

2310. A letter from the Chairman, Federal Deposit Insurance Corporation, transmitting the Corporation's annual report for the calendar year 1986, pursuant to 12 U.S.C. 1827(a); to the Committee on Banking, Finance and Urban Affairs.

2311. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. ACT 7-94, "Rate of Interest on Judgments and Decrees Temporary Act of 1987", pursuant to D.C. Code section 1-233(c)(1); to the Committee on the District of Columbia.

2312. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. ACT 7-93, "D.C. Hospital Equipment Revenue Bond Act of 1985 Amendment Temporary Act of 1987", pursuant to D.C. Code section 1-233(c)(1); to the Committee on the District of Columbia.

2313. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. ACT 7-92, "Extension of the Moratorium on Retail Service Station Conversions Amendment Temporary Act of 1987", pursuant to D.C. Code section 1-233(c)(1); to the Committee on the District of Columbia.

2314. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. Act 7-91, "D.C. Ceremonial Funds Amendment Temporary Act of 1987", pursuant to D.C. Code section 1-233(c)(1); to the Committee on the District of Columbia.

2315. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. Act 7-90, "Day Care Policy Act of 1979 Amendment Temporary Act of 1987", pursuant to D.C. Code section 1-233(c)(1); to the Committee on the District of Columbia.

2316. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. Act 7-89, "Closing of a Portion of 9th Street, N.W., and a Public Alley in Square 2875, S.O. 86-313, Act of 1987", and Report, pursuant to D.C. Code section 1-233(c)(1); to the Committee on the District of Columbia.

2317. A letter from the Secretaries of Education, and Health and Human Services, transmitting a report to Congress on the nature and effectiveness of Federal, State, and local drug prevention/education programs, prepared in cooperation with the Secretary of Health and Human Services, pursuant to 20 U.S.C. 4642; to the Committee on Education and Labor.

2318. A letter from the Secretary of Education transmitting a copy of the final regulations and notice of invitation for applications for new awards for 1988-89 school year, pursuant to 20 U.S.C. 1232(d)(i); to the Committee on Education and Labor.

2319. A letter from the Secretary, Interstate Commerce Commission, transmitting the Commission's notice that docket no. 40073, South-West Car Parts Company versus Missouri Pacific Railroad Company has extended the time period for serving a final decision nunc pro tunc by an additional 90 days to January 6, 1988, pursuant to 49 U.S.C. 10327(k)(2); to the Committee on Energy and Commerce.

2320. A letter from the Department of Justice transmitting the Department's decision not to defend the constitutionality of the provisions which preclude the labeling and advertising of the alcoholic content of beer, pursuant to 8 U.S.C. 1551 nt.; to the Committee on the Judiciary.

2321. A letter from the Special Counsel, U.S. Merit Systems Protection Board, transmitting the Special Committee's Scientific

Review of Concerns about the Animal Drug Evaluation Process Center for Veterinary Medicine, FDA, pursuant to 5 U.S.C. 1206(b)(5)(A); to the Committee on Post Office and Civil Service.

2322. A letter from the Acting Assistant Secretary of the Army (Civil Works), transmitting a copy of a letter report dated January 1987, that revises the flood control plan for Village Creek, AL, that was recommended by the Chief of Engineers and supersedes the previous letter of March 1, 1984; to the Committee on Public Works and Transportation.

2323. A letter from the Administrator, General Services Administration, transmitting an informational copy of a Report of Building Project Survey for Memphis, TN, pursuant to 40 U.S.C. 610(b); to the Committee on Public Works and Transportation.

2324. A letter from the Executive Secretary, Department of Defense, transmitting the report on Department of Defense procurement from small and other business firms for October 1986 through August 1987, pursuant to 15 U.S.C. 639(d); to the Committee on Small Business.

2325. A letter from the Secretaries of Education, Labor, and Health and Human Services, transmitting a joint report, "Special Report to the U.S. Congress on Substance Abuse Prevention" which identifies the cooperation and coordination among the Departments, the resources efficiently utilized, duplication avoided, and the most complete and effective substance abuse prevention information shared with the States, pursuant to 21 U.S.C. 801 nt.; jointly, to the Committees on Education and Labor and Energy and Commerce.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and references to the proper calendar, as follows:

Mr. WHEAT: Committee on Rules. House Resolution 295. Resolution providing for the consideration of H.R. 1212, a bill to prevent the denial of employment opportunities by prohibiting the use of lie detectors by employers involved in or affecting interstate commerce (Rept. 100-407). Referred to the House Calendar.

Mr. DERRICK: Committee on Rules. House Resolution 296. Resolution providing for the consideration of H.R. 3545, a bill to provide for reconciliation pursuant to section 4 of the concurrent resolution on the budget for the fiscal year 1988 (Rept. 100-408). Referred to the House Calendar.

Mr. HAWKINS: Committee on Education and Labor. H.R. 3436. A bill to amend the Older Americans Act of 1965 to make technical corrections (Rept. 100-409). Referred to the Committee of the Whole House on the State of the Union.

Mr. CHAPPELL: Committee on Appropriations. H.R. 3576. A bill making appropriations for the Department of Defense for the fiscal year ending September 30, 1988, and for other purposes (Rept. 100-410). Referred to the Committee of the Whole House on the State of the Union.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. CHAPPELL:

H.R. 3559. A bill to authorize the acquisition of 25 acres to be used for an administrative headquarters for Canaveral National Seashore; to the Committee on Interior and Insular Affairs.

By Mr. CLAY:

H.R. 3560. A bill to amend the National Labor Relations Act with respect to the right to organize of certain security personnel; to the Committee on Education and Labor.

By Mr. CLINGER:

H.R. 3561. A bill to amend the Internal Revenue Code of 1986 to provide a more lenient treatment for small issuers of tax-exempt bonds with respect to the arbitrage rebate rules and the private activity bond rules; to the Committee on Ways and Means.

By Mr. COELHO (for himself, Mr. Akaka, Mrs. Bentley, Mr. Berman, Mr. Brown of Colorado, Mr. Cheney, Mr. Espy, Mr. DeFazio, Mr. Fazio, Mr. Hastert, Mr. Henry, Mr. Hochbrueckner, Mr. Hoyer, Mr. Lent, Mr. Levine of California, Mr. Lewis of Georgia, Mr. Moody, Mr. Morrison of Connecticut, Mr. Morrison of Washington, Mr. Olin, Mr. Quillen, Mr. Roberts, Mr. Robinson, Mr. Schuette, Mrs. Smith of Nebraska, Mr. Synar, Mr. Weiss, Mr. Dyson, Mr. Whittaker, Mr. Glickman, and Mr. Pepper):

H.R. 3562. A bill to recognize the organization known as the National Academies of Practice; to the Committee on the Judiciary.

By Mr. DORNAN of California (for himself, Mr. Wortley, Mr. Stump, Mr. Badham, and Mr. DeLay):

H.R. 3563. A bill to award a congressional gold medal to Mrs. William J. Casey in honor of the late William J. Casey; to the Committee on Banking, Finance and Urban Affairs.

By Mr. DURBIN (for himself, Mr. Glickman, Mr. Lehman of Florida, Mr. McCloskey, Mr. Gray of Illinois, Mr. Lagomarsino, Mr. Conyers, Mr. Grandy, Mr. Wilson, Mr. Dornan of California, Mr. Mrazek, Mrs. Boxer, Mr. Smith of Florida, Mr. Oberstar, Mr. Lipinski, Mr. Biaggi, Mr. Feighan, Mr. Owens of New York, Mrs. Collins, Mrs. Johnson of Connecticut, Mr. Shumway, Mr. Stallings, Mr. DeFazio, Mr. Weldon, Mr. Nielson of Utah, Mr. Fauntroy, Mr. Bevill, Mr. Espy, Mr. Panetta, Mr. Valentine, Mr. Bates, Mr. Kildee, Mr. Hochbrueckner, Mr. Fazio, Mr. Davis of Illinois, Mrs. Roukema, Mr. Richardson, Mr. Skaggs, Mr. Penny, Mr. Visclosky, Mr. Donnelly, Mr. Baker, Mr. Hayes of Illinois, Mr. Slattery, Mr. Sawyer, Mrs. Bentley, Mr. Edwards of Oklahoma, and Mr. Fields):

H.R. 3564. A bill to amend the Federal Aviation Act of 1958 to establish penalties for tampering with smoke detection devices; to the Committee on Public Works and Transportation.

By Mr. JACOBS:

H.R. 3565. A bill to provide for treatment of Federal pay in the same manner as non-Federal pay with respect to garnishment and other legal process; to the Committee on Post Office and Civil Service.

By Mr. JEFFORDS (for himself and Mr. Henry):

H.R. 3566. A bill to expand efforts to inform workers of hazards in the work place, to train workers in the safe handling of such hazards, to establish an interim risk notification program and to create a commission to report to Congress on the benefits and costs of risk notification; to the Committee on Education and Labor.

By Mr. MOLINARI:

H.R. 3567. A bill to amend title 49, United States Code, to make the term of service of the Administrator of the Federal Aviation Administration 7 years; to the Committee on Public Works and Transportation.

By Mr. MRAZEK (for himself and Mr. Ridge):

H.R. 3568. A bill to permit the immigration of Vietnamese Americans to the United States; to the Committee on the Judiciary.

By Mr. NOWAK:

H.R. 3569. A bill to establish a Motor Carrier Administration in the Department of Transportation; to the Committee on Public Works and Transportation.

By Mr. RANGEL:

H.R. 3570. A bill to amend the Internal Revenue Code of 1986 to provide that gross income of an individual shall not include income from United States savings bonds which are transferred to an education institution as payment for tuition and fees; to the Committee on Ways and Means.

By Mr. ROBINSON:

H.R. 3571. A bill to provide for the development and implementation of programs for children and youth camp safety; to the Committee on Education and Labor.

H.R. 3572. A bill to direct the Secretary of the Army to modify the boundaries of the Little Rock Division of the Corps of Engineers, and for other purposes; to the Committee on Public Works and Transportation.

By Mr. STARK:

H.R. 3573. A bill to amend title XVIII of the Social Security Act to provide for coverage of screening mammography under the Medicare Program; jointly, to the Committees on Ways and Means and Energy and Commerce.

By Mr. TORRICELLI (for himself, Mr. Florio, Mr. Gallo, Mrs. Roukema, and Mr. Guarini):

H.R. 3574. A bill to amend the Federal Aviation Act of 1958 to prohibit the takeoffs and landings of subsonic aircraft exceeding certain noise limits; to the Committee on Public Works and Transportation.

By Mr. APPLEGATE (for himself, Mr. McEwen and Mr. Watkins):

H.J. Res. 388. Joint resolution designating April 9, 1988, as "National Former Prisoner of War Recognition Day"; to the Committee on Post Office and Civil Service.

By Mr. HAWKINS (for himself and Mr. Dreier of California):

H.J. Res. 389. Joint resolution to designate June 1988 as "National Recycling Month"; to the Committee on Post Office and Civil Service.

By Mr. LANTOS (for himself, Mr. Daub, Ms. Pelosi, Mr. Lewis of California, Mr. Murphy, Mr. Sunia, Ms. Kaptur, and Mr. Dymally):

H.J. Res. 390. Joint resolution designating November 13–19, 1988, as "National Cult Awareness Week"; to the Committee on Post Office and Civil Service.

By Mr. ROE:

H.J. Res. 391. Joint resolution to designate the period commencing on May 2, 1988, and ending on May 8, 1988, as "National Drinking Water Week"; to the Committee on Post Office and Civil Service.

By Mr. RUSSO:

H.J. Res. 392. Joint resolution proposing an amendment to the Constitution of the United States to protect unborn children and other persons; to the Committee on the Judiciary.

By Mr. LOTT (for himself and Mr. Walker):

H. Res. 297. Resolution to amend the rules of the House of Representatives to require that the report on any measure reported from a committee shall include, in the case of a recorded vote, the names of those Members voting for and against ordering the measure reported to the House, including a designation of those voting by proxy; and, in the case of a measure ordered reported by a nonrecord vote, the report shall include the names of those Members actually present at the time the measure is ordered reported; to the Committee on Rules.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII.

Miss SCHNEIDER introduced a bill (H.R. 3575) for the relief of Vincent Ricci; which was referred to the Committee on Armed Services.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 39: Mr. Matsui.

H.R. 81: Mr. Flake.

H.R. 190: Mr. Nielson of Utah.

H.R. 276: Mrs. Collins.

H.R. 588: Mr. Blaz, Mr. Conyers, Mr. Bilbray, Mr. Gunderson, Mr. Dannemeyer, Mr. Wise, Mrs. Martin of Illinois, Mr. Henry, Mr. Jeffords, Mr. Buechner, and Mr. Brown of California.

H.R. 1007: Mr. Moorhead, Mr. Saxton, Mr. Gonzalez, Mr. DeWine, Mr. Schuette, Mr. McCurdy, Mr. Robinson, Mr. Applegate, Mr. Harris, Mr. Ray, Mr. Bonior of Michigan, Mr. Swindall, Mr. Morrison of Washington, Mr. Bryant, and Mr. Emerson.

H.R. 1036: Mr. Feighan and Mr. Borski.

H.R. 1038: Mr. Nielson of Utah, and Mrs. Martin of Illinois.

H.R. 1119: Mr. Miller of California.

H.R. 1213: Mr. Clarke.

H.R. 1259: Mr. Frenzel.

H.R. 1313: Mr. McDade, Mr. Gallegly, and Mr. Roe.

H.R. 1666: Mr. Ballenger.

H.R. 1700: Mr. Hayes of Illinois.

H.R. 1782: Mr. Courter, Mr. Solomon, Mr. Hatcher, Mr. Stokes, and Mr. Marlenee.

H.R. 1842: Mr. Gaydos, Mr. Torricelli, Mr. Rinaldo, Mr. Howard, Mr. Gallo, Mr. Wilson, Mr. Dwyer of New Jersey, Mr. Traxler, Mr. Roe, Mr. Guarini, and Mr. Hamilton.

H.R. 1917: Mr. Lancaster.

H.R. 2138: Mr. Eckart and Mr. Murtha.

H.R. 2151: Mr. Rinaldo, Ms. Oakar, Mr. Howard, and Mr. Markey.

H.R. 2173: Mr. Mfume and Mr. Hayes of Illinois.

H.R. 2248: Ms. Snowe and Mr. Skaggs.

H.R. 2405: Mr. Lantos.

H.R. 2433: Mr. Kolter.

H.R. 2517: Mr. Cardin.

H.R. 2649: Mr. English, Mrs. Collins, Mr. Owens of Utah,, Mr. Howard, Mr. Brooks, and Mr. Young of Florida.

H.R. 2692: Mr. Carper, Mrs. Morella, Mrs. Kennelly, Mr. Synar, and Mr. LaFalce.

H.R. 2787: Mr. Cardin.

H.R. 2794: Mr. Marlenee.

H.R. 2800: Mr. Thomas A. Luken, Mr. Anthony, Mr. Blaz, Mr. Coelho, Mr. Florio, Mr. Houghton, Mr. Kanjorski, Mr. Bonker, Mr. Levine of California, Mr. MacKay, Mr. Traficant, Mr. Schulze, Mr. Lipinski, Mr. Buechner, Mr. Yatron, Mr. Mineta, Mr. Dixon, Mr. Carper, Mr. Cardin, Mr. Gonzalez, Mr. Boucher, Mr. Anderson, Mr. Bilbray, Mr. Hamilton, Mr. Penny, and Mr. Jenkins.

H.R. 2879: Mr. Mavroules.

H.R. 2928: Mr. Atkins and Mr. Ridge.

H.R. 2934: Mr. Kastenmeier, Mr. Frank, and Mr. Wise.

H.R. 2959: Mr. Smith of Florida, Mr. Akaka, Mr. English, Mr. Thomas of California, Mr. Lantos, Mr. Hughes, Mr. Hyde, Mrs. Boxer, Mr. Nielson of Utah, Mr. Foglietta, Mr. Kennedy, Mr. Packard, Mrs. Collins, Mr. Edwards of Oklahoma, Mr. Fish, Mr. Lancaster, and Mrs. Martin of Illinois.

H.R. 2972: Mr. Fuster and Mr. Tallon.

H.R. 3010: Mr. Fish, Ms. Pelosi, and Mr. Ridge.

H.R. 3130: Mr. Kolter, Mrs. Lloyd, Mr. Espy, Mrs. Bentley, Mr. Solarz, Ms. Pelosi, Mr. Frost, Mr. Atkins, Mr. Hutto, and Mr. Scheuer.

H.R. 3160: Mr. Nielson of Utah, and Mr. Wise.

H.R. 3171: Mr. Roe, Mr. Boehlert, Mr. Lewis of Georgia, Mr. Matsui; Mr. Wortley, Mr. Daub, Mr. Horton, Mrs. Martin of Illinois, Mr. LaFalce, Mr. Valentine, Mr. Biaggi, Mr. Blaz, Mr. Thomas of Georgia, Mr. Obey, Mrs. Boggs, Mr. AuCoin, Mr. Durbin, and Mr. Lowery of California.

H.R. 3179: Mr. Martinez, Mr. Weiss, Mrs. Collins, Mr. Dwyer of New Jersey, Mr. LaFalce, Mr. Solarz, and Mr. Gilman.

H.R. 3180: Mr. Lagomarsino and Mr. Edwards of Oklahoma.

H.R. 3280: Mr. Boehlert.

H.R. 3286: Mr. Lehman of Florida, Mr. Wise, Mr. Hayes of Illinois, Mr. Perkins, Mr. Penny, Mr. Robinson, Mr. Murphy, Mr. Leland, Mr. Levin of Michigan, Mr. Fauntroy, Mr. Evans, Mr. Foglietta, Mr. Howard, Mr. Ford of Michigan, Mr. Kildee, Mrs. Kennelly, Mr. Gonzalez, Mr. Jontz, Mr. Solarz, Mr. Lowry of Washington, Mrs. Collins, Mr. Richardson, Mr. Clay, Mr. Sawyer, Mr. Biaggi, Mrs. Johnson of Connecticut, Mr. Goodling, Mr. Atkins, Mr. Fazio, Mr. Jeffords, Mr. Mrazek, Mr. Owens of New York, Mr. Coleman of Missouri, Mr. Visclosky, Mr. Gunderson, Miss Schneider, Mr. Matsui, Mr. Rodino, Ms. Kaptur, and Mr. Chandler.

H.R. 3294: Mr. Boehlert and Mr. Jacobs.

H.R. 3344: Mr. Gilman.

H.R. 3371: Mr. Espy.

H.R. 3380: Mr. Fuster and Mr. Tallon.

H.R. 3442: Mr. Davis of Illinois, Mr. Lagomarsino, Mr. McEwen, Mr. Oxley, Mr. Daub, and Mr. Walker.

H.R. 3478: Mr. Mavroules.

H.R. 3485: Mr. Bustamante, Mr. Nielson of Utah, and Mr. Badham.

H.J. Res. 303: Mr. Weiss, Mr. Sikorski, Mr. Wilson, Mr. McDade, Mr. Lancaster, and Mr. Kemp.

H.J. Res. 359: Mr. Lipinksi, Mr. Scheuer, Mr. Panetta, and Mr. Fazio.

H.J. Res. 367: Mr. Traficant.

H.J. Res. 384: Mr. McCollum, Mr. Bustamante, Mr. Quillen, Mr. Wortley, and Mr. Skelton.

H. Con. Res. 168: Mr. Edwards of California, Ms. Kaptur, Mr. Frost, Mr. Rodino, Mr. Oberstar, Mr. Stark, Mr. Hall of Ohio, Mr. Owens of New York, Miss Schneider, and Mr. Levine of California.

H. Con. Res. 201: Mr. Burton of Indiana, Mr. Inhofe, Mr. Upton, Mr. Lagomarsino, Mr. Fields, and Mr. Badham.

H. Res. 251: Mr. Hochbrueckner.

H. Res. 271: Mr. Mack, Mr. Tauke, Mr. Fields, Mr. Olin, Mr. Carper, Mr. Hiler, Mr. Henry, and Mrs. Martin of Illinois.

EXTENSIONS OF REMARKS

HAVE WE FALLEN SHORT OF OUR FOUNDING FATHERS' VISION?

HON. PHILIP M. CRANE

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 28, 1987

Mr. CRANE. Mr. Speaker, I would like to ask my colleagues to consider a question that has been brought to my attention: "After 200 years, have we allowed self-government to fall short of our Founding Fathers' vision?" Mr. Louis Dehmlow cogently advances the theory that we have indeed fallen short. He believes that self-government is in jeopardy due to three primary reasons, "overtaxation with misrepresentation," "the lawyering of America," and the rise of a "less interested, less informed electorate." I would like to submit Mr. Dehmlow's articles as an alarming perspective to be considered in conjunction with the celebration of the bicentennial of the U.S. Constitution.

Mr. Dehmlow astutely points out that modern politicians have not only created an omnipotent bureaucracy, but that they have, in fact, colluded with these bureaucrats in a refusal to control Government spending. This overspending has resulted in what Mr. Dehmlow terms "overtaxation with misrepresentation." Mr. Dehmlow alerts Government officials to the fact that they are spending funds that are not available, and are then misusing their powers by placing a tax burden on their constituents in an attempt to counterbalance their own misappropriations.

Another area where Mr. Dehmlow is correct in his belief that we have failed our Founding Fathers is in the "lawyering of America." In Mr. Dehmlow's view, the politicians and the bureaucrats cooperate with the lawyers toward the inevitable end of litigating America. Mr. Dehmlow warns that "ignorance of the law is the great blindness in our land * * * in this way our lawyers have become our rulers." In the present litigious and complicated system, the lawyers have the upper hand, for they are the only members of society who can "pretend to know what should be done." Thus, the majority of the public sector must acquiesce to those who seemingly possess all of the answers.

Finally, Mr. Dehmlow accuses the American Government of alienating the populace, and thus producing among the American people increased apathy. The power of the Government has so increased that a distrust of the powers that be has developed among the citizenry. In fairness, Mr. Dehmlow does not place blame exclusively upon the Government. He also expresses intense dissatisfaction with voters who are ill-informed as to the issues that are before them, as well as with a system of education that makes accommodation to mediocrity. He goes on to suggest that miseducation and ignorance are weakening not only the American system, but are indeed jeopardizing the values upon which our Founding Fathers built this great Nation.

Ironically as it might seem, while we are in the process of celebrating the 200th anniversary of our system of government, we should also consider those areas in which we have dangerously strayed from our Founding Fathers' constitutional blueprint. Before it is too late, Americans must examine the present state of our Nation and determine if we have indeed failed to meet the challenge "to give meaning to our God-given rights by advancing our free society." Mr. Dehmlow's articles follow:

[From Channels, National Association of Wholesaler-Distributors, July 1987]

WE, THE PEOPLE—PART I

(By Louis H.T. Dehmlow)

Okay, first, a pop quiz: Who was president of the United States during the Civil War—Joseph Stalin or Winston Churchill?

Such a question would have been laughable not so long ago, but, nowadays, I'm not sure. A recent survey found that two-thirds of American eleventh-graders could not place the Civil War in the correct half-century, and half of them could not identify Joseph Stalin or Winston Churchill. Another study revealed that twenty percent of American sixth-graders could not locate the United States on a map.

We've all had moments when we have felt that "Ignorance is bliss," but I don't think that any of us would like to see that become our new national motto.

John Adams never had heard of Stalin or Churchill either, since they hadn't been born yet, but he understood that ignorance about such things in the future would undermine America's new form of government. "Liberty cannot be preserved," he warned, "without a general knowledge among the people."

As millions of Americans prepare for a gala celebration of the two hundredth year of our Constitution, I must admit that there are some very un-festive questions bothering me. I don't wish to spoil anyone's party, but, is there, in fact, "a general knowledge among the people" so that our democratic republic is secure? Is our constitutional system of checks and balances still successful in limiting the power and growth of government?

Before I buy a single bicentennial souvenir, or get misty-eyed from a thirty-second TV spot on our national heritage, I really want to think about these questions honestly. Maybe you agree with me that there couldn't be a better time to re-examine our system of self-government than right now * * * in this Bicentennial year for our Constitution.

After all, the founding fathers did not risk their lives and reputations to create a document that would be celebrated as something symbolic and sentimental. They wanted just the opposite; they wanted to devise a new form of government that would live on as a challenge to each succeeding generation. To achieve that, they did something revolutionary—they made each of us a member of the ruling class. They made citizenship the most important political office under the Constitution.

But are we living up to our responsibility as self-rulers—to keep this a government of, by, and for the people?

Nearly everyone is familiar with Ben Franklin's wry statement that nothing is certain but death and taxes. But I recently discovered that this observation was part of a larger, more serious statement, expressed in a letter he wrote to a friend in France in 1789:

"Our Constitution is in actual operation; everything appears to promise that it will last; but nothing in this world is certain but death and taxes."

If Franklin were alive today undoubtedly he would be impressed to learn that America's new republic has become the oldest existing government in the world. It has survived and prospered through all kinds of change because the central truths upon which it was based have not changed. Its Constitution has proven resilient because it was based on both sides of human nature: On the reality of self-interest as man's principal motivation, and on the ideal of virtue as man's proper goal.

Yet even as our founders showed tremendous insight into principles—understanding which ideas worked and which didn't—they knew they could not anticipate the inevitable economic, political and social changes to come. That is why they were careful to include a provision on how the Constitution itself could be amended, and that is why they devised a system of checks and balances to allow time for patient deliberation before a final judgment was made.

Most importantly, that is why they placed as much power as possible not with the government but with that agency in human history most responsible for change and improvement: the individual.

In placing individual freedom above the convenience of the state, the founders set in motion an individualism that would transform the world. In the two succeeding centuries, America's inventors and entrepreneurs have made unprecedented breakthroughs in science, transportation, medicine, communications, education, business, and the arts.

It is now our challenge, as individual citizens, to ask ourselves if we have made similar progress in improving government itself. Or have we allowed self-government in this country to fall short of our founders' vision?

OVER-TAXATION WITH MISREPRESENTATION

Probably the most obvious case of our government not living up to the hopes of our founders is the current burden of taxes on the average citizen. That burden not only is far beyond what our founders could have imagined two centuries ago, it is far beyond what anyone could have imagined two generations ago. After the "temporary" federal income tax first was proposed, an opponent of the tax was ridiculed in Congress when he warned that its adoption

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

could ultimately lead to people being taxed as high as ten percent of their income!

The American Revolution, of course, was fueled partly by outrage over such taxes as the one imposed on tea. The Declaration of Independence made clear that "the history of the present King of Great Britain is a history of repeated injuries and usurpations, all having a direct object the establishment of an absolute tyranny over these states . . . He has erected a multitude of new offices, and sent hither swarms of officers to harass our people and eat out their substance."

If only they had known the IRS.

In modern America, the amount of our earnings that goes to the government is hidden in all kinds of ingenious ways to diminish our pain—payroll deductions, sales taxes, license fees, Social Security—even inflation, the most insidious form of taxation. The average taxpayer works more than four months of the year to pay for government—one-third of his life, and growing! And now leading politicians are pushing yet another form of taxation: ordering businesses to provide their employees "mandated benefits" as dictated by the government.

The reason for over-taxation is overspending. Liberals like to point to unnecessary spending at the Pentagon. Conservatives like to point to the skyrocketing costs of "entitlements." Both are right. And the number of people receiving a check from the government will, at this rate, eventually exceed the number of people who do not receive a check.

The reason that spending has gotten out of control is to be found in the liberals' eagerness to address social problems, and in the conservatives' eagerness to strengthen our national defense. Both have willingly given enormous power to new bureaucracy, far beyond anything envisioned by our founders.

Our founders wisely devised a system of checks and balances to keep government fighting itself so it wouldn't "eat out our substance" instead and take away our liberties. But modern politicians have given us bureaucracy more powerful than any branch of government. It can act as a legislative branch in creating new regulations, as an executive branch in enforcing them and as a judicial branch in interpreting them.

I remember being involved in an effort to fight some ridiculous regulations that were harming my wholesale distribution commodity line in 1974. I talked with several congressmen who agreed the regulations were foolish and injurious, but said they couldn't do anything about it. Years later, I happened to sit next to a high-level bureaucrat at a dinner and discovered that he worked in the agency responsible. I told him the story of what happened and he said, "The mistake you made was to go to the elected officials. We bureaucrats really run Washington."

The American writer, Mary McCarthy, shed light on this problem when she wrote, "Bureaucracy, the rule of no one, has become the modern form of despotism." And that is the difficulty of fighting the cancerous growth of bureaucracy—it's faceless. It is, indeed, "the rule of no one," so who can you fight? Who can you organize public opinion against?

The cry of the American people two hundred years ago was that "taxation without representation was tyranny." But what is over-taxation with misrepresentation?

Surely we have not deliberately elected representatives who would make a mockery of Jefferson's principle that government is best which governs least. So why do we elect people who refuse to control spending, and who, in effect, collude with other politicians to over-tax and over-regulate us?

The facts seem paradoxical: According to opinion polls, Americans don't have a very high opinion of Congress as an institution. Yet 95% of incumbent House members seeking re-election are re-elected! Think about that. We say that generally we don't trust Congress, yet we all believe our own congressman is an exception. Why is that?

Well, each incumbent congressman has tremendous tax-paid advantages over any challenger. Incumbents can use tax money to mail correspondence telling their constituents all the wonderful things they are doing for motherhood and apple pie . . . but rarely anything indicating how they actually vote on controversial issues. They have tax-paid staff helping them, in effect, campaign. And any time a new federal project is to be announced for their district, the relevant government agency makes sure the incumbent can announce it first so voters assume it's his or her accomplishment.

How appalling this would be to men like Madison and Jefferson. Their complaints about King George seem like nitpicking by comparison. They never could have imagined that "porkbarrel" spending of the taxpayers' money would be used by elected representatives to influence voters. They conceived of public service as a temporary sacrifice that people would make for the good of their coutnry, and then they would return home to their chosen profession and live with the effects of their decisions.

"Career politicians" did not fit into their vision. But then, to be fair, neither did they imagine that taxpayers would turn into a "silent majority."

[From Channels, National Association of Wholesaler-Distributors, August 1987]

WE, THE PEOPLE—PART II

(America celebrates the bicentennial of the Constitution in 1987. In September, millions of people will be attending parties and buying souvenirs to commemorate this wondrous event. But, before the fireworks begin, we should honestly try to answer History's unspoken question to us: "After 200 years, have we allowed self-government to fall short of our founders' vision?". In last month's column, Louis Dehmlow made the case that we indeed have fallen short. He said we have allowed career politicians and an ever-expanding bureaucracy to impose "over-taxation with misrepresentation." In the second half of his essay, "We, the People," Louis Dehmlow says there are two additional areas where self-government is in jeopardy: first, we suffer "the lawyering of America"; second, we have a less interested, less informed electorate.)

WE, THE LAWYERS

Another area where we have allowed our democratic republic to fall short of our founders' vision is in the lawyering of America.

If career politicians and professional bureaucrats have hurt America's productivity, keep in mind they couldn't have done it without their partners, the litigious lawyers. Together, these three comprise a kind of Bermuda Triangle, wherein countless entrepreneurs and liberties sink without a trace.

Two-thirds of all the world's lawyers practice here in the United States. Some 40,000 new graduates come out of law schools each year to join the more than 700,000 already practicing. Compare that to a country like Japan, where there are only 13,000. We have one lawyer for every 360 people; they have one for ever 9,300. Is it any wonder that Japan can boast a spirit of cooperation rather than contention?

American lawyers have taken the idea of the adversary process in the courtroom and applied it to everything outside the courtroom, too. Adversary law certainly is legitimate, but when you have 700,000 people engaging in it, you're asking for trouble. Indeed, we're now spending more than $30 billion annually in legal fees in this country. That kind of "competitiveness" stifles the economic competitiveness America needs.

In the private sector, lawyers keep busy by litigating us into a worsening liability crisis. In the public sector, though, lawyers have kept busy trying to regulate us from the cradle to an early grave. The daily Federal Register, which records most government regulations, will total about 60,000 pages this year. That is more than twice the Encyclopedia Britanica. Yet Congress will spend more than $1 billion this year drafting more laws.

Our founders understood that individual rights were only safe if ours was a system of laws, not men. But they could not have imagined it would evolve into a system where things would become so complicated and litigious that only lawyers could pretend to know what should be done. "Ignorance of the law is no excuse," we are warned. But, in truth, ignorance of the law is the great blindness in our land. The proverb says, in the land of the blind the one-eyed will be king. In this way, our lawyers have become our rulers.

A LESS INFORMED ELECTORATE

Self-government falls short of our founders' vision in a third way: the electorate does not have the "general knowledge" John Adams said was essential to a free society.

The percentage of eligible American voters actually voting has been in decline for a number of decades. Now, only one-half of eligible voters vote. Perhaps part of the reason fewer citizens try to be well-informed has to do with apathy. A certain amount of apathy and alienation is to be expected in a democracy, since it is a form of government based on skepticism, doubt, self-criticism and distrust of power. But it goes beyond that. A great many voters in the last two generations have put their hopes in a great leader coming to rescue us. Such hopes inevitably crash, whether in a democracy or a dictatorship, because true progress comes from individualism and community, not from politics and demagoguery.

Part of our alienation from politics also is a result of the federal government growing more and more distant as it has become more and more powerful. Americans long ago decided "you can't beat City Hall," but how much truer that seems about Washington. Sadly, our own government has come to seem as distant to most Americans as the British Parliament seemed to colonial Americans two centuries ago. Perhaps more so.

Yet all of this shouldn't really matter. No matter how powerless we may feel, millions of Americans have fought and died for freedom and self-government. It is our duty, is it not, to exercise that privilege?

But, wait . . . Do we really want people to vote if they don't care about or understand the issues. A voter may think his ignorance is bliss, but frankly, on a mass scale, it scares the hell out of me.

Clearly, our country is suffering from serious mis-education. It's not just a matter of our students not knowing who Joseph Stalin was; they also don't know about his politics of liquidating his enemies. Our children have been taught a great deal about all of the injustices in America, but they don't know why the boat people left Vietnam and why there is a Berlin Wall. Is it any wonder that in opinion polls Gorbachev rates more trustworthy than many Western elected officials?

In popular curriculum materials, democratic values are characterized as "ethnocentric." In other words, all cultures and political systems are equally valid. No one is better or worse, only "different." But this value-free-education goes beyond our schools. The mass media is an equal part of it. Television, movies, video cassettes and rock music have produced what a Harvard sociologist called "sensate culture." The message is: Feel good. It doesn't really matter what you think.

Few classroom teachers can compete with this bombardment of sounds and images. And the values they need in their students—like integrity and industry—are under attack in this mass culture.

Recently, in scandal after scandal, we have seen the destructive power of what I call "the noose media." The resulting disillusionment of the American people—"a second malaise" was the way The Washington Post described the new mood—shows the power of the press. But where is that power in helping to inform people about the nonsensational? When we look past the superficial "news," what do we find that will improve our "general knowledge"?

Marshall McLuhan observed in the 1970s, that instant electronic communication was so powerful that the world was, in effect, shrinking into a "global village." He said the power of television was so great that the printed word was becoming obsolete. Yet he made another observation, little known, that should make us pause before welcoming this "brave new world." He said, "America is the only country ever founded on the printed word."

Will our grandchildren learn what those printed words were? Will they learn about a Constitution not created at the end of a thirty-minute TV show but as the capstone of thought beginning with a battle in Runnymede, England in 1215? I want them to know . . .

The English king found himself embattled back then. His noblemen said, wait, before we would risk our lives for you, there are certain concessions you must make. You may claim to have the divine right to rule, but we want you to guarantee us some rights as well. And so the Magna Carta, "the great charter," was negotiated. It established that the power of the king was not supreme. Later, the charter would be interpreted as the guarantee of many other liberties, including trial by jury.

The next date our grandchildren should know is 1679, when England formally recognized the writ of habeas corpus. This required a prosecutor to bring the accused into court to answer the charges against him. This safeguard against illegal imprisonment was highly revered by American colonists and was one of their grievances against the British.

Finally, they should remember 1689, when the British Bill of Rights was declared. It placed the monarchy upon a constitutional and parliamentary basis, removing from it any aura of divine right.

In these three documents, our founders saw vital principles about man's relationship to government, which they clearly defined in our own Constitution. And to make sure that relationship was clear, the first thing they did after the Constitution was ratified was to add the Bill of Rights, guaranteeing that "the rights of the people shall not be infringed."

The founders believed that God did not give any ruler a right to govern, but rather gave to all of us the right to be free. So, in America, we recognized for the first time that "rights" began with citizens, who then constituted government to protect those rights. This was the American Revolution—the triumph of an idea. It remains our challenge, as individuals, to give meaning to our God-given rights by advancing our free society. In this age, it is not a challenge easily met. Thomas Paine could just as accurately have been describing our own generation when he wrote, "These are the times that try men's souls. . . ."

But in this visionary document, the American Constitution, we have principles to guide us and sustain us. Let us draw from those principles the hope and inspiration to truly keep alive this spirit of "a new nation, conceived in liberty."

COMMUNIST SANDINISTA BACKED PR FIRM SPEARHEADS ANTI-CONTRA CAMPAIGN

HON. DONALD E. "BUZ" LUKENS

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 28, 1987

Mr. DONALD E. LUKENS. Mr. Speaker, I rise today to share with my colleagues revealing two-part articles from the Washington Times, October 19 and 20, 1987.

The author examines why history's most popular modern President has been unable to solidify support for Contra aid. He concludes that a group called Fenton Communications has successfully "romanced and manipulated" the U.S. media to support leftist, anti-Reagan, anti-Contra policies.

The group's founder, David S. Fenton, boasts a history of radical leftwing activities. He was a former member of the White Panther Party, a radical 1960's group modeled after the militant Black Panther Party. Their motto was "Rock 'n' roll, drugs and [sex] in the streets."

Clients of Fenton Communications include: Maurice Bishop, Former Prime Minister of Grenada; Miguel d'Escoto, Nicaraguan Foreign Minister; Oliver Tambo, President of the African National Congress; and Guillermo Ungo, Leader of the Salvadoran Marxist Farabundo Marti National Liberation Front.

It distresses me to know how the likes of a David Fenton has succeeded in brainwashing so many of my colleagues.

[From the Washington Times, Oct. 19, 1987]

PR FIRM SPEARHEADS ANTI-CONTRA CAMPAIGN

(By Don Kowet)

Sometime between Nov. 7 and Thanksgiving, the Reagan administration will begin an uphill battle in Congress for an additional $270 million to aid the Nicaraguan resistance.

Why has the most popular president in modern U.S. history been unable to muster broader public and congressional support for his passionately pro-Contra policy?

Part of the answer may be a small public relations firm, Fenton Communications, with offices here and in New York City.

Fenton Communications—the brainchild of David S. Fenton, a former '70s radical and Rolling Stone magazine staffer—has a history of left-wing advocacy.

Between 1982 and 1984, the firm served briefly as the registered foreign agent of the Nicaraguan Sandinista government, Andreas Papandreou's Greece and Maurice Bishop's Grenada. Since June 1986, Fenton has been registered with the U.S. Justice Department as a foreign agent of Marxist Angola, currently receiving a retainer of $16,500 per month.

Fenton has organized news conferences and U.S. publicity tours for such icons of the left as African National Congress President Oliver Tambo and the Salvadoran Farabundo Marti National Liberation Front's Guillermo Ungo. It also arranged British Labour Party leader Neil Kinnock's latest U.S. visit and CIA renegade Philip Agee's recent book tour.

Perhaps most significantly, however, interviews with more than a dozen sources—including activists for and against Contra aid, plus former radicals—suggest that Fenton is the pivotal coordinator of a successful, ongoing nationwide campaign to massage the U.S. media with good news from Managua.

Fenton Communications' pro-Sandinista connections include links with:

A shadowy, non-profit group that possibly funds some of Fenton's for-profit activities.

A San Francisco-based organization targeting with television ads members of Congress considered "swing" votes on Contra aid.

A network of anti-Contra aid activists with ties to the Washington-based, leftist think tank the Insitute for Policy Studies.

In 1986 alone, Fenton was hired to focus media attention on three of the West Germans allegedly "kidnapped" in Nicaragua by the resistance; the Christic Institute-backed lawsuit charging resistance leaders with a criminal conspiracy involving drug-smuggling, gun-running and murder; the pro-Sandinista "Quest for Peace" coalition's fund-raising campaign, and the four Vietnam veterans' "fast for life" on the steps of the Capitol.

This year, Fenton Communications has been publicizing the efforts of a coalition called "Countdown '87," which has sponsored rock concerts in Washington, Los Angeles and New York to fight further funding to the Nicaraguan resistance and has announced a $1 million anti-aid television ad campaign.

Despite repeated requests, Mr. Fenton, the 35-year-old president and founder of Fenton Communications, refused to be interviewed for this article. Nick Allen, director of Fenton's Washington office, also declined to be interviewed.

The relationship between Fenton Communications and the tax-exempt Central America Media Education Project—an organization that channels "information" on political and military developments in Central American countries to national media outlets—is a curious one.

According to a fund-raising letter written by radical film-maker Haskell Wexler, the media projects "works with" Witness for Peace, Medical Aid for El Salvador, the Washington Office on Latin America, the National Sanctuary Defense Fund, the Christic Institute, the Institute for Policy Studies "and dozens of others."

Mr. Wexler writes further that Mr. Fenton and Mr. Allen "directly" supervise "the day-to-day work of the media project," which Fenton Communications "carries out."

The media project, notes Mr. Wexler, isn't burdened by "all the usual organizational overhead of an office staff, phones, etc."

Every day, "media project staff" members meet with journalists, "pitching our story ideas," he says. Every week, "the media project" telephones reporters based in Nicaragua, Honduras and El Salvador "to urge them to cover stories that are not being covered," the letter continues.

Mr. Wexler touts the media project's triumphs, including "major stories" on all three nightly network newscasts and "Donahue" and "front-page articles in The New York Times, The Washington Post and other major newspapers."

Mr. Wexler's fund-raiser ends with a collage of major articles—several of them front-pagers—sparked by the media project, including Don Shannon's 1984 Los Angeles Times piece titled "Exiles Linked to Salvador Death Squads."

"The Central America Media *what*?" said Mr. Shannon in an interview. "I have never heard of it, and I have no idea what that is. The way I got that story was I got a call from someone at Fenton Communications who told me [former U.S. Ambassador to El Salvador] Robert White was giving a news conference."

Several other reporters denied knowing about the media project, instead citing Fenton Communications as the catalyst of their stories.

Gary Moore, a former Atlanta Constitution newspaper reporter writing a book about Nicaragua, said he recently heard about the media project for the first time when he telephoned to ask who had paid Fenton's fees for a Fenton-arranged March 7, 1985, press conference releasing the "Brody Report," cataloging alleged Contra abuses.

Mr. Moore said he was told by a Fenton staffer that the "money for that press conference was paid out of Central America Media Education Project funds."

"Heather Foote [Washington Office on Latin America]" is listed by Mr. Wexler as a media project advisory board member. In an interview, however, Miss Foote (now with the Presbyterian Church's Washington Office) said she did not have a telephone number for the media project and, for that matter, wasn't even sure if she was a board member anymore. "It's done out of Fenton," Ms. Foote said.

Advisory board member William LeoGrande of American University said he didn't even remember when the last board meeting took place.

Margery Tabankin, director of the Washington-based Arca Foundation, is a media project board member. Arca's 1985/86 annual report lists a $15,000 grant to the media project, donated through The Youth Project. Miss Tabankin confirmed in an interview that until 1977, when she became director of the Carter administration's VISTA (Volunteers In Service To America) program, she was executive director of The Youth Project.

The Youth Project—a left-leaning, Washington-based tax-exempt organization that characterizes its role as "working for social justice and peace by supporting grass-roots groups and building citizens' movements"—is a major source of funding for the Central America Media Education Project.

According to its annual report for the 1985-86 fiscal year, The Youth Project contributed "$95,000 in supplemental funds committed from 12 sources and $51,500 from individual contributors" to the media project. This total of $146,500—by far the largest total Youth Project grant to a single organization—was supplemented by another $20,000 from the Circle Fund, directly administered by The Youth Project.

The Youth Project and its donor-advised funds are perennial contributors to the Institute for Policy Studies and IPS spinoffs. IPS Direc-media project board member.

Mr. Wexler and IPS Fellow Saul Landau co-produced the 1983 film "Target Nicaragua" about alleged CIA covert action aimed at overthrowing the Saninistas. Sources said that Fenton Communications represented Mr. Wexler and Mr. Landau on their publicity tour.

"David Fenton has very good connections, especially at The New York Times with [op-ed page editor] Robert Semple," said Scott Powell, a conservative critic of IPS whose book about the think tank, "Covert Cadres," is about to be published. "Semple was a good friend of William Sloan Coffin, and IPS man," Mr. Powell said.

Mr. Semple failed to return several telephone calls.

Fenton's Washington director, Nick Allen, also has IPS links.

Until he joined Fenton Communications in October 1986, Mr. Allen was executive director of the San Francisco-based Project Neighbor To Neighbor (now called Neighbor To Neighbor Action).

Neighbor To Neighbor is a spinoff of San Francisco's Institute for Food and Development Policy, which in turn is a spinoff of IPS.

The food institute's co-founders—Joseph Collins and Frances Moore-Lappe—have been listed as Neighbor To Neighbor advisory board members along with Cora Weiss, wife of IPS Chairman Peter Weiss.

Mr. Allen used to be the food institute's projects director. In 1982, he helped Mr. Collins and Miss Moore-Lappe write a book about Nicaragua called "What Difference Could a Revolution Make?" The book portrayed the independent Nicaraguan newspaper La Prensa as a blend of "rumors" and "virulent attacks on the government," under "the CIAs influence."

Neighbor To Neighbor is a principal sponsor of the current "Countdown '87" campaign. The executive director of "Countdown '87" is Rosa DeLauro, former chief of staff for Sen. Christopher Dodd, Connecticut Democrat.

And, to complete the circle, Mr. Allen is now, through Fenton Communications, a "Countdown '87" official spokesman.

While there is no direct evidence of a link between the two, the Fenton public relations effort overlaps—and sometimes smoothly interlocks—with the work done by Agendas International, a small New York firm that serves as a registered agent of the Nicaraguan government.

In addition to arranging meetings between visiting Sandinista dignitaries and U.S. newsmen, Agendas lists among its services holding "meetings with U.S. support groups to keep advised of and make recommendations for collaboration with them."

[From the Washington Times, Oct. 20, 1987]

IT'S A LONG CLIMB THROUGH THE LEFT FOR SANDINISTAS' U.S. PRESS AGENT

(By Don Kowet)

Washington-based Fenton Communications is critical to the success of a national campaign to massage the media with "good news" from Managua.

Although the firm has provided spokesmen for several leftist regimes, an important part of its business now is promoting anti-Contra causes—in collaboration with its tax-exempt soulmate, the Central America Media Education Project.

The media project funds some of Fenton's activities, often on behalf of clients with close ties to the Institute for Policy Studies, the left-wing think tank just off Dupont Circle.

Fenton Communications, which also has offices in New York, is the latest product of 35-year-old David S. Fenton's evolution through radical ranks from the anti-Nixon, anti-Vietnam politics of the late '60s to the anti-Reagan, anti-Contra politics of the '80s. Mr. Fenton declined to be interviewed for this article, but several persons who knew him during the '70s recall his rise through the radical movement.

David Horowitz, an ex-editor of the radical Ramparts magazine who has since rejected his earlier allegiance to the left, for one, identified Mr. Fenton as a former member of the White Panther Party.

The White Panthers, a radical group formed in the '60s, was based in Ann Arbor, Mich., and modeled after the militant Black Panther Party. The group's official motto, said Mr. Horowitz, was "Rock'n 'roll, drugs and [sex] in the streets."

Another person, who asked not to be named, said he knew Mr. Fenton intimately during the early-to-mid-1970s.

A former left-wing activist close to the White Panthers, he said Mr. Fenton joined the radical Liberation News Service (LNS) in New York City in his mid-teens. "He was the LNS official photographer, the LNS 'wunderkind,'" said the source.

Mr. Fenton subsequently moved to Ann Arbor, joined the White Panther Party, became editor of its newly revamped newspaper, rechristened The Ann Arbor Sun.

"The White Panthers needed a new newspaper," said the man, "because the Panther Party was changing its name to the Rainbow People's Party."

But Mr. Fenton left the newspaper and the White Panther/Rainbow People's Party after a "strenuous" dispute over a plan to move the paper to Detroit.

In 1973, Macmillan published Mr. Fenton's book of New Left photographs called "Shots." Later, he became publicity director of Rolling Stone magazine.

In 1987, he joined two other former Rolling Stone staffers—ex-associate editor Howard Kohn and ex-staff writer Susan Kellam—to solicit help form rock celebrities for the defense fund supporting the lawsuit filed in behalf of the late Karen Silkwood against Kerr-McGee, the nuclear fuel producer.

Daniel P. Sheehan, one of the Silkwood attorneys, is now chief counsel of the Christic Institute, whose lawsuit against the Nicaraguan resistance leaders is a client of Mr. Fenton's firm.

On May 9, 1978, Mr. Fenton and Miss Kellam co-produced a Silkwood benefit concert at New York City's Palladium.

In November of that year, Mr. Fenton reportedly met in California with singer Jackson Browne and other activists. A corporation called MUSE—Musicians United for Safe Energy—was formed for the purpose of producing a series of five anti-nuclear power concerts held in September 1979 at New York's Madison Square Garden.

The successful rock concerts not only established Mr. Fenton's credibility as a publicist and promoter of left-wing causes—cementing his contacts at major television and print outlets—but also forged his first pipeline into powerful sources of left/liberal funding.

Reportedly, MUSE obtained no-interest loans totaling about $350,000, primarily from philanthropist Stewart Mott and a pair of New York City foundations—the Stern Fund and the Morris L. Levinson Fund. Mr. Mott and the Stern Fund are major funders of the Institute for Policy Studies and several IPS spinoffs.

The former left-wing activist once close to the White Panthers said that Mr. Fenton's anti-nuclear efforts led to his "big break" in 1980, when anti-Vietnam War activist Abbie Hoffman emerged from his Thousand Islands hideway in New York state. Hoffman had jumped bail in 1974, charged with selling cocaine. Mr. Fenton, by this telling, helped arrange Barbara Walters's Sept. 2, 1980, ABC interview with Mr. Hoffman.

Mr. Fenton organized his public relations firm on Jan. 8, 1982. By Feb. 18, he had signed a letter of agreement with Nicaraguan Ambassador to the United States Francisco Fiallos for a "short-duration project," publicizing Sandinista Commandante Jaime Wheelock's tour of the United States.

On July 1, 1982, Fenton Communications registered as a foreign agent of the leftist Papandreou Greek government—the relationship ended in 1984—and in 1983 as a foreign agent of the government of Grenada to publicize the U.S. visit of the island nation's prime minister, Maurice Bishop.

Fenton arranged for Mr. Bishop to appear on ABC's "Nightline" on May 31, 1983.

"Bishop," said a person familiar with events that night, "had been totally prepared to spend a half-hour telling the American public how great Grenada was."

Instead, the broadcast focused on tales of a CIA plot to overthrow the government of Suriname and Mr. Bishop's role in taking that country to the brink of chaos. Carl Bernstein, in a filmed report, and Ted Koppel cited Mr. Bishop's advice to Suriname strongman Desi Bouterse to "eliminate your enemies or they will eliminate you."

"One night six weeks later," Mr. Bernstein reported, "Bouterse moved against leaders of the opposition, brutally."

"After the show," said the man familiar with the incident, "Bishop just stormed out. He was furious." For a while, he said, "David's credibility dropped among the people who do the major fund-raising for the guerrillas in El Salvador and for the Sandinistas."

But Fenton Communications continued to represent the government of Greece, and by the spring of 1984, a few days before the presidential election in El Salvador, the firm was sending reporters press releases giving locations and telephone numbers where Salvadoran Marxist rebel political leaders could be reached for interviews.

Meanwhile, in September 1983, a small New York City public relations firm headed by Donald J. Casey and Darryl L. Hunt—both former Maryknoll priests and ex-seminary classmates of Sandinista Foreign Minister Miguel d'Escoto—had registered as a foreign agent of the Nicaraguan government.

That firm, Agendas International, still represents the Sandinistas, receiving in the past four years payments from the Nicaraguan government totaling $1,242,000. The agency also has reported expenses of $1,233,000 in Nicaragua's behalf, incurred in the course of presenting Sandinista officials—and their message—to the U.S. public.

Although there is no conclusive evidence of a direct connection between the two public relations agencies, Agendas and Fenton often work closely with both the U.S. media and the network of Sandinista support groups, complementing each other's efforts.

While Fenton and the media project put media representatives together with the support groups, Agendas arranges meetings between visiting Sandinista dignitaries and U.S. newsmen.

A recent curious meeting at Managua's Intercontinental Hotel witnessed by former radical leftist Ron Radosh and two colleagues illustrates the overlapping connections of the pro-Sandinista network.

Mr. Radosh, now a college teacher, the Puebla Institute's Nina Shea and the Smith-Richardson Foundation's Devon Gaffney found a meeting in progress between a group of Sandinista officials and a prominent pair of Central America Media Education Project board members.

Mr. Radosh said the trio saw—and overheard—IPS Director Robert Borosage and William Leogrande, an American University professor, "reporting and commenting on the U.S. press and political organizations and their attitudes toward the Sandinistas" with Alejandro Bendana, secretary-general of the Sandinista Foreign Ministry, and other Nicaraguan officials.

Miss Gaffney and Miss Shea, in separate interviews with The Times, confirmed Mr. Radosh's account.

Miss Gaffney also confirmed Mr. Radosh's assertion that Mr. Leogrande told Mr. Bendana: "You don't have to worry. In two years, the U.S. will be out of Central America, and you can do what you want."

In a telephone interview, Mr. Borosage listened to a reading of the account provided by Mr. Radosh.

"It's total and complete balderdash," he said. "It's the problem of a historian turned fantasist. He doesn't lie very well."

Mr. Leogrande could not be reached for comment.

In 1984, during the visit of Nicaraguan President Daniel Ortega to the United States, Agendas International worked closely with the Committee of Concern for Central America, a group of anti-resistance Hollywood celebrities, headed by former M*A*S*H star Mike Farrell, said to have been founded by "theater and literary contacts" of Mr. Ortega's live-in companion, Rosario Murillo.

The Committee of Concern handled the Los Angeles end of Mr. Ortega's Agendas-arranged tour, including a fund-raiser for the organization at the home of Robert Foxworth, star of CBS's "Falcon Crest," and his wife, actress Elizabeth Montgomery. The guests were said to include Jackson Browne and Sen. Christopher Dodd, Connecticut Democrat and a member of the Foreign Relations Committee.

A San Francisco-based anti-Contra group called Neighbor To Neighbor—whose advisory board includes to Central America Media Education Project board members—has worked closely with the Committee of Concern, producing in 1985 a controversial documentary called "Faces of War."

The Washington-based Arca Foundation, a prime funder of the media project whose head is also a project board member, provided funding both for the Committee of Concern and "Faces of War."

Until he joined Fenton Communications in October 1986 as director of its Washington office, Nick Allen was executive director of Neighbor to Neighbor. He also was executive producer of the "Faces of War" documentary.

In January 1986, Agendas International prepared a plan for the Nicaraguan government, later leaked to the press, that proposed "targeting" certain key congressmen in a media campaign designed to sway their "swing votes" against Contra aid.

Agendas never put the plan into action, but in February 1987 Neighbor To Neighbor initiated such a campaign targeting with television ads three key senators, including Nancy Kassebaum, Kansas Republican, who "flip-flopped" on Contra aid.

Sen. Kassebaum's press secretary, Larry Shainman, recalled Fenton "running a press conference in Washington where Neighbor To Neighbor aired their [anti-Kassebaum] ad."

Now the Fenton/Neighbor To Neighbor-led "Countdown '87" coalition is launching a far more ambitious reprise of the Agendas plan, targeting with television ads six "swing vote" senators and 23 House members to combat congressional aid to the Nicaraguan resistance.

David Fenton and his tax-exempt allies continues to successfully romance and manipulate the U.S. media to support leftist policies. The measure of their success is the fact that the most popular president in modern U.S. history faces long odds in his fight with Congress over further aid to the Nicaraguan resistance.

NICARAGUAN RUSH TO THE BORDER

HON. GERALD B.H. SOLOMON

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 28, 1987

Mr. SOLOMON. Mr. Speaker, under the leave to extend my remarks in the Record, I include the following:

[From the Washington Times, Oct. 20, 1987]

SPEAKING OF WHICH

The latest word from the Nicaraguan-Costa Rican border confirms that Daniel Ortega's offer of amnesty to the hundreds of thousands of bewildered Nicaraguans who fled his regime has backfired. Agency France-Press reported yesterday that "at least 550 Nicaraguans" took advantage of Mr. Ortega's refugee repatriation plan Sunday "to do the opposite of what the program intended—flee into Costa Rica."

AFP said the Nicaraguans "took advantage of the confusion" at the Penas Blancas border post and sneaked to the Costa Rican side, where they informed a Red Cross official "they would not return to Nicaragua under the current conditions for anything in the world."

"They said they did not want to be forced to join the [Sandinista] army," the official said. "Others spoke of repression, of food shortages and of persecution."

Reuters news agency, meanwhile, quoted unidentified sources in San Jose, the Costa Rican capital, as saying "as many as 5,000 refugees were expected to stream across the Nicaraguan-Costa Rican frontier in the next few days" because of last week's heavy fighting between Sandinista forces and anti-Marxist Nicaraguan resistance troops.

[From the Washington Post, Oct. 21, 1987]

Costa Rica Struggles To Aid Refugees

(By Julia Preston)

La Cruz, Costa Rica, October 20.—Harried Costa Rican authorities here are struggling to feed and shelter 636 Nicaraguans who surged across the border Sunday in the largest single-day influx of Nicaraguan refugees to this county.

The exodus came as President Oscar Arias, who recently won the Nobel Peace Prize, is busily promoting a regional peace plan that he wrote in part to lessen the flow of Nicaraguan exiles into Costa Rica.

Since early September the two governments have allowed family members living on opposite sides of the border to mingle on Sundays at the Penas Blancas crossing point. Nicaragua's leftist Sandinista government sponsored the reunions hoping relatives would meet with rebel fighters, called counterrevolutionaries or contras, and urge them to return to civilian life in Nicaragua.

But many Nicaraguans here said they heard Nicaraguan President Daniel Ortega speak of the border openings for the first time in a Sandinista Radio broadcast last week. The announcement came at a time when Sandinista recruiters were stepping up a new conscription campaign in southern Nicaragua, they said, Thousands of Nicaraguan young men have left the country to avoid being drafted.

A first group of 100 or so Nicaraguans pushed past a handful of Sandinista border guards early in the morning and clambered over a chain-link border fence, witnesses said. The Sandinista guards tried to stop them by shooting in the air, but no one was injured.

At midmorning Radio Impacto, a procontra Costa Rican station, broadcast to southern Nicaragua that some Nicaraguans had already made the crossing, according to refugee William Mercado who heard the newscast in his home. Mercado said he sped out the door and hopped a bus to the border with nothing more than the clothes on his back.

Refugees said guards on both sides finally left the border open most of the morning so they could cross freely. Several dozen Nicaraguans paid truck drivers to drive them across, refugees said.

The Nicaraguans said they were tired of severe shortages, starvation wages and a recent military draft call.

"There's no rice, there's no soap. If I feed my children twice a day, I can only eat once myself," said Marta Alicia Grillo, an emaciated woman carrying a 2-year-old son, Grillo's husband, who also sought refuge, was called up to the Army in early September and had been in hiding for a month in their home town of Rivas, she said.

Another recent draftee, Jorge Antonio Quiroz, said he heard of Arias' peace plan but did not believe it would succeed soon enough to help him avoid military service.

"As long as that Sandinista government stays in power, it's a lie to say there will be peace," Quiroz said.

Student Melania Cordero said she left her sobbing mother at the border gate in Nicaragua to look for work as a maid in Costa Rica.

"In this country you can buy what you want and the stores have what you want to buy," Cordero explained.

In La Cruz, 15 miles south of the Penas Blancas border station, frantic Costa Rican Red Cross volunteers prepared a tent campsite for the 452 men among the refugees, being held temporarily in the cramped Sea Gull discotheque. Health workers hurried to interview and vaccinate every Nicaraguan, fearing the spread of disease.

Costa Rica now hosts about 25,000 Nicaraguans registered with the United Nations as refugees. But tens of thousands of others are living here on their own. Arias has sounded an alarm, saying a total of 100,000 Nicaraguans live in Costa Rica's national integrity.

Three weeks ago Costa Rica and Nicaragua signed an agreement with the United Nations to repatriate Nicaraguan refugees who wish to go home. The first 33 Nicaraguans returned to their country Oct. 14 under the plan, a U.N. spokesman said.

[From the Wall Street Journal, Oct. 27, 1987]

Sandinistas' Border Closing Opens Nicaraguan Wounds

(By Charles McCoy)

Puente Las Lajas, Nicaragua.—Here at one of the last lonely bridges on the road to Costa Rica, the Nicaraguan government is learning that a closed border can quickly become an open wound.

On Friday, the Sandinista government canceled a program that for the previous four weekends had allowed thousands of Nicaraguans to cross into Costa Rica for a few hours to see relatives who have taken refuge there. Officials gave many reasons, but the real one seemed to be that many people who crossed the frontier kept on going, seeking asylum themselves.

The border troubles are an embarrassment for the Sandinistas and an indication of the unexpected problems being caused it by the peace accords signed in August by the Central American presidents. Allowing cross-border visits wasn't specifically called for in the accords, but it seemed a popular goodwill gesture. To draw back now is "quite unfortunate timing for the peace process," says a Western European diplomat in Managua.

The closure order didn't altogether stem the impulse to leave. By 7 a.m. Sunday, a strange parade of more than 1,000 poor campesinos was marching from the town of Rivas toward the border about 15 miles away, some beating sticks on the ground, some swinging machetes lazily. They got as far as this bridge, where two dozen soldiers behind barricades trained automatic weapons on them. Before the morning was over, there would be a bit of blood and an eloquent display of some of the pressures clawing at Nicaraguan society.

APPEAL TO ANGELS

"So it has gotten this bad," sighs Marta Elena Alvarez, a peasant woman balancing a bag of corncobs on her head and a baby on her shoulder, as she watches the crowd inch toward the soldiers. "When will the angels come to save this forsaken country?"

The events at the border indicate that, less than two weeks before the deadline for completing some of the accords' conditions, thousands of Nicaraguans are more eager to flee than to wait around to see if peace and democracy break out. On Oct. 18, an estimated 1,200 Nicaraguans took advantage of the border program to stampede into Costa Rican refugee camps. Another 3,000 people were pushed back by Sandinista troops.

"These people feel they have no future here," says Mario Rappaciolli, a right-wing opposition politician in Managua. "They don't believe the present government is capable of bringing peace."

The Sandinistas say they closed the border because Costa Rican officials were encouraging Nicaraguans to seek sanctuary, a charge the Costa Ricans deny. Over the weekend, the Sandinistas also accused the Honduran army and U.S.-backed Contra rebels of interfering with an identical border program at Las Manos, along the Honduran frontier near several Nicaraguan refugee camps. Many diplomats in Managua viewed the charges as a prelude to closing that crossing, too.

CIRCUMVENTING RED TAPE

Technically, Nicaragua permits its citizens to emigrate. But they must have a passport, and fighting the bureaucracy to get one can take months. Young men can't leave without proving they've completed their military service. Thus, the open-border program was an opportunity to short-cut the regulations. The Nicaraguans who flocked to do so Sunday were simple people who have always been poor. Politics has little meaning for them, but war and hunger do, and they are sick of both.

"I am a campesino," says Augusto Diaz, a weathered herdsman in a battered straw hat, whose palms are scarred with rope burns and cuts. "I don't like the government. I don't like la Contra. I just want to live in peace and have beans to eat, but I can't do that here any more."

Heading out from Rivas, the pilgrims are an odd collection: old women with cloth bundles across their backs, teenagers full of bluster and a few men pushing wood-wheeled carts.

"What can they do against the thousands we have with us here?" shouts 17-year-old Luis Henriquez, who has walked and hitchhiked the 100 miles from Managua to visit his mother and two brothers in Costa Rica. "We can die of hunger or we can die of bullets."

UGLY RUMORS

Suddenly, shots, Sandinista police, quickly reinforced by a small squad of army regulars, have driven from behind, parked their jeeps at the head of the procession and begun firing more or less into the air. They tell the marchers to go home. A teen-age boy is propelled by a surge in the crowd toward a young, frightened-looking policeman. The policeman cracks the boy with a rifle butt across the cheek, opening a bloody gash. Later, rumors ripple through the crowd that the teen-ager died from the blow.

The police and the troops issue more warnings and withdraw further south, toward the bridge. Soon, the crowd again begins to move in that direction. "They treat us like dogs," roars Mercedes Lopez, who has come from Leon.

According to government statistics, about 400,000 Nicaraguans—15 percent of the nation's population—have fled since the Sandinistas brought down dictator Anastasio Somoza in 1979. That is one of the greatest population flights in modern Latin American history. The wealthy and professional classes got out first, but now a lot of ordinary people, including youths trying to dodge the draft, are leaving.

The bitterness found in this crowd isn't universal. The Sandinistas still have support in much of the country, though the war and a ruined economy have eroded their popularity. Even here on the road to the border, hatred of the government doesn't translate into support for the U.S.-backed Contra guerrilas.

TWO SIDES, ONE FATE

"I won't fight for the government, and I won't fight for the Contras," says a 16-year-old named Humberto Ruz. He has had brothers killed fighting for both sides. "Either side you fight for, you end up just as dead."

About 25 yards from the foot of this bridge, the parade halts. A local Sandinista political official with a bull horn exhorts the crowd to turn back. He is jeered. "The soldiers on the bridge have orders to not permit you to pass—that's the way it is, comrades," the official says.

The crowd mills. Enterprising businessmen wheel ice cream carts through it. Slowly the people advance to the bridge entrance, about 10 yards from the wall of soldiers. "What's going to happen to us?" ask a worried Anna Maria Castro.

Nothing. This crowd isn't looking for a fight. People chant and taunt for a few minutes, then clamber aboard trucks sent by the Red Cross to take them back to Rivas. "But we'll be back next week," says Luis, the youngster who earlier talked about the distinction between starvation and death by bullets. "Today, I prefer to die slowly."

NATIONAL FORMER PRISONER OF WAR RECOGNITION DAY

HON. DOUGLAS APPLEGATE

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 28, 1987

Mr. APPLEGATE. Mr. Speaker, I am introducing today a resolution which would establish next April 9, 1988, as "National Former Prisoner of War Recognition Day." Joining me as original cosponsors of this measure are Representatives BOB MCEWEN and WES WATKINS.

Mr. Speaker, earlier this year I introduced a similar resolution, House Joint Resolution 155, which designated last April 9 as "National Prisoner of War Recognition Day." Over 130 Members signed onto this measure. On March 31, a similar measure, Senate Joint Resolution 47, was passed by the House, due much to the help of Representative MERVYN DYMALLY, chairman of the House Post Office and Civil Service Subcommittee on Census and Population, and Representative CONNIE MORELLA, the ranking minority member of the subcommittee. I'm pleased that we were able to find a day to recognize America's former POW's.

Next April 9 will mark the 46th anniversary of the fall of Bataan in the Philippines during World War II, an event that is remembered by thousands of American veterans who were taken prisoner and imprisoned for nearly 4 years. I would like to continue the tradition that we established this year by creating, once again, a special day for recognizing America's former POW's. I kindly request the support of my colleagues on this measure.

A TRIBUTE TO ELIZABETH KILLINGER

HON. C. THOMAS McMILLEN

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 28, 1987

Mr. McMILLEN of Maryland. Mr. Speaker, I rise to commemorate an individual in my district who has exemplified the spirit of giving to others.

This lady is Elizabeth Killinger, a neighbor of mine, who was recently selected as Crofton Citizen of the Year. Mrs. Killinger has lived in Crofton for over 20 years. During this span, she has served admirably in a number of civic organizations.

As membership chairwoman of the Crofton Swim and Tennis Club, Mrs. Killinger was responsbile for a membership roster of over 2,000. She has also been the president of the Federated Woman's Club and the Crofton Village Garden Club.

From her work in these organizations, those of us who live in Crofton daily enjoy the fruits of Mrs. Killinger's labors. She was personally responsible for the flowers and shrubbery at the Back Lake in Crofton. Her work has also beautified the common areas of Crofton. In addition to her work in the community of Crofton, she has also taken an active interest and leadership role in preserving portions of historic Anne Arundel County, MD.

The work of Elizabeth Killinger has been enjoyed by many in my district and my community, Mr. Speaker. It is a pleasure to call the attention of the House to her selection as Crofton Citizen of the Year.

A CONGRESSIONAL SALUTE TO ROBERT J. TARLTON

HON. GUS YATRON

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 28, 1987

Mr. YATRON. Mr. Speaker, I rise today to pay tribute to Mr. Robert J. Tarlton of Lansford, PA. On November 14, 1987, Mr. Tarlton will be honored by the Panther Valley Chamber of Commerce as its "Citizen of the Year."

Robert J. Tarlton is clearly deserving of this award. He is well known in our area for his business achievements and his commitment to public service. Mr. Tarlton has had a long and successful career in radio and television. From 1933 until he volunteered to serve in the Army during World War II, Mr. Tarlton operated a successful radio sales and service business. Upon returning from the war, he quickly recognized the many benefits of a new technology—television. In the late 1940's, Mr. Tarlton developed and installed in the Panther Valley the first multichannel coaxial cable system to be operated as a viable business. Mr. Tarlton built on his success in the Panther Valley by helping establish cable systems in a number of States. His system was the precursor of the cable television systems now used throughout America.

Robert Tarlton has received many well-deserved honors for his contributions to cable television. He was a founding member of what is now the National Cable Television Association and the Pennsylvania Cable Television Association. In recognition of his many achievements, both organizations have honored Mr. Tarlton for his invaluable work in the development of cable television.

Mr. Tarlton also remains active in local community affairs. He is a member of the Lansford AMVETS, the American Legion, the VFW, the BPO Elks, the Lansford Volunteer Fire Co., and the local Rotary Club. He is also now serving as coordinator of the Carbon-Schuylkill Community Hospital Association. He remains dedicated and committed to helping his fellow citizens.

I can think of no individual more deserving of selection as the Panther Valley Chamber of Commerce's "Citizen of the Year." Robert J. Tarlton is an outstanding individual who has made invaluable contributions to the Panther Valley and to the development of cable television throughout our Nation. I know that my colleaues will join me in honoring Robert J. Tarlton on this important occasion and in wishing him continued success and good fortune in the years to come.

COURAGE

HON. DON RITTER

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 28, 1987

Mr. RITTER. Mr. Speaker, courage, especially in time of conflict, is a great virtue. When that courage is manifest in the midst of great fear, the value and worth of the courage are proportionately enhanced.

Airman, the magazine of America's Air Force, recounted the story of the sixth combat mission of Francis Gallagher, B-24 radio operator-gunner, in its issue for September 1987. Cpl. Frank Gallagher kept a diary of his 35 combat missions from October 1944 through April 1945 for his daughter Barbara who was 2 years old at the time. He wrote a prologue for his diary "just in case" he would never see her again.

Throughout these 35 combat missions, Frank admitted that he was "scared most of the time." On his sixth mission, November 5, 1944, in a B-24 nicknamed Lonesome Polecat, Frank was terribly frightened. He had just been promoted to buck sergeant.

On this mission, to clear out a large concentration of German troops who were harassing a unit of guerrillas in a Yugoslav valley, no one reckoned on the Germans' mobile antiaircraft guns. Frank wrote: "Their fire was the most accurate I've seen to date." With the deputy lead plane shot down, carrying two majors, two captains, and a lieutenant along as observers, Sergeant Gallagher endured fire, bomb-bay doors that would not close, his plane tossed like a toy and a small fire which he put out on his own flight deck.

The Lonesome Polecat limped back to base, late and alone. Frank Gallagher wrote in his diary that he wanted no more days like this. But in terrible fear, he remained at his post, carried out his duty and responded to emergencies. Mr. Speaker, it is quite fitting that the House of Representatives bestow the honor of acknowledgment on this man of courage.

A CONGRESSIONAL SALUTE TO STEVE G. PODESTA

HON. GLENN M. ANDERSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 28, 1987

Mr. ANDERSON. Mr. Speaker, I rise today to honor a distinguished business and civic leader in my district, Steve G. Podesta. Steve will be honored on November 13, 1987 by the harbor Association of Industry and Commerce at their ninth annual "Salute to Industry" Awards Banquet. Steve was chosen as this year's honoree based on his dedicated service to the South Bay area over a long period of years. This auspicious occasion gives me an opportunity to express my appreciation for his work on behalf of the Ports of Long Beach and Los Angeles as well as the surrounding community. Steve Podesta epitomizes the image of the dedicated community servant.

Born in Los Angeles, CA, Steve has proven over the years his commitment to the overall commerce of the South Bay Area. He started his career working for the Douglas Aircraft Co. in Long Beach during World War II, and continued with the company until he became self-employed in 1961. Since that time, he has been involved in a whole host of business endeavors and commercial organizations. Among the long list of Steve's impressive accomplishments: board chairman of the BSP Development Corp.; director of the Bank of San Pedro; coowner of Helitrans; coowner of Podesta-Moller and Associates; senior vice president of Professional Satellite Imaging Corp.; as well as board chairman and director of Renergy International Corp. Steve has also served as a real estate developer and an industrial/manufacturing consultant.

While dedicated to a career in financial and business organizations, Steve has given an enormous amount of his time and energy to various civic duties. In addition to his participation in professional organizations, such as the San Pedro Community Development Advisory Committee, and the Harbor Association of Industry and Commerce, which he served as president and director, Steve has also been active in the Rotary Club of San Pedro and the Harbor Occupational Center Citizen's Advisory Committee. He has made significant contributions of time and energy to the Bay Harbor Hospital, Port of Los Angeles-Long Beach Marine Square Club, and the San Pedro Chamber of Community Development and Commerce. Clearly, Steve's numerous accomplishments highlight the truly remarkable contribution he has made toward the betterment of our community.

My wife, Lee, joins me in extending our warmest congratulations to Steve G. Podesta on this special occasion. His many years of community service and civic duty are an inspiration to us all. We wish Steve and his wife Doris, whose own accomplishments are equally impressive, all the best in the years ahead.

WAR POWERS AND THE PERSIAN GULF

HON. WM. S. BROOMFIELD

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 28, 1987

Mr. BROOMFIELD. Mr. Speaker, there have been numerous calls in Congress for application of the War Powers Resolution of 1973 to the situation in the Persian Gulf. Under the War Powers Resolution, the President would be required to withdraw United States forces in 60-90 days from situations abroad in which there are hostilities or in which imminent involvement in hostilities is clearly indicated by the circumstances, unless Congress authorizes continued deployment.

In politics as in military operations there is always a tendency to fight the last war. Unfortunately, the consequences in politics can be equally severe.

The War Powers Resolution was a belated reaction to the involvement of United States forces in Indochina. Having permitted successive administrations to expand and extend the United States combat role in Indochina, Congress attempted to prevent such a commitment of forces from occurring again without explicit Congressional authorization.

The War Powers Resolution thus attempts to shift the action to Congress. But Congress has seldom shown an ability or willingness to act in such circumstances. Look at where we are today. Months after commencement of United States naval operations to protect the reflagged Kuwaiti tankers, the Congress has still not acted to resolve the War Powers issue with regard to Persian Gulf operations.

The fact is that the President must have the authority to commit United States forces in order to support United States foreign policy and defend United States national security interests. Attempting to require congressional authorization stands the matter on its head.

I commend to my colleagues an excellent column on this subject by Edwin M. Yoder of the Washington Post, which appeared in the Atlanta Constitution on October 20, 1987.

WAR POWERS RESOLUTION DOESN'T APPLY IN GULF

(By Edwin M. Yoder)

WASHINGTON.—Ever since the Reagan administration agreed last spring to put American flags on Kuwaiti oil tankers and provide them with an escort of U.S. warships, Congress has fumed that the 1973 War Powers Resolution is being ignored.

The reasons vary. Some senators claim that Congress really wants to share responsibility if something goes wrong—a claim too incredible to take seriously. Others seem to say that this dubious "act" should be enforced because it is there, like Mount Everest.

In the War Powers Resolution, Congress said in essence that a president who puts U.S. armed forces in danger of "imminent hostilities" must give notice to Congress. Then Congress has 60 to 90 days to approve or not.

The resolution was, in effect, an ex post facto comment by Congress upon the origins of U.S. involvement in Vietnam—just as the obstructive Neutrality Act of the 1930s (which, until amended, kept Franklin Roosevelt from selling arms to the anti-Hitler forces in Europe) was an equally misguided comment on how we got into World War I.

But the implication that Congress was dragged unwarily and unwillingly into Vietnam is silly. Congress was a willing, even eager, collaborator from the start—from the Gulf of Tonkin Resolution to a very late stage of the debate.

In today's Persian Gulf policing exercise, it is hard to believe that even Congress, meddlesome as some of its members like to be in foreign policy, would ever require a president to pull U.S. naval forces out of the Persian Gulf, where they have been active since the late 1940s.

Another difficulty is that the terms of the War Powers Resolution are vague. "Hostilities," for instance, are not defined. The enforcement mechanism—a joint resolution, without presidential signature—has been cast in some constitutional doubt by the Supreme Court decision on legislative vetoes. (The court said that acts having the force of law must—unlike joint resolutions—be submitted to the president for his signature.)

Every president since Richard Nixon, who vetoed the act, has questioned its constitutional validity. It has been formally invoked only once in the deployment of U.S. Marines at the Beirut airport Congress then "gave" President Reagan 18 months. But that did not silence a running commentary that finally intimidated the administration and forced a sudden, shameful pullout.

Jimmy Carter did not bother to invoke the War Powers Resolution when he tried the rescue mission in Iran. Nor did Reagan when he invaded Grenada or bombed Libya. These operations were far more clearly "hostile" than escorting tankers in the Persian Gulf, but were short-term operations not likely to exhaust a 60-day limit. Another puzzle.

The fixation on the War Powers Resolution is hard to understand. Congress, after all, is at liberty to express its view of any presidential use of U.S. forces, anywhere, without waiting for the War Powers Resolution. Congress has ample powers of the purse to put an end to any expedition it wishes to. And it can impeach any president who flagrantly disregards its will on the expenditure of public monies.

In practice, of course, no one expects any such bruising showdown. Two hundred years of pushing and shoving between presidents and Congresses have left the question of war-policy paramountcy in suspension. That was true of arguments stretching from Washington's neutrality proclamation in the war between France and Britain to the dispatch of U.S. armies to Korea and Vietnam.

Congress no doubt finds its frustrating that presidents always have the upper hand, because they can act expeditiously and because the movement of troops or ships is inherently an executive function.

In its nature, the Persian Gulf question is for those reasons and others a presidential judgment call. Congress' best option, unless it wants to wheel out the really big guns, is to observe and grumble: a familiar function, if not so constitutional as it might wish.

NATIONAL FOOD BANK WEEK

HON. MICKEY LELAND

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 28, 1987

Mr. LELAND. Mr. Speaker, I have introduced House Joint Resolution 368 which designates the week of November 8 through 14 as "National Food Bank Week." For the benefit of my colleagues, I would like to share articles published by both the Christian Science Monitor and USA Today regarding contributions by food banks to feed the hungry in our country. With Thanksgiving on its way, it is time not only to count one's own blessings but to support those who are extending a helping hand to the less fortunate. I urge my colleagues to cosponsor House Joint Resolution 368 and give food banks the recognition they deserve.

[From USA Today, Oct. 27, 1987]

USA'S FOOD BANKS FACE BELT-TIGHTENING

(By John Bacon)

Lunch is on the house at the Gospel Church of God on the Bronx's Grand Concourse in New York.

Each day more than 500 people dig in to spaghetti, chicken or "whatever we can get our hands on," says Edwin Curley, retired airman and volunteer lunch monitor.

The program is one of hundreds supplied by Food For Survival, New York's regional food bank. But Food For Survival, like many food banks across the USA, is scurrying for winter stocks in the face of increasing need.

Adding to collection woes, corporate belt-tightening and an unfriendly tax law. Food banks are fighting back.

A bill in Congress would declare Nov. 8–14 National Food Bank Week—in time for Thanksgiving collections.

St. Louis Boy Scouts try next month to collect more than 1 million pounds of food for the area food bank.

Raley's grocery store chain in California and Nevada is selling $1 and $5 tax-deductible coupons to shoppers. Raley's will use the money to buy food at wholesale prices for 32 non-profit bood banks.

Food banks are suffering from cuts in corporate generosity—a main source of food and money.

Federal tax revision trimmed breaks for donations.

High-priced corporate takeovers put new pressure on the "bottom line."

Production is more tightly contolled, meaning less excess to give food banks. And food with packaging flaws, once ticketed for food banks, now is sold through intermediaries to prisons, hospitals and other institutions.

"Companies are under tremendous pressure to squeeze more out of every dollar," said Phil Warth, director of Second Harvest, the nation's food bank clearinghouse. "There's not much we can do about it—we don't make the food."

"What hurts is that so often in pays for the companies to just throw the food away," said Sandra Lewis, Food Lifeline director in Seattle. "We're competing with the trash can."

Second Harvest expects to increase collections by 15 percent this year—down from last year's 28 percent growth.

Many regional food banks are more severely hit. The Los Angeles Regional Food Bank, among the USA's largest with distributions of 2 million pounds a month, reports a 50 percent drop in local donations.

"With companies becoming more bottom-line oriented, they just don't have so many leftovers" says Charmeen Wing, director of the Los Angeles effort.

Winter's approach has some cities in colder areas shuddering. "People need cash up front to pay the oil man, the coal man, or whoever," says Jean Machenberg, director of the Central Virginia Food Bank in Richmond, Va. "When it's heat or eat, people heat."

That sends people to agencies supported by Machenberg's food bank, which distributes up to 4 million pounds of food annually. This year, donations are down 20 percent.

Food For Survival, like food banks in Seattle and St. Louis, expects 1987 donations to match 1986. All, however, had hoped for increases.

In St. Louis, food bank spokesman Bill Donovan estimates that need will rise 15 percent this year.

[From USA Today, Oct. 27, 1987]

SECOND HARVEST GREW INTO A NATIONAL EFFORT

(By John Bacon)

John van Hengel started Second Harvest, now the USA's largest charity food program, because he saw a lot of wasted food and a lot of people who needed it.

Van Hengel was working in a Phoenix soup kitchen in the early 1960s, collecting leftovers from local grocers in a battered truck.

"We brought in more than we could use, so we would drop it off at other missions," says van Hengel, a retired sporting goods representative. In 1967 he obtained a small warehouse to store supplies so other local missions could pick up their supplies.

Soon organizations in Seattle and Pasadena, Calif., were asking for van Hengel's help. The idea spread. In 1976 the federal government funded the start-up effort to make Second Harvest the national food bank clearinghouse.

Now Second Harvest collects food and helps food banks nationwide organize collections from national corporations such as Campbell Soup Co. and General Foods Corp. It also certifies food banks, monitoring storage facilities and bookkeeping practices.

In 1979 Second Harvest distributed 2.5 million pounds of food. This year the group and the 200-plus certified food banks nationwide will distribute more than 350 million pounds of food.

Van Hengel said he became involved in hunger programs out of a "horrible need to be needed."

Today, van Hengel, 64, operates International Foodbanking Service Inc. He recently returned from a consulting trip to Paris and Brussels: "I got treated like a king over there. Not bad for a retired old goat."

[From the Christian Science Monitor, Oct. 27, 1987]

AMERICA'S BOUNTY KEEPS FOOD BANKS BUSY

(By Mary B.W. Tabor)

BOSTON.—"If it's not fresh, it's not legal." That's the motto of the Legal Seafood restaurants, promising just-caught fish for finicky palates. Unfortunately, it also means that what's not eaten at the end of the day must go.

Across the country, restaurants, farmers, grocers, and manufacturers face tons of surplus, slightly damaged, or unwanted food that US standards deem "edible but unmarketable." Although a portion of the food will be redistributed by food banks or relief groups, most of it—approximately 137 million tons of it each year—will go into trash.

Who's to blame? Everyone, says Westy Egmont, head of the Boston Food Bank. In the food business, he says, "waste happens at every stage."

Not only do statistics show that 20 percent of the food produced in the US is lost between the field and the table, but Mr. Egmont says approximately 20 percent of the food prepared in America's kitchens is never eaten. Reports from a study at the University of Arizona say about $11.7 billion worth of edible food is wasted in US homes each year. That's enough to feed all of Canada, the report says.

Meanwhile, with federal food-program funding cut by more than $12 billion since 1980, at least 20 million Americans—ones who could have turned to foodstamps or school lunches for a square meal a decade ago—are now insufficiently fed, according to government figures released yesterday.

In a nation where plates are, more often than not, piled high with food that no one is expected to eat, malnourishment is absurd, says Egmont. So his organization—affiliated with some 200 other food banks in a network called Second Harvest—is trying to put a little sense back into the system.

Tucked back in an old warehouse in the Roxbury section of Boston, the six-year old Boston Food Bank serves as a non-profit clearinghouse for food solicited from the private sector. Food made unmarketable as a result of mislabeling, overproduction, or other superficial flaws is donated to the Food Bank. It is then stored, triply checked, and redistributed on a daily basis to some 600 qualified charitable groups.

So far this year more than 4 million pounds of donated and surplus food have passed through the BFR, valued at approximately $8.5 million. And in keeping with Second Harvest's policy of "tight-ship" management, BFB, which charges its shoppers 12 cents per pound of food, spends only $1 for every $121 worth of food distributed.

Food banking can help solve the problem of redistribution, but as Egmont suggests, one of the basic causes of waste is lack of responsibility. There are, however, some exceptions to this rule.

For example, Legal Seafood's owner, George Berkowitz, developed a "quick chill" system to help redistribute the unused food. Some of Legal's chefs volunteer Saturdays to prepare high-protein meals. The meals are extremely popular with the soup kitchens, says Kristin Stangeby, who runs the selling floor.

On the college level, Smith College in Northampton, Mass., has a system in which a student can notify the college dining services when she is going to miss a meal during vacation periods. Smith then donates 10 cents for that meal to the Western Massachusetts Food Bank and at the same time, avoids wasting a helping.

Tufts University, outside Boston, has also adopted a program to help students take responsibility for food waste. Excess prepared food is taken daily from the dining halls to a local soup kitchen.

Egmont says that while the food bank concept may be "the most logical, immediate "band-aid available" for food waste, there is no substitute for government programs. And the problems of overproduction, poor distribution, and hunger will continue until the US has a more economically just society, he says.

Other problems, he says, are that in a culture oriented toward highly processed food, serving sizes are predetermined by the packager. A single-serving package can sometimes hold enough for two, and most Americans, he says, tend to throw out leftovers after a day or two. He also attributes excessive waste to American trendiness. As long as a product is in vogue, he says, retailers can not keep enough on the shelf. When the fads change, a surplus is almost inevitable.

That's when the food bank comes to the rescue. "[At BFB,] we just watch for the trendy ads and then wait for the food to come in."

A TRAGIC CASE

HON. MEL LEVINE

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 28, 1987

Mr. LEVINE of California. Mr. Speaker, I would like to bring to my colleagues attention the tragic case of CWO Martin F. Gaffney, U.S. Marine Corp, and his wife and family.

Tragically, Mrs. Gaffney, and their infant son, John Martin Gaffney, have died of AIDS. Martin Gaffney tests positive for the HIV or AIDS virus. Only the daughter Maureene Gaffney has not been infected with this virus.

Currently, Chief Warrant Officer Gaffney and his family have a claim filed against the United States pursuant to the provisions of the Federal Tort Claims Act, and are seeking damages. They charge that this tragedy resulted from a blood transfusion Mrs. Gaffney received as a result of mismanagement of her first pregnancy by the naval medical system.

Mrs. Gaffney first became pregnant in late 1980, with a projected due date in August 1981. However, her pregnancy was allowed to go beyond her due date, the claim states, despite inquiries by Mr. Gaffney regarding inducing labor. I wish to note, Mr. Speaker, that it can be medically unwise to allow a pregnancy to progress indefinitely, because the placenta can begin to deteriorate, and fail to provide adequate support for the fetus.

Almost a month after her due date, Mrs. Gaffney began to experience pains, and Mr. Gaffney took her into the emergency room at the local naval medical facility. The claim states that after being examined by a nurse, who apparently consulted a physician by telephone, Mrs. Gaffney's pains were diagnosed as a false alarm and she was released. At that time, the nurse noted that there were fetal heart tones, indicated that the infant was alive. Two days later Mrs. Gaffney again experienced pains and went into the emergency room. During this second visit to the emergency room, there were no fetal heart tones, and after unsuccessful attempts to induce labor, the infant was delivered stillborn by cesarean section. At this time, Mrs. Gaffney was given two units of blood, including the unit believed to be infected by the HIV virus.

The Gaffney's claim charges that Mrs. Gaffney's pregnancy was not properly monitored, and that if it had been, and she had been delivered in accordance with generally accepted standards of medical practice, the infant would have lived, and Mrs. Gaffney would probably not have required the transfusions. However, according to the claim, as a result of the delay in delivery, the infected blood was administered to Mrs. Gaffney, infecting her, Mr. Gaffney, and a future child, John Martin Gaffney.

In addition to successful resolution of his families' claim, Martin Gaffney would like to see changes made in the military medical system which will protect other individuals and families from tragedies such as his family has suffered.

The Department of Defense is making progress in improving the military medical system, and the Armed Services Subcommittee on Military Personnel and Compensation has held several hearings across the country examining this problem. I wholeheartedly commend these important actions.

One important change in the system would be to encourage rigorous monitoring of the quality of medical care by allowing active duty personnel to bring claims directly for medical malpractice. Under current law, active duty personnel cannot file claims against the Government for malpractice. For example, the Gaffney's claim is based on the medical care that Mrs. Gaffney, a dependent, received. However, active duty personnel who claim to have received substandard care do not have this vital recourse to the courts.

H.R. 1054 and S. 347 would make this important change. The House Judiciary Committee has conducted hearings on H.R. 1054, and the bill has been placed on the House Calendar. Additionally, the Subcommittee on Military Personnel and Compensation, which does not have direct oversight, conducted a hearing this summer, at which the Department of Defense proposed a compromise plan which would allow for adjudication of claims by active duty military personnel.

Mr. Speaker, we must do everything possible to ensure high quality medical care for those who protect our country. I strongly support H.R. 1954, and urge its passage.

UNITED STATES-CANADIAN FREE TRADE AGREEMENT

HON. LEE H. HAMILTON

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 28, 1987

Mr. HAMILTON. Mr. Speaker, I would like to insert my Foreign Affairs Newsletter for October 1987 into the CONGRESSIONAL RECORD:

UNITED STATES-CANADIAN FREE TRADE AGREEMENT

On October 3, the U.S. and Canada concluded a Free Trade Agreement (FTA). The two economies, closely intertwined, are the world's largest trading partners. Almost 80 percent of Canada's exports come to the U.S. and 20 percent of U.S. exports go to Canada. Trade has built strong ties between our two countries but has also created frictions: Since 1983, the U.S. has run a major trade deficit with Canada. Rising protectionism has led to numerous trade disputes which have threatened to escalate into an all-out trade war.

The FTA is meant to remedy these problems and to prevent new ones. By halting protectionism and opening trade opportunities in goods, services and intellectual property, the FTA could provide a stimulus for the new round of global trade negotiations now underway, and make our close trade ties with Canada even closer. The FTA will increase competition. The hope is that over time it will strengthen both the U.S. and Canadian economies and create thousands of new jobs. My sense is that the FTA will create more winners than losers.

Under special "fast track" procedures, the President has until January 3, 1988 to sign an agreement which he must then submit to Congress for approval, probably early next spring. The House and Senate will have 60-90 days to consider the pact and vote on it, up or down; no amendments are permitted. The treaty is likely to be approved both by Congress and the Canadian Parliament, but not without contention.

Tariffs: The heart of the FTA is the removal of tariffs. Eighty percent of Canadian exports to the U.S. and 65 percent of U.S. exports to Canada are already duty-free. Existing Canadian tariffs average double those in the U.S., and some are much higher. The FTA will phase out all remaining tariffs. Some will be eliminated in January 1988, others within three years, and the remainder by 1998. The longer phase-in period will allow time for industry adjustment. Some short-term dislocation may result, but tariff elimination should boost long-term efficiency and growth.

Non-Tariff Barriers: Limited progress on remaining non-tariff barriers is perhaps the FTA's single largest shortcoming. Negotiators were unable to bridge the gap between widely varying U.S. and Canadian views on subsidies. Nevertheless, some important progress was made. Canada agreed to tighten the 1965 U.S.-Canadian Auto Pact guidelines to prevent foreign auto producers (largely Japanese and Korean) from receiving duty-free concessions. Unofficial Canadian auto content rules will be replaced with a 50 percent North American provision which will benefit U.S. suppliers. In services, each country agreed to give the other the same treatment they provide their own nationals. Substantial progress was made in financial services where differing banking regulations presented a barrier to competition. These concessions will help the U.S., which enjoys an advantage in service trade with Canada.

Energy: Canada's proximity and vast resources make a stable energy supply relationship a major U.S. objective. Under the FTA, Canada will guarantee less volatility in energy exports to the U.S. In return, the U.S. will allow Canada limited access to Alaska's North Slope oil. This trade-off has raised concerns in both countries. Many Canadians believe it is one-sided; some Americans insist that exclusive U.S. access to Alaskan oil must not be relinquished. National security interests in Alaskan energy are important, but the gains from long-term U.S. access to Canadian energy resources should not be overlooked.

Investment: Nearly half of all Canadian industry is owned by foreigners, three-fourths of whom are American. Concern with foreign ownership led Canada to enact numerous investment restrictions, including "performance undertakings" (requirements for exports, local sourcing and domestic content) and limitations on foreign holdings. The FTA will eliminate Canadian minimum equity rules and performance undertaking requirements. U.S. companies will receive the same treatment for new acquisitions as Canadian companies. Canadian "cultural" industries, such as broadcasting media and publications, will be exempted. The Canadians remain deeply sensitive about issues of sovereignty and fear that their cultural identity will be overrun by a surge of Yankee influence from the south.

Dispute Settlement: The FTA creates a controversial binational dispute settlement mechanism to replace review by national courts. The tribunal will consist of five experts—two U.S., two Canadian, and a mutually agreed-upon fifth party, who will review contested trade dispute rulings by U.S. and Canadian authorities. The national laws of each country will be applied, but the binational tribunal will have the final say. Constitutionality questions raised by this provision must be addressed before the FTA is sent to Congress.

The FTA is not perfect. It has shortcomings as well as positive aspects. Many nontariff barriers will remain, especially in agriculture where progress must await developments in the new round of global trade negotiations. However, U.S. trade with Canada is likely to increase significantly. Winning U.S. industries will include autos, telecommunications, computers, financial services and many small manufacturers now hurt by trade barriers. Losers may include metal and energy-extraction industries, and U.S. shippers, who fear the FTA could expand Canadian maritime opportunities in the U.S. market.

Canada is a close ally and neighbor with whom we share the world's longest undefended border. Over the years we have enjoyed unequaled cooperation on a broad range of issues. The FTA represents an ambitious new frontier for our relationship. The coming debate will focus not only on the FTA, but on the future of overall cooperation between the U.S. and Canada. The broader question is whether the FTA will move the world in the direction of competing trade blocs or set a precedent for a new round of trade liberalization.

BUILDING A NEW PARTNERSHIP FOR THE AMERICAS

HON. BILL RICHARDSON

OF NEW MEXICO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 28, 1987

Mr. RICHARDSON. Mr. Speaker, I would like to alert my colleagues of a speech by Presidential candidate Gov. Michael S. Dukakis, "Building a New Partnership for the Americas." This excellent speech calls for strong foreign policy. It calls for support of the Arias peace plan. It calls on this country to promote human rights and democracy around the world.

BUILDING A NEW PARTNERSHIP FOR THE AMERICAS

(Speech by Gov. Michael S. Dukakis)

I am an internationalist.

I believe that the United States must be deeply and actively engaged in what's going on in the world.

That we must be tough and strong and involved—in our hemisphere, in our relations with the Soviet Union, in the Middle East and Far East, and in the world economy.

Of course, it's easy to talk about being tough and strong and involved. We've been getting that kind of rhetoric from the White House for nearly seven years.

But it's another thing to be tough; to be strong; and to use our strength for the right reasons and the right goals and the right objectives and the right values.

And wandering around the world like a lonesome cowboy is no substitute for a strong and coherent foreign policy that respects the rule of law; that works in concert with our allies; and that reflects American values.

We can't afford another four years of a foreign policy that talks tough and collapses under fire.

We can't afford more Lebanons; more Iran-contra scandals; more ill-conceived adventures in the Persian Gulf; more missed chances to stop the arms race.

We can't afford a $170 billion trade deficit.

And we can't afford a failed and illegal policy in Central America.

During the next weeks and months, I will be setting forth my vision of America's place in the world: my views on how we strengthen our national security; on how we can build a competitive America; and on how we pursue what I believe is the best opportunity for meaningful arms control and arms reduction we have had in our lifetimes.

It will be an optimistic vision. A vision of an America that is proud and strong and confident; an America with a foreign policy that gives life to the principles and values upon which our nation was founded.

America must have a strong national defense. We must also have a strong and growing economy; quality schools for our children; a safe and wholesome environment; and new leadership in the White House that will make sure we get a dollar's worth of security for every defense dollar we spend.

Our nation was born in rebellion; we were raised on the frontier; and we came of age in the industrial revolution. We are not a nation that fears change. We expect it. We embrace it. And we have always understood that we must make change work for us, not against us.

The times now demand new leadership; leadership with a deep understanding of history and a clear view of the future—its dangers and its opportunities.

Leadership that understands we are stronger when we work together—with our allies; with our neighbors; with the international community. Leadership that knows we are stronger when we respect the law and the Constitution and live up to our own principles and values.

This afternoon, I want to apply these ideas to a specific challenge: to our relations with those who share with us the proud badge of "Americans": the people of Central and South America. For our neighbors to the south do not refer to us simply as "Americans". They call us "norteamericanos": Americans of the north.

During the summer of 1954, I had the opportunity to live with a wonderful family in Lima, Peru and to study at the oldest university in our hemisphere. That's where I learned to appreciate and respect the Latin American people and their history and culture. It's where I learned to speak Spanish. And it's where I first confronted the inconsistencies in our policies toward our neighbors to the south.

For it was in 1954 that the United States government, operating right out of the U.S. Embassy in Guatemala City, engineered the overthrow of the democratically elected government of Guatemala. And the curious thing about what happened in Guatemala in 1954 was that nobody here in the United States seemed to know what was going on while everybody in Peru knew exactly what we were doing. The result of that U.S. directed military coup in Guatemala was thirty years of the most brutal repression any country in this hemisphere has ever endured.

In this century, the United States has mounted nineteen major military expeditions to Latin America. Five times, we sent troops to Honduras. The Marines occupied Nicaragua for twenty years. And we have helped overthrow a democratically-elected government not only in Guatemala in 1954, but in Chile in 1973.

Every time we intervened, we did so in the name of democracy and freedom.

And almost without exception, the legacy of our intervention has been tyranny, not freedom.

The lesson in this is not that our announced goals were wrong, but that we chose the wrong means. We put ourselves above the law. We tried to go it alone. We tried to impose our views, instead of helping to build a democratic tradition. We showed our neighbors a fist, when they needed a helping hand.

This is a lesson that the current Administration has not learned. Since coming to office in 1981, it has carried out a policy towards Nicaragua that has ignored the counsel of our Latin American allies, flouted international law, violated treaties which we ourselves helped to draft and sign and ratify; undermined our Constitution and fueled the flames of violence and instability throughout Central America.

As a result, it has been a weak policy; a policy that has failed to unite our people at home, failed to win support from our allies abroad, failed to reduce Soviet and Cuban influence in Nicaragua, and failed to serve the best interests of our country or of our neighbors.

The next President will have the opportunity—and the responsibility—to restore U.S. leadership. Not by seeking to dominate our neighbors or to dictate regional events. But by building a strong and durable partnership with a new generation of democratic leaders in Latin America.

A partnership that will recall the spirit of FDR's Good Neighbor policy and build on the best elements of JFK's Alliance for Progress.

A partnership: to restore economic development and economic opportunity; to ensure peace and security; to promote democracy and human rights.

Not long ago, most Latin American countries were governed by military dictators.

Today, democratic elections have given the region its best group of leaders in at least a quarter century. Leaders like Alfonsin in Argentina * * * Arias in Costa Rica * * * Barco in Colombia * * * Cerezo in Guatemala * * * de la Madrid in Mexico * * * Garcia in Peru * * * and Sanguinetti in Uruguay. These are strong, practical, progressive, democrats; they are good neighbors; and they will be good partners.

And if we listen to those leaders, we will understand that the greatest danger we face in this hemisphere is not Nicaragua or Cuba; it is the desire of those in Latin America who are poor, jobless, landless or malnourished to lead a better life.

For economic weakness leads to weakness elsewhere: by undermining the democratic promise; by sowing the seeds of radical revolution; by strengthening the appeal of profits from trafficking in drugs; by disrupting communities, breaking up families and driving tens of thousands northward each year in search of opportunity.

We in this country are proud to be a land of opportunity. But the people of Latin America want and deserve opportunity at home.

And today, Latin America is in the middle of its worst economic crisis since World War II.

The military left behind huge debts in Argentina and Brazil and Guatemala. Peru must cope with a $13 billion debt and a rural infant mortality rate of 25 percent. The per capita income in every country in Central America has declined by ten percent or more since 1981. The average annual inflation rate in Latin America during that period has been an incredible 134%. A decade of growth has evaporated. Unemployment has risen and wages have gone down.

Unfortunately, we have not responded. Instead, we have turned a blind eye to poverty and a deaf ear to the debt crisis. And in so doing, we have extended an open invitation to those who would cause trouble in our hemisphere.

In Cuba, schoolchildren chant anti-debt slogans to visiting dignitaries. And the Soviet Union has not failed to notice that on two dominant issues—the debt and Cental America—our policies are opposed by Argentina. Brazil and Mexico, the three giants of Latin America. It should be no surprise that Secretary Gorbachev soon plans to visit those countries; the first visit a Soviet leader will have ever made to the mainland of Latin America.

That's why we need a partnership for progress in the Americas; a partnership that will fulfill John F. Kennedy's vision twenty-six years ago of "a hemisphere where all men can hope for a suitable standard of living, and all can live out their lives in dignity and freedom." A partnership that must begin with Mexico, a nation whose future is of far greater importance to the United States than our misbegotten adventure in Nicaragua.

Mexico is a valued and important neighbor—our third biggest trading partner and our number one supplier of oil.

But it is a neighbor in trouble.

Its population has doubled since 1960, and the real wages of the Mexican people have declined by forty percent in the last five years alone.

We have much to gain by helping Mexico to get back on its feet.

And much to gain by building a new partnership for progress throughout Latin America.

For while Mexico's recession has cost 200,000 U.S. jobs, the Latin American debt crisis, as a whole, has caused a forty percent decline in our exports to the region. That means $14 billion less in sales each year of soybeans and grain, steel and automobiles, construction equipment and farm machinery; and thousands of lost jobs for American workers and lost opportunity for American farmers.

It means dollars that should be going to buy John Deere tractors and Iowa feed grain and South Dakota beef being used for interest payments to New York banks.

The region's external debt is now more than $380 billion. And for five straight years, there has been a net transfer of financial resources out of Latin America—a total of $131 billion since 1982. That's more than twice the relative size of the 1920's war reparations that destabilized German democracy and paved the way for Hitler's rise to power.

Sooner or later, the constant demand that Latin Americans "tighten their belt" will tie a noose around democracy.

And the next President of the United States must understand the link between our security and Latin America's economy.

He must sit down with the leaders of Latin America, with the international banks, with commercial lenders, and with private voluntary organizations to develop a joint plan of action—based on the knowledge that if Latin American democracies are to grow, they must have access to foreign capital, they must have easier access to foreign markets, and they must be challenged to create opportunity not just for some, but for all their people.

We must begin by seeking an increase in capital for multilateral lending institutions, especially the Inter-American Development Bank—capital to come not just from the United States, but from Japan and Europe and Canada.

We should recognize that the burden of debt relief must be shared fairly—by borrowers and lenders.

We should act on the principle that debt service payments must leave sufficient funds within a country to allow adequate investment and growth.

We should recognize that what may work in one country will not work in another.

We should encourage innovation and experimentation: debt for equity swaps like those used in Chile and Mexico, and agreements like the Conservation International's deal with Bolivia to exchange six hundred fifty thousand dollars in debt relief for expanded environmental protections in the Amazon rain forest.

We should encourage Latin American governments to address not just the symptoms, but the causes of underdevelopment, by responding to the needs of the poor, and by seeking to involve all their citizens in the economic life of their countries.

The United States will have a key role to play in this partnership; a role we cannot play unless we get our own fiscal house in order. A lower deficit in Washington will mean a stronger domestic economy; it will make it easier for us to help others; and it will mean lower interest rates and easier access to capital for Latin American governments.

We should seek to increase trade by bringing down tariff and nontariff barriers—between North and South America, between our hemisphere and Asia and Europe and Africa. We should oppose new barriers, such as an oil import tax, that would hurt our economy and destroy Mexico's, a country which depends on oil exports for almost half its foreign exchange.

And we should direct our foreign aid dollars to where they will do the most good.

What sense does it make to spend $75 million to send advanced fighter aircrft to Honduras, a country where only one rural child in five is born healthy; where less than half the population has access to safe water; where almost half the adults cannot read; and where 56 percent of the workforce is without a full-time job?

And what could we possibly be thinking of when we provide Haiti with millions of dollars in military aid when those same funds could be used to help private voluntary organizations or the Inter-American Foundation to meet the basic human needs of the Haitian poor?

But no program of economic development will succeed in an atmosphere of civil or regional violence. And today, violence is encouraging capital flight, producing thousands of refugees, squandering public resources and disrupting the economic life of much of Central America.

That's why we need a partnership for peace and security, as well.

As the Americas' strongest and most powerful nation, it is our responsibility to reply firmly and forcefully to any serious military threat from the Soviet Union.

There is no place in this hemisphere for platforms from which the Soviet Union can project offensive military power against the United States, or our allies and friends.

But regional peace and security are not solely a U.S. concern; and they are not solely a U.S. responsibility.

And that is why forty years ago we helped write the Rio Treaty and the Charter of the Organization of American States. Those treaties provide a solid foundation for regional security. Under our Constitution, those treaties are the law of our land. And those treaties explicitly prohibit what we are now doing in Nicaragua.

We've had enough law breaking in high places in Washington. We don't need any more.

And make no mistake about it. What we are doing in Central America today is a violation of U.S., as well as international, law.

U.S. aid to the contras must end. For contra aid is not a lever that will foster democratic change in Nicaragua; it is, instead, a wedge separating the United States from our democratic neighbors.

Because there isn't a democratic nation in this hemisphere that supports our policy in Nicaragua.

That's why they've been trying to get us to pay attention to the Contadora process for the past five years.

And as a result of their efforts, in the words of Costa Rican President Oscar Arias, "the hour of peace" for Central America has come. Last month in Guatemala City, the leaders of that region signed a historic agreement based on Contadora and the Arias plan; a plan to stop the killing and start the talking in Central America.

The United States should be supporting this agreement—not reluctantly, but enthusiastically—for its goals are our goals: a ceasefire with amnesty for those who have taken up arms against their government; an end to outside intervention, whether by the United States or Cuba or the Soviet Union; respect for international borders; a halt to regional militarization; progress toward democracy; and protection for human rights.

The agreement reached in Guatemala City is only a framework for peace; it is not peace itself. But it is a serious document that makes demands and imposes obligations that can and must be met—by Nicaragua, by guerrilla groups, by outside powers and by every government in the region. And we should seize the opportunity to help translate this plan's promise into the reality of peace and security for Central America.

We should be willing to negotiate directly with Nicaragua to resolve our legitimate security concerns. The Central American governments expect and desire that we do so.

We should be offering whatever technical and financial support may be needed to help monitor and verify the provisions of a more detailed plan for peace.

And we should be welcoming President Arias as a hero when he arrives in Washington next week, not lecturing him about the dangers of Communist subversion. He and his colleagues are well aware of the dangers. They put their lives on the line for democracy every day. And they want contra aid to stop.

The courage and creativity of Central America's leaders reminds us that we should never underestimate the determination of our fellow Americans to be free.

On the last day of last month, a quiet and peaceful man named Antoine Thurel burned himself to death on the steps in front of the State House in Boston. Antoine Thurel, like my own parents, was an immigrant. He came from Haiti, the poorest nation in this hemisphere. And he sacrificed his life in frustration and despair over the agonizing struggle for freedom and justice in his homeland.

His death should help us to remember that poverty and repression are not abstractions; they have a human face; their image is reflected in the eyes and stamped in the hearts of millions of Haitians and Salvadorans and Guatemalans and Cubans and Nicaraguans and Chileans who have sought refuge in neighboring countries, or who have come to our shores in search of freedom, but who have kept alive within themselves the hope—the dream—of returning to find freedom and prosperity at home.

It is a dream our nation can help come true.

Not by overthrowing governments we don't happen to agree with; not by cozying up to Latin American dictators as we have so often over the past century; but by demonstrating every day and every week the powerful force of our ideals; by pointing to the strength and success of the democratic partnership we will build in this hemisphere; and by building an alliance for freedom; for economic opportunity; and for social justice throughout this hemisphere.

We should use our aid dollars to help civilian leaders, especially in Central America, to establish control over their military, to build strong democratic institutions and to translate the democratic promise into a better life for their people—through better schools, better health care, better housing and better jobs.

We should help to initiate a Pan-American exchange program—a two way exchange of students and teachers and tradesmen and professionals and farmers and just plain citizens—to teach and to learn from each other and about each other, and to build a partnership among the Americas that will go deeper and grow stronger than ties based simply on government to government relations.

We should increase student scholarship programs so that Latin American students will have a better chance to develop the kind of sophisticated technical and management skills that will help them to grow and give something back to their countries.

We should expand and strengthen the Peace Corps.

And we should restore America's leadership in the struggle to increase respect throughout the world for basic human rights.

Listen to the words of Jacobo Timerman: "Of all the dramatic situations I witnessed (while a political prisoner in Argentina), nothing can compare to those family groups who were tortured often together, sometimes separately but in view of one another, or in different cells, while one was aware of the other being tortured. The entire affective world, constructed over the years * * * collapses with a kick in the father's genitals, smack on the mother's face, an obscene insult to the sister, or the sexual violation of a daughter."

Listen to the Witnesses and to the surviving victims of torture in El Salvador, the relatives of the disappeared in Guatemala and Chile, the political prisoners in Nicaragua and in Fidel Castro's Cuba.

Listen and understand that nothing justifies the theft of human dignity. Nothing. Not leftwing or rightwing politics. Not personal or economic or religious differences. There is no rationale for torture. No excuse for murder of kidnappings or disappearances.

The United States cannot impose respect for human rights. but we can place strict conditions on our military and economic aid; we can support the Inter-American Commission and the Inter-American Court on Human Rights; and, I must add, the International Court of Justice; we can encourage and protect human rights monitors; we can speak up for the silenced; we can insist on liberty for the unjustly imprisoned; and we can demand—even during civil conflict—that international humanitarian standards be observed.

We are a strong nation not so much because of what we possess, but because of what we believe.

And we are strongest when we meet the standards we set for others—not when we mine harbors, teach political assassination, or break the laws of our country to conduct a secret war.

The great liberator, Simon Bolivar, had it right when he said that the Americas are the greatest region in the world, not so much by virtue of our area and our wealth, but by our freedom and glory.

We need leadership in the white House that will understand that.

Leadership that will understand what Mexican writer Carlos Fuentes meant when he said that the "the great weakness of the Soviet Union is that they are surrounded by satellites, and not by friends."

Because our friendship with the people of Latin America can be one of our greatest strengths. If we respect each other. If we respect the law. If we work together to produce the kind of sustained economic growth that will create opportunity for all the people of this hemisphere.

That won't happen overnight.

But Poco a poco. Little by little.

Paso a paso. Step by step.

Juntos. Together.

Vamos a ganar. We shall succeed.

JACK K. WESTBROOK: AFA MAN OF THE YEAR

HON. JOHN J. DUNCAN

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 28, 1987

Mr. DUNCAN. Mr. Speaker, Mr. Jack K. Westbrook from Knoxville, TN, was recently honored as "Man of the Year" by the Air Force Association, the hightest tribute one can receive from that organization.

The association recognizes that "under his guidance, the highly successful 'Greater Knoxville Committee on American' was created to bring local civic and community groups together to better understand the Nation's military requirements by hearing top-level speakers on key issues." He thus has enhanced the objectives of the AFA.

As State president, Jack led over 2,000 members in five chapters across Tennessee in highlighting the goals of the AFA, and the Air Force. He has also served as president of many other groups which include the Tennessee Association of Life Underwriters, the Knoxville Association of Life Underwriters and the local chapter of the American Society of Chartered Life Underwriters. In short, Jack has been a strong and respected State leader.

Jack is to be highly commended for his widespread and active support for the AFA throughout the years. He greatly deserves the special recognition which goes with the AFA "Man of the Year" award.

WELCOME TO OUR NEWLY NATURALIZED CITIZENS

HON. BENJAMIN A. GILMAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 28, 1987

Mr. GILMAN. Mr. Speaker, it is with sincere pleasure that I congratulate the residents of New York's 22d Congressional District who have chosen to become citizens of the United States with all the privileges, freedoms, and responsibilities that American citizenship entails.

Our beautiful Hudson Valley region in New York State is proud of its newest citizens, and I invite my colleagues to join me in welcoming the following newly naturalized Americans and extending to them our best wishes for a happy and prosperous life in their new homeland:

NEWLY NATURALIZED AMERICANS

Noel Abrigo Aborda.
Mr. Geoffrey O. Agard.
Francois Alexandre.
Solange Aristil.
Jennifer Lee Attick.
Mr. Mauricio Jaime Aufgang.
Richard Vieira Azevedo.
Renate Elisabeth Bammert.
Mr. Filippo Basile.
Lucy Bellone.
Ms. Eva Bickel.
Mr. Zippora Bickel.
Ichak C. Bikel.
Maria Bischoff.
Mr. Nirys Boursiquot.
Ester Brach.
Ms. Hilmer C. Brown.
Ms. Jean-Claude Cadet.
Ms. Irene O. Calkin.
Ana E. Cano.
Ms. Lucy Chua Castaneda.
Robert Chen-Ro Chang.
Victoria Heui-Tai Chang.
Phyllis D. Charles.
Mr. Vasile Ciriac.
Crismely A. Climes.
Nolly Climes.
Pedro Climes.
Domenico Cortese.
Marie Elena Cracolici.
Ms. Angela M. Crawford.
Mr. and Mrs. Anna & Felice DeFilippis.
Anatoly Dekhtyar.
Irina Dekhtyar.
Carlos Mauricio Del Pozo.
Catherine Elizabeth Doherty.

Hit Dominy.
Ms. Silvia Donates.
Mr. Eddy Dorestan.
Ms. Marie Carmel Dorestan.
Mr. Phillippe M. Doucet.
Maria Drago.
Keri K. Dreyer.
Fred Fariborz Ebrahimi.
Ilidio F. Elias.
Flora Espaillat.
Batja Feigel Kroser.
Pierre Gerard Fleurimond.
Rebecca Freund.
Ms. Carmela Frustaci.
Ms. Tova Gluck.
Susan Goldenberg.
Ms. Ekaterini Gouvis.
Mr. and Mrs. Moshe & Schochana Gratt.
Ms. Monika Greene.
Rachimboi Haknasar.
Eunice P. H. Hamilton.
Mr. Rogelio A. Hamilton.
Mr. Simon D. L. Haysom.
Antonio Zamora Hernandez.
Moise Fouad Holly.
Margaret Hurley.
Housien Ahmed Ismail.
Mr. Toaby Isrol.
Mr. Stephan Ivaseczko.
Serge Jean-Baptiste.
Rocky Jean-Louis.
Jacqueline A. Jones.
Andrea Patricia Junor.
Yvon Kavanagh.
Percy Ruston Kavarana.
Ms. Mary B. Keegan.
Ms. Josephine Kent.
Ms. Lydia Khosdeghian.
Bong Ho Kim.
Lila Yunok Kim.
Aneta Klein.
Devorah Kleinberger.
Sushma Kumar.
Mr. Daniel P. Lacroix.
Minh Q. Lam.
Philip L. Lanigan.
Talanat Asenat Lapid.
Richard Laput.
Steven Egbert Lawrence.
Hallie Lewyta.
Hazrah Lin.
Ms. Socorro Llado.
Jose R. Lopez.
Federico Lostumbo.
Van Quoc Luu.
Yen Tuyet Luu.
Zenaida Manojo.
Rosanna Marcotullio.
Mr. Archibald C. Marshall.
Caesar Martone.
Sergio Maturana.
Kenrick J. McBean.
Beryl McDonald.
Rosalia Mermelstein.
Ms. Monika Michalik-Lobaido.
Lilian Minh.
Mr. Isaac Mizrachi.
Luis Mogollon.
Gilda Moliterno.
Sorin Ioan Mortun.
Virginia Mortun.
Mr. Howard NGuyen.
Francois J. Negri.
Ms. Maria Olivares.
Orlando Pacifico.
Iluminada Manuel Pagayunan.
Mr. Garineh Panossian.
Mr. Abinash Parida.
Patricia Park.
Marie Parker.
Amit S. Patel.
Rachel Perl.
Geraldine Pierre-Fleurimond.
Mr. Gaetano Pinto.
Wlodek Piotrowski.
Ms. Suk Yon Porter.
Francisca G. Powell.
Samuel A. Powell.
Kari O. Preston.
Gerda Probst.
Mr. Marcelo L. Quarantotto.
Alfredo B. Rabino, Jr.
Gilma Ramirez.
Paula Reisman.
Elida Dolores Reyes.
Sandra Elizabeth Reyes.
Hubert Fitzroy Roberts.
Adlher Rodriguez.
Gricelidys M. Rodriguez.
Jose A. Rodriguez.
Mr. Jose Rodriguez.
Samuel Salamon.
Sofia Salamon.
Hernando Salazar.
Judith N. Samet.
Ms. Maria Santos.
Claudia Schirripa.
Nicholas Siraj Schneller.
Ursula Scholz.
Carlyle Emanuel Sheppard.
Ms. Carol Ann-Marie Sheppard.
Mun Hui Sin.
Julio Sousa.
Adria Pauline Subbiondo.
Mr. Nong Duc Ta.
Ms. Jenny Tan.
Mary Tashjian.
Mr. Whitley Thomas.
Eleni Toromanides.
William Ernest Trevor.
Leonie Tugman.
Jean Emmanuel Turnier.
Gayle M. Unhjem.
Ambrogio Bruno Vippolis.
Arun K. Vohra.
Benjamin Weber.
Rosalind I. Winkler.
Ahmet Yilmaz.
Douglas Robert Young.
Jose Rolando Zapata.
Jonathan A. Zwart.

SALUTE TO THE POETRY OF BETH WILSON

HON. RONALD V. DELLUMS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 28, 1987

Mr. DELLUMS. Mr. Speaker, I rise today to commemorate the printing and publication of an outstanding and historic scroll written by a constituent of the Eighth Congressional District, Mrs. Beth P. Wilson. Ms. Wilson is the notable and acclaimed author of many children's books, including biographies of Martin Luther King, Jr—that won the CATE Award—Muhammed Ali, Stevie Wonder, and a tome entitled "Giants for Justice", which addresses the lives of Mary McLeod Bethune, A. Philip Randolph as well as Martin Luther King, Jr.

With the publication of the "Crispus Attucks Scroll," Beth Wilson has created a striking rendition of the life of Crispus, embellished in poetry and rendered on parchment. It is an educational tool of extraordinary dimensions, and one which we are proud to identify as having been a product of the intelligence, creativity and commitment of one of the outstanding citizens of the district we represent.

Beth Wilson was born in Tacoma, WA, and has lived in Berkeley, CA since the early thirties. Her late husband, W.D. Wilson, practiced dentistry for many years in the West Oakland neighborhood where I grew up. Beth Wilson is a former teacher, the second black teacher in Oakland, CA, and became an educational consultant in the Berkeley public schools. She abandoned this career to become an author. Beth is a former board member of the California Writers' Club. Her poems have been published in the Christian Science Monitor, the Open Court Publishing Series, the African-American Studies Program and other periodicals. A copy of "Crispus Attucks" hangs in my Washington and district offices as a tribute to this great individual who has worked so prodigiously to document the lives of others for the benefit and education of our youth.

NATIONAL IMMIGRANTS DAY

HON. WILLIAM O. LIPINSKI

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 28, 1987

Mr. LIPINSKI. Mr. Speaker, as cochairman of the Democratic Council on Ethnic-Americans, I rise to inform my colleagues that today is the day we set aside to honor our Nation's rich ethnic and immigrant heritage. Today also marks the 101st anniversary of the dedication of the Statue of Liberty.

Immigrant Americans have always distinguished themselves and added to our diversity through their determination to preserve their customs and values. However, they have at the same time been recognized as patriotic Americans willing to defend their new homeland with their lives, if need be.

Mr. Speaker, diversity has always been at the root of our strength and our prosperity. Immigrants from all over the world have given our Nation a special place in the world. No other country in the world shares such a combination of ancient cultural heritage with the experience of the New World.

For over 100 years, the Statue of Liberty has been a symbol of the old meeting the new and the promise of freedom that allows us all to live in harmony and genuine opportunity to build a better life for all who have come to share in this promise.

On National Immigrants Day, we pay tribute to those who have braved turbulent times in their own countries and chose to become Americans. In order to remind the present generation of our rich past, we must rededicate ourselves to insuring that future generations of immigrants will have the opportunity to come to America and prosper.

THE NEW KOREAN CONSTITUTION

HON. THOMAS M. FOGLIETTA

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 28, 1987

Mr. FOGLIETTA. Mr. Speaker, yesterday the Korean people voted overwhelmingly in support of the new Korean constitution. The tremendous pride of the voters echoed throughout the day as 93 percent of the

Korean electorate went to the polls. This is a truly historic occasion and one which sets the foundation for the presidential election to be held this December.

The road to democracy in Korea has been a long and difficult one. The reforms which were adopted this summer are a tribute to those Koreans who have worked peacefully for democratic change. The renewed respect for human rights, freedom of the press, and the restoration of the civil liberties of several hundred dissidents send a clear signal of Korea's commitment to democracy. I support these efforts and encourage continued reform.

A new era in Korean history has begun. For the first time in 16 years, the Korean people will be able to choose their next president in a free and open forum. Likewise, elections for the National Assembly next spring will further cement the new democratic pact between the government and the people. I would like to congratulate all Korean citizens on this momentous occasion and urge my colleagues to take note of the dramatic changes taking place in Korea.

THE NEW MEDICO REHABILITATION CENTER

HON. RALPH M. HALL

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 28, 1987

Mr. HALL of Texas. Mr. Speaker, a new facility, the Medico Rehabilitation Center, opened earlier this year near Tyler, TX. It is a very modern facility and is to focus on the treatment and rehabilitation of head injury victims.

There are 400,000 people a year who sustain head injuries. Seventy to ninety thousand of those people are disabled for the rest of their lives. The New Medico Rehabilitation Center of Texas will take care of their demanding problems. The 432-acre facility will serve Texas and a five State region.

In the past, head injured people were often forgotten by society. Their care was less than adequate and rehabilitation was virtually nonexistent. A major problem with the care of head injured victims is expense. The cost of extended care can be astronomical, as the recovery period for the head injured patient is unpredictable. The new medico facility is committed to the care of these patients.

I wish to commend Mr. Jim Harrington, executive director, Dr. Barry Rath, clinical director, and Ms. Judi Levy, clinical evaluator and associate of the New Medico Rehabilitation Center of Texas; Mr.Charles Haynes, president and executive director of the Texas Head Injury Foundation; Ms. Kathlees Rowe, public information officer and Mr. Peter Miller, deputy director of post acute division of New Medico Combined; and Ms. Claire Giuseffi, director and rehabilitation nurse of Texas Employer's Insurance Association—and all the men and women associated with this facility—for their dedication to help the head injury patient learn to overcome their deficiencies and provide opportunities to use the skills they have.

I especially want to applaud Ms. Claire Giuseffi, director and rehabilitation nurse with Texas Employer's Insurance Association, who has shown great dedication in behalf of those victimized by head injuries in industrial accidents. Her findings reveal that 80 to 90 percent of clients who are head injured do not have the funding they need for their care. Ms. Giuseffi said when insurance companies began to consider the cost of lifelong care of head injured clients, "they looked to rehabilitation as a means of cost containment." Yet she said "the objective isn't always for them to go back to work. The bottom line is to give them a much better quality of life."

Mr. Speaker, I am certainly proud of this facility and of those who make it possible.

MAJORITY RULE?

HON. TRENT LOTT

OF MISSISSIPPI

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 28, 1987

Mr. LOTT. Mr. Speaker, much has been made in this bicentennial of our Constitution about our system of majority rule. Ironically, here in the people's House, the concept of majority rule is being increasingly ignored, violated or waived. A few years ago House rules were changed to permit as few as one-third of a committee's members to transact all business, including the markup of legislation. Left in place was the longstanding requirement that a majority of a committee's members actually be present at the time a measure is ordered reported to the House.

However, there is increasing evidence that this requirement is being ignored by committees which are hardpressed to muster a majority quorum. Last week one such dispute arose on the House floor. It was settled by the Chair, in accordance with the precedents, by taking the word of the bill's manager that a majority of members were present. This week, rather than risk another such fight over a bill, the Rules Committee took the extraordinary step of simply waiving the majority quorum rule. This is an outrageous precedent that other committees are sure to take advantage of in the future.

To avoid any confusion over the importance of the majority quorum requirement, and to ensure strict compliance and enforcement, I am today introducing an amendment to House Rules to require that the committee report on any measure reported by a committee either include a list of those Members voting for and against the measure, including those voting by proxy; or, in the case of a nonrecord vote, the names of those members actually present at the time the measure is ordered reported.

Obviously, a bill could not be considered unless the report contained this information. And the lists of members actually present as contained in the report would serve as the evidence of compliance with the rule should a point of order be raised that a quorum was not present. In this way we can avoid the questionable practice of relying on the word of a bill's manager in those instances in which the committee transcript does not clearly show the names of those present at the time of reporting.

While this may seem a niggling rule to some, I would submit that it is essential to our legislative process that a majority of a committee's members actually participate in reporting legislation to this House. To the extent that bills do not reflect the will of an informed and participating majority at the committee level, the more the measure is likely to be unacceptable to and rewritten by the House membership when it reaches the floor.

I urge my colleagues to cosponsor this resolution. At this point in the RECORD I include the text of my proposed rule change:

H. RES. 297

Resolved. Rule XI of the rules of the House of Representatives is amended in the following ways:

Clause 2(1)(2)(B) is amended to read as follows:

"(B) With respect to each rollcall vote on a motion to report any bill or resolution of a public character, the total number of votes cast for, and the total number of votes cast against, the reporting of such bill or resolution, together with the names of those members voting for, and those members voting against, reporting the resolution (including a designation of those members voting by proxy), shall be included in the committee report.".

Clause 2(1)(2) is further amended by adding at the end thereof the following:

"(C) With respect to any nonrecord vote on a motion to report any bill or resolution of a public character, the names of those members of the committee actually present at the time the bill or resolution is ordered reported shall be included in the committee report.".

TIME TO TIGHTEN SANCTIONS

HON. WILLIAM (BILL) CLAY

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 28, 1987

Mr. CLAY. Mr. Speaker, it has been 1 year since Congress enacted the Comprehensive Anti-Apartheid Act over the veto of President Reagan. The Anti-Apartheid legislation was our Nation's first real effort to address the abominable human rights violations occurring in South Africa. The Reagan administration's failure to advance an effective United States policy toward South Africa requires that Congress renew our efforts. As we in this body continue to assess the situation in South Africa and to promote an effective antiapartheid policy, I commend the following editorial which appeared in the St. Louis Post-Dispatch, October 8, 1987:

TIME TO TIGHTEN SANCTIONS

President Reagan has followed the Comprehensive Anti-Apartheid Act of 1986 the way a mischievous child obeys his mother: selectively. The law, passed over a veto, required Mr. Reagan to report on the impact of economic sanctions against South Africa. In complying, he noted that no lessening of apartheid can be seen. That being the case, the law then requires additional punitive measures. Mr. Reagan declines.

He acknowledges that the state of emergency has been reimposed along with other draconian repression of blacks and that the Botha government has failed to meet with black leaders. But the administration blames the sanctions, saying their "impact has been more negative than positive."

The initial sanctions, however, were intended as a message that the United States was willing to back up economically its advocacy of an end to apartheid. Should that word be disbelieved or unheeded, as is the case, the plan was to increase the sanctions. Such incremental tightening of an economic vise was designed to push toward peaceful change while leaving some time for the United States to lend whatever auspices might bring about a new order, including all races, in South Africa.

In short, one year's sanctions were not expected to end apartheid abruptly. The president's recalcitrance on increasing sanctions is matched by the undercutting that has occurred this year. Randall Robinson, head of the anti-apartheid group, TransAfrica, points to several administration deficiencies: The act provided for convening a conference of industrial nations to try to reach an agreement on sanctions—no attempt was made to call such a conference. South African uranium was to be banned—a loophole was created administratively. The same thing happened with barring iron, steel and iron ore.

Economic sanctions pose difficult moral questions for countries imposing them because strict bans will mean hardship for the very people they are designed to help. Writing in The New York Times, longtime apartheid foe and member of the South African Parliament, Helen Suzman, notes that the response to U.S. and European sanctions was a surge of support for ultra-conservatives. Says Mrs. Suzman, "If there were any chance that sanctions would dismantle apartheid, I would be the first to support them. But reducing South Africa to a wasteland would lead not to a nonracial democracy but to more oppression and misery. No one should be under the delusion that things are so bad in South Africa that they could not get worse."

But what is the alternative? Diplomacy and pleading can only go so far; at some point a country must stand firmly against a system of government that allocates basic rights by the color of citizens' skin. Phased-in sanctions, at least, keep the dialogue going in the hope that a wasteland—or worse, the devastation of civil war—can be averted. Congress must, again, direct the president to take a firm stand against apartheid. It should close the loopholes the administration opened this past year and increase restrictions so there can be no doubt of U.S. resolve to oppose apartheid.

BEYOND SANCTIONS

HON. PHILIP M. CRANE

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 28, 1987

Mr. CRANE. Mr. Speaker, under the Comprehensive Anti-Apartheid Act of 1986, the President is required annually to review the sanctions placed upon South Africa by the United States. After recently reviewing the act, President Reagan concluded that the United States should not implement additional sanctions. This conclusion comes in light of the fact that current sanctions have not led to an improvement in conditions for black South Africans. It may be further argued that sanctions have not only failed to promote improvements, but have, in fact, led to increased hardships for black South Africans.

The tragedy of sanctions is that they undercut one of the most effective weapons blacks in South Africa have against apartheid: their growing economic power. In fact, as former Assistant U.S. Secretary of State Alan Keyes points out, blacks have achieved their greatest victories over apartheid in the economy. The recent mining strike and the pass-law repeal demonstrate the growing economic leverage blacks have. Sanctions, however, threaten to halt this progress.

Secretary of State George Shultz recently praised the accomplishments of black schools, unions, and entrepeneurs in undermining apartheid and convincing whites that blacks can prosper if given the necessary freedom. The United States should go further and redirect foreign aid to help blacks push for nonviolent change. However, blacks can exert such power only if the South African economy grows. This necessary economic growth is possible only if the United States realizes that sanctions are indeed a failure. Rather than working to increase the severity of sanctions against South Africa, the United States should correct its previous mistake by repealing the Comprehensive Anti-Apartheid Act of 1986.

I would like to submit the following article enumerating the inconsistencies of sanctions for the careful consideration of my colleagues.

Why Sanctions are a Failure

(By Simon Jenkins)

As soon as America's General Motors Corporation bowed to sanctions pressure and pulled out of South Africa, its local management moved fast. Renamed Delta Motors, the auto company removed 500 workers, dropped off the "Sullivan list" of firms enforcing intergrationist work practices and reversed the policy of not selling to the apartheid regime. GM thus joined some 80 American firms that have left South Africa in the past 18 months. As Congress begins a review of sanctions legislation, the results are hardly contributing to the anti-apartheid cause.

South Africa, in fact, is changing from being a classic case for economic sanctions to a classic case against them. As a tool of foreign policy, sanctions always have been easier to advocate than to impose, let alone succeed.

Succinctly put, sanctions are one of the most ineffective forms of aggression, vulnerable on at least four fronts:

The free-trade market has ways of finding new sources of supply or new conduits for old ones. Someone, somewhere, will always strike a bargain, undermining the embargo.

Sanctions are notoriously ineffective in securing real political change. The few successes almost always involve actual or implied military intervention. When such a threat is implausible, sanctions may do no more than entrench the targeted regime.

Sanctions, where implemented, tend to hurt the wrong people. Such bans are the ultimate form of economic warfare and to work fast require a total siege. Yet that action is indiscriminate and tends to harm those least able to guard against it—the poor.

Finally, sanctions develop a political life of their own, raising unrealistic expectations of success. When the embargoes fail, the result is disillusionment and bitterness.

THE IMPACT ON SOUTH AFRICA

A year after South Africa's state of emergency triggered a series of American, European Community and Commonwealth embargoes against that country, every one of the weaknesses of the strategy has been encountered. The economy, rather than suffering, is hesitantly improving. The internal anarchy of 1985-86 has died down. President P. W. Botha has survived a general election that marked a shift to the right. The government has shown its ability to continue to control dissent, if not suppress it. In short, another South African trauma seems to have passed.

Firms fleeing the moral complexities of South Africa include most of the giants of American world trade: General Motors, Ford, IBM, Exxon, Eastman Kodak, Honeywell, General Electric, Coca-Cola, and, most recently, Citicorp. Most have defied U.S. lobbyists and avoided a scorched-earth policy. Instead, they have sold to other multinationals or, more often, to local management. Factories have continued to benefit from franchises, licenses and component supplies. But the new bosses, many from the rising Afrikaner bourgeoisie, have been freed from conscientious American monitoring and have rationalized and sold where the market is best.

The Johannesburg stock market has boomed as fleeing firms have sold off at bargain prices. As Tony Bloom of the Premier Group notes: "South African companies have been able to acquire technology, management skills, brand names and market share that would have taken years to build."

Trade sanctions have had scarcely greater impact than disinvestment. Restrictions on overseas purchases of coal and steel and certain metals could threaten the jobs of up to 40,000 Transvaal miners. A boycott of sugar and fruit industries, which employ up to 150,000 people, in theory also could cause immense hardship. Neither threat has yet materialized.

South Africa's economy certainly suffers from problems familiar in Africa—inflation, shortage of foreign credit, an excessive public sector. Unlike most African countries, however, it runs a big current-account surplus, manages its economy reasonably well and has renegotiated a phased repayment of its foreign debt. Both the gold price and the terms of trade have moved in its favor. And last year's collapse of the rand more than wiped out any effect sanctions may have had.

Inside South Africa, enthusiasm for ecomomic sanctions is waning. Black leaders were only won over to the policy in a belief that it was the "final push" to topple apartheid. This toppling refuses to happen. Now, many nonwhite leaders are conceding that the prosanctions stance has done little except harm their own people. Even the Rev. Allan Boesak, the outspoken Colored (mixed race) leader, noting deepening misery in the depressed industrial areas of the Cape, is one of those now questioning sanctions.

Ford is a case in point. With an excellent record in South Africa but under "investor responsibility" pressure at home, that corporation was holding back on selling its 42 percent holding in Samcor for fear of the potential hardship on Mamelodi township near Pretoria, where many of its workers live. The pressure, however, proved too much and Ford is departing.

One South African diplomat has reflected: "American liberals came to South Africa determined to refight the American Civil War. They fought well, but now they seem afraid they might lose and only want to scramble back home." To others, the saddest feature of the Americans' pullout is that the hesitant progress South African blacks are making arises from precisely the union and community institutions promoted by American companies. Ironically, South Africa has recently become one of capitalism's more credible shows. Now, that show is closing down.

SOUTH AFRICAN SANCTIONS HAVE LEFT THE UNITED STATES DEPENDENT ON THE SOVIET UNION FOR STRATEGIC MATERIALS

HON. DONALD E. "BUZ" LUKENS

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 28, 1987

Mr. DONALD E. LUKENS. Mr. Speaker, I am reprinting for the RECORD an article from the August 3, 1987 issue of Barron's which describes how dependent America has become on vital strategic materials from the Communist bloc. This dependence is both frightening and angering. How can the United States depend on its strongest adversary for the very materials of defense?

Sanctions against South Africa have not worked and—even worse—they are endangering our own Nation. It is time to end a policy which harms both those it is intended to help and ourselves.

ANTI-APARTHEID OR PRO-SOVIET?—SANCTIONS RAISE U.S. DEPENDENCE ON U.S.S.R. FOR STRATEGIC MINERALS

(By Shirley Hobbs Scheibla)

WASHINGTON.—Among other things, the Comprehensive Anti-Apartheid Act, which Congress overrode a Presidential veto to pass last October, prohibits U.S. imports of any "article" from any firm connected in any way with the South African government. The law also threatens to prohibit currently legal imports of strategic minerals from South Africa one year after passage, if "significant" progress hasn't been made in establishing a nonracial democracy. While few lawmakers (and almost none of their constituents) seem to realize it, such provisions already have succeeded in sharply curtailing the flow of strategic and critical materials from South Africa. At the same time, they have made the U.S. increasingly—some say alarmingly—dependent for such imports on the Soviet Union and its satellites.

The statistics are jolting. For instance, U.S. imports of chrome ore from the Soviets surged to a whopping 6,440 gross tons per month on average for the six months ended March 31, compared with a mere 479 gross tons on average during the legislatively designated base period, 1981 through 1985. Chrome, of course, is essential to the manufacture of stainless steel and superalloys; hence, it is vitally important in the aerospace, chemical, defense, power-generation and transportation industries. And the U.S. is heavily dependent upon imports to meet its needs. Small wonder then that upon passage of the Anti-Apartheid Act, the Soviet Union, the world's second largest source of chrome, started developing a new mine with annual capacity of two million tons.

And chrome is only part of the shocking story. Imports of antimony from Russia have risen to 98 times the total in the base period. The U.S. also lacks adequate domestic sources of antimony, which is essentil for such items as bullets, computers, radar and sonar. Anticipating the new demand, Russia also is rapidly expanding production of antimony in the Soviet Central Asian republics of Kirgiziya and Tadzhikistan.

The list goes on—more Soviet ferrosilicon manganese, industrial diamonds, rhodium, platinum and silver bullion, all critical materials. Strategic imports also are up from Soviet bloc countries. Ferrosilicon and ferrosilocon manganese are essential for alloyed and specialty steels used to make hull plates for Navy ships and in the bodies of military vehicles and tanks. Under the first six months of the law, monthly imports of Soviet ferrosilocon averaged 2,814,527 gross pounds, compared with 692,970 for the 1981–85 average.

Again, monthly imports of ferrosilicon manganese from Yugoslavia averaged 3,270,157 gross pounds, against the base of 2,168,352. Imports of industrial diamonds from Russia were up 100 times the base average; platinum bars and plates, up five times; rhodium up three and a half times and zinc up four and a half times. Six different categories of Yugoslav aluminum imports rose.

The law says that the President may lift any of its provisions if he determines after six months that it is causing increased U.S. dependence on Soviet and Soviet-bloc countries for strategic and critical materials and reports his finding to Congress. Even though the newly compiled figures are so startling, President Reagan has no plans to do so. The reason is painfully clear. In the current climate of opinion, Congress and the media would go for his throat.

To its credit, the Commerce Department has carried out the act's mandate to give monthly reports to Congress on growing U.S. vulnerability to the Soviets or Soviet-dominated countries in terms of strategic and critical materials. But nobody on Capitol Hill seems to be paying the slightest heed.

Queried about this, Secretary of the Interior Donald P. Hodel, who also serves as chairman of the National Critical Materials Council, replied, "I don't have the answer. If you ask somebody should we buy a major component of a weapons system from the Soviet Union, they would say, 'Of course not; that's crazy.' Then should we buy the raw material that is necessary to make that weapons system from the Soviet Union? Of course not. Because of the sanctions against South Africa, we are increasingly dependent on the Soviets and Soviet-bloc countries for raw materials that are essential to the defense establishment, at the very least."

To make matters worse, the House Foreign Affairs Africa Subcommittee plans hearings this fall on HR 1580, a bill by Rep. Ronald V. Dellums, California Democrat. It would repeal the Anti-Apartheid Act and substitute a much more drastic measure. Among other things, it would ban imports of any mineral from South Africa essential for military uses unless the President certifies to Congress that domestic supplies are inadequate and "substitutes for such minerals are not available." It says nothing about importing from Communist countries. Moreover, it does away with the requirement to report to Congress on such imports.

HR 1580 also would get rid of a little-noticed part of the Anti-Apartheid Act, which states, "The United States . . . recognizes that some of the organizations fighting apartheid have become infiltrated by Communists and that Communists serve on the governing boards of such organizations."

Incredible as it may seem, during the last Congress, the House passed the Dellums bill. The only change in the current version is an addition which would prohibit any form of cooperation, direct or indirect, with the government of South Africa by U.S. military or intelligence agencies. HR 1580 has 53 co-sponsors, including Rep. Peter W. Rodino, Jr., a New Jersey Democrat and chairman of the House Judiciary Committee.

Sen. Alan Cranston, a California Democrat, has introduced S. 556, a nearly identical measure, on behalf of himself and Democratic Senators Ted Kennedy of Massachusetts and Carl Levin of Michigan. It differs from the Dellums bill only by deleting authorization for the President "to limit the importation into the U.S. of any product or service of a foreign country to the extent to which such foreign country benefits from, or otherwise takes commercial advantage of, any prohibition imposed by or under this Act." S. 556 now is pending before the Senate Foreign Relations Committee.

Meanwhile, ostensibly because the findings of the Anti-Apartheid Act for the first six months may be criticized as seasonal, the Administration is planning to continue the monthly reports for a full year. But if both houses of Congress pass the Dellums-Cranston bills, they may end abruptly.

Secretary Hodel, however, is considering having the National Critical Materials Council report on increasing imports of strategic materials from the Soviets. The 1984 law which created the Council calls for it to make public such critical materials "issues and concerns . . . as are deemed critical to the economic and strategic health of the nation" and to make policy recommendations to the President concerning them.

Will Hodel recommend that something be done about this country's mounting reliance on the Soviets for strategic materials owing to the Anti-Apartheid Act? First, he replies, Congress and the country must understand what's at stake. "Right now, when we start talking about solutions, people usually say, 'What's the problem?' " he notes.

"The last time I checked," adds Hodel pointedly, "the Soviets were still engaged in killing, mutilating and bombing innocent people in Afghanistan in a clear war of aggression."

If the sanctions against South Africa were working, the Rev. Leon Sullivan (civil rights activist and General Motors director) wouldn't find a need to call for all companies to pull out of that country. Indeed, the South African Catholic Bishops Conference, which initially supported sanctions, now has published a report finding that they are ineffective. In fact, they are counterproductive. By leaving South Africa, some companies are greatly enriching the Afrikaners who take over the divested enterprises.

At the same time, several land-bound black African countries are dependent on exporting through South Africa. Sen. Kennedy is so concerned about the harm which the sanctions he has pushed for are inflicting on them that he has proposed giving them $700 million of American taxpayers' money over half a decade.

One must ask why the U.S. should believe that racial injustice in South Africa warrants action drastic enough to harm this country, but should embrace trade with the Soviet Union, which puts millions of its own people in gulags and commits untold atrocities abroad. U.S. foreign policy should have two objectives: to achieve its intended aims and to advance the nation's interests. On both counts, sanctions against South Africa have failed.

NICARAGUAN FREEDOM FIGHTERS STRUGGLE AGAINST COMMUNIST DICTATORSHIP

HON. GERALD B.H. SOLOMON

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 28, 1987

Mr. SOLOMON. Mr. Speaker, I would like to draw the attention of my colleagues to events that have just taken place on the Nicaraguan border with Costa Rica—events that demonstrate the intense desire among Nicaraguans to rid their country of its Communist dictators.

In early September, the Communist Sandinista regime began allowing Nicaraguans to cross the border for short periods, thinking that they would persuade their relatives in the resistance to desert their struggle.

But, as a French news agency reports, many Nicaraguans took advantage of this program, not to talk their relatives into returning, but to flee and join them.

News leaked out that the border was open in mid-October, and within a few days, 1,200 people had fled to Costa Rica and Communist troops had to turn 3,000 more back from the border.

Just this last weekend, 1,000 more Nicaraguans were turned back at gunpoint by Communist troops.

Mr. Speaker, up to 400,000 Nicaraguans—15 percent of the country's population—have fled their country since the Communists took power.

If we in this Congress don't understand the meaning of this, listen to what one of last week's new refugees said after crossing the border:

> As long as that Sandinista Government stays in power, it's a lie to say there will be peace.

Mr. Speaker, we must act to ensure that the Nicaraguan freedom fighters remain ready to resume their struggle against this Communist dictatorship.

IN HONOR OF CLARKE HINKLE

HON. DOUGLAS APPLEGATE

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 28, 1987

Mr. APPLEGATE. Mr. Speaker, today I am pleased to have the honor to speak of a man who has devoted his life to hard work and determination. Mr. Clarke Hinkle, not only a Pro Football Hall of Famer for his 10 years with the Green Bay Packers, but a citizen of Steubenville, OH, whose inspiration has touched many American youths. In honor of the 10th year of the Clarke Hinkle Scholar/Athlete/Citizen Award, Clarke is being honored today, Wednesday, October 28, 1987, for his outstanding life achievements.

Clarke Hinkle is best known for his years with the Green Bay Packers. His outstanding athletic abilities is best exemplified by the fact that he played on both the offensive unit and the defensive unit. As a fullback on the offense, he was a scoring threat everytime he carried the ball. But it was as a defensive linebacker that his head to head clashes with the great Chicago Bears fullback, Bronko Nagurski, became legendary.

Clarke Hinkle, born April 10, 1912, in Toronto, OH, where he attended Toronto High School and then went on to Bucknell University in Lewisburg, PA. During his years in school, Clarke led Bucknell to its finest football years. In 1964, in fact, Hinkle was named, along with Christy Mathewson, as the greatest athlete in Bucknell history.

In January of 1932, Green Bay Packers Coach Curly Lambeau signed Clarke to a Packer's contract for $125 a game. Coach Lambeau was quoted as saying, "Hinkle was the greatest all around fullback ever to play in the National Football League." At the end of his career in 1941, Hinkle had carried 1,171 times for 3,860 yards, scored 373 points and averaged 43.4 yards on punts. He was all NFL in 1936, 1937, and 1938 and then again in 1941. He was inducted into both the NFL Hall of Fame and the College Football Hall of Fame.

In continuing honor of Clarke Hinkle, Mr. Speaker, the Fort Steuben Mall of Steubenville, OH, has awarded the Clarke Hinkle Award to a senior from each of the 20 area high schools each year for the past 10 years. Those students receiving this award have excelled in academics, athletics, and good citizenship, all qualities embodied in Clarke Hinkle.

TRIBUTE TO ORLANDO LAGMAN

HON. C. THOMAS McMILLEN

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 28, 1987

Mr. McMILLEN of Maryland. Mr. Speaker, I rise to acknowledge Orlando Lagman, a great artist whose work has been admired by many.

Perhaps the most telling example of Mr. Lagman's talent as an artist is his relationship with the Sultan of Brunei, considered by many to be the world's richest man.

Mr. Lagman had recently painted the portraits of the Sultan of Brunei and his two wives. The paintings now hang in the Sultan's palace in Brunei.

The Sultan of Brunei so admired the painting that he asked Orlando Lagman to be his palace guest and paint the rest of his family.

The Sultan of Brunei is estimated to be a billionaire many times over. His palace cost $300 million, and has 1,788 rooms and used 16 acres of Italian marble in its construction. I think it is fair to say that the Sultan could afford the services of any artist in the world. That he chose Orlando Lagman is a testament to his skill as an artist and the outstanding quality of his work.

HERBERT ANAYA, HUMAN RIGHTS ACTIVIST

HON. GUS YATRON

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 28, 1987

Mr. YATRON. Mr. Speaker, Monday's brutal murder of human rights activist Herbert Anaya once again demonstrates the violent tendencies of those committed to subverting Salvadoran democracy.

Mr. Anaya, the coordinator of the nongovernmental human rights commission [CDHES] in El Salvador, was gunned down by two unidentified gunmen after he droped his children off at school. This reprehensible act was strongly condemned by President Jose Napoleon Duarte whose personal commitment to human rights and peaceful reconciliation in El Salvador is symbolized by his endorsement of the Arias peace plan. This most recent killing is relevant to the Central American peace plan. It represents a direct effort by rightwing extremists to undermine President Duarte's credibility, while at the same time eliminating by force those individuals whose views differ from their own.

The irony of this tragedy is the death squad which committed this heinous crime probably thought that it could find itself protected under the very plan it so strongly opposes. The Government of El Salvador, in a controversial decision, had indicated that it planned to apply the amnesty provisions of the Arias plan to rightwing human rights violators, as well as the Marxist guerrillas of the FMLN.

While I have concerns about the application of a comprehensive amnesty, I have learned that El Salvador's National Assembly has just passed legislation which provides for an amnesty for politically motivated crimes prior to the 22d of October. This decision would exclude the murderers of Mr. Anaya from protection under the new law.

Mr. Speaker, as a supporter of President Duarte in his valiant crusade for human rights, I think it is incumbent on the Government of El Salvador to bring to justice those responsible for Mr. Anaya's murder as a tangible sign that it is genuinely committed to establishing a credible, civilian court system based on the rule of law.

Further, the Reagan administration and the United States Embassy should make it very clear to the Government of El Salvador, and in particular the Defense Ministry, that the escalation of rightwing death squad activities could have serious implications for continued United States assistance and training for El Salvador's security forces.

THE 75TH ANNIVERSARY OF THE FIRST WINDISH FRATERNAL BENEFIT SOCIETY OF AMERICA

HON. DON RITTER

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 28, 1987

Mr. RITTER. Mr. Speaker, the Lehigh Valley of Pennsylvania is proud to celebrate the 75th anniversary of the First Windish Fraternal Benefit Society of America.

At the turn of the century, the first pioneer Windish brothers migrated from Austria-Hungary and arrived in this community. As the Vendic population—Austria-Hungary—of the Lehigh Valley expanded in the early 1900's, the uppermost thought in their minds was to help the sick, widowed, and orphaned of their community. The fraternal society was formed for the purpose of filling these needs.

In 1912, the first meeting of the First Windish Fraternal Benefit Society was held. Present were 41 members of the community. Beginning in 1913, branch offices were opened in Palmerton, PA; New Brunswick, NJ; Steelton, PA; Bridgeport, CT; Pittsburgh, PA; and Allentown, PA. These branches served the same purposes as those of the home office.

In 1916, the home branch moved into their present quarters at 321 East Packer Avenue, Bethlehem, PA. Since that day in 1912, the society has grown to a membership of over approximately 1,700 members.

From the beginning, the First Windish Fraternal Benefit Society of America has looked toward the welfare of its membership and that of the communities its serves. One fine example of this participation, even in our national interest, is the record of more than 100 members serving in the Armed Forces to defend the United States in World War II.

Mr. Speaker, it is incumbent on this House of Congress to acknowledge and praise the efforts and history of this First Windish Fraternal Benefit Society of America. The purpose of this society reflects admirably the best intentions of our local communities and our Nation.

A CONGRESSIONAL SALUTE TO MATSUI OSK

HON. GLENN M. ANDERSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 28, 1987

Mr. ANDERSON. Mr. Speaker, it is my honor to rise today to pay tribute to Matsui Osk on the occasion of the opening ceremony for their new container terminal. The opening ceremony will be held November 2, 1987.

In 1964, Matsui Osk was established by a merger of two companies that had a long history of trade with the United States, Matsui Lines and Osk. Since its inception, Matsui Osk has been in the forefront of innovations concerning shipping. A firm commitment to excellence, and the determination to be the best has propelled Matsui Osk to the heights of the shipping industry.

Matsui Osk is the first Japanese steamship line to offer Container Service between the United States and Japan. It is the largest liner operator, running more regularly scheduled routes in the world and is the second largest steamship line in Japan. It is also the first company to develop automobile carriers. Matsui Osk has built the first technologically advanced, state of the art terminal of its kind in the Port of Los Angeles.

Matsui Osk maintains approximately 300 ships operating 40 trade routes, between 300 ports, throughout 100 different countries. It operates 10 eastbound and westbound double stack rail networks which form an intricate intermodal transportation network linking the east coast to the west coast. In 1986, Matsui Osk founded Transpacific Container Service Corp. [TRAPAC].

Mr. Speaker, as you can see Matsui Osk is a successful, thriving business, and due to its leadership, Matsui Osk will continue to succeed and maintain its hold in the shipping industry. I would like to recognize the men who make up the Matsui Osk leadership; Minoru Nishioko, president; Matsuhiko Nakano, president of TRAPAC; John Maddox, vice president; George Marshall, Sr., vice president; Kiichiro Aiura, president of Matsui Osk Lines International; and Shizuo Konduh, chairman of the board.

My wife, Lee, joins me in congratulating these men, their company, and their great accomplishments, and wish them continued success in the future.

GRENADA: A VICTORY FOR FREEDOM

HON. WILLIAM S. BROOMFIELD

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 28, 1987

Mr. BROOMFIELD. Mr. Speaker, this past weekend marked the fourth anniversary of the United States rescue mission to Grenada. I want to commend the administration for its prudent decision to send U.S. forces to that island so that future generations of Grenadians would be able to enjoy the fruits of freedom.

That brave decision saved a nearby island nation from falling under the control of Cuba and other "internationalist" nations that are dedicated to forcing their failed revolutions on nearby states. Cuba has become the model in this hemisphere of the sad and dismal police states which have little to offer to the common man other than failed economies and empty promises. Nicaragua is clearly following the Cuban model. The Nicaraguan people want democracy and deserve it. America must do everything we can to help those who struggle for the freedom of that country.

Grenada has won a place in history as a living symbol of the victory of liberty over totalitarianism. During a visit to Grenada in 1986, President Reagan has cheered by the people of that island who called him "Uncle Reagan." He told them that "in the cause of liberty, all free people are part of the same family. We should all stand together as brothers and sisters."

I encourage the administration to continue to help Grenada as that new Government tries to build a better future for its people.

With these thoughts in mind, I commend the following New York Times article to my colleagues in the House:

[From the New York Times, Oct. 25, 1987]

SINCE U.S. LANDING, A NEW GRENADA

(By Joseph B. Treaster)

ST. GEORGE'S, GRENADA, October 24.—In the churches of Grenada on Sunday they will be saying prayers of thanksgiving to mark the day four years ago when American troops swept ashore to quell a spasm of violence that threatened to consume this beautiful Caribbean island.

For most Grenadians, the anniversary of what they refer to as "the rescue mission" is expected to pass quietly. Time and money and advice from the United States and other countries have begun to heal the wounds. As one businessman put it, Grenada is "reverting to being a normal country."

No one has forgotten the execution of Maurice Bishop, the popular leftist Prime Minister, by his own soldiers. Nor have they forgotten the fear of more violence, possibly even civil war, as other hard-line leftist leaders made people prisoners in their own homes under a 24-hour curfew for nearly a week. The thunder of American bombs also remains vivid.

But the soldiers are gone now, the barbed wire has been rolled up and Grenadians are working out their differences on the floor of Parliament and in the pages of half a dozen papers.

"DEMOCRACY WITH FOIBLES"

"Grenada is now a functioning democracy with all the foibles," said one of the handful of United States diplomats who still monitor events in the country from a makeshift embassy in a cluster of resort cottages.

Grenada, with about 92,000 people, is a conservative and mainly Christian country. Most people acknowledge they had a love affair with Mr. Bishop, but they say they never subscribed to his Government's Marxism. And they say they doubt Mr. Bishop himself was a Marxist.

Some Grenadians say they yearn for the excitement of the Bishop rallies and the national pride they felt when he spoke. But most were happy to trade that for the calm that came after the American invasion and deepened as Herbert A. Blaize, 69 years old, a lawyer, took office as Prime Minister in late 1984.

For most Grenadians there was never any debate over whether the United States had a right to intervene. When the leftist government disintegrated, the country was in tatters. The farms had shriveled. Tourists had stopped coming.

GOOD ROADS AND ELECTRICITY

Some $90 million in United States aid poured in, and Grenada now has some of the smoothest roads in the Caribbean, fairly reliable electricity and water, a powerful radio station, a new mental hospital, replacing one that was accidentally bombed, and a small industrial park.

The big international airport, which President Reagan pictured as a launching pad for Communist subversion when it was being built by Mr. Bishop's Government and Cuban construction crews, has been finished with American, British and Canadian help.

Unemployment is still high, estimated somewhere in the 20 to 30 percent range. But there has been a lot of local spending on the aid projects and you can almost hear the money jingling in Grenadian pockets. There are many new cars and refrigerators.

Grenadians have sunk their money into small hotels, gift shops and restaurants, and many are building houses.

The bonanza expected from the United States has not come. But the economy grew more than 5 percent last year. The country's crops—nutmeg, bananas and cocoa—have rebounded and world prices are up. Tourism, which jumped 31 percent from 1984 to 1985, has leveled off at about 57,000 stay-over visitors this year and last, and about 200 cruise ship visits for each of the two years.

In some ways, Grenada is experiencing democracy with a vengeance. Kendrick Radix, the former Attorney General of the People's Revolutionary Government, holds occasional rallies. Although he does not seem to have much of a following, he says he does not rule out violent rebellion.

Sir Eric Gairy, whose repressive style as Prime Minister led to the leftist takeover in 1979, is publishing a weekly newspaper and contemplating a comeback. The moderate coalition supported by the United States as a means of blocking a return to power by Sir Eric in the 1984 elections has fallen apart and many Grenadians say he has reason to be hopeful.

Urged on by American and British experts, Mr. Blaize abolished Grenada's income tax and created several new taxes. But he has had trouble collecting them and has borrowed heavily.

Last year, 17 soldiers and officials of the former leftist Government were convicted of killing Mr. Bishop and several friends and Cabinet members. Most were sentenced to death; all are appealing the verdicts.

The other evening, two teen-agers leaned against a roadside fence talking about their country and its leaders. They had been charmed by Mr. Bishop, but they did not fault Mr. Blaize.

"You'll find that the majority of the people just want a system that's sort of mixed, not too much capitalist, not too much socialist," one youth said.

"Just something to try to develop the land and keep down the chances of an uprising, a revolution. Grenada has had too much struggling for power. There's been too much emphasis on politics in Grenada. If we could put that behind us and just develop the land, that's what's needed."

ELECTRONIC NETWORK OF CALIFORNIA ORGANIZATIONS TO IMPROVE SERVICE TO HUNGRY AND HOMELESS

HON. MICKEY LELAND

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 28, 1987

Mr. LELAND. Mr. Speaker, the establishment of a unique electronic network that will substantially improve the delivery of services to hungry and homeless people was announced yesterday. HandsNet, as the innovative project is called, was made possible by grants from Apple Computer, Inc., and Hands Across America. It links 48 organizations in California by computer enabling them to share information and benefit from each other's research and resources.

The idea for HandsNet was proposed to Apple by the California Organizing Committee, whose charter was to distribute $1.2 million in Hands Across America funds and coordinate the programs and resources of service providers within the State. The resulting collaborative effort brought together a combination of public, private, and corporate resources to solve the serious and continuing problems of hunger and homelessness.

Hands Across America has shown wisdom in its fund distribution approach which leverages relatively small amounts of money by combining them with local energies, initiatives, and funding sources to make a big contribution. Apple has made its largest single donation to date with the package of personal computer systems, printers, and telephone modems. Seven other corporate donors have also made grants to the network.

The participating agencies include a balance between urban and rural areas, equally divided between small and large groups. For example, a homeless coalition of 500 shelters and a food network of 80 food pantries, food bank, and gleaning groups are represented as well as smaller church-operated organizations.

The types of valuable information that will be shared on HandsNets include:

Maintaining participation, waiting list, and other pertinent data on programs such as Food Stamps, Women, Infants, and Childrens Special Supplemental Feeding [WIC], and Elderly Nutrition;

Posting lists of available surplus food, thus permitting foodbank operators to coordinate trucking and distribution;

Centralizing county data so that agencies can make better use of census figures, local poverty statistics and cost-of-living indexes to help people to find jobs and permanent housing.

In addition to the telecommunications network, HandsNet staff will set up a parallel network for use as an interactive data base for the collection of demographic and statistical information. HandsNet will be linked with two private Washington, DC, agencies who lead in national research on problems of poverty and hunger—Food Research and Action center and the Center on Budget and Policy Priorities.

HandsNet demonstrates that the American people can apply their traditional inventiveness and creativity in solving problems even one as seemingly intractable as hunger. It also shows their generosity and compassion in directing talents and resources to those who need a helping hand.

HandsNet has great potential for improving the quality and timeliness of food and shelter assistance. It is the hope of all concerned with alleviating hunger, particularly the program's organizers, that the success of this program will lead to its replication throughout the country. Thus, the benefits of modern technology may in the near future enhance service to those who live below the margin of poverty in all parts of the Nation.

IN HONOR OF ADRIAN E. SCHARLACH

HON. MEL LEVINE

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 28, 1987

Mr. LEVINE of California. Mr. Speaker, I rise today to congratulate Adrian E. Scharlach, a good friend and civil leader, on the occasion of his 70th birthday. On that date, November 10, 1987, his family and friends will gather to celebrate this joyous event.

Adrian E. Scharlach was born in San Francisco and attended Lowell High School and the University of California at Berkeley. During his teens he became responsible for running the family men's clothing business.

Adrian served when his country called during World War II and attained the rank of captain of the infantry in the Army. Adrian Scharlach saw service at Normandy and in Belgium, and was awarded the Bronze Star for bravery.

Shortly after entering the real estate business, Adrian became the head of a corporation which owned a string of hotels, including the Leamington Hotel, up to that time the largest in Oakland. Through his work he was elected to two terms as president of the East Bay Hotel Association. He gave this association new direction and modernized its procedures, helping bring Oakland to the forefront of bay area communities.

Adrian Scharlach is a long-time member of the Concordia Club, one of the oldest and most important Jewish social organizations in the West. Adrian served as chairman of a number of committees and was elected vice president of the club.

Mr. Scharlach served as president of the Northern California Division of the American Jewish Congress, an organization founded by Supreme Court Justice Louis Brandeis to strengthen human rights and promote civil liberties.

While president, Adrian Scharlach organized a task force to investigate the quality of care in San Francisco nursing homes which has enabled hundreds of senior citizens and their families to select the facility which best meets their needs. Subsequently, Adrian Scharlach was elected national vice president of the American Jewish Congress.

Adrian Scharlach is the father of my dear friend Edmund Scharlach, producer and writer for network television, and Andrew Scharlach, professor at the University of Southern California; stepfather of Stephen Cohen and Cynthia Cohen Taylor. He resides in the San Francisco Bay area with his wife, Jacqueline.

I am pleased to ask my colleagues in the U.S. House of Representatives to join me in wishing Adrian Scharlach and his family a warm and happy celebration now and for the future.

THE ECONOMY

HON. LEE H. HAMILTON

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 28, 1987

Mr. HAMILTON. Mr. Speaker, I would like to insert my Washington Report for Wednesday, October 28, 1987, into the CONGRESSIONAL RECORD:

THE ECONOMY

The recent record-breaking convulsions in the stock market came as an unwelcome surprise. The great concern is that a recession or, even worse, a depression may follow, just as the Great Depression followed the stock market crash of 1929. Fortunately, this is not likely to happen. Today's economy is better equipped to handle financial shocks. The Federal Reserve has announced it will not allow a monetary contraction as occurred in the Depression, and numerous economic reforms have been instituted since the 1930's to protect the economy, Federal deposit insurance, unemployment insurance, social security and other elements of the so-called safety net now guarantee against widespread destitution and help prevent financial panic. The Federal Government today takes much more responsibility in managing, regulating and stabilizing the economy than it did in the 1930's.

But no one can predict what the impact of the stock market decline will be on the economy. The key factor will be the extent to which confidence in the economy has been shaken. Consumer confidence, which is the pivotal factor in driving trillions of dollars of spending decisions, must be watched very closely in the days ahead. My suspicion is that even if the market recovers substantially, the basic confidence in the economy has been shaken. Even if the market crash does not precipitate a downturn, it still signals a pressing need to get our economic house in order.

I do not agree with the assurances that the economy is being guided by sound economic policies. The basic conditions of the economy certainly are in better shape than they were in 1929, but there is obviously plenty wrong that needs to be corrected.

Looking back over the 1980's, the American economy has posted some solid achievements. We have had almost five years of economic growth—the longest peacetime expansion on record—with an inflation rate that has averaged less than 4 percent per year. Interest rates, while rising recently, are still much below their levels in 1980 and 1981. The unemployment rate is now 5.9 percent, the lowest level in eight years. Despite a loss of 1 million manufacturing jobs, more than 12.5 million new jobs have been created since 1982.

Yet these economic achievements have made it possible to overlook growing signs of economic mismanagement, both here and abroad.

For months the so-called "twin towers," the huge stubborn U.S. trade deficit and the Federal Government's budget deficit, have cast a shadow over the Nation's economy. The Federal Government and the Nation have been living far beyond their means, with both borrowing heavily to make up the difference between what they spend and what they take in. The United States has become a debtor nation for the first time since World War I, now owing more than $300 billion to foreign investors. Though inflation is down, the recent decline in the value of the dollar could bring a new bout of rising prices, led by imported goods. This renewed threat of inflation has induced the Federal Reserve to raise interest rates in recent months, which has been depressing homebuying and business investment across the country. The Wall Street gyrations may remind us that deficits are dangerous policies. These debt levels have certainly contributed to the concern about the economy and the instability of the dollar.

Japan, Germany and other Western European countries have also mismanaged their economies. With high unemployment and large trade surpluses, policymakers aboard should be expanding their economies in order to create new jobs and absorb more of their own production, as well as more exports from the United States. But their efforts have been only half-hearted, contributing to the world imbalances.

That stock markets fell all over the world suggests that investors everywhere are losing confidence in the current management of the world's major economies.

The stock market tremors arise from great strains and imbalances in the American economy. They must be addressed vigorously, or we will be in deep trouble. The message on the stock market decline is that it is time for a change in economic policies. It is that we should not be running these huge deficits, and that we should now do what we should have been doing all along to take care of the imbalance in the economy. The required repairs are obvious. They include a much smaller federal deficit; a better balance between consumption and production, leading to a lower trade deficit; lower interest rates and more investment. My own view is that we have done ourselves a lot of damage in the past several years with our economic policy and have made much more difficult the long run prospects for the U.S. economy.

Japan, Germany and the rest of Western Europe will have to make their contribution by stimulating growth and importing more from the United States. In turn, the U.S. will have to reduce its dependence on foreign lenders by getting its budget deficit under control.

The changes will not come easily. Although Congress and the President recognize the necessity of reducing the federal deficit, there are fundamental disagreements over how it should be done. The paramount task is to break the stalemate between the President and the Congress on the major budget issues.

We simply cannot postpone all action on the budget deficits for another year or two, just because we find it difficult to make decisions. In the shadow of the economic crisis, congressional leaders and the President have agreed to begin discussion about a compromise budget package with all disputed issues on the table. There is an immense opportunity in this crisis of political will and economic confidence. In many respects, the world economy has never been more solid. The economic prospects before us are incredible, if only we can meet the challenges.

THE EMPLOYEE POLYGRAPH PROTECTION ACT

HON. BILL RICHARDSON

OF NEW MEXICO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 28, 1987

Mr. RICHARDSON. Mr. Speaker, I submit for the RECORD my testimony before the Rules Committee explaining my amendment to the Employee Polygraph Protection Act:

TESTIMONY OF BILL RICHARDSON, OCTOBER 28, 1987

Mr. Chairman, when the House of Representatives considers H.R. 1212, the Employee Polygraph Protection Act, I plan to offer an amendment to counter the problems of theft and diversion of controlled substances into the illegal drug market.

Specifically, my amendment exempts those companies authorized by the Federal Government to manufacture, distribute, or dispense controlled substances from the polygraph ban. The intent of the amendment is to minimize the diversion and theft of dangerous drugs and narcotics from legitimate sources in the United States. The exemption is narrowly drawn: The test can only be adminstered to employees or prospective employees who would have direct access to the manufacture, storage, distribution, or sale of controlled substances. The amendment also explicitly prohibits polygraph test results from being used as the sole determining factor for hiring, disciplining, or firing an employee.

Mr. Chairman, I believe my amendment will provide an important and needed exemption to the Employee Polygraph Protection Act. Both the Drug Enforcement Agency and the General Accounting Office estimate that 250 to 270 million dosage units of legally manufactured drugs are stolen or diverted into illicit channels annually. These losses are not only incurred by manufactures but occur throughout the retail chain including retail pharmacies, warehouses, and trucks in transit. The methods by which controlled substances are diverted for illegal purposes vary from outright employee theft to computer fraud, illegal sales, shipment thefts, and stolen prescription pads.

Finally, my amendment is the exact word for word language adopted by the House in the 99th Congress when we debated a similar bill restricting polygraph tests. Mr. Chairman, and members of the commitee, I respectfully ask that my amendment be considered in order under the rule.

AMENDMENT TO H.R. 1212, AS REPORTED OFFERED BY MR. RICHARDSON OF NEW MEXICO

Page 8, after line 13, insert the following new subsection:

(d) EXEMPTION FOR DRUG SECURITY, DRUG THEFT, OR DRUG DIVERSION INVESTIGATIONS.—This Act shall not prohibit the use of a lie detector test by any employer authorized to manufacture, distribute, or dispense a controlled substance listed in schedule I, II, III, or IV pursuant to section 202 of the Controlled Substances Act (21 U.S.C. 812) to the extent that—

(1) such use is consistent with—

(A) applicable State and local law, and

(B) any negotiated collective bargaining agreement, that explicitly or implicitly limits or prohibits the use of lie detector tests by such employer;

(2) the test is administered only to an employee who has, or a prospective employee who would have, direct access to the manufacture, storage, distribution, or sale of any such controlled substance; and

(3) the results of an analysis of lie detector charts are not used as the sole basis upon which any employee or prospective employee is discharged, dismissed, disciplined in any manner, or denied employment or promotion.

IN MEMORY OF B. RAY THOMPSON

HON. JOHN J. DUNCAN

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 28, 1987

Mr. DUNCAN. Mr. Speaker, with the death of B. Ray Thompson, Knoxville, and indeed all of east Tennessee, loses a good friend and respected businessman. He died after 81 years of hard work and philanthropic activities.

As a child, Thompson worked with his father in a sawmill located on Cumberland Mountain in Tennessee. Thompson later decided not to go to college because he was ready to go to work full time and make something out of himself. One of his first jobs was that of a salesman with a coal brokerage firm. Other business interests in timber and banking made him a multimillionaire, one of the wealthiest individuals in Tennessee. To Thompson's credit, however, he generously contributed to hospitals, schools, and cultural programs throughout the State, sharing his wealth to improve his community.

Because of his contributions, the Fort Sanders Regional Medical Center in Knoxville will be establishing the Thompson Cancer Survival Center. Such a center would be capable of providing services to individuals with cancer, and their families, enabling them to receive the best treatment and counseling available in their own community. Thompson established the center so that cancer victims could receive good care close to home. Both he and his second wife, who died in 1953, suffered the effects of bouts with cancer. He wanted to spare others as much pain as possible.

Other organizations in Knoxville which benefited from Thompson's philanthropic nature include the University of Tennessee theater program, the Knoxville Symphony, and the Knoxville Civic Opera Co. The university has also named its new basketball arena for him; an arena which otherwise would have been impossible to construct. The following Knoxville News-Sentinel editorial, October 23, further outlines his life and accomplishments, as does the Kaye Franklin Veal article of the same date.

B. RAY THOMPSON

To B. Ray Thompson, vast wealth had a special meaning; he used much of his for the benefit of others.

Thompson, 81, died Thursday of cancer, a disease that also took the life of his second wife, Mary Louise Moore Thompson. Because of her battle with the dread disease, Thompson gave more than $7 million to establish the $30 million Thompson Cancer Survival Center now under construction across Clinch Avenue from Fort Sanders Regional Medical Center.

Thompson, who amassed his fortune in the coal, timber and oil business, was a native of the mountains of Scott County. He skipped college because he said he wanted to start making it in the world. Make it he did. He became a multimillionaire. He came to Knoxville in 1941. He also had a ranch in Louisville, Tenn., where he raised Charolais cattle.

His business organization, Elk River Resources Inc., composed of about 20 companies with 10,000 employees, was sold in 1979 to Sun Oil Co. for about $300 million in Sun Oil stock. He also had been in the banking business, first as a director of the old Hamilton National Bank and later the United American Bank.

This sentimental man with a gruff exterior was a supporter of various organizations, such as the University of Tennessee's theater program, the Knoxville Symphony and the Knoxville Civic Opera Co. He was a strong backer of Harrison-Chilhowee Academy, and he gave $75,000 toward the goal of $200,000 for new pediatric neurology laboratory at Children's Hospital. He made many other financial gifts during his later years. He had served as a trustee of Tusculum College, Greeneville. He was a member of Sequoyah Hills Presbyterian Church, and of the Development Council at Fort Sanders hospital.

In 1981, Thompson was presented the Human Relations Award of the Knoxville Roundtable of the National Conference of Christians and Jews for outstanding contributions to his community.

One such contribution was revealed recently when he was identified as the donor of $5 million in 1983 to help build the $30 million, 25,000-seat UT basketball arena.

He reluctantly agreed to use his name in connection with the arena as long as the name of retiring UT president Ed Boling was also included. So the arena was named the Thompson-Boling Assembly Center and Sports Arena.

B. Ray Thompson will be missing as a generous, caring member of this community, but he won't be forgotten.

ET'S GREAT BENEFACTOR DIES AT 81

(By Kaye Franklin Veal)

"Robert Browning once said a man's reach should exceed his grasp, else what is heaven for. Someone who has never settled for less than he could is B. Ray Thompson, who has made the dream for the finest cancer center come true."—Dr. Archer Bishop, chairman of the board, at the cornerstone ceremony for the Thompson Cancer Survival Center, July 24, 1987.

Multimillionaire B. Ray Thompson, though as the men who dug his coal and felled his timber, was being remembered today by his friends and fellow citizens.

The 81-year-old Thompson died Thursday of cancer, a disease he hated so much he had given at least $7 million to establish the $30 million Thompson Cencer Survival Center.

It is under construction across Clinch Avenue from Fort Sanders Regional Medical Center in Knoxville, where Thompson died early Thursday morning.

It was May 31, 1953, that the multimillionaire stood at a window of the Fort Sanders Hospital room of his young second wife, Mary Louise Moore Thompson, who grew up in Clinton, and watched her die of colon cancer after seven operations in a three-year battle.

He called her the bravest person he had ever known and vowed one day to do what he could to save others.

He did not know four years ago when he started the Survival Center project that he would soon find himself victim of the same disease.

He underwent cancer surgery at Baptist Hospital about two years ago. In recent months, he had been in and out of Fort Sanders several times. He was returned to Fort Sanders early Saturday.

Earlier this month, he went home to his Blount County ranch knowing there was little else the doctors could do for him.

He wanted to go home to his 400-acre ranch on Fort Loudoun Lake, where he raised Charolais cattle. There he found sanctuary from the business world and once said it was his "favorite place on earth." More than 150 geese live on the waters of the farm. In June, his last birthday was celebrated there with close friends. Barbecue and live bluegrass music kept the host happy as he blew out 81 candles on his cake.

He had wanted to die at home, he said, looking out at his ranchland and cattle.

He had beamed with pride on July 25 as the ground-breaking and cornerstone-laying of the cancer center launched his dream. However, his health quickly declined after that.

Before his death, Thompson allowed the University of Tennessee to reveal that he was the anonymous donor of $5 million in 1983 to help build the $30 million, 25,000-seat UT basketball arena.

UT officials had often asked Thompson to let them announce his major gift and name the arena in his honor. He reluctantly agreed after his condition worsened last month, on the condition that retiring UT President Ed Boling's name was included, too. The facility will be named the Thompson-Boling Assembly Center and Sports Arena.

President Boling said Thursday, "B. Ray Thompson believed in the University of Tennessee. . . . Ray preferred that his support of the university remain anonymous.

"But I must say that his acts of generosity enabled the university to achieve levels not otherwise possible in many programs, particularly in business, engineering and agriculture."

John Moxham, president of the Fort Sanders Foundation, the parent corporation of the hospital, said "the most fitting tribute we can make . . . is to see his dream of a top-notch cancer survival center here come true."

Alan Guy, president of Fort Sanders hospital, termed Thompson "an absolute treasure . . . not just in terms of money . . . but his enormous energy."

Thompson made substantial other financial gifts during his later years, many of which are unknown.

He was a strong backer of Harrison-Chilhowee Baptist Academy and gave $75,000 toward a goal of $200,000 for a new pediatric neurology laboratory at Children's Hospital in honor of his good friend, the late Dr. Bill Hill, a pediatrician.

He was chairman of the executive board of the defunct United American Bank when it was closed by the Federal Deposit Insurance Corp. as the banking empire of Jake Butcher crumbled. He reportedly lost about $2 million.

His company, Elk River Resources Inc., with about 10,000 employees, merged into

Sun Oil Co., based in Radnor, Pa., in late 1979, with Thompson receiving about $300 million in Sun Oil stock.

At the time, the Sun company was the 10th largest oil company in the country. Elk River comprises about 20 companies. After the sale, Thompson continued as president and chairman of the board.

Thompson's first company was Shamrock Coal Co. in Kentucky. He also owned Jewell Smokeless Coal Corp. In Virginia and the Oneida Coal Co. in West Virginia.

Thompson first came to Knoxville in 1941 from his native Scott County. He laughed when he said his birthplace in Elgin, Tenn., was so deep in the mountains "that daylight had to be piped in."

He skipped finishing high school, saying he wanted to get started making a success of himself in this world.

Thompson was an active supporter of the UT theater program, the Knoxville Symphony and the Knoxville Civic Opera Co. He was a member of the development council at Fort Sanders hospital, supported Children's Hospital and served as a trustee of Tusculum College in Greeneville.

He was a member of Sequoyah Hills Presbyterian Church. He belonged to Cherokee Country Club, was an avid golfer and played in the same foursome of pals for many years.

The Thompsons had wintered for years in Naples, Fla., the last few years in their new penthouse atop a condominium complex. He played golf almost every day.

In 1981, the Knoxville Roundtable of the National Conference of Christians and Jews presented its Human Relations Award to Thompson.

In 1956, he married the former Lucille Stansberry Kohlhase, of Clinton and Fort Lauderdale, Fla. Besides his Blount County ranch, the couple also maintained a home in The Westlands condominium in West Knoxville.

The oldest children, B. Ray Thompson Jr. and Jack Thompson, are children of his first marriage to Jessie Jackson Thompson, a native of Oneida, who died giving birth to Jack.

His stepdaughter, Sandi Kohlhase Bishop, was born to his present wife, Lucille, during an earlier marriage, but she was a daughter to him, family friends said. Sandi Bishop's husband, Dr. Archer Bishop, an orthopedic surgeon, is chairman of the Thompson center.

"He was gruff on the surface and a tough, tough businessman," said one firend, "but underneath he was a very sentimental person." He adored his three children and doted on his 12 grandchildren and five great-grandchildren, the friend said.

In addition to his wife, the two sons, the stepdaughter, granchildren, and great-grandchildren, he also leaves two sisters, Maxine Tittsworth, Knoxville, and Imogene Cheely, Clinton, and a brother, John Thompson, of Decatur, Ala.

A memorial service will be held at 10:30 a.m. Saturday at Sequoyah Hills Prebyterian Church, with the family receiving friends there after the service.

The family has asked that contributions be made to the Thompson Center.

Mann's Heritage Chapel is in charge.

PRESIDENT REAGAN'S REMARKS TO THE CORPS OF CADETS, WEST POINT, OCTOBER 28, 1987

HON. BENJAMIN A. GILMAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 28, 1987

Mr. GILMAN. Mr. Speaker, this morning I had the privilege to accompany the President to the U.S. Military Academy, in New York's beautiful mid-Hudson Valley, at West Point.

The President could not have chosen a more appropriate setting to address the Cadets and the Nation with respect to our arms control negotiations.

I believe that our colleagues would welcome sharing the President's thoughts. Accordingly, Mr. Speaker, I request that the President's remarks be printed in full at this point in the CONGRESSIONAL RECORD:

TEXT OF REMARKS BY THE PRESIDENT TO THE CORPS OF CADETS OF THE U.S. MILITARY ACADEMY

Secretary Weinberger, Congressman Gilman, General Palmer, General Gorden, members of the staff and faculty, ladies and gentlemen of the United States Military Academy:

I want to thank you for all your hospitality, especially since I'm an old Army man myself. It was back in the thirties that I joined the Army Reserves as a member of the 14th Regiment of the—get ready—Horse Cavalry.

In 1778, George Washington erected a fort high upon a granite point overlooking the Hudson, to guard the region of New York in the event of a British attack. And now for more than 180 years, the United States Military Academy here at West Point has in effect extended and carried on that first mission. For here we train the men and women whose duty it is to defend the Republic—the men and women whose profession is watchfulness—whose skill is vigilance—whose calling is to guard the peace, but if need be, to fight and to win.

More than 180 years, West Point in this time has established and added luster to a proud story—a story of courage and heroism, of sacrifice, and yes, very often the ultimate sacrifice. It is the story of men like Ulysses Grant, the son of a humble tanner in Ohio who went on from West Point to save the American Union. It is the story of Dwight David Eisenhower, a Kansas farm boy who learned the skills at West Point that enabled him to command the mightiest invasion force in history; and of Douglas MacArthur, an acknowledged genius in war, who showed himself during the occupation of Japan to be a genius in peace as well.

And if I may, it is the story of men like General Fred Gorden. The only black cadet in his class, today General Gorden has come back to West Point as commandant—setting an example for you, and indeed for all young Americans, of what hard work and devotion to duty can achieve.

These last two names I mentioned—General Gorden and General MacArthur—call to mind a special moment in the history of this Academy. For it was 25 years ago that General of the Army Douglas MacArthur stood in this spot and addressed the cadets of West Point. And General Gorden—at the time cadet Gorden—was sitting where you are today. It was a moment cadet Gorden would never forget. Just days from graduation, he looked around this mess hall and saw war-hardened officers moved to tears by the power of MacArthur's words.

"The long gray line has never failed us. Were you to do so, a million ghosts . . . would rise from their white crosses, thundering those magic words: Duty, honor, country.

Then MacArthur added:

"This does not mean that you are warmongers. On the contrary, the soldier above all other people prays for peace, for he must suffer and bear the deepest wounds and scars of war."

General Palmer, ladies and gentlemen of West Point, it is because you above all other people pray for peace—but must bear the burden, should that peace fail—that I have come here today. For I want to speak about relations between the American Republic and democracy's main competitor, the Soviet Union—relations that are likely to shape the whole course of your careers as professional soldiers. I want in particular to discuss our present efforts for arms reduction—efforts that may soon be yielding historic results.

But first, some essential background.

From the beginning, our Administration has insisted that this country base its relations with the Soviet Union upon realism, not illusion. This may sound obvious. But when we took office, the historical record needed restatement. So restate it we did:

We told the truth about the massive Soviet build-up. We told the truth about Afghanistan and Poland. We told the truth about economic growth and standards of living—that it is not the democracies that have backward economies, that it is not the Western World in which life expectancy is actually on the decline. We told the truth about the moral distinction between their system and ours.

When our Administration took office, we found America's military forces in a state of disrepair.

Today the situation is very different. Pay and training for our Armed Forces are up. The Navy has been expanded. Weapons systems of all kinds have been modernized, making full use of the technological revolution—as a result of our efforts, you in the Army will see the fielding of more than 400 new systems. And we have begun work upon a dramatic new departure, both in military strategy and technology, our Strategic Defense Initiative which offers the hope of rendering ballistic missiles obsolete and of ensuring deterrence by protecting lives, not threatening them. In brief: We have replaced weakness with strength.

To turn now from background to specific substance: The agenda of our relations with the Soviet Union has focused upon four critical areas. First, human rights, because freedom is what we stand for as Americans. Second, negotiated settlement to regional conflicts. Third, expanded exchanges between our peoples. And fourth, arms reduction.

In some areas of this four-part agenda, we have seen progress. Cultural, scientific, and other bilateral exchanges have shown a dramatic increase since my 1985 meeting with Mr. Gorbachev in Geneva. In human rights, too, we have seen some positive developments. Some political prisoners have been released.

Emigration figures are up somewhat. And of course there is talk of reform in the Soviet Union—of some liberalizing changes in Soviet laws and of economic reforms that could give greater scope to individuals initiative.

We harbor no illusions: While changes have taken place in the Soviet system, the one-party system unchecked by democratic institutions remains unchanged. Yet we welcome such changes as have taken place. And we call upon them to make still more.

It is in regional conflicts where Soviet performance has been most disturbing. Anyone searching for evidence that the Soviets remain expansionist—indeed, imperialist—need look no farther than Nicaragua or Afghanistan.

Our policy in these regional conflicts is straightforward. We will continue to engage the Soviets seeking to find political solutions to regional conflicts—solutions that eliminate foreign troops and return the fate of nations to their own people. In Nicaragua, we support the peace plan agreed upon by the Central American presidents last August—insisting upon the establishment of full and genuine democracy in Nicaragua. Moreover, Soviet-bloc and Cuban forces must leave that nation; this is essential to protect our own security.

As for the democratic resistance in Nicaragua: Year upon year for 7 years now, they have fought and sacrificed and endured. It is the resistance—the brave members of the resistance, many of them no more than teenagers—who have kept the Communist Sandinistas from consolidating their power and forced them into the current peace plan. It is the resistance, in short, that has given Nicaragua at least a chance for true freedom.

My friends, I know you agree: We must not abandon these courageous men and women, these soldiers. So let me promise: Nicaragua will have its freedom. And we will help the resistance carry on its brave fight until freedom is secure.

This brings me to the final area on our agenda for U.S.-Soviet relations, arms reductions. For here our realism and commitment are close to producing historic results.

It was in 1977 that the Soviet Union first deployed the SS-20. The SS-20 was a qualitatively new and unprovoked threat against our friends and allies, a triple-warhead nuclear missile capable of striking anywhere in Western Europe and much of Asia mere minutes after being launched.

You must remember that NATO had no comparable weapon in its arsenal with which to counter this new force.

By 1979, the Soviets had deployed some 130 I.N.F. missiles, with 390 warheads. General Secretary Brezhnev declared that "a balance now exists." In March 1982 they declared a "moratorium" on the deployment of new I.N.F. missiles in Europe. But this was only a cover, and by August 1982, the number of Soviet INF missiles had climbed to over 300, with more than 900 warheads.

How did the West respond? In 1977, Chancellor Helmut Schmidt of West Germany led the call for the deployment of NATO's own INF missiles to counter this new Soviet threat. And in December 1979, NATO made a two "track" decision.

First, the United States would negotiate with the Soviets, attempting to persuade them to withdraw the SS-20s.

Second, as long as the Soviets refused to do so, the United States would indeed deploy a limited number of its own I.N.F. missiles—Pershing II and ground-launched cruise missiles—in Europe.

It is important to stress that the aim of this decision was not in itself the deployment of American missiles. That was only to be the means to an end. In the words of Valery Giscard d'Estaing, President of France at the time of the 1979 NATO decision, "* * * the deployment of Pershing IIs in Europe * * * was a tactical exercise, whose preferred goal was to compel the Soviet Union to eliminate the SS-20s."

No doubt the Soviets wanted to test NATO resolve. And indeed, the deployment of our I.N.F. missiles had to be carried out in the face of sharp political protests and even mass demonstrations.

I remember speaking in Bonn in 1982. Thousands of demonstrators chanted and marched. And I couldn't help thinking: What irony. For it was to secure the peace they sought and the freedom they were exercising, that we were deploying the missiles they protested.

Yet NATO held firm. And yes, it was when we showed strength that if need be we would ensure the credibility of our deterrent posture, by meeting force with force, that the Soviets—after first walking out of the negotiations—eventually returned and began to talk seriously about the possibility of withdrawing their own INF missiles.

I am pleased to say that the agreement we are nearing is based upon the proposal that the United States, in consultation with our allies, first put forward in 1981—the zero-option. The class of U.S. and Soviet INF missiles.

According to this agreement, the Soviets will be required to remove four times as many nuclear warheads as will the United States. Moreover, the Soviets will be required to destroy not only their entire force of SS-20s and SS-4s, but also their shorter-range ballistic missiles, the SS-12s and SS-23s. As I said, all these missiles will be eliminated. How will we know that the Soviets have actually destroyed their missiles? As you know, the Soviets have an extensive record of violating past arms control agreements. So, frankly, we're not going to take their word for it.

Any treaty I agree to must provide for effective verification, including on-site inspection of facilities before and during reductions, and short-notice inspections afterwards. All in all, the verification regime we have put forward is the most stringent in the history of arms control negotiations. I will not settle for anything less.

At the same time that we have been moving forward on INF missiles, we have attached the highest priority to achieving deep reductions in U.S. and Soviet strategic arms. Even Mr. Gorbachev has described strategic weapons as the "root problem" in arms control, and we agree. To that end we have expedited the strategic arms negotiations in Geneva. Much progress has been made in reaching accord on our proposal of cutting strategic arsenals in half. The Soviets must, however, stop holding strategic offensive reductions hostage to measures that would cripple our S.D.I.—particularly since the Soviets are already spending billions on a strategic defense program of their own.

And this brings me to what happened last week in Moscow.

As Secretary Shultz has reported, he had lively, sometimes heated discussions with Foreign Minister Shevardnadze and General Secretary Gorbachev. That was no surprise. The whole range of issues on our agenda was covered. There was important positive movement toward an INF agreement and there was progress in other areas as well, not only in arms reduction. As I announced earlier today, Foreign Minister Shevardnadze will come to Washington Friday to meet with me and Secretary Shultz to continue these discussions.

Let me repeat what I have said before. Summits can be useful for leaders and for nations—occasions for frank talk and a bridge to better relations. It would be good for Mr. Gorbachev to see this country for himself. I am ready to continue and intensify our negotiations but a summit is not a precondition for progress on the agenda at hand.

When the General Secretary is ready to visit the United States, I and the American people will welcome him.

Let us remember that we've reached this point only as a solid alliance—an alliance made up of NATO, Congress, and the American people. If we are to continue to see real results and to convince the Soviets to bargain seriously, this cohesion must continue.

Now, some have argued that when the I.N.F. missiles have been removed, our commitment to Europe will have been weakened. Yet, this is simply untrue.

We maintain our firm commitment to the NATO stragegy of flexibile response, ensuring that the Alliance is capable of blocking aggression at any level. In Europe itself, we will retain a large force of nuclear weapons of many types, including ground-based systems—and aircraft and submarines capable of delivering nuclear weapons. And in consultation with our NATO allies, we have agreed that further nuclear reductions can take place only in the context of a substantial improvement in the balance of chemical and conventional forces.

During the years of these negotiations, new realities have come into play—new realities that present new opportunities. In particular, in recent years we have seen the emergence among some of our European allies of a willingness, even an eagerness, to seek a larger, more closely coordinated role for Western Europe in providing its own defense. We Americans welcome this.

For these four decades, NATO has in effect represented an alliance between a number of partners and one very senior partner. Yet today our European allies have risen from the ruins of war to vitality, prosperity, and growing unity as a continent. And so I would submit that now the Alliance should become more and more among equals, indeed, an alliance between continents. In the words of former Secretary of State Henry Kissinger, the time has come for our country, quote, ". . . to . . . welcome a European identity in defense, which in the end is bound to spur Atlantic cooperation."

This, then, is the accounting that I have come here to give you. For, ladies and gentlemen, of West Point, I believe that from time to time we who are your civilian leaders owe that—an accounting—to you who bear the burden of our decisions.

But I have come not only to inform you. I have come to enlist your help.

If we do reach an INF agreement with the Soviets, when its provisions have been fulfilled and the INF missiles destroyed, you will be assuming your posts as platoon leaders and troop commanders—and even then, when I and the members of my Administration will already have been some years out of office, your careers will only be beginning.

So I ask you to guard the future of the Republic. Use the courage and steadiness that this Academy is teaching you in dealing with our adversaries. Employ all your skill as a soldiers and goodwill as Americans in preserving and strengthening the emerging relationship with our friends and allies.

And always—always remain true to the values for which this Academy and our country stand: Duty. Honor. Country.

As Commander-in-Chief these seven years, I have been struck again and again by the professionalism of our military officers and by the dedication of the soldiers I have met in the field. But one who impressed me most deeply is a member of the United States Army, I never met.

His name was Sean Luketina, and he was 23 years old. He did not have the privilege of attending this Academy. He was a sergeant, a soldier like those you will command.

In this month of October, 4 years ago, Sean Ludetina fought in the invasion of Grenada. He was wounded—badly wounded. He was evacuated to a hospital in Puerto Rico, where his father, a retired Army officer, joined him. He slipped in and out of a coma. During a moment when he was conscious, his father asked him: "Sean, was it worth it?"

"Yes, Dad", he answered.

Then his father asked: "Son, would you do it again?"

Sergeant Luketina looked into his father's eyes and said simply this: "Hell yes, Dad."

Duty. Honor. Country.

Sean Ludetina died for the cause that the Army of this Republic has always served, from the hunger and bloody snow of Valley Forge to the heavy demands of vigilance upon the borders of Germany and Korea. It is the cause of life as God meant life to be lived. It is the cause of human freedom.

And so the proud words again today as they did 25 years ago, as they will at this Academy 25 years hence, and 25 years after that.

Duty. Honor. Country.

Permit me to say as well that I feel something today of what General MacArthur must have felt. Your youth, your optimism—they give me strength. And as I look out upon your young faces, I feel as one who will depart the stage almost before you have made your first entrance—I feel in my heart a great confidence in the future of our country.

For I know that you will defend the future.

And it is true.

"The long gray line has never failed us."

Thank you and God bless you all.

WESTERN STATES LEGAL FOUNDATION

HON. RONALD V. DELLUMS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 28, 1987

Mr. DELLUMS. Mr. Speaker, I rise to bring to the attention of my colleagues an important legal resource for individuals and organizations interested in preserving the rights of those who protest governmental policies concerning the nuclear arms race.

Western States Legal Foundation was formed by a group of concerned lawyers, community organizers and individuals who believe that people demonstrating nonviolently for sane environmental and socially just policies should have the legal resources to defend themselves from attack which is leveled at them simply because they choose to exercise their first amendment rights.

I have come to know of their work over the 5 years of their existence and appreciate very much their efforts in providing timely information as well as the unique approaches that they have taken in representing the due process rights of demonstrators, as in the Livermore Labs demonstration case of 1983.

I particularly want to join with others who are sponsoring a fifth anniversary celebration for Western States Legal Foundation on November 10, 1987, in honoring the board of directors and current staff members Jacquiline Cabasso and Andrew Lichterman for their relentless efforts on behalf of those wishing to exercise their right to nonviolent protest.

EAGLE SCOUT GREGORY A. MILLS

HON. WILLIAM O. LIPINSKI

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 28, 1987

Mr. LIPINSKI. Mr. Speaker, it is with great pleasure that I call to the attention of my colleagues an exemplary young citizen, Gregory Mills. He will be recognized on Sunday, November 22 for achieving the highest rank in scouting, "Eagle Scout."

In becoming an Eagle Scout, he will join the ranks of a very select group. The individual tasks which he had to complete are impressive alone. These tasks challenged every facet of his personality—mental, physical, psychological and more. His accomplishment becomes even more notable when it is viewed cumulatively. That is, the entire sum of achievements and the perseverance of character demanded illustrate just what high caliber young man Gregory is.

In today's society, our youth are truly bombarded with a variety of lifepaths to choose from. While the freedom of choice is in itself good, too often we hear of young people who are led astray by the ignorance of their years to a lifestyle they do not deserve. It is always refreshing to recognize young men who choose a constructive way of life and also excel at it. Though some credit should be given to the family of this young man and to the Scout leaders who provided support, Gregory today knows that he can participate in society in a manner that will benefit himself as well as his community.

The achievement of attaining the rank of Eagle Scout lays an excellent base for a productive future. I'm sure my fellow Members of Congress join me in wishing Gregory the best of luck in his future endeavors.

VETERANS DAY, 1987

HON. LOUISE M. SLAUGHTER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 28, 1987

Ms. SLAUGHTER of New York. Mr. Speaker, I rise to urge all Americans to join me in honoring our veterans on Veterans Day, November 11.

Throughout our history, men and women have fought and died to preserve our Nation's liberty and freedom. Veterans Day should be the occasion to remember the sacrifices these patriots have made in the 212 years since a ragged group of Minutemen challenged the British at Lexington and Concord and changed the world. In nine major wars since then, over 40 million of our fellow citizens have taken up arms to defend our land and its ideals; over 1,177,000 gave up their lives in these struggles.

Veterans Day is an opportunity for all of us to recognize our deep debt to these brave fighters. Not only do we honor the heroes who died, we honor their children, mothers, fathers, husbands, and wives. Each of those who has fallen has left an unfilled void. Our challenge every day is to be worthy of their sacrifice and to aid and comfort their friends and loved ones.

We also honor on Veterans Day those who returned from war. In the 30th District of New York, over 65,000 men and women served in the military and have returned to resume their lives in the community. Each gave a measure of their lives so that we can live in freedom. These veterans have earned our gratitude and respect. As a nation and as individuals we have a responsibility to recognize their service and to recompense them as best we can for the hardship and suffering they endured for us.

Veterans Day should be both a day of remembrance and day of dedication to the ideals veterans have fought for. President Abraham Lincoln expressed this most eloquently as he spoke at the consecration of the National Cemetery at Gettysburg:

> . . . It is rather for us to be here dedicated to the great task remaining before us—that from these honored dead we take increased devotion to that cause for which they gave the last full measure of devotion—that we here highly resolve that these dead shall not have died in vain—that this nation, under God, shall have a new birth of freedom—and that government of the people, by the people, for the people, shall not perish from the earth.

A century later we can best honor our veterans by rededicating ourselves to the values for which they fought and died. We must be prepared to continue their struggle to safeguard liberty and freedom. In addition we should commit ourselves to efforts to build a lasting peace so that our children will not be required to suffer through the ever-escalating horrors of war.

Veterans Day is a special opportunity for citizens to remember the sacrifices required to build our great Nation. I urge all Americans to unite in honoring our veterans and join them in the continuing struggle for liberty, peace, and freedom.

THE LIFE INSURANCE LOOPHOLE

HON. WILLIS D. GRADISON, JR.

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 28, 1987

Mr. GRADISON. Mr. Speaker, on October 7 Congressman PETE STARK and I introduced a bill, H.R. 3441, that would change the way that loans or predeath distributions from life insurance contracts are taxed. Because of the broad effect the bill could have on a large number of policyholders, the bill has aroused considerable interest from many fronts. It has also generated some misinformation. Therefore, I wanted to take this opportunity to detail the circumstances and reasoning that have led to our introduction of this legislation.

The life insurance industry is the beneficiary of a significant tax advantage—the tax-free inside buildup of investment income earned on premiums paid. This advantage ensures that people will be able to provide for the financial difficulties created by premature death. Life insurance becomes more expensive to provide the older the policyholder becomes; this only makes sense, as the risk of death becomes greater with age. Therefore, the earnings from paid life insurance premiums are not taxes on a current basis to the policyholder, as they would be in, say, a mutual fund. In part from "inside buildup," a reserve for each policyholder builds up to fund the greater risks that come later in life. The result is life insurance protection that people can continue to afford.

But because of the inside buildup of earnings, life insurance contracts can become quite attractive investments for reasons that have little to do with risk protection. In fact, the practical effect of our current tax laws allows people to pay a single premium for life insurance protection and receive the investment income on that money tax free.

These single premium policies have been around for some time without attracting much attention. After all, shouldn't someone be allowed to buy their insurance, a car, or any other product in one payment if they wish? But with the Tax Reform Act of 1986, and its wholesale closing of tax loopholes, the popularity of the tax avoidance offered by investment oriented life insurance has skyrocketed. In fact, sales of single premium policies in the first 6 months of 1987 equaled their entire 1986 sales. And the 1986 figure was more than twice that of 1985.

That the sales of these policies is driven by tax considerations is clear. Advertisements and articles in investment magazines characterize the opportunities as "legal tax evasion" and "the last tax game left in town." While advertisements are not always the most objective judge of a product, they do tell us something about its character.

The problem with the growth in sales of investment oriented life insurance contracts is the threat they pose to tax revenues, and thus the deficit. The bill that Representative STARK and I have introduced is not a shortsighted response to the immediate need for revenue; in fact, the bill raises little money in the short term because it would grandfather all premiums paid by policyholders as of the date of its introduction. The problem is the long run. If the volume of money going into life insurance continues to accelerate in order to avoid current taxation of investment income, it will result in substantial revenue loss to the Government. While providing an unfair tax shelter to some investors, these policies would increase the pressure on other parts of the Tax Code, from which the Government would need to find additional revenue.

The challenge, then, is to find a way of preserving the good of affordable life insurance while maintaining equity in the Tax Code. The problem is not that there is inside buildup; the problem is the ability of investors to get at the earnings of the policy without paying taxes, an opportunity they do not have with other tax favored investments such as IRA's Keogh plans, pensions plans, and annuities.

Thus, H.R. 3441 would bring the treatment of early distributions or loans from all life insurance polcies into line with that given other tax deferred vehicles. The money paid into these policies would still build up tax free, thereby providing for retirement or death benefits. But if investors choose to use the money early, the money would be taxes as investment income, just as with IRA's and pension plans.

Mr. STARK and I do not presume that our bill is the only way to prevent tax abuse in the life insurance area; we look forward to hearing suggestions from the insurance industry and others on how best to resolve the situation. We do think, though, that our approach makes sense, and is consistent with the goals of the Tax Reform Act of 1986—only by plugging up loopholes that we can keep tax rates low and the Tax Code fair.

THE REGULATORY FAIRNESS ACT

HON. BEN NIGHTHORSE CAMPBELL

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 28, 1987

Mr. CAMPBELL. Mr. Speaker, I commend the House today for unanimously agreeing to pass H.R. 2858, the Regulatory Fairness Act.

The current regulatory process works against consumers seeking utility rate reductions. Despite declining costs for producing electricity, many utilities have failed to lower their rates.

Under the Federal Power Act, wholesale suppliers of electricity receive prompt response in seeking rate increases before the Federal Energy and Regulatory Commission [FERC]. The parallel provision of the act governing efforts of wholesale purchasers to lower rates does not provide the same expedited treatment. This represents a gross inequity and deters wholesale electric consumers from seeking rate reductions.

All electric consumers benefit when the regulatory process is responsive and when utilities can only charge rates that are just and reasonable.

More than 900 public power systems and several hundred rural electric cooperatives purchase power from FERC-regulated utilities. Retail customers of investor-owned utilities will also benefit. This bill will help lower electric rates for consumers.

When wholesale electric suppliers ask for a rate increase, they get to take the elevator. If FERC's current regulatory practice is not changed, consumers seeking rate decreases will have to continue to take the stairs.

PREVENTION OF OCCUPATIONAL DISEASE

HON. JAMES M. JEFFORDS

OF VERMONT

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 28, 1987

Mr. JEFFORDS. Mr. Speaker, today PAUL HENRY and I are introducing the "Occupational Disease Prevention Act of 1987." This bill is identical to the amendment in the nature of a substitute offered during the debate on H.R. 162, the High Risk Occupational Disease Notification and Prevention Act.

The substitute is being introduced in bill form because, as I have stated numerous times on the floor of this House, I strongly support the concept of worker notification and right-to-know but do not believe that the approach set forth in H.R. 162 will prevent disease. I also do not believe that H.R. 162 will be enacted into law. Should Congress find itself in the position of having to consider a reasonable approach to notification, our bill will be available.

The legislation being introduced today will prevent disease by building on the existing programs of the Occupational Safety and Health Administration [OSHA], adding new programs in OSHA and requiring the National Institute for Occupational Safety and Health [NIOSH] to begin a more measured approach of risk notification than is set forth in H.R. 162.

Now that the rhetoric and hyperbole of the floor debate are behind us, I hope that my colleagues will take a close look at our proposal. It is not a legislative ploy, nor is it a killer amendment. It is, in my opinion, the best proposal for actually doing something in the 100th Congress to prevent occupational disease.

A summmary of the bill follows:

Requires the Secretary of Labor, within 1 year, to extend the coverage and expand the rights of employees under the OSHA hazard communication standard;

Requires the Secretary, during rulemaking, to consider whether the standard should be amended to include appropriate medical monitoring information, whether the training requirements should be expanded, and whether summaries of material safety data sheets [MSDS's] written in simple, nontechnical language would be useful;

Requires the Secretary, within 6 months, to promulgate a standard requiring employers to notify employees who have been exposed to an OSHA-regulated substance in excess of the OSHA-recommended permissible exposure limit [PEL]. Such notification shall also include steps that employers are taking to rectify situation.

Requires that, within 6 months, all Federal agencies that are responsible for establishing health and safety standards for workers are to promulgate a standard consistent with the OSHA hazard communication standard;

Requires that the Secretary, through use of public service announcements, notify workers of their rights to information regarding their workplace and any hazards they might have worked with;

Establishes within OSHA an Office of Hazards Communication;

Requires OSHA, within 1 year, to update the Z-tables;

Increases the penalties to employers who violate the hazard communication standard;

Requires the General Accounting Office [GAO] to evaluate the effectiveness of the OSHA hazard communication standard;

Authorizes OSHA an additional $20 million to carry out its expanded authority;

Requires NIOSH begin an interim program to provide notice to workers who participate in its studies until the establishment of a more general notification program;

Authorizes NIOSH $5 million for notification;

Creates a 15-member Commission to conduct a comprehensive study of the effectiveness of the NIOSH notification program and to report its findings to Congress within 2 years; and

Authorizes the Commission $1 million to carry out its responsibilities.

YUGOSLAVS APPEAL FOR DEMOCRACY

HON. PHILIP M. CRANE

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 28, 1987

Mr. CRANE. Mr. Speaker, I rise to address the issue of the "democratization" of Yugoslavia. A diverse group of Yugoslav dissidents and emigres have signed an appeal to the Government of Yugoslavia to "democratize" the country, release all political prisoners, and permit freedom of expression. The appeal was arranged by Freedom House, the New York-based organization that monitors political rights and civil liberties worldwide.

I would like to praise the actions of Freedom House, and to submit the appeal to "democratize" Yugoslavia for the consideration of my colleagues.

154 Yugoslav Dissidents and Emigres of Diverse Backgrounds Sign Single Appeal To "Democratize" Yugoslavia

New York, September 14.—An unusually diverse group of 154 prominent Yugoslav dissidents and emigres—Croats, Serbs, Slovenes and Albanians—have signed a single appeal to the government of Yugoslavia to democratize the country, release all political prisoners, and permit freedom of expression. The appeal was arranged and released by Freedom House, the New York-based organization that monitors political rights and civil liberties worldwide.

While the signers represent widely divergent objectives for the future structure and policies of the country, they agreed that "the democratization of Yugoslavia can peacefully resolve the monumental social, economic, political and national problems which increasingly plague that country."

This was believed to be the first time such a broadly diverse group had agreed on a single appeal to the government of Yugoslavia. The signers, addressing "other governments," urged them "to make all credits and aid to Yugoslavia commensurate with the degree of freedom Yugoslavia permits its citizens, and the degree to which it abides by international human rights agreements to which it is a signatory."

The statement was signed by "people of different political and religious persuasions and ethnic backgrounds living inside and outside Yugoslavia." In addition to Yugoslavia and other European countries, the signers live in North and South America, and Australia. Many are prominent intellectuals, writers, scientists and religious leaders reflecting virtually all of Yugoslavia's ethnic groups.

The text of the statement and the list of signers are being sent to the President of Yugoslavia and his ambassador in Washington.

Among the signatories are writers and former prisoners of conscience in Yugoslavia, Mihajlo Mihajlov and Momcilo Selic, who live in the United States; Vladimir Mijanovic, a prominent Yugoslav dissident; writers Gojko Djogo and Rastko Zakich, who live in Yugoslavia; Jaksa Kusan and Gvido Saganic, editors of Nova Hrvatska (the New Croatia) based in London; Michael Radenkovich, chairman of the Serbian Heritage Foundation (U.S.A.); Bishop Basil Veinovich (U.S.A.); writer Branko Salaj (Sweden); dissident Pavle Rak (presently in France); Professor Sami Repishti, an ethnic Albanian and former prisoner of conscience in Yugoslavia (U.S.A.); and Professor Cyril Zebot, an economist and author of books on Slovenia (U.S.A.).

The statement was initiated at a day-long Freedom House seminar on June 6. Fourteen Yugoslav dissidents and emigres of widely diverse views discussed the situation in Yugoslavia. That discussion will be published shortly by Freedom House as a paperback book under the title, "Yugoslavia: The Failure of 'Democratic' Communism."

The full text of the appeal follows:

AN APPEAL

We, the people of different political and religious persuasions and ethnic backgrounds, living in and outside Yugoslavia agree that the democratization of Yugoslavia can peacefully resolve the monumental social, economic, political and national problems which increasingly plague the country.

To that end we address the following appeals to the Yugoslav authorities and other Governments which are instrumental in maintaining the status quo in that country.

To the Yugoslav Authorities:

Release immediately all political prisoners including those held in psychiatric wards.

Annul Article 133, the so called "hostile propaganda" provision of the Criminal Code of the Socialist Federal Republic of Yugoslavia.

End intimidation and harassment of numerous individuals and groups struggling for the rule of law outside the ruling party. Establish dialogues with these groups and permit public discussion of their ideas and proposals.

Allow the freedom of public expression to all individuals and groups which struggle for human rights and democratic alternatives, freedom of expression, press, assemble, speech and publishing.

To other Governments:

All credits and aid extended to the present government must be commensurate with the degree of freedom it permits its citizens and the degree to which it abides by the international human rights agreements to which Yugoslavia is a signatory. Progress in democratizaton can be gauged by the degree to which the proposals addressed to the Yugoslav authorities are implemented.

Signed:

Vladimir Adzemovic, Sotir Akimovski, Borislav Ankunovic, Brahimir Anzulovic, Josip Asic, Kata Asic, Mandica Asic, Ivan Bachan, John Bambic Slavica Barovic, Bishop Basil (Veinovich), Elizabeth Bevanda, Nilolas Bevanda, Violet Bevanda.

Danny Betor, H. Bitor, Matt Bittor, Petra Brbich, Ivan Botic, K. Burevicius, Jakov Burmaz, A. Popovic-Cawley, Pero Cerovic, Frano Cetinic, M. Cordas, Vladimir Cosic, Rudolf Cujes, G. Cvtetan.

Milovan Danojlic, Joseph Derk, J.M. Divic, Gojko Djogo, Bransilav Djokic, Bora Dragasevic, Draga Dragasevic, Drago Drempetic, Vojin Durkovic, Ante Goko, Oskar Gruenwald, John Gunning, John Hasek, M. Hess, Katarina Hueter.

Goran Ivanic, Josip Ivanic, Olga Ivanic, Dobrila Ivkovic, George Ivkovic, Midrag Ivkovic, Maria Ivusic, Ivan Jakic, Des Jakovac, Jerome Jareb, S. Jasar, T. Jovanovic, O. Jovic.

Dragas Keseljevic, Ante Klobucar, E. Klobucar, F. Klobucar, B. Kochovic, Raoul Koenig, A. Knezevich, Mary Knezevich, Babetta Kralj, J. Kralj, Michael M. Kovac, Lucian Kovodic, M. Krstic, J. Kurtovic, Jaksa Kusan.

Father John Lavrih, Maria A. Levic, Nenad Medzarac, Gjuro Malvic, Diane Maric, Mary Maric, Mirko Maric, A. Markulin, Sime Maruna, Rusko Matulic, Rev. Joseph Mavsar, Midrag Mihailovic, Mihajlo Mihajlov, Vladimir Mijanovic, Michael Milenkovitch, M. Milicevic, Marko Milunovic, Nicholas Moravcevich.

Dragisa Nesic, Frank Orazem, Slava Orazem, Ivan D. Pajic, Predrag Pajic, Tom Pang, Nikola R. Pasic, Svetomir Paunovic, Vladimir Pavlovic, Andree Pavlovic, Dusan Pavlovic, Jure Petricevic, D. Petrovic, Lucjan Piekarsky, Stojan Popov, M. Prpich, Drago Prpich, Gojko Prutich.

Michael Radenkovich, Tihomil Radja, M. Radocaj, Milan Radovic, D. Radovanovitch, Negovan Rajic, Pavle Rak, Matej Roesmann, Vitomir Radoticic, Borivoje Radonich, Bernardino Barbetta, A.J. Raudkwi, Sami Repishti, Dusan Roller, Vera Roller.

Gvido Saganic, Branko Salaj, M. Sekulic, Momcilo Selic, Petr Senkovic, B. Selubijn, Michael Shaskevich, Mile Smitran, M. Spasojevic, Charles D. Sporer, B. Stankovic, S. Stefanovic, B. Stevanovic, A. Stukel, J. Sulef, Tomislav Sunic, Mary Szkambala.

S. Tint, Marie Trenzova, Peter Urbanac, Mirko Vidovic, S.R. Vlahovic, R. Vorkapic, J.Z. Vuckovic, Vladeta Vuckovic, Branko Vukobratic, M.M. Vokasinovic, Rastko Zakich, P. Vukovic, Cyril, A. Zebot, J. Zekovic, D. Zivanovic.

The addresses of the signatories are on file at Freedom House.

CORNELIO ROYBAL CONSTRUCTION CO. OF LAS VEGAS, NM, RECEIVES NATIONAL AWARDS

HON. BILL RICHARDSON

OF NEW MEXICO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 28, 1987

Mr. RICHARDSON. Mr. Speaker, earlier this week, the Department of Energy presented National Awards in the National Awards Program for Energy Innovation. I am pleased to advise my colleagues that the Cornelio Roybal Construction Co. of Las Vegas, NM, was recognized for its project, the Las Vegas Passive Solar Homes Program. The Public Service Co.

of New Mexico and the Luna Vocational Technical Institute were cosponsors of this project.

The Las Vegas Passive Solar Homes Program is a unique project promoting the design and construction of cost-effective, energy-efficient homes suitable for low-income families. The three organizations developed a design package which includes: low-energy performance standards, design worksheets, and reference materials. Builders of energy-efficient housing can follow these simplified guidelines.

The results are astonishing. Mr. Roybal's construction company builds and sells inexpensive solar homes. Each solar house, including land, sells for approximately $50,000. The houses average 1,400 square feet in size. Heating bills have averaged only $8 per month. Water heating bills have averaged only $19 per month. These rates are especially attractive to low-income families.

The solar guidelines used were developed according to the climate in Las Vegas, NM. However, these guidelines can be adapted to any place in the country by incorporating local climatic data. The Las Vegas Passive Solar Homes Program is a fine example for solar heating across the country.

My congratulations to the Cornelio Roybal Construction Co., the Public Service Co. of New Mexico, and the Luna Vocational Technical Institute.

LEGISLATION TO MAKE TAMPERING WITH A SMOKE DETECTOR A CRIMINAL OFFENSE

HON. RICHARD J. DURBIN

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 28, 1987

Mr. DURBIN. Mr. Speaker, today I am introducing legislation to make tampering with an airplane smoke detector a criminal offense. Passage of this bill would provide an important deterrent to any person who may be tempted to tamper with this important safety equipment.

The recent incident in which a Piedmont plane was forced to make an emergency landing due to a fire that was apparently caused by a person smoking in the restroom has demonstrated the importance of smoke detectors on commercial aircraft. At 35,000 feet and 550 miles per hour there are no emergency exits to allow passengers to escape a fire. The lives of the passengers depend on the ability of the flight crew to take prompt action. An inoperative smoke detector could result in the loss of precious seconds which would jeopardize the lives of hundreds of passengers.

Despite the potential for a major disaster due to a fire on an airplane, I was surprised to learn that there are currently no specific penalties for tampering with a smoke detector on an airplane. My bill would correct this omission. The bill provides that a person convicted of tampering with a smoke detector would be subject to a fine of not more than $50,000, or imprisonment for not more than 5 years, or both. I will also ask the Administrator of the FAA to promulgate regulations requiring air carriers to display a sign in airplane lavatories advising passengers of this Federal penalty.

I believe passage of this legislation is needed to improve the safety of commercial air travel for airline passengers and crews. The importance of this legislation and the need for prompt congressional action is demonstrated by the fact that 47 Members of the House have joined me as original cosponsors of this bill.

H.R. 3564

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 902 of the Federal Aviation Act of 1958 (49 U.S.C. App. 1301 et seq.) is amended by adding at the end the following:

"TAMPERING WITH SMOKE DETECTION DEVICE

"(r)(1) It shall be unlawful for any person to knowingly and without authority tamper with a smoke detection device of an aircraft used for air transportation.

"(2) Whoever violates this subsection shall be subject to a fine of not more than $50,000, or imprisonment for not more than 5 years, or both.".

ORIGINAL COSPONSORS OF H.R. 3564

Mr. Glickman, Mr. Lehman of Florida, Mr. McCloskey, Mr. Gray of Illinois, Mr. Lagomarsino, Mr. Conyers, Mr. Grandy, Mr. Wilson of Texas, Mr. Dornan, Mr. Mrazek, Mrs. Boxer, Mr. Smith of Florida, Mr. Oberstar, Mr. Lipinski, Mr. Biaggi.

Mr. Feighan, Mr. Owens, Mrs. Collins, Mrs. Johnson, Mr. Shumway, Mr. Stallings, Mr. DeFazio, Mr. Weldon, Mr. Nielson, Mr. Fauntroy, Mr. Bevill, Mr. Espy, Mr. Panetta, Mr. Valentine, Mr. Bates.

Mr. Kildee, Mr. Hochbrueckner, Mr. Fazio, Mr. Davis of Illinois, Mrs. Roukema, Mr. Richardson, Mr. Skaggs, Mr. Penny, Mr. Visclosky, Mr. Donnelly, Mr. Baker, Mr. Hayes, Mr. Slattery, Mr. Sawyer, Mrs. Bentley, Mr. Edwards of Oklahoma, and Mr. Fields.

HANS WILBUR WELCH: THE MEANING OF THE CONSTITUTION

HON. WILLIAM LEHMAN

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 28, 1987

Mr. LEHMAN of Florida. Mr. Speaker, hundreds of millions of people call this country home, but relatively few of us—only a handful, really—can call ourselves native Americans. The vast majority of us are immigrants or descendants who came to this land from someplace else.

America continues to grow as people come from all over the world to make a home here. These newcomers bring different cultures, viewpoints, and talents which add to our diversity and strength. Every American, old or new, has his or her own idea of what this country stands for, and I'm sure each of us has reflected from time to time on our Nation's history, its purpose, and its future.

I recently had the opportunity to hear the thoughts of Hans Wilbur Welch on these matters. Hans is 10 years old and is a fifth grader at Vineland Elementary School in Dade County. He is a native of Korea who came to this country in 1981. He lives in Miami with his parents, George and Ynskje Welch, and his sisters, Tamara, Tetske, Tatiana and brother, Alexander.

Hans wrote a poem entitled "What America Means to Me" and recited it before a distinguished audience of North Dade business and political leaders. Afterwards, he led the group in the pledge of allegiance.

Mr. Speaker, I was present when Hans made his presentation, and I know that everyone there, including me, was deeply moved by his heart-felt sincerity and honesty of expression. I would like to share his poem with my colleagues:

WHAT AMERICA MEANS TO ME

(By Hans Wilbur Welch)

America means a lot to me,
Because in this country we are free.
The Constitution is a set of rules,
Over which the delegates debated,
And a quill pen was the tool
That they used to write what they created.

One man who saw the emblem of the sun
Carved on the back of Washington's chair
Asked if it was a rising or setting one
And whether the weather would continue fair.

I'm so glad that the sun did rise,
All the delegates should win a prize.
Madison was a very smart man,
I can see him working under a fan.
Benjamin was very wise,
He discovered electricity in the skies.

Washington was the boss,
And the Constitution was not a loss.
Over the laws the Supreme Court presides
By reading the rules the Constitution provides.
All the countries copy our Constitution,
For governing it is the best solution.

BIRMINGHAM-SOUTHERN COLLEGE NAMED "THE BEST"

HON. BEN ERDREICH

OF ALABAMA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 28, 1987

Mr. ERDREICH. Mr. Speaker, a sound education for our young people remains our Nation's best hope for future economic growth and prosperity. I would like to share some good news with my colleagues about an institution of higher learning in my district that has received outstanding recognition for its commitment to our youth and the pursuit of excellence in education.

In its October 27 issue, "U.S. News & World Report" highlighted America's best colleges and among Southern liberal arts schools, Birmingham-Southern College in Birmingham, AL, was selected as the best.

According to the article, "America's Best Colleges:"

In 1975, (Birmingham-Southern) had 727 students and an uncertain future. Bucking the trend to abandon liberal arts and push vocational study as a way to lure students, President Neal Berte instead gambled on strengthening liberal arts at the same time that the school stressed its many preprofessional programs and added a computer-science major. Today, the school boasts 1,633 undergraduates and a reputation for excellence.

We all know the importance of quality education to our Nation's economic future. Our competitive stance around the world and future job growth depend on our improving our educational institutions.

Mr. Speaker, I often have the opportunity to visit the Birmingham-Southern campus, and can tell you that its reputation for excellence is certainly warranted. I congratulate Dr. Neal Berte and the faculty and staff of Birmingham-Southern for having garnered this outstanding recognition. Birmingham-Southern knows the importance of providing its students with a quality education, and its successful effort has been rewarded with this designation as one of the Nation's best. In the ongoing quality effort it achieves, Birmingham-Southern is a major force for Alabama and, indeed, our Nation's future growth.

Following is an editorial in the Birmingham News congratulating Birmingham-Southern on this latest recognition for its excellence in education:

MORE LAURELS FOR 'SOUTHERN

Birmingham-Southern College, recognized in several national surveys as one of the top liberal arts colleges in the country, has now been identified as the best in the South.

We congratulate President Neal Berte, who has led the renaissance of this fine college, and all the staff and students who have participated in making it the best.

The latest feather in 'Southern's cap, reported in U.S. News & World Report, is especially meaningful because it reflects the judgments of college presidents. About 760 presidents responded to the survey, which asked them to select the 10 best schools in their own category.

Among the 161 Southern liberal arts colleges, Birmingham-Southern was named most often. Over half the presidents included it in the top 10. In 1985, 'Southern ranked seventh in the region in the liberal arts category.

Dr. Berte has made Birmingham-Southern a leader not only in education, but in the community as well. We salute him and his school on the well deserved recognition.

GORBACHEV'S FOLLY

HON. DOUG BEREUTER

OF NEBRASKA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 28, 1987

Mr. BEREUTER. Mr. Speaker, evidently the leadership of the Soviet Union felt that President Reagan wants or needs a summit so bad that he would agree to concessions on the strategic defense initiative [SDI] simply for the privilege of meeting with Mikhail Gorbachev. They are gravely mistaken. Summits are most successful when they confirm agreements already made; they are least successful when attempts are made to force consensus where none exists. The Soviets have wasted much time, effort, and international good will on the intermediate nuclear forces [INF] negotiations if they have come this far but really have no intention of signing an accord. We are no worse off not undertaking the charade of a summit if the Soviets are not in agreement on intermediate steps to benefit our two nations' mutual security.

I commend to the attention of my colleagues an editorial from a newspaper in the heartland of America, which I am confident expresses widely held American sentiments. The editorial appeared in the Omaha World Herald on October 28, 1987.

[From the Omaha World Herald, Oct. 28, 1987]

MAKING UNITED STATES "EARN" A SUMMIT

It wouldn't be a disaster if Soviet leader Mikhail Gorbachev broke his commitment to attend a summit meeting with President Reagan in the United States. The importance of a U.S.-Soviet summit meeting in the United States in the next few months can easily be overestimated.* * *

Gorbachev, in backing away from his commitment to visit the United States, seemed to be suggesting last week that the United States should have to "earn" the favor of a Gorbachev visit by making concessions on SDI development and testing. If the Soviet leader sincerely believes that U.S. leaders put that much importance on the possibility of a U.S. summit, he is grossly out of touch with the U.S. position at the current stage of U.S.-Soviet diplomacy.

Summit meetings and other state visits are symbols of a working relationship between two countries. If Gorbachev decided not to go through with his visit, it would indicate that his working relationship with the United States left something to be desired—not because the United States had changed its position on any issue of substance but because Gorbachev attempted to change the rules at the last minute and was quite properly rebuffed.

THE ARIAS PLAN: FOUNDATION OF FALSE HOPE

HON. PHILIP M. CRANE

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 28, 1987

Mr. CRANE. Mr. Speaker, recently the five leaders of the Central American countries agreed on a regional peace agreement known as the Arias Plan. This plan raises the false hope that peace will soon find its place in the Central American region. While the United States supports the movement for peace, the Arias plan cannot be accepted as it stands. It contains omissions, flaws, and vagaries. Serious doubt is cast as to whether the Arias plan can produce effective and lasting solutions to the problems in the region. As a result, the Arias plan must be modified and the following criteria must be met in order to bring lasting peace and stability to the Central American region.

Perhaps the most profound issue of the Arias Plan which demands direct and immediate attention is that of freedom. It is undoubtedly the fundamental criterion required of the Sandinista regime. Since the Arias Agreement, a number of concessions have been made by the Sandinistas, however, they must be considered with caution. Their actions in accordance with the agreement include allowing La Prensa to resume publishing. But after allowing the opposition access to the media by permitting Radio Catolica to air, the Communists reversed their position. The Sandinista government announced a cease fire and a partial withdrawal of their troops from designated areas. Yet these developments cannot be accepted at face value. Freedom of the press is exercised not by all people but rather only by those who support the revolution. To date, since Daniel Ortega assumed power, there have been no real elections as promised. He has stated that elections will not permit the people to choose their leader. Instead, power will always belong to him, his colleagues and their successors. Free elections must be a cornerstone to any true peace plan for Nicaragua. We cannot be fooled by these misleading, superficial actions which have taken place so far in Nicaragua. These actions are, in fact, only the bare minimum needed to demonstrate loyalty to democratic ideals. They are not true to democratic ways and therefore must be questioned in every aspect of an agreement. Without specified steps outlined to secure an open and pluralistic democracy, any agreement would be worthless.

The Arias Plan does not consider the interests of U.S. security in the region. There are 3000 Cubans and 150 East Bloc Communist advisors in Nicaragua, all of whom are allowed to remain there under the Arias Plan. They have virtually penetrated every sector of the Sandinista regime. It is imperative that they be removed to ensure peace and freedom not only in Nicaragua, but in the entire Central American region. Sandinista assistance of various Marxist groups seeking to overthrow freely elected governments in El Salvador, Guatemala and Honduras should also be stopped. There is no other alternative if peace and stability are to last in the region.

This peace and stability also depends upon the creation of a National Army with loyalties to a constitution rather than a political party as in the present situation. Moreover, as it now stands, the Sandinistas will implement only partial amnesty for political prisoners. There must be a firm plan which allows the 17,000 freedom fighters to fully reintegrate into the Nicaraguan society; this includes complete amnesty. Furthermore, it would be a prerequisite that the resistance participate in negotiations with the Sandinistas. Thus, the resistance will uphold the status of being legitimate.

Finally, the free market system must be adopted in Nicaragua. The current Sandinista-imposed socialist economic system is failing. If implemented, the free market system would fill the needs of a country with the unique diversity of Nicaragua. It is quite possible and even probable that the Sandinista regime would use American economic assistance to build up their ailing economy. Yet we must be wary that a country so willing to accept military aid from a communist country might use U.S. money to actually supplement a failing communist economy.

In the past, the Sandinistas have made similar commitments to freedom and democracy; commitments which have not been followed through. They have stated, to the effect, that they were willing to concede to the opposition, however, this was only when Congress considered the continuation of financial assistance to the freedom fighters. This raises doubt concerning the credibility of the Sandinstas and their willingness to abide by any peace agreement. The aforementioned criteria are the basic fundamentals necessary to bring about the change promised to the Organization of American States in 1979. These criteria should be nonnegotiable, and represent the only chance that peace and freedom will ever have to thrive in Central America. In sum, we must question the logic of adopting a peace plan which relies on the questionable good will of the Sandinistas, is endorsed by Castro, and involves the abandonment of the very group that brought Nicaragua to the bargaining table.

In a recent editorial in U.S. News & World Report, chief political correspondent, Michael Kramer, provides additional insights into the shortcomings of the Arias plan. I commend the article to my colleagues' attention:

A Central American Yalta?

(By Michael Kramer)

And now we're told that Ronald Reagan is the Problem; that he, not Daniel Ortega, needs watching; that out of the goodness of their hearts and a reverence for Thomas Jefferson, the Sandinistas can be trusted to bring democracy to Nicaragua and abandon their commitment to a "revolution without borders." Why else would Ortega have flown to Havana last week? Who better than Fidel to instruct Managua about creating an open society? How could we have been so blind? Daniel Ortega, democratic statesman. Of course! Danny, we hardly knew ye.

It has become clear that the White House was outmaneuvered by the leaders of Central America. It is also true that the administration has only itself to blame for the Great Guatemalan Gaffe. Imagine for a moment that you are President Napoleón Duarte of El Salvador, the leader of a fragile democracy almost totally dependent on Washington for protection. You awaken one morning to hear that "peace" has broken out up north. You and the Contras, it turns out, are the last to know that Jim Wright and Ronald Reagan have cut a deal. How do you respond? You do what he did: You strive to avoid further proof that you are merely an American puppet and rush to sign an "indigenous" peace agreement.

There's much to learn from the latest folly—it will soon be a case study at the foreign-policy schools—but for now, it is more important to relearn exactly what we're dealing with. Consider just some of the key elements of the "peace" proposal drafted by Costa Rican President Oscar Arias—and the likelihood of Sandinista good faith.

Arias wants freedom of the press without prior censorship. In Nicaragua, this means reopening La Prensa. But it is simply too easy to conjure a reopened but censored La Prensa—a "balance" the Sandinistas may conclude is "concession" enough, especially when one remembers how the commandantes really feel about the media. Here is Bayardo Arce, a former journalism professor who is now one of Nicaragua's nine all-powerful rulers: "We support freedom of the press, but, of course, the freedom of the press we support [is] a freedom of the press that supports the revolution."

Free elections are a centerpiece of the Arias plan. Not surprisingly, the Sandinistas claim their rigged 1984 election was itself free. Golly gee, deadpanned Foreign Minister Miguel D'Escoto last week, "our revolution is very much committed to democracy." What can we really expect from future elections in Nicaragua? More of the same. Elections, Daniel Ortega has said, will "in no way—like a lottery—decide who is going to have power. For this power belongs to us."

Everyone should cease supporting the region's insurgencies, says Arias. The Sandinistas would have to walk away from the Salvadoran guerillas and close the guerillas' headquarters operation in Managua. We ain't doin' nothing', say the Sandinistas—but their true feelings were on display a few years back. "We will never give up supporting our brothers in El Salvador," said Arce. "We are not ashamed to be helping El Salvador," said Ortego's brother Humberto, who happens to be the Sandinista Defense Minister. "We would like to help all revolutions."

I haven't even mentioned some other—quite major—problems with Arias: What will the proposed cease-fire look like? Will the Contras have any role in their own disappearance? How can there be peace if the Soviet bloc is still permitted to aid the Sandinistas? What good at all is a document that doesn't punish noncompliance?

Oscar Arias obviously took too much psychology in school. He actually believes in behavior modification. But the fact is that the promises he wants the Sandinistas to make are the same ones they made to the Organization of American States before the *comandantes* took power in 1979—the promises they broke. It's wise to recall how blatantly the Sandinistas have lied—so blatantly that Jimmy Carter suspended American assistance to the new regime long before the Contras were born. Yes, it was Carter who did that, not Reagan.

Given the Sandinistas' sorry record, one would assume that Arias's verification procedures would have real teeth. They don't. The outside compliance group—a sterling outfit on paper—will almost surely rely on the *internal* National Reconciliation Commission for its opinion of Sandinista compliance. That *sounds* good, but Arias's fine print permits the internal commission to be stacked by the Sandinistas themselves.

IN THE VIET CONG'S FOOTSTEPS

As Ortego & Company go through the motions, one can only marvel at how well they are employing the old Viet Cong rule for guerrilla warfare: *Danh va dam, dam va danh*—"fighting and talking, talking and fighting." Who knows, they may even go the distance; the Arias treaty may become reality. Nicaragua's ravaged economy (the product more of mismanagement than of war) may cause the Sandinistas to so mute their rhetoric that they win U.S. economic aid. They may be smart enough as *Comandante* Jaime Wheelock has said, to 'use the money of the imperialists to build socialism," smart enough to lie low until the danger of renewed Contra aid is past.

But they can't seriously change their stripes and remain, in the words of Daniel Ortega, "profoundly anti-Yankee and Marxist-Leninist." There is nothing in the dialectic that demands action tomorrow—but sooner or later they must march again. Not to worry, says Oscar Arias. If they do, "they will be morally isolated by the whole world." Arias should read George Orwell, who wrote: "Despotic governments can stand 'moral force' till the cows come home; what they fear is physical force."

What happens when the cows come home? Will the U.S. and the Latin democracies have the stomach to reimpose military pressure when the Sandinistas cheat? Can a Central American Yalta really work without a Central America NATO in the wings? Until these questions are satisfactorily addressed, the future under Arias will be bleak—a disaster postponed rather than avoided.

NATIONAL RECYCLING MONTH

HON. AUGUSTUS F. HAWKINS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 28, 1987

Mr. HAWKINS. Mr. Speaker, today I am proud to introduce, along with Congressman DAVID DREIER, a resolution entitled "National Recycling Month," which will help to send a message to cities across this Nation about the need to respond to our growing waste disposal crisis.

Brimming landfills are being closed in one city after another. More than 3,500 have been shut since 1979. Some 16,400 remain, but not for long. Nearly one-half of the Nation's major cities will run out of room for their garbage within 5 years. The landfills in Los Angeles will hit capacity by 1991; New York City has barely 12 years left.

Frustrated by the growing garbage crisis, some cities have chosen to burn their garbage in mass incinerators. This is an unfortunate choice for several reasons. First of all, you don't get rid of your trash disposal problems with mass burn. You still have to bury the ash that the burned garbage creates—some of which is toxic. Second, incineration may be a worse polluter than land disposal because it creates new chemical compounds that are released into the environment through smokestack emissions. These compounds, known as dioxins and furans, are dangerous air pollutants.

Faced with the prospect of these potentially dangerous incinerators being placed in their community, residents have organized to defeat their construction. In Los Angeles, a group of concerned citizens went against all odds in fighting a trash incinerator proposal called LANCER [Los Angeles City Energy Recovery] and won. Another group of citizens in Irwindale, CA stopped a similar proposal in their community. In the city of Philadelphia, residents effectively organized to defeat another mass burn project.

There is a safer and more efficient alternative to mass burning—recycling. Community-based trash separation and recycling requires the least amount of capital and is the most flexible of systems. Recycling not only diverts a significant portion of the waste stream from landfills—but the trash that is landfilled is basically nontoxic.

The resolution we are introducing today seeks to encourage our Nation to adopt recycling measures and to assist in developing the growth of incremental markets for materials recovered from recyclable goods. We need to expand and refine our national recycling efforts to respond to our garbage crisis—and to provide an alternative to dangerous waste disposal technologies. I would like to submit the text of the resolution for my colleagues to review and I encourage their support for this measure.

To designate June 1988 as "National Recycling Month".

JOINT RESOLUTION

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

Whereas a solid waste disposal crisis exists in the United States;

Whereas half of the major cities in the United States will have no space available for disposal of garbage within 5 years;

Whereas mass trash incineration involves the dangers of toxic emissions and toxic landfills;

Whereas source separation, mechanical separation, and community-based recycling programs are cost-effective alternatives to mass trash incineration;

Whereas recycling diverts a significant portion of waste from landfills;

Whereas recylcing converts most of the waste that eventually is placed in landfills to a nontoxic form;

Whereas the revenues from goods recovered by public sector recycling programs help to offset the costs of the programs;

Whereas shared savings, which accrue by avoiding the higher cost of landfills or incineration, make recycling an economically efficient disposal alternative to mass trash incineration even where markets for recycled materials are weak or undeveloped;

Whereas a well-developed system of recylcing scrap metals, paper, and glass already exists and significantly reduces the quantity of solid waste comprised of metal, paper, and glass;

Whereas substantial increases in the amount of materials recycled will require development of markets that absorb the increase in the amount of materials recycled, known as incremental markets;

Whereas many consumer products are designed without sufficient regard for safe and efficient recycling after disposal;

Whereas the Federal Government and State and local governments should enact legislative measures that will increase the amount of solid waste that is recycled;

Whereas the Federal Government and State and local governments should encourage the growth of incremental markets for materials recovered from recyclable goods;

Whereas the Federal Government and State and local governments should promote the design of products that can be recycled safely and efficiently after use;

Whereas the Federal Government and State and local governments should establish requirements for in-home separation of waste to enable efficient recycling; and

Whereas the people of the United States should be encouraged to participate in educational and legislative endeavors that promote waste separation methods, community-based recycling programs, and expanded utilization of recovered materials: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That June 1988 is designated as "National Recycling Month", and the President of the United States is authorized and requested to issue a proclamation calling upon the people of the United States to observe the month with appropriate ceremonies and activities.

STUDY FAULTS LABS' ACCURACY IN TESTING FOR AIDS INFECTION

HON. JIM COOPER

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 28, 1987

Mr. COOPER. Mr. Speaker, last week the Subcommittee on Regulation and Business Opportunities, on which I sit, held an important hearing. A subcommittee investigation uncovered new data on the accuracy of AIDS testing done in laboratories around the country.

I'd like to share an article summarizing the subcommittee's investigation from the Washington Post.

[From the Washington Post, Oct. 27, 1987]

STUDY FAULTS LABS' ACCURACY IN TESTING FOR AIDS INFECTION

(By Susan Okie)

Laboratories testing blood for evidence of AIDS have such a high error rate that in some low-risk groups, nine out of 10 positive findings would probably be wrong, a new government analysis has found.

Such a high rate of these so-called "false positives"—in which people without the AIDS virus wrongly appear to have it—would cast grave doubts on the reliability of massive screenings.

The analysis was done by the congressional Office of Technology Assessment and presented last week at a hearing of the subcommittee on regulation and business opportunities of the House Small Business Committee. It was based on recent results of proficiency testing of approximately 700 U.S. laboratories by the College of American Pathologists (CAP).

Rep. Ron Wyden (D-Ore.), chairman of the subcommittee, said in an interview that he found the labs' error rates "mind boggling."

In addition to the false positives, the data suggest that labs may be reporting falsely negative blood test results on as many as 10 percent of individuals who are really infected with the virus.

"Both the false positives and the false negatives have frightening social implications," Wyden said. "False negatives are people who think they're well and spread the virus. False positives have the potential of just causing social chaos," because uninfected individuals might base decisions about marriage, childbearing and careers on an erroneously positive test result.

The standard blood tests currently available to detect infection with the AIDS virus are the enzyme immunoassay (EIA or ELISA) and the Western blot. The EIA, performed initially as a screening test, detects protein antibodies produced by an infected individual's immune system against particles of the virus, known as human immunodeficiency virus, or HIV.

The more accurate and expensive Western blot is done as a confirmatory test if the EIA is positive. Poor quality Western blots are the main reason for the laboratories' high false-positive and false-negative rates.

Because donated blood is discarded even if positive only on the initial EIA test, these findings do not suggest that infected blood is any more likely than previously believed—1 in 10,000—to pass through undetected.

When they are perfectly performed both the EIA and the Western blot are highly sensitive, providing positive results in infected individuals in 99.6 percent of cases. They are also highly specific, giving negative results in uninfected persons in at least 99 percent of cases. But the pathologists' proficiency testing program, in which laboratories were sent a series of "unknown" blood samples to test, showed that the error rates in laboratories around the nation are considerably higher than these ideal figures, especially for the technically more complicated Western blot.

The CAP's proficiency testing of laboratories during the period from July 1986 through June 1987 showed that the overall false-positive rate for the Western blot was 4.7 percent. The theoretical false-positive rate, if the test is properly performed, is 0.5 percent. The laboratories' overall false-negative rate was 9.3 percent, compared with a theoretical false-negative rate, if the test is properly performed, of only 0.4 percent.

Some laboratories achieve performance standards close to the ideal rates, while others have even higher error rates than the averages cited in the CAP data. But consumers having the blood tests, and doctors ordering them, often have no way of judging an individual laboratory's performance, the subcommittee was told.

In large-scale AIDS testing programs, false-positive results make up a greater proportion of all positive results when the group being tested is at low risk of infection with the virus. In contrast, false-negative results assume greater importance when a high-risk group is tested. The OTA analysis used the laboratories' performance record to predict the outcome of testing in six different populations for whom some estimate of infection with the AIDS virus was available.

For example, in a program to test 100,000 high-risk patients at a sexually transmitted disease clinic, the OTA predicted that 984 of an estimated 10,000 infected individuals would be missed because of a falsely negative blood test, while 72 uninfected people would test falsely positive.

On the other hand, if 100,000 blood donors were tested in Peoria, Ill., a group with a very low frequency of infection, 80 of the 89 positive blood tests, or 90 percent, would be false positives, the OTA analysis predicted.

Other experts testfiying before the subcommittee echoed the concerns raised by the OTA report. Different laboratories use different criteria to identify a positive Western blot, and national standards have not been established for the test's performance, interpretation or quality, said James R. Carlson, director of the AIDS Virus Diagnostic Laboratory at the University of California at Davis.

Of 10 commerical laboratories sent "blind" samples by the U.S. Army to test their preformance of the Western blot, 10 failed the test, some of them repeatedly, said Col. Donald S. Burke, who directs the Army's HIV screening program.

Most doctors who order AIDS blood tests assume they are accurate and know little about variations in laboratory performance, said Patricia Watson Martin, director of product development at Epitope Inc., a clinical laboratory and diagnostics firm based in Portland, Ore. "Because the opportunities for making profit from HIV antibody testing are so vast . . . we must act quickly to put controls into place to insure the quality of testing," she told the subcommittee.

Wyden said he plans to press for stronger federal oversight of the rapidly growing HIV-testing industry. "You can be pro or con testing, but as a prerequisite to a national testing policy, we're going to have to deal with this accuracy issue," he said.

THE CONSTITUTION: A LIVING LEGACY

HON. SOLOMON P. ORTIZ

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 28, 1987

Mr. ORTIZ. Mr. Speaker, last month our Nation celebrated the bicentennial of the U.S. Constitution. All across this great land citizens gathered to recall the profound blessings which this document has bestowed upon us. Of particular importance were the activities in which the students of our Nation's schools participated to commemorate the bicentennial of the Constitution. I would like to take this opportunity to commend one student in particular for his eloquent expression of the meaning and importance of the document which binds us all together.

I speak of Michael Brough, whose essay on the Constitution won first place in the senior high division of Kleberg County, TX. We can all learn from this young man's appreciation of what makes the Constitution such a special document. In his essay, Michael explains that it is both the Constitution's basic immutable principles and its ability to adapt to change that have allowed it to endure for so long as the fundamental law of the greatest nation on earth.

Just as James Madison and his colleagues 200 years ago found it necessary to express their ideas on the Constitution in the Federalist Papers, Michael Brough has provided us with further insight into the remarkable product of the American intellect known as the U.S. Constitution. As Americans, it is vital that we understand this most important of American documents and for his efforts in this regard, I would like to commend Michael Brough on his outstanding essay and insert it into the Congressional Record at this time.

THE CONSTITUTION: A LIVING LEGACY

(By Michael Brough)

For 200 years, the Constitution of the United States has served as the foundation of all facets of American government and law. It has weathered heated controversies between Americans concerning issues such as states rights, slavery, and prohibition. Through two world wars and an ensanguined civil war, it remains the strong and vital basis on which freedom rests. The Constitution's survival through affliction ranging from economic depression to social oppression is evidence of its most important characteristics—its endurance. Obviously, the founding fathers foresaw such future conflict and assigned to the Constitution three qualities to which this endurance can be attributed: a definite statement of citizen's rights, the establishment of a governmental system, and the ability to change.

In the Bill of Rights and additional amendments, certain rights and freedoms are granted to the people. These are not set into specific laws but are used as the basis for creating more explicit laws on national and state levels. Due to the more general freedoms expressed in the great document, laws may be implemented, revoked, or changed to suit changing American society without making drastic alterations to the Constitution. However, although laws may adjust to the changing country, all must remain within the bounds of the basic tenets set forth in the Constitution, including freedom of speech, freedom of religion, freedom of the press, as well as the right to a fair trial. Thus, the law may be adjusted to future circumstances and values, but the freedom of Americans will remain intact.

In addition to setting forth rights, the Constitution established an ingenious system of national government. The basic pattern was for three separate but balanced federal powers. A bicameral congress, head of the legislative branch, became the lawmaking body for the United States; the executive branch, led by the President, was to carry out the law; and the Supreme Court and the remainder of the judicial branch were to interpret the laws. This delineation of power and responsibility created a thorough system of checks and balances when insured constitutionality and popular public consent to all laws and the administration of the law.

Finally, to insure the endurance of the Constitution, the framers of the document included provisions for change. The "elastic clause" of Article I empowers Congress to pass new laws to meet change. The Supreme Court can also modify laws by determining their constitutionality and interpreting their meaning. Thirdly, the authors introduced a slow, but not impossible, process by which the Constitution may be amended. Thus, the Constitution can adopt to changing times. With the ability to change, the provision of an organized government, and the statement of basic rights, the Constitution of the United States has served as the framework of today's American government. Throughout its two hundred year lifespan, it has remained a vital, dynamic document that truly is a living legacy.

NATIONAL ACADEMIES OF PRACTICE

HON. TONY COELHO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 28, 1987

Mr. COELHO. Mr. Speaker, today I am introducing, along with Representatives Claude Pepper, Bob Whittaker, Daniel Akaka, Helen Bentley, Howard Berman, Hank Brown, Dick Cheney, Roy Dyson, Mike Espy, Peter DeFazio, Vic Fazio, Dennis Hastert, Paul Henry, George Hochbrueckner, Steny Hoyer, Norman Lent, Mel Levine, John Lewis, Jim Moody, Bruce Morrison, Sid Morrison, Jim Olin, Jim Quillen, Pat Roberts, Tommy Robinson, Bill Schuette, Virginia Smith, Mike Synar, Ted Weiss, and Dan Glickman, legislation which would provide a Federal charter to the National Academies of Practice [NAP].

Established in 1981, the National Academies of Practice was created to serve as the Nation's interdisciplinary health policy forum. It consists of nine academies: Dentistry, Medicine, Nursing, Optometry, Osteopathic Medicine, Podiatric Medicine, Psychology, Social Work, and Veterinary Medicine. Academies are dedicated to addressing the issue of the national health from the perspective of hands-on practitioners in an interdisciplinary fashion and without regard to the special interests of any of the nine health care delivery disciplines.

Membership in the NAP is restricted to 100 distinguished practitioners within each of the nine academies. Distinguished practitioners are elected by their peers and are individuals who have spent a significant portion of their professional careers as practitioners providing direct care to consumers.

Legislation to provide the NAP Federal charter status has already passed the U.S. Senate. I hope that you will join me in ensuring that this worthy organization receives positive consideration in the House of Representatives.

Mr. Speaker, the following is the text of this legislation:

H.R. 3562

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CHARTER.

The National Academies of Practice, a nonprofit corporation organized under the laws of the District of Columbia, is recognized as such and is granted a Federal charter.

SEC. 2. POWERS.

The National Academies of Practice (hereinafter in this Act referred to as the "corporation") shall have only those powers granted to it through its bylaws and articles of incorporation filed in the State or States in which it is incorporated and subject to the laws of such State or States.

SEC. 3. PURPOSES OF CORPORATION.

The purposes of the corporation shall be to honor persons who have made significant contributions to the practice of applied psychology, dentistry, medicine, nursing, optometry, osteopathy, podiatry, social work, veterinary medicine, and other health care professions and to improve the practices in these professions by disseminating information about new techniques and procedures.

SEC. 4. SERVICE OF PROCESS.

With respect to service of process, the corporation shall comply with the laws of the States in which it is incorporated and those States in which it carries on its activities in furtherance of its corporate purposes.

SEC. 5. MEMBERSHIP.

Eligibility for membership in the corporation and the rights and privileges of members of the corporation shall be as provided in the bylaws of the corporation.

SEC. 6. BOARD OF DIRECTORS; COMPOSITION; RESPONSIBILITIES.

The composition of the board of directors of the corporation and the responsibilities of such board shall be as provided in the articles of incorporation of the corporation and in conformity with the laws of the State or States in which it is incorporated.

SEC. 7. OFFICERS OF CORPORATION.

The positions of officers of the corporation and the election of such officers shall be as is provided in the articles of incorporation of the corporation and in conformity with the laws of the State or States in which it is incorporated.

SEC. 8. RESTRICTIONS.

(a) Income and Compensation.—No part of the income or assets of the corporation shall inure to any member, officer, or director of the corporation or be distributed to any such individual during the life of this charter. Nothing in this subsection shall be construed to prevent the payment of reasonable compensation to the officers of the corporation or reimbursement for actual and necessary expenses in amounts approved by the board of directors.

(b) LOANS.—The corporation shall not make any loan to any officer, director, or employee of the corporation.

(c) POLITICAL ACTIVITY.—The corporation and any officer and director of the corporation, acting as such officer or director, shall not contribute to, support, or otherwise participate in any political activity or in any manner attempt to influence legislation.

(d) STOCK.—The corporation shall have no power to issue any shares of stock or to declare or pay any dividends.

(e) CONGRESSIONAL APPROVAL.—The corporation shall not claim congressional approval or Federal Government authority for any of its activities.

SEC. 9. LIABILITY.

The corporation shall be liable for the acts of its officers and agents when acting within the scope of their authority.

SEC. 10. BOOKS AND RECORDS; INSPECTION.

The corporation shall keep correct and complete books and records of account and shall keep minutes of any proceeding of the corporation involving any of its members, the board of directors, or any committee having authority under the board of directors. The corporation shall keep, at its principal office, a record of the names and addresses of all members having the right of vote in any proceeding of the corporation. All books and records of such corporation may be inspected by any member having the right to vote in any corporation proceeding, or by any agent or attorney of such member, for any proper purpose, at any reasonable time. Nothing in this section shall be construed to contravene any applicable State law.

SEC. 11. AUDIT OF FINANCIAL TRANSACTIONS.

The first section of the Act entitled "An Act to provide for audit of accounts of private corporations established under Federal law", approved August 30, 1964 (36 U.S.C. 1101), is amended by inserting after paragraph 70 the following:

"(71) National Academies of Practice.".

PERSONAL EXPLANATION

HON. PATRICIA SCHROEDER

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 28, 1987

Mrs. SCHROEDER. Mr. Speaker, I was absent this summer for several votes. Had I been present, I would have voted as follows:

Roll No. 237, adoption of conference report on H.R. 558: "Yea."

Roll No. 285, adoption of House Resolution 231: "Yea."

Roll No. 286, passage of H.R. 618: "Yea."

Roll No. 287, adoption of the rule on H.R. 3022: "No."

Roll No. 288, passage of H.R. 3022: "No."

Roll No. 289, Eckart amendments to H.R. 1414: "Yea."

Roll No. 312, adoption of the rule on House Resolution 238: "No."

Roll No. 315, adoption of House Resolution 192: "Yea."

Roll No. 316, adoption of House Resolution 260: "Yea."

Roll No. 319, passage of H.R. 1154: "No."

Roll No. 320, Lungren amendment to H.R. 442: "No."

Roll No. 321, passage of H.R. 442: "Yea."

Roll No. 322, adoption of the rule on H.R. 3030: "Yea."

DRUG CZAR'S "GREAT ESCAPE" THWARTED IN MEXICO

HON. LAWRENCE J. SMITH

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 28, 1987

Mr. SMITH of Florida. Mr. Speaker, recently U.S. drug agents discovered an 800-foot-long tunnel that was being dug to a Mexico City jail housing drug czar Rafael Caro Quintero. Caro is a major narcotics trafficker and the prime suspect in the brutal February 1985 torture-murder of DEA Agent Enrique Camarena Salazar.

According to published reports, Mexican officials were aware of this tunnel and did nothing about it until we found out about it.

Mr. Speaker, as chairman of the Foreign Affairs' Task Force on International Narcotics Control, I have watched the drug enforcement situation in Mexico deteriorate. Mexican cooperation in the Camarena case has been tepid at best. For 2½ years, Caro has been in jail awaiting a trial that I doubt ever will occur.

This was a major public works project of this nature—25 feet beneath the surface, 6 feet wide and 4 feet high, shored up for the entire length and taking 6 months. I sincerely doubt that it could not have been constructed in secrecy.

Everything about this episode is suspicious but all too familiar. Mexican officials either look the other way or else actively support the drug traffickers in their efforts to avoid prosecution. The upper levels talk a good fight, but their works are inadequate.

Now I know that Mexico's judicial system differs from our own. But before I leave this body, Mr. Speaker, I just once want to see Mexico try and convict a major trafficker or the people who murdered our DEA agent. I don't believe that is asking too much.

In the meantime, I congratulate our agents in the field for their fine work in ferreting out this escape tunnel.

NATIONAL CULT AWARENESS WEEK

HON. TOM LANTOS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 28, 1987

Mr. LANTOS. Mr. Speaker, today I am introducing legislation designating November 13–19, 1988, "National Cult Awareness Week." This will commemorate not only the 10th anniversary of Jonestown, where one of the most distinguished Members of this House, Leo J. Ryan, was murdered, but it will also serve to educate people about the dangers of destructive cults.

Destructive cults—of which Jim Jones' People's Temple is one of the most infamous—attack members' fundamental human rights and civil liberties. They use a variety of deceptive and coercive techniques to compel members to submit to the will of the cult leader. These groups deprive the cult member of his or her freedom of choice and erode self esteem which often results in severe psychological damage. Destructive cults attack the most fundamental principles enshrined in our Constitution—in the words of Thomas Jefferson, "There can be no freedom of religion unless there is freedom of mind."

You or one of your family or friends may already have been approached by cult recruiters either on the street or even in your home. You may already be aware of some of the methods used by cults to recruit members, but I would like to take this opportunity to describe some of the most harmful techniques employed by these groups.

All new recruits are isolated from society and from contact with any viewpoint that might contradict the teachings of the cult. This usually includes cutting off all contact with family and friends—telephone conversations and letters are strictly controlled. As the recruit becomes more deeply involved these relationships are replaced by absolute dependence on fellow cult members and, in many cases, arranged marriages.

Strong peer group pressure makes recruits doubt their own convictions. New members find themselves in an attractive environment where they are flattered and made to feel that they belong. At no time is the recruit ever left alone to think through and sort out these new and confusing experiences. Furthermore, work hours are long and demanding and the member never receives adequate sleep. Coupled with a low protein diet, the recruit rapidly becomes vulnerable and disoriented. Members are encouraged to share their innermost secrets which helps to break down the ego. Later the threat of making these secrets public is used to help prevent escape.

Guilt is employed constantly to force members to work harder and without relief. The member assumes monumental guilt both for his or her own sins and also for the state of all mankind. This is coupled with the use of perpetual physical and spiritual fear to maintain group loyalty. The slightest negative or questioning of the cult is soul threatening. Tragic consequences are prophesied for anyone leaving the group. The member comes to believe that only the cult is the way to righteousness.

Many of us associate chanting and singing with cults. This is a deliberate tactic to induce a quasi-hypnotic state of high susceptibility. Cult members must also conform in dress, and the values formerly held by the members are constantly denounced. Members are normally compelled to donate their earnings, savings, and possessions to the group which further reduces the chance of escape from the cult.

One new recruit to a well-known cult describes the experience during a 100-day leadership training camp:

The camp, which operated on a rigid schedule, was physically, emotionally, and mentally overpowering. I felt that I never had enough food to eat or hours to sleep. There's something continuously going on, from early in the morning until late at night. Even in those situations where you're just moving from one location to another in the camp, there's somebody on either side of you. You become so fatigued and your emotions become so strongly accentuated that they set off to the side any kind of rational thinking process. You become an absorber of feelings and attitudes and behavior patterns rather than an alert adult responding to a community that is offering something which you can take or leave. You really become committed more by default than by choice.

Not all cults employ all of these techniques, and these methods are not necessarily inherently evil. However, when used by cults to deny individual choice, they attack our fundamental civil liberties. As we celebrate the 200th anniversary of our Constitution we must take all steps to ensure that the principles of our free and democratic society are protected. For these reasons, I urge you to join with me in supporting National Cult Awareness Week.

PRESIDENT OF EL SALVADOR'S HUMAN RIGHTS COMMISSION GUNNED DOWN

HON. ROD CHANDLER

OF WASHINGTON

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 28, 1987

Mr. CHANDLER. Mr. Speaker, yesterday I was appalled to learn that Herbert Anaya, the president of El Salvador's Human Rights Commission, was gunned down in front of his home by unknown assailants. It now appears likely that this assassination was the work of death squads.

It is clear that these forces, like their Communist counterparts in the FMLN, wish to subvert the peace process and overturn the reforms of President Jose Napoleon Duarte.

Well let me make clear that this outrageous, coldblooded, and brazen murder will not be tolerated. Any attempt by the forces of the right or the left to subvert the government of President Duarte will be met in the strongest possible terms.

There is no way the FMLN guerrillas can better assure United States support for their destruction than by fighting against peace in Central America. Likewise, the right wing in El Salvador can quickly end United States support by encouraging the death squads to continue or by challenging the Duarte government's stability.

Let both sides be warned that the forces of democracy in the United States Congress stand squarely behind the forces of democracy in El Salvador and all Central America.

No retreat from these principles will be tolerated.

PERSONAL EXPLANATION

HON. JAMES McCLURE CLARKE

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 28, 1987

Mr. CLARKE. Mr. Speaker, on Wednesday, October 21, 1987, I was necessarily absent for several votes. I would like to make clear my position on those measures considered by the House.

On the Courter amendment to H.R. 2939, the Independent Counsel amendments, rollcall No. 370, I would have voted "nay."

On the Shaw amendment to H.R. 2939, the Independent Counsel amendment, rollcall No. 371, I would have voted "nay."

On the Shaw amendment to H.R. 2939, the Independent Counsel amendments, rollcall No. 372, I would have voted "nay."

On final passage of H.R. 2939, the Independent Counsel amendments, rollcall No. 373, I would have voted "yea."

H.R. 1720

HON. ROBIN TALLON

OF SOUTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 28, 1987

Mr. TALLON. Mr. Speaker, one of the greatest challenges to modern society is to provide basic assistance to those in need without limiting individual opportunity or independence. Until now, we have had limited success in meeting this challenge and the result has been a growing number of welfare dependents. We are beginning to recognize that providing basic goods such as food and shelter are often an insufficient and wasteful response to human need. Just as important are the deeper more vulnerable needs of a sense of worth and dignity. Too often, our Government administers to the results of employment and poverty without addressing the causes.

I rise today in support of a measure which I believe will correct this problem by linking welfare assistance with job training—H.R. 1720, the Family Welfare Reform Act. H.R. 1720 has as its fundamental component the essential link between work and welfare payments through employment training and support. It requires that targeted groups of welfare recipients participate in a national education, training and work program. The groups targeted are recipients like teen parents who are the most likely to become dependent on welfare. In establishing this training network, H.R. 1720 gives States maximum flexibility in adapting the program to meet their individual needs.

H.R. 1720 encourages States to raise benefits by enhancing the Federal matching rate for States that increase benefits to ensure that the safety net for the poor is adequate.

It sets a policy that will keep families together. In 23 States, a father must leave home in order for the family to receive welfare assistance. Under H.R. 1720, all unemployed two parent households would be eligible for assistance through the AFDC-UP Program.

It establishes the important principle that parents must be doing everything they can to support their children before the Government offers any assistance. For this reason, child support enforcement is a critical part of H.R. 1720. The bill calls for increased paternity determinations, penalties for noncompliance with the 1984 child support enforcement amendments, and incentives to adopt automatic wage withholding laws.

Each of these provisions is an important step in the process of permanently escaping poverty. Without a doubt there will be short-term costs in enacting these reforms. But they will be far outweighed in savings to the taxpayer as welfare recipients are transferred from the welfare rolls to the payrolls.

H.R. 1720 promises to change welfare from a maintenance system to a doorway to real opportunity. It promises this change because it refocuses welfare on fundamental concepts too long forgotten or overlooked. The first is the understanding that welfare should involve reciprocal responsibilities. For too long welfare has been based on a lose-lose proposition where little is expected and little is provided.

The second concept is the critical importance of work. Work is the way to cut welfare costs and promote self-sufficiency. It confers emotional and psychological benefits on the recipient; it is an opportunity to join the Nation's mainstream. Work is important to the development of personal dignity, self-confidence, and identity, and as favorable to family stability and a healthy home environment.

The final understanding is the need to strengthen the family. The ties between martial instability, out-of-wedlock births and poverty are indeniable. Half of the Nation's poor live in female-headed families and over one-third of those in female-headed families are poor. Three out of every four new welfare cases result from either a marital disruption or an out-of-wedlock birth to first-time mother.

By refocusing the welfare system on these concepts we can create the opportunity to bring down today's barriers to productive lives for welfare recipients and invest wisely, systematically and productively in welfare prevention.

The chance to work, learn and hope are the essential ingredients of the American dream. Denied any one of these, an individual is unlikely to ever achieve a fulfilled, productive life. And for every American who is denied his full potential we sell short America's future. The choice is clear: more work or more welfare. I urge my colleagues to join me in support of H.R. 1720 and a securer future for all Americans.

PERSONAL EXPLANATION

HON. WILLIAM F. CLINGER, JR.

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 28, 1987

Mr. CLINGER. Mr. Speaker, last week the House passed legislation permanently reauthorizing the independent counsel statute.

I would like to take this opportunity to state for the RECORD my reasons for voting against final passage of the bill.

If you will recall, the House rejected the amendment offered by our colleague from

Florida [Mr. SHAW] which would have extended the list of officials covered by the statute to include Members of Congress.

Time and time again, Congress has passed legislation under which the legislative branch is exempt from the bill's requirements. I ask my colleagues to consider the fact that we have legislated against discrimination in the workplace but continue to allow ourselves to hire, fire, promote or demote our own staffers on the basis of sex, race, or religion. Just this month, the majority of my collegues voted for H.R. 162, the High Risk Occupational Disease Notification Act. It was described as a necessary step to protect the health of American workers. If the Members of this body feel that such legislation is indeed critically important, then our own offices should not be excluded from its provisions.

This practice of exempting ourselves from legislation deemed to be worthy of enactment is unacceptable to me and that is why I voted against final passage of H.R. 2939.

A TRIBUTE TO THE MEMBERS OF DAAD

HON. JIM SAXTON

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 28, 1987

Mr. SAXTON. Mr. Speaker, I rise today to pay tribute to 47 high school students from my 13th Congressional District who have dedicated themselves to halting drug abuse right at the grassroots level.

The students, who attend Holy Cross High School and Delran High School, have so distinguished themselves that they are today receiving the "Youth Against Drugs" award bestowed by the U.S. Department of Education.

The program they are involved in is properly known as DAAD—short for "Drugs & Alcohol Abuse is Deadly." and through this unique program, these students have been able to reach down into our neighborhood grade schools where first exposure to drugs and alcohol is likely to occur.

As members of DAAD, each student must have first successfully completed 16 hours of training and counseling related to chemical substance abuse. They then team up into pairs and visit fifth grade classrooms throughout the area to speak to the younger students on many hazards of substance abuse.

The students themselves must be fully committed and dedicated to the cause and, at the onset, sign a contract stating that they, too, will remain substance free.

Mr. Speaker, I know that many Members of this House, and, of course, First lady Nancy Reagan, have demonstrated time and again their leadership in the war on drug and other substance abuse.

But these students are leaders in their own right, intent on assuring that the next generation of Americans do not fall victim to the drug and alcohol problems which can destroy families, disrupt communities and end lives.

I'm sure my colleagues here in the House will want to join me in saluting and congratulating these young people for their dedication to a most worth initiative.

Kevin Harrison, John Ellison, Debbie Ash, Jennifer Robinson, Michelle Miller, Mary Beth Smith, Jen Moore, Stacy Peterson, Nancy Venture, Andrea Branas.

Jennifer Goldberg, Joyce Chou, Susan Schmeidler, Sandra Prickitt, Erik Wall, Raquel Sheeran, Kathy Murray, Joemille Santiago, Kristin Yaskowski, Joe Cartaino, Tricia Cosgrove, Keith Harvey, Kerri Hibbs, Heather Belonger.

Julie Finertie, Gizelle Brooks, Karyn Schmeidler, Thomas Potts, Susan Southwick, Steve Schneider, Geri Nahlen, Megan Thompson, Jeff Wilkinson, Michelle Chadwick, Danielle Derosa, Courtney Henty, Teresa Mitkus, Carol Clowry.

Frank Konicki, Tom Reinhart, Noelle Tracey, Chrissie Romanoff, Stephen Zakroff, Stacey Mullan, Carol Schnell, Kevin Knight, Cathy Younglove.

THE PASSING OF JACK RAY

HON. GEORGE (BUDDY) DARDEN

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 28, 1987

Mr. DARDEN. Mr. Speaker, I want to call to the attention of my colleagues the passing of Jack Ray, a Georgian who made an outstanding contribution to our State in his public life, and who also was a close friend of my family for many years.

Jack Ray died in Atlanta last week at age 74. He was a native of Norwood, GA—not far from my hometown of Sparta. His long political career included service in the State House of Representatives between 1943 and 1961, and as State treasurer from 1961 until 1970.

While serving in the general assembly, he was the principal sponsor of legislation creating Georgia's basic 3-percent sales tax. That new source of revenue made possible the first major school funding program in State history.

I am pleased to say that my uncle, John Ricketson, was among Jack Ray's early sponsors when he sought election to the general assembly. Over the years, our families remained close—he and my father were good friends; his son Neal and I have been friends since we attended the University of Georgia together, and our daughters have developed a strong friendship in recent years.

Jack Ray was always the same with everyone he encountered—warm and friendly, with a wonderful sense of humor. In later years, he changed his political party affiliation, but he never let that affect his relationships with his many friends.

Mr. Speaker, I invite my colleagues to join me in extending our sympathies to Jack Ray's wife, Jane Hamilton Ray, as well as to his son Neal and his sister, Mrs. Mary Robinson. Jack Ray's record of achievement in Georgia politics and government is matched by few others in our State's history.

DENNIS HERRICK, AN AMERICAN WRITER

HON. DALE E. KILDEE

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 28, 1987

Mr. KILDEE. Mr. Speaker, it gives me great pleasure to share with my colleagues an article composed by Mr. Dennis Herrick, the editor and publisher of one of the most highly respected newspapers from America's heartland, the Sun, of Mount Vernon and Lisbon, IA. Mr. Herrick has always demonstrated the type of levelheaded demeanor I believe represents the highest tradition in American editorship. Although I lost my administrative assistant, Dennis Herrick, to his dream of owning a newspaper a few years ago, I continue to consider him to be a man with tremendous intellect, intense patriotism, and high values of respect for others. The following article appeared in the Publisher's Notes section of the August 6, 1987, issue of the Sun.

We liked our heroes square-jawed, lean and handsome, and some folks really go for a uniform, too. I guess that's why a lot of people think Lt. Col. Oliver North is the latest American hero. But they don't have the same feeling about chunky Rear Admiral John Poindexter with his male pattern baldness and smelly pipe.

Poindexter should be just as popular as North. After all, North was only Poindexter's errand boy in the White House pecking order.

Frankly, I am appalled by both.

North and Poindexter are men of misguided principle, vigilantes who wrap themselves in America's flag while covertly flouting its Constitution.

Both are servicemen who forgot, if they ever understood it to begin with, that their commander in chief is the President of the United States, not the nearest be-medaled admiral or general.

Poindexter and North are two of the clearest examples we have had in a long time of why the writers of our Constitution put the military under civilian control, not under the rule of officers.

The arrogance of a rear admiral and a mere lieutenant colonel deciding what Congress and the President should know and what they should not know is staggering in its implications. They wouldn't even listen to the Secretary of Defense. Here are a couple of gung-ho boys who think they have the wisdom and power to conduct America's foreign policy.

Poindexter, as national security adviser, admits he did not tell President Reagan everything about the scheme he and North were working on. "I did not want him to be associated with the decision," Poindexter said. North claims he believed Poindexter had Reagan's explicit approval, but North lied about so many other things that his credibility is shaky at best on that claim.

Forget about whether America should or should not arm the Contras, freedom fighters, mercenaries or whatever else you want to call them, and help them overthrow a foreign government.

And forget about your feelings of trading hostages for sophisticated weapons.

And forget how we armed an avowed enemy of the United States, and may very well get some of those missiles back in the Persian Gulf the hard way.

And forget about how the entire affair has impacted the Iran-Iraq war that we were supposed to be neutral in, destroyed what little credibility we had in the Middle East, and made President Reagan look like an ignoramus and his Cabinet meetings like a bar brawl.

The question is whether North and Poindexter were good soldiers or zealots dangerously out of control.

It's clear to me.

A TRIBUTE TO BETTY GOLDENKRANZ

HON. CHARLES E. SCHUMER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 28, 1987

Mr. SCHUMER. Mr. Speaker, I would like to take this opportunity to recognize and congratulate an outstanding achievement by a resident of the 10th Congressional District and a dear friend of mine. Betty Goldenkranz has been named Reading Teacher of the Year by the New York State Reading Association.

I think my colleagues will agree that along with the criticism that our schools have taken over the past few years, great unheralded strides have been made in improving the way our children are taught. When I hear of the achievements of a person like Betty, I think you can agree we should all be very proud.

Betty Goldenkranz is in her 10th year as Reading Resource Teacher for Public School 269. Her responsibilities include teacher training and staff development, as well a diagnosis and recommendation for students needing special attention.

She has spent time as a lecturer at Brooklyn College in the department of reading and learning, as well as a consultant to St. John's University for its after school tutorial program.

Betty has a BA in sociology and elementary education from Hunter College, an MS in education and reading from Brooklyn College and has also done post-graduate work, concentrating in learning disabilities.

Along the way she managed to raise three children with her husband, Steve, and they have three lovely grandchildren.

My best wishes and heartfelt congratulations go out to Betty and her entire family on this tremendous achievement.

"SIGNING FOR SUCCESS" GALLAUDET UNIVERSITY IS NUMBER ONE

HON. STEVE GUNDERSON

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 28, 1987

Mr. GUNDERSON. Mr. Speaker, Biannually, U.S. News and World Report publishes and comments on a survey of college and university presidents of the best colleges and universities in the United States. With the 1987–88 academic year in full swing, the October 26, 1987, U.S. News and World Report dedicated a majority of this issue to higher education in the United States in its special report—"America's Best Colleges."

For many of us who thumbed through this issue, probably the first thing we looked for was how our alma mater ranked nationally or regionally. Aside from our personal interest in the survey, Members of Congress should note with great interest the top ranking of an institution, right in our backyard, that receives appropriated Federal funds. Gallaudet University, located in northeast Washington, DC, received the distinction as the best liberal-arts institution in the East.

It is important to note that being included within the results of the U.S. News and World Report survey is nothing new for Gallaudet University. In 1983, Gallaudet College was ranked as the fifth best Eastern liberal arts instiution. Two years later, in the 1985 survey, Gallaudet College was ranked No. 3 of Eastern smaller comprehensive institutions. A year after Gallaudet was recognized as a university under title I of the Education of the Deaf Act of 1986, it has been ranked No. 1 by its peers as the top Eastern liberal arts institution. These and other accomplishments illustrate the depth and quality of the university community at Gallaudet. Gallaudet University shows us that we do get better with age.

For over 122 years, Gallaudet University has served as the only liberal arts institution in the world dedicated to educating hearing impaired individuals. Gallaudet University stands as an international symbol of the unique aptitude, potential, and talent of hearing impaired individuals by delivering outstanding educational opportunities, leadership, and programs for the hearing impaired of all ages.

Gallaudet University has made great strides in the 1980's, and I have no doubt it will continue to grow and prosper in the years to come. Congress must continue to recognize and support the accomplishments and importance of Gallaudet University's mission in our higher education community.

As a congressional trustee for Gallaudet University, I am proud of the many achievements of this fine institution, and wish to congratulate Gallaudet University's administration, faculty, staff, and students for their dedication and service for the continuing growth of this innovative learning environment.

A BIT OF PORTUGAL IN NEWARK

HON. PETER W. RODINO, JR.

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 28, 1987

Mr. RODINO. Mr. Speaker, as a lifetime resident of Newark, I share with all my fellow Newarkers a deep sense of pride in our city. Newark is a city on the move—undergoing a renaissance and a rebirth.

It is also a city of people and neighborhoods. Throughout its long history, Newark served as the gateway for countless numbers of people seeking a better life and bringing with them their many cultures and traditions. This gives Newark a social fabric that is both diverse and unique.

One Newark neighborhood that boasts a rich urban vibrancy is the Ironbound section. This prosperous, tightly knit community is particularly noted for the many contributions of its Portuguese-American residents and its special ethnic flavor.

Mr. Speaker, with your permission, I would like to include in my remarks a recent article from the New York Times highlighting the many attractions in the Ironbound neighborhood.

[From the New York Times, Oct. 7, 1987]

LITTLE PORTUGAL: PAGE OF HISTORY IN NEWARK

(By Marian Burros)

Visitors to the Ironbound section of Newark enter a time warp. Just three blocks from Pennsylvania Station here and a five-minute drive from Newark International Airport is an ethnic neighborhood of 40 or 50 years ago, where in the late afternoon, neighbors visit with neighbors, the women on their stoops, the men in the local bars.

Portuguese music blares from loudspeakers along Ferry Street, a milelong stretch of shops and restaurants. The language in the stores is Portuguese. Travel agencies offer bargain trips to Portugal. Imported Portuguese ingredients take up at least 20 percent of the shelf space in the markets, while the 50-odd restaurants serve Portuguese dishes, with a generous helping of Spanish favorites like paella and mariscada.

This tiny section of Newark is bounded on three sides by railroad tracks and on the fourth by a railroad yard—hence the name. Some, however, prefer to call it Down Neck, from its location on a neck bordered by the Passaic River, or simply Little Portugal.

A working-class community since it was settled in the early 19th century, the Ironbound has seen a succession of immigrant groups: German, Irish, Polish, Italian. It did not become famous for eating and shopping, however, until the Portuguese began arriving in the 1960's and 70's.

Today, most estimates agree that about 50,000 to 70,000 residents of the Ironbound, or 50 to 70 percent of the population, are Portuguese; the remainder are Hispanic, Italian, black and Polish.

It is a prosperous, tightly knit community. Those who leave feel a constant pull to return. Isabel and José Fernando Costa, for example, moved back three years ago from South River, N.J. "Even when I lived in South River," Mrs. Costa said, "I still came here to shop. The butcher does something special for you, and the fish is fresh."

At lunchtime, the markets are filled with young women who work in the area and know the butchers and fishmongers by name. Maria Cordiero of Elizabeth, N.J., shops once or twice a week at Conde's Fish Market, which opened in 1929. "The things are fresher here," she said.

Many women from the Ironbound shop for groceries every day usually after work and often with children in tow. At stores like Seabra's on Ferry Street, Portuguese and American ingredients jostle for shelf space: Serra Curado, a goat cheese dipped in paprika and oil, and Kraft single slices; Portuguese corn bread, dense and crusty from its corn-and wheat-flour base, and Wonder bread; ketchup and piri-piri, the stingingly hot peppers from Angola, a former Portuguese territory.

Retail bakeries supply the stores with excellent breads and many customary Portuguese sweets. There are also the distinctively perfumed and fruity Portuguese olive oils and unusual cuts of meat: salted pig's ears, pork tongues, tails and snouts and chickens with heads and feet intact. The Lopes Meat Company is famous for its spicy sausages, such as chouriço and linguiça, and presunto, which resembles prosciutto. At week's end, the fish markets feature fish flown in from Portugal.

These ingredients will be turned into savory Portuguese specialties like caldeirada, a fisherman's stew that includes cod, squid and monkfish. The whole is suffused with olive oil, as are so many Portuguese dishes. Bacalhau, the beloved salt cod, is offered in a dozen variations. Sardines are grilled, then eaten head and all.

Pork is a staple and the basis of two hearty recipes: pork and clams cooked with pickled vegetables and olives and served with fried potatoes, and feijoada, a casserole of pork and beans similar to the Brazilian dish of the same name, expect that the beans are white instead of black.

The neighborhood appeals not only to Portuguese-Americans, who come from as far away as Long Island, Westchester County and Pennsylvania, but to other transplanted Europeans. Michael Frede, who is German and teaches at Princeton University, comes with his wife, Gabrielle. On one visit, Mrs Frede was pushing their 13-month-old twin daughters in a stroller through Orlando, a food market on Ferry Street.

"It's like an old-type community that we don't have in Princeton," Mr. Frede said. "The things we can get here are much more European—the ham, cheese, rabbits chouriço. This is like an outing for us. We have some coffee and shop."

It is the restaurants, however, that attract the largest cross section of visitors. "You can't get the food anyplace else—the taste, the quality, the way it's presented," said Michael Bertone, a lawyer who was dinning at the Peninsular on Ferry Street.

"When I came to New Jersey in 1973 as Federal prosecutor, I quickly learned that Newark is known for its Portuguese food," said Peter Sarasohn, a lawyer in Roseland, N.J., who recently brought two business associates to Casa Vasca.

Casa Vasca is a Basque restaurant, but even the Portuguese say it is difficult to tell Spanish and Portuguese restaurant food apart. "After a while, they blend here," said Céu Cirne-Neves, who was born in Portugal and came to the United States when she was 14 years old. "So even though paella is not Portuguese, it's made in Portuguese restaurants."

Ms. Cirne-Neves, who is the public-relations director for St. James Hospital in the Ironbound, said the Portuguese food was authentic. But Armando Fontoura, the undersheriff of Essex County, N.J., and the president of the Portuguese-American Congress of New Jersey, disagreed. Mr. Fontoura came to the Ironbound from Portugal when he was 11. "Catering to Americans in the restaurants," he said, "has bastardized the food."

Authentic Portuguese food is less oily than Spanish food and uses spices more widely, according to Jean Anderson, the author of "The Food of Portugal" (Morrow, 1986). The distinction is probably lost in the Ironbound. "For Americans," said José Marques, the owner of El Pastor restaurant on Market Street, "we make things with less hot pepper, less fat and less salt."

Despite the American intrusions—the ketchup on the table, surf and turf on the menus—the Ironbound is essentially a European enclave in the United States, one to which its sons and daughters often return.

Mr. Fontoura, for example, said his family has made a down payment on one of the area's first condominiums. "I miss the people and the density," he said. "There is someone always available to talk with until the wee hours of the morning." And there are the Portuguese foods: "Why, you can buy everything you need right here."

TRIBUTE TO MR. FRANK ZACCARIA, PRINCIPAL OF THE PASSAIC COUNTY TECHNICAL AND VOCATIONAL HIGH SCHOOL

HON. ROBERT A. ROE

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 28, 1987

Mr. ROE. Mr. Speaker, I rise today to join in honoring a man of great compassion and selfless ambition. Mr. Frank Zaccaria, the newly appointed principal of the Passaic County Technical and Vocational High School, will be honored by the Federation of Italian Societies at its annual dinner dance on November 1, 1987.

Mr. Zaccaria has long recognized the value education holds for all members of society, including those with special needs and requirements. At this time I would like to quote a brief history of his distinguished career which includes a wide range of both private, civic and public duties:

TRIBUTE TO MR. FRANK ZACCARIA, PRINCIPAL OF THE PASSAIC COUNTY TECHNICAL AND VOCATIONAL HIGH SCHOOL

Frank was born in Totowa on August 8, 1930, and has been a resident of West Paterson for the past eighteen years. He attended local schools and graduated from Passaic Valley High School in 1947. At the outbreak of the Korean conflict, Frank joined the U.S. Air Force, served four years, and achieved the rank of Staff Sergeant, while serving with the European Occupation Forces in Germany and Italy.

After his discharge, he returned to civilian life and married Mary Brosnan, resumed his job at Continental Can Co., and enrolled at Seton Hall University earning a Bachelor of Arts Degree in Sociology. Frank continued his education and received a Masters Degree in Education from William Paterson College.

After 22 years in a business career, which saw him rise from a factory line worker to Production Control Manager, Frank chose to pursue a long desired career in the field of Education for the Handicapped. In 1971, he joined the staff of the Passaic County Technical and Vocational High School as a teacher of the handicapped. It wasn't long after that he was appointed to the position of Coordinator of Cooperative Industrial Education, placing handicapped students in jobs. In 1985, Frank became Supervisor of Career and Vocational Education. The Board of Education appointed Mr. Zaccaria principal of that school in January 1987.

In addition to his membership in the New Jersey Principal and Supervisors Association, the Epsilon Pi Tau Professional Society of Industrial Arts and Vocational Education, the American Vocational Association, and the New Jersey Cooperative Industrial Education Coordinators Association, he was elected to "Who's Who" in American Cooperative Education in 1980.

Frank's civic activities and interests include serving as Vice President of the Board of Trustees of Tombrook College for five years, Secretary to the West Paterson Planning Board, member of the Passaic County Boy Scouts of America's Executive Board, one of the founders of the Italian American Forum, member of the West Paterson Bi-Centennial Committee, and membership in the West Paterson American Legion Post #238.

He has been an elected councilman of the West Paterson governing body since 1973, having held the various positions of Council President, Police Commissioner, Fire Commissioner and Finance Commissioner.

He and Mary are members of Our Lady of Pompeii Church in Paterson. Their five children, Frank X., Kathleen and her husband Richard Dellanno, Karyn, Mary, and Pamela, are the delight of their lives and a lovely tribute to their 31 years of married life.

Mr. Speaker, I believe it is most apparent that Frank is a self-made man, who turned from a successful business career to rechannel his efforts into a career where his love of knowledge could be passed on to others. Education is the most precious commodity we can pass on to our children, and it is important to remember that education must be flexible to meet the needs of everyone who desires to learn. Schools such as Passaic County Vo-Tech give students an option, allowing them to learn valuable and much needed job skills for New Jersey's booming economy, while still providing a solid background in the traditional studies thus allowing them to continue their education beyond high school.

Frank Zaccaria has been intimately involved in the school both as an instructor and administrator for 15 years. He is a concerned educator, one dedicated not merely to supervising children while their parents work, but to a complete, well rounded education where the parents are involved in the process as the students. Mr. Speaker, the world today is a demanding one, but if we can find men and women like Frank Zaccaria, who care enough to prepare our youth to be active and productive in it, then I am confident we will leave our communities and our country in very capable hands.

STOP THE EXPLOITATION OF CHILDREN

HON. GEORGE MILLER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 28, 1987

Mr. MILLER of California. Mr. Speaker, I recently introduced a bill to ban the importation into our country of products produced by exploited children. I am very pleased that the measure has drawn the support of nearly 90 of our colleagues, as well as the endorsement of many advocacy organizations representing labor, children, and human rights. It's time to demand that the brutalization of children in the workplace stop.

Today, the Christian Science Monitor printed my opinion editorial which discusses the steps which must be taken to protect the world's children. I urge my colleagues to read the article, and to cosponsor my legislation.

The article follows:

STOP EXPLOITING CHILD LABORERS

(By George Miller)

In June 1970, the United States Fish and Wildlife Service added the whale to its list of endangered species, severely restricting the importation of whale products.

The same step was taken in 1978 to help ensure the survival of the Asian elephant. Since the enactment of the Endangered Species Act in 1966, similar protection has been granted to rhinos, leopards, wombats, and many other species.

Don't the world's children deserve the same level of protection?

According to the International Labor Organization, 88 million children between the ages of 11 and 15 are now part of the world's labor force. They, and millions more younger than 11, work in dismal and dangerous conditions, putting in endless hours and getting virtually nothing in return.

Child labor is on the rise in large part because third-world countries are racing to meet the demand for their products created by Western nations. A Thai government survey revealed that child labor in Thailand increased 30 percent between 1981 and 1983, and evidence suggests the rate has continued to climb in tandem with the Thai export industry. A 1985 United Nations study of Thai industry reports that "manufacturing industries employing a large proportion of child workers are those which expanded very rapidly in the last few years as a result of their export potential."

Child laborers all over the world leave a long trail of profits for company owners, traders, and Western department stores.

The Mocary factory in Morocco can produce a carpet for less than $20. When it is sold to Macy's in New York for $166, Mocary executives gain almost $100 in profit. After marking up and selling the rug, labeled "Made in Morocco exclusively for R. H. Macy's," Macy's makes a $282 profit. The broker who arranges these and other transactions makes millions of dollars each year in commissions. The United States imported 10,000 carpets, worth $2.3 million, from Morocco in 1985. Western consumers create the demand for these products, but do nothing to ensure that the world's children are not sacrificed. Its time to use our economic strength to protect the children of the world rather than allow commercial demands to underwrite their enslavement.

When concerns about international exploitation of child labor are raised, we are frequently admonished that we cannot affect labor conditions abroad. We are told we cannot mandate remedies, or that foreign governments won't even respect their own fair-labor laws. Yet by prohibiting the importation of products derived from endangered species, we do attempt to influence the policies of foreign governments.

We should in effect, add "exploited children" to the list of "endangered species." This is the essence of legislation that I recently introduced in Congress: barring the importation into the US of any item produced in violation of internationally recognized child labor rights.

We are also told that unless these children are allowed to work, they will starve. Such arguments have served to justify exploitation for centuries. Like the slaveholders who justified slavery on the basis that slaves were better off on the plantation, countries that ignore child labor laws say employers hire five-year-olds out of compassion. The truth is that these companies prefer to hire children, rather than some of the millions of unemployed adults, because they can work them long and pay them little. An Indian legal scholar estimates that if child labor was eliminated in his country, 15 million adult jobs would be created.

Stopping child labor requires a national commitment to keeping children out of the workplace. Kenya, an underdeveloped and impoverished nation, is not only more aggressive in enforcing its child labor laws, but has established Africa's first policy of universal education. In many countries, however, the government simply disregards its own child labor laws, as well as minimal international standards for child labor: enforcement of a minimum working age; prohibition of work at night or in hazardous occupations; enforced standards for minimum hours of work, health, and safety; and a ban on compulsory employment. Some governments have encouraged children to enter training programs where, in the absence of any mechanism to prevent exploitation, they are soon working 70 hours a week.

By putting economic pressure on these countries, we can force them to change their child labor practices.

As child labor stunts the mental and physical growth of children, it also stifles a nation's potential for development. Economic progress in the third world will not come by wasting away the most valuable resource for the sake of foreign exchange. Prosperity will be achieved by giving children the opportunity to grow, and allowing them to make a much greater contribution to society as adults.

WALL STREET JOURNAL ARTICLE EMPHASIZES TRUE CORPORATE SHAREOWNER RESPONSIBILITY DURING HOSTILE TAKEOVERS

HON. THOMAS A. LUKEN

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 28, 1987

Mr. THOMAS A. LUKEN. Mr. Speaker, during the past few years, most of us have come to recognize that this country has slipped a rung or two on the ladder of international competitiveness. Confident as we are that America can regain its competitive edge, and turn an alarming trade deficit into a once-again respectable trade surplus, we nonetheless know that the task ahead will not be easy.

Recently, John Smale, chief executive officer of Procter & Gamble, headquartered in Cincinnati, addressed the question of competitiveness at the annual meeting of Procter & Gamble shareholders. An adaptation of his remarks was published in the Wall Street Journal on Friday, October 16, 1987.

Shortly, Mr. Speaker, this body will be asked to vote on legislation amending the 20-year-old Williams Act. As it seems wholly fair to suggest that we have been prompted into action by the increasingly abusive and manipulative tactics of "corporate raiders" and inside traders, and inasmuch as much needs to be said about hostile takeovers and well-run corporations, I ask that Mr. Smale's Wall Street Journal article be inserted into the RECORD. In doing so, I sincerely hope that his salient remarks will be widely read and pondered by my fellow Members and by concerned citizens everywhere.

[From the Wall Street Journal, Oct. 16, 1987]

WHAT ABOUT SHAREOWNERS' RESPONSIBILITY?

(By John G. Smale)

Widespread hostile takeover activity has made maximizing immediate shareholder value appear to be the basic purpose of a business enterprise. Some defend hostile takeovers as adherence to free enterprise—as reliance on market forces to structure and restructure our economy. But this emphasis will, if not appropriately curbed, have just the opposite effect.

From the perspective of someone whose company has been in business for 150 years, I can say that by focusing on the short term, our publicly held business enterprises will see their competitive position decay, their resiliency in difficult times undermined, and their standing in our society compromised.

There is, of course, nothing new about a corporation's fundamental responsibility to its owners. What is new is the role of what I'll call the "temporary owner," whose sole interest is that of a speculator looking for the "fast buck."

In sharp contrast to the traditional shareholder, "temporary owners" play a role that can lead to the acquisition of corporate assets through creative financing—for the purpose of reaping a quick profit. This often results in the breakup and/or the forced assumption of major debt by the corporation under attack.

A COMPETITIVE MARKETPLACE

This process produces in my opinion, a distrortion—and a serious one—of the role of business in our society.

That role is to provide goods or services the society wants at the lowest possible cost. It does this in a competitive marketplace—a marketplace continuously evolving in terms of technology, consumer needs, competitive skill and economic circumstances. Over time, how well a company does depends importantly on how vigorously it prepares for the future. That preparation often involves decisions and investments that have short-term adverse consequences.

And that's one of the things that should concern us about hostile takeovers: Managers making expedient decisions to run up the price of their company's stock in order to try to prevent the takeover of their company.

It is difficult to generalize about hostile takeovers and forced leveraged buyouts because each situation has its own unique elements. It's clear, however, that opportunity exists for manipulation to produce profits for speculators without consideration of the real interests of the corporation's long-term investors, its employees, or the communities in which it operates.

It is also clear that hositile takeovers do not do what the speculators say they will do. Research by scholars such as Michael Porter of Harvard Business School suggests they do not usually bring better management to poorly run companies, do not create additional wealth in our economy, and do not even, over time, necessarily provide a good mechanism for shareholders to realize full value for their shares.

Historically, it was considered highly desirable to have a strong balance sheet, a balance sheet with no more than a reasonable amount of debt. This enabled the corporation to withstand economic downturns, and gave it the financial resources to make major investments, all to the advantage of shareholders. Now, some argue that corporations are "underleveraged."

But an argument can be made, as well, that it is not a healthy thing that corporate debt has grown over half a trillion dollars in the last 4 years—from 37 percent of U.S. corporate net worth in 1983 to 53 percent last year, a record debt ratio.

Until recently, putting a significant part of a company's profits into investments for future growth was considered essential—the driving force of future profit growth. Now, it is argued that companies should cut investments to provide shareholders quick returns. For example, oil companies have been attacked for using profits to search for new oil reserves. Even more ominous for the ability of American business to compete technologically is what I've heard from other chief executive officers about cutbacks in research and development resulting from takeovers or resistance to attempted takeovers.

Historically, temporary fluctuations in the market price of a company's stock did not drive decisions on how the company should be structured. Now, some argue that if the total value of all of the company's stock is less than the price that could be paid for its various parts, the corporation should be effectively liquidated.

Hard to measure, but nonetheless important, is the damage that overemphasis on short-term results can bring to the attitudes of our society toward corporations. Corporations are citizens—paper citizens to be sure—but citizens nonetheless. A corporation exhibiting little concern for the rest of society or for its own future risks the disfavor of our citizens.

A corporation's success over time is almost totally dependent on its ability to attract and retain good people as employers—good people in terms of their talents, their integrity, and their willingness to sacrifice at times for the good of the company. But for a corporation to expect this kind of commitment and dedication from its employees; it must reciprocate. It must evidence a greater breadth of purpose than short-term maximization of per-share stock price.

There can be little argument about the obligation that those who manage and govern corporations have to the shareholder. But what about the shareholder's obligation? In fact, doesn't ownership itself imply some responsibility if our economy and our society are to be healthy?

Here, an examination of the history of my company is, I think, helpful. Procter & Gamble, founded in 1837, predates over 99 percent of the business corporations in this country. It has seen public attitudes and expectations concerning corporations shift with economic and political circumstances over the years.

Our beliefs about the responsibilities of ownership are based on the attitudes of our founders and their successors—owners of a family business. Through their actions, the Procters and the Gambles demonstrated time and again three aspects of responsibility, which are still a part of this company's character.

They were generous with their time and money to help those less fortunate and to build a thriving community. They planned the business for the long-term, and they were mindful of their employees.

The company has always been an industry leader in employee benefits and has, today, the longest running continuous profit-sharing plan in existence.

Early in the 1920's, the company implemented a plan, revolutionary for its day, of selling direct to retailers. The resistance of wholesalers to this idea, coupled with a national financial crisis and recession, resulted in a 1-year loss to the company of more than $30 million. That was an amount about equal to what the company had earned in its previous 5 years.

You can imagine how Cooper Procter, the corporation's chief executive at the time, felt about this. He knew it would adversely affect the value of the company's stock in the short run. He wrote his niece at the time: "My own judgment and prestige will suffer * * * I cannot help * * * in the long run, the present plan will work for the advantage of the average stockholder who held this stock as an investment and not as speculation."

Cooper Procter was right, of course. The decision worked to the advantage of the stockholder, because the decision had fundamentally made the company more competitive.

We feel very deeply our obligation to the owners of this company, both individual owners and the institutions who own large numbers of shares. We have the fundamental obligation to enhance the value of their ownership over time.

Importantly, we feel responsibility for our own employees and retired employees who constitute by far the largest single group of shareholders. This company doesn't have a pension plan. It has profit sharing. And the vast majority of the company's profit-sharing plans are held in P&G stock. Furthermore, 16,000 of our some 44,000 U.S. employees purchase additional P&G stock each month through a payroll deduction plan.

GUIDING PRINCIPLES

For the most part then, the employees of this company—management and workers alike—have their financial well-being tied to P&G stock. And over time, it's worked out pretty well. In the past 35 years, for example, an investment of $100 in P&G, with simple reinvestment of dividends, would have grown to $6,977—an amount 75 percent higher than from a similar investment in the stocks included in the Dow Jones industrial average for those years.

We have no crystal ball. We don't know what the future will bring. We do know, however, that the principles that have guided the conduct of this company's business in the past have served its shareholders, its employees, the communities where it operates, and consumers throughout the world—and served them well. We intend to continue operating on the basis of those principles in the future.

I believe the basic business system in this country has worked well. It has been, by and large, efficient. It has produced the world's highest standard of living for our citizens. We must be very sure that in an environment of expediency—with some willing to manipulate corporate structure for quick profits—we don't end up compromising the basic strength of this unique business system.

VIETNAM: ANOTHER BETRAYAL?

HON. BILL McCOLLUM

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 28, 1987

Mr. McCOLLUM. Mr. Speaker, I would like to bring to the attention of all Members an article written by Al Santoli entitled "Vietnam—Are We Setting the Stage for Another Betrayal?"

Al Santoli is a much decorated Vietnam veteran and author of many books on Vietnam. His article, written in the editorial section of the Washington Times on September 22, 1987, addresses the current negotiations between the Reagan administration and the Vietnamese Government concerning our missing servicemen in Southeast Asia. This "must-read" article grows in importance with the current negotiations taking place regarding Central America; it seems the United States has learned the wrong lessons from the Vietnam war.

[From the Washington Times, Sept. 22, 1987]

VIETNAM—ARE WE SETTING THE STAGE FOR ANOTHER BETRAYAL?

(By Al Santoli)

With all the best intentions, the Reagan administration is once again engaging in a foreign policy debacle. By encouraging "humanitarian assistance" and considering lifting certain trade restrictions to Vietnam, the stage has been set for further destabilization in the Pacific region.

This development concerns allies like Thailand, whose citizens are suffering ongoing attacks by Vietnamese and Laotian troops, who also train and supply militant Thai "Pak Mai" guerrillas. And as part of the Soviet "internationalist" alliance, Vietnam's aggressive activities extend to our own hemisphere.

In El Salvador, captured guerrilla documents and communist defectors have stated that top FMLN guerrilla commanders have been recently trained in Vietnam. And on Aug. 31, 1987, in a nationally broadcast speech before the ruling Council of Ministers in Hanoi, Vietnam's No. 2 leader Pham Hung, reaffirmed: "Vietnam will actively continue . . . to support the struggle against imperialism in El Salvador, Chile, Palestine, Lebanon . . . and the policy of national concord of the Democratic Republic of Afghanistan" (the Soviet proxy regime). And in Guatemala, American M-16 rifles captured by Hanoi are being found in the hands of communist guerrillas.

Earlier this August, President Reagan sent a delegation to Hanoi led by retired Gen. John Vessey to discuss the missing-in-action (MIA) issue. This visit set the U.S. aid initiative into motion. After the Vessey delegation returned to Washington, I asked the trip's organizer and point man at the National Security Council for the MIA issue, Col. Richard Childress, if they discussed the training and supplying of Latin American guerrillas with the Vietnamese. Col. Childress emphatically said, "No," because that would have created an unharmonious atmosphere at the meetings.

After the seven years of frustration on the MIA issue, the administration had capitulated to Hanoi's intransigence, ignoring the regime's brutal behavior to its own citizens, to its neighbors and in the international community.

The aid initiative comes at a time when Vietnam is stepping up its propaganda campaign to divide ASEAN solidarity and win votes of support on its occupation of Cambodia at the upcoming United Nations session. And rather than moving away from the Soviets, who have doubled their aid to Vietnam to $2 billion annually, in speech after speech Vietnamese leaders proclaim that "militant solidarity and all-around cooperation with the Soviet Union is the cornerstone" of Vietnam's policy.

Presently, the Soviets are expanding military bases in Danang and Cam Ranh Bay, already their largest overseas naval and air facilities. And with the recent Indian seizure of the Sri Lankan port of Trincomalee, the Soviets have the ability to threaten or block both entrances to the Straits of Malacca, the choke point of shipping between the Indian and Pacific Oceans.

The administration's irrational actions are reminiscent of the Paris Peace Accords of 1973, which guaranteed the return of all American prisoners and remains. Col. Childress was only a junior officer at the time. His lack of sound judgment in dealing with the Vietnamese and Laotian communists is almost understandable. But Gen. Vessey played a major policy role in handing Laos to the North Vietnamese and Pathet Lao.

In 1972, as deputy chief of the Joint U.S. military Advisory Group in Thailand, Gen. Vessey was responsible for planning the defense of Laos after the cease-fire went into effect. At that time, the North Vietnamese were continuing a blitzkrieg offensive throughout Laos, especially along the Ho Chi Minh Trail, the main invasion route to South Vietnam.

The backbone of Laotian defense was 30 battalions of Thai Special Guerrilla Units trained by U.S. Special Forces. On Dec. 18, 1972, in a *top secret* cable to the Pentagon, Gen. Vessey condescendingly ignored the Vietnamese offensive and advocated disbanding the SGUs. Hence leaving Laos at the mercy of communist forces. And our loyal friends, the Hmong irregular troops, were slaughtered as they tried to disrupt the NVA onslaught toward South Vietnam on the trail. The Vessey cable to the Pentagon states: "Agreement to maintain the SGU assistance to Vietnam at this time is tantamount to supporting their occupation of Cambodia and future aggression against Thailand.

And in El Salvador, since FMLN leaders have received training in Vietnam, landmine terrorism has tragically increased, creating hundreds of civilian casualties.

The Reagan administration's policy of paying the communists for MIA remains through intermediaries goes back at least to late 1984. At that time, unknown to the public, Col. Childress spearheaded administration pressure on the Asian Development Bank to grant an $8 million interest-free loan to Laos for a forestry project of dubious merit. An American official at the bank resisted out of concern that the project would help to support the 50,000 Vietnamese troops that control Laos. And he feared that slave labor for the project would come from former American allies who are inmates in the Laotian gulag. But after heavy administration pressure, the money was given. And another such loan for Laos is being prepared at present.

Human rights conditions in Laos and Vietnam are among the most reprehensible in the world. Last week, while Mr. Reagan met with the pope, more than 200 Catholic priests and nuns, 3,000 Buddhist monks and nuns and 30 Protestant ministers continued to languish with thousands of other re-education camp prisoners in Vietnam's gulag.

Immediately pror to Gen. Vessey's trip, Vietnam's media heralded a mass arrest of Catholics, including an 81-year-old priest, in Thu Duc near Saigon. And while Montagnard tribespeople continued to be persecuted in Vietnam, on the Thai-Lao border desperate Hmong refugees are being murdered by Vietnamese and Lao troops.

Thailand, through threatened by U.S. trade sanctions, has stepped up its efforts to suppress drug trafficking. Meanwhile, the Laotian government has become a major grower and exporter of opium, heroin and marijuana. Much of it is exported through the Vietnamese port of Danang. Drug enforcement experts in Asia say that this year the Laotian opium crop is 100-200 tons, a 400 percent increase above last year. This dramatic rise in the Loatian drug trade was confirmed by U.S. Assistant Secretary of State Ann Wrobleski in recent testimony before the House of Representatives.

I don't believe that any servicemen who were taken prisoner or died in Indochina would agree that the reclamation of their remains is more important than protecting our children from the drug trade.

And as a veteran who fought alongside those men, I don't believe that their sacrifice should be a reason for the U.S. government to grant aid or support to Soviet proxy regimes who have broken every rule of international law and decency. Especially when they openly broadcast the large amounts of fresh food they ship to the Soviet Union while their own people are hungry.

So long as Vietnam and its surrogates remain a threat to their neighbors and our allies in other parts of the world, the U.S. government must not, as in 1973, capitulate and give license for further tyranny.

As in North Korea, where more than 8,000 American bodies remain, we must not let sentiment take precedent over strong resolve and sound judgment. This is the only hope to break the stranglehold of communist strongmen over their enslaved peoples.

The administration should learn from the lesson of Ethiopia, where massive Western aid was cynically exploited by the regime. Though some people were saved from starvation, thousands of others are being slaughtered in subsequent communist-forced relocation and collectivization campaigns. And instead of moving the Ethiopian regime away from the Soviets, who maintain a major naval base there, we've helped them consolidate their power.

When administration or congressional delegations visit Hanoi, the first place they should visit is the giant statue of Lenin erected just last year in Ba Dinh Square, the only such icon in all of Southeast Asia. There may be a more productive way to gain the release of captured American servicemen like Mike Bosiljevac, who quite possibly was transferred to Moscow because of his technical knowledge. Rather than paying ransom to proxies, it would be better to deal directly with Moscow, similar to the acquisition of Anatoly Sharansky.

The MIA issue remains highly charged, sometimes to mythic proportions, for many patriotic Americans who wish to reclaim honor lost in Vietnam. But we should remember that the brave servicemen put their lives on the line—and sometimes endured horrific torture—for the ideals of freedom and to stop communist expansion.

They are dying a second death because not only were their ideals betrayed in 1973, but even now their remains are being used to further enslave the peoples of Southeast Asia.

MORE SUPPORT FOR PUBLIC HEALTH SOLUTIONS TO AIDS

HON. WILLIAM E. DANNEMEYER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 28, 1987

Mr. DANNEMEYER. Mr. Speaker, it is always gratifying for this Member to read when responsible journalists and editoral boards endorse a public opinion approach to solving the AIDS epidemic rather than succumbing to the sophistries surrounding a civil rights approach. I commend the following editorials for your attention:

[From the Dallas Times Herald, Sept. 22, 1987]

REAGAN RIGHT ABOUT AIDS BILL

It's understandable that Congress would consider a ban on discrimination against AIDS sufferers and making the unauthorized disclosure of their identities a federal crime. The notion that people who may soon die must also endure intimidation and censure is repugnant.

But the Reagan administration is right to criticize the proposal as premature. It would deprive public health officials of important information, subject medical workers to unnecessary exposure to AIDS and grant carriers of a fatal, contagious disease exemptions not enjoyed by carriers of any other illness. The bill should be dropped.

There is no doubt public fear of AIDS has led to episodic discrimination and abuse against some AIDS victims. The refusal of a public school in Arcadia, Fla., to admit three children with AIDS and the subsequent burning of their home were appalling actions. Yet, it would be wrong to view this as a civil rights case, requiring the same types of legislative remedies accorded minorities two decades ago.

Dr. Otis Bowen, secretary of health and human services was correct in saying that if various state health officials find they have a problem with discrimination against AIDS victims, they "should be free to act accordingly. Other states and Congress will be able to observe and learn from the results."

AIDS is not a race or religion. It is a lethal, contagious disease which has infected about 41,700 Americans and killed 24,000 so far. As Dr. Bowen notes, most states already have laws prohibiting the unauthorized disclosure of medical information and requiring certain types of tests for public health reasons.

AIDS is a rapidly growing, national health problem about which too little is known. State and local health agencies, along with private and public hospitals and physicians, are in the forefront of the battle against this epidemic.

As the disease spreads, there are bound to be errors in judgment. They will have to be corrected at whatever level of government is appropriate. But Congress should let the process unfold rather than stepping in with the wrong federal law at the wrong time.

[From the Dallas Morning News, Oct. 16, 1987]

AIDS Must Be Treated as Health Issue

(By Jerry W. Chevalier)

The AIDS virus was first recognized in the United States in the late 1970s. It was first thought to occur only in homosexual men, hence the name that was first associated with it: GRID (gay-related immune deficiency). However, it is a heterosexual problem too.

This disease is associated with indiscriminate sexual activity (particularly anal intercourse) and the sharing of intraveneous needles that is common among drug abusers. Acquired immune deficiency syndrome also can be transmitted by contaminated blood products and body fluids, blood transfusions, and from mother to fetus.

The projections from the U.S. Public Health Service show that the AIDS epidemic will be with us for at least another five years. It is estimated that there are 50 to 100 people infected with AIDS for every person diagnosed as having AIDS, and that by 1991, there will be 270,000 reported cases, 3,000 of which will involve infants and children. Right now, AIDS is the No. 1 killer of women ages 20-35 in New York City.

Society is searching for a way out of the terrible dilemma poised by this disease. The dilemma specifically is that policy-makers and citizens are faced with the difficult task of finding effective measures to contain a devastating epidemic that, in turn, does not violate the privacy of individuals and does not damage human lives and dignity. However, one must consider the other side of the story. There are hundreds of thousands of Americans infected and dying from this virus.

Society must keep in mind that people routinely are medically tested for a variety of diseases for obtaining insurance, marriage licenses, certain jobs, as hospital workups for diagnosis and for admission as immigrants to the United States. However, this has not been the case with AIDS. AIDS always has been the exception to the rule concerning fatal dangers to the public (immigrants, soldiers, and prisoners are now being tested).

Testing should be done on all individuals entering a hospital or health clinic as part of their routine workup. The act of testing all individuals would eliminate the stigma of testing "high-risk" or select groups of people. It also would decrease the cost of health care the individual, family or society has to incur by identifying what the individual has and not waiting until the person has a life-threatening opportunistic disease such as pneumocycstis carini pneumonia, cryptococcal meningitis, toxoplasmosis or CMV, which is how AIDS is currently diagnosed.

The results of the HIV test should be made available to all health care workers who would have direct patient contact that would or could cause exposure to blood or body fluids. All people who have had sex with that individual should be contacted and informed that they may have been infected with the HIV just as any other sexually transmitted disease is (contact tracing). Those individuals should then be tested and educated about what their options are. In addition, the person's place of employment should be informed if that individual's job lends itself to frequent or potential contact involving blood or body fluids such as the medical, dental and nursing fields.

From the time of AIDS' discovery, the whole emphasis has been that "the needs of the one outweigh the needs of the many." The constant flooding of information on how you cannot get AIDS and the supposed inaccurate tests are part of the problem. According to Wadley Blood Bank, the HIV test is 99.7 percent accurate. If the individual HIV test is positive, it will be repeated. If it is still positive, then a more accurate test is done, the Western Blot test, which is 100 percent accurate.

When new ways of transmission are discovered, they are downplayed by the media and public officials so as to not create panic or hysteria. For example, when some dentists and health care workers caught AIDS from their patients, it was downplayed because those people "had breaks in the skin" through which the virus entered or that the blood had prolonged contact on their skin. Breaks in the skin are not uncommon, and we do not know how long blood has to be in contact with your skin before you will be infected. Accidents happen every day; they are unavoidable and unpredictable.

Society has allowed a vocal, highly political minority to misappropriate AIDS as a moral issue, thus giving our government leaders an excuse to abdicate their responsibility. AIDS is a health issue, and should be treated as such.

There are laws before Congress now ensuring that the rights of the individual shall be inviolate, such as the law stating that insurance companies shall not discriminate against people who live in certain ZIP code districts or adresses, as they have in the past. There is also the patient confidentiality law that provides for confidentiality of the individual, but not to the extent that the confidentiality will endanger other lives.

We need laws to protect the rights of the individual against those who would take advantage, but you cannot treat a deadly problem by ignoring it.

Mandatory testing should not be done to ostracize those who carry the virus but to make them aware of precautions they need to take to protect themselves and others.

There are hundreds of thousands of people in this country carrying the virus and spreading it to others, often unknowingly. Like other dangerous and contagious diseases—which is how AIDS should be treated—we cannot control it if we do not know who is spreading it. A person who is HIV positive will not necessarily develop AIDS, but he can spread it to those who will; therefore, mandatory testing and careful dissemination of information as outlined should be instituted.

Jerry W. Chevalier is a registered nurse working at a metroplex hospital and a candidate for a master of science degree in nursing at the University of Texas at Arlington. Jane Langdon, also an R.N. and a UTA graduate student, contributed to this article.

[From the Washington Post, Oct. 18, 1987]

Make It a Crime To Spread AIDS—Counseling Isn't Enough for Reckless or Deliberate Infectors

(By Douglas J. Besharov)

"I have AIDS," Kenny Grice told his friend Lorenzo Owens, three tragic words heard all too often these days. Owens was not sympathetic, though. The two men had just had sex. As Grice dressed, Owens got a knife from the kitchen and slit his lover's throat. Owens subsequently pled guilty to manslaughter.

Lost in the recent furor about AIDS testing is the question of the obligation of individuals who test positive to protect others from this life-taking disease. Until now, most experts have assured us that the education and counseling of victims will be enough to prevent dangerous behavior. Yet there is deeply troubling evidence that a small minority of AIDS victims either are intent on infecting others—or simply do not care enough to change their sexual practices.

Although most studies document a tremendous reduction in risky sexual behavior by homosexual men, most also show that knowledge of positive test results does not affect the sexual behavior of a small core of AIDS victims—they do not reduce the number of their sex partners or the number of times that they engage in unprotected anal intercourse.

In a Johns Hopkins study of 1,000 gay men, two years after being tested for AIDS, more than 15 percent still did not want to know the result. (Initially, more than 30 percent had not wanted to know.) In a Miami study, 16 of 28 AIDS patients continued to have unprotected sex for one to three years; 13 of their steady partners later tested positive. Studies in London and Paris show similarly disturbing behavior.

None of these studies involved a random sample of AIDS victims, but their message is clear: Positive test results do not prevent a small number of infected persons from recklessly exposing others to this dread disease.

Some might say that people assume the risk of contracting AIDS when they have unprotected sex with members of high-risk groups, such as gays and drug users. But consider this: In a recent study conducted by Adelphi University researchers, 80 percent of the wives of bisexual men did not know of their husbands' homosexual activity. This is a dangerous lack of information. In a study of 45 married couples with one spouse carrying the disease and the other having no other known risk factor, 26 spouses became infected.

Moreover, there is evidence that some confirmed AIDS carriers become even more reckless toward others. "The drug addicts who test seropositively really go wild, with lots of increased drug use and sexual acting-out behavior," according to Edith Springer, a New York City health counselor. And then, of course, there was a widely reported case of Joseph Edward Markowski, charged on June 29 in Los Angeles with attempted murder for selling his AIDS-contaminated blood and with assault with the intent to commit great bodily injury for acts of prostitution.

Educating and counseling AIDS carriers should certainly be the first and most important steps in trying to prevent such dangerous behavior. But it is denying reality to suppose that they will be enough. Cases like those described above call out for criminal prosecution.

Picturing AIDS victims as emaciated and near death, many will say that criminal prosecution would be heartless—and useless. But most people who test positive are still healthy and may lead normal lives for years. For them, the prospect of criminal prosecution would not be an empty threat.

The San Antonio health department last year sent letters to 14 AIDS victims warning that further sexual activity would lead to felony charges under the state's Communicable Disease Prevention and Treatment Act. Unlike Texas, however, most states do not have laws that adequately cover the deliberate or reckless exposure of others to AIDS. Although many states have laws making the transmission of communicable diseases a crime, most of these laws are limited to specified diseases, such as syphilis, gonorrhea and even tuberculosis, but not AIDS.

Even when state penal laws do cover all communicable diseases, including AIDS, they usually require an actual "transmission" of the disease. Rarely can this be proven in AIDS cases. Despite some early concern about a high rate of false-positive results, the test is now considered very reliable, at least in regard to high-risk groups. A more serious legal problem is that the AIDS test only determines the presence of AIDS antibodies—that is, it only shows that someone has been exposed to the virus. It does not prove that someone has AIDS or AIDS-related complex (ARC). Nor are medical experts sure how many of those who test positive can spread the disease or how many will actually come down with the disease. (Most estimates range from 20 to 50 percent, but some go as high as 100 percent; no one really knows.)

Many states are now considering legislation to fill these gaps in their penal laws. Most proposals, unfortunately, are designed to meet special problems—or the most recent news story. Thus, a California bill would make donating blood after testing positive a felony punishable by six years in jail. Nevada—which has long had legalized prostitution—has passed a law providing 20-year jail sentences for prostitutes who continues to ply their trade after learning that they test positive. Such piecemeal legislation obscures the central issue. More generalized criminal legislation is needed.

States should make it a felony to expose others deliberately or recklessly to the AIDS virus—whether or not the disease is transmitted, and whether or not the victim tests positive for AIDS antibodies. Although exposing someone to the AIDS virus does not always result in an infection, doing so is analogous to speeding on a busy street or shooting into a crowded room. Whether or not someone is hurt, the act demonstrates a criminal disregard for the safety of others. Many veneral disease control statutes have long been structured this way. Florida and Idaho recently made it a crime to willfully or knowingly expose anyone to the AIDS virus.

Possible transmission through sexual contact requires special legislation because of the problems of consent. Many courts hold that, by engaging in sexual conduct, a person assumes the risk of becoming infected. But this need not be. As mentioned above, many states have along had statutes that make transmitting veneral diseases a crime. And, over the years, there have been numerous convictions for the intentional transmission of a communicable disease through sexual contact.

One legislative approach to deal with the consent problem in nonmarital situations, already passed in the New Jersey Assembly, makes it a felony for those who know that they had AIDS to "commit an act of sexual penetration." But such legislation is likely to raise strong opposition. In explaining his objections to similar legislation, Thomas B. Stoddard, the New York Civil Liberties Union's legislative director, says that he fears that "the AIDS crisis will be used to recriminalize consensual sodomy statutes."

In any event, it is not necessary to go this far. Adequate protection for sexual partners can be achieved by simply making it a felony not to tell a sex partner about a positive AIDS test. Who could object to that?

We can have a compassionate response to AIDS victims without countenancing a small minority's antisocial behavior. Criminal penalties for deliberately exposing others to the AIDS virus will not eradicate this frightening dread disease, but they will certainly be a step toward containing its spread.

SOUND ECOLOGY IS GOOD BUSINESS

HON. JAMES H. SCHEUER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 28, 1987

Mr. SCHEUER. Mr. Speaker, I insert an excellent speech by Barber Conable, President of the World Bank, in today's RECORD:

SOUND ECOLOGY IS GOOD BUSINESS

(An address by Barber B. Conable, President, the World Bank and International Finance Corp., to the World Resources Institute, May 5, 1987)

It is a honor to address members and supporters of the World Resources Institute.

The Institute is a global resource itself. Policymakers owe you a lasting debt of thanks for the research you pursue and the admirable balance with which you present it.

What I owe you on this occasion is a report on the World Bank's actions, plans and progress in matching our fight against global poverty with our commitment to environmental protection.

The two goals are not just consistent. They are interdependent. Sustained development depends on managing resources, not exhausting them.

Economic growth based on any other premise is a costly illusion. What is wasted or poisoned today leaves that much less to nourish the world tomorrow.

"Environmental neglect," as I said to the Governors of the World Bank seven months ago, "destroys assets vital not just to the quality of life but to life itself." Environmental planning, I would add tonight, can make the most of nature's resources so that human resourcefulness can make the most of the future.

I share the optimism of the recently released report of the World Commission on Environment and Development. With its members I, too, "see . . . the possibility for a new era of economic growth . . . based on policies that sustain and expand the environmental resource base."

My optimism, like theirs, is tempered by caution.

In environmental affairs, as in many others, science has outdistanced government. Yet many of the problems the world has come to recognize as urgent are still beyond man's technical, as well as political, capacities.

We know that we must stop the advance of the deserts. We do not yet know how.

We know that population control is essential to environmental protection. But, for all the progress of past decades in family health and planning, population growth in many of the poorest lands continues to outrun resources.

We know that we must save the tropical rain forests. But neither developing nations nor international institutions have adequate alternatives for hungry people in search of food, and the land to grow it on. And researchers are only beginning to discover the potential of the forests to support settled and wildlife together.

Most broadly, we know of the planet-wide threat to the basic resources of air and water on which the survival of earth depends. But common effort to save the global commons requires a degree of institutional coordination and a measure of sustained political resolve that man applies more readily in destroying than in preserving life.

In measuring the influence of the World Bank against the environmental challenge, I see how long a road there is to travel from awakened environmental consciousness to effective environmental action.

The Bank has long been at the forefront of that march. Ours was the first international lending institution to set explicit policies on limiting any harmful environmental consequences of development projects it supported. In the early 1970s, for example, a Bank-financed iron ore terminal was built on a Brazilian beach under strict safeguards against pollution and with real respect for the site's natural beauty.

Inevitably, the Bank has also stumbled. For instance, a more recent Brazilian project, known as Polonoreste, was a sobering example of an environmentally sound effort which went wrong.

The Bank misread the human, institutional and physical realities of the jungle and the frontier.

A road which benefited small farmers also became a highway for logging companies.

Protective measures to shelter fragile land and tribal people were carefully planned. They were not, however, executed with enough vigor.

In some cases, the dynamics of the frontier got out of control.

Polonoreste teaches many lessons. A basic truth is that ambitious environmental design requires realistic analysis of the enforcement mechanisms in place and in prospect.

When mistakes associated with the Polonoreste project became obvious in early 1985, the Bank interrupted payments as a way to encourage important corrective measures. We learned not that we should avoid projects with environmental implications, but rather that where institutional safeguards are weak, the Bank must be a positive force to strengthen them.

Brazil has now made progress in building safeguards for environmental protection. And the Bank is anxious to support Brazil's government in pursuing a National Environmental Program that can become a model for other nations.

For a second basic truth is that development cannot be halted, only directed. And the Bank cannot influence progress from the sidelines. It must be part of the action.

With the developing nations, we must go on learning by doing. If the World Bank has been part of the problem in the past, it can and will be a strong force in finding solutions for the future.

"Nothing so needs reforming," Mark Twain observed, "as other people's habits." The Bank will begin by reforming its own.

First, we are creating a top-level Environment Department to help set the direction of Bank policy, planning and research work. It will take the lead in developing strategies to integrate environmental considerations into our overall lending and policy activities.

At the same time, new offices in each of the four regional technical departments will take on a dual role. They will function both as environmental watchdogs over Bank-supported projects, and as scouts and advocates for promising advances in resource management. In this process, they will routinely consult with environmental officials in developing countries, and will work to strengthen local institutions. The establishment of these offices will increase significantly the number of staff directly involved in environmental programs.

Those organizational changes do not just add layers of interference to head off errors of commission. The added staff will also help define policy and develop initiatives to promote growth and environmental protection together. They will work to ensure that environmental awareness is integral to all the Bank's activities.

Environmental action adds a new dimension to the fight against global poverty. It recognizes that sound ecology is good economics. Indeed the objectives of sustainable economic growth, poverty alleviation and environmental protection are often mutually reinforcing.

Population pressure, pushing farmers onto increasingly marginal land, is a major cause of ecological problems in many countries, particularly the poorer ones. Curbing population growth is essential for sustainable economic growth; otherwise it will not be possible to introduce policies and programs that steer farmers to the best land, that induce the production of crops which strengthen the soil and stem erosion, that bring livestock to graze where pasture is rich, and that educate city and country dwellers alike to respect and safeguard the balance of nature.

The World Bank is a force for development and will remain so. We will continue to support major investments in energy and infrastructure, in industrialization and irrigation.

Our role in such projects, however, will include greater sensitivity to their long-term environmental effects. And we will put new emphasis both on correcting economic policy incentives that promote environmental abuse, and on stimulating the small-scale activities that can combat human and environmental deprivation.

Not only will we strengthen the Bank's longstanding policy of scrutinizing development projects for their environmental impact and withholding support for those where safeguards are inadequate, but we will also institutionalize an approach to natural resource management that puts a premium on conservation.

As part of these philosophical and institutional changes, I propose to allocate new resources to a number of new environmental initiatives.

In partnership with member countries and with the rest of the development community, we will begin with an urgent, country-by-country assessment of the most severely threatened environments in developing nations.

We will promote a country-wide initiative against the advance of the desert and the destruction of forests in Africa.

We will contribute to a global program to support tropical forest conservation.

And we will participate in a cooperative effort by the nations of the Mediterranean and other international agencies to prepare a long-term campaign to protect that sea and its coasts.

As recent events have demonstrated, environmental protection is a subject which warrants increased efforts in industrialized as well as in developing countries. But progress is especially hard to achieve in the developing world.

So many other priorities demand simultaneous attention. So few skilled personnel are available. And so much must be done to build the institutional capacity to handle complex environmental issues.

Acknowledging those realities, the World Bank also acknowledges its special responsibilities in helping developing nations shape their growth. As an advisor, a source of intellectual as well as a financial support, the Bank must be responsive and innovative. And as a lender, it must exert new and persuasive influence to integrate better management of natural resources into development planning and investment.

Fortunately, we are far from alone. The Bank can profit from and contribute to the valuable work of our member nations, the expert and dedicated efforts of non-governmental organizations and the wide, continuing experience of other international agencies such as the United Nations Environment Program.

We must start, however, with better knowledge of the problems and the opportunities we face.

To gain that understanding, the Bank will use our added staff resources in a collaborative effort to assess environmental threats in the 30 most vulnerable developing nations. That five-year process will involve not just study but education, and not just in the Bank but also with responsible developing country policymakers.

Our goal will be to develop a new appreciation of the forces at work against environmental balance. Our objective is a sort of natural resources balance sheet, a coherent planning instrument for better management.

I believe we can make ecology and economics mutually reinforcing disciplines. By looking closely at market forces and broadly at all key sectors of development activity, we can identify both the effective and perverse factors shaping and misshaping the environment.

I am not proposing make-work research. What I seek from data—much of which is already on hand—is a composite inventory of environmental assets and liabilities.

With such a planning instrument, we could move toward establishing the value of those priceless resources—topsoil and grass cover, water and drainage, human skills and traditional lifestyles—we too often treat as worthless.

Let us show in economic and environmental terms what subsidies to pesticide producers and timber cutters and livestock growers actually cost in ruining the land and driving families from it.

Let us weigh the real price of wilderness resettlement against the expense of health and family planning clinics, of agricultural extension services, new crops and new farming techniques.

Let us hold pricing policies and currency values up to the light of environmental analysis to see if and how they encourage over-exploitation of natural resources.

And let us acknowledge that, while we must exercise increasing care with large-scale development projects, small is not necessarily beautiful. It is time we recognize that individual practices driven by poverty and ignorance and unexamined economic policies have cumulative effects that are just as environmentally destructive as any badly planned wilderness road or hydroelectric project.

We must reshape not just the Bank's outlook and activities but also the customs and ingrained attitudes of hundreds of millions of individuals and of their leaders. In doing so we must remember another piece of Mark Twain's wisdom: "Habit is habit, and not to be flung out of the window, but coaxed downstairs a step at a time."

Our environmental assessment surveys will move us one big step forward. They will assemble the knowledge we need to move further and faster toward environmental rationality in our leading programs.

In Africa, while country assessments proceed, the Bank will also lay the ground for action that crosses national boundaries and tackles regional environmental dangers.

Africa's needs are critical. Over the last 15 years, despite the best efforts of African governments and the international community, per capita income and per capita food production in most of sub-Saharan Africa have declined. At the same time and in the same areas, deserts have spread, forests have dwindled, soil has washed away.

With population projected to rise from 380 million to 690 million in the last two decades of the century, the pressures of urbanization, fuelwood consumption and slash-and-burn farming are stripping West Africa alone of 3.6 million hectares of forest a year. Continued over three years, that tempo of deforestation would denude an area the size of Greece; over ten years, the Ivory Coast.

The rate of forest loss in five West African nations is seven times the world average, and desertification in just one country—Mali—has drawn the Sahara 350 kilometers farther south in the last 20 years. The Congo River carries an average of 65 million metric tons of soil into the ocean each year.

Against these natural and man-made forces, I believe we must mount an international environmental rescue and development effort in sub-Saharan Africa. I will ask World Bank staff experts to draw up a special program of technical studies to identify and assess urgent, promising environmental protection projects, regional, not just national, in their sweep.

Environmental threats do not respect political lines of demarcation. Environmental solutions must generate political and technical responses as broad as the challenge.

Our work should point the way for action by donor and recipient nations and non-governmental organizations. The latter have a particularly important role to play, in that problems of deforestation and natural resource degradation are development problems and can best be solved with the active participation of people at the grassroots level. Our common priority should be coordinated intervention against the spread of deserts and for the conservation of forest resources.

We must be bold in both the scope of our enterprise and in testing untried ideas. Unless we reach beyond today's limits and doubts, we cannot truly measure our capacity for progress.

Tropical forests in Africa, Asia and Latin America also demand priority attention. Tropical deforestation is not only a major environmental problem, it is a critical development problem as well. Deforestation is leading to widespread degradation of the natural resource base, undermining the capacity of the environment to support developing country economies and populations.

The World Bank is the world's largest single source of financing for tropical forest conservation and development. Over the past decade World Bank investments and technical assistance grants in forestry have exceeded one billion dollars. We are ready to do more.

The Bank intends to more than double its annual level of funding for environmentally sound forestry projects from $138 million this year to $350 million in fiscal 1989. At the July meeting in Bellagio, Italy sponsored jointly by your Institute, the Rockefeller Foundation, FAO, UNDP and the Bank, we will propose specific strategies for expanding priority work in forest management and reforestation.

Our Tropical Forestry Action Plan is a direct outgrowth of the Worlds Resources Institute's excellent 1985 report, "Tropical Forests: A Call for Action." That study called for a doubling of forestry investments over the next five years. It redefined the challenge of conservation by making it clear—in cost-benefit terms—how deforestation impoverishes both man and nature. It also recognized that simply providing more funding for forestry is not enough; increased investment in forestry must be accompanied by policy measures designed to ensure sustainability.

We are improving our understanding of the connection between the loss of tree cover in upland watersheds and flood damage downstream, between fuelwood scarcity and fertilizer shortages and between the annual destruction of 11 million hectares of tropical rain forest and the loss of plant and animal species of great, potential genetic benefit to mankind.

We are becoming increasingly able to define investment programs to correct past mistakes and prevent new ones.

We can mobilize resources for agroforestry and sustainable farming systems based on it.

We can help nations determine the wooded areas to protect and those to use more intensively.

We can help train foresters and farmers in new techniques of tree breeding, in the cultivation of medicinal plants and the conservation of wildlands.

We are, in short, better aware of the gravity of the global danger, better equipped to address it. Now we must be prepared to mobilize resources to combat deforestation on a global scale.

Lastly, in the Mediterranean region, the Bank stands ready to assist in an intensfied international effort to protect the heritage of beauty and natural resources that 18 nations and some 400 million people hold in common.

The governments of the Mediterranean states have long recognized the danger of pollution to public health and to fishing and tourism industries. The World Bank, the European Investment Bank and Regional Development Fund, the United Nations Environment Program, with many other agencies, have been active in providing financial and technical help to alleviate this problem.

Now we are exploring together the possibility of designing a broad, international project to improve the Mediterranean environment and strengthen it with a long-term preservation plan. It is an ambitious political as well as technical under-taking, involving many separate governments and technical support agencies.

The World Bank is well placed to help coordinate their effort. And if, with our assistance, the peoples of the Mediterranean can make progress in managing the great resource they share, they can set an example to the whole world of cooperation in protecting the global commons.

I have given you only an introduction to the World Bank's environmental action agenda. Events, not speeches, will test its sweep and its impact. But I cannot end these remarks without a note of combined caution and exhortation.

While there is much we can do, no one knows better than I do the actual limits of the Bank's influence on the policies and practices of the developed and developing nations. No one knows better than you do the power of informed and aroused public opinion to command and redirect the attention of decision makers.

The World Bank needs the help of environmental activists in every nation, in those where organized groups have already proven their effectiveness and in those where consciousness is only now dawning.

We need your advice, your expertise, your pressure and your imagination to make the urgent work of environmental protection a coordinated campaign for a safer, richer, healthier world.

As ours is a common cause—the battle against global poverty is also the fight for a sustainable environment—let us be allies for progress on every front. There is a long campaign ahead. We cannot accept anything less than victory.

Thank you.

SENATE COMMITTEE MEETINGS

Title IV of Senate Resolution 4, agreed to by the Senate on February 4, 1977, calls for establishment of a system for a computerized schedule of all meetings and hearings of Senate committees, subcommittees, joint committees, and committees of conference. This title requires all such committees to notify the Office of the Senate Daily Digest—designated by the Rules Committee—of the time, place, and purpose of the meetings, when scheduled, and any cancellations or changes in the meetings as they occur.

As an additional procedure along with the computerization of this information, the Office of the Senate Daily Digest will prepare this information for printing in the Extensions of Remarks section of the Congressional Record on Monday and Wednesday of each week.

Any changes in committee scheduling will be indicated by placement of an asterisk to the left of the name of the unit conducting such meetings.

Meetings scheduled for Thursday, October 29, 1987, may be found in the Daily Digest of today's Record.

Meetings Scheduled

OCTOBER 30

9:30 a.m.
Armed Services
Strategic Forces and Nuclear Deterrence Subcommittee
To resume hearings on Title I provisions of S. 1085, Nuclear Protections and Safety Act of 1987, focusing on defense nuclear safety matters.
SR-222

Commerce, Science, and Transportation
Aviation Subcommittee
To hold oversight hearings on activities of the Federal Aviation Administration and the Military Airlift Command to ensure the safe operation of flights carrying military personnel.
SR-253

Joint Economic
To hold oversight hearings on long term costs of U.S. trade deficits and the U.S. foreign debt.
SD-628

10:00 a.m.
Finance
Health Subcommittee
To hold hearings to examine the affects of the current nursing shortage on health care.
SD-215

Foreign Relations
International Economic Policy, Trade, Oceans and Environment Subcommittee
To hold joint hearings with the Subcommittee on Terrorism, Narcotics and International Operations to review the Overseas Private Investment Corporation's (OPIC) lending practices and the Mideast pipeline proposal.
SD-419

10:30 a.m.
Agriculture, Nutrition, and Forestry
Agricultural Credit Subcommittee
Business meeting, to resume mark up of S. 1665, Fram Credit Act of 1987.
SR-332

NOVEMBER 2

10:00 a.m.
Special on Aging
To hold hearings on the proposed Medicare Part B premium increase.
SD-628

NOVEMBER 3

9:30 a.m.
Armed Services
Conventional Forces and Alliance Defense Subcommittee
To hold hearings on conventional arms control in Europe.
SR-222

Energy and Natural Resources
Closed briefing on the U.S.-Canada Free Trade Agreement and its potential effects on energy and natural resources industries.
SD-366

10:00 a.m.
Judiciary
To hold hearings on pending nominations.
SD-226

2:00 p.m.
Energy and Natural Resources
Public Lands, National Parks and Forests Subcommittee
To hold hearings on S. 708, to require annual appropriations of funds to support timber management and resource conservation on the Tongass National Forest, Alaska.
SD-366

NOVEMBER 4

9:30 a.m.
Energy and Natural Resources
Business meeting, to consider pending calendar business.
SD-366

10:00 a.m.
Agriculture, Nutrition, and Forestry
To hold joint hearings with the Committee on the Judiciary's Subcommittee on Technology and the Law on the use

and regulation of biotechnology in agriculture.

SR-332

Commerce, Science, and Transportation

To resume hearings on safety and reregulation of the airline industry.

SR-253

Environment and Public Works

Water Resources, Transportation, and Infrastructure Subcommittee

To resume hearings to review infrastructure issues.

SD-406

NOVEMBER 5

9:30 a.m.

Energy and Natural Resources

Business meeting, to consider pending calendar business.

SD-366

Joint Economic

To hold hearings to evaluate the prospects for U.S. exports and imports.

SD-628

10:00 a.m.

Banking, Housing, and Urban Affairs

To hold hearings to review recent developments in the securities markets.

SD-538

2:00 p.m.

Energy and Natural Resources

Public Lands, National Parks and Forests Subcommittee

To resume hearings on S. 708, to require annual appropriations of funds to support timber management and resource conservation on the Tongass National Forest, Alaska.

SD-366

Select on Indian Affairs

To hold oversight hearings on the implementation of Title IV, Part C of the Omnibus Drug Act (P.L. 99-570), and to hold hearings on S. 1684, to settle Seminole Indian land claims in Florida.

SR-485

3:15 p.m.

Banking, Housing, and Urban Affairs

Consumer Affairs Subcommittee

To hold oversight hearings on the ability of consumers to plan their financial affairs.

SD-538

NOVEMBER 6

9:30 a.m.

Finance

Taxation and Debt Management Subcommittee

To hold hearings on S. 639 and S. 1099, bills to empower states to require out-of-state vendors to collect state sales and use taxes.

SD-215

NOVEMBER 9

9:30 a.m.

Energy and Natural Resources

To hold hearings on the greenhouse effect and global climate change.

SD-366

NOVEMBER 10

9:00 a.m.

Select on Indian Affairs

To hold oversight hearings on implementation of the Indian Child Welfare Act (P.L. 95-608).

SR-485

9:30 a.m.

Energy and Natural Resources

To continue hearings on the greenhouse effect and global climate change.

SD-366

10:00 a.m.

Agriculture, Nutrition, and Forestry

To resume joint hearings with the Committee on Judiciary's Subcommittee on Technology and the Law on the use and regulation of biotechnology in agriculture.

SR-332

10:30 a.m.

Judiciary

Patents, Copyrights and Trademarks Subcommittee

To hold hearings on S. 698, Syndicated Television Music Copyright Reform Act of 1987.

SD-226

NOVEMBER 12

9:00 a.m.

Commerce, Science, and Transportation

Communication Subcommittee

To hold oversight hearings on the public broadcast system.

SR-253

10:00 a.m.

Foreign Relations

To hold hearings to reexamine the War Powers Resolution with a view to possibly revising the law.

SD-419

1:00 p.m.

Select on Indian Affairs

To hold hearings on S. 1722, to establish the National Museum of the American Indian, Heye Foundation within the Smithsonian Institution, and to establish a memorial to the American Indian, and S. 1723, to establish certain regional exhibition facilities as part of the National Museum of the American Indian.

SR-301

NOVEMBER 13

9:30 a.m.

Commerce, Science, and Transportation

Surface Transportation Subcommittee

To hold hearings to review the activities of transportation property brokers.

SR-253

NOVEMBER 16

2:00 p.m.

Select on Indian Affairs

To resume hearings on S. 1722, to establish the National Museum of the American Indian, Heye Foundation within the Smithsonian Institution, and to establish a memorial to the American Indian, and S. 1723, to establish certain regional exhibition facilities as part of the National Museum of the American Indian.

SR-301

NOVEMBER 17

9:00 a.m.

Rules and Administration

Business meeting, to consider pending legislative and administrative business.

SR-301

NOVEMBER 18

10:00 a.m.

Commerce, Science, and Transportation

To resume hearings on safety and reregulation of the airline industry.

SR-253

NOVEMBER 19

9:30 a.m.

Commerce, Science, and Transportation

Business meeting, to consider pending calendar business.

SR-253

2:00 p.m.

Select on Indian Affairs

To hold oversight hearings to review Federal agency actions related to the implementation of the Department of the Interior's Garrison Unit Joint Tribal Advisory Committee final report recommendations, and on proposed legislation to implement the report recommendations.

SR-485

DECEMBER 2

9:00 a.m.

Select on Indian Affairs

To hold hearings on S. Con. Res. 76, to acknowledge the contribution of the Iroquois Confederacy of Nations to the development of the United States Constitution and to reaffirm the continuing government-to-government relationship between Indian tribes and the United States established in the Constitution.

SR-485

DECEMBER 3

9:00 a.m.

Select on Indian Affairs

To hold hearings on S. 1236, authorizing funds for certain programs of the Navajo-Hopi Relocation program.

SR-485

CANCELLATIONS

OCTOBER 29

9:30 a.m.

Commerce, Science, and Transportation

Business meeting, to consider pending calendar business.

SR-253

Energy and Natural Resources

Business meeting, to consider pending calendar business.

SD-366

NOVEMBER 5

9:30 a.m.

Commerce, Science, and Transportation
Aviation Subcommittee

To hold oversight hearings on activities of the Federal Aviation Administration, Department of Transportation.

SR-253

3:00 p.m.

Conferees

On the education provisions of H.R. 3, Omnibus Trade and Competitiveness Act of 1987.

SD-430

NOVEMBER 10

9:30 a.m.

Commerce, Science, and Transportation
Aviation Subcommittee

To resume hearings on S. 1600, to create an independent Federal Aviation Administration.

SR-253

NOVEMBER 12

9:30 a.m.

Commerce, Science, and Transportation
Aviation Subcommittee

To resume hearings on S. 1600, to create an independent Federal Aviation Administration.

SR-253

SENATE—*Thursday, October 29, 1987*

(Legislative day of Friday, October 16, 1987)

The Senate met at 8:30 a.m., on the expiration of the recess, and was called to order by the Honorable TIMOTHY E. WIRTH, a Senator from the State of Colorado.

PRAYER

The Chaplain, the Reverend Richard C. Halverson, D.D., offered the following prayer:

Let us pray:

*God of Abraham, Isaac, and Israel, give us ears to hear and minds to heed the warning of Your servant, Moses. "Take care lest you forget the Lord your God and fail to keep His commandments * * *. When you have eaten your fill, and have built fine houses to live in, and your herds and flocks have multiplied, and your silver and gold have increased, and everything you own has prospered, beware lest your heart grow haughty and you forget the Lord your God * * * and you say to yourselves, 'My own power and the might of my own hand have won this wealth' * * *. If you do forget the Lord your God and follow other gods to serve them or bow down to them, I warn you this day that you shall certainly perish."*—The Torah, Deuteronomy 8:11-14, 17, 19.

Lord of life, Your word warns of the peril of prosperity—not because wealth is wrong—but because money so easily becomes an idol and replaces God in our lives. Gracious Father, in Your mercy and grace, are You trying to get our attention through the activities of Wall Street? The Apostle Paul reminds us that the "love of money is the root of all evil."—I Timothy 6:10. Forgive us, Lord, for our pride and materialism and turn us back to Your truth, we pray in His name who said, "No man can serve two masters: for either he will hate the one and love the other; or else he will hold to the one and despise the other. Ye cannot serve God and mammon.—Matthew 6:24. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore [Mr. STENNIS].

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, October 29, 1987.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable TIMOTHY E. WIRTH, a Senator from the State of Colorado, to perform the duties of the Chair.

JOHN C. STENNIS,
President pro tempore.

Mr. WIRTH thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. Under the standing order, the majority leader is recognized for not to exceed 5 minutes.

Mr. BYRD. Mr. President, I thank the Chair.

RESERVATION OF LEADER TIME

Mr. BYRD. Mr. President, I ask unanimous consent that the time of both the Republican leader and myself be reserved.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

RECOGNITION OF SENATOR PROXMIRE

The ACTING PRESIDENT pro tempore. The Senator from Wisconsin.

REAGAN ADMINISTRATION TURNS ITS BACK ON NUKE WEAPONS TESTING BAN

Mr. PROXMIRE. Mr. President, what is the most important arms control agreement our country could negotiate with the Soviet Union? The answer is an agreement to stop all nuclear weapons testing. Here is the one agreement that could stop the technological nuclear arms race.

Mr. President on October 13 William Broad reported for the New York Times that the Reagan administration—

> Remains deeply committed to the explosive testing of nuclear weapons despite its recent agreement with the Soviet Union to negotiate an eventual total ban on nuclear blasts.

Just last month—in September—the superpowers agreed to step-by-step negotiations to improve procedures to verify compliance and set limits on testing. In the words of the joint statement at that time:

> The ultimate objective is the complete cessation of nuclear testing as part of an effective disarmament process.

This was good news for arms control, Mr. President, it appeared to mean that the administration was coming back to the pledge made in the 1963 Limited Test Ban Treaty to negotiate with the Soviet Union a comprehensive end to nuclear weapons testing.

But now the administration is coming back to the "testing will continue forever" policy. The New York Times reports that Bernard Halloran, a spokesman for the Arms Control and Disarmament Agency has said:

> The official Government position is that a complete test ban will occur only when there is no longer any need to rely on nuclear weapons for deterrence.

Mr. President, this means the technological nuclear arms race will go on and on. And it means suicide. Sure, the United States may well be able to maintain a technological lead over the Soviet Union for years to come. But again and again and again we have discovered that every time we develop a newer, swifter, more devastating nuclear weapon, the Soviet Union comes along in a few months or a few years with the same weapon. We developed the hydrogen bomb. Within a couple of years the Soviets researched, developed, and deployed their hydrogen bomb. Then we developed the multiple, independently targeted reentry vehicle missile—the MIRV. Here was a tremendous, highly complex, and devastating new weapon. A single missile could carry 8 or 10 separately targeted warheads. We were convinced it would be generations before the Soviets could develop their MIRV. How wrong we were. Within a very few years they had their own MIRV's. Similarly in cruise missiles, and the submarines and bombers to deliver them, we were first, but barely. The Soviets have repeatedly shown they can erase any time advantage we have in technology in a few years or even in months. Now both superpowers are moving into the nuclear x-ray laser era. A few years and a few dozen tests on both sides and both superpowers will be able to destroy an enemy target 10,000 miles away in a fraction of a second. Just press the button and presto, there goes the White House and the Pentagon instantaneously. Or press the button and there goes the Politburo and Red Square. Decapitation—the total destruction of enemy command—could happen so fast it could conceiv-

● **This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.**

ably make retaliation impossible or fruitless.

So, Mr. President, why not go back to that opportunity of last month? Why not press for a prompt end to this mad scientist urge to see if it would really be possible to destroy civilization? The simplest and most consistently pressed reason for continued nuclear weapons testing has been to make sure that our nuclear arsenal retains its reliability. But there are two answers to this. Some experts contend that a weapon can be designed with a reliability that makes testing unnecessary. The second reason reliability testing should not stand in the way of a weapons test ban agreement is that it would be a simple matter to exempt reliability testing from a test ban and permit the adversary to make on-hand inspection of such tests to verify that the test was confined strictly to reliability. Why not? After all, does reliability testing advance the arms race? No way.

Mr. President, the New York Times article provides a helpful table setting forth the number of nuclear weapons tests for each category of weapons each year. The table shows that about three quarters of the tests are for new warheads for oncoming delivery systems or for star wars antimissile devices. Only one or two tests per year are conducted for testing the ability of deterrent systems to survive attack, one or two for research on how nuclear weapons work, and one or two for assessing the reliability of nuclear weapons in our stockpile.

Mr. President, I ask unanimous consent that the article to which I have referred by William Broad in the October 18, 1987, New York Times, together with the table on the Nuclear Testing Agenda be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the New York Times, Oct. 18, 1987]

U.S. IS COMMITTED TO NUCLEAR TESTS

(By William J. Broad)

The United States remains deeply committed to the explosive testing of nuclear weapons despite its recent agreement with the Soviet Union to negotiate an eventual total ban on nuclear blasts, Government scientists and officials say.

Other scientists, as well as arms control experts favoring a test ban, say the policy calls into question the Reagan Administration's sincerity in the negotiations, which are scheduled to start before Dec. 1.

Federal officials disagree, saying a test ban is a worthy goal that might be achieved in the 21st century.

SUPERIORITY AND STABILITY

But they also insist that testing will be needed as far into the future as they can now see, to gauge the reliability of aging nuclear weapons, to fashion new warheads and to create exotic new arms for President Reagan's plan for a defense against attacking missiles. At least three types of such "Star Wars" devices have advanced to the point of explosive testing at the Government's nuclear test site in Nevada.

Underscoring the strong desire of many officials to continue testing, a senior official of the Energy Department, which designs and produces the nation's nuclear warheads, said in Congressional testimony recently that the development and testing of advanced antimissile weapons offered the West a chance to gain superiority over the Soviet Union in an important new phase of military technology.

Critics, on the other hand, declare that nuclear reliability can be assured without testing and that the search for superiority is futile at best and dangerous in its potential to undermine nuclear stability.

COMPLEX ROAD TO PERFECTION

Experts on both sides agree that a test ban would halt nuclear advances. They say the perfection of a new weapon requires a complex process of design, testing and redesign. The number of tests needed can range from three or four to a hundred or more, depending on the complexity of the device. So far this year, the United States has announced a dozen nuclear tests at its underground site in Nevada.

"The official Government position is that a complete test ban will occur only when there is no longer a need to rely on nuclear weapons for deterrence," said Bernard Halloran, a spokesman for the Arms Control and Disarmament Agency.

Nevertheless, the United States and the Soviet Union last month agreed to step-by-step negotiations to improve procedures to verify compliance with a treaty and set limits on nuclear testing. "The ultimate objective," said a joint statement, is "the complete cessation of nuclear testing as part of an effective disarmament process." Although played down by the Administration, the move was hailed in the Soviet Union.

"The Administration is entering this negotiation clearly opposed to the stated goal," said Spurgeon M. Keeny, Jr., a former Government arms control official who is now president of the Arms Control Association, a private organization that seeks to promote nuclear weapons accords. "They don't want a test ban. The arms control community seized on this as a great triumph. But it's not. It was transparent from the very beginning."

Proving the reliability of the nation's existing nuclear stockpile is considered a key reason to continue testing, according to William F. Scanlin, a weapons official at the Lawrence Livermore National Laboratory in California, one of two Federal centers where nuclear arms are designed. "These systems don't retain their military effectiveness forever," he said. "It's like a car. You can't put it in a garage for 20 years and expect it to run. You have to turn it over every once in a while."

Critics say reliability can be designed into a weapon so that it never needs to be tested once it enters the stockpile. "There is simply no technical case that testing must continue for reliability," said Hugh E. DeWitt, a Livermore physicist who does not work on weapons and who favors a test ban. But weapons scientists say serious flaws are sometimes discovered only by testing.

NEVER GOING TO BE FINISHED

The development of ordinary nuclear warheads, like those for cruise missiles and the Midgetman missile, is seen as another important reason to test. Robert Barker, assistant to the Secretary of Defense for atomic energy, told Congress in March that "we are never going to be finished" testing, because of a need to create new arms as adversaries change targets, tactics and weapons. "Neither we nor the Soviets in my view are going to be finished," he said.

Federal officials say Dr. Barker is being considered to head the American delegation to the new negotiations.

Proponents say other reasons to test include the need to expose key military systems like satellites, missile silos and warheads to nuclear blast and radiation to make sure they can survive enemy attack. Another is an attempt to gain a fuller understanding of how nuclear weapons work so that if tests are ever banned, atomic scientists will have the best possible data for carrying on their work.

IN DEFENSE, AN OFFENSIVE POTENTIAL

One of the newest and most important reasons is seen to be the development of arms for the "Star Wars" system, which Federal officials nonetheless often characterize as non-nuclear.

In theory, these new weapons, including the nuclear X-ray laser, are meant to channel the vast energy of nuclear explosions into beams that flash across space to destroy enemy targets. Although being developed by the antimissile program, experts say the devices, if perfected, could be used for offense as well as defense.

Federal officials usually say that such top-secret research is pursued mainly to understand how the Russians might use these weapons and that they do not plan to use nuclear-driven beams. Critics charge that the Government is weighing the use of such nuclear arms in the American antimissile program.

"Far from making nuclear weapons obsolete, 'Star Wars' is actually helping make them more versatile," said Steven Aftergood, director of the Los Angeles-based Committee to Bridge the Gap, which opposes the antimissile program.

AN ESPECIALLY ATTRACTIVE OPTION

In a striking departure from the usual Government explanation for research on nuclear beam weapons, James W. Culpepper, deputy assistant Secretary of Energy for military applications, told Congress in secret testimony last March that the new arms offered a technical edge over the Soviet Union.

"For the United States," he said in the testimony, which has since been declassified, such research "is an especially attractive option, for it permits us to exploit the advantages of high technology, an area of United States superiority."

The new "Star Wars" devices are third-generation nuclear arms. The first and second generations of nuclear weapons were atomic bombs, developed in the 1940's, and hydrogen bombs, perfected in the 1950's. These conventional weapons radiate their energy spherically, whereas third-generation weapons are meant to focus their power in beams across vast distances. Work on them began in the early 1980's.

John E. Pike, head of space policy for the Federation of American Scientists, which favors rapid movement toward a test ban, said a review of the Federal budget suggested that there was enough money for three or four antimissile nuclear tests a year. Nuclear tests in general cost $10 million to $40 million, with antimissile tests thought to be some of the most expensive of all.

In 1986, Lieut. Gen. James A. Abrahamson, the director of the Pentagon's antimissile program, told Congress that more money was needed to "accelerate the underground testing in several areas, not just the X-ray laser, also the Prometheus concept and one other." Private experts believe this third type of nuclear weapon is meant to beam microwaves through space.

THE NUCLEAR TESTING AGENDA—NUCLEAR EXPLOSIONS BEING CONDUCTED BY FEDERAL SCIENTISTS

	Tests per year
New warheads: Development of conventional nuclear warheads for new weapons such as cruise missiles and the Midgetman missile.	8 to 12.
"Star wars" antimissile devices: Research on exotic arms meant to channel power of nuclear blasts into focused beams.	3 or 4.
Mock attack: Exposure of critical military systems such as satellites, missile silos and warheads to nuclear blast and radiation to make sure they can survive enemy attack.	1 or 2.
Nuclear mysteries: Research on understanding exactly how nuclear weapons work so that if tests are banned atomic scientists would have the best possible data for carrying on their work.	1 or 2.
Reliability: Explosion of weapons from the nation's nuclear stockpile to make sure they remain effective.	1 or 2.

Mr. PROXMIRE. I yield the floor.

QUORUM CALL

Mr. BYRD. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SANFORD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER [Mr. PROXMIRE]. Without objection, it is so ordered.

(Mr. WIRTH assumed the chair.)

RECOGNITION OF SENATOR SANFORD

The ACTING PRESIDENT pro tempore. The Senator from North Carolina is recognized.

SOCIAL SECURITY NOTCH ADJUSTMENT ACT

Mr. SANFORD. Mr. President, I am pleased to introduce legislation today, joined by my distinguished colleagues, Senators ARLEN SPECTER, RICHARD LUGAR, BARBARA MIKULSKI, and LARRY PRESSLER, to correct the Social Security "notch."

This is a workable, affordable solution.

When Abigail Van Buren wrote a column on the "notch" in 1983, there were probably very few people who appreciated just how widespread her "Dear Abby" readership is. From what I have heard, it did not take long for Congress to appreciate just how many readers she has, especially readers who were born between 1917 and 1921.

These individuals, of course, are the "notch babies." They were angry then and, understandably, they remain angry today. The source of their consternation is no secret. They are perturbed because they believe they have been robbed of some of their Social Security benefits.

I think by now most Members of this body understand the "notch" issue. In 1977 Congress altered the Social Security benefit formula to correct a flaw. Automatic benefit increases adopted in 1972 proved to be too generous. These projected high benefit levels were a real threat to the Social Security trust fund, and clearly something had to be done. But the Social Security Amendments of 1977 had unintended consequences, in my opinion, as we experienced high rates of inflation. The gap in benefit levels paid to those born before 1917 and those born in 1917 and later increased dramatically.

Today, an average earner born in 1916 who retired at age 65 receives more than $700 per month in Social Security benefits, while an average earner born in 1921 who retired at age 65 receives only $583. One individual is receiving $1,500 more each year in Social Security benefits for no other reason than that he was born 5 years earlier, not because he earned a higher wage before he retired. This simply does not make sense.

My bill proposes to change the current state of affairs. Under the Social Security Notch Adjustment Act, which I will send forward and introduce, benefits for those individuals born between 1917 and 1929 will increase. Increases will average no more than about $500 per year for the average "notch baby." Actual increases will range from less than $100 to $1,200 per year. In addition to this, my bill provides current retirees a retroactive, one time benefit up to $1,000, to help compensate for past periods of entitlement at depressed benefit levels.

My bill does not just increase spending, it also saves. It saves $4 billion over 10 years by eliminating future benefit increases to "bonanza babies," those who were born before 1917 and who continue to work and continue to receive "double indexed" benefit increases that have been denied "notch babies."

Under current law, "bonanza babies" who continue working after age 65 are allowed to have those additional yearly earnings calculated into their benefits. They can substitute those later year earnings for earlier, lower earnings years, and they earn higher retirement benefits because of this. "Notch babies," on the other hand, are excluded under current law from using any earnings after age 61 for the purpose of calculating their benefits. The Social Security Notch Adjustment Act would allow those individuals born in 1917 and later to use 4 additional years of earnings, through age 65, in calculating their retirement benefits.

I have several charts to illustrate what this bill does and what it will cost. The first chart shows how the Social Security Notch Adjustment Act will increase benefits for persons born between 1917 and 1929.

The red line on the first chart shows current benefit levels for workers born between 1917 and 1929, retiring at age 65 who always had average earnings. The blue line shows how my bill proposes to adjust that by increasing benefits. This adjustment fills in the pothole that now exists. And, as you can see, this gradual adjustment does not create another dramatic "notch."

One criticism of measures that propose to fix the notch is that it will bankrupt the Social Security trust fund. This is not so. This would be so if we would go back to the formula which was corrected in 1972, and let the payments take off for the sky as they were doing when those born before 1917 became the lucky "bonanza babies." My bill is limited. It simply fills in the pothole created by the 1977 adjustment, and brings the notch babies up to the level of those born after the notch period. It is not excessive. It is not all the notch babies want. It is fair, no more, no less.

The Social Security Notch Adjustment Act increases the yearly OASI benefit by less than 3 percent a year. I have a chart to illustrate this.

My bill adds less than 3 percent to the total OASI expenditure, except during the first year where we also include the retroactive payment. In 1996, the added cost of this bill will be only about half of the 1988 COLA increase.

The Social Security trust fund will continue to build up a surplus. I prefer to call that a reserve. By any name, the reserves are not endangered.

In 1996, the surplus for that year alone is projected to be $106 billion; 1996 estimates suggest that the Social Security trust fund will collect $106 billion more than it will pay in benefits. The cumulative research by that year is projected to be $697 billion. It has been estimated it will reach $1.3 trillion by the turn of the century. If my bill is adopted, that figure will be reduced by about one-fourth of this year's defense budget.

I believe the notch babies have been discriminated against far too long. If the flaw created in 1972 had been corrected in 1972, we would not have this problem. It wasn't, and now let's get on with ending this notch inequity once and for all. By the year 2000 it will have dug into the reserves by only about the same amount as one-fourth of this year's defense budget. That is a small price to pay for fairness.

Mr. President, I ask unanimous consent that the text of the bill, technical notes and a statement by Senator SPECTER, who has been very committed to correcting the notch injustice through his own legislation, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 1830

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Social Security Notch Adjustment Act".

SEC. 2. EXPANSION OF PERIOD OF TRANSITION; NEW ALTERNATIVE FORMULA WITH RESPECT TO SUCH PERIOD.

(a) EXPANSION OF PERIOD OF TRANSITION.—Section 215(a)(4)(B)(i) of the Social Security Act (42 U.S.C. 415(a)(4)(B)(i)) is amended by striking "1984" and inserting in lieu thereof "1992".

(b) ESTABLISHMENT OF NEW TRANSITIONAL FORMULA.—Section 215(a) of such Act (42 U.S.C. 415(a)) is amended by adding at the end thereof the following new paragraph:

"(8)(A) Paragraphs (1) (except for subparagraph (C)(i) thereof) and (4) do not apply to the computation or recomputation of a primary insurance amount for an individual who had wages or self-employment income credited for one or more years prior to 1979, and who was not eligible for an old-age or disability insurance benefit, and did not die, prior to January 1979, if in the year for which the computation or recomputation would be made the individual's primary insurance amount would be greater if computed or recomputed under subparagraph (B).

"(B) The primary insurance amount computed or recomputed under this subparagraph is the amount computed or recomputed under section 215(a) as in effect in December 1978 (for purposes of old-age insurance benefits in the case of an individual who becomes eligible for such benefits prior to 1992) or as provided by section 215(d) (in the case of an individual to whom such section applies) reduced by the product derived by multiplying such amount by the sum of—

"(i) 5.0 percent;

"(ii) 1/12 of 1 percent for each month beginning after the month in which an individual attains the age of 62 and before the month in which the individual attains the age of 65 with respect to which the individual is not entitled to old-age insurance benefits; and

"(iii) the applicable percentage for the year in which the individual becomes eligible for old-age insurance benefits, as determined by the following table:

"If the individual becomes eligible for such benefits in:	The applicable percentage is:
1979	2 percent
1980	4 percent
1981	6 percent
1982	8 percent
1983	10 percent
1984	12 percent
1985	14 percent
1986	16 percent
1987	18 percent
1988	20 percent
1989	22 percent
1990	24 percent
1991	26 percent.".

(c) APPLICABILITY OF OLD PROVISIONS.—Section 215(a)(5) of such Act (42 U.S.C. 415(a)(5)) is amended—

(1) by inserting "(A)" after "(5)";

(2) by striking "For" and inserting in lieu thereof "Except as provided in subparagraph (B), for";

(3) by striking "effect," and all that follows through the period and inserting in lieu thereof "effect."; and

(4) by adding at the end thereof the following new subparagraph:

"(B) In applying this section as in effect December 1978 as provided in subparagraph (A)—

"(i) effective for January 1979, the dollar amount specified in paragraph (3) of subsection (a) shall be increased to $11.50;

"(ii) the table for determining primary insurance amounts and maximum family benefits contained in this section in December 1978 shall be revised as provided by subsection (i) for each year after 1978; and

"(iii) in the case of an individual to whom paragraph (1) does not apply by reason of paragraph (8)—

"(I) subsection (b)(2)(C) shall be deemed to provide that an individual's 'computation base years' may include only calendar years in the period after 1950 (or 1936 if applicable) and ending with the calendar year in which such individual attains age 65; and

"(II) the 'contribution and benefit base' (under section 230) with respect to remuneration paid in (and taxable years beginning in) any calendar year after 1981 shall be deemed to be $29,700.".

(d) CONFORMING AMENDMENT.—Section 215(a)(3)(A) of such Act (42 U.S.C. 415(a)(3)(A)) is amended in the matter following clause (iii) by striking "(4)" and inserting in lieu thereof "(4) or (8)".

(e) EFFECTIVE DATE AND RELATED RULES.—

(1) Except as provided in paragraph (2), the amendments made by this section shall be effective as if included in the amendments made by section 201 of the Social Security Amendments of 1977.

(2)(A) In any case in which an individual (under title II of the Social Security Act) is entitled on the date of enactment of this Act to monthly insurance benefits under such title which were computed—

(i) under section 215 of the Social Security Act as in effect (by reason of the Social Security Amendments of 1977) after December 1978, or

(ii) under section 215 of such Act as in effect prior to January 1979 by reason of subsection (a)(4)(B) of such section (as amended by the Social Security Amendments of 1977),

the Secretary of Health and Human Services (notwithstanding section 215(f)(1)) of the Social Security Act) shall recompute such individual's primary insurance amount so as to take into account the amendments made by this section and shall pay to such individual in a lump sum the amount specified in subparagraph (B).

(B)(i) Except as provided in clause (ii), the amount specified in this subparagraph is any additional amount to which such individual is entitled (for the period beginning with the first month for which such individual was entitled to such benefits and ending with the month preceding the first month with respect to which recomputation under subparagraph (A) is effective) by reason of such amendments.

(ii)(I) In the case of a primary insurance amount applicable to monthly insurance benefits payable for months before January 1987, the total amount payable to any individual under subparagraph (A) on the basis of such primary insurance amount is $1,000.

(II) If the amount payable under subparagraph (A) on the basis of such primary insurance amount would (except for subclause (I)) exceed $1,000, any individual receiving monthly insurance benefits on the basis of such amount shall receive such benefits in the same proportion as the benefits would be received in January 1987 (except that no such individual shall receive less than $300).

(C) In the case of any individual who—

(i) is entitled on the date of enactment of this Act to monthly insurance benefits under title II of the Social Security Act,

(ii) dies after such date and before the date on which payment is made under subparagraph (A), and

(iii) is an individual with respect to whom monthly insurance benefits under title II of the Social Security Act are payable on the basis of such individual's primary insurance amount;

the amount payable to such individual under paragraph (A) shall be paid (on an equal basis) to individuals who (for any month beginning with December 1986 and ending with the month such individual dies) are entitled or eligible to receive such benefits on the basis of the deceased individual's primary insurance amount. If there is no individual for whom payment can be made under the preceding sentence, a lump sum not to exceed $300 may be paid (in accordance with this title) to cover the funeral expenses of such deceased individual.

SEC. 3. MODIFICATION OF AGE AT WHICH MONTHLY EARNINGS OF CERTAIN INDIVIDUALS ARE NO LONGER COUNTED IN DETERMINING PRIMARY INSURANCE AMOUNT.

(a) IN GENERAL.—Section 215(a)(5)(B) of the Social Security Act, as added by section 1(c), is amended—

(1) by striking "and" at the end of clause (ii);

(2) by striking the period at the end of clause (iii) and inserting in lieu thereof "; and"; and

(3) by adding at the end thereof the following new clause:

"(iv) in the case of an individual to whom paragraph (1) does not apply by reason of paragraph (3), subsection (b)(2)(C) shall be deemed to provide that an individual's 'computation base years' may include only calendar years in the period after 1950 (or 1936 if applicable) and ending with the calendar year in which such individual attains age 70.".

(b) EFFECTIVE DATE.—

(1) Subject to paragraph (2), the amendments made by subsection (a) shall apply with respect to benefits payable under title II of the Social Security Act in or after January 1986.

(2) The amendments made by subsection (a) shall not have the effect of reducing or otherwise adversely affecting any monthly insurance benefit which is payable under title II of the Social Security Act.

TECHNICAL NOTES ON SANFORD NOTCH BILL

Technical description of the provisions of S. 1830, a bill proposed by U.S. Senator Terry Sanford (D-NC) to restore Social Security benefit equity for persons born in the 'Notch' years after 1916, by creating a fair transition benefit formula for persons born in 1917 through 1929.

1. *To Whom do provisions of S. 2830 apply?*

A. Retired workers born after January 1, 1917 and before January 1, 1930 and their dependents.

B. Survivors of workers born after January 1, 1917 and before January 1, 1930 if the worker died in or after the year of his/her 62nd birthday.

C. Disability beneficiaries born after January 1, 1917 and before January 1, 1930, beginning with the month they attain age 65 and are reclassified as retired workers.

2. *How are their benefits computed?*

Benefits are computed under three benefit formulae with benefits paid under the formula that produces the highest benefits. The three formulae are:

A. The permanent AIME Indexing formula enacted in 1977.

B. The current-law transition formula that applies to persons born between 1917 and 1921 inclusive.

C. The new transition provision contained in this legislation.

3. *How are benefits computed under the new Transition provisions?*

A. First, compute a "Preliminary Primary Insurance Amount (PIA)" under the old (1972) law's "1967 New Start" computation method as if the 1977 Amendments had never been enacted except that the maximum creditable earnings for years after 1981 shall be $29,700 and earnings in years after a person reaches 65 shall not be used to compute benefits under the transition.

B. Second, compute a "New Transition PIA" by reducing the "Preliminary PIA" by a percentage found by adding together steps 1, 2, and 3 below. (1) Take five percent (5%) plus, (2) two percent (2%) for each year of birth after 1916, plus (3) one-twelfth of one percent (0.083%) for each month retirement delayed (i.e. one percent per year) beginning with the month a person attains age 62 and ending with the earlier of the month of initial entitlement or the month of attainment of age 65.

The table below shows the percentage reductions that would be applied to the "Preliminary PIA" to produce the "New Transition PIA."

	Age of retirement			
	62	63	64	65
Date of birth:				
1917	7	8	9	10
1918	9	10	11	12
1919	11	12	13	14
1920	13	14	15	16
1921	15	16	17	18
1922	17	18	19	20
1923	19	20	21	22
1924	21	22	23	24
1925	23	24	25	26
1926	25	26	27	28
1927	27	28	29	30
1928	29	30	31	32
1929	31	32	33	34

C. The "New Transition PIA" then forms the basis for computing the actual benefits payable for all persons entitled to benefits in the same manner as under current law.

D. Persons who become entitled to benefits prior to age 65, but who do not draw benefits for some months because they return to regular work, shall, at age 65, have their reduction months under this transition increased by the same number of months that their reduction months for early retirement are reduced.

4. Miscellaneous Provision:

For persons born on or before January 1, 1917 earnings in or after the year such persons reach age 70, shall not be used to determine the amount of benefits payable for months in or after January 1986, except that no such person's benefits shall be reduced bacause of the passage of this provision.

5. When are the provisions effective?

All the provisions of the bill, except for the miscellaneous provision (see #4 above), are fully effective for benefits due in or after January 1987 for all affected persons entitled to benefits in or after the month of enactment.

In addition, benefits will be paid for all months prior to January 1987 retroactive to the month of initial entitlement except that the total amount of such retroactive benefits payable on any worker's account shall not exceed $1,000. Where such retroactive amounts would otherwise exceed $1,000, the retroactive benefits paid to each entitled person shall be in the same proportion as the proportion of the benefits due them in January, 1987 relative to all benefits payable on the account in January, 1987, except that each such individual shall receive at least $300.

In the event of the death of an affected person after the enactment of this legislation but prior to the payment of benefits, the under payment due such individual shall be divided equitably among the survivors who were entitled or eligible to be entitled to benefits on the affected person's record for any months beginning with January, 1987 and ending with the month following the month of such affected person's death. Where no such eligible survivors exist, a $300 lump sum death payment may be made to cover funeral expenses in accordance with established provisions of law.

Mr. SPECTER. Mr. President, the legislation which Senator SANFORD and I are introducing today seeks to restore Social Security equity to senior citizens born between 1917 and 1929, to address the Social Security notch issue. The so-called notch babies were treated very unfairly in the 1977 legislation and that inequity should be corrected. This bill is more modest than other legislative proposals and is a realistic effort to correct the existing injustice.

Our legislation, the Social Security Notch Adjustment Act, provides an average annual increase of approximately $500 per year for the notch babies. Actual increases would range from under $100 to $1,200 annually. Notch babies also would receive a one-time lump sum of up to $1,000 to help compensate for past benefit disparity.

My record on seeking a solution to this problem is a long one. As early as 1983 and again in 1985, I cosponsored legislation directing the Secretary of Health and Human Services and the Commissioner of Social Security to study the notch benefit disparity, and report to Congress on how this problem could be corrected. On September 30, 1986, I introduced legislation, S. 2892, to amend title II of the Social Security Act to restore benefits to notch babies. That bill was reintroduced as S. 1119 on May 1, 1987.

The legislation Senator SANFORD and I are introducing today is fair to the almost 9 million retired workers affected by the notch disparity, at a more modest cost.

Several organizations should be commended for their untiring efforts to gain equity for Social Security notch babies. Among these groups are the National Committee to Preserve Social Security and Medicare, the Gray Panthers, the Veterans of Foreign Wars and the Notch Babies Organization of Pennsylvania.

Mr. President, the time has come for us to restore benefit equity.

Mr. MELCHER. Mr. President, I am extremely concerned with the effectiveness of the Social Security system and the well-being of this country's older Americans. Social Security has done more than any other Government program to bring older Americans out of poverty. However, I'm sure that all of my colleagues have heard from members of a group who believe that they are being cheated by the Social Security system. These people are called notch babies.

The Social Security notch resulted from the 1977 Social Security amendments. In 1977, it looked as though Social Security would go broke if preventive action were not taken. The resulting amendments, however, subjected many retirees to different rules. The outcome has been that many people with similar work and salary histories receive different benefits simply because they were born a couple of years apart.

While many people may disagree about what should be done to eliminate this problem, it is clear that an inequity exists. Congress simply cannot ignore the notch problem and justice should be done to correct it.

For the Social Security system to remain effective, it must treat all beneficiaries fairly. This is why an issue like the Social Security notch is so important and why I want to commend my colleague from North Carolina for his work in this area. By introducing this legislation today, Senator SANFORD has demonstrated his compassion and fairness.

Because I believe this issue deserves the attention of Congress, as chairman of the Special Committee on Aging, I plan to hold a hearing on the notch situation early next year. It is my hope that this hearing will help us further along the road to finding a fair solution to this serious problem.

Mr. PRESSLER. Mr. President, I am pleased to join my distinguished colleague from North Carolina, Senator SANFORD, as an original cosponsor of this legislation. The Social Security notch problem has been around for several years. In every Congress, numerous pieces of legislation are introduced to bring the benefits of those born between 1917 and 1921 up to the level of those born in 1916. Every Congress these proposals die in the Finance Committee. It is time to address this issue. Equitable benefits must be given to those adversely affected by this notch problem.

When I am back home in South Dakota, I often hold meetings specifically to discuss senior citizen issues. The most popular—or should I say unpopular—item brought up at these meetings is the Social Security notch. It is not difficult to understand why. South Dakota has 30,246 retired workers who are subject to the notch discrimination, simply because they had the misfortune to be born in the wrong year. These notch babies continue to contact my office, asking for news on the notch year corrective legislation. Unfortunately, I am constantly in the frustrating position of having to say the bill is still pending in the Finance Committee.

Mr. President, I know the Members of this body are compassionate and sensitive to the needs of the elderly. However, many senior citizens in this Nation live solely on their Social Security benefits. Some of these people receive significantly reduced benefits due to a flawed formula developed in the 1970's to protect the Social Security trust fund.

As a cosponsor of S. 225, legislation introduced in January by Senator D'AMATO, I remain committed to a full restoration of Social Security benefits for the notch babies. However, we all know how little progress has been made by proposals such as S. 225 during the past few years. Providing full and immediate equity to those affected by the notch would be a very costly endeavor. Therefore, I believe the legislation being introduced today will be a good starting point in the efforts to remedy the Social Security notch problem.

It is important to understand that the funds for this notch correction would not come from general revenues. The notch correction would be phased in under this compromise bill with moneys from the Social Security trust fund. Resolution of the problem would be achieved gradually to ensure that a steady buildup of trust fund reserves continues. In fact, Social Security assets would still exceed $1.2 trillion by the year 2000 should this bill become law.

Mr. President, I believe this is a well-crafted compromise that is deserving of some decisive action by the appropriate committees and this entire body. We should act promptly. No longer can we ignore the voices of over 8 million senior citizens. They have been subject to a great discrimination, which has caused them many hardships in paying for food, shelter, and medical care. Congress must live up to its responsibility and correct this inequity. I urge my colleagues to take a careful look at this legislation and to join me in supporting expeditious action on the measure.

THE LAST DAY OF 21 YEARS' SERVICE

Mr. BYRD. Mr. President, as Senators, the elected Members of this Chamber are the primary centers of attention and interest on this side of Capitol Hill.

But as all of our colleagues know, much of our performance as Senators depends upon the loyalty and hard work of the staff members who work in our offices. Acting in our names, these men and women have direct contact with our constituents back home. By their alertness, sensitivity, intelligence, and talent, good staff people can enhance the work and reputation of their Senators, or, on the contrary, by a lack of the same, can diminish and conceivably help to destroy careers.

Today, I want to pay tribute to one of my staff members who has, for 21 years, fulfilled her responsibilities in my office with exemplary loyalty and selflessness.

Tomorrow is Ms. Mary E. Bainbridge's final day of work on my staff. Mary is retiring as of tomorrow at noon. During her 21 years with me, Mary Bainbridge has served in a number of office roles. For the past several years, she has been my office manager. I want to take this opportunity to thank Mary Bainbridge for the diligence she has shown, for the extra miles that she has gone in my behalf, and for the numberless contributions that she has made to the people of West Virginia in the two decades-plus that she has been on my staff.

A native of Norfolk, VA, Ms. Bainbridge was brought early to Washington by her family. After attending school locally, she launched her working life at the General Accounting Office, after which she worked at the State Department, the law firm of Covington and Burling, and then at Georgetown University Law School.

Following service on staffs in the House of Representatives, to my good fortune, Mary Bainbridge joined my staff.

Now that phase of her life is coming to its end. Mary will be retiring to a newly purchased home in Baltimore to spend her time enjoying classical music and operas.

I hope that there, she will also remember warmly the years that she spent working on my staff. I hope also that the years to come will bring her every blessing and satisfaction for which she could wish, and that she will count among her triumphs the outstanding record that she carved for herself in the Senate office of ROBERT C. BYRD.

Mary, may God's angels watch over you always.

ALLOCATION OF TIME

Mr. BYRD. Mr. President, I ask unanimous consent that the time of Mr. MELCHER under the order be under my control.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. BYRD. Mr. President, I ask unanimous consent that the time I just used be charged against the order of Mr. MELCHER.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. BYRD. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SYMMS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

CUBAN MISSILE CRISIS ANNIVERSARY

Mr. SYMMS. Mr. President, I think it is very appropriate at this time, that we look back at what happened 25 years ago with respect to the Cuban missile crisis: The entire question of the late 1950's of Fidel Castro taking over Cuba, the response from the United States regarding the fiasco at the Bay of Pigs, and, in my judgment, the fiasco the next year with the so-called Cuban missile crisis where, in fact, the establishment news media at that time reported that it was a great victory for the United States. I think if one looks back in history you can see that it was a great victory for the Soviet Union and a defeat for the United States.

I bring this up today in context with where we are in Central America—as a member of the Senate observation team to the Guatemala Peace Accords and to the implementation of those accords.

I think it is appropriate for Senators, Representatives, and all Americans, to be very cognizant of what happened 25 years ago with respect to Cuba and what appears to be happening in Central America and Africa today.

I believe there is a parallel. In this morning's Washington Times, an article states: "Republicans stall Contra aid request. The reason, of course, is that they are not certain whether they have the votes in the Democratic-controlled Congress to pass Contra aid. I believe that if, under Democrat or Republican controlled Congress, the United States stands eye to eye with the Soviets and blinks, history will point out that the problems that will come back to haunt us will be the establishment of another Soviet satellite country in Central America. This will certainly bring problems to the U.S. security and to the security of the free world.

Mr. President, I think it is important that we mark the 25th anniversary of the Cuban missile crisis. That 2-week event, which ended a quarter century ago yesterday, was heralded as a victory by the supporters of President Kennedy but, in fact, it guaranteed the spread of communism in the Americas and Africa, and the decline of United States power and influence around the world.

In July 1960, then Soviet Premier Nikita Khrushchev stated, "In the short time I have to live, I would like to see the day when the Communist flag flies over the world."

In the years since that statement the Soviet Union, Mr. President, and its proxies, have labored to make that wish a reality. If the United States and our Western allies do not stand unified in an effort to combat the Soviet aggression in this hemisphere and throughout the world, the Soviet Union may succeed.

I think that is something we have to recognize. It is a reality, that we live in a world that is not as we wish it were. We live in a world where there is an adversarial position to the freedoms we respect and live by, and the standards of our free society.

We live in a world where our chief adversary does not respect human rights, does not respect personal freedom such as freedom of speech, religion, and emigration. Our adversaries, the Soviet Union, have troops in Africa, Central America, and Afghanistan. They have a trememdous genocide program against the people in Southeast Asia. Particularly, it is now going on in Afghanistan.

Although historians have heaped praise on the late President Kennedy's handling of the Cuban missile crisis, little attention has been focused on the repercussions of his actions. Many of today's struggles against communism can be linked to the missile crisis and the agreements reached 25 years ago.

In the Kennedy-Khrushchev agreement of 1962 the Soviets agreed to withdraw and not reintroduce the offensive nuclear missiles they had placed in Cuba. In turn, President Kennedy publicly stated that the United States would never attempt an invasion of Cuba or the overthrow of the Castro regime. Later, he agreed to remove the medium-range Jupiter missiles in Turkey.

In my view, those concessions, and the crisis in general, drastically changed the course of events of the past 25 years and will certainly have great impact on the future of democracy in the world.

I recall in 1982 when President Reagan made the same pledge, that he would not use United States troops to ensure freedom in Nicaragua. I said at the time to the President and his advisers that I thought it was a mistake to ever make that statement of what you will not do. I believe we do not need American troops to solve the problem in Central America, but I do not believe that the United States of America should ever say that they would not use them if they thought it was necessary to ensure the security of the United States. Securing freedom for Nicaragua is going to have an implication to the freedom of the people in the United States of America. I think it is a mistake to make that pledge.

What happened in Cuba over those 25 years, once the United States guaranteed that we would not invade, was we virtually gave Fidel Castro a free hand to solidify his base and strengthen his position in Cuba with no threat that there might be people airdropped from Florida in the hills of Cuba and start back with a revolution where he would have to defend the oppression of his government against people who might, in fact, start showing some resolute resistance to the oppressiveness of the Castro government.

Certainly, the most outrageous United States concession was guaranteeing the security of a Soviet satellite country only 90 miles from our border.

That, in my view, was an outrageous mistake, and we should not have done it. But it is done, and we now should look back at history and not make the same mistake in Central America.

Since 1960, the Soviet Union has pumped over $9 billion in military aid and supplies into Cuba. The Soviets have supplied over $4 billion in economic assistance during the 1960's alone.

Fidel Castro has repaid the Soviets in spades, Mr. President, by exporting Soviet communism throughout Central America and Africa by being the proxy forces for his bosses in Moscow.

This U.S. concession is a blatant violation, Mr. President, of the Monroe Doctrine which states that:

> The American continents, by the free and independent condition which they have assumed and maintain, are henceforth not to be considered as subjects for future colonization by any European power. We could not view any interpostition for the purpose of oppressing them, or controlling, in any other manner, their destiny, by any European power in any other light than as the manifestation of an unfriendly disposition towards the United States.

Mr. President, several times the U.S. Congress has reaffirmed our Nation's commitment to that doctrine. We have done it most recently in the Senate within the past weeks. We have done it several times since this Senator has been a Member of the Senate. Many of those amendments have been offered by myself or Senator HELMS or others. We have restated the concern of the American people through our actions that we want to uphold the Monroe Doctrine, but we have never gotten the kind of reaffirmation that by our actions as a nation, working together with the executive branch and the congressional branch the United States exert what it is we say we believe in.

We have an opportunity to reverse the Brezhnev doctrine not only in Afghanistan but in Angola and in Nicaragua. I think it is most important that we reverse the Brezhnev doctrine. It is like a football game. There is an offense and a defense. If we are on the offense, our adversaries will have to defend their own terrain, and will be forced to withhold their new expansionist ideas.

Free from any worry about United States interferences, Cuban mercenary activities have been widespread and effective. In Nicaragua, there are presently up to 8,000 Cubans helping Dictator Daniel Ortega establish yet another Communist beachhead on this continent. The Nicaraguan freedom fighters have fought the expanding Sandinista military since the Somoza regime collapsed in 1979. With the assistance of United States military and economic aid, the Contras have contained the spread of the Communist cancer, but I believe the situation in Central America and Nicaragua should be of grave concern to every freedom loving American. Should the Contra freedom fighters fail, the United States will have again allowed the "Red tide" of communism to flow closer to the shores of America.

Cuban troops are active in 17 African countries. Angola is the clearest example. Jonas Savimbi, and the Unita forces are struggling to fight the Cuban backed Communist domination of their region. Unita has made great strides in combating the estimated 30,600 foreign troops in Angola, approximately one-third of which are Cuban.

Because of Savimbi's commitment and the bravery of the Unita troops, it looks as though the recent Communist offensive in Angola will fail. The October 24 article in Jane's Defense Weekly details the extensive fighting. I commend Jane's for printing what I believe to be an illuminating update on Angola, and I recommend that all Senators read it.

I have mentioned these various fights for freedom because they are the direct result of the United States' guarantees which have permitted the Castro regime to wield their Communist sickle in Nicaragua and pound their hammer in Angola. Castro's troops have marched into countries, destroyed their economies, and crushed those who are struggling to promote freedom and democracy. Cuba has been a training ground for terrorism and subversion and can be directly linked with several of the recent massacres around the globe. Castro has been a leader in the Communist movement. His disciples include: Nicaragua's Daniel Ortega, Libya's Mu'ammar Qadhafi, Mozambique's Samora Machel and Joaquim Chissano, Ethiopia's Mengistu, and the SWAPO leader, Nujoma. Though Castro pulls the strings of many, he himself is no more than a puppet in the hands of the Politburo in Moscow.

In addition to allowing Castro's devastating reign of terror and Communist expansion, the Cuban missile crisis directly altered the strategic military balance between the United States and the Soviet Union.

At the time of the crisis, the United States held a strategic advantage over the Soviets in deliverable nuclear weapons. The total numbers of ICBM's, SLBM's, and IRBM's for the United States in 1962 was 478. The Soviet numbers totaled 183, including the 42 in Cuba. With our bomber force included, the U.S. strategic superiority was 12 to 1 over the Soviets in 1962.

In the 25 years since the missile crisis, the Soviet Union has successfully reversed that ratio. Following those tense weeks in 1962, Soviet Foreign Minister Vasily Kuznetsov stated that the Soviet Union would never again be caught in a position of strategic inferiority. In validating that statement, the constant Soviet buildup of nuclear forces has catastrophically altered the strategic balance between the United States and the Soviet Union. The Soviets changed our 12-to-1 advantage to their 10-to-1 advantage. This strategic position would leave the United States vulnerable should we face another crisis similar to that of a quarter century ago.

That is what the strategic space shield is all about, Mr. President. That is why it is so imperative we have that today because the strategic balance of nuclear superiority is actually in favor of the Soviet Union today.

A recent article in the Washington Times quotes several authorities in United States-Soviet relations, including Raymond Garthoff, a former State Department official who was involved in the missile crisis, Ray Cline, the deputy director for intelligence at the time, and David Sullivan, who is a member of the Senate Foreign Relations staff and consults Senators on defense and strategic issues. Each believed the missile crisis was certainly a long-term defeat for the United States and a strategic victory for the Soviet Union. Sullivan believes the Kennedy-Khrushchev agreement represented a total defeat for the Monroe Doctrine since it permitted Soviet power to grow. He also states that "the Soviet nuclear delivery threat from Cuba today is more than twice what it was during the Cuban missile crisis."

As a consequence of the missile crisis, Cuba's ports and military bases today back a Soviet capability to disrupt United States sealanes to Western Europe, which would be vital in case of war; 55 advanced Mig-23 fighters and 200 Mig-21's are based in Cuba and a submarine port has been in use since 1969. Soviet Bear-D reconnaissance aircraft from Cuba patrol off United States coasts. And the Soviets' largest electronic espionage facility outside the U.S.S.R. is at Lourdes, Cuba, where 2,100 Soviet technicians can monitor United States communications, including space launch activities in Florida and up to half of all United States telephone calls in the Southeastern United States.

In the 2 short weeks of 1962, the people of this world came closer than ever to nuclear Armageddon, a situation I hope we never again face. Because of Kennedy's weakness at the Bay of Pigs and in the Berlin crisis, the Soviets initiated the missile crisis. Because of Kennedy's weakness in the Cuban missile crisis, Cuba has expanded the frontiers of communism and the Soviet empire has increased its nuclear superiority.

The lessons of the Cuban missile crisis are painful. Certainly, hindsight is 20-20. However, I firmly believe the past 25 years is proof-positive of what is in store for democracies if we do not take action to thwart Communist goals.

We can stop the expansion of communism. But not by using half-hearted attempts. Strength, unity, and the will to succeed are the keys to victory. Now more than ever do we, as leaders of the free world, need to recommit ourselves to rolling back the borders of communism and expanding the frontiers of freedom.

Mr. President, I ask unanimous consent that the following be printed in the RECORD.

First, a portion of the Department of Defense's "1987 Soviet Military Power" handbook, outlining the Soviet military buildup of Cuba.

Second, an article printed on October 24, in Jane's Defense Weekly, which describes the current offensive in Angola.

Third, an article printed on October 22, in the Washington Times, titled "'62 Cuban crisis viewed by analysts as tendering hemisphere to Soviets."

There being no objection, the material was ordered to be printed in the RECORD, as follows:

CUBA

The continuing flow of large amounts of military and economic aid highlights the importance Moscow attaches to Cuba, the focal point of Soviet policy in Latin America. Since 1960, Moscow has provided Havana with about $9 billion in military equipment at no cost to Cuba, emphasizing Havana's importance to Soviet planners. After very large deliveries from 1981 to 1985, Cuba in 1986 received modest quantities of new equipment, including FLOGGER aircraft, HIP helicopters, T-62 tanks, T-54/55 tanks, and BM-21 rocket launchers. The Soviets continue to support Cuba's military with 2,800 military advisers.

During the 1980s, the USSR has furnished Cuba with over $4 billion in economic assistance and subsidies per year. However, Soviet subsidies declined somewhat in 1986, primarily reflecting the lower market price of oil, some of which the Cubans re-export for hard currency. Soviet financial help in 1986 was not sufficient to solve Cuba's hard currency shortage. The Soviet Union continues to provide most of Cuba's oil supplies, either directly or through swap arrangements with third countries. Moscow has agreed to provide Havana with 2.5 billion rubles in new credits between 1986 and 1990, an increase of 50 percent over the 5-year period ending in 1985. One project the Soviet credits will fund is completion of the first phase (two of four reactors) of the Cienfuegos nuclear power station.

In return for its investment, the Soviet Union continues to reap substantial benefits. Cuba supports revolutionaries in Latin America with training and materiel and assists pro-Soviet states such as Nicaragua, Angola, and Ethiopia. For example, 2,000 to 2,500 Cuban military and security personnel are in Nicaragua. Cuba also provides the USSR with military and intelligence-collection benefits. At least nine deployments of BEAR D naval reconnaissance and five of BEAR antisubmarine warfare aircraft were made to Cuba in 1986. The 26th deployment of a Soviet naval task force to the Caribbean began in October. The task force, which consisted of a KARA-Class guided-missile cruiser, a KASHIN-Class guided-missile destroyer, a FOXTROT-Class submarine, and a BORIS CHILIKIN-Class oiler, conducted anti-surface, antisubmarine, and antiair exercises with Cuban naval units during the month-long deployment. The Soviet-manned intercept site at Lourdes, the largest outside the USSR, enables Moscow to monitor sensitive US maritime, military, and space communications as well as US domestic telephone calls.

The first session of the 3d Congress of the Cuban Communist Party and the 27th Congress of the Communist Party of the Soviet Union last February highlighted a renewed closeness in Soviet-Cuban political relations. Yegor Ligachev, the second most powerful Kremlin leader, headed the Soviet delegation to the 3d Congress, and President Fidel Castro led the Cuban delegation to the 27th Congress. In Moscow, Castro had his first two meeting with Gorbachev. Despite manifestations of close relations at the two congresses. Soviet-Cuban relations continued to be plagued primarily by economic differences. Cuba's hard currency shortage has forced Havana to seek even more financial support from Moscow, but the USSR may not be willing or able to satisfy its partner.

ANGOLA: CRUCIAL CONFRONTATION AHEAD

(By Helmoed-Römer Heitman)

The current offensive against antigovernment UNITA guerrillas by Angolan FAPLA forces has finally led to major engagements.

The most serious of these appear to have been on the Lomba river, 50 km north-east of Mavinga, one of the main objectives of the offensive. UNITA claims to have halted the attacks, inflicting heavy losses on the Soviet-led government forces.

UNITA's leader, Dr. Jonas Savimbi expects, however, that FAPLA will make at least one more major effort to take Mavinga, a UNITA strategic stronghold en route to the headquarters town of Jamba, before the start of the rainy season. He sees this as the crucial battle of the offensive, and, perhaps of the entire civil war.

FAPLA losses between 10 July and the end of September are given as four Soviet, 20 Cuban and 1023 FAPLA personnel killed and 31 Soviet and 75 Cubans wounded. A total of 150 FAPLA soldiers and four pilots were captured by UNITA, while the latter's losses are given as 86 killed and 522 wounded.

Among FAPLA equipment claimed destroyed are seven T-55 tanks and 19 other armoured vehicles. At least one M-25 helicopter has been shot down and was shown to the press.

While UNITA figures need to be read with caution, the fact remains that Savimbi was able to hold a news conference in Mavinga during the weekend of 3/4 October, despite FAPLA's efforts to take the town and its strategically-located airfield.

FAPLA will soon have to continue with its offensive if it is to remain in its forward positions until the next dry season. If it is successful, taking Mavinga and holding it through the rainy season, FAPLA will be in an excellent position to push UNITA from Jamba in 1988.

Without Mavinga, it will have to either withdraw to this year's start lines or rely on overland resupply during the rainy season in the face of concerted UNITA harassment, or even serious disruption of logistic movements over a poor network of roads made worse by the rains.

UNITA not only realises the importance of Mavinga to FAPLA, but also needs to control the airport for its own resupply. Mavinga is reportedly the main airhead for supplies flown in from South Africa, the newly U.S.-refurbished Kamina air base in Zaire and Gabon.

Local residents are predicting an early start to this year's rains and this would suggest that UNITA will throw everything into holding onto Mavinga in the hope that the rains will come to their aid, disrupting FAPLA ground movements and complicating its air support.

Dr. Savimbi sees this offensive as FAPLA's last big gamble and feels that if it fails, the Angolan Government will have no alternative but to negotiate with UNITA. He feels that two successive failures—1985 and 1986—increasingly widespread UNITA operations and increasing Soviet disenchantment with FAPLA's commitment to the war, render this a make or break offensive.

For its part, UNITA is prepared to return to lower-key guerrilla warfare should it lose the impending battle, even though the loss of Jamba and the base areas would be a serious propaganda defeat and would cause logistic problems.

Savimbi said that the present fighting in south-eastern Angola is intended not only to weaken UNITA, but also to challenge South Africa. The introduction of the Mig-23s, Sukhoi Su-22s and modern surface to air missile (SAM) systems is excessive, relative to UNITA capabilities, he said, and must have a broader aim.

This, he believes, is to test South Africa, both in its resolve to face Soviet action in southern Africa and the capabilities of its armed forces, should South Africa choose to escalate its activities in the region.

Without doubt, this offensive has been planned on a lavish scale. According to reports, the offensive was planned and launched under the personal supervision of Soviet Gen Konstantin Shaganovitch, who is said to be the highest-ranking Soviet officer ever to have been posted outside of Europe or Afghanistan, and who arrived in Angola in December 1985. He is assisted by Soviet counter-insurgency expert Gen Mikhail Petrov.

Each FAPLA brigade is reported to have between 70-90 Soviet advisors and specialists attached to ensure that campaigns are carried out to the Soviet plans.

Apart from standard equipment, the estimated 18,200 troops involved in the offensive are enjoying heavier than usual armour—as many as 150 T-55s—and air support. This offensive has also seen the first deployment of M-46 guns in Angola and the first deployment of the new Mi-35 derivative of the Mi-24 Hind helicopter. The preparations for the offensive included as many as 12 An-24 flights into Luanda daily, over a considerable period of time.

The UNITA force deployed in the area apparently numbers some 8000 under the command of Gen Ben Ben, 5000 being deployed along a 40 km front opposite the main FAPLA force.

This year's offensive was late getting under way, delayed by UNITA harassment. UNITA also used a tactic which has served it well in the past—stepping-up operations in other parts of Angola to draw forces away from the main offensive thrust.

UNITA figures for such operations during April, May, June and July: 412 contacts, in which nine aircraft were downed, 882 FAPLA, 125 Cuban and four Soviet soldiers were killed, 85 FAPLA soldiers captured and 217 vehicles and 26 armoured vehicles were destroyed.

While UNITA figures need to be viewed with care, they have in the past tended to reflect trends fairly accurately and therefore give an indication of the effort which UNITA made towards disrupting the FAPLA deployment.

The first serious clash apparently took place on 10 July, with the offensive proper opening on 14 August. Towards the second week of September, at least two FAPLA brigades, apparently 21 and 47 Brigades, reached the Lomba river and forced a crossing. Overrunning a UNITA logistic depot.

According to UNITA, 250 FAPLA and 40 UNITA soldiers were killed in the fighting around the depot. Three FAPLA battalions finally consolidated positions on the southern bank of the Lomba, but failed to follow through, and were surrounded during a 13 September UNITA counter-attack, losing, according to UNITA, some 70 men, before retreating.

A MiG is also reported to have been downed during the four-hour battle. UNITA admits to losing 10 men.

Additional FAPLA forces advancing on Mavinga to resume the attack were halted by the South African Air Force, according to reports from Luanda, on 20 September. Further SAAF raids are said to have followed, with a major strike against the Cuito Cuanavale region of 30 September, while other targets were shelled by South African artillery.

A South African force of up to four battalions is reported to have entered southeastern Angola, where it clashed with FAPLA forces.

In one such incident, a 250-man mechanised FAPLA force is reported to have lost 160 men.

UNITA seized the initiative on 4 October, crossing the Lomba river and driving FAPLA forces from their positions on the northern bank, during a 10-hour battle.

According to UNITA Chief-of-Staff Gen. Demostenes Amos Chiljingutila, 232 FAPLA, seven Soviet and 20 UNITA soldiers died in the fighting. Two hundred vehicles including four T-55s, and at least one SA-8 system and mobile radar equipment were captured.

Having created some breathing space, it now seems that UNITA intends to concentrate on guerrilla warfare tactics in the rear of the FAPLA forces, to disrupt their logistics until the rains begin.

Additional operations can be expected in other parts of Angola in an effort to diffuse FAPLA concentrations. FAPLA, for its part is reported to be moving to the front one or two of its better trained brigades, that have yet to be committed to combat in this offensive.

The degree to which South Africa has become directly involved in the present campaign is far from clear.

South African Defence Minister Magnus Malan has acknowledged that South Africa is providing "moral, material and humanitarian" aid to UNITA, and that there is a "limited SADF presence" in southern Angola.

He implied that a major task of the force was to deal with SWAPO guerrillas before they could cross into South West Africa/Namibia during the forthcoming rainy season. Nonetheless, it does appear that South Africa is giving active support to UNITA, despite the risks.

South Africa faces a difficult choice. It would cetainly not want to see UNITA lose its base areas, if only because this could open up more of the Angolan border to SWAPO infiltration into northern SWA/Namibia.

A scaling-down of UNITA operations would follow a defeat, allowing SWAPO to withdraw some of its units from anti-UNITA and base defence operations, redeploying the available units against SWA/Namibia.

A strong UNITA also prevents Angola considering direct confrontation with South Africa. Added to this, Pretoria would not want to see a Soviet-backed victory anywhere near its borders.

On the other hand, South Africa does not wish to become involved in a new adventure in Angola. Memories of 1975-1976 are still too fresh.

A number of sources report that South African G-5 155 mm guns have played a major role in disrupting the FAPLA offensive, more so than the air strikes reported by the Angolan Government. This appears to make sense, as South-Africa would not want to expose its mainly imported fighter and strike force to the modern SAM/AA systems deployed in Angola. Artillery, however, can be replaced more easily.

The South African Army's artillery warfare doctrine is extremely effective. Tactics involve deploying G-5, G-6 or Valkiri guns, with armoured car and infantry support to within range of the enemy's rear targets, and destroying them from a distance. The low force: space ratios in the area make this tactic possible.

The key element in South Africa's support of UNITA appears to be its fire support from artillery combat groups. It is relatively low-profile, does not endanger equipment, and leaves other forces free to take action against SWAPO.

Much of South Africa's involvement appears to be concerned more with SWAPO than against FAPLA. Malan noted that SWAPO insurgents were to be found throughout southern Angola, and should be dealt with before they cross into SWA/Namibia.

This suggests that South Africa may have chosen to exploit FAPLA's offensive against UNITA, in order to attack SWAPO facilities in Angola, disrupting their preparations for their annual rainy season infiltration.

This would appear to tie-in with reports of South African operations around Xangongo, 'Ngiva and Mongua, and penetrations as deep as 200 km into the central sector of southern Angola.

There has not been any major operation, or series of minor operations of this nature since the December 1983/January 1984 Operation ASKARI, which led to the establishment of the Joint Monitoring Commission and the disengagement of South African forces from southern Angola.

Under the terms of the disengagement, agreement, Angola was to prevent SWAPO re-establishing itself in the south of the country. SWAPO has however returned to the region and has attempted to step-up its operations into SWA/Namibia.

SWAPO has also enjoyed FAPLA protection and logistic support. This has led to clashes between the SADA and FAPLA during cross-border pursuits of SWAPO.

The present offensive against UNITA's Mavinga stronghold has drawn resources from other parts of Angola, and FAPLA will now be less willing to protect SWAPO from any raiding force. This has created an opportunity which South Africa would not want to, and indeed appears not to, have missed.

[From the Washington Times, Oct. 22, 1987]

'62 CUBAN CRISIS VIEWED BY ANALYSTS AS TENDERING HEMISPHERE TO SOVIETS

(By Bill Certz)

The 1962 Cuban missile crisis, long regarded as a diplomatic victory by the United States over the Soviet Union, is viewed today by some analysts as a U.S. strategic defeat that solidified a Soviet foothold in the Western Hemisphere.

The affair that erupted 25 years ago today and brought the world to the brink of nuclear war has resulted in a Soviet base for military power projection and regional subversion, they say.

Ray Cline, deputy director for intelligence at the time, recalled the events of October 1962 as a time when senior administration leaders were unafraid to act from strength, a feeling he described as, "Don't worry, we can push this toward the military end of the spectrum."

"That was possibly the last time we'll have that luxury of military superiority in an international crisis," he said in an interview.

For two tense weeks in October 1962, the United States and the Soviet Union faced off over the secret introduction into Cuba of Soviet intermediate-range nuclear missiles that could easily reach much of the United States.

The crisis peaked on Oct. 22, when President John F. Kennedy announced on nationwide television that any missile fired from Cuba would be considered an attack by the Soviet Union on the United States.

He said U.S. Navy ships had blockaded the island and would turn away Soviet ships bound for Cuba.

Mr. Cline, who wrote the passage about the missile attack in Mr. Kennedy's speech , said: "It was a direct threat. It was saying, 'Don't think you can limit this because it's in Cuba.' "

The crisis subsided on Oct. 28 when Soviet leader Nikita Khruschev agreed to withdraw 42 SS-4 nuclear missiles from Cuba in exchange for a U.S. pledge not invade the island. Secretly, according to Robert Kennedy's book "Thirteen Days," the president also promised to remove 15 U.S. Jupiter ballistic missiles based in Turkey with NATO forces a short time after the crisis was over.

At the time of the crisis, the United States held a 10-to-1 advantage over the Soviet Union in nuclear ICBMs. Today, by some estimates, that has been reversed with the Soviets holding an advantage of about 4-to-1.

John Lenczowski, until recently a National Security Council staff specialist on the Soviet Union, blamed weak U.S. policies for "turning the Cuban missile crisis into a strategic defeat." In an interview, he said the most damaging effect of the agreement on Cuba has been felt by U.S. friends in Latin America.

"Our toleration of a Soviet base of political-military operations in Cuba has sent a signal of weakness to our Latin American friends that we do not have the will to resist communist insurgency in our hemisphere," said Mr. Lenczowski, now with the Ethics and Public Policy Center.

"As a result, our Latin neighbors are reluctant to make public their opposition to Nicaraguan communism."

Helmut Sonnenfeldt, a former State Department official with broad experience in U.S.-Soviet relations, said the Kennedy administration drew the line at offensive missiles when it could have demanded more.

As a result, the Cuban missile crisis helped the Soviets learn how far they could go in supporting revolution in the region.

"That permitted other military activities and allowed the Soviets to gain a foothold in the hemisphere," said Mr. Soonenfeldt, a Brookings Institution scholar.

Raymond L. Garthoff, a former State Department official closely involved in the crisis, believes U.S. military strength was a "bedrock factor" in the outcome of the affair, but that threat of nuclear war would have produced the same outcome with today's rough superpower parity.

The Kennedy administration, according to Mr. Garthoff, now a senior fellow at the Brookings Institution, should have sought a broader agreement aimed at complete demilitarization of Cuba.

"Future Cuban military involvements in Angola and Ethiopia would have been avoided because the Cubans would not have had the necessary military establishment," Mr. Garthoff wrote in Reflections on the Cuban Missile Crisis, scheduled for release today.

David Sulivan, a strategic expert on the staff of the Senate Foreign Relations Committee, aid he believes the Kennedy-Khrushchev agreement represented a "total defeat" for the Monroe Doctrine since it permitted Soviet power to grow.

"The Soviet nuclear delivery threat from Cuba today is more than twice what it was during the Cuban missile crisis of 1962," Mr. Sullivan said. "Moreover, the tables have been turned, and today the Soviets have a 4-to-1 advantage in ICBM warhead delivery capability, when in 1962 we had a 10-to-1 ICBM advantage over them."

The agreement undercut the Monroe Doctrine—the 1850s commitment to bar the spread of European influence in the Western Hemisphere.

Mr. Cline, now chairman of the Global Strategy Council, a research group, reflected on the affair a quarter of a century later as "an excellent intelligence performance, and a good decision-making performance."

However, the benefits have not withstood the test of time, he said.

"The political gains over the Soviet Union were frittered away over the next 25 years so that Cuba has become a major Soviet strategic base," Mr. Cline said. "The result is we have exactly the kind of Soviet military base in Cuba that Kennedy tried to prevent during the missile crisis."

Among the consequences since 1962 from the Cuba-Soviet connection:

Cuba's ports and military bases today back a Soviet capability to disrupt U.S. sea lanes to Western Europe, which would be vital in case of war there.

Fifty-five advanced MiG-23 fighters and 200 MiG-21s are based in Cuba and a submarine port of Cienfuegos has been in use since 1969.

Soviet Bear-D reconnaissance aircraft from Cuba patrol off U.S. coasts.

The Soviets' largest electronic espionage facility outside the U.S.S.R. is at Lourdes, Cuba, where 2,100 Soviet technicians can monitor U.S. communications, including space launch activities in Florida and up to half of all U.S. telephone calls in the southeastern United States.

Arms and explosives used by Puerto Rico terrorists were traced to weapons shipments from Vietnam to Cuba.

Mr. SYMMS. I thank the distinguished majority leader.

I yield the floor.

RECOGNITION OF SENATOR SASSER

The PRESIDING OFFICER. Under the previous order, the Senator from Tennessee [Mr. SASSER] is recognized for 10 minutes.

CATASTROPHIC HEALTH CARE LEGISLATION

Mr. SASSER. Mr. President, since the outset of the debate on catastrophic health care some months ago, I have attempted to focus attention on the overriding issue involved: long-term care. Yet, as the Senate concludes consideration of one of the most significant expansions of Medicare benefits since the program's inception, we see precious little on the question of long-term care. So while the bill passed earlier this week does bring some good news for our older Americans, it falls short of the mark in efforts to allay the health care concerns of the overwhelming majority of our older citizens.

Failure to address long-term care is not a new shortcoming in the Finance Committee bill that was passed here. You will recall that the debate on catastrophic health care coverage began in earnest last year, when the Secretary of Health and Human Services, Dr. Otis Bowen, delivered his comprehensive report to the President. While that report confirmed what many elderly Americans already knew from experience—that their insurance coverage is inadequate to cover a catastrophic illness—the Bowen report made few recommendations about providing long-term care.

The Bowen plan provided the basic framework for the bill we have considered and for the catastrophic health care bill passed earlier by our colleagues in the House of Representatives. The Finance Committee, I am delighted to say, has made significant changes in the Bowen plan. Some of them I think are very beneficial. But no language was added to address the elderly's long-term health care concerns. So while we are moving forward, we are forgoing an excellent opportunity to address the elderly's most pressing health care concern. The sad truth remains, Mr. President, that for all the improvements contained in this bill, our failure to address the issue of long-term care means continued risk of economic and emotional devastation for our elderly, for their sons, and for their daughters.

For the facts clearly show that long-term care remains the most pressing health care need of our older citizens. Studies show that annual out-of-pocket health costs for the elderly above $2,000 are almost entirely the result of lengthy nursing home stays—nursing home stays that are not covered by the bill we just passed. In fact, nursing home care is responsible for over 80 percent of these catastrophic costs. Hospital care, on the other hand, that is covered in this bill accounts for only 10 percent of the elderly's catastrophic costs when they are confronted with catastrophic illness.

I mention these facts to remind the Senate that though we have started moving in the right direction, we still have a long way to go. We have yet to grapple with the more serious problem of chronic, long-term care.

Statistics alone do not begin to tell the story of the ravages of long-term care. I have held a series of hearings both here and in the State of Tennessee focusing on this very issue, and the need for long-term care. Witness after witness filled in the human aspect of these grim statistics.

For example, Mrs. Bettie Durham from Memphis told me that her 87-year-old father, James Platt, has been confined to a nursing home for the last 4½ years. His income is $1,115 a month. However, his nursing home bill alone is $1,650 a month.

Neither Medicare nor Mr. Platt's private insurance cover any of these tremendous nursing home costs. And his income is $50 a month too much for him to qualify for Medicaid. His children, working people, must pay over $500 a month out of their own earnings to keep their father in the nursing home.

Mrs. Dean Carr from Piney Flats, TN, told a similar story. Her 92-year-old father—Ollie Shell—has cancer. Mr. Shell has been in a nursing home since March. His life savings of $10,000 were rapidly consumed by medical and nursing home bills—which run about $2,000 a month.

Mr. Shell receives $450 a month in Social Security retirement benefits. That covers only a small portion of his medical expenses. Medicare and his supplemental insurance policy cover none of the nursing home costs. Mr. Shell's four children, who themselves have limited resources, must pay for most of his care.

In relating her father's plight at the hearing Mrs. Carr said, "I just pray that no one in this room ever has to go through what we have gone through * * * because it tears your heart out."

Tragically, Mr. President, this situation promises to get worse before it gets better. In fact, a recent report by the Department of Health and Human Services indicates that the financial nightmare of long-term care is reaching epidemic proportions among the elderly. The report estimates that as many as 500,000 elderly persons a year completely exhaust their personal resources—all that they have been able to accumulate during their lifetime of earnings—paying for nursing home care. Indeed, according to this report, half of the 75-year-olds and older who enter private nursing homes are bankrupt within 13 weeks.

And what does the future promise for our older citizens? Over the past two decades, the number of Americans age 65 and older has grown twice as fast as the rest of our population. The growth of the elderly population will continue well into the next century.

By the year 2030, more than 1 in 5 Americans will be 65 or older, increasing from 25.5 million in 1980 to 64.6 million in 2030. Even more startling, there will be a nearly eightfold increase in the 85-plus population by the year 2050—from 2.2 million people in 1980 to 16 million by the year 2050.

Now, I know how many of my colleagues will respond to my argument. They will agree about the need to address the question of long-term care. But, they will argue costs simply prohibit such steps at this time, that it is just too costly a step to take at this time. And to those colleagues I would say yes, there is no doubt that cost is a legitimate concern. However, I question whether the issue of cost has become a convenient excuse for inaction.

Moreover I would point out that the Government is already paying a significant long-term care cost. Presently, the Federal Government pays about half of the elderly's nursing home costs, a key long-term care cost. So we are already paying a sizable sum for long-term care for the elderly. But this cost is not borne by Medicare—the health program for the elderly. This cost is borne by Medicaid funding. My colleagues will recall that Medicaid is the Government health program for the poor. It only helps our older citizens after they have lost their financial independence. No, much of the Government money paying for nursing home care for the elderly is Medicaid funding.

Yet, my colleagues will recall that Medicaid is the Government health care program for the poor. It only helps the elderly after they have lost their financial independence. Thus, the Government is assisting seniors who need long-term care—but not before they impoverish themselves in the process and exhaust their life's savings; and then, and only then, can they access the Medicaid system and get some assistance in paying their long-term health care policy.

So the question of cost, while important, should not deter us from tackling a problem that has pushed many of our senior citizens to the point of despair. We are already paying for long-term care. We are simply paying in an inequitable and inefficient manner. Rather than become mired on this point, Mr. President, I believe we would do well to focus on how best to restructure Medicare to make it a true, geriatric program—a program that meets the special needs of the elderly as was originally intended.

Medicare is presently modeled after private health insurance for employees. As a result, it protects older citizens, largely against the costs of hospitalization for acute illnesses—that is, illnesses that can be cured so that the patient returns to 100 percent capacity. That is a sound strategy for young and middle-aged workers, but it is seriously flawed when applied to an elderly population.

Our current Medicare Program does not reflect the basic health differences between the young and the aged. The elderly—unlike younger persons—are often plagued by a host of chronic conditions. These ailments require the attention of physicians who are familiar with the symptoms that are displayed among the elderly. The proper evaluation and treatment of these conditions should allow the patient to return to as much of a desired lifestyle as possible, since return to full capacity is not always possible. These conditions also require preventive care to avoid further disability. They require long-term care once patients can no longer be managed at home.

As presently structured, Medicare fails to address these points. Medicare helps seniors survive acute illnesses, only to let them fall into poverty when chronic illnesses strike. The bill we passed will help to alleviate that problem, but we must not be content with what I view as a partial solution.

To do the job right, we should be discussing full coverage for long-term care services. Services such as home health care, nursing home care, adult day care, and respite care ought to be on the table during any debate on catastrophic health care.

"We should explore redirecting Medicare coverage toward keeping the elderly healthy through preventive care benefits such as health screening and dental, eye, and hearing care. By focusing on preventive medicine, expensive hospital and long-term care can be avoided.

Mr. President, I am a realist. It is clear that a bill of this scope will not be addressed this year, but I submit to my colleagues that is the wave of the future. If we are going to fully address the question of catastrophic health care, we will have to return to these issues at a later date.

Mr. President, I do not wish to denigrate the fine effort put into the catastrophic health care bill that passed this body. Although we are not solving the problem of long-term care with this bill, we have passed a bill that will benefit millions of senior citizens. It is definitely a step in the right direction.

As a Chinese philosopher said hundreds of years ago, "A journey of a thousand miles starts with the first step." This legislation that we passed does move us down the path of providing quality health care for our Nation's elderly, but I submit to my colleagues that we still have a way to go.

DEPARTMENT OF TRANSPORTATION AND RELATED AGENCIES APPROPRIATIONS, FISCAL YEAR 1988

The PRESIDING OFFICER. Under the order, the hour of 9:30 having arrived, the Senate will now resume consideration of H.R. 2890, which the clerk will report.

The legislative clerk read as follows:

A bill (H.R. 2890) making appropriations for the Department of Transportation and related agencies for the fiscal year ending September 30, 1988, and for other purposes.

The Senate resumed consideration of the bill.

ORDER OF PROCEDURE

Mr. BYRD. Mr. President, I ask unanimous consent to proceed out of order for 5 minutes.

Mr. STEVENS. May I make the same request?

Mr. BYRD. For not to exceed 10 minutes, to be equally divided between Mr. STEVENS and myself.

The PRESIDING OFFICER. Without objection, it is so ordered.

RESOLUTION TO LIMIT DEBATE ON THE MOTION TO PROCEED

Mr. BYRD. Mr. President, today I am introducing, along with the Senator from Alaska [Mr. STEVENS] and the Senator from Arkansas [Mr. PRYOR], a resolution which provides a 2-hour time limitation for debate on the motion to proceed to legislation.

This debate limitation would apply only to motions to proceed made by the majority or minority leader at a time other than the morning hour, which consists of the first 2 hours of session following an adjournment. In addition, there would be no time limitation on a motion to proceed to a change in Senate rules.

Controversy has surrounded nondebatable motions to proceed on several occasions during this first session of the 100th Congress—specifically, on the energy appliance standards bill and the Department of Defense authorization. These measures eventually came up for consideration by the Senate, but valuable time was wasted in the effort to have the Senate consider the bills.

A majority leader does not have the luxury of time in attempting to address the problems facing this Nation, and wasted time is the result of prolonged and unlimited debate on motions to proceed.

The suggestion that there should be a time limitation on motions to proceed is not a new one. Although this resolution does reserve the right to make a motion to proceed under a time limitation to the majority leader and the minority leader, it does not eliminate the Senate tradition of unlimited debate on legislation. This resolution simply removes one layer of filibuster. It is still possible to have unlimited debate on a measure itself and on amendments thereto, on motions that the Senate insist on its amendments, on motions that the Senate request a conference with the House on the disagreeing votes, on motions to appoint conferees, and at various other stages if the Senate so chooses.

Under this proposal, the majority leader would at least have an opportunity to bring a bill up for consideration, provided a majority of the Senate votes to proceed. Adoption of a time limitation on motions to proceed would enhance the ability of a majority leader to set the Senate agenda—a responsibility and prerogative generally recognized by both sides of the aisle as belonging to a majority leader.

I am hopeful that the Rules Committee will give this proposal careful consideration and report it back to the full Senate for its approval.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. HELMS. Mr. President, will the Senator yield for a parliamentary inquiry?

Mr. STEVENS. Yes.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. I thank the Senator from Alaska.

Maybe I should direct this to the majority leader. Are we moving back the time of the vote with these statements?

Mr BYRD. Slightly we are; yes, indeed we are, and I apologize for that.

Mr. HELMS. It is of no concern to me. I just want to know what the situation is.

Mr. BYRD. As soon as the distinguished Senator completes his statement regarding the introduction of the resolution we will be done.

Mr. HELMS. Very well.

I thank the Chair and the distinguished majority leader, and I thank Mr. STEVENS.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. Mr. President, I am grateful to the Senator from North Carolina. We had no intention to delay the vote but it is obvious we have slightly delayed the vote.

I join my good friend and distinguished colleague, our majority leader, in submitting a Senate resolution to establish a reasonable limit on the amount of discussion which could occur upon motions to proceed to the consideration of legislation before the Senate.

This is not the first time that I have submitted such a resolution. I have served in the Senate for a considerable period of time. I am completing my 19th year this year, and I believe that, based upon the time I have served in the leadership, I have witnessed firsthand the experience that leaders have, the sense of frustration that develops when it is not possible to move the Senate to the consideration of the substance of a measure.

It is important to remember that extended debate on the motion to proceed in and of itself does not address the substantive issue.

There have been now, in the period since 1979, 10 motions to proceed offered in the 96th Congress, 12 offered in the 97th Congress, 22 offered in the 98th Congress, 17 offered in the 99th Congress, and 6 offered so far in this Congress.

I point out the fact that during that period of time one party controlled the 96th Congress, the Democratic Party, my party controlled the 97th, 98th, and 99th and now the Democratic Party controls the 100th.

It is obvious that the leadership of both parties have faced contested motions to take the Senate to substantive legislative matters.

The only thing this creates is the opportunity for a preliminary filibuster. Such debate does not address the merits of legislation. It does not deal in any way with the substance of the matter that the majority leader seeks to make the pending business, and it only delays the Senate.

As far as I can tell there have only been three instances in which debate on such motions ultimately succeeded in ending consideration of a matter.

On those three occasions the debate on the substance itself would have succeeded, but the Senate delayed itself in reaching that result.

We argue about the quality of life in the Senate and yet we use our time on procedural delays which do not address the merits of the proposal before the Senate. In my view that is contrary to the functioning of democracy and circumvents the purpose of the Senate which is to address the substance of proposals before us.

We have had a series of calls for reform since 1959, and several distinguished groups of Senators have brought proposals to limit debate on motions to proceed before the Senate. In April 1983, Senators Ribicoff and Pearson proposed a 2-hour time limit on such debate. My dear friend, Senator Jim Pearson, of Kansas took the lead in espousing this reform. In doing so, he argued forcefully for the proposition that the will of the Senate was being thwarted by what he called the double filibuster and I call the preliminary filibuster. In late 1984, my colleague and good friend from Rhode Island JOHN CHAFEE named a Republican ad hoc Committee on Proposed Amendments to Rules Relating to Floor Action in the U.S. Senate. Among the recommendations of that ad hoc committee was a suggestion which is identical to the resolution being offered by Senator BYRD and myself today. It is interesting to note that the January 1985 ad hoc committee recommendation on limiting debate on motions to proceed was concurred in by Senators GORTON, EVANS, MATHIAS, and QUAYLE.

The Chafee committee's conclusion that debate on motions to proceed should be limited to 2 hours, was concurred in later in 1985, when the committee chaired by Senator DAN QUAYLE of Indiana reported its recommendations to the Senate, on June 6, 1985.

The Quayle committee before whom I appeared and made this suggestion filed its recommendations on debate on motions to proceed. They supported the concept that is before the Senate now in this resolution offered by Senator BYRD and myself. Members of the Quayle committee voting to support this recommendation included Senators QUAYLE, Mathias, GARN, WALLOP, RUDMAN, and KASTEN—by proxy.

As I indicated previously, the resolution which we offer today resembles in many ways resolutions which have been introduced by Senators on both sides of the aisle dating back to the late 1950's. The resolution being offered today has one, and only one, purpose—to allow a debate, within reasonable limits, on a motion to proceed and then depending upon the vote on that motion, to move, in a timely fashion, to consideration of the legislation.

Mr. President, this resolution does not preclude or eliminate the ability of any Senator to debate a motion to proceed. It only places a very reasonable limit upon the time which such debate can occupy.

This resolution does not limit, in any way, the ability of any Senator to debate, fully and at whatever length the Senator feels is appropriate, the legislation itself. I repeat, Mr. President, this resolution will not preclude extended debate on any substantive legislative matter.

This resolution represents a balanced and reasonable approach to a persistent and troubling issue with respect to the operation of the Senate.

I want to emphasize that this resolution does not in any way limit the ability of any Senator to debate fully and at whatever length the Senator wishes, whenever he thinks it is appropriate, the legislation itself. The majority leader has listed the number of times a Senator can debate any motion once we are on the substance of a bill. Such debate on a motion would, in effect, bring about another filibuster.

I do believe that this resolution represents a balanced and reasonable approach to a persistent and troubling issue with respect to the operation of the Senate.

We should not waste our time debating and trying to decide whether we should ultimately decide a question.

I thank my friend, the majority leader, for permitting me to join him in this matter.

The PRESIDING OFFICER. The Senator from Alaska has yielded the floor.

The majority leader.

Mr. BYRD. Mr. President, if the distinguished Senator from South Carolina would just allow me 30 seconds.

Mr. President, I ask unanimous consent that the Senate resolution which has been discussed here be placed directly on the calendar.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, I also submit the same resolution for appropriate referral.

DEPARTMENT OF TRANSPORTATION AND RELATED AGENCIES APPROPRIATIONS, FISCAL YEAR 1988

The Senate resumed consideration of the bill (H.R. 2890).

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. Mr. President, I rise today as chairman of the Committee on Commerce, Science, and Transportation. Under rule XXV of the Standing Rules of the Senate, the Commerce Committee has jurisdiction over legislation dealing with the regulation of civil aviation, and the proposed committee amendment clearly seeks to regulate in this area, and the Chair has so ruled. The Senator from New Jersey has appealed the ruling of the Chair and is asking the full Senate to validate his infringement on the jurisdiction of the Commerce Committee.

Mr. President, the committee system was set up for many reasons, one of which was to allow the committee with expertise on an issue to provide full consideration of the issue before it reaches the floor of the Senate. The Commerce Committee has already received one bill that deals with smoking on public conveyances, S. 51, offered by the Senator from Utah [Mr. HATCH], and I have indicated to Senator HATCH that hearings will be held on the bill. The Commerce Committee is prepared to provide the forum to examine all aspects of any legislation that comes within its jurisdiction.

I strongly urge the Senate to maintain the structure provided by the rules and the committee system. As we enter the final stage of the budget and appropriation process, it is imperative that the Senate indicate that it has the discipline to uphold its own rules and support the jurisdiction of its committees.

Mr. President, with respect to the pending matter, the appeal of the distinguished Senator from New Jersey of a point of order by my colleague from North Carolina [Mr. HELMS] as the chairman of the Committee on Commerce, Space, Science, and Transportation, I should advise the Senate that we have an aviation consumer bill that has been reported out and is on the floor of the Senate and ready for consideration. We have not ignored the interests of the flying public; on the contrary, we are ready to move forward.

Now what you see in this particular amendment by the Senator from New Jersey, in the Senate transportation appropriation bill, is an end run around the committee system, just another example of a breakdown of discipline in the Congress.

If there is one regret this Senator has in his experience in this body, it is having to witness a total breakdown of discipline. We are passing treaties over in the House. In the Senate, we are passing treaties by majority vote rather than the required two-thirds.

Any committee can pick up any issue under any subterfuge, taking over the jurisdiction and, of course, no one knows exactly where we are on any score.

I want to support the point of order by our colleague, the Senator from North Carolina, on rule XV. Under rule XVI there is another point of order lies because this is clearly legislating on an appropriations bill.

So I hope, Mr. President, that we will simmer down and look at the proper way to approach these problems. The Commerce Committee has not dragged its feet. We have the Hatch bill, S. 51, relative to smoking on all public transportation, not just the airlines, but the buses, trains, and otherwise.

We agreed that we will have a hearing this fall on it. The Transportation Department is making a study. So the issue here is not whether this matter is getting enough attention, it is whether the Senate intends to show some discipline, follow its own rules and shut down this end run proposed by our friend from New Jersey. I hope that the Senate will support the point of order.

The PRESIDING OFFICER. The Senator from South Carolina has yielded the floor. Who yields time?

Mr. LAUTENBERG. Mr. President, we have the time divided, as I understand the consent agreement of last night, between the two sides. Would the Parliamentarian just define for us now how that time splits and how these comments are being allocated?

Mr. HELMS. And how much time remains?

The PRESIDING OFFICER. Debate time has been limited to 16 minutes, equally divided, with time to be controlled by the Senator from New Jersey and the Senator from North Carolina.

Mr. LAUTENBERG. Sixteen minutes equally divided.

The PRESIDING OFFICER. Correct.

Mr. LAUTENBERG. And the comments of the Senator from South Carolina, has that time been charged to the 16 minutes?

The PRESIDING OFFICER. The time is presumed to be charged to the Senator from North Carolina.

Mr. LAUTENBERG. I thank the Chair.

Mr. HELMS. Parliamentary inquiry. How much time do I have remaining?

The PRESIDING OFFICER. The Senator from North Carolina has 5 minutes and 24 seconds under his control.

Mr. HELMS. Mr. President, inasmuch as the distinguished Senator from South Carolina [Mr. HOLLINGS], the chairman of the Commerce Committee, is especially interested in the implications of this matter, I am going to yield my time to him.

Mr. HOLLINGS. That is all right. I am finished.

Mr. FORD. Mr. President, could I have some time?

Mr. HELMS. The Senator can have as much time as I have remaining.

The PRESIDING OFFICER. The Senator yields to the Senator from Kentucky that time which he requires up to 5 minutes and 17 seconds remaining.

The Senator from Kentucky.

Mr. FORD. Mr. President, I will not take but just a minute. I rise to support the Senator from North Carolina and my chairman of the Commerce Committee, of which I am a member, and I am also chairman of the Aviation Subcommittee. I think the motion that was made by the distinguished Senator from North Carolina was correct. I think the statement by our distinguished chairman was correct. He is not dragging his feet. We are not dragging our feet. We are trying our best to reach an accommodation that would be meaningful.

I think the distinguished Senator from North Carolina said last night that a proposal by the Department, had it been in the bill, there would have been no objection.

If you look at what has transpired here, we would probably eliminate, for all practical purposes, except from on the coast-to-coast flights, smoking on airlines because of the hub-and-spoke situation. What we find is a need to have a meaningful study and that we do not have under this proposal.

So, Mr. President, I am very pleased with the apparent decision of the Chair yesterday. I am pleased with the support that my chairman of the Commerce Committee is giving to the proponents of this.

Mr. President, I would like to explain why I am supporting the efforts of the Senator from North Carolina to remove portions of H.R. 2890 that pertain to banning smoking on airlines on flights of 2 hours or less for a 3-year period. The Commerce Committee, which has jurisdiction of all matters pertaining to transportation rightfully should be reporting legislation on this matter.

Many Senators may be surprised to learn that I want to resolve this issue. I have talked with the chairman of the Transportation Subcommittee, the Senator from New Jersey, on many occasions on this issue. I have agreed that a ban should be imposed, but I suggested that it be a 1-hour ban. Due to the current hub-and-spoke system utilized by most of the airlines, I believe a 1-hour ban would be a more realistic test. The 2-hour ban was selected by the proponents of a ban because it is the closest one can get to a total ban without declaring a total ban. I am sure politically 2 hours sounds better.

Mr. President, what will actually occur with a 2-hour ban is that approximately 85 percent of the flights in the United States will ban smoking. Only on the coast-to-coast, nonstop flights will smoking be allowed. I have been interested in compromising, but have been unsuccessful; I do believe there is a more reasonable way to accomplish the ban.

Mr. President, the procedure used to ban smoking on aircraft is not the correct procedure under the Senate rules. The Senate Commerce Committee should have a hearing and review the ramifications of this action. Many airlines, particularly the smaller ones, have contacted me to explain their opposition. There is a competitive issue involved in that about 30 percent of airline passengers smoke. Those 30 percent are going to seek nonstop flights rather than the short segments provided by the smaller airline companies. All of this should be reviewed in a hearing.

For the past 14 years, the airlines have been governed by Federal regulations which provide for the segregation of nonsmoking and smoking passengers and for the guarantee of a seat in the nonsmoking section to all passengers who so request. The airlines are satisfied with the current situation as are most passengers. The majority of the complaints received by the airlines come from smokers who are denied a seat in the nonsmoking section.

Last Tuesday, the airlines met with the Department of Transportation to discuss a complete review of environmental tobacco smoke on aircraft to be conducted by an independent contractor which will be chosen by the DOT. In an effort to resolve this issue, I had suggested to the chairman of the Transportation Subcommittee to have the National Institutes of Health conduct a 2-year study. I am certainly satisfied with the procedures of the DOT in using funds to further review the proposals of the National Academy of Sciences report of 1986. The National Academy of Sciences stated that little is known about the environment in the passenger cabins of commercial aircraft under routine flight conditions and what is known is limited in scope. The DOT is correct in responding to the issues raised in that report since they have recognized the absence of research on aircraft air quality. All passengers, not just smokers, will benefit from that research.

Mr. President, I had planned on offering an amendment to this bill to require a 1-hour ban for a 2-year period with a study to be conducted by the National Institutes of Health. I will not offer the amendment and instead will support the efforts of the Senator from North Carolina. I firmly believe that hearings are essential; this is not the way for the Senate to approve a major legislative, not appropriations, issue. If the Senator from North Carolina is successful, I will do all that I can to see that the Commerce Committee moves expeditiously on this matter.

The PRESIDING OFFICER. Who yields time?

Mr. SANFORD. Mr. President, the Senator from Kentucky has the time.

Mr. FORD. I yield it back.

Mr. HELMS. Mr. President, I yield all except 30 seconds to the Senator from North Carolina.

The PRESIDING OFFICER. The Senator from North Carolina [Mr. HELMS] yields all but 30 seconds of his remaining time to the Senator from North Carolina [Mr. SANFORD].

Mr. SANFORD. Mr. President, I respectfully urge my colleagues in this Chamber to sustain the decision of the Chair to rule out of order the proposed smoking ban amendment to this appropriations bill. I think the Parliamentarian was correct and the Chair was correct. Quite aside from the issues involved, I think it is incumbent upon us to adhere to the rules.

I think we have talked a great deal about new rules to keep extraneous discussions off the floor in order to get us home before Christmas. We simply cannot get the business done if we do not sustain our rules.

Clearly, each of us in this Chamber has an interest in protecting and preserving the health, safety, and comfort of the traveling public. It is unquestionably within the meaning of rule 15 a "significant matter." I do not believe, however, that this bill provides the proper context in which to debate these issues, nor do I believe this is an issue properly within the jurisdiction of the Appropriations Committee.

There are, as my distinguished colleague from North Carolina has already pointed out, a good many other complaints besides smoking about which airline passengers feel strongly. Surveys have demonstrated time and again that smoking on planes is, among the many others, one of the issues about which they feel least strong. Instead the flying public has asked that Congress do more to improve passenger safety; that we improve air traffic control; that we demand better on-time records; that we see to it that their baggage arrives when they do; and that we assure their reservations are honored.

It seems to me that if we are concerned about improving the quality of air travel in this country we ought not to limit our efforts to make air travel safer just to restricting or otherwise banning inflight smoking, particularly without first determining if there might be some other, less intrusive way to achieve our goals.

We should first explore the possibilities the market itself may provide to offer the flying public both smoking and nonsmoking flights. If the demand for nonsmoking flights is as great as some believe it might be, then surely the airlines will begin offering nonsmoking flights to respond to this demand. Indeed, the airlines already make it their policy to accord preferred treatment to nonsmokers whenever conditions warrant their doing so.

But why, Mr. President, should we squander our efforts to make meaningful improvements in the quality of air travel on no more than the imposition of a 2-hour inflight smoking ban? How can we fairly say we are dealing responsibly with the problems in the airline industry when we elect to address only smoking to the exclusion of other problems that weigh far more heavily on the minds of the flying public?

No, Mr. President, as I have said earlier, this is not a bill to which a matter as significant as a smoking ban should be attached. If there are among my colleagues in this Chamber enough who believe that smoking, along with the many other—and, in my view, far more serious—problems that plague the airline industry, ought to be addressed by this body, then such legislation, as far as I'm concerned, should be offered and debated as a freestanding measure. It has no place, however, being made part of this legislation.

Once again, Mr. President, I ask my colleagues to uphold the ruling of the chair, and I yield the floor.

I yield back to the Senator from North Carolina.

The PRESIDING OFFICER. The Senator from North Carolina has 2 minutes 24 seconds under his control. Who yields time?

Mr. HELMS. Mr. President, I yield myself such time as I may require.

The issue here at the moment is not the committee amendment in the appropriation bill authored by the distinguished Senator from New Jersey. The issue is whether we are going to destroy the committee system. In the situation that developed last night, I raised a point of order that the provision, the amendment by the Senator from New Jersey, was a violation, and a clear one, of rule XV, paragraph 5. Let me read it slowly and carefully. And Senators ought to be mindful of the chaos that will result if this rule is destroyed by agreeing to the Senator from New Jersey's appeal to the ruling of the Chair.

Here is what the rule says:

> It shall not be in order to consider any proposed committee amendment (other than a technical, clerical, or conforming amendment) which contains any significant matter not within the jurisdiction of the committee proposing such amendment.

Now, obviously, if this rule is stricken by voting in favor of the appeal to the ruling of the Chair by the Senator from New Jersey, then any committee will have free license to invade the province of any other committee. So that is the issue, whether we are going to destroy the committee system in the U.S. Senate.

I reserve the balance of my time.

The PRESIDING OFFICER. The Senator reserves the remainder of his time, which is 6 seconds.

The Senator from New Jersey.

Mr. LAUTENBERG. Thank you, Mr. President. What we have heard in these last minutes is a challenge to the process. I would like to take a couple of minutes to discuss it because I do not think we are discussing process. We are discussing an amendment to a bill that has carried with it from the House a ban on smoking for 2 hours.

Mr. President, when the Senate suspended action on the transportation appropriations bill last night, pending was my appeal of the ruling of the Chair on a point of order on rule XV. I made that appeal in order to preserve my rights and keep my options open.

On reflection, I have concluded that I ought to let the ruling of the Chair stand and offer another amendment, in lieu of the language that the Chair has ruled out of order.

I am, therefore, prepared to agree to withdraw my appeal of the ruling of the Chair. Whether the Senate ends up voting on a procedural matter or the substance of the airplane smoking ban, we have got to be clear about what I earlier said; what it is we are discussing. We are not talking about committee rights or germaneness or anything else like that. We are talking about health. We are talking about the health of the flying public. We are talking about the health of flight attendants who work on those airplanes. And when the Senate votes, it is not going to be voting on whether or not to uphold the position of the National Academy of Sciences. The tobacco industry will always say more research is needed. The tobacco industry still disputes that cigarettes are harmful. But in reference to controlling passive smoke, the Surgeon General has made his position very clear. He said:

> Measures to protect the public health are required now.

I have a lot of respect for Dr. Koop and I think my colleagues share in this respect. We should vote this morning to protect the public health, to allow a 3-year ban on smoking on scheduled airline flights of 2 hours or less, to go into effect. We have an opportunity today to vote in this body, to make a difference in people's lives. I can tell you that today's vote can make that difference.

Since the day I announced I was proposing this smoking ban I received letters and phone calls from people all over this country. They have called to thank me.

Flight attendants called to say they find it hard to do their work because of smoke in the air. Parents call me to say they cannot travel on airplanes because their child is allergic to smoke. These are not highly paid lobbyists speaking for the powerful tobacco companies sending out thousands of telegrams. These are ordinary citizens pleased that somebody is there looking out for their health.

Mr. President, yesterday the distinguished Senator from North Carolina talked about the small vote by which the amendment carried. Sixty percent of the Senators in the Appropriations Committee voted to ban smoking—60 percent.

If this were an election, it would be a landslide. It would not be simply a matter of changing three votes.

Any of us would like to win an election with a 60-percent vote and feel pretty good about it.

Mr. President, I ask unanimous consent that the appeal of the ruling of the Chair be withdrawn.

The PRESIDING OFFICER. Is there objection?

Mr. BYRD. Reserving the right to object, and I will not object, I wish it were possible to vitiate this whole episode beginning with the point of order, and I will state why.

Rule XVI was devised to protect appropriations bills from having legislation attached thereto, but also to permit the Senate to respond to House legislative language.

Rule XV was devised to protect authorizing committees from having their jurisdiction intruded upon by other authorizing committees.

Rule XVI and the precedents interpreting it implicitly recognize the right of the Appropriations Committee to report legislative proposals which could otherwise be interpreted to violate rule XV, provided such proposal is voted by the Senate to be germane to language inserted by the House.

Rule XVI allows for a point of order against a legislative amendment and then for the raising of a question of germaneness. Thus, the right of the Senate to respond to House initiated legislation is protected on appropriations bills. By virtue of rule XV having been invoked here, and the Chair having ruled—properly, as it did—if that becomes a precedent then the Senate may at some future time find itself defenseless against a House bill which comes in here which has opened the door and the Senate would not be able to offer an amendment to legislation from the House which was already included in the bill. The issue is not whether one committee has invaded the jurisdiction of another. The issue is whether the process under rule XVI which allows the Senate to decide if an amendment is germane to a legislative provision of the House shall remain valid.

We have precedents here to the extent that if the House has already opened the door on a nongermane or legislative matter, the Senate has a right to amend that language because the House has already opened the door with legislation on an appropriation bill. But now we are about to say that this point of order, in the future, can be raised. We ought not do that. Rule XVI protects the rights of Senators as well as the Senate's prerogatives relative to the House. We are going to find at a later date this precedent confronting us; that even though the House has underlying language, as it has here, that this Senate is defenseless and cannot offer an amendment to it.

I just wish we could vitiate the whole business. We are about to vitiate the appeal, I think, anyhow, which will leave the Chair's ruling stand. The Chair ruled, I think, correctly. I wish the point of order had been made under rule XVI. But if we can vitiate the whole thing, then the Senator is going to offer an amendment anyhow. If the appeal is withdrawn, if consent is given to that request, he is going to offer an amendment anyhow and his rights would be reserved in either case to offer the amendment.

I wonder if we could get unanimous consent to vitiate ab initio, the point of order and just go from there?

Mr. HELMS. Would the distinguished majority leader yield?

Mr. BYRD. Yes.

Mr. HELMS. If it can be included that the Senator from New Jersey will agree to strike his amendment in the bill and offer it as an amendment, a floor amendment, that would be perfectly satisfactory to me. But the proposal of the majority leader lacks a little bit of appeal because the amendment, which ought not to have been in the bill in the first place, remains in the bill.

Any Senator can offer a floor amendment, as the distinguished majority leader has indicated. I wonder if the distinguished majority leader would ask unanimous consent to extend the time, put in a quorum call and let me talk to some of my colleagues who are interested in doing this, for just about 5 minutes.

Mr. BYRD. Before I do that I think we would be happy and would be well advised to remove, ab initio, the point of order and the amendment from the bill and let the Senator then proceed from there with his amendment, which he can do in any event.

Mr. LAUTENBERG. I thank the majority leader. I would agree to that, provided that we are very clear that the amendment in the committee bill that could be withdrawn need not be exactly replicated when I introduce my amendment after that.

Mr. HELMS. Well, if the Senator would yield, if the majority leader will yield, I will have to see the amendment. I do not want to buy a pig in a poke.

Mr. LAUTENBERG. It is essentially the same amendment with slightly different language. But I am going to reserve the right to introduce that amendment.

I agree to pull down that portion of the bill that we have been discussing. Does that, then, permit us to vitiate that whole process, including the challenge under rule XV?

Mr. BYRD. Let me say on the record that I am for greater safety on airlines. I will probably agree with Senator FORD and Senator HOLLINGS and Senator HELMS on this question, unless we can reach some modification on the amendment.

Right now I am putting all of that aside and urging that we look at what we are about to do with respect to Senate rules and precedents. I would hope we could, as I say, vitiate the whole thing.

Mr. HELMS. Just for the record, I understand what probably is afoot. I know what I would do under the same circumstances, if I were the Senator from New Jersey. Of course, he is entitled to do it and he is entitled to offer whatever amendment he wishes.

Mr. LAUTENBERG. Of course.

Mr. HELMS. I am a little concerned about the probable efforts to tree it, but on the other hand I can still offer an amendment in contradiction of his. Whether I can get it passed or not I do not know but I have no objection to the suggestion of the majority leader and I will be glad to ask unanimous consent that my point of order be withdrawn.

Mr. BYRD. Mr. President, could I make the request, as I began, that the point of order and all subsequent actions and motions be vitiated and that the amendment be deleted.

The PRESIDING OFFICER. Is there objection? If not, it is so ordered.

Mr. LAUTENBERG addressed the Chair.

The PRESIDING OFFICER (Mr. SANFORD). The Senator from New Jersey.

Mr. HELMS. Mr. President, if the Senator will yield, did I use all my time?

The PRESIDING OFFICER. The Senator has 10 seconds remaining.

Mr. HELMS. Mr. President, Senator TRIBLE has been waiting for some time. Would the Senator agree for him to have 2 minutes?

Mr. LAUTENBERG. I was looking for the Senator from Oregon.

Mr. TRIBLE. May I ask for 10 seconds?

Mr. LAUTENBERG. Yes.

Mr. TRIBLE. Mr. President, I oppose the Lautenberg language because of important procedural and institutional reasons.

What we see here is yet another example of the decline of the legislative process in the Senate.

We have before us an amendment to an appropriations bill circumventing both the standing rules and committee jurisdiction.

We have these rules and the committee of jurisdiction precisely because the Senate is intended to be a deliberative body. That requires orderly procedure and division of legislative labor.

Yet, this amendment, like so many others, contributes as my colleague from Missouri Senator DANFORTH once characterized it as a "Cacophony of Confusion."

The reason for this Mr. President, is that we have resorted to deciding issue after issue as a committee of the whole. We ignore our procedures so that we are able to respond to the individual agenda of 100 Senators, as a result of the life of this body has become fractions, fragmented and partisan to the point of paralysis.

The Senate cannot conduct itself—it cannot do business—as a standing committee of the whole. It is quite simply impossible and certainly inconsistent with deliberation to put every issue of importance to 1 Senator before the other 99.

Yet, that is our direction. That is where we are tending. And, Mr. President, irrespective of what I think of the merits of this measure, I would oppose it for both procedural and institutional reasons.

At some point as Senators we must say enough. We must be willing to assert that our rules and committee jurisdiction are more than matters of mere convenience that we can dismiss because our own political agenda requires it.

Legislation to ban smoking on board commerical aircraft is also unwarranted and inappropriate for other reasons. Smoking aboard aircraft is already sharply restricted; every passenger is guaranteed a no smoking seat—even if a smoking section must be reduced or eliminated to satisfy that guarantee.

A 1987 Airline Pilots Association poll determined airline passengers, by a margin of 87 to 12 percent, believe that the "current practice of separating smoking and nonsmoking passengers is a reasonable policy that respects the rights of each." Moreover, reviews of recent DOT consumer complaint reports consistently show no more than a single smoking complaint for each 1 million passengers. Smoking complaints are declining both in absolute terms and relative to all other consumer concerns.

Finally, a smoking ban would pose serious compliance problems, and significant administrative and practical problems for airlines and passengers alike.

For these and other good reasons I believe the Lautenberg language should not be accepted.

Mr. LAUTENBERG. Mr. President, I am happy to yield for a RECORD statement under the unanimous-consent agreement, provided I do not lose the floor to the junior Senator from Kentucky.

The PRESIDING OFFICER. Without objection, it is so ordered.

SMOKING BAN ON AIRLINE FLIGHTS

Mr. McCONNELL. Mr. President, I rise today to express my opposition to this amendment to ban smoking on all domestic airline flights of 2 hours or less. This amendment characterizes one of the worst tendencies of our political system—our inexorable urge to regulate, regardless of whether or not there is information to back up legislation, regardless of whether or not there is any kind of public consensus.

I sincerely wonder why this amendment has been offered—public opinion does not warrant such a ban. A recent poll conducted by the Airline Pilots Association found that 87 percent of those polled agreed that "the current practice of separating smoking and nonsmoking passengers is a reasonable policy that respects the rights of each." Complaints about smoking and air travel rank in the bottom fourth of Department of Transportation complaint categories, accounting for less than 3 percent of all complaints. Clearly those who travel on airplanes do not perceive that smoking is a serious problem. In fact, a ban on smoking on any flights would likely increase complaints of those who feel they have the right to smoke, but are told they cannot.

Our present regulations governing smoking on airlines are adequate. Currently, every passenger with reservations is guaranteed a nosmoking seat, even if a smoking section must be reduced or eliminated to satisfy the guarantee.

One of the tenets being used to advance this amendment is that environmental smoke is a hazard. The simple fact is that there is no solid, incontrovertible evidence that this is the case. The Surgeon General's Report on Environmental Tobacco Smoke [ETS], and the National Academy of Sciences' which recommended a ban on inflight smoking, failed to include any scientific data to conclude that ETS is harmful to nonsmokers. No scientifically valid studies have ever been conducted on airplane cabin conditions.

However, my fear for this legislation is ultimately caused by the great impact this ban will have on an important industry in Kentucky—tobacco. Tobacco is a legal crop, upon which 150,000 Kentuckians base their livelihood. The industry nationwide employs 710,000 workers, pays nearly $19 billion in wages and accounts for nearly $31.5 billion on our GNP. While I make a personal decision not to smoke, I do not think it is acceptable to impose restraints on those who do.

I do not think that anyone can deny that this is a serious matter which merits careful and thorough study. Both the Department of Transportation and the Air Transport Association agree definitive determinations should be made on exposure to enivornmental tobacco smoke aboard aircraft before a decision is reached to ban smoking on commerical flights.

In the mad rush to legislate, the proponents of this amendment are overlooking the facts, or rather the lack of facts. There are over 150,000 individuals in Kentucky who derive their livelihood from the tobacco industry. Such smoking bans, we must realize, would directly effect this industry. The very least the Americans deserve is the knowledge that any action on this matter is well thought out, is supported by scientific evidence, is debated in the appropriate fora, and is taken only when we are convinced that this is the best possible way to address the problem, if there is a problem.

Mr. President, I encourage my colleagues to oppose the proposed ban on smoking on airlines.

AMENDMENT NO. 1098

Mr. LAUTENBERG. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from New Jersey [Mr. LAUTENBERG] proposes an amendment numbered 1098.

Mr. LAUTENBERG. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 57, after line 2, add the following:

"(c) After the date of expiration of the 4-month period following the date of the enactment of this subsection, and for a period of 36 months less a day thereafter, except that subsections (a) and (b) shall be null and void upon the date of enactment, it shall be unlawful to smoke in the passenger cabin or lavatory on any scheduled airline flight in intrastate, interstate, or overseas air transportation, if such flight is scheduled for 2 hours or less in duration, which prohibition shall be enforced by the Secretary of Transportation, who shall issue such regulations as may be necessary to carry out the provision of this subsection, which regulations shall be authorized to include and shall include a regulation providing that any passenger who tampers with, disables, or destroys any smoke alarm device located in any restroom aboard an aircraft engaged in air transportation or intrastate air transportation shall be subject to a civil penalty in accordance with section 901 of the Federal Aviation Act of 1958 except that such civil penalty may be imposed in an amount up to $2,000."

Mr. LAUTENBERG. Mr. President, this amendment restores the substance of the committee amendment pertaining to smoking on airlines. To be specific, it makes it unlawful to smoke on scheduled domestic flights of 2 hours or less. The amendment will accomplish all of the objectives of the amendment originally offered by the committee.

Let me briefly summarize the main provisions.

First, there will be a 3-year ban on smoking on scheduled domestic flights of 2 hours or less.

Second, persons violating the ban will be subject to fines up to $1,000.

Three, tampering with or disabling smoke detectors——

Mr. BYRD. Mr. President, will the distinguished Senator yield? I beg his pardon for interrupting.

Mr. LAUTENBERG. I yield to the majority leader.

Mr. BYRD. Mr. President, on last evening, I stated to Senators that there would be a rollcall vote beginning at 10 o'clock. Both the assistant Republican leader and I made it clear that there would be a rollcall vote, if not on the appeal, which now has been avoided, then on a motion to instruct the Sergeant at Arms.

Senators have come to the floor expecting that.

I think if we are going to say there will be a rollcall vote, then there should be one.

I wonder if the distinguished Senator will indicate how much longer he will be speaking.

Mr. LAUTENBERG. I will probably need an additional 15 minutes and then we will return to the bill after the vote.

Mr. BYRD. Will the Senator allow us, by unanimous consent, to proceed with the live quorum call, have the rollcall vote, and get unanimous consent that he be recognized after the quorum has been established, and his statement not show an interruption?

Mr. LAUTENBERG. Without losing my right to the floor, I will be glad to do that.

Mr. BYRD. Mr. President, I make that request.

The PRESIDING OFFICER. Is there objection?

Mr. LAUTENBERG. Mr. President, before we leave the pending business, I would like to ask for the yeas and nays to be ordered on this amendment.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. BYRD. Mr. President, has my request been entered? I suggest the absence of a quorum, and it will be a live quorum.

QUORUM CALL

Mr. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk called the roll and the following Senators entered the Chamber and answered to their names.

[Quorum No. 32]

Boschwitz
Byrd
Exon
Ford
Helms
Hollings
Johnston
Lautenberg
McConnell
Pryor
Roth
Rudman
Sanford
Stevens
Trible
Wallop

The PRESIDING OFFICER. A quorum is not present. The clerk will call names of absent Senators.

Mr. BYRD. Mr. President, I move that the Sergeant at Arms be instructed to request the attendance of absentees and I ask for the yeas and nays on the motion.

The PRESIDING OFFICER. Is there a sufficient second? There is sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the distinguised Senator from West Virginia. The yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Tennessee [Mr. GORE] and the Senator from Illinois [Mr. Simon] are necessarily absent.

Mr. SIMPSON. I announce that the Senator from New York [Mr. D'AMATO] and the Senator from Vermont [Mr. STAFFORD], are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 80, nays 16, as follows:

[Rollcall Vote No. 357 Leg.]

YEAS—80

Adams
Armstrong
Baucus
Bentsen
Biden
Bingaman
Boren
Boschwitz
Bradley
Breaux
Bumpers
Burdick
Byrd
Chiles
Cochran
Cohen
Conrad
Cranston
Danforth
Daschle
DeConcini
Dixon
Dodd
Dole
Domenici
Durenberger
Exon
Ford
Fowler
Glenn
Graham
Grassley
Harkin
Hatch
Hatfield
Heflin
Heinz
Helms
Hollings
Humphrey
Inouye
Johnston
Karnes
Kassebaum
Kennedy
Kerry
Lautenberg
Leahy
Levin
Lugar
Matsunaga
McClure
McConnell
Melcher
Metzenbaum
Mikulski
Mitchell
Moynihan
Murkowski
Nunn
Packwood
Pell
Pressler
Pryor
Reid
Riegle
Rockefeller
Roth
Rudman
Sanford
Sarbanes
Sasser
Shelby
Simpson
Stennis
Stevens
Thurmond
Trible
Warner
Wirth

NAYS—16

Bond
Chafee
Evans
Garn
Gramm
Hecht
Kasten
McCain
Nickles
Proxmire
Quayle
Specter
Symms
Wallop
Weicker
Wilson

NOT VOTING—4

D'Amato
Gore
Simon
Stafford

So the motion was agreed to.

The PRESIDING OFFICER. A quorum is present.

DEPARTMENT OF TRANSPORTATION AND RELATED AGENCIES APPROPRIATIONS, FISCAL YEAR 1988

AMENDMENT NO. 1099

Mr. LAUTENBERG. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New Jersey [Mr. LAUTENBERG] proposes an amendment numbered 1099.

Mr. LAUTENBERG. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

In amendment numbered 1098, strike all after the word "After" and insert the following:

"the date of expiration of the 4-month period following the date of the enactment of this subsection, and for a period of 36 months and one day thereafter, except that subsections (a) and (b) shall be null and void upon the date of enactment, it shall be unlawful to smoke in the passenger cabin or lavatory on any scheduled airline flight in intrastate, interstate, or overseas air transportation, if such flight is scheduled for 2 hours or less in duration, which prohibition shall be enforced by the Secretary of Transportation, who shall issue such regulations as may be necessary to carry out the provision of this subsection, which regulations shall be authorized to include and shall include a regulation providing that any passenger who tampers with, disables, or destroys any smoke alarm device located in any restroom aboard an aircraft engaged in air transportation or intrastate air transportation shall be subject to a civil penalty in accordance with section 901 of the Federal Aviation Act of 1958 except that such civil penalty may be imposed in an amount up to $2,000."

Mr. STEVENS. Mr. President, will my good friend yield without losing his right to the floor?

Mr. LAUTENBERG. I yield.

Mr. STEVENS. Mr. President, I ask unanimous consent that the Senator be permitted to yield to me without losing his right to the floor so that I may make a motion with consent of the majority and minority leaders.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STEVENS. Mr. President, the other night on the Consent Calender there was an item Calendar Order 318, H.R. 278 which was temporarily removed because of a temporary objection.

ALASKA NATIVE CLAIMS SETTLEMENT ACT AMENDMENTS

Mr. STEVENS. Mr. President, I now ask unanimous consent that the Senate proceed to the consideration of Calendar Order No. 381, H.R. 278, the amendments to the Alaska Native Claims Settlement Act.

Mr. BYRD. Mr. President, it has been cleared on this side.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 278) to amend the Alaska Native Claims Settlement Act to provide Alaska Natives with certain options for the continued ownership of lands and corporate shares received pursuant to the Act, and for other purposes.

There being no objection, the Senate proceeded to consider the bill which, had been reported from the Committee on Energy and Natural Resources, with an amendment to strike all after the enacting clause and insert in lieu thereof, the following:

That (a) this Act may be cited as the "Alaska Native Claims Settlement Act Amendments of 1987".

(b) Unless otherwise expressly provided, whenever in this Act an amendment is expressed in terms of an amendment to a section or subsection, the reference shall be considered to be made to a section or subsection of the Alaska Native Claims Settlement Act of 1971, as amended (43 U.S.C. 1601-1629a).

CONGRESSIONAL FINDINGS AND DECLARATION OF POLICY

SEC. 2. The Congress finds and declares that—

(1) the Alaska Native Claims Settlement Act was enacted in 1971 to achieve a fair and just settlement of all aboriginal land and hunting and fishing claims by Natives and Native groups of Alaska with maximum participation by Natives in decisions affecting their rights and property;

(2) the settlement enabled Natives to participate in the subsequent expansion of Alaska's economy, encouraged efforts to address serious health and welfare problems in Native villages, and sparked a resurgence of interest in the cultural heritage of the Native peoples of Alaska;

(3) despite these achievements and Congress's desire that the settlement be accomplished rapidly without litigation and in conformity with the real economic and social needs of Natives, the complexity of the land conveyance process and frequent and costly litigation have delayed implementation of the settlement and diminished its value;

(4) Natives have differing opinions as to whether the Native Corporation, as originally structured by the Alaska Native Claims Settlement Act, is well adapted to the reality of life in Native villages and to the continuation of traditional Native cultural values;

(5) to ensure the continued success of the settlement and to guarantee Natives continued participation in decisions affecting their rights and property, the Alaska Native Claims Settlement Act must be amended to enable the shareholders of each Native Corporation to structure the further implementation of the settlement in light of their particular circumstances and needs;

(6) among other things, the shareholders of each Native Corporation must be permitted to decide—

(A) when restrictions on alienation of stock issued as part of the settlement should be terminated, and

(B) whether Natives born after December 18, 1971, should participate in the settlement;

(7) by granting the shareholders of each Native Corporation options to structure the further implementation of the settlement, Congress is not expressing an opinion on the manner in which such shareholders choose to balance individual rights and communal rights;

(8) no provision of this Act (the Alaska Native Claims Settlement Act Amendments of 1987) shall—

(A) supersede the declaration of policy set forth in section 2 of the Alaska Native Claims Settlement Act of 1971,

(B) rescind the extinguishment of aboriginal land claims and hunting and fishing rights effected by section 4 of that Act, or

(C) confer on any Native organization any degree of sovereign governmental authority over lands (including management, or regulation of the taking, of fish and wildlife) or persons in Alaska; and

(9) the Alaska Native Claims Settlement Act, as amended, and this Act are Indian legislation enacted by Congress pursuant to its plenary authority under the Constitution of the United States to regulate Indian affairs.

NEW DEFINITIONS

SEC. 3. Section 3 (43 U.S.C. 1602) is amended—

(1) by inserting "group," after "individual," in subsection (h);

(2) by striking out "and" at the end of subsection (k);

(3) by striking out the period at the end of subsection (l) and inserting in lieu thereof a semicolon;

(4) by striking out "Native Group." in subsection (m) and inserting in lieu thereof "Group Corporation;"; and

(5) by adding at the end thereof the following new subsections:

"(n) 'Group Corporation' means an Alaska Native Group Corporation organized under the laws of the State of Alaska as a business for profit or nonprofit corporation to hold, invest, manage and/or distribute lands, property, funds, and other rights and assets for and on behalf of members of a Native group in accordance with the terms of this Act;

"(o) 'Urban Corporation' means an Alaska Native Urban Corporation organized under the laws of the State of Alaska as a business for profit or nonprofit corporation to hold, invest, manage and/or distribute lands, property, funds, and other rights and assets for and on behalf of members of an urban community of Natives in accordance with the terms of this Act;

"(p) 'Settlement Common Stock' means stock of a Native Corporation issued pursuant to section 7(g)(1) that carries with it the rights and restrictions listed in section 7(h)(1);

"(q) 'Replacement Common Stock' means stock of a Native Corporation issued in exchange for Settlement Common Stock pursuant to section 7(h)(3);

"(r) 'Descendant of a Native' means—

"(1) a lineal descendant of a Native or of an individual who would have been a Native if such individual were alive on December 18, 1971, or

"(2) an adoptee of a Native or of a descendant of a Native, whose adoption—

"(A) occurred prior to his or her majority, and

"(B) is recognized at law or in equity;

"(s) 'Alienability restrictions' means the restrictions imposed on Settlement Common Stock by section 7(h)(1)(B); and

"(t) 'State-Chartered Settlement Trust' means a trust established by a Native Corporation under the laws of the State of Alaska for the sole benefit of holders of its Settlement Common Stock.".

ISSUANCE OF STOCK

SEC. 4. Subsection (g) of section 7 (43 U.S.C. 1606(g)) is amended to read as follows:

"(g)(1) SETTLEMENT COMMON STOCK.—(A) The Regional Corporation shall be authorized to issue such number of shares of Settlement Common Stock (divided into such classes as may be specified in the articles of incorporation to reflect the provisions of this Act) as may be needed to issue one hundred shares of stock to each Native enrolled in the region pursuant to section 5.

"(B)(i) Notwithstanding any other provision of law, a Regional Corporation may amend its articles of incorporation to authorize the issuance of additional shares of Settlement Common Stock to—

"(I) Natives born after December 18, 1971,

"(II) Natives who were eligible for enrollment pursuant to section 5 but were not so enrolled, or

"(III) Natives who have attained the age of sixty-five, for no consideration or for such consideration as may be specified in such amendment or in a resolution approved by the board of directors pursuant to authority expressly vested in the board by the amendment. The amendment to the articles of incorporation may specify which class of Settlement Common Stock shall be issued to the various groups of Natives.

"(ii) Not more than one hundred shares of Settlement Common Stock shall be issued to any one individual pursuant to clause (i).

"(iii) In amending its articles of incorporation pursuant to clause (i), a Regional Corporation may provide that Settlement Common Stock issued to a Native pursuant to such amendment (or stock issued in exchange for such Settlement Common Stock pursuant to subsection (h)(3) or section 37(d)) shall be deemed cancelled upon the death of such Native. No compensation for this cancellation shall be paid to the estate of the deceased Native or to any person holding the stock.

"(iv) Settlement Common Stock issued pursuant to clause (i) shall not carry rights to share in distributions made to shareholders pursuant to subsections (j) and (m) unless, prior to the issuance of such stock, a majority of the class of existing holders of Settlement Common Stock carrying such rights separately approve the granting of such rights. The articles of incorporation of the Regional Corporation shall be deemed to be amended to authorize such class vote.

"(C)(i) Notwithstanding any other provision of law, a Regional Corporation may amend its articles of incorporation to authorize the issuance of additional shares of Settlement Common Stock as a dividend or other distribution (without regard to surplus of the corporation under the laws of the State) upon each outstanding share of Settlement Common Stock issued pursuant to subparagraphs (A) and (B).

"(ii) The amendment authorized by clause (i) may provide that shares of Settlement Common Stock issued as a dividend or other distribution shall constitute a separate class of stock with greater per share voting power than Settlement Common Stock issued pursuant to subparagraphs (A) and (B).

"(2) OTHER FORMS OF STOCK.—(A) Notwithstanding any other provision of law, a Regional Corporation may amend its articles

of incorporation to authorize the issuance of shares of stock other than Settlement Common Stock in accordance with the provisions of this paragraph. Such amendment may provide that—

"(i) preemptive rights of shareholders under the laws of the State shall not apply to the issuance of such shares, and

"(ii) issuance of such shares shall permanently preclude the corporation from—

"(I) conveying assets to a State-Chartered Settlement Trust, or

"(II) issuing shares of stock without adequate consideration as required under the laws of the State.

"(B) The amendment authorized by subparagraph (A) may provide that the stock to be issued shall be one or more of the following—

"(i) divided into classes and series within classes, with preferences, limitations, and relative rights, including, without limitation—

"(I) dividend rights,

"(II) voting rights, and

"(III) liquidation preferences;

"(ii) made subject to one or more of—

"(I) the restrictions on alienation described in clauses (i), (ii), and (iv) of subsection (h)(1)(B), and

"(II) the restriction described in paragraph (1)(B)(iii); and

"(iii) restricted in issuance to—

"(I) Natives who have attained the age of sixty-five;

"(II) other identifiable groups of Natives or identifiable groups of descendants of Natives defined in terms of general applicability and not in any way by reference to place of residence or family; or

"(III) State-Chartered Settlement Trusts; or

"(IV) entities established for the sole benefit of Natives or descendants of Natives, in which the classes of beneficiaries are defined in terms of general applicability and not in any way by reference to place of residence, family, or position as an officer, director, or employee of a Native Corporation.

"(C) The amendment authorized by subparagraph (A) shall provide that the additional shares of stock shall be issued—

"(i) as a dividend or other distribution (without regard to surplus of the corporation under the laws of the State) upon all outstanding shares of stock of any class or series, or

"(ii) for such consideration as may be permitted by law (except that this requirement may be waived with respect to issuance of stock to the individuals or entities described in subparagraph (B)(iii)).

"(D) During the period in which alienability restrictions are in effect, no stock, whose issuance is authorized pursuant to subparagraph (A), shall be—

"(i) issued to, or for the benefit of, a group of individuals composed only or principally of employees, officers, and directors of the corporation; or

"(ii) issued more than thirteen months after the date on which the vote of the shareholders on the amendment authorizing the issuance of such stock occurred if, as a result of the issuance, the outstanding shares of Settlement Common Stock will represent less than a majority of the total voting power of the corporation for the purpose of electing directors.

"(3) Disclosure Requirements.—(A) An amendment to the articles of incorporation of a Regional Corporation authorized by paragraph (2) shall specify—

"(i) the maximum number of shares of any class or series of stock that may be issued, and

"(ii) the maximum number of votes that may be held by such shares.

"(B) If an amendment to the articles of incorporation of a Regional Corporation authorized by paragraph (2) authorizes the issuance of classes or series of stock that, when issued singly or in combination, may cause the outstanding shares of Settlement Common Stock to represent less than a majority of the total voting power of the corporation for the purpose of electing directors, the shareholders of such corporation shall be expressly so advised in a proxy statement or other informational material distributed to such shareholders in advance of their vote on the amendment.

"(4) Savings.—(A)(i) No shares of stock issued pursuant to paragraphs (1)(C) and (2) shall carry rights to share in distributions made to shareholders pursuant to subsections (j) and (m). No shares of stock issued pursuant to paragraph (1)(B) shall carry such rights unless authorized pursuan to paragraph (1)(B)(iv).

"(ii) Notwithstanding the issuance of additional shares of stock pursuant to paragraphs (1)(B), (1)(C), or (2), a Regional Corporation shall apply the ratio last computed pursuant to subsection (m) prior to the date of the enactment of the Alaska Native Claims Settlement Act Amendments of 1987 for purposes of distributing funds pursuant to subsections (j) and (m).

"(B) The issuance of additional shares of stock pursuant to paragraphs (1)(B), (1)(C), or (2) shall not affect the division and distribution of revenues pursuant to subsection (i).

"(C) No provision of this Act shall limit the right of a Regional Corporation to take an action authorized by the laws of the State unless such action is inconsistent with the provisions of this Act.".

SETTLEMENT COMMON STOCK

Sec. 5. Subsection (h) of section 7 (43 U.S.C. 1606(h)) is amended to read as follows:

"(h)(1) Rights and Restrictions.—(A) Except as otherwise expressly provided in this Act, Settlement Common Stock of a Regional Corporation shall—

"(i) carry a right to vote in elections for the board of directors and on such other questions as properly may be presented to shareholders;

"(ii) permit the holder to receive dividends or other distributions from the corporation; and

"(iii) vest in the holder all rights of a shareholder in a business corporation organized under the laws of the State.

"(B) Except as otherwise provided in this subsection, Settlement Common Stock, inchoate rights thereto, and rights to dividends or distributions declared with respect thereto shall not be—

"(i) sold;

"(ii) pledged;

"(iii) subjected to a lien or judgment execution;

"(iv) assigned in present or future;

"(v) treated as an asset under—

"(I) title 11 of the United States Code or any successor statute,

"(II) any other insolvency or moratorium law, or

"(III) other laws generally affecting creditors' rights; or

"(vi) otherwise alienated.

"(C) Notwithstanding the restrictions set forth in subparagraph (B), Settlement Common Stock may be transferred to a Native or a descendent of a Native—

"(i) pursuant to a court decree of separation, divorce, or child support;

"(ii) by a holder who is a member of a professional organization, association, or board that limits his or her ability to practice his or her profession because he or she holds Settlement Common Stock; or

"(iii) as an inter vivos gift from a holder to his or her child, grandchild, great-grandchild, niece, or nephew.

"(D) A transfer made pursuant to subparagraph (C)(iii) shall not subject the holder or his or her child, grandchild, great-grandchild, niece, or nephew to any form of Federal, State, or local taxation.

"(2) Inheritance of Settlement Common Stock.—(A) Upon the death of a holder of Settlement Common Stock, ownership of such stock (unless cancelled in accordance with subsection (g)(1)(B)(iii)) shall be transferred in accordance with the lawful will of such holder or pursuant to applicable laws of intestate succession. If the holder fails to dispose of his or her stock by will and has no heirs under applicable laws of intestate succession, the stock shall escheat to the issuing Regional Corporation and be cancelled.

"(B) The issuing Regional Corporation shall have the right to purchase at fair value Settlement Common Stock transferred pursuant to applicable laws of intestate succession to a person not a Native or a descendant of a Native after the date of the enactment of the Alaska Native Claims Settlement Act Amendments of 1987 if—

"(i) the corporation—

"(I) amends its articles of incorporation to authorize such purchases, and

"(II) gives the person receiving such stock written notice of its intent to purchase within ninety days after the date that the corporation either determines the decedent's heirs in accordance with the laws of the State or receives notice that such heirs have been determined, whichever later occurs; and

"(ii) the person receiving such stock fails to transfer the stock pursuant to paragraph (1)(C)(iii) within sixty days after receiving such written notice.

"(C) Settlement Common Stock of a Regional Corporation—

"(i) transferred by will or pursuant to applicable laws of intestate succession after the date of the enactment of the Alaska Native Claims Settlement Act Amendments of 1987, or

"(ii) transferred by any means prior to the date of the enactment of the Alaska Native Claims Settlement Act Amendments of 1987, to a person not a Native or a descendant of a Native shall not carry voting rights. If at a later date such stock is lawfully transferred to a Native or a descendant of a Native, voting rights shall be automatically restored.

"(3) Replacement Common Stock.—(A) On the date on which alienability restrictions terminate in accordance with the provisions of section 37, all Settlement Common Stock previously issued by a Regional Corporation shall be deemed cancelled, and shares of Replacement Common Stock of the appropriate class shall be issued to each shareholder, share for share, subject only to subparagraph (B) and to such restrictions consistent with this Act as may be provided by the articles of incorporation of the corporation or in agreements between the corporation and individual shareholders.

"(B)(i) Replacement Common Stock issued in exchange for Settlement Common Stock issued subject to the restriction authorized by subsection (g)(1)(B)(iii) shall bear a legend indicating that the stock will

eventually be cancelled in accordance with the requirements of that subsection.

"(ii) Prior to the termination of alienability restrictions, the board of directors of the Native Corporation shall approve a resolution to provide that each share of Settlement Common Stock carrying the right to share in distributions made to shareholders pursuant to subsections (j) and (m) shall be exchanged either for—

"(I) a share of Replacement Common Stock that carries such right, or

"(II) a share of Replacement Common Stock that does not carry such right together with a separate, non-voting security that represents only such right.

"(iii) Replacement Common Stock issued in exchange for a class of Settlement Common Stock carrying greater per share voting power than Settlement Common Stock issued pursuant to subsections (g)(1)(A) and (g)(1)(B) shall carry such voting power and be subject to such other terms as may be provided in the amendment to the articles of incorporation authorizing the issuance of such class of Settlement Common Stock.

"(C) The articles of incorporation of the Regional Corporation shall be deemed amended to authorize the issuance of Replacement Common Stock and the security described in subparagraph (B)(ii)(II).

"(D) Prior to the date on which alienability restrictions terminate, a Regional Corporation may amend its articles of incorporation to impose upon Replacement Common Stock one or more of the following—

"(i) a restriction denying voting rights to any holder of Replacement Common Stock who is not a Native or a descendant of a Native;

"(ii) a restriction granting the Regional Corporation, or the Regional Corporation and members of the shareholder's immediate family who are Natives or descendants of Natives, the first right to purchase, on reasonable terms, the Replacement Common Stock of the shareholder prior to the sale or transfer of such stock (other than a transfer by will or intestate succession) to any other party, including a transfer in satisfaction of a lien, writ of attachment, judgment execution, pledge, or other encumbrance; and

"(iii) any other term, restriction, limitation, or provision authorized by the laws of the State.

"(E) Replacement Common Stock shall not be subjected to a lien or judgment execution based upon any asserted or unasserted legal obligation of the original recipient arising prior to the issuance of such stock.".

VILLAGE, URBAN, AND GROUP CORPORATIONS

SEC. 6. Subsection (c) of section 8 (43 U.S.C. 1607(c)) is amended to read as follows:

"(c) APPLICABILITY OF SECTION 7.—The provisions of subsections (g), (h), and (o) of section 7 of this Act shall apply in all respects to Village Corporations, Urban Corporations, and Group Corporations.".

PROCEDURES FOR CONSIDERING AMENDMENTS AND RESOLUTIONS

SEC. 7. The Alaska Native Claims Settlement Act of 1971, as amended, is further amended by adding the following new section:

"PROCEDURES FOR CONSIDERING AMENDMENTS AND RESOLUTIONS

"SEC. 36. (a) COVERAGE.—Notwithstanding any provision of the articles of incorporation and bylaws of a Native Corporation or of the laws of the State, except those related to proxy statements and solicitations that are not inconsistent with this section—

"(1) an amendment to the articles of incorporation of a Native Corporation authorized by subsections (g) and (h) of section 7, subsection (d)(1)(B) of this section, or section 37; or

"(2) a resolution authorized by section 38(a)(2);

shall be considered in accordance with the provisions of this section.

"(b) BASIC PROCEDURE.—(1) An amendment or resolution described in subsection (a) may be approved by the board of directors of a Native Corporation in accordance with its bylaws. If the board approves the amendment or resolution, it shall direct that the amendment or resolution be submitted to a vote of the shareholders at the next annual meeting or at a special meeting (if the board, at its discretion, schedules such special meeting). One or more such amendments or resolutions may be submitted to the shareholders and voted upon at one meeting.

"(2)(A) A written notice (including a proxy statement if required under applicable law), setting forth the amendment or resolution approved pursuant to paragraph (1) (and, at the discretion of the board, a summary of the changes to be effected) together with any amendment or resolution submitted pursuant to subsection (c) and the statements described therein shall be sent, not less than fifty days nor more than sixty days prior to the meeting of the shareholders, by first-class mail or hand-delivered to each shareholder of record entitled to vote at his or her address as it appears in the records of the Native Corporation. The corporation may also communicate with its shareholders at any time and in any manner authorized by the laws of the State.

"(B) The board of directors, at its discretion, may exclude from a communication made to the shareholders regarding an amendment or resolution approved pursuant to paragraph (1) information concerning the value of land, or any interest in land, received by the corporation pursuant to this Act if such land or interest in land is committed by the corporation to traditional or cultural uses or is of speculative value on the date such communication is prepared. The exclusion of such information shall be disclosed to the shareholders of the corporation in such communication. No provision of this subparagraph shall be interpreted to require the disclosure of such information in other circumstances.

"(C) If the board of directors determines, for quorum purposes or otherwise, that a previously-noticed meeting must be postponed or adjourned, it may, by giving notice to the shareholders, set a new date for such meeting not more than forty-five days later than the original date without sending the shareholders a new written notice (or a new summary of changes to be effected). If the new date is more than forty-five days later than the original date, however, a new written notice (and a new summary of changes to be effected if such a summary was originally sent pursuant to subparagraph (A)), shall be sent or delivered to shareholders not less than thirty days nor more than forty-five days prior to the new date.

"(c) SHAREHOLDER PETITIONS.—(A)(1) With respect to an amendment authorized by section 7(g)(1)((B) or section 37(b) or an amendment authorizing the issuance of stock subject to the restrictions provided by section 7(g)(2)(B)(iii), the holders of shares representing at least 25 per centum of the total voting power of a Native Corporation may petition the board of directors to submit such amendment to a vote of the shareholders in accordance with the provisions of this section.

"(B) The requirements of the laws of the State relating to the solicitation of proxies shall govern solicitation of signatures for a petition described in subparagraph (A) except that the requirements of Federal law shall govern the solicitation of signatures for a petition that is to be submitted to a Native Corporation with a class of equity securities registered pursuant to the Securities Exchange Act of 1934, as amended (48 Stat. 881). If a petition meets the applicable solicitation requirements and—

"(i) the board agrees with such petition, the board shall submit the amendment and either the proponents' statement or its own statement in support of the amendment to the shareholders for a vote, or

"(ii) the board disagrees with the petition for any reason, the board shall submit the amendment and the proponents' statement to the shareholders for a vote and may, at its discretion, submit an opposing statement or an alternative amendment.

"(2) Paragraph (1) shall not apply to a Native Corporation that elects application of section 37(d) in lieu of section 37(b). Paragraph (1) shall not apply to a Native Corporation that elects application of section 37(c) in lieu of section 37(b) until December 18, 1991. Insofar as they are not inconsistent with this section, the laws of the State shall govern any shareholder right of petition for such corporations.

"(d) VOTING STANDARDS.—(1) An amendment or resolution described in subsection (a) shall be considered to be approved by the shareholders of a Native Corporation if it receives the affirmative vote of shares representing—

"(A) a majority of the total voting power of the corporation, or

"(B) a level of the total voting power of the corporation greater than a majority (but not greater than two-thirds of the total voting power of the corporation) if the corporation establishes such a level by an amendment to its articles of incorporation.

"(2) A Native Corporation in amending its articles of incorporation pursuant to section 7(g)(2) to authorize the issuance of a new class or series of stock may provide that a majority (or more than a majority) of the shares of such class or series must vote in favor of an amendment or resolution described in subsection (a) (other than an amendment authorized by section 37) in order for such amemdment or resolution to be approved.

"(e) VOTING POWER.—For the purposes of this section, the determination of total voting power of a Native Corporation shall include all outstanding shares of stock that carry voting rights except shares that are not permitted to vote on the amendment or resolution in question because of restrictions in the articles of incorporation of the corporation.".

DURATION OF ALIENABILITY RESTRICTIONS

SEC. 8. The Alaska Native Claims Settlement Act, as amended, is further amended by adding the following new section:

"DURATION OF ALIENABILITY RESTRICTIONS

"SEC. 37. (a) GENERAL RULE.—Alienability restrictions shall continue until terminated in accordance with the procedures established by this section.

"(b) OPT-OUT PROCEDURE.—(1) A Native Corporation may amend its articles of incorporation to terminate alienability restrictions in accordance with this subsec-

tion. Such an amendment may be considered and voted on not more than once prior to December 18, 1991, and not more than once annually thereafter.

"(2) An amendment authorized by paragraph (1) shall specify the time of termination, either by establishing a date certain or by describing the specific event upon which alienability restrictions shall terminate.

"(3) Rejection of an amendment authorized by paragraph (1) by the shareholders of a Native Corporation shall not preclude consideration of subsequent amendments to terminate alienability restrictions.

"(c) RECAPITALIZATION PROCEDURE.—(1)(A) On or prior to December 18, 1991, a Native Corporation may amend its articles of incorporation to implement a recapitalization plan pursuant to this subsection. Rejection of an amendment or amendments to implement a recapitalization plan by the shareholders shall not preclude consideration of a subsequent amendment or amendments to implement such a plan prior to December 18, 1991.

"(B) An amendment or amendments submitted pursuant to subparagraph (A) (and any subsequent amendment submitted pursuant to subparagraph (C)) may provide for the maintenance or extension of alienability restrictions for—

"(i) an indefinite period of time;

"(ii) a specified period of time not to exceed fifty years; or

"(iii) a period of time that shall end upon the occurrence of a specified event or condition, including a shift in the capital structure of the corporation such that stock other than Settlement Common Stock represents a majority of the total voting power of the corporation for the purpose of electing directors.

"(C) If an amendment or amendments approved pursuant to subparagraph (A) or this subparagraph maintains or extends alienability restrictions for a specified period of time, termination of the restrictions at the close of such period may be postponed if a further amendment to the articles of incorporation of the corporation is approved to extend the restrictions. There shall be no limit on the number of such amendments that can be approved. Such amendments shall not be effective to extend the restrictions unless approved prior to the expiration of the period of maintenance or extension then in force.

"(D) Notwithstanding any other provision of law, the board of directors may ask the shareholders to approve en bloc pursuant to a single vote a series of amendments (including an amendment to authorize the issuance of stock pursuant to section 7(g) and, in the case of Cook Inlet Region, Incorporated, an amendment to authorize a plan providing for the issuance and sale of stock, other than Settlement Common Stock, to officers and employees) to implement a recapitalization plan that includes a provision maintaining alienability restrictions.

"(2)(A) If an amendment to the articles of incorporation of a Native Corporation maintaining or extending alienability restrictions for a specified period of time is approved pursuant to paragraph (1), the restrictions shall automatically terminate at the end of such period unless the restrictions are extended in accordance with the provisions of paragraph (1)(C).

"(B)(i) Notwithstanding any other provision of this subsection, a Native Corporation that approves an amendment pursuant to paragraph (1) to maintain or extend alienability restrictions may later amend its articles of incorporation to terminate the restrictions. Such amendment shall specify the time of termination, either by establishing a date certain or by describing the specific event upon which the restrictions shall terminate.

"(ii) Rejection of an amendment described in clause (i) by the shareholders shall not preclude consideration of subsequent amendments to terminate alienability restrictions.

"(3) If a recapitalization plan approved pursuant to paragraph (1) distributes voting alienable common stock to each holder of shares of Settlement Common Stock (issued pursuant to section 7(g)(1)(A)) that carries aggregate dividend and liquidation rights equivalent to those carried by such shares of Settlement Common Stock (except for rights to distributions made pursuant to sections 7(j) and 7(m)) upon completion of the recapitalization plan, then such holder shall have no right under section 38 to further compensation from the corporation with respect to action taken pursuant to this subsection.

"(d) OPT-IN PROCEDURE.—(1)(A) Subsection (b) shall not apply to a Native Corporation whose board of directors approves, no later than one year after the date of the enactment of the Alaska Native Claims Settlement Act Amendments of 1987, a resolution electing the application of this subsection.

"(B) This subsection shall not apply to Village Corporations, Urban Corporations, and Group Corporations located outside of the Bristol Bay and Aleut regions.

"(2)(A) Alienability restrictions imposed on Settlement Common Stock issued by a Native Corporation electing application of this subsection shall terminate on December 18, 1991, unless extended in accordance with the provisions of this subsection.

"(B) The board of directors of a Native Corporation electing application of this subsection shall, at least once prior to January 1, 1991, approve, and submit to a vote of the shareholders, an amendment to the articles of incorporation of the corporation to extend alienability restrictions. If the amendment is not approved by the shareholders, the board of directors may submit another such amendment to the shareholders once or more a year until December 18, 1991.

"(C) An amendment submitted pursuant to subparagraph (B) and any amendment submitted pursuant to subparagraph (D) may provide for an extension of alienability restrictions for—

"(i) an indefinite period of time, or

"(ii) a specified period of time not to exceed fifty years.

"(D) If an amendment approved by the shareholders of a Native Corporation pursuant to subparagraph (B) or this subparagraph extends alienability restrictions for a specified period of time, termination of the restrictions at the close of such period may be postponed if a further amendment to the articles of incorporation of the corporation is approved to extend the restrictions. There shall be no limit on the number of such amendments that can be approved. Such amendments shall not be effective to extend the restrictions unless approved prior to the expiration of the period of extension then in force.

"(3) If an amendment to the articles of incorporation of a Native Corporation extending alienability restrictions for a specified period of time is approved pursuant to paragraph (2), the restrictions shall automatically terminate at the end of such period unless the restrictions are extended in accordance with the provisions of paragraph (2)(D).

"(4)(A) Notwithstanding any other provisions of this section, a Native Corporation that approves an amendment to its articles of incorporation pursuant to paragraph (2) to extend alienability restrictions for an indefinite period of time may later amend its articles of incorporation to terminate the restrictions. Such amendment shall specify the time of termination, either by establishing a date certain or by describing the specific event upon which the restrictions shall terminate.

"(B) The rejection of an amendment described in subparagraph (A) by the shareholders shall not preclude consideration of subsequent amendments to terminate alienability restrictions.

"(5)(A) If a Native Corporation amends its articles of incorporation pursuant to paragraph (2) to extend alienability restrictions, a shareholder who—

"(i) voted against such amendment, and

"(ii) desires to relinquish his or her Settlement Common Stock in exchange for the stock or payment authorized by the board of directors pursuant to subparagraph (B),

shall notify the Corporation within ninety days of the date of the vote of the shareholders on the amendment of his or her desire.

"(B) Within one hundred and twenty days of the date of the vote described in subparagraph (A), the board of directors shall approve a resolution to provide that each shareholder who has notified the corporation pursuant to subparagraph (A) shall receive either—

"(i) alienable common stock in exchange for his or her Settlement Common Stock pursuant to paragraph (6), or

"(ii) an opportunity to request payment for his or her Settlement Common Stock pursuant to section 38(a)(1)(B).

"(C) This paragraph shall apply only to the first extension of alienability restrictions approved by the shareholders. Notwithstanding any other provisions of law, no dissenters rights of any sort shall be permitted in connection with subsequent extensions of such restrictions.

"(6)(A) If the board of directors of a Native Corporation approves a resolution providing for the issuance of alienable common stock pursuant to paragraph (5)(B), then on December 18, 1991, or sixty days after the approval of the resolution, whichever later occurs, the Settlement Common Stock of each shareholder who has notified the corporation pursuant to paragraph (5)(A) shall be deemed cancelled, and shares of alienable common stock of the appropriate class shall be issued to such shareholder, share for share, subject only to subparagraph (B) and to such restrictions consistent with this Act as may be provided by the articles of incorporation of the corporation or in agreements between the corporation and individual shareholders.

"(B)(i) Alienable common stock issued in exchange for Settlement Common Stock issued subject to the restriction authorized by section 7(g)(1)(B)(iii) shall bear a legend indicating that the stock will eventually be cancelled in accordance with the requirements of that section.

"(ii) Alienable common stock issued in exchange for a class of Settlement Common Stock carrying greater per share voting power than Settlement Common Stock issued pursuant to subsections (g)(1)(A) and (g)(1)(B) shall carry such voting power and be subject to such other terms as may be pro-

vided in the amendment to the articles of incorporation authorizing the issuance of such class of Settlement Common Stock.

"(iii) In the resolution authorized by paragraph (5)(B), the board of dirctors shall provide that each share of Settlement Common Stock carrying the right to share in distributions made to shareholders pursuant to subsections (j) and (m) of section 7 shall be exchanged either for—

"(I) a share of alienable common stock carrying such right, or

"(II) a share of alienable common stock that does not carry such right together with a separate, non-voting security that represents only such right.

"(iv) In the resolution authorized by paragraph (5)(B), the board of directors may impose upon the alienable common stock to be issued in exchange for Settlement Common Stock one or more of the following—

"(I) a restriction granting the corporation, or the corporation and members of the shareholder's immediate family who are Natives or descendants of Natives the first right to purchase, on reasonable terms, the alienable common stock of the shareholder prior to the sale or transfer of such stock (other than a transfer by will or intestate succession) to any other party, including a transfer in satisfaction of a lien, writ of attachment, judgment execution, pledge, or other encumbrance; or

"(II) any other terms, restriction, limitation, or other provision permitted under the laws of the State.

"(C) The articles of incorporation of the Native Corporation shall be deemed amended to implement with the provisions of the resolution authorized by paragraph (5)(B).

"(D) Alienable common stock issued pursuant to this subparagraph shall not be subjected to a lien or judgment execution based upon any asserted or unasserted legal obligation of the original recipient arising prior to the issuance of such stock.

"(7)(A) No share of alienable common stock issued pursuant to paragraph (6) shall carry voting rights if it is owned, legally or beneficially, by a person not a Native or a descendant of a Native.

"(B)(i) A purchaser or other transferee of shares of alienable common stock shall, as a condition of the obligation of the issuing Native Corporation to transfer such shares on the books of the corporation, deliver to the corporation or transfer agent, as the case may be, a statement on a form prescribed by the corporation identifying the number of such shares to be transferred to such transferee and certifying—

"(I) that such transferee is or is not a Native or a descendant of a Native;

"(II) that such transferee, if not a Native or a descendant of a Native, understands that shares of such alienable common stock shall not carry voting rights so long as such shares are held by the transferee or any subsequent transferee not a Native or a descendant of a Native;

"(III) that such transferee, if a purchaser, understands that such acquisition may be subject to section 13(d) of the Securities Exchange Act of 1934, as amended, and the regulations of the Securities and Exchange Commission promulgated thereunder; and

"(IV) that such transferee will be the sole beneficial owner of such shares (if not, the transferee must certify as to the identities of all beneficial owners of such shares and whether such owners are Natives or descendants of Natives).

"(ii) The statement required by clause (i) shall be prima facie evidence of the matters certified therein and may be relied upon by the corporation in effecting a transfer on its books.

"(iii) For purposes of this subparagraph, a beneficial owner of a security includes any person (including a corporation, partnership, trust, association, or other entity) who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise has or shares—

"(I) voting power, which includes the power to vote, or to direct the voting of, such security; or

"(II) investment power, which includes the power to dispose, or to direct the disposition of, such security.

"(iv) Any person who, directly or indirectly, creates or uses a trust, proxy, power of attorney, pooling arrangement, or any other contract, arrangement, or device with the purpose or effect of divesting such person of beneficial ownership of a security or preventing the vesting of such beneficial ownership as part of a plan or scheme to evade the requirements imposed by this section or section 13(d) of the Securities Exchange Act of 1934, as amended, shall be deemed for purposes of such sections to be the beneficial owner of such security.

"(C) The statement required by subparagraph (B) shall be verified by the transferee before a notary public or other official authorized to administer oaths in accordance with the laws of the jurisdiction of the transferee or in which the transfer is made.".

DISSENTERS RIGHTS

Sec. 9. The Alaska Native Claims Settlement Act of 1971, as amended, is further amended by adding the following new section:

"DISSENTERS RIGHTS

"Sec. 38. (a) Coverage.—(1) Notwithstanding the laws of the State, if the shareholders of a Native Corporation—

"(A) fail to approve an amendment authorized by section 37(b) to terminate alienability restrictions, a shareholder who voted for the amendment may demand payment from the corporation for all of his or her shares of Settlement Common Stock; or

"(B) approve an amendment authorized by section 37(d) to continue alienability restrictions without issuing alienable common stock pursuant to section 37(d)(6), a shareholder who voted against the amendment may demand payment from the corporation for all of his or her shares of Settlement Common Stock.

"(2)(A) A demand for payment made pursuant to paragraph (1)(A) shall be honored only if contemporaneously with the vote giving rise to the demand, the shareholders of the corporation approved a resolution providing for the purchase of Settlement Common Stock from dissenting shareholders.

"(B) A demand for payment made pursuant to paragraph (1)(B) shall be honored.

"(b) Relationship to State Procedure.—(1) Except as otherwise provided in this section, the laws of the State governing the right of a dissenting shareholder to demand and receive payment for his or her shares shall apply to demands for payment honored pursuant to subsection (a)(2).

"(2) The board of directors of a Native Corporation may approve a resolution to provide a dissenting shareholder periods of time longer than those provided under the laws of the State to take actions required to demand and receive payment for his or her shares.

"(c) Valuation of Stock.—(1) Prior to a vote described in subsection (a)(1), the board of directors of a Native Corporation may approve a resolution to provide that one or more of the following conditions will apply in the event a demand for payment is honored pursuant to subsection (a)(2)—

"(A) the Settlement Common Stock shall be valued as restricted stock; and

"(B) the value of land, or an interest in land, received by the corporation pursuant to this Act shall be excluded by the shareholder making the demand for payment, the corporation purchasing the Settlement Common Stock of the shareholder, and any court determining the fair value of the shares of Settlement Common Stock to be purchased if such land, or interest in land—

"(i) is committed by the corporation to traditional or cultural uses, or

"(ii) is of speculative value,

on the date the vote described in subsection (a)(1) is conducted.

"(2) No person shall have a claim against the Native Corporation or its board of directors based upon the failure of the board to approve a resolution authorized by this subsection.

"(d) Form of Payment.—(1) Prior to a vote described in subsection (a)(1), the board of directors of a Native Corporation may approve a resolution to provide that in the event a demand for payment is honored pursuant to subsection (a)(2) payments to each dissenting shareholder shall be made by the corporation through the issuance of a negotiable note in the principal amount of the payment due, which shall be secured by—

"(A) a payment bond issued by an insurance company or financial institution;

"(B) the deposit in escrow of securities or property having a fair market value equal to at least 125 per centum of the face value of the note; or

"(C) a lien upon the real property interests of the corporation valued at 125 per centum or more of the face amount of the note, other than lands or interests in land that are committed to traditional or cultural uses and the percentage interest in the corporation's timber resources and subsurface estate that exceeds its percentage interest in revenues from such property under section 7(i).

"(2) A note issued pursuant to paragraph (1) shall provide that—

"(A) interest shall be paid semi-annually, beginning as of the date on which the vote described in subsection (a)(1) occurred, at the rate applicable on such date to obligations of the United States having a maturity date of one year, and

"(B) the principal amount and accrued interest on such note shall be payable to the holder at a time specified by the corporation but in no event later than the date that is five years after the date of the vote described in subsection (a)(1).

"(e) Dividend Adjustment.—(1) The cash payment made pursuant to subsection (a) or the principal amount of a note issued pursuant to subsection (d) to dissenting shareholders shall be reduced by the amount of dividends paid to such shareholder with respect to his or her Settlement Common Stock after the date of the vote described in subsection (a)(1).

"(2) Upon receipt of a cash payment pursuant to subsection (a) or a note pursuant to subsection (d), a dissenting shareholder shall no longer have an interest in the shares of Settlement Common Stock or in the Native Corporation.".

STATE-CHARTERED SETTLEMENT TRUST OPTION

Sec. 10. The Alaska Native Claims Settlement Act, as amended, is further amended by adding the following new section:

"STATE-CHARTERED SETTLEMENT TRUST OPTION

"Sec. 39. (a) Conveyance of Corporate Assets to a State-Chartered Settlement Trust.—(1) Notwithstanding any other provision of law and in addition to any other authority, a Native Corporation may convey assets (excluding title to, or any other interest in, subsurface estate in land received pursuant to this Act), stock, or beneficial interests to a State-Chartered Settlement Trust established by the corporation in accordance with the laws of the State and the provisions of this section. A conveyance of title to, or any other interest in, subsurface estate of land received pursuant to this Act in violation of this paragraph shall be void ad initio and shall not be given effect by any court.

"(2)(A) Notwithstanding any provision of the laws of the State, a Native Corporation that has established a State-Chartered Settlement Trust shall have sole authority to—

"(I) appoint the trustees of the trust, and

"(II) remove the trustees of the trust for cause.

An appointment or removal of a trustee in violation of this provision shall be void ab initio and shall not be given effect by any court.

"(B) Notwithstanding any other provision of the laws of the State, a Native Corporation that has established a State-Chartered Settlement Trust may—

"(i) expand the class of beneficiaries to include holders of Settlement Common Stock issued after the creation of the trust without compensation to the original beneficiaries; and

"(ii) amend the specific purposes for which the trust was established so long as such amendment does not conflict with the provisions of subparagraph (C).

"(C) The general purpose of a State-Chartered Settlement Trust shall be to preserve the heritage and culture of Natives and to promote the health, education, and welfare of its beneficiaries. A State-Chartered Settlement Trust shall not—

"(i) operate as a business;

"(ii) alienate land or any interest in land received from the settlor Native Corporation; or

"(iii) discriminate in favor of a group of individuals composed only or principally of employees, officers, or directors of the settlor Native Corporation.

An alienation of land or an interest in land in violation of this provision shall be void ab initio and shall not be given effect by any court.

"(3) So long as the establishment and operation of a State-Chartered Settlement Trust complies with the conditions established in this subsection, the trust shall not be held to violate any laws against perpetuities.

"(4)(A) The initial trust instrument prepared by a Village Corporation, Urban Corporation, or Group Corporation to establish a State-Chartered Settlement Trust shall be reviewed by the Regional Corporation for the region in which the Village Corporation, Urban Corporation, or Group Corporation is located. The Regional Corporation may approve, disapprove, or refuse to act on the trust instrument in its sole and unreviewable discretion. If the trust instrument is not approved by the Regional Corporation, it shall be of no force and effect. Amendments to the trust instrument, if made within three years of the creation of the trust, shall also be subject to the review and approval of the Regional Corporation in accordance with the provisions of this subparagraph.

"(B) No provision of this paragraph shall create a fiduciary obligation on the part of a Regional Corporation with respect to—

"(i) its review of a trust instrument or amendments thereto of a Village Corporation, Urban Corporation, or group Corporation, or

"(ii) the operation of the State-Chartered Settlement Trust governed by such instrument.

"(b) Savings.—(1) The provisions of this Act (including, but not limtied to, section 14) shall continue to apply to any land, or interest in land, conveyed to a State-Chartered Settlement Trust as if the land, or interest in land, were still held by the Native Corporation that conveyed the land, or interest in land.

"(2) No timber resources subject to section 7(i) conveyed to a State-Chartered Settlement Trust shall be harvested for sale, exchanged, or otherwise conveyed (other than a reconveyance to the Regional Corporation that made the original conveyance) except as necessary to—

"(A) dispose of diseased or dying timber or to prevent the spread of disease or insect infestation;

"(B) prevent or suppress fire; and

"(C) ensure public safety.

The revenue, if any, from such timber harvests shall be paid to the Regional Corporation that made the original conveyance and shall be subject to section 7(i) as if such conveyance had not occurred.

"(3) Notwithstanding any other provision of law, the conveyance of assets, stock, or beneficial interests pursuant to subsection (a) to a State-Chartered Settlement Trust shall not affect the applicability or enforcement (including specific performance) of a valid contract, judgment, lien, or other obligation (including an obligation arising under section 7(i)) to which such assets, stock, or beneficial interests were expressly or potentially subject immediately prior to such conveyance.

"(4) A claim made pursuant to paragraph (1), (2), and (3) shall be enforceable against the State-Chartered Settlement Trust holding the land, interest in land, or other assets, stock, or beneficial interests in question to the same extent as such claim would have been enforceable against the transferor Native Corporation. No transferee State-Chartered Settlement Trust shall make a distribution or conveyance of assets (including cash), stock, or beneficial interests that would render it unable to satisfy a claim made pursuant to paragraph (1), (2), and (3). A distribution or conveyance made in violation of this provision shall be void ab initio and shall not be given effect by any court.".

ALASKA LAND BANK

Sec. 11. Section 907 of the Alaska National Interest Lands Conservation Act of 1980 (43 U.S.C. 1636) is amended—

(a) by striking out "subsection (c)(2)" throughout the section and inserting in lieu thereof "subsection (d)(1)";

(b) in the proviso of subsection (a), by striking out "lands not owned by landowners described in subsection (c)(2) shall not" and inserting in lieu thereof "no lands shall";

(c) by amending subsections (c), (d), and (e) to read as follows:

"(c) Benefits to Private Landowners.—(1) In addition to any requirement of applicable law, the appropriate Secretary is authorized to provide technical and other assistance with respect to fire control, trespass control, resource and land use planning, and the protection, maintenance, and enhancement of any special values of the land subject to the agreement, all with or without reimbursement as agreed upon by the parties, so long as the landowner is in compliance with the agreement.

"(2) The provision of section 21(e) of the Alaska Native Claims Settlement Act of 1971, as amended, shall apply to all lands which are subject to an agreement made pursuant to this section so long as the parties to the agreement are in compliance therewith.

"(d) Automatic Protections for Lands Conveyed Pursuant to the Alaska Native Claims Settlement Act.—(1) Notwithstanding any other provision of law, all land, and interests in land, conveyed by the Federal Government pursuant to the Alaska Native Claims Settlement Act of 1971, as amended, to a Native individual or Native Corporation or subsequently reconveyed by a Native Corporation pursuant to section 39 of that Act to a State-Chartered Settlement Trust shall be exempt, so long as such land and interests are not developed (or leased or sold to third parties) from—

"(A) adverse possession and similar claims based upon estoppel;

"(B) real property taxes by any governmental entity;

"(C) judgments resulting from a claim based upon or arising under—

"(i) title 11 of the United States Code or any successor statute,

"(ii) other insolvency or moratorium laws, or

"(iii) other laws generally affecting creditors' rights;

"(D) judgments in any action at law or in equity to recover sums owed or penalties incurred by a Native Corporation or State-Chartered Settlement Trust or any employee, officer, director, or shareholder of such corporation or trust, unless this exemption is contractually waived prior to the commencement of such action; and

"(E) involuntary distributions or conveyances related to the involuntary dissolution of a Native Corporation or State-Chartered Settlement Trust.

"(2) Definitions.—(A) For purposes of this subsection, the term—

"(i) 'Developed' means a purposeful modification of land, or an interest in land, from its original state that effectuates a condition of gainful and productive present use without further substantial modification. Surveying, construction of roads, providing utilities, or other similar actions, which are normally considered to be component parts of the development process but do not create the condition described in the preceding sentence, shall not constitute a developed state within the meaning of this clause. In order to terminate the exemptions listed in paragraph (1), land, or an interest in land, must be developed for purposes other than exploration, and the exemptions will be terminated only with respect to the smallest practicable tract actually used in the developed state;

"(ii) 'Exploration' means the examination and investigation of undeveloped land to determine the existence of subsurface nonrenewable resources; and

"(iii) 'Leased' means subjected to a grant of primary possession entered into for a gainful purpose with a determinable fee remaining in the hands of the grantor. With respect to a lease that conveys rights of ex-

ploration and development, the exemptions listed in paragraph (1) shall continue with respect to that portion of the leased tract that is used solely for the purposes of exploration.

"(B) For purposes of this subsection—

"(i) land shall not be considered developed solely as a result of—

"(I) the construction, installation, or placement upon such land of any structure, fixture, device, or other improvement intended to enable, assist, or otherwise further subsistence or other customary or traditional uses of such land, or

"(II) the receipt of fees related to hunting, fishing, and guiding activities conducted on such land;

"(ii) land upon which timber resources are being harvested shall be considered developed only during the period of such harvest and only to the extent that such land is integrally related to the timber harvesting operation; and

"(iii) land subdivided by a State or local platting authority on the basis of a subdivision plat submitted by the holder of the land or its agent, shall be considered developed on the date of final approval of the subdivision plat unless the subdivided property is a remainder parcel.

"(3) Action by a Trustee.—(A) Except as provided in this paragraph and in section 14(c)(3) of the Alaska Native Claims Settlement Act of 1971, as amended, no trustee, receiver, or custodian vested pursuant to applicable Federal or State law with a right, title, or interest of a Native individual or Native Corporation shall—

"(i) assign or lease to a third party,

"(ii) commence development or use of, or

"(iii) convey to a third party,

any right, title, or interest in any land, or interests in land, subject to the exemptions described in paragraph (1).

"(B) The prohibitions of subparagraph (A) shall not apply—

"(i) when the actions of such trustee, receiver, or custodian are for purposes of exploration or pursuant to a judgment in law or in equity (or arbitration award) arising out of any claim made pursuant to section 7(i) or section 14(c) of the Alaska Native Claims Settlement Act of 1971, as amended; or

"(ii) to any land, or interest in land, which has been—

"(I) developed or leased prior to the vesting of the trustee, receiver, or custodian with the right, title, or interest of the Native Corporation; or

"(II) expressly pledged as security for any loan or expressly committed to any commercial transaction in a valid agreement.

"(4) Exclusions, Reattachment of Exemptions.—(A) The exemptions listed in paragraph (1) shall not apply to any land, or interest in land, which is—

"(i) developed (or leased or sold to a third party);

"(ii) held by a Native Corporation in which neither—

"(I) the Settlement Common Stock of the corporation,

"(II) the Settlement Common Stock of the corporation and other stock of the corporation held by holders of Settlement Common Stock, nor

"(III) the Settlement Common Stock of the corporation and other stock of the corporation held by holders of Settlement Common Stock and by Natives and descendants of Natives,

represents a majority of either the total equity of the corporation or the total voting power of the corporation for the purposes of electing directors; or

"(iii) held by a State-Chartered Settlement Trust with respect to which any of the conditions set forth in section 39 of the Alaska Native Claims Settlement Act of 1971, as amended, have been violated.

"(B) The exemptions described in paragraphs (1)(C), (1)(D), and (1)(E) shall not apply to any land, or interest in land—

"(i) if, and for so long as, such land or interest is expressly pledged as security for any loan or expressly committed to any commercial transaction in a valid agreement, and

"(ii) to the extent necessary to enforce a judgment in any action at law or in equity (or any arbitration award) arising out of any claim made pursuant to section 7(i) or section 14(c) of the Alaska Native Claims Settlement Act of 1971, as amended.

"(C) If the exemptions listed in paragraph (1) are terminated with respect to land, or an interest in land, as a result of development (or a lease to a third party), and such land, or interest in land, subsequently reverts to an undeveloped state (or the third-party lease is terminated), then the exemptions shall again apply to such land, or interest in land, in accordance with the provisions of this subsection.

"(5) Tax Recapture Upon Subdivision Plat Approval.—Upon the final approval by an appropriate government authority of a subdivision plat submitted by, or on behalf of, a Native individual, Native Corporation, or State-Chartered Settlement Trust with respect to land described in paragraph (1), such individual, corporation, or trust shall pay all State and local property taxes on the smallest practicable tract integrally related to the subdivision project that would have been incurred by the individual, corporation, or trust on such land (excluding the value of subsurface resources and timber) in the absence of the exemption described in paragraph (1)(B) during the thirty months prior to the date of the final approval of the plat. The State and local property taxes (together with interest at the rate of 5 per centum per annum commencing on the date of final approval of the subdivision plat) shall be paid in equal semi-annual installments over a two-year period commencing on the date six months after the date of final approval of the subdivision plat.

"(6) Savings.—No provision of this subdivision shall be construed to impair, or otherwise affect, any valid contract or other obligation that was entered into prior to the date of the enactment of the Alaska Native Claims Settlement Act Amendments of 1987.

"(e) Condemnation.—Notwithstanding any other provision of law, all land subject to an agreement made pursuant to subsection (a) and all land, and interests in land, conveyed or subsequently reconveyed pursuant to the Alaska Native Claims Settlement Act of 1971, as amended, to a Native individual, Native Corporation, or State-Chartered Settlement Trust shall be subject to condemnation for public purposes in accordance with the laws of the State."; and

(d) by adding at the end thereof the following new subsection:

"(g) State Jurisdiction.—Except as expressly provided in subsection (d), no provision of this section shall be construed as affecting the civil or criminal jurisdiction of the State of Alaska.".

CONFORMING AMENDMENTS

Sec. 12. (a) Section 7.—Subsection (o) of section 7 (43 U.S.C. 1606) is amended to strike everything following the word "stockholder" except the period at the end of the subsection.

(b) Section 21.—Section 21 (43 U.S.C. 1620) is amended—

(1) by inserting after "distributions" in subsection (a) "(even if the Regional Corporation or Village Corporation distributing the dividend has not segregated revenue received from the Alaska Native Fund from revenue received from other sources)";

(2) by inserting at the end of subsection (c) the following: "First commercial development shall not occur solely because of the receipt of advance payments, including bonuses or royalties, that may qualify for depletion deductions.";

(3) by striking out "Village Corporation" and inserting in lieu thereof "Native Corporation" in subsection (j);

(4) by striking out everything after "one and one-half acres:" in subsection (j) and inserting in lieu thereof: "Provided further, That if the shareholder receiving the homesite subdivides such homesite, he or she shall pay all Federal, State, and local taxes that would have been incurred but for this subsection together with simple interest at 6 per centum per annum calculated from the date of receipt of the homesite, including taxes or assessments for the provision of road access and water and sewage facilities by the conveying corporation or the shareholder."; and

(5) by adding at the end thereof the following new subsection:

"(k) The adjusted basis for determining gain or loss, for Federal, State, and local income tax purposes, of—

"(1) stock of a Native Corporation received by a holder directly from the corporation pursuant to this Act (including, but not limited to, Settlement Common Stock and Replacement Common Stock);

"(2) stock of a Native Corporation issued by the corporation as a dividend or distribution on its outstanding stock; or

"(3) stock described in paragraphs (1) and (2) which is acquired (before such stock is first actively traded on an established market) by gift or through inheritance,

shall be the highest of the adjusted basis of the property of the corporation allocable to such stock, the original basis of the property of the corporation allocable to such stock, or the highest sales price of the stock on an established market during the first ten days of trading. The corporation shall make this basis determination when such stock is first actively traded on an established market or, if it is not so traded, at any time the determination is necessary. The corporation shall notify the holders of the stock of its determination.".

(c) Section 30.—Subsection (b) of section 30 (43 U.S.C. 1627(b)) is amended by striking out "prior to December 19, 1991" and inserting in lieu thereof "while the Settlement Common Stock of all corporations subject to merger or consolidation remains subject to alienability restrictions.".

(d) Securities Exchange Act of 1934—Section 13(d)(1) of the Securities Exchange Act of 1934 is amended by inserting "or any equity security issued by a Native Corporation pursuant to section 37(d)(6) of the Alaska Native Claims Settlement Act of 1971, as amended" after "Investment Company Act of 1940".

SEVERABILITY

Sec. 13. Section 27 (85 Stat. 688) is amended to read as follows:

"SEVERABILITY

"Sec. 27. The provisions of this Act, as amended, and the Alaska Native Claims Settlement Act Amendments of 1987 are severable. If any provision of either Act is deter-

mined by a court of competent jurisdiction to be invalid, such invalidity shall not affect the validity of any other provision of either Act.”.

SECURITIES LAWS EXEMPTION

SEC. 14. Section 28 (43 U.S.C. 1625) is amended to read as follows:

“SECURITIES LAWS EXEMPTION

“SEC. 28. (a) A Native Corporation shall be exempt from the provisions, as amended, of the Investment Company Act of 1940 (54 Stat. 789), the Securities Act of 1933 (48 Stat. 74), and the Securities Exchange Act of 1934 (48 Stat. 881) until the earlier of the day after—

“(1) the date on which the corporation issues shares of stock other than Settlement Common Stock in a transaction where—

“(A) the transaction or the shares are not otherwise exempt from Federal securities laws; and

“(B) the shares are issued to persons or entities other than—

“(i) individuals who held shares in the corporation on the date of the enactment of the Alaska Native Claims Settlement Act Amendments of 1987;

“(ii) Natives;

“(iii) descendants of Natives;

“(iv) individuals who have received shares of Settlement Common Stock by inheritance pursuant to section 7(h)(2);

“(v) State-Chartered Settlement Trusts; and

“(vi) entities established for the sole benefit of Natives or descendants of Natives;

“(2) the date on which alienability restrictions are terminated; or

“(3) the date on which the corporation files a registration statement with the Securities and Exchange Commission pursuant to either the Securities Act of 1933 or the Securities Exchange Act of 1934.

“(b) No provision of this section shall be construed to require or imply that a Native Corporation shall, or shall not, be subject to provisions of the Acts listed in subsection (a) after any of the dates described in subsection (a).

“(c)(1) A Native Corporation that, but for this section, would be subject to the provisions of the Securities Exchange Act of 1934 shall annually prepare and transmit to its shareholders a report that contains substantially all the information required to be included in an annual report to shareholders by a corporation subject to that Act.

“(2) For purposes of determining the applicability of the registration requirements of the Securities Exchange Act of 1934 on or after the date described in subsection (a), holders of Settlement Common Stock shall be excluded from the calculation of the number of shareholders of record pursuant to section 12(g) of that Act.

“(d) Notwithstanding any other provision of law, the provisions of the Investment Company Act of 1940 shall not apply to any Native Corporation prior to January 1, 2001.”.

ELIGIBILITY FOR FEDERAL PROGRAMS, MINORITY STATUS

SEC. 15. Section 29 (43 U.S.C. 1626) is amended by adding the following new subsections:

“(c) In determining the eligibility of a household, an individual Native, or a descendant of a Native to—

“(1) participate in the Food Stamp program,

“(2) receive assistance under the Social Security Act, or

“(3) receive financial assistance or benefits under any other Federal program or federally-assisted program,

no compensation (including in-kind or cash dividends on stock received from a Native Corporation to the extent such dividends do not, in the aggregate, exceed $2,000 per individual per annum), stock (including stock issued or distributed by a Native Corporation as a dividend or distribution on stock), partnership interest, land or interest in land (including land or an interest in land received from a Native Corporation as a dividend or distribution on stock), or other benefits received by such individual, such household, or a member of such household under this Act shall be taken into account, regardless of whether such compensation, stock, partnership interest, land or interest in land, or other benefit is subject to Federal, State, or local taxation.

“(d) Notwithstanding any other provision of law, Alaska Natives shall remain eligible for all Federal Indian programs on the same basis as other Native Americans.

“(e)(1) For all purposes of Federal law, a Native Corporation shall be considered to be a corporation owned and controlled by Natives and a minority business enterprise if—

“(A) the Settlement Common Stock of the corporation,

“(B) the Settlement Common Stock of the corporation and other stock of the corporation held by holders of Settlement Common Stock; or

“(C) the Settlement Common Stock of the corporation and other stock of the corporation held by holders of Settlement Common Stock and by Natives and descendants of Natives,

represents a majority of both the total equity of the corporation and the total voting power of the corporation for the purposes of electing directors.

“(2) For all purposes of Federal law, direct and indirect subsidiary corporations, joint ventures, and partnerships of a Native Corporation qualifying pursuant to paragraph (1) shall be considered to be an entity owned and controlled by Natives and a minority business enterprise if the shares of stock or other units of ownership interest held by such Native Corporation and by the holders of its Settlement Common Stock represent a majority of both—

“(A) the total equity of the subsidiary corporation, joint venture, or partnership; and

“(B) the total voting power of the subsidiary corporation, joint venture, or partnership for the purpose of electing directors, the general partner, or principal officers.

“(3) No provision of this subsection shall—

“(A) preclude a Federal agency or instrumentality from applying standards for determining minority ownership (or control) less restrictive than those described in paragraphs (1) and (2), or

“(B) supersede any such less restrictive standards in existence on the date of enactment of the Alaska Native Claims Settlement Act Amendments of 1987.

“(f)(1) Section 3 of Public Law 97-451 (96 Stat. 2448) is amended by inserting ‘for which is administered by the United States pursuant to section 14(g) of Public Law 92-203, as amended’ after ‘alienation’ in subsection (3) and subsection (4).

“(2) The amendment made by paragraph (1) shall be effective as if originally included in section 3 of Public Law 97-451.

“(g) For the purposes of implementation of the Civil Rights Act of 1964, a Native Corporation and corporations, partnerships, joint ventures, trusts, or affiliates in which the Native Corporation owns not less than 25 per centum of the equity shall be within the class defined in section 701(b) of Public Law 88-352 (78 Stat. 253), as amended, or successor statutes.”.

JUDICIAL REVIEW

SEC. 16. (a) STATUTE OF LIMITATIONS.—(1) Notwithstanding any other provision of law, a civil action that challenges the constitutionality of an amendment made by, or other provision of, this Act (the Alaska Native Claims Settlement Act Amendments of 1987) shall be barred unless—

(A) if the civil action challenges—

(i) the issuance or distribution of Settlement Common Stock for less than fair market value consideration pursuant to section 7(g)(1)(B) or 7(g)(2)(C)(ii) of the Alaska Native Claims Settlement Act of 1971, as amended; or

(ii) an extension of alienability restrictions that involves the issuance of stock pursuant to subsections (c) or (d) of section 37 of the Alaska Native Claims Settlement Act of 1971, as amended:

the civil action is filed within six months of the date of the shareholder vote authorizing the challenged issuance, distribution, or extension and a request for a declaratory judgment or injunctive relief is made before stock is issued or distributed; or

(B) with respect to any other civil action, the civil action is filed within two years of the date of the enactment of this Act.

(2) No Native Corporation taking an action described in paragraph (1)(A) shall issue or distribute stock within fourteen days of the date of the shareholder vote authorizing such action.

(b) JURISDICTION AND PROCEDURE.—(1) The United States District Court for the District of Alaska shall have exclusive original jurisdiction over a civil action described in subsection (a). The action shall be heard and determined by a court of three judges as provided in section 2284 of title 28 of the United States Code. An appeal of the final judgment in the action shall be made directly to the United States Supreme Court.

(2) No money judgment shall be entered against the United States in a civil action subject to this section.

(c) STATEMENT OF PURPOSE.—The purpose of the limitation on civil actions established by this section is—

(1) to ensure that after the expiration of a reasonable period of time, Native shareholders, Native Corporations, the United States, and the State and its political subdivisions will be able to plan their affairs with certainty in full reliance on the provisions of this Act, and

(2) to eliminate the possibility that the United States will incur a monetary liability as a result of the enactment of this Act.

DISCLAIMER

SEC. 17. No provision of this Act (the Alaska Native Claims Settlement Act Amendments of 1987), exercise of authority pursuant to this Act, or change made by, or pursuant to, this Act in the status of land shall be construed to validate or invalidate or in any way affect—

(1) any assertion that a Native organization (including a federally-recognized tribe, traditional Native council, or Native council organized pursuant to the Act of June 18, 1934 (48 Stat. 987), as amended) has or does not have governmental authority over lands (including management of, or regulation of the taking of, fish and wildlife) or persons within the boundaries of the State of Alaska, or

(2) any assertion that Indian country (as defined by 18 U.S.C. 1151 or any other au-

thority) exists or does not exist within the boundaries of the State of Alaska.

Mr. STEVENS. Mr. President, last week, the Alaska Federation of Natives met for its 21st annual convention. I am delighted to report that the convention delegates voted overwhelmingly to support the effort to secure passage of a 1991 bill this year.

Now that the Native people of Alaska have formally conveyed their desire to the Congress to see this legislation move forward, it is critical that we move quickly to pass this bill. Because of the decline in oil prices, the Alaska economy is sagging. Many Alaska businesses, including several Native corporations, are in serious financial trouble. The Senate substitute, which was reported out of the Senate Energy Committee on a 17-to-1 vote, would protect Native corporation lands from bankruptcy and judgments.

It is my hope that we can work together with the House in a spirit of cooperation to develop a final 1991 bill in the very near future. The Alaska congressional delegation deeply appreciates the tremendous help that Senator JOHNSTON and Senator MCCLURE, Senate Energy Committee chairman and ranking Republican member respectively, have given us in the long effort to preserve the heritage of Alaska's Native peoples. As we enter into these negotiations, I hope we will all keep in mind our ultimate goal—to protect the land conveyed under the 1971 land settlement.

Mr. President, I yield to my colleague from Alaska.

Mr. MURKOWSKI. Mr. President, I am extremely grateful for the Senate's action in passing H.R. 278 today. This legislation amends the Alaska Native Claims Settlement Act in order to ensure continued Native ownership of lands received in settlement of Alaska Natives' aboriginal claims.

Senator STEVENS and I have worked for 2 very long years to enact these amendments. With Senate passage today, we are very close to achieving that goal. I anticipate that we will now have a conference with the House to resolve the numerous minor differences between this bill and the House passed bill. It is my hope that we can complete that conference and pass a final bill before the Congress adjourns this year.

Mr. President, I cannot overemphasize the importance of this legislation to Alaska's Native people. The Alaska Native Claims Settlement Act of 1971 marked an historic experiment in this country's dealings with native Americans. The essence of that experiment was to make business corporations the recipients and holders of the proceeds of the settlement. All Alaska Natives were then made shareholders of these corporations.

To ensure that Alaska's Natives received the full benefits of the settlement, Congress imposed a 20-year restriction on the ability of individual Natives to sell or otherwise transfer their stock. That 20-year period will expire in 1991 and there is grave concern in the native community about the potential impacts of that expiration. As a result, this legislation provides a menu of options designed to maintain Native ownership of settlement lands and to ensure that future generations of Natives share in the proceeds of the settlement. The shareholders of each corporation will be able to select the options which best meet their needs.

Mr. President, we would not have been able to pass this legislation without the extraordinary efforts of several people. First, I want to thank two staff members of the Committee on Energy and Natural Resources—Tom Williams and Tony Bevinetto. Their efforts and guidance are always appreciated.

Janie Leask, John Shively, Morris Thompson, Oliver Leavitt and Glenn Fredericks of the Alaska Federation of Natives devoted considerable time and resources to this endeavor. In particular, I want to recognize the contribution made by Julie Kitka of the Alaska Federation of Natives. Julie's unwavering devotion to this project has been above and beyond the call of duty. It is safe to say, that without Julie's able assistance we would not be passing this bill today.

Also, I particularly want to recognize the outstanding staff assistance of Grey Chapados of Senator STEVENS' office, Rick Agnew of Congressman YOUNG's office and Tom Roberts and John Moseman of my staff.

Mr. INOUYE. Mr. President, the Senate, today, is acting upon H.R. 278, a bill to amend the Alaska Native Claims Settlement Act to provide Alaska Natives with certain options for the continued ownership of lands and corporate shares received pursuant to the Alaska Native Claims Settlement Act. This act, enacted in 1971, attempted to resolve conflicting claims of Native Alaskans and nonnatives to land in the State of Alaska by, among other things, setting aside 40 million acres of land in that State for Native Alaskans, providing certain monetary compensation, and delineating the hunting and fishing rights of the Native Alaskans. A central part of this legislation was the establishment of 13 regional Native corporations with issuance of shares of stock to the individual Native members and the provision that restricted alienation of either stock or land for a period of not less than 20 years. An important additional element is that that legislation, ANCSA, took no position whatsoever on the governmental authority of Native entities within the State of Alaska.

Mr. President, December 18, 1991, the 20 year expiration date for restriction upon alienation of Native Alaskan land or stock in the regional corporations, is fast closing upon us. The Alaskan Natives are rightfully worried about the consequences that would attend the expiration of this date without remedial legislation that would protect their interests in their lands and natural resources. The advance of this date is clearly a strong factor in eliciting the support of the Native community for the legislation that is before us today. But even so, there have been strong expressions of concern about the effects this legislation might have on the rights of the Native Alaskans, and these concerns undoubtedly led to the failure of proposed remedial legislation in the last Congress.

In this Congress the House Committee on Interior and Insular Affairs has labored hard to draft a bill which they believe is a fair and equitable resolution of the 1991 issues. The Senate Committee on Energy and Natural Resources has labored equally hard and with equal concern to achieve a fair and just resolution to these thorny issues. There are significant differences in the two bills, but each propose a solution that would allow for continued protection of the Native resources.

Mr. President, I commend both the House and the Senate committees for the work they have done on this legislation. I would like only to comment on the issues that have been brought to my attention and speak to my understanding of the intent of this legislation. One of the most important concerns that has been pressed is that the legislation may not be totally neutral on the issue of the governmental status of traditional Native councils and villages that may be organized under the Indian Reorganization Act of 1934, as amended in 1936 to include Alaskan Natives, or Indian tribes with the State of Alaska. The language of the House and the Senate bills differ in this respect, yet each purports to be totally neutral with respect to this issue. I have reviewed both bills and have spoken with my colleagues on this matter. It is my understanding, and I am satisfied in this regard, that it is the intent of both the House and the Senate committees that nothing in this legislation should be considered or interpreted to in any way suggest that an Alaskan Native entity or the State or a political subdivision of the State, has any particular governmental authority. In other words, the legislation is totally neutral on this subject.

A second major concern is that the definition of undeveloped land for purposes of State taxation is not sufficiently clear. Since any developed lands would most likely be located in the villages themselves, it is the very homeland of the Natives that could be placed in jeopardy. As defined in the Senate bill, the term developed means a change in the land, or an interest in the land, that effectuates a condition of gainful and productive use.

A third area of concern is the failure of the Senate bill to specifically provide that a traditional Native council or a group organized under the Indian Reorganization Act could be a qualified transferee entity from a "native corporation." On this issue I would only note that there is a difference between the House bill and the Senate bill and that this is a matter that must be resolved by the House and Senate conferees.

Finally I would like to note that section 15 of the Senate bill specifically provides for the continued eligibility of Alaskan Natives for programs of assistance to American Indians on the same basis as those programs are made available to members of Indian tribes in the lower 48. I have two thoughts on this matter. In general, programs that are available to Indian tribes under the Indian Health Service or the Bureau of Indian Affairs in the lower 48 are premised on a unique political status often referred to as a government-to-government relationship between the United States and the Indian tribes. This is a relationship that has existed between the tribes and the United States since the inception of this Nation, and has been reaffirmed in recent years not only by the courts, but also by Presidents Johnson, Nixon and Reagan in major policy statements. The status of Native Alaskan entities is currently before the Federal courts. I support this legislation, among other reasons, because it is neutral on the governmental status of Alaskan Native entities.

My second thought on this provision is that it will once and for all put to rest the notion propounded by some in Washington that the Alaskan Native Claims Settlement Act of 1971 terminated the relationship of the United States with the Alaskan Native people. Time and again the Congress has rejected this view, not only in subsequent legislation dealing directly with Native Alaskan issues but also through appropriation legislation. In this vein, I welcome the clarification of Native eligibility provided through this legislation.

Finally, I would note that this legislation is deemed, properly so, to be Indian legislation enacted by the Congress pursuant to its plenary authority under the Constitution of the United States to regulate Indian affairs. This is important for two reasons. Number 1, it confers upon the Congress significant authority, though not unlimited, to legislate in matters affecting Indians and native Americans. No. 2, as Indian legislation, this act is entitled to those favorable rules of judicial construction that attend all other Indian legislation.

Mr. President, with these thoughts in mind I support the bill before us today and commend both the House and the Senate committees for their diligence and hard work on this most difficult of issues.

Mr. JOHNSTON. Mr. President, I am pleased that the Senate has chosen to pass by unanimous consent the amended Alaska Native Claims Settlement Act amendments. My committee has labored long and hard to produce the measure, and I wish to compliment the Senators from Alaska, their staffs, and the others who have expended so much time and effort. This complex bill is quite different from the one passed by the other body. Some improvements may yet be necessary to best serve the interests of the Alaska Native community and of the Nation, and I will work toward that goal.

The PRESIDING OFFICER. If there be no further amendment to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute.

The committee amendment was agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the committee amendment and third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read the third time.

The bill was read a third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

So the bill (H.R. 278) was passed.

Mr. STEVENS. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. MURKOWSKI. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. STEVENS. Mr. President, I move that the Senate insist on its amendment and request a conference with the House of Representatives on the disagreeing votes of the two Houses and that the Chair be authorized to appoint conferees on the part of the Senate.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Alaska.

The motion was agreed to.

Mr. STEVENS. Let me thank my good friend from New Jersey. I appreciate very much his yielding.

Conferees are not at the desk, Mr. President. We will submit them later.

Mr. MURKOWSKI. I wish to join my colleague in thanking the Senator from New Jersey and the leader for accommodating us for this time. We are most appreciative.

Mr. STEVENS. We appreciate the cooperation very much.

Mr. MURKOWSKI. That goes for the Alaska Native people.

Thank you very much.

Mr. BYRD. Both Senators are welcome.

DEPARTMENT OF TRANSPORTATION AND RELATED AGENCIES APPROPRIATIONS, FISCAL YEAR 1988

The Senate continued with consideration of H.R. 2890.

The PRESIDING OFFICER. The Senator from New Jersey.

AMENDMENT NO. 1099

Mr. LAUTENBERG. Mr. President, let me be specific about what it is that we are proposing in this second-degree amendment.

To be specific, we are banning smoking on scheduled domestic flights of 2 hours or less.

The amendment will accomplish all the objectives of the amendment originally reported from the committee, and I will summarize briefly for the record once again what the amendment includes.

First of all, there would be a 3-year ban on smoking on scheduled domestic flights of 2 hours or less. Persons violating the ban would be subject to fines up to $1,000. Tampering with or disabling smoke detectors would be punishable by fines of up to $2,000.

The Secretary would enforce these provisions by regulation and the language in the House bill, which was there when that bill came over and therefore made this amendment germane, requires airport authorities to enforce the 2-hour ban which (a) seems unworkable and (b) needed to be refined in order to give some teeth to this ban.

That 2-hour ban as developed on the House side would therefore be vitiated if this amendment carries.

Mr. President, I have no desire to detain the Senate on this matter. We have had debate on the essential issues. I think that the core arguments have been made and I believe a majority of my colleagues agree. To be sure, others may wish to make their views known today, and I believe they ought to be able to do that, but I think we are past the time for delay by parliamentary maneuvering.

The issue is the health and comfort of those who fly on our Nation's airplanes.

Smoke in an aircraft cabin is not only irritating, it has been said by the Surgeon General and by the National Research Council that passive smoking can be injurious to one's health, and I think that we ought to offer passengers on airline flights of up to 2 hours a smoke-free environment.

We discussed yesterday at length that air quality in airplanes has generally deteriorated as the technology of the aircraft has improved. A new aircraft takes in less outside air and therefore it is recirculating foul cabin air.

So the issue that we are discussing right now is whether or not those who object to smoking other people's cigarettes have the right to do so.

It is not our intention to penalize the small farmer. I would assume that a 2-hour smoking ban would not be the difference in their existence.

Mr. President, I think the time is now to decide this issue. I would invite, as I earlier said, any of my colleagues who would like to make their comments to do so, and I yield the floor, Mr. President.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. Shelby). Without objection, it is so ordered.

RECESS UNTIL 12:09 P.M.

Mr. BYRD. Mr. President, some negotiations are going on at the moment. Rather than keep the Senate in a quorum, I think it would be well to let the doorkeepers, and others, to have a little respite so they can get a drink of water, and a breath of fresh air.

I ask unanimous consent, therefore, that the Senate stand in recess for 30 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Thereupon, at 11:39 a.m., the Senate recessed until 12:09 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer [Mr. Daschle].

The PRESIDING OFFICER. The Chair, in his capacity as a Senator from the State of South Dakota, suggests the absence of a quorum.

The legislative clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

MORNING BUSINESS

Mr. BYRD. Mr. President, I ask unanimous consent that there be a period for morning business, that Senators may speak therein for not to exceed 15 minutes and that when Mr. Conrad, who is planning to speak for 15 minutes, completes his speech, the Senate then stand in recess for 15 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. CONRAD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE ECONOMIC EVENTS OF LAST WEEK

Mr. CONRAD. Mr. President, I want to take a few minutes to discuss the economic events of the last week and to reflect on the underlying causes for the market crash that we have experienced in this country and the ongoing economic instability that this country is experiencing.

When I returned home, as I did this weekend, to talk to the people of my State, I was repeatedly asked why I thought the market lost some 20 percent of its value in just 1 week, why we were seeing such a high level of anxiety in the foreign markets, why we saw such economic instability.

I think we all know the reasons for the precipitous crash, the triggering mechanisms, the things that had occurred just prior to the crash—the new trade deficit numbers for August that indicated we were not making progress on the trade deficit, the action by the Federal Reserve to increase the discount rate, the action by the Germans to increase their interest rates, and the tensions in the Persian Gulf. But, more important, Mr. President, are the underlying causes, the underlying reasons for the lack of confidence in the markets.

Yesterday, Hobart Rowen had a column in the Washington Post which I think neatly describes the underlying causes for the market collapse. Mr. Rowen, in his column, wrote:

> Despite assurances by supply-siders that lower tax rates would generate larger revenues, the deficit was created by the huge 1981 tax cut. In turn, the deficit (financed largely by foreigners) set off high interest rates, an overvalued dollar and enormous trade and current account deficits.

Mr. President, I have prepared charts that show, I think, the precise pattern as described by Mr. Rowen that, perhaps, will make it easier for people to visualize the set of forces that have led us to where we are today.

This first chart shows the Federal spending and revenues over the last 10 years. The spending line, as people can see, has been on a constant upward pattern.

Revenues, on the other hand, over the last 10 years, have had a different pattern.

In 1981, revenues took a U-turn. It is easy to see from this chart that spending and revenues from the midseventies until about 1981 were closely tracking. They were running on almost a parallel track. It is true we were running deficits above $40 to $50 billion, but in 1980 and 1981 when spending continued on its incline but revenue took a U-turn, our deficits absolutely exploded.

Let me just show the next chart which shows, as a result of that pattern of spending and revenue, the public debt in this country absolutely exploded.

Again, over the last 10 years, from 1977 to 1987, this chart depicts what has happened with the public debt. We went from a public debt in 1977 of less than $800 billion to a public debt, today, of over $2.4 trillion. A tripling of the public debt in just the last 10 years.

People ask me, well, what difference does that make? What difference does it make that the public debt has exploded? I had one Senator ask me, he said: you know, I think it makes a difference what happens with the deficit. But interest rate is down, inflation is down, unemployment is down—I am beginning to wonder if it does make any difference that we have had a massive increase in the public debt.

Here is the difference it makes. Just as Mr. Rowen described in his column that we have had an increase in interest rates over the last 6 or 7 years as a result of the exploding public debt, I have prepared this chart that shows that he is precisely correct. Real interest rates, the difference between inflation and the interest rates people pay, have jumped and gone up quite noticeably.

The fact is a lot of people, if you ask them what has happened to interest rates in the last 6 years, will tell you interest rates have gone down. And they are right, too. Nominal interest rates have declined. But real interest rates, which is what matters in economic terms, that difference between inflation and the interest rate you pay, has gone up, not down.

This chart shows over the last 25 years the relationship of long-term business real interest rates. What it shows is that for 20 years, from 1961 to 1981, real interest rates averaged 2.3 percent. In other words, if inflation was 3 percent, you could expect to pay 5 or 6 percent for interest. But look what happened in the midseventies, Mr. President. Real interest rates were negative. Inflation was actually higher than the interest rates people were being charged. What did that tell people to do? That told people to go out and borrow money because it was actually being subsidized by inflation.

That, of course, is precisely what people did. They went out and borrowed. Then in the late seventies, real interest rates started climbing and they skyrocketed to over 8.5 percent, the highest real interest rates in our history.

Even now, with interest rates having declined and pulled back some, we still are left with real interest rates which are much higher than what we have traditionally experienced in this country. We will have a real interest rate level of about 6 percent.

What difference does that make? Well, this next chart shows what has happened to the value of the American dollar. This chart shows the increase in the value of the U.S. dollar, again in the period from 1976 to 1987. You can see at the same time that real interest rates skyrocketed, in the early eighties; the value of the U.S. dollar skyrocketed.

In fact, from 1980 to 1985 it went up over 70 percent in value. Now it has pulled back some but it is still at very high levels, if one compares it to the value of the dollar in the midseventies.

What does that mean to us? What is the effect of a dollar that has skyrocketed in value? Many people say: Gee, that is good; a strong U.S. dollar, strong country. That has a superficial appeal. The problem with the skyrocketing value of the U.S. dollar is what it did to our ability to compete in the international marketplace, in our ability to sell our products. That can be seen in the next chart which shows what has happened with the trade picture in this country. This chart shows the merchandise trade balance from 1968 to 1986 in this country. We can see that the trade deficit has absolutely gone out of control. One statistic that I would leave the audience with is the trade deficit, in 1986, was greater than the total of all the trade surplus accumulated by this country since World War II. In just 1 year we were able to completely eliminate all of the trade surplus accumulated since World War II and that, of course, is a direct result of the explosion in value of the U.S. dollar which was like a hidden tax on all of our exports.

Well, the final chart shows the impact on this country of those trade deficits because we have now become a debtor nation for the first time since 1914. For the first time in over 70 years the United States owes more money than it is owed. We can see on this chart that we went from being a creditor nation. We were a large creditor. That is, people owed us more than we owed them, until late 1984. Then we became a debtor nation. Since that time our status as a debtor nation has grown dramatically.

We are not only the largest debtor Nation in the world, we are the largest debtor Nation in the history of the world. We have a larger accumulated foreign external debt than Mexico and Brazil and Argentina combined.

What difference does that make? Well, Mr. President, what difference does it make when you go to the bank and you have a large deposit? How are you treated in comparison with how you are treated when you go and you have a large note outstanding. That is the difference. If you were in that kind of relationship with the bank, you have a large deposit, the banker does not have much to say about what you do with your economic life. But if you have a large note outstanding at that bank, all of a sudden that banker has a lot of say in what you do and that is precisely the status that our country finds itself in today. We are now going to have dictated to us part of the economic decisionmaking of this country by the willingness of others to extend credit to us.

Mr. President, I hope I have been able to outline here some of the underlying causes of the market deterioration we have seen; the lack of confidence that is being demonstrated by others in the future of our economy because we have moved to a new status in the world. We have moved to a situation in which this country now is dependent on others to extend credit to us to finance these deficits. That is why it is imperative that we do something about our budget deficits. That is why it is imperative, in my judgment and in the judgment of some 48 other of my colleagues who have signed a letter, along with me, to those who are negotiating on the budget deficit, to do more than is outlined in the Gramm-Rudman-Hollings Act.

The Gramm-Rudman-Hollings Act called for $23 billion of budget deficit reduction this year. The problem with that is that it does not assure year-to-year deficit reduction. If we are to be credible, we are going to have to demonstrate that we can reduce the budget deficit on a year-to-year basis. The $23 billion simply does not do it. The reason it does not is because it is off a projection. The $23 billion that is bandied about in the media is not a reduction from last year's budget. It is a reduction from the projection of next year's deficit.

Mr. President, let me just quickly indicate that in 1987 this country ran up a budget deficit of $148 billion. It is projected by the Office of Management and Budget to be $163 billion next year and by the Congressional Budget Office to be $179 billion next year. If we reduce CBO's figure by $23 billion we will achieve a budget deficit of $156 billion in fiscal 1988.

That would be a deficit that is increasing from year to year, not being reduced. That would send all of the wrong signals to the marketplace, it would send all of the wrong signals to the international community, and, in my judgment, would simply demean our economic problems.

Mr. President, the first thing we must do is reduce the deficit on a year-to-year basis, a multiyear plan, that assures everyone we are making genuine progress on that deficit.

Second, we have included in our letter to the negotiators that we also send a message to the Federal Reserve Board that it is critical that they be accommodating in terms of the monetary policy during this time.

Why is that? Very simply, Mr. President, if they are not, we can put this economy into a recession. The reason for that is very simple: If we are going to be raising taxes, if we are going to be cutting back on spending, obviously those are steps that will slow down the economy. The only way to offset that is to have the Federal Reserve Board be more accommodating on monetary policy.

Finally, Mr. President, we cannot get out of the soup alone. It is imperative that our allies in Western Europe and Japan, also be engaged in expansionary policies if we are going to avoid a worldwide recession, in my judgment, with the situation in which we find ourselves.

So, Mr. President, I would also urge that the President and those of his administration immediately engage our allies in discussions about how we can convince them to be expansionary during this period when we, of necessity, have to pull back so that we can reduce our budget deficit and at the same time convince our Federal Reserve Board to be more accommodating in the monetary policy of this country so that while we are reducing our deficit, we do not push this economy into recession, and not only our economy but the world economy as well.

With that, Mr. President, I ask unanimous consent to have printed in the RECORD a column by Mr. Hobart Rowen, which appeared in yesterday's Washington Post.

I also ask unanimous consent to enter into the RECORD the letter signed by 48 of our colleagues, including the distinguished occupant of the chair.

I further ask unanimous consent to have printed in the RECORD the article which appeared in the Washington Post today by Mr. Michael Kinsley, relating to the economic policy of the country.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Washington Post, Oct. 28, 1987]

CUTTING THE DEFICIT IS NOT ENOUGH

(By Hobart Rowen)

Yes, we need a significant cut in the American budget deficit. But when Wall Street and other fragile markets tell political leaders all over the world to "Get to work!" the message has a broader and deeper meaning.

It would be a mistake to think that a nod in the direction of fiscal sanity will be enough to avoid the deep recession that analysts think likely next year. There remain the critical issues of the trade deficit, exchange rate levels, the protectionist threat and the ugly overhang of $1 billion in Third World debt.

At a dinner here Monday among liberal Democrats and members of the West German Social Democratic Party, Gina Despres, a top aide to Sen. Bill Bradley (D-N.J.), heard no disagreement when she said:

"The problems and the solutions we face are international: America can't solve this crisis alone. Just cutting the American budget deficit won't help unless West Germany and Japan expand their economies. It will only cause recession.

"If you [Germans] don't expand, we will have a bitter protectionist reaction, and we will all go to hell in a handbasket."

Wolfgang Roth, a member of the German parliament and the SPD's "shadow" economics minister, acknowledged that confidence must be restored in the ability of the major governments to work together. Treasury Secretary James A. Baker III, Roth said, "was right to criticize the Kohl government's high-interest-rate policy. It doesn't make any sense, and I couldn't justify it in any way."

Yet the markets are just as unsure whether West Germany, which plays such a key role in Europe's economy, will face up to its responsibilities as they are about the U.S. government's ultimate response.

In Washington, politicians are still fingering each other for blame in the crisis. But what financial markets await is a fast and credible move (no smoke and mirrors, please) to cut the budget deficit significantly, not just the $23 billion that would arise anyway out of the Gramm-Rudman-Hollings legislation.

Financial markets need the assurance of a deficit reduction on the order of $40 billion to $50 billion in fiscal 1988. That would offset the inflationary potential of the Federal Reserve Board's welcome market-rescuing, money-easing steps that reversed its tight money policy.

In a telephone conversation Monday, New York Gov. Mario Cuomo said: "If they [the White House and congressional budget negotiators] come back and say, 'We've giving it our best shot, and we can't come up with more than $23 billion,' then we've got to say: 'It's not enough, you've got to do better.' They need to send a signal that they are sensitive to this issue."

One senses that President Reagan is not sufficiently scared. He temporizes about a tax increase arguing that nothing worse than a "correction" is taking place, and that the economy is pretty much okay.

But how about the Democrats? I don't hear the half-dozen or so Democratic presidential candidates using the dreaded words "tax increase." As political analyst Ted Van Dyk says: "The Democratic presidential candidates' economic proposals have been, to this point, a joke."

The idea of a tax increase must be put in perspective. Several readers, recalling that higher taxes in the 1930s exacerbated the economic decline then, wonder about the wisdom of raising taxes now. It's a good question. But no one is suggesting a Hoover-like tax program, designed to wipe out the deficit. Rather, it must be a carefully balanced package to reduce the deficit—and be coordinated, as Gina Despres said, with offsetting stimulating moves by the Fed here and governments abroad.

Despite assurances by supply-siders that lower tax rates would generate larger revenues, the deficit was created by the huge 1981 tax cut. In turn, the deficit (financed largely by foreigners) set off high interest rates, an overvalued dollar and enormous trade and current account deficits.

With the fiscal policy so loose and stimulating a consumer boom, the Fed necessarily followed a tight monetary policy. That's why interest rates had been shooting up this year and became one of the elements underlying the stock market collapse. That's also why the budget deficit has to be curtailed—so that interest rates can come down and stay down.

Then there is the question of the trade deficit and protectionism. One of the triggers for the Great Depression, most scholars now agree, was passage of the misguided Smoot-Hawley Tariff Act in 1930, after the market crashed in 1929. Yet you can search the Congressional Record fruitlessly for a statement by any protectionist that it would be better, now, to put aside any notions of trade restrictions.

Imagine the tonic if Democratic trade hawks, led by Rep. Richard Gephardt of Missouri, were to announce that they were abandoning their protectionist mischief that panicked financial markets.

U.S. SENATE,
Washington, DC, October 29, 1987.

DEAR COLLEAGUE, we are writing to urge you, as a member of the Senate's negotiating team, to push for an agreement with the Administration for more than $23 billion of deficit reductions in fiscal 1988.

It is absolutely essential, in the aftermath of the stock market's turbulence, to send a strong signal to the financial world that the Federal deficit is going to come down on a year-to-year basis. The $23 billion of savings required under the Gramm-Rudman-Hollings law will not achieve this result.

As you know, the fiscal 1987 deficit was $148 billion. Using Congressional Budget Office projections, implementing $23 billion of savings will reduce the fiscal 1988 deficit to $156 billion. Using OMB's more optimistic baseline deficit of $163 billion, a package of $23 billion would bring the deficit to $140 billion. We should, in our view, be striving for a package of savings that will achieve significant year-to-year declines in the level of the deficit—as the linchpin of Federal efforts to keep the economy on a stable and sustainable course.

There are grave risks that recent events will profoundly shake the public's confidence—prompting a general retrenchment that drains the economy of its strength. A significant fall-off in consumer spending or business investment could easily undermine the economy's performance. The need for reassurance—through actions rather than words—is urgent. We have an ideal opportunity through the present negotiations to enact the elements of a forceful policy.

For this approach to work, monetary policy must continue to ease. The Federal Reserve promptly responded to the shocks of last week by boosting supplies of money and credit, and those moves must be sustained. We hope the current negotiations will emphasize to the Fed that an accommodative monetary policy must be part of the package that restores confidence in our economy.

If your negotiations produce an agreement to reduce the deficit by more than $23 billion, we will push to see that it is implemented. As recent events make clear, the world is watching the decisions we reach on the fiscal 1988 budget. We cannot let this opportunity to make substantial progress on the deficit slip by.

Sincerely,

Thomas A. Daschle, Wyche Fowler, Jr., Max Baucus, Bob Graham, Dennis DeConcini, J. Bennett Johnston, Spark M. Matsunaga, Sam Nunn, Howell Heflin, Terry Sanford, Dale Bumpers, Kent Conrad, Timothy E. Wirth, Carl Levin, Tom Harkin, William Proxmire, Daniel K. Inouye, David Boren, Jeff Bingaman, John F. Kerry, Ted Stevens, Alfonse D'Amato, John Glenn, George J. Mitchell, Rudy Boschwitz, Alan Cranston, Dave Karnes, Don Nickles, Richard Shelby, Jay Rockefeller, Patrick J. Leahy, Paul Simon, Quentin Burdick, Daniel J. Evans, John C. Danforth, Frank H. Murkowski, Arlen Specter, Jake Garn, Steve Symms, Larry Pressler, Alan J. Dixon, Kit Bond, Pete Wilson, Chuck Grassley, Don Riegle, John Breaux, Edward M. Kennedy and John Melcher.

[From the Washington Post, Oct. 29, 1987]

BLAME SOMEONE—EVEN LORD KEYNES

(By Michael Kinsley)

Well whaddya know. The collapse of the stock market was just "a long-overdue correction." So explained President Reagan at his press conference Oct. 22. Funny, no one around the White House mentioned that a correction was overdue before it happened. Until then, the soaring stock market was proof of the wisdom of Reaganomics.

But what is—or rather, what was—Reaganomics? There's some confusion on this point between the president and his loyal supporters. At his press conference, Reagan blamed our current impasse on "more than half a century" of Democratic domination in Congress. "They have followed, beginning with what they call the Keynesian theory, deficit spending. . . . I think I'd like to point out that Maynard Keynes didn't even have a degree in economics."

Reagan may reject the theory, but he has embraced the practice with a vengeance. During the six fiscal years he's been in charge, deficits have totaled $1.4 trillion, compared with $999 billion for the previous two centuries.

As usual, Reagan places the blame elsewhere. "I have repeatedly asked the Congress for less money and they have turned around and given more to spend." In fact, Reagan has proposed budgets totaling $3.14 trillion and Congress has given him budgets totaling $3.129 trillion—$11 billion less than he has asked. The shape of those budgets was different: we spent more on social programs and less on defense than Reagan wanted. But total spending has been more or less exactly what he requested.

Yet even as the president inveighs against 50 years of Keynesianism, some conservatives—most prominently, presidential candidate Jack Kemp—defend his record as the brilliant flower of Keynesianism. Pseudopopulists of the right (joined, oddly, by some on the left) warn that the deficit scare is Herbert Hooverism. Reducing the deficit now, they say, especially by raising taxes, could cause a depression. FDR took office promising to balance the budget, but wisely did the opposite. What's needed is looser money and lower interest rates. Why, they ask, did the stock market boom during five years of growing deficits and collapse when the deficit went down by a third?

Let's answer that question with another question: if taxes are dangerous and our current deficits are harmless or even healthy, why stop here? Why not eliminate taxation, borrow it all, speed up the printing presses and really have a good time? Obviously there's a point at which such behavior becomes self-defeating. Once this is conceded, it becomes hard to maintain that we're not past that point.

Politicians may wish to believe that federal deficits are coming down, but the market is not so naive. Ostensibly the deficit dropped from $221 billion in fiscal 1986 to $148 billion in fiscal 1987. Of that drop, however, $20 billion reflected a one-time-only bonus from tax reform, mainly people cashing in their capital gains before the rate goes up. Next year the same factor will reduce revenues by $12 billion. Another $15 billion was saved this year through accounting tricks, such as pushing paydays into next year and selling off assets, including the right to collect on government loans. Selling off loans to reduce the deficit is like cashing in a CD to pay the Mastercard bill. It helps in the present but makes the future worse.

An honest figure for the 1987 deficit is more like $185 billion. The Congressional Budget Office projected deficits to stay about there for the next two or three years, and that was on pre-crash assumptions about steady growth with low inflation that look unlikely now. With Reagan advocating more asset and loan sales as preferable to raising taxes, the market is right to be unconsoled.

Hooverism? No. A reduced fiscal stimulus (i.e., smaller deficit) won't lead to a calamitous self-feeding contraction like the Great Depression because institutions like federal deposit insurance now exist to prevent a rout. However, there's no denying that higher taxes and lower government spending will depress economic activity and could cause or aggravate a recession. The problem is that, thanks to Reagan's deficits, the alternatives are even riskier.

If it weren't for a flood of foreign capital we long ago would have faced the choice between higher interest rates, which would have throttled the recovery, or printing money, which would have reignited inflation. We still face that choice, only in aggravated form because we now owe billions more a year on our past debts.

Since the beginning of 1987, foreign private investors have supplied no net new capital. The money has come, under duress, from foreign central banks, which have spent about $80 billion of their own reserves shoring up the value of the dollar. They won't keep this up. To keep attracting foreign capital we must either let the dollar sink, which means inflation, or raise interest rates, which probably means a recession. This is the classic dilemma of economic policy, which the supply-siders claimed to have abolished. But the smaller the deficit, the lower the dose of either medicine we have to take.

Poor Lord Keynes. The same crowd that blames him for the present mess is invoking his shade in their efforts to make things worse.

Mr. CONRAD. With that, Mr. President, I yield the floor.

The PRESIDING OFFICER. The time of the Senator has expired.

RECESS UNTIL 1:15 P.M.

Mr. BYRD. Mr. President, I ask unanimous consent, in view of the fact that negotiations are still going on with respect to the transportation legislation, that the Senate stand in recess until 1:15 p.m. today.

There being no objection, the Senate, at 12:33 p.m., recessed until 1:15 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. CONRAD).

The PRESIDING OFFICER. The Republican leader.

Mr. DOLE. Mr. President, I ask unanimous consent that I may speak out of order for 5 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

HOUSE VOTE ON BUDGET RECONCILIATION

Mr. DOLE. Mr. President, I am pleased to inform my colleagues that the House, just a short time ago, rejected the rule and—for the moment—consideration of the budget reconciliation package.

This should heighten chances for our efforts to bring about significant and meaningful reductions in the Federal deficit, and it should also be welcome news to the stock markets around the world.

As I have said, we are threatened by a crisis. But this looming crisis has also presented us with an opportunity to take substantial positive steps that will have a lasting healing effect on our economy.

First, we must start with a pledge to put new spending on hold. Mr. President, the House reconciliation package contained $2.4 billion in this fiscal year, including $179 million for welfare reform, $336 million for Medicaid, $500 million for pay increases, and $300 million for the Rural Development Bank.

I do not suggest that the Congress should not continue to review its spending priorities, only that massive new spending is not what the economy—or the markets—need at this juncture.

I have been involved in negotiations between the Senate and House leadership, as well as representatives of the President, on a package for deficit reduction. These negotiations should be allowed to continue through to completion before either House takes action on budget reconciliation, and I commend all those in the House who voted to reject the House rule.

Mr. President, I want to again restate my concern, as I view it, about the seriousness of the problem we are facing not just in the United States but globally with reference to the economy and the necessity for action.

I know that we have Republicans and Democrats, Senators and House Members, who are working diligently, and I was privileged to attend that meeting this morning.

I can only comment in a general way that I think progress is being made. We agreed we would not talk about details, and I do not intend to. I am advised in a poll that has not yet been released that for the first time the Federal deficit when you ask the open-ended question by far and away is No. 1. The American people, whether they are stockholders or not, know that if the economy falls everyone is going to be in difficulty.

As the Presiding Officer knows, we went through a lot of this in the Midwest 3 years ago. The Midwest went through an economic wringer. Many small business men and women lost their businesses. Many farmers lost their farms. Land prices dropped dramatically, you might say just about like the stock market lost a third in value, 20 percent, 50 percent. So we understand how serious it is and we understand the need for that strong signal to come from the administration and from Congress.

I do not often comment on actions in the other body because I know they are just as concerned, and maybe have different ways to do it, but I must say I was a bit encouraged when I learned this morning that in the House of Representatives a bipartisan majority had rejected the rule on reconciliation because the reconciliation bill in the House, even though it nets out some savings, has about $7 billion in new spending over the next 3 years, $7 million, including a welfare reform package, the goals of which may be desirable. But it would seem to me if we really have a crisis, we ought to just stop passing spending bills.

So I congratulate the Republicans and Democrats who did reject the rule. Maybe they will go back; maybe it will be worked out. But I think this is the first indication that the message is getting to Congress and to individual Members that the American people, whether they make their living on Wall Street or not, are beginning to react to this serious problem.

So I hope that it is an indication we may put new spending programs on hold. The House reconciliation package contained $2.4 billion for this fiscal year in new spending, including $179 million for welfare reform, $336 million for Medicaid, $500 million for pay increases and $300 million for the Rural Development Bank.

I think we have to continue to review our spending priorities, continue to do as we are doing here—we are passing appropriation bills—give the President a chance to look those over and go to conference.

But I do believe that whatever may happen this afternoon or tomorrow in the House or next week on reconciliation, that this signal will be heard. The signal, as I understand, was 213 House Members said no. I am not certain we really feel the urgency that must be out there.

I indicated that we had a little meeting last night in Houston. Nothing much happened, I must say, but we all showed up. There was no blood on the door. But I sort of got the feeling that in that debate the question should have been focused on this very serious problem, on the economic problem, and it was not. There were no questions, in effect.

It is a global problem. The world changed, as I said a couple of weeks ago, in the last 2 weeks and we no longer control it. If we are going to further deflate, then we have to have some reflation on the part of Japan and West Germany. I understand they may have lowered their interest rates today. And we ought to insist that, for every dollar we have in budget deficit reduction, we have a dollar in reflation in Japan and West Germany. And I would also suggest Japan might want to put $30 billion or $40 billion into less developed countries to stimulate the economies in those countries so they can start buying and keep the economy going. And maybe that can be done.

And it is about time that the so-called Tiger countries—Korea, South Korea, Taiwan, Singapore and Hong Kong—cut loose from the dollar and let their currencies float. So it is a global problem.

And I want to commend my colleagues who have been in S-211 the day before yesterday, all day yesterday, all this morning, and they are going to be there all afternoon, all day tomorrow, Saturday, if necessary, to demonstrate that we are taking action in the Congress.

I also want to commend the distinguished majority leader for his leadership.

RECESS FOR 20 MINUTES

Mr. BYRD. Mr. President, negotiations are continuing on the transportation appropriation bill. We may be saving time by having those negotiations; we may not.

I ask unanimous consent that the Senate stand in recess for another 20 minutes.

There being no objection, the Senate, at 1:22 p.m., recessed until 1:42 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer [Mr. CONRAD].

The PRESIDING OFFICER. The Chair, in his capacity as a Senator from North Dakota, suggests the absence of a quorum. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

20-MINUTE RECESS

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate stand in recess for an additional 20 minutes.

There being no objection, the Senate recessed at 1:54 p.m. until 2:14 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer [Mr. CONRAD].

THE U.S. ECONOMY

Mr. MELCHER. Mr. President, I hate to see market losses and the resulting misery for investors, but solid markets have to be built on an economy that is sound. The U.S. economy has weak spots. I draw your attention to basic commodity price weakness and remind the Senate that the strength of basic industries forms the base of the U.S. economy. So go the basic industries, so goes the Nation. Ignoring them is perilous. Let us look at where these markets are in comparison to the stock market.

If cattle prices had increased 300 percent since 1980, every rancher would have his ranch in as good shape as any "Ponderosa" ever was, and if wheat and corn prices had tripled over the past 7 years, farmers would be buying cadillacs and yachts. If copper and silver prices were 300 percent higher than in 1980, mining companies would be buying up computer firms. If oil and gas prices had trebled in the same timeframe, royalty owners would be on easy street, and if lumber prices had likewise trebled, sawmill operators would be vacationing in luxurious spas.

If all of those commodity prices had matched the rapid growth of the stock market, folks both in and out of those businesses would be saying, "Well, what goes up must come down," and would take it for granted that their markets had expanded too rapdily and had been overextended. None of us really believe that cattle prices should be $187 per hundred, which is three times the average 1980 price; nor would we think that wheat should be at $11 per bushel, corn at $9 per bushel, oil at $72 per barrel, copper at $3 per pound, or lumber at $609 per thousand board feet, which is three times the 1980 price. If those markets had ever had a 300-percent runup, would any of us believe that it was a lasting market price?

Instead, so far this decade, commodity prices have dropped, and dropped drastically and they have had very little public concern. The stock market wringing out of one-third in value has caused consternation, and the attention of Wall Street and the public has been riveted on Congress and the administration to do something about the twin towering deficits—Federal and trade—and to correct past fiscal and trade policies. I am all for doing that, but I do not want to mislead anybody that the puny actions we may take in reducing the Federal deficit $23 billion will create economic stability and bring back U.S. economy strength.

I have pointed out on this Senate floor on several occasions over the past year that the U.S. economy is not built on bedrock but is built on sand and that the low commodity prices in agriculture, energy, minerals and forest products were a serious threat to the overall economy of the country.

These commodity prices have been sick because we either imported too much of those commodities or exported too little of them, and particularly those that we produce in surplus too little has been exported. That is not just basic economic theory, it is common sense. The god-awful truth is that too many people have been lulled into believing that it is not significant when our own producers and their industries go down the tubes because we were shifting all of that economic strength to something called a "service-oriented" economy.

If a service-oriented economy is identified as one providing communications, health care, medicines, insurance, financing, computers, and so forth, who is producing the wealth out of the ground to pay for all of that? If we are not going to take coal and metals and produce steel, aluminum and copper to put into finished products, where does the money start? If we downgrade farmers as being too productive, will we not ignore our basic economic strength? What is the advantage of economic policies that attract imports and weaken U.S. exports?

The answers to these questions are obvious, but we have had too many people following a "pied piper" of a changing U.S. economy to meet modern trends and that the basic questions would not have to be addressed, let alone answered. Somebody has to pay the piper and the only way to pay it is to produce basic commodities that are turned into products and profits upon which the economy is built.

I feel only sadness for the investors who have taken a licking in the stock market decline. But I have no illusions that a few fiscal corrections by the Federal Government will make everything right to underpin the shaky U.S. economy. Certainly, it is good that the leading economic indicators of unemployment, liquidity of banks, and with the stock market advances earlier this year even the gross national product has shown improvement.

But I am realistic in recognizing that economic indicators have been mixed and that we do not have historic experience in measuring economic indicators against the circumstances that have engulfed our economy. For several years, we have had Federal deficits greater than $150 billion matched by U.S. trade deficits which have averaged $150 billion, and we have become a debtor nation. The U.S. economy never has been anywhere near this point before in all of our history, and any other government in any other country anywhere in the world that has ever had a fraction of these types of fiscal and trade deficits has found itself in the throes of terrible economic circumstances.

To paraphrase Merrill Lynch's current television ads, "I'm bullish on America, but mule-headed enough to know that we have to get back to fundamentals and get America back on track."

One of the first things we must do to get back on track is to provide the underpinnings for the agricultural economy by restructuring farm credit. Farmers and ranchers are still paying 11- to 14-percent interest rates on their loans, which will not cut it. They must have lower interest rates—competitive with those who have been buying the stocks and bonds on Wall Street. We shall have a farm credit bill on this Senate floor in a matter of days and the bill is structured to restructure the debt of 30–60 percent of American agricultural producers. To start building the U.S. economy on bedrock rather than sand, we have to provide the type of economic conditions where credit for agricultural producers is not just equitable and reasonable but also competitive. We have the power and know-how to do just that. The question is, are there enough of us here who have the foresight to vote so that it can be accomplished? I believe so, because I believe in the innate common sense of the American people and their representatives.

What is needed now is a reawakening that basic industries and their products are not passé; their markets are important; that these industries create the jobs and economic activity that can really make the U.S. economy sound.

Furthermore, we are efficient and competitive in these industries and the portion of the U.S. economy that is "service oriented" can only flourish when the basic industries of the United States are thriving.

Mr. President, I yield the floor.

Mr. HATFIELD. Mr. President, I ask unanimous consent for 3 minutes to speak on a subject relating to the ban on smoking.

The PRESIDING OFFICER. Without objection, it is so ordered.

SMOKING ON AIRLINES

Mr. HATFIELD. Mr. President, my office has been flooded in recent days with mailgrams which state that Congress should not limit smoking on airlines because it takes away a smoker's right to enjoy a cigarette. As a former smoker, I am very much aware of the pleasures of smoking, but there is an even more fundamental right at stake here: the right of every American boarding an airplane to know that they will breathe clean air for the duration of the flight.

It is a simple fact of biology that we all must breathe to live. We have no choice in the matter. And certainly the quality of air we breathe depends on many factors, including whether we choose to smoke or to live with someone who chooses to smoke. That is the point, smoking is a choice that is made freely, at least until the addiction of smoking grips the body. Today when a person boards a commercial airliner, the choice about the quality of air to be breathed is limited. Although there are choices of seating in smoking and nonsmoking sections, the nature of an airline's closed cabin results in all passengers being exposed to cigarette smoke. I am reminded of a cartoon I recently saw which depicted a ticket agent asking an airline passenger if he preferred a seat in smoking or passive smoking.

It once was believed that the dangers of cigarette smoking were limited to those who chose to smoke. Thanks to studies done by Surgeon General Koop, we know better today. The Surgeon General found a direct link between so-called second-hand smoke and respiratory diseases, including lung cancer. As Federal legislators we have a responsibility to protect Americans from factors which threaten their health and safety. That is precisely what the committee bill does.

No less august group than the National Academy of Sciences recommends a total ban on commercial airline flights because there is no way to protect passengers from the effects of second-hand smoke. Currently there is no protection—no physical barrier—which separates smokers from nonsmokers, nor should there be such a barrier. The solution to the problem is offered, at least for flights of 2 hours or less, in the committee bill. The Department of Transportation clearly recognizes the problem by banning smoking on all commercial aircraft with capacity for 30 passengers or less. It is time to extend that provision to include all commercial aircraft.

Mr. President, we are going to hear a good deal about how the committee bill is an attack on the small tobacco farmer. Nothing could be further from the truth. Yes, Mr. President, I have received a large number of mailgrams on this issue from my constituents who choose to smoke. But that correspondence was not generated by tobacco farmers, but by the cigarette companies. The companies are carrying out one of the slickest, well organized lobbying efforts I have seen since we encountered the bankers a few years ago on the issue of interest withholding. We are not talking about the interests of small farmers but the interests of corporate giants.

The committee bill is not antifarmer; it is prohealth, proclean air, prolife. As I have said, we have a solemn duty to protect the health of our citizens. Buried in the statistics of the nearly 1,000 Americans who die from smoking-related diseases every day in this country are nonsmokers who die from the effects of second-hand smoke. We may not be able to stop this tragedy, but we can help to control it.

The risks of air travel are great enough, we should not compound these risks by continuing to subject the passengers and crew of commercial airline flights to the dangers of second-hand smoke. I urge my colleagues to vote to retain the language contained in the committee bill.

The PRESIDING OFFICER (Mr. DIXON). The Senator from Texas [Mr. GRAMM].

Mr. GRAMM. Parliamentary inquiry, Mr. President. Would it be in order for me to speak on the nomination of Douglas Ginsburg to be a member of the U.S. Supreme Court?

The PRESIDING OFFICER. The Senator may speak on any subject he wishes.

Mr. BYRD. Mr. President, the Senator should speak as in executive session. Would he indicate how lengthy his speech would be, because we have had the negotiations go forward on the pending matter and I would hope we would not delay that long.

Mr. GRAMM. I certainly understand that. I ask unanimous consent that I may proceed for a maximum of 5 minutes as if in executive session.

The PRESIDING OFFICER. Without objection, it is so ordered.

NOMINATION OF JUDGE DOUGLAS HOWARD GINSBURG TO BE ASSOCIATE JUSTICE OF THE SUPREME COURT

Mr. GRAMM. Mr. President, when Judge Robert Bork's nomination was sent to the Senate by President Reagan, I was relatively unfamiliar with Judge Bork, other than simply having read about him in the paper, having met him on a couple of occasions and having general knowledge of his record. I, therefore, considered it important to withhold my final judgement until the committee had held hearings and until everyone had an opportunity to state their views.

In the case of Judge Bork, after listening to both his critics and those who supported him, I decided to support him. There were certainly issues, many of them economic—the balanced budget amendment to the Constitution being one—on which I strongly differed with him. But I believed then, as I believe now, that the President is elected by the people of the United States; that Presidential elections set a road map in terms of political philosophy, and that we ought to expect the President to appoint someone who agrees with his philosophy. So I voted for Judge Bork. I was as disappointed as any Member here when he was rejected by the U.S. Senate.

In contrast with my initial lack of familiarity with Judge Bork, I know Judge Doug Ginsburg well. I am familiar with his record. I have worked with him. I have followed his record in the Justice Department, at the Office of Management and Budget, and as a Federal judge. I strongly support his nomination.

I know him so well, I support him so strongly, that I do not have to listen to his critics to know that his appointment today by the President fulfilled a promise that Ronald Reagan made when the Senate rejected Judge Bork. And that promise was that he would come back with the appointment of a conservative, of a conservative who shared his view and the view of the American people that judges should interpret the law and not make it. He promised he would come back with an appointment to the Supreme Court of a person who believed in strict construction of the Constitution, an appointment of a person who was concerned about victims' rights as well as criminal rights.

I believe, based on my knowledge of Judge Doug Ginsburg, that he has done that. I strongly support this nomination. I intend to work for the confirmation of Judge Ginsburg by the U.S. Senate. I commend my colleagues to look at his outstanding record. I believe that he brings to this task an excellent set of tools—tools as a scholar, tools as a student of the law, tools as a person who has worked in the Justice Department and who has worked in the Office of Management and Budget on economic matters.

I have long believed that the Constitution protects not just our political rights, but it protects our economic rights, as well. So I commend our President for this nomination. I commend my colleagues to look at his record and join me in supporting him.

I yield the floor.

DEPARTMENT OF TRANSPORTATION AND RELATED AGENCIES APPROPRIATIONS, FISCAL 1988

The Senate resumed consideration of the bill.

AMENDMENT NO. 1099

Mr. LAUTENBERG. Mr. President, I send a modification of the pending second-degree amendment regarding the smoking provision in the transportation appropriations bill to the desk, and ask that it be adopted.

The PRESIDING OFFICER. The Senator has a right to modify his second-degree amendment.

The amendment will be so modified.

The modification is as follows:

In amendment numbered 1098, strike all after the word "After" and insert the following: "the date of expiration of the 4-month period following the date of the enactment of this subsection, and for a period of 24 months and 1 day thereafter, expect that subsections (a) and (b) shall be null and void upon the date of enactment, it shall be unlawful to smoke in the passenger cabin or lavatory on any scheduled airline flight in intrastate, interstate, or overseas air transportation, if such flight is scheduled for 90 minutes or less in duration, which prohibition shall be enforced by the Secretary of Transportation, who shall issue such regulations as may be necessary to carry out the provision of this subsection, which regulations shall be authorized to include and shall include a regulation providing that any passenger who tampers with, disables, or destroys any smoke alarm device located in any restroom aboard an aircraft engaged in air transportation or intrastate air transportation shall be subject to a civil penalty in accordance with section 901 of the Federal Aviation Act of 1958 except that such civil penalty may be imposed in an amount up to $2,000.".

Mr. LAUTENBERG. Under the modification of this amendment, we change the period of time during which smoking shall be banned on aircraft from 3 to 2 years, 24 months. Flights scheduled for 90 minutes or less will be those upon which there will be a smoking ban.

After several hours of negotiations on this—and we worked very hard—I indicated I was willing to make minor modifications in my amendment and I would renew the request to make that modification.

The PRESIDING OFFICER. That modification has been made, may I say to the Senator from New Jersey.

Mr. LAUTENBERG. Mr. President, public support for a smoking ban is certainly there. Flight attendants want it; air travelers want it. There is a majority, a significant majority, of the public in support and there is a majority of the Senate in support. We are ready to clear the air.

I do not want to prolong the debate. We do not want to delay action on this very important bill. With the amendment as modified, we take a major step forward, a step that opponents of the ban have opposed throughout. At this point, Mr. President, with the modification of the amendment, we can go ahead and move this bill, and ban smoking on most U.S. flights.

Mr. President, I ask unanimous consent that no amendments related to the smoking ban be in order.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. LAUTENBERG. Mr. President, I further ask unanimous consent that the yeas and nays on my first amendment be vitiated.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. LAUTENBERG. Mr. President, I ask unanimous consent that a letter from Julius Richmond, the former Surgeon General, now a professor of health policy at Harvard University, be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

HARVARD UNIVERSITY, DIVISION OF HEALTH POLICY RESEARCH AND EDUCATION,
Boston, MA, October 28, 1987.

Senator FRANK LAUTENBERG,
U.S. Senate, Hart Senate Office Building,
Washington, DC.

DEAR SENATOR LAUTENBERG: As a former Surgeon-General of the U.S. Public Health Service and Assistant Secretary for Health of the Department of Health and Human Services, I am writing to support enthusiastically your proposed legislation to prohibit smoking on airplane flights of less than two hours duration. I should add that I would be equally enthusiastic about banning smoking on all flights.

Your proposed legislation is clearly in the interest of health of the public. The data covering the hazards of passive smoking are so pursuasive that action is necessary to protect the health of non-smokers. The cumulative effect of passive smoking is destined to take a toll on non-smokers. They should not be coerced into a smoke filled environment while flying.

Please let me know if there is anything more I can do to further the passage of this legislation.

With very best wishes,
Sincerely yours,
JULIUS B. RICHMOND, M.D.

Mr. HELMS. Mr. President, let me say that while this compromise is not satisfactory really to either side, from this Senator's standpoint it is a substantial improvement. I appreciate the cooperative attitude of the distinguished Senator from New Jersey and the time spent by the distinguished majority leader on it.

It still is not good from the standpoint of this Senator or the tobacco farmers who I am proud to represent, but, as I say, it is a vast improvement. I thank the Senator for his time.

Mr. SIMPSON. I strongly support the Senator from New Jersey's amendment to the transportation appropriations bill which would ban smoking on all scheduled domestic flights of 2 hours or less.

Recent studies by the National Academy of Sciences and the Surgeon General confirm that there is a significant risk taken by those who inhale passive smoke, or second-hand smoke. The Surgeon General states the inhalation of this smoke does cause disease, including lung cancer and emphysema.

I spend a great chunk of my time in the air between Washington and Wyoming, and I can personally attest to the unassailable fact of physics that the swirls of smoke in an airplane do not know the difference between the smoking and nonsmoking sections. This smoke affects every single one of us. It enters our nostrils, our sinuses, and our mouths and causes headaches, allergy, and nausea in some persons. Now I used to be a three-pack-a-day smoker myself, so I know the strength and power of that particular pervasive habit—I also know of the enjoyment that seems to be derived by many smokers. It is an awful tough habit to break. I remember when I quit it cold turkey I sat and shook for about 3 days.

That is a smoker's choice to inhable these noxious fumes. And in that pleasure is their choice to inhale the residue of the incineration of these shredded and dried bits of vegetation. But I made a conscious, personal choice not to any longer inhale such fumes and subject my body to the potential damages.

I do not in any way view this as an antitobacco issue. It is not to me a win-or-lose confrontation. I do not view this as a discriminatory issue either: I view this solely as a health issue. I certainly do not need another test or study or white paper to tell me that my body physically reacts to the presence of any subsequent inhalation of another person's smoke.

In your own home—the sky's the limit—you can light a campfire in your own living room if you wish—but spare me the debilitating smoke on an aircraft—at least for 2 hours.

Mr. GARN. Mr. President, I rise today in support of the committee language in the fiscal year 1988 Department of Transportation appropriations bill banning smoking on commercial airline flights of less than 2 hours. I believe this is action that the Senate should have taken long before this day arrived.

I was 1 of the 12 members of the Appropriations Committee who supported this language when it was considered by the full committee. This language, crafted by my distinguished colleague, Senator LAUTENBERG, is a better solution to the problem of smoking on commercial airlines than that proposed by the Durbin amendment in the House transportation appropriations bill. The Durbin amendment would place burdensome and onerous enforcement responsibilities on airports and their managers, who would lose vital airport improvement funds as a result of allowing smoking airplanes in the air for less than 2 hours to land at their airport. The burden to enforce this policy should not be on the shoulders of the airport authorities; instead, it should be up to the respective airlines and FAA officials to enforce this policy. I have tremendous reservations about the Durbin solution, which is why I support the Senate language and hope it is adopted in conference.

Recently, I received a phone call to my office from a constituent of mine. She indicated to me that she had the occasion to travel from the east coast to Utah several weeks ago on one of our major airlines. After making a stop along this route, and before boarding a plane to continue her trip, the ground personnel indicated that the airline was prohibiting smoking on her next flight due to the malfunction in one of the airline's air conditioners that would prevent the proper circulation of the cabin's air. I don't recall the duration of this particular flight, but this constitutent stated that the difference in this flight with other flights was obvious. She also said that several other passengers noticed the difference and how more enjoyable, in their own words, this flight was than the other flights where smoking was permitted. I think this example, though not widespread, is important to note in this debate.

Mr. President, I am pleased this body and the Congress is finally doing something about involuntary smoking in public and on public conveyances, such as airplanes. This action has resulted because of the two widely cited studies by the National Academy of Sciences and the Surgeon General. The Surgeon General's report is particularly enlightening on this subject. In the foreword of this report, the Surgeon General states the following regarding involuntary smoking:

First, involuntary smoking is a cause of disease, including lung cancer, in healthy nonsmokers.

Second, the children of parents who smoke, compared with the children of nonsmoking parents, have an increased frequency of respiratory infections, increased respiratory symptoms, and slightly smaller rates of increase in lung functions as the lung matures.

Third, simple separation of smokers and nonsmokers within the same air space may reduce, but does not eliminate, exposure of nonsmokers to environmental tobacco smoke.

These are conclusions which it appears those who support maintaining smoking on all flights, and smoking in all public places, either are not aware of or simply wish to ignore. I am not against people who smoke, but I don't necessarily believe these individuals should have the right to jeopardize the health of others, especially in light of the conclusions from the Surgeon General's report, to protect their right to smoke. The majority of airline passengers are nonsmokers who have the right to expect that their health will be protected on airline flights. I think this language prohibiting smoking on flights of 2 hours or less, that is prohealth and which sunsets in 3 years, is appropriate and necessary at this time. I hope my colleagues will agree that the time to act is now, now that these studies have been released which document the negative and harmful effects of passive smoke.

I urge my colleagues to support this language and our colleague, Senator LAUTENBERG, on this subject.

SMOKING BAN ON DOMESTIC AIRLINERS

Mr. WIRTH. Mr. President, our Nation's foremost health experts have long been united in their belief that the hazards of passive smoking are nearly equal to those encountered by regular smokers, particularly in close quarters with poor ventilation.

As a result, Congress mandated a study more than 2 years ago to determine whether air quality on board commercial airliners is hazardous and whether Federal standards adequately protect the health and safety of air travelers. The National Research Council, an agent of the National Academy of Sciences, subsequently embarked upon an 18-month study at the request of the Federal Aviation Administration [FAA].

The results of that study call for a Federal ban on smoking on all domestice commercial flights in order to protect the health and safety of airline passengers and crews. Citing the lack of any Federal agency that is responsible for health aboard planes, the council pointed to the special insular conditions that exist on airliners as compelling reasons for enactment of a total smoking ban.

For example, on a typical flight, with a full cabin and less than half of the passengers smoking, it would take a ventilation rate of 50 to 75 cubic feet of air per passenger per minute to alleviate the irritation caused by cigarette smoke. But the Aerospace Industries Association, has indicated that the maximum ventilation for five different aircraft is less than 20 cubic feet per passenger per minute with some aircraft dropping to as low as 6.9 cubic feet.

The National Research Council concluded that a complete smoking ban should be implemented to not only reduce irritation and potential health hazards associated with tobacco smoke, but also to reduce the possibility of fires caused by cigarettes and to bring cabin air quality into line with established standards for other closed environments.

Accordingly, I was pleased to join with my distinguished colleague from New Jersey, in seeking approval of the amendment to the transportation appropriations bill requiring that airports wishing to receive Federal funds implement a ban on smoking on all domestic flights of less than 2 hours' duration.

Based on the evidence compiled by the National Research Council, I believe that the health threat posed by second hand smoke on airlines is certainly sufficient to warrant a ban on smoking for flights lasting less than 2 hours. However, judging from recent debate on the floor of this Chamber, it has become obvious that if we hope to take any progress toward improving the air quality on commercial flights, we must accept a compromise on this particular issue at this time. For that reason, I will support the modified amendment which will apply the smoking ban only to those flights shorter than 90 minutes in duration, enforceable over the next 2, rather than 3, years.

By basing Federal funding eligibility on compliance to the smoking ban, the Federal Government provides the same incentive to airports as that employed to encourage the enforcement of speed limits on interstate highways and a minimum drinking age in States across the Nation. All domestic air carriers offering flights of less than 2 hours duration would simply be required to ban smoking in order to use the facilities of any airport that hopes to qualify for Federal funding.

The Federal Government spends an enormous amount of money each year in its attempt to clear the air of pollutants. The Environmental Protection Agency and the Occupational Safety and Health Administration are just two of the institutions committed to improving our public health—but their jurisdiction does not extend to the environment of airliners.

Moreover, our Federal health programs bears a terrible burden in medical costs for smokers who succumb to the debilitating or fatal effects of the use of tobacco. Now, we know that environmental tobacco smoke causes as much, if not more, of the lung cancer and death each year than all of the hazards associated with evironmental air pollution.

In light of our national commitment to clean air and our concern for the public health of our citizens, I am convinced that we would be negligent of our duty if we were to ignore recommendations of the study we called for just 2 years ago. I encourage my colleagues to join in this commonsense approach to further ensure the safety of the Nation's skyways.

Mr. GLENN. Mr. President, I rise in support of the pending provision to ban smoking on all scheduled domestic airplane flights of 90 minutes or less.

The link between cigarette smoking and several serious illnesses—including such deadly diseases as lung cancer, emphysema, and heart disease—is undisputed. And the latest scientific evidence indicates that nonsmokers are harmed by the smoke from others. The Surgeon General, in his December 1986 report "The Health Consequences of Involuntary Smoking," concludes that involuntary smoking is a cause of disease, including lung cancer, in healthy nonsmokers.

Experts tell us that the simple separation of smokers and nonsmokers aboard an airplane does not sufficiently diminish the nonsmokers' exposure to airborne tobacco smoke. Nonsmokers exposed to passive smoke in the confined space of an aircraft often experience acute physical reactions, such as eye, nose, and throat irritation. And it is not only the nonsmoking passengers, but also the in-flight crew, which we must protect from the dangers of passive smoking. I have heard from many individual flight attendants who have told me of the problems posed by the heavy concentration of smoke in sections of the airplane. These problems have ranged from burning eyes, to strained breathing, and even dizziness. I feel very strongly that these flight attendants, who provide not only for the comfort, but also for the safety of the flying public, must be protected from this health hazard.

The amendment before us today would establish a direct 2-year prohibition of smoking on scheduled domestic flights of 90 minutes or less, impose a civil penalty of up to $1,000 for each violation, and prohibit tampering with or disabling smoke alarms aboard the aircraft. Unlike a similar amendment which the House passed on July 13, 1987, the Senate version does not make enforcement of this ban a responsibility of the airports, nor does it tie enforcement to the awarding of Federal airport improvement grants. Rather, the amendment before us directs the Secretary of Transportation to enforce these provisions by regulation and provides for a public comment period on the proposed regulations. I commend my colleague from New Jersey for improving on the House amendment by providing for a more appropriate method of enforcement.

The National Academy of Sciences has issued two studies which support the Surgeon General's findings and recommend that all smoking aboard domestic commercial airline flights be banned. In addition, many medical associations have voiced their support for a ban on smoking on airplane flights. In short, the medical and scientific communities of this Nation are in favor of this amendment. I am pleased to join them today in offering my support for this ban on smoking on flights of 90 minutes or less.

Mr. HATCH. Mr. President, I think it is time we in Congress caught up with the scientific evidence—cigarette smoking is both a health and a safety risk to nonsmokers, as well as smokers who travel. This is especially true for airline passengers who are often forced to sit for hours in confined areas, breathing air contaminated by cigarette smoke.

In 1985, Congress asked the Office of Technology Assessment to review the scientific evidence as to whether cigarette smoke causes illness and disease in nonsmokers. In May 1986, OTA issued a report entitled, "Passive Smoking in the Workplace; Selected Issues," which contained the following conclusions:

> There is ample evidence that nonsmokers are exposed to elements of tobacco smoke when they are around people who are smoking * * * Children and people with pre-existing lung disease might be more susceptible than healthy adults to some of the effects of passive smoking.

Most importantly, the authors of the report stated:

> More than a dozen studies have been published during the 1980's that address the possible association of passive smoking and lung cancer. Taken one by one, the studies cannot be considered 'definitive'; however most investigators have found that passive smoking elevates a nonsmoker's risk of lung cancer, and results in about half the studies were statistically significant. The consistency of the results argues for stronger conclusions than could be drawn from individual studies; examined together, the evidence is generally consistent with an increased risk of lung cancer, on the order of a doubling of risk, among nonsmokers regularly exposed to environmental cigarette smoke compared with nonsmokers without exposure.

Congress also asked the National Research Council to evaluate cigarette smoking on commercial aircraft. In their 1986 report entitled, "The Airliner Cabin Environment, Air Quality and Safety," the Council concluded:

> A contaminant in aircraft cabins that can be detected by its characteristic odor and visibility is environmental tobacco smoke—the combination of exhaled mainstream smoke and the smoke generated by smoldering cigarettes. Environmental tobacco smoke is a hazardous substance and is the most frequent source of complaint about aircraft air quality.
>
> Because of the high concentration of environmental tobacco smoke generated in the smoking zone, it cannot be compensated for by increased ventilation in that zone. Moreover, strict separation of the airplane into smoking and nonsmoking zones does not prevent exposure of flight attendants and nonsmoking passengers to environmental tobacco smoke.

The scientific experts considered several ways of reducing environmental tobacco smoke in aircraft including structural or engineering changes, but concluded that they were economically infeasible.

The National Research Council went on to recommend:

> A ban on smoking on all domestic commercial flights, for four major reasons: to lessen irritation and discomfort to passengers and crew, to reduce potential health hazards to cabin crew associated with environmental tobacco smoke, to eliminate the possibility of fires caused by cigarettes, and to bring the cabin air quality into line with

established standards for other closed environments.

Other scientific experts have been just as definitive. In a 1981 report entitled, "Indoor Pollutants," the National Research Council stated:

> Public policy should clearly articulate that involuntary exposure to tobacco smoke has adverse health effects and ought to be minimized or avoided where possible.

But perhaps the strongest conclusions have been reached by the Surgeon General of the United States, C. Everett Koop. In his 1986 report entitled, "The Health Consequences of Involuntary Smoking," the Surgeon General made the following statement:

> The comparison of the chemical composition of smoke inhaled by active smokers with that inhaled by involuntary smokers suggests that the toxic and carcinogenic effects are quantitatively similar, a similarity that is not too surprising because both mainstream smoke and environmental tobacco smoke result from the combustion of tobacco.

The Surgeon General went on to the following three major conclusions.

First. Involuntary smoking is a cause of disease, including lung cancer in healthy nonsmokers;

Second. The children of parents who smoke compared with the children of nonsmoking parents have an increased frequency of respiratory infection, increased respiratory symptoms and slightly smaller rates of increase in lung function as the lung matures; and,

Third. The simple separation of smokers and nonsmokers within the same airspace may reduce, but does not eliminate, the exposure of nonsmokers to environmental tobacco smoke.

Mr. President, similar results and opinions can be found in other reports such as a 1986 report by the National Research Council entitled, "Environmental Tobacco Smoke; Measuring Exposure and Assessing Health Effects," a 1985 Surgeon General's report, "Health Consequences of Smoking; Cancer and Chronic Lung Disease in the Workplace," and other studies by private researchers and State and local governments.

Clearly, there seems to be little real disagreement among objective scientific experts on the health consequences of passive smoking. Passive smoking threatens the health of everyone who is exposed, and it is especially hazardous to the very young and very old. It is not a theoretical health hazard. We are not talking about assumptions based on the death of a few laboratory specimens. The Surgeon General has made it clear that every day the 1,000 cigarette smokers who die prematurely are taking 12 to 15 nonsmokers with them. In other words, it is estimated that up to 5,000 nonsmokers die prematurely each year from exposure to the cigarette smoke of others.

Mr. President this year there has been much debate on this floor about the rights of individuals, about protecting our basic rights as individuals against a variety of threats and challenges. Well, passive smoking is a very real threat against perhaps our most fundamental individual rights—the right to life.

Let me share with you a letter I received from Anna Carroll of Alexandria, VA. She has been diagnosed as having nonhereditary pulmonary emphysema. Not only has she never smoked, no one in her family has smoked, including her husband. Medical experts told her that her emphysema was directly related to the fact that she was surrounded by chain smokers at work for more than 25 years.

As tragic as her story is, that wasn't the reason she contacted me. Her reason was to request legislation to protect nonsmokers while traveling. She stated that when she attempts to use public transportation—trains, buses, or airplanes—she has severe reactions due to exposure to tobacco smoke. The flight attendants would sometimes be forced to keep a close watch on her and provide her with supplemental oxygen because of the tobacco smoke. She also gets chest pains and must struggle to breathe when exposed to cigarette smoke.

When I introduced legislation on January 6, 1987, to ban smoking on airplanes and other public conveyances, I put Ms. Carroll's letter in the CONGRESSIONAL RECORD and an interesting thing happened. I received letters from others like her. I won't read all of them, but I would like to read a few lines from a representative few.

Ms. Loretta M. Skewes from Michigan stated:

> On flight 004 the smoking was very heavy and although I complained to the attendant, nothing was done and I suffered a breathing problem which resulted in a full blown asthma attack. I had not suffered an attack for years but now the allergic cycle has been restarted.

Gerald and Sharon Campbell of Woodside, NY, said in their letter:

> Since smoke sensitive people also find it necessary to travel on public conveyances, and they find it necessary to breathe during these trips, to permit smoking is to deny others the opportunity to travel. Senate Bill 51 will give us the "right" to travel without paying the penalty of an asthma attack, the infliction of carcinogenic and radioactive materials on our innocent lungs and the possibility of long-term illness and shortened lifespans.

Mrs. Wanda F. Tozer of Cincinnati, OH, wrote:

> My respiratory system is highly sensitive to smoke. Yet there are times when I must fly to get somewhere on time. I find myself dreading each time I must fly because I nearly panic knowing that I will barely be able to breathe.

Again, I could go on and on with these letters. I have received stacks of letters from Utah and all over the country in support of this legislation. I have even received letters from Boy Scouts who are members of Troop 55 in Amalga, UT. But instead of going on, I will place these letters in the RECORD, but I want to read one more paragraph from Anna Carroll's letter. She said:

> Letters to the Secretary of Transportation, the FAA, airlines, etc., have done little to any good. There are no laws on the books so nobody takes responsibility for protection of the innocent nonsmoker.

Mr. President, people can choose to smoke but there is no such choice about breathing. We should not ban individuals from airplanes or other public conveyances simply because they cannot safely breathe air polluted by other passengers. Our much heralded right to travel should not be subject to the risks posed by passive smoking.

There is another factor we should consider, Mr. President. Smoking on airlines also poses a safety risk to all passengers. A recent study by the Federal Aviation Administration found that 6 percent of in-flight aircraft fires were caused by careless smoking.

Perhaps Michael Brown of Arlington, TX, put it most succinctly when he wrote in a recent editorial:

> Consider this; we put an average of 150 people inside of an enclosed metal cylinder filled with highly flammable oxygen and tons of explosive jet fuel, pressurize the cabin, take the aircraft 6 miles above the Earth and then allow smokers to pull out an open flame and light up.

Mrs. Georgia Schafer, a flight attendant from Golden, CO, wrote about another safety problems, she stated:

> I experienced on a flight the cabin pressure going crazy. This caused peoples ears to block and become very painful as well as headaches. The Flight Engineer could not control the cabin pressure. When the mechanics came to repair the problem they found that the valves were covered in nicotine and the valves had stuck shut.

Mr. President, we are fortunate that cigarette smoking has not yet resulted in a fatal airline crash in this country, but how long will our luck last? The opponents of banning smoking on airlines have raised two principal arguments. First, they contend that a ban will increase the risk of in-flight fires, because it will encourage smokers to sneak back to the restrooms and light up.

Mr. President, the Federal Aviation Administration [FAA] has already addressed this concern. I ask unanimous consent that that section 121.308 of the Federal Aviation regulations on lavatory fire protection be placed in the RECORD along with part (e) and (f) of section 25.854.

These regulations require every lavatory in a commercial airplane to be equipped with a smoke detector and every trash receptacle to be equipped with a fire extinguisher. If a smoke alarm sounds as soon as a cigarette is lit, notifying flight attendants, it is unlikely that smokers will continue to try to smoke in airplane lavatories.

The second argument frequently raised against the proposed ban is the need to protect the rights of smokers. Smokers do have rights but, as with every right, there are limits. Smokers have the right to endanger their own health, but that right ends when they start endangering the health and safety of others.

The evidence is clear that lighting up a cigarette on a commercial airliner does just that, it endangers the health and safety of others. Our laws are replete with examples of the regulation of individual conduct which poses a health or safety risk to others. Banning smoking from airlines would not be an anomaly. If anything, our failure to protect nonsmokers is the anomaly.

Today, we have the chance to correct this failure. We have the chance to protect the Anna Carrolls of this country and give them the right to travel the rest of us enjoy. We have the chance to protect our children, our parents, and ourselves from the dangers of cigarette smoke.

The public supports this move. A recent Gallup Poll found that 85 percent of nonsmokers, 75 percent of former smokers and 63 percent of smokers felt that smokers should not smoke around nonsmokers. Recently, the Society for Respiratory Care surveyed 2,306 travelers in the Salt Lake City Airport. Sixty-six percent said they wanted smoking banned compared to only 26 percent who didn't.

The scientists of this country have spoken, the American public has spoken, the flight attendant's unions have spoken. Today, it's time for the Senate to act. It's time for us to protect the health and safety of passengers on airlines by eliminating tobacco smoke from the airlines.

Mr. President, as I am sure my colleagues realize, I would prefer a prohibition of smoking on any public conveyance, and on January 6 of this year, I introduced legislation to accomplish that goal. I feel it is the only effective way to ensure that all public transportation is safe for all our citizens, regardless of the length of time an individual is a passenger.

Nonetheless, I realize that some of my colleagues feel that this is too drastic a step, that we should start out with a 2-hour ban, and then move forward if necessary.

Consequently, in deference to their wishes, I will support such a limited ban, but I hope my support is not mistaken for a decision on my part to relinquish my fight to ban smoking on all flights. The scientific basis already exists to justify such a prohibition. At some point, this body must come to terms with the dangers of passive smoking and realize that exposure to smoke, especially on long airplane flights or bus trips, is extremely dangerous to the health of everyone.

I hope my colleagues will support my amendment. It's time that we again ensure that the Anna Carrol's of this world can exercise the right to travel in this country.

Mr. KERRY. Mr. President, I rise today in support of an amendment which will ban smoking in aircraft on flights of 90 minutes or less for a trial period of 2 years. I believe, as recent studies indicate, that this ban will result in a more healthy environment for both passengers and crew. The atmosphere inside an airplane is artificial, ventilation is impossible, passengers and air stewards are currently being required to breath recycled bad air.

As we have heard throughout the course of this debate there are serious health consequences associated with breathing passive smoke. The Surgeon General's report released last December, the Health Consequences of Involuntary Smoking, clearly documents that involuntary smoking is a cause of disease, including lung cancer, in healthy nonsmokers. The report further states that cigarette smoke puts children at an increased risk of lung infection, and that simple separation of smokers from nonsmokers does not eliminate the exposure.

Moreover, the National Academy of Science report last year, the Airliner Cabin Environment, addressed the issue of air quality on aircraft in some detail and strongly recommended a ban on smoking in aircraft.

In a recent meeting in my office, an airline stewardess echoed testimony of the Association of Flight Attendants and stated that attendants experience a high level of acute sinus and bronchial problems. She went on to say that she personally experienced or witnessed each of the following symptoms: dizziness, nausea, severe headaches, and coughing spells. She attributed each of these symptoms to the smoky environment of the cabin.

We have heard here today the example of Air Canada, the first airline in North America to eliminate smoking on certain flights of 2 hours or less, but I think the results are worth repeating. Mr. President, 96 percent of the Air Canada passengers surveyed after flying a nonsmoking flight said they approved of the ban. Further, an Air Canada spokesman said:

> We have to keep our eye on the bottom line. If sales had gone down on the nonsmoking flights, we might have had to reconsider. But sales in fact went up.

I believe that the Surgeon General's report on the adverse effects of passive smoke, the National Academy of Science study on airliner cabin environment, and the testimony of flight attendants yields conclusive evidence that smoking in aircraft is a real health threat to passengers and particularly crew members. I believe that the American people are becoming increasingly aware of this threat and recognize the need to separate smokers from nonsmokers where possible and to limit smoking were adequate separation is not possible. I urge the adoption of this amendment.

Mr. LAUTENBERG. Mr. President, we will, with this ban, be capturing more than half of the flights that take place. That is based on data provided by the FAA's office of air control and, Mr. President, I ask, now, for approval of this amendment. Mr. President, I move the adoption of the amendment.

The PRESIDING OFFICER. Is there any further debate on the second-degree, modified amendment? If not, the question is on agreeing to the amendment of the Senator from New Jersey.

The amendment (No. 1099), as modified, was agreed to.

Mr. HELMS. Mr. President, I would like the RECORD to reflect that even though the amendment as approved is a substantial improvement, I nevertheless want to be recorded as voting in the negative.

The PRESIDING OFFICER. It will be noted.

Mr. LAUTENBERG. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HELMS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The question is on agreeing to the first-degree amendment, as amended.

The amendment (No. 1098), as amended, was agreed to.

Mr. LAUTENBERG. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HELMS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

NOMINATION OF JUDGE DOUGLAS GINSBURG TO BE AN ASSOCIATE SUPREME COURT JUSTICE

Mr. DOLE. Mr. President, I wonder if the distinguished Senator from New Jersey would yield that I may speak as if in executive session for 2 minutes, if the majority leader has no objection.

Mr. BYRD. Mr. President, I have no objection. The Senator may speak for any length of time that he wishes. I hope however, that the other Senators will not speak for too long on the subject of the Ginsburg nomination.

Mr. DOLE. I think there are only a couple of other Senators who want to speak very briefly.

We have just come from the White House where the President indicated he is going to nominate Douglas Howard Ginsburg of the District of Columbia to succeed Lewis Powell as Associate Justice of the U.S. Supreme Court.

Judge Ginsburg is a member of U.S. Court of Appeals for the District of Columbia Circuit. He graduated from Cornell University and the University of Chicago School of Law. He served as a law clerk for Justice Thurgood Marshall of the Supreme Court and then became a tenured professor at Harvard Law School. He has authored a number of articles in law journals and other publications and in the Harvard Review. He rose to be Assistant Attorney General for the Antitrust Division.

I have met Judge Ginsburg. I think Judge Ginsburg will be scrutinized very carefully, as he should be. I believe, even though the Bork nomination failed, all of us in the Senate learned a great deal about the nominating process. And I am certain that, Judge Ginsburg is going to be carefully scrutinized. That is the way the process works. This will be done as rapidly as possible. Hopefully, we will have hearings scheduled quite soon, then we can get to this nomination before we leave this year.

I have heard a great deal about Judge Ginsburg today, and in the past few days, because he was on a list that the Chief of Staff, Mr. Baker, brought to Senators on both sides.

I am very happy to stand here today and indicate that, based on what I know, I am prepared to support Judge Ginsburg. I want to wait until we have the hearing, obviously. But, based on the information we have received, this man is well qualified. He is a young man, 41 years of age. If he is confirmed, he will have a long and, hopefully, distinguished career on the Supreme Court.

So I congratulate him and his family; and the President, for making the nomination.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. McCLURE. Mr. President, I ask unanimous consent to proceed as in executive session.

The PRESIDING OFFICER. Without objection, the Senator from Idaho is recognized.

Mr. McCLURE. Mr. President, I am pleased to join with my colleagues in commending the President for the nomination just announced with respect to Judge Ginsburg's nomination to serve as Associate Justice of the Supreme Court.

Mr. President, I want to read an excerpt of the President's remarks in presenting Judge Ginsburg in the East Room of the White House, just a few moments ago.

I read from the President's statement.

> I am announcing today that, in accordance with my duty under the Constitution, I intend to nominate and ask the Senate to confirm Judge Douglas Ginsburg of the United States Court of Appeals for the District of Columbia circuit for the position of Associate Justice of the Supreme Court.
>
> Judge Ginsburg is a highly-regarded member of the legal profession. His career as a federal judge, as Assistant Attorney General of the United States, as a senior official at the Office of Management and Budget, as a distinguished professor at Harvard Law School, and as a former law clerk to Supreme Court Justice Thurgood Marshall makes him eminently qualified to sit on our highest court.
>
> Just as importantly, Judge Ginsburg is highly respected by his peers across the political spectrum. When I nominated him to the U.S. Court of Appeals last year, he was unanimously confirmed by the Senate and won lavish praise not just from conservatives but from liberals as well.
>
> Judge Ginsburg is, as I am, as every justice I have nominated has been a believer in judicial restraint—that is, that the proper role of the courts is to interpret the law, not make it. In our democracy, our elected representatives make laws, and unelected judges interpret the laws. That is the foundation of our system of government. Above all, judges must be guided by our most fundamental law—the Constitution. Every judge that I appoint must understand that he or she serves under the Constitution, not above it. Judge Ginsburg is such a judge.
>
> Throughout his professional career, Judge Ginsburg has shown that he also believes, as I do, that the courts must administer fair and firm justice while remembering not just the rights of criminals but, equally important, the rights of the victims of crime and the rights of society.
>
> Too often, judges have interpreted the Constitution and have made law enforcement a game in which clever lawyers try to find ways to trip up the police on the rules.
>
> This is not what our Founding Fathers intended when they framed our Constitution 200 years ago. They knew that among the most vital duties of government was to "insure domestic tranquility." They drafted a constitution and gave us a system that was true to that duty while protecting the rights of all Americans.
>
> I believe that Judge Ginsburg will take a tough, clear-eyed view of this essential purpose of the Constitution while remaining sensitive to the safety of our citizens, and to problems facing law enforcement professionals.
>
> Much has been said about my agenda for the courts. I want courts that protect the rights of all citizens. No one has rights when criminals are allowed to prey on society. Judge Ginsburg understands that. That's why I am nominating him. That's why I have selected each of the people I have put forward for the Supreme Court.
>
> In taking up this nomination, I hope we can all resolve not to permit a repetition of the campaign of pressure politics that has so recently chilled the judicial selection process.
>
> It is time for the Senate to show that it will join with me in defending the integrity and independence of the American system of justice.
>
> A good way to begin would be by holding hearings promptly. When Justice Powell announced his retirement 4 months ago, he made it plain that he believed it would be unfair to the parties with cases before the Supreme Court, and unfair to the remaining members of the court, to be left without nine full-time justices. He graciously stepped down from the court to enable the President and the Congress to select his replacement before the October term began.
>
> But, as a result of the longest delay in starting hearings to fill a vacant seat on the court since the custom of taking testimony from Supreme Court nominees first began in 1939, the Nation's highest court is still operating at less than full strength over 4 months later.
>
> The long delay in scheduling hearings for Judge Bork had other results as well. Since June 1987, when Justice Powell resigned, the work of the Supreme Court has grown ever more burdensome. All during the months of July, August, and September, nearly one-third of the literally hundreds of cases that the remaining eight justices reviewed for hearing were criminal cases. Throughout this time, the empty seat on the Supreme Court has been a casualty in the fight for victims' rights and the war against crime.
>
> During the last 25 years, the average time between nomination and the start of hearings has been less than 18 days. In fact, in the entire 200-year history of our country since the nomination of John Jay, the average start-to-finish time from a President's appointment to confirmation or other action by the Senate has been only 24 days.
>
> One Senator has boasted that the reason for the 70-day delay in beginning Judge Robert Bork's hearings was to allow time to gear up the political campaign against him. That was, very simply, a disservice to the court and to the Nation. If these hearings take longer than 3 weeks to get going, the American people will know what's up.
>
> It is time to put the national interest ahead of partisan political interests. No excuses about the press of other business before the Senate Judiciary Committee. There is more important business before that committee than to bring the Supreme Court up to full strength. The Senate has a duty in this regard, just as I do.
>
> So this is my call to the Senate today. Let us all resolve that the process of confirming a Supreme Court nominee will never again be distorted, as it was in Judge Bork's case. Alexander Hamilton wrote that "the complete independence of the courts of justice is * * * essential in * * * the Constitution." Let us resolve this time that guarding that independence will be the Senate's highest priority. The American people want this. They have a right to expect it.
>
> By selecting Judge Ginsburg—I have gone the extra mile to ensure a speedy confirmation. I have been impressed by the fact that in academia, in government, and on the bench, Judge Ginsburg has been enormously popular with colleagues of all political persuasions. A word that many have used to describe Douglas Ginsburg is "unpretentious." That's quite a compliment for a judge. But I guess that's just one reflection of a man who believes profoundly in the rule of law. In the last analysis it is just such men and women who ensure the continued respect for our constitutional system. That is why I am so pleased to nominate Judge Douglas Ginsburg to the highest court of our Nation.

Let me say in closing, it is up to all of us to see to it that Senate consideration of Judge Ginsburg's nomination is fair and dispassionate—and above all, prompt. I believe America is looking for a sign that, this time, the process will protect the independence of our judiciary—as the framers of the Constitution intended. I urge Senator Biden and Senator Thurmond and the other members of the Senate Judiciary Committee to join me in the spirit of bipartisan cooperation, and to demonstrate this spirit by meeting during the coming week to schedule hearings on this nomination.

Mr. President, I commend the President for making the nomination that he has made. I look forward to the hearings that I am sure will proceed very promptly. I know how talking with Senator BIDEN about it that there is no intention to delay, unduly, the nomination process, and I commend Senator BIDEN for that—not only the appearance but the reality of fairness in the process. I look forward to participating with the Senate in the consideration of this nomination. I am confident that after reflection the Judiciary Committee will vote to approve this nomination and we will have the opportunity on the floor of this Senate in yet this year to vote upon that confirmation. I thank the Chair.

Mr. HATCH. Mr. President, I am also pleased to note that President Reagan nominated Judge Ginsburg, of the District of Columbia Court of Appeals to be an Associate Justice of the Supreme Court. I commend the President for sending up this outstanding nominee, whose qualifications for this most important post are truly exemplary.

Particularly in light of these extraordinary qualifications, I trust that my colleagues will perform their advise and consent function in the responsible manner contemplated by the Constitution, without the pressure politics that so infected Judge Bork's confirmation process. First and foremost, it is imperative that we hold the hearings on Judge Ginsburg as promptly as possible. There can be no repetition of the unprecedented 72 day delay of the Bork hearings; a delay calculated to allow the special interest groups to mount their campaign of opposition in the media and the Senate. Since 1962, it has taken the Senate Judiciary Committee only 18 days, on average, to begin hearings on Supreme Court nominations.

The 10-week delay for Judge Bork's hearings was the longest since the custom of taking testimony from Supreme Court nominees began in 1939.

We simply cannot allow partisan political concerns to again override the broader national interest. Any dilatory tactics in connection with this confirmation will deprive the President of his constitutionally vested authority to appoint judicial nominees, deprive the full Senate of its power to exercise its advise and consent function and, most important, deprive the Supreme Court of the ability to effectively perform its most important responsibilities. We will have failed in our duties if we allow all three branches to be so hampered in performing their constitutionally prescribed roles. This is not the civics lesson that we want to send to the American people in this, the bicentennial year of our Constitution.

As Justice Powell stated when he stepped down, if the Supreme Court is at less than full strength, it "create[s] problems for the Court and for litigants." Due to Judge Bork's extremely protracted confirmation process, the Court has already been operating at less than full strength for well over a month. The Court is currently considering some very complex and significant cases involving a multitude of important constitutional issues. The American people, as well as litigants before the Court, expect and deserve a Court that is able to effectively decide these cases and carry out its other duties. We are obligated to minimize the instability, delay, and confusion that necessarily results from an incomplete Court. It is only fair that we establish a Court that is able to dispense complete and final justice.

This means that we must forgo an early Thanksgiving recess. It means we must forgo excuses about the press of other business that the Judiciary Committee must take up before the nomination of Judge Ginsburg. You will undoubtedly hear that the nominee's record is so extensive that we must delay to fully explore it, or we will hear that the record is so incomplete that we must delay to probe further into his background. These excuses for stalling simply will not wash.

All of Judge Bork's opponents were fully aware that the interminable delay in his confirmation—and his defeat—would result in a vacancy on the Court at this late date in the term. They cannot be heard now to complain that we must turn to other business before filling the vacancy that their efforts created.

Today, in announcing the nomination of Judge Ginsburg, President Reagan warned that if we adjourn before acting on this nomination, he may well convene a special session to take final action on this question. No one will be less happy than I about spending Christmas in Washington on this matter, but the President will be fully within his rights to keep us here if we refuse to do what the national interest requires.

In sum, let us pledge now that we will separate politics from the confirmation process. Let us prove to the American people that we can fulfill our role in a statesman-like manner, without political wrangling or politically motivated delay.

As a matter of fact, I join in Senator MCCLURE's comments. Senator BIDEN has personally told me that there will be no delays and as best we can we will move ahead quickly and with dispatch shown. I want to commend him for that attitude. If that happens, and I believe that it will, the American people will owe him a great debt of gratitude.

Let me finish with these two thoughts.

Judge Ginsburg has served with distinction in all areas of the legal profession. He currently serves as a judge on the U.S. Court of Appeals for the District of Columbia, often referred to as the second most important court in the Nation. He was a Government litigator, serving with distinction as the Assistant Attorney General for the Antitrust Division of the Justice Department and was Administrator for the Information and Regulatory Affairs Office in the Office of Management and Budget. He is a distinguished scholar who served for 10 years as a professor at the Harvard Law School and is the author of numerous books and articles on antitrust, economic regulation, and the first amendment. He is familiar with the workings of the Supreme Court since he served as a clerk to Justice Thurgood Marshall.

In light of Judge Ginsburg's outstanding credentials, it is little wonder that the American Bar Association unanimously recommended him as qualified to serve on the court of appeals. Indeed, so impressive is Judge Ginsburg's record, that two of my colleagues on the other side of the aisle, who are not generally known for their support of President Reagan's judicial nominees, have both sung Judge Ginsburg's praises and highly recommended his confirmation as an appellate court judge.

In introducing Judge Ginsburg, Senator KENNEDY noted that he is a man with an insightful mind who is "able to dissect particular legal issues and questions with clarity and with a sense of compassion and with an understanding of the law." Senator KENNEDY also said that Judge Ginsburg is "open-minded * * * willing to listen, and * * * willing to consider views which he has not himself held."

The other Senator from Massachusetts, Senator KERRY, echoed this praise, stating, "there could be no more highly qualified candidate for a judgeship on the U.S. Court of Appeals for the D.C. Circuit than Douglas Ginsburg." Senator KERRY went on to say, "I know that he commands the greatest respect from our mutual friends at Harvard such as Alan Dershowitz and Larry Tribe. Alan has indicated to me that he regards Doug Ginsburg as a legal scholar of the highest order—nonideological, nonpolemical and the best possible nomination that the President could make for the Federal judiciary."

Finally, I just want to add my voice for Judge Ginsburg. I have known him for quite a while and watched his career with a great deal of interest. I have to say he is one of the finest young legal minds in the Nation. He is the type of a person who will make a great Supreme Court Justice. He has the intellect to really add to the Court. He has the industry to add to the Court. He is physically strong and, I think, he is emotionally a very strong individual as well.

I might add that he has great judicial temperament, a man of very modest personality. He does not build himself at the expense of others. He is a person that I think almost anybody who would take the time to shake his hand and get acquainted with him would like.

I want to say what a tremendous appointment this is. I feel sorry for the Borks, sorry for what they had to go through. I am sorry that we had to go through that kind of a process. But let us not make this a repeat. Let us do what is right.

I yield the floor.

The **PRESIDING OFFICER.** The majority leader.

Mr. **BYRD.** Mr. President, I am one of those who urged the President to send up a conservative nominee to fill the vacancy on the Supreme Court. I am confident that the Judiciary Committee will act with calmness, dispassionately, and fairly.

I think it is time for everybody in this body and outside this body, at this end of the avenue and at the other end of the avenue, to curb our rhetoric so that the Senate can make a decision in a way that will promote public confidence in us and in the process and in the Court.

The Judiciary Committee has not only the right but also the responsibility to give full and careful consideration to Judge Ginsburg's qualifications and his experience and his philosophy. I would hope that we would stop raking over the old ashes; and, as I said the other day with respect to budget deficits, stop pointing fingers, bickering and badgering, and look ahead, not backward. We do not gain anything by looking backward.

As one who tried to remain dispassionate and tried to view the Bork nomination with calmness and who tried to deal fairly with it, who urged on all my colleagues on both sides and on the White House to go slow on the rhetoric, I think I have some credibility in this regard. But I urge us all to take care that we do not fan old flames, and that we concentrate on the business of the Senate, and the Ginsburg nomination will be part of that business.

I have heard some talk today about convening a special session. I do not know how much time it will take for the Judiciary Committee to adequately prepare itself for the hearings. I hope it takes whatever time is adequate, no more, no less. But I caution people at the White House, the other end of the avenue who helped to polarize the country and who contributed in great measure to the politicization of the Bork nomination. I urge us all to be cautious, that we do not contribute in the same manner to this nomination. The scriptures say that "the wicked flee when no man pursueth." So let us not conjure up a ghost that is pursuing when there is none. Nobody is advocating any unreasonable delay, but the Senate does have to take a little time. The committee will require a little time. I hope that the White House will not be pointing the finger, as we have seen happen too many times, at this Senate, start badgering it and pillorying it and saying it has to do this or that by a certain date or time, or convene a special session, or make veiled threats of that kind. I go into this with an open mind and with an intent to support, wherever I can, a conservative nominee to the Court. But this Senate is not going to be pilloried or badgered or stampeded by anyone.

DEPARTMENT OF TRANSPORTATION AND RELATED AGENCIES APPROPRIATIONS, FISCAL YEAR 1988

The Senate continued with the consideration of the bill.

Mr. **BYRD.** Mr. President, I hope now that we can get on with the bill. I understand there are about three amendments remaining.

AMENDMENT NO. 1100

(Purpose: To assure that grant applicants under airway science programs will not be penalized on the basis that such applicants previously received funds under such program)

Mr. **CONRAD** addressed the Chair.

The **PRESIDING OFFICER** (Ms. MIKULSKI). The Senator from North Dakota.

Mr. **CONRAD.** I have an amendment I send to the desk and ask for its immediate consideration.

The **PRESIDING OFFICER.** The clerk will report.

The legislative clerk read as follows:

The Senator from North Dakota [Mr. CONRAD], proposes an amendment numbered 1100.

Mr. **CONRAD.** Madam President, I ask unanimous consent the clerk dispense with further reading of the amendment.

The **PRESIDING OFFICER.** Without objection, it is so ordered.

The amendment is as follows:

On page 12, line 16, immediately before the period, insert a comma and the following: "but in no event shall an applicant for an airway science grant be denied such grant, in whole or in part, on the basis that the applicant had previously received funds under the airway science programs".

Mr. **CONRAD.** Madam President, the amendment I have sent to the desk is basically technical in nature. It simply ensures that all grant applicants for airway science programs are playing by the same rules; that the college or university that received funds from the Airway Science Program will not be penalized because it received funds in prior years.

Madam President, very simply the University of North Dakota has received in the past earmarked funds from these grant sources, and now there is no longer earmarking. There is a pool from which all States can apply, and we just want to ensure that because some schools may have received earmarked funds in the past they are not precluded from competing on an equivalent basis with all other institutions in the future.

Madam President, this amendment has been cleared, to my understanding, by both managers. I move its adoption.

Mr. **LAUTENBERG.** Madam President, we have looked at this amendment and there is no objection. Therefore, on this side I am prepared to accept the amendment.

Mr. **D'AMATO.** Madam President, we certainly think this amendment is eminently fair.

The **PRESIDING OFFICER.** If there is no further debate, the question is on agreeing to the amendment of the Senator from North Dakota.

The amendment (No. 1100) was agreed to.

Mr. **CONRAD.** Madam President, I move to reconsider the vote by which the amendment was agreed to.

Mr. **LAUTENBERG.** I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1101

(Purpose: To deny funds for transportation projects in the United States that use the engineering, architectural, and construction services of any foreign country that does not provide such services of the United States access to the markets of the foreign country)

The **PRESIDING OFFICER.** The Senator from Alaska.

Mr. **MURKOWSKI.** Madam President, I send an amendment to the desk and ask for its immediate consideration.

The **PRESIDING OFFICER.** The clerk will report.

The legislative clerk read as follows:

The Senator from Alaska [Mr. MURKOWSKI], for himself and Mr. STEVENS, proposes an amendment numbered 1101.

Mr. **MURKOWSKI.** Madam President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. The amendment is as follows:

At the end of the bill, add the following:

SEC. . DENIAL OF FUNDS FOR PROJECTS USING CERTAIN SERVICES OF FOREIGN COUNTRIES THAT DENY FAIR MARKET OPPORTUNITIES.

(a) IN GENERAL.—

(1) None of the funds appropriated by this Act may be used to carry out within the United States, or within any territory or possession of the United States, any transportation project which uses any service of a foreign country during any period in which such foreign country is listed by the United States Trade Representative under subsection (c).

(2) Paragraph (1) shall not apply with respect to the use of a service in a project if the Secretary of Transportation determines that—

(A) the application of paragraph (1) to such service would not be in the national interest,

(B) services offered in the United States, or in any foreign country that is not listed under subsection (c), of the same class or kind as such service are insufficient or are not of a satisfactory quality, or

(C) exclusion of such service from the project would increase the cost of the overall project by more than 20 percent.

(b) DETERMINATIONS.—

(1) By no later than the date that is 30 days after the date on which each report is submitted to the Congress under section 181(b) of the Trade Act of 1974 (19 U.S.C. 2241(b)), the United States Trade Representative shall make a determination with respect to each foreign country of whether such foreign country—

(A) denies fair and equitable market opportunities for services of the United States in procurement, or

(B) fair and equitable market opportunities for services of the United States in bidding.

for construction projects that cost more than $500,000 and are funded (in whole or in part) by the government of such foreign country or by an entity controlled by such foreign country.

(2) In making determinations under paragraph (1), the United States Trade Representative shall take into account information obtained in preparing the report submitted under section 181(b) of the Trade Act of 1974 and such other information as the United States Trade Representative considers to be relevant.

(c) LISTING OF FOREIGN COUNTRIES.—

(1) The United States Trade Representative shall maintain a list of each foreign country with respect to which an affirmative determination is made under subsection (b).

(2) Any foreign country that is added to the list maintained under paragraph (1) shall remain on the list until the United States Trade Representative determines that such foreign country does permit the fair and equitable market opportunities described in subparagraphs (A) and (B) of subsection (b)(1).

(3) The United States Trade Representative shall annually publish in the Federal Register the entire list required under paragraph (1) and shall publish in the Federal Register any modifications to such list that are made between annual publications of the entire list.

(d) DEFINITIONS.—For purposes of this section—

(1) The term "service" means any engineering, architectural, or construction service.

(2) Each foreign instrumentality, and each territory or possession of a foreign country, that is administered separately for customs purposes shall be treated as a separate foreign country.

(3) Any service provided by a person that is a national of a foreign country, or is controlled by nationals of a foreign country, shall be considered to be a service of such foreign country.

Mr. MURKOWSKI. Mr. President, this amendment has been cleared on both sides. Senator STEVENS and Senator D'AMATO join me in introducing the amendment. What it does quite simply is requires reciprocity in bidding for design engineering, construction, and architectural services associated with our transportation projects.

I believe my colleagues are well aware of the difficulties United States construction firms are having in penetrating the Japanese construction market despite the fact that our firms are internationally competitive. One example, the $8 billion Kansai International Airport has become a symbol for the phrase, "closed to foreign participation."

The Senate has adopted this reciprocity provision on three other funding bills for public projects: The DOD authorization bill, the military construction appropriations bill, the Airport and Airways Improvement Act.

In addition, we have included language on the trade bill calling for a 302 investigation on barriers to United States design engineering, construction, and architectural services in Japan.

I believe this sends a strong signal to our friends in Japan that we are determined to use the leverage of our marketplace to insure United States firms are given fair and equitable opportunities to bid on public projects in Japan.

I thank the bill managers for their support of this important provision.

Madam President, the amendment I am introducing on behalf of the senior Senator from Alaska and myself is a straightforward one. It simply requires that in order for foreign design engineering, construction, and architectural firms to participate in projects funded under this act, the firms home market must be open to participation by U.S. firms.

This body has seen fit to include this provision in the DOD authorization bill, the military construction appropriations bill, and most recently in the Airport and Airways Improvement Act.

My amendment uses the leverage of our marketplace in addressing a serious inequity. For the past 2 years, we have been actively encouraging the Government of Japan to take action to open up their construction market to United States construction firms. In the next decade over $62 billion worth of major projects will be built in Japan. The first of these, the Kansai International Airport, an $8 billion project, is underway. U.S. firms have invested a great deal of time and capital in pursuing contracts for this project. Yet despite their efforts, and the fact that they are internationally competitive in this area, we have made little progress. While the Kansai International Airport Co. has awarded in excess of $2 billion in contracts, less than $2.2 million of these have gone to U.S. firms. In fact, no United States firms has won a major contract in Japan since 1965. In contrast, Japanese construction firms' share of the United States market continues to grow. In the past 4 years, their share of the U.S. market has grown over 50 percent, in 1986 their U.S. contracts were valued in excess of $2.2 billion.

I want to state firmly that there is nothing wrong with Japanese construction firms, or for that matter firms from any country participating in our market if they are able to provide these services at the most competitive price. However, we must look at the long-term impact this will have on the health of the domestic industry if they can't make up for lost domestic market share by bidding on projects overseas. We are not demanding the U.S. firms be given contracts, all we are asking for is the opportunity to bid on projects on a fair and equitable basis.

This is not a "Buy America" provision. It starts from the premise that our projects are open to foreign participation, but places the stipulation that participation be based on reciprocal opportunities for U.S. firms overseas.

In the 2 years that I have been active on this issue, I have heard from construction firms from all over the United States, all expressing their frustration over the inequity.

I would like to quote the president of one of these firms, based in Illinois:

> While the Kansai project is an airport, the same exclusion exists with respect to subway, sewer, highway and rail tunnel construction in Japan. It is impossible for a U.S. construction contractor to secure such work, whether individually or in joint venture with Japanese partners. It is likewise impossible for tunneling machine suppliers to secure orders from Japanese contractors irrespective of price or delivery vis-a-vis Japanese construction equipment suppliers.
>
> In contrast, there are no barriers to Japanese contractors securing such federally funded underground work in the U.S. and there are likewise no barriers to Japanese tunneling machine suppliers securing orders from U.S. contractors performing federally funded underground work here. Of late they have been quite successful in securing such major construction work.
>
> In summary, I urge you to consider broadening the scope of your reciprocity bill to encompass all federally funded construction irrespective of project purpose. Underground U.S. infrastructure construction

work involving tunneling is an enormous market—but not as dramatic or evident to the average citizen as major airports.

I would also at this time like to cite an article entitled "Opening the Japanese Construction Market," written by Franklin J. Agardy, the president of URS Corp., a major United States international engineering and construction firm based in California. This article appeared in a recent edition of Export Today.

Mr. Agardy writes:

> It is my personal opinion that the Japanese will only very reluctantly open their engineering/construction market to foreign firms and will only do so under heavy pressure. The two primary reasons for this attitude are that, first, the Japanese truly do not believe any foreign firms can perform better than their own companies and, second, their domestic industry appears to be very profitable. Outside competitors only reduce the earnings of Japanese firms * * * and make no mistake about it, the Japanese will go to extraordinary lengths to protect their domestic market. For example, no American company could manage a project in Japan without using Japanese subcontractors, but it is common knowledge that we cannot hire them. That's because Japanese prime contractors tell subcontractors they will never get a contract from a Japanese firm if they work for a foreign competitor.
>
> To correct the total imbalance of trade in this critically important sector of both nations' economies, the U.S. must begin to establish a level playing field through governmental regulatory action. If United States companies cannot bid on public works projects in Japan, then we must not allow them to bid on public works here.

I ask unanimous consent that the full text of the article be printed in the Record.

There being no objection, the material was ordered to be printed in the Record, as follows:

Construction Market

(By Franklin J. Agardy)

(The Japanese engineering/construction industry takes in $5 billion a year in revenues in the U.S., but American firms do virtually no business in Japan. A top executive who discussed this problem with the Japanese as part of a Presidential Trade Delegation found there is little incentive for Japan to open its market, so the rules of the game must change. Dr. Agardy is president and chief operating officer of URS Corporation, a New York Stock Exchange-listed professional services firm, headquartered in San Mateo, CA.)

In late 1986, a Presidential Trade Delegation made up of 10 executives from leading U.S. construction, engineering design, and equipment supply firms visited Japan for meetings with senior government and industry officials.

Led by Assistant Secretary for Trade Development H.P. Goldfield, the delegation's general purpose was to discuss how U.S. firms might begin to participate in the Japanese construction and engineering market. Our specific purpose was to learn about the bidding practices to be used in the building of Kansai International Airport—the largest airport project ever undertaken—and to explore ways in which American companies might compete for a portion of the work to be carried out on this project.

I and most of my colleagues were under no illusions about the likelihood of immediate success with the Japanese. While the U.S. is the world's largest export market for the Japanese engineering and construction industry—providing it with some $5 billion in revenues in 1986—U.S. firms do virtually no business in Japan. Attempts to penetrate the Japanese market have met with a total lack of success.

Despite the fact that U.S. officials have pressed for American participation in the Kansai project since the early 1980's, the Japanese have excluded foreigners from bidding for work through the closed "designated bid" system and have carried out a pattern of harassment aimed at discouraging outside bidders.

From the start, the Kansai International Airport company—whose personnel are drawn almost exclusively from the Japanese government and ex-government officials-maintained that Japan had all the technology and equipment to build the project. Also, not surprisingly, past and present chairmen of the Japan Civil Engineering Association have opposed allowing foreign bidders to participate in Kansai and said that to do so would "cause confusion." Yet the company of the present chairman of the Association, Mr. Taichiro Kumagai, is reported to have received contracts in New York City totaling over $1.2 billion in just the past two years.

A DELEGATION TO TOKYO

Our delegation's visit to Japan was arranged even with the Japanese industry's intransigence because of an exchange of letters between President Reagan and Prime Minister Nakasone as well as high-level discussions regarding the U.S. governments desire to see the domestic Japanese market opened to the American engineering/construction industry. While Prime Minister Nakasone in July of 1986 called for greater freedom of participation by foreign firms and said the issue threatened to become "a knotty political problem," the impact of his words on the Japanese bureaucracy and industry appears to have been negligible.

President Reagan and other U.S. government officials were—and are—particularly interested in having U.S. firms participate in the Kansai project. This complex facility, which may cost over $8 billion when completed in the 1990s, is to be built on an artificial island in Osaka Bay and will serve the cities of Osaka, Kyoto and Kobe. Obviously, a project of this size requires an enormous amount of engineering and construction expertise as well as technical equipment, and many American companies stand ready to provide it with state-of-the-art technology at fair prices.

Most importantly, the U.S. government properly sees American participation in Kansai as an opening wedge that will create even more business through the $60 billion in other infrastructure projects that the Japanese have planned for the next decade.

WHAT AMERICANS CAN OFFER

Apart from the self-interest of the American government and companies, the fact is that the Japanese have limited experience in building international airports and the Kansai project, specifically, could well benefit from foreign participation. For example, no meaningful studies of the environmental impact of building a huge artificial island in a sensitive aquaculture where a large fishing industry exists have been formulated.

Also, virtually all of Japan is seismically vulnerable, and the island will place a tremendously unusual load on the floor of Osaka Bay. Yet, in my opinion, seismic analysis and design considerations have not been adequately thought through. American firms lead the world in environmental and seismic analysis capabilities but, of course, none of them were asked to advise or consult on these important matters.

In addition, there is a serious question about the advisability of the Japanese plan to design and construct the artificial island before the airport itself is fully designed because, if for no other reason, the size, shape, and structure of the island would obviously be impacted by the most efficient way of handling passenger and cargo movements.

In the Presidential Trade Delegation's discussions with officials of the Kansia International Airport Company and the Japanese government, our attitude was typically American—and perhaps naive. We felt there was a serious problem here, and that well-intentioned people carrying out honest negotiations could come to at least partial agreement on how to solve it. While this approach was considerably less than successful, I feel it was proper, at least initially, because resolution of trade difficulties through negotiations is far preferable to the imposition of tariffs and other artificial barriers.

PROBLEMS WITH CONSENSUS

Frankly, meaningful progress in our discussions with the Japanese was stopped dead in its tracks by their "consensus" approach to decision making. A firm "yes" or "no" was seldom hard, but "maybes" abounded. When we tried to pin down an issue, we were told that a solution was "impossible" unless a great many people were solicited and their agreement obtained. When we talked with those people we found many new and different "maybes" raised that would require endless discussion in order to reach consensus. At the conclusion of talks like this, we found that we'd been very politely treated, had been told that we should be optimistic about the future, but in reality had accomplished almost nothing.

Much of the information we received from the Japanese had to do with the reasons why foreign participation in their construction and engineering market could not work. Some of the reasons were:

Foreign companies must first show long-term commitment and "staying power"—and that means at least 20 years;

Foreign companies don't know how to work with Japanese firms and couldn't efficiently manage relationships with subcontractors;

There is, by their definition, serve and chronic unemployment in Japan (it amounts to 2.5-3 percent) and they can ill afford to have Americans or other foreigners create further problems.

In another line of defense that I call "pass the football," both public and private sector representatives claim that they have no authority to resolve the problem. The government says that the Kansai Airport is a private project and, while they'd like to help out the Americans, they don't have the power to force participation. The Kansai Airport people agree theirs is a private project, but point out that all construction in Japan proceeds only with the approval of the ministry in Tokyo. Since we were never able to get both sides to the same table at the same time, resolution of the disagreement was impossible.

REPORTING BACK HOME

Even with the frustrations encountered during our visit and the lack of concrete achievement, industry members of the delegation believe that the overall effect was worthwhile. In a report to the Department of Commerce following our return home, we said the trip was a strong and unmistakable signal to both the Japanese government and industry that the U.S. is most serious about pursuing access to their engineering/construction market. We were successful in generating wide publicity for our objective and did much to elevate this issue as a priority that must be further addressed by the Nakasone government.

While no discernible progress was realized on the broader objective of appraising specific steps taken by the government to provide a "fully open, transparent, and nondiscriminatory bidding system," the trip did provide extermely valuable insight into bidding practices on the Kansai Airport and other major projects in Japan. It is possible that a foundation has been laid for U.S. companies to pursue contract opportunities individually through joint ventures and other means. (In early 1987, Bechtel Group, Inc. of San Francisco received a $200,000 consulting contract to study passenger terminal designs and to suggest improvements for that phase of the Kansai project. A European construction executive called the award "blatant tokenism—a scrap of meat thrown out to keep the barking dogs quiet.")

In our report, we also expressed the unanimous opinion that the Department of Commerce should be commended for its efforts in organizing and chairing the Presidential Trade Delegation. Assistant Secretary Goldfield was particulary effective in presenting a clear and consistent message throughout the meetings in Japan and in involving each industry participant as an active and integral member of the team.

RELUCTANT OPENING

It is my personal opinion that the Japanese will only very reluctantly open their engineering/construction market to foreign firms and will only do so under heavy pressure. The two primary reasons for this attitude are that, first, the Japanese truly do not believe any foreign firm can perform better than their own companies and, second, their domestic industry appears to be a very profitable. Outside competitors only reduce the earnings of Japanese firms which have already been hurt by the decline in major construction activity throughout the world.

And, make no mistake about it, the Japanese will go to extraordinary lengths to protect their domestic market. For example, no American company could manage a project in Japan without using Japanese subcontractors, but it is common knowledge that we cannot hire them. That's because Japanese prime contractors tell subcontractors they will never get a contract from a Japanese firm if they work for a foreign competitor.

WHAT TO DO

To correct the total imbalance of trade in this critically important sector of both nations' economies, the U.S. must begin to establish a level playing field through governmental regulatory action. If an American contractor or engineering firm is prevented from working for another U.S. company in Japan as they now are, then similar restrictions must apply here. Why should the Japanese be allowed to build a plant for Honda in Ohio if an American firm can't design a building for IBM in Tokyo? Also, if U.S. companies cannot bid on public works project in Japan, then we must not allow them to bid on public works here.

These steps, while harsh compared with the current practice, are preferable to drastic congressional action that would be much more difficult to repeal once put in place. To those who say that we simply need to educate the Japanese more about our system and desires while trying to understanding their culture better, I say, "You don't understand the situation." Even if that were a viable alternative (which I doubt, because the Japanese already understand our position very well), it would take a lifetime to accomplish.

Another helpful step American companies could take to obtain engineering/construction business in Japan would be for them to form joint ventures and thus share the risk and cost of seeking such contracts. The odds of success now are so overwhelmingly negative that it's probably not prudent for one firm to try to go it alone, but a well-funded and carefully organized joint venture could eventually make some headway. It is also possible that joint ventures with Japanese firms in Japan will help correct the situation, but the fact that few if any combinations exist in the Japanese market leads me to the conclusion that only one group of potential partners is really interested.

While the difficulties I've described with the Japanese engineering/construction market result in part from a rather unique set of circumstances, they are related to the overall need to improve our industry's competitiveness in international trade. I believe the solution to this larger problem lies in the formulation of a closer business-government partnership like the one created by the Department of Commerce during our delegation's trip to Japan. What we need is nothing short of a "Team America" approach that can take advantage of the U.S. professional services industry's leading edge position to increase exports of American manufactured goods and services.

NO PROTECTORS, PLEASE

Let me emphasize that our industry doesn't need or want a "grand protector," but rather a helpmate. To achieve success, it is critical that the variety of federal agencies involved in trade promotion and foreign assistance become even more export-sensitive and better integrate and coordinate their working relationships with each other and the U.S. firms that can be winners in offshore markets. Beyond that, it's up to the private sector to realize international success by providing an innovative, solid technical product that meets the client's needs at an attractive price.

MAJOR CONSTRUCTION PROJECTS IN JAPAN

Six major projects in Japan, scheduled for completion about 2000, will cost approximately $50 billion. Many other projects are also in the planning stage, including a plan to build an airport in almost every prefecture in Japan and a number of urban redevelopment projects.

Project	Completion date	Estimated cost (billions)
Rokko Island	1990	$7
Kansai Airport	1992	8
Tokyo Bay Bridge	1996	7
Akashi Straits Bridge	1998	6
Osaka Bay Technopolis	2000	11
Yokohama Bay Port	2001	11

Source: U.S. Department of Commerce.

Mr. MURKOWSKI. Madam President, my amendment does not place any new administrative burdens on the executive branch. It would prohibit foreign firms from countries listed in the U.S. Trade Representative's "Annual Report on Foreign Trade Barriers" from bidding on these projects. This annual report which was mandated by Congress in the Trade Act of 1974 identifies those countries which have barriers to U.S. construction services.

This amendment has been drafted to allow substantial discretion for the administration. The escape clause would allow the provision to be waived if the Secretary of Transportation determines that:

First. Application is not in the national interest.

Second. Services offered in the United States or by foreign countries not listed in the report are neither sufficient nor of satisfactory quality; or

Third. Exclusion would raise the project cost over 20 percent—this figure is based on legislative precedent.

As I indicated earlier, this provision was accepted by the Senate on three other bills, DOD authorization, military construction, and airport and airway improvement reauthorization.

The fight against foreign trade barriers must take place on many fronts, the industry and USTR cannot do it alone, all we are asking is that the Department of Transportation do their part.

I urge my colleagues to support the adoption of this amendment.

Mr. LAUTENBERG. Madam President, this amendment by the distinguished Senator from Alaska has merit, and it has been cleared on this side.

Mr. D'AMATO. Madam President, I want to commend my colleague from Alaska for his work in this area. What we seek is fairness, reciprocity, and we see continual erosion as it relates to our companies being allowed to bid business in other areas. What we want is fair play.

Let me commend my colleague. I hope he will add me as a cosponsor.

Mr. MURKOWSKI. The Senator from New York has been added.

Mr. D'AMATO. I certainly support it.

Mr. MURKOWSKI. Madam President, I thank the manager and comanager. I am most appreciative of their remarks. I ask for adoption of the amendment.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from Alaska [Mr. MURKOWSKI].

The amendment (No. 1102) was agreed to.

Mr. LAUTENBERG. I move to reconsider the vote by which the amendment was agreed to.

Mr. MURKOWSKI. I move to lay that motion on the table

The motion to lay on the table was agreed to.

AMENDMENT NO. 1102

(Purpose: To ensure that certain highways that are designated as interstate highways under section 139(c) of title 23, United States Code, are subject to the provisions allowing a 65-mile-per-hour speed limit)

Mr. MURKOWSKI. Madam President, I have an amendment which I send to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Alaska [Mr. MURKOWSKI] for himself and Mr. STEVENS, proposes an amendment numbered 1102.

Mr. MURKOWSKI. Madam President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 59, line 6, strike out "either".

On page 59, line 9, strike out "or".

On page 59, line 14, strike out the period and insert in lieu thereof "; or".

On page 59, between lines 14 and 15, insert the following:

(3) constructed to the geometric and construction standards adequate for current and probable future traffic demands and for the needs of the locality and is designated by the Secretary of Transportation as part of the Interstate System in accordance with section 139(c) of title 23, United States Code.

Mr. MURKOWSKI. Madam President, this amendment will ensure that the State of Alaska has the same privileges as any other State with regard to raising the speed limit on rural portions of the Interstate Highway System.

As my colleagues are aware, the original Interstate Highway System did not include any roads in Alaska. However, recognizing that circumstances in Alaska are unique, Congress added approximately 1,000 miles of Alaskan highways to the system several years ago.

As my colleagues are also aware, an option allowing States to raise the speed limit on portions of interstate within their borders was provided during this year's debate on the highway reauthorization.

At the time, we assumed that the Alaskan highways designated as part of the Interstate System were included, and to make sure of that, a colloquy among Senator SYMMS, Senator BURDICK, and myself was included in the RECORD of the debate. That colloquy made it absolutely clear that the Senate intended Alaska to have the same option as any other State.

However, for reasons unknown to me, certain Department of Transportation attorneys have maintained that Alaska does not have that option, and ignored the colloquy on which we were depending.

This amendment will make the Senate's intentions amply clear, and allay any objections that might be based on the contention that the existing law does not allow this change to be made.

I might also point out that the State of Alaska has assured the Department of Transportation that the State has no intention of raising the speed limit on any highways before it has conducted a detailed engineering and safety study on any proposed increase.

Madam President, I move adoption of the amendment.

Mr. LAUTENBERG. Madam President, this amendment has been cleared and we are all set on this side.

Mr. D'AMATO. We have no objection.

Mr. MURKOWSKI. I thank my colleagues from New Jersey and New York. I ask for adoption of the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Alaska.

The amendment (No. 1102) was agreed to.

Mr. LAUTENBERG. I move to reconsider the vote by which the amendment was agreed to.

Mr. MURKOWSKI. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BYRD. Madam President, the fiscal year 1988 transportation and related agencies appropriation bill provides $1.258 billion for airport facilities and equipment. The navigation directional beacon at the Grant County, WV airport was damaged in the November 1985 flood and is inoperable. Is it the intention of the managers that some of the funding for airport facilities and equipment will be used for the Grant County, WV airport for navigational aids?

Mr. LAUTENBERG. Yes. We are aware of the problem at the Grant County airport. There is sufficient funding in the bill to provide for a localizer system at the Grant County airport, and it is the intention of the managers of the bill that FAA make this funding available to that airport.

It is the intention of the managers of the bill that the FAA make this funding available to the airport.

Mr. D'AMATO. I join in that request, Madam President, and I certainly believe that is an intent that should be carried out.

Mr. BYRD. Madam President, I thank both the manager and the ranking manager for their statements, for their understanding of our problem there, for their consideration, and for the positive position that they have taken on the matter. I appreciate that very much.

Madam President, I wonder if we could proceed with a technical amendment, and go to third reading before, if the distinguished Senator would wait just a couple of minutes. We might proceed to third reading first.

Mr. LAUTENBERG. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. KASTEN. Madam President, I ask unanimous consent that the order for the quorum call be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KASTEN. I ask unanimous consent to proceed as if in executive session for not to exceed 2 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE NOMINATION OF DOUGLAS HOWARD GINSBURG TO BE AN ASSOCIATE JUSTICE OF THE SUPREME COURT

Mr. KASTEN. President Reagan today fulfilled one of his most important constitutional responsibilities. He nominated a new Associate Justice to our Nation's highest court.

We have had a remarkable debate over the last 3 months, a truly valuable national discussion of what ends the awesome power of the Supreme Court should properly serve.

Should the Supreme Court seek to make the political will of its own members the law of the land? Or should legislation be left to the elected branches of government?

Many of us have been thinking about these questions. I know President Reagan has. And he's decided that the people's representatives in Congress, not judges, should make our laws.

His nominee to the Supreme Court, Judge Douglas Ginsburg, has served with distinction on the D.C. Circuit Court of Appeals. I think it is especially noteworthy that when this body approved him to that court a year ago on October 8, we did it unanimously.

Judge Ginsburg has written about and participated in many important cases. He was a prominent professor at the Harvard Law School, a committed law enforcement official at the Justice Department, and a dedicated public servant at the Office of Management and Budget.

The Senate Judiciary Committee has an ample public record to examine in its consideration of Judge Ginsburg. The committee and the full Senate now have an extraordinary opportunity to show all Americans that the

Senate has good judgment, and that the Senate plays fair.

I plan to carefully study the record and announce my decision on this nomination when I have all the facts. I would say now that Judge Ginsburg appears to share with me the view that it is the job of the people's elected representatives to make the law—not the judiciary.

In conclusion, I call upon the Judiciary Committee to act promptly to get hearings underway so we can fill the vacancy on the Supreme Court.

Madam President, I yield the floor.

Mr. LAUTENBERG. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. D'AMATO. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

DEPARTMENT OF TRANSPORTATION APPROPRIATIONS

AMENDMENT NO. 1103

(Purpose: To make technical corrections to H.R. 2, the "Surface Transportation and Uniform Relocation Assistance Act of 1987")

Mr. D'AMATO. Madam President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from New York (Mr. D'AMATO), for Mr. SYMMS proposes an amendment numbered 1103.

Mr. D'AMATO. Madam President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Strike Sec. 332 (page 60) and insert in lieu thereof the following:

"SEC. 332. Section 149(b)(82) of the Surface Transportation and Uniform Relocation Assistance Act of 1987 is amended to read as follows: "(82) subsections (a)(82) and (a)(83) $2,300,000;". Section 149(b)(83) of such Act is repealed, and succeeding paragraphs are renumbered accordingly."

Mr. D'AMATO. Madam President, this amendment is technical in nature. Basically it combines two highway projects in the State of Idaho. It does not provide for any additional dollars. It gives the State the needed flexibility to deal with both of these projects. I am pleased to state that it has been cleared on both sides.

On behalf of Senator SYMMS, I offer this amendment.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from Idaho [Mr. SYMMS].

The amendment (No. 1103) was agreed to.

Mr. D'AMATO. Madam President, I move to reconsider the vote by which the amendment was agreed to.

Mr. LAUTENBERG. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1104

Mr. LAUTENBERG. Madam President, I send to the desk a technical amendment and ask consent for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from New Jersey (Mr. LAUTENBERG) proposes an amendment numbered 1104.

Mr. LAUTENBERG. Madam President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 56, after line 6, strike all through "$2000" on the last line of the agreed to Lautenberg amendment, as modified, and insert in lieu thereof the following:

"SEC. 327. After the date of expiration of the 4-month period following the date of the enactment of this subsection, and for a period of 24 months thereafter, it shall be unlawful to smoke in the passenger cabin or lavatory on any scheduled airline flight in intrastate, interstate, or overseas air transportation, if such flight is scheduled for 90 minutes or less in duration, which prohibition shall be enforced by the Secretary of Transportation, who shall issue such regulations as may be necessary to carry out the provision of this subsection, which regulations shall be authorized to include and shall include a regulation providing that any passenger who tampers with, disables, or destroys any smoke alarm device located in any restroom aboard an aircraft engaged in air transportation or intrastate air transportation shall be subject to a civil penalty in accordance with section 901 of the Federal Aviation Act of 1958 except that such civil penalty may be imposed in an amount up to $2,000."

Mr. LAUTENBERG. Madam President, I move adoption of the amendment.

The PRESIDING OFFICER. Is there any debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from New Jersey [Mr. LAUTENBERG].

The amendment (No. 1104) was agreed to.

Mr. LAUTENBERG. Madam President, I move to reconsider the vote by which the amendment was agreed to.

Mr. D'AMATO. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. LAUTENBERG. Madam President, I know of no further amendments.

Before we go to third reading, however, I want to take a moment to express my appreciation to my distinguished colleague from New York, Senator D'AMATO. He is the distinguished ranking member of our subcommittee and has played a major role in developing this bill and moving it through the committee and the Senate. I am grateful to him for his help, advice, and cooperation.

I also want to recognize the contributions of the people who support us throughout this process—the subcommittee staff. Both the majority staff—Jerry L. Bonham, Patrick McCann, Joseph McGrail, and Veronica Queen—and the minority staff—Anne Miano and Dorothy Pastis—have continued the committee's tradition of impartial professional assistance and hard work. They serve the committee and the Senate well.

Mr. D'AMATO. Madam President, I join in the accolades that the manager of the bill, Senator LAUTENBERG, has given to our staff. I say that because it is truly professional. I think we can particularly be proud on the Appropriations Committee of the professionalism that has been demonstrated down through the years and continues in this session. I think it is a mighty fine group.

I commend the distinguished manager of the bill for undertaking a very sensitive, highly charged matter contained in the bill, as well as the many other demanding issues contained in it. He has succeeded in meeting the requirements of safety in the skies for the FAA, and satisfying the multifaceted obligations of the Coast Guard. At the same time he has managed to assure that mass transit Amtrak and other important projects were not neglected. I must note that he has done an outstanding job in arriving at a compromise as it relates to cigarette smoking on board scheduled air carrier flights.

I think Senator LAUTENBERG has done an outstanding job, and I would not want to miss this opportunity to pay tribute to him. All too often, we are involved in the battles, and we do not take the time to say, "A job well done."

Mr. LAUTENBERG. I thank my colleague. I appreciate his comments and his support.

Mr. PELL. I wonder if I might direct an inquiry to the majority floor manager, the distinguished chairman of the Transportation Appropriations Subcommittee, Senator LAUTENBERG.

Some weeks ago I wrote to the chairman concerning a matter involving the State of Rhode Island and Amtrak. The problem concerns the legal rights which will be granted to the State for the operation of commuter rail service out of the new Providence Rail Station owned by Amtrak. For many months Amtrak and the State of Rhode Island have been attempting, unsuccessfully, to negotiate a resolution of this issue, which in essence consists of the State's desire to have an easement to fully protect their interests as a commuter operator in the new station, and Amtrak's refusal to go beyond giving the State an agreement which would not constitute an actual property interest.

I would point out here that the new station was funded in part by the State of Rhode Island, which was responsible for the unprecedented agreement that relocated the main rail line through downtown Providence and conferred a great benefit on Amtrak in the form of a beautiful new station, one of the very few new rail stations to be built in the last 40 years.

I wonder if I might inquire of the distinguished chairman as to his view of the problem I have raised.

Mr. LAUTENBERG. I thank my friend, the senior Senator from Rhode Island for raising this point, which I know has been a difficult problem for the Rhode Island State Department of Transportation. I would say to my friend that I sympathize with the problem his State is facing in regard to the easement issue, particularly in light of the State's contribution to the new Amtrak station in Providence. My committee is reluctant to engage in what we might call micromanagement on matters of this sort and we cannot address the problem within the parameters of this bill. I would hope, however, that Amtrak would go back to the negotiating table, if you will, with the State of Rhode Island, and see if an operating agreement cannot be devised that will give Rhode Island adequate protection of its legal interests in the operation of commuter service out of the new station.

AIRPORT SURVEILLANCE RADAR

Mr. BAUCUS. Mr. President, I am pleased that the committee report includes funding to establish an airport surveillance radar [ASR] system at Missoula, MT. I thank the distinguished Senator from New Jersey [Mr. LAUTENBERG], for the assistance that he and his able staff member, Mr. Bonham, provided by working with me and the FAA on this matter.

The committee's action recognizes the urgent need for advanced radar equipment for Missoula. This airport is located in a valley surrounded by five mountains in the heart of some of the most challenging and formidable terrain in the United States.

Severe local weather conditions in the valley such as frequent low ceilings, air inversions and winter snow and ice storms contribute to the difficulties that even experienced pilots face when landing at or departing from the Missoula airport.

What's more, pilots are often confronted by combinations of these conditions very suddenly when approaching Missoula's air space just when they are dropped from radar guidance provided from Salt Lake City.

I believe that there is no doubt that the installation of an airport surveillance system in Missoula will enhance public safety and save lives. By including Missoula in the committee's report, we have taken a major step forward to improve the quality of air travel in this region of the country.

I recognize that including the necessary funding for a radar system for Missoula is only the first step. I will be working closely with the members of the conference committee on this matter as they meet to reach a final agreement.

I am also aware of the leadtime needed by the FAA to complete the procurement actions for the acquisition and installation of these radar systems. I trust, however, that the FAA will recognize the importance of the Senate's action by including funding to meet the radar needs at Missoula.

Again, I appreciate the support that the committee has given me and the citizens of Montana by including Missoula on the list for future radar system support. And I thank the Senator from New Jersey for his support of this much-needed airport safety improvement.

ELIZABETHTOWN AIRPORT

Mr. FORD. I rise to engage the manager in a colloquy in the interest of aviation service and safety at the Elizabethtown Airport in Kentucky.

The Elizabethtown airport is near Fort Knox and provides passenger service to members of the Armed Forces and a growing number of other passengers. It is estimated that there will be between 3,500 and 4,000 landings at the airport yearly and the airport now has 12 daily air carrier flights.

I know the Senator is well aware of the need for precision landing capability at our airports in order that service can be provided in adverse weather conditions and safety can be enhanced. Presently, the Elizabethtown Airport has no such capability although it is certainly needed. The airspace near the airport is restricted because of Fort Knox security concerns. This makes landing approaches during adverse weather even more difficult. An ILS would provide the means of overcoming this limitation.

The report accompanying the bill under consideration identifies a number of locations where the committee recommends that an instrument landing system [ILS] be installed or upgraded. In that regard, the FAA Administrator has acknowledged the need to continue installing ILS's.

Therefore, I would ask the manager if he doesn't agree that the Elizabethtown Airport should be included in the list of airports designated in the committee report for an ILS.

Mr. LAUTENBERG. I thank my distinguished colleague from Kentucky for bringing this matter to our attention. He and I share many of the same concerns about the quality and safety of our aviation system. I fully agree that the Elizabethtown Airport should be included in the list of locations at which the committee recommends FAA install an ILS. Further, it is my intention, assuming we are able to hold this item in conference, to reference the Elizabethtown Airport in the statement of managers to assure that FAA moves promptly to install an ILS at that airport.

SPEED LIMIT PROVISION

Mr. LAUTENBERG. Madam President, I would like to be on record as opposing section 329 of the bill as considered and passed by the Senate. That provision would allow States to raise the speed limit from 55 miles per hour to 65 miles per hour on rural roads that are not classified as interstates but meet interstate highway standards. I respectfully submit that this is too much too soon.

Less than 7 months ago with the enactment of Public Law 100-17, the Surface Transportation and Uniform Relocation Assistance Act of 1987, States were allowed to raise the speed limit on rural interstate highways. Today, we simply do not have enough data to adequately assess the effect of that move.

But the preliminary data we do have from States such as New Mexico which increased the limit suggests that drivers are even exceeding the increased limit, and that the fatality rate is up.

We overturned a decade long policy when we raised the speed limit on rural interstates and now only 6 months later we are being asked to allow approximately 6,000 additional miles of rural roads to be eligible for the increased speed.

I believe we should wait. The very agency that oversees the effects of the speed limit, the National Highway Traffic Safety Administration, testified on March 19, 1987, in front of the Transportation Subcommittee of Appropriations that data on the effects of a speed limit increase is very difficult to collect because there are so many factors affecting what happens on the highways. When asked what speed control programs the agency has carried out, Administrator Diane Steed stated "I think I can fairly say, Mr. Chairman, that we have not done as much as we should have with regard to speed over the last few years."

When asked about what the agency has done to assess what the involvement of speed is relative to risk, Mr. Finkelstein, Associate Administrator for Research and Development responded, "We know that overall there is a much larger fatality problem on rural roads than on high-speed roads, but we do not have the ability to see differences between, say, a 50-mile-an-hour speed limit road and a 55-mile-an-hour speed limit road on specific crashes."

I bring this to the Senate's attention because based on these responses the committee included a total of $450,000 above the budget request to assess speed limit safety impacts. I believe that with those additional funds NHTSA might better develop its data bases to make informed conclusions regarding the effect of speed on highway fatalities.

I fought the original increase on rural interstates and I am against allowing additional highways to post a 65-miles-per-hour speed limit. I believe it flies in the face of safety, that it abandons energy conservation goals that this Nation needs to pay serious attention to and finally it is unnecessary. The National Academy of Sciences estimated that the original limit saved 2,000 to 4,000 lives per year since 1974. Many, many serious injuries were prevented each year including paralyzing spinal injuries. I know of no safety related group that supports broadening the recently enacted 65-miles-per-hour speed limit.

I will be back on this issue. I strongly believe that armed with the data that the National Highway Traffic Safety Agency will collect, the weight of evidence will force us to rethink the position we took today. As chairman of the Subcommittee on Transportation I promise my colleagues that I will diligently follow the $450,000 earmarked for research on the safety impacts of the speed limit so that we will have before us as soon as possible information necessary to make informed decisions on this matter.

I thank the Senate.

SUPPORT OF THE PROGRAM FOR REGIONAL OBSERVING AND FORECASTING SERVICES CONTRIBUTES TO AVIATION SAFETY

Mr. WIRTH. Madam President, I would like to express concern about the Federal Aviation Administration's [FAA] lack of support for the National Oceanic and Atmospheric Administration's [NOAA] Program for Regional Observing and Forecasting Service [PROFS]. Despite remarkably high marks from users of PROFS, the FAA has in the past only reluctantly provided its share of support for this innovative weather radar system. This year, the FAA has ceased to utilize PROFS products entirely.

PROFS, a technology transfer project of NOAA, was created to apply weather information systems developed in academic environments to practical uses. First provided at the FAA's request in 1982, and upgraded in 1984, the PROFS project was designed to generate a unique set of data to help alleviate serious problems caused by adverse weather conditions at Denver Stapleton International Airport. Due to its central location, Stapleton can act as a bottleneck to the entire air traffic control system when adverse weather conditions develop unexpectedly. By providing minute by minute weather monitoring abilities, PROFS allows better and more efficient air traffic flow control.

According to a report issued in May of 1986 by the Department of Transportation's [DOT] inspector general:

> Use of this workstation has begun to pay big dividends in increased efficiency in air traffic control and airline operations because the CWSU meteorologists are able to prepare short-range projections of weather impacts on traffic flows and communicate them to the traffic management unit and area supervisors.

Furthermore, conversations with Denver air traffic controllers and meteorologists have underscored the significant contributions made to increased aviation safety in the Rocky Mountain region by the PROFS program. This strong support has been echoed by the manager of the Denver Air Route Traffic Control Center [ARTCC], who has written that the information provided by this NOAA service contributes significantly to increased airway safety and efficiency in Denver traffic control and terminal operations. The DOT inspector general has strongly urged that the FAA provide PROFS-type services to all 20 ARTCC's until a future weather system is available.

Unfortunately, despite broad agreement on the usefulness of the system, the FAA has repeatedly resisted providing its portion of the funding for PROFS. NOAA's annual costs are $3.5 million: the FAA's share of that amount is $300,000, to finance operation and maintenance expenses of the Denver ARTCC's workstation. In the past, following requests by myself and other members of the Colorado congressional delegation, the FAA has been persuaded to provide the necessary amounts, payable on a reimbursable basis. Unfortunately, for fiscal year 1987, the agency reneged on its obligation and, as of the beginning of fiscal year 1988, the Denver ARTCC workstation has been shut down.

The FAA has been inconsistent in its reasons for this lack of support. In correspondence to me, the FAA stated that current weather services were sufficient to meet aviation needs. However, 1 month later, the FAA stated that support for PROFS was discontinued in favor of the Terminal Doppler Radar, but that that system would not be available to air traffic controllers until late in 1989.

Mr. President, in this time of airway congestion and public demands for a safer air transportation system, we should not be discontinuing an effective, proven weather forecasting service such as PROFS. Rather, the FAA should be attempting to utilize every means at its disposal to insure that our Nation's air traffic arrives safely and efficiently to its destination.

To date, the FAA has resisted all efforts to work out an effective solution. Consequently, I had considered offering an amendment to the transportation appropriations legislation to require the FAA to continue its nominal support of PROFS. However, at this time, I am deferring to Chairman LAUTENBERG's wishes and withholding my proposal. However, I look forward to revisiting this issue in the near future.

Mr. DOMENICI. Mr. President, I rise in support of the Transportation appropriations bill for fiscal year 1988.

The bill as reported provides $11.1 billion in new budget authority and $9.9 billion in outlays for the Department of Transportation and related agencies.

I want to commend the distinguished chairman of the subcommittee, the Senator from New Jersey, and the distinguished Senator from New York, the ranking member, for producing a bill that is within their 302(b) allocation.

In particular, I know that the chairman and ranking member were hamstrung by a scoring provision in the fiscal year 1988 budget resolution that prohibits the scoring of loan asset sales as offsets.

In passing its transportation appropriations bill, the House allowed the scoring of an outlay offset of $240 million for the sale of redeemable rail preference shares, a loan asset sale. The chairman of the Senate Budget Committee, correctly interpreting the provisions in the fiscal year 1988 budget resolution, did not allow this loan asset sale to score as an offset.

Thus, this subcommittee produced a bill, within their 302(b) allocation, without the benefit of $240 million in outlay offsets used by the House in producing its bill.

As I have on previous bills, I would indicate that even though this bill is in compliance with the subcommittee's 302(b) allocation, it exceeds the approximate level for the subcommittee in the new Gradison baseline. As mandated by the Gramm-Rudman-Hollings Reaffirmation Act that the President recently signed into law, the sequester baseline is constructed by taking last year's appropriated level and adding an increase of 4.2 percent for inflation.

Since this, and other bills, are over the Gradison baseline levels, it will not contribute any savings toward the $23 billion in deficit reduction that the Congress must accomplish by November 20. Indeed, if enacted, this bill will make it more difficult to reach the $23 billion in required reductions.

Mr. BINGAMAN. Mr. President, I am pleased to support the appropriations bill for the Department of Transportation and related agencies for fiscal year 1988. The bill assures funding for the Nation's transportation needs, including FAA, the Coast Guard, the Federal Highway Administration, Motor Carrier Safety, National Highway Traffic Safety Administration, Federal Railroad Administration, mass transit needs and more.

Perhaps most importantly, however, this bill addresses a number of the many issues affecting the safety of our airline industry in this country. There could be no other important matter for our consideration. This bill, in my opinion, attempts to address such concerns. I commend the chairman of Transportation Subcommittee and the ranking member for their work in this regard.

I am especially pleased the bill meets some of the transportation needs of my home State of New Mexico. The priority ranking of the Albuquerque and Taos airports ensures that needed expansion and improvement funds to these airports will continue. In a rural and growing State such as mine, this assistance is vital. Additionally, the instrument land system at the Las Cruces airport is also of great importance. This airport has experienced in recent years an increase in traffic as a reliever airport for the El Paso area.

I urge the swift passage and enactment of this important act in order to continue to provide for the transportation needs of the country.

Thank you, Mr. President.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment of the amendments and the third reading of the bill.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read the third time.

Mr. BYRD. Madam President, before the Senate goes to a vote, I compliment the manager and the ranking manager on the high degree of professionalism which they have demonstrated in managing this bill on the floor today. I think they can feel a very high sense of accomplishment as we proceed to the passage of this bill.

They have been able to deal with an extremely difficult, thorny, complicated matter. I sat in the meetings with the manager and others and I saw him demonstrate skill and knowledge and understanding and reasonableness that are high attributes for anyone. I witnessed it today when I saw FRANK LAUTENBERG in those negotiations.

I also want to thank Senator FORD, Senator HELMS, and all other Senators who participated in the negotiations and for the cooperation that was displayed. This is a bill which could have gone on and on and on. As a matter of fact, it could have been taken down, and then everything would have been left to a continuing resolution. All Senators demonstrated restraint, courage, and dedication.

I suppose that I, more than any other Senator, have the opportunity to watch Senators as they manage bills on the floor. I will not name names, but there are some Senators who are excellent managers and others who are a little less than excellent. Over the years, I have seen some who are quite poor, as a matter of fact. But in these two managers, I have seen very good managership and skill, and the Senate is in their debt.

Mr. LAUTENBERG. Madam President, I thank the majority leader for his kind comments—more important, perhaps, for the work that he put in, in terms of perfecting a compromise on a very sensitive part of this bill. His guidance and counsel were invaluable. In addition, as usual, his knowledge of the process and his wisdom in applying that process helped to get us through this very sticky part of the transportations appropriation bill.

Madam President, as is always said here, this is not a perfect bill. It is a very good bill. It takes care of a very important agenda for our country, and that is the transportation agenda. We are all concerned about safety in the skies and on the rails and on our highways and improving those systems to accommodate the needs we continue to see expand.

I was pleased to have the opportunity to chair this subcommittee and to manage this bill. It was not without some trepidation that we faced up to the issue of banning smoking on aircraft. We have a good bill; we have a good compromise. We will be banning smoking in aircraft cabins for any flight that is an hour and a half in duration or less. It provides a modicum of significant relief for most people. We will have 2 years during which an examination will be finally made—one which I believe will confirm that there is an impairment in the air and jeopardy to one's health. Mr. President, I do also want to thank Joy Silver of my staff, and all the representatives of the key health groups, including the Coalition on Smoking or Health, for their hard work on the smoking ban provision. Their contribution was significant.

Madam President, I am prepared now to ask for the yeas and nays on final passage of the transportation appropriations bill.

Mr. SASSER. Madam President, I rise today during consideration of the fiscal year 1988 transportation bill to clarify a matter of importance in the FAA account, "facilities and equipment."

The Senate bill deletes the appropriation necessary to replace the 25-year-old aircraft used by the FAA Administrator for official missions. The House provided this funding because, after the initial budget submission, testimony made clear that an internationally capable, current technology aircraft would provide significant cost savings. In fact, I have learned, the need for a replacement aircraft grows more critical with time as the existing, aging aircraft continues to need costly repairs.

I would appreciate the chairman's clarification of the Senate position and an expression of support for the funds necessary for a replacement aircraft, inasmuch as this item will be in conference.

Mr. LAUTENBERG. The Senator has correctly described the situation. The House provided funds for a replacement, and the Senate left the item open for further study. I agree that the FAA Administrator has many official responsibilities and a legitimate requirement for an internationally capable aircraft. I also agree that such an aircraft should represent the best U.S. technology has to offer and be compatible with Congress' other investments in aviation systems.

I will discuss this in conference, and I express to my colleague that I see the need, and I will do my best to meet that need as budget resources permit.

Madam President, I ask for the yeas and nays on the transportation appropriations measure.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. BYRD. Madam President, I shall suggest the absence of a quorum so that both Cloakrooms will have 2 or 3 minutes in which to alert Senators to the fact that a rollcall vote is about to occur and so that we might have the managers of the next bill prepared to take that bill up upon the disposition of the transportation appropriations bill.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BYRD. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Madam President, I yield the floor.

The PRESIDING OFFICER. The bill, having been read the third time, the question is, Shall it pass? On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Tennessee [Mr. GORE] and the Senator from Illinois [Mr. SIMON] are necessarily absent.

I further announce that, if present and voting, the Senator from Tennessee [Mr. GORE] would vote "yea."

Mr. SIMPSON. I announce that the Senator from Kansas [Mr. DOLE], the Senator from Delaware [Mr. ROTH], the Senator from Vermont [Mr. STAFFORD], and the Senator from Idaho [Mr. SYMMS] are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 84, nays 10, as follows:

[Rollcall vote No. 358 Leg.]

YEAS—84

Adams
Baucus
Bentsen
Biden
Bingaman
Bond
Boren
Bradley
Breaux
Bumpers
Burdick
Byrd
Chafee
Chiles
Cochran
Cohen
Cranston
D'Amato
Danforth
Daschle
DeConcini
Dixon
Dodd
Domenici
Durenberger
Evans
Exon
Ford
Fowler
Glenn
Graham
Grassley
Harkin
Hatch
Hatfield
Hecht
Heinz
Hollings
Inouye
Johnston
Karnes
Kassebaum
Kasten
Kennedy
Kerry
Lautenberg
Leahy
Levin
Lugar
Matsunaga
McCain
McClure
McConnell
Melcher
Metzenbaum
Mikulski
Mitchell
Moynihan
Murkowski
Nickles
Nunn
Packwood
Pell
Pressler
Pryor
Quayle
Reid
Riegle
Rockefeller
Rudman
Sanford
Sarbanes
Sasser
Shelby
Simpson
Specter
Stennis
Stevens
Thurmond
Trible
Warner
Weicker
Wilson
Wirth

NAYS—10

Armstrong
Boschwitz
Conrad
Garn
Gramm
Heflin
Helms
Humphrey
Proxmire
Wallop

NOT VOTING—6

Dole
Gore
Roth
Simon
Stafford
Symms

So the bill (H.R. 2890), as amended, was passed.

Mr. BYRD. Madam President, I move to reconsider the vote by which the bill was passed.

Madam President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BYRD. Madam President, on behalf of Mr. LAUTENBERG I move the Senate insist on its amendments, request a conference with the House, and that the Chair be authorized to appoint conferees on the part of the Senate.

The motion was agreed to; and the Presiding Officer (Ms. MIKULSKI) appointed Mr. LAUTENBERG, chairman, Mr. STENNIS, Mr. BYRD, Mr. CHILES, Mr. HARKIN, Mr. INOUYE, Mr. D'AMATO, Mr. COCHRAN, Mr. KASTEN, Mr. WEICKER, and Mr. HATFIELD conferees on the part of the Senate.

AIR PASSENGER PROTECTION ACT

Mr. BYRD. Madam President, the order has been heretofore entered that the majority leader may, after consulting with the minority leader or his designee, go to Calendar Order No. 283, S. 1485, a bill to amend the Federal Aviation Act of 1958 to provide various protections for passengers traveling by aircraft, and for other purposes. I ask the Chair lay that before the Senate.

The PRESIDING OFFICER. The Clerk will report.

The legislative clerk read as follows:

A bill (S. 1485) to amend the Federal Aviation Act of 1958 to provide various protections for passengers traveling by aircraft, and for other purposes.

The Senate proceeded to consider the bill which had been reported from the Committee on Commerce, Science, and Transportation, with amendments, as follows:

(The parts of the bill intended to be stricken are shown in boldface brackets, and the parts of the bill intended to be inserted are shown in italics.)

S. 1485

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Air Passenger Protection Act of 1987".

SEC. 2. (a) Title IV of the Federal Aviation Act of 1958 (49 App. U.S.C. 1371 et seq.) is amended by adding at the end the following:

"SUBMISSION OF CERTAIN INFORMATION

"REQUIRED INFORMATION

"SEC. 420. (a) The Secretary shall, within ninety days after the date of enactment of the Air Passenger Protection Act of 1987, promulgate regulations requiring air carriers to submit to the Secretary on a monthly basis the following information relating to scheduled air transportation between any airports in the United States:

"(1) on-time performance, measured as the average time of actual departure [or] *and* arrival past the scheduled departure [or] *and* scheduled arrival [time, as appropriate,] *time* for transportation between each two points served by each air carrier.

"(2)(A) The total number of passengers carried by each air carrier, (B) the number of such passengers who arrived at their final destination without one or more pieces of their checked baggage and who notify the air carrier that such baggage failed to arrive, and (C) what percent the passengers identified in subparagraph (A) of this paragraph are of the passengers specified in subparagraph (B) of this paragraph.

"(3)(A) The number of flights scheduled at each airport by each air carrier, (B) the number of such flights cancelled at each airport, and (C) what percent the flights identified in subparagraph (B) of this paragraph are of the flights identified in subparagraph (A) of this paragraph.

"(4) The number of passengers involuntarily denied boarding by each air carrier, and the compensation offered to such passengers.

"AVAILABILITY OF INFORMATION

"(b) The Secretary shall, with respect to information reported under subsection (a) of this section, take such action as may be necessary to make that information available to the public, including publication of summary information in the Federal Register and the issuance of monthly reports.

"COMPUTERIZED AIRLINE RESERVATION SYSTEMS

"REQUIREMENTS OF INFORMATION IN THE SYSTEM

"SEC. 421. (a) The Secretary shall, within ninety days after the date of enactment of the Air Passenger Protection Act of 1987, amend the regulations regarding computerized airline reservation systems offered to subscribers by an air carrier or any of its affiliates contained in [section] *part* 255 of title 14, Code of Federal Regulations, to require that—

"(1) for scheduled air transportation between any airports in the United States, the elapsed time shown for each flight displayed in such computer system shall not be less than a minimum realistic time established by the Administrator for such transportation;

"(2) no such computer system shall, for purposes of ordering the display of flight information, assign a weight of displacement for any flight having a scheduled departure time thirty minutes or less after the departure time requested or twenty-nine minutes or less before the departure time requested; and

"(3) each air carrier provide the Secretary with an average of the actual arrival times for each scheduled flight that it operates, based on the actual times of arrival for such flight during the previous month.

"SPECIFIC INFORMATION

"(b)(1) The Administrator shall determine the minimum realistic time under subsection (a)(1) of this section according to a formula to be developed by the Administrator and published in the Federal Register. Such formula shall be based on (A) the distance between the airports; (B) the standard cruise speed for the involved type of aircraft; (C) the typical taxi, landing, and take off times for the type of aircraft involved and, where the Administrator determines it to be appropriate, for the airport; and (D) where the Administrator determines it to be appropriate, meteorological factors.

"(2) The Secretary shall require that the information provided under subsection (a)(3) of this section is included in all schedules published in such computer reservation systems, and that such information is made available to the public.

"PROMULGATION OF CERTAIN REGULATIONS

"SEC. 422. The Secretary shall, within ninety days after the date of enactment of the Air Passenger Protection Act of 1987, promulgate regulations—

"(1) to establish a standardized definition of a delayed flight, as well as the causes of delays;

"(2) to establish a uniform designation symbol to be used by an air carrier in its schedules to identify aircraft having a passenger seating capacity of thirty seats or less;

"(3) to amend the final rule issued under [section] *part* 121 of title 14, Code of Federal Regulations, relating to carry-on baggage programs to establish uniform standards for use by all air carriers in controlling the size and amounts of carry-on baggage; and

"(4) to require that any carrier who advertises a fare for particular air transportation but does not make that fare available for all passengers on such transportation must include in any advertisement for such transportation a notice that availability of transportation at the advertised fare is limited.

The definition established under paragraph (1) of this section shall include considerations of weather, air traffic control, passenger service, maintenance, and any other safety factor. The Secretary shall require each air carrier, in reporting information under section 420(a)(1) of this Act, to report to the Secretary the cause of its delays. Such information shall be made available to the public.

"CONSUMER HOTLINE

"SEC. 423. (a) The Secretary shall, within ninety days after the date of enactment of the Air Passenger Protection Act of 1987, establish a twenty-four hour toll-free consumer hotline to provide consumer information on air carrier performance records, information as to the rights of consumers and responsibilities of air carriers, and assistance in resolving disputes between consumers and air carriers. Information with respect to the availability of such hotline and its purpose, together with the telephone number of such hotlines, shall be printed on each ticket jacket, and prominently displayed in appropriate locations at airports.".

(b) Notwithstanding any other provision of this Act, the Secretary of Transportation shall not implement any provision of this section, or any amendment made by this section, if the Secretary determines that such implementation will have an adverse impact on the safety of air transportation. If the Secretary makes such a determination, the Secretary shall publish notice of such determination in the Federal Register.

(c) Notwithstanding any other provision of this Act, information reported pursuant to this Act shall not be used by a vendor of a computerized airline reservation system to bias the display of flights or fare information.

[(c)] *(d)* The table of contents of the Federal Aviation Act of 1958 is amended by inserting immediately after the item relating to section 419 the following:

"Sec. 420. Submission of certain information.
"(a) Required information.
"(b) Availability of information.
"Sec. 421. Computerized airline reservation systems.
"(a) Requirements of information in the system.
"(b) Specific information.
"Sec. 422. Promulgation of certain regulations.
"Sec. 423. Consumer hotline.".

SEC. 3. The Secretary of Transportation shall establish an Advisory Committee to determine the appropriate level of capacity in the air traffic control system. The Advisory Committee shall be headed by the Administrator of the Federal Aviation Administration, and shall include representatives of aviation user groups. The Advisory Committee shall submit to the Congress and the Secretary a report on the level of capacity not later than December 31, 1988. The report shall include the levels of traffic which the air traffic control system is capable of handling safely and with a high level of dependability for each year within the five-year period beginning on January 1, 1989, the speed with which the capacity can safely be increased, and what additional resources should be made available to assure maximum safety and system capacity.

Mr. FORD. Mr. President, the legislation before us, the Air Passenger Protection Act of 1987, is designed to address the airline service problems that have plagued air travelers throughout the country this year.

S. 1485 is the culmination of several weeks of work by the Aviation Subcommittee, including the ranking member, Senator KASSEBAUM, and the Commerce Committee. I am pleased that this bill comes to the floor with strong support, as it is cosponsored by Senators HOLLINGS, DANFORTH, EXON, GORE, BINGAMAN, EXON, SIMON, ROCKEFELLER, and MELCHER.

The past year has clearly been a time of turmoil for the airline industry. Millions of air travelers have seen firsthand how this has translated into service of significantly reduced quality. We all agree that something must be done to ensure that the airlines develop more realistic schedules and that travelers be given more information on which they can make educated travel decisions.

This legislation is designed to do that. Let me briefly outline the major provisions of the bill for my colleagues before we begin debating and offering amendments to it.

First, in an effort to allow travelers to make informed choices about air travel, this bill requires the Secretary of Transportation to mandate the submission of monthly records on each airline's on-time performance, lost baggage, canceled flights, as well as the number of passengers involuntarily denied boarding. The Secretary is then required to make this information available to the public—through airline computer reservation systems, the publication of summary information in the Federal Register, and the issuance of monthly reports.

Prior to the sunset of the Civil Aeronautics Board in 1984, information of this type was submitted and regularly used by the carriers as a means of establishing a competitive advantage.

Mr. President, I see that happening now, where the airlines are beginning to advertise, "We are on time" a great percentage of the time, "Less luggage is being lost. Fewer are being denied boarding." So the work of the Department of Transportation, the Commerce Committee here in the Senate and the like committee in the House, has begun to take hold. I think the airlines are beginning to take heart, that we do mean business as we move cautiously but stubbornly along this path.

I believe this is a healthy way of both improving the flow of information to the air traveler, as well as providing the needed incentives in a deregulated environment to ensure service competition.

The bill requires the Secretary to establish a definition for delayed flights. There has been much confusion in the airline industry as to when a flight is delayed or when it is not. The FAA has one standard, while the airlines use another.

Our bill will require that a standard definition for delays be established. It will also require the airlines to report the cause for their delays—whether they be bad weather, limitations in the air traffic control system, maintenance problems, or any other factor that may cause a flight to take longer than its schedule states. This will enable us to better isolate and address the problems that have contributed to air service problems.

The bill also attempts—and I say attempts—to improve airline scheduling. It requires the FAA to determine what the minimum elapsed flight time is between any two airports in the country. Once completed, the Secretary is then required to ensure that no airline flight is scheduled for a shorter elapsed time than determined by the FAA. This will eliminate the practice of shaving time off flight schedules, making them unrealistically optimistic. And it will help improve on-time performance.

S. 1485 also attempts to encourage the airlines to spread out their flight schedules during peak travel hours by eliminating the incentive to schedule more flights at any one moment that an airport can handle.

Mr. President, I get a little bit tired of going to an airport, walking up to get my ticket validated to make a flight, and see that there are five flights leaving at the same time and that there is no way those five flights can take off at the same time. You just hope that you are called earlier than later because you would be 30 minutes late if you are the last one called, as opposed to being only 10 minutes late if you are the first one called.

Airline computer reservation systems encourage the carriers to do this because flights scheduled at certain peak times are given priority listing. The result is substantially more tickets sold by travel agents on those flights. Our bill eliminates any disadvantages that are currently assigned for flights that are not precisely at the time a traveler requests, therefore encouraging the airlines to spread out their schedules.

Mr. President, combined, these provisions will result in more realistic airline scheduling—an objective we all want.

Other provisions in this legislation include the creation of a 24-hour, toll-free hotline at the Department of Transportation. This hotline will provide travelers with a central location—other than with the airline—to resolve their flight problems. This hotline will also help ensure the collection of more realistic figures about traveler complaints. Our bill would require this toll-free number be printed or stamped on all airline ticket jackets and located at various points throughout an airport—ensuring its widespread distribution.

The bill addresses a number of other problems. It would require the development of a uniform designation symbol to be used by all airlines to denote the use of aircraft of 30 or fewer passenger seats. It requires the development of an industrywide standard for controlling the size and amount of carry-on baggage. And it requires that when an airline advertises a discount fare that is limited, it be required to provide notice of that fact.

Finally, S. 1485 directs the Secretary of Transportation to establish an advisory committee to determine the safe and adequate level of traffic in the air traffic control system for the future. To be headed by the Administrator of the FAA and made up of users of the air traffic control system, this committee would be directed to report to the Congress and the Secretary by December 31, 1988 on what the airway system can safely handle, the pace at which that capacity should be increased, and what resources will be needed to assure long-term safety and system capacity.

Mr. President, this means that we will try to project and be ahead of the curve instead of behind the curve as we are now in our airline system.

This legislation should not be viewed as a cure-all for the problems currently facing the airline industry. We attempted to address many of the long-term concerns when we earlier adopted S. 1184, the Senate reauthorization of the Airport and Airway Trust Fund. That bill will require the hiring of more controllers, the installation of more computers and navigational aids, and the construction of more airports and runways—all of which are desperately needed enhancements to our air transportation system.

Mr. President, other steps have been taken by the Department of Transportation and the airline industry to address some of the problems that this legislation is designed to resolve. Some may thus question why we need to pass this bill. The number of airline delays and complaints are down. However, I believe legislation is needed to ensure that over the long-run, travelers will be guaranteed that the airline industry will be responsive to their needs for quality service—and that the problems of the past year will not return in the years to come.

S. 1485 is a balanced approach—designed to improve the quality of air travel, without imposing undue burdens on the airline industry. It is a good compliment to our airport and airway authorization bill. And it is good for the traveling public.

I urge my colleagues to support passage of this legislation.

Mr. President, I would also hope that we would not get into long, controversial amendments. This is a bill that should be adopted very quickly, something that should be sent to conference so that in a very few weeks we might be able to have this piece of legislation in place. With this bill, those of us who travel by air will be able to see improvements to service and the travelling public will benefit from what we have attempted to do.

Mr. President, I yield the floor.

Mr. DANFORTH addressed the Chair.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. DANFORTH. Mr. President, let me begin by paying my respects to the Senator from Kentucky and to the staff of the Commerce Committee, both the majority staff and the minority staff, for a really remarkable piece of work they have accomplished in our committee.

This is the second very significant piece of legislation to reach the floor of the Senate in a day.

Yesterday we dealt with the airways trust fund question. The two managers of that bill, Senator FORD and Senator KASSEBAUM, managed to pass that bill without serious damage on the floor of the Senate. It was a necessary bill to pass if we are going to keep up with safety in air transportation and meet the expanded needs of a deregulated system.

This is a second major piece of legislation. It is something that Senator FORD has been working on, and Senator KASSEBAUM and I have been working on, for a long time.

I think it was last March that the idea was first conceived of having some sort of system of providing for better customer information on the true on-time performance for an airline.

It does not really do any good if I want to go, say, to Kansas City tomorrow morning and I call up the airport and they say, "Well, there is a plane that is arriving at 8 o'clock and it is due in Kansas City at 10 o'clock," if in fact the plane does not take off, does not leave the gate until 9 and then sits on the tarmac for half an hour or so and eventually arrives after the scheduled things that I am supposed to do in Kansas City have long since been completed.

So I think that this is a real step forward in arming consumers with the kind of information that they need if they are going to make informed choices. It is also, I think, the basis of a form of competition for the airlines that has been all too lacking in the age of deregulation.

Since deregulation of our air transportation the major form of competition among airlines has been rates, how much does it cost to get from point A to point B. There has been very little competition with respect to services. What this would do would be to provide a whole new basis for airlines competing on the basis of service, so that the consumer can find out what the on-time percentage is, what the possibilities of lost baggage and the like are. That kind of information and that kind of competition will improve air transportation.

It is interesting to me—and I do not have the statistics to back this up, Mr. President, but it certainly is based on my own observation—that in the last month or so the on-time performance of airplanes at least appears to be better than it was in the previous 6 months or so.

Maybe the reason for that is that increased attention has been given to the performance of air transportation. Magazine articles have been written, even cover stories in news magazines have been written about the dismal performance of air transportation. I think that the increased attention itself has had a beneficial effect.

What this bill does is to say that the attention is not going to be just a flash in the pan. It is not going to be the kind of thing that is going to take place for a month or so and then die down. There is going to be a continuing flow of information to the customer, so that the customer is going to be making choices on the basis of the performance of the airline and that is going to be cranked into the whole decisionmaking process.

I think it is really a terrific idea and one that is long overdue.

We are not going to go back, in the opinion of this Senator, to the age of regulated air transportation. Some people long for that. Some people wish that deregulation had never occurred in the first place. But really I do not think it is going to be possible and I do not think it would be desirable to try to unscramble this particular egg.

But the issue now is, since we have deregulation, how do we have a more adequate air transportation system than we do today. I have always believed that the best form of regulation is not something that is found in a rule book but, rather, an informed clientele, an informed consumer, and that is precisely the basis of this particular bill.

Mr. President, several amendments I am sure are going to be offered, and I am about to offer one myself dealing with what I think is an issue that is even more important than the on-time performance of airplanes, and that is whether the airplanes or the trains or the trucks or any other mode of transportation meets its destination at all. This has to do with the question of drug use by people in safety-related positions in transportation.

It is clear that the use of drugs is a sad aspect of our society in general. According to the National Institute on Drug Abuse, 19 percent of all Americans over 12 years of age have used illicit drugs within the past year; 65 percent of people in the 18- to 25-year-old age group, representing those who are entering the work force, have used illicit drugs in the last year.

So this really is a national problem and it is not unusual that a problem that permeates all of society also has its outcroppings in all kinds of professions, including transportation, and this has had some disastrous effects.

Everybody knows the tragic story of the train accident in Chase, MD, which took place in January of this year when an Amtrak locomotive was hit by a Conrail train and a number of people were killed and people were injured in that very tragic accident—16 deaths in the Chase, MD, accident, 170 injuries. It is a tragedy, and when the engineer and the brakeman of the Conrail locomotive were tested for drugs in their system it was subsequently found that they were in fact on drugs.

There have been a number of other specific instances and there are a number of statistics which are equally appalling.

With respect to highway safety, a study published on May 9, 1987, showed that 30 percent of a random sample of truck drivers had taken drugs with the potential for abuse, that 14 percent of the drivers tested, tested positive for marijuana in their systems, 2 percent for cocaine. In Tennessee, in 1982, there were 75 drug-related arrests of commercial truck drivers. By 1985, that number in Tennessee had increased from 75 to 355. In 1986, in Tennessee, there were 389 drug arrests of commercial drivers.

In respect to the inter-city bus industry, during a strike in 1983, Greyhound took applications from a group of experienced inter-city bus drivers and found that 30 percent of the applicants' urine sample tested positive for marijuana. There are a number of specific examples. For example, in the State of California, a Los Agneles bus driver rear ended another bus in May 1986 injuring 23 passengers. The driver tested positive for cocaine.

On May 30, 1986, a Los Angeles city bus was involved in an accident which injured 26 passengers. The driver tested positive for marijuana.

In Los Angeles, on July 31, 1986, a Los Angeles city bus overturned onto a freeway injuring 27 passengers. One of whom later died. The testing showed that the driver was under the influence of drugs at the time of the accident. And so it goes, on and on with many, many examples to add to the Conrail/Amtrak situation, people who have been involved with accidents with buses, with trucks, with airplanes, with locomotives in transportation, where drugs had been the cause.

So, Mr. President, with that background, on behalf of myself and Senators HOLLINGS and MIKULSKI, I send an amendment to the desk and ask for its immediate consideration.

Mr. FORD. Will the Senator withhold? I have some committee work to do before that.

Mr. DANFORTH. I would be happy to.

Mr. FORD. I appreciate that very much.

Mr. DANFORTH. Mr. President, I ask unanimous consent that Senator FORD might be recognized for the purpose of offering committee amendments, and subsequent to the disposition of those amendments, that I might regain the floor.

COMMITTEE AMENDMENTS

Mr. FORD. Mr. President, there is one committee amendment at the desk. I ask that it be adopted.

The PRESIDING OFFICER. I say to the Senator from Kentucky that there are a series of committee amendments.

Mr. FORD. I ask unanimous consent that the committee amendments be considered en bloc.

The PRESIDING OFFICER. Without objection, it is so ordered.

The question occurs on agreeing to the committee amendments presented en bloc.

The committee amendments were agreed to.

Mr. FORD. Mr. President, I move to reconsider the vote by which the amendments were agreed to en bloc.

Mr. DANFORTH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. FORD. Will the Senator yield for a unanimous-consent request?

Mr. DANFORTH. Yes.

Mr. FORD. Mr. President, I ask unanimous consent that the amendments considered en bloc shall be considered as the original text for the purpose of further amendments.

The PRESIDING OFFICER. Without ojection, it is so ordered.

Mr. FORD. I thank the Chair. I thank the Senator from Missouri.

AMENDMENT NO. 1105

Mr. DANFORTH. Mr. President, on behalf of myself and Senators HOLLINGS and MIKULSKI, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Missouri (Mr. DANFORTH), for himself, Mr. HOLLINGS, Ms. MIKULSKI, and Mr. DOLE proposes an amendment numbered 1105.

Mr. DANFORTH. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the bill, add the following:

SEC. . (a) The Congress finds that—

(1) alcohol and drug abuse poses significant dangers to the safety and welfare of the Nation;

(2) millions of the Nation's citizens utilize transportation by aircraft, railroads, trucks, and buses, and depend on the operators of aircraft, railroads, trucks, and buses to perform in a safe and responsible manner;

(3) the greatest efforts must be expended to eliminate the abuse of alcohol and use of illegal drugs, whether on duty or off duty, by those individuals who are involved in the operation of aircraft, railroads, trucks, and buses;

(4) the use of alcohol and illegal drugs has been demonstrated to affect significantly the performance of individuals, and has been proven to have been a critical factor in transportation accidents;

(5) the testing of uniformed personnel of the armed forces has shown that the most effective deterrent to abuse of alcohol and use of illegal drugs is increased testing, including random testing;

(6) adequate safeguards can be implemented to ensure that testing for abuse of alcohol or use of illegal drugs is performed in a manner which protects an individual's right of privacy, ensures that no individual is harassed by being treated differently from other individuals, and ensures that no individual's reputation or career development is unduly threatened or harmed; and

(7) rehabilitation is a critical component of any testing program for abuse of alcohol or use of illegal drugs, and should be made available to individuals, as appropriate.

(b)(1) Title VI of the Federal Aviation Act of 1958 (49 App. U.S.C. 1421 et seq.) is amended by adding at the end thereof the following:

"ALCOHOL AND CONTROLLED SUBSTANCES TESTING

"TESTING PROGRAM

"SEC. 613. (a)(1) The Administrator shall, in the interest of aviation safety, prescribe regulations within twelve months after the date of enactment of this section. Such regulations shall establish a program which requires air carriers and foreign air carriers to conduct pre-employment, periodic recurring, random and post-accident testing of airmen, crewmembers, airport security screening contract personnel, and other air carrier employees responsible for safety-sensitive functions (as determined by the Administrator), and testing of such individuals upon a reasonable suspicion that they have used, without lawful authorization, alcohol or a controlled substance.

"(2) The Administrator shall establish a program applicable to employees of the Federal Aviation Administration whose duties include responsibility for safety-sensitive functions. Such program shall provide for pre-employment, periodic recurring, random and post-accident testing, and testing of such individuals upon a reasonable suspicion that they have used, without lawful authorization, alcohol or a controlled substance.

‘(3) In prescribing regulations under the programs required by this subsection, the Administrator shall require, as the Administrator considers appropriate, the suspension or revocation of any certificate issued to such an individual, or the disqualification or dismissal of any such individual, in accordance with the provisions of this section, in any instance where a test conducted and confirmed under this section indicates that such individual has used, without lawful authorization, alcohol or a controlled substance.

"PROHIBITION ON SERVICE

"(b)(1) No person may use, without lawful authorization, alcohol or a controlled substance after the date of enactment of this section and serve as an airman, crewmember, airport security screening contract personnel, air carrier employee responsible for safety-sensitive functions (as determined by the Administrator), or employee of the Federal Aviation Administration with responsibility for safety-sensitive functions.

"(2) No individual who is determined to have used, without lawful authorization, alcohol or a controlled substance after the date of enactment of this section shall serve as an airman, crewmember, airport security screening contract personnel, air carrier employee responsible for safety-sensitive functions (as determined by the Administrator), or employee of the Federal Aviation Administration with responsibility for safety-sensitive functions unless such individual has completed a program of rehabilitation described in subsection (c) of this section.

"(3) Any such individual determined by the Administrator to have used, without lawful authorization, alcohol or a controlled substance after the date of enactment of this section who (A) refuses to undertake, (B) fails to complete a rehabilitation program described in subsection (c) of this section, (C) has previously undertaken or completed such a rehabilitation program, or (D) has been determined by the Administrator to have served as an airman, crewmember, airport security screening contract personnel, air carrier employee responsible for safety-sensitive functions (as determined by the Adminstrator), or employee of the Federal Aviation Administration with responsibility for safety-sensitive functions while impaired by or under the influence of alcohol or a controlled substance, shall not be permitted to perform the duties relating to air transportation which such individual performed prior to the date of such determination.

"PROGRAM FOR REHABILITATION

"(c)(1) Each air carrier and foreign air carrier shall establish and maintain a rehabilitation program which at a minimum provides for the identification and opportunity for treatment of employees referred to in subsection (b) of this section in need of assistance in resolving problems with the use, without lawful authorization, of alcohol or controlled substances. Each air carrier and foreign air carrier is encouraged to make such program available to all of its employees other than employees referred to in subsection (b) of this section. Nothing in this subsection shall preclude any air carrier or foreign air carrier from establishing a program under this subsection in cooperation with any other air carrier or foreign air carrier.

"(2) The Administrator shall establish and maintain a rehabilitation program which at a minimum provides for the identification and opportunity for treatment of those employees of the Federal Aviation Administration whose duties include responsibility for safety-sensitive functions who are in need of assistance in resolving problems with the use of alcohol or controlled substances.

"PROCEDURES

"(d) In establishing the program required under subsection (a) of this section, the Administrator shall develop requirements which shall—

"(1) promote, to the maximum extent practicable, individual privacy in the collection of specimen samples;

"(2) with respect to laboratories and testing procedures, incorporate the Department of Health and Human Services scientific and technical guidelines dated February 13, 1987, and any subsequent amendments thereto, including mandatory guidelines which—

"(A) establish comprehensive standards for all aspects of laboratory drug testing and laboratory procedures to be applied in carrying out this Act, including standards which require the use of the best available technology for ensuring the full reliability and accuracy of drug tests and strict procedures governing the chain of custody of specimens collected for drug testing;

"(B) specify the drugs for which individuals may be tested; and

"(C) establish appropriate standards and procedures for periodic review of laboratories and criteria for certification and revocation of certification of laboratories to perform drug testing in carrying out this Act;

"(3) provide that all tests which indicate the use, without lawful authorization, of alcohol or a controlled substance by any individual shall be confirmed by a scientifically recognized method of testing capable of providing quantitative data regarding alcohol or a controlled substance;

"(4) require that all laboratories involved in the testing of any individual under this section shall have the capability and facility, at such laboratory, of performing screening and confirmation tests;

"(5) provide for the confidentiality of test results and medical information (other than information relating to alcohol or a controlled substance) of employees, except that the provisions of this paragraph shall not preclude the use of test results for the orderly imposition of appropriate sanctions under this section; and

"(6) ensure that employees are selected for tests by nondiscriminatory and impartial methods, so that no employee is harassed by being treated differently from other employees in similar circumstances.

"EFFECT ON OTHER LAWS AND REGULATIONS

"(e) (1) No State or local government shall adopt or put into effect any law, rule, regulation, ordinance, standard or order that is inconsistent with the regulations promulgated under this section, except that the regulations promulgated under this section shall not be construed to preempt provisions of State criminal law which impose sanctions for reckless conduct leading to actual loss of life, injury or damage to property, whether the provisions apply specifically to employees of an air carrier or foreign air carrier, or to the general public.

"(2) Nothing in this section shall preclude the Administrator from adopting or continuing in effect other regulations intended to protect persons or property on the ground or in the air from the hazards to safety associated with the potential use of alcohol or controlled substances by airmen, crewmembers, airport security screening contract personnel, air carrier employees responsible for safety-sensitive functions (as determined by the Administrator), or employees of the Federal Aviation Administration) with responsibility for safety-sensitive functions.

"DEFINITION

"(f) For the purposes of this section, the term 'controlled substance' means any substance under section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)) whose use the Administrator has determined poses a risk to transportation safety.".

(2) That portion of the table of contents of the Federal Aviation Act of 1958 relating to title VI is amended by adding at the end thereof the following:

"Sec. 613. Alcohol and controlled substances testing.
"(a) Testing program.
"(b) Prohibition on service.
"(c) Program for rehabilitation.
"(d) Procedures.
"(e) Effect on other regulations.
"(f) Definition.".

(c) Section 202 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 431) is amended by adding at the end thereof the following:

"(l)(1) The Secretary shall, within one year after the date of enactment of this subsection, review existing rules, regulations, standards, and orders governing alcohol and drug use in railroad operations for the purpose of determining whether they are adequate to ensure safety. In conducting such review, the Secretary shall specifically—

"(A) require that all railroad employees responsible for safety-sensitive functions (as determined by the Secretary) by subject to testing on a random basis for the use, without lawful authorization, of alcohol or a controlled substance;

"(B) consider application of existing rules, regulations, orders, and standards to other categories of employees, including employees responsible for the safety of passengers, railroad rolling stock, or track and related structures;

"(C) require, as the Secretary considers appropriate, disqualification for an established period of time or dismissal of any employee determined to have used or to have been impaired by alcohol while on duty; and

"(D) require, as the Secretary considers appropriate, disqualification for an established period of time or dismissal of any employee determined to have used a controlled substance, whether on duty or not on duty, except as permitted for medical purposes by law and any rules, regulations, standards or orders issued under this Act.

Nothing in this subsection shall be construed to restrict the discretion of the Secretary to continue in force, amend, or further supplement any rules, regulations, standards and orders governing alcohol and drug use in railroad operations issued before the date of enactment of this subsection.

"(2) In carrying out the provisions of this subsection, the Secretary shall develop requirements which shall—

"(A) promote, to the maximum extent practicable, individual privacy in the collection of specimen samples;

"(B) with respect to laboratories and testing procedures, incorporate the Department of Health and Human Services scientific and technical guidelines dated February 13, 1987, and any subsequent amendments thereto, including mandatory guidelines which—

"(i) establish comprehensive standards for all aspects of laboratory drug testing and laboratory procedures to be applied in carrying out this Act, including standards which require the use of the best available technology for ensuring the full reliability and accuracy of drug tests and strict procedures governing the chain of custody of specimens collected for drug testing;

"(ii) specify the drugs for which individuals may be tested; and

"(iii) establish appropriate standards and procedures for periodic review of laboratories and criteria for certification and revocation of certification of laboratories to perform drug testing in carrying out this Act;

"(C) provide that all tests which indicate the use, without lawful authorization, of alcohol or a controlled substance by any employee shall be confirmed by a scientifically recognized method of testing capable of providing quantitative data regarding alcohol or a controlled substance;

"(D) require that all laboratories involved in the testing of any employee under this section shall have the capability and facility, at such laboratory, of performing screening and confirmation tests;

"(E) provide for the confidentiality of test results and medical information (other than information relating to alcohol or a controlled substance) of employees, except that the provisions of this subparagraph shall not preclude the use of test results for the orderly imposition of appropriate sanctions under this section; and

"(F) ensure that employees are selected for tests by nondiscriminatory and impartial methods, so that no employee is harassed by being treated differently from other employees in similar circumstances.

"(3) For the purposes of this subsection, the term 'controlled substance' means any substance under section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)) whose use the Secretary has determined poses a risk to transportation safety.".

(d)(1) The Commerical Motor Vehicle Safety Act of 1986 (Public Law 99-570; 100 Stat. 5223) is amended by adding at the end the following:

"SEC. 12020. ALCOHOL AND CONTROLLED SUBSTANCES TESTING.

"(a) REGULATIONS.—The Secretary shall, in the interest of commercial motor vehicle safety, prescribe regulations within twelve months after the date of enactment of this section. Such regulations shall establish a program which requires motor carriers to conduct pre-employment, periodic recurring, random and post-accident testing of the operators of commercial motor vehicles, and testing upon a reasonable suspicion that they have used, without lawful authorization, alcohol or a controlled substance.

"(b) TESTING.—(1) In promulgating such regulations, the Secretary shall require that post-accident testing of the operator of a commercial motor vehicle be conducted in the case of any accident involving a commercial motor vehicle in which occurs loss of human life, or, as determined by the Secretary, other serious accidents involving bodily injury or significant property damage.

"(2) Nothing in subsection (a) of this section shall preclude the Secretary from providing in such regulations that such testing be conducted as part of the medical examination required by subpart E of part 391 of title 49, Code of Federal Regulations, with respect to those operators of commercial motor vehicles to whom such part is applicable.

"(c) PROGRAM FOR REHABILITATION.—The Secretary shall promulgate regulations setting forth requirements for a rehabilitation program for the identification and opportunity for treatment of operators of commercial motor vehicles who are determined to have used, without lawful authorization, alcohol or a controlled substance. The Secretary shall determine the circumstances under which such operators shall be required to participate in such program. Nothing in this subsection shall preclude a motor carrier from establishing a program under this subsection in cooperation with any other motor carrier.

"(d) PROCEDURES FOR TESTING.—In establishing the program required under subsection (a) of this section, the Secretary shall develop requirements which shall—

"(1) promote, to the maximum extent practicable, individual privacy in the collection of specimen samples;

"(2) with respect to laboratories and testing procedures, incorporate the Department of Health and Human Services scientific and technical guidelines dated February 13, 1987, and any subsequent amendments thereto, including mandatory guidelines which—

"(A) establish comprehensive standards for all aspects of laboratory drug testing and laboratory procedures to be applied in carrying out this Act, including standards which require the use of the best available technology for ensuring the full reliability and accuracy of drug tests and strict procedures governing the chain of custody of specimens collected for drug testing;

"(B) specify the drugs for which individuals may be tested; and

"(C) establish appropriate standards and procedures for periodic review of laboratories and criteria for certification and revocation of certification of laboratories to perform drug testing in carrying out this Act;

"(3) provide that all tests which indicate the use, without lawful authorization, of alcohol or a controlled substance by any individual shall be confirmed by a scientifically recognized method of testing capable of providing quantitative data regarding alcohol or a controlled substance;

"(4) require that all laboratories involved in the testing of any individual under this section shall have the capability and facility, at such laboratory, of performing screening and confirmation tests;

"(5) provide for the confidentiality of test results and medical information (other than information relating to alcohol or a controlled substance) for employees, except that the provisions of this paragraph shall not preclude the use of test results for the orderly imposition of appropriate sanctions under this section; and

"(6) ensure that employees are selected for tests by nondiscriminatory and impartial methods, so that no employee is harassed by being treated differently from other employees in similar circumstances.

"(e) EFFECT ON OTHER LAWS AND REGULATIONS.—No State or local government shall adopt or put into effect any law, rule, regulation, ordinance, standard, or order that is inconsistent with the regulations promulgated under this section, except that the regulations promulgated under this section shall not be construed to preempt provisions of State criminal law which impose sanctions for reckless conduct leading to actual loss of life, injury or damage to property, whether the provisions apply specifically to commercial motor vehicle employees, or to the general public.

"(f) APPLICATION OF PENALTIES.—(1) Nothing in this section shall be construed to supersede any penalty applicable to the operator of a commercial motor vehicle under this Act or any other provision of law.

"(2) The Secretary shall determine appropriate sanctions for commercial motor vehicle operators who are determined, as a result of tests conducted and confirmed under this section, to have used, without lawful authorization, alcohol or a controlled substance but are not under the influence of alcohol or a controlled substance, as provided in this title.

"(g) DEFINITION.—For the purposes of this section, the term 'controlled substance' means any substance under section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)) whose use the Secretary had determined poses a risk to transportation safety.".

(d)(2) The table of contents of the Commercial Motor Vehicle Safety Act of 1986 (Public Law 99-570; 100 Stat. 5223) is amended by adding at the end thereof the following:

"Sec. 12020. Alcohol and controlled substances testing.".

(e)(1) The Secretary shall design, within nine months after the date of enactment of this section, and implement, within fifteen months after the date of enactment of this section, a pilot test program for the purpose of testing the operators of commercial motor vehicles on a random basis to determine whether an operator has used, without lawful authorization, alcohol or a controlled substance.

(2) The Secretary shall solicit the participation of States which are interested in participating in such program and shall select four States to participate in the program.

(3) The Secretary shall ensure that the selection made pursuant to this section is representative of varying geographical and population characteristics of the Nation, and takes into consideration the historical geographical incidence of commercial motor vehicle accidents involving loss of human life.

(4) The pilot program authorized by this section shall continue for a period of one year. The Secretary shall consider alternative methodologies for implementing a system of random testing of operators of commercial motor vehicles.

(5) Not later than thirty months after the date of enactment of this section, the Secretary shall prepare and submit to the Congress a comprehensive report setting forth the results of the pilot program conducted under this section. Such report shall include any recommendations of the Secretary concerning the desirability and implementation of a system for the random testing of operators of commercial motor vehicles.

(6) For purposes of carrying out this subsection, there shall be available to the Secretary $5,000,000 from funds made available to carry out section 404 of the Surface

Transportation Assistance Act of 1982 for fiscal year 1988.

(7) For purposes of this subsection, the term—

(1) "commercial motor vehicle" shall have the meaning given to such term in section 12019(6) of the Commercial Motor Vehicle Safety Act of 1986 (Public Law 99-570; 100 Stat. 5241); and

(2) "Secretary" means the Secretary of Transportation.

Mr. DANFORTH. Mr. President, this amendment is basically a bill that has already been reported by the Senate Commerce Committee, I think by a vote of 19 to 1, providing for drug testing.

There are some points that have been added by Senator MIKULSKI dealing with lab certification and procedures for drug testing. But this is a drug testing amendment. It provides for preemployment drug testing, postaccident drug testing, drug testing for reasonable suspicion, but the key to it really is mandatory random drug testing. That is what it provides.

It provides that in the case of safety related personnel in the transportation industries, there be mandatory random drug testing. This is a very controversial item. We had witnesses appear before the committee on both sides of the issue.

The Federal Railroad Administrator, John Riley, testified that in his view mandatory random testing was the most important thing that we could do with respect to assuring that drug-related accidents do not occur. He believes that preemployment screening, postaccident screening, and reasonable suspicion testing just do not get the job done. He was asked particularly about testing for reasonable suspicion. He pointed out that in the case of the Chase, MD, accident, the engineer and the brakeman had been in the presence of their supervisor immediately before the accident. Apparently, they were able to mask their behavior in such a way that the supervisor had no idea that they had any drugs in their system.

So it is possible to be on drugs and have nobody know that you are on them. I think all of us have heard stories about kids who had been on drugs and finally their behavior becomes so erratic that the parents suspect that something has gone wrong, but they fooled their parents for a long period of time.

So it was the testimony before the Commerce Committee that testing for reasonable suspicion of a person who looks glassy-eyed, if a person does not walk property and the like, testing for reasonable suspicion really is not adequate to get the job done; and that the best deterrent to drug use is mandatory random testing. That really is the essential ingredient of any drug testing program. Without mandatory random drug testing you really do not have very much at all.

Witnesses came before the committee, and they testified against mandatory random testing. They said that somehow it interfered with their rights to privacy. They made a lot of that argument. But, Mr. President, when the question of drug testing has been raised in court even with respect to prison guards it has been held constitutional. Surely, if it is constitutional to test prison guards it should be constitutional to test airline pilots for drugs.

The constitutional issue is always one of balancing an individual's rights with the requirements of public safety. Here you have such an obvious threat to public safety, where there is statistical evidence of drug use by people in safety-related transportation areas, where there have been actual cases of death and injury as a result of drug use by safety-related transportation personnel, a clear danger to the public, a danger that has tragically proved itself in fact in the past.

What the individual is asked to do is so small—to give a urine sample. Transportation employees have physicals anyhow, and I have never heard of a physical examination without urine samples. I have never heard of them without blood samples, for that matter.

So it does not seem to me to be outrageous as a condition of employment to require people to have physicals. It does not seem to me to be outrageous as a condition of employment to require people to give samples. It is such a small requirement to give a urine sample when scores, maybe hundreds, of people's lives are in your hands.

People say: "Well, you can have drugs in your system and not actually be under the influence of drugs." Maybe that is so. Undoubtedly, it is so. But it would seem to me that it would be reasonable to expect that those who are in professions which take the lives of people in their hands should act professionally. It should be reasonable for the public to believe that those who are flying the planes and operating the locomotives and driving 18-wheelers down the highway are drug-free.

I do not think it is solace to the public to be told that their airline pilot has some drugs in his system but that he can operate with the drugs in his system, that some people can function under the influence of drugs. It is a reasonable requirement to say that those who are in safety-related professions must be absolutely free of drugs.

Mr. President, with respect to the question of what kind of imposition it is to give a sample, the Airline Pilots Association opposes this. Yet, every time you and I go to the airport, our luggage goes through an x-ray machine and we go through metal detectors. Is that an infringement on our privacy? Of course, it is. Of course, it is an infringement on our privacy to have people look through a machine, into our luggage, and have the right, as a matter of fact, to do more than look through the machine—to open up our bags and go through our laundry. It is an infringement on our privacy to go through a metal detector.

One might say, "What business is it of anyone if we have a metal belt buckle on or have a pocketknife in our pocket? What business is it of anyone if we have those things?" Yet, they have a right to know before we get on the plane. But it is a reasonable imposition on the traveling public to assure them that the people who are getting on the planes are not hijackers or do not have explosives, and the same is true in the case of testing. It is a reasonable assurance.

I daresay that the likelihood that any given passenger has explosives or has a gun in his possession is much less than the likelihood that a person in a safety-related transportation job is under the influence of drugs.

So, Mr. President, that is the nature of the amendment. As I say, this amendment was reported by the Commerce Committee as a bill. It was considered. Hearings were held. The vote in the Commerce Committee was 19 to 1. I think it is a very important piece of legislation.

I am delighted that the Senator from Maryland [Ms. MIKULSKI] has taken such a keen interest in this, and she really has. She has been very, very active in this whole field. I commend this to the Senate.

Ms. MIKULSKI. Mr. President, I rise in strong support of the amendment offered by the Senator from Missouri.

Our country was shocked and saddened last January 4 when a Conrail locomotive crashed into an Amtrak passenger train near Chase, MD that took the lives of 16 innocent people.

When I heard about it, my reaction was to rush to the scene. From the carnage I saw on TV, I knew I should go to the hospital. I went to Franklin Square Hospital to meet with and offer encouragement to the families and the hospital staff.

Members of my own staff participated in the volunteer effort to help the injured. Others went in to give blood.

But when the wreckage cleared, we knew there was other action that had to be taken. We knew it was of the utmost importance that we prevent this kind of tragedy from ever happening again.

I remember the first time I spoke to Roger Horn, whose 16-year-old daughter died in the crash. I told him I could not turn back the clock. But I could help him exercise his right to be heard. And heard he has been, as have all those who had loved ones or friends that were victims in the crash.

These families and their friends have helped turn this tragedy into action. Their grief has given birth to an effort to correct a transportation infrastructure whose safety systems have gone awry.

January's senseless tragedy happened largely because of human inattentiveness to safety. Standard safety warning devices on the Conrail locomotive were either disconnected or ignored. And this negligence was compounded by the fact that the Conrail locomotive engineer and his assistant were using illegal substances shortly before the crash.

The amendment before the Senate, which I am proud to cosponsor, is designed to put in place a system to help eliminate substance abuse in our transportation industries.

I know that there is a great deal of concern among some of my colleagues about the rights of transportation workers who would undergo random testing.

I share those concerns. However, I do not believe that there is a conflict between public safety and the constitutional rights of transportation workers. There is a balance between the two. Drug testing can go forward provided: That there are accurate labs which insure strict chain of custody and the best testing procedures are used; and that workers' due process rights, including the opportunity for rehabilitation, are protected.

If a worker undergoes a random test, he or she must be guaranteed that the testing is accurate and that all precautions to insure that accuracy are guaranteed.

That is why I am pleased that Senator DANFORTH has incorporated, at my request, the lab testing protections we put in the supplemental appropriations bill to insure accuracy in Federal worker drug testing.

Those protections will insure comprehensive, uniform testing standards at labs across the Nation. Labs are required to use the best available technology for testing and to guarantee strict procedures governing the chain of custody of drug testing specimens.

In addition, these recent changes to the amendment will require plans to specify the drugs for which employees may be tested.

Finally, the amendment would establish standards for certifying labs to be used, periodic review of those labs and criteria to revoke a lab's certification if it falls below these standards.

Mr. President, nothing can ease the pain or remove the sorrow from last January's tragedy. But we can take a major step toward making safety the highest priority of our Nation's transportation network and spare other families the anguish many of my constituents have had to bear.

This amendment is a step in that direction. I urge its adoption.

The PRESIDING OFFICER. Who seeks recognition?

Mr. FORD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SARBANES. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SARBANES. Mr. President, I rise in support of the pending amendment.

I commend my very able and distinguished colleague from Maryland for her eloquent statement with respect to this amendment.

Mr. President, while the legislation before us is a matter of general application, it obviously has a very specific meaning and concern for those of us from Maryland since we experienced the terrible tragedy which occurred last January 4, in Baltimore County when Amtrak train No. 94 crashed into a Conrail train which crossed into its path killing 16 passengers and seriously injuring more than 170 others.

All of us were shocked and saddened by that catastrophe, Maryland's worst rail disaster, which brought grief and suffering to many, many families and friends of those who were killed and injured. I have spoken before on this floor about the exceptional and generous response to the tragedy that was made by countless citizens in our State particularly by the residents of Chase, MD.

Today, I particularly want to note the determined efforts now being made by the families of those who experienced this tragedy to obtain corrective legislation. To their credit, they have undertaken to translate their grief and sorrow into action by seeking a legislative remedy and they have come to the Congress again and again in pursuit of that goal. The families and friends of the victims of the January 4, 1987 Amtrak/Conrail train wreck in Chase, MD organized the Safe Travel America organization to seek action by the Congress strengthening our laws and regulations on travel safety.

Only recently, they were here on the Hill engaged in a very effective grass roots lobbying effort. I simply want to say to all of those who have been engaged in the effort that, while this deep personal loss cannot be undone, their action is, in a sense, the best tribute that they can pay to the loved ones whose lives were taken in that tragic accident.

The pending legislative proposal deals with a very serious matter: how do you address the problem of drug abuse by those who are placed in very responsible positions for the lives of others? In other words, we are concerned about people who have been given major responsibilities for the operation of our public transportation systems and into whose hands the safety and the lives of large numbers of people are placed every day.

This legislation is an effort to address that question. It seeks to deal with the drug question, not only by screening and testing mechanisms, but also by an important effort at rehabilitation. My colleague has had accepted as part of the pending proposal important safeguards with respect to laboratory testing to ensure their validity and accuracy and to make sure that no one is improperly questioned in that regard.

It is clear that this is a critical matter calling out for the affection of the Congress. It was addressed in the Commerce Committee and important legislation was reported out of that committee by an overwhelming vote. The proposal that is before us tracks that legislation.

I commend the Safe Travel America group for the efforts they have undertaken in behalf of this legislation. Anyone who was close to and experienced that tragic accident could not help but have it burnt into their memory forever and realize the necessity for corrective action. Mr. President, I hope the Senate will adopt this amendment.

Mr. President, I yield the floor.

Mr. HOLLINGS addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina, Mr. HOLLINGS.

Mr. HOLLINGS. Mr. President, I want to commend the distinguished Senator from Missouri on this amendment. As the chairman of our Commerce, Science, and Transportation Committee last year and now as our ranking member this year, the distinguished Senator has taken an active role in this area. The amendment under consideration encompasses the substance of S. 1041, the Transportation Employee Safety and Rehabilitation Act of 1987, adopted by the Commerce Committee earlier this year. Approval of this amendment would represent a significant step toward improving the safety of the traveling public. Workers in the rail, aviation, and motor carrier industries would also be principal beneficiaries of this since they are the ones who find themselves on the front line of any accident that may occur on account of drugs or alcohol.

Incidentally, Mr. President, of course, workers in public transportation, owe a higher degree of care, as we all know, under all of the State laws and, therefore, a higher degree of responsibility. Therefore, we in the public sector owe a higher degree of responsibility to the traveling public to make sure that we give not just a driving test or a vision test so you can see, or a reaction test, but certain tests of this kind on a random basis.

Drug and alcohol abuse in the transportation industries has been an issue of continuing concern on the part of the members of the Commerce Committee. I am certain that it has also been a major concern of Members of the Senate as a whole, particularly our colleagues from Maryland. Accidents such as the one earlier this year in Chase, MD, serve to show us just how tragic the results can be when safety is compromised. In that accident, 16 individuals were killed and over 170 were injured when an Amtrak train collided with three Conrail locomotives that had improperly pulled out into the Amtrak line. While we do not have a definitive conclusion as to the factors which led the Conrail engineer and brakeman to ignore three separate warning signals, we have every indication to believe that drugs may well have played a major part in that.

The accident at Chase, MD, is not the sole motivation for passage of S. 1041 and the amendment being considered. Rather, it is when this tragedy is added to the record that is already before us that one can see the full scope of the problem.

There is no question that drug and alcohol use among transportation employees is a problem. The record developed by the Commerce Committee in hearings held during the 99th and 100th Congress confirms this. For example, the Federal Railroad Administration reports that between 1975 and 1984, there were 48 rail accidents in which drugs or alcohol were "directly affecting" causes. These resulted in 80 injuries and 37 fatalities, and cost some $34 million in damages. In 1986, after having begun a program of post-accident drug and alcohol testing, the Federal Railroad Administration found that some 5 percent of the 759 rail employees tested showed signs of illicit drugs or alcohol in their systems.

The potential for problems exist in other areas of transportation, as well. In the commercial aviation area, we have learned that the Air Line Pilot Association—and, incidentally, I commend them for this—has administered a voluntary alcohol rehabilitation program in which some 800 commercial pilots have undergone treatment in recent years. While we have been fortunate in that no commercial air carrier accidents have been directly attributed to drugs or alcohol, certainly these statistics indicate the serious potential problem that exists among employees who may not have yet acknowledged their drug or alcohol problems.

Witnesses before the Commerce Committee also attested to the problems that exist in the motor carrier industry. For example, we were provided with the results of a study conducted by the Insurance Institute for Highway Safety that showed that of a random sample of 300 truck drivers, and among those 88 percent who agreed to be tested, 18 percent tested positive for the presence of controlled substances or alcohol. In the bus industry, we were informed that when Greyhound took applications from a group of experienced intercity bus drivers during a strike in 1983, some 30 percent of the applicants tested positive for marijuana. These are alarming statistics, Mr. President.

What then is the solution to this particular problem? Some might argue that drug and alcohol abuse is a societal problem—they got a problem for every solution. They would argue that you have to change the whole society before you can do anything. Such nonsense that goes on up here in Washington. That would not sell in downtown Atlanta, GA, or elsewhere I can tell you that.

"We are societal and you have got to look at it in the societal context." Well, the distinguished Presiding Officer and I do not buy that one.

In my view, those who choose to work in safety sensitive positions in transportation industries assume a special obligation since what they do directly affects the safety of the traveling public.

As legislators, we also have an obligation to the traveling public. That is to do all we can to ensure that transportation workers are free from the influence of drugs or alcohol when they have responsibility for the safe operation of a train, airplane, truck, or bus. We can help meet our responsibility in this regard through passage of the amendment that is before us.

The amendment under consideration seeks to deter drug and alcohol abuse through a program which includes five forms of testing. Testing would be required under this proposal prior to employment; on a periodic basis; following serious accidents; when there is reasonable suspicion to believe that an employee has used drugs or alcohol; and on a random basis. All of these are integral aspects of S. 1041 and this amendment. I would like, however, to focus a few remarks on the issue of random testing.

In my opinion, the random testing required by this amendment is the primary means we have to actually deter the unlawful use of drugs and alcohol. That is what we are trying to do. We are not trying to get rid of an employee for another reason. What we are trying to do here is create deterrents.

Preemployment, postaccident, reasonable suspicion and, to a degree, periodic testing, are all designed to detect actual drug or alcohol abuse. Contrasted with this is random testing. While random testing can detect the presence of drugs or alcohol, to be sure, it primarily serves as a deterrent to the unlawful use of these substances. It is the possibility that one might be tested at random that will serve to discourage the use of drugs or alcohol and that will do the most to improve transportation safety.

There are misconceptions about random testing, and you are going to hear from other speakers who will try to oppose this. We have had a very difficult time with regard to this from our friends in organized labor who have sought to defer a random testing proposal from consideration. That is why we have to move now with this amendment.

They seem to say it may be used as a means to harass employees or to allow employers to target certain individuals for testing. That is not the case.

The random testing authorized in this amendment is intended to be purely random. The text of the amendment and the report accompanying S. 1041 clearly seek to ensure that employees are selected from random tests by nondiscriminatory and impartial methods, For example, the committee report envisions that a computer-generated random selection process might be used to select employees for random tests. A procedure like this would ensure that random testing would be used solely for deterrent purposes, not for harassment.

The amendment under consideration also contains a number of important safeguards to protect employee privacy and ensure accuracy in testing.

If there is a frustration I have with this, it has been that we had not gotten this bill up earlier. Perhaps there is a silver lining in this however, and that most assuredly we are not just acting with this amendment in a reaction to the Maryland disaster. Even after these months since that disaster has ensued, we are still just as determined and still just as convinced of the rightness of this particular cause and this amendment.

It is also my understanding that this legislation authorizes the Secretary of Transportation to require the establishment of rehabilitation programs in the aviation, rail, and motor carrier industries. In this regard, I am particularly interested in seeing to it that programs are initiated which provide employees with an opportunity to voluntarily come forward and seek assistance for any drug or alcohol problems they might have.

That is on a voluntary basis. Obviously, however, there has to be a penalty for those who violate their trust in public safety by being caught under the influence and causing a tragedy of the kind that we have experienced, or any accident or injury to themselves.

We do not want to do away with the penalty itself, all on the premise that there is no penalty and all that we will get is rehabilitation. I have heard that argument.

The sponsors of this amendment, and I am proud to join with the Senator from Missouri and the Senator from Maryland, favor rehabilitation. We commend those in the airline industry, particularly, who set up this particular program on a voluntary basis, tried and true. We hope it will follow with others in the rail and motor carrier industries.

I believe a requirement for carriers to provide employees with an opportunity to enter such self-help programs would do much to assist individual employees and society through the promotion of a safer transportation network.

With these remarks, I urge my colleagues to give their strong support to this amendment. Its adoption would send a clear signal that we are serious about doing all we can to improve the safety of transportation in the United States.

I yield the floor.

Mr. LEVIN. Mr. President, while I will vote against the motion to table the Danforth amendment, I am troubled by some of the specific language of the amendment as it now stands. For example, I would like to see greater clarity on the question of when an employee could use alcohol when not on the job. As the amendment stands, an employee could not, for instance, drink a beer even off the job, unless authorized by law.

Nevertheless, this amendment is heading in the right direction. It is designed to bring about greater certainty that the traveling public will not have its life and limb put at risk as a result of transportation workers operating under the influence of drugs or alcohol.

Furthermore, the underlying bill still must go to conference, at which time the overly broad language in this amendment could be, and hopefully will be, modified and fine tuned.

Mr. PELL. Mr. President, I shall vote in favor of the motion to table the amendment relating to mandatory random drug testing. Because of my concerns about the fundamental fairness of mandatory random drug testing for approximately 300,000 employees involved in public transportation services.

There is no question that these workers have the very highest obligation to uphold the safety of the passengers whose lives are entrusted to their professional services. I would point out here that, even with mandatory random testing out of the bill, there still would be a requirement for testing public transportation employees in preemployment, postaccident, and reasonable suspicion situations. These safeguards are sufficient, in my view, to protect the public without the added intrusiveness of mandatory random testing, a provision I find to be unfair and overbroad in its attempt to control private, off the job conduct.

Mr. CHAFEE. Mr. President, drug and alcohol abuse has become an increasing problem in the workplace. The costs of this abuse are clearly magnified in the transportation sector. When operators of a plane, bus, or train use drugs or alcohol on the job, they not only endanger their own lives, but the lives of passengers entrusted to their care or other passengers in the system.

Substance abuse clearly leads to impaired memory, lethargy, and reduced coordination. In the case of a transportation worker in a safety-sensitive position, delayed response time can result in the loss of life. I think what brings us here today is especially the memory of what happened in Maryland. There, when the Conrail train crashed into the Amtrak train and the loss of 16 individuals and 170 injuries ensued, it was a ghastly situation.

It particularly came to my attention, and affected me personally and those from my State, because there were two young sisters on that train, two young girls, sisters. Both of them were killed. They were from our State.

My heart goes out to their family. We do not want to see this happen again if we can avoid it.

The legislation we are now considering to require drug and alcohol testing for employees in safety-sensitive positions, had it been in effect, could have prevented this tragic accident.

Now there are those who will say that random drug testing of airline pilots, bus drivers, or truck drivers, is a violation of our civil liberties. I would agree with this assessment in every case, except where the lives of the public are at such risk. In undertaking a drug testing program of any sort, it is necessary to protect the privacy and rights of those being tested. S. 1041 takes the necessary precautions to protect these rights. The bill also provides safeguards to assure accurate test results. Mr. President, it is worth noting that this legislation takes great care to protect employees both by requiring that a second test of the highest laboratory quality be administered to confirm any initial screening which indicates the use of alcohol or drugs, and by requiring the confidential treatment of the initial screening.

The potential for catastrophic disaster created by those who abuse alcohol and illegal drugs while working in safety-sensitive transportation positions necessitates a drug testing program to deter this behavior. This legislation is an appropriate response to this difficult problem. If somebody has got a better idea, we would be glad to hear it. It is not just some esoteric problem that somebody has dreamed up. It happened. It happened in Maryland. It could happen again.

So I urge my colleagues to support this amendment and to vote against any motion to table.

I thank the Chair.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. INOUYE. Mr. President, my beautiful State is as far away from the Nation's capital as any other State. In fact, it is beyond Alaska.

In the last 15 years on an average I have returned home to Hawaii 21 times a year. In addition to that, I have to, as part of my work, travel to other parts of the United States. In the past 15 years I have spent an average of 23 days up in the air; 23 days. I believe I have spent as much time up in the air as any other Senator.

Obviously, I am concerned about passenger safety. I am concerned about my life. That is normal, to think about one's own life.

But, Mr. President, according to statistics provided us by the Department of Transportation, this year over 425 million men and women and children of the United States will be traveling by flying. As of this moment we have not had any accident resulting in death cause by drug abuse.

This year over 425 million men, women, and children will be flying and, so far, no accident as a result of drug abuse.

Mr. President, like all, I am concerned about drug abuse. I think it is one of the worst tragedies confronting us in the United States. But I do not believe that this concern justifies violating the constitutional right to privacy of the vast number of transportation employees who would be subjected to random drug testing without reasonable suspicion should this measure become law.

We would be testing these pilots who so far have demonstrated that they can fly; who so far have demonstrated they have flown without drugs. But we have placed all of them under some cloud of suspicion by this bill.

In determining whether a search and seizure is reasonable, Mr. President, courts have balanced the Government's interest in searching against an individual's right to privacy. For example, the Supreme Court has found that seizing of blood constitutes a grave invasion of privacy as defined by the fourth amendment.

Furthermore, the degree of intrusion involved in the seizing of urine has been held akin to the taking of blood. As a result, an employer must have a compelling interest to test before it will be held constitutional.

Proponents of this measure contend that the Government has a substantial interest in protecting public safety. I do not disagree with this. But in light of recent court decisions which found this interest alone insufficient to justify the random testing of U.S. Customs officers, firefighters, and police officers, I think there is a high probability that the Senate bill will not withstand constitutional scrutiny.

Mr. President, I cannot agree with the rationale that only those employees who are drug abusers would fear or find such testing repulsive.

However, it is the constitutional liberty of all employees that is at stake.

I do not believe that the Government's interest in random testing is compelling enough to justify invading the privacy of all employees without reasonable suspicion.

Much has been said about the recent tragic accident that occurred in the State of Maryland. I, too, was horrified by the pictures that appeared on television night after night. I, too, am concerned about the possibility that those who were operating this train may have used drugs or may have been under the influence of alcohol. But I think we should also keep in mind the millions of passengers who have taken this same route month after month, year after year, safely taking it to their destinations, without any fear of those in charge being under the influence of drugs or alcohol.

If this amendment passes in the same haste as it was written, I think that unsound public policy would be the result, and it will be measured by the countless numbers of lawsuits stemming from the unresolved constitutional question.

As I stated when this amendment, which was then S. 1041, was reported out of the Commerce Committee, I had serious reservations regarding the potential unconstitutionality of random drug testing, and my concerns have not been calmed. To the contrary, the U.S. Supreme Court has not decided this issue. No. U.S. court of appeals has upheld random drug testing on as massive a scale as that which this amendment would establish.

Recent court of appeals decisions uphold drug testing which is founded upon reasonable suspicion. That has been the law of the land for over 200 years.

Recent court of appeals decisions which do provide for random testing limit such testing to a distinct and well-defined class of employees who are responsible for drug interception or the prevention of drug trafficking in prison systems. There is no documentation, Mr. President, that transportation-related employees are drug users or who have the responsibility of drug interception. To the contrary, 425 million passengers this year, myself included, will be flying over the land without fear of pilots being drug abusers.

For these reasons, Mr. President, much as I hate to find myself in opposition to any of my dear friends, I would have to move to table the amendment.

Mr. DANFORTH. Mr. President, before the Senator does that, may I respond?

Mr. INOUYE. Please, yes.

Mr. DANFORTH. Mr. President, I ask unanimous consent that Senators DOLE, WILSON, MCCAIN, CHAFEE, and STEVENS be added as cosponsors to this amendment.

The PRESIDING OFFICER (Mr. REID). Without objection, it is so ordered.

Mr. DANFORTH. Mr. President, first of all, with respect to airline pilots, the evidence that was presented in the Commerce Committee was that the Airline Pilots Association itself reported that 800 commercial pilots have acknowledged an attempt to end their addiction to alcohol through the association's voluntary rehabilitation program recently.

I say that for whatever it is worth, but I would point out that in the view of this Senator there is no sector in the country, there is no group of people, who are free from the problems of either alcoholism or drug abuse.

This is pervasive in American society. I do not think it is reasonable to believe there is any class of people, any group of people who somehow are absolutely free of the problem.

Second, with respect to the question of whether there is a cloud of suspicion hanging over every airline pilot or every locomotive engineer or every truck driver, the answer is, of course, no. It is not a question of suspecting people. It is not a question of hurting someone's feelings. This is a question of public safety. I do not feel that I am somehow under a cloud of suspicion when I go to the National Airport to take a plane to St. Louis and I have to go through a metal detector. I do not believe that people really say, "There goes JACK DANFORTH; he is a terrorist."

But the fact is that we have to protect against that tiny fraction of the population that is dangerous, because if there is a mistake, if there is one terrorist in a thousand, one terrorist in 10,000, there is real trouble. If there is one person under the influence of drugs who is piloting a plane or operating a locomotive, there is real trouble. There was real trouble in Chase, MD. There is real trouble with all of the bus accidents and the truck accidents that I cited in my opening statement on this amendment—real trouble. People's lives are taken. People's lives are lost. It is not a question of suspecting people, of saying, "Oh, my gosh, we suspect you of being an awful person because we are taking urine samples."

Urine samples are taken of airline pilots every 6 months, I believe, in their ordinary physical exams. I do not think that that is an imposition. I think that is a basic requirement because we want healthy pilots. Certainly, if we want healthy pilots, if we want healthy locomotive engineers, we want those who are free of drugs.

Finally, with respect to the constitutional question, the question of random testing has been raised in several cases that have been decided by the U.S. courts of appeals. Now, I do not know of any court of appeals case that has taken up the issue of random drug testing and alcohol testing where the testing has been held unconstitutional.

I could be wrong on that, but I just do not know of any case that has been decided by the court of appeals. District court cases have gone both ways. I believe the prevailing view in district courts is for drug testing, but I am not sure about that. But I know that in the court of appeals cases the cases have turned out in favor of the constitutionality of random drug testing.

The eighth circuit court of appeals decided a case with respect to prison guards; the second cricuit court of appeals with respect to FBI agents; the eighth circuit with respect to prisoners themselves; the third circuit court of appeals in the case of Shoemaker versus Handel certiorari was denied by the U.S. Supreme Court in that case incidentally—random drug and alcohol testing was held constitutional for jockeys.

Now, Mr. President, under what theory could it possibly be constitutional to test jockeys for drugs and not test locomotive engineers for drugs?

So I believe it is clear that this would be held constitutional by the U.S. Supreme Court if it ever were to get that far.

Mr. FORD. Will the Senator yield for a question? Mr. President, I want to ask the Senator a question.

Mr. DANFORTH. Yes.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. FORD. How often does the Senator anticipate that an individual might be tested during the period of 12 months if you go for random testing; he may or may not be tested?

Mr. DANFORTH. May or may not. The meaning of random is that you would never know if you were going to be tested or not.

Mr. FORD. So you would hold that over their head.

Mr. DANFORTH. Yes.

Mr. FORD. That is the essence of that.

Mr. DANFORTH. Very much like when you are driving down the street, do you know that a policeman is parked around the corner looking for speeders? Who knows? Hopefully there is deterrent effect.

Mr. FORD. I like them out on the highway where you can see them and they are useful instead of being behind a billboard.

If we have a group that is included in this legislation that would meet, or more than meet, the qualifications or suggestions on this and there is some provision, is there any way they might be excluded from this legislation? The pilots, for instance, are given physicals every 6 months. Why should this legislation be imposed upon them when they regularly have to do that in order to fly? It seems to me where they are doing that now, the remedy might be excluding them from random testing provided they have that test, then, that cloud would not necessarily be over their head. Of course, that means that you are going to test others, but others that might have to have physicals every 6 months and they comply with certain rules, standards, regulations, whatever it might be, they might be excluded under this legislation.

Mr. DANFORTH. Let us suppose that an airline pilot—I am not sure about how often they have physical exams.

Mr. FORD. So they would have a specimen taken and it would be reported if there was some unusual characteristic.

Mr. DANFORTH. Let us suppose that an airline pilot is tested every 6 months, and I think a locomotive engineer every year, 2 years, something like that. But let us suppose it is a 6-month physical exam that they have and they give urine samples as a matter of course during that exam. And let us suppose that a particular drug shows up in a urine sample for, say, 5 weeks or 3 days or whatever, but let us say 5 weeks after it is used. Then that would say you could feel you would be in the clear except for that limited period of time when it would show up in the sample. That is the problem. The testimony that we had in the committee was that without random testing, there is really no good way to assure that drugs will not be used in the workplace.

Mr. FORD. If you have a problem user, surely it would be difficult for that individual to stay off for 5 weeks or a longer period. You basically do not have a problem user if they can stay off any kind of drugs for several weeks. You may get a prescription for a bad cold or the flu or something like that. Under this provision, what do you do in case the test shows up positive for drugs? What kind of remedy does that individual have?

Mr. DANFORTH. Let me say, first of all, with respect to the problem user, I think from the standpoint of the passengers, a person who uses drugs once on a recreational basis is a problem user. I do not think that you have to be an addict to be a problem user as far as the public is concerned. I would assume that most of the people who use drugs probably—I do not know, but maybe or not—are not addicts.

Mr. FORD. Where they have a prescription but are not a problem user, how does that individual vindicate himself from this particular problem?

Mr. DANFORTH. My understanding—and the Congressional Research Service has done a study of this—is that even the initial screening is 98- to 100-percent accurate in finding what, if anything, is in the sample, that under the provisions of this bill subsequent to the initial screening, the person would continue to hold the job.

And a second test would be done on the sample. It is believed that that test is 100 percent accurate. The best belief that has been accepted, as a matter of fact, by the courts who have addressed this question, is that it is 100 percent accurate, and that it tells what the person has used. It does describe what is in the person's system, and the amount that is in the person's system. So I think there is no chance that an inaccurate result would come from something like eating poppyseed bread of something like that.

Mr. FORD. How many individuals will be covered under this piece of legislation as it relates to the airline industry?

Mr. DANFORTH. How many people are employed?

Mr. FORD. No. That would be subjected to the random testing?

Mr. DANFORTH. It would be about 175,000.

Mr. FORD. How many in the rail industry then would be covered? I have already read it. I can almost tell you.

Mr. DANFORTH. There are 120,000 rail employees.

Mr. FORD. One hundred seventy-five and 120,000, that is 295,000. How many in the trucking industry?

Mr. DANFORTH. Three million.

Mr. FORD. Three million? That is roughly 3,300,000 with my modern math. And 2 percent of that is how many?

Mr. DANFORTH. Senator FORD, about 60,000, I think.

Mr. FORD. About 60,000. So we have roughly 66,000 people that would have to take the second test. The cloud would be over them, if we said 98 percent positive, only 2 percent negative. I am just using the Senator's figures.

So we would have approximately 66,000 that would have a cloud over their heads, who would have to go take the second test. How many of that 2 percent would be found drug free, or would find that a mistake had been made on the first test?

Mr. DANFORTH. The belief is and the best evidence that I have, and that is from the Congressional Research Service, believe that the first screening——

Mr. FORD. Ninety-eight percent.

Mr. DANFORTH. Ninety-eight to one hundred percent accurate, and that is why no disciplinary measures are used against this person. In fact, there is not a cloud until the second test is completed and the second test is believed to be 100 percent.

Mr. FORD. They would have to take the second test if there was some problem in the 98 percent?

Mr. DANFORTH. The same sample would be subjected to the second procedure.

Mr. FORD. It still would be a second test under the original sample?

Mr. DANFORTH. That is right.

Mr. FORD. So it would have to go one step further.

Mr. DANFORTH. Yes.

Mr. FORD. The Congressional Budget Service gave the Senator this information?

Mr. DANFORTH. The Congressional Research Service.

Mr. FORD. What scientific background does the Congressional Research Service have? Do they go out and gather the material and give it to the Senator?

Mr. DANFORTH. Senator FORD, you are taxing my knowledge of the process that they undertook.

Mr. FORD. We would tax everybody's knowledge based on what we are getting ready to do here. I think we ought to be acquainted with what is going on.

Mr. DANFORTH. It would seem to me that where you have a clear case, not only on the basis of samples for example, random surveys at truck stops, but actual cases and a number of actual cases of people being killed and people being injured in real accidents, then the question is to use the best judgment we can on how to reduce the prospects of this kind of thing happening in the future. I think that makes sense when, for example, the Federal Railway Administrator comes before the Commerce Committee, and says this is really the only thing that makes sense. When that is the evidence before us, and when that is the best evidence that we have, and the courts have held this as a matter of fact on the basis of expert testimony provided to them, that there is 100 percent certainty as far as they are concerned on the basis of the second test of the same sample, then it seems to me that the time has come to act.

Mr. FORD. I say to my distinguished friend I have no problem with trying to eliminate drug users. I have no problem. But I want to be very careful that I do not impugn the integrity or the character of an individual and someone slips one too many either way. If we are treading on 66,000 who have to be tested the second time or their original specimen would be tested the second time, that is a lot of questions being asked as it relates to random sampling.

Mr. DANFORTH. Let me ask the Senator from Kentucky this: If there is a 98-percent to 100-percent chance that an airline pilot has drugs in his system, does the Senator not believe that that should require a second test?

Mr. FORD. I do not mind the second test. But I have never found in all of the testimony, and I have listened to a lot of testimony like the Senator has, where any of the tests are 100 percent accurate. The Senator says 98 percent to 100. I do not think anybody will say to the Senator or to the committee, at least witnesses that I have heard, that they are at least 100 percent accurate.

Mr. DANFORTH. No; 98 percent to 100 percent on the first screening and the second test, too, believed to be 100 percent.

Mr. FORD. Why we not do it 100 percent the first time?

Mr. DANFORTH. Because it is the question of the process that is used.

Mr. FORD. And the cost. Is it an additional cost for the second?

Mr. DANFORTH. Sure.

Mr. FORD. What does the first one cost and who pays for it?

Mr. DANFORTH. It would be paid for by the industry itself; $13 to $20 for the first test.

Mr. FORD. So $20 for the first test, times 3 million is what it would cost the industry and how much for the second?

Mr. DANFORTH. No. That is not correct, Senator FORD. Nobody is suggesting that every employee must be tested once a year. That would be the cost of every employee who is tested once a year.

Mr. FORD. The airline pilot could be tested four times a year.

Mr. DANFORTH. But a mandatory random test would occur at numbers by the basic nature of things, and could not be predicted.

Mr. FORD. What is the second cost or the cost of the second test?

Mr. DANFORTH. Each test would be about $13 to $20.

Mr. FORD. The same as the original test, so just double it. It would be $20 for the first one, $20 for the second one, or a total of $40 to $50 for the first two tests? Is that correct?

Mr. DANFORTH. If you did two of them?

Mr. FORD. Two percent, you would have to do two, roughly, 98 percent to 100 percent.

Mr. DANFORTH. The Senator is getting the lowest figure, 98 percent. If you want to assume the lowest, that would be correct.

Mr. FORD. I am taking the Senator's figures, 98 to 100 percent. The worst it could be would be 2 percent. That is the very worst it could be, and so 2 percent is 66,000 times $40.

Mr. DANFORTH. Everybody who would test positively would be tested twice.

Mr. FORD. I understand that. But we have 2 percent, and that is the worst scenario.

Mr. DANFORTH. I am not really tracking with you.

Mr. FORD. The Senator says 98 percent to 100 percent postive.

Mr. DANFORTH. No. I am saying that the test, it is believed, the first screening, is 98 to 100 percent accurate.

Mr. FORD. All right. So we have 98 percent which would be the worst scenario under the Senator's scenario, that would be accurate, 98 percent. That would be 2 percent at the worst and it would have to be tested the second time.

Mr. DANFORTH. No. Everybody would be tested the second time if they tested positive.

Mr. FORD. That would be the 2 percent, roughly.

Mr. DANFORTH. No.

Mr. FORD. How many would be positive? We have no idea?

Mr. DANFORTH. No.

Mr. FORD. Of those tested positive, 2 percent have to be retested?

Mr. DANFORTH. No. Everybody who tested positive gets retested.

Mr. FORD. That should be——

Mr. DANFORTH. That is the safety measure that is used to protect the people because the first screening may be somewhere between zero and 2 percent inaccurate. So to make sure that even that 2 percent inaccuracy does not come into play, everybody who is tested positive gets the second test.

Mr. FORD. The point I am making, the Senator does not know how many are going to be tested?

Mr. DANFORTH. No.

Mr. FORD. He does not know how many are going to be positive or negative, and he does not know what the cost is going to be to the industry?

Mr. DANFORTH. No.

Mr. FORD. I thank the Senator.

Mr. DANFORTH. I also say we do not know on any given day at National Airport how many people are going to walk through the metal detectors carrying guns. We do not know on any given day how many people are going to show up in the airport in Louisville or anywhere else that are going to be toting bombs with them. I do not know who could take a sample, but I do not think anybody wants to take the chance that very many people are doing that.

Let us suppose, just for the sake of argument, that it were known that only 1 percent of the flights that took off at National Airport had people who were under the influence of drugs. It is not that high, I do not think. But let us suppose that only 1 percent of the flights that took off, or 1 percent of the locomotives on the tracks, were operated by people under the influence of drugs. The chances are 99 percent that you are going to reach your destination; OK, so what are you worried about? I do not think anybody would make that argument.

With respect to mandatory random testing, let us suppose that it costs $30 or $40 or whatever to do the program, per person who is tested, however many people that is. It seems to me that that is a very modest cost to pay to reduce the incidence of people being wiped out in public transportation in this country—a very modest cost.

Mr. HOLLINGS. Mr. President, we know what the commercial pilots have stated. We know what the motor carrier industry has pointed out; the 18 percent that tested positive in a random testing of 300 truck drivers. Thirty percent of the applicants for positions as intercity bus drivers tested positive for marijuana. We know what the facts are with respect to the Federal Railway Administration. They found that 5 percent of the 759 rail employees tested following accidents showed signs of illicit drugs or alcohol. So we do not have to guess.

We are seeing, if you please, a demand from the traveling public that they remove the cloud of suspicion. I never heard such a nonsensical analysis, that we are putting people under the cloud. Everybody now is under that cloud of suspicion with these statistics. So, in addition to deterrence, what I am trying to do and the amendment certainly will accomplish is to remove that cloud of suspicion, and see to it that there is some responsibility.

As to the invasion of privacy, taking blood, we had that argument way back 40 years ago in connection with smallpox vaccinations. We have done away with that. You could not stick a person. They have done away with smallpox by invading their privacy.

Under the contention of the Senator from Hawaii, we want to invade privacy. I want to, for the public good. When there is an overriding public interest, there is an overriding public duty for the highest degree of safety. So the cloud is a cloud of the highest degree of safety, and the cloud we are trying to remove here is a cloud of suspicion.

We would not measure who has traveled most in the U.S. Congress. Neither the Senator from Hawaii nor the Senator from California qualifies. There is the crowd on the political stump running for President. They are up there all the time. I know that in 1983, I missed 50 percent of the votes. But I was up in the air, going back and forth and traveling in all areas. Announce for the Presidency, if you want to win an award for staying up in the air.

I can tell you that what we have done is find a public need. We found it on the authorization bill for the Department of Defense. We mandated drug testing for those who are coming into the service. They give up certain rights when they volunteer, and you give up certain rights when you drive for the traveling public and not just privately.

In a similar fashion, as the Senator pointed out, we give jockeys drug tests. The American public has come forward in scholastic football for steroids testing. We are giving all those tests right on down the line. Yes, it is a miracle, and I stated so yesterday when we passed the airport and airways safety bill.

We found that of 425 million passengers, approximately 1.2 million passengers today will travel from 10,000 locations to 10,000 locations safely.

That is the argument, of course, of Reaganomics. Look at the great, wonderful binge we have been on. Then, all of a sudden, bang—and on October 14 we lost one-half of a billion dollars in 1 day, and we had the crash, because the people kept wanting and wanting. There comes a due date. You have to pay your bills, and you know that you are playing with danger, playing with fire.

In a similar fashion, in public safety, we are playing with fire, talking about the rights of privacy of those who are in control of airplanes, buses, or trains.

What does it cost? All the gymnastics about how much is this and that—what is the cost of 16 dead and 170 injured in Maryland this past year? Those are the costs we are looking at.

Here is what we found just 24 hours ago, by a vote of 96 to 1. We found that, yes, we have had in airlines all that safety. But we also see the gathering storm. Through September of this year, we have had 857 near-misses, a 37-percent increase over last year, and it went up last year over the previous year. We found 984 operational errors, an increase of 80 percent. We found 2,551 pilot deviations, where pilots deviated from the Federal air regulations, an increase of 54 percent. That is why this body, by 96 to 1, voted $15.6 billion.

But when we get to safety and what everybody can do in football and jockeying and horse racing in everywhere else in the world—where pilots themselves volunteer—and what have you, then all of a sudden this congressional crowd can go off on a toot about privacy.

Let us give Congress a drug test, and you will find that Congress is acting judiciously, although perhaps a little late.

The use of drugs was not of concern when we were young and coming along. But in this day and age, it is a concern of all of us.

What we are trying to do, at the most and at the best, is to get deterrence. If they know there is random testing and they are going to lose their livelihood and everything else, that will help them say "No." Otherwise, if they have not been able to say, "No," they can voluntarily come under this bill, under the rehabilitation program. It is not punitive. It is done in a deliberate, judicious fashion.

This amendment should not be tabled. We are using the guidelines of the Health and Human Services Department. It is not a cloud of suspicion. The cloud of suspicion is there. Congress has found it already, yesterday and today. Let us follow through now and adopt this particular amendment, so that we can remove the cloud of suspicion.

I yield the floor.

Mr. KERRY. Mr. President, I join with my colleague, the distinguished Senator from Hawaii, and others, in expressing concern about moving too quickly and perhaps too broadly to attempt to deal with an issue that we are all very concerned about. I voted for this bill in committee but, I think, as the chairman and the ranking member and others remember, it was an issue that we talked about and expressed certain concern about at the time.

I believe there was an agreement certainly among staff and I think an understanding among Senators that we would vote for it because we thought it was an issue of such importance it ought to come to the floor, but between the time of its being passed out of committee and coming to the floor, there was work to be done. There were issues yet to be resolved, issues about the scope of the testing, cost, appeals process, how we were going to deal with some of the unresolved uncertainties of the testing process itself.

Now, Mr. President, as a member of the committee, I would say that I do not believe we worked our those differences. I do not believe that at this point in time we should move forward to broadly create a new governmental program where we do not even know the costs, where we are not sure of the implications, that will open up a whole new testing ability of all transportation employees, particularly when some of those employees have never been characterized in any assertions as being part of the problem.

There is an editorial in the Baltimore Sun which says that "Frustration can lead to bad judgments. Transportation Secretary Elizabeth Dole's dismay at the loss of life in the Amtrak crash north of Baltimore coupled with frustration many feel over drug abuse may be behind her injudicious decision on random drug tests for all railroad and airline personnel."

There are countless other editorials across the country which raise the question of the Constitution, of rights of privacy, and other issues.

Mr. President, as legislators we are often put in the position of trying to balance an interest that we have in moving quickly ahead to satisfy what we perceive as a public demand, balanced against rights that are sometimes a little harder to touch and a little harder to put one's hand on or feel in political terms that are engraved in the Constitution.

I do not think that we should just casually dismiss those because there is an enormous cry by the public to do what the public has never even had defined for them as a particular problem. No airline crash has ever been attributed to an airline pilot's mistake or use of drugs.

And I do not think it is possible to say that the public is screaming about drug testing for pilots when there has never been an allegation that one accident in the air has been as a result of drugs and there has been no finding to that effect.

But equally as important, Mr. President, I think about the drug testing program itself, let me relate a few items to my colleagues.

Recently there was an incident in drug testing where on the very crash that is the cause of much of the feeling that we ought to have a random program, those particular tests, the laboratory test showed evidence of marijuana byproducts in the blood of Conrail employees involved in that January 4 collision, but the Transportation Department now acknowledges that the test results may be "procedurally flawed" even though they were conducted at the Premier medical laboratory run by the FAA.

Another item, a Washington, DC, television reporter last year documented a 70-percent error rate on a group of specimens sent blindly to six DC area commercial laboratories.

Another item, following the NCAA basketball final four, press reports term the drug testing procedures "Kafkaesque." Sports Illustrated reports that:

> Countless players were detained for hours after games, while they tried to overcome dehydration and produce specimens. Others, in legitimate need of medication, feared taking it, lest they test positive for a banned substance. Florida Coach Norm Sloan went so far as to move his Gators from their Syracuse hotel, fearing his players might test positive beause of passive marijuana smoke from another room.

These incidents should surprise no one, as numerous cases in both State and Federal courts have shown, the issues of privacy, accuracy, and due process raised by drug testing are exceedingly complex and controversial. I support the general notion of "mandatory drug screening programs" for selected categories of employees and I believe that there is overwhelming public support for such a program. The challenge is how we translate this broadly supported goal into legislation which is fair, effective, and capable of withstanding the inevitable legal challenges we can expect.

Mr. President, in testimony before the Commerce Committee this year on this subject National Traffic Safety Board Chairman James Burnett made that point when he said that it would be a mistake to embark on a program of random mass testing which winds up creating a series of drug tests as a consequence of it. "Inevitably a lot of people will be injured creating a backlash against the whole concept of drug testing."

My primary concern, Mr. President, is with the legal and constitutional implications of arbitrary random drug testing in the transportation industry. No drug testing program will be effective in combating drug abuse unless it is on sound legal ground, and can withstand a constitutional challenge. If we pass a drug testing bill, and that bill is not upheld by the courts, then we have achieved nothing in the fight against drugs. On the contrary, we may have created the very backlash which Mr. Burnett talked about so that it makes it harder to get people to support the program or have confidence in it in the future. I believe for that reason we ought to proceed slowly here. We ought to look at how we strengthen this program, and I am convinced there is a good-faith willingness among the members of the committee to do precisely that.

Some have argued that compulsory drug tests violate the 14th amendment prohibition against unreasonable searches and seizures. Courts have so held. That is not made up. Courts have so held.

It has also been argued that drug tests violate the 5th amendment right against self-incrimination and 14th amendment guarantees of due process. It has also been argued that drug tests violate the right to privacy, which we all know particularly underscored by the Bork hearings is not specifically stated in the Constitution but which the courts have articulated and written about through the years.

Some State constitutions and statutes also specifically protect the right to privacy. Legal protections may also differ for public employees versus private employees, and for unionized employees versus nonunionized employees.

Even if the courts were to uphold the mass random testing program required by this legislation, I would have serious reservations about various issues which I believe are not adequately addressed by the current bill. These include the costs of the drug screening and confirmation testing, the cost, management, and evaluation of employee rehabilitation programs, and the rights of employees to appeal a positive finding of drug use.

I believe that the first improvement in the Commerce Committee's proposal would be to move away from the requirement for random testing of all employees, regardless of whether or not they have displayed any record of impaired performance, judgment, or other work or personality disorders which may indicate a substance abuse problem.

Mr. President, I personally obviously feel that the constitutional problems are significant enough to want to go slowly here. I realize that some of my colleagues do not share that view, and I understand that. But it seems to me that regardless of your view of the constitutional question here, it is obvious that the existence of that ambiguity is going to lead to protracted, expensive legal challenges, not just once, but potentially dozens of times as everyone from the airline pilots to package handlers to flight attendants seek to have the law struck down as it applies particularly to them. The clear direction of the Federal courts at this point is to rely heavily, when resolving such constitutional questions, on job-related factors, such as reasonable expectations of privacy and heavily regulated industry distinctions. Such considerations will lead to numerous lawsuits, and the consequent delays will not only be expensive for the Government, not only expensive for the industry and the workers, but they are going to lead to a delay in the very goal we are going to try to implement.

I believe we can work out details here which will allow us to have a mandatory drug testing program for selected kinds of employees, a prescreening program for employment as well as a program that applies specifically to those people, people who have been shown to have problems in the past and that would give us an enormous increase in the numbers of people who currently ought to be tested and are not being tested. If we did that we would move forward in a concerted way that would allow us to create a track record for testing, a track record for the results, understand the costs, and know what the final consequences are going to be on workers and on the drug problem itself.

I think that would be a far, far more sensible way to proceed. I hope my colleagues will decide that this is a moment to try to proceed with caution, come up with a good piece of legislation, not avoid the issue, open up a new area, but do so in an intelligent, workable, and most important, sustainable fashion.

Mr. President, I yield the floor.

Mr. EXON addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. EXON. Mr. President, I am pleased to rise in support of the amendment to incorporate into S. 1485 provisions to require random and other drug and alcohol testing for certain safety-sensitive employees in the aviation, rail, truck, and bus industries.

I ask unanimous consent that I be entered as a cosponsor.

The PRESIDING OFFICER (Mr. BREAUX). Without objection, it is so ordered.

Mr. EXON. As one of the early leaders of this effort, I am pleased that we are taking this action today. Despite the obvious split on the Commerce Committee on this subject, when this matter was voted out of the Commerce Committee after extensive hearings, it was 19 for and 1 against; although I could see that there were reservations, and some good ones, expressed by many of the members. It may be that that was closer to the tragic accident of the Amtrak train than we are experiencing today. I think that fact does not change the need for this legislation and I hope that the matter will go forward.

The Senate Surface Transportation Subcommittee, of which I am chairman, held hearings earlier this year on rail safety following the tragic accident near Chase, MD, involving Amtrak and Conrail trains. Among other issues, the problems posed by the unfortunate presence of drugs and alcohol in our society were a major concern. I worked along with Senators HOLLINGS and DANFORTH on legislation subsequently reported by the full Commerce Committee. Unfortunately, this bill has been held up for 7 months. Therefore, it is entirely appropriate that we take action today on this measure.

Two areas of particular concern to me, which were included in the legislation and this amendment, were to include provisions to set up testing programs for truck and bus drivers and to ensure that testing is not used to harass employees. Regarding truck and bus drivers, I have always believed that what is good for the goose is good for the gander and it would be unfair to test only rail and air employees. I added these provisions to the Commerce Committee bill.

Regarding prevention of harassment of employees, the legislation contains a provision which I originated to ensure that any regulations adopted contain provisions to ensure supervisors cannot single out employees they do not like. I believe that "random" drug testing should be truly random and contain procedures to ensure that. This could be done by such means as computer selection or other objective means for selection of names of employees to be tested.

Finally, as a member of the Armed Services Committee, I am also aware that the drug testing initiatives undertaken in our Armed Forces have been extraordinarily successful. There has been a dramatic drop in the use of illegal drugs in our Armed Forces and random drug testing has been credited by persons in all four services with this progress. I think the general public deserves the same type of progress in increased protection from hazards caused by drugs and alcohol in our public transportation system.

Mr. President, I yield the floor.

Mr. DANFORTH. Mr. President, I ask unanimous consent that Senators DECONCINI and HELMS be added as cosponsors.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HELMS. Mr. President, I strongly support the amendment offered by the distinguished Senator from Missouri [Mr. DANFORTH]. We were saddened by the tragic accident in Maryland this past January involving an Amtrak passenger train. We were appalled when it was later disclosed that drug use by personnel operating the Conrail train may have played a part in the accident.

The pending amendment would authorize random drug testing of transportation employees whose duties affect the safety of the traveling public. Such random testing has been criticized as an unconstitutional invasion of worker privacy rights. Mr. President, I cannot agree. Any privacy rights real or imagined, cannot possibly outweigh society's right to ensure individuals operating public modes of transportation are in full possession of their faculties.

Random testing, by virtue of the fact that it is random, is the most effective method of deterring drug use in the workplace. As long as the selection procedure is truly random and the test results are accurate, I can see no great harm which would be visited upon transportation workers by such testing.

I have heard further arguments that workers should not be tested unless there are reasonable grounds to suspect them of drug use. Mr. President, I find this argument untenable because it basically advocates postaccident testing. The harm or loss of life the present amendment seeks to prevent will already have occurred in many instances before testing would be justified. This is the present state of the law and it did not prevent the accident in Maryland.

Finally, Mr. President, if transportation workers subject to random testing find it truly intrusive and degrading, then they should consider employment which does not affect public safety so directly. The argument that "what people do on their own time is their own business" does not, and never has, carried so far as to permit individuals to endanger large segments of society. It should be readily apparent that drug use off the job often affects performance on the job. Individuals entrusted with the lives of hundreds on an everyday basis do not have the right to endanger those lives under the banner of individual liberty or privacy.

Mr. President, I urge Senators to support Senator DANFORTH's amendment because it is a practical, effective means of preventing transportation accidents caused needlessly by illegal drug use.

Thank you, Mr. President. I yield the floor.

Mr. INOUYE. Mr. President, this amendment has been presented in the name of passenger safety. I, too, support passenger safety, but my question is: Where do we go from here?

Because if statistics are correct, and I have no reason to doubt them, more passengers have been killed in passenger vehicles on our highways in a period of 2 weeks than passengers have died as a result of accidents in the air, in buses, in trains and in trucks. If passenger safety is the justification, then I suppose the next step would be to require random drug testing for all drivers on the highways.

Mr. President, if there are no others speaking on this amendment, I move to table the amendment.

The PRESIDING OFFICER. The question is on the motion of the Senator from Hawaii to table the pending amendment.

Mr. INOUYE. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Hawaii [Mr. INOUYE] to table the amendment of the Senator from Missouri [Mr. DANFORTH]. The yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON: I announce that the Senator from Tennessee [Mr. GORE], the Senator from Massachusetts [Mr. KENNEDY], the Senator from Illinois [Mr. SIMON], and the Senator from Mississippi [Mr. STENNIS] are necessarily absent.

Mr. SIMPSON: I announce that the Senator from Kansas [Mr. DOLE], the Senator from Utah [Mr. HATCH], the Senator from Pennsylvania [Mr. HEINZ], the Senator from Delaware [Mr. ROTH], the Senator from Vermont [Mr. STAFFORD], and the Senator from Idaho [Mr. SYMMS] are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 7, nays 83, as follows:

[Rollcall Vote No. 359 Leg.]

YEAS—7

Adams
Cranston
Inouye
Kerry
Matsunaga
Melcher
Pell

NAYS—83

Armstrong
Baucus
Bentsen
Biden
Bingaman
Bond
Boren
Boschwitz
Bradley
Breaux
Bumpers
Burdick
Byrd
Chafee
Chiles
Cochran
Cohen
Conrad
D'Amato
Danforth
Daschle
DeConcini
Dixon
Dodd
Domenici
Durenberger
Evans
Exon
Ford
Fowler
Garn
Glenn
Graham
Gramm
Grassley
Harkin
Hatfield
Hecht
Heflin
Helms
Hollings
Humphrey
Johnston
Karnes
Kassebaum
Kasten
Lautenberg
Leahy
Levin
Lugar
McCain
McClure
McConnell
Metzenbaum
Mikulski
Mitchell
Moynihan
Murkowski
Nickles
Nunn
Packwood
Pressler
Proxmire
Pryor
Quayle
Reid
Riegle
Rockefeller
Rudman
Sanford
Sarbanes
Sasser
Shelby
Simpson
Specter
Stevens
Thurmond
Trible
Wallop
Warner
Weicker
Wilson
Wirth

NOT VOTING—10

Dole
Gore
Hatch
Heinz
Kennedy
Roth
Simon
Stafford
Stennis
Symms

So the motion to lay on the table amendment (No. 1105) was rejected.

The PRESIDING OFFICER. The question is on agreeing to the Danforth amendment.

The amendment (No. 1105) was agreed to.

Mr. DANFORTH. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. BENTSEN. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Are there further amendments?

Mr. FORD. Mr. President, we will have three or four fairly controversial amendments beyond this one. I would be very hopeful that we might take up another one and dispose of it this evening, if we have to stack the vote until tomorrow morning.

Is there a possibility we might get a unanimous-consent agreement on time for this particular amendment, which will be labor protection for pilots?

Mr. NICKLES. I did not hear all of the Senator's statement. Does he want a time agreement dealing with the labor protection amendment?

Mr. FORD. Yes, and to stack the vote until the morning. Or if you want to stay around tonight, we will be glad to.

Mr. NICKLES. Mr. President, I would like to see the amendment. I have seen a version of it. I would like to see the amendment. I would certainly be agreeable——

The PRESIDING OFFICER. The Senate is not in order. The Senator will suspend until conversations cease.

The Senator from Oklahoma.

Mr. NICKLES. Mr. President, I would like to see the amendment and I would certainly be agreeable to hold the vote over until tomorrow.

Mr. FORD. Would the Senator be agreeable to 1 hour equally divided?

Mr. NICKLES. I would not want to enter into that agreement yet until we have a chance to see the amendment and have a chance to assess it. I have no desire to extend the Senate late tonight or tomorrow.

I also want to have a chance to talk to a couple of other people and see what they have in mind.

Mr. FORD. I appreciate the Senator's courtesy and I yield the floor.

AMENDMENT NO. 1106

(Purpose: To amend the Federal Aviation Act of 1958 to ensure the fair treatment of airline employees in airline mergers and similar transactions)

Mr. ADAMS. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Washington [Mr. ADAMS] proposes an amendment numbered 1106.

Mr. ADAMS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Insert at the appropriate place: That (a) section 408 of the Federal Aviation Act of 1958 (49 App U.S.C. 1378) is amended by adding at the end the following:

"FAIR TREATMENT OF EMPLOYEES

"(g) In any case in which the Secretary determines that the transaction which is the subject of the application would tend to cause reduction in employment, or to adversely affect the wages and working conditions, including the seniority, of any air carrier employees, labor protective provisions calculated to mitigate such adverse consequences, including procedures culminating in binding arbitration, if necessary, shall be imposed by the Secretary as a condition of approval, unless the Secretary finds that the projected costs of protection would exceed the anticipated financial benefits of the transaction. The proponents of the transaction shall bear the burden of proving there will be no adverse employment consequences or that projected costs of protection would be excessive.".

(b) The item relating to section 408 in the table of contents of the Federal Aviation Act of 1958 is amended by adding at the end the following:

Mr. ADAMS. Mr. President, on my amendment I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

If the Senator will suspend. The amendment is drafted as a bill. Does the Senator wish it to be modified to read as an amendment?

Mr. ADAMS. Yes. I request that it be as an amendment.

The PRESIDING OFFICER. Without objection, it is so ordered. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

AMENDMENT NO. 1107

(Purpose: To amend the Federal Aviation Act of 1958 to provide for the efficient handling of airline mergers and to ensure the fair treatment of airline employees in airline mergers and similar transactions)

Mr. ADAMS. Mr. President, I send an amendment to the desk and ask for its immediate consideration as an amendment to the amendment.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Washington [Mr. ADAMS], proposes an amendment numbered 1107 to amendment 1106.

Mr. ADAMS. Mr. President, I ask unanimous consent that further reading of the amendment to the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Strike all of the language proposed in amendment No. and insert the following:

SEC. 2. Section 1601(a)(7) of the Federal Aviation Act of 1958 (49 App. U.S.C. 1551(a)(7)) is amended by striking all after "in effect on" and inserting in lieu thereof the following: "the date of enactment of the Airline Merger Transfer Act of 1987, except to the extent any such sections relate to labor protection provisions: *Provided*, That rights, duties, and obligations arising (1) in proceedings commenced before the Department of Transportation prior to April 1, 1987, or (2) pursuant to final orders adopted by the Secretary of Transportation or the Board under sections 408 and 409 and section 414 (relating to such sections 408 and 409) prior to the effective date of termination shall be administered and, as necessary, adjudicated, as if such sections were not terminated.".

SEC. 3. (a) Section 7 of the Clayton Act (15 U.S.C. 18) is amended—

(1) in the first and second paragraphs, by inserting ", nor any air carrier or foreign air carrier subject to the Federal Aviation Act of 1958, person controlling such air carrier or foreign air carrier, other common carrier, or person substantially engaged in the business of aeronautics," immediately after "Federal Trade Commission" wherever it appears; and

(2) in the last paragraph, by striking "Secretary of Transportation,".

(b) Section 11 of the Clayton Act (15 U.S.C. 21) is amended—

(1) in subsection (a), by (A) striking "in the Secretary of Transportation where applicable to air carriers and foreign air carriers subject to the Federal Aviation Act of 1958;", and (B) inserting ", except air carriers and foreign air carriers subject to the Federal Aviation Act of 1958," immediately after "other character of commerce"; and

(2) in subsections (b) through (l), by striking "Commission, Board, or Secretary" and "commission, board, or Secretary" wherever they appear and inserting in lieu thereof "commission or board".

SEC. 4. (a) Section 408(b) of the Federal Aviation Act of 1958 (49 App. U.S.C. 1378(b)) is amended by adding at the end the following:

"(4) In any case in which the Secretary determines that the transaction which is the subject of the application would tend to cause reduction in employment, or to affect adversely the wages and working conditions (including the seniority) of any air carrier employee, the Secretary shall impose labor protection provisions calculated to mitigate such adverse consequences, including procedures resulting in binding arbitration, if the Secretary considers such procedures to be necessary. The Secretary shall impose such provisions unless the Secretary finds that the projected costs of imposing such provisions would exceed the anticipated financial benefits of the transaction. The proponents of the transaction shall bear the burden of proving that there will be no adverse employment consequences or that the projected costs of the imposition of such protection would be excessive.".

(b)(1) Section 1601 of the Federal Aviation Act of 1958 (49 App. U.S.C. 1551) is amended by adding at the end the following:

"LABOR PROTECTION PROVISIONS

"(f) The authority of the Department of Transportation in section 408 relating to labor protection provisions, the authority in section 204 relating to the exercise and performance of powers and duties under section 408, and the authority to make exemptions in section 416 relating to the requirements of section 408, are transferred to the Department of Labor.".

(2) The item in the table of contents of the Federal Aviation Act of 1958 relating to section 1601 is amended by adding at the end the following:

"(F) LABOR PROTECTION PROVISIONS.".

(c) All rules and regulations issued by any agency or official of any agency in the performance of any duty transferred by subsection (b) of this section shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked by the Secretary of Labor, a court of competent jurisdiction, or by operation of law.

SEC. 5. (a) The Secretary of Transportation shall compile, on a quarterly basis, information regarding the fares charged and frequency of service offered by air carriers during the previous quarter for scheduled airline service to or from the fifty United States airports with the greatest number of annual enplanements, as determined by the Secretary, at which any one air carrier provides more than 50 percent of the total number of flights offered to or from such airport.

(b) The Secretary of Transportation shall retain any information compiled under subsection (a) of this section for a period of five years after the date of its transmittal.

(c) As used in this Act, the term "air carrier" has the meaning given to such term in section 101(3) of the Federal Aviation Act of 1958 (49 App. U.S.C. 1301(3)).

Mr. ADAMS. Mr. President, I am asking that copies of the amendment in its complete form be sent to the Senator from Oklahoma. I say to the Senator from Oklahoma, I appreciate his consideration. I understand that he wishes to read it. I wanted to be certain that we had it so that it was in complete form so that he could examine it. I have asked that it be brought to him immediately.

Mr. President, while that is being done, I hope we can get a time agreement, after the Senator has had an opportunity to look at it and discuss it with whomever he wishes to discuss it, with an appropriate time for debate.

The amendment I am offering tonight is contained in S. 724. That was the Airline Merger Transfer Act of 1987, which was reported by the Commerce Committee earlier this year. This amendment was adopted by the Commerce Committee. There were hearings on it. I offer this amendment to the consumer bill because the parliamentary situation makes it unlikely that the merger bill will come to the floor in the near future. I state that to the other Members so that they understand that this is not something that is new. It is not something that is any different than has been discussed before, that has been passed from the committee. So that there are no tricks; this is nothing other than a straightforward presentation. I was going to leave it as part of the bill S. 724, but since that bill is not going to be brought up today, it is being offered as an amendment.

Mr. President, let me begin my explanation of this amendment——

Mr. CHAFEE addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington has the floor.

Mr. CHAFEE. I wonder if we could interject here one moment and ascertain, if we could, from the majority leader how late we might be in this evening. Is this a proper time for such an inquiry?

Mr. ADAMS. I will yield without losing the floor to the majority leader for an explanation.

Mr. BYRD. Mr. President, the managers of the bill are entitled to go for a while yet this evening and either dispose of this amendment or have a time agreement under which all debate would take place tonight with only the vote to be carried over in the morning. That is the only way we will finish this bill tomorrow, because if we carry over the debate and the vote tomorrow, as I understand in talking with the manager of the bill, there are at least three other tough amendments, which will mean we are not going to finish tomorrow because about 3 o'clock Senators will want to know whether they can leave. And even though we will be in on Monday, I have indicated I will try to put votes that are ordered on Monday over to Tuesday. That will mean then we will not finish this bill until Tuesday. If we finish this bill tomorrow, the back is going to have to be broken tonight.

Mr. NICKLES. Will the majority leader yield just for a thought?

Mr. BYRD. Yes.

Mr. NICKLES. I now have a copy of the legislation before me. I have several questions I would like to ask the sponsor of the amendment. I know my colleagues wish to know the agenda for the evening. Would it be agreeable with the majority leader and with the sponsor of the amendment—I do not know how long the sponsor of the amendment wishes to take on the amendment—say, for an hour of debate tonight and possibly an hour of debate tomorrow with a vote tomorrow?

Mr. BYRD. No. No. The evening is early, and if we can do this tonight it will take 2 hours or probably an hour and a half to finish.

I do not mean to be abrupt in my answer. I am being realistic now, having stood on this floor for 21 years and having seen how these things work out. I think it is realistic to think we can finish this amendment tonight at a reasonably early hour.

Mr. FORD. Mr. President, will the Senator yield?

Mr. ADAMS. Yes, I will yield to the Senator from Kentucky.

Mr. FORD. Will the Senator from Oklahoma take 2 hours equally divided, and have a vote tomorrow? Those who want to debate it can stay that late and others can go on home. I think the quality of life committee would appreciate that. An hour and a half would suit me much better, but I am willing to give the Senator another half an hour.

Mr. NICKLES. I appreciate the offer of my good friend and colleague from Kentucky. There is one little problem. If I can get the majority leader's attention, we have one Senator who I believe wishes to be heard but cannot be heard tonight and would like to be heard tomorrow, I do not think requiring a great deal of time. If we could have 30 minutes or an hour tomorrow—an hour equally divided with the time certain for the vote, it is certainly agreeable with me. But I am trying to help one other Senator as well.

Mr. BYRD. I think it would be reasonable to have debate tonight, have one-half hour for debate tomorrow morning beginning, say, at 9 o'clock and begin the vote, rollcall at 9:30. If that would be agreeable, it seems to me that would work.

Mr. NICKLES. I will agree to that.

Mr. BYRD. Very well.

Mr. President, I ask unanimous consent that on this issue there be—I am not talking about the issue. I am talking about the amendment and the amendment to the amendment—there be not to exceed 2 hours tonight to be equally divided and controlled by the offeror of the amendment and the ranking manager or her designee, and that there will be 30 minutes tomorrow morning beginning at the hour of 9 o'clock to be equally divided between the offeror and the ranking manager or her designee; that the vote in relation to the amendments then occur at 9:30 a.m.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. BYRD. I thank all Senators.

Mr. ADAMS. I thank the majority leader and I thank the Senator from Oklahoma and the managers of the bill for their cooperation and help in arranging this agreement.

Mr. BYRD. Mr. President, if the Senator will yield further.

Mr. ADAMS. I yield to the majority leader.

Mr. BYRD. Before I say there will be no more rollcall votes tonight, Mr. President, I ask unanimous consent, in view of the fact tomorrow is Friday and everybody knows we have a bill up here, it is an important bill—this will be the first vote which normally is a 15-minute rollcall vote—that tomorrow morning's vote be 30 minutes and that the call for the regular order occur automatically at the expiration of the 30 minutes, which means get here, do not be 1 minute late. Thirty minutes is ample time for that first vote tomorrow.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Washington.

Mr. BYRD. There will be more rollcall votes tonight.

Mr. ADAMS. Thank you, Mr. President.

Let me begin my explanation of this amendment by reminding my colleagues that Congress began consideration of airline deregulation when I was Secretary of Transportation. While I was not entirely happy with the Airline Deregulation Act, I was pleased to see that it contained employee protection provisions. This was a very important part of having this original bill passed.

The PRESIDING OFFICER. Will the Senator withhold?

We need order in the Senate. Will Senators and staff please take their conversations to the cloakroom?

The Senator may proceed.

Mr. ADAMS. I thank you, Mr. President.

I was not entirely happy with the Airline Deregulation Act. As I say, I was pleased to see that it contained certain labor protection provisions. These were not extensive as had been granted in previous times to railroad employees or to certain other types of employees in the transportation industry. But it did contain certain employee protections that were designed to ensure that airline employees would not be asked to carry a disproportionate share of the burden of deregulation.

All of us involved in that bill knew that there would be burdens from deregulation. To give consumers certain rights and to give them a greater choice, it meant that certain portions of the industry were going to have to carry a burden.

The inclusion of labor protection made a good deal of sense. We knew that deregulation would have an adverse impact on companies which were managed inefficiently or which misjudged the market. We also knew that employees, no matter how innocent or hard working, would feel the effects of management error in a deregulated environment. In addition, deregulation of the industry made it easier for airlines to merge and consolidate.

This was another portion of the act, difficult negotiations among all the parties involved, and a very difficult bill to pass and very difficult to administer.

While we expected deregulation to result in some benefit to the airlines and to the flying public, we were careful to include provisions in the act designed to cushion employees from the job loss and turmoil that deregulation might create.

Unfortunately, the Department of Transportation has completely misinterpreted the message of the Deregulation Act. Not only has the Department failed to implement the act's employee protective provisions, it has taken the Deregulation Act as a license to abandon the traditional protection afforded airline employees in corporate mergers, acquisitions and similar transactions. For 30 years, the Civil Aeronautics Board required, as a condition of merger, that the seniority lists of the merging carriers be integrated in a fair and equitable manner and that some financial benefit be provided to offset the burden of lost jobs or reduced wages.

Since assuming authority over LPP's from the CAB in January of 1985, however, the Department of Transportation has never required the imposition of such protection. In fact, the LPP policy of the Department is so narrow that it ensures that protection for the employees will never be imposed.

The amendment that I am introducing today simply requires the continuation of an LPP policy that the CAB followed for many years and that Congress directed the Department of Transportation to continue.

It would be different if this had not been directed by the Congress but it had been. It was the law of the land. It was a specific direction.

This amendment also transfers the responsibility of administering this policy from the Department of Transportation to the Secretary of Labor. And there is a reason for that. Originally, the CAB had regulatory authority over not only rates, routes, and mergers, but also over labor protection provisions and, in effect, the entire scope of regulation of the airlines.

When this was transferred to the Department of Transportation, the CAB went out of existence—one of the few agencies that has been sunsetted. I applaud the fact that this was sunsetted. But as it transferred into the Department of Transportation—and I know the Department well—they had no expertise in labor matters. The CAB had developed expertise in this over 30 years. So we have now a Department administering this provision which is the law and was the law of the land, but did not put in any labor protections. So we have asked that this go to the Secretary of Labor where there is expertise.

The point, Mr. President, is simply this: this amendment does not break new ground, it does not create any new powers; instead it simply reaffirms the authority which Congress intended to be exercised when it passed the Airline Deregulation Act of 1978.

This amendment would require that in any case in which the Secretary of Labor determines that a merger or transaction between two air carriers would cause a reduction in employment, or adversely affect the working conditions of air carrier employees, labor protection provisions calculated to lessen such effect must be imposed as a condition of approval.

This legislation is drawn in a way that preserves a reasonable degree of discretion for the Secretary of Labor. Thus, while the bill requires that LPP's be considered when approving airline mergers, it does not dictate the precise nature of those protections.

To those that have spent years in the field I would say this is not Allegheny Mohawk, this is not New York DOT; this is a specific provision that requires the Secretary of Labor to apply labor protective provisions but gives him the right or her to examine each transaction on a case-by-case basis and determine the levels of LPP's to be applied based on the individual merits of each case.

This legislation also provides for the early sunset of the existing authority of the Secretary of Transportation over airline mergers.

The reason that airline mergers and labor protection provisions have remained in the Department of Transportation is because the original transfer of all CAB authority went to the Department of Transportation which was an appropriate thing to do at that point. All that is left now is merger authority which belongs elsewhere, and to be terminated, and used under the regular antitrust law, and labor protection to go to the Labor Department which has the expertise to do this.

Since deregulation, and particularly in the past 2 years, the Department of Transportation has approved a series of mergers that has led to a significant increase in concentration of the industry.

In my opinion, this concentration may well continue, and it is very significant particularly in long route carriers. These mergers were approved with little serious review by the Department, and even over the objections of the Department of Justice in several cases.

That concerns me greatly because this Department of Justice is not reknowned for its desire to prevent mergers.

This amendment therefore would transfer the review of antitrust issues involved in airline mergers to the Department of Justice. So they would not have to simply make objections in the existing case, but would be able to exercise the authority which they have held over the industries.

In closing, I would just like to reiterate the fact that labor protection provisions have historically provided a reasonable and workable means of reducing the hardships caused by mergers and similar transactions while at the same time promoting stability at the affected carriers. This bill will, once again, make these provisions a vital part of airline transactions.

The Commerce Committee held hearings on this bill and approved it by a substantial majority. Mr. President, the effect of this amendment would simply be to reaffirm our commitment to reasonable levels of labor protection in an industry which is still struggling to deal with the effects of deregulation. I urge its adoption.

Mr. President, I urge the adoption of this amendment, and I reserve the balance of my time.

The PRESIDING OFFICER. Who yields time?

The Senator from Oklahoma.

Mr. NICKLES. I wonder if my good friend and colleague, the sponsor of the amendment, might respond to a couple of questions concerning his amendment. I wonder if the sponsor of the amendment might be willing to answer just a few questions.

Mr. ADAMS. I will be most happy to answer the Senator from Oklahoma.

Mr. NICKLES. The Senator has two amendments. He has a first-degree and a second-degree.

Mr. ADAMS. That is correct.

Mr. NICKLES. Is the second-degree amendment comparable or identical to the legislation which——

Mr. ADAMS. That is correct.

Mr. NICKLES. What was the Senate bill?

Mr. ADAMS. S. 724.

Mr. NICKLES. Is this identical legislation that was added to another bill in the Commerce Committee?

Mr. ADAMS. That is correct. It was to the so-called anti-merger bill. It is a part of that.

Mr. NICKLES. Is it comparable or identical to legislation which this body voted on and did not accept last year?

Mr. ADAMS. I will say to the Senator that there are certain modifications, particularly with regard to the case-by-case basis for applying LPP's. That is not exactly the same as the bill that was introduced last year.

Mr. NICKLES. Not exactly the same, but the others were labor protection agreements in the event of merger. These apply not only in mergers, but also in the sale of assets.

Mr. ADAMS. If that is treated as a merger transaction by the two parties, the answer is yes.

There is a body of case law applying to so-called 5(a) procedures that has gone on for many years that treats the sale of assets as a merger if it carries out the effect of a merger.

Mr. NICKLES. I appreciate the complicated answer. But if I owned an airline company and I had a significant inventory of airplanes and if I desired to sell 10 percent, would these labor protection provisions apply to the sale of 10 percent of my assets?

Mr. ADAMS. No. They never did. It has always been a major portion of the airlines that indicated the asset sale was being used as an alternative to a stock transfer, stock merger, or stock sale. Ten percent was a lesser amount.

In other words, if you owned an airline—the example you gave—and you wished to sell 10 percent of the planes, lease them or change them, these provisions would not apply to that kind of case.

Mr. NICKLES. If I wished to sell half of my planes, would that apply?

Mr. ADAMS. It might, if the assets were being used as an alternative to a merger or a stock sale.

Mr. NICKLES. I think the Senator is in a gray area, but it is an important area. One of my objections to the bill is that I understand it would apply to a significant sale or lease, or whatever, of an individual company's assets.

Mr. ADAMS. If an individual company is using the asset route as a method of merging out its airline, or the other company is using it as an acquisition measure, then this would apply.

As I say, there is a significant body of case law on when you go over the line and you are in a merger or an acquisition, as opposed to sale of a portion of your assets. Ten percent has never been considered as a sale; 50 percent, usually not; but it could, if it indicates that the airline is going out of business and is being acquired by another.

Mr. NICKLES. So if I were the owner of an airline and the airline was not making any money, and I decided to downscale the size of my company and I had a hundred airplanes and decided that I only needed 60 and was going to sell 40, these labor protection provisions would not apply in that case?

Mr. ADAMS. They would be a matter of discretion, as it is now, under section 408 of the Federal Aviation Act. In each case, downsizing has generally not been considered an acquisition or a merger. If it has been a sale and a part of the company moving out of business and becoming a merged or acquired company, then there has been discretion in DOT to apply LPP's. The same discretion would apply in the future. We have not changed the system.

Mr. NICKLES. I think there is a big distinction.

If I had a hundred planes and was going to sell 40 percent, the Senator is saying that the Department of Transportation or the Department of Labor would make that decision. That is a significant sale; and if there is a sale, there is a buyer. So you have, presumably, some other airplane company purchasing those 40 airplanes.

I think it is a very important distinction. I have had the impression that that would apply to labor protection agreements. I have not heard you say that it would or would not, and it is important to find out.

Mr. ADAMS. There is a discretionary authority, depending upon the nature of the transaction.

The reason I say that is that there has been a trend in the airline industry in recent years, ever since the Continental merger, the Continental acquisitions, and before, where the purchase of assets has been used to create an acquisition of a company, and whether the Department of Justice or the Secretary of Labor applies that with a reasonable test of discretion, and the courts have always looked at that depending on whether or not there has been a major complaint about that. But when you talk about the sale of less than a major portion of the assets, the general exercise of discretion, the case law says that has not been treated as a merger or an acquisition with LPP's applying.

The whole purpose and point of my answer to the Senator is that people have become more and more clever in the airline industry in recent years to determine ways of shifting assets, stock ownership, and holding companies. We have tried to carefully give discretion to the Secretary of Labor and the Attorney General so that they can apply LPP's and also that the merger authority be under the Department of Justice to determine whether or not this is a merger or an acquisition that requires approval—not approval, but whether or not the Department of Justice will approve it or file a court suit.

Mr. NICKLES. Will the Department of Labor make that determination?

Mr. ADAMS. It is subject to the Department of Justice determining whether or not it is a merger acquisition and the Department of Labor determining whether or not it is for application of the LPP's. It is an authority placed in each of the departments with an expertise.

Mr. NICKLES. If you have an airline merger or a significant sale of assets, does that not also have to go through the Department of Transportation?

Mr. ADAMS. It does, at the present time. It would not, after this, because the CAB authority—unless it is an international carrier, it does not carry that. Under the present law, it does.

Mr. NICKLES. Under the present law, they are required to receive approval from the Justice Department and from the Transportation Department, and now the Senator's amendment would say that they would have to go through the Labor Department as well?

Mr. ADAMS. No, it does not work that way. The Department of Transportation received the powers of the CAB under the act of 1978, so it has the power to approve mergers or to disapprove them, and the same with acquisitions. The Department of Justice can appear in those cases and can indicate whether it approves or disapproves of it, but the Department of Transportation does not have to follow their statement or recommendation; and in recent cases, the Department of Transportation has not done it.

The Department of Transportation also applies or does not apply the LPP's now. What my amendment does, or the bill does, is to send the LPP's to Labor and to send the merger authority to the Department of Justice, where all other merger authority is, so that the Department of Transportation's authority is sunsetted and transferred over to Justice to be handled as other antitrust transactions, and LPP's would go to Labor, to be handled under the Labor Department.

Mr. NICKLES. If the Senator will yield again, I might ask the Chair is this time being charged on my time?

Mr. ADAMS. How much time do we have?

The PRESIDING OFFICER. The Senator from Oklahoma is correct.

Mr. NICKLES. I might ask the Senator——

Mr. ADAMS. If the Senator will yield for a moment how much time, Mr. President, do each of us have and how is the time being charged?

The PRESIDING OFFICER. The Senator from Washington has 50 minutes 47 seconds. The Senator from Oklahoma has 50 minutes 2 seconds.

Mr. ADAMS. I thank the Chair.

Mr. NICKLES. Mr. President, I thank the Senator and my colleague. I appreciate his response.

I would like to find out what is in this legislation and then I will enter some arguments against it, but I think it is important to find out exactly what we have.

Mr. ADAMS. I am most pleased to answer the questions and will be as helpful as I can. This is an area that is one that has been of great concern to me for many years and I am hopeful that we will improve the whole situation by this amendment.

Mr. NICKLES. I might ask the Senator to look at page 3 of his amendment under the fourth paragraph, the top of the page. It says "In any case in which the Secretary" and I am assuming that is the Secretary of Labor; is that correct?

> In any case in which the Secretary determines that the transaction which is the subject of the application would tend to cause reduction in employment, or adversely affect the wages and working conditions (including the seniority) of any air carrier employee, the Secretary shall impose labor protection provisions calculated to mitigate such adverse consequences, including procedures resulting in binding arbitration, if the Secretary considers such procedures to be necessary.

Can the Senator imagine any possible merger or significant acquisition in the airline industry which would not tend to cause a reduction of employment or adversely affect the wages or working conditions of any carrier employee?

Mr. ADAMS. Oh, certainly. Any time that you would have a merger of a strong carrier which is trying to absorb one of the other regional carriers and intends to expand its system, which happens quite often, you will have an increase in employment and you will have the whole merger operation being an expansion, not simply a contraction.

This is the way it always used to be until we got into the recent very bad effects of deregulation, which was hammering people down.

Mr. NICKLES. Let me try and make sure the Senator and I are on the same wavelength. His language basically would say that this provision would be triggered if any employee would be adversely affected, so he is talking about merging or compiling or maybe a larger carrier taking on part of a smaller carrier, and the Senator is saying that if any employee has an adverse effect whatsoever, then the Secretary of Labor is going to trigger this provision.

Mr. ADAMS. The Secretary of Labor is going to look at the provision at this point. That is what this is for.

Mr. NICKLES. No. The language says, "The Secretary shall impose labor provisions." It does not say "may." It says "shall."

Mr. ADAMS. Yes, calculated to mitigate such adverse consequences.

What the Senator is assuming is that there will always be a series of adverse consequences. The Senator asked me whether he or she would in every situation impose these. What I am saying to the Senator is that in times past mergers used to be something that was beneficial to both sides. And you do not assume an adverse set of consequences each time it happens.

I will certainly state to the Senator that in recent years the acquisitions and mergers that have taken place have had adverse consequences, not only to employees, but to communities, and there has been a destruction of great portions of the operating systems. That is why we get so many complaints about it and there are bills on the floor.

Therefore, in many of the ones that the Senator is envisioning the Secretary will do this. But very often the seniority lists merge, more employees are brought in, the employees are not adversely affected and you have to establish that they are.

Now, if you want to take a premise that they are then yes—they would be triggered, but all I am saying to the Senator is this does not automatically happen. It depends on the merging parties.

Mr. NICKLES. Did the Senator say in the majority of cases the mergers happen and there is not a loss? If that is the case, why is this legislation even called for?

Mr. ADAMS. Oh, no. What I said was that in the past, it used to be that mergers created expansion and they created new opportunities for people, and that seniority lists were merged and things went very well. In recent years, since deregulation, the hammering of the fares, the inability of people to maintain maintenance; the only place they have ever been able to turn after this is to lay off large numbers of employees and to have very adverse effects.

So in recent years, you have had a series of mergers adverse not only to small communities but people working in them, to everybody except the Wall Street junk bond dealers. That is why this is necessary, and I certainly did not say to the Senator that in recent years I think these mergers have been beneficial, certainly. I certainly did not say I thought they had not been adverse to employees. They had been adverse. That is the reason for the amendment.

Mr. NICKLES. Your amendment also states a little further down the page around 9 the next sentence, "The Secretary shall impose such provisions unless the Secretary finds that the projected costs of imposing such provisions would exceed the anticipated financial benefits of the transaction."

How in the world would the proponents of the merger know what the financial benefits of the transaction would be if they have no idea what the labor protection provisions might be imposed upon them?

Mr. ADAMS. It is very simple. You look at the projections that come out of the merger and they are all filed, because it is usually part of a transaction on a major exchange and they state "We are going to have revenues of this amount, and that is where we are going to fly, and this is what the load factors have been," and you simply run down the balance sheet and determine what those are, and then you turn over and you see the projections. "We anticipate not having these people fly any longer; we are going to get rid of these airplanes," and you look through, and I am using the aircraft industry as an example, you look through this and you see what the costs would be of applying labor protection provisions to it.

They always on a merger attempt to establish at the Wall Street level the benefits of the merger. So it is just like any cost-benefit ratio in any merger that goes forward. When you look at it you balance it off. Very simply it is all contained in their balance sheets and proposals. If it is any kind of major carrier it has to be filed with the SEC.

Mr. NICKLES. If the Senator will yield, let us try to calculate the labor protection provisions, how much per employee. I read in some places where labor protection provisions could equal $90,000 a year per employee or per a particular status or classification of employee.

Mr. ADAMS. That is precisely why I drafted this in the form that it is drafted, which is that in the past, there was a set of administrative regulations and of cases, the most famous one in the airline industry being Allegheny-Mohawk, which says this is what you give in mergers, and it went down the seniority list: pilots, machinists, and everyone else.

So in this case, the Secretary can calculate from the provisions that the Secretary is imposing precisely what the costs would be, and that is why we gave that flexibility. It is one of the key differences between this and the New York Dock in railroads or Allegheny-Mohawk in airlines. So he sets them, or she sets them.

Would the Secretary use Allegheny-Mohawk as a guide to determining the cost? It seems like the Senator has given under his last explanation a great deal of discretion to the Secretary. Would they not fall back on the precedent and would that not be Allegheny-Mohawk in this situation?

Mr. ADAMS. No, it would not be Allegheny-Mohawk. It would certainly probably look at the precedents, but that is precisely why the discretion was given here to do this in this fashion, because the Secretary can look at the merger, the size of the parties that are involved in the merger, and at the employees who would be affected and place at that point appropriate labor protections, and so they always can look at there being a net financial benefit.

What is happening now, I might say to the Senator from Oklahoma, and why I feel so strongly about this and why I have introduced it is that the people who get thrown away in these mergers are not the people selling the stock, not the people selling the bonds. They throw away the people who are the employees or they slash the wages in dramatic amounts.

That is what I meant in my opening statement about the employees are carrying the burden of the mergers. And that is not fair. That is all we are trying to do here. And the Secretary of Labor is given that power in this—this is really a limitation on the Secretary of Labor.

Mr. NICKLES. Let me ask the Senator another question. If given this discretion—and, Allegheny-Mohawk, if I remember, was a 5-year salary continuation at 60 percent of their existing salary; correct me if I am wrong—could the Secretary impose a term longer? Could he impose a percentage higher? How much discretion?

This is unbelievable to me that we are going to say, "Secretary, you determine what these labor protection provisions are going to be and how much they are going to cost." I am shocked.

Mr. ADAMS. That is what this provision that you just read is, it is certainly a cap on it, because it states that you cannot do this if the costs are going to exceed the benefits of the merger. And you have to, I hope, assume that a Secretary of Labor, as a Secretary of Transportation, would apply a standard in this so that the merger, as it finished, would be beneficial. You just are trying to prevent all the burden falling on the employees.

Mr. NICKLES. But the Secretary could impose labor protection provisions so expensive up to the amount equal to the entire net gain of the merger, thereby nullifying any advantage whatsoever of the merger.

Mr. ADAMS. A Secretary could do that, but a Secretary could not last very long doing that.

Mr. NICKLES. Correct me if I am wrong, but you are giving the Secretary the authority to increase or to set the labor protection provisions to an amount equal to the net economic gain that the proponents of merger were advocating.

Mr. ADAMS. If you want to say that somebody could be that unreasonable, they could do it. They could do it now. In other words, the Department of Transportation could do that at the present time.

Mr. NICKLES. If the Senator would yield, if the Department could do it now, why do we need this legislation?

Mr. ADAMS. Because the Department, as I said in my opening statement, has never applied a labor protection provision to any of these mergers. And we have merged everything from Continental Airlines, to Eastern Airlines, to TWA, to Ozark. You can run a list that goes down through every community in this country where we have wiped out airlines one after another, and they have never applied it. That is the reason for the amendment. If they had used some reasonable discretion as they went along and not thrown all the burden on the employees, I would not have offered the amendment.

Mr. NICKLES. Let me make sure I understand. The Secretary has the discretion presently under present law to impose these standards?

Mr. ADAMS. The Secretary of Transportation does.

Mr. NICKLES. But the Senator's amendment mandates that the Secretary of Labor will impose these standards.

Mr. ADAMS. If there is an adverse consequence.

Mr. NICKLES. On any employee; on one employee?

Mr. ADAMS. That is what it says. On any employee, if there is an adverse consequence.

Mr. NICKLES. Let me ask another question. If you are talking about a significant merger and if you are talking about thousands of employees, do you not think that this provision would kick in on every single potential merger or significant sale of assets? Because surely someone could say that they were adversely affected in a significant merger, so it seems to me that this provision would mandate the Secretary of Labor to instigate labor protection provisions on any and all mergers, period, within the airline industry.

Mr. ADAMS. Not at all. It goes right back to the point we made before. If the merger is fair, if it has not dumped on the employees the total burden—we are dealing someplace between zero for the employees and an amount that still makes the merger beneficial. I have to assume that you are going to have some reasonable people doing this. But I have drafted it very carefully so that they have the discretion once an employee is adversely affected.

Now, when you talk about how much they might give, remember, this is tied to those that are adversely affected. In most mergers, they are not. Or, in most mergers, you used to have agreement among the parties that these are the ways we would merge the list, these are the ways we would proceed. And if there were a few adversely affected employees, they got very little, I might state to the Senator from Oklahoma, but they got something. They were not just left.

Mr. NICKLES. If the Senator would answer maybe one more question. I am using a lot of my time and the Senator's time, as well. I appreciate his cooperation.

I have heard him make statements, "Well, we are trying to protect the employees," et cetera. This applies strictly to the airline industry. Does the Senator think possibly this should apply to all industries? The steel companies? We have had mergers in steel. We have had mergers in petroleum. We have had mergers, really, almost a financial revolution over the last several years in a lot of industries that have merged, bought and sold, divided, subdivided. If this is such a good deal, why should it just apply to the airline industry?

Mr. ADAMS. Whether or not it is such a good deal and whether other industries should have it, I will leave with the Senator for another day. But I will state why it is necessary in the transportation industry and why it has existed in the transportation industry.

We are dealing with a series of very highly skilled employees. Their skill is directed into a specific niche and they have devoted, many of them, most of their lives to that niche. In other words, if you are an airline pilot or a machinist skilled in jet engines, that is all you do and you keep the system alive. If you do not exist, the system would not work. It is a transportation system. You cannot drop a part out like a department store.

Mr. NICKLES. I understand.

Mr. ADAMS. So they have no place to go.

Mr. NICKLES. Has employment in the airline industry declined in the last several years?

Mr. ADAMS. Yes, it has, in a lot of categories. I would supply to the Senator the various categories that there have been a decline of employment.

Now, the problem that you have, in trying to determine what the exact amount of employment is, is that there are a lot of private jets flying, there are a lot of other kinds of airlines flying now. So you cannot say with complete accuracy whether everybody has gotten a job again or not. It is my understanding they have not. They have just been left.

Mr. NICKLES. I need to move a little quicker.

Mr. ADAMS. I understand.

Mr. NICKLES. I want to touch on a couple of other things. I will make some statements concerning the employment in the airline industry and will show it has expanded substantially. I will make that point in a moment.

Concerning the LPP's and how much it would cost, if you are an airline executive and you happen to be losing money and you do not like losing money, you wish you were not losing money, but these are tough times out there and times have changed, the airline industry has changed significantly, and you need to sell or you need to merge or you need to combine in order to survive and in order to save some jobs. Now, I can think of some companies, I will not mention any names, that have been in that kind of dilemma. Maybe they were overexpanded for this type of competitive market so they have to sell or have to sell in part. How long will it take them to learn from the Secretary of Labor the cost of these labor protection provisions so they would know whether or not they will be able to consummate a lifesaving or jobsaving provision? Maybe if they cannot do a merger, they may go bankrupt. So, instead of selling part of their equipment, they may end up shutting down the entire company because of the Senator's provision.

Mr. ADAMS. To answer, the Senator, 60 days.

Mr. NICKLES. You mandate that to the Secretary of Labor?

Mr. ADAMS. You asked me about how long this would take. If you have a 60-day cap, he could do it in 30. And if you are really in trouble and you have somebody down there doing a decent job in front of that agency, they probably could do it in less than 30. There never has been a hangup on how long these things take, unless they are hotly contested or hotly litigated. And in a good merger and with somebody who is trying to get the job done and has been fair enough to the people, it usually does not even take that long. You do it by an agreement just off the top.

Mr. NICKLES. Another quick question: If you have a possible merger between a unionized airline and one that is predominantly not unionized, are you imposing a particular financial burden on the nonunionized company in order to assume the labor protection provisions for the unionized company?

Mr. ADAMS. No, I do not think so. In other words, what we are trying to do is to move through into the system the trained people who fit into particular niches of the system. And whether they are in a union or not in a union—you know, there is nothing in here that says union employees are treated one way and nonunion another.

Mr. NICKLES. But the Senator's amendment would be mandating, for example——

Mr. ADAMS. That applies to everybody, right across the board.

Mr. NICKLES. Let us take, for example, though, if you have a nonunion airline and you have a union airline and they wish to do a merger but maybe that nonunion airline is in a situation that they need to reduce the work force in order to become competitive or they cannot afford the salaries, wages, and benefits that the unionized company has been paying. Maybe that is one of the reasons why the unionized company finds themselves in financial difficulty and so they wish to take some of those assets or some of those routes.

The Senator's amendment would impose upon them, would it not, that they would be required to maintain wages and benefits of a certain percentage for a certain number of years? Quite likely, if it followed the precedent of Allegheny-Mohawk, of 5 years and 60 percent as a bare minimum as a condition of the merger?

Mr. ADAMS. No. It does not require Allegheny-Mohawk; one.

Second, what it does require is that the merging parties not throw all of the burden on the employees of the benefit of the merger. That is all that it does.

If the company that is buying out can only pay a certain amount, you have got to assume that, under the provisions, that the Secretary is going to follow them and that the costs can outweigh the benefits.

What we are trying to do is a very fair and simple thing. You do not dump the whole burden on the people that are involved. If the merger is worthwhile, whether it is nonunion into union or union into nonunion, then make a fair proposition with your employees. If you do not, the Secretary of Labor can say: make a fair proposition. There is also an arbitration clause in here.

Mr. President, please put this on my time. I do not want to take the time of my colleague because he has things he wants to say.

What we are doing is we are dealing between zero help and all of it being dumped on the employees. What you are putting as a top limit—what are they going to grant them?—I have said in the bill the most they can grant them is they cannot take away the benefits of the merger. In between that there is discretion. That is what this amendment is all about. You can pick any number that you want in there as a percentage, to say: this is an outlandish case.

Outlandish Secretaries will make outlandish decisions. But, if we assume reasonable people, all we have tried to do in this amendment is say: have all the parties to this merger, which includes the workers, treated fairly and have a Secretary of Labor looking at whether or not it is fair so far as the employees are concerned and have the Justice Department look at it as to whether it is fair under the antitrust laws. That is all it is, straight out.

Mr. NICKLES. If the Senator would yield again, does the Senator believe in the collective-bargaining process? Does not the Senator believe that this would be better handled between the employers and employees and not having the Federal Government, the heavy hand of the Federal Government and Department of Labor, coming in and mandating these type of negotiations? Why not leave that to the employers and employees, to work out on their own regard without us coming up with a system where the Department of Labor is going to calculate what are called labor protection provisions that may well end up costing $50,000 or $100,000 or may for some employees $60,000 per year for 5 years?

These are pretty well-paid employees, by and large. Quite a lot higher than our national income by and large, I would say. Much, much higher. Why not allow them to work out these type of arrangements instead of imposing and interfering and mandating Government interference?

Mr. ADAMS. Collective-bargaining agreements have been held to expire when merger talks occur. I am very happy and I support collective bargaining in the units that are there. But employees are not at the table when mergers and acquisitions take place. They hear about them later. They have tried very hard to get in with ESOPS. They have tried to be present.

All we are saying is that the Government has a presence. For employees out of the Labor Department, from the Department of Justice, so far as competitiveness is concerned, to say to the merging partners: There are rules that you have to live by. That is what this country has done. And then, after the parties have merged or have an acquisition, they will have collective bargaining and even if they have not had it, or it expires, or the agreement runs out, they will bargain again.

All we are saying is that this is just like rules that protect stockholders, rules that protect consumers. Incidentally, I think this bill has to pass to protect the consumers, because I think the airline business is having a lot of trouble. What we are saying is: Do not lay that all off on the employees. I will take back my time now and let the Senator use his own.

Mr. NICKLES. I appreciate my colleague's combination.

Mr. President, I appreciate the sponsor's amendment and his remarks. Mr. President, I think that if the Senator is interested in passage of the underlying bill, he is doing exactly the wrong thing. I think for one thing, if this amendment is passed, he is guaranteeing a veto of the bill. So, if he is interested in the underlying bill, which has a lot of provisions that I am sure a lot of our colleagues would be interested in, passage of this amendment in all likelihood, at least in the opinion of this Senator, would probably seal the fate of the bill and guarantee a veto.

We have had a letter, and I will introduce a letter by the Secretary of Transportation in opposition to this provision.

Mr. President, I hope our colleagues will look at this amendment. It is a complicated amendment. It is a long amendment. But it is not that difficult. Its labor protection provisions will be mandated for mergers and I will include in mergers, and/or significant asset transfers within the airline industry.

We do not have this in any other industry in the United States. We have mergers in all other industries in the United States. We merge coal companies, we merge oil companies, we merge agriculture concerns, we merge every type of industry in the United States. But in no other industry do we have Federal mandates coming down saying we are going to mandate that the Secretary of Labor has to impose labor protection provisions to guarantee the wages, conditions, seniority of a particular group.

Why is this amendment coming out? It is probably coming out because of some lobbyists who have been working hard. They want these type of provisions. I think it would be a serious mistake.

If people are concerned about the airline industry, it has probably been one of the most rapidly growing industries in our country for the last several years. Employment has grown. Wages have grown. Benefits have grown. Are we trying to protect a few in maybe an isolated case? Protect them from an industry that is growing probably faster than most any other industry?

I will give you a couple of statistics and these statistics were provided by the Air Transport Association.

In 1978 there were 329,300 employees. In 1981 there are 349,000—almost 350,000 employees.

In 1986 there were over 421,000 employees. So you can see, between 1978 and 1986, there is an increase of over 50 percent in the total number of employees in the airline industry.

These are all categories. It ranges everywhere from pilots down to reservation agents. I understand my colleague making the statement that, well, there are certain high-paid categories and some of these might be limited. A lot of these positions are very highly paid. The Senator from Kentucky follows the airline industry probably closer than most anybody in the Senate and he is well aware of the fact that you can have a captain flying a 747 making up to, I believe, $175,000 per year.

You know, just reading from the Eastern Falcon, in their January 1 edition, the earnings for 1986, it is said for pilots, and this is on the top end, the highest level of earnings for pilots was $140,000. These labor protection agreements, if it follows some of the precedents, and I understand my colleague said it would not have to but it probably would, in my opinion—labor protection provision would say, well, if you are going to purchase this aircraft or merge this aircraft we are going to give everyone associated with that aircraft their salary at 60 percent for a minimum of 5 years.

That is not half bad. That means if he was a pilot or something, you are talking about payments of $60,000, $70,000, or $80,000 for 5 years for doing nothing.

Why? Because that airline company happened to change names?

Then I will also tell you that the effect of this amendment, if it passes, is that you will deny a lot of potential mergers from going forth. Maybe they should not be, you might say. Well, we have the Justice Department to review that. If they determine it is anticompetitive, they can refuse it. But the Department of Transportation reviews it as well. Now, we are going to put in one other bureaucracy and say to the Department of Labor, "Now, you have to give your blessing on this proposal. You have to calculate the economic benefit of the merger."

The Department of Labor knows nothing about the economic benefit of a merger of two airlines, and I can tell you that the two companies involved do not have precise knowledge of what the value of the merger would be. They hope. Maybe they guess. But it is a calculation. It is a risk. They do not know. They also do not know about those labor protection provisions because we turn over to the Secretary of Labor——

Mr. ADAMS. Will the Senator yield?

Mr. NICKLES. I have a few more comments and then I will yield. How much time have I remaining?

The PRESIDING OFFICER (Mr. GRAHAM). Twenty-eight minutes and 20 seconds remaining.

Mr. NICKLES. They would have no idea whatsoever what the costs of these provisions would be. So when they are calculating and they say, "Wait a minute, we have been losing money; this is a difficult time, a changing time in the airline industry; we have had mergers; we have had an increase in flights," as a matter of fact, the airline industry in the number of passengers has increased and increased substantially because of deregulation.

In 1980, 275 million passengers; in 1981, 286 million passengers.

In 1986, 418 million passengers.

So you realize we went from less than 300 million to over 400 million in just the last 6 years. We have had a significant increase in passengers. People are taking advantage now. Maybe because of the mergers, maybe because of some of the competition which is really now in effect.

I think most of my colleagues are well aware that you can fly to a lot of places a lot cheaper today than what you could a few years ago, though that is not true in every case.

We have wrestled with that problem. Maybe that is one of the challenges of deregulation. But a lot of people are flying a lot cheaper than they ever have before.

Yet we are talking about imposing very punitive provisions on one industry. If this is such a good provision, why not do it on the steelworkers? They have had a very difficult time. We have had a couple of companies that are in bankruptcy right now, or may be wrestling with it. I know the Senator from Kentucky is aware of that.

Why not in coal? Why not in oil? Why not in other industries that are going through some difficult times?

Look at the wages, the benefits, the provisions and the costs. We might ask ourselves, "Who is going to pay these costs?"

If for some reason this makes the merger nonexistent because the cost of the labor protection equals the cost of the merger, and maybe the merger was marginal in the first place, it might have been as some people would say, that it is a gamble, that they could not make it individually but possibly putting the two companies together would permit one to survive.

"Yet we had the Secretary of Labor come up and determine the labor protection provisions and the costs negated almost all the costs of the merger, so why merge?"

So they do not merge.

Then you end up having two companies go bankrupt. What good does that do? That does not save anybody 60 percent of their salary for 5 years. That decreases employment. It decreases service. That makes it less competitive.

It is not just my thought, DON NICKLES saying, "I have looked at this amendment and think it is a bad amendment."

The United States Senate last year voted against this provision, or a provision that was very comparable. It was a close vote, 49-49. That is about as close as we come in the Senate.

I do not know what the outcome of the vote will be tomorrow. I can tell you that in this Senator's opinion that if this provision is part of this bill, I think there is a very strong likelihood that the President of the United States would veto the bill. I think there is certainly a strong likelihood that veto will be sustained.

A couple of other quick points.

We are interfering in the collective-bargaining process. I happen to be a believer in the collective-bargaining process. I happen to think that employers and employees are quite capable of negotiating things that are to their mutual benefit.

This industry, the airline industry, is not an independent industry that lacks sophistication. Its pilots, its employees, its machinists are probably as organized as most any other industry. They are probably as well paid as any other industry. They are probably as well represented at the bargaining table as any other industry.

I think the unions involved work very hard to advocate their members' positions on issues.

We do not need to be doing their negotiating and mandating binding arbitration in legislation on the floor of the Senate. They are big boys and girls. They can handle themselves. They have gone on strike to fight for provisions such as this. They have been successful, as Senators are well aware, in some companies in some cases, in getting labor protection provisions in their contracts. Why should we be mandating labor protection provisions for those companies and unions that did not get them? Why should we be interfering in the collective-bargaining process? That makes no sense. Why should we be telling airlines in a very difficult time, a trying time, when they are trying to make some changes to stay alive, why should we be mandating very expensive, very costly provisions to keep them from making or taking actions that may enable them to survive?

Why should we cast doubts of uncertainty, having the Secretary of Labor calculate and determine labor protection provisions?

The Secretary of Labor is going to say, "Yes, here are the labor protection provisions and how much they are going to cost."

I never did find out if it would be 60 percent for 5 years. I do not know if that is going to be it or not. If I do not know, certainly the companies who are proposing the merger will not know either.

If they do not know what the costs of these provisions are, how are they going to be able to make a judgment concerning whether they should go forward with a proposal to merge or make significant changes?

I hope my colleagues will look long and hard at this proposal.

I will just put into the RECORD for the information of my colleagues, and hopefully they will consider this when they look into this issue, a couple of articles. One is an article from the Wall Street Journal dated September 12, 1986. I will not read the entire article. I do ask unanimous consent to have the entire article printed in the RECORD.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

[From the Wall Street Journal, Sept. 12, 1986]

SAVING AIRLINE JOBS

Consider the following hypothetical situation: Goosewing Airlines, hemorrhaging red ink, works out a merger with Juggernaut Air. The agreement maintains most of Goosewing's air routes and preserves the jobs of most of its employees. But some workers will be displaced, so federal aviation authorities overrule the deal. Juggernaut backs off, Goosewing is forced into bankruptcy, and all of its employees lose their jobs.

There is a very real prospect of this scenario playing out in the airline industry under a proposed amendment to the Federal Aviation Act that wended its way to the House floor Wednesday. This ill-conceived measure would empower the Department of Transportation to impose labor-protective provisions—so called "LPPs"—on airlines engaged in such transactions as mergers, acquisitions or sale of assets. The LPP could apply to deals that cause reduction of employment, or "adversely affect" wages, working conditions and seniority of carrier employees. More than 350,000 airline workers would be shielded by the regulation.

The airline unions behind this notion want to turn back the clock a decade, before deregulation, when they were protected from the vagaries of the labor market. In several major deals during the 1970s, the federal government stepped in on behalf of the unions, requiring that laid-off employees be paid 60% of their wages for up to five years. But Congress has not foisted LPPs on anyone since deregulation.

To do so would set an atrocious precedent. Apart from the free-market arguments that can be mustered against such a move, there are practical considerations. Most important, it would make financially strapped airlines much less desirable to potential buyers. Weaker airlines that otherwise might be absorbed by stronger lines would simply go out of business. Instead of some worker catching on with the new airline, all of them would lose their jobs.

A situation close to this recently played out in the near merger of Frontier and United Air Lines. The merger collapsed when the union representing pilots at United Airlines rejected the company's plan to bring lower-paid Frontier pilots up to United's pay scale over five years. Frontier suspended operations, and filed for Chapter 11 bankruptcy protection. For the sake of preserving the salary structure of United pilots, the pilots union forced 4,700 Frontier employees out of jobs.

A regulation that raises the cost of business in the airline industry is the last thing airline employees need. If it becomes unprofitable for stronger airlines to acquire floundering ones, bankruptcies will become more common and more jobs in the industry will be lost. Indeed, the airline industry has steadily increased employment levels and average salaries since 1978 mainly because it has been free from onerous regulation. It would be a shame if Congress bowed to the behest of the pilots union and started to reregulate the industry.

Mr. NICKLES. I will read from one paragraph of this editorial piece.

A situation close to this recently played out in the near merger of Frontier and United Air Lines. The merger collapsed when the union representing pilots at United Airlines rejected the company's plan to bring lower-paid Frontier pilots up to United's pay scale over five years. Frontier suspended operations, and filed for Chapter 11 bankruptcy protection. For the sake of preserving the salary structure of United pilots, the pilots union forced 4,700 Frontier employees out of jobs.

A regulation that raises the cost of business in the airline industry is the last thing airline employees need. If it becomes unprofitable for stronger airlines to acquire floundering ones, bankruptcies will become more common and more jobs in the industry will be lost.

Mr. President, we do not need to say more. That is factual. That is not just my opinion but it is the opinion of others.

I have one other editorial from the New York Times dated August 4, 1986. Again, I ask unanimous consent to have this editorial as well as an editorial from the Journal of Commerce dated February 12, 1987, printed in the RECORD.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

[From the New York Times, Aug. 4, 1986]

WHEN WAGES FLY HIGHER THAN AIRLINES

Do pilots, mechanics and flight attendants need special Government protection against layoffs or wage reductions when airlines merge? There's little economic justification for it. In fact, by making failing airlines less attractive as merger candidates, it might even cost jobs. But the airline unions have enlisted influential House members to press their case, including the chairmen of the Public Works Committee, James Howard, and the Aviation Subcommittee, Norman Mineta. If the issue is left to insiders to settle, Congress may go along.

Before the industry was deregulated in 1978, airlines were legally entitled to a fair return on their investment. Similarly, the unions contended that airline employees were entitled to special protection against loss of seniority or pay cuts.

Any analogy to the present time is fuzzy, at best. Under regulation, airlines gave up the right to set fares or change routes in exchange for assurance of a reasonable profit. But airline labor remained free to charge whatever the traffic would bear and the Civil Aeronautics Board bowed to prevailing political realities. In a series of postwar mergers it required airlines to maintain jobs and wage scales—or pay five years' pay as severance.

Under deregulation, the C.A.B. (and later the Department of Transportation) were given broad discretion to set conditions for airline mergers. The unions assumed that the labor-protection precedents would stand. Instead, the Government limited protection to cases in which labor strife might seriously disrupt air travel. No such cases have been found. So now organized labor asks Congress to impose the old policy.

It is hard to see why airline employees deserve such an assist. Dramatic change in the industry has not been accompanied by a loss of jobs, or even wages, as has been true of steel or trucking. In 1977, the last year before deregulation, scheduled carriers employed 325,000 workers. In 1985, their payroll was up to 355,000. Their average pay was $42,000.

Employees of weaker airlines are at greater risk in a competitive environment. But typically, their employers are foundering because they are unable to lower labor costs. The proposed labor-protection measure would block one last route, short of bankruptcy, to such reduction. If, for example, the purchaser of deficit-ridden Eastern Airlines had been required to maintain wages or pay billions in severance, neither Texas Air nor anyone else would have saved the carrier from Chapter 11 bankruptcy.

That might serve the unions' broader interests of maintaining high wage scales in the industry. But it doesn't serve the workers whose jobs are at risk, or the public interest. Since a majority of members of the House Public Works Committee are co-sponsors, there is little chance of stopping the protection bill at committee level. We hope a majority in Congress will refuse to surrender to such favoritism.

Mr. NICKLES. One comment from the New York Times article says:

WHEN WAGES FLY HIGHER THAN AIRLINES

* * * *

It is hard to see why airline employees deserve such an assist. Dramatic change in the industry has not been accompanied by a loss of jobs, or even wages, as has been true of steel or trucking. In 1977, the last year before deregulation, scheduled carriers employed 325,000 workers. In 1985, their payroll was up to 355,000. Their average pay was $42,000.

Forty-two thousand dollars was their average pay in 1985 and yet we are on the floor of the Senate, at 7:40 in the evening, coming up with an amendment saying:

We are going to protect this group of employees. We are not going to protect any other group. We are going to say for this group that maybe has some particular political clout and that maybe makes significant political contributions that we are going to protect this group. We are going to provide them a guarantee that if anybody ever wants to come in and make a merger, we are going to guarantee that even if they did not have it in their collective-bargaining agreement we are going to put it in for them. We are going to do the negotiating on the floor of the Senate for this particular group.

I think that is a mistake. I have no objection if an airline and their employees negotiate a labor protection agreement. That is their opportunity. That is their wish. That is fine. It should not be the prerogative of the Senate to interfere. We should not oppose it. We should let them decide. Let us not mandate labor protection provisions on one single class. That would be a serious mistake.

Mr. President, I also have a letter from the U.S. Chamber of Commerce dated July 30, 1986, urging opposition to this provision. I ask unanimous consent that it be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

U.S. CHAMBER OF COMMERCE,
July 30, 1986.

Hon. NORMAN Y. MINETA,
Chairman, Subcommittee on Aviation, Committee on Public Works and Transportation, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The U.S. Chamber of Commerce, on behalf of its nearly 180,000 members, respectfully urges you to oppose H.R. 4838, a bill that would amend Section 408 of the Federal Aviation Act of 1958 to require labor protective provisions in mergers and other business transactions in the airline industry.

H.R. 4838 is contrary to the intent of airline deregulation, the principles of our free market system and the fundamentals of our collective bargaining system. Furthermore, H.R. 4838 ultimately would cost—not save—jobs in the airline industry by hindering financially troubled airlines in their efforts to revitalize through mergers, sales or acquisitions.

Labor protective provisions were implemented by the federal government when the airlines were a highly regulated and less competitive industry. Although costly and disruptive then, labor protective provisions are even more inappropriate and unnecessary for today's deregulated airline industry.

H.R. 4838 is bad public, economic and labor policy, which would harm substantially airlines, consumers and, ultimately, workers. The U.S. Chamber urges you to vote against H.R. 4838.

Sincerely,

ALBERT D. BOURLAND.

Mr. NICKLES. Mr. President, I also have a letter dated July 8, 1987, from the U.S. Chamber of Commerce and I ask unanimous consent that it be printed in the RECORD.

There being no objection the letter was ordered to be printed in the RECORD, as follows:

U.S. CHAMBER OF COMMERCE
July 8, 1987.

Hon. GORDON J. HUMPHREY,
U. S. Senate, Washington, DC.

DEAR SENATOR HUMPHREY: The U.S. Chamber of Commerce, on behalf of its more than 180,000 members, respectfully urges you to oppose S. 724, the Airline Merger Transfer Act of 1987, unless the requirement of labor protective provisions (LPPs) is struck from the bill.

S. 724 recently was reported by the Committee on Commerce, Science, and Transportation after adoption of an amendment by Senator Adams to impose labor protective provisions on employers and employees in the airline industry. The House of Representatives already has passed a similar requirement.

It is likely that an amendment to strike the LPPs section will be offered on the floor and that other amendments will be offered to improve and scale back this harmful and disruptive provision. The chamber urges you to support these efforts.

LPPs are contrary to the intent of airline deregulation, the principles of our free market system and the fundamentals of our collective bargaining system. Furthermore, LPPs ultimately would cost—not save—jobs in the airline industry by hindering financially troubled airlines in their efforts to revitalize through mergers, sales or acquisitions. LPPs were implemented by the federal government when the airlines were a highly regulated and less competitive industry. Although costly and disruptive then, LPPs are even more inappropriate and unnecessary for today's deregulated airline industry. Since 1978, when the airline industry was deregulated, total airline employment has increased from 325,000 to 355,000, and the average employee's annual earnings have increased from $27,000 to $42,500.

Legislation that would require LPPs, such as S. 724, would reverse these trends by (1) decreasing the opportunity for necessary sales, mergers and acquisitions and their attendant job preservation, (2) decreasing competition, (3) increasing airline costs, (4) increasing disruption of airline personnel practices, and (5) contradicting the precedents and purposes of collective bargaining and upsetting the current balance in labor-management relations.

The Chamber urges you to oppose S. 724—or any other bill—that would impose LPPs on the airline industy and to support efforts to delete this section from the Airline Merger Transfer Act of 1987.

Sincerely,

ALBERT D. BOURLAND.

Mr. NICKLES. Mr. President, I reserve the remainder of my time.

Mr. ADAMS addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. ADAMS. Mr. President, how much time do I have?

The PRESIDING OFFICER. The Senator has 47 minutes, 15 seconds.

Mr. ADAMS. I yield myself such time as I may consume.

The PRESIDING OFFICER. The Senator from Washington.

Mr. ADAMS. Mr. President, I think it is very important that I correct several impressions that may have been left by my distinguished friend and colleague from Oklahoma.

First, with regard to whether or not this may or may not be vetoed, this bill passed the House of Representatives overwhelmingly by a voice vote. I ask unanimous consent, Mr. President, to have printed in the RECORD a letter dated September 22, 1987, signed by JOHN PAUL HAMMERSCHMIDT, who is the ranking Republican member of the Committee on Public Works, and by NEWT GINGRICH, the ranking member on the Subcommittee on Aviation to the Honorable Ronald Reagan, President of the United States, urging that this be passed and that there be no veto; it just restores a policy of the past.

Mr. ADAMS. With regard to the Department of Transportation opposing this, I have had some little experience with the U.S. Department of Transportation. I know very well the people who are involved. They may oppose it because it is a jurisdictional fight. The Department of Labor has never opposed this. They have in fact had negotiations with the White House.

Mr. NICKLES. Will the Senator yield for a moment?

Mr. ADAMS. I will be happy to yield to the Senator.

Mr. NICKLES. It is my understanding that the Department of Labor does oppose this provision. I wanted to so inform the Senator of that fact.

Mr. ADAMS. I would be happy to hear about it because I had not heard about it. I am certain that Secretary of Labor Brock in his prior existence did not. I know he has shifted his existence and that the new Secretary when he comes up will inform me, but let me continue on and then I would be happy to have the Senator comment.

As part of this debate, the Senator has raised the question of deregulation and the fact that many more people are flying and that this is a good thing. Now, this is a good thing. But let me tell the Senator that the quality of airline service in the United States has plummeted.

When I was Secretary of Transportation one of the things I wanted was labor protection so it did not all dump on the employees.

The second thing was that we did not turn around the subsidy in the airline industry from having the routes that were the high-density business routes traveled by wealthy people subsidized by the little towns because in the past the complaint was, well, the people who are traveling from New York to San Francisco or from New York to Chicago are subsidizing the people who are traveling from New York to Sioux Falls or New York to Butte or other places in the country.

We tried in this country to establish a system so that everybody could travel at a fair rate.

Let me tell you what is happening. We have turned that upside down. If you want to fly—and I notice that the Presiding Officer is the distinguished Senator from the State of Florida—if you want to fly from here to Jacksonville, FL, it will cost you $279 or more. You are going to go through Atlanta and it is going to take you 4 hours where it used to take you 1 hour 20 minutes. If you want to fly to Miami, you can fly in less time and you can fly a good part of the year for $99.

That is what we used to call in the industry "long haul-short haul." What it is is little towns—and not just little towns. The reason I mentioned Jacksonville is that it is an up and coming town in Florida. It has a lot of people in it. It has a lot of industries. It wants to have a fair chance to have other businesses. A company looks at it and says, "Well, maybe we ought to go to Miami or maybe we better be in New York or Chicago because we can fly our executives back and forth for about a third the price and with better scheduling than we can fly to any one of the Cincinnatis, the Clevelands, the Seattles." I will not mention the hometowns of the Senator from Oklahoma but I would have him check and I bet you pay more to fly to the hometowns in Oklahoma than you pay to go out to Los Angeles or San Francisco, and that has nothing to do with the cost of travel. It has to do with the ability of airlines to say we will charge the people in the areas that are smaller and do not have the clout and where we do not have to compete.

And I am going to talk to you in a minute about hubs because this is one business I know an awful lot about and what has happened to it.

Mr. NICKLES. If the Senator will allow me——

Mr. ADAMS. Just let me finish and I will be happy to yield. The impact of all this is to blank out for a competitive purpose whole sections of the country. The second thing—and this is another thing that we feared—is that they do not know how to price that airplane. You will sit on that airplane having to fly on a business trip or going to a funeral, which I recently had to do, where you cannot plan it 6 weeks in advance and most business people, most people in the Senate with the schedule that we have, most people who are working at a business have to go when they have to go and you are jammed into the same area and you are sitting across from somebody who is paying a third of the price. I have never felt that that was particularly fair.

Now, I am willing to let the market keep working and we are going to keep complaining about it, but it has not carried out the promise that was there.

Why are we concerned about this? I will tell you why we are concerned about it. Because this is one country where transportation is different. You give me control of the transportation net of this country in anyplace and I will run your businesses. It has always been true. The fortunes made in oil were not made from owning the oil fields. The fortunes made in oil and in coal and in every other basic resource were made by controlling the transportation.

That is why it was regulated by the Federal Government. We did not dream up regulation just because we wanted to regulate one industry. It is because this industry has a different impact than any other industry. You can control steel production. You can control coal production, oil production if you can control the transportation. And now we are moving into a new type of industry in this country, financial, service industry, insurance companies, banks. And what is happening to them? I do not think it is particularly healthy. It happens in my State; it happens elsewhere. Everything is crowded around one town. The financial institutions want to be where they can get back and forth to one another. Therefore, you have a concentration in a few spots. And trying to get in and out of those airports is not only dangerous but it is expensive; it is inconvenient.

I want to talk a minute about the hubs. The airlines were driven into hubs because they used the merger system to dominate a particular area. They wanted to have a monopoly in that area and the way you got it was to buy out the company that was there competing with you, but it was a small one.

And in all except the very biggest of our hubs in this country. That is what has happened. You have airlines dominating that area, and they can basically set the fares. And certainly they can set the fares going in and out of each of those areas to the immediate surrounding cities. These are not just always little cities. They are medium-size cities. They are cities that can run 500,000 to 1 million people.

So I am trying to explain why this industry has had labor protection, why it has had merger protections. The railroad industry is the same. It is not the only industry that has had labor protection provisions. The railroad industry did too because you have been dealing with basically monopoly power. What is concerning me about not only labor protection but the provision of putting this under the Antitrust Division because the Department of Transportation has focused too much on simply the system, the people that appear before them rather than what the system does to the other people and not just the travelers. It is bad enough for them—but the effect upon the cities that are involved, and the airports that are involved.

I want to compliment the manager of the bill, the distinguished Senator from Kentucky, for bringing up the consumer bill and for bringing up the improvement of the airport bill because every time you move into an area and establish a hub in an underutilized airport in order to exercise your monopoly power being acquired all the time through the mergers and acquisitions, at that point you then overload that airport. You overload the parking lot, you overload the services, you overload the runways, you overload the terminal facilities, and you put an enormous impact on the flow system of the FAA. We cannot manage any longer with the same number of air controllers. The reason we cannot is you are now having to manage hubs with tremendous flows, with the control of slots, in a number of places throughout the United States. When I was Secretary we had six airports we had to look at. Now you have to look at more than 15, and each one of these has been created by the circumstances of deregulation and by the effects of the labor protection provisions not being observed and mergers simply plowing ahead.

It is a specialized industry. Everybody recognizes it. It is specialized because of its impact on other industries and on the people that are involved in it. They spent their lives in it.

The Senator from Oklahoma has mentioned how bad Allegheny-Mohawk is. I have said we are not saying Allegheny-Mohawk. But you know how much you get if you have worked between 1 and 2 years? You get 6 months payment. If you are a flight attendant and you are given a pink slip on Friday and you get 6 months to try to figure out what else you can do, you are not getting very, very much. In 2 or 3 years you get 12 months. I am not saying this is what people are going to be paid, but all I am saying is that this country is made great by people having a sense of common decency about their employees, about people that are working, and about what they are doing as they go through mergers.

Frankly, Mr. President, I could look at the larger picture here. I am very tired of people being purchased up and thrown away by getting pink slips on Friday. It happens all over my State in all the resource industries, timber, aluminum, others. We have some good companies and they have done some wonderful things to tell people in advance. There are some who have not. I think that is part of what we are talking about.

This is a very major thing we are doing here, something that has passed the House of Representatives, something that has been in existence a long time, and what we are trying to do is get some fundamental fairness.

The final point I want to mention, and I will be happy to yield back my time and maybe the Senator from Oklahoma is willing to yield his back, is he has mentioned figures of expansion of the industry. Mr. President, if this industry has expanded to the degree that he states, and there has been expansion but it is irregular throughout the country, then there has been an increase in employment and there is going to be very little impact of labor protection provisions, and probably is not going to cost anybody anything but it is going to cost those that have tried to be very unfair. That is what this is all about, is a system of fundamental fairness.

An expansion in the industry that produces more jobs, everybody will be picked up and will be employed, and the example was given of Frontier. I will tell you what happened to Frontier. Frontier was purchased by Peoples. Then Peoples was purchased by Texas Air. So they have gone through a whole series of mergers. They were not just cast out because United Airlines' pilots complained. Incidentally, United Airlines has had its share of troubles since then and its share of troubles did not come from running the airline. It was because they took money out of the airline and began to put it into a lot of other businesses. It caused an enormous corporate shake-up because now they are trying to get rid of those businesses and get back into the airline business. That is part of the problem here; do not just suck things out of the company and put it on the backs of the employees, go someplace else, not be able to run it and have the whole company collapse.

I hope we will pass this. The House of Representatives has passed it. Maybe it was 49 to 49 the last time but there has been a slight change in the Senate. I would like to have another vote on this this time. I do not think the President is going to veto it with the House of Representatives saying and the Republican Members saying they wish to have this bill, which is now an amendment to the bill, made a part of the law of the land.

Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator from Washington has 32 minutes and 5 seconds.

Mr. ADAMS. I would say to the Senator from Oklahoma, I know of no others that wish to have time. I am willing to yield back my time if the Senator from Oklahoma is. I yield the floor at this point in deference to the Senator from Oklahoma.

Mr. NICKLES. I appreciate it. I have a couple of questions for the Senator if he would respond.

The PRESIDING OFFICER. Does the Senator from Washington yield for a question?

Mr. ADAMS. I am pleased to yield for a question.

Mr. NICKLES. The Senator mentioned the possibility that the Secretary of Labor would make this assessment on how much the labor protection provisions would cost. If a company involved disagreed strongly with that assessment, say they thought it was totally out of line, do they have an appeal process, or is this final?

Mr. ADAMS. There has always been an appeal process.

This is in the merger system and there has always been a way to appeal the first decision made by the department.

Mr. NICKLES. Let me talk for a second and give the Senator a chance to clear his throat. If I understand the procedure, the Secretary of Labor would make the decision, he would calculate the cost of the labor protection provisions, and they may well be very expensive to the tune of $40,000 or $50,000 per certain category or class of employees, maybe $80,000 for some of the higher paid employees and maybe for a term of 4 or 5 years. So we are talking about big money. We are talking about mandating those provisions without any work performed in some cases. We would talk about writing a check for no work and we can say an employee, if they told the Allegheny-Mohawk situation they may just be writing a very large check for work not even performed. I am not sure. If the firms involved disagreed with that decision, do they appeal it to the Secretary of Labor? Who do they make the appeal to?

Mr. ADAMS. Under section 1006 of the Federal Aviation Act they appeal to the district court.

Mr. NICKLES. To the district court?

Mr. ADAMS. That is correct.

Mr. NICKLES. In the process of this appeal, which I could see or I would imagine it would be contested possibly by the unions involved, would the Senator agree with me that that appeal could possibly take months and therefore be totally confused, with the uncertainty involved, make the proposed merger very less attractive, and possibly kill the merger altogether?

Mr. ADAMS. No. Traditionally these have gone up very quickly. The problems that they have had with mergers have been in other areas where they have had antitrust problems. I did want to correct the Senator's earlier statement. The Department of Justice does not at the present time pass on these. They simply make an appearance before the Department of Transportation which is ruling on whether or not the merger is acceptable.

The Department of Transportation in recent cases has ignored the Department of Justice. That is why I have sunsetted in this amendment. The Department of Transportation can send it to Justice. Under the amendment, Justice would pass on the antitrust laws. Under the Department of Labor, they go up, if there is a disagreement or there is a desire of appeal, to the district court. That is on an expedited and a short record.

Mr. FORD. I say to the distinguished Senator from Oklahoma that under the sunsetting of CAB, the merger jurisdiction will be transferred from the Department of Transportation to the Department of Justice, and I will offer an amendment to expedite that by a little better than a year, to turn that all over to the Department of Justice and take it out of the hands of the Department of Transportation.

Mr. NICKLES. What type of timetable would it usually take if you had two applicants desiring the merger? Time, I would think, is of the essence. If you are talking about merger, particularly talking about a failing company, a company that is in financial difficulty, time is of the essence. If that stretches out for months and goes through some type of appeal process, appealing through the courts, I would see this as being deadly to a potential merger.

Mr. FORD. I do not know that it is deadly, but I do not know what the timeframe would be.

Mr. NICKLES. Does the sponsor of the amendment know?

Mr. ADAMS. A 60-day period. That is the regulation in the Department of Transportation that would be carried over. That is the maximum. It goes up on a short record to the district court if they wish to appeal, and you can ask for expedited procedure.

Mr. NICKLES. But before a U.S. district court, would it not be conceivable that you could be talking about months before that court?

Mr. ADAMS. No, because it goes up on expedited procedure. It does not have to go on a jury trial. It goes up on administrative appeal.

Mr. NICKLES. So, on administrative appeal, say it was not to one party's satisfaction and they wished to appeal that to an appellate court.

Mr. ADAMS. If they can find basis for an appeal. But, traditionally, these have not had a basis, because they go up on a short record. This has not been a procedure in the past that has unduly delayed any of these. Their programs are generally that lengthy or longer in the antitrust aspect, if somebody looks at them. Now, somebody is not looking at them.

Mr. NICKLES. It has not been a problem because the labor protection provisions have not been implemented by the Department of Transportation.

Mr. ADAMS. It used to in the past. In the last few years, they have not done it. Under the CAB, they always ran this through; and in recent years—that is the reason for the amendment—they have not applied LPP's.

Mr. NICKLES. I understand that arbitration, under the Senator's amendment is up to the Secretary. But there is no standard for the Secretary to apply in determining whether or not to initiate arbitration. Is that correct?

Mr. ADAMS. No. What arbitration is used for in these cases, generally, is a conflict with repect to seniority. The standards of arbitration are used, I would say, as a matter of practice—the general standards of the American Association of Arbiters. It is applied here when the Secretary, in the Secretary's discretion, feels arbitration to be helpful in solving the problem.

Mr. NICKLES. Labor and management negotiated contracts, and in some of their contracts, I am sure, there is binding arbitration if they are unable to resolve a dispute. Is not the Senator's amendment again interjecting the Federal Government into the entire collective bargaining process, with the Secretary being able to mandate labor protection provisions, giving the Secretary the possibility of mandating arbitration, which, again labor and management had not agreed to?

Mr. ADAMS. No. What happens in these cases is that the merger agreement will terminate the collective bargaining agreements, just as has happened, as I am sure you are familiar, in the bankruptcy case in Continental Airlines. So the whole collective bargaining system is skewed and has been skewed by the merger process.

So what you are trying to do here is to help promote some labor peace by adding a set of rules, in effect. Otherwise, you create an enormous amount of dissension at that point in time, where there is a question of who flies and who pickets and that kind of thing. I believe in the collective bargaining system, but it is wiped out by the merger system. That is one reason for the amendment.

Mr. NICKLES. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. Three minutes and forty-three seconds.

Mr. NICKLES. Mr. President, I wish to enter a couple of things in the RECORD. I do think that this is interference in the collective bargaining process.

Mr. President, I ask unanimous consent to have printed in the RECORD one page of an article by Capt. Henry A. Duffy.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

EXCERPT

One consequence of industry growth is an increased demand for pilots. Airline expansion since 1984 has pushed pilot hiring to record levels.

In 1985, major, national, and regional jet airlines hired more than 7,800 pilots, a 43 percent increase from the previous year. In 1986, the market for pilots remained strong as more than 6,300 were hired.

I predict that the combination of a steady rate of aircraft deliveries and an escalation in the number of pilot retirements—expected to increase from less than 400 in 1987 to more than 1,000 in 1992—will require jet airlines to add between 4,000 and 6,000 pilots to the workforce per year through the early 1990s.

Industry expansion and increased demand for qualified personnel have benefited airline employees—in particular pilots—by reducing the disparity between A and B scales. At American alone, new-hire rates have increased by more than 50 percent in just four years.

As airlines continue to compete for qualified pilots, I expect new-hire rates, along with pilot pay at all airlines, to continue to increase at a very steady pace. Our goals are to eliminate all B scales and to bring all pilots up to the industry standard.

Toward these goals, ALPA plans to negotiate more agreements like the one between Pan Am and Pan Am Express. That agreement establishes a rate at which regional pilots can fill vacancies at the major airlines. (Prior to this, major airlines rarely hired pilots from regional airlines they owned or had close ties to.) I predict agreements like the Pan Am/Pan Am Express one will become more commonplace—developing a guaranteed pool of qualified pilots for major airlines and reducing turnover and training costs at the regionals.

Consolidation has redefined the industry. The number of certificated airlines—which rose from 36 to 123 in the first six years of deregulation—will decline to 73 after all the current mergers have been completed. If you exclude from that number the carriers that operate only within Alaska, Hawaii, and the Caribbean, the number of airlines remaining, which operate within the continental United States, declines to 37.

So we've gone from 123 down to 37 carriers.

I predict that industry concentration has been completed—for the most part. Any further consolidation will be focused on the acquisition of code-sharing regionals and, to a lesser degree, smaller national airlines.

Major airlines will continue to increase their financial ties to regionals to guarantee traffic feed into their hubs. Currently more than 80 percent of regional airline capacity is devoted to providing service to majors and nationals through code-sharing agreements.

I believe, given recent trends, that most regionals will eventually become partially or fully owned subsidiaries of the majors. The vertical airline—providing air service from Terre Haute to Tokyo via code sharing on consolidated ticketing—has become a reality.

Airline consolidation has benefited ALPA in terms of greater job stability, as well as improved compensation for its pilots. The majority of the airlines surviving this wave of mergers are those that have experienced financial success since deregulation, and whose employees have avoided the wage-reduction efforts prevalent at other airlines.

Moreover, the merging of operations will increase the pay of employees at the airlines being acquired. In six of the seven current airline combinations that involve a major airline and a merging of operations, pilots at the acquired airline will experience increases in pay at an average in excess of 30 percent.

Mr. NICKLES. I will read a couple of paragraphs. He says:

> One consequence of industry growth is an increased demand for pilots. Airline expansion since 1984 has pushed pilot hiring to record levels.
>
> In 1985, major, national, and regional jet airlines hired more than 7,800 pilots, a 43 percent increase from the previous year. In 1986, the market for pilots remained strong as more than 6,300 were hired.

Mr. President, there are two other paragraphs. I am running out of time.

Will the Senator give me 4 minutes of his time?

Mr. ADAMS. I yield 4 minutes to the Senator.

Mr. NICKLES. I thank the Senator.

Mr. Duffy goes on further in the article and says:

> Airline consolidation has benefited ALPA in terms of greater job stability, as well as improved compensation for its pilots. The majority of the airlines surviving this wave of mergers are those that have experienced financial success since deregulation, and whose employees have avoided the wage-reduction efforts prevalent at other airlines.
>
> Moreover, the merging of operations will increase the pay of employees at the airlines being acquired. In six of the seven current airline combinations that involve a major airline and a merging of operations, pilots at the acquired airline will experience increases in pay at an average in excess of 30 percent.

Mr. President, I also ask unanimous consent to have printed in the RECORD a letter from the Secretary of Transportation, dated June 3, 1987. This is a letter from Secretary Dole to the chairman of the committee. I will not read the entire letter. It says:

> In my view, it would be a mistake to entertain the suggestion by some that this occasion should be taken to impose statutorily for the first time "labor protective provisions" (LPP's) in the case of airline mergers.

There being no objection, the letter was ordered to be printed in the Record, as follows:

The Secretary of Transportation,
Washington, DC, June 3, 1987.

Hon. Ernest F. Hollings,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, DC.

Dear Fritz: I am pleased to hear that the Committee may act favorably at its next markup on Subcommittee Chairman Ford's bill S. 724, which would terminate the Department of Transportation's prior approval authority over airline mergers on the date of the bill's enactment. His hearings made it abundantly clear that this exception from Clayton Act procedures no longer serves either the airlines or the public well.

In my view, it would be a mistake to entertain the suggestion by some that this occasion should be taken to impose statutorily for the first time "labor protective provisions" (LPP's) in the case of airline mergers. The airline industry is fully mature and does not need or benefit from industry—specific standards imposed by the federal government that vary from most other industries. Mergers in the airline industry should not be subject to different merger standards, either in judging the effect of the proposed merger on competition or in the conditions for protection of affected employees.

As we understand the amendment, it would have a most arbitrary effect on potential mergers, depending on comparative financial and labor costs. Where the overall financial benefits of the merger or acquisition are marginal, such as saving a failing company, and the labor adjustment costs are significant, no protection would be available under the amendment. At the other end of the spectrum, it presumably would have little impact in cases where the monetary or seniority effects of the transaction on employees are small, but in this case it would hardly be needed. In between these two extremes in circumstances where substantial payments are required for highly paid personnel, the "Allegheny-Mohawk" standard relied on could result in compensation for not working that exceeds $90,000 annually for up to six years. Furthermore, experience has shown that airline labor protection provisions are extremely complex to administer, as illustrated by still outstanding aspects of the 8-year-old Pan American/National Airlines merger.

The proposed amendment should not be confused with the separate Employee Protection Program (EPP) provided under the Airline Deregulation Act of 1978, which is currently being administered by this Department and the Department of Labor. I would also note that organized labor has already gained one substantial advantage under the 1978 Act, namely the prohibition on "mutual aid pacts" common in the airline industry prior to that Act to assist managements in weathering strikes.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the submission of this report.

With warmest regard,
Sincerely,
Elizabeth Hanford Dole.

Mr. NICKLES. Mr. President, I also ask unanimous consent to have printed in the Record a letter from Senator Pete Wilson, enclosing a letter from Senator Brock Adams, dated September 9, 1987.

There being no objection, the letter was ordered to be printed in the Record, as follows:

U.S. Senate,
Washington, DC, October 29, 1987.

Mr. President: I ask unanimous consent that a letter sent to me from Senator Adams on the subject of labor protection provisions be included in the Congressional Record at an appropriate place during this debate.

Sincerely,
Pete Wilson.

U.S. Senate,
Washington, DC, September 9, 1987.

Senator Pete Wilson,
720 Hart Office Building,
Washington, DC.

Dear Pete: Thank you for your letter concerning the labor protection provisions of S. 724, the Airline Merger Transfer Act of 1987. Senator Ford has asked me to respond to the questions that you present regarding the implementation of these provisions. I share the concern you express for clear Congressional guidance to the Executive Branch on legislation enacted, and I hope that this letter will help explain the intent of the legislation to your satisfaction.

I believe that a brief description of the bill will answer many of the questions that you pose. The bill would reestablish the traditional and longstanding practice of imposing conditions to protect the interests of employees who may be adversely affected by an airline merger. The bill does not require the Secretary of Labor to impose any particular set of protections, however. Rather, the bill leaves to the discretion of the Secretary of Labor the determination of what protections are appropriate in any individual case. This determination can be a complex one and is a matter that is better left to the expertise of the Department of Labor. While clear standards and policy guidance are always necessary, Congress should be chary of enacting legislation that attempts to mandate the results of case by case proceedings.

Under the legislation, the LPP's should be calculated to mitigate adverse consequences of the transaction, such as a reduction in employment of an adverse effect on the wages and working conditions (including seniority) of air carrier employees, including procedures resulting in binding arbitration. Several of your questions refer to the LPP's imposed in the Allegheny-Mohawk Merger Case, 59 C.A.B. 19 (1972) and ask whether the Secretary of Labor would be required to impose these conditions or whether the Secretary would have discretion to impose conditions less generous or different from the Allegheny-Mohawk conditions. As I note above, the legislation gives the Secretary sufficient flexibility to tailor the protective conditions to the individual transaction. Thus, Allegheny-Mohawk LPP's are not mandatory. On the other hand, these protective conditions were developed over the course of thirty years of C.A.B. caselaw and represent a reasoned attempt to balance the interests of airline employees and the carriers involved in the transaction. I would expect that in implementing the bill, the Secretary would consider the opinions and principles developed by the C.A.B.

Many of your questions relate to the "cost/benefit test" established in the bill which would obviate employee protection where the "projected costs of imposing such provisions would exceed the anticipated financial benefits of the transaction." The burden of proving that the costs of the LPP's are greater than the financial benefits of the transaction is placed on the proponents of the transaction. The purpose of this provision is to assure that worthwhile mergers, some of which may result in little projected financial gain for the merging airlines, will not be jeopardized by the cost of protective provisions. Generally, however, I anticipate that air carriers entering into such transactions would have a reasonable estimate of the financial benefits of their investment and of the consequences of the merger on airline employees. I also expect that in most transactions the benefits will outweigh the costs of employee protection, as any reduction in employment would be accompanied by a corresponding savings in labor costs.

Under the legislation, it is the Secretary's responsibility to assess the costs of employee protection and the financial benefits of the transaction, based on the information and evidence submitted by the parties in the case. Generally, the financial benefits of a merger will include the elimination of redundant or unprofitable routes, labor savings, savings in administrative costs, increased load factor and proceeds from the sale of excess assets and equipment. The exact standards for defining these costs and benefits, however, are left to the discretion of the Secretary, as is common practice in legislation concerning administrative procedure and agency action.

I trust that the above discussion has addressed your concerns about the bill. Please let me know if I can provide you with any further information or answer any other questions.

Sincerely,
Brock Adams.

Mr. NICKLES. Mr. President, I ask unanimous consent to have printed in the Record a letter dated July 13, 1987, from Pan Am Corp.

There being no objection, the letter was ordered to be printed in the Record, as follows:

[Letter sent to all U.S. Senators.]

Pan Am,
Washington, DC, July 13, 1987.

Hon. Brock Adams,
U.S. Senate, Washington, DC.

Dear Senator Adams: In the near future you will be asked to vote on S. 724, a bill relating to airline mergers which was recently approved by the Senate Commerce Committee. The bill was amended to include labor protective provisions, which, on the surface, would appear to be a protective measure for employees, but in reality produce very negative results for them.

The proposal requires the Secretary of Labor to impose labor protective provisions which could include several extremely expensive benefits to be paid by the airlines, such as a dismissal allowance of up to 60 percent of an employee's salary for up to five years or a separation allowance of one year's pay. The possibilities of LPPs are endless. And, who do they benefit? Certainly not the long-time, dedicated employee who has spent his working life with the company. No, if any employee is impacted, it is the most junior employee who generally is protected by union contract. The senior employee whose job is kept intact is left with a company whose chances of survival are greatly weakened by enormous LPPs it has been forced to pay out to the junior employees.

While certainly each employee is entitled to protection, this issue should be left to the collective bargaining process. LPPs restrict this process by automatically granting monetary benefits to an employee terminated as a result of a merger. This is almost unheard of in any other industry and certainly is counter to the deregulated industry which exists today.

Finally, the bill singles out the airline industry by requiring review of mergers by the Departments of Justice, Labor, and Transportation. Any other industry simply would have a proposed merger reviewed by the Department of Justice. Such an onerous obligation would make the airline merger process so complicated, lengthy and expensive as to possibly negate the transaction, thereby causing the unnecessary loss of many jobs.

When S. 724 comes to the Senate floor, we urge you to give serious thought to the real consequences of the bill. Your vote against this measure will help protect the vast majority of the airline employees in the long run.

Sincerely yours,
Rosemary Griffin Murray,
System Director-Governmental Affairs.

Mr. NICKLES. Mr. President, to highlight, it says:

> Finally, the bill singles out the airline industry by requiring review of mergers by the Departments of Justice, Labor, and Transportation. Any other industry simply would have a proposed merger reviewed by the Department of Justice. Such an onerous obligation would make the airline merger process so complicated, lengthy and expensive as to possibly negate the transaction, thereby causing the unnecessary loss of many jobs.

Mr. President, we will discuss this issue tomorrow.

I appreciate the indulgence of my friend and colleague.

I think this particular amendment will be a mistake. I also have a note from OMB that they will send over in opposition to the Senator's amendment.

Again I will reiterate my statement earlier. It is my belief that if this amendment is adopted it will provoke a Presidential veto.

I yield the remainder of my time.

The PRESIDING OFFICER. The Senator from Oklahoma has yielded the remainder of his time. Who yields time?

The Senator from Washington.

Mr. ADAMS. Mr. President, I just want to correct the last statement. We terminate the Department of Transportation. It would be no review by them. It all goes to the Department of Justice.

Mr. DANFORTH. Mr. President, I would like to direct a question to the sponsor of this amendment. Mr. President, I wonder if the Senator from Washington could clarify whether this amendment would require that the Allegheny-Mohawk labor protective provisions be applied in every airline merger case.

Mr. ADAMS. Mr. President, in answer to the inquiry from the Senator from Missouri, no, the amendment does not require application of Allegheny-Mohawk labor protective provisions to all airline mergers. It would be up to the Secretary of Labor to decide whether the statutory standard for labor protective provisions have been met and to decide the appropriate scope of labor protective provisions.

Mr. DANFORTH. Mr. President, I thank the Senator from Washington.

Based on that description, I have no objection to the amendment.

Mr. ADAMS. Mr. President, unless the distinguished Senator from Kentucky wishes some time I am going to yield back the remainder of my time.

Mr. FORD. Mr. President, I say to my distinguished friend from Washington, I have no time unless he gives me some time. I would like to make a few unanimous-consent agreements if he does not mind.

Mr. ADAMS. Whatever the Senator from Kentucky would like to do, I yield him such time as he may consume, and I yield back the remainder of time after the Senator from Kentucky completes the statement.

Mr. FORD. Mr. President, I ask unanimous consent that the Senator from Vermont, Mr. Leahy, and the Senator from Ohio, Mr. Metzenbaum, be added as cosponsors of the bill, S. 1485.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. FORD. Mr. President, I understand that the pilots are well compensated. I do not want someone with inexperience in the nose of that airplane when I am flying.

Early on, or after World War II, many, many pilots went from the Air Force into the airline industry. It was a recruiting era. It seemed like they went from there into the industry.

Today, we have or are having a difficult time in securing well-trained pilots.

It seems that an incentive is important to have well-qualified pilots.

Most airlines—and I do not know of any airline that does not—will have a more rigid standard than the minimum qualifications for pilots who fly their airplanes.

It makes a significant difference when you begin to look at what is required of a pilot to understand and to know all the safety and operating procedures. I am not too unhappy with the kind of salary some of them make, based on what our athletes are making today. Why, some of our athletes during their strike lost more per week than the pilot makes all year.

So I am not very unhappy or hold it against any pilot who makes good money, and the airlines uses that incentive to get qualified pilots.

I worry about the total industry, as it relates to pilots, because those pilots with some experience in commuter airlines are being hired to fly larger planes.

Mr. President, I do not want to go further, but I just think that what we are doing here is not only what might be called labor protection, but I think it is safety. I think the underlying issue here is the safety of the airlines, qualified pilots, no friction as it relates between the pilot and the copilots and the employees after a merged airline.

I might say to my good friend that the Department of Justice recommended against four recent airline mergers and the Department of Transportation approved all four of them. Then they recommended the last merger be approved. The Department of Transportation adminstrative law judge turned it down.

So I am not sure what you are coming on. The Department of Justice probably is getting this authority too late. But under the amendment of the distinguished Senator from Washington the decision is taken out of the Department of Transportation's arena and given to the Department of Justice.

Mr. President, I yield back the time that was given to me by the distinguished Senator from Washington.

The PRESIDING OFFICER. The Senator from Kentucky has yielded back the remainder of his time.

Mr. FORD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The absence of a quorum having been suggested, the clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. FORD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

A NEED FOR SAFE TRAVEL AMERICA

Mr. DANFORTH. Mr. President, Congress has made great strides in improving transportation safety. However, there are a number of very significant problems that still must be addressed.

On October 7, Congress was visited by over 600 members of a new grassroots lobbying group called Safe Travel America. The members of this group—families and friends of the victims of the January Chase, MD, train wreck—told their tragic story in every congressional office. They reminded me of another compelling and persuasive group organized in living rooms and around dining-room tables—the Mothers Against Drunk Driving.

Like the members of groups such as MADD, Safe Travel America has brought home to every Member of Congress the human tragedy resulting from that needless collision last January between an Amtrak train and a Conrail train. Sixteen people were killed in that wreck, most of them young people. I urge my colleagues to read the following two articles: one by Roger and Susan Horn, who lost their 16-year-old daughter, and another that appears in the November issues of both Washingtonian and Baltimore magazines. Mr. President, I ask unanimous consent that both articles be printed in the Record immediately following these remarks.

Mr. President, there are two bills pending in the U.S. Senate that could help prevent future accidents like the one at Chase, MD.

S. 1539 would allow the Federal Railroad Administration to penalize individuals for violations of rail safety laws, would provide access to the driving records of prospective railroad employees, and would require establishment of qualifications for engineers.

S. 1041 is designed to ensure drug- and alcohol-free bus drivers, airline pilots and mechanics, and railroad engineers and brakemen. The bill provides for testing, including random testing, for substance abuse by those in safety sensitive positions.

Both bills, overwhelmingly approved by the Senate Commerce Committee, represent a bipartisan effort to address very important and urgent safety concerns.

Mr. President, there are many problems in this world that we in Congress cannot solve. Transportation safety is not one of them. The time for action has come.

There being no objection, the material was ordered to be printed in the Record, as follows:

[From the Evening Sun, Oct. 13, 1987]

A NEED FOR TRAVEL SAFETY

(By Roger A. and Susan D. Horn)

(Notice to passengers.—The engineer operating your train has been convicted 11 times for automobile speeding, and he will be speeding while operating your train today. Other personnel operating trains over the track used by your train are alcoholics, drunk drivers and drug abusers with high levels of drugs in their bodies today. Critical safety devices in their locomotives are deliberately disabled. None of your operating personnel has ever passed a federal or state licensing test.)

Truth in packaging is required for cereal and toothpaste, but if it were required for public transportation, this notice would have been posted on the doors of the Amtrak Colonial, whose Jan. 4 collision near Chase with a Conrail train took 16 lives, most of them children and young people. One of them was our 16-year-old daughter, Ceres, who was returning from the Christmas holidays to her first-term final exams at Princeton University. Similar notices would have to be posted on every passenger train departing today, for nothing has been done since January to alter slipshod safety practices that are common in the rail industry.

After reading such a notice, would you put your children on the train? Would you get on yourself?

On March 24 there was a near-tragedy in North Philadelphia in which a Conrail engineer ran his freight train through a stop signal and almost got out onto the main line in front of a southbound Amtrak passenger train (the Colonial again). Subsequent tests showed that the engineer had high levels of marijuana in his body—more than four times as much as the Conrail engineer in the January crash.

In mid-September a Conrail freight conductor operating out of Baltimore appeared in Dundalk District Court on drunk driving charges. His Maryland automobile record lists 24 previous convictions for drunk driving and other charges, but he is still operating trains. No state or federal law or company rule prevents him from doing so.

Recently, Maryland state police responded to a call to take an intoxicated engineer off a train. However, they found that there was no Maryland statute under which he could be charged.

The Conrail engineer allegedly responsible for the January crash has been indicted only for manslaughter, a misdemeanor; despite the appalling death toll and tens of millions of dollars of damages, no other federal or state statute applies. His brakeman, who was found to have PCP in addition to marijuana in his body, has been charged with nothing; no state or federal laws apply in his case.

Clearly something is wrong and it needs to be set right.

The common assumption that government regulators ensure adherence to common-sense safety practices in interstate transportation is sadly mistaken. Most people are shocked to learn that no license is required to operate a train. They find it hard to believe that major interstate transportation companies make no effort to use publicly available records to determine whether safety-critical employees have conviction records for automobile speeding or drunk driving.

Responding to citizen demands in recent months, the U.S. Senate Commerce Committee has overwhelmingly approved two excellent transportation safety bills: S. 1041 on drug and alcohol testing and rehabilitation for safety-critical rail, airline, bus and trucking employees, and S. 1539 on rail safety. The drug testing bill (S. 1041) provides for pre-employment, periodic, post-incident, probable cause and random testing. It also mandates rehabilitation programs, confidentiality of test data and certification of testing laboratories. Because S. 1041 includes careful safeguards for individual rights and privacy, respected legal authorities believe that it will pass careful scrutiny for constitutionality by the courts.

Mandatory random testing is a key element of this bill, and it ensures that every safety-critical employee has an equal probability (and certainty) of being selected for testing; neither management nor labor has any discretion over who is tested. The objective is, of course, to encourage troubled employees to enroll in rehabilitation programs and, as a last defense, to detect recalcitrant drug abusers who refuse to stop.

Last year, Congress failed to pass any rail safety bill because special interests demanded too many self-serving amendments. This year's rail safety bill (S. 1539) is both clean and short, and it contains a historic provision to give the Federal Railroad Administration (FRA) authority over individual employees and managers when they violate safety rules. This authority, which the Federal Aviation Administration has always had over pilots and other airline personnel, would give FRA inspectors the power to remove from the cab an engineer who has disabled key safety devices, a power that, incredibly, they never had before.

Although further legislation will be needed to finish the job, these two bills are a good start toward restoring the confidence of the traveling public. They are however, opposed by powerful special interests whose representatives are in Washington every day, tirelessly lobbying for their selfish objectives. Having failed to stop these bills in committee, these special interests are now lobbying in the back rooms of Congress to keep them from coming to the floor of the Senate or House for debate.

To counter the special interests, thousands of citizens from every state have written their senators and representatives to urge them to support new safety legislation. In addition, over 500 citizens, mostly young people, went to Washington last Wednesday for a special legislative action day. Organized by families of victims of the January crash, they held a prayer breakfast and press conference on Capital Hill. More important, they visited every single member of Congress to urge active support of new strong transportation safety legislation right now. Local students for McDonogh School (Ceres' alma mater), Roland Park Country School and Friends School formed the majority of the group visiting Congress; through students came from as far away as Princeton, Smith College and Shippensburg State University.

Others who wish to help ensure safer transportation may do so by writing their U.S. senators and representatives. Urge them to ask the Senate and House leadership to bring S. 1041 and S. 1539 to the floor for debate now, and them to support these and other bills for traveler safety. Maryland residents have special reason to send this message to Sen. Paul Sarbanes, who has not yet taken a position on travel safety. Sen. Barbara Mikulski and Rep. Helen Bentley, R-2nd, already have pledged their full support for these two bills.

Action is needed *now*. Every day's delay increases the chance of another massive tragedy and more loss of life. Act now to demand safe travel in America.

[From the Washingtonian, November 1987]

LIFE AND DEATH ON THE FAST TRACK

(By Ramsey Flynn and Steven D. Kaye)

(On the first Sunday of 1987, moms and dads are sending kids back to college, football fans are tuning in the Giants-49ers playoff game, and at 12:35 pm.

(Amtrak's Colonial 94 is leaving Washington's Union Station. Just north of Baltimore, the train rounds a curve at 120 MPH and the engineer sees three blue Conrail locomotives dead ahead.

(Here is how five lives intersected at that terrible, avoidable point of impact.)

The images flicker in his mind, sometimes when he's driving, sometimes when he's trying to sleep. He finds himself aboard the train in the moments surrounding the crash. He sees the impact in slow motion, hears the roar, feels the grip of steel twisting around him.

Months after the fiery wreck of the Colonial, Dr. Roger Horn still imagines it is a dozen times a day.

In a hot and crowded congressional hearing room in July, he finds space to sit cross-legged on the floor, balancing a heavy briefcase on his lap to take notes. He has testified many times since that Sunday afternoon in January when sixteen people died in the collision of the Amtrak passenger train and three Conrail locomotives near Baltimore. Now he waits his turn to take his private anguish public once again.

A big man, the mathematics professor stretches his back and shifts uncomfortably. He will not testify for hours. Across the room, a high-ranking staff member of the Federal Railroad Administration turns to an assistant. "That's Dr. Horn," he whispers. "His daughter was killed."

At 7 o'clock on Sunday morning, January 4, it is clear and dry, 27 degrees and still dark outside the pretty, blue Victorian home at 13 Maple Avenue in the Overlea neighborhood of Baltimore.

Denise Evans is in the kitchen. She can hear her husband rustling in the hallway with two-year-old Joshua, and she knows what's coming. "C'mon," she hears Jerry whisper. "Let's go get Mommy." He picks up their son and carries him like a football into the kitchen for breakfast.

At the table they snatch bacon from each other when Denise isn't looking and Joshua giggles at their mischief. Jerry gets up several hours before work each morning just to be with him.

This morning father and son splash in the bathtub together before Jerry departs at 9 am. At the front porch, the lanky, 35-year-old Amtrak engineer presses his lips to a spot on the door where he and Denise kiss each other through the glass. Joshua giggles again.

This day Jerry will operate Amtrak's Colonial 94, scheduled to depart Washington's Union Station at 12:30 pm, bound for Boston. He winks and gives Joshua a father's exaggerated wave and promises to be home by 11 pm.

On a small farm in Potomac, Maryland, twenty-year-old Christy Johnson is trying to administer a shot to one of her family's horses. The animal bucks and turns, knocking the syringe from her hands. It disappears into the straw on the barn floor.

Christy was hoping to catch a morning train so she could spend the day with her sister in New York before flying back to Stanford University. But she's running late, and now it looks as if she'll have to catch the 12:40 at New Carrollton.

Christy's parents, Arthur and Ann Johnson, say good-bye and go off to Georgetown Presbyterian Church. They are feeling good about their daughter, who five years ago had started to abuse drugs. Christy had gone to her parents, sought counseling, and within a year was off drugs and helping other kids with the same problem.

Now, as she approaches graduation from Stanford, she is weighing a career in psychology or health care.

On their way to church, her parents pass Rebecca Hyman, one of Christy's closest friends from high school. Rebecca is on her way to pick up Christy and drive her to the train station. Another old friend joins Christy and Rebecca at the house, and they make smalltalk over coffee in the kitchen.

Christy runs up to her bedroom to finish packing, and Rebecca follows as they try to squeeze in a few more minutes together.

They head out the Beltway to New Carrollton, reaching 70 miles an hour as Christy keeps nagging: "We're going to miss this train."

At the station Rebecca helps Christy with her luggage and they quickly hug. "I love you," says Christy.

In the Pennsylvania town of Shipensburg, eighteen-year-old T.C. Colley is ending a long stay with his father and stepmother. He's going back to Baltimore, where his mother lives and where some letters from his new girlfriend await him. Then he'll take the train up to Providence, where he's a freshman in photography at the Rhode Island School of Design. He's determined to be the next Ansel Adams.

T.C. and his father had a heart-to-heart talk last night about growing up. It seemed that T.C. was testing out his latest personal style, a penchant for frankness, and his father wanted to rein him in a bit. "Just be sweet," added his stepmother, Susan. "Just be you."

Tom Colley drives his son to the usual rendezvous point near York, Pennsylvania, and watches him throw his coat in the back of his mother's car before T.C. heads off for Baltimore.

In the wooded hills of northern Baltimore County, sixteen-year-old Ceres Horn is canvassing her family's home for belongings before returning to Princeton, where she's a freshman honors student two years younger than most of her classmates. She doesn't want to forget the heavy wool sweater she bought for her boyfriend back at school.

Her father, Roger Horn, a Johns Hopkins University professor, is in Israel lecturing on mathematics. Ceres and the rest of the family stayed up later than usual last night as her mother, brother, and sister gathered around her bed and listened to her describe how she's cramming sports and theater into her heavy academic schedule. Her goal is to become an astronaut, and she's going to try for a summer job in the astrophysics department at Johns Hopkins.

But this is Sunday morning, January 4, time to get back to school. Ceres, her mother, and her nine-year-old brother, Howie, drive to Penn Station in downtown Baltimore, where engineer Jerry Evans, at the controls of the Amtrak Colonial, is about to pull into Track 3, Gate C. He left Washington at 12:35 p.m., five minues late, stopped briefly at New Carrollton, and now is almost on time.

The Colonial is one of the modern Amtrak trains bought by the federal government to keep the country's passenger-train system alive. Since the early 1950s, trains had lost more and more riders to airliners and cars, and by the late 1960s, when it became clear that no private railroad could afford to keep them going, Congress decided to create Amtrak as a national railroad. Amtrak lost millions of dollars every year, but taxpayers kept the trains running.

Today Evans's train includes two big General Motors electric locomotives and twelve passenger cars. About 400 passengers are already aboard. Christy Johnson has moved far to the front of the train, to passenger car 21236, just behind an empty café car and the two locomotives.

On the platform, T.C. Colley's stepfather, Cal Walker, a physics professor at Johns Hopkins, recognizes Ceres Horn's mother. They introduce the two teenagers.

T.C. is loaded down with luggage. His mother, Ann, notices the wide stance he has adopted since taking up karate. He's gotten so tall and broad in the last year, and he slouches, as if uncomfortable with his height. He's dressed in the dark, heavy clothes that say *artiste*, with a new woolen scarf from his stepmother swooping around his shoulders. He wears a silver chain around his neck and an earring she recently gave him.

The Colonial pulls in, bringing with it a rush of cool air and flurry of goodbyes. "I love you," Ann tells T.C. "I'm very proud of you, and I think you're wonderful."

"So do I," says T.C.

"Good. We agree on it, then."

She puts him on the third car from the end of the train. "Try going toward the back," she says. "It looks like there are more seats back there." But T.C. goes forward, as young people often do in crowded trains, walking through seven cars until he finds one with a lot of room—passenger car 21236, the same car Ceres Horn and Christy Johnson are in. About 175 passengers board the train in Baltimore. There are now almost 600 passengers, along with 12 crew members, aboard the Colonial.

An Amtrak conductor barks over the radio to Jerry Evans, "Nine-oh-three, Jerry, 94, okay to proceed."

"Okay," says Evans, "94 on the move."

Susan Horn and young Howie are already out of the station when she remembers to mail Ceres's letter to Johns Hopkins astrophysics professor Arthur Davidsen. She walks back and drops it into a mailbox. "I'm very excited about the prospect of working for the Center for Astrophysical Sciences this summer," Ceres has written. "It will give me a better understanding of what an astrophysicist actually does and enable me to decide if majoring in physics at Princeton is for me.

The Bayview freight yard on Baltimore's east side has the old-fashioned look of most of the yards on the railroad system's busy northeast corridor: rows of parallel tracks, a squat control tower, a few cinder-block buildings, and trailers painted in dull green and gray.

The buildings are plastered with safety posters, a different one each month. On a roundhouse wall there used to be a mirror etched: "Accidents only happen to the other guy. Meet the other guy."

Today engineer Ricky Lynn Gates and brakeman Ed (Butch) Cromwell are scheduled to move three diesel locomotives 110 miles north and west for use in the Enola Yard outside Harrisburg.

Railmen love this kind of duty—they call it "light engines"—because with no freight cars to pull, the locomotives have quicker acceleration and easier handling. It's an easy run that comes maybe one time in a hundred. Gates won't have to worry about moving a long, heavy freight train, with the buffeting and bumping of boxcars and tank cars on hills and curves. Cromwell won't have to worry about brake-hose trouble or busted couplers. Just a short scoot up to Perryville, Maryland, then west to the Enola Yard. They'll make it in three hours, and they'll ride a bus back home.

Gates's fee for the job is $121.06 each way, Cromwell's $96.50. Lack of seniority has meant too much furlough time for both of them, and they feel lucky to get the work. January 4 is still considered holiday time by many of their coworkers, who have taken the day off.

The two enter the terminal building for the paperwork. Gates registers and signs the safety sheet, which posts safety rules. The paperwork tells him he should expect a delay twelve miles up the line at "Gunpow," the first switch, half a mile south of the Gunpowder River Bridge, where the wooden-tied freight line merges with the newer, concrete-tied, high-speed line of the northeast corridor. He'll probably have to wait there a few minutes for the passing of a priority Amtrak passenger train, Jerry Evans's train, which is running one minute behind schedule.

Gates looks the freight engines over, checks in with the trainmaster, George Mince, and tells him the lead engine doesn't have a working two-way radio. It's a common problem, and they agree that he can use one of the shorter-range, hand-held models that brakemen use in walking the brake lines.

The trainmaster observes the two-man crews while they talk. Supervisors used to look just for signs of drinking when crews checked in. Today, as his drug-detection training has taught him, Mince also looks for other signs. He has been around the rails for 36 years, long enough to know how tough spotting a drug user can be.

At 32, Gates is a seasoned veteran of both alcohol and marijuana use. Cromwell, 33, prefers marijuana and sometimes other drugs. Gates is discreet about the illegal stuff, but some of his friends know about it. Most of them figure he stays in control on the job.

The alcohol problem did become a public matter late one night in December. A cop caught him weaving down the road in his car. Gates couldn't recite the alphabet, and he foolishly presented his open wallet with a $20 bill and a $5 bill over his driver's license, but the cop wouldn't go for it. The details would emerge in a county courtroom some three months later, when there would be considerable interest in the habits of Ricky Lynn Gates.

But today Mince doesn't notice anything unusual about this crew. They look fit and ready to run 400 tons of diesel locomotives the 110 miles up to Enola, and he sends them on their way.

The national rail system is in the best physical condition it has been in in the last 25 years. The equipment is the best ever. . . . But if 8,000-ton trains are entrusted to impaired crew members, disaster will not be avoided. —Secretary of Transportation Elizabeth Dole, in a 1984 Senate hearing.

The railroad industry has waged war with alcohol for more than a century, and even today something of the traditional image of America's trailblazing railroaders persists: hard-working, hard-drinking, rough, loud, and grimy.

A few visits to the workplaces and homes of today's railmen dispel much of that image. Trailblazing has been supplanted by mortgages, tuition, and car payments. But many railroaders still drink on the job, and some use drugs.

Until 21 months ago, there was no federal law saying they couldn't.

Freight and passenger lines do prohibit crew members from using alcohol or drugs or being impaired on the job. Rule G, as it's known industry-wide, has been around since 1897. The railroads designed Rule G to weed the abusers out of the working ranks, and violators traditionally have been fired.

But Rule G doesn't work. That was made clear in a 1979 Department of Transportation study of 234,000 railroad workers. It found that 23 percent of operating employees, including engineers and conductors, were problem drinkers, and that 5 percent of all employees came to work very drunk or got very drunk while on duty at least once during the year-long study.

With little faith left in Rule G, the industry has been trying other ways to get substance abusers out of safety-sensitive positions. Some railroads and unions have formed Rule G by-pass agreements that offer treatment as an alternative to termination. It can be voluntary, or workers can be referred to an evaluation-and-rehabilitation program by a "prevention team"—two or more coworkers—or by a union official Those who complete treatment can return to duty.

Although the railroad unions have historically underplayed the extent of drug problems among workers, it is the unions that now are pushing hardest for such peer-prevention programs. While concerned about safety, they also would like to head off increased federal involvement. The unions and the railroads have long claimed that they can police themselves against drugs and alcohol.

The Federal Railroad Administration, part of the Department of Transportation, regulates all aspects of the industry, including rail safety. Between 1975 and 1984, the FRA investigated 48 accidents it says were caused by drug or alcohol impairment, accidents that caused 37 deaths and $35 million in property damage. The accidents included three head-on collisions, a derailment at 68 miles per hour on 25-mile-per-hour curve, and the wreck of a 100-car freight train carrying hazardous materials that forced the evacuation of a Louisiana town. In that wreck, both the engineer and the head brakeman were drunk and asleep.

Something more than self-policing seemed necessary.

Beginning in 1983, a group of FRA staff members under administrator John Riley, a Reagan appointee, spent about three years writing a set of regulations they hoped would control the use of alcohol and drugs in the industry. FRA regulations have the force of law.

For the first time, railroad operating employees would be prohibited by federeal law from alcohol or drug use or impairment while on duty. Pre-employment urine tests would be mandatory. Railroad companies would be required to conduct, and crews to submit to, toxicological testing after certain types of accidents. Accident reports from the railroads, which the FRA depends on for most of its data, would include inquiries into the possible involvement of drugs and alcohol, even when no such involvement was obvious. Railroads would have to establish voluntary drug-referral policies and Rule G by-pass agreements.

Finally, railroads would have the right to require any operating employee to submit to breath and urine tests on the basis of "reasonable cause," even when no accident had occured. The unions fought that provision in court and lost.

In the context of the old railroad industry, the FRA's new set of rules seemed drastic when they went into effect early in 1986.

For engineer Ricky Gates, they didn't make much difference.

Gates pulls his engines up to the signal-testing bay to check out the cab's safety devices. From the engineer's seat on the right side of the cab, he looks at the incab signal rack mounted on the window to his upper left.

The vertical signal looks like a down-sized traffic light with four aspects, all a light shade of amber, with patterns of dots telling the engineer when we go, when to slow, when to prepare to stop, when to stop. It is activated electronically by switchers who sit in trackside towers along the route. It duplicates the larger, remote-controlled signals mounted over the tracks or on the wayside. Engineers bet their lives on these signals.

Some engineers will tell you that they've seen signals malfunction, but that they usually "fail down," telling crewmen to go slower than they should rather than faster. Signals telling them to go when they should stop—"false proceeds"—are rare. There have been nineteen in the northeast corridor in the last four years, none causing an accident.

A signal bulb in Gates' cab is missing. It's part of the signal telling him to slow down and prepare to stop. He doesn't worry about it. Engineers who linger too long over the little things are not popular in a business where time is so closely linked to money.

Gates checks the alerter whistle, mounted on the floor behind his controlling console. It looks something like a flute and sounds like a shrill pennywhistle. It screeches every time the train passes any signal that doesn't say "go," just to keep the crew paying attention.

Most engineers hate the whistle. Not only is it painfully loud, it's also insulting. It's a safety device, but to them it questions their professionalism. Some engineers muffle the whistle with a few inches of duct tape. More often it's taped by a brakeman, riding overnight in the cab of a second or third locomotive and trying to catch a few winks on a gently rocking freight train.

Gates tests his alerter whistle and hears nothing—or, at most, a faint hiss. He didn't put the tape there. It is probably from an earlier trip. Gates has a reputation as a sticker for the rules, and normally he would remove the tape.

But today Gates and Cromwell are in a holiday mood. Corridor traffic is low. They're running light engines. Cromwell has along his personal radio. They might be able to listen to the San Francisco 49ers-New York Giants playoff game.

And one of them is packing a couple of marijuana joints.

At 1:13 p.m. the engineer and his brakeman get the go-ahead from the Bayview tower to proceed, and at 1:16 they pull out of the yard, onto a freight track adjacent to the high-speed main line.

In order to keep a freight train moving, an engineer is supposed to keep his left foot on the dead-man's pedal, a simple, floor-mounted safety device that has been around for a long time. If the engineer becomes incapacitated and his foot leaves the pedal, the train stops.

Many engineers consider the dead-man's pedal a nuisance. It's uncomfortable to keep your foot on the same spot, sometimes for more than twelve hours at a stretch. You get leg cramps. You can't get up from your seat, even to use the cab bathroom, without stopping the train.

The dead-man's pedal is probably the safety device that's most commonly disabled on a freight train, and any engineer will tell you it's the easiest thing to do. All he has to do is put a wrench on top of it.

Rick Gate's engine has a disabled dead-man's pedal, the throttle is set for acceleration, and no one has to steer a freight train. For the time being, this train doesn't need him anymore.

Gates and Cromwell are not a regular team; the crews are always rotating. But they've spent enough time together to know they have something in common. They both like to get high.

And so they light up a joint.

They make small talk. Cromwell is soft-spoken, when he speaks at all. Some of his past crewmates say it's possible to spend twelve hours in the cab with him and never exchange a word. Off duty, he's always available for a pickup softball game, and he wields a pretty good bat. Most people who know him like him.

Gates is a rock-music lover and a *Star Trek* fan, and is more outgoing. He's been running the rails for fourteen years, and in a job that is often boring, conversation helps keep him alert. He smokes four packs of cigarettes a day. He sometimes brings home-cooked meals to work to share with his crewmate.

Mixing a demanding work schedule with a growing affection for alcohol didn't help his marriage, and he and his wife, Mary, split up a few years ago. She kept custody of their two daughters.

After the separation, Gates moved into a small apartment in Essex, Maryland, and threw himself into railroading. It seemed to define everything about him. He plunged into the rules and regulation, scoring high marks on his proficiency tests. He scored 100 percent on his last one.

Gates is proud of his knowledge and chides other engineers when they do something that's not by the book. He cites the rule book from memory.

He has been disciplined by Conrail for insubordination, and sometimes he plays his harmonica over the nighttime radio waves, which is not allowed by the rules. Driving his car, he has racked up nineteen citations in fifteen years—mostly for speeding—and twice has had his driver's license revoked. But his record on the rails is good, and most of his colleagues are happy to have him as a crewmate.

The consensus among those who know him in the railroad fraternity is that Gates has the right stuff. But in early afternoon of January 4, at the controls of Conrail train ENS-121, Ricky Lynn Gates is not altogether in character.

A marijuana high often distorts one's sense of time—half an hour can feel like five minutes, or five minutes can feel like an hour.

In the past year Gates has taken a train through the Gunpow switch 99 times, usually from Bayview. As with any familiar routine, he has developed a certain feeling, an internal clock, that tells him how much time should elapse from step to step. Gates is used to moving long, heavy freight trains that can take ten miles to get up to speed. He is used to a fifteen- or twenty-minute lull between Bayview and the Gunpow "distant signal," two miles before the switch at the interlocking of the freight and passenger tracks.

But today Gates is running light engines, and he has fooled with the delicate workings of that internal clock.

Once out of Bayview, his three-engine train picks up speed much more quickly than the seasoned engineer is accustomed to. Twenty-four steel wheels race along the rails, clacking from joint to joint. The big engines whine as they suck up diesel fuel. The scenery rushes past: houses, trees, the main lines on Gates's left. Conrail train ENS-121 has hit 60 miles an hour less than a mile out of the yard, tens of thousands of feet sooner than would a train weighed down by freight.

Fifteen miles to the north, Edgewood Tower switching operator Richard Hafer is expecting the Conrail. But first he's expecting a crowded Amtrak passenger train, streaking along at more than 100 miles an hour.

The dispatchers keep the radio chatter going: "Got a hot move coming for ya," says John Atkins at Perryville.

"Aaah, what are ya gonna wake me up this time of day for?" Hafer says, "It's almost quittin' time."

"Fifteen will be coming [on track] three, eighty-one will be on four and, oh, I think we" double-barrel them."

"And let the engines sit at Gunpow?"

"Sure."

"All right," says Hafer, "we can handle that."

Jerry Evans put his love for his work into a poem in 1981:

I ride my magic carpet
On ribbons made of steel
And my heart keeps pace
To the tapping of the wheels

Over mountains and through valleys
I glide on shiny rail
As the boxcars float behind me
Like the wind through a stallion's tail

I am the mind, my hands are the nerves
As I pilot my carpet by the sea and around curves

The power is addictive, feelings immense
But now my ride is over
Mommy, can I have ten more cents?

At 1:23 pm on January 4, Evans has just crossed the city line out of Baltimore. He lets the Amtrak train's speed build to about 120 miles an hour. It's suposed to be capped off at 105, because the Colonial today includes one of the older Heritage passenger cars, built in the 1950s and not designed for the highest speeds. Amtrak's express Metroliners, the fastest passenger trains in the country, routinely operate at 125 miles per hour. But the Colonial is not a Metroliner.

Like nearly all Amtrak engineers, Evans used to work for Conrail, where the trains are slower, noisier, dirtier. Freight engineers are out of the public eye, they don't haul human cargo, and they admit to being more casual about their work.

Some engineers stay away from passenger trains, because they can't stand the mandate for high speed. Not Jerry Evans: He likes to go fast, just like any other engineer drawn to the high-speed Amtrak engines. In his auto, he's earned eleven speeding tickets since 1969, though nothing alcohol-related, no reckless driving, just speeding.

Evans and his Amtrak colleagues are proud of their work and consider themselves no less professional than airline pilots. Their railroad competes successfully for passengers with the airlines in the Northeast, claiming a 32 percent market share of the commuter traffic between Washington and New York, more than any one airline. But to maintain that share, speed is of the essence.

At the controls of the Colonial, Evans presses on. He didn't have to work today, but took the extra duty for the $140 that will go to fixing up the house in Overlea. He's missing the christening of his best friend's little girl today and doesn't feel good about that. But Denise will stand in for him at the church.

Inside car 21236, the passengers have settled in comfortably. They have plenty of leg room and head room, open luggage racks overhead, no seat belts, a smooth ride, and the confidence that they're using what they've been told is one of America's safest ways to travel.

Conductor Donald Keasey comes through the car.

He takes a $29.50 ticket from a sixteen-year-old girl who wants to be an astronaut, an ambition that became unsettling to her mother after the space shuttle Challenger exploded.

When Ceres Horn arrived home after school that day, Susan Horn's eyes fixed on her daughter's and the two rushed into a hug. "Precious," her mother said, "I don't want you to become an astronaut. I just couldn't live with you coming into that kind of danger."

But Ceres pulled away. "Mommy," she said, "I can't think of a better way to get to God than to be blown up to him."

The conductor steadies himself from seat to seat as the train races on. He comes to Christy Johnson, who has unfinished business in California, where she's helping a Palo Alto probation officer counsel a teenage drug abuser. Christy hands Keasey her $41 ticket.

He comes to T.C. Colley, who paid $58 for this ride after leaving a note on a dormitory buddy's door in Providence—"I'm coming back. Are you?"

Amtrak's Colonial 94 rounds the sweeping curve that will bring into view the Gunpow switch.

Chase, Maryland, is a small town on a peninsula near the Chesapeake Bay. It is populated by working-class residents whose well-kept homes front the brackish waters of the Gunpowder River.

On the afternoon of January 4, many residents of Chase are at home watching the NFL playoff game on TV. A few minutes before 1:30 PM, the Giants have punted into the 49ers' end zone and there is a pause for a commercial. The Giants are ahead, 7-3.

At 1:27, Gates and Cromwell pass Gunpow's "distant signal." They are two miles from the switch into the main line, and the signal is telling them to slow down. The in-cab alerter whistle tries to sound but has been stifled.

The Conrail engines go past the signal at 60 miles an hour without slowing.

In front of the brakeman's seat on the left side of the freight cab is a bright-red emergency brake valve. The rule book recognizes the brakeman as a back-up to the engineer. He must call out the positions of the signals he sees, confirm the engineer's answer, and respond to the signals if the engineer fails to do so.

Today, Ed Cromwell does none of those things.

There is a safety device designed for just such an occasion. It is called automatic train control, or ATC, and although all Amtrak trains on the northeast corridor have it, most other trains do not. If an ATC-equipped train passes a signal that says slow down, and the train doesn't, ATC kicks in, the brakes are applied, and the train slows down.

ATC would start braking Ricky Gates's train now—if Ricky Gates's train had ATC.

The Conrail engines race up to another signal, less than a mile from the Gunpow switch, telling the crewmen to go even slower and to get ready to stop. They fly past as if it isn't there.

Moments later, at 1:29 p.m. Gates spots the "home" signal up ahead, 350 feet from the main line. Even through his oil-smeared windshield, the bleak winter sunlight paling the signal's amber dots, he can make out what it says: "stop". That means the switch is closed, and that means something is probably coming on the other track—the high-speed passenger track.

The experienced engineer in Gates snaps to. Now, 1,500 feet from where track meets track, he only wants to stop.

The throttle is cut and the emergency brakes are slammed on. The three engines jerk as the wheels lock and slide along the rails, squealing and spewing sparks. Gates and Cromwell are suddenly at war with 400 tons of machine going 60 miles an hour.

They can't stop in time. The engines go through the closed switch, throwing it open and breaking into the main line. When they stop, Gates and Cromwell find themselves sitting on the high-speed track, with part of their rearmost engine straddling the switch behind them.

Gates is breathing hard.

He and Cromwell know they're in a bad situation. They can't turn right, can't turn left. If something is coming behind them, they probably can't outrun it. They might be able to back up, to go back over the switch. The engineer throws the engine into reverse.

Cromwell looks back down the mainline track. He sees the powerful headlight of a train as it rounds the curve. He shouts over the din of the diesel engine:

"There's something coming! Jump!"

Cromwell sprints away.

Alone in the cab of Colonial 94, Jerry Evans is doing what engineers normally do when the visibility is clear—focusing on the horizon, as far ahead as he can see, where the rails meet the sky. Highspeed trains need a lot of room to stop.

The horror stories of veteran engineers spill out in taverns near the railroad yards: kids who stand with their bicycles on the tracks until they can get the engineer to blow the horn; older kids who suspend manhold covers from overhead passes just to see what happens; teenagers in a car waving beer cans and pulling away a few seconds before the train comes by; one too many drivers trying to beat the train at a crossing. Engine-makers have given the cabs bulletproof windows, across which birds sometimes explode like balloons filled with red paint.

At night the engineers see a locomotive headlight in the distance and they're not always sure it's not on their own track. They can feel their hearts beating.

Despite the dangers, engineers don't often get hurt. But railmen still talk when the companies cut back on maintenance and safety employees, and some worry about the drunks and drug users, too. There has been a general feeling for some time that the rent is past due.

As for Jerry Evans, he's a family man, and he takes no chances. He lost his mother last fall, and it made him think about the fragility of his own life on the job. He wrote out a will and discussed his feelings with Denise in November. At first she didn't want to hear about it, but Jerry said it was best to be safe, to worry about herself more than him in the event of an accident.

Then he told her, "If anything ever happens to me out there, don't settle."

In the cab of Colonial 94, Evans scans ahead as the Gunpow switch comes into sight around the curve, 54 miles out of Washington's Union Station. A patch of Conrail blue occupies the place 1,500 feet ahead where his train is going.

He throws the Colonial into emergency at 1:30 pm. The braking will last fourteen seconds.

The passengers in car 21236 lurch slightly. Conductor Keasey has just finished collecting tickets in the first three cars and thinks to himself, "I wonder what Jerry's doing up there."

Harold Bergin, a chef from New York heading home after the holidays, looks up from a magazine story about how to make risotto. He's got his Walkman on and can't hear the pair of skis rattling in an overhead rack. His wife, Kyra, continues reading a New York magazine.

In the locomotive, Jerry Evans is going through the moments that his wife will later be unable to shut out of her mind. She will feel his terror, and she will wish that somehow she could have held him.

Evans does not jump from the cab; it probably wouldn't have mattered. The physical pain is gone in milliseconds. The poet with the boyish passion for trains will be eulogized as the "the best darn engineer."

Northeast-corridor radio traffic, 1:31 pm, January 4:

"Just talkin' about somebody in emergency here. Just a minute."

"Ya hear that, power director?"

"1SL, 2SL Perryville?"

"Yeah, what is it?"

"Transmission."

"We just lost power."

"He lost the transmission line."

"Oh, shit."

"What happened?"

"Those engines went through the signal at Gunpow. They said that and, ah, 94 got into them. We need ambulances at Gunpow. Right here at the interlocking, evidently."

"He hit 'em."

"He sure did."

A fireball mushrooms at the point of impact. Harold Bergin is thrown forward and sees a bright-orange light filling his window. He shouts to Kyra; "Hold on!"

The Colonial has slammed into the side of the rearmost Conrail engine straddling the switch and the main track. The lead Amtrak engine disintegrates, and the Conrail locomotive explodes into countless pieces, the largest a chunk of scorched metal the size of a motorcycle. Thousands of gallons of diesel fuel are ignited.

Almost a quarter-mile south of the switch, the Colonial's rear cars continue forward, shoving those ahead off the tracks in a zigzag chain reaction. For ten seconds the entire crumpling mass slides forward along the tracks.

Cromwell is running for his life, cringing under a canopy of shrapnel flying all around him. One piece fractures his lower leg and drops him to the ground. He gets up and keeps running.

The empty café car behind the Amtrak engines is heaved on its side and slams to the ground, scraping along the rails. The next car, 21236, also flips sideways. Bergin watches the ground passing by the window as thunder envelops everything, muffling the screams. Seats break free and tumble everywhere. Luggage and people fly. Bergin is hurled forward more than ten feet into the aisle, stopping when his head hits the back of a seat.

The front of the care corkscrews, its thin aluminum skin ripping into huge, jagged blades. It cracks and buckles as the mass of burning wreckage slows and finally stops.

The first thing Bergin can't figure out is why he can't hear screaming and crying. He doesn't know that half the people who have shared his car are dying and others are unconscious.

"Harold?" It's his wife calling.

"Kyra?"

They can't see each other because of the gathering black smoke of the diesel fuel and the twisted heap of luggage and chairs. He has lost his glasses, and she has blood dripping into her eyes.

"Find your way out," says Harold. "I'll find my way out. Just get out."

Kyra gets out through a window and drops shoeless to the cold, sharp gravel. She sees how the network of overhead wires is tangled around the wreck—a huge, battered insect in a broken web.

Harold is in one end of the car and doesn't see many signs of life. He climbs back and forth, desperately looking for an excape. His only route is partially blocked by a man who is pinned to the floor, alive and conscious. Harold has an injured left shoulder and cannot free him. The thought of just climbing over the man and leaving him is sickening, but there's no other way to go. Harold apologizes as he clambers over the man to safety.

The Bergins try to get their bearings. Other passengers are already milling around, some moving purposelessly in shock. As the Bergins huddle together and the cold air tightens the blood on their faces, they look across a drainage ditch to see the gathering people of Chase looking back at them—each side staring in stunned disbelief.

Some of the Chase residents are crying. Finally one woman shouts, "Does anybody want to use my telephone to call their families?"

Reality comes to Rick Gates in pieces, an escalating image of catastrophe that his mind tries its best to deny. At first he clings to the hope that no one was killed. He's worried about Butch, because he didn't see where he went. He has no idea what happened to the Amtrak engineer—who he will later learn was someone he'd passed many hours with when they both worked for Conrail.

As black smoke billows from the heart of the wreckage, Gates runs back to the largely intact Conrail lead engine, which was pushed 900 feet up the tracks, away from the wreck. He grabs the fire extinguisher and shouts "Emergency, emergency, emergency!" into the portable radio. He keeps shouting but can't raise an answer from any of the area towers.

He runs back to where some of the cars have piled up onto the back of an Amtrak engine, which is crushed into the track bed with one care elbowed over it, and there Rick Gates is confronted with his first casualty. A man pinned between the engine and the top car is moving his head and moaning as the fire creeps toward him. Gates chips away at the flames with the fire extinguisher as emergency workers show up. The man is rescued, but he will die a few hours later.

Gates races back and forth around the wreckage. People who know him begin arriving, members of railroading's extended family who happen to live nearby. Former Contrail engineer Pat Kelly finds him pumping the radio for help. Gates gives him the radio and Kelly asks what happended. "I blew a red," says Gates. "I got through a switch and I couldn't get back."

Gates goes looking for Butch, who by now is calling his girlfriend, who also lives nearby. Cromwell tells her he's okay and adds, "I think I'm going to lose my job."

A Conrail conductor and his wife walk onto the scene at about 1:45, the wife thinking to herself, "This can't be real. Whoever did the special effects in this movie is going to win an Oscar." As George and Harriett Telljohn come upon their friend Rick Gates, he is pacing around frantically in his oversized brown leather flight jacket, holding on to the receding hope that no one has died.

The Telljohns assume that Gates has also just arrived. "Rick, what are you doing here?" asks George, who will remain Gate's close friend right through the worst of what is to come. "How'd you get here so fast?"

"I was the engineer," says Gates. "Butch was with me. Go find Butch." Telljohn goes looking for Cromwell. Harriett Telljohn and Gates remain talking as rescue workers walk by with a stretcher bearing a lifeless human form beneath a white sheet. It passes two feet from the engineer, who shudders. He then overhears a fireman's orders to another rescue worker. "There's another one over there in the bushes. Go get it."

"Oh my God," says Gates, falling into Harriett's arms and sobbing.

At a little past 1:30, paramedic John Waskevitz and his wife are going shopping. They heard an explosion a few minutes ago, but it sounded like an artillery test at the Aberdeen Proving Ground on the other side of the river.

Waskevitz notices a column of dark smoke to the north. The firehouse alarm sounds. He heads for the smoke. At the tracks he sees people removing suitcases from some of the rear cars. Waskevitz, the first emergency worker on the scene, makes his way to the wreckage through clusters of dazed survivors.

He climbs onto the mangled car perched unsteadily at the top of the wreckage. It is passenger car 21236. He looks into the smoke-filled car and sees a mass of seats broken loose. He wriggles inside through a broken window. One victim is buried under the seats. Waskevitz checks for a pulse in her neck and feels none. He digs further, snaking along on his hands and knees, or on his stomach, stashing debris behind him like a mole. He comes to another victim, her neck apparently broken. She too is dead.

He hears cries for help and comes upon a woman in her thirties, pinned to the floor of the car by a seat. He tries to free the seat but it's pressured in. In moments he will be joined by the first two police officers on the scene. They will finally free the woman after about an hour, when the accident scene will have grown into a complex emergency operation.

A total of 507 firefighters from 23 engine companies have responded, in addition to 509 county police, 185 state police, and 60 Amtrak police; 200 Red Cross workers and hundreds of other volunteers and medical personnel; and more that 600 residents of Chase. Over the next few hours, the rescue forces set up command posts, aid stations, and staging areas for transporting the injured.

The first ambulances to arrive are raided by panic-stricken survivors who loot them of tape, gauze, first-aid kits, anything they can reach. In all, 175 passengers will be listed as injured.

The people of Chase respond in a hundred ways. Two boys are the first of more than 30 local volunteers who go into the cars and carry out the injured. Seventeen-year-old Michael Booker is unnerved by the limp body of an infant in his arms. He later will learn that the child survived.

Neighbors bring out blankets and first-aid supplies. One man works his backyard garden hose on a spreading brush fire. Two young men place lawn chairs on the roof of a nearby garage and eat dinner while they watch.

Still others whose houses are clustered along the tracks bring survivors inside, offering blankets, coffee, telephones. Their homes are transformed into communications centers, first-aid centers, bases for reporters and photographers. Some houses end up with bloodstained floors and carpets thick with mud. The county will later solicit requests for reimbursement.

On the other side of car 21236 from where Waskevitz is still working, rescue and trauma workers are struggling to save three people trapped in the maze of steel. At least two other people are also trapped and still alive there.

Dr. Ameen Ramzy of University Hospital's Shock Trauma Unit in Baltimore is accustomed to seeing seriously injured people hanging at the edge of their mortality, and he has brought many of them back. He worked in a Beirut war zone a few years ago. But nothing has prepared him for this daylong succession of disappointments. Of the fifteen passengers of the Colonial who are killed, thirteen are aboard car 21236.

The trapped victims are really trapped, by tons of steel and other debris. If the doctor can get some of them intubated with fluids, he can increase their chances of survival. But some of them are nearly impossible to reach.

Paramedic Kathy Smith is tending to a small boy and his grandmother in one end of the car. Seven-year-old Adam Moore, of Neptune, New Jersey, is pinned by his grandmother's crushed legs, a buckled seat back, and a wall.

"Let me out of here," Adam says. "Why don't you help me?"

"Hush, baby," his grandmother says weakly. "They're trying to help."

"I want to go home."

"We're going to have you out," the paramedic says. "It won't be too much longer and you'll be headed home."

"Do I have to go by train?" Adam asks.

A cold stream of fire-suppression foam pours into the car, pooling around him. Now Smith has to worry about hypothermia. She urges doctor to consider amputating 52-year-old Peggy Moore's legs as a last-ditch effort to save both victims. The doctors aren't sure it would work.

As doctors run intravenous lines to them and firefighters struggle with the immovable steel, the boy and his grandmother grow weaker and drift in and out of consciousness. Each time he opens his eyes, Adam asks how long it will be. He dies about three hours after the crash, within minutes of his grandmother.

A paramedic who labored over him for hours pleads, "Doc, are you *sure?*"

Nearby, a woman is extricated alive and flown to the trauma unit, where her legs are amputated. She lingers for eight days before dying.

Outside the top car, a doctor is stopped by a man with a slight injury to his face. He says he would like to leave the scene, but would the doctor mind certifying his injury? "I'm sure my lawyer will be mad at me later if I don't get one now," he says.

Maryland National Guard troops erect a large canvas tent—a morgue.

By nightfall, county police chief Cornelius Behan turns to a police major and says, "Keep in mind that this could turn into a criminal investigation." Police then seal off the area around the Conrail engines up the track. But by this time a number of people, including Rick Gates, have been in and out of the cab. The cab is now clean. Gate's and Cromwell's belongings are soon returned to them unexamined by police.

As rescue efforts continue, federal investigators clamber through the wreckage. Some of what they find will lead them back to the cab of the Conrail locomotive at rest up the track, and some will lead them far beyond.

Susan Horn hears of the wreck over the car radio on her way home from Penn Station and immediately starts talking to God: "Please don't let that be her train." Her nine-year-old boy remains unwaveringly optimistic. "Mommy," says Howie, "I know she's all right."

At home, they guard the telephones and monitor the television. Early in the evening, Susan calls her husband in Haifa, Israel: "Roger, it's bad news. There's been a train crash with Cere's train. It's been hours and we haven't heard a word. We have to assume that at best she's been very seriously hurt." Roger Horn is given an immediate "compassionate case" seat to New York by El Al. He will spend the thirteen-hour flight trying to assume the best, his stomach twisted into a knot.

The Horns hear nothing until after dawn, when a family friend goes to the morgue at the crash site and locates Cere's body.

Susan, Corinne, and Howard huddle together for strength on Monday. Roger calls from Kennedy Airport in New York that evening. "I love you," he tells them. "There's a lot of love in our family and it will get us all through this."

In Potomac, Arthur and Ann Johnson spend the early hours calling for information, the silence giving them no comfort. They call their daughter Joy in New York, who reminds them of Christy's paramedical training. "She's probably just busy treating people at the scene."

By 4:30 am Monday, they have joined other relatives of Colonial passengers at a Holiday Inn about twenty miles from the wreck. All they are told is to "stand by."

Ann Johnson is reading the Psalms in her Bible—the 23rd, the 51st, the 88th—"O Lord, my God, I call for help by day; I cry out in the night before thee"—and she hears them as if at a funeral.

An Episcopal minister approaches them at mid-morning, accompanied by a couple of police detectives, a Red Cross worker, and an Amtrak claims agent. Gently they confirm the worst.

One of them thinks to warn the Johnsons of the cluster of media people waiting in the lobby. Arthur turns away and says, "Somebody find me a back door."

In Pennsylvania, Tom and Susan Colley have kept vigil throughout the night, anxious about using the phone for fear they'd block their son's incoming call. They've been through this routine before. A year ago, T.C. was in an Amtrak train that hit a truck south of Chicago. Lots of cars were knocked off the track, but nobody was seriously hurt. That always comforted them when T.C. took a train rather than a plane; fewer passengers would have survived an airplane crash.

At the time, the Red Cross got T.C. to a phone to call his parents in the middle of the night. As time went on, whatever trauma he had experienced was transformed into a remembered adventure.

So the Colleys figure T.C. might just be unimpressed with such familiar territory and might have caught one of the buses provided by Amtrak.

Then an incoming phone call puts an end to that hope, and Tom Colley finds himself notifying other relatives that the only heir to the family name is gone.

Gates and Cromwell soon re-establish contact. Aware of the mounting search for guilty parties, they decide to lie.

The first rumors from the investigation by the National Transportation Safety Board hint at switcher error. But as investigators talk with people who talked with Gates just after the crash, one quotes him as saying, "It's pretty obvious what happened. I got through a red and couldn't get back."

At 1 pm on Wednesday, as workers continue to clear debris from the site of the wreck, Gates is sitting in a lawyer's office in Baltimore, surrounded by lawyers, federal investigators, and a few union men. He is telling what happened after Bayview:

". . . from there we continued north, received a clear indication on the home signal at North Point, a clear signal on the home signal at River. . . . We received a clear signal on the 836 signal at Bengies and then at the 816 signal. At that time, Mr. Cromwell was fixing his lunch and cutting open some water bottles that we could put our Cokes into.

"And I saw the 'approach limited" signal flashing—had to get right close to see it, but it was flashing. And upon going under it I called the 'approach medium' signal to Mr. Cromwell. He turned around, and I don't know whether he saw it or not, but he saw the 'appoach medium' in the cab. I acknowledged as we went under it and started to slow down a little bit. Mr. Cromwell and myself were talking, and as he fixed his lunch we were basically complaining about the engines.

"And after that—I don't remember how close I was to the stop signal, but as soon as I saw it I immediately dumped the air, plugged the engines by putting reverse in reverse and pulling back on the throttle again. I grabbed the portable radio and started yelling the emergency. And after that we—that's when the accident happened."

They ask him about the alerter whistle, "I acknowledged it so fast it didn't have a chance to go off," he says. They ask him if he was on drugs the day of the crash. He tells them no. They ask if he is a user of alcohol or drugs. After an interruption from his lawyer, he says, "Upon advice of my counsel, I will not answer that."

Then it's the brakeman turn. Cromwell says he helped Gates monitor a steady succession of clear signals on the way to Gunpow, when he took a break to prepare a sandwich and some drinks. He says he never heard an alerter whistle, and that he wasn't looking when the train approached the home signal at Gunpow:

"The next thing I remember is I was still in the process of getting my sandwich—everything all set after we went by the Chase signal—it's the 816—and I don't know how long after that, but I heard the engine jump. The engines jumped. I didn't know if Rick did it, or it was some kind of failure or derailing or what. So I looked out the fireman's side windows, and I seen the headlight in back of me. I didn't know if the headlight was stopped, moving, or, you know, what it was doing."

After the crash, an ambulance took him to Johns Hopkins Hospital for his broken leg, and later Sunday he gave blood and urine specimens. He goes on to say that he hadn't used drugs that day.

Two federal drug labs, however, will find in his blood and urine evidence of drug use—marijuana and PCP, a powerful drug sold as an animal tranquilizer.

Evidence of marijuana use will also be found in blood and urine samples taken from Gates the evening of the crash.

Gates's and Cromwell's statements are the last they will make publicly before a shroud of silence descends over their actions in the cab.

Both hide from the press. Gates resorts to waiting in the laundry room of his apartment building until the TV cameramen have left his door. He spends days and sleepless nights alternating between guilt and denial. One night in February his friend George Telljohn finds him sitting on his couch with a pile of mail, mostly hate mail, on the coffee table. Gates hands one letter to Telljohn, not lifting his gaze from the floor. A snapshot of Ceres Horn flutters to the table. The letter reads:

Dear Mr. Gates,

You don't even know me, but your life has had such a significant impact upon mine. I am Corinne Horn, sister of Ceres Horn, victim of the Amtrak crash.

I don't know if you read the newspaper articles on my sister, but if you did, you would know that she was a sixteen-year-old freshman at Princeton who was ranked second in her senior class, and graduated magna cum laude from McDonogh School . . . .

She was absolutely the best person, besides my parents, to ever set foot on this earth. . . . Resse was my better half. When I was flirting, she was studying or doing something constructive. Reese was going to be an astronaut, her childhood fantasy. And then you shot her down.

Mr. Gates, I bet you never dreamed of the consequences when you started puffing away on January 4, 1987. What could possibly have possessed you to smoke it on the job? I would understand if it was in the privacy of your own home, but not on the job.

I used to hate you for killing the only person who ever fully understood me, who could identify with me. But not anymore. Now I only pity you, because you will have to live every day for the rest of your life with the knowledge that you took sixteen lives, sixteen beautiful lives. . . .

I truly pity you, Mr. Gates, and hope that you are strong enough to face the days ahead, because I know I wouldn't be. . . . Please write back to me. You owe me at least that much.

Telljohn asks Gates if he'll write back. Gates says his lawyers won't let him.

He goes to a psychiatric hospital for drug and alcohol treatment. He attends Alcoholics Anonymous meetings. He preaches about the perils of substance abuse to his friends. Some of whom find his self-accusation unsettling. "If Rick's an alcoholic," says one of his drinking buddies from the yard, "then I'm an alcoholic. And I'm not an alcoholic."

While maintaining his claim that bad signals and equipment are to blame for the accident, Gates also tells at least one friend of his growing desire to become a substance-abuse counselor.

Already, the credibility of Gates and Cromwell—the two key witnesses to the crash—is diminishing. The evidence of their drug use and word of the taped whistle come to light. The Conrail engine's speed recorder shows that it hadn't slowed to the 40 miles an hour required by the signal that Gates had acknowledged seeing. A re-enactment shows that if Gates had obeyed that signal, he could have stopped in time.

In the last ten years the American railway labor force has been reduced almost by half. Some in the rank and file blame this for fostering an attitude of rebellion against company policies and for reinforcing the traditional spirit of "us versus them."

Amtrak's worst crash is not the first to be used as ammunition by the bitterly feuding factions of the rail industry. The tragedy briefly held the promise of uniting them in common cause, but that promise is quickly lost in a round of familiar accusations.

As the FRA and the NTSB begin closing in on a conclusion of human error, some union men continue backing up Gates' story. "I don't have any reason not to believe him," says United Transportation Union Representative Bill Packer in June. By July, Packer stops responding to inquiries.

After discovery of the taped whistle in Gates's cab, FRA administrator John Riley announces a dragnet of the five major rail yards on the northeast corridor. Despite the advance notice, federal inspectors discover six locomotives with identically taped whistles just two weeks after the crash. Later they will find 70 more across the country. Riley calls each one an accident waiting to happen. The unions ask where the inspectors were before the accident.

"I think all of us heard stories at one time or another about engineers disabling whistles," says Riley from his office on the eighth floor of the Department of Transportation building in Washington. "I don't think we reacted to it seriously, because we hadn't had one of these as the major cause in an accident. The perception was that you couldn't ever catch it because it was so easy to cover up. You not only have to find somebody who is reckless; you also have to find somebody who is stupid."

When inspectors found cabs without working whistles, he says, "we weren't calling them 'tampering.' They showed up as 'inoperative whistle'—just like any other mechanical defect."

Amtrak president W. Graham Claytor Jr. points out that the federal government is not responsible for the detailed inspection and maintenance of privately owned locomotives. "The [Contrail] management are the ones who were supposed to have caught that, not the FRA," he says.

Labor leaders call Riley a front man for the railroad companies and tell him to stay off their turf and to levy heavier fines on management violations. They say most safety problems stem from management's squeezing every dime: deferring maintenance, pushing schedules, overloading freight cars. Riley calls railroad workers honest and hard working but calls their union leaders "featherbedders." In any case, he says, "I've offended everybody—which is as it should be."

Riley wants the FRA to have the same authority over railroad engineers—who are not required to be licensed—as the Federal Aviation Administration has over airline pilots. He has no enforcement power over individual railroad employees. It is against federal law for an engineer to drink on duty, but even if Riley personally found one with a sixpack in the cab of an engine, he couldn't fine or fire him.

Meanwhile, the credibility of the railroads' new self-policing and drug-amnesty programs is in trouble. From almost every sector of the industry comes a call for mandatory random drug testing. But the unions insist that such testing is not constitutional.

Proponents say that train operators should be held to a higher standard than others, and that only drug abusers have anything to fear. Labor counters that management could use the tests to harass employees. Proponents say computer-generated random selection would prevent that. But union officials respond to their constituencies by trying to shout down random testing at hearing after hearing.

In public they lash out at the companies and the regulators before more gently censuring some of their own, even as a few privately admit that nothing else has prevented on-the-job drug abuse.

Riley accuses the unions of sacrificing safety by using the random-testing issue as a bargaining chip. "They could help us a lot on safety, but the price of cooperation is always 'alcohol and drugs,'" he says. "It ain't gonna happen."

In the months after the crash, many of the railmen's taverns on the northeast corridor note a drop in business. Predictions are that it will bounce back.

In March a Conrail freight train overruns a "stop" signal just before a track junction near Philadelphia, with an Amtrak Colonial following behind. Automatic signals warn the Amtrak engineer, and he is able to stop his train well before the switch. The Conrail engineer is drug-tested and found to have marijuana metabolites in his blood and urine. Amtrak bars him from its tracks.

In September a Conrail brakeman in the Bayview Yard—one place where it would seem self-policing would be working well—faces his fourth charge of driving while impaired by alcohol. He has 26 prior traffic convictions and 6 license suspensions or revocations. His drinking habit is no secret in the yard. He is still working on the railroad.

Amtrak comes out in support of random drug testing, but Conrail opposes it, saying that its program of "reasonable cause" testing is good enough.

Several months after the crash, legal maneuvers leave Rick Gates more isolated than ever. He and Cromwell have been forced to resign, and Conrail stops paying for their legal defense.

Baltimore County state's attorneys find a statute that would allow an engineer to be charged with manslaughter if the state can prove gross negligence. They subpoena Ed Cromwell, the brakeman who has made himself scarce even among fellow railroaders.

In a meeting, they convince Cromwell and his lawyer that under state law any crewman in the cab can be indicted and convicted of manslaughter.

The defense attorney and his client decide to make a deal if state and federal prosecutors promise immunity from prosecution, in writing. The deal is made. Cromwell will tesify in secret before a grand jury, and he will tell of the marijuana, the missed signals, the cover story—everything.

The manslaughter indictment of Rick Gates arrives on May 4. The accused appears in public for the first time since the crash wearing mirrored sunglasses as his lawyer denies charges that his client killed sixteen people with a runaway train. Gates is in court for preliminary motions twice during the summer, each time sitting stiffly, with a thousand-yard stare, as his team of public defenders whisper among themselves, rarely turning to their client.

Roger Horn is there, wrestling with his feelings of pity for the accused and bitterness over the loss of the daughter he called his "best friend." Susan Horn stays home, declaring her sympathy for Gates and Cromwell but adding that part of their punishment should be to have to live with a victim's family for a week.

In considered moments, most of the victims' families say that they know the crewmen never meant to harm anyone, and that they must be suffering, too.

Railmen at the Bayview Yard take up a collection for Gates, in part to help him make his child-support payments. Thirteen friends have pitched in to make his $5,000 bail. There is no serious discussion of helping out Cromwell. They know he is working with the state.

Gates asks a friend how Butch is doing.

"Why should you care about Butch?"

"I pray for him every day," says Gates, startling the friend, who thought he was an agnostic.

"Even though he supplied the drugs and then worked for the state so he could get off scot-free?"

"All the more reason to pray for him," says Gates.

(Stated in its most basic form, the cause of the accident was the failure of Amtrak Number 94 to stop before striking Conrail ENS-121.—Conrail's "proposed probable case," submitted to the NTSB.)

At the congressional rail-safety hearing on that hot Thursday in July, Tom Luken, chairman of a House transportation subcommittee, is grilling the FRA's John Riley about safety in the wake of the Amtrak-Conrail crash.

Riley sips his water as he parries the Ohio Democrat's pointed questioning. He produces charts and graphs of what he calls improved safety statistics.

"Now, these figures are impressive," responds Luken, "but are they possibly misleading?"

A union man cannot stifle a guffaw. Labor leaders sit on one side of the room, enjoying Riley's discomfiture.

It's said that some Conrail officials are here, too. Their company moves more freight than any other in the region, but since January 4 its public presence has been almost invisible.

Amtrak's Graham Claytor testifies that there's no need to increase the fines for management safety violations because citations are insult enough. Anyway, he points out, in fining the heavily subsidized Amtrak, the federal government would be, in effect, fining itself.

All the while, Roger Horn the parent sits on the floor in the lee of the half-wall separating the constituents from the politicians.

Sometimes he asks himself, "Why am I doing this? Why is it up to the wounded citizen to do what these people are paid to do?" He thought he could protect his family from a dangerous world. Safety was the first priority. He never allowed his children in cars driven by teenagers. They held an alcohol-free party for Ceres' senior prom. Now, he says, he feels "stripped of my manhood" by forces beyond his control.

By 4:30 pm, there are fewer than half a dozen spectators left in the once-jammed hearing room. It's time for Roger Horn and Tom Colley and Arthur Johnson to testify. They gather at the witness table.

Johnson is a former administrator at the National Oceanic and Atmospheric Administration and a veteran of congressional hearings. His daughter Christy was crushed and suffocated in Colonial 94. "On several occasions," he says, "I have listened in amazement and disgust to representatives of labor and other lobbying bodies as they consistently resist efforts to strengthen the law, even though their own members would be the first to benefit."

Chairman Luken leaves, explaining that he must catch a plane back home. Now only one congressman is left.

Colley testifies in the nearly empty room. The bearded professor of theater from Shippensburg University speaks in a calm but impassioned voice about how his eighteen-year-old son, T.C., was burned before dying of smoke inhalation. T.C. was his only child, the fourth Colley to be named Thomas, the one who promised to name his own son Thomas.

Now it is Roger Horn's turn. Traces of emotion slip into his otherwise academic delivery. Before reading a statement, he brings up the idea of jail time fo railroad executives whose employees are found to be negligent. "That will get their attention," he says.

He urges Congress to pass a tough rail-safety bill. "We have learned to our horror," he adds, "that neither the railroad companies nor the railroad unions will voluntarily enforce appropriate levels of operating safety, not even those railway companies that are actually creatures of the federal government."

The victims' families linger in the hallway after the hearing. They share their frustrations, their disgust at what they see as a daylong display of self-preservation.

They've watched as each party used the tragedy for its own purposes. The actions of the two Conrail crewmen made it the perfect case for we-told-you-so's from company management and the FRA. Equipment problems like the lack of automatic train control and untested safety whistles served the same purpose for labor. "Watch out," said a labor lawyer in passing. "There are more crashes coming."

The families are angered by Conrail's absence from the public process. They give Amtrak's Claytor credit for facing the heat, even if they aren't happy with many of his answers.

Some progress has been made. The FRA proposed phasing in automatic train control on every train in the northeast corridor over two years. Amtrak agreed to install luggage-restraint systems in four cars and to equip the rest of the fleet if they work. Amtrak and Conrail already agreed to reduce freight-train presence on high-speed tracks.

Horn and the Colleys are car-pooling north toward home in Washington's rush-hour traffic, wondering aloud how to assign blame.

They've heard about how the operators of the errant Conrail engine had used drugs; how federal inspectors had failed to monitor the problem of disabled safety devices; how the FRA and the NTSB had for a time pursued the case for automatic train control; and how labor continues to fight against federal licensing and random drug testing of crewmen.

Roger Horn falls silent for a time, until the traffic comes to a standstill. "There's enough blood to go around for everybody," he says.

ARMENIAN ASSEMBLY HONORS CALIFORNIA GOVERNOR GEORGE DEUKMEJIAN

Mr. PRESSLER. Mr. President, earlier this month, on October 10 in Boston, the Armenian Assembly of America hosted a dinner to honor California Governor George Deukmejian for his outstanding contributions to his State and our Nation. I very much appreciate having been invited to this gala event by Mr. Hirair Hovnanian, chairman of the board of trustees of the Armenian Assembly. Mr. Chuck Haitaian and Ross Vartian, who know how I came to be interested in Armenian issues through my position as the former chairman and current ranking member of the Senate Foreign Relations Subcommittee on European Affairs, also have my gratitude for their assistance to me.

I was privileged to attend this salute to Governor Deukmejian and to meet so many leaders of the Armenian community here in the United States. It was an honor to be included in the distinguished company of our colleagues—Senator Bob Dole, Senator Ted Kennedy, Vice President George Bush, as well as several of our colleagues from the House of Representatives. Senator Dole, Senator Kennedy and Vice President Bush made stirring speeches about Governor Deukmejian and the nearly 250,000 Americans of Armenian descent.

Mr. President, I ask unanimous consent that the text of their remarks, as well as those of Governor Deukmejian, as printed in the October 22, 1987 edition of the California Courier appear in the Record following my remarks. In addition, I ask that an article on this event from the October 15, 1987 edition of the Armenian Reporter also be included in the Record.

Nearly 1,000 people attended the dinner honoring Governor Deukmejian. It was held in conjunction with the Armenian Assembly's National Conference. Again this year, one of the highlights of the conference was a discussion of congressional resolution recognizing a "National Day of Remembrance for the Victims of the Armenian Genocide" in the Ottoman Empire earlier this century.

The conference participants, as well as the speakers at the dinner, expressed serious disappointment over a defeat of the resolution on a procedural motion in the House of Representatives last August.

Mr. President, the Senate has not yet acted on the companion resolution, Senate Joint Resolution 43. We have an opportunity to move on this measure yet this year, and I encourage all of our distinguished colleagues and their staffs to look at it very carefully. It is a simple reaffirmation of this Nation's traditional recognition of the terrible suffering inflicted on 1.5 million people of Armenian ancestry who were victims of the genocidal policies of the Ottoman Empire from 1915 to 1923.

Some have argued that we dare not pass such a resolution on the grounds that it would offend our allies in Turkey and threaten continued Turkish participation in the NATO Alliance. Mr. President, that argument is nonsense. The genocide against Armenians resulted from policies of the Ottoman Empire, before the current Republic of Turkey came into existence. It would strengthen, rather than weaken, our vital alliance with Turkey if Turkish leaders would stop lobbying against the "National Day of Remembrance for the Victims of the Armenian Genocide" resolution. As I have said before on this floor, Turkey should permit the historians and other scholars of the world to examine the archives of the Ottoman Empire period for evidence that would resolve this genocide issue. We have thousands of eyewitness accounts from survivors of the Armenian Genocide, as well as from American and other diplomats who served in Turkey during the period in question. One or both Houses of Congress have approved resolutions recognizing the Armenian Genocide on four occasions. Ten U.S. Presidents have recognized the Genocide.

Mr. President, the Senate should act soon to reaffirm these previous condemnations of the Ottoman Empire's efforts to annihilate the Armenian ethnic group.

There being no objection, the material was ordered to be printed in the Record, as follows:

[From the Armenian Reporter, Oct. 15, 1987]

"Governor Deukmejian, Senator Dole in Boston Interviews Explain Positions; Comment on Future, and Discuss Armenian Political Aspirations, Goals"

(By Florence Avakian)

Boston, Mass.—In a pride-packed weekend in Boston, the Armenian Assembly officially came of age on the American political scene. Forums were held with congressmen, academicians and journalists: press conferences took place with high public officials, and presidential candidates including the Vice President of the United States, addressed the Armenian community in person. And the catalyst for all this was California Governor George Deukmejian whose 25 years in public service was celebrated with much fanfare.

To provide food for thought during the festivities, two panel discussions were held with experts. Entitled "Challenges for the Nineties." this panel, closed to all (including the press) except Armenian Assembly officials and trustees, examined challenges that the Assembly will face in the fields of government, international relations, media and academia. It featured Kenneth Kachigian, former speechwriter for Presidents Nixon and Reagan; Edward Djerejian, Chief Deputy Assistant Secretary of State for Near Eastern and South Asian Affairs; Tamar Manjikian, a copy editor at the Los Angeles Herald Examiner; and Khachig Tololyan, Associate Professor of English at Wesleyan University.

Another panel analyzed the role that the media, polls, party conventions and political action committees will play in "Campaign '88". Participants were Congressmen Robert K. Dornan (R-CA) and Sam Gejdenson (D-CT); syndicated political columnist and TV commentator Mark Shields; and two-time Pulitzer Prize-winning journalist Steve Kurkjian. This session became an entertaining contest of clever, rapid-fire political jabs, each speaker vying for the most laughs.

In a serious presentation, Kurkjian, chief of the Boston Globe's Washington Bureau, emphasized the role of the press in informing the public "so they can make intelligent decisions." For Armenians, he stressed, this means getting their message through in an "articulate, clear and consistent fashion according to the American way," so journalists can convey it to the American people.

DEUKMEJIAN PRESS CONFERENCES

This theme of information and education was the main focus of press conferences on Saturday afternoon, October 10, held by Governor George Deukmejian and Senator Robert Dole (R-KA).

In two separate meetings—one with the general press and another with the ethnic Armenian press attended by a large contingent of Armenian print, radio and TV representatives, the California Governor again and again pointed to the need for educating and informing the public, Congress, Administration and presidential candidates with respect to the history and recognition of the "Genocide against the Armenian people. Unfortunately, the representatives of Turkey have tried for some time now to distort the historical record." However, he said, he did not favor a litmus test for candidates. "You don't gain anything from making a demand and requiring a commitment. Most public officials respond better to first receiving the facts, weighing them and then making a judgment."

Concerning the recently defeated HR resolution designating a Day of Remembrance for the Armenian martyrs, he "regretted" that it went down on a procedural vote and not on its merits. "We Armenians have a reputation for persistence and survivability which will keep the issue on the front burner." he stated.

To a question by this writer concerning the value of the resolution, and what new strategies could be used by the Armenian community to insure the resolution's success the next time around, he answered that "it places the world's greatest power on record in recognizing the wrongs committed against the Armenian people. It is a reminder to the world that we must be vigilant so that this sort of atrocity is not repeated," he stated forcefully.

In terms of community action, he urged Armenians and "their friends from other ethnic communities who have suffered considerable oppression" to pressure their elected representatives while at the same time informing the public through letters to the editor, opinion articles, etc. "We have to recognize that the Turkish government is spending large sums of money to influence American public opinion against us. Since the Armenians don't have a government or government funds, we have to be more vigorous, more effective in our grassroots efforts."

EXPAND EFFORTS TO INFORM PEOPLE

In a followup question, I asked why the American people should be excited about this question when they are not generally concerned about current foreign policy questions, and how the Armenians could educate them. The Governor agreed that though the American public "on the whole" is not well informed, efforts must be expanded to inform them better. He pointed out that there are more Armenians than Turks in this country which translates into votes. "The Turkish government," he said, "is having its success not so much with the American public, but with the government in Washington, using the alliance and the bases as their leverage." By continually raising the issue, he predicted that "hopefully the conscience of this country and Administration in standing up for human rights will get through."

To a question raised by this paper's editor on the implications of the military relationship between the United States and Turkey, the Governor answered there was "nothing whatsoever inconsistent with Turkey remaining a military ally and at the same time acknowledging the Genocide." He pointed out that Japan and Germany were U.S. enemies, but today "we are good friends and trading partners and their governments have acknowledged their wrongs."

Pressed to comment on a letter sent by Secretary of State George Shultz to Mr. Alex Manoogian which stated that President Reagan opposed the Remembrance resolution, the Governor expressed surprise and characterized it as "wrong" if true. The President, he said, was well aware of what occurred in 1915. "His mother would talk about the plight of the Armenians. And when Reagan was governor, he spoke of it, and wrote statements acknowledging the Genocide."

Pointing out the positions of the European Common Market and Amnesty International with regards to Turkey's denial of human rights, Deukmejian said Turkey would "stand taller" before the world if they spoke the truth. But the Governor also acknowledged in response to another question that the U.S. in "bargaining away human rights for narrow temporary gains makes American foreign policy less effective."

WHO WOULD REPRESENT THE ARMENIANS

Asked whether the U.S. could play a role in bringing about reconciliation between the Turks and Armenians, he emphatically answered yes. "If they wanted to. It would be a marvelous thing." He then added, that "our government might ask why not have a dialogue between Armenians and Turks, and then the question would be who would represent the Armenians." This remark drew a laugh from all present.

In such a dialogue, he said, issues could be opened up such as "freedom to live in an area that was our homeland or throughout Turkey. Given that opportunity, Armenians will make marvelous contributions. Armenians did that when a greater number were allowed to work there. Too bad the Turkish government and people don't see the advantage to their own country of Armenian capability."

Finally Governor Deukmejian concluded the hour-long press conferences by restating that he will not seek the 1988 Republican presidential nomination. Rumored to be a supporter of Vice President Bush, he also said that he will not endorse any candidate prior to the convening of the Republican Convention next summer.

DOER, NOT TALKER

During the hour-long press conference, this writer was impressed with George Deukmejian's sincerity, concern and dedication. He's not your typical joking, back-slapping, baby-kissing politician. Shy, laid back, he seems to be someone much more comfortable out of camera range, tackling the affairs of state.

Not a glib speaker, he carefully phrases each thought, often accompanying it with a warm smile. It is obvious that he prefers to be doing rather than talking. In the rough-and-tumble—and many times clawing—world of politics, it is almost remarkable that this quiet worker has made it to the top in a state used to leaders with bizarre behavior or macho theatrics.

U.S. MUST RECOGNIZE GENOCIDE

Senator Robert Dole, an announced presidential candidate for 1988, in a 15-minute press conference, stated to a large contingent of American print and broadcast media that he was in Boston to honor Governor George Deukmejian whom he's "known for a long time and who has done an outstanding job. He has set the pace for Republicans of large states. And he has a political future," he stated.

Turning to the Remembrance resolution, the Senator said he would not favor a litmus test for presidential candidates, but that it was "about time we recognized the Genocide against the Armenians." He said he had not discussed the issue with the President in answer to a question by this writer, but he pointed out that when the Genocide Convention was passed in 1985 by the Senate "under my leadership", he had spoken about the Armenian Genocide.

Dole again recounted to the press his long-standing relationship with the late Dr. Hampar Kelikian who repaired his shattered right arm following extensive injuries in World War II. "He treated me many times over a 37-month period," the Senator said emotionally, "and never took a dime. Through him I learned about the injustices of the Turks."

Following both the Dole and Deukmejian press conferences, this writer listened in as the United Nations correspondent for the Turkish daily Hurryiet, went up to both officials and asked them to comment on Turkey. Both Deukmejian and Dole acknowledged the validity of the military alliance between the U.S. and Turkey, but they also emphatically stated without hesitation that Turkey must admit its past wrongs with regard to the "Genocide of the Armenians."

[From the California Courier, Oct. 22, 1987]

REMARKS OF GOV. GEORGE DEUKMEJIAN

I want to express on behalf of Gloria and myself how much we appreciate the outstanding role that the Armenian Assembly is playing on behalf of the entire Armenian community throughout the world, and to thank the organizers and members of the board of trustees and the very active members for the support that they have extended to this outstanding organization and to thank all of you who have come here this evening from throughout the United States, in fact, there are some here who have come from outside the United States, to join with all of us in this effort to demonstrate to the American people, to our representatives in our American government, the role that Armenians play in their communities and in our great nation.

As it's been said tonight, I think this dinner with the outstanding government leaders who are present with us this evening, demonstrates that the Armenians throughout this country are involved in government, want to participate in this great country and make further significant contributions in the years ahead.

I am also most honored that you would set up a fund in my name for the purpose of encouraging young people, and middle aged people and perhaps some old people to encourage them to get more involved in public service. So having participated now for 25 years myself, I can tell you there is indeed great satisfaction that comes from being an active participant and being able to see the fruits of your labor as you help to resolve and to solve issues that are of concern to people from day to day.

And so this fund, I know, will have impact and will be very beneficial to bringing into government and into public service, a greater number of Armenians. And let me tell you, as governor, I've had an opportunity to appoint many people. I've appointed over 1,000 women. I've appointed in excess of 500 people of Hispanic ancestry, I've appointed probably 300-400 people from the black community, and of course, I've appointed some 2,000 Armenian to positions in state government.

Now I've exaggerated that a little bit, but only a little bit. But the point I wanted to really make is that the Californians that I've appointed who are of Armenian ancestry have helped me do my job, they were qualified for the position to which they were appointed, and they have made all of us very proud because they have done an outstanding job in their respective positions. I am confident that with the help of this fund, and this program, that there will be many others that will follow throughout the entire country.

Now we've been highly honored this evening by the presence of Senator Edward Kennedy. I had not had the opportunity before this evening to personally meet the Senator and I am delighted that he would take the time to come and to be with our Armenian community this evening and to hear his strong words of his activities and his support. I am also very, very honored to have with us Senator Pressler, Chip Pashayan, Congressman Bob Dornan, Speaker of the Massachusetts Legislature George Keverian, and also of course, my good friend, Senator Bob Dole and Vice President George Bush.

I think that we owe them a great, great debt of gratitude for their presence and in the way in which they have honored the Armenian community. In the coming year, it is expected that at least two of our distinguished leaders who are here tonight will be facing off against each other in the American way, going to the voters and asking for their support for the opportunity to serve this nation as its President. And let me tell you that no matter which one comes out on top. I can assure you that America will be the winner and Armenians will be the winners.

I'm sorry that my friend Gov. Dukakis wasn't able to personally be here, but I was so pleased that he took the time to make the video to express his very generous comments. When he was in Sacramento earlier this year, he had a chance to visit in my office and he told me that when he was a small boy growing up, his brother who is a bit taller than he is, was always called Big Duke and Gov. Dukakis was always called Little Duke. Well, in California the press calls me the Iron Duke.

Now it's too bad that he's not in the same party that I am in. Wouldn't that be quite a ticket—Deukmejian and Dukakis—our campaign slogan would be "More than just a pretty name."

This really is a very proud moment for me and Gloria. I tell you that it's been a fond hope of mine to have an opportunity to say thank you to all of you. When I started out 25 years ago in the first campaign that I had running for the State Assembly, there weren't very many Armenian people in our city of Long Beach, there weren't many that were involved in those early campaigns. But as I began to move towards higher office, expanding the areas within the districts that I was running in, more and more members of the Armenian community came forward to support us.

What I like about this fund that you've established is that you're going to be helping others. I can tell you that anyone in public life, and I speak now from first-hand experience, needs a lot of help and a lot of support. And along the way, as I moved from Assemblyman to Senator, to Attorney General, to Governor, that support increased at each level despite the fact that in every election that I ran for statewide office. I was always the underdog. The polls had me down against my opposition, but the only reason I was successful was because the Armenian community was there with its support early and that's what made it possible for us to go on to victory.

Now if you're happy about the fact that I have been elected Governor let me tell you that my friends, especially my friends from the Armenian community in California made it possible. And there are a number of Californians here tonight and I'd like them to stand up and be recognized.

So there are people along with many others who have been a tremendous help and I just wanted to use this chance to tell you how much I appreciated that.

America has proven that when individuals are free and when they are given opportunities to get a good education and to fully participate in our private enterprise economy, there is no limit to what they can accomplish.

From its beginning, our great nation has been a land of freedom, hope and opportunity for so many, regardless of their ethnic backgrounds or religious convictions. President Theodore Roosevelt expressed it very well many decades ago when he said, "America is not a matter of birthplace or creed or line of descent. It is a question of principle, of idealism, of character."

So many of us had parents or grandparents who came to this great country to take full advantage of the opportunities America offered, and to build a better future for their families. They came with a fierce conviction to preserving their ideals, their values, and their culture. And through their determination and foresight, they helped to shape the America that we know today.

Just a few days ago, I had the opportunity to visit my boyhood area in nearby Albany, N.Y. Once again I was reminded of what a great country this is. America offers endless opportunities to those who are willing to work hard.

As the Vice President said, "Where else but in America could the son of immigrant parents—who came to this country without any money, without any contacts, without knowing the culture, without knowing the language—how could it be that under those circumstances that within one generation their son would be the governor of the most populous state in the nation?

A state which is a nation state. We have the sixth largest economy in the entire world. Just ahead of us are the United States of America, the Soviet Union, Japan, West Germany, France, and we are even ahead of Great Britain.

Now the beautiful thing about this country is, that it just doesn't happen for me, it's happened for other, inluding the Governor of the State of Massachusetts. So it is a dream that repeats and will continue to repeat itself because the opportunities are there.

This is America's proudest legacy: that the dreams of even the most humble child can come true. It doesn't matter how much money your parents had, or what neighborhood you grow up in, or whether your family has lived in this country ten weeks or ten generations. The door for success, opportunity and achievement is open to all.

We acknowledge our nation is not perfect. We still have biases and prejudice. Amid our general prosperity there are deep pockets of distress. But we are getting better every day because our principles are sound, and our people have the strength and the conviction to continually make our nation a stronger and a better place.

For so many of us here tonight, America has become the free and the prosperous land that our parents, grandparents, and our brothers and sisters dreamed of. Each one of us is living proof of the promise of America. We are the keepers of the flame of liberty and we have a duty to preserve it on behalf of all people throughout the world.

There is tremendous power in this flame. It has built our nation into a mighty engine of progress and opportunity.

America has always been a bright, bold beacon of hope and freedom. That's why I can't understand why our federal government won't stand up and designate a National Day of Remembrance in honor of our families and ancestors. It's time to do what is right. It is time to speak the truth clearly and courageously. It is time to stand up and be counted on the side of freedom and human rights.

Our nation is devoted to man's highest ideals. We must constantly strive to ensure that our great country will never cease to be a proud guardian of human rights.

Whatever our country's imperfections, we are a nation of hope and opportunity, of tolerance and respect, of concern and compassion for the weak as well as for the strong. And I truly believe that the bright light of these ideals is powerful enough to overcome any challenges we will face in the years ahead.

We must continue to strive for a brighter future and make ours a society where the dreams of every citizen are most likely to come true. With your active involvement, we can preserve this golden legacy for ourselves, for our families and for future generations.

The confidence and tremendous support that so many of you have given to me has been a source of great inspiration and pride. I deeply appreciate all that you have done and I want to assure you that I'll do my best to never to let you down.

[From the California Courier, Oct. 22, 1987]

MESSAGE OF SENATOR ROBERT DOLE

I am very honored to be here. I certainly want to commend the Assembly for your outstanding work.

I came tonight because I heard there was going to be a very special announcement. Of course, the Governor is the late speaker and I'm a little nervous about what he might say.

So I'm going to hang around until he finishes. You could have a winning ticket up here somewhere. I'm not certain where it might be.

Well, we're all very proud of Governor Deukmejian, who represents a state larger than many countries, and who has demonstrated that he's a hands-on no nonsense legislator, someone who works with the legislature against great odds because they're a Democratic legislature. I have no quarrel with Democrats, as long as they're not in the majority, and they are in the State of California.

But Duke has done an outstanding job, and we've all reviewed his record and we're all very proud of him.

My relationship with the Armenian community goes back, wayback to about 1947 or '48 or '46. I was wounded late in the war in April of 1945, and many of the good physicians left the Army. So I went around searching for a miracle, not knowing at that young age there wasn't one out there. I went all over the country, trying to find some miracle man who could make it all well again. And I met a man named Dr. Kelikian who had served in WWII who loved this country and had a great respect for those who had served this country in WWII. It almost became a father-son relationship. He gave me a lot of good advice. He told me to grow up. It's not bad advice. That he could do the best he could. I remember when I first went to his office, you would have thought I was the only patient he'd ever had. He met me halfway down the steps. That was Dr. Kelikian. I don't know how many times he was good to me. I remember my mother came to visit me at Wessley Hospital and he said: "You've got vericose veins. I'll take care of that." So she was operated on. And he wasn't just beginning, you know, he wasn't practicing. I remember my father went down to pay him and he was insulted. He wouldn't take a dime, not one cent could I pay Dr. Kelikian for all that he had done for me, not just with his little scalpel and all those other things, but what he had done for me as a person. The most generous man I ever knew. And I'm very proud tonight in this audience I can find Mrs. Kelikian and Alice and Virginia, two of Dr. Kelikian's daughters.

Dr. Kelikian never asked for much. Like I said, he was a very generous man. But he did tell me a lot about what had happened to his family, and when it happened and how it happened. And I guess over the years, because of the impact he had on my life. I've tried to somehow repay him in some small way. There's a lot that needs to be done, as Ted Kennedy said. Systematic discrimination against the Armenian population of Turkey and the USSR; the false and malicious equation of justice for Armenians with support for terrorism, and, of course, the matter of genocide.

Eighteen months ago, I stood on the floor of the Senate making a final argument for passage of the genocide convention which had been hanging around the United States for 30 some years, waiting for someone to come along and get it done.

We finally and forever declared the atrocity of genocide a crime against humanity. In those comments, in the final comments before the vote I noted: "The treaty has enormous value as a worldwide statement of outrage and condemnation of very real horrors as real as the Armenian Genocide."

The genocide is part of world history. But for each of you I know it is much more. It is also a part of your personal heritage. A terrible wound that has not yet been healed. And a wound that can never heal; it can't be denied; nor can its existence be covered up.

We cannot tolerate ignorance or indifference or lies about the genocide any longer. Not in this country, not if we actually live by the same principles of truth and justice that we so often expouse. It is time for the Congress of the United States to acknowledge the Armenian Genocide, to expose it to the world and to let the process of healing and forgiveness at last and at long, long last begin.

Armenian-Americans, in fact, Armenians around the world, have paid their dues. You have struggled and you have suffered and you have persevered. Yes, you've paid your dues. You're all due all the accomplishments and awards which come to you. No doubt about it, the Armenian-Americans and where they are today and they've achieved what they've achieved today the old-fashioned way, they earned it.

I wonder how many professions are represented here tonight. How many advanced degrees, how many business, and artistic and academic successes. Suffice it to say there is more talent here tonight than has probably ever been assembled in New England, and that includes when all the Presidential candidates happened to be in New Hampshire on the same day, so you're making progress.

So along with the Vice President and my colleagues, Cong. Chip Pashayan, Senator Larry Pressler and Cong. Bob Dornan and others, we're very proud to be here. America is not perfect but compared to what. I've said many times in all the years I've been in Congress I've yet to receive my first letter from anybody in my state saying Bob get me out of America. But I've had a lot of tearful letters from a lot of people saying how can I get my son, or my mother, or my father to America. And I remember case after case that Dr. Kelikian would bring to me. So that's what America is all about. It's above politics, it's above party. We're proud of Armenian-Americans, we're proud of our heritage. You're proud of your heritage, and we're only just beginning.

[From the California Courier, Oct. 22, 1987]

MESSAGE BY SENATOR EDWARD KENNEDY

I am honored to join with so many distinguished leaders and members and friends of the Armenian community and I'm also honored to be here to commend the Armenian Assembly of America for its superb accomplishments over the past 15 years. The Assembly has come of age as a leading force in the Armenian-American community and across the nation. We're proud to acknowledge your achievements and your leadership.

I want to join in welcoming two distinguished visitors who are with us this evening, Vice President Bush and my colleague Senator Robert Dole. It seems like everyone here is running for President except me. And I also want to mention another person here, a man who's not running for president because he already holds higher office—the Speaker of the Massachusetts House of Representatives, "Mr. Armenia" of Massachusetts—George Keverian.

I had an idea—why don't we just spare everybody a lot of trouble and settle those Republican primaries here and now. Everyone for George Bush stand up on the right and everyone for Bob Dole stand up on the far right. Or is it the other way around?

But seriously, it is also a privilege to be here with another of my Senator colleagues—Larry Pressler—and to be part of this very significant tribute to Governor Deukmejian by the Armenian Assembly of America. In a sense, it's a pity that Gov. Deukmejian isn't running for president, too. What a shootout that would be. The Massachusetts Duke (Dukakis) against the California Duke. As my nephew Joe was telling me the other day, now I know what your problem is, Teddy. You should have been named Marmaduke, and then that way you could have run for president and called yourself the Irish Duke.

I want to pay tribute to one of your great founders and greatest benefactors, a great friend of mine and a great dreamer of the Armenian dream. How very proud Steve Mugar would have been to attend this gathering to see his dream come true. He was especially proud of your achievements in Massachusetts and even prouder of your eminent role as the leading voice of America for the Armenian cause. And it is an honor for me to join in this tribute to the manifold contributions of the Armenian community to our commonwealth and our country.

Here in Massachusetts we are especially proud that Worcester is the site of the first Armenian settlement in America. And we are equally proud of the sons and daughters and grandchildren of those early immigrants who have made an enduring mark in the world of business, scholarship and the arts in our commonwealth.

Tonight we honor the extraordinary contributions of the Armenian heritage to America, especially your enduring faith and commitment to hard work and dedication to family. These values are the essence of America, they have brought eminence to Armenian-Americans in many fields, and they have enriched every state in our American community. A short distance from this hotel you can see the lion and the unicorn, the work of an Armenian artist, atop of the old City Hall. In this city, and throughout New England you can see the monuments to Steve Mugar and learn how a tiny grocery store in Boston grew under his genius to the incredible supermarket chain of Star Markets. Across the Charles River is the endowed chair in Armenian studies at Harvard University.

From Worcester and Watertown in Massachusetts to Fresno in California, wherever the sons and daughters of Armenia have gone, you have touched, you have made America better than you found it and we are grateful for your accomplishments. Now you have also come of age in public life. Governor Deukmejian, Speaker Keverian and the other Armenian-American leaders here tonight have brought well-deserved national recognition for your community.

As generations to come enter public service, they will be ready to help America face the complex challenges tht lie ahead, enriching the entire nation through the ability and dedication that have always made Armenians a proud and strong people.

In honoring the contributions of your heritage, we also remember the darker chapters in your history. None of us can ignore the savage cruelty that Armenians have suffered across the centuries. Few peoples in the history of the earth have endured so much murderous persecution for their faith and bore their enormous tragedy with such extraordinary courage. I am proud to be a sponsor in the United States Senate of the Armenian Genocide Resolution and that Resolution should have passed the House of Representatives last August. With a little more help from the Reagan Administration, it would have passed. With the vast majority of Americans we say again tonight that we shall never forget the cruel truth of Armenian suffering. We shall never forget the millions of men, women and children who perished in their homeland at the beginning of this century, in that nightmare of the soul that became one of the worst crimes against humanity in all recorded history. As the great writer, H.G. Wells observed, "human history beomes more and more a race between education and catastrophe."

That is why the Armenian Resolution in Congress is so important. Unless America speaks the truth, unless the world comes to terms in the present with the horrors of the past, we may well stand condemned to repeat those horrors in the future. We must not let that happen.

Reminding ourselves relentlessly of man's inhumanity to man is our best hope to prevent atrocities in the future and to avoid the ultimate atrocity for all humanity—the atrocity of nuclear catastrophe.

Republican and Democrat, liberal and conservative, Irish and Armenian, we stand together as Americans for the great goals of liberty and justice, tolerance and compassion, human rights and human dignity for all our citizens and for all our peoples everywhere. We shall never stand silent or turn our eyes away in the face of cruelty and suffering, the bigotry and repression that still infects so much of our planet, and that casts such a deep shadow over the dream we share of peace on earth. Often those who have known darkness the most can lead us most surely to the light. With your help and your leadership we shall work even harder together in the years ahead for the great goals that join us here. I am grateful to all of you for inviting me to be a part of this assembly. For each of you and for our country and for all the causes we share, may the best be yet to come.

[From the California Courier, Oct. 22, 1987]

REMARKS OF VICE PRESIDENT GEORGE BUSH

Tonight we come to the East Coast to honor a guy from the West Coast. As Barry (Zorthian) said, I asked George Deukmejian to place my name in nomination in the 1984 Republican Convention. The years before that and since our friendship, both personal and professional, has grown. I give you a lot of credit for having both George Deukmejian and me here at the same time. Most audiences wouldn't be able to stand this much charisma all at once.

In a recent article, George was described as "a governor who wants to govern." I can't think of a better way to describe his strength, integrity and common sense that has characterized his outstanding leadership as Governor of California. He is tough on crime, advocate of public safety and public service, right out in front as a champion of excellence in education, and, of course, has long ago shown his good common political sense by being a Republican. When George took office, he inherited a billion dollar deficit and he turned it into a billion dollar surplus.

I know all of you are here tonight to honor the Duke, an outstanding American of Armenian descent. But he measures up to any test of excellence, not only good for Armenians; good for the state of California, and good for America. The people of California are lucky to have him as their Governor. With all respect, I'd say to the people of this, my native state, our Duke is better than your Duke (Dukakis).

A special interest, of course, is George's sensitivity to his own ethnic heritage. He's never forgotten his roots, and he's been a leader in drawing attention to the tragic events that befell the Armenian people in the end of the last century, the beginning of this one, climaxing in the horrors that began in 1915. He pursues his goal not out of any desire for revenge or retribution decades after the fact, but because of the lesson we can all learn from these historical events, and the lesson is simple and yet powerful and profound. If the civilized world continues to be silent, this cycle of horror could one day repeat itself.

We must never let that happen. The United States has a stake in acknowledging the history of the Armenian people. After all, American diplomats and missionaries had a large hand in writing it. In our free and open society, history cannot and must not be changed for the convenience of the moment. We cannot and must not deny the testimony of survivors and scholars alike.

Earlier this month, I was in Poland and I met there with the leaders of Soldarity, Lech Walesa, in public right out there in the open, talked about it openly on public, national TV, the first time an American had been permitted this in Poland. They're looking to the future. Then I visited the concentration camps at Auschwitz and I saw those three by three prison cells where four human beings were made to stand day after day until they dropped dead in place; the gas chambers, the crematory where the flames engulfed the corpses of entire families.

I thought to myself, what would the world be like if we didn't teach our children what happened. What if Poland plowed these death camps into the earth and people were allowed to forget or never learn about the atrocities that were committed. There's a slogan that I wrote into the book there, written by, I believe, a French Jew, and it said, "in remembrance lies the secret of redemption." I put that in that memory book at the Berkenow death camp and I wrote those words because I believe in the affirmation of history—facing history honestly is morally and ethically the right thing to do. As one of our founding fathers Patrick Henry once said, "I know of no other way of judging the future but by the past."

If the past has taught us anything about the Armenian people, it's that you're survivors. Your enemies have buried Armenian bodies but they've never and will never bury your spirits.

And tonight as I look out at three generations, met some earlier, three generations of Armenians, I am proud that you've chosen to live in the United States of America, the freest, the fairest, most generous nation on the face of the earth. Together we'll stand for America and lead her into the future. America is the land of opportunity and you've made the most of yours.

Recently, Hirair (Hovnanian) said, "Armenians are not here in America because the economy is good (although it is), we're here because we're free, we have the freedom to be what we want to be."

This is no time for blame. I ran on the Republican platform that addresses this issue squarely and I'm going to be proud to carry the Republican banner on that platform in the future. That is the way I deal with this question we're talking about here tonight.

Great times to be living in America. Our economy is strong. The respect around the world—I've been to 76 countries as your Vice President—respect around the world is strong, even in those countries with which we have the greatest difficulties.

In the months ahead, I am confident we are going to sign an arms control agreement, one that is verifiable, one that actually reduces the numbers of nuclear weapons for the first time in the nuclear age. So we're using our strength to make the world safe for children, our children, and our children's children.

Can we face difficult challenges? Challenge is just another word for opportunity. The character is the same halfway around the world.

If we seize these opportunities, we make the most, we can lead America into a new era of peace and prosperity. So each of you here tonight is living proof of the fullness of the American dream and where else but in America could the son of the Armenian grow up and lead as our honoree here tonight has led, become governor of the most populous state in the greatest country on the face of the earth.

George, this is your night. Barbara and I are thrilled to be at your side, you and Gloria, to honor you in this well-deserved tribute to you, to what you've accomplished in the past, and what you're bound to accomplish in the future. Thank you. God bless America and God bless George Deukmejian.

THE NOMINATION OF DOUGLAS HOWARD GINSBURG TO BE AN ASSOCIATE JUSTICE OF THE SUPREME COURT

Mr. KENNEDY. Mr. President, Judge Ginsburg's nomination comes to the Senate with far less known about his views than was the case with Judge Bork. What is most ominous about the nomination at this stage is the suggestion that Ed Meese prevailed upon the President, with little consideration, to name an ideological clone of Judge Bork—a Judge Bork without a paper trail—instead of a real conservative who would have broad support in the Senate.

This troubling implication is supported by the fact that Judge Ginsburg is one of the least experienced nominees ever submitted by any President to the Supreme Court.

The lesson of the Senate's rejection of Robert Bork is that President Reagan is not entitled to tilt the Supreme Court to the far right, far beyond the end of his term as President.

If Judge Ginsburg's philosophy about the constitutional rights and liberties of the American people is as extreme as Judge Bork's, I will do all I can to see that this nomination is not confirmed.

At the very least, because the position of Supreme Court Justice is so important, the Senate Judiciary Committee will need adequate time to assess whether Judge Ginsburg's brief career, and his views on fundamental constitutional issues, qualify him for service on the Nation's highest Court. The Senate has the responsibility under the Constitution to give its advice and consent, not serve as a rubber stamp.

SENATOR WARNER RECEIVES L. MENDEL RIVERS AWARD

Mr. BYRD. Mr. President, last evening the senior Senator from Virginia, JOHN WARNER, was honored at a reception where he received the 1987 L. Mendel Rivers Award.

This award is presented annually to the legislator whom the Non-Commissioned Officers Association deems to be most deserving for his or her action on prodefense issues.

The distinguished chairman of the Armed Services Committee, Senator SAM NUNN, presented the award to Senator WARNER.

JOHN WARNER is an excellent choice for this year's award. He is a gentleman, a patriot, a former Secretary of the Navy. He serves in this body with distinction, consistently displaying the admirable quality of reasonableness.

I have had the distinct pleasure of working with him over the years and I have always admired the quality of his character. He is a man who is able to rise above the heat of the moment and above politics. JOHN WARNER is a man who puts his country first.

I extend my congratulations to Senator WARNER on the important recognition he received last evening. I look forward to working with him on the many vital defense issues which face our country in the years ahead.

ED ORTIZ: A GREAT ASSET FOR NEVADA

Mr. HECHT. Mr. President, I rise today to honor a truly special Nevadan, Mr. Edward F. Ortiz.

Ortiz, who resides in Las Vegas, is the manager of the procurement department of Reynolds Electrical & Engineering Co., Inc. Although he has held that position for 28 years, his relationship with the company exceeds 30 years. Mr. Ortiz is a graduate of Louisiana State University and is a lifetime certified purchasing manager.

One of the many reasons Ed is so very special to all of us is his longtime commitment to minority and small businesses. If you have a question about procurement, you call Ed Ortiz. If you have a question about the legal aspects of a business deal, you call Ed Ortiz. If you have a question about just what in the devil is going on in the business community, you call Ed Ortiz.

Mr. President, over the years as Ed was contributing to the growth and development of the Las Vegas business community, he was more concerned about getting the job done, than receiving recognition for his efforts. Nonetheless, when you are fair, honest, and hard working, recognition seeks you out. Such is the case with Ed Ortiz. Mr. President, I would like to take a moment to shine the limelight on Ed and list a few of his many accomplishments.

Ed is founder and present chairperson of the Nevada Minority Purchasing Council.

He is chairman of the National Minority Supplier Development Council regional chairperson's committee.

He is a member of the Small Business Administration Advisory Council.

He is the founding chairman, and former president and active member of the Purchasing Management Association of Southern Nevada.

He is a member of the Southern California Small Business Economic Utilization Council.

He is a member of the active corps of executives, sponsored by the Small Business Administration.

He was a delegate to the White House Conference for Small Business, with continuing followup activity as a member of the minority caucus.

Ed received the Small Business Advocate of the Year Award in 1986 from the Small Business Administration.

And on August 25, 1986, Ed received a proclamation from the State of Nevada declaring Edward Ortiz Day in recognition of his many years of leadership in the development of small and disadvantaged business.

Mr. President, on November 5, 1987, I am sponsoring my third Nevada Conference on Small Business. I am pleased and honored to have Ed as the honorary chairman of this important event. Because of Ed's efforts, many of those who are in attendance at the conference will have a much easier path in their efforts to obtain Government contracts.

Ed, I thank you, and all of Nevada thank you for your many years of dedicated service to the Las Vegas business community.

BICENTENNIAL MINUTE

OCTOBER 29, 1929: STATE FUNERAL FOR A SENATOR

Mr. DOLE. Mr. President, 58 years ago today, on October 29, 1929, the Senate met for 3 minutes and adjourned out of respect to the memory of Senator Theodore Burton, who had died the previous day. On the following day, the Senate Chamber was filled to capacity for Burton's memorial service, the first to be held here in 15 years. Among the attendees were President Hoover, who had been Burton's close friend, the Chief Justice of the United States, Members of both Houses, and representatives of the diplomatic corps.

Burton is the only man in American history who has had the distinction of serving first in the U.S. House of Representatives, then in the Senate, returning to the House, and again moving back to the Senate. Beyond this footnote to history, the Ohio Republican Senator, acquainted with 12 Presidents from Cleveland to Hoover, was respected as a brilliant and independent legislator who had written extensively on governmental finance. He was best remembered as a leader in the cause of international peace.

Theodore Burton first came to the Senate in 1909, following 16 years of service in the House. He decided not to seek reelection in 1914, the first direct popular election of Senators under the 14th amendment, partly because he feared he might lose. He also believed that service in the House offered more flexibility and that the Senate had become populated with men who "said one thing in the Cloakroom and voted another way on the floor." Burton was succeeded in the Senate by Warren Harding, who used his Senate seat as a springboard to the White House. Burton later regretted his decision to leave the Senate, believing that if he had remained he might have been the Republican party's logical presidential nominee in 1916. He returned to the House in 1921 and in 1928, at the age of 76, he was elected to the Senate by a record-breaking majority. Within weeks, the pressures of Senate service began to take their toll and he died within a year.

PRODUCT LIABILITY AND CHILD CAR SEATS

Mr. DANFORTH. Mr. President, October 15 was National Safety Belt Use Day—a day to commemorate and promote the use of safety belts and child car safety seats. Unfortunately, the gains recognized on that day may, in part, be undermined by the product liability problems facing manufacturers of child car seats. The problems confronting this industry illustrate the unacceptable burdens imposed by the current product liability system.

In the last 10 years, State after State has mandated the use of child car seats for young children. The Federal Government played a key role in encouraging the States to act. In 1984 legislation was enacted which mandated that at least 8 percent of Federal highway safety funds secured by the Safety Administration Program be devoted to promoting the proper use of child car seats. As a result of such efforts, child car seat use improved from 23 percent in 1981 to 72 percent in 1986.

But, while government at all levels along with the private and nonprofits sectors have encouraged the use of child car seats for their proven safety benefits, our failure to address the confused and costly product liability system is posing a threat to the car seat industry. At a time when the market for child car seats should be expanding, companies are leaving the industry because it is becoming increasingly difficult to meet rising liability costs while producing seats at a price the public can afford.

Mr. President, representatives of the child car seat industry have testified before the Senate and House committees with jurisdiction over product liability reform. In the interest of better informing my colleagues about the problems facing this industry, I want to bring to their attention the testimony of Mr. Jon Reynolds, corporate attorney for Cosco, Inc., of Columbus, IN, who appeared on behalf of car seat manufacturers. While I do not endorse all of Mr. Reynolds' recommendations, there is no doubt that the problems he presents needs to be addressed.

Mr. President, I ask that the statement of Mr. Jon Reynolds appear in the RECORD.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

TESTIMONY

I am Jonathan Reynolds, Corporate Attorney for Cosco, a manufacturer of housewares and juvenile products. Prior to coming to Cosco, I was a partner in Russ and Reynolds, a California law firm involved primarily in the defense of product liability and personal injury cases.

Cosco is a 50 year old company headquartered in Columbus, Indiana that manufacturers housewares and juvenile products.

This is a critical issue for Cosco. Quite honestly, the very existence of our company and our jobs are on the line. With me are other members of Cosco's management group and the President of our Union. John Moeller, our Chairman, could not be with us due to a prior business commitment. He is however vitally interested in tort reform and is currently serving as the Chairman of the Coalition for Uniform Product Liability Law, one of the major tort reform coalitions in the country.

Our emphasis today will be on child car seats, our company's most serious product liability problem.

We seek justice, no more and no less. Like all Americans, we have learned quickly to sense when we are being "ripped off." We are simply not being treated justly by our present tort system. Jobs, companies, products and even tax revenues could ultimately be lost if these injustices are not corrected. The future development, and possibly the availability of domestically produced child car seats are at stake. In the current environment, valuable resources and effort that should be going into the development of this product are being diverted into defending lawsuits.

Child car seats are widely recognized as being very effective in saving lives and preventing injuries. They are mandated for use in all 50 states and the District of Columbia and are credited with saving hundreds of lives and thousands of serious injuries annually.

Child car seats have been designed, tested and manufactured to a standard issued and enforced by the U.S. Department of Transportation since 1968. The current standard, which was implemented in 1980 requires sophisticated dynamic testing. It was developed over an eight year period through the joint efforts of the U.S. Department of Transportation, the University of Michigan and Cornell and other universities, numerous consumer safety groups, the medical community, academics, testing laboratories, and the child car seat manufacturers. Over the years, in addition to meeting this standard the manufacturers have worked very hard to improve upon their basic designs to make the products easier to use and to discourage misuse.

The products produced under this standard are performing very effectively in the real world. Chuck Hurley, Executive Director of the National Safety Council, has described them as "performing beyond all expectations." Department of Transportation studies also support the conclusion that child car seats are highly effective when used properly.

Unfortunately, misuse of child car seats is a major problem. U.S. Department of Transportation studies show that a great many child car seats are not being used properly and that very often the misuse is intentional despite manufacturers instructions and warnings. For example, 70% of those who faced infants improperly forward and 95% of those who did not use the harness properly did so knowingly. The manufacturers, in addition to making their products easier to use properly have been working with the American Academy of Pediatrics, the National Passenger Safety Association, the National Safety Council, other safety groups, and the National Highway Traffic Safety Administration to combat consumer misuse.

While child car seats are performing very effectively in the real world when used properly, they cannot save every life nor can they prevent every injury, and that is the hub of the problem.

Product liability is an enormous problem for the manufacturers. During 1986, the number of child car seat manufacturers decreased from twelve to nine. All of the companies who have made child car seats for a period of time are being sued for amounts exceeding the net worth of their companies or divisions. The manufacturers are not able to purchase adequate insurance coverage and many are uninsured for most claims. The viability of this industry is genuinely threatened, and ultimately the availability and affordability of this needed product is at risk.

It is wrong to assume that these products are inherently ineffective. When compared with the millions of seats sold each year and the hundreds of thousands that are in accidents, only a relative handful of claims are made, and almost all of these involve products that have been misused. These claims, however, because of their nature, the seriousness of the injuries, the current tort environment, etc. threaten the viability of this relatively small industry.

Unfortunately when confronted with product liability suits the child car seat manufacturers believe they have little choice but to settle out of court rather than attempt to take the case to a jury under the current tort environment. There are many reasons for this.

First, it is common knowledge among experienced trial attorneys that juries want to find in favor of injured children who are themselves faultless. It is also common knowledge that juries tend to view manufacturers as "rich" and very able to pay.

Second, in almost every case, the driver or drivers who caused the accident and the parents or caretakers who may have misused the child car seat do not have adequate insurance coverage. The child car seat manufacturer is often the only "deep pocket" defendant, who under joint and several liability rules, may be required to pay all damages if found as little as 1% liable for the injury. There is no true balancing of comparative fault. This has caused my company to settle suits where we truly believed we were not at fault.

Third, the pendulum has swung so far in favor of the plaintiff in the courtroom that manufacturers usually only risk a jury decision in cases where a defense verdict is virtually certain or the plaintiff's demand for settlement is grossly excessive. Under the current tort system, the manufacturer has virtually no practical defenses:

Meeting government standards is not a defense regardless of how effective or how much in the public interest those standards are.

In reality misuse is normally not a practical defense. It is only viable where the misuser has a significant amount of insurance or personal assets, or can be proven 100% at fault. Further, 20/20 hindsight unfairly extends the manufacturers responsibility for the "foreseeable" consequences resulting from a product's use. This places on the manufacturer an unreasonable responsibility for all of the attendant hazards of every accident no matter how unusual or severe, and for almost any misuse no matter how unusual or reckless.

State-of-the-art defense is often not a practical defense. State laws vary greatly. From the viewpoint of a nationwide marketer, it is only a truly solid defense where it is impossible to technically design and manufacture a better product, regardless of cost and market price.

Fourth, the entire judicial system is geared toward forcing settlements which has resulted in expanded pre-trial discovery and increased litigation costs. Costs of defense are massive. The child car seat manufacturer can now expect to spend $200,000 to $300,000 in the defense of a major case.

Fifth, the pressure on the defendant to settle is enormous. "Surely you will settle for the cost of defense" is heard repeatedly from judges. I have personally heard this admonition in countless cases I have defended. When presented with the option of spending large amounts of money to further defend the case, coupled with the very real possibility of a large verdict, most manufacturers and insurance companies reluctantly accept settlement.

The net result is to force the child car seat manufacturers into settling suits in which the manufacturer's product was truly not responsible for the injuries. This is an intolerable situation and cannot long endure.

What tort reforms are needed? From the perspective of the child car seat manufacturer we offer the following:

First, establish a fair system of comparative fault that assesses the contribution of each actor in a situation, including persons who have acted on behalf of the plaintiff, with damages assessed only according to degree of fault. Eliminate joint and several liability. (At a minimum, eliminate joint and several liability for those that have played a relatively minor role. At a minimum we urge the adoption of the 25 percent threshold before a defendant could be jointly and severally liable, that was part of an approved resolution by the American Bar Association House of Delegates in their report earlier this year.

Second, provide a strong misuse defense under which a defendant would not be liable if the product has been altered or modified, or if the product has been used in violation of, or contrary to, the manufacturer's express written instructions and warnings.

Third, the clarity of instructions and warnings should be judged on the basis of reasonableness, i.e. are the instructions and warnings clear to an ordinarily prudent person exercising reasonable care in the use of the product.

Fourth, a government standards defense, granting immunity from suit based on design defect providing the child car seat meets FMVSS 213, should be implemented. FMVSS 213 has proven to be a very effective standard in the real world. It is our impression that the child car seat manufacturers would support and comply with the concept of pre-market testing if necessary.

Finally, trials must be conducted on a bifurcated basis. Payments from collateral sources should reduce judgments, and all settlements and judgments should provide for periodic payments of future damages.

VALUABLE RESOURCES

We know of no other products, with the possible exception of vaccines, that has such a direct impact on the health and safety of our nation's children, yet faces such enormous liability risks. The experience and expertise of these manufacturers represent a valuable national resources that the country cannot afford to dissipate. The tort reforms outlined above are fair and just. The time for their implementation is long past due.

REPORT ON DEFERRAL OF CERTAIN BUDGET AUTHORITY—MESSAGE FROM THE PRESIDENT—PM-80

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with accompanying papers; which, pursuant to the order of January 30, 1975, was referred jointly to the Committee on Appropriations, the Committee on the Budget, the Committee on Labor and Human Resources, the Committee on Energy and Natural Resources, and the Committee on the Judiciary:

To the Congress of the United States:

In accordance with the Impoundment Control Act of 1974, I herewith report six deferrals of budget authority totaling $96,285,288.

The deferrals affect programs in the Departments of Energy, Health and Human Services, and Justice.

The details of these deferrals are contained in the attached report.

RONALD REAGAN.

THE WHITE HOUSE, *October 29, 1987.*

ANNUAL REPORT ON THE STATE OF SMALL BUSINESS—MESSAGE FROM THE PRESIDENT—PM-81

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Small Business:

To the Congress of the United States:

I am pleased to submit to the Congress my sixth annual report on the state of small business. This report confirms that the small business economy was healthier at the end of 1986 than at the start of the year, reflecting growth in both new firms and new employment. Our Nation's small businesses fare best with stable prices, low interest rates, and steady growth, all of which were present in 1986.

A healthy small business sector is more than a reflection of the national well-being; it is an active force for change. America's entrepreneurs are continually experimenting with new products, new technologies, and new channels of distribution. Half of all major innovations in the past 30 years were generated in small companies.

The result of all this innovative activity is new companies and more employment for our workers. The great industrial and commercial concerns of our Nation were built by innovators like Henry Ford and Alexander Graham Bell, whose small businesses grew to help shape a new economy. Today, many of America's great corporations rely on small firms as suppliers, manufacturers, distributors, and customers.

A broader spectrum of Americans than ever before is starting businesses. In the past 10 years, the number of businesses owned by women has increased three times as fast as businesses owned by men. Minority-owned businesses have also increased; American minorities are more likely than ever before to be business owners in 1987.

It is critical to listen to the people whose small enterprises comprise such a vital part of our economy. Consequently, in May 1984, I signed into law a bill providing for the 1986 White House Conference on Small Business. This Conference, held in Washington, DC, in 1986, brought together 1,800 small business delegates from the 50 States, Puerto Rico, and the District of Columbia. The delegates debated and voted on a myriad of small business issues.

In the end, they made 60 recommendations to the Federal Government, ranging from reducing the deficit, to easing the terribly expensive burden of liability insurance, to continuing our efforts to enlist small firms in important national research efforts. This last recommendation—to reauthorize the Small Business Innovation Research Act—has been signed into law, as have several other bills addressing the delegates' concerns. I can assure the small business delegates that their message will continue to be heard during the 100th Congress.

What benefits the economy also benefits small business. On October 22, 1986, I signed into law the most comprehensive tax reform legislation since the enactment of the Internal Revenue Code in 1954. Culminating 2 years of bipartisan effort, this law cuts tax rates significantly for corporations and individuals alike, and limits or eliminates many special tax advantages. The law is designed to help remove tax considerations from business decisions, which are best made in a free, competitive marketplace.

For the future, I have a very simple goal, which I believe all Americans share. Call it competitiveness or a quest for excellence. The quest for excellence that I envision is not just a legislative package, although legislation will play a part. It is not just another government program, although government will have a role. Rather, it is a great national undertaking that challenges all Americans.

To help achieve this goal, I have submitted to the Congress a major competitiveness proposal to assure that the Federal Government does everything possible to make our businesses and workers preeminent in the 21st century. Enactment of my proposal will allow American workers and businesses to meet world competition head-on. This six-part program is aimed at increasing investment in human and intellectual capital, promoting the development of science and technology, protecting intellectual property, enacting essential legal and regulatory reforms, meeting the challenges of international markets, and reducing the Federal deficit.

Promoting flexible job skills and more challenging work for a better work force are important to the competitiveness of American industry. This new program will help workers displaced by adverse economic conditions, technological changes, or increased imports. Small firms—major employers of first-time job holders, recently unemployed workers, and workers in need of training—will play a very important part in this program.

This administration is interested in exploring with the Congress and industry representatives measures that will provide more incentives for American business to advance in research and technological development. To help transfer technology from Federal laboratories to the marketplace, I have signed Executive Order No. 12591 creating incentives for the development and transfer of federally supported innovation. To protect business confidentiality, I am also proposing to broaden legislatively the Freedom of Information Act definitions of trade secrets and confidential commercial information. In addition, I have signed an Executive Order giving businesses an opportunity to object to the government's release of commercial information if disclosure would harm commercial competitive interests.

To maintain the incentives for continued innovation and the protection of intellectual property envisioned by the signers of our Constitution, I have proposed legislation to the Congress that would: protect processes for manufacturing products, restore the time lost by inventors due to government-mandated testing of products, and reduce the incentives for unnecessary litigation.

Regulations and excessive paperwork place small businesses at a disadvantage in an increasingly competitive world marketplace. Over the past decade, small firms have benefited from the more competitive milieu in the deregulated financial and transportation industries. This Administration supports continued deregulation and other reforms to eliminate regulatory obstacles to open competition. I have also proposed statutory reforms to curtail the costly product liability spiral and to amend our antitrust laws to reflect the dynamics of world trade.

U.S. trade laws have been effective instruments for opening foreign markets and defending American industries against unfair practices by our competitors. I have proposed improving those laws that enhance our ability to meet the challenges from abroad without enacting protectionist barriers at home. Our proposals will emphasize opening markets through multilateral negotiations, encouraging adjustment while providing relief to industries injured by import competition, and tightening our laws to deal more effectively with unfair competition.

Finally, improving our national competitiveness means eliminating the Federal budget deficit. Controlling Federal spending remains an essential goal. I have proposed a budget that achieves the Gramm-Rudman-Hollings target by reducing spending, not by raising taxes.

The quest for America's business is to make products more efficiently, to embrace new ideas, and to develop better methods of management and new technologies. In that quest, this Administration will continue to listen to the concerns of small business owners and to press for legislation that will enhance small business' ability to compete. In the final analysis, though, it is the individual decisions and innovative efforts of our Nation's business owners and workers that will forge a new American competitivenss.

RONALD REAGAN.

THE WHITE HOUSE, *October 29, 1987.*

PROHIBITION AGAINST IMPORTS FROM IRAN—MESSAGE FROM THE PRESIDENT—PM 82

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with accompanying papers; which was referred to the Committee on Finance:

To the Congress of the United States:

Pursuant to section 505 of the International Security and Development Cooperation Act of 1985 (22 U.S.C. 2349aa-9), I hereby report to the Congress that I have exercised my constitutional and statutory authority to prohibit the importation into the

United States of all goods and services of Iranian origin.

I am enclosing a copy of the Executive Order that I have issued exercising this authority. I have delegated to the Secretary of the Treasury the power, in consultation with the Secretary of State, to carry out the provisions of the Order.

I have authorized these steps in response to the actions and policies of the Government of Iran in support of terrorism and in the conduct of aggressive and unlawful military action against U.S.-flag vessels and merchant vessels of other non-belligerent nations engaged in lawful and peaceful commerce in international waters of the Persian Gulf and territorial waters of non-belligerent nations of that region. These Iranian actions and policies have been supported in part by revenue earned from the sale of products imported into the United States. The measures taken pursuant to this Order are in response to such hostile Iranian actions occurring after the conclusion of the 1981 Algiers Accords, and are intended solely as a response to such action.

Since Iran was officially designated under U.S. law in 1984 as a country that has repeatedly supported acts of international terrorism, the United States has taken a number of limited economic measures in response to hostile Iranian actions. These measures have included export controls on items that would contribute to Iran's military potential and its ability to support international terrorism.

Iran, however, not only has continued but has escalated its aggressive acts against the United States. Iranian actions in the Persian Gulf have not only directly threatened U.S.-flag merchant vessels and U.S. forces but those of our allies and other friendly states as well. These policies of the Government of Iran have necessitated the further economic measures I have announced today.

The United States calls upon the Government of Iran to cease its support of terrorism and acts of aggression directed at the United States and other nations both in the Persian Gulf and elsewhere. The United States calls upon other nations to join us by taking similar measures. We must demonstrate by firm political, economic, and other steps that the international community considers the actions and policies of the Government of Iran unlawful and intolerable.

RONALD REAGAN.

THE WHITE HOUSE, *October 29, 1987.*

MESSAGES FROM THE HOUSE

At 1:30 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the Speaker has signed the following enrolled bill and joint resolution:

H.R. 307. An act to designate the Federal Building and United States Post Office located at 315 West Allegan Street in Lansing, Michigan, as the "Charles E. Chamberlain Federal Building and United States Post Office"; and

S.J. Res. 171. Joint resolution designating the week beginning November 8, 1987, as "National Women Veterans Recognition Week."

The enrolled bill and joint resolution were subsequently signed by the Acting President pro tempore (Mr. WIRTH).

At 5:36 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 2818. An act providing exemption from certain Federal and State laws for solar small power production facilities;

H.R. 3457. An act to amend the Packers and Stockyards Act, 1921, to provide financial protection to poultry growers and sellers, and to clarify Federal jurisdiction under such Act; and

H.R. 3483. An act to amend title 18, United States Code, to improve certain provisions relating to imposition and collection of criminal fines, and for other purposes.

ENROLLED JOINT RESOLUTION SIGNED

At 8:18 p.m., a message from the House of Representatives, delivered by Mr. Berry, one of its reading clerks, announced that the Speaker has signed the following enrolled joint resolution:

H.J. Res. 309. Joint resolution providing support for the Civic Achievement Award Program in Honor of the Office of the Speaker of the House of Representatives.

MEASURES REFERRED

The following bill was read the first and second times by unanimous consent, and referred as indicated:

H.R. 2818. An act providing exemption from certain Federal and State laws for solar small power production facilities; to the Committee on Energy and Natural Resources.

ENROLLED JOINT RESOLUTION PRESENTED

The Secretary of the Senate reported that on today, October 29, 1987, he had presented to the President of the United States the following enrolled joint resolution:

S.J. Res. 171. Joint resolution designating the week beginning November 8, 1987, as "National Women Veterans Recognition Week."

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. BIDEN, from the Committee on the Judiciary, without amendment and with a preamble:

H.J. Res. 97. Joint resolution to recognize the Disabled American Veterans Vietnam Veterans National Memorial as a memorial of national significance.

H.J. Res. 130. Joint resolution to designate the week beginning November 22, 1987, as "National Family Caregivers Week."

S. Res. 246. Resolution to honor Irving Berlin for the pleasure he has given to the American people through almost a century of his music.

S. Res. 267. Resolution to express the sense of the Senate that Rachel Carson is recognized on the 25th anniversary of her book "Silent Spring", for her outstanding contributions to public awareness and understanding of environmental issues.

S. Res. 303. Resolution to comment the efforts and commitment of the organizers and participants of "Justice For All Day," November 17, 1987.

S.J. Res. 35. Joint resolution relating to the commemoration of January 28, 1988, as a "National Day of Excellence."

By Mr. BIDEN, from the Committee on the Judiciary, without amendment:

S.J. Res. 66. Joint resolution to designate the week of November 22 through November 28, 1987, as "National Family Week".

Mr. BIDEN, from the Committee on the Judiciary, without amendment and with a preamble:

S.J. Res. 97. Joint resolution to designate the week beginning November 22, 1987, as "National Adoption Week".

S.J. Res. 98. Joint resolution to designate the week of November 29, 1987, through December 5, 1987, as "National Home Health Care Week".

S.J. Res. 105. Joint resolution to designate December 7, 1987, as "National Pearl Harbor Remembrance Day" on the occasion of the anniversary of the attack on Pearl Harbor.

S.J. Res. 125. Joint resolution to designate the period commencing on May 9, 1988, and ending on May 15, 1988, as "National Stuttering Awareness Week".

S.J. Res. 126. Joint resolution to designate March 16, 1988, as "Freedom of Information Day".

S.J. Res. 134. Joint resolution to designate the week commencing on the third Sunday in May, 1988, as "National Tourism Week".

S.J. Res. 136. Joint resolution to designate the week of December 13, 1987, through December 19, 1987, as "National Drunk and Drugged Driving Awareness Week".

S.J. Res. 146. Joint resolution to designate January 8, 1988, as "National Skiing Day".

S.J. Res. 174. Joint resolution to designate the week beginning November 15, 1987, as "African American Education Week".

S.J. Res. 185. Joint resolution to designate the period commencing on May 2, 1988, and ending on May 8, 1988, as "National Drinking Water Week".

S.J. Res. 201. Joint resolution to designate January 28, 1988, as "National Challenger Center Day" to honor the crew of the space shuttle *Challenger.*

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. BIDEN, from the Committee on the Judiciary:

Frank L. McNamara, Jr., of Massachusetts, to be United States Attorney for the District of Massachusetts for the term of 4 years.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. SANFORD (for himself, Mr. SPECTER, Mr. LUGAR, Ms. MIKULSKI, and Mr. PRESSLER):

S. 1830. A bill to amend title II of the Social Security Act to provide for a more gradual period of transition (and a new alternative formula with respect to such transition) to the changes in benefit computation rules enacted in the Social Security Amendments of 1977 as they apply to workers born in years after 1916 and before 1930 (and related beneficiaries) and to provide for increases on their benefits accordingly, and for other purposes; to the Committee on Finance.

By Mr. HEINZ:

S. 1831. A bill entitled the "Economic Stabilization and Recovery Act of 1987"; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. DURENBERGER:

S. 1832. A bill to amend the Internal Revenue Code of 1986 to exclude from gross income amounts withdrawn from Individual Retirement plans for payment of long-term care insurance premiums; to the Committee on Finance.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. BYRD (for himself, Mr. STEVENS, and Mr. PRYOR):

S. Res. 308. A resolution to limit time on the motion to proceed; placed on the calendar.

By Mr. BYRD (for himself, Mr. STEVENS, and Mr. PRYOR):

S. Res. 309. A resolution to limit time on the motion to proceed; to the Committee on Rules and Administration.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. SANFORD (for himself, Mr. SPECTER, Mr. LUGAR, Ms. MIKULSKI, and Mr. PRESSLER):

S. 1830. A bill to amend title II of the Social Security Act to provide for a more gradual period of transition—and a new alternative formula with respect to such transition—to the changes in benefit computation rules enacted in the Social Security Amendments of 1977 as they apply to workers born in years after 1916 and before 1930—and related beneficiaries—and to provide for increases on their benefits accordingly, and for other purposes; to the Committee on Finance.

(The remarks of Mr. SANFORD and the text of the legislation appear in today's RECORD.)

By Mr. HEINZ:

S. 1831. A bill entitled the "Economic Stabilization and Recovery Act of 1987"; to the Committee on Banking, Housing, and Urban Affairs.

ECONOMIC STABILIZATION AND RECOVERY ACT

Mr. HEINZ. Mr. President, today I am introducing a bill which is cited as the Economic Stabilization and Recovery Act of 1987. The purpose of this bill is to recognize that we face some economic problems which, if left unattended to, could make our economy very sick indeed.

What this legislation does in twofold, and I will explain the reasons for it in a moment, but what this legislation does is very simple. It directs the Federal Reserve Board, no later than 7 days from today, to reduce the discount rate, which currently stands at 6 percent, to 5 percent or less. It further directs the Secretary of the Treasury, working in conjunction with the Board and its chairman, to make every reasonable effort to achieve a coordinated, simultaneous multilateral interest rate reduction in an amount comparable to that effected by the Federal Reserve Board among the major industrialized nations known as the G-5.

Mr. President, I have never ever introduced a bill on the Federal Reserve, before let alone one directing specific action by the Federal Reserve Board in my 17 years of service in the House of Representatives and Senate.

I have generally viewed the introduction of bills telling the Federal Reserve to do one thing or anther as dangerous congressional meddling in the affairs of an independent agency.

I take this step today because it is my view that the time has come for us to have a serious debate not only about fiscal policy but about monetary policy. It is my view that important as fiscal policy is, important as the deficit reduction talks between the President and the Congress are, no matter how good the agreement and how lasting the agreement they achieve, fiscal policy by itself, given where we have come to, will not be nearly enough to avoid a crisis of consumer confidence. If left unattended, this could plunge us into a recession.

I do not think that we are necessarily condemned to have a recession, but I do think we have very little time in order to avoid it. We have very little time for the Congress and the President to reach an agreement to a deficit reduction package. And we have very little time for the Federal Reserve Board to accelerate its accommodating policy which it started just a week ago in order to make it clear that the Federal Reserve is going to be an active player in reassuring both the average American, the consumer, and the world that we will not stand idly by while our economy becomes sick and ill and develops an economic syndrome that could be serious indeed.

Let me say that, despite the unprecedented plunge of the stock market a week ago Monday that was worse than anything we felt in 1929, the good news is that the world and our economy are very different today than in 1929. I do not think that, even under the worst scenario, we face a depression. We have, notwithstanding the tremendous drop of last week, shown that our financial markets can handle the biggest drop in history. We will not return to the scenes of long bread lines that we all remember from the depression. But we can invite great difficulty, including unemployment and inflation, if we do not take additional action now within the next few days.

There are things that need to be done and should be done. I think it is important to note that the action that the Federal Reserve Board has taken so far in accommodating to the difficulties of last week has been helpful. On Tuesday of last week, the Federal Reserve Board, in a very short announcement, indicated that it would supply the necessary liquidity to keep the system going. And that liquidity has been helpful.

It has been helpful, however, somewhat selectively. It has principally taken the form of money being made available to the finance intermediaries, the banks, the major lenders. And while there has been some reflection of that, and only some, in the general level of interest rates, it has not been reflected meaningfully in ways that will help or reassure the consumer. It has not been reflected in home mortgages or auto loans or home improvement loans.

Indeed, what the Fed has done so far has been reasonably helpful to the big guys but not particularly helpful, at least as yet, to the little guys. And what is needed, therefore, is action by the Federal Reserve that will have significant consequences, not to the big banks but to the average American. A discount rate cut which is visible, and which under this proposal would go from 6 to 5 percent, will set the stage for the reduction of consumer interest rates and restore the kind of confidence on the part of the consumer that I believe we so badly need.

We also need to ensure that this interest rate cut is implemented in a way that causes our trading partners to go along. We need them to go along with an interest rate cut to stimulate their economy and to stimulate the world economy. And we also need it to prevent an unwarranted fall in the dollar.

Mr. President, as I said, I find my introduction of this legislation an unprecedented step. But I think it is an absolutely necessary step. If all we do is enact a $23 billion or a $33 billion or even a $43 billion deficit reduction package, we will have fooled ourselves into believing that in a $4 trillion economy—notwithstanding the need to show that we know how to lead and how to act—that a $23 to $43 billion improvement in the Federal fiscal deficit is something more than a modest drop in the bucket.

If we are really going to help the average person, we need to restore confidence to the consumer who is postponing an auto purchase or postponing a home purchase or postponing the purchase of a refrigerator, because they do not know what is going to happen. The single most important act that this country can take, and it can only be taken by the Federal Reserve Board, is to cut that discount rate. The Fed should cut it today or tomorrow or next Monday, but not later than sometime in the middle of next week.

Let me discuss one or two technical issues:

As of yesterday, the Treasury bill rate stood nearly a full percentage point below the discount rate. The T-bill rate was at 5.06 percent compared to the 6-percent discount rate. This is nearly a point below the discount rate.

The Federal funds rate, the overnight lending rate, is down to 6.67 percent, just two-thirds of a point above the discount rate.

The inflation rate, as we measure it, has been running in the third quarter at 2.4 percent, as measured by the GNP deflator; 2.7 percent on the fixed rate index.

While most people think that those understate the underlying rate of inflation—and maybe it is above 3 percent—all the experts, including those of the Fed and the Treasury, agree that the rate of inflation has been decelerating, not accelerating.

And so anybody who believes that other interest rates are not in line with the need for a discount rate cut or that a discount rate cut would be adding fuel to some fire of inflation, let me tell you, the fire is not just there, the ashes are cold and dead.

I am worried, Mr. President, that unless the Federal Reserve acts the economy is going to go dead. And that is something that we cannot afford.

Let me say one last word about that. We face this year a $175 billion budget deficit. If there is agreement between the President and the Congress on a $23 or $25 billion budget deficit reduction package, we will lower the deficit to $150 billion for fiscal 1988. If there is a recession, the budget deficit will start at $150 billion. By the time we count up the cost of unemployment, the revenues foregone, the increased outlays in income transfer payments for people who are in need, on unemployment or food stamps, or what have you, the deficit, according to best estimates, even if we said what we were going to is not going to be $150 billion, but will be more like $300 or $350 billion.

Mr. President, I do not know what a recession would be like with a $350 billion dificit, which would absorb, according to every estimate I have seen, well in excess of 100 percent of savings.

I do not know what the consequences will be. That is off the economic map. It is off the ends of the Earth.

I will tell you one other thing. I do not want to see this country or any of us go into that unexplored territory. We journey there at our peril and that is why, Mr. President, I believe that we need action at once.

By Mr. DURENBERGER:

S. 1832. A bill to amend the Internal Revenue Code of 1986 to exclude from gross income amounts withdrawn from individual retirement plans for payment of long-term care insurance premiums; to the Committee on Finance.

EXCLUSION FROM GROSS INCOME OF WITHDRAWALS FROM INDIVIDUAL RETIREMENT PLANS FOR PAYMENT OF LONG-TERM CARE INSURANCE PREMIUMS

● **Mr. DURENBERGER.** Mr. President, the bill I am introducing today will allow retired individuals to use some of their tax deferred savings to pay for long-term care insurance without suffering any tax penalty. Under this proposal, a citizen over age 59½ would be permitted to withdraw up to $2,000 per year from his or her individual retirement account [IRA] to purchase long-term care insurance. Such withdrawals would not be subject to Federal income tax. This bill, in combination with others I am developing, will help expand options for the elderly to protect themselves in case they need long-term health care. In turn, this will reduce future pressures on public programs, such as Medicaid, that pay for the care of most nursing home residents. Many of them are people who at one time had resources but "spent down" to Medicaid eligibility. This bill will encourage people to save their assets for possible future health needs.

Last year, we made significant changes in the rules governing individual retirement accounts. As a result of these rules, most individuals who are currently covered by employer-provided retirement plans were permitted to continue contributing to IRA's, but only on an after-tax basis.

Some commentators have suggested that the rules we adopted last year will not provide sufficient incentives for most individuals to contribute to an IRA. The bill I am offering today would provide an incentive for individuals to continue to contribute to their IRA's, even if their contributions are from after-tax dollars.

In addition, individuals who are not covered by employer-provided pension plans would be encouraged to continue contributing pretax earnings to their IRA, and then have the option to withdraw money tax-free to pay for long-term care insurance.

Mr. President, for an individual who is not covered by an employer-provided pension plan, the only retirement nest egg available is his or her IRA. By contrast, the individual whose employer has provided a retirement plan has the security of knowing that his or her retirement living expenses can be covered by pension payouts, and that if long-term care becomes necessary, he is more likely to be able to afford the insurance premiums.

My bill tries to equalize the financial burden facing those who have company-sponsored pension plans and those individuals who do not have such plans. It allows pretax funding for long-term care, without tax penalty, for individuals not covered by company pension plans, and permits after-tax funding for long-term care, for those who are covered by pension plans.

Mr. President, the goal of my bill is to encourage individuals to purchase private long-term health care protection, without creating the problems and budget deficits caused by governmental programs. The need for such coverage is going to become much greater in the next 15 years. If we encourage our citizens to set up accounts now that will permit them the security of a financial nest egg in case of the need for long-term care, I believe we will have taken a necessary step to avoiding the day when the long-term care problem becomes a problem that the public will expect Government to resolve.

I ask unanimous consent that a copy of the bill be printed at this point in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1832

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

EXCLUSION FROM GROSS INCOME FOR AMOUNTS WITHDRAWN FROM INDIVIDUAL RETIREMENT PLANS FOR LONG-TERM CARE INSURANCE PREMIUMS

(a) IN GENERAL.—Subsection (d) of section 408 of the Internal Revenue Code of 1986 (relating to tax treatment of distributions from individual retirement plans) is amended by adding at the end thereof the following new paragraph:

"(7) DISTRIBUTIONS FOR QUALIFIED LONG-TERM CARE INSURANCE PREMIUMS.—

"(A) IN GENERAL.—No amount (which but for this paragraph would be includible in the gross income of the payee or distributee under paragraph (1)) shall be included in gross income during the taxable year if—

"(i) the payee or distributee has attained age 59½ on or before the date of the distribution, and

"(ii) the distribution is used during such year to pay premiums for any qualified long-term care insurance policy for the benefit of the payee or distributee or the spouse of the payee or distributee if such spouse has attained age 59½ on or before the date of the distribution.

"(B) DOLLAR LIMITATION.—

"(i) IN GENERAL.—The amount excluded from gross income under subparagraph (A) shall not exceed $2,000 ($1,000 in the case of a separate return by a married individual).

"(ii) COST-OF-LIVING ADJUSTMENT.—The Secretary shall adjust the dollar amounts under clause (i) for taxable years beginning in calendar years after 1988 in the same manner as under section 1(f), except that only increases in the medical component of the Consumer Price Index shall be taken into account.

"(C) QUALIFIED LONG-TERM CARE INSURANCE POLICY.—For purposes of subparagraph (A)—

"(i) IN GENERAL.—Subject to clause (ii), the term 'qualified long-term care insurance policy' means an insurance policy or rider, issued by a qualified issuer, and certified by the Secretary of Health and Human Services (in accordance with procedures similar to the procedures prescribed in section 1882 of the Social Security Act (42 U.S.C. 1384ss) used in the certification of medicare supplemental policies (as defined in subsection (g)(1) of such section)) to be advertised, marketed, offered, or designed to provide coverage—

"(I) for not less than 12 consecutive months for each covered person,

"(II) on an expense incurred, indemnity, or prepaid basis,

"(III) for 1 or more medically necessary, diagnostic services, preventive services, therapeutic services, rehabilitation services, maintenance services, or personal care services, and

"(IV) provided in a setting other than an acute care unit of a hospital.

"(ii) COVERAGE SPECIFICALLY EXCLUDED.—Such term does not include any insurance policy or rider which is offered primarily to provide any combination of the following kinds of coverage:

"(I) Basic Medicare supplement coverage.

"(II) Basic hospital expense coverage.

"(III) Basic medical-surgical expense coverage.

"(IV) Hospital confinement indemnity coverage.

"(V) Major medical expense coverage.

"(VI) Disability income protection coverage.

"(VII) Accident only coverage.

"(VIII) Specified disease coverage.

"(IX) Specified accident coverage.

"(X) Limited benefit health coverage.

"(D) QUALIFIED ISSUER.—For purposes of subparagraph (A), the term 'qualified issuer' means any of the following:

"(i) Private insurance company.

"(ii) Fraternal benefit society.

"(iii) Nonprofit health corporation.

"(iv) Nonprofit hospital corporation.

"(v) Nonprofit medical service corporation.

"(vi) Prepaid health plan."

(b) EFFECTIVE DATE.—The amendment made by this Act shall apply to taxable years beginning after December 31, 1987.●

ADDITIONAL COSPONSORS

S. 629

At the request of Mr. BINGAMAN, the name of the Senator from Mississippi [Mr. COCHRAN] was added as a cosponsor of S. 629, a bill to establish literacy programs for individuals of limited English proficiency.

S. 1006

At the request of Mr. HECHT, the name of the Senator from California [Mr. CRANSTON] was added as a cosponsor of S. 1006, a bill entitled the "Geothermal Steam Act Amendments of 1987."

S. 1009

At the request of Mr. MCCONNELL, his name was withdrawn as a cosponsor of S. 1009, a bill to accept the findings and to implement the recommendations of the Commission on Wartime Relocation and Interment of Civilians.

S. 1081

At the request of Mr. BINGAMAN, the name of the Senator from Mississippi [Mr. COCHRAN] was added as a cosponsor of S. 1081, a bill to establish a coordinated National Nutrition Monitoring and Related Research Program, and a comprehensive plan for the assessment of the nutritional and dietary status of the U.S. population and the nutritional quality of the U.S. food supply, with provision for the conduct of scientific research and development in support of such program and plan.

S. 1389

At the request of Mr. MITCHELL, the names of the Senator from Tennessee [Mr. GORE], and the Senator from Delaware [Mr. ROTH] were added as cosponsors of S. 1389, a bill to amend the National Fish and Wildlife Foundation Establishment Act with respect to management requisition, and disposition of real property, reauthorization, and participation of foreign governments.

S. 1485

At the request of Mr. ROCKEFELLER, his name was added as a cosponsor of S. 1485, a bill to amend the Federal Aviation Act of 1958 to provide various protections for passengers traveling by aircraft, and for other purposes.

At the request of Mr. WILSON, his name was added as a cosponsor of S. 1485, supra.

At the request of Mr. FORD, the names of the Senator from Vermont [Mr. Leahy] and the Senator from Ohio [Mr. METZENBAUM] were added as cosponsors of the bill S. 1485, supra.

S. 1586

At the request of Mr. KERRY, the name of the Senator from Maryland [Ms. MIKULSKI] was added as a cosponsor of S. 1586, a bill to provide financial assistance under the Education of the Handicapped Act to assist severely handicapped infants, children, and youth to improve their educational opportunities through the use of assistive device resource centers, and for other purposes.

S. 1601

At the request of Mr. MCCAIN, the name of the Senator from Arizona [Mr. DECONCINI] was added as a cosponsor of S. 1601, a bill to permit the immigration of Vietnamese Amerasians to the United States.

S. 1774

At the request of Mr. PRYOR, the name of the Senator from Oregon [Mr. HATFIELD] was added as a cosponsor of S. 1774, a bill to promote and protect taxpayer rights, and for other purposes.

S. 1790

At the request of Mr. GARN, the name of the Senator from Arizona [Mr. MCCAIN] was added as a cosponsor of S. 1790, a bill to authorize the expansion of the National Air and Space Museum at Washington Dulles International Airport.

S. 1811

At the request of Mr. HEINZ, the name of the Senator from Maryland [Ms. MIKULSKI] was added as a cosponsor of S. 1811, a bill to provide a transitional funding method to ensure continued pension payments to steel industry retirees and to assure the viability of the private pension system, and for other purposes.

S. 1814

At the request of Mr. MELCHER, the name of the Senator from Colorado [Mr. WIRTH] was added as a cosponsor of S. 1814, a bill to provide clarification regarding the royalty payments owed under certain Federal onshore and Indian oil and gas leases, and for other purposes.

SENATE JOINT RESOLUTION 172

At the request of Mr. BRADLEY, the names of the Senator from Delaware [Mr. ROTH], the Senator from Vermont [Mr. STAFFORD], and the Senator from Iowa [Mr. GRASSLEY] were added as cosponsors of Senate Joint Resolution 172, a joint resolution to designate the period commencing February 21, 1988, and ending February 27, 1988, as "National Visiting Nurse Association Week."

SENATE JOINT RESOLUTION 174

At the request of Mr. SIMON, the names of the Senator from Utah [Mr. GARN], the Senator from Kansas [Mrs. KASSEBAUM], and the Senator from Virginia [Mr. WARNER] were added as cosponsors of Senate Joint Resolution 174, a joint resolution designating the week beginning November 15, 1987, as "African American Education Week."

SENATE JOINT RESOLUTION 181

At the request of Mr. WILSON, the name of the Senator from North Dakota [Mr. BURDICK] was added as a cosponsor of Senate Joint Resolution 181, a joint resolution designating the week beginning February 1, 1988, as "National VITA Week."

SENATE JOINT RESOLUTION 196

At the request of Mr. PACKWOOD, the names of the Senator from Florida [Mr. CHILES], the Senator from Mississippi [Mr. STENNIS], the Senator from South Dakota [Mr. PRESSLER], the

Senator from Virginia [Mr. TRIBLE], and the Senator from Maine [Mr. MITCHELL] were added as cosponsors of Senate Joint Resolution 196, a joint resolution to designate February 4, 1988, as "National Women in Sports Day."

SENATE JOINT RESOLUTION 201

At the request of Mr. GARN, the names of the Senator from Wyoming [Mr. SIMPSON] and the Senator from Vermont [Mr. STAFFORD] were added as cosponsors of Senate Joint Resolution 201, a joint resolution to designate January 28, 1988, as "National Challenger Center Day" to honor the crew of the space shuttle *Challenger*.

SENATE RESOLUTION 303

At the request of Mr. KENNEDY, the names of the Senator from Mississippi [Mr. COCHRAN], the Senator from Tennessee [Mr. GORE], the Senator from Louisiana [Mr. JOHNSTON], the Senator from Oregon [Mr. PACKWOOD], the Senator from California [Mr. WILSON], the Senator from Arizona [Mr. MCCAIN], the Senator from Nevada [Mr. REID], the Senator from Wisconsin [Mr. KASTEN], the Senator from New Mexico [Mr. BINGAMAN], the Senator from Alaska [Mr. STEVENS], the Senator from Nebraska [Mr. KARNES], the Senator from Colorado [Mr. WIRTH], the Senator from Oregon [Mr. HATFIELD], and the Senator from Wyoming [Mr. SIMPSON] were added as cosponsors of Senate Resolution 303, a resolution to commend the efforts and commitment of the organizers and participants of "Justice For All Day," November 17, 1987.

SENATE RESOLUTION 308—TO LIMIT TIME ON THE MOTION TO PROCEED

Mr. BYRD (for himself, Mr. STEVENS, and Mr. PRYOR) submitted the following resolution; which was placed on the calendar:

S. RES. 308

Resolved, That rule VIII of the Standing Rules of the Senate is amended by inserting at the end thereof the following new paragraph:

"3. Debate on any motion to proceed to the consideration of any matter, other than an amendment to the Standing Rules of the Senate, made by the Majority Leader or the Minority Leader at any time other than the morning hour shall be limited to two hours, to be equally divided between and controlled by the Majority Leader and Minority Leader or their designees, at the conclusion of which, without any intervening action, the Senate shall proceed to vote in relation to the motion.".

SENATE RESOLUTION 309—TO LIMIT TIME ON THE MOTION TO PROCEED

Mr. BYRD (for himself, Mr. STEVENS, and Mr. PRYOR) submitted the following resolution; which was referred to the Committee on Rules and Administration:

S. RES. 309

Resolved, That rule VIII of the Standing Rules of the Senate is amended by inserting at the end thereof the following new paragraph:

"3. Dabate on any motion to proceed to the consideration of any matter, other than an amendment to the Standing Rules of the Senate, made by the Majority Leader or the Minority Leader at any time other than the morning hour shall be limited to two hours, to be equally divided between and controlled by the Majority Leader and Minority Leader or their designees, at the conclusion of which, without any intervening action, the Senate shall proceed to vote in relation to the motion.".

AMENDMENTS SUBMITTED

DEPARTMENT OF TRANSPORTATION AND RELATED AGENCIES APPROPRIATION, FISCAL YEAR 1988

LAUTENBERG (AND GRAHAM) AMENDMENT NO. 1098

Mr. LAUTENBERG (for himself and Mr. GRAHAM) proposed an amendment, which was subsequently modified, to the bill (H.R. 2890) making appropriations for the Department of Transportation and related agencies for the fiscal year ending September 30, 1988, and for other purposes; as follows:

In amendment numbered 1098, strike all after the word "After" and insert the following: "the date of expiration of the 4-month period following the date of the enactment of this subsection, and for a period of 24 months and one day thereafter, except that subsections (a) and (b) shall be null and void upon the date of enactment, it shall be unlawful to smoke in the passenger cabin or lavatory on any scheduled airline flight in intrastate, interstate, or overseas air transportation, if such flight is scheduled for 90 minutes or less in duration, which prohibition shall be enforced by the Secretary of Transportation, who shall issue such regulation as may be necessary to carry out the provision of this subsection, which regulations shall be authorized to include and shall include a regulation providing that any passenger who tampers with, disables, or destroys any smoke alarm device located in any restroom aboard an aircraft engaged in air transportation or intrastate air transportation shall be subject to a civil penalty in accordance with section 901 of the Federal Aviation Act of 1958 except that such civil penalty may be imposed in an amount up to $2,000."

LAUTENBERG AMENDMENT NO. 1099

Mr. LAUTENBERG proposed an amendment to amendment No. 1098 proposed by him to the bill (H.R. 2890) supra; as follows:

In amendment numbered 1098, strike all after the word "After" and insert the following: "the date of expiration of the 4-month period following the date of the enactment of this subsection, and for a period of 36 months and one day thereafter, except that subsections (a) and (b) shall be null and void upon the date of enactment, it shall be unlawful to smoke in the passenger cabin or lavatory on any scheduled airline flight in intrastate, interstate, or overseas air transportation, if such flight is scheduled for 2 hours or less in duration, which prohibition shall be enforced by the Secretary of Transportation, who shall issue such regulations as may be necessary to carry out the provision of this subsection, which regulations shall be authorized to include and shall include a regulation providing that any passenger who tampers with, disables, or destroys any smoke alarm device located in any restroom aboard an aircraft engaged in air transportation or intrastate air transportation shall be subject to a civil penalty in accordance with section 901 of the Federal Aviation Act of 1958 except that such civil penalty may be imposed in an amount up to $2,000."

CONRAD AMENDMENT NO. 1100

Mr. CONRAD proposed an amendment to the bill (H.R. 2890) supra; as follows:

On page 12, line 16, immediately before the period, insert a comma and the following: "but in no event shall an applicant for an airway science grant be denied such grant, in whole or in part, on the basis that the applicant had previously received funds under the airway science programs".

MURKOWSKI (AND STEVENS) AMENDMENTS NOS. 1101 AND 1102

Mr. MURKOWSKI (for himself and Mr. STEVENS) proposed two amendments to the bill (H.R. 2890) supra; as follows:

AMENDMENT No. 1101

At the end of the bill, add the following:

SEC. . DENIAL OF FUNDS FOR PROJECTS USING CERTAIN SERVICES OF FOREIGN COUNTRIES THAT DENY FAIR MARKET OPPORTUNITIES

(a) IN GENERAL.—

(1) None of the funds appropriated by this Act may be used to carry out within the United States, or within any territory or possession of the United States, any transportation project which uses any service of a foreign country during any period in which such foreign country is listed by the United States Trade Representative under subsection (c).

(2) Paragraph (1) shall not apply with respect to the use of a service in a project if the Secretary of Transportation determines that—

(A) the application of paragraph (1) to such service would not be in the national interest,

(B) services offered in the United States, or in any foreign country that is not listed under subsection (c), of the same class or kind as such service are insufficient or are not of a satisfactory quality, or

(C) exclusion of such service from the project would increase the cost of the overall project by more than 20 percent.

(b) DETERMINATIONS.—

(1) By no later than the date that is 30 days after the date on which each report is submitted to the Congress under section 181(b) of the Trade Act of 1974 (19 U.S.C.

2241(b)), the United States Trade Representative shall make a determination with respect to each foreign country of whether such foreign country—

(A) denies fair and equitable market opportunities for services of the United States in procurement, or

(B) fair and equitable market opportunities for services of the United States in bidding,

for construction projects that cost more than $500,000 and are funded (in whole or in part) by the government of such foreign country or by an entity controlled by such foreign country.

(2) In making determinations under paragraph (1), the United States Trade Representative shall take into account information obtained in preparing the report submitted under section 181(b) of the Trade Act of 1974 and such other information as the United States Trade Representative considers to be relevant.

(c) LISTING OF FOREIGN COUNTRIES.—

(1) The United States Trade Representative shall maintain a list of each foreign country with respect to which an affirmative determination is made under subsection (b).

(2) Any foreign country that is added to the list maintained under paragraph (1) shall remain on the list until the United States Trade Representative determines that such foreign country does permit the fair and equitable market opportunities described in subparagraphs (A) and (B) of subsection (b)(1).

(3) The United States Trade Representative shall annually publish in the Federal Register the entire list required under paragraph (1) and shall publish in the Federal Register any modifications to such list that are made between annual publications of the entire list.

(d) DEFINITIONS.—For purposes of this section—

(1) The term "service" means any engineering, architectural, or construction service.

(2) Each foreign instrumentality, and each territory or possession of a foreign country, that is administered separately for customs purposes shall be treated as a separate foreign country.

(3) Any service provided by a person that is a national of a foreign country, or is controlled by nationals of a foreign country, shall be considered to be a service of such foreign country.

AMENDMENT No. 1102

On page 59, line 6, strike out "either".

On page 59, line 9, strike out "or".

On page 59, line 14, strike out the period and insert in lieu thereof "; or ".

On page 59, between lines 14 and 15, insert the following:

(3) constructed to the geometric and construction standards adequate for current and probable future traffic demands and for the needs of the locality and is designated by the Secretary of Transportation as part of the Interstate System in accordance with section 139(c) of title 23, United States Code.

SYMMS AMENDMENT NO. 1103

Mr. D'AMATO (for Mr. SYMMS) proposed an amendment to the bill (H.R. 2890) supra; as follows:

Strike Sec. 332 (page 60) and insert in lieu thereof the following:

"Sec. 332. Section 149(b) (82) of the Surface Transportation and Uniform Relocation Assistance Act of 1987 is amended to read as follows: "(82) subsections (a) (82) and (a) (83) $2,300,000;". Section 149(b) (83) of such Act is repealed, and succeeding paragraphs are renumbered accordingly."

LAUTENBERG AMENDMENT NO. 1104

Mr. LAUTENBERG proposed an amendment to the bill (H.R. 2890) supra; as follows:

On page 56 after line 6, strike all through "$2000" on the last line of the agreed to Lautenberg amendment, as modified, and insert in lieu thereof the following:

"SEC. 327 after the date of expiration of the 4-month period following the date of the enactment of this subsection, and for a period of 24 months thereafter, it shall be unlawful to smoke in the passenger cabin or lavatory on any scheduled airline flight in intrastate, interstate, or overseas air transportation, if such flight is scheduled for 90 minutes or less in duration, which prohibition shall be enforced by the Secretary of Transportation, who shall issue such regulations as may be necessary to carry out the provision of this subsection, which regulations shall be authorized to include and shall include a regulation providing that any passenger who tampers with, disables, or destroys any smoke alarm device located in any restroom aboard an aircraft engaged in air transportation or intrastate air transportation shall be subject to a civil penalty inaccordance with section 901 of the Federal Aviation Act of 1958 except that such civil penalty may be imposed in an amount up to $2,000."

AIR PASSENGER PROTECTION ACT

DANFORTH (AND OTHERS) AMENDMENT NO. 1105

Mr. DANFORTH (for himself, Mr. HOLLINGS, Ms. MIKULSKI, Mr. DOLE, Mr. WILSON, Mr. MCCAIN, Mr. CHAFEE, Mr. STEVENS, Mr. DECONCINI, Mr. HELMS, and Mr. EXON) proposed an amendment to the bill (S. 1485) to amend the Federal Aviation Act of 1958 to provide various protections for passengers traveling by aircraft, and for other purposes; as follows:

At the end of the bill, add the following:

SEC. . (a) The Congress finds that—

(1) alcohol and drug abuse poses significant dangers to the safety and welfare of the Nation;

(2) millions of the Nation's citizens utilize transportation by aircraft, railroads, trucks, and buses, and depend on the operators of aircraft, railroads, trucks, and buses to perform in a safe and responsible manner;

(3) the greatest efforts must be expended to eliminate the abuse of alcohol and use of illegal drugs, whether on duty or off duty, by those individuals who are involved in the operation of aircraft, railroads, trucks, and buses;

(4) the use of alcohol and illegal drugs has been demonstrated to affect significantly the performance of individuals, and has been proven to have been a critical factor in transportation accidents;

(5) the testing of uniformed personnel of the armed forces has shown that the most effective deterrent to abuse of alcohol and use of illegal drugs is increased testing, including random testing;

(6) adequate safeguards can be implemented to ensure that testing for abuse of alcohol or use of illegal drugs is performed in a manner which protects an individual's right of privacy, ensures that no individual is harassed by being treated differently from other individuals, and ensures that no individual's reputation or career development is unduly threatened or harmed; and

(7) rehabilitation is a critical component of any testing program for abuse of alcohol or use of illegal drugs, and should be made available to individuals, as appropriate.

(b)(1) Title VI of the Federal Aviation Act of 1958 (49 App. U.S.C. 1421 et seq.) is amended by adding at the end thereof the following:

"ALCOHOL AND CONTROLLED SUBSTANCES TESTING

"TESTING PROGRAM

"SEC. 613. (a)(1) The Administrator shall, in the interest of aviation safety, prescribe regulations within twelve months after the date of enactment of this section. Such regulations shall establish a program which requires air carriers and foreign air carriers to conduct pre-employment, periodic recurring, random and post-accident testing of airmen, crewmembers, airport security screening contract personnel, and other air carrier employees responsible for safety-sensitive functions (as determined by the Administrator), and testing of such individuals upon a reasonable suspicion that they have used, without lawful authorization, alcohol or a controlled substance.

"(2) The Administrator shall establish a program applicable to employees of the Federal Aviation Administration whose duties include responsibility for safety-sensitive functions. Such program shall provide for pre-employment, periodic recurring, random and post-accident testing, and testing of such individuals upon a reasonable suspicion that they have used, without lawful authorization, alcohol or a controlled substance.

"(3) In prescribing regulations under the programs required by this subsection, the Administrator shall require, as the Administrator considers appropriate, the suspension or revocation of any certificate issued to such an individual, or the disqualification or dismissal of any such individual, in accordance with the provisions of this section, in any instance where a test conducted and confirmed under this section indicates that such individual has used, without lawful authorization, alcohol or a controlled substance.

"PROHIBITION ON SERVICE

"(b)(1) No person may use, without lawful authorization, alcohol or a controlled substance after the date of enactment of this section and serve as an airman, crewmember, airport security screening contract personnel, air carrier employee responsible for safety-sensitive functions (as determined by the Administrator), or employee of the Federal Aviation Administration with responsibility for safety-sensitive functions.

"(2) No individual who is determined to have used, without lawful authorization, alcohol or a controlled substance after the date of enactment of this section shall serve as an airman, crewmember, airport security screening contract personnel, air carrier employee responsible for safety-sensitive functions (as determined by the Administrator), or employee of the Federal Aviation Administration with responsibility for safety-sensitive functions unless such individual has completed a program of rehabilitation described in subsection (c) of this section.

"(3) Any such individual determined by the Administrator to have used, without lawful authorization, alcohol or a controlled substance after the date of enactment of this section who (A) refuses to undertake, (B) fails to complete a rehabilitation program described in subsection (c) of this section, (C) has previously undertaken or completed such a rehabilitation program, or (D) has been determined by the Administrator to have served as an airman, crewmember, airport security screening contract personnel, air carrier employee responsible for safety-sensitive functions (as determined by the Administrator), or employee of the Federal Aviation Administration with responsibility for safety-sensitive functions while impaired by or under the influence of alcohol or a controlled substance, shall not be permitted to perform the duties relating to air transportation which such individual performed prior to the date of such determination.

"PROGRAM FOR REHABILITATION

"(c)(1) Each air carrier and foreign air carrier shall establish and maintain a rehabilitation program which at a minimum provides for the identification and opportunity for treatment of employees referred to in subsection (b) of this section in need of assistance in resolving problems with the use, without lawful authorization, of alcohol or controlled substances. Each air carrier and foreign air carrier is encouraged to make such program available to all of its employees other than employees referred to in subsection (b) of this section. Nothing in this subsection shall preclude any air carrier or foreign air carrier from establishing a program under this subsection in cooperation with any other air carrier or foreign air carrier.

"(2) The Administrator shall establish and maintain a rehabilitation program which at a minimum provides for the identification and opportunity for treatment of those employees of the Federal Aviation Administration whose duties include responsibility for safety-sensitive functions who are in need of assistance in resolving problems with the use of alcohol or controlled substances.

"PROCEDURES

"(d) In establishing the program required under subsection (a) of this section, the Administrator shall develop requirements which shall—

"(1) promote, to the maximum extent practicable, individual privacy in the collection of specimen samples;

"(2) with respect to laboratories and testing procedures, incorporate the Department of Health and Human Services scientific and technical guidelines dated February 13, 1987, and any subsequent amendments thereto, including mandatory guidelines which—

"(A) establish comprehensive standards for all aspects of laboratory drug testing and laboratory procedures to be applied in carrying out this Act, including standards which require the use of the best available technology for ensuring the full reliability and accuracy of drug tests and strict procedures governing the chain of custody of specimens collected for drug testing;

"(B) specify the drugs for which individuals may be tested; and

"(C) establish appropriate standards and procedures for periodic review of laboratories and criteria for certification and revocation of certification of laboratories to perform drug testing in carrying out this Act;

"(3) provide that all tests which indicate the use, without lawful authorization, of alcohol or a controlled substance by any individual shall be confirmed by a scientifically recognized method of testing capable of providing quantitative data regarding alcohol or a controlled substance;

"(4) require that all laboratories involved in the testing of any individual under this section shall have the capability and facility, at such laboratory, of performing screening and confirmation tests;

"(5) provide for the confidentiality of test results and medical information (other than information relating to alcohol or a controlled substance) of employees, except that the provisions of this paragraph shall not preclude the use of test results for the orderly imposition of appropriate sanctions under this section; and

"(6) ensure that employees are selected for tests by nondiscriminatory and impartial methods, so that no employee is harassed by being treated differently from other employees in similar circumstances.

"EFFECT ON OTHER LAWS AND REGULATIONS

"(e) (1) No State or local government shall adopt or put into effect any law, rule, regulation, ordinance, standard or order that is inconsistent with the regulations promulgated under this section, except that the regulations promulgated under this section shall not be construed to preempt provisions of State criminal law which impose sanctions for reckless conduct leading to actual loss of life, injury or damage to property, whether the provisions apply specifically to employees of an air carrier or foreign air carrier, or to the general public.

"(2) Nothing in this section shall preclude the Administrator from adopting or continuing in effect other regulations intended to protect persons or property on the ground or in the air from the hazards to safety associated with the potential use of alcohol or controlled substances by airmen, crewmembers, airport security screening contract personnel, air carrier employees responsible for safety-sensitive functions (as determined by the Administrator), or employees of the Federal Aviation Administration) with responsibility for safety-sensitive functions.

"DEFINITION

"(f) For the purposes of this section, the term 'controlled substance' means any substance under section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)) whose use the Administrator has determined poses a risk to transportation safety.".

(2) That portion of the table of contents of the Federal Aviation Act of 1958 relating to title VI is amended by adding at the end thereof the following:

"Sec. 613. Alcohol and controlled substances testing.
"(a) Testing program.
"(b) Prohibition on service.
"(c) Program for rehabilitation.
"(d) Procedures.
"(e) Effect on other regulations.
"(f) Definition.".

(c) Section 202 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 431) is amended by adding at the end thereof the following:

"(l)(1) The Secretary shall, within one year after the date of enactment of this subsection, review existing rules, regulations, standards, and orders governing alcohol and drug use in railroad operations for the purpose of determining whether they are adequate to ensure safety. In conducting such review, the Secretary shall specifically—

"(A) require that all railroad employees responsible for safety-sensitive functions (as determined by the Secretary) be subject to testing on a random basis for the use, without lawful authorization, of alcohol or a controlled substance;

"(B) consider application of existing rules, regulations, orders, and standards to other categories of employees, including employees responsible for the safety of passengers, railroad rolling stock, or track and related structures;

"(C) require, as the Secretary considers appropriate, disqualification for an established period of time or dismissal of any employee determined to have used or to have been impaired by alcohol while on duty; and

"(D) require, as the Secretary considers appropriate, disqualification for an established period of time or dismissal of any employee determined to have used a controlled substance, whether on duty or not on duty, except as permitted for medical purposes by law and any rules, regulations, standards or orders issued under this Act.

Nothing in this subsection shall be construed to restrict the discretion of the Secretary to continue in force, amend, or further supplement any rules, regulations, standards and orders governing alcohol and drug use in railroad operations issued before the date of enactment of this subsection.

"(2) In carrying out the provisions of this subsection, the Secretary shall develop requirements which shall—

"(A) promote, to the maximum extent practicable, individual privacy in the collection of specimen samples;

"(B) with respect to laboratories and testing procedures, incorporate the Department of Health and Human Services scientific and technical guidelines dated February 13, 1987, and any subsequent amendments thereto, including mandatory guidelines which—

"(i) establish comprehensive standards for all aspects of laboratory drug testing and laboratory procedures to be applied in carrying out this Act, including standards which require the use of the best available technology for ensuring the full reliability and accuracy of drug tests and strict procedures governing the chain of custody of specimens collected for drug testing;

"(ii) specify the drugs for which individuals may be tested; and

"(iii) establish appropriate standards and procedures for periodic review of laboratories and criteria for certification and revocation of certification of laboratories to perform drug testing in carrying out this Act;

"(C) provide that all tests which indicate the use, without lawful authorization, of alcohol or a controlled substance by any employee shall be confirmed by a scientifically recognized method of testing capable of providing quantitative data regarding alcohol or a controlled substance;

"(D) require that all laboratories involved in the testing of any employee under this section shall have the capability and facility, at such laboratory, of performing screening and confirmation tests;

"(E) provide for the confidentiality of test results and medical information (other than information relating to alcohol or a controlled substance) of employees, except that the provisions of this subparagraph shall not preclude the use of test results for the orderly imposition of appropriate sanctions under this section; and

"(F) ensure that employees are selected for tests by nondiscriminatory and impartial methods, so that no employee is harassed by being treated differently from other employees in similar circumstances.

"(3) For the purposes of this subsection, the term 'controlled substance' means any substance under section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)) whose use the Secretary has determined poses a risk to transportation safety.".

(d)(1) The Commercial Motor Vehicle Safety Act of 1986 (Public Law 99-570; 100 Stat. 5223) is amended by adding at the end the following:

"SEC. 12020. ALCOHOL AND CONTROLLED SUBSTANCES TESTING.

"(a) REGULATIONS.—The Secretary shall, in the interest of commercial motor vehicle safety, prescribe regulations within twelve months after the date of enactment of this section. Such regulations shall establish a program which requires motor carriers to conduct pre-employment, periodic recurring, random and post-accident testing of the operators of commercial motor vehicles, and testing upon a reasonable suspicion that they have used, without lawful authorization, alcohol or a controlled substance.

"(b) TESTING.—(1) In promulgating such regulations, the Secretary shall require that post-accident testing of the operator of a commercial motor vehicle be conducted in the case of any accident involving a commercial motor vehicle in which occurs loss of human life, or, as determined by the Secretary, other serious accidents involving bodily injury or significant property damage.

"(2) Nothing in subsection (a) of this section shall preclude the Secretary from providing in such regulations that such testing be conducted as part of the medical examination required by subpart E of part 391 of title 49, Code of Federal Regulations, with respect to those operators of commercial motor vehicles to whom such part is applicable.

"(c) PROGRAM FOR REHABILITATION.—The Secretary shall promulgate regulations setting forth requirements for a rehabilitation program for the identification and opportunity for treatment of operators of commercial motor vehicles who are determined to have used, without lawful authorization, alcohol or a controlled substance. The Secretary shall determine the circumstances under which such operators shall be required to participate in such program. Nothing in this subsection shall preclude a motor carrier from establishing a program under this subsection in cooperation with any other motor carrier.

(d) PROCEDURES FOR TESTING.—In establishing the program required under subsection (a) of this section, the Secretary shall develop requirements which shall—

"(1) promote, to the maximum extent practicable, individual privacy in the collection of specimen samples;

"(2) with respect to laboratories and testing procedures, incorporate the Department of Health and Human Services scientific and technical guidelines dated February 13, 1987, and any subsequent amendments thereto, including mandatory guidelines which—

"(A) establish comprehensive standards for all aspects of laboratory drug testing and laboratory procedures to be applied in carrying out this Act, including standards which require the use of the best available technology for ensuring the full reliability and accuracy of drug tests and strict procedures governing the chain of custody of specimens collected for drug testing;

"(B) specify the drugs for which individuals may be tested; and

"(C) establish appropriate standards and procedures for periodic review of laboratories and criteria for certification and revocation of certification of laboratories to perform drug testing in carrying out this Act;

"(3) provide that all tests which indicate the use, without lawful authorization, of alcohol or a controlled substance by any individual shall be confirmed by a scientifically recognized method of testing capable of providing quantitative data regarding alcohol or a controlled substance;

"(4) require that all laboratories involved in the testing of any individual under this section shall have the capability and facility, at such laboratory, of performing screening and confirmation tests;

"(5) provide for the confidentiality of test results and medical information (other than information relating to alcohol or a controlled substance) for employees, except that the provisions of this paragraph shall not preclude the use of test results for the orderly imposition of appropriate sanctions under this section; and

"(6) ensure that employees are selected for tests by nondiscriminatory and impartial methods, so that no employee is harassed by being treated differently from other employees in similar circumstances.

"(e) EFFECT ON OTHER LAWS AND REGULATIONS.—No State or local government shall adopt or put into effect any law, rule, regulation, ordinance, standard, or order that is inconsistent with the regulations promulgated under this section, except that the regulations promulgated under this section shall not be construed to preempt provisions of State criminal law which impose sanctions for reckless conduct leading to actual loss of life, injury or damage to property, whether the provisions apply specifically to commercial motor vehicle employees, or to the general public.

"(f) APPLICATION OF PENALTIES.—(1) Nothing in this section shall be construed to supersede any penalty applicable to the operator of a commercial motor vehicle under this Act or any other provision of law.

"(2) The Secretary shall determine appropriate sanctions for commercial motor vehicle operators who are determined, as a result of tests conducted and confirmed under this section, to have used, without lawful authorization, alcohol or a controlled substance but are not under the influence of alcohol or a controlled substance, as provided in this title.

"(g) DEFINITION.—For the purposes of this section, the term 'controlled substance' means any substance under section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)) whose use the Secretary had determined poses a risk to transportation safety.".

(d)(2) The table of contents of the Commercial Motor Vehicle Safety Act of 1986 (Public Law 99-570; 100 Stat. 5223) is amended by adding at the end thereof the following:

"Sec. 12020. Alcohol and controlled substances testing.".

(e)(1) The Secretary shall design, within nine months after the date of enactment of this section, and implement, within fifteen months after the date of enactment of this section, a pilot test program for the purpose of testing the operators of commercial motor vehicles on a random basis to determine whether an operator has used, without lawful authorization, alcohol or a controlled substance.

(2) The Secretary shall solicit the participation of States which are interested in participating in such program and shall select four States to participate in the program.

(3) The Secretary shall ensure that the selection made pursuant to this section is representative of varying geographical and population characteristics of the Nation, and takes into consideration the historical geographical incidence of commercial motor vehicle accidents involving loss of human life.

(4) The pilot program authorized by this section shall continue for a period of one year. The Secretary shall consider alternative methodologies for implementing a system of random testing of operators of commercial motor vehicles.

(5) Not later than thirty months after the date of enactment of this section, the Secretary shall prepare and submit to the Congress a comprehensive report setting forth the results of the pilot program conducted under this section. Such report shall include any recommendations of the Secretary concerning the desirability and implementation of a system for the random testing of operators of commercial motor vehicles.

(6) For purposes of carrying out this subsection, there shall be available to the Secretary $5,000,000 from funds made available to carry out section 404 of the Surface Transportation Assistance Act of 1982 for fiscal year 1988.

(7) For purposes of this subsection, the term—

(1) "commercial motor vehicle" shall have the meaning given to such term in section 12019(6) of the Commercial Motor Vehicle Safety Act of 1986 (Public Law 99-570; 100 Stat. 5241); and

(2) "Secretary" means the Secretary of Transportation.

ADAMS AMENDMENT NO. 1106

Mr. ADAMS proposed an amendment to the bill S. 1485, supra; as follows:

Insert at the appropriate place:

That (a) section 408 of the Federal Aviation Act of 1958 (49 App. U.S.C. 1378) is amended by adding at the end the following:

"FAIR TREATMENT OF EMPLOYEES

"(g) In any case in which the Secretary determines that the transaction which is the subject of the application would tend to cause reduction in employment, or to adversely affect the wages and working conditions, including the seniority, of any air carrier employees, labor protective provisions calculated to mitigate such adverse consequences, including procedures culminating in binding arbitration, if necessary, shall be imposed by the Secretary as a condition of approval, unless the Secretary finds that the projected costs of protection would exceed the anticipated financial benefits of the transaction. The proponents of the transaction shall bear the burden of proving there will be no adverse employment consequences or that projected costs of protection would be excessive.".

(b) The item relating to section 408 in the table of contents of the Federal Aviation Act of 1958 is amended by adding at the end the following:

ADAMS AMENDMENT NO. 1107

Mr. ADAMS proposed an amendment to amendment No. 1106 proposed by him to the bill S. 1485, supra; as follows:

Strike all of the language proposed in amendment No. and insert the following:

SEC. 2. Section 1601(a)(7) of the Federal Aviation Act of 1958 (49 App. U.S.C. 1551(a)(7)) is amended by striking all after "in effect on" and inserting in lieu thereof the following: "the date of enactment of the Airline Merger Transfer Act of 1987, except to the extent any such sections relate to labor protection provisions; *Provided*, That rights, duties, and obligations arising (1) in proceedings commenced before the Department of Transportation prior to April 1, 1987, or (2) pursuant to final orders adopted by the Secretary of Transportation or the Board under sections 408 and 409 and section 414 (relating to such sections 408 and 409) prior to the effective date of termination shall be administered and, as necessary, adjudicated, as if such sections were not terminated.".

SEC. 3. (a) Section 7 of the Clayton Act (15 U.S.C. 18) is amended—

(1) in the first and second paragraphs, by inserting ", nor any air carrier or foreign air carrier subject to the Federal Aviation Act of 1958, person controlling such air carrier or foreign air carrier, other common carrier, or person substantially engaged in the business of aeronautics," immediately after "Federal Trade Commission" wherever it appears; and

(2) in the last paragraph, by striking "Secretary of Transportation,".

(b) Section 11 of the Clayton Act (15 U.S.C. 21) is amended—

(1) in subsection (a), by (A) striking "in the Secretary of Transportation where applicable to air carriers and foreign air carriers subject to the Federal Aviation Act of 1958; ", and (B) inserting ", except air carriers and foreign air carriers subject to the Federal Aviation Act of 1958," immediately after "other character of commerce"; and

(2) in subsections (b) through (l), by striking "Commission, Board, or Secretary" and "commission, board, or Secretary" wherever they appear and inserting in lieu thereof "commission or board".

SEC. 4. (a) Section 408(b) of the Federal Aviation Act of 1958 (49 App. U.S.C. 1378(b)) is amended by adding at the end the following:

"(4) In any case in which the Secretary determines that the transaction which is the subject of the application would tend to cause reduction in employment, or to affect adversely the wages and working conditions (including the seniority) of any air carrier employee, the Secretary shall impose labor protection provisions calculated to mitigate such adverse consequences, including procedures resulting in binding arbitration, if the Secretary considers such procedures to be necessary. The Secretary shall impose such provisions unless the Secretary finds that the projected costs of imposing such provisions would exceed the anticipated financial benefits of the transaction. The proponents of the transaction shall bear the burden of proving that there will be no adverse employment consequences or that the projected costs of the imposition of such protection would be excessive.".

(b)(1) Section 1601 of the Federal Aviation Act of 1958 (49 App. U.S.C. 1551) is amended by adding at the end the following:

"LABOR PROTECTION PROVISIONS

"(f) The authority of the Department of Transportation in section 408 relating to labor protection provisions, the authority in section 204 relating to the exercise and performance of powers and duties under section 408, and the authority to make exemptions in section 416 relating to the requirements of section 408, are transferred to the Department of Labor.".

(2) The item in the table of contents of the Federal Aviation Act of 1958 relating to section 1601 is amended by adding at the end the following:

"(F) LABOR PROTECTION PROVISIONS.".

(c) All rules and regulations issued by any agency or official of any agency in the performance of any duty transferred by subsection (b) of this section shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked by the Secretary of Labor, a court of competent jurisdiction, or by operation of law.

SEC. 5. (a) The Secretary of Transportation shall compile, on a quarterly basis, information regarding the fares charged and frequency of service offered by air carriers during the previous quarter for scheduled airline service to or from the fifty United States airports with the greatest number of annual enplanements, as determined by the Secretary, at which any one air carrier provides more than 50 percent of the total number of flights offered to or from such airport.

(b) The Secretary of Transportation shall retain any information compiled under subsection (a) of this section of a period of five years after the date of its transmittal.

(c) As used in this Act, the term "air carrier" has the meaning given to such term in section 101(3) of the Federal Aviation Act of 1958 (49 App. U.S.C. 1301(3)).

NOTICES OF HEARINGS

SELECT ON COMMITTEE ON INDIAN AFFAIRS

Mr. INOUYE. Mr. President, I would like to announce that the Select Committee on Indian Affairs will be holding the following:

On Friday, October 30, 1987, beginning at 9 a.m. in Senate Russell 485, a markup on S. 1703, amendments to the Indian Self-Determination and Education Act; S. 795, San Luis Rey Water Rights Settlement Act; and, further discussion of the Special Committee on Investigations;

On Thursday, November 5, 1987, beginning at 2 p.m., in Senate Russell 485, hearings on the Implementation of the Omnibus Drug Act (Public Law 99-570, title IV, part C) and, on S. 1684, Florida Seminole Water Claims Settlement; and

On Tuesday, November 10, 1987, beginning at 9 a.m., in Senate Russell 485, an oversight hearing on the Implementation of the Indian Child Welfare.

Those wishing additional information should contact the committee at 224-2251.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. JOHNSTON. Mr. President, I would like to announce for the public that a nomination hearing has been scheduled before the full Committee on Energy and Natural Resources.

The committee will hear testimony on the nomination of Earl E. Gjelde for the position of Under Secretary of the Interior and Henry M. Ventura for the position of Assistant Secretary of the Interior for Policy, Budget, and Administration.

The hearing will take place Friday, November 13, 1987, 9:30 a.m. in room SD-366 of the Senate Dirksen Office Building in Washington, DC.

Mr. President, I would like to announce for the information of the Senate and the public, the scheduling of a hearing before the Committee on Energy and Natural Resources to receive testimony regarding S. 1567 and H.R. 2858, bills to provide for refunds pursuant to rate decreases under the Federal Power Act.

The hearing is scheduled for November 18, 1987 beginning at 2 p.m. in room 366 of the Dirksen Senate Office Building.

For further information regarding the hearing you may wish to contact Bill Conway, senior counsel for the committee, telephone (202) 224-7149. Those wishing to testify or who wish to submit a written statement for the hearing record should write to the Committee on Energy and Natural Resources, room SD-364, Dirksen Senate Office Building, Washington, DC 20510.

SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS AND FORESTS

Mr. BUMPERS. Mr. President, I would like to announce for the public that a hearing has been scheduled before the Subcommittee on Public Lands, National Parks and Forests.

The hearing will take place November 12, 1987, at 2 p.m. in room SD-366 of the Dirksen Senate Office Building in Washington, DC.

The purpose of the hearing is to receive testimony on the following measures currently pending before the subcommittee.

H.R. 2416, a bill to establish the Jimmy Carter National Historic Site and Preservation District in the State of Georgia, and for other purposes; and

H.R. 2325, a bill to authorize the acceptance of a donation of land for addition to Big Bend National Park, in the State of Texas.

Those wishing information about testifying at the hearing or submitting written statements should write to the Subcommittee on Public Lands, National Parks and Forests, U.S. Senate, room SD-364, Dirksen Senate Office Building, Washington, DC. 20510. For further information, please contact Tom Williams at 224-7145 or Beth Norcross at 224-7933.

Mr. BUMPERS. Mr. President, I would like to announce for the public that a hearing has been scheduled before the Subcommittee on Public Lands, National Parks and Forests.

The hearing will take place November 17, 1987, at 2 p.m. in room SD-366 of the Dirksen Senate Office Building in Washington, DC.

The purpose of the hearing is to receive testimony on the following measure currently pending before the Subcommittee.

S. 1544, a bill to amend the National Trails System Act to provide for cooperation with State and local governments for the improved management of certain Federal lands, and for other purposes.

Those wishing information about testifying at the hearing or submitting written statements should write to the subcommittee on Public Lands, National Parks and Forests, U.S. Senate, room SD-364, Dirksen Senate Office Building, Washington, DC 20510.

For further information, please contact Tom Williams at 224-7145 or Beth Norcross at 224-7933.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. BYRD. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate on Thursday, October 29, 1987, to continuation of hearings to receive testimony on the status of the Department of Energy's efforts to address issues concerning the defense materials production reactors located in the United States.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. BYRD. Mr. President, I ask unanimous consent that the Committee on Governmental Affairs, be authorized to meet during the session of the Senate on Thursday, October 29, to hold hearings on the nomination of Frank Nebeker, to be director of the Office of Government Ethics.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON NUCLEAR REGULATION

Mr. BYRD. Mr. President, I ask unanimous consent that the Subcommittee on Nuclear Regulation, Committee of Environment and Public Works, be authorized to meet during the session of the Senate on Thursday, October 29, beginning to conduct a hearing on legislative reorganization proposals for the Nuclear Regulatory Commission.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON ANTITRUST, MONOPOLIES, AND BUSINESS RIGHTS

Mr. BYRD. Mr. President, I ask unanimous consent that the Subcommittee on Antitrust, Monopolies, and Business Rights of the Committee on the Judiciary, be authorized to meet during the session of the Senate on October 29, 1987 to hold a hearing on S. 1523, Racketeering Influence and Corruption Organization Act.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON THE JUDICIARY

Mr. BYRD. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to hold a business meeting during the session of the Senate on Thursday, October 29, 1987.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

HONORING CAPTAIN JOHN HUNT

● Ms. MIKULSKI. Mr. President, much attention has been focused lately on the involvement of U.S. Armed Forces in the escalating conflict in the Persian Gulf. But in debating the War Powers Act and the mission of our forces in the region, scant attention has been given to the heroism of those men and women of the merchant marine currently serving in that part of the world.

The sailors and captains of the Merchant Marine are as dedicated to the freedom of international waters as our armed naval forces.

They willingly risk the dangers of fanatic terrorism.

They bravely maneuver their vessels through the world's most troubled waters.

They courageously keep the shipping lanes open, and they do so on commercial vessels that are utterly defenseless to the surprise attacks of terroist mines and missiles.

Mr. President, one particular member of the merchant marine deserves special commendation. His name is Captain John Hunt, whose U.S.-flag oil tanker, the *Sea Isle City*, was torn apart without warning by the impact of an Iranian silkworm missile. Captain Hunt is a long standing member of the International Association of Masters Mates and Pilots whose headquarters is in Linthicum, MD. He was on the bridge of the *Sea Isle City* when the missile sped out of the horizon exploding in a shower of glass molten metal 25 feet below him. As the American flag floated over the smoking deck, Captain Hunt lay burned, bleeding, and blinded. He is now lying in an Egyptian hospital bed, and it is uncertain if he will ever recover his sight.

As we continue to confront the menace of Iranian terrorism in the gulf, let us remember, along with our Armed Forces in the region, those men and women of the Merchant Marine who, like Captain Hunt, are willing to take on the dangers facing the free world even when the price is their own lives. Mr. President, Captain Hunt is an example of courage to all of us. I hope and pray that he will fully recover from his wounds and return to active duty.

Mr. President, I would ask that the Washington Post article of Monday, October 19, 1987 concerning the resilient spirit of the American Captain be inserted in the RECORD.

The article follows:

[From the Washington Post, Oct. 19, 1987]

BLINDED U.S. CAPTAIN RECOVERS AFTER ATTACK—GLASS SPRAYED HEAD WHEN MISSILE STRUCK

(By Patrick E. Tyler)

KUWAIT, Oct. 18.—John Hunt, the American captain whose U.S.-flag oil tanker, the Sea Isle City, was mauled by an Iranian Silkworm missile Friday, awoke today in an intentive-care unit here after 54 hours of unconsciousness, his face bandaged to cover his blinded eyes and his upper body swollen under a black-thread latticework of stitches.

As physicians tended lacerated crew members at a hospital near Kuwait's oil port, shipyard workers poured over the twisted superstructure of the Sea Isle City as it sat motionless against a concrete pier in Kuwait's downtown harbor.

An American flag fluttered over its fire-blackened bridge tower, raised just before reporters were allowed on board as Washington was deciding to retaliate against Iran for the missile strike against a U.S. flag-ship in Kuwait waters.

At Kuwait's Addan Hospital, the 60-year-old American captain was sleeping when four reporters were escorted to his bedside by an Egyptian medical team.

The physicians said Hunt was fully conscious at 2 p.m., when they weaned him off drugs used while an artificial respirator controlled his breathing during two days of recovery from marathon surgical sessions Friday.

Hunt was in "very high spirits," according to the hospital's chief of intensive care, Jalai Ghouhary, and even showed a sense of humor when he told the physician that he did not want to go back on the respirator. "Look, doctor, don't make me a zombie again," Hunt said.

But medical sources said Hunt had not yet been told that the spray of jagged glass fragments that shredded his head and torso when the powerful Silkworm warhead exploded 25 feet below the bridge had irreparably damaged his eyes.

Cotton gauze was taped over his eyes. His reddish blond hair, gray at the temples, rested against the green sheet of the hospital bed.

Hunt's left arm, in a plaster cast from the elbow down, was in traction. His right hand and forearm also were bandaged.

The hospital's chief of surgery, Mohammed Mehrez, said Hunt was in serious but stable condition and would require at least another two weeks of hospitalization.

The doctor said that when Hunt was rushed from the burning ship to the hospital by hellicopter Friday morning, he was conscious and called out, "Where am I?" and "I can't see," and asked to be sedated for his pain.

In an initial five hours of surgery, the medical team dug dozens of pieces of glass out of Hunt that showed up on X-rays because of the lead in the heavy marine plate.

"The captain lost a hell of a lot of blood," Mehrez said, and it took more than 60 sutures to stitch dozens of lacerations from his waist up.

Hunt underwent surgery to dig glass fragments out of his abdominal wall and three more hours of surgery on his eyes, hospital officials said.

In a room down the corridor from Hunt, Italian Filippo Tucci, 53, captain of the Sea Isle City before it was reregistered under the U.S. flag in August, also was recovering from serious cuts and damage to his left eye.

Tucci's nurse handed him a plastic container with three large glass fragments, one of them the size of a marble, that had been removed from his eye. Medical sources said it was uncertain whether he would recover sight in that eye.

In a halting voice, Tucci told reporters, that he and Hunt had been standing side-by-side on the bridge looking through the large windows. Two miles ahead was the offshore "sea island" loading terminal, about nine miles from Shuaiba Port.

The 81,283-ton tanker was moving toward the oil-laden terminal at about three miles per hour when Tucci spotted the missile right before impact.

"All we could say was, 'My God, there's a missile,' and then it hit," Tucci said. "We received a tremendous shock."

Stunned and bleeding profusely, Tucci said, "I saw Capt. Hunt was on the floor and I called to him."

Hunt replied, "Yes, Capt. Tucci, I can't see anything."

Tucci said he realized the ship was still bearing down on the oil terminal and he dragged himself to where he could shout to an engineer to turn the ship, cut power and drop anchor.

"I could imagine what kind of disaster there would be if we struck the sea island," Tucci said.

In addition to the officers, 10 crewmen were hospitalized. Three Filipino crewmen and a British engineer, the only crew member who suffered burns, remain there.

At Kuwait's downtown harbor, engineers from Kuwait Oil Tanker Co., which owns the Sea Isle City through a U.S. subsidiary, said repairs will take more than a month.

Company officials showed reporters hundreds of what they said were fragments from the Silkworm strewn over the decks and throughout the wrecked bridge tower on the stern. The fragments included pieces of twisted sheet metal from the skin of the missile, but also heavy steel fragments of the propulsion system that controlled its flight path, according to the engineers.

Some of the fragments were etched with five-digit numerals and others still bore wiring and copper coils that one engineer speculated were to ignite the warhead.

The damage inside the ship left no doubt of the missile's explosive power. The missile hit a ventilating tower on the deck just in front of the bridge, causing the warhead to detonate just before it hit the superstructure of the bridge.

The force of the blast blew out the bridge windows 35 feet above the impact point, and the warhead still had enough power to rip through steel bulkheads in the superstructure. Engineers said the shrapnel tore through 10 steel barriers before the last chunk of hot metal dug into a steel wall in the rear of the upper boiler room.●

GETTING THE BOMBS OUT

● Mr. **HATFIELD**. Mr. President, the voices of those who preach strength through peace are all too often drowned out by the violence of a world which worships strength through peace. But they are there, Mr. President—the voices of those who preach strength through peace are there and Colman McCarthy believes they ought to be heard.

In the autumn edition of the University of Portland magazine, McCarthy asks a simple question: "If peace is what every government says it seeks, and peace is the yearning of every heart, why aren't we studying it and teaching it in schools?" It is a valid question, and I ask that "Getting the Bombs Out" be printed in the RECORD.

GETTING THE BOMBS OUT

(By Colman McCarthy)

A question settled in my mind a few years ago and refused to leave until I not only answered it but also acted on the answer. The question: if peace is what every government says it seeks, and peace is the yearning of every heart, why aren't we studying it and teaching it in schools? Governments and citizens aren't proclaiming that mathematics, languages or science are their goals. Yet students are required to take those and other courses as if the future of the species depended on them. At commencements, graduates are told to go into the world as peacemakers. Yet in most schools, peace is so unimportant that no place is found for it in the curriculum.

Rather than whine about this, which is what too many in the syndicated column trade are content to do most of the time, I decided to go into the schools myself. Four years ago I began teaching courses in alternatives to violence. After being with some 800 students in three universities and one high school, I can give the preliminary report that, contrary to what some might say, with opened minds and receptive hearts, peace can be taught and learned.

I use the qualification "preliminary" because peace, like love, is a cheapened word. Nuclear missiles are now called "peacekeepers," and are presumably equipped with multiple peaceheads. We are told repeatedly that the way to ensure peace is to be ready for war. Nearly all world governments, with an annual global arms budget of $900 billion, preach peace through strength rather than strength through peace.

It isn't enough to condemn the militarists or the latest Pharoah. They do what they are trained to do: deal with conflicts through fists, guns, armies or nukes. They believe wholeheartedly—and deserve credit for the intensity of their beliefs—that violence is the way to stop violence. It is obvious that history proves that approach wrong—if war was effective all our problems would have been resolved thousands of years ago. But the obviousness would be embraced by more citizens if the alternatives to fists, guns, armies and nukes were taught and learned. If the alternatives aren't made available, how can they be applied?

As a pacifist, I am uneasy with the term "peace studies." It will do for now but exactness will eventually be needed. What I have been teaching is peace through nonviolence. That, too, is somewhat imprecise. The sharpest phrase is peace through soul force, or to rely on Gandhi's favorite word, satyagraha. Nonviolence isn't just about ending wars. It's about creating peace in our own hearts, often the last place many people ever find it. Between 1950 and 1978, the suicide rate among teenagers in the United States rose by more than 170 percent. Some 20,000 murders are committed annually in the United States. Violent sports like football, boxing, and hockey are glorified. Child abuse and spouse abuse are rising. About 25 million abortions are performed in the world every year, 1.5 million in the United States alone.

Studying peace through nonviolence is as much about getting the bombs out of our hearts as it is about getting them out of the Pentagon budget. Every problem we have, every conflict, whether among our family or friends, or internationally among governments, will be addressed either through violent force or nonviolent force. No third option exists. I teach my classes because I believe in nonviolent force—the force of justice, the force of love, the force of sharing wealth, the force of ideas, the force of organized resistance to corrupt power. Fighting with those kinds of forces is the essence of nonviolence. The first class of every semester I teach I ask my students, "Is anyone here armed?" No one has ever raised a hand. "You are all armed," I reply. "You're armed with ideas and you're in school to become armed with more ideas."

Occasionally a student will come back with the charge that I asked a trick question. Of course I did. Nonviolence is a tricky subject. The beauty and sanity of it doesn't get into our heads easily or automatically. It takes years and years of study. Why do we dismiss nonviolence so quickly by saying that it's a wonderful theory but unreal, yet we are willing to go slowly with other complex subjects?

After I ask the question about arms, I pose a second one by listing 10 names to be identified: U.S. Grant, Robert E. Lee, Dwight Eisenhower, George Patton, William Westmoreland, Jane Addams, Jeannette Rankin, A.J. Muste, Adin Ballou, and Dorothy Day. Everyone can routinely identify the first five. All are generals. It is rare that anyone knows the second five: all believers or practitioners of nonviolence. A few take a guess that the last person was an actress and singer, as in Doris Day.

The students aren't to blame for knowing only the first five names. In grammar school and high school, and continuing through college, they are taught the history of America's seven declared wars and a fair portion of the 137 undeclared wars. Violence is taught as lore—the Alamo, Custer's Last Stand, the ride of Paul Revere, Lexington and Concord, Gettysburg. If SAT scores were based on high schoolers' knowledge of bloodshed and militarism, we would have a nation of young geniuses.

To teach peace through nonviolence is to give the young a chance to develop a philosophy of force. It's to expose them to the history, techniques, and practitioners of nonviolence. I often think that college is too late. Courses on nonviolence should begin in kindergarten and first grade, and continue through grammar school, junior high and senior high school. To choose to live by a philosophy of nonviolent force is to choose Jesus over Caesar, Vincent de Paul over Napoleon, William Penn over George Washington, Jeannette Rankin over Franklin Roosevelt, Tolstoy over Lenin, Dorothy Day over Lyndon Johnson, Daniel Berrigan over Ronald Reagan.

Students, or at least the wary ones, often say they are glad former flower children like me occasionally turn up on college faculties, but in the real world nonviolence won't work and hasn't worked. Look what happened, they say, to Jesus, Gandhi, King and a lot of other pacifists who were killed. I answer with the only honest reply available. Nonviolence is a risky philosophy to live by. It is no guarantee of safety. It's a failure. All that can be said of it is that it's less of a failure than violence.

Those who prefer violent force, I tell my students, as when a government sends its army to change the behavior of another government that has an army of its own to say that its behavior needs no changing, must justify the deaths of this century's 78 million war victims. (The number is a 500 percent increase over the last century.) Those who choose the handgun as the most effective way to control or persuade the next person need to talk to the 10,000 people who will be killed and shot in the next year. Those who prefer violent force must explain the more than 40 wars or conflicts raging in the world today, killing an estimated 41,000 people a month—most of them poor boys slaughtered by other poor boys. Those who believe that nothing is tastier than a juicy sirloin must explain where America's flesh eaters get the right to impose death every day on 15 million mammals, fowl and fish. Those who believe America is a generous nation must account for the 38,000 children who die in the Third World every day from diseases that could be prevented by vaccinations that cost $10 per child. The Congressional Research Office reports that since 1977, U.S. development and food aid to Third World nations has decreased by 16 percent while military aid has increased 53 percent.

This school year I am serving as adjunct professor at two universities. I will teach a three credit course at each. Shelves of books are available, but I have never been much for loading students with required books. If I am effective as a teacher—if my love for the subject is contagious—students will want to read on their own, perhaps for a lifetime, after the course is over. The best education is self-education. A teacher serves the student merely by showing why a subject is worth loving and how the soul is uplifted by studying it and applying it. And nothing is more applicable to life than nonviolence.

I recommend books, but for each class I supply readings and base each class on them. We discuss, debate, and analyze. For about 20 minutes at the end, I pose a question and set the students to writing down their views. In-class writing is essential. Few students write enough as it is, and fewer still are asked by their teachers merely to express their opinions. These in-class papers aren't graded; I give them back with my comments. If trust is established, students will relish the chance to mix it up intellectually with their teacher.

This current semester, my course, "Alternatives to Nonviolence," is based on 14 classes. I'm expecting it to go like this:

Class one. Readings: Gandhi. In-class writing assignment: If Gandhi were alive and came to campus to give a lecture, what do you think he would say? What would the students—and faculty—think of his message?

Class two. Readings: Dorothy Day. In-class writing assignment: On your way home tonight, you are approached by a homeless person who asks for a place to spend the night. This person is smelly, unkempt and looks decidedly unappreciative of any largess you might offer. What do you say and do?

Class three. Readings: Gene Sharp, on instances where nonviolence has worked. In-class writing assignment: Are the techniques of the Danish resistance to the Nazis applicable today, say, if the Soviets were to invade the United States or the United States were to invade Nicaragua?

Class four. Readings: Carol Ascher. In-class writing assignment: Comment on Ascher's belief, "The problem for women who want to take a nonviolent stance in this extremely violent world is, in fact, rather like the problem for men who decide to become pacifists while on the battlefield. They must invent tactics, strategies, and states of mind which take them out of real-world and internalized vicitimization. Insofar as it is possible to get off the battlefield, they must do so. But men can shoot their guns in the air, volunteer to drive an ambulance, or go AWOL. Women in their homes and in the cities today have a more difficult time discovering their demarcations of the battlefield."

Class five. Readings: Joan Baez. In-class reading assignment: Give your views on Baez's commitment to nonviolence, especially her summary of how most people look at it. "You take nonviolent warfare somewhere in the world and people go at it through strikes or boycotts for a two-week period. At the end of two weeks, if five people get killed, the reaction is, 'I told you it wouldn't work.' But if you take armed struggle—where you feel as though your're defending yourself because you have those conventional weapons—and you fight in the streets for two weeks, and at the end of the two weeks 20,000 people are dead, nobody says, 'I told you it wouldn't work.' They say, 'That's war.' "

Class six. Readings: Paul Hanley Furfey and Sidney Len. In-class writing assignment: Compose an editorial on Secretary of State George Shultz's refusal in August 1985 to meet with a visiting delegation of Japanese A-bomb survivors, while agreeing on the same day to pose for promotional photographs with Japanese sumo wrestlers.

Class seven. Readings: Thomas Merton. In-class writing assignment: Do you think Merton would have been more effective as a peacemaker outside his monastery than in it?

Class eight. Readings: Philip Halle. In-class writing assignment: Was Le Chambon, the French village that practiced non-violence when the Nazis marched in, merely a fluke of history, or could its methods be applied elsewhere?

Class nine. Readings: Leo Tolstoy. In-class writing assignment: Do you agree or disagree with Tolstoy that patriotism is dangerous and useless?

Class ten. Readings: Vic Sussman, Isaac Bashevis Singer, Scott Nearing, and Dick Gregory. In-class writing assignment: Do you agree or disagree that eating animal corpses is unethical, unhealthy, and economically wasteful?

Class eleven. Readings: Martin Luther King, Jr. In-class writing assignment: Offer your thoughts on King's belief that "a nation that continues year after year to spend more on military defense than on programs of social uplift is approaching spiritual death."

Class twelve. Readings: Pope John XXIII. In-class writing assignment: Comment on Pope John's statement, "The Russian people are a wonderful people. We must not condemn them because we do not like their political system. They have a deep spiritual inheritance which they have not lost. We can talk with them. We must always try to speak to the goodness that is in people. Nothing is lost in the attempt. Everything may be lost if people do not find a way to work together to save peace."

Class thirteen. Readings: Merle Shain. In-class writing assignment: compose a marriage contract for yourself that shows how we can exist lovingly with the person next to us.

Class fourteen. Readings: Milton Mayer. In-class writing assignment: Mayer gave a commencement address in which he told the graduates that "the world will change you faster, more easily, and more durably than you will change it. If you undertake only to keep the world from changing you, you will have your hands full." Agree or disagree?

As broad as this course may seem, it really is not much more than a skimming of what's available. I have taught two other courses, "The Politics of Nonviolence" and "The Peace and World Order," and never was short of material. Courses on nonviolence are easily designed. What isn't easy is shifting people's thinking. More than 1200 U.S. campuses allow the Pentagon in their classrooms with ROTC programs, with some 108,000 students enrolled. At the same time, there are only 50 colleges that offer a degree in peace studies, though there are others who offer concentrations, like the University of Portland's Certificate Program.

Only rarely though does a school promote itself for its peace program. How often do college presidents tell prospective students, "Come to my school because we have an excellent program in nonviolent studies." Instead, they recruit students by talking of the new computer center, or the business school, or the new gym.

The militarists aren't to blame. I'm to blame for not doing more to get peace courses into the schools. The peace movement is to blame for the same reason. Liberal arts professors have to answer for their laziness in not fighting for courses in nonviolence.

But in the end, it is students themselves who must supply the moral pressure to get those courses. It's their tuition, their world, and their future. Peter Kropotkin, the Russian pacifist and communitarian advised the young: "Think about the kind of world you want to live and work in. What do you need to build that world? Demand that your teachers teach you that?" It's advice that students—and their teachers—should take to heart.●

AMERICAN EX-POW'S OF GARFIELD

● **Mr. LAUTENBERG.** Mr. President, I want to recognize a recent accomplishment of the American Ex-Prisoners of War of Garfield, NJ. The group dedicated a new building. The State commander of American Ex-Prisoners of War, Walter Furca, led the dedication. I am informed that this is the first building in the United States solely dedicated to the purpose of housing events surrounding American Ex-Prisoners of War.

Chapter 3 of the American Ex-Prisoners of War includes 200 members in the Garden State area. It is proud of its new established home. The building will be used for meetings, installations, fundraisers, dinners, and dances.

Recently, I joined my colleagues in a resolution supporting the negotiations which were to take place between General Vessey and officials from Vietnam. The purpose of this mission was to determine the fate of those who are POW/MIA's. The result of Vessey's expedition was a reestablishment of the commitment to find the POW's and MIA's.

The building in Garfield symbolizes a commitment here at home to recognize and to assist prisoners of war. We, as a nation, are obligated to do our best to find these men and to bring them home.

I would like to commend the men in chapter 3 as well as the 28,000 other ex-prisoners of war in our country. The building in Garfield is an excellent representation of the continued recognition of their dedication to our country.●

SMALL BUSINESS ANSWER DESK 5TH ANNIVERSARY

● Mr. WEICKER. Mr. President, it is my distinct pleasure to wish "happy birthday" to the small business answer desk on the occasion of its fifth anniversary of service to America's small business community. As chairman of the Small Business Committee, I wrote to the Administrator of the Small Business Administration [SBA] urging him to institute a toll-free telephone information/referral service in early 1982. On October 14, 1982, the small business answer desk hotline was established by the Office of Advocacy at SBA and I am pleased to report that it has responded to nearly one-quarter of a million calls. By calling this 800 number, small business owners are directed to the correct source for a definitive answer to small business questions on Government regulations, Federal, State, and private source business assistance.

The answer desk focuses on Federal Government programs and regulations, but also provides information about State, municipal, and private sector agencies. The answer desk averages approximately 275 calls each business day—over 54,000 in fiscal year 1987. Callers may obtain information ranging from how to start a new business to export opportunities for their product. People from every region of the country utilize the answer desk; over the last 5-year period, constituents from my own State of Connecticut alone placed nearly 6,000 calls.

The answer desk is open Monday through Friday from 9 a.m. to 5 p.m. EST. The phone number is 1-800-368-5855 or 653-7561 for the Washington, DC, area. The small business answer desk is a unique and valuable resource for this Nation's small business and it is to be commended on a job well done.●

MONTANA TECH IS TOPS

● Mr. BAUCUS. Montana is fortunate to have an excellent higher education system. Our facilities offer a wide range of programs and degrees to match the interests of today's students. One of these facilities, Montana College of Mineral Science and Technology, was recently named the top school in science and technology for its size by U.S. News & World Report.

Montana Tech is located in Butte, MT, and features an excellent program in minerals engineering. U.S. efforts to become more competitive in the world market must include a solid educational foundation for our children. I believe Montana Tech can give students the training they need to enhance American competitiveness.

I would like to congratulate the students, staff, and administration of Montana Tech for receiving the recognition they have long deserved. I am confident that Montana Tech's tradition of quality will continue and that Montana and the rest of the country will continue to benefit from their efforts.

I ask that a copy of the article be inserted in the RECORD.

[From U.S. News & World Report, Oct. 26, 1987]

ROCKS AND ROCKETS

It has a name that would be hard to fit even on an oversized college sweatshirt, but Montana College of Mineral Science and Technology in Butte achieved a "first" in the *U.S. News* survey for being on a list of schools selected for special mention because of particular strengths in either the sciences or the humanities. In most cases, winners in these specialties were already highly rated in terms of their overall undergraduate education. However, when presidents of the smaller comprehensive colleges were asked to name top schools in the area of science and technology, Montana Tech was their first choice largely because of a superb program in minerals engineering.

SPACE CONNECTION

Similarly, among comprehensive schools in the South, the University of Alabama in Huntsville, which had failed to make the overall listings, was named the top school in science-and-technology education. Many college presidents noted how well it had integrated its programs with the nearby George C. Marshall Space Flight Center.

The rest of the colleges that rated No. 1 in science and technology (see table) also placed in the top tier of their categories according to the overall quality of their undergraduate programs. However, 19 otherwise unranked schools gained recognition in these fields, winning what one educator called "the microchip wreath." In the national liberal-arts category, Bucknell University and Lafayette College, both Pennsylvania schools with engineering programs, made the list. Franklin and Marshall College, also in Pennsylvania, and Hope College in western Michigan were cited for strong chemistry departments.

Among the national universities, four well-known but otherwise unranked schools—Carnegie Mellon in Pittsburgh, Georgia Institute of Technology in Atlanta, Rensselaer Polytechnic Institute in Troy, N.Y., and Purdue in West Lafayette, Ind., made the list of high-tech picks.

"Microchip wreaths" also went to three smaller Eastern comprehensive schools: The Philadelphia College of Textiles and Science, an independent institution in suburban Germantown, Pa., Manhattan College, a Roman Catholic college in Riverdale, N.Y., and the University of Lowell, a state-supported school outside Boston. Presidents of Southern comprehensive colleges cited the University of Central Florida in Orlando, Texas A&I University in Kingsville and Alabama's Tuskegee University for excellence in the sciences. Among comprehensive schools in the West, the U.S. News survey gave similar recognition to three otherwise unranked state-supported schools: California State Polytechnic University in Pomona, Michigan Technological University in Houghton and California's San Diego State University. Geneva College, a Presbyterian school in Beaver Falls, Pa., and Tri-State University in Angola, Ind., were singled out for having top-notch science programs among regional liberal-arts schools in the East and West.

Top-ranked humanities programs—Colleges with most votes for undergraduate humanities programs.

National Universities, Harvard Univ. (Mass.); National Liberal-Arts Colleges, Amherst College (Mass); Smaller Comprehensive, Berea College (Ky.); Southern Comprehensive, Trinity University (Tex); Eastern Comprehensive, Villanova University (Pa); Western Comprehensive, Santa Clara University (Calif); Western Liberal Arts, Alverno College (Wis); Southern Liberal Arts, Wofford College (S.C.); Eastern Liberal Arts, Bradford College (Mass).

Top-ranked science programs—Colleges with most votes for undergraduate science programs.

National Universities, Massachusetts Institute of Technology; National Liberal Arts, Oberlin College (Ohio); Smaller Comprehensive, Montana College of Mineral Science and Technology; Southern Comprehensive, Univ. of Alabama in Hunstville; Eastern Comprehensive, Rochester Inst. of Technology (N.Y.); Western Comprehensive, Calif. Poly St. Univ., San Luis Obispo; Western Liberal Arts, Alma College (Mich); Southern Liberal Arts, Virginia Military Inst.; Eastern Liberal Arts, Saint Joseph College (Conn.)

FOUR FOR HUMANITIES

When it came to colleges with highly regarded specialties in the humanities curricula, the survey found some evidence to support the notion that college adminstrators tend to equate strength in these subjects with overall academic quality. That is shown by the fact that while 21 unranked schools were cited for excellence in the sciences, only four colleges—all of them religiously affiliated—that were cited for excelling in the humanities did not make the overall listings.

Three of the schools, La Salle University in Philadelphia; Rosemont College, a women's school in that city's Main Line suburbs, and Canisius College in Buffalo, are Roman Catholic institutions. The fourth, Kenyon College, an Episcopal school in Gambier, Ohio, did not make the top 25 in the national liberal-arts category, but boasts an English department that has long drawn praise from its academic peers.●

FORMAL NOTIFICATION

PROPOSED ARMS SALE

● **Mr. PELL.** Mr. President, the administration today gave formal notification to the Congress of its intent to sell major defense equipment to Saudi Arabia. The proposed sales include Multi-Stage Improvement Program retrofit kits for F-15 aircraft, 12 F-15C/D attrition/replacement aircraft, and 150 modification kits for M60A1 tanks.

I am pleased that the administration agreed not to ask for the transfer of Maverick missiles to Saudi Arabia. The proposal made today follows a period of consultation with the Congress.

Section 36(b)(1) of the Arms Export Control Act requires that Congress receive formal notification of proposed arms sales under the act in excess of $50 million, or, in the case of major defense equipment as defined in the act, those in excess of $14 million. Upon receipt of such notification, the Congress has 30 calendar days during which the sale may be reviewed. The provision stipulates that, in the Senate, the notification of proposed sales shall be sent to the chairman of the Foreign Relations Committee.

In keeping with my intention to see that such information is available to the full Senate, I ask to have printed in the RECORD at this point the notifications I have received. The classified annexes referred to in the notifications are available to Senators at the Foreign Relations Committee.

The notifications follow:

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, DC, October 29, 1987.
In reply refer to I-15242/87ct.

Hon. CLAIBORNE PELL,
Chairman, Committee on Foreign Relations, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: Pursuant to the reporting requirements of section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith transmittal No. 88-01 and under separate cover the classified annex thereto. This transmittal concerns the Department of the Air Force's proposed letter(s) of offer to Saudi Arabia for defense articles and services estimated to cost $375 million. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this transmittal.

Sincerely,
CHARLES W. BROWN,
Director.

[Transmittal No. 88-01]

NOTICE OF PROPOSED ISSUANCE OF LETTER OF OFFER. PURSUANT TO SECTION 36(b)(1) OF THE ARMS EXPORT CONTROL ACT [1]

(i) Prospective purchaser: Saudi Arabia.

(ii) Total estimated value:

	Million
Major defense equipment	$0
Other	375
Total	375

[1] As defined in section 47(6) of the Arms Export Control Act.

(iii) Description of articles or services offered: Multi-Stage Improvement Program (MSIP) retrofit kits for F-15 aircraft, support equipment, spares, simulators, and training equipment modification.

(iv) Military department: Air Force (YNA).

(v) Sales commission, fee, etc., paid, offered, or agreed to be paid: None.

(vi) Sensitivity of technology contained in the defense articles or defense services proposed to be sold: See annex under separate cover.

(vii) Section 28 report: Case not included in section 28 report.

(viii) Date report delivered to Congress: October 29, 1987.

POLICY JUSTIFICATION

SAUDI ARABIA—RETROFIT KITS FOR F-15 AIRCRAFT

The Government of Saudi Arabia has requested the purchase of Multi-Stage Improvement Program (MSIP) retrofit kits for F-15 aircraft, support equipment, spares, simulators, and training equipment modification. The estimated cost is $375 million.

This sale is consistent with the stated U.S. policy of assisting friendly nations to provide for their own defense by allowing the transfer of reasonable amounts of defense articles and services. In a regional context, continuing support of the defense capabilities of Saudi Arabia will also contribute to overall Middle East security.

The MSIP program involves a series of modifications that incorporate current technology and enhance the supportability of the F-15 aircraft. Saudi Arabian participation in this program is required for continuing cost-effective support of Saudi Arabian F-15s. This support is predicated on commonality between the export version of the F-15 and the U.S. Air Force version. As modifications are currently underway to the U.S. Air Force configuration, where appropriate, similar modifications must be made to the Saudi Arabian configuration. Modifications to the Saudi Arabian configuration will not include some of the upgrades planned for the U.S. Air Force, such as the state-of-the-art AN/APG-70 radar. The upgrade technology provided by the MSIP modification results in modest improvements in operational capability.

The sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be the McDonnell-Douglas Corporation of St. Louis, Missouri.

Implementation of this sale will not require the assignment of any additional U.S. Government personnel; however, 80 contractor representatives may be required in Saudi Arabia for three years.

There will be no adverse impact on U.S. defense readiness as a result of this sale.

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, DC, October 29, 1987.
In reply refer to: I-02586/87ct.

Hon. CLAIBORNE PELL,
Chairman, Committee on Foreign Relations. U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: Pursuant to the reporting requirements of section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith transmittal No. 88-02 and under separate cover the classified annex thereto. This transmittal concerns the Department of the Air Force's proposed letter(s) of offer to Saudi Arabia for defense articles and services estimated to cost $502 million. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portions of this Transmittal.

Sincerely,
CHARLES W. BROWN,
Director.

[Transmittal No. 88-02]

NOTICE OF PROPOSED ISSUANCE OF LETTER OF OFFER PURSUANT TO SECTION 36(b)(1) OF THE ARMS EXPORT CONTROL ACT [1]

(i) Prospective purchaser: Saudi Arabia.

(ii) Total estimated value:

	Million
Major defense equipment	$480
Other	22
Total	502

[1] As defined in section 47(6) of the Arms Export Control Act.

(iii) Description of articles or services offered: Twelve F-15C/D attrition/replacement aircraft in the Multi-Stage Improvement (MSIP) configuration.

(iv) Military department: Air Force (SKC).

(v) Sales commission, fee, etc., paid, offered, or agreed to be paid: None.

(vi) Sensitivity of technology contained in the defense articles or defense services proposed to be sold: See Annex under separate cover.

(vii) Section 28 report: Case not included in section 28 report.

(viii) Date report delivered to Congress: October 29, 1987.

POLICY JUSTIFICATION

SAUDI ARABIA—F-15C/D ATTRITION/REPLACEMENT AIRCRAFT

The Government of Saudi Arabia has requested the purchase of 12 F-15C/D attrition/replacement aircraft in the Multi-Stage Improvement (MSIP) configuration. The estimated cost is $502 million.

This sale is consistent with the stated U.S. policy of assisting friendly naitons to provide for their own defense by allowing the transfer of reasonable amounts of defense articles and services. In a regional context, continuing support of the defensive capabilities of Saudi Arabia will also contribute to overall Middle East security.

These 12 attrition/replacement aircraft are required to sustain the Saudi Arabian F-15 program at the force level validated by Congress in 1978 (60 aircraft). The required quantity is based on standard U.S. Air Force computational models using actual Saudi Arabian losses to date. All 12 attrition/replacement aircraft are being procured now, rather than incrementally, because the F-15C/D production line is scheduled to close in early 1988. Aircraft in excess of the 60 aircraft force level will be retained in the U.S. at Saudi Arabia's expense. As the number of operational aircraft will not exceed validated program levels, the proposed sale will not materially increase Saudi Arabia's military capability. Saudi Arabia will have no difficuluty absorbing these aircraft into its armed forces.

The sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be the McDonnell Aircraft Company of St. Louis, Missouri.

Implementation of this sale will not require the assignment of any additional U.S. Government personnel or contractor representatives in Saudi Arabia.

There will be no adverse impact on U.S. defense readiness as a result of this sale.

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, DC, October 29, 1987
In reply refer to: I-02606/87ct.

Hon. CLAIBORNE PELL,
Chairman, Committee on Foreign Relations, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: Pursuant to the reporting requirements of section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith transmittal No. 88-03 and under separate cover the classified annex thereto. This transmittal concerns the Department of the Army's proposed letter(s) of offer to Saudi Arabia for defense articles and services estimated to cost $120 million. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portions of this Transmittal.

Sincerely,

CHARLES W. BROWN,
Director.

[Transmittal No. 88-03]

NOTICE OF PROPOSED ISSUANCE OF LETTER OF OFFER, PURSUANT TO SECTION 36(b)(1) OF THE ARMS EXPORT CONTROL ACT

(i) Prospective purchaser: Saudi Arabia.

(ii) Total estimated value:

	Million
Major defense equipment [1]	$0
Other	120
Total	120

[1] As defined in section 47(6) of the Arms Export Control Act.

(iii) Description of articles or services offered: One hundred fifty conversion kits to modify 150 M60A1 tanks to the M60A3 Tank thermal Sight configuration and contractor services to install the kits in Saudi Arabia.

(iv) Military department: Army (VIX).

(v) Sales commission, fee, etc., paid offered, or agreed to be paid: None.

(vi) Sensitivity of technology contained in the defense articles or defense services proposed to be sold: See annex under separate cover.

(vii) Section 28 report: Case not included in section 28 report.

(viii) Date report delivered to Congress: October 29, 1987.

POLICY JUSTIFICATION

SAUDI ARABIA—TANK CONVERSION KITS

The Government of Saudi Arabia has requested the purchase of 150 conversion kits to modify 150 M60A1 tanks to the M60A3 Tank Thermal Sight configuration and contractor services to install the kits in Saudi Arabia. The estimated cost is $120 million.

This sale is consistent with the stated U.S. policy of assisting friendly nations to provide for their own defense by allowing the transfer of reasonable amounts of defense articles and services. In a regional context, continuing support of the defensive capabilities of Saudi Arabia will also contribute to overall Middle East security.

Saudi Arabia needs these tank conversion kits to standardize its U.S. origin armor force which currently includes M60 tanks in both the A1 and A3 configurations. The lack of standardization causes training and logistical poblems which conversion will help to alleviate. Saudi Arabia will have no difficulty absorbing these tank conversion kits into its armed forces.

The sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be General Dynamics Services Company of Sterling Heights, Michigan.

Implementation of this sale will not require the assignment of any additional U.S. Government personnel; however, 27 contractor representatives will be required in Saudi Arabia for two years.

There will be no adverse impact on U.S. defense readiness as a result of this sale.●

FEDERAL AND LOCAL GOVERNMENTS TAKE LONG AWAITED ACTION ON CHILD CARE

● **Mr. RIEGLE.** Mr. President, I am pleased to have this opportunity to commend the General Services Administration [GSA] for taking the long awaited and badly needed step of appointing the first high-level Federal official responsible for creating more child care facilities at Government agencies. As the Nation's largest employer, the Federal Government should serve as an inspiration and a model for the private sector in meeting the needs of its employees for adequate day care. That is why I have introduced a bill, S. 1071, to create a public-private partnership that encourages the provision of child care.

The Federal Government must demonstrate the sincerity of its commitment to promoting access to child care for all American workers by addressing the crying need in its own offices. Congress has demonstrated its support for onsite child care by authorizing the GSA to develop such facilities. Yet, a report by the House of Representatives Committee on Government Operations cites "the failure" of GSA to respond to that congressional mandate.

The availability of child care at the workplace, assisted by the employer, not only helps workers, but has returns for the employer as well. It can improve productivity, retention, and recruitment. Without adequate child care, employees understandably may miss work or be distracted on the job. This is the bottom line for business; for the Nation, the bottom line is to demonstrate healthy respect for the needs of families, and particularly for our children.

I would like to congratulate the new appointee, Barbara M. Leonard. With high fees and long waiting lists plaguing existing facilities, she has her work cut out for her. The Federal Government has let this problem languish for too long. On behalf of the dedicated Federal workers who are in need of day care for their children, I offer my support of her efforts. I hope that she will succeed in making day care more available and more affordable for Federal workers.

Another commendable effort at providing day care facilities for Government workers' children is being made by Fairfax County. The county's decision to open a day care center soon for its employees should serve as an example for local governments across the Nation.

I ask that two articles from today's Washington Post concerning this issue be printed in the RECORD.

The articles follow:

[From the Washington Post, Oct. 29, 1987]

GSA NAMES FIRST FEDERAL OFFICIAL TO CREATE DAY CARE CENTERS

(By Sandra Evans)

The General Services Administration announced the appointment yesterday of the first high-level federal official responsible for creating more child care facilities at government agencies.

The appointment was one of a series of actions that GSA Administrator Terence C. Golden had promised to take to promote onsite centers for federal workers here and in other parts of the country.

Barbara M. Leonard, a former Rhode Island manufacturer and 1984 Republican senatorial candidate who has been GSA's regional administrator for New England, was named to the position and will report directly to Golden on child care issues.

"GSA is assuming responsibility for getting child care centers in government," Golden said yesterday, adding that the project has the agency's "total commitment." He said GSA would help agencies survey employes about their child care needs and help start centers.

Rep. Cardiss Collins (D-Ill.), who has critized GSA for not doing more for child care in the federal government, hailed Golden yesterday for having "taken up the gauntlet."

"We know that our federal government is out front," Collins said at a news conference and official opening of the GSA's new onsite child care center at its headquarters at 18th and F streets NW.

There are 12 child care centers in GSA-controlled buildings throughout the country, including seven in the Washington area, according to GSA. Other child care centers serve federal employes in buildings not controlled by GSA, such as one at the Federal Home Loan Bank Board at 17th and G streets NW and one for the House of Representatives at 501 First St. SE.

High fees and long waiting lists for spaces for infants are problems confronting several of the centers.

At the GSA center, there is a year's waiting list for its 11 infant slots, but there are vacancies for toddlers and preschoolers.

The House center, which opened in September, will open a second infant care service Monday with 10 slots in addition to the eight spaces they have now, said Natalie Gitelman, the center's director.

Fees at the House center range up to $130 a week for infants, the highest among the on-site federal facilities in this area, and some Hill workers have complained that this put the center out of the reach of lower-paid employes. Gitelman said the center had tried to make the center available for all employes by starting a scholarship program that helps 30 percent of the children enrolled.

The weekly fees at the new GSA center are $87.50 for preschoolers and $115 for infants. Golden acknowledged that making care affordable for lower-income employes is "a major issue" at such facilities.

Another program, this one a privately financed effort aimed at dealing with latchkey children, was announced yesterday at the Department of Health and Human Services. Whirlpool Corp. and the American Home Economics Association are starting a pilot project, with the District of Columbia as one of five test sites, to advise communities on how to start after-school programs.

One of the goals would also be to teach safety measures to latchkey children.

Officials with the program cited statistics showing that 2 million to 6 million children aged 6 to 13 take care of themselves for part of the day. Some 6,000 children a year die in accidents and fires at home and "in nearly every instance there is no adult present," they said.

[From The Washington Post, Oct. 29, 1987]

FAIRFAX TO PROVIDE EMPLOYES WITH DAY CARE

(By John Bohn)

Fairfax County officials are opening a day care center soon for county workers' children, a move they hope will show private employers that the county's promotion of work site centers is sincere and at the same time meet the needs of their own employes.

"It's sort of trying to set the good example for other employers throughout the county," said Board of Supervisors Chairman John F. Herrity. "We can't encourage you to do something we're not doing."

The center, scheduled to open early next year at the former Fairfax City elementary school on Main Street near the Massey Building, will be the first time the county will provide day care services or benefits for its employes.

About 75 children, ranging in age from six weeks to five years, will be able to participate in the five-day-a-week, 10½-hour-a-day program. Fees are expected to be $115 a week for infants and toddlers, $100 a week for 2-year-olds, and $85 a week for children 3 and older, according to Ellen Tuyahov of the County Office for Children.

Parents earning less than the county's median income could pay less on a sliding scale, she said. Fees are to cover all operating expenses, excluding rent, which the county will cover.

Parents using private day care centers in Fairfax might expect to pay $110 to $120 a week for infants and $75 to $80 a week for preschoolers, or about $65 a week for home day care, according to Charlotte Hughes, director of the county's Employer Childcare Development Council.

Officials expect high demand for the employe day care program, especially for the 12 available positions for infants. State standards require a ratio of one day care worker for every four children under 16 months old, so few centers offer care for them.

"Our gut feeling is this won't meet the need," said Patti Rounsevell, chairwoman of a child care advisory group for the County Office for Children.

Officials have not surveyed all county employes, but Hughes said most employers find that 25 percent of their employes have preschool-age children, and one-tenth of those enroll them in newly opened employer-sponsored day care programs.

At that rate, 225 of the county government's 9,000 employes would wish to enroll children. About 60 employes attended an informational meeting last week.

Officials expect to hold a lottery in January or February to choose participants from among general county employes, including part-time workers eligible for other benefits.

Officials said school system employes probably would not be eligible because they are in a separate pay system.

The county plans to move its training program for home and private center day care workers to the center, and students will be able to observe day care and possibly practice teaching.

At present, two employer-sponsored day care systems operate in the county, according to Hughes: one at Mount Vernon Hospital and a center opened this week by a consortium of 22 businesses in Tysons Corner.

Hughes' group is encouraging other businesses to join together to start day care centers. Businesses and community groups in Reston are working on child care programs that would take care of children of local employes and residents. She said the Springfield Industrial Park and Newington might have enough businesses to support a joint day care center, and there might be enough demand for a second one in Tysons Corner.

In general, she said, an employer must have at least 3,000 employes and more often must have 7,000 to make it practical to start its own day care center. Smaller firms can form consortiums, purchase slots in private centers or allow employes to have an amount deducted from their pay to cover day care expenses. Since employes pay no taxes on such a deduction, this creates a tax subsidy for day care.

The county plans to start such a program for its employes next year, but it may be delayed by a requirement that it get state permission to do so.

Fairfax County has one of the highest ratios of working women in the country, and has 28,900 children under age 5. About 13,390 slots exist for children in the county's 111 licensed day care centers, but these are almost all filled, according to Hughes. Many of the rest get home day care, but there is still a tremendous need.

"We get 1,000 calls a month asking for day care information," she said. "That's 1,000 parents looking for care a month."

A TAX ON GASOLINE

● Mr. **WEICKER**. Mr. President, I would like to bring to the attention of my colleagues an editorial in today's Washington Post. It forcefully makes the case for a tax on gasoline, a position I have long held and have sought to write into law.

The Post article makes plain the need for decisive action to reduce the Federal budget deficit and to curb U.S. oil consumption. A gas tax would accomplish both goals.

The need for new revenues is all too clear. So is the upward spiral of oil imports. Our Nation's economy and security is again at risk because of increased dependence on oil imports and the complete absence of a comprehensive energy policy.

Studies have shown that a tax on gasoline could be easily implemented and would serve as an important incentive to conserve energy, without having any adverse effects on our economy as a whole.

Mr. President, I ask that the Washington Post editorial of October 29 be printed in the RECORD.

The editorial follows:

[From the Washington Post, Oct. 29, 1987]

TIME FOR THE GAS TAX

If President Reagan and Congress can't cut the budget deficit by more than the $23 billion already assured, that will be a spectacular confession of political incompetence. People in the financial markets will certainly read it that way, and an incompetent government is not a reassuring sight to investors already badly shaken by the drop in stock prices. But the job of managing the budget is not as hard as the negotiators have been making it.

The deficit has to come down, but that's not all. Throughout the economy Americans are consuming more than they can afford and saving too little. It's time to raise consumption taxes, and not just on beer.

The case for a gasoline tax is stronger than ever. It would not only raise the revenues that the government desperately needs. It would also put a useful restraint on the rate at which this country is burning oil. Oil imports have been rising steadily for two years. With the world's chief source of imported oil threatened by an unending war in the Persian Gulf, it's mindless simply to let the country's dependence keep drifting upward.

Each penny per gallon added to the gas tax would raise $1 billion a year. How about a 30-cent tax, phased in over three years? It would do wonders for the deficit. It would also do wonders for the atmosphere in the stock market. People there fear that even if the White House and Congress manage to produce a reduction in this year's deficit, it will be a patched-up list of one-shot gimmicks and nifties like asset sales and accounting changes that promise only the most illusory improvement. A gasoline tax scheduled to rise over time would, in contrast, be a solid promise of real and permanent progress.

As you would expect, the antitax theorists and supply-siders have begun to remind a nervous Congress that attempts to balance the budget in the early 1930s made the Depression much worse. There are a couple of night-and-day differences between circumstances then and now. The American economy, and the world's, was already several months into a recession when the stock market crashed in 1929. Now, in contrast, the economy is expanding rapidly. In the 1930s, the Federal Reserve mistakenly tightened the money supply and raised interest rates. Currently, one crucial benefit of a lower deficit would be to provide the Federal Reserve greater latitude to lower interest rates. That will do more to avoid a recession than trying to persuade Wall Street that big deficits are good for it. The gas tax is too effective a remedy to ignore.●

INFORMED CONSENT: VIRGINIA

● Mr. **HUMPHREY**. Mr. President, it is widely accepted in medical protocol that a doctor does not make a decision for a patient, but rather simply provides information, alternatives, and recommendations about appropriate medical treatment. It is then up to the patient to decide. It is also widely accepted that choices involving medical care aren't truly choices if any facts have been withheld from the patient. That's why the second opinion plays such an important role in today's health care.

Unfortunately, when it comes to abortion, there often is a lack of information provided to the patient, and oftentimes the lack is purposeful. In a strange twist of logic, some abortion proponents contend that providing women with all the facts about the effects, risks, and alternatives to abortion limits their choice. Obviously, this cannot be true.

Nevertheless, across the country women are consenting to abortion without the full facts, which is not only against medical protocol, but is an outright injustice toward women who must decide on a procedure that cannot be undone. I ask my colleagues to end this injustice by supporting informed consent legislation, S. 272 and S. 273.

I also ask that a letter from the Commonwealth of Virginia in support of informed consent be entered into the RECORD.

The letter follows:

JULY 1, 1986.

DEAR SENATOR HUMPHREY: Statistics show that 4,000 preborn children die in the United States each day at the hands of abortionists. I believe that this number would be reduced greatly if women and girls were informed of ALL the possible ramifications of such a decision prior to the "procedure."

I know of women who were lied to about the growth and development of their preborn child by abortionists. The "counselor" who counseled me prior to my abortion spoke only of the "products of conception" and "pregnancy tissue" that would be removed from my uterus. She did not offer to show me a fetal model of my fully formed child that they were going to tear apart limb from limb. I acknowledge that at the time of my abortion in 1973, fetology and/or neonatology were not as advanced as they are today. That is not a sufficient excuse. The abortionists and their assistants saw what collected in the jar at the end of that vacuum aspiration tube and it was considerably more than a "mass of pregnancy tissue." It included the pieces of what was, only a few minutes prior, a fully formed preborn baby.

They take your money, kill your baby, offer you birth control (sometimes) and send you home. Perhaps they will mention that, as with any medical procedure, there are always risks. But, they add, no more than having your tonsils removed or going to the dentist. I have met women who will strongly disagree with the risks involved. Women who now, following their abortions, are unable to conceive for no accountable medical reason.

I have met, as well as read testimonies of, women whose uteri were perforated, or who suffered hemorrhaging following their abortions. In addition there are several emotional and psychological complications that will follow an abortion when a woman recognizes that she has been part and parcel in having her offspring, her child, horribly killed.

In light of the fact that abortions will continue, informed consent MUST be a part of this "procedure" as with other more legitimate medical procedures. Women who are told the truth are more likely to choose life—I pray.

Sincerely,

SUSAN L. WIMMER,
Virginia.●

MORITZ VON BOMHARD

● Mr. McCONNELL. Mr. President, on October 21, I alerted my colleagues to a New York Times article about the Louisville Orchestra's Sound Celebration Festival. At that time, I commented on the remarkable cultural accomplishments of the city of Louisville and its residents. I would now like to submit another article that corroborates last week's statement. The article appears in Insight, a publication for University of Louisville alumni and faculty, and details the life and achievements of an extraordinary man, Maestro Moritz von Bomhard.

Maestro Bomhard studied at the Julliard School of Music and Columbia University and taught at Princeton University. He has composed symphonies and concertos and has served as arranger and composer for the Philharmonic Piano Quartet.

One of his most notable contributions to the arts occurred in 1952, when he founded the Kentucky Opera in Louisville. In the opera's early years, he performed all the major nonperforming functions himself—casting, building and designing sets, auditioning, and fundraising. The article mentions that he was offered a permanent position in Europe but decided to return to Louisville. It does not mention that he was persuaded to return by a cable sent by his Kentucky colleagues pleading him to return because he was so indispensable to the Kentucky Opera. One of his colleagues said, "His opera company was his calling; providing an opera company for Louisville was the thing he had to do."

To solidify his commitment to improving the quality of the arts in Kentucky, Maestro Bomhard has created a bequest that will endow a chair at the University of Louisville School of Music. This chair, by providing students with advanced training in music theater, will ensure that the legacy of Moritz von Bomhard will endure for years to come.

It is my hope that by seeing this article, Senators can confirm the statements I made last week. Maestro von Bomhard's actions further contribute to the cultural excellence of Kentucky of which I am so proud.

The article follows:

MORITZ VON BOMHARD TO ENDOW CHAIR AT SCHOOL OF MUSIC

Moritz von Bomhard, who founded the Kentucky Opera Association and served as its artistic director for thirty years, has created a bequest that will endow a chair of music theatre at the University of Louisville School of Music. The chair is designed to provide instruction to upper level students in all aspects of music theatre, including opera, cabarets, musical festivals and Broadway musicals.

It is the ambition of Maestro Bomhard to offer select students specialized courses that will lead to a proficiency in rehearsal and performance techniques, an ability to read and play piano reductions and orchestral scores, an ability to pronounce and sing original texts, and a knowledge of vocal performance traditions embracing cadenzas, tempo changes and dynamics. Students will also be expected to achieve expertise in the various aspects of stagecraft, such as stage direction, scene and costume design and changes, lighting techniques, etc. The program will be all-encompassing and its ultimate objective will be to develop the skills necessary to produce various forms of music theatre.

The chair, which is the first of its kind in the United States, will draw international attention and recognition to the School of Music. In the words of Jerry Ball, Dean of the School of Music, "Moritz von Bomhard has always been an innovator. His legacy to the School of Music will benefit young professionals in a manner that cannot be duplicated at other institutions of higher learning. There is no question in my mind that this program should produce leaders and directors of music theatre who will be prepared to compete with the best in this country."

Maestro Bomhard studied at the Julliard School of Music and subsequently taught at Princeton University. While teaching at Princeton, Maestro resided in New York and devoted much of his time to composing. During this time he wrote three symphonies, piano pieces, chamber music and a concerto for strings. Several of these compositions were performed by the Columbia Broadcasting System orchestra.

In the years following World War II, Maestro Bomhard earned a Master's Degree at Columbia University. During this time he founded the New Lyric Stage Opera Company and also served as arranger and composer for the Philharmonic Piano Quartet (Columbia Recordings). Following several guest engagements with U of L's School of Music, where he produced and conducted operas, Maestro left New York and settled in Louisville. In 1952 he founded the Kentucky Opera.

Because of a shortage of funds, he served as his own director, scenic director, scenic artist and music director for the Kentucky Opera. To demonstrate its support for the fledgling opera association, the U of L School of Music appointed him to its faculty.

Between 1954 and 1962 Maestro went abroad in the summer months to make tapes with radio symphony orchestras in Hamburg, Zurich and Munich and to conduct symphony concerts in major German cities. At the request of the Ford Foundation, he established a cultural program in Berlin. Though offered a permanent position in prestigious Hamburg, Maestro decided to return to Louisville to nurture and guide his new opera company. Since its founding, the Kentucky Opera has performed 66 operas (including six new works) and staged 124 productions. One of his career highlights was conducting Verdi's "Othello" for the opening of the Norton Center at Centre College in Danville, Kentucky.

During his thirty years as artistic director of the Kentucky Opera Association prior to his retirement in 1981, Maestro worked as a part-time faculty member of the U of L School of Music. He has given lecture series, conducted opera workshops, coached singers, held seminars and produced operas.

The numerous awards he has received include the Downtown Salute to the Arts Man of the Year Award in 1966, an honorary Doctor of Letters from Ursuline College and the Giovanni Martini Award from Bellarmine College. Maestro has been a member of the Louisville Orchestra Board and has served as a regular judge of the Metropolitan Opera Auditions throughout the country.●

STATEMENT/CATASTROPHIC HEALTH CARE LEGISLATION

● Mr. MELCHER. Mr. President, this past Tuesday was a historic day. The U.S. Senate took an important step toward assuring the protection of our elderly from the ravages of catastrophic health care costs. I know the chairman of the Finance Committee, Senator BENTSEN, has worked long and hard in developing a package that is both humane and fiscally sound. I commend him for producing S. 1127, the Medicare Catastrophic Loss Prevention Act of 1987.

AGING COMMITTEE INVOLVEMENT

During the past year, the Special Committee on Aging has documented the shortcomings of the Medicare Program's coverage of catastrophic health care costs and has worked to find ways to address these shortcomings. As chairman of the Aging Committee, I have been privileged to receive testimony at four different hearings from witnesses interested in the costs of catastrophic health care. The Aging Committee has heard from elderly persons who have been victimized by catastrophic health care costs, from the Secretary of Health and Human Services and other Administration witnesses, as well as representatives of the insurance industry, aging advocacy groups, doctors, drug manufacturers and distributors and academics.

On January 26 of this year, three impressive women testified before the Senate Aging Committee about their experiences with a loved one needing extended and costly medical care. Their stories cut across this country, to the core of what makes America great—independence and pride. We heard these hard-working, honest Americans talk about their day-to-day struggles to make ends meet. These people found themselves victims of catastrophic health care expenses not because they didn't plan for the future or because they didn't pay their fair share, but only because they ran into the double burden of poor health and costly care.

On April 16, Senator SHELBY chaired a field hearing on catastrophic health care costs and on July 20 I held another hearing to examine the more specific burden of prescription drug costs. It became increasingly obvious during the course of these hearings—and in ensuing discussions with older Americans and their advocates—that older Americans not only need the expanded benefits included in S. 1127, but also require assistance to help pay for the burdensome costs of prescription drugs and long-term care.

SUMMARY OF S. 1127

S. 1127 makes important and needed improvements in the Medicare Program that address some of the many problems that were outlined at Aging Committee hearings. I am particularly gratified that the elderly no longer would have to fear being bankrupted by a long-term stay in a hospital. Under this bill, the elderly would not have to pay more than one hospital deductible each year and would be eligible for 365 days of hospital care annually. By eliminating terminology like "spell of illness" and "lifetime reserve days," the catastrophic bill simplifies the Medicare Program and makes it easier for all of us to understand.

S. 1127 builds on and strengthens the administration's original proposal in a number of ways. It caps out-of-pocket expenses for acute-care services covered under Medicare at $1,850 and provides that beneficiaries would be liable for only one inpatient hospital deductible each calendar year. As in the President's proposal, Medicare's hospital coinsurance, which is now required if a patient stays in the hospital longer than 60 days, would be altogether eliminated.

I believe that one of the most significant improvements in this package is a provision which requires the Secretary of Health and Human Services to notify Medicare beneficiaries what the program will and will not cover. This notice will be developed by aging advocates and insurers and should help reduce the great confusion which surrounds the Medicare Program.

Because expansion of Medicare benefits will produce some savings for the Medicaid Program, S. 1127 requires States to reinvest these savings in further health care protection for the elderly and disabled. The bill directs the HHS Secretary to estimate the savings to each State's Medicaid Program and States then would use these funds to either "buy-in" the Medicare part B catastrophic premium for larger numbers of low-income elderly or to provide protection against spousal impoverishment for those individuals whose spouse has been institutionalized.

Unlike the President's catastrophic health care proposal, S. 1127 takes some small but important steps toward expanding long-term care protection under the Medicare Program. Under this bill, coverage of nursing home, home health and hospice care is expanded and a study of long-term financing options is required. Expansions include:

Dropping the very restrictive 3-day prior hospitalization requirement for nursing home care;

Expanding skilled nursing home coverage from its current 100 days to 150 days;

Increasing the number of days (from 21 to 45) that patients discharged from a hospital or nursing home would be entitled to daily home health care;

Clarifying the "homebound" requirement which historically has caused many of the inconsistent reimbursement practices which troubled the delivery of needed home health care services; and

Eliminating the current limit of 210 days of hospice care and making it an open-ended benefit.

The benefits included in S. 1127 are therefore significant and I strongly support them. However, a General Accounting Office report I released in August outlines a number of shortcomings that we must yet address.

GAO REPORT

The General Accounting Office [GAO] report I released outlines the coverage that the Senate and House catastrophic plans provide. It states that although both legislative proposals would increase protection for enrollees, the protection is largely against costly hospital stays. Major gaps would remain in Medicare in the limited coverage of part B physicians' charges and in the complete absence from coverage of certain very important items such as long-term care.

This report goes on to say that CBO estimates that 5.5 million beneficiaries—17 percent of part B enrollees—spend more than $500 annually for their prescription drugs, and, therefore, would benefit from the out-patient prescription drug coverage the House bill provides. However, GAO points out that the $500 deductible would keep this provision from helping some of the elderly who need it the most—the poor, near poor, and those who do not have private supplemental insurance. Therefore, the drug benefit we passed Tuesday (which has a $600 deductible and will not be fully implemented until 1993) is even more susceptible to GAO's finding.

The GAO report concludes that although the catastrophic health care bill we passed provides for significantly improved protection, it will not plug many of the gaps in coverage for long-term care, prescription drugs, in-home custodial services and respite services for relatives caring at home for the

chronically ill and disabled. Because of the timeliness of this report, I ask that the report's "Principal Findings" be printed in the RECORD at this point.

The "Principal Findings" follow:

PRINCIPAL FINDINGS

PROGRAM EVALUATION AND
METHODOLOGY DIVISION,
U.S. GENERAL ACCOUNTING OFFICE,
Washington, DC, July 31, 1987.

B-227664
Hon. JOHN MELCHER,
Chairman Special Committee on Aging,
U.S. Senate.

DEAR MR. CHAIRMAN: On January 20, 1987, you asked us to provide you with information about legislative proposals to protect Medicare enrollees from the financial hardships that often accompany catastrophic illness.

Initially, our review focused on six legislative proposals introduced into the first session of the 100th Congress. During the course of our review, the House Ways and Means Committee and the Senate Finance Committee approved H.R. 2470 and S. 1127. It is generally believed that these will form the basic structure for the Medicare coverage that the full Congress will eventually consider.

Therefore, with the concurrence of the committee staff, we focused on H.R. 2470, as approved by the House Ways and Means Committee on May 19, 1987, and S. 1127, as approved by the Senate Finance Committee on May 29, 1987. We also looked at the aspects of long-term care in S. 454, introduced by James R. Sasser.

In response to your request, we developed the following material:

1. a statement of our objectives, scope, and methodology;
2. a review and comparison of H.R. 2470 and S. 1127 against the current Medicare program with respect to benefits to enrollees, their costs, and the program's financing mechanisms;
3. a discussion of important issues that may still need attention; and
4. a synthesis of the lessons learned from the operation of state-financed insurance programs for catastrophic illness that the Congress might consider in the development of a federal program.

In 1950, just over 8 percent of the population was 65 years old and older, but in 1980 this percentage was over 11 percent. One of the most important issues of the late 1980's is how to protect the elderly and their families against the catastrophic expenses they may face when they have acute medical problems or when they need long-term care because of chronic illness and disabling conditions such as stroke and Alzheimer's disease.

Despite benefits from Medicare and private supplements to that program, out-of-pocket expenditures for medical care substantially burden them. This is especially true for nursing home care, for which more than one half of all costs are paid for by patients or their relatives.

Both bills are designed to expand Medicare coverage for acute care. Both are intended to be "budget neutral." That is, the cost of the expanded benefits would be paid for through higher Medicare premiums.

The provisions of the two proposals would significantly increase protection for the enrollees. For example, the bills would increase the number of covered hospital days and alter or eliminate deductibles and coinsurance payments. However, even if one of the current proposals or others similar to them are adopted, some gaps will remain.

The gaps in the Medicare program as they would be modified by H.R. 2470 or S. 1127 would be not in hospital services but in the incomplete coverage of physicians' charges and limited coverage of long-term care at home and in nursing homes. Therefore, it seems clear that the expanded Medicare benefits in either proposal would only partially protect the elderly from catastrophic expenses.

Issues that may require additional consideration are the definition of catastrophic expense, the specific health-care needs of the elderly, prescription drugs, and out-of-pocket expenses for services both covered and not covered by Medicare. We discuss these briefly below.

"Catastrophic expense" can be defined either in absolute terms or relative to income or wealth. Both bills define it absolutely, in the sense that they would limit how much an enrollee would have to pay for specific expenses without regard for individual income. The limit, called the "copayment cap," sets the maximum amount an individual would have to pay, either as deductibles or as coinsurance payments, for a spell of illness.

The lower copayment cap being proposed is $1,043. Approximately 91 percent of the Medicare beneficiaries have historically had copayment expenses totaling less than $1,000 for services covered by Medicare. This means that under the proposed legislation, 91 percent of the enrollees who apply for benefits would not exceed the $1,043 cap (if past trends were to continue) and, therefore, would not be eligible for benefits.

Both Medicare and private insurance (called "Medigap" policies) are designed to deal largely with the cost of acute-care needs and do not cover the typical needs of patients in long-term care, who by and large do not require the services of a physician or a skilled nurse but, rather, need help in dressing, eating, toileting, moving from one place to another, and supervision. While both H.R. 2470 and S. 1127 would extend the number of days covered in a skilled nursing facility, neither bill addresses the long-term services mentioned above.

The Medicaid program does pay for the most expensive long-term service—nursing home care—but it is so structured that a condition of eligibility for it is the impoverishment of the beneficiaries and their spouses. To obtain Medicaid benefits, a person must be either poor or reduced to poverty in the process of trying to pay for care.

Another issue is out-of-pocket expenses. Although H.R. 2470 and S. 1127 differ slightly, the combined expenses for services partially covered and services not covered by Medicare (excluding expenses associated with long-term care) would leave some elderly persons burdened with out-of-pocket expenses quite large in relation to their income. This would be particularly a problem for the elderly "near-poor" who do not qualify for Medicaid.

Many other important issues are addressed in the version of H.R. 2470 approved by the House Energy and Commerce Committee. They include prescription drugs, protecting the sick person or the spouse from impoverishment, and providing for personal care in the home and respite care. However, your need for an immediate analysis of the basic proposal precluded a full analysis of the amended version of the bill at this moment.

The experience of five states in trying to implement catastrophic illness programs may be relevant to some aspects of the federal proposals. New Hampshire and Rhode Island currently operate state-financed catastrophic illness insurance programs; Alaska, Maine, and Minnesota have operated one at some time since the mid-1970's. We derived several lessons from our review of their programs.

First, some of the states included assets as a factor in eligibility determinations. If assets are not included in determining whether an elderly person should receive the program's benefits, then an illness may be defined as catastrophic and covered by the program when the elderly person may in fact have enough wealth in the form of assets to finance care without serious financial effect on the family. The decision to include assets must be carefully considered also because large out-of-pocket expenses an elderly person pays by selling assets could lead to the impoverishment of the sick person or the spouse.

Second, high costs and rapid cost growth generally characterized the states' programs. Hospital benefits produced the main expense for the programs, from 71 percent of total expenditures in Alaska to 86 percent in Maine.

The states tried to contain the rapid growth in program costs with three basic cost-sharing mechanisms: deductibles, coinsurance, and limits to coverage. Rhode Island also created explicit incentives to the elderly to take private insurance coverage. It based a varying deductible on the quality of an applicant's insurance coverage: the more extensive the insurance coverage, the lower the deductible. This is a unique feature of Rhode Island's program, the only program that has been able to maintain hospital benefits. Providing expanded hospital benefits cost the state programs more than providing any other benefit.

The experience of the states indicates the need for continual attention to the ways in which current administrative structures could be used to implement a program and to identify and limit its costs. Administrative costs seem to be reduced to the extent that a program employs existing agencies and resources. Probably the most important lesson from the states' experiences is that the states often had to reassess the relative costs and revenues of their programs.

SUMMARY

Overall, our review indicates that H.R. 2470 and S. 1127 would certainly add to the benefits available to the elderly. However, some of the elderly would still be at risk for substantial out-of-pocket health-care expenses, especially for long-term care, even if these bills are enacted.

For further information, please call me or Carl Wisler at (202-275-1854).

Sincerely,

ELEANOR CHELIMSKY,
Director.

Mr. MELCHER. To begin to address the gaps in prescription drug and long-term care coverage that were outlined in the GAO report, I offered a number of amendments that were included in the Senate-passed version of the catastrophic health care bill and I intend to continue making these high priority issues for the Senate Special Committee on Aging.

PRESCRIPTION DRUG COVERAGE

With regard to the prescription drug provision we included in S. 1127, we must continue our efforts to find ways to reduce the deductible so that more older Americans can qualify for this greatly needed benefit. Because I believe we were going in the wrong direction with the drug benefit, I offered—and was pleased to have accepted—an amendment that gives the Secretary of Health and Human Services the authority to reduce, as well as increase, the deductible if sufficient revenue is available. However, we can and must do more to expand this drug benefit.

Under S. 1127's prescription drug benefit, there will be far too many elderly who will remain unprotected against drug costs that represent truly catastrophic expenses to them. I strongly believe that until and unless we provide a drug benefit that provides assistance to more than 17 percent of our elderly, we will continue to hear from too many of our constituents who are forced to make the unacceptable decision of buying either needed medications or paying for such essentials as groceries and heat.

LONG-TERM CARE

We must make a similar commitment in the area of financing long-term care. This is truly the most catastrophic of all health expenses. For those elderly spending more than $2,000 annually on out-of-pocket medical expenses, the cost of nursing home care absorbs more than 80 percent of every dollar spent over and above $2,000. Unfortunately, because the majority of elderly persons requiring home or nursing home care require custodial rather than skilled nursing care, S. 1127's expansion of skilled long-term care benefits does not offer any additional assistance to the largest segment of the elderly population needing long-term care.

In the upcoming months and years, we all must work together to fight for the coverage of long-term health care. There is no question that it will be difficult to find the funding we need to pay for long-term care for both the elderly and nonelderly who are chronically ill and desperately need assistance. However, to me, it is nothing but a matter of priorities. If all of us do our jobs to bring to the attention of the American public the need for long-term care coverage, it will become a priority—for the public, the rest of the Congress, and the administration. Our elderly need and deserve nothing less.

As a first step, I offered two amendments and joined in offering another that would provide information on the need for and availability of long-term care coverage and on ways to finance it. These amendments, which were accepted, would:

First, expand the scope of an institute of medicine study on long-term care to include the review of the long-term needs of Americans of all ages; a review of the sources of financing and the coverage of long-term care in other developed nations and the implications of these findings on the development of similar policies in the United States, and a review of the impact that various approaches to financing long-term care would have on the access to those services by various groups, such as minorities, women and children;

Second, require the Secretary of Health and Human Services to evaluate and report to Congress on the various adult day care services being provided throughout the United States, including information on the scope and availability of day care center services, the health care settings in which the services are provided, and the advisability of having a Medicare benefit for adult day care; and

Third, establish a bipartisan commission on health care which would provide specific recommendations on Federal programs, policies, and financing to assure availability of comprehensive long-term care for the elderly and disabled.

In addition, I have directed that the entire volume III of the Aging Committee's annual publication, "Developments in Aging," be dedicated to the issue of long-term care. This report chronicles legislative and administrative actions pertaining to Federal programs serving our ever-increasing aging population.

The information contained in volume III will be a compilation of the most recent demographic and statistical data pertaining to long-term care. It will include, but not be limited to data and background information on the following:

The long-term care population: who they are—including emphasis on those who are most at risk—why they need long-term care, what they need, projections for the future.

Long-term care services currently available: home health care, family caregiving, institutional care.

Financing: who pays for long-term care services—with special emphasis on the burden that long-term care places on families.

CONCLUSION

I believe it is essential that we keep in mind that passage of the Medicare Catastrophic Loss Prevention Act of 1987 is but a first step in protecting older Americans against all catastrophic health care costs. Providing coverage for long-term nursing and home care and expanding the prescription drug benefit should be at the top of our list. Until we can assure the elderly of this Nation that they never will have to choose between eating or paying the rent and getting needed health care, can we truly call it "catastrophic protection."

FRAUD OF THE DAY—PART II

● Mr. HEINZ. Mr. President, today's fraud involves the apparel industry, a popular target for fraudulent activity since much of it is subject to quantitative restraints.

On July 21, 1986, Eagle Eye, Ltd., which happens to be a Pennsylvania company, in case anyone thinks I have been biased in my presentations, and its Hong Kong affiliate pled guilty to four counts each of 18 U.S.C. 542, the fraud statute, and 19 U.S.C. 1304(e), relating to marking. These counts involved the illegal importation of sweaters produced in Hong Kong and the People's Republic of China through Japan in order to avoid quota restrictions. The country of origin of the sweaters was changed from Hong Kong or China to Japan. The companies paid criminal fines totaling $40,000, and each firm received 5 years probation for the marking violations. The companies have also collectively agreed to pay $280,000 in civil penalties. The Customs Service was fortunate in this case since it was also able to recover $160,000 from the sale of forfeited merchandise seized in connection with the violations.

This fraud does not involve multimillion dollar fines or awesome quantities of merchandise. It is admittedly pedestrian when compared to the Mitsui steel fraud or the multinational coffee fraud I discussed last week, but it is these small cases which add up and do the real damage to our economy, particularly in sectors like apparel, which are filled with small businesses. A multimillion dollar manufacturer could probably cope with the lost sales caused by this fraudulent act, but a small manufacturer could not.

It is because of this damage that I have been stressing the need for a private right of action so strenuously over the last few weeks. Fortunately, this fight is not without important allies. I recently received a letter from the Trade Reform Action Coalition supporting the Senate provision creating a private right of action in customs fraud cases. This coalition, known as TRAC, is made up of many disparate groups, ranging from the National Cotton Council of America to the American Iron and Steel Institute to the International Ladies' Garment Workers Union. The diversity of the groups making up the coalition clearly shows the wide range of support which a private right of action provision enjoys.

The arguments that the coalition makes in its letter are quite similar to those I have presented during my "frauds of the day." The letter mentions the valuable deterrent action of a private right of action, as well as the fact that present fines and penalties are seldom commensurate with the magnitude of the illegal act committed.

The TRAC letter also refutes a popular argument against the pending amendment—the overcrowding of the courts. As I have mentioned on an earlier occasion, the Court of International Trade can easily handle a significant increase in the number of cases it processes. Overall, this letter clearly sums up many of my arguments in favor of a private right of action for customs fraud violations. Mr. President, I ask that this letter be printed in the RECORD.

The letter follows:

TRADE REFORM ACTION COALITION,
August 11, 1987.

Mr. ALAN F. HOLMER,
General Counsel, Office of U.S. Trade Representative, Washington, DC.

DEAR ALAN: On behalf of members of the Trade Reform Action Coalition (TRAC membership attached), we are writing to express our strong support for Section 939 of the Senate's omnibus trade bill, which creates a private enforcement action against customs fraud.

TRAC's 1987 legislative agenda has, as one component, passage of a private right of action to recover damages that result from customs fraud and violations. Section 939 of the Senate trade bill, co-sponsored by Senators Heinz, Danforth, Specter and Hollings, would enable U.S. companies that have been injured by customs fraud or gross customs negligence to pursue civil actions in the Court of International Trade (CIT) to recover damages that result from these illegal and harmful activities.

The arguments for this amendment are, in our view, overwhelming.

First and foremost, there is currently very little deterrent to foreign exporters and U.S. importers who engage in customs fraud. Due to inadequate U.S. Customs Service staff and other resources, most fraud goes undetected. Moreover, in those limited number of Customs Service fraud actions that are brought (e.g., Korean polyester filament through Japan and the Thyssen and Mitsui steel cases), there is usually a delay of several years between the time fraud occurs and the government finally decides to act.

Second, in those cases where settlements are reached between the government and guilty parties, the fines that are levied often bear little resemblance to the economic damage that results from fraud. Those who knowingly and willingly engage in customs fraud know that the "gains" from fraud will in all likelihood outweigh the sanctions if they are caught and, as a result, there is currently no real deterrent to this criminal activity. In addition, those who are directly harmed by customs fraud schemes are not compensated at all for the damage that is done to their businesses.

Third, Section 939 will assist U.S. Customs Service enforcement efforts, precisely because it will have a strong deterrent effect. The principle here is no different from what it is when people violate U.S. antitrust and securities laws, which also allow for private recovery of damages. Foreign exporters and U.S. importers who engage in customs fraud will henceforth know that they will be held potentially liable for damages that result from fraud, and this alone will discourage such schemes.

There are no strong arguments, in our view, against passage of Section 939.

Some make the point that Section 939 will lead to "trade harassment" and the filing of frivolous suits. This argument makes no sense, because Rule 11 of the Federal Rules of Civil Procedure already provides clear authority to impose sanctions on parties that file lawsuits for purposes of harassment—and, if there are still any doubts, TRAC members would support inclusion of specific language in Section 939 that would (1) require parties filing actions to believe their allegations are well-grounded, (2) prohibit civil actions that harass any person and (3) clarify the authority of the Court of International Trade to impose sanctions on parties that file harassment suits.

Another empty argument against passage of Section 939 is that it will create a logjam at the Court of International Trade. This is contrary to what CIT officials themselves say, and comparative caseload statistics make clear that the CIT could take an additional workload without great difficulty. For example, the number of civil actions filed in the CIT decreased by 98 from 1985 to 1986 and, while the average number of civil actions filed per federal district judge in 1986 was 444, the average for judges on the CIT was only 183.

During Senate debate on Section 939, Senators Bentsen and Packwood recognized that the amendment in question will assist Customs Service enforcement efforts and deter customs fraud and will not in any way interfere with legitimate trade activities. Both therefore agreed to support the concept of a private right of action to recover damages for customs fraud. Members of TRAC hope that USTR, and the Administration as a whole, will also support this amendment in the upcoming Conference on the trade bill.

Sincerely,

FRANK FENTON,
Co-Chairman.
JIM CONNER,
Co-Chairman.

TRADE REFORM ACTION COALITION [TRAC]

Alliance of Metalworking Industries.
Amalgamated Clothing and Textile Workers Union.
American Apparel Manufacturers Association.
American Brush Manufacturers Association.
American Chain Association.
American Cutlery Manufacturers Association.
American Die Casting Institute.
American Federation of Fisherman.
American Fiber, Textile, Apparel Coalition.
American Furniture Manufacturers Association.
American Gear Manufacturers Association.
American Institute of Steel Construction, Inc.
American Iron and Steel Institute.
American Metal Stamping Association (Washer Division).
American Mushroom Institute.
American Pipe Fittings Association.
American Textile Machinery Association.
American Textile Manufacturers Institute.
American Wire Products Association.
American Yarn Spinners Association.
Anti-Friction Bearing Manufacturers Association.
Automotive Service Industry Association.
Association of Die Shops International.
Association of Steel Distributors.
Association of Synthetic Yarn Manufacturers.
Bicycle Manufacturers Association of America, Inc.
Brass and Bronze Ingot Institute.
Carpets and Rug Institute.
Cast Iron Soil Pipe Institute.
Cast Metals Association.
Clothing Manufacturers Association of America.
Committee of Pipe and Tube Imports
Copper and Brass Fabricators Council, Inc.
Cutting Tool Manufacturers Association.
Expanded Metal Manufacturers Association.
Footwear Industries of America, Inc.
Forging Industry Association.
Group of 33.
Hand Tools Institute.
Industrial Fasteners Institute.
Industrial Perforators Association, Inc.
Industrial Unions Department, AFL-CIO.
International Ladies' Garment Workers Union.
International Leather Goods, Plastics and Novelty Workers Union.
Investment Casting Institute.
Iron Castings Society.
Knitted Textile Association.
Lead-Zinc Producers Committee.
Luggage and Leather Goods Manufacturers of America, Inc.
Man-Made Fiber Producers Association, Inc.
Metal Cutting Tool Institute.
Metal Treating Institute.
Metalworking Trade Coalition.
National Association of Chain Manufacturers.
National Association of Hosiery Manufacturers.
National Association of Pattern Manufacturers.
National Association of Uniform Manufacturers.
National Cotton Council of America.
National Foundry Association.
National Knitwear Manufacturers Association.
National Knitwear and Sportwear Association.
National Tooling and Machining Association.
National Wool Growers Association.
Neckwear Association of America.
Non-Ferrous Founders' Society.
Northern Textile Association.
Outdoor Power Equiment Institute.
Plumbing Manufacturers Institute.
Scale Manufacturers Association, Inc.
Steel Founders' Society.
Steel Plate Fabricators Association, Inc.
Steel Service Center Institute.
Synthetic Organic Chemical Manufacturers Association.
Textile Distributors Association, Inc.
Tool and Die Institute.
U.S. Battery Trade Council.
U.S. Fastener Manufacturers Group.
Valve Manufacturers Association.
Welded Steel Tube Institute.
Work Glove Manufacturers Association.●

NAUM MEIMAN

● Mr. SIMON. Mr. President, the Soviets argue that "all Jews who wanted to leave the Soviet Union have left. Family reunification has been completed. The decline in emigration in recent years is simply due to the fewer number of persons requesting exist visas."

I am troubled by this statement. I have been involved and concerned with the Naum Meiman case for quite a few years. I know Naum. He is a Soviet refusenik who has repeatedly applied for an exit visa to leave Russia. He tried to get the best medical treatment for his wife when she had cancer; when she was allowed to leave the country for treatment, he was not allowed to join her. When she died he was not granted permission to attend her funeral. Again, I must question the Soviet's statement.

It is time that we do away with the term "refusenik." It is time that the Soviets begin to live up to the standards that they have set.●

RECESS SUBJECT TO THE CALL OF THE CHAIR

Mr. FORD. Mr. President, I move that the Senate stand in recess subject to the call of the Chair.

The motion was agreed to, and at 8:22 p.m., the Senate recessed subject to the call of the Chair.

The Senate reassembled at 8:53 p.m., when called to order by the Presiding Officer (Mr. GRAHAM).

ORDERS FOR FRIDAY

RECESS UNTIL 8:30 A.M.

Mr. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in recess until 8:30 a.m. tomorrow.

The PRESIDING OFFICER. Without objection, it is so ordered.

RESERVATION OF LEADERSHIP TIME

Mr. BYRD. Mr. President, I ask unanimous consent that the time of the two leaders on tomorrow be reserved for their use later in the day.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECOGNITION OF CERTAIN SENATORS

Mr. BYRD. I ask unanimous consent that upon the completion of the prayer, the following Senators be recognized each for the time stated: Mr. PROXMIRE, 5 minutes; Mr. ROCKEFELLER, 13 minutes; Mr. HEFLIN, 5 minutes; and Mr. BOREN, 10 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. BYRD. I believe the order is already entered for a return to the consideration of the Adams amendments at 9 o'clock a.m. Am I correct?

The PRESIDING OFFICER. That is correct.

Mr. BYRD. There is a 30-minute time agreement on the Adams amendments divided between Senators ADAMS and KASSEBAUM. At 9:30 a.m., there will be a vote in relation to the Adams amendments. That will be a 30-minute rollcall vote, and the call for the regular order is automatic.

UNANIMOUS-CONSENT AGREEMENT

Mr. BYRD. Mr. President, I ask unanimous consent that the majority leader, after consultation with the Republican leader, may call up any time the House FHA temporary extension legislation; that when the bill is called up, it be considered under the following the time limitation:

Provided, that there be 10 minutes on the bill to be equally divided between Senators CRANSTON and D'AMATO:

Provided, further, that the only amendment in order be an Armstrong amendment concerning a permanent extension of FHA programs on which there be 30 minutes to be equally divided;

That no motion to commit or recommit be in order;

And, ordered, further, that immediately upon disposition of the Armstrong amendment the Senate proceed to third reading, and without further debate or action of any kind;

And, that the Senate then proceed without further debate or motion or action of any kind to final passage of the bill;

Provided, further, that the agreement be in the usual form.

The PRESIDING OFFICER. Without objection, it is so ordered.

The agreement is as follows:

Ordered, That the Majority Leader, after consultation with the Minority Leader, is authorized at any time to proceed to the consideration of House Joint Resolution 393, the FHA temporary extension, and that the only amendment in order be an Armstrong amendment dealing with a permanent extension of FHA programs, on which there shall be 30 minutes debate, to be equally divided and controlled.

Ordered further, That there be 10 minutes debate on the joint resolution, to be equally divided and controlled by the Senator from California (Mr. Cranston) and the Senator from New York (Mr. D'Amato).

Ordered further, That no motions to recommit be in order.

Ordered further, That immediately upon disposition of the Armstrong amendment, the Senate proceed to third reading and final passage of the bill.

Ordered further, That the agreement be in the usual form.

RECESS UNTIL 8:30 A.M. TOMORROW

Mr. BYRD. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the order previously entered, that the Senate stand in recess until the hour of 8:30 a.m. tomorrow.

The motion was agreed to, and at 8:57 p.m., the Senate recessed until tomorrow, Friday, October 30, 1987, at 8:30 a.m.

HOUSE OF REPRESENTATIVES—*Thursday, October 29, 1987*

(FIRST LEGISLATIVE DAY)

The House met at 10 a.m.

The Reverend James Westbrook, pastor, First Cumberland Presbyterian Church, Jackson, TN, offered the following prayer:

O Lord, God whose perfect love has given us the dream of freedom, help us find that perfect freedom to be honestly responsible for each other. Lead us to search for that peace which endures in goodness, not fear or selfishness. Sustain us in that power which has the sense to be thoughtful and merciful.

We give thanks for those who have sacrificed for us all our history, without knowing our name or station. We thank You for those who dream for and defend us, in spite of what they do know of us.

Give to each of us, elector or electorates, the clear note of comment to call from ourselves only our best. Amen.

THE JOURNAL

The **SPEAKER**. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

Mrs. **SAIKI**. Mr. Speaker, pursuant to clause 1, rule I, I demand a vote on agreeing to the Speaker's approval of the Journal.

The **SPEAKER**. The question is on the Chair's approval of the Journal.

The question was taken; and the Speaker announced that the ayes appeared to have it.

Mrs. **SAIKI**. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The **SPEAKER**. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 299, nays 102, not voting 32, as follows:

[Roll No. 383]

YEAS—299

Ackerman
Akaka
Alexander
Anderson
Andrews
Annunzio
Anthony
Applegate
Archer
Aspin
Atkins
AuCoin
Baker
Barnard
Bartlett
Bateman
Bates
Beilenson
Bennett
Bereuter
Berman
Bevill
Bilbray
Boggs
Bonior
Bonker
Borski
Bosco
Boucher
Boxer
Brennan
Brooks
Broomfield
Brown (CA)
Bruce
Bryant
Bustamante
Byron
Callahan
Campbell
Cardin
Carper
Carr
Chapman
Chappell
Clarke
Coats
Coelho
Coleman (TX)
Collins
Combest
Conte
Conyers
Cooper
Coyne
Crockett
Daniel
Darden
Davis (MI)
de la Garza
DeFazio
Derrick
DeWine
Dicks
Dingell
Dixon
Donnelly
Dowdy
Downey
Durbin
Dwyer
Dyson
Early
Eckart
Edwards (CA)
Edwards (OK)
English
Erdreich
Espy
Evans
Fascell
Fawell
Feighan
Flake
Flippo
Florio
Foglietta
Foley
Frank
Frost
Garcia
Gaydos
Gejdenson
Gibbons
Gilman
Glickman
Gonzalez
Gordon
Gradison
Grandy
Grant
Gray (PA)
Green
Guarini
Gunderson
Hall (TX)
Hamilton
Hammerschmidt
Harris
Hatcher
Hawkins
Hayes (IL)
Hayes (LA)
Hefley
Hefner
Hertel
Hiler
Hochbrueckner
Horton
Houghton
Howard
Hoyer
Hubbard
Huckaby
Hughes
Hutto
Hyde
Jeffords
Jenkins
Johnson (CT)
Johnson (SD)
Jones (NC)
Jones (TN)
Jontz
Kanjorski
Kaptur
Kasich
Kastenmeier
Kennedy
Kennelly
Kildee
Kleczka
Kolter
Kostmayer
LaFalce
Lancaster
Lantos
Leath (TX)
Lehman (CA)
Lehman (FL)
Leland
Lent
Levin (MI)
Levine (CA)
Lewis (GA)
Lipinski
Livingston
Lloyd
Lott
Lowry (WA)
Lujan
Luken, Thomas
MacKay
Manton
Markey
Martin (NY)
Martinez
Matsui
Mavroules
Mazzoli
McCloskey
McCollum
McCurdy
McDade
McEwen
McHugh
McMillen (MD)
Meyers
Mfume
Mica
Miller (CA)
Miller (WA)
Mineta
Moakley
Mollohan
Montgomery
Moody
Moorhead
Morella
Morrison (CT)
Morrison (WA)
Mrazek
Murphy
Murtha
Myers
Nagle
Natcher
Neal
Nelson
Nichols
Nowak
Oakar
Oberstar
Obey
Olin
Ortiz
Owens (NY)
Owens (UT)
Oxley
Packard
Panetta
Parris
Patterson
Pease
Pelosi
Perkins
Petri
Pickett
Pickle
Price (IL)
Price (NC)
Pursell
Quillen
Rangel
Ray
Regula
Richardson
Rinaldo
Ritter
Robinson
Rodino
Roe
Rose
Rostenkowski
Rowland (GA)
Roybal
Russo
Sabo
Savage
Sawyer
Schaefer
Scheuer
Schneider
Schuette
Schumer
Sharp
Shaw
Shays
Shumway
Shuster
Sisisky
Skaggs
Skelton
Slattery
Slaughter (NY)
Smith (FL)
Smith (IA)
Smith (NE)
Smith (NJ)
Solarz
Spratt
St Germain
Staggers
Stallings
Stark
Stenholm
Stokes
Stratton
Studds
Swift
Synar
Tallon
Tauzin
Taylor
Thomas (GA)
Torres
Torricelli
Towns
Traficant
Traxler
Udall
Valentine
Vander Jagt
Vento
Visclosky
Volkmer
Walgren
Watkins
Waxman
Weiss
Wheat
Whitten
Wilson
Wise
Wolpe
Wortley
Wylie
Yates
Yatron

NAYS—102

Armey
Badham
Ballenger
Barton
Bentley
Bilirakis
Bliley
Boehlert
Brown (CO)
Buechner
Bunning
Burton
Chandler
Cheney
Clay
Clinger
Coble
Coleman (MO)
Coughlin
Courter
Craig
Crane
Dannemeyer
Daub
DeLay
Dickinson
DioGuardi
Dorgan (ND)
Dreier
Duncan
Emerson
Frenzel
Gallegly
Gallo
Gekas
Gingrich
Gregg
Hansen
Hastert
Henry
Herger
Holloway
Hopkins
Hunter
Inhofe
Ireland
Jacobs
Kolbe
Konnyu
Kyl
Lagomarsino
Leach (IA)
Lewis (CA)
Lewis (FL)
Lightfoot
Lowery (CA)
Lukens, Donald
Lungren
Madigan
Marlenee
McCandless
McGrath
McMillan (NC)
Michel
Miller (OH)
Molinari
Nielson
Pashayan
Penny
Porter
Ravenel
Rhodes
Ridge
Rogers
Roth
Roukema
Rowland (CT)
Saiki
Saxton
Schroeder
Sensenbrenner
Sikorski
Skeen
Slaughter (VA)
Smith (TX)
Smith, Denny (OR)
Smith, Robert (NH)
Snowe
Solomon
Stangeland
Stump
Sundquist
Swindall
Tauke
Upton
Vucanovich
Walker
Weber
Weldon
Whittaker
Wolf
Young (FL)

NOT VOTING—32

Biaggi
Boland
Boulter
Davis (IL)
Dellums
Dornan (CA)
Dymally
Fazio
Fields
Fish
Ford (MI)
Ford (TN)
Gephardt
Goodling
Gray (IL)
Hall (OH)
Kemp
Latta
Mack
Martin (IL)
Pepper
Rahall
Roberts
Roemer
Schulze
Smith, Robert (OR)
Spence
Sweeney
Thomas (CA)
Williams
Wyden
Young (AK)

□ 1010

So the Journal was approved.

The result of the vote was announced as above recorded.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Hallen, one of its clerks, announced that the Senate had passed without amendment a bill of the House of the following title:

H.R. 614. An act to designate the new U.S. courthouse in Birmingham, Alabama, as the "Hugo L. Black United States Courthouse."

The message also announced that the Senate had passed with amendments in which the concurrence of the House is requested, a bill of the House of the following title:

H.R. 2906. An act making appropriations for military construction for the Department of Defense for the fiscal year ending September 30, 1988, and for other purposes.

The message also announced that the Senate insists, upon its amendments to the bill (H.R. 2906) "An act

□ This symbol represents the time of day during the House proceedings, e.g., □ 1407 is 2:07 p.m.
Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

making appropriations for military construction for the Department of Defense for the fiscal year ending September 30, 1988, and for other purposes," and requests a conference with the House on the disagreeing votes of the two Houses thereon, and appoints Mr. SASSER, Mr. INOUYE, Mr. PROXMIRE, Mr. REID, Mr. STENNIS, Mr. SPECTER, Mr. GARN, Mr. STEVENS, and Mr. HATFIELD, to be the conferees on the part of the Senate.

ANNOUNCEMENT BY THE SPEAKER

The SPEAKER. The Chair announces that it is his intention to recognize only one Member for a 1-minute speech, and that is the gentleman from Tennessee [Mr. JONES] who has a statement with respect to our guest chaplain today.

THE REVEREND JAMES WESTBROOK

(Mr. JONES of Tennessee asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. JONES of Tennessee. Mr. Speaker, it is my honor and privilege to welcome to this Chamber today Rev. James Westbrook, pastor of the First Cumberland Presbyterian Church in Jackson, TN. Born and raised in west Tennessee, Reverend Westbrook has been a life-long friend of mine. He has guided me both personally and professionally. James gives unselfishly of his time in the comfort of his parishioners and he always has a kind word and helping hand for all folks.

I am pleased that he has been able to share his insights and inspiration with us here today.

PROVIDING FOR CONSIDERATION OF H.R. 3545, OMNIBUS BUDGET RECONCILIATION ACT OF 1987

Mr. DERRICK. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 296 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 296

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 1(b) of rule XXIII, declare the House resolved into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 3545) to provide for reconciliation pursuant to section 4 of the concurrent resolution on the budget for the fiscal year 1988, and the first reading of the bill shall be dispensed with. All points of order against the bill and against its consideration are hereby waived. After general debate, which shall be confined to the bill and which shall not exceed three hours, to be equally divided and controlled by the chairman and ranking minority member of the Committee on the Budget, the bill shall be considered as having been read for amendment under the five-minute rule. The amendments printed in section one of the report of the Committee on Rules accompanying this resolution shall be considered as having been adopted in the House and in the Committee of the Whole, subject to amendments made in order by the following sentence. No other amendment to the bill shall be in order in the House or in the Committee of the Whole except the amendments en bloc printed in section two of the report of the Committee on Rules, if offered by the Member indicated or his designee, said amendments en bloc shall not be subject to amendment or to a demand for a division of the question in the House or in the Committee of the Whole, said amendments en bloc shall be debatable for not to exceed one hour, to be equally divided and controlled by the proponent of the amendments and a Member opposed thereto, and all points of order against said amendments are hereby waived. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit, which may not contain instructions.

□ 1025

The SPEAKER. The gentleman from South Carolina [Mr. DERRICK] is recognized for 1 hour.

Mr. DERRICK. Mr. Speaker, for the purpose of debate only, I yield the customary 30 minutes to the gentleman from Mississippi [Mr. LOTT], and pending that, I yield myself such time as I may consume.

Mr. Speaker, House Resolution 296 is a modified closed rule providing for the consideration of H.R. 3545, the Guaranteed Deficit Reduction Reconciliation Act of 1987. The rule waives all points of order against the bill and against its consideration. The rule provides 3 hours of general debate, to be equally divided and controlled by the chairman and ranking minority member of the Budget Committee. The rule provides that, upon adoption of the rule, the amendments printed in section 1 of the Rules Committee report accompanying House Resolution 296 (H.R. 100-408) shall be considered to have been adopted in the House and in the Committee of the Whole.

Six of the seven amendments in section 1 are essentially housekeeping amendments, making changes in response to CBO scoring decisions, resolving committee jurisdictional disputes, clarifying overlapping provisions reported by different committees and inserting the final part of the welfare reform package. Beginning with the second amendment listed in section one of the report, these amendments:

Modify chapter 2 of subtitle D of title I, the Agriculture Committee title. This chapter deals with rural telephone bank lending.

Delete subtitle F of title I. This subtitle deals with the use of ethanol in motor fuel;

Delete subtitle G of title I. This subtitle deals with a cotton promotion fee;

Insert the text of H.R. 3337, the food stamp provisions reported by the Agriculture Committee which are part of the welfare reform package;

Delete section 5003 of title V, the Interior Committee title. This section deals with a tariff on imported coal; and

Delete the welfare reform provisions reported by the Education and Labor Committee (subtitle C of title III) and the Ways and Means Committee (subtitle B of title IX) and insert provisions that represent a compromise between the somewhat different provisions reported by those two committees.

The first amendment included in section 1 of the report would add a statement of congressional policy and intent, which reaffirms the intention of Congress to achieve at least $23 billion in deficit reduction and outlines how these savings are to be achieved.

No other amendment to the bill is in order in the House or in the Committee of the Whole except amendments printed in section 2 of the committee report, if offered by Representative MICHEL of Illinois or his designee. The rule waives all points of order against the Michel amendments. These amendments shall be considered en bloc, are not amendable, and are not subject to a demand for a division of the question in the House or in the Committee of the Whole. The amendments are debatable for 1 hour, with the time equally divided and controlled by the proponent of the amendment and an opponent. The rule also provides for one motion to recommit, which may not contain instructions.

I want to make sure everyone understands how consideration of this bill will proceed. When the rule is adopted, the amendments listed in section 1 of the rules committee report will automatically be adopted: there will be no separate vote on those amendments. Then, after the completion of general debate, there will be an hour of debate on the Michel amendments, followed by a single vote on those amendments en bloc. Following that vote, the Committee of the Whole will rise and report back to the House. At that time a motion to recommit without instructions is in order, followed by a vote on final passage.

Mr. Speaker, we all understand the importance of this legislation. If any of us had harbored any doubt about the absolute necessity to reduce our budget deficit, I think that doubt disappeared when the stock market plunged over the cliff last week.

This legislation certainly does not solve the deficit problem, but it does represent a significant step in the right direction. It contains deficit reduction of $14.65 billion and it serves as the cornerstone of a plan that will reduce the deficit at least $23 billion. The affirmation of that plan will demonstrate to Wall Street and Main Street that we are serious about deficit reduction and are committed to preventing the imposition of the mindless and harmful Gramm-Rudman-Hollings sequestration.

The statement of congressional policy and intent that will be included in this reconciliation bill outlines how this deficit reduction will be achieved: $12 billion in increased revenues in the reconciliation bill; at least $2.5 billion in permanent spending reductions in the reconciliation bill; $6 to $7 billion in reductions in discretionary appropriations, enforced by the section 302(a) of the Budget Act ceiling on discretionary spending; approximately $2 billion in increased revenues resulting from enhanced IRS enforcement; and approximately $1 billion from reductions in debt service costs.

Let me add here that this bill and this statement of policy and intent are not intended to take the place of a bipartisan agreement that congressional and administration negotiators are trying to work out at this very moment. The proponents of this reconciliation legislation are all fully committed to that economic summit process and are hopeful that it will be successfully concluded in the near future. If an agreement is reached in a timely manner, legislation to implement that agreement can be inserted into the Senate reconciliation bill or into the report of the House-Senate conference on reconciliation. If, however, an agreement is not reached in a timely manner, and I sincerely hope that does not happen; but if it does, we need to be in a position to move ahead with a deficit reduction plan that will forestall sequestration and demonstrate that the Congress has not abandoned the cause of deficit reduction. Passage of this reconciliation bill here today will not do any harm to the negotiation process, but a failure to pass this bill will greatly increase the harm that will be done if those negotiations do fail.

The Guaranteed Deficit Reduction Reconciliation Act represents both a downpayment on deficit reduction and a pledge to follow up with further cuts in spending. Just think what kind of a signal it will send if we are unwilling to take even this first step toward dealing with the deficit. I urge you to vote for this rule and then to vote for the reconciliation bill.

Mr. LOTT. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, if anything ever deserved to be described as a debacle in this House of Representatives, it is this rule and the bill it makes in order. If my colleagues had been present at the Rules Committee meeting on this bill yesterday, or have tried to plow through this massive bill, they would realize that this is not budget reconciliation; this is fudge it, discombobulation. Not only are the so-called deficit reduction numbers fudged, but this whole process and this 2,247 page bill make chaos look like God's grand design.

Mr. Speaker, whoever dreamed up this mess must have had as their theme song that pop favorite, "I Started a Joke." This might be the joke to end all jokes—except it really isn't funny. It isn't funny to bring something this absurd, this partisan, and this disingenuous to the House floor at a time when we are trying to negotiate in earnest on a genuine and bipartisan deficit reform package.

Mr. Speaker, I am sure there are those on the other side who will say I protest too much. This rule looks simple enough. It's your basic modified closed rule that permits the minority one substitute and denies us any instructions on the motion to recommit. And I would have to admit that the Rules Committee was half fair by permitting the Republican leader to offer a substitute. But the motion to recommmit, with or without instructions, should be the prerogative of the minority, and not dictated by the majority party.

But, what you don't see in the rule, other than in the form of weird, Halloween shadows, is what else this rule does. For that you have to go to the report on the rule—something which is never widely circulated or read. Ordinarily, the report on a rule runs all of one sentence. But, in this case it contains some ten amendments, nine of which you will never get to vote on separately. That's because they are automatically adopted if you adopt this rule.

This is what is called a self-executing rule. Back in the old days, the Rules Committee only used this unusual procedure for making technical or minor and noncontroversial amendments to a bill. But, this procedure is being used more and more lately for the automatic adoption of substantive and controversial provisions.

Let's briefly go down the list of self-executing amendments that you will be adopting by voting for this rule. The first three strike provisions which were objected to by other committees: the ethanol fuel provision, the cotton promotion fees, and the coal tariff. Those I have no problem with.

But, the next three amendments strike all of the Education and Labor and Ways and Means welfare provisions, and then insert a whole new, 148-page welfare reform compromise which no one on the Rules Committee had seen when we reported this rule, which no one could explain, and which no one could provide a cost estimate on.

We all know the original welfare reform package would cost around $6 billion over 5 years. But, we have no idea how much this mysterious new compromise welfare package might cost. This could be worse than buying a pig in a poke. This could end up being a whole stock truck full unseen of swine. We just don't know.

But, even if the authors of this compromise are able to convince us, with a straight face, that this compromise will cost less than the original version, the fact remains that a major welfare reform bill, no matter how important or how carefully crafted, has no business being in a reconciliation bill. Reconciliation is designed to reduce the deficit, not increase it. Welfare reform is a spending add-on. It should be considered as separate legislation. This kind of game convinces me all the more that we need a hard-and-fast rule against including extraneous matters, including spending add-ons, in reconciliation legislation. This is the biggest abuse I have seen to date. Fortunately, the Michel substitute will permit us to strike welfare reform altogether.

The next amendment that would be automatically adopted with the adoption of this rule is a so-called leadership statement of intent. What that is is a nonbinding, sense of Congress provision that says we intend to live up to the terms of our budget resolution and reduce the deficit by $23 billion this year, including half of that from tax increases.

Mr. Speaker, this language has all the substance and force of a big ball of cotton candy—it's all sweet talk and hot air. This and a dollar won't get you a cup of coffee, let alone a penny of real spending reductions. If this language buys anyone off, I've got a few monuments for sale.

The next self-executing amendment has to do with the Rural Telephone Bank. You may recall that the original provision would have increased spending by some $307 million. We are now told that this substitute is budget neutral, though I don't know of anyone on the Rules Committee who could explain what it does; and I doubt if there is a CBO cost estimate available.

Finally, the last self-executing amendment would add an entire bill, the so-called Staggers-Panetta food stamp reform bill, H.R. 3337. I am told that bill runs some 43 pages and will cost approximately $11 million in increased spending in fiscal 1988, and $322 million over 3 years. So, once again we have an extraneous matter, presumably part and parcel with the welfare reform package, that has no business in a deficit reduction bill, no matter how appealing that bill might be on its merits.

The only thing in this rule that is allowed separate consideration and a separate vote is the Republican substitute. All the Democrat amendments are self-executing with this rule. But we have to make amendments the old-fashioned way—by earning them with separate debates and votes. But, we're not complaining. We know we're making our forefathers proud with this brief little flair of democracy in action, the way Congress was intended to operate.

Mr. Speaker, I know our Republican leader will explain his substitute in greater detail at the appropriate time. Suffice it to say that his amendment does three basic things: It cuts all but $1.3 billion in new taxes; it implements a spending freeze that will net $11 billion in savings; and it strikes the welfare reform provisions that could cost up to $6 billion over 5 years. In short, it adopts a more sensible and balanced approach to deficit reduction, and is worthy of everyone's support.

Having said all that, Mr. Speaker, I am still going to urge my colleagues to vote against this rule so as not to jeopardize our ongoing, bipartisan deficit reduction negotiations. Let's avoid putting some Members on record in favor of this ludicrous package that is going nowhere. Some time ago I observed that the more absurd the process, the less serious the Democratic leadership is about sound legislation. This is just such an instance. This self-executing rule should be allowed to do just that: It should be allowed to execute itself and die by its own devices. Vote "no" on this rule.

☐ 1040

Mr. MADIGAN. Mr. Speaker, will the gentleman yield?

Mr. LOTT. I am glad to yield to the distinguished gentleman from Illinois.

Mr. MADIGAN. Mr. Speaker, I thank the gentleman from Mississippi for yielding.

If I may, Mr. Speaker, I would just like to elaborate a little bit on a couple of the things the gentleman from Mississippi has referred to. There are two ethanol provisions here. One has been deleted by the rule. The other one remains in the package. The one that remains in the package is submitted by the Ways and Means Committee and completely reverses the 1986 agreement that was reached by various committees of the House of Representatives with respect to ethanol imports. What is now in this package will allow for the import duty free of more Brazilian and European ethanol, depressing the need for ethanol made in the United States, thus depressing the corn market and enlarging the exposure of the U.S. Treasury to the farmers income support programs. That is a complete violation and reversal of what we agreed to in 1986.

There is another provision the gentleman from Mississippi referred to with regard to the Rural Telephone Bank. When we started out with that, Mr. Speaker, it was supposed to save $300 million. Now, over the 3 years covered by this resolution, it has a net expenditure of $443 million, making a difference of $743 million in a bill that is supposed to reduce spending.

The gentleman has referred to the welfare reform package. I understand now that there is a new compromise on that. It is 148 pages long, and 99 percent of the Members of this House have not been able to see it because it has been embargoed until 10 o'clock this morning. What is it going to look like to the financial markets if we today pass a $10 or $11 billion welfare reform package that 99 percent of the Members have not even seen, and at a cost of an extra $10 or $11 billion?

This should be junked. This entire process should be junked. We should allow the summit to continue among the 12 people who are trying to find a solution to this very vexing problem.

Mr. Speaker, I urge the Members to vote against this rule.

Mr. DERRICK. Mr. Speaker, I yield 2 minutes, for the purposes of debate only, to the gentleman from Florida [Mr. MICA].

Mr. MICA. Mr. Speaker, I rise in support of the rule, and I want to start out by saying that as a Member of this body for nearly 10 years I voted for Gramm-Rudman, Gramm-Rudman-Hollings I and II, Gramm-Latta I and Gramm-Latta II, and the budget cut, we did everything we could possibly do to try to reduce the deficit. Believe me, we have tried it all, and I have tried it all.

I have come to the conclusion today that it is time to try something different. It is time to try a different approach. I spent the last 2 days lobbying Members to support or oppose the rule or take items in or out of the package, and believe me, it is like pulling a thread on a sweater. As soon as two Members agree to take one part of the package out, two say, "If that goes, I won't join in." We have gone back and forth, back and forth, and we cannot keep the package together, the way I see it, any other way. This rule is part of what is needed to try a new approach. It is important.

Now, I hate taxes. We all hate taxes. My wife hates taxes, my four children hate taxes, and if I had a dog, my dog would hate taxes. But we have to start paying the price for what has happened for the last 10 years, and we have all been a part of it. Nobody likes to take their medicine.

Nobody wants everything that is in the package. I do not like everything that is in the package. But we are going to have to do something, and we are going to have to do it quickly. The eyes of Wall Street, the eyes of America, the eyes of the world are on this body, and they are saying, "Let's see what you can do." And make no mistake, there is no other package.

There is no other approach. This is the approach before us. We do have an alternative that we can look at, but we must move. We must move today. The worst signal we could send to Wall Street is that it is business as usual. Some Members may say, "If you don't pull this out, I won't vote for it." Others say, "If you don't pull that out, I won't vote for it," and we go right back to what we have always done before.

Mr. Speaker, let me just give the Members the process briefly. If we pass this today, the bipartisan commission is out there meeting. This will go to the Senate. It will be the vehicle. If they come to a bipartisan agreement, it would be substituted for this package, or whatever is in the package. The vehicle would be on its way, and we could act quickly. Without a package, we have no vehicle.

Mr. Speaker, I am going to urge all the Members to vote for the bipartisan package if it comes. But what if it does not come? That is why we need to work together today. I urge the support of the Members.

Mr. LOTT. Mr. Speaker, I yield 2 minutes to the gentleman from New Hampshire [Mr. GREGG].

Mr. GREGG. Mr. Speaker, I thank the Republican whip for yielding time to me.

This rule represents one of the most grotesque examples of institutional arrogance that we have seen in recent history in this House. Not only does it reflect a bill which many Members of the minority were not even allowed to view when we were asked to vote on it, especially in the Ways and Means Committee relative to specific benefits for specific Members, but it also reflects a bill which probably a majority of this House, maybe as much as 95 percent of this House, have never seen in the area of welfare—a new package created in the middle of the night in some room where only a few Members were participants and brought to this floor.

Traditionally, reconciliation is supposed to cut spending. It is supposed to be a reorganization of our spending priorities to get us in line on our budget. This bill represents virtually no reduction in spending. It represents a significant increase in taxes and the addition of a major new spending program, a welfare reform program, which is not reform but which is an attempt to throw more money at a very serious problem in a manner which no one has been allowed to review.

How can we ask the Members of the House, be they Republican or Democrat, to vote for a bill which has that sort of major initiative in it when we have no chance to even review that initiative, when we have no chance to amend that initiative, and when we have no chance to take it up and work the will of the House on that initiative?

□ 1055

Clearly this bill is wrong. It is the wrong bill at the wrong time. It represents tax increases. It represents new programs, and it is totally inappropriate to the present process which is going on which is an attempt to reach a bipartisan agreement.

Mr. DERRICK. Mr. Speaker, I yield 3 minutes, for the purpose of debate only, to the gentleman from Texas [Mr. STENHOLM].

Mr. STENHOLM. Mr. Speaker, why are we here today debating this rule on this package at this time?

There are some good provisions in this reconciliation bill, and I acknowledge that, but remember this package was put together before Black Monday. This package is not a response to Black Monday. In my judgment this is a partial cause of Black Monday because it is business as usual, contrary to my good friend, the gentleman from Florida, this is business as usual in the worst possible way.

Welfare reform should not be in a reconciliation package when we are trying to tell the whole world that is looking at us at this very moment that we are going to do something about deficits by reducing spending. Why? Why, Mr. Speaker, is it important and necessary that we have a new spending program at this point in time?

Let us give the summit a chance. It is true, we cannot agree in all ways. All the little buttons here saying "No taxes," I say to my colleagues as long as they keep those buttons, we do not have a prayer of getting 218 votes to do anything.

We have tried. There has been a good-faith effort by a lot of folks on both sides of the aisle to come up with an alternative because if one is going to be critical of this package, which I am, we better propose something that we are for. I am for $40 billion or more in deficit reduction, $2 in spending or more, and $1 in taxes.

I plead with my colleagues on this side to take off those silly buttons. We have a serious problem and the only way we get 218 votes to do anything around here is have the spirit of cooperation, of compromise, of sitting and saying we have got a problem, let us work on it.

Who shot this package down that we were trying to bring in as a bipartisan group today to this floor? Who shot us down?

It was the President of the United States. The first day we started talking about summits, he took Social Security off the table.

Now I say to my colleagues, we cannot take anything off the table and get 218 votes to do anything unless we do it by secret ballot.

We all agree to this privately. All I do today on this rule is plead with my colleagues to vote no. Send a message to the world that this House is going to get serious on deficit reduction by letting our negotiators put together a package that does something positive. A vote no today is not a vote against doing something good. A vote no today is for giving us a chance to send the world the message that this House is ready to do something about the deficit.

If we vote yes today we are going to send just the opposite message.

Mr. LOTT. Mr. Speaker, I yield 3 minutes to our distinguished leader, the gentleman from Illinois [Mr. MICHEL].

Mr. MICHEL. Mr. Speaker, let me first compliment my distinguished colleague from Texas [Mr. STENHOLM] for the comments he has made and associate myself with a good measure of that, maybe with one exception. Let me say, too, that maybe I should be meagerly grateful for the opportunity that in this rule we are going to be able to offer an amendment, and that is it.

Let me go to the much larger question here and it ties in very closely I think with the gentleman from Texas [Mr. STENHOLM] remarks.

We have no business considering this thing at this time right now particularly in view of the small meeting we had with the leaders and the President just a few days ago in which the distinguished majority leader of the other body conceded the fact that probably whatever this omnipotent group of negotiators decided upon will probably have to be enfolded into a reconciliation bill that would be considered in the other body because that would probably be the only mechanism in which they could assure there would be no filibusters and dilatory tactics employed. I accept that.

Then why is it all that urgent that in this body then we attempt to do in a flim-flam sort of way what ain't going to be the eventual answer when all is said and done?

Quite frankly, to give the message, for example, that the total we can come up with in reconciliation is something in the $15 billion range is outrageous, gives exactly the wrong message.

I thought what we were really talking about in eventual reconciliation and agreement was a minimum of $23 billion, not putting a cap on it, and if it is possible to go further to do something beyond that.

I will agree with the gentleman that we have to give and take here. None of us can be all that much in concrete on our views, but I make mention to the Speaker in one last appeal to put it off. It will end up in acrimonious debate, the kind of thing we frankly do not need when we are telling the American public out there that we are on the verge hopefully of having a bipartisan agreement on an overall measure for significant deficit reduction.

The timing is bad. It just sends the wrong message. But if this is going to be our lot to have to debate this, we have to make it the kind of debate which signals the difference between why one wants to raise taxes, why one wants to concentrate more on the expenditure side, what the avenue might be between the two differing points of view. I cannot wed myself to a tax increment with no more assurance on the expenditure side that it is all on the come. The come around here, I will tell my colleagues, has been very, very meager. All it has meant is more and more spending on appropriations bills. Take them one after another, and my colleagues will see how much more spending we have added on this year over last year. I understand we've added over $9 billion more than last year with the defense amount frozen. Boy, we are not pennypinching around here, believe me, when we stack up what we are going to end up appropriating this year versus last year.

There is a body of Members out there on both sides, Democrats and Republicans, and I might say that probably the concentration is among some of our younger Members who have a longer life to live than some of our older Members around here including this Member, and look at what we are doing to our kids and our grandchildren out there by failing to come to grips with, yes, that very sensitive area, entitlements. I will single out one, but there are several others that ought to be met and it can only be done in a bipartisan way. I think it is time we just vote down the rule, clean the decks, and we will have an opportunity to come back but in a much better climate.

Mr. Speaker, I urge the Members to vote against this rule.

Mr. DERRICK. Mr. Speaker, for purposes of debate only, I yield 2 minutes to the gentleman from Ohio [Mr. PEASE].

Mr. PEASE. Mr. Speaker, welfare reform looms as a major point of controversy as we prepare to debate the reconciliation bill.

Let me stress for you one of the very good provisions of the welfare reform bill. For the many on welfare who can work and want to work, the current system offers a cruel choice. A welfare mother, for example, can take a low-wage job and get off welfare. That's good. But the mother and her children then lose their Medicaid eligibility. That's bad. What mother would take a minimum wage job at the cost of losing medical coverage for her children? Keeping or losing medical insurance ought not to enter into a welfare mother's decision of whether to join the work force.

The bill before us provides for health benefits to be extended up to 2 years for families who leave welfare due to taking a job. During the first 6 months, they will continue on Medicaid. In the remaining 18 months, States would be able to offer other forms of coverage, such as HMO's, State employee health plan coverage, State plans for the uninsured, or employer coverage. States would also be able to levy an income-based premium during the 18-month period.

This aspect of the bill is a humane and practical response to a chronic problem associated with getting welfare recipients into the work force. The whole idea to this bill is to get people off of welfare and on to the work rolls. It deserves support.

☐ 1105

Mr. LOTT. Mr. Speaker, I yield 1 minute to the gentleman from Texas [Mr. Armey].

Mr. ARMEY. Mr. Speaker, well before the 100th Congress convened, you, as heir apparent to Mr. O'Neill's throne, declared your intention to raise taxes on the American people rather than to reduce this deficit by responsible budget cuts. Throughout the course of this entire Congress you and your party have refused to address the question of budget cuts and have constantly used every apparatus of this body to try to raise taxes on the American people.

Your latest gambit is a bait and switch tactic. You have baited the President into a budget summit to work on a bipartisan proposal, and while that summit is meeting you switch and bring your tax increase to the floor.

I want to tell you, Mr. Speaker, if I could speak for myself and many of our colleagues who listen to our constituents; this is the no-tax towel. We are going to vote against this rule. This is not the time to throw in the no-tax towel.

I ask my colleagues to vote "no" on this rule.

Mr. DERRICK. Mr. Speaker, for purposes of debate only, I yield 2 minutes to the gentleman from California [Mr. Panetta].

Mr. PANETTA. Mr. Speaker, I urge Members to vote for the rule and for reconciliation. I recognize the problems that exist with the rule. We are not all pleased with the rule, all of the provisions that are part of reconciliation, the fact that the rule does not provide for the amendments that I thought should be given an opportunity to be presented, the limitations of the rule and other provisions that are part of the reconciliation.

But the bottom line here is that there is no time left, no time left to sit down and satisfy all of the concerns, and no time left to sit down and hope that we can now come together and try to develop a package that would move as quickly as we have to move now if we are going to deal with this problem.

We are in the midst of an economic crisis. The economy is collapsing due to a number of reasons, but in large measure due to the deficit. Gramm-Rudman is ready to strike within a few weeks, leading to the deepest cuts across the board that we have ever faced.

The American public looks at all of this and says there simply is no time left, no time for us to get involved in bickering and in partisanship and in the games and the intricacies of rulemaking. That is exactly the kind of war we fight day in, day out. The public does not understand that.

The public is looking at the bottom line, and the bottom line is deficit reduction. We have spent 8 months developing a budget in this institution. We have spent over 10 weeks working on reconciliation.

Prior to the crash there were many individuals who did not want to be a part of that process, and I understand that, for whatever reason. But the fact is that they are now 10 weeks and 8 months too late. This is the only game in town if we have a chance of producing any kind of deficit reduction now.

The bottom line is we are looking at $14.6 billion in deficit reduction that is a part of this package. Because this is the only deficit reduction package we have before us now, it is essential that we adopt it.

The time for tough choices is now. This is the only choice. Let us make it now.

Mr. LOTT. Mr. Speaker, I yield 2 minutes to the gentleman from Minnesota [Mr. Penny]. There is bipartisan opposition to this rule.

Mr. PENNY. Mr. Speaker, I rise in opposition to this rule. I urge my colleagues, do not vote for this rule on the assumption that this proposal will help us avoid sequestration. It will not, because it will not be signed into law. It is veto bait.

Let us put our faith in the bipartisan summit and demonstrate that we can in a bipartisan way cut this deficit.

Do not vote for this because you believe it gives us a negotiating position at that summit meeting. It undercuts negotiations. This is the budgetary equivalent of Contra aid. Let us not pass this bill while negotiations are underway. We have waited 5 years for a bipartisan summit with the President. Let us not undercut it now.

Do not vote for this because you think it cuts the deficit. It increases the spending. It does not cut the deficit in the manner that we should. It includes a $5 billion increase in welfare spending which has been made even worse by the Rules Committee which allowed another $1 billion worth of add-ons to that welfare package to make it a $6 billion increase.

Do not vote for this because you think Wall Street needs to see action. This is not what Wall Street is looking for. This is not what our constituents are looking for. They want to see real deficit reduction, they want to see a bipartisan effort.

If you have trouble with welfare in this package, then vote no.

If you have trouble with the tax provisions here, then vote no.

If you have trouble because it does not cut spending enough, then vote no.

If you want to see the bipartisan summit work, then vote no.

Vote no until the President and our congressional leadership see that we want the summit to work.

Mr. DERRICK. Mr. Speaker, for purposes of debate only, I yield 2 minutes to the gentleman from Massachusetts [Mr. Donnelly].

Mr. DONNELLY. Mr. Speaker, I rise in support of this rule for three basic but I think very important reasons.

One, it is critically important that we continue the process. I do not think anybody is under the impression that what is in the reconciliation package is written in stone, that it will not be changed, that it cannot be changed once there is a bipartisan agreement between the legislative branch and the executive branch.

But let me remind my friends we have a little over 3 weeks until the so-called drop dead date under Gramm-Rudman, November 20. This is the first opportunity this institution has had to act since the crash in the market.

Second, the minority has a right to offer a substitute. The minority expresses surprise over the addition of the so-called welfare reform. It was your President that requested us to do welfare reform. The Committee on Ways and Means has worked for the last 2 years on this issue. My colleagues have a right to strike welfare reform.

But, third, Mr. Speaker, and most importantly, the economic community has sent us mixed signals about what the problems and the causes of the crash were. Is it the budget deficit, is it the trade deficit, is it the declining value of the dollar?

But there has been no mixed signal from Wall Street on one message, and that is stop the partisan bickering.

And what do we do, the first opportunity we have to address the budget deficit we show up with buttons that say, "Kill Taxes." We hear the speeches about Democrats wanting to increase taxes.

We have had Black Monday and we will have a Black Thursday if we kill this rule and show the investment and economic community that there is political paralysis here on Capitol Hill.

Vote aye on the rule. Show the people of America that we can act and that we will act in a responsible fashion.

Mr. LOTT. Mr. Speaker, I yield 2 minutes to the gentlewoman from New Jersey [Mrs. ROUKEMA].

Mrs. ROUKEMA. Mr. Speaker, the rule should be defeated. Wisdom would dictate that we not bring up reconciliation in what is a politically charged atmosphere while the financial markets and world leaders are looking for calm and decisive leadership.

But even if we allow that there is some merit in the thesis of the distinguished chairman of the Budget Committee that there is a time line here, and that we are facing the Gramm-Rudman timetable. Even if we allow for that, the welfare reform package should never, under any circumstances, have been included in reconciliation.

Yesterday I went before the Rules Committee and in a plea to them I asked them to rise above politics and rise to principle and address the issue of child support reforms. Recognizing that welfare reform, even if now passed, would ultimately be dropped, and if dropped, it would not erase the fact that there is an urgent need for reforms on child support. I asked for an amendment to be granted so that I could present it as a germane amendment to the relevant part of the reconciliation bill. I was refused in that request, and in refusing me in that request it means that the Congress of the United States is turning its back on the 3 million American families who have legal child support orders that are not now being collected.

This is a shameful and politically callous move. The rule should be defeated.

Mr. DERRICK. Mr. Speaker, for purposes of debate only, I yield 3 minutes to the distinguished gentleman from Pennsylvania [Mr. GRAY], chairman of the Budget Committee.

Mr. GRAY of Pennsylvania. Mr. Speaker, we come today to put a downpayment on deficit reduction, and we come at a very important and critical time in the economic history of our country.

Just a few days ago we lost in 1 day a half trillion dollars of future prosperity for this great Nation, and we lost it because we had not taken decisive action in correcting the fundamental problems of our economy: The budget deficit and the trade deficit.

I think that there is no better time than now for us to begin a guaranteed deficit reduction program, sending a signal of decisiveness to the marketplace.

There are those who say this is not the time because we have a budget summit finally going on, even though some of us have been asking for it for almost a year. I am a participant in that budget summit, and let me tell my colleagues that passing this guaranteed deficit reduction is not going to hurt that budget summit, because if we can come up with a bipartisan agreement, we can substitute it for this legislation.

The real issue is that we have a time limit, November 15. If we do not act now, then we will not have anything to offer to this Nation to solve its basic economic problems if the summit fails.

There are those who say this is not real. It is real. There are $12 billion of new revenues that come from progressive sources that do not change the tax rate for any individual American taxpayer. We continue the base broadening of tax reform and closing of loopholes. In fact, portions of the tax bill are those things that were recommended by this administration, and there are $2.5 billion worth of reconciled spending changes that are cuts in spending.

Thus, this package has $14.5 billion of deficit reduction, the first downpayment.

Next week we will be here with the second and final payment, which will then bring us to over $23 billion.

I would simply say to those who want to send a signal to the marketplace, who want to correct the fundamentals, let us move forward today. Let us vote for the rule, and then let us vote for the reconciliation package. If we fail then, I am afraid that what will happen is people will say here about Washington, "There they go again, fighting over taxes and revenues when all of us know that the real issue is not whether to tax or not to tax."

The President's budget, every budget he has given to me has had taxes. His budget this year had $8 billion worth of taxes, and while we argued over $10 billion and the difference between the congressional plan and the administration's plan, we lost a half trillion dollars of American wealth on Black Monday.

I think it is time for us to start moving forward. We can do it today. Vote yes on the rule and vote for the reconciliation.

Mr. LOTT. Mr. Speaker, in furtherance of our bipartisan spirit, I yield 2 minutes to the gentleman from Virginia [Mr. OLIN].

Mr. OLIN. Mr. Speaker, I thank the gentleman from Mississippi for yielding me this time.

Mr. Speaker, I rise in opposition to the rule. I do so reluctantly because I respect the objectives of those who are sponsoring this reconciliation bill.

☐ 1120

But to me the rule and the bill will send entirely the wrong signal to the financial community, to all of our constituents and to those who are negotiating at the budget summit.

I oppose the rule for three reasons:

First, it provides for a new, expensive program of welfare reform in what is supposed to be a deficit reduction bill.

Second, it is primarily a tax bill. The hard savings in this bill are only $2.5 billion.

Third, it does not go beyond the $23 billion in deficit reduction.

And on welfare, the objective of getting people off of welfare into jobs is an excellent one and we all favor it. But the process is complex. The cost and the effectiveness however are uncertain. We do not even know what is in the bill. This new program does not belong in the reconciliation bill.

On deficit reduction, we all know that we are going to meet the objective of $23 billion. The markets knew that and they crashed anyway.

We need to raise the sights back to the point we were at before we knew the President was joining the process.

And to go for anything in the $23 billion level is just ridiculous.

On savings: Savings in any deficit reduction package we approve need to be real and permanent. They need to be structured to give confidence that they will help continued deficit reduction. This bill does not do that.

Mr. Speaker, this reconciliation bill is well-intentioned and represents a lot of hard work. Much of it probably needs to be in the final package we approve, but it does not send the right message. I urge defeat of the rule because I believe we need to do better.

Mr. LOTT. Mr. Speaker, may I inquire as to the time available on both sides?

The **SPEAKER** pro tempore (Mr. FASCELL). The gentleman from Mississippi [Mr. LOTT] has 6 minutes remaining and the gentleman from South Carolina [Mr. DERRICK] has 8½ minutes remaining.

Mr. LOTT. Mr. Speaker, I yield 2 minutes to the gentleman from Oregon [Mr. DENNY SMITH].

Mr. DENNY SMITH. Mr. Speaker and my colleagues, I think this rule is an outrage. I do not see any reason to have it here.

I went before the Rules Committee yesterday to talk about the fact that this reconciliation package really only reconciles about $0.86 billion when you take the change in the Gramm-Rudman-Hollings ceilings that we changed in Gramm-Rudman II. This is the wrong forum and it is the wrong timing.

There is no excuse when we have a bipartisan group of leadership trying to put together a real opportunity. I think Mr. STENHOLM mentioned the fact that we had to have everything on the table. I fully agree. I think all the entitlement programs, everything should be in here. This is a corruption of the process when you add in the welfare which is new spending of some

$5 billion, the taxes of $12 to $17 billion, depending on whose estimate you have, and then with the new baselines in Gramm-Rudman-Hollings you only have $0.86 billion true reduction spending.

I think the chairman of the Committee on the Budget mentioned this was a downpayment, $0.86 billion downpayment? We are talking about the need to go beyond the $23 billion that is called for in the Gramm-Rudman reduction.

Why not really get down to business with the so-called bipartisan leadership group? Beyond that, I think that we can do something here today by defeating this rule. Short of that, I would like to see this budget frozen right across the board. I see no reason why Mr. MICHEL's beginning of the freeze is not the proper way to do this. It is just outrageous to talk about the fact that we are going to have reductions when CBO, and when you look at the Gramm-Rudman-Hollings changes in the baseline, that we are only getting $860 million when we are talking about the need to go well beyond the $23 billion. Somewhere in the $40 billion is more in line with what my thinking would be.

We need to get this budget balanced. We have been in a situation where we have raised the spending since I came to the Congress from $660 billion to $1.060 trillion and we have a lot of new programs that keep popping up in here. Catastrophic health is out there, welfare is out there.

Mr. Speaker, I urge defeat of the rule so we can go back to the drawing board.

Mr. LOTT. Mr. Speaker, I yield 2 minutes to the gentleman from Delaware [Mr. CARPER].

Mr. CARPER. I thank the gentleman for yielding.

Mr. Speaker, I rise with reluctance to oppose this rule. I believe there are three reasons why this rule should be defeated. First of all, I believe we are putting the cart before the horse. This action today would be premature. There is an old song that came out of the Vietnam war that says, "Give peace a chance." We ought to reword that here today to say, "Give these peace talks a chance between this administration and this Congress."

Moreover, $23 billion of deficit reduction is not enough. It is just not enough. We are talking about treading water. A $23 billion deficit reduction plan does nothing toward reducing the 1988 deficit below last year's level. In reality, our 1988 budget deficit would be roughly the same as in 1987 if all we can agree on is this $23 billion plan.

Next week or 10 days from now if we are in the same position, if we have had no progress in these talks, then let us sit down and reconsider a proposal like this. But to do so today is premature.

The Republican substitute which will be offered to this Democratic alternative is just as flawed, I think, as the Democratic plan. Whereas the Democratic plan relies too much on revenues, the Republican plan basically ignores that as part of the solution.

The second problem with this reconciliation bill is the inclusion of welfare reform in it. I think welfare reform is an important enough issue to be addressed in its own right. Our Nation's welfare system is a national disgrace. We have to address it. It encourages dependency; it fosters greater dependency.

Third, the rule that is before us today does not permit anyone who serves outside of the Committee on Ways and Means to make meaningful input into what our welfare reform package is going to look like.

What we have here is a take-it-or-leave-it proposal. I cannot accept that. There is much good in this Ways and Means Committee proposal. There is some good in the proposals developed by Representative BROWN and Senator MOYNIHAN, as well. We need to pick and choose the best elements of each.

In closing, we need real welfare reform. We need real deficit reduction. This reconciliation bill represents an effort to address both problems, but we can do better and we must do better.

What message are we sending to the financial market by defeating this rule? The message is that $23 billion is not enough. We can do better and we will do better.

Mr. DERRICK. Mr. Speaker, for purposes of debate only, I yield 2½ minutes, to the distinguished chairman of the Committee on Ways and Means, the gentleman from Illinois [Mr. ROSTENKOWSKI].

Mr. ROSTENKOWSKI. Mr. Speaker, I seldom speak on rules. My job usually comes later, during the general debate on the merits of the bill. But today, I want to speak to those of you who are thinking about voting against this rule. I don't mean my Republican colleagues, all of whom are expected to vote against the rule. I want to talk to my Democratic colleagues who are thinking about voting against the rule and are using welfare reform as an excuse.

This bill is the first step toward meeting our commitment to reduce the Federal deficit by $23 billion. It attacks the deficit through a combination of reasoned budget cuts and responsible revenue increases. Continued high deficits hurt everyone. The stock market collapse has shown us how vulnerable we really are. In fact, the losses on the stock market have focused attention on the deficit like never before. We want to calm the market and protect those who were hurt by the crash. They've already lost millions and they demand that we do something.

There's nothing wrong with that sentiment. But there are others in this country who haven't been affected at all by the stock market crash. They don't have a bank account and they don't have a broker. Most of them are children. The welfare provisions of this bill are designed to protect them against the ravages of the economy.

You may be wondering why I care so much about welfare reform since I am known as a conservative on welfare issues. In my view, hard work is the cornerstone of success. Our welfare system should reward work and promote family stability. We should give welfare recipients the tools they need—be that training, education, or support services—to be independent. I am not alone in this view. Most Americans also want a welfare system that places a premium on work. That is precisely what this bill does. We should be eager, not reluctant, to pass this bill. The choices before us are clear. If we are going to take care of those who have had losses on the stock market, we should also be willing to take care of poor children. If we can send a message of fiscal responsibility to Wall Street, we can send a message of compassion to the 7 million children who live in poverty. We can vote for a responsible, compassionate deficit reduction package. Or we can risk doing nothing. The choice is yours. Every once in a while you know you're a Democrat for a reason.

This is one of those times that I am proud that I am and I ask my colleagues to think about that.

I urge the Members to vote for the rule.

Mr. DERRICK. Mr. Speaker, I yield such time as he may consume to the gentleman from Florida [Mr. MACKAY].

Mr. MACKAY. I thank the gentleman for yielding.

Mr. Speaker, I rise in opposition to the rule.

Mr. McGRATH. Mr. Speaker, I rise in opposition to H.R. 3545. This budget reconciliation package was crafted entirely by the House Democrats. This bill was put together before the recent economic crisis which prompted Congress and the White House to begin serious negotiations to reduce the budget deficit. The Democratic plan imposes burdensome tax increases and several billion dollars of additional spending. The bill includes only $1 billion in real savings. This legislation has no place on the agenda at a time when our deficit is approaching $200 billion.

Last month I voted for a serious effort to cut the Federal deficit. Its provisions require $23 billion in automatic spending cuts if Congress fails to agree on a specific program to deal with the deficit by November 20. I hope it doesn't come to that. At a time when we are facing instabilities in the world markets, it is essential that both parties work together and show a united front to the rest of the country. This reconciliation bill as it now stands, crafted solely by one party and filled with phantom savings and gimmick solutions, sends the wrong signal from Washington and could jeopardize the current negotiations and create further turmoil in the markets.

As a Republican on the House Ways and Means Committee, I was locked out of the Democratic caucus negotiations which produced $14 billion in new taxes for inclusion in the fiscal year 1988 reconciliation bill. The bill contains $14.4 billion in deficit reduction, of which $13.26 billion is new taxes and other revenues. My position has been and remains that budget savings should be a major component of any deficit reduction package. Tax increases cannot be the primary source of revenue. At the very least, a bill proclaimed as a step toward reducing the Federal deficit should not include major additional expenditures.

The point of this reconciliation bill is to reconcile budget numbers with appropriations numbers. How can this be accomplished successfully and fairly when the majority party insists on weaving program expansions into the bill and disguising shifts in expenditures as real policy?

For example, are we really expected to believe that labeling frozen pizzas as containing real or substitute cheese will save $29 million over 3 years? Or that shifting $1.2 billion in farmers' income subsidy payments from the beginning of the crop year into the next fiscal year represents real savings? Or that charging "cruiser fees" of at least $250,000 for every vessel escorted through the Persian Gulf by the U.S. military is a proper way to raise $95 million at a time when such unrest exists in that region? The same bill also contains $7.5 billion in new Federal spending, primarily welfare reform, a policy which ought to be debated separate and apart from legislation designed to establish overall budget goals.

The budget reconciliation bill as it now stands represents a missed opportunity to take meaningful action to reduce the Federal deficit. I would have welcomed the opportunity to participate with my Democratic colleagues on the Ways and Means Committee in devising real budget savings. For example, we missed an opportunity to take action to reduce evasion of gasoline excise taxes. In July 1986 the Subcommittee on Oversight held hearings on evasion of gasoline excise taxes. The subcommittee and later the Congress concluded that evasion was rampant and losses to the Treasury totaled between $500 million to $1 billion annually. To capture that revenue, Congress moved the collection point for the tax from the wholesale distributor or jobber to the terminal effective January 1, 1988.

Based upon the vast experience New York State has had with evasion of State gasoline taxes, I worked this year to improve that measure and to move the collection point further upstream to the beginning of the petroleum distribution system—the refinery gate and the first point of entry into the United States. However, the committee did not adopt this provision. Unfortunately, it substantially reversed its 1986 action. The bill now before the House would make the taxable event removal of the gasoline from the terminal, and would permit thousands of jobbers to remit the tax. This measure is a serious mistake. It would undercut the good work of the Tax Reform Act; it would result in greater inefficiency and opportunities for evasion in the tax collection system. There will be a serious loss of revenues to the Treasury.

Every year the reconciliation bill becomes a vehicle for chicanery. The deceptions have reached a new high in 1987. The bill is filled with concocted cosmetic changes that will score as budget reductions when in fact they do not impinge on program operations and do not result in budget savings. The recent turmoil in the market has shown me that we must make a responsible effort to reduce the deficit and put partisan politics aside. A compromise can be made if the majority party is willing to accept spending cuts as part of the product of negotiations, forget all the nonsense included in the current bill, and get back to the business of developing responsible fiscal policy.

Mr. OWENS of New York. Mr. Speaker, I rise in reluctant opposition to the rule and to the inclusion of welfare reform legislation in reconciliation.

While I support, with some reservations, the final compromise version of the Family Welfare Reform Act (H.R. 1720), reconciliation is simply not the right vehicle for such a significant and difficult undertaking as welfare reform. I know that the sponsors of H.R. 1720 have only the best of intentions in seeking to include this bill in reconciliation, but the great dangers inherent in this strategy are ones that I cannot accept.

The Senate has only just now begun to hold hearings on welfare reform and, given the dramatic deficiencies of some of the proposals they are reviewing, there is much that needs to be debated and carefully considered by that body before it takes action. Including H.R. 1720 in reconciliation, however, makes it less likely that this debate will occur and raises the possibility that the legislative process in the other body may be essentially short circuited; welfare reform could be forged not in subcommittee, committee, and floor action but in private, back-room negotiations between House and Senate conferees on reconciliation. The atmosphere in which these negotiations would take place is certain to be inimicable to the careful, painstaking balancing of interests and concerns which welfare reform requires. The need to swiftly enact reconciliation in order to head off the automatic Gramm-Rudman budget cuts, for example, will impose artificial and extremely tight time constraints on these discussions and, even more importantly, the controversial nature of the tax increase called for by reconciliation could create enormous pressure on the conferees to make concessions to congressional Republicans and the White House which should not and would not otherwise be made. Attaching welfare reform to reconciliation, in other words, could very easily become a recipe for disaster.

Welfare reform must not be rushed. All of us recognize that should legislation be enacted this year or next, the Congress will not revisit this issue again for many years to come. If we are to develop legislation which will work—which truly does help AFDC recipients achieve self-sufficiency and does not merely punish them for their poverty—we have a responsibility to move slowly and carefully and to avoid high-risk gambits like including welfare reform in reconciliation. Let's take our time and do this right.

Mr. DREIER of California. Mr. Speaker, I rise today in opposition to H.R. 3545 the reconciliation bill. Once again, we have the opportunity to face up to reality of the massive budget deficit and, once again, the American people will be disappointed.

While H.R. 3545 calls for an aggregate decrease in the deficit of $14 billion, only a small percentage of that is achieved through real spending cuts. The deficit reductions in this legislation are dependent not on sound fiscal restraint, but on the same creative bookkeeping which Congress used to reduce, only on paper, the deficit last year. Nearly $2 billion in savings would be achieved by the gimmick of shifting outlays from one fiscal year to the next. This fails to satisfy the intent and purpose of this reconciliation bill, and I doubt that anyone, including Wall Street, will be fooled.

This reconciliation bill is a contradiction. It contains over $1.5 billion in new entitlement spending when its purpose is to reduce Government expenditures. It is another Christmas tree bill. The more than 70 so-called sweetening provisions which are recommended to change existing tax law testify to this fact. The leadership has been advertising this bill as one which closes loopholes. Unfortunately, they added many of their own.

The reconciliation bill also contains fraudulent welfare reform provisions which don't even belong in a reconciliation bill. According to the Congressional Budget Office, the welfare reform proposal uses approximately 70 percent of its funds to simply increase welfare benefits. A number of Republicans, including myself, have offered an alternative that concentrates on putting individuals to work, at less than one-fourth the cost.

I believe that welfare recipients need assistance in becoming self-sufficient, not just higher welfare benefits. We want the rest of the country to look at California's successful GAIN Program, where recipients participate in employment and training programs to help them shift from welfare rolls to payrolls. It is unfortunate that a welfare reform bill will not be coming to the House floor on its own, where it can be seriously debated.

I also take exception to provisions in this reconciliation bill which create new inequities in the tax laws. For instance, there are provisions to put further limits on home mortgage interest deductions and curtail tax-free exchanges of like-kind real estate. The real estate industry is already shouldering a disproportionate share of the burden under the Tax Reform Act of 1986. In fact, this is one of the reasons I opposed that measure.

Mr. Speaker, we should not place sound fiscal policy on the bargaining table. With a $150 billion budget deficit, we cannot afford new programs or artificial budget reductions. We owe American taxpayers more than false hopes. Unfortunately, that is, once again, what they will get with this reconciliation bill. I strongly urge its defeat.

Mr. FRENZEL. Mr. Speaker, the rule on the reconciliation bill deserves summary rejection. The bill is wrong, and the rule is even more wrong.

To pass the reconciliation bill now would be harmful to the legislative-executive negotiations now in process. We have waited 5 months for the bill. Surely we can wait a few days or a week longer.

The rule, of course, would be out of order in any circumstances, at any time. It gags debate on the most important issue of the year. It prohibits amendments. It actually adopts nongermane amendments.

It's a terrible rule. It ought to be defeated.

Mr. ANDREWS. Mr. Speaker, I would like to take this opportunity to expand on the repercussions of sequestration on NASA and consequently Johnson Space Center which borders my district. I urge the passage of this rule in order that we can move forward and reduce this deficit by spending cuts and necessary revenues.

The effects of sequestration on the National Aeronautics and Space Administration would be twofold. One billion dollars would be taken from the NASA budget. In addition, because defense is also cut, much of the military procurement dollars which are intended for space initiatives would be terminated. As you can see NASA would be hit twice by sequestration, once from domestic cuts and once from defense cuts.

Specifically sequestration would guarantee that the space shuttle launch date would again be postponed. As such, the space station would be delayed and the window of opportunity for various planetary explorations would be lost. For example, the planetary alignment for a mission to Mars occurs every 22 to 24 months. I would hate to see our space program develop a proposal, build a craft, prepare for a launch and then because Congress could not agree on a deficit reduction plan have to cancel the mission for who knows how long.

Today we are facing strong challenges to our role in space development from the Soviets, the Europeans, and the Japanese, we must take responsible steps to assure our Nation's role in space and realize its rich potential. Sequestration is not the right message.

I am sure you have similar examples on the effects of sequestration in your district. I strongly urge you to support the rule and take this first step to responsible budget deficit reduction.

Mr. DAUB. Mr. Speaker, I rise today to express my sincere disappointment with the budget reconciliation process and to urge my colleagues to vote for the Republican substitute which represents a reasonable alternative to tax increases. The ad hoc taxes reported from my committee, Ways and Means, were written for the sole purpose of producing immediate revenue. They are not well thought out by the full committee and as a result they will result in serious repercussions to the already fragile economy.

New taxes at this time, particularly these taxes which weigh so heavily upon business, will send a dangerous and unpredictable signal to the markets, to the business community, and to foreign investors that will last for a long time to come. These taxes should not be voted upon so lightly since they will be here for many years to come if they should pass. If our concern is truly meeting the budget mandates in Gramm-Rudman then we should allow ourselves more time by temporarily cutting our spending, which simply means a year of tightening our belts. Voting for hasty tax increases, which most Members have not yet fully analyzed, represents poor legislation and bad representation.

To help you understand the lack of careful consideration of these new taxes I will briefly describe the process that was used in the Ways and Means Committee. On October 1 Ways and Means met to begin consideration of revenue proposals for inclusion in the reconciliation bill. The chairman had previously committed that there would be no chairman's mark before the committee, however, at approximately 6 p.m. the night before the meeting a 23-page document filled with tax proposals was delivered to my office. It contained $27.4 billion in tax increases and a statement by the chairman that he expected the committee to "consider and formally act upon as many of these proposals as possible."

The next morning the Members were informed that we would be required to raise nearly $60 billion in new taxes, a number which no Republican had any voice in determining. At this meeting the Republican Members expressed opposition to the package and asked that we be presented with the entire package rather than only half. The chairman stated that this was impossible and adjourned the meeting "subject to the call of the chair."

When the Chair called on October 15, all of the Members responded, including the Republicans, and were presented with a 73-page document filled with complex tax provisions contained in three separate titles and additional pages for new outlays for welfare reform. The package contained approximately $59 billion in new taxes and about $6 billion in outlays, including outlays contained in subtitle B which was not even before the committee.

When I asked why the entire bill was not before the committee I was told by the acting chairman that time did not permit copies to be made for everyone, although the bill was in fact complete and it would be made available to me. When I questioned Mr. Brockway, chief of staff of the Joint Committee on Taxation, I was told that he would "get something together" for me. For the next 4 days I continually nagged both the majority staff and the joint committee for a complete copy of the bill that the committee had reported, but was told that it could not be made available to me. Clearly the majority members of the Ways and Means Committee abdicated the democratic process when they prepared and reported this bill to the full House. I don't mind losing a vote, but I can't stand to be locked out from the democratic process.

Let me briefly note two outrageous provisions within this bill that cry for an alternative to be offered. On page 15 of the summary that we voted for in committee I noted a provision similar to one I had advocated for some time to raise over half a billion dollars in revenue by closing a loophole that allowed multibillion-dollar food processors to use the cash method of accounting. When the majority adopted the provision in caucus the special interests received a free ride and bought themselves almost half a billion dollars in tax-free forgiveness. When I questioned Mr. Brockway about the give-away, he managed in the colloquy to give away even more by making it possible to draft an even more advantageous provision for the giant poultry producers.

One more and I will stop. I received an urgent call from the University of Nebraska immediately after hearing of the provision to cap the annual amount that can be used in a cafeteria plan. At considerable expense the university had recently established their plan to provide benefits for over 10,000 employees, only 500 of which are defined as highly compensated under the Tax Reform Act of 1986. All of the computer programming has already been done and the employee communication materials have already been printed, also at considerable expense. Now the majority party wants to change the rules in midstream, effective as soon as only 60 days from now! Because I was "locked out" from the discussion I was unable to participate and inform my Democratic friends on the committee that this is nothing more than a tax on the poor, because those who benefit the most are those who earn less than the $43,800 FICA wage cap. Unfortunately, I could not be there to overcome the desires of the staff to impose this new cap and now the University of Nebraska, and hundreds of other similarly situated institutions will be paying the price.

If you think the Ways and Means bill is a tax on the rich then you are absolutely wrong. Although craftily drafted these taxes will have immediate adverse affects on labor, corporations, the insurance industry, the real estate industry, banking and many other important employers and result in lost jobs and unemployment, slowing the economy.

Mr. GARCIA. Mr. Speaker, today we will be considering the omnibus Reconciliation Act, and I rise in support of this legislation and in opposition to allowing cuts to be made via the sequestration route.

To say "justice is blind" is to say it is fair and that decisions are based on fact, not on speculation or other types of bias. However, sequestration too is blind yet it means the complete opposite. Sequestration does not look at the facts but cuts without discretion and without consideration of which programs are truly needed, which programs have already been cut to the bone and which programs can use some trimming.

Housing programs for example have been cut by over 65 percent in the past 6 years. I believe a direct result of this has been the dramatic increase in homeless individuals and families we have witnessed in recent years. Sequestration will not only reduce the funds available for assisted housing, it will add to the extensive problems our Nation's cities are having trying to keep up with their homeless. As a result of sequestration the 1987 housing budget would be cut to the extent that approximately 9,700 units would be lost, 1,000 of which are targeted to the elderly and handicapped, 8,700 to low and moderate-income families. Those of us on the Housing Subcommittee have worked long and hard to produce a housing bill that not only meets budgetary constraints, but will be as beneficial as possible within those constraints. However, one thing that has been underscored again and again throughout hearings and markups of the bill is the desperate need for these programs, and the increasing number of families that need assisted housing.

Another area that will experience undue cuts is education. Compensatory education will be cut by $353 million, an amount that will affect the education of over 450,000 children. Student financial assistance will be cut even more—$461 million—effectively eliminating thousands of Pell grants, supplemental educational opportunity grants, college work study grants, State student incentive awards and loans to low-income students. At a time when education is one of the most necessary components for future participation in the work force, when American companies are being outstripped by foreign counterparts, and we are slowly losing ground in the field of high technology, education is not an appropriate target for massive cutbacks. There are thousands of students each year that never make it through high school. Many States are already projecting a dearth of qualified future employees to supply their employment needs, and are designing incentive programs to keep children in school. Statistics show that children that drop out of school are much more prone to become involved in criminal activities, to be on welfare, experiment with drugs—the list goes on. The Federal Government should not now turn its back on its children—the future of this country. Without them we literally have nothing.

There are many other programs which are equally important and which will be cut unfairly if we do not act now to avoid sequestration. Future generations may otherwise blame us, and rightly so for sitting back and watching as injustice marches on.

Mr. SYNAR. Mr. Chairman, H.R. 3545, the Omnibus Budget Reconciliation Act, represents the first real step the House has taken in several years to make true progress toward reducing the deficit. The Ways and Means Committee should be congratulated on coming up with a fair and resonable package of new revenues.

Each of us knows that new revenues are necessary to reduce the deficit. The 1981 tax cuts have resulted in a loss of general fund revenues from 13.9 percent of GNP in 1981 to 11.7 percent now. Federal revenues have declined by nearly $1 trillion from 1982 to 1987 as a result of that legislation. The loss in 1988 will be $258 billion. At the same time, we have increased defense spending by 40 percent after inflation.

Spending cuts alone simply will not result in substantial savings, since most social programs—aside from Social Security—have been substantially reduced in the last 6 years. Nondefense discretionary spending has already declined by 21 percent since 1981. Appropriations for low-income programs have fallen 49 percent since 1981.

Fortunately, the President now also realizes that both tax increases and spending cuts are necessary components of significant deficit reduction. Though late in coming, the President's decision to hold a budget summit with congressional leaders is welcome news. It is unfortunate that it took the collapse of our stock market to bring him to the table.

The reconciliation bill passed by the House is not perfect—I have serious concerns about several provisions that I will mention later—but perfection is not the standard by which this legislation should be judged. Rather, we must compare this bill to the certain alternatives of a $23 billion Gramm-Rudman sequestration on November 20.

The Gramm-Rudman process was intended to present us with two very clear and stark alternatives for deficit reduction, and eliminate the option of doing nothing. While I strongly oppose the automatic reduction process of Gramm-Rudman, I do believe it has served the beneficial purpose of highlighting the need for increased revenues.

It is important to acknowledge the effects that a Gramm-Rudman sequestration will have on many important social and defense programs. Sequestration will cut $11.5 billion from domestic programs and $11.5 billion from defense programs.

Sequestration would cut $100 million in the Headstart education program, and $350 million from chapter 1 compensatory education program—which provides remedial education to disadvantaged children. Subsidized housing—already ravaged by cuts under the Reagan administration—would be further cut by $668 million.

These reductions stand in sharp contrast to the modest tax increases included in the reconciliation bill. These revenue provisions primarily consist of loophole closings and small increases in taxes on corporations and wealthy individuals. Over one-third of the revenue increases in the bill—$4.4 billion—consist of proposals made by President Reagan, and the extension of certain tax provisions scheduled to expire.

Significantly, the bill does not alter any of the important components of the Tax Reform Act of 1986. The bill does not modify the capital gains rate or increase individual tax rates.

Like most Members, I have concerns about several provisions contained in the Ways and Means Committee proposal. I am strongly opposed to two provisions in particular. First, the bill denies deductions for interest expenses exceeding $5 million per year incurred in certain corporate acquisitions. Second, the bill denies an interest deduction for debt used for certain hostile corporate takeovers.

The committee apparently believed that Federal tax policy should discourage all corporate acquisitions, whether friendly or hostile. The House Subcommittee on Telecommunications and Finance, which has jurisdiction over the securities markets, has studied the issue of corporate mergers and acquisitions for several years. As a member of the subcommittee, I have participated in hearings on nearly every aspect of this issue. The problems created by certain acquisitions are not so easily solved as the committee seems to believe.

These limits on the deductibility of debt acquired for corporate acquisitions and hostile takeovers rest on the questionable premise that such acquisitions are inherently harmful to the economy. In fact, many friendly acquisitions and hostile takeovers result in companies operating more efficiently, and in fact keep many firms from failing altogether.

These provisions, if signed into law, would place American firms at an extreme disadvantage compared to foreign firms. Foreign firms could continue to acquire American companies at a rapid pace, unaffected by these provisions. But their American counterparts would face acquisition costs significantly higher.

Another provision of concern to me, though less significant than the corporate takeover provisions, is the requirement that escorted foreign vessels pay at least $250,000 for the cost of U.S. Navy escorts in the Persian Gulf. This provision, which was added by the Merchant Marine and Fisheries Committee, suggests that the American military is available for hire and that we lack the resolve to pay for our military commitments. Certainly we should encourage our allies to contribute toward the defense of the Persian Gulf. But we demean ourselves by placing "user fees" on the beneficiaries of U.S. military protection.

Finally, the bill authorizes a 3-percent pay increase for Federal employees, including Members of Congress. Few would question that Federal employees deserve a 3-percent cost-of-living increase. At the same time, few of our constituents will understand how we can vote ourselves a pay raise in the same year that we accepted a $12,000 raise.

Deficit reduction, like charity, begins at home. We cannot tell the American people that they must shoulder new taxes and expect fewer social services, while at the same time raising our own salaries. This duplicity undermines the faith of the American people in the political process and is extremely harmful to the institution of Congess.

There are several specific health care initiatives in this bill that I actively supported in the Energy and Commerce Committee. As in previous years, the reconciliation bill has become the main vehicle for major changes in health care policy.

In April, the Rural Health Care Coalition, a bipartisan organization of over 70 House Members, introduced a package of legislative proposals designed to improve access to community based health care in rural areas. The health care problems of rural Americans deserve congressional action. Mortality rates in general and, infant mortality rates in particular, are higher in rural areas. Rural elderly have generally worse health status than their urban counterparts and are more likely to suffer from chronic diseases.

While the health status of rural Americans demands access to health care services, the reality is quite the contrary; 22 of Oklahoma's 77 counties are listed as medically underserved areas, which means they don't have the personnel or facilities to meet basic health care needs. The situation in Oklahoma is repeated throughout the Nation. Reimbursement rates for rural doctors are 30 to 50 percent less than urban doctors in all but five States. Of the Nation's 58 hospital closures in 1986, nearly 64 percent were small or rural hospitals.

The Rural Health Care Coalition has been working to educate Members of Congress about the problems of health care delivery in rural areas. Our colleagues on both the Ways and Means and Energy and Commerce Committees have incorporated many of our proposals into the reconciliation package.

The House Reconciliation bill includes the following recommendations from the Rural Health Care Coalition:

Provides a 2-percent DRG update for rural hospitals;

Requires HHS to analyze proposed regulations for their impact on health providers and beneficiaries in rural areas;

Improves the volume adjustment payments for sole community providers;

Revises the definition of urban areas to include rural counties from which more than 15 percent of the population commutes to an urban area, as well as for rural hospitals located in counties adjacent to urban areas;

Requires HHS to use the urban area wage index to adjust the labor portion of the PPS payment;

Authorizes $15 million over 3 years to small, rural, isolated hospitals for diversification and modernization;

Expands the swing bed program to hospitals with up to 100 beds while including important protections to ensure that skilled nursing facilities aren't harmed.

The reconciliation legislation also includes provisions to require that peer review organizations conduct on-site quarterly consultations with rural hospitals, emphasize educational activities, hold direct discussions of admission and payment denials with the affected parties and includes protections for physicians who are sanctioned for quality of care problems and are excluded from the Medicare system.

Other provisions in reconciliation endorsed by the Rural Health Care Coalition include an update of the payments to rural health clinics, updates in the reimbursement rates for physicians providing primary care services and a bonus payment to those physicians practicing in medically underserved areas.

While none of these proposals by themselves will solve all of the problems associated with health care delivery in rural areas, they represent a good first step toward addressing the most pressing matters. The work of the Rural Health Care Coalition is not complete by any means.

Another important proposal which has been incorporated into this bill is the infant mortality initiative. I can think of few greater responsibilities of the Congress than to extend to every child born in this country the opportunity to grow up with access to adequate health care. The United States ranks 16th among developed nations in infant death rates. Each year this country loses 11 newborns out of every 1,000. Oklahoma ranks third in the Nation in the category of babies born to women receiving no prenatal care, or none until the last 3 months of pregnancy. According to the Oklahoma Institute for Child Advocacy, accessibility to prenatal care is one of the largest unmet needs.

The infant mortality provisions in this bill are an investment in our Nation's future. Healthy babies will one day become healthy, productive workers and contributing members of our society. Babies born to young mothers who don't receive health care early on will never get that chance.

These provisions will allow States to provide prenatal, delivery and postdelivery Medicaid care to any pregnant woman and any child up to 1 year of age in families below the proverty line. It also allows States, at their option to extend Medicaid coverage to children below age 4 with family incomes below 100 percent of the Federal poverty level. Finally, it allows States to cover children below age 6 in families with incomes below 100 percent of the Federal poverty level.

Another important issue included in this bill is nursing home reform. As a member of the Select Committee on Aging, I am all too familiar with the lax enforcement of existing nursing home standards and the threat to the welfare of the chronically ill elderly who need continuous care. Nursing home reform is certaintly an idea whose time has come.

I am pleased that the Energy and Commerce Committee has incorporated important nursing home reforms into this package. This legislation revamps the whole thrust of nursing home regulation and focuses more attention on the individual needs of patients by requiring facilities to assess the health status of each patient and develop a plan of care tailored to that individual. Rural elderly rarely have access to long term skilled nursing care and, must instead rely upon intermediate care facilities [ICF's]. The bill strikes a delicate balance between the practical realities of nurse shortages and the ambitious goal of providing round the clock nurse staffing. Initially, H.R. 2270 would have made it impossible for small, rural ICF's to stay open because it offered no flexibility in meeting the increased staffing requirements. Rural facilities must compete not only with urban areas for nurses, but also other health care providers for nurses. Under the compromise, small, rural ICF's will be given extra time to meet staffing requirements and can request a temporary exemption from part of the staffing requirements.

Finally, I want to comment on another provision in reconciliation which addresses the problem of elderly couples having to "spend down" their assets in order to qualify for nursing home coverage under the Medicaid Program. Since very few elderly are protected from the expensive cost of nursing home care, and long term care averages $20,000 per year, Medicaid is the only alternative many elderly have to receive nursing home care. This provision is critical to protect seniors from impoverishment.

Eligibility for Medicaid is based on a couple's income and assets. Although specific requirements may vary from State to State, essentially a couple may retain only their home, car and $2,500 in assets and still qualify for Medicaid. All income is kept under the name of the member of the couple actually receiving the money. The income of the spouse in the nursing home must go toward the nursing home bills. States have the option of allowing a portion of this money to be given to the spouse remaining at home as a monthly allowance. The State of Oklahoma does not exercise this option. And, even in those States providing an allowance, the average is $320 per month—hardly adequate to meet daily living expenses.

The current law disproportionately affects women since, women are less likely to have income in their own names that may be kept for living expenses. The Older Women's League reports that only 1 in 5 women has a pension. In addition, women are more likely to outlive their husbands.

The spousal impoverishment provisions included in this legislation set a floor of $925 for States to use in setting the allowance provided to the spouse who remains in the home. This provision is not only fair, it is essential.

When one reviews the balance sheet of this bill, the good points outweigh the bad. It is a much better option than sequestration. At least elected officials and the American people get to choose these priorities.

Mr. ALEXANDER. Mr. Speaker, I rise in support of the rule and in support of the reconciliation bill.

There are any number of good reasons to support this bill. I would like to briefly address one of those reasons, which is vitally important to all of rural America.

H.R. 3545 contains provisions that begin to correct the unfair disparity in Medicare hospital reimbursement that exists between rural hospitals and urban ones.

When Congress established the Medicare prospective payment system in 1983, it wrote this disparity into law on the assumption that rural hospitals' costs were less than those of urban hospitals.

Increasingly, it is becoming apparent that this assumption was flawed.

Expensive, high-technology miracles of modern medicine, such as CAT scanners or magnetic resonance imagers, don't cost any less if it's an east Arkansas hospital buying them instead of one here in Washington.

The size of the rural-urban reimbursement problem varies from region to region. But, in fiscal year 1985 the national standardized amount per case was 20 percent less for rural hospitals than urban. This is unfair.

Unfortunately, this bill doesn't correct the whole problem. I wish it did, and I hope we can all work together next year to reduce or eliminate entirely the disparity.

But the bill does take some important first steps.

Among other things, the bill would:

Extend to rural hospitals an extra 1-percent increase in the diagnosis related group payment above and beyond the regular update for each of the next 3 years.

Expand the swing-bed program for rural hospitals with up to 100 beds.

Direct the Secretary of Health and Human Services to revise the definition of urban areas to include border rural counties from which more than 15 percent of the population commutes to urban areas and, upon application from a hospital in a border county, compensate the hospital for its higher labor costs.

I would also point out that the Finance Committee in the other body has reported even better reimbursement provisions, providing rural hospitals an extra 3.2-percent increase in their reimbursement.

Therefore, if you support rural hospitals, you should vote for this rule, for this bill, and oppose further delay. We must move now, so that we can have a rapid conference and get the best deal we can for rural hospitals in this year's reconciliation bill.

CALL OF THE HOUSE

Mr. DERRICK. Mr. Speaker, I move a call of the House.

A call of the House was ordered.

The call was taken by electronic device, and the following Members responded to their names:

[Roll No. 384]

Ackerman
Akaka
Alexander
Anderson
Andrews
Annunzio
Anthony
Applegate
Armey
Atkins
AuCoin
Badham
Baker
Ballenger
Barnard
Bartlett
Barton
Bateman
Bates
Beilenson
Bennett
Bentley
Bereuter
Berman
Bevill
Bilbray
Bilirakis
Bliley
Boehlert
Boggs
Bonior
Bonker
Borski
Bosco
Boucher
Boxer
Brennan
Brooks
Broomfield
Brown (CA)
Brown (CO)
Bruce
Bryant
Buechner
Bunning
Burton
Bustamante
Byron
Callahan
Campbell
Cardin
Carper
Carr
Chandler
Chapman
Chappell
Cheney
Clarke
Clay
Clinger
Coats
Coble
Coelho
Coleman (MO)
Coleman (TX)
Collins
Combest
Conte
Conyers
Cooper
Coughlin
Courter
Coyne
Crane
Dannemeyer
Darden
Daub
Davis (IL)
Davis (MI)
de la Garza
DeFazio
DeLay
Dellums
Derrick
DeWine
Dickinson
Dicks
Dingell
DioGuardi
Dixon
Donnelly
Dorgan (ND)
Dornan (CA)
Dowdy
Downey
Dreier
Duncan
Durbin
Dwyer
Dymally
Dyson
Early
Eckart
Edwards (CA)
Edwards (OK)
Emerson
English
Erdreich
Espy
Evans
Pascell
Pawell
Feighan
Fields
Fish
Flake
Flippo
Florio
Foglietta
Ford (MI)
Ford (TN)
Frost
Gallegly
Gallo
Garcia
Gaydos
Gejdenson
Gekas
Gilman
Gingrich
Glickman
Gonzalez
Gordon
Gradison
Grandy
Grant
Gray (PA)
Green
Gregg
Guarini
Gunderson
Hall (OH)
Hall (TX)
Hamilton
Hammerschmidt
Hansen
Harris
Hastert
Hatcher
Hawkins
Hayes (IL)
Hayes (LA)
Hefley
Hefner
Henry
Herger
Hertel
Hiler
Hochbrueckner
Holloway
Hopkins
Horton
Houghton
Howard
Hoyer
Hubbard
Huckaby
Hughes
Hunter
Hutto
Hyde
Inhofe
Ireland
Jacobs
Jeffords
Jenkins
Johnson (CT)
Johnson (SD)
Jones (NC)
Jones (TN)
Jontz
Kanjorski
Kaptur
Kasich
Kastenmeier
Kennedy
Kennelly
Kildee
Kleczka
Kolbe
Kolter
Konnyu
Kostmayer
Kyl
LaFalce
Lagomarsino
Lancaster
Lantos
Leach (IA)
Leath (TX)
Lehman (CA)
Lehman (FL)
Leland
Lent
Levin (MI)
Levine (CA)
Lewis (CA)
Lewis (FL)
Lewis (GA)
Lightfoot
Lipinski
Livingston
Lloyd
Lott
Lowery (CA)
Lowry (WA)
Lujan
Luken, Thomas
Lukens, Donald
Lungren
Mack
MacKay
Madigan
Manton
Markey
Marlenee
Martin (IL)
Martin (NY)
Martinez
Matsui
Mavroules
Mazzoli
McCandless
McCloskey
McCollum
McCurdy
McDade
McEwen
McGrath
McHugh
McMillan (NC)
McMillen (MD)
Meyers
Mfume
Mica
Michel
Miller (CA)
Miller (OH)
Miller (WA)
Mineta
Moakley
Molinari
Mollohan
Montgomery
Moody
Moorhead
Morella
Morrison (CT)
Morrison (WA)
Mrazek
Murtha
Myers
Nagle
Natcher
Neal
Nichols
Nielson
Nowak
Oakar
Obey
Olin
Ortiz
Owens (NY)
Owens (UT)
Oxley
Packard
Panetta
Parris
Pashayan
Patterson
Pease
Pelosi
Penny
Perkins
Petri
Pickett
Pickle
Porter
Price (IL)
Price (NC)
Pursell
Quillen
Rahall
Rangel
Ravenel
Ray
Regula
Rhodes
Richardson
Ridge
Rinaldo
Ritter
Roberts
Robinson
Rodino
Roe
Roemer
Rogers
Rose
Rostenkowski
Roth
Roukema
Rowland (CT)
Rowland (GA)
Roybal
Russo
Sabo
Saiki
Savage
Sawyer
Saxton
Schaefer
Schneider
Schroeder
Schuette
Schumer
Sensenbrenner
Sharp
Shaw
Shays
Shumway
Sisisky
Skaggs
Skeen
Skelton
Slattery
Slaughter (NY)
Slaughter (VA)
Smith (FL)
Smith (IA)
Smith (NE)
Smith (NJ)
Smith (TX)
Smith, Denny (OR)
Smith, Robert (NH)
Snowe
Solarz
Solomon
Spratt
St Germain
Staggers
Stallings
Stangeland
Stenholm
Stokes
Stratton
Studds
Stump
Sundquist
Sweeney
Swift
Swindall
Synar
Tallon
Tauke
Tauzin
Taylor
Thomas (GA)
Torres
Torricelli
Towns
Traficant
Traxler
Upton
Valentine
Vander Jagt
Visclosky
Volkmer
Vucanovich
Walgren
Walker
Watkins
Waxman
Weber
Weiss
Weldon
Wheat
Whittaker
Whitten
Wilson
Wise
Wolf
Wolpe
Wortley
Wyden
Wylie
Yates
Yatron
Young (FL)

☐ 1150

The SPEAKER pro tempore (Mr. FASCELL). On this rollcall, 399 Members have recorded their presence by electronic device, a quorum.

Under the rule, further proceedings under the call were dispensed with.

PROVIDING FOR CONSIDERATION OF H.R. 3545, OMNIBUS RECONCILIATION ACT OF 1987

The SPEAKER pro tempore. The gentleman from Mississippi [Mr. LOTT] is recognized.

Mr. LOTT. Mr. Speaker, I yield 2 minutes to the gentleman from California [Mr. LUNGREN].

Mr. LUNGREN. Mr. Speaker, I thank the gentleman for yielding me this time.

We all know this is a serious time. We are dealing with a serious issue, and it demands seriousness.

The problem is that we are dealing with a rule that is fashioned to protect a bill that was constructed before the crash of the market, and yet we are being told we must adopt this rule and pass this bill because of the crash of the market.

That to me does not make a great deal of sense. I am not certain I know what the market is telling us, but I do know the market is not saying emphasize tax increases over everything else.

I do know the market is not telling us to increase spending with a new welfare program that is going to cost untold dollars in the future.

I do know the market is not telling us to go ahead with questionable savings. I do know the market is not telling us to make sure you have tax goodies placed in there for certain Members.

If we look at this with new programs and new taxes, we might say it is bipartisan but in the worst sense. It gives us the worst of the great spending programs of the Great Society of Lyndon Johnson and the worst of the tax proposals of Herbert Hoover and the Great Depression.

That may make it bipartisan, but I also think it makes it wrong.

For reasons not readily apparent to me, and to many Americans and certainly not the market, there is an insistence that we deal with this today while a bipartisan approach to solving our overall problem is going on. I do not understand that.

This may be the Jim Wright bill, but I would say with all due respect to my Speaker, this time Wright is wrong. This is the wrong bill at the wrong time.

The true bipartisan vote is no.

Let the House work together in a meaningful bipartisan fashion to solve the serious business that our constituents sent us here to take care of.

Mr. DERRICK. Mr. Speaker, I yield such time as he may consume to the gentleman from Georgia [Mr. RAY].

Mr. RAY. Mr. Speaker, I thank the gentleman for yielding time to me.

Mr. Speaker, I rise today to oppose the inclusion of welfare reform legislation in the budget reconciliation bill.

Last night, the dollar took a beating on foreign markets. The dollar's decline discourages foreign investment in the United States and heightens fears among domestic investors that higher interest rates will be required to shore up the dollar. Combine this with the stock market's volatility over the last 2 weeks, including the market loss of over a fifth of its value last Monday, and our economy is facing a drastic situation. The eyes of the world are now looking to the President and the Congress for action.

In an effort to reassure the market, the President agreed to meet with congressional leaders to work out a plan of deficit reduction. We in Congress, however, have decided to debate a bill which includes changes in the Nation's current welfare programs estimated to cost $5.2 billion over the next 5 years, and this is probably a conservative cost estimate. Will this reassure the market? I seriously doubt it.

Now is the time to seriously reduce the deficit. To do so will require sacrifices in our health programs, our education programs, our defense programs, and others. It will also require Members of this body to reduce their own spending. For example, each Member receives an annual allotment of 2,500 U.S. Capitol Historical Society pictorial calendars. There are over 1 million of these calendars mailed out by the House of Representatives each year. This amounts to over $700,000 per year. I have decided not to send out these calendars as long as we are under the Gramm-Rudman-Hollings constraint.

I bring this matter up to underscore the fact that we need to reduce spending any way we can both to reassure the stock market and to reassure the American people that we are serious about deficit reduction. While welfare reform is a laudable objective, it does not belong in a bill which is designed to reduce the staggering budget deficits which threaten the fiscal stability of this Nation.

Welfare reform is important enough to be debated in its own right, and I support its consideration by the House as a freestanding measure. However, I must admit that I have problems with several provisions of this proposal. Exempting mothers with children under age 3 from required participation in the work programs does not seem advisable in my view. It provides an incentive to mothers to continue to have children when the youngest reaches 3 years of age. When you combine this with the proposal to increase welfare benefits, I believe that this welfare reform proposal actually creates a strong disincentive to work. The proposal seems to foster increased dependency by the long-term welfare recipients which the proposal is supposedly trying to help. However, if this proposal was considered by itself, amendments could be proposed which could address these problems and lead to a sound welfare reform bill.

Mr. Speaker, the inclusion of welfare reform in the budget reconciliation bill defeats the purpose of this bill by increasing spending and sending a sign to our markets that the Congress is not really serious about reducing the Federal budget deficit. I think it is somewhat ironic that we are considering this legislation on October 29, the 58th anniversary of Black Tuesday. Let's prevent history from repeating itself. Let's defeat this rule and the bill.

Mr. DERRICK. Mr. Speaker, I yield the balance of my time to the gentleman from Texas [Mr. Wright], the distinguished Speaker of the House.

The SPEAKER pro tempore. The Speaker is recognized for 6 minutes.

Mr. WRIGHT. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, I want to ask a serious personal question of each Member here. I am not going to ask for a show of hands, but I really would appreciate each Member answering this honestly in his own mind.

Did you say, as I said in the campaign last year, that you were really going to do something to lower these deficits? I wonder how many of us made that pledge.

I think most of us probably did. Here is your first real chance to do that.

This is a bill that will lower deficits, the first honest-to-God guaranteed multibillion-dollar deficit reduction bill to come before this Congress this year.

It may be the only chance we have this year to take one step that will take this big a bite out of deficits, unless you prefer automatic sequestration.

If you do, fine, vote against this. Sequestration will happen.

This bill is not perfect, but it is deficit reduction, and it is the first chance we have had.

This bill contains $12 billion in real revenues. I do not think I have heard anybody say they are not real.

It also commands some $11 billion in additional deficit reduction through savings. You can quarrel about whether all of that is absolutely real, but most of it is.

The bill is not perfect, but it is a start. It is something.

It is deeds instead of words. It is actual instead of just promissory. The only other thing out there is something promissory.

This is the only actual thing we have. Frankly, I do not know any easier way to get $23 billion. There is not any painless way.

If we are just individually unwilling to vote for this set of deficit reductions today, you can find a lot of excuses. One about as good as another, I guess; we can find some petty flaw in the bill, magnify it, fixate upon it, and use that as justification for failing to come to grips with the big question today, or we can quarrel about procedure.

We can say, oh, I would vote for it if only they had packaged it a little bit differently, or if only they had scheduled the bill on some other day.

We can hypothecate any number of theoretical choices. Those are not the choices that we have.

Today we have a clear choice. We can vote for real deficit reduction, or we can vote against it. The world is waiting. The nervous markets are waiting.

The American public is waiting to see whether we in the United States House of Representatives have the resolve and the fortitude to take this first real step toward true deficit reduction.

We have been marching up this hill all year, knowing we had to face this choice sooner or later.

This is what we said we would do when we passed the budget resolution earlier in the year. And now that the time is upon us, we hear some say, "Well, let us wait and see if somebody else has got some suggestion."

That is not the responsibility that the Constitution placed upon us.

That Constitution which we have been at pains to honor this year very plainly and unequivocally says that all revenue measures must originate in the House. Like it or not, that is our job. That is our duty.

I am confused by anybody being unwilling to face that job. If we perform our duty today, we can bring something real to the bargaining table with the President and with the Senate.

Your affirmative vote today will strengthen our hand, strengthen the hand of the House. It will improve the chances of a successful negotiation. If we refuse to perform that duty, we surrender our claim to participate. If we refuse to perform this duty today, we go empty-handed into any negotiation that occurs. Is that what you want?

We put ourselves at the mercy of others. We say, "The House cannot make up its mind. You fellas tell us what you want."

If that is what you want, that is what you can have.

This is the fairest revenue bill that you will have a chance to vote on this year. If you turn this revenue measure down, your choices more likely are going to be excise taxes on your consumers, 30 percent gasoline taxes recommended by the newspaper today, heavier taxes on Medicare patients.

Every one of those things has been recommended this year by somebody in the administration. Those are the things that have been recommended, together with such things as doing away with the exemption on personal property taxes.

If you want to have those choices, vote this one down. Or if you prefer to vote against any revenues, then you know what you are going to get. You will get sequestration.

If you like that, vote this down; vote it down today. But I do not think those are the choices that we want.

The problem is not going to go away. The longer we delay, the bigger it gets. The public wants action. It does not want delay. It does not want us to say, "Oh, well, let us wait and see what somebody else tells us they can do." They put us in these jobs to make these choices, and that is what they expect of us.

I think more than any other one thing, the public wants a clear demonstration that somebody is willing to do something.

The time is now. It is time to show that we are serious about deficit reduction.

If you are serious about real deficit reduction, this is our chance. Vote "aye" on the previous question; vote "aye" on the resolution; "aye" on the rule, "aye" on the guaranteed deficit reduction bill.

Mr. DERRICK. Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

The SPEAKER pro tempore. The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

Mr. LOTT. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 203, noes 217, not voting 13, as follows:

[Roll No. 385]

AYES—203

Ackerman
Akaka
Alexander
Anderson
Andrews
Annunzio
Anthony
Aspin
Atkins
AuCoin
Bates
Beilenson
Bennett
Berman
Bevill
Bilbray
Boggs
Boland
Bonior
Bonker
Borski
Bosco
Boucher
Boxer
Brennan
Brooks
Brown (CA)
Bruce
Bryant
Bustamante
Cardin
Carr
Chappell
Clarke
Clay
Coelho
Coleman (TX)
Collins
Conyers
Cooper
Coyne
Crockett
Daniel
Darden
de la Garza
DeFazio
Dellums
Derrick
Dicks
Dingell
Dixon
Donnelly
Dorgan (ND)
Dowdy
Downey
Durbin
Dwyer
Dymally
Dyson
Eckart
Edwards (CA)
Espy
Evans
Fascell
Feighan
Flake
Flippo
Florio
Foglietta
Foley
Ford (MI)
Ford (TN)
Frank
Frost
Garcia
Gaydos
Gejdenson
Gibbons
Glickman
Gonzalez
Gordon
Grant
Gray (PA)
Guarini
Hall (OH)
Hawkins
Hayes (IL)
Hertel
Hochbrueckner
Howard
Hoyer
Jacobs
Jenkins
Jones (NC)
Jontz
Kanjorski
Kaptur
Kastenmeier
Kennedy
Kennelly
Kildee
Kleczka
Kolter
Kostmayer
Lantos
Lehman (CA)
Lehman (FL)
Leland
Levin (MI)
Levine (CA)
Lewis (GA)
Lipinski
Lowry (WA)
Luken, Thomas
Manton
Markey
Martinez
Matsui
Mavroules
Mazzoli
McCloskey
McCurdy
McHugh
McMillen (MD)
Mfume
Mica
Miller (CA)
Mineta
Moakley
Mollohan
Montgomery
Moody
Morrison (CT)
Mrazek
Murtha
Nagle
Natcher
Nelson
Nowak
Oakar
Oberstar
Obey
Ortiz
Owens (NY)
Owens (UT)
Panetta
Pease
Pelosi
Perkins
Pickle
Price (IL)
Rangel
Richardson
Rodino
Roe
Rose
Rostenkowski
Roybal
Russo
Sabo
Savage
Sawyer
Scheuer
Schumer
Sikorski
Skaggs
Skelton
Slaughter (NY)
Smith (FL)
Smith (IA)
Solarz
St Germain
Staggers
Stark
Stokes
Stratton
Studds
Swift
Synar
Tallon
Thomas (GA)
Torres
Torricelli
Towns
Traficant
Traxler
Udall
Vento
Visclosky
Volkmer
Walgren
Watkins
Waxman
Weiss
Wheat
Whitten
Williams
Wilson
Wise
Wolpe
Wyden
Yates
Yatron

NOES—217

Applegate
Badham
Baker
Ballenger
Barnard
Bartlett
Barton
Bateman
Bentley
Bereuter
Bilirakis
Bliley
Boehlert
Broomfield
Brown (CO)
Buechner
Bunning
Burton
Byron
Callahan
Campbell
Carper
Chandler
Chapman
Cheney
Clinger
Coats
Coble
Coleman (MO)
Combest
Conte
Coughlin
Courter
Craig
Crane
Dannemeyer
Daub
Davis (IL)
Davis (MI)
DeLay
DeWine
Dickinson
DioGuardi
Dornan (CA)
Dreier
Duncan
Early
Edwards (OK)
Emerson
English
Erdreich
Fawell
Fields
Fish
Frenzel
Gallegly
Gallo
Gekas
Gilman
Gingrich
Goodling
Gradison
Grandy
Green
Gregg
Gunderson
Hall (TX)
Hamilton
Hammerschmidt
Hansen
Harris
Hastert
Hatcher
Archer
Hayes (LA)
Hefley
Hefner
Henry
Herger
Hiler
Holloway
Hopkins
Horton
Houghton
Hubbard
Huckaby
Hughes
Hunter
Hutto
Hyde
Inhofe
Ireland
Jeffords
Johnson (CT)
Johnson (SD)
Jones (TN)
Kasich
Kolbe
Konnyu
Kyl
LaFalce
Lagomarsino
Lancaster
Leach (IA)
Leath (TX)
Lent
Lewis (CA)
Lewis (FL)
Lightfoot
Livingston
Lloyd
Lott
Lowery (CA)
Lujan
Lukens, Donald
Lungren
Mack
MacKay
Madigan
Marlenee
Martin (IL)
Martin (NY)
McCandless
McCollum
McDade
McEwen
McGrath
McMillan (NC)
Meyers
Michel
Miller (OH)
Miller (WA)
Molinari
Moorhead
Morella
Morrison (WA)
Murphy
Myers
Neal
Nichols
Nielson
Olin
Oxley
Packard
Parris
Pashayan
Armey
Patterson
Penny
Petri
Pickett
Porter
Price (NC)
Pursell
Quillen
Rahall
Ravenel
Ray
Regula
Rhodes
Ridge
Rinaldo
Ritter
Roberts
Robinson
Roemer
Rogers
Roth
Roukema
Rowland (CT)
Rowland (GA)
Saiki
Saxton
Schaefer
Schneider
Schroeder
Schuette
Sensenbrenner
Sharp
Shaw
Shays
Shumway
Shuster
Sisisky
Skeen
Slattery
Slaughter (VA)
Smith (NE)
Smith (NJ)
Smith (TX)
Smith, Denny (OR)
Smith, Robert (NH)
Snowe
Solomon
Spratt
Stallings
Stangeland
Stenholm
Stump
Sundquist
Sweeney
Swindall
Tauke
Tauzin
Taylor
Upton
Valentine
Vander Jagt
Vucanovich
Walker
Weber
Weldon
Whittaker
Wolf
Wortley
Wylie
Young (FL)

NOT VOTING—13

Biaggi
Boulter
Fazio
Gephardt
Gray (IL)
Kemp
Latta
Pepper
Schulze
Smith, Robert (OR)
Spence
Thomas (CA)
Young (AK)

☐ 1205

The Clerk announced the following pairs:

On this vote:

Mr. Gephardt for, with Mr. Kemp against.

Mr. Fazio for, with Mr. Latta against.

Mr. Gray of Illinois for, with Mr. Young of Alaska against.

Mr. Pepper for, with Mr. Spence against.

Mr. CHAPMAN changed his vote from "yea" to "nay."

Mr. WATKINS changed his vote from "nay" to "yea."

So the resolution was not agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

THE VOTE ON HOUSE RESOLUTION 296

(Mr. MICHEL asked and was given permission to address the House for 1 minute.)

Mr. MICHEL. Mr. Speaker, I ask for this 1-minute for the purpose to say that under somewhat otherwise normal conditions, noting our unanimous vote on this side, we would be elated with this victory.

Mr. Speaker, we do not look upon it that way. The majority in this House has said here there ought not be a quick rush to judgment, that we recognize the urgency of the overall objective, but this procedure would do it harm. It has been my feeling for the last week or so in view of what the President has said and in view of some of our colleagues meeting over in the other body as they have, that men of good will could bring their divergent thoughts together, and reach agreement. Had this scenario unfolded this afternoon the way it was originally described, however, I am just afraid the tenor of that debate would have given the wrong signal.

I think from the few remarks we might have made earlier and some of the others, this feeling was shared by Members on both sides of the aisle and, so, yes, I for one am grateful for that vote to defeat the rule, but we are not gloating over it.

I just want to say to the distinguished Speaker that there might be an inclination to quickly go to the Rules Committee, come back with a stripped-down version, but it should be known now the Members have attempted to express their desire to give this bipartisan negotiating team a chance. The distinguished gentleman from Washington [Mr. FOLEY] serves on that negotiating team. I think he would probably buttress what I have said from the standpoint that there is some movement. There is a good feeling, and frankly maybe in a shorter time span than one might feel is possible, I think agreement can be reached.

☐ 1215

Then out of that meeting I would think would come a much better signal, the kind that all of us would like to project.

With that, Mr. Speaker, I have nothing further to say other than I would hope that it would signal our intention and certainly our ability to work together, hand and glove, in a bipartisan way to come to a final resolution.

LEGISLATIVE PROGRAM

(Mr. WRIGHT asked and was given permission to address the House for 1 minute.)

Mr. WRIGHT. Mr. Speaker, I ask for this time in order to speak to the question of the schedule and program for the balance of the week.

I appreciate what my friend, the gentleman from Illinois [Mr. MICHEL], the minority leader, has suggested. He has been consistent, suggesting all along that we delay, and see if we can get some signal as to what the President will accept before we try to pass anything.

If we do that, it puts the total initiative in the hands of the executive branch of Government over something that the Constitution declared was the primary business of the House of Representatives.

I bow to the majority. That is a part of the business of this chamber. We recognize that when a majority speaks, we owe them our respect. The majority quite obviously did not want to vote on this particular rule. At least 25 or 30 Members have told me personally in the last couple of days that they just did not believe it appropriate to be considering this deficit reduction bill at the same time and in the same package that we were considering a welfare reform bill. A great many of those Members professed that they liked the welfare reform bill and that they believe we need welfare reform, but they thought it inappropriate to consider the two somewhat different matters together.

The distinguished gentleman from Illinois made that suggestion to me, as a matter of fact, 2 weeks ago. Obviously a substantial number of Members feel that way.

Therefore, the Rules Committee will convene at 12:45 and we will be seeking another rule which separates those two somewhat distinguishable items and takes welfare reform out of it.

I do believe that we have the responsibility as the U.S. House of Representatives to do our best to come forward with a reasonable, fair, constructive deficit reduction package so that we have something that represents our majority to take and put on the table when we negotiate with the White House. Otherwise, we go bereft of any suggestions, having said in effect that the House cannot make up its mind and has no suggestions to offer.

Therefore, I am going to ask that the Rules Committee meet and bring us back a rule that bows to the express wishes of a great many Members of the House. I have had a great many Members say to me that they cannot imagine a fairer revenue measure than the one that we have to consider. We will give the House that opportunity and see if a majority of the Members wish to go forward with at least that much deficit reduction action. And we will stay in session here until we do that.

So I do implore my colleagues, the minority party, to work with us. You have chosen throughout this year a course that I recognize has been a difficult one for you. I could have wished that we would have had more bipartisan cooperation when the Budget Committee was trying to come to a mix. For reasons of your own—and I do not criticize you for it—you chose to stay out of these meetings, to boycott them. And then we invited you to participate and wished you had participated along with other Members of the Ways and Means Committee in putting together a revenue package. And it was your choice and decision to boycott those meetings.

Notwithstanding that, exactly half the revenues in that bill are out of the President's request—things that he specifically requested. So we do want to be reasonable: we want to be bipartisan. We want to fulfill the wishes of the responsible majority of this House. That is what we have tried to do so that we do not go home this week having said that we are incapable or unwilling to face the reality of the need for real deficit reduction.

ANNOUNCEMENT OF MEETING OF RULES COMMITTEE

Mr. DERRICK. Mr. Speaker, the chairman of the Committee on Rules has authorized me to announce that the Committee on Rules will meet at 1:15 this afternoon to consider H.R. 3545.

FURTHER LEGISLATIVE PROGRAM

(Mr. LOTT asked and was given permission to address the House for 1 minute.)

Mr. LOTT. Mr. Speaker, I take this time so that we can learn what the schedule will be for the rest of the day and/or tomorrow. I think the Speaker missed the point of that vote that we just took. The House was saying very clearly, as our distinguished leader here has been saying, that they do not want to act while we are making a good faith effort to have a bipartisan budget deficit reduction effort underway over on the Senate side with Representatives from the House, the Senate and the administration. It was not just an expression on welfare reform, although that was part of it.

But what does this now mean? This matter cannot be brought up again today without unanimous consent. Are we going to be in session tomorrow to continue this effort?

Mr. FOLEY. Mr. Speaker, will the gentleman yield?

Mr. LOTT. I am glad to yield to the gentleman from Washington.

Mr. FOLEY. Mr. Speaker, I will inform the House that we will be in session this afternoon to await the report from the Committee on Rules. As I understand what the gentleman has just told me, it is most unlikely that we will be given authority to proceed with a rule filed on the same day. Under those circumstances, it is my duty to inform the House that not only will there be rollcalls this afternoon but the House will come in tomorrow morning at 10 o'clock. The usual 3 p.m. adjournment will be waived and will stay in session until we finish the reconciliation bill as provided by the rule.

Members should assume that tomorrow will be a day on which there will be rollcall votes and that we will be in session until sometime after 6 o'clock.

Mr. LOTT. I would like to respond to the distinguished majority leader. The House has expressed itself on this and this rule.

Mr. FOLEY. It has expressed itself, I would say to the gentleman, on this rule.

Mr. LOTT. With the vote we just had, surely there would not be unanimous consent or the two-thirds vote to bring it up today.

☐ 1230

What the House I am convinced was trying to say is that this issue should be put off to see if these negotiations would work.

Are we trying to punish the House?

Mr. FOLEY. The gentleman has made that point many times and we respect that it has been made. If the gentleman will permit me to say so, however, we have no intention of putting this matter off. We believe it is essential to proceed with this legislation, to present it to the U.S. Senate and to give that body an opportunity to consider it. Indeed we feel that the opportunity to employ any effective compromise that might be reached by the so-called working group, which is now meeting, depends upon the movement of this legislation to the Senate so that it will have a basis on which to act if that agreement occurs. We believe it is unwise for the House to allow this action to be put off until close to the 15th or 20th of November when the sequestration process reaches its end.

While I respect the gentleman's point, I do not accept it or agree with it. We have a very fundamental disagreement on what is the appropriate and proper legislative schedule on this matter.

It is obvious that there were controversial elements in the last rule, but do not agree that it was a vote by the House to put off the reconciliation bill. For this reason we intend to proceed and believe a new rule will be adopted by the House.

Mr. LOTT. Reclaiming my time, you know, the reconciliation bill is already 4 months late and now you are saying that it is essential that we act today or tomorrow at a time when we are trying to get an agreement. So I just, you know, I cannot understand the gentleman and the leadership's attitude on this. I will not add insult to injury at this point by asking what the schedule would be next week because after what I have just heard there is no telling what it would be.

Mr. GINGRICH. Mr. Speaker, will the gentleman yield?

Mr. LOTT. I yield to the gentleman from Georgia [Mr. Gingrich].

Mr. GINGRICH. I thank the gentleman for yielding.

Mr. Speaker, I just want to make a point that every Member of this House to watch the next few hours. The leadership brought a rule to the floor that a significant number of Democrats told them was unacceptable. We had a solid vote on our side. We cooperated to simply send the signal that the bill is not acceptable.

Now this is a bill which has, for example, an entire list of tax benefits at a time we are trying to raise taxes on everyone else. I am simply suggesting to the leadeship of your side that the country will not profit from the next 3 days being focused on this particular bill and on a partisan fight in this particular House when the country is asking for a bipartisan effort and a bipartisan vote won today.

A PLEA FOR BIPARTISANSHIP

(Mr. FOLEY asked and was given permission to address the House for 1 minute.)

Mr. FOLEY. Mr. Speaker, I yield to the gentleman from Florida [Mr. MacKay].

Mr. MacKAY. I thank the gentleman for yielding.

Mr. Speaker, I would like to say on behalf of a number of Democrats who have been trying to proceed in a bipartisan manner that the speech made by my friend from the State of Georgia is one of the most destructive things that could have happened today.

Mr. FOLEY. Mr. Speaker, I yield back the balance of my time.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. McHugh). The Chair will entertain unanimous consent requests for 1-minute speeches.

TAX PREFERENCES FOR THE DEMOCRATS

(Mr. WALKER asked and was given permission to address the House for 1 minute.)

Mr. WALKER. Mr. Speaker, let me suggest that there might have been some other reasons why some of us were concerned about the legislation that was coming before the House.

I have here a list of the tax preferences that were included in the so-called reconciliation bill that were there for just Members of the Democratic leadership. I think a number of people might be concerned about that.

Four million dollars for Tarrant County, TX, which just happens to be in Speaker Wright's district; $42 million for Kaiser Aluminum and Chemical Co. that just happens to be in Majority Leader Foley's district; similar special treatment for the Southwestern Bell Corp. which just happens to be in the Democratic Caucus chairman's district; special provision to assist a domed stadium project in Cleveland which just happens to be in the caucus vice-chair's district; special tax treatment for a hotel in Chicago which just happens to be chairman of Ways and Means Committee Danny Rostenkowski; a $26 million tax break for the McLouth Steel Co. that just happens to be in Chairman Dingell's district; a preferental tax treatment for the University of Miami that just happens to be in Rules Committee Chairman Pepper's district.

I would suggest that there is a little bit of a problem here with a bill that suggests it is doing something for the national interest when in fact it is doing something only for special interests, tax preference goodies for very special interests namely the Democratic leadership.

I think some of those things ought to be stripped out of the bill too if the Rules Committee is going to act this afternoon.

□ 1245

CONGRESSMAN ANNUNZIO OPPOSES INCREASE IN MEDICARE PART B PREMIUMS

Mr. ANNUNZIO. Mr. Speaker, I rise to express my deep concern about proposed increases in Medicare part B premiums, and at the same time, to announce my support for legislation to curtail this unfair burden which is being placed on the shoulders of the elderly and disabled in this country.

All of us have seen a dramatic increase in the cost of health care in recent years. In 1967 expenditures for the Medicare part B program were $799 million. By 1986, this expenditure grew to more than $75 billion, and Congressional Budget Office projections put this amount at over $141 billion by 1992.

Instead of offering comprehensive legislation to control the rising cost of health care and thereby to insure that the Nation's senior citizens do not bear a disproportionate share of this expenditure, last month the administration proposed a 38-percent increase in these Medicare part B premiums. The monthly premium of $17.90 which the elderly and disabled now pay to participate in the Medicare part B program would be raised to $24 a month under the administration's proposal.

This additional cost is not of minor consequence, since almost 50 percent of the more than 31 million older and disabled citizens who participate in the Medicare program depend upon Social Security as their sole source of monthly income. They are forced into the untenable choice of either paying this increase, which they cannot afford, or foregoing Medicare part B coverage altogether. Our elderly and disabled deserve better. Also, it is interesting to note that in the past, premiums paid by part B Medicare participants have accounted for only one-quarter of the cost of the program. The remaining cost has been financed from Federal general revenues.

Mr. Speaker, our country's elderly and disabled should not be forced to pay the price for the failure of others to control the rising costs of health care, and therefore, I was glad to add my name as a cosponsor of H.R. 3291, a bill to make any future increases in the Medicare part B premium fairer by providing that future annual increases in this premium cannot be more than the annual percentage of cost-of-living increases in Social Security benefits.

All alternatives should be explored in controlling the rising cost of Medicare part B health care. Although the Medicare prospective payment system has placed significant controls on Medicare in-patient hospital care, similar cost controls are completely lacking for other services. This prospective payment system has shifted many procedures which used to be performed in the hospital under Medicare part A to outpatient care treatment traditionally covered by the Medicare part B program, accounting for increased Medicare part B expendtiures. We should pursue a legislative course which controls these new costs, rather then paying for this treatment at the expense of those least able to afford it.

H.R. 3291 is an important first step in protecting senior citizens from the ravages of skyrocketing health care costs by limiting the rate of increase in the part B Medicare premium to the rate of increase in Social Security benefits, thus insuring that no loss of coverage or benefits results. I urge my colleagues in the House of Representatives to support this urgently needed legislation.

PERSONAL EXPLANATION

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from West Virginia [Mr. Rahall] is recognized for 5 minutes.

Mr. RAHALL. Mr. Speaker, I was unavoidably absent for the vote of final passage of H.R. 515, the Fair Credit and Charge Card Disclosure Act of 1987. I am a strong supporter of this much needed legislation and, had I been present, I would have voted "aye."

A BLUEPRINT FOR RECONCILIATION AND TRADE LEGISLATION

(Mr. VOLKMER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. VOLKMER. Mr. Speaker, it is quite clear to some of us on this side of the aisle that what has occurred today is an effort to impose upon this House the requirements that the President himself has decided what should be done about reducing our deficits and not to have the House itself participate in that problem of reducing the deficits.

I personally feel that we should all participate in it, that some of us in the House have our own ideas about what should be done in order to reduce those deficits for this coming year, and that the President also has his ideas and those ideas should be listened to by Members of the House, but we should not necessarily be dictated to by the administration. Therefore, I feel it incumbent upon the House to proceed with the schedule the leadership has outlined so that we may go forward with a new rule and the adoption of that rule and thereafter the passage of the reconciliation bill which would reduce our deficits for this year by $23 billion.

I believe that that is the necessary ingredient in order to provide a stimulus to the economy to help reduce and bring down interest rates and to help to bring about economic recovery in this country.

One other thing that we need to do and address ourselves to is this: hopefully, within the next several weeks we will get the bill out of conference that will bring about a change in the trade imbalance that this country presently has. As many of the Members know, in the past year or 2 years we have had a trade imbalance of $150 to $160 billion, representing money from this country that has gone to foreign nations, and at the same time those foreign nations have imposed restrictions on many of our products that have been attempted to be sold in their countries.

I feel that we should level the playing field in our trade, and that once those markets in those other countries are opened up to our products, we will also be able to export more of our manufactured products, increase our economic recovery, put people back to work, reduce the trade imbalance, and at the same time let those people in those other countries know that our products are not inferior, that they are superior to many of theirs, and that if they would open up their borders to our products, we would be able to sell more to them.

Mr. Speaker, I am sure that is why many of our trading partners are closing their borders to our products, because they know that our products would be more than competitive in their markets.

STRATEGY AND OFFICER EDUCATION: THE WEAK LINK

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Missouri [Mr. SKELTON] is recognized for 30 minutes.

Mr. SKELTON. Mr. Speaker, one of the most important challenges in American national security policy today is the education of our military leaders. America's ability to defend herself depends on having excellent military officers provided with superior training. And our military establishment has gone far to meet this challenge of excellence. Our officers are, on the whole, an outstanding group of intelligent men and women, highly educated and well-trained in their technical duties. The extent and breadth of their schooling is a tribute to the American commitment to quality education. In fact, almost all American officers are college graduates, and many hold advanced degrees.

But there is one aspect of their education which falls short of these high standards: the inadequate attention to the study of strategy. For that reason, I am dedicating this third of my five speeches on strategy to the relationship between strategy and professional military education.

We have to be concerned about strategic thinking in our Armed Forces because its inadequacy hurts us. Inattention to strategy is part of the reason for the confused planning, wasted money, and military setbacks that have plagued our Armed Forces in recent times. I have mentioned in earlier speeches examples of such shortcomings. In weapons procurement, the lack of some overall strategic vision means that decisions have to be made ad hoc, one at a time. One result of this process is that some truly important capabilities, such as minesweeping, are sometimes overlooked, or given lower priority, in the rush toward fashionable new technologies of the moment.

Our strategic poverty also hurts the ability of our Armed Forces to act effectively. In Vietnam, to take the most prominent example, we were never clear either about our goals or how we would pursue them, and as a result we let down our allies, our fighting men, and our own ideals.

MILITARY EDUCATION

But what does all this have to do with education? It's very simple—people think as they are taught to think, and do what they are taught to do. When the actions of military leaders are inappropriate or ineffective, it is usually not because they did not think well enough or long enough; it is because they thought about the wrong things, as they were taught to do. A leader who asks the wrong questions can be assured of getting the wrong answers. Asking the right questions means asking about strategy, and that is too often left undone.

In an earlier speech, I defined strategy as being concerned mostly with means—how to get where we are going. It has to take the goal for granted. This is just common sense: before someone can plan a strategy to do something, he has to know what he is trying to do. The question strategy asks is, "how do I accomplish that goal, using the means available?" Military strategy is just one kind of strategy, asking "how can I use military force—not threats but force—to reach that goal?"

Unfortunately, this last question is one that is all too rarely asked. Secretary of Defense Weinberger, in his last annual report to the Congress, wrote, "America's basic defense strategy is to deter aggression." But deterrence is a strategy of threats. The question of what to do in case threats are inadequate is ignored.

Our current policy in the Persian Gulf is just another sad illustration of how widespread this failing is. The main military mission of our warships in the gulf is to protect U.S.-flagged shipping. But our planners were thinking mostly about deterring the overt threat of air and missile attacks, so they sent high-profile surface warships, which are good for such threats. They did not think to ask themselves about strategy—and in particular about what Iranian strategy might be—so they ignore the threat posed by mines or small craft, even though those threats were known.

I said earlier that to develop a strategy, the planner must already know what his goals are. This is not the job of the military planner to decide. The President and Secretary of Defense have the responsibility for making that decision, often with guidelines setforth by Congress. It is a heavy responsibility: he must tell his military leaders loudly and clearly, "this is what we are here to do, and that is what we must avoid." Without such guidance, planners of strategy cannot do their job.

That means our leaders, especially our President but including we in Congress, have the obligations to make hard decisions about what we will and will not defend. As Frederick the Great once observed, "He who defends everything defends nothing." Even though we are one of the world's two superpowers, we are not all-powerful. We also have to be clear about who the enemy is—against whom or what we are defending the places we defend—and we must not be wrong. In Vietnam, for example, the lack of clarity about just who the enemy was was one of our greatest difficulties.

THE ROLE OF MILITARY STRATEGISTS

Though the President has to decide all these things, the task of military strategists is no less crucial. Their responsibility is to devise the strategies on which we base our most important national security decisions. No matter how brave our soldiers, and no matter how clear our goals, if the plan for battle fails, the battle is lost. One of the main reasons France fell to the Nazi invaders in 1940 was because her strategy was simply bad. As a result, France suffered under the Nazi occupation for 4 years. And unlike the French in World War II, we may not get the luxury of a second chance in a future war.

If good military strategy is crucial in case of battle, it is just as necessary for good defense policy planning. Planning should start with strategies based on the goals set by the President and Congress. Then, Pentagon planning documents like the Defense Guidance—and the budget—should be based on those strategies. This way, we could be much clearer about how the weapons we buy contribute—as a package, not just individually—to the ability of our Armed Forces to carry out their missions. If we are clear about these issues, we can make better budgeting decisions about tradeoffs between different weapons systems. We can be sure that what we do buy fits in well with our overall national strategy. And we can be sure that no major capabilities are allowed to wither away almost to nothing, as happened with our minesweeping ability.

I think the reason there is such a vacuum in strategic planning is because our military officers are just not taught to emphasize it. Though they are taught strategy, they are not taught to think strategically. And there is a profound difference between the two. At the lowest level, the emphasis of officer training is of tactical, technical sort; about how to lead men in battle and how to use their equipment. At middle levels, the education is about how to manage, how to participate as part of a smoothly running staff. And at the highest levels, senior military leaders study the politico/military dimension of national security—how to navigate in the waters of interagency wrangling, waters infested, as the services see it, with bureaucratic sharks: service rivals, competing civilian agencies, and congressional oversight committees.

To be sure, our officers are taught some strategy along the way. But a few courses in strategy no more makes a strategist than a few college courses in poetry make a poet. What our system of military education has to do is not just offer a few more courses on strategy; it has to offer the opportunity and incentive for officers to think about strategy—to become professional strategists, not just professional managers of a military bureaucracy. To illustrate what needs to be done, let me use as an example a system that was very successful at producing strategists: the German General Staff system of the 19th and early 20th century.

GERMAN WAR ACADEMY

The heart of the German Army's educational system was their war college, the Kriegsakademie. Unlike the 1-year courses taught at the American war colleges, the Kriegsakademie devoted 3 years to educating German officers in strategy and tactics, in addition to technical subjects, history, and foreign languages.

But even more important than the time German officers spent in the Kriegsakademie were their incentives for thinking about strategy outside it. In order to get into the Academy, young officers had to study for years to prepare for stringent entrance examinations. They were expected to do this in their spare time while they were on active duty. And strategy was one of the most important subjects they were expected to study—to think about constantly. After they graduated from the Academy, these officers joined the General Staff, where their assignments often involved helping to draw up strategic plans. When they were assigned to line units, the maneuvers they engaged in were designed to force them to find creative tactical and operational solutions to tough problems.

Only this constant consideration of strategy and operations—before getting into the Academy, while in it, and after leaving it—could turn these German officers into the proficient strategists they became. They were proficient because they were professional: strategy was their specialty.

CHANGING THE FOCUS OF AMERICAN WAR COLLEGES

It is this aspect of the old German General Staff that we need to emulate in the United States today. We need to create a corps of professional strategists, whose training centers not around bureaucratic tasks like managing paper flow, or around political maneuvering aimed at getting a larger defense appropriation, but around thinking about military strategy.

We have an excellent base on which to build. Our system of postgraduate education for military officers is among the best in the world. None of our major allies have anything to match it. All we need to do is to change its focus slightly. And the recent Goldwater-Nichols Defense Reorganization Act set up the necessary institutional structure by strengthening the Joint Chiefs of Staff, joint planning and joint training at all levels. So in the new Joint Chiefs of Staff structure, real strategic planning can be ugraded and emphasized—if we encourage it.

Those who teach in American war colleges complain that there just isn't enough time to teach all they wish they could teach. And they are right. In 1 year, which is as long as most war college programs last, there is very little time for officers to absorb what they are learning, think about it, and build on it. Sometimes courses that ought logically to be taught in sequence have to be taught simultaneously, because of this time constraint.

The answer is simple: the war and staff colleges need to take more time. Instead of sending so many officers to civilian universities to get masters' and sometimes doctorate degrees in civilian fields like political science and international relations, we might upgrade our military schools, such as the National Defense University, into institutions that grant degrees in military science. The National Defense University could also be made into a research institution, like any civilian university, where the faculty—mostly officers—would engage in research and publish books and articles on military subjects, including strategy.

If we do these things we can create an atmosphere in our Armed Forces which encourages officers to think about strategy. They will be taught strategy at all levels of their education. When they are not in school, they will read about strategy in military journals and in books. At the war college level they will study with the officers who wrote those books and articles, and with other students who are interested in and knowledgeable about strategy. And, hopefully, in their joint staff and command assignments, they will need to think about strategy in order to do their jobs.

The need for our military leaders to think more about strategy, to become professional strategists, is clear just on its own terms. Strategists will be likely to be better planners, planners who will have foresight and thus avoid force-strategy mismatches and poorly planned operations.

But just as important, we need a good corps of strategists because we have competition. There is one military organization in the world which does more than any other to train its officers about strategy. It is also virtually the only armed force which gives its officers more military education than the United States military does. And it is one of the few that has academic programs in military science. The result is that that one country probably has more professional military strategists in its officer corps than any other in the world. That one country is the Soviet Union. And if we do not teach ourselves military strategy, we may be running the risk of having the Soviets teach it to us. It is this that we will avoid if we will but meet the need.

□ 1300

ISSUES IN RECONCILIATION BILL

The **SPEAKER** pro tempore (Mr. VOLKMER). Under a previous order of the House, the gentleman from Massachusetts [Mr. FRANK] is recognized for 60 minutes.

Mr. FRANK. Mr. Speaker, I want to touch on some of the issues that are before the House today in the reconciliation bill. One is the welfare bill.

I understand that procedural concerns led some Members to vote against the rule, because the welfare bill had been included.

I understand that there are others who disagreed with the fundamentals of the bill on the grounds it was too expensive. That latter position in particular is troubling to me.

I also found some fault with the welfare bill, but it was that it did not do enough in my judgment to recognize the fact that we have a welfare system that condemns innocent children to live in desperate poverty. The fact that it did not do enough was by no means the fault of those in the Committee on Ways and Means and elsewhere who brought it forward.

I believe they would have preferred a bill that more adequately addressed the needs of the desperately poor. They were constrained from doing it.

I want to talk a little bit about those constraints. I understand the problems of the budget deficit. There are expansions in the program areas that I would like to see that I understand we must forgo.

I have been working with many others on a housing bill. The Democratic majorities in both bodies, as represented on the committee on the conference on the housing bill, are prepared to adopt an authorizing figure that is lower by hundreds of millions of dollars than the figure adopted by either House.

Each House adopted an authorizing bill by very large margins, more than two-thirds; but in the interests of accommodating the deficit, we have agreed, I believe tentatively in the committee of the conference, if it will help facilitate this bill, we will go to a figure lower than adopted in either House.

There are areas in the transportation field, in the education field where we underserve the public interest. The deficit is a constraint on our ability immediately or even in the very near term to meet those needs.

When we cut the welfare bill below certainly what it was when it was presented in the rule, I think we are doing something that I find very hard to understand. We are victimizing the innocent children.

The great majority of people who receive aid to families with dependent children are in fact dependent children. They are 2-, 3-, 4-, 7-, and 8-year-olds who did not ask to be born, who were brought into this world in circumstances over which they had no control, and I do not understand how many of the Members can be content to require that these helpless and innocent children live lives of degradation, because they are supported by a welfare stipend that is below what is needed to live a decent life.

In some cases the parents of these children have behaved irresponsibly. Along with, I guess, every other Member, I would like to think of ways by which we could discourage the irresponsible behavior of some of the young people which resulted in these children being born; but until we are able to do that, we have a welfare policy. If we continue the kind of stringency that we have in many parts of the country, we have a welfare policy that literally punishes the children for the sins of the parents, and visiting the sins of the parents on the children is not the sort of humane policy that we ought to be following.

The bill as presented greatly increased the requirement that people on welfare find jobs. In my view the main reason that people on welfare do not work is that there are not jobs available for which they can be hired.

I do not think that the vast majority of people on welfare choose to be there. Those who understand what it is like to be on AFDC, the restrictions, the constraints, the low level of sustenance, I do not think anyone would regard that as a rational choice over a job, except in a few instances which I will allude to in a minute, so I think the notion that vast numbers of people are lounging on the welfare system because they choose not to work is a mistaken one.

We used to talk about what happens when there were high welfare benefits. Some people would claim that high welfare benefits attracted a lot of people in from out of State.

In Massachusetts we had much less migration from other parts of the United States on the part of the poor, despite the fact that we have always had high welfare benefits.

If you look at the patterns of high migration, they seem very clearly to follow much more employment opportunity.

In Massachusetts we have not had much heavy industry or the kind of relatively unskilled, relatively high-paying jobs which have been the major magnet for the very poor.

Welfare benefits have been high, but in the absence of industry we have had much less inmigration, better job opportunities than those manufacturing opportunities where high school levels were not a barrier to entry.

I do not believe the argument that there are a large number of people who have to be blasted off welfare when there are jobs that are going begging. We have to address the perceptions in this world, and there are people who choose not to work. I do not think they are a very large number.

I think it is reasonable for us to say that the citizens who pay taxes ought not to have to support people who have the option of gainful employment.

One of the things that the welfare bill did that was before us was to facilitate people on welfare getting employment. It did in part by a series of coercions, some of which, in fact, may have gone a little further than I would have ideally chosen; but I think they took account of the fact that some of these people might not be able to find jobs. It would be wrong to penalize the welfare recipient who was ready and willing to go to work, but was unable to find work.

The bill also, said, look, if you meet welfare now and go to a minimum-wage job, and you lose all medical benefits, your family will be worse off. Legally that is not a reason for staying on the welfare rolls.

As a practical matter, it becomes a very serious consideration for individuals worried about the health of their children.

I remember when Arthur Laffer, the economist distinguished for his work in supply-side economics, criticized one aspect of the Gramm-Latta bill that passed this House in 1981, particularly in this AFDC area, because he pointed out that it diminished the people who got off welfare and went to work, so we have a bill before the House which says you are not going to be able to get large numbers of welfare recipients now to transfer to work situations, unless you do a few things to facilitate that.

One is to provide day care. we have in this bill a requirement that people with children above in age of 3 go to work.

□ 1315

That is reasonable. People in the economy who have small children go to work, but they are able to afford day care if they are a two-parent family. Perhaps they have a relative that will do it. To mandate that single parents who have no children below the age of 3, but who may have 4-, 5-, and 6-year olds go off to work on a regular basis perhaps in a night job, and there is no guarantee that people only work from 9 to 5, parents who have small children need day care if they are single parents to be able to work.

Mr. HENRY. Mr. Speaker, will the gentleman yield?

Mr. FRANK. I yield to the gentleman from Michigan.

Mr. HENRY. Mr. Speaker, I appreciate the gentleman yielding. The reason I interject at this point is to also demonstrate, however, that the tremendous inconsistency exists in this reconciliation bill which if we are to believe the gentleman from Massachusetts [Mr. FRANK] resolves the problem or seeks to be sensitive to the problem of day care for mothers with children while at the same time the same bill removed the tax incentives for employers to offer day care to their workers under cafeteria plans.

I do not see how the gentleman from Massachusetts can get up and praise the section of the bill for its supposed enlightenment on the day care issue while at the same time the proposal before us also eliminated all the private sector incentives for employers to provide day care and cafeteria plans for their workers.

Mr. FRANK. Mr. Speaker, I take it the gentleman from Michigan [Mr. HENRY] is in agreement with the day care provisions of the welfare bill.

Mr. HENRY. Mr. Speaker, if the gentleman will yield, I am in agreement with the concept of dealing with the day care issue.

Mr. FRANK. Mr. Speaker, I would point out the gentleman from Michigan, and I will get to the tax question, but I want to see where he is first. I never heard of being able to take a child to a day care concept. The gentleman's agreement with the concept does not take care of any kids.

I wonder if the gentleman is in agreement with the day care provisions of the welfare bill, and if not, how the gentleman would change them?

Mr. HENRY. Mr. Speaker, if the gentleman will yield further, the question is whether or not we are going to have a workfare requirement or work requirement, or work incentive program. It seems to me totally appropriate that particularly for children below certain age groups, that one ought to have collectively in conjunction with entitlements the beneficiaries receive, that the client receives, provision for child care, yes; provision for transportation, quite frankly, yes; and in fact some of the most substantive breakthroughs in workfare have succeeded because they have had those provisions in place.

However, the bill at least as it came out of the Committee on Education and Labor, and remember that some of us have not seen the whole bill, and I have got part 2 of the bill, not part 1 of the bill, so I am still missing 1,000 pages of the bill that we are debating. It would be nice to know exactly which version we are speaking of as it appears in the final version.

Mr. FRANK. Mr. Speaker, reclaiming my time, I am sure the gentleman always reads every bill that comes before us, and he had read all of the continuing resolutions that we have voted on. He is unusual in that respect, but I am sure it is due to his diligence that he does that. I know the gentleman would not claim with respect to one bill that which was not his usual practice. So I admire his diligence in reading all of the bills that come before the Congress.

Mr. HENRY. I do not think we ought to denigrate the abilities and intentions of the work of our colleagues. I think all of us seek to find those particulars of the provisions with which we are most conversant, with which we have legislative expertise, but the gentleman has to remember also that the bill was reported out through the Committee on Rules just last night. It was printed this morning, and only half of the bill is printed. How can we even know on these contentious issues? Obviously a 2,300-page bill is so large that no one will get up and say, "I have read all of it," or "I am going to read it when it comes in."

Mr. FRANK. Reclaiming my time, my point was simply that if the gentleman has read the bill—and the gentleman referred to the 1,000 pages—simply put, and I like to be precise, if the bill had been lying before us for 3 weeks I doubt that any Member would have read it all. The gentleman alluded to the whole 1,000 pages, and I did not think he would have read the whole 1,000 pages. But I am interested, the gentleman apparently agrees with the thrust of the bill to provide more day care than is now available for people who receive AFDC if they are to be required to go to work. Am I correct in that assessment?

Mr. HENRY. If the gentleman will yield, the bill certainly seeks to add day care protections for the workfare client population.

Mr. FRANK. The gentleman is in agreement with that provision?

Mr. HENRY. Mr. Speaker, if the gentleman will continue to let me explain, the problem potentially is that when you expand some type of opt-out provision which allows for parents with children up to the age of 15 to opt-out of workfare provisions because of minor dependents, it flies in the face of the fact——

Mr. FRANK. Mr. Speaker, I will take my time back, because if the gentelman wants to take a special order to talk about something else, he can do that.

Mr. Speaker, I was talking about day care. I am talking about a specific provision, and the gentleman from Michigan wishes to speak about another provision. The gentleman will remember that I was talking about day care, and he can talk about other things if he wants to on his own special order and I will join him. But I want to do one section at a time. The opt-out is a separate provision.

What I was asking is that some people have criticized this bill because they said it was too expensive. One of the major areas of expense is in the provision of additional day care. I was asking the gentleman whether or not he agreed with the provisions on day care that are presently in the bill. I would be glad to discuss the opt-out provision at another time.

Mr. HENRY. Mr. Speaker, I have attempted to respond, but every time I try to respond the gentleman reclaims his time.

If the gentleman from Massachusetts [Mr. FRANK] would give me an opportunity to answer, I will try to answer, but the problem is whether or not the gentleman gives me an opportunity to answer.

Mr. FRANK. Mr. Speaker, I yield to the gentleman from Michigan.

Mr. HENRY. If we try to look at the general population, we have something like 60 to 65 percent of single-headed households with children under the age of 16, in which the head of the household is at work. The question is, frankly, do we provide in a welfare reform bill protections for single-headed households, in most cases mothers, obviously, provided protections that the middle class, that the upper middle class or even lower middle class but nonwelfare families do not enjoy. The best way to secure day care for your child, or gain unobstructed parental discretion, is to go into welfare.

Mr. FRANK. Now will the gentleman answer my question? I understand the point he wants to make and he wishes to get off this point. I will deal with those other points later. There are first of all problems with jurisdiction.

Let me just say to answer the general point, that in 1970 a bill was brought out and passed by both Houses of Congress which would have provided a sliding scale day care benefit. It would have provided for day care to those with no income, and it would have required a sliding scale contribution. I thought that was a great bill that the two Democratic Houses of Congress passed and I was sorry that President Nixon vetoed it. So I agree with the concept, but we still have now a specific bill before us and I would like to expand day care into other areas although by the time you get to the upper middle class, frankly, I think with the budget constraints, if we define that by income, they will probably be on their own. I do not think we can afford in this budget climate to subsidize the upper middle class.

Mr. HENRY. Mr. Speaker, if the gentleman will yield?

Mr. FRANK. I thought the gentleman answered my question as much as he was going to. He started getting off onto the fourth other subject. I waited until he came to the fourth other subject before I came back in.

The upper middle class will be on its own.

The question I still have is does the gentleman approve of the day care provisions that are in the welfare bill before us today? That seems to be a simple question. He may think that if we do that, that we should do other things elsewhere, but one deals with legislation one piece at a time. I would be interested to know, which is my original question, whether the gentleman agrees with the AFDC provisions in the bill that was before us?

Mr. **HENRY**. Mr. Speaker, if the gentleman will yield, I will answer if he will give me an opportunity to answer.

Mr. **FRANK**. I have given the gentleman that opportunity, and I am glad to do that. I have asked the gentleman that question about five times, and the gentleman has spoken about five times. He has not yet answered the question. I do not say that a yes or no answer is required, but is the gentleman in favor of those provisions or is he not?

Mr. Speaker, I yield to the gentleman.

Mr. **HENRY**. Mr. Speaker, I am opposed to the provision in this bill which was before us.

Mr. **FRANK**. On day care?

Mr. **HENRY**. There are two provisions of day care. One is the provision which eliminates those tax incentives for the provision of day care for those who work.

Mr. **FRANK**. Mr. Speaker, I am going to take back my time because the gentleman is deliberately distorting the question which I have asked.

Mr. **HENRY**. I thought that was the question.

Mr. **FRANK**. I am going to ask, Mr. Speaker, that the gentleman be instructed as to the rules. On his special order he can do as he wishes.

There are several provisions of the bill, and on this particular provision I suspect that the gentleman does not want to answer the question.

The question is does the gentleman approve of the day care provisions that respond to the AFDC question in the welfare part of the bill?

I know the gentleman has problems in other parts of the bill and we can talk about those later, but we cannot talk about all these provisions simultaneously.

Mr. Speaker, I would ask the gentleman if he is in favor of or is opposed to the day care provisions concerning AFDC in the bill that was before us?

Mr. **HENRY**. Mr. Speaker, I would be glad to respond.

I said I had two issues, and I pointed to the one which I was not allowed to talk to. That was why I asked to be allowed to answer.

The fact is we cannot sever the two issues because we were asked under your rule to vote for both provisions simultaneously. The rule did not allow us to sever the questions.

As to the second part, if I may answer?

Mr. **FRANK**. Mr. Speaker, taking back my time, I was not asking the gentleman how he voted on the rule or how he would vote on the final reconciliation. I was asking about a specific part of a specific issue in the bill that was before us.

Mr. **HENRY**. On the specific aspect of the "welfare reform," I am in disagreement.

Mr. **FRANK**. The gentleman is in disagreement with the day care provisions?

Mr. **HENRY**. In disagreement as to the bill as reported, that is correct.

Mr. **FRANK**. Mr. Speaker, I might say that for a gentleman who got up and said that we were being inconsistent because we were for day care in the welfare bill but were knocking out tax credits, I think the inconsistency is now reversed. The gentleman is apparently not for providing day care in the extent to which we did which seems to be not enough for the people on welfare, but he is for providing it to the upper middle class. Upper middle class people vote for me in some numbers, too, I would hope, but to say that one is for subsidizing the upper middle class, but opposed the day care provisions in the welfare section of the bill where we require single parents with 5-year-olds to go to work, is, I believe, very inconsistent.

Mr. Speaker, I kept stressing the question because the gentleman said he was in favor of the concept of day care. As I said, I have yet to see somebody who could drop his kid off or her kids off at the concept. Concepts do not cut much butter, so we are left with those kids in trouble. That is an example for the gentleman from Michigan [Mr. HENRY] of what my problem is with people concerning the AFDC bill. To begrudge provision of day care for people and say we expect them to go to work, that not only seems to me unfair to the children, and by the way there are adults on AFDC who seem to be admirable and are victims of circumstances beyond their control. Many, many of the women on AFDC are women who were left by callous husbands or fathers of their children who will not pay up their expenses.

□ 1325

We all agreed to try to make them do more of that. There are some people on AFDC who are not admirable, who have been irresponsible at the adult stage, but it is the children who are the victims, so denying adequate day care I do not understand.

The gentleman from Michigan who initiated this now at long last tells me he is against the day care provisions of the AFDC bill, and also thinks we should give more tax subsidies for upper income people.

The other problem I have are people who object to the Medicaid provisions. The gentleman makes a good point before when he said we should not give benefits to the very poor and deny them to others because we do not want to give people in the center the incentive to be on welfare. That is the great catch-22 that the conservative side has been using and has cited in 1976 when the bill passed under the leadership of Walter Mondale, then a Member of the U.S. Senate. I trust that it is not a violation of the rules for me to refer to a prior incarnation of Walter Mondale. Both Houses passed an excellent bill on child care which included a sliding scale for child care so that people at the AFDC level of income could get free child care, people working at the low level of wages would make contribution, and the more you made the more you would contribute and everybody would get some help.

The Republicans killed that bill because they controlled the presidency. We did not have two-thirds, and what they said was no, it will cost too much money. You may only help the very poor.

Similarly with Medicaid, it was the Gramm-Latta bill of 1981, and the gentleman talks about not reading a bill, in 1981 Gramm-Latta came in, and came marching down here on its own feet from the OMB, and Members on the other side like automatons voted for it.

One of the things that Gramm-Latta did was to reduce those aspects of Federal programs which aided people who were above the welfare line working at low-wage jobs. As I said, Arthur Laffer, who apparently invented supply side economics on a napkin, did that. It is a good thing that they did not have hot air blowers in the place where he was or we may never have had supply side economics because he may not have had a napkin. But Arthur Laffer said the Gramm-Latta bill was in fact flawed in that it took away incentives to get off welfare.

So what the right wing says in the first place is that you are wrong because you only want to help the very poor, but when we propose Medicaid should be available for a couple of years on a transitional basis for people getting off of welfare, when we propose the sliding scale for day care, even the gentleman from Texas, who I see is here, when we were talking about a housing program that would go above the public housing level but try and help lower income people and people facing a terrible housing crisis, to that the conservatives said no. That is the catch-22. If you try to help people above the poverty level they tell you it is too expensive and then having defeated that they will tell you you are not being fair.

Mr. GONZALEZ. Mr. Speaker, will the gentleman yield?

Mr. FRANK. I yield to the gentleman from Texas.

Mr. GONZALEZ. Mr. Speaker, I thank my distinguished colleague from Massachusetts for yielding. The gentleman is very correct.

The record shows who has not been for these responses on the part of some of us to the burgeoning needs that are clearly and obviously arising from the midst of our constituents. I wanted to bring to the gentleman's attention, since he is one of the most active and valuable Members of the Subcommittee on Housing and Community Development, that one of the programs that we have been endeavoring to place into the housing and community development program since the omnibus housing bill of 1965, which was the first comprehensive housing bill, what we call now community development programs, at the beginning of what we now know as the Department of Housing and Urban Development, or HUD, that omnibus bill of 1965 enabled some of us to place a provision in that section dealing with public housing that would have made allowances for child care centers in public housing. I am sure the gentleman knows that if there is any area that we could say is really dominated by the very poor, it would be that area of housing. And yet it was not until last year, 1986, in the last Congress, that we were able to get that provision into the comprehensive authorization bill that the House passed out by the greatest margin ever in the history of a housing bill. In fact, it was 340 votes to 36 on a floor amendment.

The minority side knocked out the proviso with respect to child care centers and child care activities that would enable those very poor, particularly the single female head of households to really go out and work, and at the same time make and take minimal care of the children.

So I think the gentleman's statements are absolutely accurate. It is not a question of whether one is partisan or not. The history of this shows that is partisan, that it has been, that it has been the minority, the Republican Party and side that has consistently resisted everything through history from Social Security to public housing.

I think, however, that history also shows that eventually the Congresses do respond. Unfortunately, not before very serious social dislocations.

So I thank the gentleman for discussing this.

Mr. FRANK. I thank the gentleman from Texas as well. Under his leadership we have for the 7 years I have been here, and I know before that, tried very hard to fashion Federal programs that respond appropriately to needs, and time and again our conservative friends insist that we confine this to the people at the welfare level and below. Then they turn around and say we are being unfair.

In particular, let us look at the people at the welfare level. To use the fact that we have not adequately tried to help people above that as the reason for denying people at the AFDC level, and again I am struck that the gentleman from Michigan who initiated this discussion with me ultimately concedes he is against the child care provisions of this bill, and I am not talking about other provisions that he might be against, I am talking about child care, it just seems to me wrong to say to a single parent you are going to have to go to work. That is not wrong. People ought to go to work if they are able and there is a job. But we are not going to provide you child care. We invite difficulty ourselves with children who are not adequately cared for.

I do not excuse anyone who is an adult and who commits crimes or misbehaves. I do not think there is anything in anyone's childhood that justifies criminal behavior, certainly not being violent, but it is a statistical fact, and we can expect more of that. And recognizing statistics does not mean we excuse the behavior in the individual case.

The majority of people who receive Aid to Families with Dependent Children are in fact the children who are the victims of the process. Refusing to give them adequate child care, begrudging medical benefits that are adequate to their parents when they leave, keeping the welfare benefit level low, those are all great mistakes. But of all of the inconsistencies the great great-grand-parent inconsistency is the one that deals with the 2-parent family provision of this bill.

I have heard from my Republican friends dozens of times, and I have heard it from the President himself, one of the criticisms they make of current social policy is it gives families an incentive to break up. They say under your program a family that splits up will be eligible for welfare and the family that stays together will not be. Yes, it is true, there are some States where if there are two unemployed parents in the household, they are not eligible for AFDC.

So in this bill we say two-parent families where neither parent is able through no fault of his or her own to go to work, they should get AFDC. That is one of the things the conservatives object to. They will tell us in their horror stories about how we give incentives to break up families.

There is one simple way to deal with that. You disallow anybody from requiring a family to break up to get welfare. That we find is one of the issues that people on the Republican side complain of from the President on sideways.

So I think we have a great gap between the criticisms that are being made and the reality of the bill to say that we are spending too much because when we talk about medical benefits for people going off welfare, and day care, and aid to families where the father is present, that we are spending too much on welfare, people must mean we are supposed to shut it down.

By the way, many of us hope, no one can be sure, but many of us hope that passage of a bill that improves people's ability to go to work will have in the immediate term a money saving effect, because I do not think most people want to be on welfare. I think given the chance to get jobs they will take them. I do not think you need as much coercion as is in this bill, but I can live with it, given the other provisions.

But to talk about doing just the coercion part with nothing else I think is misidentifying the problem. It must mean that people think that there are 3- and 4-year olds living too well in this country who are on welfare. People must think that there are small children on AFDC who are overdressed, who are overeating, who live in luxurious circumstances. I do not think that comports in any way to reality.

Mr. PEASE. Mr. Speaker, will the gentleman yield?

Mr. FRANK. I am glad to yield to the gentleman from Ohio.

Mr. PEASE. Mr. Speaker, I thank the gentleman for yielding. I am pleased to hear what the gentleman is saying about welfare, because I think some of his comments are very well taken.

Mr. Speaker, let me say that I am a member of the Public Assistance Subcommittee of the Ways and Means Committee that put together the welfare reform package. We had hoped to make it part of the reconciliation bill. A majority of Members of the House decided that that was not appropriate, and I accept that, and it is my hope that we can bring the bill to the floor as soon as possible on its own and enact the legislation, because in my view welfare reform is long overdue.

We have finally, at long last, a consensus in this country that welfare as it is presently constituted does not work well and encourages dependency, and that something needs to be done about it. This bill, I think, is an excellent response to those concerns.

May I ask the gentleman from Massachusetts whether he has enough time to let me address the subject for 5 minutes or so?

Mr. FRANK. Let me say to the gentleman in these particular circumstances I suffer from no shortage of time whatsoever, and I welcome the gentleman's participation.

Mr. PEASE. I thank the gentleman for yielding and I will continue.

Common sense ought to be our guide in evaluating the welfare reform proposal which we hope to bring before the House. The proposals offered for consideration by the Ways and Means Committee pass the common sense test with flying colors because the package is result oriented and practical.

Most of us here as well as most of our constituents agree that work, work, should be the key to any welfare reform effort. No matter what you think should be our primary goal in welfare reform, whether you think it should be reduction of poverty, cutting the cost of welfare programs or reducing the number of people who depend on these programs, a job has always been and will continue to be the best way to achieve those goals. Work must have a favored position among the options available to welfare families.

It makes no sense whatsoever to encourage people to work if working is going to leave them economically worse off than they are on welfare. What kind of message is that to send to these families?

If Members of the House are serious about their commitment to jobs as the best way out of welfare, how can they ignore the injustice of a system such as the one we now have which penalizes work? Opponents love to castigate welfare dependency and blame the current system for perpetuating it. To many, even receiving $1 of welfare assistance constitutes dependency.

□ 1340

Mr. Speaker, that simply will not wash. The people we are trying to reach with this reform effort are those who know, who know that their long term prospects would be brighter with a job but they lack the basic tools to succeed in the job market.

The package that we have out of the Ways and Means Committee targets these people and addresses their specific needs for education and for training. We must never forget that we are dealing with families here. Welfare should not work against the family unit as it unfortunately does now under current law. If the President really wants to see a long overdue correction, as he says, let him endorse this package's requirement for States to adopt an unemployed parent program as part of the welfare system.

The fact that our welfare system was originally designed to aid needy children without fathers has led to a very legitimate criticism. The existing program encourages the breakup or the nonformation of families. That is crazy.

It is time that we remove the bias against families in the current law. This House has included a mandatory unemployed parent program in its reconciliation bills for the last few years and we should do so again this year.

Now President Reagan has enunciated as one of his welfare reform principles that the system should "encourage the formation of economically self-sufficient families."

It seems to me that making the unemployed parent program mandatory would be an obvious way to help fulfill this important goal.

Furthermore, we have to deal with transition problems of people who move from welfare to gainful employment. In my opinion, it is these transition problems which cause more people to stay on welfare than any other single factor.

Our economic system does not generally find people jumping directly from poverty, from welfare to a middle-class income. That is not the way it works. If people are going to get off of welfare, off of the poverty rolls, they are going to move first into a low-income, low-paying job.

The welfare reform proposal crafted by the Committee on Ways and Means devotes considerable attention to such transition problems as health care, day care, transportation and work-related expenses.

These are practical problems that ought not to affect the decision of a welfare mother who wants to join or rejoin the work force.

Let me elaborate on that for a moment.

Currently a woman on welfare, say with two children, has her medical care needs for herself and her children paid for from Medicaid. She does not have a direct out-of-pocket expense for medical bills. If that woman is given the opportunity to get a minimum wage job, that is desirable, most of us would think. But if she takes that minimum wage job she will soon find that she and her children are no longer eligible for Medicaid.

Now people who are on welfare are in unfortunate circumstances but they are not stupid. And what kind of a mother would take a minimum wage job which brought her income roughly to what she gets in welfare and in the process lose medical benefits for her children? No welfare mother is going to do that and no welfare mother should do that, nor should she be forced to.

The transition rules that we have in the welfare reform bill make it possible for that welfare mother to go off of welfare, to take a minimum wage job and to be able to retain medical benefits for up to two years: the first 6 months through Medicaid, the next 18 months through any one of a variety of programs that a State government might choose to provide.

It also, I might add, allows the State government to provide for cost-sharing on the part of the former walfare recipient.

That is important and we think it is a real contribution to encouraging people to get off of welfare and into the job market.

Now I would have thought that if there was a consensus issue for this Congress it would be welfare reform. The need to change our welfare system it not disputed on either side of the aisle.

The single importance of work as the cornerstone of welfare reform is also unquestioned. It appears that the debate comes down to dollars and to me that is too bad.

To do a good job on welfare reform we require an initial investment to get the ultimate return that we all want to see.

No one criticizes a business firm for putting in money up front and losing money the first year or two as long as it is part of an overall plan to achieve ultimate profit. That is what the Ways and Means Committee package does with welfare reform. It puts in an initial investment in education, in training, in medical care, in day care and so on in order to get people off of welfare and on to the working rolls.

Finally, Mr. Speaker, if Congress were to be judged and if the President were to be judged on how we treat our worst-off citizens, we would not get very high marks for our current law. We can demonstrate our commitment by passing a welfare reform bill that has a practical, commonsense approach to welfare reform. And although I had hoped we would be able to do that today, I still hope we can do it in the near future and I hope very much that my colleagues will agree on the wisdom of doing so.

I thank the gentleman for yielding.

Mr. FRANK. Mr. Speaker, before the gentleman leaves, let me say that I appreciate his point of view. It is helpful that he pointed out where these additional dollars are going so that people who do not think that people making a transition from welfare to work ought to get help for the medical bills for their children should say so and vote against that, but people should understand where it goes.

Let me also add, and I want to underline what the gentleman said, we heard the President and many other Republicans saying one criticism they have in the current welfare system is that it rewards you if you have a family breakup. I gather I am correct when I say there is a provision in the bill brought forward from the committee which would end that incentive. It would say the States may no longer penalize you for having two parents in the home if they have honestly tried to find work and could not find it. In fact, the Republicans by and large are opposing that provision. So on the one hand they criticize what they say is an incentive to breakup families and on the other hand oppose the gentleman's efforts to deal with them.

I yield to the gentleman from Ohio.

Mr. PEASE. I think the gentleman's analysis is entirely correct. Perhaps I ought to underscore the point that I made earlier, and that is that the additional costs of this bill are not represented by higher welfare payments to those people on welfare. God knows those payments ought to be higher.

The amount of money that now goes to people who are unfortunate enough to be on welfare in most States, in almost all States, is grossly inadequate. It ought to be increased. But we did not think in the Committee on Ways and Means that this bill was the proper place to do that.

Mr. FRANK. I thank the gentleman.

So that means that if people are complaining about the costs they either want to hold up benefits, not provide day care, not provide medical care or in other ways worsen the very unhappy condition of a lot of innocent 4- or 5-year-olds.

Mr. PEASE. Exactly right. The additional money in this bill is designed to educate and train people so they can get off of welfare and provide them transitional medical benefits to encourage them to do so, to provide day care so they can hang onto a job and so on. And I thank the gentleman.

Mr. FRANK. I thank the gentleman and I promised that I would yield to the gentleman from Pennsylvania [Mr. RITTER].

Mr. RITTER. I thank my friend from Massachusetts for yielding.

Mr. Speaker, I would like to comment on the budget reconciliation bill whose rule was just defeated by a vote of 217 to 203. The House has spoken, actually a bipartisan coalition of Republicans and some 48 Democrats have spoken against this rule and against this bill.

Last week—and we are still feeling the reverberations—we all witnessed an avalanche in the financial markets.

Mr. Speaker, avalanches do not occur randomly. Avalanches are triggered. The buildup of the material in an avalanche—and we can use this metaphor to describe the twin deficits and rising interest rates and the impending trade bill, which the global financial markets did not feel was a positive step on the part of this Congress—we can view that buildup as being there for some time. But what was the event that set the avalanche in motion?

Today the House voted against this reconciliation bill by voting against the rule and, my colleagues, the markets have been voting against this reconciliation bill since Friday, October 16, when the Dow Jones average fell 108 points. We should note that the Ways and Means tax bill part of reconciliation became public on October 15.

The markets spoke in response to the tax bill. The avalanche began. On Monday after investors really found out what was in the tax bill the avalanche accelerated with a 508-point drop.

It did not have to be a cannon shot, it did not have to be a bomb. A rifle shot can start an avalanche. The Democratic tax bill was just such a rifle shot.

The tax provisions in reconciliation went to the heart of some significant underpinnings of the bull market that we have been experiencing.

These tax provisions remove substantial value from not only a limited number of stocks, which have potential for merger or acquisition, but value is lost across the length and breadth of a market where other stocks also reflect the higher value of priorities subject to mergers and acquisitions.

I call my colleagues' attention to an article by Edward Yardeni, the director of economics at Prudential-Bache Securities that appeared in the Wall Street Journal of yesterday. It is entitled "That M and A Tax Scare Raffling the Markets."

Mr. Yardeni makes a compelling case that not only stocks subject to potential merger and acquisitions had the bottom whipped out from under them, but many other stocks in the market felt the same pressure. The reconciliation bill has a welfare provision that is not appropriate at this time. The reconciliation bill had deficit reductions which may not be sufficient at this time. There is a budget summit process that is underway; we should give it a chance. But the single most important element in this reconciliation bill is this tax measure that was targeted at the heart of Wall Street value which is also Main Street value when retirement incomes and pension funds are considered. And unless we send a signal to the financial markets that we are willing to withdraw from this crippling tax measure, we could see continuing instability in the financial markets the likes of which we're trying desperately to avoid. It would seem that the Democratic leadership is not engaged in seeking a recession or a falling out of the bottom of the financial markets which could lead to one.

□ 1355

It is probably innocent that they have stumbled on these particular elements for a tax increase; turning against Wall Street makes political sense; but the fact is that now that we have seen the impact of these new taxes, we have seen the rifle shot causing the avalanche, now is the time to withdraw from these provisions and let the budget summit have a chance to work its way. Let us at least consider the fact that these tax provisions could be extremely dangerous to our economic health, and let us not go ahead and try to ram these provisions through the House at a time when the financial markets are so nervous and the probability is so high that the free fall in the financial markets was a result of the tax increase bill before us.

This is not something just for Wall Street; this is something that determines the economic climate of this country, and if the nervousness on Wall Street extends throughout the country and extends down to Main Street, we could find ourselves in a recession and we could find ourselves with the economic bottom falling out at a time when there is 3.8-percent economic growth, at a time when unemployment is at its lowest in recent years. This tax bill doesn't make sense.

At a time when American industry and American workers are responding to the global challenge and doing fairly well at it, it would be unwise to enact a tax measure that had such far-reaching negative implications.

[From the Wall Street Journal, Oct. 28, 1987]

THAT M&A TAX SCARE RATTLING THE MARKETS

(By Edward Yardeni)

Tomorrow the House will vote on a $12 billion tax increase containing what was a major cause of the recent stock-market crash. That is a provision designed to severely limit corporate merger and acquisition activity.

Many investors and traders learned of this plan from a Wall Street Journal story on Oct. 14. The day before, the Democrats on the House Ways and Means Committee agreed on a number of tax-raising measures including the elimination of the deduction for interest expenses exceeding $5 million a year on debt from a takeover or leveraged buyout.

On Oct. 15, the full committee approved the package. Takeover stocks were pummeled late during the trading day (see table). Several announced and unannounced deals were delayed. Arbitragers sold large blocks of the stocks.

Though the tax measure faced an uncertain future both in Congress and with the White House (the Senate Finance Committee on Oct. 16 approved a bill without the anti-takeover provisions), the arbs sold fast. They are not long-term investors, and they feared the worst.

Under the Ways and Means proposal, the interest provision would be retroactive to Oct. 13, a crushing setback to any deal being worked on or considered. To understand its effect, consider this case:

For an $800 million business in a stable industry, a relatively conservative acquisition financing would be 75 percent debt and 25 percent equity. The annual interest charges on the $600 million debt would be about $60 million, assuming a 10 percent interest rate. Under the committee's plan, only $5 million would be deductible. So additional taxes of $18.7 million (34 percent of $55 million) would have to be paid every year.

The acquirer's annual after-tax cash flow would be reduced by $18.7 million, lowering the value of the business by an estimated $187 million, the value of the reduced cash flow assuming a 10 percent discount rate. That's a 23 percent decline in the value of the business!

The decrease in value would be greater if the acquisition were financed entirely with debt, which would be possible if a larger company were the acquirer. It would be less dramatic if more equity were used in the takeover.

How could the collapse in the prices of a small number of takeover stocks cause the awesome crash in the entire stock market? Corporations were the largest purchasers of stocks during the bull market. According to Federal Reserve Board data, corporate equity outstanding declined by $74.5 billion during 1984, $81.5 billion during 1985 and $80.8 billion during 1986. Acquisitions and stock repurchases account for this dramatic reduction in the supply of stocks.

HOW SOME TAKEOVER STOCKS WERE HIT

	Tuesday 10/13	Wednesday 10/14	Thursday 10/15	Friday 10/16	Monday 10/19
Allegis	103⅝	102¼	97	93⅞	66
Dayton Hudson	54½	52⅞	49½	44¾	30
Gillette	41¼	40½	36⅝	32¾	24
Irving Bank	74½	72	70	65⅜	48½
Kansas City Southern	70½	67⅞	61¾	56½	45
Mead	45¼	43¼	41½	38¾	29¼
Sante Fe Southern	60¾	61	56¼	51	41⅜
Tenneco	59	60¼	57½	55	43¼
USG	53⅝	52¾	49⅛	43⅜	31½
Zayre	31	30	28⅝	24¾	15⅝

This suggests that the bull market was largely fueled by mergers, acquisitions and buy backs. Stock values were driven up by corporate enterpreneurs willing to pay above-market prices to control other corporations. Controlling ownership must always be worth more than minority ownership. Presumably, the new owners believe that they can increase the value of the acquired company above their purchase price with better management and by restructuring the business, including selling undervalued assets.

The recent surge in mergers and acquisitions brought more, and larger, publicly traded businesses into the category of corporations that could be acquired. So price-earnings ratios rose closer to valuations based on majority, rather than minority, ownership. Owners of minority interests in public companies benefited as share prices rose.

As shown, the value of a typical corporation to a potential acquirer would be cut by roughly a quarter under the Ways and Means plan. Interestingly, the Dow fell 20.6% from Oct. 13, when the idea was accepted, through last Friday. Price-earnings ratios collapsed toward minority ownership levels.

Apparently, the House Ways and Means Committee adopted the provision not only to raise taxes, but also to halt mergers and acquisitions. Whether this is a good idea is a profound policy question with tremendous implications for U.S. productivity and trade competitiveness. However, a better way to slow takeover activity is to have stock prices that as fully as possible reflect the control values of businesses. Share prices would be higher and pension funds, mutual funds and individual shareholders would be, in the aggregate, $1 trillion better off, or about where they were before the October massacre.

In these days of a weakened presidency, the threat of the Ways and Means bill being enacted was sufficient to cause a widespread flight from equities. We've seen recent precedents for financial-market panic in response to Washington.

For example, on March 27, the administration announced a tariff on certain imports of Japanese electronic products. The dollar immediately plunged and government bond yields soared from 7½% to 9% in a few weeks. Early this summer, the Treasury proposed termination of a tax treaty with the Netherlands Antilies, which permits certain investors to avoid withholding on bond-coupon income. The market in affect bonds declined precipitously until the Treasury corrected the admitted error.

A curious aspect of the present anti-takeover initiative is that foreigners would not be adversely affected by taxes. Their relative ability to acquire U.S. owned companies would be enhanced, doubly so because U.S. companies would stand to be sold at a significant discount to their potential value.

The Ways and Means measure contains some needed takeover reforms, such as a prohibitive tax on "greenmail" payments to raiders. But putting most companies out of reach of enterpreneurs, and sacrificing a measure of the more-accountable management that this fosters, has already had a disastrous effect on equity prices, aggregate wealth and national income. If the House puts the anti-takeover plan to rest, perhaps some of the damage can be undone.

(Mr. Yardeni is director of economics at Prudential-Bache Securities.)

Mr. Speaker, I thank the gentleman from Massachusetts for yielding, and I urge my Democratic colleagues to hold to their previous vote on the rule and to vote "no" on this tax increase and vote no on the reconciliation rule when it comes up the next time.

Mr. FRANK. Mr. Speaker, the gentleman is welcome, and I am still trying to sort out his metaphors, and when I get them all sorted out, I will be able to respond.

Mr. Speaker, I yield to the gentleman from Michigan [Mr. LEVIN], a member of the Ways and Means Committee.

Mr. LEVIN of Michigan. Mr. Speaker, I thank the gentleman from Massachusetts very much, and I congratulate him on bringing up this special order so that we can talk about welfare reform.

Welfare reform was a piece of the reconciliation bill. For some it was preferred that it be discussed separately from reconciliation. Welfare reform now clearly will have to stand very much on its own.

I listened with interest to the gentleman's comments about how welfare reform can stand fully on its own, and I just want to, if I might, reenforce some of the gentleman's points and make a few others. The welfare reform bill has been so mischaracterized. It is a pro-work bill. It is a bill to link the welfare system to work. It is a bill to combine obligation on the part of the welfare recipient in terms of work with opportunity to work. Over 65 percent of the money within the bill would go for the welfare-work connection. There would be a mandate. The States would be able to require, indeed would have to require that children 3 and older participate in these work programs, these training programs. In a word, the welfare reform effort is to help people get out of the present circumstance they are in and equip them to get into the work flow. And to add further to this, the bill provides for performance standards and sanctions to make sure that the States move people off the welfare rolls into jobs.

So the first point—and it is a critical one—is that the welfare reform bill is a pro-work bill. It provides the support services, child care, transportation, and health care, to help people make the transition from the welfare rolls to the workplace.

Second—and this is so important—it is pro-family. I was listening to the comments of the gentleman from Massachusetts about the unemployed parent and the two-parent provision. We now have a system that essentially requires people to split up to support their kids. It is an anti-family system. It is interesting to see where support for this part of the welfare reform bill, the two-parent family provision, is coming from. The Catholic bishops in their pastoral letter recently zeroed in on this particular provision and they called for Federal legislation that would require States to provide two-parent families, AFDC if they otherwise qualify.

There is a new book coming out from the Heritage Foundation, a very conservative outfit, and I would like to quote very briefly from it when it supports extending AFDC to two-parent families. It says:

> Since family stability should be a major policy goal, it would be a wise exercise in prevention for all States to provide this assistance to help intact families in hard times rather than restrict their assistance only to families that have already collapsed.

Mr. FRANK. Mr. Speaker, could I ask the gentleman if he would, elaborating on the position here of the Catholic bishops as reported by the Heritage Foundation, tell us, in the Ways and Means Committee bill, what was the position in the Republican substitute and alternative with regard to this particular pro-family provision?

Mr. LEVIN of Michigan. It was essentially the status quo, to keep the present antifamily provision.

Mr. FRANK. So if the Republican substitute were to be adopted, States would still have the option of continuing to give families an incentive to break up, so then the President could continue to complain about it? Whereas our bill would end that incentive, the Republican substitute would preserve that incentive to break up families within the States?

Mr. LEVIN of Michigan. Absolutely. And there is another irony in the Republican provision that relates to the family, and that is this question: when kids are how old, when should there be a mandate that the parent work? In the bill that came out of the Ways and Means Committee, there is a provision that there shall be a mandatory program in the case of the parents—in the case of the mother, in most cases—with children 3 and older. As to those families with kids younger than that, it would depend on the parent and the particular circumstances. Also there would necessarily have to be a provision for daycare.

The Republican alternative would have mandated that mothers with kids from 6 months to 3 would have to go to work.

Mr. FRANK. And without the provision necessarily of daycare, so you would have a situation where a single parent with a 9-month-old child would be legally required to go to work to get any assistance whatever, even if no daycare were available?

Mr. LEVIN of Michigan. That is right. And even if the kid of 9 months really needed the hourly attention of the parent.

Mr. FRANK. Let me say that I have myself encountered very few self-sufficient 9-month-olds.

Mr. LEVIN of Michigan. Well, there are a few.

Mr. FRANK. I guess so.

Mr. LEVIN of Michigan. This is a matter of some difficulty and some controversy, but it is interesting that the Republican alternative would have said to mothers of kids 9 months or 12 months old, "Go to work or you and your kids are off the rolls."

I am in favor of a linkage between welfare and work. I am in favor of an obligatory system, but it has to be a system that takes into account family needs.

And there is another strength within this welfare reform bill, and that is its linkage to the private sector.

I want to mention to the gentleman from Massachusetts this aspect of it because it is critical. We had a fight within the committee. The Republican minority said that the States and local communities ought to be able to continue to use the community work experience program beyond 6 months, beyond 9 months, beyond 12 months, and beyond 15 months to place people, rather than requiring people to be trained to go into the private sector, into permanent private sector jobs. So essentially what we had in the Republican alternative was a plea that local communities be able to use CWEP the way the CETA Program was misused in some places. It was a good program in some places, but in others it was makeshift. It did not move people into the private work flow on a permanent basis.

So this is a pro-private sector welfare reform bill. What it says to the States is that you must put together a program that helps people on welfare get off the rolls into employment, not makeshift employment but into private sector permanent jobs, into the workflow, the continuing workflow itself.

So those are some of the critical points in the welfare bill. As I mentioned, the vote earlier today means that that bill will have to be considered separately. I feel that it is a critical issue. I feel that it is a bill that can stand on its own two legs. I hope at some point that this House will take up that measure. It is not a bill that simply adds more benefits to the present system. It is a bill that dramatically reshapes this welfare system of ours. That reshaping is long overdue. It is a bill that is pro-work, it is pro-family, it is pro-private sector, and I hope that this House will soon be able to take it up.

Mr. FRANK. Mr. Speaker, I thank the gentleman and I agree with much of what he has said. I will just add that I know he agrees, too, that if we had the resources, many of us feel we ought to increase the benefits. This bill does not do that. I regret that it does not, but we did the best we could.

Mr. LEVIN of Michigan. Yes, we did the best we could, and there is a provision, if I might add this, that matches increased State benefits.

Mr. FRANK. I appreciate that.

Mr. LEVIN of Michigan. Again this is something that lies within the States. It is creative Federalism.

Mr. FRANK. Mr. Speaker, I do not ask for 5 legislative days for other Members to revise and extend their remarks, because if they had wanted to say something, they should have been here like the rest of us.

Mr. Speaker, I yield back the balance of my time.

THE CRISIS IN CENTRAL AMERICA; AND THE ECONOMIC CRISIS IN THE UNITED STATES

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Texas [Mr. GONZALEZ] is recognized for 60 minutes.

Mr. GONZALEZ. Mr. Speaker, today it is my intention to develop two subject matters that I have been speaking forth on here in the well of the House and for the record for quite some time. Both subject matters, I believe, are unsubmersible. That is, no matter how we try, our Nation—and that means the Congress—has to face them.

The first is the question of Central America, and the second is the coequal subject matter in importance and priority, the general fiscal monetary economic situation and problem which now has taken such a dramatic turn that it is unavoidably confronted by the country and the Congress, but to those of us who have been speaking out in both instances with respect to both subject matters for many years, it is in a way a sad development because we had spoken in anticipation and had hoped to have some suggestions and some recognitions at least discussed, neither of which I can see has happened.

In the first case, referring to our continuing dilemma in Central America, with particular reference to both El Salvador and Nicaragua, I regret to say that I do not see what it is our news dispatches are telling us. The first time, as I have said repeatedly, that I addressed the question having to do with Latin America, as we like to call it, was on April 1, 1980.

□ 1410

President Carter was President. I was not attacked, because I spoke then, and I spoke subsequently on an average, during the time we were in session that year, at least on an average of once a week, hopeful that something would give and that some of the suggestions I was making then would reach the White House judgmental and decision levels; but they did not, so that I did not hear any criticism about my being partisan or critical of the Chief Executive such as I have heard to the point of such vehemence that back home, not the least of the causes of the recent, much publicized encounter, physical encounter last December, were mostly motivated by the rather intense reaction to what I had been saying and doing, particularly the introduction of the impeachment resolution of the President this last March 5.

I say this, because I want to continue to speak in light of what I have said and what is on the record. It is not what I am saying now in retrospect, or what I am saying now to try to hem and haw, but what I said on the record.

In the case of the second issue, fiscal, monetary meaning interest rates, the pressures in both the urban, as well as the rural or agricultural-producing areas, with respect to the allocation of credit, these are all subject matters that I first began to discuss 23 years ago, and particularly with some continuity after the first credit crunch of June 1966.

The reason is that I am and have always been since coming to the House of Representatives a member of the Committee on Banking, Finance and Urban Affairs which when I came aboard was called the Banking Currency Committee. For the past almost 7 years, I have had the honor of being the chairman of the largest subcommittee in the entire Congress, the Subcommittee on Housing and Community Development, but also I have been a member of the Committee on Small Business, since it became a legislative committee in 1974 since its inception.

In other words, I am a charter member of that committee which under our system is considered a minor committee, though it is a standing legislative committee, and the major committee that I have been assigned to and have been a member of has been the Committee on Banking, Finance and Urban Affairs.

Through the years I have had opportunities to belong to other what around here are called power center committees, such as the Committee on Ways and Means, the tax-writing committee, the Committee on Appropriations and the Committee on Rules, if you please.

A few years ago I had an opportunity to belong to those, since I was offered an opportunity to belong. This was really substantially before the so-called Committee Reform Act of 1974 which greatly enlarged the membership of these committees.

The Committee on Ways and Means used to have a total membership of 17. Today it is at least four times larger.

My own Committee on Banking, Finance and Urban Affairs, when I came aboard 26 years ago, it consisted of 31 members, which was the exact size of the State Senate of Texas that I had belonged to for 5 years, 31 members.

The Committee on Appropriations was practically the same size as the Committe on Ways and Means. Today it is about 55 members. Today the Committee on Banking, Finance and Urban Affairs is 51 members, so that with this proliferation in the number of subcommittees, for instance, and also the enlarged number on these standing committees, I think the net result has been some problems that need attention for reform within house.

One of the victims has been the ability of Congress to react, and then address these terribly important problems both with respect to foreign relations and international economic situations, as well as the domestic fiscal and monetary situations, so that with respect to the Central American question, I have been advocating since April 1, 1980, that the United States exert its leadership role.

No matter how we feel about these issues, there is no question and nobody can deny that the United States has tremendous stakes by way of national interest in this which some consider our front porch or back porch, depending on the point of view, of our own geographical situation.

It so happened long before I thought I would be in politics, or long before I thought I would be in the U.S. House of Representatives, I had given long study, pondered long some of the obvious historical, vital issues in this corpus of tradition and historical evolvement and culture that has existed south of our border, and which antedates our own nationhood and our own culture in the North American section of the New World.

I have pointed out from time to time, both before I was a politician, and again I say, I want to remind the Members that I never did intend to be a public official, for I studied engineering first and then studied law.

The intervention of the war made many of us realize how mistakenly we had been taught, or how erroneously we had grown up as aliens and strangers in the very land that we had been born in. Finally, it took this great tumbler of walls, but which at great cost of blood and treasure known as World War II to bring about the realization of the mistaken notions of the prior and antecedent decades.

It has always been and continues to be a constant educational process, but I notice that there was this terrible ignorance or vacuum in the realization of what it is we occupy from the perception of the external world in the world itself and in the New World particularly.

Every nation is so self-contained, and ours is not the only one. In a contracting world in which the diminution of distances conquered by electronic means of communication has been so great, has been of such an exponential rate of contraction, that the individual units known as nations and cultures have simply not caught up.

Just as in the case of local situations, I can recall growing up in San Antonio when the man-to-man relationships between neighbors was present and active and there. I recall that even as an elementary schoolchild, I knew the name of the chief of police. I knew the name of the street and fire police, park commissioner, the mayor of the city which was a household name.

We knew the neighbors, and there was a man-to-man relationship, communication that today simply does not exist.

I doubt seriously whether chosen at random 10 adult citizens in the city of San Antonio could name all 11 members of the city of San Antonio Council. I doubt seriously they can name their legislative delegation from the county, and there have been very interesting polls taken which to me have been very gratifying by some political scientists in some of the local universities as to identification as a U.S. Representative in the area.

In my case I have had the privilege of being in public elective and representative capacity for 35 years, 3 years on the local legislative body, the city council, 5 years in the State senate, and now 26 years in the U.S. House of Representatives.

In each one of these eras, I have noticed that we are blithely oblivious to this vast historical process that has been taking place; and as I said, even before the beginning of our Nation.

As I have mentioned before in Mexico and in Cuba even, we had colleges and printing presses before the Pilgrims came to Plymouth Rock in the beginning of the 17th century.

The sociological, historical, racial developments have been complex and difficult.

What I am saying is that we reached the point where we can no longer indulge safely in ignoring this existence, in ignoring this history, in ignoring the culture of it.

Interestingly enough, because of what has been touted by reports both emanating from the Census Bureau, as well as from sociologists and political scientists, as to what is called the tremendous growing sector known as the Hispanic sector in the United States, this has brought about some fears.

In our part of the country it has brought about attempts to legislate English as the official language.

This seems ridiculous at a time when all of the generations such as mine—I am one of the rare exceptions that preserved the mother tongue, but everybody else has abandoned it.

For 44 years, San Antonio had the only daily newspaper published in the Spanish language in the United States.

Today there is not even a weekly, so that is why this impetus now to have a statute declare English as the official language.

It is my opinion, and it is borne out of fear of what some people have grossly exaggerated as the growing concern about this growing number of Hispanics.

Back in my time when I first got elected to office and it was the first breakthrough, I was elected to the State senate in 1956, there were quite a number of local citizens running around saying, well, it looks like the Mexicans are taking over, and I was pretty much all alone at the time.

I did not know whether to laugh or cry, because on the other hand, I could take it as a real compliment that I must have had such a symbolic influence that I was considered as being one capable of taking over.

I say all this, because it is reflected in what I have considered to be a catastrophic, a bankrupt, if you please, course of conduct on the part of our country with respect to these nations south of the border, not excluding any, but at a time with particular reference to Central America, because that is where I believe our mischievous policies are bringing about a harvest of great harm and detriment to the future national interest of our country, the true national interest of our country.

□ 1425

I believe that when this administration reverted to what I thought was a policy that would never be thought of in the 20th century certainly, the Calvin Coolidge gunboat marine approach, when that was done and the first Secretary of State under this administration, Gen. Alexander Haig, announced what he said was going to be the priority, I could not believe his utterances. I could not believe that such tremendous reaction, so regressive and so counterproductive in light of two times that our administrations had been very enlightened, and the success of that enlightened program was revealed first in the case of Franklin Roosevelt's good neighbor policy by the fact that when we entered the great emergency during World War II, instead of enemies we had allies, every one of them. Even Mexico was, where strong anti-American sentiments had long been in existence, ever since the invasion of Mexico in 1914 by the Marines at Vera Cruz, as late as just immediately after the war, Gen. John Pershing's excursions chasing, and incidentally I think the lesson to be learned there is he never caught Pancho Villa.

All of these things we have not quite ever evaluated as far as how they would mitigate against a kind of a new world leadership that I believe destiny has inescapably placed in America's hands.

What I have been critical of has been the torpid ignorance reversal to policies that did not work and those the last time tried were in 1929 and it was not until 1979 that we got the fruits, the bad fruits of that policy. We are still floundering around to figure out what it is we in the Congress are going to do. We respond spasmodically, knee jerk, respond to ad hoc recommendations and requests eminating from the executive branch of the Government.

I have often believed that one of the main things and tasks of a modern-day politician in the United States is to anticipate, to provide anticipatory suggestions, not to wait until a hot potato is at hand and then not being able to handle it, but rather to devise some pincers that when the hot potato is there it can be pulled out successfully.

Given the developments in El Salvador, where colleague after colleague ever since we went down and paid for and funded the election in El Salvador and we were able to impose our man Napoleon Duarte as President, ever since then colleague after colleague has come up to announce what a tremendous success we have had in El Salvador when the truth of the matter is that we are no closer to any kind of what could be defined as success in policy than we were 6 years ago and this after 4½ billion dollars' worth of investment, after untold millions of dollars of Huey helicopters, armaments, rifles, projectiles, recoilless rifles, and as late as less than a week ago the sorry tales about how the leading human rights individual in El Salvador was murdered just a few days ago by what is called the reborn death squads.

Who are the death squads? Who have been the death squads and who continue to be? Who were the individuals that comprised the death squads that murdered Archbishop Romero? And murdered the four American nuns? And murdered the four Scandinavian reporters? These were the same individuals with the same leader that we in the United States in certain segments of the U.S. conservative element, and I hate to use that word because I always considered that word almost reverentially. I respect it. But today what passes as conservative is an abomination in the use of the word.

But anyway using that word, they have helped this individual known as D'Aubuisson who bragged about the death squads being glory squads. Now that Napoleon Duarte is placed in a position where he has lost control and the army and the individuals such as D'Aubuisson are saying, "look, don't go that far, we did not let you become leader."

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF H.R. 3479, GAS ROYALTY ACT OF 1987

Mr. FROST, from the Committee on Rules, submitted a privileged report (Rept. No. 100-412) on the resolution (H. Res. 299) providing for the consideration of the bill (H.R. 3479) to provide for adjustments of royalty payments under certain Federal onshore and Indian oil and gas leases, and for other purposes, which was referred to the House Calendar and ordered to be printed.

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF H.R. 3545, BUDGET RECONCILIATION ACT OF 1987

Mr. FROST, from the Committee on Rules, submitted a privileged report (Rept. No. 100-411) on the resolution (H. Res. 298) providing for the consideration of the bill (H.R. 3545) to provide for reconciliation pursuant to section 4 of the concurrent resolution on the budget for the fiscal year 1988, which was referred to the House Calendar and ordered to be printed.

SUNDRY MESSAGES FROM THE PRESIDENT

Sundry messages in writing from the President of the United States were communicated to the House by Mr. Saunders, one of his secretaries, who also informed the House that on the following dates the President approved and signed bills and joint resolutions of the House of the following titles:

On September 23, 1987:

H.J. Res. 134. Joint resolution designating the week of September 20, 1987, through September 26, 1987, as "Emergency Medical Services Week."

On September 28, 1987:

H.J. Res. 224. Joint resolution designating the week of October 28, 1987, through October 24, 1987, as "Benign Essential Blepharospasm Awareness Week."

On September 29, 1987:

H.J. Res. 324. Joint resolution increasing the statutory limit on the public debt.

On September 30, 1987:

H.J. Res. 362. Joint resolution making continuing appropriations for the fiscal year 1988, and for other purposes; and

H.R. 1163. An act to amend section 901(e) of the Federal Aviation Act of 1958 to revise criminal penalties relating to certain aviation reports and records offenses.

On October 8, 1987:

H.J. Res. 355. Joint resolution designating September 27, 1987, as "Gold Star Mothers Day."

On October 9, 1987:

H.R. 1744. An act to amend the National Historic Preservation Act to extend the authorization for the Historic Preservation Fund.

On October 15, 1987:

H.J. Res. 338. Joint resolution designating October 15, 1987, as "National Safety Belt Use Day"; and

H.R. 242. An act to provide for the conveyance of certain public lands in Oconto and Marinette Counties, WI.

On October 16, 1987:

H.R. 797. An act to authorize the donation of certain non-Federal lands to Gettysburg National Military Park and to require a study and report on the final development of the park;

H.R. 1205. An act to direct the Secretary of Agriculture to release a reversionary interest of the United States in certain land located in Putnam County, Florida, and to direct the Secretary of the Interior to convey certain mineral interests of the United States in such land to the State of Florida;

H.R. 2035. An act to amend the Act establishing Lowell National Historical Park, and for other purposes; and

H.R. 2249. An act to change the title of employees designated by the Librarian of Congress for police duty and to make the rank structure and pay for such employees the same as the rank structure and pay for the Capitol Police.

On October 23, 1987:

H.R. 3226. An act to amend the Anti-Drug Abuse Act of 1986 to permit certain participants in the White House Conference for a Drug Free America to be allowed travel expenses, and for other purposes.

On October 26, 1987:

H.R. 1567. An act to provide for the use and distribution of funds awarded to the Cow Creek Bank of Umpqua Tribe of Indians in the United States Claims Court docket numbered 53-81L, and for other purposes.

On October 28, 1987:

H.J. Res. 234. Joint Resolution to designate the month of November in 1987 as "National Hospice Month"; and

H.R. 2741. An act to authorize the minting of commemorative coins to support the training of American athletes participating in the 1988 Olympic Games.

FURTHER MESSAGE FROM THE SENATE

A further message from the Senate by Mr. Haller, one of its clerks, announced that the Senate had passed a bill of the following title, in which the concurrence of the House is requested:

S. 1822. An act to make certain amendments to the Sentencing Reform Act of 1984 and to improve certain provisions relating to imposition and collection of criminal fines, and for other purposes.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. Coats) to revise and extend their remarks and include extraneous material:)

Mr. Hunter, for 5 minutes, today.

Mr. Walker, for 60 minutes, today.

Mr. Gingrich, for 60 minutes, today.

(The following Members (at the request of Mr. Gonzalez) to revise and extend their remarks and include extraneous material:)

Mr. Annunzio, for 5 minutes, today.

Mr. Rahall, for 5 minutes, today.

Mr. Gonzalez, for 60 minutes, today.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

Mr. Daub, on House Resolution 296.

(The following Members (at the request of Mr. Coats) and to include extraneous matter:)

Mr. Oxley.

Mr. Crane in two instances.

Mr. Lagomarsino.

Mrs. Johnson of Connecticut.

Mr. Badham.

Mr. Ballenger.

Mr. Rhodes.

(The following Members (at the request of Mr. Gonzalez) and to include extraneous matter:

Mr. Sikorski.

Mr. Rodino.

ENROLLED BILL SIGNED

Mr. ANNUNZIO, from the Committee on House Administration, reported that the committee had examined and found truly enrolled a bill of the House of the following title, which was thereupon signed by the Speaker:

H.R. 307. An act to designate the Federal Building and U.S. Post Office located at 315 West Allegan Street in Lansing, MI, as the "Charles E. Chamberlain Federal Building and United States Post Office."

MOTION TO ADJOURN UNTIL 3:15 P.M. TODAY

Mr. FOLEY. Mr. Speaker, I move, pursuant to clause 4 of rule XVI, that when the House adjourns today it adjourn to meet at 3:15 p.m. today.

The SPEAKER pro tempore (Mr. Volkmer). The question is on the motion offered by the gentleman from Washington [Mr. Foley].

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. LOTT. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 243, nays 166, not voting 25, as follows:

[Roll No. 386]

YEAS—243

Ackerman
Akaka
Alexander
Anderson
Andrews
Annunzio
Anthony
Applegate
Aspin
Atkins
AuCoin
Barnard
Bates
Beilenson
Bennett
Berman
Bevill
Bilbray
Boggs
Boland
Bonior
Bonker
Borski
Bosco
Boucher
Boxer
Brennan
Brooks
Brown (CA)
Bryant
Bustamante
Byron
Campbell
Cardin
Carper
Carr
Chapman
Chappell
Clarke
Clay
Coelho
Coleman (TX)
Collins
Conyers
Cooper
Coyne
Darden
de la Garza
DeFazio
Dellums
Derrick
Dicks
Dingell
Dixon
Donnelly
Dorgan (ND)
Dowdy
Downey
Durbin
Dwyer
Dymally
Dyson
Early
Eckart
Edwards (CA)
English
Erdreich
Espy
Evans
Fascell
Feighan
Flake
Flippo
Florio
Foglietta
Foley
Ford (MI)
Ford (TN)
Frank
Frost
Garcia
Gaydos
Gejdenson
Gibbons
Glickman
Gonzalez
Gordon
Grant
Gray (PA)
Guarini
Hall (OH)
Hall (TX)
Hamilton
Harris
Hawkins
Hayes (IL)
Hayes (LA)
Hefner
Hertel
Hochbrueckner
Howard
Hoyer
Hubbard
Huckaby
Hughes
Hutto
Jacobs
Johnson (SD)
Jones (NC)
Jones (TN)
Jontz
Kanjorski
Kaptur
Kastenmeier
Kennelly
Kildee
Kleczka
Kolter
Kostmayer
LaFalce
Lancaster
Lantos
Leath (TX)
Lehman (CA)
Lehman (FL)
Leland
Levin (MI)
Levine (CA)
Lewis (GA)
Lipinski
Lowry (WA)
Luken, Thomas
MacKay
Manton
Markey
Martinez
Matsui
Mavroules
Mazzoli
McCloskey
McCurdy
McHugh
McMillen (MD)
Mfume
Mica
Miller (CA)
Mineta
Moakley
Mollohan
Montgomery
Moody
Morrison (CT)
Mrazek
Murphy
Murtha
Nagle
Natcher
Neal
Nelson
Nichols
Nowak
Oakar
Oberstar
Obey
Olin
Ortiz
Owens (UT)
Panetta
Patterson
Pease
Pelosi
Penny
Pepper
Perkins
Pickett
Pickle
Price (IL)
Price (NC)
Rahall
Rangel
Ray
Richardson
Robinson
Rodino
Roe
Rose
Rostenkowski
Rowland (GA)
Roybal
Russo
Sabo
Savage
Sawyer
Scheuer
Schroeder
Schumer
Sharp
Sikorski
Sisisky
Skaggs
Skelton
Slattery
Slaughter (NY)
Smith (FL)
Smith (IA)
Solarz
Spratt
St Germain
Staggers
Stallings
Stark
Stenholm
Stokes
Stratton
Studds
Swift
Synar
Tallon
Tauzin
Thomas (GA)
Torres
Torricelli
Towns
Traficant
Traxler
Udall
Valentine
Vento
Visclosky
Volkmer
Walgren
Watkins
Weiss
Wheat
Whitten
Williams
Wilson
Wise
Wolpe
Wright
Wyden
Yates
Yatron

NAYS—166

Archer
Armey
Baker
Bartlett
Barton
Bateman
Bentley
Bereuter
Bilirakis
Bliley
Boehlert
Boulter
Broomfield
Brown (CO)
Bruce
Buechner
Bunning
Burton
Callahan
Chandler
Cheney
Clinger
Coats
Coble
Coleman (MO)
Combest
Conte
Coughlin
Courter
Craig
Crane
Dannemeyer
Daub
Davis (IL)
Davis (MI)
DeLay
DeWine
Dickinson
DioGuardi
Dornan (CA)
Dreier
Duncan
Edwards (OK)
Emerson
Fawell
Fields
Fish
Frenzel
Gallegly
Gallo
Gekas
Gilman
Gingrich
Goodling
Gradison
Grandy
Green
Gregg
Gunderson
Hammerschmidt
Hansen
Hastert
Hefley
Henry
Herger
Hiler
Holloway
Hopkins
Horton
Houghton
Hunter
Hyde
Inhofe
Jeffords
Johnson (CT)
Kasich
Kolbe
Konnyu
Kyl
Lagomarsino
Latta
Leach (IA)
Lent
Lewis (CA)
Lewis (FL)
Lightfoot
Lott
Lowery (CA)
Lujan
Lukens, Donald
Lungren
Mack
Madigan
Marlenee
Martin (IL)
Martin (NY)
McCandless
McCollum
McDade
McEwen
McGrath
McMillan (NC)
Meyers
Michel
Miller (OH)
Miller (WA)
Molinari
Moorhead
Morella
Morrison (WA)
Myers
Nielson
Oxley
Packard
Parris
Pashayan
Petri
Porter
Pursell
Quillen
Ravenel
Regula
Rhodes
Ridge
Rinaldo
Ritter
Roberts
Rogers
Roukema
Rowland (CT)
Saiki
Saxton
Schaefer
Schneider
Schuette
Sensenbrenner
Shaw
Shays
Shumway
Skeen
Slaughter (VA)
Smith (NE)
Smith (NJ)
Smith (TX)
Smith, Denny (OR)
Smith, Robert (NH)
Snowe
Solomon
Stangeland
Stump
Sundquist
Sweeney
Swindall
Tauke

Taylor
Upton
Vander Jagt
Vucanovich
Walker
Weber
Weldon
Whittaker
Wolf
Wortley
Wylie
Young (FL)

NOT VOTING—25

Badham
Ballenger
Biaggi
Crockett
Daniel
Fazio
Gephardt
Gray (IL)
Hatcher
Ireland
Jenkins
Kemp
Kennedy
Livingston
Lloyd
Owens (NY)
Roemer
Roth
Schulze
Shuster
Smith, Robert (OR)
Spence
Thomas (CA)
Waxman
Young (AK)

□ 1450

Mr. DANNEMEYER changed his vote from "yea" to "nay."

Mr. BOLAND and Mr. YATES changed their votes from "nay" to "yea."

So the motion was agreed to.

The result of the vote was announced as above recorded.

LEGISLATIVE PROGRAM

(By unanimous consent, Mr. FOLEY was allowed to proceed out of order for 1 minute.)

Mr. FOLEY. Mr. Speaker, I take this time to advise the Members on both sides of the aisle of what we intend for the program this afternoon. The Committee on Rules has reported and the rule to provide for consideration of the Guaranteed Deficit Reduction Reconciliation Act has been filed. Because the Rules of the House require a two-thirds vote for it to be brought up on the same day, it was our intention to ask for unanimous consent so that this might occur. Since I have been advised, however, that will not be granted, we now intend to move that the House adjourn today, and, should that motion be adopted, we would reconvene at 3:15 p.m. this afternoon to consider the rule, the general debate, and complete action on the Guaranteed Deficit Reduction Reconciliation Act.

We feel frankly, that this is in the interest of Members on both sides of the aisle since it avoids the possibility of a prolonged session tomorrow and the inconvenience this would cause because of commitments made earlier on the assumption the House would not be in session this Friday.

So the purpose of this announcement is to suggest to Members on both sides of the aisle that, assuming adoption of the motion, the adjournment of the House will not signal the end of business today. We will reconvene at 3:15.

Mr. MADIGAN. Mr. Speaker, will the gentleman yield?

Mr. FOLEY. I yield to the gentleman from Illinois [Mr. MADIGAN].

Mr. MADIGAN. I thank the gentleman for yielding.

Mr. Speaker, do I understand that the purpose of our having 2 legislative days in 1 calendar day is so that the House avoids the necessity of having a two-thirds majority to be able to consider this and can consider it only with a simple majority, is that the gentleman's point?

Mr. FOLEY. Actually, there is not any requirement for a special vote to consider it on the next legislative day. A two-thirds vote is required to consider it on the same day. The rule could be adopted under these circumstances with a majority vote.

Mr. MADIGAN. So what we are doing if the gentleman would yield further is just to further diminish whatever roll the minority is entitled to play in the deliberations of the assembly, is that correct?

Mr. FOLEY. No. The minority obviously would give notice of this and we intend that Members understand what is to happen. We have just adopted a motion which provides for the second legislative day on the same calendar day. If a majority of the House, Republicans and Democrats, had not wished to have that occur, they could have defeated the motion.

Mr. MADIGAN. If the gentleman would yield very briefly, is it also correct that the rule is changed in that the 3 hours of debate that was earlier considered necessary for this very important bill has now been reduced to 1 hour?

Mr. FOLEY. That is correct. But again, we assume that since the issues of the bill have already been debated today on the rule and the House has made the judgment that welfare reform should be considered at another time, one of the major points of contention has been removed. Thus it no longer requires quite so long a general debate as normally would be granted.

One-hour general debate is common for most of the bills that reach this floor.

Mr. MADIGAN. If the gentleman would kindly yield for this one further question. Am I correct in saying that this is only the second time in this decade that such a procedure has been followed?

Mr. FOLEY. I am sorry. I did not hear the gentleman's question.

Mr. MADIGAN. My question is am I correct in saying that this is only the second time in this decade that a procedure like this has been followed in the House of Representatives?

Mr. FOLEY. I would take the gentleman's word for it. I have not studied the history of this particular procedure that closely.

Mr. MADIGAN. I am sure that this must be very important if we are reducing it to an hour and establishing this very unusual precedent. I thank the gentleman.

Mr. WALKER. Mr. Speaker, will the gentleman yield?

Mr. FOLEY. I yield to the gentleman from Pennsylvania [Mr. WALKER].

Mr. WALKER. I thank the gentleman for yielding.

We are somewhat concerned about this end run around the rules primarily because there is another rule that has some problems in this. And I wonder if the gentleman understands why we would be a little upset. It is my understanding that when this bill was reported from the Budget Committee it did not have—the Budget Committee did not have a quorum present. In fact, I have the documentation.

Is the rule that we are about to bring also going to waive the provisions of rule XI, which suggests that you can bring a bill to the floor without any quorum?

Mr. FOLEY. The gentleman is correct.

Mr. WALKER. So for the second time in two days, the Rules Committee is going to be bringing a motion to the floor that says you do not need a quorum present in order to pass legislation and now we are also going to do an end run around the two-thirds rule to protect the Members.

I would say to the gentleman from Washington, I mean we are being terribly abused and this is an outrage in the way the House is being conducted.

Well, you all can moan but I will tell you from the standpoint of somebody who has to try to operate around here hopefully within the rules and hopefully fairly, this is a terrible injustice. And for a party that says they want to stand for justice and fairness you all are abandoning all pretenses of it with what you are doing on the floor today.

(By unanimous consent, Mr. FOLEY was allowed to proceed out of order for 1 additional minute.)

Mr. FOLEY. I will yield very briefly to the gentleman from California, but I wish to respond to the other gentleman's statement.

Mr. Speaker, it is our intention to try to conduct the legislative program in a way that does not disturb or interfere with the ability of Members to conduct their affairs on the floor and off. This is nothing more than an attempt to complete this action without the necessity of an unscheduled Friday session. This bill deals with issues on which the opinions, I know, are strong but the positions are well known. The debate, for the most part, has already taken place. So I reject with respect the gentleman from Pennsylvania's assertions that the procedure is either unfair or unwarranted.

Mr. DANNEMEYER. Mr. Speaker, will the gentleman yield?

Mr. FOLEY. I yield to the gentleman from California.

Mr. DANNEMEYER. I thank the gentleman for yielding.

Mr. Speaker, Genesis tells us our Lord created the world in seven days. We are now witnessing the creation of an eighth day. I just ask the gentleman: Does he have a name for this new creation?

Mr. FOLEY. Yes; it is called the Guaranteed Deficit Reduction Reconciliation Act.

ADJOURNMENT

Mr. FOLEY. Mr. Speaker, I move that the House do now adjourn.

The SPEAKER pro tempore (Mr. Volkmer). The question is on the motion offered by the gentleman from Washington [Mr. Foley].

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. WALKER. Mr. Speaker, on that, I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device and there were—yeas 236, nays 171, not voting 27, as follows:

[Roll No. 387]

YEAS—236

Ackerman
Akaka
Alexander
Anderson
Andrews
Annunzio
Anthony
Applegate
Aspin
Atkins
AuCoin
Barnard
Bates
Beilenson
Bennett
Berman
Bevill
Boggs
Boland
Bonior
Bonker
Borski
Bosco
Boucher
Boxer
Brennan
Brooks
Bryant
Byron
Campbell
Cardin
Carper
Carr
Chapman
Chappell
Clarke
Clay
Coelho
Coleman (TX)
Conyers
Cooper
Coyne
Daniel
Darden
de la Garza
DeFazio
Dellums
Derrick
Dicks
Dingell
Dixon
Donnelly
Dorgan (ND)
Dowdy
Downey
Durbin
Dwyer
Dymally
Dyson
Early
Eckart
Edwards (CA)
English
Erdreich
Espy
Evans
Fascell
Feighan
Flake
Flippo
Florio
Foglietta
Foley
Ford (TN)
Frank
Frost
Garcia
Gaydos
Gejdenson
Gibbons
Gordon
Grant
Gray (PA)
Hall (TX)
Hamilton
Harris
Hatcher
Hawkins
Hayes (IL)
Hayes (LA)
Hefner
Hertel
Hochbrueckner
Howard
Hoyer
Hubbard
Huckaby
Hughes
Hutto
Jacobs
Jenkins
Johnson (SD)
Jones (NC)
Jones (TN)
Jontz
Kanjorski
Kaptur
Kastenmeier
Kennelly
Kildee
Kleczka
Kolter
Kostmayer
LaFalce
Lancaster
Lantos
Leath (TX)
Lehman (CA)
Lehman (FL)
Leland
Levin (MI)
Levine (CA)
Lewis (GA)
Lipinski
Lowry (WA)
Luken, Thomas
MacKay
Manton
Martinez
Matsui
Mavroules
Mazzoli
McCloskey
McCurdy
McHugh
McMillen (MD)
Mfume
Mica
Miller (CA)
Mineta
Moakley
Mollohan
Montgomery
Moody
Morrison (CT)
Mrazek
Murphy
Murtha
Nagle
Natcher
Neal
Nelson
Nichols
Nowak
Oakar
Oberstar
Obey
Olin
Ortiz
Owens (NY)
Owens (UT)
Panetta
Patterson
Pease
Pelosi
Penny
Pepper
Perkins
Pickett
Pickle
Price (IL)
Price (NC)
Rahall
Rangel
Ray
Richardson
Robinson
Rodino
Roe
Rose
Rostenkowski
Rowland (GA)
Roybal
Russo
Sabo
Savage
Sawyer
Scheuer
Schroeder
Schumer
Sharp
Sikorski
Sisisky
Skaggs
Skelton
Slattery
Slaughter (NY)
Smith (IA)
Solarz
Spratt
St Germain
Staggers
Stallings
Stark
Stenholm
Stokes
Stratton
Studds
Swift
Synar
Tallon
Tauzin
Thomas (GA)
Torres
Torricelli
Towns
Traficant
Traxler
Udall
Valentine
Vento
Visclosky
Volkmer
Walgren
Watkins
Weiss
Wheat
Whitten
Williams
Wilson
Wise
Wolpe
Wright
Wyden
Yates
Yatron

NAYS—171

Archer
Armey
Badham
Baker
Ballenger
Bartlett
Barton
Bateman
Bentley
Bereuter
Bilirakis
Bliley
Boehlert
Boulter
Broomfield
Brown (CO)
Bruce
Buechner
Bunning
Burton
Callahan
Chandler
Cheney
Clinger
Coats
Coble
Coleman (MO)
Combest
Conte
Coughlin
Courter
Craig
Crane
Dannemeyer
Daub
Davis (IL)
Davis (MI)
DeLay
DeWine
Dickinson
DioGuardi
Dornan (CA)
Dreier
Duncan
Edwards (OK)
Emerson
Fawell
Fields
Fish
Frenzel
Gallegly
Gallo
Gekas
Gilman
Gingrich
Gonzalez
Goodling
Gradison
Grandy
Green
Gregg
Gunderson
Hammerschmidt
Hansen
Hastert
Hefley
Henry
Herger
Hiler
Holloway
Hopkins
Horton
Houghton
Hunter
Hyde
Inhofe
Ireland
Jeffords
Johnson (CT)
Kasich
Kolbe
Konnyu
Kyl
Lagomarsino
Latta
Leach (IA)
Lent
Lewis (CA)
Lewis (FL)
Lightfoot
Livingston
Lott
Lowery (CA)
Lujan
Lukens, Donald
Lungren
Mack
Madigan
Marlenee
Martin (IL)
Martin (NY)
McCandless
McCollum
McDade
McEwen
McGrath
McMillan (NC)
Meyers
Michel
Miller (OH)
Miller (WA)
Molinari
Moorhead
Morella
Morrison (WA)
Myers
Nielson
Oxley
Packard
Parris
Pashayan
Petri
Porter
Pursell
Quillen
Ravenel
Regula
Rhodes
Ridge
Rinaldo
Ritter
Roberts
Rogers
Roth
Roukema
Rowland (CT)
Saiki
Saxton
Schaefer
Schneider
Schuette
Sensenbrenner
Shaw
Shays
Shumway
Skeen
Slaughter (VA)
Smith (NE)
Smith (TX)
Smith, Denny (OR)
Smith, Robert (NH)
Snowe
Solomon
Stangeland
Stump
Sundquist
Sweeney
Swindall
Tauke
Taylor
Upton
Vander Jagt
Vucanovich
Walker
Weber
Weldon
Whittaker
Wolf
Wortley
Wylie
Young (FL)

NOT VOTING—27

Biaggi
Bilbray
Brown (CA)
Bustamante
Collins
Crockett
Fazio
Ford (MI)
Gephardt
Glickman
Gray (IL)
Guarini
Hall (OH)
Kemp
Kennedy
Lloyd
Markey
Roemer
Schulze
Shuster
Smith (FL)
Smith (NJ)
Smith, Robert (OR)
Spence
Thomas (CA)
Waxman
Young (AK)

Mr. LEHMAN of Florida and Mr. LOWRY of Washington changed their votes from "nay" to "yea".

☐ 1505

So the motion was agreed to.

The result of the vote was announced as above recorded.

Accordingly (at 3 o'clock and 15 minutes p.m.), under its previous order, the House adjourned until today, Thursday, October 29, 1987, at 3:15 p.m.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

[*October 29, 1987 (First Legislative Day)*]

Mr. DERRICK: Committee on Rules. House Resolution 298. Resolution providing for the consideration of H.R. 3545, a bill to provide for reconciliation pursuant to section 4 of the concurrent resolution on the budget for the fiscal year 1988. (Rept. 100-411). Referred to the House Calendar.

Mr. BEILENSON: Committee on Rules. House Resolution 299. Resolution providing for the consideration of H.R. 3479, a bill to provide for adjustments of royalty payments under certain Federal onshore and Indian oil and gas leases, and for other purposes (Rept. 100-412. Referred to the House Calendar.

[*October 29, 1987 (First Legislative Day)*]

Mr. DINGELL: Committee on Energy and Commerce. H.R. 435. A bill to amend title 3, United States Code, and the Uniform Time Act of 1966 to establish a single poll closing time in the continental United States for Presidential general elections (Rept. 100-117, Pt. 2). Referred to the Committee of the Whole House on the State of the Union.

Mr. ROE: Committee on Science, Space, and Technology. H.R. 3228. A bill to authorize appropriations to the Secretary of Energy for the Superconducting Super Collider Program, with an amendment (Rept. 100-413). Referred to the Committee of the Whole House on the State of the Union.

Mr. WHITTEN: Committee on Appropriations. House Joint Resolution 394. Joint Resolution making further continuing appropriations for the fiscal year 1988, and for other purposes (Rept. 100-414). Referred to the Committee of the Whole House on the State of the Union.

Mr. WHITTEN: Committee on Appropriations. House Joint Resolution 395. Joint Resolution making further continuing appropriations for the fiscal year 1988, and for other purposes (Rept. 100-415). Referred to the Committee of the Whole House on the State of the Union.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

[Omitted from the Record of Oct. 28, 1987]

By Mr. CHAPPELL:

H.R. 3576. A bill making appropriations for the Department of Defense for the fiscal year ending September 30, 1988, and for other purposes.

[*October 29, 1987 (First Legislative Day)*]

By Mr. DioGUARDI (for himself, Mr. Traficant, Mr. Crane, Mr. Konnyu, Mr. Wolf, Mr. Dornan of California, Mr. Gingrich, Mr. Burton of Indiana, Mr. Gilman, Mr. Hyde, and Ms. Kaptur):

H.R. 3577. A bill to suspend most-favored-nation trade privileges to the Socialist Federal Republic of Yugoslavia; to the Committee on Ways and Means.

By Mr. GALLEGLY:

H.R. 3578. A bill to authorize the National Park Service to acquire up to 3 acres of lands to be used for a visitor site and administrative facilities for the Santa Monica Mountains National Recreation Area; to the Committee on Interior and Insular Affairs.

By Mr. HUCKABY:

H.R. 3579. A bill to provide protection, under section 1114 of title 18, United States Code, for field office employees of the Social Security Administration; to the Committee on the Judiciary.

By Mr. LAGOMARSINO:

H.R. 3580. A bill to amend title XIX of the Social Security Act to permit States the option of providing medical assistance to individuals with a family income meeting an income standard specified by the State, and for other purposes; to the Committee on Energy and Commerce.

By Mr. LIPINSKI:

H.R. 3581. A bill to amend the Internal Revenue Code of 1986 to provide for the establishment of, and the deduction of contributions to, housing savings accounts and, in order to compensate for the loss in Federal revenues by reason of such accounts, to restrict the deduction for home mortgage interest; to the Committee on Ways and Means.

H.R. 3582. A bill to amend the Internal Revenue Code of 1986 to provide for the establishment of, and the deduction of contributions to, education savings accounts and, in order to compensate for the loss in Federal revenues by reason of such accounts, to restrict the deduction for home mortgage interest; to the Committee on Ways and Means.

By Mr. RHODES (by request):

H.R. 3583. A bill to clarify and strengthen the authority for certain Department of the Interior law enforcement services, activities, and officers in Indian country, and for other purposes; to the Committee on Interior and Insular Affairs.

By Mr. STUDDS (for himself, Mr. Young of Alaska, Mr. Jones of North Carolina, and Mr. Davis of Michigan):

H.R. 3584. A bill to improve efforts to monitor, assess, and reduce the adverse impacts of driftnets; to the Committee on Merchant Marine and Fisheries.

By Mr. TOWNS (for himself and Mr. Daub):

H.R. 3585. A bill to amend title 5, United States Code, to allow periods of certain service performed as an employee under certain Federal-State cooperative programs to be creditable for purposes of civil service retirement; to the Committee on Post Office and Civil Service.

[*October 29, 1987 (Second Legislative Day)*]

By Mr. CONYERS:

H.R. 3586. A bill to make certain amendments to the Sentencing Reform Act of 1984 and to improve certain provisions relating to the imposition and collection of criminal fines, and for other purposes; to the Committee on the Judiciary.

By Mrs. KENNELLY:

H.R. 3587. A bill to amend part D of title IV of the Social Security Act to expand, improve, and make more effective the child support enforcement program; to the Committee on Ways and Means.

By Mr. LANTOS (for himself, Mr. Stark, Mr. Edwards of California, Mr. Hawkins, Mr. Roybal, Mr. Dymally Mr. Bates, Mr. Dellums, Mr. Murphy, and Mr. Sunia):

H.R. 3588. A bill to provide for a study by the National Park Service of the Smith River region in northern California and southern Oregon; jointly, to the Committees on Interior and Insular Affairs and Agriculture.

By Mr. REGULA (for himself, Mr. Murtha, Mr. Porter, Mr. Barnard, Mr. Davis of Illinois, Mr. Lipinski, Mr. Murphy, Mr. Nowak, Mr. Ritter, Mr. Upton, Mr. Hiler, and Mrs. Bentley):

H.R. 3589. A bill imposing quantitative restrictions on the importation into the United States of certain stainless steel coil and sheet; to the Committee on Ways and Means.

By Mr. SOLOMON:

H.R. 3590. A bill to provide for U.S. policies with respect to Tibet; to the Committee on Foreign Affairs.

[*October 29, 1987 (First Legislative Day)*]

By Mr. GONZALEZ (for himself, Mr. St Germain, Mr. Wylie, and Mrs. Roukema):

H.J. Res. 393. Joint resolution to provide for the temporary extension of certain programs relating to housing and community development, and for other purposes; to the Committee on Banking, Finance and Urban Affairs.

[*October 29, 1987 (Second Legislative Day)*]

By Mr. LAGOMARSINO:

H.J. Res. 396. Joint resolution to designate the week beginning September 11, 1988, as "Total Education Awareness Week"; to the Committee on Post Office and Civil Service.

By Mr. BEREUTER:

H. Con. Res. 208. Concurrent resolution concerning renewal of U.S. participation in the U.N. Educational, Scientific and Cultural Organization [UNESCO]; to the Committee on Foreign Affairs.

By Mr. BORSKI:

H. Res. 300. Resolution expressing the opposition of the House of Representatives to the continued control of the cathedral in Vilnius, Lithuania, by the Union of Soviet Socialist Republics; to the Committee on Foreign Affairs.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

[*October 29, 1987 (First Legislative Day)*]

H.R. 81: Mr. Rangel.

H.R. 993: Mr. Gilman.

H.R. 1231: Mr. Jontz, Mr. Pease, Ms. Slaughter of New York, Mr. Conyers, Mr. Ford of Michigan, Mr. Levine of California, and Mr. Crockett.

H.R. 1550: Mr. Coleman of Missouri.

H.R. 1966: Mr. Vento.

H.R. 2248: Mr. Parris.

H.R. 2624: Mr. Schaefer.

H.R. 2640: Mr. Taylor, Mr. Frost, Mr. DeFazio, Mr. Kleczka, Mr. Panetta, Mrs. Morella, Mr. Schaefer, and Mr. Flake.

H.R. 2707: Mr. Cardin.

H.R. 2870: Mr. Owens of New York and Mr. Conyers.

H.R. 3024: Mr. Lancaster and Mr. Wortley.

H.R. 3075: Mr. Bunning, Mr. Bliley, Mr. Shaw, Mr. Upton, and Mr. Packard.

H.R. 3182: Mr. Bryant, Mr. Volkmer, Mrs. Collins, Mr. Levin of Michigan, Mr. Frost, Mrs. Morella, Mr. Matsui, Mr. Atkins, and Mr. Spence.

H.R. 3332: Ms. Oakar, Mr. Ackerman, Ms. Snowe, Mr. Scheuer, Mr. Perkins, Mr. Kastenmeier, Mr. Richardson, and Mr. Waxman.

H.R. 3444: Mr. Moakley, Mr. Lagomarsion, Mr. Roe, Mr. Horton, Mr. Garcia, Mr. Penny, Mr. Dowdy of Mississippi, Mr. Neal, and Mr. Mr. Mavroules.

H.R. 3489: Mr. Boucher, Mr. Stallings, Mr. Weber, Mr. Stangeland, Mr. Robert F. Smith, Mr. Herger, Mr. Boehlert, and Mr. Hansen.

H.R. 3511: Mr. Conyers, Mr. Martinez, and Mr. Coyne.

H.R. 3524: Mr. Bustamante.

H.R. 3549: Mr. Stangeland.

H.J. Res. 152: Mr. Brown of California, Mr. Mazzoli, Mr. Hamilton, Mr. Gray of Pennsylvania, Mr. Oberstar, Mrs. Collins, Mr. McCloskey, Mr. Mineta, Mr. Bryant, Mr. Garcia, Ms. Slaughter of New York, Mr. Wheat, Mr. St Germain, and Mr. Waxman.

H.J. Res. 304: Mr. DeLay, Mr. Espy, Mr. Thomas of California, Mr. Schaefer, Mr. Mienta, Mr. Sikorski, Mr. Martin of New York, Mr. Bonior of Michigan, Mr. Fawell, Mr. Mollohan, Mr. Gejdension, Mr. Brown of Colorado, Mr. Nelson of Florida, Mr. Vander, Mr. Jagt, Mr. Wheat, Mr. Lewis of Georgia, Mr. Kleczka, Mr. Yates, Mr. Waxman, Mr. Dixon, Mr. Vento, Mr. Bateman, Mr. Hyde, Mr. Lipinski, Mr. Dellums, Mr. Roberts, Mr. Murtha, Mr. Hammerschmidt, Mr. McCloskey, Mr. DioGuardi, Mr. Henry, Mr. Traficant, Mr. Daniel, Mr. Dwyer of New Jersey, Mr. Sabo, Mr. Jeffords, Mr. Wyden, Mr. Courter, Mr. Davis of Illinois, Mr. Torres, Mr. Hayes of Illinois, Mr. Wylie, Mr. Nagle, Mr. Alexander, and Mr. Mrazek.

H.J. Res. 368: Mr. Bateman, Mr. Bliley, Mr. Callahan, Mr. Cardin, Mr. Chandler, Mr. DioGuardi, Mr. Spence, Mr. Foley, Mr. Sikorski, Mr. Ford of Tennessee, Mr. Brennan, Mr. Bustamante, Mrs. Byron, Mr. Dowdy of Mississippi, Mr. Oberstar, Mr. Molinari, Mr. Badham, Mr. Clarke, Mr. Yatron, Mr. Lewis of Florida, Mr. Hyde, Mr. Crockett, Mr. Schumer, Ms. Snowe, Mr. McDade, Mr. Mack, Mr. Miller of Washington, Mr. Broomfield, Mr. Dicks, Mr. Frost, Mr. Guarini, Mr. Morrison of Connecticut, Mr. Courter, Mr. Moakley, Mr. Mazzoli, Mr. McHugh, Mrs. Lloyd, Mr. Packard, Mr. Levin of Michigan, Mrs. Kennelly, Mr. Hughes, Mr. Grandy, and Mr. Buechner.

H. Con. Res. 126: Mr. Clinger.

H. Con. Res. 169: Mr. Solomon, Mr. Badham, Mr. DioGuardi, Mr. Dornan of California, and Mr. Neal.

H. Con. Res. 205: Mr. Owens of New York, Mr. Lowry of Washington, Mr. Torres, Mr. Levine of California, Mr. Weiss, Mr. Pease, and Mr. Hughes.

SECOND LEGISLATIVE DAY

The House met at 3:15 p.m.

The Chaplain, Rev. James David Ford, D.D., offered the following prayer:

Remind us each day, O God, that the greatest gift that any of us might possess is the attitude of thanksgiving. From the rising of the Sun until the going down of the same, at all the times of life, may we treasure every moment to express praise and joy for all the wonderful gifts of life-the gifts of freedom and renewal, the gifts of family and friendships, and the gift of grace. Amen.

THE JOURNAL

The **SPEAKER**. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

Mr. **CRANE**. Mr. Speaker, pursuant to clause 1, rule I, I demand a vote on agreeing to the Speaker's approval of the Journal.

The **SPEAKER**. The question is on the Chair's approval of the Journal.

The question was taken; and the Speaker announced that the ayes appeared to have it.

Mr. **CRANE**. Mr. Speaker, on that I demand the yeas and nays.

PARLIAMENTARY INQUIRY

Mr. **WALKER**. I have a parliamentary inquiry, Mr. Speaker.

The **SPEAKER**. The Chair will take the parliamentary inquiry of the gentleman.

Mr. **WALKER**. I thank the Chair.

We are about to cast a vote. Is the Journal available for inspection by the Members?

The **SPEAKER**. The Journal is indeed available.

Mr. **WALKER**. I thank the Chair.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 245, nays 161, answered "present" 2, not voting 25, as follows:

[Roll No. 388]

YEAS—245

Ackerman
Akaka
Alexander
Anderson
Andrews
Annunzio
Anthony
Applegate
Aspin
Atkins
AuCoin
Barnard
Bates
Beilenson
Bennett
Berman
Bevill
Boggs
Boland
Bonior
Bonker
Borski
Bosco
Boucher
Boxer
Brennan
Brooks
Broomfield
Brown (CA)
Bruce
Bryant
Bustamante
Campbell
Cardin
Carper
Carr
Chandler
Chapman
Chappell
Clarke
Coelho
Coleman (TX)
Collins
Conte
Conyers
Cooper
Coyne
Crockett
Daniel
Dannemeyer
Darden
de la Garza
DeFazio
Dellums
Derrick
Dicks
Dingell
Dixon
Donnelly
Dorgan (ND)
Dowdy
Downey
Durbin
Dwyer
Dyson
Early
Eckart
Edwards (CA)
English
Erdreich
Espy
Evans
Fascell
Feighan
Flake
Flippo
Florio
Foglietta
Foley
Ford (TN)
Frank
Frenzel
Frost
Garcia
Gaydos
Gejdenson
Gibbons
Glickman
Gonzalez
Gordon
Grant
Gray (PA)
Hall (OH)
Hall (TX)
Hamilton
Harris
Hatcher
Hayes (IL)
Hayes (LA)
Hefner
Hertel
Hochbrueckner
Howard
Hoyer
Hubbard
Huckaby
Hughes
Hunter
Hutto
Jenkins
Johnson (SD)
Jones (NC)
Jones (TN)
Jontz
Kanjorski
Kaptur
Kasich
Kastenmeier
Kennedy
Kennelly
Kildee
Kleczka
Kostmayer
LaFalce
Lagomarsino
Lancaster
Lantos
Leath (TX)
Lehman (CA)
Lehman (FL)
Levin (MI)
Levine (CA)
Lewis (CA)
Lewis (GA)
Lipinski
Lowry (WA)
Luken, Thomas
MacKay
Manton
Markey
Martinez
Matsui
Mavroules
Mazzoli
McCloskey
McCurdy
McHugh
McMillen (MD)
Mfume
Mica
Miller (CA)
Mineta
Moakley
Mollohan
Montgomery
Moody
Morrison (CT)
Morrison (WA)
Mrazek
Murphy
Murtha
Nagle
Natcher
Neal
Nelson
Nichols
Nowak
Oakar
Oberstar
Obey
Olin
Ortiz
Owens (NY)
Owens (UT)
Panetta
Patterson
Pease
Pepper
Perkins
Pickett
Pickle
Price (IL)
Price (NC)
Rangel
Ray
Richardson
Rinaldo
Robinson
Rodino
Roe
Rose
Rostenkowski
Rowland (GA)
Roybal
Russo
Sabo
Savage
Sawyer
Scheuer
Schumer
Sharp
Sisisky
Skaggs
Slattery
Slaughter (NY)
Smith (FL)
Smith (IA)
Smith (NJ)
Solarz
Spratt
St Germain
Staggers
Stallings
Stark
Stokes
Stratton
Studds
Swift
Synar
Tallon
Tauzin
Thomas (GA)
Torres
Torricelli
Towns
Traficant
Traxler
Udall
Valentine
Vento
Visclosky
Volkmer
Walgren
Walker
Watkins
Weiss
Weldon
Wheat
Whitten
Williams
Wilson
Wolpe
Wyden
Yates
Yatron

NAYS—161

Archer
Armey
Badham
Baker
Ballenger
Bartlett
Barton
Bateman
Bentley
Bereuter
Bilirakis
Bliley
Boehlert
Boulter
Brown (CO)
Buechner
Bunning
Burton
Byron
Callahan
Cheney
Clay
Clinger
Coats
Coble
Coleman (MO)
Combest
Coughlin
Courter
Craig
Crane
Davis (MI)
DeLay
DeWine
Dickinson
DioGuardi
Dreier
Duncan
Edwards (OK)
Emerson
Fawell
Fields
Fish
Gallegly
Gallo
Gekas
Gilman
Goodling
Gradison
Grandy
Green
Gregg
Guarini
Gunderson
Hammerschmidt
Hansen
Hastert
Hawkins
Hefley
Henry
Herger
Hiler
Holloway
Hopkins
Horton
Houghton
Hyde
Inhofe
Ireland
Jacobs
Jeffords
Johnson (CT)
Kolbe
Konnyu
Kyl
Latta
Leach (IA)
Lent
Lewis (FL)
Lightfoot
Livingston
Lott
Lowery (CA)
Lujan
Lukens, Donald
Lungren
Mack
Madigan
Marlenee
Martin (NY)
McCandless
McCollum
McDade
McEwen
McGrath
McMillan (NC)
Meyers
Michel
Miller (OH)
Miller (WA)
Molinari
Moorhead
Morella
Myers
Nielson
Oxley
Packard
Parris
Pashayan
Penny
Petri
Porter
Pursell
Quillen
Rahall
Ravenel
Regula
Rhodes
Ridge
Ritter
Roberts
Rogers
Roth
Roukema
Rowland (CT)
Saiki
Saxton
Schaefer
Schneider
Schroeder
Schuette
Sensenbrenner
Shaw
Shays
Shumway
Shuster
Sikorski
Skeen
Slaughter (VA)
Smith (NE)
Smith (TX)
Smith, Denny (OR)
Smith, Robert (NH)
Snowe
Solomon
Stangeland
Stenholm
Stump
Sundquist
Sweeney
Swindall
Tauke
Taylor
Upton
Vander Jagt
Weber
Whittaker
Wolf
Wortley
Wylie
Young (FL)

ANSWERED "PRESENT"—2

Davis (IL)
Dornan (CA)

NOT VOTING—25

Biaggi
Bilbray
Daub
Dymally
Fazio
Ford (MI)
Gephardt
Gingrich
Gray (IL)
Kemp
Kolter
Leland
Lloyd
Martin (IL)
Pelosi
Roemer
Schulze
Skelton
Smith, Robert (OR)
Spence
Thomas (CA)
Vucanovich
Waxman
Wise
Young (AK)

□ 1535

Mrs. **JOHNSON** of Connecticut and Messrs. **McGRATH**, **BURTON** of Indiana, **CRANE**, **BAKER**, **LIVINGSTON**, and **CRAIG** changed their votes from "yea" to "nay."

Messrs. **BATES**, **KASICH**, **CHANDLER**, **FRENZEL**, **LAGOMARSINO**, **WELDON**, **HUNTER**, and **DANNEMEYER** changed their votes from "nay" to "yea."

So the Journal was approved.

The result of the vote was announced as above recorded.

OMNIBUS BUDGET RECONCILIATION ACT OF 1987

Mr. **DERRICK**. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 298 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. Res. 298

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 1(b) of rule XXIII, declare the House resolved into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 3545) to provide for reconciliation pursuant to section 4 of the concurrent resolution on the budget for the fiscal year 1988, and the first reading of the bill shall be dispensed with. All points of order against the bill and against its consideration are hereby waived. After general debate, which shall be confined to the bill and which shall not exceed one hour, to be equally divided and controlled by the chairman and ranking minority member of the Committee on the Budget, the bill shall be considered as having been read for amendment under the five-minute rule. The amendments printed in section one of the report of the Committee on Rules accompanying this resolution shall be considered as having been adopted in the House and in the Committee of the Whole, subject to amendments made in order by the following sentence. No other amendment to the bill shall be in order in the House or in the Committee of the Whole except the amendments en bloc printed in section two of the report of the Committee on Rules, if offered by the Member indicated or his designee, said amendments en bloc shall not be subject to amendment or to a demand for a division of the question in the House or in the Committee of the Whole, said amendments en bloc shall be debatable for not to exceed one hour, to be equally divided and controlled by the proponent of the amendments and a Member opposed thereto, and all points of order against said amendments are hereby waived. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit, which may not contain instructions.

The **SPEAKER** pro tempore (Mr. MURTHA). The gentleman from South Carolina [Mr. DERRICK] is recognized for 1 hour.

Mr. **DERRICK**. Mr. Speaker, for the purposes of debate only, I yield the customary 30 minutes to the gentleman from Mississippi [Mr. LOTT] and, pending that, I yield myself such time as I may consume.

Mr. Speaker, I will not take the time of the Members of this House to explain the rule completely. Since the rule is nearly identical to House Resolution 296, the earlier rule for consideration of H.R. 3545, the Guaranteed Deficit Reduction Reconciliation Act, I will only explain the differences.

The only change in the rule itself is that this rule provides 1 hour of general debate while House Resolution 296 had provided for 3 hours of debate. The effect of the rule has changed, however, as a result in a change in the committee report accompanying the rule. The rule provides that amendments printed in section 1 of the Rules Committee report shall be considered to have been adopted in the House and in the Committee of the Whole upon adoption of the rule. The report accompanying this rule differs from the report accompanying House Resolution 296 in that it contains amendments which strike the welfare reform provisions from H.R. 3545, so that welfare reform will not be a part of the reconciliation bill.

The rule also provides, as did the earlier rule, for a vote on amendments en bloc offered by Mr. MICHEL or his designee, which are printed in section 2 of the rule. Since Mr. MICHEL's amendment printed in the earlier report amended the welfare reform provisions which are no longer in the bill, the part of his amendment dealing with welfare reform has been deleted from the Rules Committee report.

House Resolution 298 is a modified closed rule providing for the consideration of H.R. 3545, the Guaranteed Deficit Reduction Reconciliation Act of 1987. The rule waives all points of order against the bill and against its consideration. The rule provides 1 hour of general debate, to be equally divided and controlled by the chairman and ranking minority member of the Budget Committee. The rule provides that, upon adoption of the rule, the amendments printed in section 1 of the Rules Committee report accompanying House Resolution 298 shall be considered to have been adopted in the House and in the Committee of the Whole.

These amendments:

Modify chapter 2 of subtitle D of title I, the Agriculture Committee title. This chapter deals with Rural Telephone Bank lending.

Delete subtitle F and title I. This subtitle deals with the use of ethanol in motor fuel;

Delete subtitle G of title I. This subtitle deals with a cotton promotion fee;

Delete section 5003 of title V, the Interior Committee title. This section deals with a tariff on imported coal; and

Delete the welfare reform provisions reported by the Education and Labor Committee—subtitle C of title III—and the Ways and Means Committee—subtitle B of title IX—and the debt collection extension reported by the Ways and Means Committee to pay for welfare reform.

The first amendment included in section 1 of the report would add a statement of congressional policy and intent, which reaffirms the intention of Congress to achieve at least $23 billion in deficit reduction and outlines how these savings are to be achieved.

No other amendment to the bill is in order in the House or in the Committee of the Whole except amendments printed in section 2 of the committee report, if offered by Representative MICHEL of Illinois or his designee. The rule waives all points or order against the Michel amendments. These amendments shall be consider en bloc, are not amendable, and are not subject to a demand for a division of the question in the House or in the Committee of the Whole. The amendments are debatable for 1 hour, with the time equally divided and controlled by the proponent of the amendment and an opponent. The rule also provides for one motion to recommit, which may not contain instructions.

PREFERENTIAL MOTION TO ADJOURN

Mr. **GREGG**. Mr. Speaker, I send to the desk a preferential motion.

The **SPEAKER** pro tempore. The Clerk will report the motion.

The Clerk read as follows:

Mr. GREGG moves the House do now adjourn.

The **SPEAKER** pro tempore. The question is on the preferential motion offered by the gentleman from new Hampshire [Mr. GREGG].

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

Mr. **GREGG**. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 165, nays 250, not voting 18, as follows:

[Roll No. 389]

YEAS—165

Archer
Armey
Badham
Baker
Ballenger
Bartlett
Barton
Bateman
Bentley
Bereuter
Bilirakis
Bliley
Boehlert
Boulter
Broomfield
Brown (CO)
Buechner
Bunning
Burton
Callahan
Chandler
Cheney
Clinger
Coats
Coble
Coleman (MO)
Combest
Conte
Coughlin
Courter
Craig
Crane
Dannemeyer
Daub
Davis (IL)
Davis (MI)
DeWine
Dickinson
DioGuardi
Dornan (CA)
Dreier
Edwards (OK)
Emerson
Fawell
Fields
Fish
Frenzel
Gallo
Gekas
Gilman
Gingrich
Gradison
Grandy
Green
Gregg
Gunderson
Hammerschmidt
Hansen
Hastert
Hefley
Henry
Herger
Hiler
Holloway
Hopkins
Horton
Houghton
Hunter
Hyde
Inhofe
Ireland
Jeffords
Johnson (CT)
Kasich
Kolbe
Konnyu
Kyl
Lagomarsino
Leach (IA)
Lent
Lewis (CA)
Lewis (FL)
Lightfoot
Livingston
Lott
Lowery (CA)
Lujan
Lungren
Mack
Madigan
Marlenee
Martin (IL)
Martin (NY)
McCandless
McCollum
McDade
McEwen
McGrath
McMillan (NC)
Meyers
Michel
Miller (OH)
Miller (WA)
Molinari
Moorhead
Morella
Myers
Nielson
Oxley
Packard
Parris
Pashayan
Petri
Porter
Pursell
Quillen
Rahall
Ravenel
Regula
Rhodes
Ridge
Rinaldo
Ritter
Roberts
Rogers
Roth
Roukema
Rowland (CT)
Saiki
Saxton
Schaefer
Schneider
Schuette
Sensenbrenner
Shaw
Shays
Shumway
Shuster
Skeen
Slaughter (VA)
Smith (NE)
Smith (TX)
Smith, Denny (OR)
Smith, Robert (NH)
Snowe
Solomon
Stangeland
Stratton
Stump
Sundquist
Sweeney
Swindall
Tauke
Taylor
Upton
Vander Jagt
Vucanovich
Walker
Weber
Weldon
Whittaker
Wolf
Wortley
Wylie
Young (FL)

NAYS—250

Ackerman
Akaka
Alexander
Anderson
Andrews
Annunzio
Anthony
Applegate
Aspin
Atkins
AuCoin
Barnard
Bates
Beilenson
Bennett
Berman
Bevill
Bilbray
Boggs
Boland
Bonior
Bonker
Borski
Bosco
Boucher
Boxer
Brennan
Brooks
Brown (CA)
Bruce
Bryant
Bustamante
Byron
Campbell
Cardin
Carper
Carr
Chapman
Chappell
Clarke
Clay
Coelho
Coleman (TX)
Collins
Conyers
Cooper
Coyne
Crockett
Daniel
Darden
de la Garza
DeFazio
DeLay
Dellums
Derrick
Dicks
Dingell
Dixon
Donnelly
Dowdy
Downey
Duncan
Durbin
Dwyer
Dymally
Dyson
Early
Eckart
Edwards (CA)
English
Erdreich
Espy
Evans
Fascell
Feighan
Flake
Flippo
Florio
Foglietta
Foley
Ford (MI)
Ford (TN)
Frost
Garcia
Gaydos
Gejdenson
Gibbons
Glickman
Gonzalez
Gordon

Grant
Gray (PA)
Guarini
Hall (OH)
Hall (TX)
Hamilton
Harris
Hatcher
Hawkins
Hayes (IL)
Hayes (LA)
Hefner
Hertel
Hochbrueckner
Howard
Hoyer
Hubbard
Huckaby
Hughes
Hutto
Jacobs
Jenkins
Johnson (SD)
Jones (NC)
Jones (TN)
Jontz
Kanjorski
Kaptur
Kastenmeier
Kennedy
Kennelly
Kildee
Kleczka
Kolter
Kostmayer
LaFalce
Lancaster
Lantos
Latta
Lehman (CA)
Lehman (FL)
Leland
Levin (MI)
Levine (CA)
Lewis (GA)
Lipinski
Lloyd
Lowry (WA)
Luken, Thomas
Lukens, Donald
MacKay
Manton
Markey
Martinez
Matsui
Mavroules
Mazzoli
McCloskey
McCurdy
McHugh
McMillen (MD)
Mfume
Mica
Miller (CA)
Mineta
Moakley
Mollohan
Montgomery
Moody
Morrison (CT)
Morrison (WA)
Mrazek
Murphy
Murtha
Nagle
Natcher
Neal
Nelson
Nichols
Nowak
Oakar
Oberstar
Obey
Olin
Ortiz
Owens (NY)
Owens (UT)
Panetta
Patterson
Pease
Pelosi
Penny
Pepper
Perkins
Pickett
Pickle
Price (IL)
Price (NC)
Rangel
Ray
Richardson
Robinson
Rodino
Roe
Rose
Rostenkowski
Rowland (GA)
Roybal
Russo
Sabo
Savage
Sawyer
Scheuer
Schroeder
Schumer
Sharp
Sikorski
Sisisky
Skaggs
Skelton
Slattery
Slaughter (NY)
Smith (FL)
Smith (IA)
Smith (NJ)
Solarz
Spratt
St Germain
Staggers
Stallings
Stark
Stenholm
Stokes
Studds
Swift
Synar
Tallon
Tauzin
Thomas (GA)
Torres
Torricelli
Towns
Traficant
Traxler
Udall
Valentine
Vento
Visclosky
Volkmer
Walgren
Weiss
Wheat
Whitten
Williams
Wilson
Wise
Wolpe
Wyden
Yates
Yatron

NOT VOTING—18

Biaggi
Dorgan (ND)
Fazio
Frank
Gallegly
Gephardt
Goodling
Gray (IL)
Kemp
Leath (TX)
Roemer
Schulze
Smith, Robert (OR)
Spence
Thomas (CA)
Watkins
Waxman
Young (AK)

☐ 1600

Mr. OBERSTAR and Mr. VOLKMER changed their votes from "yea" to "nay."

Mr. BURTON of Indiana changed his vote from "nay" to "yea".

So the motion was rejected.

The result of the vote was announced as above recorded.

PARLIAMENTARY INQUIRY

Mr. GINGRICH. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore (Mr. MURTHA). The gentleman will state it.

Mr. GINGRICH. Mr. Speaker, would the Speaker explain to the House what day we are in?

The SPEAKER pro tempore. The second legislative day of October 29.

Mr. GINGRICH. I thank the Chair.

GENERAL LEAVE

Mr. LOTT. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the subject of House Resolution 296.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Mississippi.

There was no objection.

Mr. LOTT. Mr. Speaker, I thank the gentleman for yielding me the customary 30 minutes, and I yield myself such time as I may consume.

Mr. Speaker, I first would like to inquire of the gentleman from South Carolina [Mr. DERRICK], whether he would be willing to yield to me for the purpose of offering the following amendment to the rule: In the second sentence before the period insert the following: "except for the provisions of clause 2(l)(2)(a) of rule XI?

Mr. Speaker, the present rule waives all points of order against the reconciliation bill and its consideration.

My proposed amendment would provide an exception and not waive the House rule which requires that a majority of the committee actually be present to report a measure.

Mr. Speaker, I make this request of the majority because the last time we waived the majority quorum requirement the chairman served notice that we would not tolerate breaches. The last time we waived this point of order on the requirement for a majority to be there, for a quorum to report a rule, the chairman served notice that he would not tolerate and we would not tolerate such breaches of the rules in the future.

The gentleman from South Carolina noted that we had sent back a bill to a committee last year because it was clear from the record that there was not a majority.

Is the gentleman willing to expose this bill to a point of order for lack of a quorum rule as has been requested and therefore would the gentleman allow me this opportunity to amend the rule so that we will not be waiving once again, for the second time this week, that a quorum be present to report a bill.

Mr. DERRICK. I yield to the gentleman for the purposes of debate only.

Mr. LOTT. Well, I thought that would be what the gentleman would do. So therefore he is not really yielding to me for that amendment. But I do want to emphasize again it is my understanding the Budget Committee did not have a quorum when this legislation was reported. So once again we are acting——

Mr. DERRICK. Mr. Speaker, will the gentleman yield?

Mr. LOTT. I yield to the gentleman from South Carolina [Mr. DERRICK].

Mr. DERRICK. I thank the gentleman for yielding.

Mr. Speaker, I was there when it was reported. I did not count to see whether there was a quorum or not. No one raised the issue of a quorum. There were quite a few Members there. There could have very well been a quorum there but the matter was not raised.

Mr. LOTT. The bill was reported on a 20 to 14 vote with 18 of the 34 Members voting by proxy and only 16 present. A majority quorum is 18.

Mr. Speaker, if I could speak on the rule itself now, we went to the Rules Committee, we reported out the same rule we had earlier except we took out the welfare provisions of the base bill and also the applicable references that would have been involved in the Michel substitute. We also reduced from 3 hours to 1 hour the general debate on this bill. Ordinarily I would think, well, that is not all that bad an idea, you know, if you do not have a lot of request for time. But I just want to emphasize that on a major reconciliation bill, one of the two most important bills of the year, we are going to reduce the general debate to less than 1 hour, really. And I think that is also a mistake.

So, my colleagues, I think again the timing on this rule and on this bill is wrong while these negotiations are underway.

I think the rule is really not what it should be. We should give other Members opportunity to make their case, anybody who has other reasonable substitutes should be in order. I would urge my colleagues to defeat the rule.

This time it would probably stay defeated and we would not have to go through the ridiculous substance that we are fixing to deal with. But rather than drag this out, I ask unanimous consent that all the good stuff I said earlier today, this morning, the previous legislative day, whatever it was, there was some good stuff in there and I would like for it to be inserted in the RECORD here.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Mississippi?

There was no objection.

Mr. LOTT. Mr. Speaker, I have several requests for time. Does the gentleman from South Carolina have any requests?

Mr. DERRICK. I have no requests.

Mr. LOTT. Mr. Speaker, I yield 2 minutes to the gentleman from Washington [Mr. MILLER].

Mr. MILLER of Washington. Mr. Speaker, we have already heard plenty about how this bill that claims to offer a deficit reduction not only does not offer the $23 billion in deficit reduction required by Gramm-Rudman, but does not even offer the reduction called for in the budget resolution last June of $30 billion. We have heard much about the balance between spending cuts and tax cuts, that it is over 9 to 1 in favor of tax hikes rather than spending cuts. We have heard how many of the spending cuts offered are unreal. But also some of the revenue proposals are unreal.

Let me as a member of the Committee on Merchant Marine and Fisheries just give one example.

Included in this budget reconciliation bill is what I call the rent-a-Navy provision. This provides that we are going to try to raise $135 million by requiring that our Navy captains in the Persian Gulf bill any tanker they give protection to $250,000. So our captains in the Persian Gulf are supposed to go along and decide whether what they gave was sufficient to constitute protection and whether they should bill ships $250,000. This is credited with $135 million of revenue.

This provision is not only a discredit to our foreign policy and what we are doing in the Persian Gulf, it is demeaning to the U.S. military. Unfortunately, my colleagues, this is all too typical of the lack of thought of many of the provisions in this bill.

Let us get on with real deficit reduction and defeat the bill.

Mr. LOTT. Mr. Speaker, I yield 2 minutes to the gentleman from Illinois [Mr. FAWELL].

Mr. FAWELL. Mr. Speaker, this rule and reconciliation bill is living proof that Congress has a "fatal attraction" for taxing, borrowing, and spending.

The markets have sent a warning shot across our bow: Do something about massive deficits and do it now.

And what is the Democrats' response? A reconciliation bill that cuts only $1 billion from a $1 trillion Federal budget, raises taxes $14 billion, and adds spending provisions.

Federal spending is already slated to grow $61 billion in 1988. Thus, this bill cuts only $1 billion from a $61 billion increase in spending; $1 in cuts for every $61 in increased spending; $1 in cuts for every $14 in new taxes. That's their response. Tax and spend. Borrow and spend.

Is this the signal we want to send to Wall Street?

It's outrageous! The Democrats are saying, in effect: "Damn the market, the economy, the people, damn the Nation. They simply will not cut spending. They can't even slow the rate of growth of spending.

And, they ignore a Social Security tax increase already scheduled to take an additional $18 billion out of the pockets of working Americans in 1988. Even without imposing the new taxes in the reconciliation bill, America's tax burden will soon exceed the tax load during the Carter years, which hold the record for taxing the Nation.

What is it going to take to make Congress wake up? Are we waiting for a depression to jolt us into action?

We haven't balanced a budget for 18 years. Only four times in 37 years. And there's little hope for a balanced budget in this century. Nothing but more debt from here to eternity.

Fifteen billion in deficit reduction is not enough. Even $23 billion leaves us with a bigger deficit in 1988 than 1987.

We should cut at least $40 billion from the 1988 deficit. We can't afford $61 billion in new spending in 1988. Growth in spending should be cut at least in half. That's $31 billion in spending reductions—31 times the cuts suggested in the timid reconciliation bill. If it is across the board, it would not cut any program below 1987 spending levels as sequestration would do.

I'd support $12 billion in new taxes if they came hand-in-hand with $31 billion in spending reductions. Such a $43 billion package would send a positive signal to the markets that Congress is serious about deficit reduction.

There would be some painful decisions. COLA's would have to be reduced. Pay raises for Federal workers and Congress would have to be cut back. Some of the new programs which have been authorized might have to be reexamined.

Aren't we better off making some small sacrifice today to avoid an economic catastrophe tomorrow?

Mr. Speaker, it is our Nation's economy and future generations that will pay the enormous price for Congress' "fatal attraction" for profligate spending.

Two hundred years ago Thomas Jefferson argued that "the laws of nature" made it unfair to impose the debts of one generation upon another. Yet, this is exactly what we are doing for not one, but many generations to come.

Mr. LOTT. Mr. Speaker, I yield 2 minutes to the gentleman from Minnesota [Mr. FRENZEL].

Mr. FRENZEL. Mr. Speaker, I oppose the rule. I believe it should be summarily defeated.

If this were not a serious place of business I suppose we would all be laughing now at this rule and its predecessor, which was defeated a little earlier. But we do not know if right now is yesterday or tomorrow.

All we can say is if the Democratic leadership of this House will do it one more time, it will make today Halloween. Halloween is a perfectly appropriate time to be taking up this rule and this kind of bill because this House is playing a very cruel joke on the people of the United States whose fiscal affairs we have ruined over the years.

Now if we take this extra day scam a little bit further, we can crowd all of next year into January, and be done before the end of the first month. That is the best thing we could do for the people of this country. All of those doubled up days might even produce double-time pay for the extra work.

Now that is the absurdity, the perversion of the rules under which we are laboring. The House doesn't even know what day it is.

Another absurdity is that we have not passed any significant bill this year except a couple of bills left over from last year in January. The Democrat leadership will not even let us amend the first significant bill that we are going to deal with this year. The leadership's rule also won't let us debate it for more than an hour. Remember, it's a complicated tax bill on which we have serious reservations, on which we have numerous questions. Newspapers report there are 75 Members' provisions for privileged Members of the Congress. We don't even know what they are yet. And we have 1 hour to talk about it. That is shabby treatment. It is a disgrace to this great House of Representatives.

We asked also that the President negotiate with Congress. The President said, "OK, even though they declared my budget dead-on-arrival I will negotiate." Now the House stonewalls and sandbags him with this rule. This is a graceless act which merits disapproval.

Mr. LOTT. Mr. Speaker, I yield 5 minutes to the gentleman from New York [Mr. LAFALCE].

Mr. LAFALCE. Mr. Speaker, I rise very reluctantly on this rule, as I cast my vote against the previous rule, most reluctantly.

Ninety-nine percent of the time I would be supporting the rule. But these are unusual circumstances.

The stock market crashed in a period of 2 weeks from 2,700 to 1,700, the greatest drop in the history of the Republic. We simply cannot conduct business as usual. We must rise to the occasion.

The bill that is before us today was crafted about a month ago and reported out of the Committee on Ways and Means before the stock market crash. We have not risen to the occasion. We have not opted to do something beyond the usual in this bill.

Most importantly, we are in the midst of an economic summit right now—discussion with the President and with the Senate, in a bipartisan fashion. I do not know how successful those discussions will be. But I believe it is imperative that they be successful, that we show to the world that we can govern, wisely and together. That is the great imperative.

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Therefore, it will take the courage and concurrence of the Republicans to vote for revenue increases of at least the amount in this bill.

What I prefer, however, is that we delay this bill at least for a short time so that we can strive more mightily to reach some type of compact among all these parties, rather than proceed unilaterally; and I would prefer that we proceed, possibly dollar for dollar, revenue increase and spending cut, or at least with both parts of the package in plan, in whatever percentages we might agree to, at the same time. I am fearful that if we act today—and I support 95 percent of the measures within this bill—I am fearful that some of the spending reductions we might expect in the continuing resolution will not come about, or might be illusory, at a time when the market perception of the Nation was that we definitely would have at least $23 billion in real, and not illusory cuts, because of the automatic sequestration provisions in the Gramm-Rudman law.

I also point out that I do not think $23 billion in deficit reduction is nearly enough, because the resolution we adopted in August called for in excess of $36 billion, and somehow from August to September the Congress reduced it from $36 billion to $23 billion, and now, because of this action, which I think could be good action, if in concert with spending reductions, there is a real possibility that we might not even make the $23 billion.

There are other difficulties that I have with this bill too. As far as the welfare reform provision is concerned—and I strongly support welfare reform—I am glad that it was taken out because I do not think it was appropriately put in a reconciliation bill. But there are some other provisions in the bill that give me great concern, especially the provision which would eliminate the deductibility of interest for mergers and acquisitions. So much of the rise in the market was due to the possible opportunity for mergers and acquisitions that I am fearful that the project of passage of this provision might have been at least a contributory factor to the market decline.

I am also cognizant of the fact that the leadership of this institution has now said that they might well abandon that provision in conference, and I ask, why can we not have a vote on that now? Why not debate it now? Why ask us to walk the plank to vote for a provision that is generally perceived to be a bad provision?

Further, we must have revenue increases, I think, far more than we have here, $12 billion. I think we should have from $36 billion to $50 billion in deficit reduction, and perhaps $25 billion or more of that should be in revenue increases. I am prepared to vote for that. I am prepared to vote for such revenue increases. There are countless measures that could be enacted. I am prepared to vote for a great many of these. But, let us do it together. And, let us do it in a package of revenue increases and spending cuts.

If we cannot reach an accord with the President, with the Senate, and with the Republicans in, for example, 1 week—and I may be more hopeful than realistic, because the Republicans did not enter into any negotiations with us during the Ways and Means Committee process—I am hoping that the market crash has changed their disposition on that—we can revisit this issue, if need be, and I hope it will not be needed, 1 week from now.

If the rule is defeated, it will not be the end of the world. As a matter of fact, when the first rule was defeated before—and I am not saying there was a causal relationship—the market went up from about 40 points at noon to about 90 points at close, so at the very least the world will not end and the market will not collapse if the rule is defeated.

I think it would be best if we would attempt to achieve our stated goal, $36 billion in deficit reductions or at the very least $23 billion. If we give the Republicans an opportunity of at least 1 more week to act jointly with us on revenue increases of at least the magnitude of this bill, coupled with equal and real expenditure reductions in the same bill, I think that would be the right course for us. Fourth, I would suggest that if we, Democrats and Republicans, cannot reach agreement on the right mix of spending cuts, then we should, reluctantly, take the Gramm-Rudman formula, legislate that formula by half, cut spending by about $12 billion per the Gramm-Rudman formula, and couple it with the $12 billion in revenue increases of this bill. We will have proven what is imperative—that we can respond to crises, that we can govern, wisely and together.

Mr. LOTT. Mr. Speaker, I yield 2 minutes to the gentleman from New Hampshire [Mr. GREGG].

Mr. DORNAN of California. Mr. Speaker, will the gentleman yield?

Mr. GREGG. I yield to the gentleman from California.

Mr. DORNAN of California. Mr. Speaker, I just want to tell my colleagues that having been at the debate in Houston last night in person, I think it was obvious that all of us in America who witnessed the debate were watching the next President who was in that group of six. I think it is going to be Vice President GEORGE BUSH, which means that we are going to have gridlock, because I am a realist. That is why I think it is going to be BUSH, and we are not going to take this House. You will lose a few seats, and JIM WRIGHT will still be the distinguished Speaker. But we had a chance around 12:05 today to really establish some bipartisan work here, and we blew it. Now we are back to playing these obnoxious games. I think we all know that the American people do not want taxes raised, and that is why we will win the Presidency.

Mr. Speaker, I thank the gentleman for yielding.

Mr. GREGG. Mr. Speaker, I would like to follow up on the comments made by the gentleman from California and the gentleman from New York.

What is happening here is obvious, that not only have we lost control of the calendar by making tomorrow today, but we have lost control of what elements we had of a bipartisan consensus that was developing out of the meetings between the Presidency and the leadership of the Congress. It does seem to me that when the majority leadership treats with such obvious disdain the minority on an issue of such critical concern to all of us, that fundamentally undermines the ability to reach an agreement between the majority and the minority on this issue, which is more important than simply the relationship of those of us in the House because it affects the capacity of this country to continue to live and prosper.

It also seems to me that it is clearly an attempt by the majority to bury what has been a tax bill that is extremely controversial in a short time and in the confusion of parliamentary activity. This bill has some fatal flaws. It has some problems which may have generated the downturn in the market, and it should be openly debated, and it ought to be subject to amendment. It is totally inappropriate that we should be denied those rights.

Mr. LOTT. Mr. Speaker, I yield 2 minutes to the gentleman from Nebraska [Mr. DAUB].

Mr. DAUB. Mr. Speaker, I thank the gentleman for the 2 minutes. I appreciate this.

A long time ago Will Rogers, the great humorist from Oklahoma, said that "you never have to worry about them when they're home." Of course, what he was trying to say was that it was only when we were convened in Washington that we could do great damage to the country.

Mr. Speaker, I guess in my lifetime I have once or twice seen the Speaker turn off the clock in this place when it was about to reach midnight, when something we were supposed to do did not quite get done, but I did not think I would live to see the day when we could really say that this was a 2-for-1 proposition. We get 2 days for the price of 1. The absence of debate from the majority party on the other side of the aisle is about as logical as was their assertion that the Republican members of the Ways and Means Committee walked out of the discussions in an attempt to avoid their positions being defeated on record votes when we were trying to put together this piece of legislation that we are now debating.

If my friends on the other side of the aisle would go back and look at history, they would find that Churchill said it right when he said, I think, quite eloquently, words to this effect:

"If you know history, you can make history. If you ignore it, you do so at your peril."

We have had seven recessions since World War II, and each of those recessions has been wider and deeper than the one that preceded it. If you go back and look at the history of Congress and the party in power in Congress during each of those times ahead of each recession, you find they attempted to fiscally overstimulate the economy by appropriating funds, more than we had in the bank at the time, and by raising taxes, and the function of those two elements in the fiscal overstimulation of the economy led to years of recession following that legislative activity when fiscal policy collided with monetary policy. So the function or the phenomenon of that particular environment is the one I am most concerned about today.

So I say to my colleagues, if we raise $12 billion in new revenues while only reducing spending by about $2.5 billion, which is essentially the arithmetic of this bill, we are heading fiscally back on that same path. We are going to throw a higher threshold of Federal spending in the way of economic prosperity, with 59 months of continued economic growth and 250,000 net new jobs that have been added to this economy during each and every one of the last 59 months, we must not risk, I say to my colleagues, this kind of damage at this time.

If the package were otherwise, if the package had 25 percent revenues and 75 percent spending reductions, that is the kind of package this Member could buy. But the arithmetic is so proportioned to fiscally raise the threshold of spending that we will not take that money and put it on the deficit, because make no mistake about it, Gramm-Rudman II does not require any money that we raise to be spent on deficit reduction. That is the problem. In fact, we are only about $1 billion short of our target for 1988, with a healthy economy and with about $50 billion of revenue coming from fuller employment, only about $20 billion of the $73 billion in new revenue coming from the capital gains feature of the Tax Reform Act.

Mr. GIBBONS. Mr. Speaker, will the gentleman yield?

Mr. DAUB. I will be happy to yield in a moment.

So, Mr. Speaker, I ask my colleagues to consider the recessionary tendency of the piece of legislation that is before us today and reject this rule. We can craft a much better bill.

Mr. Speaker, I am happy to yield to my good friend, the gentleman from Georgia.

Mr. GIBBONS. Mr. Speaker, as I recall it, in the Ways and Means Committee no member offered any amendment to strike or add or subtract or modify anything. Why did the gentleman not do that? He had plenty of opportunity to do it.

Mr. DAUB. Mr. Speaker, if the gentleman will allow me to reclaim my time, I appreciate the point the gentleman is trying to make. After the first meeting, after the amendment to include State and local employees as a new source of revenue for Medicare, and after the Republicans voiced their objection to not being able to put the facts together, we were not invited back until the last day and the final hour.

Mr. GIBBONS. But on the last day the gentleman did not offer any amendments, he did not move to strike, he did not offer any amendment or try to modify. The gentleman had plenty of time, and I was in the chair.

The SPEAKER pro tempore. The time of the gentleman from Nebraska [Mr. DAUB] has expired.

Mr. LOTT. Mr. Speaker, I yield 2 minutes to the gentleman from Pennsylvania [Mr. WALKER].

Mr. WALKER. Mr. Speaker, one might wonder why the majority party would take such a chance on wrecking the economy with the bill that they have before us. One might wonder why they would go to such lengths to violate the most basic rules of law in the House of Representatives to bring up the bill before us.

The answer to those questions may be in the fact that they have taken such good care of themselves in the bill. When you take a look at the bill we are about to consider, you will find the Democratic leadership has managed to take very good care of itself. The Speaker has a $4 million tax preferential goodie in the bill. The majority leader has a $42 million tax preferential goodie in the bill. Similar treatment is given to the chairman of the Democratic Caucus, and the vice chair of the Democratic Caucus gets assistance for a domed stadium project in her city. There is a $26 million tax break for the chairman of the Energy and Commerce Committee. The chairman of the Rules Committee gets preferential tax treatment for the University of Miami. They have taken very good care of themselves. That is one reason why they would bend the rules in order to bring it out here.

Then they took very good care of us, too. This bill allows for a $2,700 increase in Members' pay. Now, it was not enough that earlier this year we raised our pay by $12,000 without a vote. Now, with this bill we are going to raise it by another $2,700. I think the American people are disgusted by this kind of action around here. They would be disgusted by a process where we literally bend the rules so we can raise our own pay. Wait until they read about this one. Wait until they find out the lengths we went to to raise our own pay in this bill. This $2,700 of pay increase, I think, is disgusting.

Mr. Speaker, this bill and this rule should be turned down.

Mr. LOTT. Mr. Speaker, I yield 2 minutes to the gentleman from Ohio [Mr. GRADISON].

Mr. GRADISON. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, this is a sad day for the House of Representatives and for the Nation. At the very time the country is crying out for bipartisanship and cooperation, we are witnessing a macho exercise by the House leadership, flexing its partisan muscles, and demanding that its Members walk the plank. What an unbelievable scene. At the very time summit meetings are taking place to resolve the longstanding budget impasse, the House is hardening the lines and making it more difficult for our negotiators to reach a compromise which the House will accept. I have been in the securities business all my adult life and if bringing up this bill at this time is meant to reassure the capital markets, my judgment is that it will have exactly the opposite effect. It smacks of politics as usual rather than accommodation and bipartisanship and by including spending increases and relying on tax boosts casts doubt on the sincerity of the Congress in reducing the deficit by restraining spending. I am not so naive as to believe that the Speaker would bring this new rule to the floor without the votes to pass it in his pocket. But as for this Member—and I believe Republican Members in general—a vote for this bill is a vote of no-confidence in the summit meetings now underway—a dangerous action at a dangerous time.

Mr. LOTT. Mr. Speaker, I yield 2 minutes to the gentleman from California [Mr. DANNEMEYER].

Mr. DANNEMEYER. Mr. Speaker, I thank the gentleman for yielding me this time.

I would hope that the gentleman from Texas [Mr. WRIGHT], the Speaker, would be on the floor for my comments. I do not know whether the gentleman is here or not, but I have heard the Speaker say that Congress has appropriated less money than what President Reagan has asked for over the years of the Reagan Presidency.

I do not know what figures the gentleman is reading or believing to make that statement; but putting it kindly, I think the gentleman is sadly misinformed.

The facts are that over the years 1982 through 1986, those 5 fiscal years, and we are updating it now to include 1987, but it has not yet been done; but for 1982 through 1986, for national defense Congress appropriated $65.4 billion less than what Reagan asked for, $8 billion less than what President Reagan asked for in Medicare, $5.3 billion less in Social Security, and $5.6 billion less in net interest.

The reductions that Congress made in those four categories total $84.5 billion, but now get this: all other categories which mainly undergird the existence of the liberal welfare state in America, Congress over those 5 years appropriated $176.8 billion more than what this President asked be spent.

Over that 5 years, when you subtract one from the other, you find the net overappropriation beyond what the President asked for is $92.2 billion.

Since most of the impetus for all of that increased spending over what President Reagan has asked for has come from the Members on the Democratic side of the aisle, I commend you for your consistency by now wanting to put your tax revenues where your spending has been.

I can tell the Members something, the American people do not want increased taxes. They want the deficit solved by cutting spending, not raising taxes.

Mr. Speaker, this rule should be defeated.

Mr. LOTT. Mr. Speaker, I yield 2 minutes to the gentleman from Indiana [Mr. Burton].

Mr. BURTON of Indiana. Mr. Speaker, I thank the gentleman for yielding me this time.

In the 1930's protectionist legislation was passed over the stock market crash, and they raised taxes and it led to the Great Depression, so what are we talking about here today?

We are talking about a tax increase, and many of the Members on the other side of the aisle are talking about protectionist legislation, and that is what we do not need.

Wall Street is telling us, we do not want a tax increase, and yet that is exactly what is being proposed; but in addition to that, you are going right down that road spending money like a drunken sailor on leave, and I apologize to the sailors.

The gentleman from Pennsylvania pointed out, there is a grab bag full of goodies while we are trying to get control of spending. There is $4 million for the Speaker of the House for a special-interest project in the gentleman's district, $42 million for the Kaiser Aluminum and Chemical Corp. for the majority leader's district, similar treatment for the Southwestern Bell Corp. in the district of the gentleman from Missouri [Mr. Gephardt], and the gentlewoman from Ohio [Ms. Oakar] has special benefits in this bill, and the chairman of the Ways and Means Committee [Mr. Rostenkowski] has benefits in this bill, and $26 million for the gentleman from Michigan [Mr. Dingell].

In addition to that, $2,700 in pay benefits is being sneaked in just after we got the largest pay increase we have had in a long time. The people of this country deserve better at a time of national crisis from the Democrat Party.

Mr. LOTT. Mr. Speaker, I yield the balance of my time to the gentleman from Illinois [Mr. Michel], the distinguished Republican leader.

The SPEAKER pro tempore (Mr. Murtha). The gentleman from Illinois [Mr. Michel] the Republican leader, is recognized for 3 minutes.

Mr. MICHEL. Mr. Speaker, I thank the gentleman for yielding me this time.

I will only take a moment or two, because I will have more to say when we speak in behalf of my amendment which has been made in order by this revised rule.

I am not altogether sure that it is necessary for me to recap those arguments I made earlier in the day, but maybe simply ask unanimous consent for a replay of the videotape of those remarks which would probably be just as effective, maybe more so.

I guess there has been one constructive thing done today, and that is that we finally convinced a good many Members around here that welfare reform as such is a big enough subject to be dealt on its own and outside the realm of having it included with the debate on reconciliation, so that was something good and positive that came about as a result of all that has transpired.

I am very distressed to learn from the gentleman from Minnesota [Mr. Frenzel], who follows this subject very carefully and did not know about it at the time the gentleman was making his remarks, there has been a bit of a misrepresentation here, because it is not all that welfare scuttle in here, you have got $350 million of Medicaid provisions from the Committee on Energy and Commerce that are still in the bill.

There has been a slight misrepresentation; and for that, along with the other things, we have to have some reason for raising concern here about this rush to judgment.

Mr. DERRICK. Mr. Speaker, will the gentleman yield?

Mr. MICHEL. I yield to the gentleman from South Carolina.

Mr. DERRICK. I thank the gentleman for yielding to me.

If I might suggest to the gentleman, the gentleman's amendment did not strike out the Medicaid provisions, nor did we do so in ours, because we did not consider that to be part of the welfare provision.

The gentleman did not strike it out in the gentleman's amendment. We did not strike it out when we went back to ours.

Mr. MICHEL. We were operating under two different sets of rules here and were under the impression of whether we were or were not going to be considering welfare reform.

The gentleman very well knows that under our proposition, we would have as a substitute the amendment of the gentlewoman from New Jersey with respect to child-care provisions.

Be that as it may be, again I would say that we have had some very unique kinds of goings on here today. I am certainly not very happy with the flow of events, but the gentleman has the majority.

We do the best we can with our diminished numbers here to be constructive players from time to time, and there is good and sufficient reason for our Members on our side still to vote against this rule if, for no other reason, over the way the Members have been treated over the course of the day.

For that, we will let the flow of events take their course, and at the appropriate time when our amendment is made in order, we will have more comments to make, more pertinent and substantive comments to the real overall big issue at hand.

Mr. CONTE. Mr. Speaker, it appears that once is not enough. For the second time today we are asked to vote on a rule to bring reconciliation to the floor, and for the second time today it's a bad idea. The changes to the rule don't make any difference, because the fundamental point of controversy is not what reconciliation does or does not do, but whether it makes any sense at all to consider reconciliation while the Administration and Congressional leaders are in the midst of intense negotiations. I hold it makes no sense. As much as anyone here I want to fend off that blind butcher, Gramm-Rudman-Hollings, whose mindless across the board cuts rob Congress of its basic responsibility to judge and fund programs on the merits. But to say that, here and now, we are obligated to pass reconciliation is to misrepresent what we are seeking to accomplish in the economic summit, and puts us all a step in front of where we should be.

We have the most serious and daunting task before us: reducing the enormous Federal deficit, but the sine qua non of budget reduction is that Congress and the President must work together. That's what we are doing at the economic summit. If we proceed to consideration of reconciliation today, we will be working at cross-purposes with the summit conference, which, in the first and last analysis, remains the surest way to avoid sequestration. The econmic summit is not for show, nor is it for scoring political points. With newfound wisdom we are sitting down at the table and putting our heads together, rather than banging them against each other. The President has come to the bargaining table and placed everything save Social Security on it. Can we afford to disregard his action? Can we afford to disregard the economic crisis which prompted his change of heart? Of course not. Yet by rushing through reconciliation today, it is exactly that message we are sending.

We are supposed to be partners in the process, but too often the politicized process fosters an institutional myopia—the big picture gets awfully fuzzy, and it takes a sharp blow to knock it into focus. We felt that blow a week ago Monday. The aftershocks are still sending tremors through the economy. The markets are in turmoil, the dollar is destabilized, and here in Washington the ground is shaking.

We didn't prevent the bottom from dropping out of the stock market, but we can prevent the bottom from dropping out of the economy—if we act in harmony. I've been hearing my colleagues—on both sides of the aisle—and there is far too much rancor and discord concerning the budget reduction. Just look at us now, using procedural maneuvers to get a second vote in a single day. We really can't afford the sideshows—the carnival wizardry, the number games and one-time budget reduction tricks. We need to negotiate with the President a mutually agreeable, verifiable budget reduction plan, but how can we do that if we're all galloping around on our high horses, pet economists at our sides, decrying any tax increase or further spending cuts? How can we do that if we call the President's hand before the cards are even dealt? That is partisanship masquerading as principle. Too much is at stake with the country, and the rest of the world, looking to Washington for leadership.

Be cool, be considerate, be smart. Support the negotiations which are going on between the President and Congress, don't undermine them by hasty action today. Over the last 2 weeks there has been a substantial change in the political climate, and the congressional agenda should reflect that change. Calmness and flexibility need to prevail, compromise is essential. I would repeat Emerson's warning. "A foolish consistency is the hobgoblin of little minds, adored by little statesmen and philosophers and divines." I look around in this Chamber and do not see any "little statesmen." Don't prove me wrong today. Vote down the rule, and hold off on an action we will all have cause to regret.

Mr. FORD of Michigan. Mr. Speaker, the President's alternative pay plan calls for a Federal employees' pay raise of 2 percent, effective in January 1988. That plan makes no provision for Federal agencies to absorb any of the cost of that pay raise. As a consequence, in the absence of any mandated absorption, the cost of the President's pay raise comes to $1.39 billion.

The Committee on Post Office and Civil Service, in its reconciliation submission, calls for a Federal employees' pay raise of 3 percent, effective in January 1988, and also mandates that agencies absorb 65 percent of the cost of the raise in fiscal year 1988. Consequently, the only additional cost to the Federal Government of that pay raise is $730 million, or 35 percent of the fully appropriated cost of $2.09 billion.

As I see it, the committee's recommendations save more than $600 million, even when measured against the President's 2-percent pay raise.

Mr. Speaker, I rise in support of H.R. 3545 and take this opportunity to discuss the recommendations of the Committee on Post Office and Civil Service, relating to Federal employees' pay.

In the Budget Resolution for fiscal year 1988, the Committee on Post Office and Civil Service was instructed to recommend savings of $100 million in fiscal year 1988 and some $5.2 billion over 3 fiscal years. My committee responded unanimously with a package of reconciliation savings which, according to the impartial Congressional Budget, achieves savings of $962 million in fiscal year 1988 and $6.4 billion over fiscal years 1988 through 1990: well beyond the savings instruction to the committee.

How did we achieve those savings? The savings in section 7001 of H.R. 3545 result from delaying the effective date of Federal pay adjustments and requiring agencies to absorb a portion of the estimated cost of those adjustments. In each of fiscal years 1989 and 1990, we delay the effective date of pay raises 3 months to January of each fiscal year; in effect, reducing the amount of each raise by one quarter. In all 3 fiscal years, Federal agencies will be required to absorb a substantial portion of the cost of the raises: 65 percent in fiscal year 1988 and 50 percent in each of fiscal years 1989 and 1990.

The effect of these provisions constitutes a real, verifiable reduction in Federal outlays. As the CBO cost estimate included in the report on the bill states, and I quote, "the committee's reconciliation proposals would reduce net federal outlays by $6.4 billion in [fiscal years] 1988–1990." Outlay savings in fiscal year 1988 alone come to $962 million, some $862 million more than the Committee on Post Office and Civil Service was instructed to recommend in its deficit reduction effort.

Mr. Speaker, section 7001 of H.R. 3545 does provide for a 3-percent raise for Federal employees in fiscal year 1988, effective next January. That 3-percent pay raise is fully consistent with the assumptions of the budget resolution. In fact, if Congress were to do nothing in the area of Federal pay, Federal employees would receive a pay raise of 2 percent effective in January, by virtue of the President's own submission of recommendations as an alternative to the 23-percent pay adjustment required to achieve comparability under existing law.

Mr. Speaker, why any issue has been raised with respect to the committee's reconciliation submission is beyond me. We have exceeded our fiscal year 1988 reconciliation instruction ninefold. And, the committee has exceeded its 3-year instruction by more than $1 billion. All this while ensuring that Federal employees are afforded at least modest pay increases over the next 3 years. I think it unfortunate that we find it necessary at this time to deviate from the principle espoused in law that Federal pay rates be comparable with private sector pay rates for the same levels of work. But, I am certain you will all agree that the economic troubles we face suggest the need for this extraordinary effort.

Mr. JONES of North Carolina. Mr. Speaker, I appreciate the opportunity to support the rule, and to elaborate on that portion of the budget resolution pertaining to the Committee on Merchant Marine and Fisheries. I would like to commend the leadership of the Rules Committee on the work they have done in bringing up this measure.

Our reconciliation instructions required the committee to come up with $94 million in revenues (or savings) to help offset the Federal deficit. By a 32 to 7 vote on October 14, the committee approved a plan to charge those commercial vessels using U.S. Naval escorts in the Persian Gulf a fee of the greater of $250,000 per voyage or the actual cost of the voyage. The Congressional Budget Office scored the commmittee $135 million for fiscal year 1988 based on actual cost data obtained from the Department of Defense.

Mr. Speaker, I believe the vast majority of American people are in favor of this proposal. It places the onus of paying for a service on the users of that service—initially the Government of Kuwait, the actual owners of the vessels being escorted, but finally, and most importantly, the end consumers of the protected petroleum products. Coast Guard user fees, proposed every year and rejected every year, also seek to recover costs from users of a service, but the users are generally required by law to obtain those services, such as vessel and personnel documentation. And, clearly, from a political perspective, it is much harder to assess a fee on constituents than on foreign beneficiaries.

While the Defense Department may see the escort service as a military operation whose effect is to preempt Soviet influence in the gulf, those who requested the naval escorts did so for purely voluntary commercial reasons. Indeed, what difference would it make to the Kuwaiti ship operators, or Japanese and European oil consumers if it were a Soviet or American frigate protecting their commerce so long as it discouraged Iranian attacks?

I know the administration is opposed to this fee, largely because they feel it is the traditional role of the Navy to protect freedom of navigation. I wonder, then, what they were thinking when they continually proposed Coast Guard user fees for services traditionally provided to both the commercial and recreational maritime populations of this country? The Coast Guard is a branch of the Government as old or older than the Navy, and its long-gratis operations are every bit as cherished as those of the U.S. Navy.

For these reasons among others, Mr. Speaker, I believe this proposal makes eminent sense. Another issue pertaining to the fee is jurisdiction. The Merchant Marine and Fisheries Committee has held two hearings on the reflagging and escort operation. Once the ships were reflagged, they became part of the U.S.-flag merchant marine, and as such, the Committee on Merchant Marine and Fisheries has jurisdiction over their welfare. Actions of our Government imposed upon a commercial vessel flying the U.S. flag, for that matter any flag, are within our jurisdiction. It is axiomatic that a user fee upon commercial vessels, flying the U.S. flag, is appropriately imposed by our committee, and is within the contemplation of the Rules of the House of Representatives. There is little legislation reported by any committee that does not in some way affect the general interests of other committees, and in recognition of this, I informed both the Committee on Armed Services and the Committee on Foreign Affairs of our action; that notice reiterates the validity of our jurisdiction over this matter and was not meant to cede any portion of our jurisdiction over merchant marine and navigation matters to any other committee.

Additionally, the Coast Guard is the agency authorized to collect the user fee. The reason for designating the Coast Guard, over which the Merchant Marine and Fisheries Committee has authorizing power, is that they are traditionally the agency charged with assisting the navigation of commercial vessels, and the service being provided in the Persian Gulf is clearly an aid to those tankers' ability to safely navigate those otherwise, prohibitively, treacherous waters.

The committee has also included comprehensive oil spill legislation which generates fund collections at the rate of 1.3-cents per barrel of oil for victim compensation and response. This should generate $5 million in the first year with increases in the outyears. Although the Public Works Committee does not have reconciliation instructions, we recognize that they also have jurisdiction and welcome their participation in any conference that may ensue. Finally, the committee added a provision to correct the U.S. investment base in the Panama Canal. This will result in $5 to $6 million in increased interest payments to the U.S. Treasury in years 1989 and 1990.

Mr. Speaker, I appreciate the opportunity to explain these provisions to you and the esteemed Members of this body. I think we have crafted a measure which deals in a fair and equitable manner with the difficult problem of balancing the Federal budget, and I believe the rule before us, by including our committee's provisions with the other essential features, allows the House to responsibly debate and enact a sound budget reconciliation bill.

GENERAL LEAVE

Mr. DERRICK. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on House Resolution 298, the resolution presently under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from South Carolina?

There was no objection.

Mr. DERRICK. Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

The SPEAKER pro tempore. The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. LOTT. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 238, nays 182, not voting 13, as follows:

[Roll No. 390]

YEAS—238

Ackerman
Akaka
Alexander
Anderson
Andrews
Annunzio
Anthony
Aspin
Atkins
AuCoin
Barnard
Bates
Beilenson
Bennett
Berman
Bevill
Bilbray
Boggs
Boland
Bonior
Bonker
Borski
Bosco
Boucher
Boxer
Brennan
Brooks
Brown (CA)
Bruce
Bryant
Bustamante
Byron
Cardin
Carr
Chapman
Chappell
Clarke
Clay
Coelho
Coleman (TX)
Collins
Conyers
Cooper
Coyne
Crockett
Daniel
Darden
de la Garza
DeFazio
Dellums
Derrick
Dicks
Dingell
Dixon
Donnelly
Dorgan (ND)
Dowdy
Downey
Durbin
Dwyer
Dymally
Dyson
Eckart
Edwards (CA)
English
Erdreich
Espy
Evans
Fascell
Feighan
Flake
Flippo
Florio
Foglietta
Foley
Ford (MI)
Ford (TN)
Frank
Frost
Garcia
Gaydos
Gejdenson
Gibbons
Glickman
Gonzalez
Gordon
Grant
Gray (PA)
Guarini
Hall (OH)
Harris
Hatcher
Hawkins
Hayes (IL)
Hayes (LA)
Hefner
Hertel
Hochbrueckner
Howard
Hoyer
Huckaby
Hughes
Hutto
Jacobs
Jeffords
Jenkins
Johnson (SD)
Jones (NC)
Jones (TN)
Jontz
Kanjorski
Kaptur
Kastenmeier
Kennedy
Kennelly
Kildee
Kleczka
Kolter
Kostmayer
Lancaster
Lantos
Leath (TX)
Lehman (CA)
Lehman (FL)
Leland
Levin (MI)
Levine (CA)
Lewis (GA)
Lipinski
Lloyd
Lowry (WA)
Luken, Thomas
MacKay
Manton
Markey
Martinez
Matsui
Mavroules
McCloskey
McCurdy
McHugh
McMillen (MD)
Mfume
Mica
Miller (CA)
Mineta
Moakley
Mollohan
Montgomery
Moody
Morrison (CT)
Mrazek
Murtha
Nagle
Natcher
Neal
Nelson
Nichols
Nowak
Oakar
Oberstar
Obey
Olin
Ortiz
Owens (NY)
Owens (UT)
Panetta
Patterson
Pease
Pelosi
Pepper
Perkins
Pickett
Pickle
Price (IL)
Price (NC)
Rangel
Ray
Richardson
Robinson
Rodino
Roe
Rose
Rostenkowski
Rowland (GA)
Roybal
Russo
Sabo
Savage
Sawyer
Scheuer
Schroeder
Schumer
Sikorski
Sisisky
Skaggs
Skelton
Slattery
Slaughter (NY)
Smith (FL)
Smith (IA)
Solarz
Spratt
St Germain
Staggers
Stallings
Stark
Stenholm
Stokes
Stratton
Studds
Swift
Synar
Tallon
Tauzin
Thomas (GA)
Torres
Torricelli
Towns
Traficant
Traxler
Udall
Valentine
Vento
Visclosky
Volkmer
Walgren
Watkins
Weiss
Wheat
Whitten
Williams
Wilson
Wise
Wolpe
Wyden
Yates
Yatron

NAYS—182

Applegate
Archer
Armey
Baker
Ballenger
Bartlett
Barton
Bateman
Bentley
Bereuter
Bilirakis
Bliley
Boehlert
Boulter
Broomfield
Brown (CO)
Buechner
Bunning
Burton
Callahan
Campbell
Carper
Chandler
Cheney
Clinger
Coats
Coble
Coleman (MO)
Combest
Conte
Coughlin
Courter
Craig
Crane
Dannemeyer
Daub
Davis (IL)
Davis (MI)
DeLay
DeWine
Dickinson
DioGuardi
Dornan (CA)
Dreier
Duncan
Early
Edwards (OK)
Emerson
Fawell
Fields
Fish
Frenzel
Gallegly
Gallo
Gekas
Gilman
Gingrich
Goodling
Gradison
Grandy
Green
Gregg
Gunderson
Hall (TX)
Hamilton
Hammerschmidt
Hansen
Hastert
Hefley
Henry
Herger
Hiler
Holloway
Hopkins
Horton
Houghton
Hubbard
Hunter
Hyde
Inhofe
Ireland
Johnson (CT)
Kasich
Kolbe
Konnyu
Kyl
LaFalce
Lagomarsino
Latta
Leach (IA)
Lent
Lewis (CA)
Lewis (FL)
Lightfoot
Livingston
Lott
Lowery (CA)
Lujan
Lukens, Donald
Lungren
Mack
Madigan
Marlenee
Martin (IL)
Martin (NY)
Mazzoli
McCandless
McCollum
McDade
McEwen
McGrath
McMillan (NC)
Meyers
Michel
Miller (OH)
Miller (WA)
Molinari
Moorhead
Morella
Morrison (WA)
Murphy
Myers
Nielson
Oxley
Packard
Parris
Pashayan
Penny
Petri
Porter
Pursell
Quillen
Rahall
Ravenel
Regula
Rhodes
Ridge
Rinaldo
Ritter
Roberts
Rogers
Roth
Roukema
Rowland (CT)
Saiki
Saxton
Schaefer
Schneider
Schuette
Sensenbrenner
Sharp
Shaw
Shays
Shumway
Shuster
Skeen
Slaughter (VA)
Smith (NE)
Smith (NJ)
Smith (TX)
Smith, Denny (OR)
Smith, Robert (NH)
Snowe
Solomon
Stangeland
Stump
Sundquist
Sweeney
Swindall
Tauke
Taylor
Upton
Vander Jagt
Vucanovich
Walker
Weber
Weldon
Whittaker
Wolf
Wortley
Wylie
Young (FL)

NOT VOTING—13

Badham
Biaggi
Fazio
Gephardt
Gray (IL)
Kemp
Roemer
Schulze
Smith, Robert (OR)
Spence
Thomas (CA)
Waxman
Young (AK)

☐ 1645

The Clerk announced the following pairs:

On this vote:

Mr. Gephardt for, with Mr. Kemp against.

Mr. Waxman for, with Mr. Spence against.

Mr. Fazio for, with Mr. Thomas of California against.

Mr. Gray of Illinois for, with Mr. Young of Alaska against.

Mr. GILMAN and Mr. CAMPBELL changed their votes from "*yea*" to "nay."

Mr. RAY changed his vote from "nay" to "yea."

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

The SPEAKER pro tempore (Mr. MURTHA). Pursuant to the provisions of House Resolution 298 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 3545.

□ 1656

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 3545) to provide for reconciliation pursuant to section 4 of the concurrent resolution on the budget for the fiscal year 1988, with Mr. SWIFT in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the first reading of the bill is dispensed with.

Under the rule, the gentleman from Pennsylvania [Mr. GRAY] will be recognized for 30 minutes and the gentleman from Ohio [Mr. LATTA] will be recognized for 30 minutes.

The Chair recognizes the gentleman from Pennsylvania [Mr. GRAY].

Mr. GRAY of Pennsylvania. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, we have before us today the cooperative efforts of nine House committees to produce savings pursuant to reconciliation instructions contained in the conference agreement on the concurrent resolution on the budget for fiscal year 1988.

This was a formidable task. Many of the committees made reforms which were very difficult for them in order to meet the common goal of deficit reduction. This package may include some elements which all of us would prefer to see done a little differently. However, our House committees acted in good faith to meet their reconciliation directives. Some committees when back more than once to come up with sufficient savings. This measure, therefore, represents the collective wisdom of our House committee on how to best meet their reconciliation target. One committee, the Banking, Finance, and Urban Affairs Committee, has already enacted its reconciliation savings.

The Budget Reconciliation Act of 1987 would reduce the deficit by $24.3 billion in fiscal year 1988, and $80.1 billion over the next 3 years when scored against the budget resolution baseline. This measure would reduce the deficit by more than $14.5 billion in fiscal year 1988 when scored against the Gramm-Rudman-Hollings baseline.

As you know, it is imperative for the Federal Government to reduce the large budget deficits which have weakened the economy, enlarged the trade deficit, and eroded our international competitiveness and financial security.

This bill represents our commitment to achieving substantial deficit reduction as required by adoption of the concurrent resolution on the budget for fiscal year 1988 and as required under the amended Gramm-Rudman-Hollings law. It includes substantial restraint on spending as well as revenue increases for fiscal year 1988.

I want to stress the fact that this bill, with its reductions, will enable the House to maintain its priorities set forth in the budget resolution and, in combination with enactment of discretionary appropriations measures that do not exceed section 302(a) allocations under the Budget Act, will reduce the deficit sufficiently to avoid the mindless across-the-board sequestration of Gramm-Rudman-Hollings. In addition, by providing a considered policy, rather than the abdication of policy under Gramm-Rudman-Hollings, it will instill confidence that we can control our economic future.

In conclusion, this bill is a superior alternative to sequestration and the devastating impact of the reductions mandated by Gramm-Rudman-Hollings.

I urge all members to vote "aye."

□ 1655

Mr. Chairman, I yield such time as he may consume to the gentleman from Michigan [Mr. WOLPE].

Mr. WOLPE. Mr. Chairman, I rise in support of the Omnibus Budget Reconciliation Act.

Mr. Chairman, I rise in strong support of H.R. 3545, the Omnibus Reconciliation Act—legislation which represents a major step toward meeting our fiscal year 1988 deficit reduction target of $23 billion.

On Monday, October 19, Wall Street's free-floating anxiety about our Nation's economic future transformed itself into a stampede of panic. The "bull" became a "bear"—and in a matter of hours, sell orders flooded every brokerage house in the country. When 4 o'clock finally came, the Dow Jones average had crashed a record 508 points. And in the 8 days of trading that have taken place since that "Black Monday," the market has remained dangerously volatile, registering another record loss just this week.

Mr. Chairman, Wall Street has sent us a message—a message that this Congress, our President, and the entire Nation can ill afford to ignore. Wall Street is telling us that it's time to abandon the rose-colored glasses, to face up to economic reality, and to do the job we were elected to do: govern.

And today, with our Nation's financial markets still in turmoil, the responsibility to govern carries with it three distinct obligations.

First, we've got to be straight with ourselves and we've got to be straight with the American public. The first step in resolving any problem is to acknowledge that a problem exists. To suggest, as President Reagan has, that what happened on "Black Monday" was nothing more than an "overdue market correction" is to raise serious questions about the capacity of our national leadership to address the immediate crisis. The President's words were meant to be reassuring, but they have had the unintended result of undermining public confidence in our national leadership. We need to stop substituting myth for reality and face our economic challenges head-on.

To pretend that current economic policy has nothing to do with the collapse on Wall Street is to engage in self-deception. We all know that our Nation's twin deficits—our record trade deficit and our record budget deficit—are the underlying causes of the market instability. And it's equally clear that current economic policy is responsible for those deficits. As Peter Peterson, Secretary of Commerce during the Nixon administration, notes in this month's edition of the Atlantic Monthly, Reaganomics has been "a hard lesson in the law of unintended results."

The administration promised a balanced budget by 1984; yet the President's own budget submissions these past 6 years called for a cumulative increase in the national debt of almost $1 trillion. Administration policy promised a $65 billion trade surplus in 1984; instead, largely because of our Federal budget deficits, we suffered a $123 billion trade deficit. These are realities that we can no longer ignore. It's time to admit that on the economic front, serious mistakes have been made. And there is more than enough blame to go around.

Second, we must demonstrate that in a time of crisis, we can act on a bipartisan fashion to address the formidable economic problems that confront our Nation. We must discard the politics of confrontation and embrace the politics of cooperation. We must regain the common ground that—regardless of party affiliation—we all share as Americans.

And finally, third, in the spirit of bipartisanship, we must act swiftly and decisively to address our economic problems with pragmatic solutions. In short, we must pass this deficit reduction bill.

While the budget summit now underway may generate agreement on further deficit reduction measures, enactment of this bill represents an important first step toward meeting our deficit reduction goal.

The reconciliation measure before us achieves nearly $14.5 billion in deficit reduction. Moreover, it contains language that makes it clear that the continuing resolution to be voted upon next week will contain additional significant budget cuts. Together these actions will total $23 billion in guaranteed deficit reduction—approximately half of that total coming from spending reductions, half from new revenues. And it should be noted that the Guaranteed Deficit Reduction Act accomplishes this task without increasing personal or business income tax rates. The bill's revenue elements are primarily loophole-closing measures that will not impact one iota on low- or middle-income taxpayers.

I urge my colleagues to join me in sending a strong and clear signal to our Nation's financial markets by supporting this vital Deficit Reduction Act.

Mr. GRAY of Pennsylvania. Mr. Chairman, I reserve the balance of my time.

Mr. LATTA. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, need I say that this legislation should not be on the floor? I think it has been said time and time again and proven time and time again today that this legislation should not now be on the floor.

Why do I say that? Right now the administration, with the full concurrence of the President of the United States, the Secretary of the Treasury, the Director of OMB, Howard Baker, the President's Chief of Staff, the head of our National Security Council, the leadership of the House and the Senate, the Republican leaders of the House and the Senate, the chairmen of the Appropriations Committee on both sides, the Finance Committee chairman on the Senate side, the head of our Ways and Means Committee on this side, the ranking Members, the Budget Committee chairman and myself are engaged in what we believe and the country hopes are meaningful negotiations to reduce the deficit in a bipartisan manner.

So why are we now debating a very partisan piece of legislation? We have spent hours and hours getting to this point instead of deliberating on the other side of the Capitol Building where we have been in session, incidentally, without the press, even without staff. When I say that, that means meaningful negotiations are underway. The question is why, why do we bring out some partisan piece of legislation that cannot possibly become the law? It cannot become law. But it can send the wrong signal to a lot of people in the country and across the world.

We have gotten the idea when this legislation dies, and it is going to die sooner or later, whether it is in the House or in the Senate or in conference, it is going to die, that we really do not mean anything, we are not sincere about doing anything about deficit reduction. That is the wrong signal to send, and we could have spent our time today more wisely in those negotiations that hopefully will mean something and can become law.

Let us just briefly examine this partisan piece of legislation. To start with, it is a lopsided piece of legislation, heavy on taxes, light on spending reductions. Is that what the American people want?

I have had polls in my district, every Member has probably had a poll in his or her district. The American people want something done about spending by this Congress. They do not want more taxes.

But measured against the Gramm-Rudman baseline, the fiscal year 1988 components of this package now under discussion add up as follows:

New taxes, $14 billion, $14 billion; tax cuts for special interest groups, $2 billion; user fees and increased receipts almost $1 billion; entitlement increases nearly $1.5 billion. And we had to have some of that sleight of hand, shifting outlays from fiscal year 1988 into the out years, $1.75 billion. And last but not least, here is that small item, the item that the American people want most, true spending cuts, less than $1 billion.

The 1988 figures are bad, but the 3-year totals are even worse. Here's what you get from this bill over the next 3 years:

New taxes: over $60 billion;

Tax cuts for special interests: over $5½ billion;

User fees and increased receipts: nearly $3 billion;

Entitlement increases: almost $6 billion; and

True spending cuts: a little over $8½ billion.

Let's look at what else is in the Democrats' package. What about the entitlement expansions? Why are they increasing Federal entitlements at a time when everyone is saying that Congress must curb spending growth? How can the same leaders who are insisting on entitlement expansions on the House floor then go across the Capitol Building to the budget summit and agree to a stringent, no-frills deficit reduction plan? Everyone has a list of areas where more spending would be nice. But this is just not the time to enact spending increases that will grow even larger in the out-years.

And what about spending over half a billion dollars to give Federal employees a 3-percent pay raise instead of the 2-percent raise currently scheduled? Then there is Medicaid, where this year's downpayment of $300 million grows to more than $2 billion over the 3 years between now and 1990. There are other program expansions planted here and there in this bill. But the point is clear. This reconciliation bill—just like many before it—is carrying a heavy load of new spending. However, this year is different. We can't afford business as usual.

A review of Democrat reconciliation bills would not be complete unless we looked at the smoke and mirrors always found there. Just a short month ago we solemnly pledged in the Gramm-Rudman legislation never again to indulge in budget chicanery, but now it appears that the Democrats just could not resist. For example, we said we would no longer give credit for deficit reduction when program costs were merely moved from one year to another. But in this bill, over $1 billion in deficit is claimed because advance deficiency payments for farm commodities are being reduced. Total payments are not being cut, just the amount the farmers receive up front. Where is the true deficit reduction in a policy like this? Similarly, Medicare payments to providers are being slowed down. The Government will still pay out the same amounts, but it will be paid out later. Again, no true deficit reduction. Do we really expect this kind of deficit reduction to be taken seriously?

Lastly, there are the creative techniques used to produce deficit reduction for scoring purposes even though program costs are unchanged. The Persian Gulf "escort fee" should get the grand prize in this category.

The point of this review of the reconciliation provisions is to demonstrate how little deficit reduction on the spending side would result if this bill were enacted. The deficit is almost all on the tax side.

Mr. Chairman, we want to cooperate in the important task of assuring the country that Congress can and is willing to get the deficit under control. But frankly, this just is not our idea of a deficit reduction package. In 1988 less than $1 billion out of this entire bill is all that can be considered true spending cuts. Less than $1 billion! Compared to entitlement expansions of more than $1 billion. How can you walk out of one room in the Capitol where supposedly you are trying to negotiate a significant, lasting cut in the U.S. budget deficit and come on to the floor and vote on a budget package that has less than $1 billion in spending cuts and over $13 billion in tax increases and fees? The two approaches are not compatible.

So this piece of legislation should be overwhelmingly defeated so that we send a message to the financial markets, not only in this country but across the world, because those markets are affecting our markets, send the signal that we mean it this time. We are not joking. We are not going to pass a phony like this. We are going to wait until the real true thing comes along, and we are going to pass it with bipartisan support and do something about the deficit, Mr. Chairman.

If we pass this reconciliation bill, we are going to send the opposite signal to them. So let us do the right thing for a change. We are on the road, but not in this piece of legislation.

We are behind closed doors working like we should, and we can do something about it by defeating this piece of legislation and doing it quickly.

Mr. Chairman, I yield 3 minutes to the gentleman from Tennessee [Mr. DUNCAN].

□ 1710

Mr. DUNCAN. Mr. Chairman, to me the welfare provision was perhaps the least offensive part of the Ways and Means Committee bill. This to me I think is the worst bill that had been offered since I have been on the Ways and Means Committee for the past 17 years. It is a bill, as stated, that should not have come up today. In fact, this past few days Senator BYRD, the Democratic majority leader, said we should not consider reconciliation bills while we were in the so-called economic summit conference. But nevertheless we are.

The bill was crafted in the worst possible way. It was voted out of the committee without all the cost figures from the Joint Committee on Taxation.

You will also notice in the debate that we have very little time to debate this bill. We should have had at least 2 hours.

They tried to spread the word that the only tax in the bill is going to be on high-income people.

Mr. Chairman, that is not true. If you will go and dig into the bill, if we had time to go into it page by page and item by item, you will find many things that affect low-income people. For example, I have already heard from some of my rural schoolbus operators in Tennessee. They do not tell you that this bill eliminates the Federal gasoline tax for schoolbus operators unless the bus is owned by the local government. They also do not tell you people from the smaller cities that bus operators that operated intercity bus systems will also lose their gasoline tax deduction. And where are they going to get the money? I can just see the schoolbus operators going down to the city hall or to the county courthouse and requesting more money to take care of the new tax.

And if you have an insurance policy with the mutual insurance companies they have been treated very shabbily. They are not being treated like other institutions of like kind. And I think also you will hear from your waitresses in the restaurant establishments because they are also being required to pay tax withholding on their tips.

So it is not a good bill, Mr. Chairman. As I say, we eliminated the most offensive part of the bill, but the bad parts in this bill are still there.

Mr. GRAY of Pennsylvania. Mr. Chairman, I yield 8 minutes to the distinguished chairman of the Committee on Ways and Means, the gentleman from Illinois [Mr. ROSTENKOWSKI].

Mr. ROSTENKOWSKI. Mr. Chairman, Congress recently restored a constitutionally valid Gramm-Rudman trigger. At the time, there was widespread concern in the Congress that we were simply avoiding our responsibility as legislators to make the hard choices necessary to reduce the Federal budget deficit. However, the main rationale for restoring the trigger was to put pressure on the President to face the deficits which have accumulated during his Presidency.

Having restored the trigger, we have also committed ourselves to producing a responsible reconciliation bill, and appropriation bills which in the aggregate will prevent sequestration.

If the House passed the reconciliation bill which is now before us, we will have taken a positive step toward giving the American people and the President a choice between across-the-board, mindless budget cuts and a reasoned package which combines responsible spending reductions and prudent revenue increases. Let us be clear about the significance of today's vote: A vote against this reconciliation bill is a vote in favor of sequestration. A vote against this reconciliation bill will undermine the budget summit and send a very negative signal to our financial markets.

As chairman of the Committee on Ways and Means, I would like to describe the spending reductions and revenue increases which were developed by the committee and are contained in titles IX and X.

The total deficit reduction reported by the Ways and Means Committee is $14 billion in fiscal year 1988 and $62 billion for the 3-year budget window. The committee has more than met its outlay reduction instruction under reconciliation, and has satisfied the revenue requirement placed on the committee by the passage of House Joint Resolution 324 to avoid sequestration.

For fiscal year 1988, these totals break down to $1.6 billion in outlay reductions and $12 billion in revenues. For fiscal year 1988 through 1990, the outlay reductions are $8 billion and revenue increases are equal to $53 billion. Let me discuss each of these packages separately.

Mr. Chairman, title IX of the reconciliation bill contains the committee's spending cuts. The Committee on Ways and Means was assigned savings in the Medicare Program of $1.5 billion in fiscal year 1988 and $8.7 billion over 3 years. The Medicare provisions of the committee package, together with the provisions of the recently enacted debt ceiling bill, reduce spending by $1.6 billion in fiscal year 1988 and $9.0 billion over 3 years.

The Medicare provisions are carefully designed to achieve the assigned savings targets in a balanced fashion. The committee distributes the reductions fairly among hospitals and physicians, and does not affect beneficiaries.

In fact, a committee provision that strengthens the Participating Physician Program should reduce out-of-pocket health costs of the elderly and disabled. By increasing the payment differential to 5 percent, the committee hopes to encourage more physicians to agree always to accept the Medicare reimbursement as payment in full. Participating physicians now provide over 40 percent of Medicare physician services.

The Medicare provisions of the reconciliation bill are immeasurably preferable to a Gramm-Rudman sequester.

Under a sequester, all hospitals would receive an increase in Medicare payments in fiscal year 1988 equal to 0.3 percent. Under the committee package, hospitals generally receive a 1-percent increase and hospitals in large cities and rural areas receive a 2-percent increase.

Moreover, the reconciliation legislation blocks administration changes in capital reimbursement, bad debt payments, and outlier case policy, all of which could reduce payments to hospitals significantly.

In order to improve the financial solvency of the Pension Benefit Guaranty Corporation [PBGC], the committee agreed to increase the annual insurance premium charged to single employer defined benefit pension plans, and to impose a variable rate premium on underfunded plans. The committee also agreed to recommendations relating to the minimum funding standards for underfunded plans, employer access to plan assets in overfunded plans, and the termination of underfunded plans.

The Committee on Education and Labor has also reported recommendations regarding the PBGC. While these provisions differ from those reported by the Committee on Ways and Means, the differences will be worked out in conference.

Title IX also provides a 2-year authorization of appropriations for the U.S. International Trade Commission, the Office of the U.S. Trade Representative, and the U.S. Customs Service at levels which will allow these agencies to effectively carry out our trade laws. The authorization for the U.S. Customs Service would not only restore the administration's proposed cut of 2,000 Customs personnel but would add 800 new positions for commercial operations to be funded out of the Customs user-fee account. This increase in Customs personnel, coupled with the modifications in this bill to expand and improve the customs user-fee account, should result in a significant increase in revenue collections by customs.

Title IX also includes 19 miscellaneous AFDC and SSI amendments designed to correct inequities in the current programs, streamline administration, and make other technical improvements. In addition, this subtitle includes a permanent extension of Federal funding for voluntarily placed foster care children and extends, for 2 years, the authority to transfer foster care funds to child welfare services. Two provisions extend child support enforcement services to families not now eligible to receive them, Finally, subtitle C makes technical improvements in the Unemployment Compensation Program, authorizes self-employment demonstrations and extends, for 3 years, the 0.2 percentage point FUTA surtax.

Title IX also includes provisions which extend the Social Security and railroad retirement taxes in certain circumstances, modify certain Social Security benefits, and alter certain administrative procedures of the Social Security Administration. In general, the Social Security tax provisions extend coverage to previously excluded types of income and workers. These include agricultural workers, certain earnings of armed service workers, all cash tips, and the value of group term life insurance in excess of $50,000. In addition, the railroad retirement tier II tax is increased by 2 percentage points. The miscellaneous benefit provisions approved by the committee include a modification of the alternate benefit formula for persons with pensions from noncovered employment, correction of an anomaly concerning the Government pension offset and extension for 1 more year of the provision allowing continuation of disability benefits pending appeal. The administrative provisions include a requirement for automatic payment of attorneys' fees and for the payment of interim benefits in cases of delayed final decisions at the appeals court level.

Mr. Chairman, the revenue title of the reconciliation bill achieves its target of $12 billion for fiscal year 1988 without increasing income tax rates, imposing new or higher excise taxes, or increasing taxes on low- and middle-income taxpayers. Instead, the Revenue Act of 1987 continues the mandate of tax reform by closing loopholes and asking higher taxes only from high-income individuals and big businesses that today are not paying their fair share. These reforms continue the Congress' efforts to make the tax system fairer to all.

Key revenue-raising business reforms in the Ways and Means title include:

Repeal of the "completed contract method of accounting," which has allowed many major defense contractors to avoid much or all of their Federal tax liabilities.

Strengthening of the corporate minimum tax.

Limiting two corporate tax avoidance techniques—master limited partnerships and overleveraging in corporate mergers and acquisitions—which, left unchecked, might undermine the 1986 corporate tax reforms.

Restricting the buying and selling of excess corporate tax benefits.

Requiring large corporations to pay their estimated taxes on a more timely basis.

Repeal of deferral of U.S. tax for runaway plants—so companies would not benefit by moving factories and jobs overseas.

Deny foreign tax credits for investments in South Africa.

Reforms affecting wealthy individuals include:

Repeal of the scheduled decline in the top Federal estate tax rate for estates of over $3 million and phasing out lower estate tax rates and the unified estate tax credit for estates of over $5 million.

Limiting deferral of tax on like-kind exchanges of property so that wealthy taxpayers cannot escape tax by trading one property for another.

Limiting interest deductions on home mortgages of more than $1 million and home equity loans of more than $100,000. Yachts and recreational mobile homes would not qualify as second homes.

Restricting the Federal estate tax deduction for proceeds of a sale to an employee stock ownership plan—to conform with the intent of the 1986 act.

In addition to these reforms, the bill also provides relief from several onerous provisions of present law. The relief measures include:

Relief of nondealers from current taxation of certain installment sales income.

Repeal of the requirement that certain partnerships, et cetera must use the calendar year as their tax year.

Allocating 67 percent of a company's U.S. R&D expenses against U.S. income rather than against foreign income.

Allowing current deduction of expenses of free-lance authors and similar creators rather than capitalization of those expenses over a number of years.

Allowing deductions by mutual fund shareholders for administrative costs of the funds without regard to the 2-percent floor under miscellaneous deductions.

Expansion of eligibility for the low-income housing credit.

Repeal of investment tax credit recapture following a casualty loss.

Allowing charitable gift annuities not to be treated as commercial-type insurance.

Many of the revenue-raising provisions in title X have varying effective dates. It has come to my attention that while these dates are prospective from the first date of action on the legislation some companies and individuals were in the process of completing transactions which may be affected by these provisions.

It is my intention to review the effective dates of the revenue provisions of the bill and—in the context of a conference with the Senate—to develop appropriate effective dates that are truly prospective in nature. I believe that prospective effective dates should be granted where appropriate. I am especially sympathetic with prospective dates for those provisions which would otherwise cause ordinary business transactions for which significant time and money has been invested to be invalid. While every transaction cannot be grandfathered because of policy or revenue considerations, I will make every effort to develop reasonable effective dates for the reforms included in this bill.

For example, it has been brought to my attention that the effective date for the provision which reclassifies certain publicly traded partnerships as corporations needs to be clarified to state that initial transfers of assets and partnership interests and the conduct of business activities as described in a registration statement filed by October 13, 1987, and to be engaged in upon the closing of the public offering, neither would constitute a substantial expansion of the partnership nor result in the activities of the partnership being deemed to be substantially changed. Similarly, a termination of a partnership for Federal income tax purposes under section 708(b) of the code caused by the offering pursuant to such registration statement would not result in the partnership ceasing to be treated as an existing partnership under section 10122 of the bill.

In addition, with respect to the effective dates governing the limitations on deductions for interest on corporate stock acquisition indebtedness—section 10138 of the bill—it has come to my attention that in certain circumstances the effective date provisions have been interpreted by some to assist a corporate acquisition to the potential detriment of a corporation. It is not my intention to have the effective date provisions of this legislation assist in any manner the hostile takeover of a corporation. For example, a tender offer made on, or before, October 13, 1987, to acquire the stock of a corporation at a specific price within a specified time period would be grandfathered under the provision, but it could be interpreted that competing offers made during the original term of the tender offer would not be grandfathered.

It was not the intent of the legislation to hinder the efforts of a corporation to respond to a hostile takeover. Accordingly, I intend to seek in conference appropriate changes in the effective date of this provision as are necessary to assure that corporations will receive equitable treatment under this provision, including the ability of a corporation to respond to a grandfathered tender offer during the original term of such offer, as further limited by the general January 1, 1989, effective date of this provision.

Mr. Chairman, no one likes the reconciliation process. It is a process which was not considered major under the 1974 Budget Act, but which has since come to dominate the legislative process.

However, I'm sure that we like even less the prospect of sequestration or failure to reduce the massive Federal budget deficit.

The simple fact is that the only responsible action is to approve this reconciliation bill, and demonstrate to the American people, our trading partners and our own financial markets that we have the courage to pass responsible budget-cutting legislation which includes both reasonable outlay reductions and prudent revenue increases.

I urge adoption of this important deficit reduction bill.

Mr. HAWKINS. Mr. Chairman, will the gentleman yield?

Mr. ROSTENKOWSKI. I yield to the chairman of the Committee on Education and Labor, the gentleman from California [Mr. HAWKINS].

Mr. HAWKINS. I thank the gentleman for yielding.

Mr. Chairman, title III of H.R. 3545 contains the amendments adopted by the Committee on Education and Labor. These amendments modify certain present law standards regarding qualified pension plans, including the funding of defined benefit plans; the premium payable to the Pension Benefit Guaranty Corporation [PBGC] by single-employer pension plans, and pension portability.

Title IX of H.R. 3545 contains amendments adopted by the Committee on Ways and Means which makes modifications in single-employer defined benefit pension plan funding standards, and increases the PBGC premium. Title X of H.R. 3545 contains certain other modifications of present law regarding qualified pensions and continuing health care provided by employers. It is my understanding that these titles will be discussed in conference. It is my further understanding that both the Committee on Education and Labor and Ways and Means recognize that any future jurisdictional questions will be resolved by the Speaker and the Parliamentarian under the normal rules and precedents of the House, and that neither committee intends to rely on any claim of jurisdiction based on unique disposition of these issues in the context of H.R. 3545.

Mr. Chairman, I will ask the gentleman, is that his understanding as well?

Mr. ROSTENKOWSKI. Yes it is, and I agree with the chairman of the Committee on Education and Labor.

Mr. HAWKINS. Mr. Chairman, I rise in support of H.R. 3545. Title III of the bill contains the amendments adopted by the Committee on Education and Labor.

The amendments to the Employee Retirement Income Security Act of 1974 made by subtitle A represent a bipartism approach to solving the serious problems facing our pension system in the areas of plan termination and funding. In addition, a substantial increase in the annual permium paid by single-employer plans to the Pension Benefit Guaranty Corporation is authorized.

The amendments made by subtitle B are designed to further national retirement income policy by providing for pension portability and greater likelihood that money saved for retirement will be used for that purpose.

Subtitles A and B are comprehensive packages of legislative change. In most instances, the changes affect matters within the sole jurisdiction of the Committee on Education and Labor. In certain other instances, the changes affect matters within the shared jurisdictions of the Committee on Education and Labor and the Committee on Ways and Means. In a few instances, the changes affect tax matter within the sole jurisdiction of the Committee on Ways and Means.

In its amendments contained in title X and XI of the bill, the Committee on Ways and Means has adopted similar legislative changes, most of which affect matters within the sole jurisdication of that committee, some affecting matters which are within the sole jurisdication of the Committee on Education and Labor, and some within the shared jurisdiction of our committees.

Prior to the actions of either committee, the committees informally agreed that the serious problems facing the pension system needed comprehensive and integrated solutions. Because of the complexity of the issues involved and the need to carefully coordinate the labor and tax provisions of ERISA, the committees agreed that, notwithstanding the jurisdictional prerogatives of our two committees, each would develop its own package of legislative changes. Both packages have been included in the bill before us and will move forward to conference.

Our primary goals in adopting this strategy were two: to enable the conferees to have the benefit of broader approaches to these problems than would otherwise be the case if the normal jurisdictional procedures were followed and to avoid further complicating an already difficult budget process.

Although the legislative proposals adopted by the Committee on Education and Labor and the Committee on Ways and Means are different, we share the common goal of improving the benefit security of all workers and the financial condition of the PBGC. I am confident that we can work out our differences amicably and quickly in conference and that the cooperative spirit with which we have approached these issues thus far will continue to prevail.

A brief summary of the major features of title III follows:

Summary of the Pension Asset Protection Act of 1987 (Subtitle A of Title III of H.R. 3545)

As a result of the deficit of the Pension Benefit Guaranty Corporation (PBGC), the government agency that guarantees the defined benefit pension obligations of employers, the Budget Committee has required the Education and Labor Committee to raise $500 million in revenues for the PBGC over the next three years as part of the Omnibus Budget Reconciliation Act of 1987 (the Guaranteed Deficit Reduction Act, H.R. 3545).

In February of 1987, the Administration submitted a comprehensive legislative proposal to Congress to address the problems raised by the premature termination of overfunded single-employer defined benefit plans and the weakness of the current minimum funding rules with respect to certain underfunded single-employer pension plans. In addition, the President's Budget for Fiscal Year 1988 assumed a substantial increase in the annual premium paid by covered plans to the PBGC and a change in the form of the premium from a uniform rate to a two-part rate, consisting of both a flat rate component and a variable rate component based on the extent of unfunded liability of the plan.

To a substantial extent, the legislative changes approved by the Committee on Education and Labor and contained in subtitle A of Title III of H.R. 3545 adopt the general structure and content of the Administration's February proposals. The major features of the Committee on Education and Labor's legislative proposals are as follows:

1. WITH RESPECT TO THE PBGC PREMIUM

The annual premium is increased from $8.50 to $19 per participant in order to meet the Budget Reconciliation target. An additional per participant funding charge will be assessed against any employer terminating a defined benefit pension plan after July 1, 1987. The charge is actually a deferred premium. It was adopted in recognition that the premium is being kept artificially lower than would be necessary in order to retire the PBGC's deficit in order to encourage employers to remain in the defined benefit pension system. Once an employer makes the decision to leave the defined benefit system, a mechanism ought to exist to recoup some portion of the premium that would otherwise have been charged to employers to fund the PBGC program on a realistic basic, but for Congress' desire to keep the premium as low as possible. For the first three years after enactment, the charge will be $200. Thereafter the charge will be recalculated each year as a percentage of the PBGC deficit at that time.

2. WITH RESPECT TO OVERFUNDED PLANS

Under current law, an employer can receive assets in excess of pension liability only by terminating its pension plan. The Committee bill seeks to discourage employers from prematurely terminating their pension plans and jeopardizing the benefit security of workers. The bill will allow employers to withdraw those assets without terminating the plan provided that, after the withdrawal, an asset cushion remains in all plans maintained by the employer and members of its controlled group. The cushion must equal the greater of 125 percent of termination liability or full funding limit under current law. If an employer chooses to terminate a pension plan rather than withdraw those excess assets, an amount equal to the cushion will be paid out to active participants and retirees as partial compensation for their loss in benefits from the premature termination of the employer's pension plan. The Committee has adopted this approach in order to be sure that it would always be economically advantageous for an employer to withdraw assets, rather than terminate the plan. An employer that terminates an overfunded pension plan at a time that it or any member of its controlled group maintains other plans funded at less than a specified amount would be subject to accelerated funding obligations over 3 years in order to bring those plans up to that specified amount. Rules similar to the termination rules would apply in cases of mergers, acquisitions, and transfers of assets outside the controlled group.

3. WITH RESPECT TO UNDERFUNDED PLANS

The Committee bill requires plans that are not fully funded for termination liability to increase their yearly minimum funding contribution in order to improve their funding status and prevent further deterioration. Additionally, the bill tightens the current rules regarding the payment of the annual funding obligation by requiring payment within 2 months after close of the plan year. The employer and its controlled group will be liable for making this contribution.

The bill also tightens the rules governing waivers of funding contributions. If an employer seeks a waiver of its funding contribution, the waiver must be requested within 2 months after close of the plan year. The maximum number of waivers is reduced from 5 over 15 years to 3 over 15 years and will be permitted only in cases of temporary business hardship of the entire controlled group.

Mr. LATTA. Mr. Chairman, I yield such time as she may consume to the gentlewoman from New Jersey [Mrs. ROUKEMA].

Mrs. ROUKEMA. I thank the gentleman for yielding time to me.

Mr. Chairman, I want to commend the chairman of the Committee on Education and Labor for his fine work on the ERISA portion of this bill.

Mr. Chairman, I rise to bring to the committee's attention several points in connection with the ERISA funding and title IV single employer termination insurance amendments included in this legislation. First, it should be understood that the Committee on Education and Labor provisions included under title III of H.R. 3545 are highly protective of the interests of employees and retirees covered under defined benefit pension plans. These provisions are comprehensive and address those issues which the administration has recommended we consider—namely the increase in premium income needed to finance the PBGC single-employer program, faster funding of pensions to reduce PBGC risks and increase participant security, and provision for a withdrawal mechanism from ongoing plans to encourage plan continuation and discourage plan termination. However, these provisions differ in some important respects from the recommendations the committee received from the administration and many organizations representing PBGC premium payers.

On the issue of the pension increase, the committee proposal provides a flat $19 premium plus an exit premium initially set at $200. The administration recommended a variable rate approach and a modified version of that approach has been included in the bill under the Ways and Means Committee title. As I have stated throughout the development of this legislation, given the level of the flat dollar increase that is required to raise the same amount of premium income for PBGC, it is perhaps time to encourage underfunded plans to become better funded and to introduce at least some differential into the premium structure to reward those plans that have fully funded and present little or no risk to the PBGC.

This is especially the case given the continued concern of the administration and many employers with the adequacy of the funding standards under the Education and Labor Committee approach.

One variable rate approach that should be considered in conference, which would be actuarially equivalent to increasing the current premium from $8.50 to $19 per capita as under title III, would be to limit the premium increase to $14 per capita for well-funded plans (that is, those having plan assets in an amount equal to or in excess of plan vested liabilities). This approach would also provide for a variable rate of $5.50 for each $1,000 of per capita plan underfunding. In no event would an underfunded plan premium have to exceed $45 per capita.

This variable rate approach, or similar one, would produce positive results. It would allocate premium costs more equitably by requiring higher premiums from single-employer plans with the greatest underfunding. It would reward employers with well-funded plans. It would encourage better funding of poorly funded plans. It would reduce the existing insurance subsidy to sponsors that do not fund their plans adequately. It would also limit the incentive to leave the defined benefit system that would result from the higher and higher per capita premiums needed to raise sufficient revenue for the PBGC.

Finally, the variable rate is further justified now that the PBGC rates are being raised substantially for the second year in a row, because to do otherwise would raise the rate proportionally much more in terms of benefits insured for those plans having lower benefit levels. Particularly for those plans who have done a good funding job and who cover the country's lower wage workers, the higher premium increase that would be required under a flat rate approach would not only penalize such well-funded plans, but may discourage employers from covering low wage workers under defined benefit plans.

In answer to arguments as to the added burden of a variable rate approach on some employers, it should be understood that even for employers paying a maximum variable rate equivalent of $45 per capita, the increased cost over a $19 flat premium would, in most cases, amount to less than 1 percent of such employers' pension contributions.

Given the diversity in the approaches taken by the Committee on Education and Labor and the Committee on Ways and Means as to this issue, I believe that in conference this body can greatly improve the pension provisions and make them more equitable by further strengthening the funding standards and incorporating a variable rate approach in the PBGC premium structure.

In addition, I think we should recognize that the PBGC deficit may continue to grow unless in conference this body can improve the PBGC's claim in bankruptcy or devise special rules to discourage employers in Chapter 11 from dumping their underfunded plans onto the PBGC. As recommended by the administration, this bill already makes a marginal improvement in this regard by increasing from 75 to 100 percent the liability to the PBGC for the amount of plan underfunding.

In conclusion, given the far-reaching nature and diversity of the pension provisions in this reconciliation bill, the task of the conferees will be a difficult one and not without some consequence to the employers sponsoring and the participants covered under single-employer defined benefit pension plans. In the end the legislation must protect pension participants as well as the PBGC, encourage the continuation and sound funding of defined benefit plans, and give at least some recognition to long-term retirement income security considerations by expanding pension plan coverage and by improving pension portability.

Mr. LATTA. Mr. Chairman, I yield 3 minutes to the gentleman from Massachusetts [Mr. CONTE].

Mr. CONTE. Mr. Chairman, I rise in opposition to this measure. Although I applaud its objective—the reduction of the deficit through a package of spending cuts and revenue enhancements—this is simply the wrong bill at the wrong time.

The events of the past several weeks, and particularly the dramatic drop and continued instability of the securities exchanges around the world, have made clear the need to bring the Federal deficit under control. Not only does that effort have to be made for the benefit of our domestic economy, but in addition to stabilize the world economy on which this Nation is so dependent.

There are many contributing causes to the current situation. Certainly there are fears about the global economy. World economic growth has been lopsided, with other countries growing primarily by selling to the United States. Last year's trade deficit of $156 billion may not have been a cause, but was certainly a symptom of a domestic economy in trouble.

One of the consequences of our trade imbalance has been that our budget deficit has in large part been financed overseas. The money that we have been sending overseas for imports has been coming back to us in the form of investment. But that creates an additional problem. The economic boom of the past several years has been premised upon economic expansion and low inflation. But the problem is that interest rates must be kept low enough to keep the expansion growing, but high enough to attract the foreign investment that finances the budget deficit.

Clearly, in the absence of clear-cut progress, or even the appearance of a specific commitment to make serious budget deficit reductions, world-wide confidence in our ability to walk this policy tight-rope has been shaken. Recent high-level statements regarding the level of the dollar or Federal Reserve policy may have helped trigger the past 2 weeks' panic on Wall Street. But the underlying cause of the problem—the accurate perception that there is not much going on to reduce the deficit—remains.

Only in the face of the panic of the financial markets, have we seen what should have taken place years ago—a genuine effort by both congressional and administration leaders to arrive at a concensus position on deficit reduction. There is finally a recognition that we must put partisan politics aside, or at least on the back burner, while everything except Social Security is put on the table.

As a member of the negotiating team that is trying to come up with a workable, responsible, deficit reduction approach, I have been convinced in this week's meetings of the sincerity of the participants. I am optimistic that we will, in fact, be able to come up with an alternative to the Gramm-Rudman-Hollings sequester, and also a responsible plan for deficit reduction in the longer run.

But in my view, the reconciliation measure before us does not advance this effort, and in fact is premature by coming just as the so-called Budget Deficit Summit is getting underway.

The dimensions of this measure, consisting of approximately $12 billion in revenue increases for fiscal year 1988, have been known for some time. Yet this was clearly inadequate to convince the captial markets of the sincerity of congressional efforts to bring the deficit under control. In other words, the stock market crash occurred with reasonably full knowledge of this measure.

That says to me that we need to try something else. The dimensions of that something else are being worked out in the negotiations between the Congress and the administration. But to go ahead now, with this clearly inadequate and discredited bill, sends exactly the wrong signal. This bill represents business as usual, while we need something other than the usual. I strongly oppose adopting this bill at this time.

While I strongly oppose this bill as a matter of principle, as the wrong bill at the wrong time, I must also take issue with at least a few of its specific provisions. For example, once again the Merchant Marine Committee's section of the measure side-steps the obvious and clearly overdue reform of imposing Coast Guard user fees on recreational boaters. A simple $20-per-year fee would raise about $100 million—perhaps not a great amount in the national scale of things, but certaining an equitable and appropriate measure. Instead, the committee has proposed a user fee on military escorts in the Persian gulf, a matter probably outside of the committee's jurisdiction and a dangerous precedent for turning our Armed Forces into paid mercenaries.

With regard to agriculture, the committee has reported a watered-down payment limitation provision that doesn't actually save any money in fiscal year 1988. Although that provision may save as much as $215 million in fiscal years 1989 and 1990, most of the remaining contributions from the Agriculture Committee simply push forward outlays from year to year.

While the Ways and Means section of the bill contains a number of worthwhile provisions, it also provides nearly $400 million in tax expenditures—items that some might regard as special interest tax breaks. I am also concerned about a provision dealing with the treatment of customer base intangibles which would have the effect of disallowing any deduction for amortization of the cost of a customer list. It would deny the deduction even if the taxpayer can prove that the list declines over time and does not renew itself. This would have a seriously depressing effect on the home heating oil industry, and I hope that this provision can be tightened up at some point to distinguish between abusive and legitimate uses of this deduction.

Mr. Chairman, I again stress that this is the wrong bill at the wrong time. We should wait until the work of the legislative-administration summit has been completed. Under these circumstances, I must urge the defeat of this measure.

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Mr. GRAY of Pennsylvania. Mr. Chairman, I yield such time as he may consume to the gentleman from Pennsylvania [Mr. COYNE].

Mr. COYNE. Mr. Chairman, I rise in support of the reconciliation bill.

Mr. Chairman, I rise in strong support of H.R. 3545, the budget reconciliation bill for fiscal year 1988. This vital piece of legislation will be an important element in sustaining this Nation's increasingly fragile economic health. I want to take this opportunity to congratulate both Chairman ROSTENKOWSKI and Chairman GRAY for their dedication to the process that has brought us to this point today. I commend them for their leadership during the many hours of difficult, often fractious, debate on this reconciliation package.

Now the time has come for us to make an extremely difficult decision. And the alternatives to this bill are simply unpleasant. The consequences of this legislation are many, are obvious and are considerable. If we do not approve this bill what will be the reaction in financial markets around the world? And how serious will our efforts to bring down the deficit be viewed by the American public? Not very, I fear.

If we fail to pass this bill, the impact of automatic budget cuts under the Gramm-Rudman-Hollings law will be devastating for every segment of our society—the rich and the poor; white collar and blue collar; whites, blacks, Hispanics; the Northeast and Southwest—no one and no place can expect to be spared the consequences if we fail to act.

And given the recent turmoil in the world's financial markets, what we are trying to do today still may not be enough to reassure those markets.

The messages coming from Wall Street and from Main Street are crystal clear: Get the economy back on an even keel and do whatever is absolutely necessary to do it. That means reduce the deficit now, not later, even if that means raising taxes.

President Reagan has expressed confidence in the economy and contends that all the economic indicators are robust.

I have a distinctly different view of just how robust the economy is today. Consider these indicators:

The trade deficit—in the month of August the trade deficit was $15.7 billion, bringing the cumulative total for the year to $114.1 billion. That's $6 billion ahead of last year's record setting trade deficit.

Unemployment—officially, more than 7 million Americans remain out of work despite the nearly 5 years of steady economic expansion.

Poverty—more than 36 million Americans are officially living at, or below, the poverty level. Many of these people hold jobs that pay minimum wage, a level of income that has lost nearly a third of its value to inflation over the past 8 years. And, a recent study by the Physicians Task Force on Hunger in America reports that as many as 20 million children, elderly and blue collar workers are undernourished. And this in a country that has witnessed record grain harvests for 3 straight years.

If these are the good times, as so many in the Reagan administration assert, I shudder to think what bad times would bring.

What if we do not pass this reconciliation bill? We all know what will happen. The automatic budget cuts, as required by law will cut a large swath through every Government agency, and, coincidentally, just days before our national Thanksgiving holiday.

Let's take a look at where some of these automatic cuts would occur.

In housing, the only Federal program that provides specially designed housing for the elderly would be cut by more than 1,000 units. We can scarcely afford to reduce the availability of these units considering that by 1995 one in three households will be elderly. In addition, public housing subsidies would be trimmed by $120 million in programs providing funds for desperately needed repairs and maintenance.

Federal education programs would be slashed a whopping $1.8 billion. Deep cuts would be made in programs for disadvantaged children and in financial assistance to low-income college students.

More than $340 million would be lost to community development, urban development and economic development grant programs. These programs have served as the cornerstone of Federal assistance to local governments striving to revitalize their cities.

Drug abuse programs, a major priority of the White House, would lose nearly $12 million while the Drug Enforcement Agency stands to be cut by nearly $43 million.

But among all this carnage there is one cut under Gramm-Rudman-Hollings that seems to make a lot of sense—the $4.3 million reduction for the Office of Management and Budget.

These automatic budget cuts simply make no sense, especially coming, as they would, at a time when the United States is struggling to recover from a historic trade imbalance. Just a few short months ago, the House passed a landmark trade bill. Among the bill's provisions are programs to bolster education and job training programs as a means of improving our competitive position in world trade. I cannot think of a better way to shoot ourselves in the foot on trade than to allow these automatic spending reductions to take place at this critical juncture, jeopardizing these types of educational and job opportunities.

There is, however, a practical and workable alternative before us today. We can, and we must, reassure the country and the world that we will not tolerate massive budget and trade deficits any longer. We can take an important, and long overdue, first step in that direction by passing this bill.

While this bill makes an important contribution to reducing the deficit, it also includes some important provisions related to health care and to pensions.

Of particular interest to me is a provision that will permit Medicare certification of infant heart transplants in conjunction with hospitals performing adult heart transplants. This program will provide a crucial model to other health insurance programs and demonstrate what are needed criteria for establishing similar pediatric coverage.

This bill also includes reforms in Medicare payment practices that will save $650 million over 3 years by reducing allowable payments for eight procedures that the Physicians Payment Review Commission has determined are overpriced by Medicare.

Other various payments to participating physicians, hospitals and other providers are also reduced for savings of approximately $9.4 billion over the next 3 years. This represents greater efficiency and more accountability in the Medicare program. Over the long term these reforms should vastly improve the quality of care the elderly receive.

The bottom line on Medicare in this bill is that beneficiaries are protected from the deep cuts we have been required to make. The bill also further protects participants from billing problems by now requiring that even those physicians not accepting Medicare assignment must file claims directly to Medicare. Under this change, physicians would bill participants for only that portion of the bill that Medicare will not reimburse.

The bill also instructs the Department of Health and Human Services to develop fee schedules for radiologic and anesthesia services and for durable medical equipment such as prosthetics; and establishes new coverage for therapeutic footwear required for the treatment of severe diabetic foot disease. This reform would produce a savings of $110 million over 3 years by reducing the need for hospitalization and surgery.

Finally, this bill encourages States to voluntarily establish health insurance risk pools so that those individuals who cannot afford to buy private health insurance, or do not have access to employer-sponsored plans, will be able to have some type of basic, minimum health coverage.

In the area of pensions, new, stiffer requirements are included in this bill to ensure that retirees can count on the benefits they have been promised. Furthermore, to ease the burden on the Pension Benefits Guaranty Corporation, the cost of insurance premiums to corporations enjoying the protection of the agency has been wisely increased. The higher premiums will make a significant contribution to the financial health of this overwhelmed agency. Other pension reforms will, hopefully, discourage some employers from terminating pension plans and encourage others to maintain full funding of their plans.

In the end, what this bill does is begin the process of restoring the people's faith in our ability to deal with the deficit on a bipartisan basis. There are no smoke and mirrors in this package, and we have not turned our back on the tax reforms of 1986 intended to benefit low- and middle-income taxpayers. The revenues raised in this bill are a careful, thoughtful balance of fees proposed by President Reagan on users of Federal services, various business taxes, and extensions of current tax laws or closing some loopholes.

We cannot afford to miss this historic opportunity to turn the corner on the budget deficit. I urge all of my colleagues on both sides of the aisle to consider the events of the past 2 weeks and vote in favor of this bill.

Mr. GRAY of Pennsylvania. Mr. Chairman, I yield 3 minutes to the distinguished gentleman from California [Mr. PANETTA], a member of the Committee on Agriculture.

Mr. PANETTA. Mr. Chairman, while talk is nice, and we all wish the summit participants the best of luck, there is no substitute for action and tough votes on real deficit reduction.

The reconciliation bill we are considering today is real action and real deficit reduction. It will reduce the deficit by $14.5 billion in fiscal year 1988. Along with action on appropriation bills it will eliminate the need for Gramm-Rudman sequestration scheduled for November 20. By fiscal year 1990 reconciliation, along with appropriations cuts, will reduce the deficit by over $100 billion, bringing us well under the Gramm-Rudman deficit target for that year.

I'm sure we all hope the summit participants are successful in agreeing to the largest possible deficit reduction package. It is certainly encouraging to see the President waking up to the realization that deficits are an economic problem.

Last week's stock market crash, continued market shakiness, our position as the world's largest debtor nation, our $2.3 trillion public debt, and our continuing trade deficit all scream for quick, bold action on the deficit.

Well the Congress has been working for 8 months on a deficit reduction plan. Today is the culmination of all that work and sweat.

Outside this Chamber, on the other hand, the summit has just started its work. And unfortunately there are no guarantees that the summit will produce anything but talk. Whether it does or not Gramm-Rudman sequestration will be a reality on November 20, summit agreement or no summit agreement.

Let's remind ourselves of how devastating sequestration will be: Defense programs, excluding personnel, will be cut by 10.5 percent across the board. The postsequestration level in defense will be $32 billion in defense spending authority below the President's fiscal year 1988 request. Research and development will be cut by $4.3 billion, procurement will be cut by $13.5 billion, and operations and maintenance will be cut by $8.8 billion.

Nondefense programs will be cut by a 8.5-percent across the board. Medicare, agriculture, and education programs would be cut by $1.4 billion each. The National Cancer Institute will be cut by $62 million, job training by $328 million, elementary and secondary education by $500 million, education for the handicapped by $154 million, vocational education by $86 million, the EPA will be cut by $490 million, aid to highways by $1.1 billion, Federal Aviation Administration by $206 million, subsidized housing by $667 million, NASA by $969 million, and the FBI by $116 million.

Make no mistake about it, Gramm-Rudman sequestration this November will mean some of the deepest spending cuts in history.

To avoid this budget Armageddon Congress and the President must agree to $23 billion in alternative deficit reduction. This reconciliation bill before us today is a major component of an alternative plan which will reduce the deficit by over $23 billion and avoid sequestration. Here are the pieces to this package: $12 billion in revenues included in reconciliation; $2.5 billion in reconciliation spending cuts; $8.7 billion in appropriations savings, including tougher IRS enforcement; $1 billion in savings on public debt interest from enacting reconciliation and appropriations; and $24.2 billion in total deficit reduction.

We will hear a lot of complaints today about the tax increases in reconciliation. But even the President is backing off his pledge to use his veto gun on any tax increase. Let us also not overlook the fact that he has signed into law over $200 billion in tax increases since becoming President, and for this year's budget he proposed $22.4 billion worth of new revenues, including user fees, asset sales, and additional IRS enforcement.

Also, let's not forget that the revenue increase now being considered by the House and Senate is 40 percent lower than what the President and Congress pledged to achieve in their respective budget plans. We have already backed off a tougher amount of increased revenue, lets draw the line here and approve at least $12 billion in new revenue.

Obviously the greatest threat to the goal of $23 billion is the tax issue. But does it really make sense to sacrifice airline safety, Head Start and AIDS research on the altar of no revenue increase? Does it make sense to play games with the defense budget and cut back on fuel, ammunition and spare parts when we are risking American lives in the Persian Gulf? With the wolf of a financial crisis outside the door and the entire world looking to this body for leadership and action it will be fiscal suicide to reject $14.5 in real deficit reduction.

At the time the President signed the original Gramm-Rudman bill he said: "Gramm-Rudman won't make our decisions any easier, but it will make our choices crystal clear for all to see." The President was right. Because of Gramm-Rudman we are all forced to face those tough choices. It puts the Congress and the President between a rock and a hard place. Gramm-Rudman means the deficit will be reduced one way or another, through a rational, fair and balanced plan or through mindless across-the-board cuts in programs both Democrats and Republicans support.

Today we have the added problem of a world wide financial crisis as an extra incentive to what is the right and responsible course of action. Never have the choices been so clear. No more important vote will face the House this year. I urge a "yes" vote on reconciliation.

Mr. LATTA. Mr. Chairman, I yield 2 minutes to the gentlewoman from Connecticut [Mrs. JOHNSON].

Mr. SUNDQUIST. Mr. Chairman, will the gentlewoman yield?

Mrs. JOHNSON of Connecticut. I yield to the gentleman from Tennessee.

Mr. SUNDQUIST. Mr. Chairman, if the budget process this year wasn't so sad, it would almost be entertaining. To the average American observer, we're beginning to look like participants on a TV game show.

Think of all the similarities: For most of this budget season, we've been spinning the "Wheel of Fortune." New entitlement programs, budget-busting catastrophic health and housing bills, and all sorts of prizes to take home. We authorized money as though we hadn't the first care about the "Truth or Consequences." While we merrily played our silly game of "Tic Tac Dough" we didn't realize that we were actually playing "Jeopardy." When we realized we were 4 months behind the budget schedule, with not a single appropriations bill yet to reach the President's desk, it was time for "Concentration"—and our fearless leaders revved up the reconciliation machine. Thus was born "pizza cheese" provisions and Persian Gulf escort fees, to pay for all the fun we've had so far. As if "pizza cheese" wasn't enough to advance us to the "Double Jeopardy" round, our Democratic leaders had to sweeten the pot with some billion-dollar transition rules and special-interest tournaments. After all of the Democrats got their chance to climb the "$400 Million Pyramid," the "Password" was given that the "Price Was Right." Meanwhile, we await the results of "The Dating Game" between the White House and our congressional summiteers. Mr. Chairman, the 1988 congressional budget process has been enough to make Vanna White blush.

All of this, as I said, would be hugely entertaining if it weren't so embarrassing to this body as an institution. We can put an end to the game show mentality today by voting down this reconciliation bill. Aside from the effect of snubbing the summit process now underway, this bill is the worst thing we can do to reassure the markets. This bill represents spending increases instead of spending cuts, user fees instead of cuts, more taxes instead of cuts, and shifting outlays instead of cuts.

All year long, the Democratic leaders of Congress have been begging for a budget summit. When the President agreed, they said it was time to put partisanship aside. This bill does the exact opposite. Let's stop playing games, and put this reconciliation bill aside.

Mr. DORNAN of California. Mr. Chairman, will the gentlewoman yield?

Mrs. JOHNSON of Connecticut. I yield to the gentleman from California.

Mr. DORNAN of California. Mr. Chairman, it is eerie that today, October 29, is the anniversary of the famous stock market crash of 1929 and we are here debating a reconciliation bill that threatens to spark a recession and of course a further plunge in stock prices. It should surprise no one in this Chamber that today's stock market gain of 91.51 points, the third largest in Wall Street history, was fueled by our defeat of the rule on reconciliation at midday. And it should not surprise anyone if the markets react negatively tomorrow if we pass this tax raising bill tonight.

Mr. Chairman, it is nonsense to believe we can tax our way out of the deficit problem. The only sure way to reduce the deficit is to reduce spending. Period. I repeat, reduce spending.

The Democrats say that we need more productivity, so they tax productivity. That's inane. The Democrats say we need a rebound in stock prices, so they propose taxes that would stifle mergers and acquisitions, a driving force in the bull market. The Democrats say we need a lower deficit, so they add $400 million in pork barrel spending to a bill supposed to reduce the deficit. The Democrats say we need cooperation, so they ride roughshod over the Republican minority while paying lip-service to the President who has followed through on his offer to negotiate a budget deficit reduction in good faith. The Democrats say we need to make tough decisions, so they reward themselves by including another pay raise in the bill. Another pay raise. Can you believe this arrogance.

Mr. Speaker, if we pass this bill, we will be signaling the world's markets that we are not serious about either working with our President on a truly bipartisan budget agreement, or fulfilling our obligation to act responsibly. If this monstrosity passes tonight, Mr. Chairman, you can be sure that the stock markets will let us know what they think tomorrow. Let's do the right thing, the principled thing. Let's do the smart thing. Let's defeat this market buster.

Mr. LAGOMARSINO. Mr. Chairman, will the gentlewoman yield?

Mrs. JOHNSON of Connecticut. I yield to the gentleman from California.

Mr. LAGOMARSINO. Mr. Chairman, I thank the gentlewoman for yielding.

Mr. Chairman, I rise in strong opposition to this legislation before us, and I urge my colleagues to defeat it.

Mr. Chairman, I rise in strong opposition to the Omnibus Budget Reconciliation Act, H.R. 3545. This poorly drafted deficit reduction package is opposed by the American Farm Bureau, the National Federation of Independent Business and the Small Business Legislative Council among others. This legislation relies far too heavily on new taxes and additional revenues rather than worthwhile spending reductions. Furthermore, while the legislation claims spending cuts of $3.7 billion in fiscal year 1988 it is interesting to note that $1.7 billion in savings are achieved by shifting payments to fiscal year 1989. In addition, entitlement expansions including a welfare reform bill which will cost $6.6 billion over the first 5 years.

Mr. Chairman, this legislation also contains dozens of special tax breaks for particular corporations, housing projects, sports complexes, municipalities, and private individuals. The cost of these special interest tax breaks represents revenues the Government will not be able to apply to its budget deficit. Moreover, this bill makes substantial adverse, changes in the Tax Code only a year after the Tax Reform Act of 1986 was signed into law. Small business and individual taxpayers, whether they were for or against last year's tax bill, are united on one point. The economy needs tax stability.

Mr. Chairman, just last month a bipartisan compromise resulted in legislation, signed by the President, reinstating the Gramm-Rudman provisions. I supported that compromise because it guaranteed at least $23 billion in deficit reduction for fiscal year 1988. However, every effort should be made to reduce the deficit without sequestration in a way that does not require burdensome tax increases.

I encourage my colleagues to vote against this bill.

Mr. Chairman, it is my understanding there is a 3-percent pay raise for Members of Congress contained in this legislation. Do we deserve this? Clearly no. Some of my colleagues might think because we had 2 days today that we deserve extra pay. Try to sell that to your constituents.

Mrs. JOHNSON of Connecticut. Mr. Chairman, I ask my colleagues, particularly those who voted for the budget resolution that passed this House, to oppose this reconciliation bill.

I ask the Members to remember the pages and pages of rhetoric that said the budget resolution was OK because it paired $18 billion of tax increases with $18 billion in spending cuts. Its legitimacy rested on pairing every dollar of tax increases with a dollar of spending cuts. That was the primary argument for its passage.

That promise made by this House to the American public is being broken by this bill. This bill and the actions of the Appropriations Committee and the subcommittees combined do not pair spending cuts with tax increases. That promise that was made repeatedly is being broken. It is now false. So I call on you to reject this bill and fulfill the promise, at the very least, of your own budget resolution to pair spending cuts into tax increases.

This bill is $13 billion in taxes and revenues. There is only $860 million in savings out of $1 trillion budget. That is downright pathetic, and get this: there is $1.7 billion in false savings, created by shifting dollars that will be spent this year into next year's budget. In that "Gramm-Rudman fix" bill that we passed only a few weeks ago, the one very small reform we got was a law that said we could not do this, shift money spent on one fiscal year into the budget of another fiscal year. Before the ink is dry, we are breaking our own law and are shifting figures to create phony savings all over again.

New revenues are necessary to address the fiscal crisis America faces but a few new taxes can't do the job. They must be coupled with real savings on the spending side to develop a powerful package that sends a clear signal to our citizens and the world that our democracy is strong, our representatives unafraid of the responsibilities they bear.

Mr. Chairman, I urge my colleagues to oppose this reconciliation bill and make the House as good as its word.

Mr. GRAY of Pennsylvania. Mr. Chairman, I yield 1 minute to the genteman from Illinois [Mr. HAYES].

Mr. HAYES OF Illinois. Mr. Chairman, I rise to offer my opposition to a section 10173, subsection E which restricts local communities from using tax-exempt bonds to purchase utility facilities. While I do not oppose the reconciliation bill, I am adamantly opposed to this provision. It is my hope that the House will recede to the Senate when this bill goes to conference and that the use of tax exempt financing to aquire electric utility assets not be infringed upon.

Mr. Chairman. I rise to offer my opposition to a particular provision of the reconciliation bill before us today. The provision which concerns me—section 10173, subsection E—restricts local communities from using tax-exempt bonds to purchase utility facilities.

I have serious concerns about this proposal. It was added without the normal due process. There was no notice, and there were no hearings, and when I have spoken to my colleagues about it, few knew that it was even in the reconciliation bill.

This provision could have a negative effect on this country's energy policy. There are 2,200 systems in the country that have public power. Fourteen percent comes from municipally owned systems. This provision would effectively prevent any more local municipalities from exercising the option of municipal ownership, forcing them to be held hostage to their current systems. My colleagues, I want you to know that many of your local communities have franchise agreements that will expire in the next few years. In 1991, the franchise agreement in South Tucson, AZ, will expire. In 1997, there will be expirations in Coral Gables, FL, and Maywood, IL. In 1996, there will be expirations in Elmhurst, IL, and Biloxi, MS. In 1988, there will be expirations in West Palm Beach and Topeka, KS. In 1987, there will be expirations in Bismarck, ND, and Shreveport, LA. If you think your hometown is exempt, you had better think again.

This provision also takes away a major negotiating tool of local government. Even if they do not wish to exercise the option of municipal control, the mere possibility gives important leverage to local governments.

My colleagues, I am also concerned about my constituents. The city of Chicago is studying the feasibility of a partial takeover of the local electric utility. Local newspapers have reported that Chicago consumers could save as much as $18 billion in electric bills over a 20-year period; $18 billion. And that is just in Chicago alone. If Chicago electric consumers can save even a fraction of that, then it is certainly worth more study.

But, if the ways and means provision becomes law, it will be impossible. The savings this provision will produce are meager—less than $100 million over a 3-year period. Additionally there are also tax benefits for investor-owned utilities in this bill, tax benefits to the tune of over $50 million, it is a case of taking from the public interest to pay for the special interest. It is definitely not in the consumer interest, whether the consumers are in your district or mine.

Mr. Chairman, I do not oppose the reconciliation bill. But I am adamantly opposed to this provision. It is my hope that the House will recede to the Senate when this bill goes to conference.

Mr. Chairman, I am including with this statement a list of concerned national organizations that also oppose this provision:

Consumer Federation of America.
American Federation of State County and Municipal Employees.
American Public Power Association.
Consumer Energy Council of America.
United States Conference of Mayors.
National League of Cities.
National Consumers League.
Public Securities Association.
Fund for Renewable Energy and the Environment.
American Public Gas Association.
Public Citizen.
Environmental Action.
Government Finance Officers Association.
Citizen/Labor Energy Coalition.
Friends of the Earth.

Mr. LATTA. Mr. Chairman, I yield 2 minutes to the gentleman from Texas [Mr. ARMEY].

Mr. ARMEY. Mr. Chairman, I thank the gentleman for yielding this time to me.

Mr. Chairman, what we are doing here today is keeping a promise, a promise that was made by the Speaker of the House, before this session of Congress began, to raise taxes on the American people.

Let us understand the language with which we speak in this body. When we say we are going to raise taxes, we mean, dollar for dollar, we are going to take a dollar out of your pocket and put it in our pocket. And when we say we are going to cut spending, we mean we are not going to increase the spending we had planned by as much as we had planned. And the fact of the matter is while there is a bipartisan, bicameral summit meeting to attempt honest budget reconciliation that will give some relief to the American taxpayers, the Speaker and his leadership team are ramming, dollar for dollar, $12 billion worth of tax increases through this body today to strengthen his hand in that summit while he gives us the false promise of a decrease in the spending increase next year.

Now, they tell us that we have to raise taxes because we cannot cut spending. We have had on this floor this year 23 separate amendments to appropriation bills to cut spending in an amount of $5 billion, which could be $5 billion of tax relief for the American taxpayers. All but 3 of those 23 amendments were defeated, and 117 Members of the Democratic Party in this body could not find a single one of those 23 amendments to cut spending for which they could vote yes. By the way, this was to cut the increase in half, not cut spending but increase by only half as much as was planned. As I say, 117 Members could not find one to vote for.

Mr. Chairman, I say that the time has come for us to vote no for American taxpayer.

Mr. GRAY of Pennsylvania. Mr. Chairman, I yield 1 minute to the gentleman from Ohio [Mr. PEASE].

Mr. PEASE. Mr. Chairman, many will point out flaws in the various individual provisions in the Ways and

Means tax package. But I ask my colleagues to look at the big picture. I think we here today in this Chamber have an obligation to approach this package from a broader perspective and to look at the Ways and Means proposal as a package, and to consider the message it sends to a jittery international market eagerly awaiting a sign that the United States is taking decisive action to put its economic house in order.

Let's look at the bottom line, and see what the Ways and Means revenue provisions would mean to the average taxpayer. The answer is not much, and that's good! We don't need to go to the average taxpayer on this one. In fact, as a committee, we very deliberately steered a course to avoid placing burdens on middle and lower income Americans. That is why we stayed away from excise and payroll taxes.

Instead, we concentrated on provisions which further the aims of the landmark Tax Reform Act of 1986. Indeed, it takes the kinds of steps we should be taking to improve the Tax Code whether or not we needed to raise the money for deficit reduction.

Just as important, this bill keeps faith with the taxpayers on the key matter of tax rates. We set in motion an orderly reduction of tax rates last year which would give us basically a two-rate system for individuals beginning in 1988. Under the package in the bill, taxpayers can count on this reduction coming on schedule.

If you supported tax reform last year, you should be able to support the revenue package that is under consideration today. Logic demands it!

Opponents should think about the consequences of their actions. Benign neglect under the current economic situation is just plain foolhardy. Markets around the world are looking to the United States for leadership. If we fail to show that we can manage our own obvious economic problems, what can we expect to hear from Wall Street, Tokyo, Singapore, and London tomorrow? Truly, the whole world is watching.

Without a strong indication that real deficit reduction is going forward, pressure on our dollar and on interest rates will continue to mount. Our trading partners will continue to resist calls to stimulate their economies, and the financial markets will continue their dangerous instability.

I would have no quarrel with criticism that the revenue package doesn't go far enough. But, incredible as it seems in light of all the evidence we have seen in the past few weeks, opponents are arguing that a revenue increase is unnecessary. Where have these people been? What kind of economic advice are they heeding? No reputable economist could look at the fiscal situation today and say that revenue increases are out of order.

We have been gambling with our economic future long enough. Tolerance for our self-indulgence has apparently come to an end. People around the world realize that the consequences of an unlimited borrow-and-spend economic program by the United States cannot be contained within our borders.

Even if we take the modest steps we are debating today, we are far from out of the woods. The markets could be signaling a recession, which no action we take may be able to avert entirely. There is a good prospect, however, that significant and meaningful deficit reduction could find us better equipped to withstand whatever economic troubles may lie ahead.

It is certain that drifting along on the present course would leave us virtually weaponless in combatting a recession. We would not be able to increase the fiscal deficit; it would already be prohibitively high. The Federal Reserve would not be able to cut interest rates to stimulate investment, because the dollar would plummet as foreign investors bailed out from fear of inflation. We would be left with the dismal choice of either cranking up the printing presses or letting the recessionary wave swamp our economy.

This is not a perfect bill; no product of the legislative process ever is. But lack of perfection is an insufficient reason to oppose the bill—especially in light of the consequences of failure to act when circumstances so clearly compel us to do so.

Mr. LATTA. Mr. Chairman, I yield 2 minutes to the gentleman from Kentucky [Mr. ROGERS].

Mr. DELAY. Mr. Chairman, will the gentleman yield?

Mr. ROGERS. I am happy to yield to the gentleman from Texas.

Mr. DELAY. Mr. Chairman, I rise in opposition to this once-more tax-and-spend bill.

Mr. Chairman, I am strongly opposed to H.R. 3545, the Budget Reconciliation Act both because of its contents and the way it was ushered through the House.

This Legislation does not meet the demands of those on Wall Street who have called for "real" reductions in the budget deficit. Actual spending cuts total only $1 billion. The bill contains $14.3 billion in tax increases. And the rest of the supposed deficit reduction comes from the same smoke and mirrors we have seen all along in our budget process. This bill saves almost $2 billion by shifting outlays out of fiscal year 1988 into later years. It achieves a large part of deficit reduction by increasing taxes by $12.3 billion in FY 1988 and by over $54 billion over the next 3 years.

This is not what Wall Street or the majority of Americans mean when they demand a reduced budget deficit. American's don't want new taxes; they want spending cuts. The longer that this Congress treats the wishes of the American people with such callous disregard, the stronger will be the rebellion when all of this finally comes to a head. I would have thought that a 509 point drop in the stock market in one day would have signaled that our spending habits had come to a head. Apparently the heads of the majority are thicker than I realized.

Yet, what adds insult to injury in this bill is just how blatant the leaders of the majority party have rewarded themselves with goodies without regard to the costs. Anybody who believes in the commitment of the Democrats to deficit reduction should look a the following list of items contained in this bill: (1) Forgiveness of a $4 million tax liability of the Ballard Estate in Tarrant County, Texas located in Speaker JIM WRIGHT's district; (2) a $42 million tax refund for Kaiser Aluminum & Chemical Corporation in the form of special permission to carry back its investment tax credit for 15 years, enabling it to offset its tax liability in prior years. Kaiser is located in Majority Leader TOM FOLEY's district; (3) a special provision to assist a domed stadium project in Cleveland, Ohio, home of Democratic Caucus Vice Chair MARY ROSE OAKAR; (4) special tax treatment for the Claridge Hotel in Chicago, Illinois, on behalf of Ways and Means Committee Chairman DAN ROSTENKOWSKI; (5) a $26 million tax break for McLouth Steel Co. in Trenton, Michigan in the form of permission to carry forward net operating losses to offset future income. Trenton is located in Energy and Commerce Committee Chairman DINGELL's district; (6) preferential tax treatment for the University of Miami, located in Rules Committee Chairman PEPPER's district. The above documents the absolute abuse of the power of the majority party in this Congress.

An oft mentioned reason mentioned by this same majority for voting for this bill is that the only alternative is the sequestration of $23 billion across the board by the Gramm/Rudman legislation recently enacted. This too is an empty and deceiving argument. As this Congress was moving this bill to the floor of the House, the President had opened up bipartisan negotiations with the leaders of both parties in the House and Senate to achieve a lasting and real compromise to reduce the budget. Members who state that sequestration is the only alternative ignore these negotiations and contradict the statements made by the Democratic leadership taking part in these negotiations.

One of the most shocking provisions in this bill is the one granting Members of Congress a payraise. The Budget Committee scores the pay raise as a $962 million reduction in the deficit because the committee had previously assumed an even higher pay raise. That makes the Congressional pay raise of 3% seem to be a reduction in spending. This provision completely ignores the public outcry following the recent Congressional Payraise of over $12,000 by awarding an additional raise of $2,700 to Members.

Yet, the process that brought this bill to the floor really tells the story of totalitarian control exercised by the Democrats in this Congress. Republican Budget Committee members were locked out of the meetings where this bill was crafted. Once it was completed, all 2,247 pages of it, it was reported out of committee without a majority of committee members present which would have normally made it subject to a point of order on the floor. Instead, it was brought to the floor under a rule waiving all points of order, providing only 3 hours of debate and no amendments. When Republicans resoundly defeated the rule by joining with 48 Democrats who opposed the inclusion of a $6 billion welfare provision, the majority called for adjournment. This allowed them to reconvene the House in a different legislative day 5 minutes later thereby allowing them to bring the rule and the bill back to the floor without the needed two-thirds vote otherwise required. Obviously, when the majority of the Members of the House do not share the views of the leadership of the Democratic party, that leadership simply bends the rules to achieve its ends.

Mr. ROGERS. Mr. Chairman, I have to ask, as others have today, why are we taking up this bill now? The American people expect us to work in a bipartisan, good-faith effort to reduce the deficit. The President and the House and Senate leaders came together in good faith. Now, the Democratic leadership in this body insists on ramming through a highly partisan charged plan which violates anyone's concept of maintaining an open mind in negotiations, even as we negotiate. That is some good faith.

This is not the time for partisanship or ruthless tactics. It is not the time for business as usual. It is not the time for more smoke and mirrors. It is time for good-faith leadership.

I ask the Members to look at the leadership's proposal and ask themselves, is it real? Of course not. It claims $3.5 billion in program cuts. It actually cuts less than $1 billion. The majority of that claimed savings is pushing spending into following years, not cutting it.

Is it balanced? Of course not.

Earlier this year the Democrats figured that they would cut the deficit, one-half spending cuts to tax increases, but here we are dealing with a bill that hikes taxes and user fees by over $13 billion, and it gives us real cuts of less than $1 billion. That is barely a 13-to-1 ratio.

Is it fair? Not to those who thought we would leave the tax code alone for a while after last year. It is not fair to our colleagues and the administration who are trying to come up with a real, bargained, bipartisan reduction effort. It is not fair to the financial markets, and it is not fair to our constituents.

I remind my colleagues that a week ago on Wall Street and around the world we had an earthquake of about 6.5 on the Richter scale. We are still sitting on the San Andreas Fault, and nobody in this body would deny that the deficit is a contributing factor.

If Members want to send the right signal, they should vote down this effort while our negotiators are making a good-faith effort.

Mr. GRAY of Pennsylvania. Mr. Chairman, I yield such time as he may consume to the gentleman from Massachusetts [Mr. DONNELLY].

Mr. DONNELLY. Mr. Chairman, I rise in strong support of the reconciliation package.

Mr. Chairman, I rise in strong support of the reconciliation legislation if for no other reason than the devastation that will occur in this country on November 20 when sequestration hits.

The Committee on Ways and Means has put together a responsible package of spending cuts with a base-broadening, loophole-closing revenue package that does not raise tax rates. Compared to the unfair, devastating effects of across-the-board cuts, there is really only one responsible, courageous choice: Vote for the reconciliation package drafted by the Ways and Means Committee and other committees of the House.

Under the Ways and Means portion of this bill, we reform Medicare payments to hospitals and physicians, and save $1.5 billion doing so. We reform the rules governing lobbying and political activities by tax exempt organization—a provision which includes severe restrictions on the ability of exempt organizations to offer for sale items or services that are provided free of charge by the Federal Government.

Most importantly, we raise $12.3 billion in revenues in a responsible way that does not tamper with the low tax rates that were part and parcel to the Tax Reform Act of 1986. In fact, most of the revenue in this bill comes from closing loopholes created by the 1986 Reform Act.

Mr. Chairman, there is really only one choice before us today as the Nation watches our actions closely. The decline in the stock market is testimony to the belief that we will not be able to reduce the budget deficit. Prove those people on Wall Street wrong, and avoid the devastating effects of sequestration. Passage of this bill is one concrete offering we can provide to a doubting Nation.

Mr. GRAY of Pennsylvania. Mr. Chairman, I yield 2 minutes to the distinguished gentleman from New York [Mr. SCHUMER].

Mr. SCHUMER. Mr. Chairman, I rise in support of this legislation.

Let me say that today as we speak, as we all know, the world around us, the economic world, is in turmoil. It is fascinating to see that from one end of this country to the other and from one end of this globe to the other, people are looking to us, to the Government of the United States, to the Congress, and to this House for some kind of leadership.

For us to do nothing, for us to sit on our hands and say that we cannot do anything is an abdication of that leadership, and I would say to my colleagues on the other side of the aisle something that was said back in the 1960's, something that I think is very apropos now: if you are not part of the solution, you are part of the problem.

The package here is not perfect. I can find a thing or two to quarrel with. I am sure every one of my 434 colleagues here and every one of our 200 million Americans can find something in the package that they do not like.

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We can let the perfect be the enemy of the good, and because this does not meet everything that we want done, we oppose it.

The bottom line is, is this real, or is it not real. Careful scrutiny of this package will indicate that the $23 billion in cuts are real. No, it is not $30 billion, no, it is not $50 billion; but these are real cuts, and at a time when the world is clamoring for leadership from this body, for us to stand there and do nothing, for us to be picayune and say this part or that part, or the other part does not work would be an abdication of our responsibility.

If we do nothing, is it likely that the markets will crash further? Probably not. Is it possible? Is there a real possibility? Yes.

I urge the Members to support this package, because this package is $23 billion of real cuts.

Mr. LATTA. Mr. Chairman, I yield 2 minutes to the gentleman from Florida [Mr. MACK].

Mr. MACK. Mr. Chairman, I thank the gentleman for yielding me this time.

I would like to take this opportunity to put this debate in perspective with what occurred in 1929. If we go back and look at the records, the stock market fell from September of 1929 through December, a 70-day period, by 47 percent; but what is not told is the stock market rallied.

It recovered half of that loss during the next 6 months. In April 1930, though, the message was that the Congress was going to pass protectionist legislation, the Smoot-Hawley tariff bill. The market went from 294 in 1930 over a 2-year period to 41, from 294 to 41. I mention that in this context.

It was not the crash of October 1929 that created the Great Depression. It was the response of the Congress to that crash that extended the life and depth of the Great Depression, so I say to the Members on both sides of the aisle, this is a serious issue that we face.

The choices that we are making are the key thing. Go back to the two previous days prior to Monday, October 19. Three actions took place in the Congress.

The first was the House Committee on Ways and Means bill. The second was a meeting of the conference committee on the protectionist legislation making its way through the Congress, and the third on Friday, the day preceding the stock market crash of 500 points, the Senate Finance Committee passed out its tax bill.

What I am saying to the Members is that once again, we have the opportunity of seeing history repeat itself. It is the actions that we take in response to the message that we got from the market on Monday that is so vital.

It is a mistake to pass a tax bill, not a reconciliation bill, a tax bill that is antigrowth, antibusiness, and anticompetitive.

I would urge the Members to vote down this bill.

Mr. GRAY of Pennsylvania. Mr. Chairman, I yield 2½ minutes to the gentleman from Montana [Mr. WILLIAMS].

Mr. WILLIAMS. Mr. Chairman, I thank the gentleman for yielding me this time.

I think that most of the Members in this Chamber, and Americans generally, understand that if you are going to run the store, you have to have some money in the cash register.

The tragedy now in the United States is, in my judgment, that we do not have any money in the cash register. The American Treasury is bare, and it is bare because of action on tax bills that have been taken each year since 1981.

I checked just before coming over on the floor this evening. The Federal Treasury this year because of actions that we have taken every year including 1981, the Federal Treasury this year just past, fiscal year, of course, has lost $118 billion. Remember, the Federal deficit is $148 billion; and this year alone the drain on the Treasury because of our tax actions was $118 billion, and that combined with the revenue loss for every year since Ronald Reagan took office comes to a total of lost revenue of $722 billion.

According to the President's budget, the U.S. Treasury will lose in the coming year an additional $164 billion, and in the year after that, $193 billion for a total loss from 1982 through 1990 of $1,079 billion.

I remind the Members again that the Federal deficit about which all of the Members have great concern is $148 billion.

The loss to the Federal Treasury because of all the tax actions, including tax increases and tax decreases that the President of the United States and this Congress have taken in this decade, is $1,079 billion. The cash register is bare.

Mr. LATTA. Mr. Chairman, I yield such time as he may consume to the gentleman from Pennsylvania [Mr. COUGHLIN].

Mr. COUGHLIN. Mr. Chairman, I rise in strong opposition to the bill.

Mr. Chairman, the socalled deficit reduction bill just approved by the House is the most arrogant exercise of power I have witnessed in nearly 20 years in Congress. Permit me to cite only a few examples.

First, it socks the taxpayers with $54 billion in new taxes over the next 3 years but makes only $1 billion in true spending cuts over the coming year. Proponents claim that these new taxes will be paid by big corporations and the rich, but Americans are smart enough to know that it is working men and women who will pick up the tab.

Second, under the guise of deficit reduction the bill actually creates expensive new spending programs, including: $336 million for expanded Medicaid coverage; $230 million for a new vaccine injury fund; $291 million for prepayment of rural telephone bank loans without penalty; and a new $6 billion welfare program was too much even for this Congress to swallow and was mercifully dropped from the bill.

Third, many of the socalled deficit reduction measures are simply illusory, such as: $135 million in annual deficit reductions by charging a $250,000 per day fee for U.S. Navy escorts in the Persian Gulf. Left unanswered is the question of how to collect the fee; $29 million in deficit reduction in reduced dairy subsidies for cheese as a result of labeling pizza cheese substitutes; $1.05 billion in deficit reduction in 1988 by postponing agricultural commodity support payments until the following year; and $760 million in deficit reduction in 1988 by postponing Medicaid payments until next year.

Fourth, and most cynically arrogant, the socalled deficit reduction bill contains a grab bag of goodies for the Democratic leadership of the House. These include: Forgiveness of a $4 million tax liability of the Ballard estate in the Texas Congressional District represented by Speaker of the House WRIGHT, a $42 million tax refund for Kaiser Aluminum & Chemical Corp. in the Washington State Congressional District of majority leader FOLEY; and similar special treatment for Southwestern Bell Corp. of St. Louis, MO, in the congressional district of Democrat Caucus Chairman RICHARD GEPHARDT.

The kind of chicanery included in this bill is hardly calculated to increase confidence in the Government and its ability to restore confidence in the economy.

Mr. LATTA. Mr. Chairman, I yield such time as he may consume to the gentleman from Missouri [Mr. CLAY].

Mr. CLAY. Mr. Chairman, I rise in support of title III of H.R. 3545.

The Committee on Education and Labor was directed by the Budget Committee to increase the revenues raised through premiums paid to the Pension Benefit Guaranty Corporation by $500 million over the next 3 years. The legislation reported by the Committee on Education and Labor and included in the bill before you then meets that target.

In addition, in February of this year, the administration proposed a package of comprehensive reforms to the Employee Retirement Income Security Act of 1974 [ERISA] relating to the termination of overfunded pension plans by employers in order to recover assets in excess of termination liability and requiring underfunded plans to fund benefits more quickly. Because these proposals—the premium increase and the reforms—are all interrelated and seek to strengthen the private pension system and reduce the Federal deficit, we are considering them jointly.

The Subcommittee on Labor-Management Relations, which I Chair, has been considering proposals to improve the Federal Termination Insurance System for some time. Many of the issues before us today were discussed during consideration of the Single-Employer Pension Plan Amendments Act of 1985 and the subcommittee's hearings in 1985 and 1987 on overfunded and underfunded pension plans.

I want to commend my Republican colleagues, particularly the ranking member of the subcommittee, Mrs. ROUKEMA, and the ranking member of the full committee, Mr. JEFFORDS, for diligently working with us to find bipartisan solutions to the serious problems that jeopardize the retirement benefits of working men and women.

We are faced with two interrelated problems in the private pension system. First, some pension plans present a risk both to workers and to the PBGC because they are underfunded. To help shore up the PBGC and to meet our budget reconciliation requirement, title III of this bill authorizes an increase in the annual premium paid by employers to the PBGC from $8.50 to $19.00 per participant. While this increase may seem substantial, it is the fairest solution to alleviate the deficit currently faced by the PBGC.

In addition, title III incorporates reforms to ERISA's minimum funding standards which will gradually improve the funding status of underfunded plans without altering the current rules for healthy plans. In crafting these rules, the committee has tried to strike a balance between the need to improve the current funded status of underfunded plans and the need to avoid saddling companies already in precarious financial condition with substantially increased funding obligations that may have the undesired effect of pushing those companies over the brink into bankruptcy. Each of the four committees with jurisdiction over the funding rules, the Labor and Tax Committees in both bodies, has adopted a different set of funding rules. Each committee has made a good-faith effort to strike the appropriate balance and the differences among the committees will clearly be reconciled in conference.

Second, the Committee on Education and Labor is proposing a middle ground for the problem of the termination of overfunded pension plans in order to recapture assets in excess of termination liability. Under current law, employers are able to recover all of the excess funds if they terminate the pension plan. Our proposal will permit employers to withdraw excess funds without terminating the plan, provided a sufficient cushion of assets remains in the plan to protect worker's benefit security. Employers may still terminate their pension plans, but the asset cushion will be equitably apportioned among the active workers and the retirees under the plan. While many of us are concerned about permitting employers to withdraw funds from ongoing pension plans, we believe that forcing employers to terminate plans to get the money is even more harmful to benefit security.

The members of the Committee on Education and Labor believe that any changes in ERISA provide protection to participants and retirees when an overfunded plan terminates. Some believe that employers should not be able to recover assets in excess of termination liability at all. Others believe that any excess assets should be shared.

Mr. Chairman, I believe it is crucial that the proposals we are considering today provide some protection to participants and retirees.

When an employer sets up a defined benefit pension plan, it does so to provide its workers with some percentage of their lifetime wages during their retirement years. The employer promises its workers that if they continue to work for the company they will receive a pension benefit when they reach retirement age. In return, employees work under the agreement that their work over the years will build toward providing for them in their retirement years. The pension is part of a worker's wages that are deferred until retirement. Over the years, workers forego salary increases and other employment benefits in favor of protecting their retirement benefits. But, the fundamental expectation always remains—if I continue to work for this company, I will be working toward providing an adequate retirement income for myself and my family.

When an employer prematurely terminates the pension plan in order to recoup so-called excess assets, it is cutting off the worker's expectations and, in many cases, reducing his or her ability to provide for an adequate retirement income. Retirement benefits are often based upon final years of salary, so if the plan is prematurely terminated, the worker is deprived of higher benefits. The administration proposal itself recognizes that premature pension plan terminations decrease benefit security with respect to future benefit accruals.

The final consideration for workers and retirees is the role that inflation plays in affecting retirement benefits. As Members of Congress, we receive cost-of-living adjustments on our pensions. Sometimes we don't realize that most workers in the private sector do not receive automatic COLA's. Many employers provide these adjustments on an ad hoc basis, but often these adjustments do not truly reflect the actual effects of inflation. Many employers pay today's pensions in yesterday's dollars.

Premature plan terminations decrease benefit security with respect to future benefit accruals and discourage the provision of cost-of-living adjustments.

Some would argue that when an employer sets up a defined benefit plan, its only responsibility is to provide the promised benefit. They argue that the nature of the defined benefit plan is such that since the employer has to make up any shortfall if the plan is underfunded, any excess assets that remain in the trust after termination liability is satisfied belong to the employer. That is a nice theory. It doesn't reflect reality. When an underfunded plan terminates, workers and retirees do not always get their full benefits. The LTV retirees are a perfect example. When the pension benefit guaranty corporation terminated the LTV plans, many retirees saw their benefits slashed in half, since their early retirement supplements were not guaranteed. If workers and retirees are required to share the pain when their employer gets in financial difficulty, they should share the gain when their employer does well.

Congress provides substantial tax incentives to employers contributing to pension plans. The pension assets build up tax free as an incentive for the provision of retirement benefits for workers. I believe that congress has an obligation to stop letting this money that was given favorable tax treatment for the benefit of workers to be used to finance corporate mergers and takeovers. It is only fair and just that we provide some protection to the workers who spent their lives working toward financially secure retirement years.

Finally, the Committee on Education and Labor's proposals increase the annual per participant premium paid to the PBGC by covered plans from $8.50 to $19. The committee has rejected the administration's request that the form of this premium be changed from its current uniform rate to a variable rate. I know that many of my colleagues believe that the variable rate is a good idea. I do not.

I oppose substituting a variable rate premium for the current flat rate premium. There is no doubt that the PBGC's deficit is large and that, in the short term anyway, it is likely to increase. We share a common concern about the shaky condition of the PBGC and are struggling to find ways to improve it.

But I oppose the variable rate premium because it is an inappropriate solution to the current problem and because it is fundamentally unfair.

Let me summarize my concerns.

First, the PBGC is not an insurance company. The PBGC termination insurance program is not real insurance. It is a program of social insurance designed to provide a safety net for participants and retirees when their pension plans terminate without enough assets to pay benefits. If Congress had intended this to be real insurance, it would have structured the program very differently. In fact, in 1974, the ERISA conferees had before them two models: A private sector insurance model with a risk-related premium and the program we now have financed by uniform premiums. Congress rejected the insurance model. Nothing has happened since ERISA to convince me that the program is or should be more like private insurance. Adding anything to this program that makes people believe it is like real insurance concerns me.

Second, none of the variable rate proposals that have been suggested correlates the premium to the real risk that the plan poses to PBGC if the plan terminated. The administration's plan and the structures approved by the two tax committees all base the variable rate on the degree to which the plan is underfunded on a termination basis. A plan can be underfunded and pose little or no risk to the system. Any variable rate proposal that Congress adopts should hit only those companies that pose an actual risk to PBGC.

Third, I think we should be honest about what the real purpose of a variable rate premium is. Both the General Accounting Office and the Congressional Budget Office have testified before the Committee on Ways and Means that the value of a variable rate premium as an incentive to companies to fund their plans is marginal at best. The variable rate premium is simply a money-raising scheme. It is a tax paid to finance the PBGC Program. Rather than take the political heat for increasing premiums across the board to finance the PBGC deficit, the variable rate proposal allows you to raise a lot more money by taxing plans with unfunded liability at a higher rate. Yet it is the most regressive tax imaginable—it forces the poorer funded plans to pay more.

Fourth, why do we need to raise so much money in the first place? PBGC tells us that about 80 percent of their current deficit of $4 billion is attributable to liabilities from steel industry plans. In essence, what the PBGC premium payers have been asked to do is bail out the steel industry. That is totally unfair. The PBGC Program was never designed to rescue an entire industry in trouble. It was supposed to step in to pay benefits in isolated instances of business failure. It is unfair that only those companies who happen to sponsor defined benefit plans must bail out the steel industry. It is particularly unfair since most of the unfunded plans in the steel industry have already been terminated and thus will not have to pay any additional premiums.

So who should pay for steel? I believe that it is in the national interest for America to have a domestic steel industry, so if the steel industry cannot pay for its own liabilities, taxpayers as a whole should bear the national security costs of having a competitive steel industry. It is clear that the only way for steel to become competitive again is to reduce capacity. It is also clear that by far the largest component of the cost of downsizing is the huge pension and health costs that are triggered by employee layoffs and early retirements.

If the taxpayers generally are not going to pay for steel, who's left to pay? A substantial portion of the pension costs for some companies have been shifted to the PBGC and ultimately to its premium payers. If you believe, as I do, that it is unfair to ask only companies that sponsor defined benefit plans covered by the PBGC to bear the entire cost of a steel bailout, how can you believe that it is fairer to ask only those companies sponsoring underfunded defined benefit plans to bail out steel? That's what all of the variable rate proposals do—they shift the cost of paying for steel from all companies to companies with underfunded plans. I think that is fundamentally unfair.

Rather than shift the cost of paying for the PBGC's current deficit onto those companies least able to pay, I believe it is fairer to continue to require that all companies share the burden equally by paying the same premium.

The Education and Labor proposals contained in title III of the bill provide a practical solution to the problems faced by the private pension system. They will improve and strengthen the funding and termination standards and improve the financial condition of the PBGC and thus will better protect the retirement benefits of American men and women. Our workers and retirees deserve no less.

Mr. LATTA. Mr. Chairman, I yield 2 minutes to the gentleman from Illinois [Mr. CRANE].

Mr. CRANE. Mr. Chairman, I thank the gentleman for yielding me this time.

We have listened to the superstition and mythology in this country. When John Kennedy got elected President, roughly 26 percent of GNP was taken in of taxes at all levels, and today it is over 31 percent.

When John Kennedy was elected, roughly 26 percent of GNP was being spent at all levels.

In short, we were in approximate balance, and today that is over 35 percent and still growing.

If we look at the 1981 tax cut over a 5-year timeframe, that was a $980 billion tax cut, the biggest in history; but subtract $660 billion from that as a result of Social Security tax increases during that same timeframe, and the absence of indexation until 1985, that still left us with a $300 billion tax cut, still the biggest tax cut in history.

Then Congress responded in 1982 with TEFRA, Tax Equity and Fiscal Responsibility Act, and that was $229 billion over a 5-year timeframe.

That took our tax cut now down to $71 billion. Then in 1983 we got a $16 billion excise tax, modest. We laid off the taxpayers a little bit that year, but that took it down to 55.

Then we got in 1984 DEFRA, the Deficit Reduction Act, another demonstration of our commitment to balance budgets by raising taxes, and DEFRA was a $50 billion tax increase over just 3 years.

The 1986 tax reform bill this year is bringing in $29 billion, supposed to be revenue neutral, over 5; and we are supposed to start getting the benefits of neutrality in 1988, 1989, and 1990.

What is this Congress' response on this side of the aisle over here? They come forward with a $60 billion tax increase over the next 3 years.

I submit to the Members, we are overtaxed to an extreme, and for that reason this bill should be defeated.

Mr. GRAY of Pennsylvania. Mr. Chairman, I yield such time as he may consume to the gentleman from North Carolina [Mr. NEAL].

Mr. NEAL. Mr. Chairman, I have deep concerns about the provisions the tax portion of this reconciliation package which would limit the interest deductibility of any debt incurred in connection with an acquisition or stock buyback.

Mr. Chairman, hundreds of growth companies in America have relied on debt financing to make acquisitions that have either saved or created jobs. There simply is no basis for legislation which arbitrarily discourages the use of debt financing in all such acquisitions.

Mr. Chairman, I'd like to begin my argument by offering some examples of the type of acquisitions that may be stopped by this provision.

Mr. Chairman, everyone in this body knows there is an urgent need for quality day care services in this country. In the last 5 years, Kinder-Care Learning Centers has grown into the Nation's largest private day care provider, with more than 1,000 centers in 40 States. Not only does it provide day care to over 100,000 children, it has enabled hundreds of thousands of women to enter the job market. Much of the company's growth has been fueled by debt-financed acquisitions, the kind that would be discouraged and penalized by this bill.

Mr. Chairman, Stone Container Corp., which employs over 15,000 workers and is thriving in an industry besieged with tough foreign competition, recently created 450 new jobs in Florida when it used debt to acquire a company which ran an old, shutdown paper mill. Stone refurbished the mill and brought it back on line. It also used debt to acquire financially ailing Southwest Forest Industries. Stone's access to debt financing saved jobs and helped create an industrial success story.

Mr. Chairman, in recent years, the once great packaging arm of the American Can Co. was going downhill; its parent, forsaking basic industry, was becoming a financial services business. Plants and facilites were old and little capital had been invested in the business. Last year, Triangle Industries used debt to acquire American's packaging operations. Now in the hands of managers committed to the packaging business, many old American Can facilities are being modernized and Triangle's new American National Can Company is the largest and lowest cost packaging company in the world.

Mr. Chairman, this proposal has some rhetorical appeal. Some can say that we are really sticking it to Wall Street and big business. But, in fact, we're really hurting the day care providers like Kinder-Care, growing companies beating back foreign competitors like Stone, and companies investing in smokestack industry, like American National Can.

Mr. Chairman, what makes this tax proposal particularly illogical is that acquisitions, which are indisputably beneficial, will be jeopardized, while many other uses of corporate debt, will continue to enjoy the benefits of interest deductibility. What is the basis for the government deciding that one use of debt is good, but another use is bad, and should be discouraged? Why encourage a company to borrow money to build a factory, but refuse to recognize as a legitimate business expense the interest on money used to save jobs by acquiring a failing company or factories?

Are we ready Mr. Chairman to adopt a policy which puts the Federal Government in the position of establishing an arbitrary capital and credit allocation program, of saying, in effect, that all debt-financed acquisitions are, per se, bad, while those financed with equity or cash are, per se, good? I hope not. The basic difference between our economic system and the centrally planned economies is that our Government does not make such decisions. It is our strength and we should maintain our free market system rather than weakening it as this provision does.

Mr. Chairman, the fact is that big business will manage. Indeed, the provision favors companies with lots of cash, which tend to be Fortune 100 type companies. It's worth noting that these large firms, with more cash and better access to equity markets, will be able to mount both friendly and hostile transactions. Meanwhile, smaller companies, no longer able to borrow to buy back their stock, may be more vulnerable to takeovers. This is especially true now that the stock market has dropped.

Mr. Chairman, even more damaging is the fact that the other major winners under this provision are foreign companies. Since they don't pay taxes here, they would be unaffected. They could borrow anytime and any amount to acquire a U.S. firm. But U.S. firms will be hamstrung. I suspect some big foreign investors are licking their chops. It will be open season on American companies.

Mr. Chairman, I recognize that some supporters will argue that this provision will contribute to a deleveraging of American business, a desirable goal given the perception in some quarters that corporate debt-to-equity levels are excessively high, in part because of the merger and acquisition boom.

But debt-to-equity ratios, viewed in isolation, tell you little about the shape of corporate America; debt-to-equity levels change constantly. The key measure of whether corporations have gorged themselves on debt is whether or not they have enough money to meet their obligations.

Mr. Chairman, the facts show that interest coverage ratios, which represents the number of times that cash income now exceeds required debt interest payments, is 6.4, higher than it was in 1980. In other words, in the aggregate, business is better able to pay off debt service now than before the so-called merger mania took hold.

Mr. Chairman, in summary, this tax provision will hurt hundreds, if not thousands, of American companies who are trying to innovate and grow and provide jobs for our people. It will hurt our domestic economy. Stifle growth, deepen the trade deficit, and give an unfair and unreasonable advantage to foreign companies. It is essential, Mr. Chairman, that this tax, which would discourage growth and progress, be removed when our conferees meet with their counterparts in the Senate.

Mr. GRAY of Pennsylvania. Mr. Chairman, I yield 2½ minutes to the gentleman from Kansas [Mr. SLATTERY].

Mr. SLATTERY. Mr. Chairman, I rise in support of this legislation. In doing so, I would like to point out that in considering legislation like this, it is very easy to come to the floor and nitpick it and find reasons to oppose it. I can look at this legislation and find several things about it that I do not like.

There are however very important reasons why we should all be able to rise above those minor objections to support this legislation.

One of the big reasons is, it is critical for this Congress, this administration, and the U.S. Government to be able to demonstrate to the world financial community that we are capable of making some tough decisions, and making some tough decisions this evening.

Some Members say, well, this may be part of the solution, but it is not all of the solution, so I am going to vote against it. It does not make sense to say that you are going to oppose part of the solution, because it is not a total solution.

I realize this is not a total solution, but it is a darn good first step toward a solution. There has been much talk about taxes, but consider this.

This bill does not raise Federal corporate income tax rates. It does not raise Federal individual income tax rates. It does not raise Federal excise tax rates.

I ask the Members, where in the world are we going to find some additional revenue if we do not find it in the way this bill provides?

There are some Members, particularly on this side of the aisle, that say we can solve the deficit problem without revenue. I do not know how many times I have heard the cliche that the American public is not undertaxed. The Government is overspending.

To that I say amen; but the reality is, we have an enormous deficit.

The minority this evening is going to offer a substitute, at least the last word I got. Keep in mind we are dealing with a $150 billion deficit by a very conservative estimate. Many of the Members supporting the substitute say they can solve this problem without revenues. But their total package proposes not $150 billion in cuts or $140 billion in cuts. It recommends only $15 billion in deficit reduction.

They cannot find the cuts, because they cannot find the votes even on their side of the aisle, and they know that. The reality is, we have got to package something that contains revenues and contains some spending cuts.

The other point I would make, and I hope the Members are listening, the freeze advertised in the substitute advertises $11.2 billion in savings, but those savings are not anymore enforceable, not any more real than the savings proposed in this package with the 302(a) allocation ceiling.

They are not enforceable. We all have to make the tough choices later on with the appropriation bills on the spending side. I will be there. I am prepared to deal with the whole spending side including entitlements.

Mr. LATTA. Mr. Chairman, I yield 1 minute to the gentleman from Idaho [Mr. CRAIG].

Mr. CRAIG. Mr. Chairman, I thank the gentleman for yielding me this time.

I rise in strong opposition to this reconciliation package. Let me focus on another area that has not been talked about today, and that is the area of oil, oil independence, and our Nation's great dependency and growing dependency on foreign oil.

In the reconciliation recommendations of the Committee on Interior and Insular Affairs that were incorporated in H.R. 2851 that is now in this package, there is a whole new design for onshore oil and gas leasing systems on our Federal lands.

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Based on the preliminary studies, the Forest Service and the Department of the Interior say if this bill becomes law and this becomes the policy of leasing our public lands for the purpose of oil exploration and development, we can anticipate a dramatic decline in revenues to the Department of the Interior as a result of this. So here we have a bill that is proposing massive new tax increases while it is putting forth a whole new leasing plan for our public lands that will substantially reduce our capability of generating revenue from oil revenues.

Mr. Chairman, I urge a vote against this measure.

Mr. SLATTERY. Mr. Chairman, I yield 2 minutes and 20 seconds to the gentleman from Texas [Mr. DE LA GARZA], the chairman of the Committee on Agriculture.

Mr. DE LA GARZA. Mr. Chairman, I rise in support of the bill.

Like all Members of the House, I am deeply concerned about the current disarray in the world's financial markets. The Wall Street debacle of the past few days has made clear the need for Congress, in concert with the executive branch, to act decisively in a Federal deficit reduction initiative.

H.R. 3545 is a first step to getting the Federal budget deficit under control. Quick action by Congress on this bill—which proposes to cut the deficit by $23 billion this fiscal year—could do much to calm our troubled markets.

Title I of H.R. 3545, under the rule, consists of budget reconciliation proposals developed by the Committee on Agriculture. Our proposals will contribute a budget reduction of over $1.3 billion this fiscal year, as estimated by the Congressional Budget Office. In addition, title I will provide for a one-time revenue boost of an estimated $7.2 billion in fiscal year 1988 through prepayment to the Federal Financing Bank of certain rural electric loans guaranteed by the Rural Electrification Administration.

Title I, in subtitle A, will require advancing deficiency payments to producers at a 30-percent payment rate for wheat and feed grain crops and a 20-percent payment rate for cotton and rice crops. Current law provides the Secretary of Agriculture authority to advance up to 50 percent of these payments, and this authority has been used to make 40 percent of wheat and feed grain payments and 30 percent of cotton and rice payments in advance for the 1987 crop year. This policy is projected to continue through the expiration of the Food Security Act of 1985. Savings result from limiting the advances below this projection.

Subtitle A will require that 1 billion bushels of Commodity Credit Corporation-owned surplus stocks be sold on a bid basis for nontraditional uses by the end of fiscal year 1990. Spending is projected to decline from sales receipts and the reduction of storage costs.

Subtitle A will restrict the maximum allowable acreage limitation for oats to 5 percent of base acreage. Reductions in barley price support program costs are projected to more than offset the increase in oats program spending because acreage formerly planted to barley is expected to be planted to oats instead.

Subtitle A also will require the early disbursement of 75 percent of certain producer payments that are based on season average prices. About $1.76 billion of payments to producers would be made in fiscal year 1989, rather than fiscal year 1990. This would result in increased 1989 outlays but reduced 1990 outlays such that the net 2-year budget effect would be zero.

Subtitle B of title I will permit producers that participate in acreage reduction to not plant any of their permitted acreage and receive 92 percent of the deficiency payments on their permitted plantings. Current law provides that producers must plant at least 50 percent of their permitted planting acreage to receive 92 percent of their deficiency payments. Elimination of the 50-percent planting requirement is projected to lower production and cause decreased commodity loan outlays.

Title I, in subtitle C, will reform the definition of "person" for the purpose of determining the application of the monetary limitations on direct producer payments under the farm commodity programs. These reforms are expected to reduce projected reconstitution and splitting of farms, and limit future payments to individuals in current farm organizations who now receive amounts several times greater than authorized under the existing limitations.

Subtitle D of title I will permit the prepayment of rural electrification loans made by the Federal Financing Bank without penalty, as provided for under the concurrent resolution on the budget for fiscal year 1988. It also will require that a processing fee be collected from borrowers that prepay to provide for contingent costs to the Federal Financing Bank associated with the prepaid loans.

The Subtitle D will direct the REA Administrator to disapprove condemnation and acquisition of the property of electric utility cooperatives in certain cases; adjust the Rural Electrification Administration's administratively imposed limit on the amount of utility cooperative funds that may be invested in nonact purposes from 3 to 15 percent; direct the Rural Electrification Administration to refinance and reamortize all its outstanding certificates of beneficial ownership issued to the Treasury; and direct the Rural Electrification Administration to conduct a study regarding the feasibility of creating a utility-owned national power transmission grid.

It will provide reforms in the determination of interest rates charged by the Rural Electrification Bank, effective beginning in fiscal year 1989. As part of these reforms, it will permit prepayment of loans—without penalty—stemming from the excessive interest rates charged by the Rural Telephone Bank. The REA and RTB loan prepayments, as well as the processing fees, will result in increased receipts to the Federal Government.

Subtitle E of title I will modify current law on the penalties for violation of agricultural marketing orders to include civil penalties in addition to criminal penalties. The Federal Government is expected to collect receipts from fines under these civil penalty provisions.

Subtitle E will impose new labeling requirements regarding cheese and cheese alternates in frozen foods. These labeling requirements are expected to result in increased use of real cheese by frozen food manufacturers, thus reducing Government purchases of cheese under the Dairy Price Support Program.

Title I also includes the provisions of H.R. 3337, a bill to make improvements in the Food Stamp Program. A key element of the committee's title I provisions is that we achieve needed reconciliation targets without substantively revising the 1985 farm bill.

Because much of the direct Federal spending controlled by the Committee on Agriculture is in the farm programs, the committee had a difficult task in achieving its assigned fiscal year 1988 budget target without doing harm to the farm programs put into place by the 1985 farm bill. Nonetheless, the committee met that challenge, and under title I, the farm programs will continue essentially unchanged.

Given the precarious state of the agricultural economy, the last thing our farmers need is a change in the course of the farm programs put into place less than 2 years ago.

Further, for the most part, the 1985 farm bill is beginning to show good results in stabilizing agricultural markets and reducing commodity surpluses. In fact, as the programs begin to meet their goals, we see the Federal cost of the programs being reduced substantially as well. Projections now are that farm program costs will steadily decline over the next 3 years, without any substantive changes in the structure of the programs.

Mr. Chairman, I urge my colleagues to join me in strongly supporting the provisions of title I of the bill, and in voting favorably on passage of this vital legislation.

And, Mr. Chairman, as part of my support for this measure, I would respectfully address a collateral issue that is impacted by the deficit and what we do here today.

Mr. Chairman, many of the Members of the House have approached me to express their concern regarding the recent precipitous drop in the prices for equity securities on the New York Stock Exchange and across the spectrum of other stock exchanges and the over-the-counter markets. Some of my colleagues have questioned whether or not the trading of stock index futures and so-called program trading may have played a role in the fall of stock prices over the past 2 weeks.

Some have suggested that program trading in general, and the use of stock index futures in particular, are contributors to the volatility and overall decline in stock prices. As the chairman of the Committee on Agriculture, which has jurisdiction over commodity futures, stock index futures, and the Commodity Futures Trading Commission—the Federal agency which regulates these activities—I share responsible commentators' interest in finding out what effects, if any, program trading and the use of stock index futures may have on the stock market.

However, we should be careful not to jump to any conclusions about the benefits or detriments of stock index futures or program trading without first collecting and carefully considering all of the available data. The Committee on Agriculture is taking a close look into the effects that the use of stock index futures and program trading may have had during recent fluctuations in both the cash and futures markets for equity securities.

Since the Dow Jones Industrial Average dropped more than 500 points on Monday, October 19, I have been in frequent contact with regulators at the Commodity Futures Trading Commission and officials at futures exchanges that trade stock index futures. I have also met with Hon. ED JONES, the chairman of the Agriculture Subcommittee on Conservation, Credit, and Rural Development, Hon. EDWARD R. MADIGAN, the ranking Republican on the Committee on Agriculture, and Hon. E. THOMAS COLEMAN, the ranking Republican on the Subcommittee on Conservation, Credit, and Rural Development, to discuss these important issues.

We believe it is the committee's responsibility to take a serious look at whether or not the use of stock index futures and program trading serve the public good and if consumers, farmers, exporters, investors, and others affected by the commodity futures markets may be negatively affected by these developments. We make no assumptions at this point, but it is clear to me that recent events require us to thoroughly investigate this new phenomenon.

For those Members not familiar with trading in stock index futures, a brief review of the regulatory history is in order. The Commodity Futures Trading Act of 1974 (Public Law 93-463) marked a new era of futures trading regulation.

Prior to enactment of that legislation, the regulatory statute enacted in 1936—the Commodity Exchange Act—had been substantially revised only once—in 1968—and regulated futures trading was limited to certain enumerated agricultural commodities.

The 1974 act greatly expanded permissable trading to include contracts in any goods, service, right, or interest traded for future delivery. Also, the Act created the Commodity Futures Trading Commission [CFTC], an independent agency, to take over regulation of the futures industry.

The expansion in futures trading was needed to respond to the demands and potentials being brought about by the revolutionary advances being made in business communications and computers, and other changes in international finance. With the advent of floating exchange rates and global markets in currencies, for example, the need arose for ways to hedge the risk of holding or trading foreign currencies. Likewise, the onset of volatile interest rates coupled with sophisiticated new computer techniques of finanical management led people to think of financial instruments as tradable commodities and created the need and opportunity for the development of instruments to protect against interest rate fluctuations. In short, the 1974 act allowed the use of futures for risk-hedging in new areas and for new commodities.

The 1974 legislation also imposed new oversight responsibilities for the Committee on Agriculture. We had to develop expertise in such exotic new futures instruments as T-bill and yen futures. I am proud to report that our committee, and especially the Subcommittee on Conservation Credit, and Rural Development—which handles futures oversight responsibility for the committee—have acquitted themselves well in meeting these added responsibilities. Since 1974, we have successfully handled three multiyear CFTC authorization bills—in 1978, 1982, and 1986. The current authorization expires September 30, 1989. Members of our committee have developed well-deserved reputations for their expertise in this relatively arcane area of finance.

Likewise, the Commodity Futures Trading Commission has gained much respect for its responsible regulation of a rapidly expanding futures industry. The industry has mushroomed over the past 10 years both in volume of trading and instruments traded, but its growth has for the most part been smooth. The Commission has been vigilent in the protection of the public and the industry has responded quickly to problems as they have arisen. Pursuant to the 1982 reauthorization, the industry has put in place a strong, self-regulatory arm—the National Futures Association—in addition to the front-line, self-regulatory functions of the exchanges themselves.

A relatively recent development in the futures industry is trading in stock index futures. These cash-settlement commodity contracts were developed to allow hedging the risks involved in holding and trading stocks. While a logical part of the development of futures following the 1974 act, stock index futures brought the futures industry in direct contact with the securities markets, and necessitated the Commodity Futures Trading Commission to coordinate its regulatory program with that of the Securities and Exchange Commission.

The Futures Trading Act of 1982 implemented a jurisdictional accord between the Commodity Futures Trading Commission [CFTC] and the Securities and Exchange Commission [SEC] that clarified the division of regulatory responsibility between the two agencies with respect to stock index futures and options. In that legislation, the CFTC's jurisdiction over all futures contracts and options on futures contracts was retained, as was the SEC's jurisdiction over stock options. Thus, it is the case today that the CFTC regulates futures on stock indexes and options and the SEC regulates options on stock indexes. I am pleased that these two regulatory agencies have in the past and continue today to work closely together in the regulation of these markets.

For example, in the Futures Trading Act of 1982, Congress mandated a study to determine whether or not futures and options markets would detract from liquidity in the underlying markets or otherwise adversely affect cash markets and capital formation. The Federal Reserve Board, the SEC, and the CFTC conducted the study jointly and concluded that rather than chasing investment away from the equity markets, these instruments actually may assist capital formation. The CFTC has exhibited its effective oversight and regulation of the markets, and the futures exchanges have not been reluctant to implement emergency procedures in coordination with the CFTC in times of market difficulties. The futures exchanges themselves have also worked closely with their counterpart exchanges in the equity markets. The futures and cash exchanges have agreed to close early through this week in an effort to allow the cash exchanges the opportunity to settle the transactions from the record trading they have experienced over the past week. Also, last Thursday, the futures exchanges, working with the CFTC, implemented daily price limits and increased margin requirements on stock index futures. These actions exemplify the close working relationship that exists between all of these exchanges and their respective Federal regulators.

I would like to commend the CFTC for their diligence and positive action during this difficult time. I would also like to express my appreciation for the manner in which the CFTC has coordinated their regulation of trading in stock index futures with the SEC's regulation of the stock exchanges themselves. The working relationship between these two agencies has been very good in past years, and they have continued to work successfully together over the past few weeks. I was also pleased at reports from the CFTC of the timely implementation of the CFTC's audit trail regulations and its large trader reporting system, both of which assisted not only the CFTC, but other regulators as well, in keeping abreast of market developments over the past few weeks.

I wish to take this opportunity to inform my colleagues in the House that Chairman Ed Jones has announced that the Subcommittee on Conservation, Credit, and Rural Development will begin hearings on this matter next Wednesday, November 4, at 10 a.m.

Mr. Chairman, as the chairman of the committee with jurisdiction over the issues involved with the trading of stock index futures, I would pledge to my colleagues in the House that we plan to thoroughly review these issues before taking any action. We will be working closely with the Federal regulators of these financial markets, the directors of the futures exchanges, and the participants in these markets. We will also welcome the input of our fellow Members in the House at every step of this process.

With this in mind, I would also inform my colleagues on other committees in the House with an interest in these important issues that we on the Committee on Agriculture will be pleased to share with you our findings from this review.

It is critical that we not take action just for action's sake on this very important and sensitive matter. The Committee on Agriculture is committed to discharging its responsibilities in this matter both thoughtfully and efficiently. We will welcome the input of all interested parties as we begin the process of investigating these issues of importance to consumers, farmers, exporters, and investors. However, it will not serve anyone's best interest to charge ahead without first carefully studying the complex issues at hand.

Mr. LATTA. Mr. Chairman, I yield such time as he may consume to the gentleman from Arizona [Mr. Kolbe].

Mr. KOLBE. Mr. Chairman, I rise in opposition to H.R. 3545.

Mr. Chairman, the day after "Black Monday" I joined with our colleagues on both sides of the aisle to urge the President, the Speaker, and the leadership of the other body to agree to an economic summit to achieve real deficit reductions. I believed then, as I believe now, that meaningful reductions could take place only if Democrats and Republicans work together, out of the cameras and bright lights.

Now that those negotiations have begun, we must be careful not to undermine them in any way. A summit breakdown would send exactly the wrong signal to the market. Instead of showing our Government's resolve to keep the economy growing, it would expose our weakness precisely at the time when we need strong leadership to restore public confidence.

It is time to say to each other what our constituents are telling us: No more Black Mondays. We can start by voting against this budget reconciliation package. This is the wrong bill at the wrong time. It increases spending when the market tells us spending must be reduced. It pretends that prepaying agricultural loans and slowing down Medicare payments can yield real budget savings, when we all know that phantom bookkeeping just won't do it this time. The laws we have enacted this legislative session alone will cost well over $1 billion.

The only real deficit reductions in this bill come from $13 billion in new taxes. Not only is a tax hike without spending cuts not the way to go, but a $13 billion deficit reduction isn't nearly enough. Financial experts agree that even the $23 billion required by Gramm-Rudman-Hollings won't send the right message to Wall Street or any other street in America. We need deeper spending cuts and we need them now.

Instead of engaging in partisan strife that hurts us and hurts this country, let's demonstrate our resolve to give the bipartisan summit a chance to work. When Republicans and Democrats joined forces to defeat the rule to this same bill earler today, we did what many said couldn't be done. We stopped negotiating with ourselves and agreed to keep talking with the White House. We made the tough choice. We stood firm. Now we're being asked to stand firm again. My colleagues, has that much changed these past few hours?

Raising revenues without cutting spending does little to inspire public confidence in Congress' ability to solve problems. It does little to keep Black Monday from happening again. The time has come to put our differences aside. Mr. Chairman, no more Black Mondays—not now, not ever.

Mr. LATTA. Mr. Chairman, I yield 1 minute to the gentleman from Pennsylvania [Mr. Ritter].

Mr. RITTER. Mr. Chairman, if we care about Main Street, if we care about retirement income and pensions, we will vote no on this bill. There is every reason to believe that the avalanche of stock prices on Wall Street are a direct result of the Democratic Committee on Ways and Means tax bill which cuts at the heart of stock values.

Let us look at the timing. On Thursday, October 15 the Committee on Ways and Means approved this $12 billion assault on Wall Street or Main Street.

On Friday, October 16, Wall Street had its initial reaction, a 108-point dive.

What happened over the weekend is investors really got wind of what was in this bill, and there was a 508-point dive.

The Dow was up 90 points today. Let us not give Wall Street and Main Street another kick from the Congress.

Mr. SLATTERY. Mr. Chairman, I yield 2 minutes to the gentleman from Texas [Mr. Stenholm].

Mr. STENHOLM. Mr. Chairman, I want to focus on the deficit for just a moment and try to stay away from some of the rhetoric.

The deficit on our side is reduced by $23 billion. The deficit with the Republican substitute is reduced by $15 billion. It really does not do the job.

I think we all agree to that.

I guess I am really not speaking for or against either of the substitutes today as much as I would like to take this time to focus on the problem and the problem is spending. That is the problem. We do not solve the deficit by cutting spending alone, but we are going to have to find some way to cut spending. If we do nothing this year, spending goes up $56 billion. The package that we are about to vote on cuts spending by $12.2 billion.

The next package will cut it by $13.8 billion.

Let us focus on the reconciliation bill before us. We cut spending by $12.2 billion and the message we are sending to the world out there today is that the best we can do under this tremendous problem that we have is cut spending by 1.1 percent.

Surely we can do better than that. Surely we can find cuts.

I know the chairman of the Budget Committee, and I know Members on both sides of the aisle have been looking, but we have not found the chemistry as yet to put together what we have got to do.

Yet, the cash register is empty, but every family out there that is suffering the same problem does not have the luxury of printing more money. There is nothing in this budget that should not be frozen or cut. Start with Social Security and work on down, if you please.

Why, why, why can we not bring ourselves to say that there is something inherently wrong with cutting the cost-of-living adjustment for a millionaire at the same time we talk about the other very real problems that are facing us? The problem is spending.

The CHAIRMAN. The Chair will announce that the gentleman from Ohio [Mr. LATTA] has 5 minutes remaining and the gentleman from Kansas [Mr. SLATTERY] has half a minute remaining.

The gentleman from Ohio [Mr. LATTA] is recognized.

Mr. LATTA. Mr. Chairman, I yield such time as he may consume to the gentleman from Ohio [Mr. MILLER].

Mr. MILLER of Ohio. Mr. Chairman, I rise in opposition to H.R. 3545.

Mr. Chairman, here we go again, 2,200-page document with thousands of individual provisions is given to us early this afternoon and we are expected to intelligently vote on it by this evening. All the Evelyn Wood speed reading courses in the world wouldn't give one the talent necessary to gallop through this mammoth measure in the short time provided.

No one likes to buy a pig in a poke, and that would be precisely what we would be doing if we approved this measure tonight.

I must ask why the haste, why the hurry? Are we trying to scoop the administration, are we trying to preempt the President, in arriving at a reconciliation package? At this very moment the administration is working diligently with the Congress to forge a package of proposals acceptable to all sides. Let's give the process a chance to work.

The bill calls on the American people to accept larger tax increases than may be necessary to help rectify a problem that this Congress did much to create. We need to leave no stone unturned in search of additional spending reductions. This legislation calls for approximately $12 billion in new revenues, with only $3.7 billion from spending reductions.

Mr. LATTA. Mr. Chairman, I yield 1 minute to the gentleman from Washington [Mr. MILLER].

(Mr. MILLER of Washington asked and was given permission to revise and extend his remarks.)

Mr. MILLER of Washington. Mr. Chairman, the majority leadership is apparently misinterpreting the earlier defeat of the rule for this bill. Let me then, be very clear about why I and so many of my colleagues on both sides of the aisle oppose this bill. This legislation sends exactly the wrong signal to financial markets still reeling from the precedent shattering events of last week. This bill is a bad idea whose time will never come.

Money managers the world over are looking for evidence, proof positive, that we here in Congress are finally going to make the hard choices needed to rein in our runaway Federal Budget. There are encouraging signals that this evidence could come from the budget negotiations now proceeding at the White House.

Here in this Chamber, however, there is no such evidence. Instead of carefully crafted, thoughtful spending restraint, we offer the same old make-believe spending cuts and all too real tax hikes. This bill contains one preposterous proposal after another.

Let me, as a member of the Merchant Marine and Fisheries Committee, give one example; it's something I call rent a Navy. This proposal calls for the collection of a $250,000 fee from every tanker we protect in the Persian gulf. The commanders of our U.S. Navy ships in the gulf are apparently to define that protection, decide when it is necessary and charge the receiving ships accordingly for this service. My question is, will our ship's commanders accept American express?

Now this "rent-a-Navy" proposal is just one of the hundreds of hat tricks and illusions in this bill. And what happened to the proposition that at least half of the budget savings would come from spending cuts? This bill contains $13 billion in tax hikes to $1 billion in real spending reductions. Let's call the emperor's new wardrobe exactly what it is—not reconciliation—not a budget bill—not a bill with a balance between spending cuts and tax hikes—this is a tax hike, plain and simple.

Mr. Chairman, who are we trying to kid with this tax hike? Not the world's money managers. Trust me, they can add. Certainly not the American people. My constituents have been telling me for 3 years; "cut Federal spending." We are not going to fool anyone with this bill except possibly ourselves.

Maybe that's the idea. Are we trying to fool ourselves into believing that we have actually done something constructive about our massive Federal budget deficit. If so, this is a dangerous deception—a deception that could turn last week's Wall Street warning into next week's mayhem on Main Street.

I urge my colleagues to reject this deception and hold out for real meaningful, effective deficit reduction.

Mr. LATTA. Mr. Chairman, I yield 1 minute to the gentleman from Missouri [Mr. BUECHNER].

Mr. BUECHNER. Mr. Chairman, I have some talking points, and I have a lot of words in them, and they also have a lot of statistics. Everyone has brought down their own set of statistics. We have pointed fingers across the aisle and down the street.

I think the biggest problem we have here is that we have remembered that we were Republicans, and we have remembered that we were Democrats, and we have remembered who we want to blame, and we forgot that we met the enemy and they is us.

There are not any Members here who seem to be willing to say that we have screwed up, we have spent too much money, and the bullet is coming toward us and instead of ducking, what we are doing is pretending it will not shatter our brains. But it will.

What we are doing up here is we are putting our hand in front of our face. We are fooling the people, we think. We are fooling Wall Street, we think. We are fooling investors from across the seas, we think.

☐ 1805

We are wrong. If we do not reduce spending, we can carry these little graphs and charts and we can talk here about Herbert Hoover and Ronald Reagan, and they will crumble in our pocket like our economy will because we will not reduce spending.

Reject this reconciliation.

Mr. LATTA. Mr. Chairman, I yield 1 minute to the gentleman from New York [Mr. HOUGHTON].

Mr. HOUGHTON. Mr. Chairman, there are two givens in life. Reasonable men and women disagree, and it is very difficult to argue somebody out of something they have not already been argued into. So I am not sanguine about what I am about to say, but I feel in good conscience I should say it.

Everyone wants this country's financial condition to be sound. Almost everyone wants a reasonable end to this budget impasse. Some want taxes increased, many want reduced spending, but that is not the point.

The point is that we are here today, or is it tomorrow, and we are discussing what I believe to be a premature bill. It is hard to follow what is being said. We almost use the same argument for opposing positions.

But it is clear we have asked our leadership, we pleaded with our leadership, to put together a bipartisan group to work on the situation where we were unable to handle it ourselves.

Why do we not let them do this?

Mr. LATTA. Mr. Chairman, I yield 2 minutes to the gentleman from Minnesota [Mr. FRENZEL].

Mr. FRENZEL. Mr. Chairman, under the Budget and Anti-Impoundment Act of 1974, the reconciliation provision was intended to enforce each year's budget resolution. Reconciliation was intended to be the enforcement mechanism that would make the Congress' budget come true.

In practice, reconciliation has served other, more ignoble goals. It has been the chosen vehicle to carry new spending programs which could not succeed by themselves. And, it has been the vehicle for tax increase bills.

This year's reconciliation is flawed by the same infirmities. A huge new welfare program, costing over $5 billion in 5 years, was one unwelcome hitch hiker. That bill probably cannot be enacted on its own, so the Ways and Means Committee majority attached it to reconciliation. That may be a good way to pander to a welfare constituency, but it is a terrible, unacceptable process. The rejection of the first rule caused the Ways and Means Welfare bill and the Agriculture welfare bill to be dropped from reconciliation.

But, the Energy and Commerce welfare bill, dealing with Medical, is still in. So a vote for reconcilation is still a vote for nearly $400 million in additional welfare benefits.

Another infirmity is $14.5 billion in new taxes, and $57 billion over 3 years. Democrat theology apparently demands that almost all deficit reduction be done by new taxes. This reconciliation therefore carries unacceptable new tax burdens.

Yes, there are miniscule spending reductions in the bill. The Ways and Means Committee made some real savings in Medicare, about $1.5 billion. But that's about it. The rest of the Ways and Means portion of new taxes and new spending—not exactly what the constituents are screaming for.

Other committee savings are largely shifts of payment dates. The new Gramm-Rudman-Hollings trigger makes them illegal, but Democrats will call them savings. The Agriculture Committee merely moved some subsidy payments into another fiscal year and claimed that act as saving. The Merchant Marine Committee invented some fees it cannot collect and has not earned and claimed them as savings.

The makeup of the new taxes are interesting, too. The committee majority, which hatched this turkey in the dark of night in the secret of a closed meeting attended exclusively by Democrats, says the bill raises taxes only on corporations and rich people. Members would be well advised to read the bill rather than accept this characterization without reservation.

Employees of companies which have cafeteria plans of employee benefits will lose many of those benefits whether they are rich or poor. Loss of benefits punishes the less affluent more than the rich.

Military reservists in active duty training don't have to be rich to pay social security taxes for the first time. Farmers and small business owners may be rich before they die, but when the farm or business has to be sold to pay death taxes, the heirs won't feel prosperous.

Employees who have seen pension funds assets sharply cut in the market disruption don't have to be rich to suffer from the prohibition of contributions to pension funds which may be fully funded one day and 60 percent funded the next.

As for the whole package, consumers eventually wind up paying most of any tax increase, however levied. Pulling $14 billion out of the private sector without reducing public expenditures just exacerbates the fiscal problem.

But, even more troubling is the fact that several tax features, most conspicuously the repeal of deductibility of interest on funds used to purchase businesses, are very unsettling to our already unsettled markets. To be sure the chairman of the Ways and Means Committee has given public hints that the feature will be removed. That may give some comfort to insiders, but it is unlikely to ease disrupted markets.

Another severely troubling circumstance is the fact that the provision regarding master limited partnerships is apparently couched in terms far different than those described by the Joint Tax Committee staff in only single solitary meeting on this tax bill that the committee held. Republicans were offered very limited time for questions. The questions on MLP's were very specific. The answers do not coincide with the bill and committee report. That's not an unheard of situation, but it isn't routine either. The MLP question must be resolved. So must the difference between the staff's explanation of cash accountings recapture provisions which do more for Perdue and Tyson than earlier described.

In a previous speech I referred to a clandestine list of tax provisions not ever shown to committee Republicans. The first item on that list was costed by the Joint Tax Committee at $1 million or less. The interested Congressman said in a press release it would save the ratepayers of Long Island from $160 to $240 million per year. The company to be taken over, LILCO, tells our staff the cost is $350 million over 3 years. We need to determine the true figure.

In former times, Ways and Means bills were carefully worked out. Members knew what they were voting on. The language agreed on was the language in the bill. Often, the committee even had the language of the bill before it when it voted.

The United States ended its last fiscal year with a deficit of about $150 billion. After we add $14 billion—$12 billion net—in new taxes and an alleged $23 billion in total deficit reductions, we will reduce the deficit from $150 billion last year to $160 billion next year. It takes a weird system of mathematics to raise the deficit by reducing it.

If that arithmetic pleases you, you'll love the reconciliation bill. If not, maybe you will join me in opposition.

Mr. GRAY of Pennsylvania. Mr. Chairman, I yield such time as he may consume to the gentleman from Texas [Mr. ANDREWS].

Mr. ANDREWS. Mr. Chairman, I rise in support of the Guaranteed Deficit Reduction Reconciliation Act. As a member of the House Ways and Means Committee, I am proud of the provisions of the bill we crafted under severe time constraints.

Our revenue package meets three important goals: It does not increase income tax rates as we promised during tax reform; it does not increase excise taxes which will hurt the lower and middle income classes; and it does not significantly change the Tax Reform Act of 1986. Most importantly, we included outlay reductions without balancing the budget on the backs of the poor, the elderly, and even the middle class.

The bill does meet the reconciliation target of $12 billion additional revenues for 1988, which will be used to reduce the Federal deficit. Further spending reductions to meet the $23 billion deficit reduction target for 1988 will result from the appropriations process itself.

We started our proceedings with the President's own revenue proposals, taken from his budget; we accepted $2.3 billion of his proposals. We also adopted several of the President's proposals to close loopholes and improve the income tax system, which were not adopted as part of tax reform.

We rejected proposals such as a gasoline sales tax increase, which would have dealt a painful blow to my home State of Texas and the surrounding region. We adopted proposals to limit estate and gift tax loopholes, to cut down on corporate tax breaks, and to increase compliance with the tax code.

Mr. Chairman, I am not happy with every provision we adopted. I don't think any member of our committee is happy with every decision we made. But, the point is we made those tough decisions. We did not walk away from the table. And we will not walk away today.

It is time that the Congress and the White House get serious and face up to the deficit. The stock market's vulnerability of late shows how crucial our actions are. We must move to reduce the deficit in a bipartisan manner.

Mr. GRAY of Pennsylvania. Mr. Chairman, I yield such time as he may consume to the gentleman from Texas [Mr. PICKLE].

Mr. PICKLE. Mr. Chairman, I also rise in support of this request. I remind my colleagues that we had better do something and we had better do something positive and we should do it now.

Mr. Chairman, I rise in support of this budget reconciliation measure.

Every Member of this House will agree that we face no more serious economic problem today than reducing our Federal deficit.

Every Member will agree that the deficit should be reduced in a fair and equitable manner.

We have an opportunity today to send a message to Wall Street and to Main Street that this House is willing to address this problem and move ahead.

This measure, in my opinion, is the fairest way to address this crucial problem, given the circumstance we face.

Mr. Chairman, the intent of this measure is to reduce our budget deficit—in real terms—by $14.5 billion.

These spending cuts and revenue increases have been accomplished in such a way that this country's taxpayers and businesses have not been seriously penalized.

We have continued the base-broadening and loophole-closing we began last year—and we have not increased the income tax rates for any Americans.

The vote that we take today can be a vote in favor of real deficit reduction. I know many of my colleagues wish we had gone further, but let's be honest, Mr. Chairman, this Congress is not going to achieve a deficit reduction of $23 billion through spending cuts alone. You and I know that is a fact.

The proposal before us is as balanced a bill as this Congress is likely to get.

You may disagree with individual provisions—the cost-of-living increases, Medicare cuts, or any one of the revenue provisions.

But your choice today is to vote for or against this package—and this may be the best, or perhaps the last chance you have to achieve the kind of progress this measure represents.

You may want to stand alone and proclaim your virtue as a "fiscal conservative" or "against Government spending" or "against raising new revenue." You have a right to voice those objections—but if you vote "no" at this point, you make no progress at all.

I firmly believe that our decision on this bill is more important than any one, single vote. If we have the opportunity to achieve a $23 billion reduction in the deficit, we cannot afford to lose this chance.

I don't disagree with Members who have concerns about individual provisions, but I hope you will not build a wall around yourselves and declare your independence and valor—and thereby miss the chance to make an eventual $23 billion cut in the deficit.

If you want to reduce the deficit, here is your chance—and I respectfully suggest you'd better take it.

Mr. GRAY of Pennsylvania. Mr. Chairman, I yield myself the balance of my time to close by saying someone has said we need leadership. Leadership means taking action and that is what we are here for.

My friend, the gentleman from Texas [Mr. STENHOLM] very clearly put the whole issue in perspective when he said we have to reduce the deficit. Yes, we have struggled with it. Where were our colleagues? They did not offer a budget; they would not support the President's budget.

On reconciliation, where was the alternative? There was none. I hear today there will be. I will look forward to debating it.

But one thing we know for sure is we have got to reduce these deficits. This is not a perfect package, but it is a real package. Let us vote for it and be fair and reduce the deficit and move on.

The CHAIRMAN. All time has expired.

Pursuant to the rule, the bill is considered as having been read for amendment under the 5-minute rule.

The text of H.R. 3545, as introduced and without amendments, is as follows:

H.R. 3545

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Budget Reconciliation Act of 1987".

SEC. 2. TABLE OF CONTENTS.

Title I—Committee on Agriculture.
Title II—Committee on Banking, Finance and Urban Affairs.
Title III—Committee on Education and Labor.
Title IV—Committee on Energy and Commerce.
Title V—Committee on Interior and Insular Affairs.
Title VI—Committee on Merchant Marine and Fisheries.
Title VII—Committee on Post Office and Civil Service.
Title VIII—Committee on Veterans' Affairs.
Title IX—Committee on Ways and Means: Spending Measures.
Title X—Committee on Ways and Means: Revenue Measures.

TITLE I—COMMITTEE ON AGRICULTURE

Subtitle A—Farm Program Revisions

SEC. 1001. ADVANCE DEFICIENCY PAYMENTS.

(a) FINDINGS.—Congress finds that—

(1) the early payment of deficiency payments to farmers has an important effect on the solvency of agricultural lending institutions. In particular, advance deficiency payments made in 1987 appear to have been a significant factor in a dramatic four-fifths reduction in losses to the Farm Credit System institutions for the first half of 1987 from a similar period in 1986. Under current law, the authority to make advance payments is at the discretion of the Secretary of Agriculture;

(2) because Government assistance to the Farm Credit System will be required in 1987 and in later years, advance deficiency payments should be a permanent policy of the Department of Agriculture; and

(3) any reduction in Government expenditures in the operation of the Commodity Credit Corporation, through the use of advance deficiency payments, should be included in all calculations of the budget of the United States Government, as authorized under section 202(b) of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987.

(b) IN GENERAL.—Effective for the 1988 through 1990 crops, section 107C(a) of the Agricultural Act of 1949 (7 U.S.C. 1445b-2(a)) is amended by—

(1) in paragraph (1)—

(A) striking out "and" at the end of subparagraph (A);

(B) striking out "each of the 1987 through 1990 crops" in subparagraph (B) and inserting in lieu thereof "the 1987 crops; and"; and

(C) adding at the end the following:

"(C) shall make such payments available to such producers for each of the 1988 through 1990 crops, as provided in paragraph (2)(F)(ii)."; and

(2) in paragraph (2)(F)—

(A) striking out "(F) Such payments" and inserting in lieu thereof "(F)(i) Except as provided in clause (ii), such payments";

(B) redesignating clauses (i) through (iii) as subclauses (I) through (III); and

(C) adding at the end the following:

"(ii) For each of the 1988 through 1990 crops, such payments shall be made available to the producers on a farm in an amount determined by multiplying—

"(I) the estimated farm program acreage for the crop, by

"(II) the farm program payment yield for the crop, by

"(III) in the case of a crop of wheat or feed grains (except for the 1988 crops of corn and grain sorghum), 30 percent of the projected payment rate, in the case of the 1988 crop of corn or grain sorghum, 30 1/3 percent of the projected rate, and in the case of a crop of upland cotton or rice, 20 percent of the projected payment rate.".

SEC. 1002. DISPOSITION OF EXCESS STOCKS.

(a) FINDINGS.—Congress finds that—

(1) the accumulation of Government stocks of agricultural commodities, and of corn in particular, has a price depressing effect on domestic and world markets;

(2) the depressed prices result in reduced farm income and increased Government expenditures in the form of direct producer payments and in the cost to the Government of acquisition of the grain through loan forfeiture and of storage;

(3) it should be the policy of the Department of Agriculture to dispose of Government stocks of agricultural commodities in a manner that will not disrupt traditional markets for these commodities; and

(4) any reduction in Government expenditures in the operation of the Commodity Credit Corporation, through the disposition of Government stocks of agricultural commodities, should be included in all calculations of the budget of the United States Government, as authorized under section 202(b) of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987.

(b) DISPOSITION OF COMMODITIES.—During the period beginning October 1, 1987, and ending September 30, 1990, the Secretary of Agriculture shall dispose of agricultural commodities owned by the Commodity Credit Corporation in accordance with this section for nontraditional uses that the Secretary determines will not displace commercial sales or depress prices for such commodities.

(c) PRIORITIES.—In disposing of agricultural commodities under this section, the Secretary shall give priority to—

(1) disposing of out of condition or inferior quality stocks;

(2) disposing of stocks for innovative nontraditional uses, to encourage the development of new markets for such commodities; and

(3) disposing of stocks for uses that offer environmental or similar benefits.

(d) Safeguards.—The Secretary by rule shall establish appropriate safeguards to ensure that agricultural commodities disposed of under this section do not enter the traditional commercial channels for such commodities.

(e) Bid Basis.—The Secretary shall dispose of agricultural commodities under this section on a bid basis, but may set minimum or reserve prices beneath which bids will not be accepted.

(f) Quantity for Disposal.—The Secretary, to the extent practicable, shall dispose of 1,000,000,000 bushels (or equivalent units of measurement) of agricultural commodities under this section.

(g) Report.—The Secretary shall report, not later than October 31, 1990, to the Committee on Agriculture of the House of Representatives and to the Committee on Agriculture, Nutrition, and Forestry of the Senate, on the operation of the program established by this section.

SEC. 1003. ACREAGE REDUCTION PROGRAM FOR OATS.

Effective for the 1988 through 1990 crops of feed grains, section 105C(f)(1) of the Agricultural Act of 1949 (7 U.S.C. 1444e(f)(1)) is amended by adding at the end of subparagraph (C) the following: "Notwithstanding the foregoing provisions of this subparagraph, in implementing a feed grain acreage limitation program for the 1988, 1989, or 1990 crop of feed grains, the Secretary may not require a producer of oats to limit the acreage planted to oats for harvest on the farm to less than 95 percent of the feed grain crop acreage base on the farm allocated to barley and oats (as adjusted to deduct the acreage within the farm's barley and oats base planted to barley for harvest and the acreage within such base that is considered as reduced acreage with respect to such barley production). To ensure the efficient and fair implementation of the preceding sentence, the Secretary shall announce revisions of the acreage limitation program for the 1988 crop of feed grains to reflect the provisions of the preceding sentence as soon as practicable after the date of enactment of the Budget Reconciliation Act of 1987.".

SEC. 1004. DEFICIENCY PAYMENTS FOR THE 1987 CROPS OF WHEAT, OATS, AND BARLEY AND THE 1988 CROPS OF CORN AND GRAIN SORGHUM.

(a) Wheat.—Effective for the 1987 crop of wheat, section 107D(c)(1) of the Agricultural Act of 1949 (7 U.S.C. 1445b-2(c)(1)) is amended by adding at the end of subparagraph (E) the following:

"(iii) The Secretary shall make available to producers payments under this subparagraph for the 1987 crop of wheat, as follows:

"(I) Not later than December 1, 1987, the Secretary shall estimate the payment rate, per bushel, for established price payments for such crop, as determined under clause (ii).

"(II) At the same time, the Secretary shall make available to each producer of such crop, at the producer's option, a payment under this subparagraph in an amount, per bushel, equal to not less than 75 percent (as determined by the Secretary) of such estimated payment rate.

"(III) The Secretary shall make available to each producer of such crop the full amount of the payment due under this subparagraph, less any amount paid to the producer under subclause (II), at such later time established by the Secretary.".

(b) Feed Grains.—Effective for the 1987 and 1988 crops of feed grains, section 105C(c)(1) of the Agricultural Act of 1949 (7 U.S.C. 1444e(c)(1)) is amended by adding at the end of subparagraph (D) the following:

"(iii) The Secretary shall make available to producers payments under this subparagraph for each of the 1987 crops of oats and barley, as follows:

"(I) Not later than December 1, 1987, the Secretary shall estimate the payment rate, per bushel, for established price payments for the crop, as determined under clause (ii).

"(II) At the same time, the Secretary shall make available to each producer of such crop, at the producer's option, a payment under this subparagraph on such producer's oats or barley production in an amount, per bushel, equal to not less than 75 percent (as determined by the Secretary) of such estimated payment rate.

"(III) The Secretary shall make available to each producer of such crop of oats or barley the full amount of the payment applicable to the commodity due under this subparagraph, less any amount paid to the producer under subclause (II), at such later time established by the Secretary.

"(iv) The Secretary shall make available to producers payments under this subparagraph for each of the 1988 crops of corn and grain sorghum, as follows:

"(I) Not later than March 1, 1989, the Secretary shall estimate the payment rate, per bushel or hundredweight (as applicable), for established price payments for the crop, as determined under clause (ii).

"(II) At the same time, the Secretary shall make available to each producer of such crop, at the producer's option, a payment under this subparagraph on such producer's corn or grain sorghum production in an amount, per bushel or hundredweight (as applicable), equal to not less than 75 percent (as determined by the Secretary) of such estimated payment rate.

"(III) The Secretary shall make available to each producer of such crop of corn or grain sorghum the full amount of the payment applicable to the commodity due under this subparagraph, less any amount paid to the producer under subclause (II), at such later time established by the Secretary.".

Subtitle B—Optional Acreage Diversion Act of 1987

SEC. 1011. SHORT TITLE.

This subtitle may be cited as the "Optional Acreage Diversion Act of 1987".

SEC. 1012. WHEAT OPTIONAL ACREAGE DIVERSION PROGRAM.

Effective for the 1988, 1989, and 1990 crops of wheat, section 107D(c)(1) of the Agricultural Act of 1949 is amended by—

(1) in subparagraph (C)—

(A) in clause (i)—

(i) inserting ", or all such permitted acreage," after "permitted wheat acreage of the farm for the crop";

(ii) in subclause (I) thereof, inserting "(or all)" after "such portion"; and

(iii) adding at the end thereof the following: "Notwithstanding any other provision of this section, any producer who elects to devote all or a portion in excess of 50 per centum of the permitted wheat acreage of the farm to conservation uses (or other uses as provided in subparagraph (K)) under this subparagraph shall receive deficiency payments on the acreage that is considered to be planted to wheat and eligible for payments under this subparagraph for such crop at a per-bushel rate established by the Secretary, except that such rate may not be established at less than the projected deficiency payment rate for the crop, as determined by the Secretary. Such projected payment rate for the crop shall be announced by the Secretary prior to the period during which wheat producers may agree to participate in the program for such crop.";

(B) striking out "To be" in clause (ii) and inserting in lieu thereof "Effective for crops prior to the 1988 crop, to be";

(C) in clause (iii), striking out "If" in the first sentence and inserting in lieu thereof "Effective for crops prior to the 1988 crop, if"; and

(D) in clause (iv)—

(i) inserting "(or all)" after "such portion"; and

(ii) inserting "under this subparagraph" after "subparagraph (K))"; and

(2) in subparagraph (K)—

(A) in clause (ii)(I), striking out "subclause (II)" and inserting in lieu thereof "subclauses (II) and (III)"; and

(B) adding at the end thereof the following:

"(III) Haying and grazing shall not be permitted for the 1988, 1989, or 1990 crop on a farm under subclause (I) on more than 50 percent of the permitted wheat acreage of the farm.".

SEC. 1013. FEED GRAINS OPTIONAL ACREAGE DIVERSION PROGRAM.

Effective for the 1988, 1989, and 1990 crops of feed grains, section 105C(c)(1) of the Agricultural Act of 1949 is amended by—

(1) in subparagraph (B)—

(A) in clause (i)—

(i) inserting ", or all of such permitted acreage," after "permitted feed grain acreage of the farm for the crop";

(ii) in subclause (I) thereof, inserting "(or all)" after "such portion"; and

(iii) adding at the end thereof the following: "Notwithstanding any other provision of this section, any producer who elects to devote all or a portion in excess of 50 percent of the permitted feed grain acreage of the farm to conservation uses (or other uses as provided in subparagraph (I)) under this subparagraph shall receive deficiency payments on the acreage that is considered to be planted to feed grains and eligible for payments under this subparagraph for such crop at a per-bushel rate established by the Secretary, except that such rate may not be established at less than the projected deficiency payment rate for the crop, as determined by the Secretary. Such projected payment rate for the crop shall be announced by the Secretary prior to the period during which feed grain producers may agree to participate in the program for such crop.";

(B) striking out "To be" in clause (ii) and inserting in lieu thereof "Effective for crops prior to the 1988 crop, to be";

(C) in clause (iii), striking out "If" in the first sentence and inserting in lieu thereof "Effective for crops prior to the 1988 crop, if"; and

(D) in clause (iv)—

(A) inserting "(or all)" after "such portion"; and

(B) inserting "under this subparagraph" after "subparagraph (I))"; and

(2) in subparagraph (I)—

(A) in clause (ii)(I), striking out "subclause (II)" and inserting in lieu thereof "subclauses (II) and (III)"; and

(B) adding at the end thereof the following:

"(III) Haying and grazing shall not be permitted for the 1988, 1989, or 1990 crop on a farm under subclause (I) on more than 50 percent of the permitted feed grain acreage for the farm.".

SEC. 1014. REGULATIONS.

(a) IN GENERAL.—Not later than 30 days after the date of enactment of this Act, the Secretary of Agriculture shall issue regulations implementing the amendments made to sections 107D(c)(1) and 105C(c)(1) of the Agricultural Act of 1949 by sections 1012 and 1013, respectively.

(b) NONREDUCTION OF BASES AND YIELDS.—Such regulations shall include provisions that ensure that the wheat or feed grain crop acreage base and farm program payment yield for any farm will not be reduced if the producers on the farm set aside from production all, or a portion, of the producer's permitted acreage under the acreage diversion program under section 107D(c)(1)(C) or 105C(c)(1)(B) as amended by section 1012 or 1013, respectively.

(c) EFFECT ON LANDLORD-TENANT RELATIONS.—Such regulations shall ensure, to the maximum extent practicable, that the programs authorized under this subtitle will not adversely affect the relationships between landlords and tenants, regarding any crop acreage base entered into such programs, in existence at the date of enactment of this Act.

SEC. 1015. MINIMIZATION OF ADVERSE EFFECTS ON AGRIBUSINESS.

The Secretary of Agriculture shall implement the programs authorized under this subtitle in such a manner as to minimize any adverse effect on agribusiness and other agriculturally related economic interests within any county, State, or region by restricting the total amount of wheat or feed grain acreage that may be taken out of production under the programs, taking into consideration the total amount of wheat or feed grain acreage that has or will be removed from production under other price support, production adjustment, or conservation program activities.

SUBTITLE C—FARM PROGRAM PAYMENTS INTEGRITY ACT OF 1987

SEC. 1021. SHORT TITLE.

This subtitle may be cited as the "Farm Program Payments Integrity Act of 1987".

SEC. 1022. PREVENTION OF THE CREATION OF ENTITIES TO QUALIFY AS SEPARATE PERSONS.

(a) IN GENERAL.—Effective beginning with the 1988 crops (except as provided in section 1026(b)(1)), the Food Security Act of 1985 is amended by—

(1) in paragraph (1) of section 1001 (7 U.S.C. 1308), striking out "For each" and inserting in lieu thereof "Subject to sections 1001A through 1001D, for each";

(2) in paragraph (2) of section 1001—

(A) in subparagraph (A), striking out "For each" and inserting in lieu thereof "Subject to sections 1001A through 1001D, for each"; and

(B) in subparagraph (C), striking out "The total" and inserting in lieu thereof "Subject to sections 1001A through 1001D, the total"; and

(3) inserting after section 1001 the following:

"PREVENTION OF THE CREATION OF ENTITIES TO QUALIFY AS SEPARATE PERSONS; PAYMENTS LIMITED TO ACTIVE FARMERS

"SEC. 1001A. (a) For the purposes of preventing the use of multiple legal entities to avoid the effective application of the payment limitations under section 1001:

"(1) A person (as defined in section 1001(5)(B)(i)) that receives farm program payments (as described in paragraphs (1) and (2) of this section as being subject to limitation), or that receives honey program loans, for a crop year under the Agricultural Act of 1949 may not also hold, directly or indirectly, substantial beneficial interests in more than two entities (as defined in section 1001(5)(B)(i)(II)) engaged in farm operations that also receive such payments or loans as separate persons, for the purposes of the application of the limitations under section 1001. Likewise, a person that does not receive such payments or loans for a crop year may not hold, directly or indirectly, substantial beneficial interests in more than three entities that receive such payments or loans as separate persons, for the purposes of the application of the limitations under section 1001.

"(2) For the purpose of this subsection, a beneficial interest in any entity that is less than 10 percent of all beneficial interests in such entity combined shall not be considered a substantial beneficial interest, unless the Secretary determines, on a case-by-case basis, that a smaller percentage should apply to one or more beneficial interests to ensure that the purpose of this subsection is achieved.

"(3) To facilitate administration of this subsection, each entity receiving such payments or loans as a separate person shall notify each individual or other entity that acquires or holds a substantial beneficial interest in it of the requirements and limitations under this subsection; and each such entity receiving payments or loans shall provide to the Secretary of Agriculture, at such times and in such manner as prescribed by the Secretary, the name and social security number of each individual, or the name and taxpayer identification number of each entity, that holds or acquires a substantial beneficial interest.

"(4)(A) If a person is notified that the person holds substantial beneficial interests in more than the number of entities receiving payments or loans that is permitted under this subsection for the purposes of the application of the limitations under section 1001, the person immediately shall notify the Secretary, designating those entities that should be considered as permitted entities for the person for purposes of applying the limitations. Each remaining entity in which the person holds a substantial beneficial interest shall be subject to reductions in the payments or loans to the entity subject to limitation under section 1001, as follows: Each such payment or loan applicable to the entity shall be reduced by an amount that bears the same relation to the full payment that the person's beneficial interest in the entity bears to all beneficial interests in the entity combined.

"(B) If the person does not so notify the Secretary, all entities in which the person holds substantial beneficial interests shall be subject to reductions in the per person limitations under section 1001 in the manner described in subparagraph (A).".

SEC. 1023. PAYMENTS LIMITED TO ACTIVE FARMERS.

Effective beginning with the 1988 crops (except as provided in section 1026(b)(1)), section 1001A of the Food Security Act of 1985, as added by section 1022, is amended by adding at the end the following:

"(b)(1) To be separately eligible for farm program payments (as described in paragraph (1) and (2) of section 1001 as being subject to limitation), or for honey program loans, under the Agricultural Act of 1949 with respect to a particular farming operation (whether in the person's own right or as a partner in a general partnership, a grantor of a revocable trust, a participant in a joint venture, or a participant in a similar entity (as determined by the Secretary) that is the producer of the crops involved), a person must be an individual or entity described in section 1001(5)(B)(i) and actively engaged in farming with respect to such operation, as provided under paragraphs (2), (3), and (4).

"(2) For the purposes of paragraph (1), except as otherwise provided in paragraph (3):

"(A) An individual shall be considered to be actively engaged in farming with respect to a farm operation if—

"(i) the individual makes a significant contribution (based on the total value of the farming operation) of—

"(I) capital, equipment, or land; and

"(II) personal labor or active personal management;

to the farming operation; and

"(ii) the individual's share of the profits or losses from the farming operation is commensurate with the individual's contributions to the operation; and

"(iii) the individual's contributions are at risk.

"(B) A corporation or other entity described in section 1001(5)(B)(i)(II) shall be considered as actively engaged in farming with respect to a farming operation if—

"(i) the entity separately makes a significant contribution (based on the total value of the farming operation) of capital, equipment, or land;

"(ii) the stockholders or members collectively make a significant contribution of personal labor or active personal management to the operation; and

"(iii) the standards provided in clauses (ii) and (iii) of paragraph (A), as applied to the entity, are met by the entity.

"(C) If a general partnership, joint venture, or similar entity (as determined by the Secretary) separately makes a significant contribution (based on the total value of the farming operation involved) of capital, equipment, or land, and the standards provided in clauses (ii) and (iii) of paragraph (A), as applied to the entity, are met by the entity, the partners or members making a significant contribution of personal labor or active personal management shall be considered to be actively engaged in farming with respect to the farming operation involved.

"(D) In making determinations under this subsection regarding equipment and personal labor, the Secretary shall take into consideration the equipment and personal labor normally and customarily provided by farm operators in the area involved to produce program crops.

"(3) Notwithstanding the provisions of paragraph (2), the following persons shall be considered to be actively engaged in farming with respect to a farm operation:

"(A) A person that is a landowner contributing the owned land to the farming operation if the landowner receives rent or income for such use of the land based on the land's production or the operation's operating results, and the person meets the standard provided in clauses (ii) and (iii) of paragraph (2)(A).

"(B) With respect to a farming operation conducted by persons, a majority of whom are individuals who are family members, an adult family member who makes a significant contribution (based on the total value of the farming operation) of active personal management or personal labor and, with respect to such contribution, who meets the standards provided in clauses (ii) and (iii) of paragraph (2)(A). For the purposes of the preceding sentence, the term 'family member' means an individual to whom another family member in the farming operation is related as lineal ancestor, lineal descendant, or sibling (not including spouses thereof).

"(C) A sharecropper who makes a significant contribution of personal labor to the farming operation and, with respect to such contribution, who meets the standards provided in clauses (ii) and (iii) of paragraph (2)(A).

"(4) For the purposes of paragraph (1), except as provided in paragraph (3), the following persons shall not be considered to be actively engaged in farming with respect to a farm operation:

"(A) A landlord contributing land to the farming operation if the landlord receives cash rent, or a crop share guaranteed as to the amount of the commodity to be paid in rent, for such use of the land.

"(B) Any other person, or class of persons, determined by the Secretary as failing to meet the standards set out in paragraphs (2) and (3).

"(5) The determination as to whether a person receiving custom farming services will be considered as actively engaged in farming shall be based on paragraphs (1) through (3) of this subsection; and no other rules with respect to custom farming shall apply.".

SEC. 1024. DEFINITION OF PERSON: ELIGIBLE INDIVIDUALS AND ENTITIES; RESTRICTIONS APPLICABLE TO CASH-RENT TENANTS.

Effective beginning with the 1988 crops (except as provided in section 1026(b)(1)):

(a) In General.—Section 1001(5) of the Food Security Act of 1985 (7 U.S.C. 1308(5)) is amended by—

(1) inserting after the first sentence of subparagraph (A) the following: "Such regulations shall incorporate the provisions in subparagraphs (B) through (E) of this paragraph, paragraph (6), and sections 1001A through 1001D.";

(2) striking out the second sentence of subparagraph (A), and inserting in lieu thereof the following:

"(B)(i) For the purposes of the regulations issued under subparagraph (A), subject to clause (ii), the term 'person' means—

"(I) an individual, including any individual participating in a farming operation as a partner in a general partnership, a participant in a joint venture, a grantor of a revocable trust, or a participant in a similar entity (as determined by the Secretary); and

"(II) a corporation, joint stock company, association, limited partnership, charitable organization, or other similar entity (as determined by the Secretary), including any such entity or organization participating in the farming operation as a partner in a general partnership, a participant in a joint venture, a grantor of a revocable trust, or as a participant in a similar entity (as determined by the Secretary).

"(ii)(I) Such regulations shall provide that the term 'person' does not include any cooperative association of producers that markets commodities for producers with respect to the commodities so marketed for producers.

"(II) In defining the term 'person' as it will apply to irrevocable trusts and estates, the Secretary shall ensure that fair and equitable treatment is given to trusts and estates and the beneficiaries thereof.

"(iii) Such regulations shall provide that, with respect to any married couple, the husband and wife shall be considered to be one person, except that any married couple consisting of spouses who, prior to their marriage, were separately engaged in unrelated farming operations, each spouse shall be treated as a separate person with respect to the farming operation brought into the marriage by such spouse so long as such operation remains as a separate farming operation, for the purposes of the application of the limitations under this section.";

(3) redesignating subparagraph (B) as subparagraph (C); and

(4) adding at the end thereof the following:

"(D) Any person that conducts a farming operation to produce a crop subject to limitations under this section as a tenant that rents the land for cash (or a crop share guaranteed as to the amount of the commodity to be paid in rent) shall be considered the same person as the landlord unless the tenant makes a significant contribution of personal labor or active personal management, and equipment, used in the farming operation.

"(E) The Secretary may not approve (for purposes of the application of the limitations under this section) any change in a farming operation that otherwise will increase the number of persons to which the limitations under this section are applied unless the Secretary determines that the change is bona fide and substantive. In the implementation of the preceding sentence, the addition of a family member to a farming operation under the criteria set out in section 1001A(b)(1)(B) shall be considered a bona fide and substantive change in the farming operation.".

(b) Repeal.—Paragraph (6) of section 1001 of the Food Security Act of 1985 (7 U.S.C. 1308(b)) is hereby repealed.

SEC. 1025. MORE EFFECTIVE AND UNIFORM APPLICATION OF PAYMENT LIMITATIONS.

(a) Education Program.—(1) The Secretary of Agriculture shall implement a payment provisions education program for appropriate personnel of the Department of Agriculture and members and other personnel of local, county, and State committees established under section 8(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)), for the purpose of fostering more effective and uniform application of the payment limitations and restrictions under sections 1001 through 1001D of the Food Security Act of 1985.

(2) The education program shall provide training to such personnel in the fair, accurate, and uniform application to individual farming operations of the provisions of law and regulation relating to the payment provisions of sections 1001 through 1001D of the Food Security Act of 1985. Particular emphasis shall be given to the changes in the law made by sections 1022, 1023, and 1024 of this Act.

(3) The education program shall be fully implemented, and the training completed, not later than 60 days after the date of enactment of this Act.

(4) The Secretary shall carry out the program provided under this subsection through the Commodity Credit Corporation.

(b) Schemes or Devices.—Effective beginning with the 1988 crops (except as provided in section 1026(b)(1), the Food Security Act of 1985 is amended by inserting after section 1001A, as added by sections 1022 and 1023 of this Act, the following:

"SCHEMES OR DEVICES

"Sec. 1001B. If the Secretary of Agriculture determines that any person has adopted a scheme or device to evade, or that has the purpose of evading, the provisions of section 1001, 1001A, 1001C, or 1001D of this Act, such person shall be ineligible to receive farm program payments (as described in paragraphs (1) and (2) of section 1001 as being subject to limitation), or honey program loans, applicable to the crop year for which such scheme or device was adopted and the succeeding crop year.".

SEC. 1026. REGULATIONS; TRANSITION RULES; EQUITABLE ADJUSTMENTS.

(a) Regulations.—(1) The Secretary of Agriculture shall issue, not later than 30 days after the date of the enactment of this Act, interim regulations to carry out the amendments to the Food Security Act of 1985 made by this subtitle.

(2) Any field instructions relating to, or other supplemental clarifications of, the regulations issued under sections 1001 through 1001D of the Food Security Act of 1985 shall not be used in resolving issues involved in the application of the payment limitations or restrictions under such sections or regulations to individuals, other entities, or farming operations until copies of the publication are made available to the public.

(b) Transition and Allowance for Equitable Reorganizations.—(1) In implementing the amendments made to the Food Security Act of 1985 by this subtitle, the Secretary may waive the application of any or all of the amendments to the 1988 crops or to any class of individuals or legal entities, or farming operations, producing such crops, as necessary to ensure an orderly, fair, and equitable transition in the payments limitation program.

(2) To allow for the equitable reorganization of farming operations to conform to the limitations and restrictions contained in the amendments made to the Food Security Act of 1985 by this subtitle in cases in which the application of such limitations and restrictions will reduce payments or loans to the farming operation (as determined by the Secretary), the Secretary may waive the application of the substantive change rule under section 1001(5)(E), as added by section 1024 of this Act, or any regulation of the Secretary containing a comparable rule, to any reorganization applied for prior to December 31, 1988, to the extent the Secretary determines appropriate to facilitate any such equitable reorganizations that does not increase such payments or loans.

(c) Good Faith Reliance on Official Advice.—Section 1001 of the Food Security Act of 1985 (7 U.S.C. 1308) is amended by adding at the end thereof the following new paragraph:

"(6) Notwithstanding any other provision of law, actions taken by an individual or other entity in good faith on action or advice of an authorized representative of the Secretary may be accepted as meeting the requirement under this section or section 1001A, to the extent the Secretary deems it desirable in order to provide fair and equitable treatment.".

(d) Conservation Reserve Application.—Notwithstanding section 1234(f)(2) of the Food Security Act of 1985 (16 U.S.C. 3834(f)), the provisions of paragraphs (5) through (7) of section 1001, as amended by this subtitle, and sections 1001A through 1001D, of the Food Security Act of 1985 shall apply to the conservation reserve program under subtitle D of title XII of such Act with respect to rental payments to persons under contracts entered into after the date of enactment of this Act, except with respect to landlords that receive cash rent, or a crop share guaranteed as to the amount of the commodity to be paid in rent, for the use of the land.

SEC. 1027. FOREIGN PERSONS MADE INELIGIBLE FOR PROGRAM BENEFITS.

Effective beginning with the 1988 crops (except as provided in section 1026(b)(1)), the Food Security Act of 1985 is amended by inserting after section 1001B, as added by section 1025 of this Act, the following:

"FOREIGN PERSONS MADE INELIGIBLE FOR PROGRAM BENEFITS

"SEC. 1001C. Notwithstanding any other provision of law:

"(a) For each of the 1988 through 1990 crops, any person who is not a citizen of the United States or an alien lawfully admitted into the United States for permanent residence under the Immigration and Nationality Act shall be ineligible to receive any type of production adjustment payments, price support program loans, payments, or benefits made available under the Agricultural Act of 1949 (7 U.S.C. 1421 et seq.), the Commodity Credit Corporation Charter Act (15 U.S.C. 714 et seq.), or subtitle D of title XII of the Food Security Act of 1985 with respect to any commodity produced, or land set aside from production, on a farm that is owned or operated by such person, unless such person is an individual who is providing land, capital, and a substantial amount of personal labor in the production of crops on such farm.

"(b) For purposes of subsection (a), a corporation or other entity shall be considered a person that is ineligible for production adjustment payments, price support program loans, payments, or benefits if more than 10 percent of the beneficial ownership of the entity is held by persons who are not citizens of the United States or aliens lawfully admitted into the United States for permanent residence under the Immigration and Nationality Act, unless such persons provide a substantial amount of personal labor in the production of crops on such farm. Notwithstanding the foregoing provisions of this subsection, with respect to an entity that is determined to be ineligible to receive such payments, loans, or other benefits, the Secretary may make payments in an amount determined by the Secretary to be representative of the percentage interest of the entity which is owned by citizens of the United States.

"(c) No person shall become ineligible under this section for production adjustment payments, price support program loans, payments or benefits as the result of the production of a crop of an agricultural commodity planted, or commodity program or conservation reserve contract entered into, before the date of enactment of the Farm Program Payments Integrity Act of 1987.".

SEC. 1028. GOVERNMENT AGENCIES MADE INELIGIBLE FOR CERTAIN PROGRAM BENEFITS.

Effective beginning with the 1988 crops (except as provided in section 1026(b)(1)), the Food Security Act of 1985 is amended by inserting after section 1001C, as added by section 1027 of this Act, the following:

"GOVERNMENT AGENCIES MADE INELIGIBLE FOR CERTAIN PROGRAM BENEFITS

"SEC. 1001D. Notwithstanding any other provision of law, for each of the 1988 through 1990 crops, no State, political subdivision, or agency thereof shall be eligible to receive farm program payments (as described in paragraphs (1) and (2) of section 1001 as being subject to limitation), or honey program loans, with respect to lands or animals—

"(1) owned by the State, political entity, or agency thereof; and

"(2) farmed or husbanded primarily in the direct furtherance of a public function, as determined by the Secretary of Agriculture.".

Subtitle D—Rural Electrification Administration Programs

CHAPTER 1—AMENDMENTS TO RURAL ELECTRIFICATION ACT OF 1936

SEC. 1031. AMENDMENT TO SECTION 306A OF THE RURAL ELECTRIFICATION ACT OF 1936.

Section 306A of the Rural Electrification Act of 1936 (7 U.S.C. 936A) is amended to read as follows:

"SEC. 306A. PREPAYMENT OF FEDERAL FINANCING BANK LOANS.—(a) If, on the effective date of this section, a borrower has an outstanding loan made by the Federal Financing Bank and guaranteed by the Administrator of the Rural Electrification Administration under section 306, the borrower may prepay such loan (or any loan advance made thereunder) by paying the outstanding principal balance due on such loan (or advance) if—

"(1) private capital, with the existing loan guarantee (available at the option of the borrower) is used to replace the loan; and

"(2) the borrower certifies that any savings from such prepayment will be—

"(A) passed on to its customers; or

"(B) in a case of financial hardship, used to improve the financial strength of the borrower; or

"(C) used to avoid future rate increases.

"(b)(1) A processing fee shall be assessed against each borrower whose request for prepayment of a loan is approved after September 30, 1987. Each fee shall be assessed at the time of prepayment on each loan advance and shall be in an amount equal to 1.78 percent of the outstanding principal balance of the loan advance. Such fee shall provide for contingencies to recover all or partial costs of loan origination, processing, servicing, or overhead expenses associated with the loan.

"(2) Any additional receipts under paragraph (1) shall be treated as reimbursements to the Government and be included in all calculations of the budget of the United States Government authorized under section 202(b) of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987.

"(c) No sums in addition to the payment of the outstanding principal balance of the loan advance and a penalty assessed thereon, as provided for under subsection (b), may be charged as the result of such prepayment against the borrower, the fund, or the Rural Electrification Administration.

"(d) Whenever a loan (or advance) is prepaid under this section, the existing loan guarantee shall, at the option of the borrower, be amended to include, for the duration of the term of the guarantee on the loan (or advance) prepaid, the amount of principal balance prepaid, plus the amount of the penalty paid by the borrower and the cost to the borrower of obtaining financing to prepay the loan (or advance). Any loan obtained by the borrower to prepay the loan (or advance) may be on terms and conditions acceptable to the borrower and the lender, except that no such loan may exceed the amount to which the guarantee is applied under the preceding sentence.

"(e) Any guarantee of a loan advance prepaid under this section shall be fully assignable and transferable without condition and shall remain available for the remainder of the term of the loan originally agreed to by the Administrator.".

SEC. 1032. REA PROCEDURE IN PROPERTY ACQUISITION.

Section 7 of the Rural Electrification Act of 1936 (U.S.C. 907) is amended by—

(1) designating the first paragraph thereof as subsection (a); and

(2) striking out the second paragraph and inserting in lieu thereof the following:

"(b) No property, rights, or franchises of a borrower of funds under sections 4, 201, or 305, or a recipient of a guarantee under section 306, shall, without the approval of the Administrator, be sold, exchanged, transferred, or otherwise disposed of by such borrower or recipient of a guarantee or acquired by any entity through annexation or condemnation, until all loans obtained by such borrower from, or made to such borrower and guaranteed by, the Rural Electrification Administration, including all interest and charges, have been repaid.

"(c) The Administrator shall not consent to acquisition of such property, rights, or franchises by annexation or condemnation if the borrower, or a wholesale supplier of such borrower, that is recipient of loan or loan guarantee under this Act, opposes such acquisition and—

"(1) such acquisition will presently, or within a reasonable period is likely to, increase the cost to serve members of, and consumers of the services provided by, the borrower or members of, and consumers of the services provided by, other Rural Electrification Administration borrowers that obtain capacity and energy from such wholesale supplier;

"(2) such acquisition will presently, or within a reasonable period is likely to, impair the ability of such borrower or such wholesale supplier of the borrower to provide adequate, reliable service at reasonable costs;

"(3) the Administrator finds and certifies, at the discretion of the Administrator, that the security for any loans from or guarantees by the Rural Electrification Administration to such borrower's wholesale power supplier is not reasonably adequate and such loans or guaranteed loans will not be repaid within the time agreed; or

"(4) the Administrator finds and certifies, at the discretion of the Administrator, that the acquisition otherwise interferes with the purposes of the Rural Electrification Act of 1936.

Certification by the board of directors of such affected borrower or such wholesale supplier attesting to any facts set forth therein relating to the conditions described in paragraph (1) or (2) of the preceding sentence shall be accepted by the Administrator as establishing the existence of such facts, unless contradicted by other evidence received by the Administrator.".

SEC. 1033. USE OF FUNDS.

The Rural Electrification Act of 1936 is amended by inserting after section 311 (7 U.S.C. 940a) the following:

"SEC. 312. USE OF FUNDS.—A borrower of an insured or guaranteed electric loan under this Act may, without restriction or prior approval of the Administrator, invest its own funds or make loans or guarantees, not in excess of 15 percent of its total utility plant.".

SEC. 1034. AMORTIZATION AND REFINANCING OF CERTIFICATES OF BENEFICIAL OWNERSHIP.

The Rural Electrification Act of 1936 is amended by inserting after section 304 (7 U.S.C. 934) the following:

"SEC. 304A. AMORTIZATION AND REFINANCING OF CERTIFICATES OF BENEFICIAL OWNERSHIP.—(a) All certificates of beneficial ownership issued by the Rural Electrification and Telephone Revolving Fund outstanding on October 1, 1987, shall be refinanced by the Secretary of the Treasury, without penalty or premium, at a rate of interest equal to the cost of money to the Government on the date of enactment of this section for new Treasury borrowings of the same maturity as the certificates of beneficial ownership being refinanced.

"(b) All certificates of beneficial ownership issued by the Rural Electrification and Telephone Revolving Fund shall be amortized on a normal basis, with both principal and interest paid each year.".

SEC. 1035. ELECTRIC TRANSMISSION STUDY BY REA ADMINISTRATOR.

(a) IN GENERAL.—The Administrator of the Rural Electrification Administration shall conduct a study to evaluate the feasibility of creating a utility-owned transmission network and the benefits that could result to rural and other electric consumers from such a network.

(b) ASSESSMENT TO BE INCLUDED IN STUDY.—The study shall include an assessment of the extent to which improvement in the transmission systems of utility systems and in access by such systems to transmission owned by other utilities can permit—

(1) more efficient use of existing generation capacity between regions and time zones;

(2) reduced costs to consumers;

(3) postponement of new generation construction;

(4) improved ability of such systems to meet debt service obligations; and

(5) conservation of scarce fuels and other resources.

(c) DUTIES OF ADMINISTRATOR IN CONDUCTING STUDY.—In conducting the study, the Administrator shall—

(1) consult closely with all segments of the electric utility industry;

(2) hire such staff as needed to provide expertise to complete the study;

(3) identify any special needs, problems, or circumstances of rural electric utility systems with respect to transmission;

(4) determine the benefits of a system-owned grid;

(5) determine the extent to which new construction of transmission is needed or will be needed during the 1990's;

(6) determine the extent to which access to transmission by any rural electric utility system is limited and the causes and costs associated with that limitation; and

(7) identify and propose specific actions that the Federal Government can take to facilitate the creation of a utility-owned power network.

(d) USE OF SUMS FOR AND SCHEDULING OF STUDY.—(1) The Administrator shall conduct the study using sums appropriated to the Rural Electrification Administration for general salaries and expenses.

(2) The Administrator shall submit to Congress—

(A) a proposed plan and detailed outline for conducting the study no later than September 30, 1988;

(B) an interim report of the results of the study no later than September 30, 1989; and

(C) a comprehensive final report of the results of the study no later than September 30, 1990.

SEC. 1036. REGULATIONS.

The Secretary of Agriculture, not later than 30 days after the date of the enactment of this Act, shall issue regulations to carry out the amendments to the Rural Electrification Act of 1936 made by this chapter. In issuing regulations to carry out the provisions of section 306A of the Rural Electrification Act of 1936, as amended by section 1031 of this Act, the Secretary shall ensure that such regulations—

(1) facilitate prepayment of loans (or advances) covered by such section;

(2) provide for full processing of each prepayment request within 30 days after its submission to the Rural Electrification Administration; and

(3) except as specifically and directly provided in section 306A, impose no restriction that increases the cost to borrowers of obtaining private financing for prepayment under such section, or delays the full processing of prepayment requests, or inhibits the ability of such borrowers to enter into prepayment arrangements under such section.

SEC. 1037. EFFECTIVE DATE.

The amendments to the Rural Electrification Act of 1936 made by this chapter shall become effective on the date of enactment of this Act, except that a borrower of an outstanding loan made by the Federal Financing Bank and guaranteed by the Rural Electrification Administration under section 306 of the Rural Electrification Act of 1936, at the borrower's option, if such borrower and the Rural Electrification Administration have reached an agreement on prepayment of the loan under section 306A of such Act as in effect prior to the date of enactment of this Act may prepay such loan under such agreement after such effective date.

CHAPTER 2—RURAL TELEPHONE BANK BORROWERS FAIRNESS ACT OF 1987

SEC. 1041. SHORT TITLE.

This chapter may be cited as the "Rural Telephone Bank Borrowers Fairness Act of 1987".

SEC. 1042. RURAL TELEPHONE BANK INTEREST RATES AND LOAN PREPAYMENTS.

(a) FINDINGS.—Congress finds that—

(1) overcharging of Rural Telephone Bank borrowers has resulted in $179,000,000 in excess profits and has imperiled borrowers by raising costs to ratepayers;

(2) borrowers will be able to seek redress under section 408(b)(3)(G) of the Rural Electrification Act of 1936, as added by subsection (d), or may leave the Rural Telephone Bank, but in no case may the Governor of the Bank issue regulations requiring any penalty from borrowers seeking to retire debt prior to maturity; and

(3) any reduction in Government expenditures in the operation of the Rural Telephone Bank, from borrowers' conduct resulting from the implementation of the amendments made by subsections (b) and (d), should be included in all calculations of the budget of the United States Government, authorized under section 202(b) of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987.

(b) RURAL TELEPHONE BANK LOAN PREPAYMENTS.—Section 408(b) of the Rural Electrification Act of 1936 (7 U.S.C. 948(b)) is amended by adding at the end the following:

"(8) A borrower with a loan from the telephone bank may prepay the loan (or any part thereof) by paying the face amount without being required to pay the prepayment penalty set forth in the note covering such loan, if such prepayment is made prior to October 1, 1988.".

(c) REGULATIONS.—The Governor of the Rural Telephone Bank shall issue regulations, within 30 days after the date of enactment of this Act, to implement the provision added to section 408 of the Rural Electrification Act of 1936 by subsection (b). Such regulations shall implement such provision without any restrictions not set forth in such provision.

(d) DETERMINATION OF INTEREST RATES ON RURAL TELEPHONE BANK LOANS.—Paragraph (3) of section 408(b) of the Rural Electrification Act of 1936 (7 U.S.C. 948(b)(3)) is amended to read as follows:

"(3)(A) On and after the date of the enactment of this paragraph, each advance made under this section shall bear interest only as provided in this paragraph, but in no event at a rate that is less than 5 percent per annum.

"(B) The interest rate on advances made before October 1, 1987, shall be whichever of the following is the lesser:

"(i)(I) The sum of the results of the calculations described in subclause (II).

"(II) The amount of each advance made under the loan, divided, respectively, by the aggregate of all advances made under the loan, each of which quotients is multiplied, respectively, by the costs of obtaining funds for the fiscal year in which the advance was made, as set forth in the following table:

For advances made in—	The cost of obtaining funds is—
Fiscal year 1974	5.01 percent
Fiscal year 1975	5.85 percent
Fiscal year 1976	5.33 percent
Fiscal year 1977	5.00 percent
Fiscal year 1978	5.87 percent
Fiscal year 1979	5.93 percent
Fiscal year 1980	8.10 percent
Fiscal year 1981	9.46 percent
Fiscal year 1982	8.39 percent
Fiscal year 1983	6.99 percent
Fiscal year 1984	6.55 percent
Fiscal year 1985	5.00 percent
Fiscal year 1986	5.00 percent
Fiscal year 1987	5.00 percent.

For purposes of this paragraph, the term 'fiscal year' means the 12-month period ending on September 30 of the designated year.

"(ii) The rate specified in the loan commitment governing the advance.

"(C) The interest rate on advances made on or after October 1, 1987, and before the date of the enactment of this paragraph shall be—

"(i) for the period beginning on the date of the enactment of this paragraph and ending at the close of fiscal year 1988, the rate specified in the loan commitment governing the advance; and

"(ii) after fiscal year 1988, whichever of the following is the lesser:

"(I) The rate specified in the loan commitment governing the advance.

"(II) The cost of obtaining funds during fiscal year 1988, as determined under subparagraph (E).

"(D) The interest rate on advances made on or after the date of the enactment of this paragraph shall be—

"(i) for the period beginning on the date the advance is made and ending at the close of the fiscal year in which the advance is made, the average yield (on the date of the advance) on outstanding marketable obligations of the United States having a final maturity comparable to the final maturity of the advance; and

"(ii) after the fiscal year in which the advance is made, the cost of obtaining funds during such fiscal year, as determined under subparagraph (E).

"(E) Within 30 days after the end of each fiscal year, the Governor shall determine to the nearest 0.01 percent the cost of obtaining funds during the fiscal year, by calculating the sum of the results of the following calculations:

"(i) The aggregate of all amounts received by the telephone bank during the fiscal year from the issuance of class A stock, multiplied by the rate of return payable by the telephone bank during the fiscal year, as specified in section 406(d), to holders of class A stock, which product is divided by the aggregate of the amounts advanced by the telephone bank during the fiscal year.

"(ii) The aggregate of all amounts received by the telephone bank during the fiscal year from the issuance of class B stock, multiplied by the rate at which dividends are payable by the telephone bank during the fiscal year, as specified in section 406(e), to holders of class B stock, which product is divided by the aggregate of the amounts advanced by the telephone bank during the fiscal year.

"(iii) The aggregate of all amounts received by the telephone bank during the fiscal year from the issuance of class C stock, multiplied by the rate at which dividends are payable by the telephone bank during the fiscal year, under section 406(f), to holders of class C stock, which product is divided by the aggregate of the amounts advanced by the telephone bank during the fiscal year.

"(iv)(I) The sum of the results of the calculations described in subclause (II).

"(II) The amounts received by the telephone bank during the fiscal year from each issue of telephone debentures and other obligations of the telephone bank, multiplied, respectively, by the rates at which interest is payable during the fiscal year by the telephone bank to holders of each issue, each of which products is divided, respectively, by the aggregate of the amounts advanced by the telephone bank during the fiscal year.

"(v)(I) The amount by which the aggregate of the amounts advanced by the telephone bank during the fiscal year exceeds the aggregate of the amounts received by the telephone bank from the issuance of class A stock, class B stock, class C stock, and telephone debentures and other obligations of the telephone bank during the fiscal year, multiplied by the historic cost of obtaining funds as of the close of the fiscal year immediately preceding the fiscal year, which product is divided by the aggregate of the amounts advanced by the telephone bank during the fiscal year.

"(II) For purposes of this clause, the term 'historic cost of obtaining funds', with respect to the close of a preceding fiscal year, means the sum of the results of the following calculations: The amounts advanced by the telephone bank in each fiscal year during the period beginning with fiscal year 1974 and ending with the preceding fiscal year, multiplied, respectively, by the cost of obtaining funds during the fiscal year (as set forth in the table in subparagraph (B)(i)(II) for fiscal years 1974 through 1987, and as determined by the Governor under this subparagraph for fiscal years after fiscal year 1987), each of which products is divided, respectively, by the aggregate of the amounts advanced by the telephone bank during the period.

"(F)(i) Notwithstanding subparagraph (D), if a borrower holds a commitment for a loan under this section part or all of the proceeds of which have not been advanced as of the date of the enactment of this paragraph, the borrower may, until the later of the date the next advance under the loan commitment is made or 90 days after such date of enactment, elect to have the interest rate specified in the loan commitment apply to the unadvanced portion of the loan in lieu of the rate which (but for this clause) would apply to the unadvanced portion under this paragraph. If any borrower makes an election under this clause with respect to a loan, the Governor shall adjust the interest rate which applies to the unadvanced portion of the loan accordingly.

"(ii)(I) If the telephone bank, pursuant to section 407(d), issues telephone debentures on any date to refinance telephone debentures or other obligations of the telephone bank, the telephone bank shall, in addition to any interest rate reduction required by any other provision of this paragraph, for the period applicable to the advance, reduce the interest rate charged on each advance made under this section during the fiscal year in which the refinanced debentures or other obligations were originally issued by the amount applicable to the advance.

"(II) For purposes of subclause (I), the term 'the period applicable to the advance' means the period beginning on the issue date described in subclause (I) and ending on the earlier of the date the advance matures or is completely prepaid.

"(III) For purposes of subclause (I), the term 'the amount applicable to the advance' means an amount which fully reflects that percentage of the funds saved by the telephone bank as a result of the refinancing which is equal to the percentage representation of the advance in all advances described in subclause (I).

"(IV) Within 60 days after any issue date described in subclause (I), the Governor shall amend the loan documentation for each advance described in subclause (I), as necessary, to reflect any interest rate reduction applicable to the advance by reason of this clause, and shall notify each affected borrower of the reduction.

"(G) Within 30 days after the publication of any determination made under subparagraph (E), any affected borrower may obtain review of the determination, or any other equitable relief as may be determined appropriate, by the United States court of appeals for the judicial circuit in which the borrower does business by filing a written petition requesting the court to set aside or modify such determination. On receipt of such a petition, the clerk of the court shall transmit a copy of the petition to the Governor. On receipt of a copy of such a petition from the clerk of the court, the Governor shall file with the court the record on which the determination is based. The court shall have jurisdiction to affirm, set aside, or modify the determination.

"(H) Within 60 days after the date of the enactment of this paragraph, the Governor shall amend the loan documentation for each advance to reflect any interest rate reduction applicable to the advance by reason of this paragraph, and shall notify each affected borrower of the reduction.

"(I) Within 5 days after determining the cost of obtaining funds for a fiscal year, the Governor shall—

"(i) cause the determination to be published in the Federal Register in accordance with section 552 of title 5, United States Code; and

"(ii) furnish a copy of the determination to the Comptroller General of the United States.

"(J) The Comptroller General shall review, on an expedited basis, each determination a copy of which is received from the Governor and, within 15 days after the date of such receipt, furnish Congress a report on the accuracy of the determination.

"(K) The telephone bank shall not sell or otherwise dispose of any loan made under this section.".

SEC. 1043. INTEREST RATE TO BE CONSIDERED FOR PURPOSES OF ASSESSING ELIGIBILITY FOR LOANS.

Paragraph (4) of section 408(b) of the Rural Electrification Act of 1936 (7 U.S.C. 948(b)(4)) is amended by inserting at the end the following: "For purposes of determining the creditworthiness of a borrower for a loan under this paragraph, the Governor shall assume that the loan, if made, would bear interest at a rate equal to the average yield (on the date of the determination) on outstanding marketable obligations of the United States having a final maturity comparable to the final maturity of the loan.".

SEC. 1044. ESTABLISHMENT OF RESERVE FOR LOSSES DUE TO INTEREST RATE FLUCTUATIONS.

(a) ESTABLISHMENT OF RESERVE; FUNDING.—Section 406 of the Rural Electrification Act of 1936 (7 U.S.C. 947) is amended by adding at the end the following:

"(h) There is hereby established in the Rural Telephone Bank a reserve for losses due to interest rate fluctuations. Within 30 days after the date of the enactment of this subsection, the Governor of the Rural Telephone Bank shall transfer to the reserve for losses due to interest rate fluctuations all amounts in the reserve for contingencies as of the date of the enactment of this subsection. Amounts in the reserve for interest rate fluctuations may be expended only to cover operating losses of the telephone bank (other than losses attributable to loan defaults) and only after taking into consideration any recommendations made by the General Accounting Office under section 1044(b) of the Rural Telephone Bank Borrowers Fairness Act of 1987.".

(b) STUDY BY GENERAL ACCOUNTING OFFICE.—Within 180 days after the date of the enactment of this Act, the General Accounting Office shall complete a study of operations of the Rural Telephone Bank and report its recommendations to the Committees on Agriculture and Government Operations of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate with respect to—

(1) the appropriate level of funding for the reserve for losses due to interest rate fluctuations established in section 406(h) of the Rural Electrification Act of 1936 (7 U.S.C. 947(h));

(2) the circumstances under which amounts in the reserve for losses due to interest rate fluctuations should be expended;

(3) the circumstances under which amounts should be added to the reserve for losses due to interest rate fluctuations; and

(4) the disposition of excess reserves.

In such study, the General Accounting Office shall consider the effects of such recommendations on Rural Telephone Bank borrowers, the subscribers of such borrowers, and the United States Government.

(c) LIMITATION ON ESTABLISHMENT OF NEW RESERVES.—Subsection (g) of section 406 of the Rural Electrification Act of 1936 (7 U.S.C. 947(g)) is amended—

(1) by striking out "reserves for losses," and inserting in lieu thereof "the reserve for loan losses,"; and

(2) by adding at the end the following: "The telephone bank may not establish any reserve other than the reserves referred to in this subsection and in subsection (h).".

SEC. 1045. PUBLICATION OF RURAL TELEPHONE BANK POLICIES AND REGULATIONS.

The Governor of the Rural Telephone Bank shall cause to be published in the Federal Register, in accordance with section 553 of title 5, United States Code, all rules, regulations, bulletins, and other written policy standards governing the operation of the Rural Telephone Bank's programs. After September 30, 1988, the Rural Telephone Bank may not deny a loan or advance to any applicant or borrower for any reason which is not based upon a rule, regulation, bulletin, or other written policy standard which has been so published.

Subtitle E—Department of Agriculture Programs

SEC. 1051. MARKETING ORDER PENALTIES.

Section 8c(14) of the Agricultural Adjustment Act (7 U.S.C. 608c(14)) is amended—

(1) by inserting "(A)" before "Any"; and

(2) by adding at the end thereof the following new subparagraph:

"(B) Any handler subject to an order issued under this section, or any officer, director, agent, or employee of such handler, who violates any provision of such order (other than a provision calling for payment of a pro rata share of expenses) may be assessed a civil penalty by the Secretary not exceeding $1,000 for each such violation, and each day during which such violation continues shall be deemed a separate violation; except that if the Secretary finds that a petition pursuant to paragraph (15) of this section was filed and prosecuted by the handler in good faith and not for delay, no civil penalty may be assessed under this paragraph for such violations as occurred between the date upon which the handler's petition was filed with the Secretary, and the date upon which notice of the Secretary's ruling thereon was given to the handler in accordance with regulations prescribed pursuant to paragraph (15) of this section. The Secretary may issue an order assessing a civil penalty under this paragraph only after notice and an opportunity for an agency hearing on the record. Such order shall be treated as a final order reviewable in the district courts of the United States in any district in which the handler subject to the order is an inhabitant, or has his principal place of business. The validity of such order may not be reviewed in an action to collect such civil penalty.".

SEC. 1052. FROZEN FOOD LABELING.

(a) IN GENERAL.—Section 1(n) of the Federal Meat Inspection Act (21 U.S.C. 601(n)) is amended by—

(1) striking out "or" at the end of paragraph (11);

(2) redesignating paragraph (12) as paragraph (13); and

(3) inserting after paragraph (11) the following:

"(12) if it is a product that contains meat or a meat food product and includes an ingredient that resembles any variety of cheese for which a standard of identity exists in an amount which is greater than one-third the amount of standardized cheese used in the product, and there does not appear on the label in a prominent manner contiguous to the product name on the principal display panel the term 'contains imitation cheese' or, when authorized by the Secretary, 'contains cheese alternate' (and the Secretary shall also approve other common or usual names to describe the ingredients which resemble any variety of cheese for which a standard of identity exists);".

(b) IMPLEMENTATION.—The amendments made by this section shall take effect and shall be implemented by September 1, 1988. The Secretary shall grant individual requests for temporary exemptions from compliance with this section, upon a showing of economic hardship. Any such temporary exemptions granted by the Secretary shall not extend beyond September 1, 1989.

Subtitle F—Ethanol

SEC. 1061. SHORT TITLE.

This subtitle may be cited as the "Agricultural Ethanol Motor Fuel Act of 1987".

SEC. 1062. ETHANOL-BLENDED FUEL REQUIREMENT.

(a) GENERAL RULE.—Effective on the date of enactment of this Act, the President shall establish a program to provide that the total quantity of motor fuel sold annually in commerce in the United States by wholesale distributors shall contain not less than the percentage of ethanol, derived principally from agricultural feedstocks, by volume set forth in the following table:

Calendar Year:	Percent of Ethanol in Motor Fuel by Volume:
1988	1.0 percent.
1989	1.5 percent.
1990	2.5 percent.
1991	3.5 percent.
1992 and thereafter	5.0 percent.

(b) COMPUTATION.—

(1) The percentage of ethanol in motor fuel sold by a wholesale distributor shall be determined by measuring the ethanol content by volume of the motor fuel sold by the wholesale distributor as may be modified in accordance with paragraph (2).

(2) If a wholesale distributor sells motor fuel with an ethanol content that is in excess of the content required by subsection (a), another wholesale distributor may arrange, in accordance with regulations issued by the Federal agency or agencies designated by the President, with such wholesale distributor to have all or part of the excess ethanol credited to such other wholesale distributor in such a manner that the other wholesale distributor shall be considered to have sold the excess ethanol.

(c) REPORTS.—

(1) Each wholesale distributor of motor fuel shall report to the Federal agency or agencies designated by the President the total amount of motor fuel sold in a calendar year and the amount and percentage of ethanol contained in such motor fuel. Such report shall be made within 30 days after the expiration of the calendar year.

(2)(A) A wholesale distributor that arranges under subsection (b)(2) to have part of its excess ethanol credited to another wholesale distributor during a calendar year shall report to the designated Federal agency or agencies the amount credited to each other wholesale distributor and the identity of the other wholesale distributors that entered into such arrangement. Such report shall be made within 30 days after the expiration of the calendar year.

(B) A wholesale distributor who arranges under subsection (b)(2) to have part of the excess ethanol of another wholesale distributor credited to its sales of ethanol during a calendar year shall report to the designated Federal agency or agencies the amount credited to its sales and the identity of the wholesale distributors with which it entered into such arrangement. Such report shall be made within 30 days after the expiration of the calendar year.

SEC. 1063. ENFORCEMENT.

(a) CIVIL PENALTY.—Each wholesale distributor that does not meet an annual requirement under section 1062(a) shall pay a civil penalty of not more than $1 for each gallon of motor fuel that does not comply with such requirement. The civil penalty shall be assessed by the head of the Federal agency or agencies designated by the President in accordance with subsection (b).

(b) PROCEDURE.—

(1) Before issuing an order assessing a civil penalty against any person, the head of a designated Federal agency shall provide to such person notice of the proposed penalty. Such notice shall inform such person of the opportunity to elect within 30 days after the date of such notice to have the procedures of paragraph (3) (in lieu of those of paragraph (2)) apply with respect to such assessment.

(2)(A) Unless an election is made within 30 calendar days after receipt of notice under paragraph (1) to have paragraph (3) apply with respect to such penalty, the head of the designated Federal agency by order shall assess the penalty, after a determination of violation has been made on the record after an opportunity for an agency hearing pursuant to section 554 of title 5, United States Code, before a hearing examiner appointed under section 3105 of such title 5. Such assessment order shall include the hearing examiner's findings and the basis of such assessment.

(B) Any person against whom a penalty is assessed under subparagraph (A) may, within 60 calendar days after the date of the order of the head of the designated Federal agency assessing such penalty, institute an action in the United States court of appeals for the appropriate judicial circuit for judicial review of such order in accordance with chapter 7 of title 5, United States Code. The court shall have jurisdiction to enter a judgment affirming, modifying, or setting aside, in whole or in part, the order of the head of the designated Federal agency, or the court may remand the proceeding to the Federal agency for such further action as the court may direct.

(3)(A) In the case of any civil penalty with respect to which the procedures of this paragraph have been elected, the head of the designated Federal agency promptly shall assess such penalty.

(B) If the civil penalty has not been paid within 60 calendar days after the assessment order has been made under subparagraph (A), the head of the designated Federal agency shall institute an action in the appropriate district court of the United States for an order affirming the assessment of the civil penalty. The court shall have authority to review de novo the law and the facts involved, and shall have jurisdiction to enter a judgment enforcing, modifying and enforcing as so modified, or setting aside in whole or in part such assessment.

(C) Any election to have this paragraph apply may not be revoked except with the consent of the head of the designated Federal agency.

(4) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order under paragraph (2) or after the appropriate district court has entered final judgment in favor of the head of the designated Federal agency under paragraph (3), the head of the designated Federal agency shall recover the amount of such penalty in any appropriate district court of the United States. In such action, the validity and appropriateness of such final assessment order or final judgment shall be subject to review.

SEC. 1064. PROGRAM FOR ETHANOL DEVELOPMENT AND USE.

The President shall establish by executive order, or such Federal agency or agencies as the President designates shall establish by regulations, a program to promote the development and use of ethanol in motor fuel. Such program shall include efforts to inform the public of the benefits of increasing the use of ethanol derived from agricultural feedstocks in motor fuel and the beneficial effects such use may have on the environment.

SEC. 1065. COMMODITY CREDIT CORPORATION COOPERATION WITH ETHANOL PROGRAM.

Section 423 of the Agricultural Act of 1949 (7 U.S.C. 1433b) is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following:

"(c) In providing for the processing of Commodity Credit Corporation stocks under this section, the Secretary shall ensure, insofar as possible, that there is close cooperation and coordination between the program established under this section and with the President's program established under the Agriculture Ethanol Motor Fuel Act of 1987.".

SEC. 1066. DEFINITIONS.

As used in this subtitle—

(1) the term "ethanol" means any ethyl alcohol, but principally that derived from agricultural feedstocks, that is suitable for use by itself or in combination with other fuels as a motor fuel, except that it does not include ethanol produced from petroleum or natural gas;

(2) the term "commerce" means any trade, traffic, transportation, exchange, or other commerce—

(A) between any State and any place outside of such State, or

(B) that affects any trade, traffic, transportation, exchange, or other commerce described in subparagraph (A);

(3) the term "motor fuel" means any substance (other than diesel fuel) suitable as a fuel for self-propelled vehicles designed primarily for use on public streets, roads, and highways; and

(4) the term "United States" means each of the several States and the District of Columbia.

Subtitle G—Cotton Research and Promotion

SEC. 1071. SHORT TITLE.

This subtitle may be cited as the "Cotton Research and Promotion Program Act of 1987".

SEC. 1072. CONFORMING AMENDMENTS.

Section 2 of the Cotton Research and Promotion Act (7 U.S.C. 2101) is amended by—

(1) in the fourth sentence of the first paragraph, inserting "and imported into the United States" after "United States";

(2) striking out the sixth sentence of the first paragraph; and

(3) in the third paragraph—

(A) striking out "harvested" and inserting "marketed" in lieu thereof; and

(B) inserting "and cotton imported into the United States" after "United States".

SEC. 1073. COTTON BOARD; ASSESSMENTS.

(a) AMENDMENTS TO SECTION 7.—Section 7 of the Cotton Research and Promotion Act (7 U.S.C. 2106) is amended by—

(1) striking out "producer" in subsection (a)(2);

(2) in the first sentence of subsection (b)—

(A) inserting "(1)" after "shall be composed of"; and

(B) striking out the colon and all that follows through the end of the sentence and inserting in lieu thereof the following: "; and (2) an appropriate number of representatives, as determined by the Secretary, of persons who import cotton into the United States. Each cotton-producing State shall be entitled to at least one representative on the Cotton Board."; and

(3) in the first sentence of subsection (e)—

(A) inserting ", and handlers who are importers shall pay to the Cotton Board on imported cotton" before ", an assessment"; and

(B) striking out "$200,000" and inserting "$300,000".

(b) PROPOSED AMENDMENT TO ORDER.—

(1) Notwithstanding any provision of the Cotton Research and Promotion Act in effect prior to the date of enactment of this Act, or any rule or procedure issued thereunder, the Secretary of Agriculture shall issue a proposed amendment to the order in effect under such Act on the date of enactment of this Act, in accordance with the procedure prescribed in such Act, that contains the following:

(A) Procedures under which an appropriate number of persons who import cotton shall serve on the Cotton Board.

(B) A provision subjecting cotton and the products thereof imported into the United States to the assessments provided for in section 7(e) of the Cotton Research and Promotion Act, with the quantity and value of such cotton to be established in accordance with regulations issued by the Secretary.

(C) A provision terminating the authority of the Cotton Board to accept and process applications for refunds of assessments (as provided in section 11(b) of the Cotton Research and Promotion Act).

(2) Within a reasonable period after enactment of this subsection, the Secretary shall publish the proposed amendment to the order. Such publication shall provide notice and opportunity for interested persons to comment on the proposed amendment. After notice and opportunity for comment are so provided, the Secretary shall issue the proposed amendment to the order, which shall become effective if approved in a referendum, as provided for in section 8(b) of the Cotton Research and Promotion Act.

SEC. 1074. REFERENDUM.

Section 8 of the Cotton Research and Promotion Act (7 U.S.C. 2107) is amended by inserting "(a)" after "SEC. 8." and by adding at the end thereof a new subsection (b) as follows:

"(b) Notwithstanding the foregoing provisions of this section, the Secretary shall, within a period not to exceed 8 months from the date of enactment of the Cotton Research and Promotion Program Act of 1987, conduct a referendum among persons who have been cotton producers during a representative period, as determined by the Secretary, for the purpose of ascertaining whether they approve or disapprove the proposed amendment to the order specified in such Act and shall publish the results of the referendum. Within a period not to exceed 90 days from publication of the results of the referendum, the Secretary shall publish final implementing regulations which will be effective on publication.

"(c) The failure of cotton producers to approve an amendment to any order issued under this Act shall not be deemed to invalidate such order.".

SEC. 1075. REFUNDS OF ASSESSMENTS.

Section 11 of the Cotton Research and Promotion Act (7 U.S.C. 2110) is amended by—

(1) designating the text thereof as subsection (a);

(2) striking out "Notwithstanding any other provision of this Act, any" and inserting in lieu thereof "Except as provided in subsection (b), any"; and

(3) adding at the end thereof a new subsection (b), as follows:

"(b)(1) Beginning on the date of enactment of the Cotton Research and Promotion Program Act of 1987, refunds of assessments collected under this Act shall be made only as authorized by the provisions of this subsection:

"(2) Prior to the date on which the results of the referendum conducted under section 8(b) are announced by the Secretary, any person shall have the right to demand and receive from the Cotton Board a refund of an amount collected under section 7 if such person is responsible for paying such amount and does not support the program established under this Act. Such demand shall be made in accordance with regulations, on a form, and within a time period prescribed by the Cotton Board and approved by the Secretary, but in no event less than ninety days from the date of payment, and on proof satisfactory to the Board that such person paid the amount for which refund is sought. Any such refund shall be made within sixty days after demand therefor.

"(3) Effective beginning on the date that the Secretary announces the results of the referendum conducted under section 8(b), and if such referendum is approved by a majority of those persons voting in the referendum, the authority of the Cotton Board to accept and process applications for refunds under this section shall terminate, unless such date is prior to July 1, 1988, in which case the authority shall terminate on June 30, 1988.".

SEC. 1076. DEFINITIONS.

Section 17 of the Cotton Research and Promotion Act (7 U.S.C. 2116) is amended by—

(1) in subsection (c), inserting "(1)" after "means" and adding after "seed" the following: "and (2) upland cotton produced in foreign countries and imported into the United

States, and products containing processed cotton that were produced in foreign countries and imported into the United States"; and

(2) in subsection (d), inserting "or who imports cotton into the United States" after "cottonseed".

TITLE II—COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS

SEC. 2001. SAVINGS ACHIEVED.

For other provisions of law which reduce spending for fiscal years 1988, 1989, and 1990 in satisfaction of the reconciliation requirements imposed by section 4(m) of H. Con. Res. 93 (100th Congress), see the amendment made by section 503 of the Competitive Equality Banking Act of 1987 to section 11 of the Federal Deposit Insurance Act.

TITLE III—COMMITTEE ON EDUCATION AND LABOR

Subtitle A—Pension Assets Protection

SEC. 3001. SHORT TITLE AND TABLE OF CONTENTS.

This subtitle may be cited as the "Pension Assets Protection Act of 1987".

TABLE OF CONTENTS OF SUBTITLE

Sec. 3001. Short title and table of contents.
Sec. 3002. Minimum benefit security level.
Sec. 3003. Asset withdrawals permitted from certain ongoing single-employer plans; related definitions.
Sec. 3004. Limitations on employer reversions upon plan termination.
Sec. 3005. Three-year amortization of underfunding of plans of controlled group upon distribution to employer from a terminated plan or upon certain transactions involving plan assets; tax-free transfers between certain single-employer plans in same controlled group.
Sec. 3006. Termination charge for single-employer plan termination.
Sec. 3007. Treatment of defined contribution plans with respect to distributions and mergers, consolidations, and transfers from defined benefit plans.
Sec. 3008. Benefit security funding charge and related adjustments to funding standards.
Sec. 3009. Increase in liabilities arising upon plan termination.
Sec. 3010. Amendments relating to section 4049 trust.
Sec. 3011. Single-employer plan benefit guaranty premiums.
Sec. 3012. Miscellaneous and conforming amendments relating to plan terminations.
Sec. 3013. Miscellaneous amendments to titles I and III of ERISA.
Sec. 3014. Additional limitations on investment by an individual account plan forming part of a floor-offset arrangement and on investment by an individual account plan in employer stock.
Sec. 3015. Plan amendments not required until January 1, 1988.

SEC. 3002. MINIMUM BENEFIT SECURITY LEVEL.

(a) AMENDMENT TO EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.—Section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002) is amended by adding at the end the following new paragraphs:

"(41) MINIMUM BENEFIT SECURITY LEVEL.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'minimum benefit security level' of a plan means the sum of—

"(i) the greater of—

"(I) an amount equal to the full funding limitation (within the meaning of section 302(c)(7)) with respect to such plan, using the projected unit credit funding method, or

"(II) 125 percent of the actuarial present value of all benefit liabilities under the plan, and

"(ii) the amount which would be required to be distributed from the plan under section 4044(d)(2)(A) if the plan terminated.

"(B) SPECIAL RULE FOR PLANS PROVIDING QUALIFIED EVENT-CONTINGENT BENEFITS.—

"(i) IN GENERAL.—In any case in which a plan provides a qualified event-contingent benefit, the term 'minimum benefit security level' of such plan means the lesser of—

"(I) the amount described in subparagraph (A), except that, in applying subparagraph (A) for purposes of this subclause, '150 percent' shall be substituted for '125 percent' and qualified event-contingent benefits shall be disregarded, or

"(II) the amount which would be determined as the amount described in subparagraph (A) if all events, upon which qualified event-contingent benefits under the plan are contingent and which have not occurred as of the time of the determination, occurred immediately before the determination.

"(ii) QUALIFIED EVENT-CONTINGENT BENEFIT.—For purposes of clause (i), the term 'qualified event-contingent benefit' means any subsidy or benefit which is contingent upon the occurrence of an event which—

"(I) has not occurred, and

"(II) does not constitute an event occurring solely with respect to a participant or beneficiary (such as the attainment of any age, disability, death, or the completion of any period of service).

"(C) INTEREST RATE ASSUMPTION.—The interest rate assumed for purposes of subparagraph (A)(i)(II) shall be the lesser of—

"(i) the interest rate stated in the plan for purposes of determining single sum distributions, or

"(ii) the interest rate required under section 203(e)(2).

"(D) REGULATIONS.—The Secretary of the Treasury may prescribe regulations under this paragraph. Any such regulations shall be prescribed in consultation with the Secretary.

"(42) BENEFIT LIABILITIES.—The term 'benefit liabilities' under a plan to any person means all benefits of such person under the plan (including benefits the reduction or elimination of which is not prohibited under section 204(g)).".

(b) AMENDMENT TO INTERNAL REVENUE CODE OF 1986.—Section 414 of the Internal Revenue Code of 1986 (relating to definitions and special rules) is amended by adding at the end the following new subsection:

"(u) MINIMUM BENEFIT SECURITY LEVEL.—

"(1) IN GENERAL.—For purposes of this part, except as provided in paragraph (2), the term 'minimum benefit security level' of a plan means the sum of—

"(A) the greater of—

"(i) an amount equal to the full funding limitation (within the meaning of section 412(c)(7)) with respect to such plan, using the projected unit credit funding method, or

"(ii) 125 percent of the actuarial present value of all benefit liabilities under the plan, and

"(B) the amount which would be required to be distributed from the plan under section 4044(d)(2)(A) of the Employee Retirement Income Security Act of 1974 if the plan terminated.

"(2) SPECIAL RULE FOR PLANS PROVIDING QUALIFIED EVENT-CONTINGENT BENEFITS.—

"(A) IN GENERAL.—For purposes of this part, in any case in which a plan provides a qualified event-contingent benefit, the term 'minimum benefit security level' of such plan means the lesser of—

"(i) the amount described in paragraph (1), except that, in applying paragraph (1) for purposes of this clause, '150 percent' shall be substituted for '125 percent' and qualified event-contingent benefits shall be disregarded, or

"(ii) the amount which would be determined as the amount described in paragraph (1) if all events, upon which qualified event-contingent benefits under the plan are contingent and which have not occurred as of the time of the determination, occurred immediately before the determination.

"(B) QUALIFIED EVENT-CONTINGENT BENEFIT.—For purposes of subparagraph (A), the term 'qualified event-contingent benefit' means any subsidy or benefit which—

"(i) is contingent upon the occurrence of an event which has not occurred, and

"(ii) does not constitute an event occurring solely with respect to a participant or beneficiary (such as the attainment of any age, disability, death, or the completion of any period of service).

"(3) INTEREST RATE ASSUMPTION.—The interest rate assumed for purposes of paragraph (1)(A)(ii) shall be the lesser of—

"(A) the interest rate stated in the plan for purposes of determining single sum distributions, or

"(B) the interest rate required under section 411(a)(11)(B).

"(4) BENEFIT LIABILITIES.—For purposes of this subsection, the term 'benefit liabilities' under a plan to any person means all benefits of such person under the plan (including benefits the reduction or elimination of which is not prohibited under section 411(d)(6)).

"(5) REGULATIONS.—The Secretary may prescribe regulations under this subsection. Any such regulations shall be prescribed in consultation with the Secretary of Labor.".

SEC. 3003. ASSET WITHDRAWALS PERMITTED FROM CERTAIN ONGOING SINGLE-EMPLOYER PLANS; RELATED DEFINITIONS.

(a) AMENDMENTS TO THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.—

(1) IN GENERAL.—Part 4 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 is amended—

(A) by redesignating section 414 (29 U.S.C. 1114) as section 415; and

(B) by inserting after section 413 (29 U.S.C. 1113) the following new section:

"ASSET WITHDRAWALS FROM CERTAIN ONGOING SINGLE-EMPLOYER PLANS

"SEC. 414. (a) IN GENERAL.—The requirements of this part shall not be treated as violated solely by reason of a withdrawal by the employer during any plan year of assets of an ongoing single-employer plan to an extent expressly provided for under the plan if, as of immediately after the withdrawal—

"(1) the current value of the assets in the plan from which the withdrawal is made is not less than the minimum benefit security level of such plan, and

"(2) the current value of the assets in each other single-employer plan (if any) which is maintained by the employer (or by any other person who is then in the controlled group including the employer) is not less than the minimum benefit security level of such plan.

"(b) SPECIAL RULES FOR RECENTLY AMENDED PLANS AND FOR MERGERS, CONSOLIDATIONS, AND TRANSFERS OF PLAN ASSETS.—

"(1) IN GENERAL.—In determining the extent to which a plan provides for the withdrawal of plan assets by the employer for purposes of this section, any such provision, and any amendment increasing the amount which may be withdrawn, shall not be treated as effective before the end of the fifth calendar year following the date of the adoption of such provision or amendment and notice thereof is provided to all affected parties.

"(2) TREATMENT OF PLANS AFTER MERGERS, CONSOLIDATIONS, AND TRANSFERS.—Except as otherwise provided in regulations of the Secretary of the Treasury, in the case of a transaction described in section 208, paragraph (1) shall continue to apply separately with respect to the amount of any assets involved in such transaction.

"(3) EXCEPTION FOR CERTAIN EXISTING PLANS.—

"(A) IN GENERAL.—Paragraph (1) shall not apply with respect to any plan which provides on July 1, 1987, in accordance with section 4044(d) (as in effect on such date), for a distribution of plan assets to the employer upon plan termination.

"(B) 180-DAY NOTICE REQUIREMENT.—In the case of any plan described in subparagraph (A), any plan amendment providing for the withdrawal of plan assets or an increase in the amount which may be withdrawn shall not be considered effective unless the plan amendment is effective not earlier than 180 days after the employer has provided written notice of such amendment to all affected parties.

"(c) ONGOING PLAN.—For purposes of this section, a plan is 'ongoing' to the extent that, under both title IV of this Act (if applicable) and section 411(d)(3) of the Internal Revenue Code of 1986, the plan is not treated as a terminated plan.

"(d) APPLICATION TO MULTIPLE-EMPLOYER PLANS.—The provisions of this section shall apply with respect to multiple-employer plans only to the extent provided in regulations prescribed by the Secretary of the Treasury in consultation with the Secretary.

"(e) REGULATIONS.—

"(1) IN GENERAL.—Except as provided in paragraph (2), the Secretary of the Treasury, in consultation with the Secretary, may prescribe such regulations as may be necessary under subsections (a) and (b).

"(2) SUBSECTION (b)(3)(B).—The Secretary may prescribe such regulations as may be necessary under subsection (b)(3)(B).".

(2) PLAN PROVISION MAY PROVIDE FOR ASSET WITHDRAWAL.—Part 4 of subtitle B of title I of such Act is amended—

(A) in section 402(c) (29 U.S.C. 1102(c)), by striking "or" at the end of paragraph (2), by striking "plan." in paragraph (3) and inserting "plan; or", and by adding at the end the following new paragraph:

"(4) that the employer may withdraw plan assets from the plan to the extent permitted under section 414.";

(B) in section 403(c)(1) (29 U.S.C. 1103(c)(1)), by inserting ", or under section 414 (relating to withdrawal of plan assets)" after "subsection (d),"; and

(C) in section 404(a)(1) (29 U.S.C. 1104(a)(1)), by inserting "414," after "403 (c) and (d),".

(3) 60-DAY NOTICE REQUIREMENT FOR PLAN ASSET WITHDRAWAL.—

(A) IN GENERAL.—Section 104 of such Act (29 U.S.C. 1024) is amended—

(i) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively; and

(ii) by inserting after subsection (b) the following new subsection:

"(c)(1) Not later than 60 days after the date of any withdrawal of plan assets by the employer pursuant to section 414, the employer maintaining the plan from which the withdrawal was made shall provide the Secretary, the Secretary of the Treasury, the administrator, and each employee organization representing participants in the plan a written notice of such withdrawal. Any such notice shall be maintained in the principal office of the administrator.

"(2) Such notice shall identify the plan from which the withdrawal was made, the amount of the withdrawal, a detailed accounting of assets held by the plan immediately before and immediately after the withdrawal, the benefit liabilities under the plan at the time of the withdrawal, the types of qualified event-contingent benefits (if any) under the plan, the amount of the benefit liabilities which constitute qualified event-contingent benefits, and a listing of all transactions described in section 208 involving the plan during the period commencing with the period of 2 calendar years preceding the withdrawal and ending with the date of the withdrawal.

"(3) Such notice shall include the name and identification of each other single-employer plan maintained by a person in the controlled group including the employer at the time of the withdrawal and the employer maintaining such plan, the current value of the assets of such plan and the present value of the benefit liabilities of such plan at the beginning and end of the last plan year preceding the withdrawal, and a listing of all transactions described in section 208 involving such plan during the period commencing with the period of 2 calendar years preceding the withdrawal and ending with the date of the withdrawal. The Secretary may waive the requirements of this paragraph to the extent the Secretary determines that such requirements are unnecessary to carry out the purposes of this section.

"(4) Such notice shall include copies of all filings required by the Secretary of the Treasury or such Secretary's delegate pursuant to section 6058 of the Internal Revenue Code of 1986 with respect to—

"(A) the plan from which the withdrawal was made, and

"(B) each other single-employer plan maintained by the employer or any other person who was in a controlled group including the employer at any time during the period commencing with the period of 2 calendar years preceding the withdrawal and ending with the date of the withdrawal.

"(5) Such notice shall include a certification by an enrolled actuary (including supporting documentation) that the requirements of section 414 were met with respect to the withdrawal.

"(6) The Secretary may prescribe such additional reporting requirements as may be necessary to carry out the purpose of section 414 and other related provisions.".

(B) RIGHT TO EXAMINATION OF INFORMATION.—Section 104(b)(2) of such Act (29 U.S.C. 1024(b)(2)) is amended—

(i) by striking "description and" and inserting "description,";

(ii) by striking "report and" and inserting "report,"; and

(iii) by striking "operated" and inserting "operated, and any notice and certification provided pursuant to subsection (c)".

(C) PENALTY FOR FAILURE TO PROVIDE NOTICE.—Section 502(i) of such Act (29 U.S.C. 1132(i)) is amended—

(i) by inserting "(1)" after "(i)";

(ii) by striking "subsection" in the last sentence and inserting "paragraph"; and

(iii) by adding at the end the following new paragraph:

"(2) The Secretary may assess a civil penalty against any employer who fails to provide a notice as required under section 104(c). The amount of such penalty may not exceed an amount per day equal to the greater of—

"(A) $5,000, or

"(B) one-tenth of one percent of the amount withdrawn,

for the period beginning with the date on which such failure first occurs and ending with the date on which such notice is so provided.".

(4) PERMITTED ASSET WITHDRAWALS CONSTITUTING AN EXEMPTION FROM PROHIBITED TRANSACTIONS.—Section 408(b) of such Act (29 U.S.C. 1108(b)) is amended by inserting after paragraph (11) the following:

"(12) A withdrawal of assets from the plan permitted under section 414.".

(5) DEFINITION OF SINGLE-EMPLOYER PLAN AND MULTIPLE EMPLOYER PLAN.—Section 3 of such Act (29 U.S.C. 1002) (as amended by section 3002(a) of this Act) is further amended by adding at the end the following new paragraphs:

"(43) SINGLE-EMPLOYER PLAN.—The term 'single-employer plan' means a defined benefit plan which is not a multiemployer plan.

"(44) MULTIPLE-EMPLOYER PLAN.—

"(A) IN GENERAL.—The term 'multiple-employer plan' means a single-employer plan which is maintained by more than one employer.

"(B) TREATMENT OF CONTROLLED GROUP.—For purposes of subparagraph (A), any 2 or more employers who are in the same controlled group shall be treated as a single employer.".

(6) DEFINITION OF CONTROLLED GROUP.—Section 3 of such Act (29 U.S.C. 1002) (as amended by paragraph (5)) is further amended by adding at the end the following new paragraph:

"(45) CONTROLLED GROUP.—

"(A) IN GENERAL.—The term 'controlled group' means, in connection with any person, a group consisting of such person and all other persons under common control with such person.

"(B) COMMON CONTROL.—For purposes of subparagraph (A), the determination of whether 2 or more persons are under 'common control' shall be made under regulations prescribed by the Secretary of the Treasury under subsections (b), (c), (m), and (o) of section 414 of the Internal Revenue Code of 1986.".

(7) CLERICAL AMENDMENT.—The table of contents in section 1 of such Act is amended by striking the item relating to section 414 and inserting the following new items:

"Sec. 414. Asset withdrawals from certain ongoing single-employer plans.

"Sec. 415. Effective date.".

(b) AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1986.—

(1) IN GENERAL.—Subsection (a) of section 401 of the Internal Revenue Code of 1986 (relating to requirements for qualification) is amended by inserting after paragraph (28) the following new paragraph:

"(29) Withdrawal by employer of plan assets.—

"(A) In general.—A trust forming a part of a defined benefit plan (other than a multiemployer plan) shall not be treated as failing to constitute a qualified trust under this section solely by reason of a withdrawal of plan assets by the employer permitted under section 4975(d)(16).

"(B) Effect of correction of withdrawal.—In any case in which an employer becomes subject to tax under section 4980A (relating to excise tax on certain withdrawals of plan assets) and corrects (as defined in section 4980A(d)(4)) the excess withdrawal of plan assets on which such tax is based within 90 days after such withdrawal, the plan shall not fail to constitute a qualified trust under this section solely by reason of the withdrawal, except to the extent inconsistent with the purposes of this paragraph, or as otherwise prescribed by the Secretary in regulations.".

(2) Treatment of section 403(a) annuity plans.—Section 404(a)(2) of such Code (relating to taxation of employees' annuities) is amended by inserting "and (29)" before "and, if applicable".

(3) Permitted asset withdrawals constituting an exemption from prohibited transactions.—Subsection (d) of section 4975 of such Code (relating to exemptions from prohibited transactions) is amended—

(A) in paragraph (14), by striking "(F); or" and inserting "(F);";

(B) in paragraph (15), by striking "(F)." and inserting "(F); or"; and

(C) by inserting after paragraph (15) the following:

"(16) a withdrawal of assets of the plan in accordance with section 414 of the Employee Retirement Income Security Act of 1974.".

(4) Actuarial statements required in case of asset withdrawal.—Subsection (b) of section 6058 of such Code (relating to actuarial statement in case of mergers, etc.) is amended—

(A) by striking "(b) Actuarial" and all that follows through "the plan administrator" and inserting the following:

"(b) Actuarial Statement in Case of Mergers, Etc., or Asset Withdrawal.—Not less than 30 days before—

"(1) a merger, consolidation, or transfer of assets or liabilities of a plan described in subsection (a) to another plan, or

"(2) a withdrawal of plan assets described in section 401(a)(29),

the plan administrator"; and

(B) by inserting "or section 401(a)(29) (as applicable)" after "section 401(a)(12)".

(5) Excise tax on certain withdrawals.—

(A) In general.—Chapter 43 of such Code (relating to excise taxes relating to qualified pension, etc., plans) is amended by adding at the end the following new section:

"SEC. 4980A. TAX ON CERTAIN WITHDRAWALS OF PLAN ASSETS.

"(a) Imposition of Tax.—There is hereby imposed a tax on each withdrawal of plan assets from a qualified plan by the employer maintaining the plan if the amount of such withdrawal is in excess of the permissible amount.

"(b) Amount of Tax.—The amount of the tax imposed by subsection (a) shall be a percentage of the amount in excess of the permissible amount, determined as follows:

"(1) Correction within 90 days.—If a correction occurs with respect to the withdrawal before the end of the 90-day period following the date of the withdrawal, the amount of the tax shall be 5 percent of the amount in excess of the permissible amount.

"(2) Correction within 365 days.—If a correction does not occur with respect to the withdrawal before the end of the 90-day period described in paragraph (1) but does occur before the end of the 365-day period following the date of the withdrawal, the amount of the tax shall be 50 percent of the amount in excess of the permissible amount.

"(3) No correction within 365 days.—If a correction does not occur with respect to the withdrawal before the end of the 365-day period following the date of the withdrawal, the amount of the tax shall be 100 percent of the amount in excess of the permissible amount and an additional 100 percent of such excess for each subsequent 365-day period as of the end of which a correction has not occurred.

"(c) Liability for Tax.—The tax imposed by subsection (a) shall be paid by the employer making the withdrawal.

"(d) Definitions.—For purposes of this section—

"(1) Qualified plan.—The term 'qualified plan' means any defined benefit plan (other than a multiemployer plan) meeting the requirements of section 401(a) or 403(a). Such term shall include any defined benefit plan (other than a multiemployer plan) which at any time has been determined by the Secretary to be a qualified plan (within the meaning of the preceding sentence) or with respect to which deductions have been taken by an employer under section 404.

"(2) Permissible amount.—

"(A) In general.—The term 'permissible amount' means the amount (determined as of immediately before the withdrawal) of the excess of the market value of plan assets over the minimum benefit security level of the plan.

"(B) Exclusion.—Such term does not include the market value of plan assets with respect to which a withdrawal may not occur by reason of a failure to meet any requirement of subsection (b) or (c) of section 414 of the Employee Retirement Income Security Act of 1974.

"(C) Recomputation to account for new qualified event-contingent benefits.—Pursuant to such regulations as may be prescribed by the Secretary, if within 365 days after the withdrawal, the plan is amended to include (or increase) qualified event-contingent benefits (within the meaning of section 414(u)(2)(B)), the permissible amount shall be recomputed as of the time of the withdrawal and the amount of tax imposed under this subsection shall be determined as though such benefits (or such increase in such benefits) were included in the plan as of the time of the withdrawal.

"(3) Minimum benefit security level.—The term 'minimum benefit security level' has the meaning provided in section 414(u).

"(4) Correction.—The term 'correction' means, with respect to a withdrawal of plan assets, placing the plan in a financial position not worse than that in which the plan would be if the amount of the withdrawal had not been in excess of the permissible amount as of immediately before the withdrawal.".

(B) Conforming amendment relating to excise tax on prohibited transactions.—Section 4975(g) of such Code (relating to tax on prohibited transactions) is amended by adding at the end the following new sentence: "This section shall not apply with respect to a prohibited transaction to which section 4980A applies.".

(C) Clerical amendment.—The table of sections for chapter 43 of such Code is amended by adding at the end the following new item:

"Sec. 4980A. Tax on certain withdrawals of plan assets.".

(c) Effective Date and Transition Rule.—

(1) Effective date.—The amendments made by this section shall apply with respect to withdrawals occurring after the later of—

(A) December 31, 1987, or

(B) 90 days after the date of the enactment of this Act.

(2) Transition rule.—In the case of any plan which is amended to provide for the withdrawal of plan assets under section 414 of the Employee Retirement Income Security Act of 1974 (as added by this section) during the first plan year beginning after December 31, 1988, subsection (b)(1) of such section shall be applied by substituting "fourth calendar year" for "fifth calendar year".

SEC. 3004. LIMITATIONS ON EMPLOYER REVERSIONS UPON PLAN TERMINATION.

(a) In General.—Section 4044(d) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1344(d)) is amended to read as follows:

"(d) Distribution of Plan Assets.—

"(1) In general.—In the case of the termination under section 4041 of a single-employer plan, if there are plan assets remaining after satisfaction of all liabilities described in subsection (a), such assets shall be distributed in accordance with this subsection.

"(2) Distribution of assets attributable to employee contributions.—

"(A) In general.—The remaining assets of the plan which are attributable to employee contributions shall be equitably distributed to the participants who made such contributions or their beneficiaries (including alternate payees, within the meaning of section 206(d)(3)(K)).

"(B) Portion of assets attributable to employee contributions.—For purposes of subparagraph (A), the portion of the remaining assets which are attributable to employee contributions shall be an amount equal to the product derived by multiplying—

"(i) the market value of the total remaining assets, by

"(ii) a fraction—

"(I) the numerator of which is the present value of all portions of the accrued benefits with respect to participants which are derived from participants' mandatory contributions (referred to in subsection (a)(2)), and

"(II) the denominator of which is the present value of all benefits with respect to which assets are allocated under paragraphs (2) through (6) of subsection (a).

"(C) Participants.—For purposes of this paragraph, each person who is, as of the termination date—

"(i) a participant under the plan, or

"(ii) an individual who has received, during the 3-year period ending with the termination date, a distribution from the plan of such individual's entire nonforfeitable benefit in the form of a single sum distribution in accordance with section 203(e) or in the form of irrevocable commitments purchased by the plan from an insurer to provide such nonforfeitable benefit,

shall be treated as a participant with respect to the termination, if all or part of the nonforfeitable benefit with respect to such person is or was attributable to participants' mandatory contributions (referred to in subsection (a)(2)).

"(3) Distribution of assets to participants and beneficiaries.—

"(A) In general.—The remaining assets of the plan which are not required to be distributed under paragraph (2) shall be distributed among participants with respect to the termination, or their beneficiaries (including alternate payees, within the meaning of section 206(d)(3)(K)), to the extent provided in subparagraph (B) and in the manner provided in subparagraph (C).

"(B) Amount available for distribution.—The amount of the remaining assets described in subparagraph (A) which are required to be distributed under this paragraph is an amount equal to the lesser of—

"(i) the amount of the remaining assets described in subparagraph (A), or

"(ii) the excess (not less than zero) of—

"(I) the minimum benefit security level (within the meaning of section 3(41)) of the plan as of the termination date, over

"(II) the sum of plan assets allocated under subsection (a) and plan assets distributed under paragraph (2).

"(C) Manner of distribution.—

"(i) Distribution in proportion to certain accrued benefits.—The amount distributed under this paragraph shall be distributed among the participants with respect to the termination, or their beneficiaries (including alternate payees, within the meaning of section 206(d)(3)(K)), in proportion to the actuarial present value of the accrued benefits (as limited by clause (ii)) payable to participants, or their beneficiaries (including alternate payees, within the meaning of section 206(d)(3)(K)), including benefits the reduction or elimination of which is not prohibited under section 204(g).

"(ii) Limitation on valuation.—For purposes of clause (i), the actuarial present value of each accrued benefit referred to in clause (i) shall not exceed an amount which would be the actuarial present value (as of the termination date) of such accrued benefit payable in the form of a single life annuity in an annual amount not greater than 50 percent of the amount provided under section 415(b)(1)(A) of the Internal Revenue Code of 1986.

"(D) Participants.—For purposes of this paragraph, each person who is, as of the termination date—

"(i) a participant under the plan, or

"(ii) an individual who has received, during the 3-year period ending with the termination date, a distribution from the plan of such individual's entire nonforfeitable benefit in the form of a single sum distribution in accordance with section 203(e) or in the form of irrevocable commitments purchased by the plan from an insurer to provide such nonforfeitable benefit,

shall be treated as a participant with respect to the termination.

"(4) Distribution to employer.—

"(A) In general.—The remaining assets of the plan which are not required to be distributed under paragraphs (2) and (3) may be distributed to the employer if—

"(i) the distribution to the employer does not contravene any applicable provision of law, and

"(ii) the plan provides for such distribution, subject to the requirements of subparagraph (B).

"(B) Special rule for recently amended plans.—

"(i) In general.—In determining the extent to which a plan provides for the distribution of plan assets to the employer for purposes of this paragraph, any such provision, and any amendment increasing the amount which may be distributed to the employer, shall not be treated as effective before the end of the fifth calendar year following the date of the adoption of such provision or amendment.

"(ii) Recently established plans.—A distribution to the employer from a plan shall not be treated as failing to satisfy the requirements of this subparagraph if the plan has been in effect for fewer than 5 years and the plan has provided for such a distribution since the effective date of the plan.

"(iii) Treatment of plans after mergers, consolidations, and transfers.—Except as otherwise provided in regulations of the Secretary of the Treasury, in any case in which a transaction described in section 208 occurs, clause (i) shall continue to apply separately with respect to the amount of any assets transferred in such transaction.

"(C) Employer.—For purposes of this paragraph, the term 'employer' has the meaning provided in section 3(5).

"(5) Distribution in absence of distribution to employer.—Except as otherwise provided in the terms of the plan or in any other document under which the plan is maintained or operated, assets of the plan which remain after distributions in accordance with paragraphs (2) and (3) and which are not distributed as provided in paragraph (4) shall be distributed to the participants and beneficiaries in the same proportions as assets of the plan are allocated under paragraphs (2) through (6) of subsection (a).

"(6) General qualification requirements.—If the Secretary of the Treasury determines that any distribution made pursuant to this subsection would (without regard to this paragraph) result in discrimination prohibited by section 401(a)(4) of the Internal Revenue Code of 1986 or a violation of section 415 of such Code, then the distribution may be revised, notwithstanding the preceding provisions of this subsection, to the extent necessary to prevent such discrimination or violation.".

(b) Technical Amendment.—Section 4044(b)(4) of such Act (29 U.S.C. 1344(b)(4)) is amended by striking "section 401(a), 403(a), or 405(a)" and inserting "section 401(a) or 403(a)".

(c) Effective Date.—The amendments made by this section shall apply with respect to terminations with respect to which the termination date occurs on or after July 22, 1987.

SEC. 3005. THREE-YEAR AMORTIZATION OF UNDERFUNDING OF PLANS OF CONTROLLED GROUP UPON DISTRIBUTION TO EMPLOYER FROM A TERMINATED PLAN OR UPON CERTAIN TRANSACTIONS INVOLVING PLAN ASSETS; TAX-FREE TRANSFERS BETWEEN CERTAIN SINGLE-EMPLOYER PLANS IN SAME CONTROLLED GROUP.

(a) Amendments to Employee Retirement Income Security Act of 1974.—

(1) Additional charge to funding standard account.—

(A) In general.—Paragraph (2) of section 302(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1082(b)) is amended—

(i) in subparagraph (C), by striking "and" at the end;

(ii) in subparagraph (D), by striking "paragraph (3)(D)." and inserting "paragraph (3)(D), and"; and

(iii) by adding at the end the following new subparagraph:

"(E) in the case of a single-employer plan, the amount necessary to amortize any allocated funding shortfall determined under section 302A with respect to each prior plan year over a period of 3 plan years.".

(B) Special rules relating to charge for allocated funded shortfall.—

(i) Reduction in charge by amount of plan assets subsequently transferred to plan; applicability to multiple-employer plans.—Subsection (c) of section 302 of such Act (29 U.S.C. 1082(c)) is amended by adding at the end the following new paragraph:

"(11)(A) Any balance of an allocated funding shortfall for a plan remaining unamortized under subparagraph (E) of subsection (b)(2) at any time during the 3-year period referred to in such subparagraph shall be reduced (not below zero) by the amount of any assets transferred to the plan at such time from another single-employer plan to the extent such assets are transferred without liabilities or are in excess of liabilities transferred to the plan with such assets.

"(B) Subsection (b)(2)(E) shall not apply with respect to multiple-employer plans, except to such extent as may be prescribed in regulations of the Secretary of the Treasury.".

(ii) Charge not subject to waiver.—Subsection (a) of section 303 of such Act (29 U.S.C. 1083(a)) is amended in the first sentence by striking "section 302(b)(2)(C)" and inserting "subparagraph (C) or (E) of section 302(b)(2)".

(2) Determination of additional charge.—Part 3 of subtitle B of title I of such Act is amended by inserting after section 302 the following new section:

"DETERMINATION OF CHARGES TO FUNDING STANDARD ACCOUNT ARISING FROM CERTAIN EMPLOYER DISTRIBUTIONS OR TRANSACTIONS

"Sec. 302A. (a) Charge Based on Allocated Funding Shortfall.—

"(1) General rule.—For purposes of determining the charge to the funding standard account of the funded plan under section 302(b)(2)(E), in any case in which there is a funding shortfall in such plan after an employer distribution affecting such plan (as described in paragraph (2)) or a transaction affecting such plan (as described in paragraph (3)), an allocated funding shortfall shall be determined under this section for such plan with respect to the plan year in which the distribution or transaction occurs.

"(2) Employer distribution affecting plan.—For purposes of this section, an employer distribution affecting the funded plan is an employer distribution under section 4044(d)(4) from a terminated plan to the employer maintaining the funded plan or any plan related to the funded plan.

"(3) Transaction affecting plan.—For purposes of this section, a transaction affecting the funded plan is a transaction—

"(A) which constitutes a merger, consolidation, or transfer of plan assets or liabilities referred to in section 208 in which assets or liabilities attributable to the funded plan or a plan related to the funded plan are transferred to, or consolidated or merged with, another plan, or

"(B) in which responsibility for funding the funded plan or a plan related to the funded plan is assumed (in whole or in part) by another person.

"(4) Funding shortfall.—For purposes of this section, the funding shortfall in a plan after an employer distribution or transaction is an amount equal to the excess (greater than zero) of—

"(A) the lesser of—

"(i) the minimum benefit security level of such plan (determined as of immediately after the distribution or transaction), or

"(ii) the amount of assets which such plan would need to hold (as of immediately after the distribution or transaction) so that the funded ratio of such plan would then equal the controlled group funded ratio with respect to such plan (determined as of immediately before the distribution or transaction),

over

"(B) the amount of the assets of such plan (determined as of immediately after the distribution or transaction).

"(5) ALLOCATED FUNDING SHORTFALL.—

"(A) IN GENERAL.—The allocated funding shortfall for the funded plan determined under this section, in connection with an employer distribution affecting such plan or a transaction affecting such plan, is the amount allocated to the plan in an allocation described in subparagraph (B) (subject to any reduction under paragraph (7), in the case of such a transaction).

"(B) ALLOCATION OF AGGREGATE FUNDING SHORTFALL.—The allocation described in this subparagraph is an allocation under subsection (b) of the aggregate funding shortfall (determined under paragraph (6)) among the funded plan and all plans which are (as of immediately before the distribution or transaction) related to the funded plan and in which there are funding shortfalls after the distribution or transaction.

"(6) AGGREGATE FUNDING SHORTFALL.—

"(A) IN GENERAL.—For purposes of this section, the aggregate funding shortfall, in connection with an employer distribution affecting the funded plan or a transaction affecting the funded plan, is an amount equal to the sum of the funding shortfalls after such distribution or transaction (determined under paragraph (4)) in the funded plan and all other plans which are (as of immediately before the distribution or transaction) related to the funded plan, except that such amount shall not exceed—

"(i) in the case of an employer distribution, the amount of the distribution, or

"(ii) in the case of a transaction, the amount of the pre-transaction available assets of such plans (determined under subparagraph (B)).

"(B) PRE-TRANSACTION AVAILABLE ASSETS.—For purposes of subparagraph (A), the amount of the pre-transaction available assets of the plans referred to in subparagraph (A) is an amount equal to the sum of the amounts determined for each plan under this subparagraph. Each such amount determined for a plan under this subparagraph is equal to the excess (not less than zero) of—

"(i) the amount of the assets of such plan (determined as of immediately before the transaction), over

"(ii) the greater of—

"(I) the amount of assets which such plan would need to hold (as of immediately after the transaction) so that the funded ratio of such plan would then equal the controlled group funded ratio with respect to such plan (determined as of immediately before the transaction), or

"(II) the amount of the benefit liabilities of such plan (determined as of immediately before the transaction).

"(7) REDUCTION IN ALLOCATED FUNDING SHORTFALL TAKING INTO ACCOUNT FUNDED STATUS OF POST-TRANSACTION CONTROLLED GROUP IN RELATION TO FUNDED PLAN.—

"(A) IN GENERAL.—Except as provided in subparagraph (D), the amount of the allocated funding shortfall determined for the funded plan under paragraph (5) in the case of a transaction affecting such plan shall be reduced by any amount allocated to such plan in an allocation described in subparagraph (B).

"(B) ALLOCATION OF POST-TRANSACTION AVAILABLE ASSETS AMONG PLANS IN POST-TRANSACTION CONTROLLED GROUP.—The allocation described in this subparagraph is an allocation under subsection (b) among the funded plan and all plans which are (as of immediately after the transaction) related to the funded plan of the post-transaction available assets of such plans (determined under subparagraph (C)).

"(C) POST-TRANSACTION AVAILABLE ASSETS.—For purposes of subparagraph (B), the amount of the post-transaction available assets of the plans referred to in subparagraph (B) is an amount equal to the sum of the amounts determined for each plan under this subparagraph. Each such amount determined for a plan under this subparagraph is equal to the excess (not less than zero) of—

"(i) the amount of the assets of such plan (determined as of immediately after the transaction), over

"(ii) the greater of—

"(I) the amount of assets which such plan would need to hold (as of immediately after the transaction) so that the funded ratio of such plan would then equal the controlled group funded ratio with respect to such plan (determined as of immediately after the transaction), or

"(II) the amount of the benefit liabilities of such plan (determined as of immediately after the transaction).

"(D) EXCEPTION.—

"(i) IN GENERAL.—The preceding provisions of this paragraph shall not apply if—

"(I) the transaction constitutes a transfer of assets from the funded plan to another single-employer plan or a transfer of liabilities to the funded plan from another single-employer plan,

"(II) such single-employer plan is (as of immediately after the transaction) related to the funded plan, and

"(III) the funded ratio of such single-employer plan (determined as of immediately after the transaction) is greater than the funded ratio of the funded plan (determined as of immediately after the transaction).

"(ii) TRANSFER DEFINED.—For purposes of clause (i), a transfer of assets or liabilities includes any consolidation, merger, or other similar transaction or event which has the effect of such a transfer.

"(b) ALLOCATIONS OF AGGREGATE FUNDING SHORTFALLS AND SURPLUS ASSETS.—An amount designated for allocation under paragraph (5)(B) or (8)(B) of subsection (a) is allocated as provided in this subsection among plans designated therein if such amount is allocated in its entirety among all the designated plans in relation to the respective funded ratios of such plans, in accordance with regulations of the Secretary of the Treasury, in such manner as to ensure that—

"(1) the funded ratios of all such plans (if the assets of the plan included amounts so allocated) would be—

"(A) equivalent, and

"(B) not less than the highest of the funded ratios of such plans, or

"(2) if the total amount to be allocated is insufficient to satisfy the requirements of paragraph (1), the funded ratios with respect to those designated plans with the lowest funded ratios would be, to the extent of the amount to be allocated, increased by the allocation to equivalent funded ratios (if the assets of the plan included amounts so allocated)—

"(A) commencing the allocation with the designated plan with the lowest funded ratio (before taking into account amounts so allocated),

"(B) proceeding with allocations to the designated plans in ascending order of the funded ratios of such plans, and

"(C) ensuring that no amount is so allocated to any designated plan if the funded ratio of another designated plan would be lower (taking into account amounts so allocated).

Subject to subsection (d), funded ratios shall be determined under this subsection as of immediately after the employer distribution or transaction affecting the funded plan.

"(c) ADDITIONAL DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) FUNDED PLAN.—The term 'funded plan' means the plan maintaining the funding standard account under section 302 with respect to which, for purposes of section 302(b)(2)(E), the allocated funding shortfall is determined under this section.

"(2) RELATED PLAN.—Any other plan is related to the funded plan if such other plan is maintained by—

"(A) the employer maintaining the funded plan, or

"(B) any other person in the controlled group including such employer.

"(3) CONTROLLED GROUP FUNDED RATIO.—The term 'controlled group funded ratio' with respect to a plan means the ratio of—

"(A) the total amount of the assets held by the funded plan and all plans related to the funded plan, to

"(B) the sum of the benefit liabilities of all such plans.

"(4) FUNDED RATIO.—The term 'funded ratio' of a plan means the ratio of—

"(A) the amount of the assets of such plan, to

"(B) the benefit liabilities of such plan.

"(5) AMOUNT OF ASSETS.—Any reference to an amount of assets shall be deemed a reference to the current value of such assets.

"(6) TREATMENT OF MULTIPLE-EMPLOYER PLANS.—For purposes of paragraph (3) and paragraphs (5)(B) and (8)(B) of subsection (a), multiple-employer plans shall be disregarded except to such extent as may be prescribed in regulations of the Secretary of the Treasury referred to in section 302(c)(11)(B).

"(7) REGULATORY AUTHORITY FOR ADJUSTMENTS TO ALLOCATED FUNDING SHORTFALL.—The Secretary of the Treasury may prescribe regulations, consistent with the purposes of this section, under which the allocated funding shortfall for a plan in connection with any transaction occurring during any plan year is adjusted to take into account other employer distributions and transactions affecting the funded plan occurring during such plan year.

"(d) ALTERNATIVE VALUATION DATES.—

"(1) IN GENERAL.—Except to the extent prescribed in such regulations as may be prescribed under paragraph (3), at the election of the employer maintaining the funded plan—

"(A) amounts which are (but for this subsection) required to be determined under subsection (a) as of immediately before an employer distribution affecting the plan or a transaction affecting the plan shall be determined as of the beginning of the plan year preceding the first plan year in which the distribution or transaction occurs, except that, if the distribution or transaction occurs on the first day of such plan year, such amount shall, pursuant to any such election, be determined as of the beginning of the next plan year, and

"(B) in the case of an amount otherwise required to be determined as of immediately after the employer distribution or transaction, as of the beginning of the plan year following the plan year in which the distribution or transaction occurs.

"(2) Certification requirements.—This subsection shall permit a valuation with respect to any plan as of an alternative time only if the employer maintaining the funded plan certifies to the Secretary of the Treasury that—

"(A) in the case of an alternative time under paragraph (1)(A), as of immediately before the time of the employer distribution or transaction, there has been no material change in asset valuations (under the plan with respect to which the valuation is being made) or in the funded ratio (of such plan) since the alternative time for valuation, and

"(B) in the case of an alternative time under paragraph (1)(B), as of the alternative time for valuation, there has been no material change in asset valuations (under the plan with respect to which the valuation is being made) or in the funded ratio (of such plan) since immediately after the employer distribution or transaction.

"(3) Regulations.—The Secretary of the Treasury may by regulation provide for other times as alternative times for valuations to the extent consistent with the purposes of this section.

"(e) Security for Amortization of Shortfalls.—

"(1) In general.—Under regulations of the Secretary prescribed in consultation with the Secretary of the Treasury, the requirements of section 302 shall not be treated as satisfied with respect to an allocated funding shortfall determined under subsection (a) unless, not later than the time of the employer distribution affecting the funded plan or the transaction affecting such plan (as applicable), the employer maintaining such plan, or any other person who is in the controlled group including the employer, provides to the plan security described in paragraph (2). Subject to paragraph (3), the security shall be released (and any amounts thereunder shall be refunded with accrued interest) on the later of—

"(A) the 15th day of the third month following period of 3 plan years referred to in section 302(b)(2)(E), or

"(B) the date on which the requirements of section 302 are met with respect to the third plan year referred to in section 302(b)(2)(E).

"(2) Nature of security.—Security described in this subsection constitutes—

"(A) a bond issued by a corporate surety company that is an acceptable surety for purposes of section 412, or

"(B) cash, or United States obligations which mature in 3 years or less, held in escrow by a bank or similar financial institution,

in an amount sufficient to provide security to the funded plan for the allocated funding shortfall.

"(3) Immediate payment of security upon nonpayment of amortization amount.—The entire amount of the security described in paragraph (2) shall be immediately paid to the funded plan if—

"(A) any amount described in section 302(b)(3)(A) is not contributed when due (taking into account any amount described in section 302(b)(3)(C)), or

"(B) the Secretary determines that the amortization, pursuant to section 302(b)(2)(E), of the allocated funding shortfall has not been, or cannot be, accomplished by reason of termination of the funded plan or a subsequent transaction resulting in an additional allocated funding shortfall for such plan to be amortized under section 302(b)(2)(E).

"(4) Payment of security necessary for meeting minimum funding standard.—In any case in which a security is payable under the requirements of this subsection in connection with an allocated funding shortfall required to be amortized under section 302(b)(2)(E), the requirements of section 302 shall not be treated as satisfied to the extent that such security is not paid or that payment of such security does not amortize in full the outstanding balance of such shortfall remaining to be so amortized.".

(3) Clerical amendment.—The table of contents in section 1 of such Act is amended by inserting after the item relating to section 302 the following new item:

"Sec. 302A. Determination of charges to funding standard account arising from certain employer distributions or transactions.".

(b) Amendments to Internal Revenue Code of 1986.—

(1) Additional charge to funding standard account.—

(A) In general.—Paragraph (2) of section 412(b) of the Internal Revenue Code of 1986 (relating to charges to funding standard account) is amended—

(i) in subparagraph (C), by striking "and" at the end;

(ii) in subparagraph (D), by striking "paragraph (3)(D)." and inserting "paragraph (3)(D), and"; and

(iii) by adding at the end the following new subparagraph:

"(E) in the case of a defined benefit plan other than a multiemployer plan, the amount necessary to amortize any allocated funding shortfall determined under section 412A with respect to each prior plan year over a period of 3 plan years.".

(B) Special rules relating to charge for allocated funding shortfall.—

(i) Reduction in charge by amount of plan assets subsequently transferred to plan; applicability to multiple-employer plans.—Subsection (c) of section 412 of such Code (relating to special rules) is amended by adding at the end the following new paragraph:

"(11) Special rules relating to charge for allocated funding shortfall.—

"(A) Reduction in charge by amount of plan assets subsequently transferred to plan.—Any balance of an allocated funding shortfall for a plan remaining unamortized under subparagraph (E) of subsection (b)(2) at any time during the 3-year period referred to in such subparagraph shall be reduced (not below zero) by the amount of any assets transferred to the plan at such time from another defined benefit plan (other than a multiemployer plan) to the extent such assets are transferred without liabilities or are in excess of liabilities transferred to the plan with such assets.

"(B) Applicability of charge to multiple-employer plans.—Subsection (b)(2)(E) shall not apply with respect to multiple-employer plans, except to such extent as may be prescribed in regulations of the Secretary.".

(ii) Charge not subject to waiver.—Paragraph (1) of section 412(d) of such Code (relating to waiver in case of substantial business hardship) is amended in the first sentence by striking "subsection (b)(2)(C)" and inserting "subparagraph (C) or (E) of subsection (b)(2)".

(2) Determination of additional charges.—Chapter 1 of such Code is amended by inserting after section 412 the following new section:

"SEC. 412A. DETERMINATION OF CHARGES TO FUNDING STANDARD ACCOUNT ARISING FROM CERTAIN EMPLOYER DISTRIBUTIONS OR TRANSACTIONS.

"(a) Charge Based on Allocated Funding Shortfall.—

"(1) General rule.—For purposes of determining the charge to the funding standard account of the funded plan under section 412(b)(2)(E), in any case in which there is a funding shortfall in such plan after an employer distribution affecting such plan (as described in paragraph (2)) or a transaction affecting such plan (as described in paragraph (3)), an allocated funding shortfall shall be determined under this section for such plan with respect to the plan year in which the distribution or transaction occurs.

"(2) Employer distribution affecting plan.—For purposes of this section, an employer distribution affecting the funded plan a plan is an employer distribution under section 4044(d)(4) of the Employee Retirement Income Security Act of 1974 from a terminated plan to the employer maintaining the funded plan or any plan related to the funded plan.

"(3) Transaction affecting plan.—For purposes of this section, a transaction affecting the funded plan is a transaction—

"(A) which constitutes a merger, consolidation, or transfer of plan assets or liabilities referred to in section 414(l) in which assets or liabilities attributable to the funded plan or a plan related to the funded plan are transferred to, or consolidated or merged with, another plan, or

"(B) in which responsibility for funding the funded plan or a plan related to the funded plan is assumed (in whole or in part) by another person.

"(4) Funding shortfall.—For purposes of this section, the funding shortfall in a plan after an employer distribution or a transaction is an amount equal to the excess (greater than zero) of—

"(A) the lesser of—

"(i) the minimum benefit security level of such plan (determined as of immediately after the distribution or transaction), or

"(ii) the amount of assets which such plan would need to hold (as of immediately after the distribution or transaction) so that the funded ratio of such plan would then equal the controlled group funded ratio with respect to such plan (determined as of immediately before the distribution or transaction),

over

"(B) the amount of the assets of such plan (determined as of immediately after the distribution or transaction).

"(5) Allocated funding shortfall.—

"(A) In general.—The allocated funding shortfall for the funded plan determined under this section, in connection with an employer distribution affecting such plan or a transaction affecting such plan, is the amount allocated to the plan in an allocation described in subparagraph (B) (subject to any reduction under paragraph (7), in the case of such a transaction).

"(B) ALLOCATION OF AGGREGATE FUNDING SHORTFALL.—The allocation described in this subparagraph is an allocation under subsection (b) of the aggregate funding shortfall (determined under paragraph (6)) among the funded plan and plans which are (as of immediately before the distribution or transaction) related to the funded plan and in which there are funding shortfalls after the distribution or transaction.

"(6) AGGREGATE FUNDING SHORTFALL.—

"(A) IN GENERAL.—For purposes of this section, the aggregate funding shortfall, in connection with an employer distribution affecting the funded plan or a transaction affecting the funded plan, is an amount equal to the sum of the funding shortfalls after such distribution or transaction (determined under paragraph (4)) in the funded plan and all other plans which are (as of immediately before the distribution or transaction) related to the funded plan, except that such amount shall not exceed—

"(i) in the case of an employer distribution, the amount of the distribution, or

"(ii) in the case of a transaction, the amount of the pre-transaction available assets of such plans (determined under subparagraph (B)).

"(B) PRE-TRANSACTION AVAILABLE ASSETS.—For purposes of subparagraph (A), the amount of the pre-transaction available assets of the plans referred to in subparagraph (A) is an amount equal to the sum of the amounts determined for each plan under this subparagraph. Each such amount determined for a plan under this subparagraph is equal to the excess (not less than zero) of—

"(i) the amount of the assets of such plan (determined as of immediately before the transaction), over

"(ii) the greater of—

"(I) the amount of assets which such plan would need to hold (as of immediately after the transaction) so that the funded ratio of such plan would then equal the controlled group funded ratio with respect to such plan (determined as of immediately before the transaction), or

"(II) the amount of the benefit liabilities of such plan (determined as of immediately before the transaction).

"(7) REDUCTION IN ALLOCATED FUNDING SHORTFALL TAKING INTO ACCOUNT FUNDED STATUS OF POST-TRANSACTION CONTROLLED GROUP IN RELATION TO FUNDED PLAN.—

"(A) IN GENERAL.—Except as provided in subparagraph (D), the amount of the allocated funding shortfall determined for the funded plan under paragraph (5) in the case of a transaction affecting such plan shall be reduced by any amount allocated to such plan in an allocation described in subparagraph (B).

"(B) ALLOCATION OF POST-TRANSACTION AVAILABLE ASSETS AMONG PLANS IN POST-TRANSACTION CONTROLLED GROUP.—The allocation described in this subparagraph is an allocation under subsection (b) among the funded plan and all plans which are (as of immediately after the transaction) related to the funded plan of the post-transaction available assets of such plans (determined under subparagraph (C)).

"(C) POST-TRANSACTION AVAILABLE ASSETS.—For purposes of subparagraph (B), the amount of the post-transaction available assets of the plans referred to in subparagraph (B) is an amount equal to the sum of the amounts determined for each plan under this subparagraph. Each such amount determined for a plan under this subparagraph is equal to the excess (not less than zero) of—

"(i) the amount of the assets of such plan (determined as of immediately after the transaction), over

"(ii) the greater of—

"(I) the amount of assets which such plan would need to hold (as of immediately after the transaction) so that the funded ratio of such plan would then equal the controlled group funded ratio with respect to such plan (determined as of immediately after the transaction), or

"(II) the amount of the benefit liabilities of such plan (determined as of immediately after the transaction).

"(D) EXCEPTION.—

"(i) IN GENERAL.—The preceding provisions of this paragraph shall not apply if—

"(I) the transaction constitutes a transfer of assets from the funded plan to another defined benefit plan (other than a multiemployer plan) or a transfer of liabilities to the funded plan from another such defined benefit plan,

"(II) such defined benefit plan is (as of immediately after the transaction) related to the funded plan, and

"(III) the funded ratio of such defined benefit plan (determined as of immediately after the transaction) is greater than the funded ratio of the funded plan (determined as of immediately after the transaction).

"(ii) TRANSFER DEFINED.—For purposes of clause (i), a transfer of assets or liabilities includes any consolidation, merger, or other similar transaction or event which has the effect of such a transfer.

"(b) ALLOCATIONS OF AGGREGATE FUNDING SHORTFALLS AND SURPLUS ASSETS.—An amount designated for allocation under paragraph (5)(B) or (8)(B) of subsection (a) is allocated as provided in this subsection among plans designated therein if such amount is allocated in its entirety among all the designated plans in relation to the respective funded ratios of such plans, in accordance with regulations of the Secretary, in such manner as to ensure that—

"(1) the funded ratios of all such plans (if the assets of the plan included amounts so allocated) would be—

"(A) equivalent, and

"(B) not less than the highest of the funded ratios of such plans, or

"(2) if the total amount to be allocated is insufficient to satisfy the requirements of paragraph (1), the funded ratios with respect to those designated plans with the lowest funded ratios would be, to the extent of the amount to be allocated, increased by the allocation to equivalent funded ratios (if the assets of the plan included amounts so allocated)—

"(A) commencing the allocation with the designated plan with the lowest funded ratio (before taking into account amounts so allocated),

"(B) proceeding with allocations to the designated plans in ascending order of the funded ratios of such plans, and

"(C) ensuring that no amount is so allocated to any designated plan if the funded ratio of another designated plan would be lower (taking into account amounts so allocated).

Subject to subsection (d), funded ratios shall be determined under this subsection as of immediately after the employer distribution or transaction affecting the funded plan.

"(c) ADDITIONAL DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) FUNDED PLAN.—The term 'funded plan' means the plan maintaining the funding standard account under section 412 with respect to which, for purposes of section 412(b)(2)(E), the allocated funding shortfall is determined under this section.

"(2) RELATED PLAN.—

"(A) IN GENERAL.—Any other plan is related to the funded plan if such other plan is maintained by—

"(i) the employer maintaining the funded plan, or

"(ii) any other person in the controlled group including such employer.

"(B) CONTROLLED GROUP.—

"(i) IN GENERAL.—For purposes of subparagraph (A), the term 'controlled group' means, in connection with any person, a group consisting of such person and all other persons under common control with such person.

"(ii) COMMON CONTROL.—For purposes of clause (i), the determination of whether 2 or more persons are under 'common control' shall be made under regulations prescribed by the Secretary of the Treasury under subsections (b), (c), (m), and (o) of section 414.

"(3) CONTROLLED GROUP FUNDED RATIO.—The term 'controlled group funded ratio' with respect to a plan means the ratio of—

"(A) the total amount of the assets held by the funded plan and all plans related to the funded plan, to

"(B) the sum of the benefit liabilities of all such plans.

"(4) FUNDED RATIO.—The term 'funded ratio' of a plan means the ratio of—

"(A) the amount of the assets of such plan, to

"(B) the benefit liabilities of such plan.

"(5) AMOUNT OF ASSETS.—Any reference to an amount of assets shall be deemed a reference to the market value of such assets.

"(6) TREATMENT OF MULTIPLE-EMPLOYER PLANS.—For purposes of paragraph (3) and paragraphs (5)(B) and (8)(B) of subsection (a), multiple-employer plans shall be disregarded except to such extent as may be prescribed in regulations of the Secretary referred to in section 412(c)(11)(B).

"(7) REGULATORY AUTHORITY FOR ADJUSTMENTS TO ALLOCATED FUNDING SHORTFALL.—The Secretary may prescribe regulations, consistent with the purposes of this section, under which the allocated funding shortfall for a plan in connection with any transaction occurring during any plan year is adjusted to take into account other employer distributions and transactions affecting the funded plan occurring during such plan year.

"(d) ALTERNATIVE VALUATION DATES.—

"(1) IN GENERAL.—Except to the extent prescribed in such regulations as may be prescribed under paragraph (3), at the election of the employer maintaining the funded plan—

"(A) amounts which are (but for this subsection) required to be determined under subsection (a) as of immediately before an employer distribution affecting the plan or a transaction affecting the plan shall be determined as of the beginning of the plan year preceding the first plan year in which the distribution or transaction occurs, except that, if the distribution or transaction occurs on the first day of such plan year, such amount shall, pursuant to any such election, be determined as of the beginning of the next plan year, and

"(B) in the case of an amount otherwise required to be determined as of immediately after the employer distribution or transaction, as of the beginning of the plan year following the plan year in which the distribution or transaction occurs.

"(2) Certification requirements.—This subsection shall permit a valuation with respect to any plan as of an alternative time only if the employer maintaining the funded plan certifies to the Secretary that—

"(A) in the case of an alternative time under paragraph (1)(A), as of immediately before the time of the employer distribution or transaction, there has been no material change in asset valuations (under the plan with respect to which the valuation is being made) or in the funded ratio (of such plan) since the alternative time for valuation, and

"(B) in the case of an alternative time under paragraph (1)(B), as of the alternative time for valuation, there has been no material change in asset valuations (under the plan with respect to which the valuation is being made) or in the funded ratio (of such plan) since immediately after the employer distribution or transaction.

"(3) Regulations.—The Secretary may by regulation provide for other times as alternative times for valuations to the extent consistent with the purposes of this section.

"(e) Security for Amortization of Shortfalls.—

"(1) In general.—Under regulations of the Secretary of Labor prescribed in consultation with the Secretary, the requirements of section 412 shall not be treated as satisfied with respect to an allocated funding shortfall determined under subsection (a) unless, not later than the time of the employer distribution affecting the funded plan or the transaction affecting such plan (as applicable), the employer maintaining such plan, or any other person who is in the controlled group including the employer, provides to the plan security described in paragraph (2). Subject to paragraph (3), the security shall be released (and any amounts thereunder shall be refunded with accrued interest) on the later of—

"(A) the 15th day of the third month following period of 3 plan years referred to in section 412(b)(2)(E), or

"(B) the date on which the requirements of section 412 are met with respect to the third plan year referred to in section 412(b)(2)(E).

"(2) Nature of security.—Security described in this subsection constitutes—

"(A) a bond issued by a corporate surety company that is an acceptable surety for purposes of section 412 of the Employee Retirement Income Security Act of 1974, or

"(B) cash, or United States obligations which mature in 3 years or less, held in escrow by a bank or similar financial institution,

in an amount sufficient to provide security to the funded plan for the allocated funding shortfall.

"(3) Immediate payment of security upon nonpayment of amortization amount.—The entire amount of the security described in paragraph (2) shall be immediately paid to the funded plan if—

"(A) any amount described in section 412(b)(3)(A) is not contributed when due (taking into account any amount described in section 412(b)(3)(C)), or

"(B) the Secretary of Labor determines that the amortization, pursuant to section 412(b)(2)(E), of the allocated funding shortfall has not been, or cannot be, accomplished by reason of termination of the funded plan or a subsequent transaction resulting in an additional allocated funding shortfall for such plan to be amortized under section 412(b)(2)(E).

"(4) Payment of security necessary for meeting minimum funding standard.—In any case in which a security is payable under the requirements of this subsection in connection with an allocated funding shortfall required to be amortized under section 412(b)(2)(E), the requirements of section 412 shall not be treated as satisfied to the extent that such security is not paid or that payment of such security does not amortize in full the outstanding balance of such shortfall remaining to be so amortized.".

(3) Tax-free transfers between certain plans in same controlled group.—Subsection (c) of section 4980 of such Code (relating to definitions and special rules for tax on reversion of qualified plan assets to employer) is amended by adding at the end the following new paragraph:

"(4) Exception for transfers between certain plans in same controlled group.—Any amount transferred directly between defined benefit plans (neither of which is a multiemployer plan) maintained by the same employer or by employers in the same controlled group (within the meaning of section 412A(c)) shall not be treated as an employer reversion for purposes of this section (or includible in the gross income of any such employer).".

(4) Clerical amendment.—The table of sections for subpart B of part 1 of subchapter D of chapter 1 of such Code is amended by inserting after the item relating to section 412 the following new item:

"Sec. 412A. Determination of charges to funding standard account arising from certain employer distributions or transactions.".

(c) Effective Dates.—The amendments made by this section (other than subsection (b)(3)) shall apply with respect to—

(1) employer distributions in plan terminations with respect to which the termination date occurs on or after the date of the enactment of this Act, and

(2) transactions occurring on or after the date of the enactment of this Act.

SEC. 2006. TERMINATION CHARGE FOR SINGLE-EMPLOYER PLAN TERMINATION.

(a) Standard Terminations.—

(1) In general.—Section 4041(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1341(b)) is amended—

(A) in subparagraph (B) of paragraph (1), by striking "subparagraphs (A) and (B)" and inserting "subparagraphs (A), (B), and (C)"; and

(B) in paragraph (2), by redesignating subparagraphs (C) and (D) as subparagraphs (D) and (E), respectively, and by inserting after subparagraph (B) the following new subparagraph:

"(C) Termination charge.—

"(i) Payment to the corporation.—The contributing sponsor shall pay to the corporation in connection with a standard termination under this subsection an amount equal to the product derived by multiplying—

"(I) the number of individuals, each of whom is a participant in the plan as of the termination date or has received, since the beginning of the period of 5 calendar years preceding the termination date, a distribution from the plan of his or her entire nonforfeitable benefit in the form of a single sum distribution or in the form of irrevocable commitments purchased by the plan from an insurer to provide such nonforfeitable benefit, by

"(II) the deficit quotient for the computation period in which the termination date occurs.

"(ii) Deficit quotient.—For purposes of this subparagraph, the term 'deficit quotient' for a computation period means the quotient derived by dividing—

"(I) the amount of the deficit of the corporation with respect to the single-employer plan basic benefits guaranty program as of September 30 preceding such computation period, as reported by the corporation pursuant to section 4008, by

"(II) the total number of participants, in single-employer plans covered under section 4021, as determined by the corporation.

"(iii) Computation period.—For purposes of this subparagraph, the term 'computation period' means a 12-month period commencing July 1 of any year.

"(iv) Form and manner of payment.—The payment required under this subparagraph shall be due and payable no later than the date on which the notice required under subparagraph (A) is submitted. The corporation shall specify by regulation rules relating to the payment of such amount.".

(2) Notice of noncompliance for failure to pay termination charge.—Subparagraph (D)(i)(I) of section 4041(b)(2) of such Act (as redesignated by paragraph (1) of this subsection) (29 U.S.C. 1341(b)(2)(C)(i)(I)) is amended by striking "subparagraph (A) or (B)" and inserting "subparagraph (A), (B), or (C)".

(3) Additional conforming amendments.—Section 4041(b) of such Act (as amended by the preceding provisions of this paragraph) is further amended, in subparagraph (C) of paragraph (1), in clause (ii) of paragraph (2)(A), and in subparagraph (E) of paragraph (2) (in the matter preceding clause (i) and in clause (i)), by striking "subparagraph (C)" each place it appears and inserting "subparagraph (D)".

(b) Distress and Involuntary Terminations.—

(1) Distress terminations.—

(A) In general.—Section 4041(c)(2) of such Act (29 U.S.C. 1341(c)(2)) is amended by redesignating subparagraphs (B), (C), and (D) as subparagraphs (C), (D), and (E), respectively, and by inserting after subparagraph (A) the following new subparagraph:

"(B) Termination charge.—

"(i) Payment to the corporation.—

"(I) In general.—A contributing sponsor (or any member of such contributing sponsor's controlled group) shall pay to the corporation in connection with a distress termination under this subsection an amount equal to the termination charge which would apply under section 4041(b)(2)(C) if the termination were a standard termination under section 4041(b).

"(II) Special rule.—In any case in which the contributing sponsor (or any member of the contributing sponsor's controlled group) maintains, as of the termination date, another single-employer plan which has assets in excess of its minimum benefit security level, the amount determined under subclause (I) shall be increased by 100 percent.

"(ii) Form and manner of payment.—The payment required under this subparagraph shall be due and payable no later than the date on which the notice required under subparagraph (A) is submitted. The corporation shall specify by regulation rules relating to the payment of such amount.";

(B) Conforming amendments.—Section 4041(c) of such Act (29 U.S.C. 1341(c)) is further amended—

(i) in paragraph (1)(B), by striking "subparagraph (A)" and inserting "subparagraphs (A) and (B)";

(ii) in paragraph (2)(C) (as redesignated by subparagraph (B) of this paragraph), by striking "subsection (a)(2) and" and inserting "subsection (a)(2),", and by inserting "and the payment required under subparagraph (B)," after "subparagraph (A),"; and

(iii) in subparagraphs (D) and (E) (as redesignated by subparagraph (B) of this paragraph) of paragraph (2), by striking "subparagraph (B)" and inserting "subparagraph (C)".

(2) Involuntary terminations.—Section 4042(c) of such Act (29 U.S.C. 1342(c)) is amended—

(A) by inserting "(1)" after "(c)";

(B) by striking "Upon granting a decree" and inserting the following:

"(2) Upon granting a decree"; and

(C) by adding at the end the following new paragraph:

"(3) In any case in which a plan is terminated under this subsection, the contributing sponsor (or any member of such contributing sponsor's controlled group) shall pay to the corporation in connection with the termination an amount equal to the termination charge which would apply under section 4041(b)(2)(B) if the termination were a standard termination under section 4041(b). Such charge shall be payable upon demand of the corporation after issuance of the decree or execution of the agreement between the corporation and the plan administrator described in paragraph (2). The corporation shall specify by regulation rules relating to the payment of such termination charge.".

(c) Effective Date and Transitional Rule.—

(1) Effective date.—The amendments made by this section shall apply—

(A) with respect to standard terminations and distress terminations for which notices of intent to terminate referred to in section 4041(a)(2) of the Employee Retirement Income Security Act of 1974 are provided on or after July 1, 1987, and

(B) with respect to terminations by the Pension Benefit Guaranty Corporation for which proceedings are initiated on or after such date.

(2) Transitional rule.—For purposes of section 4041(b)(2)(C) of the Employee Retirement Income Security Act of 1974 (as added by this section), the deficit quotient for the computation period beginning on July 1, 1987, and for each of the two succeeding computation periods shall be deemed to be equal to $200.

SEC. 3007. TREATMENT OF DEFINED CONTRIBUTION PLANS WITH RESPECT TO DISTRIBUTIONS AND MERGERS, CONSOLIDATIONS, AND TRANSFERS FROM DEFINED BENEFIT PLANS.

(a) Prohibition Against Transfers of Excess Assets From Defined Benefit Plans to Defined Contribution Plans.—

(1) Amendment of employee retirement income security act of 1974.—Section 208 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1058) is amended—

(A) by inserting "(a)" after "Sec. 208."; and

(B) by adding at the end the following new subsections:

"(b) In the case of a transaction constituting a merger, consolidation, or transfer referred to in subsection (a) in which plan assets or liabilities are transferred from a defined benefit plan—

"(1) the requirements of subsection (a) shall not be treated as met if the transfer is a transfer to a defined contribution plan of assets without liabilities or in excess of liabilities transferred to the plan with such assets, and

"(2) a fiduciary of a plan shall not be considered to have violated any provision of part 4 of subtitle B of title I solely by reason of transferring, or accepting the transfer of, assets without liabilities or in excess of liabilities transferred to the plan with such assets, if the transfer is between defined benefit plans maintained by employers within the same controlled group.

"(c) For purposes of this section, a transfer of assets or liabilities includes any consolidation, merger, or other similar transaction or event which has the effect of such a transfer.".

(2) Amendment of internal revenue code of 1986.—Section 414(l) of the Internal Revenue Code of 1986 (relating to mergers or consolidations of plans or transfers of plan assets) is amended—

(A) by striking "A trust which forms a part of a plan shall not constitute" and inserting the following:

"(1) In general.—A trust which forms a part of a plan shall not constitute"; and

(B) by adding at the end the following new paragraphs:

"(2) Prohibition against transfers of excess assets from defined benefit plans to defined contribution plans.—In the case of a transaction constituting a merger, consolidation, or transfer referred to in paragraph (1) in which plan assets or liabilities are transferred from a defined benefit plan—

"(A) the requirements of paragraph (1) shall not be treated as met if the transfer is a transfer to a defined contribution plan of assets without liabilities or in excess of liabilities transferred to the plan with such assets, and

"(B) a fiduciary of a plan shall not be considered to have violated any provision of part 4 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 solely by reason of transferring, or accepting the transfer of, assets without liabilities or in excess of liabilities transferred to the plan with such assets, if the transfer is between defined benefit plans maintained by employers within the same controlled group.

"(3) Transfer defined.—For purposes of this subsection, a transfer of assets or liabilities includes any consolidation, merger, or other similar transaction or event which has the effect of such a transfer.".

(b) Repeal of Exemption From Reversion Tax for Employee Stock Ownership Plans.—

(1) Repeal.—Paragraph (3) of section 4980(c) of the Internal Revenue Code of 1986 (relating to exemption for employee stock ownership plans from tax on reversion of qualified plan assets to employer) is repealed.

(2) Conforming amendment.—Paragraph (4) of section 4980(c) of such Code (as added by section 3005(b)(4) of this Act) is redesignated as paragraph (3).

(c) Effective Date.—The amendments made by this section shall apply with respect to distributions to employers, and mergers, consolidations, and transfers of plan assets, occurring on or after July 22, 1987.

SEC. 3008. BENEFIT SECURITY FUNDING CHARGE AND RELATED ADJUSTMENTS TO FUNDING STANDARDS.

(a) Amendments to Employee Retirement Income Security Act of 1974.—

(1) Additional charge to funding standard account.—

(A) In general.—Paragraph (2) of section 302(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1082(a)) (as amended by section 3005(a) of this Act) is further amended—

(i) in subparagraph (D), by striking "and" at the end;

(ii) in subparagraph (E), by striking "years." and inserting "years, and"; and

(iii) by adding at the end the following new subparagraph:

"(F) in the case of a single-employer plan covered under section 4021, separately, with respect to each plan year, any benefit security charge determined under section 302B with respect to such plan year.".

(B) Effective date.—The amendments made by this paragraph shall apply with respect to plan years ending after December 31, 1991.

(2) Benefit security charge.—

(A) In general.—Part 3 of subtitle B of title I of such Act (as amended by section 3005(a) of this Act) is further amended by inserting after section 302A the following new section:

"DETERMINATION OF BENEFIT SECURITY CHARGE

"Sec. 302B. (a) Applicability of Charge.—For purposes of determining the charge under section 302(b)(2)(F) to the funding standard account of a single-employer plan covered under section 4021, if the funded ratio of the plan for any plan year is less than 1, a benefit security charge shall be determined under this section with respect to such plan year.

"(b) Amount of Charge.—Subject to subsection (e), the benefit security charge determined under this section with respect to a plan year is the excess (not less than zero) of—

"(1) the benefit security contribution for such year determined under subsection (c), over

"(2) the amount of net charges for such year determined under subsection (d).

"(c) Benefit Security Contribution.—The benefit security contribution determined under this subsection for any plan year is the sum of the following:

"(1) Benefit payments.—The value of the total amount of benefit payments (other than distributions described in paragraph (2)(A)) under the plan for such year (taking into account interest determined as provided in section 302(b)(5) to the end of such year).

"(2) Factored distributions.—The product derived by multiplying—

"(A) the total amount of distributions of benefits from the plan for such year in the form of single sum distributions or in the form of irrevocable commitments which are purchased by the plan from an insurer to provide such benefits and which are not assets of the plan, by

"(B) a percentage equal to the excess (not less than zero and not more than 100 percent) of 150 percent over the funded ratio for the plan as of the beginning of the plan year,

"(3) Interest on excess vested liabilities.—The product derived by multiplying—

"(A) the excess (not less than zero) of—

"(i) the amount of vested liabilities under the plan for such year, over

"(ii) the value of the plan assets (increased by the sum of the amount of any outstanding funding deficiencies and the amount of any outstanding balance of any waived funding deficiencies) for such year, by

"(B) the interest rate used under this section to compute the amount of vested liabilities under the plan for such year.

"(4) CHARGE FOR WAIVED FUNDING DEFICIENCIES.—The amount described in section 302(b)(2)(C).

"(d) AMOUNT OF NET CHARGES.—The amount of net charges determined under this subsection for any year is the excess (not less than zero) of—

"(1) the sum of the amounts charged under subparagraphs (A), (B), (C), (D), (E), and (F) of section 302(b)(2) for such year, over

"(2) the sum of the amounts credited under subparagraphs (B) and (D) of section 302(b)(3) for such year.

"(e) LIMITATION ON BENEFIT SECURITY CHARGE.—

"(1) IN GENERAL.—In the case of a plan under which the funded ratio for the plan as of the beginning of the plan year is greater than 50 percent, the benefit security charge for a plan year shall not exceed the greater of—

"(A) the amount of contributions, in excess of contributions otherwise required for such plan year under section 302 (without regard to section 302(b)(2)(F)), which would be necessary to maintain the projected funded ratio of the plan for such plan year at an amount equal to the sum of—

"(i) the funded ratio of the plan as of the beginning of such plan year (taking into account any change in assumptions for such plan year), and

"(ii) the funded ratio improvement factor of the plan for such plan year described in paragraph (2), or

"(B) the amount equal to the excess, if any, of—

"(i) projected vested liabilities described in subparagraph (C) of paragraph (3), taking into account only that portion thereof attributable to participants and beneficiaries in pay status, over

"(ii) projected plan assets described in subparagraph (B) of paragraph (3).

"(2) FUNDED RATIO IMPROVEMENT FACTOR.—The funded ratio improvement factor of a plan for a plan year described in this paragraph is the product derived by multiplying—

"(A) the excess of 1 over the funded ratio of the plan as of the beginning of the plan year, by

"(B) 5 percent.

"(3) PROJECTED FUNDED RATIO.—

"(A) IN GENERAL.—For purposes of this subsection, the projected funded ratio of a plan for a plan year is the ratio of projected plan assets described in subparagraph (B) to projected vested liabilities described in subparagraph (C).

"(B) PROJECTED PLAN ASSETS.—Projected plan assets described in this subparagraph are the value of plan assets as of the beginning of the plan year, projected to the end of the plan year, taking into account expected income and disbursements under the plan.

"(C) PROJECTED VESTED LIABILITIES.—Projected vested liabilities described in this subparagraph are the amount of vested liabilities under the plan, determined as of the beginning of the plan year and projected to the end of the plan year, taking into account all expected changes (other than benefit increases) occurring during such plan year by reason of plan amendments first taking effect in such plan year.".

(B) CLERICAL AMENDMENT.—The table of contents in section 1 of such Act (as amended by section 3005(a) of this Act) is further amended by inserting after the item relating to section 302A the following new item:

"Sec. 302B. Determination of benefit security charge.".

(C) EFFECTIVE DATE.—The amendment made by this paragraph shall apply with respect to plan years ending after December 31, 1991.

(3) ADJUSTMENTS TO AMORTIZATION PERIOD RELATING TO NET EXPERIENCE LOSSES AND GAINS.—

(A) IN GENERAL.—Paragraphs (2)(B)(iv) and (3)(B)(ii) of section 302(b) of such Act (29 U.S.C. 1082(b) (2)(B)(iv) and (3)(B)(ii)) are each amended by striking "15 plan years" and inserting "5 plan years (in the case of single-employer plans) or 15 plan years (in the case of multiemployer plans)".

(B) EFFECTIVE DATE.—The amendments made by this paragraph shall apply with respect to plan years beginning after December 31, 1988.

(4) TIME FOR MAKING CONTRIBUTIONS.—

(A) REDUCTION OF PERIOD DURING WHICH CONTRIBUTIONS MAY BE MADE AFTER CLOSE OF YEAR.—

(i) IN GENERAL.—Effective with respect to plan years beginning after December 31, 1988, paragraph (10) of section 302(c) of such Act (29 U.S.C. 1082(c)) is amended by inserting "in the case of multiemployer plans," after "paragraph,".

(ii) TRANSITIONAL RULE FOR YEARS BEGINNING DURING 1988.—In the case of any plan year beginning during calendar year 1988, the last sentence of section 302(c)(10) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1082(a)(10)) shall be applied in the case of single-employer plans by substituting "3 months" for "6 months".

(B) QUARTERLY ESTIMATED PAYMENTS REQUIRED.—

(i) IN GENERAL.—Section 302 of such Act (29 U.S.C. 1082) is amended—

(I) by redesignating subsection (d) as subsection (e); and

(II) by inserting after subsection (c) the following new subsection:

"(d)(1) In any case in which, as of the end of the taxable year of an employer responsible for contributing to or under a single-employer plan the amount described in subsection (b)(3)(A)—

"(A) the employer maintains a plan to which this section applies, and

"(B) there is outstanding a waived funding deficiency under such plan,

the required annual payment for the plan year ending with or within such taxable year shall be paid in 4 installments during such plan year.

"(2)(A) The required installments shall be due on March 15, June 15, September 15, and December 15, respectively, of such plan year (in the order in which such dates appear in such plan year).

"(B) In applying this subsection to a plan year beginning on any date other than January 1, April 1, July 1, or October 1, there shall be substituted, for the dates specified in subparagraph (A), the dates which correspond thereto.

"(3) For purposes of this subsection—

"(A) The amount of any required installment shall be equal to—

"(i) in the case of the first installment, 25 percent of the required annual payment,

"(ii) in the case of the second installment, 33 1/3 percent of the amount of the required annual payment remaining unpaid,

"(iii) in the case of the third installment, 50 percent of the amount of the required annual payment remaining unpaid, and

"(iv) in the case of the fourth installment, the amount of the required annual payment remaining unpaid.

"(B) The term 'required annual payment' means the lesser of—

"(i) the amount required to be contributed to or under the plan by the employer for the plan year by reason of this section, or

"(ii) the amount so required for the preceding plan year.

Clause (ii) shall not apply if the preceding plan year was not a year of 12 months.

"(4) This subsection shall be applied to plan years of less than 12 months in accordance with regulations prescribed by the Secretary of the Treasury.".

(iii) EFFECTIVE DATE.—The amendments made by this subparagraph shall apply with respect to plan years beginning after December 31, 1988.

(5) FUNDING WAIVERS.—

(A) REQUIREMENTS FOR WAIVERS.—

(i) APPLICATION MUST BE SUBMITTED BEFORE DATE 2½ MONTHS AFTER CLOSE OF YEAR.—Section 303 of such Act (29 U.S.C. 1083) is amended by adding at the end the following new subsection:

"(f) No waiver may be granted under this section with respect to any single-employer plan for any plan year unless an application therefor is submitted to the Secretary of the Treasury not later than the 15th day of the 3rd month beginning after the close of such plan year."

(ii) WAIVER ALLOWED ONLY FOR TEMPORARY HARDSHIP.—Section 303 of such Act (29 U.S.C. 1083) is amended by striking "substantial business hardship" in subsections (a) and (b) and inserting in lieu thereof "temporary substantial business hardship".

(iii) HARDSHIP MUST ALSO EXIST AT CONTROLLED GROUP LEVEL.—Section 303 of such Act (29 U.S.C. 1083) (as amended by the preceding provisions of this subparagraph) is further amended by adding at the end the following new subsection:

"(g)(1) If an employer is a member of a controlled group, the temporary substantial business hardship requirements of subsection (a) shall be treated as met only if such requirements are met—

"(A) with respect to such employer, and

"(B) with respect to the controlled group of which such employer is a member (determined by treating all members of such group as a single employer).

"(2) For purposes of paragraph (1), the term 'controlled group' means any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414 of the Internal Revenue Code of 1986."

(B) FREQUENCY OF WAIVERS.—The second sentence of section 303(a) of such Act (29 U.S.C. 1083(a)) is amended by inserting "with respect to a single-employer plan for more than 3 of any 15 consecutive plan years or with respect to a multiemployer plan" after "standard".

(C) REPAYMENT OF WAIVED CONTRIBUTIONS.—

(i) INTEREST RATE USED WITH RESPECT TO VARIANCE FROM MINIMUM FUNDING STANDARD.—Subsection (a) of section 303 of such Act (29 U.S.C. 1083(a)) is amended—

(I) by inserting "(1)" after "(a)"; and

(II) by striking the last sentence and inserting the following:

"(2) The interest rate used for purposes of computing the amortization charge described in section 302(b)(2)(C) for any plan year shall be the greater of—

"(A) 120 percent of the Federal mid-term rate (as in effect under section 1274 of the

Internal Revenue Code of 1986 for the 1st month of such plan year), or

“(B) the highest rate of interest used under the plan in determining charges to the funding standard account maintained by the plan.”.

(ii) Interest rate used with respect to extension of amortization period.—Subsection (a) of section 304 of such Act (29 U.S.C. 1084(a)) is amended—

(I) by redesignating subparagraphs (A) and (B) of paragraph (1) as clauses (i) and (ii), respectively;

(II) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively;

(III) by inserting “(1)” after “(a)”; and

(IV) by striking the last sentence and inserting in lieu thereof the following:

“(2) The interest rate applicable for any plan year under any arrangement entered into by the Secretary of the Treasury in connection with an extension granted under this subsection shall be the greater of—

“(A) 120 percent of the Federal mid-term rate (as in effect under section 1274 of the Internal Revenue Code of 1986 for the 1st month of such plan year), or

“(B) the highest rate of interest used under the plan in determining charges to the funding standard account maintained by the plan.”.

(iii) Adjustments to amortization period for waived funding deficiencies.—Subparagraph (C) of section 302(b)(2) of such Act (29 U.S.C. 1082(b)(2)(C)) is amended to read as follows:

“(C) the amount necessary to amortize each waived funding deficiency for each prior plan year in equal annual installments (until fully amortized) over a period of—

“(i) in the case of a single-employer plan, not more than the lesser of—

“(I) the greater of 5 plan years, or the product derived by multiplying 15 plan years by the ratio of plan assets for such year to benefit liabilities under the plan for such year (increasing any such product which is not a multiple of 1 plan year to the next higher multiple of 1 plan year), or

“(II) 15 plan years, or

“(ii) in the case of a multiemployer plan, over a period of not more than 15 plan years, and”.

(D) Notice to participants of application for funding waivers.—Section 303(e)(1) of such Act (29 U.S.C. 1083(e)(1)) is amended by striking “plan.” and inserting “plan, and each affected party. Such notice shall include a description of the extent to which the plan is funded for benefits which are guaranteed under title IV and benefit liabilities (as defined in section 4001(a)(16)).”.

(E) Effective dates.—

(i) In general.—Except as provided in clauses (ii) and (iii), the amendments made by this paragraph shall apply in the case of—

(I) any application submitted after the date of the enactment of this Act for a waiver with respect to a plan year beginning after December 31, 1985, and

(II) any waiver granted pursuant to such an application.

(ii) Special rule for subparagraph (A)(i).—

(I) In general.—The amendment made by subparagraph (A)(i) shall apply to plan years beginning after December 31, 1987.

(II) Transitional rule for years beginning in 1988.—In the case of any plan year beginning during calendar year 1988, section 303(f) of the Employee Retirement Income Security Act of 1974 (as added by subparagraph (A)(i)) shall be applied by substituting “6th month” for “3rd month”.

(iii) Special rule for subparagraph (D).—The amendment made by subparagraph (D) shall apply in the case of any application submitted after the date of the enactment of this Act.

(b) Amendments to the Internal Revenue Code of 1986—

(1) Additional charge to funding standard account.—

(A) In general.—Paragraph (2) of section 412(b) of the Internal Revenue Code of 1986 (as amended by section 3005(b) of this Act) is further amended—

(i) in subparagraph (D), by striking “and” at the end;

(ii) in subparagraph (E), by striking “years.” and inserting “years, and”; and

(iii) by adding at the end the following new subparagraph:

“(F) in the case of a defined benefit plan (other than a multiemployer plan) covered under section 4021 of the Employee Retirement Income Security Act of 1974, separately, with respect to each plan year, any benefit security charge determined under section 412B with respect to such plan year.”.

(B) Effective Date.—The amendments made by this paragraph shall apply with respect to plan years ending after December 31, 1991.

(2) Benefit security charge.—

(A) In general.—Chapter 1 of such Code (as amended by section 3005(b) of this Act) is further amended by inserting after section 412A the following new section:

“SEC 412B. DETERMINATION OF BENEFIT SECURITY CHARGE.

“(a) Applicability of Charge.—For purposes of determining the charge under section 412(b)(2)(F) to the funding standard account of a single-employer plan covered under section 4021 of the Employee Retirement Income Security Act of 1974, if the funded ratio of the plan for any plan year is less than 1, a benefit security charge shall be determined under this section with respect to such plan year.

“(b) Amount of Charge.—Subject to subsection (e), the benefit security charge determined under this section with respect to a plan year is the excess (not less than zero) of—

“(1) the benefit security contribution for such year determined under subsection (c), over

“(2) the amount of net charges for such year determined under subsection (d).

“(c) Benefit Security Contribution.—The benefit security contribution determined under this subsection for any plan year is the sum of the following:

“(1) Benefit payments.—The value of the total amount of benefit payments (other than distributions described in paragraph (2)(A)) under the plan for such year (taking into account interest determined as provided in section 412(b)(5) to the end of such year).

“(2) Factored distributions.—The product derived by multiplying—

“(A) the total amount of distributions of benefits from the plan for such year in the form of single sum distributions or in the form of irrevocable commitments which are purchased by the plan from an insurer to provide such benefits and which are not assets of the plan, by

“(B) a percentage equal to the excess (not less than zero and not more than 100 percent) of 150 percent over the funded ratio for the plan as of the beginning of the plan year,

“(3) Interest on excess vested liabilities.—The product derived by multiplying—

“(A) the excess (not less than zero) of—

“(i) the amount of vested liabilities under the plan for such year, over

“(ii) the value of the plan assets (increased by the sum of the amount of any outstanding funding deficiencies and the amount of any outstanding balance of any waived funding deficiencies) for such year, by

“(B) the interest rate used under this section to compute the amount of vested liabilities under the plan for such year.

“(4) Charge for waived funding deficiencies.—The amount described in section 412(b)(2)(C).

“(d) Amount of Net Charges.—The amount of net charges determined under this subsection for any year is the excess (not less than zero) of—

“(1) the sum of the amounts charged under subparagraphs (A), (B), (C), (D), (E), and (F) of section 412(b)(2) for such year, over

“(2) the sum of the amounts credited under subparagraphs (B) and (D) of section 412(b)(3) for such year.

“(e) Limitation on Benefit Security Charge.—

“(1) In general.—In the case of a plan under which the funded ratio for the plan as of the beginning of the plan year is greater than 50 percent, the benefit security charge for a plan year shall not exceed the greater of—

“(A) the amount of contributions, in excess of contributions otherwise required for such plan year under section 412 (without regard to section 412(b)(2)(F)), which would be necessary to maintain the projected funded ratio of the plan for such plan year at an amount equal to the sum of—

“(i) the funded ratio of the plan as of the beginning of such plan year (taking into account any change in assumptions for such plan year), and

“(ii) the funded ratio improvement factor of the plan for such plan year described in paragraph (2), or

“(B) the amount equal to the excess, if any, of—

“(i) projected vested liabilities described in subparagraph (C) of paragraph (3), taking into account only that portion thereof attributable to participants and beneficiaries in pay status, over

“(ii) projected plan assets described in subparagraph (B) of paragraph (3).

“(2) Funded ratio improvement factor.—The funded ratio improvement factor of a plan for a plan year described in this paragraph is the product derived by multiplying—

“(A) the excess of 1 over the funded ratio of the plan as of the beginning of the plan year, by

“(B) 5 percent.

“(3) Projected funded ratio.—

“(A) In general.—For purposes of this subsection, the projected funded ratio of a plan for a plan year is the ratio of projected plan assets described in subparagraph (B) to projected vested liabilities described in subparagraph (C).

“(B) Projected plan assets.—Projected plan assets described in this subparagraph are the value of plan assets as of the beginning of the plan year, projected to the end of the plan year, taking into account expected income and disbursements under the plan.

"(C) Projected vested liabilities.—Projected vested liabilities described in this subparagraph are the amount of vested liabilities under the plan, determined as of the beginning of the plan year and projected to the end of the plan year, taking into account all expected changes (other than benefit increases) occurring during such plan year by reason of plan amendments first taking effect in such plan year.".

(B) Clerical amendment.—The table of sections for subpart B of part 1 of subchapter D of chapter 1 of such Code (as amended by section 3005(b) of this Act) is further amended by inserting after the item relating to section 412A the following new item:

"Sec. 412B. Determination of benefit security charge.".

(C) Effective date.—The amendment made by this paragraph shall apply with respect to plan years ending after December 31, 1991.

(3) Adjustments to amortization period relating to net experience losses and gains.—

(A) In general.—Paragraphs (2)(B)(iv) and (3)(B)(ii) of section 412(b) of such Code (relating to charges and credits to the funding standard account relating to net experience losses and gains) are each amended by striking "15 plan years" and inserting "5 plan years (in the case of single-employer plans) or 15 plan years (in the case of multiemployer plans)".

(B) Effective date.—The amendments made by this paragraph shall apply with respect to plan years beginning after December 31, 1988.

(4) Increase in deduction for employer contributions.—Clause (i) of section 404(a)(1)(A) of such Code (relating to deduction for contribution of an employer to pension trusts) is amended to read as follows:

"(i) the greater of—

"(I) the amount necessary to satisfy the minimum funding standard provided by section 412(a) for plan years ending within or with such taxable year (or for any prior plan year), or

"(II) if the ratio of plan assets for such year to vested liabilities under the plan for such year is less than 1, the amount of contributions for such year which would be necessary to increase such ratio to 1,

if such amount is greater than the amount determined under clause (ii) or (iii) (whichever is applicable with respect to the plan).".

(5) Time for making contributions.—

(A) Reduction of period during which contributions may be made after close of year.—

(i) In general.—Effective with respect to plan years beginning after December 31, 1988, paragraph (10) of section 412(c) of such Code (relating to time when certain contributions deemed made) is amended by inserting "in the case of multiemployer plans," after "paragraph,".

(ii) Transitional rule for years beginning during 1988.—In the case of any plan year beginning during calendar year 1988, the last sentence of section 412(c)(10) of such Code shall be applied in the case of single-employer plans by substituting "three months" for "six months".

(B) Quarterly estimated payments required.—

(i) In general.—Chapter 43 of such Code (relating to qualified payments, etc., plans) is amended by inserting after section 4971 the following new section:

"SEC. 4971A. FAILURE BY EMPLOYER TO MAKE QUARTERLY PAYMENTS OF ESTIMATED REQUIRED CONTRIBUTION FOR A WAIVED FUNDING DEFICIENCY.

"(a) General Rule.—

"(1) Amount of tax.—In any case in which, as of the end of an employer's taxable year—

"(A) the employer maintains a defined benefit plan (other than a multiemployer plan) to which section 412 applies, and

"(B) there is outstanding as of the end of such taxable year a waived funding deficiency under such plan,

there is hereby imposed a tax equal to the amount determined under paragraph (2) with respect to any underpayment of a required installment for a plan year ending with or within such taxable year.

"(2) Determination of amount.—The amount determined under this paragraph with respect to any underpayment shall be determined by applying—

"(A) the underpayment rate established under section 6621,

"(B) to the amount of the underpayment,

"(C) for the period of the underpayment.

"(3) Liability for tax.—The tax imposed by this subsection shall be paid by the employer responsible for contributing to or under the plan the amount described in section 412(b)(3)(A).

"(b) Amount of Underpayment, Period of Underpayment.—For purposes of subsection (a)—

"(1) Amount.—The amount of the underpayment shall be the excess of—

"(A) the required installment, over

"(B) the amount (if any) of the installment contributed to or under the plan on or before the due date for the installment.

"(2) Period of underpayment.—The period of the underpayment shall run from the due date for the installment to whichever of the following dates is the earlier—

"(A) the 15th day of the 3rd month following the close of the plan year, or

"(B) with respect to any portion of the underpayment, the date on which such portion is contributed to or under the plan.

"(3) Order of crediting contributions.—For purposes of paragraph (2)(B), contributions shall be credited against unpaid required installments in the order in which such installments are required to be paid.

"(c) Number of Required Installments; Due Dates.—For purposes of this section—

"(1) Payable in 4 installments.—There shall be 4 required installments for each plan year.

"(2) Time for payment of installments.—

"(A) In general.—The required installments shall be due on March 15, June 15, September 15, and December 15, respectively, of such plan year (in the order in which such dates appear in such plan year).

"(B) Fiscal years.—In applying this subsection to a plan year beginning on any date other than January 1, April 1, July 1, or October 1, there shall be substituted, for the dates specified in subparagraph (A), the dates which correspond thereto.

"(d) Amount of Required Installment.—For purposes of this section—

"(1) In general.—The amount of any required installment shall be equal to—

"(A) in the case of the first installment, 25 percent of the required annual payment,

"(B) in the case of the second installment, 33 1/3 percent of the amount of the required annual payment remaining unpaid,

"(C) in the case of the third installment, 50 percent of the amount of the required annual payment remaining unpaid, and

"(D) in the case of the fourth installment, the amount of the required annual payment remaining unpaid.

"(2) Required annual payment.—The term 'required annual payment' means the lesser of—

"(A) the amount required to be contributed to or under the plan by the employer for the plan year by reason of this section, or

"(B) the amount so required for the preceding plan year.

Subparagraph (B) shall not apply if the preceding plan year was not a year of 12 months.

"(e) Short Plan Years.—This section shall be applied to plan years of less than 12 months in accordance with regulations prescribed by the Secretary."

(ii) Clerical amendment.—The table of sections for chapter 43 of such Code is amended by inserting after the item relating to section 4971 the following new item:

"Sec. 4971A. Failure by employer to make quarterly payments of estimated required contribution."

(iii) Effective date.—The amendments made by this subparagraph shall apply with respect to plan years beginning after December 31, 1988.

(6) Liability of members of controlled group for taxes on failure to meet minimum funding standards.—

(A) General rule.—Section 4971 of such Code (relating to taxes on failure to meet minimum funding standards) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e) Liability for Tax.—

"(1) In general.—Except as provided in paragraph (2), the tax imposed by subsection (a) or (b) shall be paid by the employer responsible for contributing to or under the plan the amount described in section 412(b)(3)(A).

"(2) Joint and several liability where employer member of controlled group.—

"(A) In general.—If the employer referred to in paragraph (1) is a member of a controlled group, each member of such group shall be jointly and severally liable for the tax imposed by subsection (a) or (b).

"(B) Controlled group.—For purposes of subparagraph (A), the term 'controlled group' means any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414."

(B) Technical amendments.—

(i) Subsection (a) of section 4971 of such Code is amended by striking the last sentence.

(ii) Subsection (b) of section 4971 of such Code is amended by striking the last sentence.

(C) Effective date.—The amendments made by this paragraph shall apply with respect to taxes imposed for taxable years beginning after December 31, 1988.

(7) Funding waivers.—

(A) Requirements for waivers.—

(i) Application must be submitted before date 2 1/2 months after close of year.—Subsection (d) of section 412 of such Code (relating to variance from minimum funding standard) is amended by adding at the end the following new paragraph:

"(4) Application must be submitted before date 2 1/2 months after close of year.—No waiver may be granted under this subsection with respect to any plan for any plan year unless an application therefor is submitted to the Secretary not later than the 15th day of the 3rd month beginning after the close of such plan year."

(ii) Waiver allowed only for temporary hardship.—Subsection (d) of section 412 of such Code is amended—

(I) by striking out "substantial business hardship" in paragraphs (1) and (2) and inserting in lieu thereof "temporary substantial business hardship", and

(II) by striking out "SUBSTANTIAL BUSINESS HARDSHIP" in the heading of paragraphs (1) and (2) and inserting in lieu thereof "TEMPORARY SUBSTANTIAL BUSINESS HARDSHIP".

(iii) Hardship must also exist at controlled group level.—Subsection (d) of section 412 of such Code (as amended by the preceding provisions of this subparagraph) is further amended by adding at the end the following new paragraph:

"(5) Special rule if employer is member of controlled group.—

"(A) In general.—If an employer is a member of a controlled group, the temporary substantial business hardship requirements of paragraph (1) shall be treated as met only if such requirements are met—

"(i) with respect to such employer, and

"(ii) with respect to the controlled group of which such employer is a member (determined by treating all members of such group as a single employer).

"(B) Controlled group.—For purposes of subparagraph (A), the term 'controlled group' means any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414."

(B) Frequency of waivers.—The second sentence of section 412(d) of such Code is amended by inserting "with respect to a defined benefit plan (other than a multiemployer plan) for more than 3 of any 15 consecutive plan years or with respect to a multiemployer plan" after "standard".

(C) Repayment of waived contributions.—

(i) Interest rate used with respect to variance from minimum funding standard.—Paragraph (1) of section 412(d) of such Code (as amended by subparagraph (A)(ii)) is further amended—

(I) by striking so much as precedes "10 percent" and inserting the following:

"(1) Waiver in case of temporary substantial business hardship.—

"(A) In general.—If an employer, or in the case of a multiemployer plan,"; and

(II) by striking the last sentence and inserting the following:

"(B) Interest rate.—The interest rate used for purposes of computing the amortization charge described in subsection (b)(2)(C) for any plan year shall be the greater of—

"(i) 120 percent of the Federal mid-term rate (as in effect under section 1274 for the 1st month of such plan year), or

"(ii) the highest rate of interest used under the plan in determining charges to the funding standard account maintained by the plan.".

(ii) Interest rate used with respect to extension of amortization period.—Subsection (e) of section 412 of such Code is amended—

(I) by redesignating subparagraphs (A) and (B) of paragraph (1) as clauses (i) and (ii), respectively, and adjusting the margination accordingly;

(II) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively, and adjusting the margination accordingly;

(III) by striking so much as precedes "(described in" and inserting the following:

"(e) Extension of amortization periods.—

"(1) In general.—The period of years required to amortize any unfunded liability"; and

(IV) by striking the last sentence and inserting the following:

"(2) Interest rate.—The interest rate applicable for any plan year under any arrangement entered into by the Secretary in connection with an extension granted under this subsection shall be the greater of—

"(A) 120 percent of the Federal mid-term rate (as in effect under section 1274 for the 1st month of such plan year), or

"(B) the highest rate of interest used under the plan in determining charges to the funding standard account maintained by the plan.".

(iii) Adjustments to amortization period for waived funding deficiencies.—Subparagraph (C) of section 412(b)(2) of such Code (relating to charge for waived funding deficiencies) is amended to read as follows:

"(C) the amount necessary to amortize each waived funding deficiency (within the meaning of subsection (d)(3)) for each prior plan year in equal annual installments (until fully amortized) over a period of—

"(i) in the case of a defined benefit plan (other than a multiemployer plan), not more than the lesser of—

"(I) the greater of 5 plan years, or the product derived by multiplying 15 plan years by the ratio of plan assets for such year to benefit liabilities under the plan for such year (increasing any such product which is not a multiple of 1 plan year to the next higher multiple of 1 plan year), or

"(II) 15 plan years, or

"(ii) in the case of a multiemployer plan, over a period of not more than 15 plan years, and".

(D) Notice to participants of application for funding waivers.—Section 412(f)(4)(A) of such Code (relating to advance notice) is amended by striking "plan." and inserting "plan, and each affected party (as defined in section 3(46) of the Employee Retirement Income Security Act of 1974). Such notice shall include a description of the extent to which the plan is funded for benefits which are guaranteed under title IV of the Employee Retirement Income Security Act of 1974 and benefit liabilities (as defined in section 4001(a)(16) of such Act).".

(E) Effective dates.—

(i) In general.—Except as provided in clauses (ii) and (iii), the amendments made by this paragraph shall apply in the case of—

(I) any application submitted after the date of the enactment of this Act for a waiver with respect to a plan year beginning after December 31, 1985, and

(II) any waiver granted pursuant to such an application.

(ii) Special rule for subparagraph (A)(i).—

(I) In general.—The amendment made by subparagraph (A)(i) shall apply to plan years beginning after December 31, 1987.

(II) Transitional rule for years beginning in 1988.—In the case of any plan year beginning during calendar year 1988, section 412(d)(4) of the Internal Revenue Code of 1986 (as added by subparagraph (A)(i)) shall be applied by substituting "6th month" for "3rd month".

(iii) Special rule for subparagraph (D).—The amendment made by subparagraph (D) shall apply in the case of any application submitted after the date of the enactment of this Act.

(c) Limitation on Benefit Security Charge for Transition Years With Respect to Plans Maintained by Steel Companies.—

(1) In general.—The benefit security charge determined under section 302B of the Employee Retirement Income Security Act of 1974 and section 412B of the Internal Revenue Code of 1986 with respect to a transition year in the case of any plan maintained by a steel company shall not exceed the amount necessary to result in a funded ratio improvement factor for the plan for such year of more than 1 percent.

(2) Definitions.—For purposes of this subsection—

(A) Steel company.—The term "steel company" means any employer that is a corporation described in section 806(b) of the Steel Import Stabilization Act.

(B) Transition year.—The term "transition year" means a plan year which is one of the first 5 plan years for which such sections 302B and 412B are effective.

(C) Funded ratio improvement factor.—The term "funded ratio improvement factor" for a plan for a plan year means the excess over 100 percent of the ratio (expressed as a percentage) of the funded ratio of the plan for such plan year to the funded ratio of such plan for the prior plan year.

(D) Use of ERISA and code terminology.—Any other term used in this subsection which is used in such sections 302B and 412B shall have the meaning provided such term for purposes of such sections.

SEC. 3009. INCREASE IN LIABILITIES ARISING UPON PLAN TERMINATION.

(a) Benefit Liabilities.—

(1) In general.—Section 4001(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1301(a)) is amended by striking paragraph (16) and inserting in lieu thereof the following:

"(16) 'benefit liabilities' to any person means, in connection with a plan terminated under this title, all benefits of such person under the plan as of the termination date (including benefits the reduction or elimination of which is not prohibited under section 204(g));".

(2) Conforming amendments.—Title IV of such Act is amended by striking "benefit commitments" each place it appears and inserting "benefit liabilities".

(b) Liability to Corporation for Distress Termination.—Section 4062(b)(1)(A)(ii)(I) of such Act (29 U.S.C. 1362(b)(1)(A)(ii)(I)) is amended by striking "75 percent" and inserting "100 percent".

(c) Liability to the Section 4049 Trust.—Section 4062(c)(1)(A) of such Act (29 U.S.C. 1362(c)(1)(A)) is amended by striking the last sentence and inserting the following: "The liability of such person under this subsection shall consist of the total outstanding amount of benefit liabilities under the plan.".

SEC. 3010. AMENDMENTS RELATING TO SECTION 4049 TRUST.

(a) Elimination of Liability Payment Years.—

(1) In general.—Section 4049(c)(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1349(c)(1)) is amended by striking in the first sentence "Not later" and all that follows through "the corporation" and inserting the following: "Not later than 30 days after the receipt of each liability payment under section 4062(c) (but in no event more frequently than once per year), the corporation".

(2) Conforming amendments.—Section 4049(c) of such Act (29 U.S.C. 1349(c)) is further amended—

(A) in paragraph (1)(B), by striking "such year" and inserting "a fiscal year of the trust"; and

(B) in paragraph (2), by striking all of the first sentence following "this subsection" and inserting "(other than the final payment owed under this subsection) if such payment does not exceed $100.", and by striking "payment to such person in connection with the next following liability payment year" in the second sentence and inserting "next payment to such person due under this subsection".

(b) Payment of Initial Administrative Expenses Incurred Pursuant to Section 4049.—Section 4049(a) of such Act (29 U.S.C. 1349(a)) is amended by adding at the end the following new sentence: "Reasonable administrative expenses incurred in carrying out the responsibilities under this section prior to the receipt of any liability payments under section 4062(c) shall be paid by the persons described in section 4062(a) in accordance with procedures which shall be prescribed by the corporation by regulation, and the amount of the liability determined under section 4062(c) shall be reduced by the amount of such expenses so paid.".

SEC. 3011. SINGLE-EMPLOYER PLAN BENEFIT GUARANTY PREMIUMS.

(a) Premium Increase.—

(1) In general.—Section 4006(a)(3)(A)(i) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1306(a)(3)(A)(i)) is amended by striking "for plan years beginning after December 31, 1985, an amount equal to $8.50" and inserting "for plan years beginning after December 31, 1987, an amount equal to $19.00".

(2) Conforming amendments.—Section 4006(c)(1)(A) of such Act (29 U.S.C. 1306(c)(1)(A)) is amended—

(A) in clause (i), by striking "and" at the end;

(B) in clause (ii), by inserting "and before January 1, 1986," after "after December 31, 1977,"; and

(C) by adding at the end the following new clause:

"(iii) with respect to each plan year beginning after December 31, 1985, and before January 1, 1988, an amount equal to $8.50 for each individual who was a participant in such plan during the plan year, and".

(b) Employer Liability for Premiums.—

(1) In general.—Section 4007(a) of such Act (29 U.S.C. 1307(a)) is amended—

(A) by striking "The plan administrator" and inserting "(1) Except as provided in paragraph (2), the plan administrator"; and

(B) by adding at the end the following new paragraph:

"(2) Each person who is a contributing sponsor of a single-employer plan or a member of the controlled group including such sponsor shall be jointly and severally liable to the corporation for payment of premiums for such plan.".

(2) Conforming amendments.—Subsections (b), (c), and (d) of section 4007 of such Act (29 U.S.C. 1307 (b), (c), and (d)) are each amended by inserting "(or, in the case of a single-employer plan, a contributing sponsor or member of the controlled group including such contributing sponsor)" after "plan administrator" each place it appears.

SEC. 3012. MISCELLANEOUS AND CONFORMING AMENDMENTS RELATING TO PLAN TERMINATIONS.

(a) Treatment With Respect to Multiemployer Plans of Qualified Preretirement Survivor Annuities Conformed to Treatment With Respect to Single-employer Plans.—Section 4022A of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1322A) is amended by adding at the end the following new subsection:

"(i) For purposes of subsection (a), a qualified preretirement survivor annuity (as defined in section 205(e)(1)) with respect to a participant under a multiemployer plan which has terminated or which is insolvent under section 4245(b) or 4281(d)(2) shall not be treated as forfeitable solely because the particiant has not died as of the termination date or the date of insolvency (as applicable).".

(b) Certain Information Not Required From Certain Insurance Contract Plans.—

(1) Standard termination.—Section 4041(b)(2)(A) of such Act (29 U.S.C. 1341(b)(2)(A)) is amended—

(A) by striking clause (iii) and inserting the following:

"(iii) certification by the plan administrator that—

"(I) the information on which the enrolled actuary based the certification under clause (i) is accurate and complete, and

"(II) the information provided to the corporation under clause (ii) is accurate and complete."; and

(B) by adding at the end thereof the following:

"Clause (i) and clause (iii)(I) shall not apply to a plan described in section 412(i) of the Internal Revenue Code of 1986.".

(2) Distress termination.—Section 4041(c)(2)(A) of such Act (29 U.S.C. 1341(c)(2)(A)) is amended—

(A) by striking clause (iv) and inserting the following:

"(iv) certification by the plan administrator that—

"(I) the information on which the enrolled actuary based the certifications under clause (ii) is accurate and complete, and

"(II) the information provided to the corporation under clauses (i) and (iii) is accurate and complete."; and

(B) by adding at the end the following:

"Clause (ii) and clause (iv)(I) shall not apply to a plan described in section 412(i) of the Internal Revenue Code of 1986.".

(c) Recipients of notice of benefit liabilities.—Section 4041(b)(2)(B) of such Act (29 U.S.C. 1341(b)(2)(B)) is amended—

(1) in the first sentence, by striking "person who is a participant or beneficiary under the plan" and inserting "affected party (other than an employee organization representing participants and the corporation)"; and

(2) in the last sentence, by striking "participant or beneficiary" and inserting "affected party".

(d) Clarification of distress tests.—Clauses (i) and (ii) of section 4041(c)(2)(B) of such Act (29 U.S.C. 1341(c)(2)(B) (i) and (ii)) are each amended by inserting "Federal law or" after "under any similar".

(e) Clarification of date as of which employer must be in a bankruptcy proceeding to qualify for distress termination.—Clauses (i) and (ii) of section 4041(c)(2)(B) of such Act (29 U.S.C. 1341(c)(2)(B) (i) and (ii)) are each amended by inserting "proposed" before "termination date".

(f) Treatment under distress tests of cases converted to liquidation.—Section 4041(c)(2)(B)(i)(I) of such Act (29 U.S.C. 1341(c)(2)(B)(i)(I)) is amended by inserting before the comma at the end the following: "(or a case described in clause (ii) filed by or against such person has been converted, as of such date, to a case in which liquidation is sought)".

(g) Notice to Corporation under Reorganization Distress Test.—Section 4041(c)(2)(B)(ii) of such Act (29 U.S.C. 1341(c)(2)(B)(ii)) is amended—

(1) in subclause (II), by striking "and" at the end;

(2) by redesignating subclause (III) as subclause (IV);

(3) by inserting after subclause (II) the following new subclause:

"(III) such person notifies the corporation in advance that such person intends to request the approval of the bankruptcy court (or other appropriate court in a case under such similar Federal law or law of a State or political subdivision) of the plan termination, and";

and

(4) in subclause (IV) (as redesignated), by striking "(or other" and all that follows through "subdivision)" and inserting "(or such other appropriate court)".

(h) Amendments Relating to Valuation Dates Relating to Distress Termination.—

(1) Valuation dates for information required to be provided to the corporation.—Section 4041(c)(2)(A)(ii) of such Act (29 U.S.C. 1341(c)(2)(A)(ii)) is amended—

(A) in subclause (I), by striking "(as of the proposed termination date)" and inserting "(as of the proposed termination date, and, if applicable, as of the proposed distribution date)";

(B) in subclauses (II), (III), (IV), and (V), by striking "as of such date" each place it appears and inserting "as of such dates";

(C) in subclause (V), by striking the semicolon and inserting a comma; and

(D) by adding at the end the following:

"except that the corporation may waive any certification required under this clause if the amount which would otherwise be required to be so certified is not needed for the corporation to make the findings described in paragraph (3)(A) or to calculate liability under section 4062;".

(2) Valuation dates for purposes of determining liability.—Section 4062(c)(1) of such Act (29 U.S.C. 1362(c)(1)) is amended—

(A) in subparagraph (A) (as amended by section 3009(c) of this Act), by striking "plan." and inserting "plan, valued as of the date of distribution (or, if no distribution is authorized under section 4041(c)(3)(B), the termination date)."; and

(B) by striking subparagraph (B) and inserting the following new subparagraph:

"(B) Special rule in case of subsequent insufficiency for guaranteed benefits.—For purposes of subparagraph (A), in any case described in clause (ii) of section 4041(c)(3)(C), actuarial present values shall be determined as of the date of the notice to the corporation (or the finding by the corporation) described in such clause.".

(3) Valuation dates for determining outstanding amount of unfunded benefit liabilities.—Section 4001(a)(19) of such Act (29 U.S.C. 1301(a)(19)) is amended—

(A) by inserting "as of any date" after "a participant or beneficiary"; and

(B) in subparagraph (A), by striking "the termination date" and inserting "such date".

(i) Time of Expiration of Prohibition on Lump Sum Payments After Initiating Distress Termination.—Section 4041(c)(3)(D) of such Act (29 U.S.C. 1341(c)(3)(D)) is amended, in the last sentence, by inserting "the preceding provisions of this subparagraph shall cease to apply, and" after "termination,".

(j) Clarification of existing authority to pool assets of terminated plans.—Section 4042(a) of such Act (29 U.S.C. 1342(a)) is amended by striking the third sentence and inserting the following: "Notwithstanding any other provision of this title, the corporation is authorized to pool the assets of terminated plans for purposes of administration, investment, payment of liabilities of all such terminated plans, and such other purposes as it determines to be appropriate in the administration of this title.".

(k) Submission of Plan Data in Involuntary Termination.—Section 4042(c) of such Act (29 U.S.C. 1342(c)) (as amended by section 3006(b) of this Act) is further amended by adding at the end the following new paragraph:

"(4) In the case of a proceeding initiated under this section, the plan administrator shall provide the corporation, upon the request of the corporation, the information described in clauses (ii), (iii), and (iv) of section 4041(c)(2)(A).".

(l) Treatment of Withdrawal of Substantial Employers from Single-Employer Plans under Multiple Controlled Groups.—

(1) Liability for withdrawal.—Section 4063(b) of such Act (29 U.S.C. 1363(b)) is amended by striking "in accordance with" in the first sentence and all that follows through "entire plan," in the second sentence and inserting the following: "in an amount equal to the sum of the amounts described in paragraphs (1) and (2) of section 4062(a), determined as provided in section 4062".

(2) Amount available for refund upon termination within 5-year period after withdrawal.—Section 4063(c)(3)(C) of such Act (29 U.S.C. 1363(c)(3)(C)) is amended by striking "not required to meet any obligation of the corporation with respect to the plan" and inserting "in excess of the amount needed, together with the other assets of the plan, to pay all benefit liabilities under the plan".

(3) Partitioned plans.—Section 4063(d)(2) of such Act (29 U.S.C. 1363(d)(2)) is amended to read as follows:

"(2) treat that portion of the plan funds allocable under paragraph (1) to participants no longer in covered service as—

"(A) a standard termination under section 4041(b), if all of the requirements of sections 4041(b) (2) and (3) are met, or

"(B) a distress termination under section 4041(c), if the plan administrator demonstrates to the satisfaction of the corporation that the requirements of section 4041(c)(2) are met; and".

(4) Responsibility of corporation.—Section 4063 of such Act (29 U.S.C. 1363) is further amended by adding at the end the following new subsection:

"(f) Nothing in this section shall be construed as requiring the corporation to collect liability under subsection (b) or to collect a bond under subsection (c), and the corporation shall not be liable to any participant or beneficiary for the failure to take any such action.".

(m) Civil Penalties for Failure to Timely Provide Required Information.—

(1) Single-employer plans.—Subtitle D of such Act (29 U.S.C. 1361 et seq.) is amended by adding at the end the following new section:

"PENALTY FOR FAILURE TO TIMELY PROVIDE
REQUIRED INFORMATION

Sec. 4071. The corporation may assess a penalty, payable to the corporation, against any person who fails to provide any notice or other information required under this subtitle or subtitle A, B, or C, or any regulations prescribed under any such subtitle, within the applicable time limit specified therein. Such penalty shall not exceed $1,000 for each day for which such failure continues.".

(2) Multiemployer plans.—Section 4302 of such Act (29 U.S.C. 1452) is amended to read as follows:

"PENALTY FOR FAILURE TO TIMELY PROVIDE
REQUIRED INFORMATION

Sec. 4302. The corporation may assess a penalty, payable to the corporation, against any person who fails to provide any notice or other information required under this subtitle, or any regulations prescribed under this subtitle, within the applicable time limit specified therein. Such penalty shall not exceed $1,000 for each day for which such failure continues.".

(3) Clerical amendments.—The table of contents in section 1 of such Act is amended—

(A) by adding after the item relating to section 4070 the following new item:

"Sec. 4071. Penalty for failure to timely provide required information.";

and

(B) by striking the item relating to section 4302 and inserting the following new item:

"Sec. 4302. Penalty for failure to timely provide required information.".

(n) Technical Correction to Cross-Reference to Corporate Reorganization Rules.—Section 4218(1)(A) of such Act (29 U.S.C. 1398(1)(A)) is amended by striking "section 4062(d)" and inserting "section 4069(b)".

(o) Notice to Corporation of Multiemployer Plan Litigation.—Section 4301(g) of such Act (29 U.S.C. 1451(g)) is amended by striking the first sentence and inserting the following: "The plan sponsor of a multiemployer plan shall serve upon the corporation by certified mail a copy of any complaint, district court opinion, notice of appeal from a decision of a district court, and court of appeals opinion in any action in which the plan sponsor is a party and which involves any provision of this subtitle.".

(p) Technical Correction Relating to Multiemployer Plan Contingent Liability for Termination of Single-Employer Plan to Which Liabilities Were Transferred.—Section 4232(c)(1)(A) of such Act (29 U.S.C. 1412(c)(1)(A)) is amended to read as follows:

"(A) the amount of unfunded guaranteed benefits of the terminated single-employer plan, less the liability to the corporation of the employer who maintained the single-employer plan determined in accordance with section 4062(b) or 4064, or".

SEC. 3013. MISCELLANEOUS AMENDMENTS TO TITLES I AND III OF ERISA.

(a) Definition of Affected Party.—Section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002) (as amended by the preceding provisions of this title) is further amended by adding at the end the following new paragraph:

"(46) Affected party.—The term 'affected party' means, with respect to a plan—

"(A) each participant in the plan,

"(B) each beneficiary under the plan who is a beneficiary of a deceased participant or who is an alternate payee (within the meaning of section 206(d)(3)(K)) under an applicable qualified domestic relations order (within the meaning of section 206(d)(3)(B)(i)), and

"(C) each employee organization representing participants in the plan,

except that, in connection with any notice required to be provided to the affected party, if an affected party has designated, in writing, a person to receive such notice on behalf of the affected party, any reference to the affected party shall be construed to refer to such person.".

(b) Amendment of Statute of Limitations With Respect to Certain Reports.—Section 413(a)(2) of such Act (29 U.S.C. 1113(a)(2)) is amended by striking "(A)" and by striking "or (B)" and all that follows through "title;".

(c) Penalty for Failure To Provide Annual Report in Complete Form.—Section 502(c) of such Act (29 U.S.C. 1132(c)) is amended—

(1) by inserting "(1)" after "(c)", and by striking "(1) who" and "(2) who" and inserting "(A) who" and "(B) who", respectively; and

(2) by adding at the end the following new paragraph:

"(2) The Secretary may assess a civil penalty of up to $1,000 a day from the date of a plan administrator's failure or refusal to file the annual report required to be filed with the Secretary under section 101(b)(4). For purposes of this paragraph, an annual report that has been rejected under section 104(a)(4) shall not be treated as having been filed with the Secretary.".

(d) Clarification of Permissible Return of Contributions.—Subparagraph (B) of section 403(c)(2) of such Act (29 U.S.C. 1103(c)(2)(B)) is amended to read as follows:

"(B) If a contribution is conditioned on initial qualification of the plan under section 401, 403(a), or 405(a) of the Internal Revenue Code of 1986, and if the plan does not qualify initially, then paragraph (1) shall not prohibit the return of such contribution to the employer within one year after the date of the denial of the initial qualification of the plan, but only if the application for the determination regarding initial qualification is made by the time prescribed by law for filing the employer's return for the taxable year in which such plan was adopted.".

(e) Clarification Regarding the Imposition of an Annual Sanction for Prohibited Transactions Which Are Continuing in Nature.—Section 502(i) of such Act (29 U.S.C. 1132(i)) is amended by striking the second sentence and inserting the following: "The amount of such penalty may not exceed 5 percent of the amount involved in each such transaction (as defined in section 4975(f)(4) of the Internal Revenue Code of 1986) for each year or part thereof during which the prohibited transaction continues, except that, if the transaction is not corrected (in such manner as the Secretary shall prescribe in regulations which shall be consistent with section 4975(f)(5) of such Code) within 90 days after notice from the Secretary (or such longer period as the Secretary may permit), such penalty may be in an amount not more than 100 percent of the amount involved.".

(f) Clarification Regarding Effect of Determination Letter by the Internal Revenue Service on Enforcement by the Department of Labor of Fiduciary Standards under ERISA.—Section 3001(d) of such Act (29 U.S.C. 1201(d)) is amended by adding after the second sentence the following: "The determination of the Secretary of the Treasury shall not be prima facie evidence on issues relating solely to part 4 of subtitle B of title I.".

SEC. 3014. ADDITIONAL LIMITATIONS ON INVESTMENT BY AN INDIVIDUAL ACCOUNT PLAN FORMING PART OF A FLOOR-OFFSET ARRANGEMENT AND ON INVESTMENT BY AN INDIVIDUAL ACCOUNT PLAN IN EMPLOYER STOCK.

(a) Treatment of Individual Account Portions of Floor-Offset Arrangements.—

(1) In general.—Section 407(d)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1107(d)(3)) is amended by adding at the end the following new subparagraph:

"(C) After February 19, 1987, the term 'eligible individual account plan' does not include any individual account plan benefits of which are taken into account in determining the benefits payable to a participant under any defined benefit plan."

(2) Treatment of floor-offset arrangement as single plan.—Section 407(d) is amended by adding at the end the following new paragraph:

"(9) For purposes of this section, an arrangement consisting of a defined benefit plan and an individual account plan, benefits of which are taken into account in determining the benefits payable under such defined benefit plan, shall be considered to be a single plan.".

(b) Transition Rule for Application of 10 Percent Limit.—Section 407(a) of such Act (29 U.S.C. 1107(a)) is amended—

(1) in paragraph (2), by adding at the end the following new sentence: "The preceding provisions of this paragraph shall not apply to acquisitions of qualifying employer securities or qualifying employer real property made by a plan described in section 407(d)(3)(C) pursuant to a binding contract in effect on February 19, 1987."; and

(2) by adding at the end the following new paragraph:

"(5)(A) After December 31, 1992, a plan which includes a plan described in subparagraph (C) of section 407(d)(3) may not hold any qualifying employer securities or qualifying employer real property (or both) to the extent that the aggregate fair market value of such securities and property determined on December 31, 1992, exceeds 10 percent of the greater of—

"(i) the fair market value of the assets of the plan determined on December 31, 1992, or

"(ii) the fair market value of the assets of the plan determined on February 20, 1987.

"(B) Subparagraph (A) of this paragraph shall not apply to any plan which on any date after February 19, 1987, and before January 1, 1993, does not hold employer securities or employer real property (or both), the aggregate fair market value of which determined on such date exceeds 10 percent of the greater of—

"(i) the fair market value of the assets of the plan, determined on such date, or

"(ii) the fair market value of the assets of the plan on February 19, 1987."

(c) Restrictions on Treatment of Stock as Qualifying Employer Security.—Section 407 of such Act (29 U.S.C. 1107) is amended—

(1) in subsection (d)(5), by adding at the end the following new sentence: "After February 19, 1987, in the case of a plan other than an eligible individual account plan, stock shall be considered a qualifying employer security only if such stock satisfies the requirements of subsection (f)(1)."; and

(2) by adding at the end the following new subsection:

"(f)(1) Stock satisfies the requirements of this subsection if—

"(A) no more than 25 percent of the aggregate amount of stock of the same class issued and outstanding at the time of acquisition is held by the plan, and

"(B) at least 50 percent of the aggregate amount referred to in subparagraph (A) is held by persons independent of the issuer.

"(2) Until January 1, 1993, a plan shall not be treated as violating subsection (a) solely by holding stock which fails to satisfy the requirements of paragraph (1), if such stock—

"(A) has been so held since February 19, 1987, or

"(B) was acquired on a date later than February 19, 1987, pursuant to a legally binding contract in effect on February 19, 1987, and has been so held since such later date.

"(3) After February 19, 1987, no plan may acquire stock which does not satisfy the requirements of paragraph (1) unless the acquisition is made pursuant to a legally binding contract in effect on such date.".

SEC. 3015. PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989.

If any amendment made by this title requires an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after January 1, 1989, if—

(1) during the period after such amendment made by this subtitle takes effect and before such first plan year, the plan is operated in accordance with the requirements of such amendment made by this subtitle or in accordance with an amendment prescribed by the Secretary of the Treasury and adopted by the plan, and

(2) such plan amendment applies retroactively to the period after such amendment made by this subtitle takes effect and such first plan year.

A plan shall not be treated as failing to provide definitely determinable benefits or contributions, or to be operated in accordance with the provisions of the plan, merely because it operates in accordance with this section.

Subtitle B—Pension Portability

SEC. 3101. SHORT TITLE AND TABLE OF CONTENTS.

This subtitle may be cited as the "Pension Portability Act of 1987".

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Sec. 3102. Findings and declaration of policy.

Part A—Portable Pension Plans

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Sec. 3112. Investment requirements for certain portable pension plans.
Sec. 3113. Rules relating to rollovers and transfers to and from portable pension plans.
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Sec. 3124. Simplified alternative salary reduction arrangements under simplified employee pensions and portable pension plans.
Sec. 3125. Application of requirements for simplified employee pensions and portable pension plans with respect to separate lines of business.
Sec. 3126. Effective date of part.

SEC. 3102. FINDINGS AND DECLARATION OF POLICY.

(a) Findings.—The Congress finds—

(1) that the pension plan asset accumulations under existing pension plans—

(A) are increasingly being distributed at job termination or otherwise used for current consumption, thus removing a major source of national savings necessary for capital formation; and

(B) because of the increasingly mobile nature of the Nation's labor force and because of the lack of an effective pension portability mechanism, are not being efficiently utilized to pay monthly benefits for death, disability, and retirement; and

(2) that it is therefore desirable and in the interests of employees and their employers that employees and the pension plans under which they are covered be encouraged to retain accrued benefits for payment in the form of retirement income by making available a more efficient portability plan arrangement.

(b) Declaration of Policy.—It is hereby declared to be the policy of this subtitle to further national retirement income policies by providing for portable pension plans—

(1) which will encourage the expansion of employer funded pension coverage and result in a more efficient and equitable tax and retirement income delivery system; and

(2) which will provide a more efficient mechanism for pension portability and the preservation of pension plan assets to be distributed in monthly benefit form to meet death, disability, and retirement needs.

PART A—PORTABLE PENSION PLANS

SEC. 3111. UTILIZATION OF ROLLOVER INDIVIDUAL RETIREMENT ACCOUNTS AND ANNUITIES AS PORTABLE PENSION PLANS; DISTRIBUTION AND PORTABILITY REQUIREMENTS.

(a) Amendment to Internal Revenue Code of 1986.—Section 408 of the Internal Revenue Code of 1986 is amended—

(1) by redesignating subsection (p) as subsection (q); and

(2) by inserting after subsection (o) the following new subsection:

"(p) Portable Pension Plan Defined.—

"(1) Requirements.—

"(A) In general.—For purposes of this title, the term 'portable pension plan' means an arrangement consisting of one or more rollover individual retirement plans which—

"(i) meet the requirements of subsection (k) with respect to amounts contributed by employers on behalf of employees in the manner provided in such subsection,

"(ii) meet the distribution requirements of paragraph (2), and "(iii) meet the portability requirements of paragraph (3).

"(B) Rollover individual retirement plan.—For purposes of this paragraph, the term 'rollover individual retirement plan' means an individual retirement account or an individual retirement annuity which accounts separately for—

"(i) contributions which represent prior plan distributions which were not includible in gross income under subsection (d)(3) or section 402(a)(5)(A), 402(a)(7), 403(a)(4)(A), or 403(b)(8), and

"(ii) any other contributions to the account or annuity with respect to an individual representing amounts which—

"(I) if distributed from the account or annuity to the individual, would not be includible in gross income of the individual, and

"(II) are described in section 402(a)(10) (or similar rules applicable pursuant to subsection (a)(4)(B) or (b)(8)(C) of section 403).

"(2) Distribution requirements.—

"(A) In general.—An arrangement meets the requirements of this paragraph only if the arrangement provides as follows:

"(i) Consent requirements.—No distribution to an individual or an individual's beneficiary may be made without the consent of the individual (or a beneficiary in the case of the individual's death), except in the case of a distribution in the form described in subclause (II) or (III), as applicable, of clause (iii) which would, if not otherwise distributed, be includible in gross income solely by application of subsection (a)(6) or (b)(3).

"(ii) Application requirements.—A distribution to an individual or an individual's beneficiary will be made only in accordance with a timely written application by the individual (or a beneficiary in the case of the individual's death) which is made in accordance with the terms of the arrangement and which—

"(I) requests the distribution,

"(II) designates for such distribution a form permitted under clause (iii), and

"(III) specifies the date on which such distribution is to commence.

"(iii) Forms of distribution.—A distribution to an individual or an individual's beneficiary will be made in whichever of the following forms of retirement income is designated pursuant to clause (ii)(II):

"(I) a 100 percent qualified joint and survivor annuity (within the meaning of section 417(b)),

"(II) a 50 percent qualified joint and survivor annuity (within the meaning of section 417(b)),

"(III) a single life annuity (which may be in the form of a refund annuity),

"(IV) an annuity certain over 10 years,

"(V) a lump sum distribution, or

"(VI) any other form of distribution expressly elected in writing in accordance with the terms of the arrangement, and, in any case in which the individual has the account balance from which the distribution is made other than by reason of being a beneficiary and the beneficiary is the spouse of such individual, in accordance with the spousal consent requirements of subparagraph (D).

For purposes of this clause, a distribution shall be treated as made in a form described in subclause (I), (II), (III), or (IV) if such distribution is made in an equivalent form consisting of a series of periodic payments determined in accordance with the principles applicable under section 72(t) with respect to a series described in section 72(t)(2)(A)(iv).

"(B) Spousal consent in selection of form of distribution other than 50 percent joint and survivor form.—In any case in which an individual has an account balance under the arrangement other than by reason of being a beneficiary and the beneficiary is the spouse of such individual, the arrangement does not meet the requirements of this paragraph unless such arrangement provides that the distribution of the account balance will be in the form described in subparagraph (A)(iii)(II) except to the extent another form described in subparagraph (A)(iii) is elected by the individual in writing and the election meets the spousal consent requirements of subparagraph (D).

"(C) Beneficiary.—For purposes of this paragraph, the term 'beneficiary', when used in connection with an arrangement referred to in this paragraph, means—

"(i) the spouse of an individual, but only—

"(I) if such individual has an account balance under the arrangement other than by reason of being a surviving spouse or other beneficiary (as defined clause (ii) or (iii)), and

"(II) to the extent no other person is a beneficiary (within the meaning of clause (ii) or (iii)) with respect to the account balance,

"(ii) any other person designated by an individual described in clause (i)(I), or by the terms of the arrangement, who is or may become eligible under the arrangement to receive some or all of the account balance, if the spousal consent requirements of subparagraph (D) are met, or

"(iii) with respect to amounts transferred directly to such arrangement from any other plan (including investment income attributable thereto), the beneficiary under such other plan or arrangement.

"(D) Spousal consent requirements.—The spousal consent requirements of this subparagraph are met if, with respect to an election under subparagraph (A)(iii)(VI) or (B) or a designation under subparagraph (C)(ii)—

"(i) the spouse of the individual consents in writing to the election or designation, the elected form or designation may not be changed without spousal consent (or the consent of the spouse expressly permits changes in the form or designation without any requirement of further consent by the spouse), and the spouse's consent acknowledges the effect of such consent and is witnessed by a notary public, or

"(ii) the individual states in writing witnessed by a notary public that the consent required under clause (i) may not be obtained because there is no spouse, because the spouse cannot be located, or because of such other circumstances as may be prescribed in regulations referred to in section 417(a)(2)(B).

Any consent by a spouse (or establishment that the consent of a spouse may not be obtained) under the preceding sentence shall be effective only with respect to such spouse.

"(E) Applicability of distribution requirements to individual retirement accounts and annuities.—Nothing in this subsection shall affect the applicability to an individual retirement account or annuity forming a part of a portable pension plan of the requirements of subsections (a)(6) and (b)(3).

"(3) Portability requirements.—An arrangement meets the portability requirements of this paragraph if the arrangement meets the requirements of subparagraphs (A) and (B).

"(A) Portability from the plan.—The requirements of this subparagraph are met if the arrangement provides that, pursuant to an election under paragraph (2)(A)(iii)(VI), the arrangement will make the following transfers:

"(i) Transfers to other portable pension plans.—A transfer of all or part of the account balance with respect to such individual directly from the arrangement to a portable pension plan.

"(ii) Transfers to other qualified plans.—A direct transfer of all or part of the account balance with respect to such individual directly from the arrangement to a plan described in section 401(a) which includes a trust exempt from tax under section 501(a), but only to the extent provided under subsection (a)(10) or (e)(7)(B) of section 402.

"(B) Portability to the plan.—The requirements of this subparagraph are met if the arrangement accepts with respect to any individual each of the following:

"(i) Rollovers from other plans.—Any transfer to the arrangement of a plan distribution which, under subsection (d)(3) or section 402(a)(5)(A), 402(a)(7), 402(a)(10), 403(a)(4)(A), or 403(b)(8), is not includible in gross income.

"(ii) Separation transfers from qualified plans.—Any direct transfer to such arrangement of a plan distribution described in section 411(a)(11)(B) or section 417(e)(3).

"(iii) Other transfers.—Any other direct transfer to such arrangement—

"(I) from any simplified employee pension,

"(II) from any portable pension plan, or

"(III) from any plan described in section 401(a) which includes a trust exempt from tax under section 501(a).

"(4) Good faith reliance on certain information.—No requirement of this part with respect to a portable pension plan shall be treated as not met solely by reason of any act or failure to act in the administration of such plan in good faith reliance on a notarized statement issued pursuant to this subsection.".

(b) Amendments to Employee Retirement Income Security Act of 1974.—

(1) Definition of portable pension plan.—Section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002) is amended by adding at the end the following new paragraph:

"(47) Portable pension plan.—

"(A) In general.—The term 'portable pension plan' means a pension plan consisting of one or more rollover individual retirement plans.

"(B) Rollover individual retirement plan.—For purposes of this paragraph, the term 'rollover individual retirement plan' means an individual retirement account or an individual retirement annuity described in section 408 of the Internal Revenue Code of 1986 which accounts separately for—

"(i) contributions which consist of plan distributions which are not includible in gross income under section 402(a)(5)(A), 402(a)(7), 403(a)(4)(A), 403(b)(8), or 408(d)(3) of the Internal Revenue Code of 1986, and

"(ii) any other contributions with respect to an individual representing amounts which, if distributed, would not be includible in gross income of the individual.".

(2) Distribution and portability requirements for portable pension plans.—

(A) In general.—Part 2 of subtitle B of title I of such Act is amended—

(i) by redesignating section 211 (29 U.S.C. 1061) as section 213; and

(ii) by inserting after section 210 (29 U.S.C. 1060) the following new sections:

"DISTRIBUTION REQUIREMENTS FOR PORTABLE PENSION PLANS

"Sec. 211. (a) In General.—Each portable pension plan shall provide as follows:

"(1) Consent requirements.—No distribution to a participant or a participant's beneficiary may be made without the consent of the participant (or a beneficiary in the case of the participant's death), except in the case of a distribution in the form described in subparagraph (B) or (C) of paragraph (3) which would, if not otherwise distributed, be includible in gross income solely by application of subsection (a)(6) or (b)(3) of section 408 of the Internal Revenue Code of 1986.

"(2) Application requirements.—A distribution to a participant or a participant's beneficiary will be made only in accordance with a timely written application by the participant (or a beneficiary in the case of the participant's death) which is made in accordance with the terms of the plan and which—

"(A) requests the distribution,

"(B) designates for such distribution a form permitted under paragraph (3), and

"(C) specifies the date on which such distribution is to commence.

"(3) Forms of distribution.—A distribution to a participant or a participant's beneficiary will be made in whichever of the following forms of retirement income is designated pursuant to paragraph (2)(B):

"(A) a 100 percent qualified joint and survivor annuity (within the meaning of section 205(d)),

"(B) a 50 percent qualified joint and survivor annuity (within the meaning of section 205(d)),

"(C) a single life annuity (which may be in the form of a refund annuity),

"(D) an annuity certain over 10 years,

"(E) a lump sum distribution, or

"(F) any other form of distribution expressly elected in writing in accordance with the terms of the plan, and, in any case in which the beneficiary is the participant's spouse, the spousal consent requirements of subsection (c).

For purposes of this paragraph, a distribution shall be treated as made in a form described in subparagraph (A), (B), (C), or (D) if such distribution is made in an equivalent form consisting of a series of periodic payments determined in accordance with the principles applicable under section 72(t) of the Internal Revenue Code of 1986 with respect to a series described in section 72(t)(2)(A)(iv) of such Code.

"(4) Applicability of distribution requirements to individual retirement accounts and annuities.—Nothing in this section shall affect the applicability to an individual retirement account or annuity forming a part of a portable pension plan of the requirements of subsections (a)(6) and (b)(3) of section 408 of the Internal Revenue Code of 1986.

"(b) Spousal Consent in Selection of Form of Distribution other than 50 Percent Joint and Survivor Form.—In any case in which the beneficiary under a portable pension plan is the participant's spouse, the plan shall provide that the distribution of the accrued benefit will be in the form described in subsection (a)(3)(B) except to the extent another form described in subsection (a)(3) is elected by the participant in writing and the election meets the spousal consent requirements of subsection (c).

"(c) Spousal Consent Requirements.—The spousal consent requirements of this subsection are met if, with respect to an election under subsection (a)(3) or (b)—

"(1)(A) the spouse of the participant consents in writing to the election, (B) the elected form may not be changed without spousal consent (or the consent of the spouse expressly permits changes in the form without any requirement of further consent by the spouse), and (C) the spouse's consent acknowledges the effect of such consent and is witnessed by a notary public, or

"(2) the participant states in writing witnessed by a notary public that the consent required under paragraph (1) may not be obtained because there is no spouse, because the spouse cannot be located, or because of such other circumstances as may be prescribed in regulations referred to in section 205(c)(2)(B).

Any consent by a spouse (or establishment that the consent of a spouse may not be obtained) under the preceding sentence shall be effective only with respect to such spouse.

"(d) Written Explanation to Recipients of Distributions.—The administrator of a portable pension plan shall, immediately before making a distribution pursuant to this section, provide to the individual who is to be the recipient of the distribution a written explanation of—

"(1) the provisions under which the distribution may or may not be subject to tax or penalty under the Internal Revenue Code of 1986, and

"(2) the terms and conditions of the applicable form of distribution, the participant's right to make an election under subsection (a)(3)(F), and the rights of the participant's spouse under subsection (b).

"(e) Model forms.—The Secretary and the Secretary of the Treasury shall jointly prescribe by regulation model forms which may be used for purposes of complying with the requirements of subsection (d).

"PORTABILITY REQUIREMENTS FOR PORTABLE PENSION PLANS

"Sec. 212. (a) Portability from Portable Pension Plans.—A portable pension plan shall provide that, pursuant to an election under section 211(a)(2)(F), the plan will make the following transfers:

"(1) Transfers to other portable pension plans.—A transfer of all or part of the account balance with respect to such individual directly from the plan to another portable pension plan (within the meaning of section 3(47) or section 408(p) of the Internal Revenue Code of 1986).

"(2) Transfers to other qualified plans.—A direct transfer of all or part of the account balance with respect to such individual directly from the plan to a plan described in section 401(a) of the Internal Revenue Code of 1986 which includes a trust exempt from tax under section 501(a) of such Code, but only to the extent provided under subsection (a)(10) or (e)(7)(B) of section 402 of such Code.

"(b) Portability to Portable Pension Plans.—A portable pension plan shall accept with respect to any individual each of the following:

"(1) Rollovers from other plans.—Any transfer to the plan of a plan distribution which, under section 402(a)(5)(A), 402(a)(7), 402(a)(10), 403(a)(4)(A), 403(b)(8), or 408(d)(3) of the Internal Revenue Code of 1986, is not includible in gross income.

"(2) Separation transfers from qualified plans.—Any direct transfer to such plan of a plan distribution described in section 203(e)(2) or section 205(g)(3).

"(3) Other transfers.—Any other direct transfer to such plan—

"(A) from any simplified employee pension (within the meaning of section 408(k) of the Internal Revenue Code of 1986),

"(B) from any portable pension plan (within the meaning of section 3(47) or section 408(p) of the Internal Revenue Code of 1986), or

"(C) from any plan described in section 401(a) of the Internal Revenue Code of 1986 which includes a trust exempt from tax under section 501(a) of such Code.".

(B) Clerical amendment.—The table of contents in section 1 of such Act is amended by striking the item relating to section 211 and inserting the following:

"Sec. 211. Distribution requirements for portable pension plans.

"Sec. 212. Portability requirements for portable pension plans.

"Sec. 213. Effective dates.".

(3) Special definition of beneficiary.—Paragraph (8) of section 3 of such Act (29 U.S.C. 1002(8)) is amended—

(A) by striking "The term" and inserting "(A) Subject to subparagraph (B), the term"; and

(B) by adding at the end the following new subparagraph:

"(B)(i) In the case of a portable pension plan, the term 'beneficiary' means—

"(I) the spouse of a participant, but only to the extent no other person is a beneficiary (within the meaning of subclause (II) or (III)) with respect to the accrued benefit,

"(II) any other person designated by a participant, or by the terms of the plan, who is or may become eligible under the plan to receive some or all of the accrued benefit, if the spousal consent requirements of clause (ii) are met, or

"(III) with respect to amounts transferred directly to such plan from any other pension plan (including investment income attributable thereto), the beneficiary under such other plan.

"(ii) The spousal consent requirements of this clause are met if, with respect to a designation under clause (i)(II)—

"(I) the spouse of the participant consents in writing to the designation, the designation may not be changed without spousal consent (or the consent of the spouse expressly permits changes in the designation without any requirement of further consent by the spouse), and the spouse's consent acknowledges the effect of such consent and is witnessed by a notary public, or

"(II) the participant states in writing witnessed by a notary public that the consent required under subclause (I) may not be obtained because there is no spouse, because the spouse cannot be located, or because of such other circumstances as may be prescribed in regulations referred to in section 205(c)(2)(B).

Any consent by a spouse (or establishment that the consent of a spouse may not be obtained) under the preceding sentence shall be effective only with respect to such spouse.".

(4) Good faith reliance on certain information.—

(A) In general.—Part 4 of subtitle B of title I of such Act is amended—

(i) by redesignating section 415 as section 416; and

(ii) by inserting after section 414 the following new section:

"GOOD FAITH RELIANCE UNDER PORTABLE PENSION PLANS ON CERTAIN INFORMATION

"Sec. 415. No requirement of this title with respect to a portable pension plan shall be treated as not met solely by reason of any act or failure to act in the administration of such plan in good faith reliance on a notarized statement issued pursuant to section 3(8)(B)(ii) or 211(c) of this subtitle, paragraph (4)(D)(ii) or (7)(B)(ii) of section 408(k) of the Internal Revenue Code of 1986, or section 408(p)(2)(D) of such Code.".

(B) Clerical amendment.—The table of contents in section 1 of such Act is amended by striking the item relating to section 415 and inserting the following:

"Sec. 415. Good faith reliance under portable pension plans on certain information.
"Sec. 416. Effective date.".

(5) Prototype portable pension plans.—

(A) In general.—Subtitle A of title III of such Act is amended by adding at the end the following new section:

"PROTOTYPE PORTABLE PENSION PLANS

"Sec. 3005. The Secretary of Labor and the Secretary of the Treasury shall jointly prescribe by regulation one or more prototype plans which would, upon adoption by any plan sponsor, constitute a portable pension plan (within the meaning of section 3(47) of this subtitle and section 408(p) of the Internal Revenue Code of 1986) which meets the applicable requirements of this subtitle and such Code.".

(B) Clerical amendment.—The table of contents in section 1 of such Act is amended by inserting after the item relating to section 3004 the following:

"Sec. 3005. Prototype portable pension plans.".

SEC. 3112. INVESTMENT REQUIREMENTS FOR CERTAIN PORTABLE PENSION PLANS.

(a) In General.—Part 4 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 (as amended by section 101 of this subtitle) is further amended—

(1) by redesignating section 416 as section 417; and

(2) by inserting after section 415 the following new section:

"REQUIRED INVESTMENT OPTIONS UNDER PORTABLE PENSION PLANS

"Sec. 416. (a) In General.—A portable pension plan shall, as at least one option for investment of account balances under the plan, provide for investment of such account balances in individual or pooled arrangements, the assets of which consist principally of cash or securities issued, insured, or guaranteed by the United States or an agency of the United States (which may include temporary investments in other forms of insubstantial amounts).

"(b) Default Option.—A portable pension plan shall provide that each account balance under the plan may, as one of the means under the plan of investment of such account balance, be invested or reinvested under the plan exclusively in—

"(1) the form of the option described in subsection (a), or

"(2) the form of any other option which is insured and which provides for the safety of the principal and accrued earnings thereon and meets any requirements which may be specified in regulations of the Secretary. The requirements of the preceding sentence shall not apply if the participant (or a beneficiary in the event of the participant's death) elects otherwise in accordance with the terms of the plan.".

(b) Clerical Amendment.—The table of contents in section 1 of such Act (as amended by section 101 of this subtitle) is further amended by striking the item relating to section 416 and inserting the following:

"Sec. 416. Required investment options under portable pension plans.
"Sec. 417. Effective date.".

SEC. 3113. RULES RELATING TO ROLLOVERS AND TRANSFERS TO AND FROM PORTABLE PENSION PLANS.

(a) Portability From Portable Pension Plans Restricted to Direct Plan-to-Plan Transfers.—Paragraph (3) of section 408(d) of the Internal Revenue Code of 1986 (relating to rollover contribution) is amended by adding at the end the following new subparagraph:

"(G) Denial of rollover treatment for distributions from portable pension plans.—This paragraph does not apply to any amount paid or distributed from a portable pension plan.".

(b) Rollover From Qualified Plan to Individual Retirement Account or Annuity Unavailable Unless Rollover Is to a Portable Pension Plan.—

(1) In general.—Clause (iv) of section 402(a)(5)(E) of such Code (relating to eligible retirement plan) is amended to read as follows:

"(iv) Eligible retirement plan.—The term 'eligible retirement plan' means—

"(I) a portable pension plan,

"(II) a qualified trust, or

"(III) an annuity plan described in section 403(a).".

(2) Rollover where spouse receives distributions.—Paragraph (7) of section 402(a) of such Code (relating to rollover where spouse receives distributions after death of employee) is amended by striking "subclause (III) or (IV)" and inserting "subclause (II) or (III)".

(3) Rollovers from annuity contracts purchased by tax-free entities.—Clause (ii) of section 403(b)(8)(A) of such Code (relating to rollover amounts from annuity purchased by section 501(c)(3) organization or public school) is amended by striking "an individual retirement plan" and inserting "a portable pension plan".

(c) Treatment of Amounts Constituting Rollovers or Direct Transfers between Qualified Plans and Portable Pension Plans.—

(1) In general.—Section 402(a) of such Code (relating to taxability of beneficiary of exempt trust) is amended by adding at the end the following:

"(10) Treatment of Amounts Constituting Rollovers or Direct Transfers between Qualified Plans and Portable Pension Plans.—

"(A) Treatment of direct transfers from qualified trusts to portable pension plans.—The amount of any distribution from any employees' trust described in section 401(a) which is exempt from tax under section 501(a) shall not be taxable solely because such distribution is in the form of a direct transfer to a portable pension plan.

"(B) Treatment of direct transfers from portable pension plans to qualified trusts.—

"(i) In general.—The amount of any distribution described in clause (ii) from an account balance under a portable pension plan shall not be taxable solely because such distribution is in the form of a direct transfer to a trust described in section 401(a) which is exempt from tax under section 501(a).

"(ii) Employee contributions previously taxed.—A distribution is described in this clause to the extent that the amount distributed was separately accounted for and represents employee contributions (within the meaning of paragraph (5)(E)(ii)) other than accumulated deductible employee contributions (within the meaning of section 72(o)(5)(B)).

"(C) Portability of employee contributions.—For purposes of paragraph (5), an amount otherwise distributed and transferred as described in such paragraph shall not be considered to exceed the maximum amount permitted in such paragraph solely because a distribution described in subparagraph (B)(ii) is transferred to a portable pension plan—

"(i) in a direct transfer between plans, or

"(ii) within 60 days after the date on which the employee received the distribution of such employee contributions.".

(2) Conforming amendments.—

(A) Section 403(a) plans.—Subparagraph (B) of section 403(a)(4) of such Code (relating to certain rules made applicable in the case of rollovers from qualified annuity plans) is amended by inserting ", section 402(a)(10)," after "section 402(a)(5)".

(B) Section 403(b) annuities.—Subparagraph (C) of section 403(b)(8) of such Code (relating to certain rules made applicable in the case of rollovers from annuities purchased by section 501(c)(3) organization or public school) is amended by inserting ", section 402(a)(10)," after "section 402(a)(5)".

(d) Investment in Life Insurance Contracts Transferred to Individual Retirement Accounts Forming Part of a Portable Pension Plan.—Paragraph (3) of section 408(a) of such Code (relating to individual retirement accounts) is amended by inserting after "contracts" the following: "other than life insurance contracts transferred as described in section 401(a)(29)(A) (or as provided in similar rules under section 403(a)(5) or 403(b)(10)) to a portable pension plan".

SEC. 3114. RULES RELATING TO DISTRIBUTIONS AND TRANSFERS FROM QUALIFIED PLANS.

(a) Amendments to Employee Retirement Income Security Act of 1974.—

(1) Allowed distributions and transfers from certain pension plans.—

(A) In general.—Section 206 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1056) is amended by adding at the end the following new subsection:

"(e) Allowed distributions and transfers from certain pension plans.—A distribution of benefits with respect to any participant under a pension plan other than a simplified employee pension plan or a portable pension plan may be made only if the distribution is described in paragraph (1), (2), (3), (4), (5), (6), or (7).

"(1) Direct transfer to another plan.—

"(A) In general.—A distribution is described in this paragraph if it consists of a direct transfer of all or part of the benefit with respect to a participant in the plan to a portable pension plan or other pension plan and otherwise meets the requirements of this part.

"(B) Transfer procedure.—Any transfer shall be treated as meeting the requirements of subparagraph (A) only if the transfer is made—

"(i) to a portable pension plan (within the meaning of section 3(47) or section 408(p) of the Internal Revenue Code of 1986) or other pension plan selected by the participant in a written application acceptable to the plan or otherwise in accordance with such regulations as the Secretary of the Treasury may prescribe, or

"(ii) to a portable pension plan (within the meaning of section 3(47) or section 408(p) of the Internal Revenue Code of 1986) or other pension plan selected by the plan administrator if the participant does not select such a plan pursuant to clause (i) before a reasonable period (not to exceed 90 days) after the date on which occurs the event with respect to which the transfer is made.

"(C) Exception for small distributions.—In any case in which a portable pension plan (within the meaning of section 3(47) or section 408(p) of the Internal Revenue Code of 1986) selected by the plan administrator pursuant to subparagraph (B)(ii) with respect to a participant during any plan year provides that it does not accept deposits of a specified dollar amount less than the dollar amount specified in section 408(k)(2)(C) of the Internal Revenue Code of 1986 (determined with the application of section 408(k)(8) of such Code), the preceding provisions of this paragraph shall not apply with respect to a distribution with respect to such participant during such plan year to the extent that the total amount of distributions from such plan with respect to such participant during such plan year do not exceed such dollar amount specified in such section 408(k)(2)(C).

"(2) Employee contributions previously taxed.—A distribution is described in this paragraph to the extent that the amount distributed was separately accounted for and represents employee contributions (within the meaning of section 402(a)(5)(E)(ii) of the Internal Revenue Code of 1986) other than accumulated deductible employee contributions (within the meaning of section 72(o)(5)(B) of such Code).

"(3) Retirement-type distribution.—A distribution is described in this paragraph if it consists of any of the following:

"(A) Retirement age distribution.—A distribution made on or after the date on which the participant attains age 59 1/2.

"(B) Survivor benefit.—A distribution made to a beneficiary (or to the estate of the participant) on or after the death of the participant.

"(C) Disability distribution.—A distribution attributable to the participant's being disabled within the meaning of section 72(m)(7) of the Internal Revenue Code of 1986,

"(D) Retirement income stream.—A distribution after separation from service in a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the participant or the joint lives (or joint life expectancies) of such participant and the participant's beneficiary.

"(E) Early retirement.—A distribution made to a participant after separation from service after attainment of age 55.

"(4) Certain stock dividends.—A distribution is described in this paragraph to the extent that it consists of dividends paid with respect to stock of a corporation which are described in section 404(k) of the Internal Revenue Code of 1986.

"(5) Stock distributions.—A distribution is described in this paragraph to the extent that it consists of stock issued by the person who is an employer with respect to the plan.

"(6) Hardship or medical expenses.—A distribution to a participant (other than a distribution described in paragraph (3)) is described in this paragraph to the extent such distribution—

"(A) is with respect to a hardship described in section 401(k)(2)(B)(iv) or 403(b)(7) of the Internal Revenue Code of 1986, or

"(B) does not exceed the amount allowable as a deduction under section 213 of such Code to the participant for amounts paid during the taxable year for medical care (determined without regard to whether the participant itemizes deductions for such taxable year).

"(7) Payment to alternate payee pursuant to qualified domestic relations order.—A distribution is described in this paragraph if it is made to an alternate payee pursuant to a qualified domestic relations order (within the meaning of subsection (d)(3)(B)(i)).".

(2) Exception from $3,500 distribution rule where transfer of entire benefit is made directly to another pension plan.—

(A) In general.—Section 203(e) of such Act (29 U.S.C. 1053(e)) is amended—

(i) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively; and

(ii) by inserting after paragraph (1) the following:

"(2)(A) A direct transfer of the entire benefit described in paragraph (1) to a portable pension plan (within the meaning of section 3(47) or section 408(p) of the Internal Revenue Code of 1986) or other pension plan shall not be treated as a distribution in violation of paragraph (1).

"(B) For purposes of subparagraph (A), a transfer of less than such entire benefit shall be treated as a transfer of the entire benefit if the excluded portion of the benefit consists solely of distributed employee contributions which are not includible in gross income for purposes of the Internal Revenue Code of 1986 in connection with the distribution.".

(B) Joint and survivor annuity and preretirement survivor annuity requirements.—Section 205(g) of such Act (29 U.S.C. 1055(g)) is amended—

(i) by redesignating paragraph (3) as paragraph (4); and

(ii) by inserting after paragraph (2) the following:

"(3)(A) A direct transfer of the entire present value described in paragraph (1) or (2) to a portable pension plan (within the meaning of section 3(47) or section 408(p) of the Internal Revenue Code of 1986) or other pension plan shall not be treated as a distribution in violation of paragraphs (1) and (2).

"(B) For purposes of subparagraph (A), a transfer of less than such entire present value shall be treated as a transfer of the entire present value if the excluded portion consists solely of distributed employee contributions which are not includible in gross income for purposes of the Internal Revenue Code of 1986 in connection with the distribution.".

(3) Limitation on application of restrictions on transfers of plan assets.—Section 208(a) of such Act (as amended by subtitle A) (29 U.S.C. 1058) is further amended—

(A) by inserting "(including a portable pension plan within the meaning of section 3(47) or section 408(p) of the Internal Revenue Code of 1986)" after "other plan"; and

(B) by adding at the end the following new sentence: "The requirements of this section shall be treated as met in the case of a direct transfer of a benefit to a portable pension plan (within the meaning of section 3(47) or section 408(p) of the Internal Revenue Code of 1986) or other pension plan which provides the optional forms of distribution described in section 211(a)(3).".

(4) Certain transfers not treated as reductions in benefits.—Section 204(g)(2) of such Act (29 U.S.C. 1054(g)) is amended by adding at the end the following new sentence: "The requirements of this paragraph shall be treated as met in the case of a direct transfer of a benefit to a portable pension plan (within the meaning of section 3(47) or section 408(p) of the Internal Revenue Code of 1986) or other pension plan which provides the optional forms of distribution described in section 211(a)(3).".

(5) Service disregarded where distribution is permitted.—Section 204(d) of such Act (29 U.S.C. 1054(d)) is amended—

(A) in paragraph (1), by striking "or";

(B) in paragraph (2), by striking "receive." and inserting "receive, or";

(C) by inserting after paragraph (2) the following:

"(3) a distribution meeting the requirements of sections 203(e)(2), 205(g)(3), and 206(e)."; and

(D) in the last sentence, by striking "Paragraph (2)" and inserting "Paragraphs (2) and (3)".

(6) Conforming amendment to title IV.—Section 4044 of such Act (29 U.S.C. 1344) is amended by adding at the end the following new subsection:

"(e) So much of any distribution from a terminated plan as would not meet the requirements of section 206(e) if the plan had not terminated and such distribution were made other than as a direct transfer described in section 206(e)(1) shall be made as such a direct transfer.".

(b) Amendments to Internal Revenue Code of 1986.—

(1) Restrictions on distribution of benefits.—Subsection (a) of section 401 of the Internal Revenue Code of 1986 (relating to requirements for qualification) (as amended by section 3003(b)(1)) is further amended by inserting after paragraph (29) the following new paragraph:

"(30) Restrictions on distribution of nonforfeitable benefits.—A trust shall not constitute a qualified trust under this subsection unless, under the plan of which such trust is a part, a distribution of benefits with respect to any employee under the plan may be made only if the distribution is described in subparagraph (A), (B), (C), (D), (E), (F), or (G).

"(A) Direct transfer to another plan.—

"(i) In general.—A distribution is described in this subparagraph if it consists of a direct transfer of all or part of the benefit with respect to an employee under the plan to a portable pension plan or other plan described in this subsection and otherwise meets the requirements of this part.

"(ii) Transfer procedure.—Any transfer shall be treated as meeting the requirements of clause (i) only if the transfer is made—

"(I) to a portable pension plan or other plan described in this subsection selected by the employee in a written application acceptable to the plan or otherwise in accordance with such regulations as the Secretary may prescribe, or

"(II) to a portable pension plan or any such other plan selected by the plan administrator if the employee does not select such a plan pursuant to subclause (I) before a reasonable period (not to exceed 90 days) after the date on which occurs the event with respect to which the transfer is made.

"(iii) Exception for small distributions.—In any case in which a portable pension plan selected by the plan administrator pursuant to clause (i)(II) with respect to an employee during any plan year provides that it does not accept deposits of a specified dollar amount less than the dollar amount specified in section 408(k)(2)(C) (determined with the application of section 408(k)(8)), the preceding provisions of this subparagraph shall not apply with respect to a distribution with respect to such employee during such plan year to the extent that the total amount of distributions from such plan with respect to such employee during such plan year do not exceed such dollar amount specified in section 408(k)(2)(C).

"(B) Employee contributions previously taxed.—A distribution is described in this subparagraph to the extent that the amount distributed was separately accounted for and represents employee contributions (within the meaning of section 402(a)(5)(E)(ii)) other than accumulated deductible employee contributions (within the meaning of section 72(o)(5)(B)).

"(C) Retirement-type distribution.—A distribution is described in this subparagraph if it consists of any of the following:

"(i) Retirement age distribution.—A distribution made on or after the date on which the employee attains age 59 1/2.

"(ii) Survivor benefit.—A distribution made to a beneficiary (or to the estate of the employee) on or after the death of the employee.

"(iii) Disability distribution.—A distribution attributable to the employee's being disabled within the meaning of section 72(m)(7),

"(iv) Retirement income stream.—A distribution after sepearation from service in a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the employee or the joint lives (or joint life expectancies) of such employee and the employee's beneficiary.

"(v) Early retirement.—A distribution made to an employee after separation from service after attainment of age 55.

"(D) Certain stock dividends.—A distribution is described in this subparagraph to the extent that it consists of dividends paid with respect to stock of a corporation which are described in section 404(k).

"(E) Stock distributions.—A distribution is described in this subparagraph to the extent that it consists of stock issued by the person who is an employer with respect to the plan.

"(F) Hardship and medical expenses.—A distribution to an employee (other than a distribution described in subparagraph (C)) is described in this subparagraph to the extent such distribution—

"(i) is with respect to a hardship described in section 401(k)(2)(B)(iv) or 403(b)(7), or

"(ii) does not exceed the amount allowable as a deduction under section 213 to the employee for amounts paid during the taxable year for medical care (determined without regard to whether the employee itemizes deductions for such taxable year).

"(G) Payment to alternate payee pursuant to qualified domestic relations order.—A distribution is described in this subparagraph if it is made to an alternate payee pursuant to a qualified domestic relations order (within the meaning of section 414(p)(1).".

(2) Benefit distribution rules for employee annuities.—

(A) Section 403(a) plans.—Subsection (a) of section 403 of such Code (relating to taxability of beneficiary under a qualified annuity plan) is amended by adding at the end the following new paragraph:

"(5) Benefit distribution rules.—Rules similar to the rules of sections 401(a)(29), 411(a)(11), 414(l), and 417(e) shall apply with respect to annuity contracts described in paragraph (1).".

(B) Section 403(b) plans.—Paragraph (10) of section 403(b) of such Code (relating to distribution requirements) is amended by inserting after "account)" the following: "and, in the case of separations from service, transfers from the plan are made in accordance with rules similar to section 401(a)(29)(A)".

(3) Exception from $3,500 distribution rule where transfer of entire benefit is made directly to a portable pension plan.—

(A) In general.—Paragraph (11) of section 411(a) of such Code (relating to restrictions on certain mandatory distributions) is amended—

(i) by redesignating subparagraphs (B) and (C) as subparagraphs (C) and (D), respectively; and

(ii) by inserting after subparagraph (A) the following:

"(B) Exception for direct transfers to portable pension plans.—

"(i) In general.—A direct transfer of the entire benefit described in subparagraph (A) to a portable pension plan or other qualified employer plan (within the meaning of section 219(e)(3)) shall not be treated as a distribution in violation of subparagraph (A).

"(ii) Exclusion of employee contributions.—For purposes of clause (i), a transfer of less than such entire benefit shall be treated as a transfer of the entire benefit if the excluded portion of the benefit consists solely of distributed employee contributions which are not includible in gross income in connection with the distribution.".

(B) Joint and survivor annuity and preretirement survivor annuity requirements.—Subsection (e) of section 417 of such Code (relating to restrictions on cashouts) is amended—

(i) by redesignating paragraph (3) as paragraph (4); and

(ii) by inserting after paragraph (2) the following:

"(3) Exception for direct transfers to portable pension plans.—

"(A) In general.—A direct transfer of the entire present value described in paragraph (1) or (2) to a portable pension plan or other qualified employer plan (within the meaning of section 219(e)(3) shall not be treated as a distribution in violation of paragraphs (1) and (2).

"(B) Exclusion of employee contributions.—For purposes of subparagraph (A), a transfer of less than such present value shall be treated as a transfer of the entire present value if the excluded portion consists solely of distributed employee contributions which are not includible in gross income in connection with the distribution.".

(4) Limitation on application of restrictions on transfers of plan assets.—Section 414(l)(1) of such Code (as amended by subtitle A) (relating to mergers and consolidations of plans or transfers of plan assets) is amended—

(A) by inserting "or any portable pension plan" after "trust plan"; and

(B) by adding at the end the following new sentence: "The requirements of this subsection shall be treated as met in the case of a direct transfer of a benefit to a trust plan or to a portable pension plan or other plan described in section 401(a) providing the optional forms of distribution described in section 408(p)(2)(A)(iii).".

(5) Certain transfers not treated as reductions in benefits.—Section 411(d)(6)(B) of such Code (relating to accrued benefit not to be decreased by amendment) is amended by adding at the end the following new sentence: "The requirements of this subparagraph shall be treated as met in the case of a direct transfer of a benefit to a portable pension plan or other plan described in section 401(a) providing the optional forms of distribution described in section 408(p)(2)(A)(iii).".

(6) Service disregarded where distribution is permitted.—Subparagraph (B) of section 411(a)(7) of such Code (relating to effect of certain distributions) is amended—

(A) in clause (i), by striking "or";

(B) in clause (ii), by striking "receive." and inserting "receive, or";

(C) by inserting after clause (ii) the following:

"(iii) a distribution meeting the requirements of paragraph (11)(B), section 401(a)(29)(A), and section 417(e)(3)."; and

(D) in the last sentence, by striking "Clause (ii)" and inserting "Clauses (ii) and (iii)".

SEC. 3115. EFFECTIVE DATE OF PART.

(a) In General.—Except as provided in subsection (b), the amendments made by this part shall apply with respect to taxable years beginning after December 31, 1991.

(b) Special Rules for Section 104.—

(1) In general.—Except as provided in paragraphs (2) and (3), the amendments made by section 3114 shall apply with respect to plan years beginning after December 31, 1991.

(2) Plan amendments.—If any amendment made by section 3114 requires an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after December 31, 1991, if—

(A) during the period after such amendment made by section 3114 takes effect and before such first plan year, the plan is operated in accordance with the requirements of such amendment made by section 104, and

(B) such plan amendment applies retroactively to the period after such amendment made by section 3114 takes effect and before such first plan year.

A plan shall not be treated as failing to provide definitely determinable benefits or contributions, or to be operated in accordance with the provisions of the plan, merely because it operates in accordance with this paragraph.

(3) Special Rule for Collectively Bargained Plans.—In the case of a plan maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers ratified before the date of the enactment of this subtitle, the amendments made by section 3114 shall not apply to employees covered by any such agreement in plan years beginning before the later of—

(A) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof on or after the date of the enactment of this subtitle), or

(B) January 1, 1992.

(4) Special rule for individuals allowed certain special elections under Tax Reform Act of 1986.—The amendments

made by this section shall not apply with respect to any individual eligible to make an election under paragraph (3), (4), or (5) of section 1122(h) of the Tax Reform Act of 1986.

PART B—RULES APPLICABLE TO SIMPLIFIED EMPLOYEE PENSIONS AND PORTABLE PENSION PLANS

SEC. 3121. DEFINITION OF SIMPLIFIED EMPLOYEE PENSION PLAN FOR PURPOSES OF TITLE I OF ERISA.

Section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002) is amended by adding at the end the following:

"(48) Simplified employee pension plan.—The term 'simplified employee pension plan' means a pension plan consisting of one or more simplified employee pensions within the meaning of section 408(k)(1) of the Internal Revenue Code of 1986.".

SEC. 3122. DISTRIBUTION REQUIREMENTS FOR SIMPLIFIED EMPLOYEE PENSION PLANS.

(a) Amendments to Internal Revenue Code of 1986.—

(1) In general.—Paragraph (4) of section 408(k) of the Internal Revenue Code of 1986 (relating to withdrawals from simplified employee pensions must be permitted) is amended to read as follows:

"(4) Distributions of account balance.—

"(A) In general.—A simplified employee pension meets the requirements of this paragraph only if—

"(i) employer contributions thereto are not conditioned on the retention in such pension of any portion of the amount contributed, and

"(ii) there is no prohibition imposed by the employer on withdrawals from the simplified employee pension except to the extent required in this paragraph.

"(B) Distribution requirements.—A simplified employee pension established after December 31, 1991, meets the requirements of this paragraph only if the pension provides as follows:

"(i) Consent requirements.—No distribution to the employee or a beneficiary may be made without the consent of the employee (or a beneficiary in the case of the employee's death), except in the case of a distribution in the form described in subclause (II) or (III), as applicable, of clause (iii) which would, if not otherwise distributed, be includible in gross income solely by application of subsection (a)(6) or (b)(3).

"(ii) Application requirements.—A distribution to the employee or a beneficiary will be made only in accordance with a timely written application by the employee (or a beneficiary in the case of the employee's death) which is made in accordance with the terms of the pension and which—

"(I) requests the distribution,

"(II) designates for such distribution a form permitted under clause (iii), and

"(III) specifies the date on which such distribution is to commence.

"(iii) Forms of distribution.—A distribution to the employee or a beneficiary will be made in whichever of the following forms of retirement income is designated pursuant to clause (ii)(II):

"(I) a 100 percent qualified joint and survivor annuity (within the meaning of section 417(b)),

"(II) a 50 percent qualified joint and survivor annuity (within the meaning of section 417(b)),

"(III) a single life annuity (which may be in the form of a refund annuity),

"(IV) an annuity certain over 10 years,

"(V) a lump sum distribution, or

"(VI) any other form of distribution expressly elected in writing in accordance with the terms of the pension, and, in any case in which the beneficiary is the employee's spouse, the spousal consent requirements of subparagraph (D).

For purposes of this clause, a distribution shall be treated as made in a form described in subclause (I), (II), (III), or (IV) if such distribution is made in an equivalent form consisting of a series of periodic payments determined in accordance with the principles applicable under section 72(t) with respect to a series described in section 72(t)(2)(A)(iv).

"(C) Spousal consent in selection of form of distribution other than 50 percent joint and survivor form.—In any case in which the beneficiary is the employee's spouse, the pension meets the requirements of this paragraph only if the pension provides that the distribution of the account balance will be in the form described in subparagraph (A)(iii)(II) except to the extent another form described in subparagraph (A)(iii) is elected by the employee in writing and the election meets the spousal consent requirements of subparagraph (D).

"(D) Spousal consent requirements.—The spousal consent requirements of this subparagraph are met if, with respect to an election under subparagraph (B)(iii) or (C)—

"(i) the spouse of the employee consents in writing to the election, the elected form may not be changed without spousal consent (or the consent of the spouse expressly permits changes in the form without any requirement of further consent by the spouse), and the spouse's consent acknowledges the effect of such consent and is witnessed by a notary public, or

"(ii) the employee states in writing witnessed by a notary public that the consent required under clause (i) may not be obtained because there is no spouse, because the spouse cannot be located, or because of such other circumstances as may be prescribed in regulations referred to in section 417(a)(2)(B).

Any consent by a spouse (or establishment that the consent of a spouse may not be obtained) under the preceding sentence shall be effective only with respect to such spouse.

"(E) Applicability of distribution requirements to individual retirement accounts and annuities.—Nothing in this paragraph shall affect the applicability to an individual retirement account or annuity constituting a simplified employee pension of the requirements of subsections (a)(6) and (b)(3).".

(2) Special definition of beneficiary for simplified employee pensions.—Paragraph (7) of section 408(k) of such Code (relating to definitions) is amended by adding at the end the following new subparagraph:

"(D) Beneficiary.—

"(i) In general.—In the case of a simplified employee pension established after December 31, 1991, the term 'beneficiary', when used in connection with an employee, means—

"(I) the spouse of the employee, but only to the extent there is no other beneficiary (within the meaning of subclause (II) or (III)) with respect to the account balance,

"(II) any other person designated by the employee, or by the terms of the pension, who is or may become eligible under the pension to receive some or all of the account balance, if the spousal consent requirements of clause (ii) are met, or

"(III) with respect to amounts transferred directly to such pension from any other plan (including investment income attributable thereto), the beneficiary under such other plan.

"(ii) Spousal consent requirements.—The spousal consent requirements of this clause are met if—

"(I) the spouse of the employee consents in writing to the designation under clause (i)(II) of the other person referred to in clause (i)(II) as a beneficiary, such designation is of a beneficiary which may not be changed without spousal consent (or the consent of the spouse expressly permits designations by the employee without any requirement of further consent by the spouse), and the spouse's consent acknowledges the effect of such consent and is witnessed by a notary public, or

"(II) the employee states in writing witnessed by a notary public that the consent required under subclause (I) may not be obtained because there is no spouse, because the spouse cannot be located, or because of such other circumstances as may be prescribed in regulations referred to in section 417(a)(2)(B).

Any consent by a spouse (or establishment that the consent of a spouse may not be obtained) under the preceding sentence shall be effective only with respect to such spouse.".

(3) Good faith reliance on certain information.—Subsection (k) of section 408 of such Code is further amended—

(A) by redesignating paragraph (9) as paragraph (10); and

(B) by inserting after paragraph (8) the following new paragraph:

"(9) Good faith reliance on certain information.—No requirement of this part with respect to a simplified employee pension shall be treated as not met solely by reason of any act or failure to act in the administration of such plan in good faith reliance on a notarized statement issued pursuant to this subsection.".

(b) Amendments to Employee Retirement Income Security Act of 1974.—

(1) In general.—Section 211 of the Employee Retirement Income Security Act of 1974 (as added by section 3102(b)(2) of this subtitle) is amended—

(A) in the heading, by inserting "and simplified employee pension plans" after "portable pension plans";

(B) in the matter preceding paragraph (1) in subsection (a), by inserting "and each simplified employee pension plan established after December 31, 1991," after "portable pension plan";

(C) in subsection (a)(4), by inserting "or a simplified employee pension plan" after "portable pension plan"; and

(C) in subsections (b) and (d), by inserting "or a simplified employee pension plan established after December 31, 1991," after "portable pension plan" each place it appears.

(2) Applicability of special definition of beneficiary.—Subparagraph (B) of section 3(8) of such Act (as added by section 3111 of this subtitle) is amended by inserting "or a simplified employee pension plan established after December 31, 1991" after "portable pension plan".

(3) Good faith reliance under simplified employee pension plans on certain information.—

(A) In general.—Section 415 of such Act (as added by section 3111(b)(4)(A)(ii) of this subtitle) is amended—

(i) in the heading, by inserting "OR SIMPLIFIED EMPLOYEE PENSION PLANS" after "PORTABLE PENSION PLANS"; and

(ii) in the text, by inserting "or a simplified employee pension plan established after December 31, 1991," after "portable pension plan".

(B) Clerical amendment.—The item relating to section 415 in table of sections in section 1 of such Act (as added by section 3111(b)(4)(B) of this subtitle) is amended by inserting "or simplified employee pension plans" after "portable pension plans".

SEC. 3123. MANNER AND EXTENT TO WHICH REPORTING AND DISCLOSURE, PARTICIPATION, VESTING, FUNDING, AND OTHER REQUIREMENTS UNDER TITLE I OF ERISA APPLY TO SIMPLIFIED EMPLOYEE PENSION PLANS AND PORTABLE PENSION PLANS.

(a) Alternative Methods for Meeting Reporting and Disclosure Requirements.—

(1) In general.—Section 110 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1030) is amended by adding at the end the following new subsection:

"(c) The Secretary shall by regulation prescribe an alternative method of compliance with the requirements of this part for simplified employee pension plans and portable pension plans. In prescribing regulations pursuant to this subsection, the Secretary shall specifically take into account those attributes which are peculiar to such plans.".

(2) Issuance of regulations.—The Secretary of Labor shall issue the regulations required under section 110(c) of the Employee Retirement Income Security Act of 1974 (as added by subsection (a)) not later than the effective date specified in section 3126.

(b) Applicability of Participation Requirements.—Section 202(a)(1)(B) of such Act (29 U.S.C. 1052(a)(1)(B)) is amended—

(1) by redesignating clause (ii) as clause (iii); and

(2) by inserting after clause (i) the following new clause:

"(ii) Subparagraph (A) does not apply with respect to a simplified employee pension plan or a portable pension plan. No such plan may require, for treatment of any individual by the plan as an individual on behalf of whom contributions may be made to the plan for any year in compliance with section 408 of the Internal Revenue Code of 1986, that such individual—

"(I) have attained any age that is greater than 21, or

"(II) have performed service for the employer during more than 3 years of the immediately preceding 5 years.".

(c) Applicability of Vesting Requirements.—Section 203(a) of such Act (29 U.S.C. 1053(a)) is amended—

(1) in paragraph (1), by adding at the end the following: "A simplified employee pension plan or portable pension plan does not satisfy the requirements of this paragraph unless it further provides that an employee's rights in his accrued benefit derived from the employer's contributions are nonforfeitable."; and

(2) in paragraph (2), by inserting "(other than a simplified employee pension plan or portable pension plan)" after "A plan" the first place it appears.

(d) Inapplicability of Funding Requirements.—Paragraph (8) of section 301(a) of such Act (29 U.S.C. 1081(a)(8)) is amended by inserting ", a simplified employee pension plan, a portable pension plan," after "plan)" the first place it appears.

(e) Other Conforming Changes to Title I Requirements.—

(1) Distribution rules otherwise provided for.—Section 203(e)(1) of such Act (29 U.S.C. 1053(e)(1)) is amended by inserting "(other than a portable pension plan or a simplified employee pension plan established after December 31, 1991)" after "pension plan".

(2) Survivor annuity rules otherwise provided for.—Section 205(b) of such Act (29 U.S.C. 1055(b)) is amended by adding at the end the following new paragraph:

"(4) This section shall not apply to a portable pension plan or a simplified employee pension plan established after December 31, 1991.".

(3) Rules for form and payment of benefits otherwise provided for.—Section 206 of such Act (29 U.S.C. 1056) is amended by adding at the end of each of subsections (a), (b), and (c) the following new sentence: "The preceding provisions of this subsection shall not apply with respect to a portable pension plan or a simplified employee pension plan established after December 31, 1991.".

SEC. 3124. SIMPLIFIED ALTERNATIVE SALARY REDUCTION ARRANGEMENTS UNDER SIMPLIFIED EMPLOYEE PENSIONS AND PORTABLE PENSION PLANS.

Subsection (k) of section 408 of the Internal Revenue Code of 1986 (relating to simplified employee pensions defined) is amended—

(1) by redesignating paragraphs (7), (8), (9) (as added by section 3122(a)(3)(B)), and (10) (as redesignated by section 3122(a)(3)(A)) as paragraphs (8), (9), (10), and (11), respectively; and

(2) by inserting after paragraph (6) the following new paragraph:

"(7) Employee may elect simplified alternative salary reduction arrangement under a uniform simplified employee pension.—

"(A) In general.—A simplified employee pension meeting the requirements of subparagraph (B) shall not fail to meet the requirements of this subsection for a year solely because such pension provides that an employee may elect to have the employer make payments for such year—

"(i) as elective employer contributions to the pension on behalf of the employee, or

"(ii) to the employee directly in cash.

"(B) Requirements.—The requirements of this subparagraph are met for any year with respect to a simplified employee pension to which an employer makes payments under this subsection for such year if—

"(i) each employee with respect to whom payments are made by the employer to a simplified employee pension for such year is eligible to make the election described in subparagraph (A)(i),

"(ii) the simplified employee pension provides that it will not accept contributions for such year which are in excess of the maximum salary reduction amount for such year, and

"(iii) the requirements of subparagraph (D) are met with respect to employer contributions under the simplified employee pension (other than payments made by the employer to the pension pursuant to an election described in subparagraph (A)(i)).

"(C) Maximum salary reduction amount.—For purposes of subparagraph (B)(ii), the term 'maximum salary reduction amount' for a year means an amount equal to the product derived by multiplying—

"(i) the greater of—

"(I) $12,500, or

"(II) 25 percent of the employee's total compensation for such year (including payments made by the employer to the simplified employee pension pursuant to an election described in subparagraph (A)(i)),

by

"(ii) a fraction—

"(I) the numerator of which is the total amount of the contributions made by the employer to simplified employee pensions with respect to such employee for such year (determined without regard to payments made by the employer to simplified employee pensions pursuant to an election described in subparagraph (A)(i)), and

"(II) the denominator of which is the amount of such employee's total compensation (as determined under clause (i)(II)) for such year.

"(D) Rules governing employer contributions.—

"(i) In general.—The requirements of this subparagraph are met with respect to employer contributions to a simplified employee pension if, under the pension—

"(I) a contribution may be made to the pension by an employer for any year only if the participation requirements of clause (ii) are met for such year, and

"(II) the total amount of such contributions for any year to the pension is determined in accordance with the requirements of clause (iii).

"(ii) Participation requirements.—

"(I) In general.—The participation requirements of this clause are met for any year if contributions are made by the employer for such year to simplified employee pensions referred to in subparagraph (B) with respect to each employee who has completed a period of service with the employer extending beyond the later of the date on which the employee attains the age of 21 or the date on which the employee completes 1 year of service.

"(II) Employment at end of year may be required.—The participation requirements of this clause and paragraph (2) shall not be considered as not met solely because the employer does not make contributions for any year with respect to all employees who were not employed by the employer as of the last day of the year. The preceding sentence shall not apply with respect to any employee who rendered any service to the employer during such year and with respect to whom the employer made a contribution for the immediately preceding year.

"(iii) Requirements relating to amount and payment of contribution.—

"(I) In general.—The total amount of employer contributions to a simplified employee pension for any year with respect to an employee (determined without regard to payments made by the employer to the pension pursuant to an employee's election described in subparagraph (A)(i)) is determined in accordance with the requirements of this clause if such amount equals the declared annual contribution of such employer for such employee for such year.

"(II) Declared annual contribution.—Except as provided in subclause (V), for purposes of this clause, the declared annual contribution of an employer for an employee for any year equals the product derived by multiplying the compensation amount described in subclause (III) by the percentage described in subclause (IV).

"(III) Compensation amount.—The compensation amount described in this subclause is an amount equal to the lesser of the total compensation paid to the employee during the year (including payments made by the employer to the simplified employee pension pursuant to an election described in subparagraph (A)(i)), or the dollar amount in effect for such year under paragraph (3)(C).

"(IV) Percentage.—The percentage described in this subclause is a uniform percentage which, for purposes of this subclause, is fixed for such year by the employer with respect to all simplified employee pensions for all employees with respect to whom employer contributions are made for such year.

"(V) Supplemental contributions.—The declared annual contribution of an employer for an employee for any year may be increased by a uniform monetary amount which is fixed for such year by the employer with respect to all simplified employee pensions, and declared by the employer under subclause (VI), for all employees with respect to whom employer contributions are made for such year.

"(VI) Reporting of taxable year, monetary amount, and percentage to the simplified employee pension.—The requirements of this subparagraph are not met with respect to employer contributions under a simplified employee pension unless the pension provides that the employer's taxable year, the uniform percentage fixed by the employer with respect to employees pursuant to subclause (IV) for such taxable year, and the uniform monetary amount fixed by an employer with respect to employees pursuant to subclause (V) for such taxable year must be declared by the employer to the pension together with the employer's first contributions to the pension with respect to an employee for such year.

"(E) Exception for State and local and tax-exempt pensions.—This paragraph shall not apply to a simplified employee pension maintained by—

"(i) a State or local government or political subdivision thereof, or any agency or instrumentality thereof, or

"(ii) an organization exempt from tax under this title.

"(F) Exception for employer maintaining other qualified plan.—

"(i) In general.—This paragraph shall not apply to a simplified employee pension maintained by an employer who also maintains a retirement plan under which service is credited for purposes of benefit accrual with respect to any employee described in subparagraph (D)(ii)(I).

"(ii) Retirement plan.—For purposes of clause (i), the term 'retirement plan' means—

"(I) a pension, profit-sharing, or stock bonus plan described in section 401(a) or a trust which is part of such a plan, or

"(II) an annuity plan described in section 403(a).".

SEC. 3125. APPLICATION OF REQUIREMENTS FOR SIMPLIFIED EMPLOYEE PENSIONS AND PORTABLE PENSION PLANS WITH RESPECT TO SEPARATE LINES OF BUSINESS.

(a) In General.—Subsection (k) of section 408 of the Internal Revenue Code of 1986 (relating to simplified employee pensions) is amended—

(1) by redesignating paragraph (11) (as redesignated by section 3124(1)) as paragraph (12); and

(2) by inserting after paragraph (10) (as redesignated by section 3124(1)) the following new paragraph:

"(11) Application of requirements with respect to separate lines of business.—The Secretary may, by regulation, provide that the requirements of this subsection may be met by application separately with respect to a separate line of business for any year if, for such year—

"(A) the employer maintains in all separate lines of business of the employer one or more plans consisting of simplified employee pensions or plans described in section 401(a) or 403(a), and

"(B) with respect to each separate line of business, the requirements of this section, section 401(a), and section 403(a) (as applicable) are met with respect to each such pension or plan.".

(b) Conforming Amendment.—Paragraph (1) of section 414(r) of such Code (relating to special rules for separate lines of business) is amended by striking "89 and 410(b)" and inserting "89, 408(k)(10), and 410(b)".

SEC. 3126. EFFECTIVE DATE OF PART.

The amendments made by this part shall apply with respect to taxable years beginning after December 31, 1991.

Subtitle C—Fair Work Opportunities Program

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SEC. 3201. ESTABLISHMENT OF FAIR WORK OPPORTUNITIES PROGRAM.

(a) State Plan Requirement.—Section 402(a)(19) of the Social Security Act is amended to read as follows:

"(19) provide that the State has in effect and operation a Fair Work Opportunities Program approved by the Secretary of Labor as meeting all of the requirements of section 416 and of part C of this title;".

(b) Establishment and Operation of State Programs.—Part A of title IV of such Act is amended by adding at the end thereof the following new section:

"FAIR WORK OPPORTUNITIES PROGRAM

"Sec. 416. (a) Purpose.—It is the purpose of the Fair Work Opportunities Program required under subsection (b) to assure that needy children and parents obtain the education, training, and employment which will help them avoid long-term welfare dependence.

"(b) Establishment and Operation of Programs.—As a condition of its participation in the Family Support Program under this part, each State shall establish and operate a Fair Work Opportunities Program approved by the Secretary of Labor as meeting the requirements of part C of this title.

"(c) Participation.—(1) Each adult recipient of family support supplements in the State who is not exempt under paragraph (3) shall be required to participate in the Fair Work Opportunities Program under part C to the extent that the program is available in the political subdivision where he or she resides and State resources otherwise permit. The State public assistance agency (as such term is defined in section 431(6)) shall take such action as may be necessary to ensure that each recipient of such supplements (including each such recipient who is exempt under paragraph (3)) is notified and fully informed concerning the education, training, and work opportunities offered under the program.

"(2) The State may require participation in the program under part C by recipients who are not exempt under paragraph (3) (hereinafter referred to as 'mandatory participants'), and shall also extend the opportunity to participate in the program to recipients who are exempt under paragraph (3) (hereinafter referred to as 'voluntary participants'). The State shall actively encourage such exempt recipients to participate in the program, and shall from time to time furnish to the Secretary of Labor appropriate assurances that it is doing so.

"(3) The following are exempt from mandatory participation in the program under part C—

"(A) an individual who is ill, incapacitated, or 60 years of age or over;

"(B) an individual who is needed in the home because of the illness or incapacity of another family member;

"(C) the parent or other caretaker relative of a child under 3 years of age (subject to the last sentence of this paragraph); except that the State shall permit and encourage participation in the program in the case of parents and other caretaker relatives of children who have attained 1 year of age but who have not attained 3 years of age, where appropriate day care is guaranteed to the relative involved and his or her participation is on a part-time basis;

"(D) the parent or other caretaker relative of a child who has attained 3 years of age but not 6 years of age unless appropriate day care is guaranteed to such relative and his or her participation is on a part-time basis;

"(E) the parent or other caretaker relative of a child who has attained 6 years of age but not 15 years of age unless appropriate day care is guaranteed to such relative during any period while such child is not in school or is not otherwise receiving care during the time such parent or relative is participating in the program under part C;

"(F) an individual who is working 20 or more hours a week;

"(G) a child who is under the age of 16 or attending, full time, an elementary, secondary, or vocational (or technical) school, except in the case of a minor parent with respect to whom the State has exercised its option under section 417(c);

"(H) a woman who is pregnant; and

"(I) an individual who resides in an area of the State where the program is not available.

In the case of a two-parent family to which section 407 applies, the exemption under subparagraph (C), (D), or (E) shall apply only to one parent or other caretaker relative; but the State may at its option make such exemption inapplicable in any such case to both of the parents or relatives involved (and require the participation in the program of one of them on a full-time basis) if appropriate child care is guaranteed in accordance with the applicable provisions of such subparagraph.

"(4) If the parent or other caretaker relative or any dependent child in the family attends (in good standing) a school, an accredited postsecondary institution, or a course of vocational or technical training which can reasonably be expected to lead to employment, at the time he or she would otherwise commence participation (as a mandatory participant or voluntary participant) in the program under part C, such attendance shall constitute satisfactory participation in the educational or training component of the program (by that parent, caretaker, or child) so long as it continues; and the family support plan shall so indicate. The costs of such school or training shall not constitute federally reimbursable expenses for purposes of section 403 (but this sentence shall not prevent the State from providing or making reimbursement for the cost of day care and other supportive services which are necessary for such attendance in accordance with section 402(g)).

"(5) For purposes of paragraph (3), the term 'appropriate day care' means only day care that (A) provides to the parent or caregiver, a safe, healthy, supportive setting appropriate for the age and individual needs of their children; (B) provides unlimited parental access; (C) posts in clear public view the appropriate telephone number for filing any complaint regarding child care quality, or health or safety violations; and (D) complies fully with all local health and fire safety standards (as required by section 402(g)(1)(B) of this Act as amended by title II of the Family Welfare Reform Act of 1987).

"(d) SPECIAL EFFORTS.—With the objective of making the most effective use of resources available to a State, special efforts shall be undertaken under this section and part C of this title to develop and provide needed services and activities for—

"(1) families with a teenage parent, and families with a parent who was under 18 years of age when the first child was born;

"(2) families that have been receiving aid to families with dependent children or family support supplements continuously for two or more years;

"(3) families with one or more children under 6 years of age;

"(4) families with a parent who has not been employed during the preceding 12 months or who lacks a high school diploma or equivalent, or has special educational needs; and

"(5) families with older children in which the youngest child is within 2 years of being ineligible for family support supplements because of age.

"(e) PRIORITIES.—To the extent that the resources available to a State are not adequate to accommodate the provision of services to all mandatory participants and voluntary participants under this section and part C, first consideration shall be given to those (whether mandatory or voluntary participants) who actively seek to participate in program activities.

"(f) ORIENTATION.—(1)(A) During orientation, the State public assistance agency shall provide each applicant for family support supplements full information (verbally and in writing) about the opportunities offered by the Fair Work Opportunities Program under part C and the rights, responsibilities, and obligations of participants in the program, the obligations of the State agency to provide necessary supportive services (including child care), and descriptions of transitional child care services and health coverage transitional options.

"(B) As part of such orientation, the local resource and referral agency, or (if resource and referral agencies are not in place) an agency representative knowledgeable about child care, shall also provide (i) information on the type and locations of quality child care services available within the geographical area reasonably accessible to applicants, (ii) assistance to such recipients to select developmentally appropriate quality child care services, and (iii) assistance to such recipients to make arrangements to obtain such child care services.

"(C) The information described in subparagraphs (A) and (B) shall also be provided to all current recipients of family support supplements within six months after regulations are issued to implement this section and shall also be available at any time to recipients of family support supplements who did not receive orientation under this subsection at the time of their initial application for such supplements or who need additional information about the program.

"(2) During the orientation described in paragraph (1), each applicant for or recipient of family support supplements shall be informed of the exemptions provided under subsection (c)(3), and the consequences of a refusal to participate in the program if not so exempt. Whether or not such applicant or recipient is so exempt, he or she shall be informed of the opportunity to receive first consideration for services by actively seeking to participate in the program and shall be given appropriate opportunities to indicate his or her desire to participate at the end of the orientation session. Each such applicant or recipient shall also be notified in writing, within a month after the orientation, of the opportunity to indicate his or her desire to participate in the program, including a clear description of how to enter the program.

"(g) JOB SEARCH.—Job search by an applicant for family support supplements may be required or assisted while his or her application is being processed. During orientation, each applicant shall be informed that job search by a participant may be required or assisted after his or her initial assessment, after his or her education or training, and at other appropriate times during his or her participation in the program under part C, as may be set forth in the agency-client agreement entered into between such individual and the State work initiatives agency under part C and as otherwise provided by such State agency. After 8 weeks of job search activity without obtaining a job, a participant shall not be required to continue in such job search activity, but shall be provided education, training, or other activities designed to improve his or her prospects for employment. No requirement imposed by the State under the preceding provisions of this subsection may be used as a reason for any delay in making a determination of an individual's eligibility for family support supplements or in issuing a payment to or on behalf of any individual who is otherwise eligible for such supplements.

"(h) SANCTIONS.—(1) If any mandatory participant in the program under part C fails without good cause to comply with any requirement imposed with respect to his or her participation in such program—

"(A) the needs of such participant (whether or not section 407 applies) shall not be taken into account in making the determination with respect to his or her family under section 402(a)(7), and

"(B) if such participant is a member of a family which is eligible for family support supplements by reason of section 407, and his or her spouse is not participating in the program, the needs of such spouse shall also not be taken into account in making such determination.

The sanction described in subparagraph (A) (and the sanction described in subparagraph (B) if applicable) shall continue until the participant's failure to comply ceases; except that such sanction shall continue for a minimum of 3 months if the failure to comply is the participant's second or a subsequent such failure.

"(2) No sanction shall be imposed under paragraph (1) until appropriate notice thereof has been provided to the participant involved, and until conciliation efforts have been made to discuss and resolve the participant's failure to comply and to determine whether or not good cause for such failure existed. In any event, when a failure to comply has continued for 3 months, the State public assistance agency shall promptly remind the participant in writing of his or her option to end the sanction by terminating such failure.

"(3) If a voluntary participant drops out of the program under part C after having commenced participation in such program, he or she shall thereafter be given no priority so long as other mandatory or voluntary participants are actively seeking to participate under subsection (e).

"(i) WORK SUPPLEMENTATION PROGRAMS.—(1) Any State may institute a work supplementation program under which such State, to the extent it considers appropriate, may reserve the sums which would otherwise be payable to participants in the program under this section as family support supplements under the State plan approved under this part and use such sums instead for the purpose of providing and subsidizing jobs for such participants (as described in paragraph (3)(C) (i) and (ii)), as an alternative to the supplements which would otherwise be so payable to them under such plan.

"(2)(A) Notwithstanding any other provision of law, Federal funds may be paid to a State under this part, subject to the provisions of this section, with respect to expenditures incurred in operating a work supplementation program under this subsection.

"(B) Nothing in this part, or in any State plan approved under this part, shall be construed to prevent a State from operating (on such terms and conditions and in such cases as the State may find to be necessary or appropriate) a work supplementation program in accordance with the provisions of this Act applicable to this subsection.

"(C) Notwithstanding any other provision of law, a State may adjust the levels of the standards of need under the State plan to the extent the State determines such adjustments to be necessary and appropriate for carrying out a work supplementation program under this subsection.

"(D) Notwithstanding any other provision of law, a State operating a work supplementation program under this subsection may provide that the need standards in effect in those areas of the State in which such program is in operation may be different from the need standards in effect in the areas in which such program is not in operation, and such State may provide that the need standards for categories of recipients of family support supplements may vary among such categories to the extent the State determines to be appropriate on the basis of ability to participate in the work supplementation program.

"(E) Notwithstanding any other provision of law, a State may make further adjustments in the amounts of the family support supplements paid under the plan to different categories of recipients (as determined under subparagraph (D)) in order to offset increases in benefits from needs-related programs (other than the State plan approved under this part), to the extent the State determines such adjustments to be necessary and appropriate to further the purposes of the work supplementation program.

"(F) In determining the amounts to be reserved and used for providing and subsidizing jobs under this subsection as described in paragraph (1), the State may use a sampling methodology.

"(G) Notwithstanding section 402(a)(8) or any other provision of law, a State operating a work supplementation program under this subsection may reduce or eliminate the amount of earned income to be disregarded under the State plan to the extent the State determines such a reduction or elimination to be necessary and appropriate to further the purposes of the work supplementation program.

"(3)(A) A work supplementation program operated by a State under this subsection shall provide that any individual who is an eligible individual (as determined under subparagraph (B)) shall take a supplemented job (as defined in subparagraph (C)) to the extent that supplemented jobs are available under the program. Payments by the State to individuals or employers under the program shall be treated as expenditures incurred by the State for family support supplements under the State plan for purposes of section 403(a)(1) and (2), except as limited by paragraph (4) of this section.

"(B) For purposes of this subsection, an eligible individual is an individual (not exempt under subsection (c)(3)) who is in a category which the State determines should be eligible to participate in the work supplementation program, and who would, at the time of his or her placement in the job involved, be eligible for family support supplements under the State plan if such State did not have a work supplementation program in effect.

"(C) For purposes of this subsection, a supplemented job is—

"(i) a job provided to an eligible individual by the State work initiatives agency under part C; or

"(ii) a job provided to an eligible individual by any other employer for which all or part of the wages are paid by such agency.

A State may provide or subsidize any job under the program under this subsection which such State determines to be appropriate.

"(D) At the option of the State, individuals who hold supplemented jobs under a State's work supplementation program shall be exempt from the retrospective budgeting requirements imposed pursuant to section 402(a)(13)(A)(ii) (and the amount of the aid which is payable to the family of such individual for any month, or which would be so payable but for the family's participation in the work supplementation program, shall be determined on the basis of the income and other relevant circumstances in that month).

"(E) Section 439 shall apply with respect to assignments of eligible individuals to supplemented jobs under this subsection.

"(4) The amount of the Federal payment to a State under section 403(a) for expenditures incurred in making payments to individuals and employers under a work supplementation program under this subsection shall not exceed an amount equal to the amount which would otherwise be payable under paragraph (1) or (2) of such section if the family of each individual employed in the program had received the maximum amount of family support supplements payable under the State plan to such a family with no income (without regard to adjustments under paragraph (2) of this subsection) for a period of months equal to the lesser of (A) nine months, or (B) the number of months in which such individual was employed in such program. Expenditures so incurred shall be considered to have been made for family support supplements under the State plan for purposes of section 403(a)(1) and (2).

"(5) Wages paid under a work supplementation program shall be considered to be earned income for purposes of any provision of law.

"(6) Any State which chooses to operate a work supplementation program under this subsection must provide that any individual who participates in such program, and any child or relative of such individual (or other individual living in the same household as such individual) who would be eligible for family support supplements under the State plan approved under this part if such State did not have a work supplementation program, shall be considered individuals receiving family support supplements under the State plan approved under this part for purposes of eligibility for medical assistance under the State plan approved under title XIX.

"(j) Uniform Reporting Requirements.—The Secretary shall establish uniform reporting requirements under which each State will be required periodically to furnish such information and data as the Secretary may need to ensure that the purposes and provisions of this section are being effectively carried out, including at a minimum—

"(1) the average monthly number of families participating in the program under this section, the types of such families,

"(2) the amounts expended under the program (as family support supplements and otherwise) with respect to such families,

"(3) the length of time for which such families are assisted child care cost for such families,

"(4) the nature of child care arrangements for such families, and

"(5) the numbers of children in each age group (infants, toddlers, preschool, and school age) receiving child care assistance.

The information and data so furnished shall be separately stated with respect to each of the services and activities under this section.".

(c) Establishment of Program.—Part C of title IV of the Social Security Act is amended to read as follows:

"PART C—FAIR WORK OPPORTUNITIES FOR FAMILY SELF-SUFFICIENCY

"DEFINITIONS

"Sec. 431. As used in this part—

"(1) the term 'recipient' means an individual who is receiving aid to families with dependent children or family support supplements under part A of this title;

"(2) the term 'mandatory participant' means a recipient who is not exempt from the participation requirement under section 416(c)(2) and (3) of this Act;

"(3) the term 'voluntary participant' means a recipient who is exempt from the participation requirement under sections 416(c) (2) and (3) of this Act;

"(4) the term 'Secretary' means the Secretary of Labor;

"(5) the term 'State work initiatives agency' means the agency designated under section 433 to develop the State plan and administer the Fair Work Opportunities Program under this part;

"(6) the term 'State public assistance agency' means the agency which administers or supervises the State plan approved under section 402 of this Act;

"(7) the term 'postsecondary institution' has the meaning provided in section 4(18) of the Job Training Partnership Act; and

"(8) the term 'appropriate day care' has the meaning provided in section 416(c)(5) of this Act.

"AUTHORIZATION AND ALLOCATION OF FUNDS

"Sec. 432. (a) Authorization—(1) There are authorized to be appropriated to the Secretary of Labor to carry out this part the sum $650,000,000 for fiscal year 1988, and such sums as may be necessary for each succeeding fiscal year.

"(2) Of the amount appropriated pursuant to paragraph (1) in excess of $200,000,000 for any fiscal year, the first $150,000,000 shall be reserved for purposes of providing child care under this part.

"(b) Reserved Funds.—Five percent of the amount so appropriated—

"(1) for fiscal year 1988 and fiscal year 1989, shall be made available by the Secretary to the States for technical assistance and planning grants and demonstration programs; and

"(2) for each succeeding fiscal year, shall be made available by the Secretary for demonstration programs and to the States determined by the Secretary to be excelling in terms of the performance standards under section 438.

"(c) Allocations.—(1) The Secretary shall allocate 95 percent of the amount so appropriated for any fiscal year among the States to carry out plans approved under section 434. In allocating amounts among the States, the Secretary shall take into account each State's prior year allocations and the relative number of recipients in the various States during the most recent year for which satisfactory data are available.

"(2) Amounts allocated under this section to any State shall be in addition to any amount payable to such State for use under section 416 and this part pursuant to section 403(a)(4) (as amended by section 102 of the Family Welfare Reform Act of 1987).

"(d) Matching Requirement.—(1) Each State receiving an allocation under subsection (c)(1) shall ensure that there will be available, from non-Federal sources, a portion of the costs of providing services under this part. Contributions from non-Federal sources may be provided in cash or in kind.

"(2) The amount required to be provided from non-Federal sources in each State under paragraph (1) for fiscal year 1988 and each succeeding fiscal year shall be equal to the sum of—

"(A) 10 percent of so much of its allocation under subsection (c)(1) as does not exceed the State's prior year allocation;

"(B) 20 percent of so much of its allocation under subsection (c)(1) as does exceed the State's prior year allocation and is expended for purposes of education and training programs under sections 436(a)(2) and (3) and related child care and supportive services; and

"(C) 30 percent of so much of its allocation under subsection (c)(1) as does exceed the State's prior year allocation and is expended for any other purpose under this part (including administrative expenses).

"(e) Definition.—As used in this section, the term 'prior year allocation' means the amount allocated to a State from appropriations for fiscal year 1986 under this part.

"STATE WORK INITIATIVES AGENCY

"Sec. 433. The Governor of each State shall designate, as the State work initiatives agency responsible for developing the State plan and administering the Fair Work Opportunities Program under this part, the State public assistance agency, the State employment services agency, or another agency of State government. Such designation shall be based on a determination that the agency so designated has extensive capacity for exercising overall direction of programs designed to meet the employment and training needs of eligible participants under this part in the State.

“STATE PLANS

“SEC. 434. (a) SUBMISSION.—In order to qualify for incentive grants under section 432(b)(2) and in order to receive an allocation under section 432(c) for any fiscal year, a State shall develop and submit to the Secretary a State plan in accordance with the requirements of this section.

“(b) PROVISIONS.—Each such State plan shall set forth—

“(1) a description of coordination arrangements with other Federal and State agencies, including the State educational agency;

“(2) a description of the services to be provided in programs under sections 436 and 437 and the methods and priorities to be used in the allocation of such services;

“(3) assurances that the State plan meets the criteria for coordination established in the Governor's coordination and special services plan pursuant to section 121(b)(1) of the Job Training Partnership Act;

“(4) assurances that the State will meet the matching requirements of section 432(d), and an identification of the State resources available to meet such requirements;

“(5) procedures for selecting service providers which take into account past performance in providing similar services, fiscal accountability, and ability to meet performance standards;

“(6) assurances that, if the State receives an allocation under section 432(b)(2) for excelling in terms of performance standards, the State will appropriately distribute an equitable portion thereof to any service provider whose actions were the basis for such allocation;

“(7) assurances that services provided are in addition to, and do not duplicate, services that are otherwise available from other Federal or State agencies on a nonreimbursable basis;

“(8) assurances that education, training, and work programs include private sector and local government invovement through administrative entities under section 4(2) of the Job Training Partnership Act, in planning and program design to assure that participants are trained for jobs that are likely to be available in the community;

“(9) assurances that community-based organizations (as defined in section 4(5) of the Job Training Partnership Act) are involved in planning and program design to facilitate outreach in the client community and in the delivery of services (meeting the conditions set forth in section 107(a) of the Job Training Partnership Act);

“(10) a description of the distribution of services within the State (A) identifying for each area within the State the resources to be made available for training, on-the-job training, and transitional employment opportunities, and (B) explaining the economic and demographic reasons for such distribution;

“(11) assurances that necessary supportive services will be available to participants, including appropriate day care for children of preschool age or other children while not in school and while not otherwise receiving care during such times as their parents will be participating in activities under this part;

“(12) a description of the methods by which the State will comply with the requirements of section 444; and

“(13) such other information and assurances as the Secretary may require in accordance with regulations.

“(c) PUBLIC COMMENTS.—Not later than 30 days before submission of the plan to the State job training coordinating council in accordance with subsection (d), the proposed State plan shall be published and made reasonably available to the general public through local news facilities and public announcements, in order to provide the opportunity for review and comments through such means as public hearings.

“(d) REVIEW AND APPROVAL.—The State work initiatives agency shall submit the State plan described in subsection (b)—

“(1) to the State job training coordinating council established pursuant to section 122 of the Job Training Partnership Act, for a period not to exceed 90 days, for review and comments prior to submission to the Governor;

“(2) to the Governor of the State for approval prior to the submission of the plan to the Secretary; and

“(3) to the Secretary for approval of the plan.

“(e) NOTICE AND OPPORTUNITY FOR HEARING.—The Secretary shall notify the State work initiatives agency within 45 days after submission of the State plan whether it has been approved or disapproved. Any notice of disapproval shall include a statement of the reasons for such disapproval. A State plan shall not be disapproved unless the State work initiatives agency has been afforded an opportunity for a hearing on the plan.

“ASSESSMENT AND FAMILY SUPPORT PLAN

“SEC. 435. (a) INITIAL ASSESSMENT AND DEVELOPMENT OF FAMILY SUPPORT PLAN.—The State work initiatives agency shall make an initial assessment of the educational, child care, and other supportive services needs, as well as the skills, prior work experience, and employability of each participant in the program under this part, including a review of the family circumstances and of the needs of the children as well as those of the adult caretaker. The assessment of the educational needs of each participant shall include testing of literacy and reading skills. On the basis of such assessment, the State work initiatives agency and the participating members of the family (or the adult caretaker relative in the family with respect to any such participant who is a child) shall negotiate a family support plan for the family. The family support plan shall set forth and describe all of the activities in which participants in the family will take part under the program, including the child care and other supportive services that will be provided to facilitate participation; and shall, to the maximum extent possible and consistent with this part, reflect the choices of such participants.

“(b) AGENCY-CLIENT AGREEMENT.—(1)(A) Following the initial assessment and the development of the family support plan with respect to any family under this section, the State work initiatives agency and the participating members of the family (or the adult caretaker relative in the family with respect to participants who are children) shall negotiate and enter into an agency-client agreement including—

“(i) a commitment by the participants (or adult caretaker relative) to participate in the program in accordance with the family support plan,

“(ii) a description in detail of the activities in which the participants will take part and the conditions and duration of such participation, and

“(iii) a description in detail of all of the activities, including child care and other supportive services, which the State will arrange and the services which the State will provide in the course of such participation.

“(B) Each participant (or adult caretaker relative) shall be given such assistance as may be required in reviewing and understanding the family support plan and his or her obligations and those of the agency as specified in the agency-client agreement. Prior to signing the agency-client agreement, each participant shall be afforded an opportunity, for a period of not to exceed 10 days, to review the proposed agreement, to request additional information concerning its terms and contents, and to renegotiate any appropriate provision of the agreement which he or she deems necessary.

“(2) Each participant shall be guaranteed an opportunity for a fair hearing before the State work initiatives agency in the event of any dispute involving the contents of the family support plan, the contents or signing of the agency-client agreement, the nature or extent of his or her participation in the program as specified therein, the availability of child care and other supportive services, or any other aspect of such participation which is provided for under this section (including any dispute involving the imposition of sanctions under section 402(h) of this Act and the participant's right to conciliation before any such sanction is imposed); and the agency-client agreement shall so provide. The agency-client agreement shall be signed by the participant (or adult caretaker relative) and the agency representative responsible for implementation of the agreement.

“(3) The State work initiatives agency shall assign to each participating family a member of the agency staff to provide case assistance services to the family; and the case assistant so assigned shall be responsible for—

“(A) obtaining or brokering, on behalf of the family, any other services which may be needed to assure the family's effective participation,

“(B) monitoring the progress of the participant, and

“(C) periodically reviewing and renegotiating the family support plan and the agency-client agreement as appropriate.

Amounts expended in providing case assistance services under this paragraph shall be considered to be expenditures for the proper and efficient administration of the State plan.

“COMPREHENSIVE EDUCATION, TRAINING, JOB, AND SUPPORT SERVICES

“SEC. 436. (a) COMPREHENSIVE SERVICES.—Comprehensive services to be offered to participants under this part shall include—

“(1) job search services, including (but not limited to)—

“(A) training in job seeking skills;

“(B) job search and job club activities;

“(C) job and career counseling;

“(D) testing and assessment;

“(E) labor market information; and

“(F) referral to employers;

“(2) education programs, including (but not limited to)—

“(A) basic and remedial education;

“(B) literacy training;

“(C) bilingual education for individuals with limited English proficiency;

“(D) high school or equivalent education (combined with training when appropriate) for individuals who lack a high school diploma; and

“(E) appropriate specialized advanced education;

“(3) training programs, including (but not limited to)—

"(A) job readiness activities to help prepare participants for employment;

"(B) institutional job skills training;

"(C) on-the-job training; and

"(D) work experience;

"(4) necessary support services, as required by subsection (c);

"(5) counseling, information, and referrals to help participants experiencing personal or family problems which may affect their ability to engage in work; and

"(6) job development, job placement, and follow-up services to assist participants in securing and retaining employment and advancement.

"(b) TRANSITIONAL EMPLOYMENT.—Comprehensive services may also include transitional employment, subject to the requirements of section 437.

"(c) SUPPORT SERVICES.—Eligible participants receiving any of the services described in paragraphs (1), (2), and (3) of subsection (a) or in subsection (b) shall be provided such related support services as are necessary to enable such individuals to participate therein. Related support services shall include transportation and child care assistance. Any individual who is the parent or other caretaker relative of any dependent child or incapacitated individual and whose family ceases to be eligible for family support supplements under the State plan under section 402 as of the close of any month (if at that time the family has earnings) shall continue to be entitled to reimbursement for the costs of any appropriate day care (subject to the applicable dollar limitations specified in section 402(g)(1)) which is determined by the State agency to be reasonably necessary for his or her employment, for a period of up to 12 months after the close of such month, under a sliding scale formula established by the State which shall be based on the family's ability to pay (and under which such applicable dollar limitations are appropriately reduced to reflect such ability).

"(d) EDUCATION SERVICES.—(1) Any participant lacking a high school diploma shall, before being required to participate in any other services or activities, be required to participate in a program which addresses the education needs identified in the participant's initial assessment, including high school or equivalent education designed specifically for participants who do not have a high school diploma, remedial education to achieve a basic literacy level, or instruction in English as a second language; and both the family support plan and the agency-client agreement shall so provide. Any other services or activities to which such a participant is assigned under the agreement may not be permitted to interfere with his or her participation in an appropriate education program under this paragraph. Any participant pursuing a high school or equivalent education shall not be required to participate in other services or activities.

"(2) Children in participating families who are not themselves participants in the program under this part shall be encouraged to take part in any suitable education or training programs available under the program authorized by this part; and the program must also provide to such children additional services specifically designed to help them stay in school (including financial incentives as appropriate), complete their high school education, and obtain marketable job skills. Activities in which such children participate may not, however, be permitted to interfere with their school attendance.

"(3) An individual who attends an accredited postsecondary institution (on not less than a half-time basis), as long as such individual is making satisfactory progress in a vocational or undergraduate education or training program consistent with the individual's employment goals, shall be deemed to be participating satisfactorily under this part without participating in any other program or activity.

"(e) REPETITION OF PROGRAMS PROHIBITED.—An individual who has completed participation in a program component described in paragraph (2) or (3) of subsection (a) shall not be required to participate again in the same component.

"(f) WORK EXPERIENCE PROGRAMS.—(1) Any State which chooses to do so may establish a work experience program in accordance with this subsection. The purpose of such programs is to provide marketable work experience and training for individuals who are not otherwise able to obtain employment, through a combination of work experience and vocational training or educational activities as part of a planned sequence set forth in the participant's family support plan. Such programs shall be designed to move participants into regular public or private employment. Such programs must be able demonstrably—

"(A) to provide marketable skills to participants without previous work experience,

"(B) to upgrade the existing skills of participants with limited previous work experience, or

"(C) to transform obsolete skills into marketable skills.

"(2) Work experience programs shall be limited to projects which serve a useful public purpose in fields such as health, social service, environmental protection or conservation, education, urban and rural development and redevelopment, welfare, recreation, public facilities, public safety, and day care. Priority with respect to the selection of agencies carrying out such projects shall be given to those agencies which offer child care or health care. To the extent possible, the prior training, experience, and skills of a recipient shall be used in making appropriate work experience assignments. Participants in a program under this subsection may not fill unfilled vacancies.

"(3) A State which elects to establish a work experience program under this subsection shall operate such program so that each participant, in conjunction with vocational training or educational activities, performs unpaid work experience (for a total of not more than 30 hours a week) for a period not exceeding 3 months.

"(4) No participant shall be assigned to a position under this subsection unless—

"(A) the participant's initial assessment identifies lack of recent work experience as a barrier to immediate placement in regular public or private employment;

"(B) the participant is unable to be placed in work supplementation programs established pursuant to this title, or in unsubsidized employment;

"(C) the assignment is part of a planned sequence of activities, specified in both the family support plan and the agency-client agreement, which is designed to prepare the participant for regular public or private employment; and

"(D) the participant has not been employed during the preceding 6 months.

"(5) If at the conclusion of his or her participation in the work experience program, the individual has not become employed, a reassessment with respect to such individual shall be made and a modified family support plan developed. In no event shall any individual who has completed the activities described in this subsection be required to repeat such activities or be reassigned to perform other unpaid work experience, unless—

"(A) the individual requests to repeat such activities or be reassigned to perform other unpaid work experience, and such request is reflected in a modified family support plan; or

"(B) such extension would lead to employment in an on-the-job training position.

Any extension under this paragraph shall be only for the time period described in paragraph (3).

"(6) The State shall provide coordination between a work experience program operated pursuant to this subsection, any program of job search, and the other work-related activities under this part so as to ensure that job placement will have priority over participation in the work experience program.

"(7) Participants in such programs may not be required, without their consent, to travel unreasonable distances from their homes or remain away from their homes overnight.

"TRANSITIONAL EMPLOYMENT

"SEC. 437. (a) RESTRICTIONS ON TRANSITIONAL EMPLOYMENT.—Transitional employment provided under this section includes only employment (for wages) which shall be—

"(1) with a public or nonprofit private employer;

"(2) for a period not to exceed 6 months, unless at the end of such 6-month period additional transitional employment is determined to be necessary in a review and modification of the family support plan; and

"(3) partially or wholly subsidized under this part.

"(b) ELIGIBILITY FOR TRANSITIONAL EMPLOYMENT.—An individual may not be provided with transitional employment under this section unless such transitional employment is part of the family support plan and the individual—

"(1) has been a participant for at least 6 months in comprehensive services (as described in section 436), including job search, or such longer period as may be required for the participant to achieve substantial progress in the education component of such services; and

"(2) has been unable to secure unsubsidized employment.

"(c) PRIORITIES.—In providing transitional employment for such individuals, priority shall be given to transitional employment which—

"(1) provides services to other eligible participants, such as child care and transportation; or

"(2) is likely to lead to unsubsidized employment, directly or through on-the-job training.

"PERFORMANCE STANDARDS

"SEC. 438. (a) CRITERIA FOR ESTABLISHING STANDARDS.—For the purpose of evaluating the success of programs established under this part and determining eligibility for additional allocations under section 432(b)(2), the Secretary of Labor, on the basis of recommendations received pursuant to subsection (b) of this section, shall establish performance standards. Such performance standards—

"(1) shall be measured by outcome and not by levels of activity or participation, and shall be based on the degree of success which may reasonably be expected of States, in carrying out work-related programs under this part which help such individuals achieve self-sufficiency and in reducing welfare costs;

"(2) shall take into account job placement rates, wages, job retention, reduced levels of aid under the State plan, improvements in the educational levels of participants, and the extent to which participants are able to obtain jobs providing health benefits or child care;

"(3) shall encourage States to give appropriate recognition to the greater difficulties in achieving self-sufficiency which face individuals who have greater barriers to employment; and

"(4) shall include guidelines permitting appropriate variations to take account of the differing conditions (including unemployment rates) which may exist in different States.

"(b) Procedures for Establishing Standards.—(1) The Secretary shall establish an advisory committee to develop proposed performance standards meeting the requirements of subsection (a). The advisory committee shall include representatives of State agencies administering programs under this part, State job training coordinating councils, labor organizations, business organizations, education agencies, community based organizations, and organizations representing eligible participants.

"(2) The proposed performance standards developed by such advisory committee shall be submitted to the Office of Technology Assessment, for a period not to exceed 30 days, for review and comment prior to their submission to the Secretary. The comments of the Office of Technology Assessment concerning the proposed performance standards shall be included with the documents submitted to the Secretary by the advisory committee.

"(3) The Secretary may collect preliminary program information from the States to assist in the development of performance standards. The Secretary shall have access to information developed pursuant to section 104(c) of the Family Welfare Reform Act of 1987 for such purpose.

"(c) Preliminary and Final Standards.—Preliminary guidelines intended to facilitate compliance with performance standards referred to in subsection (a) shall be established within 12 months after the date of the enactment of the Family Welfare Reform Act of 1987. Final standards shall be established, prescribed, and published no later than 24 months after enactment of such Act.

"(d) State-by-State Variation.—The performance standards developed and prescribed under this section shall be varied by the Governor of a State, to the extent permitted under subsection (a), to the extent necessary to take account of specific economic, geographic, and demographic factors in the State, the characteristics of the population to be served, and the types of services to be provided.

"(e) Targeting of Services.—Prior to the development of performance standards under this section, each State should take immediate action to fulfill the purposes of this part regarding the targeting of services toward those individuals who are most difficult to place in unsubsidized employment on the basis of—

"(1) work experience,

"(2) duration of welfare dependency, and

"(3) educational attainments.

"(f) Evaluations.—(1) The Secretary shall conduct evaluations of each State's progress toward meeting the performance standards developed under this section. Evaluations shall be conducted at the completion of each fiscal year for which a State may be held accountable for such standards.

"(2) If a State fails to meet the performance standards at the conclusion of any such evaluation period, the Secretary shall provide such necessary technical assistance to the State as will facilitate meeting such standards. The Secretary shall review the State's compliance within a reasonable period after providing such assistance (as determined by the Secretary and the Governor), except that such period may not exceed 6 months.

"(g) Incentive Allocations.—(1) In the case of any State which meets or exceeds the performance standards, such State shall be eligible for incentive allocations available under section 432(b)(2).

"(2) The amount of such additional allocation shall be based on the extent to which such State meets or exceeds the performance standards under performance categories established by this part. The Secretary shall determine the amounts of such incentive awards.

"(h) Review and Revision of Standards.—The Secretary shall periodically (but not more frequently than once each three years) review the performance standards developed under this section and submit recommendations for changes to the advisory committee and the Office of Technology Assessment for review and comment prior to prescribing any revisions to such standards.

"GENERAL REQUIREMENTS

"Sec. 439. (a) Refusal To Participate.—Prior to a determination pursuant to section 416(h) that an individual has refused to participate under section 416 or this part without good cause, the State work initiatives agency shall provide to such individual a notice of intent to make such determination. In no event may a final determination be made in a first such instance unless such individual has been offered an opportunity to reach a conciliatory resolution, including the opportunity to discuss reasons for the lack of cooperation and to propose options with the goal of continuing in the program under this part. The failure of a State to provide services to an individual in accordance with a family support plan developed under section 435 shall constitute one of the grounds for good cause.

"(b) Benefits and Labor Standards.—The provisions of sections 142 and 143 (relating to benefit requirements and labor standards) of the Job Training Partnership Act shall apply to all program activities under section 416 and under this part and any work program carried out under this Act.

"(c) Suitability of Work Assignments.—(1)(A) Each assignment of a participant to any program activity under section 416 or under this part, or under any work program carried out under this Act, shall be consistent with the physical capacity, skills, experience, health, family responsibilities, and place of residence of such participant. For the purposes of this part and section 416, or any work program carried out under this Act, part-time participation shall in no event exceed 20 hours per week; and no part-time participant shall be required to participate in more than one program or activity if travel to and participation therein would exceed such time.

"(B) Before assigning a participant to any activity under section 416 or under this part, or under any work program carried out under this Act, the State shall assure that—

"(i) appropriate standards for health, safety, and other conditions are applicable to participation in such activity;

"(ii) the conditions of participation in such activity are reasonable, taking into account the geographic region, the residence of the participant, and the proficiency of the participant, and the child care and other supportive service needs of the participant; and

"(iii) the participant will not be required, without his or her consent, to travel an unreasonable distance from his or her home or remain away from such home overnight.

"(2) The State may not require a participant in the program under this part or under section 416 or under any program under this Act to accept a position under the program (as work supplementation or otherwise) if accepting the position would result in the receipt of wages paid at a rate below the Federal minimum wage established by the Fair Labor Standards Act of 1938. The State shall establish a program whereby, to prevent any loss of income to the participant as a result of the acceptance of such job, the State shall provide a supplement at a level which, when combined with wages from such job, equals the participant's benefits level while participating in the program for a period of 12 months.

"(d) Mandatory Workfare Prohibited.—Funds available under this part will not be used, directly or indirectly, to support any mandatory workfare program. As used in this subsection, the term 'mandatory workfare program' means any program under which recipients of welfare or other public assistance are to be required to perform work in exchange for such assistance, but are not to be provided wages and worker benefits in paid employment.

"(e) Nondiscrimination Provisions.—(1) The provisions of section 167 (relating to nondiscrimination) of the Job Training Partnership Act shall apply to all program activities under section 416 and under this part and any work program carried out under this Act.

"(2) Individuals assigned to any job or work program under this Act shall not be discriminated against on the basis of race, sex, national origin, religion, age, or handicapping condition, and such individuals shall have such rights as are available under any Federal, State, or local law prohibiting discrimination in employment.

"USE OF EXISTING RESOURCES

"Sec. 440. (a) Reimbursement Permitted.—In making use of the programs of other State or local agencies (public or private), a State agency may reimburse such agencies for services rendered to individuals under this part to the extent that such services and opportunities are not otherwise available on a nonreimbursable basis.

"(b) Use of Services and Information From Private Industry Councils.—(1) The State work initiatives agency shall utilize the services of each private industry council (as established under the Job Training Partnership Act) to identify and provide advice on the types of jobs available or likely to become available in the service delivery area of such council.

"(2) The State work initiatives agency shall not conduct, in any area, institutional training under any program established pursuant to section 436(a) of any type which is not related to jobs of the type which are or are likely to become available in such area as determined after taking into account information provided by the private industry council for such area.

"(c) In carrying out services and activities under this part, the State work initiatives agency may enter into appropriate contracts and other arrangements with public and private agencies and organizations for the provision or conduct of any services or activities under this part.

"REPORTS, RECORDKEEPING, AND INVESTIGATIONS

"Sec. 441. (a) Records and Reports.—(1) Each State work initiatives agency shall keep records that are sufficient to permit the preparation of reports required by this part and to permit the tracing of funds to a level of expenditure adequate to insure that the funds have not been spent unlawfully.

"(2) Each State work initiatives agency shall maintain such records and submit such reports, in such form and containing such information, as the Secretary requires regarding the performance of its programs. Such records and reports shall be submitted to the Secretary, but shall not be required to be submitted more than once each quarter unless specifically requested by the Congress or a committee thereof.

"(b) Investigations.—(1)(A) In order to evaluate compliance with the provisions of this part, the Secretary shall conduct in several States, in each fiscal year, investigations of the use of funds received by State work initiatives agencies under this Act.

"(B) In order to insure compliance with the provisions of this part, the Comptroller General of the United States may conduct investigations of the use of funds received under this part by any State agency.

"(2) In conducting any investigation under this part, the Secretary or the Comptroller General of the United States may not request the compilation of any new information not readily available to such State agency.

"(c) State Reports.—Each State work initiatives agency shall make such reports concerning its operations and expenditures as shall be prescribed by the Secretary.

"(d) Review of Complaints.—(1) Whenever the Secretary receives a complaint from any interested person which alleges, or whenever the Secretary has reason to believe, that a State work initiatives agency receiving financial assistance under this part is failing to comply with the requirements of this part or the terms of the State plan, the Secretary shall investigate the matter.

"(2) If, after such investigation, the Secretary determines that there is substantial evidence to support such allegation or belief that such a State work initiatives agency is failing to comply with such requirements, the Secretary shall, after due notice and opportunity for a hearing to such State work initiatives agency, determine whether such allegation or belief is true.

"(3) The Secretary shall conduct such investigation, and make the final determination required by paragraph (2) regarding the truth of the allegation or belief involved, not later than 120 days after receiving the complaint.

"NONCOMPLIANCE AND CORRECTIVE ACTIONS

"Sec. 442. (a) Sanctions for Noncompliance.—(1) If the Secretary of Labor concludes that any State work initiatives agency receiving funds under this part, or if the Secretary of Health and Human Services concludes that any State public assistance agency under section 416 or any other provision of this Act is failing to comply with any provision of this Act, such Secretary shall have authority to terminate or suspend financial assistance in whole or in part and to order such sanctions or corrective actions as appropriate, including the repayment of misspent funds from sources other than funds under this part and the withholding of future funding, if prior notice and an opportunity for a hearing have been given to the State.

"(2) Whenever such Secretary orders termination or suspension of financial assistance to a subgrantee or subcontractor (including any operator under a nonfinancial agreement), such Secretary shall have authority to take whatever action is necessary to enforce such order, including action directly against the subgrantee or contractor (and including requiring the primary recipient to take legal action) to reclaim misspent funds or to otherwise protect the integrity of the funds or ensure the proper operation of the program.

"(b) Remedies Not Exclusive.—The existence of remedies under this Act shall not preclude any person, who alleges that an action of a State agency violates any of the provisions of this part, from instituting a civil action or pursuing any other remedies authorized under Federal, State, or local law.

"DEMONSTRATION PROGRAMS

"Sec. 443. (a) Authorized Uses of Funds.—Funds available to the Secretary under section 432(b)(1) and (2) may be made available to States, for use in conjunction with other resources, for such purposes as—

"(1) demonstrations to test the effectiveness of arrangements under which private organizations will operate supported-work programs to place participants in full-time jobs in the private sector, with the Federal subsidy of wages not to exceed 9 months, through performance-based contracts conditioned upon retention in such private sector employment after the Federal subsidy ends;

"(2) demonstrating more effective methods of providing coordination and services to ensure long-term family self-sufficiency through community-based comprehensive family support services involving a partnership between the State work initiatives agency and community-based organizations having experience and demonstrated effectiveness in providing services; and

"(3) financial assistance to nonprofit community development corporations to demonstrate their effectiveness in creating employment opportunities for recipients and other low-income individuals.

"(b) State Demonstration Programs.—In order to encourage States to develop innovative education and training programs for children receiving aid under State plans approved under section 402, any State may establish and conduct one or more demonstration projects, targeted to such children, designed to test financial incentives and interdisciplinary approaches to reducing school dropouts, encouraging skill development, and avoiding welfare dependence; and the Secretary may make grants to States to assist in financing such projects. Demonstration projects under this paragraph shall meet such conditions and requirements as the Secretary shall prescribe, and no such project shall be conducted for a period of less than one year or more than 5 years.

"CHILD CARE REQUIREMENTS

"Sec. 444. (a) Assessment.—Prior to or in conjunction with the expenditure of funds available under section 432(a)(2) for child care for participants in the program, each State shall conduct an assessment of the adequacy and appropriateness of child care resources in the State or particular communities in the State to meet the child care needs of participants in the program and those of other families receiving family support supplements. Such assessments shall specifically address the adequacy of resources available for children in different age groups, including infants, toddlers, preschools, and school-age children.

"(b) Coordination.—In order to encourage and facilitate coordination in the delivery of child care services, each State may provide that funds to participants for child care services under section 402(g) may be available to supplement early childhood development programs within a State, including Head Start programs, preschool programs funded under chapter one of the Education Consolidation and Improvement Act of 1981, schools and nonprofit child care programs (including community based organizations receiving State or local funds designated for preschool programs for handicapped children), so as to extend these programs to provide full day, full year services to children in participating families.

"(c) Training of Caregivers.—Each State shall institute a program to provide grants for training child care personnel in areas such as child growth and development, communication with families, health and safety, instruction, and administration and management. Child care personnel eligible for such training may include employees of child care centers as well as family day care providers and others meeting the standards enumerated in section 402(g)(1)(B) of this Act (as amended by title II of the Family Welfare Reform Act of 1987).

"(d) Child Care Supply.—Any State may use funds provided under this part to institute a program to provide grants to local nonprofit child care programs to establish or renovate child care centers and family day care homes which meet the standards enumerated in section 402(g)(1)(B) of this Act (as amended by title II of the Family Welfare Reform Act of 1987) and which will be used to serve participants in the other activities described in section 436, including on-site or nearby child care centers operated as part of the education, training, or employment programs, as well as other child care centers which will be used by program participants. Such grants may also be made available to local child care agencies (such as resource and referral programs) to recruit, train, and provide other essential supports to new family day care providers. These grants may also be used to assist centers and family day care providers to come into compliance with applicable health and safety standards.

"(e) Prohibition of Relaxation of Child Care Licensing Requirements.—No State shall reduce the level of standards applicable to child care provided within the State on the date of enactment of the Family Welfare Reform Act of 1987.".

SEC. 3202. RELATED SUBSTANTIVE AMENDMENTS.

(a) Federal Matching Rates.—(1) Section 403(a) of the Social Security Act is amended by inserting after paragraph (3) the following new paragraph:

"(4) in the case of any State, an amount equal to 65 percent of the total amount expended during such quarter (other than administrative expenditures) for the programs established pursuant to section 416 and part C; and".

(2) Section 403(a)(3) of such Act is amended—

(A) by striking out "and" after the comma at the end of subparagraph (B);

(B) by redesignating subparagraph (C) as subparagraph (D); and

(C) by inserting after subparagraph (B) the following new subparagraph:

"(C) one-half of so much of such expenditures as are incurred in connection with the administration of the programs established under section 416 and part C, and".

(b) Demonstration Authority: Projects to Test the Effect of Early Childhood Development Programs, and to Test the Elimination of the 100-Hour Rule Under the AFDE-UP Program.—Section 1115 of such Act is amended—

(1) by inserting "(1)" before "In the case of" in subsection (a);

(2) by striking out "(1) the Secretary" and "(2) costs" in subsection (a) and inserting in lieu thereof "(A) the Secretary" and "(B) costs", respectively;

(3) by striking out subsection (b);

(4) by redesignating subsection (c) as paragraph (2) of subsection (a), and in such subsection as so redesignated by striking out "subsection (a)", "(1)", "(2)", and "(3)" and inserting in lieu thereof "paragraph (1)", "(A)", "(B)", and "(C)", respectively; and

(5) by adding at the end thereof the following new subsection:

"(b) Demonstration Programs.—(1)(A) In order to test the effect of in-home early childhood development programs and preschool center-based development programs (emphasizing the use of volunteers and including academic credit for student volunteers) on families receiving aid under State plans approved under section 402 and participating in the education, training, and work program under section 416, up to 10 States may undertake and carry out demonstration projects utilizing such development programs to enhance the cognitive skills and linguistic ability of children under the age of 5, to improve the communications skills of such children, and to develop their ability to read, write, and speak the English language effectively. Such projects may include parents along with their eligible children in family-centered education programs that assist children directly in achieving the goals stated in the preceding sentence and also help parents contribute to the proper development and education of their young children. Demonstration projects under this paragraph shall meet such conditions and requirements as the Secretary shall prescribe, and no such project shall be conducted for a period of more than 3 years.

"(B) The Secretary shall consider all applications received from States desiring to conduct demonstration projects under this paragraph, shall approve up to 10 applications involving projects which appear likely to contribute significantly to the achievement of the purpose of this paragraph, and shall make grants to the States whose applications are approved to assist them in carrying out such projects.

"(C) The Secretary shall submit to the Congress with respect to each project undertaken by a State under this paragraph, after such project has been carried out for one year and again when such project is completed, a detailed evaluation of the project and of its contribution to the achievement of the purpose of this paragraph.

"(2)(A) In order to permit States to test whether (and the extent to which) eliminating the 100-hour rule under section 407, and requiring parents under that section to accept any reasonable job offers while preserving the eligibility of their families for aid under the applicable State plan approved under section 402, would effectively encourage such parents to enter the permanent work force and thereby significantly reduce program costs, up to 5 States and localities may undertake and carry out demonstration projects under which—

"(i) each parent receiving aid pursuant to section 407 is required to accept any reasonable full- or part-time job which is offered to him or her, without regard to the amount of the parent's resulting earnings as compared to the level of the family's aid under the applicable State plan, and

"(ii) the family's eligibility under the plan is preserved notwithstanding the parent's resulting earnings, so long as such earnings (after the application of section 402(a)(8)) do not exceed the applicable State standard of need, without regard to the 100-hour rule or any other durational standard that might be applied in defining unemployment for purposes of determining such eligibility.

"(B) The Secretary shall consider all applications received from States desiring to conduct demonstration projects under this paragraph, shall approve up to 5 applications involving projects which appear likely to contribute significantly to the achievement of the purpose of this paragraph, and shall make grants to the States whose applications are approved to assist them in carrying out such projects.

"(C) Each demonstration project approved under this paragraph shall provide for the payment of aid under the applicable State plan, as though section 407 had been modified to reflect the provisions of clauses (i) and (ii) of subparagraph (A) but shall otherwise be carried out in accordance with all of the requirements and conditions of section 407 (and any related requirements and conditions under part A of title IV); and each such project shall meet such other requirements and conditions as the Secretary shall prescribe.

"(3)(A) Any demonstration project undertaken pursuant to this subsection—

"(i) must be designed to improve the financial well-being of families with children or otherwise improve the operation of the program or programs involved; and

"(ii) may not permit modifications in any program which would have the effect of disadvantaging children in need.

"(B) There are authorized to be appropriated such sums as may be necessary to enable the Secretary to make grants with respect to the demonstration projects which are provided for under any of the preceding paragraphs of this subsection (and for which an authorization in specific dollar amounts is not included in the paragraph involved).".

SEC. 3203. TECHNICAL AND CONFORMING AMENDMENTS.

(a) In Part A of Title IV.—(1) Section 402(a)(35) of such Act is repealed.

(2) Section 403(a)(3) of such Act is amended—

(A) by striking out all of subparagraph (D) (as redesignated by section 102(a)(2) of this Act) which follows "such expenditures" and inserting in lieu thereof a comma; and

(B) by striking out all that follows "section 2002(a) of this Act" in the matter following such subparagraph and inserting in lieu thereof "other than services furnished under section 416 or under section 402(g); and".

(3) Section 403(c) of such Act is repealed.

(4) Section 403(d) of such Act is repealed.

(5) Section 407(b)(2)(A) of such Act is amended by striking out "will be certified" and all that follows down through "within 30 days" and inserting in lieu thereof "will participate or apply for participation in the program established under section 416 within 30 days".

(6) Section 407(b)(2)(C)(i) of such Act is amended by striking out ", unless exempt" and all that follows down through "is not registered" and inserting in lieu thereof "is not currently participating in the program established under section 416, unless such parent is exempt under section 416(c)(3),".

(7) Section 407(c) of such Act is amended by striking out "to certify such parent" and all that follows and inserting in lieu thereof "to participate in the program established under section 416.".

(8) Section 407(d)(1) of such Act is amended by striking out "under section 409" and all that follows and inserting in lieu thereof "under section 416(j);".

(9) Section 407(e) of such Act is repealed.

(10) Section 409 of such Act is repealed.

(11) Section 414 of such Act is repealed.

(b) In Other Provisions.—(1) Section 1108(b) of such Act is amended by striking out "section 402(a)(19)" and inserting in lieu thereof "section 416".

(2) Section 1902(a)(10)(A)(i)(I) of such Act is amended by striking out "section 414(g)" and inserting in lieu thereof "section 416(i)(6)".

(c) Job Training Partnership Act.—Section 102(a)(2) of the Job Training Partnership Act is amended by striking out "and" and inserting before the period a comma and the following: "and the State public assistance agency for administering part A of title IV of the Social Security Act".

SEC. 3204. EFFECTIVE DATE.

(a) Amendments to Sections 402 and 1115.—The amendments made by this subtitle (other than the amendments to part C of title IV of the Social Security Act) shall become effective October 1, 1989; except that—

(1) if any State theretofore makes the changes in its State plan approved under section 402 of the Social Security Act which are required in order to carry out such amendments, and formally notifies the Secretary of Health and Human Services of its desire to become subject to such amendments as of the first day of any calendar quarter beginning on or after the date on which the proposed regulations of the Secretary of Health and Human Services are published under section 416 of such Act and before October 1, 1989, such amendments shall become effective with respect to that State as of such first day; and

(2) section 1115(b)(3) of the Social Security Act (as added by section 102(b) of this Act) shall become effective October 1, 1987.

(b) Transition Provisions for Title IV-C Amendments.—(1) The Secretary of Labor, from funds appropriated for fiscal years 1988 and 1989 to carry out part C of title IV of the Social Security Act, is authorized to provide financial assistance under such part C (as amended by this Act), in the same manner as such assistance was provided under such part C as in effect on the day before the enactment of this Act, until September 30, 1989.

(2) Notwithstanding any other provision of law, States may expend funds received under part C of title IV of the Social Security Act during fiscal years 1988 and 1989, in

order to conduct any activity deemed necessary to provide for an orderly transition to the operation, as of October 1, 1989, of programs under such part C.

(3) The provisions of this Act shall not affect administrative or judicial proceedings pending on the date of enactment of this Act.

(4) By July 1, 1988, the Secretary of Labor shall have published in the Federal Register final regulations governing the transition period ending September 30, 1989 (as described in this subsection); and by April 1, 1989, the Secretary of Labor shall have published in the Federal Register final regulations governing the establishment of the Fair Work Opportunities Program under part C of title IV of the Social Security Act.

(5) Funds for carrying out part C of title IV of the Social Security Act for fiscal year 1988 allocated to any State which were not obligated prior to the end of such fiscal year, shall remain available for obligation during fiscal year 1989. No reduction shall be made in the allocation for any State from appropriations to carry out such part C for fiscal year 1989 on account of the carryover of such funds from fiscal year 1988 to fiscal year 1989.

(c) INITIAL STATE EVALUATIONS.—(1) With the objective of—

(A) providing an in-depth assessment of the welfare population in each State, so as to furnish an accurate picture on which to base estimates of future demands for welfare services in conducting the program under this part and to improve the efficiency of targeting and service allocation under such program,

(B) assuring that training for welfare recipients under such program will be realistically geared to labor market demands and that the program will produce individuals with marketable skills, while avoiding duplication and redundancy in the delivery of services, and

(C) otherwise assuring that States will have the information needed as a practical matter to carry out the purposes of this part,

each State shall undertake and carry out an evaluation of its welfare population demographics within the 6-month period beginning on the date of the enactment of this Act. Such evaluation shall be designed, undertaken, and carried out in each State by an agency designated by the Governor of that State.

(2) In carrying out the evaluation under subsection (a) the State shall give particular attention to the current and anticipated demands of the labor market or markets within the State, the types of training which are needed to meet those demands, and any changes in the current service delivery systems which may be needed to satisfy the requirements of this part.

(3) The evaluation shall be structured so as to produce accurate and usable information (separately stated for long-term, medium-term, and short-term recipients in each category) on the age, family status, educational and literacy levels, and work experience of the individuals and families within the welfare population in the State, including the actual numbers of such individuals and families in each such category.

(4) The Secretary of Labor shall provide each State with such technical assistance and data as it may need in order to carry out its evaluation under subsection (a); and each State shall transmit its evaluation to the Secretary of Labor by the close of the 6-month period specified in that subsection. The Secretary of Labor shall transmit a copy of such evaluation to the advisory committee established under section 438(b)(1) of the Social Security Act and to the Office of Technology Assessment for use in the preparation and review of performance standards.

(5) The Secretary of Labor shall pay to each State the sum of $100,000 to assist that State in designing and carrying out its evaluation under this subsection; and of the total amount available to the Secretary for fiscal year 1988 under section 432(b)(1) of title IV-C (as amended by this Act) the sum of $5,200,000 shall be available only for this purpose.

(6) As used in this subsection, the term "welfare population" with respect to any State means collectively all individuals in such State who are or could become recipients of family support supplements under title IV, part A, of the Social Security Act.

TITLE IV—COMMITTEE ON ENERGY AND COMMERCE

Subtitle A—Medicare Provisions

SEC. 4000. AMENDMENTS TO SOCIAL SECURITY ACT IN SUBTITLES A AND B; TABLE OF CONTENTS OF SUBTITLES A AND B.

(a) AMENDMENTS TO THE SOCIAL SECURITY ACT.—Except as otherwise specifically provided, whenever in this subtitle or subtitle B, an amendment is expressed in terms of an amendment to or repeal of, a section or other provision, the reference shall be considered to be made to that section or other provision of the Social Security Act.

(b) TABLE OF CONTENTS.—The table of contents of this subtitle and subtitle B is as follows:

Subtitle A—Medicare Provisions

Sec. 4000. Amendments to Social Security Act in subtitles A and B; table of contents of subtitles A and B.

PART 1—PAYMENT REFORMS

Sec. 4001. Reduction of payments for certain procedures.
Sec. 4002. Payment for physician anesthesia services.
Sec. 4003. Adjustment in medicare economic index for 1988.
Sec. 4004. Incentive payments for primary care physicians in underserved rural areas.
Sec. 4005. Payments for durable medical equipment, prosthetic devices, orthotics, and prosthetics.
Sec. 4006. Fee schedules for radiologic services.
Sec. 4007. Fee schedules for physician pathology services.
Sec. 4008. Prohibition of implementation of prospective payment for "rap" services.
Sec. 4009. Technical changes in application of maximum allowable actual charge (MAAC).
Sec. 4010. Elimination of 1975 floor for prevailing physician charges.
Sec. 4011. Updating maximum rate of payment per visit for independent rural health clinics.
Sec. 4012. Payment for certified nurse anesthetists.
Sec. 4013. Direct payment for services of registered nurses as assistants at surgery.
Sec. 4014. Adjustment in payment for physicians' services.

PART 2—COVERAGE AND ELIGIBILITY CHANGES

Sec. 4021. Coverage of influenza vaccine and its administration.
Sec. 4022. Clarification of coverage of drugs used in immunosuppressive therapy.
Sec. 4023. Coverage of social worker services furnished by a health maintenance organization to its members.
Sec. 4024. Permitting continuation of medicare coverage by payment by individuals with certain physical or mental impairments.
Sec. 4025. Medicare payment for therapeutic shoes for individuals with severe diabetic foot disease.

PART 3—HOME HEALTH CARE QUALITY IMPROVEMENTS

Sec. 4031. Requirement that individual be confined to home.
Sec. 4032. Appeals procedures.
Sec. 4033. Conditions of participation for home health agencies.
Sec. 4034. Standard and extended survey.
Sec. 4035. Enforcement.
Sec. 4036. Publication of directory of home health agencies.
Sec. 4037. Maintenance of toll-free hotline investigative unit.
Sec. 4038. Study of adjustments to home health agency cost limits.
Sec. 4039. Data used to determine home health agency cost limits.
Sec. 4040. Home health prospective payment demonstration project.

PART 4—PEER REVIEW ORGANIZATIONS

Sec. 4051. Peer review on-site quarterly consultation with rural hospitals.
Sec. 4052. Peer review emphasis on educational activities.
Sec. 4053. Direct discussion of payment denials with peer review organizations.
Sec. 4054. Study of effectiveness of sending denial notices to beneficiaries.
Sec. 4055. Preexclusion hearings.

PART 5—MISCELLANEOUS PROVISIONS

Sec. 4071. Providing community nursing and ambulatory care on a prepaid capitated basis to medicare beneficiaries.
Sec. 4072. Revision of part B hearings.
Sec. 4073. Requirements for publication of policies.
Sec. 4074. Prohibiting slow down in payments under part B.
Sec. 4075. Treatment of employees of the Physician Payment Review Commission as Congressional employees for certain purposes.
Sec. 4076. Treatment of podiatrists.
Sec. 4077. Implementation of primary payer requirements for end-stage renal disease transplantations.
Sec. 4078. Limitation of minimum utilization rate requirement for end-stage renal disease transplantations.
Sec. 4079. Delay in effective date in physician incentive rules for health maintenance organizations.
Sec. 4080. Delay in effective date for requiring hospital protocols for organ procurement.
Sec. 4081. Studies of end-stage renal disease program.
Sec. 4082. Study of payment for chemotherapy in physicians' offices.
Sec. 4083. Delay in effective date for establishing physician identifier system.

Sec. 4084. Clarification of penalties for improper laboratory billings.
Sec. 4085. Certification of pediatric heart transplant programs.
Sec. 4086. Technical amendments.

Subtitle B—Provisions Relating to Medicaid Program

Part 1—Combating Infant Mortality

Sec. 4101. Medicaid optional coverage for additional low-income pregnant women and children.
Sec. 4102. Allowing accelerated coverage of children up to age 5.
Sec. 4103. Coverage of children up to age 8.
Sec. 4104. Demonstration projects to improve access to needed physician services by pregnant women and children.
Sec. 4105. Miscellaneous provisions relating to services for pregnant women and children.

Part 2—Addressing Needs of Elderly Poor

SUBPART A—IMPROVEMENTS FOR NURSING HOME RESIDENTS

Sec. 4111. Requirements for nursing facilities.
Sec. 4112. Use of resident assessments.
Sec. 4113. Survey and certification process.
Sec. 4114. Enforcement process.
Sec. 4115. Personal needs allowance.
Sec. 4116. Effective dates.
Sec. 4117. Annual report.

SUBPART B—OTHER PROVISIONS

Sec. 4121. Medically needy income levels for certain 2-member couples in California.
Sec. 4122. Home and community-based services for the elderly.
Sec. 4123. Protection of income and resources of couple for maintenance of community spouse.

Part 3—Addressing the Needs of Working Welfare Recipients

Sec. 4131. Medicaid eligibility.
Sec. 4132. Medicaid extension due to collection of child or spousal support.
Sec. 4133. Effective date.

Part 4—Inflation Adjustment for Territories and Miscellaneous Provisions

Sec. 4141. Increasing the maximum annual medicaid payments that may be made to the Commonwealths and territories.
Sec. 4142. Clarification of coverage of clinic services furnished to homeless outside facility.
Sec. 4143. Physicians' services furnished by dentists.
Sec. 4144. Adjustment in medicaid payment for inpatient hospital services furnished by disproportionate share hospitals.
Sec. 4145. Treatment of Garden State Health Plan.
Sec. 4146. Further clarification of flexibility for State medicaid payment systems for inpatient services.
Sec. 4147. Technical and miscellaneous amendments.

PART 1—PAYMENT REFORMS

SEC. 4001. REDUCTION OF PAYMENTS FOR CERTAIN PROCEDURES.

(a) In General.—Section 1842(b) (42 U.S.C. 1395u(b)) is amended—

(1) in paragraph (11)(B)—

(A) in clause (i), by striking "and shall be further reduced by 2 percent with respect to procedures performed in 1988" and inserting "and, with respect to procedures performed in 1988, shall be such prevailing charge recognized with respect to such procedures in 1987 reduced by 5 percent and further reduced by any additional reduction under clause (iii)",

(B) in clause (ii), by striking "75 percent" and "1986" and inserting "80 percent" and "1987", respectively, and

(C) by adding at the end the following new clause:

"(iii) The additional reduction provided under this clause with respect to a type of cataract surgical procedure performed in a region (as defined in section 1886(d)(2)(D)) is 10 percent of the amount (if any) by which—

"(I) the prevailing charge for that type of procedure in the locality in which it is performed (as determined under clause (i) without regard to this clause), exceeds

"(II) the weighted regional average of the prevailing charges under subclause (I) for that type of procedure performed for all the localities in the region."; and

(2) by adding at the end the following new paragraph:

"(13)(A)(i) In determining the reasonable charge under paragraph (3) for procedures described in subparagraph (C) and performed in 1988, subject to subparagraph (B), the prevailing charge for such procedure for participating and nonparticipating physicians shall be the prevailing charge otherwise recognized for such procedure for 1987 reduced by 10 percent and further reduced by any additional reduction under clause (ii). A reduced prevailing charge under this subparagraph is the prevailing charge level for 1988 for purposes of applying the economic index under the fourth sentence of paragraph (3) for subsequent years.

"(ii) The additional reduction provided under this clause with respect to a type of procedure performed in a region (as defined in section 1886(d)(2)(D)) is 10 percent of the amount (if any) by which—

"(I) the prevailing charge for that type of procedure in the locality in which it is performed (as determined under clause (i) without regard to this clause), exceeds

"(II) the weighted regional average of the prevailing charges under subclause (I) for that type of procedure performed for all the localities in the region.

"(B) In no case shall the reduction under subparagraph (A) for a procedure result in a prevailing charge in a locality for a year which is less than 80 percent of the weighted national average of such prevailing charges for such procedure for all localities in the United States for 1987.

"(C) The procedures described in this subparagraph are as follows: coronary artery bypass surgery, total hip replacement, transurethral resection of the prostate, suprapubic prostatectomy, diagnostic dilation and curettage, and carpal tunnel repair.

"(D)(i) In the case of a reduction in the reasonable charge for a physician's service under subparagraph (A), if a nonparticipating physician furnishes the service to an individual entitled to benefits under this part after the effective date of such reduction (subject to clause (iv)), the physician may not charge the individual more than the limiting charge (as defined in clause (ii)) plus (for services furnished during the 12-month period beginning on the effective date of the reduction) ½ of the amount by which the physician's maximum allowable actual charge for the service for the previous 12-month period exceeds the limiting charge.

"(ii) In clause (i), the term 'limiting charge' means, with respect to a service, 125 percent of the prevailing charge for the service after the reduction under subparagraph (A).

"(iii) If a physician knowingly and willfully imposes a charge in violation of clause (i), the Secretary may apply sanctions against such physician in accordance with subsection (j)(2).

"(iv) This subparagraph shall not apply to services furnished after the earlier of (I) December 31, 1990, or (II) one-year after the date the Secretary reports to the Congress, under section 1845(e)(3), on the development of a relative value scale under section 1845.".

(b) Effective Date.—The amendments made by subsection (a) shall apply to procedures performed on or after January 1, 1988.

SEC. 4002. PAYMENT FOR PHYSICIAN ANESTHESIA SERVICES.

(a) In General.—Section 1842(b) (42 U.S.C. 1395u(b)) is further amended by adding at the end the following new paragraph:

"(14)(A) In determining the reasonable charge under paragraph (3) of a physician for medical direction of two or more nurse anesthetists performing, on or after January 1, 1988, anesthesia services in whole or in part concurrently, the number of base units which may be recognized with respect to such medical direction for each concurrent procedure (other than cataract surgery or an iridectomy) shall be reduced by—

"(i) 10 percent, in the case of medical direction of 2 nurse anesthetists concurrently,

"(ii) 25 percent, in the case of medical direction of 3 nurse anesthetists concurrently, and

"(iii) 40 percent, in the case of medical direction of 4 nurse anesthetists concurrently.

"(B) In determining the reasonable charge under paragraph (3) of a physician for medical direction of two or more nurse anesthetists performing, on or after January 1, 1989, anesthesia services in whole or in part concurrently, the number of base units which may be recognized with respect to such medical direction for each concurrent cataract surgery or iridectomy procedure shall be reduced by 10 percent.

"(C) The Secretary shall require claims for physicians' services for medical direction of nurse anesthetists to indicate the number of such anesthetists being medically directed concurrently at any time during the procedure, the name of each nurse anesthetist being directed, and the type of procedure for which the services are provided.".

(b) Development of Uniform Relative Value Guide.—The Secretary of Health and Human Services, in consultation with groups representing physicians who furnish anesthesia services, shall establish by regulation a relative value guide for use in all carrier localities in making payment for physician anesthesia services furnished under part B of title XVIII of the Social Security Act on and after January 1, 1989. Such guide shall be designed so as to result in expenditures under such title for such services in an amount that would not exceed the amount of such expenditures which would otherwise occur.

SEC. 4003. ADJUSTMENT IN MEDICARE ECONOMIC INDEX FOR 1988.

(a) IN GENERAL.—Section 1842(b)(4) (42 U.S.C. 1396u(b)(4)) is amended by adding at the end the following new subparagraph:

"(F)(i) For purposes of this part for physicians' services furnished in 1987, the percentage increase in the MEI is 3.2 percent.

"(ii) For purposes of this part for physicians' services furnished in 1988, the percentage increase in the MEI is—

"(I) 6 percent for primary care services (as defined in subparagraph (E)(iii)), and

"(II) 2 percent for other physicians' services.".

(b) PRIMARY CARE SERVICES DEFINED.—Section 1842(b)(4)(E) (42 U.S.C. 1396u(b)(4)(E)) is amended by adding at the end the following new clause:

"(iii) The term 'primary care services' means physicians' services which constitute immunization injections, office medical services, home medical services, skilled nursing, intermediate care, and long-term care medical services, or nursing home, boarding home, domiciliary, or custodial care medical services (as defined by procedure code by the Secretary).".

SEC. 4004. INCENTIVE PAYMENTS FOR PRIMARY CARE PHYSICIANS IN UNDERSERVED RURAL AREAS.

(a) IN GENERAL.—Section 1833 (42 U.S.C. 1395l) is amended by adding at the end the following new subsection:

"(m)(1) In the case of services furnished—

"(A) by a primary care physician (as defined in paragraph (2)),

"(B) to an individual who is covered under the insurance program established by this part and who incurs expenses for such services,

"(C) in a rural area (as defined in section 1886(d)(2)(D)) that is designated, under section 332 of the Public Health Service Act, as a class 1 or class 2 health manpower shortage area,

in addition to the amount otherwise paid under this part, there also shall be paid to the physician (on a monthly or quarterly basis) from the Federal Supplementary Medical Insurance Trust Fund an amount equal to 10 percent of the prevailing charge for the service in the locality in which it is performed.

"(2) In paragraph (1), the term 'primary care physician' means a physician whose primary practice of medicine is in the field of family practice, general practice, general internal medicine, gynecology, or pediatrics.".

(b) STUDY.—The Secretary of Health and Human Services shall study and report to Congress, by not later than July 1, 1988, on the feasibility of making additional payments described in section 1833(m) of the Social Security Act with respect to services of primary care physicians which are performed in health manpower shortage areas located in urban areas.

(c) EFFECTIVE DATE.—The amendments made by this subsection (a) shall apply to services performed on or after April 1, 1988.

SEC. 4005. PAYMENTS FOR DURABLE MEDICAL EQUIPMENT, PROSTHETIC DEVICES, ORTHOTICS, AND PROSTHETICS.

(a) AMOUNT AND FREQUENCY OF PAYMENT FOR DURABLE MEDICAL EQUIPMENT, PROSTHETIC DEVICES, ORTHOTICS, AND PROSTHETICS.—Part B of title XVIII is amended by inserting after section 1833 the following new section:

"SPECIAL PAYMENT RULES FOR PARTICULAR SERVICES

"SEC. 1834. (a) PAYMENT FOR DURABLE MEDICAL EQUIPMENT, PROSTHETIC DEVICES, ORTHOTICS, AND PROSTHETICS.—

"(1) GENERAL RULE FOR PAYMENT.—

"(A) IN GENERAL.—With respect to a covered item (as defined in paragraph (13)) for which payment is determined under this subsection, payment shall be made in the frequency specified in paragraphs (2) through (7) and in an amount equal to 80 percent of the payment basis described in subparagraph (B).

"(B) PAYMENT BASIS.—The payment basis described in this subparagraph is the lesser of—

"(i) the actual charge for the item, or

"(ii) the payment amount recognized under paragraphs (2) through (7) of this subsection for the item;

except that clause (i) shall not apply if the covered item is furnished by a public home health agency (or by another home health agency which demonstrates to the satisfaction of the Secretary that a significant portion of its patients are low income) free of charge or at nominal charges to the public.

"(C) EXCLUSIVE PAYMENT RULE.—This subsection shall constitute the exclusive provision of this title for payment for covered items under this part.

"(2) PAYMENT FOR INEXPENSIVE DURABLE MEDICAL EQUIPMENT.—

"(A) IN GENERAL.—Payment for an item of durable medical equipment (as defined in paragraph (13)(A)) the purchase price of which does not exceed $150 shall be made on a rental basis or in a lump-sum amount for the purchase of the item and the payment amount recognized for purchase or rental is the lesser of the amount specified in subparagraph (B) or (C) for purchase or rental, except that the total amount of rental payments with respect to an item may not exceed the payment amount specified in subparagraph (B) with respect to the purchase of the item.

"(B) PAYMENT AMOUNT.—For purposes of subparagraph (A), the amount specified in this subparagraph, with respect to the purchase or rental of an item furnished in a carrier service area—

"(i) in 1989 is the 75th percentile of all customary charges (weighted by frequency) in the area for the purchase or rental, respectively, of the item (based on data for purchases or rentals, respectively, during the 12-month period ending on June 30, 1986) increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 24-month period ending with September 1988; or

"(ii) in a subsequent year, is the amount specified in this subparagraph for the preceding year increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 12-month period ending with September of that preceding year.

"(C) CUSTOMARY PAYMENT LIMIT.—For purposes of subparagraph (A), the amount specified in this subparagraph, with respect to the purchase or rental of an item furnished by a supplier—

"(i) in 1989 is the customary charge of the supplier established for the purchase or rental of the item during 1988, increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 12-month period ending with September 1988; or

"(ii) in a subsequent year, is the amount specified in this subparagraph for the preceding year increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 12-month period ending with September of that preceding year.

"(3) PAYMENT FOR ITEMS REQUIRING FREQUENT AND SUBSTANTIAL SERVICING.—

"(A) IN GENERAL.—Payment for a covered item (such as ventilators , aspirators, IPPB machines, and nebulizers) for which there must be frequent and substantial servicing in order to avoid risk to the patient's health shall be made on a monthly basis for the rental of the item and the amount recognized is the lesser of the amount specified in subparagraph (B) or (C).

"(B) PAYMENT AMOUNT.—For purposes of subparagraph (A), the amount specified in this subparagraph, with respect to an item or device furnished in a carrier service area—

"(i) in 1989 is the 75th percentile of all customary charges (weighted by frequency) in the area for the rental of the item or device (based on data for rentals during the 12-month period ending on June 30, 1986) increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 24-month period ending with September 1988; or

"(ii) in a subsequent year, is the amount specified in this subparagraph for the preceding year increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 12-month period ending with September of that preceding year.

"(C) CUSTOMARY PAYMENT LIMIT.—For purposes of subparagraph (A), the amount specified in this subparagraph, with respect to an item or device item furnished by a supplier—

"(i) in 1989 is the customary charge of the supplier established for rental of the item during 1988, increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 12-month period ending with September 1988; or

"(ii) in a subsequent year, is the amount specified in this subparagraph for the preceding year increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 12-month period ending with September of that preceding year.

"(4) PAYMENT FOR CERTAIN CUSTOMIZED ITEMS.—Payment with respect to a covered item that is not specifically identified or described in a common procedure coding system (established by the Administrator of the Health Care Financing Administration) shall be made in a lump sum amount for the purchase of the item in a payment amount based upon the carrier's individual consideration for that item, and for the reasonable and necessary maintenance and service for parts and labor not covered by the supplier's or manufacturer's warranty, when necessary during the period of medical need, and the amount recognized for such maintenance and service shall be paid on a lump-sum, as needed basis based upon the carrier's individual consideration for that item.

"(5) PAYMENT FOR OXYGEN AND OXYGEN EQUIPMENT.—

"(A) IN GENERAL.—Payment for oxygen and oxygen equipment shall be made on a monthly basis in the monthly payment amount recognized under paragraph (9) for oxygen and oxygen equipment (other than portable oxygen equipment), subject to subparagraphs (B) and (C).

"(B) Add-on for portable oxygen equipment.—When portable oxygen equipment is used, but subject to subparagraph (D), the payment amount recognized under subparagraph (A) shall be increased by the monthly payment amount recognized under paragraph (9) for portable oxygen equipment.

"(C) Volume adjustment.—When the attending physician prescribes an oxygen flow rate—

"(i) exceeding 4 liters per minute, the payment amount recognized under subparagraph (A), subject to subparagraph (D), shall be increased by 50 percent, or

"(ii) of less than 1 liter per minute, the payment amount recognized under subparagraph (A) shall be decreased by 50 percent.

"(D) Limit on adjustment.—When portable oxygen equipment is used and the attending physician prescribes an oxygen flow rate exceeding 4 liters per minute, there shall only be an increase under either subparagraph (B) or (C), whichever increase is larger, and not under both such subparagraphs.

"(6) Payment for other covered items (other than durable medical equipment).—Payment for other covered items (other than durable medical equipment and other covered items described in paragraph (3), (4), or (5)) shall be made in a lump sum amount for the purchase of the item in the amount of the purchase price recognized under paragraph (8).

"(7) Payment for other items of durable medical equipment.—

"(A) In general.—In the case of an item of durable medical equipment not described in paragraphs (2) through (6)—

"(i) payment shall be made on a monthly basis for the rental of such item during the period of medical need (but payments under this subparagraph may not extend over a period of continuous use of longer than 15 months), and, subject to subparagraph (B), the amount recognized for each such month is 10 percent of the purchase price recognized under paragraph (8) with respect to the item;

"(ii) during the succeeding 6-month period of medical need, no payment shall be made for rental or servicing of the item; and

"(iii) during the first month of each succeeding 6-month period of medical need, a service and maintenance payment may be made (for parts and labor not covered by the supplier's or manufacturer's warranty, as determined by the Secretary to be appropriate for the particular type of durable medical equipment) and the amount recognized for each such 6-month period is the lower of (I) a reasonable and necessary maintenance and servicing fee established by the carrier, or (II) 10 percent of the total of the purchase price recognized under paragraph (8) with respect to the item.

The Secretary shall determine the meaning of the term 'continuous' in subparagraph (A).

"(B) Range for rental amounts.—

"(i) For 1989.—For items furnished during 1989, the payment amount recognized under subparagraph (A)(i) shall not be more than 115 percent, and shall not be less than 85 percent, of the prevailing charge established for rental of the item January 1987, increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 12-month period ending with September 1988.

"(ii) For 1990.—For items furnished during 1990, the payment amount recognized under subparagraph (A)(i) shall not be more than the maximum amount established under clause (i), and shall not be less than the minimum amount established under such clause, for 1989, each such amount increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 12-month period ending with September 1989.

"(8) Purchase price recognized for miscellaneous devices and items.—For purposes of paragraphs (6) and (7), the amount that is recognized under this paragraph as the purchase price for a covered item is the amount described in subparagraph (C) of this paragraph, determined as follows:

"(A) Computation of local purchase price.—Each carrier under section 1842 shall compute a base local purchase price for the item as follows:

"(i) The carrier shall compute a base local purchase price, for each item described—

"(I) in paragraph (6) equal to the 75th percentile of all customary charges (weighted by frequency) in the locality for the purchase of the item, based on data for purchases during the 6-month period ending on December 31, 1986, or

"(II) in paragraph (7) equal to the average of the purchase prices on the claims submitted on an assignment-related basis for the unused item supplied during the 6-month period ending on December 31, 1986.

"(ii) The carrier shall compute a local purchase price, with respect to the furnishing of each particular item—

"(I) in 1989, equal to the base local purchase price computed under clause (i) increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 24-month period ending with September 1988, or

"(II) in 1990, equal to the local purchase price computed under this clause for 1989 increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 12-month period ending with September 1989.

"(B) Computation of regional purchase price.—With respect to the furnishing of a particular item in each region (as defined in section 1886(d)(2)(D)), the Secretary shall compute a regional purchase price—

"(i) for 1989 and for 1990, equal to the average (weighted by relative volume of all claims among carriers) of the local purchase prices for the carriers in the region computed under subparagraph (A)(ii) for the year, and

"(ii) for each subsequent year, equal to the regional purchase price computed under this subparagraph for the previous year increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 12-month period ending with September of the previous year.

"(C) Purchase price recognized.—For purposes of paragraphs (6) and (7) and subject to subparagraph (D), the amount that is recognized under this paragraph as the purchase price for each item furnished—

"(i) in 1989, is the sum of (I) 75 percent of the local purchase price computed under subparagraph (A)(ii)(I) for 1989, and (II) 25 percent of the regional purchase price computed under subparagraph (B) for 1989;

"(ii) in 1990, is the sum of (I) 50 percent of the local purchase price computed under subparagraph (A)(ii)(II) for 1990, and (II) 50 percent of the regional purchase price computed under subparagraph (B) for 1990; and

"(iii) in 1991 or a subsequent year, is the regional purchase price computed under subparagraph (B) for that year.

"(D) Range on amount recognized.—The amount that is recognized under subparagraph (C) as the purchase price for an item furnished—

"(i) in 1989, may not exceed 130 percent, and may not be lower than 80 percent, of the average of the purchase prices recognized under such subparagraph for all the regions in the United States in that year, and

"(ii) in a subsequent year, may not exceed 125 percent, and may not be lower than 85 percent, of the average of the purchase prices recognized under such subparagraph for all the regions in the United States in that year.

"(9) Monthly payment amount recognized with respect to oxygen and oxygen equipment.—For purposes of paragraph (5), the amount that is recognized under this paragraph for payment for oxygen and oxygen equipment is the monthly payment amount described in subparagraph (C) of this paragraph. Such amount shall be computed separately (i) for all items of oxygen and oxygen equipment (other than portable oxygen equipment) and (ii) for portable oxygen equipment (each such group referred to in this paragraph as an 'item').

"(A) Computation of local monthly payment rate.—Each carrier under this section shall compute a base local payment rate for each item as follows:

"(i) The carrier shall compute a base local average monthly payment rate per beneficiary as an amount equal to (I) the total reasonable charges for the item during the 6-month period ending on December 31, 1986, divided by (II) the total number of months for all beneficiaries receiving the item in the area during the 6-month period for which the carrier made payment for the item under this title.

"(ii) The carrier shall compute a local average monthly payment rate for the item applicable—

"(I) to 1989, equal to 96 percent of the base local average monthly payment rate computed under clause (i) for the item increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 24-month period ending with September 1988, or

"(II) to 1990, equal to the local average monthly payment rate computed under this clause for the item for 1989 increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 12-month period ending with September of 1989.

"(B) Computation of regional monthly payment rate.—With respect to the furnishing of an item in each region (as defined in section 1886(d)(2)(D)), the Secretary shall compute a regional monthly payment rate—

"(i) for 1989 and for 1990, equal to the average (weighted by relative volume of all claims among carriers) of the local monthly payment rates for the carriers in the region computed under subparagraph (A)(ii) for the year, and

"(ii) for each subsequent year, equal to the regional monthly payment rates computed under this subparagraph for the previous year increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 12-month period ending with September of the previous year.

"(C) Monthly payment amount recognized.—For purposes of paragraph (5), the amount that is recognized under this paragraph as the base monthly payment amount for each item furnished—

"(i) in 1989, is the sum of (I) 75 percent of the local average monthly payment rate computed under subparagraph (A)(ii)(I) for the item for 1989, and (II) 25 percent of the regional monthly payment rate computed under subparagraph (B) for the item for 1989;

"(ii) in 1990, is the sum of (I) 50 percent of the local average monthly payment rate computed under subparagraph (A)(ii)(II) for the item for 1990, and (II) 50 percent of the regional monthly payment rate computed under subparagraph (B) for the item for 1990; and

"(iii) in a subsequent year, is the regional monthly payment rate computed under subparagraph (B) for the item for that year.

"(D) Range on amount recognized.—The amount that is recognized under subparagraph (C) as the base monthly payment amount for an item furnished—

"(i) in 1989, may not exceed 130 percent, and may not be lower than 80 percent, of the average of the base monthly payment amounts recognized under such subparagraph for all the regions in the United States in that year; and

"(ii) in a subsequent year, may not exceed 125 percent, and may not be lower than 85 percent, of the average of the base monthly payment amounts recognized under such subparagraph for all the regions in the United States in that year.

"(10) Exceptions.—Exceptions to the amounts recognized under the previous provisions of this subsection shall be made to take into account the unique circumstances of covered items furnished in Alaska, Hawaii, or Puerto Rico.

"(11) Billing practices.—Notwithstanding any other provision of this title, no supplier of a covered item for which payment is made under this subsection and which is furnished on a rental basis may charge an individual for the rental or servicing of such item after rental payments may no longer be made under this subsection. If a supplier knowingly and willfully violates the previous sentence, the Secretary may apply sanctions against the supplier under subsection (j)(2) in the same manner such sanctions may apply with respect to a physician.

"(12) Regional carriers.—The Secretary may designate, by regulation under section 1842, one carrier for each region (as defined in section 1886(d)(2)(D)) to process all claims within the region for covered items under this section.

"(13) Covered item.—In this subsection, the term 'covered item' means—

"(A) durable medical equipment (as defined in section 1861(n)), including such equipment described in section 1861(m)(5);

"(B) prosthetic devices (described in section 1861(s)(8)), but not including parenteral and enteral nutrition nutrients, supplies, and equipment; and

"(C) orthotics and prosthetics (described in section 1861(s)(9)).

"(14) Carrier.—In this subsection, any reference to the term 'carrier' includes a reference, with respect to durable medical equipment furnished by a home health agency as part of home health services, to a fiscal intermediary.".

(b) Study and Evaluation.—(1) The Secretary of Health and Human Services shall monitor the impact of the amendments made by this section on the availability of covered items and shall evaluate the appropriateness of the volume adjustment for oxygen and oxygen equipment under section 1834(a)(5)(C) of the Social Security Act (as amended by subsection (a) of this section). The Secretary shall report to Congress, by not later than January 1, 1991, on such impact and on the evaluation and shall include in such report recommendations for changes in payment methodology for covered items under section 1834(a) of such Act.

(2) Before January 1, 1991, the Secretary may not conduct any demonstration project respecting alternative methods of payment for covered items under title XVIII of the Social Security Act.

(3) In this subsection, the term "covered item" has the meaning given such term in section 1834(a)(13) of the Social Security Act (as amended by subsection (a) of this section).

(4) The Secretary shall, upon written request, provide the data and information used in determining the payment amounts for covered items under section 1834(a) of the Social Security Act.

(c) Conforming Amendments.—(1) Section 1814 (42 U.S.C. 1395f) is amended—

(A) in subsection (j)(2)(B), by amending subparagraph (B) to read as follows:

"(B) Section 1834(a)(1)(B).", and

(B) in subsection (k), by striking all that follows "shall be" and insert "the amount described in section 1834(a)(1).".

(2) Section 1832(a) (42 U.S.C. 1395k(a)) is amended—

(A) in paragraph (2)(A), by inserting "(other than items described in subparagraph (G))" after "services";

(B) in paragraph (2)(B), by inserting "(other than items described in subparagraph (G))" after "medical and other health services"; and

(C) in paragraph (2)—

(i) by striking "and" at the end of subparagraph (E),

(ii) by striking the period at the end of subparagraph (F) and inserting "; and", and

(iii) by adding at the end the following new subparagraph:

"(G) covered items (described in section 1834(a)(13)) furnished by a provider of services or by others under arrangements with them made by a provider of services.".

(3) Section 1833(a) (42 U.S.C. 1395l(a)) is amended—

(A) in paragraph (1)—

(i) by striking "; and" at the end of clause (G) and inserting a comma, and

(ii) by adding at the end the following: "and (I) with respect to covered items (described in section 1834(a)(13)), the amounts paid shall be the amounts described in section 1834(a)(1),";

(B) in paragraph (2)—

(i) by striking "and (F)" and inserting "(F), and (G)", and

(ii) in subparagraph (A), by striking "(other than durable medical equipment)";

(B) by striking "and" at the end of paragraph (3);

(C) by striking the period at the end of paragraph (4) and inserting "; and"; and

(D) by adding at the end the following new paragraph:

"(5) in the case of covered items (described in section 1834(a)(13)) the amounts described in section 1834(a)(1).".

(4) Section 1866(a)(2)(A) (42 U.S.C. 1395cc(a)(2)(A)) is amended by adding at the end the following new sentence: "Notwithstanding the first sentence of this subparagraph, a home health agency may charge such an individual or person, with respect to covered items subject to payment under section 1834(a), the amount of any deduction imposed under section 1833(b) and 20 percent of the payment basis described in section 1834(a)(2).".

(5) Section 1889 (42 U.S.C. 1395zz) is repealed.

(d) Effective Date.—The amendments made by this section shall apply to covered items furnished on or after January 1, 1989.

SEC. 4006. FEE SCHEDULES FOR RADIOLOGIC SERVICES.

(a) In General.—Part B of title XVIII is amended—

(1) in section 1833(a)(1) (42 U.S.C. 1395l(a)(1)), as amended by section 4005(c)(3), by striking "and" before "(I)", and by adding at the end the following new clause: "and (J) with respect to expenses incurred for radiologic services (as defined in section 1834(b)(7)), the amounts paid shall be 80 percent of the lesser of the actual charge for the services or the amount provided under the fee schedule established under section 1834(b),"; and

(2) by adding at the end of section 1834, as added by section 4005(a) of this Act, the following new subsection:

"(b) Fee Schedules for Radiologic Services.—

"(1) Development.—The Secretary shall develop—

"(A) a relative value scale to serve as the basis for the payment for radiologic services under this part,

"(B) using such scale and appropriate conversion factors, fee schedules (on a regional, statewide, or carrier service area basis) for payment for radiologic services under this part, to be implemented for such services furnished during 1989, and

"(C) an appropriate index to be applied, subject to paragraph (3)(B), to updating such fee schedules annually for radiologic services furnished in years after 1989.

"(2) Consultation.—In carrying out paragraph (1), the Secretary shall regularly consult closely with the Physician Payment Review Commission, the American College of Radiology, and other organizations representing physicians or suppliers who furnish radiologic services and shall share with them the data and data analysis being used to make the determinations under paragraph (1), including data on variations in current medicare payments by geographic area, and by service and physician specialty.

"(3) Considerations.—In developing the relative value scale and fee schedules under paragraph (1), the Secretary—

"(A) shall take into consideration variations in the cost of furnishing such services among geographic areas and among different sites where services are furnished, and

"(B) may also take into consideration such other factors respecting the manner in which physicians in different specialties furnish such services as may be appropriate to assure that payment amounts are equitable and designed to promote effective and efficient provision of radiologic services by physicians in the different specialties.

"(4) Savings.—

"(A) 1989.—The fee schedules established under paragraph (1) for 1989 shall be designed in a manner to reduce aggregate payments (net of any coinsurance and deductibles under sections 1833(a)(1)(I) and 1833(b)) for radiologic services furnished in 1989 by not more than $20,000,000 below the amount of such aggregate payments if this subsection had not been enacted.

"(B) 1990 and 1991.—The fee schedules established under paragraph (1) for 1990 and

1991 shall be designed in a manner to reduce aggregate payments (net of any coinsurance and deductibles under sections 1833(a)(1)(I) and 1833(b)) for radiologic services furnished in each respective year by not less than $30,000,000 below the amount of such aggregate payments if this subsection had not been enacted.

"(C) NONPARTICIPATING PHYSICIANS.—Each fee schedule so established shall provide that the payment rate recognized for nonparticipating physicians and suppliers is equal to 96 percent of the payment rate recognized for participating physicians and suppliers.

"(5) LIMITING CHARGES OF NONPARTICIPATING PHYSICIANS.—

"(A) IN GENERAL.—In the case of radiologic services furnished after January 1, 1989, for which payment is made under a fee schedule under this subsection, if a nonparticipating physician or supplier furnishes the service to an individual entitled to benefits under this part, the physician or supplier may not charge the individual more than the limiting charge (as defined in subparagraph (B)).

"(B) LIMITING CHARGE DEFINED.—In subparagraph (A), the term 'limiting charge' means, with respect to a service furnished—

"(i) in 1989, 125 percent of the amount specified for the service in the appropriate fee schedule established under paragraph (1),

"(ii) in 1990, 120 percent of the amount specified for the service in the appropriate fee schedule established under paragraph (1), and

"(iii) after 1990, 115 percent of the amount specified for the service in the appropriate fee schedule established under paragraph (1).

"(C) ENFORCEMENT.—If a physician or supplier knowingly and willfully imposes a charge in violation of subparagraph (A), the Secretary may apply sanctions against such physician or supplier in accordance with section 1842(j)(2).

"(6) ADVANCE OF DEDUCTIBLE AND COINSURANCE AMOUNTS.—In the case of a participating physician or supplier which furnishes radiologic services, the carrier making payment for the service shall advance to the physician or supplier from the Federal Medical Supplementary Insurance Trust Fund an amount equal to any coinsurance and deductible under section 1833(a)(1)(I) or section 1833(b) applicable to the service. The carrier shall make arrangements to collect the amounts so advanced on the physician's or supplier's behalf and shall deposit any amounts so collected into such Trust Fund. The Secretary shall establish appropriate guidelines for the advancing and collecting of funds under this paragraph.

"(7) RADIOLOGIC SERVICES DEFINED.—For the purposes of this subsection, section 1833(a)(1)(I), and section 1842(h)(1)(B), the term 'radiologic services' only includes services performed by, or under the direction or supervision of, a physician who is certified, or eligible to be certified, by the American Board of Radiology.".

(b) PERMITTING PARTICIPATION LIMITED TO RADIOLOGIC SERVICES.—Section 1842(h)(1) (42 U.S.C. 1395u(h)(1)) is amended by inserting "(A)" after "(h)(1)" and by adding at the end the following new subparagraph:

"(B) The Secretary shall also permit physicians and suppliers, who are not participating physicians or suppliers under subparagraph (A) and who furnish radiologic services (as defined in section 1834(b)(7)), to voluntarily enter into an agreement to become a participating physician or supplier only with respect to those services. With respect to physicians and suppliers who enter into such an agreement under this subparagraph, any reference in this title to a participating physician or supplier is deemed only to refer to such physicians and suppliers with respect to radiologic services.".

(c) DEADLINES AND EFFECTIVE DATE.—(1) The Secretary of Health and Human Services shall establish the relative value scale and fee schedules for radiologic services (under section 1834(b) of the Social Security Act) by not later than August 1, 1988, and shall report to Congress on the development of such fee schedules not later than August 1, 1988.

(2) The amendments made by this section shall apply to services performed on or after January 1, 1989, and until such time as the Secretary of Health and Human Services implements physician fee schedules based on the relative value scale developed under section 1845(e) of the Social Security Act.

SEC. 4007. FEE SCHEDULES FOR PHYSICIAN PATHOLOGY SERVICES.

(a) IN GENERAL.—The Secretary of Health and Human Services shall develop—

(1) a relative value scale to serve as the basis for the payment for physician pathology services under part B of title XVIII of the Social Security Act,

(2) using such scale and appropriate conversion factors, proposed fee schedules (on a regional, statewide, or carrier service area basis) for payment for physician pathology services under such part, that could be implemented for such services furnished during 1990, and

(3) an appropriate index to be applied to updating such fee schedules annually for physician pathology services furnished in years after 1990.

(b) CONSULTATION.—In carrying out subsection (a), the Secretary shall regularly consult closely with the Physician Payment Review Commission, the College of American Pathologists, and other organizations representing physicians who furnish physician pathology services and shall share with them the data and data analysis being used to make the determinations under subsection (a), including data on variations in current medicare payments by geographic area, and by service and physician specialty.

(c) CONSIDERATION.—In developing the fee schedules under subsection (a), the Secretary shall take into consideration variations in the cost of furnishing physician pathology services among geographic areas.

(d) REPORT.—The Secretary shall report, not later than April 1, 1989, to the Committees on Energy and Commerce and Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the relative value scale, fee schedules, and the index developed under this section. Such report shall include recommendations on how to protect medicare beneficiaries against excessive charges for physician pathology services above the payment amounts established by the fee schedules.

SEC. 4008. PROHIBITION OF IMPLEMENTATION OF PROSPECTIVE PAYMENT FOR "RAP" SERVICES.

(a) IN GENERAL.—Nothing in section 9344(c) of the Omnibus Budget Reconciliation Act of 1986 or any other provision of law shall be construed as authorizing or requiring the Secretary of Health and Human Services to provide for the implementation of any prospective payment system (described in such section) for payment for radiologic services, physician anesthesia services, and physician pathology services under title XVIII of the Social Security Act.

(b) PROHIBITION ON CERTAIN STUDIES AND DEMONSTRATIONS.—The Secretary of Health and Human Services shall not conduct, after the date of enactment of this Act and before January 1, 1991, any new study or demonstration project designed specifically to reform the medicare payment methodology for services described in subsection (a) unless specifically directed under law to do so.

SEC. 4009. TECHNICAL CHANGES IN APPLICATION OF MAXIMUM ALLOWABLE ACTUAL CHARGE (MAAC).

(a) APPLICATION ON INDIVIDUAL CHARGE BASIS.—Section 1842(j)(1) (42 U.S.C. 1395u(j)(1)) is amended—

(1) in subparagraph (B)(i), by striking "a physician's actual charge (as defined in subparagraph (C)(vi)" and inserting "an actual charge", and

(2) in subparagraph (C)(vi), by striking "and subparagraph (B)".

(b) BASE PERIOD.—

(1) EXCEPTION.—In the case of a physician who establishes to the satisfaction of a carrier that the physician did not have actual charges for a procedure in the calendar quarter beginning on April 1, 1984, but had actual charges (whether under title XVIII of such Act or otherwise) for the procedure performed during the 12-month period ending March 31, 1984, the carrier shall compute the maximum allowable actual charge under section 1842(j) of the Social Security Act for such procedure performed by such physician in 1988 based on the physician's actual charges for the procedure for such 12-month period.

(2) NEW PERIOD TO BE USED.—Section 1842(j)(1) (42 U.S.C. 1395u(j)(1)) is amended—

(A) in subparagraphs (C)(iv), (C)(v), and (C)(vi), by striking "calendar quarter beginning on April 1, 1984" and inserting "12-month period ending June 30, 1986", and

(B) in subparagraph (C)(iv), by striking "such quarter" and inserting "such 12-month period".

(c) EFFECTIVE DATES.—(1) The amendment made by subsection (a) shall apply to charges imposed for services furnished on or after January 1, 1988.

(2) The amendments made by subsection (b)(2) shall apply to charges imposed for services furnished on or after January 1, 1989.

SEC. 4010. ELIMINATION OF 1975 FLOOR FOR PREVAILING PHYSICIAN CHARGES.

(a) IN GENERAL.—Section 1842(b)(3) (42 U.S.C. 1395u(b)(3)) is amended by striking the next-to-last sentence (which begins "Notwithstanding the provisions of").

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to payment for services furnished on or after January 1, 1988.

SEC. 4011. UPDATING MAXIMUM RATE OF PAYMENT PER VISIT FOR INDEPENDENT RURAL HEALTH CLINICS.

(a) IN GENERAL.—Section 1833 (42 U.S.C. 1395l) is amended by inserting after subsection (e) the following new subsection:

"(f) In establishing limits under subsection (a) on payment for rural health clinic services provided by independent rural health clinics, the Secretary shall establish such limit, for services provided—

"(A) in 1988, at $46, and

"(B) in a subsequent year, at the limit established under this subsection for the previous year increased by the percentage increase in the medicare economic index (referred to in the fourth sentence of section 1842(b)(3)) applicable to physicians' services furnished as of the first day of that year.".

(b) Report on Rates.—The Secretary of Health and Human Services shall report to Congress, by not later than March 1, 1989, on the adequacy of the amounts paid under title XVIII of the Social Security Act for rural health clinic services provided by independent rural health clinics.

SEC. 4012. PAYMENT FOR CERTIFIED REGISTERED NURSE ANESTHETISTS.

Section 1833(l)(2) (42 U.S.C. 1395l(l)(2)) is amended—

(1) by striking "ending" and inserting "beginning", and

(2) by inserting before the period at the end the following: "and based on such other data as the Secretary determines to be necessary to establish a reasonable fee schedule".

SEC. 4013. DIRECT PAYMENT FOR SERVICES OF REGISTERED NURSES AS ASSISTANTS AT SURGERY.

(a) Services Covered.—Section 1861(s)(2)(K)(i) (42 U.S.C. 1395x(s)(2)(K)(i)) is amended—

(1) by striking "by a physician assistant (as defined in subsection (aa)(3)) under the supervision of a physician (as so defined)" and inserting "under the supervision of a physician (as so defined) by a physician assistant (as defined in subsection (aa)(3))", and

(2) by inserting "by a physician assistant or registered nurse" before "as an assistant at surgery".

(b) Payment Amount.—Section 1842(b)(12)(A) (42 U.S.C. 1395u(b)(12)(A)) is amended by inserting "or registered nurse" after "physician assistant".

(c) Payment to Employer.—Section 1842(b)(6)(C) (42 U.S.C. 1395u(b)(6)(C)) is amended by inserting "or registered nurse" after "physician assistant".

(d) Reduction in Payment To Avoid Duplicate Payment.—Notwithstanding any other provision of law, the Secretary of Health and Human Services may reduce the amount of payments otherwise made to hospitals under title XVIII of the Social Security Act, so as to eliminate estimated duplicate payments for historical or current costs attributable to services described in section 1861(s)(2)(K) of such Act (for which payment may be made under the amendments made by this section).

(e) Study of Payment Rates.—The Secretary shall report to Congress, by not later than April 1, 1989, concerning adjustments to the amount of payment made, under part B of title XVIII of the Social Security Act, for services described in section 1861(s)(2)(K) of such Act (as amended by this section), to ensure that the amount of such payments reflects the approximate cost of furnishing the services, taking into account compensation costs and overhead and supervision costs attributable to registered nurses.

(f) Effective Date.—The amendments made by this section shall apply to services furnished on or after January 1, 1988.

SEC. 4014. ADJUSTMENT IN PAYMENT FOR PHYSICIANS' SERVICES.

(a) Increase in Permissible and Prevailing Charges for Certain Physicians' Services.—

(1) Establishment of reasonable charge floor.—Section 1842(b)(4)(A) (42 U.S.C. 1395u(b)(4)(A)) is amended by redesignating clause (v) as clause (vi) and by inserting after clause (iv) the following new clause:

"(v)(I) Before each year (beginning with 1989), the Secretary shall establish, for each physicians' service, a reasonable charge floor equal to 55 percent of the average of the prevailing charge levels (determined under the third and fourth sentences of paragraph (3), without regard to this clause for participating physicians) for such service for all localities in the United States (weighted by the relative frequency of the service in each locality) for the year.

"(II) Notwithstanding any other provision of this subsection other than clause (iv), if the prevailing charge level otherwise determined under the third and fourth sentences of paragraph (3) for a physicians' service furnished in 1989 by a participating physician is less than the reasonable charge floor established under subclause (I) for the service for 1989, the prevailing charge level which shall apply is the prevailing charge level otherwise determined increased by ⅓ of the amount by which such reasonable floor exceeds the prevailing charge level otherwise determined.

"(III) Notwithstanding any other provision of this subsection other than clause (iv), if the prevailing charge level otherwise determined under the third and fourth sentences of paragraph (3) for a physicians' service furnished in 1990 by a participating physician is less than the reasonable charge floor established under subclause (I) for the service for 1990, the prevailing charge level which shall apply is the prevailing charge level otherwise determined increased by ½ of the amount by which such reasonable floor exceeds the prevailing charge level otherwise determined.

"(IV) Notwithstanding any other provision of this subsection other than clause (iv), if the prevailing charge level under the third and fourth sentences of paragraph (3) for a physicians' service furnished in a year (beginning with 1991) by a participating physician, shall not be less than the reasonable charge floor established under subclause (I) for the service for the year.".

(2) Customary charge floor.—Section 1842(b)(4)(D) (42 U.S.C. 1395u(b)(4)(D)) is amended by adding at the end the following new clause:

"(v)(I) In applying customary charges for a physicians' service furnished in 1989 or 1990, notwithstanding any other provision of this subsection, a customary charge shall not be less than the prevailing charge level established under subclause (II) or (III) of subparagraph (A)(v) for the service for 1989 or 1990, respectively, for the locality in which the service is furnished.

"(II) In applying customary charges for a physicians' service furnished in a year (beginning with 1991), notwithstanding any other provision of this subsection, a customary charge shall not be less than the reasonable charge floor established under subparagraph (A)(v)(I) for the service for the year.".

(3) Permitting increase in maximum allowable actual charge to reasonable charge floor.—Section 1842(j)(1)(C) (42 U.S.C. 1395u(j)(1)(C)), as amended by section 4086(f) of this title, is amended by adding at the end the following new clause:

"(viii) Notwithstanding any previous provision of this subparagraph, the maximum allowable actual charge for a physicians' service furnished in 1989 or 1990 may not be less than 96 percent of the prevailing charge level established under subclause (II) or (III) of subparagraph (A)(v) for the service for 1989 or 1990, respectively.".

(b) Adjustment in Percentage Increase in MEI.—Section 1842(b)(4)(F) (42 U.S.C. 1395u(b)(4)(F)), as added by section 4003(a) of this Act, is further amended by adding at the end the following new clause:

"(iii) For purposes of this part for physicians' services furnished in a year after 1988, notwithstanding subparagraph (E)(ii), the percentage increase in the MEI is the percentage increase in the MEI otherwise determined minus 2 percentage points.".

(c) Effective Date.—The amendments made by this section shall apply to payment for physicians' services furnished on or after January 1, 1989.

PART 2—COVERAGE AND ELIGIBILITY CHANGES

SEC. 4021. COVERAGE OF INFLUENZA VACCINE AND ITS ADMINISTRATION.

(a) In General.—Section 1861(s)(10)(A) (42 U.S.C. 1395x(a)(10)(A)) is amended by inserting before the semicolon the following: "and influenza vaccine and its administration".

(b) Effective Date.—The amendment made by subsection (a) shall apply to influenza vaccine administered on or after January 1, 1988.

SEC. 4022. CLARIFICATION OF COVERAGE OF DRUGS USED IN IMMUNOSUPPRESSIVE THERAPY.

(a) In General.—Section 1861(s)(2)(J) (42 U.S.C. 1395x(s)(2)(J)) is amended by striking "immunosuppressive drugs" and inserting "prescription drugs used in immunosuppressive therapy".

(b) Effective Date.—The amendment made by subsection (a) shall apply to drugs dispensed on or after the date of the enactment of this Act.

SEC. 4023. COVERAGE OF SOCIAL WORKER SERVICES FURNISHED BY A HEALTH MAINTENANCE ORGANIZATION TO ITS MEMBERS.

(a) In General.—Section 1861(s)(2)(H)(ii) (42 U.S.C. 1395x(s)(2)(H)(ii)) is amended—

(1) by inserting "or by a clinical social worker (as defined in subsection (ff))" after "clinical psychologist (as defined by the Secretary)"; and

(2) by striking "incident to his services" and inserting "incident to such clinical psychologist's services or clinical social worker's services".

(b) Clinical Social Worker Defined.—Section 1861 of such Act is further amended by adding at the end the following new subsection:

"Clinical Social Worker

"(ff) The term 'clinical social worker' means an individual who—

"(1) possesses a master's or doctor's degree in social work;

"(2) after obtaining such degree has performed at least 2 years of supervised clinical social work; and

"(3)(A) is licensed or certified as a clinical social worker by the State in which the services are performed, or

"(B) in the case of an individual in a State which does not provide for licensure or certification—

"(i) has completed at least 2 years or 3,000 hours of post-master's degree supervised clinical social work practice under the supervision of a master's level social worker in an appropriate setting (as determined by the Secretary), and

"(ii) meets such other criteria as the Secretary establishes.".

(c) Effective Date.—The amendments made by this section shall be effective with respect to services performed on or after January 1, 1988.

SEC. 4024. PERMITTING CONTINUATION OF MEDICARE COVERAGE BY PAYMENT BY INDIVIDUALS WITH CERTAIN PHYSICAL OR MENTAL IMPAIRMENTS.

(a) In General.—Part A of title XVIII is amended by adding at the end the following new section:

"CONTINUED HOSPITAL INSURANCE BENEFITS FOR UNINSURED INDIVIDUALS WITH PHYSICAL OR MENTAL IMPAIRMENTS

"Sec. 1819. (a) Every individual who—

"(1) has not attained the age of 65,

"(2) was entitled to benefits under this part under section 226(b), but such entitlement was terminated because the individual engaged in substantial gainful activity,

"(3) is determined, on an annual basis, to continue to have the physical or mental impairment upon which the benefits described in section 226(b)(2) were based,

"(4) has been entitled to or enrolled for benefits under this part for each month (other than a month in which the individual is enrolled in a group health plan described in section 1862(b)(3)(A)(iv) by reason of the individual's or the individual's spouse's current employment) since the first month in which the individual was entitled to benefits under this part, and

"(5) is not otherwise entitled to benefits under this part,

shall be entitled to enroll in the insurance program established by this part.

"(b) An individual may enroll under this section only in such manner and form as may be prescribed in regulations, and only during an enrollment period prescribed in or under this section.

"(c)(1) An individual's initial enrollment period shall begin on the first day of the third month before the month in which the individual first satisfies the requirements of subsection (a) and shall end 7 months later.

"(2) In any case where the Secretary finds that an individual's enrollment or non-enrollment under this section is unintentional, inadvertent, or erroneous and is the result of the error, misrepresentation, or inaction of an officer, employee, or agent of the Federal Government, or its instrumentalities, the Secretary may take such action (including the designation for such individual of a special initial or subsequent enrollment period, with a coverage period determined on the basis thereof and with appropriate adjustments of premiums) as may be necessary to correct or eliminate the effects of such error, misrepresentation, or inaction.

"(3)(A) In the case of an individual who—

"(i) at the time the individual first satisfies subsection (a) is enrolled in a group health plan described in section 1862(b)(3)(A)(iv) by reason of the individual's (or the individual's spouse's) current employment, and

"(ii) has not elected to enroll under this section during the individual's initial enrollment period,

there shall be a special enrollment period described in subparagraph (C).

"(B) In the case of an individual who—

"(i) has enrolled in the program under this part during the individual's initial enrollment period or is described in subparagraph (A)(i),

"(ii) has enrolled in this program during any subsequent special enrollment period under this paragraph during which the individual was not enrolled in a group health plan described in section 1862(b)(3)(A)(iv) by reason of the individual's (or individual's spouse's) current employment, and

"(iii) has not terminated enrollment under this section at any time at which the individual is not enrolled in such a group health plan by reason of the individual's (or individual's spouse's) current employment,

there shall be a special enrollment period described in subparagraph (C).

"(C) The special enrollment period referred to in subparagraphs (A) and (B) is the period beginning with the first day of the first month in which the individual is no longer enrolled in a group health plan described in section 1862(b)(3)(A)(iv) by reason of current employment and ending 7 months later.

"(d)(1) The period during which an individual is entitled to benefits under this part by reason of this section (in this section referred to the individual's 'coverage period') shall begin on whichever of the following is the latest:

"(A) In the case of an individual who enrolls pursuant to subsection (c)(1)—

"(i) before the month in which the individual first satisfies subsection (a), the first day of such month,

"(ii) in the month in which the individual first satisfies subsection (a), the first day of the month following the month in which the individual so enrolls,

"(iii) in the month following the month in which the individual first satisfies subsection (a), the first day of the second month following the month in which the individual so enrolls, or

"(iv) more than one month following the month in which the individual first satisfies subsection (a), the first day of the third month following the month in which the individual so enrolls; or

"(B) In the case of an individual who enrolls during a special enrollment period pursuant to subsection (c)(3)—

"(i) in the first month of the special enrollment period, on the first day of such month, or

"(ii) in a month after the individual's first month of the special enrollment period, the first day of the month following the month in which the individual so enrolls.

"(2) An individual's coverage period shall continue until the individual's enrollment has been terminated—

"(A) at the close of the month following the month in which the individual files notice that the individual no longer wishes to participate in the insurance program established by this part,

"(B) at the end of a grace period (described in the third sentence of section 1838(b)) for nonpayment of premiums, or

"(C) as of the close of the last month for which the individual meets the requirements of subsection (a) for enrollment under this section.

"(3) No payments may be made under this part with respect to expenses of an individual enrolled under this section unless such expenses were incurred by the individual during a period which, with respect to the individual, is a coverage period.

"(e)(1) Except as provided in paragraph (2), the monthly premium of each individual under this section is the monthly premium determined under section 1818(d).

"(2)(A) Subject to subparagraph (B), in the case of an individual with respect to whom the monthly premium under this subsection (and, if applicable, the monthly premium under section 1839(g)) exceeds 8 percent of $\frac{1}{12}$th the adjusted gross income of the individual (as defined by the Secretary), the Secretary shall provide for a proportional reduction in the amount of each such monthly premium so that the sum of such monthly premiums does not exceed 8 percent of 1/12 of such adjusted gross income.

"(B) In no case shall a monthly premium be reduced under subparagraph (A) so it is less than 25 percent of the monthly premium otherwise determined.

"(f) Payment of the monthly premiums on behalf of any individual who meets the conditions of subsection (a) may be made by any public or private agency or organization under a contract or other arrangement entered into between it and the Secretary if the Secretary determines that payment of such premiums under such contract or arrangement is administratively feasible.

"(g) Amounts paid to the Secretary for coverage under this section shall be deposited in the Treasury to the credit of the Federal Hospital Insurance Trust Fund.".

(b) Buy-in to Part B Coverage.—

(1) Enrollment.—Section 1837 (42 U.S.C. 1395p) is amended by adding at the end the following new subsection:

"(j) Notwithstanding any other provision of this section, the enrollment periods for an individual who is eligible to enroll for benefits under this part only because of enrollment for benefits under section 1819 are the enrollment periods provided under that section.".

(2) Coverage period.—Section 1838 (42 U.S.C. 1395q) is amended by adding at the end the following new subsection:

"(f) Notwithstanding subsection (a), in the case of an individual who is eligible to enroll for benefits under this part only because of enrollment for benefits under section 1819, the coverage period shall be the coverage period described in that section.".

(3) Amount of premium.—Section 1839 (42 U.S.C. 1395r) is amended by adding at the end the following new subsection:

"(g) In the case of an individual who is eligible to enroll for benefits under this part only because of enrollment for benefits under section 1819, notwithstanding any other provision of this section, but subject to section 1819(e)(2), the monthly premium is twice the monthly actuarial rate established under subsection (a) for that month.".

(c) Permitting Disabled Individuals to Renew Entitlement to Medicare After Gainful Employment Without a 2-year Waiting Period.—Section 226(f) (42 U.S.C. 426(f)) is amended by inserting before the period at the end the following: ", unless the physical or mental impairment which is the basis for disability is the same as (or directly related to) the physical or mental impairment which served as the basis for disability in such previous period".

(d) Effective Dates.—

(1) In general.—The amendments made by this section shall apply to months beginning after the end of the 60-day period beginning on the date of the enactment of this Act, and the amendments made by subsections (a) and (b) of this section shall apply to individuals whose entitlement to benefits under part A of title XVIII of the Social Security Act by virtue of section 226(b) of such Act is terminated after the end of such period.

(2) Elimination of waiting period.—The amendment made by subsection (c) shall not apply so as to include (for the purposes described in section 226(f) of the Social Security Act) monthly benefits paid for any month in a previous period (described in that section) that terminated before the end of the 60-day period described in paragraph (1).

SEC. 4025. MEDICARE PAYMENT FOR THERAPEUTIC SHOES FOR INDIVIDUALS WITH SEVERE DIABETIC FOOT DISEASE.

(a) COVERAGE UNDER PART B.—Section 1861(s) (42 U.S.C. 1395x(s)) is amended—

(1) by redesignating paragraphs (12) through (15) as paragraphs (13) through (16), respectively,

(2) by striking out "and" at the end of paragraph (10),

(3) by striking out the period at the end of paragraph (11) and inserting in lieu thereof "; and", and

(4) by inserting after paragraph (11) the following new paragraph:

"(12) extra-depth shoes with inserts or custom molded shoes for an individual with diabetes, if—

"(A) the physician who is managing the individual's diabetic condition (i) documents that the individual has peripheral neuropathy with evidence of callus formation, a history of pre-ulcerative calluses, a history of previous ulceration, foot deformity, or previous amputation, or poor circulation, and (ii) certifies that the individual needs such shoes under a comprehensive plan of care related to the individual's diabetic condition;

"(B) the particular type of shoes are prescribed by a podiatrist or other qualified physician (as established by the Secretary); and

"(C) the shoes are fitted and furnished by a podiatrist or other qualified individual (such as a pedorthist or orthotist, as established by the Secretary) who is not the physician described in subparagraph (A) (unless the Secretary finds that the physician is the only such qualified individual in the area).".

(b) LIMITATION ON BENEFIT.—Section 1833 (42 U.S.C. 1395), as amended by section 4004(a) of this title, is amended by adding at the end the following new subsection:

"(n)(1) In the case of shoes described in section 1861(s)(12)—

"(A) no payment may be made under this part for the furnishing of more than one pair of shoes for any individual for any calendar year, and

"(B) with respect to expenses incurred in any calendar year, no more than the limit established under paragraph (2) shall be considered as incurred expenses for purposes of subsections (a) and (b).

Payment for shoes under this part shall be considered to include payment for any expenses for the fitting of such shoes.

"(2)(A) Except as provided by the Secretary under subparagraphs (B) and (C), the limit established under this paragraph—

"(i) for the furnishing of one pair of custom molded shoes is $300;

"(ii) for the furnishing of extra-depth shoes and inserts is—

"(I) $100 for the pair of shoes itself, and

"(II) $50 for inserts for a pair of shoes.

"(B) The Secretary or a carrier may establish limits for shoes that are lower than the limits established under subparagraph (A) if the Secretary finds that shoes and inserts of an appropriate quality are readily available at or below such lower limits.

"(C) For each year after 1988, each dollar amount specified in subparagraph (A) (as previously adjusted under this subparagraph) shall be increased by the same percentage increase as the Secretary provides with respect to durable medical equipment for that year, except that if such increase is not a multiple of $1, it shall be rounded to the nearest multiple of $1.

"(3) In this title, the term 'shoes' includes, except for purposes of subparagraphs (A)(ii) and (B) of paragraph (2), inserts for extra-depth shoes.".

(c) MODIFICATION OF EXCLUSION.—Section 1862(a)(8) (42 U.S.C. 1395y(a)(8)) is amended by inserting ", other than shoes furnished pursuant to section 1861(s)(12)" before the semicolon.

(d) CONFORMING AMENDMENTS.—Sections 1864(a), 1865(a), 1902(a)(9)(C), and 1915(a)(1)(B)(ii)(I) (42 U.S.C. 1395aa(a), 1395bb(a), 1396a(a)(9)(C), 1396n(a)(1)(B)(ii)(I)) are each amended by striking out "paragraphs (12) and (13)" and inserting in lieu thereof "paragraphs (13) and (14)".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to shoes furnished on or after January 1, 1988.

PART 3—HOME HEALTH CARE QUALITY IMPROVEMENTS

SEC. 4031. REQUIREMENT THAT INDIVIDUAL BE CONFINED TO HOME.

(a) PART A.—Section 1814(a) (42 U.S.C. 1395f(a)) is amended by adding at the end thereof the following: "For purposes of paragraph (2)(C), an individual shall be considered to be 'confined to his home' if the individual has a condition, due to an illness or injury, that restricts the ability of the individual to leave his or her home except with the assistance of another individual or the aid of a supportive device (such as crutches, a cane, a wheelchair, or a walker), or if the individual has a condition such that leaving his or her home is medically contraindicated. While an individual does not have to be bedridden to be considered 'confined to his home', the condition of the individual should be such that there exists a normal inability to leave home, that leaving home requires a considerable and taxing effort by the individual, and that absences of the individual from home are infrequent or of relatively short duration.".

(b) PART B.—Section 1835(a) (42 U.S.C. 1395n(a)) is amended by adding at the end thereof the following: "For purposes of paragraph (2)(A), an individual shall be considered to be 'confined to his home' if the individual has a condition, due to an illness or injury, that restricts the ability of the individual to leave his or her home except with the assistance of another individual or the aid of a supportive device (such as crutches, a cane, a wheelchair, or a walker), or if the individual has a condition such that leaving his or her home is medically contraindicated. While an individual does not have to be bedridden to be considered 'confined to his home', the condition of the individual should be such that there exists a normal inability to leave home, that leaving home requires a considerable and taxing effort by the individual, and that absences of the individual from home are infrequent or of relatively short duration.".

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall apply to items and services provided on or after October 1, 1987.

SEC. 4032. APPEALS PROCEDURES.

(a) IN GENERAL.—Section 1816(c) (42 U.S.C. 1395h(c)) is amended by adding at the end the following new paragraph:

"(3) Each agreement under this section with a fiscal intermediary to perform services relating to payment for home health services under this part or part B shall provide that—

"(A) the intermediary shall provide a thorough explanation of any denial of a claim for such services under this title;

"(B) in the case of any request for reconsideration of a determination with respect to such services, the parties to the reconsideration shall be notified promptly of the intermediary's determination; and

"(C) if the intermediary fails to mail or otherwise transmit notice of a determination with respect to such a reconsideration within 60 days after the date on which the request for such reconsideration is received, an amount equal to two percent of the amount in dispute shall be paid to the party requesting the reconsideration for each 30-day period or portion thereof that elapses after the end of such 60-day period and before the notice is mailed or otherwise transmitted.".

(b) MEASURING FISCAL INTERMEDIARY PERFORMANCE.—Section 1816(f) (42 U.S.C. 1395h(f)) is amended by adding at the end the following: "Such standards and criteria shall include, with respect to a fiscal intermediary performing services with respect to home health agencies, the promptness and accuracy with which the intermediary makes determinations and notifies parties of such determinations and the rate with which its determinations are reversed on appeal.".

(c) EFFECTIVE DATES.—

(1) The amendment made by subsection (a) shall apply to claims filed on or after October 1, 1987.

(2) The amendment made by subsection (b) shall apply to performance of intermediaries with respect to claims filed on or after October 1, 1987.

(3) The Secretary of Health and Human Services shall provide for such timely amendments to agreements under section 1816 of the Social Security Act, and regulations, to such extent as may be necessary to implement the amendments made by this section on a timely basis.

SEC. 4033. CONDITIONS OF PARTICIPATION FOR HOME HEALTH AGENCIES.

(a) DEFINITION OF HOME HEALTH AGENCY.—Section 1861(o)(6) (42 U.S.C. 1395x(o)(6)) is amended by inserting "the conditions of participation specified in section 1891(a) and" after "meets".

(b) CONDITIONS OF PARTICIPATION.—Title XVIII is amended by adding at the end the following new section:

"CONDITIONS OF PARTICIPATION FOR HOME HEALTH AGENCIES; HOME HEALTH QUALITY

"SEC. 1891. (a) The conditions of participation that a home health agency is required to meet under this subsection are as follows:

"(1) The agency protects and promotes the rights of each individual under its care, including each of the following rights:

"(A) The right to be fully informed in advance about the care and treatment to be provided by the agency, to be fully informed in advance of any changes in the care or treatment to be provided by the agency that may affect the individual's well-being, and (except with respect to an individual adjudged incompetent) to participate in planning care and treatment or changes in care or treatment.

"(B) The right to voice grievances with respect to treatment or care that is (or fails to be) furnished without discrimination or reprisal for voicing grievances.

"(C) The right to confidentiality of the clinical records described in section 1861(o)(3).

"(D) The right to have one's property treated with respect.

"(E) The right to be fully informed orally and in writing (in advance of coming under the care of the agency) of—

“(i) all items and services furnished by (or under arrangements with) the agency for which payment may be made under this title,

“(ii) the coverage available for such items and services under this title, title XIX, and any other Federal program of which the agency is reasonably aware,

“(iii) any charges for items and services not covered under this title and any charges the individual may have to pay with respect to items and services furnished by (or under arrangements with) the agency, and

“(iv) any changes in the charges or items and services described in clause (i), (ii), or (iii).

“(F) The right to be fully informed in writing (in advance of coming under the care of the agency) of the individual's rights and obligations under this title.

“(G) The right to be informed of the availability of the State home health agency hot-line established under section 1864(a).

“(2) The agency notifies the State entity responsible for the licensing or certification of the agency of a change in—

“(A) the persons with an ownership or control interest (as defined in section 1124(a)(3)) in the agency, and

“(B) the corporation, association, or other company responsible for the management of the agency.

Such notice shall be given at the time of the change and shall include the identity of each new person or company described in the previous sentence.

“(3)(A) The agency must not use (on a full-time, temporary, per diem, or other basis), any individual who is not a licensed health care professional to provide items or services described in section 1861(m) on or after October 1, 1989, unless the individual—

“(i) as a result of completing a training program that meets minimum standards established by the Secretary under subparagraph (D), is competent to provide such items or services, or

“(ii)(I) is enrolled in, and making timely progress in completing, such a training program, the completion of which reasonably assures that the individual is competent to provide such items or services, and (II) with respect to providing specific items or services, is competent to provide those items or services.

“(B) The agency must provide such regular performance review and regular in-service education as assures that individuals used to provide items and services described in section 1861(m) are competent to provide those items and services.

“(C) For purposes of subparagraph (A), an individual is not considered to have completed a training program described in subparagraph (A)(i) if, since the individual's most recent completion of such a program, there has been a continuous period of 24 consecutive months during none of which the individual was used to provide items and services described in section 1861(m) for compensation.

“(D)(i) The Secretary shall establish minimum standards for training programs described in subparagraph (A) by not later than July 1, 1988.

“(ii) Such standards shall include the content of the curriculum, minimum hours of training, qualification of instructors, and procedures for determination of competency.

“(iii) Such standards may permit recognition of programs offered by or in home health agencies, as well as other organizations (including employee organizations), and of programs in effect on the date of the enactment of this section; except that they may not provide for the recognition and approval of a program offered by or in a home health agency which has been determined to be out of compliance with the requirements specified in or pursuant to section 1861(o) or subsection (a) within the previous 2 years.

“(iv) Such standards shall permit a determination that an individual who has completed (before January 1, 1989) a training program shall be deemed to have completed a program approved by the Secretary if the Secretary determines that, at the time the program was offered, the program met the standards established under this subparagraph.

“(4) The agency includes an individual's plan of care required under section 1861(m) as part of the clinical records described in section 1861(o)(3).

“(5) The agency operates and provides services in compliance with all applicable Federal, State, and local laws and regulations (including the requirements of section 1124) and with all accepted professional standards and principles which apply to professionals providing items and services in such an agency.

“(b) It is the duty and responsibility of the Secretary to assure that the conditions of participation and requirements specified in or pursuant to section 1861(o) and subsection (a) of this section and the enforcement of such conditions and requirements are adequate to protect the health and safety of individuals under the care of a home health agency and to promote the effective and efficient operation of the program.”.

(c) Effective Date.—Except as otherwise provided, the amendments made by subsections (a) and (b) shall apply to home health agencies as of the first day of the 18th calendar month that begins after the date of the enactment of this Act.

SEC. 4034. STANDARD AND EXTENDED SURVEY.

(a) In General.—Section 1891 (as added by section 4033) is amended by adding at the end thereof the following new subsections:

“(c)(1) Any agreement entered into or renewed by the Secretary pursuant to section 1864 relating to home health agencies shall provide that the appropriate State or local agency shall conduct an annual standard survey of each home health agency. Any individual who notifies (or causes to be notified) a home health agency of the time or date on which such a survey is scheduled to be conducted is subject to a civil money penalty of not to exceed $2,000. The Secretary shall provide for imposition of civil money penalties under this clause in a manner similar to that for the imposition of civil money penalties under section 1128A. The Secretary shall review each State's or local agency's procedures for scheduling and conduct of annual standard surveys to assure that the State or agency has taken all reasonable steps to avoid giving notice of such a survey through the scheduling procedures and the conduct of the surveys themselves.

“(2)(A) Except as provided in subparagraph (B), the standard survey shall be conducted without prior notice with respect to each home health agency not later than 15 months after the date of the previous standard survey conducted under this paragraph with respect to that agency. The Statewide average interval between standard surveys of any home health agency shall not exceed 12 months.

“(B) If not otherwise conducted under subparagraph (A), a standard survey (or an abbreviated standard survey) of an agency—

“(i) may be conducted within 2 months of any change of ownership, administration, or management of the agency, and

“(ii) shall be conducted within 2 months of when a significant number of complaints have been reported with respect to the agency to the Secretary, the State, the entity responsible for the licensing of the agency, the State or local agency responsible for maintaining a toll-free hotline and investigative unit (under section 1864(a)), or any other appropriate Federal, State, or local agency.

“(C) A standard survey conducted under this paragraph with respect to a home health agency—

“(i) shall include, for a case-mix stratified sample of individuals furnished items or services by the agency—

“(I) visits to the homes of such individuals, but only with the consent of such individuals, for the purpose of evaluating (in accordance with a standardized reproducible assessment instrument (or instruments) approved by the Secretary under subsection (d)) the extent to which the quality and scope of items and services furnished by the agency attained and maintained the highest possible functional capacity of each such individual as reflected in such individual's written plan of care required under section 1861(m) and clinical records required under section 1861(o)(3); and

“(II) a survey of the quality of care and services furnished by the agency as measured by indicators of medical, nursing, and rehabilitative care;

“(ii) shall be based upon a protocol that is developed, tested, and validated by the Secretary not later than October 1, 1989; and

“(iii) shall be conducted by an individual—

“(I) who meets minimum qualifications established by the Secretary not later than July 1, 1989, and

“(II) who is not serving (or has not served within the previous 2 years) as a member of the staff or as a consultant to the home health agency surveyed with respect to such agency's compliance with any condition of participation specified in or pursuant to section 1861(o) or subsection (a) of this section.

“(D) Each home health agency that is found, under a standard survey, to have provided poor substandard care shall be subject to an extended survey to identify policies and procedures which produced such care and to determine whether the agency has complied with the conditions of participation specified in or pursuant to section 1861(o) and subsection (a) of this section. The extended survey shall be conducted immediately after the standard survey (or, if not practical, not later than 2 weeks after the date of completion of the standard survey). Any other agency may, at the Secretary's or State's discretion, be subject to such an extended survey or partial extended survey.

“(E) Nothing in this paragraph shall be construed as requiring an extended (or partial extended) survey as a prerequisite to imposing a sanction against an agency under subsection (e) on the basis of the findings of a standard survey.

“(d)(1) Not later than April 1, 1989, the Secretary shall designate an assessment instrument (or instruments) for use by an agency conducting surveys pursuant to subsection (c).

"(2)(A) Not later than January 1, 1991, the Secretary shall—

"(i) evaluate the assessment process,

"(ii) report to Congress on the results of such evaluation, and

"(iii) based on such evaluation, make such modifications in the assessment process as the Secretary determines are appropriate.

"(B) The Secretary shall periodically update the evaluation conducted under subparagraph (A), report the results of such update to Congress, and, based on such update, make such modifications in the assessment process as the Secretary determines are appropriate.

"(3) The Secretary shall provide for the training of State and Federal surveyors in the use of any assessment instrument (or instruments) designated under paragraph (1).".

(b) Effective Date.—Except as otherwise specifically provided in section 1891(d) of the Social Security Act (as added by subsection (a)), the amendment made by subsection (a) shall become effective on the first day of the 18th calendar month to begin after the date of the enactment of this Act.

SEC. 4035. ENFORCEMENT.

Section 1891 (as added by section 4033 and amended by section 4034) is further amended by adding at the end thereof the following new subsections:

"(e)(1) If the Secretary determines on the basis of a standard, extended, or partial extended survey or otherwise, that a home health agency that is certified for participation under this title is no longer in compliance with the requirements specified in or pursuant to section 1861(o) or subsection (a) and determines that the deficiencies involved immediately jeopardize the health and safety of the individuals to whom the agency furnishes items and services, the Secretary shall take immediate action to remove the jeopardy and correct the deficiencies through the remedy specified in subsection (f)(2)(A)(iii) or terminate the certification of the agency, and may provide, in addition, for 1 or more of the other remedies described in subsection (f)(2)(A).

"(2) If the Secretary determines on the basis of a standard, extended, or partial extended survey or otherwise, that a home health agency that is certified for participation under this title is no longer in compliance with the requirements specified in or pursuant to section 1861(o) or subsection (a) and determines that the deficiencies involved do not immediately jeopardize the health and safety of the individuals to whom the agency furnishes items and services, the Secretary may (for a period not to exceed 6 months) impose intermediate sanctions developed pursuant to subsection (f), in lieu of terminating the certification of the agency. If, after such a period of intermediate sanctions, the agency is still no longer in compliance with the requirements specified in or pursuant to section 1861(o) or subsection (a), the Secretary shall terminate the certification of the agency.

"(3) If the Secretary determines that a home health agency that is certified for participation under this title is in compliance with the requirements specified in or pursuant to section 1861(o) or subsection (a) but, as of a previous period, did not meet such requirements, the Secretary may provide for a civil money penalty under subsection (f)(2)(A)(i) for the days in which it finds that the agency was not in compliance with such requirements.

"(4) The Secretary may continue payments under this title with respect to a home health agency not in compliance with the requirements specified in or pursuant to section 1861(o) or subsection (a) over a period of not longer than 6 months, if—

"(A) the State or local survey agency finds that it is more appropriate to take alternative action to assure compliance of the agency with the requirements than to terminate the certification of the agency,

"(B) the agency has submitted a plan and timetable for corrective action to the Secretary for approval and the Secretary approves the plan of corrective action, and

"(C) the agency agrees to repay to the Federal Government payments received under this subparagraph if the corrective action is not taken in accordance with the approved plan and timetable.

The Secretary shall establish guidelines for approval of corrective actions requested by home health agencies under this subparagraph.

"(f)(1) The Secretary shall develop and implement, by not later than April 1, 1989—

"(A) a range of intermediate sanctions to apply to home health agencies under the conditions described in subsection (e), and

"(B) appropriate procedures for appealing determinations relating to the imposition of such sanctions.

"(2)(A) The intermediate sanctions developed under paragraph (1) shall include—

"(i) civil money penalties (with interest) for each day of noncompliance,

"(ii) suspension of all or part of the payments to which a home health agency would otherwise be entitled under this title with respect to items and services furnished by a home health agency on or after the date on which the Secretary determines that intermediate sanctions should be imposed pursuant to subsection (e)(2), and

"(iii) the appointment of temporary management to oversee the operation of the home health agency and to protect and assure the health and safety of the individuals under the care of the agency while improvements are made in order to bring the agency into compliance with all the requirements specified in or pursuant to section 1861(o) or subsection (a).

The temporary management under clause (iii) shall not be terminated until the Secretary has determined that the agency has the management capability to ensure continued compliance with all the requirements referred to in that clause.

"(B) The sanctions specified in subparagraph (A) are in addition to sanctions otherwise available under State or Federal law and shall not be construed as limiting other remedies, including any remedy available to an individual at common law.

"(C) A finding to suspend payment under subparagraph (A)(ii) shall terminate when the Secretary finds that the home health agency is in substantial compliance with all the requirements specified in or pursuant to section 1861(o) and subsection (a).

"(3) The Secretary shall develop and implement, by not later than April 1, 1989, specific procedures with respect to the conditions under which each of the intermediate sanctions developed under paragraph (1) is to be applied, including the amount of any fines and the severity of each of these sanctions. Such procedures shall be designed so as to minimize the time between identification of deficiencies and imposition of these sanctions and shall provide for the imposition of incrementally more severe fines for repeated or uncorrected deficiencies.".

(b) Effective Date.—Except as otherwise specifically provided in subsections (e) and (f) of section 1891 of the Social Security Act (as added by subsection (a)), the amendment made by subsection (a) shall become effective on the first day of the 18th calendar month to begin after the date of the enactment of this Act.

SEC. 4036. PUBLICATION OF DIRECTORY OF HOME HEALTH AGENCIES.

Section 1864 (42 U.S.C. 1395aa) is amended by adding at the end the following new subsection:

"(d)(1) The Secretary shall publish annually a directory containing the name, address, and telephone number of each home health agency that is certified to participate in the program established under this title. The directory shall provide information regarding all surveys and certifications made with respect to each agency, including information on patient care and the imposition of sanctions (if any) made under this title. The directory shall be organized by geographic area and in such a manner as to be most useful to individuals eligible for benefits under this title.

"(2)(A) The Secretary shall make the directory available to the public without charge at each district and branch office of the Social Security Administration and through area agencies on aging designated pursuant to section 305(a) of the Older Americans Act of 1965.

"(B) The Secretary shall promptly notify individuals eligible for benefits under this title of the availability of any directory newly published pursuant to this subsection.".

SEC. 4037. MAINTENANCE OF TOLL-FREE HOTLINE AND INVESTIGATIVE UNIT.

(a) In General.—Section 1864(a) (42 U.S.C. 1395aa(a)) is amended by adding at the end the following: "Any agreement under this subsection shall provide for the appropriate State or local agency to maintain a toll-free hotline to receive complaints (and to answer questions) with respect to home health agencies in the State or locality, and to maintain a unit for investigating such complaints that possesses enforcement authority and has access to survey reports required under section 1891(c).".

(b) Application.—The amendment made by subsection (a) shall apply to agreements entered into or renewed on or after the date of the enactment of this Act.

SEC. 4038. STUDY OF ADJUSTMENTS TO HOME HEALTH AGENCY COST LIMITS.

The Secretary of Health and Human Services shall study and report to the Congress, not later than December 31, 1988, on—

(1) whether the separate schedules of cost limits currently applied to home health agencies located in urban and rural areas accurately reflect differences in the costs of urban and rural home health agencies, and

(2) the appropriateness of modifying such limits to take into account the proportion of agency patients who are from urban and rural areas.

SEC. 4039. DATA USED TO DETERMINE HOME HEALTH AGENCY COST LIMITS.

(a) In General.—Section 1861(v)(1)(L) (42 U.S.C. 1395x(v)(1)(L)) is amended by adding at the end the following new clause:

"(iii) In establishing limits under this subparagraph, the Secretary shall—

"(I) utilize a wage index that is based on data obtained from home health agencies, and

"(II) base such limits on the most recent data available, which data may be for cost reporting periods beginning no earlier than July 1, 1985.".

(b) Effective Date.—The amendment made by subsection (a) shall apply to cost reporting periods beginning on or after July 1, 1988.

SEC. 4040. HOME HEALTH PROSPECTIVE PAYMENT DEMONSTRATION PROJECT.

(a) In General.—The Secretary of Health and Human Services shall provide for a demonstration project to develop and test alternative methods of paying home health agencies on a prospective basis for services furnished under the medicare and medicaid programs. The project shall be designed in a manner to enable the Secretary to evaluate the effects of various methods of prospective payment (including payments on a per-visit, per-case, and per-episode basis) on program expenditures, access to, and quality of, home health care, and home health agency operations. The Secretary shall assure that services are first furnished under the project not later than July 1, 1988, and, for this purpose, the Secretary may reinstate a previously awarded contract, or award a sole source contract, to carry out the project.

(b) Funding.—The provisions of subsection (a)(2) and the first sentence of subsection (b) of section 402 of the Social Security Amendments of 1967 shall apply to the demonstration project under subsection (a) of this section as they apply to experiments under subsection (a)(1) of that section.

(c) Report.—The Secretary shall submit to Congress, not later than one year after the date of the enactment of this Act, an interim report on the demonstration project and, not later than 4 years after the date of the enactment of this Act, a final report on the results of the project.

PART 4—PEER REVIEW ORGANIZATIONS

SEC. 4051. PEER REVIEW ON-SITE QUARTERLY CONSULTATION WITH RURAL HOSPITALS.

(a) In General.—Section 1154(a) (42 U.S.C. 1320c-3(a)) is amended by adding at the end the following new paragraph:

"(15) With respect to each hospital which is located in a rural area and the services of which are reviewed by the organization, the organization shall provide for a physician (or physicians), who is responsible for review of cases on behalf of the organization for services in the hospital, to visit the hospital, not less often than quarterly, and meet with the medical and administrative staff of the hospital respecting the organization's review of the hospital's services for which payment may be made under title XVIII.".

(b) Effective Date.—The amendment made by subsection (a) shall apply to contracts under part B of title XI of the Social Security Act as of January 1, 1988.

SEC. 4052. PEER REVIEW EMPHASIS ON EDUCATIONAL ACTIVITIES.

(a) In General.—Section 1153(c) (42 U.S.C. 1320c-2(c)) is amended by adding after and below paragraph (8) the following: "In evaluating the performance of utilization and quality control peer review organizations under contracts under this part, the Secretary shall place emphasis on the performance of such organizations in educating providers and practitioners (particularly those in rural areas) concerning the review process and criteria being applied by the organization.".

(b) Effective Date.—The amendment made by subsection (a) shall apply to contracts under part B of title XI of the Social Security Act as of January 1, 1988.

SEC. 4053. DIRECT DISCUSSION OF PAYMENT DENIALS WITH PEER REVIEW ORGANIZATIONS.

(a) In General.—Section 1154(a)(2) (42 U.S.C. 1320c-3(a)(2)) is amended by inserting after the first sentence the following: "The organization's determination that payment should not be made shall not become final until 30 days after the date the organization has provided the physician or provider involved with reasonable notice of the proposed determination (including a specification of the criteria under which the determination is proposed to be made). The organization shall provide the physician or provider involved with a reasonable and convenient opportunity during such 30-day period to discuss the proposed determination.".

(b) Effective Date.—The amendment made by subsection (a) shall apply to determinations made on or after the first day of the first month that begins more than 30 days after the date of the enactment of this Act.

SEC. 4054. STUDY OF EFFECTIVENESS OF SENDING DENIAL NOTICES TO BENEFICIARIES.

(a) In General.—The Secretary of Health and Human Services shall conduct a study of the educational effectiveness of utilization and quality control peer review organizations providing medicare beneficiaries with notice in the case of services for which payment, under title XVIII of the Social Security Act, will be denied by such an organization by reason of paragraph (1) or (9) of section 1862(a) of such Act, but in which such beneficiaries are not liable for payment by reason of section 1879 of such Act.

(b) Report.—The Secretary shall report to the Congress on the results of the study not later than 2 years after the date of the enactment of this Act.

SEC. 4055. PREEXCLUSION HEARINGS.

(a) In General.—Section 1156(b) (42 U.S.C. 1320c-5(b)) is amended by adding at the end the following new paragraph:

"(5) Before the Secretary may effect an exclusion under paragraph (2), the provider or practitioner adversely affected by the determination is entitled to a hearing before an administrative law judge (described in section 205(b)) respecting whether the provider or practitioner should be able to continue furnishing services to individuals entitled to benefits under this Act, pending completion of the administrative review procedure under paragraph (4). If the judge does not determine, by a preponderance of the evidence, that the provider or practitioner will pose a serious risk to such individuals if permitted to continue furnishing such services, the Secretary shall not effect the exclusion under paragraph (2) until the provider or practitioner has been provided reasonable notice and opportunity for an administrative hearing thereon under paragraph (4).".

(b) Effective Date.—The amendment made by subsection (a) shall apply to determinations made by the Secretary of Health and Human Services under section 1156(b) of the Social Security Act on or after the date of the enactment of this Act.

(c) Transition for Current Cases.—In the case of a practitioner or person—

(1) for whom a notice of determination under section 1156(b) of the Social Security Act has been provided within 365 days before the date of the enactment of this Act,

(2) who has not exhausted the administrative remedies available under section 1156(b)(4) of such Act for review of the determination, and

(3) who requests, within 90 days after the date of the enactment of this Act, a hearing established under this subsection,

the Secretary of Health and Human Services shall provide for a hearing described in section 1156(b)(5) of the Social Security Act (as amended by subsection (a) of this section).

(d) Redeterminations in Certain Cases.—If, in hearing under subsection (c), the judge does not determine, by a preponderance of the evidence, that the provider or practitioner will pose a serious risk to individuals entitled to benefits under title XVIII of the Social Security Act if permitted to continue or resume furnishing such services, the Secretary shall not effect the exclusion (or shall suspend the exclusion, if previously effected) under paragraph (2) of section 1156(b) of such Act until the provider or practitioner has been provided an administrative hearing thereon under paragraph (4) of such section, notwithstanding any failure by the provider or practitioner to request the hearing on a timely basis.

PART 5—MISCELLANEOUS PROVISIONS

SEC. 4071. PROVIDING COMMUNITY NURSING AND AMBULATORY CARE ON A PREPAID, CAPITATED BASIS TO MEDICARE BENEFICIARIES.

(a) In General.—Title XVIII is amended by inserting after section 1876 the following new section:

"PROVISION OF COMMUNITY NURSING AND AMBULATORY CARE ON A PREPAID, CAPITATED BASIS

"Sec. 1876A. (a) Eligibility of Medicare Beneficiaries to Enroll with Eligible Organizations.—Subject to the provisions incorporated by subsection (c)(3), every individual entitled to benefits under part A and enrolled under part B (other than an individual medically determined to have end-stage renal disease or an individual enrolled with an eligible organization under section 1876 or with an organization under section 1833(a)(1)(A)) shall be eligible to enroll under this section with any eligible organization with which the Secretary has entered into a contract under this section and which serves the geographic area in which the individual resides.

"(b) Definitions of Community Nursing and Ambulatory Care and Eligible Organization.—

"(1) Community nursing and ambulatory care defined.—In this section, the term 'community nursing and ambulatory care' means the following services furnished to an individual which are, except as provided in subparagraphs (F), (G), and (H) provided on a visiting basis in a place of residence used as such individual's home:

"(A) Part-time or intermittent nursing care furnished by or under the supervision of registered professional nurses on a visiting basis in a place of residence used as an individual's home.

"(B) Physical, occupational, or speech therapy.

"(C) Social and related services supportive of a plan of ambulatory care.

"(D) Part-time or intermittent services of a home health aide.

"(E) Medical supplies (other than drugs and biologicals) and durable medical equipment while under a plan of care.

"(F) Medical and other health services described in paragraphs (2)(H)(ii) and (5) through (9) of section 1861(s).

"(G) Rural health clinic services described in section 1861(aa)(1)(C).

"(H) Certain other related services listed in section 1915(c)(4)(B) to the extent the Secretary finds such services are appropriate to prevent the need for institutionalization of a patient.

"(2) Eligible organization defined.—For purposes of this section, the term 'eligible organization' means a public or private entity, organized under the laws of any State, which meets the following requirements:

"(A) The entity is primarily engaged in the direct provision of community nursing and ambulatory care.

"(B) The entity provides directly, or through arrangements with other qualified personnel, community nursing and ambulatory care.

"(C) The entity provides that all community nursing and ambulatory care is furnished by or under the supervision of a registered nurse and that all such care is furnished by qualified staff.

"(D) The entity has policies governing the furnishing of community nursing and ambulatory care that are developed by registered professional nurses.

"(E) The entity maintains clinical records on all patients.

"(F) The entity has protocols and procedures to assure, when appropriate, timely referral to or consultation with other health care providers or professionals.

"(G) The entity complies with applicable State and local laws governing the provision of community nursing and ambulatory care to patients.

"(H) The requirements of subparagraphs (B), (D), and (E) of section 1876(b)(2).

"(c) Contracts with Eligible Organizations.—

"(1) In general.—The Secretary may not enter into a contract under this section with an eligible organization unless it meets the requirements of this subsection and subsection (d) with respect to members enrolled under this section.

"(2) Basic service package.—The organization must provide to members enrolled under this section, through providers and other persons that meet the applicable requirements of this title and part A of title XI, community nursing and ambulatory care (as defined in subsection (b)(1)) which is generally available to individuals residing in the geographic area served by the organization, except that the organization may provide such members with such additional health care services as the members may elect, at their option, to have covered.

"(3) Incorporation of enrollment provisions.—Section 1876(c)(3) shall apply to eligible organizations under this section in the same manner as it applies to eligible organizations under section 1876, and, for such purpose, any reference in that section to subsection (a)(1)(A) is deemed a reference to subsection (d)(1)(A) of this section.

"(4) Availability of services.—The organization must make community nursing and ambulatory care (and such other health care services as such individuals have contracted for) available and accessible to each such individual, within the area served by the organization, with reasonable promptness and in a manner which assures continuity.

"(5) Incorporation of grievance procedures.—Section 1876(c)(5) shall apply to organizations under this section in the same manner as it applies to organizations under section 1876.

"(6) Quality assurance.—The organization must have arrangements, established in accordance with regulations of the Secretary, for an ongoing quality assurance program for health care services it provides to such individuals, which program (A) stresses health outcomes and (B) provides review by health care professionals of the process followed in the provision of such health care services.

"(d) Determination of Per Capita Payment Rates.—

"(1) In general.—(A) The Secretary shall annually determine, and shall announce (in a manner intended to provide notice to interested parties) not later than September 7 before the calendar year concerned, a per capita rate of payment for each class of individuals who are enrolled under this section with an eligible organization and who are entitled to benefits under part A and enrolled under part B.

"(B) The Secretary shall define appropriate classes of members, based on age, disability status, and such other factors as the Secretary determines to be appropriate, so as to ensure actuarial equivalence. The Secretary may add to, modify, or substitute for such classes, if such changes will improve the determination of actuarial equivalence.

"(C) The annual per capita rate of payment for each such class shall be equal to 95 percent of the adjusted average per capita cost (as defined in paragraph (3)) for that class.

"(D) In the case of an eligible organization with a contract, the Secretary shall make monthly payments in advance and in accordance with the rate determined under subparagraph (C), except as provided in subsection (e)(3)(B), to the organization for each individual enrolled with the organization under this section.

"(E) The amount of payment under this paragraph may be retroactively adjusted to take into account any difference between the actual number of individuals enrolled in the plan under this section and the number of such individuals estimated to be so enrolled in determining the amount of the advance payment.

"(2) Payments as substitute for other payments.—Payments under a contract to an eligible organization under paragraph (1) shall be instead of the amounts which (in the absence of the contract) would be otherwise payable, pursuant to sections 1814(b) and 1833(a), for services furnished by or through the organization to individuals enrolled with the organization under this section.

"(3) Adjusted average per capita cost (AAPCC) defined.—For purposes of this section, the term 'adjusted average per capita cost' means the average per capita amount that the Secretary estimates in advance (on the basis of actual experience, or retrospective actuarial equivalent based upon an adequate sample and other information and data, in a geographic area served by an eligible organization or in a similar area, with appropriate adjustments to assure actuarial equivalence) would be payable in any contract year for those services covered under parts A and B and types of expenses otherwise reimbursable under parts A and B which are described in subparagraphs (A) through (G) of subsection (b)(1) (including administrative costs incurred by organizations described in sections 1816 and 1842), if the services were to be furnished by other than an eligible organization.

"(4) Payment from medicare trust funds.—The payment to an eligible organization under this section for individuals enrolled under this section with the organization and entitled to benefits under part A and enrolled under part B shall be made from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund in such proportions from each such trust fund as the Secretary deems to be fair and equitable taking into consideration benefits attributable to parts A and B, respectively.

"(5) Exclusive source of payment.—During any period in which an individual is enrolled under this section with an eligible organization having a contract, only the eligible organization (and no other individual or person) shall be entitled to receive payments from the Secretary under this title for community nursing and ambulatory care (as defined in subsection (b)(1)) furnished to the individual.

"(6) Budget neutrality.—The Secretary may not enter into a contract with an organization under subsection (c) unless the Secretary determines that estimated total payments under this title for eligible individuals enrolled under the contract will not exceed, for benefits and administration, the amount that the Secretary reasonably estimates would have been made under this title for such individuals if the Secretary had not entered into such a contract.

"(e) Restriction on Premiums, Deductibles, Copayments, and Coinsurance.—

"(1) In general.—In no case may the portion of an eligible organization's premium rate and the actuarial value of its deductibles, coinsurance, and copayments charged (with respect to community nursing and ambulatory care) to individuals who are enrolled under this section with the organization, exceed the actuarial value of the coinsurance and deductibles that would be applicable on the average to individuals enrolled under this section with the organization (or, if the Secretary finds that adequate data are not available to determine that actuarial value, the actuarial value of the coinsurance and deductibles applicable on the average to individuals in the area, in the State, or in the United States, eligible to enroll under this section with the organization, or other appropriate data) and entitled to benefits under part A and enrolled under part B, if they were not members of an eligible organization.

"(2) Additional benefits.—If the eligible organization provides to its members enrolled under this section services in addition to community nursing and ambulatory care, election of coverage for such additional services shall be optional for such members and such organization shall furnish such members with information on the portion of its premium rate or other charges applicable to such additional services. In no case may the sum of—

"(A) the portion of such organization's premium rate charged, with respect to such additional services, to members enrolled under this section, and

"(B) the actuarial value of its deductibles, coinsurance, and copayments charged, with respect to such services to such members,

exceed the adjusted community rate for such services (as defined in section 1876(e)(3)).

"(3) Additional benefits required.—(A) Subject to subparagraphs (B) and (C), each such contract shall provide that if—

"(i) the adjusted community rate, referred to in paragraph (2), for community nursing and ambulatory care covered under parts A and B (as reduced for the actuarial value of the coinsurance and deductibles under those parts) for members enrolled under this section with the organization,

is less than

"(ii) the average of the per capita rates of payment to be made under subsection (d)(1) at the beginning of an annual contract period for members enrolled under this section with the organization,

the eligible organization shall provide to such members the additional benefits described in section 1876(g)(3) which are selected by the eligible organization and which the Secretary finds are at least equal in value to the difference between that average per capita payment and the adjusted community rate (as so reduced).

"(B) Subparagraph (A) shall not apply with respect to any organization which elects to receive a lesser payment to the extent that there is no longer a difference between the average per capita payment and adjusted community rate (as so reduced).

"(C) An organization (with the approval of the Secretary) may provide that a part of the value of such additional benefits under subparagraph (A) be withheld and reserved by the Secretary as provided in section 1876(g)(5).

"(D) If the Secretary finds that, for purposes of subparagraph (A), there is insufficient enrollment experience to determine an average of the per capita rates of payment to be made under subsection (d)(1) at the beginning of a contract period, the Secretary may determine such an average based on the enrollment experience of other contracts entered into under this section.

"(4) INCORPORATION OF RELATED PROVISIONS.—The provisions of paragraphs (3), (5), and (6) of section 1876(g) shall apply in the same manner to contracts under this section as they apply to risk-sharing contracts under section 1876, and, for this purpose, any reference in such paragraphs to paragraph (2) is deemed a reference to paragraph (3) of this subsection.

"(5) INCORPORATION OF SECONDARY PAYOR PROVISION.—Section 1876(e)(4) shall apply to eligible organizations under this section in the same manner as it applies to eligible organizations under section 1876.

"(f) INCORPORATION OF PROVISIONS RELATING TO OTHER TERMS OF CONTRACT.—Section 1876(i) shall apply to contracts under this section in the same manner as it applies to contracts under section 1876, and, for such purpose, any reference to subsection (e) is deemed a reference to subsection (d) of this section.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to contracts entered into on or after January 1, 1988.

SEC. 4072. REVISION OF PART B HEARINGS.

(a) CLARIFICATION OF OBRA AMENDMENT.—Section 1869(b)(3)(B) (42 U.S.C. 1395ff(b)(3)(B)) is amended is amended by striking "chapter 5" and inserting "section 553".

(b) EXPEDITED ADMINISTRATIVE HEARING WHERE ONLY ISSUES OF LAW.—Section 1869(b) (42 U.S.C. 1395ff(b)) is amended by adding at the end the following new paragraph:

"(5) In an administrative hearing pursuant to paragraph (1), where the moving party alleges that there are no material issues of fact in dispute, the administrative law judge shall make an expedited determination as to whether any such facts are in dispute and, if not, shall determine the case expeditiously.".

(c) TIMELY CARRIER HEARINGS ON PART B APPEALS.—Section 1842(b)(5) (42 U.S.C. 1395u(b)(5)) is amended—

(1) by inserting "(A)" after "(5)", and

(2) by adding at the end the following new subparagraph:

"(B) The Secretary shall establish standards for evaluating carriers' performance of reviews of initial carrier determinations and of fair hearings under paragraph (3)(C), under which a carrier is expected—

"(i) to complete such reviews, within 45 days after the date of a request by an individual enrolled under this part for such a review, in 95 percent of such requests, and

"(ii) to make a final determination, within 120 days after the date of receipt of a request by an individual enrolled under this part for a fair hearing under paragraph (3)(C), in 90 percent of such cases.".

(d) EFFECTIVE DATES.—(1) The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

(2) The amendment made by subsection (b) shall apply to requests for hearings filed after the end of the 60-day period beginning on the date of the enactment of this Act.

(3) The amendments made by subsection (c) shall apply to evaluation of performance of carriers under contracts entered into or renewed on or after January 1, 1988.

SEC. 4073. REQUIREMENTS FOR PUBLICATION OF POLICIES.

(a) PUBLICATION AS REGULATIONS OF SIGNIFICANT POLICIES.—Section 1871(a) (42 U.S.C. 1395hh(a)) is amended—

(1) by inserting "(1)" after "(a)"; and

(2) by adding at the end thereof the following new paragraph:

"(2) No rule, requirement, or other statement of policy (other than a national coverage determination) that has (or may have) a significant effect on the scope of benefits, the payment for services, or the eligibility of individuals, entities, or organizations to furnish or receive services or benefits under this title shall take effect unless it is promulgated by the Secretary by regulation under paragraph (1).".

(b) PUBLICATION OF LIST OF OTHER POLICIES.—Section 1871 (42 U.S.C. 1395hh) is amended by adding at the end thereof the following new subsection:

"(c) The Secretary shall publish in the Federal Register, not less frequently than every 3 months, a list of all manual instructions, interpretative rules, statements of policy, and guidelines of general applicability which—

"(1) are promulgated to carry out this title, but

"(2) are not published pursuant to subsection (a)(1) and have not been previously published in a list under this subsection.".

(c) ADVANCE NOTICE OF CERTAIN OTHER POLICY CHANGES.—Section 1871 (42 U.S.C. 1395hh) is further amended by adding at the end the following new subsection:

"(d) A carrier, fiscal intermediary, or utilization and quality control peer review organization may not provide for a change of a policy which affects a change in (or establishes a standard for) payment under this title (including the establishment of payment screens and utilization and quality control standards), unless it—

"(1) has a process reasonably designed to provide notice of the change to providers, practitioners, and suppliers likely to be affected by the change, and

"(2) provides notice under such a process not later than 30 days before the effective date of the change.".

(d) RURAL IMPACT REGULATORY ANALYSIS.—In the publication of each proposed or final regulation that—

(1) relates to a Federal health care program under the jurisdiction of the Secretary of Health and Human Services, and

(2) can reasonably be expected to affect a substantial number of providers of health care services in rural areas,

the Secretary shall include an analysis of the impact of the regulation on the access of individuals to health care services in rural areas. Such analysis shall include an evaluation of the ability of rural health care providers to comply with any reporting requirements imposed under the regulation.

(e) EFFECTIVE DATES.—

(1) The amendments made by subsection (a) shall not apply to rules, requirements, and policies issued on or before the date of enactment of this Act.

(2)(A) The amendment made by subsection (b) shall not apply to instructions, rules, statements, and guidelines issued before January 1, 1988.

(B) The Secretary shall first publish in the Federal Register the list required under section 1871(c) of the Social Security Act by not later April 1, 1988.

(3) The amendment made by subsection (c) shall apply to policy changes issued on or after January 1, 1988.

(4) Subsection (d) shall apply to regulations published more than 120 days after the date of the enactment of this Act.

SEC. 4074. PROHIBITING SLOW DOWN IN PAYMENTS UNDER PART B.

The Secretary of Health and Human Services may not require or otherwise provide, through regulation, instruction, or otherwise, that carriers under part B of title XVIII of the Social Security Act may delay or otherwise slow down the payment of amounts that are payable under such part in order to achieve any increase in the average period of payment of such amounts.

SEC. 4075. TREATMENT OF EMPLOYEES OF THE PHYSICIAN PAYMENT REVIEW COMMISSION AS CONGRESSIONAL EMPLOYEES FOR CERTAIN PURPOSES.

(a) IN GENERAL.—Section 1845(c) (42 U.S.C. 1395w-1(c)) is amended—

(1) in paragraph (1), by inserting ", except as provided in paragraph (3)" before the colon, and

(2) by adding at the end the following new paragraph:

"(3) For purposes of pay (other than pay of members of the Commission) and employment benefits, rights, and privileges, all personnel of the Commission shall be treated as if they were employees of the United States Senate.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the date of the enactment of this Act.

SEC. 4076. TREATMENT OF PODIATRISTS.

(a) DELETING INSTITUTIONAL RESTRICTION.—Section 1861(r)(3) (42 U.S.C. 1395x(r)(3)) is amended—

(1) by striking "subsection (s) of this section" and inserting "subsections (k), (m), (p)(1), and (s) of this section and sections 1814(a), 1832(a)(2)(F)(ii), and 1835", and

(2) by striking "; and for the purposes" and all that follows through "which he is legally authorized to perform".

(b) CORRECTING REFERENCE TO COUNCIL.—Section 1861(b)(6) (42 U.S.C. 1395x(b)(6)) is amended by striking "Council on Podiatry Education of the American Podiatry Association" and inserting "Council on Podiatric

Medical Education of the American Podiatric Medical Association".

(c) Effective Date.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 4077. IMPLEMENTATION OF PRIMARY PAYER REQUIREMENTS FOR END-STAGE RENAL DISEASE PROGRAM.

(a) In General.—Section 1862(b)(2)(A) (42 U.S.C. 1395y(b)(2)(A)) is amended by striking "(ii)" and all that follows through "under this title" and inserting "(ii) can reasonably be expected to be made under such a plan".

(b) Effective Date.—The amendment made by subsection (a) shall apply with respect to items and services furnished on or after 30 days after the date of the enactment of this Act.

SEC. 4078. LIMITATION OF MINIMUM UTILIZATION RATE REQUIREMENT FOR END-STAGE RENAL DISEASE TRANSPLANTATIONS.

(a) In General.—The last sentence of section 1881(b)(1) (42 U.S.C. 1395rr(b)(1)) is amended by striking "covered procedures and for self-dialysis training programs" and inserting "transplantations".

(b) Effective Date.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

SEC. 4079. DELAY IN EFFECTIVE DATE IN PHYSICIAN INCENTIVE RULES FOR HEALTH MAINTENANCE ORGANIZATIONS.

Section 9313(c)(2)(B) of the Omnibus Budget Reconciliation Act of 1986 is amended by striking "April 1, 1989" and inserting "April 1, 1990".

SEC. 4080. DELAY IN EFFECTIVE DATE FOR REQUIRING HOSPITAL PROTOCOLS FOR ORGAN PROCUREMENT.

Section 9318(b)(2) of the Omnibus Budget Reconciliation Act of 1986, as amended by section 107(c) of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987, is amended by striking "November 21, 1987" and inserting "April 1, 1988".

SEC. 4081. STUDIES OF END-STAGE RENAL DISEASE PROGRAM.

(a) In General.—The Secretary of Health and Human Services shall arrange for a study of the end-stage renal disease program within the medicare program.

(b) Items Included in Study.—Among other items, the study shall address—

(1) access to treatment by both individuals eligible for medicare benefits and those not eligible for such benefits;

(2) the quality of care provided to end-stage renal disease beneficiaries, as measured by clinical indicators, functional status of patients, and patient satisfaction;

(3) the effect of reimbursement on quality of treatment;

(4) major epidemiological and demographic changes in the end-stage renal disease population that may affect access to treatment, the quality of care, or the resource requirements of the program; and

(5) the adequacy of existing data systems to monitor these matters on a continuing basis.

(c) Report.—The Secretary shall submit to Congress, not later than 3 years after the date of the enactment of this Act, a report on the study.

(d) Arrangements for the Study.—The Secretary shall request the National Academy of Sciences, acting through the Institute of Medicine, to submit an application to conduct the study described in this section. If the Academy submits an acceptable application, the Secretary shall enter into an appropriate arrangement with the Academy for the conduct of the study. If the Academy does not submit an acceptable application to conduct the study, the Secretary may request one or more appropriate nonprofit private entities to submit an application to conduct the study and may enter into an appropriate arrangement for the conduct of the study by the entity which submits the best acceptable application.

(e) Elimination of Unneeded Reporting Requirements.—

(1) In general.—Section 1881 (42 U.S.C. 1395rr) is amended—

(A) in subsection (c)(2)(F), by striking "and subsection (g)",

(B) by striking the last sentence of subsection (c)(6),

(C) by striking subsection (g), and

(D) by redesignating subsection (h), as added by section 20 of the Medicare and Medicaid Patient and Program Protection Act of 1987 (Public Law 100-93), as subsection (g).

(2) Effective date.—The amendments made by paragraph (1) shall take effect on the date of the enactment of this Act.

SEC. 4082. STUDY OF PAYMENT FOR CHEMOTHERAPY IN PHYSICIANS' OFFICES.

(a) In General.—The Secretary of Health and Human Services shall study ways of modifying part B of title XVIII of the Social Security Act to permit adequate payment under such part for the costs associated with providing chemotherapy to cancer patients in physicians' offices. The study shall be performed in consultation with physicians and other health care providers who are experts in cancer therapy and with representation of health insurers who have experience in these payment issues.

(b) Report.—The Secretary shall report to Congress on the results of the study by not later than April 1, 1989.

SEC. 4083. DELAY IN EFFECTIVE DATE FOR ESTABLISHING PHYSICIAN IDENTIFIER SYSTEM.

Section 9202(g) of the Consolidated Omnibus Budget Reconciliation Act of 1985 is amended by striking "July 1, 1987" and inserting "October 1, 1988".

SEC. 4084. CLARIFICATION OF PENALTIES FOR IMPROPER LABORATORY BILLINGS.

(a) In General.—Section 1833(h)(5) (42 U.S.C. 1395l(h)(5)) is amended by adding at the end the following new subparagraph:

"(D) If a person knowingly and willfully bills an individual enrolled under this part for charges for a clinical diagnostic laboratory test for which payment may only be made on an assignment-related basis under subparagraph (C), the Secretary may apply sanctions against the person in the same manner as the Secretary may apply sanctions against a physician in accordance with section 1842(j)(2).".

(b) Effective Date.—The amendment made by subsection (a) shall apply to procedures performed on or after the date of the enactment of this Act.

SEC. 4085. CERTIFICATION OF PEDIATRIC HEART TRANSPLANT PROGRAMS.

The Secretary of Health and Human Services, upon the request of a pediatric heart transplant center, shall review whether or not the center meets the standards and criteria for qualification as a heart transplant center for purposes of title XVIII of the Social Security Act, other than the fact that the center has performed a specified number of heart transplants. If the Secretary determines that the center meets such standards and criteria (other than for the number of heart transplants performed), the Secretary shall issue a certification of such fact.

SEC. 4086. TECHNICAL AMENDMENTS.

(a) Section 1833 (42 U.S.C. 1395l) is amended—

(1) in paragraphs (1)(D)(i) and (2)(D)(i) of subsection (a), by striking, "on the basis of an assignment described in section 1842(b)(3)(B)(ii), under the procedure described in section 1870(f)(1)," and inserting "on an assignment-related basis" and "on an assignment-related basis,", respectively;

(2) in subsection (a)(2)(D)(i), by striking "first opinion)" and inserting "first opinion))";

(3) in subsection (a)(1), by striking "and" before "(G)"; and

(4) in subsection (b)(3)(A), by striking "on the basis of an assignment described in section 1842(b)(3)(B)(ii), under the procedure described in section 1870(f)(1)" and inserting "on an assignment-related basis".

(b) Section 1833(h)(1)(C) (42 U.S.C. 1395l(h)(1)(C)) is amended by inserting before the period the following: ", and ending on December 31, 1989. For such tests furnished on or after January 1, 1990, the fee schedule shall be established on a nationwide basis".

(c) Section 1835(a)(2)(C) (42 U.S.C. 1395n(a)(2)(C)) is amended by striking the second comma at the end of clause (i).

(d) Section 1842(b)(3)(C) (42 U.S.C. 1395u(b)(3)(C)) is amended by striking "not more than" and inserting "less than".

(e) Section 1842(h)(5) (42 U.S.C. 1395u(h)(5)) is amended by striking "the" before "participation".

(f) Effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1986, section 1842(j)(1)(C) (42 U.S.C. 1395u(j)(1)(C)) is amended—

(1) in clause (i), by inserting "maximum allowable" after "If the physician's",

(2) in clause (v), by striking "1987" and inserting "1986", and

(3) by adding at the end the following new clause:

"(vii) In the case of a nonparticipating physician who was a participating physician for any period on or after January 1, 1987, the maximum allowable actual charge shall be computed under this subparagraph as if the physician had been a nonparticipating physician for all periods on or after January 1, 1987.".

(g) Paragraph (4) of section 1845(e) (42 U.S.C. 1395w-1(e)) is amended by moving the alignment of each of its provisions (including any clauses therein) 2 ems to the left.

(h) Section 1861(b)(4) (42 U.S.C. 1395x(b)(4)) is amended by striking the comma before "anesthesia" and inserting "and" and by striking "certified" the second place it appears.

(i) The heading of subsection (g) of section 1861 (42 U.S.C. 1395x) is amended to read as follows:

"Outpatient Occupational Therapy Services".

(j) Section 1861(v)(5)(A) (42 U.S.C. 1395x(v)(5)(A)) is amended by striking "section 1861(p)" and "section 1861(g)" and inserting "subsection (p)" and "subsection (g)", respectively.

(k) The heading of subsection (bb) of section 1861 (42 U.S.C. 1395x) is amended to read as follows:

"Services of a Certified Registered Nurse Anesthetist".

(l) The heading of subsection (ee) of section 1861 (42 U.S.C. 1395x) is amended to read as follows:

"Discharge Planning Process".

(m) Section 1862(a)(1)(A) (42 U.S.C. 1395y(a)(1)(A)) is amended by striking "or (D)" and inserting "(D), or (E)".

(n) Section 1862(a)(14) (42 U.S.C. 1395y(a)(14)) is amended by striking "an patient" and inserting "a patient".

(o) Section 1862(b) (42 U.S.C. 1395y(b)) is amended—

(1) by inserting "(and may, in accordance with paragraph (5), collect double damages)" after "bring an action" in the third sentence of paragraph (1), in the second sentence of paragraph (2)(B), and in the second sentence of paragraph (3)(A)(ii);

(2) in paragraph (4)(A)(iii), by striking "this subsection (a)" and inserting "clause (i)"; and

(3) in paragraph (4)(B)(i), by striking "in section 5000(b) of the Internal Revenue Code of 1986" and inserting "under subsection (b) of section 5000 of the Internal Revenue Code of 1986 (without regard to subsection (d) of that section)".

(p) Effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1986, section 1866(g) (42 U.S.C. 1395cc(g)) is amended by striking "for a hospital outpatient service" and all that follows through "subsection (a)(1)(H)" and inserting "inconsistent with an arrangement under subsection (a)(1)(H) or in violation of the requirement for such an arrangement".

(q) Section 1869(a) (42 U.S.C. 1395ff(a)) is amended by inserting "or a claim for benefits with respect to home health services under part B" before "shall".

(r) Section 1869(b)(2) (42 U.S.C. 1395ff(b)(2)) is amended—

(1) in the matter before subparagraph (A), by striking "(1)(C)" and inserting "(1)";

(2) in subparagraph (A)—

(A) by inserting "(or with respect to home health services under part B)" after "part A", and

(B) by inserting "or (1)(D)" after "(1)(C)"; and

(3) in subparagraph (B), by inserting "(other than with respect to home health services)" after "part B".

(s) Section 1875(c)(3)(B) (42 U.S.C. 1395ll(c)(3)(B)) is amended by striking "years 1987" and inserting "year 1987".

(t) Section 1876(i)(6)(B) (42 U.S.C. 1395mm(i)(6)(B)) is amended by striking "subsection (a)" and inserting "subsections (a) and (b)".

(u) Section 1138(a)(1)(B) (42 U.S.C. 1320b-8(a)(1)(B)) is amended by striking "In" and inserting "in".

(v) Effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1986—

(1) section 9335(j)(2) of such Act is amended by inserting before the period at the end the following: "except that, until network administrative organizations are established under section 1881(c)(1)(A) of the Social Security Act (as amended by subsection (d)(1) of this section), the distribution of payments described in the last sentence of section 1881(b)(7) of such Act shall be made based on the distribution of payments under section 1881 of such Act to network administrative organizations for fiscal year 1986"; and

(2) section 9343 of such Act is amended—

(A) amending subparagraph (A) of subsection (e)(2) to read as follows:

"(2)(A) Section 1833 (42 U.S.C. 1395l) is amended—

"(i) in subsection (a)(1)(F), by striking '(i)(3)' and inserting '(i)(4)', and

"(ii) in subsection (b)(3), by striking 'or under subsection (i)(2) or (i)(4)'.";

(B) in subsection (h)(2), effective October 1, 1987, by striking "and (d)" and inserting "(c), and (e)"; and

(C) in subsection (h)(4), by striking "(c)" and inserting "(d)".

Subtitle B—Provisions Relating to Medicaid Program

PART 1—COMBATTING INFANT MORTALITY

SEC. 4101. MEDICAID OPTIONAL COVERAGE FOR ADDITIONAL LOW-INCOME PREGNANT WOMEN AND CHILDREN.

(a) Permitting Income Level up to 185 Percent of Poverty Level.—Section 1902(l) (42 U.S.C. 1396a(l)), inserted by section 9401 of the Omnibus Budget Reconciliation Act of 1986, is amended—

(1) in paragraph (2)—

(A) by striking "(2) For purposes of paragraph (1)" and inserting "(2)(A) For purposes of paragraph (1) with respect to individuals described in subparagraph (A) or (B) of that paragraph",

(B) by striking "100 percent" and inserting "185 percent", and

(C) by adding at the end the following new subparagraph:

"(B) If a State elects, under subsection (a)(10)(A)(ii)(IX), to cover individuals not described in subparagraph (A) or (B) of paragraph (1), for purposes of that paragraph and with respect to individuals not described in such subparagraphs the State shall establish an income level which is a percentage (not more than 100 percent, or, if less, the percentage established under subparagraph (A)) of the income official poverty line described in subparagraph (A)."; and

(2) in paragraph (3)(D), by inserting "appropriate" after "applied is the".

(b) Effective Date.—The amendments made by this section shall apply to medical assistance furnished on or after January 1, 1988.

SEC. 4102. ALLOWING ACCELERATED COVERAGE OF CHILDREN UP TO AGE 5.

(a) In General.—Section 1902(l)(1) (42 U.S.C. 1396a(l)(1)), inserted by section 9401 of the Omnibus Budget Reconciliation Act of 1986, is amended—

(1) by inserting "and" at the end of subparagraph (B), and

(2) by striking subparagraphs (C) through (F) and inserting in lieu thereof the following:

"(C) children born after September 30, 1983, and who have attained one year of age but have not attained 2, 3, 4, or 5 years of age (as selected by the State),".

(b) Conforming Amendments.—(1) Such section 1902(l) is further amended—

(A) in paragraph (3)(C), by striking ", (C), (D), (E), or (F)" and inserting "or (C)", and

(B) in paragraph (4)(B)(ii), by striking ", (D), (E), or (F)".

(2) Section 9401(f)(2) of the Omnibus Budget Reconciliation Act of 1986 is amended by striking "(A)" after "(2)" and by striking subparagraphs (B) through (D).

(c) Effective Date.—The amendments made by this section shall apply to medical assistance furnished on or after January 1, 1988.

SEC. 4103. COVERAGE OF CHILDREN UP TO AGE 8.

(a) Qualified Children.—Section 1905(n)(2) (42 U.S.C. 1396d(n)(2)) is amended by striking "5 years" and inserting "8 years".

(b) Optional Children.—Section 1902(l)(1)(C), as amended by section 4102(a)(2) of this Act, is further amended by striking "or 5 years" and inserting "5, 6, 7, or 8 years".

(c) Effective Date.—Except as provided in subsection (d), the amendments made by this section shall apply to medical assistance furnished on or after October 1, 1988.

(d) Transition.—For purposes of section 1905(n)(2) of the Social Security Act (as amended by subsection (a)) for medical assistance furnished—

(1) during fiscal year 1989, any reference to "8 years" is deemed a reference to "6 years", and

(2) during fiscal year 1990, any reference to "8 years" is deemed a reference to "7 years".

SEC. 4104. DEMONSTRATION PROJECTS TO IMPROVE ACCESS TO NEEDED PHYSICIAN SERVICES BY PREGNANT WOMEN AND CHILDREN.

(a) In General.—The Secretary of Health and Human Services shall provide for demonstration projects by States to reduce infant mortality and early childhood morbidity through improving the access of eligible pregnant women and children under the medicaid program to obstetricians and pediatricians.

(b) Nature of Projects.—Demonstration projects under this section shall incorporate innovative approaches to increasing participation of obstetricians and pediatricians under the medicaid program, by means such as—

(1) improving compensation for such physicians through increasing the payment rates for such physicians, expediting reimbursement, and using innovative payment mechanisms including global fees for maternity and pediatric services (with guaranteed periodic payments);

(2) assisting in securing, or paying for, medical malpractice insurance or otherwise sharing in the risk of liability for medical malpractice;

(3) decreasing unnecessary administrative burdens in submitting claims or securing authorization for treatment;

(4) guaranteeing continuity of coverage, and expediting eligibility determinations, for eligible pregnant women and children served by such physicians; and

(5) covering medical services to meet the needs of high-risk pregnant women and infants.

(c) Supplemental Funding.—With respect to the additional expenditures for medical assistance made under a State plan under title XIX of the Social Security Act to carry out a demonstration project under this section, the Federal medical assistance percentage (otherwise determined under section 1905(b) of such Act) shall be increased by 25 percentage points (but in no case to a percentage greater than 90 percent).

(d) Waiver Authority.—(1) Except as provided under paragraphs (2) and (3), the Secretary is authorized to waive the requirements of title XIX of the Social Security Act to the extent necessary to implement demonstration projects under this section.

(2) Except as permitted under section 1915(b)(1) of the Social Security Act, the Secretary may not waive under paragraph (1) the requirements of sections 1902(a)(23) and 1916 of such Act.

(3) The Secretary may not approve a demonstration project under this section, or a waiver under paragraph (1), that reduces the amount, duration, or scope of medical assistance made available under title XIX of the Social Security Act or that results in a loss of eligibility for individuals otherwise eligible for such assistance.

(e) Timely Action on Applications.—A request to the Secretary by a State for approval of a demonstration project under this section (and any accompanying waiver of a requirement of title XIX of the Social Security Act) shall be deemed granted unless the Secretary, within 90 days after the date of its submission to the Secretary, either denies such request in writing or informs the State in writing with respect to any additional information which is needed in order to make a final determination with respect to the request. After the date the Secretary receives such additional information, the request shall be deemed granted unless the Secretary, within 90 days of such date, denies such request.

(f) Amounts and Use of Funds.—The Secretary may not approve demonstration projects under this section that result in aggregate, additional Federal expenditures under title XIX of the Social Security Act that exceed $50,000,000 in fiscal year 1988. Amounts appropriated and obligated to carry out this section shall be available until expended.

(g) Report.—The Secretary shall report to Congress, not later than March 1, 1991, on the demonstration projects carried out under this section and on how the results of such projects may be used to lower infant mortality through improving the access of indigent pregnant women and qualified children to needed physician services.

SEC. 4105. MISCELLANEOUS PROVISIONS RELATING TO SERVICES FOR PREGNANT WOMEN AND CHILDREN.

(a) Period of Extended Coverage for Pregnant Women.—Section 1902(e)(5) (42 U.S.C. 1396a(e)(5)) is amended by striking "until the end of the 60-day period beginning on the last day of her pregnancy" and inserting "through the end of the month in which the 60-day period (beginning on the last day of her pregnancy) ends".

(b) No Application of AFDC Deeming Methodology.—Section 1902(l)(3)(E) (42 U.S.C. 1396a(l)(3)(E)), inserted by section 9401 of the Omnibus Budget Reconciliation Act of 1986, is amended by inserting after "title IV" the following: "(except to the extent such methodology is inconsistent with clause (D) of subsection (a)(17))".

(c) Maintenance of Effort Date.—Section 1902(l)(4)(A) (42 U.S.C. 1396a(l)(4)(A)), inserted by section 9401 of the Omnibus Budget Reconciliation Act of 1986, is amended by striking "April 17, 1986" and inserting "July 1, 1987".

(d) No AFDC Application Required for Optional Women and Children.—Section 1902(l)(4) (42 U.S.C. 1396a(l)(4)), inserted by section 9401 of the Omnibus Budget Reconciliation Act of 1986, is amended by adding at the end the following new subparagraph:

"(C) A State plan may not provide, in its election of the option of furnishing medical assistance to individuals described in paragraph (1), that such individuals must apply for benefits under part A of title IV as a condition of applying for, or receiving, medical assistance under this title.".

(e) Effective Dates.—(1) The amendments made by subsections (a) and (b) shall be effective as if they had been included in the enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985.

(2) The amendment made by subsection (c) shall apply to elections made on or after the enactment of this Act.

(3) The amendment made by subsection (d) shall apply as if included in the enactment of section 9401 of the Omnibus Budget Reconciliation Act of 1986.

PART 2—ADDRESSING NEEDS OF ELDERLY POOR

Subpart A—Improvements for Nursing Home Residents

SEC. 4111. REQUIREMENTS FOR NURSING FACILITIES.

(a) Application of Single Set of Requirements for Nursing Facilities (Other Than Intermediate Care Facilities for the Mentally Retarded).—Title XIX, as amended by section 5(b) of the Medicare and Medicaid Patient and Program Protection Act of 1987 (Public Law 100-93), is amended by redesignating section 1922 as section 1925 and by inserting after section 1921 the following new section:

"REQUIREMENTS FOR NURSING FACILITIES

"Sec. 1922. (a) Nursing Facility Defined.—In this title, the term 'nursing facility' means an institution (or a distinct part of an institution) which—

"(1) is primarily engaged in providing to residents—

"(A) nursing care and related services for residents who require medical or nursing care,

"(B) rehabilitation services for the rehabilitation of injured, disabled, or sick persons, or

"(C) on a regular basis, health-related care and services to individuals who because of their mental or physical condition require care and services (above the level of room and board) which can be made available to them only through institutional facilities; and

"(2) meets the requirements for a nursing facility described in subsections (b), (c), (d), and (e) of this section.

Such term also includes any facility which is located in a State on an Indian reservation and is certified by the Secretary as meeting the requirements of paragraph (1) and subsections (b), (c), (d), and (e).

"(b) Requirements Relating to Provision of Services.—

"(1) Quality of life.—A nursing facility must care for its residents in such a manner and in such an environment as will promote maintenance or enhancement of the quality of life of each resident.

"(2) Scope of services and activities under plan of care.—A nursing facility must provide services and activities to attain or maintain the highest possible physical and mental health, and psychosocial well-being, of each resident in accordance with a written plan of care which—

"(A) is initially prepared by the attending physician or other licensed health professional with the participation of the resident or the resident's family or legal representative;

"(B) is periodically reviewed and revised by the attending physician or other licensed health professional after each assessment under paragraph (3); and

"(C) describes the medical, nursing, mental health, and psychosocial needs of the resident and how such needs will be met.

"(3) Residents' assessment.—

"(A) Requirement.—A nursing facility must conduct a standardized, reproducible assessment of each resident's functional capacity through the use of an instrument which is specified by the State under subsection (h)(2) and which, upon completion, describes the resident's capability to perform daily life functions.

"(B) Certification.—Each such assessment must be conducted or coordinated (with the appropriate participation of health professionals) by a registered professional nurse who signs and certifies the accuracy of the assessment.

"(C) Frequency.—Such an assessment—

"(i) must be conducted—

"(I) upon admission for each individual admitted on or after October 1, 1990;

"(II) promptly after a significant change in the resident's physical or mental condition; and

"(III) in no case less often than annually; and

"(ii) must be reviewed for accuracy no less frequently than once every 3 months after admission.

Such an assessment must be conducted, by not later than October 1, 1991, for each resident of the facility on that date.

"(4) Provision of services and activities.—

"(A) In general.—To the extent needed to fulfill all plans of care described in paragraph (2), a nursing facility must provide (or arrange for the provision of)—

"(i) nursing services, physicians' services, and specialized rehabilitative services to attain and maintain the highest possible physical and mental health and psychosocial well-being of each resident;

"(ii) medically-related social services to attain and maintain the highest possible physical and mental health and psychosocial well-being of each resident;

"(iii) pharmaceutical services (including procedures that assure the accurate acquiring, receiving, dispensing, and administering of all drugs and biologicals) to meet the needs of each resident;

"(iv) dietician services that assure that the meals meet the daily nutritional and special dietary needs of each resident;

"(v) an on-going program of activities designed to meet the interests and the physical and mental health and psychosocial well-being of each resident; and

"(vi) routine and emergency dental services (to the extent covered under the State plan) to meet the needs of each resident.

The services provided or arranged by the facility must meet professional standards of quality.

"(B) Qualified providers.—Services described in clauses (i), (ii), (iii), (iv), and (vi) of subparagraph (A) must be provided by qualified persons in accordance with each resident's written plan of care.

"(C) Required nursing care.—

"(i) General requirements.—With respect to nursing facility services provided on or after October 1, 1990, (or such later effective date as may be provided under subclause (I) or (II) or subparagraph (E)(i) with respect to intermediate care facilities in certain States), a nursing facility—

"(I) except as provided in subparagraph (D)(i), must provide 24-hour licensed nursing services which are sufficient to meet the nursing needs of its residents, and

"(II) except as provided in subparagraph (D)(ii), must use the services of a registered nurse for at least 8 consecutive hours a day, 7 days a week.

"(ii) Requirement for additional registered nurse services for larger nursing facilities.—With respect to nursing facility services provided on or after October 1, 1992, (or such later effective date as may be provided under subparagraph (E)(i)(III) with respect to intermediate care facilities in certain States) by a nursing facility which has at least 90 beds, except as provided in subparagraph (D)(iii), the nursing facility must use the services of a registered nurse for at least 16 hours per day, 7 days a week.

"(D) FACILITY WAIVERS.—

"(i) WAIVER OF 24-HOUR LICENSED NURSING REQUIREMENT FOR SMALLER INTERMEDIATE CARE FACILITIES.—The Secretary may waive the requirement of subparagraph (C)(i)(I), to the extent it requires a nursing facility to provide licensed nursing services for more than 16 hours a day, for services furnished during the 2-year period beginning on the effective date of the requirement of subparagraph (C)(i), if—

"(I) the facility is an intermediate care facility (as defined in clause (v)) and has less than 90 beds,

"(II) the facility demonstrates to the satisfaction of the Secretary that the facility has been unable, despite diligent efforts (including offering wages at the prevailing rate for licensed nursing personnel in the labor market area in which the facility is located) to employ qualified licensed nursing personnel,

"(III) the Secretary finds that the facility has only residents whose physicians have indicated (through physicians' orders or admission notes) that each such resident does not require licensed nursing services during the period in which such services are not available, and

"(IV) the Secretary finds that, for any such periods in which licensed nursing services are not available, a registered nurse or a physician is obligated to respond immediately to telephone calls from the facility and (if required to provide necessary services at the facility) is able to arrive at the facility within 30 minutes after being called.

"(ii) WAIVER OF REGISTERED NURSE SERVICES OVER WEEKENDS.—The Secretary may waive the requirement of subparagraph (C)(i)(II), to the extent that it requires that a nursing facility engage the services of a registered nurse for more than 5 days a week, if—

"(I) the facility demonstrates to the satisfaction of the Secretary that the facility has been unable, despite diligent efforts (including offering wages at the prevailing rate for registered nurses in the labor market area in which the facility is located) to employ qualified registered nurses, and

"(II) the Secretary finds either that the facility has only residents whose physicians have indicated (through physicians' orders or admission notes) that each such resident does not require the services of a registered nurse or a physician for a 48-hour period, or that the facility has made arrangements for a registered nurse or a physician to spend such time at the facility as may be indicated as necessary by the physician to provide necessary nursing services on days when the regular full-time registered nurse is not on duty.

"(iii) WAIVER OF SECOND SHIFT OF REGISTERED NURSE SERVICES FOR LARGER NURSING FACILITIES IN RURAL AREAS.—The Secretary may waive the requirement of subparagraph (C)(ii), to the extent it requires that a nursing facility engage the services of a registered nurse for more than 8 hours a day, if—

"(I) the facility is located in a rural area (as defined by the Secretary), and

"(II) the facility demonstrates to the satisfaction of the Secretary that the facility has been unable, despite diligent efforts (including offering wages at the prevailing rate for registered nurses in the labor market area in which the facility is located) to employ qualified registered nurses.

"(iv) GENERAL TERMS OF WAIVERS.—The Secretary may waive a requirement under this subparagraph only—

"(I) upon the request of a State on behalf of a facility, and

"(II) for a period of not to exceed 6 months;

except that such a waiver may be renewed, upon the request of a State on behalf of a facility, for additional periods of not to exceed 6 months each.

"(v) INTERMEDIATE CARE FACILITY DEFINED.—As used in this subparagraph and subparagraph (E), the term 'intermediate care facility' means a nursing facility other than a skilled nursing facility (as defined in clause (vi)).

"(vi) SKILLED NURSING FACILITY.—As used in this clause (v) and subparagraph (E), the term 'skilled nursing facility' means a nursing facility that—

"(I) was participating as a skilled nursing facility under the State plan under this title as of June 30, 1987,

"(II) was not participating as of such June 30, 1987, as a skilled nursing facility or intermediate care facility under the State plan under this title but begins participating as a skilled nursing facility under such plan after June 30, 1987, and before October 1, 1989, or

"(III) was not participating as of June 30, 1987, as a skilled nursing facility or intermediate care facility under the State plan under this title but begins participating as a nursing facility under the State plan under this title after September 30, 1989.

"(E) DELAY IN EFFECTIVE DATE FOR INTERMEDIATE CARE FACILITIES IN CERTAIN STATES.—

"(i) IN GENERAL.—The Secretary may provide, upon the request of a State described in clause (ii) made—

"(I) during fiscal year 1990, for a delay until October 1, 1991, in the effective date under subparagraph (C)(i) for staffing requirements for nursing facility services furnished in intermediate care facilities (as defined in subparagraph (D)(v)) in the State,

"(II) during fiscal year 1991, for a further delay until October 1, 1992, in the effective date under subparagraph (C)(i) for staffing requirements for nursing facility services furnished in intermediate care facilities in the State with less than 90 beds, or

"(III) during fiscal year 1992, for a delay until October 1, 1993, in the effective date under subparagraph (C)(ii) for staffing requirements for nursing facility services furnished in intermediate care facilities in the State,

if the Secretary determines that it would be fiscally impracticable for intermediate care facilities in the State to meet the applicable staffing requirements of subparagraph (C) by the effective date otherwise provided.

"(ii) STATES COVERED.—A State is described in this clause only if, as of June 30, 1987, there were more intermediate care facilities (as defined in subparagraph (D)(v)) in the State than skilled nursing facilities (as defined in subparagraph (D)(vi)).

"(iii) DEEMED EXTENDED WAIVER FOR CERTAIN STATES.—In the case of a State that receives a waiver under clause (i)(I) and the budget of which is only adopted on a biennial basis, the Secretary shall be deemed to have approved a waiver with respect to the State under clause (i)(II).

"(5) REQUIRED TRAINING OF NURSE AIDES.—

"(A) IN GENERAL.—A nursing facility must not use (on a full-time, temporary, per diem, or other basis) any individual, who is not a licensed health professional (as defined in subparagraph (E)), as a nurse aide in the facility on or after January 1, 1990, unless the individual—

"(i) as a result of completing a training program which is recognized and approved by the State under subsection (f)(1)(A), is competent to provide such services, or

"(ii)(I) is enrolled in, and making timely progress in completing, such a training program, the completion of which reasonably assures that the individual is competent to provide such services, and (II) with respect to providing specific nursing or nursing-related services, is competent to provide those services.

"(B) IN-SERVICE EDUCATION.—A nursing facility must provide such regular performance review and regular in-service education as assures that individuals used as nurse aides are competent to provide those services.

"(C) RE-TRAINING REQUIRED.—For purposes of subparagraph (A), an individual is not considered to have completed a training program described in subparagraph (A)(i) if, since the individual's most recent completion of such a program, there has been a continuous period of 24 consecutive months during none of which the individual performed nursing or nursing-related services for compensation.

"(D) NURSE AIDE DEFINED.—In this section, the term 'nurse aide' means any individual providing nursing or nursing-related services to residents in a nursing facility, but does not include an individual who is a physician, registered professional nurse, licensed practical nurse, or licensed social worker.

"(E) LICENSED HEALTH PROFESSIONAL DEFINED.—In this paragraph, the term 'licensed health professional' means a physician, physician assistant, nurse practitioner, physical, speech, or occupational therapist, registered professional nurse, licensed practical nurse, or licensed social worker.

"(6) PHYSICIAN SUPERVISION AND CLINICAL RECORDS.—A nursing facility must—

"(A) require that the health care of every resident be provided under the supervision of a physician;

"(B) provide for having a physician available to furnish necessary medical care in case of emergency; and

"(C) maintain clinical records on all residents, which records include the plans of care (described in paragraph (2)) and the residents' assessments (described in paragraph (3)).

"(7) REQUIRED SOCIAL SERVICES.—In the case of a nursing facility with more than 120 beds, the facility must have at least one social worker (with at least a bachelor's degree in social work or similar professional qualifications) employed full-time to provide or assure the provision of social services.

"(c) REQUIREMENTS RELATING TO RESIDENTS' RIGHTS.—

"(1) GENERAL RIGHTS.—

"(A) SPECIFIED RIGHTS.—A nursing facility must protect and promote the rights of each resident, including each of the following rights:

"(i) FREE CHOICE.—The right to choose a personal attending physician, to be fully informed in advance about care and treatment, to be fully informed in advance of any changes in care or treatment that may affect the resident's well-being, and (except with respect to a resident adjudged incompetent) to participate in planning care and treatment or changes in care and treatment.

"(ii) FREE FROM RESTRAINTS.—The right to be free from physical or mental abuse, corporal punishment, or involuntary seclusion and to be free from any physical or chemical restraints imposed for purposes of discipline or convenience. Restraints may only be imposed to ensure the physical safety of the resident or other residents and only upon the written order of a physician that specifies the duration and circumstances under which the restraints are to be used.

"(iii) PRIVACY.—The right to privacy with regard to accommodations, medical treatment, written and telephonic communications, visits, and meetings of family and of resident groups.

"(iv) CONFIDENTIALITY.—The right to confidentiality of personal and clinical records.

"(v) LEAST RESTRICTIVE ENVIRONMENT.—The right to reside and receive services in the least restrictive environment, except where the health or safety of the individual or other residents would be endangered.

"(vi) GRIEVANCES.—The right to voice grievances with respect to treatment or care that is (or fails to be) furnished, without discrimination or reprisal for voicing the grievances.

"(vii) PARTICIPATION IN RESIDENT AND FAMILY GROUPS.—The right of the resident to organize and participate in resident groups in the facility and the right of the resident's family to meet in the facility with the families of other residents in the facility.

Clause (iii) shall not be construed as requiring the provision of a private room.

"(B) NOTICE OF RIGHTS.—A nursing facility must—

"(i) provide to each resident, upon reasonable request, a written statement of the resident's legal rights during the stay at the facility (which statement is updated upon changes in such rights);

"(ii) inform each resident who is entitled to medical assistance under this title—

"(I) at the time of admission to the facility or, if later, at the time the resident becomes eligible for such assistance, of the items and services (including those specified under section 1902(a)(28)(B)) that are included in nursing facility services under the State plan and for which the resident may not be charged (except as permitted in section 1916), and of those other items and services that the facility provides and for which the resident may be charged and the amount of the charges for such items and services; and

"(II) of changes in the items and services described in clause (i) and of changes in the charges imposed for items and services described in that clause;

"(iii) inform each other resident, in writing before or at the time of admission and periodically during the resident's stay, of services available in the facility and of related charges for such services, including any charges for services not covered by the facility's basic per diem charge; and

"(iv) upon admission, provide to each resident and each resident's spouse (if any) the written notice (developed and distributed by the State under subsection (f)(2)) of the resident's and spouse's rights and obligations under this title.

"(C) USE OF PSYCHOTROPIC DRUGS.—Psychotropic drugs may be administered only on the orders of a physician and only as part of a plan (included in the written plan of care described in paragraph (2)) designed to eliminate or modify the symptoms for which the drugs are prescribed and only if, at least annually an independent, external consultant in psychopharmacology reviews the appropriateness of the drug plan of each resident receiving such drugs.

"(D) RIGHTS OF INCOMPETENT RESIDENTS.—In the case of a resident adjudged incompetent under the laws of a State, the rights of the resident under this title shall devolve upon, and, to the extent judged necessary by a court of competent jurisdiction, be exercised by, the person appointed under State law to act on the resident's behalf.

"(2) TRANSFER AND DISCHARGE RIGHTS.—

"(A) IN GENERAL.—A nursing facility must permit each resident to remain in the facility and must not involuntarily transfer or discharge the resident from the facility unless—

"(i) the transfer or discharge is necessary to meet the resident's welfare and the resident's welfare cannot be met in the facility;

"(ii) the transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;

"(iii) the safety of individuals in the facility is endangered;

"(iv) the health of individuals in the facility would otherwise be endangered;

"(v) the resident has failed, after reasonable notice, to pay (or to have paid under this title on the resident's behalf) an allowable charge imposed by the facility for an item or service requested by the resident and provided by the facility and (in the case of a resident who is eligible for medical assistance under this title) for which a charge may be imposed under this title; or

"(vi) the facility ceases to operate.

In the each of the cases described in clauses (i) through (iv), the basis for the transfer or discharge must be documented in the resident's clinical record. In the cases described in clauses (i) and (ii), the documentation must be made by the resident's physician, and in the case described in clause (iv) the documentation must be made by a physician. For purposes of clause (v), in the case of a resident who becomes eligible for assistance under this title after admission to the facility, only charges which may be imposed under this title shall be considered to be allowable.

"(B) PRE-TRANSFER AND PRE-DISCHARGE NOTICE.—

"(i) IN GENERAL.—Before effecting an involuntary transfer or discharge of a resident, a nursing facility must—

"(I) notify the resident (and an immediate family member of the resident or legal representative) of the transfer or discharge and the reasons therefor,

"(II) record the reasons in the resident's clinical record (including any documentation required under subparagraph (A)), and

"(III) include in the notice the items described in clause (iii).

"(ii) TIMING OF NOTICE.—The notice under clause (i)(I) must be made at least 30 days in advance of the resident's transfer or discharge except—

"(I) in a case described in clause (iii) or (iv) of subparagraph (A);

"(II) in a case described in clause (ii) of subparagraph (A), where the resident's health improves sufficiently to allow a more immediate transfer or discharge;

"(III) in a case described in clause (i) of subparagraph (A), where a more immediate transfer or discharge is necessitated by the resident's urgent medical needs; or

"(IV) in a case where a resident has not resided in the facility for 30 days.

In the case of such exceptions, notice must be given as many days before the date of the transfer or discharge as is practicable.

"(iii) ITEMS INCLUDED IN NOTICE.—Each notice under clause (i) must include—

"(I) for transfers or discharges effected on or after October 1, 1989, notice of the resident's right to appeal the transfer or discharge under the State process established under subsection (f)(2);

"(II) the name, mailing address, and telephone number of the State long-term care ombudsman (established under section 307(a)(12) of the Older Americans Act of 1965);

"(III) in the case of residents with developmental disabilities, the mailing address and telephone number of the agency responsible for the protection and advocacy system for developmentally disabled individuals established under part C of the Developmental Disabilities Assistance and Bill of Rights Act; and

"(IV) in the case of mentally ill residents (as defined in subsection (f)(4)(G)(ii)), the mailing address and telephone number of the agency responsible for the protection and advocacy system for mentally ill individuals established under the Protection and Advocacy for Mentally Ill Individuals Act.

"(C) ORIENTATION.—A nursing facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.

"(D) NOTICE ON BED-HOLD POLICY AND READMISSION.—

"(i) NOTICE BEFORE TRANSFER.—Before a resident of a nursing facility is transferred for hospitalization or therapeutic leave, a nursing facility must provide written information to the resident and an immediate family member or legal representative concerning—

"(I) the provisions of the State plan under this title regarding the period (if any) during which the resident will be permitted under the State plan to return and resume residence in the facility, and

"(II) the policies of the facility regarding such a period, which policies must be consistent with clause (iii).

"(ii) NOTICE UPON TRANSFER.—At the time of transfer of a resident to a hospital or for therapeutic leave, a nursing facility must provide written notice to the resident and an immediate family member or legal representative of the duration of any period described in clause (i).

"(iii) PERMITTING RESIDENT TO RETURN.—A nursing facility must establish and follow a written policy under which a resident—

"(I) who is eligible for medical assistance for nursing facility services under a State plan,

"(II) who is transferred from the facility for hospitalization or therapeutic leave, and

"(III) whose hospitalization or therapeutic leave exceeds a period paid for under the State plan for the holding of a bed in the facility for the resident,

will be permitted to be readmitted to the facility immediately upon the first availability of a bed in a semiprivate room in the facility if, at the time of readmission, the resident requires the services provided by the facility.

"(3) ACCESS AND VISITATION RIGHTS.—A nursing facility must—

"(A) permit immediate access to any resident by any representative of the Secretary, by any representative of the State, by an ombudsman or agency described in subclause (II), (III), or (IV) of paragraph (2)(B)(iii), or by the resident's individual physician;

"(B) permit immediate access to a resident, subject to the resident's right to deny or withdraw consent at any time, by the members of the immediate family of the resident;

"(C) permit immediate access to a resident (subject only to reasonable restrictions) by relatives (other than immediate family members) of the resident and others who are visiting with the consent of the resident;

"(D) permit reasonable access to a resident by any entity or individual that provides health, social, legal, or other services to the resident and

"(E) permit representatives of the State ombudsman (described in paragraph (2)(B)(iii)(II)), with the permission of the resident (or the resident's legal representative) and consistent with State law, to examine a resident's clinical records.

"(4) EQUAL ACCESS TO QUALITY CARE.—

"(A) IN GENERAL.—A nursing facility must establish and maintain identical policies and practices regarding transfer, discharge, and the provision of services required under the State plan for all individuals regardless of source of payment.

"(B) CONSTRUCTION.—

"(i) NOTHING PROHIBITING ANY CHARGES FOR NON-MEDICAID PATIENTS.—Subparagraph (A) shall not be construed as prohibiting a nursing facility from charging any amount for services furnished, consistent with the notice in paragraph (1)(B) describing such charges.

"(ii) NO ADDITIONAL SERVICES REQUIRED.—Subparagraph (A) shall not be construed as requiring a State to offer additional services on behalf of a resident than are otherwise provided under the State plan.

"(5) ADMISSIONS POLICY.—

"(A) ADMISSIONS.—With respect to admissions practices, a nursing facility must—

"(i)(I) not require individuals applying to reside or residing in the facility to waive their rights to benefits under this title or title XVIII, (II) not require oral or written assurance that such individuals are not eligible for, or will not apply for, benefits under this title or title XVIII, and (III) prominently display in the facility written information, and provide to such individuals oral and written information, about how to apply for and use such benefits and how to receive refunds for previous payments covered by such benefits;

"(ii) not require a third party guarantee of payment to the facility as a condition of admission (or expedited admission) to, or continued stay in, the facility; and

"(iii) in the case of an individual who is entitled to medical assistance for nursing facility services, not charge, solicit, accept, or receive, in addition to any amount otherwise required to be paid under the State plan under this title, any gift, money, donation, or other consideration as a precondition of admitting (or expediting the admission of) the individual to the facility or as a requirement for the individual's continued stay in the facility.

"(B) CONSTRUCTION.—

"(i) NO PREEMPTION OF STRICTER STANDARDS.—Subparagraph (A) shall not be construed as preventing States or political subdivisions therein from prohibiting, under State or local law, the discrimination against individuals who are entitled to medical assistance under the State plan with respect to admissions practices of nursing facilities.

"(ii) CONTRACTS WITH GUARDIANS.—Subparagraph (A)(ii) shall not be construed as preventing a facility from requiring an individual, who has legal access to a resident's income or resources available to pay for care in the facility, to sign a contract (without incurring personal financial liability) to provide payment from the resident's income or resources for such care.

"(iii) CHARGES FOR ADDITIONAL SERVICES REQUESTED.—Subparagraph (A)(iii) shall not be construed as preventing a facility from charging a resident, eligible for medical assistance under the State plan, for items or services the resident has requested and received and that are not specified in the State plan as included in the term 'nursing facility services'.

"(iv) BONA FIDE CONTRIBUTIONS.—Subparagraph (A)(iii) shall not be construed as prohibiting a nursing facility from soliciting, accepting, or receiving a charitable, religious, or philanthropic contribution from an organization or from a person unrelated to the resident (or potential resident), but only to the extent that such contribution is not a condition of admission, expediting admission, or continued stay in the facility.

"(6) PROTECTION OF RESIDENT FUNDS.—

"(A) IN GENERAL.—A nursing facility must, upon written authorization by a resident, accept responsibility for holding, safeguarding, and accounting for the resident's personal funds, and providing each resident access to such funds and records of such funds.

"(B) ACCOUNTING FOR FUNDS.—Where a resident has given an authorization under subparagraph (A), the nursing facility must—

"(i) establish and maintain a system that—

"(I) assures a full and complete accounting of each such resident's personal funds, and

"(II) establishes a separate account for such funds in order to preclude any commingling of such funds with institutional funds or with the funds of any other person other than another such resident; and

"(III) notifies each resident receiving medical assistance under the State plan when the amount in the resident's account reaches $200 less than the dollar amount determined under section 1611(a)(3)(B) and the fact that if the amount in the account (in addition to the value of the resident's other nonexempt resources) reaches the amount determined under such section the resident may lose eligibility for such medical assistance; and

"(ii) upon such resident's death, promptly convey such resident's personal funds (and a final accounting of such funds) to the individual administering the resident's estate.

"(d) REQUIREMENTS RELATING TO PREADMISSION SCREENING FOR MENTALLY ILL AND MENTALLY RETARDED INDIVIDUALS.—A nursing facility must not admit, on or after January 1, 1989, any new resident who—

"(1) is mentally ill (as defined in subsection (f)(4)(G)(i)) unless the State mental health authority has determined prior to admission that, because of the physical and mental condition of the individual, the individual requires the level of services provided by a nursing facility, and, if the individual requires such level of services, whether the individual requires active treatment for mental illness, or

"(2) is mentally retarded (as defined in subsection (f)(4)(G)(ii)) unless the State mental retardation or developmental disability authority has determined prior to admission that, because of the physical and mental condition of the individual, the individual requires the level of services provided by a nursing facility, and, if the individual requires such level of services, whether the individual requires active treatment for mental retardation.

The facility must make a copy of any such determination part of the resident's clinical records.

"(e) REQUIREMENTS RELATING TO ADMINISTRATION AND OTHER MATTERS.—

"(1) ADMINISTRATION.—

"(A) IN GENERAL.—A nursing facility must be administered in a manner that enables it to use its resources effectively and efficiently to attain and maintain the highest possible physical and mental health and psychosocial well-being of each resident (consistent with any criteria the Secretary establishes under subsection (g)(4)).

"(B) REQUIRED NOTICES.—If a change occurs in—

"(i) the persons with an ownership or control interest (as defined in section 1124(a)(3)) in the facility,

"(ii) the persons who are officers, directors, or agents of the facility,

"(iii) the corporation, association, or other company responsible for the management of the facility, or

"(iv) the individual who is the administrator or director of nursing of the facility,

the nursing facility must provide notice to the State agency responsible for the licensing of the facility, at the time of the change, of the change and of the identity of each new person, company, or individual described in the respective clause.

"(2) LICENSING AND LIFE SAFETY CODE.—

"(A) LICENSING.—A nursing facility must be licensed under applicable State and local law.

"(B) LIFE SAFETY CODE.—A nursing facility must meet such provisions of such edition (as specified by the Secretary in regulation) of the Life Safety Code of the National Fire Protection Association as are applicable to nursing homes; except that—

"(i) the Secretary may waive, for such periods as he deems appropriate, specific provisions of such Code which if rigidly applied would result in unreasonable hardship upon a facility, but only if such waiver would not adversely affect the health and safety of residents or personnel, and

"(ii) the provisions of such Code shall not apply in any State if the Secretary finds that in such State there is in effect a fire and safety code, imposed by State law, which adequately protects residents of and personnel in nursing facilities.

"(3) SANITARY AND INFECTION CONTROL AND PHYSICAL ENVIRONMENT.—A nursing facility must—

"(A) establish and maintain an infection control program designed to provide a safe, sanitary, and comfortable environment in which residents reside and to help prevent the development and transmission of disease and infection, and

"(B) be designed, constructed, equipped, and maintained in a manner to protect the health and safety of residents, personnel, and the general public.

"(4) MISCELLANEOUS.—

"(A) COMPLIANCE WITH FEDERAL, STATE, AND LOCAL LAWS AND PROFESSIONAL STANDARDS.—A nursing facility must operate and provide services in compliance with all applicable Federal, State, and local laws and regulations (including the requirements of sections 1124 and 1902(a)(13)(A)) and with all accepted professional standards and principles which apply to professionals providing services in such a facility.

"(B) OTHER.—A nursing facility must meet such other requirements relating to the health and safety of residents or relating to the physical facilities thereof as the Secretary may find necessary, which may include any of the conditions described in section 1861(j)(15).

"(f) State Plan Requirements Relating to Nursing Facility Requirements.—

"(1) Specification of nurse training programs and establishment of nurse aide registry.—

"(A) Specification of nurse aide training programs.—Each State, as a condition of approval of its plan under this title, must specify, by not later than January 1, 1989, those nurse aide training programs that the State recognizes and approves for purposes of subsection (b)(5) and that meet the minimum standards established under subsection (g)(2), but the failure of the Secretary to establish such standards shall not relieve any State of its responsibility under this paragraph. The State may not provide for the recognition and approval of a program—

"(i) offered by or in a nursing facility which has been determined to be out of compliance with the requirements of subsection (b), (c), (d), or (e) within the previous 2 years, or

"(ii) offered by a nursing facility unless the State makes the determination, upon an individual's completion of the program, that the individual is competent to provide nursing or nursing-related services in nursing facilities, and the State may not delegate this responsibility to the facility.

"(B) Nurse aide registry.—Each State, as a condition of approval of its plan under this title, must establish, by not later than January 1, 1989, and maintain a registry of all individuals who have satisfactorily completed a nurse aide training program approved under subparagraph (A) in the State. The registry must meet minimum requirements established by the Secretary under subsection (g)(2)(B), but failure of the Secretary to issue final regulations shall not relieve the State from its responsibility to establish and maintain a registry under this subparagraph.

"(2) Notice of medicaid rights.—Each State, as a condition of approval of its plan under this title, effective April 1, 1988, must develop (and periodically update) a written notice of the rights and obligations of residents of nursing facilities (and spouses of such residents) under this title. Such notice shall include a description of the provisions of section 1922 (relating to protection of income and resources of community spouses).

"(3) State appeals process for involuntary transfers.—Each State, as a condition of approval of its plan under this title, effective for transfers from nursing facilities effected on or after October 1, 1989, must provide for a fair mechanism for hearing appeals on involuntary transfers of residents of such facilities. Such mechanism must meet any guidelines established by the Secretary under subsection (g)(3); but the failure of the Secretary to establish such guidelines shall not relieve any State of its responsibility to provide for such a fair mechanism.

"(4) State requirements for preadmission screening and resident review.—

"(A) Preadmission screening.—Each State, as a condition of approval of its plan under this title, effective January 1, 1989, must have in effect a preadmission screening program, for making determinations (using any criteria developed under subsection (g)(5)) described in subsection (d) for mentally ill and mentally retarded individuals (as defined in subparagraph (G)) who are admitted to nursing facilities on or after January 1, 1989. The failure of the Secretary to develop minimum criteria under subsection (g)(5) shall not relieve any State of its responsibility to have a preadmission screening program under this subparagraph or to perform resident reviews under subparagraph (B).

"(B) State requirement for annual resident review.—

"(i) For mentally ill residents.—As a condition of approval of a State plan under this title, as of April 1, 1990, in the case of each resident of a nursing facility who is mentally ill, the State mental health authority must review and determine (using any criteria developed under subsection (g)(5))—

"(I) whether or not the resident, because of the resident's physical and mental condition, requires the level of services provided by a nursing facility or requires the level of services of an inpatient psychiatric hospital for individuals under age 21 (as described in section 1905(h)) or of an institution for mental diseases providing medical assistance to individuals 65 years of age or older; and

"(II) whether or not the resident requires active treatment for mental illness.

"(ii) For mentally retarded residents.—As a condition of approval of a State plan under this title, as of April 1, 1990, in the case of each resident of a nursing facility who is mentally retarded, the State mental retardation or developmental disability authority must review and determine (using any criteria developed under subsection (g)(5))—

"(I) whether or not the resident, because of the resident's physical and mental condition, requires the level of services provided by a nursing facility or requires the level of services of an intermediate care facility described under section 1905(d); and

"(II) whether or not the resident requires active treatment for mental retardation.

"(iii) Frequency of reviews.—

"(I) Annual.—Except as provided in subclauses (II) and (III), the reviews and determinations under clauses (i) and (ii) must be conducted with respect to each mentally ill or mentally retarded resident not less often than annually.

"(II) Preadmission review cases.—In the case of a resident subject to a preadmission review under subsection (d), the review and determination under clause (i) or (ii) need not be done until the resident has resided in the nursing facility for 1 year.

"(III) Initial review.—The reviews and determinations under clauses (i) and (ii) must first be conducted (for each resident not subject to preadmission review under subsection (d)) by not later than April 1, 1990.

"(C) Response to preadmission screening and resident review.—As a condition of approval of a State plan, as of April 1, 1990, the State must meet the following requirements:

"(i) Long-term residents not requiring nursing facility services, but requiring active treatment.—In the case of a resident who is determined, under subparagraph (B), not to require the level of services provided by a nursing facility, but to require active treatment for mental illness or mental retardation, and who has continuously resided in a nursing facility for at least 30 months before the date of the determination, the State must, in consultation with the resident's family or legal representative and care-givers—

"(I) inform the resident of the institutional and noninstitutional alternatives covered under the State plan for the resident,

"(II) offer the resident the choice of remaining in the facility or of receiving covered services in an alternative appropriate institutional or noninstitutional setting,

"(III) clarify the effect on eligibility for services under the State plan if the resident chooses to leave the facility (including its effect on readmission to the facility), and

"(IV) regardless of the resident's choice, provide for (or arrange for the provision of) such active treatment for the mental illness or mental retardation.

A State shall not be denied payment under this title for nursing facility services for a resident described in this clause because the resident does not require the level of services provided by such a facility, if the resident chooses to remain in such a facility.

"(ii) Other residents not requiring nursing facility services, but requiring active treatment.—In the case of a resident who is determined, under subparagraph (B), not to require the level of services provided by a nursing facility, but to require active treatment for mental illness or mental retardation, and who has not continuously resided in a nursing facility for at least 30 months before the date of the determination, the State must, in consultation with the resident's family or legal representative and care-givers—

"(I) arrange for the safe and orderly discharge of the resident from the facility,

"(II) prepare and orient the resident for such discharge, and

"(III) provide for (or arrange for the provision of) such active treatment for the mental illness or mental retardation.

"(iii) Residents not requiring nursing facility services and not requiring active treatment.—In the case of a resident who is determined, under subparagraph (B), not to require the level of services provided by a nursing facility and not to require active treatment for mental illness or mental retardation, the State must—

"(I) arrange for the safe and orderly discharge of the resident from the facility, and

"(II) prepare and orient the resident for such discharge.

"(D) Denial of payment where failure to conduct preadmission screening.—No payment may be made under section 1903(a) with respect to nursing facility services furnished to an individual for whom a determination is required under subsection (d) or subparagraph (B) but for whom the determination is not made.

"(E) Permitting alternative disposition plans.—With respect to residents of a nursing facility who are mentally retarded or mentally ill and who are determined under subparagraph (B) not to require the level of services of such a facility, but who require active treatment for mental illness or mental retardation, a State and the nursing facility shall be considered to be in compliance with the requirement of this paragraph if, before October 1, 1988, the State and the Secretary have entered into an agreement relating to the disposition of such residents of the facility and the State is in compliance with such agreement. Such an agreement may provide for the disposition of the residents after the date specified in subparagraph (C).

"(F) Appeals procedures.—Each State, as a condition of approval of its plan under this title, effective January 1, 1989, must have in effect an appeals process for individuals adversely affected by determinations under subparagraph (A) or (B).

"(G) Definitions.—In this paragraph and subsection (d):

"(i) An individual is considered to be 'mentally ill' if the individual has a primary or secondary diagnosis of mental disorder (as defined in the Diagnostic and Statistical Manual of Mental Disorders, 3rd edition).

"(ii) An individual is considered to be 'mentally retarded' if the individual is mentally retarded or a person with a related condition (as described in section 1905(d)).

"(iii) The term 'active treatment' has the meaning given such term by the Secretary in regulations.

"(g) Responsibilities of Secretary Relating to Nursing Facility Requirements.—

"(1) Responsibility.—It is the duty and responsibility of the Secretary to assure that requirements which govern the provision of care in nursing facilities under State plans approved under this title, and the enforcement of such requirements, are adequate to protect the health and safety of residents and to promote the effective and efficient use of public moneys.

"(2) Establishment of minimum nurse aide training standards and registry standards.—

"(A) Nurse aide training standards.—For purposes of subsections (b)(5) and (f)(1)(A), the Secretary shall establish, by July 1, 1988, minimum standards for nurse aide training programs for nurse aides, including the content of the curriculum, minimum hours of training, qualifications of instructors, and procedures for determination of competency. Such standards may permit recognition of programs offered by or in facilities, as well as outside facilities (including employee organizations), and of programs in effect on the date of the enactment of this section. Such standards shall permit a State to find that an individual who has completed (before January 1, 1989) a nurse aide training program shall be deemed to have completed such a program approved under subsection (b)(5) if the State determines that, at the time the program was offered, the program met the requirements for approval under such subsection.

"(B) Registry standards.—The Secretary shall establish, by July 1, 1988, minimum standards for the establishment and maintenance of registries under subsection (f)(2)(B). Such standards shall provide for the inclusion of documented findings of resident neglect or abuse involving individuals listed in the registry.

"(3) Federal guidelines.—For purposes of subsections (c)(2)(B)(iii) and (f)(3), by not later than October 1, 1988, the Secretary shall establish guidelines for minimum standards State appeals processes under subsection (f)(3) must meet to provide a fair mechanism for hearing appeals on involuntary transfers of residents from nursing facilities.

"(4) Criteria for administration.—The Secretary shall establish criteria for assessing a nursing facility's compliance with the requirement of subsection (e)(1) with respect to—

"(A) its governing body and management,

"(B) agreements with hospitals regarding transfers of residents to and from the hospitals,

"(C) disaster preparedness,

"(D) direction of medical care by a physician,

"(E) laboratory and radiological services,

"(F) clinical records, and

"(G) participation of residents and legal representatives.

"(5) Federal minimum criteria for preadmission screening and resident review.—The Secretary shall develop, by not later than October 1, 1988, minimum criteria for States to use in making determinations under subsections (d) and (f)(4)(B) and in permitting individuals adversely affected to appeal such determinations, and shall notify the States of such criteria.".

(b) Incorporating Requirements into State Plan.—

(1) In general.—Section 1902(a) (42 U.S.C. 1396a(a)) is amended—

(A) in paragraph (13)(A), by inserting "which, in the case of nursing facilities, take into account the costs of complying with subsections (b), (c), and (e) of section 1922 and provide (in the case of a nursing facility with a waiver under section 1922(b)(4)(C)(ii)) for an appropriate reduction to take into account the lower costs of the facility for nursing care," after "State" the second place it appears; and

(B) by amending paragraph (28) to read as follows:

"(28) provide—

"(A) that any nursing facility receiving payments under such plan must satisfy all the requirements of subsections (b) through (e) of section 1922 as they apply to such facilities;

"(B) for specifying in the plan (and making available upon request a description of) the items and services that are included in 'nursing facility services';

"(C) for procedures to make available to the public the data and methodology used in establishing payment rates for nursing facilities under this title; and

"(D) for compliance (by the date specified in the respective sections) with the requirements of—

"(i) section 1922(f) (relating to implementation of nursing facility requirements);

"(ii) section 1922(h)(2) (relating to specification of resident assessment instrument);

"(iii) section 1922(i) (relating to responsibility for survey and certification of nursing facilities); and

"(iv) sections 1922(j)(2)(B) and 1922(j)(2)(D) (relating to establishment and application of remedies);".

(2) State plan amendment required.—A plan of a State under title XIX of the Social Security Act shall not be considered to have met the requirement of section 1902(a)(13)(A) of the Social Security Act (as amended by paragraph (1)(A) of this subsection), as of April 1, 1989, unless by that date the State has submitted to the Secretary of Health and Human Services an amendment to such State plan to provide for an appropriate adjustment in payment amounts for nursing facility services furnished on or after October 1, 1989. The Secretary shall, not later than September 30, 1989, review each such plan amendment for compliance with such requirement and by such date shall approve or disapprove each such amendment. If the Secretary disapproves such an amendment, the State shall immediately submit a revised amendment which meets such requirement. The absence of approval of such a plan amendment does not relieve the State or any nursing facility of any obligation or requirement under title XIX of the Social Security Act (as amended by this Act).

(c) Funding.—

(1) In general.—Section 1903(a)(2) (42 U.S.C. 1396b(a)(2)) is amended—

(A) by inserting "(A)" after "(2)", and

(B) by adding at the end the following new subparagraphs:

"(B) notwithstanding paragraph (1) or subparagraph (A), with respect to amounts expended for nursing aide training programs described in section 1922(f)(1), regardless of whether the training programs are provided in or outside nursing facilities or of the skill of the personnel involved in such programs, an amount equal to 50 percent of so much of the sums expended during such quarter (as found necessary by the Secretary for the proper and efficient administration of the State plan) as are attributable to such training programs; plus

"(C) an amount equal to 75 percent of so much of the sums expended during such quarter (as found necessary by the Secretary for the proper and efficient administration of the State plan) as are attributable to preadmission screening and resident review activities conducted by the State under section 1922(f)(4); plus".

(2) Enhanced funding for nurse aide training.—For calendar quarters during fiscal years 1988 and 1989, with respect to payment under section 1903(a)(2)(B) of the Social Security Act to a State for additional amounts expended by the State under its plan approved under title XIX of such Act for nursing aide training programs described in section 1922(f)(1) of such title, any reference to "50 percent" is deemed a reference to the sum of the Federal medical assistance percentage (determined under section 1905(b) of such Act) plus 25 percentage points, but not to exceed 90 percent.

(d) Revision of Previous Definitions.—Section 1905 (42 U.S.C. 1396d) is amended—

(1) by amending subsection (c) to read as follows:

"(c) For definition of the term 'nursing facility', see section 1922(a).";

(2) in subsection (d)—

(A) by striking "intermediate care facility services" and inserting "intermediate care facility for the mentally retarded",

(B) by striking "may include services in a public" and inserting "means an",

(C) in paragraph (3), by inserting "in the case of a public institution," after "(3)";

(3) in subsection (f), by striking "skilled" each place it appears; and

(4) by striking subsection (i).

(e) Making Coverage of Nursing Facility Services Mandatory for Adults.—Section 1905(a)(4)(A) (42 U.S.C. 1396d(a)(4)(A)) is amended by striking "skilled".

(f) Elimination of Payment Differential.—Section 1903 (42 U.S.C. 1396b) is amended—

(1) by striking subsection (h), and

(2) in subsection (a)(1), by striking ", (h), and" and inserting "and".

(g) Clarifying Terminology.—(1) Section 1902(a)(10) (42 U.S.C. 1396a(a)(10)) is amended—

(A) in subparagraph (A)(ii)(VI), by striking "skilled" and by inserting "for the mentally retarded" after "intermediate care facility";

(B) in subparagraph (C)(iv), by striking "intermediate care facility services" and inserting "in an intermediate care facility"; and

(C) in subparagraph (D), by striking "skilled".

(2) Section 1902(a)(13) (42 U.S.C. 1396a(a)(13)) is amended—

(A) in subparagraph (A), by striking ", skilled nursing facility, and intermediate care facility services" and inserting "services, nursing facility services, and services in an intermediate care facility for the mentally retarded",

(B) in subparagraph (A), by striking ", skilled nursing facility, and intermediate care facility and" and inserting "nursing facility, and intermediate care facility for the mentally retarded and";

(C) in subparagraph (C), by striking "skilled nursing facilities and intermediate care facilities" and inserting "nursing facilities"; and

(D) in subparagraph (D)—

(i) by striking "skilled nursing facility or intermediate care facility" and inserting "nursing facility", and

(ii) by striking "skilled nursing facility services or intermediate care facility services" and inserting "nursing facility services".

(3) Section 1902(a)(30)(B) (42 U.S.C. 1396a(a)(30)(B)) is amended by striking "skilled nursing facility, intermediate care facility," each place it appears and inserting "intermediate care facility for the mentally retarded,".

(4) Section 1902(e)(3)(B)(i) (42 U.S.C. 1396a(e)(3)(B)(i)) is amended by striking "skilled nursing facility, or intermediate care facility" and inserting "nursing facility, or intermediate care facility for the mentally retarded".

(5) Section 1902(e)(9) (42 U.S.C. 1396a(e)(9)) is amended—

(A) in subparagraph (A)(iii), by striking "skilled nursing facility, or intermediate care facility," and inserting "nursing facility, or intermediate care facility for the mentally retarded", and

(B) in subparagraph (B), by striking "skilled nursing facilities, or intermediate care facilities" and inserting "nursing facilities, or intermediate care facilities for the mentally retarded".

(6) Section 1905(a) (42 U.S.C. 1396d(a)) is amended—

(A) in paragraph (5), by striking "skilled",

(B) in paragraph (14), by striking ", skilled nursing facility services, and intermediate care facility services" and inserting "and nursing facility services", and

(C) in paragraph (15), by striking "intermediate care facility services (other than such services" and inserting "services in an intermediate care facility for the mentally retarded (other than".

(7) Section 1128B (42 U.S.C. 1320a-7b), as redesignated by section 4(d) of the Medicare and Medicaid Patient and Program Protection Act of 1987 (Public Law 100-93), is amended—

(A) in subsection (c), by striking "intermediate care facility" and inserting "nursing facility, intermediate care facility for the mentally retarded", and

(B) in subsection (d)(2)(A), by striking "skilled nursing facility, or intermediate care facility" and inserting "nursing facility, or intermediate care facility for the mentally retarded".

(8) Section 1911 (42 U.S.C. 1396j) is amended by striking ", intermediate care facility, or skilled nursing facility" each place it appears and inserting "or nursing facility".

(9) Section 1913 (42 U.S.C. 1396l) is amended—

(A) in the heading, by striking "SKILLED NURSING AND INTERMEDIATE CARE SERVICES" and inserting "NURSING FACILITY SERVICES";

(B) in subsection (a)—

(i) by striking "skilled nursing facility services and intermediate care facility services" and inserting "nursing facility services", and

(ii) by inserting before the period at the end the following: "and which, with respect to the provision of such services, meets the requirements of subsections (b) through (e) of section 1922";

(C) in subsection (b)(1)—

(i) by striking "skilled nursing or intermediate care facility services" and inserting "nursing facility services", and

(ii) by striking "skilled nursing and intermediate care facilities" and inserting "nursing facilities"; and

(D) in subsection (b)(3), by striking "skilled nursing or intermediate care facility services" and inserting "nursing facility services".

(10) Section 1915(c) (42 U.S.C. 1396n(c)) is amended—

(A) in paragraph (1), by striking "skilled nursing facility or intermediate care facility" and inserting "nursing facility or intermediate care facility for the mentally retarded";

(B) in paragraph (2)(B)(i), by striking ", skilled nursing facility, or intermediate care facility services" and inserting "services, nursing facility services, or services in an intermediate care facility for the mentally retarded";

(C) in paragraph (2)(B), by striking "need" and all that follows up to the semicolon and inserting "need for inpatient hospital services, nursing facility services, or services in an intermediate care facility for the mentally retarded";

(D) in paragraph (2)(C), by striking "or skilled nursing facility or intermediate care facility" and inserting ", nursing facility, or intermediate care facility for the mentally retarded";

(E) in paragraph (2)(C), by striking "or skilled nursing facility or intermediate care facility services" and inserting ", nursing facility services, or services in an intermediate care facility for the mentally retarded";

(F) in paragraph (5), by striking "skilled nursing facility or intermediate care facility" and inserting "nursing facility or intermediate care facility for the mentally retarded"; and

(G) in paragraph (7), by striking "or in skilled nursing or intermediate care facilities" and inserting ", nursing facilities, or intermediate care facilities for the mentally retarded".

(11) Section 1916 (42 U.S.C. 1396m) is amended, in subsections (a)(2)(C) and (b)(2)(C), by striking "skilled nursing facility, intermediate care facility" and inserting "nursing facility, intermediate care facility for the mentally retarded".

(12) Section 1917 (42 U.S.C. 1396p), as amended by section 4123(b) of this title, is amended—

(A) in subsections (a)(1)(B)(i) and (c)(2)(B)(i), by striking "skilled nursing facility, intermediate care facility" and inserting "nursing facility, intermediate care facility for the mentally retarded", and

(B) in subsection (c)(3)(A), by striking "skilled".

(h) Repeal of Requirements for Program to License Nursing Home Administrators.—(1) Section 1902(a) (42 U.S.C. 1396a(a)) is amended by striking paragraph (29).

(2) Section 1908 (42 U.S.C. 1396g) is repealed.

(3) The amendments made by paragraphs (1) and (2) shall take effect on October 1, 1989.

(i) Utilization Review.—Section 1903(i)(4) (42 U.S.C. 1396b(i)(4)) is amended by striking "or skilled nursing facility" each place it appears.

(j) Technical Assistance.—The Secretary of Health and Human Services shall, upon request by a State, furnish technical assistance with respect to the development and implementation of reimbursement methods for nursing facilities that take into account the case mix of residents in the different facilities.

(k) Report on Staffing Requirements.—The Secretary of Health and Human Services shall report to Congress, by not later than January 1, 1993, on the progress made in implementing the nursing facility staffing requirements of subparagraph (C) of section 1922(b)(4) of the Social Security Act (as amended by subsection (a) of this section), including the number and types of waivers approved under subparagraph (D) of such section and the number of States which have received a delay of an effective date under subparagraph (E) of such section.

SEC. 4112. USE OF RESIDENT ASSESSMENTS.

(a) In General.—Section 1922, as inserted by section 4111, is amended by adding at the end the following new subsection:

"(h) Resident Assessments.—

"(1) Designation of instrument.—The Secretary shall, by not later than April 1, 1990, designate one or more instruments which a State may specify under paragraph (2) for use by nursing facilities in complying with the requirements of subsection (b)(3). Such instruments shall be consistent with a minimum data set of core elements, common definitions, and utilization guidelines specified by the Secretary.

"(2) State specification of instrument.—As a condition of approval of its State plan and effective July 1, 1990, each State shall specify the instrument to be used by nursing facilities in the State in complying with the requirements of subsection (b)(3). Such instrument shall be—

"(A) one of the instruments designated under paragraph (1), or

"(B) an instrument which the Secretary has approved as being consistent with the minimum data set of core elements, common definitions, and utilization guidelines specified by the Secretary under paragraph (1).

"(3) Evaluation.—The Secretary shall evaluate, and report to Congress by not later than January 1, 1992, on the implementation of the resident assessment process under this subsection.

"(4) Penalty for falsification.—

"(A) An individual who willfully and knowingly certifies a material and false statement in a resident assessment described in subsection (b)(3) is subject to a civil money penalty of not more than $1,000 with respect to each assessment.

"(B) An individual who willfully and knowingly causes another individual to certify a material and false statement in a resident assessment described in subsection (b)(3) is subject to a civil money penalty of not more than $5,000 with respect to each assessment.

"(C) The Secretary shall provide for imposition of civil money penalties under this paragraph in a manner similar to that for the imposition of civil money penalties under section 1128A.".

SEC. 4113. SURVEY AND CERTIFICATION PROCESS.

(a) In General.—Section 1922, as inserted by section 4111 and amended by section 4112, is further amended by adding at the end the following new subsection:

"(i) Survey and Certification Process.—

"(1) STATE AND FEDERAL RESPONSIBILITY.—Under each State plan under this title, the State shall be responsible for certifying, in accordance with surveys conducted under paragraph (2), the compliance of nursing facilities (other than public facilities) with the requirements of subsections (b) through (e). The Secretary shall be responsible for certifying, in accordance with surveys conducted under paragraph (2), the compliance of public nursing facilities with the requirements of such subsections.

"(2) SURVEYS.—

"(A) ANNUAL STANDARD SURVEY.—

"(i) IN GENERAL.—Each nursing facility shall be subject to an annual standard survey, to be conducted without any prior notice to the facility. Any individual who notifies (or causes to be notified) a nursing facility of the time or date on which such a survey is scheduled to be conducted is subject to a civil money penalty of not to exceed $2,000. The Secretary shall provide for imposition of civil money penalties under this clause in a manner similar to that for the imposition of civil money penalties under section 1128A. The Secretary shall review each State's procedures for scheduling and conduct of annual standard surveys to assure that the State has taken all reasonable steps to avoid giving notice of such a survey through the scheduling procedures and the conduct of the surveys themselves.

"(ii) CONTENTS.—Each standard survey shall include, for a case-mix stratified sample of residents—

"(I) a survey of the quality of care furnished, as measured by indicators of medical, nursing, and rehabilitative care, dietary and nutrition services, activities and social participation, and sanitation, infection control, and the physical environment, and

"(II) an audit of the residents' assessments and written plans of care provided under subsection (b)(3) to determine the accuracy of such assessments and the adequacy of such plans of care.

"(iii) FREQUENCY.—

"(I) IN GENERAL.—Each nursing facility shall be subject to a standard survey not later than 15 months after the date of the previous standard survey under this subparagraph. The Statewide average interval between standard surveys of a nursing facility shall not exceed 12 months.

"(II) SPECIAL SURVEYS.—If not otherwise conducted under subclause (I), a standard survey (or an abbreviated standard survey) may be conducted within 2 months of any change of ownership, administration, management of a nursing facility, or director of nursing in order to determine whether the change has resulted in any decline in the quality of care furnished in the facility.

"(B) EXTENDED SURVEYS.—Each nursing facility which is found, under a standard survey, to have provided substandard quality of care shall be subject to an extended survey to identify policies and procedures which produced such quality and to determine whether the facility has complied with the requirements described in subsections (b) through (e). The extended survey shall be conducted immediately after the standard survey (or, if not practical, not later than 2 weeks after the date of completion of the standard survey). Any other facility may, at the Secretary's or State's discretion, be subject to such an extended survey (or a partial extended survey). Nothing in this paragraph shall be construed as requiring an extended or partial extended survey as a prerequisite to imposing a sanction against a facility under subsection (j) on the basis of findings in a standard survey.

"(C) SURVEY PROTOCOL.—Standard and extended surveys shall be conducted—

"(i) based upon a protocol which the Secretary has developed, tested, and validated by not later than April 1, 1990, and

"(ii) by individuals who meet such minimum qualifications as the Secretary establishes by not later than April 1, 1990.

The failure of the Secretary to develop, test, or validate such protocols or to establish such minimum qualifications shall not relieve any State of its responsibility (or the Secretary of the Secretary's responsibility) to conduct surveys under this subsection.

"(D) CONSISTENCY OF SURVEYS.—Each State shall implement programs to measure and reduce inconsistency in the application of survey results among surveyors.

"(E) PROHIBITION OF CONFLICTS OF INTEREST.—A State may not use as a surveyor under this subsection an individual who is serving (or has served within the previous 2 years) as a member of the staff of, or as a consultant to, the facility surveyed respecting compliance with the requirements of subsections (b) through (e).

"(F) TRAINING SURVEYORS IN USE OF ASSESSMENT INSTRUMENTS.—The Secretary shall provide for the training of State and Federal surveyors in the use of the assessment instruments designated under subsection (h)(1).

"(3) VALIDATION SURVEYS.—

"(A) IN GENERAL.—The Secretary shall conduct onsite surveys of a representative sample of nursing facilities in each State, within 2 months of the date of surveys conducted under paragraph (2) by the State, in a sufficient number to allow inferences about the adequacies of each State's surveys conducted under paragraph (2). In conducting such surveys, the Secretary shall use the same survey protocols as the State is required to use under paragraph (2). If the State has determined that an individual nursing facility meets the requirements of subsections (b) through (e), but the Secretary determines that the facility does not meet such requirements, the Secretary's determination as to the facility's not meeting such requirements is binding and supersedes that of the State survey.

"(B) REDUCTION IN ADMINISTRATIVE COSTS FOR SUBSTANDARD PERFORMANCE.—If the Secretary finds, on the basis of such surveys, that a State's survey and certification performance is not adequate, the Secretary shall provide for a reduction of the payment otherwise made to the State under section 1903(a)(2)(D) with respect to a quarter equal to 33 percent multiplied by a fraction, the denominator of which is equal to the total number of residents in nursing facilities surveyed by the Secretary that quarter and the numerator of which is equal to the total number of residents in nursing facilities which were found pursuant to such surveys to be not in compliance with any of the requirements of subsections (b) through (e). A State that is dissatisfied with the Secretary's findings under this subparagraph may obtain reconsideration and review of the findings under section 1116 in the same manner as a State may seek reconsideration and review under that section of the Secretary's determination under section 1116(a)(1).

"(C) SPECIAL SURVEYS OF COMPLIANCE.—Where the Secretary has reason to question the compliance of a nursing facility with any of the requirements of subsections (b) through (e), the Secretary may conduct a survey of the facility and, on that basis, make independent and binding determinations concerning the extent to which the nursing facility meets such requirements.

"(4) INVESTIGATION OF COMPLAINTS AND MONITORING COMPLIANCE.—Each State shall maintain procedures and adequate staff to—

"(A) investigate complaints of violations of requirements by nursing facilities, and

"(B) monitor, on-site, on a daily or other regular basis a nursing facility's compliance with the requirements of subsections (b) through (e) if—

"(i) the facility has been found not to be in compliance with such requirements and is in the process of correcting deficiencies to achieve such compliance;

"(ii) the facility was previously found not to be in compliance with such requirements, has corrected deficiencies to achieve such compliance, and verification of continue compliance is indicated; or

"(iii) the State has reason to question the compliance of the facility with such requirements.

"(5) DISCLOSURE OF RESULTS OF INSPECTIONS AND ACTIVITIES.—

"(A) PUBLIC INFORMATION.—Each State, and the Secretary, shall make available to the public—

"(i) information respecting all surveys and certifications made respecting nursing facilities,

"(ii) copies of cost reports of such facilities filed under this title or under title XVIII,

"(iii) copies of statements of ownership under section 1124, and

"(iv) information supplied under section 1902(a)(38).

"(B) NOTICE TO OMBUDSMAN.— Each State shall notify the State long-term care ombudsman (established under section 307(a)(12) of the Older Americans Act of 1965) of the State's findings of noncompliance with any of the requirements of subsections (b) through (e), with respect to a nursing facility in the State.

"(C) NOTICE TO PHYSICIANS AND NURSING FACILITY ADMINISTRATOR LICENSING BOARD.—If a State finds that a nursing facility has provided substandard quality of care, the State shall notify—

"(i) the attending physician of each resident with respect to which such finding is made, and

"(ii) any State board responsible for the licensing of the nursing facility administrator of the facility.

"(D) ACCESS TO FRAUD CONTROL UNITS.—Each State shall provide its State medicaid fraud and abuse control unit (established under section 1903(q)) with access to all information of the State agency responsible for surveys and certifications under this subsection.".

(b) INCREASING MATCHING PERCENTAGE FOR NURSING HOME SURVEY AND CERTIFICATION ACTIVITIES.—(1) Section 1903(a)(2) (42 U.S.C. 1396b(a)(2)), as amended by section 4111(c) of this Act, is further amended by adding at the end the following new subparagraph:

"(D) for each calendar quarter during—

"(i) fiscal year 1990, an amount equal to 90 percent,

"(ii) fiscal year 1991, an amount equal to 85 percent,

"(iii) fiscal year 1992, an amount equal to 80 percent, and

"(iv) fiscal year 1993 and thereafter, an amount equal to 75 percent,

of so much of the sums expended during such quarter (as found necessary by the

Secretary for the proper and efficient administration of the State plan) as are attributable to State activities under section 1922(i); plus".

(2) Section 1903(r) (42 U.S.C. 1396b(r)) is amended by striking "paragraphs (2)" each place it appears and inserting "paragraphs (2)(A)".

(3) For purposes of section 1903(a) of the Social Security Act, proper expenses incurred by a State for medical review by independent professionals of the care provided to residents of nursing facilities who are entitled to medical assistance under title XIX of such Act shall be reimbursable as expenses necessary for the proper and efficient administration of the State plan under that title.

(c) Revision of Penalty Provisions.—(1) Section 1903(g) (42 U.S.C. 1396b(g)) is amended—

(A) in paragraph (1)—

(i) by striking "or intermediate care facility services" the first place it appears and inserting "or services in an intermediate care facility for the mentally retarded",

(ii) by striking ", skilled nursing facility services for 30 days,",

(iii) by striking ", skilled nursing facility services, or intermediate care facility services" and inserting "or services in an intermediate care facility for the mentally retarded",

(iv) by striking ", skilled nursing facilities, and intermediate care facilities" and inserting "and intermediate care facilities for the mentally retarded";

(B) in paragraph (4)(B), by striking ", skilled nursing facilities, and intermediate care facilities" and inserting "and intermediate care facilities for the mentally retarded";

(C) in paragraph (6)—

(i) by striking subparagraph (B),

(ii) in subparagraph (C), by striking "intermediate care facility services" and inserting "services in an intermediate care facility for the mentally retarded", and

(iii) by redesignating subparagraphs (C) and (D) as subparagraphs (B) and (C), respectively; and

(D) by striking paragraph (7).

(2) Section 1902(a)(31) (42 U.S.C. 1396a(a)(31)) is amended—

(A) in the matter before subparagraph (A), by striking "skilled nursing facility services" and all that follows through "where" and inserting "services in an intermediate care facility for the mentally retarded (where", and

(B) in subparagraph (B), by striking "skilled nursing or intermediate care facility" and inserting "intermediate care facility for the mentally retarded".

(3) Section 1902(a)(33)(B) (42 U.S.C. 1396a(a)(33)(B)) is amended by inserting ", except as provided in section 1922(d)," after "(B) that".

(4) The amendments made by this subsection shall not apply to a State until such date (not earlier than October 1, 1990) as of which the Secretary determines that—

(A) the State has specified the resident assessment instrument under section 1922(h)(2) of the Social Security Act, and

(B) the State has begun conducting surveys under section 1922(i)(2) of such Act.

(d) Miscellaneous Conforming Amendments.—(1) Section 1902(a)(44) (42 U.S.C. 1396a(a)(44)) is amended—

(A) in the matter before subparagraph (A), by striking "skilled nursing facility services, intermediate care facility services" and inserting "services in an intermediate care facility for the mentally retarded", and

(B) in subparagraph (A), by striking "that are intermediate care facility services in an institution for the mentally retarded" and inserting "that are services in an intermediate care facility for the mentally retarded".

(2) Section 1903(a)(7) (42 U.S.C. 1396b(a)(7)) is amended by inserting "subject to section 1922(i)(3)(B)," after "(7)".

(3) Section 1910 (42 U.S.C. 1396i) is amended—

(A) by striking "SKILLED NURSING FACILITIES AND" in the heading,

(B) by striking subsection (a), and

(C) by redesignating subsections (b) and (c) as subsections (a) and (b), respectively.

(4) Section 1866(c) (42 U.S.C. 1395cc(c)) is amended by striking paragraph (2) and by redesignating paragraph (3) as paragraph (2).

SEC. 4114. ENFORCEMENT PROCESS.

(a) In General.—Section 1922, as inserted by section 4111 and amended by sections 4112 and 4113, is further amended by adding at the end the following new subsection:

"(j) Enforcement Process.—

"(1) In general.—If a State finds, on the basis of a standard, extended, or partial extended survey under subsection (i)(2) or otherwise, that a nursing facility no longer meets a requirement of subsection (b), (c), (d), or (e) and further finds that the facility's deficiencies—

"(A) immediately jeopardize the health or safety of its residents, the State shall take immediate action to remove the jeopardy and correct the deficiencies through the remedy specified in paragraph (2)(A)(iii), or terminate the facility's participation under the State plan and may provide, in addition, for one or more of the other remedies described in paragraph (2); or

"(B) do not immediately jeopardize the health or safety of its residents, the State may terminate the facility's participation under the State plan and may provide, in addition, for one or more of the remedies described in paragraph (2).

Nothing in this paragraph shall be construed as restricting the remedies available to a State to remedy a nursing facility's deficiencies. If a State finds that a nursing facility meets such requirements but, as of a previous period, did not meet such requirements, the State may provide for a civil money penalty under paragraph (2)(A)(i) for the days in which it finds that the facility was not in compliance with such requirements.

"(2) Specified remedies.—

"(A) Listing.—Except as provided in subparagraph (B)(ii), each State shall establish by law (whether statute or regulation) at least the following remedies:

"(i) Denial of payment under the State plan with respect to any individual admitted to the nursing facility involved after such notice to the public and to the facility as may be provided for by the State.

"(ii) A civil money penalty assessed and collected, with interest, for each day in which the facility is or was out of compliance with a requirement of subsection (b), (c), (d), or (e), or regulations or guidelines under such a subsection. Funds collected by a State as a result of imposition of such a penalty (or as a result of the imposition by the State of a civil money penalty for activities described in subsections (h)(4)(A), (h)(4)(B), or (i)(2)(A)(i)) shall be applied to the protection of the health or property of residents of nursing facilities that the State or the Secretary finds deficient, including payment for the costs of relocation of residents to other facilities, maintenance of operation of a facility pending correction of deficiencies or closure, and reimbursement of residents for personal funds lost.

"(iii) The appointment of temporary management to oversee the operation of the facility and to assure the health and safety of the facility's residents, where there is a need for temporary management while—

"(I) there is an orderly closure of the facility, or

"(II) improvements are made in order to bring the facility into compliance with all the requirements of subsections (b) through (e).

The temporary management under this clause shall not be terminated under subclause (II) until the State has determined that the facility has the management capability to ensure continued compliance with all the requirements of subsections (b) through (e).

"(iv) The authority, in the case of an emergency, to close the facility, to transfer residents in that facility to other facilities, or both.

"(B) Deadline and guidance.—(i) Except as provided in clause (ii), as a condition for approval of a State plan for calendar quarters beginning on or after October 1, 1989, each State shall establish the remedies described in clauses (i) through (iv) of subparagraph (A) by not later than October 1, 1989. The Secretary shall provide, through regulations or otherwise by not later than October 1, 1988, guidance to States in establishing such remedies; but the failure of the Secretary to provide such guidance shall not relieve a State of the responsibility for establishing such remedies.

"(ii) A State may establish alternative remedies (other than termination of participation) other than those described in clauses (i) through (iv) of subparagraph (A), if the State demonstrates to the Secretary's satisfaction that the alternative remedies are as effective in deterring noncompliance and correcting deficiencies as those described in subparagraph (A).

"(C) Funding.—The reasonable expenditures of a State to provide for temporary management and other expenses associated with implementing the remedies described in clauses (iii) and (iv) of subparagraph (A) shall be considered, for purposes of section 1903(a)(7), to be necessary for the proper and efficient administration of the State plan.

"(D) Assuring prompt compliance.—If a nursing facility has not complied with any of the requirements of subsections (b) through (e) within 3 months after the date the facility is found to be out of compliance with such requirements, the State shall impose the remedy described in subparagraph (A)(i) for all individuals who are admitted to the facility after such date.

"(E) Repeated noncompliance.—In the case of a nursing facility which, on 3 consecutive standard surveys conducted under subsection (i)(2), has been found to have provided substandard quality of care, the State shall (regardless of what other remedies are provided)—

"(i) impose the remedy described in subparagraph (A)(i), and

"(ii) monitor the facility under subsection (i)(4)(B),

until the facility has demonstrated, to the satisfaction of the State, that it is in compliance with the requirements of subsections (b) through (e) and that it will remain in compliance with such requirements.

"(F) INCENTIVES FOR HIGH QUALITY CARE.—In addition to the remedies specified in this paragraph, a State may establish a program to reward, through public recognition, incentive payments, or both, nursing facilities that provide the highest quality care to residents who are entitled to medical assistance under this title. For purposes of section 1903(a)(7), proper expenses incurred by a State in carrying out such a program shall be considered to be expenses necessary for the proper and efficient administration of the State plan under this title.

"(3) SECRETARIAL AUTHORITY.—

"(A) FOR STATE NURSING FACILITIES.—With respect to a State nursing facility, the Secretary shall have the authority and duties of a State under this subsection, including the authority to impose remedies described in paragraph (2)(A) (other than clause (iv) thereof).

"(B) OTHER NURSING FACILITIES.—With respect to any other nursing facility in a State, if the Secretary finds that a nursing facility no longer meets a requirement of subsection (b), (c), (d), or (e) and further finds that the facility's deficiencies—

"(i) immediately jeopardize the health or safety of its residents, the Secretary shall take immediate action to remove the jeopardy and correct the deficiencies through the remedy specified in subparagraph (C)(iii), or terminate the facility's participation under the State plan and may provide, in addition, for one or more of the other remedies described in subparagraph (C); or

"(ii) do not immediately jeopardize the health or safety of its residents, the Secretary may impose any of the remedies described in subparagraph (C).

Nothing in this subparagraph shall be construed as restricting the remedies available to the Secretary to remedy a nursing facility's deficiencies. If the Secretary finds that a nursing facility meets such requirements but, as of a previous period, did not meet such requirements, the Secretary may provide for a civil money penalty under subparagraph (C)(ii) for the days on which he finds that the facility was not in compliance with such requirements.

"(C) SPECIFIED REMEDIES.—The Secretary may take the following actions with respect to a finding that a facility has not met an applicable requirement:

"(i) DENIAL OF PAYMENT.—The Secretary may deny any further payments to the State for medical assistance furnished by the facility to all individuals in the facility or to individuals admitted to the facility after the effective date of the finding.

"(ii) AUTHORITY WITH RESPECT TO CIVIL MONEY PENALTIES.—The Secretary may impose a civil money penalty in an amount not to exceed $10,000 for each day of noncompliance and the Secretary shall impose and collect such a penalty in the same manner as civil money penalties are imposed and collected under section 1128A.

"(iii) APPOINTMENT OF TEMPORARY MANAGEMENT.—In consultation with the State, the Secretary may appoint temporary management to oversee the operation of the facility and to assure the health and safety of the facility's residents, where there is a need for temporary management while—

"(I) there is an orderly closure of the facility, or

"(II) improvements are made in order to bring the facility into compliance with all the requirements of subsections (b) through (e).

The temporary management under this clause shall not be terminated under subclause (II) until the Secretary has determined that the facility has the management capability to ensure continued compliance with all the requirements of subsections (b) through (e).

"(D) CONTINUATION OF PAYMENTS PENDING REMEDIATION.—The Secretary may continue payments under section 1903(a) with respect to a nursing facility not in compliance with a requirement of subsection (b), (c), (d), or (e), over a period of not longer than 6 months, if—

"(i) the State survey agency finds that it is more appropriate to take alternative action to assure compliance of the facility with the requirements than to terminate the certification of the facility,

"(ii) the State has submitted a plan and timetable for corrective action to the Secretary for approval and the Secretary approves the plan of corrective action, and

"(iii) the State agrees to repay to the Federal Government payments received under this subparagraph if the corrective action is not taken in accordance with the approved plan and timetable.

The Secretary shall establish guidelines for approval of corrective actions requested by States under this subparagraph.

"(4) EFFECTIVE PERIOD OF DENIAL OF PAYMENT.—A finding to deny payment under this subsection shall terminate when the State or Secretary (or both, as the case may be) finds that the facility is in substantial compliance with all the requirements of subsections (b) through (e).

"(5) IMMEDIATE TERMINATION OF PARTICIPATION FOR FACILITY WHERE STATE OR SECRETARY FINDS NONCOMPLIANCE AND IMMEDIATE JEOPARDY.—If either the State or the Secretary finds that a nursing facility has not met a requirement of subsection (b), (c), (d), or (e) and finds that the failure immediately jeopardizes the health or safety of its residents, the State and the Secretary shall notify the other of such finding, and the State or the Secretary, respectively, shall take immediate action to remove the jeopardy and correct the deficiencies through the remedy specified in paragraph (2)(A)(iii) or (3)(C)(iii), or terminate the facility's participation under the State plan. If the facility's participation in the State plan is terminated by either the State or the Secretary, the State shall provide for the safe and orderly transfer of the residents eligible under the State plan consistent with the requirements of subsection (c)(2).

"(6) SPECIAL RULES WHERE STATE AND SECRETARY DO NOT AGREE ON FINDING OF NONCOMPLIANCE.—

"(A) STATE FINDING OF NONCOMPLIANCE AND NO SECRETARIAL FINDING OF NONCOMPLIANCE.—If the Secretary finds that a nursing facility has met all the requirements of subsections (b) through (e), but a State finds that the facility has not met such requirements and the failure does not immediately jeopardize the health or safety of its residents, the State's findings shall control and the remedies imposed by the State shall be applied.

"(B) SECRETARIAL FINDING OF NONCOMPLIANCE AND NO STATE FINDING OF NONCOMPLIANCE.—If the Secretary finds that a nursing facility has not met all the requirements of subsections (b) through (e) and that the failure does not immediately jeopardize the health or safety of its residents, but the State has not made such a finding, the Secretary—

"(i) may impose any remedies specified in paragraph (3)(C) with respect to the facility, and

"(ii) shall (pending any termination by the Secretary) permit continuation of payments in accordance with paragraph (3)(D).

"(7) SPECIAL RULES FOR TIMING OF TERMINATION OF PARTICIPATION WHERE REMEDIES OVERLAP.—

"(A) STATE AND SECRETARIAL FINDING OF NONCOMPLIANCE AND TERMINATION, BUT NO IMMEDIATE JEOPARDY, TIMING LEFT UP TO STATE.—If—

"(i) both the Secretary and the State find that a nursing facility has not met all the requirements of subsections (b) through (e),

"(ii) neither finds that the failure immediately jeopardizes the health or safety of its residents, and

"(iii) both find that the facility's participation under the State plan should be terminated,

the State's timing of any termination shall control so long as the termination date does not occur later than 6 months after the date of the finding to terminate.

"(B) STATE AND SECRETARIAL FINDING OF NONCOMPLIANCE, SECRETARIAL FINDING TO TERMINATE, BUT NO IMMEDIATE JEOPARDY, TEMPORARY DEFERRAL TO STATE.—If—

"(i) both the Secretary and the State find that a nursing facility has not met all the requirements of subsections (b) through (e),

"(ii) neither finds that the failure immediately jeopardizes the health or safety of its residents, and

"(iii) the Secretary, but not the State, finds that the facility's participation under the State plan should be terminated,

the Secretary shall (pending any termination by the Secretary) permit continuation of payments in accordance with paragraph (3)(D).

"(C) STATE AND SECRETARIAL FINDING OF NONCOMPLIANCE, STATE FINDING TO TERMINATE, BUT NO IMMEDIATE JEOPARDY, TIMING UP TO STATE.—If—

"(i) both the Secretary and the State find that a nursing facility has not met all the requirements of subsections (b) through (e),

"(ii) neither finds that the failure immediately jeopardizes the health or safety of its residents, and

"(iii) the State, but not the Secretary, finds that the facility's participation under the State plan should be terminated,

the State's decision to terminate, and timing of such termination, shall control.

"(8) STATE AND SECRETARIAL FINDING OF NONCOMPLIANCE, BUT NO IMMEDIATE JEOPARDY, IMPOSITION OF ALTERNATIVE OR ADDITIONAL REMEDIES.—

"(A) ONE PARTY FINDS ADDITIONAL REMEDY.—If—

"(i) both the Secretary and the State find that a nursing facility has not met all the requirements of subsections (b) through (e),

"(ii) neither finds that the failure immediately jeopardizes the health or safety of its residents, and

"(iii) the Secretary or the State, but not both, establishes one or more remedies which are additional or alternative to the remedy of terminating the facility's participation under the State plan,

such additional or alternative remedies shall also be applied.

"(B) OVERLAPPING ADDITIONAL OR ALTERNATIVE REMEDIES.—If—

"(i) both the Secretary and the State find that a nursing facility has not met the requirements of subsections (b) through (e),

"(ii) neither finds that the failure immediately jeopardizes the health or safety of its residents, and "(iii) both the Secretary and the State establish one or more remedies which are additional or alternative to the remedy of terminating the facility's participation under the State plan,

only the additional or alternative remedies of the Secretary shall apply.

"(9) CONSTRUCTION.—The remedies provided under this subsection are in addition to those otherwise available under State or Federal law and shall not be construed as limiting such other remedies, including any remedy available to an individual at common law. The remedies described in clauses (i), (iii), and (iv) of paragraph (2)(A) may be imposed during the pendency of any hearing.

"(10) SHARING OF INFORMATION.—Notwithstanding any other provision of law, all information concerning nursing facilities required by this section to be filed with the Secretary or a State agency shall be made available to Federal or State employees for purposes consistent with the effective administration of programs established under this title and title XVIII, including investigations by State medicaid fraud control units.".

(b) CONFORMING AMENDMENTS.—(1) Section 1902 (42 U.S.C. 1396a) is amended by striking subsection (i).

(2) Section 1903(i) (42 U.S.C. 1396b(i)) is amended by striking the period at the end of paragraph (7) and inserting "; or" and by adding at the end the following new paragraph:

"(8) with respect to any amount expended for medical assistance for nursing facility services to reimburse (or otherwise compensate) a nursing facility for payment of a civil money penalty imposed under section 1922(j).".

SEC. 4115. PERSONAL NEEDS ALLOWANCE.

(a) REQUIRING PERSONAL NEEDS ALLOWANCE OF AT LEAST $35 FOR AN INDIVIDUAL AND $70 FOR AN INSTITUTIONALIZED COUPLE NOT RECEIVING SSI BENEFITS.—Section 1902 (42 U.S.C. 1396a), as amended by section 5(a) of the Medicare and Medicaid Patient and Program Protection Act of 1987 (Public Law 100-93), is amended—

(1) in subsection (a)—

(A) by striking "and" at the end of paragraph (48),

(B) by striking the period at the end of paragraph (49) and inserting "; and", and

(C) by inserting after paragraph (49) the following new paragraph:

"(50) provide, in accordance with subsection (q), for a monthly personal needs allowance for certain institutionalized, non-SSI individuals and couples."; and

(2) by adding at the end the following new subsection:

"(q)(1)(A) In order to meet the requirement of this paragraph for purposes of subsection (a)(50), the State plan must provide that, in the case of an institutionalized, non-SSI individual or couple described in subparagraph (B), in determining the amount of the individual's or couple's income to be applied monthly to payment for the cost of care in an institution, there shall be deducted from the monthly income (in addition to other allowances otherwise provided under the State plan) a monthly personal needs allowance—

"(i) which is reasonable in amount for clothing and other personal needs of the individual (or couple) while in an institution, and

"(ii) which is not less (and may be greater) than the minimum monthly personal needs allowance described in paragraph (2).

"(B) In this subsection, the term 'institutionalized, non-SSI individual or couple' means an individual or married couple—

"(i) who is an inpatient in a hospital, skilled nursing facility, or intermediate care facility for which payments are made under this title throughout a month,

"(ii) with respect to whom a supplemental security income payment is not made under section 1611(e), and

"(iii) who is determined to be eligible for medical assistance under the State plan.

"(2) The minimum monthly personal needs allowance described in this paragraph for months in—

"(A) 1988 is $35 for an institutionalized individual and $70 for an institutionalized couple (if both are aged, blind, or disabled, and their incomes are considered available to each other in determining eligibility), or

"(B) a subsequent year, is equal to the allowance established under this paragraph for the months in the previous year increased by the applicable percentage increase (as defined in section 215(i)) effective in December of the previous year;

except that any such allowance determined under subparagraph (B), if not a multiple of $1, shall be rounded to the next highest multiple of $1.

"(3) Paragraphs (10) and (17) of subsection (a) shall not be construed as requiring individuals who are entitled to supplemental security income payments under title XVI to have their personal needs allowance determined under this subsection in a manner comparable to that provided to institutionalized, non-SSI individuals and couples.".

(b) EFFECTIVE DATE.—(1) The amendments made by this subsection (a) apply (except as provided under paragraph (2)) to payments under title XIX of the Social Security Act for calendar quarters beginning on or after January 1, 1988, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act.

SEC. 4116. EFFECTIVE DATES.

(a) NEW REQUIREMENTS AND SURVEY AND CERTIFICATION PROCESS.—Except as otherwise specifically provided in section 1922 of the Social Security Act, the amendments made by sections 4111 and 4113 (relating to nursing facility requirements and survey and certification requirements) shall apply to nursing facility services furnished on or after October 1, 1989, without regard to whether regulations to implement such amendments are promulgated by such date; except that section 1902(a)(28)(B) of the Social Security Act (as amended by section 4111(b) of this Act), relating to requiring State medical assistance plans to specify the services included in nursing facility services, shall apply to calendar quarters beginning more than 6 months after the date of the enactment of this Act, without regard to whether regulations to implement such section are promulgated by such date.

(b) DESIGNATION OF RESIDENT ASSESSMENT INSTRUMENT AND ENFORCEMENT.—(1) Except as otherwise specifically provided in section 1922 of the Social Security Act and except as provided in paragraph (2), the amendments made by sections 4112 and 4114 of this Act apply to payments under title XIX of the Social Security Act for calendar quarters beginning on or after the date of the enactment of this Act, without regard to whether regulations to implement such amendments are promulgated by such date.

(2) In applying the amendments made by section 4114 for services furnished before October 1, 1989—

(A) any reference to a nursing facility is deemed a reference to a skilled nursing facility or intermediate care facility (other than an intermediate care facility for the mentally retarded), and

(B) with respect to such a skilled nursing facility or intermediate care facility, any reference to a requirement of subsection (b), (c), (d), or (e) is deemed a reference to the provisions of section 1861(j) or section 1905(c), respectively, of the Social Security Act.

(c) WAIVER OF PAPERWORK REDUCTION.—Chapter 35 of title 44, United States Code, shall not apply to information required for purposes of carrying out this Act and implementing the amendments made by this Act.

SEC. 4117. ANNUAL REPORT.

The Secretary of Health and Human Services shall report to the Congress annually on the extent to which nursing facilities are complying with the requirements of subsections (b) through (e) of section 1922 of the Social Security Act (as added by the amendments made by section 4111 of this Act) and the number and type of enforcement actions taken by States and the Secretary under section 1922(j) of such Act (as added by section 4114 of this Act).

Subpart B—Other Provisions

SEC. 4121. MEDICALLY NEEDY INCOME LEVELS FOR CERTAIN 2-MEMBER COUPLES IN CALIFORNIA.

For purposes of section 1903(f)(1)(B) of the Social Security Act, for payments made to California on or after July 1, 1983, in the case of a family consisting only of two individuals both of whom are adults and at least one of whom is aged, blind, or disabled, the "highest amount which would ordinarily be paid to a family of the same size" under the State's plan approved under part A of title IV of such Act shall, at California's option, be the amount determined by the State agency to be the amount of the aid which would ordinarily be payable under such plan to a family which consists of one adult and two children and which is without any income or resources. Section 1902(a)(10)(C)(i)(III) of the Social Security Act shall not prevent California from establishing (under the previous sentence) an applicable income limitation for families described in that sentence which is greater than the income limitation applicable to other families, if California has an applicable income limitation under section 1903(f) of such Act which is equal to the maximum applicable income limitation permitted consistent with paragraph (1)(B) of such section for families other than those described in the previous sentence.

SEC. 4122. HOME AND COMMUNITY-BASED SERVICES FOR THE ELDERLY.

(a) STATUTORY WAIVER PROGRAM.—Section 1915 (42 U.S.C. 1396n) is amended—

(1) by transferring subsection (d) to the end of such section and redesignating it as subsection (h), and

(2) by inserting after subsection (c) the following new subsection:

"(d)(1) The Secretary shall by waiver provide that a State plan approved under this title shall include as 'medical assistance' under such plan payment for part or all of the cost of home or community-based services (other than room and board) approved by the Secretary which are provided pursuant to a written plan of care to individuals 65 years of age or older with respect to whom there has been a determination that but for the provision of such services the individuals would require the level of care provided in a skilled nursing facility or intermediate care facility the cost of which could be reimbursed under the State plan.

"(2) A waiver shall not be granted under this subsection unless the State provides assurances satisfactory to the Secretary that—

"(A) necessary safeguards (including adequate standards for provider participation) have been taken to protect the health and welfare of individuals provided services under the waiver and to assure financial accountability for funds expended with respect to such services;

"(B) the State will provide, with respect to individuals 65 years of age or older who—

"(i) are entitled to medical assistance for skilled nursing or intermediate care facility services under the State plan,

"(ii) may require such services, and

"(iii) may be eligible for such home or community-based services under such waiver,

for an evaluation of the need for such skilled nursing facility or intermediate care facility services;

"(C) such individuals who are determined to be likely to require the level of care provided in a skilled nursing facility or intermediate care facility are informed of the feasible alternatives, if available under the waiver, at the choice of such individuals, to the provision of skilled nursing facility or intermediate care facility services;

"(D) the State will provide to the Secretary annually, consistent with a data collection plan designed by the Secretary, information on the impact of the waiver granted under this subsection on the type and amount of medical assistance provided under the State plan and on the health and welfare of recipients; and

"(E) under the waiver the amount of the medical assistance with respect to skilled nursing facility services, intermediate care facility services, and home and community-based services (as defined in paragraph (5)(C)) under the State plan for individuals 65 years of age or older during a waiver year will not exceed the projected amount described in paragraph (5)(B) for that year.

"(3) A waiver granted under this subsection may include a waiver of the requirements of section 1902(a)(1) (relating to statewideness), section 1902(a)(10)(B) (relating to comparability), and section 1902(a)(10)(C)(i)(III) (relating to income and resource rules applicable in the community). Subject to a termination by the State (with at least 60 days advance notice to the Secretary) at the beginning of any calendar quarter, a waiver under this subsection shall be for an initial term of 3 years and, upon the request of a State, shall be extended for additional 5-year periods unless the Secretary determines that for the previous waiver period the assurances provided under paragraph (2) have not been met. A waiver may provide, with respect to post-eligibility treatment of income of all individuals receiving services under the waiver, that the maximum amount of the individual's income which may be disregarded for any month is equal to the amount that may be allowed for that purpose under a waiver under subsection (c).

"(4) A waiver under this subsection may, consistent with paragraph (2), provide medical assistance to individuals (to the extent consistent with written plans of care, which are subject to the approval of the State) for case management services, homemaker/home health aide services and personal care services, adult day health services, habilitation services, respite care, and such other services requested by the State as the Secretary may approve.

"(5)(A) In the case of a waiver approved under this subsection, notwithstanding any other provision of section 1903 to the contrary, payment may not be made under section 1903(a)(1) for medical assistance with respect to skilled nursing facility services, intermediate care facility services, and home and community-based services (as defined in subparagraph (C)) under the State plan for individuals 65 years of age or older during a waiver year under this subsection (whether or not the waiver is terminated during the waiver year) to the extent that the amount of such assistance exceeds the projected amount described in subparagraph (B) for that year.

"(B) For purposes of subparagraph (A), the projected amount under this subparagraph for a waiver year is the sum of the following two amounts (determined by the Secretary):

"(i) The aggregate amount of the State's medical assistance under this title for skilled nursing facility services and intermediate care facility services furnished to individuals 65 years of age or older for the base year (as defined in subparagraph (C)(ii)) increased by the nursing facility increase percentage (as defined in subparagraph (D)(i), subject to subparagraph (D)(ii)(I)).

"(ii) The aggregate amount of the State's medical assistance under this title for home and community-based services (as defined in subparagraph (D)) furnished to individuals 65 years of age or older for the base year (as defined in subparagraph (C)(ii)) increased by the home care increase percentage (as defined in subparagraph (D)(i), subject to subparagraph (D)(ii)(II)).

If the waiver applies less than Statewide, the amount projected under this subparagraph shall be reduced to reflect the portion of the State covered under the waiver.

"(C) In this paragraph:

"(i) The term 'home and community-based services' includes services described in section 1905(a)(7), services described in paragraph (4), and personal care services.

"(ii) The term 'base year' means, with respect to a State, the most recent 4-calendar-quarter period (ending before October 1, 1987) for which actual expenditures under this title have been reported to, and approved by, the Secretary as of January 31, 1988.

"(D)(i) The terms 'nursing facility increase percentage' and 'home care increase percentage' mean, with respect to a waiver year, the applicable annual percentage (as defined in clause (ii)) compounded annually over the period (including fractions of a year before the first waiver year) beginning with the last month of the base year and ending with the last month of the waiver year.

"(ii) In clause (i), the term 'applicable annual percentage' means 9 percent per year or, if greater for a period beginning on or after October 1, 1989, for purposes of—

"(I) subparagraph (B)(i), the sum of the percentage increase in the facility index (projected under clause (iii)(I)) from the month before the period to the last month of the period and the percentage increase in the elderly population of the State (projected under clause (iii)(III)) from the beginning to the end of the period; or

"(II) subparagraph (B)(ii), the sum of the percentage increase in the home and community-based services index (projected under clause (iii)(II)) from the month before the period to the last month of the period and the percentage increase in the elderly population of the State (projected under clause (iii)(III)) from the beginning to the end of the period.

"(iii) The Secretary shall develop and promulgate by regulation (by not later than July 1, 1989)—

"(I) a method, based on an index of appropriately weighted indicators of changes in the wages and prices of the mix of goods and services which comprise both skilled nursing facility services and intermediate care facility services (regardless of the source of payment for such services), for projecting, before and with respect to a period, the percentage increase in such index between the month before the period to the last month of the period;

"(II) a method, based on an index of appropriately weighted indicators of changes in the wages and prices of the mix of goods and services which comprise home and community-based services (regardless of the source of payment for such services), for projecting, before and with respect to a period, the percentage increase in such index between the month before the period to the last month of the period; and

"(III) a method for projecting, on a State specific basis, the percentage increase in the number of residents in each State who are over 75 years of age for any period.".

(b) Conforming Amendment.—Section 1902(a)(10)(A)(ii)(VI) (42 U.S.C. 1396a(a)(10)(A)(ii)(VI)) is amended by striking "section 1915(c)" each place it appears and inserting "subsection (c) or (d) of section 1915".

(c) Effective Date.—The amendments made by this section shall take effect on January 1, 1988, without regard to whether regulations to implement such amendments are promulgated by such date.

(d) Transition for Existing Waivers.—In the case of a State which, as of December 1, 1987, has a waiver approved with respect to elderly individuals under section 1915(c) of the Social Security Act, which waiver is scheduled to expire before July 1, 1988, if the State notifies the Secretary of Health and Human Services before the expiration date of such waiver of the State's intention to file an application for a waiver under section 1915(d) of such Act (as amended by subsection (a) of this section), the Secretary shall extend approval of the State's waiver, under section 1915(c) of such Act, on the same terms and conditions through July 1, 1988.

SEC. 4123. PROTECTION OF INCOME AND RESOURCES OF COUPLE FOR MAINTENANCE OF COMMUNITY SPOUSE.

(a) In General.—Title XIX, as amended by section 4111(a), is amended by inserting after section 1922 the following new section:

"TREATMENT OF INCOME AND RESOURCES FOR CERTAIN INSTITUTIONALIZED SPOUSES

"Sec. 1923. (a) Special Treatment for Institutionalized Spouses.—

"(1) Supersedes other provisions.—In determining the eligibility for medical assistance of an institutionalized spouse (as defined in subsection (h)(1)), the provisions of this section supersede any other provision of this title (including sections 1902(a)(17) and 1902(f)) which is inconsistent with them.

"(2) No comparable treatment required.—Any different treatment provided under this section for institutionalized spouses shall not, by reason of paragraph (10) or (17) of section 1902(a), require such treatment for other individuals.

"(3) Does not affect certain determinations.—Except as this section specifically provides, this section does not apply to—

"(A) the determination of what constitutes income or resources, or

"(B) the methodology and standards for determining and evaluating income and resources.

"(4) Application in certain states and territories.—

"(A) Application in states operating under demonstration projects.—In the case of any State which is providing medical assistance to its residents under a waiver granted under section 1115, the Secretary shall require the State to meet the requirements of this section in same manner as the State would be required to meet such requirement if the State had in effect a plan approved under this title.

"(B) No application in commonwealths and territories.—This section shall only apply to a State that is one of the 50 States or the District of Columbia.

"(b) Rules for Treatment of Income.—

"(1) Separate treatment of income.—During any month in which an institutionalized spouse is in the institution, no income of the community spouse shall be deemed available to the institutionalized spouse.

"(2) Attribution of income.—In determining the income of an institutionalized spouse or community spouse, after the institutionalized spouse has been determined to be eligible for medical assistance, except as otherwise provided in this section and regardless of any State laws relating to community property or the division of marital property, the following rules apply:

"(A) Non-trust property.—Subject to subparagraphs (C) and (D), in the case of income not from a trust, unless the instrument providing the income otherwise specifically provides—

"(i) if payment of income is made solely in the name of the institutionalized spouse or the community spouse, the income shall be considered available only to that respective spouse;

"(ii) if payment of income is made in the names of the institutionalized spouse and the community spouse, one-half of the income shall be considered available to each of them; and

"(iii) if payment of income is made in the names of the institutionalized spouse or the community spouse, or both, and to another person or persons, the income shall be considered available to each spouse in proportion to the spouse's interest (or, if payment is made with respect to both spouses and no such interest is specified, one-half of the joint interest shall be considered available to each spouse).

"(B) Trust property.—In the case of a trust—

"(i) except as provided in clause (ii), income shall be attributed in accordance with the provisions of this title (including sections 1902(a)(17) and 1902(k)), and

"(ii) income shall be considered available to each spouse as provided in the trust, or, in the absence of a specific provision in the trust—

"(I) if payment of income is made solely to the institutionalized spouse or the community spouse, the income shall be considered available only to that respective spouse;

"(II) if payment of income is made to both the institutionalized spouse and the community spouse, one-half of the income shall be considered available to each of them; and

"(III) if payment of income is made to the institutionalized spouse or the community spouse, or both, and to another person or persons, the income shall be considered available to each spouse in proportion to the spouse's interest (or, if payment is made with respect to both spouses and no such interest is specified, one-half of the joint interest shall be considered available to each spouse).

"(C) Property with no instrument.—In the case of income not from a trust in which there is no instrument establishing ownership, subject to subparagraph (D), one-half of the income shall be considered to be available to the institutionalized spouse and one-half to the community spouse.

"(D) Rebutting ownership.—The rules of subparagraphs (A) and (C) are superseded to the extent that an institutionalized spouse can establish, by a preponderance of the evidence, that the ownership interests in income are other than as provided under such subparagraphs.

"(c) Rules for Treatment of Resources.—

"(1) Computation of spousal share at time of institutionalization.—

"(A) Total joint resources.—There shall be computed (as of the beginning of a continuous period of institutionalization of the institutionalized spouse)—

"(i) the total value of the resources to the extent either the institutionalized spouse or the community spouse has an ownership interest, and

"(ii) a spousal share which is equal to ½ of such total value.

"(B) Assessment.—At the request of an institutionalized spouse or community spouse, at the beginning of a continuous period of institutionalization of the institutionalized spouse and upon the receipt of relevant documentation of resources, the State shall promptly assess and document the total value described in subparagraph (A)(i) and shall provide a copy of such assessment and documentation to each spouse and shall retain a copy of the assessment for use under this section. If the request is not part of an application for medical assistance under this title, the State may, at its option as a condition of providing the assessment, require payment of a fee not exceeding the reasonable expenses of providing and documenting the assessment.

"(2) Attribution of resources at time of initial eligibility determination.—In determining the resources of an institutionalized spouse at the time of application for benefits under this title, regardless of any State laws relating to community property or the division of marital property—

"(A) except as provided in subparagraph (B), all the resources held by either the institutionalized spouse, community spouse, or both, shall be considered to be available to the institutionalized spouse, and

"(B) resources held in the name of (or for the sole benefit of) the community spouse shall not be considered to be available to an institutionalized spouse, to the extent that the amount of such resources does not exceed the amount computed under subsection (f)(2)(A) (as of the time of application for benefits) or, if greater, the amount that a court has ordered to be retained by the community spouse for the support of the community spouse.

"(3) Separate treatment of resources after eligibility for benefits established.—During the continuous period in which an institutionalized spouse is in an institution and after the month in which an institutionalized spouse is determined to be eligible for benefits under this title, no resources of the community spouse shall be deemed available to the institutionalized spouse.

"(4) Resources defined.—In this section, the term 'resources' does not include—

"(A) resources excluded under subsection (a) or (d) of section 1613, and

"(B) resources that would be excluded under section 1613(a)(2)(A) but for the limitation on total value described in such section.

"(d) Protecting Income for Community Spouse.—

"(1) Allowances to be offset from income of institutionalized spouse.—After an institutionalized spouse is determined to be eligible for medical assistance, in determining the amount of the spouse's income that is to be applied monthly to payment for the costs of care in the institution, there shall be deducted from the spouse's monthly income the following amounts in the following order:

"(A) A personal needs allowance (described in section 1902(q)(1)), in an amount not less than the amount specified in section 1902(q)(2).

"(B) A community spouse monthly income allowance (as defined in paragraph (2)), but only to the extent income of the institutionalized spouse is made available to (or for the benefit of) the community spouse.

"(C) A family allowance, for each family member, equal to at least ⅓ of the amount by which the amount described in paragraph (3)(A)(i) exceeds the amount of the monthly income of that family member.

"(D) Amounts for incurred expenses for medical or remedial care for the institutionalized spouse that are not subject to payment by a legally liable third party.

In subparagraph (C), the term 'family member' only includes minor or dependent children, dependent parents, or dependent siblings of the institutionalized or community spouse who are residing with the community spouse.

"(2) Community spouse monthly income allowance defined.—In this section (except as provided in paragraph (5)), the 'community spouse monthly income allowance' for a community spouse is an amount by which—

"(A) except as provided in subsection (e), the minimum monthly maintenance needs allowance (established under and in accordance with paragraph (3)) for the spouse, exceeds

"(B) the amount of monthly income otherwise available to the community spouse (determined without regard to such an allowance).

"(3) Establishment of minimum monthly maintenance needs allowance.—

"(A) In general.—Each State shall establish a minimum monthly maintenance needs allowance for each community spouse which, subject to subparagraph (B), is equal to or exceeds—

"(i) 150 percent of 1/12 of the nonfarm income official poverty line (defined by the Office of Management and Budget and revised annually in accordance with sections 652 and 673(2) of the Omnibus Budget Reconciliation Act of 1981) for a family unit of 2 members; plus

"(ii) an excess shelter allowance (as defined in paragraph (4)); plus

"(iii) ½ of the amount by which the income available to the institutionalized spouse exceeds the sum of the amounts described in clauses (i) and (ii).

A revision of the official poverty line referred to in clause (i) shall apply to medical assistance furnished during and after the second calendar quarter that begins after the date of publication of the revision.

"(B) Cap on minimum monthly maintenance needs allowance.—The minimum monthly maintenance needs allowance established under subparagraph (A) may not exceed $1,500 (subject to adjustment under subsections (e) and (g)), or, if greater, the amount specified under the State plan.

"(4) Excess shelter allowance defined.—In paragraph (3)(A)(ii), the term 'excess shelter allowance' means, for a community spouse, the amount by which the sum of—

"(A) the spouse's expenses for rent or mortgage payment (including principal and interest), taxes and insurance and, in the case of a condominium or cooperative, required maintenance charge, for the community spouse's principal residence, and

"(B) the standard utility allowance (used by the State under section 5(e) of the Food Stamp Act of 1977) or, if the State does not use such an allowance, the spouse's actual utility expenses,

exceeds 30 percent of the amount described in paragraph (3)(A)(i), except that, in the case of a condominium or cooperative, for which a maintenance charge is included under subparagraph (A), any allowance under subparagraph (B) shall be reduced to the extent the maintenance charge includes utility expenses.

"(5) Court ordered support.—If a court has entered an order against an institutionalized spouse for monthly income for the support of the community spouse, the community spouse monthly income allowance for the spouse shall be not less than the amount of the monthly income so ordered.

"(e) Notice and Fair Hearing.—

"(1) Notice.—Upon—

"(A) a determination of eligibility for medical assistance of an institutionalized spouse, or

"(B) a request by either the institutionalized spouse, or the community spouse, or a representative acting on behalf of either spouse,

each State shall notify both spouses (in the case described in subparagraph (A)) or the spouse making the request (in the case described in subparagraph (B)) of the amount of the community spouse monthly income allowance (described in subsection (d)(1)(B)), of the amount of any family allowances (described in subsection (d)(1)(C)), of the method for computing the amount of the community spouse resources allowance permitted under subsection (f), and of the spouse's right to a fair hearing under this subsection respecting ownership or availability of income or resources, and the determination of the community spouse monthly income or resource allowance.

"(2) Fair hearing.—If either the institutionalized spouse or the community spouse is dissatisfied with a determination of—

"(A) the community spouse monthly income allowance because the amount of the minimum monthly maintenance needs allowance (established under subsection (d)(3)) is not adequate to support the community spouse without financial duress;

"(B) the amount of monthly income otherwise available to the community spouse (as applied under subsection (d)(2)(B));

"(C) the computation of the spousal share of resources under subsection (d)(1)(B);

"(D) the attribution of resources under subsection (d)(2); or

"(E) the determination of the community spouse resource allowance (as defined in subsection (f)(2)), such spouse is entitled to a fair hearing described in section 1902(a)(3) with respect to such determination. If either such spouse establishes that the minimum monthly maintenance needs allowance or the community spouse resource allowance (in relation to the amount of income generated by such an allowance) is not adequate to support the community spouse without financial duress, there shall be substituted, for the minimum monthly maintenance needs allowance in subsection (d)(2)(A) (or for the community spouse resource allowance under subsection (f)(2)), an amount adequate to support the community spouse without financial duress.

"(f) Permitting Transfer of Resources to Community Spouse.—

"(1) In general.—An institutionalized spouse may, without regard to section 1917, transfer to the community spouse (or to another for the sole benefit of the community spouse) an amount equal to the community spouse resource allowance (as defined in paragraph (2)), but only to the extent the resources of the institutionalized spouse are transferred to (or for the sole benefit of) the community spouse.

"(2) Community spouse resource allowance defined.—In paragraph (1), the 'community spouse resource allowance' for a community spouse is an amount (if any) by which—

"(A) the greatest of—

"(i) $12,000 (subject to adjustment under subsection (f)), or, if greater, the amount specified under the State plan (but not more than 4 times the amount described in clause (i));

"(ii) the lesser of (I) the spousal share computed under subsection (c)(1), or (II) 4 times the amount described in clause (i);

"(iii) the amount established under subsection (e)(2); or

"(iv) the amount transferred under a court order under paragraph (3),

exceeds

"(B) the amount of the resources otherwise available to the community spouse (determined without regard to such an allowance).

"(3) Transfers under court orders.—If a court has entered an order against an institutionalized spouse for the support of the community spouse, section 1917 shall not apply to amounts of resources transferred pursuant to such order for the support of the spouse of a family member (as defined in subsection (d)(1)).

"(g) Indexing Dollar Amounts.—For services furnished during a calendar year after 1988, the dollar amounts specified in subsections (d)(3)(B) and (f)(2)(A)(i) shall be increased by the same percentage as the percentage increase in the consumer price index for all urban consumers (all items; U.S. city average) between September 1987 and the September before the calendar year involved.

"(h) Definitions.—In this section:

"(1) The term 'institutionalized spouse' means an individual who—

"(A) is in a hospital, skilled nursing facility, or intermediate care facility, or who (at the option of the State) is described in section 1902(a)(10)(A)(ii)(VI), and

"(B) is married to a spouse who is not in a hospital, skilled nursing facility, or intermediate care facility;

but does not include any such individual who is not likely to meet the requirements of subparagraph (A) for at least 30 consecutive days.

"(2) The term 'community spouse' means the spouse of an institutionalized spouse.".

(b) Taking into Account Certain Transfers of Assets.—Subsection (c) of section 1917 (42 U.S.C. 1396p) is amended to read as follows:

"(c)(1) In order to meet the requirements of this subsection (for purposes of section 1902(a)(49)(B)), the State plan must provide for a period of ineligibility in the case of an institutionalized individual (as defined in paragraph (3)) who, at any time during the 24-month period immediately before the individual's application for medical assistance under the State plan, disposed of resources for less than fair market value. The period of ineligibility shall begin with the month in which such resources were transferred and the number of months in such period shall be equal to (A) the total uncompensated value of the resources so transferred, divided by (B) the average cost, to a private patient at the time of the application, of nursing home care in the State or, at State option, in the community in which the individual is institutionalized.

"(2) An individual shall not be ineligible for medical assistance by reason of paragraph (1) to the extent that—

"(A) the resources transferred were a home and title to the home was transferred to the individual's spouse or child who is under age 21, or (with respect to State eligible to participate in the State program established under title XVI) is blind or permanently and totally disabled, or (with respect to States which are not eligible to participate in such program) is blind or disabled as defined in section 1614;

"(B) the resources were transferred to (or to another for the sole benefit of) the community spouse, as defined in section 1923(h)(2), or the individual's child who is blind or permanently and totally disabled;

"(C) a satisfactory showing is made to the State (in accordance with any regulations promulgated by the Secretary) that (i) the individual intended to dispose of the resources either at fair market value, or for other valuable consideration, or (ii) the resources were transferred exclusively for a purpose other than to qualify for medical assistance; and

"(D) the State determines that denial of eligibility would work an undue hardship.

"(3) In this subsection, the term 'institutionalized individual' means an individual who—

"(A) is an inpatient in a hospital, skilled nursing facility, or intermediate care facility, and

"(B) is required, as a condition of receiving services in such institution under the State plan, to spend for costs of medical care all but a minimal amount of the individual's income required for personal needs.

“(4) A State may not provide for any period of ineligibility for an institutionalized individual due to transfer of resources for less than fair market value except in accordance with this subsection.”.

(c) Conforming Amendment.—Section 1902(a) (42 U.S.C. 1396a(a)), as amended by section 4115(a), is amended—

(1) in paragraph (10)(C)(i)(III), by striking “the same” each place it appears and inserting “no more restrictive than the”;

(2) by striking “and” at the end of paragraph (49);

(3) by striking out the period at the end of the paragraph (50) and inserting “; and”, and

(4) by inserting after paragraph (50) the following new paragraph:

“(51)(A) meet the requirements of section 1923 (relating to protection of community spouses), and (B) meet the requirement of section 1917(c) (relating to transfer of assets).”; and

(6) by adding at the end the following new sentence: “For purposes of paragraph (10), methodology is considered to be ‘no more restrictive’ if, using the methodology, additional individuals may be eligible for medical assistance and no individuals who are otherwise eligible are made ineligible for such assistance.”.

(d) Study of Means of Recovering Costs of Nursing Facility Services from Estates of Beneficiaries.—The Secretary of Health and Human Services shall study the means for recovering amounts from estates of deceased medicaid beneficiaries (or the estates of the spouses of such deceased beneficiaries) to pay for the medical assistance for skilled nursing facility or intermediate care facility services furnished, under title XIX of the Social Security Act, to such medicaid beneficiaries. The Secretary shall report to Congress, not later than December 31, 1988, on such means, and include appropriate recommendations for changes in legislation.

(e) Effective Date.—(1) The amendments made by this section apply (except as provided under paragraphs (2) and (3)) to payments under title XIX of the Social Security Act for calendar quarters beginning on or after January 1, 1988, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act.

(3)(A) The amendments made by paragraphs (1) and (6) of subsection (c) shall apply to medical assistance furnished on or after October 1, 1982.

(B) Section 1923 of the Social Security Act (as inserted by subsection (a)) shall only apply to institutionalized individuals who begin continuous periods of institutionalization on or after January 1, 1988, except that subsections (b) and (d) of such section (and so much of subsection (e) of such section as relates to such other subsections) shall apply as of January 1, 1988 to individuals institutionalized on or after such date.

(C) The amendments made by subsection (b) shall apply, as of January 1, 1988, to individuals who apply for, or are eligible for, medical assistance on or after such date, without regard to when resources were transferred.

PART 3—ADDRESSING THE NEEDS OF WORKING WELFARE RECIPIENTS

SEC. 4131. MEDICAID ELIGIBILITY.

(a) In General.—Title XIX, as amended by sections 4111(a) and 4123(a), is amended by inserting after section 1923 the following new section:

“EXTENSION OF MEDICAID BENEFITS

“Sec. 1924. (a) Initial 6-Month Extension.—

“(1) Requirement.—Notwithstanding any other provision of this title, each State plan approved under this title must provide that each family which was receiving aid pursuant to a plan of the State approved under part A of title IV in at least 3 of the 6 months immediately preceding the month in which such family becomes ineligible for such aid, because of hours of, or income from employment of the caretaker relative (as defined in subsection (e)), shall, subject to paragraph (3) and without any reapplication for benefits under the plan, remain eligible for assistance under the plan approved under this title during the immediately succeeding 6-month period in accordance with this subsection.

“(2) Notice of benefits.—Each State, in the notice of termination of aid under part A of title IV sent to a family meeting the requirements of paragraph (1)—

“(A) shall notify the family of its right to extended medical assistance under this subsection and include in the notice a description of the circumstances (described in paragraph (3)) under which such extension may be terminated; and

“(B) shall include a card or other evidence of the family's entitlement to assistance under this title for the period provided in this subsection.

“(3) Termination of extension.—

“(A) No dependent child.—Subject to subparagraph (B), extension of assistance during the 6-month period described in paragraph (1) to a family shall terminate (during such period) at the close of the first month in which the family ceases to include a child who is (or would if need be) a dependent child under part A of title IV; except that, with respect to a child who would cease to receive medical assistance because of this subparagraph but who may be eligible for assistance under the State plan because the child is described in clause (i) or (v) of section 1905(a), the State may not discontinue such assistance under this subparagraph until the State has determined that the child is not eligible for assistance under the plan.

“(B) Notice before termination.—No termination of assistance shall become effective under subparagraph (A) until the State has provided the family with notice of the grounds for the termination.

“(4) Scope of coverage.—

“(A) In general.—Subject to subparagraph (B), during the 6-month extension period under this subsection, the amount, duration, and scope of medical assistance made available with respect to a family shall be the same as if the family were still receiving aid under the plan approved under part A of title IV.

“(B) State medicaid ‘wrap-around’ option.—A State, at its option, may pay a family's expenses for premiums, deductibles, coinsurance, or similar costs for health insurance or other health coverage offered by a employer of the caretaker relative or the absent parent of a dependent child. In the case of such coverage offered by an employer of the caretaker relative—

“(i) the State may require the caretaker relative, as a condition of extension of coverage under this subsection, to make application for such employer coverage, but only if—

“(I) the caretaker relative is not required to make financial contributions for such coverage (whether through payroll deduction, payment of deductibles, coinsurance, or similar costs, or otherwise), and

“(II) the State provides, directly or otherwise, for payment of any of the premium amount, deductible, coinsurance, or similar expense that the employee is otherwise required to pay; and

“(ii) the State shall treat the coverage under such an employer plan as a third party liability (under section 1902(a)(25)).

Payments for coverage under this subparagraph shall be considered, for purposes of section 1903(a), to be payments for medical assistance.

“(b) Mandatory 18-Month Extension.—

“(1) Requirement.—Notwithstanding any other provision of this title, each State plan approved under this title shall provide that the State shall offer to each family, which has received assistance during the entire 6-month period under subsection (a) and which meets the requirement of paragraph (2)(B), in the last month of the period the option of extending coverage under this subsection for the succeeding 18-month period, subject to paragraph (3).

“(2) Notice of option.—

“(A) In general.—Each State, during the 3rd and 6th month of any extended assistance furnished to a family under subsection (a), shall notify the family of the family's option for subsequent extended assistance under this subsection. Each such notice shall include (i) a statement as to whether any premiums are required for such extended assistance, and (ii) a description of other out-of-pocket expenses, benefits, reporting and payment procedures, and any pre-existing condition limitations, waiting periods, or other coverage limitations imposed under any alternative coverage options offered under paragraph (4)(D).

“(B) Reporting of earnings required to determine any premium.—If the State requires a premium for extended assistance under this subsection, the State may require (as a condition for extended assistance under this subsection) that a family receiving extended assistance under subsection (a) report to the State, not later than the 21st day of the 4th month in the period of extended assistance under subsection (a), on the family's gross monthly earnings (less the cost of day care for dependent children) in each of the first 3 months of that period; but such requirement shall only apply if the notice under subparagraph (A) during the 3rd month of assistance describes the requirement of this subparagraph.

“(C) 6th month notice.—The notice under subparagraph (A), furnished during the 6th month of assistance under this subsection, shall describe the amount of any premium required of a particular family for each of the first 3 months of extended assistance under this subsection.

“(3) Termination of extension.—

“(A) In general.—Subject to subparagraphs (B) and (C), extension of assistance during the 18-month period described in paragraph (1) to a family shall terminate (during the period) as follows:

"(i) No dependent child.—The extension shall terminate at the close of the first month in which the family ceases to include a child who is (or would if need be) a dependent child under part A of title IV.

"(ii) Failure to pay any premium.—If the family fails to pay any premium for a month under paragraph (5) by the 21st day of the following month, the extension shall terminate at the close of that following month, unless the individual has established, to the satisfaction of the State, good cause for the failure to pay such premium on a timely basis.

"(iii) Quarterly income reporting and test.—The extension shall terminate at the close of the 1st, 4th, 7th, 10th, 13th, or 16th month of the 18-month period if—

"(I) the family fails to report to the State, by the 21st day of such month, information on the family's gross monthly earnings (less the costs of day care for dependent children) in each of the previous 3 months, unless the family has established, to the satisfaction of the State, good cause for the failure to report on a timely basis; except that this subclause shall not apply unless the State has notified the family, in the month before the month in which information is required to be reported under this subclause, of the reporting requirement of this subclause;

"(II) the caretaker relative had no earnings in one or more of the previous 3 months, unless such lack of any earnings was due to an involuntary loss of employment, illness, or other good cause, established to the satisfaction of the State; or

"(III) the State determines that the family's average gross monthly earnings (less costs of day care for dependent children) during the immediately preceding 3-month period exceeds 185 percent of the official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved.

Instead of terminating a family's extension under clause (I), a State, at its option, may provide for suspension of the extension until the month after the month in which the family reports information required under that subclause, but only if the family's extension has not otherwise been terminated under subclause (II) or (III).

Information described in clause (iii)(I) shall be subject to the restrictions on use and disclosure of information provided under section 402(a)(9). The State shall make determinations under clause (iii)(III) for a family each time a report described in clause (iii)(I) for the family is received.

"(B) Notice before termination.—No termination of assistance shall become effective under subparagraph (A) until the State has provided the family with notice of the grounds for the termination, which notice shall include (in the case of termination under subparagraph (A)(iii)(II), relating to no continued earnings) a description of how the family may reestablish eligibility for medical assistance under the State plan.

"(C) Continuation in certain cases until redetermination.—

"(i) Dependent children.—With respect to a child who would cease to receive medical assistance because of subparagraph (A)(i) but who may be eligible for assistance under the State plan because the child is described in clause (i) or (v) of section 1905(a), the State may not discontinue such assistance under such subparagraph until the State has determined that the child is not eligible for assistance under the plan.

"(ii) Medically needy.—With respect to an individual who would cease to receive medical assistance because of clause (ii) or (iii) of subparagraph (A) but who may be eligible for assistance under the State plan because the individual is within a category of person for which medical assistance under the State plan is available under section 1902(a)(10)(C) (relating to medically needy individuals), the State may not discontinue such assistance under such subparagraph until the State has determined that the individual is not eligible for assistance under the plan.

"(4) Coverage.—

"(A) In general.—During the extension period under this subsection—

"(i) the State plan shall offer to each family medical assistance which (subject to subparagraphs (B) and (C)) is the same amount, duration, and scope as would be made available to the family if it were still receiving aid under the plan approved under part A of title IV; and

"(ii) the State plan may offer alternative coverage described in subparagraph (D).

"(B) Elimination of most non-acute care benefits.—At a State's option and notwithstanding any other provision of this title, a State may choose not to provide medical assistance under this subsection with respect to any (or all) of the items and services described in paragraphs (4)(A), (6), (7), (8), (11), (13), (14), (15), (16), (18), (20), and (21) of section 1905(a).

"(C) State medicaid 'wrap-around' option.—At a State's option, the State may elect to apply the option described in subsection (a)(4)(B) (relating to 'wrap-around' coverage) for families electing medical assistance under this subsection in the same manner as such option applies to families provided extended medical assistance under subsection (a).

"(D) Alternative assistance.—At a State's option, instead of the medical assistance otherwise made available under this subsection the State may offer families a choice of health care coverage under one or more of the following:

"(i) Enrollment in family option of employer plan.—Enrollment of the caretaker relative and dependent children in a family option of the group health plan offered to the caretaker relative.

"(ii) Enrollment in family option of state employee plan.—Enrollment of the caretaker relative and dependent children in a family option within the options of the group health plan or plans offered by the State to State employees.

"(iii) Enrollment in state uninsured plan.—Enrollment of the caretaker relative and dependent children in a basic State health plan offered by the State to individuals in the State (or areas of the State) otherwise unable to obtain health insurance coverage.

"(iv) Enrollment in hmo.—Enrollment of the caretaker relative and dependent children in a health maintenance organization (as defined in section 1903(m)(1)(A)) less than 50 percent of the membership (enrolled on a prepaid basis) of which consists of individuals who are eligible to receive benefits under this title (other than because of the option offered under this clause). The option of enrollment under this clause is in addition to, and not in lieu of, any enrollment option that the State might offer under subparagraph (A)(i) with respect to receiving services through a health maintenance organization in accordance with section 1903(m).

If a State elects to offer an option to enroll a family under this subparagraph, the State shall pay any premiums and other costs for such enrollment imposed on the family. A State's payment of premiums for the enrollment of families under this subparagraph (not including any premiums otherwise payable by an employer and less the amount of premiums collected from such families under paragraph (5)) shall be considered, for purposes of section 1903(a)(1), to be payments for medical assistance.

"(E) Open enrollment.—If a State offers an alternative option under subparagraph (D) to families, the State must offer such families the option of enrolling or disenrolling in such an option during a one month period each year without cause and, in the case of enrollment under clause (iii) or (iv) of such subparagraph, the option of disenrolling from the organization or plan for cause at any time.

"(F) Prohibition on cost-sharing for maternity and preventive pediatric care.—

"(i) In general.—If a State offers an alternative option under subparagraph (D) for families, under the option the State must assure that care described in clause (ii) is available without charge to the families through—

"(I) payment of any deductibles, coinsurance, or other cost-sharing respecting such care, or

"(II) providing coverage under the State plan for such care without any cost-sharing, or any combination of such mechanisms.

"(ii) Care described.—The care described in this clause consists of—

"(I) services related to pregnancy (including prenatal, delivery, and post partum services), and

"(II) ambulatory preventive pediatric care (including ambulatory early and periodic screening, diagnosis, and treatment services under section 1905(a)(4)(B)) for each child who meets the age and date of birth requirements to be a qualified child under section 1905(n)(2).

"(5) Premium.—

"(A) Permitted.—Notwithstanding any other provision of this title (including section 1916), a State may impose a premium for a family for extended coverage under this subsection, which premium may vary by family size.

"(B) Level may vary by option offered.—The level of such premium may vary, for the same family, for each option offered by a State under paragraph (4)(C).

"(C) Limit on premium.—In no case may the amount of any premium under this paragraph for a family for a month in one of the premium payment periods described in subparagraph (D)(ii) exceed 10 percent of the amount by which—

"(i) the family's average gross monthly earnings (less the costs of day care for dependent children) during the premium base period (as defined in subparagraph (D)(iii)), exceeds

"(ii) the monthly minimum wage earnings (as defined in subparagraph (D)(i)) for the period.

"(D) Definitions.—In subparagraph (C):

"(i) The term 'monthly minimum wage earnings' means the average amount of earnings which one person would earn during a month in the period if the person were employed for 8 hours on each weekday in the month and was paid the minimum wage rate provided under section 6(a) of the Fair Labor Standards Act of 1938.

"(ii) A 'premium payment period' described in this clause is a 3-month period beginning with the 1st, 4th, 7th, 10th, 13th, or 16th month of the 18-month extension period provided under this subsection.

"(iii) The term 'premium base period' means, with respect to a particular premium payment period, the period of 3 consecutive months the last of which is 4 months before the beginning of that premium payment period.

"(c) Applicability in States and Territories.—

"(1) States operating under demonstration projects.—In the case of any State which is providing medical assistance to its residents under a waiver granted under section 1115(a), the Secretary shall require the State to meet the requirements of this section in the same manner as the State would be required to meet such requirement if the State had in effect a plan approved under this title.

"(2) Inapplicability in commonwealths and territories.—The provisions of this section shall only apply to the 50 States and the District of Columbia.

"(d) General Disqualification for Fraud.—This section shall not apply to an individual who is a member of a family if the individual's eligibility for aid was terminated because of fraud or the imposition of a sanction.

"(e) Caretaker Relative Defined.—In this section, the term 'caretaker relative' has the meaning of such term as used in part A of title IV.".

(b) Conforming Amendments.—(1) Section 1902(e)(1) (42 U.S.C. 1396a(e)(1)) is amended by striking "Notwithstanding" and all that follows through the end and inserting the following: "For provision relating to extension of coverage for certain families which have received aid pursuant to a State plan approved under part A of title IV and which have earned income, see section 1924.".

(2) Section 1905(a) (42 U.S.C. 1396d(a)) is amended by striking "or" at the end of clause (vii), by inserting "or" at the end of clause (viii), and by inserting after clause (viii) the following new clause:

"(ix) individuals provided extended benefits under section 1924,".

(c) Waiver.—Upon approval of the demonstration project relating to the Family Independence Program in the State of Washington under (under subtitle B of title IX of this Act) and with respect to such project, the Secretary of Health and Human Services shall waive compliance with any requirements of sections 1902(a)(1), 1916, and 1924 of the Social Security Act, but only to the extent necessary to enable the State to carry out the project as enacted by the State of Washington in May 1987.

SEC. 4132. MEDICAID EXTENSION DUE TO COLLECTION OF CHILD OR SPOUSAL SUPPORT.

(a) In General.—Section 1902(e)(1) (42 U.S.C. 1396a(e)(1)) is amended by inserting "(A)" after "(e)(1)" and by adding at the end the following new subparagraph:

"(B) Notwithstanding any other provision of this title, each dependent child, and each relative with whom such a child is living (as such terms are defined in part A of title IV, and including the spouse of such a relative as described in section 406(b)), who—

"(i) becomes ineligible for aid under part A of title IV as a result (wholly or partly) of the collection or increased collection of child or spousal support under part D of such title, and

"(ii) has received such aid in at least three of the six months immediately preceding the month in which such ineligibility begins,

shall be deemed, for purposes of this title, to be a recipient of aid under part A of title IV for an additional 6 calendar months beginning with the month in which such ineligibility begins.".

(b) Construction.—Section 1902(h) (42 U.S.C. 1396a(h)) is amended by inserting "(1)" after "(h)" and by adding at the end the following new paragraphs:

"(2) Nothing in section 417(a)(1) shall be construed as requiring or authorizing a case manager assigned under such section to conduct any activities with respect to medical assistance furnished (or which may be furnished) under this title.

"(3) Any individual who would be receiving aid under part A of title IV but for section 417(b)(1)(A) shall be considered, for purposes of this title, to be receiving such aid.".

SEC. 4133. EFFECTIVE DATE.

(a) In General.—The amendments made by this part shall apply (except as provided under subsection (b)) to payments under title XIX of the Social Security Act for calendar quarters beginning on or after January 1, 1988 (without regard to whether regulations to implement such amendments are promulgated by such date), with respect to families that cease to be eligible for aid under part A of title IV of the Social Security Act on or after such date.

(b) Delay.—(1) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this part, the State plan shall not be regarded as failing to comply with the requirements of title XIX of such Act solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act.

(2) In the case of the State of Texas the amendments made by this part shall apply to calendar quarters beginning on or after October 1, 1989.

PART 4—INFLATION ADJUSTMENT FOR TERRITORIES AND MISCELLANEOUS PROVISIONS

SEC. 4141. INCREASING THE MAXIMUM ANNUAL MEDICAID PAYMENTS THAT MAY BE MADE TO THE COMMONWEALTHS AND TERRITORIES.

(a) In General.—Subsection (c) of section 1108 (42 U.S.C. 1308) is amended to read as follows:

"(c) The total amount certified by the Secretary under title XIX with respect to a fiscal year for payment to—

"(1) Puerto Rico shall not exceed (A) $79,000,000 for fiscal year 1988, (B) $83,700,000 for fiscal year 1989, and (C) $88,600,000 for fiscal year 1990 (and each succeeding fiscal year);

"(2) the Virgin Islands shall not exceed (A) $2,600,000 for fiscal year 1988, (B) $2,750,000 for fiscal year 1989, and (C) $2,920,000 for fiscal year 1990 (and each succeeding fiscal year);

"(3) Guam shall not exceed (A) $2,500,000 for fiscal year 1988, (B) $2,650,000 for fiscal year 1989, and (C) $2,800,000 for fiscal year 1990 (and each succeeding fiscal year);

"(4) the Northern Mariana Islands shall not exceed (A) $750,000 for fiscal year 1988, (B) $790,000 for fiscal year 1989, and (C) $840,000 for fiscal year 1990 (and each succeeding fiscal year); and

"(5) American Samoa shall not exceed (A) $1,450,000 for fiscal year 1988, (B) $1,540,000 for fiscal year 1989, and (C) $1,630,000 for fiscal year 1990 (and each succeeding fiscal year).".

(b) Effective Date.—The amendment made by subsection (a) shall apply to payments for fiscal years beginning with fiscal year 1988.

SEC. 4142. CLARIFICATION OF COVERAGE OF CLINIC SERVICES FURNISHED TO HOMELESS OUTSIDE FACILITY.

(a) In General.—Section 1905(a)(9) (42 U.S.C. 1396d(a)(9)) is amended by inserting before the semicolon at the end the following: ", including such services furnished outside the clinic by clinic personnel to an eligible individual who does not reside in a permanent dwelling or does not have a fixed home or mailing address".

(b) Effective Date.—The amendment made by subsection (a) shall apply to services furnished on or after January 1, 1988, without regard to whether regulations to implement such amendment are promulgated by such date.

SEC. 4143. PHYSICIANS' SERVICES FURNISHED BY DENTISTS.

(a) Clarifying Coverage.—Section 1905(a)(5) (42 U.S.C. 1396d(a)(5)) is amended by inserting "(A)" after "(5)" and by inserting before the semicolon at the end the following: ", and (B) medical and surgical services furnished by a dentist (described in section 1861(r)(2)) to the extent such services may be performed under State law either by a doctor of medicine or by a doctor of dental surgery or dental medicine and would be described in clause (A) if furnished by a physician (as defined in section 1861(r)(1))".

(b) Effective Date.—(1) The amendment made by subsection (a) applies (except as provided under paragraph (2)) to payments under title XIX of the Social Security Act for calendar quarters beginning on or after January 1, 1988, without regard to whether or not final regulations to carry out such amendment have been promulgated by such date.

(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirement imposed by the amendment made by subsection (a), the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet this additional requirement before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act.

SEC. 4144. ADJUSTMENT IN MEDICAID PAYMENT FOR INPATIENT HOSPITAL SERVICES FURNISHED BY DISPROPORTIONATE SHARE HOSPITALS.

(a) Implementation of Requirement.—A State's plan under title XIX of the Social Security Act shall not be considered to meet the requirement of section 1902(a)(13)(A) of such Act (insofar as it requires payments to hospitals to take into account the situation of hospitals which serve a disproportionate number of low income patients with special needs), as of April 1, 1988, unless the State has submitted to the Secretary of Health and Human Services, by not later than such date, an amendment to such plan that—

(1) specifically defines the hospitals so described (and includes in such definition any disproportionate share hospital described in subsection (b)(1) which meets the requirement of subsection (d)), and

(2) provides, effective for inpatient hospital services provided not later than July 1, 1988, for an appropriate increase in the rate or amount of payment for such services provided by such hospitals, consistent with subsection (c).

The Secretary shall, not later than June 30, 1988, review each such plan amendment for compliance with such requirement and by such date shall approve or disapprove each such amendment. If the Secretary disapproves such an amendment, the State shall immediately submit a revised amendment which meets such requirement.

(b) Hospitals Deemed Disproportionate Share.—

(1) In general.—For purposes of subsection (a)(1), a hospital which meets the requirement of subsection (d) is deemed to be a disproportionate share hospital if—

(A) the hospital's medicaid inpatient utilization rate (as defined in paragraph ( )) exceeds 15 percent; or

(B) the hospital's low-income utilization rate (as defined in paragraph (3)) exceeds 25 percent.

(2) Medicaid inpatient utilization rate defined.—For purposes of paragraph (1)(A), the term "medicaid inpatient utilization rate" means, for a hospital, a fraction (expressed as a percentage), the numerator of which is the hospital's number of inpatient days attributable to patients who (for such days) were eligible for medical assistance under the State plan approved under title XIX of the Social Security Act in a period, and the denominator of which is the total number of the hospital's inpatient days in that period.

(3) Low-income utilization rate defined.—For purposes of paragraph (1)(B), the term "low-income utilization rate" means, for a hospital, the sum of—

(A) the fraction (expressed as a percentage)—

(i) the numerator of which is the sum (for a period) of (I) the total revenues paid the hospital for patient services under a State plan under title XIX of the Social Security Act and (II) the amount of the cash subsidies for patient services received directly from State and local governments, and

(ii) the denominator of which is the total amount of revenues of the hospital for patient services (including the amount of such cash subsidies) in the period; and

(B) a fraction (expressed as a percentage)—

(i) the numerator of which is the total amount of the hospital's charges for inpatient hospital services which are attributable to charity care in a period, and

(ii) the denominator of which is the total amount of the hospital's charges for inpatient hospital services in the hospital in the period.

The numerator under subparagraph (B)(i) shall not include contractual allowances and discounts (other than for indigent patients not eligible for medical assistance under a State plan approved under title XIX of the Social Security Act).

(c) Payment Adjustment.—In order to be consistent with this subsection, a payment adjustment for a disproportionate share hospital must either—

(1) be in an amount equal to the product of (A) the amount paid under the State plan to the hospital for operating costs for inpatient hospital services (of the kind described in section 1886(a)(4)), and (B) the hospital's disproportionate share adjustment percentage (established under section 1886(d)(5)(F)(iv)); or

(2) provide for a minimum specified additional payment amount (or increased percentage payment) and for an increase in such a payment amount (or percentage payment) in proportion to the percentage by which the hospital's medicaid utilization rate (as defined in subsection (b)(2)) exceeds 15 percent.

(d) Requirement to Qualify as Disproportionate Share Hospital.—(1) Except as provided in paragraph (2), no hospital may be defined or deemed as a disproportionate share hospital under a State plan under title XIX of the Social Security Act or under subsection (b) of this section unless the hospital has at least 2 obstetricians who have staff privileges at the hospital and who have agreed to provide obstetric services to individuals who are entitled to medical assistance for such services under such State plan.

(2)(A) Paragraph (1) shall not apply to a hospital—

(i) whose inpatients are predominantly individuals under 18 years of age; or

(ii) which is located in a rural area (as defined for purposes of section 1886 of the Social Security Act) and which does not offer nonemergency obstetric services to the general population as of the date of the enactment of this Act.

(B) In the case of a hospital located in a rural area (as defined for purposes of section 1886 of the Social Security Act), in paragraph (1) the term "obstetrician" includes any physician with staff privileges at the hospital to perform nonemergency obstetric procedures.

SEC. 4145. TREATMENT OF GARDEN STATE HEALTH PLAN.

(a) Treatment as Health Maintenance Organization.—Section 1903(m) (42 U.S.C. 1396b(m)) is amended—

(1) by adding at the end the following new paragraph:

"(6) For purposes of this subsection, in the case of the State of New Jersey, the term 'contract' includes an undertaking by the State agency (in the State plan under this title), if the undertaking provides for—

"(A) the operation of a program meeting all the requirements of this subsection;

"(B) the establishment of a separate entity (which may be a subdivision of such State agency) with responsibility for operation of the program; and

"(C) separate accounting for the funds used to operate the program.

Such an undertaking is subject to approval by the Secretary in the same manner as a contract under this subsection."; and

(2) in paragraph (2)(F), by inserting "or pursuant to an undertaking described in paragraph (6)" after "subparagraph (A)(ii)".

(b) Conforming Amendment.—Section 1902(e)(2)(A) (42 U.S.C. 1396a(e)(2)(A)) is amended by inserting "or with an entity described in section 1903(m)(6) pursuant to an undertaking described in that section" after "section 1903(m)(2)(A)".

SEC. 4146. FURTHER CLARIFICATION OF FLEXIBILITY FOR STATE MEDICAID PAYMENT SYSTEMS FOR INPATIENT SERVICES.

(a) In General.—Section 1902(h)(1) (42 U.S.C. 1396a(h)(1)), as amended by section 4132(b) of this title, is amended—

(1) by inserting "(A)" after "to limit", and

(2) by inserting before the period at the end the following: ", or (B) the amount of payment made under a plan under this title with respect to inpatient hospital services, skilled nursing facility services, or intermediate care facility services, whether on a facility-by-facility, aggregate, or other basis, to the amount that can reasonably be estimated would have been paid for such services on such a basis under the reimbursement principles applicable under title XVIII".

(b) Effective Date.—The amendments made by subsection (a) shall be effective as if it were included in the amendment effected under section 9433 of the Omnibus Budget Reconciliation Act of 1986.

SEC. 4147. TECHNICAL AND MISCELLANEOUS AMENDMENTS.

(a) Section 2176 Waiver Technicals.—

(1) In general.—Section 1915(c)(3) (42 U.S.C. 1396n(c)(3)) is amended by striking "and section 1902(a)(10)(B) (relating to comparability)" and inserting ", section 1902(a)(10)(B) (relating to comparability), and section 1902(a)(10)(C)(i)(III) (relating to income and resource rules applicable in the community)".

(2) Effective date.—The amendment made by paragraph (1) shall be effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1986.

(b) Katie Beckett Technical.—

(1) In general.—Section 1902(e)(3)(C) (42 U.S.C. 1396a(e)(3)(C)) is amended by striking "to have a supplemental security income (or State supplemental) payment made with respect to him under title XVI" and inserting "for medical assistance under the State plan under this title".

(2) Effective date.—The amendment made by paragraph (1) shall be effective as if it were included in section 134 of the Tax Equity and Fiscal Responsibility Act of 1982.

(c) Codification of Voluntary Contribution Rule.—

(1) In general.—Section 1902(a)(2) (42 U.S.C. 139a(a)(2)) is amended by inserting "(which participation may include the application of private funds donated to, and subject to the unrestricted control of, the State)" after "financial participation by the State" each place it appears.

(2) Effective date.—The amendment made by paragraph (1) takes effect on the date of the enactment of this Act.

(d) Organ Transplant Technical.—

(1) In general.—Section 1903(i) (42 U.S.C. 1396b(i)) is amended—

(A) in paragraph (1), by striking the period at the end and inserting "; or", and

(B) by adding at the end the following new sentence: "Nothing in paragraph (1) shall be construed as permitting a State to provide services under its plan under this title that are not reasonable in amount, duration, and scope to achieve their purpose.".

(2) Effective date.—The amendments made by paragraph (1) shall be effective as if included in the enactment of section 9507 of the Consolidated Omnibus Budget Reconciliation Act of 1985.

(e) Emergency Care Technical.—

(1) In general.—Section 1137 (42 U.S.C. 1320b-7) is amended by adding at the end the following new subsection:

"(f) Subsections (a)(1) and (d) shall not apply with respect to aliens seeking medical assistance for the treatment of an emergency medical condition under section 1903(v)(2).".

(2) Effective date.—The amendment made by paragraph (1) shall apply as if it were included in the enactment of section 9406 of the Omnibus Budget Reconciliation Act of 1986.

(f) Civil Money Penalty and Exclusion Clarifications.—

(1) Civil money penalty.—Section 1128A(a)(1) (42 U.S.C. 1320a-7(a)(1)), as amended by section 3(a)(1) of the Medicare and Medicaid Patient and Program Protection Act of 1987 (Public Law 100-93), is amended by striking "or has reason to know" each place it appears and inserting "or should know".

(2) Exclusion.—Section 1128(d)(3)(B) (42 U.S.C. 1320a-6(d)(3)(B)), as amended by section 2 of the Medicare and Medicaid Patient and Program Protection Act of 1987 (Public Law 100-93), is amended—

(A) by inserting "(i)" after "(B)", and

(B) by adding at the end the following new clause:

"(ii) A State health care program may provide for a period of exclusion which is longer than the period of exclusion under a program under title XVIII.".

(3) Effective date.—The amendment made by paragraph (1) shall apply to activities occurring before, on, or after the date of the enactment of this Act.

(g) HMO Technical Amendments.—

(1) In general.—(A) Section 1903(m)(2)(F) (42 U.S.C. 1396b(m)(2)(F)) is amended by striking "subparagraph (G)" and inserting "subparagraphs (E) or (G)".

(B) Section 1902(e)(2)(A) (42 U.S.C. 1396a(e)(2)(A)) is amended by striking "section 1903(m)(2)(G)" and inserting "subparagraph (B)(iii), (E), or (G) of section 1903(m)(2)".

(2) Effective date.—The amendments made by paragraph (1) shall take effect on the date of the enactment of this Act.

(h) Incorporation of Certain Provisions Relating to Indian Health Service Facilities.—

(1) In general.—Section 1911 (42 U.S.C. 1396j), as amended by section 4111(g)(8) of this title, is amended—

(A) by striking "or nursing facility" each place it appears and inserting ", nursing facility, or any other type of facility which provides services of a type otherwise covered under the State plan"; and

(B) by adding at the end the following new subsection:

"(c) The Secretary is authorized to enter into agreements with the State agency for the purpose of reimbursing such agency for health care and services provided in Indian Health Service facilities to Indians who are eligible for medical assistance under the State plan.".

(2) Effective date.—The amendments made by paragraph (1) shall apply to health care services performed on or after the date of the enactment of this Act.

(i) Frail Elderly Demonstration Project Waivers.—

(1) In general.—Section 9412(b)(2) of the Omnibus Budget Reconciliation Act of 1986 is amended—

(A) in subparagraph (A), by inserting before the period at the end the following: ", including permitting the organization to assume progressively (over the initial 3-year period of the waiver) the full financial risk", and

(B) in subparagraph (B), by striking "be awarded a grant from the Robert Wood Johnson Foundation" and insert "participate in an organized initiative to replicate the findings of the On Lok long-term care demonstration project (described in section 603(c)(1) of the Social Security Amendments of 1983)".

(2) Effective date.—The amendments made by paragraph (1) shall take effect as though it were included in the Omnibus Budget Reconciliation Act of 1986.

(j) Medically Needy Incurred Expenses.

(1) In general.—Section 1902(a)(17) (42 U.S.C. 1396a(a)(17)) is amended by striking "(whether in the form of insurance premiums or otherwise)" and inserting "(whether in the form of insurance premiums or otherwise and regardless of whether such costs are reimbursed under another public program of the State or political subdivision thereof)".

(2) Effective date.—The amendment made by paragraph (1) shall apply to costs incurred after the date of the enactment of this Act.

(k) Qualifications for Case Managers for Individuals With Development Disabilities and Chronic Mental Illness.—

(1) In general.—Section 1915(g)(1) (42 U.S.C. 1396n(g)(1)) is amended by adding at the end the following new sentence: "The State may limit the case managers available with respect to case management services for eligible individuals with developmental disabilities or with chronic mental illness in order to ensure that the case managers for such individuals are capable of ensuring that such individuals receive needed services.".

(2) Effective date.—The amendment made by paragraph (1) shall take effect as though it were included in the enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985.

(l) Habilitation Services Effective Date.—Effective as if included in the enactment of section 9502 of the Consolidated Omnibus Budget Reconciliation Act of 1985, subsection (j)(1) of such section is amended by inserting before the period at the end the following: "to individuals eligible for services under a waiver granted under section 1915(c) of the Social Security Act, without regard to whether such individuals were receiving institutional services before their participation in the waiver".

(m) Section 2176 Waiver for Institutionalized Developmentally Disabled.—

(1) In general.—Section 1915(c)(7) (42 U.S.C. 1396n(c)(7)) is amended by inserting "(A)" after "(7)" and adding at the end the following new subparagraph:

"(B) In making estimates under paragraph (2)(D) in the case of a waiver that applies only to individuals with developmental disabilities who are inpatients in a skilled nursing facility or intermediate care facility and whom the State has determined, on the basis of an evaluation under paragraph (2)(B), to need the level of services provided by an intermediate care facility for the mentally retarded, the State may determine the average per capita expenditures that would have been made in a fiscal year for those individuals under the State plan on the basis of the average per capita expenditures under the State plan for services to individuals who are inpatients in an intermediate care facility for the mentally retarded.".

(2) Effective date.—The amendment made by paragraph (1) shall take effect on the date of the enactment of this Act.

(n) Renewal of Freedom-of-Choice Waivers.—

(1) In general.—Section 1915(h) (42 U.S.C. 1396n(h)), as redesignated by section 4122(a)(1) of this Act, is amended by striking "denies such request in writing within 90 days after the date of its submission to the Secretary." and inserting ", within 90 days after the date of its submission to the Secretary, either denies such request in writing or informs the State agency in writing with respect to any additional information which is needed in order to make a final determination with respect to the request. After the date the Secretary receives such additional information, the request shall be deemed granted unless the Secretary, within 90 day of such date, denies such request.".

(2) Effective date.—The amendment made by paragraph (1) shall apply to requests for continuation of waivers received after the date of the enactment of this Act.

(o) Repeal of Coordinated Audit Requirement.—

(1) In general.—(A) Section 1129 (42 U.S.C. 1320a-8) is repealed.

(B) Section 1902(a)(42) (42 U.S.C. 1396a(a)(42)) is amended—

(i) by striking "(A)", and

(ii) by striking ", (B)" and all that follows up to the semicolon at the end.

(2) Effective date.—The amendments made by paragraph (1) shall apply to audits conducted after the date of the enactment of this Act.

(p) Medicaid Quality Review.—

(1) In general.—(A) Section 1902(a)(30)(C) (42 U.S.C. 1396a(a)(30)(C)) is amended by inserting ", an entity which meets the requirements of section 1152, as determined by the Secretary," after "title XI)".

(B) Section 1902(d) (42 U.S.C. 1396a(d)) is amended—

(i) by inserting after "contracts with" the following: "an entity which meets the requirements of section 1152, as determined by the Secretary, for the performance of the quality review functions described in subsection (a)(30)(C), or", and

(ii) by striking "organization (or organizations)" each place it appears and inserting "such an entity or organization".

(C) Section 1903(a)(3)(C) (42 U.S.C. 1396b(a)(3)(C)) is amended by inserting "or by an entity which meets the requirements of section 1152, as determined by the Secretary," after "utilization and quality control peer review organization".

(2) Effective date.—The amendments made by paragraph (1) shall take effect on the date of the enactment of this Act.

(q) Codification of Technical Error Definition.—

(1) In general.—Section 1903(u)(1)(E) (42 U.S.C. 1396b(u)(1)(E)) is amended by adding at the end the following:

"For purposes of clause (ii), a 'technical error' is an error in eligibility condition (such as assignment of social security numbers and assignment of rights to third-party benefits as a condition of eligibility) that, if corrected, would not result in a difference in the amount of medical assistance paid.".

(2) Effective date.—The amendment made by paragraph (1) takes effect on the date of the enactment of this Act.

(r) Freedom of Choice.—

(1) In general.—Section 1902(a)(23) (42 U.S.C. 1396a(a)(23)) is amended—

(A) by inserting "(A)" after "Guam, provide that", and

(B) by inserting before the semicolon at the end the following: ", and (B) an enrollment of an eligible individual in a primary care case-management system (described in section 1915(b)(1)), a health maintenance organization, or a similar entity shall not restrict the choice of the qualified person from whom the individual may receive services under section 1905(a)(4)(C)".

(2) Effective date.—The amendments made by paragraph (1) shall apply to services furnished on and after July 1, 1988.

(s) Miscellaneous Technical Corrections.—

(1) Subclause (IX) of section 1902(a)(10)(A)(ii) (42 U.S.C. 1396a(a)(10)(A)(ii)) is amended by moving it 4 ems to the right so as to align its left margin with that of subclause (VIII) of that section.

(2) Subclause (X) of section 1902(a)(10)(A)(ii) (42 U.S.C. 1396a(a)(10)(A)(ii)) is amended by moving it 2 ems to the right so as to align its left margin with that of subclause (VIII) of that section.

(3) Section 1902(a)(17) (42 U.S.C. 1396a(a)(17)) is amended by striking "subsection (l)(3)" and inserting "subsections (l)(3), (m)(4), and (m)(5)".

(4) Section 1902(a)(30)(C) (42 U.S.C. 1396(a)(30)(C)) is amended by striking "provide" and inserting "use".

(5) Section 1903(f)(4) (42 U.S.C. 1396b(f)(4)) is amended by inserting ", 1902(a)(10)(A)(ii)(X), or 1905(p)(1)" after "1902(a)(10)(A)(ii)(IX)".

(6) Paragraph (9) of section 1902(e) (42 U.S.C. 1396a(e)) is amended by moving the paragraph 2 ems to the left so as to align the left margin of subparagraph (A) (before clause (i)) and subparagraphs (B) and (C) with the left margin of paragraph (8).

(7) Section 1902(l)(1) (42 U.S.C. 1396a(l)(1)) is amended—

(A) by striking "(1)(l) Individuals" and inserting "(l)(1) Individuals",

(B) by moving the matter before subparagraph (A) 2 ems to the left so it is indented only once, and

(C) by striking ", whose" and inserting "and whose".

(8) Sections 1902(l)(2), 1902(m)(2)(A), 1905(p)(2)(A), and 501(b)(2) (42 U.S.C. 1396a(l)(2), 1396a(m)(2)(A), 1396d(p)(2)(A), 701(b)(2)) are each amended by striking "nonfarm".

(9) Paragraphs (1) and (2) of section 1925(a), as redesignated by section 4111(a) of this title, are amended to read as follows:

"(1) AFDC.—(A) Section 402(a)(32) of this Act (relating to individuals who are deemed recipients of aid but for whom a payment is not made).

"(B) Section 402(a)(37) of this Act (relating to individuals who lose AFDC eligibility due to increased earnings).

"(C) Section 406(h) of this Act (relating to individuals who lose AFDC eligibility due to increased collection of child or spousal support).

"(D) Section 414(g) of this Act (relating to certain individuals participating in work supplementation programs).

"(2) SSI.—(A) Section 1611(e) of this Act (relating to treatment of couples sharing an accommodation in a facility).

"(B) Section 1619 of this Act (relating to benefits for individuals who perform substantial gainful activity despite severe medical impairment).

"(C) Section 1634(b) of this Act (relating to preservation of benefit status for disabled widows and widowers who lost SSI benefits because of 1983 changes in actuarial reduction formula).

"(D) Section 1634(c) of this Act (relating to individuals who lose eligibility for SSI benefits due to entitlement to child's insurance benefits under section 202(d) of this Act).".

(10) Effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1986, section 9411(a)(2)(B) of such Act is amended by inserting "such" after "need for".

Subtitle C—Vaccine Compensation

SECTION 4201. SHORT TITLE, REFERENCE.

(a) Short Title.—This subtitle may be cited as the "Vaccine Compensation Amendments of 1987".

(b) Reference.—Whenever in this subtitle (other than in section 4202(a)) an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Public Health Service Act.

SEC. 4202. EFFECTIVE DATE.

(a) In General.—Section 323(a) of the National Childhood Vaccine Injury Act of 1986 (42 U.S.C. 300aa-1 note) is amended by striking out "Subtitle 2 of such title and this title shall take effect on the effective date of a tax" and all that follows in that section and inserting in lieu thereof "parts A and B of subtitle 2 of such title shall take effect on October 1, 1988 and parts C and D of such title and this title shall take effect on the date of the enactment of the Vaccine Compensation Amendments of 1987.".

(b) References.—

(1) Sections 2111, 2115, 2119(a), 2122, 2123, 2125, 2126, 2127, and 2128 (42 U.S.C. 300aa-11, 300aa-15, 300aa-199a), 300aa-22, 300aa-23, 300aa-25, 300aa-26, 300aa-27, 300aa-28) are each amended by striking out "effective date of this subtitle" each place it appears and inserting in lieu thereof "effective date of this part".

(2) Sections 2111(a)(5)(A), 2115(e)(2) and 2116 (42 U.S.C. 300aa-11(a)(5)(A), 300aa-15(e)(2), 300a-16) are each amended by striking out "effective date of this title" each place it appears and inserting in lieu thereof "effective date of this part".

SEC. 4203. COMPENSATION.

(a) Source.—Section 2115 (42 U.S.C. 300aa-15) is amended by adding at the end the following:

"(i) Source of Compensation.—

"(1) Payment of compensation under the Program to a petitioner for a vaccine-related injury or death associated with the administration of a vaccine before the effective date of this part shall be made from appropriations under subsection (i).

"(2) Payment of compensation under the Program to a petitioner for a vaccine-related injury or death associated with the administration of a vaccine on or after the effective date of this part shall be made from the Vaccine Injury Compensation Trust Fund established under section 9510 of the Internal Revenue Code of 1986.".

(b) Authorization.—Section 2115 (42 U.S.C. 300aa-15)(as amended by subsection (a)) is amended by adding at the end the following:

"(j) Authorization.—For the payment of compensation under the Program to a petitioner for a vaccine-related injury or death associated with the administration of a vaccine before the effective date of this part there are authorized to be appropriated $80,000,000 for fiscal year 1989, $80,000,000 for fiscal year 1990, $80,000,000 for fiscal year 1991, and $80,000,000 for fiscal year 1992. Amounts appropriated under this subsection shall remain available until expended.".

(c) Minimum.—Section 2115(a)(1) (42 U.S.C. 300a-15(a)(1)) is amended by striking out the last sentence of subparagraphs (A) and (B).

(d) Lump Sum.—

(1) Section 2115 (42 U.S.C. 300aa-15) is amended—

(A) by striking out the last two sentences after paragraph (4) in subsection (a), and

(B) by adding at the end of the first subsection (f) the following:

"(4)(A) Except as provided in subparagraph (B), payment of compensation under the Program shall be made in a lump sum determined on the basis of the net present value of the elements of the compensation.

"(B) In the case of a payment of compensation under the Program to a petitioner for a vaccine-related injury or death associated with the administration of a vaccine before the effective date of this part the compensation shall be paid in 4 equal annual installments. If the appropriations under subsection (i) are insufficient to make a payment of an annual installment, section 2111(a) shall not apply to a civil action for damages brought by the petitioner entitled to the payment.".

(2)(A) Subsections (e) and (f) of section 2112 (42 U.S.C. 300a-12) are repealed and subsection (g) of such section is redesignated as subsection (e).

(B) Section 2118 (42 U.S.C. 300aa-18) is repealed.

(e) Limit.—Section 2115(b) (42 U.S.C. 300aa-15(b)) is amended by striking out "shall only include the compensation described in paragraphs (1)(A) and (2) of subsection (a)" and inserting in lieu thereof the following: "may not include the compensation described in paragraph (1)(B) of subsection (a) and may include attorneys' fees and other costs included in a judgment under subsection (e), except that the total amount that may be paid as compensation under paragraphs (3) and (4) of subsection (a) and included as attorneys' fees and other costs under subsection (e) may not exceed $30,000".

(f) Termination of Program.—Part D of title XXI is amended by adding at the end the following:

"TERMINATION OF PROGRAM

"Sec. 2134. (a) Reviews.—The Secretary shall review the number of awards of compensation made under the Program to petitioners under section 2111 for vaccine-related injuries and deaths associated with the administration of vaccines on or after the effective date of this part as follows:

"(1) The Secretary shall review the number of such awards made in the 12-month period beginning on the effective date of this part.

"(2) At the end of each 3-month period beginning after the expiration of the 12-month period referred to in paragraph (1) the Secretary shall review the number of such awards made in the 3-month period.

"(b) Report.—

"(1) If in conducting a review under subsection (a) the Secretary determines that at the end of the period reviewed the total number of awards made by the end of that period and accepted under section 2121(a) exceeds the number of awards listed next to the period reviewed in the table in paragraph (2)—

"(A) the Secretary shall notify the Congress of such determination, and

"(B) beginning 180 days after the receipt by Congress of a notification under paragraph (1), no petition for a vaccine-related injury or death associated with the administration of a vaccine on or after the effective date of this part may be filed under section 2111.

Section 2111(a) and part B shall not apply to civil actions for damages for a vaccine-related injury or death for which a petition may not be filed because of subparagraph (B).

"(2) The table referred to in paragraph (1) is as follows:

Period reviewed:	Total number of awards by the end of the period reviewed
12 months after the effective date of part	150
13th through the 15th month after such date	188
16th through the 18th month after such date	225
19th through the 21st month after such date	263
22nd through the 24th month after such date	300
25th through the 27th month after such date	338
28th through the 30th month after such date	375
31st through the 33rd month after such date	413
34th through the 36th month after such date	450
37th through the 39th month after such date	488
40th through the 42nd month after such date	525
43rd through the 45th month after such date	563
46th through the 48th month after such date	600.".

(g) TECHNICAL.—Section 2115 (42 U.S.C. 300a-15) is amended by redesignating the second subsection (f) and subsection (g) as subsections (g) and (h), respectively.

SEC. 4204. PETITIONS.

(a) APPLICATION OF LIMITS.—Section 2111(a) (42 U.S.C. 300aa-11) is amended by adding at the end the following:

"(8) This subsection applies only to a person who has sustained a vaccine-related injury or death and who is qualified to file a petition for compensation under the Program."

(b) QUALIFICATION.—

(1) Section 2111(b)(1) (42 U.S.C. 300a-11(b)(1)(A)) is amended by striking out "may file" and inserting in lieu thereof "may, if the person meets the requirements of subsection (c)(1), file".

(2) Section 2111(c)(1)(D) (42 U.S.C. 300a-11(c)(1)(D)) is amended (A) by striking out "for more than 1 year" and inserting in lieu thereof "for more than 6 months", (B) by striking out ", (ii)" and inserting in lieu thereof "and", and (C) by striking out "(iii)" and inserting in lieu thereof "(ii)".

(c) WITHDRAWAL.—Section 2121 (42 U.S.C. 300a-21) is amended by redesignating subsection (b) as subsection (c) and by inserting after subsection (a) the following:

"(b) WITHDRAWAL OF PETITION.—If a district court fails to enter a judgment under section 2112 on a petition filed under section 2111 within 365 days after the date on which the petition was filed, the petitioner may submit to the court a notice in writing withdrawing the petition. Such a notice shall be filed not later than 90 days after the expiration of such 365-day period. A person who has submitted a notice under this subsection may, notwithstanding section 2111(a)(2), thereafter maintain a civil action for damages in a State or Federal court without regard to part B and consistent with otherwise applicable law.".

SEC. 4205. CITIZEN'S ACTIONS.

Section 2131(c) (42 U.S.C. 300a-31(c) is amended by striking out "to any party, whenever the court determines that such award is appropriate" and inserting in lieu thereof "to any plaintiff who substantially prevails on one or more significant issues in the action".

SEC. 4206. VACCINE ADMINISTRATORS.

Section 2111(a) (42 U.S.C. 300a-11) is amended by striking out "vaccine manufacturer" each place it appears and inserting in lieu thereof "vaccine administrator or manufacturer".

Subtitle D—User Fees

SEC. 4301. USER FEES.

(a) IN GENERAL.—

(1)(A) The Nuclear Regulatory Commission shall annually assess and collect such fees and charges as are described in paragraphs (2) and (3) in an amount that approximates 100 percent of the budget of the Commission in the fiscal year in which such assessment is made.

(B) The first such assessment shall be made not later than September 30, 1988, and shall be based on the budget of the Commission for fiscal year 1988.

(2) Pursuant to section 9701 of title 31, United States Code, any person who receives a service or thing of value from the Commission shall pay fees to cover the Nuclear Regulatory Commission's costs in providing any such service or thing of value.

(3)(A) Any person who holds a license issued under section 103 or 104 b. of the Atomic Energy Act of 1954 (42 U.S.C. 2133, 2134(b)), that authorizes such person to operate a utilization facility with a rated thermal capacity in excess of 50,000,000 watts shall pay, in addition to the fees set forth in paragraph (2), an annual charge. The Commission shall recover from such charge such costs of the Commission as are not recovered under paragraph (2).

(B) The Nuclear Regulatory Commission shall, by rule, determine the amount of such annual charge for each licensee described in subparagraph (A) in a manner that ensures that the licensees who require the greatest expenditures of Nuclear Regulatory Commission resources pay the greatest annual charge.

(b) USE OF FUNDS.—Amounts collected under this section shall be deposited in the General Fund of the Treasury to reimburse the United States for amounts appropriated for use by the Nuclear Regulatory Commission in carrying out its functions.

(c) REPEAL.—Title VII of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99-272) is amended by striking subtitle G. This repeal shall become effective upon promulgation of the Commission's final rule implementing this section.

(d) FUTURE ENACTMENTS.—No law enacted on or after the date of the enactment of this Act shall be construed to modify this section unless such law explicitly amends this section.

TITLE V—COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

SEC. 5001. NUCLEAR REGULATORY COMMISSION ANNUAL CHARGES.

(a) IN GENERAL.—

(1)(A) The Nuclear Regulatory Commission shall annually assess and collect such fees and charges as are described in paragraphs (2) and (3) in an amount that approximates 75 percent of the budget of the Commission in the fiscal year in which such assessment is made.

(B) The first such assessment shall be made not later than September 30, 1988, and shall be based on the budget of the Commission for fiscal year 1988.

(2) Pursuant to section 9701 of title 31, United States Code, any person who receives a service or thing of value from the Commission shall pay fees to cover the Nuclear Regulatory Commission's costs in providing any such service or thing of value.

(3)(A) Any person who holds a license issued under section 103 or 104 b. of the Atomic Energy Act of 1954 (42 U.S.C. 2133, 2134(b)), that authorizes such person to operate a utilization facility with a rated thermal capacity in excess of 50,000,000 watts shall pay, in addition to the fees set forth in paragraph (2), an annual charge. The Commission shall recover from such charge such costs of the Commission as are recoverable under paragraph (1) and not recovered under paragraph (2).

(B) The Nuclear Regulatory Commission shall, by rule, determine the amount of such annual charge for each licensee described in subparagraph (A) in a manner that ensures that the licensees who require the greatest expenditures of Nuclear Regulatory Commission resources pay the greatest annual charge.

(b) USE OF FUNDS.—Amounts collected under this section shall be deposited in the General Fund of the Treasury to reimburse the United States for amounts appropriated for use by the Nuclear Regulatory Commission in carrying out its functions.

(c) REPEAL.—Title VII of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99-272) is amended by striking subtitle G. This repeal shall become effective upon promulgation of the Commission's final rule implementing this section.

SEC. 5002. ALLOCATION OF ABANDONED MINE RECLAMATION FUNDS IN WYOMING.

Notwithstanding any other provision of law, the State of Wyoming may, subject to a plan approved by the Governor, expend not more than $2,000,000 from its allocation of fiscal year 1987 appropriated funds under section 402(g) of Public Law 95-87 for direct assistance to citizens evacuated from their homes in the Rawhide and Horizon Subdivisions in Campbell County, Wyoming, due to hazards from methane and hydrogen sulfide gases.

SEC. 5003. COAL TRADE EQUALIZATION.

(a) SHORT TITLE.—This section may be cited as the "Coal Trade Equalization Act of 1987".

(b) FINDINGS.—The Congress finds and declares that—

(1) the United States possesses vast reserves of coal which can be utilized in an economical and environmentally sound manner for the purpose of generating electricity and for industrial and other commercial applications;

(2) reliance on often volatile foreign sources of coal does not contribute to the energy independence and security of the United States, aggravates the balance of trade deficit, may jeopardize the reliability of electrical power generation in certain regions of the Nation, does not make full use of domestic resources and may contribute to unemployment in regions dependent to some degree upon the production and utilization of coal for their economic welfare;

(3) there exists no national policy on imports of coal, which imports currently enter the United States free of tariff;

(4) many foreign nations impose a variety of trade constraints on imported coal, including coal which originates in the United States; and

(5) foreign coal producers are not required to comply with stringent environmental, health, welfare, and safety standards thereby giving foreign coal producers a competitive advantage over domestic coal producers.

(c) By the Secretary of the Interior Regarding the Federal Coal Leasing Program and the United States Coal Industry.—(1) The Secretary of the Interior shall investigate the relationship between coal imports and—

(A) the management of the Federal coal leasing program; and

(B) the economic condition of the United States coal industry;

and report the results thereof within 180 days after the date of the enactment of this Act to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate.

(2) If the Secretary of the Interior finds, as a result of the investigation under subsection (a), that coal imports are adversely affecting the management of the Federal coal leasing program and the economic condition of one or more sectors of the United States coal industry, the Secretary shall include in the report required under subsection (a) appropriate legislative recommendations.

(d) Tariff Treatment of Coal.—Subpart J of part 1 of schedule 5 of the Tariff Schedules of the United States (19 U.S.C. 1202) is amended—

(1) by inserting before item 521.11 the following:

"Subpart J headnote:

"1. Coal that is a product of Colombia and imported into the Commonwealth of Puerto Rico shall be classified under item 521.32."; and

(2) by striking out item 521.31 and inserting in lieu thereof the following:

	Coal of all classifications, including culm and slack, and including lignite but not including peat; coke commercially suitable for use as fuel; and compositions of coal, coke, or other carbonaceous material, whether in briquet or other form, used for fuel. Coal		
"521.32	If the product of a country determined by the Secretary of Commerce to be a historical importer of United States coal in quantities exceeding the quantities of coal that it exports to the United States........	Free	Free
521.34	Other	$8 per ton	$8 per ton
521.36	Other	Free	Free".

(e) Amendments to the Trade Act of 1974.—Paragraph (1) of section 503(c) of the Trade Act of 1974 (19 U.S.C. 2463) is amended—

(1) by striking out "and" at the end of subparagraph (F);

(2) by striking out the period at the end of subparagraph (G) and inserting in lieu thereof ", and"; and

(3) by adding at the end thereof the following new subparagraph:

"(H) coal subject to the duty imposed under item 521.34 of the Tariff schedules of the United States (19 U.S.C. 1202).".

(f) Effective Date of Certain Provisions.—The amendments made by subsections (d) and (e) of this section shall apply with respect to articles entered, or withdrawn from warehouse for consumption, after the date of enactment of this Act.

SEC. 5004. FEDERAL ONSHORE OIL AND GAS LEASING.

(a) Short Title; References.—

(1) Short Title.—This section may be cited as the "Federal Onshore Oil and Gas Leasing Reform Act of 1987".

(2) References.—Any reference in this section to the "Mineral Lands Leasing Act of 1920" is a reference to the Act of February 25, 1920 entitled "An Act to promote the mining of coal, phosphate, oil, oil shale, gas and sodium on the public domain" (30 U.S.C. 181 and following).

(b) Oil and Gas Leasing System.—

(1) Competitive Bidding.—Paragraph (1) of section 17(b) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 226(b)(1)) is amended to read as follows:

"(1) All lands to be leased under this section (except lands within a special tar sand area) shall be leased as provided in this paragraph to the highest responsible qualified bidder by competitive bidding under general regulations. Leases may not be issued in units larger than 2,560 acres except in Alaska where such units shall not be larger than 5,760 acres. Such units shall be as nearly compact as possible. Lease sales shall be conducted by oral bidding except that sealed bids may be submitted. Lease sales shall be held for each State, where appropriate, not less frequently than quarterly. Lease sales may be held more frequently if the Secretary of the Interior determines such sales are necessary. The public may make confidential expressions of interest about specific lands. A non-refundable fee of at least $75 shall be required to be paid by any person to bid on any lease offered under the provisions of this subsection. A lease under this paragraph shall be conditioned upon the payment of a royalty at a rate of not less than 12½ percent in amount or value of the production removed or sold from the lease. The Secretary of the Interior shall accept the highest bid at or above $2 per acre from a responsible qualified bidder without evaluation of the lands proposed for lease; except that the Secretary need not issue a lease if, in his discretion, he determines that accepting the highest bid offered for such lease would not represent a reasonable return to the public. Lands for which no bids, or no bids at or above $2 per acre, are received shall become available for leasing under subsection (c) for a period not to exceed one year after the lease sale.".

(2) Noncompetitive Leasing.—Section 17(c) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 226(c)), is amended to read as follows:

"(c)(1) If lands initially required to be leased under subsection (b)(1) become available for leasing under this subsection, the person first making application for the lease after the lands become available under this subsection who is qualified to hold a lease under this Act shall be entitled to a lease of such lands without competitive bidding, upon payment of a non-refundable application fee of at least $75. A lease under this subsection shall be conditioned upon the payment of a royalty at a rate of not less than 12½ per centum in amount or value of the production removed or sold from the lease.

"(2) If lands become available for noncompetitive leasing under this subsection, and if at the expiration of the 1-year period referred to in subsection (b)(1), no lease application is pending for the lands under paragraph (1) of this subsection, the lands shall again be available for leasing in accordance with subsection (b)(1). When any lease issued under paragraph (1) or under subsection (b)(1) terminates, expires, is cancelled, or is relinquished, the land covered by such lease shall again be available for leasing in accordance with subsection (b)(1).".

(3) Rentals.—Section 17(d) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 226(d)) is amended to read as follows:

"(d) Rentals.—All leases issued under this section shall be conditioned upon payment by the lessee of a rental of not less than $2 per acre per year for the first through fifth years of the lease and not less than $3 per acre per year for each year thereafter. Each year's lease rental shall be paid in advance. A minimum royalty of not less than $3 per acre in lieu of rental shall be payable at the expiration of each lease year beginning on or after a discovery of oil or gas in paying quantities on the land leased.".

(4) Notice and Reclamation.—

(A) Additional provisions.—Section 17 of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 226) is amended by relettering subsections (f) through (k) as subsections (i) through (n) and by adding the following new subsections (f) through (h):

"(f) Maps and Descriptions.—At least 60 days before offering lands for lease under this section, and at least 30 days before substantially modifying the terms of any lease issued under this section, the Secretary shall provide public notice through publication in the Federal Register. The Secretary shall also make available periodic notice of pending applications for permits to drill to the appropriate State and local governments and the public. All notices shall include the terms or modified lease terms and maps or a narrative description of the affected lands. Where the inclusion of maps in such notice is not practicable, maps of the affected lands shall be made available to the public for review. Such maps shall show the location of all tracts to be leased, and of all leases already issued in the general area. The requirements of this section are in addition to any public notice required by other law.

"(g) Surface-Disturbing Activities.—The Secretary of the Interior, or for national forest lands, the Secretary of Agriculture, shall regulate all surface-disturbing activities conducted pursuant to any lease issued under this Act, and shall determine reclamation and other actions as required in the interest of conservation of surface resources. No permit to drill on an oil and gas lease issued under this Act may be granted without the analysis and approval by the Secretary concerned of a plan of operations covering proposed surface-disturbing activities within the lease area. The Secretary concerned shall, by rule or regulation, establish such standards as may be necessary to ensure that an adequate bond, surety, or other financial arrangement will be established prior to the commencement of surface-disturbing activities on any lease, to ensure the complete and timely reclamation of the lease tract, and the restoration of any lands or surface waters adversely affected by lease operations after the abandonment or cessation of oil and gas operations on the lease. No oil or gas lease may be issued under this Act to any person during any period in which, as determined by the Secretary of the Interior or Secretary of Agriculture, such person has failed or refused to comply in any material respect with the reclamation requirements and other standards established under this section for any prior lease to which such requirements and standards applied. Prior to making such determination with respect to any person the concerned Secretary shall provide such person with adequate notification and an opportunity to comply with such reclamation requirements and other standards and shall consider whether any administrative or judicial appeal is pending. Once the person has complied with the reclamation requirement or other standard concerned an oil or gas lease may be issued to such person under this Act.

"(h) Public Domain Forest Lands.—The Secretary of the Interior may not issue any lease on public domain national forest lands without the consent of the Secretary of Agriculture.".

(B) Conforming amendment.—Section 31(h) of such Act is amended by striking out "section 17(j)" and substituting "section 17(m)".

(c) Assignments.—Sections 30(a) and 30(b) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 187a) are redesignated as sections 30A and 30B, respectively, and the third sentence of section 30A is amended by striking out the colon and all that follows and substituting a period and the following: "The Secretary may, in his discretion, disapprove an assignment of any of the following, unless the assignment constitutes the entire lease or is demonstrated to further the development of oil and gas:

"(1) A separate zone of deposit under any lease.

"(2) A part of a legal subdivision.

"(3) Less than 640 acres outside Alaska or less than 2,560 acres within Alaska.

Requests for approval of assignment or sublease shall be processed promptly by the Secretary.".

(d) Lease Cancellation.—The first sentence of section 31(b) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188(b)), is amended to read as follows: "Any lease issued after August 21, 1935, under the provisions of section 17 of this Act shall be subject to cancellation by the Secretary of the Interior after 30 days notice upon the failure of the lessee to comply with any of the provisions of the lease, unless—

"(1) the leasehold contains a well capable of production of oil or gas in paying quantities, or

"(2) the lease is committed to an approved cooperative or unit plan or communitization agreement under section 17(m) of this Act which contains a well capable of production of unitized substances in paying quantities.".

(e) Land Use Plans.—The Mineral Lands Leasing Act of 1920 (30 U.S.C. 181 et seq.), is amended by adding the following new section after section 40:

"SEC. 41. LAND USE PLANS.

"(a) Oil and Gas Leases.—

"(1) In general.—Oil and gas leases issued pursuant to this Act on public lands or public domain national forest lands on which the public has expressed substantial interest in oil and gas leasing or for which the Secretary of the Interior, in his discretion, finds there is a high potential for recovery of oil and gas, may be issued only if leasing of the affected lands for oil and gas has been evaluated and is provided for in a land use plan meeting the requirements of this section, as well as other applicable laws.

"(2) Amendments.—Where a land use plan has been completed, or where substantial progress has been made toward the completion of such a plan and the Secretary of the Interior (or for national public domain forest lands, the Secretary of Agriculture) determines that completion and subsequent amendment of the plan would better comply with the requirements of this section than restarting the planning process, the Secretary concerned shall take appropriate steps to amend the plan to comply with the provisions of this section. An amendment to a land use plan made pursuant to this section shall not cause initiation of a new land planning cycle.

"(3) Interim period and plan completion date.—Within 60 days after the enactment of this section, the Secretary of the Interior and the Secretary of Agriculture each shall publish a notice in the Federal Register indicating lands affected by this subsection and specifying the dates for completion or amendment of each land use plan affected by this section. In no case shall the date specified be later than January 1, 1991. Nothing in this section shall preclude the issuance of oil and gas leases during the period prior to the date specified. After the specified date, no oil and gas lease may be issued until the completion of the plan or until a plan amendment in compliance with this section is effective, except that delays in the implementation of a plan or plan amendment due to an appeal shall not preclude the issuance of oil and leases after January 1, 1991.

"(4) Considerations.—Consideration of oil and gas leasing in a land use plan, or amendments to such plan, shall include, but is not limited to, each of the following for the area subject to such plan:

"(A) The potential oil and gas resources including a map and narrative description indicating those areas with known oil and gas reserves as well as lands already under lease for oil and gas.

"(B) An analysis of the most likely social, economic, and environmental consequences of exploration and development for oil and gas recovery, including the most likely potential consequences of exploration and development of tracts already leased or for which lease applications are pending.

"(C) An identification of those specific protective stipulations to be applied to oil and gas leases, and the specific areas to which each such stipulation shall apply. The Secretary of the Interior concerned is authorized to use stipulations which reserve the right to prohibit surface occupancy of the lease area only where the Secretary determines that recovery of oil or gas from such area is feasible without surface occupancy.

"(b) Multiple Use.—Nothing in this section shall be construed to be in violation of the principles of multiple use management as set forth in Federal Land Management Policy Act of 1976 or the Forest and Rangeland Renewable Resources Planning Act of 1974, whichever is applicable.

"(c) Definitions.—For purposes of this section—

"(1) The term 'land use plans' means those plans required under provisions of the Federal Land Management Policy Act of 1976 or the land management plans for national forest system units required under section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974.

"(2) The term 'public lands' means those lands identified by section 103(e) of the Federal Land Management Policy Act of 1976.".

(f) Lands Not Subject to Oil and Gas Leasing.—The Mineral Lands Leasing Act of 1920 (30 U.S.C. 181 et seq.) is amended by adding the following at the end thereof:

"SEC. 42. LANDS NOT SUBJECT TO OIL AND GAS LEASING.

"(a) Prohibition.—The Secretary shall not issue any oil and gas lease under this Act on any of the following Federal lands:

"(1) Lands recommended for wilderness allocation by the surface-managing agency.

"(2) Lands within Bureau of Land Management wilderness study areas.

"(3) Lands designated by Congress as wilderness study areas, except where oil and gas leasing is specifically allowed to continue by the statute designating the study area.

"(4) Lands within areas allocated for wilderness or further planning in Executive Communication 1504, Ninety-sixth Congress (House Document numbered 96-119), unless such lands are allocated to uses other than wilderness by a land and resource management plan complying with the provisions of section 41 of this Act, or have been released to uses other than wilderness by an Act of Congress.

"(b) Oil and Gas Exploration.—In the case of any area of National Forest or public lands subject to this section, nothing in this section shall affect any authority of the Secretary of the Interior (or for public domain National Forest Lands, the Secretary of Agriculture) to issue permits for exploration for oil and gas by means not requiring construction of roads or improvement of existing roads if such activity is conducted in a manner compatible with the preservation of the wilderness environment.".

(g) Effective Date Regulations.—

(1) In General.—Except as provided in paragraph (3), after enactment of this section all oil and gas leasing pursuant to the Mineral Lands Leasing Act of 1920 (30 U.S.C. 181 et seq.) shall be conducted in accordance with the amendments made by this section.

(2) Regulations; Early Lease Sales.—

(A) Regulations.—The Secretary shall issue final regulations to implement amendments made by this section within 180 days after the enactment of this Act. The regulations shall be effective when published in the Federal Register.

(B) Treatment under other law.—The proposal or promulgation of such regulations shall not be considered major Federal actions subject to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969.

(C) Lease sales before regulations.—The Secretary may hold one or more lease sales conducted in accordance with the amendments made by this section before promulgation of regulations referred to in this subsection. Sale procedures for such sale shall be established in the notice of sale.

(3) Pending Applications.—

(A) Simultaneous leasing system.—All noncompetitive oil and gas lease applications filed pursuant to regulations governing the simultaneous oil and gas leasing system (under 43 CFR subpart 3112 as in effect on the date of enactment of this Act) and pending on the date of enactment of this Act shall be processed, and leases shall be issued, if appropriate, under the Mineral Lands Leasing Act of 1920 (30 U.S.C. 181 et seq.) as it was in effect before its amendment by this section.

(B) Over-the-counter.—All noncompetitive oil and gas lease offers filed pursuant to the regulations governing the over-the-counter leasing system (under 43 CFR subpart 3111 as in effect on the date of enactment of this Act) prior to September 15, 1987, shall be processed, and leases shall be issued, if appropriate, under the Mineral Lands Leasing Act of 1920 (30 U.S.C. 181 et seq.) as it was in effect before its amendment by this section.

(C) Competitive bids.—All competitive oil and gas lease bids filed pursuant to applicable regulations (under 43 CFR subpart 3120 as in effect on the date of enactment of this Act) and pending on the date of enactment of this Act shall be processed and leases shall be issued, if otherwise appropriate, under the Mineral Lands Leasing Act of 1920 (30 U.S.C. 181 et seq.) as it was in effect before its amendment by this section.

(h) Enforcement.—The Mineral Lands Leasing Act of 1920 (30 U.S.C. 181 et seq.), is amended by inserting after section 42 the following new section:

"SEC. 43. ENFORCEMENT AUTHORITIES.

"(a) Misrepresentation.—Any person shall be liable under the provisions of this section if that person willfully and knowingly misrepresents to the public the provisions of this Act and its implementing regulations, by any means of communication, in any of the following respects:

"(1) The value or potential value of any lease that is issued under this Act or portion thereof.

"(2) The value or potential value of any potential lease to be issued under this Act or portion thereof.

"(3) The value or potential value of any land available for leasing under this Act.

"(4) The availability of any land for leasing under this Act.

"(5) The ability of the person to obtain leases under this Act on his or her own behalf or on behalf of any other person not within the definition of subsection (h).

"(b) Schemes.—Any person who knowingly and willfully organizes, or participates in, any scheme, arrangement, plan, or agreement to circumvent the provisions of this Act or its implementing regulations shall be liable under the provisions of this section.

"(c) Civil Actions.—The Attorney General shall institute, against any person who, given the nature of the intended recipient of the communications, knew or should have known he or she was violating subsection (a) or (b) of this section, a civil action, in the district court of the United States for the judicial district in which the defendant resides or in which the violation occurred or in which the lease or land involved is located, for a temporary restraining order, injunction, civil penalty of not more than $100,000 for each violation, or other appropriate remedy, including but not limited to a prohibition from participation in exploration, leasing, or development of any Federal mineral, or both.

"(d) Criminal Penalty.—Any person who knowingly and willfully violates the provisions of this section shall, upon conviction, be punished by a fine of not more than $500,000 for each violation or by imprisonment for not more than 5 years, or both.

"(e) Officers, Employees, and Agents.—

"(1) Duties.—Whenever a corporation or other entity is subject to civil or criminal action under this section, any officer, employee or agent of such corporation or entity who authorized, or ordered or carried out the prescribed activity shall be subject to the same action.

"(2) Subject to civil or criminal actions.—Whenever any officer, employee or agent of a corporation or other entity is subject to civil or criminal action under this section for activity conducted on behalf of the corporation or other entity, the corporation or other entity shall be subject to the same action.

"(f) Interpretation.—The remedies, penalties, fines, and imprisonment prescribed in this section shall be concurrent and cumulative and the exercise of one shall not preclude the exercise of the others. Further, the remedies, penalties, fines, and imprisonment prescribed in this section shall be in addition to any other remedies, penalties, fines, and imprisonment afforded by any other law or regulation.

"(g) State Actions.—

"(1) Authority.—A State may commence a civil action under subsection (c) of this section against any person conducting activity within the State in violation of this section. Civil actions brought by a State shall only be brought in the United States district court for the judicial district in which the defendant resides or in which the violation occurred or in which the lease or land involved is located. The district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to order appropriate remedies and penalties as described in subsection (c) of this section.

"(2) Notice.—The State shall notify the Attorney General of the United States of any civil action filed by the State under this subsection within 30 days of filing of the action.

"(3) Recovery of penalties.—Any civil penalties recovered by the State under this subsection shall be retained by the State and may be expended in such manner and for such purposes as the State deems appropriate. If a civil action is jointly brought by the Attorney General and a State, by more than one State or by the Attorney General and more than one State, any civil penalties recovered as a result of the joint action shall be shared by the parties bringing the action in accordance with a written agreement entered into prior to the filing of the action.

"(4) Savings provisions.—Nothing in this section shall deprive a State of jurisdiction to enforce its own civil and criminal laws against any person who may also be subject to civil and criminal action under this section.

"(h) Definition of Person.—For purposes of this section, the term 'person' shall mean any person engaged in the business of promoting, encouraging, contracting for, or acquiring Federal mineral leases for or by others in return for a fee or commission.".

(i) Short Title.—The Mineral Lands Leasing Act of 1920 (30 U.S.C. 181 et seq.) is amended by inserting after section 43 the following new section:

"SEC. 44. SHORT TITLE.

"This Act may be cited as the 'Mineral Lands Leasing Act of 1920'.".

(j) Technical Amendments.—Section 1008 of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3148) is amended as follows:

(1) Subsections (c) and (e) are repealed.

(2) The second sentence of section 1008(d) is repealed.

SEC. 5005. RECLAMATION.

(a) Intent and Purpose.—Section 201 of the Reclamation Reform Act of 1982 (43 U.S.C. 390aa) is amended by inserting before "Sec. 201." the following:

"Sec. 200. It is the intent of Congress that no individual or legal entity receive irrigation water under this title at less than full cost on more than 960 acres of class I lands, or the equivalent thereof, in which that individual or legal entity has an economic interest, except as otherwise provided in this title.".

(b) Trusts.—The test of section 214 of the Reclamation Reform Act of 1982 (43 U.S.C. 390nn) is amended to read as follows:

"Sec. 214. (a) All trusts established under State or Federal law shall be subject to all applicable provisions of Federal reclamation law, including this title.

"(b) All trusts established under State or Federal law subject to the provisions of this title which receive irrigation water under this title shall be deemed to be a qualified or limited recipient.

"(c) All trusts established under State or Federal law established after June 3, 1987, shall be required to: be in writing; be approved by the Secretary; and, identify and describe the interests of each trustee, grantor, and beneficiary.

"(d) Lands placed in a revocable trust shall be attributed to the grantor.

"(e) An individual or corporate trustee holding land in a fiduciary capacity, shall not be subject to the ownership and full cost pricing limitations of this title and the ownership limitations provided in any other provisions of Federal reclamation law.".

(c) Farm Management Arrangements.—The Reclamation Reform Act of 1982 (43 U.S.C. 390aa et seq.) is amended—

(1) by redesignating section 230 as section 231; and

(2) by inserting after section 229 the following new section:

"FARM MANAGEMENT ARRANGEMENTS

"Sec. 230. (a) Notwithstanding any other provision of law, any individual or legal entity who receives irrigation water and enters into a farm management arrangement, farm services agreement, or any other form of operational relationship shall submit for approval by the Secretary, on such reports or forms as the Secretary deems appropriate—

"(1) the name of the individual or legal entity performing such management or services;

"(2) the legal description of the land subject to such arrangement or agreement; and

"(3) that such arrangement or agreement conforms with the requirements of subsection (c).

"(b) Failure to comply with subsection (a) or with a request by the Secretary for submission of any such arrangement or agreement shall result in an increase in the cost of irrigation water to the full cost of all irrigation water delivered to such individual or legal entity until such time as the individual or legal entity has complied with the requirements of this section.

"(c) The Secretary may approve a farm management arrangement or farm services agreement or any other form of operational relationship only if—

"(1) such arrangement or agreement is in writing; and,

"(2) under such arrangement or agreement, the individual or legal entity is performing such farm management arrangement or farm services or any other form of operational relationship for a reasonable fee and does not assume an economic interest in the farming operation other than as a beneficiary of a security interest.".

(d) **Administrative Provisions—Evasion.**—Section 224 of the Reclamation Reform Act of 1982 (43 U.S.C. 390ww) is amended by adding at the end thereof the following:

"(g)(1) If a trust, farm management arrangement, farm services agreement or any other form of operational relationship evades the intent or provisions of this title or any other provision of Federal reclamation law, the Secretary shall recast such arrangement, agreement, or trust to reflect the true situation and shall apply a penalty equal to the full cost of all irrigation water which has been delivered to such individual or legal entity less any amount already paid for such irrigation water, plus interest at the rate established for underpayment of tax under section 6621 of the Internal Revenue Code of 1986.

"(2) Any determination by the Secretary under this subsection shall be in accordance with chapter 5 of title 5 of the United States Code (relating to administrative procedure), subject to an adjudicatory hearing.

"(3) Any trust, arrangement or agreement which has received the approval of the Secretary as required by section 214 or section 230 shall not be liable for the penalty described in paragraph (1) during the period for which such trust, arrangement or agreement was approved, unless such Secretarial approval was obtained as a result of fraud, malfeasance or misrepresentation of fact.

"(4) Nothing in this subsection shall preclude the Secretary from reviewing any trust, arrangement or agreement utilized by an individual or legal entity who receives irrigation water for the purpose of determining compliance with this Act, or Federal reclamation law.".

(e) **Effective Date.**—The amendments made by this Act shall take effect upon the date of enactment of this Act. The Secretary is directed to issue any necessary draft regulations to conform past regulations to this section within 30 days and to issue final regulations to implement this section within 120 days of the date of enactment of this Act. Such regulations shall carry out the intent and purposes of this Act, the Reclamation Reform Act of 1982, and Federal reclamation law.

SEC. 5006. LAND AND WATER CONSERVATION FUND ACT AMENDMENTS.

(a) **Short Title.**—This section may be cited as the "Land and Water Conservation Fund Act Amendments of 1987".

(b) **Park System Admission Fees; Use of Receipts.**—

(1) Section 4(a) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601–6a(a)), is amended as follows:

(A) Paragraph (1) is amended by striking out "$10" and inserting in lieu thereof "$25" in the first sentence.

(B) Paragraph (1) is further amended by striking out "(1)" and inserting in lieu thereof "(1)(A)" and adding the following new subparagraph:

"(B) For admission into a specific designated unit of the National Park System, or into several specific units located in a particular geographic area, the Secretary is authorized to make available an annual admission permit for a reasonable fee. The fee shall not exceed $15 regardless of how many units of the park system are covered. The permit shall convey the privileges of, and shall be subject to the same terms and conditions as, the Golden Eagle Passport, except that it shall be valid only for admission into the specific unit or units of the National Park System indicated at the time of purchase.".

(C) Paragraph (2) is amended by adding the following sentences at the end thereof: "The fee for a single-visit permit at any designated area applicable to those persons entering by private, noncommercial vehicle shall be no more than $5 per vehicle. The single-visit permit shall admit the permittee and all persons accompanying him in a single vehicle. The fee for a single-visit permit at any designated area applicable to those persons entering by any means other than a private noncommercial vehicle shall be no more than $3 per person. The maximum fee amounts set forth in this paragraph shall apply to all designated areas except those specified in paragraph (9).".

(D) Paragraph (3) is amended by adding the following new sentence at the end thereof: "Notwithstanding any other provision of this Act, no admission fee may be charged at any unit of the National Park System if—

"(A) the unit is located in an urbanized area; and

"(B) no fee was charged for admission to the unit as of September 30, 1986.".

(5) Add the following new paragraphs:

"(6)(A) No later than 60 days after the date of enactment of this paragraph, the Secretary of the Interior shall submit to the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate a report on the entrance fees proposed to be charged at units of the National Park System. The report shall include a list of units of the National Park System and the entrance fee proposed to be charged at each unit. The Secretary of the Interior shall establish and include in the report an explanation of the guidelines used in applying the criteria contained in subsection (d).

"(B) Following submittal of the report to the respective committees, any proposed changes to matters covered in the report, including the addition or deletion of park units or the increase or decrease of fee levels at park units shall not take effect until 60 days after notice of the proposed change has been submitted to the committees.

"(7) No admission fee may be charged at any unit of the National Park System for admission of any person 16 years of age or less.

"(8) For purposes of paragraph (3), the term 'urbanized area' means an area consisting of a central city or cities of at least 50,000 inhabitants and the surrounding closely settled area for the city or cities considered as an urbanized area by the Secretary of Commerce for general statistical purposes.

"(9) In the case of the following parks, the fee for a single-visit permit applicable to those persons entering by private, noncommercial vehicle (the permittee and all persons accompanying him in a single vehicle) shall be no more than $10 per vehicle and the fee for a single-visit permit applicable to persons entering by any means other than a private noncommercial vehicle shall be no more than $5 per person: Grand Canyon National Park, Yellowstone National Park, and Grand Teton National Park. In the case of Yellowstone and Grand Teton, a single-visit fee collected at one unit shall also admit the vehicle or person who paid such fee for a single-visit to the other unit.".

(2) Section 4(f) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601–6a(f)) is amended to read as follows:

"(f) The head of any Federal agency, under such terms and conditions as he deems appropriate, may contract with any public or private entity to provide visitor reservation services. Any such contract may provide that the contractor shall be permitted to deduct a commission to be fixed by the agency head from the amount charged the public for providing such services and to remit the net proceeds therefrom to the contracting agency.".

(3) Section 4 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601–6a) is amended by adding the following new subsections at the end thereof:

"(i) All receipts from fees collected pursuant to this section by any Federal agency (or by any public or private entity under contract with a Federal agency) shall be covered into a special account for that agency established in the Treasury of the United States. The preceding sentence shall not apply to fees collected by the United States Fish and Wildlife Service. Notwithstanding any other provision of law, amounts covered into such special account for each such agency during each fiscal year shall be available for obligation or expenditure by the agency after the end of such fiscal year, to be used for resource protection, research, interpretation and maintenance activities related to resource protection at facilities managed by that agency at which outdoor recreation is available. The preceding sentence shall not apply in the case of fees collected by the National Park Service (or by any public or private entity under contract with the National Park Service). Amounts covered into the special account for the National Park Service during each fiscal year shall be allocated among park system units in accordance with subsection (j) in the first fiscal year after the year in which such funds are covered into the special account. Notwithstanding any other provisions of law, such amounts shall be available for obligation or expenditure by the Director of the National Park Service to be used in such first fiscal year as follows:

"(1) In the case of receipts from fees collected for admission to units of the national park system: for resource protection, research, and interpretation at units of the national park system.

"(2) In the case of receipts from user fees collected for units of the national park system: for resource protection, research, interpretation, and maintenance activities related to resource protection at units of the national park system.

"(j)(1) Half of the funds made available to the Director of the National Park Service under subsection (i) in each fiscal year shall be allocated among units of the national park system in accordance with paragraph (2) of this subsection and half shall be allocated in accordance with paragraph (3) of this subsection. Amounts allocated to a unit for any fiscal year and not expended in that fiscal year shall remain available for expenditure at that unit until expended.

"(2) The amount allocated to each unit under this paragraph for each fiscal year shall be a fraction of the total allocation to all units under this paragraph. The fraction for each unit shall be determined by dividing the operating expenses at that unit during the prior fiscal year by the total operating expenses at all units during the prior fiscal year.

"(3) The amount allocated to each unit under this paragraph for each fiscal year shall be a fraction of the total allocation to all units under this paragraph. The fraction for each unit shall be determined by dividing the user fees and admission fees collected under this section at that unit during the prior fiscal year by the total of user fees and admission fees collected under this section at all units during the prior fiscal year.

"(k) When authorized by the head of the collecting agency, volunteers at designated areas may sell permits, and collect fees, authorized or established pursuant to this section. The head of such agency shall insure that such volunteers have adequate training regarding (1) the sale of permits and the collection of fees, (2) the purposes and resources of the areas in which they are assigned, and (3) the provision of assistance and information to visitors to the designated area. The Secretary shall require a surety bond for any such volunteer performing services under this subsection. Funds available to the collecting agency may be used to cover the cost of any such surety bond. The head of the collecting agency may enter into arrangements with qualified public or private entities pursuant to which such entities may sell (without cost to the United States) annual admission permits (including Golden Eagle Passports) at any appropriate location. Such arrangements shall require each such entity to reimburse the United States for the full amount to be received from the sale of such permits at or before the agency delivers the permits to such entity for sale.

"(l)(1) Where the National Park Service provides transportation to view all or a portion of any national park, the Director of the National Park Service may impose a charge for such service in lieu of an admission fee under this section. The amount of any fee imposed under this paragraph shall not exceed the maximum amount of the admission fee which could otherwise be imposed under subsection (a).

"(2) Notwithstanding any other provision of law, half of the charges imposed under paragraph (1) shall be retained by the national park at which the service was provided. The remainder shall be covered into the special account referred to in subsection (i) in the same manner as receipts from fees collected pursuant to this section. Fifty percent of the amount retained shall be expended only for maintenance of transportation systems at the park where the charge was imposed. The remaining fifty percent of the retained amount shall be expended only for activities related to resource protection at such park.".

(4) Title I of Public Law 96-514 is amended by striking out the following: "Notwithstanding the provisions of Public Law 90-401, revenues from recreation fee collections by Federal agencies shall hereafter be paid into the Land and Water Conservation Fund, to be available for appropriation for any or all purposes authorized by the Land and Water Conservation Fund Act of 1965, as amended, without regard to the source of such revenues.".

(5) Section 402 of the Act of October 12, 1979 (93 Stat. 664), is hereby repealed.

(6) The following provisions relating to fees in specific national park system units are hereby repealed:

Park System Unit(s)	Act	Provision Repealed
Alaska units of national park system	Alaska National Interest Lands Conservation Act	Last sentence section 203
Biscayne National Park, Florida	June 28, 1980 (94 Stat. 600)	Last sentence section 106
Boston African American National Historic Site, Massachusetts	Oct. 10, 1980 (94 Stat. 1846)	Last sentence section 103
Channel Islands National Park, California	March 5, 1980 (94 Stat. 77)	Section 207
Fort Jefferson National Monument, Florida	June 28, 1980	Last sentence section 204
Golden Gate National Recreation Area, California	Oct. 27, 1972 (16 U.S.C. 460bb-3(e)	Section 4(e)
Martin Luther King Jr. National Historic Site, Georgia	Oct. 10, 1980 (94 Stat. 1842)	Section 5
Mount Rushmore National Memorial, South Dakota	Feb. 25, 1929 (45 Stat. 1300)	Last sentence section 3
Point Reyes National Seashore, California	Sept. 13, 1962 (16 U.S.C 459c-5(e))	Section 5(e)

(7) The Secretary of the Interior shall assess the extent to which traffic congestion and overcrowding occurs at certain park system units during times of seasonally high usage and shall conduct a study of the following:

(A) The feasibility of reducing vehicular traffic within national park system units through fee reductions for visitors traveling by bus and through other means which could shift visitation from automobiles to buses.

(B) The feasibility of encouraging more even seasonal distribution of visitation.

The study shall include a pilot project to be carried out in Yosemite National Park. For purposes of such pilot project, the Secretary may reduce the fees for admission of various classes or categories of visitors to Yosemite National Park and may reduce the admission fees imposed at the park during seasons with low visitation. A report containing the results of the study shall be transmitted to the Committee on Interior and Insular Affairs of the United States House of Representatives and to the Committee on Energy and Natural Resources of the United States Senate within 3 years after the enactment of this Act.

(c) Extension of Land and Water Conservation Fund.—

(1) Section 2 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601 and following) is amended as follows:

(A) In the matter preceding subsection (a), strike "1989" and substitute "2015".

(B) In subsection (c)(1) strike "1989" and substitute "2015".

(2) The last sentence of section 3 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601 and following) is amended to read as follows: "Moneys made available for obligation or expenditure from the fund or from the special account established under section 4(a)(1)(B) may be obligated or expended only as provided in this Act.".

(d) The President shall submit as part of the annual budget message a detailed list and accounting of all fees received pursuant to this Act by each collecting agency and each collecting unit and shall include proposed distributions of fee receipts from the previous year by function within each unit. Appropriations shall be made as required in this Act. No funds shall be transferred from fee receipts made available under this Act to each unit: *Provided, however,* That in making appropriations, funds derived from such fees may be used for any purpose authorized herein.

TITLE VI—COMMITTEE ON MERCHANT MARINE AND FISHERIES

Subtitle A—Oil Pollution Liability and Compensation

SEC. 6001. SHORT TITLE AND TABLE OF CONTENTS.

(a) Short Title.—This subtitle may be cited as the "Oil Pollution Liability and Compensation Act of 1987".

(b) Table of Contents.—The table of contents of this subtitle is as follows:

Sec. 6001. Short title and table of contents.

CHAPTER 1—OIL POLLUTION LIABILITY AND COMPENSATION

Sec. 6101. Definitions.
Sec. 6102. Liability.
Sec. 6103. Uses of the fund.
Sec. 6104. Claims procedure.
Sec. 6105. Designation and advertisement.
Sec. 6106. Subrogation.
Sec. 6107. Financial responsibility.
Sec. 6108. Litigation, jurisdiction, and venue.
Sec. 6109. Relationship to other law.
Sec. 6110. Effective date.

CHAPTER 2—CONFORMING AMENDMENTS

Sec. 6201. Trans-Alaska pipeline fund.
Sec. 6202. Intervention on the High Seas Act.
Sec. 6203. Federal Water Pollution Control Act.
Sec. 6204. Deepwater Port Act.
Sec. 6205. Outer Continental Shelf Lands Act Amendments.
Sec. 6206. Notice to State; increased penalties for failure to report.
Sec. 6207. Qualified authorizing legislation.

CHAPTER 3—IMPLEMENTATION OF INTERNATIONAL CONVENTIONS

Sec. 6301. Definitions.
Sec. 6302. Applicability of conventions.
Sec. 6303. Recognition of international fund.
Sec. 6304. Action in United States courts.
Sec. 6305. Contribution to international fund.
Sec. 6306. Recognition of foreign judgments.
Sec. 6307. Financial responsibility.
Sec. 6308. Regulations.

CHAPTER 1—OIL POLLUTION LIABILITY AND COMPENSATION

SEC. 6101. DEFINITIONS.

For the purposes of this subtitle, the term—

(1) "act of God" means an unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character the effects of which could not have been prevented or avoided by the exercise of due care or foresight;

(2) "claim" means a request, made in writing for a sum certain, for compensation for damages or removal costs resulting from an incident;

(3) "claimant" means any person who presents a claim for compensation under this subtitle;

(4) "damages" means damages for injury to, destruction of, or loss of natural resources and damages for economic loss specified in section 6102(a)(2) of this subtitle, and includes the cost of assessment of damages;

(5) "discharge" means any emission (other than natural seepage), intentional or unintentional, and includes, but is not limited to, spilling, leaking, pumping, pouring, emitting, emptying, or dumping;

(6) "exclusive economic zone" means the zone established by Presidential Proclamation Numbered 5030, dated March 10, 1983;

(7) "facility" means an onshore facility and an offshore facility;

(8) "foreign offshore unit" means a structure or group of structures which is located, in whole or in part, in the territorial sea or on or over the continental shelf of a foreign country and is or was used for one or more of the following purposes: exploring for, drilling for, producing, storing, handling, transferring, processing, or transporting oil produced from the seabed beneath the foreign country's territorial sea or from the foreign country's continental shelf;

(9) "Fund" means the Oil Spill Liability Trust Fund, established by section 9509 of the Internal Revenue Code of 1954;

(10) "guarantor" means any person, other than the responsible party, who provides evidence of financial responsibility for a responsible party under this subtitle;

(11) "incident" means any occurrence or series of occurrences having the same origin, involving one or more vessels, facilities, or any combination thereof, resulting in the discharge or substantial threat of discharge of oil;

(12) "lessee" means a person holding a leasehold interest in an oil or gas lease on lands beneath navigable waters (as such term is defined in section 2 of the Submerged Lands Act (43 U.S.C. 1301)) on or submerged lands of the Outer Continental Shelf, granted or maintained under applicable State law or the Outer Continental Shelf Lands Act;

(13) "mobile offshore drilling unit" means a vessel (other than a self-elevating lift vessel) capable of use as an offshore facility;

(14) "national contingency plan" means the national contingency plan published under section 311(c) of the Federal Water Pollution Control Act or revised pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act;

(15) "natural resources" includes land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the exclusive economic zone), any State or local government, or any foreign government;

(16) "navigable waters" means the waters of the United States, including the territorial sea;

(17) "offshore facility" means—

(A) a facility of any kind (other than a vessel, a public vessel, or a self-elevating lift vessel) which is located, in whole or in part, on lands beneath navigable waters (as such term in defined in section 2 of the Submerged Lands Act (43 U.S.C. 1301)) or on the Outer Continental Shelf, and is or was used for one or more of the following purposes: exploring for, drilling for, producing, storing, handling, transferring, processing, or transporting oil produced from lands beneath navigable waters or the Outer Continental Shelf; and

(B) a deepwater port licensed under the Deepwater Port Act of 1974;

(18) "oil" means petroleum, including crude oil or any fraction or residue therefrom;

(19) "onshore facility" means any facility (including, but not limited to, motor vehicles and rolling stock) of any kind, any portion of which is located in, on, or under, any land within the United States other than submerged land;

(20) "owner" means any person holding title to, or in the absence of title, any other indicia of ownership of, whether by lease, permit, contract, license, or other form of agreement, except that such term does not include a person who, without participating in the management or operation of a vessel or a pipeline, holds indicia of ownership primarily to protect his security interest therein;

(21) "person" means an individual, corporation, partnership, association, Federal agency, State, municipality, commission, or political subdivision of a State, or any interstate body;

(22) "permittee" means a person holding an authorization, license, or permit for geological exploration issued under section 11 of the Outer Continental Shelf Lands Act or applicable State law;

(23) "public vessel" means a vessel owned or bareboat chartered and operated by the United States, or by a State or political subdivision thereof, or by a foreign nation, except when such vessel is engaged in commerce;

(24) "remove" or "removal" refers to removal of the oil from the water and shorelines or the taking of such other actions as may be necessary to minimize or mitigate damage to the public health or welfare, including, but not limited to, damage to fish, shellfish, wildlife, and public and private property, shorelines, and beaches;

(25) "removal costs" means the costs of removal taken after a discharge of oil has occurred, including all costs of completing removal and the costs to prevent, minimize, or mitigate oil pollution where there was a substantial threat of a discharge of oil including costs incurred under subsection (c), (d), (e), or (l) of section 311 of the Federal Water Pollution Control Act, under the Intervention on the High Seas Act, or under section 18 of the Deepwater Port Act of 1974;

(26) "responsible party" means the following:

(A) VESSELS.—In the case of a vessel, the responsible party is any person owning, operating, or chartering by demise, the vessel.

(B) FACILITIES.—In the case of a facility (including a pipeline but not including any other offshore facility), the responsible party is any person owning or operating the facility.

(C) OFFSHORE FACILITIES.—In the case of an offshore facility (other than a pipeline or a deepwater port licensed under the Deepwater Port Act of 1974, and except as provided in section 6102(a)(4)), the responsible party is the lessee or permittee of the area in which the facility is located, or the holder of a right of use and easement granted under applicable State law or the Outer Continental Shelf Lands Act for the area in which the facility is located (where the holder is a different person than the lessee or permittee).

(D) DEEPWATER PORTS.—In the case of a deepwater port licensed under the Deepwater Port Act of 1974, the responsible party is the licensee.

(27) "Secretary" means the Secretary of Transportation;

(28) "tanker" means a vessel constructed or adapted for the carriage of oil in bulk or in commercial quantities as cargo, except that the term does not include a non-self-propelled vessel of less than 3,000 gross tons carrying oil in bulk as cargo or in residue from cargo and operating on waters of the United States lying inside the baseline from which the territorial sea is measured or on waters outside such baseline which are part of the Gulf Intracoastal Waterway;

(29) "territorial sea" means the belt of the sea measured from the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters, and extending seaward a distance of three nautical miles;

(30) "United States" and "State" mean the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Marianas, and any other territory or possession over which the United States has jurisdiction; and

(31) "vessel" means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water other than a public vessel.

SEC. 6102. LIABILITY.

(a) ELEMENTS OF LIABILITY.—

(1) JOINT, SEVERAL, AND STRICT LIABILITY.—Notwithstanding any other provision of law and subject to the provisions of this section, the responsible party for a vessel or a facility from which oil is discharged, or which poses the substantial threat of a discharge of oil, into or upon the navigable waters or adjoining shorelines or the waters of the exclusive economic zone is jointly, severally, and strictly liable for the removal costs and damages specified in paragraph (2) that arise out of or directly result from such incident.

(2) COVERED REMOVAL COSTS AND DAMAGES.—

(A) REMOVAL COSTS.—The removal costs referred to in paragraph (1) are removal costs consistent with the national contingency plan, which shall be recoverable by any claimant.

(B) DAMAGES.—The damages referred to in paragraph (1) are the following:

(i) NATURAL RESOURCES.—Damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss, which shall be recoverable by a United States trustee or a State trustee.

(ii) REAL OR PERSONAL PROPERTY.—Damages for injury to, or economic losses resulting from destruction of, real or personal property, which shall be recoverable by a claimant who owns or leases such property.

(iii) SUBSISTENCE USE.—Damages for loss of subsistence use of natural resources, which shall be recoverable by any claimant who so uses natural resources which have been injured, destroyed, or lost.

(iv) REVENUES.—Damages equal to the loss of taxes, royalties, rents, or net profits shares, for a period not to exceed one year, due to the injury, destruction, or loss of real property, personal property, or natural resources, which shall be recoverable by the Government of the United States, a State, or a political subdivision thereof.

(v) Profits and earning capacity.—Damages equal to the loss of profits or impairment of earning capacity due to the injury, destruction, or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant who derives at least 25 percent of his or her earnings from the activities which utilize such property or natural resources, or, if such activities are seasonal in nature, 25 percent of his or her earnings during the applicable season.

(3) Excluded discharges.—Paragraph (1) shall not apply to any discharge permitted by a permit issued under Federal, State, or local law.

(4) Division of responsibility for MODU discharges on or above the water.—

(A) Treated first as a tanker.—For purposes of determining the responsible party and applying this subtitle, a mobile offshore drilling unit which is being used as an offshore facility shall be deemed to be a tanker with respect to the discharge, or the substantial threat of a discharge, of oil on or above the surface of the water, except as provided in subparagraph (B).

(B) Treated as a facility for excess liability.—To the extent that removal costs and damages from any incident described in subparagraph (A) exceed the amount for which the responsible party is liable under subparagaph (A) (as such amount may be limited under subsection (c)(1)(A)), the mobile offshore drilling unit shall be deemed to be an offshore facility. For purposes of applying subsection (c)(1)(C), the amount specified in such subsection shall be reduced by the amount for which the responsible party is liable under subparagraph (A).

(5) Liability of third parties.—

(A) In general.—In any case where the responsible party for a vessel or facility can establish that a discharge and the removal costs and damages resulting were caused solely by an act or omission of one or more third parties in accordance with subsection (b)(1)(B) (or solely by such an act or omission in combination with an act of God or an act of war), such third party or parties shall be liable under this section.

(B) Limitation applied.—

(i) Owner or operator of vessel or facility.—If such third party or parties are the owner or operator of a vessel or facility which caused the incident, the liability of such third party or parties shall be subject to the limits provided in subsection (c), as applied with respect to such vessel or facility.

(ii) Other cases.—In any other case, the liability of such third party or parties shall not exceed the limitation which would have been applicable to the responsible party of the vessel or facility from which the discharge actually occurred if such responsible party were liable.

(b) Defenses to Liability.—

(1) Complete defenses.—Except when the responsible party has failed or refused to report the incident where required by law and the responsible party knows or has reason to know of the incident, there is no liability under subsection (a) if the responsible party establishes that the incident—

(A) resulted from an act of God, an act of war, hostilities, civil war, or insurrection; or

(B) was solely caused by an act or omission of one or more persons other than—

(i) a responsible party;

(ii) an employee or agent of a responsible party; or

(iii) one whose act or omission occurs in connection with a contractual relationship with a responsible party.

(2) Defenses as to particular claimants.—There is no liability under subsection (a)—

(A) as to a particular claimant, where the incident is caused, in whole or in part, by the gross negligence or willful misconduct of that claimant; or

(B) as to a particular claimant, to the extent that the incident is caused by the negligence of that claimant.

(c) Limits on Liability.—

(1) General rule.—The total of the liability of a responsible party under subsection (a) and any removal costs incurred by, or on behalf of, the responsible party with respect to each incident shall not exceed—

(A) $500 per gross ton or $5,000,000, whichever is greater (but not to exceed $60,000,000), for any tanker;

(B) $300 per gross ton or $500,000, whichever is greater, for any other vessel; or

(C) $75,000,000 for any facility.

(2) Exceptions.—

(A) Proximate cause.—Paragraph (1) shall not apply if the incident was proximately caused by—

(i) willful misconduct or gross negligence within the privity or knowledge of the responsibility party; or

(ii) a violation, within the privity or knowledge of the responsible party, of applicable Federal safety, construction, or operating regulations.

(B) Failure or refusal of responsible party.—Paragraph (1) shall not apply if the responsible party fails or refuses—

(i) to report the incident where required by law and the responsible party knows or has reason to know of the incident; or

(ii) to provide all reasonable cooperation and assistance requested by a responsible official in connection with removal activities.

(3) Adjusting limits of liability.—

(A) Facilities.—The Secretary is authorized to establish by regulation, with respect to any class or category of facility (other than an offshore facility which is not a deepwater port) a maximum limit of liability under this section of less than $75,000,000, but not less than $8,000,000, taking into account the size, storage capacity, oil throughput, proximity to sensitive areas, type of oil handled, history of discharges, and other factors relevant to risks posed by the class or category of facility.

(B) Periodic reports.—The Secretary shall, from time to time, report to the Congress on the desirability of adjusting the limits of liability specified in paragraph (1) of this subsection.

(d) Liability for Interest.—

(1) General rule.—The responsible party or his guarantor shall be liable to the claimant for interest on the amount paid in satisfaction of a claim under this section for the period described in paragraph (2).

(2) Period.—

(A) In general.—Except as provided in subparagraph (B), the period for which interest shall be paid under paragraph (1) is the period beginning on the date on which the claim is presented to the responsible party, or guarantor, and ending on the date on which the claimant is paid, inclusive.

(B) Exclusion of period due to offer by guarantor.—If the guarantor offers to the claimant an amount equal to or greater than that finally paid in satisfaction of the claim, the period described in subparagraph (A) shall not include the period beginning on the date such offer is made and ending on the date such offer is accepted. If such offer is made within 60 days after the date upon which the claim is presented pursuant to section 6104(a), the period described in subparagaph (A) shall not include any period before such offer is accepted.

(C) Exclusion of periods in interest of justice.—The period described in paragraph (A) shall not include any period—

(i) during which a claimant is not paid due to reasons beyond the control of the responsible party; and

(ii) if it would not serve the interest of justice to include such period.

(D) Calculation of interest.—The interest paid under this subsection shall be calculated at the average of the highest rate for commercial and finance company paper of maturities of 180 days or less obtaining on each of the days included within the period for which interest must be paid to the claimant, as published in the Federal Reserve bulletin.

(E) Interest not subject to liability limits.—Interest under this paragraph shall be in addition to damages for which claims may be asserted under section 6102 and shall be paid without regard to any limitation of liability under subsection (c)(1) of this section. The payment of interest under this subsection by a guarantor shall be subject to section 6107(e).

(e) Natural Resources.—

(1) Liability.—In the case of an injury to, destruction of, or loss of natural resources under this section, liability shall be—

(A) to the United States Government for natural resources belonging to, managed by, controlled by, or appertaining to the United States,

(B) to any State for natural resources within the State or belonging to, managed by, controlled by, or appertaining to such State, and

(C) where subsection (f) of this section applies, to the government of a foreign country for natural resources belonging to, managed by, controlled by, or appertaining to such country.

(2) Designation of trustees.—

(A) In general.—The President, or the authorized representative of any State or of the foreign government, shall act on behalf of the public as trustee of such natural resources to recover for such damages.

(B) Federal trustees.—The President shall designate the Federal officials who shall act on behalf of the public as trustees for natural resources under this subtitle.

(C) State trustees.—The Governor of each State shall designate State and local officials who may act on behalf of the public as trustee for natural resources under this subtitle and shall notify the President of such designations.

(3) Functions of trustees.—

(A) Federal trustees.—The officials designated under paragraph (2)(B)—

(i) shall assess damages for injury to, destruction of, or loss of natural resources for purposes of this subtitle for the natural resources under their trusteeship;

(ii) may, upon request of and reimbursement from a State and at the Federal officials' discretion, assess damages for the natural resources under the State's trusteeship; and

(iii) shall develop and adopt a plan for the restoration, rehabilitation, or replacement or acquisition of the equivalent of the natural resources under their trusteeship.

(B) State trustees.—The officials designated under paragraph (2)(C)—

(i) shall assess damages to natural resources for the purposes of this subtitle for the natural resources under their trusteeship; and

(ii) shall develop and adopt a plan for the restoration, rehabilitation, or replacement or acquisition of the equivalent of the natural resources under their trusteeship.

(C) Notice and opportunity to be heard.—Plans shall be developed and adopted under subparagraphs (A)(iii) and (B)(ii) only after adequate public notice and opportunity for hearing and consideration of all public comment.

(4) Measure of damages.—

(A) In general.—The measure of damages in any action under this section for injury to, destruction of, or loss of natural resources shall not be limited to the sums which can be used to restore or replace such resources.

(B) Determine costs with respect to plans.—Costs shall be determined under subparagraph (A) with respect to plans adopted under paragraph (3) (A) and (B).

(C) No double recovery.—There shall be no double recovery under this subtitle for natural resource damages, including the costs of damage assessment or restoration, rehabilitation, replacement, or acquisition for the same incident and natural resource.

(5) Rebuttable presumption.—Any determination or assessment of damages to natural resources for the purposes of this subtitle made by a Federal or State trustee in accordance with the regulations promulgated under section 301 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 shall have the force and effect of a rebuttable presumption on behalf of the trustees in any administrative or judicial proceeding under this subtitle.

(6) Use of recovered sums.—Sums recovered by the United States Government or a state as trustee under this subsection shall be retained by the trustee, for use only to restore, replace, or acquire the equivalent of such natural resources in accordance with section 107(f)(1) of the Comprehensive Environmental Response, Compensation and Liability Act.

(f) Recovery by Foreign Claimants.—

(1) In general.—A foreign claimant may only recover removal costs and damages under this subtitle in accordance with this subsection.

(2) Covered discharges.—A foreign claimant may recover only if the discharge of oil was from—

(A) a facility;

(B) a vessel in the navigable waters of the United States; or

(C) a tanker that received oil at the terminal of the pipeline constructed under the Trans-Alaska Pipeline Authorization Act for transportation to a port in the United States, the incident having occurred prior to delivery to that port;

and resulted in the presence of oil in or on the territorial sea, internal waters, or adjacent shoreline of a foreign country.

(3) Requirements.—A foreign claimant may only recover if—

(A) the claimant first seeks compensation under title III;

(B) the claimant has not been otherwise compensated for the removal costs or damages; and

(C) recovery is authorized by a treaty or executive agreement between the United States and the claimant's country, or the Secretary of State, in consultation with the Attorney General and other appropriate officials, has certified that the claimant's country provides a comparable remedy for United States claimants.

(4) Exception for Canadian claimants respecting Trans-Alaska pipeline oil.—Paragraph (3)(C) shall not apply with respect to recovery by a resident of Canada in the case of an incident described in paragraph (2)(C).

(5) Definition of foreign claimant.—For purposes of this subsection, the term "foreign claimant" means any person residing in a foreign country, the government of a foreign country, or any agency or political subdivision thereof.

(g) Recovery of Removal Costs and Damages by Responsible Party.—

(1) In general.—The responsible party for a vessel or facility from which oil is discharged, or which posed the substantial threat of a discharge of oil, may assert a claim for removal costs and damages under subsection (a) only if he or she can show that—

(A) he or she is entitled to a defense to liability under subsection (b); or

(B) he or she is entitled to a limitation of liability under subsection (c).

(2) Extent of recovery.—A responsible party who is entitled to a limitation of liability may assert a claim under paragraph (1) of subsection (a) only to the extent that the sum of the removal costs and damages incurred by the responsible party plus the amounts paid by the responsible party or by the guarantor on behalf of the responsible party for claims asserted under subsection (a) exceeds the amount to which the total of the liability under subsection (a) and removal costs and damages incurred by, or on behalf of, the responsible party is limited under subsection (c).

(h) Contribution.—A person may bring an action for contribution against any other person who is liable or potentially liable under this section. Such an action shall be brought in accordance with section 6108.

(i) Indemnification Agreements.—

(1) In general.—No indemnification, hold harmless, or similar agreement or conveyance shall be effective to transfer the liability imposed under this section from the responsible party for any vessel or facility or from any person who may be liable for an incident under this section to any other person. Nothing in this subsection shall bar any agreement to insure, hold harmless, or indemnify a party to such agreement for any liability under this section.

(2) Relationship to other causes of action.—Nothing in this subtitle, including the provisions of paragraph (1) of this subsection, shall bar a cause of action that a responsible party subject to liability under this section, or a guarantor, has or would have, by reason of subrogation or otherwise against any person.

(j) Consultation on Removal Actions.—The Secretary shall consult with the affected trustees designated under section 6102(e)(2) on the appropriate removal action to be taken in connection with any discharge of oil. Removal with respect to any discharge shall be considered completed when so determined by the Secretary and the Governor or Governors of the affected State or States, in accordance with the national contingency plan.

SEC. 6103. USES OF THE FUND.

(a) In General.—The Fund shall be available to the Secretary for—

(1) the payment of removal costs and the cost of carrying out subsections (c), (d), (i), and (l) of section 311 of the Federal Water Pollution Control Act, sections 5 and 7 of the Intervention on the High Seas Act, and section 18 of the Deepwater Port Act;

(2) the payment of removal costs and damages described in section 6102(a)(2) not otherwise compensated under this subtitle;

(3) the payment of removal costs and damages resulting from the discharge, or substantial threat of discharge, of oil from a foreign offshore unit;

(4) the payment of administrative and personnel costs and expenses reasonably necessary for and incidental to the implementation and administration of this subtitle; and

(5) the payment of contributions to the International Fund under title III of this subtitle.

(b) Defenses to Liability for the Fund.—The Fund shall not be available to pay any claim for removal costs or damages—

(1) as to a particular claimant, where the incident of oil or economic loss is caused, in whole or in part, by the gross negligence or willful misconduct of that claimant; or

(2) as to a particular claimant, to the extent that the incident or economic loss is caused by the negligence of that claimant.

(c) Maximum Amount Payable From Fund.—The maximum amount which may be paid from the Fund with respect to any incident in combination with payment, if any, under the International Convention on the Establishment of an International Fund for Compensation of Oil Pollution Damage, 1984, shall not exceed $500,000,000.

(d) Federal and State Officials Who May Obligate From the Fund.—The Secretary is authorized to promulgate regulations designating one or more Federal officials who may obligate money in the Fund in accordance with subsection (a) of this section or portions thereof. The Secretary is also authorized to delegate authority to obligate money in the Fund or to settle claims to officials of a State with an adequate program operating under a cooperative agreement with the Federal Government.

(e) Obligation of the Fund by State Officials.—

(1) Authority.—In accordance with regulations promulgated under this subsection, the Governor of each State, or any appropriate State official designated by the Governor, is authorized to obligate the Fund for payment in an amount not to exceed $100,000 for removal costs not inconsistent with the national contingency plan required for the immediate response to an incident.

(2) Notification.—A Governor or designee exercising the authority granted by this subsection shall notify the Secretary within 24 hours of any obligation of a payment from the Fund.

(3) Regulations.—Not later than six months after the date of the enactment of this subtitle, the Secretary shall publish proposed regulations detailing the manner in which the authority to obligate the Fund and to enter into agreements under this subsection is to be exercised, and, not later than three months after the close of the comment period on such proposed regulations, the Secretary shall promulgate the regulations.

(f) Rights of Subrogation.—Payment of any claim by the Fund under this subtitle shall be subject to the United States Government acquiring by subrogation of all rights of the claimant to recover from the responsible party.

(g) Audit.—The Comptroller General shall provide an audit review team to audit all payments, obligations, reimbursements, or other uses of the Fund, to assure that the Fund is being properly administered and that claims are being appropriately and expeditiously considered. The Comptroller General shall submit to the Congress an interim report one year after the establishment of the Fund. The Comptroller General shall thereafter provide such auditing of the Fund as is appropriate. Each Federal agency shall cooperate with the Comptroller General in carrying out this subsection.

(h) Period of Limitations for Claims.—

(1) Removal costs.—No claim may be presented under this section for recovery of removal costs unless the claim is presented within three years after the date of completion of all removal action.

(2) Damages.—No claim may be presented under this section for recovery of damages unless the claim is presented within three years after the date on which the loss and its connection with the discharge in question were reasonably discoverable with the exercise of due care, or in the case of damages under section 6102(a)(2), if later, the date on which final regulations are promulgated under section 301(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

(i) Limitation on Payment for Same Costs.—Where the Secretary has paid an amount out of the Fund for any costs or damages specified under subsection (a), no other claim may be paid out of the Fund for the same costs or damages.

(j) Obligation in Accordance With Plan.—

(1) In general.—Except as provided in paragraph (2), amounts may be obligated from the Fund for the restoration, rehabilitation, or replacement, or acquisition of natural resources only in accordance with a plan adopted under section 6102(e)(3).

(2) Exception.—Paragraph (1) shall not apply in a situation requiring action to avoid irreversible loss of natural resources or to prevent or reduce any continuing danger to natural resources or similar need for emergency action.

SEC. 6104. CLAIMS PROCEDURE.

(a) Presentation to Responsible Party or Guarantor.—Except as provided in subsection (b), all claims for removal costs or damages shall be presented first to the responsible party or guarantor of the source designated under section 6105(a).

(b) Presentation to Fund.—Claims for removal costs or damages may be presented first to the Fund—

(1) where the Secretary has advertised or otherwise notified claimants in accordance with section 6105(c);

(2) by a responsible party who may assert a claim under section 6102(g);

(3) by the Governor of a State for removal costs incurred by that State; or

(4) by a United States claimant in a case where a foreign offshore unit has discharged oil causing damage for which the Fund is liable under section 6103(a)(3).

(c) Election.—If a claim is presented in accordance with subsection (a) and—

(1) each person to whom the claim is presented denies all liability for the claim, or

(2) the claim is not settled by any person by payment within 180 days after the date upon which (A) the claim was presented, or (B) advertising was begun pursuant to section 6105(b), whichever is later,

the claimant may elect to commence an action in court against the responsible party or guarantor or to present the claim to the Fund.

(d) Uncompensated Damages.—If a claim is presented in accordance with subsection (a) and full and adequate compensation is unavailable, either because the claim exceeds a limit of liability invoked under section 6102 or because the responsible party and his guarantor are financially incapable of meeting their obligations in full, a claim for the uncompensated damages may be presented to the Fund.

(e) Procedure for Claims Against the Fund.—The Secretary shall promulgate, and may from time to time amend, regulations for the presentation, filing, processing, settlement, and adjudication of claims under this subtitle against the Fund.

SEC. 6105. DESIGNATION AND ADVERTISEMENT.

(a) Designation of Source and Notification.—When the Secretary receives information of an incident, he shall, where possible and appropriate, designate the source or sources of the discharge. If a designated source is a vessel or a facility, the Secretary shall immediately notify the responsible party and the guarantor, if known, of that designation.

(b) Advertisement by the Responsible Party or Guarantor.—If a responsible party or guarantor fails to inform the Secretary, within five days after receiving notification of a designation under subsection (a), of his denial of the designation, such party or guarantor shall advertise the designation and the procedures by which claims may be presented to such party or guarantor, in accordance with regulations promulgated by the Secretary. Advertisement under the preceding sentence shall begin no later than 15 days after the date of the designation made under subsection (a). If advertisement is not otherwise made in accordance with this subsection, the Secretary shall promptly and at the expense of the responsible party or the guarantor involved, advertise the designation and the procedures by which claims may be presented to the responsible party or guarantor. Advertisement under this subsection shall continue for a period of no less than 30 days.

(c) Advertisement by the Secretary.—If—

(1) the responsible party and the guarantor both deny a designation within five days after receiving notification of a designation under subsection (a),

(2) the source of the oil pollution was a public vessel, or

(3) the Secretary is unable to designate the source or sources of the oil pollution under subsection (a),

the Secretary shall advertise or otherwise notify potential claimants of the procedures by which claims may be presented to the Fund.

SEC. 6106. SUBROGATION.

(a) In General.—Any person, including the Fund, who pays compensation pursuant to this subtitle to any claimant for costs or damages shall be subrogated to all rights, claims, and causes of action that the claimant has under this subtitle.

(b) Actions on Behalf of the Fund.—Upon request of the Secretary, the Attorney General shall commence an action on behalf of the Fund to recover any compensation paid by the Fund to any claimant pursuant to this subtitle, and all costs incurred by the Fund by reason of the claim, including interest (including prejudgment interest), administrative and adjudicative costs, and attorney's fees. Such an action may be commenced against any responsible party or (subject to section 6107(e)) guarantor, or against any other person who is liable, pursuant to any law, to the compensated claimant or to the Fund, for the cost or damages for which the compensation was paid. Such an action shall be commenced against the responsible foreign government or other responsible party to recover any removal costs or damages paid from the Fund as the result of the discharge, or substantial threat of discharge, of oil from a foreign offshore unit.

SEC. 6107. FINANCIAL RESPONSIBILITY.

(a) Vessels.—

(1) Requirement.—The responsible party for any vessel over 300 gross tons (except a non-self-propelled vessel that does not carry oil as cargo or fuel), using any port or place in the United States or the navigable waters or any offshore facility shall establish and maintain, in accordance with regulations promulgated by the Secretary, evidence of financial responsibility sufficient to meet the maximum amount of liability to which, in the case of a tanker, the responsible party could be subjected under section 6102(c)(1)(A) of this subtitle, or to which, in the case of any other vessel, the responsible party could be subjected under section 6102(c)(1)(B) of this subtitle, in a case where the responsible party would be entitled to limit liability under that section. If the responsible party owns or operates more than one vessel, evidence of financial responsibility need be established only to meet the maximum liability applicable to the largest of such vessels.

(2) Withholding clearance.—The Secretary of the Treasury shall withhold or revoke the clearance required by section 4197 of the Revised Statutes of the United States of any vessel subject to this subsection that does not have the certification required under this subsection.

(3) Denying entry to or detaining vessels.—The Secretary of the department in which the Coast Guard is operating may (A) deny entry to any offshore facility or any port or place in the United States, or to the navigable waters, or (B) detain at such a facility or port or place, any vessel that, upon request, does not produce the certification required under this subsection or the regulations issued under this subsection.

(4) Seizure of vessel and oil.—Any vessel subject to the requirements of this subsection which is found in the navigable waters without the necessary evidence of financial responsibility and any oil carried as cargo on such vessel shall be subject to seizure by the United States.

(b) Offshore Facilities.—Each responsible party with respect to an offshore facility shall establish and maintain evidence of financial responsibility sufficient to meet the maximum amount of liability to which the responsible party could be subjected under section 6102 of this subtitle in a case where the responsible party would be entitled to limit liability under this section. In cases where a person is the responsible party for more than one facility subject to this subsection, evidence of financial responsibility need be established only to meet the maximum liability applicable to one such facility.

(c) Methods of Financial Responsibility.—Financial responsibility under this section may be established by any one, or by any combination, of the following methods, which the Secretary determines to be acceptable: evidence of insurance, surety bond, guarantee, letter of credit, qualification as a self-insurer, or other evidence of financial responsibility. Any bond filed shall be issued by a bonding company authorized to do business in the United States. In promulgating requirements under this section, the Secretary is authorized to specify policy or other contractual terms, conditions, or defenses which are necessary, or which are unacceptable, in establishing such evidence of financial responsibility in order to effectuate the purposes of this subtitle.

(d) CLAIMS AGAINST GUARANTOR.—Any claim for which liability may be established under section 6102 of this subtitle may be asserted directly against any guarantor providing evidence of financial responsibility for a responsible party liable under that section for costs and damages to which the claim pertains. In defending against such a claim, the guarantor may invoke all rights and defenses which would be available to the responsible party under section 6102. The guarantor may also invoke the defense that the incident was caused by the willful misconduct of the responsible party but the guarantor may not invoke any other defense that might be available in proceedings brought by the responsible party against the guarantor.

(e) LIMITATION ON GUARANTOR'S LIABILITY.—Nothing in this subtitle shall impose liability with respect to an incident on any guarantor for damages or removal costs which exceeds, in the aggregate, the amount of financial responsibility required under this subtitle which that guarantor has provided for the responsible party for any vessel or facility that was a source of oil pollution in that incident.

(f) CIVIL PENALTY.—

(1) IN GENERAL.—Any person who, after notice and an opportunity for a hearing, is found to have failed to comply with the requirements of this section or the regulations issued under this section, or with a denial or detention order issued under subsection (a)(3) of this section, shall be liable to the United States for a civil penalty, not to exceed $25,000 per day of violation. The amount of the civil penalty shall be assessed by the Secretary by written notice. In determining the amount of the penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the violation, the degree of culpability, any history of prior violation, ability to pay, and such other matters as justice may require. The Secretary may compromise, modify, or remit, with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this paragraph. If any person fails to pay an assessed civil penalty after it has become final, the Secretary may refer the matter to the Attorney General for collection.

(2) JUDICIAL RELIEF.—In addition to, or in lieu of, assessing a penalty under paragraph (1) of this subsection, the Secretary may request the Attorney General to secure such relief as necessary to compel compliance with this section, including, but not limited to, a judicial order terminating operations. The district courts of the United States shall have jurisdiction to grant such relief as the public interest and the equities of the case may require.

(g) CONTINUATION OF REGULATIONS.—Any regulation respecting financial responsibility, which has been issued pursuant to any provision of law repealed or superseded by this subtitle, and which is in effect on the date immediately preceding the effective date of this subtitle, shall be deemed and construed to be a regulation issued pursuant to this section. Such a regulation shall remain in full force and effect unless and until superseded by new regulations issued under this section.

(h) UNIFIED CERTIFICATE.—The Secretary may issue one certificate of financial responsibility for purposes of this subtitle and the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

SEC. 6108. LITIGATION, JURISDICTION, AND VENUE.

(a) REVIEW OF REGULATIONS.—Review of any regulation promulgated under this subtitle may be had upon application by any interested person only in the Circuit Court of Appeals of the United States for the District of Columbia. Any such application shall be made within 90 days from the date of promulgation of such regulations.

(b) JURISDICTION.—Except as provided in subsection (a) of this section, the United States district courts shall have original jurisdiction over all causes of action arising under this subtitle (which shall be deemed to include actions under the International Convention on Civil Liability for Oil Pollution Damages, 1984, and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1984), without regard to the citizenship of the parties or the amount in controversy.

(c) VENUE.—Venue shall lie in any district in which the incident, injury, or damages occurred, or in which the defendant resides, may be found, has its principal office, or has appointed an agent for services of process. For the purposes of this section, the Fund and the International Fund, established under article 2 of the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1984, shall reside in the District of Columbia.

(d) SAVINGS PROVISION.—Nothing in this subtitle shall affect any action commenced before the date of enactment of this subtitle.

(e) PERIOD OF LIMITATIONS.—

(1) DAMAGES.—Except as provided in paragraphs (3) and (4), an action may not be commenced for damages under this subtitle, unless that action is commenced within three years after the date on which the loss and its connection with the discharge in question were reasonably discoverable with the exercise of due care, or in the case of damages described in section 6102(a)(2)(B)(i), if later, the date on which regulations are promulgated under section 301 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

(2) REMOVAL COSTS.—Except as provided in paragraphs (3) and (4), an action may not be commenced for recovery of removal costs under this subtitle, unless that action is commenced within three years after completion of the removal action. An action may be commenced under section 6102 for recovery of removal costs at any time after such costs have been incurred.

(3) ACTIONS FOR CONTRIBUTION.—An action may not be commenced for contribution for any removal costs or damages unless that action is commenced within three years after—

(A) the date of judgment in any action under this subtitle for recovery of such costs or damages, or

(B) the date of entry of a judicially approved settlement with respect to such costs or damages.

(4) SUBROGATION.—An action based on rights subrogated pursuant to this subtitle by reason of payment of a claim may not be commenced under this subtitle unless that action is commenced within three years after the date of payment of such claim.

SEC. 6109. RELATIONSHIP TO OTHER LAW.

(a) PREEMPTION.—Except as provided in this subtitle, an action may not be brought in a court of the United States, or of any State or political subdivision thereof, for removal costs or categories of damages specified under section 6102(a)(2) of this subtitle.

(b) PRESERVATION OF STATE FUNDS.—Nothing in this chapter or section 9509 of the Internal Revenue Code of 1954 shall affect the authority of any State to establish or continue in effect, and to require any person to contribute to, a fund a purpose of which is to pay for removal costs or damages arising out of or directly resulting from an incident.

(c) NO PREEMPTION OF CIVIL PENALTIES.—Nothing in this subtitle or section 9509 of the Internal Revenue Code of 1954 shall affect the authority of the United States or any State or political subdivision thereof to impose, or to determine the amount of, any fine or penalty for any violation of law relating to an incident.

(d) FINANCIAL RESPONSIBILITY.—Except as provided in this subtitle, a responsible party for a vessel or facility who establishes and maintains evidence of financial responsibility in accordance with this chapter shall not be required under any State or local law, rule, or regulation to establish or maintain any other evidence of financial responsibility in connection with liability for the discharge, or substantial threat of a discharge, of oil from such vessel or facility. Evidence of compliance with the financial responsibility requirements of this chapter shall be accepted by a State in lieu of any other requirement of financial responsibility imposed by such State in connection with liability for the discharge of oil from such vessel or facility. A State may enforce, on the navigable waters of the State, the requirements for evidence of financial responsibility imposed under section 6107 of this subtitle.

SEC. 6110. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in subsection (b), this chapter shall apply with respect to an incident occurring after the date of the enactment of this subtitle.

(b) PAYMENTS FROM FUND.—Payments under section 6103(a) may not be made before the commencement date (as that term is defined in section 4611(f)(2) of the Internal Revenue Code of 1986).

CHAPTER 2—CONFORMING AMENDMENTS

SEC. 6201. TRANS-ALASKA PIPELINE FUND.

(a) IN GENERAL.—Section 204(b) of the Trans-Alaska Pipeline Authorization Act is amended—

(1) in the first sentence, by inserting after "any area" the following: "in the State of Alaska";

(2) in the first sentence, by inserting after "any activities" the following: "related to the trans-Alaska oil pipeline"; and

(3) by inserting at the end of the subsection the following new sentence: "This subsection shall not apply to removal costs covered by the Oil Pollution Liability and Compensation Act of 1987.".

(b) REPEAL.—Subsection (c) of section 204 of the Trans-Alaska Pipeline Authorization

Act is repealed. The repeal made by the preceding sentence shall not affect the applicability of that subsection to claims arising before the date of the enactment of this subtitle. The repeal of paragraphs (4), (6), and (8) of that subsection shall only become effective upon the payment by the Board of Trustees of the Trans-Alaska Pipeline Liability Fund of all claims certified under subsection (c) of this section and the rebate of all remaining amounts under, and the completion of all actions required to carry out, such subsection.

(c) Rebate of Fund Excess.—(1) Not later than 210 days after the date of enactment of this subtitle, the Board of Trustees of the Trans-Alaska Pipeline Liability Fund shall certify to the Secretary the total amount of claims outstanding against that Fund as of the date of enactment of this subtitle. The amount of that Fund exceeding the total amount so certified shall be rebated directly, on a pro rata basis, to the owners of the oil at the time it was loaded on the vessel.

(2) After the settlement of all claims described in paragraph (1) and the completion of all actions, if any, by the Trans-Alaska Pipeline Fund for recovery of amounts paid on such claims, the remaining amounts in that Fund shall be rebated directly, on a pro rata basis, to the owners of the oil at the time it was loaded on the vessel.

(3) Whenever a rebate is made on a pro rata basis to the owners of oil under paragraph (1) or (2) of this subsection, each owner's share of the rebate shall be an amount determined by dividing the amount contributed by that owner to the Trans-Alaska Pipeline Liability Fund by the total amount contributed by all such owners of that Fund.

(d) Liability of Officers and Trustees of Fund.—Officers and trustees, both present and former, of the Trans-Alaska Pipeline Liability Fund shall not be subject to any liability incurred by that Fund or by the present and past officers and trustees of that Fund, other than liability for gross negligence or willful misconduct.

SEC. 6202. INTERVENTION ON THE HIGH SEAS ACT.

Section 17 of the Intervention on the High Seas Act is amended to read as follows:

"Sec. 17. The Oil Spill Liability Trust Fund shall be available to the Secretary for actions taken under sections 5 and 7 of this Act.".

SEC. 6203. FEDERAL WATER POLLUTION CONTROL ACT.

Section 311 of the Federal Water Pollution Control Act is amended as follows:

(1) Subparagraph (H) of paragraph (2) of subsection (c) is amended by striking out "from the fund established under subsection (k) of this section for the reasonable costs incurred in such removal" and inserting in lieu thereof the following: ", in the case of any discharges of oil from a vessel or facility, for the reasonable costs incurred in such removal from the Oil Spill Liability Trust Fund".

(2) Subsection (d) is amended by striking out the last sentence.

(3)(A) Subsections (f), (g), and (i) of section 311 of the Federal Water Pollution Control Act shall not apply with respect to any incident for which liability is established under section 6102 of this subtitle.

(B) Paragraphs (2) and (3) of subsection (f) are amended by striking out "under subsection (c) for the removal of such oil or substance by the United States Government" each place it appears and inserting in lieu thereof "under subsection (c) for the removal of such oil or substance by the United States Government and for payments made pursuant to section 6103(a)(1) of the Oil Pollution Liability and Compensation Act of 1987".

(4) Subsection (i) is amended by striking out "(1)" after "(i)" and striking out paragraphs (2) and (3).

(5) Subsection (k) is repealed. Any amounts remaining in the revolving fund established under that subsection shall be deposited in the general fund of the Treasury. The Oil Spill Liability Trust Fund shall assume all liability incurred by the revolving fund established under section 311(k) of the Federal Water Pollution Control Act.

(6) Subsection (l) is amended by striking out the second sentence.

(7) Subsection (p) is repealed.

(8) Section 311 is amended by adding at the end thereof the following new subsection:

"(s) The Oil Spill Liability Trust Fund shall be available to carry out subsections (c), (d), (i), and (l). Any amounts received by the United States under this section shall be deposited in the Oil Spill Liability Trust Fund.".

SEC. 6204. DEEPWATER PORT ACT.

The Deepwater Port Act of 1974 is amended as follows:

(1) In section 4(c)(1) strike "section 18(l) of this Act;" and insert in lieu thereof "section 6107 of the Oil Pollution Liability and Compensation Act of 1987,";

(2) Subsections (b), (d), (e), (f), (g), (h), (i), (j), (l), (n), and paragraphs (1) and (2) of subsection (m) of section 18 are deleted.

(3) Paragraph (3) of subsection (c) of section 18 is amended by striking "Deepwater Port Liability Fund established pursuant to subsection (f) of this section", and inserting in lieu thereof "Oil Spill Liability Trust Fund".

(4) Subsections (c), (k), and (m) of section 18 are redesignated as subsections (b), (c), and (d) respectively, and paragraphs (3) and (4) of subsection (m) are redesignated as paragraphs (1) and (2), respectively.

(5) Paragraph (1) of subsection (a) of section 19 is amended by striking the period at the end of the second sentence and inserting in lieu thereof "except that discharges from a deepwater port or from a vessel within a deepwater port safety zone which are subject to the civil penalty provisions of section 18(a)(2) of the Deepwater Port Act of 1974 shall not be subject to the penalty provisions of any other Federal law."

(6) Any amounts remaining in the Deepwater Port Liability Fund, established under section 18(f) of the Deepwater Port Act of 1974, shall be deposited in the Fund established under this subtitle. The Oil Spill Liability Trust Fund shall assume all liability incurred by the Deepwater Port Liability Fund.

SEC. 6205. OUTER CONTINENTAL SHELF LANDS ACT AMENDMENTS.

Title III of the Outer Continental Shelf Lands Act Amendment of 1978 is hereby repealed. Any amounts remaining in the Offshore Oil Pollution Compensation Fund established under section 302 of that title shall be deposited in the Oil Spill Liability Trust Fund. The Oil Spill Liability Trust Fund shall assume all liability incurred by the Offshore Oil Pollution Compensation Fund.

SEC. 6206. NOTICE TO STATE; INCREASED PENALTIES FOR FAILURE TO REPORT.

(a) Notice.—Section 311(b)(5) of the Federal Water Pollution Control Act is amended by inserting after the first sentence the following: "The Federal agency shall immediately notify the appropriate State agency of any State that is, or may reasonably be expected to be, affected by the discharge of oil.".

(b) Increased Penalties.—The second sentence of section 311(b)(5) of the Federal Water Pollution Control Act is amended by striking "fined not more than $10,000, or imprisoned for not more than one year, or both" and inserting in lieu thereof "fined in accordance with the applicable provisions of title 18 of the United States Code, or imprisoned for not more than three years (or not more than five years in the case of a second or subsequent conviction), or both".

SEC. 6207. QUALIFIED AUTHORIZING LEGISLATION.

This subtitle shall be considered to be qualified authorizing legislation for purposes of section 4611(f)(2)(B) of the Internal Revenue Code of 1986.

SEC. 6208. EFFECTIVE DATE.

Sections 6201, 6202, 6203, 6204, and 6205 shall be effective on the commencement date (as that term is defined in section 4611(f)(2) of the Internal Revenue Code of 1986).

CHAPTER 3—IMPLEMENTATION OF INTERNATIONAL CONVENTIONS

SEC. 6301. DEFINITIONS.

For the purposes of this chapter—

(1) the terms "ship", "owner", "oil", "pollution damage", and "incident" shall have the meanings provided in article I of the Civil Liability Convention;

(2) the term "Civil Liability Convention" means the International Convention on Civil Liability for Oil Pollution Damage, 1984;

(3) the term "financial responsibility" has the same meaning as "financial security" under the Civil Liability Convention;

(4) the term "Fund Convention" means the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1984; and

(5) the term "International Fund" means the International Oil Pollution Compensation Fund, established under article 2 of the Fund Convention.

SEC. 6302. APPLICABILITY OF CONVENTIONS.

During any period in which the Civil Liability Convention and the Fund Convention are in force with respect to the United States, liability relating to pollution damage arising from an incident involving a ship shall be determined in accordance with the Civil Liability Convention and Fund Convention. Nothing in this chapter shall constitute a ratification of either the Civil Liability Convention or the Fund Convention.

SEC. 6303. RECOGNITION OF INTERNATIONAL FUND.

The International Fund is recognized under the laws of the United States as a legal person, and shall have the capacity to acquire and dispose of real and personal property, and to institute and be party to legal proceedings. The Director of the International Fund is recognized as the legal representative of the International Fund. The Director shall be deemed to have appointed irrevocably the Secretary of State as the International Fund's agent for the service of process in any legal proceedings involving the International Fund within the United States. The International Fund and its assets shall be exempt from all direct taxation and payment of any customs duties in the United States.

SEC. 6304. ACTION IN UNITED STATES COURTS.

(a) Service of Process on Fund.—In any action brought in a court in the United

States against the owner of a ship or its guarantor under the Civil Liability Convention, the plaintiff or defendant, as the case may be, shall serve a copy of the complaint and any subsequent pleading therein upon the International Fund at the same time the complaint or other pleading is served upon the opposing parties.

(b) INTERVENTION.—The International Fund may intervene as a party as a matter of right in any action brought in a court in the United States against the owner of a ship or its guarantor under the Civil Liability Convention.

SEC. 6305. CONTRIBUTION TO INTERNATIONAL FUND.

(a) PAYMENTS TO BE MADE FROM OIL SPILL LIABILITY TRUST FUND.—The amount of any contribution to the International Fund which is required to be made under article 10 of the Fund Convention by any person with respect to oil received in any port, terminal installation, or other installation located in the United States shall be paid to the International Fund from the Oil Spill Liability Trust Fund established by section 9509 of the Internal Revenue Code of 1986.

(b) INFORMATION.—The Secretary may, by regulation, require persons who are required to make contributions with respect to oil received in any port, terminal, installation, or other installations in the United States under article 10 of the Fund Convention to provide all information relating to that oil as may be necessary to carry out subsection (a) of this section, articles 10, 12, 13, 14, and 15 of the Fund Conventions, and Article 29 of the Protocol of 1984 to Amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971.

SEC. 6306. RECOGNITION OF FOREIGN JUDGMENTS.

Any final judgment of a court of any country which is a party to the Civil Liability Convention or to the Fund Convention in an action for compensation under either convention shall be recognized by any court of the United States having jurisdiction under this subtitle, when that judgment has become enforceable in that country and is no longer subject to ordinary form of review, except where—

(1) the judgment was obtained by fraud, or

(2) the defendant was not given reasonable notice and a fair opportunity to present its case.

SEC. 6307. FINANCIAL RESPONSIBILITY.

(a) UNITED STATES DOCUMENTED SHIPS.—The owner of each ship which is documented under the laws of the United States which is subject to the Civil Liability Convention shall establish and maintain, in accordance with regulations promulgated by the Secretary, evidence of financial responsibility as required in Article VII of the Civil Liability Convention.

(b) OTHER SHIPS.—The owner of each ship (other than a ship to which subsection (a) applies or a ship which is a public vessel), which is subject to the Civil Liability Convention and which enters or leaves a port or terminal in the United States or uses an Outer Continental Shelf facility or an offshore facility that is or was licensed under the Deepwater Port Act of 1974, shall establish and maintain, in accordance with regulations promulgated by the Secretary, evidence of financial responsibility as required in article VII of the Civil Liability Convention. Any ship which has on board a valid certificate issued in accordance with article VII of the Civil Liability Convention shall be considered as having met the requirements of this subsection. Any ship carrying only oil as cargo, fuel, or residue, which has on board a valid certificate issued in accordance with article VII of the Civil Liability Convention shall be considered as having met the requirements of section 6107 of this subtitle.

(c) AUTHORITY OF SECRETARY TO ISSUE.—The Secretary is authorized to issue any certificate of financial responsibility which the United States may issue under the Civil Liability Convention.

(d) WITHHOLDING CLEARANCE.—The Secretary of the Treasury shall withhold or revoke the clearance required by section 4197 of the Revised Statutes of the United States of any ship which does not have a certificate demonstrating compliance with this section.

(e) DENYING ENTRY AND DETAINING VESSELS.—The Secretary of the department in which the Coast Guard is operating may (1) deny entry to any facility or to any port or place in the United States, or (2) detain at the facility or port or place in the United States, any ship subject to this section which, upon request, does not produce the certificate demonstrating compliance with this section or regulations issued hereunder.

(f) CIVIL PENALTY.—Any person who, after notice and an opportunity for a hearing, is found to have violated this section, any regulation issued under this section, section 6305(b), or section 6308, or any denial or detention order issued under subsection (e) of this section shall be liable to the United States for a civil penalty, not to exceed $25,000 per day of violation. The amount of the civil penalty shall be assessed by the Secretary in accordance with the procedures set forth in section 6107 of this subtitle.

(g) WAIVER OF SOVEREIGN IMMUNITY.—The United States waives all defenses based on its status as a sovereign State with respect to any controversy arising under the Civil Liability Convention or the Fund Convention relating to any ship owned by the United States and used for commercial purposes.

SEC. 6308. REGULATIONS.

The Secretary may prescribe the necessary regulations to carry out this subtitle and all obligations of the United States under the International Convention on Civil Liability for Oil Pollution Damage, 1984, and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1984.

Subtitle B—Navigation Enhancement User Fees

SEC. 6401. This subtitle may be cited as the "Navigation Enhancement User Fee Act of 1987".

SEC. 6402. (a) The Secretary of the department in which the Coast Guard is operating shall establish fees to cover the costs of the United States Government to enhance the ability of a vessel to more safely transit the Persian Gulf. The amount of the fee may not be less than the greater of—

(1) fees computed under the guidelines prescribed under section 9701 of title 31, United States Code; or

(2) $250,000 per vessel per two port voyage during which any service is provided.

(b) The Secretary shall assess a fee established under this subtitle when—

(1) a department, agency, or instrumentality of the United States Government is requested or required to enhance the ability of a vessel to more safely transit the Persian Gulf; and

(2) the request is not for search and rescue services.

(c) A person not paying a fee in violation of this subtitle is liable to the United States Government for a civil penalty of $250,000. Each day the fee is not paid is a separate violation.

(d) If the person requesting or requiring the service does not pay for that service within 10 days from when the service was provided, the United States Government may not provide any future service to that person.

(e) The collection of a fee for a service under this subtitle does not affect the duties and liabilities of the United States Government under existing law for the performance of functions for which fees are collected, and the collection of a fee does not constitute an expressed or implied undertaking by the Government to perform any service in a certain manner or to provide any service at a particular time and place.

Subtitle C—Investment in Panama Canal

SEC. 6501. INCREASE IN INVESTMENT IN THE PANAMA CANAL.

Section 1603(b) of the Panama Canal Act of 1979 (22 U.S.C. 3793(b)) is amended by adding at the end the following:

"The investment of the United States shall also be increased by the amount of tolls and other receipts that covers interest on the investment of the United States and that was deposited in the Panama Canal Commission Fund before December 31, 1985.".

TITLE VII—COMMITTEE ON POST OFFICE AND CIVIL SERVICE

SEC. 7001. PAY ADJUSTMENTS DURING FISCAL YEARS 1988, 1989, and 1990.

(a) ADJUSTMENTS FOR EMPLOYEES UNDER STATUTORY PAY SYSTEMS.—

(1) OVERALL PERCENTAGE ADJUSTMENTS.—Notwithstanding any other provision of law, adjustments under section 5305 of title 5, United States Code, in the rates of pay under the General Schedule and in the rates of pay under the other statutory pay systems shall be as follows:

(A) In the case of fiscal year 1988, the overall percentage of the adjustment under such section shall be an increase of 3 percent.

(B) In the case of fiscal year 1989, the overall percentage of the adjustment under such section shall be an increase of 4.8 percent.

(C) In the case of fiscal year 1990, the overall percentage of the adjustment under such section shall be an increase of 5.2 percent.

(2) UNIFORM ADJUSTMENTS; DELAYED EFFECTIVE DATES.—Each increase in a pay rate or schedule which takes effect pursuant to subparagraph (A), (B), or (C) of paragraph (1) shall, to the maximum extent practicable, be of the same percentage and shall take effect as of the beginning of the first applicable pay period beginning on or after January 1 of the fiscal year involved.

(b) ADJUSTMENTS FOR PREVAILING RATE EMPLOYEES.—

(1) LIMITATION.—Notwithstanding any other provision of law, and except as otherwise provided in this subsection, in the case of a prevailing rate employee described in section 5342(a)(2) of title 5, United States Code, or an employee covered by section 5348 of such title, the total adjustment to any wage schedule or rate applicable to such employee which is to become effective (determined without regard to paragraph (2) or any other similar provision of law delaying the effective date of any pay adjustment) during—

(A) fiscal year 1988, shall not exceed the overall percentage adjustment prescribed in subsection (a)(1)(A) (determined without taking into account any adjustment to any such wage schedule or rate which, but for section 15201 of the Consolidated Omnibus Budget Reconciliation Act of 1985, section 613 of Public Law 99-591 (100 Stat. 3341-330 et seq.), or any other similar provision of law, would have become effective in fiscal year 1987);

(B) fiscal year 1989, shall not exceed the overall percentage adjustment prescribed in subsection (a)(1)(B) (determined without taking into account any adjustment to any such wage schedule or rate which, but for paragraph (2) or any other similar provision of law, would have become effective in fiscal year 1988); and

(C) fiscal year 1990, shall not exceed the overall percentage adjustment prescribed in subsection (a)(1)(C) (determined without taking into account any adjustment to any such wage schedule or rate which, but for paragraph (2) or any other similar provision of law, would have become effective in fiscal year 1989).

(2) Delayed effective dates.—Notwithstanding any other provision of law, any increase permitted by paragraph (1) which is scheduled to take effect during fiscal year 1988, 1989, or 1990 (determined without regard to this paragraph, any provision of law referred to in the parenthetical matter in paragraph (1)(A), or any other similar provision of law delaying the effective date of any pay adjustment) shall take effect as of the beginning of the first applicable pay period beginning at least 90 days after the date on which such increase would have taken effect if this paragraph (and any other such similar provision of law) had not been enacted.

(3) Negotiated wage schedules.—Notwithstanding section 9(b) of Public Law 92-392 or section 704(b) of Public Law 95-454, paragraph (1) shall apply (in such manner as the Office of Personnel Management shall prescribe) to prevailing rate employees to whom such section 9(b) applies, except that paragraph (1) shall not apply to any increase in a wage schedule or rate which is required by the terms of a contract entered into before the date of the enactment of this Act.

(4) Rule of construction.—Nothing in this subsection or any provision of law governing the use of appropriated funds for the payment of employees covered by this subsection during the period covered by paragraph (1) (or any part of such period) shall be construed to permit or require the payment to any such employee at a rate in excess of the rate that would be payable were this subsection, or such provision of law governing the use of appropriated funds, not in effect.

(5) Exceptions.—The Office may make exceptions from the limitations imposed by paragraph (1) if the Office determines that such exceptions are necessary to ensure the recruitment or retention of well-qualified employees.

(c) Funding Limitations.—

(1) Percentages.—Notwithstanding any other provision of law, amounts appropriated in order to provide for the respective adjustments described in subparagraphs (A), (B), and (C) of subsection (a)(1), and the respective adjustments subject to subparagraphs (A), (B), and (C) of subsection (b)(1), shall cover—

(A) not to exceed 35 percent of the increase in total pay for fiscal year 1988; and

(B) not to exceed 50 percent of the increase in total pay for each of fiscal years 1989 and 1990.

(2) Information required in President's budgets and proposed appropriations.—When the President submits a budget of the United States Government, or any proposed appropriations, to the Congress which relate to fiscal year 1988, 1989, or 1990, the President shall, if such budget or proposed appropriation includes any amounts for basic pay for any employees referred to in subsection (d)(1)(A) or (B), include estimates as to—

(A) the total amount under such budget or proposed appropriation attributable to providing for that part of total pay described in subsection (d)(2); and

(B) the total amount which would be required under such budget or proposed appropriation to provide for the full amount of that part of total pay described in subsection (d)(2) for the period of time covered by such budget or proposed appropriation.

(d) Definitions.—For purposes of this section—

(1) the term "total pay" means, with respect to a fiscal year—

(A) the total amount of basic pay which, in the case of employees covered by the statutory pay systems, will be payable to such employees for service performed during such year; and

(B) the total amount of basic pay which, in the case of prevailing rate employees described in section 5342(a)(2) of title 5, United States Code, and employees covered by section 5348 of such title, will be payable to employees under those respective provisions for service performed during such year;

(2) the term "increase in total pay" means, with respect to a fiscal year, that part of total pay for such year which is attributable to the adjustment taking effect under this section during such year; and

(3) the term "statutory pay system" has the meaning given such term by section 5301(c) of title 5, United States Code.

SEC. 7002. CONTINUATION OF 6-DAY MAIL DELIVERY.

Section 1722 of the Omnibus Budget Reconciliation Act of 1981 (39 U.S.C. 403 note) is amended by striking "1987" and inserting in lieu thereof "1990".

SEC. 7003. ELIMINATION OF AUTHORITY FOR MEMBERS OF THE POSTAL SERVICE'S BOARD OF GOVERNORS TO SERVE BEYOND THE EXPIRATION OF THEIR TERMS.

Section 202(b) of title 39, United States Code, is amended by striking the last sentence thereof.

TITLE VIII—COMMITTEE ON VETERANS' AFFAIRS

SEC. 8001. SENSE OF CONGRESS REGARDING SALE OF CERTAIN LOANS.

(a) Findings.—The Congress finds that—

(1) a recent change in accounting procedures proposed by the Office of Management and Budget and concurred in by the Congressional Budget Office with regard to accounting for the proceeds of loans sold with recourse by an agency of the Federal Government has had a significant effect and seriously limited the policymaking function of the Congress;

(2) this change was accepted by the Congressional Budget Office without consultation with committees affected by such change; and

(3) further, continued efforts to achieve short-term savings in the Veterans' Administration loan guaranty revolving fund are compromising the Administrator of Veterans' Affairs' ability to manage soundly the financing of the Veterans' Administration housing loan guaranty program, thereby jeopardizing the future of this very successful program.

(b) Sense of Congress.—It is therefore the sense of the Congress—

(1) that the Congressional Budget Office should reverse its decision on accounting for loans sold with recourse by the Veterans' Administration; and

(2) that, consistent with section 7 of the concurrent resolution on the budget for fiscal year 1988, any change in the assets sales policy of the Veterans' Administration should not be considered in future budget resolutions as a means of achieving deficit reduction.

SEC. 8002. GUARANTY AMOUNT.

(a) Purchase or Construction of Homes.—(1) Section 1803(a)(1) of title 38, United States Code, is amended by striking out "in an amount" and all that follows and inserting in lieu thereof the following:

"in an amount not to exceed—

"(A) 40 percent of the loan, or $40,000, whichever is less, reduced by

"(B) the amount of entitlement previously used by the veteran under this chapter and not restored as a result of the exclusion in section 1802(b) of this title."

(2) Section 1810(c) is repealed.

(b) Manufactured Homes.—Section 1819(c) of such title is amended—

(1) in paragraph (3), by striking out the first sentence and inserting in lieu thereof the following: "The Administrator's guaranty may not exceed—

"(A) 30 percent of the loan, or $20,000, whichever is less, reduced by

"(B) the amount of entitlement previously used by the veteran under this chapter and not restored as a result of the exclusion in section 1802(b) of this title."; and

(2) by striking out paragraph (4).

(c) Direct Loans.—Section 1811 (d)(2)(A) of such title is amended by striking out "$27,500" each place it appears and inserting in lieu thereof "$40,000".

SEC. 8003. VENDEE LOANS.

Section 1816(d)(1) of title 38, United States Code, is amended by striking out "not more than 75 percent, nor less than 60 percent," in the first sentence and inserting in lieu thereof "not more than 75 percent (65 percent in the case of fiscal years 1988, 1989, and 1990), nor less than 60 percent (50 percent in the case of fiscal years 1988, 1989, and 1990),".

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PART 1—COVERAGE AND BENEFITS

SEC. 9001. COVERAGE OF INACTIVE DUTY MILITARY TRAINING.

(a) SOCIAL SECURITY ACT AMENDMENT.—Paragraph (1) of section 210(l) of the Social Security Act is amended to read as follows:

"(l)(1) Except as provided in paragraph (4), the term 'employment' shall, notwithstanding the provisions of subsection (a) of this section, include—

"(A) service performed after December 1956 by an individual as a member of a uniformed service on active duty, but such term shall not include any such service which is performed while on leave without pay, and

"(B) service performed after December 1987 by an individual as a member of a uniformed service on inactive duty training.".

(b) FICA AMENDMENT.—Paragraph (1) of section 3121(m) of the Internal Revenue Code of 1986 (relating to inclusion of service in the uniformed services) is amended to read as follows:

"(1) INCLUSION OF SERVICE.—The term 'employment' shall, notwithstanding the provisions of subsection (b) of this section, include—

"(A) service performed by an individual as a member of a uniformed service on active duty, but such term shall not include any such service which is performed while on leave without pay, and

"(B) service performed by an individual as a member of a uniformed service on inactive duty training.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to service performed after December 31, 1987.

SEC. 9002. COVERAGE OF ALL CASH PAY OF AGRICULTURAL EMPLOYEES WHOSE EMPLOYERS SPEND $2,500 OR MORE A YEAR FOR AGRICULTURAL LABOR.

(a) SOCIAL SECURITY ACT AMENDMENT.—Paragraph (2) of section 209(h) of the Social Security Act is amended by striking clause (B) and inserting "(B) the employer's expenditures for agricultural labor in such year equal or exceed $2,500;".

(b) FICA AMENDMENT.—Subparagraph (B) of section 3121(a)(8) of the Internal Revenue Code of 1986 (relating to wages) is amended by striking clause (ii) and inserting "(ii) the employer's expenditures for agricultural labor in such year equal or exceed $2,500;".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to remuneration for agricultural labor paid after December 31, 1987.

SEC. 9003. COVERAGE OF THE EMPLOYER COST OF GROUP-TERM LIFE INSURANCE.

(a) COVERAGE UNDER OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE PROGRAM.—

(1) SOCIAL SECURITY ACT AMENDMENT.—Paragraph (3) of section 209(b) of the Social Security Act is amended by striking "death" and inserting "death, except that this subsection (b) does not apply to such amount to the extent of the amount includible in the gross income of the employee under section 79 of the Internal Revenue Code of 1986".

(2) FICA AMENDMENT.—Subparagraph (C) of section 3121(a)(2) of the Internal Revenue Code of 1986 (relating to wages) is amended by striking "death" and inserting "death, except that this paragraph does not apply to such amount to the extent of the amount includible in the gross income of the employee under section 79".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply with respect to group-term life insurance coverage in effect after December 31, 1987.

SEC. 9004. COVERAGE OF SERVICES PERFORMED BY ONE SPOUSE IN THE EMPLOY OF THE OTHER.

(a) SOCIAL SECURITY ACT AMENDMENTS.—

(1) IN GENERAL.—Subparagraph (A) of section 210(a)(3) of the Social Security Act is amended by striking "performed by an individual in the employ of his spouse, and service".

(2) EXCEPTION FOR CERTAIN DOMESTIC SERVICE IN THE PRIVATE HOME OF A SPOUSE.—Paragraph (3) of section 210(a) of such Act is amended by striking so much of subparagraph (B) as precedes clause (i) and inserting the following:

"(B) Service not in the course of the employer's trade or business, or domestic service in a private home of the employer, performed by an individual in the employ of his spouse or son or daughter; except that the provisions of this subparagraph shall not be applicable to such domestic service performed by an individual in the employ of his son or daughter if—".

(b) FICA AMENDMENTS.—

(1) IN GENERAL.—Subparagraph (A) of section 3121(b)(3) of the Internal Revenue Code of 1986 (relating to employment) is amended by striking "performed by an individual in the employ of his spouse, and service".

(2) EXCEPTION FOR CERTAIN DOMESTIC SERVICE IN THE PRIVATE HOME OF A SPOUSE.—Paragraph (3) of section 3121(b) of such Code (relating to employment) is amended by striking so much of subparagraph (B) as precedes clause (i) and inserting the following:

"(B) service not in the course of the employer's trade or business, or domestic service in a private home of the employer, performed by an individual in the employ of his spouse or son or daughter; except that the provisions of this subparagraph shall not be applicable to such domestic service performed by an individual in the employ of his son or daughter if—".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to service performed after December 31, 1987.

SEC. 9005. TREATMENT OF SERVICE PERFORMED BY AN INDIVIDUAL IN THE EMPLOY OF A PARENT.

(a) SOCIAL SECURITY ACT AMENDMENTS.—

(1) AGE BELOW WHICH SERVICE FOR PARENT IS EXCLUDED FROM COVERED EMPLOYMENT REDUCED TO AGE 18.—Subparagraph (A) of section 210(a)(3) of the Social Security Act (as amended by section 9004(a)(1) of this Act) is further amended by striking "twenty-one" and inserting "18".

(2) EXCEPTION FOR CERTAIN DOMESTIC SERVICE IN THE PRIVATE HOME OF PARENT.—Subparagraph (B) of section 210(a)(3) of such Act (as amended by section 9004(a)(2) of this Act) is further amended by inserting "under the age of 21 in the employ of his father or mother, or performed by an individual" after "individual" the first place it appears.

(b) FICA AMENDMENTS.—

(1) AGE BELOW WHICH SERVICE FOR PARENT IS EXCLUDED FROM COVERED EMPLOYMENT REDUCED TO AGE 18.—Subparagraph (A) of section 3121(b)(3) of the Internal Revenue Code of 1986 (as amended by section 104(b)(1) of this Act) is further amended by striking "21" and inserting "18".

(2) EXCEPTION FOR CERTAIN DOMESTIC SERVICE IN THE PRIVATE HOME OF PARENT.—Subparagraph (B) of section 3121(b)(3) of such Code (as amended by section 104(b)(2) of this Act) is further amended by inserting "under the age of 21 in the employ of his father or mother, or performed by an individual" after "individual" the first place it appears.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to service performed after December 31, 1987.

SEC. 9006. APPLICABILITY OF GOVERNMENT PENSION OFFSET TO CERTAIN FEDERAL EMPLOYEES.

(a) WIFE'S INSURANCE BENEFITS.—Paragraph (4) of section 202(b) of the Social Security Act is amended—

(1) by redesignating subparagraph (B) as subparagraph (C); and

(2) by striking subparagraph (A) and inserting the following:

"(A) The amount of a wife's insurance benefit for each month as determined after application of the provisions of subsections (q) and (k) shall be reduced (but not below zero) by an amount equal to two-thirds of the amount of any monthly periodic benefit payable to the wife (or divorced wife) for such month which is based upon her earnings while in the service of the Federal Government or any State (or political subdivision thereof, as defined in section 218(b)(2)) if, on the last day she was employed by such entity—

"(i) such service did not constitute 'employment' as defined in section 210(a), or

"(ii) such service was being performed while in the service of the Federal Government, and constituted 'employment' as so defined solely by reason of subparagraph (G) or (H) of section 210(a)(5), unless subparagraph (B) applies.

The amount of the reduction in any benefit under this subparagraph, if not a multiple of $0.10, shall be rounded to the next higher multiple of $0.10.

"(B) Subparagraph (A)(ii) shall not apply with respect to monthly periodic benefits based in whole or in part on service which constituted 'employment' as defined in section 210(a) if such service was performed for at least 5 years in the aggregate during the period beginning—

"(i) July 1, 1987, in the case of such service which constitutes 'employment' as defined in section 210(a) solely by reason of section 210(a)(5)(H), or

"(ii) January 1, 1984, in the case of such service which constitutes 'employment' as so defined solely by reason of section 210(a)(5)(G),

and ending with the close of the first calendar month as of the end of which the wife (or divorced wife) is eligible for benefits under this subsection and has made a valid application for such benefits.".

(b) HUSBAND'S INSURANCE BENEFITS.—Paragraph (2) of section 202(c) of such Act is amended—

(1) by redesignating subparagraph (B) as subparagraph (C); and

(2) by striking subparagraph (A) and inserting the following:

"(A) The amount of a husband's insurance benefit for each month as determined after application of the provisions of subsections (q) and (k) shall be reduced (but not below zero) by an amount equal to two-thirds of the amount of any monthly periodic benefit payable to the husband (or divorced husband) for such month which is based upon his earnings while in the service of the Federal Government or any State (or political subdivision thereof, as defined in section 218(b)(2)) if, on the last day he was employed by such entity—

"(i) such service did not constitute 'employment' as defined in section 210(a), or

"(ii) such service was being performed while in the service of the Federal Government, and constituted 'employment' as so defined solely by reason of subparagraph (G) or (H) of section 210(a)(5), unless subparagraph (B) applies.

The amount of the reduction in any benefit under this subparagraph, if not a multiple of $0.10, shall be rounded to the next higher multiple of $0.10.

"(B) Subparagraph (A)(ii) shall not apply with respect to monthly periodic benefits based in whole or in part on service which constituted 'employment' as defined in section 210(a) if such service was performed for at least 5 years in the aggregate during the period beginning—

"(i) July 1, 1987, in the case of such service which constitutes 'employment' as defined in section 210(a) solely by reason of section 210(a)(5)(H), or

"(ii) January 1, 1984, in the case of such service which constitutes 'employment' as so defined solely by reason of section 210(a)(5)(G),

and ending with the close of the first calendar month as of the end of which the husband (or divorced husband) is eligible for benefits under this subsection and has made a valid application for such benefits.".

(c) WIDOW'S INSURANCE BENEFITS.—Paragraph (7) of section 202(e) of such Act is amended—

(1) by redesignating subparagraph (B) as subparagraph (C); and

(2) by striking subparagraph (A) and inserting the following:

"(A) The amount of a widow's insurance benefit for each month as determined after application of the provisions of subsections (q) and (k) shall be reduced (but not below zero) by an amount equal to two-thirds of the amount of any monthly periodic benefit payable to the widow (or surviving divorced wife) for such month which is based upon her earnings while in the service of the Federal Government or any State (or political subdivision thereof, as defined in section 218(b)(2)) if, on the last day she was employed by such entity—

"(i) such service did not constitute 'employment' as defined in section 210(a), or

"(ii) such service was being performed while in the service of the Federal Government, and constituted 'employment' as so defined solely by reason of subparagraph (G) or (H) of section 210(a)(5), unless subparagraph (B) applies.

The amount of the reduction in any benefit under this subparagraph, if not a multiple of $0.10, shall be rounded to the next higher multiple of $0.10.

"(B) Subparagraph (A)(ii) shall not apply with respect to monthly periodic benefits based in whole or in part on service which constituted 'employment' as defined in section 210(a) if such service was performed for at least 5 years in the aggregate during the period beginning—

"(i) July 1, 1987, in the case of such service which constitutes 'employment' as defined in section 210(a) solely by reason of section 210(a)(5)(H), or

"(ii) January 1, 1984, in the case of such service which constitutes 'employment' as so defined solely by reason of section 210(a)(5)(G),

and ending with the close of the first calendar month as of the end of which the widow (or surviving divorced wife) is eligible for benefits under this subsection and has made a valid application for such benefits.".

(d) WIDOWER'S INSURANCE BENEFITS.—Paragraph (2) of section 202(f) of such Act is amended—

(1) by redesignating subparagraph (B) as subparagraph (C); and

(2) by striking subparagraph (A) and inserting the following:

"(A) The amount of a widower's insurance benefit for each month as determined after application of the provisions of subsections (q) and (k) shall be reduced (but not below zero) by an amount equal to two-thirds of the amount of any monthly periodic benefit payable to the widower (or surviving divorced husband) for such month which is based upon his earnings while in the service of the Federal Government or any State (or political subdivision thereof, as defined in section 218(b)(2)) if, on the last day he was employed by such entity—

"(i) such service did not constitute 'employment' as defined in section 210(a), or

"(ii) such service was being performed while in the service of the Federal Government, and constituted 'employment' as so defined solely by reason of subparagraph (G) or (H) of section 210(a)(5), unless subparagraph (B) applies.

The amount of the reduction in any benefit under this subparagraph, if not a multiple of $0.10, shall be rounded to the next higher multiple of $0.10.

"(B) Subparagraph (A)(ii) shall not apply with respect to monthly periodic benefits based in whole or in part on service which constituted 'employment' as defined in section 210(a) if such service was performed for at least 5 years in the aggregate during the period beginning—

"(i) July 1, 1987, in the case of such service which constitutes 'employment' as defined in section 210(a) solely by reason of section 210(a)(5)(H), or

"(ii) January 1, 1984, in the case of such service which constitutes 'employment' as so defined solely by reason of section 210(a)(5)(G),

and ending with the close of the first calendar month as of the end of which the widower (or surviving divorced husband) is eligible for benefits under this subsection and has made a valid application for such benefits.".

(e) Mother's and Father's Insurance Benefits.—Paragraph (4) of section 202(g) of such Act is amended—

(1) by redesignating subparagraph (B) as subparagraph (C); and

(2) by striking subparagraph (A) and inserting the following:

"(A) The amount of a mother's or father's insurance benefit for each month as determined after application of the provisions of subsections (q) and (k) shall be reduced (but not below zero) by an amount equal to two-thirds of the amount of any monthly periodic benefit payable to the individual for such month which is based upon the individual's earnings while in the service of the Federal Government or any State (or political subdivision thereof, as defined in section 218(b)(2)) if, on the last day the individual was employed by such entity—

"(i) such service did not constitute 'employment' as defined in section 210(a), or

"(ii) such service was being performed while in the service of the Federal Government, and constituted 'employment' as so defined solely by reason of subparagraph (G) or (H) of section 210(a)(5), unless subparagraph (B) applies.

The amount of the reduction in any benefit under this subparagraph, if not a multiple of $0.10, shall be rounded to the next higher multiple of $0.10.

"(B) Subparagraph (A)(ii) shall not apply with respect to monthly periodic benefits based in whole or in part on service which constituted 'employment' as defined in section 210(a) if such service was performed for at least 5 years in the aggregate during the period beginning—

"(i) July 1, 1987, in the case of such service which constitutes 'employment' as defined in section 210(a) solely by reason of section 210(a)(5)(H), or

"(ii) January 1, 1984, in the case of such service which constitutes 'employment' as so defined solely by reason of section 210(a)(5)(G),

and ending with the close of the first calendar month as of the end of which the individual is eligible for benefits under this subsection and has made a valid application for such benefits.".

(f) Effective Date.—The amendments made by this section shall apply with respect to benefits for months after June 1987; except that—

(1) in any case in which monthly periodic benefits are payable to an individual based on earnings while in the service of the Federal Government constituting 'employment' as defined in section 210(a) of the Social Security Act solely by reason of section 210(a)(5)(G) of such Act, such amendments shall not apply with respect to any benefit of such individual under subsection (b), (c), (e), (f), or (g) of section 202 of the Social Security Act for which application was made before July 1, 1987; and

(2) nothing in such amendments shall affect any exemption (from the application of the pension offset provisions contained in subsection (b)(4), (c)(2), (e)(7), (f)(2), or (g)(4) of section 202 of the Social Security Act) which any individual may have by reason of subsection (g) or (h) of section 334 of the Social Security Amendments of 1977.

(g) Transition Rule.—In the case of any individual who attained age 60 before the beginning of the calendar year 1987, subsections (b)(4)(B), (c)(2)(B), (e)(7)(B), (f)(2)(B), and (g)(4)(B) of section 202 of the Social Security Act (as amended by this section) shall be applied by substituting for "5 years" a period of time in relation to the age such individual attained during that calendar year, as set forth in the following table:

If the individual attains in calendar year 1987 the following age:	The period of time to be substituted shall be:
Age 65 or over	180 days
Age 64	1 year
Age 63	2 years
Age 62	3 years
Age 61	4 years

SEC. 9007. EXEMPTION FROM CERTAIN BENEFIT REDUCTIONS.

(a) In General.—Section 215(a)(7)(D) of the Social Security Act is amended—

(1) by striking "30 years or more of coverage" in the first sentence and inserting "25 years or more of coverage";

(2) by striking "more than 25 years of coverage but less than 30 years of coverage" in the second sentence and inserting "more than 20 years of coverage but less than 25 years of coverage"; and

(3) by striking "29", "28", "27", and "26" (in clauses (i), (ii), (iii), and (iv)) and inserting "24", "23", "22", and "21", respectively.

(b) Effective Date.—The amendments made by subsection (a) shall apply with respect to benefits payable for months after December 1987.

SEC. 9008. MODIFICATION OF AGREEMENT WITH IOWA TO PROVIDE COVERAGE FOR CERTAIN POLICEMEN AND FIREMEN.

(a) In General.—Notwithstanding subsection (d)(5)(A) of section 218 of the Social Security Act and the references thereto in subsections (d)(1) and (d)(3) of such section 218, the agreement with the State of Iowa heretofore entered into pursuant to such section 218 may, at any time prior to January 1, 1989, be modified pursuant to subsection (c)(4) of such section 218 so as to apply to services performed in policemen's or firemen's positions required to be covered by a retirement system pursuant to section 410.1 of the Iowa Code as in effect on July 1, 1953, if the State of Iowa has at any time prior to the date of the enactment of this Act paid to the Secretary of the Treasury, with respect to any of the services performed in such positions, the sums prescribed pursuant to subsection (e)(1) of such section 218 (as in effect on December 31, 1986, with respect to payments due with respect to wages paid on or before such date).

(b) Service To Be Covered.—Notwithstanding the provisions of subsection (e) of section 218 of the Social Security Act (as so redesignated by section 9002(c)(1) of the Omnibus Budget Reconciliation Act of 1986)), any modification in the agreement with the State of Iowa under subsection (a) shall be made effective with respect to—

(1) all services performed in any policemen's or firemen's position to which the modification relates on or after January 1, 1987, and

(2) all services performed in such a position before January 1, 1987, with respect to which the State of Iowa has paid to the Secretary of the Treasury the sums prescribed pursuant to subsection (e)(1) of such section 218 (as in effect on December 31, 1986, with respect to payments due with respect to wages paid on or before such date) at the time or times established pursuant to such subsection (e)(1), if and to the extent that—

(A) no refund of the sums so paid has been obtained, or

(B) a refund of part or all of the sums so paid has been obtained but the State of Iowa repays to the Secretary of the Treasury the amount of such refund within 90 days after the date on which the modification is agreed to by the State and the Secretary of Health and Human Services.

SEC. 9009. INTERIM DISABILITY BENEFITS IN CASES OF DELAYED FINAL DECISIONS.

(a) Disability Benefits Under Title II.—Section 223 of the Social Security Act is amended—

(1) by redesignating subsection (h) as subsection (i); and

(2) by inserting after subsection (g) the following new subsection:

"interim benefits in cases of delayed final decisions

"(h)(1) In any case in which an administrative law judge has determined after a hearing as provided under section 205(b) that an individual is entitled to disability insurance benefits or child's, widow's, or widower's insurance benefits based on disability and the Secretary has not issued his final decision in such case within 110 days after the date of the administrative law judge's determination, such benefits shall be currently paid for the months during the period beginning with the month preceding the month in which such 110-day period expires and ending with the month preceding the month in which such final decision is issued.

"(2) For purposes of paragraph (1), in determining whether the 110-day period referred to in paragraph (1) has elapsed, any period of time for which the action or inaction of such individual or such individual's representative without good cause results in the delay in the issuance of the Secretary's final decision shall not be taken into account to the extent that such period of time exceeds 20 calendar days.

"(3) Any benefits currently paid under this title pursuant to this subsection (for the months described in paragraph (1)) shall not be considered overpayments for any purpose of this title (unless payment of such benefits was fraudulently obtained), and such benefits shall not be treated as past-due benefits for purposes of section 206(b)(1).".

(b) Benefits Under Title XVI.—Section 1631(a) of such Act is amended by adding at the end thereof the following new paragraph:

"(8)(A) In any case in which an administrative law judge has determined after a hearing as provided in subsection (c) that an individual is entitled to benefits based on disability or blindness under this title and the Secretary has not issued his final decision in such case within 110 days after the date of the administrative law judge's determination, such benefits shall be currently paid for the months during the period beginning with the month in which such 110-day period expires and ending with the month in which such final decision is issued.

"(B) For purposes of subparagraph (A), in determining whether the 110-day period referred to in subparagraph (A) has elapsed, any period of time for which the action or inaction of such individual or such individual's representative without good cause results in the delay in the issuance of the Secretary's final decision shall not be taken into account to the extent that such period of time exceeds 20 calendar days.

"(C) Any benefits currently paid under this title pursuant to this paragraph (for the months described in subparagraph (A)) shall not be considered overpayments for any purpose of this title, unless payment of such benefits was fraudulently obtained.".

(c) Effective Date.—The amendments made by this section shall apply with respect to determinations by administrative law judges of entitlement to benefits made after 180 days after the date of the enactment of this Act.

SEC. 9010. CONTINUATION OF DISABILITY BENEFITS DURING APPEAL.

Subsection (g) of section 223 of the Social Security Act is amended—

(1) in paragraph (1)(iii), by striking "June 1988" and inserting "June 1989"; and

(2) in paragraph (3)(B), by striking "January 1, 1988" and inserting "January 1, 1989".

SEC. 9011. EXTENSION OF DISABILITY RE-ENTITLEMENT PERIOD FROM 15 MONTHS TO 60 MONTHS.

(a) Disability Insurance Benefits.—Paragraph (1) of section 223(a) of the Social Security Act is amended by striking "15 months" and inserting "60 months".

(b) Child's Insurance Benefits Based on Disability.—Clause (i) of section 202(d)(1)(G) of such Act is amended by striking "15 months" and inserting "60 months".

(c) Widow's Insurance Benefits Based on Disability.—Paragraph (1) of section 202(e) of such Act is amended, in subclause (II) of the last sentence, by striking "15 months" and inserting "60 months".

(d) Widower's Insurance Benefits Based on Disability.—Paragraph (1) of section 202(f) of such Act is amended, in subclause (II) of the last sentence, by striking "15 months" and inserting "60 months".

(e) Conforming Amendments.—

(1) Termination of period of disability.—Subparagraph (D) of section 216(i)(2) of such Act is amended by striking "15-month" and inserting "60-month".

(2) Termination of benefits during re-entitlement period.—Subsection (e) of section 223 of such Act is amended by striking "15-month" and inserting "60-month".

(f) Effective Date.—The amendments made by this section shall take effect January 1, 1988, and shall apply with respect to—

(1) individuals who are entitled to benefits which are payable under subsection (d)(1)(B)(ii), (d)(6)(A)(ii), (d)(6)(B), (e)(1)(B)(ii), or (f)(1)(B)(ii) of section 202 of the Social Security Act or subsection (a)(1) of section 223 of such Act for any month after December 1987, and

(2) individuals who are entitled to benefits which are payable under any provision referred to in paragraph (1) for any month before January 1988 and with respect to whom the 15-month period described in the applicable provision amended by this section has not elapsed as of January 1, 1988.

SEC. 9012. APPLICATION OF EMPLOYER TAXES TO EMPLOYEES' CASH TIPS.

(a) Application of Tax to Tips.—Section 3121(q) of the Internal Revenue Code of 1986 (relating to inclusion of tips for employee taxes) is amended—

(1) by striking "Employee Taxes" in the heading and inserting "Both Employee and Employer Taxes";

(2) by striking "other than for purposes of the taxes imposed by section 3111";

(3) by striking "remuneration for employment" and inserting "remuneration for such employment (and deemed to have been paid by the employer for purposes of subsections (a) and (b) of section 3111)"; and

(4) by inserting after "at the time received" the following: "; except that, in determining the employer's liability in connection with the taxes imposed by section 3111 with respect to such tips in any case where no statement including such tips was so furnished (or to the extent that the statement so furnished was inaccurate or incomplete), such remuneration shall be deemed for purposes of subtitle F to be paid on the date on which notice and demand for such taxes is made to the employer by the Secretary".

(b) Conforming Amendments.—(1) Subsections (a) and (b) of section 3111(a) of such Code (relating to rate of tax on employers) are each amended by striking "and (t)".

(2) Section 3121(t) of such Code (relating to special rule) is repealed.

(c) Effective Date.—The amendments made by this section shall apply with respect to tips received (and wages paid) on and after January 1, 1988.

PART 2—OTHER SOCIAL SECURITY PROVISIONS

SEC. 9021. FEES FOR REPRESENTATION OF CLAIMANTS IN ADMINISTRATIVE PROCEEDINGS.

(a) In General.—Subsection (a) of section 206 of the Social Security Act is amended—

(1) by inserting "(1)" after "(a)";

(2) by inserting "(subject to the succeeding provisions of this subsection)" after "The Secretary" in the fourth sentence; and

(3) by striking the fifth sentence and all that follows through "Any person who" in the seventh sentence and inserting the following:

"(2)(A) In any case in which the Secretary, in any claim before the Secretary for benefits under this title, makes a determination favorable to the claimant and the claimant was represented by an attorney in connection with such claim, the attorney, subject to paragraph (3), shall be entitled to recover a fee to compensate the attorney for the services performed by the attorney in connection with such claim in the manner and amount provided in this paragraph.

"(B) To the extent that the claimant, as a result of such determination, is entitled to past-due benefits under this title that would have been payable to the claimant without regard to sections 224 and 1127(a)—

"(i) the amount of the fee recoverable by the attorney shall be equal to the lesser of—

"(I) 25 percent of the total amount of such past-due benefits, or

"(II) $4,000 (subject to subparagraph (F)), and

"(ii) the Secretary shall, notwithstanding sections 205(i) and 207, certify for payment the amount of any past-due benefits payable (after the application of sections 224 and 1127(a)) in the form of a check payable to both the claimant and the attorney, which shall be sent to the attorney not later than 60 days after the date of the determination, and shall send to the attorney—

"(I) a notice specifying the amount of the proceeds of such check which may be retained by the attorney as the amount recoverable by the attorney, and

"(II) a form which would constitute, upon completion and notarization by a notary public, a sworn affidavit by the attorney and by the claimant (or the claimant's representative payee if one has been appointed under section 205(j)) that, upon payment of the proceeds from such check to the claimant, not more than the amount specified in such notice as the amount recoverable by the attorney has been retained by such attorney.

Any such amount so retained by the attorney shall be treated as recoverable by the attorney in accordance with this paragraph; except that, if the attorney fails without good cause to send such affidavit (as so completed and so notarized) to the Secretary within 15 days after receipt of such check, such amount shall not be so treated, and the attorney shall not be recognized or entitled to represent claimants before the Secretary so long as such failure continues.

"(C) To the extent that the favorable determination is made with respect to benefits which were continued for any period pursuant to section 223(g)—

"(i) the amount of the fee recoverable by the attorney shall be equal to the lesser of—

"(I) 25 percent of the total amount of such benefits paid for such period, or

"(II) $4,000 (subject to subparagraph (F)),

"(ii) the Secretary shall certify for payment to the attorney (out of the Trust Fund from which such benefits were paid) the amount recoverable by the attorney, and

"(iii) upon payment to the attorney pursuant to clause (ii), a portion of the total amount of such benefits paid for such period equal to the amount of the fee recoverable by the attorney shall be treated as an overpayment to the claimant, except that section 204(b) shall not apply, and except that such overpayment, unless the claimant and the Secretary agree otherwise, shall be repaid only by means of deducting, notwithstanding sections 205(i) and 207, 10 percent of each monthly benefit payable to the claimant for months beginning after the month in which the determination is made, until the total of such deductions equals the amount of the overpayment.

"(D) If the favorable determination is not of entitlement to past-due benefits and does not relate to benefits the payment of which was continued pursuant to section 223(g)—

"(i) the amount of the fee recoverable by the attorney shall be equal to the lesser of—

"(I) 300 percent of (a) the primary insurance amount of the claimant if the favorable determination entitles the claimant to benefits based on his or her own wages and self-employment income, or (b) the monthly benefit of the claimant (before any reductions or deductions) if such determination entitles the claimant to benefits based on another person's wages and self-employment income, or

"(II) $4,000 (subject to subparagraph (F)),

"(ii) the Secretary shall certify for payment to the attorney (out of the Trust Fund from which the claimant is entitled to benefits as a result of the favorable determination) the amount recoverable by the attorney, and

"(iii) upon payment to the attorney pursuant to clause (ii), the amount of the fee recoverable by the attorney shall be treated as an overpayment to the claimant, except that section 204(b) shall not apply, and except that such overpayment, unless the claimant and the Secretary agree otherwise, shall be repaid only by means of deducting, notwithstanding sections 205(i) and 207, 10 percent of each monthly benefit payable to the claimant for months beginning after the month in which the determination is made, until the total of such deductions equals the amount of the overpayment;

except that if no such primary insurance amount or monthly benefit has been determined, the amount of the fee recoverable by the attorney shall be fixed by the Secretary in accordance with criteria established in the rules and regulations prescribed under the last sentence of paragraph (1), and clauses (i), (ii), and (iii) of this subparagraph shall not apply.

"(E) The administrative law judge or other person conducting the hearing on any claim to which subparagraph (B) applies or may apply shall (at or prior to the time of the favorable determination) provide the claimant, the attorney, and the Secretary with an estimate of the amount of the fee which is or may be recoverable by the attorney in accordance with this paragraph for services performed in connection with such claim; and any request under paragraph (3) for review of the amount so estimated must be made within 10 days after the date of such determination.

"(F) If the Secretary pursuant to section 215(i) increases benefits effective with December of any calendar year, effective for determinations made on or after January 1 of the next calendar year, the Secretary shall increase the amounts specified in subparagraphs (B)(i)(II), (C)(i)(II), and (D)(i)(II) (as in effect immediately before such January 1) by the same percentage as the percentage of the increase in benefits effective with such December under section 215(i) and publish such amount as so increased in the Federal Register.

"(3)(A) Upon a written request to the Secretary by the claimant, or by the administrative law judge or other person who made the favorable determination (but only on the basis of extraordinary evidence of attorney failure to adequately represent the claimant's interest), to reduce the amount otherwise recoverable by the attorney under subparagraph (B), (C), or (D) of paragraph (2), or upon a written request to the Secretary by the attorney to increase the amount recoverable by the attorney under subparagraph (B), (C), or (D) of paragraph (2), and after providing the claimant, the attorney, and such administrative law judge or other person with reasonable notice of such request and an opportunity to submit written information in favor of or in opposition to such request, the Secretary shall provide for review of such amount in accordance with subparagraph (B).

"(B)(i) In the case of a request under subparagraph (A) by the claimant or by the attorney, a review under subparagraph (A) of the amount otherwise recoverable by the attorney under paragraph (2) shall be conducted by the administrative law judge or other person who made the favorable determination; except that, if the Secretary determines that such administrative law judge or other person is not available for the purpose of conducting such review, the Secretary shall designate another administrative law judge or other person for such purpose.

"(ii) In the case of a request under subparagraph (A) by the administrative law judge or other person who made the favorable determination, a review under subparagraph (A) of the amount otherwise recoverable by the attorney under paragraph (2) shall be conducted by the Secretary or by another administrative law judge or other person who is designated by the Secretary and has supervisory authority over the administrative law judge or other person who made the favorable determination.

"(C) Upon completion of the review pursuant to this paragraph, the administrative law judge or other person conducting the review pursuant to subparagraph (B) shall affirm, modify, or disallow the amount otherwise recoverable by the attorney under paragraph (2). If such amount is so disallowed, the Secretary shall certify for payment benefits to any claimant as provided in this title without regard to paragraph (2). Any such amount as so affirmed or modified shall be considered the amount recoverable by the attorney under paragraph (2).

"(4) In any case to which paragraph (2) applies, no fee other than the amount recoverable by the attorney under that paragraph may be payable or certified for payment for the representation involved; and (in any such case) the term 'maximum fee' as used in paragraph (6) means the amount so recoverable.

"(5) The Secretary shall certify benefits to any claimant for payment as provided in this title without regard to paragraph (2) if the attorney submits to the Secretary a written waiver of the attorney's rights under paragraph (2) before the date on which the Secretary certifies payment to the attorney of the fee recoverable by the attorney.

"(6) Any person who".

(b) Protection of Attorney's Fees From Offsetting SSI, Worker's Compensation, or Public Disability Benefits.—

(1) SSI benefits.—Subsection (a) of section 1127 of such Act is amended by adding at the end the following new sentence: "A benefit under title II shall not be reduced pursuant to the preceding sentence to the extent that any amount of such benefit would not otherwise be available for payment in full of the amount recoverable from such benefit by an attorney pursuant to section 206(a)(2)(B).".

(2) Worker's compensation and public disability benefits.—Section 224(a) of such Act is amended by inserting before the last sentence the following new sentence: "A benefit under section 223 or 202 shall not be reduced pursuant to the preceding provisions of this paragraph to the extent that any amount of such benefit would not otherwise be available for payment in full of the amount recoverable from such benefit by an attorney pursuant to section 206(a)(2)(B).".

(c) Effective Date.—The amendments made by this section shall apply with respect to determinations favorable to the claimant made on or after January 1, 1988.

SEC. 9022. TREATMENT OF CORPORATE DIRECTORS AS EMPLOYEES.

(a) In General.—Paragraph (1) of section 210(j) of the Social Security Act is amended by inserting "or director" after "officer".

(b) Effective Date.—The amendment made by this section shall apply with respect to service performed after December 31, 1987.

SEC. 9023. APPLICATION OF EARNINGS TEST IN YEAR OF INDIVIDUAL'S DEATH.

(a) Year in Which Individual Would Have Attained Retirement Age but for the Individual's Death in Such Year Treated as a Year Throughout Which the Earnings Test for Individuals Who Have Attained Retirement Age Is Applicable.—Paragraph (3) of section 203(f) of the Social Security Act is amended by inserting "(or, but for the individual's death, would have attained)" after "who has attained".

(b) Elimination of the Short Taxable Year in the Year of Death for Purposes of the Earnings Test.—Paragraph (3) of section 203(f) of such Act is further amended—

(1) by inserting after the first sentence the following new sentence: "For purposes of the preceding sentence, notwithstanding section 211(e), the number of months in the taxable year in which an individual dies shall be 12."; and

(2) in the last sentence, by striking "preceding sentence" and inserting "first sentence of this paragraph".

(c) Effective Date.—The amendments made by this section shall apply with respect to deaths after the date of the enactment of this Act.

SEC. 9024. DENIAL OF BENEFITS TO INDIVIDUALS DEPORTED OR ORDERED DEPORTED ON THE BASIS OF ASSOCIATIONS WITH THE NAZI GOVERNMENT OF GERMANY DURING WORLD WAR II.

(a) In General.—Section 202(n)(1) of the Social Security Act is amended by striking "or (18)" in the matter preceding subparagraph (A) and inserting "(18), or (19)".

(b) Time of Deportation.—Section 202(n) of such Act is further amended by adding at the end the following new paragraph:

"(3) For purposes of paragraphs (1) and (2) of this subsection, an individual against whom a final order of deportation has been issued under paragraph (19) of section 241(a) of the Immigration and Nationality Act (relating to persecution of others on account of race, religion, national origin, or political opinion, under the direction of or in association with the Nazi government of Germany or its allies) shall be considered to have been deported under such paragraph (19) as of the date on which such order became final.".

(c) Effective Date.—The amendments made by this section shall apply only in the case of deportations occurring, and final orders of deportation issued, on or after the date of enactment of this Act, and only with respect to benefits for months beginning (and deaths occurring) on or after such date.

SEC. 9025. MODIFICATIONS IN THE TERM OF OFFICE OF PUBLIC MEMBERS OF THE BOARDS OF TRUSTEES OF THE SOCIAL SECURITY TRUST FUNDS.

(a) In General.—Sections 201(c), 1817(b), and 1841(b) of the Social Security Act are each amended by inserting after the first sentence the following: "A member of the Board of Trustees serving as a member of the public and appointed to fill a vacancy occurring before the expiration of the term for which such member's predecessor was appointed shall be appointed only for the remainder of such term. A member appointed as a member of the public may serve after the expiration of such member's term until such member's successor has taken office.".

(b) Effective Date.—The amendments made by this section shall apply to members of the Boards of Trustees of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, of the Federal Hospital Insurance Trust Fund, and of the Federal Supplementary Medical Insurance Trust Fund serving on such Boards of Trustees as members of the public on or after the date of the enactment of this Act.

SEC. 9026. TECHNICAL CORRECTIONS.

(a) The heading of section 210(p) of the Social Security Act is amended to read as follows:

"Medicare Qualified Government Employment".

(b)(1) Section 211(a)(7) of such Act is amended—

(A) by inserting "and" before "section 911"; and

(B) by striking "and section 931 (relating to income from sources within possessions of the United States) of the Internal Revenue Code of 1954".

(2) Section 211(a)(8) of such Act is amended to read as follows:

"(8) The exclusion from gross income provided by section 931 of the Internal Revenue Code of 1986 shall not apply;".

(c) Section 218(v) of such Act is amended—

(1) by striking "(v)" and inserting "(n)";

(2) by striking paragraph (3); and

(3) by redesignating paragraphs (4) and (5) as paragraphs (3) and (4), respectively.

(d) Section 3121(a)(5) of the Internal Revenue Code of 1986 is amended—

(1) by striking "; or" at the end of subparagraph (F) and inserting ", or"; and

(2) by striking the comma at the end of subparagraph (G) and inserting a semicolon.

PART 3—RAILROAD RETIREMENT PROGRAM

SEC. 9031. INCREASE IN RATES OF TIER 2 RAILROAD RETIREMENT TAX ON EMPLOYEES FOR 1988 AND THEREAFTER.

(a) In General.—Subsection (b) of section 3201 of the Internal Revenue Code of 1986 (relating to tier 2 employee tax) is amended to read as follows:

"(b) Tier 2 Tax.—In addition to other taxes, there is hereby imposed on the income of each employee a tax equal to 4.90 percent of the compensation received during any calendar year by such employee for services rendered by such employee.".

(b) Effective Date.—The amendment made by this section shall apply with respect to compensation received after December 31, 1987.

SEC. 9032. INCREASE IN RATES OF TIER 2 RAILROAD RETIREMENT TAX ON EMPLOYERS FOR 1988 AND THEREAFTER.

(a) In General.—Subsection (b) of section 3221 of the Internal Revenue Code of 1986 (relating to tier 2 employer tax) is amended to read as follows:

"(b) Tier 2 Tax.—In addition to other taxes, there is hereby imposed on every employer an excise tax, with respect to having individuals in his employ, equal to 16.10 percent of the compensation paid during any calendar year by such employer for services rendered to such employer.".

(b) Effective Date.—The amendments made by this section shall apply with respect to compensation paid after December 31, 1987.

SEC. 9033. COMMISSION ON RAILROAD RETIREMENT REFORM.

(a) Commission on Railroad Retirement Reform.—There is established a commission to be known as the Commission on Railroad Retirement Reform (in this section referred to as the "Commission").

(b) Study.—The Commission shall conduct a comprehensive study of the issues pertaining to the long-term financing of the railroad retirement system. The Commission shall submit recommendations to the Congress for revisions in, or alternatives to, the current financing system to assure the provision of retirement benefits to former, present, and future railroad employees on an actuarially sound basis. The study will take into account—

(1) the possibility of restructuring the financing of railroad retirement benefits through increases in the tier 2 tax rate, increases in the tier 2 tax wage base, the imposition of a tax on operating revenues, revisions in the investment policy of the railroad retirement pension fund, covering railroad employment under social security, and establishing a privately funded and administered railroad industry pension plan;

(2) the economic outlook for the railroad industry, and the nature of the relationships between the railroad retirement system, levels of railroad employment and compensation, and the performance of the rail sector; and

(3) any other matters which the Commission considers would be necessary, appropriate, or useful to the Congress in developing legislation to reform the financing of the railroad retirement system.

(c) Membership of the Commission.—

(1) Number and appointment.—The Commission shall be composed of 7 members, as follows:

(A) 3 individuals appointed by the President—

(i) one of whom shall be appointed on the basis of recommendations made by representatives of employers (as defined in section 1(a) of the Railroad Retirement Act of 1974) so as to provide representation on the Commission satisfactory to the largest number of employers concerned,

(ii) one of whom shall be appointed on the basis of recommendations made by representatives of employees (as defined in section 1(b) of the Railroad Retirement Act of 1974) so as to provide representation on the Commission satisfactory to the largest number of employees concerned, and

(iii) one of whom shall be appointed from members of the public;

(B) 2 individuals appointed by the Speaker of the House of Representatives from among members of the public—

(i) one of whom shall be appointed after consultation with the Chairman of the Committee on Ways and Means of the House of Representatives, and

(ii) one of whom shall be appointed after consultation with the Chairman of the Committee on Energy and Commerce of the House of Representatives; and

(C) 2 individuals appointed by the President pro tempore of the Senate from among members of the public—

(i) one of whom shall be appointed after consultation with the Chairman of the Committee on Finance of the Senate, and

(ii) one of whom shall be appointed after consultation with the Chairman of the Committee on Labor and Human Resources of the Senate.

All public members of the Commission shall be appointed from among individuals who are not in the employment of and are not pecuniarily or otherwise interested in any employer (as so defined) or organization of employees (as so defined). In making appointments under this section, the President, the Speaker of the House of Representatives, and the President pro tempore of the Senate shall ensure that the members of the Commission, collectively, possess special knowledge of retirement income policy, social insurance, private pensions, taxation, and the structure of the transportation industry. A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

(2) Basic pay.—The members of the Commission shall each be paid at a rate equal to the daily equivalent of the annual rate of basic pay in effect for grade GS-18 of the General Schedule for each day (including travel time) during which they are engaged in the actual performance of duties vested in the Commission.

(3) Quorum.—Four members of the Commission shall constitute a quorum but a lesser number may hold hearings.

(4) Chairman.—The President shall appoint as Chairman one member from the members appointed from the public.

(d) Staff of Commission; Experts and Consultants.—

(1) Staff.—Subject to such rules as may be prescribed by the Commission, the Chairman may appoint and fix the pay of such personnel as the Chairman considers appropriate.

(2) Applicability of certain civil service laws.—The staff of the Commission may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no individual so appointed may receive pay in excess of [the annual rate of basic pay payable for GS-18 of the General Schedule].

(3) Experts and consultants.—Subject to such rules as may be prescribed by the Commission, the Chairman may procure temporary and intermittent services under section 3109(b) of title 5 of the United States Code, but at rates for individuals not to exceed the daily equivalent of the maximum annual rate of basic pay payable for GS-18 of the General Schedule.

(4) Staff of federal agencies.—Upon request of the Commission, the Railroad Retirement Board and any other Federal agency may detail, on a reimbursable basis, any of the personnel thereof to the Commission to assist the Commission in carrying out its duties under this section.

(e) Access to Official Data and Services.—

(1) Official data.—The Commission may, as appropriate, secure directly from any department or agency of the United States information necessary to enable it to carry out this section. Upon request of the Chairman of the Commission, the head of such department or agency shall, as appropriate, furnish such information to the Commission.

(2) Mails.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

(3) Administrative Support Services.—The Administrator of General Services shall provide to the Commission on a reimbursable basis such administrative support services as the Commission may request.

(f) Report.—The Commission shall transmit a report to the President and to each House of the Congress not later than October 1, 1989. The report shall contain a detailed statement of the findings and conclusions of the Commission, together with its legislative recommendations.

(g) Termination.—The Commission shall cease to exist 60 days after submitting its report pursuant to subsection (f).

Subtitle B—Family Welfare Reform

SEC. 9100. SHORT TITLE.

This subtitle may be cited as the "Family Welfare Reform Act of 1987".

SEC. 9100A. AFDC REPLACED BY FAMILY SUPPORT PROGRAM.

The program under part A of title IV of the Social Security Act, heretofore known as the program of aid to families with dependent children, shall hereafter be known as the Family Support Program. The aid payable to needy families with dependent children in accordance with State plans approved under section 402 of such Act shall hereafter be called family support supplements, or aid in the form of family support supplements, as more specifically provided in the amendments made by this subtitle; and all references to "aid" under such plans shall hereafter (to the extent that they relate to periods on or after the date of the enactment of this subtitle) be deemed to be references to such aid in the form of family support supplements.

PART 1—NATIONAL EDUCATION, TRAINING, AND WORK (NETWORK) PROGRAM

SEC. 9101. ESTABLISHMENT OF NETWORK PROGRAM.

(a) State Plan Requirement.—Section 402(a)(19) of the Social Security Act is amended to read as follows:

"(19) provide that the State has in effect and operation an education, training, and work program approved by the Secretary as meeting all of the requirements of section 416;".

(b) Establishment and Operation of State Programs.—Part A of title IV of such Act is amended by adding at the end thereof the following new section:

"NATIONAL EDUCATION, TRAINING, AND WORK PROGRAM

"Sec. 416. (a) Purpose.—It is the purpose of this section to assure that needy children and parents obtain the education, training, and employment which will help them avoid long-term welfare dependence.

"(b) Establishment and Operation of Programs.—(1) As a condition of its participation in the Family Support Program under this part, each State shall establish and operate an education, training, and work program which has been approved by the Secretary as meeting all of the requirements of this section, and shall make the program available in each political subdivision of the State where it is feasible to do so after taking into account the number of prospective participants, the local economy, and other relevant factors. The Secretary's approval shall be based on a plan setting forth and describing the program and estimating the number of persons to be served, which shall be submitted by the State on or before the effective date of this section and which, if the State has determined that the program is not to be available in all of its political subdivisions, shall include appropriate justification for that determination.

"(2) Each State education, training, and work program under this section shall include private sector and local government involvement in planning and program design to assure that participants are trained for jobs that will actually be available in the community.

"(3) The State agency which administers or supervises the administration of the State's plan approved under section 402 shall be responsible for the operation and administration of the State's education, training, and work program under this section.

"(4) Federal funds made available to a State for purposes of the program under this section shall be used to augment and expand existing services and activities which promote the purpose of this section, and shall not in whole or in part replace or supplant any State or local funds already being expended for that purpose.

"(c) Participation.—(1) Each adult recipient of family support supplements in the State who is not exempt under paragraph (4) shall be required to participate in the program under this section to the extent that the program is available in the political subdivision where he or she resides and State resources otherwise permit. The State agency shall take such action as may be necessary to ensure that each recipient of such supplements (including each such recipient who is exempt under paragraph (4)) is notified and fully informed concerning the education, training, and work opportunities offered under the program.

"(2) The State may require participation in the program under this section by recipients who are not exempt under paragraph (4) (hereinafter referred to as 'mandatory participants'), and shall also extend the opportunity to participate in the program to recipients who are exempt under paragraph (4) (hereinafter referred to as 'volunteers'). The State shall actively encourage volunteers to participate in the program, and shall from time to time furnish to the Secretary appropriate assurances that it is doing so.

"(3) With the objective of making the most effective possible use of the State's resources and identifying the families which most urgently need the services and activities provided under the program under this section, the program shall establish (and the plan submitted under subsection (b)(1) shall designate) specific target populations including—

"(A) families with a teenage parent, and families with a parent who was under 18 years of age when the first child was born;

"(B) families that have been receiving aid to families with dependent children or family support supplements continuously for two or more years; and

"(C) families with one or more children under 6 years of age.

For purposes of subparagraph (B), a family that has received aid to families with dependent children or family support supplements for at least 20 months out of any period of 24 consecutive months shall be treated as having received such aid or supplements continuously during that period.

"(4) The following are exempt from participation in the program under this section:

"(A) an individual who is ill, incapacitated, or 60 years of age or over;

"(B) an individual who is needed in the home because of the illness or incapacity of another family member;

"(C) the parent or other caretaker relative of a child under 3 years of age (subject to the last sentence of this paragraph); except that—

"(i) the State may not require participation in the program by a parent or other caretaker relative of a child who has attained 3 years of age but not 6 years of age unless day care is guaranteed to such relative and his or her participation is on a part-time basis,

"(ii) the State shall permit and encourage participation in the program (and waive the exemption provided by this subparagraph) in the case of parents and other caretaker relatives of children who have not attained 3 years of age, where day care is guaranteed to the relative involved and his or her participation is on a part-time basis, and

"(iii) the Secretary may permit the State at its option to require participation in the program (and waive the exemption provided by this subparagraph) in the case of parents and other caretaker relatives whose youngest child has attained 1 year of age but not 3 years of age if (I) the State demonstrates to the satisfaction of the Secretary that appropriate infant care for each such child who has not attained 3 years of age can be guaranteed within the applicable dollar limitations set forth in section 402(g)(I), and (II) such relative's participation will be on a part-time basis;

"(D) an individual who is working 20 or more hours a week;

"(E) a child who is under the age of 16 or attending, full time, an elementary, secondary, or vocational (or technical) school, except in the case of a minor parent with respect to whom the State has exercised its option under section 417(c);

"(F) a woman who is pregnant; and

"(G) an individual who resides in an area of the State where the program is not available.

In the case of a two-parent family to which section 407 applies, the exemption under subparagraph (C) shall apply only to one parent or other caretaker relative; but the State may at its option make such exemption inapplicable in any such case to both of the parents or relatives involved (and require their participation in the program, at least one of them on a full-time basis) if appropriate child care is guaranteed in accordance with the applicable provisions of such subparagraph.

"(5) If the caretaker relative or any dependent child in the family is already attending (in good standing) a school or a course of vocational or technical training designed to lead to employment at the time he or she would otherwise commence participation (as a mandatory participant or volunteer) in the program under this section, such attendance shall constitute satisfactory participation in the educational or training component of the program (by that caretaker or child) so long as it continues; and the family support plan (entered into under subsection (f)) shall so indicate. The costs of such school or training shall not constitute federally reimbursable expenses for purposes of section 403 (but this sentence shall not prevent the State from providing or making reimbursement for the cost of day care which is necessary for such attendance in accordance with section 402(g)(1)).

"(d) PRIORITIES.—(1) To the extent that the State's resources do not permit the inclusion in the program of all mandatory participants and volunteers, the selection of the families to whom services are to be provided under the program under this section shall be made (subject to subsection (l)(3) and paragraphs (2) and (3) of this subsection) in accordance with the following priorities:

"(A) First priority shall be given to volunteers who are described in subparagraphs (A), (B), and (C) of subsection (c)(3).

"(B) Second priority shall be given to mandatory participants who are described in subparagraphs (A), (B), and (C) of subsection (c)(3).

"(C) Third priority shall be given to mandatory participants (not described in subparagraph (B)) in families with older children.

"(D) Fourth priority shall be given to volunteers not described in subparagraph (A).

"(E) Fifth priority shall be given to all other mandatory participants.

For purposes of subparagraph (C), a family 'with older children' is a family in which the youngest child is within two years of being ineligible for family support supplements because of his or her age.

"(2) Among the mandatory participants described in subparagraph (B), (C), or (E) of paragraph (1), first consideration shall be given to those who actively seek to participate in the program.

"(3) In the case of a State which provides satisfactory assurances that it will make available the resources to serve all mandatory participants and volunteers within a 3-year period after the effective date of this section, paragraph (1) shall not apply until the expiration of such 3-year period.

"(e) ORIENTATION.—The State agency shall provide each applicant for family support supplements with orientation to the program under this section, including full information about the opportunities offered by the program and the obligations of participants in the program (and including descriptions of day care services and available health coverage transition options). Such orientation shall also be available at any time to recipients of family support supplements who did not receive orientation under this subsection at the time of their initial application for such supplements or who need additional information about the program.

"(f) ASSESSMENT AND FAMILY SUPPORT PLAN.—The State agency shall make an initial assessment of the educational needs, skills, and employability of each participant in the program under this section, including a review of the family circumstances and of the needs of the children as well as those of the adult caretaker; and on the basis of such assessment the State agency and the participating members of the family (or the adult caretaker with respect to any such participant who is a minor) shall negotiate a family support plan for the family. The family support plan shall set forth and describe all of the activities in which participants in the family will take part under the program, and shall, to the maximum extent possible and consistent with this section, reflect the respective preferences of such participants.

"(g) AGENCY-CLIENT AGREEMENT AND CASE MANAGEMENT.—(1) Following the initial assessment and the development of the family support plan with respect to any family under this section, the State agency and the participating members of the family (or the caretaker relative in the family with respect to participants who are minors) shall negotiate and enter into an agency-client agreement including a commitment by the participants (or caretaker) to participate in the program in accordance with the family support plan, specifying in detail the activities in which the participants will take part and the conditions and duration of such participation, and detailing all of the activities which the State will conduct and the services which the State will provide in the course of such participation. The participants (or caretaker) shall be given such assistance as may be required in reviewing and understanding the family support plan and the agency-client agreement.

"(2)(A) Each participant shall be guaranteed an opportunity for a fair hearing before the State agency in the event of a dispute involving the contents of the family support plan, the contents or signing of the agency-client agreement, the nature or extent of his or her participation in the program as specified therein, or any other aspect of such participation which is provided for under this section (including a dispute involving the imposition of sanctions under subsection (l) and the participant's right to conciliation before any such sanction is imposed); and the agency-client agreement shall so provide.

"(B) In no case shall any agency-client agreement entered into pursuant to this subsection give rise to a cause of action against the Federal Government or any officer or agency thereof if any party to such agreement fails to observe its terms.

"(3) The State agency shall assign to each participating family a member of the agency staff to provide case management services to the family; and the case manager so assigned shall be responsible for (A) obtaining or brokering, on behalf of the family, any other services which may be needed to assure the family's effective participation, (B) monitoring the progress of the participant, and (C) periodically reviewing and renegotiating the family support plan and the agency-client agreement as appropriate. Amounts expended in providing case management services under this paragraph shall be considered, for purposes of section 403(a)(3)(C), to be expenditures for the proper and efficient administration of the State plan.

"(h) RANGE OF SERVICES AND ACTIVITIES.—(1) In carrying out the program under this section, each State must make available a broad range of services and activities calculated to aid in carrying out the purpose of this section, specifically including (subject to the next to last sentence of this paragraph and to paragraph (2))—

"(A) high school or equivalent education (combined with training when appropriate) designed specifically for participants who do not have a high school diploma, except in the case of a participant who demonstrates a basic literacy level and whose family support plan identifies a long-term employment goal that does not require a high school diploma;

"(B) remedial education to achieve a basic literacy level, instruction in English as a second language, and specialized advanced education in appropriate cases;

"(C) group and individual job search as described in subsection (k);

"(D) on-the-job training;

"(E) skills training;

"(F) work supplementation programs as provided in subsection (i);

"(G) community work experience programs as provided in subsection (j);

"(H) job readiness activities to help prepare participants for work;

"(I) counseling, information, and referral for participants experiencing personal and family problems which may be affecting their ability to work;

"(J) job development, job placement, and follow-up services to assist participants in securing and retaining employment and advancement as needed; and

"(K) other education and training activities as determined by the State and allowed by regulations of the Secretary.

The State must in any event make available the services and aspect to all of the services and activities described in this subsection.

"(2) Any participant lacking a high school diploma shall be offered the opportunity to participate in a program which addresses the education needs identified in the participant's initial assessment, including high school or equivalent education designed specifically for participants who do not have a high school diploma, remedial education to achieve a basic literacy level, or instruction in English as a Second Language; and both the family support plan and the agency-client agreement shall so provide. Any other services or activities to which such a participant is assigned under the agreement may not be permitted to interfere with his or her participation in an appropriate education program under this paragraph.

"(3) Children in participating families who are not themselves participants in the program under this section shall be encouraged to take part in any of the education or training programs available under the program; and the State must also provide to such children additional services specifically designed to help them stay in school (including financial incentives as appropriate), complete their high school education, and obtain marketable job skills (including services provided under a demonstration program conducted pursuant to section 1115(b)(1)). Training activities in which such children participate may not, however, be permitted to interfere with their school attendance.

"(4)(A) Each assignment of a participant under the program shall be consistent with the physical capacity, skills, experience, health, family responsibilities, and place of residence of such participant.

"(B) Before assigning a participant to any activity under the program, the State shall assure that—

"(i) appropriate standards for health, safety, and other conditions are applicable to participation in such activity;

"(ii) the conditions of participation in such activity are reasonable, taking into account the geographic region, the residence of the participant, and the proficiency of the participant; and

"(iii) the participant will not be required, without his or her consent, to travel an unreasonable distance from his or her home or remain away from such home overnight.

"(5) No assignment under the program shall result in—

"(A) the displacement of any currently employed worker or position (including partial displacement such as a reduction in the hours of nonovertime work, wages, or employment benefits), or result in the impairment of existing contracts for services or collective bargaining agreements;

"(B) the employment or assignment of a participant or the filling of a position when (i) any other individual is on layoff from the same or any equivalent position, or (ii) the employer has terminated the employment of any regular employee or otherwise reduced its workforce with the intention of filling the vacancy so created with a participant subsidized under this section; or

"(C) any infringement of the promotional opportunities of any currently employed individual.

"(6) The wage rate for any position to which a participant is assigned shall be at least equal to the current pay scale for that position, or, if there is no current pay scale for that position, shall be at least equal to the greater of the applicable Federal or State minimum wage; and appropriate worker's compensation and tort claims protection shall be provided to all participants on the same basis as such compensation and protection are provided to other employed individuals in the State.

"(7)(A) Each State agency shall establish and maintain a grievance procedure for dealing with complaints about its programs and activities under this section from participants, subgrantees, subcontractors, and other interested persons. Hearings on any complaint shall be conducted within 30 days after the date on which the complaint is filed and a decision shall be made no later than 60 days after such date.

"(B) The decision of the State agency may be appealed to the Secretary under the procedures established in subparagraph (C), and the complaint itself may be appealed to the Secretary under such procedures if the State agency fails to make a decision within the prescribed 60-day period.

"(C)(i) Whenever an appeal to the Secretary, alleging that paragraph (4), (5), (6), or (8) has been violated, is made under subparagraph (B), a copy of the complaint shall be transmitted at the same time to the entity alleged to have committed the violation. An opportunity shall be afforded to such entity to review the complaint and to submit a reply to the Secretary within 15 days after receiving the copy of such complaint.

"(ii) An official who shall be designated by the Secretary shall review any complaint submitted in accordance with clause (i), and conduct such investigation as may be necessary, to ascertain the accuracy of the information set forth or alleged and to determine whether there is substantial evidence that the affected activities fail to comply with paragraph (4), (5), (6), or (8). Such official shall report his findings and recommendations to the Secretary within 60 days after commencing the review and investigation.

"(iii) The Secretary, within 45 days after receiving the report under clause (ii) shall issue a final determination as to whether a violation of paragraph (4), (5), (6), or (8) has occurred.

"(iv) The Secretary shall institute proceedings to compel the repayment of any funds determined to have been expended in violation of paragraph (4), (5), (6), or (8).

"(D) The existence of the remedies provided by this section shall not preclude any person who alleges that an action of a State agency violates any of the provisions of this section from instituting a civil action or pursuing any other remedy authorized under Federal, State, or local law.

"(8) The State may not require a participant in the program to accept a position under the program (as work supplementation or otherwise) if accepting the position would result in a net loss of income (including the insurance value of any health benefits) to the participant or his or her family.

"(9) Program activities under this section shall be coordinated in each State with programs operated under the Job Training Partnership Act and with any other relevant employment, training, and education programs available in that State. Appropriate components of the State's plan developed under subsection (b)(1) which relate to job training and workplace preparation shall be consistent with the coordination criteria specified in the Governor's coordination and special services plan required under section 121 of the Job Training Partnership Act. The State plan so developed shall be submitted to the State job training coordinating council not less than 90 days prior to its submission to the Secretary, for the purpose of review and comment by the council on those provisions of the plan related to delivery of job training services and of coordinating activities under this section with similar activities under the Job Training Partnership Act.

"(10) Program activities under this section shall be coordinated in each State with existing early childhood education programs in that State.

"(11) In carrying out the program under this section, the State may enter into appropriate contracts and other arrangements with public and private agencies and organizations for the provision or conduct of any services or activities made available under the program.

"(i) Work Supplementation Programs.—(1) Any State may institute a work supplementation program under which such State, to the extent it considers appropriate, may reserve the sums which would otherwise be payable to participants in the program under this section as family support supplements under the State plan approved under this part and use such sums instead for the purpose of providing and subsidizing jobs for such participants (as described in paragraph (3)(C)(i) and (ii)), as an alternative to the supplements which would otherwise be so payable to them under such plan.

"(2)(A) Notwithstanding any other provision of law, Federal funds may be paid to a State under this part, subject to the provisions of this section, with respect to expenditures incurred in operating a work supplementation program under this subsection.

"(B) Nothing in this part, or in any State plan approved under this part, shall be construed to prevent a State from operating (on such terms and conditions and in such cases as the State may find to be necessary or appropriate) a work supplementation program in accordance with this subsection.

"(C) Notwithstanding any other provision of law, a State may adjust the levels of the standards of need under the State plan to the extent the State determines such adjustments to be necessary and appropriate for carrying out a work supplementation program under this subsection.

"(D) Notwithstanding any other provision of law, a State operating a work supplementation program under this subsection may provide that the need standards in effect in those areas of the State in which such program is in operation may be different from the need standards in effect in the areas in which such program is not in operation, and such State may provide that the need standards for categories of recipients of family support supplements may vary among such categories to the extent the State determines to be appropriate on the basis of ability to participate in the work supplementation program.

"(E) Notwithstanding any other provision of law, a State may make further adjustments in the amounts of the family support supplements paid under the plan to different categories of recipients (as determined under subparagraph (D)) in order to offset increases in benefits from needs-related programs (other than the State plan approved under this part), to the extent the State determines such adjustments to be necessary and appropriate to further the purposes of the work supplementation program.

"(F) In determining the amounts to be reserved and used for providing and subsidizing jobs under this subsection as described in paragraph (1), the State may use a sampling methodology.

"(G) Notwithstanding section 402(a)(8) or any other provision of law, a State operating a work supplementation program under this subsection may reduce or eliminate the amount of earned income to be disregarded under the State plan to the extent the State determines such a reduction or elimination to be necessary and appropriate to further the purposes of the work supplementation program.

"(3)(A) A work supplementation program operated by a State under this subsection shall provide that any individual who is an eligible individual (as determined under subparagraph (B)) shall take a supplemented job (as defined in subparagraph (C)) to the extent that supplemented jobs are available under the program. Payments by the State to individuals or employers under the program shall be treated as expenditures incurred by the State for family support supplements under the State plan for purposes of section 403(a)(1) and (2), except as limited by paragraph (4).

"(B) For purposes of this subsection, an eligible individual is an individual (not exempt under subsection (c)(4)) who is in a category which the State determines should be eligible to participate in the work supplementation program, and who would, at the time of his or her placement in the job involved, be eligible for family support supplements under the State plan if such State did not have a work supplementation program in effect.

"(C) For purposes of this subsection, a supplemented job is—

"(i) a job provided to an eligible individual by the State or local agency administering the State plan under this part; or

"(ii) a job provided to an eligible individual by any other employer for which all or part of the wages are paid by such State or local agency.

A State may provide or subsidize any job under the program under this section which such State determines to be appropriate.

"(D) At the option of the State, individuals who hold supplemented jobs under a State's work supplementation program shall be exempt from the retrospective budgeting requirements imposed pursuant to section 402(a)(13)(A)(ii) (and the amount of the aid which is payable to the family of such individual for any month, or which would be so payable but for the family's participation in the work supplementation program, shall be determined on the basis of the income and other relevant circumstances in that month).

"(E) Paragraphs (4) through (8) of subsection (h) shall apply with respect to assignments of eligible individuals to supplemented jobs under this subsection.

"(4) The amount of the Federal payment to a State under section 403(a) for expenditures incurred in making payments to individuals and employers under a work supplementation program under this subsection shall not exceed an amount equal to the amount which would otherwise be payable under paragraph (1) or (2) of such section if the family of each individual employed in the program had received the maximum amount of family support supplements payable under the State plan to such a family with no income (without regard to adjustments under paragraph (2) of this subsection) for a period of months equal to the lesser of (A) nine months, or (B) the number of months in which such individual was employed in such program. Expenditures so incurred shall be considered to have been made for family support supplements under the State plan for purposes of section 403(a)(1) and (2).

"(5)(A) Nothing in this subsection shall be construed as requiring the State or local agency administering the State plan to provide employee status to an eligible individual to whom it provides a job under the work supplementation program (or with respect to whom it provides all or part of the wages paid to the individual by another entity under such program), or as requiring any State or local agency to provide that an eligible individual filling a job position provided by another entity under such program be provided employee status by such entity, during the first 13 weeks such individual fills that position.

"(B) Wages paid under a work supplementation program shall be considered to be earned income for purposes of any provision of law.

"(6) Any State which chooses to operate a work supplementation program under this subsection must provide that any individual who participates in such program, and any child or relative of such individual (or other individual living in the same household as such individual) who would be eligible for family support supplements under the State plan approved under this part if such State did not have a work supplementation program, shall be considered individuals receiving family support supplements under the State plan approved under this part for purposes of eligibility for medical assistance under the State plan approved under title XIX.

"(j) Community Work Experience Programs.—(1)(A) Any State which chooses to do so may establish a community work experience program in accordance with this subsection. The purpose of the community work experience program is to provide experience and training for individuals not otherwise able to obtain employment, in order to assist them to move into regular employment. Community work experience programs shall be designed to improve the employability of participants through actual work experience and training and to enable individuals employed under community work experience programs to move promptly into regular public or private employment. Community work experience programs shall be limited to projects which serve a useful public purpose in fields such as health, social service, environmental protection, education, urban and rural development and redevelopment, welfare, recreation, public facilities, public safety, and day care. To the extent possible, the prior training, experience, and skills of a recipient shall be used in making appropriate work experience assignments. Participants in a program under this subsection may not fill established unfilled position vacancies.

"(B) A State which elects to establish a community work experience program under this subsection shall operate such program so that each participant (as determined by the State) either—

"(i) works and undergoes training for a period not exceeding 6 months, with the maximum number of hours that any such individual may be required to work and undergo training in any month being a number equal to the amount of the family support supplements payable with respect to the family of which such individual is a member under the State plan approved under this part, divided by the current hourly pay scale for the position in which the participant works, or (if there is no current pay scale for that position) by the greater of the applicable Federal or State minimum wage (and the portion of a recipient's benefit for which the State is reimbursed by a child support payment shall not be taken into account in determining the number of hours that such individual may be required to work); or

"(ii) performs unpaid work experience and training (for a combined total of not more than 30 hours a week) for a period not exceeding 3 months.

Paragraphs (4) through (7) of subsection (h) shall apply with respect to the assignment of participants to positions under this section.

"(C) Nothing contained in this subsection shall be construed as authorizing the payment of family support supplements under this part as compensation for work performed, nor shall a participant be entitled to a salary or to any other work or training expense provided under any other provision of law by reason of his participation in a program under this subsection.

"(D) Nothing in this part or in any State plan approved under this part shall be construed to prevent a State from operating (on such terms and conditions and in such cases as the State may find to be necessary or appropriate) a community work experience program in accordance with this subsection.

"(E) Participants in community work experience programs under this subsection may perform work in the public interest (which otherwise meets the requirements of this section) for a Federal office or agency with its consent, and, notwithstanding section 1342 of title 31, United States Code, or any other provision of law, such agency may accept such services, but such participants shall not be considered to be Federal employees for any purpose.

"(F) If at the conclusion of his or her participation in a community work experience program the individual has not become employed, a reassessment with respect to such individual shall be made and a new family support plan developed as provided in subsection (f). In no event shall any individual who has completed the work and training activities described in clause (i) of subparagraph (B), or the work experience and training activities described in clause (ii) of such subparagraph, be required to repeat such activities or be reassigned to perform work or undergo training under either such clause.

"(2) The State shall provide coordination between a community work experience program operated pursuant to this subsection, any program of job search under subsection (k), and the other work-related activities under the program established by this section so as to insure that job placement will have priority over participation in the community work experience program.

"(3) In the case of any State which makes expenditures in the form described in paragraph (1) under its State plan approved under section 402, expenditures for the provision of training under a program under this subsection, for purposes of section 403(a)(4) (and expenditures for the proper and efficient administration of the State plan, for purposes of section 403(a)(3)), may not include the cost of making or acquiring materials or equipment in connection with such training services or the cost of supervision of work or training under such program, and may include only such other costs attributable to such program as are permitted by the Secretary.

"(k) Job Search.—(1) The State agency shall establish and carry out a program of job search for applicants and participants in the program under this section.

"(2) Participants in the program under this section shall be encouraged and may be required to take part in job search under this subsection, at such times, for such periods, and in such manner as the State agency determines (in each particular case) will be most effective in serving the special needs and interests of the individual involved and in carrying out the purpose of this section. Job search by an applicant may be required or provided for while his or her application is being processed; and job search by a participant may be required or provided for after his or her initial assessment, after his or her education or training, and at other appropriate times during his or her participation in the program under this section, as may be set forth in the agency-client agreement entered into between such individual and the State agency under subsection (g)(1) and as otherwise provided by the State agency. No requirement imposed by the State under the preceding provisions of this paragraph may be used as a reason for any delay in making a determination of an individual's eligibility for family support supplements or in issuing a payment to or on behalf of any individual who is otherwise eligible for such supplements.

"(3) Participation by an individual in job search under this subsection, without participation in one or more other services or activities offered under the program under this section, shall not be sufficient to qualify as participation in the program for any of the purposes of this section after it has continued for 8 weeks or longer without the individual obtaining a job. In any such case (after 8 weeks of job search without obtaining a job) the individual must engage in training, education, or other activities designed to improve his or her prospects for employment; and the family support plan developed under subsection (f) shall so provide.

"(l) Sanctions.—(1) If any mandatory participant in the program under this section fails without good cause to comply with any requirement imposed with respect to his or her participation in such program—

"(A) the needs of such participant (whether or not section 407 applies) shall not be taken into account in making the determination with respect to his or her family under section 402(a)(7), and

"(B) if such participant is a member of a family which is eligible for family support supplements by reason of section 407, and his or her spouse is not participating in the program, the needs of such spouse shall also not be taken into account in making such determination.

The sanction described in subparagraph (A) (and the sanction described in subparagraph (B) if applicable) shall continue until the participant's failure to comply ceases;

except that such sanction shall continue for a minimum of 3 months if the failure to comply is the participant's second or a subsequent such failure.

"(2) No sanction shall be imposed under paragraph (1) until appropriate notice thereof has been provided to the participant involved, and until conciliation efforts have been made to discuss and resolve the participant's failure to comply and to determine whether or not good cause for such failure existed. In any event, when a failure to comply has continued for 3 months the State agency shall promptly remind the participant in writing of his or her option to end the sanction by terminating such failure.

"(3) If a volunteer drops out of the program under this section after having commenced participation in such program, he or she shall thereafter be given no priority under subsection (d).

"(m) REGULATIONS.—Within 6 months after the date of the enactment of this section, the Secretary shall issue proposed regulations for the purpose of implementing and carrying out the program under this section, including regulations establishing uniform data collection requirements; and within 9 months after such date the Secretary shall publish final regulations for that purpose. Regulations under this subsection shall be developed by the Secretary in consultation with the responsible State agencies described in subsection (b)(3).

"(n) PERFORMANCE STANDARDS.—(1) Within one year after the date of the enactment of this section, the Secretary, in consultation with the Congress, the Secretary of Labor, the States and localities, educators, and other interested persons, shall develop and publish performance standards for the program under this section. Such standards shall at a minimum—

"(A) provide methods for measuring the degree to which States are targeting their programs to those individuals within each priority group (as described in subsection (d)) who will have the most difficulty finding employment;

"(B) provide methods for determining whether States are providing intensive services under the program, tailored to the individual needs of participants and fully calculated to produce self-sufficiency;

"(C) provide methods for measuring the degree to which States are placing strong emphasis on participation by volunteers among the priority groups described in subsection (d);

"(D) measure the cost effectiveness of the employment portion of the program and the welfare savings that result from the program;

"(E) establish expectations for placement rates, including the minimum rate at which participants within each priority group (as described in subsection (d)) are to be placed in jobs or complete their education or both;

"(F) take into account the extent to which the program results in job retention by participants, case closures, educational improvements, and placement in jobs that provide health benefits;

"(G) give appropriate recognition to the likelihood that unemployment and other economic factors will influence the success of the employment program; and

"(H) take into account such other factors as are deemed important.

The performance standards so developed and published shall be periodically reviewed by the Secretary and modified (in consultation with the Congress) to the extent necessary to reflect the continuing implementation of the program.

"(2) The Secretary shall develop and transmit to the Congress, for appropriate legislative action, a proposal for modifying the rate of the Federal payments to States under section 403(a)(4) so as to reflect the relative effectiveness of the various States in carrying out the program under this section and achieving its purpose.

"(o) CONTINUING EVALUATION.—The Secretary shall provide for the continuing evaluation of the programs established under this section by the several States, including their effectiveness in achieving the purpose of this section and their impact on other related programs. The Secretary shall also—

"(1) provide for the conduct of research on ways to increase the effectiveness of such programs, including research on—

"(A) the effectiveness of giving priority to volunteers,

"(B) appropriate strategies for assisting two-parent families,

"(C) the wage rates of individuals placed in jobs as a result of such programs,

"(D) the approaches that are most effective in meeting the needs of specific groups and types of participants (such as teenage parents, older parents, and families including disabled persons), and

"(E) the effect of targeting on families which include children below 6 years of age; and

"(2) provide technical assistance to States, localities, schools, and employers who may participate in the programs and who request or require such assistance.

"(p) UNIFORM REPORTING REQUIREMENTS.—The Secretary shall establish uniform reporting requirements under which each State will be required periodically to furnish such information and data as the Secretary may need to ensure that the purposes and provisions of this section are being effectively carried out, including at a minimum the average monthly number of families participating in the program under this section, the types of such families, the amounts expended under the program (as family support supplements and otherwise) with respect to such families, and the length of time for which such families are assisted. The information and data so furnished shall be separately stated with respect to each of the services and activities enumerated in subsection (h) and with respect to each of the activities described in subsections (i), (j), and (k).".

SEC. 9102. RELATED SUBSTANTIVE AMENDMENTS.

(a) FEDERAL MATCHING RATES.—(1) Section 403(a) of the Social Security Act is amended by inserting after paragraph (3) the following new paragraph:

"(4) in the case of any State, an amount equal to 65 percent of the total amount expended during such quarter for education and training under the program established pursuant to section 416; and".

(2) Section 403(a)(3) of such Act is amended—

(A) by striking out "and" after the comma at the end of subparagraph (B);

(B) by redesignating subparagraph (C) as subparagraph (D); and

(C) by inserting after subparagraph (B) the following new subparagraph:

"(C) one-half of so much of such expenditures as are incurred in connection with the administration of the education, training, and work program under section 416, and".

(b) DEMONSTRATION AUTHORITY: PROJECTS TO ENCOURAGE INNOVATIVE EDUCATION AND TRAINING PROGRAMS FOR CHILDREN, TO TEST THE EFFECT OF EARLY CHILDHOOD DEVELOPMENT PROGRAMS, AND TO TEST THE ELIMINATION OF THE 100-HOUR RULE UNDER THE AFDC-UP PROGRAM.—Section 1115 of such Act is amended—

(1) by inserting "(1)" before "In the case of" in subsection (a);

(2) by striking out "(1) the Secretary" and "(2) costs" in subsection (a) and inserting in lieu thereof "(A) the Secretary" and "(B) costs", respectively;

(3) by striking out subsection (b);

(4) by redesignating subsection (c) as paragraph (2) of subsection (a), and in such subsection as so redesignated by striking out "subsection (a)", "(1)", "(2)", and "(3)" and inserting in lieu thereof "paragraph (1)", "(A)", "(B)", and "(C)", respectively; and

(5) by adding at the end thereof the following new subsection:

"(b)(1) In order to encourage States to develop innovative education and training programs for children receiving aid under State plans approved under section 402, any State may establish and conduct one or more demonstration projects, targeted to such children, designed to test financial incentives and interdisciplinary approaches to reducing school dropouts, encouraging skill development, and avoiding welfare dependence; and the Secretary may make grants to States to assist in financing such projects. Demonstration projects under this paragraph shall meet such conditions and requirements as the Secretary shall prescribe, and no such project shall be conducted for a period of less than one year or more than 5 years.

"(2)(A) In order to test the effect of in-home early childhood development programs and pre-school center-based development programs (emphasizing the use of volunteers and including academic credit for student volunteers) on families receiving aid under State plans approved under section 402 and participating in the education, training, and work program under section 416, up to 10 States may undertake and carry out demonstration projects utilizing such development programs to enhance the cognitive skills and linguistic ability of children under the age of 5, to improve the communications skills of such children, and to develop their ability to read, write, and speak the English language effectively. Demonstration projects under this paragraph shall meet such conditions and requirements as the Secretary shall prescribe, and no such project shall be conducted for a period of more than 3 years.

"(B) The Secretary shall consider all applications received from States desiring to conduct demonstration projects under this paragraph, shall approve up to 10 applications involving projects which appear likely to contribute significantly to the achievement of the purpose of this paragraph, and shall make grants to the States whose applications are approved to assist them in carrying out such projects.

"(C) The Secretary shall submit to the Congress with respect to each project undertaken by a State under this paragraph, after such project has been carried out for one year and again when such project is completed, a detailed evaluation of the project and of its contribution to the achievement of the purpose of this paragraph.

"(3)(A) In order to permit States to test whether (and the extent to which) eliminating the 100-hour rule under section 407, and requiring parents under that section to accept any reasonable job offers while preserving the eligibility of their families for aid under the applicable State plan approved under section 402, would effectively encourage such parents to enter the permanent work force and thereby significantly reduce program costs, up to 5 States and localities may undertake and carry out demonstration projects under which—

"(i) each parent receiving aid pursuant to section 407 is required to accept any reasonable full- or part-time job which is offered to him or her, without regard to the amount of the parent's resulting earnings as compared to the level of the family's aid under the applicable State plan, and

"(ii) the family's eligibility under the plan is preserved notwithstanding the parent's resulting earnings, so long as such earnings (after the application of section 402(a)(8)) do not exceed the applicable State standard of need, without regard to the 100-hour rule or any other durational standard that might be applied in defining unemployment for purposes of determining such eligibility.

"(B) The Secretary shall consider all applications received from States desiring to conduct demonstration projects under this paragraph, shall approve up to 5 applications involving projects which appear likely to contribute significantly to the achievement of the purpose of this paragraph, and shall make grants to the States whose applications are approved to assist them in carrying out such projects.

"(C) Each demonstration project approved under this paragraph shall provide for the payment of aid under the applicable State plan, as though section 407 had been modified to reflect the provisions of clauses (i) and (ii) of subparagraph (A) but shall otherwise be carried out in accordance with all of the requirements and conditions of section 407 (and any related requirements and conditions under part A of title IV); and each such project shall meet such other requirements and conditions as the Secretary shall prescribe.

"(4)(A) Any demonstration project undertaken pursuant to this subsection—

"(i) must be designed to improve the financial well-being of families with children or otherwise improve the operation of the program or programs involved; and

"(ii) may not permit modifications in any program which would have the effect of disadvantaging children in need.

"(B) There are authorized to be appropriated such sums as may be necessary to enable the Secretary to make grants with respect to the demonstration projects which are provided for under any of the preceding paragraphs of this subsection (and for which an authorization in specific dollar amounts is not included in the paragraph involved).".

SEC. 9103. TECHNICAL AND CONFORMING AMENDMENTS.

(a) IN PART A OF TITLE IV.—(1) Section 402(a)(8)(A)(iv) of the Social Security Act is amended by striking out "(but excluding" and all that follows and inserting in lieu thereof a semicolon.

(2) Section 402(a)(9)(A) of such Act is amended by striking out "B, C, or D" and inserting in lieu thereof "B or D".

(3) Section 402(a)(35) of such Act is repealed.

(4) Section 403(a)(3) of such Act is amended—

(A) by striking out all of subparagraph (D) (as redesignated by section 9102(a)(2) of this Act) which follows "such expenditures" and inserting in lieu thereof a comma; and

(B) by striking out all that follows "section 2002(a) of this Act" in the matter following such subparagraph and inserting in lieu thereof "other than services furnished under section 416 or under section 402(g); and".

(5) Section 403(c) of such Act is repealed.

(6) Section 403(d) of such Act is repealed.

(7) Section 407(b)(2)(A) of such Act is amended by striking out "will be certified" and all that follows down through "within 30 days" and inserting in lieu thereof "will participate or apply for participation in the national education, training, and work program under section 416 within 30 days".

(8) Section 407(b)(2)(C)(i) of such Act is amended by striking out ", unless exempt" and all that follows down through "is not registered" and inserting in lieu thereof "is not currently participating in the national education, training, and work program under section 416, unless such parent is exempt under section 416(c)(4), or, if such parent is exempt under such section 416(c)(4) and has not volunteered for such participation as described in section 416(c)(2), is not registered".

(9) Section 407(c) of such Act is amended by striking out "to certify such parent" and all that follows and inserting in lieu thereof "to participate in the national education, training, and work program under section 416.".

(10) Section 407(d)(1) of such Act is amended by striking out "under section 409" and all that follows and inserting in lieu thereof "under section 416(j);".

(11) Section 407(e) of such Act is repealed.

(12) Section 409 of such Act is repealed.

(13) Section 414 of such Act is repealed.

(b) IN OTHER PROVISIONS.—(1) Section 471(a)(8)(A) of such Act is amended by striking out "A, B, C, or D" and inserting in lieu thereof "A, B, or D".

(2) Section 1108(b) of such Act is amended by striking out "section 402(a)(19)" and inserting in lieu thereof "section 416".

(3) Section 1902(a)(10)(A)(i)(I) of such Act is amended by striking out "section 414(g)" and inserting in lieu thereof "section 416(i)(6)".

SEC. 9104. EFFECTIVE DATE.

The amendments made by this part shall become effective October 1, 1989; except that—

(1) if any State theretofore makes the changes in its State plan approved under section 402 of the Social Security Act which are required in order to carry out such amendments, and formally notifies the Secretary of Health and Human Services of its desire to become subject to such amendments as of the first day of any calendar quarter beginning on or after the date on which the proposed regulations of the Secretary of Health and Human Services are published under section 416(m) of such Act and before October 1, 1989, such amendments shall become effective with respect to that State as of such first day;

(2) subsections (m), (n), (o), and (p) of section 416 of the Social Security Act (as added by section 9101(b) of this Act) shall be effective on the date of the enactment of this Act; and

(3) section 1115(b)(3) of the Social Security Act (as added by section 9102(b) of this Act) shall become effective October 1, 1987.

PART 2—DAY CARE, TRANSPORTATION, AND OTHER WORK-RELATED EXPENSES

SEC. 9111. PAYMENT OF EXPENSES BY STATES.

(a) IN GENERAL.—(1) Section 402 of the Social Security Act is amended by adding at the end thereof the following new subsection:

"(g)(1)(A) Each State shall, for each family, either—

"(i) provide day care for each dependent child, and incapacitated individual living in the same home as a dependent child, receiving family support supplements under the State plan and requiring such care, or

"(ii) reimburse the caretaker relative in the family (in advance whenever possible) for the costs of such care incurred in any month,

if and to the extent that such care (or reimbursement for the costs thereof) is determined by the State agency to be (I) directly related to an individual's participation in work, education, or training (including participation as a mandatory participant or volunteer in the program under section 416, and including participation in other work, education, or training by individuals who are not participating in such program by reason of exemptions granted under any of the subparagraphs in section 416(c)(4)), (II) reasonably necessary for such participation, and (III) cost-effective. Amounts expended under the preceding provisions of this subsection (in providing day care directly, or in making reimbursement for the costs of such care), to the extent that such amounts do not exceed $175 per month for any child age 2 or over or $200 per month for any infant under age 2, shall be considered, for purposes of section 403(a) (1) and (2), to be amounts expended as aid in the form of family support supplements under the State plan (and Federal contributions may be made under section 403(a) with respect to amounts so expended only to that extent).

"(B) No amount shall be expended under subparagraph (A) for any child care services involving more than 2 children at the same time unless such services meet applicable standards of State and local law, and in any event unless such services meet standards, established by the State, which at a minimum ensure basic health and safety protections.

"(C) Reimbursement for the costs of day care under subparagraph (A)(ii) may be accomplished through contracts or certificates, or through the disregarding of such costs from the earned income of the family (within the applicable dollar limitations set forth in subparagraph (A)) as though such disregarding were specifically provided for in section 402(a)(8) immediately after the disregards provided for in clauses (ii) and (iii) thereof (and were applied to both applicants and recipients but only with respect to earned income not otherwise disregarded under the preceding provisions of that section). No change made by a State in its method of reimbursing day care costs may have the effect of disadvantaging individuals or families receiving aid under the State plan on the date of the enactment of this subsection, by reducing their income or otherwise.

"(D) For purposes of the first sentence of subparagraph (A), day care shall be considered 'cost-effective' only if it is furnished within the applicable dollar limitations set forth in the second sentence of such subparagraph; but nothing in this subsection shall be construed as preventing any State from making reimbursement from its own funds (without any Federal contribution under section 403(a)) for day care which is not furnished within such limitations.

"(2)(A) In the case of an individual participating in the program of education, training, and work under section 416 (including participation in the form of job search under subsection (k) thereof), the State (in addition to providing day care or reimbursing the costs thereof as provided in paragraph (1)) shall reimburse the participant (in advance whenever possible) for transportation and other work-related costs incurred in any month, in an amount (subject to subparagraph (B)) not exceeding the dollar amount then in effect (for purposes of disregarding earned income) under section 402(a)(8)(A)(ii).

"(B) In the case of a participant who must travel 100 miles or more to reach his or her education or training site under the program, the reimbursement for transportation and other work-related costs under subparagraph (A) may be in an amount up to twice the dollar amount referred to in that subparagraph.

"(3) The Federal contribution with respect to day care, transportation, and other work-related costs incurred by a State under this subsection shall be determined under section 403(a) (1) or (2) as though such costs had been incurred in paying aid in the form of family support supplements, rather than under section 403(a) (3) or (4).

"(4) The value of any day care provided (or any amount received as reimbursement for day care costs incurred) under paragraph (1)—

"(A) shall not be treated as income of any person for purposes of any other Federal or federally-supported program which bases eligibility for or the amount of benefits upon need, and

"(B) may not be claimed as an employment-related expense for purposes of the credit under section 21 of the Internal Revenue Code of 1986.".

(b) Continuation After Eligibility for Aid Ceases.—(1) Subparagraph (A) of section 402(g)(1) of such Act (as added by subsection (a) of this section) is amended by inserting after the first sentence the following new sentence: "The caretaker relative of any dependent child or incapacitated individual whose family ceases to be eligible for family support supplements under the State plan as of the close of any month (if at that time the family has earnings) shall continue to be entitled to reimbursement for the costs of any day care (subject to the applicable dollar limitations specified in the succeeding sentence) which is determined by the State agency to be reasonably necessary for his or her employment, for a period of 6 months after the close of such month, under a sliding scale formula established by the State which shall be based on the family's ability to pay (and under which such applicable dollar limitations are appropriately reduced to reflect such ability).".

(2) Subparagraph (D) of section 402(g)(1) of such Act (as so added) is amended by striking out "second" and inserting in lieu thereof "third".

(c) Demonstration Authority: Projects to Encourage States to Employ AFDC Mothers as Paid Day Care Providers, and to Test the Effect of a Larger Exclusion of Automobiles From Resources.—Section 1115(b) of such Act (as added by section 9102(b) of this Act) is amended by redesignating paragraph (4) as paragraph (6), and by inserting after paragraph (3) the following new paragraphs:

"(4)(A) In order to encourage States to employ or arrange for the employment of parents (of dependent children receiving aid under State plans approved under section 402(a)) as providers of day care for other children receiving such aid, including any training which may be necessary to prepare the parents for such employment, up to 5 States may undertake and carry out demonstration projects designed to test whether such employment will effectively facilitate the conduct of the education, training, and work program under section 416 by making additional day care services available to meet the requirements of section 402(g)(1) while affording significant numbers of families receiving such aid a realistic opportunity to avoid welfare dependence.

"(B) The Secretary shall consider all applications received from States desiring to conduct demonstration projects under this paragraph, shall approve up to 5 applications involving projects which appear likely to contribute significantly to the achievement of the purpose of this paragraph, and shall make grants to those States whose applications are approved to assist them in carrying out such projects. Each project under this paragraph shall meet such conditions and requirements as the Secretary shall prescribe.

"(5)(A) In order to test the effect of increasing the maximum excludable value of automobiles under State plans approved under section 402, up to 5 States may undertake and carry out demonstration projects under which the resources of any individual are determined as though the amount prescribed by the Secretary under section 402(a)(7)(B) with respect to such individual's excludable ownership interest in an automobile were the same as the amount that would be excluded or disregarded in similar circumstances under the Food Stamp Act of 1977 (and such section 402(a)(7)(B) shall be deemed to have been modified accordingly for purposes of any such project). Demonstration projects under this paragraph shall meet such conditions and requirements as the Secretary shall prescribe, and no such project shall be conducted for a period of more than 5 years.

"(B) The Secretary shall consider all applications received from States desiring to conduct demonstration projects under this paragraph, shall approve up to 5 applications involving projects which appear likely to contribute significantly to the achievement of the purpose of this paragraph, and shall make grants to the States whose applications are approved to assist them in carrying out such projects. Both urban and rural States must be included among the States whose applications are approved.".

SEC. 9112. DEVELOPMENT OF NEW CHILD CARE RESOURCES.

Each State agency administering the education, training, and work program under section 416 of the Social Security Act shall regularly assess the availability and reliability of the child care services which are available to participants in such program, and shall take such action as may be necessary or appropriate—

(1) to develop new child care resources as the need may indicate; and

(2) to ensure the coordination of child care provided under section 402(g)(1) of the Social Security Act with other child care programs, including child development programs.

The actions required under the preceding sentence shall be taken by the State agency in cooperation with the agency of the State having jurisdiction over the provision of child care services, and shall reflect and take full account of the information set forth in the reports submitted by the State under section 2006(c) of the Social Security Act (as added by section 9183 of this Act).

SEC. 9113. EFFECTIVE DATE.

The amendments made by this part shall become effective October 1, 1987; except that—

(1) if the legislature of any particular State is not in regular session on the date of the enactment of this Act, and State legislation is required to provide the funds needed to carry out the amendments made by this part (or otherwise to implement such amendments) in that State, such amendments shall become effective with respect to that State on the first day of the first fiscal year which begins after the legislature has subsequently convened for a regular session during which a budget is (or is scheduled to be) adopted by the State; and

(2) section 402(g)(2) of the Social Security Act (as added by section 9111(a) of this Act) shall become effective on the date on which the amendment made by section 9101(b) of this Act becomes effective.

PART 3—REAL WORK INCENTIVES

SEC. 9121. CHANGES IN EARNED INCOME DISREGARDS.

(a) In General.—Section 402(a)(8) of the Social Security Act (as amended by section 9103(a)(1) of this Act) is further amended to read as follows:

"(8)(A) provide (subject to subsection (g)(1)(C)) that, with respect to any month, in making the determination under paragraph (7), the State agency—

"(i) shall disregard all of the earned income of each dependent child receiving family support supplements who is (as determined by the State in accordance with standards prescribed by the Secretary) a full-time student or a part-time student who is not a full-time employee attending a school, college, or university, or a course of vocational or technical training designed to prepare him or her for gainful employment;

"(ii) shall disregard from the earned income of any child or relative applying for or receiving family support supplements, or of any other individual (living in the same home as such relative and child) whose needs are taken into account in making such determination, the first $100 of the total of such earned income for such month;

"(iii) shall disregard from the earned income of any child or relative receiving family support supplements, or of any other individual (living in the same home as such relative and child) whose needs are taken into account in making such determination, an amount equal to 25 percent of the total of such earned income not disregarded under any other clause of this subparagraph;

"(iv) shall disregard the first $50 of any child support payments received in such month with respect to the dependent child or children in any family applying for or receiving family support supplements (including support payments collected and paid to the family under section 457(b));

"(v) may disregard the income of any dependent child or minor parent applying for or receiving family support supplements which is derived from a program carried out under the Job Training Partnership Act, but only in such amounts and for such period of time (not to exceed 6 months with respect to earned income) as the Secretary may provide in regulations;

"(vi) may disregard all or any part of the earned income of a dependent child who is a full-time student and who is applying for family support supplements, but only if the earned income of such child is excluded for such month in determining the family's total income under paragraph (18); and

"(vii) shall disregard any refund of Federal income taxes made to a family receiving family support supplements by reason of section 32 of the Internal Revenue Code of 1986 (relating to earned income credit) and any payment made to such a family by an employer under section 3507 of such Act (relating to advance payment of earned income credit); and

"(B) provide that (with respect to any month) the State agency shall not disregard, under clause (ii) or (iii) of subparagraph (A), any earned income of any one of the persons specified in subparagraph (A)(ii) if such person—

"(i) terminated his or her employment or reduced his or her earned income without good cause within such period (of not less than 30 days) preceding such month as may be prescribed by the Secretary;

"(ii) refused without good cause, within such period preceding such month as may be prescribed by the Secretary, to accept employment in which he or she is able to engage which is offered through the public employment offices of the State, or is otherwise offered by an employer if the offer of such employer is determined by the State or local agency administering the State plan, after consulting with the employer, to be a bona fide offer of employment; or

"(iii) failed without good cause to make a timely report (as prescribed by the State plan pursuant to paragraph (14)) to the State agency of earned income received in such month;".

(b) INCREASES IN AMOUNTS TO BE DISREGARDED.—(1) Section 402 of such Act (as amended by the preceding provisions of this Act) is further amended by adding at the end thereof the following new subsection:

"(h)(1) Any State may at its option increase the dollar amount under clause (ii) or (iv) of subsection (a)(8)(A) or the percentage figure under clause (iii) of such subsection (or increase both of such dollar amounts, or either or both of such dollar amounts as well as such percentage figure), effective on the first day of any calendar quarter beginning on or after the effective date of this subsection, so long as such increase (or the combination of such increases) does not have the effect of permitting a family to be eligible for aid under the State plan for any month in violation of subsection (a)(18).

"(2) Whenever benefit amounts under title II are increased by any percentage effective with any month as a result of a determination made under section 215(i), the dollar amount under subsection (a)(8)(A)(ii), as specified therein or as previously increased under paragraph (1) of this subsection or this paragraph, shall be increased by the same percentage (and rounded, when not a multiple of $1, to the next lower such multiple), effective on the first day of the following month; but no increase under this paragraph shall be effective to the extent that it would permit a family to be eligible for aid under the State plan for any month in violation of subsection (a)(18).".

(2) Section 457(b)(1) of such Act is amended by inserting after "monthly support payments" the following: "(or such larger portion of the amounts so collected as the State may have established, for purposes of section 402(a)(8)(A)(iv), under section 402(h)(1))".

(c) CONFORMING AMENDMENT.—Section 402(d) of such Act is repealed.

SEC. 9122. EFFECTIVE DATE.

The amendments made by section 9121 shall be effective on and after October 1, 1988; except that if the legislature of any particular State is not in regular session on the date of the enactment of this Act, and State legislation is required to provide the funds needed to carry out the amendments made by section 9121 (or otherwise to implement such amendments) in that State, such amendments shall become effective with respect to that State on the first day of the first fiscal year which begins after the legislature has subsequently convened for a regular session during which a budget is (or is scheduled to be) adopted by the State.

PART 4—TRANSITIONAL SERVICES FOR FAMILIES

SEC. 9131. MEDICAID ELIGIBILITY.

Section 402(a) of the Social Security Act (as amended by the preceding provisions of this Act) is further amended by striking out paragraph (37), and by inserting after paragraph (36) the following new paragraph:

"(37) provide that if any family ceases to receive family support supplements under the State plan as of the close of any month (and at that time has earnings), such family shall be treated for purposes of title XIX as continuing to receive such supplements for a period of 6 months after the close of such month; except that (A) this paragraph shall not apply if the family's eligibility for such supplements was terminated because of fraud or the imposition of a sanction, (B) if at any time during such 6-month period—

"(i) the family ceases to include a child who is (or would if need be) a dependent child, or

"(ii) any member of the family terminates his or her employment or reduces his or her earned income without good cause or refuses without good cause to accept employment, or fails to cooperate with the State in establishing paternity or obtaining support or other payments as required by paragraph (26)(B),

such period shall automatically end (as of the close of the last month in which the family included such a child or at the close of the month in which such termination, refusal, or failure occurred), and (C) such 6-month period shall include, and not be in addition to, any period during which the family remains eligible for assistance under such title XIX (after becoming ineligible for family support supplements) under section 406(h) or 1902(e);".

SEC. 9132. EFFECTIVE DATE.

The amendment made by section 9131 shall apply with respect to families that cease to be eligible for family support supplements on or after October 1, 1988; except that if the legislature of any particular State is not in regular session on the date of the enactment of this Act, and State legislation is required to provide the funds needed to carry out the amendment made by section 9131 (or otherwise to implement such amendment) in that State, such amendment shall apply in that State only with respect to families that cease to be so eligible on or after the first day of the first fiscal year which begins after the legislature has subsequently convened for a regular session during which a budget is (or is scheduled to be) adopted by the State.

PART 5—CHILD SUPPORT ENFORCEMENT AMENDMENTS

SEC. 9141. STATE GUIDELINES FOR CHILD SUPPORT AWARD AMOUNTS.

(a) AUTOMATIC UPDATING OF GUIDELINES.—Section 467(a) of the Social Security Act is amended by striking out "guidelines for child support award amounts within the State" and all that follows and inserting in lieu thereof the following: "guidelines for child support award amounts within the State, along with procedures for the periodic review and updating of all child support orders in accordance with the procedures described in section 466(a)(10). The guidelines may be established by law or by judicial or administrative action, and must be reviewed and updated if necessary at least once every three years.".

(b) GUIDELINES TO CREATE REBUTTABLE PRESUMPTION.—Section 467(b) of such Act is amended—

(1) by inserting "(1)" after "(b)";

(2) by striking out ", but need not be binding upon such judges or other officials"; and

(3) by adding at the end thereof the following new paragraph:

"(2) There shall be a rebuttable presumption, in any judicial or administrative proceeding for the award of child support, that the amount of the award which would result from the application of such guidelines is the correct amount of child support to be awarded. A written finding or specific finding on the record that the application of the guidelines would be unjust or inappropriate in a particular case shall be sufficient to rebut the presumption in that case.".

(c) STATE LAW REQUIREMENTS.—Section 466(a) of such Act is amended by inserting immediately after paragraph (9) the following new paragraph:

"(10) Procedures (including expedited procedures of the type described in paragraph (2)) requiring—

"(A) the uniform application of the guidelines established under section 467, and

"(B) the updating of child support orders at least once every two years on the basis of the reapplication of the State's child support guidelines to the current circumstances of the parties in accordance with the due process requirements of the State, including at a minimum the provision to both parties of all information necessary to determine a new award level under the guidelines and notice and opportunity for a hearing if desired by either party (but nothing in this paragraph or in such procedures shall require the lowering of any support award fixed by contract between the parties).".

SEC. 9142. ESTABLISHMENT OF PATERNITY.

(a) IN GENERAL.—(1) Section 466(a)(5) of the Social Security Act is amended by inserting "(A)" after "(5)", and by adding at the end thereof the following new subparagraph:

"(B) Procedures under which the State is required (except in cases where the individual involved has been found under section 402(a)(26)(B) to have good cause for refusing to cooperate)—

"(i) to establish the paternity of every child within the State who is a member of a family receiving aid under the State plan approved under section 402(a), as soon as possible after such child's birth but in any event prior to such child's eighteenth birthday;

"(ii) to require the child and all other parties, in a contested paternity case, to submit to genetic tests upon the request of any such party; and

"(iii) to use a 95-percent probability index from blood tests as a rebuttable presumption of paternity.".

(2) In the administration of the child support enforcement program under part D of title IV of the Social Security Act, each

State is encouraged to establish and implement a simple civil process for voluntarily acknowledging paternity and a civil procedure for establishing paternity in contested cases.

(3) A State shall be deemed to have satisfied the requirement of section 466(a)(5)(B)(i) of the Social Security Act in the fiscal year 1989 if the number of cases in which paternity is established in that State in that fiscal year is at least 50 percent higher than the number of such cases in the fiscal year 1986, and to have satisfied such requirement in any of the 4 fiscal years following the fiscal year 1989 if the number of cases in which paternity is established in that State in that fiscal year is at least 15 percent higher than the number of such cases in the preceding fiscal year.

(4) As of August 16, 1984, the requirements of section 466(a)(5)(A) of the Social Security Act (as designated by paragraph (1) of this subsection) apply to any child for whom paternity has not yet been established and any child for whom a paternity action was brought but dismissed because a statute of limitations of less than 18 years was then in effect in the State.

(b) IMPUTATION OF SUPPORT IN COMPUTING INCENTIVE PAYMENTS.—Section 458(c) of such Act is amended—

(1) by inserting "(1)" after "(c)";

(2) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively; and

(3) by adding at the end thereof the following new paragraph:

"(2) In determining the State's combined FSP/non-FSP administrative costs for any fiscal year under this section, the State shall be deemed to be collecting support in the amount of $100 a month, for a period of up to 12 months, in every case in which paternity has been established but actual collections have not commenced or the amount being actually collected is less than $100 a month.".

SEC. 9143. DEMONSTRATION PROJECTS TO ADDRESS VISITATION AND CUSTODY PROBLEMS.

Section 1115(b) of the Social Security Act (as added and amended by the preceding provisions of this subtitle) is further amended by redesignating paragraph (6) as paragraph (7), and by inserting after paragraph (5) the following new paragraph:

"(6)(A) In order to encourage States to identify the problems arising in connection with visitation by absent parents and to address problems involving child custody, to determine the magnitude of such problems, and to test possible solutions thereto (including but not limited to the creation of special staffs of mediators to deal with disputes involving court-ordered child access privileges or custody), any State may establish and conduct one or more demonstration projects in accordance with such terms, conditions, and requirements as the Secretary shall prescribe (except that no such project may include the withholding of child support payments pending visitation). No such project shall be conducted for a period of more than 3 years.

"(B) The Secretary may make grants to any State, in amounts not exceeding $5,000,000 per year, to assist in financing the project or projects established by such State under this paragraph.".

SEC. 9144. DISREGARDING OF CHILD SUPPORT PAYMENTS FOR FSP PURPOSES.

(a) IN GENERAL.—Clause (iv) of section 402(a)(8)(A) of the Social Security Act (as amended by section 9121(a) of this Act) is further amended by striking out "of any child support payments received in such month" and inserting in lieu thereof the following: "of any child support payment received in such month which was due for that month, and the first $50 of any child support payment received in such month which was due for a prior month if such payment was timely made when due by the absent parent,".

(b) CONFORMING AMENDMENT.—Section 457(b)(1) of such Act (as amended by section 9121(b)(2) of this Act) is further amended by inserting immediately before "shall be paid" the following: ", including a payment received in one month which was due for a prior month if it was timely made when due by the absent parent,".

SEC. 9145. REQUIREMENT OF PROMPT STATE RESPONSE TO REQUESTS FOR CHILD SUPPORT ASSISTANCE.

(a) IN GENERAL.—Section 452 of the Social Security Act is amended by adding at the end thereof the following new subsection:

"(g) The standards required by subsection (a)(1) shall establish limitations on the period of time (after the determination of a family's eligibility for aid under a State plan approved under section 402 or the filing of an application for services under this part) within which a State must (1) respond to requests for assistance in locating absent parents or establishing paternity, and (2) begin proceedings to establish or enforce child support awards.".

(b) STATE PLAN REQUIREMENT.—Section 454 of such Act is amended—

(1) by striking out "and" after the semicolon at the end of paragraph (22);

(2) by striking out the period at the end of paragraph (23) and inserting in lieu thereof "; and"; and

(3) by inserting immediately after paragraph (23) the following new paragraph:

"(24) provide that the State will observe and comply with the time limits established under section 452(g).".

SEC. 9146. AUTOMATED TRACKING AND MONITORING SYSTEMS.

(a) IN GENERAL.—Section 454 of the Social Security Act (as amended by section 9145(b) of this Act) is further amended—

(1) by striking out "and" after the semicolon at the end of paragraph (23);

(2) by striking out the period at the end of paragraph (24) and inserting in lieu thereof "; and"; and

(3) by inserting immediately after paragraph (24) the following new paragraph:

"(25) provide that, if it does not already have in effect an automatic data processing and information retrieval system meeting all of the requirements of paragraph (16), the State—

"(A) will submit to the Secretary by October 1, 1989 (for his review and approval no later than October 1, 1990) an advance automatic data processing planning document of the type referred to in that paragraph; and

"(B) will have in effect by October 1, 1992, an operational automatic data processing and information retrieval system meeting all the requirements of that paragraph.".

(b) REPEAL OF 90-PERCENT FEDERAL REIMBURSEMENT RATE FOR AUTOMATED DATA SYSTEMS.—Effective October 1, 1992, section 455(a)(1) of such Act is amended by striking out "an amount—" and all that follows down through "except that" and inserting in lieu thereof the following: "an amount equal to the percent specified in paragraph (2) of the total amounts expended by such State during such quarter for the operation of the plan approved under section 454; except that".

SEC. 9147. COSTS OF INTERSTATE ENFORCEMENT DEMONSTRATIONS EXCLUDED IN COMPUTING INCENTIVE PAYMENTS.

Section 458(d) of the Social Security Act is amended by inserting immediately before the period at the end thereof the following: ", and any amounts expended by the State in carrying out a special project assisted under section 455(e) shall be excluded".

SEC. 9148. FEDERAL MATCHING REDUCED FOR STATES WHICH ARE NOT IN COMPLIANCE WITH 1984 AMENDMENTS, AND INCREASED FOR STATES WHICH REQUIRE IMMEDIATE INCOME WITHHOLDING UPON ISSUANCE OF COURT ORDER.

Section 455(a)(2) of the Social Security Act is amended—

(1) by striking out "The percent" and inserting in lieu thereof "(A) Except as provided in subparagraphs (B) and (C), the percent";

(2) by redesignating the existing subparagraphs (A), (B), and (C) as clauses (i), (ii), and (iii), respectively; and

(3) by adding at the end thereof the following new subparagraphs:

"(B) In the case of a State that is not fully in compliance with the Child Support Enforcement Amendments of 1984, as determined by the Secretary, at any time after the expiration of 6 months after the date of the enactment of this subparagraph, the percent applicable to any quarter for purposes of paragraph (1) is 66 percent.

"(C) In the case of any State that has in effect a law (whether enacted before, on, or after the date of the enactment of this subparagraph) under which—

"(i) income withholding in accordance with section 466(b) is required in cases where an individual residing in the State owes child support under a court order issued or modified in the State on or after the date of the enactment of such law (or under an order of an administrative process established by a law of the State and issued or modified on or after that date), without the necessity of any application therefor or of any determination as to whether or not such individual is in arrears, and

"(ii) an exemption from the requirement described in clause (i) is permitted in any case where (I) one of the parties demonstrates, and the court (or administrative process) finds, that there is good cause not to require immediate income withholding, or (II) a written agreement is reached between both parties which provides for an alternative arrangement,

the percent applicable to any quarter for purposes of paragraph (1) for any fiscal year (unless subparagraph (B) of this paragraph applies) is 70 percent.".

SEC. 9149. COMMISSION ON INTERSTATE ENFORCEMENT.

(a) ESTABLISHMENT OF COMMISSION; PURPOSE.—There is hereby established a study commission to examine the problems of interstate child support enforcement and to develop a new model interstate law to facilitate and strengthen such enforcement.

(b) MEMBERSHIP.—The commission shall consist of 15 members, as follows:

(1) Two Members of the Senate, one selected by the Majority Leader of the Senate and the other by the Minority Leader of the Senate.

(2) Two Members of the House of Representatives, one selected by the Speaker of the House and the other by the Minority Leader of the House.

(3) The Secretary of Health and Human Services.

(4) A representative of the Commissioners on Uniform State Laws.

(5) A director of a State child support enforcement agency.

(6) A State or local prosecutor.

(7) Seven advocates for or representatives of custodial and non-custodial parents.

The members specified in paragraphs (4) through (7) shall be selected jointly by the Speaker of the House and the Majority Leader of the Senate in consultation with the Minority Leader of the House and the Minority Leader of the Senate.

(c) REPORT.—No later than one year after the date of the enactment of this Act, the commission shall submit to the President and the Congress a full and complete report of the results of its study, including a draft of a model State law designed to facilitate and strengthen interstate child support enforcement, along with such recommendations as the commission may have for further legislative, administrative, and other actions at every level.

(d) AUTHORIZATION OF FUNDS.—There are authorized to be appropriated such sums as may be necessary to carry out this section.

SEC. 9150. STUDY OF CHILD-RAISING COSTS.

The Secretary of Health and Human Services shall conduct a study of the patterns of expenditures on children in two-parent families, in single-parent families following divorce, and in single-parent families in which the parents were never married, giving particular attention to the relative standards of living in households in which both parents and all of the children do not live together. The Secretary shall submit to the Congress no later than two years after the date of the enactment of this Act a full and complete report of the results of such study, including such recommendations as the Secretary may have for legislative, administrative, and other actions. There are authorized to be appropriated such sums as may be necessary to carry out this section.

SEC. 9151. DEMONSTRATION PROJECTS TO TEST VOLUNTARY WORK, EDUCATION, AND TRAINING FOR FATHERS WHO ARE UNABLE TO PAY CHILD SUPPORT.

Section 1115(b) of the Social Security Act (as added and amended by the preceding provisions of this subtitle) is further amended by redesignating paragraph (7) as paragraph (8), and by inserting after paragraph (6) the following new paragraph:

"(7) In order to permit States to test methods of improving child support enforcement in cases where the noncustodial parent is financially unable to meet his support obligations, any State may undertake and carry out a demonstration project under which absent parents who owe child support, but whose income is insufficient to pay such support, are encouraged by all possible means to participate in the State's education, training, and work program established under section 416, in an appropriate State program under the Job Training Partnership Act, or in a similar program. Demonstration projects under this paragraph shall be established and carried out in accordance with such conditions and requirements as the Secretary shall prescribe; and the Secretary shall make grants to the States conducting such projects to assist in their financing.".

SEC. 9152. COLLECTION AND REPORTING OF CHILD SUPPORT ENFORCEMENT DATA.

(a) IN GENERAL.—The Secretary of Health and Human Services shall collect and maintain up-to-date statistics, by State, with respect to each of the services specified in subsection (b) (separately stated in the case of each such service for families receiving aid under plans approved under part A of title IV of the Social Security Act and for families not receiving such aid), on—

(1) the number of cases in the child support enforcement agency caseload under part D of title IV of the Social Security Act which need the service involved;

(2) the number of such cases in which the service has actually been provided; and

(3) the number of cases described in paragraph (2) as a percentage of the number of cases described in paragraph (1).

(b) SERVICES INVOLVED.—The services referred to in subsection (a) are—

(1) paternity determination;

(2) location of an absent parent for the purpose of establishing a child support obligation;

(3) establishment of a child support obligation; and

(4) location of an absent parent for the purpose of enforcing or modifying an established child support obligation.

SEC. 9153. ASSISTANCE IN LOCATING ABSENT PARENTS.

(a) PROVISION OF INFORMATION BY SECRETARY OF LABOR.—The Secretary of Labor shall make available to the Parent Locator Service established under section 453 of the Social Security Act and to any State child support enforcement agency which requests it, for child support enforcement purposes, from the cross-match system used by the Secretary in determining eligibility for unemployment insurance and accessed by INTERNET, all available information on the name, social security account number, current address, and place of employment of any specified individual.

(b) REIMBURSEMENT.—The Parent Locator Service and each State child support enforcement agency, upon receiving information from the Secretary of Labor under subsection (a), shall reimburse the Secretary for the reasonable cost of providing such information (and, in the case of a State child support enforcement agency, such reimbursement shall constitute an expenditure made for the operation of the plan approved under section 454 of the Social Security Act).

SEC. 9154. EFFECTIVE DATE.

Except to the extent otherwise specifically indicated, the amendments made by this subtitle shall become effective on the first day of the first calendar quarter which begins one year or more after the date of the enactment of this Act.

PART 6—PRO-FAMILY WELFARE POLICIES

SEC. 9161. REQUIREMENT THAT AID BE PROVIDED WITH RESPECT TO DEPENDENT CHILDREN IN TWO-PARENT FAMILIES.

(a) IN GENERAL.—Section 402(a) of the Social Security Act is amended—

(1) by striking out "and" after the semicolon at the end of paragraph (38);

(2) by striking out the period at the end of paragraph (39) and inserting in lieu thereof "; and"; and

(3) by inserting immediately after paragraph (39) the following new paragraph:

"(40) provide that payments of family support supplements will be made under the plan with respect to dependent children of unemployed parents, in accordance with section 407.".

(b) CONFORMING AMENDMENTS.—(1) Section 407(b) of such Act is amended by striking out "(b) The provisions" and all that follows down through "(1) requires" and inserting in lieu thereof the following:

"(b) In providing for the payment of family support supplements under the State's plan approved under section 402 in the case of families which include dependent children within the meaning of subsection (a) of this section, as required by section 402(a)(40), the State's plan—

"(1) shall require".

(2) Section 407(b)(2) of such Act is amended by striking out "provides—" and and inserting in lieu thereof "shall provide—".

(c) QUARTERS OF WORK BASED ON EDUCATION OR TRAINING.—(1) Section 407(d)(1) of such Act (as amended by section 9103(a)(10) of this Act) is further amended—

(A) by inserting "(A)" after "means a calendar quarter"; and

(B) by inserting before the semicolon at the end thereof the following: ", or (B) if the State plan so provides (but subject to the last sentence of this subsection), in which such individual (i) was in regular full-time attendance as a student at an elementary or secondary school, (ii) was in regular full-time attendance in a course of vocational or technical training designed to fit him or her for gainful employment, or (iii) participated in an education or training program established under the Job Training Partnership Act".

(2) Section 407(d) of such Act is further amended by adding at the end thereof (after and below paragraph (4)) the following new sentence:

"No individual shall be credited during his or her lifetime (for purposes of subsection (b)(1)(C)(i)) with more than 4 'quarters of work' based on attendance in a course or courses of vocational or technical training as described in paragraph (1)(B)(ii) of this subsection.".

(3) Section 407(b)(1)(C)(i) of such Act is amended by inserting after "6 or more quarters of work (as defined in subsection (d)(1))" the following: ", including 2 or more quarters of work as defined in subsection (d)(1)(A),".

(d) GAO STUDY.—The Comptroller General shall conduct a study of the administration by the States of the family support program in cases involving unemployed parents under section 407 of such Act, with particular reference to the policies and regulations governing the administration of such program in those cases, and shall recommend to the Congress within 6 months after the date of the enactment of this subtitle such changes in current law and regulation as in his judgment would make such administration less cumbersome and less prone to error in the payment of such aid. There are authorized to be appropriated such sums as may be necessary to carry out this section.

(e) EFFECTIVE DATE.—The amendments made by subsections (a), (b), and (c) shall become effective January 1, 1990.

SEC. 9162. SPECIAL PROVISIONS FOR FAMILIES HEADED BY MINOR PARENTS.

(a) CASE MANAGEMENT SERVICES; LIVING ARRANGEMENTS AND PAYMENTS OF AID.—(1) Section 402(a) of the Social Security Act is amended by inserting after paragraph (28) the following new paragraph:

"(29) provide for the assignment of a case manager to each family which is receiving family support supplements under the plan and which is headed by a minor parent, as described in section 417, and include the other provisions and conditions required by that section;".

(2) Part A of title IV of such Act (as amended by section 9101(b) of this Act) is

further amended by adding at the end thereof the following new section:

"SPECIAL PROVISIONS FOR FAMILIES HEADED BY MINOR PARENTS

"SEC. 417. (a)(1) The State agency shall assign an individual case manager to each family, receiving family support supplements under the State's plan approved under section 402, which is headed by a minor parent. The case manager so assigned shall be responsible for assuring that the family receives and effectively uses all of the aid and services which are available to it under the plan and under related laws and programs, and for supervising and monitoring the provision and use of such aid and services. Each case manager assigned under this subsection shall maintain a caseload sufficiently small to assure the provision of intensive services to and close supervision of the families to which he or she is assigned.

"(2) If the family is participating in the program under section 416, only one case manager shall be assigned to perform all case management functions for the family.

"(b)(1)(A) Each family headed by an unmarried minor parent shall be required to live with a parent, legal guardian, or other adult relative of such minor parent or in a foster home, maternity home, or other supportive living arrangement, except to the extent that the State agency determines that it is impossible or inappropriate to do so (as more particularly described in subparagraph (B)). The case manager assigned to the family may in any event require that payments of family support supplements with respect to the family be made when appropriate to a third party in the manner described in section 406(b)(2) (which in such a case shall be without regard to clauses (A) through (D) thereof); and if the minor parent is not living under adult supervision, and an appropriate relative or other representative payee cannot be found, the case manager may serve as representative payee.

"(B) The State agency may determine that it is impossible or inappropriate for a minor parent to live with a parent or legal guardian if—

"(i) the minor parent has no living parent or legal guardian whose whereabouts are known;

"(ii) the health or safety of the minor parent or the child would be jeopardized if they lived with the parent or guardian, or the living conditions of the parent or guardian are overcrowded;

"(iii) the parent or guardian refuses to allow the minor parent and child to live in his or her home; or

"(iv) the minor parent has lived apart from the parent or guardian for at least a year prior to the birth of the child or prior to making application for supplements under the plan.

"(2) In any case where the parent with whom the minor parent is living is also eligible for family support supplements (by reason of the presence in the household of one or more other children of such parent), the State must provide (notwithstanding paragraph (38)) that the minor parent and the minor parent's child or children constitute a family unit separate from that of the minor parent's parent and such other children.

"(c) The State may at its option (1) require school attendance by the minor parent on a part-time basis as a condition of such parent's eligibility for aid under the State plan, or (2) require that the minor parent participate in training in parenting and family living skills, including nutrition and health education, as a condition of such eligibility (without regard to the age of the child or children); but in either case only if and to the extent that day care for the child or children is guaranteed (and is guaranteed within the applicable dollar limitations set forth in section 402(g) if the child or any of the children is below 3 years of age).

"(d) Amounts expended by a State under this section in providing case management services with respect to families headed by minor parents shall be considered, for purposes of section 403(a)(3)(D), to be expenditures for the proper and efficient administration of the State plan.

"(e) For purposes of this section, the term 'minor parent' means a parent who has not yet attained the age of 18.".

(b) REPEAL OF PROVISION ATTRIBUTING GRANDPARENT'S INCOME TO DEPENDENT CHILD IN MINOR PARENT FAMILY.—Section 402(a) of such Act is further amended by striking out paragraph (39).

(c) EFFECTIVE DATE.—The amendments made by this section shall become effective on October 1, 1987.

PART 7—BENEFIT IMPROVEMENTS

SEC. 9171. PERIODIC RE-EVALUATIONS OF NEED AND PAYMENT STANDARDS.

Section 402 of the Social Security Act (as amended by the preceding provisions of this subtitle) is further amended by adding at the end thereof the following new subsection:

"(i) Each State shall annually re-evaluate its need standard and its payment standard under the family support program, giving particular attention to whether or not the amount which it has assumed to be necessary for shelter, in setting such standards, is adequate in the light of current housing costs in the State and in different regions within the State. The result of each such re-evaluation shall be reported by the State to the Secretary, to the Congress, and to the public.".

SEC. 9172. ENCOURAGEMENT OF STATES TO INCREASE FSP BENEFIT LEVELS.

(a) IN GENERAL.—(1) Section 403 of the Social Security Act is amended by adding at the end thereof the following new subsection:

"(k)(1)(A) In the case of any State which, effective on or after October 1, 1988, increases the level of the family support supplements which are payable under its approved State plan, the percentage of the total amount expended during any quarter as family support supplements under such plan which would otherwise be payable to the State (without regard to this subsection) as the Federal share of such expenditures under subsection (a) (1) or (2) (with or without the application of section 1118), to the extent that the total amount so expended is attributable to such increase, shall be equal to the percentage of the Federal share of the expenses attributable to such increase, as it would be determined by the application of subsection (a) (1) or (2) without regard to this subsection, increased by 25 percent (but not to more than 90 percent).

"(B) If the increase involved becomes effective on the first day of a quarter, subparagraph (A) shall apply with respect to expenditures made on and after such first day. If the increase becomes effective at any other time during a quarter, subparagraph (A) shall apply only with respect to expenditures made on and after the first day of the following quarter.

"(C) The resulting net Federal share of the total amounts expended during such quarter as family support supplements under the State plan (including both the expenditures to which this paragraph applies and the expenditures to which it does not) shall be determined as provided in paragraph (2).

"(2)(A) Whenever a State (effective on or after October 1, 1988) increases the level of the family support supplements which are payable under its approved State plan, the Secretary shall determine with respect to each particular size of family separately specified under the plan (assuming for this purpose that no family has any other income)—

"(i) the level of such supplements (expressed as a monthly dollar amount) as of September 30, 1988;

"(ii) the level of such supplements (expressed as a monthly dollar amount) immediately after such increase becomes effective;

"(iii) the dollar amount of the increase (if any) in such level; and

"(iv) the percentage of the State's total FSP caseload (i.e., of the total number of families receiving family support supplements under the plan) which is represented by families of that particular size.

"(B) The Federal share of the expenditures which are made as family support supplements under the State plan with respect to families of any particular size during any quarter commencing with the later of the quarter beginning October 1, 1988, or the first quarter in which the increase is effective, and which (if any) are attributable to such increase, shall be a percentage equal to—

"(i) the sum of (I) the level determined under subparagraph (A)(i) for such families multiplied by the net Federal percentage determined under subsection (a) (1) or (2) or section 1118 without regard to this subsection, and (II) the amount of the increase (if any) determined under subparagraph (A)(iii) for such families multiplied by the percentage of the Federal share of the expenditures attributable to such increase as determined under paragraph (1)(A),

divided by—

"(ii) the level determined under subparagraph (A)(ii),

with the resulting quotient multiplied by—

"(iii) the percentage of the State's total FSP caseload which is represented by families of that particular size as determined under subparagraph (A)(iv).

"(C) The net Federal share of the total amounts expended during the quarter involved as family support supplements under the State's approved plan for purposes of subsection (a) (1) or (2) shall be a percentage equal to the sum of the percentages determined for all family sizes by the application of clauses (i), (ii), and (iii) of subparagraph (B) to families of each such size separately; and the percentage of such net Federal share as so determined shall be in lieu of the percentage which would otherwise be applied under subsection (a) (1) or (2) or under section 1118.".

(2)(A) Section 403(a) of such Act is amended by striking out "an amount equal to" in paragraphs (1) and (2) and inserting in lieu thereof in each instance "an amount (subject to subsection (k)) equal to".

(B) The first sentence of section 1118 of such Act is amended by inserting "(subject to section 403(k))" after "be determined".

(3) The Secretary of Health and Human Services shall monitor and study the implementation of the amendments made by this subsection and the effect of such amend-

ments on benefit levels and related aspects of the program under part A of title IV of the Social Security Act, and shall submit to the Congress on or before October 1, 1991, and again on or before October 1, 1993, a detailed report on such implementation and effect.

(b) Prohibition Against Benefit Reductions.—Section 402(a) of such Act (as amended by sections 9161(a) and 9162(b) of this Act) is further amended by inserting after paragraph (38) the following new paragraph:

"(39) provide that the State will not reduce the level of the aid payable under the State plan to families of any size or composition below the level in effect for such families on June 10, 1987 (or below a level scheduled to become effective for such families after that date (and on or before September 30, 1988) under a State law enacted on or before June 10, 1987); and".

SEC. 9173. STUDY OF NEW NATIONAL APPROACHES TO WELFARE BENEFITS FOR LOW-INCOME FAMILIES WITH CHILDREN.

(a) In General.—The Secretary of Health and Human Services shall enter into a contract or arrangement with the National Academy of Sciences for the study of a new national system of welfare benefits for low-income families with children, giving particular attention to what an appropriate national minimum benefit might be and how it should be calculated. The study shall give consideration to alternative minimum benefit proposals including proposals for benefits based on a family living standard, on weighted national median income, on State median income, and on the poverty level, and shall take into account the probable impact of a national minimum benefit on individuals and on State and local governments.

(b) Methodology.—(1) The study under this section shall include the development of a uniform national methodology which could be used to calculate State-specific family living standards and benefits based on other minimum benefit proposals.

(2) The methodology so developed shall be designed to identify a single uniform measure suitable for application in each State, and shall—

(A) take into account actual living costs in each State while permitting variances in such costs as between the different geographic areas of the State;

(B) take into account variations in actual living costs in each State for families of different sizes and composition; and

(C) specify an effective process for reassessing and updating both the methodology and the resulting family living standards and benefits based on other minimum benefit policies at least once every four years.

(3) The methodology so developed shall reflect the costs of basic necessities including housing, furnishings, food, clothing, transportation, utilities, and other maintenance items; and the study shall take into account variations in costs for different geographic areas of the State where such costs may be substantially different, and variations in costs for families of different sizes and composition.

(c) Other Considerations; Progression to Proposed Minimum Benefit Levels.—In order to assess the implications of States moving to a new system of welfare benefits, the study shall include an analysis of the relationship between a State's fiscal capacity and other circumstances and constraints and the application of a full family living standard or other minimum benefit policy. The study shall propose a formula designed to achieve a uniform progression from the level of assistance currently being provided for low-income families with children under the family support program, the food stamp program, and the low-income energy assistance program, by each State, to a level based on the full family living standard or other minimum benefit policy for that State. For this purpose the Secretary shall define the term "low-income families with children" in a manner which reflects all families that include dependent children as defined for purposes of the family support program.

(d) Report and Recommendations.—The Academy shall report its recommendations resulting from the study under this section to the Secretary no later than 24 months after the date of the enactment of this Act; and the Secretary shall promptly transmit such recommendations to the Congress.

(e) Authorization of Funds.—There are authorized to be appropriated such sums as may be necessary to carry out this section.

PART 8—MISCELLANEOUS PROVISIONS

SEC. 9181. COORDINATION OF FAMILY SUPPORT AND FOOD STAMP POLICIES.

(a) Appointment and Membership of Commission.—There is hereby established a Commission on the Coordination of Family Support and Food Stamp Policies (hereinafter referred to as the "Commission"), consisting of 15 members as follows:

(1) The Secretary of Health and Human Services.

(2) The Secretary of Agriculture.

(3) Two Members of the Senate, one selected by the Majority Leader of the Senate and the other by the Minority Leader of the Senate.

(4) Two Members of the House of Representatives, one selected by the Speaker of the House and the other by the Minority Leader of the House.

(5) Two State Governors, one selected jointly by the Speaker of the House and the Majority Leader of the Senate and the other selected jointly by the Minority Leader of the House and the Minority Leader of the Senate.

(6) Seven other members, including State and local officials responsible for administering the family support and food stamp programs, representatives of welfare advocacy organizations, and individuals with demonstrated expertise in welfare policy, to be selected jointly by the Speaker of the House and the Majority Leader of the Senate in consultation with the Minority Leader of the House and the Minority Leader of the Senate.

(b) Purpose.—It shall be the purpose of the Commission—

(1) to study and consider the policies and definitions being implemented or used (under law or administrative practice) in the administration of the family support program under part A of title IV of the Social Security Act and those being so implemented or used in the administration of the food stamp program under the Food Stamp Act of 1977;

(2) to identify the policies and definitions being implemented or used under each such program which are inconsistent or in conflict with those being implemented or used under the other; and

(3) to make recommendations for developing common policies and definitions for use under both programs and thereby eliminating such inconsistency or conflict to the maximum extent possible.

(c) Report.—The commission shall submit to the President and the Congress within one year after the date of the enactment of this Act a full and complete report on its study under this section, including its recommendations for such legislative, administrative, and other actions as may be considered appropriate.

(d) Authorization of Funds.—There are authorized to be appropriated such sums as may be necessary to carry out this section.

SEC. 9182. UNIFORM REPORTING REQUIREMENTS.

Section 403 of the Social Security Act is amended by inserting immediately before subsection (f) the following new subsection:

"(e) In order to assist in obtaining the information needed to carry out subsection (b)(1) and otherwise to perform his duties under this part, the Secretary shall establish uniform reporting requirements under which each State will be required periodically to furnish such information and data as the Secretary may determine to be necessary to ensure that sections 402(a)(37), 402(g), and 417 are being effectively implemented, including at a minimum the average monthly number of families assisted under each such section, the types of such families, the amounts expended with respect to such families, and the length of time for which such families are assisted. The information and data so furnished with respect to families assisted under section 402(g) shall be separately stated with respect to families who have earnings and those who do not, and with respect to families who are receiving aid under the State plan and those who are not.".

SEC. 9183. STATE REPORTS ON EXPENDITURE AND USE OF SOCIAL SERVICES FUNDS.

Section 2006 of the Social Security Act is amended—

(1) by striking out that part of the second sentence of subsection (a) which precedes "as the State finds necessary" and inserting in lieu thereof "Reports shall be prepared annually, covering the most recently completed fiscal year, and shall be in such form and contain such information (including but not limited to the information specified in subsection (c))";

(2) by redesignating subsection (c) as subsection (d); and

(3) by inserting after subsection (b) the following new subsection:

"(c) Each report prepared and transmitted by a State under subsection (a) shall set forth (with respect to the fiscal year covered by the report)—

"(1) the number of individuals who received services paid for in whole or in part with funds made available under this title, showing separately the number of children and the number of adults who received such services, and broken down in each case to reflect the types of services and circumstances involved;

"(2) the amount actually spent in providing each such type of service, showing separately for each type of service the amount spent per child recipient and the amount spent per adult recipient;

"(3) the criteria applied in determining eligibility for services (such as income eligibility guidelines, sliding fee scales, the effect of public assistance benefits, and any requirements for enrollment in school or training programs); and

"(4) the methods by which services were provided, showing separately the services provided by public agencies and those provided by private agencies, and broken down in each case to reflect the types of services and circumstances involved.

The Secretary shall establish uniform definitions of services for use by the States in preparing the information required by this subsection.".

SEC. 9184. EVALUATION OF EMPLOYMENT, TRAINING, AND WORK PROGRAMS AND RELATED PROGRAMS.

(a) STATEMENT OF PURPOSE.—It is the view of the Congress that there is now a broad national consensus on the importance of work and preparation for work as a means of avoiding the dependency often associated with poverty. In recent years, the States have undertaken impressive new job search, education, training, and employment programs designed to help welfare recipients achieve financial independence. Evaluations of these programs provide some reason to think they may be successful in moving welfare recipients into the workforce. In enacting this subtitle the Congress is attempting to help the States pursue these programs by providing generous new resources and a great deal of flexibility in designing and implementing the programs. In addition, the Congress is granting the States great latitude in using funds currently addressed to meeting the needs of low-income citizens and citizens living in poverty. But the Congress also intends to learn as much as possible from this new investment of public funds and this new enrichment of Federal-State relations. In recent years the Congress has profited from the knowledge produced by large-scale evaluations; it is the intent of the Congress to pursue the strategy of careful evaluation of social programs in order to improve and perfect the legislation upon which these programs are based. It is the purpose of this section to carry out this objective.

(b) ESTABLISHMENT OF INTERAGENCY PANEL.—Within 3 months after the enactment of this Act, the Secretary of Health and Human Services shall convene an Interagency Panel consisting of representatives from the Office of Management and Budget, the Congressional Budget Office, the Congressional Research Service, and the General Accounting Office. The Panel shall meet periodically to design, implement, and monitor a series of implementation and evaluation studies to assess the methods and effects of the programs initiated under this subtitle. Insofar as possible, the Panel shall work in a collegial fashion; but if consensus cannot be reached among Panel members on particular decisions the Secretary of Health and Human Services is authorized to make all final decisions about program design, use of contractors, conduct of particular studies, and any other matters which may come before the Panel.

(c) ADVISORY BOARD.—Within 6 months after the enactment of this Act, the Interagency Panel shall select and appoint an advisory board of not more than 12 members. The advisory board shall include representatives of business, labor, academia, children's groups, State government, local government, welfare rights organizations, religious organizations, and community self-help organizations. The advisory board shall meet at least twice during the first year following its formation and at least once a year thereafter. It shall be the function of the advisory board to provide the Interagency Panel with advice and counsel on all aspects of its operation.

(d) OPERATION OF INTERAGENCY PANEL.—(1) The Interagency Panel shall identify the significant questions to be pursued in its studies, and shall also adopt an overall design that maximizes the knowledge gained from contrasts and comparisons between the individual studies. The Panel shall make special efforts to coordinate with the States and to use control groups and other methods of scientific evaluation whenever possible.

(2) The Panel may request the Secretary of Health and Human Services to supply any information, in the possession of or available to the Secretary, which may be of assistance in carrying out the Panel's functions under this section, and may request the Secretary to obtain any such information from States by requiring its inclusion in any of the State reports provided for under this subtitle or otherwise provided for by law. To the maximum extent possible, the Secretary shall comply with any request received from the Panel under this subsection.

(e) REPORTS.—The Interagency Panel shall report to the Congress and the President at such times as it sees fit to do so, but at least once each year, during the 5-year period beginning on the date of the enactment of this Act. The first such report shall cover the implementation of the programs under this subtitle during the period prior to the submission of that report; and the subsequent reports shall include an overview of each study the Panel it has conducted or authorized, an overall assessment of the State programs initiated under this subtitle, and a set of specific recommendations to the Congress and the President on needed changes in legislation, regulations, and program administration at the State and Federal levels. The final report shall cover the first four years of program implementation and shall be published no later than five years after the enactment of this Act.

(f) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated the total sum of $20,000,000 to enable the Panel to perform its functions during the first five years of its existence.

SEC. 9185. DEMONSTRATION PROGRAM OF GRANTS TO PROVIDE PERMANENT HOUSING FOR FAMILIES THAT WOULD OTHERWISE REQUIRE EMERGENCY ASSISTANCE.

(a) ESTABLISHMENT OF PROGRAM.—Section 1115 of the Social Security Act (as amended by the preceding provisions of this subtitle) is further amended by adding at the end thereof the following new subsection:

"(c)(1) In order to ensure that States which incur particularly high costs in providing emergency assistance for temporary housing to homeless FSP families may have an adequate opportunity to test whether such costs could be effectively reduced by the construction or rehabilitation (with the assistance of Federal grants) of permanent housing that such families can afford with their regular family support supplements, there is hereby established a demonstration program under which the Secretary shall make grants to those States, selected in accordance with paragraph (2), which conduct demonstration projects in accordance with this subsection.

"(2)(A) Any State which desires to participate in the demonstration program established by paragraph (1) may submit an application therefor to the Secretary.

"(B) To be eligible for selection to conduct a demonstration project under such program, a State—

"(i) must be currently providing emergency assistance (as defined in paragraph (6)(A)) in the form of housing, including transitional housing;

"(ii) must have a particularly acute need for assistance in dealing with the problems of homeless FSP families by virtue of the large number of such families, and the existence of shortages in the supply of low-income housing, in the political subdivision or subdivisions where such project would be conducted; and

"(iii) must submit a plan to achieve significant cost savings over a 10-year period through the conduct of such project with assistance under this subsection.

"(C) The Secretary shall select up to 3 States, from among those which submit applications under subparagraph (A) and are determined to be eligible under subparagraph (B), to conduct demonstration projects in accordance with this subsection. In the event that more than 3 States are determined to be eligible, the 3 States selected shall be those whose cost savings (as described in clause (iii) of subparagraph (B)) will be the greatest.

"(D) Grants for each demonstration project under this subsection shall be awarded within 6 months after the date of the appropriation of funds (pursuant to paragraph (8)) for the purposes prescribed in this subsection.

"(3) For each year during which a State is conducting a demonstration project under this subsection, the Secretary shall make a grant to such State, in an amount determined under paragraph (8)(B)), for the construction or rehabilitation of permanent housing to serve individuals and families who would otherwise require emergency assistance in the form of temporary housing.

"(4) A grant may be made to a State under paragraph (2) only if such State (along with or as a part of its application) furnishes the Secretary with satisfactory assurances that—

"(A) the proceeds of the grant will be used exclusively for the construction or rehabilitation of permanent housing to be owned by the State, a political subdivision of the State, an agency or instrumentality of the State or of a political subdivision of the State, or a nonprofit organization;

"(B) all units assisted with funds from the proceeds of the grant will be used exclusively for rental to families which—

"(i) are eligible, at the time of the rental, for aid under the State's plan approved under section 402 (and a family with one or more members who meet this requirement shall not be deemed ineligible because one or more other members receive benefits under title XVI),

"(ii) have been unable to obtain decent housing at rents that can be paid with the portion of such aid allocated for shelter, and

"(iii) if such housing were not available to them, would be compelled to live in a shelter for the homeless or in a hotel or motel, or other temporary accommodations, paid for with emergency assistance, or would be homeless;

"(C) the local jurisdiction in which such housing will be located is experiencing a critical shortage of housing units that are available to families eligible for aid under the State plan at rents that can be paid with the portion of such aid allocated for shelter; and

"(D) whenever units assisted with grants under the project become available for occupancy, the State will discontinue the use of an equivalent number of units of the most costly accommodations it has been using as temporary housing paid for with emergency assistance, except to the extent that such accommodations are demonstrably needed—

"(i) in addition to the units so assisted, to take account of increases in the caseload under the emergency assistance program, or

"(ii) because, due to the condition or location of such accommodations, or other factors, discontinuing the use of such units would not be in the best interests of needy families, provided that the State discontinues the use of an equivalent number of other units it has been using as temporary housing paid for with emergency assistance;

and only if the State, along with or as a part of its application, includes such documentary and other materials as may be necessary to establish its eligibility under paragraph (2)(B) and such provisions as may be necessary to carry out the requirements of subparagraph (D) of this paragraph.

"(5)(A) The average cost to the Federal Government per unit of housing constructed or rehabilitated with a grant under a project under this subsection shall be an amount no greater than the calculated yearly payment of emergency assistance that would be required to provide housing for a family in a shelter for the homeless, a hotel or motel, or other temporary quarters for one year, in the jurisdiction or jurisdictions where the project is located.

"(B) The total of Federal payments to a State under part A of title IV over the 10-year period beginning at the time construction or rehabilitation commences under the State's project under this subsection, with respect to the families who will live in housing assisted by a grant under such project (the 'total grant cost' as more particularly defined in paragraph (6)(C)), must be lower as a result of the construction or rehabilitation of permanent housing with the grant than it would be if the State made emergency assistance payments with respect to the families involved at the level of the standard yearly payment (as defined in paragraph (6)(B)) during such 10-year period.

"(C) Any grant to a State under paragraph (1) shall be made only on condition (i) that such State pay a percentage of the total cost of the construction or rehabilitation of the housing involved equal at least to the percentage of the current non-Federal share of family support supplements under the State's plan approved under section 402 (as determined under section 403(a) or 1118), increased by 10 percentage points, and (ii) that such State not require any of its political subdivisions to pay a higher percentage of the total costs of the construction or rehabilitation of such housing than it would pay with respect to family support supplements pursuant to such State plan.

"(6) For purposes of this subsection—

"(A) the term 'emergency assistance' means emergency assistance to needy families with children as described in section 403(e), and regular payments for the costs of temporary housing authorized as a special needs item under the State plan;

"(B) the term 'standard yearly payment', with respect to emergency assistance used to provide housing for a family in a shelter for the homeless, a hotel or motel, or other temporary quarters during any year in any jurisdiction, means an amount equal to the total amount of such assistance which was needed to provide all housing in temporary accommodations in that jurisdiction (with emergency assistance), in the most recently completed calendar year, at the 75th percentile in the range of all payments of emergency assistance for temporary accommodations, based on the State's actual experience with emergency assistance in such jurisdiction; and

"(C) the term 'total grant cost', with respect to housing constructed or rehabilitated under a demonstration project under this subsection, means the sum of (i) the Federal share of payments attributable to such housing during the 10-year period beginning on the date on which its construction or rehabilitation begins (including the grant provided under this subsection), (ii) the Federal share of payments of emergency assistance for temporary housing to the families involved during such construction or rehabilitation (at a level equal to the standard yearly payment), and (iii) the Federal share of regular payments of family support supplements under the State plan to such families during the remainder of such 10-year period.

"(7) Whenever a grant is made to a State under this subsection, the assurances required of the State under subparagraphs (A) through (D) of paragraph (4) and any other requirements imposed by the Secretary as a condition of such grant shall be considered, for purposes of section 404, as requirements imposed by or in the administration of the State's plan approved under section 402.

"(8)(A) There is authorized to be appropriated for grants under this subsection the sum of $15,000,000 for each of the first 5 fiscal years beginning on or after October 1, 1987.

"(B)(i) The amount appropriated for any fiscal year pursuant to subparagraph (A) shall be divided among the States conducting demonstration projects under this subsection according to their respective need for assistance of the type involved and their respective numbers of homeless FSP families, as determined by the Secretary.

"(ii) If any State to which a grant is made under this subparagraph finds that it does not require the full amount of such grant to conduct its demonstration project under this subsection in the fiscal year involved, the unused portion of such grant shall be reallocated to the other States conducting such projects in amounts based on their respective need for assistance of the type involved, as determined by the Secretary.

"(iii) Amounts appropriated pursuant to subparagraph (A), and grants made from such amounts, shall remain available until expended.

"(9) The Secretary shall prescribe and publish regulations to implement the provisions of this subsection no later than 6 months after the date of its enactment.".

(b) Effective Date.—The amendment made by subsection (a) shall become effective October 1, 1987.

SEC. 9186. CHILD SUPPORT DEMONSTRATION PROJECT IN NEW YORK STATE.

(a) In General.—Upon application by the State of New York and approval by the Secretary of Health and Human Services, the State of New York (in this section referred to as the "State") may conduct a demonstration project in accordance with this section for the purpose of testing its Child Support Supplement Program as an alternative to the existing AFDC program and the Family Support Program.

(b) Nature of Project.—Under the demonstration project conducted under this section—

(1) all custodial parents of dependent children who are eligible for family support supplements under the State plan approved under section 402(a) of the Social Security Act, and/or such types or classes of such parents as the State may specify, may elect to receive benefits under the Child Support Supplement Program in lieu of family support supplements under such plan; and

(2) the Federal Government will pay to the State with respect to families receiving benefits under the Child Support Supplement Program the same amounts as would have been payable with respect to such families under section 403 (or 1118) of the Social Security Act if they were receiving family support supplements under the State plan, calculating the Federal payments without regard to any increased earnings by such families which may arise from their participation in the Program.

(c) Waivers.—The Secretary shall (with respect to the project under this section) waive compliance with any requirements contained in title IV of the Social Security Act which (if applied) would prevent the State from carrying out the project or effectively achieving its purpose.

(d) Required Assurances.—As a condition of approval of the project under this section, the State must provide assurances satisfactory to the Secretary that it will continue to make assistance available to all eligible children in the State who are in need of financial support, and will continue to operate an effective child support enforcement program.

(e) Effective Date and Duration of Project.—The Secretary shall approve or disapprove the application of the State within 90 days after the date of its submission; and if the application as initially submitted is disapproved the Secretary and the State shall negotiate the revisions necessary for its approval. The project under this section shall commence no later than the first day of the third calendar quarter beginning on or after the date of its approval and shall continue for five years.

SEC. 9187. DEMONSTRATION OF FAMILY INDEPENDENCE PROGRAM IN WASHINGTON STATE.

(a) In General.—Upon application by the State of Washington and approval by the Secretary of Health and Human Services, the State of Washington (in this section referred to as the "State") may conduct a demonstration project in accordance with this section for the purpose of testing whether the operation of its Family Independence Program enacted in May 1987 (in this section referred to as the "Program"), as an alternative to the existing AFDC program and the FSP program, would more effectively break the cycle of poverty and provide families with opportunities for economic independence and strengthened family functioning.

(b) Nature of Project.—Under the demonstration project conducted under this section—

(1) every individual eligible for family support supplements under the State plan approved under section 402(a) of the Social Security Act shall be eligible to enroll in the Program, which shall operate simultaneously with the family support program so long as there are individuals who qualify for the latter;

(2) cash assistance shall be furnished in a timely manner to all eligible individuals under the Program (and the State may not make expenditures for services under the Program until it has paid all necessary cash assistance), with no family receiving less in cash benefits than it would have received under the family support program;

(3) individuals may be required to register, undergo assessment, and participate in

work, education, or training under the Program, except that—

(A) work or training may not be required in the case of—

(i) a single parent of a child under 6 months of age, or more than one parent of such a child in a two-parent family,

(ii) a single parent with a child of any age who has received assistance for less than 6 months,

(iii) a single parent with a child under 3 years of age who has received assistance for less than 3 years,

(iv) an individual under 16 years of age or over 64 years of age,

(v) an individual who is incapacitated, temporarily ill, or needed at home to care for an impaired person,

(vi) a woman who is in the third trimester of pregnancy, or

(vii) an individual who has not yet been individually notified in writing of such requirement or of the expiration of his or her exempt status under this subparagraph;

(B) participation in work or training shall in any case be voluntary during the first two years of the Program, and may thereafter be made mandatory only in counties where more than 50 percent of the enrollees can be placed in employment within 3 months after they are job-ready;

(C) in no case shall the work and training aspect of the Program be mandated in any county where the unemployment level is at least twice the State average; and

(D) mandated work shall not include work in any position created by a reduction in the work force, a bona fide labor dispute, the decertification of a bargaining unit, or a new job classification which subverts the intention of the Program;

(4) there shall be no change in existing State law which would eliminate guaranteed benefits or reduce the rights of applicants or enrollees; and

(5) the Program shall include due process guarantees and procedures no less than those which are available to participants in the AFDC or FSP program under Federal law and regulation and under State law.

(c) Waivers.—The Secretary shall (with respect to the project under this section) waive compliance with any requirements contained in title IV of the Social Security Act which (if applied) would prevent the State from carrying out the project or effectively achieving its purpose.

(d) Funding.—(1) The Secretary shall reimburse the State for its expenditures under the Program—

(A) at a rate equal to the Federal matching rate applicable to the State under section 403(a)(1) (or 1118) of the Social Security Act, for cash assistance and child care provided to enrollees;

(B) at a rate equal to the applicable Federal matching rate under section 403(a)(3) of such Act, for administrative expenses; and

(C) at the rate of 75 percent for an evaluation plan approved by the Secretary.

The State shall be required to pay the same portion of all expenditures made for cash assistance and services under the Program as it would be required to pay if such expenditures were made under its State plan approved under section 402(a) of the Social Security Act.

(2) As a condition of approval of the project under this section, the State must provide assurances satisfactory to the Secretary that the total amount of Federal reimbursement over the period of the project will not exceed the anticipated Federal reimbursements (over that period) under the current family support program; but this paragraph shall not prevent the State from claiming reimbursement for additional persons who would qualify for aid under the family support program, for costs attributable to increases in the State's payment standard, or for any other federally-matched benefits or services.

(e) Duration of Project.—(1) The project under this section shall begin on the date on which the first individual is enrolled in the Program, and (subject to paragraph (2)) shall end 5 years after that date.

(2) The project may be terminated at any time, on 6 months written notice, by the State or (upon a finding that the State has materially failed to comply with this section) by the Secretary.

SEC. 9188. STUDY OF HOUSING PROBLEMS OF FSP FAMILIES.

(a) Interagency Working Group.—The Secretary of Health and Human Services and the Secretary of Housing and Urban Development, acting jointly, shall establish, appoint, and convene an Interagency Working Group to study and report on the housing problems of families under the family support program.

(b) Purpose of Study.—It shall be the purpose of the study conducted by the Interagency Working Group to identify and examine the programs being implemented by the Department of Health and Human Services and the Department of Housing and Urban Development which could be better coordinated so as to—

(1) stem the transiency of the welfare population;

(2) upgrade the public and private housing stock occupied by recipients of family support supplements;

(3) require private housing stock for which rentals are paid from family support supplements to meet minimum HUD standards; and

(4) facilitate coordination between the two Departments as well as local welfare agencies and local housing authorities to facilitate the achievement of these objectives.

(c) Report.—(1) Within 6 months after the date of the enactment of this Act the Interagency Working Group shall submit to the Congress a full and complete report on its study under this section. Such report shall include the information and data required by paragraph (2) and such other information, and such recommendations for legislative, administrative, and other action, as the Interagency Working Group considers appropriate.

(2) The report submitted under paragraph (1) shall in any event include—

(A) the total dollar amount of family support supplements spent on housing, by service area;

(B) the demographic characteristics of transient recipients of family support supplements;

(C) an estimate of the number of transient welfare families and the frequency of their transiency;

(D) an estimate of the number of evictions for nonpayment of rent, by service area;

(E) an examination, by service area, of those properties which are occupied by recipients of family support supplements and which do not meet minimum HUD standards;

(F) examples of models and innovative programs which have successfully forged local housing and welfare cooperation to upgrade housing stock and stem welfare population transiency; and

(G) recommendations on ways in which local housing and welfare agencies can economically provide tenant unit management training.

SEC. 9189. REQUIREMENT OF CONTINUED TREATMENT FOR DRUG ADDICTION OR ALCOHOLISM AS CONDITION OF ELIGIBILITY.

Section 402 of the Social Security Act (as amended by the preceding provisions of this subtitle) is further amended by adding at the end thereof the following new subsection:

"(j)(1) If—

"(A) any individual who is a recipient of family support supplements under the State plan has been medically determined to be a drug addict or an alcoholic and is enrolled in a program for the treatment of his or her drug addiction or alcoholism, and

"(B) the institution, facility, or other entity responsible for providing such treatment notifies the State agency that such individual (prior to the satisfactory completion of the treatment) has terminated his or her enrollment or otherwise ceased to participate in such program or to comply with its terms, conditions, and requirements,

then (notwithstanding any other provision of this title) the needs of such individual shall not be taken into account in making the determination with respect to his or her family under subsection (a)(7) until such individual is again enrolled in such a program or a medical determination is made (and notification thereof communicated to the State agency) that he or she is no longer a drug addict or alcoholic.

"(2) Each State agency shall establish such procedures and take such other actions as may be necessary or appropriate to encourage and facilitate the making (by the institutions, facilities, and other entities involved) of the notificiations described in paragraph (1).".

SEC. 9190. INCLUSION OF AMERICAN SAMOA IN FSP PROGRAM.

(a) Inclusion in Program.—Section 1101(a)(1) of the Social Security Act is amended by inserting after the first sentence the following new sentence: "Such term when used in part A of title IV also includes American Samoa.".

(b) Limitation on Payments.—Section 1108(a) of such Act is amended—

(1) by striking out the period at the end of paragraph (3)(F) and inserting in lieu thereof "; and"; and

(2) by inserting immediately after paragraph (3) the following new paragraph:

"(4) for payment to American Samoa shall not exceed $1,000,000 with respect to any fiscal year.".

(c) Effective Date.—The amendments made by this section shall become effective on October 1, 1987.

SEC. 9191. INCREASE IN LIMITATION ON PAYMENTS TO PUERTO RICO, THE VIRGIN ISLANDS, AND GUAM.

(a) In General.—(1) Section 1108(a)(1) of the Social Security Act is amended—

(A) by striking out "or" after the comma at the end of subparagraph (E); and

(B) by striking out subparagraph (F) and inserting in lieu thereof the following new subparagraphs:

"(F) $72,000,000 with respect to each of the fiscal years 1979 through 1987, or

"(G) $81,270,000 with respect to the fiscal year 1988 and each fiscal year thereafter;".

(2) Section 1108(a)(2) of such Act is amended—

(A) by striking out "or" after the comma at the end of subparagraph (E); and

(B) by striking out subparagraph (F) and inserting in lieu thereof the following new subparagraphs:

"(F) $2,400,000 with respect to each of the fiscal years 1979 through 1987, or

"(G) $2,709,000 with respect to the fiscal year 1988 and each fiscal year thereafter;".

(3) Section 1108(a)(3) of such Act (as amended by section 9190 of this Act) is further amended—

(A) by striking out "or" after the comma at the end of subparagraph (E); and

(B) by striking out subparagraph (F) and inserting in lieu thereof the following new subparagraphs:

"(F) $3,300,000 with respect to each of the fiscal years 1979 through 1987, or

"(G) $3,725,000 with respect to the fiscal year 1988 and each fiscal year thereafter;".

(b) Effective Date.—The amendments made by this section shall apply with respect to fiscal years beginning on or after October 1, 1987.

SEC. 9192. TECHNICAL AND CONFORMING AMENDMENTS RELATING TO REPLACEMENT OF AFDC PROGRAM BY FAMILY SUPPORT PROGRAM.

(a) Amendments to Part A of Title IV.—(1) The heading of part A of title IV of the Social Security Act is amended by striking out "Aid to Families With Dependent Children" and inserting in lieu thereof "Family Support Program".

(2) Section 406(b) of such Act is amended by striking out "aid to families with dependent children" where it first appears and inserting in lieu thereof "family support supplements".

(3) The following provisions of part A of title IV of such Act are each amended by striking out "aid to families with dependent children" wherever it appears and inserting in lieu thereof "aid in the form of family support supplements": Paragraphs (4), (7), (10), (11), (14), (17), and (21) of section 402(a); subsections (a), (b), and (f) of section 403; section 405; subsections (b) (the second place it appears), (f), (g), and (h) of section 406; and subsections (b) and (c) of section 407.

(b) Amendments to Other Provisions of the Social Security Act.—(1) The following provisions of the Social Security Act are amended by striking out "aid to families with dependent children" wherever it appears and inserting in lieu thereof "aid in the form of family support supplements": Section 452(a)(10); section 454(4); section 457(d)(3); section 472(h); and section 473(b).

(2) Section 454(16) of such Act is amended by striking out "aid to families with dependent children program" and inserting in lieu thereof "Family Support Program".

(3) Subsections (b) and (c) of section 458 of such Act are each amended by striking out "AFDC" and "non-AFDC" wherever those terms appear and inserting in lieu thereof "FSP" and "non-FSP", respectively.

(c) Other References in General.—Any reference to aid to families with dependent children in any provision of law or regulation other than those provisions of law specified in the preceding subsections of this section shall be deemed to be a reference to family support supplements, or to aid in the form of family support supplements, consistent with the amendments made by the preceding provisions of this subtitle.

Subtitle C—Provisions Relating to Public Assistance and Unemployment Compensation

PART 1—FAMILY SUPPORT AND SSI AMENDMENTS

SEC. 9201. PERMANENT EXTENSION OF DISREGARD OF NONPROFIT ORGANIZATIONS' IN-KIND ASSISTANCE TO SSI AND FSP RECIPIENTS.

Section 2639(d) of the Deficit Reduction Act of 1984 is amended by striking "; but" and all that follows and inserting a period.

SEC. 9202. FRAUD CONTROL UNDER FAMILY SUPPORT PROGRAM.

(a) In General.—Part A of title IV of the Social Security Act (as amended by sections 9101(b) and 9162(a)(2) of this Act) is further amended by adding at the end the following new section:

"FRAUD CONTROL

"Sec. 418. (a) Any State, in the administration of its State plan approved under section 402, may elect to establish and operate a fraud control program in accordance with this section.

"(b) Under any such program, if an individual who is a member of a family applying for or receiving aid under the State plan approved under section 402 is found by a Federal or State court, or pursuant to an administrative hearing meeting requirements determined in regulations of the Secretary, to have intentionally—

"(1) made a false or misleading statement or misrepresented, concealed, or withheld facts, or

"(2) committed any act that constitutes a violation of any requirement imposed by or under the State plan, or of this part or the regulations issued under this part, or of any other provision of Federal or State law relating to the program under this part or the regulations issued thereunder,

for the purpose of establishing or maintaining the family's eligibility for aid under such State plan or of increasing (or preventing a reduction in) the amount of such aid, then the needs of such individual shall not be taken into account in making the determination under section 402(a)(7) with respect to his or her family (A) for a period of 6 months upon the first occasion of any such offense, (B) for a period of 12 months upon the second occasion of any such offense, and (C) permanently upon the third or a subsequent occasion of any such offense.

"(c) The State agency involved shall proceed against any individual alleged to have committed an offense described in subsection (b) either by way of administrative hearings, after notice and an opportunity for a fair hearing as required by section 402(a)(4), or (after giving such notice and an opportunity for such a hearing) by referring the matter to the appropriate authorities for civil or criminal action in a court of law. The State agency shall coordinate its actions under this section with any corresponding actions being taken under the food stamp program in any case where the factual issues involved arise from the same or related circumstances.

"(d) Any period for which sanctions are imposed under subsection (b) shall remain in effect, without possibility of administrative stay, unless and until the finding upon which the sanctions were imposed is subsequently reversed by a court of appropriate jurisdiction; but in no event shall the duration of the period for which such sanctions are imposed be subject to review.

"(e) The sanctions provided under subsection (b) shall be in addition to, and not in substitution for, any other sanctions which may be provided for by law with respect to the offenses involved.".

(b) State Plan Requirement.—Section 402(a) of such Act (as amended by section 9161(a) of this Act) is further amended—

(1) by striking "and" after the semicolon at the end of paragraph (39);

(2) by striking the period at the end of paragraph (40) and inserting "; and"; and

(3) by inserting immediately after paragraph (40) the following new paragraph:

"(41) provide, if the State has elected to establish and operate a fraud control program under section 418, that the State will submit to the Secretary (with such revisions as may from time to time be necessary) a description of and budget for such program, and will operate such program in full compliance with that section.".

(c) Federal Matching.—Section 403(a)(3) of such Act (as amended by section 9102(a) of this Act) is further amended—

(1) by striking "and" after the final comma in subparagraph (C); and

(2) by redesignating subparagraph (D) as subparagraph (E) and inserting after subparagraph (C) the following new subparagraph:

"(D) 75 percent of so much of such expenditures as are for the costs of carrying out a fraud control program under section 418, and".

SEC. 9203. EXCLUSION OF REAL PROPERTY WHEN IT CANNOT BE SOLD.

Section 1613(a) of the Social Security Act is amended by adding at the end the following new sentence: "Nothing in this section shall permit the Secretary to take into account as a resource of an individual any real property which cannot be sold because (i) it is jointly owned (and its sale would cause undue hardship, including but not limited to loss of housing, for the other owner or owners), (ii) its sale is barred by a legal impediment, or (iii) the owner's reasonable efforts to sell it have been unsuccessful.".

SEC. 9204. ADJUSTMENT OF PENALTY WHERE ASSET IS TRANSFERRED FOR LESS THAN FAIR MARKET VALUE.

Section 1613(c) of the Social Security Act is amended—

(1) by inserting immediately after "the exclusions under subsection (a)" in paragraph (1) the following: ", and subject to paragraph (4) of this subsection";

(2) by inserting "(A)" after "within the preceding 24 months if" in paragraph (1);

(3) by inserting before the period at the end of paragraph (1) the following: ", and (B) the fair market value of such resource or interest at the time it was given away or sold (plus the fair market value of any other resources or interests therein which were owned by such individual or eligible spouse within the same 24 months and were given away or sold for that purpose) exceeds the compensation received for such resource or interest (plus the compensation received for all of the other resources and interests so given away or sold) by more than $3,000"; and

(4) by adding at the end the following new paragraph:

"(4) The Secretary shall by regulation provide for suspending the application of paragraph (1) to the extent (in any instance) that the Secretary determines that such suspension is necessary to avoid undue hardship.".

SEC. 9205. EXCLUSION OF INTEREST ON BURIAL ACCOUNTS.

Section 1613(d)(4) of the Social Security Act is amended by adding at the end the following new sentence: "Notwithstanding paragraph (1), the exclusion of interest and appreciation under this paragraph shall apply regardless of whether the amount of the interest or appreciation involved, when added to the other resources of the individual and spouse, would cause such resources to exceed the applicable limit specified in paragraph (1) or (2) of section 1611(a)."

SEC. 9206. DISREGARD OF CERTAIN WELFARE BENEFITS UNDER SSI RETROSPECTIVE ACCOUNTING.

Section 1612(b)(6) of the Social Security Act is amended by inserting before the semicolon at the end the following: "(including payments of aid in the form of family support supplements under a State plan approved under section 402)".

SEC. 9207. TECHNICAL AMENDMENT RELATING TO 1986 AMENDMENT CONCERNING THE TREATMENT OF CERTAIN COUPLES IN MEDICAL INSTITUTIONS.

Effective November 10, 1986, section 1611(e)(5) of the Social Security Act is amended—

(1) by striking "sharing a room or comparable accommodation in a hospital, home, or facility" and inserting "living in the same hospital, home, or facility"; and

(2) by striking "shared such a room or accommodation" and inserting "lived in the same such hospital, home, or facility".

SEC. 9208. EXTENSION OF DEADLINE FOR DISABLED WIDOWS TO APPLY FOR MEDICAID PROTECTION UNDER 1984 AMENDMENTS.

Effective July 1, 1987, section 1634(b)(3) of the Social Security Act is amended by striking "during the 15-month period beginning with the month in which this subsection is enacted" and inserting "no later than July 1, 1988".

SEC. 9209. INCREASED EMERGENCY ADVANCE PAYMENTS FOR PRESUMPTIVELY ELIGIBLE INDIVIDUALS.

Section 1631(a)(4)(A) of the Social Security Act is amended by striking "a cash advance against such benefits in an amount not exceeding $100" and inserting "a cash advance against such benefits in an amount not exceeding the amount of the monthly benefit, including any federally-administered State supplementary payments, that would be payable to an eligible individual with no other income for the first month of such presumptive eligibility".

SEC. 9210. MODIFICATION OF INTERIM ASSISTANCE REIMBURSEMENT PROGRAM.

(a) IN GENERAL.—The first sentence of section 1631(g)(2) of the Social Security Act is amended by striking "at the time the Secretary makes the first payment of benefits" and inserting "(i) at the time the Secretary makes the first payment of benefits with respect to the period described in clause (A) or (B) of paragraph (3) or (ii) as a replacement for a benefit check which has been lost or stolen as described in clause (C) of such paragraph.

(b) DEFINITION OF INTERIM ASSISTANCE.—Section 1631(g)(3) of such Act is amended—

(1) by inserting "(A)" after "basic needs"; and

(2) by inserting before the period at the end the following: ", (B) during the period beginning with the first month for which the individual's benefits (as defined in paragraph (2)) have been terminated or suspended if the individual was subsequently found to have been eligible for such benefits, or (C) during any period for which a benefit check has been issued if such check was lost or stolen before being negotiated by the individual and there has not been a prompt replacement".

(c) EFFECTIVE DATE.—The amendments made by this section shall become effective with the 13th month following the month in which this Act is enacted, or, if sooner, with the first month for which the Secretary of Health and Human Services determines that it is administratively feasible.

SEC. 9211. SPECIAL NOTICE TO BLIND RECIPIENTS.

(a) IN GENERAL.—(1) Section 1631 of the Social Security Act is amended by adding at the end the following new subsection:

"Special Notice to Blind Individuals with Respect to Hearings and Other Official Actions

"(l)(1) In any case where an individual who is applying for or receiving benefits under this title on the basis of blindness is entitled (under subsection (c) or otherwise) to receive notice from the Secretary of any decision or determination made or other action taken or proposed to be taken with respect to his or her rights under this title, such individual shall at his or her election be entitled either (A) to receive a supplementary notice of such decision, determination, or action, by telephone, within 5 working days after the initial notice is mailed, or (B) to receive the initial notice in the form of a certified letter.

"(2) The elections described in paragraph (1) may be made at any time; but an opportunity to make such an election shall in any event be given (A) to every individual who is an applicant for benefits under this title on the basis of blindness, at the time of his or her application, and (B) to every individual who is a recipient of such benefits on the basis of blindness, at the time of each redetermination of his or her eligibility. Such an election, once made by an individual, shall apply with respect to all notices of decisions, determinations, and actions which such individual may thereafter be entitled to receive under this title until such time as it is revoked or changed.".

(2) The amendment made by paragraph (1) shall take effect on October 1, 1987; and the Secretary of Health and Human Services shall take appropriate steps, no later than one year after the date of the enactment of this Act, to ensure that every individual already receiving benefits under title XVI of the Social Security Act on the basis of blindness is given an early opportunity to make the election provided for in section 1631(l) of such Act (as added by such amendment).

(b) STUDY.—The Secretary of Health and Human Services shall study the desirability and feasibility of extending special or supplementary notification rights of the type conferred upon blind individuals by section 1631(l) of the Social Security Act (as added by subsection (a) of this section) to other individuals who may lack the ability to read and comprehend regular written notices, and shall report the results of such study to the Congress, along with such recommendations as may appear appropriate, within 6 months after the date of the enactment of this Act.

SEC. 9212. TECHNICAL AMENDMENTS RELATING TO REHABILITATION SERVICES FOR THE BLIND.

Section 1631(a)(6) of the Social Security Act is amended—

(1) by inserting "blindness (as determined under section 1614(a)(2)) or" before "disability (as determined under section 1614(a)(3))";

(2) by inserting "blindness or other" before "physical or mental impairment"; and

(3) by inserting "blindness and" before "disability benefit rolls" in subparagraph (B).

SEC. 9213. EXTENSION FROM THREE TO TWELVE MONTHS OF THE LENGTH OF TIME THAT AN INDIVIDUAL IN A PUBLIC EMERGENCY SHELTER CAN BE ELIGIBLE FOR SSI.

Section 1611(e)(1)(D) of the Social Security Act is amended by striking "more than three months in any 12-month period" and inserting "for more than 12 consecutive months".

SEC. 9214. EXCLUSION OF UNDERPAYMENTS FROM RESOURCES.

Section 1613(a)(7) of the Social Security Act is amended by inserting after "shall be limited to the first 6 months following the month in which such amount is received" the following: "(or to the first 12 months following such month with respect to any amount so received during 1987 or 1988)".

SEC. 9215. CONTINUATION OF FULL BENEFIT STANDARD FOR INDIVIDUALS TEMPORARILY INSTITUTIONALIZED.

(a) IN GENERAL.—Section 1611(e)(1) of the Social Security Act is amended—

(1) in subparagraph (A), by striking "and (E)" and inserting "(E), and (G)";

(2) in subparagraph (B), by inserting "(subject to subparagraph (G))' ' after "throughout any month"; and

(3) by adding at the end the following new subparagraphs:

"(G) A person may be an eligible individual or eligible spouse for purposes of this title, and subparagraphs (A) and (B) shall not apply, with respect to any particular month throughout which he or she is in such a public institution (other than a correctional institution) or is in a hospital, extended care facility, nursing home, or intermediate care facility receiving payments (with respect to such individual or spouse) under a State plan approved under title XIX, if it is determined in accordance with subparagraph (H) that—

"(i) such person's stay in that institution or facility (or in that institution or facility and one or more other such institutions or facilities during a continuous period of institutionalization) is likely not to exceed 3 months, and the particular month involved is one of the first 3 months throughout which such person is in such an institution or facility during a continuous period of institutionalization; and

"(ii) such person needs to continue to maintain and provide for the expenses of the home or living arrangement to which he or she may return upon leaving the institution or facility.

The benefit of any person under this title (including State supplementation if any) for each month to which this subparagraph applies shall be payable, without interruption of benefit payments and on the date the benefit involved is regularly due, at the rate that was applicable to such person in the month prior to the first month throughout which he or she is in the institution or facility.

"(H) The Secretary shall establish procedures for the determinations required by clauses (i) and (ii) of subparagraph (G), and may enter into agreements for making such determinations (or for providing information or assistance in connection with the making of such determinations) with appropriate State and local public and private agencies and organizations. Such procedures and agreements shall include the provision of appropriate assistance to individuals who, because of their physical or mental condition, are limited in their ability to furnish the information needed in connection with the making of such determinations.".

(b) CONFORMING AMENDMENT.—Section 1901(l) of such Act is amended by striking "1611(e)(1)(E)" and inserting "subparagraph (E) or (G) of section 1611(e)(1)".

(c) EFFECTIVE DATE.—The amendments made by this section shall become effective July 1, 1988.

SEC. 9216. RETENTION OF MEDICAID WHEN SSI BENEFITS ARE LOST UPON ENTITLEMENT TO EARLY WIDOW'S OR WIDOWER'S INSURANCE BENEFITS.

(a) IN GENERAL.—Section 1634 of the Social Security Act is amended by adding at the end the following new subsection:

"(d) If any person—

"(1) applies for and obtains benefits under subsection (e) or (f) of section 202 (or under any other subsection of section 202 if such person is also eligible for benefits under such subsection (e) or (f)) as required by subparagraph (A) of this paragraph, being then at least 60 years of age but not entitled to hospital insurance benefits under part A of title XVIII, and

"(2) is determined to be ineligible (by reason of the receipt of such benefits under section 202) for supplemental security income benefits under this title or for State supplementary payments of the type described in section 1616(a),

such person shall nevertheless be deemed to be a recipient of supplemental security income benefits under this title for purposes of title XIX, so long as he or she (A) would be eligible for such supplemental security income benefits, or such State supplementary payments, in the absence of such benefits under section 202, and (B) is not entitled to hospital insurance benefits under part A of title XVIII.".

(b) NOTICE.—The Secretary of Health and Human Services, acting through the Social Security Administration, shall (within 3 months after the date of the enactment of this Act) issue a notice to all individuals who have attained age 60 but not age 65 as of October 1, 1987, and who received supplemental security income benefits under title XVI of the Social Security Act prior to attaining age 60 but lost those benefits by reason of the receipt of widow's or widower's insurance benefits (or other benefits as described in section 1634(d)(1) of that Act as added by subsection (a) of this section) under title II of that Act. Each such notice shall set forth and explain the provisions of section 1634(d) of the Social Security Act (as so added), and shall inform the individual that he or she should contact the Secretary or the appropriate State agency concerning his or her possible eligibility for medical assistance benefits under such title XIX.

(c) STATE DETERMINATIONS.—Any determination required under section 1634(d) of the Social Security Act with respect to whether an individual would be eligible for benefits under title XVI of such Act (or State supplementary payments) in the absence of benefits under section 202 shall be made by the appropriate State agency.

(d) CONFORMING AMENDMENTS.—Section 1920(a)(2) of the Social Security Act is amended—

(1) by striking "1634" in subparagraph (B) and inserting "1634(c)"; and

(2) by adding at the end the following new subparagraph:

"(C) Section 1634(d) of this Act (relating to individuals who lose eligibility for SSI benefits due to entitlement to early widow's or widower's insurance benefits under section 202(e) or (f) of this Act).".

(e) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply with respect to any individual without regard to whether the determination of his or her ineligibility for supplemental security income benefits by reason of the receipt of benefits under section 202 of the Social Security (as described in section 1634(d)(2) of such Act) occurred before, on, or after the date of the enactment of this Act; but no individual shall be eligible for assistance under title XIX of such Act by reason of such amendments for any period before October 1, 1987.

SEC. 9217. DEMONSTRATION PROGRAM TO ASSIST HOMELESS INDIVIDUALS.

(a) IN GENERAL.—In order to demonstrate and test the feasibility of developing and using special procedures to ensure that all homeless individuals in shelters fully and clearly understand their rights to benefits under the SSI program and under other programs established under the Social Security Act, to provide such individuals with all possible assistance in applying for such benefits and obtaining the information and documentation necessary for that purpose, and to ensure that all such individuals receive the benefits to which they are entitled under such programs, up to 10 States may each create an SSI Outreach Team Project and provide thereunder for the establishment and operation of an SSI Outreach and Eligibility Team, in accordance with this section. Each project approved under this section shall meet such conditions and requirements, consistent with this section, as the Secretary of Health and Human Services (hereinafter referred to as the "Secretary") shall prescribe.

(b) APPLICATION AND APPROVAL OF PROJECTS.—(1) The Secretary shall consider all applications received from States desiring to conduct SSI Outreach Team Projects under this section, and shall approve up to 10 applications involving projects which appear likely to contribute significantly to the achievement of the purpose of this section.

(2) Of the projects approved under paragraph (1), 5 shall commence their operations during the fiscal year 1988 and the remainder shall commence their operations during the fiscal year 1989, as designated by the Secretary at the time of such approval.

(c) FUNDING.—The Secretary shall make grants to the States whose applications are approved under subsection (b) in order to cover the costs incurred by such States in carrying out their SSI Outreach Team Projects, including the costs of staff, administration, transportation, and other necessary expenses. The cost of each such project shall not exceed $250,000 a year, except that the Secretary may in any particular case permit the State to incur costs in excess of such amount (and increase the amount of the grant accordingly), to the extent that appropriated funds are available therefor, if the State satisfactorily demonstrates that higher costs must be incurred in order to properly serve the homeless within the project area.

(d) MEMBERSHIP OF SSI OUTREACH AND ELIGIBILITY TEAMS.—(1) Each State's SSI Outreach and Eligibility Team, under a project approved under this section, shall consist of—

(A) a case worker from the State adult social services agency or from a local adult social services agency within the State, who shall be the team leader, and (if necessary for the effective performance of the team's functions) one additional case worker from such an agency;

(B) a consultative medical examiner who is a physician/psychiatrist either employed by a social services agency described in subparagraph (A) or in private practice, and who has qualified to provide consultative examinations for the Disability Determination Service of the State vocational rehabilitation service;

(C) a disability examiner, from the State Disability Determination Service, who makes determinations in social security and SSI disability cases for the Social Security Administration; and

(D) a claims representative from an office of the Social Security Administration.

(2) Under an agreement which shall be entered into between the Secretary and the State, each of the team members shall be detailed from his or her agency to serve on the team, and while so serving shall retain all of the authority to make decisions and determinations which he or she would have within such agency.

(e) FUNCTIONS OF SSI OUTREACH AND ELIGIBILITY TEAMS.—(1) Each SSI Outreach and Eligibility Team established under a project approved under this section shall—

(A) seek to identify all homeless individuals (not already receiving assistance) who may qualify for benefits under the SSI program or under any other program established under the Social Security Act;

(B) ensure that such individuals fully and clearly understand their rights under the program or programs involved;

(C) assist such individuals in applying for any benefits for which they may be eligible and in obtaining and providing the information and supporting documents which may be necessary for that purpose; and

(D) take any and all other actions which may be necessary or appropriate to ensure that all homeless individuals receive the benefits to which they are entitled.

(2) Each team shall perform its functions at shelters where potential SSI recipients may be found, except with respect to particular functions and in particular cases where the exercise of such functions at other locations is required. To the maximum extent possible, all of the decisions, determinations, and other administrative actions necessary to provide homeless individuals with the benefits to which they are entitled shall be made or taken at the shelters, without requiring such individuals to travel to the governmental agency or entity involved; and the members of the team shall have full authority to make such decisions and determinations and take such administrative actions, at the shelters, in accordance with the authority granted to them by their respective agencies as described in subsection (d)(2).

(3) The team leader (and the additional case worker referred to in subsection (d)(1)(A) if there is one) shall have the specific responsibility of—

(A) determining, prior to the visit of the team to a shelter, the names of the individuals in the shelter who are potentially eligible individuals for SSI purposes, and determining whether they are receiving or have received SSI benefits or other benefits administered by the Social Security Administration (utilizing the claims representative on the team for this purpose);

(B) arranging transportation and (if necessary) accompanying SSI disability applicants to necessary examinations outside of the shelter;

(C) assisting as needed in the initial and subsequent interviews of potential SSI applicants by the claims representative;

(D) tracking and monitoring all decisions made on claims by applicants at the shelters; and

(E) assisting as needed in obtaining additional eligibility-related information about applicants.

(f) WAIVERS.—The Secretary shall waive any and all requirements, restrictions, and limitations (contained in title XVI of the Social Security Act or in regulations prescribed thereunder, or in any other law or regulation) which could prevent or hinder the SSI Outreach and Eligibility Team from carrying out its functions in accordance with subsection (e); but each such team shall otherwise be subject to all of the applicable provisions of such laws and regulations.

(g) INFORMATION AND REPORTS; EVALUATION.—(1) Each State having an approved SSI Outreach Team Project shall periodically submit to the Secretary such information (with respect to the project) as may be necessary to enable the Secretary to evaluate such project in particular and the demonstration program under this section in general.

(2)(A) The Secretary shall from time to time (but not less often than annually) submit to the Congress a full and complete report on the program under this section, together with a detailed evaluation of such program and of the projects thereunder along with such recommendations as may be deemed appropriate. Such evaluation and such recommendations shall be designed to serve as a basis for determining whether (and to what extent) the activities and procedures included in the demonstration program under this section should be continued, expanded, or modified, or converted (with or without changes) into a regular feature of permanent law.

(B) The criteria used by the Secretary in evaluating the program and the projects thereunder shall not be limited to those which would normally be used in evaluating programs and activities of the kind involved, but shall fully take into account the special circumstances of the homeless and their need for personalized attention and follow-through assistance, and shall emphasize the extent to which the procedures and assistance made available to applicants under such projects are recognizing those circumstances and meeting that need.

(h) AUTHORIZATION OF APPROPRIATIONS.—To carry out this section, there are authorized to be appropriated to the Secretary—

(A) the sum of $1,250,000 for the fiscal year 1988;

(B) the sum of $2,500,000 for the fiscal year 1989; and

(C) such sums as may be necessary for each fiscal year thereafter.

SEC. 9218. ELIGIBILITY OF ALIEN FOR SSI WHEN SPONSOR IS AN AGENCY OR ORGANIZATION.

Section 1621 of the Social Security Act is amended—

(1) by inserting "(1)" before "For purposes of determining" in subsection (a), and adding at the end of such subsection the following new paragraph:

"(2) Notwithstanding paragraph (1), if the person who executed the affidavit of support or similar agreement referred to in such paragraph is an agency or other organization, subsection (f) shall apply instead of subsections (b) and (c) and paragraph (1) of this subsection."; and

(2) by redesignating subsection (f) as subsection (g), and inserting after subsection (e) the following new subsection:

"(f) In the case of an individual who is an alien and with respect to whom an agency or organization executed an affidavit of support or similar agreement (as a sponsor of such individual's entry into the United States), such individual shall, for a period of three years after his entry into the United States, be ineligible for benefits under this title unless the Secretary has determined that such sponsoring agency or organization is no longer in existence, or that such agency or organization has been adjudged bankrupt by a court of competent jurisdiction. The determinations referred to in the preceding sentence shall be made by the Secretary based upon such documentary evidence as he may require.".

SEC. 9219. ASSISTANCE TO HOMELESS AFDC FAMILIES.

(a) USE OF VARIABLE SHELTER ALLOWANCES.—Nothing in title IV of the Social Security Act shall prevent a State, and the Secretary of Health and Human Services shall take no action (by regulation or otherwise) to prevent a State, prior to October 1, 1988, from including in its standard of need with respect to applicants for or recipients of aid under the State plan approved under section 402 of such Act (either as a basic or special need) an amount for shelter and related needs that varies according to geographic location, family circumstance, or the type of living accommodation occupied.

(b) LIMITATION ON EMERGENCY ASSISTANCE.—Nothing in title IV of the Social Security Act shall prevent a State, and the Secretary of Health and Human Services shall take no action (by regulation or otherwise) to prevent a State, prior to October 1, 1988, from furnishing emergency assistance without durational limitation under section 406(e) of such Act to families otherwise qualified therefor (with Federal financial participation under section 403(a)(5)), during any period of 12 consecutive months, if such assistance is authorized by the State during a single period of 30 consecutive days in such 12-month period (including assistance in the form of payments to meet needs which arose before such 30-day period or needs such as rent which extend beyond such 30-day period).

(c) DEMONSTRATION PROGRAM.—(1) For the purpose of encouraging landlords to make permanent dwelling units available to needy families that otherwise require emergency assistance under section 406(e) of the Social Security Act in the form of commercial or similar transient accommodations, and of testing a potentially effective method of minimizing or eliminating the need for emergency assistance in the form of commercial or similar transient accommodations, any State which provides for temporary shelter as a special need may submit to the Secretary of Health and Human Services an application to establish and conduct a demonstration project in accordance with this subsection and with such related conditions and requirements as the Secretary shall prescribe. The Secretary is authorized to approve any such application if it appears likely that the proposed project will contribute significantly to the achievement of the purpose specified in the preceding sentence.

(2) A demonstration project under this subsection must—

(A) provide that the State or a designated political subdivision thereof will enter into lease arrangements with the owners of permanent dwellings to provide shelter for families who are eligible for aid under the State plan approved under section 402 of the Social Security Act and are receiving emergency assistance under section 406(e) of that Act;

(B) provide for the payment of rent for each unit in any such dwelling which is occupied by a family under the project—

(i) for the first 12 months of the lease, at the rate that would be paid for comparable commercial or similar transient accommodations in the State under such section 406(e), and

(ii) for the remainder of the lease, at the applicable AFDC housing allowance (as determined without regard to the project or this subsection);

(C) require that the landlord of the unit guarantee the continuation or renewal of the lease for at least 24 months beyond the 12-month period referred to in subparagraph (B)(i); and

(D) include such provisions as may be necessary to ensure that each of the dwellings and dwelling units involved meets all local housing codes, and that in each case the landlord has a record which is free from any evidence of tenant harassment, and from evidence that tenants have been forced out of units in the dwelling (or that units in the dwelling have been reserved) in order to make such units available for the project.

No lease shall be entered into under a project under this subsection after September 30, 1989.

(3) Notwithstanding any provision to the contrary in part A of title IV of the Social Security Act or in regulations thereunder, the full amount of the rent payable for any dwelling unit occupied by a family under the project under this subsection for the first 12 month of the lease (as determined under paragraph (2)(B)(i)) shall constitute an expenditure subject to Federal reimbursement under section 403(a) of such Act and shall constitute the family's proper housing allowance for purposes of part A of title IV of such Act.

(4) As used in this subsection, the term "commercial or similar transient accommodations" means transient accommodations in (A) a commercial hotel, or (B) a similar establishment not directly operated or contracted for by the State or a political subdivision, or by a not-for-profit organization authorized by the State or political subdivision to provide such accommodations.

(d) EFFECTIVE DATE.—Subsections (a) and (b) of this section shall be effective as of October 15, 1987. Subsection (c) of this section shall become effective November 20, 1987.

SEC. 9220. TECHNICAL CORRECTION.

The subsection of section 1631 of the Social Security Act which was added as subsection (j) by section 11006 of the Anti-Drug Abuse Act of 1986 is redesignated as subsection (m) and is moved to the end of such section 1631 so that it appears immediately after subsection (l) thereof (as added by section 9211(a) of this Act); and the heading of such subsection is amended to read as follows:

"Pre-Release Procedures for
Institutionalized Persons".

SEC. 9220A. GENERAL EFFECTIVE DATE.

Except as otherwise specifically indicated, this part and the amendments made by this part shall become effective October 1, 1987.

PART 2—FOSTER CARE AND CHILD WELFARE AMENDMENTS

SEC. 9221. PERMANENT EXTENSION OF FEDERAL FUNDING FOR VOLUNTARILY PLACED FOSTER CARE CHILDREN.

Section 102 of the Adoption Assistance and Child Welfare Act of 1980 is amended—

(1) in subsection (a)(1) (in the matter preceding subparagraph (A)), by striking "and before October 1, 1987,";

(2) in subsection (c), by striking all that follows "September 30, 1979" and inserting a period; and

(3) in subsection (e), by striking ", including such recommendations" and all that follows and inserting a period.

SEC. 9222. 2-YEAR EXTENSION OF FOSTER CARE CEILING AND OF AUTHORITY TO TRANSFER FOSTER CARE FUNDS TO CHILD WELFARE SERVICES.

Section 474 of the Social Security Act is amended—

(1) in paragraphs (1), (2)(A)(iii), (2)(B), (4)(B), and (5)(A)(ii) of subsection (b), by striking "through 1987" and inserting "through 1989";

(2) in paragraph (5)(A) of subsection (b) (in the matter preceding clause (i)), by striking "October 1, 1987" and inserting "October 1, 1989"; and

(3) in paragraphs (1) and (2) of subsection (c), by striking "through 1987" and inserting "through 1989".

SEC. 9223. MOTHER/INFANT FOSTER CARE PROGRAMS.

(a) In General.—Section 475(4) of the Social Security Act is amended—

(1) by inserting "(A)" after "(4)"; and

(2) by adding at the end the following new subparagraph:

"(B) In cases where—

"(i) a child placed in a foster family home or child-care institution is the parent of a son or daughter who is in the same home or institution, and

"(ii) payments described in subparagraph (A) are being made under this part with respect to such child,

the 'foster care maintenance payments' made with respect to such child as otherwise determined under subparagraph (A) shall also include such amounts as may be necessary to cover the cost of the items described in that subparagraph which are provided to or on behalf of such son or daughter.".

(b) Conforming Amendments Relating to Eligibility Under Other Programs.—(1) Section 402(a)(24) of such Act is amended by striking "if an individual is receiving benefits under title XVI, then, for the period for which such benefits are received," and inserting the following: "if an individual is receiving benefits under title XVI or his costs in a foster family home or child-care institution are covered by the foster care maintenance payments being made to his minor parent as provided in section 475(4)(B), then, for the period for which such benefits are received or such costs are so covered,".

(2) Section 472(h) of such Act is amended by adding at the end the following new sentence: "For purposes of the preceding sentence, a child whose costs in a foster family home or child-care institution are covered by the foster care maintenance payments being made with respect to his or her minor parent, as provided in section 475(4)(B), shall be considered a child with respect to whom foster care maintenance payments are made under this section.".

(3)(A) Section 473(a)(2)(A) of such Act is amended—

(i) by striking "or" at the end of clause (i);

(ii) by adding "or" at the end of clause (ii); and

(iii) by adding after clause (ii) the following new clause:

"(iii) is a child whose costs in a foster family home or child-care institution are covered by the foster care maintenance payments being made with respect to his or her minor parent as provided in section 475(4)(B),".

(B) Section 473(a)(2)(B)(iii) of such Act is amended by inserting "or (A)(iii)" after "(A)(ii)".

(4) Section 473(b) of such Act is amended by adding at the end the following new sentence: "For purposes of the preceding sentence, a child whose costs in a foster family home or child-care institution are covered by the foster care maintenance payments being made with respect to his or her minor parent, as provided in section 475(4)(B), shall be considered a child with respect to whom foster care maintenance payments are being made under section 472.".

(c) Effective Date.—The amendments made by this section shall become effective October 1, 1987.

SEC. 9224. TECHNICAL CORRECTIONS.

(a) The last sentence of section 472(a) of the Social Security Act is amended by striking out "473(a)(1)(B)" and inserting in lieu thereof "473(a)(2)(B)".

(b) Section 201(b)(2)(B) of the Immigration Reform and Control Act of 1986 is amended by striking out "Section 473(a)(1) of such Act" and inserting in lieu thereof "Section 473(a)(2) of such Act (as amended by section 1711(a) of the Tax Reform Act of 1986)".

PART 3—CHILD SUPPORT ENFORCEMENT AMENDMENTS

SEC. 9231. CONTINUATION OF CHILD SUPPORT ENFORCEMENT SERVICES TO FAMILIES NO LONGER RECEIVING AFDC.

(a) In General.—(1) Section 457(c) of the Social Security Act is amended to read as follows:

"(c) Whenever a family with respect to which child support enforcement services have been provided pursuant to section 454(4) ceases to receive assistance under part A of this title, the State shall provide appropriate notice to the family and continue to provide such services, and pay any amount of support collected, subject to the same conditions and on the same basis as in the case of the individuals to whom services are furnished pursuant to section 454(6), except that no application or other request to continue services shall be required of a family to which this subsection applies, and the provisions of section 454(6)(B) may not be applied.".

(2) Section 454(5) of such Act is amended by striking "(except as provided in section 457(c))".

(b) Effective Date.—The amendments made by subsection (a) shall become effective upon enactment.

SEC. 9232. CHILD SUPPORT ENFORCEMENT SERVICES REQUIRED FOR CERTAIN FAMILIES RECEIVING MEDICAID.

(a) In General.—Section 454 of the Social Security Act is amended—

(1)(A) by striking "an assignment under section 402(a)(26) of this title" in paragraph (4)(A) and inserting "an assignment under section 402(a)(26) or section 1912";;

(B) by striking ", and" at the end of paragraph (4)(A) and inserting ", or, in the case of such a child with respect to whom an assignment under section 1912 is in effect, the State agency administering the plan approved under title XIX determines pursuant to section 1912(a)(1)(B) that it is against the best interests of the child to do so, and"; and

(C) by inserting "or medical assistance under a State plan approved under title XIX" immediately after "aid in the form of family support supplements" in paragraph (4)(B) (as amended by section 1992(b)(1) of this Act); and

(2)(A) by striking "provide that," and inserting "provide that (A)" in paragraph (5); and

(B) by striking the semicolon at the end of paragraph (5) and inserting "; and (B) in any case in which support payments are collected for an individual pursuant to the assignment made under section 1912, such payments shall be made to the State for distribution pursuant to section 1912, except that this clause shall not apply to such payments for any month after the month in which the individual ceases to be eligible for medical assistance;".

(b) Effective Date.—The amendments made by subsection (a) shall be effective upon enactment.

PART 4—UNEMPLOYMENT COMPENSATION

SEC. 9241. DETERMINATION OF AMOUNT OF FEDERAL SHARE WITH RESPECT TO CERTAIN EXTENDED BENEFITS PAYMENTS.

For the purpose of determining the amount of the Federal payment to any State under section 204(a)(1) of the Federal-State Extended Unemployment Compensation Act of 1970 with respect to the implementation of paragraph (3) of section 202 (a) of such Act (as added by section 1024(a) of the Omnibus Reconciliation Act of 1980), such paragraph shall be considered to apply only with respect to weeks of unemployment beginning after October 31, 1981, except that for any State in which the State legislature did not meet in 1981, it shall be considered to apply for such purpose only with respect to weeks of unemployment beginning after October 31, 1982.

SEC. 9242. DEMONSTRATION PROGRAM TO PROVIDE SELF-EMPLOYMENT ALLOWANCES FOR ELIGIBLE INDIVIDUALS.

(a) In General.—The Secretary of Labor (hereinafter in this section referred to as the "Secretary") shall carry out a demonstration program under this section for the purpose of making available self-employment allowances to eligible individuals. To carry out such program, the Secretary shall enter into agreements with three States that—

(1) apply to participate in such program, and

(2) demonstrate to the Secretary that they are capable of implementing the provisions of the agreement.

(b) Selection of States.—(1) In determining whether to enter into an agreement with a State under this section, the Secretary shall take into consideration at least—

(A) the availability and quality of technical assistance currently provided by agencies of the State to the self-employed;

(B) existing local market conditions and the business climate for new, small business enterprises in the State;

(C) the adequacy of State resources to carry out a regular unemployment compensation program and a program under this section;

(D) the range and extent of specialized services to be provided by the State to individuals covered by such an agreement;

(E) the design of the evaluation to be applied by the State to the program; and

(F) the standards which are to be utilized by the State for the purpose of assuring that individuals who will receive self-employment assistance under this section will have sufficient experience (or training) and ability to be self employed.

(2) The Secretary may not enter into an agreement with any State under this section unless the Secretary makes a determination that the State's unemployment compensation program has adequate reserves.

(c) PROVISIONS OF AGREEMENTS.—Any agreement entered into with a State under this section shall provide that—

(1) each individual who is an eligible individual with respect to any benefit year beginning during the three-year period commencing on the date on which such agreement is entered into shall receive a self-employment allowance;

(2) self-employment allowances made to any individual under this section shall be made in the same amount, on the same terms, and subject to the same conditions as regular or extended unemployment compensation, as the case may be, paid by such State; except that—

(A) State and Federal requirements relating to availability for work, active search for work, or refusal to accept suitable work shall not apply to such individual; and

(B) such individual shall be considered to be unemployed for purposes of the State and Federal laws applicable to unemployment compensation,

as long as the individual meets the requirements applicable under this section to such individual;

(3) to the extent that such allowances are made to an individual under this section, an amount equal to the amount of such allowances shall be charged against the amount that may be paid to such individual under State law for regular or extended unemployment compensation, as the case may be;

(4) the total amount paid to an individual with respect to any benefit year under this section may not exceed the total amount that could be paid to such individual for regular or extended unemployment compensation, as the case may be, with respect to such benefit year under State law;

(5) the State shall implement a program that—

(A) is approved by the Secretary;

(B) will not result in any cost to the Unemployment Trust Fund established by section 904(a) of the Social Security Act in excess of the cost which would have been incurred by such State and charged to such Fund if the State had not participated in the demonstration program under this section;

(C) is designed to select and assist individuals for self-employment allowances, monitor the individual's self-employment, and provide, as described in subsection (d), to the Secretary a complete evaluation of the use of such allowances; and

(D) otherwise meets the requirements of this section; and

(6) the State, from its general revenue funds, shall—

(A) repay to the Unemployment Trust Fund any cost incurred by the State and charged to the Fund which exceeds the cost which would have been incurred by such State and charged to such Fund if the State had not participated in the demonstration program under this section; and

(B) in any case in which any excess cost described in subparagraph (A) is not repaid in the fiscal year in which it was charged to the Fund, pay to the Fund an amount of interest, on the outstanding balance of such excess cost, which is sufficient (when combined with any repayment by the State described in subparagraph (A)) to reimburse the Fund for any loss which would not have been incurred if such excess cost had not been incurred.

(d) EVALUATION.—(1) Each State that enters into an agreement under this section shall carry out an evaluation of its activities under this section. Such evaluation shall be based on an experimental design with random assignment between a treatment group and a control group with not more than one-half of the individuals receiving assistance at any one time being assigned to the treatment group.

(2) The Secretary shall use the data provided from such evaluation to analyze the benefits and the costs of the program carried out under this section, to formulate the reports under subsection (g), and to estimate any excess costs described in subsection (c)(6)(A).

(e) FINANCING.—(1) Notwithstanding section 303(a)(5) of the Social Security Act and section 3304(a)(4) of the Internal Revenue Code of 1986, amounts in the unemployment fund of a State may be used by a State to make payments (exclusive of expenses of administration) for self-employment allowances made under this section to an individual who is receiving them in lieu of regular unemployment compensation.

(2) In any case in which a self-employment allowance is made under this section to an individual in lieu of extended unemployment compensation under the Federal-State Extended Unemployment Compensation Act of 1970, payments made under this section for self-employment allowances shall be considered to be compensation described in section 204(a)(1) of such Act and paid under State law.

(f) LIMITATION.—No funds made available to a State under title III of the Social Security Act or any other Federal law may be used for the purpose of administering the program carried out by such State under this section.

(g) REPORT TO CONGRESS.—(1) Not later than two years after the date of the enactment of this Act, the Secretary shall submit an interim report to the Congress on the effectiveness of the demonstration program carried out under this section. Such report shall include—

(A) information on the extent to which this section has been utilized;

(B) an analysis of any barriers to such utilization; and

(C) an analysis of the feasibility of extending the provisions of this section to individuals not covered by State unemployment compensation laws.

(2) Not later than four years after the date of the enactment of this Act, the Secretary shall submit a final report to the Congress on such program.

(h) FRAUD AND OVERPAYMENTS.—(1) If an individual knowingly has made, or caused to be made by another, a false statement or representation of a material fact, or knowingly has failed, or caused another to fail, to disclose a material fact, and as a result of such false statement or representation or of such nondisclosure such individual has received payment under this section to which he was not entitled, such individual shall be—

(A) ineligible for further assistance under this section; and

(B) subject to prosecution under section 1001 of title 18, United States Code.

(2)(A) If any person received any payment under this section to which such person was not entitled, the State is authorized to require such person to repay such assistance; except that the State agency may waive such repayment if it determines that—

(i) the providing of such assistance or making of such payment was without fault on the part of such person; and

(ii) such repayment would be contrary to equity and good conscience.

(B) No repayment shall be required under subparagraph (A) until a determination has been made, notice thereof and an opportunity for a fair hearing has been given to the person, and the determination has become final. Any determination under such subparagraph shall be subject to review in the same manner and to the same extent as determinations under the State unemployment compensation law, and only in that manner and to that extent.

(i) DEFINITIONS.—For purposes of this section—

(1) the term "eligible individual" means, with respect to any benefit year, an individual who—

(A) is eligible to receive regular or extended compensation under the State law during such benefit year;

(B) is likely to receive unemployment compensation for the maximum number of weeks that such compensation is made available under the State law during such benefit year;

(C) submits an application to the State agency for a self-employment allowance under this section; and

(D) meets applicable State requirements,

except that not more than (i) 3 percent of the number of individuals eligible to receive regular compensation in a State at the beginning of a fiscal year, or (ii) the number of persons who exhausted their unemployment compensation benefits in the fiscal year ending before such fiscal year, whichever is lesser, may be considered as eligible individuals for such State for purposes of this section during such fiscal year;

(2) the term "self-employment allowance" means compensation paid under this section for the purpose of assisting an eligible individual with such individual's self-employment; and

(3) the terms "compensation", "extended compensation", "regular compensation", "benefit year", "State", and "State law", have the respective meanings given to such terms by section 205 of the Federal-State Extended Unemployment Compensation Act of 1970.

(j) EFFECTIVE DATE.—This section shall become effective on October 1, 1987.

SEC. 9243. RATE OF FUTA TAX.

(a) IN GENERAL.—Paragraphs (1) and (2) of section 3301 of the Federal Unemployment Tax Act (26 U.S.C. 3301) are amended to read as follows:

"(1) 6.2 percent in the case of calendar years 1988, 1989, and 1990; or

"(2) 6.0 percent in the case of calendar year 1991 and each calendar year thereafter;".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to wages paid on or after January 1, 1988.

SEC. 9244. TRANSFER OF FUNDS INTO THE FEDERAL UNEMPLOYMENT ACCOUNT AND THE EXTENDED UNEMPLOYMENT COMPENSATION ACCOUNT.

(a) IN GENERAL.—Section 901 of the Social Security Act (42 U.S.C. 1101) is amended by adding at the end the following new subsection:

"transfers for calendar years 1988, 1989, and 1990

"(g)(1) With respect to calendar years 1988, 1989, and 1990, the Secretary of the Treasury shall transfer from the employment security administration account—

"(A) to the Federal unemployment account an amount equal to 50 percent of the amount of tax received under section 3301(1) of the Federal Unemployment Tax Act which is attributable to the difference in the tax rates between paragraphs (1) and (2) of such section; and

"(B) to the extended unemployment compensation account an amount equal to 50 percent of such amount of tax received.

"(2) Transfers under this subsection shall be as of the beginning of the month succeeding the month in which the moneys were credited to the employment security administration account pursuant to subsection (b)(2) with respect to wages paid during such calendar years.".

(b) INCREASE IN THE LIMITATION ON THE AMOUNTS IN SUCH ACCOUNTS.—(1) Section 902(a)(2) of such Act (42 U.S.C. 1102(a)(2)) is amended by striking out "one-eighth" and inserting in lieu thereof "three-eighths".

(2) Section 905(b)(2)(B) of such Act (42 U.S.C. 1105(b)(2)(B)) is amended by striking out "one-eighth" and inserting in lieu thereof "three-eighths".

(c) CONFORMING AMENDMENTS.—(1) Section 905(b)(1) of such Act (42 U.S.C. 1105(b)(1)) is amended by striking out the last sentence thereof.

(2) Section 901(c)(3)(C) of such Act (42 U.S.C. 1101(c)(3)(C)) is amended by striking out "(i)" and all that follows through the period and inserting in lieu thereof "a tax rate of 0.6 percent.".

(d) EFFECTIVE DATE.—The amendments made by this section shall become effective on the date of the enactment of this Act.

SEC. 9245. INTEREST ON ADVANCES TO THE FEDERAL UNEMPLOYMENT ACCOUNT AND THE EXTENDED UNEMPLOYMENT COMPENSATION ACCOUNT.

(a) EXTENDED UNEMPLOYMENT COMPENSATION ACCOUNT.—Section 905(d) of the Social Security Act (42 U.S.C. 1105(d)) is amended—

(1) by striking out "(without interest)" and ", without interest,"; and

(2) by adding the following new sentence at the end: "Amounts appropriated as repayable advances for purposes of this subsection shall bear interest at a rate equal to the average rate of interest, computed as of the end of the calendar month next preceding the date of such advance, borne by all interest bearing obligations of the United States then forming part of the public debt; except that in cases in which such average rate is not a multiple of one-eighth of 1 percent, the rate of interest shall be the multiple of one-eighth of 1 percent next lower than such average rate.".

(b) FEDERAL UNEMPLOYMENT ACCOUNT.—Section 1203 of such Act (42 U.S.C. 1323) is amended—

(1) by striking out "(without interest)" and ", without interest,"; and

(2) by adding the following new sentence at the end: "Amounts appropriated as repayable advances for purposes of this subsection shall bear interest at a rate equal to the average rate of interest, computed as of the end of the calendar month next preceding the date of such advance, borne by all interest bearing obligations of the United States then forming part of the public debt; except that in cases in which such average rate is not a multiple of one-eighth of 1 percent, the rate of interest shall be the multiple of one-eighth of 1 percent next lower than such average rate.".

(c) CONFORMING AMENDMENT.—Section 903(a)(1) of such Act (42 U.S.C. 1103(a)(1)) is amended by inserting "and interest" after "all advances".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to advances made on or after the date of the enactment of this Act.

SEC. 9246. CREDITING OF INTEREST TO THE FEDERAL UNEMPLOYMENT ACCOUNT EARNED ON ADVANCES TO THE STATES.

(a) IN GENERAL.—Section 1202 of the Social Security Act is amended by adding at the end the following new subsection:

"(c) Interest paid by States in accordance with this section shall be credited to the Federal unemployment account established by section 904(g) in the Unemployment Trust Fund.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to interest paid on advances made on or after the date of the enactment of this Act.

Subtitle D—Medicare Program

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PART 1—PROVISIONS RELATING TO PART A OF THE MEDICARE PROGRAM

SUBPART A—PAYMENT FOR SERVICES

SEC. 9301. HOSPITAL PROSPECTIVE PAYMENT RATES.

(a) BASIC UPDATE FACTOR FOR PPS HOSPITALS.—

(1) IN GENERAL.—Clause (i) of section 1886(b)(3)(B) of the Social Security Act (42 U.S.C. 1395ww(b)(3)(B)) is amended by striking "and for fiscal year 1988" and all that follows through the end of such clause and inserting the following:

"(III) for fiscal year 1988, 1.0 percent,

"(IV) for fiscal year 1989, the market basket percentage increase minus 4.2 percentage points,

"(V) for fiscal year 1990, the market basket percentage increase minus 1.7 percentage points, and

"(VI) for each subsequent fiscal year, the percentage determined by the Secretary pursuant to subsection (e)(4)."

(2) CONFORMING AMENDMENT.—Section 1886(e)(4) of such Act (42 U.S.C. 1395ww(e)(4)) is amended by inserting ", 1989, and 1990" after "fiscal year 1988".

(b) ADJUSTMENT FOR HOSPITALS IN LARGE URBAN AREAS OR IN RURAL AREAS.—

(1) IN GENERAL.—Section 1886(d)(3) of such Act (42 U.S.C. 13955ww(d)(3)) is amended—

(A) in the matter before subparagraph (A)—

(i) by inserting "occurring before October 1, 1987," after "such discharges", and

(ii) by striking "urban or rural areas" and inserting "large urban, other urban, or rural areas";

(B) in first sentence of subparagraph (A)—

(i) by striking "The Secretary" and inserting "(i) For discharges occurring in a fiscal year beginning before October 1, 1987, the Secretary",

(ii) by striking "each of fiscal years 1985, 1986, 1987, and 1988" and inserting "the fiscal year involved", and

(iii) by striking ", and adjusted for subsequent fiscal years in accordance with the final determination of the Secretary under subsection (e)(4), and adjusted to reflect the most recent case-mix data available,";

(C) by inserting after the first sentence of subparagraph (A) the following:

"(ii)(I) For discharges occurring in fiscal years 1988, 1989, and 1990, the Secretary shall compute average standardized amounts for hospitals located in large urban areas and for hospitals located in rural areas, in the United States and in each region, equal to the respective average standardized amounts computed for the previous fiscal year under this subparagraph increased by the sum of 1 percent plus the applicable percentage increase under subsection (b)(3)(B) for the fiscal year involved.

"(II) For discharges occurring in fiscal years 1988, 1989, and 1990, the Secretary shall compute average standardized amounts for hospitals located in urban areas (other than large urban areas), in the United States and in each region, equal to the respective average standardized amounts computed for the previous fiscal year under this subparagraph increased by the applicable percentage increase under subsection (b)(3)(B) for the fiscal year involved.

"(III) For discharges occurring in a fiscal year after fiscal year 1990, the Secretary shall compute average standardized amounts for hospitals located in large urban areas, for hospitals located in other urban areas, and for hospitals located in rural areas, in the United States and in each region, equal to the respective average standardized amounts computed for the previous fiscal year under this subparagraph increased by the applicable percentage increase under subsection (b)(3)(B) for the fiscal year involved.

"(iii) Average standardized amounts computed under this paragraph shall be adjusted to reflect the most recent case-mix data available.

"(iv) For purposes of this section, the term 'large urban area' means, with respect to a fiscal year, an area which the Secretary determines (in the publication described in subsection (e)(5)(B) before the fiscal year) is an urban area which has a population of more than 1,000,000 (as determined by the Secretary based on the most recent available population data published by the Bureau of the Census).";

(D) in the second sentence of subparagraph (A)—

(i) by redesignating such sentence as clause (v),

(ii) by striking "urban and rural averages" and inserting "averages for hospitals in large urban areas, other urban areas, and rural areas", and

(iii) by inserting "for urban and rural areas" after "discharge weighting"; and

(E) in subparagraph (D)(i)—

(i) by inserting "(or, for discharges occurring on or after November 20, 1987, in a large urban area or other urban area)" after "urban area" the first place it appears, and

(ii) by inserting "such" before "urban area" the second place it appears.

(2) CONFORMING AMENDMENTS.—Section 1886(d)(9)(A) of such Act (42 U.S.C. 1395ww(d)(9)(A)) is amended—

(A) in clause (ii)(I), by striking "an urban area, and" and inserting "a large urban area,";

(B) by redesignating subclause (II) of clause (ii) as subclause (III); and

(C) by inserting after subclause (I) of clause (ii) the following new subclause:

"(II) such rate for hospitals located in other urban areas, and".

(3) TRANSITION.—For purposes of subclauses (I) and (II) of section 1886(d)(3)(A)(ii) of the Social Security Act for fiscal year 1988, in computing the average standardized amount for hospitals located in a large urban area or other urban area, the reference to "the respective average standardized amount computed for the previous fiscal year under this subparagraph" is deemed a reference to the average standardized amount computed for hospitals located in an urban area for fiscal year 1987.

(c) ADJUSTMENT FOR NON-LABOR COSTS.—

(1) IN GENERAL.—Section 1886(d)(3) of such Act (42 U.S.C. 1395ww(d)(3)) is amended by adding at the end the following new subparagraph:

"(F) ADJUSTING FOR DIFFERENT STATE NON-WAGE PRICE LEVELS.—(i) Subject to clause (ii), the Secretary shall adjust the proportion (as estimated by the Secretary from time to time) of hospitals' costs which are attributable to costs other than wages and wage-related costs, of the DRG prospective payment rates computed under subparagraph (D)—

"(I) for discharges occurring on or after November 20, 1987, and before October 1, 1990, by a factor (established by the Secretary) reflecting the Statewide average (weighted by the number of discharges in each area) of the factors established under subparagraph (E) for areas in the State in which the hospital is located compared to the national average (so weighted) of such factors; and

"(II) for discharges occurring on or after October 1, 1990, for area differences in hospital non-wage price levels by a factor (established by the Secretary) reflecting the relative level of prices of goods and services (other than personnel costs) in the geographic area of the hospital compared to the national average level of such prices.

"(ii)(I) The amount of an increase or decrease under clause (i)(I) for a hospital for a discharge may not exceed 1 percent of the payment rate established for such discharge under this paragraph and (if applicable) subparagraphs (B) and (F) of paragraph (5) (relating to additional payments for indirect costs of medical education and for disproportionate share hospitals).

"(II) To the extent that this subparagraph results in a net increase or decrease in the aggregate payment amounts otherwise provided under this subsection, the Secretary shall provide for such equal proportional adjustment of the average standardized amounts as is necessary to assure that this subparagraph does not result in a net increase or decrease in the aggregate payment amounts provided under this subsection in the absence of this subparagraph.".

(2) CONFORMING AMENDMENT.—Section 1886(d)(5)(C)(iv) of such Act (42 U.S.C. 1395ww(d)(5)(C)(iv)) is amended by striking "The Secretary" and inserting "After taking into account any adjustment made under paragraph (3)(F), the Secretary".

(3) REPORT.—The Secretary of Health and Human Services shall report to Congress, not later than October 1, 1989, on the development of the factors to be used under section 1886(d)(3)(F)(i)(II) of the Social Security Act (as amended by paragraph (1) of this subsection).

(d) INCREASE IN DISPROPORTIONATE SHARE ADJUSTMENT AND REDUCTION IN INDIRECT MEDICAL EDUCATION PAYMENTS.—

(1) IN GENERAL.—Section 1886(d)(5) of such Act (42 U.S.C. 1395ww(d)(5)) is amended—

(A) in subparagraph (B), by striking ".405" and inserting ".3975"; and

(B) in subparagraph (F)—

(i) in clause (iii), by striking "15 percent" and inserting "20 percent", and

(ii) in clause (iv)(I), by striking "the lesser of 15 percent, or".

(2) BUDGET NEUTRALITY.—The Secretary of Health and Human Services shall provide for an equal proportional adjustment of the prospective payment rates established under section 1886(d)(3) of the Social Security Act for discharges occurring during fiscal year 1988 in a manner that assures that the amendments made by paragraph (1) do not result in a net increase or decrease in the aggregate amount of payments that would have been made under such section in the absence of such amendments.

(e) UPDATE FOR PPS-EXEMPT HOSPITALS.—

(1) IN GENERAL.—Section 1886(b)(3)(B) of such Act (42 U.S.C. 1395ww(b)(3)(B)) is amended—

(A) in clause (i), by striking "subparagraph (A) for 12-month cost reporting periods beginning during a fiscal year and for purposes of",

(B) in clause (ii), by striking "(ii) For purposes of clause (i)" and inserting "(iii) For purposes of this subparagraph", and

(C) by inserting after clause (i) the following new clause:

"(ii) For purposes of subparagraph (A), the 'applicable percentage increase' for 12-month cost reporting periods beginning during—

"(I) fiscal year 1986, is 1/2 percent,

"(II) fiscal year 1987, is 1.15 percent,

"(III) fiscal year 1988, is the market basket percentage increase minus 2.0 percentage points, and

"(IV) subsequent fiscal years is the market basket percentage increase.".

(2) CONFORMING AMENDMENT.— The second sentence of section 1886(e)(4) of such Act is amended by striking ", but may be different" and all that follows up to the period.

(f) EFFECTIVE DATES.—(1) The amendments made by subsections (a) through (d) shall apply to payments for discharges occurring on or after November 20, 1987.

(2) The amendments made by subsection (e) shall apply 51 days after the beginning of cost reporting periods beginning on or after October 1, 1987.

SEC. 9302. RURAL HOSPITALS.

(a) REVISION OF STANDARDS FOR INCLUDING A RURAL COUNTY IN AN URBAN AREA.—

(1) TREATING CERTAIN RURAL HOSPITALS ADJACENT TO URBAN AREAS AS URBAN HOSPITALS.—Section 1886(d)(8) of the Social Security Act (42 U.S.C. 1395ww(d)(8)) is amended—

(A) by redesignating clauses (i) and (ii) of subparagraphs (A) and (B) as subclauses (I) and (II), respectively,

(B) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively,

(C) by inserting "(A)" after "(8)", and

(D) by adding at the end the following new subparagraph:

"(B) The Secretary shall treat a hospital located in a rural county adjacent to one or more urban areas as being located in the urban metropolitan statistical area to which the greatest number of workers in the county commute, if—

"(i) the rural county would otherwise be considered part of an urban area but for the fact that the rural county does not meet the standard relating to the rate of commutation between the rural county and the central county or counties of any adjacent urban area;

"(ii) either (I) the number of residents of the rural county who commute for employment to the central county or counties of any adjacent urban area is equal to at least 15 percent of the number of residents of the rural county who are employed, or (II) the sum of the number of residents of the rural county who commute for employment to the central county or counties of any adjacent urban area and the number of residents of any adjacent urban area who commute for employment to the rural county is at least equal to 20 percent of the number of residents of the rural county who are employed;

"(iii) the average hospital wage level in the rural county is at least equal to the average wages paid for hospital workers in all the rural counties in the State; and

"(iv) the average hospital wage level in the rural county is at least equal to 85 percent of the average hospital wage level in the urban area to which the greatest number of workers in the rural county commute.".

(2) Budget neutrality.—The Secretary of Health and Human Services shall provide for an equal proportional adjustment of the prospective payment rates established under section 1886(d)(3) of the Social Security Act for discharges occurring during fiscal year 1988 in a manner that assures that the amendments made by paragraph (1) do not result in a net increase or decrease in the aggregate amount of payments that would have been made under such section in the absence of such amendments.

(3) Location of hospital.—For purposes of section 1886 of the Social Security Act, Watertown Memorial Hospital in Watertown, Wisconsin is deemed to be located in Jefferson County, Wisconsin.

(4) Effective date.—This section, and the amendment made by paragraph (1), shall apply to discharges occurring on or after November 20, 1987.

(b) Expansion of Swing-Bed Program.—

(1) Expansion to hospitals with fewer than 100 beds.—Section 1883(b)(1) of the Social Security Act (42 U.S.C. 1395tt(b)(1)) is amended by striking "50 beds" and inserting "100 beds".

(2) Requirements for hospitals with more than 49 beds.—Section 1883(d) of such Act (42 U.S.C. 1395dd(d)) is amended—

(A) by inserting "(1)" after "(d)", and

(B) by adding at the end the following new paragraphs:

"(2)(A) Any agreement under this section with a hospital with more than 49 beds shall provide that no payment may be made for extended care services which are furnished to an extended care patient after the end of the 5-day period (excluding weekends and holidays) beginning on an availability date for a skilled nursing facility, unless the patient's physician certifies, within such 5-day period, that the transfer of that patient to that facility is not medically appropriate on the availability date. The Secretary shall prescribe regulations to provide for notice by skilled nursing facilities of availability dates to hospitals which have agreements under this section and which are located within the same geographic region (as defined by the Secretary).

"(B) In this paragraph:

"(i) The term 'availability date' means, with respect to an extended care patient at a hospital, any date on which a bed is available for the patient in a skilled nursing facility located within the geographic region in which the hospital is located.

"(ii) The term 'extended care patient' means an individual being furnished extended care services at a hospital pursuant to an agreement with the Secretary under this section.

"(3) In the case of an agreement for a cost reporting period under this section with a hospital that has more than 49 beds, payment may not be made in the period for patient-days of extended care services that exceed 15 percent of the product of the number of days in the period and the average number of licensed beds in the hospital in the period.".

(3) Report.—The Secretary of Health and Human Services shall report to Congress, not later than February 1, 1989, concerning—

(A) the proportion of admissions to hospitals for extended care services under section 1883 of the Social Security Act which are denied or approved by a peer review organization under section 1154(a)(1) of such Act, and

(B) on recommendations for methods of encouraging hospitals that—

(i) have a low occupancy rate,

(ii) are eligible to enter (but have not entered) into an agreement under section 1883 of such Act, and

(iii) are located in areas with a need for additional providers of extended care services,

to enter into such agreements.

(4) Effective date.—The amendments made by paragraphs (1) and (2) shall apply to agreements under section 1883 of the Social Security Act entered into after September 30, 1987.

(c) Clarification of Sole Community Provider Status.—

(1) Revision of volume adjustment provision.—Section 1886(d)(5)(C)(ii) of the Social Security Act (42 U.S.C. 1395ww(d)(5)(C)(ii)) is amended—

(A) by inserting "(I)" after "(ii)",

(B) by striking the second sentence, and

(C) by adding at the end the following new subclause:

"(II) In the case of a hospital that is a sole community hospital or that meets the criteria established to be treated as such a hospital and that experiences, in a cost reporting period (beginning before October 1, 1990), compared to the previous cost reporting period, a decrease of more than 5 percent in its total number of inpatient cases due to circumstances beyond its control, the Secretary shall provide for such adjustment to the payment amounts provided under this subsection (other than under paragraph (9)) as may be necessary to fully compensate the hospital for the fixed costs it incurs in the period in providing inpatient hospital services, including the reasonable cost of maintaining core staff and services.".

(2) Study.—The Prospective Payment Assessment Commission shall conduct a study of the appropriateness of the criteria established for the designation of sole community hospitals under section 1886(d)(5)(C)(ii) of the Social Security Act. The Commission shall report to Congress on the results of such study in its report to the Congress under section 1886(e)(3)(A) of such Act due on March 1, 1988.

(3) Clarification of criteria.—The Secretary of Health and Human Services shall issue, before October 1, 1987, regulations for implementation of the volume adjustment described in the second sentence of section 1886(d)(5)(C)(ii)(I) of the Social Security Act for sole community hospitals, in order to clarify the interpretation of the criteria used in granting such an adjustment (including those circumstances that will be treated as circumstances beyond a hospital's control) and to simplify the process of applying for such adjustment.

(4) Effective date.—The amendments made by paragraph (1) shall apply to cost reporting periods beginning on or after the date of the enactment of this Act.

(d) Medicare Classification of Rural Referral Centers.—

(1) Extension of classification.—

(A) In general.—The first sentence of section 1886(d)(5)(C)(i)(I) of the Social Security Act (42 U.S.C. 1395ww(d)(5)(C)(i)(I)) is amended by striking "500" and inserting "275".

(B) Budget neutrality.—The Secretary of Health and Human Services shall provide for an equal proportional adjustment of the prospective payment rates established under section 1886(d)(3) of the Social Security Act for hospitals located in rural areas for discharges occurring on or after November 20, 1987, and before October 1, 1988, in a manner that assures that the amendment made by subparagraph (A) does not result in a net increase or decrease in the aggregate amount of payments that would have been made under such section in the absence of such amendment.

(C) Effective date.—The amendment made by subparagraph (A) shall apply to discharges occurring on or after November 20, 1987.

(2) Study.—

(A) In general.—The Secretary of Health and Human Services shall provide for a study of the criteria used for the classification of hospitals as rural referral centers under section 1886(d)(5)(C)(i) of the Social Security Act. The study shall include an examination of—

(i) the extent that hospitals classified as rural referral centers receive more or less than their actual costs of providing inpatient hospital services, and

(ii) the appropriateness of providing for payment for such centers at a rate other than the rate for a hospital located in an other urban area.

(B) Report.—The Secretary shall report to Congress, by not later than March 1, 1989, on the study conducted under subparagraph (A) and on recommendations for the criteria that should be applied, under section 1886(d)(5)(C)(i) of the Social Security Act, for the classification of hospitals as rural referral centers for cost reporting periods beginning on or after October 1, 1989.

(e) Improving the Definition of Hospital Labor Market Areas.—

(1) Adjustment for high cost hospitals.—Section 1886(d)(8) of the Social Security Act, as amended by subsection (a)(1), is amended by adding at the end the following new subparagraph:

"(C) For purposes of paragraph (3)(E) and subparagraphs (B)(vi) and (C)(iv) of paragraph (9), for hospital discharges occurring on or after November 20, 1987, and before October 1, 1990, in the case of a hospital that—

"(i) is located in a rural area in a county (or equivalent area) that is immediately adjacent to an urban area,

"(ii) applies to the Secretary (in a form and manner specified by the Secretary) for treatment under this subparagraph, and

"(iii) demonstrates to the satisfaction of the Secretary that (I) the hospital's wages and wage-related costs (determined on an hourly, per full-time equivalent employee, or other basis specified by the Secretary, which takes into account differences in occupational mix between the hospital and the hospitals in the adjacent urban area) are at least equal to the 25th percentile (or median, in the case of an adjacent urban area with less than 4 hospitals) of the distribution of such costs in an adjacent urban area,

the hospital shall be considered to be located in that adjacent urban area. If, with respect to a fiscal year, the previous sentence applies, the Secretary shall provide for an equal proportional adjustment in payments made under this subsection for discharges in the following fiscal year to assure that implementation of this subparagraph does not result in any increase or decrease in the amount of payments otherwise made under this subsection.".

(2) Analysis of wage level variation.—

(A) Analysis and report.—The Secretary of Health and Human Services shall analyze the distribution of wage levels within and among existing areas used to make the area wage level adjustment under section 1886(d)(3)(F) of the Social Security Act. The Secretary shall include in such analysis a review of the effect of variations in the occupational mix of hospital employees and different levels of fringe benefits upon hospital costs. The Secretary shall report to Congress, by not later than September 30, 1989, on the analysis under this subparagraph.

(B) Redefinition of hospital labor market areas.—For purposes of the area wage level adjustment under section 1886(d)(3)(F) of the Social Security Act, the Secretary shall redefine, for discharges occurring on or after October 1, 1990, hospital labor market areas based on the analysis under subparagraph (A).

(f) Demonstration Projects to Maintain Access to Isolated and Financially Distressed Rural Sole Community Hospitals.—

(1) In general.—The Secretary of Health and Human Services shall provide for 3-year demonstration projects described in paragraph (2) to determine appropriate methods to strengthen the ability of isolated and financially distressed rural hospitals (as defined in paragraph (6)) to provide high quality care. In selecting the areas in which demonstration projects are conducted, the Secretary shall select areas that are geographically diverse.

(2) Description of Projects.—Each demonstration project under this subsection shall demonstrate methods of strengthening the financial and managerial capability of the hospital involved to provide necessary services. Such methods may include programs of cooperation with other health care providers, of diversification in services furnished (including the provision of home health services), of physician recruitment, and of improved management systems.

(3) Evaluation and report.—The Secretary shall provide for an evaluation of the demonstration projects conducted under this subsection. The Secretary shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate—

(A) a preliminary report, by not later than 18 months after the date of the enactment of this Act, which report includes a description of the hospitals in which the demonstration projects will be conducted, and

(B) a final report upon completion of the projects, which shall include recommendations for appropriate legislative changes.

(4) Funding.—Expenditures (not to exceed $5,000,000 in each of fiscal years 1988, 1989, and 1990) made for the demonstration projects shall be made from the Federal Hospital Insurance Trust Fund (established under section 1817 of the Social Security Act). Grants and payments under contracts may be made either in advance or by way of reimbursement, as may be determined by the Secretary, and shall be made in such installments and on such conditions as the Secretary finds necessary to carry out the purpose of this subsection.

(5) Waiver of medicare requirements.—The Secretary shall waive compliance with the requirements of title XVIII of the Social Security Act to the extent and for the period the Secretary finds necessary for the conduct of the demonstration projects under this subsection.

(6) Isolated and financially distressed rural hospital defined.—In this subsection, the term "isolated and financially distressed rural hospital" means a public, or nonprofit private, hospital—

(A) that is located in a rural area (as defined in section 1886(d)(2)(D) of the Social Security Act),

(B) that is a sole community hospital (as defined in section 1886(d)(5)(C)(ii) of such Act) or meets the criteria established for designation as such a hospital,

(C) that has an agreement in effect under section 1866(a) of such Act,

(D) that has an average occupancy rate (previous to the project) of less than 50 percent, and

(E) the closure of which would result in a significant loss of access by medicare beneficiaries to necessary services.

SEC. 9303. PAYMENTS FOR HOSPITAL CAPITAL.

(a) Reductions in Payments for Capital.—

(1) In general.—Section 1886(g)(3)(A) of the Social Security Act (42 U.S.C. 1395ww(g)(3)(A)) is amended—

(A) in clause (ii), by striking "7 percent" and inserting "8.5 percent", and

(B) in clause (iii), by inserting "or fiscal year 1990" after "fiscal year 1989".

(2) Effective date.—The amendment made by paragraph (1)(A) shall not apply to payments attributable to portions of cost reporting periods occurring during the period beginning on October 1, 1987, and ending on November 20, 1987.

(b) Prospective Payment for Capital-Related Costs.—

(1) In general.—Paragraph (1) of section 1886(g) of such Act is amended to read as follows:

"(g)(1)(A) Notwithstanding section 1861(v), instead of any amounts that are otherwise payable under this title with respect to the reasonable costs of subsection (d) hospitals and subsection (d) Puerto Rico hospitals for capital-related costs of inpatient hospital services, the Secretary shall, for hospital cost reporting periods beginning on or after October 1, 1991, provide for payments for such costs in accordance with a prospective payment system established by the Secretary.

"(B) Such system—

"(i) shall provide for (I) a payment on a per discharge basis, and (II) an appropriate weighting of such payment amount as relates to the classification of the discharge;

"(ii) may provide for an adjustment to take into account variations in the relative costs of capital and construction for the different types of facilities or areas in which they are located;

"(iii) may provide for such exceptions (including appropriate exceptions to reflect capital obligations) as the Secretary determines to be appropriate, and

"(iv) may provide for suitable adjustment to reflect hospital occupancy rate.

"(C) In this paragraph, the term 'capital-related costs' has the meaning given such term by the Secretary under subsection (a)(4) as of September 30, 1987, and does not include a return on equity capital.".

(2) Conforming amendment.—Section 1886 of such Act is amended—

(A) in subsection (a)(4), by striking "with respect to costs incurred in cost reporting periods beginning prior to October 1 of 1987 (or of such later year as the Secretary may, in his discretion, select), other capital-related costs, as defined by the Secretary" and inserting "other capital-related costs (as defined by the Secretary for periods before October 1, 1987)", and

(B) by striking subparagraph (C) of subsection (g)(3).

(3) Effective dates.—The amendment made by paragraph (1) shall take effect on October 1, 1987. The amendments made by paragraph (2) shall apply to cost reporting periods beginning on or after October 1, 1987.

(c) ProPAC Report on Adjustment for Hospital Occupancy.—The Prospective Payment Assessment Commission shall study and report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate, by not later than May 1, 1988, on the suitability and feasibility of linking payment for capital-related costs under part A of title XVIII of the Social Security Act to hospital occupancy rates.

SEC. 9304. REPORTING HOSPITAL INFORMATION.

(a) In General.—Part A of title XVIII of the Social Security Act, as amended by section 9311 of this title, is amended by adding at the end the following new section:

"REPORTING HOSPITAL INFORMATION

"Sec. 1820. (a)(1) Each fiscal intermediary with an agreement under section 1816 to perform services with respect to hospitals shall prepare and submit to the Committee on Ways and Means of the House of Representatives, the Committee on Finance of the Senate, the Administrator of the Health Care Financing Administration, the Congressional Budget Office, and the Congressional Research Service of the Library of Congress by not later than 45 days after the end of each calendar quarter, a report which includes, in a summary form for all hospitals and on a hospital-specific basis and based on information received during the previous 4 calendar quarters—

"(A) hospital discharges (classified by category of service and by class of primary payer);

"(B) patient days (classified by category of service and by class of primary payer);

"(C) licensed beds and occupancy (by category of service);

"(D) outpatient visits (classified by class of primary payer);

"(E) inpatient charges and revenues (classified by class of primary payer);

"(F) outpatient charges and revenues (classified by class of primary payer);

"(G) inpatient and outpatient hospital expenses (by cost-center classified for operating and capital);

"(H) reasonable costs;

"(I) other income;

"(J) uncompensated care (classified by bad debt and charity care);

"(K) capital acquisitions; and

"(L) capital assets.

"(2) In paragraph (1):

"(A) The terms 'bad debt' and 'charity care' have such meanings as the Secretary establishes in regulations.

"(B) The term 'class' means, with respect to payers, the programs under this title, a State plan approved under title XIX, other third party-payers, and self-paying individuals.

"(b)(1) Each hospital with an agreement in effect under section 1866 shall submit, not later than 90 days after the last day of each cost reporting period, to the fiscal intermediary serving the hospital an annual cost report. Such report shall—

"(A) be submitted in accordance with a standard reporting system established by the Secretary under paragraph (2),

"(B) include a balance sheet and such information as the Secretary determines to be necessary for purposes of producing the reports described in subsection (a)(1), and

"(C) if required under paragraph (3), be submitted electronically.

In the case of hospitals which are under the common control or ownership of an eligible organization (as defined in section 1876(b)), the reports required under this paragraph may be submitted on a consolidated basis.

"(2) The Secretary shall develop the system under paragraph (1) in a manner so as—

"(A) to facilitate the submittal of the information in the report in an electronic form, and

"(B) to be compatible with the needs of the prospective payment system under section 1886.

"(3) Any hospital that in a cost reporting period (beginning on or after October 1, 1990) received more than $10,000,000 under this title (and, at the Secretary's discretion, any other hospital for a cost reporting period beginning on or after such date) shall submit the report under paragraph (1) for that period in an electronic form.

"(4) In the case of a hospital that fails to submit a report on a timely basis as required under paragraph (1) with respect to a calendar quarter, notwithstanding any other provision of this title, the amount of payment otherwise due the hospital under this title for discharges or visits (or, in the case of a hospital that is not paid under section 1886(d), for portions of its cost reporting period or periods) occurring during the second succeeding quarter shall be reduced by 5 percent.".

(2) Conforming amendment.—Section 1886(f)(1) of such Act (42 U.S.C. 1395ww(f)(1)) is amended by striking "for a period ending not earlier than September 30, 1988" and inserting "for cost reporting periods beginning before October 1, 1988".

(3) Effective date.—The amendments made by paragraph (1) shall apply to hospital cost reporting periods beginning on or after October 1, 1988.

(4) Development of reporting system.—The Secretary of Health and Human Services shall publish notice of proposed rulemaking concerning the hospital reporting system described in section 1820(b)(2) of the Social Security Act by not later than June 30, 1988, and shall publish a regulation respecting the system by not later than September 30, 1988.

(b) Conformity of Hospital Cost Reporting Periods.—

(1) In general.—Section 1820 of the Social Security Act, as added by the amendment made by subsection (a), is further amended by adding at the end the following new subsection:

"(c)(1) Except as provided in paragraph (2), as a condition of participation of a hospital in the program under this title, the hospital's cost reporting period must end on March 31, June 30, September 30, or December 31 of each year.

"(2) Paragraph (1) shall not apply to a hospital of a State (or political subdivision or entity thereof) which, as of the date of the enactment of this subsection, has a cost reporting period other than one described in paragraph (1).

"(3) The Secretary may provide grants to a hospital which, as of the date of the enactment of this subsection, does not have a cost reporting period ending on September 30 to assist the hospital in changing its cost reporting period to one that ends on September 30. Grants under this paragraph shall be made from the Federal Hospital Insurance Trust Fund and the amount of grants under this paragraph with respect to a hospital may not exceed $100,000.".

(2) Effective date.—The amendment made by paragraph (1) shall apply to hospital cost reporting periods that begin on or after January 1, 1989.

SEC. 9305. RAISING THRESHOLD FOR PROSPECTIVE PAYMENT FOR SKILLED NURSING FACILITIES TO 2,500 PATIENT DAYS.

(a) In General.—Section 1888(d)(1) of the Social Security Act (42 U.S.C. 1395yy(d)(1)) is amended by striking "1,500" each place it appears and inserting "2,500".

(b) Effective Date.—The amendment made by subsection (a) shall apply to cost reporting periods beginning on or after October 1, 1989.

SEC. 9306. MISCELLANEOUS AND TECHNICAL PROVISIONS.

(a) Responsibilities of Medicare Hospitals in Emergency Cases.—

(1) Increase in civil monetary penalty.—Section 1867(d)(2) of the Social Security Act (42 U.S.C. 1395dd(d)(2)) is amended by striking "$25,000" and inserting "$50,000".

(2) Exclusion from medicare program for violations.—Section 1867(d)(1) of such Act is amended by adding at the end the following new sentence:

"If a civil money penalty is imposed on a responsible physician under paragraph (2), the Secretary may impose the sanction described in section 1842(j)(2)(A) (relating to barring from participation in the medicare program) in the same manner as it is imposed under section 1842(j).".

(3) Effective date.—The amendments made by this subsection shall apply to actions occurring on or after the date of the enactment of this Act.

(b) Clarification of Section 1886(c) State Waiver Authority.—

(1) In general.—The second sentence of section 1886(c)(4) of the Social Security Act (42 U.S.C. 1395ww(c)(4)) is amended by inserting "(or the entity responsible for operation of the State system)" after "the State".

(2) Effective date.—The amendment made by paragraph (1) shall apply to cost reporting periods beginning on or after October 1, 1983.

(c) Clarification of Section 1814(b) State Waiver Authority.—

(1) Application of aggregate test.—Section 1814(b)(3)(B) of the Social Security Act (42 U.S.C. 1395f(b)(3)(B)) is amended by striking "rate of increase for the previous three-year period" and inserting "aggregate rate of increase from October 1, 1983, to the most recent date for which annual data are available".

(2) Effective date.—The amendment made by paragraph (1) shall take effect on the date of the enactment of this Act.

(d) Continuation of Bad Debt Recognition for Hospital Services.—In making payments to hospitals under title XVIII of the Social Security Act, the Secretary of Health and Human Services shall not make any change in the policy in effect on August 1, 1987, with respect to to payment under title XVIII of the Social Security Act to providers of service for reasonable costs relating to unrecovered costs associated with unpaid deductible and coinsurance amounts incurred under such title.

(e) Hospital Outlier Payments and Policy.—

(1) Increase in outlier payments for burn center DRGs.—

(A) In general.—For discharges classified in diagnosis-related groups relating to burn cases and occurring during fiscal years 1988 and 1989, the marginal cost of care permitted by the Secretary of Health and Human Services under section 1886(d)(5)(A)(iii) of the Social Security Act shall be 90 percent of the appropriate per diem cost of care or 90 percent of the cost for cost outliers.

(B) Study.—The Secretary shall study the appropriate payment amounts for burn cases under section 1886(d) of the Social Security Act and shall recommend to Congress appropriate adjustments to the amount of such payments to assure that the costs of treating burn patients are being adequately reimbursed.

(2) Limitation on changes in outlier regulations.—

(A) In general.—Notwithstanding any other provision of law, except as required to implement specific provisions required under statute, the Secretary of Health and Human Services is not authorized to issue in final form, after the date of the enactment of this Act and before September 1, 1988, any final regulation which changes the method of payment for outlier cases under section 1886(d)(5)(A) of the Social Security Act.

(B) ProPAC report.—The chairman of the Prospective Payment Assessment Commission shall report to the Congress and the Secretary of Health and Human Services, by not later than June 1, 1988, on the method of payment for outlier cases under such section.

(f) Miscellaneous Accounting Provision.—Effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1986, subsection (d) of section 9307 of such Act is amended to read as follows:

"(d) Miscellaneous Accounting Provision.—Notwithstanding any other provision of law, for purposes of section 1886(d)(1)(A) of the Social Security Act, in the case of a hospital that—

"(1) had a cost reporting period beginning on September 28, 29, or 30 of 1985,

"(2) is located in a State in which inpatient hospital services were paid in fiscal year 1985 pursuant to a Statewide demonstration project under section 402 of the Social Security Amendments of 1967 and section 222 of the Social Security Amendments of 1972, and

"(3) elects, by notice to the Secretary of Health and Human Services by not later than January 1, 1988, to have this subsection apply,

during the first 7 months of such cost reporting period the 'target percentage' shall be 75 percent and the 'DRG percentage' shall be 25 percent, and during the remaining 5 months of such period the 'target percentage' and the 'DRG percentage' shall each be 50 percent.".

(g) Designation of Pediatric Hospitals as Meeting Certification as Heart Transplant Facility.—For purposes of determining whether a pediatric hospital that performs pediatric heart transplants meets the criteria established by the Secretary of Health and Human Services for facilities in which the heart transplants performed will be considered to meet the requirement of section 1861(a)(1)(A) of the Social Security Act, the Secretary shall treat such a hospital as meeting such criteria if—

(1) the hospital's pediatric heart transplant program is operated jointly jointly by the hospital and another facility that meets such criteria,

(2) the unified program shares the same transplant surgeons and quality assurance program (including oversight committee, patient protocol, and patient selection criteria), and

(3) the hospital demonstrates to the satisfaction of the Secretary that it is able to provide the specialized facilities, services, and personnel that are required by pediatric heart transplant patients.

(h) Hospice Extension.—Section 9307(a) of the Omnibus Budget Reconciliation Act of 1986 is amended by striking ", for hospice care provided before October 1, 1988,".

(i) Revision of Appointment Process for Prospective Payment Assessment Commission.—

(1) In general.—Section 1886(e)(6)(B) of the Social Security Act (42 U.S.C. 1395ww(e)(6)(B)) is amended—

(A) in the first sentence, by striking "provide expertise and experience in the provision and financing of health care" and inserting "include individuals with national recognition for their expertise in health economics, hospital reimbursement, hospital financial management, and other related fields"; and

(B) by striking the last sentence.

(2) Effective date.—The amendments made by paragraph (1) shall apply to appointments made after the date of the enactment of this Act.

(j) Impact Analysis of Medicare Regulations on Rural Hospitals.—

(1) In general.—Section 1871 of the Social Security Act (42 U.S.C. 1395hh) is amended by adding at the end the following new subsection:

"(c) In publishing notices of proposed regulations, and final regulations, under subsection (a) as they may relate to the administration of part A of this title, the Secretary shall include an analysis of the impact of such regulations on health care in rural hospitals.".

(2) Effective date.—The amendment made by paragraph (1) shall apply to regulations (and proposed regulations) issued on or after January 1, 1988.

(k) Technical Corrections.—

(1) Section 1886(a)(4) of the Social Security Act (42 U.S.C. 1395ww(a)(4)) is amended by inserting a comma after "educational activities".

(2) Section 1886(d)(5)(C)(i)(II) of such Act (42 U.S.C. 1395ww(d)(5)(C)(i)(II)) is amended by inserting "index" after "case mix" both places it appears.

(3) Section 1886(d)(5)(F) of such Act (42 U.S.C. 1395ww(d)(5)(F)) is amended—

(A) in clause (i)(II), by striking "such revenues" the second place it appears and inserting "such net inpatient care revenues", and

(B) in clause (iv)(I), by striking "subclause (III)" and inserting "clause (v)".

(4) Section 1886(d)(9) of such Act (42 U.S.C. 1395ww(d)(9)) is amended by moving the matter in subparagraph (B) before clause (i) 2 ems to the left so the left margin of such matter is aligned with the left margin of the matter in subparagraph (A) before clause (i).

(5) Section 1886(h)(4)(C) of such Act (42 U.S.C. 1395ww(h)(4)(C)) is amended by striking "subparagraph (E)" and inserting "subparagraph (D)".

(6) Effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1986—

(A) subparagraph (B) of section 9307(c)(1) of such Act is amended to read as follows:

"(B) in paragraph (2)—

"(i) by striking subparagraphs (A) and (B),

"(ii) in subparagraph (C), by striking 'such subsection' and inserting 'of section 1886(d) of the Social Security Act (42 U.S.C. 1395ww(d)' and by redesignating such subparagraph as subparagraph (A), and

"(iii) by amending subparagraph (D) to read as follows:

" '(B) The amendments made by subparagraph (A) apply to discharges occurring on or after May 1, 1986.' ";

(B) section 9302(a)(2)(C) of such Act is amended by striking "1866(e)(5)" and inserting "1886(e)(5)";

(C) section 9320(h)(1) of such Act is amended by striking "before the period" and inserting "before the semicolon";

(D) section 9321(c)(4) of such Act is amended by striking "second sentence" and all that follows through "operating costs" and inserting "second sentence of section 1886(a)(4) of the Social Security Act, from the term 'operating costs";

(E) the second sentence of section 9335(d)(2) of such Act is amended by striking "establish" and inserting "designate"; and

(F) section 9321(c)(3) of such Act is amended by inserting "section 1861(v)(1)(O) and 1886(g)(2) of the Social Security Act and" after "implementing".

(7) Section 218(v) of the Social Security Act (42 U.S.C. 418(v)) is amended by striking paragraph (3).

(8) Effective as if included in the Tax Reform Act of 1986, section 1895(d)(6)(C) of such Act is amended by striking "603" and inserting "2203".

SUBPART B—NURSING HOME REFORM

SEC. 9311. REQUIREMENTS FOR SKILLED NURSING FACILITIES.

(a) In General.—Subsection (j) of section 1861 of the Social Security Act (42 U.S.C. 1395x) is amended to read as follows:

"Skilled Nursing Facility

"(j) The term 'skilled nursing facility' means an institution (or a distinct part of an institution) which—

"(1) has in effect a transfer agreement (meeting the requirements of subsection (l)) with one or more hospitals having agreements in effect under section 1866;

"(2) is primarily engaged in providing to residents (A) skilled nursing care and related services for residents who require medical or nursing care, or (B) rehabilitation services for the rehabilitation of injured, disabled, or sick persons; and

"(3) meets the requirements for a skilled nursing facility described in subsections (a), (b) and (c) of this section 1819.

Such term does not include any institution which is primarily for the care and treatment of mental diseases. Such term also includes any institution described in paragraph (1) of subsection (y), to the extent and subject to the limitations provided in such subsection. Such term also includes any institution which is located in a State on an Indian reservation and is certified by the Secretary as meeting the requirements of this subsection and subsections (a), (b), and (c) of section 1819.".

(b) Specification of Requirements.—Part A of title XVIII of such Act is amended by adding at the end the following new section:

"REQUIREMENTS FOR, AND ASSURING QUALITY OF CARE IN, SKILLED NURSING FACILITIES

"Sec. 1819. (a) Requirements Relating to Provision of Services.—For purposes of section 1861(j)(3), the requirements of this subsection (relating to provision of services) for a skilled nursing facility are as follows:

"(1) Quality of life.—A skilled nursing facility must care for its residents in such a manner and in such an environment as will promote maintenance or enhancement of the quality of life of each resident.

"(2) Scope of services under plan of care.—A skilled nursing facility must provide services that will attain or maintain the highest possible mental and psychosocial well-being, as well as physical well-being, of each resident, in accordance with a written plan of care which—

"(A) describes the medical, nursing, and psychosocial needs of the resident and how such needs will be met; and

"(B) is initially prepared by a team which includes the attending physician and a professional registered nurse with responsibility for the resident, and is periodically reviewed and revised by such team after each assessment under paragraph (3).

"(3) Residents' assessment.—

"(A) Requirement.—A skilled nursing facility must designate appropriate qualified staff to conduct a comprehensive accurate assessment of each resident's capacity to perform daily life functions, which assessment documents significant impairments in functional capacity and is based on a uniform minimum data set specified by the Secretary under subsection (d)(6).

"(B) Certification.—

"(i) In general.—Each such assessment must be conducted or coordinated (with the appropriate participation of health professionals) by a registered professional nurse who signs and certifies the completion of the assessment. Each individual who completes a portion of such an assessment shall sign and certify as to the accuracy of that portion of the assessment.

"(ii) Penalty for falsification.—If a facility willfully and knowingly causes an individual to certify a material and false statement in a resident assessment under this paragraph, the facility is subject to a civil money penalty of not more than $1,000 with respect to each assessment and not more than $10,000 with respect to any facility. The Secretary shall provide for imposition of civil money penalties under this clause in a manner similar to that for the imposition of civil money penalties under section 1128A.

"(iii) Use of independent assessors.—If a State determines, under a survey under subsection (e) or otherwise, that there has been a knowing and willful certification of false assessments under this paragraph, the facility must provide for such assessments to be conducted and certified by individuals who are independent of the facility.

"(C) Frequency.—Such an assessment must be conducted—

"(i) upon admission for each individual admitted on or after October 1, 1990;

"(ii) promptly after a significant change in the resident's physical or mental condition; and

"(iii) in no case less often than once every 12 months;

and must be reviewed at least every 3 months. Such an assessment must be conducted, by not later than October 1, 1990, for each resident of the facility on that date.

"(D) Use.—The results of such an assessment shall be recorded and maintained in a standard form in the clinical records of the resident and shall form the basis of the planning, delivering, and revising of the resident's plan of care.

"(E) Coordination.—Such assessments shall be coordinated with any State-required preadmission screening program to the maximum extent practicable in order to avoid duplicative testing and effort.

"(4) Provision of services and activities.—

"(A) In general.—To the extent needed to fulfill all plans of care described in paragraph (2), a skilled nursing facility must provide, directly or under arrangements (or, with respect to dental services, under agreements) with others for the provision of—

"(i) sufficient nursing services, physicians' services, and specialized rehabilitative services to attain or maintain the highest possible physical, mental, and psychosocial well-being of each resident;

"(ii) medically-related social services to attain or maintain the highest possible physical, mental, and psychosocial well-being of each resident;

"(iii) pharmaceutical services that assure the accurate acquiring, receiving, dispensing, and administering all drugs and biologicals to meet the needs of the residents;

"(iv) dietician services that assure that the meals meet the daily nutritional and special dietary needs of each resident;

"(v) an on-going program of activities designed to meet the interests and the physical, mental health, and psychosocial needs of each resident; and

"(vi) routine and emergency dental services to meet the needs of each resident.

The services provided or arranged by the facility must be of adequate quality. Nothing in clause (vi) shall be construed as requiring a facility to provide or arrange for dental services described in that clause without additional charge.

"(B) Qualified persons providing services.—Services described in clauses (i), (ii), (iii), (iv), and (vi) of subparagraph (A) must be provided by qualified persons in accordance with each resident's written plan of care.

"(C) Required nursing care.—

"(i) In general.—Except as provided in clause (ii), a skilled nursing facility must provide 24-hour nursing service which is sufficient to meet nursing needs of its residents and must employ the services of a registered professional nurse at least during the day tour of duty (of at least 8 hours a day) 7 days a week.

"(ii) Exception.—To the extent that clause (i) may be deemed to require that a skilled nursing facility engage the services of a registered professional nurse for more than 40 hours a week, the Secretary is authorized to waive such requirement if the Secretary finds that—

"(I) the facility is located in a rural area and the supply of skilled nursing facility services in such area is not sufficient to meet the needs of individuals residing therein,

"(II) the facility has one full-time registered professional nurse who is regularly on duty at such facility 40 hours a week, and

"(III) the facility either has only patients whose physicians have indicated (through physicians' orders or admission notes) that each such patient does not require the services of a registered nurse or a physician for a 48-hour period, or has made arrangements for a registered professional nurse or a physician to spend such time at such facility as may be indicated as necessary by the physician to provide necessary skilled nursing services on days when the regular full-time registered professional nurse is not on duty.

A waiver under this subparagraph shall be subject to annual renewal.

"(5) Required training of nurse aides.—

"(A) Offering training and testing program.—

"(i) Training and testing programs.—A skilled nursing facility must provide (by itself or through others) training under a training and testing program that is approved by the State under section 1864(d)(1) for individuals that are used by the facility as nurse aides, other than for individuals whom the facility certifies have completed successfully such a program or a testing program approved under such section.

"(ii) Offering testing programs for employees used before July 1, 1989.—A skilled nursing facility must provide, for individuals used as a nurse aide by the facility before July 1, 1989, for a testing program approved by the State under section 1864(d)(1), and such preparation as may be necessary to complete successfully such a program, as will permit such individuals at least 2 opportunities to complete such a program by January 1, 1990.

"(B) Completion of program.—

"(i) Employees used after June 30, 1989, must complete testing program or training and testing program.—A skilled nursing facility may not use an individual, first used after June 30, 1989, as a nurse aide for more than 3 months unless the individual has successfully completed a training and testing program, or a testing program, approved by the State under section 1864(d)(1).

"(ii) Employees used before July 1, 1989, must complete testing program.—A skilled nursing facility may not use an individual, first used before July 1, 1989, as a nurse aide on or after January 1, 1990, unless the individual has successfully completed a training and testing program, or a testing program, approved by the State under section 1864(d)(1).

"(C) Competency.—The facility must not permit an individual to serve as a nurse aide or provide services of a type for which the individual has not demonstrated competency and must not use such an individual as a nurse aide unless the facility has inquired of the State registry established under subsection (d)(1)(B) as to information in the registry concerning the individual's involvement in resident neglect or abuse. If the facility uses an individual as a nurse aide and dismisses the individual from such use because of a specific finding that the individual was involved in resident neglect or abuse, the facility shall report such finding to such registry.

"(D) Retraining.—The facility requires any individual who has ceased providing direct patient care as a nurse aide for more than 24 consecutive months to complete a training and testing program, approved by the State under section 1864(d)(1), before again providing such care.

"(E) On-going training.—The facility has an ongoing program of training and performance review for nurse aides, including training for individuals providing special care to residents such as those with cognitive impairments.

"(F) Nurse aide defined.—In this paragraph, the term 'nurse aide' means any individual providing nursing or nursing-related services (whether on a full-time, temporary, per diem, or other basis) to residents in a skilled nursing facility, but does not include an individual (i) who is a physician, registered professional nurse, licensed practical nurse, or licensed or certified social worker, or (ii) who volunteers to provide such services without monetary compensation.

"(6) Physician supervision and clinical records.—A skilled nursing facility must—

"(A) require that the medical care of every resident be provided under the supervision of a physician;

"(B) provide for having a physician available to furnish necessary medical care in case of emergency; and

"(C) maintain clinical records on all residents, which records include the plans of care (described in paragraph (2)) and the residents' assessments (described in paragraph (3)).

"(b) Requirements Relating to Residents' Rights.—For purposes of section 1861(j)(3), the requirements of this subsection (relating to residents' rights) for a skilled nursing facility are as follows:

"(1) General rights.—

"(A) Specified rights.—A skilled nursing facility must protect and promote the rights of each resident, including each of the following rights:

"(i) Free choice.—The right to choose a personal attending physician, to be fully informed in advance about care and treatment, to participate, where appropriate, in planning care and treatment, and to be fully informed in advance of any changes in care or treatment that may affect the resident's well-being.

"(ii) Free from restraints.—The right to be free from physical or mental abuse, corporal punishment, involuntary seclusion, and any physical or chemical restraints imposed for purposes of discipline or convenience and not required to treat the resident's medical symptoms. Restraints may only be imposed—

"(I) to ensure the physical safety of the resident or other residents, and

"(II) only upon the written order of a physician that specifies the duration and circumstances under which the restraints are to be used, except in emergency circumstances, specified by the Secretary, until such an order could reasonably be obtained.

"(iii) Privacy.—The right to privacy with regard to accommodations, medical treatment, and written and telephonic communications.

"(iv) Confidentiality.—The right to confidentiality of personal and clinical records.

"(v) Accommodation of needs.—The rights—

"(I) to reside and receive services with reasonable accommodations of individual needs and preferences, except where the health or safety of the individual or other residents would be endangered, and

"(II) to receive a notice before the room or roommate of the resident in the facility is changed.

"(vi) Grievances.—The right to voice grievances with respect to treatment or care that is (or fails to be) furnished, without discrimination or reprisal for voicing the grievances and the right to resolution promptly by the facility of grievances the resident may have with respect to the behavior of other residents.

Clause (iii) shall not be construed as requiring the provision of a private room.

"(B) Notice of rights and services.—A skilled nursing facility must—

"(i) tell each resident of the resident's legal rights during the stay at the facility,

"(ii) provide to each resident, upon reasonable request, a written statement of such rights (which statement is updated upon changes in such rights); and

"(iii) inform each resident, in writing before or at the time of admission and periodically during the resident's stay, of rights and of services available in the facility and of related charges for such services, including any charges for services not covered under this title or under a State plan approved under title XIX, or not covered by the facility's basic per diem rate.

"(C) Rights of incompetent residents.—In the case of a resident adjudged incompetent under the laws of a State, the rights of the resident under this title shall devolve upon, and be exercised by, the person appointed under State law to act on the resident's behalf.

"(2) Transfer and discharge rights.—

"(A) In general.—A skilled nursing facility must permit each resident to remain in the facility and must not involuntarily transfer or discharge the resident from the facility unless—

"(i) the transfer or discharge is necessary to meet the resident's welfare and the resident's welfare cannot be met in the facility;

"(ii) the transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;

"(iii) the safety of individuals in the facility is endangered;

"(iv) the health of individuals in the facility would otherwise be endangered;

"(v) the resident has failed, after reasonable and appropriate notice, to pay (or to have paid under this title on the resident's behalf) an allowable charge imposed by the facility for an item or service requested by the resident and for which a charge may be imposed consistent with section 1866(a); or

"(vi) the facility ceases to operate or participate in the program which reimburses for the resident's care.

In each of the cases described in clauses (i) through (iv), the basis for the transfer or discharge must be documented by the resident's physician in the resident's clinical record.

"(B) Pre-transfer and pre-discharge notice.—

"(i) In general.—Before effecting an involuntary transfer or discharge of a resident, a skilled nursing facility must—

"(I) notify the resident (and the guardian or an immediate relative of the resident, if known) of the transfer or discharge and the reasons therefor,

"(II) record the reasons in the resident's clinical record (including any documentation required under subparagraph (A)), and

"(III) include in the notice the items described in clause (iii).

"(ii) Timing of notice.—The notice under clause (i)(I) must be made at least 30 days in advance of the resident's transfer or discharge except—

"(I) in a case described in clause (iii) or (iv) of subparagraph (A);

"(II) in a case described in clause (ii) of subparagraph (A), where the resident's health improves sufficiently to allow a more immediate transfer or discharge; or

"(III) in a case described in clause (i) of subparagraph (A), where a more immediate transfer or discharge is necessitated by the resident's urgent medical needs.

"(iii) Items included in notice.—Each notice under clause (i) must include—

"(I) for transfers or discharges effected on or after October 1, 1989, notice of the resident's right to appeal the transfer or discharge under section 1864(d)(2); and

"(II) the name, mailing address, and telephone number of the State long-term care ombudsman (established under section 307(a)(12) of the Older Americans Act of 1965).

"(C) Orientation.—A skilled nursing facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.

"(3) Access and visitation rights.—A skilled nursing facility must—

"(A) permit immediate access to any resident by officially designated representatives of the Secretary, by officially designated representatives of the State, by an officially designated ombudsman described in paragraph (2)(B)(iii)(II), or by the resident's individual physician;

"(B) permit immediate access to a resident, subject to the resident's right to deny or withdraw consent at any time, by immediate family or other relatives of the resident;

"(C) permit immediate access to a resident, subject to reasonable restrictions and the resident's right to deny or withdraw consent at any time, by others who are visiting with the consent of the resident;

"(D) permit reasonable access to a resident by any entity or individual that provides health, social, legal, or other services to the resident, subject to the resident's right to deny or withdraw consent at any time; and

"(E) permit representatives of the State ombudsman (described in paragraph (2)(B)(iii)(II)), with the permission of the resident (or the resident's legal representative) and consistent with State law, to examine a resident's medical, nursing, and social records.

"(4) Equal access to quality care.—

"(A) In general.—A skilled nursing facility must establish and maintain identical policies and practices regarding transfer, discharge, and covered services for all individuals regardless of source of payment.

"(B) Admissions.—With respect to admissions practices, a skilled nursing facility must—

"(i)(I) not require individuals applying to reside or residing in the facility to waive their rights to benefits under this title or under a State plan under title XIX, (II) not require oral or written assurance that such individuals are not eligible for, or will not apply for, benefits under this title or such a State plan, and (III) prominently display in the facility and provide to such individuals written information about how to apply for and use such benefits and how to receive refunds for previous payments covered by such benefits; and

"(ii) not require a third party guarantee of payment to the facility as a condition of admission to, or continued stay in, the facility.

"(C) Construction.—

"(i) Subparagraph (B) shall not be construed as preventing States or political subdivisions therein from prohibiting, under State or local law, the discrimination against individuals who are entitled to medical assistance under such a State plan with respect to admissions practices of skilled nursing facilities.

"(ii) Subparagraph (B)(ii) shall not be construed as preventing a facility from requiring an individual, who has legal access to a resident's income or resources available to pay for care in the facility, to sign a contract (without incurring personal financial liability) to provide payment from the resident's income or resources for such care.

"(5) Protection of resident funds.—A skilled nursing facility must—

"(A) upon written authorization by a resident, accept responsibility for holding, safeguarding, and accounting for the resident's personal funds, and providing each resident access to such funds and records of such funds, and

"(B) establish and maintain a system that—

"(i) assures a full and complete accounting (not less often than quarterly) of each resident's personal funds,

"(ii) establishes a separate account or accounts for such funds in order to prevent any commingling of such funds with institutional funds or with the funds of any other person other than another such resident, and

"(iii) upon such resident's death, promptly convey such resident's personal funds (and a final accounting of such funds) to the individual administering the resident's estate.

"(c) Requirements Relating to Administration and Other Matters.—For purposes of section 1861(j)(3), the requirements of this subsection (relating to administration and other matters) for a skilled nursing facility are as follows:

"(1) Administration.—

"(A) In general.—A skilled nursing facility must be administered in a manner that enables it to use its resources effectively and efficiently to attain or maintain the highest possible physical, mental, and psychosocial well-being of each resident (consistent with requirements established under subsection (d)(5)).

"(B) Required notices.—If a change occurs in—

"(i) the persons with an ownership or control interest (as defined in section 1124(a)(3)) in the facility,

"(ii) the persons who are officers, directors, agents, or managing employees (as defined in section 1126(b)) of the facility, or

"(iii) the individual who is the administrator or director of nursing of the facility,

the skilled nursing facility must provide notice to the State agency responsible for the licensing of the facility, at the time of the change, of the change and of the identity of the new person or persons described in the respective clause.

"(C) Nursing facility administrator.—The administrator of a skilled nursing facility must meet any standards established by the Secretary under subsection (d)(4).

"(2) Licensing and life safety code.—

"(A) Licensing.—A skilled nursing facility must be licensed under applicable State and local law.

"(B) Life safety code.—A skilled nursing facility must meet such provisions of such edition (as specified by the Secretary in regulation) of the Life Safety Code of the National Fire Protection Association as are applicable to nursing homes; except that the provisions of such Code shall not apply in any State if the Secretary finds that in such State there is in effect a fire and safety code, imposed by State law, which provides protection for residents of and personnel in skilled nursing facilities at least equal to the protections provided under such Code.

"(3) Sanitary and infection control and physical environment.—A skilled nursing facility must—

"(A) establish and maintain an infection control program designed to provide a safe, sanitary, and comfortable environment in which residents reside and to help prevent the development and transmission of disease and infection, and

"(B) be designed, constructed, equipped, and maintained in a manner to protect the health and safety of residents, personnel, and the general public.

"(4) Miscellaneous.—

"(A) Compliance with federal, state, and local laws and professional standards.—A skilled nursing facility must operate and provide services in compliance with all applicable Federal, State, and local laws and regulations (including the requirements of sections 1124) and with all accepted professional standards and principles which apply to professionals providing services in such a facility.

"(B) Other.—A skilled nursing facility must meet such other requirements relating to the health, safety, and well-being of residents or relating to the physical facilities thereof as the Secretary may find necessary.".

(c) State Requirements Relating to Nursing Facility Requirements.—Section 1864 of such Act (42 U.S.C. 1395aa) is amended by adding at the end the following new subsection:

"(d) Requirements Relating to Skilled Nursing Facilities.—The Secretary may not enter an agreement under this section with a State with respect to determining whether an institution therein is a skilled nursing facility unless the State meets the following requirements:

"(1) By not later than September 1, 1988, the State must—

"(A) specify those training and testing programs, and those testing programs, that the State approves for purposes of subsection (a)(5) and that meet the minimum requirements established under section 1819(d)(2), and may not approve a program—

"(i) offered by or in a skilled nursing facility which has been determined to be out of compliance with the requirements of subsection (a), (b), or (c) within the previous 2 years, or

"(ii) offered by a skilled nursing facility unless the State makes the determination, upon an individual's completion of the program, that the individual is competent to provide nursing and nursing-related services in skilled nursing facilities; and

"(B) maintain a registry of all individuals who have successfully completed either such program.

The registry under subparagraph (B) shall provide (in accordance with regulations of the Secretary) for the inclusion of specific findings of resident neglect or abuse involving an individual listed in the registry, notice to the individual of the proposed inclusion of such a finding with respect to the individual, and for the inclusion of any brief statement of the individual disputing the findings. In the case of inquiries to the registry concerning an individual listed in the registry, any information disclosed concerning such a finding shall also include disclosure of any such statement in the registry relating to the finding or a clear and accurate summary of such a statement.

"(2) The State must provide, for transfers from skilled nursing facilities effected on or after October 1, 1989, a fair mechanism (meeting the guidelines established under section 1819(d)(3)) for hearing appeals on involuntary transfers of residents of such facilities.

"(3) By not later than July 1, 1989, the State must have implemented and enforced the nursing facility administrator standards developed under section 1819(d)(4) respecting the qualification of administrators of skilled nursing facilities.

The failure of the Secretary to establish standards under section 1819 shall not relieve any State of its responsibility under paragraph (1) or (2) of this subsection.".

(d) Federal Responsibilities for Standards.—Section 1819 of such Act, as added by subsection (b), is amended by adding at the end the following new subsection:

"(d) Secretarial Responsibilities for Standards.—

"(1) Responsibility.—It is the duty and responsibility of the Secretary to assure that requirements which govern the provision of care in skilled nursing facilities under this title, and the enforcement of such requirements, are adequate to protect the health, safety, welfare, and rights of residents and to promote the effective and efficient use of public moneys.

"(2) Nurse aide training and testing programs.—

"(A) In general.—Not later than March 1, 1988, the Secretary shall establish—

"(i) minimum standards for nurse aide training and testing programs, and testing programs, referred to in section 1864(d)(1), and

"(ii) minimum standards for the mechanism by which a State approves such programs.

"(B) Training and testing program standards.—The standards referred to in subparagraph (A)(i) with respect to a training and testing program shall specify—

"(i) the minimum amount of time required for initial and ongoing training and retraining, including not less than 100 hours with respect to initial training;

"(ii) the areas to be included in a training and testing program, including at least basic nursing skills, personal care skills, cognitive, behavioral and social care, basic restorative services, and residents' rights; and

"(iii) the minimum qualifications for instructors in the programs.

"(C) Testing program standards.—The standards referred to in subparagraph (A)(i) with respect to a testing program shall specify the areas to be included in the testing program, including at least basic nursing skills, personal care skills, cognitive, behavioral and social care, basic restorative services, and residents' rights.

"(D) Approval standards.—The standards referred to in subparagraph (A)(ii) shall specify—

"(i) the frequency with which training and testing programs and testing programs shall be reviewed by a State, and

"(ii) the methodology (which shall include performance-based evaluations as well as analysis of written submissions) by which a State makes determinations with respect to whether a program meets the minimum standards established under subparagraph (A)(i).

"(3) Federal guidelines for state appeals process for transfers.—For purposes of section 1864(d)(2), by not later than October 1, 1988, the Secretary shall establish guidelines for minimum standards which State appeals processes under such section must meet to provide a fair mechanism for hearing appeals on involuntary transfers of residents from skilled nursing facilities.

"(4) Secretarial standards for licensing of administrators.—For purposes of subsection (c)(1)(C) and section 1864(d)(3), the Secretary shall develop, by not later than March 1, 1988, standards to be applied in assuring the qualifications of administrators of skilled nursing facilities.

"(5) Requirements for administration.—For purposes of subsection (c)(1) with respect to a skilled nursing facility, the Secretary shall establish, by not later than October 1, 1988, requirements with respect to—

"(A) its governing body and management,

"(B) agreements with hospitals regarding transfers of residents to and from the hospitals and other nursing facilities,

"(C) disaster preparedness,

"(D) direction of medical care by a physician,

"(E) laboratory, radiological, and pharmaceutical services,

"(F) resident care, including clinical records, and

"(G) resident and advocate participation.

"(6) Specification of data set for resident assessments.—Not later than January 1, 1989, the Secretary shall—

"(A) specify a minimum data set of core elements and common definitions for use by skilled nursing facilities in conducting the assessments required under subsection (a)(3), and

"(B) establish guidelines for utilization of the data set.".

(e) Costs of Meeting Requirements.—

(1) Under reasonable cost.—Section 1861(v)(1)(E) of such Act (42 U.S.C. 1395x(v)(1)(E)) is amended by adding at the end the following new sentence: "Notwithstanding the previous sentence, such regulations with respect to skilled nursing facilities shall take into account (in a manner consistent with subparagraph (A) and based on patient-days of services furnished) the costs of such facilities complying with the requirements of subsections (a), (b), and (c) of section 1819 (including the costs of conducting nurse aide training and testing programs and testing programs).".

(2) Adjustment in prospective payments.—Section 1888(d) of such Act (42 U.S.C. 1395yy(d)) is amended by adding at the end the following new paragraph:

"(7) In computing the rates of payment to be made under this subsection, there shall be taken into account the costs described in the last sentence of section 1861(v)(1)(E) (relating to compliance with nursing facility requirements and of conducting nurse aide training and testing programs).".

(f) Evaluation.—The Secretary of Health and Human Services shall evaluate, and report to Congress by not later than January 1, 1992, on the implementation of the resident assessment process for residents of skilled nursing facilities under the amendments made by this section.

(g) Conforming Amendment.—Section 1861(a)(2) of such Act (42 U.S.C. 1395x(a)(2)) is amended by striking "skilled nursing facility" and inserting "facility described in subsection (j)(2) or subsection (y)(1)".

SEC. 9312. SURVEY AND CERTIFICATION PROCESS.

(a) State Requirement for Process.—Section 1864(d) of the Social Security Act (42 U.S.C. 1395aa(d)), as added by section 9311(c) of this Act, is amended—

(1) by inserting after paragraph (3) the following new paragraph:

"(4) With respect to extended care services furnished on or after July 1, 1989, the State must have in effect a survey and certification process for skilled nursing facilities in the State which meets the requirements of section 1819(e).", and

(2) in the last sentence by striking "or (2)" and inserting ", (2), or (4)".

(b) Specification of Requirements.—Section 1819 of such Act, as added by section

9311(b) and as amended by section 9311(d) of this Act, is further amended by adding at the end the following new subsection:

"(e) Survey and Certification Process.—

"(1) State and federal responsibility.—

"(A) In general.—Pursuant to an agreement under section 1864, each State shall be responsible for certifying, in accordance with surveys conducted under paragraph (2), the compliance of skilled nursing facilities (other than facilities of the State) with the requirements of subsections (a), (b), and (c). The Secretary shall be responsible for certifying, in accordance with surveys conducted under paragraph (2), the compliance of State skilled nursing facilities with the requirements of such subsections.

"(B) Educational program.—Each State shall conduct periodic educational programs for the staff and residents (and their representatives) of skilled nursing facilities in order to present current regulations, procedures, and policies under this section.

"(2) Surveys.—

"(A) Standard survey.—

"(i) In general.—Each skilled nursing facility shall be subject to a standard survey, to be conducted without any prior notice to the facility. Any individual who notifies (or causes to be notified) a skilled nursing facility of the time or date on which such a survey is scheduled to be conducted is subject to a civil money penalty of not to exceed $2,000. The Secretary shall provide for imposition of civil money penalties under this clause in a manner similar to that for the imposition of civil money penalties under section 1128A. The Secretary shall review each State's procedures for the scheduling and conduct of annual standard surveys to assure that the State has taken all reasonable steps to avoid giving notice of such a survey.

"(ii) Contents.—Each standard survey shall include—

"(I) an audit of a sample of the residents' assessments provided under subsection (a)(3) to determine the accuracy of such assessments;

"(II) a survey of the quality of care furnished as measured by indicators of medical, nursing, and rehabilitative care, using interviews and observations of a case-mix stratified sample of residents; and

"(III) a review of the facility's compliance with the requirements of subsection (a) (other than paragraph (3)), subsection (b), subsection (c)(1)(A) (insofar as it relates to the requirements described in subparagraphs (D) and (F) of subsection (d)(5)), and subsection (c)(3).

"(iii) Frequency.—

"(I) In general.—Each skilled nursing facility shall be subject to a standard survey not later than 15 months after the date of the previous standard survey under this subparagraph. The Statewide average interval between surveys of skilled nursing facilities under this subsection shall not exceed 12 months.

"(II) Special surveys.—If not otherwise conducted under subclause (I), a standard survey (or an abbreviated standard survey) may be conducted within 2 months of any change of ownership, administration, or management of a skilled nursing facility, in order to determine whether the change has resulted in any decline in the quality of care furnished in the facility.

"(B) Extended and followup surveys.—If a survey team determines that, because of the poor quality of care found in a skilled nursing facility during a standard survey of the facility, it would recommend the termination of participation of the facility under this title or the appointment of temporary management, the facility shall be subject to an extended survey. In such an extended survey, the survey team shall review and identify the policies and procedures which produced such poor quality of care and shall determine whether the facility has complied with all the requirements described in subsections (a), (b), and (c). Such review shall include an expansion of the size of the sample of residents' assessments reviewed and a review of the staffing, of in-service training, and, if appropriate, of contracts with consultants. Any other facility may, at the Secretary's or State's discretion, be subject to such an extended survey (or a partial extended survey).

"(C) Survey protocol.—Standard and extended surveys shall be conducted—

"(i) based upon a protocol which the Secretary has developed, tested, and validated by not later than January 1, 1989, and

"(ii) by individuals, of a survey team, who meet such minimum qualifications as the Secretary establishes by not later than January 1, 1989.

The failure of the Secretary to develop, test, or validate such protocols or to establish such minimum qualifications shall not relieve any State of its responsibility (or the Secretary of the Secretary's responsibility) to conduct surveys under this subsection.

"(D) Consistency of surveys.—Each State and the Secretary shall implement programs to measure and reduce inconsistency in the application of survey results among surveyors.

"(E) Prohibition of conflicts of interest.—A State may not use as a surveyor under this subsection an individual who is serving (or has served within the previous 2 years) as a consultant to any skilled nursing facility respecting compliance with the requirements of subsections (a), (b), and (c).

"(F) Survey teams.—

"(i) In general.—Surveys under this subsection shall be conducted by a multidisciplinary team of professionals (including a registered professional nurse and others selected in accordance with regulations of the Secretary).

"(ii) Specialized teams.—Each State shall maintain and utilize a specialized team for the purpose of identifying, surveying, gathering and preserving evidence, and carrying out appropriate enforcement actions against chronically substandard skilled nursing facilities. Such a team shall include (or have prompt access to) an attorney, an auditor, and appropriate health care professionals.

"(iii) Training.—The State shall provide each member of a survey team with comprehensive preservice training, and in addition a minimum of not less than 40 hours of continuing education with respect to the conduct of such surveys annually (as approved by the Secretary). No individual shall serve as a member of a survey team unless the individual has successfully completed a training and testing program in survey and certification techniques that has been approved by the Secretary.

"(3) Validation surveys.——

"(A) In general.—The Secretary shall conduct sample onsite surveys of skilled nursing facilities in each State, within 2 months of the date of surveys conducted under paragraph (2) by the State, in a sufficient number to allow inferences about the adequacies of each State's surveys conducted under paragraph (2). In conducting such surveys, the Secretary shall use the same survey protocols as the State is required to use under paragraph (2). If the State has determined that an individual skilled nursing facility meets the requirements of subsections (a), (b), and (c) but the Secretary's determination is inconsistent with the findings of the State survey team, the Secretary's determination as to the compliance of the facility is binding and supersedes that of the State survey.

"(B) Remedies for poor performance.—If the Secretary finds, on the basis of such surveys, that a State's survey and certification performance is not adequate or that a State has failed to perform surveys as required under paragraph (2), the Secretary may provide for an appropriate remedy, which may include the training of the survey team or the designation of another State to perform survey and certification activities.

"(C) Special surveys of compliance.—Where the Secretary has reason to question the compliance of a skilled nursing facility with any of the requirements of subsections (a) through (c), the Secretary may conduct a survey of the facility and, on that basis, make independent and binding determinations concerning the extent to which the skilled nursing facility meets such requirements.

"(4) Investigation of complaints and monitoring compliance.—Each State shall maintain procedures and adequate staff to—

"(A) investigate complaints of violations of requirements by skilled nursing facilities, and

"(B) monitor, on-site, on a regular basis (which may be daily or more or less frequently than daily) a skilled nursing facility's compliance with the requirements of subsections (a) through (c) if—

"(i) the facility has been found not to be in compliance with such requirements and is in the process of correcting deficiencies to achieve such compliance;

"(ii) the facility was previously found not to be in compliance with such requirements, has corrected deficiencies to achieve such compliance, and verification of continued compliance is indicated; or

"(iii) the State has reason to question the compliance of the facility with such requirements.

"(5) Disclosure of results of inspections and activities.—

"(A) Public information.—Each State, and the Secretary, shall make available to the public—

"(i) information respecting all surveys and certifications made respecting skilled nursing facilities,

"(ii) copies of cost reports of such facilities filed under this title or title XIX, and

"(iii) copies of statements of ownership under section 1124.

"(B) Notice to physicians and skilled nursing facility administrator licensing board.—If a State finds that a skilled nursing facility has provided poor quality of care, the State shall notify—

"(i) the attending physician of each resident with respect to which such finding is made, and

"(ii) the State board responsible for the licensing of the skilled nursing facility administrator at the facility.

"(C) Access to fraud control units.—Each State shall provide its State medicaid fraud and abuse control unit (established under section 1903(q)) with access to all information of the State agency responsible for surveys and certifications under this subsection.".

(c) Posting Survey Results.—Section 1864(a) (42 U.S.C. 1395aa(a)) is amended by inserting, after "readily available form and place" in the fifth sentence, the following: ", and require (in the case of skilled nursing facilities) the posting in a place readily accessible to patients (and patients' representatives),".

SEC. 9313. ENFORCEMENT PROCESS.

(a) State Requirement.—Section 1864(d) of the Social Security Act (42 U.S.C. 1395aa(d)), as added by section 9311(c) and as amended by section 9312(a) of this Act, is further amended—

(1) by inserting after paragraph (4) the following new paragraph:

"(5) The State must have established remedies under sections 1819(f)(2)(B) and 1819(f)(2)(C) (relating to establishment and application of remedies)."; and

(2) in the last sentence, by striking "or (4)" and inserting "(4), or (5)".

(b) Requirements.—Section 1819 of such Act, as added by section 9311(b) and as amended by sections 9311(d) and 9312(b) of this Act, is further amended by adding at the end the following new subsection:

"(f) Enforcement Process.—

"(1) In general.—If a State finds that a skilled nursing facility no longer meets a requirement of subsection (a), (b), or (c) and further finds that the facility's deficiencies—

"(A) immediately jeopardize the health or safety of its residents, the State shall take immediate action to remove the jeopardy and correct the deficiencies (including the appointment of temporary management under paragraph (2)(A)(iii)) or terminate immediately the facility's participation under this title and may provide, in addition, for one or more of the remedies described in paragraph (2); or

"(B) do not immediately jeopardize the health or safety of its residents, the State may terminate the facility's participation under this title or may provide, in addition, for one or more of the remedies described in paragraph (2).

Nothing in this paragraph shall be construed as restricting the remedies available to a State to remedy a skilled nursing facility's deficiencies.

"(2) Specified remedies.—

"(A) Listing.—Except as provided in subparagraph (B)(ii), each State shall establish by law (whether statute or regulation) at least the following remedies:

"(i) Denial of payment under this title with respect to any individual admitted to the skilled nursing facility involved after such notice to the public and to the facility as may be provided by this title.

"(ii) A civil money penalty assessed and collected for each day in which the facility remains out of compliance with a requirement of subsection (a), (b), or (c) or regulations or guidelines under such as subsection.

"(iii) The appointment of temporary management to oversee the operation of the facility and to assure the health and safety of the facility's residents, where there is a need for temporary management while—

"(I) there is an orderly closure of the facility, or

"(II) improvements are made in order to bring the facility into compliance with all the requirements of subsections (a) through (c) and regulations and guidelines.

"(iv) The authority, in the case of an emergency, to close the facility, to transfer residents in that facility to other facilities, or both.

"(B) Deadline and guidance.—(i) Except as provided in clause (ii), as a condition of entering into an agreement with a State under section 1864(a) with respect to determining on or after October 1, 1989, whether institutions qualify as skilled nursing facilities, each State shall establish the remedies described in clauses (i) through (iv) of subparagraph (A) by not later than July 1, 1989. The Secretary shall provide, through regulations or otherwise by not later than October 1, 1988, guidance to States in establishing such remedies; but the failure of the Secretary to provide such guidance shall not relieve a State of the responsibility for establishing such remedies.

"(ii) A State may establish alternative remedies (other than termination of participation) other than those described in clauses (i) through (iv) of subparagraph (A), if the State demonstrates to the Secretary's satisfaction that the alternative remedies are as effective in deterring noncompliance and correcting deficiencies as those described in subparagraph (A).

"(C) Assuring compliance.—If a skilled nursing facility has not complied with any of the requirements of subsections (a) through (c) within 6 months after the date the facility is found to be out of compliance with such requirements, the State shall impose the remedy described in subparagraph (A)(i) for all individuals who are admitted to the facility after such date.

"(3) Secretarial authority.——

"(A) Secretarial reviews.—With respect to a State skilled nursing facility, the Secretary shall have the authority and duties of a State under this subsection. With respect to any other skilled nursing facility in a State, the Secretary may, pursuant to subsection (e)(3) and except as provided in subparagraph (B), exercise the authority of the State under this subsection.

"(B) Authority with respect to civil money penalties.—In exercising authority under subparagraph (A) in imposing a civil money penalty under paragraph (2)(A)(ii), the Secretary shall base the amount of the penalty on the severity and frequency of the noncompliance and the size of the facility and may not impose a civil money penalty that exceeds $10,000 for each day of noncompliance and the Secretary shall impose and collect such a penalty in the same manner as civil money penalties are imposed and collected under section 1128A.

"(4) Effective period of denial of payment.—A finding to deny payment under this subsection shall terminate when the State or Secretary (or both, as the case may be) finds that the facility is in substantial compliance with all the requirements of subsections (a) through (c).

"(5) Remedies where state or secretary finds noncompliance and immediate jeopardy.—If either the State or the Secretary finds that a skilled nursing facility has not met a requirement of subsection (a), (b), or (c) and finds that the failure immediately jeopardizes the health or safety of its residents, the State shall take immediate action to remove the jeopardy and correct the deficiency (including the appointment of temporary management and the denial of payment for new residents until the facility is in compliance with the requirements). If the State determines that it is necessary to terminate immediately the facility's participation agreement, the State shall provide for the safe and orderly transfer of the residents eligible under this title consistent with the requirements of subsection (b)(2).

"(6) Special rules where state and secretary do not agree on finding of noncompliance.—

"(A) State finding of noncompliance and no secretarial finding of noncompliance.—If the Secretary finds that a skilled nursing facility has met all the requirements of subsections (a) through (c), but a State finds that the facility has not met such requirements and the failure does not immediately jeopardize the health or safety of its residents, the State's findings shall control and the remedies imposed by the State shall be applied.

"(B) Secretarial finding of noncompliance and no state finding of noncompliance.—If the Secretary finds that a skilled nursing facility has not met all the requirements of subsections (a) through (c) and that the failure does not immediately jeopardize the health or safety of its residents, but the State has not made such a finding, the Secretary may impose any remedies (other than termination of participation) with respect to the facility.

"(7) Special rules for enforcement actions where secretary and the state find noncompliance but do not agree on correction actions.—If—

"(A) both the Secretary and the State find that a skilled nursing facility has not met all the requirements of subsections (a) through (c),

"(B) neither finds that the failure immediately jeopardizes the health or safety of its residents, and

"(C) both find that the facility's participation under the plan should be terminated,

the State's determination of corrective actions and timing of such actions shall take precedence over similar determinations by the Secretary so long as such actions do not occur later than 6 months after the date of the finding of noncompliance.

"(8) Construction.—The remedies provided under this subsection are in addition to those otherwise available under State or Federal law and shall not be construed as limiting such other remedies. The remedies described in clause (i), (iii), or (iv) of paragraph (2)(A) may be imposed during the pendency of any hearing.

"(9) Sharing of information.—Notwithstanding any other provision of law, all information concerning skilled nursing facilities required by this section to be filed with the Secretary or a State agency shall be made available to Federal or State employees for purposes consistent with the effective administration of programs established under this title and title XIX.".

SEC. 9314. EFFECTIVE DATES.

(a) New Requirements and Survey and Certification Process.—Except as otherwise specifically provided in sections 1819 and 1864(d) of the Social Security Act, the amendments made by this part shall apply to extended care services furnished on or after January 1, 1989.

(b) Waiver of Paperwork Reduction.—Chapter 35 of title 44, United States Code, shall not apply to information required for purposes of carrying out this part and implementing the amendments made by this part.

PART 2—PROVISIONS RELATING TO PARTS A AND B OF THE MEDICARE PROGRAM

SEC. 9331. SETTING AVERAGE PROMPT PAY STANDARD.

(a) Part A.—Section 1816(c)(2) of the Social Security Act (42 U.S.C. 1395h(c)(2)) is amended by adding at the end the following new subparagraph:

"(D)(i) The Secretary shall manage, through agreements entered into under this section and contracts entered into under section 1842 (including agreements and contracts under section 2326(a) of the Deficit Reduction Act of 1984) and within the time periods established under subparagraph (A) and under section 1842(c)(2)(A), the payment of claims under this title so that the average period between—

"(I) fiscal intermediaries' receipt of a claim under this part and its payment shall approximate 20 days for claims in fiscal year 1988 (received after November 20, 1987); or

"(II) fiscal intermediaries' and carriers' receipt of a claim under this title and its payment shall approximate 23 days for claims in fiscal year 1989 and 25 days for claims in fiscal year 1990.

"(ii) In meeting the requirement of clause (i) for a fiscal year, the Secretary shall—

"(I) publish in the Federal Register (within 30 days after the enactment of this subparagraph for fiscal year 1988 and before July 1, 1988, and July 1, 1989 for fiscal year 1989 and fiscal year 1990, respectively) notice of the particular payment policy for each fiscal intermediary and carrier for the fiscal year, and

"(II) to the maximum extent feasible consistent with the time periods established under subparagraph (A) and under section 1842(c)(2)(A), the difference between the average payment period required of each intermediary or carrier for a fiscal year and the actual average payment period of the intermediary or carrier for the previous fiscal year shall be approximately equal.".

(b) PART B.—Section 1842(c)(2) of such Act (42 U.S.C. 1395u(c)(2)) is amended by adding at the end the following new subparagraph:

"(D)(i) The Secretary shall manage, through contracts entered into under this section and agreements entered into under section 1816 (including contracts and agreements under section 2326(a) of the Deficit Reduction Act of 1984) and within the time periods established under subparagraph (A) and under section 1816(c)(2)(A), the payment of claims under this title so that the average period between fiscal intermediaries' and carriers' receipt of a claim under this title and its payment shall approximate 23 days for claims in fiscal year 1989 and 25 days for claims in fiscal year 1990.

"(ii) In meeting the requirement of clause (i) for a fiscal year, the Secretary shall—

"(I) publish notice in the Federal Register (within 30 days after the enactment of this subparagraph for fiscal year 1988 and before July 1, 1988, and July 1, 1989 for fiscal year 1989 and fiscal year 1990, respectively) of the particular payment policy for each fiscal intermediary and carrier for the fiscal year, and

"(II) to the maximum extent feasible consistent with the time periods established under subparagraph (A) and under section 1842(c)(2)(A), the difference between the average payment period required of each intermediary or carrier for a fiscal year and the actual average payment period of the intermediary or carrier for the previous fiscal year shall be approximately equal.".

(c) GAO REPORT.—The Comptroller General shall review and report, by not later than March 31, 1988, to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the implementation of the amendments made by this section.

(d) PROHIBITION OF OTHER POLICIES INTENDED TO SLOW DOWN MEDICARE PAYMENTS.—Notwithstanding any other provision of law, except as specifically provided in this section, the Secretary of Health and Human Services is not authorized to issue, after the date of the enactment of this Act, and before October 1, 1990, any final regulation, instruction, or other policy change which is primarily intended to have the effect of slowing down claims processing, or delaying payment of claims under title XVIII of the Social Security Act.

(e) CONFORMING AMENDMENTS TO PROMPT PAYMENT PROVISIONS.—(1) Section 1816(c)(2)(B)(ii) of the Social Security Act (42 U.S.C. 1395h(c)(2)(B)(ii)) is amended by striking subclauses (II) through (IV) and inserting the following:

"(II) with respect to claims received in each of fiscal years 1988, 1989, and 1990, 30 calendar days, and

"(III) with respect to claims received in any succeeding fiscal year, 24 calendar days.".

(2) Section 1842(c)(2)(B)(ii) of such Act (42 U.S.C. 1395u(c)(2)(B)(ii)) is amended by striking subclauses (II) through (IV) and inserting the following:

"(II) with respect to claims received in each of fiscal years 1988, 1989, and 1990, 30 calendar days (or 23 calendar days with respect to claims submitted by participating physicians), and

"(III) with respect to claims received in any succeeding fiscal year, 24 calendar days (or 17 days with respect to claims submitted by participating physicians).".

SEC. 9332. HEALTH MAINTENANCE ORGANIZATIONS AND CAPITATION DEMONSTRATION PROJECTS.

(a) BROADENING USE OF CIVIL MONETARY PENALTIES AND INTERMEDIATE SANCTIONS AGAINST HMOs/CMPs.—Section 1876 of the Social Security Act (42 U.S.C. 1395mm) is amended—

(1) in subsection (c)(3)(D), by inserting "(or engage in any practice which can reasonably be expected to deny or discourage enrollment or re-enrollment)" after "expel or refuse to re-enroll", and

(2) by amending paragraph (6) of subsection (i) to read as follows:

"(6)(A) If the Secretary determines that an eligible organization with a contract under this section—

"(i) fails substantially to provide medically necessary items and services that are required (under law or under the contract) to be provided to an individual covered under the contract, if the failure has adversely affected (or has substantial likelihood of adversely affecting) the individual;

"(ii) imposes charges on individuals enrolled under this section in excess of the charges permitted;

"(iii) acts to expel or to refuse to re-enroll an individual in violation of the provisions of this section;

"(iv) engages in any practice that would reasonably be expected to have the effect of denying or discouraging enrollment (except as permitted by this section) by eligible individuals with the organization whose medical condition or history indicates a need for substantial future medical services;

"(v) enrolls an individual under this section without the individual's knowledge; or

"(vi) misrepresents or falsifies information that is furnished—

"(I) to the Secretary under this section, or

"(II) to an individual or to any other entity under this section;

the Secretary may provide for any of the remedies described in subparagraph (B).

"(B) The remedies described in this subparagraph are—

"(i) civil money penalties of not more than $25,000 for each determination under subparagraph (A) or, with respect to a determination under clause (iv) or (vi)(I) of such subparagraph, of not more than $100,000 for each such determination,

"(ii) suspension of enrollment of individuals under this section after the date the Secretary notifies the organization of a determination under subparagraph (A) and until the Secretary is satisfied that the basis for such determination has been corrected and is not likely to recur, and

"(iii) suspension of payment to the organization under this section for individuals enrolled after the date the Secretary notifies the organization of a determination under subparagraph (A) and until the Secretary is satisfied that the basis for such determination has been corrected and is not likely to recur.

The provisions of section 1128A (other than subsections (a) and (b)) shall apply to a civil money penalty under clause (i) in the same manner as they apply to a civil money penalty under that section.".

(b) LIMITATION ON CAPITATION DEMONSTRATION PROJECTS.—Notwithstanding any other provision of law, effective as of October 1, 1987, the Secretary of Health and Human Services may not conduct any capitation demonstration project with an entity which is not an eligible organization (as defined in section 1876(b) of the Social Security Act) and which either—

(1) involves more than $15,000,000 in any year in funds under title XVIII of the Social Security Act without the specific authorization and direction of Congress, or

(2) provides for a capitated payment rate that exceeds the rate specified in section 1876(a)(1)(C) of such Act.

The Comptroller General shall report to the Congress annually on any such capitation demonstration projects conducted with an entity which is such an eligible organization.

(c) TREATMENT OF MICHIGAN BLUE CARE HMO NETWORK UNDER 50 PERCENT RULE.—Blue Care, Inc., a nonprofit corporation which is indirectly owned and operated by Blue Cross and Blue Shield of Michigan, Inc. and which enrolls individuals for the purpose of providing them with health care services through assignment to health maintenance organizations which are indirectly or wholly owned and operated by Blue Cross and Blue Shield of Michigan, Inc., is deemed to meet the requirement of section 1876(f)(1) of the Social Security Act (relating to limitation on enrollment of medicare and medicaid beneficiaries with an eligible organization) if—

(1) such requirement would be met if applied to all individuals enrolled with (or otherwise assigned to) each of such health maintenance organizations, and

(2) not more than 20 percent of the number of individuals who are members of (or otherwise assigned to) each such organization consists of individuals who are entitled to benefits under title XVIII of the Social Security Act.

(d) ASSIGNMENT OF HMO MEMBERS FOR CERTAIN ORGANIZATIONS.—

(1) IN GENERAL.—Section 1876(f) of the Social Security Act (42 U.S.C. 1395mm(f)) is amended by redesignating paragraph (3) as

paragraph (4) and by inserting after paragraph (2) the following new paragraph:

"(3)(A) An eligible organization described in subparagraph (B) may elect, for purposes of determining the compliance of a subdivision, subsidiary, or affiliate described in subparagraph (B)(iii) with the requirement of paragraph (1) for the period before October 1, 1992, to have members of the subdivision, subsidiary, or affiliate considered to be members of the parent organization.

"(B) An eligible organization described in this subparagraph is an eligible organization which—

"(i) is described in section 1903(m)(2)(B)(iii);

"(ii) has members who have a collectively bargained contractual right to obtain health benefits from the organization;

"(iii) elects to provide benefits under a risk-sharing contract to individuals residing in a service area through a subdivision, subsidiary, or affiliate which itself is an eligible organization serving the area and which is wholly-owned or wholly-controlled by the parent eligible organization; and

"(iv) has assumed any risk of insolvency and quality assurance with respect to individuals receiving benefits through such a subdivision, subsidiary, or affiliate.".

(2) Effective date.—The amendments made by paragraph (1) shall take effect on the date of the enactment of this Act.

SEC. 9333. MISCELLANEOUS AND TECHNICAL PROVISIONS.

(a) Clarification of Criminal Penalties for Willful Misrepresentations.—Subsection (c) of section 1128B of the Social Security Act (42 U.S.C. 1320a-7b)), as redesignated by section 4(d) of Public Law 100-93, is amended—

(1) by striking "institution or facility" each place it appears and inserting "institution, facility, or entity", and

(2) by inserting "(including an eligible organization under section 1876(b))" after "other entity".

(b) Requiring Publication of Intermediary and Carrier Budget Methodology.—

(1) Fiscal intermediaries.—Section 1816(c)(1) of the Social Security Act (42 U.S.C. 1395h(c)(1)) is amended by adding at the end the following sentence: "The Secretary shall cause to have published in the Federal Register, by not later than September 1 before each fiscal year, data, standards, and methodology to be used to establish budgets for fiscal intermediaries under this section for that fiscal year, and shall cause to be published in the Federal Register for public comment, at least 90 days before such data, standards, and methodology are published, the data, standards, and methodology proposed to be used.".

(2) Carriers.—Section 1842(c)(1) of such Act (42 U.S.C. 1395u(c)(1)) is amended by adding at the end the following sentence: "The Secretary shall cause to have published in the Federal Register, by not later than September 1 before each fiscal year, data, standards, and methodology to be used to establish budgets for carriers under this section for that fiscal year, and shall cause to be published in the Federal Register for public comment, at least 90 days before such data, standards, and methodology are published, the data, standards, and methodology proposed to be used.".

(3) Effective date.—The amendments made by this section shall take effect on the date of the enactment of this Act and shall apply to budgets for fiscal years beginning with fiscal year 1989.

(c) Extend and Clarify Prohibition on Cost Savings Policies Before Beginning of Fiscal Year.—Notwithstanding any other provision of law, except as required to implement specific provisions required under statute, the Secretary of Health and Human Services is not authorized to issue in final form, after the date of the enactment of this Act and before October 15, 1988, any regulation, instruction, or other policy which is estimated by the Secretary to result in a net reduction in expenditures under title XVIII of the Social Security Act in fiscal year 1989 of more than $50,000,000.

(d) Notification of Providers of Services of Changes in Medicare Rules.—

(1) In general.—Section 1816 of the Social Security Act (42 U.S.C. 1395h) is amended by adding at the end the following new subsection:

"(j)(1)(A) Each agreement under this section with a fiscal intermediary which serves a home health agency or a skilled nursing facility shall require the fiscal intermediary to transmit to each such agency or facility a copy of each policy statement (as defined in paragraph (2)) received by the fiscal intermediary not later than 5 business days after the date the fiscal intermediary receives the statement.

"(B) Each agreement under this section with a fiscal intermediary which serves another provider of services shall require the fiscal intermediary to transmit to each such provider a copy of each policy statement received by the fiscal intermediary in a month not later than the 7th day of the following month, except that such policy statement shall be sent not later than 5 business days after the date of receipt of statement if the statement is effective before the 7th day of the following month.

"(2) As used in paragraph (1), the term 'policy statement' means, with respect to a fiscal intermediary and a provider of services, coverage or program instructions and memoranda, clarifications, interpretative rules, statements of policy, and guidelines of general applicability under this title which relates to that class of provider of services and which the Secretary has sent to the fiscal intermediary.".

(2) Effective date.—The amendment made by paragraph (1) shall apply to agreements under section 1816 of the Social Security Act as of January 1, 1988, but shall not apply to any instructions, memoranda, clarification, rule, statement, or guideline issued before such date.

(e) Podiatrists.—

(1) Deleting institutional restriction.—Section 1861(r)(3) of such Act (42 U.S.C. 1395x(r)(3)) is amended—

(A) by striking "subsection (s) of this section" and inserting "subsections (k), (m), (p)(1), and (s) of this section and sections 1814(a), 1832(a)(2)(F)(ii), and 1835", and

(B) by striking "; and for the purposes" and all that follows through "which he is legally authorized to perform".

(2) Correcting reference to council.—Section 1861(b)(6) of such Act (42 U.S.C. 1395x(b)(6)) is amended by striking "Council on Podiatry Education of the American Podiatry Association" and inserting "Council on Podiatric Medical Education of the American Podiatric Medical Association".

(3) Effective Date.—The amendments made by this subsection shall take effect on the date of the enactment of this Act.

(f) Technical Corrections.—

(1) Section 1128A(b) of the Social Security Act (42 U.S.C. 1320a-7a(b)) is amended—

(A) in paragraph (1)(A), by striking "XVII" and inserting "XVIII", and

(B) in paragraph (2) by inserting "each" after "$2,000 for".

(2) Section 1138(a)(1)(B) of such Act (42 U.S.C. 1320b-8(a)(1)(B)) is amended by striking "In" and inserting "in".

(3) Section 1154(a)(4) of such Act (42 U.S.C. 1320c-3(a)(4)) is amended—

(A) by indenting subparagraphs (B) and (C) (and clauses (i) through (iii) of subparagraph (C)) two additional ems;

(B) in subparagraph (B), by inserting "risk-sharing" before "contract under section 1876"; and

(C) in subparagraph (C)(i), by adding before the comma at the end the following: "(other than the ability to perform review functions under this section that are not described in subparagraph (B))".

(4) Section 1154(d) of such Act (42 U.S.C. 1320c-3(d)) is amended by striking "1164(b)(4)" and inserting "1164".

(5) Section 1160 of such Act (42 U.S.C. 1320c-9) is amended by adding at the end the following new subsection:

"(e) For purposes of this section and section 1157, the term 'organization with a contract with the Secretary under this part' includes an entity with a contract with the Secretary under section 1154(a)(4)(C).".

(6) Section 1842(l)(1)(C)(i) of such Act (42 U.S.C. 1395u(l)(1)(C)(i)) is amended by inserting "the physician establishes that" after "(i)".

(7) Section 1876(i)(7) of such Act (42 U.S.C. 1395mm(i)(7)) is amended—

(A) in subparagraph (A), by striking "Except as provided under section 1154(a)(4)(C), each" and inserting "Each";

(B) in subparagraph (A), by inserting "or with an entity selected by the Secretary under section 1154(a)(4)(C)" after "located)"; and

(C) by striking "peer" in subparagraph (B) and the second place it appears in subparagraph (A).

(8).Section 9353 of the Omnibus Budget Reconciliation Act of 1986 is amended—

(A) in subsection (a)(6)(A)(i), by striking "paragraphs (1) and (2)(D) shall apply to contracts as of" and inserting "paragraph (1) shall apply to contracts entered into or renewed on or after";

(B) in subsection (a)(6)(B), by striking "amendment made by paragraph (2)(B)" and inserting "amendments made by paragraphs (2)(B) and (2)(D)"; and

(C) in subsection (e)(3)(B), by adding at the end the following: "The provisions of section 1876(i)(7) of the Social Security Act (added by such amendment) shall apply to health maintenance organizations with contracts in effect under section 1876 of such Act (as in effect before the date of the enactment of Public Law 97-248) in the same manner as it applies to eligible organizations with risk-sharing contracts in effect under section 1876 of such Act (as in effect on the date of the enactment of this Act).".

PART 3—PROVISIONS RELATING TO PART B OF MEDICARE PROGRAM

SEC. 9361. PHYSICIAN PAYMENT UPDATE.

(a) In General.—Section 1842(b)(4)(A)(iv) of the Social Security Act (42 U.S.C. 1395u(b)(4)(A)(iv)) is amended by striking "96 percent" and inserting "95 percent".

(b) Percentage Increase in MEI.—With respect to physicians' services furnished in 1988, for purposes of part B of title XVIII of the Social Security Act the percentage increase in the MEI is deemed to be 2 percent.

(c) Effective Date.—The amendment made by subsection (a) shall apply to services furnished on or after January 1, 1988.

SEC. 9362. REDUCTION OF PAYMENTS FOR CERTAIN PROCEDURES.

(a) In General.—Section 1842 of the Social Security Act (42 U.S.C. 1395u) is amended—

(1) in subsection (b)(11)—

(A) in subparagraph (B)(i), by striking "and shall be further reduced by 2 percent with respect to procedures performed in 1988" and inserting "and, with respect to procedures performed in 1988, shall be such prevailing charge recognized with respect to such procedures in 1987 reduced by 15 percent";

(B) in subparagraph (B)(ii), by striking "75 percent" and "1986" and inserting "80 percent" and "1987", respectively, and by adding at the end the following: "There shall be no administrative or judicial review under section 1869 or otherwise of any determination under this clause."; and

(C) in subparagraph (C)—

(i) in clause (i), by striking "(subject to clause (iv))" and all that follows through the end and inserting the following: ", the physician's actual charge is subject to a limit under subsection (j)(1)(D).";

(ii) in clause (i), by striking "(i)" after "(C)"; and

(iii) by striking clauses (ii) through (iv);

(2) by amending paragraph (10) of subsection (b) to read as follows:

"(10)(A) In determining the reasonable charge under paragraph (3) for procedures described in subparagraph (C) and performed in 1988, subject to subparagraph (B), the prevailing charge for such procedure for participating and nonparticipating physicians shall be the prevailing charge otherwise recognized for such procedure for 1987 reduced by 15 percent. A reduced prevailing charge under this subparagraph is the prevailing charge level for 1988 for purposes of applying the economic index under the fourth sentence of paragraph (3) for subsequent years.

"(B) In no case shall the reduction under subparagraph (A) for a procedure result in a prevailing charge in a locality for a year which is less than 80 percent of the Secretary's estimate of the weighted national average of such prevailing charges for such procedure for all localities in the United States for 1987 based upon the best available data.

"(C) The procedures described in this subparagraph are as follows: coronary artery bypass surgery, total hip replacement, transurethral resection of the prostate, suprapubic prostatectomy, diagnostic and therapeutic dilation and curettage, and carpal tunnel repair.

"(D) In the case of a reduction in the reasonable charge for a physicians' service under subparagraph (A), if a nonparticipating physician furnishes the service to an individual entitled to benefits under this part, after the effective date of such reduction, the physician's actual charge is subject to a limit under subsection (j)(1)(D)."; and

(3) in subsection (j)(1), by adding at the end the following new subparagraph:

"(D)(i) If an action described in clause (ii) results in a reduction in a reasonable charge for a physicians' service or item and a nonparticipating physician furnishes the service or item to an individual entitled to benefits under this part after the effective date of such action, the physician may not charge the individual more than the following special limit on actual charges: For services or items furnished—

"(I) during the 12-month period beginning on the effective date of the action, the special limit is equal to 125 percent of the reduced payment allowance (as defined in clause (iii)) plus 1/2 of the amount by which the physician's maximum allowable actual charge for the service or item for the previous 12-month period exceeds such 125 percent level;

"(II) the following 12-month period, the special limit is equal to 125 percent of the reduced payment allowance; or

"(III) during any subsequent 12-month period, the special limit is equal to 115 percent of the reduced payment allowance.

"(ii) The first sentence of clause (i) shall apply to an adjustment under subsection (b)(8)(B), a reduction under subsection (b)(10)(A), a reduction under subsection (b)(11)(B), and an adjustment under section 1833(l)(3)(B).

"(iii) In clause (i), the term 'reduced payment allowance' means, with respect to an action—

"(I) under subsection (b)(8)(B), the inherently reasonable charge established under subsection (b)(8); or

"(II) under subsection (b)(10)(A) or (b)(11)(B) or under section 1833(l)(3)(B), the prevailing charge for the service after the action.

"(iv) If a physician knowingly and willfully imposes a charge in violation of clause (i) (whether or not such charge violates subparagraph (B)), the Secretary may apply sanctions against such physician in accordance with paragraph (2).

"(v) Clause (i) shall not apply to items and services furnished after the earlier of (I) December 31, 1990, or (II) one-year after the date the Secretary reports to Congress, under section 1845(e)(3), on the development of the relative value scale under section 1845.".

(b) Conforming Amendments.—(1) Section 1833(l)(6) of such Act (42 U.S.C. 1395l(l)(6)) is amended—

(A) in subparagraph (A), by striking "(subject to subparagraph (D))" and all that follows through the end and inserting the following: "after the effective date of the reduction, the physician's actual charge is subject to a limit under section 1842(j)(1)(D).";

(B) in subparagraph (A), by striking "(A)" after "(6)"; and

(C) by striking subparagraphs (B) through (D).

(2) Section 9334(b)(2) of the Omnibus Budget Reconciliation Act of 1986 is amended by striking "1842(b)(10)" and inserting "1842(j)(1)(D)".

(c) Effective Date.—The amendments made by this section shall apply to items and services furnished on or after January 1, 1988. With respect to the reduction under section 1842(b)(11)(B) of the Social Security Act and for purposes of section 9334(b)(2) of the Omnibus Budget Reconciliation Act of 1986, in applying section 1842(j)(1)(D)(i) of such Act (as added by subsection (b)(3) of this section), subclause (I) of such section shall not apply and the reference to "the following 12-month period" in subclause (II) of such section is deemed a reference to 1988.

SEC. 9363. LIMITS ON PAYMENT FOR OPHTHALMIC ULTRASOUND AND INTRAOCULAR LENSES.

(a) In General.—Section 1842 of the Social Security Act (42 U.S.C. 1395u), as amended by section 9362(a)(1)(C) of this title, is amended—

(1) in subsection (b)(11)—

(A) by redesignating subparagraph (C) as subparagraph (D),

(B) by inserting after subparagraph (B) the following new subparagraph:

"(C)(i) The prevailing charge level determined with respect to A-mode ophthalmic ultrasound procedures may not exceed 5 percent of the prevailing charge level established with respect to extracapsular cataract removal with lens implantation.

"(ii) The reasonable charge for an intraocular lens implanted during cataract surgery in a physician's office or an ambulatory surgery center may not exceed the actual acquisition cost for the lens (taking into account any discount) plus a handling fee (not to exceed 10 percent of such actual acquisition cost).";

(C) in subparagraph (D), as so redesignated and as amended by section 9362(a)(1)(C) of this title—

(i) by striking "service under subparagraph (B)" and inserting "service or item under subparagraph (B) or (C)", and

(ii) by inserting "or item" after "furnishes the service"; and

(2) in subsection (j)(1)(D), as added by section 9362(a)(3) of this title—

(A) in clause (ii), by inserting "a prevailing charge limit is established under subsection (b)(11)(C)(i), a reasonable charge limit is established under subsection (b)(11)(C)(ii)," after "(b)(11)(B),"; and

(B) in clause (iii)—

(i) by striking "or" at the end of subclause (I),

(ii) in subclause (II), by striking "or (b)(11)(B)" and inserting ", (b)(11)(B), or (b)(11)(C)(i)",

(iii) by striking the period at the end of subclause (II) and inserting "; or", and

(iv) by adding at the end the following new subclause:

"(III) under subsection (b)(11)(C)(ii), the payment allowance established under such subsection.".

(b) Effective Date.—The amendments made by subsection (a) shall apply to items and services furnished on or after January 1, 1988. With respect to the the establishment of a reasonable charge limit under section 1842(b)(11)(C)(ii) of the Social Security Act, in applying section 1842(j)(1)(D)(i) of such Act, subclause (I) of such section shall not apply and the reference to "the following 12-month period" in subclause (II) of such section is deemed a reference to 1988.

SEC. 9364. PROHIBITION OF BILLING FOR CERTAIN PURCHASED SERVICES.

(a) In General.—Section 1833 of the Social Security Act (42 U.S.C. 1395l) is amended by adding at the end the following new subsection:

"(m)(1) Payment may be made under this part for a diagnostic test described in section 1861(s)(3) (other than a clinical diagnostic laboratory test) only to the person or other entity which performed or supervised the performance of such test; except that if a physician performed or supervised the performance of such test, payment may be made to another physician with whom the physician shares the physician's practice.

"(2) A physician or supplier may not bill an individual enrolled under this part for a diagnostic test for which payment may not be made because of paragraph (1).

"(3) If a physician or supplier knowingly and willfully in repeated cases bills one or more individuals in violation of paragraph (2), the Secretary may apply sanctions against such physician or supplier in accordance with section 1842(j)(2).".

(b) Adjustment in Medicare Prevailing Charges.—

(1) Review.—The Secretary of Health and Human Services shall review payment levels

under part B of title XVIII of such Act for diagnostic tests (described in section 1861(s)(3) of the Social Security Act, but excluding clinical diagnostic laboratory tests) which are commonly performed by independent vendors, sold as a service to physicians, and billed by such physicians, in order to determine the reasonableness of payment amounts for such tests (and for associated professional services component of such tests). The Secretary may require physicians and suppliers to provide such information on the purchase or sale price (net of any discounts) for such tests as is necessary to complete the review and make the adjustments under this subsection.

(2) ESTABLISHMENT OF REVISED PAYMENT SCREENS.—If, as a result of such review, the Secretary determines, after notice and opportunity of at least 60 days for public comment, that the current prevailing charge levels (under the third and fourth sentences of section 1842(b) of the Social Security Act) for such tests or associated professional services are excessive, the Secretary shall establish such charge levels at levels which, consistent with assuring that the test is widely and consistently available to medicare beneficiaries, reflect the purchase price for the test without any additional markup. The Secretary, pursuant to guidelines published after notice and opportunity of at least 60 days for public comment, may delegate to carriers with contracts under section 1842 of the Social Security Act the establishment of new prevailing charge levels under this paragraph. When such charge levels are established, the provisions of section 1842(j)(1)(D) of such Act shall apply in the same manner as they apply to a reduction under section 1842(b)(10)(A) of such Act.

(c) EFFECTIVE DATES.—(1) The amendment made by subsection (a) shall apply to diagnostic tests performed on or after January 1, 1988; except that the Secretary of Health and Human Services may waive the application of such amendments until not later than January 1, 1989, in cases in which there are inadequate data to establish an appropriate payment level for such tests (and for the professional services component relating to the test).

(2) The Secretary of Health and Human Services shall complete the review and make an appropriate adjustment of prevailing charge levels under subsection (b) for items and services furnished no later than January 1, 1989.

SEC. 9365. REQUIRING COMPLETION OF FORMS FOR UNASSIGNED CLAIMS.

(a) IN GENERAL.—Section 1842 of the Social Security Act (42 U.S.C. 1395u) is amended by adding at the end the following new subsection:

"(n)(1) Each physician who provides items or services to an individual enrolled for benefits under this part and for which payment could be made under this part (without regard to section 1833(b))—

"(A) shall complete and submit to the appropriate carrier on the individual's behalf the standard form for claims for benefits under this part no later than the date the physician submits a charge to the individual for the items or services, and

"(B) may not impose any charge relating to completing and submitting such a form.

"(2) If a physician knowingly and willfully in repeated cases violates paragraph (1), the Secretary may apply sanctions against such physician in accordance with subsection (j)(2).".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to services furnished on or after January 1, 1989.

SEC. 9366. SUBMISSION OF CLAIMS TO SUPPLEMENTAL INSURANCE CARRIERS.

(a) IN GENERAL.—Section 1842(h)(3) of the Social Security Act (42 U.S.C. 1395u(h)(3)) is amended by inserting "(A)" after "(3)" and by adding at the end the following new subparagraph:

"(B) The Secretary shall establish a procedure whereby an individual enrolled under this part may assign, in an appropriate manner on the form claiming a benefit under this part for an item or service furnished by a participating physician or supplier, the individual's rights of payment under a medicare supplemental policy (described in section 1882(g)(1)) in which the individual is enrolled. In the case such an assignment is properly executed and a claims determination is made by a carrier with a contract under this section, the carrier shall transmit to the private entity issuing the medicare supplemental policy notice of such fact and including such information as the Secretary determines is generally provided to enable the entity to decide whether (and the amount of) any payment is due under the policy. The Secretary may enter into arrangements for the transmittal of such information to entities electronically for a reasonable fee.".

(b) MEDIGAP POLICY STANDARDS.—Section 1882 of such Act (42 U.S.C. 1395ss) is amended—

(1) in subsection (b)(1), by amending subparagraph (B) to read as follows:

"(B) includes requirements equal to or more stringent than the requirements described in paragraphs (2) and (3) of subsection (c); and";

(2) in subsection (c)—

(A) by striking "and" at the end of paragraph (1),

(B) by striking the period at the end of paragraph (2) and inserting "; and", and

(C) by inserting after paragraph (2) the following new paragraph:

"(3)(A) accepts a notice under section 1842(h)(3)(B) as a claims form for benefits under such policy in lieu of any claims form otherwise required and agrees to make a payment determination on the basis of the information contained in such claims form;

"(B) where such a notice is received—

"(i) provides notice to such physician or supplier and the beneficiary of the payment determination, and

"(ii) provides any appropriate payment directly to the participating physician or supplier involved;

"(C) provides each enrollee at the time of enrollment a card listing the name, address, and policy number of the policy; and

"(D) provides to the Secretary at least annually, for transmittal to carriers, a single mailing address to which notices under section 1842(h)(3)(B) respecting the policy are to be sent.".

(c) EFFECTIVE DATES.—(1) The amendment made by subsection (a) shall apply to contracts with carriers for claims for items and services furnished by participating physicians and suppliers on or after January 1, 1989.

(2)(A) The amendments made by subsection (b) shall apply to medicare supplemental policies as of January 1, 1989 (or, if applicable, the date established under subparagraph (B)).

(B) In the case of a State which the Secretary of Health and Human Services identifies as—

(i) requiring State legislation (other than legislation appropriating funds) in order for medical supplemental policies to be changed to meet the requirements of section 1882(c)(3) of the Social Security Act, and

(ii) having a legislature which is not scheduled to meet in 1988 in a legislative session in which such legislation may be considered,

the date specified in this subparagraph is the first day of the first calendar quarter beginning after the close of the first legislative session of the State legislature that begins on or after January 1, 1989, and in which legislation described in clause (i) may be considered.

SEC. 9367. ELIMINATION OF RETURN ON EQUITY FOR OUTPATIENT HOSPITAL SERVICES.

(a) IN GENERAL.—Section 1861(v)(1)(P) of the Social Security Act (42 U.S.C. 1395x(v)(1)(P)) is amended by inserting "(i)" after "(P)" and by adding at the end the following new clause:

"(ii) Such regulations shall not provide for the payment for a return on equity capital with respect to costs of outpatient hospital services.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply 51 days after the beginning of cost reporting periods beginning on or after October 1, 1987.

SEC. 9368. MEDICARE PAYMENT FOR THERAPEUTIC SHOES FOR INDIVIDUALS WITH SEVERE DIABETIC FOOT DISEASE.

(a) COVERAGE UNDER PART B.—Section 1861(s) of the Social Security Act (42 U.S.C. 1395x(s)) is amended—

(1) by redesignating paragraphs (12) through (15) as paragraphs (13) through (16), respectively,

(2) by striking out "and" at the end of paragraph (10),

(3) by striking out the period at the end of paragraph (11) and inserting in lieu thereof "; and", and

(4) by inserting after paragraph (11) the following new paragraph:

"(12) custom molded shoes, extra-depth shoes with or without inserts, and inserts for such shoes, for an individual with diabetes, if—

"(A) the physician who is managing the individual's diabetic condition (i) documents that the individual has peripheral neuropathy with evidence of callus formation, a history of pre-ulcerative calluses, a history of previous ulceration, foot deformity, or previous amputation, or poor circulation, and (ii) certifies that the individual needs such shoes under a comprehensive plan of care related to the individual's diabetic condition;

"(B) the particular type of shoes are prescribed by a podiatrist or other qualified physician (as established by the Secretary); and

"(C) the shoes are fitted and furnished by a podiatrist or other qualified individual (such as a certified pedorthist or orthotist, as established by the Secretary) who is not the physician described in subparagraph (A) (unless the Secretary finds that the physician is the only such qualified individual in the area).".

(b) LIMITATION ON BENEFIT.—Section 1833 of such Act (42 U.S.C. 1395) is amended by inserting after subsection (e) the following new subsection:

"(f)(1) In the case of shoes described in section 1861(s)(12)—

"(A) no payment may be made under this part for the furnishing of more than one pair of shoes or inserts for any individual for any calendar year, and

"(B) with respect to expenses incurred in any calendar year, no more than the limit established under paragraph (2) shall be considered as incurred expenses for purposes of subsections (a) and (b).

Payment for shoes under this part shall be considered to include payment for any expenses for the fitting of such shoes.

"(2)(A) Except as provided by the Secretary under subparagraphs (B) and (C), the limit established under this paragraph—

"(i) for the furnishing of one pair of custom molded shoes is $300;

"(ii) for the furnishing of extra-depth shoes and inserts is—

"(I) $100 for the pair of shoes itself, and

"(II) $50 for inserts for a pair of shoes.

"(B) The Secretary or a carrier may establish limits for shoes that are lower than the limits established under subparagraph (A) if the Secretary finds that shoes and inserts of an appropriate quality are readily available at or below such lower limits.

"(C) For each year after 1988, each dollar amount specified in subparagraph (A) (as previously adjusted under this subparagraph) shall be increased by the same percentage increase as the Secretary provides with respect to durable medical equipment for that year, except that if such increase is not a multiple of $1, it shall be rounded to the nearest multiple of $1.

"(3) In this title, the term 'shoes' includes, except for purposes of subparagraphs (A)(ii) and (B) of paragraph (2), inserts for extra-depth shoes.".

(c) Modification of Exclusion.—Section 1862(a)(8) of such Act (42 U.S.C. 1395y(a)(8)) is amended by inserting ", other than shoes furnished pursuant to section 1861(s)(12)" before the semicolon.

(d) Conforming Amendments.—Sections 1864(a), 1865(a), 1902(a)(9)(C), and 1915(a)(1)(B)(ii)(I) of such Act (42 U.S.C. 1395aa(a), 1395bb(a), 1396a(a)(9)(C), 1396n(a)(1)(B)(ii)(I)) are each amended by striking out "paragraphs (12) and (13)" and inserting in lieu thereof "paragraphs (13) and (14)".

(e) Effective Date.—The amendments made by this section shall apply to shoes and inserts furnished on or after January 1, 1988.

SEC. 9369. DEMONSTRATION PROJECTS FOR PROVIDING COMMUNITY NURSING AND AMBULATORY CARE SERVICES ON A PREPAID, CAPITATED BASIS TO MEDICARE BENEFICIARIES.

(a) In General.—The Secretary of Health and Human Services (in this section referred to as the "Secretary") shall provide for demonstration projects, in at least 4 sites, of a prepaid community nursing system described in subsection (b) in order to determine the practicality of prepaid community nursing as a means to improve home health care and to reduce the need for more costly institutional care.

(b) Description of Projects.—Under a demonstration project under this section—

(1) medicare beneficiaries would be eligible to enroll with a qualified community nursing organization to receive community nursing services (including home health services and such other services covered under part B of title XVIII of the Social Security Act as the Secretary determines to be appropriate, other than outpatient hospital services, physicians services, x-ray services, and laboratory services);

(2) the organization would receive payments for community nursing services on a capitated basis in a manner similar to that provided under a risk-sharing contract under section 1876 of such Act;

(3) the Secretary could require the organization to provide financial or other assurances (including financial risk-sharing) that minimize the inappropriate substitution of other services under title XVIII of such Act for community nursing services;

(4) the organization follows the orders of attending physicians (as they relate to community nursing services), in accordance with standards that take into account the need for coordination of patient care plans and the potential adverse health effects if services are not furnished in an appropriate manner; and

(5) if the Secretary determines that the organization has failed to perform in accordance with the requirements of the project (including meeting financial responsibility requirements under the project, any pattern of disproportionate or inappropriate institutionalization) the Secretary shall, after notice, terminate the project.

(c) Funding and Budget Neutrality.—Expenditures for the demonstration projects under this section shall be made, in appropriate parts, from the Federal Hospital Insurance Trust fund (established by section 1817 of the Social Security Act) and from the Federal Supplementary Medical Insurance Trust Fund (established by section 1841 of such Act). Grants and payments under contracts may be made either in advance or by way of reimbursement, as may be determined by the Secretary, and shall be made in such installments and on such conditions as the Secretary finds necessary to carry out the purpose of this section. The Secretary shall ensure that the aggregate payments made under demonstration projects do not exceed the aggregate payments that would have been made under title XVIII of the Social Security Act in the absence of such projects.

(d) Waiver of Medicare Requirements.—The Secretary shall waive compliance with such requirements of title XVIII of the Social Security Act to the extent and for the period the Secretary finds necessary for the conduct of the demonstration projects.

(e) Report.—The Secretary shall report to Congress, not later than 4 years after the date of the enactment of this Act, on the demonstration projects carried out under this section and concerning the advantages and disadvantages of prepaid community nursing care under the medicare program.

SEC. 9370. PHYSICIAN PAYMENT STUDIES.

(a) Definitions of Medical and Surgical Procedures.—

(1) Report on variations in carrier payment practice.—The Secretary of Health and Human Services (in this section referred to as the "Secretary") shall conduct a study of variations in payment practices for physicians' services among the different carriers under section 1842 of the Social Security Act. Such study shall examine carrier variations in the services included in global fees and pre- and post-operative services included in payment for the operation. The Secretary shall report to Congress on such study by not later than May 1, 1988.

(2) Uniform definitions of procedures for payment purposes.—The Secretary shall develop, in consultation with appropriate national medical specialty societies and by not later than July 1, 1989, uniform definitions of physicians' services (including appropriate classification scheme for procedures) which could serve as the basis for making payments for such services under part B of title XVIII of the Social Security Act. In developing such list, to the extent practicable—

(A) ancillary services commonly performed in conjunction with a major procedure would be included with the major procedure;

(B) pre- and post-procedure services would be included in the procedure; and

(C) similar procedures would be listed together if the procedures are similar in resource requirements.

(3) Office and hospital visit codes.—The Secretary shall conduct a study of alternative definitions and codes for office and hospital visits and consultations in order to develop definitions and codes which—

(A) would assure a reliable and accurate distinction between levels of services which involve significantly different costs of resources (in terms of time, complexity, and training required), and

(B) may be recorded on claims forms and may be readily and reliably verified.

The Secretary shall report to Congress on such study by not later than July 1, 1989.

(b) Expansion of Relative Value Scale (RVS) Study.—

(1) Additional services.—The Secretary shall expand the study being conducted, under section 1845(e) of the Social Security Act, to develop a relative value scale for physicians' services to include physicians' services in the fields of cardiology, emergency medicine, gastroenterology, hematology, infectious disease, nephrology, neurology, neurosurgery, nuclear medicine, oncology, physical medicine and rehabilitation, plastic surgery, pulmonary medicine, and radiation therapy.

(2) No delay in current study.—The expansion under paragraph (1) shall not be conducted in a manner that delays the completion of the current study or the report to Congress required under section 1845(e)(3) of the Social Security Act. The Secretary shall report to Congress on the services described in paragraph (1) by not later than October 1, 1989.

(3) Prompt submittal of study results to physician payment review commission.—The Secretary shall submit to the Physician Payment Review Commission a copy of any report submitted to the Secretary pursuant to a cooperative agreement in the fulfillment of the requirement of section 1845(e) of such Act, with all relevant supporting data (including survey data, analytic data files, and file documentation), by no later than 30 days after the date the report is received by the Secretary.

(c) Other Physician Payment Studies.—

(1) Fee schedule implementation.—The Secretary shall conduct a study of changes in the payment system for physicians' services, under part B of title XVIII of the Social Security Act, that would be required for the implementation of a national fee schedule for such services furnished on or after January 1, 1990. Such study shall identify any major technical problems related to such implementation and recommendations on ways in which to address such problems. The Secretary shall report to the Congress on such study by not later than July 1, 1989.

(2) Volume and intensity of physician services.—The Secretary shall conduct a study of issues relating to the volume and intensity of physicians' services under part B of title XVIII of the Social Security Act, including—

(A) historical trends with regard to increases in the volume and intensity of physicians' services furnished on a per enrollee basis (with appropriate adjustments to account for changes in the demographic composition of the medicare population);

(B) geographic variations in volume and intensity in physicians' services;

(C) an analysis of the effectiveness of methods currently used under such part to ensure that payments under such part are made only for services which are medically necessary;

(D) the development and analysis of alternative methods to control the volume of services; and

(E) the impact of the implementation of the relative value scale developed under section 1845(e) of such Act on the volume and intensity of physicians' services.

The Secretary shall submit to Congress an interim report on such study not later than May 1, 1988, and a final report on such study not later than May 1, 1989.

(3) Survey of out-of-pocket costs of medicare beneficiaries for health care services.—The Secretary shall conduct a survey to determine the distribution of—

(A) the liabilities and expenditures for health care services of individuals entitled to benefits under title XVIII of the Social Security Act, including liabilities for charges (not paid on an assignment-related basis) in excess of the reasonable charge recognized, and

(B) the collection rates among different classes of physicians for such liabilities, including collection rates for required coinsurance and for charges (not paid on an assignment-related basis) in excess of the reasonable charge recognized.

The Secretary shall report to Congress on such study by not later than July 1, 1989.

(4) Geographic variations in charges.—The Physician Payment Review Commission (established under section 1845 of the Social Security Act) shall study geographic variations in reasonable or prevailing charges recognized under part B of title XVIII of such Act. The Commission shall report to Congress on the results of such study by not later than March 1, 1988, and shall include in such report such recommendations for reducing geographic variation in such charges, after adjustments for geographic differences in cost of practice and cost of living.

SEC. 9371. MISCELLANEOUS AND TECHNICAL PROVISIONS.

(a) Prompt Submittal of Data by Secretary.—Section 1845 of the Social Security Act (42 U.S.C. 1395w-1) is amended by adding at the end the following new subsection:

"(f)(1) Not later than October 1st of each year (beginning with 1988), the Secretary shall transmit to the Physician Payment Review Commission, to the Congressional Budget Office, and to the Congressional Research Service of the Library of Congress national data (known as the Part B Medicare Annual Data System) for the previous year respecting part B of this title.

"(2) In order to ensure that the data are available for transmittal under paragraph (1) on a timely basis, the Secretary shall require, in the standards and criteria established under section 1842(b)(2), that carriers submit data for a year under the system referred to in paragraph (1) not later than July 1st of the following year.

"(3) The Secretary, in consultation with the Physician Payment Review Commission, the Congressional Budget Office, and the Congressional Research Service of the Library of Congress, shall establish and annually revise standards for the data reporting system described in paragraph (1).

"(4) The Secretary shall also provide to the entities described in paragraph (1) additional data respecting the program under this part as may be reasonably requested by them on an agreed-upon schedule.

"(5) The Secretary shall develop, in consultation with the Physician Payment Review Commission, the Congressional Budget Office, and the Congressional Research Service of the Library of Congress, a system for providing to each of such entities on a quarterly basis summary data on aggregate expenditures under this part by type of service and by type of provider. Such data shall be provided not later than 90 days after the end of each quarter (for quarters beginning with the calendar quarter ending on March 31, 1989).".

(b) Capacity to Set Geographic Payment Limits.—The Secretary shall develop the capability to implement (for services furnished on or after January 1, 1989) geographic limits on charges and payments under part B of title XVIII of the Social Security Act based on statewide, regional, or national average (or percentile in a distribution) of prevailing charges or payment amounts (weighted by frequency of services). Any such limits shall take into account adjustments for geographic differences in cost of practice and cost of living.

(c) Revision of Appointment Process for the Physician Payment Review Commission.—

(1) In general.—Section 1845(a) of Social Security Act (42 U.S.C. 1395w-1(a)(3)) is amended—

(A) in paragraph (1), by striking "with expertise in the provision and financing of physicians' services" and inserting "with national recognition for their expertise in health economics, physician reimbursement, medical practice, and other related fields"; and

(B) in paragraph (3), by striking the last sentence.

(2) Effective date.—The amendment made by paragraph (1) shall apply to appointments made after the date of the enactment of this Act.

(d) Application of Maximum Allowable Actual Charge (MAAC).—

(1) Application on individual charge basis.—Section 1842(j)(1) of the Social Security Act (42 U.S.C. 1395u(j)(1)) is amended—

(A) in the first sentence of subparagraph (B)(i), by striking "each such physician's actual charges" and inserting "the actual charges of each such physician";

(B) in the second sentence of subparagraph (B)(i), by striking "for such a service a physician's actual charge (as defined in subparagraph (C)(vi)" and inserting "on a repeated basis for such a service an actual charge"; and

(C) in subparagraph (C)(vi), by striking "and subparagraph (B)".

(2) Adjustment.—In the case of a physician who did not have actual charges under title XVIII of the Social Security Act for a procedure in the calendar quarter beginning on April 1, 1984, but who establishes to the satisfaction of a carrier that he or she had actual charges (whether under such title or otherwise) for the procedure performed prior to June 30, 1984, the carrier shall compute the maximum allowable actual charge under section 1842(j) of the Social Security Act for such procedure performed by such physician in 1988 based on such physician's actual charges for the procedure.

(3) Effective date.—The amendment made by paragraph (1) shall apply to charges imposed for services furnished on or after January 1, 1988.

(e) Clarification of Penalties for Unassigned Laboratory Services.—

(1) In general.—Section 1833(h)(5) of the Social Security Act (42 U.S.C. 1395l(h)(5)) is amended by adding at the end the following new subparagraph:

"(D) If a person knowingly and willfully and on a repeated basis bills an individual enrolled under this part for charges for a clinical diagnostic laboratory test for which payment may only be made on an assignment-related basis under subparagraph (C), the Secretary may apply sanctions against the person in the same manner as the Secretary may apply sanctions against a physician in accordance with section 1842(j)(2).".

(2) Effective date.—The amendment made by paragraph (1) shall apply to procedures performed on or after January 1, 1988.

(f) Extension of Moratorium on Laboratory Payment Demonstration.—Section 9204(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended by section 9339(e) of the Omnibus Budget Reconciliation Act of 1986, is amended by striking "January 1, 1988" and inserting "January 1, 1989".

(g) Applying Prompt-Pay Interest Requirement to Rehabilitation Facilities.—Effective for claims received on or after the date of the enactment of this Act, section 1816(c)(2)(C) of the Social Security Act (42 U.S.C. 1395h(c)(2)(C)) is amended by striking "from a hospital" and all that follows through "hospice program" and inserting "from a provider of services".

(h) Treatment of certain comprehensive outpatient rehabilitation facilities.—

(1) Location of provision of certain services.—With respect to comprehensive outpatient rehabilitation facilities certified on or before July 1, 1987, the Secretary may not require, under section 1861(cc)(2)(I) of the Social Security Act, that the facility limit the provision of physical therapy, occupational therapy, and speech pathology services to a single, fixed location, so long as such services are delivered as an integrated part of a comprehensive rehabilitation plan.

(2) Monitoring and report.—The Secretary shall carefully monitor the provision of physical therapy services, occupational therapy services, and speech pathology services by comprehensive outpatient rehabilitation facilities at sites other than a single, fixed location. The Secretary shall report to Congress, by not later than January 1, 1989, on the quality of such off-site services provided, compliance of such facilities with the requirements of section 1861(cc)(2) of the Social Security Act, and on whether the provisions of paragraph (1) should be extended to facilities certified after July 1, 1987.

(i) Technical Amendments.—

(1) Section 1833(a) of the Social Security Act (42 U.S.C. 1395l(a)) is amended—

(A) in paragraphs (1)(D)(i) and (2)(D)(i), by striking, "on the basis of an assignment described in section 1842(b)(3)(B)(ii), under the procedure described in section 1870(f)(1)," and inserting "on an assignment-related basis";

(B) in paragraph (1), by striking "and" before "(G)"; and

(C) in subsection (b)(3)(A), by striking "on the basis of an assignment described in section 1842(b)(3)(B)(ii), under the procedure described in section 1870(f)(1)" and inserting "on an assignment-related basis".

(2) Section 1833(h)(1)(C) of such Act (42 U.S.C. 1395l(h)(1)(C)) is amended by inserting before the period the following: ", and ending on December 31, 1989. For such tests furnished on or after January 1, 1990, the fee schedule shall be established on a nationwide basis".

(3) Section 1833(h)(5)(A) of such Act (42 U.S.C. 1395l(h)(5)(A)) is amended by striking "and" at the end of clause (i), by striking the period at the end of clause (ii) and inserting ", and", and by adding at the end the following new clause:

"(iii) in the case of a clinical diagnostic laboratory test provided under an arrangement (as defined in section 1861(w)(1)) made by a hospital, payment shall be made to the hospital.".

(4) Section 1835(a)(2)(C) of such Act (42 U.S.C. 1395n(a)(2)(C)) is amended by striking the second comma at the end of clause (i).

(5) Section 1842(b)(3)(C) of such Act (42 U.S.C. 1395u(b)(3)(C)) is amended by striking "not more than" and inserting "less than".

(6) Section 1842(h)(5) of such Act (42 U.S.C. 1395u(h)(5)) is amended by striking "the" before "participation".

(7) Effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1986, section 1842(j)(1) of the Social Security Act (42 U.S.C. 1395u(j)(1)) is amended—

(A) in subparagraph (C)(i), by inserting "maximum allowable" after "If the physician's",

(B) in subparagraph (C)(v), by striking "1987" and insert "1986", and

(C) by adding at the end of subparagraph (C) the following new clause:

"(vii) In the case of a nonparticipating physician who was a participating physician for any period on or after January 1, 1987, the maximum allowable actual charge shall be computed under this subparagraph as if the physician had been a nonparticipating physician for all periods on or after January 1, 1987.".

(8) Paragraph (4) of section 1845(e) of the Social Security Act (42 U.S.C. 1395w-1(e)) is amended by moving the alignment of each of its provisions (including any clauses therein) 2 ems to the left.

(9) Section 1861(b)(4) of such Act (42 U.S.C. 1395x(b)(4)) is amended by striking the comma before "anesthesia" and inserting "and" and by striking "certified" the second place it appears.

(10) The heading of subsection (g) of section 1861 of such Act (42 U.S.C. 1395x) is amended to read as follows:

"Outpatient Occupational Therapy Services".

(11) Section 1861(s) of such Act (42 U.S.C. 1395x(s)), as amended by section 9367(a) of this Act, is amended by striking "which—" before paragraph (15) and all that follows through the end of paragraph (16) and inserting the following: "which would not be included under subsection (b) if it were furnished to an inpatient of a hospital.".

(12) Section 1861(v)(5)(A) of such Act (42 U.S.C. 1395x(v)(5)(A)) is amended by striking "section 1861(p)" and "section 1861(g)" and inserting "subsection (p)" and "subsection (g)", respectively.

(13) The heading of subsection (bb) of section 1861 of such Act (42 U.S.C. 1395x) is amended to read as follows:

"Services of a Certified Registered Nurse Anesthetist".

(14) The heading of subsection (ee) of section 1861 of such Act (42 U.S.C. 1395x) is amended to read as follows:

"Discharge Planning Process".

(15) Section 1862(a)(1)(A) of such Act (42 U.S.C. 1395y(a)(1)(A)) is amended by striking "or (D)" and inserting "(D), or (E)".

(16) Section 1862(a)(14) of such Act (42 U.S.C. 1395y(a)(14)) is amended by striking "an patient" and inserting "a patient".

(17) Effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1986, section 1866(g) of the Social Security Act (42 U.S.C. 1395cc(g)) is amended by striking "for a hospital outpatient service" and all that follows through "subsection (a)(1)(H)" and inserting "inconsistent with an arrangement under subsection (a)(1)(H) or in violation of the requirement for such an arrangement".

(18) Section 1869(a) of the Social Security Act (42 U.S.C. 1395ff(a)) is amended by inserting "or a claim for benefits with respect to home health services under part B" before "shall".

(19) Section 1869(b)(2) of such Act (42 U.S.C. 1395ff(b)(2)) is amended by inserting "and (1)(D)" after "paragraph (1)(C)" each place it appears.

(20) Section 1875(c)(3)(B) of such Act (42 U.S.C. 1395ll(c)(3)(B)) is amended by striking "years 1987" and inserting "year 1987".

(21) Effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1986—

(A) section 9313(d)(3) of such Act is amended by striking "2 years after the date of the enactment of this Act" and inserting "January 1, 1990";

(B) section 9332(a)(3) of such Act is amended by inserting before the period at the end the following: "or in increasing the proportion of total payments for physicians' services which are payments for such services rendered by participating physicians";

(C) section 9335(j)(2) of such Act is amended by inserting before the period at the end the following: "except that, until network administrative organizations are established under section 1881(c)(1)(A) of the Social Security Act (as amended by subsection (d)(1) of this section), the distribution of payments described in the last sentence of section 1881(b)(7) of such Act shall be made based on the distribution of payments under section 1881 of such Act to network administrative organizations for fiscal year 1986"; and

(D) section 9343 of such Act is amended—

(i) amending subparagraph (A) of subsection (e)(2) to read as follows:

"(2)(A) Section 1833 (42 U.S.C. 1395l) is amended—

"(i) in subsection (a)(1)(F), by striking '(i)(3)' and inserting '(i)(4)', and

"(ii) in subsection (b)(3), by striking 'or under subsection (i)(2) or (i)(4)'.";

(ii) in subsection (h)(2), by striking "(d)" and inserting "(c)" and by adding at the end the following: "The amendments made by subsection (c) shall apply to services furnished after September 30, 1987."; and

(iii) in subsection (h)(4), by striking "(c)" and inserting "(d)".

PART 4—PEER REVIEW ORGANIZATIONS

SEC. 9381. PEER REVIEW ORGANIZATIONS.

(a) Extensions of Peer Review Contract Period.—

(1) One-time extensions to permit staggering of expiration dates.—

(A) In general.—In order to permit the Secretary of Health and Human Services an adequate time to complete contract renewal negotiations with utilization and quality control peer review organizations under part B of title XI of the Social Security Act and to provide for a staggered period of contract expiration dates, notwithstanding section 1153(c) of such Act, the Secretary may extend existing contracts under such part for up to 6 months and may provide for up to 2 one-year extensions of such contracts.

(B) Effective date.—The amendment made by subparagraph (A) shall apply to renewals occurring on or after the date of the enactment of this Act.

(2) 3-year contract period for satisfactory performers.—Section 1153(c)(3) of the Social Security Act (42 U.S.C. 1320c-2(c)(3)) is amended by inserting before the semicolon at the end the following: ", except that the Secretary may provide, in the case of an organization that has been performing satisfactorily, for a renewal for a 3-year period".

(b) Limitation of Beneficiary Liability for Services Disallowed by Peer Review Organizations.—

(1) Part B services.—(A) Section 1842 of the Social Security Act (42 U.S.C 1395u) is amended—

(i) in subsection (b)(3)(ii), by inserting "(and to refund amounts already collected)" after "agrees not to charge", and by striking "and (II)" and inserting ", (II) the physician or other person furnishing such service agrees not to charge (and to refund amounts already collected) for services for which payment under this title is denied under section 1154(a)(2) by reason of a determination under section 1154(a)(1)(B), and (III)";

(ii) in subsection (l)(1)(A)(iii), by inserting "(I)" after "(iii)" and by inserting before the comma the following: "or (II) payment under this title for such services is denied under section 1154(a)(2) by reason of a determination under section 1154(a)(1)(B)"; and

(iii) in subsection (l)(1)(C), by inserting "in the case described in subparagraph (A)(iii)(I)" after "to an individual".

(B) Section 1870(f) of such Act (42 U.S.C. 1395gg(f)) is amended by striking "that the reasonable charge is the full charge for the services" each place it appears and inserting "to the terms specified in subclauses (I) and (II) of section 1842(b)(3)(B)(ii) with respect to the services".

(2) Indemnification.—Section 1879(b) of such Act (42 U.S.C. 1395pp(b)) is amended—

(A) in the first sentence, by striking ", subject to the deductible and coinsurance provisions of this title,", and

(B) by adding at the end the following: "No item or service for which an individual is indemnified under this subsection shall be taken into account in applying any limitation on the amount of items and services for which payment may be made to or on behalf of the individual under this title.".

(3) Effective date.—The amendments made by this section shall apply to services furnished on or after January 1, 1988.

(c) Standards Applied by PROs.—

(1) In general.—Section 1154(a)(6) of the Social Security Act (42 U.S.C.1320c-3(a)(6)) is amended—

(A) by striking "and" at the end of subparagraph (A),

(B) by striking the period at the end of subparagraph (B) and inserting "; and",

(C) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively,

(D) by inserting "(A)" after "(6)", and

(E) by adding at the end the following:

"(iii) with respect to treatment which may be performed on an outpatient basis, in view of the patient's medical condition and the relevant procedure, consideration of social factors (such as the distance from a patient's residence to the site of care, family support, availability of proximate alternative sites of care, and the patient's ability to carry out necessary or prescribed self-care regimens) that could adversely affect the safety or effectiveness of treatment provided on an outpatient basis.

"(B) The organization shall—

"(i) offer to provide, not less often than quarterly, for a physician representing the organization to meet (at a hospital or at a regional meeting) with medical and administrative staff of each hospital (the services of which are reviewed by the organization) respecting the organization's review of the hospital's services for which payment may be made under title XVIII, and

"(ii) publish (not less often than twice each year) and distribute to providers and practitioners whose services are subject to review a report that describes the organization's findings with respect to the types of cases or clinical circumstances in which the organization has frequently determined that (I) inappropriate or unnecessary care has been provided, (II) services were rendered in an inappropriate setting, or (III) services did not meet professionally recognized standards of health care.".

(2) Effective date.—The amendments made by paragraph (1) shall apply to contracts under part B of title XI of the Social Security Act entered into or renewed more than 6 months after the date of the enactment of this Act.

PART 5—STATE HEALTH INSURANCE POOLS

SEC. 9391. INCENTIVES FOR THE ESTABLISHMENT OF STATE HEALTH INSURANCE POOLS.

(a) General Rule.—Chapter 41 of the Internal Revenue Code of 1986 is amended by adding at the end thereof the following new subchapter:

"Subchapter B—Large Employers Not Members of Qualified State Health Insurance Pools

"Sec. 4912. Tax on wages of large employers not members of qualified State health insurance pools.

"SEC. 4912. TAX ON WAGES OF LARGE EMPLOYERS NOT MEMBERS OF QUALIFIED STATE HEALTH INSURANCE POOLS.

"(a) Tax Imposed.—In the case of a large employer which—

"(1) employs any individual to perform services in a State that has established a qualified health insurance pool, and

"(2) is not a participating member of that pool in a taxable year at any time at which such services are performed,

there is hereby imposed a tax equal to 5 percent of the wages paid by the employer during the taxable year for services performed in the State by its employees.

"(b) Large Employer.—For purposes of this section—

"(1) In general.—Except as provided in paragraph (2), the term 'large employer' means an employer who, on each of some 20 days during the taxable year or the preceding taxable year, each day being in a different calendar week, employed for some portion of the day (whether or not at the same moment of time) 20 or more individuals.

"(2) Exception for governmental units.—The term 'large employer' shall not include the United States, any State or political subdivision thereof, or any possession of the United States or any agency or instrumentality of any of the foregoing (including the United States Postal Service and Postal Rate Commission); except that such term shall include any nonappropriated fund instrumentality of the United States.

"(3) Exception for certain churches and associated organizations.—The term 'large employer' shall not include, with respect to a State health insurance pool in a State, any—

"(A) church,

"(B) convention or association of churches, or

"(C) organization which is controlled by or associated (as described in section 414(c)(3)(D)) with a church or convention or association of churches,

if the church, convention, association, or organization states (in accordance with such procedures as the Secretary determines to be appropriate) that it is opposed for religious reasons to participation in the State health insurance pool of that State.

"(c) Qualified Health Insurance Pool.—For purposes of this section, the term 'qualified health insurance pool' means any organization which—

"(1) is a nonprofit corporation established pursuant to and regulated by State law;

"(2) permits any large employer doing business in the State to be a participating member;

"(3) makes available (without regard to health conditions) to all residents of the State, who are not eligible for benefits under part A of title XVIII of the Social Security Act or under a State plan approved under title XIX of such Act, levels of health insurance typical of the levels of coverage provided through large employer groups, except that—

"(A) any such level of insurance must limit the amount of the annual out-of-pocket expenses for covered services under individual coverage to $2,000 and under family coverage to $4,000;

"(B) any such level of insurance may not establish a lifetime benefit limit for any individual of less than $500,000;

"(C) subject to subparagraph (A), such insurance may provide for a choice of deductibles (in addition to the deductibles typical of levels of coverage provided through large employer groups), but not to exceed $1,000 for each covered individual;

"(D) such insurance may deny coverage for covered services for preexisting conditions for a period not to exceed 6 months, except that this subparagraph shall not apply—

"(i) during a continuous period of coverage of a covered parent, to a child born during the period,

"(ii) to a child who, at the time of the application for such insurance, is under 1 year of age and with respect to whom lifetime limits of any private health insurance coverage have been exhausted, or

"(iii) to a condition of a child at the time of birth if the child is under 1 year of age at the time of the application for insurance under this section and the condition is diagnosed not later than 30 days after the date of the child's birth;

"(E) such insurance must include as covered services the purchase and repair of medically necessary durable medical equipment; and

"(F) such insurance may deny coverage for some or all services or costs directly relating to abortion;

"(4) charges a pool premium rate expected to be self-supporting based upon a reasonable actuarial determination of anticipated experience and expected expenses, such pool premium rate in no event to exceed 150 percent of average premium rates for individual standard risks in the State for comparable coverage; and

"(5) assesses losses of the pool equitably among all participating members.

Nothing in this subsection shall be construed as preventing a State or other entity from providing for payment of part or all of the premium of an enrollee and from varying the amount of such payment based on the enrollee's income or other basis.

"(d) Other Definitions.—

"(1) Use of FUTA definitions.—For purposes of this section, the terms 'wages', 'employee', and 'employer' have the meanings given such terms in subsections (a), (c), and (d), respectively, of section 3401.

"(2) State.—The term 'State' includes the District of Columbia and the Commonwealth of Puerto Rico.

"(e) Cross References.—

"(1) For provision deny deduction for tax imposed by this section, see section 275(a)(6).

"(2) For provisions making deficiency procedures applicable to tax imposed by this section, see section 6211 et seq."

(b) Clerical Amendments.—

(1) Chapter 41 of such Code is amended by striking the chapter heading and inserting the following:

"CHAPTER 41—PUBLIC CHARITIES; LARGE EMPLOYERS NOT MEMBERS OF QUALIFIED STATE HEALTH INSURANCE POOLS

"Subchapter A. Public charities.

"Subchapter B. Large employers not members of qualified State health insurance pools.

"Subchapter A—Public Charities".

(2) The table of chapters for subtitle D of such Code is amended by striking the item relating to chapter 41 and inserting the following:

"Chapter 41. Public charities; large employers not members of qualified State health insurance pools."

(3) Subparagraph (B) of section 6104(c)(1) of such Code is amended by striking "or chapter 41 or 42" and inserting ", subchapter A of chapter 41 or chapter 42".

(c) Effective Date.—The amendments made by this section shall apply to taxable years beginning on or after January 1, 1989.

Subtitle E—Customs User Fees; Trade and Customs Agency Authorizations

SEC. 9401. CUSTOMS USER FEES.

(a) In General.—Section 13031 of the Consolidated Budget Reconciliation Act of 1985 (19 U.S.C. 58c) is amended as follows:

(1) Fee imposed on foreign content of certain schedule 8 articles.—

(A) Subsection (a)(9)(A) is amended to read as follows:

"(A) provided for under any item in schedule 8 of the Tariff Schedules of the United States except item 806.30 or 807.00,".

(B) Subsection (b)(8)(A) is amended—

(i) by striking out "and" at the end of clause (i);

(ii) by striking out the period at the end of clause (ii) and inserting a semicolon; and

(iii) by adding at the end thereof the following:

"(iii) in the case of merchandise classified under item 806.30 of the Tariff Schedules of the United States, be applied to the value of the foreign repairs or alterations to the merchandise; and

"(iv) in the case of merchandise classified under item 807.00 of such Schedules, be applied to the full value of the merchandise, less the cost or value of the component United States products.

With respect to merchandise that is classified under item 806.30 or 807.00 of such Schedules and is duty-free, the Secretary may collect the fee charged on the processing of the merchandise under subsection (a)(9) or (10) on the basis of aggregate data derived from financial and manufacturing reports used by the importer in the normal course of business, rather than on the basis of entry-by-entry accounting.".

(2) Amount of fees.—

(A) Subsection (a)(9) is amended by striking out clauses (i) and (ii) and inserting the following:

"(i) after the 15th day after the date of the enactment of the Omnibus Budget Reconciliation Act of 1987, and

"(ii) before October 1, 1988;".

(B) Subsection (a)(10) is amended—

(i) by striking out "1987;" and inserting "1988;"; and

(ii) by striking out "0.17 percent" each place it appears and inserting "0.22 percent".

(3) Provision of customs services.—Subsection (e) is amended—

(A) by redesignating paragraph (4) as paragraph (6);

(B) by inserting after paragraph (3) the following new paragraphs:

"(4) Notwithstanding any other provision of law, all customs services (including, but not limited to, normal and overtime clearance and preclearance services) shall be adequately provided, when requested, for—

"(A) the clearance of any commercial vessel, vehicle, or aircraft or its passengers, crew, stores, material, or cargo arriving, departing, or transiting the United States;

"(B) the preclearance at any customs facility outside the United States of any commercial vessel, vehicle or aircraft or its passengers, crew, stores, material, or cargo; and

"(C) the inspection or release of commercial cargo or other commercial shipments being entered into, or withdrawn from, the customs territory of the United States.

"(5) For purposes of this subsection, customs services shall be treated as being 'adequately provided' if such of those services that are necessary to meet the needs of parties subject to customs inspection are provided in a timely manner taking into account factors such as—

"(A) the unavoidability of weather, mechanical, and other delays;

"(B) the necessity for prompt and efficient passenger and baggage clearance;

"(C) the perishability of cargo;

"(D) the desirability or unavoidability of late night and early morning arrivals from various time zones;

"(E) the availability (in accordance with regulations prescribed under subsection (g)(2)) of customs personnel and resources; and

"(F) the need for specific enforcement checks."; and

(C) by amending paragraph (6) (as redesignated by subparagraph (B)) to read as follows:

"(6) Notwithstanding any other provision of law except paragraph (2), during any period when fees are authorized under subsection (a), no charges, other than such fees, may be collected—

"(A) for any—

"(i) cargo inspection, clearance, or other customs activity, expense, or service performed (regardless whether performed outside of normal business hours on an overtime basis), or

"(ii) customs personnel provided,

in connection with the arrival or departure of any commercial vessel, vehicle, or aircraft, or its passengers, crew, stores, material, or cargo, in the United States;

"(B) for any preclearance or other customs activity, expense, or service performed, and any customs personnel provided, outside the United States in connection with the departure of any commercial vessel, vehicle, or aircraft, or its passengers, crew, stores, material, or cargo, for the United States; or

"(C) in connection with—

"(i) the activation or operation (including Customs Service supervision) of any foreign trade zone or subzone established under the Act of June 18, 1934 (commonly know as the Foreign Trade Zones Act, 19 U.S.C. 81a et seq.); or

"(ii) the designation or operation (including Customs Service supervision) of any bonded warehouse under section 555 of the Tariff Act of 1930 (19 U.S.C. 1555).

(4) Disposition of fees.—Subsection (f) is amended by striking out paragraphs (1), (2), and (3) and inserting the following:

"(f) Disposition of Fees.—(1) There is established in the general fund of the Treasury a separate account which shall be known as the 'Customs User Fee Account'. Notwithstanding section 524 of the Tariff Act of 1930 (19 U.S.C. 1524), there shall be deposited into the Customs User Fee Account all fees collected under subsection (a) except that portion of such fees that is required under paragraph (3) for the direct reimbursement of appropriations.

"(2) All funds in the Customs User Fee Account shall be available, to the extent provided for in appropriations Acts, to pay the costs (other than costs for which direct reimbursement under paragraph (3) is required) incurred by the United States Customs Service in conducting commércial operations, including, but not limited to, all costs associated with commercial passenger, vessel, vehicle, aircraft, and cargo processing. So long as there is a surplus of funds in the Customs User Fee Account, the Secretary of the Treasury may not reduce personnel staffing levels for providing commercial clearance and preclearance services.

"(3) The Secretary of the Treasury, in accordance with such section 524 and without regard to apportionment or any other administrative practice or limitation, shall directly reimburse, from the fees collected under subsection (a), each appropriation for the amount paid out of that appropriation for the costs incurred by the Secretary in providing inspectional overtime services and all preclearance services. Reimbursement under this paragraph shall apply with respect to each fiscal year occurring after September 30, 1987, and shall be made at least quarterly. To the extent necessary, reimbursement of appropriations under this paragraph may be made on the basis of estimates made by the Secretary of the Treasury of the costs for inspectional overtime and preclearance services, and adjustments shall be made in subsequent reimbursements to the extent that the estimates were in excess of, or less than, the amounts required to be reimbursed.".

(5) Regulations.—Subsection (g) is amended—

(A) by striking out "(g) Regulations.—The" and inserting "(g) Regulations.—(1) In addition to the regulations required under paragraph (2), the "; and

(B) by inserting at the end thereof the following new paragraph:

"(2) The Secretary of the Treasury shall prescribe regulations governing the work shifts of customs personnel at airports. Such regulations shall provide, among such other factors considered appropriate by the Secretary, that—

"(A) the work shifts will be adjusted, as necessary, to meet cyclical and seasonal demands and to minimize the use of overtime;

"(B) the work shifts will not be arbitrarily reduced or compressed; and

"(C) consultation with the advisory committee established under section 13033 will be carried out before adjustments are made in the work shifts.".

(b) Additional Period To Claim Certain Refunds.—Section 1893(g)(2) of the Tax Reform Act of 1986 is amended by inserting after "the date that is 90 days after the date of enactment of this Act" the following: "or 90 days after the date of the enactment of the Omnibus Budget Reconciliation Act of 1987".

(c) Analysis Regarding the CES Program; Effect on Implementation of Program.—

(1) The Comptroller General of the United States shall conduct a comprehensive analysis, including a cost-benefit study, of the centralized cargo examination station (CES) concept from the perspective of both the United States Customs Service and business community users. The analysis shall be submitted on the same day to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate (hereinafter in this subsection referred to as the "Committees") not later than March 30, 1988, and shall include recommendations as to how best to implement cargo inspection procedures.

(2) The United States Customs Service—

(A) may not, after the date of the enactment of this Act, establish any new centralized cargo examination station at any ocean port, airport, or land border location unless the Customs Service provides to the Committees advance notice, in writing, of not less than 90 days regarding the proposed establishment; and

(B) shall, on such date of enactment, suspend operations at each centralized cargo examination station that was operating at an airport on the day before such date until the 90th day after a date—

(i) that is not earlier than the date on which the analysis required under paragraph (1) is submitted to the Committees, and

(ii) on which the Customs Service provides to the Committees notice, in writing, that it intends to resume operations at the station.

During the period of suspension of operations under subparagraph (B) at any centralized cargo examination station at an airport, the Secretary of the Treasury shall maintain customs operations and staffing at that airport at a level not less than that which was in effect immediately before the suspension took effect.

(d) Effective Dates.—

(1) Except as provided in paragraphs (2) and (3), the provisions of this section take effect on the date of the enactment of this Act.

(2) The amendments made by subsection (a)(1), (2), and (3) apply with respect to articles entered, or withdrawn from warehouse

for consumption, on or after the 15th day after the date of the enactment of this Act.

(3) The amendment made by subsection (a)(4) shall take effect October 1, 1987.

SEC. 9402. UNITED STATES INTERNATIONAL TRADE COMMISSION AUTHORIZATIONS.

Section 330(e)(2) of the Tariff Act of 1930 (19 U.S.C. 1330(e)(2)) is amended to read as follows:

"(2)(A) There are authorized to be appropriated to the Commission for necessary expenses (including the rental of conference rooms in the District of Columbia and elsewhere) not to exceed the following:

"(i) $35,386,000 for fiscal year 1988.

"(ii) $36,730,000 for fiscal year 1989.

"(B) Not to exceed $2,500 of the amount authorized to be appropriated for any fiscal year under subparagraph (A) may be used, subject to the approval of the Chairman of the Commission, for reception and entertainment expenses.

"(C) No part of any sum that is appropriated under the authority of subparagraph (A) may be used by the Commission in the making of any special study, investigation, or report that is requested by any agency of the executive branch unless that agency reimburses the Commission for the cost thereof.".

SEC. 9403. UNITED STATES CUSTOMS SERVICE AUTHORIZATIONS.

Section 301(b) of the Customs Procedural Reform and Simplification Act of 1978 (19 U.S.C. 2075(b)) is amended to read as follows:

"(b) Authorization of Appropriations.—

"(1) For noncommercial operations.—There are authorized to be appropriated for the salaries and expenses of the Customs Service that are incurred in noncommercial operations not to exceed the following:

"(A) $348,192,000 for fiscal year 1988, of which $171,857.06 shall be available only for concluding Contract TC-82-54 that was awarded for the development and testing of an automatic license plate reader.

"(B) $381,819,000 for fiscal year 1989.

"(2) For commercial operations.—There are authorized to be appropriated from the Customs User Fee Account for the salaries and expenses of the Customs Service that are incurred in commercial operations not to exceed the following:

"(A) $615,000,000 for fiscal year 1988.

"(B) $630,865,000 for fiscal year 1989.

"(3) For air interdiction.—There are authorized to be appropriated for the operation (including salaries and expenses) and maintenance of the air interdiction program of the Customs Service not to exceed the following:

"(A) $118,309,000 for fiscal year 1988.

"(B) $126,068,000 for fiscal year 1989.".

SEC. 9404. OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE AUTHORIZATIONS.

Section 141(f)(1) of the Trade Act of 1974 (19 U.S.C. 2171(f)(1)) is amended to read as follows:

"(f)(1)(A) There are authorized to be appropriated to the Office for the purposes of carrying out its functions not to exceed the following:

"(i) $15,141,000 for fiscal year 1988.

"(ii) $15,514,000 for fiscal year 1989.

"(B) Of the amounts authorized to be appropriated under subparagraph (A) for any fiscal year—

"(i) not to exceed $69,000 may be used for entertainment and representation expenses of the Office; and

"(ii) not to exceed $1,000,000 shall remain available until expended.".

Subtitle F—Pension Funding Requirements

SEC. 9501. DEFINITIONS.

For purposes of this subtitle—

(1) 1986 code.—The term "1986 Code" means the Internal Revenue Code of 1986.

(2) ERISA.—The term "ERISA" means the Employee Retirement Income Security Act of 1974.

PART 1—MODIFICATIONS OF MINIMUM FUNDING STANDARD

SEC. 9511. ADDITIONAL FUNDING REQUIREMENTS.

(a) Amendments to 1986 Code.—

(1) In general.—Section 412 of the 1986 Code (relating to minimum funding standard) is amended by adding at the end thereof the following new subsection:

"(l) Additional Funding Requirements for Plans Which Are Not Multiemployer Plans.—

"(1) In general.—In the case of a plan which is not a multiemployer plan, if—

"(A) the unfunded termination liability contribution determined under paragraph (2) for any plan year, exceeds

"(B) the sum of the charges for such plan year under subparagraphs (B), (C), and (D) of subsection (b)(2) reduced by the sum of the credits for such plan year under subparagraph (B) of subsection (b)(3),

the amount charged to the funding standard account for such plan year shall be increased by the amount of such excess.

"(2) Unfunded termination liability contribution.—For purposes of paragraph (1), the unfunded termination liability contribution determined under this paragraph for any plan year is the greatest of—

"(A) the unfunded amortization charge,

"(B) the anti-insolvency amount, or

"(C) the anti-deterioration amount.

"(3) Unfunded amortization charge.—For purposes of this subsection—

"(A) In general.—The unfunded amortization charge with respect to any plan for any plan year is the amount of the charge which would be determined for such plan year if the unfunded termination liability under the plan for such plan year were amortized in equal annual installments over the required amortization period.

"(B) Required amortization period.—Except as provided in subparagraph (C), the required amortization period is—

"(i) 3 years if the funded termination liability percentage is less than 50 percent,

"(ii) 5 years if the funded termination liability percentage equals or exceeds 50 percent but is less than 70 percent, or

"(iii) 15 years if the funded termination liability percentage equals or exceeds 70 percent.

"(C) Transitional rule for existing liabilities.—

"(i) No amortization of existing liability required before 1991.—In the case of any plan year beginning before January 1, 1991, the portion of the unfunded termination liability which does not exceed the adjusted existing liabilities shall not be required to be amortized under subparagraph (A).

"(ii) Longer amortization period for years after 1990 but before 1994.—In the case of a plan year beginning after December 31, 1990, but before January 1, 1994, for purposes of determining the amount of the charge under subparagraph (A) with respect to the portion of the unfunded termination liability which does not exceed the adjusted existing liabilities, the required amortization period shall be—

"(I) 4 years if the funded termination liability percentage is less than 50 percent,

"(II) 7 years if the funded termination liability percentage equals or exceeds 50 percent but is less than 70 percent, or

"(III) 20 years if the funded termination liability percentage equals or exceeds 70 percent.

"(iii) Adjusted existing liabilities.—For purposes of this subparagraph, the term 'adjusted existing liabilities' means—

"(I) the unfunded termination liability as of the beginning of the 1st plan year beginning after December 31, 1987 (determined without regard to any plan amendment adopted after June 30, 1987), reduced by

"(II) the sum of the adjusted contributions for all plan years beginning after December 31, 1987, and before the plan year for which the determination under this subsection is being made.

"(iv) Adjusted contributions.—For purposes of clause (iii), the term 'adjusted contributions' means, with respect to any plan year, the amount considered contributed by the employer to or under the plan for such plan year to the extent the amount considered to be so contributed exceeds the normal cost of the plan for such plan year.

"(4) Anti-insolvency amount.—

"(A) In general.—For purposes of this subsection, the anti-insolvency amount with respect to any plan for any plan year is the sum of—

"(i) the nonannuity distributions under the plan during such plan year, plus

"(ii) the amount of the charge which would be determined for such plan year if the adjusted unfunded termination liability under the plan for such plan year were amortized in equal annual installments over 3 years.

In no event shall the anti-insolvency amount exceed the unfunded termination liability under the plan.

"(B) Nonannuity distributions.—For purposes of this paragraph, the term 'nonannuity distribution' means—

"(i) any distribution which is not part of a series of payments described in section 72(t)(2)(A)(iv), and

"(ii) except as provided in regulations prescribed by the Secretary of the Treasury, any payment for the purchase of an annuity contract for an employee.

"(C) Adjusted unfunded termination liability.—For purposes of subparagraph (A), the term 'adjusted unfunded termination liability' means unfunded termination liability determined by—

"(i) only taking into account liabilities described in subparagraph (D), and

"(ii) by making proper adjustments to the liabilities described in subparagraph (D) for any nonannuity distribution during the plan year with respect to such liabilities.

"(D) Description of liabilities.—For purposes of subparagraph (C), the liabilities described in this subparagraph are—

"(i) liabilities for benefits in pay status, and

"(ii) liabilities for benefits reasonably expected to commence within the 5-year period beginning on the 1st day of the plan year.

"(E) Benefit commencement assumptions.—For purposes of subparagraphs (C) and (D), it shall be assumed that—

"(i) the benefits of employees who are expected to be employed when they reach the earliest retirement age will commence at such age, and

"(ii) the benefits of employees who have reached the earliest retirement age but whose benefits have not commenced will commence during the plan year for which the determination under this subsection is being made.

"(5) Anti-deterioration amount.—

"(A) In general.—For purposes of this subsection, the anti-deterioration amount with respect to any plan for any plan year is the sum of—

"(i) the amortization charges determined under subparagraph (B), plus

"(ii) 2 percent of the termination liability under the plan.

In no event shall the anti-deterioration amount exceed the unfunded termination liability under the plan.

"(B) Amortization charges.—

"(i) In general.—If there is an amortizable amount for any plan year, such amount shall be amortized in equal annual installments over the period consisting of such plan year and the succeeding 2 plan years.

"(ii) Amortizable amount.—For purposes of clause (i), the amortizable amount for any plan year is the sum of—

"(I) the unfunded percentage of the amount of the funding deterioration allocable to benefit increases, and

"(II) 100 percent of the funding deterioration not allocable to benefit increases.

"(iii) Funding deterioration.—For purposes of clause (ii), the term 'funding deterioration' means, with respect to any plan year—

"(I) the termination liability under the plan for the plan year, multiplied by

"(II) the excess (if any) of the funded termination liability percentage under the plan for the preceding plan year over such percentage for the plan year.

"(iv) Unfunded percentage.—For purposes of clause (ii), the term 'unfunded percentage' means the excess of 100 percent over the funded termination liability percentage.

"(6) Termination liability.—For purposes of this subsection—

"(A) In general.—The term 'termination liability' means the present value of all liabilities to employees and their beneficiaries under the plan.

"(B) Treatment of event-contingent benefits.—For purposes of subparagraph (A), any benefit contingent on—

"(i) a facility shutdown,

"(ii) a contraction in workforce, or

"(iii) any event which is not reasonably and reliably predictable (as determined under regulations),

shall not be taken into account until such shutdown, contraction, or event occurs.

"(7) Other definitions.—For purposes of this subsection—

"(A) Unfunded termination liability.—The term 'unfunded termination liability' means, with respect to any plan year, the excess (if any) of—

"(i) the termination liability under the plan, over

"(ii) value of the plan's assets determined under subsection (c)(2) reduced by any credit balance in the funding standard account.

"(B) Funded termination liability percentage.—The term 'funded termination liability percentage' means, with respect to any plan year, the percentage which—

"(i) the amount determined under subparagraph (A)(ii), is of

"(ii) the termination liability under the plan."

(2) Conforming amendment.—Paragraph (2) of section 412(b) of the 1986 Code is amended by adding at the end thereof the following new sentence:

"For additional requirements in the case of plans other than multiemployer plans, see subsection (l)."

(b) Amendments to ERISA.—

(1) In general.—Section 302 of ERISA is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

"(d) Additional Funding Requirements for Plans Which Are Not Multiemployer Plans.—

"(1) In general.—In the case of a plan which is not a multiemployer plan, if—

"(A) the unfunded termination liability contribution determined under paragraph (2) for any plan year, exceeds

"(B) the sum of the charges for such plan year under subparagraphs (B), (C), and (D) of subsection (b)(2) reduced by the sum of the credits for such plan year under subparagraph (B) of subsection (b)(3),

the amount charged to the funding standard account for such plan year shall be increased by the amount of such excess.

"(2) Unfunded termination liability contribution.—For purposes of paragraph (1), the unfunded termination liability contribution determined under this paragraph for any plan year is the greatest of—

"(A) the unfunded amortization charge,

"(B) the anti-insolvency amount, or

"(C) the anti-deterioration amount.

"(3) Unfunded amortization charge.—For purposes of this subsection—

"(A) In general.—The unfunded amortization charge with respect to any plan for any plan year is the amount of the charge which would be determined for such plan year if the unfunded termination liability under the plan for such plan year were amortized in equal annual installments over the required amortization period.

"(B) Required amortization period.—Except as provided in subparagraph (C), the required amortization period is—

"(i) 3 years if the funded termination liability percentage is less than 50 percent,

"(ii) 5 years if the funded termination liability percentage equals or exceeds 50 percent but is less than 70 percent, or

"(iii) 15 years if the funded termination liability percentage equals or exceeds 70 percent.

"(C) Transitional rule for existing liabilities.—

"(i) No amortization of existing liability required before 1991.—In the case of any plan year beginning before January 1, 1991, the portion of the unfunded termination liability which does not exceed the adjusted existing liabilities shall not be required to be amortized under subparagraph (A).

"(ii) Longer amortization period for years after 1990 but before 1994.—In the case of a plan year beginning after December 31, 1990, but before January 1, 1994, for purposes of determining the amount of the charge under subparagraph (A) with respect to the portion of the unfunded termination liability which does not exceed the adjusted existing liabilities, the required amortization period shall be—

"(I) 4 years if the funded termination liability percentage is less than 50 percent,

"(II) 7 years if the funded termination liability percentage equals or exceeds 50 percent but is less than 70 percent, or

"(III) 20 years if the funded termination liability percentage equals or exceeds 70 percent.

"(iii) Adjusted existing liabilities.—For purposes of this subparagraph, the term 'adjusted existing liabilities' means—

"(I) the unfunded termination liability as of the beginning of the 1st plan year beginning after December 31, 1987 (determined without regard to any plan amendment adopted after June 30, 1987), reduced by

"(II) the sum of the adjusted contributions for all plan years beginning after December 31, 1987, and before the plan year for which the determination under this subsection is being made.

"(iv) Adjusted contributions.—For purposes of clause (iii), the term 'adjusted contributions' means, with respect to any plan year, the amount considered contributed by the employer to or under the plan for such plan year to the extent the amount considered to be so contributed exceeds the normal cost of the plan for such plan year.

"(4) Anti-insolvency amount.—

"(A) In general.—For purposes of this subsection, the anti-insolvency amount with respect to any plan for any plan year is the sum of—

"(i) the nonannuity distributions under the plan during such plan year, plus

"(ii) the amount of the charge which would be determined for such plan year if the adjusted unfunded termination liability under the plan for such plan year were amortized in equal annual installments over 3 years.

In no event shall the anti-insolvency amount exceed the unfunded termination liability under the plan.

"(B) Nonannuity distributions.—For purposes of this paragraph, the term 'nonannuity distribution' means—

"(i) any distribution which is not part of a series of payments described in section 72(t)(2)(A)(iv) of the Internal Revenue Code of 1986, and

"(ii) except as provided in regulations prescribed by the Secretary, any payment for the purchase of an annuity contract for an employee.

"(C) Adjusted unfunded termination liability.—For purposes of subparagraph (A), the term 'adjusted unfunded termination liability' means unfunded termination liability determined by—

"(i) only taking into account liabilities described in subparagraph (D), and

"(ii) by making proper adjustments to the liabilities described in subparagraph (D) for any nonannuity distribution during the plan year with respect to such liabilities.

"(D) Description of liabilities.—For purposes of subparagraph (C), the liabilities described in this subparagraph are—

"(i) liabilities for benefits in pay status, and

"(ii) liabilities for benefits reasonably expected to commence within the 5-year period beginning on the 1st day of the plan year.

"(E) Benefit commencement assumptions.—For purposes of subparagraphs (C) and (D), it shall be assumed that—

"(i) the benefits of employees who are expected to be employed when they reach the earliest retirement age will commence at such age, and

"(ii) the benefits of employees who have reached the earliest retirement age but whose benefits have not commenced will commence during the plan year for which the determination under this subsection is being made.

"(5) Anti-deterioration amount.—

"(A) In general.—For purposes of this subsection, the anti-deterioration amount with respect to any plan for any plan year is the sum of—

"(i) the amortization charges determined under subparagraph (B), plus

"(ii) 2 percent of the termination liability under the plan.

In no event shall the anti-deterioration amount exceed the unfunded termination liability under the plan.

"(B) Amortization charges.—

"(i) In general.—If there is an amortizable amount for any plan year, such amount shall be amortized in equal annual installments over the period consisting of such plan year and the succeeding 2 plan years.

"(ii) Amortizable amount.—For purposes of clause (i), the amortizable amount for any plan year is the sum of—

"(I) the unfunded percentage of the amount of the funding deterioration allocable to benefit increases, and

"(II) 100 percent of the funding deterioration not allocable to benefit increases.

"(iii) Funding deterioration.—For purposes of clause (ii), the term 'funding deterioration' means, with respect to any plan year—

"(I) the termination liability under the plan for the plan year, multiplied by

"(II) the excess (if any) of the funded termination liability percentage under the plan for the preceding plan year over such percentage for the plan year.

"(iv) Unfunded percentage.—For purposes of clause (ii), the term 'unfunded percentage' means the excess of 100 percent over the funded termination liability percentage.

"(6) Termination liability.—For purposes of this subsection—

"(A) In general.—The term 'termination liability' means the present value of all liabilities to employees and their beneficiaries under the plan.

"(B) Treatment of event-contingent benefits.—For purposes of subparagraph (A), any benefit contingent on—

"(i) a facility shutdown,

"(ii) a contraction in workforce, or

"(iii) any event which is not reasonably and reliably predictable (as determined under regulations),

shall not be taken into account until such shutdown, contraction, or event occurs.

"(7) Other definitions.—For purposes of this subsection—

"(A) Unfunded termination liability.—The term 'unfunded termination liability' means, with respect to any plan year, the excess (if any) of—

"(i) the termination liability under the plan, over

"(ii) value of the plan's assets determined under subsection (c)(2) reduced by any credit balance in the funding standard account.

"(B) Funded termination liability percentage.—The term 'funded termination liability percentage' means, with respect to any plan year, the percentage which—

"(i) the amount determined under subparagraph (A)(ii), is of

"(ii) the termination liability under the plan."

(2) Conforming amendment.—Paragraph (2) of section 302(b) of ERISA is amended by adding at the end thereof the following new sentence:

"For additional requirements in case of plans other than multiemployer plans, see subsection (d)."

(c) Revision of Valuation Regulations.—Effective with respect to plan years beginning after December 31, 1987, the provisions of—

(1) the regulations prescribed under section 412(c)(2) of the 1986 Code, and

(2) the regulations prescribed under section 302(c)(2) of ERISA,

which permit asset valuations to be based on a range of other than market value shall have no force and effect. The Secretary of the Treasury or his delegate shall amend such regulations to carry out the purposes of the preceding sentence.

(d) Effective Dates.—

(1) In general.—The amendments made by this section shall apply with respect to plan years beginning after December 31, 1987.

(2) Special rule for steel companies.—

(A) In general.—For any plan year beginning before January 1, 1993, the unfunded termination liability contribution determined under section 412(l) of the 1986 Code or section 302(d) of ERISA (as added by this section) with respect to any steel employee plan shall not exceed the required percentage of the termination liability under such plan.

(B) Required percentage.—For purposes of subparagraph (A), the term "required percentage" means, with respect to any plan year, the excess (if any) of—

(i) the sum of—

(I) the funded termination liability percentage as of the beginning of the 1st plan year beginning after December 31, 1987 (determined without regard to any plan amendment adopted after June 30, 1987), plus

(II) 1 percentage point for the plan year for which the determination under this paragraph is being made and for each prior plan year beginning after December 31, 1987, over

(ii) the funded termination liability percentage as of the beginning of the plan year for which such determination is being made.

(C) Steel employee plan.—For purposes of this paragraph, the term "steel employee plan" means any plan if—

(i) such plan is maintained by a steel company, and

(ii) substantially all of the employees covered by such plan are employees of such company.

(D) Other definitions.—For purposes of this paragraph—

(i) Steel company.—The term "steel company" means any corporation described in section 806(b) of the Steel Import Stabilization Act.

(ii) Other definitions.—The terms "termination liability" and "funded termination liability percentage" have the respective meanings given such terms by section 412(l) of the 1986 Code (as added by this section).

(E) Special rule.—The provisions of this paragraph shall apply in the case of a company which was originally incorporated on April 25, 1927, in Michigan and reincorporated on June 3, 1968, in Delaware in the same manner as if such company were a steel company.

SEC. 9512. TIME FOR MAKING CONTRIBUTIONS.

(a) Reduction of Period During Which Contributions May Be Made After Close of Year.—

(1) Amendments to 1986 code.—

(A) In general.—Effective with respect to plan years beginning after December 31, 1988, paragraph (10) of section 412(c) of the 1986 Code (relating to time when certain contributions deemed made) is amended by striking out the last sentence.

(B) Transitional rule for years beginning during 1988.—In the case of any plan year beginning during calendar year 1988, the last sentence of section 412(c)(10) of the 1986 Code shall be applied by substituting "3 months" for "6 months".

(2) Amendments to erisa.—

(A) In general.—Effective with respect to plan years beginning after December 31, 1988, paragraph (10) of section 302(c) of ERISA (relating to time when certain contributions deemed made) is amended by striking out the last sentence.

(B) Transitional rule for years beginning during 1988.—In the case of any plan year beginning during calendar year 1988, the last sentence of section 302(c)(10) of ERISA shall be applied by substituting "3 months" for "6 months".

(b) Quarterly Estimated Payments Required.—

(1) In general.—Chapter 43 of the 1986 Code (relating to qualified payments, etc., plans) is amended by inserting after section 4971 the following new section:

"SEC. 4971A. FAILURE BY EMPLOYER TO MAKE QUARTERLY PAYMENTS OF ESTIMATED REQUIRED CONTRIBUTION.

"(a) General Rule.—

"(1) In general.—For each taxable year of an employer who maintains a plan—

"(A) to which section 412 applies, and

"(B) which is not a multiemployer plan (as defined in section 414(f)),

there is hereby imposed a tax equal to the amount determined under paragraph (2) with respect to any underpayment of a required installment for a plan year ending with or within such taxable year.

"(2) Determination of amount.—The amount determined under this paragraph with respect to any underpayment shall be determined by applying—

"(A) the underpayment rate established under section 6621,

"(B) to the amount of the underpayment,

"(C) for the period of the underpayment.

"(3) Liability for tax.—

"(A) In general.—Except as provided in subparagraph (B), the tax imposed by this subsection shall be paid by the employer responsible for contributing to or under the plan the amount described in section 412(b)(3)(A).

"(B) Joint and several liability where employer member of controlled group.—

"(i) In general.—If the employer referred to in subparagraph (A) is a member of a controlled group, each member of such group shall be jointly and severally liable for the tax imposed by this subsection.

"(ii) Controlled group.—For purposes of clause (i), the term 'controlled group' means any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414.

"(b) Amount of Underpayment, Period of Underpayment.—For purposes of subsection (a)—

"(1) Amount.—The amount of the underpayment shall be the excess of—

"(A) the required installment, over

"(B) the amount (if any) of the installment contributed to or under the plan on or before the due date for the installment.

"(2) Period of underpayment.—The period of the underpayment shall run from the due date for the installment to whichever of the following dates is the earlier—

"(A) the 15th day of the 3rd month (6th month in the case of plan years beginning in 1988) following the close of the plan year, or

"(B) with respect to any portion of the underpayment, the date on which such portion is contributed to or under the plan.

"(3) Order of crediting contributions.—For purposes of paragraph (2)(B), contributions shall be credited against unpaid required installments in the order in which such installments are required to be paid.

"(c) NUMBER OF REQUIRED INSTALLMENTS; DUE DATES.—For purposes of this section—

"(1) PAYABLE IN 3 INSTALLMENTS.—There shall be 3 required installments for each plan year.

"(2) TIME FOR PAYMENT OF INSTALLMENTS.—

In the case of the following required installments:	*The due date is:*
1st	June 15
2nd	September 15
3rd	December 15

"(d) AMOUNT OF REQUIRED INSTALLMENT.—For purposes of this section—

"(1) IN GENERAL.—The amount of any required installment shall be 25 percent (15 percent in the case of plan years beginning in 1988) of the required annual payment.

"(2) REQUIRED ANNUAL PAYMENT.—For purposes of paragraph (1), the term 'required annual payment' means the lesser of—

"(A) 80 percent of the amount required to be contributed to or under the plan by the employer for the plan year by reason of section 412, or

"(B) 90 percent of the amount so required for the preceding plan year.

Subparagraph (B) shall not apply if the preceding plan year was not a year of 12 months.

"(e) FISCAL YEARS AND SHORT YEARS.—

"(1) FISCAL YEARS.—In applying this section to a plan year beginning on any date other than January 1, there shall be substituted for the months specified in this section, the months which correspond thereto.

"(2) SHORT PLAN YEAR.—This section shall be applied to plan years of less than 12 months in accordance with regulations prescribed by the Secretary."

(2) CLERICAL AMENDMENT.—The table of sections for chapter 43 of the 1986 Code is amended by inserting after the item relating to section 4971 the following new item:

"Sec. 4971A. Failure by employer to make quarterly payments of estimated required contribution."

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply with respect to plan years beginning after 1987.

SEC. 9513. LIABILITY OF MEMBERS OF CONTROLLED GROUP FOR TAXES ON FAILURE TO MEET MINIMUM FUNDING STANDARDS.

(a) GENERAL RULE.—Section 4971 of the 1986 Code (relating to taxes on failure to meet minimum funding standards) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e) LIABILITY FOR TAX.—

"(1) IN GENERAL.—Except as provided in paragraph (2), the tax imposed by subsection (a) or (b) shall be paid by the employer responsible for contributing to or under the plan the amount described in section 412(b)(3)(A).

"(2) JOINT AND SEVERAL LIABILITY WHERE EMPLOYER MEMBER OF CONTROLLED GROUP.—

"(A) IN GENERAL.—If the employer referred to in paragraph (1) is a member of a controlled group, each member of such group shall be jointly and severally liable for the tax imposed by subsection (a) or (b).

"(B) CONTROLLED GROUP.—For purposes of subparagraph (A), the term 'controlled group' means any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414."

(b) TECHNICAL AMENDMENTS.—

(1) Subsection (a) of section 4971 of the 1986 Code is amended by striking out the last sentence.

(2) Subsection (b) of section 4971 of the 1986 Code is amended by striking out the last sentence.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to plan years beginning after December 31, 1987.

SEC. 9514. FUNDING WAIVERS.

(a) REQUIREMENTS FOR WAIVERS.—

(1) AMENDMENTS TO 1986 CODE.—

(A) APPLICATION MUST BE SUBMITTED BEFORE DATE 2 1/2 MONTHS AFTER CLOSE OF YEAR.—Subsection (d) of section 412 of the 1986 Code (relating to variance from minimum funding standard) is amended by adding at the end thereof the following new paragraph:

"(4) APPLICATION MUST BE SUBMITTED BEFORE DATE 2 1/2 MONTHS AFTER CLOSE OF YEAR.—No waiver may be granted under this subsection with respect to any plan for any plan year unless an application therefor is submitted to the Secretary not later than the 15th day of the 3rd month beginning after the close of such plan year."

(B) WAIVER ALLOWED ONLY FOR TEMPORARY HARDSHIP.—Subsection (d) of section 412 of the 1986 Code is amended—

(i) by striking out "substantial business hardship" in paragraphs (1) and (2) and inserting in lieu thereof "substantial temporary business hardship", and

(ii) by striking out "SUBSTANTIAL BUSINESS HARDSHIP" in the headings of paragraphs (1) and (2) and inserting in lieu thereof "SUBSTANTIAL TEMPORARY BUSINESS HARDSHIP".

(C) HARDSHIP MUST ALSO EXIST AT CONTROLLED GROUP LEVEL.—Subsection (d) of section 412 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(5) SPECIAL RULE IF EMPLOYER IS MEMBER OF CONTROLLED GROUP.—

"(A) IN GENERAL.—If an employer is a member of a controlled group, the substantial temporary business hardship requirements of paragraph (1) shall be treated as met only if such requirements are met—

"(i) with respect to such employer, and

"(ii) with respect to the controlled group of which such employer is a member (determined by treating all members of such group as a single employer).

"(B) CONTROLLED GROUP.—For purposes of subparagraph (A), the term 'controlled group' means any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414."

(2) AMENDMENTS TO ERISA.—

(A) APPLICATION MUST BE SUBMITTED BEFORE DATE 2 1/2 MONTHS AFTER CLOSE OF YEAR.—Section 303 of ERISA (relating to variance from minimum funding standard) is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

"(d) SPECIAL RULES.—

"(1) APPLICATION MUST BE SUBMITTED BEFORE DATE 2 1/2 MONTHS AFTER CLOSE OF YEAR.—No waiver may be granted under this section with respect to any plan for any plan year unless an application therefor is submitted to the Secretary of the Treasury not later than the 15th day of the 3rd month beginning after the close of such plan year."

(B) WAIVER ALLOWED ONLY FOR TEMPORARY HARDSHIP.—Section 303 of ERISA is amended by striking out "substantial business hardship" in subsections (a) and (b) and inserting in lieu thereof "substantial temporary business hardship".

(C) HARDSHIP MUST ALSO EXIST AT CONTROLLED GROUP LEVEL.—Subsection (d) of section 303 of ERISA (as amended by subparagraph (A)) is amended by adding at the end thereof the following new paragraph:

"(2) SPECIAL RULE IF EMPLOYER IS MEMBER OF CONTROLLED GROUP.—

"(A) IN GENERAL.—If an employer is a member of a controlled group, the substantial temporary business hardship requirements of subsection (a) shall be treated as met only if such requirements are met—

"(i) with respect to such employer, and

"(ii) with respect to the controlled group of which such employer is a member (determined by treating all members of such group as a single employer).

"(B) CONTROLLED GROUP.—For purposes of subparagraph (A), the term 'controlled group' means any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414 of the Internal Revenue Code of 1986."

(b) FREQUENCY OF WAIVERS.—

(1) AMENDMENTS TO 1986 CODE.—The second sentence of section 412(d) of the 1986 Code is amended by striking out "more than 5 of any 15" and inserting in lieu thereof "more than 3 of any 15".

(2) AMENDMENTS TO ERISA.—The second sentence of section 303(a) of ERISA is amended by striking out "more than 5 of any 15" and inserting in lieu thereof "more than 3 of any 15".

(c) REPAYMENT OF WAIVED CONTRIBUTIONS.—

(1) AMENDMENTS TO 1986 CODE.—

(A) INTEREST.—

(i) Paragraph (1) of section 412(d) of the 1986 Code is amended by striking out the last sentence and inserting in lieu thereof the following new sentence: "The interest rate used for purposes of computing the amortization charge described in subsection (b)(2)(C) for any plan year shall be the greater of (A) 150 percent of the Federal mid-term rate (as in effect under section 1274 for the 1st month of such plan year), or (B) the rate of interest used under the plan in determining costs."

(ii) Subsection (e) of section 412 of the 1986 Code is amended by striking out the last sentence and inserting in lieu thereof the following new sentence: "The interest rate applicable for any plan year under any arrangement entered into by the Secretary in connection with an extension granted under this subsection shall be the greater of (A) 150 percent of the Federal mid-term rate (as in effect under section 1274 for the 1st month of such plan year), or (B) the rate of interest used under the plan in determining costs."

(B) PERIOD FOR AMORTIZING WAIVED FUNDING DEFICIENCY.—

(i) Subparagraph (C) of section 412(b)(2) of the 1986 Code is amended by striking out "a period of 15 plan years" and inserting in lieu thereof "the amortization period determined under paragraph (8)".

(ii) Subsection (b) of section 412 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(8) AMORTIZATION PERIOD.—The amortization period determined under this paragraph for any waived funding deficiency for any plan year is the greater of—

"(A) 5 years, or

"(B) 15 years multiplied by the funded termination liability percentage for such plan year (as determined under subsection (l)).

The period determined under subparagraph (B) shall not exceed 15 years and shall be rounded to the nearest whole number of years."

(2) AMENDMENTS TO ERISA.—

(A) INTEREST.—

(i) Subsection (a) of section 303 of ERISA is amended by striking out the last sentence and inserting in lieu thereof the following new sentence: "The interest rate used for purposes of computing the amortization charge described in section 302(b) for any plan year shall be the greater of (A) 150 percent of the Federal mid-term rate (as in effect under section 1274 of the Internal Revenue Code of 1986 for the 1st month of such plan year), or (B) the rate of interest used under the plan in determining costs."

(ii) Subsection (a) of section 304 of ERISA is amended by striking out the last sentence and inserting in lieu thereof the following new sentence: "The interest rate applicable for any plan year under any arrangement entered into by the Secretary in connection with an extension granted under this subsection shall be the greater of (A) 150 percent of the Federal mid-term rate (as in effect under section 1274 of the Internal Revenue Code of 1986 for the 1st month of such plan year), or (B) the rate of interest used under the plan in determining costs."

(B) PERIOD FOR AMORTIZING WAIVED FUNDING DEFICIENCY.—

(i) Subparagraph (C) of section 302(b)(2) of ERISA is amended by striking out "a period of 15 plan years" and inserting in lieu thereof "the amortization period determined under paragraph (8)".

(ii) Subsection (b) of section 302 of ERISA is amended by adding at the end thereof the following new paragraph:

"(8) AMORTIZATION PERIOD.—The amortization period determined under this paragraph for any waived funding deficiency for any plan year is the greater of—

"(A) 5 years, or

"(B) 15 years multiplied by the funded termination liability percentage for such plan year (as determined under subsection (d)).

The period determined under subparagraph (B) shall not exceed 15 years and shall be rounded to the nearest whole number of years."

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply in the case of—

(A) any application submitted after June 30, 1987, and

(B) any waiver granted pursuant to such an application.

(2) SPECIAL RULE FOR APPLICATION REQUIREMENT.—

(A) IN GENERAL.—The amendments made by subsections (a)(1)(A) and (a)(2)(A) shall apply to plan years beginning after December 31, 1987.

(B) TRANSITIONAL RULE FOR YEARS BEGINNING IN 1988.—In the case of any plan year beginning during calendar year 1988, section 412(d)(4) of the 1986 Code and section 303(d)(1) of ERISA (as added by subsection (a)(1)) shall be applied by substituting "6th month" for "3rd month".

SEC. 9515. OTHER FUNDING CHANGES.

(a) PERIOD FOR AMORTIZING EXPERIENCE GAINS AND LOSSES.—

(1) AMENDMENTS TO 1986 CODE.—Paragraphs (2)(B)(iv) and (3)(B)(ii) of section 412(b) of the 1986 Code are each amended by striking out "15 plan years" and inserting in lieu thereof "3 plan years".

(2) AMENDMENTS TO ERISA.—Paragraphs (2)(B)(iv) and (3)(B)(ii) of section 302(b) of ERISA are each amended by striking out "15 plan years" and inserting in lieu thereof "3 plan years".

(b) ACTUARIAL ASSUMPTIONS MUST BE REASONABLE.—

(1) AMENDMENT TO 1986 CODE.—Paragraph (3) of section 412(c) of the 1986 Code is amended to read as follows:

"(3) ACTUARIAL ASSUMPTIONS MUST BE REASONABLE.—For purposes of this section, all costs, liabilities, rates of interest, and other factors under the plan shall be determined on the basis of actuarial assumptions and methods—

"(A) each of which is reasonable (taking into account the experience of the plan and reasonable expectations) or which, in the aggregate, result in a total contribution equivalent to that which would be determined if each such assumption and method were reasonable, and

"(B) which, in combination, offer the actuary's best estimate of anticipated experience under the plan."

(2) AMENDMENT TO ERISA.—Paragraph (3) of section 302(c) of ERISA is amended to read as follows:

"(3) ACTUARIAL ASSUMPTIONS MUST BE REASONABLE.—For purposes of this section, all costs, liabilities, rates of interest, and other factors under the plan shall be determined on the basis of actuarial assumptions and methods—

"(A) each of which is reasonable (taking into account the experience of the plan and reasonable expectations) or which, in the aggregate, result in a total contribution equivalent to that which would be determined if each such assumption and method were reasonable, and

"(B) which, in combination, offer the actuary's best estimate of anticipated experience under the plan."

(c) LIMITATION ON INTEREST RATE.—

(1) AMENDMENT TO 1986 CODE.—Paragraph (5) of section 412(b) of the 1986 Code (relating to interest) is amended to read as follows:

"(5) INTEREST.—

"(A) IN GENERAL.—The funding standard account (and items therein) shall be charged or credited (as determined under regulations prescribed by the Secretary) with interest at the appropriate rate consistent with the rate or rates of interest used under the plan to determine costs.

"(B) REQUIRED CHANGE OF INTEREST RATE.—If—

"(i) any rate of interest used under the plan to determine costs is not within the permissible range, or

"(ii) the Secretary determines that any such interest rate is not reasonable,

the plan shall establish a new rate of interest which is within the permissible range (or, where the Secretary makes a determination under clause (ii), which is permitted by the Secretary). The Secretary may permit a plan to use a rate of interest not within the permissible range where it is established to the satisfaction of the Secretary that such rate of interest is reasonable.

"(C) PERMISSIBLE RANGE.—For purposes of this paragraph, the term 'permissible range' means a rate of interest which is not more than 20 percent above, and not more than 20 percent below, the average Federal long-term rate (within the meaning of section 1274(d)) for the 5-year period ending on the last day before the beginning of the plan year (determined by excluding any portion of such period before 1985)."

(2) AMENDMENT TO ERISA.—Paragraph (5) of section 302(b) of ERISA (relating to interest) is amended to read as follows:

"(5) INTEREST.—

"(A) IN GENERAL.—The funding standard account (and items therein) shall be charged or credited (as determined under regulations prescribed by the Secretary of the Treasury) with interest at the appropriate rate consistent with the rate or rates of interest used under the plan to determine costs.

"(B) REQUIRED CHANGE OF INTEREST RATE.—If—

"(i) any rate of interest used under the plan to determine costs is not within the permissible range, or

"(ii) the Secretary of the Treasury determines that any such interest rate is not reasonable,

the plan shall establish a new rate of interest which is within the permissible range (or, where the Secretary of the Treasury makes a determination under clause (ii), which is permitted by the Secretary of the Treasury). The Secretary of the Treasury may permit a plan to use a rate of interest not within the permissible range where it is established to the satisfaction of the Secretary of the Treasury that such rate of interest is reasonable.

"(C) PERMISSIBLE RANGE.—For purposes of this paragraph, the term 'permissible range' means a rate of interest which is not more than 20 percent above, and not more than 20 percent below, the average Federal long-term rate (within the meaning of section 1274(d) of the Internal Revenue Code of 1986) for the 5-year period ending on the last day before the beginning of the plan year (determined by excluding any portion of such period before 1985)."

(d) LIMITATION ON AMORTIZATION OF PAST SERVICE CREDITS.—Clause (iii) of section 404(a)(1)(A) of the 1986 Code (relating to pension trusts) is amended by striking out "to amortize such credits" and inserting in lieu thereof "to amortize the unfunded costs attributable to such credits".

(e) LIMITATION ON DEDUCTION FOR CONTRIBUTIONS TO CERTAIN PLANS NOT LESS THAN UNFUNDED TERMINATION LIABILITY.—Paragraph (1) of section 404(a) of the 1986 Code is amended by redesignating subparagraph (D) as subparagraph (E) and by inserting after subparagraph (C) the following new subparagraph:

"(D) SPECIAL RULE IN CASE OF CERTAIN PLANS.—In the case of any defined benefit plan—

"(i) to which section 4021 of the Employee Retirement Income Security Act of 1974 applies, and

"(ii) which has 100 or more participants during the plan year,

except as provided in regulations, the maximum amount deductible under the limitations of this paragraph shall not be less than the unfunded termination liability determined under section 412(l)."

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after December 31, 1987.

PART 2—EMPLOYER ACCESS TO PLAN ASSETS

SEC. 9521. ADDITIONAL CONTRIBUTIONS REQUIRED WHERE EMPLOYER RECEIVED REVERSION, INCREASE IN TAX ON REVERSION.

(a) ADDITIONAL CONTRIBUTIONS REQUIRED WHERE EMPLOYER RECEIVED REVERSION.—

(1) AMENDMENTS TO 1986 CODE.—

(A) Section 412 of the 1986 Code (relating to minimum funding standards) is amended by adding at the end thereof the following new subsection:

"(m) Additional Contributions Required Where Employer Received Reversion.—

"(1) In general.—If an employer received an employer reversion with respect to any plan (other than a multiemployer plan) to which this section applied, the amount charged to the funding standard account of any plan described in paragraph (2) for any plan year described in paragraph (3) shall be increased by such plan's allocated share of the total additional required contribution for the calendar year in which such plan year begins.

"(2) Description of plan.—A plan is described in this paragraph if—

"(A) such plan is a defined benefit plan,

"(B) such plan is maintained by the employer referred to in paragraph (1),

"(C) such plan is not a multiemployer plan,

"(D) this section applies to such plan, and

"(E) for any plan year described in paragraph (3), such plan has an unfunded amount.

"(3) Years for which additional contributions required.—A plan year is described in this paragraph if such plan year begins in the calendar year in which the reversion is received or any of the 3 succeeding calendar years.

"(4) Additional required contribution.—For purposes of this subsection—

"(A) In general.—The additional required contribution for any calendar year is the lesser of—

"(i) the applicable percentage of the excess (if any) of—

"(I) the amount of the reversion referred to in paragraph (1), over

"(II) the aggregate additional required contributions determined under this subparagraph for prior calendar years on account of such reversion, or

"(ii) the aggregate unfunded amount under all plans described in paragraph (2) for plan years beginning in such calendar year.

"(B) Applicable percentage.—For purposes of subparagraph (A), the applicable percentage is—

"(i) 25 percent in the case of the calendar year in which the reversion is received,

"(ii) 33 1/3 percent in the case of the 1st succeeding calendar year,

"(iii) 50 percent in the case of the 2nd succeeding calendar year.

"(iv) 100 percent in the case of the 3rd succeeding calendar year.

"(C) Allocation among plans.—The additional required contribution for any calendar year shall be allocated among the plans described in paragraph (2)—

"(i) first by allocating such contribution to the plan with the lowest funded ratio until such plan would have a funded ratio equal to the plan with the next lowest funded ratio, and

"(ii) by allocating the remainder of such contribution under principles similar to the principles of clause (i).

"(5) Special rule where plan with unfunded termination liability terminated.—

"(A) In general.—If—

"(i) during any of the 4 calendar years referred to in paragraph (3), an employer terminates a plan described in paragraph (2), and

"(ii) such plan has unfunded termination liability for its last plan year, the amount charged to the funding standard account for such plan for its last plan year shall be increased by the amount determined under subparagraph (B).

"(B) Amount of increase.—The amount determined under this subparagraph is the lesser of—

"(i) the reversion referred to in paragraph (1) reduced by the aggregate required additional contributions for prior calendar years on account of such reversion, or

"(ii) the unfunded termination liability under such plan.

"(C) Coordination with required contributions for other plans.—The amount of the increase under subparagraph (A) shall be applied to reduce the amount of the reversion for purposes of determining the additional required contribution for other plans described in paragraph (2).

"(D) Special rule.—Appropriate adjustments shall be made in the application of this paragraph in any case in which the employer terminates 2 or more plans described in paragraph (2).

"(6) Permitted transfers.—

"(A) In general.—If an employer receives an employer reversion with respect to a plan to which this section applies and any portion of such reversion is transferred in a qualified transfer, the portion so transferred—

"(i) shall not be included in the gross income of the employer, and

"(ii) shall not be subject to the tax imposed by section 4980.

"(B) Qualified transfer.—For purposes of subparagraph (A), the term 'qualified transfer' means any transfer of an amount to a plan described in paragraph (2) to the extent that the amount of such transfer does not exceed the portion of the reversion allocable to such plan under rules similar to the rules of paragraph (4)(C) (or, if lesser, such plan's unfunded amount).

"(7) Security may be required.—

"(A) In general.—The Pension Benefit Guaranty Corporation may require (as a condition for permitting the termination of a plan) an employer to provide such security to the plan as may be necessary to ensure that the additional contributions required by this subsection are made.

"(B) Special rule.—Any security provided under subparagraph (A) may be perfected and enforced only by the Pension Benefit Guaranty Corporation, or, at the direction of the Corporation, by the employer or any member of such employer's controlled group.

"(8) Definitions.—For purposes of this subsection—

"(A) Employer reversion.—The term 'employer reversion' has the meaning given to such term by section 4980(c)(2).

"(B) Unfunded amount.—The term 'unfunded amount' means the excess (if any) of—

"(i) the greater of—

"(I) 125 percent of the termination liability, or

"(II) the amount determined under subsection (c)(7)(A), over

"(ii) the value of the assets of the plan determined under subsection (c)(2).

"(C) Funded ratio.—The term 'funded ratio' means the percentage which—

"(i) the value of the assets of the plan determined under subsection (c)(2), is of

"(ii) the greater of the amounts referred to in subparagraph (B)(i).

"(D) Controlled group rules.—The rules of subsections (b), (c), (m), and (o) of section 414 shall apply for purposes of this subsection."

(B) Subsection (h) of section 412 of the 1986 Code is amended by adding at the end thereof the following new sentence: "Notwithstanding paragraphs (3) and (4), for purposes of subsection (m), this section shall apply to any plan described in paragraph (3) or (4)."

(C) Clause (i) of section 4041(b)(2)(C) of ERISA is amended by striking out "or" at the end of subclause (I), by striking out the period at the end of subclause (II) and inserting in lieu thereof ", or" and by adding at the end thereof the following new subclause:

"(III) any security required under section 412(m)(7) of the Internal Revenue Code of 1986 and section 302(e)(7) of this Act has not been provided in the manner required under such sections."

(2) Amendments to ERISA.—

(A) Section 302 of ERISA (as amended by section) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e) Additional Contributions Required Where Employer Received Reversion.—

"(1) In general.—If an employer received an employer reversion with respect to any plan (other than a multiemployer plan) to which this section applied, the amount charged to the funding standard account of any plan described in paragraph (2) for any plan year described in paragraph (3) shall be increased by such plan's allocated share of the total additional required contribution for the calendar year in which such plan year begins.

"(2) Description of plan.—A plan is described in this paragraph if—

"(A) such plan is a defined benefit plan,

"(B) such plan is maintained by the employer referred to in paragraph (1),

"(C) such plan is not a multiemployer plan,

"(D) this section applies to such plan, and

"(E) for any plan year described in paragraph (3), such plan has an unfunded amount.

"(3) Years for which additional contributions required.—A plan year is described in this paragraph if such plan year begins in the calendar year in which the reversion is received or any of the 3 succeeding calendar years.

"(4) Additional required contribution.—For purposes of this subsection—

"(A) In general.—The additional required contribution for any calendar year is the lesser of—

"(i) the applicable percentage of the excess (if any) of—

"(I) the amount of the reversion referred to in paragraph (1), over

"(II) the aggregate additional required contributions determined under this subparagraph for prior calendar years on account of such reversion, or

"(ii) the aggregate unfunded amount under all plans described in paragraph (2) for plan years beginning in such calendar year.

"(B) Applicable percentage.—For purposes of subparagraph (A), the applicable percentage is—

"(i) 25 percent in the case of the calendar year in which the reversion is received,

"(ii) 33⅓ percent in the case of the 1st succeeding calendar year,

"(iii) 50 percent in the case of the 2nd succeeding calendar year.

"(iv) 100 percent in the case of the 3rd succeeding calendar year.

"(C) ALLOCATION AMONG PLANS.—The additional required contribution for any calendar year shall be allocated among the plans described in paragraph (2)—

"(i) first by allocating such contribution to the plan with the lowest funded ratio until such plan would have a funded ratio equal to the plan with the next lowest funded ratio, and

"(ii) by allocating the remainder of such contribution under principles similar to the principles of clause (i).

"(5) SPECIAL RULE WHERE PLAN WITH UNFUNDED TERMINATION LIABILITY TERMINATED.—

"(A) IN GENERAL.—If—

"(i) during any of the 4 calendar years referred to in paragraph (3), an employer terminates a plan described in paragraph (2), and

"(ii) such plan has unfunded termination liability for its last plan year,

the amount charged to the funding standard account for such plan for its last plan year shall be increased by the amount determined under subparagraph (B).

"(B) AMOUNT OF INCREASE.—The amount determined under this subparagraph is the lesser of—

"(i) the reversion referred to in paragraph (1) reduced by the aggregate required additional contributions for prior calendar years on account of such reversion, or

"(ii) the unfunded termination liability under such plan.

"(C) COORDINATION WITH REQUIRED CONTRIBUTIONS FOR OTHER PLANS.—The amount of the increase under subparagraph (A) shall be applied to reduce the amount of the reversion for purposes of determining the additional required contribution for other plans described in paragraph (2).

"(D) SPECIAL RULE.—Appropriate adjustments shall be made in the application of this paragraph in any case in which the employer terminates 2 or more plans described in paragraph (2).

"(6) SECURITY MAY BE REQUIRED.—

"(A) IN GENERAL.—The Pension Benefit Guaranty Corporation may require (as a condition for permitting the termination of a plan) an employer to provide such security to the plan as may be necessary to ensure that the additional contributions required by this subsection are made.

"(B) SPECIAL RULE.—Any security provided under subparagraph (A) may be perfected and enforced only by the Pension Benefit Guaranty Corporation, or, at the direction of the Corporation, by the employer or any member of such employer's controlled group.

"(7) DEFINITIONS.—For purposes of this subsection—

"(A) EMPLOYER REVERSION.—The term 'employer reversion' has the meaning given to such term by section 4980(c)(2) of the Internal Revenue Code of 1986.

"(B) UNFUNDED AMOUNT.—The term 'unfunded amount' means the excess (if any) of—

"(i) the greater of—

"(I) 125 percent of the termination liability, or

"(II) the amount determined under subsection (c)(7)(A), over

"(ii) the value of the assets of the plan determined under subsection (c)(2).

"(C) FUNDED RATIO.—The term 'funded ratio' means the percentage which—

"(i) the value of the assets of the plan determined under subsection (c)(2), is of

"(ii) the greater of the amounts referred to in subparagraph (B)(i).

"(D) CONTROLLED GROUP RULES.—The rules of subsections (b), (c), (m), and (o) of section 414 of the Internal Revenue Code of 1986 shall apply for purposes of this subsection."

(B) Subsection (b) of section 4 of ERISA is amended by adding at the end thereof the following new sentence: "Notwithstanding paragraphs (1) and (2), for purposes of section 302(e), part 3 of subtitle B of this title shall apply to any plan described in paragraph (1) or (2)."

(b) INCREASE IN TAX ON REVERSIONS.—Subsection (a) of section 4980 of the 1986 Code (relating to tax on reversion of qualified plan assets to employer) is amended by striking out "10 percent" and inserting in lieu thereof "20 percent".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to reversions received after June 30, 1987, except that such amendments shall not apply to any reversion on account of a termination where notice to the Pension Benefit Guaranty Corporation with respect to such termination is provided on or before June 30, 1987.

PART 3—OF PLAN TERMINATIONS

SEC. 9531. STANDARD TERMINATION PROCEDURES AVAILABLE ONLY WHEN ASSETS SUFFICIENT TO MEET TERMINATION LIABILITY.

(a) GENERAL RULE.—Subparagraph (D) of section 4041(b)(1) of ERISA is amended to read as follows:

"(D) when the final distribution of assets occurs, the plan is sufficient for termination liability (determined as of the termination date)."

(b) TECHNICAL AMENDMENTS.—

(1) Paragraphs (2)(A), (2)(C), (2)(D), and (3) of section 4041(b) of ERISA are each amended by striking out "benefit commitments" each place it appears and inserting in lieu thereof "termination liability".

(2) Subparagraph (B) of section 4041(b)(2) of ERISA is amended—

(A) by striking out "the amount of such person's benefit commitments (if any)" and inserting in lieu thereof "the amount of the termination liability (if any) attributable to such person", and

(B) by striking out "such benefit commitments" and inserting in lieu thereof "such termination liability".

(3)(A) Subparagraph (A) of section 4041(b)(3) of ERISA is amended by striking out clauses (i) and (ii) and inserting in lieu thereof the following:

"(i) purchase irrevocable commitments from an insurer to provide all benefits under the plan, or

"(ii) in accordance with the provisions of the plan and any applicable regulations, otherwise fully provide all benefits under the plan."

(B) Subparagraph (B) of section 4041(b)(3) of ERISA is amended by striking out "so as to pay" and all that follows and inserting in lieu thereof "so as to pay all benefits under the plan".

(4) Paragraphs (2) and (3) of section 4041(c) of ERISA are each amended by striking out "benefit commitments" each place it appears (including in any heading) and inserting in lieu thereof "termination liability".

(5) Paragraph (1) of section 4041(d) of ERISA is amended—

(A) by striking out "no amount of unfunded benefit commitments" and inserting in lieu thereof "no unfunded termination liability", and

(B) by striking out "BENEFIT COMMITMENTS" in the paragraph heading and inserting in lieu thereof "TERMINATION LIABILITY".

(6) Paragraph (16) of section 4001(a) of ERISA is amended to read as follows:

"(16) 'termination liability' means the present value of all liabilities to employees and their beneficiaries under the plan;".

(7) Paragraph (18) of section 4001(a) of ERISA is amended to read as follows:

"(18) 'unfunded termination liability' means, as of any date, the excess (if any) of—

"(A) the termination liability (determined as of such date on the basis of assumptions prescribed by the corporation for purposes of section 4044), over

"(B) the current value (as of such date) of the assets of the plan;".

(8) Subsection (i) of section 4042 of ERISA is amended—

(A) by striking out "all benefit commitments under the plan are" and inserting in lieu thereof "all termination liability under the plan is attributable to", and

(B) by striking out "no amount of unfunded benefit commitments" and inserting in lieu thereof "no unfunded termination liability".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply in the case of any termination where notice to the Pension Benefit Guaranty Corporation with respect to such termination is provided after June 30, 1987.

SEC. 9532. DISTRESS TERMINATIONS.

(a) BANKRUPTCY REORGANIZATION PROCEEDINGS NOT SEPARATE BASIS FOR DISTRESS TERMINATION.—

(1) Subparagraph (B) of section 4041(c)(2) of ERISA is amended—

(A) by striking out "clause (i), (ii), or (iii)" in the material preceding clause (i) and inserting in lieu thereof "clause (i) or (ii)",

(B) by striking out "a substantial member" in the material preceding clause (i) and inserting in lieu thereof "a member",

(C) by inserting before the period at the end of clause (i) the following: "or become a case seeking a reorganization", and

(D) by striking out clause (ii) and redesignating clause (iii) as clause (ii).

(2) Paragraph (2) of section 4041(c) of ERISA is amended by striking out subparagraph (C) and by redesignating subparagraph (D) as subparagraph (C).

(b) DISTRESS TERMINATION NOT AVAILABLE WHERE OTHER OVERFUNDED PLAN.—

(1) Subparagraph (C) of section 4041(c)(1) of ERISA is amended by striking out "subparagraph (B)" and inserting in lieu thereof "subparagraphs (B) and (C)".

(2) Paragraph (2) of section 4041(c) of ERISA is amended by redesignating subparagraphs (C) and (D) as subparagraphs (D) and (E), respectively, and by inserting after subparagraph (B) the following new paragraph:

"(C) PLAN SPONSOR MAY NOT HAVE OVERFUNDED PLAN.—

"(i) IN GENERAL.—The requirements of this subparagraph are met if (as of the termination date) no person who is a contributing sponsor of the plan or a member of such sponsor's controlled group is a contributing sponsor of an overfunded plan.

"(ii) OVERFUNDED PLAN.—For purposes of clause (i), the term 'overfunded plan' means any single-employer plan if (as of the termination date)—

"(I) the present value (as of such date) of the assets of such plan, exceeds

"(II) the termination liability under such plan as of such date.

To the extent provided in regulations prescribed by the corporation, in the case of a plan maintained by more than 1 employer, the portion of such plan attributable to each such employer shall be treated as a separate plan."

(c) Employer Liability to Participants Based on Termination Liability.—

(1) In general.—Subparagraph (A) of section 4062(c)(1) of ERISA is amended—

(A) by striking out "outstanding amount of the benefit commitments" and inserting in lieu thereof "outstanding amount of termination liability", and

(B) by striking out the second sentence and inserting in lieu thereof the following: "Except as provided in subparagraph (B), the liability of such person under this subsection shall be equal to the total outstanding amount of termination liability.".

(2) Outstanding termination liability.—Paragraph (19) of section 4001(a) of ERISA is amended to read as follows:

"(19) 'outstanding amount of termination liability' means, with respect to any plan, the excess (if any) of—

"(A) the termination liability (determined as of the termination date on the basis of assumptions prescribed by the corporation for purposes of section 4044), over

"(B) the termination liability which would be so determined by only taking into account benefits which are guaranteed under section 4022 or to which assets of the plan are required to be allocated under section 4044;".

(3) Subparagraph (A) of section 4049(c)(1) of ERISA is amended by striking out "the outstanding amount of benefit commitments to" and inserting in lieu thereof "to the portion of the outstanding termination liability attributable to".

(d) Employer Liability to the Corporation.—

(1) In general.—Subparagraph (A) of section 4062(b)(1) of ERISA is amended to read as follows:

"(A) In general.—Except as provided in subparagraph (B), the liability to the corporation of a person described in subsection (a) shall be the total amount of the unfunded guaranteed benefits (as of the termination date) of all participants and beneficiaries under the plan, together with interest (at a reasonable rate) calculated from the termination date in accordance with regulations prescribed by the Corporation."

(2) Lien limited to 30 percent of net worth.—

(A) Subsection (a) of section 4068 of ERISA is amended by striking out "to the extent of an amount equal to the unpaid amount described in section 4062(b)(1)(A)(i)" each place it appears and inserting in lieu thereof "to the extent such amount does not exceed 30 percent of the collective net worth of all persons described in section 4062(a)".

(B) Title IV of ERISA is amended by transferring subsection (e) of section 4062 of such Act to the end of section 4068 of such Act and by redesignating such subsection as subsection (f).

(e) Prohibition Against Future Benefits.—Section 4062 of ERISA is amended by adding at the end thereof the following new subsection:

"(e) Prohibition of Future Benefits Where All Liabilities to Corporation Not Satisfied.—

"(1) In general.—Except to the extent permitted by the Corporation, if a single-employer plan is terminated with unfunded guaranteed benefits and all liabilities with respect to such termination under subsection (b) are not satisfied, it shall be unlawful for any person described in subsection (a), at any time during the period described in paragraph (3)—

"(A) to establish an arrangement under which retirement benefits are provided, or

"(B) to provide for further accruals of retirement benefits under any arrangement previously established.

For purposes of the preceding sentence, the term 'arrangement' shall not include any multiemployer plan.

"(2) Authority to enjoin violation.—The corporation may bring an action to enjoin any violation of paragraph (1). Subsection (c) of section 4070 shall apply to any such action in the same manner as if such action were brought under section 4070.

"(3) Period during prohibition applies.—The period described in this paragraph is—

"(A) the 5-year period beginning on the termination date, and

"(B) to the extent provided in regulations, the 1-year period ending on the termination date."

(f) Corporation's Right to Amounts Held by Section 4049 Trust.—Section 4049 of ERISA is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

"(d) Corporation's Right to Amounts Held by Trust.—

"(1) In general.—If—

"(A) the total amount of unfunded guaranteed benefits (as of the termination date) of all participants and beneficiaries under the plan, exceed

"(B) the amount of the liability collected by the corporation under section 4062(b) in connection with the termination,

notwithstanding any other provision of this section, all amounts collected by the trust referred to in subsection (a) under section 4062(c) shall be paid by the trust to the corporation until the amount so paid equals such excess (together with interest (at a reasonable rate) calculated from the termination date in accordance with regulations prescribed by the corporation).

"(2) Subsequent shortfalls.—If, after the determination of the total amount of unfunded guaranteed benefits, the corporation determines that the amounts collected under section 4062(b) and paragraph (1) are not sufficient to pay all such unfunded benefits, notwithstanding any other provision of this section, the trust referred to in subsection (a) shall pay to the corporation the amount determined by the corporation to be necessary (together with the amounts collected under section 4062(b) and paragraph (1)) to pay such unfunded benefits."

(g) Effective Date.—The amendments made by this section shall apply in the case of—

(1) any termination where notice to the Pension Benefit Guaranty Corporation with respect to such termination is provided after June 30, 1987, and

(2) any termination by such Corporation under section 4042 of ERISA after June 30, 1987.

SEC. 9533. AUTHORITY OF PENSION BENEFIT GUARANTY CORPORATION TO REQUIRE SECURITY WHERE THE FAIR MARKET VALUE OF PENSION PLAN ASSETS DOES NOT EXCEED 70 PERCENT OF TERMINATION LIABILITY UNDER THE PLAN.

(a) General Rule.—Subtitle A of title IV of ERISA (relating to Pension Benefit Guaranty Corporation) is amended by adding at the end thereof the following new section:

"AUTHORITY TO REQUIRE SECURITY WHERE INADEQUATE ASSETS RELATIVE TO ACCRUED BENEFITS UNDER THE PLAN

"Sec. 4010. (a) In General.—If, at the close of any plan year, the fair market value of the assets of any single-employer plan does not exceed 70 percent of the termination liability under the plan, the corporation may require that security be provided to the plan by the contributing sponsor (or by any member of the controlled group of the contributing sponsor). Determinations under the preceding sentence may be made, in lieu of as of the close of a plan year, as of such other date as may be specified by the corporation.

"(b) Imposition of Lien Where Failure To Provide Requested Security.—

"(1) In general.—If any person required by the corporation under subsection (a) to provide security to any plan fails to provide the required security, there shall be a lien in favor of the plan in an amount determined by the corporation upon all property and rights to property, whether real or personal, belonging to such person.

"(2) Period of lien.—The lien imposed by paragraph (1) shall arise on the date of demand for security by the corporation and shall continue until such time as the corporation determines to be appropriate or until the lien becomes unenforceable by reason of lapse of time.

"(3) Certain rules to apply.—Rules similar to the rules of subsections (c), (d), and (e) of section 4068 shall apply with respect to a lien imposed by subsection (a).

"(c) Enforcement.—Any security provided under subsection (a) or lien created under subsection (b) may be perfected and enforced only by the corporation, or at the direction of the corporation, by the contributing sponsor (or any member of the controlled group of the contributing sponsor)."

(3) Clerical amendment.—The table of contents for ERISA is amended by inserting after the item relating to section 4009 the following new item:

"Sec. 4010. Authority to require security where inadequate assets relative to accrued benefits under the plan."

(c) Effective Date.—The amendments made by this section shall apply to plan years beginning after the date of the enactment of this Act.

SEC. 9534. AUTHORITY OF PENSION BENEFIT GUARANTY CORPORATION TO REQUIRE SECURITY FOR CERTAIN PENSION PLAN FUNDING WAIVERS.

(a) Amendments to 1986 Code.—

(1) Decrease in amount of accumulated funding deficiencies, etc. exempt from waiver limitations.—Clause (i) of section 412(f)(3)(C) of the 1986 Code (relating to requirements relating to waivers and extensions) is amended by striking out "$2,000,000" and inserting in lieu thereof "$250,000".

(2) Authority of PBGC to require security where accumulated funding deficiencies, etc. exceed $1,000,000.—

(A) In general.—Subsection (f) of section 412 of the 1986 Code is amended by redesignating paragraph (4) as paragraph (5) and by inserting after paragraph (3) the following new paragraph:

"(4) Authority of Pension Benefit Guaranty Corporation to require security for certain waivers and extensions.—

"(A) Application of paragraph.—This paragraph (and not paragraph (3)) shall apply to any defined benefit plan which is a single-employer plan (within the meaning of section 4001(a)(15) of the Employee Retirement Income Security Act of 1974) if—

"(i) the sum of the balances described subclauses (I), (II), and (III) of paragraph (3)(C)(i) with respect to such plan exceeds $1,000,000, or

"(ii) the fair market value of the assets of the plan does not exceed 70 percent of the termination liability under the plan (as defined in section 4001(a)(16)) of the Employee Retirement Income Security Act of 1974.

The determination under clause (ii) shall be made as of the date of the application for granting or modifying a waiver under subsection (d) or an extension under subsection (e) or such other date as may be specified by the Pension Benefit Guaranty Corporation.

"(B) PBGC authorized to require security.—In any case to which this paragraph applies, the Pension Benefit Guaranty Corporation may require—

"(i) an employer maintaining the plan referred to in subparagraph (A),

"(ii) any person which, with such employer, is treated as a single employer under subsection (b), (c), (m), or (o) of section 414, or

"(iii) any combination of persons described in clause (i) or (ii),

to provide security to such plan as a condition for granting or modifying a waiver under subsection (d) or an extension under subsection (e).

"(C) Treatment of annuitized benefits in determining asset/benefit ratio.—If any benefit under the plan is payable under an irrevocable commitment from an insurer, the fair market value of such commitment, and the present value of the benefits payable under such commitment, shall not be taken into account under subparagraph (A)(ii).

"(D) Information to PBGC.—The Secretary shall, at the request of the Pension Benefit Guaranty Corporation, provide to such Corporation such information as such Corporation may require to carry out this paragraph. Information so provided shall be treated as tax return information and subject to the safeguarding and reporting requirements of section 6103(p)."

(B) Technical amendments.—

(i) The heading of paragraph (3) of section 412(f) of the 1986 Code is amended by striking out "Security" and inserting in lieu thereof "Authority of the secretary to require security".

(ii) Clause (i) of section 412(f)(3)(A) of the 1986 Code is amended by striking out "subparagraph (C)" and inserting in lieu thereof "subparagraph (C) and paragraph (4)".

(b) Amendments to ERISA.—

(1) Decrease in amount of accumulated funding deficiencies, etc. exempt from waiver limitations.—Paragraph (1) of section 306(c) of the ERISA (relating to requirements relating to waivers and extensions) is amended by striking out "$2,000,000" and inserting in lieu thereof "$250,000".

(2) Authority of PBGC to require security where accumulated funding deficiencies, etc. exceed $1,000,000.—

(A) In general.—Section 306 of ERISA is amended by adding at the end thereof the following new subsection:

"(d) Authority of Pension Benefit Guaranty Corporation To Require Security for Certain Waivers and Extensions.—

"(1) Application of subsection.—This subsection (and not the preceding provisions of this section) shall apply to any defined benefit plan which is a single-employer plan (within the meaning of section 4001(a)(15)) if—

"(A) the sum of the balances described in subparagraphs (A), (B), and (C) of subsection (c)(1) with respect to such plan exceeds $1,000,000, or

"(B) the fair market value of the assets of the plan does not exceed 70 percent of the termination liability under the plan (as defined in section 4001(a)(16)).

The determination under subparagraph (B) shall be made as of the date of the application for granting or modifying a waiver under section 303 or an extension under section 304 or such other date as may be specified by the Pension Benefit Guaranty Corporation.

"(2) PBGC authorized to require security.—In any case to which this subsection applies, the Pension Benefit Guaranty Corporation may require—

"(A) an employer maintaining the plan referred to in paragraph (1),

"(B) any person which, with such employer, is treated as a single employer under subsection (b), (c), (m), or (o) of section 414 of the Internal Revenue Code of 1986, or

"(C) any combination of persons described in subparagraph (A) or (B),

to provide security to such plan as a condition for granting or modifying a waiver under section 303 or an extension under section 304.

"(3) Treatment of annuitized benefits in determining asset/benefit ratio.—If any benefit under the plan is payable under an irrevocable commitment from an insurer, the fair market value of such commitment, and the present value of the benefits payable under such commitment, shall not be taken into account under paragraph (1)(B).

"(4) Information to PBGC.—The Secretary of the Treasury shall, at the request of the Pension Benefit Guaranty Corporation, provide to such Corporation such information as such Corporation may require to carry out this paragraph. Information so provided shall be treated as tax return information and subject to the safeguarding and reporting requirements of section 6103(p) of the Internal Revenue Code of 1986."

(B) Technical amendments.—

(i) The heading for section 306 of ERISA is amended by striking out "Security" and inserting in lieu thereof "Authority of the Secretary of the Treasury to require security".

(ii) The table of contents for ERISA is amended in the item relating to section 306 by striking out "Security" and inserting in lieu thereof "Authority of the Secretary of the Treasury to require security".

(iii) Paragraph (1) of section 306(a) of ERISA is amended by striking out "subsection (c)" and inserting in lieu thereof "subsections (c) and (d)".

(c) Effective Date.—The amendments made by this section shall apply to applications for waivers, extensions, and modifications filed after the date of the enactment of this Act.

PART 4—INCREASE IN PREMIUM RATES

SEC. 9541. INCREASE IN PREMIUM RATES.

(a) General Rule.—Clause (i) of section 4006(a)(3)(A) of ERISA is amended by striking out "$8.50" and inserting in lieu thereof "the sum of $14 plus the additional premium (if any) determined under subparagraph (E)".

(b) Determination of Additional Premium.—Paragraph (3) of section 4006(a) of ERISA is amended by adding at the end thereof the following new subparagraph:

"(E)(i) The additional premium determined under this subparagraph with respect to any plan for any plan year shall be an amount equal to the amount determined under clause (ii) divided by the number of participants in such plan during such plan year.

"(ii) The amount determined under this clause for any plan year shall be an amount equal to $5.50 for each $1,000 (or fraction thereof) of unfunded vested benefits under the plan as of the beginning of the plan year.

"(iii) For purposes of clause (ii), the term 'unfunded vested benefits' means the amount which would be the unfunded termination liability if only vested benefits were taken into account.

"(iv) The aggregate increase in the premium payable with respect to any participant by reason of this subparagraph shall not exceed $36.

"(v) No additional premium shall be determined under this subparagraph with respect to any plan which has fewer than 100 participants during the plan year. For purposes of the preceding sentence, all single-employer plans maintained by the same employer (or any member of such employer's controlled group) shall be treated as 1 plan."

(c) Liability for Premium.—

(1) In general.—Section 4007 of ERISA is amended by striking out "plan administrator" each place it appears and inserting in lieu thereof "designated payor".

(2) Designated payor.—Section 4007 of ERISA is amended by adding at the end thereof the following new subsection:

"(e)(1) For purposes of this section, the term 'designated payor' means—

"(A) the contributing sponsor in the case of a single-employer plan, and

"(B) the plan administrator in the case of a multiemployer plan.

"(2) If the designated payor of any single-employer plan is a member of a controlled group, each member of such group shall be jointly and severally liable for any premiums required to be paid by such designated payor."

(d) Effective Date.—The amendments made by this section shall apply to plan years beginning after December 31, 1987.

SEC. 9542. STUDY.

(a) General Rule.—The Secretary of Labor shall conduct a study of foreign pension insurance systems and practices and the relative impact such systems have on job creation and international competitiveness.

(b) Report.—Not later than December 31, 1988, the Secretary of Labor shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on the study conducted under subsection (a) together with such recommendations as he may deem advisable.

PART 5—MISCELLANEOUS PROVISIONS

SEC. 9551. NOTIFICATION OF EMPLOYEES.

(a) Funded Percentage Required To Be Shown in Annual Report.—

(1) Subsection (d) of section 103 of ERISA is amended by redesignating paragraphs (11) and (12) as paragraphs (12) and (13), respectively, and by inserting after paragraph (10) the following new paragraph:

"(11) The percentage which—

"(A) the current value of the assets of the plan, is of

"(B) the termination liability under the plan (within the meaning of section 4001(a)(16))."

(2) Paragraph (3) of section 104(b) of ERISA is amended by striking out "such other material" and inserting in lieu thereof "such other material (including the percentage determined under section 103(d)(11))".

(b) NOTICE OF APPLICATION FOR FUNDING WAIVERS.—Subsection (d) of section 412 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(6) REQUIREMENT OF NOTIFICATION TO EMPLOYEES.—No waiver may be granted under this subsection unless the employer provides evidence satisfactory to the Secretary that the employer made reasonable efforts to notify current employees of the employer's application for a waiver under this subsection."

(c) EFFECTIVE DATES.—

(1) SUBSECTION (a).—The amendments made by subsection (a) shall apply to plan years beginning after December 31, 1987.

(2) SUBSECTION (b).—The amendment made by subsection (b) shall apply to applications made after the date of the enactment of this Act.

SEC. 9552. QUALIFICATION STANDARDS, ETC., UNDER THE INTERNAL REVENUE CODE.

Except to the extent specifically provided in the Internal Revenue Code of 1986, such Code shall be interpreted as if titles I and IV of the Employee Retirement Income Security Act of 1974 had not been enacted.

Subtitle G—Debt Management

SEC. 9601. PUBLIC DEBT PROVISIONS.

(a) REPEAL OF LIMITATION ON LONG-TERM BONDS.—Subsection (a) of section 3102 of title 31, United States Code, is amended by striking out the last sentence.

(b) TRUST FUNDS, ETC., MADE WHOLE.—Section 3101 of title 31, United States Code, is amended by adding at the end thereof the following new subsection:

"(d) TRUST FUNDS, ETC., MADE WHOLE.—

"(1) IN GENERAL.—

"(A) OBLIGATIONS ISSUED.—Except as provided in paragraph (2), within 30 days after the expiration of any debt issuance suspension period, the Secretary of the Treasury shall issue to each Federal fund obligations under this chapter which bear such interest rates and maturity dates as are necessary to ensure that, after such obligations are issued, the holdings of such Federal fund will replicate to the maximum extent practicable the obligations that would have been held by such Federal fund if any—

"(i) failure to invest amounts in such Federal fund (or any disinvestment) resulting from the limitation of subsection (b) had not occurred, and

"(ii) issuance of such obligations had occurred immediately on the expiration of the debt issuance suspension period.

"(B) INTEREST CREDITED.—On the first normal interest payment date or within 30 days after the expiration of any debt issuance suspension period (whichever is later), the Secretary of the Treasury shall credit to each Federal fund an amount determined by the Secretary, after taking into account the actions taken pursuant to subparagraph (A), to be equal to the income lost by such Federal fund by reason of any failure to invest amounts in such Federal fund (or any disinvestment) resulting from the limitation of subsection (b), including any income lost between the expiration of the debt issuance suspension period and the date of the credit.

"(2) INTEREST ON MARKET-BASED OBLIGATIONS.—With respect to any Federal fund which invests in market-based special obligations, on the expiration of a debt issuance suspension period, the Secretary of the Treasury shall immediately credit to such fund an amount equal to the interest that would have been earned by such fund during the debt issuance suspension period if the daily balance in such fund that the Secretary of the Treasury was unable to invest by reason of the limitation of subsection (b) had been invested each day during such period, overnight, in obligations under this chapter earning interest at a rate determined by the Secretary of the Treasury in accordance with the standard practice of the Department of the Treasury.

"(3) INTEREST ON STATE AND LOCAL GOVERNMENT SERIES.—On the expiration of the debt issuance suspension period, the Secretary of the Treasury shall (as of the close of such period) credit to each holder of any obligation which is part of the State and Local Government Series and which is in the nature of a demand deposit an amount equal to the income lost by such holder by reason of not being able to reinvest the principal of, and interest on, such obligation during such period.

"(4) CREDITED AMOUNTS TREATED AS INTEREST.—All amounts credited under this subsection shall be treated as interest on obligations issued under this chapter for all purposes of Federal law.

"(5) DEFINITIONS.—For purposes of this subsection—

"(A) DEBT ISSUANCE SUSPENSION PERIOD.—The term 'debt issuance suspension period' means any period for which the Secretary of the Treasury determines that the issuance of obligations of the United States sufficient to conduct the orderly financial operations of the United States may not be made without exceeding the limitation imposed by subsection (b).

"(B) FEDERAL FUND.—The term 'Federal fund' means any Federal trust fund or Government account established pursuant to Federal law to which the Secretary of the Treasury has issued or is expressly authorized by law directly to issue obligations under this chapter in respect of public money, money otherwise required to be deposited in the Treasury, or amounts appropriated; except that such term shall not include the Civil Service Retirement and Disability Fund or the Thrift Savings Fund of the Federal Employees' Retirement System."

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendment made by subsection (b) shall apply to debt issuance suspension periods beginning on or after July 18, 1987.

(2) SPECIAL RULES.—In the case of any debt suspension period beginning on or after July 18, 1987, and ending before the date of the enactment of this Act—

(A) for purposes of determining the date on which the Secretary of the Treasury is required to take the actions described in paragraphs (1), (2), and (3) of section 3101(d) of title 31, United States Code, as added by this section, such period shall be treated as having ended on such date of enactment, and

(B) the amount required to be credited under paragraph (3) of section 3101(d) of title 31, United States Code, as added by this section, shall include any income lost because the credit was not made upon the expiration of such period.

Subtitle H—Miscellaneous Provisions

SEC. 9701. TREATMENT OF CERTAIN TRANSFERS.

For purposes of section 202 of Public Law 100-119 (H. J. Res. 324, 100th Congress), any transfer (within the meaning of that section) which is made by this title or title X, or by any amendment made by this title or title X, is a necessary (but secondary) result of a significant policy change.

SEC. 9702. 3-YEAR EXTENSION OF PROVISIONS RELATING TO COLLECTION OF NON-TAX DEBTS OWED TO FEDERAL AGENCIES.

(a) GENERAL RULE.—Subsection (c) of section 2653 of the Deficit Reduction Act of 1984 is amended by striking out "January 1, 1988" and inserting in lieu thereof "January 1, 1991".

(b) CLARIFICATION OF CONGRESSIONAL INTENT AS TO SCOPE OF PROVISION.—

(1) Nothing in the amendments made by section 2653 of the Deficit Reduction Act of 1984 shall be construed as exempting debts of corporations or any other category of persons from the application of such amendments.

(2) It is the intent of the Congress that, to the extent practicable, the amendments made by section 2653 of the Deficit Reduction Act of 1984 shall extend to all Federal agencies (as defined in the amendments made by such section).

(3) The Secretary of the Treasury shall issue regulations to carry out the purposes of this subsection.

(c) STUDY BY THE GENERAL ACCOUNTING OFFICE.—The Comptroller General of the United States shall conduct a study of the operation and effectiveness of the amendments made by section 2653 of the Deficit Reduction Act of 1984. The study shall compile and evaluate information on the effect of those amendments on voluntary compliance with the income tax laws. Not later than April 1, 1989, the Comptroller General shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report of the study conducted under this subsection, together with such recommendations as he may deem advisable.

SEC. 9703. NATIONAL COMMISSION ON CHILDREN.

Part A of title XI of the Social Security Act is amended by adding at the end the following new section:

"NATIONAL COMMISSION ON CHILDREN

"SEC. 1139. (a)(1) There is hereby established a commission to be known as the National Commission on Children (in this section referred to as the 'Commission').

"(b)(1) The Commission shall consist of—

"(A) 12 members to be appointed by the President,

"(B) 12 members to be appointed by the Speaker of the House of Representatives, and

"(C) 12 members to be appointed by the President pro tempore of the Senate.

"(2) The President, the Speaker, and the President pro tempore shall each appoint as members of the Commission—

"(A) 4 individuals who—

"(i) are representatives of organizations providing services to children,

"(ii) are involved in activities on behalf of children, or

"(iii) have engaged in academic research with respect to the problems and needs of children,

"(B) 4 individuals who are elected or appointed public officials (at the Federal, State, or local level) involved in issues and programs relating to children, and

"(C) 4 individuals who are parents or representatives of parents or parents' organizations.

"(3) The appointments made pursuant to subparagraphs (B) and (C) of paragraph (1) shall be made in consultation with the chairmen of committees of the House of Representatives and the Senate, respectively, having jurisdiction over relevant Federal programs.

"(c)(1) It shall be the duty and function of the Commission to serve as a forum on behalf of the children of the Nation and to conduct the studies and issue the report required by subsection (d).

"(2) The Commission (and any committees that it may form) shall conduct public hearings in different geographic areas of the country, both urban and rural, in order to receive the views of a broad spectrum of the public on the status of the Nation's children and on ways to safeguard and enhance the physical, mental, and emotional well-being of all of the children of the Nation, including those with physical or mental disabilities, and others whose circumstances deny them a full share of the opportunities that parents of the Nation may rightfully expect for their children.

"(3) The Commission shall receive testimony from individuals, and from representatives of public and private organizations and institutions with an interest in the welfare of children, including educators, health care professionals, religious leaders, providers of social services, representatives of organizations with children as members, elected and appointed public officials, and from parents and children speaking in their own behalf.

"(d) Not later than September 30, 1988, the Commission shall submit a report to the President and the Congress that sets forth recommendations with respect to the following subjects:

"(1) Questions relating to the health of children that the Commission shall address include—

"(A) how to reduce infant mortality,

"(B) how to reduce the number of low birth-weight babies,

"(C) how to reduce the number of children with chronic illnesses and disabilities,

"(D) how to improve the nutrition of children,

"(E) how to promote the physical fitness of children,

"(F) how to ensure that pregnant women receive adequate prenatal care,

"(G) how to ensure that all children have access to both preventive and acute care health services, and

"(H) how to improve the quality and availability of health care for children.

"(2) Questions relating to social and support services for children and their parents that the Commission shall address include—

"(A) how to prevent and treat child neglect and abuse,

"(B) how to provide help to parents who seek assistance in meeting the problems of their children,

"(C) how to provide counseling services for children,

"(D) how to strengthen the family unit,

"(E) how children can be assured of adequate care while their parents are working or participating in education or training programs,

"(F) how to improve foster care and adoption services,

"(G) how to reduce drug and alcohol abuse by children and youths, and

"(H) how to reduce the incidence of teenage pregnancy.

"(3) Questions relating to education that the Commission shall address include—

"(A) how to encourage academic excellence for all children at all levels of education,

"(B) how to use preschool experiences to enhance educational achievement,

"(C) how to improve the qualifications of teachers,

"(D) how schools can better prepare the Nation's youth to compete in the labor market,

"(E) how parents and schools can work together to help children achieve success at each step of the academic ladder,

"(F) how to encourage teenagers to complete high school and remain in school to fulfill their academic potential,

"(G) how to address the problems of drug and alcohol abuse by young people,

"(H) how schools might lend support to efforts aimed at reducing the incidence of teenage pregnancy, and

"(I) how schools might better meet the special needs of children who have physical or mental handicaps.

"(4) Questions relating to income security that the Commission shall address include—

"(A) how to reduce poverty among children,

"(B) how to ensure that parents support their children to the fullest extent possible through improved child support collection services, including services on behalf of children whose parents are unmarried, and

"(C) how to ensure that cash assistance to needy children is adequate.

"(5) Questions relating to tax policy that the Commission shall address include—

"(A) how to assure the equitable tax treatment of families with children,

"(B) the effect of existing tax provisions, including the dependent care tax credit, the earned income tax credit, and the targeted jobs tax credit, on children living in poverty,

"(C) whether the dependent care tax credit should be refundable and the effect of such a policy,

"(D) whether the earned income tax credit should be adjusted for family size and the effect of such a policy, and

"(E) whether there are other tax-related policies which would reduce poverty among children.

"(6) In addition to addressing the questions specified in paragraphs (1) through (5), the Commission shall—

"(A) seek to identify ways in which public and private organizations and institutions can work together at the community level to identify deficiencies in existing services for families and children and to develop recommendations to ensure that the needs of families and children are met, using all available resources, in a coordinated and comprehensive manner, and

"(B) assess the existing capacities of agencies to collect and analyze data on the status of children and on relevant programs, identify gaps in the data collection system, and recommend ways to improve the collection of data and the coordination among agencies in the collection and utilization of data.

The report required by this subsection shall be based upon the testimony received in the hearings conducted pursuant to subsection (c), and upon other data and findings developed by the Commission.

"(e)(1)(A) Members of the Commission shall first be appointed not later than 60 days after the date of the enactment of this section, for terms ending on September 30, 1988.

"(B) A vacancy in the Commission shall not affect its powers, but shall be filled in the same manner as the vacant position was first filled.

"(2) The Commission shall elect one of its members to serve as Chairman of the Commission. The Chairman shall be a nonvoting member of the Commission.

"(3) A majority of the members of the Commission shall constitute a quorum for the transaction of business.

"(4)(A) The Commission shall meet at the call of the Chairman, or at the call of a majority of the members of the Commission.

"(B) The Commission shall meet not less than 4 times during the period beginning with the date of the enactment of this section and ending with September 30, 1988.

"(5) Decisions of the Commission shall be according to the vote of a simple majority of those present and voting at a properly called meeting.

"(6) Members of the Commission shall serve without compensation, but shall be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of their duties as members of the Commission.

"(f)(1) The Commission shall appoint an Executive Director of the Commission who shall be compensated at a rate fixed by the Commission, but which shall not exceed the rate established for level V of the Executive Schedule under title 5, United States Code.

"(2) In addition to the Executive Director, the Commission may appoint and fix the compensation of such personnel as it deems advisable, in accordance with the provisions of title 5, United States Code, governing appointments to the competitive service, and the provisions of chapter 51 and subchapter III of chapter 53 of such title, relating to classification and General Schedule pay rates.

"(g) In carrying out its duties, the Commission, or any duly organized committee thereof, is authorized to hold such hearings, sit and act at such times and places, and take such testimony, with respect to matters for which it has a responsibility under this section, as the Commission or committee may deem advisable.

"(h)(1) The Commission may secure directly from any department or agency of the United States such data and information as may be necessary to carry out its responsibilities.

"(2) Upon request of the Commission, any such department or agency shall furnish any such data or information.

"(i) The General Services Administration shall provide to the Commission, on a reimbursable basis, such administrative support services as the Commission may request.

"(j) There are authorized to be appropriated such sums as may be necessary to carry out this section.".

SEC. 9704. GENERAL EFFECTIVE DATE.

Notwithstanding any other provision of this Act, none of the provisions of this title, other than sections 9201, 9219(a), 9219(b), 9221, and 9222 and subtitles D, G, and I, shall become effective before November 20, 1987.

Subtitle I—Vaccine Injury Compensation

PART 1—MANUFACTURURERS EXCISE TAX ON CERTAIN VACCINES

SEC. 9801. MANUFACTURERS EXCISE TAX ON CERTAIN VACCINES.

(a) In General.—Chapter 32 of the Internal Revenue Code of 1986 (relating to manufacturers excise taxes) is amended by inserting after subchapter B the following new subchapter:

"Subchapter C—Certain Vaccines

"Sec. 4131. Imposition of tax.

"Sec. 4132. Definitions and special rules.

"SEC. 4131. IMPOSITION OF TAX.

"(a) General Rule.—There is hereby imposed a tax on any taxable vaccine sold by the manufacturer, producer, or importer thereof.

"(b) Amount of Tax.—

"(1) In general.—The amount of the tax imposed by subsection (a) shall be determined in accordance with the following table:

If the taxable vaccine is:	The tax per dose is:
DPT vaccine	$4.56
DT vaccine	0.06
MMR vaccine	4.44
Polio vaccine	0.29.

"(2) Combinations of vaccines.—If any taxable vaccine is included in more than 1 category of vaccines in the table contained in paragraph (1), the amount of the tax imposed by subsection (a) on such vaccine shall be the sum of the amounts determined under such table for each category in which such vaccine is so included.

"(c) Termination of Tax if Amounts Collected Exceed Projected Fund Liability.—

"(1) In general.—If the Secretary estimates under paragraph (3) that the Vaccine Injury Compensation Trust Fund would not have a negative projected balance were the tax imposed by this section to terminate as of the close of any applicable date, no tax shall be imposed by this section after such date.

"(2) Applicable date.—For purposes of paragraph (1), the term 'applicable date' means—

"(A) the close of any calendar quarter ending on or after December 31, 1992, and

"(B) the 1st date on which petitions may not be filed under section 2111 and 2111(a) of the Public Health Service Act by reason of section 2134 of such Act and each date thereafter.

"(3) Estimates by secretary.—

"(A) In general.—The Secretary shall estimate the projected balance of the Vaccine Injury Compensation Trust Fund as of—

"(i) the close of each calendar quarter ending on or after December 31, 1992, and

"(ii) such other times as are appropriate in the case of applicable dates described in paragraph (2)(B).

"(B) Determination of projected balance.—In determining the projected balance of the Fund as of any date, the Secretary shall assume that—

"(i) the tax imposed by this section will not apply after such date, and

"(ii) there shall be paid from such Trust Fund all claims made or to be made against such Trust Fund—

"(I) with respect to vaccines administered before October 1, 1992, in the case of an applicable date described in paragraph (2)(A), or

"(II) with respect to petitions filed under section 2111 or section 2111(a) of the Public Health Service Act, in the case of an applicable date described in paragraph (2)(B).

"SEC. 4132. DEFINITIONS AND SPECIAL RULES.

"(a) Definitions Relating to Taxable Vaccines.—For purposes of this subchapter—

"(1) Taxable vaccine.—The term 'taxable vaccine' means any vaccine—

"(A) which is listed in the table contained in section 4131(b)(1), and

"(B) which is manufactured or produced in the United States or entered into the United States for consumption, use, or warehousing.

"(2) DPT vaccine.—The term 'DPT vaccine' means any vaccine containing pertussis bacteria, extracted or partial cell bacteria, or specific pertussis antigens.

"(3) DT vaccine.—The term 'DT vaccine' means any vaccine containing diphtheria toxoid other than a DPT vaccine.

"(4) MMR vaccine.—The term "MMR vaccine' means any vaccine against measles, mumps, rubella, or 2 or more thereof.

"(5) Polio vaccine.—The term 'polio vaccine' means any vaccine containing polio virus.

"(6) Vaccine.—The term 'vaccine' means any substance designed to be administered to a human being for the prevention of 1 or more diseases.

"(7) United States.—The term 'United States' has the meaning given such term by section 4612(a)(4).

"(8) Importer.—The term 'importer' means the person entering the vaccine for consumption, use, or warehousing.

"(b) Credit or Refund Where Vaccine Returned to Manufacturer, etc., or Destroyed.—

"(1) In general.—Under regulations prescribed by the Secretary, whenever any vaccine on which tax was imposed by section 4131 is—

"(A) returned (other than for resale) to the person who paid such tax, or

"(B) destroyed,

the Secretary shall abate such tax or allow a credit, or pay a refund (without interest), to such person equal to the tax paid under section 4131 with respect to such vaccine.

"(2) Claim must be filed within 6 months.—Paragraph (1) shall apply to any returned or destroyed vaccine only with respect to claims filed within 6 months after the date the vaccine is returned or destroyed.

"(3) Condition of allowance of credit or refund.—No credit or refund shall be allowed or made under paragraph (1) with respect to any vaccine unless the person who paid the tax establishes that he—

"(A) has repaid or agreed to repay the amount of the tax to the ultimate purchaser of the vaccine, or

"(B) has obtained the written consent of such purchaser to the allowance of the credit or the making of the refund.

"(4) Tax imposed only once.—No tax shall be imposed by section 4131 on the sale of any vaccine if tax was imposed by section 4131 on any prior sale of such vaccine and such tax is not abated, credited, or refunded.

"(c) Other Special Rules.—

"(1) Fractional part of a dose.—In the case of a fraction of a dose, the tax imposed by section 4131 shall be the same fraction of the amount of such tax imposed by a whole dose.

"(2) Disposition of revenues from Puerto Rico and the Virgin Islands.—The provisions of subsections (a)(3) and (b)(3) of section 7652 shall not apply to any tax imposed by section 4131."

(b) Certain Provisions Relating to Tax-Free Sales, Etc. Not To Apply.—

(1) Subsection (a) of section 4221 of such Code (relating to certain tax-free sales) is amended by adding at the end thereof the following new sentence: "In the case of the tax imposed by section 4131, paragraphs (3), (4), and (5) shall not apply and paragraph (2) shall apply only if the use of the exported vaccine meets such requirements as the Secretary may by regulations prescribe."

(2) Paragraph (2) of section 6416(b) of such Code (relating to specified uses or resales) is amended by adding at the end thereof the following new sentence: "In the case of the tax imposed by section 4131, subparagraphs (B), (C), and (D) shall not apply and subparagraph (A) shall apply only if the use of the exported vaccine meets such requirements as the Secretary may by regulations prescribe."

(c) Clerical Amendment.—The table of subchapters for chapter 32 of such Code is amended by inserting after the item relating to subchapter B the following new item:

"Subchapter C. Certain vaccines."

(d) Effective Date.—The amendments made by this section shall take effect on January 1, 1988.

SEC. 9802. VACCINE INJURY COMPENSATION TRUST FUND.

(a) In General.—Subchapter A of chapter 98 of the Internal Revenue Code of 1986 (relating to trust fund code) is amended by adding at the end thereof the following new section:

"SEC. 9510. VACCINE INJURY COMPENSATION TRUST FUND.

"(a) Creation of Trust Fund.—There is established in the Treasury of the United States a trust fund to be known as the 'Vaccine Injury Compensation Trust Fund', consisting of such amounts as may be credited to such Trust Fund as provided in section 9602(b).

"(b) Transfers to Trust Fund.—

"(1) In general.—There are hereby appropriated to the Vaccine Injury Compensation Trust Fund amounts equivalent to the net revenues received in the Treasury from the tax imposed by section 4131 (relating to tax on certain vaccines).

"(2) Net revenues.—For purposes of paragraph (1), the term 'net revenues' means the amount estimated by the Secretary based on the excess of—

"(A) the taxes received in the Treasury under section 4131 (relating to tax on certain vaccines), over

"(B) the decrease in the tax imposed by chapter 1 resulting from the tax imposed by section 4131.

"(c) Expenditures From Trust Fund.—

"(1) In general.—Amounts in the Vaccine Injury Compensation Trust Fund shall be available, as provided in appropriation Acts, only for the payment of compensation under subtitle 2 of title XXI of the Public Health Service Act (as in effect on the date of the enactment of this section) for vaccine-related injury or death with respect to vaccines administered after September 30, 1988, and before October 1, 1992.

"(2) Transfers for certain repayments.—

"(A) In general.—The Secretary shall pay from time to time from the Vaccine Injury Compensation Trust Fund into the general fund of the Treasury amounts equivalent to amounts paid under section 4132(b) and section 6416 with respect to the taxes imposed by section 4131.

"(B) Transfers based on estimates.—Transfers under subparagraph (A) shall be made on the basis of estimates by the Secretary, and proper adjustments shall be made in the amounts subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.

"(d) Liability of United States Limited to Amount in Trust Fund.—

"(1) General rule.—Any claim filed against the Vaccine Injury Compensation Trust Fund may be paid only out of such Trust Fund.

"(2) Coordination with other provisions.—Nothing in the National Childhood Vaccine Injury Act of 1986 (or in any amendment made by such Act) shall authorize the payment by the United States Government of any amount with respect to any such claim out of any source other than the Vaccine Injury Compensation Trust Fund.

"(3) Order in which unpaid claims to be paid.—If at any time the Vaccine Injury Compensation Trust Fund has insufficient funds to pay all of the claims out of such Trust Fund at such time, such claims shall, to the extent permitted under paragraph (1) be paid in full in the order in which they are finally determined."

(b) Clerical Amendment.—The table of sections for such subchapter A is amended by adding at the end thereof the following new item:

"Sec. 9510. Vaccine Injury Compensation Trust Fund."

(c) Effective Date.—The amendments made by this section shall take effect on January 1, 1988.

PART 2—VACCINE COMPENSATION AMENDMENTS OF 1987

SEC. 9811. SHORT TITLE, REFERENCE.

(a) Short Title.—This part may be cited as the "Vaccine Compensation Amendments of 1987".

(b) Reference.—Whenever in this part (other than in section 9812(a)) an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Public Health Service Act.

SEC. 9812. EFFECTIVE DATE.

(a) In General.—Section 323(a) of the National Childhood Vaccine Injury Act of 1986 (42 U.S.C. 300aa-1 note) is amended by striking out "Subtitle 2 of such title and this title shall take effect on the effective date of a tax" and all that follows in that section and inserting in lieu thereof "parts A and B of subtitle 2 of such title shall take effect on October 1, 1988 and parts C and D of such title and this title shall take effect on the date of the enactment of the Vaccine Compensation Amendments of 1987.".

(b) References.—

(1) Sections 2111, 2115, 2119(a), 2122, 2123, 2125, 2126, 2127, and 2128 (42 U.S.C. 300aa-11, 300aa-15, 300aa-199a), 300aa-22, 300aa-23, 300aa-25, 300aa-26, 300aa-27, 300aa-28) are each amended by striking out "effective date of this subtitle" each place it appears and inserting in lieu thereof "effective date of this part".

(2) Sections 2111(a)(5)(A), 2115(e)(2) and 2116 (42 U.S.C. 300aa-11(a)(5)(A), 300aa-15(e)(2), 300a-16) are each amended by striking out "effective date of this title" each place it appears and inserting in lieu thereof "effective date of this part".

SEC. 9813. COMPENSATION.

(a) Source.—Section 2115 (42 U.S.C. 300aa-15) is amended by adding at the end the following:

"(i) Source of Compensation.—

"(1) Payment of compensation under the Program to a petitioner for a vaccine-related injury or death associated with the administration of a vaccine before the effective date of this part shall be made from appropriations under subsection (i).

"(2) Payment of compensation under the Program to a petitioner for a vaccine-related injury or death associated with the administration of a vaccine on or after the effective date of this part shall be made from the Vaccine Injury Compensation Trust Fund established under section 9510 of the Internal Revenue Code of 1986.".

(b) Minimum.—Section 2115(a)(1) (42 U.S.C. 300a-15(a)(1)) is amended by striking out the last sentence of subparagraphs (A) and (B).

(c) Lump Sum.—

(1) Section 2115 (42 U.S.C. 300aa-15) is amended—

(A) by striking out the last two sentences after paragraph (4) in subsection (a), and

(B) by adding at the end of the first subsection (f) the following:

"(4)(A) Except as provided in subparagraph (B), payment of compensation under the Program shall be made in a lump sum determined on the basis of the net present value of the elements of the compensation.

"(B) In the case of a payment of compensation under the Program to a petitioner for a vaccine-related injury or death associated with the administration of a vaccine before the effective date of this part the compensation shall be paid in 4 equal annual installments. If the appropriations under subsection (i) are insufficient to make a payment of an annual installment, section 2111(a) shall not apply to a civil action for damages brought by the petitioner entitled to the payment.".

(2)(A) Subsections (e) and (f) of section 2112 (42 U.S.C. 300a-12) are repealed and subsection (g) of such section is redesignated as subsection (e).

(B) Section 2118 (42 U.S.C. 300aa-18) is repealed.

(d) Limit.—Section 2115(b) (42 U.S.C. 300aa-15(b)) is amended by striking out "shall only include the compensation described in paragraphs (1)(A) and (2) of subsection (a)" and inserting in lieu thereof the following: "may not include the compensation described in paragraph (1)(B) of subsection (a) and may include attorneys' fees and other costs included in a judgment under subsection (e), except that the total amount that may be paid as compensation under paragraphs (3) and (4) of subsection (a) and included as attorneys' fees and other costs under subsection (e) may not exceed $30,000".

(e) Termination of Program.—Part D of title XXI is amended by adding at the end the following:

"TERMINATION OF PROGRAM

"Sec. 2134. (a) Reviews.—The Secretary shall review the number of awards of compensation made under the Program to petitioners under section 2111 for vaccine-related injuries and deaths associated with the administration of vaccines on or after the effective date of this part as follows:

"(1) The Secretary shall review the number of such awards made in the 12-month period beginning on the effective date of this part.

"(2) At the end of each 3-month period beginning after the expiration of the 12-month period referred to in paragraph (1) the Secretary shall review the number of such awards made in the 3-month period.

"(b) Report.—

"(1) If in conducting a review under subsection (a) the Secretary determines that at the end of the period reviewed the total number of awards made by the end of that period and accepted under section 2121(a) exceeds the number of awards listed next to the period reviewed in the table in paragraph (2)—

"(A) the Secretary shall notify the Congress of such determination, and

"(B) beginning 180 days after the receipt by Congress of a notification under paragraph (1), no petition for a vaccine-related injury or death associated with the administration of a vaccine on or after the effective date of this part may be filed under section 2111.

Section 2111(a) and part B shall not apply to civil actions for damages for a vaccine-related injury or death for which a petition may not be filed because of subparagraph (B).

"(2) The table referred to in paragraph (1) is as follows:

Period reviewed:	Total number of awards by the end of Period reviewed: the period reviewed
...12 months after the effective date of part	150
...13th through the 15th month after such date	188
...16th through the 18th month-after such date	225
...19th through the 21st month after such date	263
...22nd through the 24th month after such date	300
...25th through the 27th month after such date	338
...28th through the 30th month after such date	375
...31st through the 33rd month after such date	413
...34th through the 36th month after such date	450
...37th through the 39th month after such date	488
...40th through the 42nd month after such date	525
...43rd through the 45th month after such date	563
...46th through the 48th month after such date	600.".

(f) Technical.—Section 2115 (42 U.S.C. 300a-15) is amended by redesignating the second subsection (f) and subsection (g) as subsections (g) and (h), respectively.

SEC. 9814. PETITIONS.

(a) Application of Limits.—Section 2111(a) (42 U.S.C. 300aa-11) is amended by adding at the end the following:

"(8) This subsection applies only to a person who has sustained a vaccine-related injury or death and who is qualified to file a petition for compensation under the Program."

(b) Qualification.—

(1) Section 2111(b)(1) (42 U.S.C. 300a-11(b)(1)(A)) is amended by striking out "may file" and inserting in lieu thereof "may, if the person meets the requirements of subsection (c)(1), file".

(2) Section 2111(c)(1)(D) (42 U.S.C. 300a-11(c)(1)(D)) is amended (A) by striking out "for more than 1 year" and inserting in lieu thereof "for more than 6 months", (B) by striking out ", (ii)" and inserting in lieu thereof "and", and (C) by striking out "(iii)" and inserting in lieu thereof "(ii)".

(c) Withdrawal.—Section 2121 (42 U.S.C.300a-21) is amended by redesignating subsection (b) as subsection (c) and by inserting after subsection (a) the following:

"(b) Withdrawal of Petition.—If a district court fails to enter a judgment under section 2112 on a petition filed under section 2111 within 365 days after the date on which the petition was filed, the petitioner may submit to the court a notice in writing withdrawing the petition. Such a notice shall be filed not later than 90 days after the expiration of such 365-day period. A person who has submitted a notice under this subsection may, notwithstanding section 2111(a)(2), thereafter maintain a civil action for damages in a State or Federal court without regard to part B and consistent with otherwise applicable law.".

SEC. 9815. CITIZEN'S ACTIONS.

Section 2131(c) (42 U.S.C. 300a-31(c) is amended by striking out "to any party, whenever the court determines that such award is appropriate" and inserting in lieu thereof "to any plaintiff who substantially prevails on one or more significant issues in the action".

SEC. 9816. VACCINE ADMINISTRATORS.

Section 2111(a) (42 U.S.C. 300a-11) is amended by striking out "vaccine manufacturer" each place it appears and inserting in lieu thereof "vaccine administrator or manufacturer".

TITLE X—COMMITTEE ON WAYS AND MEANS: REVENUE PROVISIONS

SEC. 10000. SHORT TITLE; AMENDMENT OF THE 1986 CODE.

(a) Short Title.—This title may be cited as the "Revenue Act of 1987".

(b) Amendment of the 1986 Code.—Except as otherwise expressly provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

(c) Coordination With Section 15.—No amendment made by this title shall be treated as a change in a rate of tax for purposes of section 15 of the Internal Revenue Code of 1986.

Subtitle A—Revenue Increases

PART I—PROVISIONS PRIMARILY AFFECTING INDIVIDUALS

Subpart A—Income Tax Provisions

SEC. 10101. EXPENSES OF OVERNIGHT CAMPS NOT ALLOWABLE FOR DEPENDENT CARE CREDIT.

(a) General Rule.—Subparagraph (A) of section 21(b)(2) (defining employment-related expenses) is amended by adding at the end thereof the following new sentence:

"Such term shall not include any amount paid for services outside the taxpayer's household at a camp where the qualifying individual stays overnight."

(b) Effective Date.—The amendment made by subsection (a) shall apply to expenses paid in taxable years beginning after December 31, 1987.

SEC. 10102. CHANGES TO DEDUCTION FOR QUALIFIED RESIDENCE INTEREST.

(a) General Rule.—Paragraph (3) of section 163(h) (defining qualified residence interest) is amended to read as follows:

"(3) Qualified residence interest.—For purposes of this subsection—

"(A) In general.—The term 'qualified residence interest' means any interest which is paid or accrued during the taxable year on—

"(i) acquisition indebtedness with respect to any qualified residence of the taxpayer, or

"(ii) home equity indebtedness with respect to any qualified residence of the taxpayer.

For purposes of the preceding sentence, the determination whether any property is a qualified residence of the taxpayer shall be made as of the time the interest is accrued.

"(B) Acquisition indebtedness.—

"(i) In general.—The term 'acquisition indebtedness' means any indebtedness which—

"(I) is incurred in acquiring, constructing, or substantially improving any qualified residence of the taxpayer, and

"(II) is secured by such residence.

Such term also includes any indebtedness secured by such residence resulting from the refinancing of indebtedness meeting the requirements of the preceding sentence (or this sentence); but only to the extent the amount of the indebtedness resulting from such refinancing does not exceed the amount of the refinanced indebtedness.

"(ii) $1,000,000 limitation.—The aggregate amount treated as acquisition indebtedness for any period shall not exceed $1,000,000 ($500,000 in the case of a married individual filing a separate return).

"(C) Home equity indebtedness.—

"(i) In general.—The term 'home equity indebtedness' means any indebtedness (other than acquisition indebtedness) secured by a qualified residence to the extent the aggregate amount of such indebtedness does not exceed—

"(I) the fair market value of such qualified residence, reduced by

"(II) the amount of acquisition indebtedness with respect to such residence.

"(ii) Limitation.—The aggregate amount treated as home equity indebtedness for any period shall not exceed $100,000 ($50,000 in the case of a separate return by a married individual).

"(D) Treatment of indebtedness incurred on or before October 13, 1987.—

"(i) In general.—In the case of any pre-October 13, 1987, indebtedness—

"(I) such indebtedness shall be treated as acquisition indebtedness, and

"(II) the limitation of subparagraph (B)(ii) shall not apply.

"(ii) Reduction in $1,000,000 limitation.—The limitation of subparagraph (B)(ii) shall be reduced (but not below zero) by the aggregate amount of outstanding pre-October 13, 1987, indebtedness.

"(iii) Pre-October 13, 1987, indebtedness.—The term 'pre-October 13, 1987, indebtedness' means—

"(I) any indebtedness which was incurred on or before October 13, 1987, and which was secured by a qualified residence on October 13, 1987, and at all times thereafter before the interest is paid or accrued, or

"(II) any indebtedness which is secured by the qualified residence and was incurred after October 13, 1987, to refinance indebtedness described in subclause (I) (or refinanced indebtedness meeting the requirements of this subclause) to the extent (immediately after the refinancing) the principal amount of the indebtedness resulting from the refinancing does not exceed the principal amount of the refinanced indebtedness (immediately before the refinancing).

"(iv) Limitation on period of refinancing.—Subclause (II) of clause (iii) shall not apply to any indebtedness after—

"(I) the expiration of the term of the indebtedness described in clause (iii)(I), or

"(II) if the principal of the indebtedness described in clause (iii)(I) is not amortized over its term, the expiration of the term of the 1st refinancing of such indebtedness (or if earlier, the date which is 30 years after the date of such 1st refinancing)."

(b) Certain Mobile Homes and Boats Not Treated As Qualified Second Residence.—Subparagraph (A) of section 163(h)(5) is amended by adding at the end thereof the following new clause:

"(iv) Special rule for mobile homes and boats.—Any mobile home used on a transient basis (within the meaning of section 7701(a)(19)(C)(v)), and any boat, shall not be treated as a qualified residence under subclause (II) of clause (i)."

(c) Conforming Amendments.—Subsection (h) of section 163 is amended by striking out paragraph (4) and by redesignating paragraph (5) as paragraph (4).

(d) Effective Dates.—

(1) In general.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years beginning after December 31, 1987.

(2) Subsection (b).—The amendment made by subsection (b) shall apply to interest paid or accrued in taxable years beginning after December 31, 1987, on indebtedness incurred after October 13, 1987.

Subpart B—Employee Benefit Provisions

SEC. 10103. $500 LIMITATION ON TAXABLE BENEFIT OPTION UNDER CAFETERIA PLAN.

(a) General Rule.—Subsection (a) of section 125 (relating to cafeteria plans) is amended to read as follows:

"(a) Exclusion.—

"(1) In general.—In the case of a cafeteria plan, amounts shall not be included in the gross income of a participant in such plan solely because, under the plan, the participant may choose among the benefits of the plan.

"(2) Limitation.—The aggregate amount excluded under paragraph (1) from the gross income of any individual for any taxable year shall not exceed $500. In the case of a joint return, the limitation of the preceding sentence shall be applied separately with respect to each spouse."

(b) Reporting Requirement.—Subsection (a) of section 6051 (relating to receipts for employees) is amended by striking out the period at the end of paragraph (8) and by inserting after paragraph (8) the following new paragraph:

"(9) the total amount of taxable benefits which the employee could have chosen under a cafeteria plan (within the meaning of section 125)."

(c) Effective Date.—The amendments made by this section shall apply to taxable years beginning after December 31, 1987.

SEC. 10104. CLARIFICATION OF TREATMENT OF FEDERAL JUDGES.

(a) General Rule.—A Federal judge—

(1) shall be treated as an active participant for purposes of section 219(g) of the Internal Revenue Code of 1986, and

(2) shall be treated as an employee for purposes of chapter 1 of such Code.

(b) Effective Date.—The provisions of subsection (a) shall apply to taxable years beginning after December 31, 1987.

Subpart C—Limitation on Nonrecognition for Like-Kind Exchanges of Real Property

SEC. 10105. LIMITATION ON NONRECOGNITION FOR LIKE-KIND EXCHANGES OF REAL PROPERTY.

(a) General Rule.—Subsection (a) of section 1031 (relating to exchange of property held for productive use or investment) is amended by adding at the end thereof the following new paragraph:

"(4) Limitation on nonrecognition for like-kind exchanges of real property.—

"(A) In general.—The aggregate amount of gain not recognized by reason of paragraph (1) on exchanges by the taxpayer during any taxable year of real property shall not exceed $100,000.

"(B) Allocation of limitation.—The limitation of subparagraph (A) shall be allocated among the exchanges of real property by the taxpayer during the taxable year in proportion to the respective amounts of gain which would not be recognized under paragraph (1) but for this paragraph.

"(C) SPECIAL RULES FOR MARRIED INDIVIDUALS FILING SEPARATE RETURNS; TRUSTS.—

"(i) SEPARATE RETURNS.—In the case of a separate return by a married individual, subparagraph (A) shall be applied by substituting '$50,000' for '$100,000'.

"(ii) TRUSTS.—In the case of a trust, the limitation of subparagraph (A) shall be zero.

"(D) CERTAIN RULES MADE APPLICABLE.—Rules similar to the rules of paragraphs (6), (7), and (8) of section 179(d) shall apply for purposes of this paragraph."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to exchanges after October 13, 1987; except that such amendment shall not apply in the case of an exchange pursuant to a binding written contract in effect on October 13, 1987, and at all times thereafter before the exchange.

Subpart D—Estate and Gift Taxes

SEC. 10106. RETENTION OF 1987 RATES; PHASEOUT OF BENEFITS OF GRADUATED RATES AND UNIFIED CREDIT.

(a) PERMANENT EXTENSION OF 1987 RATES.—Paragraph (1) of section 2001(c) (relating to rate schedule) is amended by striking out the last item in the rate schedule contained therein and inserting in lieu thereof the following:

Over $2,500,000 but not over $3,000,000.	$1,025,800, plus 53% of the excess over $2,500,000
Over $3,000,000................	$1,290,800, plus 55% of the excess over $3,000,000."

(b) PHASEOUT OF BENEFITS OF GRADUATED RATES AND UNIFIED CREDIT.—

(1) IN GENERAL.—Paragraph (2) of section 2001(c) is amended to read as follows:

"(2) PHASEOUT OF GRADUATED RATES AND UNIFIED CREDIT.—The tentative tax determined under paragraph (1) shall be increased by an amount equal to 5 percent of so much of the amount (with respect to which the tentative tax is to be computed) as exceeds $5,000,000 but does not exceed $16,040,000."

(2) TECHNICAL AMENDMENTS.—

(A) Subsection (b) of section 2001 is amended—

(i) by striking out "in accordance with the rate schedule set forth in subsection (c)" in paragraph (1) and inserting in lieu thereof "under subsection (c)", and

(ii) by striking out "the rate schedule set forth in subsection (c) (as in effect at the decedent's death)" in paragraph (2) and inserting in lieu thereof "the provisions of subsection (c) (as in effect at the decedent's death)".

(B) Subsection (a) of section 2502 is amended—

(i) by striking out "in accordance with the rate schedule set forth in section 2001(c)" in paragraph (1) and inserting in lieu thereof "under section 2001(c)", and

(ii) by striking out "in accordance with such rate schedule" in paragraph (2) and inserting in lieu thereof "under such section".

SEC. 10107. REPEAL OF CREDIT FOR STATE DEATH TAXES.

(a) GENERAL RULE.—Section 2011 (relating to credit for State death taxes) is hereby repealed.

(b) ALLOWANCE OF DEDUCTION FOR STATE DEATH TAXES.—Subsection (a) of section 2053 is amended by striking out "and" at the end of paragraph (3), by inserting "and" at the end of paragraph (4), and by inserting after paragraph (4) the following new paragraph:

"(5) for any estate, inheritance, legacy, or succession taxes paid to any State or the District of Columbia,".

(c) TECHNICAL AMENDMENTS.—

(1) Subparagraph (B) of section 2053(c)(1) is amended by striking out "or inheritance taxes" and inserting in lieu thereof "or inheritance taxes imposed by a foreign country".

(2) Subsection (d) of section 2053 is amended—

(A) by striking out "STATE AND" in the subsection heading,

(B) by striking out the first sentence of paragraph (1) and inserting in lieu thereof the following: "Notwithstanding the provisions of subsection (c)(1)(B) of this section, for purposes of the tax imposed by section 2001 the value of the taxable estate may be determined, if the executor so elects before the expiration of the period of limitation for assessment provided in section 6501, by deducting from the value of the gross estate the amount (as determined in accordance with regulations prescribed by the Secretary) of any estate, succession, legacy, or inheritance tax imposed by and actually paid to any foreign country, in respect of any property situated within such foreign country and included in the gross estate of a citizen or resident of the United States, upon a transfer by the decedent for public, charitable, or religious uses described in section 2055.",

(C) by striking out "a State death tax or" in paragraph (2),

(D) by striking out "STATE AND" in the heading of paragraph (3), and

(E) by amending subparagraph (B) of paragraph (3) to read as follows:

"(B) CROSS REFERENCE.—

"For the effect of a deduction taken under this subsection on the credit for foreign death taxes, see section 2014(f)."

(3) Section 2102 is amended—

(A) by striking out subsections (a) and (b) and inserting in lieu thereof the following:

"(a) GENERAL RULE.—The tax imposed by section 2101 shall be credited with the amounts determined in accordance with sections 2012 and 2013 (relating to gift tax and tax on prior transfers).",

(B) by redesignating subsection (c) as subsection (b), and

(C) by striking out "sections 2011 to 2013, inclusive," in subsection (b)(5) (as so redesignated) and inserting in lieu thereof "sections 2012 and 2013".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to the estates of decedents dying after December 31, 1987.

SEC. 10108. SPECIAL VALUATION RULES FOR ESTATE, GIFT, AND GENERATION-SKIPPING TRANSFER TAXES.

(a) GENERAL RULE.—Subchapter C of chapter 11 (relating to miscellaneous provisions) is amended by adding at the end thereof the following new section:

"SEC. 2211. SPECIAL VALUATION RULES.

"(a) LIMITATIONS ON MINORITY DISCOUNTS.—For purposes of this chapter and chapters 12 and 13—

"(1) IN GENERAL.—The value of any stock in a corporation shall be deemed to be equal to its pro rata share of the fair market value of all of the stock of the same class in such corporation unless a different value is established by clear and convincing evidence.

"(2) OTHER LIMITATIONS.—

"(A) IN GENERAL.—In determining whether a different value can be established under paragraph (1)—

"(i) all stock held (directly or indirectly) by an individual or by members of such individual's family shall be treated as held by 1 person, and

"(ii) 2 or more transactions involving the same 2 persons (or persons related to either of such 2 persons) during the same 3-year period shall be treated as 1 transaction.

"(B) DEFINITIONS.—For purposes of this section—

"(i) FAMILY.—The term 'family' means, with respect to any individual, such individual's spouse, any lineal descendant of such individual or of such individual's spouse, any parent or grandparent of such individual, any sibling of such individual, and any spouse of any of the foregoing. For purposes of the preceding sentence, a relationship by legal adoption shall be treated as a relationship by blood.

"(ii) RELATED PERSON.—2 or more persons are related to each other if such persons bear a relationship to each other described in section 267(b) (determined by defining the term 'family' as provided in clause (ii)).

"(3) SIMILAR RULES FOR OTHER ENTITIES, ETC.—Rules similar to the rules of paragraphs (1) and (2) shall apply also in the case of interests in entities other than corporations or interests in other property.

"(b) LIMITATIONS ON VALUATION FREEZES.—

"(1) IN GENERAL.—If—

"(A) any person holds a substantial interest in an enterprise, and

"(B) such person in effect transfers a disproportionate share of the potential appreciation in the enterprise,

then the transferred property shall be included in his gross estate.

"(2) DEFINITIONS.—For purposes of this subsection—

"(A) SUBSTANTIAL INTEREST.—A person holds a substantial interest in an enterprise if such person owns (directly or indirectly) 10 percent or more of the voting power or income stream, or both, in such enterprise.

"(B) EXCEPTION FOR CERTAIN NONFAMILY TRANSFERS.—Paragraph (1) shall not apply to any transfer to any person (other than a member of the transferor's family) if such transfer is for full and adequate consideration.

"(C) TREATMENT OF FAMILY MEMBERS.—An individual shall be treated as owning any interest in an enterprise which is owned (directly or indirectly) by any member of such individual's family.

"(c) RULES TO APPLY FOR PURPOSES OF SECTIONS 1014 AND 1015.—The rules of this subsection shall apply also for purposes of sections 1014 and 1015."

(b) CONFORMING AMENDMENTS.—

(1) Subsection (c) of section 2512 (relating to valuation of gifts) is amended to read as follows:

"(c) CROSS REFERENCES.—

"(1) For special valuation rules, see section 2211.

"(2) For individual's right to be furnished on request a statement regarding any valuation made by the Secretary of a gift made by that individual, see section 7517."

(2) Section 2654 (relating to special rules for tax on generation-skipping transfers) is amended by adding at the end thereof the following new subsection:

"(e) SPECIAL VALUATION RULES.

"For special valuation rules, see section 2211."

(3) The table of sections for subchapter C of chapter 11 is amended by adding at the end thereof the following new item:

"Sec. 2211. Special valuation rules."

(c) Effective Date.—The amendments made by this section—

(1) insofar as they relate to the tax imposed by chapter 11 of the Internal Revenue Code of 1986, shall apply to estates of decedents dying after December 31, 1987,

(2) insofar as they relate to the tax imposed by chapter 12 of such Code, shall apply to gifts after December 31, 1987, and

(3) insofar as they relate to the tax imposed by chapter 13 of such Code, shall apply to transfers after December 31, 1987.

Subpart E—Estate Tax Provisions Relating to Employee Stock Ownership Plans

SEC. 10109. CONGRESSIONAL CLARIFICATION OF ESTATE TAX DEDUCTION FOR SALES OF EMPLOYER SECURITIES.

(a) Intent of Congress in Enacting Section 2057 of the Internal Revenue Code of 1986.—Section 2057 (relating to sales of employer securities to employee stock ownership plans or worker-owned cooperatives) is amended by redesignating subsections (d), (e), and (f) as subsections (e), (f), and (g), respectively, and by inserting after subsection (c) the following new subsection:

"(d) Qualified Proceeds From Qualified Sales.—

"(1) In general.—For purposes of this section, the proceeds of a sale of employer securities by an executor to an employee stock ownership plan or an eligible worker-owned cooperative shall not be treated as qualified proceeds from a qualified sale unless—

"(A) the decedent directly owned the securities immediately before death, and

"(B) after the sale, the employer securities—

"(i) are allocated to participants, or

"(ii) are held for future allocation in connection with—

"(I) an exempt loan under the rules of section 4975, or

"(II) a transfer of assets under the rules of section 4980(c)(3).

"(2) No substitution permitted.—For purposes of paragraph (1)(B), except in the case of a bona fide business transaction (e.g., a substitution of employer securities in connection with a merger of employers), employer securities shall not be treated as allocated or held for future allocation to the extent that such securities are allocated or held for future allocation in substitution of other employer securities that had been allocated or held for future allocation."

(b) Effective Date.—The amendments made by subsection (a) shall take effect as if included in the amendments made by section 1172 of the Tax Reform Act of 1986.

SEC. 10110. MODIFICATIONS OF ESTATE TAX DEDUCTION FOR SALE OF EMPLOYER SECURITIES.

(a) In General.—Section 2057 (relating to estate tax deduction for sales of employer securities to employee stock ownership plans or worker-owned cooperatives) is amended to read as follows:

"SEC. 2057. SALES OF EMPLOYER SECURITIES TO EMPLOYEE STOCK OWNERSHIP PLANS OR WORKER-OWNED COOPERATIVES.

"(a) General Rule.—For purposes of the tax imposed by section 2001, the value of the taxable estate shall be determined by deducting from the value of the gross estate an amount equal to 50 percent of the proceeds of any sale of any qualified employer securities to—

"(1) an employee stock ownership plan, or

"(2) an eligible worker-owned cooperative.

"(b) Limitations.—

"(1) Maximum reduction in tax liability.—The amount allowable as a deduction under subsection (a) shall not exceed the amount which would result in an aggregate reduction in the tax imposed by section 2001 (determined without regard to any credit allowable against such tax) equal to $750,000.

"(2) Deduction shall not exceed 50 percent of taxable estate.—The amount of the deduction allowable under subsection (a) shall not exceed 50 percent of the taxable estate (determined without regard to this section).

"(c) Limitations on Proceeds Which May Be Taken Into Account.—

"(1) Dispositions by plan or cooperative within 1 year of sale.—

"(A) In general.—Proceeds from a sale which are taken into account under subsection (a) shall be reduced (but not below zero) by the net sale amount.

"(B) Net sale amount.—For purposes of subparagraph (A), the term 'net sale amount' means the excess (if any) of—

"(i) the proceeds of the plan or cooperative from the disposition of employer securities during the 1-year period immediately preceding such sale, over

"(ii) the cost of employer securities purchased by such plan or cooperative during such 1-year period.

"(C) Exceptions.—For purposes of subparagraph (B)(i), there shall not be taken into account any proceeds of a plan or cooperative from a disposition described in section 4978A(e).

"(D) Aggregation rules.—For purposes of this paragraph, all employee stock ownership plans maintained by an employer shall be treated as 1 plan.

"(2) Securities must be acquired by plan from assets which are not transferred assets.—

"(A) In general.—Proceeds from a sale shall not be taken into account under subsection (a) to the extent that such proceeds (as reduced under paragraph (1)) are attributable to transferred assets. For purposes of the preceding sentence, all assets of a plan or cooperative (other than qualified employer securities) shall be treated as first acquired out of transferred assets.

"(B) Transferred assets.—For purposes of subparagraph (A)—

"(i) In general.—The term 'transferred assets' means assets of an employee stock ownership plan which—

"(I) are attributable to assets held by a plan exempt from tax under section 501(a) and meeting the requirements of section 401(a) (other than an employee stock ownership plan of the employer), or

"(II) were held by the plan when it was not an employee stock ownership plan.

"(ii) Exception for assets held on February 26, 1987.—The term 'transferred assets' shall not include any asset held by the employee stock ownership plan on February 26, 1987.

"(iii) Secretarial authority to waive treatment as transferred asset.—The Secretary may provide that assets or a class of assets shall not be treated as transferred assets if the Secretary finds such treatment is not necessary to carry out the purposes of this paragraph.

"(3) Other proceeds.—The following proceeds shall not be taken into account under subsection (a):

"(A) Proceeds from sale after due date for return.—Any proceeds from a sale which occurs after the date on which the return of the tax imposed by section 2001 is required to be filed (determined by taking into account any extension of time for filing).

"(B) Proceeds from sale of certain securities.—Any proceeds from a sale of employer securities which were received by the decedent—

"(i) in a distribution from a plan exempt from tax under section 501(a) and meeting the requirements of section 401(a), or

"(ii) as a transfer pursuant to an option or other right to acquire stock to which section 83, 422, 422A, 423, or 424 applies.

Any employer security the basis of which is determined by reference to any employer security described in the preceding sentence shall be treated as an employer security to which this subparagraph applies.

"(d) Qualified Employer Securities.—

"(1) In general.—The term 'qualified employer securities' means employer securities—

"(A) which are issued by a domestic corporation which has no stock outstanding which is readily tradable on an established securities market,

"(B) which are includible in the gross estate of the decedent,

"(C) which would have been includible in the gross estate of the decedent if the decedent had died at any time during the shorter of—

"(i) the 5-year period ending on the date of death, or

"(ii) the period beginning on October 22, 1986, and ending on the date of death, and

"(D) with respect to which the executor elects the application of this section.

Subparagraph (C) shall not apply if the decedent died on or before October 22, 1986.

"(2) Certain assets held by spouse.—For purposes of paragraph (1)(C), any employer security which would have been includible in the gross estate of the spouse of a decedent during any period if the spouse had died during such period shall be treated as includible in the gross estate of the decedent during such period.

"(3) Periods during which decedent not at risk.—For purposes of paragraph (1)(C), employer securities shall not be treated as includible in the gross estate of the decedent during any period described in section 246(c)(4).

"(e) Written Statement Required.—

"(1) In general.—No deduction shall be allowed under subsection (a) unless the executor of the estate of the decedent files with the Secretary the statement described in paragraph (2).

"(2) Statement.—A statement is described in this paragraph if it is a verified written statement—

"(A) which is made by—

"(i) the employer whose employees are covered by the employee stock ownership plan, or

"(ii) any authorized officer of the eligible worker-owned cooperative, and

"(B) which—

"(i) acknowledges that the sale of employer securities to the plan or cooperative is a sale to which sections 4978A and 4979A apply, and

"(ii) certifies—

"(I) the net sale amount for purposes of subsection (c)(1), and

"(II) the amount of assets which are not transferred assets for purposes of subsection (c)(2).

"(f) Other Definitions and Special Rules.—For purposes of this section—

"(1) EMPLOYER SECURITIES.—The term 'employer securities' has the meaning given such term by section 409(l).

"(2) EMPLOYEE STOCK OWNERSHIP PLAN.—The term 'employee stock ownership plan' means—

"(A) a tax credit employee stock ownership plan (within the meaning of section 409(a)), or

"(B) a plan described in section 4975(e)(7).

"(3) ELIGIBLE WORKER-OWNED COOPERATIVE.—The term 'eligible worker-owned cooperative' has the meaning given such term by section 1042(c).

"(4) EMPLOYER.—Except to the extent provided in regulations, the term 'employer' includes any person treated as an employer under subsections (b), (c), (m), and (o) of section 414.

"(g) TERMINATION.—This section shall not apply to any sale after December 31, 1991."

(b) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section shall apply to sales after February 26, 1987.

(2) PROVISIONS TAKING EFFECT AS IF INCLUDED IN THE TAX REFORM ACT OF 1986.—The following provisions shall take effect as if included in the amendments made by section 1172 of the Tax Reform Act of 1986:

(A) Section 2057(f)(2) of the Internal Revenue Code of 1986, as added by this section.

(B) The repeal of the requirement that a sale be made by the executor of an estate to qualify for purposes of section 2057 of such Code.

(3) DIRECT OWNERSHIP REQUIREMENT.—If the requirements of section 2057(d)(1)(B) of such Code (as modified by section 2057(d)(2) of such Code), as in effect after the amendments made by this section, are met with respect to any employer securities sold after October 22, 1986, and before February 27, 1987, such securities shall be treated as having been directly owned by the decedent for purposes of section 2057 of such Code, as in effect before such amendments.

(4) REDUCTION FOR SALES ON OR BEFORE FEBRUARY 26, 1987.—In applying the limitations of subsection (b) of section 2057 of such Code to sales after February 26, 1987, there shall be taken into account sales on or before February 26, 1987, to which section 2057 of such Code applied.

SEC. 10111. EXCISE TAX ON PLANS OR COOPERATIVES DISPOSING OF EMPLOYER SECURITIES FOR WHICH ESTATE TAX DEDUCTION WAS ALLOWED.

(a) IN GENERAL.—Chapter 43 (relating to excise taxes on qualified pension, etc., plans) is amended by inserting after section 4978 the following new section:

"SEC. 4978A. TAX ON CERTAIN DISPOSITIONS OF EMPLOYER SECURITIES TO WHICH SECTION 2057 APPLIED.

"(a) IMPOSITION OF TAX.—In the case of a taxable event involving qualified employer securities held by an employee stock ownership plan or eligible worker-owned cooperative, there is hereby imposed a tax equal to the amount determined under subsection (b).

"(b) AMOUNT OF TAX.—

"(1) IN GENERAL.—The amount of the tax imposed by subsection (a) shall be equal to 30 percent of—

"(A) the amount realized on the disposition in the case of a taxable event described in paragraph (1) or (2) of subsection (c), or

"(B) the amount repaid on the loan in the case of a taxable event described in paragraph (3) of subsection (c).

"(2) DISPOSITIONS OTHER THAN SALES OR EXCHANGES.—For purposes of paragraph (1), in the case of a disposition of employer securities which is not a sale or exchange, the amount realized on such disposition shall be the fair market value of such employer securities at the time of disposition.

"(c) TAXABLE EVENT.—For purposes of this section, the term 'taxable event' means the following:

"(1) DISPOSITION WITHIN 3 YEARS OF ACQUISITION.—Any disposition of employer securities by an employee stock ownership plan or eligible worker-owned cooperative within 3 years after such plan or cooperative acquired qualified employer securities.

"(2) STOCKS DISPOSED OF BEFORE ALLOCATION.—Any disposition of qualified employer securities to which paragraph (1) does not apply if—

"(A) such disposition occurs before such securities are allocated to accounts of participants or their beneficiaries, and

"(B) the proceeds from such disposition are not so allocated.

"(3) USE OF ASSETS TO REPAY ACQUISITION LOANS.—The payment by an employee stock ownership plan of any portion of any loan used to acquire employer securities from transferred assets (within the meaning of section 2057(c)(2)(B)).

"(d) ORDERING RULES.—For purposes of this section and section 4978, any disposition of employer securities shall be treated as having been made in the following order:

"(1) First, from qualified employer securities acquired during the 3-year period ending on the date of such disposition, beginning with the securities first so acquired.

"(2) Second, from qualified employer securities acquired before such 3-year period unless such securities (or the proceeds from such disposition) have been allocated to accounts of participants or their beneficiaries.

"(3) Third, from qualified securities (within the meaning of section 4978(e)(2)) to which section 1042 applied acquired during the 3-year period ending on the date of such disposition, beginning with the securities first so acquired.

"(4) Finally, from any other employer securities.

In the case of a disposition to which section 4978(d) or subsection (e) applies, the disposition of employer securities shall be treated as having been made in the opposite order of the preceding sentence.

"(e) SECTION NOT TO APPLY TO CERTAIN DISPOSITIONS.—

"(1) IN GENERAL.—This section shall not apply to any disposition described in paragraph (1) or (3) of section 4978(d).

"(2) CERTAIN REORGANIZATIONS.—For purposes of this section, any exchange of qualified employer securities for employer securities of another corporation in any reorganization described in section 368(a)(1) shall not be treated as a disposition, but the employer securities which were received shall be treated—

"(A) as qualified employer securities of the plan or cooperative, and

"(B) as having been held by the plan or cooperative during the period the qualified employer securities were held.

"(3) DISPOSITION TO MEET DIVERSIFICATION REQUIREMENTS.—Any disposition which is made to meet the requirements of section 401(a)(28) shall not be treated as a disposition.

"(f) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) TERMS USED IN SECTION 2057.—Any term used in this section which is used in section 2057 shall have the meaning given such term by section 2057.

"(2) QUALIFIED EMPLOYER SECURITIES.—The term 'qualified employer securities' has the meaning given such term by section 2057, except that such term shall include employer securities sold before February 27, 1987, for which a deduction was allowed under section 2057.

"(3) DISPOSITION.—The term 'disposition' includes any distribution.

"(4) LIABILITY FOR PAYMENT OF TAXES.—The tax imposed by this section shall be paid by—

"(A) the employer, or

"(B) the eligible worker-owned cooperative,

which made the written statement described in section 2057(e)."

(b) CONFORMING AMENDMENTS.—

(1) Section 4978(b)(2) is amended by striking out the parenthetical and inserting in lieu thereof "(determined as if such securities were disposed of in the order described in section 4978A(e))".

(2) The table of sections for chapter 43 is amended by inserting after the item relating to section 4978 the following new item:

"Sec. 4978A. Tax on certain dispositions of employer securities to which section 2057 applied."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable events (within the meaning of section 4978A(c) of the Internal Revenue Code of 1986) occurring after February 26, 1987.

PART II—BUSINESS REFORMS

Subpart A—Accounting Provisions

SEC. 10115. REPEAL OF COMPLETED CONTRACT METHOD.

(a) GENERAL RULE.—Subsection (a) of section 460 (relating to special rules for long-term contracts) is amended to read as follows:

"(a) REQUIREMENT THAT PERCENTAGE OF COMPLETION METHOD BE USED.—

"(1) IN GENERAL.—In the case of any long-term contract, the taxable income from such contract shall be determined under the percentage of completion method.

"(2) LOOKBACK METHOD TO APPLY.—Upon completion of any long-term contract, the taxpayer shall pay (or shall be entitled to receive) interest determined under the lookback method of subsection (b)(2)."

(b) CONFORMING AMENDMENTS.—

(1) Subsection (b) of section 460 is amended by striking out paragraph (1) and by redesignating paragraphs (2), (3), and (4) as paragraphs (1), (2), and (3), respectively.

(2) Paragraph (1) of section 460(b), as redesignated by paragraph (1), is amended by striking out "paragraph (3)" and inserting lieu thereof "paragraph (2)".

(3) Paragraph (3) of section 460(b), as redesignated by paragraph (1), is amended by striking out "Paragraph (2)(B)" and inserting in lieu thereof "Paragraph (1)(B)".

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to contracts entered into after October 13, 1987.

(2) SPECIAL RULE FOR CERTAIN SHIP CONTRACTS.—

(A) IN GENERAL.—The amendments made by this section shall not apply in the case of a qualified ship contract.

(B) QUALIFIED SHIP CONTRACT.—For purposes of subparagraph (A), the term 'qualified ship contract' means any contract for the construction in the United States of not more than 5 ships if—

(i) such ships will not be constructed (directly or indirectly) for the Federal Government, and

(ii) the taxpayer reasonably expects to complete such contract within 5 years of the contract commencement date (as defined in section 460(g) of the Internal Revenue Code of 1986).

SEC. 10116. PRO RATA ALLOCATION OF INTEREST EXPENSE TO TAX-EXEMPT INSTALLMENT OBLIGATIONS; DE MINIMIS EXCEPTION.

(a) General Rule.—Section 265 (relating to expenses and interest relating to tax-exempt income) is amended by adding at the end thereof the following new subsection:

"(c) Pro Rata Allocation of Interest Expense to Tax-Exempt Installment Obligations.—

"(1) In general.—In the case of a taxpayer holding 1 or more tax-exempt installment obligations acquired after December 31, 1987, no deduction shall be allowed for that portion of the taxpayer's interest expense which is allocable to such installment obligations.

"(2) Allocation.—For purposes of paragraph (1), the portion of the taxpayer's interest expense which is allocable to tax-exempt installment obligations acquired after December 31, 1987, is an amount which bears the same ratio to such interest expense as—

"(A) the average total face amount of all tax-exempt installment obligations held by the taxpayer which were acquired after December 31, 1987, bears to

"(B) the sum of—

"(i) the average adjusted bases for all assets (other than installment obligations) of the taxpayer, plus

"(ii) the average total face amount of all installment obligations held by the taxpayer.

"(3) Tax-exempt installment obligation.—For purposes of this subsection—

"(A) In general.—The term 'tax-exempt installment obligation' means any installment obligation the interest on which is wholly exempt from the taxes imposed by this subtitle.

"(B) Installment obligation.—The term 'installment obligation' means any installment obligation which—

"(i) arises from the disposition of any property (whether or not the installment method is used with respect to such obligation), and

"(ii) is held by the person making such disposition or a member of such person's affiliated group (within the meaning of section 1504 without regard to section 1504(b))

"(4) Definitions and special rules.—

"(A) Interest expense.—For purposes of this subsection, the term 'interest expense' has the meaning given to such term by subsection (b)(4)(A).

"(B) Aggregation rules.—For purposes of this subsection, all persons treated as a single employer under section 52 shall be treated as 1 taxpayer. The Secretary shall prescribe regulations for the treatment under this subsection of transactions between such persons.

"(C) Coordination with subsection (b).—This subsection shall not apply in the case of a financial institution (as defined in subsection (b)(5)), but, in applying subsection (b), the adjusted basis of any installment obligation shall be treated as equal to its face amount.

"(D) Coordination with subsection (a).—If interest on any indebtedness is disallowed under subsection (a) with respect to any tax-exempt installment obligation—

"(i) such disallowed interest shall not be taken into account for purposes of applying this subsection, and

"(ii) for purposes of applying paragraph (2), the face amount of such tax-exempt installment obligation shall be reduced (but not below zero) by the amount of such indebtedness."

(b) De Minimis Rule.—Section 265 is amended by adding at the end thereof the following new subsection:

"(d) De Minimis Rule.—

"(1) In general.—In the case of any taxpayer other than a financial institution (as defined in subsection (b)(5)), subsections (a)(2) and (c) shall not apply for any taxable year if the taxpayer's average adjusted bases of tax-exempt obligations for the taxable year does not exceed the lesser of—

"(A) 2 percent of the average adjusted bases for all assets of the taxpayer, or

"(B) $1,000,000.

Subparagraph (B) shall not apply for purposes of applying this subsection with respect to tax-exempt obligations acquired before January 1, 1988.

"(2) Aggregation rule.—All persons treated as a single employer under section 52 shall be treated as 1 taxpayer for purposes of this subsection.

"(3) Special rule for installment obligations.—In applying paragraph (1), the adjusted basis of any installment obligation shall be treated as equal to its face amount.

"(4) Subsection to be in lieu of other de minimis rules.—This subsection shall be in lieu of any other de minimis exception prescribed by the Secretary."

(c) Effective Date.—The amendments made by this section shall apply to taxable years ending after December 31, 1987.

SEC. 10117. REPEAL OF SPECIAL TREATMENT OF CERTAIN BELOW-MARKET LOANS TO CONTINUING CARE FACILITIES.

(a) General Rule.—Section 7872 (relating to treatment of loans with below-market interest rates) is amended by striking out subsection (g) and by redesignating subsection (h) as subsection (g).

(b) Effective Date.—The amendment made by subsection (a) shall apply to loans made after October 13, 1987.

SEC. 10118. CURRENT ACCRUAL OF MARKET DISCOUNT.

(a) General Rule.—Subpart B of part V of subchapter P of chapter 1 (relating to market discount on bonds) is amended by inserting after section 1277 the following new section:

"SEC. 1277A. CURRENT INCLUSION IN INCOME OF MARKET DISCOUNT.

"(a) General Rule.—In the case of any market discount bond acquired by purchase after October 13, 1987—

"(1) sections 1276 and 1277 shall not apply, and

"(2) market discount on such bond shall be included in the gross income of the taxpayer for the taxable years to which it is attributable (as determined under the rules of subsection (b) of section 1276).

Except for purposes of sections 871(a), 881, 1441, 1442, and 6049 (and such other provisions as may be specified in regulations), any amount included in gross income under paragraph (2) shall be treated as interest for purposes of this title.

"(b) Definitions and Special Rules.—

"(1) Purchase.—For purposes of this section, the term 'purchase' means any acquisition of a market discount bond unless the basis of such bond in the hands of the person acquiring it is determined in whole or in part by reference to the adjusted basis of such property in the hands of the person from whom acquired.

"(2) Limitation on amount of market discount.—

"(A) In general.—This section shall not apply to market discount on any bond to the extent such market discount exceeds the market discount which would result in the taxpayer's yield to maturity on such bond being equal to 3 times the applicable Federal rate.

"(B) Applicable federal rate.—For purposes of subparagraph (A), the term 'applicable Federal rate' means the applicable Federal rate in effect under section 1274(d) for the month in which the market discount bond was purchased and applicable to a debt instrument with a term equal to the portion of the term of such bond after the date of its purchase by the taxpayer.

"(3) Transferred basis property.—If a market discount bond is transferred in a nonrecognition transaction and such bond is transferred basis property in the hands of the transferee, for purposes of this section—

"(A) the transferee shall be treated as having acquired the bond on the date on which it was acquired by the transferor for an amount equal to the basis of the transferor, and

"(B) proper adjustments shall be made for adjustments to basis on account of such transfer (and for any original issue discount or market discount included in the gross income of the transferor).

For purposes of the preceding sentence, if the basis of any market discount bond in the hands of a transferee is determined under section 732(a) or 732(b), such property shall be treated as transferred basis property in the hands of the transferee.

"(4) Exchanged basis property.—If any market discount bond is received by the taxpayer in a nonrecognition transaction and paragraph (1) does not apply to such transaction—

"(A) for purposes of determining the amount of market discount, the basis of such bond shall be treated as being equal to its fair market value on the date of its acquisition by the taxpayer, and

"(B) if any property disposed of in such transaction is a market discount bond to which section 1276 applied, notwithstanding subsection (a)(1), section 1276 shall apply to the amount treated under section 1276(b)(2)(A) as accrued market discount on the bond received in the exchange.

"(5) Property to which election under prior law applied.—If the taxpayer made an election under section 1278(b) (as in effect before its repeal by the Revenue Act of 1987), any market discount bond to which such election applied shall be treated as a market discount bond acquired by purchase after October 13, 1987."

(b) Repeal of Exception for Tax-Exempt Obligations.—Subparagraph (B) of section 1278(a)(1) (relating to exceptions) is amended by striking out clause (ii) and by redesignating clauses (iii) and (iv) as clauses (ii) and (iii), respectively.

(c) Reporting by Brokers.—Subsection (a) of section 6045 (relating to returns by brokers) is amended by striking out "gross proceeds" and inserting in lieu thereof "gross proceeds, such details regarding market discount on bonds,".

(d) Technical Amendments.—

(1) Section 1278 is amended by striking out subsection (b) and by redesignating subsection (c) as subsection (b).

(2) The table of sections for subpart B of part V of subchapter P of chapter 1 is amended by inserting after the item relating to section 1277 the following new item:

"Sec. 1277A. Current accrual of market discount."

(e) Effective Date.—The amendments made by this section shall apply to bonds acquired by purchase (as defined in section 1277A(b)(1) of the Internal Revenue Code of 1986 as added by subsection (a)) after October 13, 1987.

SEC. 10119. CERTAIN FARM CORPORATIONS REQUIRED TO USE ACCRUAL METHOD OF ACCOUNTING.

(a) General Rule.—Section 447 (relating to method of accounting for corporations engaged in farming) is amended by striking out subsections (c) and (e), by redesignating subsection (d) as subsection (e), and by inserting after subsection (b) the following new subsections:

"(c) Exception for Certain Corporations.—For purposes of subsection (a), a corporation shall be treated as not being a corporation if it is—

"(1) an S corporation, or

"(2) a corporation the gross receipts of which meet the requirements of subsection (d).

"(d) Gross Receipts Requirements.—

"(1) In general.—A corporation meets the requirements of this subsection if, for each prior taxable year beginning after December 31, 1975, such corporation (and any predecessor corporation) did not have gross receipts exceeding $1,000,000. For purposes of the preceding sentence, all corporations which are members of the same controlled group of corporations (within the meaning of section 1563(a)) shall be treated as 1 corporation.

"(2) Special rules for family corporations.—

"(A) In general.—In the case of a family corporation, paragraph (1) shall be applied—

"(i) by substituting '$25,000,000' for '$1,000,000', and

"(ii) by substituting 'December 31, 1985,' for 'December 31, 1975,'.

"(B) Family corporation.—For purposes of this section, the term 'family corporation' means—

"(i) any corporation if at least 50 percent of the total combined voting power of all classes of stock entitled to vote, and at least 50 percent of all other classes of stock of the corporation, are owned by members of the same family, and

"(ii) any corporation described in subsection (h)."

(b) Suspense Account in Lieu of 481 Adjustments.—Section 447 is amended by adding at the end thereof the following new subsection:

"(i) Suspense Account for Family Corporations.—

"(1) In general.—If any family corporation is required by this section to change its method of accounting for any taxable year (hereinafter in this subsection referred to as the 'year of the change'), notwithstanding subsection (f), such corporation shall establish a suspense account under this subsection in lieu of taking into account adjustments under section 481(a).

"(2) Initial opening balance.—The initial opening balance of the account described in paragraph (1) shall be the lesser of—

"(A) the net adjustments which would have been required to be taken into account under section 481 but for this subsection, or

"(B) the amount of such net adjustments determined as of the close of the most recent quarter ending before October 13, 1987.

If the amount referred to in subparagraph (A) exceeds the amount referred to in subparagraph (B), notwithstanding paragraph (1), such excess shall be taken into account under section 481 in the year of the change.

"(3) Reduction in account if farming business contracts.—If—

"(A) the gross receipts of the corporation from the trade or business of farming for the year of the change or any subsequent taxable year, is less than

"(B) such gross receipts for the taxpayer's last taxable year beginning before the year of the change (or for the most recent taxable year for which a reduction in the suspense account was made under this paragraph),

the amount in the suspense account (after taking into account prior reductions) shall be reduced by the percentage by which the amount described in subparagraph (A) is less than the amount described in subparagraph (B).

"(4) Income inclusion.—Any reduction in the suspense account under paragraph (3) shall be included in gross income.

"(5) Inclusion where corporation ceases to be a family corporation.—If the corporation ceases to be a family corporation during any taxable year, the amount in the suspense account (after taking into account prior reductions) shall be included in gross income for such taxable year.

"(6) Subchapter C transactions.—The application of this subsection with respect to a taxpayer which is a party to any transaction with respect to which there is nonrecognition of gain or loss to any party by reason of subchapter C shall be determined under regulations prescribed by the Secretary."

(c) Technical Amendments.—

(1) Subsection (e) of section 447 (as redesignated by subsection (a)) is amended by striking out "subsection (c)(2)" and inserting in lieu thereof "subsection (d)".

(2) Paragraph (1) of section 447(h) is amended—

(A) by striking out "This section shall not apply to any corporation" and inserting in lieu thereof "A corporation is described in this subsection",

(B) by striking out "subsection (d)" each place it appears and inserting in lieu thereof "subsection (e)", and

(C) by striking out "subsection (d)(1)" each place it appears and inserting in lieu thereof "subsection (e)(1)".

(d) Effective Date.—The amendments made by this section shall apply to taxable years beginning after December 31, 1987.

SEC. 10120. TREATMENT OF CUSTOMER BASE INTANGIBLES AND SIMILAR ITEMS.

(a) General Rule.—Section 167 (relating to depreciation) is amended by redesignating subsection (s) as subsection (t) and by inserting after subsection (r) the following new subsection:

"(s) Treatment of Customer Base Intangibles and Similar Items.—For purposes of determining whether any amount paid or incurred to acquire customer base, market share, or any similar intangible item is allowable as a deduction under this section or any other provision of this title, such amount shall be treated as paid or incurred for intangible property with an indeterminate useful life. Section 1253(d)(2) shall not apply to any amount referred to in the preceding sentence."

(b) Effective Date.—The amendment made by subsection (a) shall apply to acquisitions after October 13, 1987; except that such amendment shall not apply in the case of any acquisition pursuant to a binding written contract in effect on October 13, 1987, and at all times thereafter before the acquisition.

SEC. 10121. REPEAL OF RESERVE FOR ACCRUAL OF VACATION PAY.

(a) General Rule.—Section 463 (relating to accrual of vacation pay) is hereby repealed.

(b) Technical Amendments.—

(1) Section 81 is hereby repealed.

(2) Subparagraph (B) of section 404(b)(2) is amended to read as follows:

"(B) Exception.—Subparagraph (A) shall not apply to any benefit provided through a welfare benefit fund (as defined in section 419(e))."

(3) Paragraph (2) of section 419(e) is amended by inserting "or" at the end of subparagraph (B), by striking out ", or" at the end of subparagraph (C), and inserting in lieu thereof a period, and by striking out subparagraph (D).

(4) Paragraph (5) of section 461(h) is amended to read as follows:

"(5) Subsection not to apply to certain items.—This subsection shall not apply to any item for which a deduction is allowable under a provision of this title which specifically provides for a deduction for a reserve for estimated expenses."

(5) The table of sections for part II of subchapter B of chapter 1 is amended by striking out the item relating to section 81.

(6) The table of sections for subpart C of part II of subchapter E of chapter 1 is amended by striking out the item relating to section 463.

(c) Effective Date.—

(1) In general.—The amendments made by this section shall apply to taxable years beginning after December 31, 1987.

(2) Change in method of accounting.—In the case of any taxpayer with respect to whom an election under section 463 of the Internal Revenue Code of 1986 was in effect for such taxpayer's last taxable year beginning before January 1, 1987, and who is required to change his method of accounting by reason of the amendments made by this section—

(A) such change shall be treated as initiated by the taxpayer,

(B) such change shall be treated as having been made with the consent of the Secretary, and

(C) the net amount of adjustments required by section 481 of such Code to be taken into account by the taxpayer—

(i) shall be reduced by the balance in the suspense account under section 463(c) of such Code as of the close of such last taxable year, and

(ii) shall be taken into account over a period not longer than 4 years.

Subpart B—Partnership Provisions

SEC. 10122. CERTAIN PUBLICLY TRADED PARTNERSHIPS TREATED AS CORPORATIONS.

(a) General Rule.—Chapter 79 (relating to definitions) is amended by adding at the end thereof the following new section:

"SEC. 7704. CERTAIN PUBLICLY TRADED PARTNERSHIPS TREATED AS CORPORATIONS.

"(a) General Rule.—For purposes of this title, except as provided in subsection (c), a publicly traded partnership shall be treated as a corporation.

"(b) Publicly Traded Partnership.—For purposes of this section, the term 'publicly traded partnership' means any partnership if—

"(1) interests in such partnership are traded on an established securities market,

"(2) interests in such partnership were offered with the expectation that there will be a secondary market for such interests, or

"(3) interests in such partnership are readily tradable on a secondary market (or the substantial equivalent thereof).

"(c) Exception for Partnerships With Passive-Type Income.—

"(1) In general.—Subsection (a) shall not apply to any publicly traded partnership for any taxable year if such partnership met the gross income requirements of paragraph (2) for such taxable year and each preceding taxable year beginning after December 31, 1986, during which the partnership (or any predecessor) was in existence.

"(2) Gross income requirements.—A partnership meets the gross income requirements of this paragraph for any taxable year if 90 percent or more of the gross income of such partnership for such taxable year consists of qualifying income.

"(3) Exception not to apply to certain partnerships which could qualify as regulated investment companies.—This subsection shall not apply to any partnership which would be described in section 851(a) if such partnership were a domestic corporation.

"(d) Qualifying Income.—

"(1) In general.—Except as otherwise provided in this subsection, the term 'qualifying income' means—

"(A) interest,

"(B) dividends,

"(C) real property rents,

"(D) gain from the sale or other disposition of real property (including property described in section 1221(1)),

"(E) income and gains derived from the exploration, development, mining or production, refining, transportation (including pipelines transporting gas, oil, or products thereof), or the marketing of any mineral or natural resource (including geothermal energy and timber), and

"(F) any gain from the sale or disposition of a capital asset (or property described in section 1231(b)) held for the production of income described in any of the foregoing subparagraphs of this paragraph.

"(2) Certain interest not qualified.—Interest shall not be treated as qualifying income if—

"(A) such interest is derived in the conduct of a financial or insurance business, or

"(B) such interest would be excluded from the term 'interest' under section 856(f).

"(3) Real property rent.—The term 'real property rent' means amounts which would qualify as rent from real property under section 856(d) if such section were applied without regard to paragraph (2)(C) thereof (relating to independent contractor requirements).

"(4) Certain income qualifying under regulated investment company or real estate trust provisions.—The term 'qualifying income' also includes any income which would qualify under section 851(b)(2) or 856(c)(2).

"(e) Inadvertent Terminations.—If—

"(1) a partnership fails to meet the gross income requirements of subsection (c)(2),

"(2) the Secretary determines that such failure was inadvertent,

"(3) no later than a reasonable time after the discovery of such failure, steps are taken so that such partnership once more meets such gross income requirements, and

"(4) such partnership, and each person holding an interest in such partnership at any time during the period specified pursuant to this subsection, agrees to make such adjustments as may be required by the Secretary with respect to such period,

then, notwithstanding such failure, such entity shall be treated as continuing to meet such gross income requirements for such period.

"(f) Effect of Becoming Corporation.—As of the 1st day that a partnership is treated as a corporation under this section, for purposes of this title, such partnership shall be treated as—

"(1) transferring all of its assets (subject to its liabilities) to a newly formed corporation in exchange for the stock of the corporation, and

"(2) distributing such stock to its partners in liquidation of their interests in the partnership."

(b) Clerical Amendment.—The table of sections for chapter 79 is amended by adding at the end thereof the following new item:

"Sec. 7704. Certain publicly traded partnerships treated as corporations."

(c) Effective Date.—

(1) In general.—The amendments made by this section shall apply—

(A) except as provided in subparagraph (B), to periods after October 13, 1987, or

(B) in the case of an existing partnership, to taxable years beginning after December 31, 1994.

(2) Existing partnership.—For purposes of this subsection—

(A) In general.—The term "existing partnership" means any partnership if—

(i) such partnership was a publicly traded partnership on October 13, 1987, or

(ii) a registration statement indicating that such partnership was to be a publicly traded partnership was filed with the Securities and Exchange Commission with respect to such partnership on or before such date.

(B) Special rule where activities substantially expanded or changed after October 13, 1987.—A partnership which, but for this subparagraph, would be treated as an existing partnership shall cease to be treated as an existing partnership as of the 1st day after October 13, 1987, on which—

(i) there has been a substantial expansion of the partnership, or

(ii) the activities of the partnership have been substantially changed.

SEC. 10123. TREATMENT OF PUBLICLY TRADED PARTNERSHIPS UNDER SECTION 469.

(a) General Rule.—Section 469 (relating to passive activity losses and credits limited) is amended by redesignating subsections (k) and (l) as subsections (l) and (m), respectively, and by inserting after subsection (j) the following new subsection:

"(k) Separate Application of Section in Case of Publicly Traded Partnerships.—

"(1) In general.—This section shall be applied separately with respect to items attributable to each publicly traded partnership (and subsection (l) shall not apply with respect to items attributable to any such partnership).

"(2) Publicly traded partnership.—For purposes of this section, the term 'publicly traded partnership' means any partnership if—

"(A) interests in such partnership are traded on an established securities market,

"(B) interests in such partnership are offered with the expectation that there will be a secondary market for such interests, or

"(C) interests in such partnership are readily tradable on a secondary market (or the substantial equivalent thereof)."

(b) Effective Date.—The amendment made by subsection (a) shall take effect as if included in the amendments made by section 501 of the Tax Reform Act of 1986.

SEC. 10124. TREATMENT OF PUBLICLY TRADED PARTNERSHIPS FOR UNRELATED BUSINESS TAX.

(a) General Rule.—Subsection (c) of section 512 (relating to special rules for partnerships) is amended to read as follows:

"(c) Special Rules for Partnerships.—

"(1) In general.—If a trade or business regularly carried on by a partnership of which an organization is a member is an unrelated trade or business with respect to such organization, such organization in computing its unrelated business taxable income shall, subject to the exceptions, additions, and limitations contained in subsection (b), include its share (whether or not distributed) of the gross income of the partnership from such unrelated trade or business and its share of the partnership deductions directly connected with such gross income.

"(2) Special rule for publicly traded partnerships.—Notwithstanding any other provision of this section—

"(A) any organization's share (whether or not distributed) of the gross income of a publicly traded partnership (as defined in section 469(k)(2)) shall be treated as gross income derived from an unrelated trade or business, and

"(B) such organization's share of the partnership deductions shall be allowed in computing unrelated business taxable income.

"(3) Special rule where partnership year is different from organization's year.—If the taxable year of the organization is different from that of the partnership, the amounts to be included or deducted in computing the unrelated business taxable income under paragraph (1) or (2) shall be based upon the income and deductions of the partnership for any taxable year of the partnership ending within or with the taxable year of the organization.

(b) Effective Date.—The amendment made by subsection (a) shall apply to partnership interests acquired after October 13, 1987.

SEC. 10125. TREATMENT OF CERTAIN PARTNERSHIP ALLOCATIONS.

(a) General Rule.—Clause (vi) of section 514(c)(9)(B) is amended to read as follows:

"(vi) the real property is held by a partnership unless the partnership meets the requirements of clauses (i) through (v) and unless—

"(I) all of the partners of the partnership are qualified organizations, or

"(II) each allocation to a partner of the partnership which is a qualified organization is a qualified allocation (within the meaning of section 168(h)(6))."

(b) Effective Date.—The amendment made by subsection (a) shall apply to property acquired after October 13, 1987, except that such amendment shall not apply in the case of property acquired pursuant to a binding written contract in effect on October 13, 1987, and at all times thereafter before the property was acquired.

SEC. 10126. COLLECTION OF TAX FROM PARTNERSHIP WHERE INCREASE IN PARTNERSHIP INCOME, ETC., RESULTS FROM CERTAIN RETURN ADJUSTMENTS.

(a) In General.—Subchapter C of chapter 63 (relating to tax treatment of partnership items) is amended by adding at the end thereof the following new section:

"SEC. 6234. COLLECTION OF TAX FROM PARTNERSHIP WHERE INCREASE IN PARTNERSHIP INCOME, ETC., RESULTS FROM CERTAIN RETURN ADJUSTMENTS.

"(a) In General.—If there is a partnership shortfall with respect to the return for any taxable year of a partnership to which this section applies, the partnership shall pay, on notice and demand by the Secretary, the tax attributable to such shortfall.

"(b) Partnerships to Which Section Applies.—This section shall apply to any partnership if interests in such partnership—

"(1) were required to be registered under a Federal or State law regulating securities, or

"(2) were sold pursuant to an exemption from registration which required the filing of a notice with a Federal or State agency regulating the offering or sale of securities.

"(c) Partnership Shortfall.—

"(1) In general.—For purposes of subsection (a), there is a partnership shortfall with respect to any partnership return for any taxable year if—

"(A) the tax increase adjustment for such year exceeds the tax decrease adjustment for such year, or

"(B) the aggregate amount of the credits shown on the return of the partnership for the taxable year exceeds the aggregate amount of the credits of the partnership for such year determined in accordance with an applicable return adjustment.

"(2) Tax increase and decrease adjustments.—For purposes of paragraph (1)—

"(A) Tax increase adjustment.—The tax increase adjustment for any taxable year is the sum of—

"(i) the amount by which the aggregate amount of income and gains of the partnership for the taxable year determined in accordance with an applicable return adjustment exceeds the aggregate amount of income and gains shown on the return of the partnership for such year, plus

"(ii) the amount by which the aggregate amount of deductions and losses shown on the return of the partnership for such year exceeds the aggregate amount of deductions and losses of the partnership for such year determined in accordance with an applicable return adjustment.

"(B) Tax decrease adjustment.—The tax decrease adjustment for any taxable year is the sum of—

"(i) the amount by which the aggregate amount of income and gains shown on the return of the partnership for such year exceeds the aggregate amount of income and gains of the partnership for the taxable year determined in accordance with an applicable return adjustment, plus

"(ii) the amount by which the aggregate amount of deductions and losses of the partnership for such year determined in accordance with an applicable return adjustment exceeds the aggregate amount of deductions and losses shown on the return of the partnership for such year.

"(3) Applicable return adjustment.—For purposes of this subsection, the term 'applicable return adjustment' means—

"(A) a final partnership administrative adjustment (but only if no proceeding is begun in any court referred to in section 6226(a) during the 150-day period referred to in section 6225(a)(1)),

"(B) a court decision which has become final,

"(C) an amended return filed by the partnership, and

"(D) a settlement agreement.

"(d) Tax Attributable to Partnership Shortfall.—

"(1) In general.—For purposes of subsection (a), the tax attributable to any partnership shortfall for any taxable year is an amount equal to the sum of—

"(A) the applicable percentage of the excess (if any) described in subsection (c)(1)(A), plus

"(B) the excess (if any) described in subsection (c)(1)(B).

"(2) Applicable percentage.—For purposes of paragraph (1), the applicable percentage for any taxable year is the highest of the rates of tax set forth in sections 1 and 11 for such year.

"(3) Reduction in tax in certain cases.—

"(A) Increase in credits determined.—If the aggregate amount of the credits of the partnership for the taxable year determined in accordance with an applicable return adjustment exceeds the aggregate amount of credits shown on the return of the partnership for such year, the amount determined under paragraph (1)(A) with respect to such adjustment shall be reduced (but not below zero) by the amount of such excess.

"(B) Proper treatment of item by partners.—The partnership shortfall for any taxable year shall be reduced by the portion thereof attributable to any item of income, gain, loss, deduction, or credit to the extent the partnership establishes to the satisfaction of the Secretary that such item was treated by any partner (for the taxable year of such partner in which such partnership taxable year ends) in accordance with the applicable return adjustment to which such shortfall relates.

"(e) Special Rules Relating to Determinations of Income, Gains, Losses, Deductions, and Credits.—For purposes of this section—

"(1) In general.—Subject to the assumptions in paragraph (2), the items of income, gain, loss, deduction, or credit shall be determined in the same manner as an individual.

"(2) Assumptions.—For purposes of paragraph (1), it shall be assumed that—

"(A) the election under section 901 is made,

"(B) no exclusion is allowable under section 108, and

"(C) the election under section 617(a) is made.

"(f) Special Rules.—

"(1) Tax paid by partnership treated as paid by partners.—

"(A) In general.—The portion of the amount paid by the partnership under subsection (a) with respect to any taxable year of the partnership which is allocable to a partner shall be treated as tax paid by such partner on the date paid by the partnership for the taxable year of such partner in which such partnership taxable year ends.

"(B) Allocation of amount paid by partnership.—The amount paid by a partnership under subsection (a) shall be allocated among its partners in accordance with their respective interests in the partnership giving rise to the partnership shortfall involved.

"(2) Recovery of tax by partnership from partners.—The partnership shall be entitled to recover any amount paid by the partnership under subsection (a) from the person to whom such amount was allocated under paragraph (1).

"(3) Amount required to be paid treated as tax.—The amount required to be paid under subsection (a) shall be assessed and collected in the same manner as tax and shall be treated for purposes of subtitle F as tax imposed by chapter 1."

(b) Clerical Amendment.—The table of sections for such subchapter C is amended by adding at the end thereof the following new item:

"Sec. 6234. Collection of tax from partnership where increase in partnership income, etc., results from certain return adjustments."

(c) Effective Date.—The amendments made by this section shall apply to taxable years of partnerships beginning after December 31, 1987.

SEC. 10127. STUDY.

The Secretary of the Treasury or his delegate shall conduct a study of the issue of treating publicly traded limited partnerships (and other partnerships which significantly resemble corporations) as corporations for Federal income tax purposes, including the issues of disincorporation and opportunities for avoidance of the corporate tax. Not later than January 1, 1989, the Secretary of the Treasury or his delegate shall submit a report on such study to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate, together with such recommendations as he may deem appropriate.

Subpart C—Corporate Provisions

SEC. 10131. REDUCTION IN DIVIDENDS RECEIVED DEDUCTION.

(a) General Rule.—The following provisions are each amended by striking out "80 percent" and inserting in lieu thereof "75 percent":

(1) Section 243(a)(1) (relating to dividends received by corporations).

(2) Subsections (a)(3) and (b)(2) of section 244 (relating to dividends received on certain preferred stock).

(3) Section 245(c)(1)(B) (relating to certain dividends received from FSC), as amended by subtitle B, relating to technical corrections.

(4) Section 246(b)(1) (relating to limitation on aggregate amount of deductions).

(5) Section 246A(a)(1) (relating to dividends received deduction where portfolio stock debt financed).

(6) Subparagraph (B) of section 805(a)(4) (relating to dividends received by insurance company).

(b) Conforming Amendment.—Subparagraph (B) of section 861(a)(2) (as amended by subtitle B, relating to technical corrections) is amended by striking out "100/80ths" and inserting in lieu thereof "100/75ths".

(c) Effective Dates.—

(1) In general.—The amendments made by this section shall apply to dividends received or accrued after December 31, 1987, in taxable years ending after such date.

(2) Amendment relating to limitation on deductions—The amendment made by subsection (a) to section 246(b) of the Internal Revenue Code of 1986 shall apply to taxable years beginning after December 31, 1987.

SEC. 10132. DIVIDEND RECEIVED DEDUCTION NOT ALLOWED FOR DIVIDENDS ON CERTAIN STOCK.

(a) General Rule.—Section 246 (relating to rules for applying deduction for dividends received) is amended by redesignating subsection (f) as subsection (g) and by inserting after subsection (e) the following new subsection:

"(f) Exclusion of Dividends on Certain Stock Having Nonstock Characteristics.—

"(1) In general.—No deduction shall be allowed under section 243 or 245 in respect of any dividend on any disqualified stock issued after October 13, 1987.

"(2) Disqualified stock.—For purposes of this subsection—

"(A) In general.—The term 'disqualified stock' means—

"(i) any stock described in section 1504(a)(4),

"(ii) any stock which under section 382(l)(6)(B)(ii) or 1504(a)(5)(A) is treated as not being stock, and

"(iii) any other stock with nonstock characteristics.

"(B) Stock with nonstock characteristics.—The following shall be treated as stock with nonstock characteristics:

"(i) Any stock the dividend rate for which is determined (in whole or in part) by reference (directly or indirectly) to interest rates.

"(ii) Any stock which is redeemable by the holder.

"(iii) Except as provided in regulations, any other stock which in substance (through mechanism, arrangement, or otherwise) has an enhanced likelihood that the principal, dividends, or both, will be received."

(b) Effective Date.—The amendment made by subsection (a) shall apply to distributions after October 13, 1987, in respect of stock issued after such date.

SEC. 10133. CERTAIN EARNINGS AND PROFITS ADJUSTMENTS NOT TO APPLY FOR CERTAIN PURPOSES.

(a) Special Rule for Determining Adjusted Basis of Stock of Members of Affiliated Group.—

(1) In general.—Section 1503 (relating to computation and payment of tax by affiliated group) is amended by adding at the end thereof the following new subsection:

"(e) Special Rule for Determining Adjustments to Basis.—

"(1) In general.—Solely for purposes of determining gain or loss on the disposition of intragroup stock, in determining the adjustments to the basis of such intragroup stock on account of the earnings and profits of any member of an affiliated group for any consolidated year—

"(A) such earnings and profits shall be determined as if section 312 were applied for such taxable year (and all preceding consolidated taxable years of the member) without regard to subsections (k) and (n) thereof, and

"(B) earnings and profits shall not include any amount excluded from gross income under section 108 to the extent the amount so excluded was not applied to reduce basis of property or other tax attributes.

"(2) Definitions.—For purposes of this subsection—

"(A) Intragroup stock.—The term 'intragroup stock' means any stock which—

"(i) is in a corporation which is a member of an affiliated group of corporations, and

"(ii) is held by another member of such group.

"(B) Consolidated year.—The term 'consolidated year' means any taxable year for which the affiliated group makes a consolidated return."

(2) Effective date.—The amendment made by paragraph (1) shall apply to any intragroup stock held on October 13, 1987. For purposes of applying such amendment to any such stock, such amendment shall be deemed to have been in effect for all periods whether before, on, or after October 13, 1987.

(b) Distributions Received by 20-Percent Corporate Shareholders.—

(1) In general.—Paragraph (1) of section 301(e) (relating to special rule for certain distributions received by 20-percent corporate shareholders) is amended by striking out "subsection (n) thereof" and inserting in lieu thereof "subsections (k) and (n) thereof".

(2) Effective date.—The amendment made by paragraph (1) shall apply to distributions after October 13, 1987. For purposes of applying such amendment to any such distribution—

(A) for purposes of determining earnings and profits, such amendment shall be deemed to be in effect for all periods whether before, on, or after October 13, 1987, but

(B) such amendment shall not affect the determination of whether any distribution on or before October 13, 1987, is a dividend and the amount of any reduction in accumulated earnings and profits on account of any such distribution.

SEC. 10134. LIMITATION ON CONSOLIDATION WHERE SUBSIDIARY NOT WHOLLY OWNED.

(a) General Rule.—Section 1503 (relating to computation and payment of tax) is amended by adding at the end thereof the following new subsection:

"(f) Limitation on Consolidation Where Subsidiary Not Wholly Owned.—

"(1) In general.—If a member of an affiliated group (other than the common parent) is not wholly owned—

"(A) only the portion of any taxable income (or net operating loss) of such member which is allocable to stock of such member owned directly by other members of such group shall be taken into account in determining the consolidated taxable income of the group, and

"(B) the remaining portion of such taxable income or loss (as the case may be) shall be treated as income or loss of a corporation which is not a member of the group.

"(2) Definitions.—For purposes of this subsection—

"(A) Wholly owned.—A corporation is wholly owned if all of the stock of such corporation is owned directly by 1 or more members of the affiliated group.

"(B) Stock to include preferred stock.—The term 'stock' includes stock described in section 1504(a)(4)."

(b) Effective Date.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1987.

SEC. 10135. BENEFITS OF GRADUATED CORPORATE RATES NOT ALLOWED TO PERSONAL SERVICE CORPORATIONS.

(a) General Rule.—Subsection (b) of section 11 (relating to corporate tax rates) is amended to read as follows:

"(b) Amount of Tax.—

"(1) In general.—The amount of the tax imposed by subsection (a) shall be the sum of—

"(A) 15 percent of so much of the taxable income as does not exceed $50,000,

"(B) 25 percent of so much of the taxable income as exceeds $50,000 but does not exceed $75,000, and

"(C) 34 percent of so much of the taxable income as exceeds $75,000.

In the case of a corporation which has taxable income in excess of $100,000 for any taxable year, the amount of tax determined under the preceding sentence for such taxable year shall be increased by the lesser of (i) 5 percent of such excess, or (ii) $11,750.

"(2) Personal service corporations not eligible for graduated rates.—Notwithstanding paragraph (1), the amount of the tax imposed by subsection (a) on the taxable income of a qualified personal service corporation (as defined in section 448(d)(2)) shall be equal to 34 percent of the taxable income."

(b) Effective Date.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1987.

SEC. 10136. AMENDMENTS TO SECTION 382.

(a) Treatment of Worthless Stock.—Paragraph (4) of section 382(g) (defining ownership change) is amended by adding at the end thereof the following new subparagraph:

"(D) Treatment of worthless stock.—If any stock held by a 5-percent shareholder became worthless during any taxable year of such shareholder and such stock is held by such shareholder as of the close of such taxable year, for purposes of determining whether an ownership change occurs after the close of such taxable year, such shareholder—

"(i) shall be treated as having acquired such stock on the 1st day of his 1st succeeding taxable year, and

"(ii) shall not be treated as having owned such stock during any prior period."

(b) Reduction in Carryforward in Title II or Similar Cases for Discharge Income.—Subparagraph (C) of section 382(l)(5) (relating to reduction of carryforwards where discharge of indebtedness) is amended by striking out "50 percent" and inserting in lieu thereof "100 percent".

(c) Treatment of Depreciation Under Built-In Loss Rules.—Subparagraph (B) of section 382(h)(2) (defining recognized built-in loss) is amended by adding at the end thereof the following new sentence:

"Such term includes any amount allowable as depreciation, amortization, or depletion for any recognition period taxable year except to the extent the new loss corporation establishes that the amount so allowable is not attributable to the excess described in clause (ii)."

(d) Effective Dates.—

(1) Subsection (a).—The amendment made by subsection (a) shall apply in the case of stock which becomes worthless in taxable years beginning after December 31, 1987.

(2) Subsections (b) and (c).—The amendments made by subsections (b) and (c) shall apply in the case of ownership changes (as defined in section 382 of the Internal Revenue Code of 1986 as amended by subsection (a)) after October 13, 1987; except that such amendments shall not apply in the case of any ownership change pursuant to a binding written contract which was in effect on October 13, 1987, and at all times thereafter before such ownership change.

SEC. 10137. LIMITATION ON USE OF PREACQUISITION LOSSES TO OFFSET BUILT-IN GAINS.

(a) General Rule.—Part V of subchapter C of chapter 1 (relating to carryovers) is amended by adding at the end thereof the following new section:

"SEC. 384. LIMITATION ON USE OF PREACQUISITION LOSSES TO OFFSET BUILT-IN GAINS.

"(a) General Rule.—

"(1) Stock acquisitions, etc.—If—

"(A) a corporation (hereinafter in this section referred to as the 'gain corporation') becomes a member of an affiliated group, and

"(B) such corporation has a net unrealized built-in gain,

the taxable income of such corporation for any recognition period taxable year (to the extent attributable to recognized built-in gains) shall not be offset by any preacquisition loss of any other member of such group.

"(2) Asset acquisitions.—If—

"(A) a corporation (hereinafter in this section referred to as the 'gain corporation') is a party to a reorganization described in subparagraph (A) or (C) of section 368(a)(1), and

"(B) such corporation has a net unrealized built-in gain,

the taxable income of the acquiring corporation for any recognition period taxable year (to the extent attributable to recognized built-in gains of the gain corporation) shall not be offset by any preacquisition loss of any corporation (other than the gain corporation) which is a party to such reorganization or is a member of any such corporation's affiliated group.

"(b) Definitions.—For purposes of this section—

"(1) Recognized built-in gain.—

"(A) In general.—The term 'recognized built-in gain' means any gain recognized during the recognition period on the disposition of any asset except to the extent the gain corporation (or, in any case described in subsection (a)(2), the acquiring corporation) establishes that—

"(i) such asset was not held by the gain corporation on the acquisition date, or

"(ii) such gain exceeds the excess (if any) of—

"(I) the fair market value of such asset on the acquisition date, over

"(II) the adjusted basis of such asset on such date.

"(B) Treatment of certain income items.—Any item of income which is properly taken into account for any recognition period taxable year but which is attributable to periods before the acquisition date shall be treated as a recognized built-in gain for the taxable year in which it is properly taken into account and shall be taken into account in determining the amount of the net unrealized built-in gain.

"(C) Limitation.—The amount of the recognized built-in gains for any recognition period taxable year shall not exceed—

"(i) the net unrealized built-in gain, reduced by

"(ii) the recognized built-in gains for prior years ending in the recognition period.

"(2) Acquisition date.—The term 'acquisition date' means the date on which the gain corporation becomes a member of the affiliated group or, in any case described in subsection (a)(2), the date of the transfer in the reorganization.

"(3) Preacquisition loss.—The term 'preacquisition loss' means—

"(A) any net operating loss carryforward to the taxable year in which the acquisition date occurs, and

"(B) any net operating loss for the taxable year in which the acquisition date occurs to the extent such loss is allocable to the period in such year on or before the acquisition date.

Except as provided in regulations, the net operating loss shall, for purposes of clause (ii) be allocated ratably to each day in the year.

"(4) Other definitions.—The terms 'net unrealized built-in gain', 'recognition period', and 'recognition period taxable year', have the same respective meanings as when used in section 382(h), except that the acquisition date shall be taken into account in lieu of the change date.

"(d) Limitation Also To Apply to Excess Credits or Net Capital Losses.—Under regulations prescribed by the Secretary, rules similar to the rules of subsection (a) shall also apply in the case of any excess credit (as defined in section 383(a)(2)) or net capital loss."

(b) Clerical Amendment.—The table of sections for part V of subchapter C of chapter 1 is amended by adding at the end thereof the following new item:

"Sec. 384. Limitation on use of preacquisition losses to offset built-in gains."

(c) Effective Date.—The amendments made by this section shall apply in cases where the acquisition date (as defined in section 384(c)(2) of the Internal Revenue Code of 1986 as added by this section) is after October 13, 1987; except that such amendments shall not apply in the case of any transaction pursuant to a binding written contract in effect on October 13, 1987, and at all times thereafter before the acquisition date.

SEC. 10138. LIMITATION ON DEDUCTION FOR INTEREST ON CORPORATE STOCK ACQUISITION INDEBTEDNESS.

(a) General Rule.—Part IX of subchapter B of chapter 1 (relating to items not deductible) is amended by inserting after section 279 the following new section:

"SEC. 279A. INTEREST ON CORPORATE STOCK ACQUISITION INDEBTEDNESS.

"(a) General Rule.—No deduction shall be allowed for any stock acquisition interest paid or incurred by a C corporation during any taxable year to the extent that such interest exceeds $5,000,000.

"(b) Exception for Stock Purchase Treated as Asset Acquisition Under Section 338.—This section shall not apply in the case of any major stock acquisition which is a qualified stock purchase (within the meaning of section 338) to which an election under section 338 applies.

"(c) Stock Acquisition Interest.—For purposes of this section—

"(1) In general.—The term 'stock acquisition interest' means—

"(A) any interest on indebtedness incurred or continued in connection with a major stock acquisition, and

"(B) any other interest expense allocable to stock acquired in such an acquisition.

Subparagraph (B) shall not apply to interest incurred after the date 5 years after the date of the last acquisition which was part of the major stock acquisition.

"(2) Allocation.—For purposes of paragraph (1)(B), the portion of the taxpayer's interest expense allocable to stock acquired in a major stock acquisition is an amount which bears the same ratio to the corporation's interest expense as—

"(A) the corporation's average adjusted bases of stock acquired in such acquisition, bears to

"(B) the average adjusted bases for all assets of the corporation.

"(3) Special rules.—

"(A) Stock redemptions, etc.—If any stock of a corporation is acquired by such corporation in a major stock acquisition, such stock shall be treated as an asset of such corporation for purposes of paragraph (2).

"(B) Coordination rules.—Rules similar to the rules of section 265(b)(6) shall apply for purposes of paragraph (2).

"(d) Major Stock Acquisition.—For purposes of this section—

"(1) In general.—The term 'major stock acquisition' means any acquisition of stock in a corporation (by purchase, redemption, or otherwise) which is pursuant to a plan of the corporation making the acquisition (or any group of persons acting in concert with such corporation) to acquire 50 percent or more (by vote or value) of stock in a corporation.

"(2) All plans treated as 1 plan.—All plans referred to in paragraph (1) by any corporation (or group of persons acting in concert with such corporation) with respect to a corporation shall be treated as 1 plan.

"(3) Aggregation of acquisitions during 3-year period.—All acquisitions during any 3-year period shall be treated as pursuant to 1 plan.

"(4) Construction ownership rules.—The rules of section 382(l)(3)(A) shall apply for purposes of this section.

"(e) Dollar Limitation in Case of Controlled Group.—For purposes of subsection (a)—

"(1) all component members of a controlled group (as defined in section 179(d)(7)) shall be treated as 1 corporation, and

"(2) the dollar limitation of subsection (a) shall be apportioned among the members of such group in such manner as the Secretary shall by regulations prescribe."

(b) Clerical Amendment.—The table of sections for chapter 1 is amended by inserting after the item relating to section 279 the following new item:

"Sec. 279A. Interest on corporate stock acquisition indebtedness."

(c) Effective Dates.—

(1) In general.—Except as provided in paragraph (2), the amendments made by this section shall apply in the case of stock acquired after October 13, 1987.

(2) Exceptions.—The amendments made by this section shall not apply in the case of stock—

(A) acquired after October 13, 1987, and before January 1, 1989, pursuant to a binding written contract in effect on October 13, 1987, and at all times thereafter before the date of the acquisition, or

(B) acquired after October 13, 1987, and before January 1, 1989, if on or before October 13, 1987, there was action by the board of directors, shareholder approval, a letter of intent, a tender offer, or a public announcement to shareholders with respect to such acquisition.

SEC. 10139. REPEAL OF NONRECOGNITION TREATMENT FOR PROPERTY DISTRIBUTED TO PARENT IN COMPLETE LIQUIDATION OF SUBSIDIARY.

(a) Repeal of Nonrecognition Treatment.—

(1) In general.—Section 337 (relating to nonrecognition for property distributed to parent in complete liquidation of subsidiary) is hereby repealed.

(2) Dividend treatment.—Subsection (a) of section 332 (relating to complete liquidations of subsidiaries) is amended to read as follows:

"(a) General Rule.—No gain or loss shall be recognized on the receipt by a corporation of property distributed in complete liquidation of another corporation; except that, notwithstanding section 331, any amount so distributed shall be treated as a dividend to the extent such amount would be so treated if it were a distribution to which section 301 applies."

(3) Basis.—Subsection (b) of section 334 is amended to read as follows:

"(b) Liquidation of Subsidiary.—

"(1) In general.—If property is received by an 80-percent distributee in a distribution in a complete liquidation to which section 332(a) applies, the basis of such property in the hands of such distributee shall be the fair market value of such property at the time of the distribution.

"(2) Special rule where loss disallowed.—If any loss is not recognized under section 336(d)(3)(B) in connection with a liquidation to which section 332(a) applies—

"(A) the amount not so recognized shall be allocated among the loss properties, and

"(B) the amount so allocated to any loss property shall increase the basis of such property determined under paragraph (1).

"(3) 80-percent distributee.—For purposes of this subsection, the term '80-percent distributee' means only the corporation which meets the 80-percent stock owner requirements specified in section 332(b)."

(4) Special rule for losses.—Paragraph (3) of section 336(d) is amended to read as follows:

"(3) Special rules in the case of liquidation to which section 332 applies.—

"(A) Distributions to minority.—In the case of any liquidation to which section 332 applies, no loss shall be recognized to the liquidating corporation on any distribution in such liquidation not made to the 80-percent distributee.

"(B) Limitation on losses for distributions to 80-percent distributees.—In the case of any liquidation to which section 332 applies, the aggregate losses recognized on distributions to the 80-percent distributee shall not exceed the aggregate gains recognized on distributions to such 80-percent distributee.

"(C) 80-percent distributee.—For purposes of this paragraph, the term '80-percent distributee' means only the corporation which meets the 80-percent stock ownership requirements specified in section 332(b)."

(5) Technical amendments.—

(A) Section 336 is amended by adding at the end thereof the following new subsection:

"(f) Regulations.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of the amendments made by subtitle D of title VI of the Tax Reform Act of 1986 and the amendment made by subpart C of part I of subtitle A of the Revenue Act of 1987, including regulations to ensure that such purposes may not be circumvented through the use of any provision of law or regulations (including the consolidated return regulations and part III of this chapter) or through the use of a regulated investment company or real estate investment trust."

(B) The table of sections for subpart B of part II of subchapter C of chapter 1 is amended by striking out the item relating to section 337.

(b) Limitation on Distributions of Stock Under Section 355.—

(1) Subparagraph (D) of section 355(b)(2) (relating to requirements as to active business) is amended by striking out "or through one or more corporations" and inserting in lieu thereof "or through 1 or more corporations, whether through the distributing corporation or otherwise".

(2) Section 355 is amended by adding at the end thereof the following new subsection:

"(c) Section Not to Apply to Intragroup Distributions.—This section shall not apply to any distribution to a corporation which is a member of the same affiliated group (as defined in section 1504 without regard to the exceptions contained in subsection (b) thereof) as the distributing corporation."

(c) Effective Dates.—

(1) Subsection (a).—The amendment made by subsection (a) shall apply in the case of liquidations after October 13, 1987.

(2) Subsection (b).—The amendments made by subsection (b) shall apply in the case of distributions after October 13, 1987.

SEC. 10140. TREATMENT OF CERTAIN PROVISIONS UNDER SECTION 304.

(a) General Rule.—Subsection (b) of section 304 (relating to redemption through use of related corporations) is amended by adding at the end thereof the following new paragraph:

"(4) Treatment of certain intragroup transactions.—

"(A) In general.—In the case of an intragroup transaction—

"(i) subsection (a) shall not apply, and

"(ii) such transaction shall be treated as if each corporation involved in such transaction distributed the stock or other property it transferred in such transaction to the corporation in control and such corporation contributed such property to the other corporation involved in such transaction.

The Secretary shall prescribe regulations providing for such adjustments to earnings and profits and the foreign tax accounts as may be necessary to carry out the purposes of this paragraph.

"(B) Intragroup transaction.—For purposes of subparagraph (A), the term 'intragroup transaction' means any transfer described in subsection (a) between corporations which are controlled by the same corporation (determined without regard to section 318(a)(3)(C))."

(b) Effective Date.—The amendment made by subsection (a) shall apply to transactions after October 13, 1987.

SEC. 10141. RECAPTURE OF LIFO AMOUNT IN THE CASE OF ELECTIONS BY S CORPORATIONS.

(a) General Rule.—Section 1363 (relating to effect of election on corporations) is amended by adding at the end thereof the following new subsection:

"(d) Recapture of LIFO Benefits.—

"(1) In general.—If—

"(A) an S corporation was a C corporation for the last taxable year before the first taxable year for which the election under section 1362(a) was effective, and

"(B) the corporation inventoried goods under the LIFO method for such last taxable year,

the LIFO recapture amount shall be included in the gross income of the corporation for such last taxable year (and appropriate adjustments to the basis of inventory shall be made to take into account the amount included in gross income under this paragraph).

"(2) LIFO recapture amount.—For purposes of this subsection, the term 'LIFO recapture amount' means the amount (if any) by which—

"(A) the inventory amount of the inventory asset under the first-in, first-out method authorized by section 471, exceeds

"(B) the inventory amount of such assets under the LIFO method.

For purposes of the preceding sentence, inventory amounts shall be determined as of the close of the last taxable year referred to in paragraph (1).

"(3) Other definitions.—For purposes of this subsection—

"(A) LIFO method.—The term 'LIFO method' means the method authorized by section 472.

"(B) Inventory assets.—The term 'inventory assets' means stock in trade of the corporation, or other property of a kind which would properly be included in the inventory of the corporation if on hand at the close of the taxable year.

"(C) Method of determining inventory amount.—The inventory amount of assets under a method authorized by section 471 shall be determined—

"(i) if the corporation uses the retail method of valuing inventories under section 472, by using such method, or

"(ii) if clause (i) does not apply, by using cost or market, whichever is lower."

(b) Effective Date.—The amendment made by subsection (a) shall apply in the case of elections made after October 13, 1987.

SEC. 10142. EXCISE TAX ON RECEIPT OF GREENMAIL.

(a) In General.—Subtitle E is amended by adding at the end thereof the following new chapter:

"CHAPTER 54—GREENMAIL

"Sec. 5881. Greenmail.

"SEC. 5881. GREENMAIL.

"(a) Imposition of Tax.—There is hereby imposed on any person who receives greenmail a tax equal to 50 percent of gain realized by such person on such receipt.

"(b) Greenmail.—For purposes of this section, the term 'greenmail' means any amount paid or incurred by a corporation in a direct or indirect redemption of its stock from any shareholder if—

"(1) such shareholder held such stock (as determined under section 1223) for less than 2 years, and

"(2) at some time during the 2-year period ending on the date of such redemption—

"(A) such shareholder,

"(B) any person acting in concert with such shareholder, or

"(C) any person who is related to such shareholder or person described in subparagraph (B),

made or threatened to make a public tender offer for stock of such corporation.

For purposes of the preceding sentence, payments made in connection with, or in transactions related to, a redemption shall be treated as paid in such redemption.

"(c) Other Definitions.—For purposes of this section—

"(1) Public tender offer.—The term 'public tender offer' means any offer to purchase or otherwise acquire stock or assets in a corporation if such offer was or would be required to be filed or registered with any Federal or State agency regulating securities.

"(2) Related person.—A person is related to another person if the relationship between such persons would result in the disallowance of losses under section 267 or 707(b).

"(d) Tax Applies Whether or Not Gain Recognized.—The tax imposed by this section shall apply whether or not the gain referred to in subsection (a) is recognized."

(b) Denial of Income Tax Deduction for Greenmail Tax.—Paragraph (6) of section 275(a) is amended by striking out "and 46" and inserting in lieu thereof "46, and 54".

(c) Clerical Amendment.—The table of chapters for subtitle E is amended by adding at the end thereof the following new item:

"Chapter 54. Greenmail."

(d) Effective Date.—The amendments made by this section shall apply to payments received after the date of the enactment of this Act in taxable years ending after such date.

SEC. 10143. SECTION 338 ELECTION DEEMED MADE IN CASE OF HOSTILE QUALIFIED STOCK PURCHASES.

(a) In General.—Section 338 (relating to certain stock purchases treated as asset acquisitions) is amended by redesignating subsection (i) as subsection (j) and by inserting after subsection (h) the following new subsection:

"(i) Election Deemed Made Where Hostile Qualified Stock Purchase.—

"(1) In general.—In the case of any hostile qualified stock purchase, the election under subsection (a) shall be treated as made with respect to the target corporation.

"(2) Hostile qualified stock purchase.—For purposes of this subsection—

"(A) In general.—The term 'hostile qualified stock purchase' means any qualified stock purchase if any significant portion of the stock included in such purchase is acquired pursuant to a hostile offer.

"(B) Hostile offer.—

"(i) In general.—For purposes of subparagraph (A), the term 'hostile offer' means any offer to acquire stock of a corporation if a majority of the independent members of the board of directors of such corporation disapprove such offer.

"(ii) Revocation of disapproval.—An offer shall not be treated as a hostile offer if—

"(I) a majority of the independent members of the board of directors of such corporation revoke such disapproval, and

"(II) no stock is acquired pursuant to such offer before such revocation.

"(iii) Independent directors.—For purposes of this subparagraph, a member of a board of directors shall be treated as independent if such member is not, and was not at any time during the 1-year period ending on the date of his approval or disapproval of the offer, an officer or employee of the target corporation.

"(3) Special rules for determining whether there is a qualified stock purchase.—For purposes this section—

"(A) the person (whether or not a corporation) who makes the offer to acquire stock of a corporation shall be treated as the purchasing corporation, and

"(B) all stock acquired by—

"(i) any person acting in concert with such offeror, and

"(ii) any person who is related (within the meaning of section 5881(c)(2)) to such offeror or person described in clause (i),

shall be treated as acquired by such offeror.

"(4) Other special rules.—In applying subsection (b)(1)(A) to a hostile qualified stock purchase, the grossed-up basis of the purchaser's recently purchased stock shall be treated as equal to the sum of any money plus the fair market value of the property (other than money) transferred in exchange for such stock."

(b) Effective Date.—The amendments made by this section shall apply to hostile qualified stock purchases (as defined in section 338(i) of the Internal Revenue Code of 1986) with respect to which the acquisition date (as defined in section 338(h)(2) of such Code) is after the date of the enactment of this Act.

SEC. 10144. DENIAL OF DEDUCTION FOR INTEREST ON INDEBTEDNESS INCURRED TO ACQUIRE STOCK OR ASSETS OF CORPORATION THE STOCK OF WHICH WAS ACQUIRED IN HOSTILE PURCHASE.

(a) In General.—Part IX of subchapter B of chapter 1 (relating to items not deductible) is amended by adding at the end thereof of the following new section:

"SEC. 280H. INTEREST ON INDEBTEDNESS INCURRED TO ACQUIRE STOCK OR ASSETS OF CORPORATION THE STOCK OF WHICH WAS ACQUIRED IN HOSTILE PURCHASE.

"(a) General Rule.—No deduction shall be allowed under this chapter for interest on indebtedness incurred or continued by a purchasing shareholder to purchase or carry the stock or assets of any corporation if—

"(1) such stock is purchased as part of a partial hostile qualified stock purchase, and

"(2) such assets are purchased on or after the partial acquisition date and were held by such corporation on such date.

"(b) Partial Hostile Qualified Stock Purchase.—For purposes of this section, the term 'partial hostile qualified stock purchase' means a hostile qualified stock purchase (as defined in section 338(i)) determined by substituting '20 percent' for '80 percent' each place it appears in section 1504(a)(2) for purposes of applying section 338(d)(3).

"(c) Purchasing Shareholder.—For purposes of this section, the term 'purchasing shareholder' means—

"(1) the shareholder who made the hostile offer referred to in section 338(i),

"(2) any person acting in concert with such shareholder, and

"(3) any person who is related (within the meaning of section 5881(c)(2)) to such shareholder or person described in paragraph (2).

"(d) Partial Acquisition Date.—For purposes of subsection (a), the term 'partial acquisition date' means, with respect to any corporation, the 1st day on which there is a partial hostile qualified stock purchase with respect to such corporation.

"(e) Successor Corporation Included.—The corporation referred to in subsection (a) shall be treated as including its successor described in section 338(a)(2)."

(b) Clerical Amendment.—The table of sections for such part IX is amended by adding at the end thereof the following new item:

"Sec. 280H. Interest on indebtedness incurred to acquire stock or assets of corporation the stock of which was acquired in hostile purchase."

(c) Effective Date.—The amdendments made by this section shall apply to indebtedness incurred after the date of the enactment of this Act in taxable years ending after such date.

Subpart D—Minimum Tax Provisions

SEC. 10145. INCREASE IN AMOUNT OF BOOK AND ADJUSTED CURRENT EARNINGS ADJUSTMENTS.

(a) General Rule.—

(1) Book preference.—Paragraph (1) of section 56(f) (relating to adjustments for book income of corporations) is amended by striking out "50 percent" and inserting in lieu thereof "100 percent".

(2) Adjusted current earnings preference.—Paragraphs (1) and (2) of section 56(g) (relating to adjustments based on adjusted current earnings) are each amended by striking out "75 percent" and inserting in lieu thereof "100 percent".

(b) Technical Amendments.—

(1) Subclause (I) of section 56(f)(2)(F)(ii) is amended by striking out "50 percent of any withholding tax" and inserting in lieu thereof "Any withholding tax".

(2) Clause (iii) of section 56(g)(4)(C) is amended by striking out ", except that '75 percent' shall be substituted for '50 percent' in clause (ii)(I) thereof".

(c) Effective Date.—The amendments made by this section shall apply to taxable years beginning after December 31, 1987.

Subpart E—Foreign Tax Provisions

SEC. 10146. DENIAL OF FOREIGN TAX CREDIT FOR TAXES PAID OR ACCRUED TO SOUTH AFRICA.

(a) General Rule.—Paragraph (2) of section 901(j) (relating to denial of foreign tax credit, etc., with respect to certain foreign countries) is amended by adding at the end thereof the following new subparagraph:

"(C) Special rule for south africa.—

"(i) In general.—In addition to any period during which this subsection would otherwise apply to South Africa, this subsection shall apply to South Africa during the period—

"(I) beginning on January 1, 1988, and

"(II) ending on the date the Secretary of State certifies to the Secretary of the Treasury that South Africa meets the requirements of section 311(a) of the Comprehensive Anti-Apartheid Act of 1986 (as in effect on the date of the enactment of this subparagraph).

"(ii) South africa defined.—For purposes of clause (i), the term 'South Africa' has the meaning given to such term by paragraph (6) of section 3 of the Comprehensive Anti-Apartheid Act of 1986 (as so in effect)."

(b) Technical Amendments.—Paragraph (1) of section 901(j) is amended—

(1) by striking out "to which" in subparagraph (A) and inserting in lieu thereof "during which", and

(2) by striking out "any country so identified" and inserting in lieu thereof "such country".

(c) Effective Date.—The amendments made by this section shall apply to taxable years beginning after December 31, 1987.

SEC. 10147. TAXATION OF INCOME OF CONTROLLED FOREIGN CORPORATIONS ATTRIBUTABLE TO IMPORTED PROPERTY.

(a) General Rule.—Subsection (a) of section 954 (defining foreign base company income) is amended by striking out "and" at the end of paragraph (4), by striking out the period at the end of paragraph (5) and inserting in lieu thereof ", and", and by adding at the end thereof the following new paragraph:

"(6) imported property income for the taxable year (determined under subsection (h) and reduced as provided in subsection (b)(5))."

(b) Definition of Imported Property Income.—Section 954 is amended by adding at the end thereof the following new subsection:

"(h) Imported Property Income.—

"(1) In general.—For purposes of subsection (a)(6), the term 'imported property income' means income (whether in the form of profits, commissions, fees, or otherwise) derived in connection with—

"(A) manufacturing, producing, growing, or extracting imported property,

"(B) the sale, exchange, or other disposition of imported property, or

"(C) the lease, rental, or licensing of imported property.

Such term shall not include any foreign oil and gas extraction income (within the meaning of section 907(c)) or any foreign oil related income (within the meaning of section 907(c)).

"(2) Imported property.—For purposes of this subsection—

"(A) In general.—Except as otherwise provided in this paragraph, the term 'imported property' means property which is imported into the United States by the controlled foreign corporation or a related person.

"(B) Imported property includes certain property imported by unrelated persons.—The term 'imported property' includes any property imported into the United States by an unrelated person if, when such property was sold to the unrelated person by the controlled foreign corporation (or a related person), it was reasonable to expect that—

"(i) such property would be imported into the United States, or

"(ii) such property would be used as a component in other property which would be imported into the United States.

"(C) Exception for property subsequently exported.—The term 'imported property' does not include any property which is imported into the United States and which—

"(i) before substantial use in the United States, is sold, leased, or rented by the controlled foreign corporation or a related person for direct use, consumption, or disposition outside the United States, or

"(ii) is used by the controlled foreign corporation or a related person as a component in other property which is so sold, leased, or rented.

"(3) Definitions and special rules.—

"(A) Import.—For purposes of this subsection, the term 'import' means entering, or withdrawal from warehouse, for consumption or use. Such term includes any grant of the right to use an intangible (as defined in section 936(b)(3)(B)) in the United States.

"(B) Unrelated person.—For purposes of this subsection, the term 'unrelated person' means any person who is not a related person with respect to the controlled foreign corporation.

"(C) Coordination with foreign base company sales income.—For purposes of this section, the term 'foreign base company sales income' shall not include any imported property income."

(c) Separate Application of Limitations on Foreign Tax Credit for Imported Property Income.—

(1) In general.—Paragraph (1) of section 904(d) (relating to separate application of section with respect to certain categories of income) is amended by striking out "and" at the end of subparagraph (H), by redesignating subparagraph (I) as subparagraph (J), and by inserting after subparagraph (H) the following new subparagraph:

"(I) imported property income, and".

(2) Imported property income defined.—Paragraph (2) of section 904(d) is amended by redesignating subparagraphs (H) and (I) as subparagraphs (I) and (J), respectively, and by inserting after subparagraph (G) the following new subparagraph:

"(H) Imported property income.—The term 'imported property income' means any income received or accrued by any person which is of a kind which would be imported property income (as defined in section 954(h))."

(3) Look-thru rules to apply.—Subparagraph (F) of section 904(d)(3) is amended by striking out "or (E)" and inserting in lieu thereof "(E), or (H)".

(d) Technical Amendments.—

(1) Clause (iii) of section 952(c)(1)(B) (relating to certain prior year deficits may be taken into account) is amended by inserting the following subclause after subclause (II) (and by redesignating the following subclauses accordingly):

"(III) imported property income,".

(2) Paragraph (5) of section 954(b) (relating to deductions to be taken into account) is amended by striking out "and the foreign base company oil related income" and inserting in lieu thereof "the foreign base company oil related income, and the imported property income".

(e) Effective Date.—

(1) In general.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years of foreign corporations beginning after December 31, 1987, and to taxable years of United States shareholders within which or with which such taxable years of such foreign corporations end.

(2) Subsection (c).—The amendments made by subsection (c) shall apply to taxable years beginning after December 31, 1987.

Subpart F—Insurance Provisions

SEC. 10148. INTEREST RATE USED IN COMPUTING TAX RESERVES FOR LIFE INSURANCE COMPANIES MAY NOT BE LESS THAN APPLICABLE FEDERAL RATE.

(a) In General.—Subparagraph (B) of section 807(d)(2) (relating to method of computing reserves for purposes of determining income) is amended to read as follows:

"(B) the greater of—

"(i) the applicable Federal interest rate, or

"(ii) the prevailing State assumed interest rate, and".

(b) Applicable Federal Interest Rate.—

(1) In general.—So much of paragraph (4) of section 807(d) (defining State assumed interest rate) as precedes subparagraph (D) is amended to read as follows:

"(4) Applicable federal interest rate; prevailing state assumed interest rate.—For purposes of this subsection—

"(A) Applicable federal interest rate.—The term 'applicable Federal interest rate' means the annual rate determined by the Secretary under section 846(c)(2) for the calendar year in which the contract was issued.

"(B) Prevailing state assumed interest rate.—

"(i) In general.—The term 'prevailing State assumed interest rate' means, with respect to any contract, the highest assumed interest rate permitted to be used in computing life insurance reserves for insurance contracts or annuity contracts (as the case may be) under the insurance laws of at least 26 States. For purposes of the preceding sentence, the effect of nonforfeiture laws of a State on interest rates for reserves shall not be taken into account.

"(ii) When rate determined.—The prevailing State assumed interest rate with respect to any contract shall be determined as of the beginning of the calendar year in which the contract was issued."

(2) Technical amendments.—

(A) Subparagraph (D) of section 807(d)(4) is redesignated as subparagraph (C).

(B) The third to the last sentence of section 807(c) is amended by striking out "the higher of" and all that follows and inserting in lieu thereof "whichever of the following rates is the highest as of the time such obligation first did not involve life, accident, or health contingencies: the applicable Federal interest rate under subsection (d)(2)(B)(i), the prevailing State assumed interest rate under subsection (d)(2)(B)(ii), or the rate of interest assumed by the company in determining the guaranteed benefit."

(C) Paragraph (2) of section 812(b) is amended—

(i) by striking out "at the prevailing State assumed rate or, where such rate is not used, another appropriate rate" and inserting in lieu thereof "at the greater of the prevailing State assumed rate or the applicable Federal interest rate", and

(ii) by adding at the end thereof the following new sentence:

"In any case where the prevailing State assumed rate is not used, another appropriate rate shall be treated as the prevailing State assumed rate for purposes of subparagraph (A)."

(c) Effective Date.—The amendments made by this section shall apply to contracts issued in taxable years beginning after December 31, 1987.

SEC. 10149. TREATMENT OF FOREIGN INSURANCE COMPANIES.

(a) In General.—Section 842 (relating to foreign corporations carrying on insurance business) is amended to read as follows:

"SEC. 842. FOREIGN COMPANIES CARRYING ON INSURANCE BUSINESS.

"(a) Taxation Under This Subchapter.—If a foreign company carrying on an insurance business within the United States would qualify under part I or II of this subchapter for the taxable year if (without regard to income not effectively connected with the conduct of any trade or business within the United States) it were a domestic corporation, such company shall be taxable under such part on its income effectively connected with its conduct of any trade or business within the United States. With respect to the remainder of its income which is from sources within the United States, such a foreign company shall be taxable as provided in section 881.

"(b) Minimum Effectively Connected Net Investment Income.—

"(1) In general.—In the case of a foreign company taxable under part I or II of this subchapter for the taxable year, its net investment income for such year which is effectively connected with the conduct of an insurance business within the United States shall be not less than the product of—

"(A) the required U.S. assets of such company, and

"(B) the domestic investment yield applicable to such company for such year.

"(2) Required U.S. assets.—

"(A) In general.—For purposes of paragraph (1), the required U.S. assets of any foreign company for any taxable year is an amount equal to the product of—

"(i) such foreign company's total insurance liabilities on United States business, and

"(ii) the domestic asset/liability percentage applicable to such foreign company for such year.

"(B) Total insurance liabilities.—For purposes of subparagraph (A)—

"(i) Companies taxable under part I.—In the case of a company taxable under part I, the term 'total insurance liabilities' means the sum of the total reserves (as defined in section 816(c)) plus (to the extent not included in total reserves) the items referred to in paragraphs (3), (4), (5), and (6) of section 807(c).

"(ii) Companies taxable under part II.—In the case of a company taxable under part II, the term 'total insurance liabilities' means the sum of unearned premiums and unpaid losses.

"(C) Domestic asset/liability percentage.—The domestic asset/liability percentage applicable for purposes of subparagraph (A)(ii) to any foreign company for any taxable year is a percentage determined by the Secretary on the basis of a ratio—

"(i) the numerator of which is the assets of domestic insurance companies taxable under the same part of this subchapter as such foreign company, and

"(ii) the denominator of which is the total insurance liabilities of the same companies.

"(3) Domestic investment yield.—The domestic investment yield applicable for purposes of paragraph (1)(B) to any foreign company for any taxable year is the percentage determined by the Secretary on the basis of a ratio—

"(A) the numerator of which is the net investment income of domestic insurance companies taxable under the same part of this subchapter as such foreign company, and

"(B) the denominator of which is the mean of the assets of the same companies held for the production of such income.

"(4) Election to use worldwide yield.—

"(A) In general.—If the foreign company makes an election under this paragraph, such company's worldwide current investment yield shall be taken into account in lieu of the domestic investment yield for purposes of paragraph (1)(B).

"(B) Worldwide current investment yield.—For purposes of subparagraph (A), the term 'worldwide current investment yield' means the percentage obtained by dividing—

"(i) the net investment income of the company from all sources, by

"(ii) the mean of all assets of the company (whether or not held in the United States) held for the production of investment income.

"(C) Election.—An election under this paragraph shall apply to the taxable year for which made and all subsequent taxable years unless revoked with the consent of the Secretary.

"(c) Special Rules for Purposes of Subsection (b).—

"(1) Coordination with small life insurance company deduction.—In the case of a foreign company taxable under part I, subsection (b) shall be applied before computing the small life insurance company deduction.

"(2) Reduction in section 881 taxes.—

"(A) In general.—The tax under section 881 (determined without regard to this paragraph) shall be reduced (but not below zero) by an amount which bears the same ratio to such tax as—

"(i) the amount of the increase in effectively connected income of the company resulting from subsection (b), bears to

"(ii) the amount which would be subject to tax under section 881 if the amount taxable under such section were determined without regard to sections 103 and 894.

"(B) Limitation on reduction.—The reduction under subparagraph (A) shall not exceed the increase in taxes under part I or II (as the case may be) by reason of the increase in effectively connected income of the company resulting from subsection (b).

"(3) Adjustment to limitation on deduction for policyholder dividends in the case of foreign mutual life insurance companies.—For purposes of section 809, the equity base of any foreign mutual life insurance company as of the close of any taxable year shall be increased by the excess of—

"(A) the required U.S. assets of the company (determined under subsection (b)(2)), over

"(B) the mean of the assets held in the United States during the taxable year.

"(4) Data used in determining domestic asset/liability percentages and domestic investment yeilds.—Each domestic asset/liability percentage, and each domestic investment yield, for any taxable year shall be based on such representative data with respect to domestic insurance companies for the second preceding taxable year as the Secretary considers appropriate."

(b) Part II Companies Subject to Same Effectively Connected Income Rule as Part I Companies.—Subparagraph (C) of section 864(c)(4) (relating to income from sources without the United States) is amended by inserting "or part II" after "part I".

(c) Repeal of Section 813.—

(1) Section 813 (relating to foreign life insurance companies) is hereby repealed.

(2) Subsection (h) of section 816 is amended by striking out "section 813(a)(4)(B)" and inserting in lieu thereof "section 842(c)(1)(A)".

(3) Paragraph (2) of section 4371 is amended by striking out "section 813" and inserting in lieu thereof "section 842(b)".

(4) The table of sections for part I of subchapter L of chapter 1 is amended by striking out the item relating to section 813.

(d) Effective Date.—The amendments made by this section shall apply to taxable years beginning after December 31, 1987.

SEC. 10150. TREATMENT OF MUTUAL LIFE INSURANCE COMPANY POLICY HOLDER DIVIDENDS FOR PURPOSES OF BOOK PREFERENCE.

(a) General Rule.—Paragraph (2) of section 56(f) (defining adjusted net book income) is amended by redesignating subparagraph (H) as subparagraph (I) and by inserting after subparagraph (G) the following new subparagraph:

"(H) Treatment of mutual life insurance company policyholder dividends.—In the case of a mutual life insurance company, in determining adjusted net book income, any reduction for policyholder dividends paid or accrued during the taxable year shall not exceed the amount allowable in computing life insurance company taxable income under section 801(b) for the taxable year. To the extent provided by the Secretary, such additional adjustments shall be made as may be necessary to make the calculation of adjusted net book income in the case of a mutual life insurance company consistent with the calculation of adjusted net book income generally."

(b) Effective Date.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1987.

SEC. 10152. TREATMENT OF CERTAIN INSURANCE SYNDICATES.

In the case of any organization which is formed under laws of the United Kingdom to write insurance or reinsurance and with respect to which there was a closing agreement signed by the Internal Revenue Service on April 1, 1980 (and in the case of any successor organization)—

(1) such closing agreement shall cease to apply with respect to taxable years beginning after December 31, 1987, and

(2) for taxable years beginning after December 31, 1987, such organization (or successor organization) shall be treated as an insurance company for purposes of the Internal Revenue Code of 1986.

The Secretary of the Treasury or his delegate shall provide for such transitional adjustments as may be appropriate to prevent items of income or deduction from being duplicated or omitted for United States tax purposes.

Subpart G—Treatment of Net Investment Income of Trade Associations

SEC. 10153. TREATMENT OF NET INVESTMENT INCOME OF TRADE ASSOCIATIONS.

(a) General Rule.—Subsection (a) of section 512 is amended by adding at the end thereof the following new paragraph:

"(6) Special rules for organizations described in paragraph (6) of section 501(c).—

"(A) In general.—Except as otherwise provided in this paragraph, in the case of an organization described in paragraph (6) of section 501(c), any item of income described in paragraph (1), (2), or (3), of subsection (b) (and gain or loss described in paragraph (5) of subsection (b)) shall be treated as derived from an unrelated trade or business, and there shall be allowed as a deduction all deductions directly connected with any such item.

"(B) Exception for amounts set aside for charitable purposes.—Subparagraph (A) shall not apply with respect to any item of income or gain which is set aside for a purpose specified in section 170(c)(4). If, during the taxable year, an amount which is attributable to income or gain so set aside is used for a purpose other than one specified in section 170(c)(4), such amount shall be included under subparagraph (A) in unrelated business taxable income for such taxable year.

"(C) Nonrecognition for certain gain.—Rules similar to the rules of paragraph (3)(D) shall apply to purposes of this paragraph."

(b) Effective Date.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1987.

Subpart H—Full-Funding Limitation For Deductions to Qualified Plans

SEC. 10154. FULL-FUNDING LIMITATION FOR DEDUCTIONS TO QUALIFIED PLANS.

(a) General Rule.—Paragraph (7) of section 412(c) (defining full-funding limitation) is amended to read as follows:

"(7) Full-funding limitation.—

"(A) In general.—For purposes of paragraph (6), the term 'full-funding limitation' means the excess (if any) of—

"(i) the lesser of (I) 150 percent of termination liability, or (II) the accrued liability (including normal cost) under the plan (determined under the entry age normal funding method if such accrued liability cannot be directly calculated under the funding method used for the plan), over

"(ii) the lesser of—

"(I) the fair market value of the plan's assets, or

"(II) the value of such assets determined under paragraph (2).

The Secretary may by regulations provide for adjustments to the percentage contained in clause (i) to take into account the respective ages or lengths of service of the participants.

"(B) Termination liability.—For purposes of subparagraph (A), the term 'termination liability' means the present value of all liabilities to employees and their beneficiaries under the plan.

"(C) Treatment of event-contingent benefits.—For purposes of subparagraph (B), any benefit contingent on—

"(i) a facility shutdown,

"(ii) a contraction in workforce, or

"(iii) any event which is not reasonably and reliably predictable (as determined under regulations),

shall not be taken into account until such shutdown, contraction, or event occurs.

"(D) Special rule for paragraph (6)(B).—For purposes of paragraph (6)(B), subparagraph (A)(i) shall be applied without regard to subclause (I) thereof."

(b) Amendment to ERISA.—Paragraph (7) of section 302(c) of the Employee Retirement Income Security Act of 1974 is amended to read as follows:

"(7) Full-funding limitation.—

"(A) In general.—For purposes of paragraph (6), the term 'full-funding limitation' means the excess (if any) of—

"(i) the lesser of (I) 150 percent of termination liability, or (II) the accrued liability (including normal cost) under the plan (determined under the entry age normal funding method if such accrued liability cannot be directly calculated under the funding method used for the plan), over

"(ii) the lesser of—

"(I) the fair market value of the plan's assets, or

"(II) the value of such assets determined under paragraph (2).

The Secretary of the Treasury may by regulations provide for adjustments to the percentage contained in clause (i) to take into account the respective ages or lengths of service of the participants.

"(B) Termination liability.—For purposes of subparagraph (A), the term 'termination liability' means the present value of all liabilities to employees and their beneficiaries under the plan.

"(C) Treatment of event-contingent benefits.—For purposes of subparagraph (B), any benefit contingent on—

"(i) a facility shutdown,

"(ii) a contraction in workforce, or

"(iii) any event which is not reasonably and reliably predictable (as determined under regulations),

shall not be taken into account until such shutdown, contraction, or event occurs.

"(D) Special rule for paragraph (6)(B).—For purposes of paragraph (6)(B), subparagraph (A)(i) shall be applied without regard to subclause (I) thereof."

(c) Revision of Valuation Regulations.—Effective with respect to plan years beginning after December 31, 1987, the provisions of—

(1) the regulations prescribed under section 412(c)(2) of the Internal Revenue Code of 1986, and

(2) the regulations prescribed under section 302(c)(2) of the Employee Retirement Income Security Act of 1974,

which permit asset valuations to be based on a range of other than market value shall have no force and effect. The Secretary of the Treasury or his delegate shall amend such regulations to carry out the purposes of the preceding sentence.

(d) Effective Date.—The amendments made by this section shall apply to years beginning after December 31, 1987.

PART III—EXCISE TAXES; USER FEES

Subpart A—Excise Taxes

SEC. 10161. EXTENSION OF TELEPHONE EXCISE TAX.

Paragraph (2) of section 4251(b) (relating to applicable percentage) is amended to read as follows:

"(2) Applicable percentage.—The term 'applicable percentage' means 3 percent; except that, with respect to amounts paid pursuant to bills first rendered after 1990, the applicable percentage shall be zero."

SEC. 10162. REPEAL OF HIGHWAY TAX EXEMPTIONS FOR BUSES.

(a) Fuel.—

(1)(A) Section 6421 (relating to gasoline used for certain nonhighway purposes, used by local transit systems, or sold for certain exempt purposes) is amended by striking out subsection (b) and by redesignating subsections (c) through (k) as subsections (b) through (j), respectively.

(B) Paragraph (2) of section 34(a) is amended to read as follows:

"(2) under section 6421 with respect to gasoline used during the taxable year otherwise than as a fuel in a highway vehicle (determined without regard to section 6421(i)), and".

(C) Subsection (b) of section 34 is amended by striking out "section 6421(j)" and inserting in lieu thereof "section 6421(i)".

(D) Sections 4041(b)(1)(C) and 6427(l)(3) are each amended by striking out "section 6421(e)(2)" and inserting in lieu thereof "section 6421(d)(2)".

(E) Subsection (a) of section 6421 is amended by striking out "subsection (j)" and inserting in lieu thereof "subsection (i)" and by striking out "subsection (f)" and inserting in lieu thereof "subsection (e)".

(F) Paragraph (1) of section 6421(c) (as redesignated by subparagraph (A)) is amended by striking out the comma after "subsection (a)" and inserting in lieu thereof "and" and by striking out ", and not more than one claim may be filed under subsection (c)".

(G) Paragraph (2) of section 6421(i) (as redesignated by subparagraph (A)) is amended by striking out "subsection (d)(2)" and inserting in lieu thereof "subsection (c)(2)".

(H) Section 6511(i)(6) is amended by striking out "section 6421(d)" and inserting in lieu thereof "section 6421(c)".

(I) Sections 7210, 7603, 7604(b), 7604(c)(2), 7605(a), 7609(c)(1), and 7610(c) are each amended by striking out "6421(g)(2)" and inserting in lieu thereof "6421(f)(2)".

(J) The section heading for section 6421 is amended by striking out ", USED BY LOCAL TRANSIT SYSTEMS,".

(K) The table of sections for subchapter B of chapter 65 is amended by striking out ", used by local transit systems," in the item relating to section 6421.

(2)(A) Section 6427 (relating to fuels not used for taxable purposes) is amended by striking out subsection (b) and by redesignating subsections (c) through (p) as subsections (b) through (o), respectively.

(B) Subsection (a), and subsections (b), (c), (d)(1), (e)(1), (f)(1), and (g) (as redesignated by subparagraph (A)), are each amended by striking out "subsection (k)" and inserting in lieu thereof "subsection (j)".

(C) Paragraph (1) of section 6427(h) (as redesignated by subparagraph (A)) is amended by striking out "subsection (a), (b), (d), (e), (g), or (h)" and inserting in lieu thereof "subsection (a), (c), (d), (f), or (g)".

(D) Subparagraph (A) of section 6427(h)(2) (as redesignated by subparagraph (A)) is amended—

(i) by striking out "subsections (a), (b), (d), (e), (g), and (h)" and inserting in lieu thereof "subsections (a), (c), (d), (f), and (g)", and

(ii) by striking out "subsection (e)" and inserting in lieu thereof "subsection (d)".

(E) Paragraph (3) of section 6427(h) (as redesignated by subparagraph (A)) is amended—

(i) by striking out "subsection (f)" each place it appears and inserting in lieu thereof "subsection (e)", and

(ii) by striking out "subsection (f)(1)" and inserting in lieu thereof "subsection (e)(1)".

(F) Paragraph (2) of section 6427(j) (as redesignated by subparagraph (A)) is amended by striking out "subsection (i)(2) or (i)(3)" and inserting in lieu thereof "paragraph (2) or (3) of subsection (h)".

(G) Subsection (m) of section 6427 (as redesignated by subparagraph (A)) is amended—

(i) by striking out "subsections (a), (b), (c), (d), (g), and (h)" in the text and inserting in lieu thereof "subsections (a), (b), (c), (f), and (g)", and

(ii) by striking out "Subsections (a), (b), (c), (d), (g), and (h)" in the heading and inserting in lieu thereof "Subsections (a), (b), (c), (f), and (g)".

(H) Subsection (n) of section 6427 (as redesignated by subparagraph (A)) is amended by striking out "subsections (a), (b), and (c)" and inserting in lieu thereof "subsections (a) and (b)".

(I) Paragraph (3) of section 34(a) is amended by striking out "section 6427(k)" and inserting in lieu thereof "section 6427(j)".

(J) Sections 7210, 7603, 7604(b), 7604(c)(2), 7605(a), 7609(c)(1), and 7610(c) are each amended by striking out "section 6427(j)(2)" and inserting in lieu thereof "section 6427(i)(2)".

(3)(A) Subsection (g) of section 4041 is amended by adding at the end thereof the following new sentence: "Paragraphs (2) and (4) shall not apply to fuel sold for use or used in any automobile bus."

(B) Paragraph (2) of section 6416(b) is amended by adding at the end thereof the following new sentence: "Subparagraphs (C) and (D) shall not apply to any fuel sold for use in any automobile bus."

(C) Subsection (b) of section 6421 (as redesignated by paragraph (1)) is amended by adding at the end thereof the following new sentence: "The preceding sentence shall not apply to fuel sold for use in any automobile bus."

(b) Tires.—

(1) Subsection (e) of section 4221 (relating to special rules) is amended by striking out paragraph (3).

(2) Subsection (d) of section 4221 (relating to definitions) is amended by striking out paragraph (7).

(3) Paragraph (2) of section 6416(b) is amended by striking out subparagraph (E), by inserting "or" at the end of subparagraph (D), and by redesignating subparagraph (F) as subparagraph (E).

(4) Subparagraph (B) of section 6416(b)(4) (relating to tires) is amended to read as follows:

"(B) such tire is sold by any person on or in connection with, or with the sale of, any other article, such tax shall be deemed to be an overpayment by such person if such other article—

"(i) is not an automobile bus chassis or an automobile bus body, and "(ii) is by such person exported, sold to a State or local government for the exclusive use of a State or local government, sold to a nonprofit educational organization for its exclusive use, or used or sold for use as supplies for vessels or aircraft."

(5) Subsection (e) of section 4071 is amended by striking out the last sentence.

(c) Effective Date.—The amendments made by this section shall take effect on January 1, 1988.

SEC. 10163. SPECIAL FUELS TAXES IMPOSED ON SALE TO RETAILERS.

(a) In General.—Subsection (n) of section 4041 (relating to tax on diesel fuel for highway vehicle use may be imposed on sale to retailer) is amended to read as follows:

"(n) Special Fuels Taxes Imposed on Sale to Retailer.—Under regulations prescribed by the Secretary—

"(1) In general.—The taxes imposed by subsections (a) and (c)(1)—

"(A) shall apply to the sale of taxable fuel to any taxable fuel retailer (and such sale shall be treated as described in paragraph (1)(A) or (2)(A) of subsection (a) or subsection (c)(1)(A), as the case may be), and

"(B) shall not apply to the sale of the taxable fuel by such retailer or the taxable use of such fuel as described in paragraph (1)(B) or (2)(B) of subsection (a) or subsection (c)(1)(B), as the case may be, if tax was imposed on such fuel under subparagraph (A) of this paragraph.

"(2) Taxable fuel.—For purposes of this subsection—

"(A) In general.—The term 'taxable fuel' means—

"(i) diesel fuel,

"(ii) taxable special fuels, and

"(iii) nongasoline aviation fuels.

"(C) Taxable special fuels.—

"(i) In general.—The term 'taxable special fuel' means any liquid on which tax would be imposed by subsection (a)(2) if sold to a person and for use described in subsection (a)(2)(A).

"(ii) Exception.—A liquid shall not be treated as a taxable special fuel for purposes of this subsection if the retailer certifies in writing to the seller of such liquid that such liquid will not be sold for use as a fuel in a motor vehicle or motorboat.

"(D) Nongasoline aviation fuels.—

"(i) In general.—The term 'nongasoline aviation fuels' means any liquid on which tax would be imposed by subsection (c)(1) if sold to a person and for use described in subsection (c)(1)(A).

"(ii) Exception.—A liquid shall not be treated as a nongasoline aviation fuel for purposes of this subsection if the retailer certifies in writing to the seller of such liquid that such liquid will not be sold for use as a fuel in an aircraft in noncommercial aviation (as defined in subsection (c)(4)).

"(3) Taxable fuel retailer.—For purposes of this subsection, the term 'taxable fuel retailer' means any person who sells—

"(A) diesel fuel for use as a fuel in a diesel-powered highway vehicle,

"(B) any taxable special fuel for use as a fuel in a motor vehicle or motorboat, or

"(C) any nongasoline aviation fuel for use as a fuel in an aircraft in noncommercial aviation.

A person shall not be treated as a taxable fuel retailer with respect to any fuel if such person sells such fuel primarily for resale.

"(4) Exemptions not to apply.—

"(A) In general.—No exemption from the tax imposed by subsection (a) shall apply to a sale to which paragraph (1) of this subsection applies.

"(B) Cross reference.—

"For provisions allowing a credit or refund for certain sales and uses of fuel, see sections 6416 and 6427."

(b) Technical Amendment.—Section 6652 is amended by striking out subsection (k) (relating to failure to give written notice to certain sellers of diesel fuel) and by redesignating subsections (l) and (m) as subsections (k) and (l), respectively.

(c) Effective Date.—The amendments made by this section shall apply to sales after December 31, 1987.

(d) Floor Stocks Tax.—

(1) Imposition of tax.—On any liquid subject to tax under subsection (a) or (c)(1) of section 4041 of the Internal Revenue Code of 1986, which on January 1, 1988, is held by a dealer for sale, there is hereby imposed a floor stocks tax at the rate of tax which would be imposed if such liquid were sold on such date for use as described in such subsection (a) or (c)(1), as the case may be.

(2) Overpayment of floor stocks taxes, etc.—Section 6416 of such Code shall apply in respect of the floor stocks taxes imposed by this subsection so as to entitle, subject to all provisions of such section, any person paying such floor stocks taxes to a credit or refund thereof for any reason specified in such section. All other provisions of law, including penalties, applicable with respect to the taxes imposed by subsection (a) or (c)(1) of section 4041 of such Code shall apply to the floor stocks tax imposed by this subsection.

(3) Due date of tax.—The taxes imposed by this subsection shall be paid before February 16, 1988.

(4) Definitions.—For purposes of this subsection—

(A) Dealer.—The term "dealer" includes a wholesaler, jobber, distributor, or retailer.

(B) Held by a dealer.—An article shall be considered as "held by a dealer" if title thereto has passed to such dealer (whether or not delivery to the dealer has been made) and if for purposes of consumption title to such article or possession thereof has not at any time been transferred to any person other than a dealer.

Subpart B—User Fees

SEC. 10164. FEES FOR REQUESTS FOR RULING, DETERMINATION, AND SIMILAR LETTERS.

(a) General Rule.—The Secretary of the Treasury or his delegate (hereinafter in this section referred to as the "Secretary") shall establish a program requiring the payment of user fees for requests to the Internal Revenue Service for ruling letters, opinion letters, and determination letters and for similar requests.

(b) Program Criteria.—

(1) In general.—The fees charged under the program required by subsection (a)—

(A) shall vary according to categories (or subcategories) established by the Secretary,

(B) shall be determined after taking into account the average time for (and difficulty of) complying with requests in each category (and subcategory), and

(C) shall be payable in advance.

(2) Exemptions, etc.—The Secretary shall provide for such exemptions (and reduced fees) under such program as he determines to be appropriate.

(3) Average fee requirement.—The average fee charged under the program required by subsection (a) shall not be less than the amount determined under the following table:

Category	Average Fee
Employee plan ruling	$400
Exempt organization ruling	$320
Employee plan determination	$250
Exempt organization determination	$200
Chief counsel ruling	$200

(c) Application of Section.—Subsection (a) shall apply with respect to requests made on or after the 1st day of the second calendar quarter beginning after the date of the enactment of this Act and before September 30, 1990.

SEC. 10165. OCCUPATIONAL TAXES RELATING TO ALCOHOL, TOBACCO, AND FIREARMS.

(a) Occupational Taxes on Distilled Spirits Plants, Bonded Wine Cellars, Breweries, Etc.—

(1) Distilled spirits plants, bonded wine cellars, etc.—

(A) In general.—Part II of subchapter A of chapter 51 (relating to distilled spirits, wines, and beer) is amended by inserting before subpart B the following new subpart:

"Subpart A—Proprietors of Distilled Spirits Plants, Bonded Wine Cellars, Etc.

"Sec. 5081. Imposition and rate of tax.

"SEC. 5081. IMPOSITION AND RATE OF TAX.

"(a) General Rule.—Every proprietor of—

"(1) a distilled spirits plant,

"(2) a bonded wine cellar,

"(3) a bonded wine warehouse, or

"(4) a taxpaid wine bottling house,

shall pay a tax of $1,000 per year in respect of each such premises.

"(b) Reduced Rates for Small Proprietors.—

"(1) In general.—Subsection (a) shall be applied by substituting '$500' for '$1,000' with respect to any taxpayer the gross receipts of which (for the most recent taxable year ending before the 1st day of the taxable period to which the tax imposed by subsection (a) relates) are less than $500,000.

"(2) Controlled group rules.—All persons treated as 1 taxpayer under section 5061(e)(3) shall be treated as 1 taxpayer for purposes of paragraph (1).

"(3) Certain rules to apply.—For purposes of paragraph (1), rules similar to the rules of subparagraphs (B) and (C) of section 448(c)(3) shall apply."

(B) Technical amendments.—

(i) Subsection (a) of section 5691 is amended by striking out "the business of a brewer, wholesale dealer in liquors, retail dealer in liquors, wholesale dealer in beer, retail dealer in beer, or limited retail dealer," and inserting in lieu thereof "a business subject to a special tax imposed by part II of subchapter A or section 5276 (relating to occupational taxes)".

(ii) The section heading of section 5691 is amended by striking out "RELATING TO LIQUORS".

(iii) The table of sections for part V of subchapter J of chapter 51 is amended by striking out "relating to liquors" in the item relating to section 5691.

(C) Clerical amendment.—The table of subparts for part II of subchapter A of chapter 51 is amended by inserting before the item relating to subpart B the following new item:

"Subpart A. Proprietors of distilled spirits plants, bonded wine cellars, etc."

(2) Breweries.—Section 5091 (relating to imposition and rate of tax on brewers) is amended to read as follows:

"SEC. 5091. IMPOSITION AND RATE OF TAX.

"(a) GENERAL RULE.—Every brewer shall pay a tax of $1,000 per year in respect of each brewery.

"(b) REDUCED RATES FOR SMALL BREWERS.—Rules similar to the rules of section 5081(b) shall apply for purposes of subsection (a)."

(b) WHOLESALE DEALERS IN LIQUORS AND BEER.—

(1) LIQUORS.—Subsection (a) of section 5111 (relating to imposition and rate of tax on wholesale dealers) is amended by striking out "$255" and inserting in lieu thereof "$500".

(2) BEER.—Subsection (b) of section 5111 is amended by striking out "$123" and inserting in lieu thereof "$500".

(c) RETAIL DEALERS IN LIQUORS AND BEER.—

(1) LIQUORS.—Subsection (a) of section 5121 (relating to imposition and rate of tax on retail dealers) is amended by striking out "$54" and inserting in lieu thereof "$250".

(2) BEER.—Subsection (b) of section 5121 is amended by striking out "$24" and inserting in lieu thereof "$250".

(3) REPEAL OF TAX ON LIMITED RETAIL DEALERS.—Subsection (c) of section 5121 is hereby repealed.

(d) TAX ON NONBEVERAGE DOMESTIC DRAWBACK.—Subsection (b) of section 5131 (relating to eligibility and rate of tax) is amended to read as follows:

"(b) RATE OF TAX.—The special tax imposed by subsection (a) shall be $500 per year."

(e) TAX ON INDUSTRIAL USE OF DISTILLED SPIRITS.—

(1) IN GENERAL.—Subchapter D of chapter 51 (relating to industrial use of distilled spirits) is amended by adding at the end thereof the following new section:

"SEC. 5276. OCCUPATIONAL TAX.

"(a) GENERAL RULE.—A permit issued under section 5271 shall not be valid with respect to acts conducted at any place unless the person holding such permit pays a special tax of $250 with respect to such place.

"(b) CERTAIN OCCUPATIONAL TAX RULES TO APPLY.—Rules similar to the rules of subpart G of part II of subchapter A shall apply for purposes of this section."

(2) CLERICAL AMENDMENT.—The table of sections for such subchapter is amended by adding at the end thereof the following new item:

"Sec. 5276. Occupational tax."

(f) TOBACCO.—

(1) IN GENERAL.—Chapter 52 (relating to cigars, cigarettes, smokeless tobacco and cigarette papers and tubes) is amended by redesignating subchapters D, E, and F as subchapters E, F, and G, respectively, and by inserting after subchapter C the following new subchapter:

"Subchapter D—Occupational Tax

"Sec. 5731. Imposition and rate of tax.

"SEC. 5731. IMPOSITION AND RATE OF TAX.

"(a) GENERAL RULE.—Every person engaged in business as—

"(1) a manufacturer of tobacco products,

"(2) a manufacturer of cigarette papers and tubes, or

"(3) an export warehouse proprietor,

shall pay a tax of $1,000 per year in respect of each premises at which such business is carried on.

"(b) REDUCED RATES FOR SMALL PROPRIETORS.—

"(1) IN GENERAL.—Subsection (a) shall be applied by substituting '$500' for '$1,000' with respect to any taxpayer the gross receipts of which (for the most recent taxable year ending before the 1st day of the taxable period to which the tax imposed by subsection (a) relates) are less than $500,000.

"(2) CONTROLLED GROUP RULES.—All persons treated as 1 taxpayer under section 5061(e)(3) shall be treated as 1 taxpayer for purposes of paragraph (1).

"(3) CERTAIN RULES TO APPLY.—For purposes of paragraph (1), rules similar to the rules of subparagraphs (B) and (C) of section 448(c)(3) shall apply.

"(c) CERTAIN OCCUPATIONAL TAX RULES TO APPLY.—Rules similar to the rules of subpart G of part II of subchapter A of chapter 51 shall apply for purposes of this section.

"(d) PENALTY FOR FAILURE TO REGISTER.—Any person engaged in a business referred to in subsection (a) who willfully fails to pay the tax imposed by subsection (a) shall be fined not more than $5,000, or imprisoned not more than 2 years, or both, for each such offense."

(2) CLERICAL AMENDMENT.—The table of subchapters for chapter 52 is amended by redesignating the items relating to subchapters D, E, and F as items relating to subchapters E, F, and G, respectively, and by inserting after the item relating to subchapter C the following new item:

"Subchapter D. Occupational tax."

(g) FIREARMS.—

(1) IN GENERAL.—Section 5801 (relating to occupational taxes) is amended to read as follows:

"SEC. 5801. IMPOSITION OF TAX.

"(a) GENERAL RULE.—On 1st engaging in business and thereafter on or before July 1 of each year, every importer, manufacturer, and dealer in firearms shall pay a special (occupational) tax for each place of business at the following rates:

"(1) Importers and manufacturers: $1,000 a year or fraction thereof.

"(2) Dealers: $500 a year or fraction thereof.

"(b) REDUCED RATES OF TAX FOR SMALL IMPORTERS AND MANUFACTURERS.—

"(1) IN GENERAL.—Paragraph (1) of subsection (a) shall be applied by substituting '$500' for '$1,000' with respect to any taxpayer the gross receipts of which (for the most recent taxable year ending before the 1st day of the taxable period to which the tax imposed by subsection (a) relates) are less than $500,000.

"(2) CONTROLLED GROUP RULES.—All persons treated as 1 taxpayer under section 5061(e)(3) shall be treated as 1 taxpayer for purposes of paragraph (1).

"(3) CERTAIN RULES TO APPLY.—For purposes of paragraph (1), rules similar to the rules of subparagraphs (B) and (C) of section 448(c)(3) shall apply."

(2) CLERICAL AMENDMENT.—The table of sections for part I of subchapter A of chapter 53 is amended by striking out the item relating to section 5801 and inserting in lieu thereof the following new item:

"Sec. 5801. Imposition of tax."

(h) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall take effect on January 1, 1988.

(2) ALL TAXPAYERS TREATED AS COMMENCING IN BUSINESS ON JANUARY 1, 1988.—

(A) IN GENERAL.—Any person engaged on January 1, 1988, in any trade or business which is subject to an occupational tax shall be treated for purposes of such tax as having 1st engaged in such trade or business on such date.

(B) LIMITATION ON AMOUNT OF TAX.—In the case of a taxpayer who paid an occupational tax in respect of any premises for any taxable period which began before January 1, 1988, and includes such date, the amount of the occupational tax imposed by reason of subparagraph (A) in respect of such premises shall not exceed an amount equal to 1/2 the excess (if any) of—

(i) the rate of such tax as in effect on January 1, 1988, over

(ii) the rate of such tax as in effect on December 31, 1987.

(C) OCCUPATIONAL TAX.—For purposes of this paragraph, the term "occupational tax" means any tax imposed under part II of subchapter A of chapter 51, section 5276, section 5731, or section 5801 of the Internal Revenue Code of 1986 (as amended by this section).

PART IV—OTHER REVENUE PROVISIONS

Subpart A—Targeted Jobs Credit

SEC. 10166. DENIAL OF TARGETED JOBS CREDIT FOR WAGES PAID DURING PERIOD OF LABOR DISPUTE.

(a) GENERAL RULE.—Subsection (c) of section 51 (defining wages) is amended by redesignating paragraph (3) as paragraph (4) and by inserting after paragraph (2) the following new paragraph:

"(3) PAYMENTS FOR SERVICES DURING LABOR DISPUTES.—If—

"(A) the principal place of employment of an individual with the employer is at a plant or facility, and

"(B) there is a strike or lockout involving employees at such plant or facility,

the term 'wages' shall not include any amount paid or incurred by the employer to such individual for services which are the same as, or substantially similar to, those services performed by employees participating in, or affected by, the strike or lockout during the period of such strike or lockout."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to amounts paid or incurred on or after January 1, 1987, for services rendered on or after such date.

Subpart B—Treatment of Certain Illegal Irrigation Subsidies

SEC. 10167. TREATMENT OF CERTAIN ILLEGAL IRRIGATION SUBSIDIES.

(a) GENERAL RULE.—Part II of subchapter B of chapter 1 (relating to items specifically included in gross income) is amended by adding at the end thereof the following new section:

"SEC. 90. ILLEGAL FEDERAL IRRIGATION SUBSIDIES.

"(a) GENERAL RULE.—Gross income shall include an amount equal to any illegal Federal irrigation subsidy received by the taxpayer during the taxable year.

"(b) ILLEGAL FEDERAL IRRIGATION SUBSIDY.—For purposes of this section—

"(1) IN GENERAL.—The term 'illegal federal irrigation subsidy' means the excess (if any) of—

"(A) the amount required to be paid for any Federal irrigation water delivered to the taxpayer during the taxpayer year, over

"(B) the amount paid for such water.

"(2) FEDERAL IRRIGATION WATER.—The term 'Federal irrigation water' means any water made available for agricultural purposes from the operation of any reclamation or irrigation project referred to in paragraph (8) of section 202 of the Reclamation Reform Act of 1982.

"(c) DENIAL OF DEDUCTION.—No deduction shall be allowed under this subtitle by reason of any inclusion in gross income under subsection (a)."

(b) Clerical Amendment.—The table of sections for part II of subchapter B of chapter 1 is amended by adding at the end thereof the following new item:

"Sec. 90. Federal irrigation subsidies."

(c) Effective Date.—The amendments made by this section shall apply to water delivered to the taxpayer in months beginning after the date of the enactment of this Act.

Subpart C—Compliance

SEC. 10168. STATE ESCHEAT LAWS NOT TO APPLY TO REFUNDS OF FEDERAL TAX.

(a) General Rule.—Subchapter A of chapter 65 (relating to procedure in general for abatements, credits, and refunds) is amended by adding at the end thereof the following new section:

"SEC. 6408. STATE ESCHEAT LAWS NOT TO APPLY.

"No overpayment of any tax imposed by this title shall be refunded (and no interest with respect to any such overpayment shall be paid) if the amount of such refund (or interest) would escheat to a State or would otherwise become the property of a State under any law relating to the disposition of unclaimed or abandoned property. No refund (or payment of interest) shall be made to the estate of any decedent unless it is affirmatively shown that such amount will not escheat to a State or otherwise become the property of a State under such a law."

(b) Clerical Amendment.—The table of sections for subchapter A of chapter 65 is amended by adding at the end thereof the following new item:

"Sec. 6408. State escheat laws not to apply."

(c) Effective Date.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 10169. SENSE OF CONGRESS AS TO INCREASED INTERNAL REVENUE SERVICE FUNDING FOR TAXPAYER ASSISTANCE AND ENFORCEMENT.

(a) Findings.—The Congress hereby finds that—

(1) the Internal Revenue Service estimates that the amount of taxes owed for 1986 will exceed the amount of taxes collected for such year by $100 billion;

(2) the current taxpayer compliance rate stands at 81.5 percent;

(3) the tax gap can be significantly reduced by enhancing taxpayer assistance services and enforcement; and

(4) the Appropriations Committee of the House of Representatives, in its fiscal year 1988 Internal Revenue Service appropriation, took a step in the direction of providing additional funding for taxpayer assistance and enforcement efforts.

(b) It is the sense of the Congress that:

(1) The Congress increase outlays for the Internal Revenue Service in fiscal year 1989 and fiscal year 1990 in the areas of taxpayer assistance and enforcement by $.7 billion in fiscal year 1989 for a revenue total of $3.2 billion and by $.8 billion in fiscal year 1990 for a revenue total of $4.4 billion. The net revenue increase would be $2.5 billion in fiscal year 1989 and $3.6 billion in fiscal year 1990, or a net revenue increase over the House Appropriations Committee recommendations of $.4 billion in fiscal year 1989 and $1.3 billion in fiscal year 1990.

(2) The Internal Revenue Service offer improved taxpayer assistance and enforcement efforts by using the aforementioned outlays in areas recommended by, or consistent with the recommendations of, the "Dorgan Task Force Report". Taxpayer assistance efforts would include providing expanded taxpayer education programs, instituting pilot programs of taxmobiles in rural areas, and upgrading the quality of telephone assistance. Taxpayer enforcement efforts would include raising the audit rate from 1.1 percent toward 2.5 percent, restoring resources to criminal investigations, and the collection of delinquent accounts.

(3) The Congress should undertake an experimental multiyear authorization and 2-year appropriation for the Internal Revenue Service consistent with the recommendations in Public Law 100-119, Sec. 201 (Increasing the Statutory Limit on the Public Debt).

(4) Increased funding should be provided for compilation and analysis of statistics of income and research.

The Internal Revenue Service must issue a report on the extent of the tax gap and the measures that could be undertaken to decrease the tax gap. The report must utilize more current data than has been utilized recently. The report must be issued by April 15, 1989. The Internal Revenue Service must also report annually on the improvements being made in the audit rate, taxpayer assistance, and enforcement efforts.

Subpart D—Estimated Tax Provisions

SEC. 10170. MITIGATION OF ESTIMATED TAX PENALTIES FOR 1987.

(a) Delay of Increase in Current Year Liability Test for Individuals.—Notwithstanding section 1541(c) of the Tax Reform Act of 1986, the amendments made by section 1541 of such Act shall apply only to taxable years beginning after December 31, 1987.

(b) Corporate Provisions.—

(1) Ratification of secretarial waiver.—The Congress hereby ratifies the safe harbor provided by paragraph (b) of the Treasury Temporary Regulation 1.6655-2T.

(2) Corporations also may use 1986 tax to determine amount of certain estimated tax installments due on or before June 15, 1987.—

(A) In general.—In the case of a large corporation, no addition to tax shall be imposed by section 6655 of the Internal Revenue Code of 1986 with respect to any underpayment of an estimated tax installment to which this subsection applies if no addition would be imposed with respect to such underpayment by reason of section 6655(d)(1) of such Code if such corporation were not a large corporation. The preceding sentence shall apply only to the extent the underpayment is paid on or before the last date prescribed for payment of the most recent installment of estimated tax due on or before September 15, 1987.

(B) Installment to which subsection applies.—This subsection applies to any installment of estimated tax for a taxable year beginning after December 31, 1986, which is due on or before June 15, 1987.

(C) Large corporation.—For purposes of this subsection, the term "large corporation" has the meaning given such term by section 6655(i)(2) of such Code (as in effect on the day before the date of the enactment of this Act).

SEC. 10171. REVISED WITHHOLDING CERTIFICATES REQUIRED TO BE PUT INTO EFFECT MORE PROMPTLY.

(a) General Rule.—Subparagraph (B) of section 3402(f)(3) (relating to when certificate takes effect) is amended to read as follows:

"(B) Furnished to take place of existing certificate.—

"(i) In general.—Except as provided in clauses (ii) and (iii), a withholding exemption certificate furnished to the employer in cases in which a previous such certificate is in effect shall take effect as of the beginning of the 1st payroll period ending (or the 1st payment of wages made without regard to a payroll period) on or after the 30th day after the day on which such certificate is so furnished.

"(ii) Employer may elect earlier effective date.—At the election of the employer, a certificate described in clause (i) may be made effective beginning with any payment of wages made on or after the day on which the certificate is so furnished and before the 30th day referred to in clause (i).

"(iii) Change of status which affects next year.—Any certificate furnished pursuant to paragraph (2)(C) shall not take effect, and may not be made effective, with respect to any payment of wages made in the calendar year in which the certificate is furnished."

(b) Effective Date.—The amendment made by subsection (a) shall apply to certificates furnished after the day 30 days after the date of the enactment of this Act.

SEC. 10172. REVISION OF CORPORATE ESTIMATED TAX PROVISIONS.

(a) General Rule.—Section 6655 (relating to failure by corporation to pay estimated income tax) is amended to read as follows:

"SEC. 6655. FAILURE BY CORPORATION TO PAY ESTIMATED INCOME TAX.

"(a) Addition to Tax.—Except as otherwise provided in this section, in the case of any underpayment of estimated tax by a corporation, there shall be added to the tax under chapter 1 for the taxable year an amount determined by applying—

"(1) the underpayment rate established under section 6621,

"(2) to the amount of the underpayment,

"(3) for the period of the underpayment.

"(b) Amount of Underpayment; Period of Underpayment.—For purposes of subsection (a)—

"(1) Amount.—The amount of the underpayment shall be the excess of—

"(A) the required installment, over

"(B) the amount (if any) of the installment paid on or before the due date for the installment.

"(2) Period of underpayment.—The period of the underpayment shall run from the due date for the installment to whichever of the following dates is the earlier—

"(A) the 15th day of the 3rd month following the close of the taxable year, or

"(B) with respect to any portion of the underpayment, the date on which such portion is paid.

"(3) Order of crediting payments.—For purposes of paragraph (2)(B), a payment of estimated tax shall be credited against unpaid required installments in the order in which such installments are required to be paid.

"(c) Number of Required Installments; Due Dates.—For purposes of this section—

"(1) Payable in 4 installments.—There shall be 4 required installments for each taxable year.

"(2) Time for payment of installments.—

"In the case of the following required installments:	The due date is:
1st	April 15
2nd	June 15
3rd	September 15
4th	December 15

"(d) Amount of Required Installments.—For purposes of this section—

"(1) Amount.—

"(A) In general.—Except as otherwise provided in this section, the amount of any required installment shall be 25 percent of the required annual payment.

"(B) Required annual payment.—Except as otherwise provided in this subsection, the term 'required annual payment' means the lesser of—

"(i) 90 percent of the tax shown on the return for the taxable year (or, if no return is filed, 90 percent of the tax for such year), or

"(ii) 100 percent of the tax shown on the return of the corporation for the preceding taxable year.

Clause (ii) shall not apply if the preceding taxable year was not a taxable year of 12 months, or the corporation did not file a return for such preceding taxable year showing a liability for tax.

"(2) Large corporations required to pay 90 percent of current year tax.—

"(A) In general.—Except as provided in subparagraph (B), clause (ii) of paragraph (1)(B) shall not apply in the case of a large corporation.

"(B) May use last year's tax for 1st installment.—Subparagraph (A) shall not apply for purposes of determining the amount of the 1st required installment for any taxable year. Any reduction in such 1st installment by reason of the preceding sentence shall be recaptured by increasing the amount of the next required installment determined under paragraph (1) by the amount of such reduction.

"(e) Lower Required Installment Where Annualized Income Installment or Adjusted Seasonal Installment Is Less Than Amount Determined Under Subsection (d).—

"(1) In general.—In the case of any required installment, if the corporation establishes that the annualized income installment or the adjusted seasonal installment is less than the amount determined under subsection (d)(1) (as modified by subsection (d)(2))—

"(A) the amount of such required installment shall be the annualized income installment (or, if lesser, the adjusted seasonal installment), and

"(B) any reduction in a required installment resulting from the application of this paragraph shall be recaptured by increasing the amount of the next required installment determined under subsection (d)(1) (as so modified) by the amount of such reduction (and by increasing subsequent required installments to the extent that the reduction has not previously been recaptured under this subparagraph).

"(2) Determination of annualized income installment.—

"(A) In general.—In the case of any required installment, the annualized income installment is the excess (if any) of—

"(i) an amount equal to the applicable percentage of the tax for the taxable year computed by placing on an annualized basis the taxable income, alternative minimum taxable income, and modified alternative minimum taxable income—

"(I) for the first 3 months of the taxable year, in the case of the 1st required installment,

"(II) for the first 3 months or for the first 5 months of the taxable year, in the case of the 2nd required installment,

"(III) for the first 6 months or for the first 8 months of the taxable year in the case of the 3rd required installment, and

"(IV) for the first 9 months or for the first 11 months of the taxable year, in the case of the 4th required installment, over

"(ii) the aggregate amount of any prior required installments for the taxable year.

"(B) Special rules.—For purposes of this paragraph—

"(i) Annualization.—The taxable income, alternative minimum taxable income, and modified alternative minimum taxable income shall be placed on an annualized basis under regulations prescribed by the Secretary.

"(ii) Applicable percentage.—

"In the case of the following required installments:	The applicable percentage is:
1st	22.5
2nd	45
3rd	67.5
4th	90

"(iii) Modified alternative minimum taxable income.—The term 'modified alternative minimum taxable income' has the meaning given to such term by section 59A(b).

"(3) Determination of adjusted seasonal installment.—

"(A) In general.—In the case of any required installment, the amount of the adjusted seasonal installment is the excess (if any) of—

"(i) 90 percent of the amount determined under subparagraph (C), over

"(ii) the aggregate amount of all prior required installments for the taxable year.

"(B) Limitation on application of paragraph.—This paragraph shall apply only if the base period percentage for any 6 consecutive months of the taxable year equals or exceeds 70 percent.

"(C) Determination of amount.—The amount determined under this subparagraph for any installment shall be determined in the following manner—

"(i) take the taxable income for all months during the taxable year preceding the filing month,

"(ii) divide such amount by the base period percentage for all months during the taxable year preceding the filing month,

"(iii) determine the tax on the amount determined under clause (ii), and

"(iv) multiply the tax computed under clause (iii) by the base period percentage for the filing month and all months during the taxable year preceding the filing month.

"(D) Definitions and special rules.—For purposes of this paragraph—

"(i) Base period percentage.—The base period percentage for any period of months shall be the average percent which the taxable income for the corresponding months in each of the 3 preceding taxable years bears to the taxable income for the 3 preceding taxable years.

"(ii) Filing month.—The term 'filing month' means the month in which the installment is required to be paid.

"(iii) Reorganization, etc.—The Secretary may by regulations provide for the determination of the base period percentage in the case of reorganizations, new corporations, and other similar circumstances.

"(f) Exception Where Tax is Small Amount.—No addition to tax shall be imposed under subsection (a) for any taxable year if the tax shown on the return for such taxable year (or, if no return is filed, the tax) is less than $500.

"(g) Definitions and Special Rules.—

"(1) Tax.—For purposes of this section, the term 'tax' means the excess of—

"(A) the sum of—

"(i) the tax imposed by section 11 or 1201(a), or subchapter L of chapter 1, whichever applies,

"(ii) the tax imposed by section 55,

"(iii) the tax imposed by section 59A, plus

"(iv) the tax imposed by section 887, over

"(B) the sum of—

"(i) the credits against tax provided by part IV of subchapter A of chapter 1, plus

"(ii) to the extent allowed under regulations prescribed by the Secretary, any overpayment of the tax imposed by section 4986 (determined without regard to section 4995(a)(4)(B)).

For purposes of the preceding sentence, in the case of a foreign corporation subject to taxation under section 11 or 1201(a), or under subchapter L of chapter 1, the tax imposed by section 881 shall be treated as a tax imposed by section 11.

"(2) Large corporation.—

"(A) In general.—For purposes of this section, the term 'large corporation' means any corporation if such corporation (or any predecessor corporation) had taxable income of $1,000,000 or more for any taxable year during the testing period.

"(B) Rules for applying subparagraph (A).—

"(i) Testing period.—For purposes of subparagraph (A), the term 'testing period' means the 3 taxable years immediately preceding the taxable year involved.

"(ii) Members of controlled group.—For purposes of applying subparagraph (A) to any taxable year in the testing period with respect to corporations which are component members of a controlled group of corporations for such taxable year, the $1,000,000 amount specified in subparagraph (A) shall be divided among such members under rules similar to the rules of section 1561.

"(iii) Certain carrybacks and carryovers not taken into account.—For purposes of subparagraph (A), taxable income shall be determined without regard to any amount carried to the taxable year under section 172 or 1212(a).

"(3) Certain tax-exempt organizations.—For purposes of this section—

"(A) Any organization subject to the tax imposed by section 511, and any private foundation, shall be treated as a corporation subject to tax under section 11.

"(B) Any tax imposed by section 511, and any tax imposed by section 1 or 4940 on a private foundation, shall be treated as a tax imposed by section 11.

"(C) Any reference to taxable income shall be treated as including a reference to unrelated business taxable income or net investment income (as the case may be).

In the case of any organization described in subparagraph (A), subsection (b)(2)(A) shall be applied by substituting '5th month' for '3rd month'.

"(h) Excessive Adjustment Under Section 6425.—

"(1) Addition to tax.—If the amount of an adjustment under section 6425 made before the 15th day of the 3rd month following the close of the taxable year is excessive, there shall be added to the tax under chapter 1 for the taxable year an amount determined at the underpayment rate established under section 6621 upon the excessive amount from the date on which the credit is allowed or the refund is paid to such 15th day.

"(2) Excessive amount.—For purposes of paragraph (1), the excessive amount is equal to the amount of the adjustment or (if smaller) the amount by which—

"(A) the income tax liability (as defined in section 6425(c)) for the taxable year as shown on the return for the taxable year, exceeds

"(B) the estimated income tax paid during the taxable year, reduced by the amount of the adjustment.

"(i) Fiscal Years and Short Years.—

"(1) Fiscal years.—In applying this section to a taxable year beginning on any date other than January 1, there shall be substituted, for the months specified in this section, the months which correspond thereto.

"(2) Short taxable year.—This section shall be applied to taxable years of less than 12 months in accordance with regulations prescribed by the Secretary.

"(j) Regulations.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section."

(b) Technical and Conforming Amendments.—

(1) Section 6154 of such Code is hereby repealed.

(2) Subparagraph (C) of section 585(c)(3) of such Code is amended by striking out "section 6655(d)(3)" and inserting in lieu thereof "section 6655(e)(2)(A)(i)".

(3) Paragraph (1) of section 6201(b) of such Code is amended by striking out "section 6154 or 6654" and inserting in lieu thereof "section 6654 or 6655".

(4) Subsection (c) of section 6425 of such Code is amended by striking out "section 6655(g)" and inserting in lieu thereof "section 6655(h)".

(5) Subsection (h) of section 6601 of such Code is amended by striking out "section 6154 or 6654" and inserting in lieu thereof "section 6654 or 6655".

(6) Subsection (e) of section 6651 of such Code is amended by striking out "section 6154 or 6654" and inserting in lieu thereof "section 6654 or 6655".

(7) The table of sections for subchapter A of chapter 62 of such Code is amended by striking out the item relating to section 6154.

(c) Effective Date.—The amendments made by this section shall apply to taxable years beginning after December 31, 1987.

Subpart E—Tax-Exempt Bond Provisions

SEC. 10173. ISSUES USED TO ACQUIRE NONGOVERNMENTAL OUTPUT FACILITIES.

(a) In General.—Subsection (a) of section 141 is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

"(d) Certain Issues Used To Acquire Nongovernmental Output Facilities Treated as Private Activity Bonds.—

"(1) In general.—For purposes of this title, the term 'private activity bond' includes any bond issued as part of an issue if the amount of the proceeds of the issue which are to be used (directly or indirectly) for the acquisition of nongovernmental output property exceeds the lesser of—

"(A) 5 percent of such proceeds, or

"(B) $5,000,000.

"(2) Nongovernmental output property.—For purposes of paragraph (1), the term 'nongovernmental output property' means any property (or interest therein) which before such acquisition was used (or held for use) by a person other than a governmental unit in connection with an output facility (within the meaning of subsection (b)(4)) (other than a facility for the furnishing of water).

"(3) Special rules.—In the case of a bond which is a private activity bond solely by reason of this subsection—

"(A) section 147(d) (relating to acquisition of existing property not permitted) shall not apply, and

"(B) paragraph (8) of section 142(a) shall be applied as if it did not contain 'local'."

(b) Effective Date.—

(1) In general.—Except as otherwise provided in this subsection, the amendments made by subsection (a) shall apply to bonds issued after October 13, 1987.

(2) Binding agreements.—The amendments made by this section shall not apply to bonds (other than a refunding bond) with respect to a facility acquired after October 13, 1987, pursuant to a binding contract entered into on or before such date.

(3) Transitional rule.—The amendments made by subsection (a) shall not apply to bonds issued—

(A) after October 13, 1987, by an authority created by a statute—

(i) approved by the State Governor on July 24, 1986, and

(ii) sections 1 through 10 of which became effective on January 15, 1987, and

(B) to provide facilities serving the area specified in such statute on the date of its enactment.

SEC. 10174. BONDS ISSUED BY INDIAN TRIBAL GOVERNMENTS.

(a) In General.—Section 7871 is amended by adding at the end thereof the following new subsection:

"(e) Essential Governmental Function.—For purposes of this section, the term 'essential governmental function' shall not include any function which is not customarily performed by State and local governments with general taxing powers."

(b) Effective Date.—The amendment made by subsection (a) shall apply to obligations issued after October 13, 1987.

Subtitle B—Technical Corrections

SEC. 10200. SHORT TITLE; ETC.

(a) Short Title.—This subtitle may be cited as the "Technical Corrections Act of 1987".

(b) Definitions.—For purposes of this subtitle—

(1) 1986 code.—The term "1986 Code" means the Internal Revenue Code of 1986.

(2) Reform act.—Except where incompatible with the intent, the term "Reform Act" means the Tax Reform Act of 1986.

(c) Coordination With Other Subtitles.—For purposes of applying the amendments made by subtitles A, C, and D of this title, the provisions of this subtitle shall be treated as having been enacted immediately before the provisions of such subtitles A, C, and D.

(d) Clerical Amendment.—Paragraph (29) of section 7701(a) of the 1986 Code is amended by striking out "of 1954" and inserting in lieu thereof "of 1986".

PART I—TECHNICAL CORRECTIONS TO TAX REFORM ACT OF 1986

SEC. 10201. AMENDMENTS RELATED TO TITLE I OF THE REFORM ACT.

(a) Amendments Related to Section 101 of the Reform Act.—

(1) Paragraph (2) of section 6867(b) of the 1986 Code is amended by striking out "at a 50-percent rate" and inserting in lieu thereof "at the highest rate of tax specified in section 1".

(2)(A) Section 531 of the 1986 Code is amended to read as follows:

"SEC. 531. IMPOSITION OF ACCUMULATED EARNINGS TAX.

"In addition to other taxes imposed by this chapter, there is hereby imposed for each taxable year on the accumulated taxable income (as defined in section 535) of each corporation described in section 532, an accumulated earnings tax equal to 28 percent of the accumulated taxable income."

(B) The amendment made by subparagraph (A) shall apply to taxable years beginning after December 31, 1987. Such amendment shall not be treated as a change in a rate of tax for purposes of section 15 of the 1986 Code.

(b) Amendments Related to Section 102 of the Reform Act.—

(1) Paragraph (5) of section 63(c) of the 1986 Code is amended—

(A) by striking out "the standard deduction applicable" and inserting in lieu thereof "the basic standard deduction applicable", and

(B) by striking out "STANDARD DEDUCTION" in the paragraph heading and inserting in lieu thereof "BASIC STANDARD DEDUCTION".

(2) Subclause (I) of section 6012(a)(1)(C)(i) of the 1986 Code is amended to read as follows:

"(I) income (other than earned income) in excess of the sum of the amount in effect under section 63(c)(5)(A) plus the additional standard deduction (if any) to which the individual is entitled, or".

(c) Amendment Related to Section 111 of the Reform Act.—Paragraph (3) of section 32(i) of the 1986 Code is amended to read as follows:

"(3) Rounding.—If any dollar amount after being increased under paragraph (1) is not a multiple of $10, such dollar amount shall be rounded to the nearest multiple of $10 (or, if such dollar amount is a multiple of $5, such dollar amount shall be increased to the next higher multiple of $10)."

(d) Amendments Related to Section 123 of the Reform Act.—

(1)(A) Clause (ii) of section 4941(d)(2)(G) of the 1986 Code is amended to read as follows:

"(ii) scholarships and fellowship grants which would be subject to the provisions of section 117(a) (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986) and are to be used for study at an educational organization described in section 170(b)(1)(A)(ii),".

(B) Paragraph (1) of section 4945(g) of the 1986 Code is amended to read as follows:

"(1) the grant constitutes a scholarship or fellowship grant which would be subject to the provisions of section 117(a) (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986) and is to be used for study at an educational organization described in section 170(b)(1)(A)(ii),".

(2)(A) The second sentence of section 1441(b) of the 1986 Code is amended to read as follows: "The items of income referred to in subsection (a) from which tax shall be deducted and withheld at the rate of 14 percent are amounts which are received by a nonresident alien individual who is temporarily present in the United States as a nonimmigrant under subparagraph (F), (J), or (M) of section 101(a)(15) of the Immigration and Nationality Act and which are—

"(1) incident to a qualified scholarship to which section 117(a) applies, but only to the extent includible in gross income; or

"(2) in the case of an individual who is not a candidate for a degree at an educational organization described in 170(b)(1)(A)(ii), granted by—

"(A) an organization described in section 501(c)(3) which is exempt from tax under section 501(a),

"(B) a foreign government,

"(C) an international organization, or a binational or multinational educational and cultural foundation or commission created or continued pursuant to the Mutual Educational and Cultural Exchange Act of 1961, or

"(D) the United States, or an instrumentality or agency thereof, or a State, or a possession of the United States, or any political subdivision thereof, or the District of Columbia,

as a scholarship or fellowship for study, training, or research in the United States."

(B) Subsection (c) of section 871 of the 1986 Code is amended—

(i) by striking out "section 1441(b)(1) or (2)" and inserting in lieu thereof "the second sentence of section 1441(b)"; and

(ii) by striking out "(F) or (J)" each place it appears and inserting in lieu thereof "(F), (J), or (M)".

(C) The following provisions of the 1986 Code are each amended by striking out "(F) or (J)" each place it appears and inserting in lieu thereof "(F), (J), or (M)":

(i) Section 3121(b)(19).

(ii) Section 3231(e)(1).

(iii) Section 3306(c)(19).

(D) Clause (i)(I) of section 7701(b)(5)(D) of the 1986 Code is amended by striking out "subparagraph (F)" and inserting in lieu thereof "subparagraph (F) or (M)".

(E) Section 210(a)(19) of the Social Security Act is amended by striking out "(F) or (J)" each place it appears and inserting in lieu thereof "(F), (J), or (M)".

(e) Amendment Related to Section 131 of the Reform Act.—Subsection (f) of section 86 of the 1986 Code is amended by inserting "and" at the end of paragraph (3), by striking out paragraph (4), and by redesignating paragraph (5) as paragraph (4).

(f) Amendments Related to Section 132 of the Reform Act.—

(1) Section 67 of the 1986 Code is amended by adding at the end thereof the following new subsection:

"(f) Coordination With Other Limitation.—This section shall be applied before the application of the dollar limitation of the last sentence of section 162(a) (relating to trade or business expenses)."

(2) Paragraph (4) of section 67(b) of the 1986 Code is amended—

(A) by striking out "deduction" and inserting in lieu thereof "deductions", and

(B) by inserting before the comma at the end thereof "and section 642(c) (relating to deduction for amounts paid or permanently set aside for a charitable purpose)".

(3) Subsection (e) of section 67 of the 1986 Code is amended to read as follows:

"(e) Determination of Adjusted Gross Income in Case of Estates and Trusts.—For purposes of this section, the adjusted gross income of an estate or trust shall be computed in the same manner as in the case of an individual, except that—

"(1) the deductions for costs which are paid or incurred in connection with the administration of the estate or trust and which would not have been incurred if the property were not held in such trust or estate, and

"(2) the deductions allowable under sections 642(b), 651, and 661, shall be treated as allowable in arriving at adjusted gross income. Under regulations, appropriate adjustments shall be made in the application of part I of subchapter J of this chapter to take into account the provisions of this section."

(4) Subsection (c) of section 67 of the 1986 Code is amended by striking out the last sentence and inserting in lieu thereof the following: "The preceding sentence shall not apply—

"(A) with respect to cooperatives and real estate investment trusts, and

"(B) except as provided in regulations, with respect to estates and trusts."

(g) Amendments Related to Section 142 of the Reform Act.—

(1) Subparagraph (A) of section 274(n)(2) of the 1986 Code is amended to read as follows:

"(A) such expense is described in paragraph (2), (3), (4), (7), (8), or (9) of subsection (e),".

(2) Paragraph (2) of section 274(k) of the 1986 Code is amended to read as follows:

"(2) Exceptions.—Paragraph (1) shall not apply to—

"(A) any expense described in paragraph (2), (3), (4), (7), (8), or (9) of subsection (e), and

"(B) any other expense to the extent provided in regulations."

(3) Clause (ii) of section 274(m)(1)(B) of the 1986 Code is amended to read as follows:

"(ii) any expense described in paragraph (2), (3), (4), (7), (8), or (9) of subsection (e).".

(4) The following provisions of the 1986 Code are each amended by striking out "section 217" and inserting in lieu thereof "section 217 (determined without regard to section 274(n))":

(A) Section 3121(a)(11).

(B) Section 3306(b)(9).

(C) Section 3401(a)(15).

(5) Paragraphs (1) and (2) of section 274(h) of the 1986 Code are each amended by striking out "trade or business that" and inserting in lieu thereof "trade or business and that".

(h) Amendment Related to Section 143 of the Reform Act.—Paragraph (5) of section 280A(c) of the 1986 Code is amended by adding at the end thereof the following new sentence: "Any amount taken into account for any taxable year under the preceding sentence shall be subject to the limitation of the 1st sentence of this paragraph whether or not the dwelling unit is used as a residence during such taxable year."

SEC. 10202. AMENDMENTS RELATED TO TITLE II OF THE REFORM ACT.

(a) Amendments Related to Section 201 of the Reform Act.—

(1) Subsection (d) of section 1250 of the 1986 Code is amended by striking out paragraph (11).

(2) Subparagraph (B) of section 201(d)(14) of the Reform Act is amended by striking out "section 168(c)(2)(F)" and inserting in lieu thereof "within the meaning of section 168(c)(2)(F)".

(3) Paragraph (4) of section 312(k) of the 1986 Code is amended by striking out "paragraphs (1) and (3)" and inserting in lieu thereof "paragraph (1)".

(4) Paragraph (4) of section 46(e) of the 1986 Code is amended—

(A) by striking out "168(j)(6)" in subparagraph (B) and inserting in lieu thereof "168(i)(3)",

(B) by striking out "paragraphs (8) and (9) of section 168(j)" in subparagraph (D) and inserting in lieu thereof "paragraphs (5) and (6) of section 168(h)",

(C) by striking out "168(j)" in subparagraph (E) and inserting in lieu thereof "168(h)", and

(D) by striking out "168(j)(4)" in subparagraph (E) and inserting in lieu thereof "168(h)(2)".

(5) Clause (i) of section 168(d)(3)(A) of the 1986 Code is amended by striking out "and which are".

(6)(A) Subparagraph (B) of section 168(f)(5) of the 1986 Code is amended—

(i) by striking out "1st full taxable year" in clause (ii) and inserting in lieu thereof "1st taxable year", and

(ii) by striking out "or" at the end of clause (i), by striking out the period at the end of clause (ii) and inserting in lieu thereof ", or", and by adding at the end thereof the following new clause:

"(iii) any property to which this section (as amended by the Tax Reform Act of 1986) applied in the hands of the transferor."

(B) Paragraph (5) of section 168(f) of the 1986 Code is amended by adding at the end thereof the following new subparagraph:

"(C) Special rule.—In the case of any property to which this section would apply but for this paragraph, the depreciation deduction under section 167 shall be determined under the provisions of this section as in effect before the amendments made by section 201 of the Tax Reform Act of 1986."

(7)(A) Subparagraph (A) of section 168(i)(7) of the 1986 Code is amended by adding at the end thereof the following new sentence: "In any case where this section as in effect before the amendments made by section 201 of the Tax Reform Act of 1986 applied to the property in the hands of the transferor, the reference in the preceding sentence to this section shall be treated as a reference to this section as so in effect."

(B) Subparagraph (B) of section 168(i)(7) of the 1986 Code is amended to read as follows:

"(B) Transactions covered.—The transactions described in this subparagraph are—

"(i) any transaction described in section 332, 351, 361, 371(a), 374(a), 721, or 731, and

"(ii) any transaction between members of the same affiliated group during any taxable year for which a consolidated return is made by such group.

Subparagraph (A) shall not apply in the case of a termination of a partnership under section 708(b)(1)(B)."

(C) Subparagraph (D) of section 168(i)(7) of the 1986 Code is hereby repealed.

(8) Subparagraph (B) of section 168(h)(2) of the 1986 Code is amended to read as follows:

"(B) Exception for certain property subject to United States tax and used by foreign person or entity.—Clause (iii) of subparagraph (A) shall not apply with respect to any property if more than 50 percent of the gross income for the taxable year derived by the foreign person or entity from the use of such property is—

"(i) subject to tax under this chapter, or

"(ii) included under section 951 in the gross income of a United States shareholder for the taxable year with or within which ends the taxable year of the controlled foreign corporation in which such income was derived.

For purposes of the preceding sentence, any exclusion or exemption shall not apply for purposes of determining the amount of the gross income so derived, but shall apply for purposes of determining the portion of such gross income subject to tax under this chapter."

(9) Subsection (a) of section 178 of the 1986 Code is amended by striking out "the deduction allowable to a lessee of a lease for any taxable year for amortization under section 167, 169, 179, 185, 190, 193, or 194" and inserting in lieu thereof "the deduction allowable to a lessee for exhaustion, wear and tear, obsolescence, or amortization".

(10) Subparagraph (A) of section 280F(d)(3) of the 1986 Code is amended by striking out "any recovery deduction" and inserting in lieu thereof "any depreciation deduction".

(11)(A) Paragraph (2) of section 168(b) of the 1986 Code is amended to read as follows:

"(2) 150 PERCENT DECLINING BALANCE METHOD IN CERTAIN CASES.—Paragraph (1) shall be applied by substituting '150 percent' for '200 percent' in the case of—

"(A) any 15-year or 20-year property, or

"(B) any property (other than property described in paragraph (3)) with respect to which the taxpayer elects under paragraph (5) to have the provisions of this paragraph apply."

(B) Paragraph (5) of section 168(b) of the 1986 Code is amended by striking out "under paragraph (3)(C)" and inserting in lieu thereof "under paragraph (2)(B) or (3)(C)".

(C) Subsection (c) of section 168 of the 1986 Code is amended to read as follows:

"(c) Applicable Recovery Period.—For purposes of this section—

"(1) In general.—Except as provided in paragraph (2), the applicable recovery period shall be determined in accordance with the following table:

In the case of:	The applicable recovery period is:
3-year property	3 years
5-year property	5 years
7-year property	7 years
10-year property	10 years
15-year property	15 years
20-year property	20 years
Residential rental property	27.5 years
Nonresidential real property	31.5 years.

"(2) PROPERTY FOR WHICH 150 PERCENT METHOD ELECTED.—In the case of property to which an election under subsection (b)(2)(B) applies, the applicable recovery period shall be determined under the table contained in subsection (g)(2)(C)."

(12) Clause (i) of section 56(a)(1)(C) of the 1986 Code is amended by striking out "do not apply" and inserting in lieu thereof "do not apply by reason of section 203, 204, or 251(d) of such Act".

(13) The heading of paragraph (24) of section 381(c) of the 1986 Code is amended by striking out "RECOVERY ALLOWANCE FOR RECOVERY PROPERTY" and inserting in lieu thereof "DEPRECIATION DEDUCTION".

(14) Paragraph (5) of section 48(a) of the 1986 Code is amended—

(A) by striking out "168(j)(4)(C)" and inserting in lieu thereof "168(h)(2)(C)",

(B) by striking out "168(j)(4)(A)(iii)" and inserting in lieu thereof "168(h)(2)(A)(iii)",

(C) by striking out "168(j)(4)(B)" and inserting in lieu thereof "168(h)(2)(B)",

(D) by striking out "168(j)(6)" and inserting in lieu thereof "168(i)(3)",

(E) by striking out "168(j)(3)(C)(ii)" and inserting in lieu thereof "168(h)(1)(C)(ii)",

(F) by striking out "paragraphs (8) and (9) of section 168(j)" and inserting in lieu thereof "paragraphs (5) and (6) of section 168(h)", and

(G) by striking out "see section 168(j)" and inserting in lieu thereof "see section 168(h)".

(15) The last sentence of section 46(e)(3) of the 1986 Code is amended—

(A) by striking out "recovery property (within the meaning of section 168)" and inserting in lieu thereof "property to which section 168 applies",

(B) by striking out "present class life" and inserting in lieu thereof "class life", and

(C) by striking out "168(g)(2)" and inserting in lieu thereof "168(i)(1)".

(16)(A) Subsection (s) of section 48 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(9) Termination.—This subsection shall not apply to any property placed in service after December 31, 1985, unless such property is transition property (as defined in section 49(e)(1))."

(B) Paragraph (4) of section 168(f) of the 1986 Code is amended to read as follows:

"(4) Sound recordings.—Any works which result from the fixation of a series of musical, spoken,, or other sounds, regardless of the nature of the material (such as discs, tapes, or other phonorecordings) in which such sounds are embodied."

(17) Paragraph (7) of section 46(c) of the 1986 Code is amended—

(A) by striking out "recovery property" and inserting in lieu thereof "property to which section 168 applies",

(B) by striking out "168(c)" each place it appears and inserting in lieu thereof "168(e)",

(C) by striking out "168(f)(3)(B)" and inserting in lieu thereof "168(f)(3)(B) (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986)", and

(D) by striking out "RECOVERY PROPERTY" in the paragraph heading and inserting in lieu thereof "PROPERTY TO WHICH SECTION 168 APPLIES".

(18) Paragraph (1) of section 47(d) of the 1986 Code is amended by striking out "section 48(c)(8)(C)"
and inserting in lieu thereof "section 46(c)(8)(C)".

(19) Paragraph (1) of section 179(d) of the 1986 Code is amended by striking out "recovery property" and inserting in lieu thereof "tangible property (to which section 168 applies)".

(20) Section 48 of the 1986 Code is amended by redesignating the subsection (s) relating to cross references as subsection (t).

(21) Clause (v) of section 168(e)(3)(B) of the 1986 Code is amended by striking out "any property" and inserting in lieu thereof "any section 1245 property".

(b) Amendments Related to Section 202 of the Reform Act.—

(1) Paragraph (3) of section 179(b) of the 1986 Code is amended to read as follows:

"(3) LIMITATION BASED ON INCOME FROM TRADE OR BUSINESS.—

"(A) In general.—The amount allowed as a deduction under subsection (a) for any taxable year (determined after the application of paragraphs (1) and (2)) shall not exceed the aggregate amount of taxable income of the taxpayer for such taxable year which is derived from the active conduct by the taxpayer of any trade or business during such taxable year.

"(B) Carryover of disallowed deduction.—The amount allowable as a deduction under subsection (a) for any taxable year shall be increased by the lesser of—

"(i) the aggregate amount disallowed under subparagraph (A) for all prior taxable years (to the extent not previously allowed as a deduction by reason of this subparagraph), or

"(ii) the excess (if any) of—

"(I) the limitation of paragraphs (1) and (2) (or if lesser, the aggregate amount of taxable income referred to in subparagraph (A)), over

"(II) the amount allowable as a deduction under subsection (a) for such taxable year without regard to this subparagraph.

"(C) Computation of taxable income.—For purposes of this paragraph, taxable income derived from the conduct of a trade or business shall be computed without regard to the deduction allowable under this section."

(2) Paragraph (1) of section 280F(d) of the 1986 Code is amended by striking out "subsections (a) and (b)" and inserting in lieu thereof "subsections (a) and (b), and the limitation of paragraph (3) of this subsection,".

(c) Amendments Related to Section 203 of the Reform Act.—

(1) Subparagraph (B) of section 203(a)(1) of the Reform Act is amended by adding at the end thereof the following new sentence: "No election may be made under this subparagraph with respect to property to which section 168 of the Internal Revenue Code of 1986 would not apply by reason of section 168(f)(5) of such Code if such property were placed in service after December 31, 1986."

(2) Subsection (d) of section 203 of the Reform Act is amended—

(A) by striking out "the case of any taxable year" and inserting in lieu thereof "the case of any taxable year beginning before October 1, 1987", and

(B) by adding at the end thereof the following new sentence: "The preceding sentence shall only apply to property which would be taken into account if such amendments did apply."

(3) Notwithstanding section 203 of the Reform Act, the amendments made by section 201 of the Reform Act shall apply to any real property which was acquired before January 1, 1987, and was converted on or after such date from personal use to a use for which depreciation is allowable.

(4) Paragraph (1) of section 203(b) of the Reform Act is amended by adding at the end thereof the following new sentence:
"For purposes of this paragraph, all members of the same affiliated group of corporations (within the meaning of section 1504 of the Internal Revenue Code of 1986) filing a consolidated return shall be treated as one taxpayer."

(5) Paragraph (1) of section 203(c) of the Reform Act is amended by striking out "Subparagraph" and inserting in lieu thereof "Except as otherwise provided in this subsection or section 204, subparagraph".

(6) Clause (i) of section 203(b)(2)(C) of the Reform Act is amended by striking out "shall be the class life" and inserting in lieu thereof "applies shall be the class life".

(7) Paragraph (3) of section 203(b) of the Reform Act is amended—

(A) by inserting before the comma at the end of subparagraph (A) "(or would have met such requirements if placed in service by such person)", and

(B) by inserting ", or is leased to such person," before "not later than".

(8) Paragraph (2) of section 203(a) of the Reform Act is amended to read as follows:

"(2) Section 202.—

"(A) In general.—The amendments made by section 202 shall apply to property placed in service after December 31, 1986, in taxable years ending after such date.

"(B) Special rule for fiscal years including January 1, 1987.—In the case of any taxable year (other than a calendar year) which includes January 1, 1987, for purposes of applying the amendments made by section 202 to property placed in service during such taxable year and after December 31, 1986—

"(i) the limitation of section 179(b)(1) of the Internal Revenue Code of 1986 (as amended by section 202) shall be reduced by the aggregate deduction under section 179 (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986) for section 179 property placed in service during such taxable year and before January 1, 1987,

"(ii) the limitation of section 179(b)(2) of such Code (as so amended) shall be applied by taking into account the cost of all section 179 property placed in service during such taxable year, and

"(iii) the limitation of section 179(b)(3) of such Code shall be applied by taking into account the taxable income for the entire taxable year reduced by the amount of any deduction under section 179 of such Code for property placed in service during such taxable year and before January 1, 1987."

(d) Amendments Related to Section 204 of the Reform Act.—

(1) Subparagraph (B) of section 204(a)(1) of the Reform Act is amended by striking out "and" at the end of clause (ii), by striking out the period at the end of clause (iii) and inserting in lieu thereof ", and", and by inserting after clause (iii) the following new clause:

"(iv) described in subparagraph (F) or (H)."

(2) Subparagraph (C) of section 204(a)(1) of the Reform Act is amended by striking out the last sentence and inserting in lieu thereof the following:

"For purposes of this subparagraph, section 203(b)(2) shall be applied by substituting 'January 1, 1994' for 'January 1, 1991' each place it appears."

(3) Subparagraph (E) of section 204(a)(1) of the Reform Act is amended by striking out the last sentence and inserting in lieu thereof the following: "For purposes of this subparagraph, section 203(b)(2) shall be applied by substituting 'January 1, 1998' for 'January 1, 1991' each place it appears."

(4) Subparagraph (F) of section 204(a)(1) of the Reform Act is amended—

(A) by striking out "paragraph" and inserting in lieu thereof "subparagraph",

(B) by striking out ", or" at the end of clause (iii) and inserting in lieu thereof a period, and

(C) by striking out so much of clause (iv) as precedes subclause (I) thereof and inserting in lieu thereof the following:

"A project is also described in this subparagraph if it is a mixed-use development which is—".

(5) The last sentence of section 204(a)(1)(F) of the Reform Act is amended—

(A) by striking out "subsection (b)(2)" and inserting in lieu thereof "section 203(b)(2)", and

(B) by striking out "1993" and inserting in lieu thereof "1998".

(6) Subparagraph (H) of section 204(a)(1) of the Reform Act is amended by striking out "July 1, 1986" and inserting in lieu thereof "June 30, 1986".

(7)(A) Paragraph (4) of section 204(a) of the Reform Act is amended to read as follows:

"(4) Property treated under prior tax acts.—The amendments made by section 201 shall not apply—

"(A) to property described in section 12(c)(2) (as amended by the Technical Corrections Act of 1987), 31(g)(5), or 31(g)(17)(J) of the Tax Reform Act of 1984,

"(B) to property described in section 209(d)(1)(B) of the Tax Equity and Fiscal Responsibility Act of 1982, as amended by the Tax Reform Act of 1984, and

"(C) to property described in section 216(b)(3) of the Tax Equity and Fiscal Responsibility Act of 1982."

(B) Paragraph (2) of section 12(c) of the Tax Reform Act of 1984 is amended by striking out "which is placed in service before January 1, 1988".

(8) Subparagraph (K) of section 204(a)(5) of the Reform Act is amended—

(A) by striking out "either" in the matter preceding clause (i),

(B) by striking out "super calendar" in clause (i) and inserting in lieu thereof "supercalendered",

(C) by striking out "were incurred" in clause (i) and inserting in lieu thereof "was incurred", and

(D) by inserting "the project" before "involves" in clause (v).

(9) Paragraph (5) of section 204(a) of the Reform Act is amended by adding at the end thereof the following new subparagraph:

"(Z) A project is described in this subparagraph if—

"(i) such project involves a fiber optic network of at least 475 miles, passing through Minnesota and Wisconsin; and

"(ii) before January 1, 1986, at least $15,000,000 was expended or committed for electronic equipment or fiber optic cable to be used in constructing the network."

(10)(A) Paragraph (8) of section 204(a) of the Reform Act is amended by striking out the period at the end of subparagraph (C) and inserting in lieu thereof a comma, and by adding at the end thereof the following new subparagraphs:

"(D) a bond volume carryforward election was made for the facility and the facility is for Chattanooga, Knoxville, or Kingsport, Tennessee, or

"(E) such facility is to serve Haverhill, Massachusetts."

(B) Paragraph (8) of section 204(a) of the Reform Act is amended by striking out ", and section 203(c),".

(11) Paragraph (10) of section 204(a) of the Reform Act is amended—

(A) by striking out "either" in the material preceding subparagraph (A),

(B) by striking out "wastewater treatment facility" in subparagraph (C) and inserting in lieu thereof "wastewater treatment facility serving Greenville, South Carolina", and

(C) by striking out "the letter of intent and service agreement described in subparagraph (A)(2) of this paragraph" in subparagraph (D) and inserting in lieu thereof "such letter of intent and service agreement".

(12) Paragraph (11) of section 204(a) of the Reform Act is amended—

(A) by striking out "Kansas, Florida, Georgia, or Texas" in subparagraph (A) and inserting in lieu thereof "the United States",

(B) by striking out "the purchase" in subparagraph (C) and inserting in lieu thereof "the purchaser", and

(C) by striking out the last sentence.

(13) Paragraph (14) of section 204(a) of the Reform Act is amended by striking out the period at the end of subparagraph (E) and inserting in lieu thereof a comma, and by inserting after subparagraph (E) the following:

"(F) the project has a planned scheduled capacity of approximately 38,000 kilowatts, the project property is placed in service before January 1, 1991, and the project is operated, established, or constructed pursuant to certain agreements, the negotiation of which began before 1986, with public or municipal utilities conducting business in Massachusetts, or

"(G) the Board of Regents of Oklahoma State University took official action on July 25, 1986, with respect to the project.

In the case of the project described in subparagraph (F), section 203(b)(2)(A) shall be applied by substituting 'January 1, 1991' for 'January 1, 1989'."

(14) Paragraph (15) of section 204(a) of the Reform Act is amended—

(A) by adding "located in New Mexico" after "to a project",

(B) by striking out "$72,000" and inserting in lieu thereof "$72,000,000", and

(C) by striking out the last sentence and inserting in lieu thereof the following:

"For purposes of this paragraph, section 203(b)(2) shall be applied by substituting 'January 1, 1996' for 'January 1, 1991' each place it appears."

(15) Paragraph (24) of section 204(a) of the Reform Act is amended by adding at the end thereof the following new subparagraphs:

"(E) The amendments made by section 201 shall not apply to the Muskegon, Michigan, Cross-Lake Ferry project having a projected cost of approximately $7,200,000.

"(F) The amendments made by section 201 shall not apply to a new automobile carrier vessel, the contract price for which is no greater than $28,000,000, and which will be constructed for and placed in service by OSG Car Carriers, Inc., to transport, under the United States flag and with an American crew, foreign automobiles to North America in a case where negotiations for such transportation arrangements commenced in 1985, and definitive transportation contracts were awarded before June 1986."

(16) Paragraph (25) of section 204(a) of the Reform Act is amended by striking out "wood energy products" and inserting in lieu thereof "wood energy projects".

(17) Paragraph (27) of section 204(a) of the Reform Act is amended—

(A) in subparagraph (A)—

(i) by striking out "$400,000,000" and inserting in lieu thereof "$500,000,000", and

(ii) by striking out "letter of intent" and inserting in lieu thereof "memorandum of terms",

(B) in subparagraph (B), by striking out "525,000" and inserting in lieu thereof "540,000",

(C) in subparagraph (C)—

(i) by striking out "$32,000,000" and inserting in lieu thereof "$22,000,000", and

(ii) by striking out "before" and inserting in lieu thereof "on",

(D) in subparagraph (D), by striking out "and 7th Avenue", and

(E) in subparagraph (H), by striking out "$62,000" and inserting in lieu thereof "$62,600,000".

(18) Paragraph (27) of section 204(a) of the Reform Act is amended by adding at the end thereof the following:

"(I) A 600,000 square foot mixed use building known as Flushing Center with respect to which a letter of intent was executed on March 26, 1986.

In the case of the building described in subparagraph (I), section 203(b)(2)(A) shall be applied by substituting 'January 1, 1993' for the applicable date which would otherwise apply."

(19) Paragraph (31) of section 204(a) of the Reform Act is amended by striking out "$10,200,000" and inserting in lieu thereof "$10,500,000".

(20) Paragraph (32) of section 204(a) of the Reform Act is amended—

(A) in subparagraph (A)—

(i) by striking out "July 30, 1984" and inserting in lieu thereof "December 26, 1985",

(ii) by striking out "February 28, 1985" and inserting in lieu thereof "July 2, 1986", and

(iii) by striking out "on June 17, 1985" and inserting in lieu thereof "in May 1985",

(B) in subparagraph (B)—

(i) by striking out "August 30, 1984" and inserting in lieu thereof "December 26, 1985",

(ii) by striking out "May 4, 1985" and inserting in lieu thereof "July 2, 1986", and

(iii) by striking out "on July 3, 1985" and inserting in lieu thereof "in July 1985",

(C) in subparagraph (E)—

(i) by striking out "$2,200,000" and inserting in lieu thereof "$5,000,000",

(ii) by striking out "on January 27, 1986" and inserting "in 1986", and

(iii) by inserting "in Masontown, Pennsylvania," after "plant",

(D) by amending subparagraph (K) to read as follows:

"(K) A 250 megawatt coal-fired electric plant in northeastern Nevada estimated to cost $600,000,000 and known as the Thousand Springs project, on which the Sierra Pacific Power Company, a subsidiary of Sierra Pacific Resources, began in 1980 work to design, finance, construct, and operate (and section 203(b)(2) shall be applied with respect to such plant by substituting 'January 1, 1995' for 'January 1, 1991'),",

(E) in subparagraph (L), by inserting "in connection with" after "housing",

(F) by amending subparagraph (M) to read as follows:

"(M) property which is part of the Kenosha Downtown Redevelopment Project and which is financed with the proceeds of bonds issued pursuant to section 1317(6)(W),",

(G) in subparagraph (O), by striking out "New Orleans, Louisiana" and inserting in lieu thereof "Pensacola, Florida", and

(H) in subparagraph (S)—

(i) by inserting "to be" before "placed",

(ii) by inserting "Coal" before "Company",

(iii) by inserting "(or any subsidiary thereof)" after "Company", and

(iv) by striking out "on December 31, 1985" and inserting in lieu thereof "by December 31, 1985".

(21) Subparagraph (T) of section 204(a)(32) of the Reform Act is amended to read as follows:

"(T) a portion of a fiber optics network placed in service by LDX NET after December 31, 1988, but only to the extent the cost of such portion does not exceed $25,000,000,".

(22) Subparagraph (U) of section 204(a)(32) of the Reform Act is amended by striking out "placed in service" and inserting in lieu thereof "constructed".

(23) Subparagraph (X) of section 204(a)(32) of the Reform Act is amended by striking out "the home rule city and the State housing finance agency adopted inducement resolutions on December 20, 1985" and inserting in lieu thereof "the home rule city on December 4, 1985, and the State housing finance agency on December 20, 1985, adopted inducement resolutions".

(24) Subparagraph (C) of paragraph (33) of section 204(a) of the Reform Act is amended to read as follows:

"(C)(i) a waste-to-energy project in Derry, New Hampshire, costing approximately $60,000,000, and

"(ii) a waste-to-energy project in Manchester, New Hampshire, costing approximately $60,000,000,".

(25) Paragraph (33) of section 204(a) of the Reform Act is amended by striking out "and" at the end of subparagraph (J), by striking out the period at the end of subparagraph (K) and inserting in lieu thereof ", and", and by inserting after subparagraph (K) the following:

"(L) a cogeneration facility to be built at a paper company in Turners Falls, Massachusetts, with respect to which a letter of intent was executed on behalf of the paper company on September 26, 1985."

(26) Subsection (a) of section 204 of the Reform Act is amended by adding at the end thereof the following new paragraphs:

"(34) The amendments made by section 201 shall not apply to an approximately 240,000 square foot beverage container manufacturing plant located in Batesville, Mississippi, or plant equipment used exclusively on the plant premises if—

"(A) a 2-year supply contract was signed by the taxpayer and a customer on November 1, 1985,

"(B) such contract further obligated the customer to purchase beverage containers for an additional 5-year period if physical signs of construction of the plant are present before September 1986,

"(C) ground clearing for such plant began before August 1986, and

"(D) construction is completed, the equipment is installed, and operations are commenced before July 1, 1987.

"(35) The amendments made by section 201 shall not apply to any property which is part of the multifamily housing at the Columbia Point Project in Boston, Massachusetts.

"(36) The amendments made by section 201 shall not apply to any ethanol facility located in Blair, Nebraska, if—

"(A) in July of 1984 an initial binding construction contract was entered into for such facility,

"(B) in June of 1986, certain Department of Energy recommended contract changes required a change of contractor, and

"(C) in September of 1986, a new contract to construct such facility, consistent with such recommended changes, was entered into.

"(37) The amendments made by section 201 shall not apply to any property which is part of a sewage treatment facility if, prior to January 1, 1986, the City of Conyers, Georgia, selected a privatizer to construct such facility, received a guaranteed maximum price bid for the construction of such facility, signed a letter of intent and began substantial negotiations of a service agreement with respect to such facility.

"(38) The amendments made by section 201 shall not apply to—

"(A) a $28,000,000 wood resource complex for which construction was authorized by the Board of Directors on August 9, 1985,

"(B) an electrical cogeneration plant in Bethel, Maine which is to generate 2 megawatts of electricity from the burning of wood residues, with respect to which a contract was entered into on July 10, 1984, and with respect to which $200,000 of the expected $2,000,000 cost had been committed before June 15, 1986,

"(C) a mixed income housing project in Portland, Maine which is known as the Back Bay Tower and which is expected to cost $17,300,000,

"(D) the Eastman Place project and office building in Rochester, New York, which is projected to cost $20,000,000, with respect to which an inducement resolution was adopted in December 1986, and for which a binding contract of $500,000 was entered into on April 30, 1986,

"(E) the Marquis Two project in Atlanta, Georgia which has a total budget of $72,000,000 and the construction phase of which began under a contract entered into on March 26, 1986,

"(F) a 166-unit continuing care retirement center in New Orleans, Louisiana, the construction contract for which was signed on February 12, 1986, and is for a maximum amount not to exceed $8,500,000,

"(G) the expansion of the capacity of an oil refining facility in Rosemont, Minnesota from 137,000 to 207,000 barrels per day which is expected to be completed by December 31, 1990, and

"(H) a project in Ransom, Pennsylvania which will burn coal waste (known as 'culm') with an approximate cost of $64,000,000 and for which a certification from the Federal Energy Regulatory Commission was received on March 11, 1986.

"(39) The amendments made by section 201 shall not apply to any facility for the manufacture of an improved particle board if a binding contract to purchase such equipment was executed March 3, 1986, such equipment will be placed in service by January 1, 1988, and such facility is located in or near Moncure, North Carolina."

(27) Subsection (b) of section 204 of the Reform Act is amended by inserting "(as amended by the Tax Reform Act of 1984)" immediately before the period at the end thereof.

(28) Subparagraph (A) of section 204(c)(1) of the Reform Act is amended by inserting "located in Pennsylvania and" before "constructed pursuant".

(29) Paragraph (3) of section 204(c) of the Reform Act is amended—

(A) by striking out "for the applicable date" and inserting in lieu thereof "(or, in the case of a project described in subparagraph (B), by substituting 'April 1, 1992') for the applicable date",

(B) by striking out "before April 1, 1986" in subparagraph (A) and inserting in lieu thereof "on or before April 1, 1986", and

(C) by adding at the end thereof the following:

"In the case of an aircraft described in subparagraph (A), section 203(b)(1)(A) shall be applied by substituting 'April 1, 1986' for 'March 1, 1986' and section 49(e)(1)(B) of the Internal Revenue Code of 1986 shall not apply."

(30) Paragraph (4) of section 204(c) of the Reform Act is amended to read as follows:

"(4) The amendments made by section 201 shall not apply to a limited amount of the following property or a limited amount of property set forth in a submission before September 16, 1986, by the following taxpayers:

"(A) Arena project, Michigan, but only with respect to $78,000,000 of investments.

"(B) Campbell Soup Company, Pennsylvania, California, North Carolina, Ohio, Maryland, Florida, Nebraska, Michigan, South Carolina, Texas, New Jersey, and Delaware, but only with respect to $9,329,000 of regular investment tax credits.

"(C) The Southeast Overtown/Park West development, Florida, but only with respect to $9,000,000 of investments.

"(D) Equipment placed in service and operated by Legget and Platt before July 1, 1987, but only with respect to $2,000,000 of regular investment tax credits, and subsections (c) and (d) of section 49 of the Internal Revenue Code of 1986 shall not apply to such equipment.

"(E) East Bank Housing Project.

"(F) $1,561,215 of investments by Standard Telephone Company.

"(G) Five aircraft placed in service before January 1, 1987, by Presidential Air.

"(H) A rehabilitation project by Ann Arbor Railroad, but only with respect to $2,900,000 of investments.

"(I) Ada, Michigan Cogeneration, but only with respect to $30,000,000 of investments.

"(J) Anchor Store Project, Michigan, but only with respect to $21,000,000 of investments.

"(K) A waste-fired electrical generating facility of Biogen Power, but only with respect to $34,000,000 of investments.

"(L) $14,000,000 of television transmitting towers placed in service by Media General, Inc., which were subject to binding contracts as of January 21, 1986, and will be placed in service before January 1, 1988.

"(M) Interests of Samuel A. Hardage (whether owned individually or in partnership form).

"(N) Two aircraft of Mesa Airlines with an aggregate cost of $5,723,484.

"(O) Yarn-spinning equipment used at Spray Cotton Mills, but only with respect to $300,000 of investments.

"(P) 328 units of low-income housing at Angelus Plaza, but only with respect to $20,500,000 of investments.

"(Q) One aircraft of Continental Aviation Services with a cost of approximately $15,000,000 that was purchased pursuant to a contract entered into during March of 1983 and that is placed in service by December 31, 1988."

(31) Paragraph (29) of section 204(a) of the Reform Act is amended—

(A) by striking out "January 18" in subparagraph (A) and inserting in lieu thereof "January 25", and

(B) by striking out "law suits filed on June 22, 1984, and November 21, 1985" in subparagraph (B) and inserting in lieu thereof "a law suit filed on October 25, 1985".

(32) Subparagraph (J) of section 204(a)(33) of the Reform Act, as amended by paragraph (25), is amended to read as follows:

"(J) A 25.85 megawatt alternative energy facility located in Deblois, Maine, with respect to which certification by the Federal Energy Regulatory Commission was made on April 3, 1986,".

(33) Paragraph (3) of section 204(c) of the Reform Act is amended—

(A) by inserting "and" at the end of subparagraph (B),

(B) by striking out subparagraph (C), and

(C) by redesignating subparagraph (D) as subparagraph (C).

(34) Subclause (II) of section 204(a)(5)(J)(ii) of the Reform Act is amended to read as follows:

"(II) the Board of Directors of an automobile manufacturer approved a written plan for the conversion of existing facilities to produce new models of a vehicle not currently produced in the United States, such facilities will be placed in service by July 1, 1987, and such Board action occurred in July 1985 with respect to a $602,000,000 expenditure, a $438,000,000 expenditure, and a $321,000,000 expenditure."

(35) Subparagraph (T) of section 204(a)(5) of the Reform Act is amended to read as follows:

"(T) A project is described in this subparagraph if it is a plant facility on Alaska's North Slope which is placed in service before January 1, 1988, and—

"(i) the approximate cost of which is $675,000,000, of which approximately $400,000,000 was spent on off-site construction,

"(ii) the approximate cost of which is $445,000,000, of which approximately $400,000,000 was spent on off-site construction and more than 50 percent of the project cost was spent prior to December 31, 1985, or

"(iii) the approximate cost of which is $375,000,000, of which approximately $260,000,000 was spent on off-site construction."

(e) Amendments Relating to Section 211 of the Reform Act.—

(1) Paragraph (1) of section 49(d) of the 1986 Code is amended to read as follows:

"(1) In general.—In the case of periods after December 31, 1985, with respect to so much of the credit determined under section 46(a) with respect to transition property as is attributable to the regular investment credit (as defined in subsection (c)(5)(B))—

"(A) paragraphs (1), (2), and (7) of section 48(q) and section 48(d)(5) shall be applied by substituting '100 percent' for '50 percent' each place it appears, and

"(B) sections 48(q)(4) and 196(d) shall not apply."

(2) Subparagraph (B) of section 49(c)(4) of the 1986 Code is amended to read as follows:

"(B) No carryback for years straddling July 1, 1987; gross up of carryforwards.—In any case to which paragraph (3) applies—

"(i) the amount of the reduction under paragraph (3) may not be carried back to any taxable year, but

"(ii) there shall be added to the carryforwards from the taxable year (before applying paragraph (2)) an amount equal to the amount which bears the same ratio to the carryforwards from such taxable year (determined without regard to this clause) as—

"(I) the applicable percentage, bears to

"(II) 1 minus the applicable percentage."

(3) Clause (i) of section 49(c)(5)(B) of the 1986 Code is amended to read as follows:

"(i) In general.—The term 'regular investment credit' means the credit determined under section 46(a) to the extent attributable to the regular percentage."

(4) Paragraph (1) of section 211(e) of the Reform Act is amended by adding at the end thereof the following new sentence: "Section 49(c) of the Internal Revenue Code of 1986 (as added by subsection (a)) shall apply to taxable years ending after June 30, 1987, and to amounts carried to such taxable years."

(5) Paragraph (4)(A) of section 211(e) of the Reform Act is amended—

(A) by striking out "Paragraphs (c) and (d) of section 49 of the Internal Revenue Code of 1954" and inserting in lieu thereof "Subsections (c) and (d) of section 49 of the Internal Revenue Code of 1986", and

(B) by striking out "1935" and inserting in lieu thereof "1985".

(6) Paragraph (4)(B) of section 211(e) of the Reform Act is amended by striking out "shall be treated as transition property" and inserting in lieu thereof "shall be treated as transition property and subsections (c) and (d) of section 49 of such Code shall not apply to such property".

(7) Paragraph (4) of section 211(e) of the Reform Act is amended by adding at the end thereof the following new subparagraphs:

"(C) Any solid waste disposal facility which will process and incinerate solid waste of one or more public or private entities including Dakota County, Minnesota, and with respect to which a bond carryforward from 1985 was elected in an amount equal to $12,500,000 shall be treated as transition property within the meaning of section 49(e) of the Internal Revenue Code of 1986.

"(D) For purposes of section 49 of such Code, the following property shall be treated as transition property:

"(i) 2 catamarans built by a shipbuilder incorporated in the State of Washington in 1964, the contracts for which were signed on April 22, 1986 and November 12, 1985, and 1 barge built by such shipbuilder the contract for which was signed on August 7, 1985.

"(ii) 2 large passenger ocean-going United States flag cruise ships with a passenger rated capacity of up to 250 which are built by the shipbuilder described in clause (i), which are the first such ships built in the United States since 1952, and which were designed at the request of a Pacific Coast cruise line pursuant to a contract entered into in October 1985. This clause shall apply only to that portion of the cost of each ship which does not exceed $40,000,000.

"(iii) Property placed in service during 1986 by Satellite Industries, Inc., with headquarters in Minneapolis, Minnesota, to the extent that the cost of such property does not exceed $1,950,000.

"(E) Subsections (c) and (d) of section 49 of such Code shall not apply to property described in section 204(a)(4) of this Act."

(8)(A) Subsection (d) of section 38 is amended to read as follows:

"(d) Ordering Rules.—For purposes of sections 46(f), 47(a), 196(a), and any other provision of this title where it is necessary to ascertain the extent to which the credits determined under any section referred to in subsection (b) are used in a taxable year or as a carryback or carryforward—

"(1) In general.—The order in which such credits are used shall be determined on the basis of the order in which they are listed in subsection (b) as of the close of the taxable year in which the credit is used.

"(2) Components of investment credit.—The order in which credits attributable to a percentage referred to in section 46(a) are used shall be determined on the basis of the order in which such percentages are listed in section 46(a) as of the close of the taxable year in which the credit is used.

"(3) Credits no longer listed.—For purposes of this subsection—

"(A) the credit allowable by section 40, as in effect on the day before the date of the enactment of the Tax Reform Act of 1984, (relating to expenses of work incentive programs) and the credit allowable by section 41(a), as in effect on the day before the date of the enactment of the Tax Reform Act of 1986, (relating to employee stock ownership credit) shall be treated as referred to in that order after the last paragraph of subsection (b), and

"(B) the employee plan percentage (as defined in section 46(a)(2)(E), as in effect on the day before the date of the enactment of the Tax Reform Act of 1984) shall be treated as referred to after section 46(a)(2)."

(B) The amendment made by subparagraph (A) shall apply to taxable years beginning after December 31, 1983, and to carrybacks from such years.

(f) Amendments Related to Section 212 of the Reform Act.—

(1) Paragraph (2) of section 212(f) of the Reform Act is amended by striking out so much of such paragraph as precedes subparagraph (A) and insert in lieu thereof the following:

"(2) Special rule.—In the case of the LTV Corporation, in lieu of the requirements of paragraph (1)—".

(2) Subclause (I) of section 212(f)(2)(B)(i) of the Reform Act is amended by striking out "such involvement begins" and inserting in lieu thereof "when the corporation receives the refund".

(3) Subsection (g) of section 212 of the Reform Act is amended by adding at the end thereof the following new paragraph:

"(3) Special rule for restructuring.—In the case of any corporation, any restructuring shall not limit, increase, or otherwise affect the benefits which would have been available under this section but for such restructuring."

(4) Section 212 of the Reform Act is amended by adding at the end thereof the following new subsection:

"(h) Tentative Refunds.—Rules similar to the rules of section 6425 of the Internal Revenue Code of 1986 shall apply to any overpayment resulting from the application of this section."

(5) Subparagraph (B) of section 212(g)(2) of the Reform Act is amended by striking out "determined under" and inserting in lieu thereof "determined for periods before January 1, 1986, under".

(6) Paragraph (2) of section 212(f) of the Reform Act is amended by adding at the end thereof the following new sentence: "In the case of the corporation referred to in the preceding sentence, no offset to any refund under this section may be made by reason of any tax imposed by section 4971 of the Internal Revenue Code of 1986 (or any interest or penalty attributable to any such tax), and the date on which any such refund is to be paid shall be determined without regard to such corporation's status under title 11, United States Code."

(g) Amendment Related to Section 213 of the Reform Act.—Subparagraph (B) of section 213(e)(2) of the Reform Act is amended by striking out "determined under" and inserting in lieu thereof "determined for periods before January 1, 1986, under".

(h) Amendment Related to Section 231 of the Reform Act.—Subsection (g) of section 41 of the 1986 Code is amended by adding at the end thereof the following new sentence: "If the amount determined under subsection (a) for any taxable year exceeds the limitation of the preceding sentence, such amount may be carried to other taxable years under the rules of section 39; except that the limitation of the preceding sentence shall be taken into account in lieu of the limitation of section 38(c) in applying section 39."

(i) Amendment Related to Sections 241 and 242 of the Reform Act.—Section 167 of the 1986 Code is amended by redesignating subsection (r) as subsection (s) and by inserting after subsection (q) the following new subsection:

"(r) Certain Property Not Treated as Depreciable.—

"(1) In general.—No depreciation deduction shall be allowable under this section (and no depreciation or amortization deduction shall be allowable under any other provision of this subtitle) with respect to—

"(A) any trademark or trade name expenditure, or

"(B) any railroad grading or tunnel bore.

"(2) Definitions.—For purposes of this subsection—

"(A) Trademark or trade name expenditure.—The term 'trademark or trade name expenditure' means any expenditure which is directly connected with the acquisition, protection, expansion, registration (Federal, State, or foreign), or defense of a trademark or trade name.

"(B) Railroad grading or tunnel bores.—The term 'railroad grading or tunnel bore' means all improvements resulting from excavations (including tunneling), construction of embankments, clearings, diversions of roads and streams, sodding of slopes, and from similar work necessary to provide, construct, reconstruct, alter, protect, improve, replace, or restore a roadbed or right-of-way for railroad track."

(j) Amendments Related to Section 243 of the Reform Act.—

(1) Section 243 of the Reform Act (related to deduction of bus and freight forwarder operating authority) is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

"(d) Application of Section 334(b)(2).—For purposes of subsections (a) and (b), the reference to section 334(b)(2) in section 266(c)(2)(A)(ii) of the Economic Recovery Tax Act of 1981 shall be a reference to such section as in effect before its repeal."

(2) The heading of subparagraph (A) of section 243(b)(2) of the Reform Act is amended by striking out "TO BEGIN IN 1987".

(k) Amendments Related to Section 251 of the Reform Act.—

(1) Paragraph (2)(B) of section 251(d) of the Reform Act is amended by striking out clause (i) and redesignating clauses (ii) and (iii) as clauses (i) and (ii), respectively.

(2) Subparagraph (P) of section 251(d)(3) of the Reform Act is amended by striking out "San Francisco" and inserting in lieu thereof "San Jose, California".

(3) Paragraph (4) of section 251(d) of the Reform Act is amended—

(A) by striking out "Lakeland marbel Arcade" in subparagraph (K) and inserting in lieu thereof "Marble Arcade office building",

(B) by striking out "and" at the end of subparagraph (Y), and

(C) by striking out subparagraph (Z) and inserting in lieu thereof the following:

"(Z) the Bigelow-Hartford Carpet Mill in Enfield, Connecticut,

"(AA) properties abutting 125th street in New York County from 7th Avenue west to Morningside and the pier area on the Hudson River at the end of such 125th Street,

"(BB) the Bristol Carpet Mill project rehabilitating 2 buildings for approximately 156 apartment units and accompanying commercial and office use,

"(CC) the City of Los Angeles Central Library project pursuant to an agreement dated December 28, 1983,

"(DD) the Warehouse Row project in Chattanooga, Tennessee,

"(EE) any project described in section 204(a)(1)(F) of this Act,

"(FF) the Wood Street Commons project in Pittsburgh, Pennsylvania,

"(GG) the John Fitch Court in Windsor, Connecticut,

"(HH) any project described in section 803(d)(6) of this Act,

"(II) Union Station, Indianapolis, Indiana,

"(JJ) the Mattress Factory project in Pittsburgh, Pennsylvania,

"(KK) Union Station in Providence, Rhode Island,

"(LL) Plat 141, lot 10.4, Newport, Rhode Island,

"(MM) South Pack Plaza, Asheville, North Carolina,

"(NN) Old Louisville Trust Project, Louisville, Kentucky,

"(OO) Stewarts Rehabilitation Project, Louisville, Kentucky,

"(PP) Bernheim Officenter, Louisville, Kentucky,

"(QQ) Springville Mill Project, Rockville, Connecticut,

"(RR) Stewarts Square, Rockford, Illinois, and

"(SS) Porters Corner, Rockford, Illinois.

"Notwithstanding the preceding sentence, the amendments made by section 201 shall apply to the project described in subparagraph (FF)."

(4) Subsection (d) of section 251 of the Reform Act is amended by striking out paragraph (6) and inserting in lieu thereof the following:

"(6) Expensing of rehabilitation expenses for the Frankford Arsenal.—In the case of any expenditures paid or incurred in connection with improvements (including repairs and maintenance) of the Frankford Arsenal pursuant to a contract and partnership agreement during the 8-year period specified in the contract or agreement, all such expenditures to be made during the period 1986 through and including 1993 shall—

"(A) be treated as made (and allowable as a deduction) during 1986,

"(B) be treated as qualified rehabilitation expenditures made during 1986, and

"(C) be allocated in accordance with the partnership agreement.

"(7) Special rule.—In the case of the rehabilitation of the Willard Hotel in Washington, D.C., section 205(c)(1)(B)(ii) of the Tax Equity and Fiscal Responsibility Act of 1982 shall be applied by substituting '1987' for '1986'."

(5) Subparagraph (B) of section 251(d)(3) of the Reform Act is amended by striking out "Pontabla" and inserting in lieu thereof "Pontalba".

(6) Subparagraph (T) of section 251(d)(4) of the Reform Act is amended by striking out "Louisville" and inserting in lieu thereof "Covington".

(l) Amendments Related to Section 252 of the Reform Act.—

(1)(A) Subparagraph (A) of section 42(b)(2) of the 1986 Code is amended by striking out "for the month" and all that follows and inserting in lieu thereof "for the earlier of—

"(i) the month in which such building is placed in service, or

"(ii) at the election of the taxpayer—

"(I) the month in which the taxpayer and the housing credit agency enter into an agreement with respect to such building (which is binding on such agency, the taxpayer, and all successors in interest) as to the housing credit dollar amount to be allocated to such building, or

"(II) in the case of any building to which subsection (h)(4)(B) applies, the month in which the tax-exempt obligations are issued.

A month may be elected under clause (ii) only if the election is made not later than the 5th day after the close of such month. Such an election, once made, shall be irrevocable."

(B) Clause (ii) of section 42(b)(2)(C) of the 1986 Code is amended by striking out "the month in which the building was placed in service" and inserting in lieu thereof "the month applicable under clause (i) or (ii) of subparagraph (A)".

(2)(A) Subparagraph (A) of section 42(c)(2) of the 1986 Code (defining qualified low-income building) is amended to read as follows:

"(A) which is part of a qualified low-income housing project at all times during the period—

"(i) beginning on the 1st day in the compliance period on which such building is part of such a project, and

"(ii) ending on the last day of the compliance period with respect to such building, and".

(B) Paragraph (1) of section 42(f) of the 1986 Code (defining credit period) is amended by striking out "beginning with" and all that follows and inserting in lieu thereof "beginning with—

"(A) the taxable year in which the building is placed in service, or

"(B) at the election of the taxpayer, the succeeding taxable year,

but only if the building is a qualified low-income building as of the close of the 1st year of such period. The election under subparagraph (B), once made, shall be irrevocable."

(3) Clause (ii) of section 42(d)(2)(D) of the 1986 Code is amended to read as follows:

"(ii) Special rules for certain transfers.—For purposes of determining under subparagraph (B)(ii) when a building was last placed in service, there shall not be taken into account any placement in service—

"(I) in connection with the acquisition of the building in a transaction in which the basis of the building in the hands of the person acquiring it is determined in whole or in part by reference to the adjusted basis of such building in the hands of the person from whom acquired,

"(II) by a person whose basis in such building is determined under section 1014(a) (relating to property acquired from a decedent),

"(III) by any governmental unit or qualified nonprofit organization (as defined in subsection (h)(5)) if the requirements of subparagraph (B)(ii) are met with respect to the placement in service by such unit or organization and all the income from such property is exempt from Federal income taxation, or

"(IV) by any person who acquired such building by foreclosure (or by instrument in lieu of foreclosure) of any purchase-money security interest held by such person if the requirements of subparagraph (B)(ii) are met with respect to the placement in service by such person and such building is resold within 12 months after the date such building is placed in service by such person after such foreclosure."

(4) Paragraph (3) of section 42(d) of the 1986 Code is amended to read as follows:

"(3) Eligible basis reduced where disproportionate standards for units.—

"(A) In general.—Except as provided in subparagraph (B), the eligible basis of any building shall be reduced by an amount equal to the portion of the adjusted basis of the building which is attributable to residential rental units in the building which are not low-income units and which are above the average quality standard of the low-income units in the building.

"(B) Exception where taxpayer elects to exclude excess costs.—

"(i) In general.—Subparagraph (A) shall not apply with respect to a residential rental unit in a building which is not a low-income unit if—

"(I) the excess described in clause (ii) with respect to such unit is not greater than 15 percent of the cost described in clause (ii)(II), and

"(II) the taxpayer elects to exclude from the eligible basis of such building the excess described in clause (ii) with respect to such unit.

"(ii) Excess.—The excess described in this clause with respect to any unit is the excess of—

"(I) the cost of such unit, over

"(II) the amount which would be the cost of such unit if the average cost per square foot of low-income units in the building were substituted for the cost per square foot of such unit.

The Secretary may by regulation provide for the determination of the excess under this clause on a basis other than square foot costs."

(5) Subparagraph (A) of section 42(d)(5) of the 1986 Code is amended by inserting before the period "(increased, in the case of an existing building which meets the requirements of paragraph (2)(B), by the amounts described in paragraph (2)(A)(i)(II))".

(6)(A) Paragraph (5) of section 42(d) of the 1986 Code is amended by adding at the end thereof the following new subparagraph:

"(C) Eligible basis not to include expenditures where 167(k) elected.—The eligible basis of any building shall not include any portion of its adjusted basis which is attributable to amounts with respect to which an election is made under section 167(k)."

(B) Subparagraph (A) of section 42(d)(5) of the 1986 Code is amended by striking out "subparagraph (B)" and inserting in lieu thereof "subparagraphs (B) and (C)".

(7) Subparagraph (A) of section 42(d)(6) of the 1986 Code is amended by inserting "or" at the end of clause (i), by striking out ", or" at the end of clause (ii) and inserting in lieu thereof a period, and by striking out clause (iii).

(8) Clause (ii) of section 42(d)(6)(B) of the 1986 Code (defining federally assisted building) is amended by striking out "of 1934".

(9)(A) Paragraph (3) of section 42(f) of the 1986 Code is amended to read as follows:

"(3) Determination of applicable percentage with respect to increases in qualified basis after 1st year of credit period.—

"(A) In general.—In the case of any building which was a qualified low-income building as of the close of the 1st year of the credit period, if—

"(i) as of the close of any taxable year in the compliance period (after the 1st year of the credit period) the qualified basis of such building exceeds

"(ii) the qualified basis of such building as of the close of the 1st year of the credit period,

the applicable percentage which shall apply under subsection (a) for the taxable year to such excess shall be the percentage equal to ⅔ of the applicable percentage which (after the application of subsection (h)) would but for this paragraph apply to such basis.

"(B) 1st year computation applies.—A rule similar to the rule of paragraph (2)(A) shall apply to any increase in qualified basis to which subparagraph (A) applies for the 1st year of such increase."

(B) Paragraph (3) of section 42(b) of the 1986 Code is amended to read as follows:

"(3) Cross references.—

"(A) For treatment of certain rehabilitation expenditures as separate new buildings, see subsection (e).

"(B) For determination of applicable percentage for increases in qualified basis after the 1st year of the credit period, see subsection (f)(3).

"(C) For authority of housing credit agency to limit applicable percentage and qualified basis which may be taken into account under this section with respect to any building, see subsection (h)(6)."

(10) Subparagraph (B) of section 42(g)(2) of the 1986 Code (defining gross rent) is amended by striking out "Federal rental assistance" and inserting in lieu thereof "rental assistance".

(11) Paragraph (2) of section 42(g) of the 1986 Code is amended by adding at the end thereof the following new subparagraph:

"(C) Units where Federal rental assistance is reduced as tenant's income increases.—If the gross rent with respect to a residential unit exceeds the limitation under subparagraph (A) by reason of the fact that the income of the occupants thereof exceeds the income limitation applicable under paragraph (1), such unit shall, nevertheless, be treated as a rent-restricted unit for purposes of paragraph (1) if—

"(i) a Federal rental assistance payment described in subparagraph (B)(i) is made with respect to such unit or its occupants, and

"(ii) the sum of such payment and the gross rent with respect to such unit does not exceed the sum of the amount of such payment which would be made and the gross rent which would be payable with respect to such unit if—

"(I) the income of the occupants thereof did not exceed the income limitation applicable under paragraph (1), and

"(II) such unit were rent-restricted within the meaning of subparagraph (A).

The preceding sentence shall apply to any unit only if the result described in clause (ii) is required by Federal statute as of the date of the enactment of this subparagraph and as of the date the Federal rental assistance payment is made."

(12) Paragraph (3) of section 42(g) of the 1986 Code is amended to read as follows:

"(3) Date for meeting requirements.—

"(A) In general.—Except as otherwise provided in this paragraph, a building shall be treated as a qualified low-income building only if the project (of which such building is a part) meets the requirements of paragraph (1) not later than the close of the 12-month period beginning on the date the building is placed in service.

"(B) Buildings which rely on later buildings for qualification.—

"(i) In general.—In determining whether a building (hereinafter in this subparagraph referred to as the 'prior building') is a qualified low-income building, the taxpayer may take into account 1 or more additional buildings placed in service during the 12-month period described in subparagraph (A) with respect to the prior building only if the taxpayer elects to apply clause (ii) with respect to each additional building taken into account.

"(ii) Treatment of elected buildings.—In the case of a building which the taxpayer elects to take into account under clause (i), the period under subparagraph (A) for such building shall end at the close of the 12-month period applicable to the prior building.

"(iii) Date prior building is treated as placed in service.—For purposes of determining the credit period and the compliance period for the prior building, the prior building shall be treated for purposes of this section as placed in service on the most recent date any additional building elected by the taxpayer (with respect to such prior building) was placed in service.

"(C) Special rule.—A building—

"(i) other than the 1st building placed in service as part of a project, and

"(ii) other than a building which is placed in service during the 12-month period described in subparagraph (A) with respect to a prior building which becomes a qualified low-income building,

shall in no event be treated as a qualified low-income building unless the project is a qualified low-income housing project (without regard to such building) on the date such building is placed in service."

(13) Paragraph (4) of section 42(g) of the 1986 Code is amended by inserting before the period "; except that, in applying such provisions (other than section 142(d)(4)(B)(iii)) for such purposes, the term 'gross rent' shall have the meaning given such term by paragraph (2)(B) of this subsection".

(14)(A) Paragraph (1) of section 42(h) of the 1986 Code is amended to read as follows:

"(1) Credit may not exceed credit amount allocated to building.—

"(A) In general.—The amount of the credit determined under this section for any taxable year with respect to any building shall not exceed the housing credit dollar amount allocated to such building under this subsection.

"(B) Time for making allocation.—Except in the case of an allocation which meets the requirements of subparagraph (C) or (D), an allocation shall be taken into account under subparagraph (A) only if it is made not later than the close of the calendar year in which the building is placed in service.

"(C) Exception where binding commitment.—An allocation meets the requirements of this subparagraph if there is a binding commitment (not later than the close of the calendar year in which the building is placed in service) by the housing credit agency to allocate a specified housing credit dollar amount to such building beginning in a specified later taxable year.

"(D) Exception where increase in qualified basis.—

"(i) In general.—An allocation meets the requirements of this subparagraph if such allocation is made not later than the close of the calendar year in which ends the taxable year to which it will 1st apply but only to the extent the amount of such allocation does not exceed the limitation under clause (ii).

"(ii) Limitation.—The limitation under this clause is the amount of credit allowable under this section (without regard to this subsection) for a taxable year with respect to an increase in the qualified basis of the building equal to the excess of—

"(I) the qualified basis of such building as of the close of the 1st taxable year to which such allocation will apply, over

"(II) the qualified basis of such building as of the close of the 1st taxable year to which the most recent prior housing credit allocation with respect to such building applied.

"(iii) Housing credit dollar amount reduced by full allocation.—Notwithstanding clause (i), the full amount of the allocation shall be taken into account under paragraph (2)."

(B) Clause (ii) of section 42(h)(6)(B) of the 1986 Code is hereby repealed.

(15) Subparagraph (A) of section 42(h)(4) of the 1986 Code is amended by striking out "financed" and all that follows and inserting in lieu thereof "financed by any obligation the interest on which is exempt from tax under section 103 if—

"(i) such obligation is taken into account under section 146, and

"(ii) principal payments on such financing are applied within a reasonable period to redeem obligations the proceeds of which were used to provide such financing."

(16) Paragraph (5) of section 42(h) of the 1986 Code is amended by redesignating subparagraph (D) as subparagraph (E) and by inserting after subparagraph (C) the following new subparagraph:

"(D) Treatment of certain subsidiaries.—

"(i) In general.—For purposes of this paragraph, a qualified nonprofit organization shall be treated as satisfying the material participation test of subparagraph (B) if any qualified corporation in which such organization holds stock satisfies such test.

"(ii) Qualified corporation.—For purposes of clause (ii), the term 'qualified corporation' means any corporation if 100 percent of the stock of such corporation is held by 1 or more qualified nonprofit organizations at all times during the period such corporation is in existence."

(17)(A) Subparagraph (B) of section 42(h)(6) of the 1986 Code is amended by adding after clause (i) the following new clause:

"(ii) Carryforward where Secretary determines unforeseen delay in placing building in service.—A housing credit dollar amount which was allocated to a building for a calendar year after 1987 may be carried forward to the succeeding calendar year for such building if—

"(I) it was reasonable to believe that such building would be placed in service during the earlier calendar year but was not solely because of unforeseen conditions which, as determined by the Secretary, were not within the control of the taxpayer, and

"(II) such building is placed in service during such succeeding calendar year."

(B) Clause (i) of section 42(h)(6)(B) of the 1986 Code is amended by striking out "The portion" and inserting in lieu thereof "Except as provided in clause (ii), the portion".

(18) Subparagraph (D) of section 42(h)(6) of the 1986 Code is amended to read as follows:

"(D) Credit reduced if allocated credit dollar amount is less than credit which would be allowable without regard to placed in service convention, etc.—

"(i) In general.—The amount of the credit determined under this section with respect to any building shall not exceed the clause (ii) percentage of the amount of the credit which would (but for this subparagraph) be determined under this section with respect to such building.

"(ii) Determination of percentage.—For purposes of clause (i), the clause (ii) percentage with respect to any building is the percentage which—

"(I) the housing credit dollar amount allocated to such building bears to

"(II) the credit amount determined in accordance with clause (iii).

"(iii) Determination of credit amount.—The credit amount determined in accordance with this clause is the amount of the credit which would (but for this subparagraph) be determined under this section with respect to the building if—

"(I) this section were applied without regard to paragraphs (2)(A) and (3)(B) of subsection (f), and

"(II) subsection (f)(3)(A) were applied without regard to 'the percentage equal to ⅔ of'."

(19) Paragraph (6) of section 42(h) of the 1986 Code is amended by adding at the end thereof the following new subparagraph:

"(E) Housing credit agency to specify applicable percentage and maximum qualified basis.—In allocating a housing credit dollar amount to any building, the housing credit agency shall specify the applicable percentage and the maximum qualified basis which may be taken into account under this section with respect to such building. The applicable percentage and maximum qualified basis so specified shall not exceed the applicable percentage and qualified basis determined under this section without regard to this subsection."

(20)(A) Subparagraph (A) of section 42(i)(2) of the 1986 Code is amended—

(i) by inserting "or any prior taxable year" after "such taxable year",

(ii) by striking out "there is outstanding" and inserting in lieu thereof "there is or was outstanding", and

(iii) by striking out "are used" and inserting in lieu thereof "are or were used".

(B) Subparagraph (B) of section 42(i)(2) of the 1986 Code is amended to read as follows:

"(B) Election to reduce eligible basis by balance of loan or proceeds of obligations.—A loan or tax-exempt obligation shall not be taken into account under subparagraph (A) if the taxpayer elects to exclude from the eligible basis of the building for purposes of subsection (d)—

"(i) in the case of a loan, the principal amount of such loan, and

"(ii) in the case of a tax-exempt obligation, the proceeds of such obligation."

(C) Paragraph (2) of section 42(i) of the 1986 Code is amended by redesignating subparagraph (C) as subparagraph (D) and by inserting after subparagraph (B) the following new subparagraph:

"(C) Special rule for subsidized construction financing.—Subparagraph (A) shall not apply to any tax-exempt obligation or below market Federal loan used to provide construction financing for any building if—

"(i) such obligation or loan (when issued or made) identified the building for which the proceeds of such obligation or loan would be used, and

"(ii) such obligation is redeemed, and such loan is repaid, before such building is placed in service."

(D) Subparagraph (D) of section 42(i)(2) of the 1986 Code is amended by striking out "subparagraph (A)" and inserting in lieu thereof "this paragraph".

(21) Paragraph (4) of section 42(j) of the 1986 Code is amended by adding at the end thereof the following new subparagraph:

"(F) No RECAPTURE WHERE DE MINIMIS CHANGES IN FLOOR SPACE.—The Secretary may provide that the increase in tax under this subsection shall not apply with respect to any building if—

"(i) such increase results from a de minimis change in the floor space fraction under subsection (c)(1), and

"(ii) the building is a qualified low-income building after such change."

(22) Clause (i) of section 42(j)(5)(B) of the 1986 Code is amended to read as follows:

"(i) more than ½ the capital interests, and more than ½ the profit interests, in which are owned by a group of 35 or more partners each of whom is a natural person or an estate, and".

(23) Paragraph (6) of section 42(j) of the 1986 Code is amended—

(A) by inserting "(OR INTEREST THEREIN)" after "BUILDING" in the heading, and

(B) by inserting "or an interest therein" after "disposition of a building" in the text.

(24) Subparagraph (B) of section 42(k)(2) of the 1986 Code is amended by inserting before the period at the end thereof the following: ", except that this subparagraph shall not apply in the case of a federally assisted building described in subsection (d)(6)(B) if—

"(i) a security interest in such building is not permitted by a Federal agency holding or insuring the mortgage secured by such building, and

"(ii) the proceeds from the financing (if any) are applied to acquire or improve such building."

(25)(A) Subsection (l) of section 42 of the 1986 Code is amended by redesignating paragraph (2) as paragraph (3) and by inserting after paragraph (1) the following new paragraph:

"(2) ANNUAL REPORTS TO THE SECRETARY.—The Secretary may require taxpayers to submit an information return (at such time and in such form and manner as the Secretary prescribes) for each taxable year setting forth—

"(A) the qualified basis for the taxable year of each qualified low-income building of the taxpayer,

"(B) the information described in paragraph (1)(C) for the taxable year, and

"(C) such other information as the Secretary may require.

The penalty under section 6652(j) shall apply to any failure to submit the return required by the Secretary under the preceding sentence on the date prescribed therefor."

(B) The subsection heading of subsection (l) of section 42 is amended to read as follows:

"(l) CERTIFICATIONS AND OTHER REPORTS TO SECRETARY.—".

(26) Paragraph (1) of section 42(n) of the 1986 Code is amended by inserting before the period at the end thereof the following: ", and, except for any building described in paragraph (2)(B), subsection (h)(4) shall not apply to any building placed in service after 1989".

(27) Subsection (d) of section 39 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(4) No CARRYBACK OF LOW-INCOME HOUSING CREDIT BEFORE 1987.—No portion of the unused business credit for any taxable year which is attributable to the credit determined under section 42 (relating to low-income housing credit) may be carried back to a taxable year ending before January 1, 1987."

(28) Paragraph (1) of section 55(c) of the 1986 Code (defining regular tax) is amended by striking out "section 42(j)" and inserting in lieu thereof "subsection (j) or (k) of section 42".

(29) Subparagraph (A) of section 252(f)(1) of the Reform Act is amended by striking out "and" at the end of clause (i), by striking out the period at the end of clause (ii) and inserting in lieu thereof a comma, and by inserting after clause (ii) the following new clauses:

"(iii) the eligible basis of such building shall be treated, for purposes of section 42(h)(4)(A) of such Code, as if it were financed by an obligation the interest on which is exempt from tax under section 103 of such Code and which is taken into account under section 146 of such Code, and

"(iv) the amendments made by section 803 shall not apply."

(31) Subparagraph (E) of section 252(f)(1) of the Reform Act is amended by striking out "maximum annual additional credit" and inserting in lieu thereof "maximum present value of additional credits".

(32) Subparagraph (E) of section 252(f)(2) of the Reform Act is amended by adding at the end thereof the following new sentence: "The preceding sentence shall apply to any building only to the extent of the portion of the additional housing credit dollar amount (allocated to such agency under subparagraph (A)) allocated to such building."

(33) Subsection (f) of section 252 of the Reform Act is amended by adding at the end thereof the following new paragraph:

"(5) TRANSITIONAL RULE.—In the case of any rehabilitation expenditures incurred with respect to units located in the neighborhood strategy area within the community development block grant program in Ft. Wayne, Indiana—

"(A) the amendments made by this section shall not apply, and

"(B) paragraph (1) of section 167(k) of the Internal Revenue Code of 1986, shall be applied as if it did not contain the phrase 'and before January 1, 1987'.

The number of units to which the preceding sentence applies shall not exceed 150."

(34) Subsection (g) of section 42 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(6) SPECIAL RULE WHERE DE MINIMIS EQUITY CONTRIBUTION.—Property shall not be treated as failing to be residential rental property for purposes of this section merely because the occupant of a residential unit in the project pays (on a voluntary basis) to the lessor a de minimis amount to be held toward the purchase by such occupant of a residential unit in such project if—

"(A) all amounts so paid are refunded to the occupant on the cessation of his occupancy of a unit in the project, and

"(B) the purchase of the unit is not permitted until after the close of the compliance period with respect to the building in which the unit is located.

Any amount paid to the lessor as described in the preceding sentence shall be included in gross rent under paragraph (2) for purposes of determining whether the unit is rent-restricted."

(m) AMENDMENTS RELATED TO SECTION 261 OF THE REFORM ACT.—

(1) Subparagraph (A) of section 7518(g)(6) of the 1986 Code, is amended by striking out "section 1(i)" and inserting in lieu thereof "section 1(j)".

(2) Subparagraph (A) of section 607(h)(6) of the Merchant Marine Act, 1936 is amended by striking out "section 1(i)" and inserting in lieu thereof "section 1(j)".

SEC. 10203. AMENDMENTS RELATED TO TITLE III OF THE REFORM ACT.

(a) AMENDMENTS RELATED TO SECTION 301 OF THE REFORM ACT.—

(1) Subparagraph (B) of section 172(d)(4) of the 1986 Code is amended by striking out ", (2)(B),".

(2) Paragraph (1) of section 3402(m) of the 1986 Code is amended by striking out "section 62) (other than paragraph (13) thereof)" and inserting in lieu thereof "section 62(a) (other than paragraph (10) thereof))".

(b) AMENDMENTS RELATED TO SECTION 302 OF THE REFORM ACT.—

(1) Section 302 of the Reform Act is amended by striking out subsection (c).

(2)(A) Paragraph (2) of section 904(b) of the 1986 Code is amended to read as follows:

"(2) CAPITAL GAINS.—For purposes of this section—

"(A) IN GENERAL.—Taxable income from sources outside the United States shall include gain from the sale or exchange of capital assets only to the extent of foreign source capital gain net income.

"(B) SPECIAL RULES WHERE CAPITAL GAIN RATE DIFFERENTIAL.—In the case of any taxable year for which there is a capital gain rate differential—

"(i) in lieu of applying subparagraph (A), the taxable income from sources outside the United States shall include gain from the sale or exchange of capital assets only in an amount equal to foreign source capital gain net income reduced by the rate differential portion of foreign source net capital gain,

"(ii) the entire taxable income shall include gain from the sale or exchange of capital assets only in an amount equal to capital gain net income reduced by the rate differential portion of net capital gain, and

"(iii) for purposes of determining taxable income from sources outside the United States, any net capital loss (and any amount which is a short-term capital loss under section 1212(a)) from sources outside the United States to the extent taken into account in determining capital gain net income for the taxable year shall be reduced by an amount equal to the rate differential portion of the excess of net capital gain from sources within the United States over net capital gain."

(B) Paragraph (3) of section 904(b) of the 1986 Code is amended by striking out subparagraph (D) and inserting in lieu thereof the following new subparagraphs:

"(D) CAPITAL GAIN RATE DIFFERENTIAL.—There is a capital gain rate differential for any taxable year if—

"(i) in the case of a taxpayer other than a corporation, subsection (j) of section 1 applies to such taxable year, or

"(ii) in the case of a corporation, any rate of tax imposed by section 11, 511, or 831 (a) or (b) (whichever applies) exceeds the alternative rate of tax under section 1201(a) (determined without regard to the last sentence of section 11(b)).

"(E) RATE DIFFERENTIAL PORTION.—

"(i) IN GENERAL.—The rate differential portion of foreign source net capital gain, net capital gain, or the excess of net capital gain from sources within the United States over net capital gain, as the case may be, is the same proportion of such amount as—

"(I) the excess of the highest applicable tax rate over the alternative tax rate, bears to

"(II) the highest applicable tax rate.

"(ii) Highest applicable tax rate.—For purposes of clause (i), the term 'highest applicable tax rate' means—

"(I) in the case of a taxpayer other than a corporation, the highest rate of tax set forth in subsection (a), (b), (c), (d), or (e) of section 1 (whichever applies), or

"(II) in the case of a corporation, the highest rate of tax specified in section 11(b).

"(iii) Alternative tax rate.—For purposes of clause (i), the term 'alternative tax rate' means—

"(I) in the case of a taxpayer other than a corporation, the alternative rate of tax determined under section 1(j), or

"(II) in the case of a corporation, the alternative rate of tax under section 1201(a)."

(3) Effective for taxable years beginning after December 31, 1987, paragraph (1) of section 1445(e) of the 1986 Code is amended by striking out "34 percent" and inserting in lieu thereof "34 percent (or, to the extent provided in regulations, 28 percent)".

(c) Amendments Related to Section 311 of the Reform Act.—

(1) Subsection (a) of section 1201 of the 1986 Code is amended by striking out "831(a)" and inserting in lieu thereof "831 (a) or (b)".

(2) Subsection (c) of section 311 of the Reform Act is amended by inserting before the period at the end thereof the following: "; except that the amendment made by subsection (b)(4) shall apply to payments made after December 31, 1986".

(3) Subparagraph (D) of section 593(b)(2) of the 1986 Code is amended by striking out "and" at the end of clause (iii), by striking out the period at the end of clause (iv) and inserting in lieu thereof ", and", and by adding at the end thereof the following new clause:

"(v) if there is a capital gain rate differential (as defined in section 904(b)(3)(D)) for the taxable year, by excluding from gross income the rate differential portion (within the meaning of section 904(b)(3)(E)) of the lesser of—

"(I) the net long-term capital gain for the taxable year, or

"(II) the net long-term capital gain for the taxable year from the sale or exchange of property other than property described in clause (iii)."

(d) Amendment Related to Section 321 of the Reform Act.—

(1)(A) Subsection (b) of section 422A of the 1986 Code is amended by adding at the end thereof the following new sentence:

"Such term shall not include any option if (as of the time the option is granted) the terms of such option provide that it will not be treated as an incentive stock option."

(B) In the case of an option granted after December 31, 1986, and on or before the date of the enactment of this Act, such option shall not be treated as an incentive stock option if the terms of such option are amended before the date 90 days after such date of enactment to provide that such option will not be treated as an incentive stock option.

(2)(A) Section 422A of the 1986 Code is amended by adding at the end thereof the following new subsection:

"(d) $100,000 Per Year Limitation.—

"(1) In general.—To the extent that the aggregate fair market value of stock with respect to which incentive stock options (determined without regard to this subsection) are exercisable for the 1st time by any individual during any calendar year (under all plans of the individual's employer corporation and its parent and subsidiary corporations) exceeds $100,000, such options shall be treated as options which are not incentive stock options.

"(2) Ordering rule.—Paragraph (1) shall be applied by taking options into account in the order in which they were granted.

"(3) Determination of fair market value.—For purposes of paragraph (1), the fair market value of any stock shall be determined as of the time the option with respect to such stock is granted."

(B) Subsection (b) of section 422A of the 1986 Code is amended by adding "and" at the end of paragraph (5), by striking out "; and" at the end of paragraph (6) and inserting in lieu thereof a period, and by striking out paragraph (7).

(C) Paragraph (1) of section 422A(c) of the 1986 Code is amended by striking out "paragraph (7) of subsection (b)" and inserting in lieu thereof "subsection (d)".

SEC. 10204. AMENDMENTS RELATED TO TITLE IV OF THE REFORM ACT.

(a) Amendments Related to Section 405 of the Reform Act.—

(1) Paragraph (1) of section 108(a) of the 1986 Code is amended by striking out "or" at the end of subparagraph (A), by striking out the period at the end of subparagraph (B) and inserting in lieu thereof ", or" and by adding at the end thereof the following new subparagraph:

"(C) the indebtedness discharged is qualified farm indebtedness."

(2) Paragraph (2) of section 108(a) is amended to read as follows:

"(2) Coordination of exclusions.—

"(A) Title 11 exclusion takes precedence.—Subparagraphs (B) and (C) of paragraph (1) shall not apply to a discharge which occurs in a title 11 case.

"(B) Insolvency exclusion takes precedence over qualified farm exclusion.—Subparagraph (C) of paragraph (1) shall not apply to a discharge to the extent the taxpayer is insolvent."

(3) Subsection (b) of section 108 of the 1986 Code is amended—

(A) by striking out "subparagraph (A) or (B)" in paragraph (1) and inserting in lieu thereof "subparagraph (A), (B), or (C)", and

(B) by striking out "In Title 11 Case or Insolvency" in the subsection heading.

(4) Subsection (g) of section 108 of the 1986 Code is amended to read as follows:

"(g) Special Rules for Discharge of Qualified Farm Indebtedness.—

"(1) Discharge must be by qualified person.—

"(A) In general.—Subparagraph (C) of subsection (a)(1) shall apply only if the discharge is by a qualified person.

"(B) Qualified person.—For purposes of subparagraph (A), the term 'qualified person' has the meaning given to such term by section 46(c)(8)(D)(iv); except that such term shall include any Federal, State, or local government or agency or instrumentality thereof.

"(2) Qualified farm indebtedness.—For purposes of this section, indebtedness of a taxpayer shall be treated as qualified farm indebtedness if—

"(A) such indebtedness was incurred directly in connection with the operation by the taxpayer of the trade or business of farming, and

"(B) 50 percent or more of the aggregate gross receipts of the taxpayer for the 3 taxable years preceding the taxable year in which the discharge of such indebtedness occurs is attributable to the trade or business of farming.

"(3) Amount excluded cannot exceed sum of tax attributes and business and investment assets.—

"(A) In general.—The amount excluded under subparagraph (C) of subsection (a)(1) shall not exceed the sum of—

"(i) the adjusted tax attributes of the taxpayer, and

"(ii) the aggregate adjusted bases of qualified property held by the taxpayer as of the beginning of the taxable year following the taxable year in which the discharge occurs.

"(B) Adjusted tax attributes.—For purposes of subparagraph (A), the term 'adjusted tax attributes' means the sum of the tax attributes described in subparagraphs (A), (B), (C), and (E) of subsection (b)(2) determined by taking into account $3 for each $1 of the attributes described in subparagraphs (B) and (E) of subsection (b)(2).

"(C) Qualified Property.—For purposes of this paragraph, the term 'qualified property' means any property which is used or is held for use in a trade or business or for the production of income.

"(D) Coordination with insolvency exclusion.—For purposes of this paragraph, the adjusted basis of any qualified property and the amount of the adjusted tax attributes shall be determined after any reduction under subsection (b) by reason of amounts excluded from gross income under subsection (a)(1)(B)."

(5) Paragraph (4) of section 1017(b) is amended to read as follows:

"(4) Special rules for qualified farm indebtedness.—

"(A) In general.—Any amount which under subsection (b)(2)(D) of section 108 is to be applied to reduce basis and which is attributable to an amount excluded under subsection (a)(1)(C) of section 108—

"(i) shall be applied only to reduce the basis of qualified property held by the taxpayer, and

"(ii) shall be applied to reduce the basis of qualified property in the following order:

"(I) First the basis of qualified property which is depreciable property.

"(II) Second the basis of qualified property which is land used or held for use in the trade or business of farming.

"(III) Then the basis of other qualified property.

"(B) Qualified property.—For purposes of this paragraph, the term 'qualified property' has the meaning given to such term by section 108(g)(3)(C).

"(C) Certain rules made applicable.—Rules similar to the rules of subparagraph (C), (D), and (E) of paragraph (3) shall apply for purposes of this paragraph and section 108(g)."

(6)(A) Paragraphs (6) and (7) of section 108(d) of the 1986 Code are each amended by striking out "subsections (a) and (b)" and inserting in lieu thereof "subsections (a), (b), and (g)".

(B) The subsection heading for section 108(d) of the 1986 Code is amended by striking out "Subsections (a), and (b)" and inserting in lieu thereof "Subsections (a), (b), and (g)".

(C) The headings for paragraphs (6) and (7)(A) of section 108(d) of the 1986 Code are each amended by striking out "Subsections (a) and (b)" and inserting in lieu thereof "Subsections (a), (b), and (g)".

(b) Amendment Related to Section 406 of the Reform Act.—Section 406 of the Reform Act is amended by striking out "after January 1, 1987, and before September 1, 1987" and inserting in lieu thereof "on or after January 1, 1987, and before October 1, 1987".

(c) Amendment Related to Section 413 of the Reform Act.—Subsection (a) of section 1254 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(4) ADJUSTMENT FOR AMOUNTS INCLUDED IN GROSS INCOME UNDER SECTION 617(b)(1)(A).—The amount of the expenditures referred to in paragraph (1)(A)(i) shall be properly adjusted for amounts included in gross income under section 617(b)(1)(A)."

SEC. 10205. AMENDMENTS RELATED TO TITLE V OF THE REFORM ACT.

(a) Amendments Related to Section 501 of the Reform Act.—

(1) Clause (ii) of section 469(e)(1)(A) of the 1986 Code (relating to certain income not treated as income from passive activity) is amended by inserting "not derived in the ordinary course of a trade or business which is" after "gain or loss".

(2)(A) Subparagraph (A) of section 469(g)(1) of the 1986 Code (relating to disposition of interests in passive activities in fully taxable transactions) is amended to read as follows:

"(A) In general.—If all gain or loss realized on such disposition is recognized, the excess of—

"(i) the sum of—

"(I) any loss from such activity for such taxable year (determined after application of subsection (b)), plus

"(II) any loss realized on such disposition, over

"(ii) net income or gain for such taxable year from all passive activities (determined without regard to losses described in clause (i)),

shall be treated as a loss which is not from a passive activity."

(B) Subparagraph (C) of section 469(g)(1) of the 1986 Code is amended to read as follows:

"(C) Income from prior years.—To the extent provided in regulations, income or gain from the activity for preceding taxable years shall be taken into account under subparagraph (A)(ii) for the taxable year to the extent necessary to prevent the avoidance of this section."

(3) Subparagraph (A) of section 469(g)(2) of the 1986 Code is amended—

(A) by striking out "paragraph (1)" and inserting in lieu thereof "paragraph (1)(A)"; and

(B) by striking out "such losses" the first place it appears and inserting in lieu thereof "losses described in paragraph (1)(A)".

(4) Section 469(g)(3) of the 1986 Code is amended—

(A) by striking out "realized (or to be realized)" and inserting in lieu thereof "(realized or to be realized", and

(B) by inserting a closing parenthesis after "completed".

(5) Paragraph (4) of section 469(h) of the 1986 Code (relating to certain closely held C corporations and personal service corporations) is amended by inserting "only" before "if".

(6) Paragraph (1) of section 469(i) of the 1986 Code (relating to $25,000 offset for rental real estate activities) is amended by striking out "in the taxable year in which such portion of such loss or credit arose" and inserting in lieu thereof "in such taxable year (and if any portion of such loss or credit arose in another taxable year, in such other taxable year)".

(7) Subparagraph (C) of section 469(i)(6) of the 1986 Code (relating to interest as a limited partner) is amended by striking out "No" and inserting in lieu thereof "Except as provided in regulations, no".

(8) Subparagraph (A) of section 469(j)(6) of the 1986 Code (relating to special rule for gifts) is amended by inserting "with respect to which a deduction has not been allowed by reason of subsection (a)" before ", and".

(9) Section 469(j) of the 1986 Code (relating to definitions and special rules) is amended by adding at the end thereof the following new paragraphs:

"(10) COORDINATION WITH SECTION 280A.—If a passive activity involves the use of a dwelling unit to which section 280A(c)(5) applies for any taxable year, any income, deduction, gain, or loss allocable to such use shall not be taken into account for purposes of this section for such taxable year.

"(11) AGGREGATION OF MEMBERS OF AFFILIATED GROUPS.—Except as provided in regulations, all members of an affiliated group which files a consolidated return shall be treated as 1 corporation."

(10) Section 501(c) of the Reform Act is amended by adding at the end thereof the following new paragraph:

"(4) INCOME FROM SALES OF PASSIVE ACTIVITIES IN TAXABLE YEARS BEGINNING BEFORE JANUARY 1, 1987.—If—

"(A) gain is recognized in a taxable year beginning after December 31, 1986, from a sale or exchange of an interest in an activity in a taxable year beginning before January 1, 1987, and

"(B) such gain would have been treated as gain from a passive activity had section 469 of the Internal Revenue Code of 1986 (as added by this section) been in effect for the taxable year in which the sale or exchange occurred and for all succeeding taxable years,

then such gain shall be treated as gain from a passive activity for purposes of such section."

(11) Subsection (j) of section 469 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(10) SPECIAL RULE FOR DISTRIBUTIONS BY ESTATES OR TRUSTS.—If any interest in a passive activity is distributed by an estate or trust—

"(A) the basis of such interest immediately before such distribution shall be increased by the amount of any passive activity losses allocable to such interest, and

"(B) such losses shall not be allowable as a deduction for any taxable year."

(12) Subsection (l) of section 469 of the 1986 Code is amended by striking out all that precedes subparagraph (B) of paragraph (3) thereof and inserting in lieu thereof the following:

"(l) Phase-In of Disallowance of Losses and Credits for Interest Held Before Date of Enactment.—

"(1) In general.—In the case of any passive activity loss or passive activity credit for any taxable year beginning in calendar years 1987 through 1990, subsection (a) shall not apply to the applicable percentage of that portion of such loss (or such credit) which is attributable to pre-enactment interests.

"(2) APPLICABLE PERCENTAGE.—For purposes of this subsection, the applicable percentage shall be determined in accordance with the following table:

"In the case of taxable years beginning in:	The applicable percentage is:
1987	65
1988	40
1989	20
1990	10.

"(3) PORTION OF LOSS OR CREDIT ATTRIBUTABLE TO PRE-ENACTMENT INTERESTS.—For purposes of this subsection—

"(A) In general.—The portion of the passive activity loss (or passive activity credit) for any taxable year which is attributable to preenactment interests is the lesser of—

"(i) the amount of the passive activity loss (or passive activity credit) which is disallowed for the taxable year under subsection (a) (without regard to this subsection), or

"(ii) the amount of the passive activity loss (or passive activity credit) which would be disallowed for the taxable year (without regard to this subsection and without regard to any amount allocable to an activity for the taxable year under subsection (b)) taking into account only pre-enactment interests."

(b) Amendments Related to Section 502 of the Reform Act.—

(1) Subparagraph (A) of section 502(d)(1) of the Reform Act (defining qualified investor) is amended to read as follows:

"(A) if—

"(i) in the case of a project placed in service on or before August 16, 1986, such person held an interest in such project on August 16, 1986, and such person made his initial investment after December 31, 1983, or

"(ii) in the case of a project placed in service after August 16, 1986, such person made his initial investment after December 31, 1983, and such person held an interest in such project on December 31, 1986, and".

(2) Subsection (d) of section 502 of the Reform Act (defining qualified investor) is amended by adding after paragraph (2) the following new paragraph:

"(3) SPECIAL RULE FOR CERTAIN PARTNERSHIPS.—In the case of any property which is held by a partnership—

"(A) which placed such property in service on or after December 31, 1985, and before August 17, 1986, and continuously held such property through the close of the taxable year for which the determination is being made, and

"(B) which was not treated as a new partnership or as terminated at any time on or after December 31, 1985, and through the close of the taxable year for which the determination is being made,

paragraph (1)(A)(i) shall be applied by substituting 'December 31, 1987' for 'August 16, 1986' the 2nd place it appears."

(3) The subsection (d) of section 502 of the Reform Act which relates to special rules is redesignated as subsection (e).

(c) Amendments Related to Section 511 of the Reform Act.—

(1) Subparagraph (A) of section 163(d)(3) of the 1986 Code (defining investment interest) is amended by striking out "incurred or continued to purchase or carry" and inserting in lieu thereof "properly allocable to".

(2) Subparagraph (B) of section 163(d)(4) of the 1986 Code is amended to read as follows:

"(B) INVESTMENT INCOME.—The term 'investment income' means the sum of—

"(i) gross income (other than gain taken into account under clause (ii)) from property held for investment, and "(ii) any net gain attributable to the disposition of property held for investment."

(3) Subparagraph (A) of section 163(d)(6) of the 1986 Code is amended to read as follows:

"(A) In general.—The amount of interest paid or accrued during any such taxable year which is disallowed under this subsection shall not exceed the sum of—

"(i) the amount which would be disallowed under this subsection if—

"(I) paragraph (1) were applied by substituting 'the sum of the ceiling amount and the net investment income' for 'the net investment income', and

"(II) paragraphs (4)(E) and (5)(A)(ii) did not apply, and

"(ii) the applicable percentage of the excess of—

"(I) the amount which (without regard to this paragraph) is not allowable as a deduction under this subsection for the taxable year, over

"(II) the amount described in clause (i).

The preceding sentence shall not apply to any interest treated as paid or accrued during the taxable year under paragraph (2)."

(4) Subparagraph (A) of section 163(h)(2) of the 1986 Code is amended by striking out "incurred or continued in connection with the conduct of" and inserting in lieu thereof "properly allocable to".

(5) Subparagraph (C) of section 163(h)(3) of the 1986 Code (defining qualified residence interest) is amended to read as follows:

"(C) Cost not less than balance of indebtedness incurred on or before August 16, 1986.—

"(i) In general.—The amount under subparagraph (B)(ii)(I) at any time after August 16, 1986, shall not be less than the outstanding principal amount (as of such time) of indebtedness—

"(I) which was incurred on or before August 16, 1986, and which was secured by the qualified residence on August 16, 1986, or

"(II) which is secured by the qualified residence and was incurred after August 16, 1986, to refinance indebtedness described in subclause (I) (or refinanced indebtedness meeting the requirements of this subclause) to the extent (immediately after the refinancing) the principal amount of the indebtedness resulting from the refinancing does not exceed the principal amount of the refinanced indebtedness (immediately before the refinancing).

"(ii) Limitation on period of refinancing.—Subclause (II) of clause (i) shall not apply to any indebtedness after—

"(I) the expiration of the term of the indebtedness described in clause (i)(I), or

"(II) if the principal of the indebtedness described in clause (i)(I) is not amortized over its term, the expiration of the term of the 1st refinancing of such indebtedness (or if earlier, the date which is 30 years after the date of such refinancing)."

(6)(A) The heading for section 163(h)(5) of the 1986 Code is amended to read as follows:

"(5) Other definitions and special rules.—For purposes of this subsection—".

(B) Paragraph (5) of section 163(h) of the 1986 Code is amended—

(i) by striking out "For purposes of this subsection—" in subparagraph (A), and

(ii) by striking out "For purposes of this paragraph, any" in subparagraph (B) and inserting in lieu thereof "Any".

(7) Clause (iii) of section 163(h)(5)(A) of the 1986 Code is amended by striking out "used or" in the heading thereof and by striking out "or use".

(8) Section 163(h)(5) of the 1986 Code is amended by adding at the end thereof the following new subparagraphs:

"(C) Unenforceable security interests.—Indebtedness shall not fail to be treated as secured by any property solely because, under any applicable State or local homestead or other debtor protection law in effect on August 16, 1986, the security interest is ineffective or the enforceability of the security interest is restricted.

"(D) Transfer incident to divorce, etc.—

"(i) In general.—If, incident to divorce or legal separation—

"(I) an individual acquires the interest of a spouse or former spouse in a qualified residence in a transfer to which section 1041 applies, and

"(II) such individual incurs indebtedness which is secured by such qualified residence,

the amount determined under paragraph (3)(B)(ii)(I) with respect to such qualified residence shall be increased by the amount determined under clause (ii).

"(ii) Amount of increase.—The amount determined under this clause shall be equal to the excess (if any) of—

"(I) the lesser of the amount of the indebtedness described in clause (i)(II), or the fair market value of the spouse's or former spouse's interest in the qualified residence as of the time of the transfer, over

"(II) the basis of the spouse or former spouse in such interest in such residence (adjusted only by the cost of any improvements to such residence).

"(E) Special rules for estates and trusts.—For purposes of determining whether any interest paid or accrued by an estate or trust is qualified residence interest, any residence held by such estate or trust shall be treated as a qualified residence of such estate or trust if such estate or trust establishes that such residence is a qualified residence of a beneficiary who has a present interest in such estate or trust or an interest in the residuary of such estate or trust."

(9) Paragraph (6) of section 163(h) of the 1986 Code is amended by striking out "subsection" the 3rd place it appears and inserting in lieu thereof "paragraph".

(10) Sections 467(c)(5)(C) and 1255(b)(2) of the 1986 Code are each amended by inserting "sections" before "170(e)".

(11) If—

(A) any amount was disallowed as a deduction under section 163(d) of the Internal Revenue Code of 1954 (as in effect on the day before the date of the enactment of the Reform Act), and

(B) such amount would (but for this paragraph) be treated as investment interest paid or accrued by the taxpayer in the taxpayer's first taxable year beginning after December 31, 1986,

to the extent such amount is attributable to an activity subject to the limitations of section 469 of the 1986 Code, such amount shall not be treated as investment interest but shall be treated as a deduction allocable to such activity for such first taxable year. Subsection (l) of section 469 of the 1986 Code shall not apply to any amount so treated.

(12) Subparagraph (E) of section 163(h)(2) of the 1986 Code is amended by inserting before the period "or under section 6166A (as in effect before its repeal by the Economic Recovery Tax Act of 1981)".

SEC. 10206. AMENDMENTS RELATED TO TITLE VI OF THE REFORM ACT.

(a) Amendment Related to Section 601 of the Reform Act.—Section 15 of the 1986 Code is amended by adding at the end thereof the following new subsection:

"(e) References to Highest Rate.—If the change referred to in subsection (a) involves a change in the highest rate of tax imposed by section 1 or 11(b), any reference in this chapter to such highest rate (other than in a provision imposing a tax by reference to such rate) shall be treated as a reference to the weighted average of the highest rates before and after the change determined on the basis of the respective portions of the taxable year before the date of the change and on or after the date of the change."

(b) Amendments Related to Sections 611 and 612 of the Reform Act.—

(1) Subparagraph (B) of section 245(c)(1) of the 1986 Code is amended by striking out "85 percent" and inserting in lieu thereof "80 percent".

(2) Subparagraph (B) of section 861(a)(2) of the 1986 Code is amended by striking out "$^{100}/_{85}$th" and inserting in lieu thereof "$^{100}/_{80}$ths".

(3) Paragraph (3) of section 854(b) of the 1986 Code is amended to read as follows:

"(3) Aggregate dividends.—For purposes of this subsection—

"(A) In general.—In computing the amount of aggregate dividends received, there shall only be taken into account dividends received from domestic corporations.

"(B) Dividends.—For purposes of subparagraph (A), the term 'dividend' shall not include any distribution from—

"(i) a corporation which, for the taxable year of the corporation in which the distribution is made, or for the next preceding taxable year of the corporation, is a corporation exempt from tax under section 501 (relating to certain charitable, etc., organizations) or section 521 (relating to farmers' cooperative associations), or

"(ii) a real estate investment trust which, for the taxable year of the trust in which the dividend is paid, qualifies under part II of subchapter M (section 856 and following).

"(C) Limitations on dividends from regulated investment companies.—In determining the amount of any dividend for purposes of this paragraph, a dividend received from a regulated investment company shall be subject to the limitations prescribed in this section."

(c) Amendments Related to Section 614 of the Reform Act.—

(1) Section 1059(d) of the 1986 Code (relating to extension to certain property distributions) is amended by striking out paragraph (5) and redesignating paragraphs (6) and (7) as paragraphs (5) and (6), respectively.

(2) Section 1059(d)(5) of the 1986 Code (defining dividend announcement date), as redesignated by paragraph (1), is amended by inserting "amount or" before "payment".

(3) Section 1059(d)(6) of the 1986 Code (relating to exception where stock held during entire existence of corporation), as redesignated by paragraph (1), is amended to read as follows:

"(6) Exception where stock held during entire existence of corporation.—

"(A) In general.—Subsection (a) shall not apply to any extraordinary dividend with respect to any share of stock of a corporation if—

"(i) such stock was held by the taxpayer during the entire period such corporation was in existence, and "(ii) except as provided in regulations, the only earnings and profits of such corporation were earnings and profits—

"(I) accumulated by such corporation during its period of existence, or

"(II) attributable to transfers or distributions from 1 or more qualified corporations.

"(B) QUALIFIED CORPORATION.—For purposes of subparagraph (A), the term 'qualified corporation' means any corporation (including a predecessor corporation)—

"(i) with respect to which the taxpayer holds directly or indirectly during the entire period of such corporation's existence at least the same ownership interest as the taxpayer holds in the corporation distributing the extraordinary dividend, and

"(ii) which has no earnings and profits—

"(I) which were earned by, or

"(II) which are attributable to gain on property which accrued during a period the corporation holding the property was,

a corporation not described in clause (i).

"(C) APPLICATION OF PARAGRAPH.—This paragraph shall not apply to any extraordinary dividend to the extent such application is inconsistent with the purposes of this section."

(4) Paragraph (1) of section 1059(e) of the 1986 Code (relating to treatment of partial liquidation) is amended by striking out "for purposes of this section (without regard to the holding period of the stock)" and inserting in lieu thereof: "to which paragraphs (1) and (2) of subsection (a) apply without regard to the period the taxpayer held such stock".

(5) Paragraph (2) of section 1059(e) of the 1986 Code (relating to qualifying dividends) is amended to read as follows:

"(2) QUALIFYING DIVIDENDS.—

"(A) IN GENERAL.—Except as provided in regulations, the term 'extraordinary dividend' does not include any qualifying dividend (within the meaning of section 243).

"(B) EXCEPTION.—Subparagraph (A) shall not apply to any portion of a dividend which is attributable to earnings and profits which—

"(i) were earned by a corporation during a period it was not a member of the affiliated group, or

"(ii) are allocable to gain on property which accrued during a period the corporation holding the property was not a member of the affiliated group."

(6) Subparagraph (A) of section 1059(e)(3) of the 1986 Code (relating to qualified preferred dividends) is amended to read as follows:

"(A) IN GENERAL.—In the case of 1 or more qualified preferred dividends with respect to any share of stock—

"(i) this section shall not apply to such dividends if the taxpayer holds such stock for more than 5 years, and

"(ii) if the taxpayer disposes of such stock before it has been held for more than 5 years, the aggregate reduction under subsection (a)(1) with respect to such dividends shall not be greater than the excess (if any) of—

"(I) the qualified preferred dividends paid with respect to such stock during the period the taxpayer held such stock, over

"(II) the qualified preferred dividends which would have been paid during such period on the basis of the stated rate of return."

(7) Clause (i) of section 1059(e)(3)(C) of the 1986 Code is amended—

(A) by striking out "any dividend payable" and inserting in lieu thereof "any fixed dividend payable", and

(B) by adding at the end thereof the following new sentence:

"Such term shall not include any dividend payable with respect to any share of stock if the actual rate of return on such stock exceeds 15 percent."

(8) Subparagraph (B) of section 1059(e)(3) of the 1986 Code is amended—

(A) by striking out "subparagraph (A)" and the material preceding clause (i) and inserting in lieu thereof "this paragraph", and

(B) by striking out "subparagraph (B)(i)(II)" in clause (ii) and inserting in lieu thereof "clause (i)(II)".

(d) AMENDMENTS RELATED TO SECTION 621 OF THE REFORM ACT.—

(1)(A) Section 382(e)(2) of the 1986 Code is amended—

(i) by inserting "or other corporate contraction" after "redemption" each place it appears, and

(ii) by inserting "OR OTHER CORPORATE CONTRACTION" after "REDEMPTION" in the heading thereof.

(B) Clause (ii) of section 382(h)(3)(A) of the 1986 Code is amended—

(i) by inserting "or other corporate contraction" after "redemption " each place it appears, and

(ii) by inserting "OR OTHER CORPORATE CONTRACTIONS" after "REDEMPTIONS" in the heading thereof.

(C) Section 382(m) of the 1986 Code is amended by inserting "and" at the end of paragraph (3), by striking out paragraph (4), and by redesignating paragraph (5) as paragraph (4).

(2) Section 382(g)(4)(C) of the 1986 Code is amended by inserting "rules similar to" before "the rules".

(3)(A) Section 382(h)(1)(C) of the 1986 Code is amended to read as follows:

"(C) SECTION 338 GAIN.—If an election under section 338 is made in connection with any ownership change, then with respect to such change—

"(i) subparagraph (A) shall not apply, and

"(ii) the section 382 limitation for the taxable year in which gain is recognized by reason of such election shall be increased by the lesser of—

"(I) the amount of such gain, or

"(II) the net unrealized built-in gain of the old loss corporation (without regard to paragraph (3)(B)) reduced by any prior recognized built-in gain."

(B) Paragraph (5) of section 382(h) of the 1986 Code is amended by striking out "recognized built-in gains and losses" and inserting in lieu thereof "recognized built-in gains to the extent such gains increased the section 382 limitation for the year (or recognized built-in losses to the extent such losses are treated as prechange losses)".

(4) Section 382(i)(3) of the 1986 Code is amended—

(A) by inserting "the earlier of" before "the 1st day", and

(B) by inserting "or the taxable year in which the transaction being tested occurs" after "1st post-change year".

(5)(A) Section 382(k)(1) of the 1986 Code is amended by inserting "or having a net operating loss for the taxable year in which the ownership change occurs" after "carryover".

(B) Section 382(k)(2) of the 1986 Code is amended to read as follows:

"(2) OLD LOSS CORPORATION.—The term 'old loss corporation' means any corporation—

"(A) with respect to which there is an ownership change, and

"(B) which (before the ownership change) was a loss corporation."

(6) Section 382(l)(3)(A) of the 1986 Code is amended by striking out "and" at the end of clause (iii), and by striking out clause (iv) and inserting in lieu thereof the following new clauses:

"(iv) except to the extent provided in regulations, an option to acquire stock shall be treated as exercised if such exercise results in an ownership change, and

"(v) in attributing stock from an entity under paragraph (2) of section 318(a), there shall not be taken into account—

"(I) in the case of attribution from a corporation, stock which is not treated as stock for purposes of this section, or

"(II) in the case of attribution from another entity, an interest in such entity similar to stock described in subclause (I)."

(7) Clause (ii) of section 382(l)(5)(A) of the 1986 Code is amended by striking out "immediately after such ownership change" and inserting in lieu thereof "after such ownership change and as a result of being shareholders or creditors immediately before such change".

(8) Section 382(l)(5)(F) of the 1986 Code is amended—

(A) by inserting "'1504(a)(2)(B)' for '1504(a)(2)' and" after "substituting" in clause (i)(I), and

(B) by striking out "deposits described in subclause (II)" in clause (ii)(III) and inserting in lieu thereof "the amount of deposits in the new loss corporation immediately after the change".

(9) Paragraph (6) of section 382(l) of the 1986 Code is amended by striking out "shall be the value of the new loss corporation immediately after the ownership change" and inserting in lieu thereof "shall reflect the increase (if any) in value of the old loss corporation resulting from any surrender or cancellation of creditors' claims in the transaction".

(10) Section 382(l) of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(8) PREDECESSOR AND SUCCESSOR ENTITIES.—Except as provided in regulations, any entity and any predecessor or successor entities of such entity shall be treated as 1 entity."

(11) Paragraph (1) of section 621(f) of the Reform Act is amended to read as follows:

"(1) AMENDMENTS MADE BY SUBSECTIONS (a), (b), AND (c).—

"(A) IN GENERAL.—

"(i) CHANGES AFTER 1986.—The amendments made by subsections (a), (b), and (c) shall apply to any ownership change after December 31, 1986.

"(ii) PLANS OF REORGANIZATION ADOPTED BEFORE 1987.—For purposes of clause (i), any equity structure shift pursuant to a plan of reorganization adopted before January 1, 1987, shall be treated as occurring when such plan was adopted.

"(B) TERMINATION OF OLD SECTION 382.—Except in a case described in any of the following paragraphs—

"(i) section 382(a) of the Internal Revenue Code of 1954 (as in effect before the amendment made by subsection (a) and the amendments made by section 806 of the Tax Reform Act of 1976) shall not apply to any increase in percentage points occurring after December 31, 1988, and

"(ii) section 382(b) of such Code (as so in effect) shall not apply to any reorganization occurring pursuant to a plan of reorganization adopted after December 31, 1986.

In no event shall sections 382 (a) and (b) of such Code (as so in effect) apply to any ownership change described in subparagraph (A).

"(C) Coordination with section 382(i).—For purposes of section 382(i) of the Internal Revenue Code of 1986 (as added by this section), any equity structure shift pursuant to a plan of reorganization adopted before January 1, 1987, shall be treated as occurring when such plan was adopted."

(12)(A) Section 621(f)(2)(C) of the Reform Act is amended by inserting "and reincorporated in Delaware in 1987," after "1924,".

(B) Clause (ii) of section 621(f)(2)(C) of the Reform Act is amended to read as follows:

"(ii) the amendments made by subsections (e) and (f) of section 806 of the Tax Reform Act of 1976 shall not apply to such debt restructuring, except that the amendment treated as part of such subsections under section 59(b) of the Tax Reform Act of 1984 (relating to qualified workouts) shall apply to such debt restructuring."

(13) Subparagraph (D) of section 621(f)(2) of the Reform Act is amended by striking out "or reorganization".

(14) Section 621(f)(3) of the Reform Act is amended by striking out "after December 31, 1986".

(15) Paragraph (4) of section 621(f) of the Reform Act is amended by striking out the last sentence and inserting in lieu thereof the following:

"Any regulations prescribed under section 382 of the Internal Revenue Code of 1986 (as added by subsection (a)) which have the effect of treating a group of shareholders as a separate 5-percent shareholder by reason of a public offering shall not apply to institutions described in section 591 of such Code with respect to any public offering before January 1, 1989. Unless the corporation otherwise elects, an underwriter of any offering of stock in a corporation before September 19, 1986 (January 1, 1989, in the case of an institution described in the preceding sentence), shall not be treated as acquiring any stock of such corporation by reason of a firm commitment underwriting to the extent the stock is disposed of pursuant to the offer (but in no event later than 60 days after the initial offering)."

(16) Subparagraph (A) of section 621(f)(7) of the Reform Act is amended by striking out "the parent corporation referred to in section 203(d)(13)(B)" and inserting in lieu thereof "a parent corporation incorporated in March 1980 under the laws of Delaware".

(17)(A) Subsection (e) of section 382 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(3) Treatment of foreign corporations.—Except as otherwise provided in regulations, in determining the value of any old loss corporation which is a foreign corporation, there shall be taken into account only items treated as connected with the conduct of a trade or business in the United States."

(B) The amendment made by subparagraph (A) shall apply to any ownership change after June 10, 1987. For purposes of the preceding sentence, any equity structure shift pursuant to a plan of reorganization adopted on or before June 10, 1987, shall be treated as occurring when such plan was adopted.

(18) Subparagraph (C) of section 382(l)(5) of the 1986 Code is amended to read as follows:

"(C) Reduction of tax attributes where discharge of indebtedness.—

"(i) In general.—In any case to which subparagraph (A) applies, 50 percent of the amount which, but for the application of section 108(e)(10)(B), would have been applied to reduce tax attributes under section 108(b) shall be so applied.

"(ii) Clarification with subparagraph (b).—In applying clause (i), there shall not be taken into account any indebtedness for interest described in subparagraph (B)."

(19) Subparagraph (E) of section 382(l)(5) of the 1986 Code is amended by striking out so much of such subparagraph as precedes clause (i) thereof and inserting in lieu thereof the following:

"(E) Only certain stock taken into account.—For purposes of subparagraph (A)(ii), stock transferred to a creditor shall be taken into account only to the extent such stock is transferred in satisfaction of indebtedness and only if such indebtedness—".

(20) Paragraph (4) of section 382(h) of the 1986 Code is amended—

(A) by inserting before the period at the end of subparagraph (A) the following: "(or to the extent the amount so disallowed is attributable to capital losses, under rules similar to the rules for the carrying forward of net capital losses)", and

(B) by striking out "treated as a net operating loss" in the paragraph heading and inserting in lieu thereof "allowed as a carryforward".

(21) Paragraph (6) of section 382(h) of the 1986 Code is amended by inserting before period at the end thereof the following: "(and the amount of the net unrealized built-in loss shall be increased by the amount so treated as a recognized built-in loss)".

(22) Paragraph (1) of section 382(g) of the 1986 Code is amended—

(A) by striking out "new loss corporation" and inserting in lieu thereof "loss corporation", and

(B) by striking out "old loss corporation" and inserting in lieu thereof "loss corporation".

(e) Amendments Related to Section 631 of the Reform Act.—

(1) Clause (ii) of section 336(d)(2)(B) of the 1986 Code is amended to read as follows:

"(ii) Certain acquisitions treated as part of plan.—For purposes of clause (i), any property described in clause (i)(I) acquired by the liquidated corporation after the date 2 years before the date of the adoption of the plan of complete liquidation shall, except as provided in regulations, be treated as acquired as part of a plan described in clause (i)(II)."

(2) Paragraph (3) of section 336(d) of the 1986 Code is amended by adding at the end thereof the following new sentence: "The preceding sentence shall apply to any distribution to the 80-percent distributee only if subsection (a) or (b)(1) of section 337 applies to such distribution."

(3) Subsection (e) of section 336 of the 1986 Code is amended by striking out "such corporation may elect" and inserting in lieu thereof "an election may be made".

(4) Subparagraph (B) of section 337(b)(2) of the 1986 Code is amended—

(A) by striking out "or 511(b)(2)" in clause (i),

(B) by striking out "in an unrelated trade or business (as defined in section 513)" in clause (i) and inserting in lieu thereof "in an activity the income from which is subject to tax under section 511(a)", and

(C) by striking out "an unrelated trade or business of such organization" in clause (ii) and inserting in lieu thereof "an activity referred to in clause (i)".

(5) Subsection (d) of section 337 of the 1986 Code is amended—

(A) by striking out "made to this subpart by the Tax Reform Act of 1986" and inserting in lieu thereof "made by subtitle D of title VI of the Tax Reform Act of 1986", and

(B) by inserting "or through the use of a regulated investment company or real estate investment trust" after "subchapter)" in paragraph (1).

(6) Subsection (b) of section 334 of the 1986 Code is amended to read as follows:

"(b) Liquidation of Subsidiary.—

"(1) In general.—If property is received by a corporate distributee in a distribution in a complete liquidation to which section 332(a) applies (or in a transfer described in section 337(b)(1)), the basis of such property in the hands of such distributee shall be the same as it would be in the hands of the transferor; except that, in any case in which gain or loss is recognized by the liquidating corporation with respect to such property, the basis of such property in the hands of such distributee shall be the fair market value of the property at the time of the distribution.

"(2) Corporate distributee.—For purposes of this subsection, the term 'corporate distributee' means only the corporation which meets the stock ownership requirements specified in section 332(b)."

(7)(A) Subparagraph (B) of section 453(h)(1) of the 1986 Code is amended by striking out "to one person" and inserting in lieu thereof "to 1 person in 1 transaction".

(B) Subparagraph (E) of section 453(h)(1) of the 1986 Code is amended by striking out "section 368(c)(1)" and inserting in lieu thereof "section 368(c)".

(8)(A) Part VII of subchapter C of chapter 1 of the 1986 Code is hereby repealed.

(B) Subsection (b) of section 311 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(3) Special rule for certain distributions of partnership or trust interests.—If the property distributed consists of an interest in a partnership or trust, the Secretary may by regulations provide that the amount of the gain recognized under paragraph (1) shall be computed without regard to any loss attributable to property contributed to the partnership or trust for the principal purpose of recognizing such loss on the distribution."

(C) The table of parts for subchapter C of chapter 1 of the 1986 Code is amended by striking out the item relating to part VII.

(9) Paragraph (1) of section 267(a) of the 1986 Code is amended—

(A) by striking out "(other than a loss in case of a distribution in corporate liquidation)", and

(B) by adding at the end thereof the following new sentence: "The preceding sentence shall not apply to any loss of the distributing corporation (or the distributee) in the case of a distribution in complete liquidation."

(10) Paragraph (1) of section 301(b) of the 1986 Code is amended to read as follows:

"(1) General rule.—For purposes of this section, the amount of any distribution shall be the amount of money received, plus the fair market value of the other property received."

(11) Subsection (d) of section 301 of the 1986 Code is amended to read as follows:

"(d) Basis.—The basis of property received in a distribution to which subsection (a) applies shall be the fair market value of such property."

(12) Section 301 of the 1986 Code is amended by striking out subsection (e) and

by redesignating subsections (f) and (g) as subsections (e) and (f), respectively.

(13)(A) Subsection (a) of section 367 of the 1986 Code is amended by redesignating paragraph (5) as paragraph (6) and by inserting after paragraph (4) the following new paragraph:

"(5) PARAGRAPHS (2) AND (3) NOT TO APPLY TO CERTAIN SECTION 361 TRANSACTIONS.—Paragraphs (2) and (3) shall not apply in the case of an exchange described in section 361. Subject to such basis adjustments as shall be provided in regulations, the preceding sentence shall not apply if the transferee is a corporation controlled (within the meaning of section 368(c)) by a domestic corporation or by members of the same affiliated group of corporations (within the meaning of section 1504)."

(B) Section 367(e)(2) of the 1986 Code (as amended by the Reform Act) shall not apply in the case of any corporation completely liquidated before June 10, 1987, into a corporation organized in a treaty country.

(14)(A) Subsection (d) of section 1248 of the 1986 Code is amended by striking out paragraph (2).

(B) Subparagraph (B) of section 1248(f)(1) of the 1986 Code is amended to read as follows:

"(B) such domestic corporation distributes stock of such foreign corporation in a distribution to which section 311(a), 337, or 361(c)(1) applies,".

(C) Paragraph (1) of section 1248(f) of the 1986 Code is amended by striking out "distribution, sale, or exchange" in the last sentence and inserting in lieu thereof "distribution".

(D) Subsection (f) of section 1248 of the 1986 Code is amended by striking out paragraph (3) and by redesignating paragraph (4) as paragraph (3).

(E) The subsection heading for section 1248(f) of the 1986 Code is amended by striking out "SECTION 311, 336, OR 337 TRANSACTIONS" and inserting in lieu thereof "NONRECOGNITION TRANSACTIONS".

(15) Paragraph (1) of section 995(c) of the 1986 Code is amended by inserting "or" at the end of subparagraph (A), by striking out ", or" at the end of subparagraph (B) and inserting in lieu thereof a period, and by striking out subparagraph (C) and the sentence following subparagraph (C).

(16) Subsection (d) of section 245 of the 1986 Code is hereby repealed.

(17) Paragraph (14) of section 1223 of the 1986 Code is amended to read as follows:

"(14) CROSS REFERENCE.—

"For special holding period provision relating to certain partnership distributions, see section 735(b)."

(18) Clause (ii) of section 341(e)(1)(C) of the 1986 Code is amended—

(A) by striking out "sale or exchange" the first place it appears and inserting in lieu thereof "liquidating sale or exchange", and

(B) by striking out ", gain or loss on which was not recognized to such other corporation under section 337(a),".

(19) Subsection (l) of section 897 of the 1986 Code is hereby repealed.

(20) Paragraph (7) of section 338(h) of the 1986 Code is hereby repealed.

(f) AMENDMENTS RELATED TO SECTION 632 OF THE REFORM ACT.—

(1) Subsection (a) of section 1374 of the 1986 Code is amended by striking out "a recognized built-in gain" and inserting in lieu thereof "a net recognized built-in gain".

(2) Subsection (b) of section 1374 of the 1986 Code is amended by striking out paragraphs (1) and (2) and inserting in lieu thereof the following:

"(1) IN GENERAL.—The amount of the tax imposed by subsection (a) shall be computed by applying the highest rate of tax specified in section 11(b) to the net recognized built-in gains of the S corporation for the taxable year.

"(2) NET OPERATING LOSS CARRYFORWARDS FROM C YEARS ALLOWED.—Notwithstanding section 1371(b)(1), any net operating loss carryforward arising in a taxable year for which the corporation was a C corporation shall be allowed as a deduction against the net recognized built-in gains of the S corporation for the taxable year. For purposes of determining the amount of any such loss which may be carried to subsequent taxable years, such amount of net recognized built-in gains shall be treated as taxable income. Rules similar to the rules of the preceding sentences of this paragraph shall apply in the case of a capital loss carryforward arising in a taxable year for which the corporation was a C corporation."

(3) Subparagraph (B) of section 1374(b)(4) of the 1986 Code is amended to read as follows:

"(B) the net recognized built-in gains of the S corporation for the taxable year shall be treated as the taxable income."

(4) Paragraph (2) of section 1374(c) of the 1986 Code is amended—

(A) by inserting "net" before "recognized built-in gains" each place it appears (including the heading), and

(B) by inserting before the period at the end of subparagraph (B) "to the extent such net gains were subject to tax under subsection (a)".

(5)(A) Section 1374 of the 1986 Code is amended by striking out all that follows paragraph (1) of subsection (d) and inserting in lieu thereof the following:

"(2) NET RECOGNIZED BUILT-IN GAIN.—The term 'net recognized built-in gain' means, with respect to any taxable year beginning in the recognition period, the excess of—

"(A) the recognized built-in gains, over

"(B) the recognized built-in losses.

If the recognized built-in losses for any such taxable year exceeds the recognized built-in gains for such taxable year, such excess shall be treated as a recognized built-in loss in the following taxable year.

"(3) RECOGNIZED BUILT-IN GAIN.—The term 'recognized built-in gain' means any gain recognized during the recognition period on the disposition of any asset except to the extent that the S corporation establishes that—

"(A) such asset was not held by the S corporation as of the beginning of the 1st taxable year for which it was an S corporation, or

"(B) such gain exceeds the excess (if any) of—

"(i) the fair market value of such asset as of the beginning of such 1st taxable year, over

"(ii) the adjusted basis of the asset as of such time.

"(4) RECOGNIZED BUILT-IN LOSSES.—The term 'recognized built-in loss' means any loss recognized during the recognition period on the disposition of any asset to the extent that the S corporation establishes that—

"(A) such asset was held by the S corporation as of the beginning of the 1st taxable year referred to in paragraph (3), and

"(B) such loss does not exceed the excess of—

"(i) the adjusted basis of such asset as of the beginning of such 1st taxable year, over

"(ii) the fair market value of such asset as of such time.

"(5) TREATMENT OF CERTAIN INCOME ITEMS.—Any item of income which is properly taken into account during the recognition period but which is attributable to periods before the 1st taxable year for which the corporation was an S corporation shall be treated as a recognized built-in gain for the taxable year in which it is properly taken into account.

"(6) TREATMENT OF CERTAIN PROPERTY.—If the adjusted basis of any asset is determined (in whole or in part) by reference to the adjusted basis of any other asset held by the S corporation as of the beginning of the 1st taxable year referred to in paragraph (3)—

"(A) such asset shall be treated as held by the S corporation as of the beginning of such 1st taxable year, and

"(B) any determination under paragraph (3)(B) or (4)(B) with respect to such asset shall be made by reference to the fair market value and adjusted basis of such other asset as of the beginning of such 1st taxable year.

"(7) RECOGNITION PERIOD.—The term 'recognition period' means the 10-year period beginning with the 1st day of the 1st taxable year for which the corporation was an S corporation.

"(8) TREATMENT OF TRANSFER OF ASSETS FROM C CORPORATION TO S CORPORATION.—

"(A) IN GENERAL.—Except to the extent provided in regulations, if—

"(i) an S corporation acquires any asset, and

"(ii) the S corporation's basis in such asset is determined (in whole or in part) by reference to the basis of such asset (or any other property) in the hands of a C corporation,

then a tax is hereby imposed on any net recognized built-in gain attributable to any such assets for any taxable year beginning in the recognition period. The amount of such tax shall be determined under the rules of this section as modified by subparagraph (B).

"(B) MODIFICATIONS.—The modifications of this subparagraph are as follows:

"(i) RECOGNIZED BUILT-IN GAINS AND LOSSES.—The preceding paragraphs of this subsection shall be applied by taking into account the day on which the assets were acquired by the S corporation in lieu of the beginning of the 1st taxable year for which the corporation was an S corporation.

"(ii) RECOGNITION PERIOD.—The term 'recognition period' means the 10-year period beginning with the taxable year of the S corporation in which the assets described in subparagraph (A) were acquired.

"(iii) SUBSECTION (C)(1) NOT TO APPLY.—Subsection (c)(1) shall not apply.

"(9) REFERENCE TO 1ST TAXABLE YEAR.—Any reference in this section to the 1st taxable year for which the corporation was an S corporation shall be treated as a reference to the 1st taxable year for which the corporation was an S corporation pursuant to its most recent election under section 1362.

"(e) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section including regulations providing for the appropriate treatment of successor corporations."

(B) Subparagraph (B) of section 1375(b)(1) of the 1986 Code is amended to read as follows:

"(B) Limitation.—The amount of the excess net passive income for any taxable year shall not exceed the amount of the corporation's taxable income for such taxable year as determined under section 63(a)—

"(i) without regard to the deductions allowed by part VIII of subchapter B (other than the deduction allowed by section 248, relating to organization expenditures), and

"(ii) without regard to the deduction under section 172."

(C) Subsection (b) of section 1375 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(4) Coordination with section 1374.—Notwithstanding paragraph (3), the amount of passive investment income shall be determined by not taking into account any recognized built-in gain or loss of the S corporation for any taxable year in the recognition period. Terms used in the preceding sentence shall have the same respective meanings as when used in section 1374."

(D) Subsection (c) of section 1375 of the 1986 Code is amended to read as follows:

"(c) Credits Not Allowable.—No credit shall be allowed under part IV of subchapter A of this chapter (other than section 34) against the tax imposed by subsection (a)."

(E) Paragraph (2) of section 1366(f) of the 1986 Code is amended by striking out "section 1374(d)(2)" and inserting in lieu thereof "section 1374".

(2) Paragraph (3) of section 1362(d) of the 1986 Code is amended—

(A) by striking out clause (v) of subparagraph (D), and

(B) by adding at the end thereof the following new subparagraph:

"(E) Special rule for options and commodity dealings.—

"(i) In general.—In the case of any options dealer or commodities dealer, passive investment income shall be determined by not taking into account any gain or loss (in the normal course of the taxpayer's activity of dealing in or trading section 1256 contracts) from any section 1256 contract or property related to such a contract.

"(ii) Definitions.—For purposes of this subparagraph—

"(I) Options dealer.—The term 'options dealer' has the meaning given such term by section 1256(g)(8).

"(II) Commodities dealer.—The term 'commodities dealer' means a person who is actively engaged in trading section 1256 contracts and is registered with a domestic board of trade which is designated as a contract market by the Commodities Futures Trading Commission.

"(III) Section 1256 contract.—The term 'section 1256 contract' has the meaning given to such term by section 1256(b)."

(3) Subsections (d) and (e) of section 1363 of the 1986 Code are hereby repealed.

(g) Amendments Related to Section 633 of the Reform Act.—

(1) Subsection (b) of section 633 of the Reform Act is amended to read as follows:

"(b) Built-In Gains of S Corporations.—

"(1) In general.—The amendments made by section 632 (other than subsection (b) thereof) shall apply to taxable years beginning after December 31, 1986, but only in cases where the return for the taxable year is filed pursuant to an S election made after December 31, 1986.

"(2) Application of prior law.—In the case of any taxable year of an S corporation which begins after December 31, 1986, and to which the amendments made by section 632 (other than subsection (b) thereof) do not apply, paragraph (1) of section 1374(b) of the Internal Revenue Code of 1954 (as in effect on the date before the date of the enactment of this Act) shall be applied as if it read as follows:

" '(1) an amount equal to 34 percent of the amount by which the net capital gain of the corporation for the taxable year exceeds $25,000, or' ".

(2) Subparagraph (B) of section 633(c)(1) of the Reform Act is amended by striking out "50 percent or more" and inserting in lieu thereof "more than 50 percent".

(3) Paragraph (1) of section 633(d) of the Reform Act is amended—

(A) by striking out "this section" and inserting in lieu thereof "this subtitle",

(B) by striking out "would be recognized and inserting in lieu thereof "would be recognized by the liquidating corporation", and

(C) by adding at the end thereof the following new sentence: "Section 333 of the Internal Revenue Code of 1954 (as in effect on the day before the date of the enactment of this Act) shall continue to apply to any complete liquidation described in the preceding sentence.".

(4) Subparagraph (C) of section 633(d)(2) of the Reform Act is amended to read as follows:

"(C) any gain on an asset acquired by the qualified corporation if—

"(i) the basis of such asset in the hands of the qualified corporation is determined (in whole or in part) by reference to the basis of such asset in the hands of the person from whom acquired, and

"(ii) a principal purpose for the transfer of such asset to the qualified corporation was to secure the benefits of this subsection."

(5)(A) Subparagraph (A) of section 633(d)(5) of the Reform Act is amended by striking out "10 or fewer qualified persons" and inserting in lieu thereof "a qualified group".

(B) Paragraph (6) of section 633(d) of the Reform Act is amended to read as follows:

"(6) Definitions and special rules.—For purposes of this subsection—

"(A) Qualified group.—The term 'qualified group' means any group of 10 or fewer qualified persons who at all times during the 5-year period ending on the date of the adoption of the plan of complete liquidation (or, if shorter, the period during which the corporation or any predecessor was in existence) owned (or was treated as owning under the rules of subparagraph (C)) more than 50 percent (by value) of the stock in such corporation.

"(B) Qualified person.—The term 'qualified person' means—

"(i) an individual,

"(ii) an estate, or

"(iii) any trust described in clause (ii) or clause (iii) of section 1361(c)(2)(A) of the Internal Revenue Code of 1986.

"(C) Attribution rules.—

"(i) In general.—Any stock owned by a corporation, trust (other than a trust referred to in subparagraph (B)(iii), or partnership shall be treated as owned proportionately by its shareholders, beneficiaries, or partners, and shall not be treated as owned by such corporation, trust, or partnership. Stock considered to be owned by a person by reason of the application of the preceding sentence shall, for purposes of applying such sentence, be treated as actually owned by such person.

"(ii) Family members.—Stock owned (or treated as owned) by members of the same family (within the meaning of section 318(a)(1) of the Internal Revenue Code of 1986) shall be treated as owned by 1 person, and shall be treated as owned by such 1 person for any period during which it was owned (or treated as owned) by any such member.

"(iii) Treatment of certain trusts.—Stock owned (or treated as owned) by the estate of any decedent or by any trust referred to in subparagraph (B)(iii) with respect to such decedent shall be treated as owned by 1 person and shall be treated as owned by such 1 person for the period during which it was owned (or treated as owned) by such estate or any such trust or by the decedent.

"(D) Special holding period rules.—Any property acquired by reason of the death of an individual shall be treated as owned at all times during which such property was owned (or treated as owned) by the decedent.

"(E) Controlled group of corporations.—All members of the same controlled group (as defined in section 267(f)(1) of such Code) shall be treated as 1 corporation for purposes of determining whether any of such corporations met the requirement of paragraph (5)(B) and for purposes of determining the applicable percentage with respect to any of such corporations. For purposes of the preceding sentence, an S corporation shall not be treated as a member of a controlled group unless such corporation was a C corporation for its taxable year which includes August 1, 1986, or it was not described for such taxable year in paragraph (1) or (2) of section 1374(c) of such Code (as in effect on the day before the date of the enactment of this Act)."

(6) Subsection (d) of section 633 of the Reform Act is amended by adding at the end thereof the following new paragraph:

"(9) Application to nonliquidating distributions.—The provisions of this subsection shall also apply in the case of any distribution (not in complete liquidation) made by a qualified corporation before January 1, 1989, without regard to whether such corporation is completely liquidated."

(7) Paragraph (8) of the section 633(d) of the Reform Act is amended by striking out "becomes an S corporation for a taxable year beginning before January 1, 1989" and inserting in lieu thereof "makes an election to be an S corporation under section 1362 of such Code before January 1, 1989, without regard to whether such corporation is completely liquidated".

(8) Section 633 of the Reform Act is amended by redesignating the subsections following the first subsection (d) as subsections (e), (f), and (g), respectively.

(9) Subsection (f)(2) of section 633 of the Reform Act (as so redesignated) is amended by striking out "May 9, 1929" and inserting in lieu thereof "May 9, 1929 (or any direct or indirect subsidiary of such corporation)".

(10) Paragraph (3) of section 633(f) of the Reform Act (as so redesignated) is amended by striking out "of such Code)" in the last sentence thereof and inserting in lieu thereof "of such Code".

(11) Subclause (I) of section 633(f)(4)(A)(i) of the Reform Act (as so redesignated) is amended by striking out "binding on the selling corporation to sell substantially all its assets" and inserting in lieu thereof "to sell substantially all of the assets of a selling corporation organized under the laws of Massachusetts on October 20, 1976,".

(12) Subparagraph (A) of section 633(f)(5) of the Reform Act (as so redesignated) is amended to read as follows:

"(A) a voting trust established not later than December 31, 1987, shall qualify as a trust permitted as a shareholder of an S corporation and shall be treated as only 1 shareholder if the holders of beneficial interests in such voting trust are—

"(i) employees or retirees of such corporation, or

"(ii) in the case of stock or voting trust certificates acquired from an employee or retiree of such corporation, the spouse, child, or estate of such employee or retiree or a trust created by such employee or retiree which is described in section 1361(c)(2) of the Internal Revenue Code of 1986 (or treated as described in such section by reason of section 1361(d) of such Code), and".

(h) Amendments Related to Section 641 of the Reform Act.—

(1) Paragraph (3) of section 1060(b) of the 1986 Code is amended by striking out "the Secretary may find necessary" and inserting in lieu thereof "the Secretary deems necessary".

(2) Section 1060 of the 1986 Code is amended by adding at the end thereof the following new subsection:

"(d) Treatment of Certain Partnership Transactions.—In the case of a distribution of partnership property or a transfer of an interest in a partnership—

"(1) the rules of subsection (a) shall apply but only for purposes of determining the value of goodwill or going concern value (or similar items) for purposes of applying section 755, and

"(2) if section 755 applies, such distribution or transfer (as the case may be) shall be treated as an applicable asset acquisition for purposes of subsection (b)."

(3)(A) Subparagraph (B) of section 6724(d)(1) of the 1986 Code (defining information return) is amended by striking out "or" at the end of clause (ix), by striking out the period at the end of clause (x) and inserting in lieu thereof ", or", and by adding at the end thereof the following new clause:

"(xi) section 1060(b) (relating to reporting requirements of transferors and transferees in certain asset acquisitions)."

(B) Section 1060 of the 1986 Code is amended by adding at the end thereof the following new subsection:

"(e) Cross Reference.—

"For provisions relating to penalties for failure to file a return required by this section, see section 6721."

(i) Amendments Related to Section 642 of the Reform Act.—

(1) Paragraph (1) of section 453(g) of the 1986 Code is amended by striking out subparagraphs (A) and (B) and inserting in lieu thereof the following:

"(A) subsection (a) shall not apply,

"(B) for purposes of this title—

"(i) except as provided in clause (ii), all payments to be received shall be treated as received in the year of the disposition, and

"(ii) in the case of any payments which are contingent as to the amount but with respect to which the fair market value may not be reasonably ascertained, the basis shall be recovered ratably, and

"(C) the purchaser may not increase the basis of any property acquired in such sale by any amount before the time such amount is includible in the gross income of the seller."

(2)(A) Section 453(g) of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(3) Related persons.—For purposes of this subsection, the term 'related persons' has the meaning given to such term by section 1239(b), except that such term shall include 2 or more partnerships having a relationship to each other described in section 707(b)(1)(B)."

(B) Section 453(g)(1) of the 1986 Code is amended by striking out "(within the meaning of section 1239(b))".

(3) The heading of paragraph (2) of section 642(c) of the Reform Act is amended by striking out "Traditional" and inserting in lieu thereof "Transitional".

(j) Amendments Related to Section 643 of the Reform Act.—

(1) Subsection (e) of section 171 of the 1986 Code is amended to read as follows:

"(e) Treatment as Offset to Interest Payments.—Except as provided in regulations, in the case of any taxable bond acquired after October 22, 1986—

"(1) the amount of any bond premium shall be allocated among the interest payments on the bond under rules similar to the rules of subsection (b)(3), and

"(2) in lieu of any deduction under subsection (a), the amount of any premium so allocated to any interest payment shall be applied against (and operate to reduce) the amount of such interest payment.

For purposes of the preceding sentence, the term 'taxable bond' means any bond the interest of which is not excludable from gross income."

(2) Paragraph (2) of section 643(b) of the Reform Act is amended by striking out "issued after" and inserting in lieu thereof "acquired after".

(k) Amendments Related to Section 646 of the Reform Act.—

(1) Paragraph (2) of section 646(b) of the Reform Act is amended to read as follows:

"(2) such entity is exclusively engaged in the leasing of mineral property and activities incidental thereto, and".

(2) Paragraph (3) of section 646(b) of the Reform Act is amended by inserting "as of October 22, 1986," after "publicly traded".

(3) Subparagraph (A) of section 646(c)(1) of the Reform Act is amended by inserting "before January 1, 1991" after "entity".

(4) Paragraph (2) of section 646(c) of the Reform Act is amended to read as follows:

"(2) Agreement.—

"(A) In general.—The agreement described in this paragraph is a written agreement signed by the board of trustees of the entity which provides that the entity will not acquire any additional property other than property described in subparagraph (B).

"(B) Permissible acquisitions.—Property is described in this paragraph if it is—

"(i) surface rights to property the acquisition of which—

"(I) is necessary to mine mineral rights held on October 22, 1986, and

"(II) is required by a written binding agreement between the entity and an unrelated person entered into on or before October 22, 1986,

"(ii) surface rights to property which are not described in clause (i) and which—

"(I) are acquired in an exchange to which section 1031 applies, and

"(II) are necessary to mine mineral rights held on October 22, 1986,

"(iii) tangible personal property incidental to the leasing of mineral property and activities incidental thereto, or

"(iv) part of any required reserves of the entity."

(5) Paragraph (1) of section 646(d) of the Reform Act is amended by striking out subparagraph (B) and inserting in lieu thereof:

"(B) for purposes of section 333 of such Code (as so in effect)—

"(i) any person holding an income interest in such entity as of such time shall be treated as a qualified electing shareholder, and

"(ii) the earnings and profits, and the value of money or stock or securities, of such entity shall be apportioned ratably among persons described in clause (i).

The amendments made by subtitle D of this title and section 1804 of this Act shall not apply to any liquidation under this paragraph."

(6)(A) Paragraph (2) of section 646(d) of the Reform Act is amended to read as follows:

"(2) Termination of election.—If an entity ceases to be described in subsection (b) or violates any term of the agreement described in subsection (c)(2), the entity shall, for purposes of the Internal Revenue Code of 1986, be treated as a corporation for the taxable year in which such cessation or violation occurs and for all subsequent taxable years."

(B) Paragraph (3) of section 646(c) of the Reform Act is amended to read as follows:

"(3) Beginning of period for which election is in effect.—The period during which an election is in effect under this subsection shall begin on the 1st day of the 1st taxable year beginning after the date of the enactment of this Act and following the taxable year in which the election is made."

(7)(A) Subsection (e) of section 646 of the Reform Act is amended to read as follows:

"(e) Special Rule for Persons Holding Income Interests.—In applying subpart E of part I of subchapter J of chapter 1 of the Internal Revenue Code of 1986 to any entity to which this section applies—

"(1) a reversionary interest shall not be taken into account until it comes into possession, and

"(2) all items of income, gain, loss, deduction, and credit shall be allocated to persons holding income interests for the period of the allocation."

(B) Section 646(d)(3) of the Reform Act is amended by striking out "or by reason of subsection (e)".

(l) Amendments Related to Section 651 of the Reform Act.—

(1)(A) Paragraph (6) of section 852(b) of the 1986 Code (as added by section 651(b)(1)(A) of the Reform Act) is redesignated as paragraph (7).

(B) Subsection (b) of section 855 of the 1986 Code is amended by striking out "section 852(b)(6)" and inserting in lieu thereof "section 852(b)(7)".

(2) Paragraph (2) of section 4982(e) of the 1986 Code is amended to read as follows:

"(2) Capital gain net income.—

"(A) In general.—Except as provided in subparagraph (B), the term 'capital gain net income' has the meaning given such term by section 1222(9) (determined by treating the 1-year period ending on October 31 of any calendar year as the company's taxable year).

"(B) Reduction by net ordinary loss for calendar year.—The amount determined under subparagraph (A) shall be reduced (but not below the net capital gain) by the amount of the company's net ordinary loss for the calendar year.

"(C) Definitions.—For purposes of this paragraph—

"(i) Net capital gain.—The term 'net capital gain' has the meaning given such term by section 1222(11) (determined by treating the 1-year period ending on October 31 of the calendar year as the company's taxable year).

"(ii) Net ordinary loss.—The net ordinary loss for the calendar year is the amount which would be the net operating loss of the company for the calendar year if the amount of such loss were determined in the same manner as ordinary income is determined under paragraph (1)."

(3) Paragraph (2) of section 852(c) of the 1986 Code is amended to read as follows:

"(2) Coordination with tax on undistributed income.—For purposes of applying this chapter to distributions made by a regulated investment company during any calendar year, the earnings and profits of such company shall be determined without regard to any net capital loss (or net foreign currency loss) attributable to transactions after October 31 of such year. The preceding sentence shall apply—

"(A) only to the extent that the amount distributed by the company during the calendar year does not exceed the required distribution for such calendar year (as determined under section 4982), and

"(B) only if an election under section 4982(e)(4) is not in effect with respect to such company."

(4) Subparagraph (C) of section 852(b)(3) of the 1986 Code is amended by striking out "regulated investment company taxable income" in the last sentence and inserting in lieu thereof "the taxable income of the regulated investment company".

(5) Subsection (e) of section 4982 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(5) Treatment of foreign currency gains and losses after October 31 of calendar year.—Any foreign currency gain or loss which is attributable to a section 988 transaction and which is properly taken into account for the portion of the calendar year after October 31 shall not be taken into account in determining the amount of the ordinary income of the regulated investment company for such calendar year but shall be taken into account in determining the ordinary income of the investment company for the following calendar year. The preceding sentence shall not apply in the case of any company making an election under paragraph (4)."

(6) Section 4982 of the 1986 Code is amended by adding at the end thereof the following new subsection:

"(f) Exception for Certain Regulated Investment Companies.—This section shall not apply to any regulated investment company for any calendar year if at all times during such calendar year each shareholder in such company was either—

"(1) a trust described in section 401(a) and exempt from tax under section 501(a), or

"(2) a segregated asset account of a life insurance company held in connection with variable contracts (as defined in section 817(d)).

For purposes of the preceding sentence, any shares attributable to an investment in the regulated investment company (not exceeding $250,000) made in connection with the organization of such company shall not be taken into account."

(m) Amendments Related to Section 652 of the Reform Act.—

(1) Paragraph (1) of section 851(a) of the 1986 Code is amended to read as follows:

"(1) which, at all times during the taxable year—

"(A) is registered under the Investment Company Act of 1940, as amended (15 U.S.C. 80a-1 to 80b-2) as a management company or unit investment trust, or

"(B) has in effect an election under such Act to be treated as a business development company, or".

(2) Paragraph (1) of section 851(e) of the 1986 Code is amended by striking out "a registered management company or registered business development company" and inserting in lieu thereof "a management company or a business development company described in subsection (a)(1)".

(n) Amendments Related to Section 653 of the Reform Act.—

(1) Subsection (b) of section 851 of the 1986 Code is amended by adding at the end thereof the following new sentence: "Income derived from a partnership or trust shall be treated as described in paragraph (2) only to the extent such income is attributable to items of income of the partnership or trust (as the case may be) which would be described in paragraph (2) if realized by the regulated investment company in the same manner as realized by the partnership or trust."

(2) Paragraph (3) of section 851(b) of the 1986 Code is amended to read as follows:

"(3) less than 30 percent of its gross income is derived from the sale or disposition of any of the following which was held for less than 3 months:

"(A) stock or securities (as defined in section 2(a)(36) of the Investment Company Act of 1940, as amended), *or*

"(B) options, futures, or forward contracts, and".

(3) Effective with respect to taxable years beginning after December 31, 1987, subsection (b) of section 851 of the 1986 Code is amended by adding at the end thereof the following new sentence: "For purposes of paragraph (3), foreign currency gains which are directly related to the company's principal business of investing in stock or securities (or options and futures with respect to stock or securities) shall not be treated as derived from the sale or other disposition of property described in paragraph (3) held for less than 3 months, and foreign currency gains not so directly related shall be treated as derived from the sale or other disposition of property described in paragraph (3) held for less than 3 months."

(4) Clause (i) of section 851(g)(2)(A) of the 1986 Code (defining designated hedge) is amended by striking out "contractual option" and inserting in lieu thereof "contractual obligation".

(5) Subsection (b) of section 851 of the 1986 Code is amended by adding at the end thereof the following new sentence: "In the case of the taxable year in which a regulated investment company is completely liquidated, there shall not be taken into account under paragraph (3) any gain from the sale, exchange, or distribution of any property after the adoption of the plan of complete liquidation."

(o) Amendments Related to Section 654 of the Reform Act.—Subsection (q) of section 851 of the 1986 Code (as added by section 654 of the Reform Act)—

(1) is redesignated as subsection (h), and

(2) is amended by adding at the end thereof the following new paragraph:

"(3) Special rule for abnormal redemptions.—

"(A) In general.—Any fund treated as a separate corporation under paragraph (1) shall not be disqualified under subsection (b)(3) for any taxable year by reason of sales resulting from abnormal redemptions on any day and occurring before the close of the 5th business day after such day if—

"(i) the fund had abnormal redemptions during such taxable year aggregating more than 30 percent of net asset value, and

"(ii) the regulated investment company of which such fund is a part would meet the requirements of subsection (b)(3) for such taxable year if all the funds which are part of such company were treated as a single company.

"(B) Abnormal redemptions.—For purposes of subparagraph (A), the term 'abnormal redemptions' means redemptions occurring on any day if the net redemptions on such day exceed 1 percent of the fund's net asset value.

"(C) Determination of net asset value.—For purposes of subparagraph (A), net asset value for any day shall be determined as of the close of the preceding day."

(p) Amendments Related to Section 662 of the Reform Act.—

(1) Subclause (I) of section 856(c)(6)(D)(i) of the 1986 Code (as added by section 662 of the Reform Act) is amended by striking out "debt instrument" and inserting in lieu thereof "debt instrument (within the meaning of section 1275(a)(1))".

(2) Notwithstanding section 669 of the Reform Act, the amendment made by section 662(c) of the Reform Act shall apply to taxable years beginning after December 31, 1986, but only in the case of obligations acquired after October 22, 1986.

(3) Subsection (c) of section 856 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(8) Treatment of liquidating gains.—In the case of the taxable year in which a real estate investment trust is completely liquidated, there shall not be taken into account under paragraph (4) any gain from the sale, exchange, or distribution of any property after the adoption of the plan of complete liquidation."

(q) Amendments Related to Section 663 of the Reform Act.—

(1) Subparagraph (A) of section 856(d)(6) of the 1986 Code is amended to read as follows:

"(A) In general.—If—

"(i) a real estate investment trust receives or accrues, with respect to real or personal property, amounts from a tenant which derives substantially all of its income with respect to such property from the subleasing of substantially all of such property, and

"(ii) a portion of the amount such tenant receives or accrues, directly or indirectly, from subtenants consists of qualified rents,

then the amounts which the trust receives or accrues from the tenant shall not be excluded from the term 'rents from real property' by reason of being based on the income or profits of such tenant to the extent the amounts so received or accrued are attributable to qualified rents received or accrued by such tenant."

(2) Subsection (f) of section 856 of the 1986 Code is amended to read as follows:

"(f) Interest.—

"(1) In general.—For purposes of paragraphs (2)(B) and (3)(B) of subsection (c), the term 'interest' does not include any amount received or accrued, directly or indirectly, if the determination of such amount depends in whole or in part on the income or profits of any person except that—

"(A) any amount so received or accrued shall not be excluded from the term 'interest' solely by reason of being based on a fixed percentage or percentages of receipts or sales, and

"(B) where a real estate investment trust receives any amount which would be excluded from the term 'interest' solely because the debtor of the real estate investment trust receives or accrues any amount the determination of which depends in whole or in part on the income or profits of any person, only a proportionate part (determined pursuant to regulations prescribed by the Secretary) of the amount received or accrued by the real estate investment trust from the debtor will be excluded from the term 'interest'.

"(2) Special rule.—If—

"(A) a real estate investment trust receives or accrues with respect to an obligation secured by a mortgage on real property or an interest in real property amounts from a debtor which derives substantially all of its gross income with respect to such property from the leasing of substantially all of its interests in such property to tenants, and

"(B) a portion of the amount which such debtor receives or accrues, directly or indirectly, from tenants consists of qualified rents (as defined in subsection (d)(6)(B)),

then the amounts which the trust receives or accrues from such debtor shall not be excluded from the term 'interest' by reason of being based on the income or profits of such debtor to the extent the amounts so received are attributable to qualified rents received or accrued by such debtor."

(r) Amendment Related to Section 664 of the Reform Act.—Clause (i) of section 857(e)(2)(B) of the 1986 Code is amended by striking out "as original issue discount on instruments" and inserting "with respect to instruments".

(s) Amendments Related to Section 668 of the Reform Act.—

(1) Paragraph (2) of section 4981(e) of the 1986 Code is amended to read as follows:

"(2) Capital gain net income.—

"(A) In general.—The term 'capital gain net income' has the meaning given such term by section 1222(9) (determined by treating the calendar year as the trust's taxable year).

"(B) Reduction for net ordinary loss.—The amount determined under subparagraph (A) shall be reduced by the amount of the trust's net ordinary loss for the taxable year.

"(C) Net ordinary loss.—For purposes of this paragraph, the net ordinary loss for the calendar year is the amount which would be net operating loss of the trust for the calendar year if the amount of such loss were determined in the same manner as ordinary income is determined under paragraph (1)."

(2) Subparagraph (C) of section 857(b)(3) of the 1986 Code is amended by striking out "real estate investment trust taxable income" in the last sentence and inserting in lieu thereof "the taxable income of the real estate investment trust".

(3) Subparagraph (A) of section 4981(c)(1) of the 1986 Code is amended by striking out "such calendar year" and inserting in lieu thereof "such calendar year (but computed without regard to that portion of such deduction which is attributable to the amount excluded under section 857(b)(2)(D))".

(t) Amendments Related to Section 671 of the Reform Act.—

(1) Paragraph (1) of section 860C(e) of the 1986 Code is amended to read as follows:

"(1) Amounts treated as ordinary.—Any amount taken into account under subsection (a) by any holder of a residual interest in a REMIC shall be treated as ordinary income or ordinary loss, as the case may be."

(2)(A) Paragraph (4) of section 860D(a) of the 1986 Code is amended—

(i) by striking out "4th month ending after" and inserting in lieu thereof "3rd month beginning after", and

(ii) by striking out "and each quarter ending thereafter" and inserting in lieu thereof "and at all times thereafter".

(B) The amendment made by subparagraph (A)(ii) shall take effect on January 1, 1988.

(3)(A) Clause (i) of section 860F(a)(2)(A) of the 1986 Code is amended to read as follows:

"(i) the substitution of a qualified replacement mortgage for a qualified mortgage (or the repurchase in lieu of substitution of a defective obligation),".

(B)(i) Paragraph (2) of section 860F(a) of the 1986 Code is amended by striking out the last sentence of subparagraph (A).

(ii) Subsection (a) of section 860F of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(5) Exceptions.—Notwithstanding subparagraphs (A) and (D) of paragraph (1), the term 'prohibited transaction' shall not include any disposition—

"(A) required to prevent default on a regular interest where the threatened default resulted from a default on 1 or more qualified mortgages, or

"(B) to facilitate a clean-up call (as defined in regulations)."

(C) Subparagraph (D) of section 860F(a)(2) of the 1986 Code is amended by striking out "described in subsection (b)".

(4) Subparagraph (A) of section 860F(b)(1) of the 1986 Code is amended by striking out "the transfer of any property to a REMIC" and inserting in lieu thereof "the transfer of any property to a REMIC in exchange for regular or residual interests in such REMIC".

(5)(A) Paragraph (1) of section 860G(a) of the 1986 Code is amended to read as follows:

"(1) Regular interest.—The term 'regular interest' means any interest in a REMIC which is issued on the startup day with fixed terms and which is designated as a regular interest if—

"(A) such interest unconditionally entitles the holder to receive a specified principal amount (or other similar amount), and

"(B) interest payments (or other similar amount), if any, with respect to such interest at or before maturity—

"(i) are payable based on a fixed rate (or to the extent provided in regulations, at a variable rate), or

"(ii) consist of a specified portion of the interest payments on qualified mortgages and such portion does not vary during the period such interest is outstanding.

The interest shall not fail to meet the requirements of subparagraph (A) merely because the timing (but not the amount) of the principal payments (or other similar amounts) may be contingent on the extent of prepayments on qualified mortgages and the amount of income from permitted investments."

(B) Paragraph (2) of section 860G(a) of the 1986 Code is amended to read as follows:

"(2) Residual interest.—The term 'residual interest' means an interest in a REMIC which is issued on the startup day, which is not a regular interest, and which is designated as a residual interest."

(C) Paragraph (3) of section 860G(a) of the 1986 Code is amended—

(i) by striking out "on or before the startup day" in subparagraph (A)(i) and inserting in lieu thereof "on the startup day in exchange for regular or residual interests in the REMIC",

(ii) by inserting "if, except as provided in regulations, such purchase is pursuant to a fixed-price contract in effect on the startup day" before the comma at the end of subparagraph (A)(ii), and

(iii) by striking out "on or before the startup day" in subparagraph (C) and inserting in lieu thereof "on the startup day in exchange for regular or residual interests in the REMIC".

(D) Subparagraph (A) of section 860G(a)(4) of the 1986 Code is amended to read as follows:

"(A) which would be a qualified mortgage if transferred on the startup day in exchange for regular or residual interests in the REMIC, and".

(E) Paragraph (9) of section 860G(a) of the 1986 Code is amended to read as follows:

"(9) Startup day.—The term 'startup day' means the day on which the REMIC issues all of its regular and residual interests. To the extent provided in regulations, all interests issued (and all transfers to the REMIC) during any period (not exceeding 10 days) permitted in such regulations shall be treated as occurring on the day during such period selected by the REMIC for purposes of this paragraph."

(F) The amendments made by this paragraph shall not apply to any REMIC where the startup day (as defined in section 860G(a)(9) of the 1986 Code as in effect on the day before the date of the enactment of this Act) is before July 1, 1987.

(6) Paragraph (3) of section 860G(a) of the 1986 Code is amended—

(A) by striking out "directly or indirectly," in subparagraph (A), and

(B) by adding at the end thereof the following new sentence:

"For purposes of this subparagraph, any obligation secured by stock held by a person as a tenant-stockholder (as defined in section 216) in a cooperative housing corporation (as so defined) shall be treated as secured by an interest in real property."

(7) Subparagraph (B) of section 860G(a)(7) of the 1986 Code is amended by inserting before the period at the end of the 1st sentence the following: "or lower than expected returns on cash flow investments".

(8)(A) Paragraph (8) of section 860G(a) of the 1986 Code is amended by striking out the last sentence.

(B) Section 860G of the 1986 Code is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

"(c) Tax on Income From Foreclosure Property.—

"(1) In general.—A tax is hereby imposed for each taxable year on the net income from foreclosure property of each REMIC. Such tax shall be computed by multiplying the net income from foreclosure property by the highest rate of tax specified in section 11(b).

"(2) Net Income From Foreclosure Property.—For purposes of this part, the term 'net income from foreclosure property' means the amount which would be the REMIC's net income from foreclosure property under section 857(b)(4)(B) if the REMIC were a real estate investment trust."

(C) Paragraph (1) of section 860C(b) of the 1986 Code is amended by striking out "and" at the end of subparagraph (C), by striking out the period at the end of subparagraph (D) and inserting in lieu thereof ", and", and by adding at the end thereof the following new subparagraph:

"(E) the amount of the net income from foreclosure property (if any) shall be reduced by the amount of the tax imposed by section 860G(c)."

(9)(A) Section 860G of the 1986 Code (as amended by paragraph (8)) is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

"(d) Tax on Contributions After Startup Date.—

"(1) In general.—Except as provided in paragraph (2), if any amount is contributed to a REMIC after the startup day, there is hereby imposed a tax for the taxable year of the REMIC in which the contribution is received equal to 100 percent of the amount of such contribution.

"(2) Exceptions.—Paragraph (1) shall not apply to any contribution which is made in cash and is described in any of the following subparagraphs:

"(A) Any contribution to facilitate a cleanup call (as defined in regulations) or a qualified liquidation.

"(B) Any payment in the nature of a guarantee.

"(C) Any contribution during the 3-month period beginning on the startup day.

"(D) Any contribution to a qualified reserve fund by any holder of a residual interest in the REMIC.

"(E) Any other contribution permitted in regulations."

(B) The amendment made by subparagraph (A) shall not apply to any REMIC where the startup day (as defined in section 860G(a)(9) of the 1986 Code as in effect on the day before the date of the enactment of this Act) is before July 1, 1987.

(10) Subsection (e) of section 860G of the 1986 Code (as redesignated by paragraph (9)) is amended by striking out "and" at the end of paragraph (2), by striking out the period at the end of paragraph (3) and inserting in lieu thereof a comma, and by adding at the end thereof the following new paragraphs:

"(4) providing appropriate rules for treatment of transfers of qualified replacement mortgages to the REMIC where the transferor holds any interest in the REMIC, and

"(5) providing that a mortgage will be treated as a qualified replacement mortgage only if it is part of a bona fide replacement (and not part of a swap of mortgages)."

(11) Paragraph (6) of section 856(c) of the 1986 Code is amended by redesignating the last subparagraph as subparagraph (F) and by striking out the subparagraph (D) added by section 671(b)(1) of the Reform Act and inserting in lieu thereof the following:

"(E) A regular or residual interest in a REMIC shall be treated as a real estate asset, and any amount includible in gross income with respect to such an interest shall be treated as interest on an obligation secured by a mortgage on real property; except that, if less than 95 percent of the assets of such REMIC are real estate assets (determined as if the real estate investment trust held such assets), such real estate investment trust shall be treated as holding directly (and as receiving directly) its proportionate share of the assets and income of the REMIC."

(12) Clause (xi) of section 7701(a)(19)(C) of the 1986 Code is amended by striking out "are loans described" and inserting in lieu thereof "are assets described".

(13) Subparagraph (B) of section 860E(c)(2) of the 1986 Code is amended by striking out "issue price of residual interest" and inserting in lieu thereof "issue price of the residual interest".

(14) Clause (ii) of section 860F(b)(1)(D) of the 1986 Code is amended by striking out "the real estate mortgage pool" and inserting in lieu thereof "the REMIC".

(15) Subsection (a) of section 860E of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(3) Special rule for affiliated groups.—All members of an affiliated group filing a consolidated return shall be treated as 1 taxpayer for purposes of this subsection, except that paragraph (2) shall be applied separately with respect to each corporation which is a member of such group and to which section 593 applies."

(16)(A) Section 860E of the 1986 Code is amended by adding at the end thereof the following new subsection:

"(e) Treatment of Excess Inclusions of Certain Tax-Exempt Organizations.—

"(1) In general.—If a tax-exempt organization is the holder of any residual interest in a REMIC, there is hereby imposed a tax on the REMIC for each calendar quarter equal to the nontaxable excess inclusion of such tax-exempt organization for such quarter multiplied by the highest rate of tax specified in section 11(b).

"(2) Definitions.—For purposes of this paragraph—

"(A) Tax-exempt organization.—The term 'tax-exempt organization' means—

"(i) the United States, any State or political subdivision thereof, any possession of the United States, or any agency or instrumentality of any of the foregoing, and

"(ii) any organization which is exempt from tax imposed by this chapter.

"(B) Non-taxable excess inclusion.—The term 'non-taxable excess inclusion' means any excess inclusion of a tax-exempt organization to the extent such inclusion is not subject to tax imposed by this chapter (determined after application of subsection (b)).

"(C) Holding through partnerships, etc.—A tax-exempt organization shall be treated as holding a residual interest in a REMIC if it holds such interest directly or through or one more partnerships, trusts, or other pass-thru entities."

(B) The amendment made by subparagraph (A) shall not apply to any REMIC where the startup day (as defined in section 860G(a)(9) of the 1986 Code as in effect on the day before the date of the enactment of this Act) is before October 14, 1987.

(17) Subparagraph (B) of section 860E(c)(2) of the 1986 Code is amended—

(A) by inserting "(adjusted for contributions)" after "residual interest" the second place it appears, and

(B) by striking "decreased by" in clause (ii) and inserting in lieu thereof "decreased (but not below zero) by".

(18)(A) Subsection (e) of section 860F of the 1986 Code is amended by adding at the end thereof the following new sentence: "In the case of a REMIC which under local law is a trust or a corporation, the trustee or the corporation (as the case may be) shall have the same responsibility to file the return and pay the tax as a residual holder."

(B) Unless the REMIC otherwise elects, the amendment made by subparagraph (A) shall not apply to any REMIC where the start-up day (as defined in section 860G(a)(9) of the 1986 Code as in effect on the day before the date of the enactment of this Act) is before the date of the enactment of this Act.

(19) Subsection (a) of section 860D of the 1986 Code is amended by adding at the end thereof the following new sentence:

"In the case of a qualified liquidation (as defined in section 860F(a)(4)(A)), paragraph (4) shall not apply during the liquidation period (as defined in section 860F(a)(4)(B)."

(20) Subsection (a) of section 860A of the 1986 Code is amended by striking out "this chapter" each place it appears and inserting in lieu thereof "this subtitle".

(21) Paragraph (1) of section 860C(b) of the 1986 Code is amended by striking out "and in the same manner" and inserting in lieu thereof "and, except as provided in regulations, in the same manner".

(22) The following sections of the 1986 Code are each amended by striking out "real estate mortgage pool" and inserting in lieu thereof "REMIC":

(A) Section 382(l)(4)(B)(ii).
(B) Section 860F(a)(2)(A)(iii).
(C) Section 860F(a)(2)(C).
(D) Section 860F(b)(1)(C)(ii).
(E) Section 860F(b)(1)(D)(ii).

(u) Amendments Related to Section 672 of the Reform Act.—

(1) Subparagraph (B) of section 163(e)(2) of the 1986 Code is amended by striking out "paragraph (6)" and inserting in lieu thereof "paragraph (7)".

(2) Subparagraph (B) of section 1278(a)(4) of the 1986 Code is amended by striking out "section 1272(a)(6)" and inserting in lieu thereof "section 1272(a)(7)".

(3) Section 1288(a) of the 1986 Code is amended by striking out "paragraph (6)" each place it appears and inserting in lieu thereof "paragraph (7)".

(4) Sections 1271(a)(2)(A)(ii) and 1275(a)(4)(B)(ii)(I) of the 1986 Code are each amended by striking out "subsection (a)(6)" and inserting in lieu thereof "subsection (a)(7)".

(v) Amendments Related to Section 675 of the Reform Act.—

(1) Subsection (a) of section 675 of the Reform Act is amended to read as follows:

"(a) General Rule.—Except as otherwise provided in this section, the amendments made by this subtitle shall take effect on January 1, 1987."

(2) Section 675 of the Reform Act is amended by adding at the end thereof the following new subsection:

"(d) Study.—The Secretary of the Treasury or his delegate shall conduct a study of the operation of the amendments made by this part and their competitive impact on savings and loan institutions and similar financial institutions. Not later than January 1, 1990, the Secretary shall submit a report of such study to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate (together with such recommendations as he may deem advisable)."

SEC. 10207. AMENDMENTS RELATED TO TITLE VII OF THE REFORM ACT.

(a) Amendments to Section 55 of the 1986 Code.—

(1) Paragraph (1) of section 55(c) of the 1986 Code is amended by inserting before the period at the end of the first sentence the following: "and the section 936 credit allowable under section 27(b)".

(2) Paragraph (2) of section 55(b) of the 1986 Code is amended by adding at the end thereof the following new sentence:

"If the tax imposed by this chapter on any taxpayer is determined by reference to an amount other than taxable income, such amount shall be treated as the taxable income of such taxpayer for purposes of the preceding sentence."

(b) Amendments to Section 56 of the 1986 Code.—

(1) Paragraph (3) of section 56(a) of the 1986 Code is amended by adding at the end thereof the following new sentence: "For purposes of the preceding sentence, the percentage of the contract completed shall be the same as the percentage used for purposes of the regular tax; except that, in the case of a contract described in section 460(e)(1), the percentage of the contract completed shall be determined under section 460(b)(2) by using costs as determined for purposes of the regular tax and by using the simplified procedures for allocation of costs prescribed under section 460(b)(4)."

(2) Subparagraph (E) of section 56(b)(1) of the 1986 Code is amended to read as follows:

"(E) Standard deduction and deduction for personal exemptions not allowed.—The standard deduction under section 63(c), the deduction for personal exemptions under section 151, and the deduction under section 642(b) shall not be allowed."

(3) Subparagraph (C) of section 56(b)(1) of the 1986 Code is amended by striking out "and" at the end of clause (ii), by striking out the period at the end of clause (iii) and inserting in lieu thereof a comma, and by adding at the end thereof the following new clauses:

"(iv) in lieu of the exception under section 163(d)(3)(B)(i), the term 'investment interest' shall not include any qualified housing interest (as defined in subsection (e)), and

"(v) the adjustments of this section and sections 57 and 58 shall apply in determining net investment income under section 163(d)."

(4) Clause (iii) of section 56(b)(1)(C) of the 1986 Code is amended—

(A) by striking out "specified activity bond" and inserting in lieu thereof "specified private activity bond", and

(B) by striking out "section 56(a)(5)(B)" and inserting in lieu thereof "section 57(a)(5)(B)".

(5) Subparagraph (A) of section 56(d)(2) of the 1986 Code is amended—

(A) by striking out "(other than subsection (a)(6) thereof)", and

(B) by adding at the end thereof the following new sentence:

"An item of tax preference shall be taken into account under clause (ii) only to the extent such item increased the amount of the net operating loss for the taxable year under section 172(c)."

(6)(A) Paragraph (1) of section 56(e) of the 1986 Code is amended—

(i) by striking out "interest which is" and inserting in lieu thereof "interest which is qualified residence interest (as defined in section 163(h)(3)) and is", and

(ii) by striking out "section 163(h)(3)" in subparagraph (B) and inserting in lieu thereof "section 163(h)(5)".

(B) Paragraph (3) of section 56(e) of the 1986 Code is amended by striking out "interest paid or accrued" and inserting in lieu thereof "interest which is qualified residence interest (as defined in section 163(h)(3)) and is paid or accrued".

(7) The last sentence of section 56(f)(2)(B) of the 1986 Code is amended by striking out "any such taxes" and inserting in lieu thereof "any such taxes (otherwise eligible for the credit provided by section 901 without regard to section 901(j))".

(8) Clause (iii) of section 56(f)(3)(A) of the 1986 Code is amended by striking out "an income statement" and inserting in lieu thereof "an income statement for a substantial nontax purpose".

(9) Subparagraph (B) of section 56(f)(3) of the 1986 Code is amended by striking out "paragraph (3)(A)" and inserting in lieu thereof "this subsection".

(10) Subparagraph (C) of section 56(f)(3) of the 1986 Code is amended by adding at the end thereof the following new sentence: "If the taxpayer has 2 or more statements described in the clause (or subclause) with the lowest number designation, the applicable financial statement shall be the one of such statements specified in regulations."

(11)(A) Subparagraph (F) of section 56(f)(2) of the 1986 Code is amended to read as follows:

"(F) Treatment of taxes on dividends from 936 corporations.—

"(i) In general.—For purposes of determining the alternative minimum tax foreign tax credit, 50 percent of any withholding tax or income tax paid to a possession of the United States with respect to dividends received from a corporation eligible for the credit provided by section 936 shall be treated as a tax paid to a foreign country by the corporation receiving the dividend.

"(ii) Limitation.—If the aggregate amount of the dividends referred to in clause (i) for any taxable year exceeds the excess referred to in paragraph (1), the amount treated as a tax paid to a foreign country under clause (i) shall not exceed the amount which would be so treated without regard to this clause multiplied by a fraction—

"(I) the numerator of which is the excess referred to in paragraph (1), and

"(II) the denominator of which is the aggregate amount of such dividends.

"(iii) Treatment of taxes imposed on 936 corporation.—For purposes of this subparagraph, taxes paid by any corporation eligible for the credit provided by section 936 to a possession of the United States shall be treated as a withholding tax paid with respect to any dividend paid by such corporation to the extent such taxes would be treated as paid by the corporation receiving the dividend under rules similar to the rules of section 902 (and the amount of any such dividend shall be increased by the amount so treated)."

(B) Clause (iii) of section 56(g)(4)(C) of the 1986 Code is amended by striking out "clause (ii)(I)" and inserting in lieu thereof "clause (i)".

(12) Clause (iii) of section 56(g)(4)(B) of the 1986 Code is amended by adding at the end thereof the following new sentence: "The preceding sentence shall not apply to any annuity contract held under a plan described in section 403(a)."

(13) Paragraph (1) of section 56(c) of the 1986 Code is amended—

(A) by striking out "ADJUSTED EARNINGS AND PROFITS" in the paragraph heading and inserting in lieu thereof "ADJUSTED CURRENT EARNINGS", and

(B) by striking out "Adjusted earnings and profits" in the heading of subparagraph (B) and inserting in lieu thereof "Adjusted current earnings".

(14)(A) Subsection (b) of section 56 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(3) Treatment of incentive stock options.—Section 421 shall not apply to the transfer of stock acquired (in a taxable year beginning after December 31, 1986) pursuant to the exercise of an incentive stock option (as defined in section 422A). The adjusted basis of any stock so acquired shall be determined on the basis of the treatment prescribed by the preceding sentence."

(B) Paragraph (3) of section 57(a) of the 1986 Code is hereby repealed.

(C) The amendments made by this paragraph shall apply with respect to options exercised after October 14, 1987.

(15) Clause (i) of section 56(a)(1)(A) of the 1986 Code is amended by striking out "REAL" in the heading and inserting in lieu thereof "PERSONAL".

(16) The heading of paragraph (1) of section 56(b) of the 1986 Code is amended by striking out "ITEMIZED".

(17) Subparagraph (A) of section 56(g)(4) of the 1986 Code is amended by adding at the end thereof the following new clauses:

"(vi) Election to have cumulative limitation.—

"(I) In general.—In the case of any property placed in service during a taxable year to which an election under this clause applies, in lieu of applying the clause (i), the depreciation deduction for such property for any taxable year shall be the lesser of the accumulated 168(g) depreciation or the accumulated book depreciation; reduced by the aggregate amount of the depreciation deductions determined under this subclause with respect to such property for prior taxable years.

"(II) Accumulated 168(g) depreciation.—For purposes of this clause, the term 'accumulated section 168(g) depreciation' means the aggregate amount of the depreciation deductions determined under the alternative system of section 168(g) with respect to the property for all periods before the close of the taxable year.

"(III) Accumulated book depreciation.—For purposes of this clause, the term 'accumulated book depreciation' means the aggregate amount of the depreciation deductions determined under the method used for book purposes with respect to the property for all periods before the close of the taxable year.

"(IV) Election.—The taxpayer may make an election under this clause for any taxable year beginning after 1989. Such an election, once made with respect to any such taxable year, shall apply to all property placed in service during such taxable year, and shall be irrevocable.

"(V) Similar rules for property described in clause (i), (iii), or (iv).—Rules similar to the rules of the preceding provisions of this clause shall also apply in the case of property to which clause (ii), (iii), or (iv) applies.

"(vii) Special rule for certain leased property.—In the case of any property subject to a lease where the income of the taxpayer for book purposes with respect to such property is determined without an allowance for depreciation, the excess of—

"(I) the alternative minimum taxable income from the lease (determined without regard to this subsection and any allowance for depreciation), over

"(II) the income from such lease reported for book purposes,

shall be treated as the depreciation deduction determined with respect to such property determined for book purposes. In the case of property described in the preceding sentence, the rules of clause (vi) shall apply whether or not the taxpayer makes an election under such clause.

"(viii) SPECIAL RULE FOR CERTAIN PROPERTY.—In the case of any property described in paragraph (1), (2), (3), or (4) of section 168(f), the amount of depreciation allowable for purposes of the regular tax shall be treated as the amount allowable under the alternative system of section 168(g)."

(c) AMENDMENTS TO SECTION 57 OF THE 1986 CODE.—

(1) Clause (iii) of section 57(a)(5)(C) of the 1986 Code is amended by inserting "(whether a current or advance refunding)" after "any refunding bond".

(2) Clause (i) of section 57(a)(5)(C) of the 1986 Code is amended to read as follows:

"(i) IN GENERAL.—For purposes of this part, the term 'specified private activity bond' means any private activity bond (as defined in section 141) which is issued after August 7, 1986, and the interest on which is not includible in gross income under section 103."

(3) Subparagraph (A) of section 57(a)(6) of the 1986 Code is amended by inserting "or 642(c)" after "section 170".

(d) AMENDMENTS TO SECTION 58 OF THE 1986 CODE.—

(1) Paragraph (2) of section 58(a) of the 1986 Code is amended—

(A) by striking out "(as modified by section 461(i)(4)(A))", and

(B) by striking out "section 469(d), without regard to paragraph (1)(B) thereof" and inserting in lieu thereof "section 469(c)".

(2) Paragraph (3) of section 58(a) of the 1986 Code is amended by striking out "section 469(g)(1)(C)" and inserting in lieu thereof "section 469(j)(2)".

(3) Subsection (a) of section 58 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(4) DETERMINATION OF LOSS.—In determining the amount of the loss from any tax shelter farm activity, the adjustments of sections 56 and 57 shall apply."

(4) Subsection (b) of section 58 of the 1986 Code is amended by striking out paragraphs (1), (2), and (3), and inserting in lieu thereof the following:

"(1) the adjustments of sections 56 and 57 shall apply,

"(2) the provisions of section 469(l) (relating to phase-in of disallowance) shall not apply, and

"(3) in lieu of applying section 469(j)(7), the passive activity loss of a taxpayer shall be computed without regard to qualified housing interest (as defined in section 56(e))."

(e) AMENDMENTS TO SECTION 59 OF THE 1986 CODE.—

(1) Paragraph (2) of section 59(e) of the 1986 Code is amended by striking out "would have been allowable as a deduction" and inserting in lieu thereof "would have been allowable as a deduction (determined without regard to section 291)".

(2) Subsection (h) of section 59 of the 1986 Code is amended by striking out "taxable year—" and all that follows and inserting in lieu thereof "taxable year with the adjustments of sections 56, 57, and 58."

(3) Paragraph (1) of section 59(a) of the 1986 Code is amended by striking out "and" at the end of subparagraph (B), by striking out the period at the end of subparagraph (C) and inserting in lieu thereof ", and", and by adding at the end thereof the following new subparagraph:

"(D) the determination of whether any income is high-taxed income for purposes of section 904(d)(2) were made on the basis of the applicable rate specified in section 55(b)(1)(A) in lieu of the highest rate of tax specified in section 1 or 11 (whichever applies)."

(4) Subsection (i) of section 59 of the 1986 Code is amended—

(A) by striking out "of this subtitle" and inserting in lieu thereof "of this subtitle (other than this part)", and

(B) by striking out "by this title" and inserting in lieu thereof "by this subtitle".

(f) TRANSITIONAL PROVISIONS.—

(1) In the case of the taxable year of an estate or trust which begins before January 1, 1987, and ends on or after such date, the items of tax preference apportioned to any beneficiary of such estate or trust under section 58(c)(1) of the Internal Revenue Code of 1954 (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986) shall be taken into account for purposes of determining the amount of the tax imposed by section 55 of the Internal Revenue Code of 1986 (as amended by the Tax Reform Act of 1986) on such beneficiary for such beneficiary's taxable year in which such taxable year of the estate or trust ends.

(2) The last sentence of subparagraph (B) of section 701(f)(6) of the Reform Act is amended to read as follows: "The aggregate amount of investment tax credits with respect to the unit in Mississippi allowed solely by reason of being described in this subparagraph shall not exceed $141,000,000."

(3) Subsection (f) of section 701 of the Reform Act is amended by adding at the end thereof the following new paragraph:

"(7) AGREEMENT VESSEL DEPRECIATION ADJUSTMENT.—

"(A) For purposes of part VI of subchapter A of chapter 1 of the Internal Revenue Code of 1986, in the case of a qualified taxpayer, alternative minimum taxable income for the taxable year shall be reduced by an amount equal to the agreement vessel depreciation adjustment.

"(B) For purposes of this paragraph, the agreement vessel depreciation adjustment shall be an amount equal to the depreciation deduction that would have been allowable for such year under section 167 of such Code with respect to agreement vessels placed in service before January 1, 1987, if the basis of such vessels had not been reduced under section 607 of the Merchant Marine Act of 1936, as amended, and if depreciation with respect to such vessel had been computed using the 25-year straight-line method. The aggregate amount by which basis of a qualified taxpayer is treated as not reduced by reason of this subparagraph shall not exceed $100,000,000.

"(C) For purposes of this paragraph, the term 'qualified taxpayer' means a parent corporation incorporated in the State of Delaware on December 1, 1972, and engaged in water transportation, and includes any other corporation which is a member of the affiliated group of which the parent corporation is the common parent. No taxpayer shall be treated as a qualified corporation for any taxable year beginning after December 31, 1991."

(4)(A) If any property to which this paragraph applies is placed in service in a taxable year which begins before January 1, 1987, and ends on or after August 1, 1986, the item of tax preference determined under section 57(a) of the Internal Revenue Code of 1954 (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986) with respect to such property shall be the excess of—

(i) the amount allowable as a deduction for depreciation or amortization for such taxable year, over

(ii) the amount which would be determined for such taxable year under the rules of paragraph (1) or (5) (whichever is appropriate) of section 56(a) of the Internal Revenue Code of 1954 (as amended by the Tax Reform Act of 1986).

(B) This paragraph shall apply to any property—

(i) which is described in paragraph (4) or (12) of section 57(a) of the Internal Revenue Code of 1954 (as so in effect), and

(ii) to which paragraph (1) or (5) of section 56(a) of the Internal Revenue Code of 1986 would apply if the taxable year referred to in subparagraph (A) began after December 31, 1986.

(g) MISCELLANEOUS AMENDMENTS.—

(1) Subparagraph (K) of section 26(b)(2) of the 1986 Code is amended by striking out the comma at the end thereof and inserting in lieu thereof ").".

(2)(A) So much of section 38(c) as precedes paragraph (4) thereof is amended to read as follows:

"(c) LIMITATION BASED ON AMOUNT OF TAX.—

"(1) IN GENERAL.—The credit allowed under subsection (a) for any taxable year shall not exceed the excess (if any) of the taxpayer's net income tax over the greater of—

"(A) the tentative minimum tax for the taxable year, or

"(B) 25 percent of so much of the taxpayer's net regular tax liability as exceeds $25,000.

For purposes of the preceding sentence, the term 'net income tax' means the sum of the regular tax and the tax imposed by section 55 reduced by the credits allowable under subparts A and B of this part and the term 'net regular tax liability' means the regular tax liability reduced by the sum of the credits allowable under subparts A and B of this part.

"(2) REGULAR INVESTMENT TAX CREDIT MAY OFFSET 25 PERCENT OF MINIMUM TAX.—

"(A) IN GENERAL.—In the case of a C corporation, the amount determined under paragraph (1)(A) shall be reduced by the lesser of—

"(i) the portion of the regular investment tax credit not used against the normal limitation, or

"(ii) 25 percent of the taxpayer's tentative minimum tax for the taxable year.

"(B) PORTION OF REGULAR INVESTMENT TAX CREDIT NOT USED AGAINST NORMAL LIMIT.—For purposes of subparagraph (A), the portion of the regular investment tax credit for any taxable year not used against the normal limitation is the excess (if any) of—

"(i) the portion of the credit under subsection (a) which is attributable to the application of the regular percentage under section 46, over

"(ii) the limitation of paragraph (1) (without regard to this paragraph) reduced by the portion of the credit under subsection (a) which is not so attributable.

"(C) LIMITATION.—In no event shall this paragraph permit the allowance of a credit which would result in a net chapter 1 tax less than an amount equal to 10 percent of the amount determined under section 55(b)(1)(A) without regard to the alternative tax net operating loss deduction. For purposes of the preceding sentence, the term 'net chapter 1 tax' means the sum of the regular tax liability for the taxable year and the tax imposed by section 55 for the taxable year reduced by the sum of the credits allowable under this part for the taxable year (other than under section 34)."

(B) Subsection (c) of section 38 of the 1986 Code is amended—

(i) by redesignating paragraph (4) as paragraph (3), and

(ii) by striking out "subparagraphs (A) and (B) of paragraph (1)" each place it appears in such paragraph and inserting in lieu thereof "subparagraph (B) of paragraph (1).

(3) Subsection (c) of section 47 of the 1986 Code is amended by striking out "or D" and inserting in lieu thereof "D, or G".

(4) The last sentence of clause (ii) of section 53(d)(1)(B) of the 1986 Code is amended by striking out "earnings and profits" and inserting in lieu thereof "current earnings".

(5) Sections 173(b), 174(e)(2), 263(c), and 1016(a)(23) of the 1986 Code are each amended by striking out "section 59(d)" and inserting in lieu thereof "section 59(e)".

(6) Section 511 of the 1986 Code is amended by striking out subsection (d).

(7) Sections 616(e) and 617(j) of the 1986 Code are each amended by striking out "section 58(i)" and inserting in lieu thereof "section 59(e)".

(8) Paragraph (4) of section 701(c) of the Reform Act is amended by striking out "section 631(a)" and inserting in lieu thereof "section 221(a)".

(9) Subparagraph (B) of section 1362(e)(5) of the 1986 Code is amended by striking out "Subsection (d)(2)" and inserting in lieu thereof "Subsection (d)".

(10) Subsection (a) of section 6154 of the 1986 Code is amended by striking out "11, 59A" and inserting in lieu thereof "11, 55, 59A".

(11) Paragraph (1) of section 962(a) of the 1986 Code is amended—

(A) by striking out "section 1" and inserting in lieu thereof "sections 1 and 55", and

(B) by striking out "section 11" and inserting in lieu thereof "sections 11 and 55".

SEC. 10208. AMENDMENTS RELATED TO TITLE VIII OF THE REFORM ACT.

(a) Amendments Related to Section 801 of the Reform Act.—

(1)(A) Subparagraph (B) of section 448(d)(2) of the 1986 Code (defining qualified personal service corporation) is amended by striking out "or indirectly" and inserting in lieu thereof "(or indirectly through 1 or more partnerships, S corporations, or qualified personal service corporations not described in paragraph (2) or (3) of subsection (a))".

(B) Section 448(d) of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(8) Use of related parties, etc.—The Secretary shall prescribe such regulations as may be necessary to prevent the use of related parties, pass-thru entities, or intermediaries to avoid the application of this section."

(2) Subparagraph (C) of section 448(d)(4) of the 1986 Code (relating to special rules for application of paragraph (2)) is amended by striking out "all such members" and inserting in lieu thereof "such group".

(3) Paragraph (2) of section 461(i) of the 1986 Code is amended to read as follows:

"(2) Special rule for spudding of oil or gas wells.—

"(A) In general.—In the case of a tax shelter, economic performance with respect to amounts paid during the taxable year for drilling an oil or gas well shall be treated as having occurred within a taxable year if drilling of the well commences before the close of the 90th day after the close of the taxable year.

"(B) Deduction limited to cash basis.—

"(i) Tax shelter partnerships.—In the case of a tax shelter which is a partnership, in applying section 704(d) to a deduction or loss for any taxable year attributable to an item which is deductible by reason of subparagraph (A), the term 'cash basis' shall be substituted for the term 'adjusted basis'.

"(ii) Other tax shelters.—Under regulations prescribed by the Secretary, in the case of a tax shelter other than a partnership, the aggregate amount of the deductions allowable by reason of subparagraph (A) for any taxable year shall be limited in a manner similar to the limitation under clause (i).

"(C) Cash basis defined.—For purposes of subparagraph (B), a partner's cash basis in a partnership shall be equal to the adjusted basis of such partner's interest in the partnership, determined without regard to—

"(i) any liability of the partnership, and

"(ii) any amount borrowed by the partner with respect to such partnership which—

"(I) was arranged by the partnership or by any person who participated in the organization, sale, or management of the partnership (or any person related to such person within the meaning of section 465(b)(3)(C)), or

"(II) was secured by the assets of any partnership."

(4) Section 464 of the 1986 Code (relating to limitations on deductions for certain farming expenses) is amended by adding at the end thereof the following new subsection:

"(g) Termination.—Except as provided in subsection (f), subsections (a) and (b) shall not apply to any taxable year beginning after December 31, 1986."

(5) Paragraph (4) of section 801(d) of the Reform Act is amended by striking out "the completed contract method" and inserting in lieu thereof "a method of accounting for long-term contracts".

(6) Section 801(d) of the Reform Act is amended by adding at the end thereof the following new paragraph:

"(5) Special rule for paragraphs (2) or (3).—If any loan, lease, contract, or evidence of any transaction to which paragraph (2) or (3) applies is transferred after June 10, 1987, to a person other than a related party (within the meaning of paragraph (2)), paragraph (2) or (3) shall cease to apply on and after the date of such transfer."

(b) Amendments Related to Section 803 of the Reform Act.—

(1) Paragraph (2) of section 263A(a) of the 1986 Code is amended by adding at the end thereof the following new sentence: "Any cost which (but for this subsection) could not be taken into account in computing taxable income for any taxable year shall not be treated as a cost described in this paragraph."

(2) Section 263A(c) of the 1986 Code (relating to general exceptions) is amended—

(A) by striking out "263(c), 616(a), or 617(a)" and inserting in lieu thereof "263(c), 263(i), 291(b)(2), 616, or 617", and

(B) by adding at the end thereof the following new paragraph:

"(6) Coordination with section 59(e).—Paragraphs (2) and (3) shall apply to any amount allowable as a deduction under section 59(e) for qualified expenditures described in subparagraphs (B), (C), (D), and (E) of paragraph (2) thereof."

(3) Subparagraph (B) of section 263A(d)(2) of the 1986 Code (relating to special rule for person with minority interest who materially participates) is amended—

(A) by striking out "such grove, orchard, or vineyard" in clause (i) and inserting in lieu thereof "the plants described in subparagraph (A) at all times during the taxable year in which such amounts were paid or incurred", and

(B) by striking out "such grove, orchard, or vineyard during the 4-taxable year period beginning with the taxable year in which the grove, orchard, or vineyard was lost or damaged" and inserting in lieu thereof "the plants described in subparagraph (A) during the taxable year in which such amounts were paid or incurred".

(4) Paragraph (3) of section 263A(f) of the 1986 Code (relating to interest relating to property used to produce property) is amended—

(A) by striking out "incurred or continued in connection with" and inserting in lieu thereof "allocable (as determined under paragraph (2)) to", and

(B) by inserting "(as so determined)" after "allocable".

(5) Section 447(b) of the 1986 Code is amended—

(A) by striking out "of" before "expenses", and

(B) by striking out "of" before "Expenses" in the heading thereof.

(6) Section 447(g)(1) of the 1986 Code is amended by striking out "trade or business of farming" each place it appears and inserting in lieu thereof "qualified farming trade or business".

(7) Paragraph (4)(A)(i) of section 803(d) of the Reform Act is amended by striking out "203" each place it appears and inserting in lieu thereof "204".

(8) Subsection (h) of section 263A of the 1986 Code is amended by striking out "and" at the end of paragraph (1), by striking out the period at the end of paragraph (2) and inserting in lieu thereof ", and", and by adding at the end thereof the following new paragraph:

"(3) regulations providing, in the case of any taxpayer who is an individual actively engaged in the trade or business of producing property described in the last sentence of subsection (b), simplified procedures for capitalization and cost recovery with respect to property so described."

(9) The allocation used in the regulations prescribed under section 263A(h)(2) of the Internal Revenue Code of 1986 for apportioning storage costs and related handling costs shall be determined by dividing the amount of such costs by the beginning entry balances and the purchases during the year.

(c) Amendments Related to Section 804 of the Reform Act.—

(1) Paragraph (3) of section 460(b) of the 1986 Code is amended—

(A) by striking out "subparagraph" and inserting in lieu thereof "paragraph",

(B) by striking out "paragraph (1)" each place it appears in subparagraph (B) and inserting in lieu thereof "subparagraph (A)", and

(C) by striking out "paragraph (1)" in subparagraph (C) and inserting in lieu thereof "subparagraph (B)".

(2)(A) Section 460(b) of the 1986 Code (relating to percentage of completion method) is amended by adding at the end thereof the following new paragraph:

"(4) Special Rules.—

"(A) Simplified method of cost allocation.—In the case of any long-term contract, the Secretary may prescribe a simplified procedure for allocation of costs to such contract in lieu of the method of allocation under subsection (c).

"(B) Look-back method not to apply to certain contracts.—Paragraph (2)(B) and subsection (a)(2) shall not apply to any contract—

"(i) the gross price of which (as of the completion of the contract) does not exceed the lesser of—

"(I) $1,000,000, or

"(II) 1 percent of the average annual gross receipts of the taxpayer for the 3 taxable years preceding the taxable year in which the contract was completed, and

"(ii) which is completed within 2 years of the contract commencement date.

For purposes of this subparagraph, rules similar to the rules of subsections (e)(2) and (f)(3) shall apply."

(B) Section 460(b)(2) of the 1986 Code is amended by striking out "In" and inserting in lieu thereof "Except as provided in paragraph (4), in".

(3) Subparagraph (B) of section 804(d)(2) of the Reform Act is amended by striking out "section 263A(c)(5)" and inserting in lieu thereof "section 460(c)(5)".

(4)(A) Paragraph (3) of section 460(b) of the 1986 Code is amended by adding at the end thereof the following new sentence:

"For purposes of the preceding sentence, any amount received or accrued after completion of the contract shall be taken into account by discounting (using the Federal mid-term rate determined under section 1274(d) as of the time such amount was received or accrued) such amount to its value as of the completion of the contract."

(B) Subparagraph (B) of section 460(b)(2) of the 1986 Code is amended by striking out "completion of the contract" and inserting in lieu thereof "completion of the contract (or, with respect to any amount received or accrued after completion of the contract, when such amount is so received or accrued)".

(d) Amendment Related to Section 805 of the Reform Act.—

(1) Section 166(d)(1)(A) of the 1986 Code is amended by striking out "subsections (a) and (c)" and inserting in lieu thereof "subsection (a)".

(2) Subsection (b) of section 805 of the Reform Act is amended by inserting ", as amended by section 901(d)(4)," after "Section 166".

(e) Amendments Related to Section 806 of the Reform Act.—

(1)(A) Clause (i) of section 706(b)(1)(B) of the 1986 Code is amended to read as follows:

"(i) the majority interest taxable year (as defined in paragraph (4)),".

(B) Paragraph (4) of section 706(b) of the 1986 Code is amended to read as follows:

"(4) Majority interest taxable year; limitation on required changes.—

"(A) Majority interest taxable year defined.—For purposes of paragraph (1)(B)(i)—

"(i) In general.—The term 'majority interest taxable year' means the taxable year (if any) which, on each testing day, constituted the taxable year of 1 or more partners having (on such day) an aggregate interest in partnership profits and capital of more than 50 percent.

"(ii) Testing days.—The testing days shall be—

"(I) the 1st day of the partnership taxable year (determined without regard to clause (i)), or

"(II) the days during such representative period as the Secretary may prescribe.

"(B) Further change not required for 3 years.—Except as provided in regulations necessary to prevent the avoidance of this section, if, by reason of paragraph (1)(B)(i), the taxable year of a partnership is changed, such partnership shall not be required to change to another taxable year for either of the 2 taxable years following the year of change."

(2) Clause (iii) of section 706(b)(1)(B) of the 1986 Code is amended by striking out "or such other period as the Secretary may prescribe in regulations" and inserting in lieu thereof "unless the Secretary by regulations prescribes another period".

(3) Section 706(b) of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(5) Application with other sections.—Except as provided in regulations, for purposes of determining the taxable year to which a partnership is required to change by reason of this subsection, changes in taxable years of other persons required by this subsection, section 441(i), section 584(h), section 645, or section 1378(a) shall be taken into account."

(4) Paragraph (2) of section 441(i) of the 1986 Code (defining personal service corporation) is amended by adding at the end thereof the following:

"A corporation shall not be treated as a personal service corporation unless more than 10 percent of the stock (by value) in such corporation is held by employee-owners (within the meaning of section 269A(b)(2), as modified by the preceding sentence). If a corporation is a member of an affiliated group filing a consolidated return, all members of such group shall be taken into account in determining whether such corporation is a personal service corporation."

(5) Section 584 of the 1986 Code (relating to common trust funds) is amended by adding at the end thereof the following new subsection:

"(h) Taxable Year of Common Trust Fund.—For purposes of this subtitle, the taxable year of any common trust fund shall be the calendar year."

(6) Section 806(c)(2) of the Reform Act is amended by striking out "Section 267(a)" and inserting in lieu thereof "Section 267(a)(2)".

(7) Subparagraph (C) of section 806(e)(2) of the Reform Act is amended—

(A) by striking out "(including such short taxable year)", and

(B) by striking out "short taxable year" the second place it appears and inserting in lieu thereof "the partner's or shareholder's taxable year with or within which the partnership's or S corporation's short taxable year ends".

(8) Section 806(e)(2) of the Reform Act is amended—

(A) by striking out "any taxable year" and inserting in lieu thereof "the taxpayer's first taxable year beginning after December 31, 1986", and

(B) by striking out "taxpayer" each place it appears and inserting in lieu thereof "partnership, S corporation, or personal service corporation".

(9) Nothing in section 806 of the Reform Act or in any legislative history relating thereto shall be construed as requiring the Secretary to permit an automatic change of a taxable year.

(10) Subsection (e) of section 806 of the Reform Act is amended by adding at the end thereof the following new paragraph:

"(3) Basis, etc. rules.—

"(A) Basis rule.—The adjusted basis of any partner's interest in a partnership or shareholder's stock in an S corporation shall be determined as if all of the income to be taken into account ratably in the 4 taxable years referred to in paragraph (2)(C) were included in gross income for the 1st of such taxable years.

"(B) Treatment of dispositions.—If any interest in a partnership or stock in an S corporation is disposed of before the last taxable year in the spread period, all amounts which would be included in the gross income of the partner or shareholder for subsequent taxable years in the spread period under paragraph (2)(C) and attributable to the interest or stock disposed of shall be included in gross income for the taxable year in which the disposition occurs. For purposes of the preceding sentence, the term 'spread period' means the period consisting of the 4 taxable years referred to in paragraph (2)(C)."

(f) Amendments Related to Section 811 of the Reform Act.—

(1) Paragraph (4) of section 453C(b) of the 1986 Code is amended—

(A) by striking out "at any time during" and inserting in lieu thereof "as of the close of", and

(B) by striking out "as of the close of such taxable year in lieu" and inserting in lieu thereof "as of the close of such taxable year (determined by not taking into account any indebtedness described in paragraph (3)(B)) in lieu".

(2) So much of paragraph (2) of section 453C(d) of the 1986 Code as precedes subparagraph (A) is amended to read as follows:

"(2) Excess allocable installment indebtedness.—If the allocable installment indebtedness for any taxable year exceeds the amount which may be allocated under paragraph (1) to applicable installment obligations arising in (and outstanding as of the close of) such taxable year, such excess shall—"

(3) Subparagraph (A) of section 453C(e)(1) of the 1986 Code is amended by adding at the end thereof the following new sentence:

"Such term also includes any obligation held by any person if the basis of such obligation in the hands of such person is determined (in whole or in part) by reference to the basis of such obligation in the hands of another person and such obligation was an applicable installment obligation in the hands of such other person."

(4) Paragraph (2) of section 453C(e) of the 1986 Code (relating to aggregation rules) is amended by striking out "For" and inserting in lieu thereof "Except as provided in regulations, for".

(5) Subparagraph (B) of section 453C(e)(4) of the 1986 Code is amended by striking out "or (3)".

(6) Paragraph (4) of section 811(c) of the Reform Act is amended by striking out the second subparagraphs (D) and (E).

(7) Paragraph (5) of section 811(c) of the Reform Act is amended by striking out "October 23, 1985" each place it appears and inserting in lieu thereof "October 23, 1984".

(8) Section 811(c) of the Reform Act is amended by adding at the end thereof the following new paragraph:

"(9) Special rules.—For purposes of section 453C of the 1986 Code (as added by subsection (a))—

"(A) Revolving credit plans, etc.—The term 'applicable installment obligation' shall not include any obligation arising out of any disposition or sale described in paragraph (1) or (2) of section 453(k) of such Code (as added by section 812(a)).

"(B) Certain dispositions deemed made on first day of taxable year.—In the case of a taxpayer's 1st taxable year—

"(i) beginning after February 28, 1986, and before January 1, 1987, and

"(ii) ending after December 31, 1986, dispositions after February 28, 1986, and before the 1st day of such taxable year shall be treated as made on such 1st day."

(g) Amendments Related to Section 812 of the Reform Act.—

(1) Section 453 of the 1986 Code is amended by redesignating the subsection (j) added by section 812 of the Reform Act as subsection (k).

(2) Subsection (c) of section 453A of the 1986 Code is amended by striking out "453(j)" and inserting in lieu thereof "453(k)".

(3) Paragraph (1) of section 812(c) of the Reform Act is amended by striking out "paragraph (2)" and inserting in lieu thereof "paragraphs (2) and (3)".

(4) Subsection (c) of section 812 of the Reform Act is amended by redesignating paragraph (2) as paragraph (3) and inserting after paragraph (1) the following new paragraph:

"(2) Sales of stock, etc.—Section 453(k)(2) of the Internal Revenue Code of 1986, as added by subsection (a), shall apply to sales after December 31, 1986, in taxable years ending after such date."

(5) Paragraph (3) of section 812(c) of the Reform Act (as so redesignated) is amended by striking out subparagraphs (B) and (C) and inserting in lieu thereof the following:

"(B) such change shall be treated as having been made with the consent of the Secretary,

"(C) the period for taking into account adjustments under section 481 of such Code by reason of such change shall be equal to 4 years, and

"(D) except as provided in paragraph (4), the amount taken into account in each of such 4 years shall be the applicable percentage (determined in accordance with the following table) of the net adjustment:

"In the case of the:	The applicable percentage is:
1st taxable year	15
2nd taxable year	25
3rd taxable year	30
4th taxable year	30.

If the taxpayer's last taxable year beginning before January 1, 1987, was the taxpayer's 1st taxable year in which sales were made under a revolving credit plan, all adjustments under section 481 of such Code shall be taken into account in the taxpayer's 1st taxable year beginning after December 31, 1986."

(6) Subsection (c) of section 812 of the Reform Act is amended by adding at the end thereof the following new paragraphs:

"(4) Acceleration of adjustments where contraction in amount of installment obligations.—

"(A) In general.—If the percentage determined under subparagraph (B) for any taxable year in the adjustment period exceeds the percentage which would otherwise apply under paragraph (3)(D) for such taxable year (determined after the application of this paragraph for prior taxable years in the adjustment period)—

"(i) the percentage determined under subparagraph (B) shall be substituted for the applicable percentage which would otherwise apply under paragraph (3)(D), and

"(ii) any increase in the applicable percentage by reason of clause (i) shall be applied to reduce the applicable percentage determined under paragraph (3)(D) for subsequent taxable years in the adjustment period (beginning with the 1st of such subsequent taxable years).

"(B) Determination of percentage.—For purposes of subparagraph (A), the percentage determined under this subparagraph for any taxable year in the adjustment period is the excess (if any) of—

"(i) the percentage determined by dividing the aggregate contraction in revolving installment obligations by the aggregate face amount of such obligations outstanding as of the close of the taxpayer's last taxable year beginning before January 1, 1987, over

"(ii) the sum of the applicable percentages under paragraph (3)(D) (as modified by this paragraph) for prior taxable years in the adjustment period.

"(C) Aggregate contraction in revolving installment obligations.—For purposes of subparagraph (B), the aggregate contraction in revolving installment obligations is the amount by which—

"(i) the aggregate face amount of the revolving installment obligations outstanding as of the close of the taxpayer's last taxable year beginning before January 1, 1987, exceeds

"(ii) the aggregate face amount of such obligations outstanding as of the close of the taxable year involved.

"(D) Revolving installment obligations.—For purposes of this paragraph, the term 'revolving installment obligations' means installment obligations arising under a revolving credit plan.

"(5) Limitation on losses from sales of obligations under revolving credit plans.—If 1 or more obligations arising under a revolving credit plan and taken into account under paragraph (3) are disposed of during the adjustment period, then, notwithstanding any other provision of law—

"(A) no losses from such dispositions shall be recognized, and

"(B) the aggregate amount of the adjustment for taxable years in the adjustment period (in reverse order of time) shall be reduced by the amount of such losses.

"(6) Adjustment period.—For purposes of paragraphs (4) and (5), the adjustment period is the 4-year period under paragraph (3)."

(h) Amendment Related to Section 821 of the Reform Act.—Section 821(b)(3) of the Reform Act is amended by adding at the end thereof the following new sentence: "The preceding sentence shall also apply to any taxable year beginning after August 16, 1986, and before January 1, 1987, if the taxpayer treated such income in the same manner for the taxable year preceding such taxable year."

(i) Amendment Related to Section 822 of the Reform Act.—Paragraph (1) of section 703(b) of the 1986 Code is amended by striking out "or (d)(4)".

(j) Amendments Related to Section 824 of the Reform Act.—

(1) Section 6501(o) of the 1986 Code which relates to cross references is amended by striking out paragraph (3).

(2) Paragraph (4) of section 824(c) of the Reform Act is amended by striking out "an indemnity agreement" and inserting in lieu thereof "an underwriting agreement".

SEC. 10209. AMENDMENTS RELATED TO TITLE IX OF THE REFORM ACT.

(a) Amendment Related to Section 901 of the Reform Act.—Subparagraph (C) of section 46(e)(4) of the 1986 Code is amended by adding at the end thereof the following new sentences: "Notwithstanding the preceding provisions of this subparagraph, any such election shall terminate effective with respect to the 1st taxable year of the organization making such election which begins after 1986 and during which such organization (or any successor organization) was not at any time the lessee under any lease of regular investment tax credit property. For purposes of the preceding sentence, the term 'regular investment tax credit property' means any section 38 property if the regular percentage applied to such property and the amount of qualified investment with respect to such property would have been reduced under paragraph (1) but for an election under this subparagraph."

(b) Amendments Related to Section 902 of the Reform Act.—

(1) Paragraph (3) of section 902(f) of the Reform Act is amended—

(A) in subparagraph (F), by striking out "distribution company" and inserting in lieu thereof "distribution facility",

(B) in subparagraph (M), by striking out "Pontabla" and inserting in lieu thereof "Pontalba",

(C) in subparagraph (P), by striking out "Birmingham, Alabama," and inserting in lieu thereof "Homewood, Alabama, the", and

(D) by adding at the end thereof the following new subparagraphs:

"(T) Bellows Falls, Vermont—building project.

"(U) East Broadway Project, Louisville, Kentucky.

"(V) O.K. Industries, Oklahoma."

(2) Paragraph (4) of section 902(f) of the Reform Act is amended by striking out "subparagraph" and inserting in lieu thereof "paragraph".

(3)(A) Paragraph (3) of section 265(b) of the 1986 Code is amended to read as follows:

"(3) Exception for certain tax-exempt obligations.—

"(A) In general.—Any qualified tax-exempt obligation acquired after August 7, 1986, shall be treated for purposes of paragraph (2) and section 291(e)(1)(B) as if it were acquired on August 7, 1986.

"(B) Qualified tax-exempt obligation.—For purposes of subparagraph (A), the term 'qualified tax-exempt obligation' means a tax-exempt obligation—

"(i) which is issued after August 7, 1986, by a qualified small issuer,

"(ii) which is not a private activity bond (as defined in section 141), and

"(iii) which is designated by the issuer for purposes of this paragraph.

For purposes of the preceding sentence and subparagraph (C), a qualified 501(c)(3) bond (as defined in section 145) shall not be treated as a private activity bond.

"(C) Qualified small issuer.—

"(i) In general.—For purposes of subparagraph (B), the term 'qualified small issuer' means, with respect to obligations issued during any calendar year, any issuer if the reasonably anticipated amount of tax-exempt obligations (other than obligations described in clause (ii)) which will be issued by such issuer during such calendar year does not exceed $10,000,000.

"(ii) Obligations not taken into account in determining status as qualified small issuer.—For purposes of clause (i), an obligation is described in this clause if such obligation is—

"(I) a private activity bond,

"(II) an obligation to which section 141(a) does not apply by reason of section 1312, 1313, 1316(g), or 1317 of the Tax Reform Act of 1986 and which would (if issued on August 15, 1986) have been an industrial development bond (as defined in section 103(b)(2) as in effect on the day before the date of the enactment of such Act) or a private loan bond (as defined in section 103(o)(2)(A), as so in effect, but without regard to any exception from such definition other than section 103(o)(2)(A)), or

"(III) an obligation issued to refund (other than to advance refund within the meaning of section 149(d)(5)) any obligation to the extent the amount of the refunding obligation does not exceed the outstanding amount of the refunded obligation.

"(D) LIMITATION ON AMOUNT OF OBLIGATIONS WHICH MAY BE DESIGNATED.—

"(i) IN GENERAL.—Not more than $10,000,000 of obligations issued by an issuer during any calendar year may be designated by such issuer for purposes of this paragraph.

"(ii) CERTAIN REFUNDINGS OF DESIGNATED OBLIGATIONS DEEMED DESIGNATED.—Except as provided in clause (iii), in the case of a refunding (or series of refundings) of a qualified tax-exempt obligation, the refunding obligation shall be treated as a qualified tax-exempt obligation (and shall not be taken into account under clause (i)) if—

"(I) the refunding obligation was not taken into account under subparagraph (C) by reason of clause (ii)(III) thereof,

"(II) the average maturity date of the refunding obligations issued as part of the issue of which such refunding obligation is a part is not later than the average maturity date of the obligations to be refunded by such issue, and

"(III) the refunding obligation has a maturity date which is not later than the date which is 30 years after the date the original qualified tax-exempt obligation was issued.

Subclause (II) shall not apply if the average maturity of the issue of which the original qualified tax-exempt obligation was a part (and of the issue of which the obligations to be refunded are a part) is 3 years or less. For purposes of this clause, average maturity shall be determined in accordance with section 147(b)(2)(A).

"(iii) CERTAIN OBLIGATIONS MAY NOT BE DESIGNATED OR DEEMED DESIGNATED.—No obligation issued as part of an issue may be designated under this paragraph (or may be treated as designated under clause (i)) if—

"(I) any obligation issued as part of such issue is issued to refund another obligation, and

"(II) the aggregate face amount of such issue exceeds $10,000,000.

"(E) AGGREGATION OF ISSUERS.—For purposes of subparagraphs (C) and (D)—

"(i) an issuer and all entities which issue obligations on behalf of such issuer shall be treated as 1 issuer,

"(ii) all obligations issued by a subordinate entity shall, for purposes of applying subparagraphs (C) and (D) to each other entity to which such entity is subordinate, be treated as issued by such other entity, and

"(iii) an entity formed (or, to the extent provided by the Secretary, availed of) to avoid the purposes of subparagraph (C) or (D) and all entities benefiting thereby shall be treated as 1 issuer.

"(F) TREATMENT OF COMPOSITE ISSUES.—In the case of an obligation which is issued as part of a direct or indirect composite issue, such obligation shall not be treated as a qualified tax-exempt obligation unless—

"(i) the requirements of this paragraph are met with respect to such composite issue (determined by treating such composite issue as a single issue), and

"(ii) the requirements of this paragraph are met with respect to each separate lot of obligations which are part of the issue (determined by treating each such separate lot as a separate issue)."

(B) In the case of any obligation issued after August 7, 1986, and before January 1, 1987, the time for making a designation with respect to such obligation under section 265(b)(3)(B)(iii) of the 1986 Code shall not expire before January 1, 1988.

(C) If—

(i) an obligation is issued on or after January 1, 1986, and on or before August 7, 1986,

(ii) when such obligation was issued, the issuer made a designation that it intended to qualify under section 802(e)(3) of H.R. 3838 of the 99th Congress as passed by the House of Representatives, and

(iii) the issuer makes an election under this subparagraph with respect to such obligation,

for purposes of section 265(b)(3) of the 1986 Code, such obligation shall be treated as issued on August 8, 1986.

(D)(i) Except as provided in clause (ii), the following provisions of section 265(b)(3) of the 1986 Code (as amended by this subparagraph (A)) shall apply to obligations issued after June 30, 1987:

(I) subparagraph (C)(ii)(III),

(II) clauses (ii) and (iii) of subparagraph (D), and

(III) subparagraphs (E) and (F).

(ii) At the election of an issuer (made at such time and in such manner as the Secretary of the Treasury or his delegate may prescribe), the provisions referred to in clause (i) shall apply to such issuer as if included in the amendments made by section 902(a) of the Tax Reform Act of 1986.

(4) Subparagraph (B) of section 291(e)(1) of the 1986 Code is amended by redesignating the clause (iv) added by section 902(c)(2) of the Reform Act as clause (v).

(5) Clause (i) of section 291(e)(1)(B) of the 1986 Code is amended by striking out "section 582(a)(2)" and inserting in lieu thereof "section 585(a)(2)".

(6) Paragraph (1) of section 902(e) of the Reform Act is amended by striking out "Section 163(h)(12)" and inserting in lieu thereof "Section 163(i)(2) (as redesignated by section 511(b) of this Act)".

(7) Paragraph (4) of section 902(f) of the Reform Act is amended—

(A) by inserting "and qualified 501(c)(3) bonds designated by such Governor for purposes of this paragraph," after "1987),", and

(B) by striking out "subparagraph" in the last sentence and inserting in lieu thereof "paragraph".

(c) AMENDMENTS RELATED TO SECTION 903 OF THE REFORM ACT.—

(1) Paragraph (1) of section 172(b) of the 1986 Code is amended by redesignating subparagraphs (L) and (M) as subparagraphs (K) and (L), respectively.

(2) Subparagraph (A) of section 172(b)(1) of the 1986 Code is amended by striking out "Except" and all that follows down through "a net operating loss" and inserting in lieu thereof "Except as otherwise provided in this paragraph, a net operating loss".

(3) Subparagraph (B) of section 172(b)(1) of the 1986 Code is amended to read as follows:

"(B) Except as otherwise provided in this paragraph, a net operating loss for any taxable year ending after December 31, 1975, shall be a net operating loss carryover to each of the 15 taxable years following the taxable year of the loss."

(d) AMENDMENTS RELATED TO SECTION 905 OF THE REFORM ACT.—

(1) Subsection (l) of section 165 of the 1986 Code is amended by redesignating paragraph (6) as paragraph (7) and by striking out paragraph (5) and inserting in lieu thereof the following:

"(5) ELECTION TO TREAT AS ORDINARY LOSS.—

"(A) IN GENERAL.—In lieu of any election under paragraph (1), the taxpayer may elect to treat the amount referred to in paragraph (1) for the taxable year as an ordinary loss described in subsection (c)(2) incurred during the taxable year.

"(B) LIMITATIONS.—

"(i) DEPOSIT MAY NOT BE FEDERALLY INSURED.—No election may be made under subparagraph (A) with respect to any loss on a deposit in a qualified financial institution if part or all of such deposit is insured under Federal law.

"(ii) DOLLAR LIMITATION.—With respect to each financial institution, the aggregate amount of losses attributable to deposits in such financial institution to which an election under subparagraph (A) may be made by the taxpayer for any taxable year shall not exceed $20,000 ($10,000 in the case of a separate return by a married individual). The limitation of the preceding sentence shall be reduced by the amount of any insurance proceeds under any State law which can reasonably be expected to be received with respect to losses on deposits in such institution.

"(6) ELECTION.—Any election by the taxpayer under this subsection for any taxable year—

"(A) shall apply to all losses for such taxable year of the taxpayer on deposits in the institution with respect to which such election was made, and

"(B) may be revoked only with the consent of the Secretary."

(2) Paragraph (1) of section 905(c) of the Reform Act is amended to read as follows:

"(1) IN GENERAL.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1981, and, except as provided in paragraph (2), the amendment made by subsection (b) shall apply to taxable years beginning after December 31, 1982."

(3) The subsection (f) of section 451 of the 1986 Code which was added by section 905(b) of the 1986 Reform Act is redesignated as subsection (g).

(4) If on the date of the enactment of this Act (or at any time before the date 1 year after such date of enactment) credit or refund of any overpayment of tax attributable to amendments made by section 905 of the Reform Act or by this subsection (or the assessment of any underpayment of tax so attributable) is barred by any law or rule of law—

(A) credit or refund of any such overpayment may nevertheless be made if claim therefore is filed before the date 1 year after such date of enactment, and

(B) assessment of any such underpayment may nevertheless be made if made before the date 1 year after such date of enactment.

SEC. 10210. AMENDMENTS RELATED TO TITLE X OF THE REFORM ACT.

(a) AMENDMENTS RELATED TO SECTION 1011 OF THE REFORM ACT.—

(1) Paragraph (1) of section 813(a) of the 1986 Code (relating to foreign life insurance companies) is amended by striking out "the special life insurance company deduction and".

(2) Paragraph (1) of section 1011(d) of the Reform Act is amended—

(A) by striking out "any bond" and inserting in lieu thereof "any market discount bond", and

(B) by striking out "28 percent" and inserting in lieu thereof "31.6 percent".

(3) Paragraph (2) of section 1011(d) of the Reform Act is amended to read as follows:

"(2) Qualified life insurance company.—For purposes of paragraph (1), the term 'qualified life insurance company' means any life insurance company subject to tax under part I of subchapter L of chapter 1 of the Internal Revenue Code of 1986."

(b) Amendments Related to Section 1012 of the Reform Act.—

(1) Clause (iv) of section 1012(c)(4)(C) of the Reform Act is amended to read as follows:

"(iv) dental benefit coverage provided by a Delta Dental Plans Association organization through contracts with independent professional service providers so long as the provision of such coverage is the principal activity of such organization."

(2) Clause (ii) of section 1012(c)(4)(C) of the Reform Act is amended by striking out "Association" and inserting in lieu thereof "Plan".

(3) The Secretary of the Treasury or his delegate may prescribe rules providing proper adjustments for taxpayers which become subject to subchapter L of chapter 1 of the 1986 Code by reason of the amendments made by section 1012 of the Reform Act with respect to short taxable years which begin during 1987 by reason of section 843 of such Code.

(c) Amendments Related to Section 1021 of the Reform Act.—

(1)(A) Subparagraph (C) of section 832(b)(7) of the 1986 Code (relating to special rules for determining premiums earned) is amended by striking out "this part" and inserting in lieu thereof "section 831(a)".

(B) The subparagraph heading for such subparagraph is amended by striking out "NONLIFE INSURANCE COMPANY" and inserting in lieu thereof "INSURANCE COMPANY TAXABLE UNDER SECTION 831(a)".

(2) Paragraph (7) of section 832(b) of the 1986 Code is amended by adding at the end thereof the following new subparagraphs:

"(D) Treatment of companies which become taxable under section 831(a).—

"(i) Exception to phase-in for companies which were not taxable, etc., before 1987.—Subparagraph (C) of paragraph (4) shall not apply to any insurance company which, for each taxable year beginning before January 1, 1987, was not subject to the tax imposed by section 821(a) or 831(a) (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986) by reason of being—

"(I) subject to tax under section 821(b) (as so in effect), or

"(II) described in section 501(c) (as so in effect) and exempt from tax under section 501(a).

"(ii) Phase-in beginning at later date for companies not 1st taxable under section 831(a) in 1987.—In the case of an insurance company—

"(I) which was not subject to the tax imposed by section 831(a) for its 1st taxable year beginning after December 31, 1986, by reason of being subject to tax under section 831(b), or described in section 501(c) and exempt from tax under section 501(a), and

"(II) which, for any taxable year beginning before January 1, 1987, was subject to the tax imposed by section 821(a) or 831(a) (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986),

subparagraph (C) of paragraph (4) shall apply beginning with the 1st taxable year beginning after December 31, 1986, for which such company is subject to the tax imposed by section 831(a) and shall be applied by substituting the last day of the preceding taxable year for 'December 31, 1986' and the 1st day of the 7th succeeding taxable year for 'January 1, 1993'.

"(E) Treatment of certain reciprocal insurers.—In the case of a reciprocal (within the meaning of section 835(a)) which reports (as required by State law) on its annual statement reserves on unearned premiums net of premium acquisition expenses, subparagraphs (B) and (C) of paragraph (4) shall be applied by treating unearned premiums as including an amount equal to such expenses."

(3) Paragraph (5) of section 832(e) of the 1986 Code is amended by striking out "and" at the end of subparagraph (A) and by striking out the period at the end of subparagraph (B) and inserting in lieu thereof a comma.

(d) Amendments Related to Section 1022 of the Reform Act.—

(1) Section 832 of the 1986 Code (defining insurance company taxable income) is amended by adding at the end thereof the following new subsection:

"(g) Dividends Within Group.—In the case of an insurance company subject to tax under section 831(a) filing or required to file a consolidated return under section 1501 with respect to any affiliated group for any taxable year, any determination under this part with respect to any dividend paid by one member of such group to another member of such group shall be made as if such group were not filing a consolidated return."

(2) Subclause (II) of section 832(b)(5)(B)(ii) of the 1986 Code (relating to losses incurred) is amended by inserting "(directly or indirectly)" after "attributable".

(e) Amendments Related to Section 1023 of the Reform Act.—

(1) Subparagraph (B) of section 846(f)(6) of the 1986 Code (relating to special rule for certain accident and health insurance lines of business) is amended by striking out "paid during the year" and inserting in lieu thereof "paid in the middle of the year".

(2) Subsection (g) of section 846 of the 1986 Code is amended by striking out "and" at the end of paragraph (1), by striking out the period at the end of paragraph (2) and inserting in lieu thereof ", and", and by adding at the end thereof the following new paragraph:

"(3) regulations providing appropriate adjustments in the application of this section to a taxpayer having a taxable year which is not the calendar year."

(3) Subsection (e) of section 1023 of the Reform Act (relating to discounting of unpaid losses and certain unpaid expenses) is amended by adding at the end thereof the following new paragraph:

"(4) Application of fresh start to companies which become subject to section 831(a) tax in later taxable year.—If—

"(A) an insurance company was not subject to tax under section 831(a) of the Internal Revenue Code of 1986 for its 1st taxable year beginning after December 31, 1986, by reason of being—

"(i) subject to tax under section 831(b) of such Code, or

"(ii) described in section 501(c) of such Code and exempt from tax under section 501(a) of such Code, and

"(B) such company becomes subject to tax under such section 831(a) for any later taxable year,

paragraph (2) and subparagraphs (A) and (C) of paragraph (3) shall be applied by treating such later taxable year as its 1st taxable year beginning after December 31, 1986, and by treating the calendar year in which such later taxable year begins for 1987; and paragraph (3)(B) shall not apply."

(f) Amendments Related to Section 1024 of the Reform Act.—

(1) Subparagraph (A) of section 831(b)(2) of the 1986 Code (relating to companies to which alternative tax applies) is amended by adding at the end thereof the following new sentence:

"The election under clause (ii) shall apply to the taxable year for which made and for all subsequent taxable years for which the requirements of clause (i) are met. Such an election, once made, may be revoked only with the consent of the Secretary."

(2) Subsection (a) of section 835 of the 1986 Code (relating to election by reciprocal) is amended by striking out "section 821(a)" and inserting in lieu thereof "section 831(a)".

(3) Subsection (f) of section 835 of the 1986 Code is amended by striking out "subsection (e)" and inserting in lieu thereof "subsection (d)".

(4) Paragraph (6) of section 243(b) of the 1986 Code (relating to special rules for insurance companies) is amended by striking out "or 821".

(5) Subsection (c) of section 543 of the 1986 Code (relating to gross income of insurance companies other than life or mutual) is amended—

(A) by striking out "or Mutual" in the heading and inserting in lieu thereof "Insurance Companies", and

(B) by striking out "life or mutual" in the text and inserting in lieu thereof "a life insurance company".

(6) Subsection (g) of section 816 of the 1986 Code (relating to burial and funeral benefit insurance companies) is amended by striking out "section 821 or".

(7) The table of sections for part II of subchapter L of chapter 1 of the 1986 Code (relating to other insurance companies) is amended by striking out the item relating to section 831 and inserting in lieu thereof the following new item:

"Sec. 831. Tax on insurance companies other than life insurance companies."

(g) Amendments Related to Section 1031 of the Reform Act.—

(1) Paragraph (1) of section 1031(a) of the Reform Act is amended by inserting "(whether made in a lump sum or a series of substantially equal payments over a period of not more than 6 years)" after "any initial payment".

(2) Paragraph (2) of section 1031(a) of the Reform Act is amended by striking out "initial payment" each place it appears and inserting in lieu thereof "initial payment referred to in paragraph (1)".

(h) Special Rule for Mutual Life Insurance Company.—

(1) In general.—Paragraph (2) of section 217(i) of the Tax Reform Act of 1984 is amended to read as follows:

"(2) Effect of election on subsidiaries of electing parent.—For purposes of determining the amount of the small life insurance company deduction of any controlled group which includes a mutual company which made an election under paragraph (1), the taxable income of such electing company shall be taken into account under section 806(b)(2) of the Internal Revenue Code of 1954 (relating to phaseout of small life insurance company deduction)."

(2) Effective date.—The amendment made by this subsection shall apply to taxable years beginning after December 31, 1986, and before January 1, 1992.

(3) Revenue loss limited.—The decrease in the amount of Federal revenue by reason of the amendment made by this subsection shall not exceed $300,000 per taxable year.

(i) Delay in Effective Date for Diversification Requirements With Respect to Accounts for Certain Immediate Annuities.—Section 817(h) of the 1986 Code shall not apply until January 1, 1989, with respect to a variable contract (as defined in section 817(d) of the 1986 Code) if—

(1) such contract provides for the payment of an immediate annuity (as defined in section 72(u)(4) of the 1986 Code),

(2) such contract was outstanding on September 12, 1986, and

(3) the segregated asset account on which such contract is based was, on September 12, 1986, wholly invested in deposits insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

(j) Treatment of Alternative Minimum Tax With Respect to Shareholders Surplus Account.—

(1) Paragraph (2) of section 815(c) of the 1986 Code (relating to shareholders surplus account) is amended by adding at the end thereof the following new sentence:

"If for any taxable year a tax is imposed by section 55, under regulations proper adjustments shall be made for such year and all subsequent taxable years in the amounts taken into account under subparagraphs (A) and (B) of this paragraph and subparagraph (B) of subsection (d)(3)."

(2) Effective Date.—The amendment made by paragraph (1) shall apply to taxable years beginning after December 31, 1986.

(k) Treatment of Certain Items as Not Interest for Source Rules, Etc.—Subsection (f) of section 818 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(3) Items described in section 807(c) treated as not interest for source rules, etc.—For purposes of part I of subchapter N, items described in any paragraph of section 807(c) shall be treated as amounts which are not interest."

SEC. 10211. AMENDMENTS RELATED TO PARTS I AND II OF SUBTITLE A OF TITLE XI OF THE REFORM ACT.

(a) Amendment Related to Section 1101 of the Reform Act.—Paragraph (4) of section 219(g) of the 1986 Code (relating to special rule for married individuals filing separately) is amended to read as follows:

"(4) Special rule for married individuals filing separately and living apart.—A husband and wife who—

"(A) file separate returns for any taxable year, and

"(B) live apart at all times during such taxable year,

shall not be treated as married individuals for purposes of this subsection."

(b) Amendments Related to Section 1102 of the Reform Act.—

(1) Sections 408(d)(2)(C) and 408(o)(4)(B)(iv) of the 1986 Code are each amended by striking out "with or within which the taxable year ends" and inserting in lieu thereof "in which the taxable year begins".

(2)(A) Section 408(d)(4) of the 1986 Code (relating to excess contributions returned before due date of return) is amended by striking out "to the extent that such contribution exceeds the amount allowable as a deduction under section 219".

(B) Section 408(d)(4) of the 1986 Code is amended—

(i) by striking out "excess" each place it appears, and

(ii) by striking out "Excess contributions" in the heading and inserting in lieu thereof "Contributions".

(3) Sections 408(d)(5) and 4973(b) of the 1986 Code are each amended by striking out all that follows "section 219" in the last sentence thereof and inserting in lieu thereof "shall be computed without regard to section 219(g).".

(4)(A) Section 6693(b) of the 1986 Code (relating to overstatement of designated nondeductible contributions) is amended to read as follows:

"(b) Penalties Relating to Nondeductible Contributions.—

"(1) Overstatement of designated nondeductible contributions.—Any individual who—

"(A) is required to furnish information under section 408(o)(4) as to the amount of designated nondeductible contributions made for any taxable year, and

"(B) overstates the amount of such contributions made for such taxable year,

shall pay a penalty of $100 for each such overstatement unless it is shown that such overstatement is due to reasonable cause.

"(2) Failure to file form.—Any individual who fails to file a form required to be filed by the Secretary under section 408(o)(4) shall pay a penalty of $50 for each such failure unless it is shown that such failure is due to reasonable cause."

(B)(i) The heading for section 6693 of the 1986 Code is amended by striking out "overstatement of" and inserting in lieu thereof "penalties relating to".

(ii) The item relating to section 6693 in the table of sections for subchapter B of chapter 68 is amended by striking out "overstatement of" and inserting in lieu thereof "penalties relating to".

(c) Amendments Related to Section 1105 of the Reform Act.—

(1) Section 402(g)(2)(C) of the 1986 Code (relating to taxation of distribution) is amended—

(A) by striking out "(and no tax shall be imposed under section 72(t))" in clause (i),

(B) by striking out "such excess deferral is made" in clause (ii) and inserting in lieu thereof "such income is distributed", and

(C) by inserting at the end thereof the following new flush sentence:

"No tax shall be imposed under section 72(t) on any distribution described in the preceding sentence."

(2) Section 402(g)(2) is amended by striking out "Required distribution" in the heading thereof and inserting in lieu thereof "Distribution".

(3) Section 402(g)(2) of the 1986 Code is amended by adding at the end thereof the following new subparagraph:

"(D) Partial distributions.—If a plan distributes only a portion of any excess deferral and income allocable thereto, such portion shall be treated as having been distributed ratably from the excess deferral and the income."

(4) Section 402(g)(3) of the 1986 Code (defining elective deferral) is amended by striking out "paragraph" and inserting in lieu thereof "subsection".

(5)(A) Clause (iii) of section 402(g)(8)(A) of the 1986 Code (relating to special rule for certain organizations) is amended by inserting "(determined in the manner prescribed by the Secretary)" after "taxable years".

(B) Section 402(g)(8) of the 1986 Code is amended by adding at the end thereof the following new subparagraph:

"(D) Years of service.—For purposes of this paragraph, the term 'years of service' has the meaning given such term by section 403(b)."

(6)(A) Section 402(g) of the 1986 Code, as added by section 1852(b)(3)(A) of the Reform Act, is redesignated as subsection (i).

(B) Section 402(g) of the 1986 Code, as added by section 1854(f)(2) of the Reform Act, is redesignated as subsection (j).

(C) Section 1854(f)(4)(C) of the Reform Act is amended by striking out "section 402(g)" and inserting in lieu thereof "section 402(j)".

(7)(A) Section 401(a) of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(29) Limitations on elective deferrals.—In the case of a trust which is part of a plan under which elective deferrals (within the meaning of section 402(g)(3)) may be made with respect to any individual during a calendar year, such trust shall not constitute a qualified trust under this subsection unless the plan provides that the amount of such deferrals under such plan and all other plans, contracts, or arrangements of an employer maintaining such plan may not exceed the amount of the limitation in effect under section 402(g)(1) for taxable years beginning in such calendar year."

(B) Section 403(b)(1) of the 1986 Code is amended by striking out "and" at the end of subparagraph (C), by inserting "and" at the end of subparagraph (D), and by inserting after subparagraph (D) the following new subparagraph:

"(E) in the case of a contract purchased under a plan which provides a salary reduction agreement, the plan meets the requirements of section 401(a)(29),".

(C) Subparagraph (A) of section 408(k)(6) of the 1986 Code, as amended by subsection (f)(1), is amended by adding at the end thereof the following new clause:

"(iv) Limitations on elective deferrals.—Clause (i) shall not apply to a simplified employee pension unless the requirements of section 401(a)(29) are met."

(D) Subparagraph (D) of section 501(c)(18) of the 1986 Code is amended by striking out "and" at the end of clause (ii), by striking out the period at the end of clause (iii) and inserting in lieu thereof ", and", and by inserting after clause (iii) the following new clause:

"(iv) the requirements of section 401(a)(29) are met."

(E)(i) Except as provided in clause (ii), the amendments made by this paragraph shall apply to plan years beginning after December 31, 1987.

(ii) In the case of a plan described in section 1105(c)(2) of the Reform Act, the amendments made by this paragraph shall not apply to contributions made pursuant to an agreement described in such section for plan years beginning before the earlier of—

(I) the later of January 1, 1988, or the date on which the last of such agreements terminates (determined without regard to any extension thereof after February 28, 1986), or

(II) January 1, 1989.

(8) Section 1105(c)(2)(A) of the Reform Act is amended by striking out "the last of such collective bargaining agreements" and inserting in lieu thereof "such agreement".

(9) Section 1105(c) of the Reform Act is amended by adding at the end thereof the following new paragraph:

"(6) Reporting requirements.—The amendments made by subsection (b) shall apply to calendar years beginning after December 31, 1986."

(10) Notwithstanding any other provision of law, a plan may incorporate by reference the dollar limitations under section 402(g) of the Internal Revenue Code of 1986.

(11) Section 402(g)(3) of the 1986 Code is amended by inserting at the end thereof the following new sentence: "An employer contribution shall not be treated as an elective deferral described in subparagraph (C) if under the salary reduction agreement such contribution is made pursuant to a one-time irrevocable election made by the employee at the time of initial eligibility to participate in the agreement or is made pursuant to a similar arrangement specified in regulations."

(12) Subparagraph (A) of section 403(b)(12) of the 1986 Code is amended by inserting after clause (ii) the following new sentence:

"For purposes of clause (i), a contribution shall be treated as not made pursuant to a salary reduction agreement if under the agreement it is made pursuant to a 1-time irrevocable election made by the employee at the time of initial eligibility to participate in the agreement or is made pursuant to a similar arrangement specified in regulations."

(d) Amendments Related to Section 1106 of the Reform Act.—

(1) Section 404(l) of the 1986 Code (relating to limitation on amount of compensation which may be taken into account) is amended by adding at the end thereof the following new sentence: "For purposes of clause (i), (ii), or (iii) of subsection (a)(1)(A), and in computing the full funding limitation, any adjustment under the preceding sentence shall not be taken into account for any year before the year for which such adjustment first takes effect.".

(2) Section 415(b)(5)(D) of the 1986 Code (relating to application to changes in benefit structures) is amended by striking out "this paragraph" and inserting in lieu thereof "subparagraph (A)".

(3) Paragraph (2) of section 415(k) of the 1986 Code (relating to contributions to provide cost-of-living protection under defined benefit plans), as added by section 1106(c) of the Reform Act, is amended—

(A) by striking out "to the arrangement" in subparagraph (C)(ii) and inserting in lieu thereof "to such increase", and

(B) by striking out subparagraph (D) and inserting in lieu thereof:

"(D) Arrangement elective; time for election.—An arrangement meets the requirements of this subparagraph only if it is elective, it is available under the same terms to all participants, and it provides that such election may at least be made in the year in which the participant—

"(i) attains the earliest retirement age under the defined benefit plan (determined without regard to any requirement of separation from service), or

"(ii) separates from service."

(4) Sections 401(a)(17) and 404(l) of the 1986 Code are each amended by adding at the end thereof the following new sentence: "In determining the compensation of an employee, the rules of section 414(q)(6) shall apply, except that in applying such rules, the term 'family' shall include only the spouse of the employee and any lineal descendants of the employee who have not attained age 19 before the close of the year."

(5) Paragraph (4) of section 1106(i) of the Reform Act is amended by striking the period at the end thereof and inserting in lieu thereof "(determined as if the amendments made by this section were in effect for such year).".

(6) Section 415(b)(5)(B) of the 1986 Code is amended by inserting "and subsection (e)" after "paragraphs (1)(B) and (4)".

(7) Subparagraph (A) of section 415(c)(6) of the 1986 Code is amended—

(A) by striking out "paragraph (c)(1)(A) (as adjusted for such year pursuant to subsection (d)(1))", and inserting in lieu thereof "paragraph (1)(A)"; and

(B) by striking out "paragraph (c)(1)(A) (as so adjusted)" and inserting in lieu thereof "paragraph (1)(A)".

(8) Sections 414(q)(1)(D) and 416(i)(1)(A)(i) of the 1986 Code are each amended by striking out "150 percent of the amount in effect under section 415(c)(1)(A)" and inserting in lieu thereof "50 percent of the amount in effect under section 415(b)(1)(A)".

(e) Amendments Related to Section 1107 of the Reform Act.—

(1) Section 457(c)(2) of the 1986 Code is amended by striking out "and paragraphs (2) and (3) of subsection (b)".

(2) Section 457(d)(1)(A) of the 1986 Code (relating to distribution requirements) is amended to read as follows:

"(A) under the plan amounts will not be made available to participants or beneficiaries earlier than—

"(i) the calendar year in which the participant attains age 70½,

"(ii) when the participant is separated from service with the employer, or

"(iii) when the participant is faced with an unforeseeable emergency (determined in the manner prescribed by the Secretary in regulations)."

(3) Paragraph (7) of section 401(k) of the 1986 Code (defining rural electric cooperative plan) is amended to read as follows:

"(7) Rural electric cooperative plan.—For purposes of this subsection—

"(A) In general.—The term 'rural electric cooperative plan' means any pension plan—

"(i) which is a defined contribution plan (as defined in section 414(i)), and

"(ii) which is established and maintained by a rural electric cooperative.

"(B) Rural electric cooperative defined.—For purposes of subparagraph (A), the term 'rural electric cooperative' means—

"(i) any organization which is exempt from tax under section 501(a) and which is engaged primarily in providing electric service on a mutual or cooperative basis,

"(ii) any organization described in paragraph (4) or (6) of section 501(c) which is exempt from tax under section 501(a) and at least 80 percent of the members of which are organizations described in clause (i), and

"(iii) an organization which is a national association of organizations described in clause (i) or (ii)."

(4) Section 414(o) of the 1986 Code is amended by inserting "or any requirement under section 457" after "(n)(3)".

(5)(A) Paragraph (6) of section 818(a) of the 1986 Code (defining pension plan contracts) is amended—

(i) by striking out "State" in subparagraph (A),

(ii) by inserting "or any organization (other than a governmental unit) exempt from tax under this subtitle," after "foregoing," in subparagraph (B),

(iii) by striking out "or" before "agency" in subparagraph (B), and

(iv) by inserting ", or organization" after "instrumentality" the second place it appears in subparagraph (B).

(B) The amendments made by this paragraph shall apply to contracts issued after December 31, 1986.

(6) Section 1107(c)(3) of the Reform Act is amended—

(A) by striking out "eligible" each place it appears, and

(B) by inserting at the end of subparagraph (B) the following new sentence: "This subparagraph shall only apply to individuals who were covered under the plan and agreement on August 16, 1986."

(7) Paragraph (5) of section 1107(c) of the Reform Act is amended—

(A) by striking out "to employees on August 1, 1986, of",

(B) by striking out "a deferred compensation plan" in subparagraph (A) and inserting in lieu thereof "to employees on August 16, 1986,",

(C) by inserting "maintaining a deferred compensation plan" after "Alabama" in subparagraph (A), and

(D) by striking out "a deferred compensation plan" in subparagraph (B) and inserting in lieu thereof "to individuals eligible to participate on August 16, 1986, in a deferred compensation plan".

(8) Section 3121(v)(3)(A) of the 1986 Code is amended by striking out "457(e)(1)" and inserting in lieu thereof "457(f)(1)".

(9) Paragraph (9) of section 457(e) of the 1986 Code is amended by inserting "after separation from service and" before "within 60 days".

(f) Amendments Related to Section 1108 of the Reform Act.—

(1) Subparagraph (A) of section 408(k)(6) of the 1986 Code (relating to salary reduction arrangements under simplified employee pensions) is amended to read as follows:

"(A) Arrangements which qualify.—

"(i) In general.—A simplified employee pension shall not fail to meet the requirements of this subsection for a year merely because, under the terms of the pension, an employee may elect to have the employer make payments—

"(I) as elective employer contributions to the simplified employee pension on behalf of the employee, or

"(II) to the employee directly in cash.

"(ii) 50 percent of eligible employees must elect.—Clause (i) shall not apply to a simplified employee pension unless an election described in clause (i)(I) is made or is in effect with respect to not less than 50 percent of the employees of the employer eligible to participate.

"(iii) Requirements relating to deferral percentage.—Clause (i) shall not apply to a simplified employee pension for any year unless the deferral percentage for such year of each highly compensated employee eligible to participate is not more than the product of—

"(I) the average of the deferral percentages for such year of all employees (other than highly compensated employees) eligible to participate, multiplied by

"(II) 1.25."

(2) Section 408(k)(6)(B) of the 1986 Code (relating to exception where more than 25 employees) is amended by inserting "who were eligible to participate (or would have been required to be eligible to participate if a pension was maintained)" after "25 employees".

(3)(A) Section 408(k)(6)(D)(ii) of the 1986 Code (defining deferral percentage) is amended by striking out "(within the meaning of section 414(s))" and inserting in lieu thereof "(not in excess of the first $200,000)".

(B) Subparagraph (B) of section 408(k)(7) of the 1986 Code (defining compensation) is amended to read as follows:

"(B) Compensation.—Except as provided in paragraph (2)(C), the term 'compensation' has the meaning given such term by section 414(s)."

(C) Subparagraph (C) of section 408(k)(3) of the 1986 Code is amended by striking out "total" before "compensation".

(D) Section 408(k)(8) of the 1986 Code is amended by striking out "paragraph (3)(C)" and inserting in lieu thereof "paragraphs (3)(C) and (6)(D)(ii)".

(4) Section 408(k)(6) of the 1986 Code (relating to employee may elect salary reduction arrangement) is amended by redesignating subparagraph (F) as subparagraph (G) and by inserting after subparagraph (E) the following new subparagraph:

"(F) Exception where pension does not meet requirements necessary to insure distribution of excess contributions.—This paragraph shall not apply with respect to any year for which the simplified employee pension does not meet such requirements as the Secretary may prescribe as are necessary to insure that excess contributions are distributed in accordance with subparagraph (C), including—

"(i) reporting requirements, and

"(ii) requirements which, notwithstanding paragraph (4), provide that contributions (and any income allocable thereto) may not be withdrawn from a simplified employee pension until a determination has been made that the requirements of subparagraph (A)(iii) have been met with respect to such contributions."

(5) Section 408(d) of the 1986 Code (relating to tax treatment of distributions) is amended by adding at the end thereof the following new paragraph:

"(7) Special rules for simplified employee pensions.—

"(A) Transfer or rollover of contributions prohibited until deferral test met.—Notwithstanding any other provision of this subsection or section 72(t), paragraph (1) and section 72(t)(1) shall apply to the transfer or distribution from a simplified employee pension of any contribution under a salary reduction arrangement described in subsection (k)(6) (or any income allocable thereto) before a determination as to whether the requirements of subsection (k)(6)(A)(iii) are met with respect to such contribution.

"(B) Certain exclusions treated as deductions.—For purposes of paragraphs (4) and (5) and section 4973, any amount excludable or excluded from gross income under section 402(h) shall be treated as an amount allowable or allowed as a deduction under section 219."

(6) Subparagraph (C) of section 404(h)(1) of the 1986 Code is amended by inserting "(or during the taxable year in the case of a taxable year described in subparagraph (A)(ii))" after "taxable year" the second place it appears.

(7) Section 1108(h) of the Reform Act is amended to read as follows:

"(h) Effective Dates.—

"(1) In general.—Except as provided in paragraph (2), the amendments made by this section shall apply to years beginning after December 31, 1986.

"(2) Integration rules.—Subparagraphs (D) and (E) of section 408(k)(3) of the Internal Revenue Code of 1954 (as in effect before the amendments made by this section) shall continue to apply for years beginning after December 31, 1986, and before January 1, 1989, except that employer contributions under an arrangement under section 408(k)(6) of the Internal Revenue Code of 1986 (as added by this section) may not be integrated under such subparagraphs."

(8) Section 209(e)(8) of the Social Security Act is amended to read as follows: "(8) under a simplified emplyee pension (as defined in section 408(k)(1) of such Code), other than any contributions described in section 408(k)(6) of such Code,".

(9) Section 3401(a)(12)(C) of the 1986 Code is amended—

(A) by striking out "section 219" and inserting in lieu thereof "section 402(h) (1) and (2)", and

(B) by striking out "a deduction" and inserting in lieu thereof "an exclusion".

(g) Amendments Related to Section 1111 of the Reform Act.—

(1)(A) Section 401(l)(2)(B) of the 1986 Code (defining contribution percentages) is amended by inserting "by the employer" after "contributed" each place it appears.

(B) Clause (ii) of section 401(l)(3)(A) of the 1986 Code is amended by inserting "attributable to employer contributions" after "benefits".

(2) Section 401(l)(5)(C) of the 1986 Code (defining average annual compensation) is amended to read as follows:

"(C) Average annual compensation.—The term 'average annual compensation' means the participant's highest average annual compensation for—

"(i) any period of at least 3 consecutive years, or

"(ii) if shorter, the participant's full period of service."

(3) Section 401(l)(5)(E) of the 1986 Code (defining covered compensation) is amended—

(A) by striking out "age 65" each place it appears" and inserting in lieu thereof "the social security retirement age", and

(B) by adding at the end thereof the following new clause:

"(iii) Social security retirement age.—For purposes of this subparagraph, the term 'social security retirement age' has the meaning given such term by section 415(b)(8)."

(4) Section 1111(c)(3) of the Reform Act is amended by striking out "benefits pursuant to, and individuals covered by, any such agreement in".

(h) Amendments Related to Section 1112 of the Reform Act.—

(1) Section 410(b)(4)(B) of the 1986 Code (relating to exclusion of employees not meeting age and service requirements) is amended—

(A) by striking out "do not meet" and inserting in lieu thereof "not meeting", and

(B) by striking out "and".

(2) Section 410(b)(6) of the 1986 Code (relating to definitions and special rules) is amended by redesignating subparagraph (F) as subparagraph (G) and by adding after subparagraph (E) the following new subparagraph:

"(F) Employers with only highly compensated employees.—A plan maintained by an employer which has no employees other than highly compensated employees for any year shall be treated as meeting the requirements of this subsection for such year."

(3) Section 401(a)(26) of the 1986 Code (relating to additional participation requirements) is amended by redesignating subparagraph (F) as subparagraph (H) and by adding after subparagraph (E) the following new subparagraphs:

"(F) Special rule for certain dispositions or acquisitions.—Rules similar to the rules of section 410(b)(6)(C) shall apply for purposes of this paragraph."

"(G) Separate lines of business.—At the election of the employer and with the consent of the Secretary, this paragraph may be applied separately with respect to each separate line of business of the employer. For purposes of this paragraph, the term 'separate line of business' has the meaning given such term by section 414(r) (without regard to paragraph (7) thereof)."

(4) Section 402(b)(2) of the 1986 Code (relating to failure to meet requirements of section 410(b)) is amended by striking out subparagraphs (A) and (B) and inserting in lieu thereof the following:

"(A) Highly compensated employees.—If 1 of the reasons a trust is not exempt from tax under section 501(a) is the failure of the plan of which it is a part to meet the requirements of section 401(a)(26) or 410(b), then a highly compensated employee shall, in lieu of the amount determined under paragraph (1), include in gross income for the taxable year with or within which the taxable year of the trust ends an amount equal to the vested accrued benefit of such employee (other than the employee's investment in the contract) as of the close of such taxable year of the trust.

"(B) Failure to meet coverage tests.—If a trust is not exempt from tax under section 501(a) for any taxable year solely because such trust is part of a plan which fails to meet the requirements of section 401(a)(26) or 410(b), paragraph (1) shall not apply by reason of such failure to any employee who was not a highly compensated employee during—

"(i) such taxable year, or

"(ii) any preceding period for which service was creditable to such employee under the plan."

(5) Subsections (m)(4)(A) and (n)(3)(A) of section 414 of the 1986 Code are each amended by striking out "and (16)" and inserting in lieu thereof "(16), (17), and (26)".

(6) Clause (iii) of section 1112(e)(3)(A) of the Reform Act is amended by striking out "a plan or merger" and inserting in lieu thereof "the plan".

(7) Section 1112(e)(2) of the Reform Act is amended by striking out "employees covered by such agreement in".

(8) Subsection (e) of section 1112 of the Reform Act is amended by striking out paragraph (3)(C) and by adding at the end of such subsection the following new paragraph:

"(4) Special rule for plans which may not terminate.—To the extent provided in regulations prescribed by the Secretary of the Treasury or his delegate, if a plan is prohibited from terminating under title IV of the Employee Retirement Income Security Act of 1974 before the 1st year to which the amendment made by subsection (b) would apply, the amendment made by subsection (b) shall only apply to years after the 1st year in which the plan is able to terminate."

(9) Subparagraph (B) of section 1112(e)(3) of the Reform Act is amended to read as follows:

"(B) Interest rate for determining accrued benefit of highly compensated employees for certain purposes.—In the case of a termination, transfer, or distribution of assets of a plan described in subparagraph (A)(ii) before the 1st year to which the amendment made by subsection (b) applies—

"(i) Amount eligible for rollover, income averaging, or tax-free transfer.—For purposes of determining any eligible amount, the present value of the accrued benefit of any highly compensated employee shall be determined by using an interest rate not less than the highest of—

"(I) the applicable rate under the plan's method in effect under the plan on August 16, 1986,

"(II) the highest rate (as of the date of the termination, transfer, or distribution) determined under any of the methods applicable under the plan at any time after August 15, 1986, and before the termination, transfer, or distribution in calculating the present value of the accrued benefit of an employee who is not a highly compensated employee under the plan (or any other plan used in determining whether the plan meets the requirements of section 401 of the Internal Revenue Code of 1986), or

"(III) 5 percent.

"(ii) Eligible amount.—For purposes of clause (i), the term 'eligible amount' means any amount with respect to a highly compensated employee which—

"(I) may be rolled over under section 402(a)(5) of such Code,

"(II) is eligible for income averaging under section 402(e)(1) of such Code, or capital gains treatment under section 402(a)(2) or 403(a)(2) of such Code (as in effect before this Act), or

"(III) may be transferred to another plan without inclusion in gross income.

"(iii) Amounts subject to early withdrawal or excess distribution tax.—For purposes of sections 72(t) and 4980A of such Code, there shall not be taken into account the excess (if any) of—

"(I) the amount distributed to a highly compensated employee by reason of such termination or distribution, over

"(II) the amount determined by using the interest rate applicable under clause (i).

"(iv) Distributions of annuity contracts.—If an annuity contract purchased after August 16, 1986, is distributed to a highly compensated employee in connection with such termination or distribution, there shall be included in gross income for the taxable year of such distribution an amount equal to the excess of—

"(I) the purchase price of such contract, over

"(II) the present value of such contract determined by using the interest rate applicable under clause (i).

Such excess shall not be taken into account for purposes of sections 72(t) and 4980A of such Code.

"(v) Highly compensated employee.—For purposes of this subparagraph, the term 'highly compensated employee' has the meaning given such term by section 414(q) of such Code."

(10) Section 413(b) of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(9) Plans covering a professional employee.—Notwithstanding subsection (a), in the case of a plan (and trust forming part thereof) which covers any professional employee, paragraph (1) shall be applied by substituting 'section 410(a)' for 'section 410', and paragraph (2) shall not apply."

(i) Amendments Related to Section 1113 of the Reform Act.—

(1) Section 203(a)(2) of the Employee Retirement Income Security Act of 1974 is amended—

(A) by striking out "following" the first place it appears, and

(B) by striking out "414(f)(1)(B)" in subparagraph (C)(ii)(I) and inserting in lieu thereof "3(37)(A)(ii)".

(2) Section 1113(e)(3) of the Reform Act is amended by striking out "Section 202(B)(i)" and inserting in lieu thereof "Section 202(a)(1)(B)(i)".

(3) The second subsection (e) of section 1113 of the Reform Act is redesignated as subsection (f).

(4) Section 1113(f) of the Reform Act, as redesignated by paragraph (3), is amended by adding at the end thereof the following new paragraph:

"(4) Repeal of class year vesting.—If a plan amendment repealing class year vesting is adopted after October 22, 1986, such amendment shall not apply to any employee for the 1st plan year to which the amendments made by subsections (b) and (e)(2) apply (and any subsequent plan year) if—

"(A) such plan amendment would reduce the nonforfeitable right of such employee for such year, and

"(B) such employee has at least 1 hour of service before the adoption of such plan amendment and after the beginning of such 1st plan year."

(5)(A) Section 411(a)(3) of the 1986 Code is amended by adding at the end thereof the following new subparagraph:

"(G) Treatment of matching contributions forfeited by reason of excess deferral or contribution.—A matching contribution (within the meaning of section 401(m)) shall not be treated as forfeitable merely because such contribution is forfeitable if the contribution to which the matching contribution relates is treated as an excess contribution under section 401(k)(8)(B), an excess deferral under section 402(g)(2)(A), or an excess aggregate contribution under section 401(m)(6)(B)."

(B) Paragraph (3) of section 203(a) of the Employee Retirement Income Security Act of 1974 is amended by adding at the end thereof the following new subparagraph:

"(F) A matching contribution (within the meaning of section 401(m) of the Internal Revenue Code of 1986) shall not be treated as forfeitable merely because such contribution is forfeitable if the contribution to which the matching contribution relates is treated as an excess contribution under section 401(k)(8)(B) of such Code, an excess deferral under section 402(g)(2)(A) of such Code, or an excess aggregate contribution under section 401(m)(6)(B) of such Code."

(6)(A) Section 411(a)(4)(A) of the 1986 Code is amended to read as follows:

"(A) years of service before age 18,".

(B) Subparagraph (A) of section 203(b)(1) of the Employee Retirement Income Security Act of 1974 is amended to read as follows:

"(A) years of service before age 18,".

(j) Amendments Related to Section 1114 of the Reform Act.—

(1) Paragraph (1) of section 414(q) of the 1986 Code (defining highly compensated employee) is amended by adding at the end thereof the following new flush sentence:

"The Secretary shall adjust the $75,000 and $50,000 amounts under this paragraph at the same time and in the same manner as under section 415(d)."

(2) Section 414(q)(6) of the 1986 Code is amended by adding at the end thereof the following new subparagraph:

"(C) Rules to apply to other provisions.—

"(i) In general.—Except as provided in regulations and in clause (ii), the rules of subparagraph (A) shall be applied in determining the compensation of (or any contributions or benefits on behalf of) any employee for purposes of any section with respect to which a highly compensated employee is defined by reference to this subsection.

"(ii) Exception for determining integration levels.—Clause (i) shall not apply in determining the portion of the compensation of a participant which is under the integration level for purposes of section 401(l)."

(3)(A) Section 414(q)(8) of the 1986 Code (relating to excluded employees) is amended—

(i) by inserting "and" at the end of subparagraph (D), by striking ", and" at the end of subparagraph (E) and inserting in lieu thereof a period, and by striking out subparagraph (F), and

(ii) by striking out "The" in the last sentence thereof and inserting in lieu thereof "Except as provided by the Secretary, the".

(B) Section 414(q) of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(11) Special rule for nonresident aliens.—For purposes of this subsection and subsection (r), employees who are nonresident aliens and who receive no earned income (within the meaning of section 911(d)(2)) from the employer which constitutes income from sources within the United States (within the meaning of section 861(a)(3)) shall not be treated as employees."

(4)(A) Paragraph (8) of section 414(q) of the 1986 Code is amended by inserting "or the number of officers taken into account under paragraph (5)" after "paragraph (4)".

(B) Section 416(i)(1)(A) of the 1986 Code is amended by adding at the end thereof the following new sentence: "For purposes of determining the number of officers taken into account under clause (i), employees described in section 414(q)(8) shall be excluded."

(5) Subparagraph (B) of section 408(k)(3) of the 1986 Code is amended to read as follows:

"(B) Special rules.—For purposes of subparagraph (A), there shall be excluded from consideration employees described in subparagraph (A) or (C) of section 410(b)(3)."

(k) Amendments Related to Section 1115 of the Reform Act.—

(1) So much of section 414(s) of the 1986 Code as precedes paragraph (2) is amended to read as follows:

"(s) Compensation.—For purposes of any applicable provision—

"(1) IN GENERAL.—Except as provided in this subsection, the term 'compensation' has the meaning given such term by section 415(c)(3)."

(2) Section 414(s) of the 1986 Code is amended by striking out paragraph (2), by redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively, and by adding at the end thereof the following new paragraph:

"(4) APPLICABLE PROVISION.—For purposes of this subsection, the term 'applicable provision' means any provision which specifically refers to this subsection."

(3)(A) Section 416(i)(1) of the 1986 Code (defining key employee) is amended by adding at the end thereof the following new subparagraph:

"(D) COMPENSATION.—For purposes of this paragraph, the term 'compensation' has the meaning given such term by section 414(q)(7)."

(B) The amendment made by this paragraph shall apply to years beginning after December 31, 1988.

(l) AMENDMENTS RELATED TO SECTION 1116 OF THE REFORM ACT.—

(1)(A) Subparagraph (B) of section 401(k)(2) of the 1986 Code (relating to distributions from a cash or deferred arrangement) is amended—

(i) by striking out subclauses (II), (III), and (IV) of clause (i) and inserting in lieu thereof:

"(II) an event described in paragraph (10),", and

(ii) by redesignating subclauses (V) and (VI) as subclauses (III) and (IV), respectively.

(B) Section 401(k) of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(10) DISTRIBUTIONS UPON TERMINATION OF PLAN OR DISPOSITION OF ASSETS OR SUBSIDIARY.—

"(A) IN GENERAL.—The following events are described in this paragraph:

"(i) TERMINATION.—The termination of the plan without establishment or maintenance of another defined contribution plan.

"(ii) DISPOSITION OF ASSETS.—The disposition by a corporation of substantially all of the assets (within the meaning of section 409(d)(2)) used by such corporation in a trade or business of such corporation, but only with respect to an employee who continues employment with the corporation acquiring such assets.

"(iii) DISPOSITION OF SUBSIDIARY.—The disposition by a corporation of such corporation's interest in a subsidiary (within the meaning of section 409(d)(3)), but only with respect to an employee who continues employment with such subsidiary.

"(B) DISTRIBUTIONS MUST BE LUMP SUM DISTRIBUTIONS.—

"(i) IN GENERAL.—An event shall not be treated as described in subparagraph (A) with respect to any employee unless the employee receives a lump sum distribution by reason of the event.

"(ii) LUMP SUM DISTRIBUTION.—For purposes of this subparagraph, the term 'lump sum distribution' has the meaning given such term by section 402(e)(4), without regard to clauses (i), (ii), (iii), and (iv) of subparagraph (A), subparagraph (B), or subparagraph (H) thereof.

"(C) TRANSFEROR CORPORATION MUST MAINTAIN PLAN.—An event shall not be treated as described in clause (ii) or (iii) of subparagraph (A) unless the transferor corporation continues to maintain the plan after the disposition."

(2) Subparagraph (B) of section 401(k)(2) of the 1986 Code is amended—

(A) by inserting "amounts held by the trust which are attributable to employer contributions made pursuant to the employee's election" after "under which",

(B) by striking out "amounts held by the trust which are attributable to employer contributions made pursuant to the employee's election" in clause (i), and

(C) by striking out "amounts" in clause (ii).

(3)(A) Clause (ii) of section 401(k)(3)(A) of the 1986 Code is amended by inserting "eligible" before "highly compensated employees" each place it appears.

(B) Section 1116(b)(4) of the Reform Act is amended by striking out "any" the first place it appears and inserting in lieu thereof "an".

(4) Subparagraph (C) of section 401(k)(3) of the 1986 Code, as added by section 1116(e) of the Reform Act, is redesignated as subparagraph (D).

(5) Subclause (I) of section 401(k)(3)(D)(ii) of the 1986 Code, as redesignated by paragraph (4), is amended by striking out "meets" and inserting in lieu thereof "meet".

(6) Section 401(k)(4)(A) of the 1986 Code is amended by striking out "provided by such employer".

(7) Section 401(k)(8) of the 1986 Code (relating to arrangement not disqualified if excess contributions distributed) is amended by redesignating subparagraph (E) as subparagraph (F) and by inserting after subparagraph (D) the following new subparagraph:

"(E) TREATMENT OF MATCHING CONTRIBUTIONS FORFEITED BY REASON OF EXCESS DEFERRAL OR CONTRIBUTION.—For purposes of paragraph (2)(C), a matching contribution (within the meaning of subsection (m)) shall not be treated as forfeitable merely because such contribution is forfeitable if the contribution to which the matching contribution relates is treated as an excess contribution under subparagraph (B), an excess deferral under section 402(g)(2)(A), or an excess aggregate contribution under section 401(m)(6)(B)."

(8) Subparagraph (B) of section 1116(f)(2) of the Reform Act is amended by adding at the end thereof the following new sentence: "If clause (i) or (ii) applies to any arrangement adopted by a governmental unit, then any cash or deferred arrangement adopted by such unit on or after the date referred to in the applicable clause shall be treated as adopted before such date."

(9) Section 401(k)(4)(B) of the 1986 Code is amended by adding at the end thereof the following new sentence:

"This subparagraph shall not apply to a rural electric cooperative plan."

(m) AMENDMENTS RELATED TO SECTION 1117 OF THE REFORM ACT.—

(1) Paragraph (1) of section 401(m) of the 1986 Code (relating to nondiscrimination test for matching contributions and employee contributions) is amended by striking out "A plan" and inserting in lieu thereof "A defined contribution plan".

(2) Paragraph (3) of section 401(m) of the 1986 Code (relating to requirements) is amended by adding at the end thereof the following new sentence: "If matching contributions are taken into account for purposes of subsection (k)(3)(A)(ii) for any plan year, such contributions shall not be taken into account under subparagraph (A) for such year."

(3) The last sentence of section 401(m)(2)(B) of the 1986 Code is amended by striking out "such contributions" the first place it appears and inserting in lieu thereof "contributions to which this subsection applies".

(4) Section 401(m)(4)(A) of the 1986 Code (defining matching contribution) is amended by striking out "the plan" each place it appears and inserting in lieu thereof "a defined contribution plan".

(5) Section 401(m)(4)(B) of the 1986 Code (defining elective deferral) is amended by striking out "section 402(g)(3)(A)" and inserting in lieu thereof "section 402(g)(3)".

(6) Subparagraph (C) of section 401(m)(6) of the 1986 Code is amended by striking out "EXCESS" in the subparagraph heading and inserting in lieu thereof "EXCESS AGGREGATE".

(7) Section 401(m)(7)(A) of the 1986 Code (relating to additional tax of section 72(t) not applicable) is amended by striking out "paragraph (8)" and inserting in lieu thereof "paragraph (6)".

(8) Section 4979(a)(1) of the 1986 Code (relating to tax on certain excess contributions) is amended by striking out "a cash or deferred arrangement which is part of".

(9) Section 4979(c) of the 1986 Code (defining excess contributions) is amended—

(A) by striking out "403(b),", and

(B) by striking out "408(k)(8)(B)" and inserting in lieu thereof "408(k)(6)(C)".

(10) Section 4979(d) of the 1986 Code (defining excess aggregate contribution) is amended by adding at the end thereof the following new sentence: "For purposes of determining excess aggregate contributions under an annuity contract described in section 403(b), such contract shall be treated as a plan described in subsection (e)(1)."

(11) Paragraph (2) of section 4979(f) of the 1986 Code (relating to inclusion in prior year) is amended to read as follows:

"(2) YEAR OF INCLUSION.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), any amount distributed as provided in paragraph (1) shall be treated as received and earned by the recipient in his taxable year for which such contribution was made.

"(B) DE MINIMIS DISTRIBUTIONS.—If the total excess contributions and excess aggregate contributions distributed to a recipient under a plan for any plan year are less than $100, such distributions (and any income allocable thereto) shall be treated as earned and received by the recipient in his taxable year in which such distributions were made."

(12) Subsection (d) of section 1117 of the Reform Act is amended by adding at the end thereof the following new paragraph:

"(4) DISTRIBUTIONS BEFORE PLAN AMENDMENT.—

"(A) IN GENERAL.—If a plan amendment is required to allow a plan to make any distribution described in section 401(m)(6) of the Internal Revenue Code of 1986, any such distribution which is made before the close of the 1st plan year for which such amendment is required to be in effect under section 1140 shall be treated as made in accordance with the provisions of the plan.

"(B) DISTRIBUTIONS PURSUANT TO MODEL AMENDMENT.—

"(i) SECRETARY TO PRESCRIBE AMENDMENT.—The Secretary of the Treasury or his delegate shall prescribe an amendment which allows a plan to make any distribution described in section 401(m)(6) of the Internal Revenue Code of 1986.

"(ii) ADOPTION BY PLAN.—If a plan adopts the amendment prescribed under clause (i) and makes a distribution in accordance with such amendment, such distribution shall be treated as made in accordance with the provisions of the plan."

(n) Amendments Related to Section 1120 of the Reform Act.—

(1)(A) Section 403(b)(10) of the 1986 Code (relating to nondiscrimination requirements), as added by section 1120(b) of the Reform Act, is redesignated as paragraph (12).

(B) Subparagraph (D) of section 403(b)(1) of the 1986 Code is amended by striking out "paragraph (10)" and inserting in lieu thereof "paragraph (12)".

(2) Clause (i) of section 403(b)(12)(A), as redesignated by paragraph (1), is amended—

(A) by inserting "(17)," after "(5),", and

(B) by inserting ", section 401(m)," after "section 401(a)" the first place it appears.

(3) Section 1120(c) of the Reform Act is amended to read as follows:

"(c) Effective Dates.—

"(1) In general.—Except as provided in paragraph (2), the amendments made by this section shall apply to years beginning after December 31, 1988.

"(2) Collective bargaining agreements.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before March 1, 1986, the amendments made by this section shall not apply to plan years beginning before the earlier of—

"(A) January 1, 1991, or

"(B) the later of—

"(i) January 1, 1989, or

"(ii) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof after February 28, 1986)."

SEC. 10211A. AMENDMENTS RELATED TO PARTS III AND IV OF SUBTITLE A OF TITLE XI OF THE REFORM ACT.

(a) Amendments Related to Section 1121 of the Reform Act.—

(1) Subparagraph (F) of section 402(a)(5) of the 1986 Code (relating to transfer treated as rollover contribution under section 408) is amended by striking out "described in subparagraph (A)" and inserting in lieu thereof "resulting in any portion of a distribution being excluded from gross income under subparagraph (A)".

(2)(A) Section 408(d)(3)(A) is amended by striking out the last sentence thereof.

(B) The amendment made by subparagraph (A) shall apply to rollover contributions made in taxable years beginning after December 31, 1986.

(3) Section 1121(d) of the Reform Act is amended by adding at the end thereof the following new paragraph:

"(5) Plans may incorporate section 401(a)(9) requirements by reference.—Notwithstanding any other provision of law, except as provided in regulations prescribed by the Secretary of the Treasury or his delegate, a plan may incorporate by reference the requirements of section 401(a)(9) of the Internal Revenue Code of 1986."

(4) Section 1121(d)(3) of the Reform Act is amended by striking out "plan years" and inserting in lieu thereof "years".

(b) Amendments Related to Section 1122 of the Reform Act.—

(1)(A) Section 72(f) of the 1986 Code (relating to special rules for computing employees' contributions) is amended by striking out "for purposes of subsections (d)(1) and (e)(7), the consideration for the contract contributed by the employee,".

(B) Section 72(n) of the 1986 Code (relating to annuities under retired serviceman's family protection plan or survivor benefit plan) is amended by striking out "Subsections (b) and (d)" and inserting in lieu thereof "Subsection (b)".

(C) Sections 406(e) and 407(e) of the 1986 Code are each amended by striking out paragraph (1) and by redesignating paragraphs (2), (3), and (4) as paragraphs (1), (2), and (3), respectively.

(2)(A) Section 72 of the 1986 Code (relating to annuities and certain proceeds of endowment and life insurance contracts) is amended by adding after subsection (c) the following new subsection:

"(d) Treatment of Employee Contributions Under Defined Contribution Plans as Separate Contracts.—For purposes of this section, employee contributions (and any income allocable thereto) under a defined contribution plan may be treated as a separate contract."

(B) Section 72(e) of the 1986 Code is amended by striking out paragraph (9).

(3) Section 414(k)(2) of the 1986 Code (relating to certain plans treated as defined contribution plans) is amended by inserting "72(d) (relating to treatment of employee contributions as separate contract)," before "411(a)(7)(A)".

(4)(A) The amendment made by section 1122(e)(1) of the Reform Act is repealed and the Internal Revenue Code of 1986 shall be applied and administered as if such amendment had not been enacted.

(B) Subclause (I) of section 402(a)(5)(D)(i) of the 1986 Code is amended by inserting "is payable as provided in clause (i), (iii), or (iv) of subsection (e)(4)(A) (without regard to the second sentence thereof) and" after "such distribution" the first place it appears.

(C) Section 402(a)(5)(D)(i) of the 1986 Code is amended by adding at the end thereof the following new sentence: "Any distribution described in section 401(a)(28)(B)(ii) shall be treated as meeting the requirements of subclauses (I) and (II)."

(D) Section 402(a)(5)(D)(iii) is amended by striking out "10-YEAR" in the heading.

(5) Clause (ii) of section 402(a)(6)() of the 1986 Code (relating to special rule for frozen deposits) is amended by adding at the end thereof the following new flush sentence:

"A deposit shall not be treated as a frozen deposit unless on at least 1 day during the 60-day period described in paragraph (5)(C) (without regard to this subparagraph) such deposit is described in the preceding sentence.".

(6) Clause (i) of section 402(e)(4)(B) of the 1986 Code is amended by striking out "taxpayer" and inserting in lieu thereof "employee".

(7) The last sentence of section 402(e)(4)(J) of the 1986 Code (relating to unrealized appreciation on employer securities) is amended to read as follows: "In accordance with rules prescribed by the Secretary, a taxpayer may elect, on the return of tax on which a distribution is required to be included, not to have this subparagraph apply with respect to such distribution."

(8) Section 402 of the 1986 Code (relating to taxability of beneficiary of employees' trust) is amended as follows:

(A) Subsection (a)(1) is amended by striking out "paragraphs (2) and (4)" and inserting in lieu thereof "paragraph (4)".

(B) Subsection (a)(4) is amended by striking out "or (2)".

(C) Subsection (a)(6)(C) is amended by striking out "paragraph (2) of subsection (a), and".

(D) Subsection (a)(6)(E)(ii) is amended by striking out "paragraph (2) of subsection (a), and" and by striking out the comma after "subsection (e)".

(E) Subsection (e)(1)(A) is amended by striking out "ordinary income portion of a".

(F) Subsection (e)(4)(A) is amended—

(i) by striking out "Except for purposes of subsection (a)(2) and section 403(a)(2), a" and inserting in lieu thereof "A", and

(ii) by striking out "subsection (a)(2) of this section, and subsection (a)(2) of section 403,".

(G) Subparagraph (L) of subsection (e)(4) is hereby repealed.

(H) Subsection (e)(4)(M) is amended by striking out ", subsection (a)(2) of this section, and section 403(a)(2)".

(I) Subsection (e)(5) is amended by striking out "and paragraph (2) of subsection (a)".

(J) Subsection (e)(6)(C) is amended to read as follows:

"(C) Special lump-sum treatment.—For purposes of this paragraph, special lump sum treatment applies to any distribution if any portion of such distribution is taxed under this subsection by reason of an election under paragraph (4)(B)."

(9)(A) Section 72(e)(7) of the 1986 Code is hereby repealed.

(B) Section 72(e)(5)(D) is amended by striking out "paragraphs (7) and (8)" and inserting in lieu thereof "paragraph (8)".

(C) Section 72(e)(8)(A) is amended by striking out "(other than paragraph (7))".

(D) Section 72(q)(2)(E) of the 1986 Code is amended by striking out "(determined without regard to subsection (e)(7))".

(10) Section 402(e)(1)(B) of the 1986 Code (relating to amount of tax on lump-sum distributions) is amended by adding at the end thereof the following new flush sentence:

"For purposes of the preceding sentence, in determining the amount of tax under section 1(c), section 1(g) shall be applied without regard to paragraph (2)(B) thereof."

(11) Section 1122(h) of the Reform Act is amended by adding at the end thereof the following new paragraph:

"(9) Special rule for state plans.—In the case of a plan maintained by a State which on May 5, 1986, permitted withdrawal by the employee of employee contributions (other than as an annuity), section 72(e) of the Internal Revenue Code of 1986 shall be applied—

"(A) without regard to the phrase 'before separation from service' in paragraph (8)(D), and

"(B) by treating any amount received (other than as an annuity) before or with the 1st annuity payment as having been received before the annuity starting date."

(12) Subparagraph (B) of section 1122(h)(2) of the Reform Act is amended by inserting ", except that section 72(b)(3) of the Internal Revenue Code of 1986 (as added by such subsection) shall apply to individuals whose annuity starting date is after July 1, 1986" after "1986".

(13) Sections 1122 (h)(3)(C) and (h)(4)(C) of the Reform Act are each amended by striking out "with respect to any other lump sum distribution" and inserting in lieu thereof "for purposes of such Code".

(14) Clause (i) of section 1122(h)(3)(C) of the Reform Act is amended—

(A) by striking out "individual" and inserting in lieu thereof "employee", and

(B) by inserting "or by an individual, estate, or trust with respect to such an employee" after "1986".

(15) Section 1122(h)(5) of the Reform Act is amended—

(A) by striking out "individual" and inserting in lieu thereof "employee",

(B) by inserting "and by including in gross income the zero bracket amount in effect under section 63(d) of such Code for such years" after "1986" in the last sentence, and

(C) by adding at the end thereof the following new sentence: "This paragraph shall also apply to an individual, estate, or trust which receives a distribution with respect to an employee described in this paragraph."

(c) AMENDMENTS RELATED TO SECTION 1123 OF THE REFORM ACT.—

(1) Subparagraph (A) of section 72(t)(2) of the 1986 Code (relating to subsection not to apply to certain distributions) is amended by striking out "on account of early retirement under the plan" in clause (v).

(2) Subparagraph (C) of section 72(t)(2) of the 1986 Code (relating to certain plans) is amended to read as follows:

"(C) EXCEPTIONS FOR DISTRIBUTIONS FROM EMPLOYEE STOCK OWNERSHIP PLANS.—Any distribution made before January 1, 1990, to an employee from an employee stock ownership plan (as defined in section 4975(e)(7)) or a tax credit employee stock ownership plan (as defined in section 409) if—

"(i) such distribution is attributable to assets which have been invested in employer securities (within the meaning of section 409(l)) at all times during the 5-plan-year period preceding the plan year in which the distribution is made, and

"(ii) at all times during such period the requirements of sections 401(a)(28) and 409 (as in effect at such times) are met with respect to such employer securities."

(3) Subparagraph (A) of section 72(t)(3) of the 1986 Code (relating to certain exceptions not to apply to individual retirement plans) is amended by striking out "and (C)" and inserting in lieu thereof "(C), and (D)".

(4) Subparagraphs (D) and (G) of section 72(q)(2) of the 1986 Code are each amended by striking out the period at the end thereof and inserting in lieu thereof a comma.

(5) Subparagraph (B) of section 72(q)(3) of the 1986 Code (relating to change in substantially equal payments) is amended by striking out "employee" each place it appears and inserting in lieu thereof "taxpayer".

(6) Section 72(q)(2) of the 1986 Code (relating to subsection not to apply to certain dispositions) is amended by inserting after subparagraph (G) the following new subparagraph:

"(H) to which subsection (t) applies (without regard to paragraph (2) thereof),".

(7) Subparagraph (D) of section 72(q)(2) and clause (iv) of section 72(t)(2)(A) of the 1986 Code are each amended by inserting "designated" before "beneficiary".

(8) Paragraph (2) of section 72(o) of the 1986 Code (relating to additional tax if amount received after age 59½) is hereby repealed.

(9) Subparagraph (I) of section 402(e)(4) of the 1986 Code is amended by striking out "clause (ii) of".

(10) Section 26(b)(2) of the 1986 Code is amended—

(A) by striking out ", (o)(2)," in subparagraph (C), and

(B) by striking out "408(f) (relating to additional tax on income from certain retirement accounts)" in subparagraph (D) and inserting in lieu thereof "72(t) (relating to 10-percent additional tax on early distributions from qualified retirement plans)".

(11) Section 1123(e)(2) of the Reform Act is amended—

(A) by striking out "taxable", and

(B) by inserting ", but only with respect to distributions from contracts described in section 403(b) of the Internal Revenue Code of 1986 which are attributable to assets other than assets held as of the close of the last year beginning before January 1, 1989" after "1988".

(12) Section 1123(e) of the Reform Act is amended by adding at the end thereof the following new paragraph:

"(5) SPECIAL RULE FOR DISTRIBUTIONS UNDER AN ANNUITY CONTRACT.—The amendments made by paragraphs (1), (2), and (3) of subsection (b) shall not apply to any distribution under an annuity contract if—

"(A) as of March 1, 1986, payments were being made under such contract pursuant to a written election providing a specific schedule for the distribution of the taxpayer's interest in such contract, and

"(B) such distribution is made pursuant to such written election."

(13) Section 72(t) of the 1986 Code shall apply to any distribution without regard to whether such distribution is made without the consent of the participant pursuant to section 411(a)(11) or section 417(e) of the 1986 Code.

(d) AMENDMENTS RELATED TO SECTION 1124 OF THE REFORM ACT.—

(1) Section 1124(a) of the Reform Act is amended to read as follows:

"(a) IN GENERAL.—If an employee dies, separates from service, or becomes disabled before 1987 and an individual, trust, or estate receives a lump-sum distribution with respect to such employee after December 31, 1986, and before March 16, 1987, on account of such death, separation from service, or disability, then, for purposes of the Internal Revenue Code of 1986, such individual, estate, or trust may treat such distribution as if it were received in 1986."

(2) Section 1124(b) of the Reform Act is amended—

(A) by striking out "employee" each place it appears and inserting in lieu thereof "individual, estate, or trust", and

(B) by inserting "with respect to an employee" after "receives".

(3) Section 1124 of the Reform Act is amended by adding at the end thereof the following new subsection:

"(c) LUMP SUM DISTRIBUTION.—For purposes of this section, the term 'lump sum distribution' has the meaning given such term by section 402(e)(4)(A) of the Internal Revenue Code of 1986, without regard to subparagraph (B) or (H) of section 402(e)(4) of such Code."

(e) AMENDMENTS RELATED TO SECTION 1131 OF THE REFORM ACT.—

(1) Subsection (c) of section 4972 of the 1986 Code (defining nondeductible contributions) is amended to read as follows:

"(c) NONDEDUCTIBLE CONTRIBUTIONS.—For purposes of this section—

"(1) IN GENERAL.—The term 'nondeductible contributions' means, with respect to any qualified employer plan, the sum of—

"(A) the excess (if any) of—

"(i) the amount contributed for the taxable year by the employer to or under such plan, over

"(ii) the amount allowable as a deduction under section 404 for such contributions (determined without regard to subsection (e) thereof), and

"(B) the amount determined under this subsection for the preceding taxable year reduced by the sum of—

"(i) the portion of the amount so determined returned to the employer during the taxable year, and

"(ii) the portion of the amount so determined deductible under section 404 for the taxable year (determined without regard to subsection (e) thereof).

"(2) ORDERING RULE FOR SECTION 404.—For purposes of paragraph (1), the amount allowable as a deduction under section 404 for any taxable year shall be treated as—

"(A) first from carryforwards to such taxable year from preceding taxable years (in order of time), and

"(B) then from contributions made during such taxable year.

"(3) CATCHUP CONTRIBUTIONS ALLOWED FOR UNDERFUNDED PLANS.—In the case of a plan to which title IV of the Employee Retirement Income Security Act of 1974 applies, if, as of the close of the plan year with or within which the taxable year begins—

"(A) the liabilities of such plan (determined as if the plan had terminated as of such time), exceed

"(B) the assets of such plan,

the amount under paragraph (1)(A)(ii) for such taxable year shall be increased by the amount of such excess.

"(4) CONTRIBUTIONS WHICH MAY BE RETURNED TO EMPLOYER.—In determining the amount of nondeductible contributions for any taxable year, there shall not be taken into account any contribution for such taxable year which is distributed to the employer in a distribution described in section 4980(c)(2)(B)(ii) if such distribution is made on or before the last day on which a contribution may be made for such taxable year under section 404(a)(6).

"(5) PRE-1987 CONTRIBUTIONS.—The term 'nondeductible contribution' shall not include any contribution made for a taxable year beginning before January 1, 1987."

(2) Paragraph (1) of section 4972(d) of the 1986 Code (defining qualified employer plan) is amended to read as follows:

"(1) QUALIFIED EMPLOYER PLAN.—

"(A) IN GENERAL.—The term 'qualified employer plan' means—

"(i) any plan meeting the requirements of section 401(a) which includes a trust exempt from tax under section 501(a),

"(ii) an annuity plan described in section 403(a), and

"(iii) any simplified employee pension (within the meaning of section 408(k)).

"(B) EXEMPTION FOR GOVERNMENTAL AND TAX EXEMPT PLANS.—The term 'qualified employer plan' does not include a plan described in subparagraph (A) or (B) of section 4980(c)(1)."

(3) Section 1131(d) of the Reform Act is amended to read as follows:

"(d) EFFECTIVE DATES.—

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years beginning after December 31, 1986.

"(2) SPECIAL RULES FOR COLLECTIVE BARGAINING AGREEMENTS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before March 1, 1986, the amendments made by this section shall not apply to contributions pursuant to any such agreement for taxable years beginning before the earlier of—

"(A) January 1, 1989, or

"(B) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof after February 28, 1986)."

(4)(A) Subparagraph (A) of section 404(a)(7) of the 1986 Code is amended—

(i) by striking out "provisions" and inserting in lieu thereof "paragraphs", and

(ii) by inserting "or in connection with trusts or plans described in 2 or more of such paragraphs" after "1 or more defined benefit plans".

(B) Paragraph (3) of section 404(h) of the 1986 Code is amended to read as follows:

"(3) Coordination with subsection (a)(7).—For purposes of subsection (a)(7), a simplified employee pension shall be treated as if it were a separate stock bonus or profit-sharing trust."

(f) Amendments Related to Section 1132 of the Reform Act.—

(1) Section 4980(c)(1)(A) of the 1986 Code (defining qualified plan) is amended by striking out "this subtitle" and inserting in lieu thereof "subtitle A".

(2) Section 4980(c)(3)(A) of the 1986 Code (relating to exception for employee stock ownership plans) is amended—

(A) by inserting "or a tax credit employee stock ownership plan (as described in section 409)" after "section 4975(e)(7)", and

(B) by inserting ", except to the extent necessary to meet the requirements of section 401(a)(28)," after "must".

(3) Subparagraph (C) of section 4980(c)(3) of the 1986 Code is amended—

(A) by striking out "(by reason of the limitations of section 415)", and

(B) by adding at the end thereof the following new sentence:

"The amount allocated in the year of transfer shall not be less than the lesser of the maximum amount allowable under section 415 or ⅓ of the amount attributable to the securities acquired."

(4) Subparagraph (B) of section 1132(c)(2) of the Reform Act is amended by striking out "November 19, 1978" and inserting in lieu thereof "September 19, 1978".

(5) Section 1132(c) of the Reform Act is amended by adding at the end thereof the following new paragraph:

"(5) Special rule for employee stock ownership plans.—Section 4980(c)(3) of the Internal Revenue Code of 1986 (as added by subsection (a)) shall apply to reversions occurring after March 31, 1985."

(6) Section 4980(c)(3) of the 1986 Code is amended by adding at the end thereof the following new subparagraphs:

"(F) No credit or deduction allowed.—No credit or deduction shall be allowed under chapter 1 for any amount transferred to an employee stock ownership plan in a transfer to which this paragraph applies.

"(G) Amount transferred to include income thereon, etc.—The amount transferred shall not be treated as meeting the requirements of subparagraphs (B) and (C) unless amounts attributable to such amount also meet such requirements."

(7) Section 4980(c)(3)(C) of the 1986 Code is amended by adding at the end thereof the following new sentence:

"In the case of dividends on securities held in the suspense account, the requirements of this subparagraph are met only if the dividends are allocated to accounts of participants or paid to participants in proportion to their accounts, or used to repay loans used to purchase employer securities."

(g) Amendments Related to Section 1133 of the Reform Act.—

(1)(A) Section 4981A of the 1986 Code (as added by section 1133 of the Reform Act) is redesignated as section 4980A.

(B) The table of sections for chapter 43 of the 1986 Code is amended by redesignating section 4981A as section 4980A.

(2) Paragraph (1) of section 4980A(c) of the 1986 Code (as redesignated by paragraph (1)) is amended by striking out "$112,500 (adjusted at the same time and in the same manner as under section 415(d))" and inserting in lieu thereof "the greater of—

"(A) $150,000, or

"(B) $112,500 (adjusted at the same time and in the same manner as under section 415(d))."

(3) Section 4980A(c)(2) of the 1986 Code (relating to exclusion of certain distributions), as redesignated by paragraph (1), is amended—

(A) by striking out "employee's" in subparagraph (C) and inserting in lieu thereof "individual's", and

(B) by adding after subparagraph (D) the following new subparagraphs:

"(E) Any retirement distribution with respect to an individual of an annuity contract the value of which is not includible in gross income at the time of the distribution (other than distributions under, or proceeds from the sale or exchange of, such contract).

"(F) Any retirement distribution with respect to an individual of—

"(i) excess deferrals (and income allocable thereto) under section 402(g)(2)(A)(ii), or

"(ii) excess contributions and (income allocable thereto) under section 401(k)(8) or 408(d)(4) or excess aggregate contributions (and income allocable thereto) under section 401(m)(6)."

(4)(A) Section 4980A of the 1986 Code, as redesignated by paragraph (1), is amended by adding at the end thereof the following new subsection:

"(f) Exemption of Accrued Benefits in Excess of $562,500 on August 1, 1986.—For purposes of this section—

"(1) In general.—If an election is made with respect to an eligible individual to have this subsection apply, the individual's excess distributions and excess retirement accumulation shall be computed without regard to any distributions or interests attributable to the accrued benefit of the individual as of August 1, 1986.

"(2) Reduction in amounts which may be received without tax.—If this subsection applies to any individual—

"(A) Excess distributions.—Subsection (c)(1) shall be applied—

"(i) without regard to subparagraph (A), and

"(ii) by reducing (but not below zero) the amount determined under subparagraph (B) thereof by retirement distributions attributable (as determined under rules prescribed by the Secretary) to the individual's accrued benefit as of August 1, 1986.

"(B) Excess retirement accumulation.—The amount determined under subsection (d)(3)(B) (without regard to subsection (c)(1)(A)) with respect to such individual shall be reduced (but not below zero) by the present value of the individual's accrued benefit as of August 1, 1986, which has not been distributed as of the date of death.

"(3) Eligible individual.—For purposes of this subsection, the term 'eligible individual' means any individual if, on August 1, 1986, the present value of such individual's interests in qualified employer plans and individual retirement plans exceeded $562,500.

"(4) Certain amounts excluded.—In determining an individual's accrued benefit for purposes of this subsection, there shall not be taken into account any portion of the accrued benefit—

"(A) payable to an alternate payee pursuant to a qualified domestic relations order (within the meaning of section 414(p)) if includible in income of the alternate payee, or

"(B) attributable to the individual's investment in the contract (as defined in section 72(f)).

"(5) Application to income on grandfathered interests.—

"(A) In general.—Except as provided in this paragraph, for purposes of this subsection (other than paragraph (3)), the accrued benefit of an individual as August 1, 1986, shall include income allocable to such accrued benefit.

"(B) Exceptions.—Subparagraph (A) shall not apply to any individual—

"(i) except as provided by the Secretary, with respect to whom contributions or accruals are made after August 1, 1986, under a plan (or successor plan) under which such individual had an accrued benefit on August 1, 1986, or

"(ii) who elects not to have subparagraph (A) apply.

"(C) Indexing of grandfathered amounts.—

"(i) In general.—If subparagraph (A) does not apply to an individual, for purposes of this subsection (other than paragraph (3)), the individual's accrued benefit as of August 1, 1986, shall be increased for the taxable year by an amount equal to the applicable percentage of such accrued benefit as adjusted under clause (ii).

"(ii) Adjustments.—For purposes of clause (i), the individual's accrued benefit as of August 1, 1986, shall be—

"(I) increased by the amount of any adjustments under clause (i) for preceding taxable years, and

"(II) decreased by the amount of any distributions of such accrued benefit during preceding taxable years.

"(iii) Applicable percentage.—For purposes of this subparagraph, the term 'applicable percentage' means, with respect to any taxable year, the Federal mid-term rate (determined under section 1274(d)) for the 1st month of such year.

"(D) Investment in contract.—For purposes of subparagraphs (A) and (C), the individual's accrued benefit as of August 1, 1986, shall be determined without regard to paragraph (4)(B).

"(6) Election.—An election under paragraph (1) shall be made on an individual's return of tax imposed by chapter 1 or 11 for a taxable year beginning before January 1, 1989."

(B) Section 4980A(c) of the 1986 Code, as redesignated by paragraph (1), is amended by striking out paragraph (5).

(5) Section 4980A(d) of the 1986 Code (relating to increase in estate tax if individual dies with excess accumulation), as redesignated by paragraph (1), is amended—

(A) by striking out "section 2010" in paragraph (2) and inserting in lieu thereof "chapter 11", and

(B) by adding at the end thereof the following new paragraphs:

"(4) Rules for computing excess retirement accumulation.—The excess retirement accumulation of an individual shall be computed without regard to—

"(A) any community property law,

"(B) the value of—

"(i) amounts payable to an alternate payee pursuant to a qualified domestic relations order (within the meaning of section 414(p)) if includible in income of the alternate payee, and "(ii) the individual's investment in the contract (as defined in section 72(f)), and

"(C) the excess (if any) of—

"(i) any interests which are payable immediately after death, over

"(ii) the value of such interests immediately before death.

"(5) Election by spouse to have excess distribution rule apply.—

"(A) In general.—If the spouse of an individual is the beneficiary of all of the interests described in paragraph (3)(A), the spouse may elect—

"(i) not to have this subsection apply, and

"(ii) to have this section apply to such interests and any retirement distribution attributable to such interests as if such interests were the spouse's.

"(B) De minimis exception.—If 1 or more persons other than the spouse are beneficiaries of a de minimis portion of the interests described in paragraph (3)(A)—

"(i) the spouse shall not be treated as failing to meet the requirements of subparagraph (A), and

"(ii) if the spouse makes the election under subparagraph (A), this section shall not apply to such portion or any retirement distribution attributable to such portion."

(6) Subparagraph (B) of section 4980A(d)(3) of the 1986 Code, as redesignated by paragraph (1), is amended to read as follows:

"(B) the present value (as determined under rules prescribed by the Secretary as of the valuation date prescribed in subparagraph (A)) of a single life annuity with annual payments equal to the limitation of subsection (c) (as in effect for the year in which death occurs and as if the individual had not died)."

(7) Section 2013 of the 1986 Code (relating to credit for tax on prior transfer) is amended by adding at the end thereof the following new subsection:

"(g) Treatment of Additional Tax Under Section 4980A.—For purposes of this section, the estate tax paid shall not include any portion of such tax attributable to section 4980A(d)."

(8) Paragraph (1) of section 1133(c) of the Reform Act is amended by inserting ", other than a distribution with respect to a decedent dying before January 1, 1987" after "1986".

(9) Section 4980A(d)(3)(A) of the 1986 Code is amended by inserting "(other than as a beneficiary, determined after application of paragraph (5))" after "the individual's interests".

(10) Section 691(c)(1) of the 1986 Code is amended by adding at the end thereof the following new subparagraph:

"(C) Excess retirement accumulation tax.—For purposes of this subsection, no deduction shall be allowed for the portion of the estate tax attributable to the increase in such tax under section 4980A(d)."

(11) Section 2053(c)(1)(B) of the 1986 Code is amended by adding at the end thereof the following new sentence: "This subparagraph shall not apply to any increase in the tax imposed by this chapter by reason of section 4980A(d)."

(12) Section 6018(a) of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(5) Return required if excess retirement accumulation tax.—The executor shall make a return with respect to the estate tax imposed by subtitle B in any case where such tax is increased by reason of section 4980A(d)."

(h) Amendments Related to Section 1134 of the Reform Act.—

(1) Section 72(p)(3)(A) of the 1986 Code (relating to denial of interest deductions in certain cases) is amended by inserting "to which paragraph (1) does not apply by reason of paragraph (2) during the period" after "loan".

(2) Subparagraph (B) of section 72(p)(3) of the 1986 Code is amended to read as follows:

"(B) Period to which subparagraph (A) applies.—For purposes of subparagraph (A), the period described in this subparagraph is the period—

"(i) on or after the 1st day on which the individual to whom the loan is made is a key employee (as defined in section 416(i)), or

"(ii) such loan is secured by amounts attributable to elective deferrals described in subparagraph (A) or (C) of section 402(g)(3)."

(i) Amendments Related to Section 1135 of the Reform Act.—

(1) Subparagraph (A) of section 72(u)(1) of the 1986 Code (relating to annuity contracts not held by natural persons) is amended by inserting "(other than subchapter L)" after "subtitle".

(2) Subparagraph (D) of section 72(u)(3) of the 1986 Code (relating to exceptions) is amended by striking out "until such time as the employee separates from service" and inserting in lieu thereof "until all amounts under such contract are distributed to the employee for whom such contract was purchased or the employee's beneficiary".

(3) Subparagraphs (D) and (E) of section 72(u)(3) of the 1986 Code (relating to exceptions) are each amended by striking out "which".

(4) Paragraph (4) of section 72(u) of the 1986 Code is amended by striking out "and" at the end of subparagraph (A), by striking out the period at the end of subparagraph (B) and inserting in lieu thereof ", and", and by adding at the end thereof the following new subparagraph:

"(C) which provides for a series of substantially equal periodic payments (to be made not less frequently than annually) during the annuity period."

(j) Amendments Related to Section 1136 of the Reform Act.—

(1) Section 401(a)(27) of the 1986 Code is amended by adding at the end thereof the following new subparagraph:

"(B) Plan must designate type.—In the case of a plan which is intended to be a money purchase pension plan or a profit-sharing plan, a trust forming part of such plan shall not constitute a qualified trust under this subsection unless the plan designates such intent at such time and in such manner as the Secretary may prescribe."

(2) Section 401(a)(27) of the 1986 Code is amended by striking out "(27)" and inserting in lieu thereof:

"(27) Determinations as to profit-sharing plans.—

"(A) Contributions need not be based on profits.—".

(k) Amendment Related to Section 1139 of the Reform Act.—Clause (i) of section 1139(d)(2)(A) of the Reform Act is amended by striking out "before January" and inserting in lieu thereof "after January".

(l) Amendments Related to Section 1140 of the Reform Act.—

(1) Subsection (a) of section 1140 of the Reform Act is amended by striking out "or subtitle C" and inserting in lieu thereof ", subtitle C, or title XVIII of this Act".

(2) Section 1140(c) of the Reform Act is amended by inserting "on or" after "beginning" the second place it appears.

(3) Section 1140(c) is amended by adding at the end thereof the following new flush sentence:

"For purposes of paragraph (1)(B) and any other provision of this title, an agreement shall not be treated as terminated merely because the plan is amended pursuant to such agreement to meet the requirements of any amendment made by this title or title XVIII of this Act."

(m) Amendments Related to Section 1145 of the Reform Act.—

(1) Subsection (f) of section 303 of the Retirement Equity Act of 1984 is amended by striking out "July 24, 1984" and inserting in lieu thereof "July 17, 1984".

(2)(A) Subparagraph (E) of section 401(a)(11) of the 1986 Code (relating to cross reference) is redesignated as subparagraph (F).

(B) Paragraph (3) of section 205(b) of the Employee Retirement Income Security Act of 1974, as added by section 1145(b) of the Reform Act, is redesignated as paragraph (4).

(n) Amendments Related to Section 1147 of the Reform Act.—

(1)(A) Subparagraph (C) of section 7701(j)(1) of the 1986 Code (relating to tax treatment of Federal Thrift Savings Fund) is amended by inserting ", section 401(k)(4)(B)," after "paragraph (2)".

(B) Section 8440(a)(3) of title 5, United States Code, is amended by inserting ", 401(k)(4)(B) of such Code," after "subsection (b)".

(2)(A) Section 7701(j)(2) of the 1986 Code (relating to nondiscrimination requirements) is amended—

(i) by striking out "401(m)(8)" and inserting in lieu thereof "401(m)(6)", and

(ii) by adding at the end thereof the following new sentence: "The Thrift Savings Fund may elect to have the nondiscrimination requirements applied separately to contributions to the Fund with respect to employees covered by the Civil Service Retirement and Disability System under chapter 83 of title 5, United States Code."

(B) Section 8440(b)(1) of title 5, United States Code, is amended by adding at the end thereof the following new sentence:

"The Fund may elect to have the nondiscrimination requirements applied separately to contributions to the Fund with respect to employees covered by the Civil Service Retirement and Disability System under chapter 83 of this title."

SEC. 10211B. AMENDMENTS RELATED TO SUBTITLES B AND C OF TITLE XI OF THE REFORM ACT.

(a) Amendments Related to Section 1151 of the Reform Act.—

(1) Paragraph (2) of section 89(a) of the 1986 Code (relating to year of inclusion) is amended to read as follows:

"(2) Year of inclusion.—

"(A) In general.—Except as provided in subparagraph (B), any amount included in gross income under paragraph (1) shall be taken into account for the taxable year of the employee with or within which the plan year ends.

"(B) Election to delay inclusion for 1 year.—If an employer maintaining a plan with a plan year ending after September 30 and on or before December 31 of a calendar year elects the application of this subparagraph—

"(i) amounts included in gross income under paragraph (1) with respect to employees of such employer shall be taken into account for the taxable year of the employee following the taxable year determined under subparagraph (A), but

"(ii) any deduction of the employer which is attributable to such amounts shall be allowable for the taxable year with or within which the plan year following the plan year in which the excess benefits occurred ends."

(2) Paragraph (4) of section 89(b) of the 1986 Code (defining nontaxable benefits) is amended by adding at the end thereof the following new sentence: "Such term includes any group-term life insurance the cost of which is includible in gross income under section 79."

(3) Paragraph (1) of section 89(g) of the 1986 Code (relating to the aggregation of comparable health plans) is amended by adding at the end thereof the following new subparagraph:

"(C) Employees covered by more than 1 plan.—The Secretary may provide that 2 or more plans providing benefits to the same participant shall be treated as 1 plan for purposes of applying subsections (d)(1)(B), (d)(2), and (f)."

(4) Subparagraph (B) of section 89(g)(2) of the 1986 Code (relating to sworn statements) is amended by adding at the end thereof the following new sentence: "No statement shall be required under clause (ii) with respect to any individual eligible for coverage at no cost under a health plan which provides core health benefits and with respect to whom the employee does not elect any health coverage from the employer."

(5) Subparagraph (D) of section 89(g)(2) of the 1986 Code is amended by striking out "under such plan" and inserting in lieu thereof "under such plans".

(6) Paragraph (6) of section 89(g) of the 1986 Code (relating to operating rules) is amended by striking out "subsection (d)(1)(A)(ii) or of" and by striking out "eligibility requirements and" in the heading thereof.

(7) Subparagraph (A) of section 89(h)*(1)* of the 1986 Code (relating to excluded employees) is amended by inserting "(or 1st day of a period of less than 31 days specified by the plan)" after "month".

(8) Section 89(j) of the 1986 Code (relating to other definitions and special rules) is amended by adding at the end thereof the following new paragraph:

"(12) Employers with only highly compensated employees.—The requirements of subsections (d) and (e) shall not apply to any statutory employee benefit plan for any year for which the only employees of the employer maintaining the plan are highly compensated employees."

(9) Section 89(k) of the 1986 Code (relating to requirement that plan be in writing) is amended by adding at the end thereof the following new paragraph:

"(5) Loss of exemption for certain plans.—If a plan described in paragraph (2)(E) fails to meet the requirements of paragraph (1), the organization which is part of such plan shall not be exempt from tax under section 501(a)."

(10) Section 6652(l)(2)(B) of the 1986 Code (relating to amount of additional tax) is amended by striking out "subsection (g)(3)" and inserting in lieu thereof "subsection (g)(3)(C)(i)".

(11)(A) Subsection (a) of section 125 of the 1986 Code is amended to read as follows:

"(a) General Rule.—Except as provided in subsection (b), no amount shall be included in the gross income of a participant in a cafeteria plan solely because, under the plan, the participant may choose among the benefits of the plan."

(B) Paragraph (1) of section 125(b) of the 1986 Code is amended by striking out "A plan shall be treated as failing to meet the requirements of this subsection" and inserting in lieu thereof "In the case of a highly compensated employee, subsection (a) shall not apply to any benefit attributable to a plan year".

(C) Paragraph (2) of section 125(b) of the 1986 Code is amended by striking out "a plan shall be treated as failing to meet the requirements of this subsection" and inserting in lieu thereof "subsection (a) shall not apply to any plan year".

(12) Subparagraph (B) of section 125(c)(1) of the 1986 Code (defining cafeteria plans) is amended to read as follows:

"(B) the participant may choose among 2 or more benefits consisting of cash and qualified benefits."

(13)(A) Paragraph (1) of section 125(e) of the 1986 Code (defining qualified benefits) is amended by inserting "and without regard to section 89(a)" after "subsection (a)".

(B) The last sentence of section 125(b)(2) of the 1986 Code is amended to read as follows: "For purposes of the preceding sentence, qualified benefits shall not include benefits which (without regard to this paragraph) are includible in gross income."

(14) Subsection (d) of section 129 of the 1986 Code is amended by redesignating paragraph (8) as paragraph (7).

(15) Paragraph (7) of section 129(d) of the 1986 Code (as so redesignated) is amended—

(A) by inserting "under all plans of the employer" after "employees" the 2nd and 3rd time it appears in subparagraph (A),

(B) by striking out "there shall be disregarded" in subparagraph (B) and inserting in lieu thereof "a plan may disregard", and

(C) by striking out "415(q)(7)" in subparagraph (B) and inserting in lieu thereof "414(q)(7)".

(16) Section 414(m)(4) of the 1986 Code is amended by inserting "and" at the end of subparagraph (A), by striking out the comma at the end of subparagraph (B) and inserting in lieu thereof a period, and by striking out subparagraphs (C) and (D).

(17) Paragraph (2) of section 414(t) of the 1986 Code is amended by striking out "132," and inserting in lieu thereof "132, 162(i)(2), 162(k),".

(18) Paragraph (6) of section 129(e) of the 1986 Code is amended by striking out "of subsection (d)" and inserting in lieu thereof "of subsection (d) (other than paragraphs (4) and (7) thereof)".

(19) Subparagraph (C) of section 414(n)(3) of the 1986 Code is amended by striking out "132," and inserting in lieu thereof "132, 162(i)(2), 162(k),".

(20) Section 414(t)(1) of the 1986 Code (relating to application of controlled group rules to certain employees) is amended by striking out "of section 414" each place it appears.

(21) Section 89(j)(6) of the 1986 Code is amended by striking out "in subparagraph (A), (B), or (C) of subsection (i)(2)".

(22)(A) Section 3121 of the 1986 Code (relating to definitions) is amended by adding at the end thereof the following new subsection:

"(x) Benefits Provided Under Certain Employee Benefit Plans.—Notwithstanding any paragraph of subsection (a) (other than paragraph (1)), the term 'wages' shall include any amount which is includible in gross income by reason of section 89."

(B) Section 3231(e) of the 1986 Code (defining compensation) is amended by adding at the end thereof the following new paragraph:

"(8) Benefits provided under certain employee benefit plans.—Notwithstanding any other paragraph of this subsection (other than paragraph (2)), the term 'compensation' shall include any amount which is includible in gross income by reason of section 89."

(C) Section 3306 of the 1986 Code (relating to definitions) is amended by adding at the end thereof the following new subsection:

"(t) Benefits Provided Under Certain Employee Benefit Plans.—Notwithstanding any paragraph of subsection (b) (other than paragraph (1)), the term 'wages' shall include any amount which is includible in gross income by reason of section 89."

(D) Section 3401 of the 1986 Code (relating to definitions) is amended by adding at the end thereof the following new subsection:

"(g) Benefits Provided Under Certain Employee Benefit Plans.—Notwithstanding any paragraph of subsection (a), the term 'wages' shall include any amount which is includible in gross income by reason of section 89."

(E) The third to last sentence of section 209 of the Social Security Act is amended—

(i) by striking out the period at the end of clause (2) and inserting in lieu thereof ", or", and

(ii) by inserting after clause (2) the following new clause:

"(3) Any amount required to be included in gross income under section 89 of the Internal Revenue Code of 1986."

(23)(A) Sections 3121(a)(5)(G) and 3306(b)(5)(G) of the 1986 Code are each amended by inserting "if such payment would not be treated as wages without regard to such plan and it is reasonable to believe that (if section 125 applied for purposes of this section) section 125 would not treat any wages as constructively received" after "section 125)".

(B) Section 209(e)(9) of the Social Security Act is amended by inserting "if such payment would not be treated as wages without regard to such plan and it is reasonable to believe that (if section 125 applied for purposes of this section) section 125 would not treat any wages as constructively received" after "1986)".

(24) Section 1151(h)(3) of the Reform Act is amended by striking out "Section 6039B(c)" and inserting in lieu thereof "Section 6039D(c)".

(25) Paragraph (1) of section 1151(k) of the Reform Act is amended by adding at the end thereof the following new sentence:

"Notwithstanding the preceding sentence, the amendments made by subsections (e)(1) and (i)(3)(C) shall, to the extent they relate to sections 106, 162(i)(2), and 162(k) of the Internal Revenue Code of 1986, apply to years beginning after 1986."

(26) Section 1151(k) of the Reform Act is amended by adding at the end thereof the following new paragraph:

"(6) Certain plans maintained by educational institutions.—If an educational organization described in section 170(b)(1)(A)(ii) of the Internal Revenue Code of 1986 makes an election under this paragraph with respect to a plan described in section 125(c)(2)(C) of such Code, the amendments made by this section shall apply with respect to such plan for plan years beginning after the date of the enactment of this Act."

(27)(A) Section 4976 of the 1986 Code is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

"(c) Tax on Funded Welfare Benefit Funds Which Include Discriminatory Employee Benefit Plan.—

"(1) In general.—If—

"(A) an employer maintains a welfare benefit fund, and

"(B) a discriminatory employee benefit plan (within the meaning of section 89) is part of such fund for any plan year,

there is hereby imposed on such employer for the taxable year with or within which the plan year ends a tax in the amount determined under paragraph (2).

"(2) Amount of tax.—The amount of the tax under paragraph (1) shall be equal to the excess (if any) of—

"(A) the product of the highest rate of tax imposed by section 11, multiplied by the lesser of—

"(i) the aggregate excess benefits (as defined in section 89) for such plan year, or

"(ii) the taxable income of the fund for such plan year, over

"(B) the amount of tax imposed by chapter 1 on such fund for such plan year."

(B) Section 4976(b) of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(5) Limitation in case of benefits to which section 89 applies.—If section 89 applies to any post-retirement medical benefit or life insurance benefit provided by a fund, the amount of the disqualified benefit under paragraph (1)(B) with respect to such benefit shall not exceed the aggregate excess benefits provided by the plan (as determined under section 89)."

(C) Section 505(a)(1) of the 1986 Code is amended by adding at the end thereof the following new subsection: "This paragraph shall not apply to any organization by reason of a failure to meet the requirements of subsection (b) with respect to a benefit to which section 89 applies."

(28) Section 89(g)(6)(B) of the 1986 Code is amended by striking out "and (C)" and inserting in lieu thereof ", (C), and (D)".

(29) Section 89(h)(4) of the 1986 Code is amended by striking out "subsection (h)(5)" and inserting in lieu thereof "subsection (g)(5)".

(30) Section 89(k)(1) of the 1986 Code is amended by striking out the last sentence and inserting in lieu thereof the following new sentences:

"Such inclusion shall be coordinated (under regulations prescribed by the Secretary) with any inclusion under subsection (a) with respect to such plan. In the case of a statutory employee benefit plan described in subsection (i)(1)(B), any amount required to be included in gross income under this subsection shall be included in the gross income of the beneficiary."

(31) Section 129(d)(1)(B) of the 1986 Code is amended by striking out "(6)" and inserting in lieu thereof "(7)".

(32)(A) Section 129(d) of the 1986 Code is amended—

(i) by striking out the last sentence of paragraph (3), and

(ii) by inserting at the end thereof the following new paragraph:

"(8) Excluded employees.—For purposes of paragraphs (2), (3), and (7), there shall be excluded from consideration employees who are excluded from consideration under section 89(h)."

(B) Sections 117(d)(4), 120(c)(2), 127(b)(2), 132(h)(1), and 505(b)(2) of the 1986 Code are each amended—

(i) by striking out "may" the first place it appears and inserting in lieu thereof "shall", and

(ii) by striking out "may be" the second place it appears and inserting in lieu thereof "are".

(33) Section 505(b) of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(7) $200,000 compensation limit.—A plan shall not be treated as meeting the requirements of this subsection unless under the plan the annual compensation of each employee taken into account for any year does not exceed $200,000. The Secretary shall adjust the $200,000 amount at the same time and in the same manner as under section 415(d)."

(34) Section 3401(a) of the 1986 Code is amended by inserting "or" at the end of paragraph (18), by striking out paragraph (19), and by redesignating paragraph (20) as paragraph (19).

(b) Amendments Related to Section 1161 of the Reform Act.—

(1) Section 162(m) of the 1986 Code (relating to special rules for health insurance costs of self-employed individuals) is amended by redesignating paragraph (4) as paragraph (5) and by inserting after paragraph (3) the following new paragraph:

"(4) Deduction not allowed for self-employment tax purposes.—The deduction allowable by reason of this subsection shall not be taken into account in determining an individual's net earnings from self-employment (within the meaning of section 1402(a)) for purposes of chapter 2 and the Social Security Act."

(2) Section 162(m) of the 1986 Code (relating to cross reference) as redesignated by section 1161(a) of the Reform Act, is redesignated as subsection (n).

(3) Section 162(m)(2)(A) of the 1986 Code is amended by inserting: "derived by the taxpayer from the trade or business with repect to which the plan providing the medical care coverage is established" after "401(c))".

(c) Amendments Related to Section 1163 of the Reform Act.—

(1) Paragraph (8) of section 129(e) of the 1986 Code (relating to treatment of onsite facilities) is amended—

(A) by inserting "maintained by an employer" after "onsite facility",

(B) by inserting "of dependent care assistance provided to an employee" after "the amount",

(C) by inserting "of the facility by a dependent of the employee" after "utilization" in subparagraph (A), and

(D) by inserting "with respect to such dependent" after "provided" in subparagraph (B).

(2) Paragraph (2) of section 129(a) of the 1986 Code is amended to read as follows:

"(2) Limitation of exclusion.—

"(A) In general.—No amount shall be excluded under paragraph (1) for dependent care services provided during a taxable year to the extent that the dependent care assistance provided with respect to such dependent care services (whether such assistance is provided in such taxable year or another taxable year) exceeds $5,000 ($2,500 in the case of a separate return by a married individual).

"(B) Year of inclusion.—If the dependent care assistance provided to an employee exceeds the limitation of subparagraph (A), such excess shall be included in gross income—

"(i) in the taxable year in which the dependent care services were provided, or

"(ii) in the case of a payment to an employee for dependent care services provided to dependents of the employee, the taxable year in which such payment was received.

"(C) Marital status.—For purposes of this paragraph, marital status shall be determined under the rules of paragraphs (3) and (4) of section 21(e)."

(d) Amendment Related to Section 1164 of the Reform Act.—Section 119(d)(2) of the 1986 Code is amended—

(1) by striking out "(as of the close of the calendar year in which the taxable year begins)" in subparagraph (A)(i), and

(2) by adding at the end thereof the following:

"The appraised value under subparagraph (A)(i) shall be determined as of the close of the calendar year in which the taxable year begins, or, in the case of a rental period not greater than 1 year, at any time during the calendar year in which such period begins."

(e) Amendments Related to Section 1166 of the Reform Act.—Section 7701(a)(20) of the 1986 Code (defining employee) is amended—

(1) by striking out "106, and 125" and inserting in lieu thereof "and 106", and

(2) by inserting "and for purposes of applying section 125 with respect to cafeteria plans," before "the term".

(f) Amendments Related to Section 1168 of the Reform Act.—

(1) Paragraph (1) of section 134(b) of the 1986 Code is amended by striking out "or regulation thereunder" and inserting in lieu thereof ", regulation, or administrative practice".

(2)(A) Section 134(b)(1) of the 1986 Code is amended by inserting "(other than personal use of a vehicle)" after "in-kind benefit".

(B) The amendment made by subparagraph (A) shall apply to taxable years beginning after December 31, 1986.

(3) Section 134(b)(3)(A) of the 1986 Code is amended by striking out "under any provision of law or regulation described in paragraph (1)".

(4) Section 1168(c) of the Reform Act is amended by striking out "1986" and inserting in lieu thereof "1984".

(g) Amendments Related to Section 1172 of the Reform Act.—

(1) Section 1172(b)(1)(A) of the Reform Act is amended by inserting "each place it appears" before the comma.

(2) Paragraphs (2) and (3) of section 409(n) of the 1986 Code (relating to securities received in certain transactions) is amended by inserting "or section 2057" after "section 1042" each place it appears.

(3) Paragraph (1) of section 2057(b) of the 1986 Code (relating to qualified sale) is amended by striking out "is".

(h) Amendments Related to Section 1173 of the Reform Act.—

(1) Section 133 of the 1986 Code (relating to exclusion of interest on securities acquisition loans) is amended by adding at the end thereof the following new subsection:

"(e) Period to Which Interest Exclusion Applies.—

"(1) In general.—In the case of—

"(A) an original securities acquisition loan, and

"(B) any securities acquisition loan (or series of such loans) used to refinance the original securities acquisition loan, subsection (a) shall apply only to interest accruing during the excludable period with respect to the original securities acquisition loan.

"(2) Excludable period.—For purposes of this subsection, the term 'excludable period' means, with respect to any original securities acquisition loan—

"(A) In general.—The 7-year period beginning on the date of such loan.

"(B) Loans described in subsection (b)(1)(A).—If the term of an original securities acquisition loan described in subsection (b)(1)(A) is greater than 7 years, the term of such loan. This subparagraph shall not apply to a loan described in subsection (b)(3)(B).

"(3) Original securities acquisition loan.—For the purposes of this subsection, the term 'original securities acquisition loan' means a securities acquisition loan described in subparagraph (A) or (B) of subsection (b)(1)."

(2)(A) Section 133(b) of the 1986 Code (defining securities acquisition loan) is amended—

(i) by striking out "or are used to refinance such a loan," in paragraph (1)(A),

(ii) by striking out ", except that this subparagraph shall not apply to any loan the commitment period of which exceeds 7 years" in paragraph (1)(B), and

(iii) by adding at the end thereof the following new paragraph:

"(5) Treatment of refinancings.—The term 'securities acquisition loan' shall include any loan which—

"(A) is (or is part of a series of loans) used to refinance a loan described in subparagraph (A) or (B) of paragraph (1), and

"(B) meets the requirements of paragraphs (2) and (3)."

(B) Subparagraph (B) of section 133(b)(3) of the 1986 Code is amended to read as follows:

"(B) repayment terms providing for more rapid repayment of principal or interest on such loan, but only if allocations under the plan attributable to such repayment do not discriminate in favor of highly compensated employees (within the meaning of section 414(q))."

(3) Section 404(k) of the 1986 Code is amended—

(A) by inserting "(whether or not allocated to participants)" after "employer securities" in paragraph (2)(C), and

(B) by adding at the end thereof the following new sentence: "Paragraph (2)(C) shall not apply to dividends from employer securities which are allocated to any participant unless the plan provides that employer securities with a fair market value not less than the amount of such dividends are allocated to such participant for the year which (but for paragraph (2)(C)) such dividends would have been allocated to such participant."

(4) Subparagraph (C) of section 852(b)(5) of the 1986 Code (relating to interest on certain loans used to acquire employer securities) is amended by striking out "paragraph" and inserting in lieu thereof "section".

(5)(A) The amendments made by paragraphs (1) and (2) shall apply to—

(i) any loan used to acquire employer securities after July 18, 1984, and

(ii) loans made after July 18, 1984, which were used (or were part of a series of loans used) to refinance any loan which—

(I) was used to acquire employer securities after May 23, 1984 (July 18, 1984, in the case of a loan described in section 133(b)(3)(B) of the Internal Revenue Code of 1986), and

(II) met the requirements of section 133 of such Code as in effect as of the later of the date on which the loan was made, or July 19, 1984.

In no event shall such amendments apply to any loan described in section 133(b)(1)(B) of such Code which is made before October 22, 1986 (or loan used, or part of a series of loans used, to refinance such a loan).

(B) Subparagraph (B) of section 1173(c)(2) of the Reform Act is amended to read as follows:

"(B) Section 133(b)(1)(A) of the Internal Revenue Code of 1986, as amended by subsection (b)(2), shall apply to any loan used (or part of a series of loans used) to refinance a loan which—

"(i) was used to acquire employer securities after May 23, 1984, and

"(ii) met the requirements of section 133 of the Internal Revenue Code of 1986 as in effect as of the later of—

"(I) the date on which the loan was made, or

"(II) July 19, 1984."

(6) Section 404(k) of the 1986 Code is amended by striking out "merely by reason of any distribution" in the third sentence and inserting in lieu thereof "or as engaging in a prohibited transaction for purposes of section 4975(d)(3) merely by reason of any distribution or payment".

(i) Amendments Related to Section 1174 of the Reform Act.—

(1) Clause (ii) of section 409(o)(1)(A) of the 1986 Code (relating to distribution requirement) is amended by striking out "such year" and inserting in lieu thereof "distribution is required to begin under this clause".

(2) Section 1174(a)(2) of the Reform Act is amended by striking out "plan terminations" and inserting in lieu thereof "distributions".

(3) Section 409(o)(1)(A) of the 1986 Code is amended by striking out "unless the participant otherwise elects" and inserting in lieu thereof "if the participant and, if applicable pursuant to sections 401 (a)(11) and 417, with the consent of the participant's spouse elects".

(j) Amendments Related to Section 1175 of the Reform Act.—

(1) Subclause (II) of section 401(a)(28)(B) of the 1986 Code (relating to method of meeting requirements) is amended by inserting "and within 90 days after the period during which the election may be made, the plan invests the portion of the participant's account covered by the election in accordance with such election" after "clause (i)".

(2) Clause (iv) of section 401(a)(28)(B) of the 1986 Code is amended to read as follows:

"(iv) Qualified election period.—For purposes of this subparagraph, the term 'qualified election period' means the 6-plan-year period beginning with the later of—

"(I) the 1st plan year in which the individual first became a qualified participant, or

"(II) the 1st plan year beginning after December 31, 1986."

(3) The last sentence of section 409(d) of the 1986 Code (relating to employer securities must stay in the plan) is amended by inserting "or to any distribution or reinvestment required under section 401(a)(28)" after "section 401(a)(9)".

(4) Section 4978(d) of the 1986 Code (relating to section not to apply to certain dispositions) is amended by adding at the end thereof the following new paragraph:

"(4) Dispositions to meet diversification requirements.—This section shall not apply to any disposition of qualified securities which is required under section 401(a)(28)."

(5) Section 409(h) of the 1986 Code (relating to right to demand employer securities; put option) is amended by adding at the end thereof the following new paragraph:

"(7) Exception where employee elected diversification.—Paragraph (1)(A) shall not apply with respect to the portion of the participant's account which the employee elected to have reinvested under section 401(a)(28)(B)."

(6) Section 401(a)(28)(B) of the 1986 Code is amended by adding at the end thereof the following new clause:

"(v) Coordination with distribution rules.—Any distribution required by this subparagraph shall not be taken into account in determining whether—

"(I) a subsequent distribution is a lump-sum distribution under section 402(e)(4)(A), or

"(II) section 402(a)(5)(D)(iii) applies to a subsequent distribution."

(k) Amendments Related to Section 1176 of the Reform Act.—

(1) Section 401(a)(22) of the 1986 Code is amended by striking out "is not publicly traded" each place it appears and inserting in lieu thereof "is not readily tradable on an established market".

(2) Section 401(a)(22) of the 1986 Code is amended by adding at the end thereof the following new sentence: "For purposes of the preceding sentence, subsections (b), (c), (m), and (o) of section 414 shall not apply except for determining whether stock of the employer is not readily tradable on an established market."

(3) Section 409(l)(4) of the 1986 Code (relating to nonvoting common stock may be acquired in certain cases), as added by section 1176(b) of the Reform Act, is redesignated as paragraph (5).

(l) Amendments Related to Section 1177 of the Reform Act.—

(1) Paragraph (2) of section 1177(b) of the Reform Act is amended by striking out "section 143(d)(3)(C)" and inserting in lieu thereof "section 146(d)(3)(C)".

(2) Subsection (b) of section 1177 of the Reform Act is amended by striking out "made by this subtitle" and inserting in lieu thereof "made by section 1175".

SEC. 10212. AMENDMENTS RELATED TO TITLE XII OF THE REFORM ACT.

(a) Amendments Related to Section 1201 of the Reform Act.—

(1)(A) Subparagraph (C) of section 904(d)(2) of the 1986 Code is amended to read as follows:

"(C) Financial services income.—

"(i) In general.—Except as otherwise provided in this subparagraph, the term 'financial services income' means any income which is received or accrued by any person predominantly engaged in the active conduct of a banking, insurance, financing, or similar business, and which is—

"(I) described in clause (ii),

"(II) passive income (determined without regard to subclause (I) of subparagraph (A)(iii)), or

"(III) export financing interest which (but for subparagraph (B)(ii)) would be high withholding tax interest.

"(ii) General description of financial services income.—Income is described in this clause if such income is—

"(I) derived in the active conduct of a banking, financing, or similar business,

"(II) derived from the investment by an insurance company of its unearned premiums or reserves ordinary and necessary for the proper conduct of its insurance business, or

"(III) of a kind which would be insurance income as defined in section 953(a) determined without regard to those provisions of paragraph (1)(A) of such section which limit insurance income to income from countries other than the country in which the corporation was created or organized.

"(iii) Exceptions.—The term 'financial services income' does not include—

"(I) any high withholding tax interest,

"(II) any dividend from a noncontrolled section 902 corporation, and

"(III) any export financing interest not described in clause (i)(III)."

(B) Clause (i) of section 864(d)(5)(A) of the 1986 Code is amended by striking out "(C)(iii)" and inserting in lieu thereof "(C)(iii)(III)".

(2) Subparagraph (D) of section 904(d)(2) of the 1986 Code is amended by adding at the end thereof the following new sentence: "Such term does not include any dividend from a noncontrolled section 902 corporation and does not include any financial services income."

(3) Paragraph (3) of section 904(d) of the 1986 Code is amended by adding at the end thereof the following new subparagraph:

"(H) Exception for certain high withholding tax interest.—This paragraph shall not apply to any amount which—

"(i) without regard to this paragraph, is high withholding tax interest (including any amount treated as high withholding tax interest under paragraph (2)(B)(iii)), and

"(ii) would (but for this subparagraph) be treated as financial services income under this paragraph.

The amount to which this paragraph does not apply by reason of the preceding sentence shall not exceed the porton of the amount referred to in clause (ii) which consists of interest or equivalent amounts."

(4) Subparagraph (E) of section 904(d)(3) of the 1986 Code is amended—

(A) by striking out "none of its income" and inserting in lieu thereof "none of its foreign base company income (as defined in section 954(a) without regard to section 954(b)(5)) and none of its gross insurance income (as defined in section 954(b)(3)(C))", and

(B) by striking out "income (other than high withholding tax interest and dividends from a noncontrolled section 902 corporation)" and inserting in lieu thereof "passive income".

(5) Paragraph (2) of section 1201(e) of the Reform Act is amended by adding at the end thereof the following new subparagraph:

"(J) Treatment of affiliated group filing consolidated return.—For purposes of this paragraph, all members of an affiliated group of corporations filing a consolidated return shall be treated as 1 corporation."

(6) Subparagraph (A) of section 904(d)(2) of the 1986 Code is amended—

(A) by striking out "The term" in clause (ii) and inserting in lieu thereof "Except as provided in clause (iii), the term", and

(B) by adding at the end thereof the following new clause:

"(iv) Clarification of application of section 864(d)(6).—In determining whether any income is of a kind which would be foreign personal holding company income, the rules of section 864(d)(6) shall apply only in the case of income of a controlled foreign corporation."

(7) Subparagraph (F) of section 904(d)(3) of the 1986 Code is amended to read as follows:

"(F) Separate category.—For purposes of this paragraph—

"(i) In general.—Except as provided in clause (ii), the term 'separate category' means any category of income described in subparagraph (A), (B), (C), (D), or (E) of paragraph (1).

"(ii) Coordination with high-taxed income provisions.—

"(I) In determining whether any income of a controlled foreign corporation is in a separate category, subclause (III) of paragraph (2)(A)(iii) shall not apply.

"(II) Any income of the taxpayer which is treated as income in a separate category under this paragraph shall be so treated notwithstanding any provision of paragraph (2); except that the determination of whether any amount is high-taxed income shall be made after the application of this paragraph."

(8) Clause (iii) of section 904(d)(2)(B) of the 1986 Code is amended to read as follows:

"(iii) Regulations.—The Secretary may by regulations provide that—

"(I) amounts (not otherwise high withholding tax interest) shall be treated as high withholding tax interest where necessary to prevent avoidance of the purposes of this subparagraph, and

"(II) a tax shall not be treated as a withholding tax or other tax imposed on a gross basis if such tax is in the nature of a prepayment of a tax imposed on a net basis."

(9) Clause (ii) of section 904(d)(2)(I) of the 1986 Code is amended by striking out "except to the extent that" and all that follows down through "and" at the end thereof and inserting in lieu thereof the following: "except that—

"(I) such taxes shall be treated as paid or accrued with respect to shipping income to the extent the taxpayer establishes to the satisfaction of the Secretary that such taxes were paid or accrued with respect to such income,

"(II) in the case of a person described in subparagraph (C)(i), such taxes shall be treated as paid or accrued with respect to financial services income to the extent the taxpayer establishes to the satisfaction of the Secretary that such taxes were paid or accrued with respect to such income, and

"(III) such taxes shall be treated as paid or accrued with respect to high withholding tax interest to the extent the taxpayer establishes to the satisfaction of the Secretary that such taxes were paid or accrued with respect to such income, and".

(10) Clause (i) of section 904(d)(2)(E) of the 1986 Code is amended by striking out "during which it was a controlled foreign corporation" and inserting in lieu thereof "during which it was a controlled foreign corporation and the taxpayer was a United States shareholder in such corporation".

(11) Subparagraph (E) of section 904(d)(1) of the 1986 Code is amended by striking out "dividends" and inserting in lieu thereof "in the case of a corporation, dividends".

(b) Amendment Related to Section 1202 of the Reform Act.—

(1) Paragraph (7) of section 902(c) of the 1986 Code is amended by striking out "this section" the second place it appears and inserting in lieu thereof "this section and section 960".

(2) Paragraph (1) of section 902(c) of the 1986 Code is amended by striking out "sections 964 and 986" and inserting in lieu thereof "sections 964(a) and 986".

(3) For purposes of sections 902 and 960 of the 1986 Code, the increase in earnings and profits of any foreign corporation under section 1023(e)(3)(C) of the Reform Act shall be taken into account ratably over the 10-year period beginning with the corporation's first taxable year beginning after December 31, 1986.

(c) Amendment Related to Section 1203 of the Reform Act.—Paragraph (5) of section 904(f) of the 1986 Code is amended by adding at the end thereof the following new subparagraph:

"(F) Dispositions.—If any separate limitation loss for any taxable year is allocated against any separate limitation income for such taxable year, except to the extent provided in regulations, rules similar to the rules of paragraph (3) shall apply to any disposition of property if gain from such disposition would be in the income category with respect to which there was such separate limitation loss."

(d) Amendments Related to Section 1211 of the Reform Act.—

(1) Subsection (d) of section 865 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(4) Coordination with subsection (c).—

"(A) Gain not in excess of depreciation adjustments sourced under subsection (c).—Notwithstanding paragraph (1), any gain from the sale of an intangible shall be sourced under subsection (c) to the extent such gain does not exceed the depreciation adjustments with respect to such intangible.

"(B) Subsection (c)(2) not to apply to intangibles.—Paragraph (2) of subsection (c) shall not apply to any gain from the sale of an intangible."

(2) Subparagraph (A) of section 865(e)(1) of the 1986 Code is amended by striking out "(d), or (f)" and inserting in lieu thereof "(d)(1)(B) or (3), or (f)".

(3)(A) Clause (ii) of section 865(g)(1)(A) of the 1986 Code is amended by striking out "partnership,".

(B) Subsection (h) of section 865 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(5) Treatment of partnerships.—In the case of a partnership, except as provided in regulations, this section shall be applied at the partner level."

(4) Subsection (f) of section 865 of the 1986 Code is amended to read as follows:

"(f) Stock of Affiliates.—If—

"(1) a United States resident sells stock in an affiliate which is a foreign corporation,

"(2) such sale occurs in a foreign country in which such affiliate is engaged in the active conduct of a trade or business, and

"(3) more than 50 percent of the gross income of such affiliate for the 3-year period ending with the close of such affiliate's taxable year immediately preceding the year in which the sale occurred was derived from the active conduct of a trade or business in such foreign country,

any gain from such sale shall be sourced outside the United States. For purposes of paragraphs (2) and (3), the United States resident may elect to treat an affiliate and all other corporations which are wholly owned (directly or indirectly) by the affiliate as one corporation."

(5) Subparagraph (B) of section 865(e)(2) of the 1986 Code is amended to read as follows:

"(B) Exception.—Subparagraph (A) shall not apply to any sale of inventory property which is sold for use, disposition, or consumption outside the United States if an office or other fixed place of business of the taxpayer in a foreign country materially participated in the sale."

(6) Subsection (g) of section 865 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(3) Special rule for certain stock sales by residents of Puerto Rico.—Paragraph (2) shall not apply to the sale by an individual who was a bona fide resident of Puerto Rico during the entire taxable year of stock in a corporation if—

"(A) such corporation is engaged in the active conduct of a trade or business in Puerto Rico, and

"(B) more than 50 percent of its gross income for the 3-year period ending with the close of such corporation's taxable year immediately preceding the year in which such sale occurred was derived from the active conduct of a trade or business in Puerto Rico.

For purposes of the preceding sentence, the taxpayer may elect to treat a corporation and all other corporations which are wholly owned (directly or indirectly) by such corporation as one corporation."

(7) Subparagraph (B) of section 864(c)(4) of the 1986 Code is amended by striking out "or" at the end of clause (i), by striking out the period at the end of clause (ii) and inserting in lieu thereof "; or", and by adding at the end thereof the following new clause:

"(iii) is derived from the sale or exchange (outside the United States) through such office or other fixed place of business of personal property described in section 1221(1), except that this clause shall not apply if the property is sold or exchanged for use, consumption, or disposition outside the United States and an office or other fixed place of business of the taxpayer in a foreign country participated materially in such sale."

(8) Section 865 of the 1986 Code is amended by redesignating subsections (h), (i), and (j) as subsections (i), (j), and (k), respectively, and by inserting after subsection (g) the following new subsection:

"(h) Treatment of Gain From Sale of Certain Stock or Intangibles.—If—

"(1) gain from the sale of stock in a foreign corporation or an intangible (as defined in subsection (d)(2)) would be sourced in the United States under this section,

"(2) under a treaty obligation of the United States (applied without regard to this section), such gain would be sourced outside the United States, and

"(3) the taxpayer chooses the benefits of this subsection with respect to such gain,

such gain shall be sourced outside the United States (but subsections (a), (b), and (c) of section 904 and sections 902, 907, and 960 shall be applied separately with respect to such gain)."

(9) Subparagraph (A) of section 865(e)(1) of the 1986 Code is amended by striking out "outside the United States" the first place it appears and inserting in lieu thereof "in a foreign country".

(10) Subparagraph (B) of section 864(c)(4) of the 1986 Code is amended—

(A) by striking out ", gain, or loss" each place it appears in the material preceding clause (i),

(B) by striking out "(including any gain or loss realized on the sale or exchange of such property)" in clause (i), and

(C) by striking out ", or gain or loss from the sale or exchange of stock or notes, bonds, or other evidences of indebtedness" in clause (ii).

(11) Clause (i) of section 865(g)(1)(A) of the 1986 Code is amended to read as follows—

"(i) any individual who—

"(I) is a United States citizen or a resident alien and does not have a tax home (as defined in section 911(d)(3)) in a foreign country, or

"(II) is a nonresident alien and has a tax home (as so defined) in the United States, and".

(e) Amendments Related to Section 1212 of the Reform Act.—

(1)(A) Paragraph (3) of section 883(c) of the 1986 Code is amended to read as follows:

"(3) Special rules for publicly traded corporations.—

"(A) Exception.—Paragraph (1) shall not apply to any corporation which is organized in a foreign country meeting the requirements of paragraph (1) or (2) of subsection (a) (as the case may be) and the stock of which is primarily and regularly traded on an established securities market in such foreign country.

"(B) Treatment of stock owned by publicly traded corporation.—Any stock in another corporation which is owned (directly or indirectly) by a corporation meeting the requirements of subparagraph (A) shall be treated as owned by individuals who are residents of the foreign country in which the corporation meeting the requirements of subparagraph (A) is organized."

(B) Paragraph (1) of section 883(c) of the 1986 Code is amended—

(i) by striking out "Paragraphs (1) and (2) of subsection (a)" and inserting in lieu thereof "Paragraph (1) or (2) of subsection (a) (as the case may be)", and

(ii) by striking out "such paragraphs (1) and (2)" and inserting in lieu thereof "such paragraph".

(2)(A) Paragraphs (1) and (2) of section 883(a) of the 1986 Code are each amended by striking out "to citizens of the United States and".

(B) Paragraphs (1) and (2) of section 872(b) of the 1986 Code are each amended by striking out "and to corporations organized in the United States".

(3)(A) The section heading for section 863 of the 1986 Code is amended to read as follows:

"SEC. 863. SPECIAL RULES FOR DETERMINING SOURCE."

(B) The table of sections for part I of subchapter N of chapter 1 of the 1986 Code is amended by striking out the item relating to section 863 and inserting in lieu thereof the following:

"Sec. 863. Special rules for determining source."

(4) Subsection (c) of section 862 is hereby repealed.

(5) Paragraphs (1) and (2) of section 872(b) of the 1986 Code and paragraphs (1) and (2) of section 883(a) of the 1986 Code are each amended by striking out "operation" and inserting in lieu thereof "international operation".

(f) Amendment Related to Section 1213 of the Reform Act.—Paragraph (2) of section 863(e) of the 1986 Code is amended by striking out "foreign country" each place it appears and inserting in lieu thereof "foreign country (or possession of the United States)".

(g) Amendments Related to Section 1214 of the Reform Act.—

(1) Paragraph (1) of section 1214(d) of the Reform Act is amended to read as follows:

"(1) In general.—The amendments made by this section shall apply to payments made in a taxable year of the payor beginning after December 31, 1986."

(2) Subparagraph (B) of section 1214(d)(2) of the Reform Act is amended by striking out "section 904(d)(2)(G)" and inserting in lieu thereof "section 904(d)(2)(H)".

(3) Subparagraph (B) of section 861(c)(1) of the 1986 Code is amended—

(A) by striking out "subchapter)" in clause (i) and inserting in lieu thereof "subchapter) or, in the case of a corporation, is attributable to income so derived by a subsidiary of such corporation",

(B) by striking out "or chain of subsidiaries of such corporation" in clause (ii), and

(C) by adding at the end thereof the following new sentence:

"For purposes of this subparagraph, the term 'subsidiary' means any corporation in which the corporation referred to in this subparagraph owns (directly or indirectly) stock meeting the requirements of section 1504(a)(2) (determined by substituting '50 percent' for '80 percent' each place it appears)."

(4) Paragraph (1) of section 2105(b) of the 1986 Code is amended by striking out "section 861(c), if any interest thereon would be treated by reason of section 861(a)(1)(A) as income from sources without the United States" and inserting in lieu thereof "section 871(i)(3), if any interest thereon would not be subject to tax by reason of section 871(i)(1)".

(5) Paragraph (2) of section 864(c) of the 1986 Code is amended by striking out the last sentence.

(6) Paragraph (3) of section 907(c) of the 1986 Code is amended:

(A) by striking out subparagraph (B) and redesignating subparagraphs (C) and (D) as subparagraphs (B) and (C), respectively, and

(B) by striking out "and dividends described in subparagraph (B)".

(h) Amendments Related to Section 1215 of the Reform Act.—

(1) Paragraph (4) of section 864(e) of the 1986 Code is amended to read as follows:

"(4) Basis of stock in nonaffiliated 10-percent owned corporations adjusted for earnings and profits changes.—

"(A) In general.—For purposes of allocating and apportioning expenses on the basis of assets, the adjusted basis of any stock in a nonaffiliated 10-percent owned corporation shall be—

"(i) increased by the amount of the earnings and profits of such corporation attributable to such stock and accumulated during the period the taxpayer held such stock, or

"(ii) reduced (but not below zero) by any deficit in earnings and profits of such corporation attributable to such stock for such period.

"(B) Nonaffiliated 10-percent owned corporation.—For purposes of this paragraph, the term 'nonaffiliated 10-percent owned corporation' means any corporation if—

"(i) such corporation is not included in the taxpayer's affiliated group, and

"(ii) members of such affiliated group own 10 percent or more of the total combined voting power of all classes of stock of such corporation entitled to vote.

"(C) Earnings and profits of lower tier corporations taken into account.—

"(i) In general.—If, by reason of holding stock in a nonaffiliated 10-percent owned corporation, the taxpayer is treated under clause (iii) as owning stock in another corporation with respect to which the stock ownership requirements of clause (ii) are met, the adjustment under subparagraph (A) shall include an adjustment for the amount of the earnings and profits (or deficit therein) of such other corporation which are attributable to the stock the taxpayer is so treated as owning and to the period during which the taxpayer is treated as owning such stock.

"(ii) STOCK OWNERSHIP REQUIREMENTS.—The stock ownership requirements of this clause are met with respect to any corporation if members of the taxpayer's affiliated group own (directly or through the application of clause (iii)) 10 percent or more of the total combined voting power of all classes of stock of such corporation entitled to vote.

"(iii) STOCK OWNED THROUGH ENTITIES.—For purposes of this subparagraph, stock owned (directly or indirectly) by a corporation, partnership, or trust shall be treated as being owned proportionately by its shareholders, partners, or beneficiaries. Stock considered to be owned by a person by reason of the application of the preceding sentence, shall, for purposes of applying such sentence, be treated as actually owned by such person.

"(D) COORDINATION WITH SUBPART F, ETC.—For purposes of this paragraph, proper adjustment shall be made to the earnings and profits of any corporation to take into account any earnings and profits included in gross income under section 951 or under any other provision of this title and reflected in the adjusted basis of the stock."

(2)(A) Paragraph (1) of section 864(e) of the 1986 Code is amended by striking out "from sources outside the United States".

(B) Subsection (h) of section 936 of the 1986 Code is amended by redesignating paragraph (7) as paragraph (8) and by inserting after paragraph (6) the following new paragraph:

"(7) SECTION 864(e)(1) NOT TO APPLY.—This subsection shall be applied as if section 864(e)(1) (relating to treatment of affiliated groups) had not been enacted."

(C) The heading for part I of subchapter N of chapter 1 of the 1986 Code is amended to read as follows:

"PART I—SOURCE RULES AND OTHER GENERAL RULES RELATING TO FOREIGN INCOME".

(D) The table of parts for subchapter N of chapter 1 of the 1986 Code is amended by striking out the item relating to part I and inserting in lieu thereof the following:

"Part I. Source rules and other general rules relating to foreign income."

(3) Paragraph (3) of section 864(e) of the 1986 Code is amended by striking out the last sentence and inserting in lieu thereof the following: "A similar rule shall apply in the case of the portion of any dividend (other than a qualifying dividend as defined in section 243(b)) equal to the deduction allowable under section 243 or 245(a) with respect to such dividend and in the case of a like portion of any stock the dividends on which would be so deductible and would not be qualifying dividends (as so defined)."

(4)(A) Paragraph (5) of section 864(e) of the 1986 Code is amended by adding at the end thereof the following new subparagraph:

"(D) TREATMENT OF BANK HOLDING COMPANIES.—To the extent provided in regulations—

"(i) a bank holding company (within the meaning of section 2(a) of the Bank Holding Company Act of 1956), and

"(ii) any subsidiary of a financial institution described in section 581 or 591 or of any bank holding company if such subsidiary is predominantly engaged (directly or indirectly) in the active conduct of a banking, financing, or similar business,

shall be treated as a corporation described in subparagraph (C)."

(B) Subparagraph (B) of section 864(e)(5) of the 1986 Code is amended by adding at the end thereof the following new sentence: "This subparagraph shall not apply for purposes of paragraph (6)."

(5) Paragraph (6) of section 864(e) of the 1986 Code is amended by striking out "directly allocable and apportioned" and inserting in lieu thereof "directly allocable or apportioned".

(6)(A) Paragraph (7) of section 864(e) of the 1986 Code is amended by striking out "and" at the end of subparagraph (B), by striking out the period at the end of subparagraph (C) and inserting in lieu thereof a comma, and by adding at the end thereof the following new subparagraphs:

"(D) for direct allocation of interest expense in the case of indebtedness resulting in a disallowance under section 246A,

"(E) that, in the case of an insurance company—

"(i) the first sentence of paragraph (3) shall not apply to the policyholders' share of (or, in the case of an insurance company taxable under section 831, 15 percent of) any tax-exempt asset (or income from such an asset), and

"(ii) a similar rule shall apply to any stock (or dividend thereon) which would otherwise be subject to the second sentence of paragraph (3), and

"(F) that this subsection shall not apply for purposes of any provision of this subchapter to the extent the Secretary determines that the application of this subsection for such purposes would not be appropriate."

(B) Subsection (e) of section 864 of the 1986 Code is amended by striking out "(except as provided in regulations)" in the material preceding paragraph (1).

(7) Paragraph (2) of section 1215(c) of the Reform Act is amended to read as follows:

"(2) TRANSITIONAL RULES.—

"(A) GENERAL PHASE-IN.—

"(i) IN GENERAL.—In the case of the 1st 3 taxable years of the taxpayer beginning after December 31, 1986, the amendments made by this section shall not apply to interest expenses paid or accrued by the taxpayer during the taxable year with respect to an aggregate amount of indebtedness which does not exceed the general phase-in amount.

"(ii) GENERAL PHASE-IN AMOUNT.—Except as provided in clause (iii), the general phase-in amount for purposes of clause (i) is the applicable percentage (determined under the following table) of the aggregate amount of indebtedness of the taxpayer outstanding on November 16, 1985:

"In the case of the:	The applicable percentage is:
1st taxable year	75
2nd taxable year	50
3rd taxable year	25.

"(iii) LOWER LIMIT WHERE TAXPAYER REDUCES INDEBTEDNESS.—For purposes of applying this subparagraph to interest expenses attributable to any month, the general phase-in amount shall in no event exceed the lowest amount of indebtedness of the taxpayer outstanding as of the close of any preceding month beginning after November 16, 1985. To the extent provided in regulations, the average amount of indebtedness outstanding during any month shall be used (in lieu of the amount outstanding as of the close of such month) for purposes of the preceding sentence.

"(B) CONSOLIDATION RULE NOT TO APPLY TO CERTAIN INTEREST.—

"(i) IN GENERAL.—In the case of the 1st 5 taxable years of the taxpayer beginning after December 31, 1986—

"(I) subparagraph (A) shall not apply for purposes of paragraph (1) of section 864(e) of the Internal Revenue Code of 1986 (as added by this section), but

"(II) such paragraph (1) shall not apply to interest expenses paid or accrued by the taxpayer during the taxable year with respect to an aggregate amount of indebtedness which does not exceed the special phase-in amount.

"(ii) SPECIAL PHASE-IN AMOUNT.—The special phase-in amount for purposes of clause (i) is the sum of—

"(I) the general phase-in amount as determined for purposes of subparagraph (A),

"(II) the 5-year phase-in amount, and

"(III) the 4-year phase-in amount.

For purposes of applying this subparagraph to interest expense attributable to any month, the special phase-in amount shall in no event exceed the limitation determined under subparagraph (A)(iii).

"(iii) 5-YEAR PHASE-IN AMOUNT.—The 5-year phase-in amount is the lesser of—

"(I) the applicable percentage (determined under the following table for purposes of this subclause) of the 5-year debt amount, or

"(II) the applicable percentage (determined under the following table for purposes of this subclause) of the 5-year debt amount reduced by paydowns:

"In the case of the:	The applicable percentage for purposes of subclause (I) is:	The applicable percentage for purposes of subclause (II) is:
1st taxable year	8⅓	10
2nd taxable year	16⅔	25
3rd taxable year	25	50
4th taxable year	33⅓	100
5th taxable year	16⅔	100.

"(iv) 4-YEAR PHASE-IN AMOUNT.—The 4-year phase-in amount is the lesser of—

"(I) the applicable percentage (determined under the following table for purposes of this subclause) of the 4-year debt amount, or

"(II) the applicable percentage (determined under the following table for purposes of this subclause) of the 4-year debt amount reduced by paydowns to the extent such paydowns exceed the 5-year debt amount:

"In the case of the:	The applicable percentage for purposes of subclause (I) is:	The applicable percentage for purposes of subclause (II) is:
1st taxable year	5	6¼
2nd taxable year	10	16⅔
3rd taxable year	15	37½
4th taxable year	20	100
5th taxable year	0	0.

"(v) 5-YEAR DEBT AMOUNT.—The term '5-year debt amount' means the excess (if any) of—

"(I) the amount of the outstanding indebtedness of the taxpayer on May 29, 1985, over

"(II) the amount of the outstanding indebtedness of the taxpayer as of the close of December 31, 1983.

The 5-year debt amount shall not exceed the aggregate amount of indebtedness of the taxpayer outstanding on November 16, 1985.

"(vi) 4-YEAR DEBT AMOUNT.—The term '4-year debt amount' means the excess (if any) of—

"(I) the amount referred to in clause (v)(II), over

"(II) the amount of the outstanding indebtedness of the taxpayer as of the close of December 31, 1982.

The 4-year debt amount shall not exceed the aggregate amount of indebtedness of the taxpayer outstanding on November 16, 1985, reduced by the 5-year debt amount.

"(vii) PAYDOWNS.—For purposes of applying this subparagraph to interest expenses attributable to any month, the term 'paydowns' means the excess (if any) of—

"(I) the aggregate amount of indebtedness of the taxpayer outstanding on November 16, 1985, over

"(II) the lowest amount of indebtedness of the taxpayer outstanding as of the close of any preceding month beginning after November 16, 1985 (or, to the extent provided in regulations under subparagraph (A)(iii), the average amount of indebtedness outstanding during any such month).

"(C) COORDINATION OF SUBPARAGRAPHS (A) AND (B).—In applying subparagraph (B), there shall first be taken into account indebtedness to which subparagraph (A) applies.

"(D) SPECIAL RULES.—

"(i) In the case of the 1st 9 taxable years of the taxpayer beginning after December 31, 1986, the amendments made by this section shall not apply to interest expenses paid or accrued by the taxpayer during the taxable year with respect to an aggregate amount of indebtedness which does not exceed the applicable percentage (determined under the following table) of the indebtedness described in clause (iii) or (iv):

"In the case of the:	The applicable percentage is:
1st taxable year	90
2nd taxable year	80
3rd taxable year	70
4th taxable year	60
5th taxable year	50
6th taxable year	40
7th taxable year	30
8th taxable year	20
9th taxable year	10.

"(ii) The provisions of this subparagraph shall apply in lieu of the provisions of subparagraphs (A) and (B).

"(iii) INDEBTEDNESS OUTSTANDING ON MAY 29, 1985.—Indebtedness is described in this clause if it is indebtedness (which was outstanding on May 29, 1985) of a corporation incorporated on June 13, 1917, which has its principal place of business in Bartlesville, Oklahoma.

"(iv) INDEBTEDNESS OUTSTANDING ON MAY 29, 1985.—Indebtedness is described in this clause if it is indebtedness (which was outstanding on May 29, 1985) of a member of an affiliated group (as defined in section 1504(a)), the common parent of which was incorporated on August 26, 1926, and has its principal place of business in Harrison, New York.

"(E) TREATMENT OF AFFILIATED GROUP.—For purposes of this paragraph, all members of the same affiliated group of corporations (as defined in section 864(e)(5)(A) of the Internal Revenue Code of 1986, as added by this section) shall be treated as 1 taxpayer whether or not such members filed a consolidated return."

"(F) ELECTION TO HAVE PARAGRAPH NOT APPLY.—A taxpayer may elect (at such time and in such manner as the Secretary of the Treasury or his delegate may prescribe) to have this paragraph not apply. In the case of members of the same affiliated group (as so defined), such an election may be made only if each member consents to such election."

(i) AMENDMENTS RELATED TO SECTION 1221 OF THE REFORM ACT.—

(1)(A) Subparagraph (C) of section 953(c)(3) of the 1986 Code is amended by adding at the end thereof the following new sentence:

"An election under this subparagraph made for any taxable year shall not be effective if the corporation (or any predecessor thereof) was a disqualified corporation for the taxable year for which the election was made or for any prior taxable year beginning after 1986."

(B) Clause (i) of section 953(c)(3)(D) of the 1986 Code is amended to read as follows:

"(i) PERIOD DURING WHICH ELECTION IN EFFECT.—

"(I) IN GENERAL.—Except as provided in subclause (II), any election under subparagraph (C) shall apply to the taxable year for which made and all subsequent taxable years unless revoked with the consent of the Secretary.

"(II) TERMINATION.—If a foreign corporation which made an election under subparagraph (C) for any taxable year is a disqualified corporation for any subsequent taxable year, such election shall not apply to any taxable year beginning after such subsequent taxable year."

(C) Paragraph (3) of section 953(c) of the 1986 Code is amended by adding at the end thereof the following new subparagraph:

"(E) DISQUALIFIED CORPORATION.—For purposes of this paragraph the term 'disqualified corporation' means, with respect to any taxable year, any foreign corporation which is a controlled foreign corporation for such taxable year (determined without regard to this subsection) but only if a United States shareholder (determined without regard to this subsection) owns (within the meaning of section 958(a)) stock in such corporation at some time during such taxable year."

(2)(A) Paragraph (1) of section 953(c) of the 1986 Code is amended by striking out "and" at the end of subparagraph (A), by striking out the period at the end of subparagraph (B) and inserting in lieu thereof ", and", and by adding at the end thereof the following new subparagraph:

"(C) the pro rata share referred to in section 951(a)(1)(A)(i) shall be determined under paragraph (5) of this subsection."

(B) Subsection (c) of section 953 of the 1986 Code is amended by redesignating paragraph (5) as paragraph (6) and by inserting after paragraph (4) the following new paragraph:

"(5) DETERMINATION OF PRO RATA SHARE.—

"(A) IN GENERAL.—The pro rata share determined under this paragraph for any United States shareholder is the lesser of—

"(i) the amount which would be determined under paragraph (2) of section 951(a) if—

"(I) only related person insurance income were taken into account,

"(II) stock owned (within the meaning of section 958(a)) by United States shareholders on the last day of the taxable year were the only stock in the foreign corporation, and

"(III) only distributions received by United States shareholders were taken into account under subparagraph (B) of such paragraph (2), or

"(ii) the amount which would be determined under paragraph (2) of section 951(a) if the entire earnings and profits of the foreign corporation for the taxable year were subpart F income.

"(B) COORDINATION WITH OTHER PROVISIONS.—The Secretary shall prescribe regulations providing for such modifications to the provisions of this subpart as may be necessary or appropriate by reason of subparagraph (A)."

(3)(A) Paragraph (2) of section 953(c) of 1986 Code is amended by striking out "with respect to which the primary insured is" and inserting in lieu thereof "with respect to which the person (directly or indirectly) insured is".

(B) Subparagraph (A) of section 953(c)(3) of the 1986 Code is amended—

(i) by striking out "persons who are the primary insured" and inserting in lieu thereof "persons who are (directly or indirectly) insured", and

(ii) by striking out "to any such primary insured" and inserting in lieu thereof "to any such person".

(C) The amendments made by this paragraph shall apply to taxable years of foreign corporations beginning after December 31, 1987.

(4)(A) Subsection (c) of section 953 of the 1986 Code (as amended by paragraph (2)) is amended by redesignating paragraph (6) as paragraph (7) and by inserting after paragraph (5) the following new paragraph:

"(6) RELATED PERSON.—For purposes of this subsection—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'related person' has the meaning given such term by section 954(d)(3).

"(B) TREATMENT OF CERTAIN LIABILITY INSURANCE POLICIES.—In the case of any policy of insurance covering liability arising from services performed as a director, officer, or employee of a corporation or as a partner or employee of a partnership, the person performing such services and the entity for which such services are performed shall be treated as related persons."

(B) Paragraphs (2) and (3)(A) of section 953(c) of the 1986 Code are each amended by striking out "(within the meaning of section 954(d)(3))".

(5) Paragraph (2) of section 953(c) of the 1986 Code is amended by striking out "insurance income attributable" and inserting in lieu thereof "insurance income (within the meaning of subsection (a)) attributable".

(6) For purposes of applying sections 952(c)(1)(A) and 884 of the 1986 Code, the earnings and profits of any corporation shall be determined without regard to any increase in earnings and profits under section 1023(e)(3)(C) of the Reform Act.

(7) Subsection (b) of section 953 of the 1986 Code is amended—

(A) by striking out paragraph (1) and redesignating paragraphs (2), (3), and (4) as paragraphs (1), (2), and (3), respectively,

(B) by striking out subparagraph (A) of paragraph (1) (as so redesignated) and inserting in lieu thereof the following:

"(A) The small life insurance company deduction.", and

(C) by striking out "(other than those taken into account under paragraph (3))" in paragraph (3) (as so redesignated).

(8) Subparagraph (B) of section 953(c)(3) of the 1986 Code is amended—

(A) by striking out "related person insurance income" and inserting in lieu thereof "related person insurance income (determined on a gross basis)", and

(B) by striking out "its insurance income" and inserting in lieu thereof "its insurance income (as so determined)".

(9) Subclause (II) of section 953(c)(3)(C)(i) of the 1986 Code is amended—

(A) by striking out "all benefits" and inserting in lieu thereof "all benefits (other than with respect to section 884)", and

(B) by striking out "under any income tax treaty" and inserting in lieu thereof "granted by the United States under any treaty".

(10) Paragraph (7) of section 861(a) of the 1986 Code is amended to read as follows:

"(7) Amounts received as underwriting income (as defined in section 832(b)(3)) derived from the issuing (or reinsuring) of any insurance or annuity contract—

"(A) in connection with property in, liability arising out of an activity in, or in connection with the lives or health of residents of, the United States, or

"(B) in connection with risks not described in subparagraph (A) as a result of any arrangement whereby another corporation receives a substantially equal amount of premiums or other consideration in respect to issuing (or reinsuring) any insurance or annuity contract in connection with property in, liability arising out of activity in, or in connection with the lives or health of residents of, the United States."

(11) Subparagraph (A) of section 955(a)(2) of the 1986 Code is amended by striking out "beginning before 1987" and inserting in lieu thereof "beginning before 1987 (to the extent such amount exceeds the sum of the decreases in qualified investments determined under this paragraph for prior taxable years beginning after 1986)".

(12) Paragraphs (6) and (7) of section 954(b) of the 1986 Code are each amended by striking out "(determined without regard to the exclusion under paragraph (2) of this subsection)".

(13)(A) Subparagraph (C) of section 1221(g)(3) of the Reform Act is amended—

(i) by striking out "July 9" and inserting in lieu thereof "June 9", and

(ii) by striking out "March 31, 1982" and inserting in lieu thereof "November 3, 1981".

(B) Subparagraph (D) of section 1221(g)(3) of the Reform Act is amended—

(i) by striking out "as of August 16, 1986, under a reinsurance contract in effect on such date" and inserting in lieu thereof "under a reinsurance contract",

(ii) by striking out "the preceding sentence" and inserting in lieu thereof "this subparagraph", and

(iii) by adding at the end thereof the following: "For purposes of this paragraph, the amount of qualified reinsurance income shall not exceed the amount of insurance income from reinsurance contracts for calendar year 1985. In the case of controlled foreign corporations described in subparagraph (C)(ii), the preceding sentence shall not apply and the qualified reinsurance income of any such corporation shall not exceed such corporation's proportionate share of $27,000,000 (determined on the basis of respective amounts of qualified reinsurance income determined without regard to this subparagraph)."

(14)(A) Paragraph (3) of section 954(d) of the 1986 Code is amended by striking out "50 percent or more" each place it appears and inserting in lieu thereof "more than 50 percent".

(B) Clause (ii) of section 861(c)(2)(B) of the 1986 Code is amended to read as follows:

"(ii) such section shall be applied by substituting '10 percent or more' for 'more than 50 percent' each place it appears."

(15) Subsection (b) of section 951 of the 1986 Code is amended by striking out "section 957(d)" and inserting in lieu thereof "section 957(c)".

(16) Subsection (c) of section 952 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(3) Special rule for determining earnings and profits.—For purposes of this subsection, earnings and profits of any controlled foreign corporation shall be determined without regard to paragraphs (4), (5), and (6) of section 312(n). Under regulations, the preceding sentence shall not apply to the extent it would increase earnings and profits by an amount which was previously distributed by the controlled foreign corporation."

(17) Subparagraph (A) of section 881(c)(4) of the 1986 code is amended by striking out clauses (ii), (iii), (iv), and (v) and inserting in lieu thereof the following:

"(ii) Paragraph (4) of section 954(b) (relating to exception for certain income subject to high foreign taxes).

"(iii) Clause (i) of section 954(c)(3)(A) (relating to certain income received from related persons)."

(18) Subparagraph (B) of section 954(c)(1) of the 1986 Code is amended by striking out "or" at the end of clause (i), by redesignating clause (ii) as clause (iii), and by inserting after clause (i) the following new clause:

"(ii) which is an interest in a trust, partnership, or REMIC, or".

(19)(A) Subsection (a) of section 6046 of the 1986 Code is amended by striking out "and" at the end of paragraph (2), by redesignating paragraph (3) as paragraph (4), and by inserting after paragraph (2) the following new paragraph:

"(3) each person (not described in paragraph (2)) who, at any time after January 1, 1987, is treated as a United States shareholder under section 953(c) with respect to a foreign corporation, and".

(B) Subsection (b) of section 6046 of the 1986 Code is amended by striking out "subsection (a)(2)" and inserting in lieu thereof "paragraph (2) or (3) of subsection (a)".

(C) Subsection (a) of section 6046 of the 1986 Code is amended by adding at the end thereof the following new sentence:

"In the case of a foreign corporation with respect to which any person is treated as a United States shareholder under section 953(c), paragraph (1) shall be treated as including a reference to each United States person who is an officer or director of such corporation."

(20) Subparagraph (B) of section 954(c)(1) of the 1986 Code is amended by striking out the last sentence and inserting in lieu thereof the following:

"In the case of any regular dealer in property, gains and losses from the sale or exchange of any such property or arising out of bona fide hedging transactions reasonably necessary to the conduct of the business of being a dealer in such property shall not be taken into account under this subparagraph. Gains and losses from the sale or exchange of any property which, in the hands of the controlled foreign corporation, is property described in section 1221(1) also shall not be taken into account under this subparagraph."

(21) Subsection (c) of section 953 (as amended by this subsection) is amended by striking out paragraph (7) and inserting in lieu thereof the following:

"(7) Coordination with section 1248.—If any person is treated under paragraph (1) as a United States shareholder with respect to any foreign corporation, for purposes of section 1248, such person shall be treated as meeting the stock ownership requirements of section 1248(a)(2) with respect to such foreign corporation.

"(8) Regulations.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection, including—

"(A) regulations preventing the avoidance of this subsection through cross insurance arrangements or otherwise, and

"(B) regulations which may provide that a person will not be treated as a United States shareholder under paragraph (1) with respect to any foreign corporation if neither such person (nor any related person to such person) is (directly or indirectly) insured under any policy of insurance or reinsurance issued by such foreign corporation."

(22) Subclause (III) of section 952(c)(1)(B)(iii) of the 1986 Code is amended by striking out "insurance income" and inserting in lieu thereof "insurance income or foreign personal holding company income,".

(23) Clause (iii) of section 952(c)(1)(B) of the 1986 Code is amended by redesignating subclauses (III) and (IV) as subclauses (V) and (VI), respectively, and by inserting after subclause (II) the following new subclauses:

"(III) foreign base company sales income,

"(IV) foreign base company services income,".

(j) Amendment Related to Section 1224 of the Reform Act.—Paragraph (2) of section 901(g) of the 1986 Code is amended by striking out "section 957(c)" and inserting in lieu thereof "section 957(c) (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986)".

(k) Amendment Related to Section 1225 of the Reform Act.—Subsection (c) of section 1225 of the Reform Act is amended by striking out "March 1, 1986" and inserting in lieu thereof "January 1, 1986".

(l) Amendments Related to Section 1226 of the Reform Act.—

(1) Subsection (a) of section 246A of the 1986 Code is amended by striking out the last sentence.

(2)(A) Paragraph (8) of section 245 of the 1986 Code is amended to read as follows:

"(8) Disallowance of foreign tax credit.—No credit shall be allowed under section 901 for any taxes paid or accrued (or treated as paid or accrued) with respect to the United States-source portion of any dividend received by a corporation from a qualified 10-percent-owned foreign corporation."

(B) Subsection (a) of section 245 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(10) Coordination with treaties.—If—

"(A) any portion of a dividend received by a corporation from a qualified 10-percent-owned foreign corporation would be treated as from sources in the United States under paragraph (9), "(B) under a treaty obligation of the United States (applied without regard to this subsection), such portion would be treated as arising from sources outside the United States, and

"(C) the taxpayer chooses the benefits of this paragraph,

this subsection shall not apply to such dividend (but subsections (a), (b), and (c) of section 904 and sections 902, 907, and 960 shall be applied separately with respect to such portion of such dividend)."

(3) Subsection (a) of section 245 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(11) COORDINATION WITH SECTION 1248.—For purposes of this subsection, the term 'dividend' does not include any amount treated as a dividend under section 1248."

(m) AMENDMENTS RELATED TO SECTION 1228 OF THE REFORM ACT.—

(1) Subsection (a) of section 1228 of the Reform Act is amended by striking out "and" at the end of paragraph (3), and by striking out paragraph (4) and inserting in lieu thereof the following:

"(4) the transfer, sale, exchange, or other disposition is part of a single integrated plan, whereby the stock of the corporation described in paragraph (1) becomes owned directly by the 2 corporations specifically referred to in subsection (b) or by such 2 corporations and by 1 or both of their jointly owned direct subsidiaries,

"(5) within 20 days after each transfer, sale, exchange, or other disposition, the person making such transfer, sale, exchange, or other disposition notifies the Internal Revenue Service of the transaction, the date of the transaction, the basis of the stock involved, the holding period for such stock, and such other information as the Internal Revenue Service may require, and

"(6) the integrated plan is completed before the date 4 years after the date of the enactment of the Technical Corrections Act of 1987.

In the case of any underpayment attributable to a failure to meet any requirement of this subsection, the period during which such underpayment may be assessed shall in no event expire before the date 5 years after the date of the enactment of the Technical Corrections Act of 1987."

(2) Subsection (c) of section 1228 of the Reform Act is hereby repealed.

(n) AMENDMENTS RELATED TO SECTION 1231 OF THE REFORM ACT.—

(1) Subparagraph (A) of section 1231(g)(2) of the Reform Act is amended by adding at the end thereof the following new sentence: "In the case of any transfer (or license) which is not to a foreign person, the preceding sentence shall be applied by substituting 'August 16, 1986' for 'November 16, 1985'."

(2) Subparagraph (B) of section 1231(g)(2) of the Reform Act is amended by striking out "was made" and inserting in lieu thereof ", if any, was made".

(3) Subsection (g) of section 1231 of the Reform Act is amended by adding at the end thereof the following new paragraph:

"(5) TRANSITIONAL RULE FOR INCREASE IN GROSS INCOME TEST.—

"(A) IN GENERAL.—If—

"(i) a corporation fails to meet the requirements of subparagraph (B) of section 936(a)(2) of the Internal Revenue Code of 1986 (as amended by subsection (d)(1)) for any taxable year beginning in 1987 or 1988,

"(ii) such corporation would have met the requirements of such subparagraph (B) if such subparagraph had been applied without regard to the amendment made by subsection (d)(1), and

"(iii) 75 percent or more of the gross income of such corporation for such taxable year (or, in the case of a taxable year beginning in 1988, for the period consisting of such taxable year and the preceding taxable year) was derived from the active conduct of a trade or business within a possession of the United States, such corporation shall nevertheless be treated as meeting the requirements of such subparagraph (B) for such taxable year if it elects to reduce the amount of the qualified possession source investment income for the taxable year by the amount of the shortfall determined under subparagraph (B) of this paragraph.

"(B) DETERMINATION OF SHORTFALL.—The shortfall determined under this subparagraph for any taxable year is an amount equal to the excess of—

"(i) 75 percent of the gross income of the corporation for the 3-year period (or part thereof) referred to in section 936(a)(2)(A) of such Code, over

"(ii) the amount of the gross income of such corporation for such period (or part thereof) which was derived from the active conduct of a trade or business within a possession of the United States.

"(C) SPECIAL RULE.—Any income attributable to the investment of the amount not treated as qualified possession source investment income under subparagraph (A) shall not be treated as qualified possession source investment income for any taxable year."

(o) AMENDMENT RELATED TO SECTION 1234 OF THE REFORM ACT.—Subsection (d) of section 6039E of the 1986 Code is amended by adding at the end thereof the following new sentence:

"Nothing in the preceding sentence shall be construed to require the disclosure of information which is subject to section 245A of the Immigration and Nationality Act (as in effect on the date of the enactment of this sentence)."

(p) AMENDMENTS RELATED TO SECTION 1235 OF THE REFORM ACT.—

(1) Paragraph (1) of section 1291(d) of the 1986 Code is amended to read as follows:

"(1) IN GENERAL.—This section shall not apply with respect to any distribution paid by a passive foreign investment company, or any disposition of stock in a passive foreign investment company, if such company is a qualified electing fund for each of its taxable years—

"(A) which begins after December 31, 1986, and for which such company is a passive foreign investment company, and

"(B) which includes any portion of the taxpayer's holding period."

(2) Subsection (c) of section 1296 of the 1986 Code is amended by striking out "owns at least" and inserting in lieu thereof "owns (directly or indirectly) at least".

(3) Paragraph (3) of section 1291(b) of the 1986 Code is amended by striking out "and" at the end of subparagraph (D), by striking out the period at the end of subparagraph (E) and inserting in lieu thereof ", and", and by adding at the end thereof the following new subparagraph:

"(F) proper adjustment shall be made for amounts not includible in gross income by reason of section 551(d), 959(a), or 1293(c)."

(4) Paragraph (2) of section 1294(c) of the 1986 Code is amended—

(A) by striking out "is disposed of" in subparagraph (A) and inserting in lieu thereof "is transferred",

(B) by striking out "such disposition or cessation" each place it appears and inserting in lieu thereof "such transfer or cessation", and

(C) by striking out "DISPOSITIONS" in the paragraph heading and inserting in lieu thereof "TRANSFERS".

(5) Paragraph (1) of section 1296(b) of the 1986 Code is amended to read as follows:

"(1) IN GENERAL.—Except as provided in paragraph (2), the term 'passive income' means any income which is of a kind which would be foreign personal holding company income as defined in section 954(c) without regard to paragraph (3) thereof."

(6)(A) Subsection (f) of section 1291 of the 1986 Code is amended to read as follows:

"(f) RECOGNITION OF GAIN.—To the extent provided in regulations, in the case of any transfer of stock in a passive foreign investment company where (but for this subsection) there is not full recognition of gain, the excess (if any) of—

"(1) the fair market value of such stock, over

"(2) its adjusted basis,

shall be treated as gain from the sale or exchange of such stock and shall be recognized notwithstanding any provision of law. Proper adjustment shall be made to the basis of any such stock for gain recognized under the preceding sentence."

(B) Subsection (e) of section 1291 of the 1986 Code is amended by striking out "Rules similar" and inserting in lieu thereof "Except to the extent inconsistent with the regulations prescribed under subsection (f), rules similar".

(7) Paragraph (5) of section 1291(a) of the 1986 Code is hereb repealed.

(8) Section 1294 of the 1986 Code is amended by adding at the end thereof the following new subsection:

"(f) CROSS REFERENCE.—

"For provisions providing for interest for the period of the extension under this section, see section 6601."

(9) Paragraph (2) of section 1291(e) of the 1986 Code is amended by striking out "not" the second place it appears.

(10)(A) Subsection (a) of section 1297 of the 1986 Code is amended by redesignating paragraph (4) as paragraph (5) and by inserting after paragraph (3) the following new paragraph:

"(4) OPTIONS.—To the extent provided in regulations, if any person has an option to acquire stock, such stock shall be considered as owned by such person. For purposes of this paragraph, an option to acquire such an option, and each one of a series of such options, shall be considered as an option to acquire such stock."

(B) Paragraph (5) of section 1297(a) of the 1986 Code (as redesignated by subparagraph (A)) is amended by striking out "paragraph (2) or (3)" and inserting in lieu thereof "paragraph (2), (3), or (4)".

(11) Paragraph (3) of section 904(d) of the 1986 Code is amended by adding at the end thereof the following new subparagraph:

"(I) LOOK-THRU APPLIES TO PASSIVE FOREIGN INVESTMENT COMPANY INCLUSION.—If

"(i) a passive foreign investment company is a controlled foreign corporation, and

"(ii) the taxpayer is a United States shareholder in such passive foreign investment company,

any amount included in gross income under section 1293 shall be treated as income in a separate category to the extent such amount is attributable to income in such category."

(12) Clause (ii) of section 1291(a)(1)(B) of the 1986 Code is amended to read as follows:

"(ii) any period in the taxpayer's holding period before the 1st day of the 1st taxable year of the company which begins after December 31, 1986, and for which it was a passive foreign investment company, and".

(13) Subparagraph (A) of section 1291(b)(2) of the 1986 Code is amended by adding at the end thereof the following new sentence:

"For purposes of clause (ii), any excess distribution received during such 3-year period shall be taken into account only to the extent it was included in gross income under subsection (a)(1)(B)."

(14) Subparagraph (A) of section 1291(a)(3) of the 1986 Code is amended by striking out "in the case of an excess distribution" and inserting in lieu thereof "for purposes of applying this section to an excess distribution".

(15) Subsection (b) of section 1293 of the 1986 Code is amended by adding at the end thereof the following new sentence: "To the extent provided in regulations, if the fund establishes to the satisfaction of the Secretary that it uses a shorter period than the taxable year to determine shareholders' interests in the earnings of such fund, pro rata shares may be determined by using such shorter period."

(16) Subparagraph (B) of section 1296(b)(2) of the 1986 Code is amended by striking out "by a corporation which" and inserting in lieu thereof "by a corporation which is predominantly engaged in an insurance business and which".

(17) Paragraph (5) of section 1297(b) of the 1986 Code is amended to read as follows:

"(5) APPLICATION OF PART WHERE STOCK HELD BY OTHER ENTITY.—

"(A) IN GENERAL.—Under regulations, in any case in which a United States person is treated as owning stock in a passive foreign investment company by reason of subsection (a)—

"(i) any disposition by the United States person or the person owning such stock which results in the United States person being treated as no longer owning such stock, or

"(ii) any distribution of property in respect of such stock to the person holding such stock,

shall be treated as a disposition by, or distribution to, the United States shareholder with respect to the stock in the passive foreign investment company.

"(B) AMOUNT TREATED IN SAME MANNER AS PREVIOUSLY TAXED INCOME.—Rules similar to the rules of section 959(b) shall apply to any amount described in subparagraph (A) and to any amount included in gross income under section 1293(a) in respect of stock which the taxpayer is treated as owning under subsection (a)."

(18) Subsection (e) of section 1293 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(3) DETERMINATION OF EARNINGS AND PROFITS.—The earnings and profits of any qualified electing fund shall be determined without regard to paragraphs (4), (5), and (6) of section 312(n). Under regulations, the preceding sentence shall not apply to the extent it would increase earnings and profits by an amount which was previously distributed by the qualified electing fund."

(19) Subsection (d) of section 1248 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(7) AMOUNTS INCLUDED IN GROSS INCOME UNDER SECTION 1293.—Earnings and profits of the foreign corporation attributable to any amount previously included in the gross income of such person under section 1293 with respect to the stock sold or exchanged, but only to the extent the inclusion of such amount did not result in an exclusion of an amount under section 1293(c)."

(20) Paragraph (6) of section 1297(b) of the 1986 Code is amended by striking out "If a" and inserting in lieu thereof "Except as provided in regulations, if a".

(21) Section 1246 of the 1986 Code is amended by redesignating the subsection relating to information with respect to certain foreign investment companies as subsection (f), by redesignating the subsection relating to coordination with section 1248 as subsection (g), and by redesignating the subsection relating to cross reference as subsection (h).

(22) Subparagraph (A) of section 1297(b)(3) of the 1986 Code is amended to read as follows:

"(A) neither such corporation (nor any predecessor) was a passive foreign investment company for any prior taxable year,".

(23) Subsection (c) of section 1293 of the 1986 Code is amended by striking out "shall be treated as a distribution which is not a dividend" and inserting in lieu thereof "shall be treated, for purposes of this chapter, as a distribution which is not a dividend; except that such distribution shall immediately reduce earnings and profits".

(24) Subsection (b) of section 1297 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(8) TREATMENT OF CERTAIN FOREIGN CORPORATIONS OWNING STOCK IN 25-PERCENT OWNED DOMESTIC CORPORATION.—

"(A) IN GENERAL.—If—

"(i) a foreign corporation is subject to the tax imposed by section 531 (or waives any benefit under any treaty which would otherwise prevent the imposition of such tax), and

"(ii) such foreign corporation owns at least 25 percent (by value) of the stock of a domestic corporation,

for purposes of determining whether such foreign corporation is a passive foreign investment company, any qualified stock held by such domestic corporation shall be treated as an asset which does not produce passive income (and is not held for the production of passive income) and any amount included in gross income with respect to such stock shall not be treated as passive income.

"(B) QUALIFIED STOCK.—For purposes of subparagraph (A), the term 'qualified stock' means any stock in a C corporation which is a domestic corporation and which is not a regulated investment company or real estate investment trust."

(25) Section 1294 of the 1986 Code is amended by adding at the end thereof the following new subsection:

"(f) TREATMENT OF LOANS TO SHAREHOLDER.—For purposes of this section and section 1293, any loan by a qualified electing fund (directly or indirectly) to a shareholder of such fund shall be treated as a distribution to such shareholder.

(26) Paragraph (2) of section 1296(b) of the 1986 Code is amended by striking out "or" at the end of subparagraph (A), by striking out the period at the end of subparagraph (B) and inserting in lieu thereof ", or", and by adding at the end thereof the following:

"(C) which is interest, or a rent or royalty, which is received or accrued from a related person (within the meaning of section 954(d)(3)) to the extent such amount is properly allocable (under regulations prescribed by the Secretary) to income of such related person which is not passive income. For purposes of subparagraph (C), the term 'related person' has the meaning given such term by section 954(d)(3) determined by substituting 'foreign corporation' for 'controlled foreign corporation' each place it appears in section 954(d)(3)."

(27) Subsection (a) of section 1296 of the 1986 Code is amended by adding at the end thereof the following new sentences:

"A foreign corporation may elect to have the determination under paragraph (2) based on the adjusted bases of its assets in lieu of their value. Such an election, once made, may be revoked only with the consent of the Secretary."

(28) Paragraph (2) of section 1291(d) of the 1986 Code is amended by striking out subparagraph (B) and inserting in lieu thereof the following:

"(B) ADDITIONAL ELECTION FOR UNITED STATES SHAREHOLDER OF CONTROLLED FOREIGN CORPORATIONS.—

"(i) IN GENERAL.—If—

"(I) a passive foreign investment company becomes a qualified electing fund for a taxable year which begins after December 31, 1986,

"(II) the taxpayer holds stock in such company on the first day of such taxable year,

"(III) such company is a controlled foreign corporation (as defined in section 957(a)), and

"(IV) the taxpayer is a United States shareholder (as defined in section 951(b)) of such company,

the taxpayer may elect to include in gross income as a dividend received on such first day an amount equal to the portion of the post-1986 earnings and profits of such company attributable (under regulations prescribed by the Secretary) to the stock in such company held by the taxpayer on such first day.

"(ii) POST-1986 EARNINGS AND PROFITS.—For purposes of clause (i), the term 'post-1986 earnings and profits' means earnings and profits which were accumulated in taxable years of such company beginning after December 31, 1986, and during the period or periods the stock was held by the taxpayer while the company was a passive foreign investment company.

"(iii) COORDINATION WITH SECTION 959(e).—For purposes of section 959(e), any amount included in gross income under this subparagraph shall be treated as included in gross income under section 1248(a)."

"(C) ADJUSTMENTS.—In the case of any stock to which subparagraph (A) or (B) applies—

"(i) the adjusted basis of such stock shall be increased by the gain recognized under subparagraph (A) or the amount treated as a dividend under subparagraph (B), as the case may be, and

"(ii) the taxpayer's holding period in such stock shall be treated as beginning on the first day referred to in such subparagraph."

(q) AMENDMENTS RELATED TO SECTION 1241 OF THE ACT.—

(1) Subparagraph (B) of section 884(b)(2) of the 1986 Code is amended to read as follows:

"(B) LIMITATION.—

"(i) IN GENERAL.—The increase under subparagraph (A) for any taxable year shall not exceed the accumulated effectively connected earnings and profits as of the close of the preceding taxable year.

"(ii) ACCUMULATED EFFECTIVELY CONNECTED EARNINGS AND PROFITS.—For purposes of clause (i), the term 'accumulated effectively connected earnings and profits' means the excess of—

"(I) the aggregate effectively connected earnings and profits for preceding taxable years beginning after December 31, 1986, over.

"(II) the aggregate dividend equivalent amounts determined for such preceding taxable years."

(2)(A) Paragraph (1) of section 884(e) is amended to read as follows:

"(1) Limitation on treaty exemption.—No income tax treaty between the United States and a foreign country shall exempt any foreign corporation from the tax imposed by subsection (a) (or reduce the amount thereof) unless such foreign corporation is a qualified resident of such foreign country."

(B) Paragraph (3) of section 884(e) of the 1986 Code is amended to read as follows:

"(3) Coordination with withholding tax.—

"(A) In general.—If a foreign corporation is subject to the tax imposed by subsection (a) for any taxable year (determined after the application of any treaty), no tax shall be imposed by section 871(a), 881(a), 1441, or 1442 on any dividends paid by such corporation out of its earnings and profits for such taxable year.

"(B) Limitation on certain treaty benefits.—If—

"(i) any dividend described in section 861(a)(2)(B) is received by a foreign corporation, and

"(ii) subparagraph (A) does not apply to such dividend,

rules similar to the rules of subparagraphs (A) and (B) of subsection (f)(3) shall apply to such dividend."

(C) Subsection (f) of section 884 of the 1986 Code is amended—

(i) by striking out the 2nd sentence of paragraph (1), and

(ii) by adding at the end thereof the following new paragraph:

"(3) Coordination with income tax treaties.—

"(A) Payor must be qualified resident.—In the case of any interest described in paragraph (1) which is paid or accrued by a foreign corporation, no benefit under any income tax treaty between the United States and the foreign country of which such corporation is a resident shall apply unless such foreign corporation is a qualified resident of such foreign country.

"(B) Recipient must be qualified resident.—In the case of any interest described in paragraph (1) which is received or accrued by any corporation, no benefit under any income tax treaty between the United States and the foreign country of which such corporation is a resident shall apply unless such corporation is a qualified resident of such foreign country."

(3) Paragraph (1) of section 884(f) of the 1986 Code is amended—

(A) by striking out "sections 871, 881, 1441, and 1442" and inserting in lieu thereof "this subtitle", and

(B) by adding at the end thereof the following new sentence:

"To the extent provided in regulations, subparagraph (A) shall not apply to interest in excess of the amounts reasonably expected to be deductible under section 882 in computing the effectively connected taxable income of such foreign corporation."

(4) Paragraph (4) of section 884(e) of the 1986 Code is amended by redesignating subparagraph (C) as subparagraph (D) and by inserting after subparagraph (B) the following new subparagraph:

"(C) Corporations owned by publicly traded domestic corporations.—A foreign corporation which is a resident of a foreign country shall be treated as a qualified resident of such foreign country if—

"(i) such corporation is wholly owned (directly or indirectly) by a domestic corporation, and

"(ii) the stock of such domestic corporation is primarily and regularly traded on an established securities market in the United States."

(5) Subparagraph (A) of section 884(e)(4) of the 1986 Code is amended—

(A) by striking out "more than 50 percent" in clause (i) and inserting in lieu thereof "50 percent or more", and

(B) by striking out "or the United States" in clause (ii) and inserting in lieu thereof "or citizens or residents of the United States".

(6) Subsection (f) of section 884 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(4) Exception for international organizations.—This subsection shall not apply to any interest paid by an international organization (as defined in section 7701(a)(18))."

(7) Subparagraph (B) of section 861(a)(2) of the 1986 Code is amended by striking out "other than under section 884(d)(2)" each place it appears and inserting in lieu thereof "other than income described in section 884(d)(2)".

(8) Paragraph (2) of section 26(b) of the 1986 Code is amended by striking out "and" at the end of subparagraph (J), by striking out the period at the end of subparagraph (K) and inserting in lieu thereof ", and", and by adding at the end thereof the following new subparagraph:

"(L) section 884 (relating to branch profits tax)."

(9) Section 861 of the 1986 Code is amended by adding at the end thereof the following new subsection:

"(f) Cross Reference.—

"For treatment of interest paid by the branch of a foreign corporation, see section 884(f)."

(10) The paragraph (6) of section 906(b) of the 1986 Code which was added by section 1241(c) of the Reform Act is redesignated as paragraph (7).

(11) Subsection (c) of section 2104 of the 1986 Code is amended by striking out "section 861(a)(1)(B), section 861(a)(1)(G), or section 861(a)(1)(H)" and inserting in lieu thereof "subparagraph (A), (C), or (D) of section 861(a)(1)".

(12) Subparagraph (A) of section 904(g)(9) of the 1986 Code is amended by striking out "861(a)(1)(B)" and inserting in lieu thereof "861(a)(1)(A)".

(13)(A) Paragraph (1) of section 4373 of the 1986 Code is amended to read as follows:

"(1) Effectively connected items.—Any amount which is effectively connected with the conduct of a trade or business within the United States unless such amount is exempt from the application of section 882(a) pursuant to a treaty obligation of the United States."

(B) The amendment made by subparagraph (A) shall apply with respect to premiums paid after the date 30 days after the date of the enactment of this Act.

(14) Paragraph (1) of section 884(f) of the 1986 Code is amended by striking out "a foreign corporation engaged in a trade or business in the United States" and inserting in lieu thereof "a foreign corporation having gross income effectively connected (or treated as effectively connected) with the conduct of a trade or business within the United States".

(r) Amendments Related to Section 1242 of the Reform Act.—

(1) Paragraph (7) of section 864(c) of the 1986 Code is amended to read as follows:

"(7) Treatment of certain property transactions.—For purposes of this title, if—

"(A) any property ceases to be used or held for use in connection with the conduct of a trade or business within the United States, and

"(B) such property is disposed of within 10 years after such cessation,

the determination of whether any income or gain attributable to such disposition is taxable under section 871(b) or 882 (as the case may be) shall be made as if such sale or exchange occurred immediately before such cessation and without regard to the requirement that the taxpayer be engaged in a trade or business within the United States during the taxable year for which such income or gain is taken into account."

(2) Paragraph (6) of section 864(c) of the 1986 Code is amended to read as follows:

"(6) Treatment of certain deferred payments, etc.—For purposes of this title, in the case of any income or gain of a nonresident alien individual or a foreign corporation which—

"(A) is taken into account for any taxable year, but

"(B) is attributable to a sale or exchange of property or the performance of services (or any other transaction) in any other taxable year,

the determination of whether such income or gain is taxable under section 871(b) or 882 (as the case may be) shall be made as if such income or gain were taken into account in such other taxable year and without regard to the requirement that the taxpayer be engaged in a trade or business within the United States during the taxable year referred to in subparagraph (A)."

(s) Amendments Related to Section 1246 of the Reform Act.—

(1) Paragraph (2) of section 1446(c) of the 1986 Code is amended by striking out "properly allocated" and inserting in lieu thereof "allocable under section 704".

(2)(A) Paragraph (2) of section 1446(b) of the 1986 Code is amended by adding at the end thereof the following new sentence:

For purposes of the preceding sentence, gross income shall not include any income described in section 1441(b) which is from sources within the United States and which is not effectively connected with the conduct of a trade or business within the United States."

(B) Paragraph (1) of section 1446(c) of the 1986 Code is amended to read as follows:

"(1) Coordination with other provisions.—Under regulations prescribed by the Secretary, proper adjustments shall be made in the application of this section for—

"(A) any amount with respect to which a tax is required to be deducted and withheld under section 1441 of 1442 (or would be required to be deducted and withheld but for paragraph (9) or (10) of section 1441(c) of a treaty),

"(B) amounts deducted and withheld under section 1445, and

"(C) other items of income of the partnership which are not effectively connected (or treated as effectively connected) with the conduct of a trade or business within the United States."

(C) Paragraph (3) of section 1446(c) of the 1986 Code is hereby repealed.

(3)(A) Subsection (a) of section 872 of the 1986 Code is amended by striking out "the case of a nonresident alien individual" and inserting in lieu thereof "the case of a nonresident alien individual, except where the context clearly indicates otherwise".

(B) Subsection (b) of section 882 of the 1986 Code is amended by striking out the "the case of a foreign corporation" and inserting in lieu thereof "the case of a foreign corporation, except where the context clearly indicates otherwise".

(t) Amendments Related to Section 1247 of the Reform Act.—

(1) Subparagraph (A) of section 892(a)(2) of the 1986 Code is amended by striking out "or" at the end of clause (i), by striking out the period at the end of clause (ii) and inserting in lieu thereof ", or", and by adding at the end thereof the following new clause:

"(iii) derived from the disposition of any interest in a controlled commercial entity."

(2) Clause (ii) of section 892(a)(2)(A) of the 1986 Code is amended to read as follows:

"(ii) received by a controlled commercial entity or received (directly or indirectly) from a controlled commercial entity."

(3) Subsection (a) of section 892 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(3) Treatment as resident.—For purposes of this title, a foreign government shall be treated as a corporate resident of its country. A foreign government shall be so treated for purposes of any income tax treaty obligation of the United States if such government grants equivalent treatment to the Government of the United States."

(4) Section 893 of the 1986 Code is amended by adding at the end thereof the following new subsection:

"(c) Limitation on Exclusion.—Subsection (a) shall not apply to—

"(1) any employee of a controlled commercial entity (as defined in section 892(a)(2)(B)), or

"(2) any employee of a foreign government whose services are primarily in connection with a commercial activity (whether within or outside the United States) of the foreign government."

(u) Amendment Related to Section 1249 of the Reform Act.—Subsection (d) of section 1503 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(3) Treatment of losses of separate business units.—To the extent provided in regulations, any loss of a separate unit of a domestic corporation shall be subject to the limitations of this subsection in the same manner as if such unit were a wholly owned subsidiary of such corporation."

(v) Amendments Related to Section 1261 of the Reform Act.—

(1)(A) So much of section 986 of the 1986 Code as precedes subsection (c) thereof is amended to read as follows:

"SEC. 986. DETERMINATION OF FOREIGN TAXES AND FOREIGN CORPORATION'S EARNINGS AND PROFITS.

"(a) Foreign Taxes.—

"(1) In general.—For purposes of determining the amount of the foreign tax credit—

"(A) any foreign income taxes shall be translated into dollars using the exchange rates as of the time such taxes were paid to the foreign country or possession of the United States, and

"(B) any adjustment to the amount of foreign income taxes shall be translated into dollars using—

"(i) except as provided in clause (ii), the exchange rate as of the time when such adjustment is paid to the foreign country or possession, or

"(ii) in the case of any refund or credit of foreign income taxes, using the exchange rate as of the time of original payment of such foreign income taxes.

"(2) Foreign income taxes.—For purposes of paragraph (1), "foreign income taxes" means any income, war profits, or excess profits taxes paid to any foreign country or to any possession of the United States.

"(b) Earnings and Profits and Distributions.—For purposes of determining the tax under this subtitle—

"(1) of any shareholder of any foreign corporation, the earnings and profits of such corporation shall be determined in the corporation's functional currency, and

"(2) in the case of any United States person, the earnings and profits determined under paragraph (1) (when distributed, deemed distributed, or otherwise taken into account under this subtitle) shall (if necessary) be translated into dollars using the appropriate exchange rate."

(B) Section 987 of the 1986 Code is amended by inserting "and" at the end of paragraph (2), by striking out ", and" at the end of paragraph (3) and inserting in lieu thereof a period, and by striking out paragraph (4).

(C) The table of sections for subpart J of part III of subchapter N of chapter 1 is amended by striking out the item relating to section 986 and inserting in lieu thereof the following:

"Sec. 986. Determination of foreign taxes and foreign corporation's earnings and profits."

(2)(A) Subsection (c) of section 988 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(5) Special rules where taxpayer takes or makes delivery.—If the taxpayer takes or makes delivery in connection with any section 988 transaction described in paragraph (1)(B)(iii), any gain or loss (determined as if the taxpayer sold the contract, option, or instrument on the date on which he took or made delivery for its fair market value on such date) shall be recognized in the same manner as if such contract, option, or instrument were so sold."

(B) The amendment made by subparagraph (A) shall not apply in any case in which the taxpayer takes or makes delivery before June 11, 1987.

(3)(A) Subsection (b) of section 988 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(3) Special rule for certain contracts, etc.—In the case of any section 988 transaction described in subsection (c)(1)(B)(iii), any gain or loss from such transaction shall be treated as foreign currency gain or loss (as the case may be)."

(B) Subclause (II) of section 988(c)(1)(C)(i) of the 1986 Code is amended to read as follows:

"(II) any gain or loss from such transaction shall be treated as foreign currency gain or loss (as the case may be)."

(C) Paragraph (2) of section 988(c) of the 1986 Code is amended by inserting "or" at the end of subparagraph (A), by striking out ", or" at the end of subparagraph (B) and inserting in lieu thereof a period, and by striking out subparagraph (C).

(D) Paragraph (3) of section 988(c) of the 1986 Code is amended to read as follows:

"(3) Payment date.—The term 'payment date' means the date on which the payment is made or received."

(4) The first sentence of paragraph (1) of section 988(d) is amended by striking out "this section" and inserting in lieu thereof "this subtitle".

(5) Subsection (b) of section 989 of the 1986 Code is amended—

(A) by striking out "951(a)" in paragraph (3) and inserting in lieu thereof "951(a)(1)(A)", and

(B) by adding at the end thereof the following new sentence:

"For purposes of the preceding sentence, any amount included in income under section 951(a)(1)(B) shall be treated as an actual distribution made on the last day of the taxable year for which such amount was so included."

(6) Clause (iii) of section 988(c)(1)(B) of the 1986 Code is amended to read as follows:

"(iii) Entering into or acquiring any forward contract, futures contract, option, or similar financial instrument unless such instrument would be marked to market under section 1256 if held on the last day of the taxable year."

(7) Subparagraph (B) of section 988(a)(3) of the 1986 Code is amended by adding at the end thereof the following new clause:

"(iii) Special rule for partnerships.—To the extent provided in regulations, in the case of a partnership, the determination of residence shall be made at the partner level."

(8) Clause (i) of section 988(a) (3)(B) of the 1986 Code is amended by adding at the end thereof the following new sentence: "If an individual does not have a tax home (as so defined), the residence of such individual shall be the United States if such individual is a United States citizen or a resident alien and shall be a country other than the United States if such individual is not a United States citizen or a resident alien."

(9) Section 903 of the 1986 Code is amended by striking out "this subpart" and inserting in lieu thereof "this part".

(w) Amendments Related to Section 1274 of the Reform Act.—

(1) Subsection (e) of section 932 of the 1986 Code is amended to read as follows:

"(e) Special Rule for Applying Section to Tax Imposed in Virgin Islands.—In applying this section for purposes of determining income tax liability incurred to the Virgin Islands, the provisions of this section shall not be affected by the provisions of Federal law referred to in section 934(a)."

(2) Paragraph (4) of section 932(c) of the 1986 Code is amended to read as follows:

"(4) Residents of the virgin islands.—In the case of an individual—

"(A) who is a bona fide resident of the Virgin Islands at the close of the taxable year,

"(B) who, on his return of income tax to the Virgin Islands, reports income from all sources and identifies the source of each item shown on such return, and

"(C) who fully pays his tax liability referred to in section 934(a) to the Virgin Islands with respect to such income,

for purposes of calculating income tax liability to the United States, gross income shall not include any amount included in gross income on such return, and allocable deductions and credits shall not be taken into account."

(3) Paragraph (2) of section 932(c) of the 1986 Code is amended by striking out "his income tax return" and inserting in lieu thereof "an income tax return".

(x) Amendment Related to Section 1275 of the Reform Act.—Section 1444 of the 1986 Code is amended by striking out "(as modified by section 934A)".

(y) Amendment Related to Section 1276 of the Reform Act.—Subsection (a) of section 7654 of the 1986 Code is amended by striking out "an individual to which" and inserting in lieu thereof "an individual to whom".

(z) Amendment Related to Section 1277 of the Reform Act.—

(1) Section 1277 of the Reform Act is amended by adding at the end thereof the following new subsection:

"(f) Exemption From Withholding.—Notwithstanding subsection (b), the modification of section 884 of the Internal Revenue Code of 1986 by reason of the amendment to section 881 of such Code by section 1273(b)(1) of this Act shall apply to taxable years beginning after December 31, 1986."

(2) Subsection (e) of section 1277 of the Act is amended by striking out "The preceding sentence" and inserting in lieu thereof "Notwithstanding subsection (b), the preceding sentence".

(aa) Coordination With Treaties.—

(1) In general.—Subsection (d) of section 7852 of the 1986 Code is amended—

(A) by striking out "this title shall" and inserting in lieu thereof "this title (as in effect without regard to any amendment thereto enacted after August 16, 1954) shall", and

(B) by striking out "in effect on the date of the enactment of this title" and inserting in lieu thereof "in effect on August 16, 1954".

(2) Certain amendments to apply notwithstanding treaties.—The following amendments made by the Reform Act shall apply notwithstanding any treaty obligation of the United States in effect on the date of the enactment of the Reform Act:

(A) The amendments made by section 1201 of the Reform Act.

(B) The amendments made by title VII of the Reform Act to the extent such amendments relate to the alternative minimum tax foreign tax credit.

(C) Except as provided in the Reform Act or in paragraph (3) of this subsection, any other amendment made by the Reform Act.

(3) Certain amendments not to apply to the extent inconsistent with treaties.—The following amendments made by the Reform Act shall not apply to the extent the application of such amendments would be contrary to any treaty obligation of the United States in effect on the date of the enactment of the Reform Act:

(A) The amendments made by section 1211 of the Reform Act to the extent—

(i) such amendments apply in the case of an individual treated as a resident of a foreign country under a treaty obligation of the United States as so in effect, or

(ii) such amendments relate to income of a nonresident from the sale or exchange of inventory property which would otherwise be sourced under section 865(e)(2) of the 1986 Code.

(B) The amendments made by section 1212(a) of the Reform Act; except for purposes of determining the amount of the foreign tax credit.

(C) The amendments made by subsections (b) and (c) of section 1212 of the Reform Act.

(D) The amendments made by section 1214 of the Reform Act; except for purposes of determining the amount of the foreign tax credit.

(E) The amendment made by section 1241(a) of the Reform Act to the extent that, under a treaty obligation of the United States, interest described in section 884(f)(1)(A) of the 1986 Code (as added by such amendment) which is in excess of amounts deducted would be treated as other than United States source.

(F) The amendment made by section 1241(b)(2)(A) of the Reform Act.

(G) The amendment made by section 1241(a) of the Reform Act to the extent such amendment relates to section 884(f)(1)(B) of the 1986 Code.

(H) The amendments made by section 1242 of the Reform Act to the extent they relate to paragraph (7) of section 864(c) of the 1986 Code.

(I) The amendment made by section 1247(a) of the Reform Act.

(J) The amendments made by section 123 of the Reform Act.

(4) Treatment of technical corrections.—For purposes of paragraphs (2) and (3), any amendment made by this title shall be treated as if it had been included in the provision of the Reform Act to which such amendment relates.

(bb) Miscellaneous Foreign Technical Corrections.—

(1) Provisions relating to foreign personal holding companies.—

(A) Subsection (f) of section 551 of the 1986 Code is amended—

(i) by amending paragraph (1) to read as follows:

"(1) a foreign partnership or an estate or trust which is a foreign estate or trust, or", and

(ii) by striking out the last sentence and inserting in lieu thereof the following: "In any case to which the preceding sentence applies, the Secretary may by regulations provide that rules similar to the rules of section 1297(b)(5) shall apply, and provide for such other adjustments in the application of this part as may be necessary to carry out the purposes of this subsection."

(B) Subsection (a) of section 551 of the 1986 Code is amended by striking out "(other than estates or trusts the gross income of which under this subtitle includes only income from sources within the United States)" and inserting in lieu thereof "(other than foreign estates or trusts)".

(C) Subsection (c) of section 552 of the 1986 Code is amended to read as follows:

"(c) Look-Thru for Certain Dividends and Interest.—

"(1) In general.—For purposes of this part, any related person dividend or interest shall be treated as foreign personal holding company income only to the extent such dividend or interest is attributable (determined under rules similar to the rules of subparagraphs (C) and (D) of section 904(d)(3)) to income of the related person which would be foreign personal holding company income.

"(2) Related person dividend or interest.—For purposes of paragraph (1), the term 'related person dividend or interest' means any dividend or interest which—

"(A) is described in subparagraph (A) of section 954(c)(3), and

"(B) is received from a related person which is not a foreign personal holding company (determined without regard to this subsection). For purposes of the preceding sentence, the term 'related person' has the meaning given such term by section 954(d)(3) (determined by substituting 'foreign personal holding company' for 'controlled foreign corporation' each place it appears)."

(D) The amendments made by this paragraph shall apply to taxable years of foreign corporations beginning after December 31, 1986.

(2) Treatment of certain payments outside the United States.—

(A) Subparagraph (A) of section 3405(d)(13) of the 1986 Code is amended by striking out "the United States" and inserting in lieu thereof "the United States and any possession of the United States".

(B) Clause (i) of section 3405(d)(13)(B) of the 1986 Code is amended to read as follows:

"(i) a United States citizen or a resident alien of the United States, or".

(C) The heading of paragraph (13) of section 3405(d) of the 1986 Code is amended by striking out "UKITED STATES" and inserting in lieu thereof "UNITED STATES OR ITS POSSESSIONS".

(D) The amendments made by this paragraph shall apply to distributions made after the date of the enactment of this Act.

(3) Clarification of disclosure under certain agreements.—

(A) Paragraph (4) of section 6103(k) of the 1986 Code is amended—

(i) by striking out "or other convention" and inserting in lieu thereof "or other convention or bilateral agreement", and

(ii) by striking out "such convention" and inserting in lieu thereof "such convention or bilateral agreement".

(B) Subparagraph (A) of section 6103(b)(5) of the 1986 Code is amended by striking out "the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau" and inserting in lieu thereof "and the Commonwealth of the Northern Mariana Islands".

(C) The amendments made by this paragraph shall take effect on the date of the enactment of the Tax Reform Act of 1986.

(4) Coordination of treaties with section 904(g).—

(A) Subsection (g) of section 904 of the 1986 Code is amended by redesignating paragraph (10) as paragraph (11) and by inserting after paragraph (9) the following new paragraph:

"(10) Coordination with treaties.—

"(A) In general.—If—

"(i) any amount derived from a United States-owned foreign corporation would be treated as derived from sources within the United States under this subsection by reason of an item of income of such United States-owned foreign corporation,

"(ii) under a treaty obligation of the United States (applied without regard to this subsection and by treating any amount included in gross income under section 951(a)(1) as a dividend), such amount would be treated as arising from sources outside the United States, and

"(iii) the taxpayer chooses the benefits of this paragraph,

this subsection shall not apply to such amount to the extent attributable to such item of income (but subsections (a), (b), and (c) of this section and sections 902, 907, and 960 shall be applied separately with respect to such amount to the extent so attributable)."

"(B) SPECIAL RULE.—Amounts included in gross income under section 951(a)(1) shall be treated as a dividend under subparagraph (A)(ii) only if dividends paid by each corporation (the stock in which is taken into account in determining whether the shareholder is a United States shareholder in the United States-owned foreign corporation), if paid to the United States shareholder, would be treated under a treaty obligation of the United States as arising from sources outside the United States (applied without regard to this subsection)."

(B) The amendment made by subparagraph (A) shall take effect as if included in the amendment made by section 121 of the Tax Reform Act of 1984.

(5) TREATMENT OF ELECTION UNDER SECTION 338(h)(10).—

(A) IN GENERAL.—Paragraph (10) of section 338(h) of the 1986 Code is amended by adding at the end thereof the following new subparagraph:

"(C) COORDINATION WITH FOREIGN TAX CREDIT PROVISIONS.—Except as provided in regulations, this paragraph shall not apply for purposes of determining the source or character of any item for purposes of subpart A of part III of subchapter N of this chapter (relating to foreign tax credit). The preceding sentence shall not apply to any gain to the extent such gain is includible in gross income as a dividend under section 1248."

(B) EFFECTIVE DATE.—The amendment made by subparagraph (A) shall apply to qualified stock purchases (as defined in section 338(d)(3) of the 1986 Code) after June 10, 1987.

(6) TREATMENT OF TAX-EXEMPT SHAREHOLDERS OF A DISC.—

(A) Section 995 of the 1986 Code is amended by adding at the end thereof the following new subsection:

"(g) TREATMENT OF TAX-EXEMPT SHAREHOLDERS.—If any organization described in subsection (a)(2) or (b)(2) of section 511 is a shareholder in a DISC—

"(1) any amount deemed distributed to such shareholder under subsection (b),

"(2) any actual distribution to such shareholder which under section 996 is treated as out of accumulated DISC income, and

"(3) any gain which is treated as a dividend under subsection (c),

shall be treated as derived from the conduct of an unrelated trade or business (and the modifications of section 512(b) shall not apply). The rules of the preceding sentence shall apply also for purposes of determing any such shareholder's DISC-related deferred tax liability under subsection (f)."

(B) The amendment made by subparagraph (A) shall apply to taxable years beginning after December 31, 1987.

(7) TREATMENT OF CERTAIN AMOUNTS PREVIOUSLY TAXED UNDER SECTION 1248.—

(A) IN GENERAL.—Subsection (e) of section 959 of the 1986 Code is amended by striking out "such person under" and inserting in lieu thereof "such person (or, in any case to which section 1248(e) applies, of the domestic corporation referred to in section 1248(e)(2)) under".

(B) EFFECTIVE DATE.—The amendment made by subparagraph (A) shall apply in the case of transactions to which section 1248(e) of the 1986 Code applies and which occur after December 31, 1986.

(8) TREATMENT OF SHARED FSC'S.—

(A) IN GENERAL.—Section 927 of the 1986 Code is amended by adding at the end thereof the following new subsection:

"(g) TREATMENT OF SHARED FSC's.—

"(1) IN GENERAL.—Except as provided in paragraph (2), each separate account referred to in paragraph (3) maintained by a shared FSC shall be treated as a separate corporation for purposes of this subpart.

"(2) CERTAIN REQUIREMENTS APPLIED AT SHARED FSC LEVEL.—Paragraph (1) shall not apply—

"(A) for purposes of—

"(i) subparagraphs (A), (B), (D), and (E) of section 922(a)(1),

"(ii) paragraph (2) of section 922(a),

"(iii) subsection (b), (c), (d), and (e) of section 924, and

"(iv) subsection (f) of this section, and

"(B) for such other purposes as the Secretary may by regulations prescribed.

"(3) SHARED FSC.—For purposes of this subsection, the term 'shared FSC' means any corporation if—

"(A) such corporation maintains a separate account for transactions with each shareholder (and persons related to such shareholder),

"(B) distributions to each shareholder are based on the amounts in the separate account maintained with respect to such shareholder, and

"(C) such corporation meets such other requirements as the Secretry may by regulations prescribe."

(B) The amendment made by subparagraph (A) shall apply as if included in the provision of the Tax Reform Act of 1984 to which it relates.

SEC. 10213. AMENDMENTS RELATED TO TITLE XIII OF THE REFORM ACT.

(a) AMENDMENTS RELATED TO SECTION 1301 OF THE REFORM ACT.—

(1) Clause (iii) of section 142(d)(4)(B) of the 1986 Code is amended by striking out "average rent" and inserting in lieu thereof "average gross rent".

(2) Clause (iii) of section 143(a)(2)(A) of the 1986 Code is amended by striking out "no bond which is part of such issue meets" and inserting in lieu thereof "such issue does not meet".

(3) Paragraph (4) of section 143(b) of the 1986 Code is amended by inserting "is part of an issue which" after "which".

(4)(A) Clause (ii) of section 144(a)(12)(A) of the 1986 Code is amended by inserting "(or series of bonds)" before "issued to refund".

(B)(i) Subclause (I) of section 144(a)(12)(A)(ii) of the 1986 Code is amended to read as follows:

"(I) the average maturity date of the issue of which the refunding bond is a part is not later than the average maturity date of the bonds to be refunded by such issue,".

(ii) Subparagraph (A) of section 144(a)(12) of the 1986 Code is amended by adding at the end thereof the following new sentence:

"For purposes of clause (ii)(I), average maturity shall be determined in accordance with section 147(b)(2)(A)."

(iii) A refunding bond issued before July 1, 1987, shall be treated as meeting the requirement of subclause (I) of section 144(a)(12)(A)(ii) of the 1986 Code if such bond met the requirement of such subclause as in effect before the amendments made by this subparagraph.

(C) Clause (ii) of section 144(a)(12)(A) of the 1986 Code is amended by adding "and" at the end of subclause (II), by striking out subclause (III), and by redesignating subclause (IV) as subclause (III).

(5) Subparagraph (B) of section 144(b)(1) of the 1986 Code is amended—

(A) by striking out "to which part B of title IV of the Higher Education Act of 1965 (relating to guaranteed student loans) does not apply", and

(B) by striking out "eligible" and all that follows in such subparagraph and inserting in lieu thereof the following: "eligible. A program shall not be treated as described in this subparagraph if such program is described in subparagraph (A).

A bond shall not be treated as a qualified student loan bond if the issue of which such bond is a part meets the private business tests of paragraphs (1) and (2) of section 141(b) (determined by treating 501(c)(3) organizations as governmental units with respect to their activities which do not constitute unrelated trades or businesses, determined by applying section 513(a))."

(6) Subclause (I) of section 145(b)(2)(B)(ii) of the 1986 Code is amended by striking out "103(b)" and inserting in lieu thereof "103(b)(2)".

(7) Clause (i) of section 145(b)(2)(C) of the 1986 Code is amended by striking out "subparagraph (B)(ii)" and inserting in lieu thereof "subparagraph (B)".

(8) Paragraph (4) of section 145(b) of the 1986 Code is amended by striking out "subparagraphs (C) and (D)" and inserting in lieu thereof "subparagraphs (C), (D), and (E)".

(9) Subparagraph (A) of section 146(f)(5) of the 1986 Code is amended to read as follows:

"(A) the purpose of issuing exempt facility bonds described in one of the paragraphs of section 142(a),".

(10)(A) Paragraph (1) of section 146(k) of the 1986 Code is amended by striking out "paragraph (2)" and inserting in lieu thereof "paragraphs (2) and (3)".

(B) Subsection (k) of section 146 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(3) TREATMENT OF GOVERNMENTAL BONDS TO WHICH VOLUME CAP ALLOCATED.—Paragraph (1) shall not apply to any bond to which volume cap is allocated under section 141(b)(5)—

"(A) for an output facility, or

"(B) for a facility of a type described in paragraph (4), (5), (6), or (10) of section 142(a),

if the issuer establishes that the State's share of the private business use (as defined by section 141(b)(6)) of the facility will equal or exceed the State's share of the volume cap allocated with respect to bonds issued to finance the facility."

(11) Subsection (e) of section 147 of the 1986 Code is amended by striking out "treated as".

(12) Subsection (f) of section 147 of the 1986 Code (relating to public approval requirement for private activity bonds) is amended by adding at the end thereof the following new paragraph:

"(4) SPECIAL RULES FOR SCHOLARSHIP FUNDING BOND ISSUES AND VOLUNTEER FIRE DEPARTMENT BOND ISSUES.—

"(A) SCHOLARSHIP FUNDING BONDS.—In the case of a qualified scholarship funding bond, any governmental unit which made a request described in section 150(d)(2)(B) with respect to the issuer of such bond shall be treated for purposes of paragraph (2) of this subsection as the governmental unit on behalf of which such bond was issued. Where more than one governmental unit within a state has made a request described in section 150(d)(2)(B), the state may also be treated for purposes of paragraph (2) of this subsection as the governmental unit on behalf of which such bond was issued."

"(B) VOLUNTEER FIRE DEPARTMENT BONDS.—In the case of a bond of a volunteer fire department which meets the requirements of section 150(e), the political subdivision described in section 150(e)(2)(B) with respect to such department shall be treated for purposes of paragraph (2) of this subsection as the governmental unit on behalf of which such bond was issued."

(13)(A) Paragraph (1) of section 147(g) of the 1986 Code (relating to restriction on issuance costs financed by issue) is amended by striking out "aggregate face amount of the issue" and inserting in lieu thereof "proceeds of the issue".

(B) Paragraph (2) of section 147(g) of the 1986 Code is amended by striking out "aggregate authorized face amount of the issue does not" and inserting in lieu thereof "proceeds of the issue do not".

(C) The amendments made by this paragraph shall apply to bonds issued after June 30, 1987.

(14) Paragraph (2) of section 148(d) of the 1986 Code (relating to special rules for reasonably required reserve or replacement fund) is amended by striking out "any fund described in paragraph (1)" and inserting in lieu thereof "any reserve or replacement fund".

(15) Paragraph (3) of section 148(f) of the 1986 Code is amended by adding at the end thereof the following new sentence: "A series of issues which are redeemed during a 6-month period (or such longer period as the Secretary may prescribe) shall be treated (at the election of the issuer) as 1 issue for purposes of the preceding sentence if no bond which is part of any issue in such series has a maturity of more than 60 days (or such longer period as the Secretary may prescribe) or is a private activity bond."

(16)(A) Subclause (I) of section 148(f)(4)(B)(iii) of the 1986 Code (relating to safe harbor for determining when proceeds of tax or revenue anticipation bonds are expended) is amended by striking out "aggregate face amount of such issue" and inserting in lieu thereof "proceeds of such issue".

(B) The amendment made by subparagraph (A) shall apply to bonds issued after June 30, 1987.

(17)(A) Subparagraph (C) of section 148(f)(4) of the 1986 Code is amended—

(i) by striking out the heading and inserting in lieu thereof:

"(C) EXCEPTION FOR GOVERNMENTAL UNITS ISSUING $5,000,000 OR LESS OF BONDS.—

"(i) IN GENERAL.—",

(ii) by redesignating clauses (i) through (iv) as subclauses (I) through (IV), respectively, and moving the margins of such subclauses 2 ems to the right, and

(iii) by striking out the last sentence and inserting in lieu thereof the following new clauses:

"(ii) AGGREGATION OF ISSUERS.—For purposes of subclause (IV) of clause (i)—

"(I) an issuer and all entities which issue bonds on behalf of such issuer shall be treated as 1 issuer,

"(II) all bonds issued by a subordinate entity shall, for purposes of applying such subclause to each other entity to which such entity is subordinate, be treated as issued by such other entity, and

"(III) an entity formed (or, to the extent provided by the Secretary, availed of) to avoid the purposes of such subclause (IV) and all other entities benefiting thereby shall be treated as 1 issuer.

"(iii) CERTAIN REFUNDING BONDS NOT TAKEN INTO ACCOUNT IN DETERMINING SMALL ISSUER STATUS.—There shall not be taken into account under subclause (IV) of clause (i) any bond issued to refund (other than to advance refund) any bond to the extent the amount of the refunding bond does not exceed the outstanding amount of the refunded bond.

"(iv) CERTAIN ISSUES ISSUED BY SUBORDINATE GOVERNMENTAL UNITS, ETC., EXEMPT FROM REBATE REQUIREMENT.—An issue issued by a subordinate entity of a governmental unit with general taxing powers shall be treated as described in clause (i)(I) if the aggregate face amount of such issue does not exceed the lesser of—

"(I) $5,000,000, or

"(II) the amount which, when added to the aggregate face amount of other issues issued by such entity, does not exceed the portion of the $5,000,000 limitation under clause (i)(IV) which such governmental unit allocates to such entity.

For purposes of the preceding sentence, an entity which issues bonds on behalf of a governmental unit with general taxing powers shall be treated as a subordinate entity of such unit. An allocation shall be taken into account under subclause (II) only if it is irrevocable and made before the issuance date of such issue and only to the extent that the limitation so allocated bears a reasonable relationship to the benefits received by such governmental unit from issues issued by such entity.

(v) DETERMINATION OF WHETHER REFUNDING BONDS ELIGIBLE FOR EXCEPTION FROM REBATE REQUIREMENT.—If any portion of an issue is issued to refund other bonds, such portion shall be treated as a separate issue which does not meet the requirements of paragraphs (2) and (3) by reason of this subparagraph unless—

"(I) the aggregate face amount of such issue does not exceed $5,000,000,

"(II) each refunded bond was issued as part of an issue which was treated as meeting the requirements of paragraphs (2) and (3) by reason of this subparagraph,

"(III) the average maturity date of the refunding bonds issued as part of such issue is not later than the average maturity date of the bonds to be refunded by such issue, and

"(IV) no refunding bond has a maturity date which is later than the date which is 30 years after the date the original bond was issued.

Subclause (III) shall not apply if the average maturity of the issue of which the original bond was a part (and of the issue of which the bonds to be refunded are a part) is 3 years or less. For purposes of this clause, average maturity shall be determined in accordance with section 147(b)(2)(A).

"(v) REFUNDING OF BONDS ISSUED UNDER LAW PRIOR TO TAX REFORM ACT OF 1986.—If section 141(a) did not apply to any refunded bond, the issue of which such refunded bond was a part shall be treated as meeting the requirements of subclause (II) of clause (v) if—

"(I) such issue was issued by a governmental unit with general taxing powers,

"(II) no bond issued as part of such issue was an industrial development bond (as defined in section 103(b)(2), but without regard to subparagraph (B) of section 103(b)(3)) or a private loan bond (as defined in section 103(o)(2)(A), but without regard to any exception from such definition other than section 103(o)(2)(C)), and

"(III) the aggregate face amount of all tax-exempt bonds (other than bonds described in subclause (II)) issued by such unit during the calendar year in which such issue was issued did not exceed $5,000,000.

References in subclause (II) to section 103 shall be to such section as in effect on the day before the date of the enactment of the Tax Reform Act of 1986. Rules similar to the rules of clauses (ii) and (iii) shall apply for purposes of subclause (III). For purposes of subclause (II) of clause (i), bonds described in subclause (II) of this clause to which section 141(a) does not apply shall not be treated as private activity bonds."

(B) Subclause (IV) of section 148(f)(4)(C)(i) of the 1986 Code (as redesignated by subparagraph (A)) is amended by striking out "(and all subordinate entities thereof)".

(C)(i) Except as provided in clause (ii), the amendments made by this paragraph shall apply to bonds issued after June 30, 1987.

(ii) At the election of an issuer (made at such time and in such manner as the Secretary of the Treasury or his delegate may prescribe), the amendments made by this paragraph shall apply to such issuer as if included in the amendments made by section 1301(a) of the Tax Reform Act of 1986.

(18) Clause (i) of section 148(f)(4)(D) of the 1986 Code is amended—

(A) by inserting "for a program" before "described in section 144(b)(1)(A)",

(B) by striking out "such a program" and inserting in lieu thereof "such program", and

(C) by adding at the end thereof the following: "Amounts designated as interest on student loans shall not be taken into account in determining whether the issuer is reimbursed for such costs. Except as otherwise hereafter provided in regulations prescribed by the Secretary, costs described in subclause (I) paid from amounts earned as described in the first sentence of this clause may also be taken into account in determining the yield on the student loans under a program described in section 144(b)(1)(A)."

(19) Subparagraph (B) of section 148(f)(7) of the 1986 Code is amended by striking out "due to reasonable cause and not" and inserting in lieu thereof "not due".

(20) Clause (iii) of section 149(b)(3)(A) of the 1986 Code is amended by striking out "with respect to any bond issued before July 1, 1989".

(21) Subparagraph (A) of section 149(b)(4) of the 1986 Code is amended by striking out "a qualified student loan bond, and a qualified redevelopment bond" and inserting in lieu thereof "and a qualified student loan bond".

(22) Paragraph (3) of section 149(e) of the 1986 Code (relating to information reporting) is amended by striking out "there is reasonable cause for the failure to file such statement in a timely fashion" and inserting in lieu thereof "the failure to file in a timely fashion is not due to willful neglect".

(23)(A) Subparagraph (B) of section 150(b)(4) of the 1986 Code (relating to change in use of facilities financed with tax-exempt private activity bonds) is amended by inserting before the period "or a qualified small issue bond".

(B) The heading for paragraph (4) of section 150(b) of the 1986 Code is amended by inserting "AND SMALL ISSUE BONDS" after "EXEMPT FACILITY BONDS".

(24)(A) Subsection (e) of section 150 of the 1986 Code is amended by redesignating paragraph (2) as paragraph (3) and by inserting after paragraph (1) the following new paragraph:

"(2) TREATMENT AS PRIVATE ACTIVITY BONDS ONLY FOR CERTAIN PURPOSES.—Bonds which are part of an issue which meets the requirements of paragraph (1) shall not be treated as private activity bonds except for purposes of sections 147(f) and 149(d)."

(B) The amendment made by subparagraph (A) shall apply to bonds issued after June 30, 1987.

(25) Clause (ii) of section 1301(f)(2)(C) of the Reform Act is amended to read as follows:

"(ii) Clause (ii) of section 25(c)(2)(A) is amended by striking out all that follows 'an amount of' and inserting in lieu thereof 'private activity bonds which it may otherwise issue during such calendar year under section 146,'."

(26) Subsection (h) of section 25 of the 1986 Code (relating to credit for interest on certain home mortgages) is amended by striking out "1987" and inserting in lieu thereof "1988".

(27) Subparagraph (B) of section 103A(c)(1) of the Internal Revenue Code of 1954, as in effect on the day before the date of the enactment of the Reform Act, is amended by striking out "1987" each place it appears and inserting in lieu thereof "1988".

(28)(A) Subsection (i) of section 146 of the 1986 Code is amended by redesignating paragraph (4) as paragraph (6) and by striking out paragraphs (2) and (3) and inserting in lieu thereof the following:

"(2) SPECIAL RULES FOR STUDENT LOAN BONDS.—If any bond is issued to refund any qualified student loan bond, paragraph (1) shall apply only if—

"(A) the average maturity date of the bonds issued to refund the qualified student loan bonds is not later than the average maturity date of the qualified student loan bonds to be refunded, and

"(B) no bond issued to refund a qualified student loan bond has a maturity date later than the date which is 17 years after the date the original bond was issued.

"(3) SPECIAL RULES FOR QUALIFIED MORTGAGE BONDS.—If any bond is issued to refund any qualified mortgage bond, paragraph (1) shall apply only if—

"(A) the average maturity date of the bonds issued to refund the qualified mortgage bonds is not later than the average maturity date of the qualified mortgage bonds to be refunded, and

"(B) no bond issued to refund a qualified mortgage bond has a maturity date later than the date which is 32 years after the date the original bond was issued.

"(4) EXCEPTION WHERE REDEMPTION TERMS ARE CHANGED.—Paragraph (1) shall not apply to any bond issued to refund any qualified student loan bond or qualified mortgage bond if—

"(A) under the terms of the issue of which the refunded bond is a part—

"(i) the bonds are required to be redeemed to the extent that the proceeds of the issue have not been expended for the purpose of the issue as of the close of the loan organization period for the issue, or

"(ii) the bonds are required to be redeemed to the extent that there are prepayments of loans provided from the proceeds of such issue, and

"(B)(i) the terms of the issue of which the refunding bond is a part do not require bonds to be redeemed at least to the same extent as the terms referred to in subparagraph (A) which apply to such issue, or

"(ii) in the case of a refunded bond to which the terms referred to in subparagraph (A)(i) apply, the last day of the loan origination period for the issue of which the refunding bond is a part is after the last day of the loan origination period for the issue of which the refunded bond is a part.

"(5) AVERAGE MATURITY.—For purposes of paragraphs (2) and (3), average maturity shall be determined in accordance with section 147(b)(2)(A)."

(B) Paragraph (4) of section 146(i) of the 1986 Code (as added by subparagraph (A)) shall apply to bonds issued after October 13, 1987.

(29) Subparagraph (D) of section 147(f)(2) of the 1986 Code is amended by striking out "the maturity date" and all that follows and inserting in lieu thereof "the average maturity date of the issue of which the refunded bond is a part is later than the average maturity date of the bonds to be refunded by such issue. For purposes of the preceding sentence, average maturity shall be determined in accordance with subsection (b)(2)(A)."

(30) Subparagraph (A) of section 150(b)(1) of the 1986 Code is amended by inserting before the period "and before the date such residence is again the principal residence of at least 1 of the mortgagors who received such financing".

(31) Subparagraph (A) of section 150(b)(2) of the 1986 Code is amended by striking out "described paragraph" and inserting in lieu thereof "described in paragraph".

(32) Paragraph (2) of section 150(b) of the 1986 Code is amended by adding at the end thereof the following: "If the provisions of prior law corresponding to section 142(d) apply to a refunded bond, such provisions shall apply (in lieu of section 142(d)) to the refunding bond."

(33) Subsection (b) of section 150 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(6) SMALL ISSUE BONDS WHICH EXCEED CAPITAL EXPENDITURE LIMITATION.—In the case of any financing provided from the proceeds of any bond which, when issued, purported to be a qualified small issue bond, no deduction shall be allowed under this chapter for interest on such financing which accrues during the period such bond is not a qualified small issue bond."

(34)(A) Section (7) of section 103(c) of the Internal Revenue Code of 1954 (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986) is amended by striking out "necessary" and inserting in lieu thereof "necessary".

(B) Subparagraph (A) shall apply to obligations sold after May 2, 1978, and to which Treasury regulation section 1.103-13 (1979) was provided to apply.

(35) VALIDATION OF SINKING FUND REGULATIONS.—

(A) IN GENERAL.—Treasury Regulation § 1.103-13(g) (1979) is hereby enacted into positive law.

(B) EFFECTIVE DATE.—

(i) Except as provided in clause (ii), subparagraph (A) shall apply to obligations sold after May 2, 1978, and to which such regulation was provided to apply.

(ii) Treasury Regulation § 1.103-13(g) (1979) as enacted into positive law by subparagraph (A) shall cease to apply to the extent hereafter modified by the Secretary of the Treasury or his delegate by regulations.

(b) AMENDMENTS RELATED TO SECTION 1311 OF THE REFORM ACT.—

(1) Section 1311 of the Reform Act is amended by redesignating subsection (d) as subsection (f), and by inserting after subsection (c) the following new subsections:

"(d) PUBLIC APPROVAL AND INFORMATION REPORTING.—Sections 147(f) and 149(e) of the 1986 Code shall apply to bonds issued after December 31, 1986.

"(e) REBATE REQUIREMENT FOR QUALIFIED SCHOLARSHIP FUNDING BONDS.—Section 150(d) of the 1986 Code shall apply to payments made after August 15, 1986."

(2) Paragraph (2) of section 1311(b) of the Reform Act (relating to effective date for section 1301(f)) is amended by inserting "with respect to non-issued bond amounts elected" after "issued".

(c) AMENDMENTS RELATED TO SECTION 1313 OF THE REFORM ACT.—

(1) Clause (i) of section 1313(a)(1)(B) of the Reform Act is amended by striking out "the proceeds" and inserting in lieu thereof "the net proceeds".

(2)(A) Subparagraph (C) of section 1313(a)(3) of the Reform Act is amended by striking out "section 148" and inserting in lieu thereof "sections 143(g) and 148".

(B) The amendment made by subparagraph (A) shall apply to bonds issued after June 30, 1987.

(3) Subparagraph (E) of section 1313(a)(3) of the Reform Act is amended by striking out "of such Code".

(4) Paragraph (3) of section 1313(a) of the Reform Act is amended by adding at the end thereof the following new sentence: "In the case of a refunding bond described in paragraph (1) with respect to a qualified bond described in paragraph (2)(B), the requirements of section 1312(b)(1) which applied to such qualified bond shall be treated as specified in this paragraph with respect to such refunding bond."

(5) Subparagraph (A) of section 1313(a)(4) of the Reform Act is amended by inserting "and by substituting 'September 1, 1986' for 'August 16, 1986' " before the comma at the end thereof.

(6) Paragraph (2) of section 1313(b) of the Reform Act is amended by adding at the end thereof "For purposes of the preceding sentence, the determination of whether a bond is described in such subsection (o)(2)(A) shall be made without regard to any exception other than section 103(o)(2)(C) of such Code."

(7) Subparagraph (F) of section 1313(b)(3) of the Reform Act is amended by striking out "of such Code".

(8) Paragraph (3) of section 1313(b) of the Reform Act is amended by adding after subparagraph (F) the following new subparagraph:

"(G) Except as provided in the last sentence of subsection (c)(2) of this section, the requirements of section 145(b) (relating to $150,000,000 limitation on bonds other than hospital bonds)."

(9) Paragraph (5) of section 1313(b) of the Reform Act is amended by striking out "are to be" and inserting in lieu thereof "are or will be".

(10)(A) The heading for subsection (c) of section 1313 of the Reform Act is amended by striking out "CURRENT" and inserting in lieu thereof "CERTAIN".

(B) Paragraph (1) of section 1313(c) of the Reform Act is amended—

(i) by striking out "apply to any bond" and inserting in lieu thereof "apply to any bond (or series of bonds)", and

(ii) by striking out "law do not" and inserting in lieu thereof "law did not".

(11)(A) Subparagraph (A) of section 1313(c)(1) of the Reform Act is amended to read as follows:

"(A) the average maturity date of the issue of which the refunding bond is a part is not later than the average maturity date of the bonds to be refunded by such issue,".

(B) Paragraph (1) of section 1313(c) of the Reform Act is amended by adding at the end thereof the following new sentence:

"For purposes of subparagraph (A), average maturity shall be determined in accordance with section 147(b)(2)(A) of the 1986 Code."

(C) Paragraph (1) of section 1313(c) of the Reform Act is amended by adding "and" at the end of subparagraph (B), by striking out subparagraph (C), and by redesignating subparagraph (D) as subparagraph (C).

(D) Subparagraph (B) of section 1313(c)(2) of the Reform Act is amended by striking out "and (D)" and inserting in lieu thereof "and (C)".

(E) A refunding bond issued before July 1, 1987, shall be treated as meeting the requirement of subparagraph (A) of section 1313(c)(1) of the Reform Act if such bond met the requirement of such subparagraph as in effect before the amendments made by this paragraph.

(12)(A) Subparagraph (N) of section 103(b)(6) of the Internal Revenue Code of 1954, as in effect on the day before the date of the enactment of the Reform Act (relating to termination dates), is amended by redesignating clauses (ii) and (iii) as clauses (iii) and (iv), respectively, and by striking out clause (i) and inserting in lieu thereof the following new clauses:

"(i) In general.—Except as provided in clause (ii), this paragraph shall not apply to any obligation issued after December 31, 1986.

"(ii) Certain refundings.—This paragraph shall apply to any obligation (or series of obligations) issued to refund an obligation issued on or before December 31, 1986, if—

"(I) the average maturity date of the issue of which the refunding obligation is a part is not later than the average maturity date of the obligations to be refunded by such issue,

"(II) the amount of the refunding obligation does not exceed the outstanding amount of the refunded obligation, and

"(III) the proceeds of the refunding obligation are used to redeem the refunded obligation not later than 90 days after the date of the issuance of the refunding obligation. For purposes of subclause (I), average maturity shall be determined in accordance with subsection (b)(14)(B)(i)."

(B) Clause (iii) of section 103(b)(6)(N) of such Code (as so in effect), as redesignated by subparagraph (A), is amended by striking out "'1988'" and inserting in lieu thereof "'1989'".

(13) Paragraph (2) of section 1313(c) of the Reform Act is amended—

(A) by striking out "apply to any bond" and inserting in lieu thereof "apply to any bond (or series of bonds)",

(B) by striking out "subsection does not" and inserting in lieu thereof "subsection did not", and

(C) by striking out "the proceeds" in subparagraph (A)(i) and inserting in lieu thereof "the net proceeds".

(14)(A) Section 1313 of the Reform Act is amended by adding at the end thereof the following new subsection:

"(d) Mortgage and Student Loan Targeting Rules To Apply to Loans Made More Than 3 Years After the Date of the Original Issue.—Subsections (a)(3) and (b)(3) shall be treated as including the requirements of subsections (e) and (f) of section 143 and paragraphs (3) and (4) of section 144(b) of the 1986 Code with respect to bonds the proceeds of which are used to finance loans made more than 3 years after the date of the issuance of the original bond."

(B)(i) The amendment made by subparagraph (A) shall apply with respect to loans made after December 31, 1987, with respect to refunding bonds issued after August 15, 1986.

(ii) The amendment made by subparagraph (A) shall not apply to any loan if (I) such loan is made pursuant to a written contract entered into with a developer which was binding on October 14, 1987, and all times thereafter, and (II) such loan is made with respect to housing constructed by such developer.

(15) A bond issued to refund an obligation described in section 103(o)(3) of the Internal Revenue Code of 1954 (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986) shall not be treated as described in section 144(b) of the 1986 Code unless it is described in section 144(b)(1)(A) of the 1986 Code.

(d) Amendments Related to Section 1314 of the Reform Act.—

(1) Subsection (a) of section 1314 of the Reform Act is amended by adding at the end thereof the following: "The treatment under the preceding sentence shall also apply to a bond issued before September 26, 1985, but only for purposes of determining whether any bond issued to advance refund such bond (or a bond which is part of a series of refundings of such bond) is an arbitrage bond (within the meaning of section 148(a) of the 1986 Code)."

(2) Subsection (f) of section 1314 of the Reform Act is amended by striking out "December" and inserting in lieu thereof "August".

(3) Section 1314 of the Reform Act is amended by redesignating subsection (g) as subsection (i) and by inserting after subsection (f) the following new subsections:

"(g) Termination of Mortgage Bond Policy Statement Requirement.—Paragraph (5) of section 103A(j) of the 1954 Code (relating to policy statement) shall not apply to any bond issued after August 15, 1986.

"(h) Arbitrage Restriction on Investments in Investment-Type Property.—In the case of a bond issued before August 16, 1986 (September 1, 1986 in the case of a bond described in section 1312(c)(2)), section 103(c) of the 1954 Code shall be applied by treating the reference to securities in paragraph (2) thereof as including a reference to investment-type property but only for purposes of determining whether any bond issued to advance refund such bond (or a bond which is part of a series of refundings of such bond) is an arbitrage bond (within the meaning of section 148(a) of the 1986 Code)."

(e) Amendments Related to Section 1315 of the Reform Act.—

(1) Subsection (c) of section 1315 of the Reform Act is amended—

(A) by inserting "for calendar year 1986" after "1954 Code" each place it appears,

(B) by striking out "before August 16" each place it appears and inserting in lieu thereof "on August 15", and

(C) by adding at the end thereof the following new sentence:

"The preceding sentence shall not apply to the extent section 1313(b)(5) treats any bond as a private activity bond for purposes of section 146 of the 1986 Code."

(2)(A) Subsection (e) of section 1315 of the Reform Act is amended by adding at the end thereof the following new sentence: "The preceding sentence shall not apply to any bond which (if issued on August 15, 1986) would have been an industrial development bond (as defined in section 103(b)(2) of the 1954 Code)."

(B) The amendment made by subparagraph (A) shall apply to bonds issued after June 10, 1987.

(f) Amendments Related to Section 1316 of the Reform Act.—

(1)(A) Subsections (a)(1), (b)(1), (c)(1), and (f)(1) of section 1316 of the Reform Act are each amended by inserting "and as having a carryforward purpose described in section 146(f)(5) of such Code" after "the 1986 Code".

(B) The amendment made by subparagraph (A) shall apply only with respect to carryforwards of volume cap for years after 1986.

(2) Subsection (c) of section 1316 of the Reform Act is amended by adding at the end thereof the following new paragraph:

"(4) Application of section 147(b).—A bond to which this subsection applies (other than a refunding bond) shall be treated as meeting the requirements of section 147(b) of the 1986 Code if the average maturity (determined in accordance with section 147(b)(2)(A) of such Code) of the issue of which such bond is a part does not exceed 20 years. A bond issued to refund (or which is part of a series of bonds issued to refund) a bond described in the preceding sentence shall be treated as meeting the requirements of such section if the refunding bond has a maturity date not later than the date which is 20 years after the date on which the original bond was issued."

(3) Paragraph (1) of section 1316(e) of the Reform Act is amended—

(A) by inserting "(and section 103(h)(2)(B)(ii) of the 1954 Code)" after "1986 Code" the first place it appears, and

(B) by inserting "(and section 103(b)(16) of the 1954 Code)" after "1986 Code" in the last sentence.

(4) Paragraph (2) of section 1316(g) of the Reform Act is amended—

(A) by striking out "described in the paragraph (3)" in subparagraph (A) and inserting in lieu thereof "issued to provide a facility described in paragraph (3)", and

(B) by striking out "which paragraph (3)" in subparagraph (C) and inserting in lieu thereof "which such paragraph (3)".

(5) Paragraph (6) of section 1316(g) of the Reform Act is amended by inserting "(and the provisions of section 1314)" after "section 1301".

(6) Paragraph (7) of section 1316(g) of the Reform Act is amended to read as follows:

"(7) In the case of a bond described in section 632(d) of the Tax Reform Act of 1984—

"(A) section 141 of the 1986 Code shall be applied without regard to subsection (a)(2) and paragraphs (4) and (5) of subsection (b),

"(B) paragraphs (1) and (2) of section 141(b) of the 1986 Code shall be applied by substituting '25 percent' for '10 percent' each place it appears, and

"(C) section 149(b) of the 1986 Code shall not apply.

This paragraph shall not apply to any bond issued after December 31, 1990."

(7)(A) Subparagraph (A) of section 1316(g)(8) of the Reform Act is amended by inserting "and as having a carryforward purpose described in section 146(f)(5) of such Code" after "the 1986 Code".

(B) The amendment made by subparagraph (A) shall apply only with respect to carryforwards of volume cap for years after 1986.

(8) Paragraph (2) of section 1316(j) of the Reform Act is amended—

(A) by striking out "$40,000,000" and inserting in lieu thereof "$175,000,000", and

(B) by striking out "December 31, 1987" and inserting in lieu thereof "the date which is 1 year after the date of the enactment of the Technical Corrections Act of 1987".

(9) Paragraph (2) of section 1316(k) of the Reform Act is amended by striking out "$55,000,000 must be redeemed no later than November 1, 1987" and inserting in lieu thereof "no more than $55,000,000 shall be outstanding later than November 1, 1987".

(10) Section 1104 of the Mortgage Subsidy Bond Tax Act of 1980 is amended by adding at the end of subsection (r) the following new sentence:

"Section 148(f) of the Internal Revenue Code of 1986 and the amendments made by section 1301 of the Tax Reform Act of 1986 shall not apply to any bonds described in paragraph (1) which may be issued as a result of the amendments made by the Tax Reform Act of 1986."

(11) Subsection (l) of section 1316 of the Reform Act is hereby repealed.

(g) AMENDMENTS RELATED TO SECTION 1317 OF THE REFORM ACT.—

(1) Subparagraph (J) of section 1317(2) of the Reform Act is amended by striking out "began construction in 1980" and inserting in lieu thereof ", a subsidiary of Sierra Pacific Resources, began in 1980 work to design, finance, construct, and operate".

(2) Subparagraph (C) of section 1317(3) of the Reform Act is amended to read as follows:

"(C) A facility is described in this subparagraph if—

"(i) it is one or more stadiums to be used either by an American League baseball team or a National Football League team currently using a stadium in a city having a population in excess of 2,500,000 and described in section 146(d)(3) of the 1986 Code,

"(ii) the bonds to be used to provide financing for one or more such stadiums are issued by a political subdivision or a State agency pursuant to a resolution approving an inducement resolution adopted by a State agency on November 20, 1985, as it may be amended (whether or not the beneficiaries of such issue or issues are the beneficiaries (if any) specified in such inducement resolution and whether or not the number of such stadiums and the locations thereof are as specified in such inducement resolution) or pursuant to P.A. 84-1470 of the State in which such city is located (and by an agency created thereby), and

"(iii) such stadium or stadiums are located in the city described in (i).

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $250,000,000. In the case of any carryforward of volume cap for one or more stadiums described in the first sentence of this subparagraph, such carryforward shall be valid with respect to bonds issued for such stadiums notwithstanding any other provision of the 1986 Code or the 1954 Code, and whether or not (i) there is a change in the number of stadiums or the beneficiaries or sites of the stadium or stadiums and (ii) the bonds are issued by either of the state agencies described in the first sentence of this subparagraph."

(3)(A) Subparagraph (P) of section 1317(3) of the Reform Act is amended by striking out "December 9, 1985" and inserting in lieu thereof "December 2, 1985".

(B) Section 1317(3)(A) of the Tax reform Act of 1986 is amended by deleting "a domed stadium—" and inserting in lieu thereof "one or both of a stadium, whether open or covered, and an arena in or adjacent to the proposed site of the stadium, and as to the stadium—".

(C) Section 1317(3)(U) of the Tax Reform Act of 1986 is amended by deleting "coliseum complex." and inserting in lieu thereof 'coliseum complex, or is a renovation of an existing stadium located in Oakland, California, and used by an American League baseball team."

(4) Paragraph (3) of section 1317 of the Reform Act is amended by adding at the end thereof the following new subparagraph:

"(Z) A facility is described in this subparagraph if—

"(i) such facility was a redevelopment project that was approved in concept by the city council sitting as the redevelopment agency in October 1984, and

"(ii) $20,000,000 in funds for such facility was identified in a 5-year budget approved by the city redevelopment agency on October 25, 1984.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $80,000,000."

(5) Paragraph (4) of section 1317 of the Reform Act is amended—

(A) by striking out "1986. The bonds" and inserting in lieu thereof "1986, and the bonds",

(B) by striking out "and" at the end the subparagraph (A), and

(C) by adding "and" at the end of subparagraph (B).

(6) Subparagraph (W) of section 1317(6) of the Reform Act is amended to read as follows:

"(W) A project is described in this subparagraph if such project is—

"(i) a part of the Kenosha Downtown Redevelopment project, and

"(ii) located in an area bounded—

"(I) on the east by the east wall of the Army Corps of Engineers Confined Disposal Facility (extended),

"(II) on the north by 48th Street (extended),

"(III) on the west by the present Chicago & Northwestern Railroad tracks, and

"(IV) on the south by the north line of Eichelman Park (60th Street) (extended).

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $105,000,000."

(7) Paragraph (6) of section 1317 of the Reform Act is amended by redesignating subparagraph (X) as subparagraph (Z) and by inserting after subparagraph (W) the following new subparagraphs:

"(X) A project is described in this subparagraph if a redevelopment plan for such project was approved by the city council of Bell Gardens, California, on June 12, 1979. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $10,000,000.

"(Y) Nothing in this paragraph shall be construed as having the effect of exempting from tax interest on any bond issued after June 10, 1987, if such interest would not have been exempt from tax were such bond issued on August 15, 1986."

(8) The last sentence of subparagraph (A) of section 1317(7) of the Reform Act is amended by inserting before the period "and section 149(d)(2) of the 1986 Code shall not apply to bonds so treated".

(9) Subparagraph (D) of section 1317(7) of the Reform Act is amended to read as follows:

"(D) A facility is described in this subparagraph if—

"(i) it is a convention, trade, or spectator facility,

"(ii) a regional convention, trade, and spectator facilities study committee was created before March 19, 1985, with respect to such facility, and

"(iii) feasibility and preliminary design consultants were hired on May 1, 1985, and October 31, 1985, with respect to such facility.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed the excess of $175,000,000 over the amount of bonds to which paragraph (48)(B) applies."

(10) Clause (ii) of section 1317(7)(G) of the Reform Act is amended to read as follows:

"(ii) such facility's location was approved in December 1985 by a task force created jointly by the Governor of the State within which such facility will be located and the mayor of the capital city of such State, and".

(11) Subparagraph (J) of section 1317(7) of the Reform Act is amended—

(A) by striking out "civic festival" in clause (i) and inserting in lieu thereof "aquafestival",

(B) by striking out clause (ii) and inserting in lieu thereof the following:

"(ii) a referendum was held on April 6, 1985, in which voters permitted the city council to lease 130 acres of dedicated parkland for the purpose of constructing such facility, and", and

(C) by striking out "$5,000,000" and inserting in lieu thereof "$10,000,000".

(12) Subparagraph (E) of section 1317(9) of the Reform Act is amended by striking out "March 5, 1985" and inserting in lieu thereof "March 6, 1985".

(13) Clause (iii) of section 1317(9)(J) of the Reform Act is amended by striking out all that precedes "by the governor" and inserting in lieu thereof the following:

"(iii) such facility's location was approved in December 1985 by a task force created jointly".

(14) Subparagraph (A) of section 1317(11) of the Reform Act is amended by striking out "and section 142(a)" and inserting in lieu thereof "in section 142(a)".

(15) Subparagraph (C) of section 1317(11) of the Reform Act is amended to read as follows:

"(C) A facility is described in this subparagraph if it is described in section 1865(c)(2)(C) of this Act."

(16)(A) Subparagraph (X) of section 1317(13) of the Reform Act is amended by striking out the last sentence.

(B) Subparagraph (W) of section 1317(13) of the Reform Act is amended by adding at the end thereof the following new sentence: "For purposes of this subparagraph, bonds shall be treated as issued by the county residential finance authority as they are issued by any authorized issuer in the commonwealth."

(17) Paragraph (13) of section 1317 of the Reform Act is amended by adding at the end thereof the following new subparagraphs:

"(AA) A residential rental property project is described in this subparagraph if it is the Carriage Trace residential rental project in Clinton, Tennessee. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $10,000,000.

"(BB) A residential rental property project is described in this subparagraph if—

"(i) a contract to purchase such property was dated as of August 9, 1985,

"(ii) there was an inducement resolution adopted on September 27, 1985, for the issuance of obligations to finance such property,

"(iii) there was a State court final validation of such financing on November 15, 1985, and

"(iv) the certificate of nonappeal from such validation was available on December 15, 1985.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $27,750,000."

(18) Paragraph (14) of section 1317 of the Reform Act is amended by striking out "$90,000,000" and inserting in lieu thereof "$130,000,000" and by inserting "incorporated on February 20, 1985" before the period at the end of the 1st sentence.

(19) Subparagraph (B) of section 1317(15) of the Reform Act is amended—

(A) by striking out all that follows "agreement with" in clause (i) and inserting in lieu thereof "an underwriter to provide planning and financial guidance for a possible bond issue, and", and

(B) by striking out "certificates" in clause (ii) and inserting in lieu thereof "bond issue"

(20) Paragraph (16) of section 1317 of the Reform Act is amended by striking out the last sentence.

(21) Clause (i) of section 1317(19)(D) of the Reform Act is amended by striking out "light rail transitway" and inserting in lieu thereof "fixed guideway".

(22) Paragraph (20) of section 1317 of the Reform Act is amended by striking out "Section 148(f)" and inserting in lieu thereof "Subsections (c)(2) and (f) of section 148".

(23) Subparagraph (B) of section 1317(21) of the Reform Act is amended—

(A) by striking out "Subsection (c)" and inserting in lieu thereof "Subsections (c)(2)", and

(B) by striking out "103A(g)(5)(C)l" and inserting in lieu thereof "103A(g)(5)(C)".

(24) Paragraph (22) of section 1317 of the Reform Act is amended to read as follows:

"(22) DOWNTOWN REDEVELOPMENT PROJECT.—Subsection (b) of section 626 of the Tax Reform Act of 1984 is amended by adding at the end thereof the following new paragraph:

" '(7) EXCEPTION FOR CERTAIN DOWNTOWN REDEVELOPMENT PROJECT.—The amendments made by this section shall not apply to any obligation which is issued as part of an issue 95 percent or more of the proceeds of which are to be used to provide a project to acquire and redevelop a downtown area if—

" '(A) on August 15, 1985, a downtown redevelopment authority adopted a resolution to issue obligations for such project,

" '(B) before September 26, 1985, the city expended, or entered into binding contracts to expend, more than $10,000,000 in connection with such project, and

" '(C) the State supreme court issued a ruling regarding the proposed financing structure for such project on December 11, 1985.

The aggregate face amount of obligations to which this paragraph applies shall not exceed $85,000,000 and such obligations must be issued before January 1, 1992.' "

(25) Subparagraph (A) of section 1317(24) of the Reform Act is amended by adding at the end thereof the following: "The last paragraph of this section shall not apply to the treatment under the preceding sentence."

(26)(A) Clause (i) of section 1317(25)(A) of the Reform Act is amended by striking out "3 counties" and inserting in lieu thereof "1 or more of 3 counties".

(B) Clause (i) of section 1317(25)(B) of the Reform Act is amended by adding at the end thereof the following new sentence: "For purposes of applying section 146(k) of the 1986 Code, the public utility facility described in subparagraph (A) shall be treated as described in paragraph (2) of such section and such paragraph shall be applied without regard to the requirement that the issuer establish that a State's share of the use of a facility (or its output) will equal or exceed the State's share of the private activity bonds issued to finance the facility."

(27) Subparagraph (I) of section 1317(27) of the Reform Act is amended by adding at the end thereof the following: "For purposes of determining whether any bond to which this subparagraph applies is a qualified small issue bond, there shall not be taken into account under section 144(a) of the 1986 Code capital expenditures with respect to any facility of the United States Government and there shall not be taken into account any bond allocable to the United States Government."

(28) Clause (i) of section 1317(29)(B) of the Reform Act is amended by striking out all that follows "1993" and inserting in lieu thereof ", by the State of Connecticut, and".

(29) Subparagraph (D) of section 1317(29) of the Reform Act is amended by striking out "the net proceeds" and inserting in lieu thereof "the proceeds".

(30) Section 1317(33)(A)(ii) of the Reform Act is amended—

(A) by striking out "on" and inserting in lieu thereof "dated" each place it appears, and

(B) by inserting "dated on December 1, 1985" after "(Series 1985A and 1985B)" in subclause (III).

(31) Subparagraph (B) of section 1317(33) of the Reform Act is amended—

(A) by striking out "and before August 7, 1988,", and

(B) by adding at the end thereof the following new sentence: "The aggregate face amount of bonds to which this subparagraph applies shall not exceed $90,000,000."

(32) Subparagraph (G) of section 1317(33) of the Reform Act is amended by striking out "subparagraph (H)" and inserting in lieu thereof "subparagraph (F)".

(33) Subparagraph (H) of section 1317(33) of the Reform Act is amended—

(A) by striking out clause (ii) and inserting in lieu thereof the following:

"(ii) the proceeds of the issue are to be used to finance projects (to be determined by such university and the issuer) which are similar to those projects intended to be financed by bonds that were the subject of a request transmitted to Congress on November 7, 1985", and

(B) by adding at the end thereof the following new sentence: "Bonds to which this subparagraph applies shall be treated as qualified 501(c)(3) bonds if such bonds would not (if issued on August 15, 1986) be industrial development bonds (as defined in section 103(b)(2) of the 1954 Code), and section 147(f) of the 1986 Code shall not apply to the issue of which such bonds are a part."

(34) Subparagraph (K) of section 1317(33) of the Reform Act is amended—

(A) by striking out "the issue is" in clause (i) and inserting in lieu thereof "the issue or issues are",

(B) by inserting "at least" before "900 units",

(C) by striking out "2,000 square feet" and inserting in lieu thereof "245,000 square feet", and

(D) by striking out "$150,000,000" and inserting in lieu thereof "$112,000,000".

(35) Paragraph (33) of section 1317 of the Reform Act is amended by striking out subparagraphs (M), (N), and (O) and inserting in lieu thereof the following new subparagraphs:

"(M) Proceeds of an issue are described in this subparagraph if such issue is issued on behalf of the Society of the New York Hospital to finance completion of a project commenced by such hospital in 1981 for construction of a diagnostic and treatment center or to refund bonds issued on behalf of such hospital in connection with the construction of such diagnostic and treatment center or to finance construction and renovation projects associated with an inpatient psychiatric care facility. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $150,000,000.

"(N) Any bond to which section 145(b) of the 1986 Code does not apply by reason of this paragraph (other than subparagraph (A) thereof) shall be taken into account in determining whether such section applies to any later issue.

"(O) In the case of any refunding bond—

"(i) to which any subparagraph of this paragraph applies, and

"(ii) to which the last sentence of section 1313(c)(2) applies,

such bond shall be treated as having such subparagraph apply (and the refunding bond shall be treated for purposes of such section as issued before January 1, 1986, and as not being an advance refunding) unless the issuer elects the opposite result."

(36) Paragraph (36) of section 1317 of the Reform Act is amended by striking out "$80,000,000" and inserting in lieu thereof "$400,000,000".

(37) Paragraph (38) of section 1317 of the Reform Act is amended by striking out "and sections 148 and 149".

(38) Paragraphs (39) and (40) of section 1317 of the Reform Act are amended to read as follows:

"(39) CERTAIN BONDS TREATED AS QUALIFIED 501(C)(3) BONDS.—A bond issued as part of an issue shall be treated for purposes of part IV of subchapter B of chapter 1 of the 1986 Code as a qualified 501(c)(3) bond if—

"(A) such bond would not (if issued on August 15, 1986) be an industrial development bond (as defined in section 103(b)(2) of the 1954 Code), and

"(B) such issue was approved by city voters on January 19, 1985, for construction or renovation of facilities for the cultural and performing arts.

The aggregate face amount of bonds to which this paragraph applies shall not exceed $5,000,000.

"(40) CERTAIN LIBRARY BONDS.—In the case of a bond issued before January 1, 1986, by the City of Los Angeles Community Redevelopment Agency to provide the library and related structures associated with the City of Los Angeles Central Library Project, the ownership and use of the land and facilities associated with such project by persons which are not governmental units (or payments from such persons) shall not adversely affect the exclusion from gross income under section 103 of the 1954 Code of interest on such bonds."

(39) Paragraph (41) of section 1317 of the Reform Act is amended to read as follows:

"(41) CERTAIN REFUNDING OBLIGATIONS FOR CERTAIN POWER FACILITIES.—With respect to 2 net billed nuclear power facilities located in the State of Washington on which construction has been suspended, the requirements of section 147(b) of the 1986 Code shall be treated as satisfied with respect to refunding bonds issued before 1992 if—

"(A) each refunding bond has a maturity date not later than the maturity date of the refunded bond, and

"(B) the facilities have not been placed in service as of the date of issuance of the refunding bond.

The aggregate face amount of bonds to which this paragraph applies shall not exceed $2,000,000,000. Section 146 of the 1986 Code and the last paragraph of this section shall not apply to bonds to which this paragraph applies."

(40) Paragraph (43) of section 1317 of the Reform Act is amended by inserting before the period "and the Internal Revenue Code of 1986 shall be applied without regard to section 149(d)(2)."

(41) Paragraph (44) of section 1317 of the Reform Act is amended—

(A) by inserting after "1986 Code" the following: "and the temporary period limitation of section 148(c)(2) of the 1986 Code",

(B) by striking out "$100,000,000" and inserting in lieu thereof "$200,000,000", and

(C) by striking out "Hospitals Bond Pool" in the second item in the table and inserting in lieu thereof "Hospital Equipment Loan Council".

(42) Paragraph (48) of section 1317 of the Reform Act is amended by striking out "either" in the material preceding subparagraph (A) and inserting in lieu thereof "any".

(43) Subparagraph (B) of section 1317(48) of the Reform Act is amended by striking out "subparagraph (O)" and inserting in lieu thereof "paragraph (6)(U)".

(44) Paragraph (48) of section 1317 of the Reform Act is amended by adding at the end thereof the following new subparagraph:

"(C) A facility which is part of a project described in paragraph (6)(O). The aggregate face amount of bonds to which this subparagraph applies shall not exceed $20,000,000."

(45) Paragraph (49) of section 1317 of the Reform Act is amended—

(A) by striking out "149(d)" and inserting in lieu thereof "149(d)(2)", and

(B) by inserting "United States" before "Housing Act of 1937".

(46) Paragraph (50) of section 1317 of the Reform Act is amended to read as follows:

"(50) TRANSITIONED BONDS SUBJECT TO CERTAIN RULES.—In the case of any bond to which any provision of this section applies, except as otherwise expressly provided, sections 103 and 103A of the 1954 Code shall be applied as if the requirements of sections 147(g), 148, and 149(d) of the 1986 Code were included in each such section."

(47) Paragraph (51) of section 1317 of the Reform Act is amended—

(A) by striking out "Section 141(a)" and inserting in lieu thereof "Section 141(b)", and

(B) by striking out "141(a)(3)" and inserting in lieu thereof "141(b)(3)".

(48) Paragraph (52) of section 1317 of the Reform Act is amended by striking out "This section" and inserting in lieu thereof "Except as otherwise provided in this section".

(49) The material preceding subparagraph (A) of section 1317(2) of the Reform Act is amended by striking out "section 103(b)(4)(C)" and inserting in lieu thereof "section 103(b)(4)(F)".

(50) Clause (ii) of section 1317(27)(H) of the Reform Act is amended by striking out "November 14, 1985" and inserting in lieu thereof "November 13, 1985".

(51) Effective for bonds issued after the date of the enactment of this Act, in the event of the death or adjudicated mental or physical incapacity of any elected official of a State designated to approve issuance of private activity bonds under section 147(f) of the 1986 Code, any person appointed by the State's chief elected executive officer and confirmed by the State's elected legislative body to serve the remaining term of the deceased or incapacitated State elected official shall be treated as an elected official of the State for purposes of section 147(f) of such Code.

(h) AMENDMENTS RELATED TO SECTION 1318 OF THE REFORM ACT.—Section 1318 of the Reform Act (relating to definitions, etc., relating to effective dates and transitional rules) is amended—

(1) by inserting "(a) DEFINITIONS.—" before "For purposes of this subtitle—", and

(2) by adding at the end thereof the following new subsections:

"(b) MINIMUM TAX TREATMENT.—

"(1) IN GENERAL.—Any bond described in paragraph (2) shall not be treated as a private activity bond for purposes of section 57 of the 1986 Code unless such bond would (if issued on August 7, 1986) be—

"(A) an industrial development bond (as defined in section 103(b)(2) of the 1954 Code), or

"(B) a private loan bond (as defined in section 103(o)(2)(A) of the 1954 Code, without regard to any exception from such definition other than section 103(o)(2)(C) of such Code).

"(2) BONDS DESCRIBED.—For purposes of paragraph (1), a bond is described in this paragraph if—

"(A) the amendments made by section 1301 do not apply to such bond by reason of section 1312 or 1316(g),

"(B) any provision of section 1317 applies to such bond, or

"(C) the proceeds of such bond are used to refund any bond referred to in subparagraph (A) or (B) (or any bond which is part of a series of refundings of such a bond) if the requirements of paragraphs (1), (2), and (3) of subsection (c) are met with respect to the refunding bond.

"(c) CURRENT REFUNDINGS NOT TAKEN INTO ACCOUNT IN APPLYING AGGREGATE LIMIT ON BONDS TO WHICH TRANSITIONAL RULES APPLY.—The limitation on the aggregate face amount of bonds to which any provision of section 1316(g) or 1317 applies shall not be reduced by the face amount of any bond the proceeds of which are to be used exclusively to refund any bond to which such provision applies (or any bond which is part of a series of refundings of such bond) if—

"(1) the average maturity date of the issue of which the refunding bond is a part is not later than the average maturity date of the bonds to be refunded by such issue,

"(2) the amount of the refunding bond does not exceed the outstanding amount of the refunded bond, and

"(3) the net proceeds of the refunding bond are used to redeem the refunded bond not later than 90 days after the date of the issuance of the refunding bond.

For purposes of paragraph (1), average maturity shall be determined in accordance with section 147(b)(2)(A) of the 1986 Code. Sections 1316(g)(5) and 1317(52) shall not apply to any refunding bond which meets the requirements of this subsection.

"(d) SPECIAL RULE PERMITTING CARRYFORWARD OF VOLUME CAP FOR CERTAIN TRANSITIONED PROJECTS.—A bond to which section 1312 or 1317 applies shall be treated as having a carryforward purpose described in section 146(f)(5) of the 1986 Code, and the requirement of section 146(f)(2)(A) of the 1986 Code shall be treated as met if such project is identified with reasonable specificity. The preceding sentence shall not apply so as to permit a carryforward with respect to any qualified small issue bond."

SEC. 10214. AMENDMENTS RELATED TO TITLE XIV OF THE REFORM ACT.

(a) AMENDMENTS RELATED TO SECTION 1401 OF THE REFORM ACT.—

(1) Subsection (e) of section 672 of the 1986 Code is amended to read as follows:

"(e) GRANTOR TREATED AS HOLDING ANY POWER OR INTEREST OF GRANTOR'S SPOUSE.—

"(1) IN GENERAL.—For purposes of this subpart, a grantor shall be treated as holding any power or interest held by—

"(A) any individual who was the spouse of the grantor at the time of the creation of such power or interest, or

"(B) any individual who became the spouse of the grantor after the creation of such power or interest, but only with respect to periods after such individual became the spouse of the grantor.

"(2) MARITAL STATUS.—For purposes of paragraph (1)(A), an individual legally separated from his spouse under a decree of divorce or of separate maintenance shall not be considered as married."

(2) Paragraph (3) of section 675 of the 1986 Code is amended by adding at the end thereof the following new sentence:

"For periods during which an individual is the spouse of the grantor (within the meaning of section 672(e)(2)), any reference in this paragraph to the grantor shall be treated as including a reference to such individual."

(3) Subsection (c) of section 674 of the 1986 Code is amended by adding at the end thereof the following new sentence: "For periods during which an individual is the spouse of the grantor (within the meaning of section 672(e)(2)), any reference in this subsection to the grantor shall be treated as including a reference to such individual."

(b) AMENDMENT RELATED TO SECTION 1402 OF THE REFORM ACT.—Section 673 of the 1986 Code is amended by adding at the end thereof the following new subsections:

"(c) SPECIAL RULE FOR DETERMINING VALUE OF REVERSIONARY INTEREST.—For purposes of subsection (a), the value of the grantor's reversionary interest shall be determined by assuming the maximum exercise of discretion in favor of the grantor.

"(d) POSTPONEMENT OF DATE SPECIFIED FOR REACQUISITION.—Any postponement of the date specified for the reacquisition of possession or enjoyment of the reversionary interest shall be treated as a new transfer in trust commencing with the date on which the postponement is effective and terminating with the date prescribed by the postponement. However, income for any period shall not be included in the income of the grantor by reason of the preceding sentence if such income would not be so includible in the absence of such postponement."

(c) Amendments Related to Section 1403 of the Reform Act.—

(1) Paragraph (2) of section 1403 of the Reform Act is amended by striking out "sections 652(a) or 662(a)" and inserting in lieu thereof section 652(a), 662(a), or 664(b)".

(2) Any trust beneficiary may elect (at such time and in such manner as the Secretary of the Treasury or his delegate may prescribe) to waive the benefits of section 1403(c)(2) of the Reform Act.

(3)(A) For purposes of determining the gross income of any pass-thru entity, such pass-thru entity shall not be allowed the benefits of section 806(e)(2)(C) or 1403(c)(2) of the Reform Act if such pass-thru entity is required to change its taxable year by reason of the amendments made by section 806 or 1403 of the Reform Act.

(B) For purposes of subparagraph (A), the term "pass-thru entity" means any trust, partnership, S corporation, or common trust fund.

(d) Amendments Related to Section 1404 of the Reform Act.—

(1) Subsection (a) of section 1404 of the Reform Act is amended—

(A) by striking out "Subsection (k) of section 6654" and inserting in lieu thereof "Subsection (l) of section 6654, as amended by section 1841 of this Act", and

(B) by striking out " '(k) Trusts" and inserting in lieu thereof " '(l) Trusts".

(2) Subsection (l) of section 6654 of the 1986 Code is amended to read as follows:

"(l) Estates and Trusts.—

"(1) In general.—Except as otherwise provided in this subsection, this subsection shall apply to any estate or trust.

"(2) Exception for estates and certain trusts.—With respect to any taxable year ending before the date 2 years after the date of the decedent's death, this section shall not apply to—

"(A) the estate of such decedent, or

"(B) any trust—

"(i) all of which was treated (under subpart E of part I of subchapter J of chapter 1) as owned by the decedent, and

"(ii) to which the residual of the decedent's estate will pass under his will.

(3) Exception for charitable trusts and private foundations.—This section shall not apply to any trust which is subject to the tax imposed by section 511 or which is a private foundation.

"(4) Special rule for annualizations.—In the case of any estate or trust to which this section applies, subsection (d)(2)(B)(i) shall be applied by substituting 'ending before the date 1 month before the due date for the installment' for 'ending before the due date for the installment'."

(3) Subsection (g) of section 643 of the 1986 Code is amended—

(A) by striking out the last sentence of paragraph (1), and

(B) by amending paragraph (2) to read as follows:

"(2) Time for making election.—An election under paragraph (1) shall be made on or before the 65th day after the close of the taxable year of the trust and in such manner as the Secretary may prescribe."

(e) Amendments Related to Section 1411 of the Reform Act.—

(1) Paragraph (3) of section 1(i) of the 1986 Code is amended by adding at the end thereof the following new subparagraph:

"(C) Coordination with section 644.—If tax is imposed under section 644(a)(1) with respect to the sale or exchange of any property of which the parent was the transferor, for purposes of applying subparagraph (A) to the taxable year of the parent in which such sale or exchange occurs—

"(i) taxable income of the parent shall be increased by the amount treated as included in gross income under section 644(a)(2)(A)(i), and

"(ii) the amount described in subparagraph (A)(ii) shall be increased by the amount of the excess referred to in section 644(a)(2)(A)."

(2) The last sentence of subparagraph (A) of section 1(i)(3) of the 1986 Code is amended by striking out "any deduction or credit" and inserting in lieu thereof "any exclusion, deduction, or credit".

(3) Subparagraph (A) of section 1(i)(4) of the 1986 Code is amended—

(A) by striking out "gross income for the taxable year which is not earned income" in clause (i) and inserting in lieu thereof "adjusted gross income for the taxable year which is not attributable to earned income",

(B) by striking out "his deduction" in clause (ii)(II) and inserting in lieu thereof "his deductions",

(C) by striking out "the deductions allowed" in clause (ii)(II) and inserting in lieu thereof "the itemized deductions allowed", and

(D) by striking out "gross income" in clause (ii)(II) and inserting in lieu thereof "adjusted gross income".

(4) Clause (iv) of section 6103(e)(1)(A) of the 1986 Code is amended by striking out "section 1(j)" and inserting in lieu thereof "section 1(i) or 59(j)".

(5) Section 59 of the 1986 Code is amended by adding at the end thereof the following new subsection:

"(j) Certain Unearned Income of Minor Children Taxed as if Parent's Income.—

"(1) In general.—In the case of any child to whom section 1(i) applies, the tax imposed by section 55 shall be equal to the greater of—

"(A) the tax imposed by section 55 without regard to this subsection, or

"(B) the sum of—

"(i) the tax which would be imposed by section 55 if—

"(I) the alternative minimum taxable income of such child for the taxable year were reduced by the net unearned minimum taxable income of such child, and

"(II) the regular tax of such child for the taxable year were reduced by the portion of such tax attributable to net unearned income (as defined in section 1(i)(4)), plus

"(ii) such child's share of the allocable parental minimum tax.

"(2) Allocable parental minimum tax.—For purposes of this subsection—

"(A) In general.—The term 'allocable parental minimum tax' means the excess of—

"(i) the tax which would be imposed by section 55 on the parent's alternative minimum taxable income if—

"(I) such income included the net unearned minimum taxable income of all children of the parent to whom section 1(i) applies, and

"(II) the amount of the parent's regular tax were increased by the amount of the aggregate of the regular taxes of all children of the parent to whom section 1(i) applies to the extent such taxes are attributable to net unearned income (as defined in section 1(i)(4)) of such children, over

"(ii) the tax imposed by section 55 on the parent without regard to this subsection.

For purposes of clause (i), the net unearned minimum taxable income of all children of the parent shall not be taken into account in computing any exclusion, deduction, or credit of the parent.

"(B) Child's share.—A child's share of any allocable parental minimum tax shall be determined under rules similar to the rules of section 1(i)(3)(B).

"(C) Coordination with section 644.—Rules similar to the rules of subparagraph (C) of section 1(i)(3) shall apply.

"(3) Net unearned minimum taxable income.—For purposes of this subsection, the term 'net unearned minimum taxable income' means net unearned income (as defined in section 1(i)(4) computed with the adjustments provided in sections 56, 57, and 58; except that, notwithstanding section 56(b)(1)(E), the deduction under section 63(c) shall be allowed.

"(4) Other rules made applicable.—For purposes of this subsection, rules similar to the rules of paragraphs (5) and (6) of section 1(i) shall apply."

(6) Subparagraph (A) of section 1(i)(5) of the 1986 Code is amended by striking out "custodial parent" and inserting in lieu thereof "custodial parent (within the meaning of section 152(e))".

(f) Amendments Related to Section 1431 of the Reform Act.—

(1) Subsection (a) of section 2611 of the 1986 Code is amended by striking out "generation-skipping transfers" and inserting in lieu thereof "generation-skipping transfer".

(2) Subsection (b) of section 2611 of the 1986 Code is amended by striking out paragraph (1) and by redesignating paragraphs (2) and (3) as paragraphs (1) and (2), respectively.

(3) Subsection (a) of section 2612 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(3) Taxable termination not to include direct skip.—For purposes of this chapter, the term 'taxable termination' shall not include any transfer which is a direct skip."

(4)(A) Section 2642 of the 1986 Code is amended by adding at the end thereof the following new subsection:

"(e) Special Rules for Charitable Lead Trusts.—

"(1) In general.—For purposes of determining the inclusion ratio for any charitable lead trust, the applicable fraction shall be a fraction—

"(A) the numerator of which is the adjusted GST exemption, and

"(B) the denominator of which is the value of all of the property in such trust immediately after the termination of the charitable lead interest.

"(2) Adjusted GST exemption.—For purposes of paragraph (1), the adjusted GST exemption is an amount equal to the GST exemption allocated to the trust increased by interest determined—

"(A) at the rate used in determining the amount of the deduction under section 2055 or 2522 (as the case may be) for the charitable lead interest, and

"(B) for the period of the charitable lead interest.

"(3) Definitions.—For purposes of this subsection—

"(A) Charitable lead trust.—The term 'charitable lead trust' means any trust in which there is a charitable lead interest.

"(B) Charitable lead interest.—The term 'charitable lead trust' means any interest described in section 2055(e)(2)(B) or 2522(c)(2)(B) with respect to which a deduction was allowed under section 2055 or 2522 (as the case may be).

"(4) COORDINATION WITH SUBSECTION (d).—Under regulations, appropriate adjustments shall be made in the application of subsection (d) to take into account the provisions of this subsection."

(B) The amendment made by subparagraph (A) shall apply for purposes of determining the inclusion ratio with respect to property transferred after October 13, 1987.

(5)(A) Section 2642 of the 1986 Code is amended by adding at the end thereof the following new subsection:

"(f) SPECIAL RULES FOR CERTAIN INTER VIVOS TRANSFERS.—Except as provided in regulations—

"(1) IN GENERAL.—For purposes of determining the inclusion ratio, if—

"(A) an individual makes an inter vivos transfer of property, and

"(B) the value of such property (or any portion thereof) would be includible in the gross estate of such individual under chapter 11 if such individual died immediately after making such transfer (other than by reason of section 2035),

except as provided in paragraph (3), any allocation of GST exemption to such property shall not be made before the close of the estate tax inclusion period (and the value of such property shall be determined under paragraph (2)). If such transfer is a direct skip, such skip shall be treated as occurring as of the close of the estate tax inclusion period.

"(2) VALUATION.—In the case of any property to which paragraph (1) applies, the value of such property shall be—

"(A) if such property is includible in the gross estate of the transferor (other than by reason of section 2035), its value for purposes of chapter 11, or

"(B) if subparagraph (A) does not apply, its value as of the close of the estate tax inclusion period.

"(3) ESTATE TAX INCLUSION PERIOD.—For purposes of this subsection, the term 'estate tax inclusion period' means any period after the transfer described in paragraph (1) during which the value of the property involved in such transfer would be includible in the gross estate of the transferor under chapter 11 (or would be so includible but for an election to treat the property as qualified terminable interest property) if he died. Such period shall in no event extend beyond the earlier of—

"(A) the date on which there is a generation-skipping transfer with respect to such property, or

"(B) the date of the death of the transferor.

"(4) TREATMENT OF SPOUSE.—Any reference in this subsection to an individual or transferor shall be treated as including a reference to the spouse of such individual or transferor.

"(5) COORDINATION WITH SUBSECTION (d).—Under regulations, appropriate adjustments shall be made in the application of subsection (d) to take into account the provisions of this subsection."

(B) The last sentence of section 2642(a)(2) of the 1986 Code is amended by striking out "of subsection (b)" and inserting in lieu thereof "of subsection (b) or in subsection (e)".

(C) Subsection (b) of section 2642 of the 1986 Code is amended by inserting "Except as provided in subsection (f)—" immediately after the subsection heading.

(6)(A) Paragraph (1) of section 2613(a) of the 1986 Code is amended by striking out "a person assigned" and inserting in lieu thereof "a natural person assigned".

(B) Subsection (c) of section 2612 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(3) LOOK-THRU RULES NOT TO APPLY.—Solely for purposes of determining whether any transfer to a trust is a direct skip, the rules of section 2651(e)(2) shall not apply."

(7) Subsection (c) of section 2652 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(3) CERTAIN SUPPORT OBLIGATIONS DISREGARDED.—The fact that income or corpus of the trust may be used to satisfy an obligation of support arising under State law shall be disregarded in determining whether a person has an interest in the trust, if—

"(A) such use is discretionary, or

"(B) such use is pursuant to the provisions of any State law substantially equivalent to the Uniform Gifts to Minors Act."

(8) Subsection (a) of section 2653 of the 1986 Code is amended by striking out "any property" and inserting in lieu thereof "any property (or there is a transfer of property which would be a generation-skipping transfer but for section 2612(c)(2))".

(9) Paragraph (2) of section 2652(c) of the 1986 Code is amended—

(A) by striking out "NOMINAL INTERESTS" in the paragraph heading and inserting in lieu thereof "INTERESTS", and

(B) by striking out "the tax" and inserting in lieu thereof "any tax".

(10) Paragraph (1) of section 2652(a) of the 1986 Code is amended—

(A) by striking out "a transfer of a kind" each place it appears and inserting in lieu thereof "any property", and

(B) by adding at the end thereof the following new sentence:

"An individual shall be treated as transferring any property with respect to which such individual is the transferor."

(11) Section 2663 of the 1986 Code is amended by striking out "and" at the end of paragraph (1), by striking out the period at the end of paragraph (2) and inserting in lieu thereof ", and", and by adding at the end thereof the following new paragraph:

"(3) regulations providing for such adjustments as may be necessary to the application of this chapter in the case of any arrangement which, although not a trust, is treated as a trust under section 2652(b)."

(12) Paragraph (3) of section 2651(e) of the 1986 Code is amended to read as follows:

"(3) TREATMENT OF CERTAIN CHARITABLE ORGANIZATIONS AND GOVERNMENTAL ENTITIES.—Any—

"(A) organization described in section 511(a)(2),

"(B) charitable trust described in section 511(b)(2), and

"(C) governmental entity,

shall be assigned to the transferor's generation."

(13) Paragraph (2) of section 2654(a) of the 1986 Code is amended—

(A) by striking out "any increase" and inserting in lieu thereof "any increase or decrease", and

(B) by striking out "such increase" and inserting in lieu thereof "such increase or decrease (as the case may be)".

(14) Subsection (b) of section 2654 of the 1986 Code is amended to read as follows:

"(b) CERTAIN TRUSTS TREATED AS SEPARATE TRUSTS.—For purposes of this chapter—

"(1) the portions of a trust attributable to transfers from different transferors shall be treated as separate trusts, and

"(2) substantially separate and independent shares of different beneficiaries in a trust shall be treated as separate trusts. Except as provided in the preceding sentence, nothing in this chapter shall be construed as authorizing a single trust to be treated as 2 or more trusts."

(15) Paragraph (2) of section 2612(c) of the 1986 Code is amended by adding at the end thereof the following new sentence: "The terms 'taxable termination' and 'taxable distribution' shall not include any transfer which would be a direct skip but for the preceding sentence."

(16) Paragraph (3) of section 2652(a) of the 1986 Code is amended—

(A) by striking out "any property" in subparagraphs (A) and (B) and inserting in lieu thereof "any trust", and

(B) by striking out "may elect to treat such property" and inserting in lieu thereof "may elect to treat all of the property in such trust".

(17) Paragraph (2) of section 2612(a) of the 1986 Code is amended to read as follows:

"(2) CERTAIN PARTIAL TERMINATIONS TREATED AS TAXABLE.—If, upon the termination of an interest in property held in trust by reason of the death of a lineal descendant of the transferor, a specified portion of the trust's assets are distributed to 1 or more skip persons (or 1 or more trusts for the exclusive benefit of such persons), such termination shall constitute a taxable termination with respect to such portion of the trust property."

(18) Paragraph (2) of section 2632(b) of the 1986 Code is amended by striking out "paragraph (1)) with respect to a prior direct skip" and inserting in lieu thereof "paragraph (1) with respect to a prior direct skip)".

(19)(A) Subsection (c) of section 2642 of the 1986 Code is amended to read as follows:

"(c) TREATMENT OF CERTAIN NONREPORTABLE GIFTS.—

"(1) DIRECT SKIPS.—In the case of any direct skip which is a nonreportable gift, the inclusion ratio shall be zero.

"(2) TREATMENT OF NONREPORTABLE GIFTS MADE TO TRUSTS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), any nonreportable gift which is made to a trust shall not be taken into account in determining the inclusion ratio for such trust.

"(B) TREATMENT OF 1ST TRANSFER TO TRUST.—If the 1st transfer to a trust is a nonreportable gift, the inclusion ratio for such trust shall be zero.

"(3) NONREPORTABLE GIFT.—For purposes of this section, the term 'nonreportable gift' means any gift to or for the benefit of any individual if all gifts made by the donor to or for the benefit of such individual during the calendar year are not taxable gifts by reason of—

"(A) section 2503(b) (taking into account the application of section 2513), or

"(B) section 2503(e)."

(B) Paragraph (1) of section 2642(d) of the 1986 Code is amended by striking out "(other than a nontaxable gift)".

(20) Clause (i) of section 2642(d)(2)(B) of the 1986 Code is amended to read as follows:

"(i) the value of the property involved in such transfer reduced by the sum of—

"(I) any Federal estate tax or state death tax actually recovered from the trust attributable to such property, and

"(II) any charitable deduction allowed under section 2055 or 2522 with respect to such property, and".

(21) Paragraph (2) of section 2651(b) of the 1986 Code is amended by striking out "a spouse of the transferor" and inserting in

lieu thereof "a spouse (or former spouse) of the transferor".

(g) Amendments Related to Section 1433 of the Reform Act.—

(1) Subsection (a) of section 1433 of the Reform Act is amended by striking out "this part" and inserting in lieu thereof "this subtitle".

(2) Paragraph (2) of section 1433(b) of the Reform Act is amended—

(A) by striking out "this part" in the material preceding subparagraph (A) and inserting in lieu thereof "this subtitle",

(B) by inserting before the comma at the end of subparagraph (A) the following: "(or out of income attributable to corpus so added)", and

(C) by inserting "or revocable trust" after "a will" in subparagraph (B).

(3)(A) Subsection (b) of section 1433 of the Reform Act is amended by striking out paragraph (3) and inserting in lieu thereof the following new paragraphs:

"(3) Treatment of certain transfers to grandchildren.—

"(A) In general.—For purposes of chapter 13 of the Internal Revenue Code of 1986, the term 'direct skip' shall not include any transfer before January 1, 1990, from a transferor to a grandchild of the transferor to the extent the aggregate transfers from such transferor to such grandchild do not exceed $2,000,000.

"(B) Treatment of transfers in trust.—For purposes of subparagraph (A), a transfer in trust for the benefit of a grandchild shall be treated as a transfer to such grandchild if (and only if)—

"(i) during the life of the grandchild, no portion of the corpus or income of the trust may be distributed to (or for the benefit of) any person other than such grandchild,

"(ii) the assets of the trust will be includible in the gross estate of the grandchild if the grandchild dies before the trust is terminated, and

"(iii) all of the income of the trust for periods after the grandchild has attained age 21 will be distributed to such grandchild not less frequently than annually.

"(C) Coordination with section 2653(a) of the 1986 code.—In the case of any transfer which would be a generation-skipping transfer but for subparagraph (A), the rules of section 2653(a) of the Internal Revenue Code of 1986 shall apply as if such transfer were a generation-skipping transfer.

"(D) Coordination with taxable terminations and taxable distributions.—For purposes of chapter 13 of the Internal Revenue Code of 1986, the terms 'taxable termination' and 'taxable distribution' shall not include any transfer which would be a direct skip but for subparagraph (A).

"(4) Treatment of grandfathered portion of trust.—If the amendments made by this subtitle do not apply to generation-skipping transfers from any portion of a trust, notwithstanding section 2654(b) of the Internal Revenue Code of 1986, such portion shall be treated as a separate trust for purposes of applying chapter 13 of such Code.

"(5) Definitions.—Terms used in this section shall have the same respective meanings as when used in chapter 13 of the Internal Revenue Code of 1986; except that section 2612(c)(2) of such Code shall not apply in determining whether an individual is a grandchild of the transferor."

(B) Clause (iii) of section 1443(b)(3)(B) of the Reform Act (as amended by subparagraph (A)) shall apply only to transfers after June 10, 1987.

(4) Subsection (d) of section 1433 of the Reform Act is amended—

(A) by striking out "shall be treated as a direct skip" and inserting in lieu thereof "shall be treated as a direct skip to such grandchild",

(B) by striking out "would be a direct skip" in subparagraph (B) and inserting in lieu thereof "would be a direct skip to a grandchild", and

(C) by adding at the end thereof the following new sentence: "Unless the grandchild otherwise directs by will, the estate of such grandchild shall be entitled to recover from the person receiving the property on the death of the grandchild any increase in Federal estate tax on the estate of the grandchild by reason of the preceding sentence."

SEC. 10215. AMENDMENTS RELATED TO TITLE XV OF THE REFORM ACT.

(a) Amendment Related to Section 1501 of the Reform Act.—Subparagraph (B) of section 6724(d)(2) of the 1986 Code is amended by striking out "6031(b)" and inserting in lieu thereof "6031(b) or (c)".

(b) Amendments Related to Section 1503 of the Reform Act.—

(1) Subparagraph (A) of section 6013(b)(5) of the 1986 Code is amended to read as follows:

"(A) Coordination with section 6653.—For purposes of section 6653, where the sum of the amounts shown as tax on the separate returns of each spouse is less than the amount shown as tax on the joint return made under this subsection—

"(i) such sum shall be treated as the amount shown on the joint return,

"(ii) any negligence (or disregard of rules or regulations) on either separate return shall be treated as negligence (or such disregard) on the joint return, and

"(iii) any fraud on either separate return shall be treated as fraud on the joint return."

(2)(A) Paragraph (1) of section 6653(a) of the 1986 Code is amended to read as follows:

"(1) In general.—If any part of any underpayment (as defined in subsection (c)) of tax required to be shown on a return is due to negligence (or disregard of rules or regulations), there shall be added to the tax an amount equal to 5 percent of the underpayment."

(B) Paragraph (1) of section 6653(b) of the 1986 Code is amended to read as follows:

"(1) In general.—If any part of any underpayment (as defined in subsection (c)) of tax required to be shown on a return is due to fraud, there shall be added to the tax an amount equal to 75 percent of the portion of the underpayment which is attributable to fraud."

(C) Paragraph (2) of section 6601(e) of the 1986 Code is amended by striking out "6659" each place it appears and inserting in lieu thereof "6653, 6659".

(3) Subsection (g) of section 6653 of the 1986 Code is amended by adding at the end thereof the following new sentence: "If any penalty is imposed under subsection (a) by reason of the preceding sentence, only the portion of the underpayment which is attributable to the failure described in the preceding sentence shall be taken into account in determining the amount of the penalty under subsection (a)."

(4) The amendments made by this subsection (other than paragraph (3)) shall apply to returns the due date for which (determined without regard to extensions) is after December 31, 1987.

(c) Amendment Related to Section 1504 of the Reform Act.—The repeal made by section 8002(c) of the Omnibus Budget Reconciliation Act of 1986 shall take effect as if the Tax Reform Act of 1986 had been enacted on the day before the date of the enactment of the Omnibus Budget Reconciliation Act of 1986.

(d) Amendments Related to Section 1511 of the Reform Act.—Section 6621 of the 1986 Code is amended—

(1) by striking out "short-term Federal rate" each place it appears in subsections (a) and (b)(1) and inserting in lieu thereof "Federal short-term rate", and

(2) by striking out "Short-Term Federal Rate" in the heading of subsection (b) and inserting in lieu thereof "Federal Short-Term Rate".

(e) Amendments Related to Section 1521 of the Reform Act.—

(1)(A) Paragraph (1) of section 6045(c) of the 1986 Code is amended by adding at the end thereof the following new sentence:

"A person shall not be treated as a broker with respect to activities consisting of managing a farm on behalf of another person."

(B) The amendment made by subparagraph (A) shall take effect as if included in the amendments made by section 311(a)(1) of the Tax Equity and Fiscal Responsibility Act of 1982.

(2)(A) Subsection (e) of section 6045 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(3) Prohibition of separate charge for filing return.—It shall be unlawful for any real estate reporting person to separately charge any customer for complying with any requirement of paragraph (1)."

(B) The amendment made by subparagraph (A) shall take effect on the date of the enactment of this Act.

(3) Subsection (e) of section 6045 of the 1986 Code is amended—

(A) by striking out "real estate broker" each place it appears in the text and inserting in lieu thereof "real estate reporting person", and

(B) by striking out "Real estate broker" in the heading of paragraph (2) and inserting in lieu thereof "Real estate reporting person".

(f) Amendment Related to Section 1522 of the Reform Act.—Section 6050M of the 1986 Code is amended by adding at the end thereof the following new subsection:

"(e) Exception for Certain Classified or Confidential Contracts.—

"(1) In general.—Except as provided in paragraph (2), this section shall not apply in the case of a contract described in paragraph (3).

"(2) Reporting requirement.—Each Federal executive agency which has entered into a contract described in paragraph (3) shall, upon a request of the Secretary which identifies a particular person, acknowledge whether such person has entered into such a contract with such agency and, if so, provide to the Secretary—

"(A) the information required under this section with respect to such person, and

"(B) such other information with respect to such person which the Secretary and the head of such Federal executive agency agree is appropriate.

"(3) Description of contract.—For purposes of this subsection, a contract between a Federal executive agency and another person is described in this paragraph if—

"(A) the fact of the existence of such contract or the subject matter of such contract has been designated and clearly marked or clearly represented, pursuant to the provisions of Federal law or an Executive order, as requiring a specific degree of protection against unauthorized disclosure for reasons of national security, or

"(B) the head of such Federal executive agency (or his designee) pursuant to regulations issued by such agency determines, in writing, that filing the required return under this section would interfere with the effective conduct of a confidential law enforcement or foreign counterintelligence activity."

(g) AMENDMENTS RELATED TO SECTION 1523 OF THE REFORM ACT.—Section 6676 of the 1986 Code is amended—

(1) by striking out "6049, or 6050N" in subsection (a)(3) and inserting in lieu thereof "or 6049",

(2) by striking out "6049, or 6050N" in subsection (b)(1)(A) and inserting in lieu thereof "or 6049", and

(3) by striking out ", DIVIDENDS, AND ROYALTIES" in the heading for subsection (b) and inserting in lieu thereof "AND DIVIDEND".

(h) AMENDMENTS RELATED TO SECTION 1542 OF THE REFORM ACT.—Subsection (h) of section 6154 of the 1986 Code is amended—

(1) by striking out "subject to the tax imposed by section 4940" in paragraph (1),

(2) by amending paragraph (2) to read as follows:

"(2) any tax imposed by section 511, and any tax imposed by section 1 or 4940 on a private foundation, shall be treated as a tax imposed by section 11, and", and

(3) by adding at the end thereof the following new sentence:

"In the case of an organization described in paragraph (1), subsection (c) of section 6655 shall be applied by substituting '5th month' for 'third month' and subsection (d)(3)(A) of section 6655 shall be applied by substituting '2 months' for '3 months' in clause (i), by substituting '4 months' for '5 months,' in clause (ii), by substituting '7 months' for '8 months' in clause (iii), and by substituting '10 months' for '11 months' in clause (iv)."

(i) AMENDMENT RELATED TO SECTION 1551 OF THE REFORM ACT.—Clause (iii) of section 7430(c)(2)(A) of the 1986 Code is amended to read as follows:

"(iii) meets the requirements of the 1st sentence of section 2412(d)(1)(B) of title 28, United States Code (as in effect on October 22, 1986) and meets the requirements of section 2412(d)(2)(B) of such title 28 (as so in effect)."

(j) PROVISION RELATED TO SECTION 1556 OF THE REFORM ACT.—To the extent the salary recommendations submitted by the President on January 5, 1987, are inconsistent with the provisions of section 7443A(d)(1) of the 1986 Code, such recommendations shall not be effective for any period.

(k) AMENDMENT RELATED TO SECTION 1557 OF THE REFORM ACT.—

(1) Subsection (d) of section 7447 of the 1986 Code is amended by adding at the end thereof the following new sentence: "In computing the rate of the retired pay under paragraph (1) of this subsection for any individual who is entitled thereto, any period during which such individual performs services under subsection (c) on a substantially full-time basis shall be treated as a period during which he has served as a judge."

(2) The amendment made by paragraph (1) shall apply for purposes of determining the amount of retired pay for months beginning after the date of the enactment of this Act regardless of when the services under section 7447(c) of the 1986 Code were performed.

(l) AMENDMENTS RELATED TO SECTION 1561 OF THE REFORM ACT.—

(1) Subsection (e)(2) of section 7609 of the 1986 Code is amended—

(A) by inserting "or the summoned party's response to a summons described in subsection (f)," after "the summons described in subsection (c),", and

(B) by striking out "the summons is issued other" and inserting in lieu thereof "the summons is issued".

(2) Subsection (i) of section 7609 of the 1986 Code is amended—

(A) by striking out "the third-party recordkeeper" in paragraph (4) and inserting in lieu thereof "the summoned party", and

(B) by inserting "AND SUMMONED PARTY" after "RECORDKEEPER" in the subsection heading.

(3) The amendments made by this subsection shall take effect on the date of the enactment of this Act.

(m) AMENDMENT RELATED TO SECTION 1562 OF THE REFORM ACT.—Subsection (d) of section 6212 of the 1986 Code is amended by adding at the end thereof the following new sentence: "Nothing in this subsection shall affect any suspension of the running of any period of limitations during any period during which the rescinded notice was outstanding."

(n) AMENDMENT RELATED TO SECTION 1563 OF THE REFORM ACT.—Subparagraph (B) of section 6404(e)(1) of the 1986 Code is amended—

(1) by inserting "error or" before "delay", and

(2) by inserting "erroneous or" before "dilatory".

(o) AMENDMENT RELATED TO SECTION 1581 OF THE REFORM ACT.—Subsection (c) of section 1581 of the Reform Act is amended by adding at the end thereof the following new sentence:

"The preceding sentence shall not apply if its application would result in an increase in the number of withholding allowances for the employee."

(p) GENERAL REQUIREMENT OF RETURN, STATEMENT, OR LIST.—

(1) Subsection (a) of section 6011 of the 1986 Code is amended by striking out "for the collection thereof" and inserting in lieu thereof "with respect to the collection thereof".

(2) The amendment made by paragraph (1) shall take effect on the date of the enactment of this Act.

(q) CERTAIN REFUNDABLE CREDITS TO BE ASSESSED UNDER DEFICIENCY PROCEDURES.—

(1) Subsection (a) of section 6201 of the 1986 Code is amended by striking out paragraph (4).

(2) Paragraph (4) of section 6211(b) is amended to read as follows:

"(4) For purposes of subsection (a)—

"(A) any excess of the sum of the credits allowable under sections 32 and 34 over the tax imposed by subtitle A (determined without regard to such credits), and

"(B) any excess of the sum of such credits as shown by the taxpayer on his return over the amount shown as the tax by the taxpayer on such return (determined without regard to such credits),

shall be taken into account as negative amounts of tax."

(3) Subsection (h) of section 6213 of the 1986 Code is amended by striking out paragraph (3) and by redesignating paragraph (4) as paragraph (3).

(4) The amendments made by this subsection shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 10216. AMENDMENTS RELATED TO TITLE XVI OF THE REFORM ACT.

(a) AMENDMENTS RELATED TO SECTION 1603 OF THE REFORM ACT.—

(1) Subparagraph (A) of section 501(c)(25) of the 1986 Code is amended by adding at the end thereof the following new sentence:

"For purposes of clause (iii), the term 'real property' shall not include any interest as a tenant in common (or similar interest) and shall not include any indirect interest."

(2) Subparagraph (D) of section 501(c)(25) of the 1986 Code is amended by striking out so much of such subparagraph as precedes clause (i) and inserting in lieu thereof the following:

"(D) A corporation or trust shall in no event be treated as described in subparagraph (A) unless such corporation or trust permits its shareholders or beneficiaries—"

(3)(A) Paragraph (25) of section 501(c) of the 1986 Code is amended by adding at the end thereof the following new subparagraph:

"(E)(i) For purposes of this title—

"(I) a corporation which is a qualified subsidiary shall not be treated as a separate corporation, and

"(II) all assets, liabilities, and items of income, deduction, and credit of a qualified subsidiary shall be treated as assets, liabilities, and such items (as the case may be) of the corporation or trust described in subparagraph (A).

"(ii) For purposes of this subparagraph, the term 'qualified subsidiary' means any corporation if, at all times during the period such corporation was in existence, 100 percent of the stock of such corporation is held by the corporation or trust described in subparagraph (A).

"(iii) For purposes of this subtitle, if any corporation which was a qualified subsidiary ceases to meet the requirements of clause (ii), such corporation shall be treated as a new corporation acquiring all of its assets (and assuming all of its liabilities) immediately before such cessation from the corporation or trust described in subparagraph (A) in exchange for its stock."

(B) Subparagraph (C) of section 501(c)(25) of the 1986 Code is amended by inserting "or" at the end of clause (iii), by striking out ", or" at the end of clause (iv) and inserting in lieu thereof a period, and by striking out clause (v).

(4) Paragraph (25) of section 501(c) of the 1986 Code is amended by adding at the end thereof the following new subparagraph:

"(F) For purposes of subparagraph (A), the term 'real property' includes any personal property which is leased under, or in connection with, a lease of real property, but only if the rent attributable to such personal property (determined under the rules of section 856(d)(1)) for the taxable year does not exceed 15 percent of the total rent for the taxable year attributable to both the real and personal property leased under, or in connection with, such lease."

(5) Paragraph (9) of section 514(c) of the 1986 Code is amended by adding at the end thereof the following new subparagraph:

"(E) SPECIAL RULES FOR ORGANIZATIONS DESCRIBED IN SECTION 501(C)(25).—

"(i) IN GENERAL.—In computing under section 512 the unrelated business taxable income of a disqualified holder of an interest in an organization described in section 501(c)(25), there shall be taken into account—

"(I) as gross income derived from an unrelated trade or business, such holder's pro rata share of the items of income described in clause (ii)(I) of such organization, and

"(II) as deductions allowable in computing unrelated business taxable income, such holder's pro rata share of the items of deduction described in clause (ii)(II) of such organization.

Such amounts shall be taken into account for the taxable year of the holder in which (or with which) the taxable year of such organization ends.

"(ii) Description of amounts.—For purposes of clause (i)—

"(I) gross income is described in this clause to the extent such income would (but for this paragraph) be treated under subsection (a) as derived from an unrelated trade or business, and

"(II) any deduction is described in this clause to the extent it would (but for this paragraph) be allowable under subsection (a)(2) in computing unrelated business taxable income.

"(iii) Disqualified holder.—For purposes of this subparagraph, the term 'disqualified holder' means any shareholder (or beneficiary) which is not described in clause (i) or (ii) of subparagraph (C)."

(6) The last sentence of section 514(c)(9)(B) of the 1986 Code is amended by striking out "clause (vi)" and inserting in lieu thereof "this paragraph".

(b) Repeal of Section 1608 of the Reform Act.—Section 1608 of the Reform Act is hereby repealed.

SEC. 10217. AMENDMENTS RELATED TO TITLE XVII OF THE REFORM ACT.

(a) Amendments Related to Section 1701 of the Reform Act.—Clause (i) of section 51(d)(12)(B) of the 1986 Code is amended by striking out "subsection (a)(1)" and inserting in lieu thereof "subsection (a)".

(b) Amendments Related to Section 1702 of the Reform Act.—

(1) Section 6652 of the 1986 Code is amended by redesignating the subsection (j) added by section 1702(b) of the Reform Act as subsection (k).

(2) Subsection (k) of section 6652 of the 1986 Code, as redesignated by paragraph (1), is amended by inserting "(and the corresponding provision of section 4041(d)(1))" after "section 4041(a)(1)".

(3) Subsection (b) of section 1702 of the Reform Act is amended by striking out "subsection (j) as subsection (k) and by inserting after subsection (i)" and inserting in lieu thereof "subsection (k) as subsection (l) and by inserting after subsection (j)".

(4) Subparagraph (B) of section 4041(n)(4) of the 1986 Code is amended by striking out "section 6652(j)" and inserting in lieu thereof "section 6652(k)".

(c) Amendments Related to Section 1703 of the Reform Act.—

(1)(A) Subsection (a) of section 4081 of the 1986 Code, as amended by section 1703 of the Reform Act, is amended by redesignating paragraph (2) as paragraph (3) and by striking out paragraph (1) and inserting in lieu thereof the following new paragraphs:

"(1) In general.—There is hereby imposed a tax at the rate specified in paragraph (2) on the earlier of—

"(A) the removal, or

"(B) the sale,

of gasoline by the refiner or importer thereof or the terminal operator.

"(2) Rates of tax.—

"(A) In general.—The rate of the tax imposed by this section is the sum of—

"(i) the Highway Trust Fund financing rate, and

"(ii) the Leaking Underground Storage Tank Trust Fund financing rate.

"(B) Rates.—For purposes of subparagraph (A)—

"(i) the Highway Trust Fund financing rate is 9 cents a gallon, and

"(ii) the Leaking Underground Storage Tank Trust Fund financing rate is 0.1 cent a gallon."

(B) Subsections (b) and (c) of section 4081 of the 1986 Code, as amended by section 1703 of the Reform Act, are each amended by striking out "subsection (d)" and inserting in lieu thereof "subsection (a)".

(C) Subsection (e) of section 4081 of the 1986 Code, as amended by section 1703 of the Reform Act, is amended—

(i) by striking out "subsection (d)(2)(A)" in paragraph (1) and inserting in lieu thereof "subsection (a)(2)", and

(ii) by striking out "subsection (d)(2)(B)" each place it appears in paragraph (2) and inserting in lieu thereof "subsection (a)(2)".

(D) Section 4081 of the 1986 Code, as amended by section 1703 of the Reform Act, is amended by striking out subsection (d) and by redesignating subsection (e) as subsection (d).

(2) Subsection (b) of section 34 of the 1986 Code is amended by striking out "section 6421(i) or 6427(j)" and inserting in lieu thereof "section 6421(j) or 6427(k)".

(3) Sections 4041(b)(1)(C) and 6427(l)(3) of the 1986 Code are each amended by striking out "section 6421(d)(2)" and inserting in lieu thereof "section 6421(e)(2)".

(4) Paragraph (3) of section 4041(f) of the 1986 Code is amended to read as follows:

"(3) Termination.—Except with respect to the taxes imposed by subsection (d), paragraph (1) shall not apply on and after October 1, 1988."

(5) The 1st sentence of section 4221(a) of the 1986 Code (as amended by section 1703 of the Reform Act) is amended by striking out all that follows "chapter" through "manufacturer" and inserting in lieu thereof "(other than under section 4121 or section 4081) on the sale by the manufacturer".

(6) Section 6421 of the 1986 Code is amended by redesignating subsection (i) (relating to income tax credit in lieu of payment) and subsection (j) (relating to cross references) as subsections (j) and (k), respectively.

(7) Subsections (a) and (b)(1) of section 6421 of the 1986 Code are each amended by striking out "subsection (i)" and inserting in lieu thereof "subsection (j)".

(8) Paragraph (2) of section 6421(j) of the 1986 Code (as redesignated by paragraph (6)) is amended by striking out "subsection (c)(2)" and inserting in lieu thereof "subsection (d)(2)".

(9) Sections 7210, 7603, 7604(b), 7604(c)(2), 7605(a), 7609(c)(1), and 7610(c) of the 1986 Code are each amended by striking out "6421(f)(2)" and inserting in lieu thereof "6421(g)(2)".

(10) Paragraph (2) of section 6427(k) of the 1986 Code is amended by striking out "(h)(3)" and inserting in lieu thereof "(i)(3)".

(11) Paragraph (6) of section 6511(i) of the 1986 Code is amended by striking out "section 6421(c)" and inserting in lieu thereof "section 6421(d)".

(12) Subparagraph (G) of section 1703(e)(2) of the Reform Act is amended by striking out all that follows "are amended" and inserting in lieu thereof "by striking out '6427(i)(2)' and inserting in lieu thereof '6427(j)(2)'."

(13) Paragraph (2) of section 1703(f) of the Reform Act is amended by adding at the end thereof the following new sentence: "All other provisions of law, including penalties, applicable with respect to the taxes imposed by section 4081 of the Internal Revenue Code of 1986 shall apply to the floor stocks taxes imposed by this section."

SEC. 10218. AMENDMENTS RELATED TO TITLE XVIII OF THE REFORM ACT.

(a) Amendment Related to Section 1801 of the Reform Act.—Clause (iii) of section 1801(a)(2)(A) of the Reform Act is amended to read as follows:

"(iii) a person became a partner in such partnership (or a beneficiary in such trust) after its formation but before September 26, 1985,".

(b) Amendments Related to Section 1802 of the Reform Act.—

(1) The last sentence of section 31(g)(17)(L) of the Tax Reform Act of 1984, as added by section 1802(a)(10)(G) of the Reform Act, is amended—

(A) by striking out "Registry of Deeds" each place it appears and inserting in lieu thereof "Register of Deed", and

(B) by striking out "May 7, 1985" and inserting in lieu thereof "May 7, 1984".

(2) Subparagraph (E) of section 168(j)(9) of the 1986 Code (as amended by section 1802(a)(2) of the Reform Act and as in effect before the amendments made by section 201 of the Reform Act) is amended—

(A) by striking out "this paragraph" in clauses (i) and (ii)(I) and inserting in lieu thereof "this paragraph and paragraph (8)", and

(B) by striking out clause (iii) and inserting in lieu thereof the following:

"(iii) Tax-exempt controlled entity.—

"(I) In general.—The term 'tax-exempt controlled entity' means any corporation (which is not a tax-exempt entity determined without regard to this subparagraph and paragraph (4)(E)) if 50 percent or more (in value) of the stock in such corporation is held by 1 or more tax-exempt entities (other than a foreign person or entity).

"(II) Only 5-percent shareholders taken into account in case of publicly traded stock.—For purposes of subclause (I), in the case of a corporation the stock of which is publicly traded on an established securities market, stock held by a tax-exempt entity shall not be taken into account unless such entity holds at least 5 percent (in value) of the stock in such corporation. For purposes of this subclause, related entities (within the meaning of paragraph (7)) shall be treated as 1 entity.

"(III) Section 318 to apply.—For purposes of this clause, a tax-exempt entity shall be treated as holding stock which it holds through application of section 318 (determined without regard to the 50-percent limitation contained in subsection (a)(2)(C) thereof)."

(c) Amendment Related to Section 1803 of the Reform Act.—

(1) Subparagraph (A) of section 1803(a)(8) of the Reform Act is amended by striking out "September 27, 1985" and inserting in lieu thereof "December 31, 1985".

(2) Subsection (c) of section 1278 of the 1986 Code is amended by inserting before the period ", including regulations providing proper adjustments in the amount of market discount where there are partial principal payments by a prior holder of a market discount bond".

(d) Amendments Related to Section 1804 of the Reform Act.—

(1) Paragraph (3) of section 1804(b) of the Reform Act is amended by striking out

"Paragraph (3) of section 54" and inserting "Paragraph (3) of section 54(d)".

(2) Clause (i) of section 54(d)(3)(D) of the Tax Reform Act of 1984 is amended by striking out "subtitle D of title VI" and inserting "subtitle D of title VI of the Tax Reform Act of 1986".

(3) Clause (ii) of section 54(d)(3)(D) of the Tax Reform Act of 1984 (as added by section 1804(b)(3) of the Tax Reform Act of 1986) is amended—

(A) by striking out "December 9, 1968," each place it appears and inserting in lieu thereof "December 10, 1968,", and

(B) by striking out "October 5, 1981" and inserting in lieu thereof "March 2, 1978,".

(4) Subsection (b) of section 312 of the 1986 Code is amended by striking out "of any property" and inserting in lieu thereof "of any property (other than an obligation of such corporation)".

(5)(A) Section 361 of the 1986 Code is amended to read as follows:

"SEC. 361. NONRECOGNITION OF GAIN OR LOSS TO CORPORATIONS; TREATMENT OF DISTRIBUTIONS.

"(a) General Rule.—No gain or loss shall be recognized to a corporation if such corporation is a party to a reorganization and exchanges property, in pursuance of the plan of reorganization, solely for stock or securities in another corporation a party to the reorganization.

"(b) Exchanges Not Solely in Kind.—

"(1) Gain.—If subsection (a) would apply to an exchange but for the fact that the property received in exchange consists not only of stock or securities permitted by subsection (a) to be received without the recognition of gain, but also of other property or money, then—

"(A) Property distributed.—If the corporation receiving such other property or money distributes it in pursuance of the plan of reorganization, no gain to the corporation shall be recognized from the exchange, but

"(B) Property not distributed.—If the corporation receiving such other property or money does not distribute it in pursuance of the plan of reorganization, the gain, if any, to the corporation shall be recognized.

The amount of gain recognized under subparagraph (B) shall not exceed the sum of the money and the fair market value of the other property so received which is not so distributed.

"(2) Loss.—If subsection (a) would apply to an exchange but for the fact that the property received in exchange consists not only of property permitted by subsection (a) to be received without the recognition of gain or loss, but also of other property or money, then no loss from the exchange shall be recognized.

"(3) Treatment of transfers to creditors.—For purposes of paragraph (1), any transfer of the other property or money received in the exchange by the corporation to its creditors in connection with the reorganization shall be treated as a distribution in pursuance of the plan of reorganization. The Secretary may prescribe such regulations as may be necessary to prevent avoidance of tax through abuse of the preceding sentence or subsection (c)(3).

"(c) Treatment of Distributions.—

"(1) In general.—Except as provided in paragraph (2), no gain or loss shall be recognized to a corporation a party to a reorganization on the distribution to its shareholders of property in pursuance of the plan of reorganization.

"(2) Distributions of appreciated property.—

"(A) In general.—If—

"(i) in a distribution referred to in paragraph (1), the corporation distributes property other than qualified property, and

"(ii) the fair market value of such property exceeds its adjusted basis (in the hands of the distributing corporation),

then gain shall be recognized to the distributing corporation as if such property were sold to the distributee at its fair market value.

"(B) Qualified property.—For purposes of this subsection, the term 'qualified property' means—

"(i) any stock in (or right to acquire stock in) the distributing corporation or obligation of the distributing corporation, or

"(ii) any stock in (or right to acquire stock in) another corporation which is a party to the reorganization or obligation of another corporation which is such a party if such stock (or right) or obligation is received by the distributing corporation in the exchange.

"(C) Treatment of liabilities in excess of basis.—If any property distributed in the distribution referred to in paragraph (1) is subject to a liability or the shareholder assumes a liability of the distributing corporation in connection with the distribution, then, for purposes of subparagraph (A), the fair market value of such property shall be treated as not less than the amount of such liability.

"(3) Treatment of certain transfers to creditors.—For purposes of this subsection, any transfer of qualified property by the corporation to its creditors in connection with the reorganization shall be treated as a distribution to its shareholders pursuant to the plan of reorganization.

"(4) Coordination with other provisions.—Section 311 and subpart B of part II of this subchapter shall not apply to any distribution referred to in paragraph (1)."

(B) Section 358 of the 1986 Code is amended by adding at the end thereof the following new subsection:

"(f) Definition of Nonrecognition Property in Case of Section 361 Exchange.—For purposes of this section, the property permitted to be received under section 361 without the recognition of gain or loss shall be treated as consisting only of stock or securities in another corporation a party to the reorganization."

(C) Section 355 of the 1986 Code is amended by adding at the end thereof the following new subsection:

"(c) Taxability of Corporation on Distribution.—Section 311 shall apply to any distribution—

"(1) to which this section (or so much of section 356 as relates to this section) applies, and

"(2) which is not in pursuance of a plan of reorganization,

in the same manner as if such distribution were a distribution to which subpart A of part I applies; except that subsection (b) of section 311 shall not apply to any distribution of stock or securities in the controlled corporation."

(D) Subsection (c) of section 336 of the 1986 Code (as amended by section 631 of the Reform Act) is amended to read as follows:

"(c) Exception For Liquidations Which Are Part of a Reorganization.—

"For provision providing that this subpart does not apply to distributions in pursuance of a plan of reorganization, see section 361(c)(4)."

(E) Subsection (a) of section 311 of the 1986 Code is amended by striking out "distribution, with respect to its stock," and inserting in lieu thereof "distribution (not in complete liquidation) with respect to its stock".

(F) The table of sections for subpart C of part III of subchapter C of chapter 1 of the 1986 Code is amended by striking out the item relating to section 361 and inserting in lieu thereof the following new item:

"Sec. 361. Nonrecognition of gain or loss to corporations; treatment of distributions."

(6) Subparagraph (A) of section 280G(b)(5) of the 1986 Code is amended—

(A) in clause (i) by striking out "section 1361(b))" and inserting in lieu thereof "section 1361(b) but without regard to paragraph (1)(C) thereof)", and

(B) by adding at the end thereof the following: "Stock described in section 1504(a)(4) shall not be taken into account under clause (ii)(I) if the payment does not adversely affect the shareholder's redemption and liquidation rights."

(7) Subparagraph (B) of section 280G(b)(5) of the 1986 Code (relating to shareholder approval requirements) is amended by adding at the end thereof the following new sentence:

"The regulations prescribed under subsection (e) shall include regulations providing for the application of this subparagraph in the case of shareholders which are not individuals (including the treatment of nonvoting interests in an entity which is a shareholder) and where an entity holds a de minimis amount of stock in the corporation."

(8) Paragraph (5) of section 280G(d) of the 1986 Code is amended by striking out "officer or any member" and inserting in lieu thereof "officer of any member".

(9) Paragraph (3) of section 338(e) of the 1986 Code is amended by striking out "which meet the 80 percent requirements of subparagraphs (A) and (B) of subsection (d)(3)" and inserting in lieu thereof "which meet the requirements of section 1504(a)(2)".

(e) Provision Related to Section 1806 of the Reform Act.—If—

(1) on a return for a taxable year beginning in 1985, 2 or more trusts were treated as a single trust for purposes of the tax imposed by chapter 1 of the Internal Revenue Code of 1954,

(2) such trusts would have been required to be so treated but for the amendment made by section 1806(b) of the Reform Act, and

(3) such trusts did not accumulate any income during such taxable year and did not make any accumulation distributions during such taxable year,

then, notwithstanding the amendment made by section 1806(b) of the Reform Act, such trusts shall be treated as one trust for purposes of such taxable year.

(f) Amendments Related to Section 1807 of the Reform Act.—

(1) Paragraphs (1)(A) and (2)(E) of section 468B(d) of the 1986 Code are each amended by striking out "the taxpayer" and inserting in lieu thereof "the taxpayer (or any related person)".

(2) Subparagraph (A) of section 468B(d)(2) of the 1986 Code is amended to read as follows:

"(A) which is established pursuant to a court order and which extinguishes completely the taxpayer's tort liability with respect to claims described in subparagraph (D),".

(3) Clause (i) of section 1807(a)(7)(C) of the Reform Act is amended to read as follows:

"(i) any portion of such fund which is established pursuant to a court order and with qualified payments, which meets the requirements of subparagraphs (C) and (D) of section 468B(d)(2) of the Internal Revenue Code of 1954 (as added by this paragraph), and with respect to which an election is made under subparagraph (F) thereof, shall be treated as a designated settlement fund for purposes of section 468B of such Code,"

(4) Paragraph (2) of section 468B(b) of the 1986 Code is amended—

(A) by striking out "the corporation," and inserting in lieu thereof "a corporation.", and

(B) by striking out "no other" and inserting in lieu thereof "No other".

(5)(A) Section 468B of the 1986 Code is amended by adding at the end thereof the following new subsection:

"(g) Clarification of Taxation of Certain Funds.—Nothing in any provision of law shall be construed as providing that an escrow account, settlement fund, or similar fund is not subject to current income tax. The Secretary shall prescribe regulations providing for the taxation of any such account or fund whether as a grantor trust or otherwise."

(B) Subparagraph (D) of section 1807(a)(7) of the Reform Act is hereby repealed.

(g) Amendments Related to Section 1810 of the Reform Act.—

(1) Paragraph (5) of section 1810(a) of the Reform Act is amended by striking out "section 125(b)(5)" each place it appears and inserting in lieu thereof "section 121(b)(5)".

(2) Section 133(d)(3)(B)(iii) of the Tax Reform Act of 1984, as amended by section 1810(i)(2) of the Reform Act, is amended by striking out "Tax Reform Act of 1985" and inserting in lieu thereof "Tax Reform Act of 1986".

(3) Clause (iv) of section 7701(b)(5)(A) of the 1986 Code is amended by striking out "section 274(k)(2)" and inserting in lieu thereof "section 274(l)(1)(B)".

(h) Amendment Relatfd to Section 1821 of the Reform Act.—

(1) Subsection (e) of section 812 of the 1986 Code (relating to dividends from certain subsidiaries not included in gross investment income) is amended to read as follows:

"(e) Dividends From Certain Subsidiaries Not Included in Gross Investment Income.—

"(1) In general.—For purposes of this section, the term 'gross investment income' shall not include any dividend received by the life insurance company which is a 100 percent dividend.

"(2) 100 percent dividend defined.—

"(A) In general.—Except as provided in subparagraphs (B) and (C), the term '100 percent dividend' means any dividend if the percentage used for purposes of determining the deduction allowable under section 243, 244, or 245(b) is 100 percent.

"(B) Certain dividends out of tax-exempt interest, etc.—The term '100 percent dividend' does not include any distribution by a corporation to the extent such distribution is out of tax-exempt interest or out of dividends which are not 100 percent dividends (determined with the application of this subparagraph).

"(C) Certain dividends received by foreign corporations.—The term '100 percent dividends' does not include any dividend described in section 805(a)(4)(E) (relating to certain dividends in the case of foreign corporations)."

(2) The amendment made by paragraph (1) shall take effect as if included in the amendments made by section 211 of the Tax Reform Act of 1984.

(i) Amendment Related to Section 1822 of the Reform Act.—Clause (i) of section 216(b)(4)(C) of the Tax Reform Act of 1984 (relating to section 818(c) elections made by certain acquired companies) is amended by striking out "clause (i)" and inserting in lieu thereof "subclause (I)".

(j) Amendment Related to Section 1825 of the Reform Act.—Paragraph (4) of section 1825(a) of the Reform Act (relating to amendments related to section 221 of the Tax Reform Act of 1984) is amended by striking out "Section 7702(e)(2)" and inserting in lieu thereof "Effective with respect to contracts entered into after October 22, 1986, section 7702(e)(2)".

(k) Amendments Related to Section 1842 of the Reform Act.—

(1) Subsection (c) of section 425 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(4) Transfers between spouses or incident to divorce.—In the case of any transfer described in subsection (a) of section 1041—

"(A) such transfer shall not be treated as a disposition for purposes of this part, and

"(B) the same tax treatment under this part with respect to the transferred property shall apply to the transferee as would have applied to the transferor."

(2) Paragraph (1) of section 425(c) of the 1986 Code is amended by striking out "paragraph (2) and (3)" and inserting in lieu thereof "paragraphs (2), (3), and (4)".

(l) Amendments Related to Section 1866 of the Reform Act.—

(1) Section 1866 of the Reform Act is amended by striking out "obligation issued to refund" and inserting in lieu thereof "obligation (or series of obligations) issued to refund".

(2)(A) Paragraph (1) of section 1866 of the Reform Act is amended to read as follows:

"(1) the average maturity of the issue of which the refunding obligation is a part does not exceed the average maturity of the obligations to be refunded by such issue,".

(B) Section 1866 of the Reform Act is amended by adding at the end thereof the following new sentence: "For purposes of paragraph (1), average maturity shall be determined in accordance with subsection (b)(14)(B)(i) of such Code."

(3) Paragraph (4) of section 1866 of the Reform Act is amended by striking out "30 days" and inserting in lieu thereof "90 days".

(4) Section 1866 of the Reform Act is amended by adding "and" at the end of paragraph (2), by striking out paragraph (3), and by redesignating paragraph (4) as paragraph (3).

(5) A refunding obligation issued before July 1, 1987, shall be treated as meeting the requirement of paragraph (1) of section 1866 of the Reform Act if such obligation met the requirement of such paragraph as enacted by the Reform Act.

(m) Amendments Related to Section 1869 of the Reform Act.—

(1) Clause (ii) of section 1869(c)(3)(A) of the Reform Act is amended by striking out "pursuant to the exercise of eminent domain" and inserting in lieu thereof "(by a governmental unit having the power to exercise eminent domain)".

(2) Subparagraph (C) of section 1869(c)(3) of the Reform Act is amended by inserting "(or similar issues)" after "resulting from the issue".

(n) Amendments Related to Section 1875 of the Reform Act.—

(1) Clause (ii) of section 6230(a)(2)(A) of the 1986 Code is amended by striking out "nonpartnership items" and inserting in lieu thereof "nonpartnership items (other than by reason of section 6231(b)(1)(C))".

(2) Subsection (g) of section 1246 of the 1986 Code (as redesignated by this Act) is amended by striking out "1248(g)(3)" and inserting in lieu thereof "1248(g)(2)".

(o) Amendment Related to Section 1878 of the Reform Act.—Paragraph (1) of section 852(e) of the 1986 Code is amended by striking out "subsection (a)(3)" and inserting in lieu thereof "subsection (a)(2)".

(p) Amendments Related to Section 1879 of the Reform Act.—

(1) Subclause (II) of section 28(b)(2)(A)(ii) of the 1986 Code is amended to read as follows:

"(II) before the date on which an application with respect to such drug is approved under section 505(b) or 507 of such Act or, if the drug is a biological product, before the date on which a license for such drug is issued under section 351 of the Public Health Service Act; and".

(2) The last sentence of section 1361(d)(3) of the 1986 Code is amended by striking out "treated as a separate trust under section 663(c)" and inserting in lieu thereof "within the meaning of section 663(c)".

(3) Subsection (p) of section 1879 of the Reform Act is amended—

(A) by striking out "Subsection (a)" in paragraph (2) and inserting "Paragraph (1)", and

(B) by striking out "subsection (a)" each place it appears in paragraphs (2) and (3) and inserting in lieu thereof "paragraph (1)".

(4)(A) Subsection (d) of section 1286 of the 1986 Code is amended to read as follows:

"(d) Special Rules for Tax-Exempt Obligations.—

"(1) In general.—In the case of any tax-exempt obligation (as defined in section 1275(a)(3)) from which 1 or more coupons have been stripped—

"(A) the amount of the original issue discount determined under subsection (a) with respect to any stripped bond or stripped coupon—

"(i) shall be treated as original issue discount on a tax-exempt obligation to the extent such discount does not exceed the tax-exempt portion of such discount, and

"(ii) shall be treated as original issue discount on an obligation which is not a tax-exempt obligation to the extent such discount exceeds the tax-exempt portion of such discount,

"(B) subsection (b)(1)(A) shall not apply, and

"(C) subsection (b)(2) shall be applied by increasing the basis of the bond or coupon by the sum of—

"(i) the interest accrued but not paid before such bond or coupon was disposed of (and not previously reflected in basis), plus

"(ii) the amount included in gross income under subsection (b)(1)(B).

"(2) Tax-exempt portion.—For purposes of paragraph (1), the tax-exempt portion of the original issue discount determined under subsection (a) is the excess of—

"(A) the amount referred to in subsection (a)(1), over

"(B) an issue price which would produce a yield to maturity as of the purchase date equal to the lower of—

"(i) the coupon rate of interest on the obligation from which the coupons were separated, or

"(ii) the yield to maturity (on the basis of the purchase price) of the stripped obligation or coupon.

The purchaser of any stripped obligation or coupon may elect to apply clause (i) by substituting 'original yield to maturity of' for 'coupon rate of interest on'."

(B)(i) Except as provided in clause (ii), the amendment made by subparagraph (A) shall apply to any purchase or sale after June 10, 1987, of any stripped tax-exempt obligation or stripped coupon from such an obligation.

(ii) If—

(I) any person held any obligation or coupon in stripped form on June 10, 1987, and

(II) such obligation or coupon was held by such person on such date for sale in the ordinary course of such person's trade or business,

the amendment made by subparagraph (A) shall not apply to any sale of such obligation or coupon by such person and shall not apply to any such obligation or coupon while held by another person who purchased such obligation or coupon from the person referred to in subclause (I).

(5) Clause (ii) of section 368(a)(2)(F) of the 1986 Code is amended—

(A) by striking out the two parenthetical phrases in the first sentence, and

(B) by adding at the end thereof the following new sentence: "For purposes of this clause, a person holding stock in a regulated investment company, a real estate investment trust, or an investment company which meets the requirements of this clause shall, except as provided in regulations, be treated as holding its proportionate share of the assets held by such company or trust."

(q) Amendments Related to Section 1895 of the Reform Act.—

(1) Subsection (b) of section 1895 of the Reform Act is amended by striking out paragraphs (1) and (2).

(2)(A) Clause (ii) of section 3121(u)(2)(B) of the 1986 Code is amended by striking out "or" at the end of subclause (IV), by striking out the period at the end of subclause (V) and inserting in lieu thereof ", or", and by inserting after subclause (V) the following new subclause:

"(VI) by an individual in a position described in section 1402(c)(2)(E)."

(B) The amendment made by subparagraph (A) shall apply to services performed after March 31, 1986.

(r) Miscellaneous Provisions.—

(1) Subsection (a) of section 8021 of the 1986 Code is amended by striking out "6103(d)" and inserting in lieu thereof "6103(f)".

(2) paragraph (8) of section 1888 of the Reform Act (and the amendment made thereby) are hereby repealed.

(s) Additional Amendments Related to Pension Plans.—

(1) Amendments related to section 1826 of the reform act.—

(A) Section 72(s)(7) of the 1986 Code is amended by striking out "primary annuity" and inserting in lieu thereof "primary annuitant".

(B) Section 72(q)(2)(B) of the 1986 Code is amended by striking out the last parenthesis.

(C) Section 419A(f)(5) of the 1986 Code is amended by striking out "accounts" and inserting in lieu thereof "account".

(D) Section 1826(c) of the Reform Act is amended by striking out "made" and inserting in lieu thereof "commencing".

(2) Amendments related to section 1851 of the reform act.—

(A) Section 1851(a) of the Reform Act is amended by striking out paragraph (4) thereof.

(B) Subclause (II) of section 512(a)(3)(E)(ii) of the 1986 Code is amended by striking out "subclause (II)" and inserting in lieu thereof "subclause (I)".

(C) Section 419(a)*(1)* of the 1986 Code is amended by striking out "subchapter" and inserting in lieu thereof "chapter".

(D) Subparagraph (B) of section 1851(a)(3) of the Reform Act is amended by inserting ", section 505, and section 4976(b)(1)(B)" after "section 419A".

(3) Amendments related to section 1852 of the reform act.—

(A) Paragraph (4) of section 1852(a) of the Reform Act is amended by adding at the end thereof the following new subparagraph:

"(C) An individual whose required beginning date would, but for the amendment made by subparagraph (A), occur after December 31, 1986, but whose required beginning date after such amendment occurs before January 1, 1987, shall be treated as if such individual had become a 5-percent owner during the plan year ending in 1986."

(B) Paragraph (1) of section 4402(h) of the Employee Retirement Income Security Act of 1974 is amended by striking out "January 12, 1982" the second place it appears and inserting in lieu thereof "January 16, 1982".

(C) Section 1852(h)(2) of the Reform Act is amended by striking out "section 416(l)" and inserting in lieu thereof "section 415(l)".

(D) Section 1852(h)(1) of the Reform Act is amended by striking out "Subsection" and inserting in lieu thereof "Effective for years beginning after December 31, 1985, subsection".

(4) Amendments related to section 1854 of the reform act.—

(A) Section 404(k) of the 1986 Code is amended by striking out "avoidance" in the 4th sentence and inserting in lieu thereof "evasion".

(B) Section 409(h)(2) of the 1986 Code (relating to plan may distribute cash) is amended by striking out "section 409(o)" and inserting in lieu thereof "paragraph (1)(B)".

(C) Subparagraph (C) of section 409(n)(3) of the 1986 Code (defining nonallocation period) is amended to read as follows:

"(C) Nonallocation period.—The term 'nonallocation period' means the period beginning on the date of the sale of the qualified securities and ending on the later of—

"(i) the date which is 10 years after the date of sale, or

"(ii) the date of the plan allocation attributable to the final payment of acquisition indebtedness incurred in connection with such sale."

(D) Subparagraph (A) of section 1042(c)(4) of the 1986 Code (defining qualified replacement property) is amended by inserting "(as in effect immediately before the Tax Reform Act of 1986)" after "section 954(c)(3)".

(E) Clause (i) of section 1042(c)(4)(B) of the 1986 Code (relating to operating corporation) is amended by striking out "placement period" and inserting in lieu thereof "replacement period".

(F) Section 1854(a)(3)(B) of the Reform Act is amended by striking out "1042(b)(3)" and inserting in lieu thereof "1042(b)".

(G) Subparagraph (C) of section 1854(a)(3) of the Reform Act is amended to read as follows:

"(C)(i) Except as provided in clause (ii), the amendments made by this paragraph shall apply to sales of securities after the date of the enactment of this Act.

"(ii) A taxpayer or executor may elect to have section 1042(b)(3) of the Internal Revenue Code of 1954 (as in effect before the amendment made by subparagraph (B)) apply to sales before the date of the enactment of this Act as if such section included the last sentence of section 409(n)(1) of the Internal Revenue Code of 1986 (as added by subparagraph (A))."

(H) Section 409(e)(5) of the 1986 Code is amended by striking out "(2) or".

(5) Amendment related to section 1875 of the reform act.—Section 1875(c)(7)(B) of the Reform Act is amended by striking out "and section 405(c)".

(6) Amendments related to section 1879 of the reform act.—

(A) Subparagraph (B) of section 125(c)(2) of the 1986 Code (relating to exception for cash and deferred arrangements) is amended by inserting "or rural electric cooperative plan (within the meaning of section 401(k)(7))" after "stock bonus plan".

(B) Subsection (u) of section 1879 of the Reform Act is amended—

(i) by striking "206(h)" each place it appears in paragraphs (1) and (4)(B) and inserting in lieu thereof "204(h)";

(ii) by redesignating paragraph (4) as paragraph (5); and

(iii) by inserting after paragraph (3) the following:

"(4) Correction of cross reference.—Section 4218(1)(A) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1398(1)(A)) is amended by striking out 'section 4062(d)' and inserting in lieu thereof 'section 4069(b)'."

(7) Amendments related to section 1895 of the reform act.—

(A) Section 106(b)(1) of the 1986 Code (relating to exception for highly compensated individuals where plan fails to provide certain continuation coverage) is amended—

(i) by striking out "any amount contributed by an employer" and inserting in lieu thereof "any employer-provided coverage", and

(ii) by striking out "to a group" and inserting in lieu thereof "under a group".

(B)(i) Section 106(b)(2) of the 1986 Code (relating to exception to certain plans) is amended by striking out the last sentence thereof.

(ii) Section 601(b) of the Employee Retirement Income Security Act of 1974 is amended by striking out the last sentence thereof.

(iii) Section 2201(b) of the Public Health Service Act is amended by striking out "subsections (a) and (b) of section 52 of the Internal Revenue Code of 1954 (relating to employees under common control)" and inserting in lieu thereof "subsections (b), (c), (m), (n), and (o) of section 414 the Internal Revenue Code of 1986 (relating to aggregation rules)".

(iv) The amendments made by this paragraph shall apply to years beginning after December 31, 1986.

(C) Section 1895(d)(5)(A) of the Reform Act is amended by striking out "section 162(k)(2)" and inserting in lieu thereof "section 162(k)(5)".

(D)(i) Section 162(k)(7)(A) of the 1986 Code is amended by striking out "the individual's employment or previous employment with an employer" and inserting in lieu thereof "the performance of services by the individual for 1 or more persons maintaining the plan (including as an employee defined in section 401(c)(1))."

(ii) Sections 607(2) of the Employee Retirement Income Security Act of 1974 and 2208(2) of the Public Health Service Act are each amended by striking out "the individual's employment or previous employment with an employer" and inserting in lieu thereof "the performance of services by the individual for 1 or more persons maintaining the plan (including as an employee defined in section 401(c)(1) of the Internal Revenue Code of 1986)."

(iii) The amendments made by this subparagraph shall apply to plan years beginning after December 31, 1987.

(E)(i) Clause (iv) of section 162(k)(2)(B) of the 1986 Code is amended by adding at the end thereof the following new sentence:

"For purposes of subclause (I), a qualified beneficiary shall not be treated as covered by another plan if the other plan does not cover a preexisting condition which was covered by the plan under which coverage is being continued."

(ii) Sections 602(2)(D) of the Employee Retirement Income Security Act of 1974 and 2202(2)(D) of the Public Health Service Act are each amended by adding at the end thereof the following new sentence: "For purposes of clause (i), a qualified beneficiary shall not be treated as covered by another plan if the other plan does not cover a preexisting condition which was covered by the plan under which coverage is being continued."

(iii) The amendments made by this subparagraph shall apply to plan years beginning after December 31, 1987.

(F)(i) The last sentence of section 162(k)(2)(C) of the 1986 Code is amended to read as follows:

"In no event may the plan require the payment of any premium for any period of continuation coverage before the day which is 45 days after the day on which the qualified beneficiary made the initial election for continuation coverage."

(ii) The last sentence of section 602(3) of the Employee Retirement Income Security Act of 1974 is amended to read as follows:

"In no event may the plan require the payment of any premium for any period of continuation coverage before the day which is 45 days after the day on which the qualified beneficiary made the initial election for continuation coverage."

(iii) The last sentence of section 2202(3) of the Public Health Service Act is amended to read as follows:

"In no event may the plan require the payment of any premium for any period of continuation coverage before the day which is 45 days after the day on which the qualified beneficiary made the initial election for continuation coverage."

(8) AMENDMENTS RELATED TO SECTION 1898 OF THE REFORM ACT.—

(A) Subparagraph (G) of section 402(a)(6) of the 1986 Code (relating to treatment of potential future vesting), as added by section 1898(a)(3) of the Reform Act, is redesignated as subparagraph (I).

(B)(i) Clause (ii) of section 417(a)(3)(B) of the 1986 Code (defining applicable period) is amended by striking out subclause (V) and inserting at the end thereof the following new flush sentence:

"In the case of a participant who separates from service before attaining age 35, the applicable period shall be a reasonable period after separation."

(ii) Clause (ii) of section 205(c)(3)(B) of the Employee Retirement Income Security Act of 1974 is amended by striking out subclause (V) and inserting at the end thereof the following new flush sentence:

"In the case of a participant who separates from service before attaining age 35, the applicable period shall be a reasonable period after separation."

(C) Section 1898(b)(8) of the Reform Act is amended by adding at the end thereof the following new subparagraph:

"(C) EFFECTIVE DATE.—The amendments made by this paragraph shall apply to distributions after the date of the enactment of this Act."

(D) Paragraph (12) of section 1898(b) of the Reform Act is amended by striking out all of subparagraph (B) from "(B) AMENDMENT" through "follows:" and inserting the following:

"(B) AMENDMENT TO ERISA.—Section 205(h) of the Employee Retirement Income Security Act of 1974 is amended—

"(i) by striking out 'the term' in paragraphs (1) and (3) and inserting in lieu thereof 'The term';

"(ii) by striking out the comma in paragraph (1) and inserting in lieu thereof a period; and

"(iii) by striking out paragraph (2) and inserting in lieu thereof the following:".

(E) Subparagraph (A) of section 411(a)(11) of the 1986 Code is amended by striking out "vested" and inserting in lieu thereof "nonforfeitable".

(F) Subparagraph (B) of section 1898(d)(1) of the Reform Act is amended by striking out "Paragraph (1)" and inserting in lieu thereof "Subsection (e)(1)".

(G) Subsection (e)(1) of section 203 of the Employee Income Security Act of 1974 is amended—

(i) by inserting "(e)" before "(1)", and

(ii) by striking out "vested" and inserting in lieu thereof "nonforfeitable".

(H) Subclause (IV) of section 205(c)(3)(B)(ii) of the Employee Retirement Income Security Act of 1974 is amended by striking out "401(a)(11)" and inserting in lieu thereof "205".

(I) Subparagraph (B) of section 1898(b)(7) of the Reform Act is amended by striking out "Subparagraph (C) of section 205(b)(1)" and inserting in lieu thereof "Clause (i) of section 205(b)(1)(C)".

(J) Section 205(e)(2) of the Employee Retirement Income Security Act of 1974 is amended by striking out "nonforfeitable accrued benefit" and inserting in lieu thereof "nonforfeitable right (within the meaning of section 203)".

(K) Section 402(f)(1) of the 1986 Code is amended by striking out "a eligible" and inserting in lieu thereof "an eligible".

(L) Section 1899A of the Reform Act is amended by striking out paragraph (13).

(M) Subparagraph (B) of section 414(p)(4) of the 1986 Code is amended—

(i) by striking out "means earlier of" and inserting in lieu thereof "means the earlier of", and

(ii) by striking out "in" each place it appears.

(N) Section 414(p)(10) of the 1986 Code (relating to waiver of certain distribution requirements) is amended by inserting ", 403(b)," after "section 401".

(O) Section 414(p)(9) of the 1986 Code is amended by adding at the end thereof the following new sentence: "For purposes of this title, except as provided in regulations, any distribution from an annuity contract under section 403(b) pursuant to a qualified domestic relations order shall be treated in the same manner as a distribution from a plan to which section 401(a)(13) applies."

(P) Section 2039 of the 1986 Code is amended by adding at the end thereof the following new subsection:

"(c) EXEMPTION OF ANNUITIES RECEIVABLE BY SPOUSE UNDER CERTAIN TRUSTS OR PLANS.—

"(1) IN GENERAL.—Notwithstanding any other provision of this section or any other provision of law, there shall be excluded from the gross estate the value of an annuity or other payment receivable by the spouse of a decedent who was a participant under a qualified pension arrangement.

"(2) PAYMENTS ATTRIBUTABLE TO DECEDENT'S CONTRIBUTIONS.—

"(A) IN GENERAL.—If the amounts described in paragraph (1) are attributable to any extent to payments or contributions made by the decedent, paragraph (1) shall not apply to that portion of such amounts which bears the same ratio to such amounts as—

"(i) the payments or contributions made by the decedent, bears to

"(ii) the total payments or contributions made.

"(B) CERTAIN CONTRIBUTIONS BY EMPLOYER.—The following contributions or payments shall not be treated as made by the decedent for purposes of this subsection:

"(i) Contributions or payments made by the decedent's employer or former employer under a qualified pension arrangement described in paragraph (3)(A) or (B).

"(ii) Contributions or payments made by the decedent's employer or former employer toward the purchase of a qualified pension arrangement described in paragraph (3)(C) to the extent excludable from gross income under section 403(b).

"(iii) Contributions or payments made on behalf of the decedent while an employee under section 401(c) under a qualified pension arrangement described in paragraph (3) (A) or (B) to the extent allowable as a deduction under section 404.

"(iv) Any deductible employee contribution (within the meaning of section 72(o)(5)).

"(C) CERTAIN MILITARY PAYMENTS.—For purposes of this subsection, amounts payable under chapter 73 of title 10, United States Code, shall be treated as payments or contributions made by the decedent only to the extent of amounts deposited under section 1438 or 1452(d) of such title.

"(3) QUALIFIED PENSION ARRANGEMENT.—For purposes of this subsection, the term 'qualified pension arrangement' means—

"(A) an employees' trust (or a contract purchased by an employees' trust) forming part of a pension, stock bonus, or profit-sharing plan which, at the time of the decedent's separation from employment (whether by death or otherwise), or at the time of termination of the plan if earlier, met the requirements of section 401(a);

"(B) a retirement annuity contract purchased by an employer (and not by an employees' trust) pursuant to a plan which, at the time of decedent's separation from em-

ployment (by death or otherwise), or at the time of termination of the plan if earlier, was a plan described in section 403(a);

"(C) a retirement annuity contract purchased for an employee by an employer which is an organization referred to in section 170(b)(1)(A) (ii) or (vi), or which is a religious organization (other than a trust), and which is exempt from tax under section 501(a); or

"(D) the program established under chapter 73 of title 10 of the United States Code."

(Q)(i) Subchapter B of chapter 12 of the 1986 Code is amended by adding after section 2516 the following new section:

"SEC. 2517. ELECTIONS UNDER QUALIFIED PLANS WITH RESPECT TO SPOUSAL BENEFITS.

"(a) GENERAL RULE.—If a qualified pension arrangement provides an employee with an option or election under which an annuity or other payment will become payable to the spouse of the employee at or after the employee's death, the exercise or nonexercise of such option or election shall not be considered a transfer for purposes of this chapter.

"(b) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) QUALIFIED PENSION ARRANGEMENT.—The term 'qualified pension arrangement' has the meaning given such term under section 2039(c)(3), except that such term shall include an individual retirement plan.

"(2) EMPLOYEE.—

"(A) FORMER EMPLOYEES.—The term 'employee' includes former employees.

"(B) INDIVIDUAL RETIREMENT PLANS.—In the case of an individual retirement plan, the term 'employee' means the individual for whose benefit the plan was established.

"(3) TRANSFERS ATTRIBUTABLE TO EMPLOYEE CONTRIBUTIONS.—The rules of section 2039(c)(2) shall apply."

(ii) The table of sections for subchapter B of chapter 12 is amended by inserting after the item relating to section 2516 the following new item:

"Sec. 2517. Elections under qualified plans with respect to spousal benefits."

SEC. 10219. EFFECTIVE DATE.

Except as otherwise provided in this title, any amendment made by this title shall take effect as if included in the provision of the Reform Act to which such amendment relates.

PART II—AMENDMENTS RELATED TO TAX PROVISIONS IN OTHER LEGISLATION

SEC. 10251. AMENDMENTS RELATED TO SUPERFUND REVENUE ACT OF 1986.

(a) AMENDMENTS RELATED TO SECTION 513 OF THE ACT.—

(1) Subsection (e) of section 4662 of the 1986 Code is amended by redesignating paragraph (3) as paragraph (4) and by inserting after paragraph (2) the following new paragraph:

"(3) REFUNDS DIRECTLY TO EXPORTER.—The Secretary shall provide, in regulations, the circumstances under which a credit or refund (without interest) of the tax under section 4661 shall be allowed or made to the person who exported the taxable chemical or taxable substance, where—

"(A) the person who paid the tax waives his claim to the amount of such credit or refund, and

"(B) the person exporting the taxable chemical or taxable substance provides such information as the Secretary may require in such regulations."

(2) Subparagraph (A) of section 4662(b)(10) of the 1986 Code is amended by striking out "a mixture of" and inserting in lieu thereof "one or more".

(b) AMENDMENT RELATED TO SECTION 515 OF THE ACT.—Paragraph (3) of section 4672(a) of the 1986 Code is amended by adding at the end of the list contained in such paragraph the following new items:

"Polyester polyethylene terephthalate
"Nylon 66
"Polyacrylonitrile
"Nylon 6".

(c) AMENDMENTS RELATED TO SECTION 516 OF THE ACT.—

(1) Section 59A of the 1986 Code (relating to environmental tax) is amended by redesignating subsections (c) and (d) as subsections (d) and (e), respectively, and by inserting after subsection (b) the following new subsection:

"(c) EXCEPTION FOR RIC's AND REIT's.—The tax imposed by subsection (a) shall not apply to—

"(1) a regulated investment company to which part I of subchapter M applies, and

"(2) a real estate investment trust to which part II of subchapter M applies."

(2) Paragraph (1) of section 882(a) of the 1986 Code is amended by inserting "59A," after "55,".

(3)(A) Paragraph (2) of section 59A(b) of the 1986 Code (defining modified alternative minimum taxable income) is amended by striking out "section 164(a)(5)" and inserting in lieu thereof "section 164(a)(6)".

(B) The paragraph (5) of section 164(a) of the 1986 Code added by section 516(b) of the Superfund Revenue Act of 1986 is redesignated as paragraph (6).

(d) AMENDMENTS RELATED TO SECTION 521 OF THE ACT.—

(1)(A) Subsection (d) of section 4041 of the 1986 Code is amended by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively, and by striking out paragraph (1) and inserting in lieu thereof the following new paragraphs:

"(1) TAX ON SALES AND USES SUBJECT TO TAX UNDER SUBSECTION (a).—In addition to the taxes imposed by subsection (a), there is hereby imposed a tax of 0.1 cent a gallon on the sale or use of any liquid (other than liquefied petroleum gas) if tax is imposed by subsection (a) (including by reason of subsection (n)) on such sale or use.

"(2) TAX ON DIESEL FUEL USED IN TRAINS.—There is hereby imposed a tax of 0.1 cent a gallon on any liquid (other than a product taxable under section 4081)—

"(A) sold by any person to an owner, lessee, or other operator of a diesel-powered train for use as a fuel in such train, or

"(B) used by any person as a fuel in a diesel-powered train unless there was a taxable sale of such liquid under subparagraph (A)."

(B) Paragraph (2) of section 6416(b) of the 1986 Code is amended by striking out "(or under paragraph (1)(A) or (2)(A) of section 4041(a) or under paragraph (1)(A) or (2)(A) of section 4041(d) or under section 4051)" and inserting in lieu thereof "(or under subsection (a) or (d) of section 4041 in respect of sales or under section 4051)".

(2)(A) Paragraph (3) of section 4041(c) of the 1986 Code is amended by striking out "the rate at which" and inserting in lieu thereof "the Highway Trust Fund financing rate at which".

(B) Paragraph (3) of section 4041(d) of the 1986 Code, as redesignated by paragraph (1), is amended—

(i) in the material preceding subparagraph (A)—

(I) by striking out "and section 4081",

(II) by striking out "0.1 cents" and inserting in lieu thereof "0.1 cent", and

(III) by inserting "(other than any product taxable under section 4081)" after "any liquid", and

(ii) by striking out the last sentence.

(3)(A) Subparagraph (A) of section 4041(b)(1) of the 1986 Code is amended by striking out "subsection (a)" and inserting in lieu thereof "subsection (a) or (d)(1)".

(B) Subparagraph (B) of section 4041(b)(1) of the 1986 Code is amended by inserting before the period "and by the corresponding provision of subsection (d)(1)".

(C) Subsection (b) of section 4041 of the 1986 Code is amended by striking out paragraph (3).

(D) Subparagraph (A) of section 4041(b)(2) of the 1986 Code is amended to read as follows:

"(A) IN GENERAL.—In the case of any qualified methanol or ethanol fuel—

"(i) subsection (a)(2) shall be applied by substituting '3 cents' for '9 cents', and

"(ii) subsection (d)(1) shall be applied by substituting '0.05 cent' for '0.1 cent' with respect to the sales and uses to which clause (i) applies."

(E) Subsection (f) of section 6421 of the 1986 Code is amended by striking out all that follows paragraph (1) and inserting in lieu thereof the following new paragraphs:

"(2) GASOLINE USED IN AVIATION.—This section shall not apply in respect of gasoline which is used as a fuel in an aircraft—

"(A) in noncommercial aviation (as defined in section 4041(c)(4)), or

"(B) in aviation which is not noncommercial aviation (as so defined) with respect to the tax imposed by section 4081 at the Leaking Underground Storage Tank Trust Fund financing rate.

"(3) LEAKING UNDERGROUND STORAGE TANK TRUST FUND TAX ON GASOLINE USED IN TRAINS.—This section shall not apply with respect to the tax imposed by section 4081 at the Leaking Underground Storage Tank Trust Fund financing rate on gasoline used as a fuel in a train."

(F) The second sentence of section 6421(a) of the 1986 Code is amended by striking out "paragraph (3) of subsection (e)" and inserting in lieu thereof "paragraph (2) of subsection (f)".

(4) Subsection (n) of section 4041 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(6) APPLICATION OF SUBSECTION TO LEAKING UNDERGROUND STORAGE TANK TRUST FUND TAXES.—For imposition of taxes imposed by subsection (d)(1) on sales to which this subsection applies, see subsection (d)(1)."

(5)(A) Paragraph (1) of section 1703(f) of the Reform Act (relating to floor stock taxes) is amended by striking out "9 cents" and inserting in lieu thereof "9.1 cents".

(B) Paragraph (4) of section 1703(f) of the Reform Act is amended to read as follows:

"(4) TRANSFER OF FLOOR STOCK TAX REVENUES TO TRUST FUNDS.—For purposes of determining the amount transferred to any trust fund, the tax imposed by this section shall be treated as imposed by section 4081 of the Internal Revenue Code of 1986—

"(A) at the Highway Trust Fund financing rate under such section to the extent of 9 cents per gallon, and

"(B) at the Leaking Underground Storage Tank Trust Fund financing rate under such section to the extent of 0.1 cent per gallon."

(6) Subparagraph (A) of section 9508(c)(2) of the 1986 Code is amended by striking out all that follows clause (i) and inserting in lieu thereof the following:

"(ii) credits allowed under section 34, with respect to the taxes imposed by sections 4041(d) and 4081 (to the extent attributable to the Leaking Underground Storage Tank Trust Fund financing rate under section 4081)."

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the provision of the Superfund Revenue Act of 1986 to which it relates.

SEC. 10252. AMENDMENTS RELATED TO HARBOR MAINTENANCE REVENUE ACT OF 1986.

(a) ORDER OF ENACTMENTS.—

(1) For purposes of section 4042 of the 1986 Code, the amendment made by section 521(a)(3) of the Superfund Revenue Act of 1986 shall be treated as enacted after the amendment made by section 1404(a) of the Harbor Maintenance Revenue Act of 1986.

(2) Paragraph (2) of section 4042(b) of the 1986 Code is amended to read as follows:

"(2) RATES.—For purposes of paragraph (1)—

"(A) The Inland Waterways Trust Fund financing rate is the rate determined in accordance with the following table:

If the use occurs:	The tax per gallon is:
Before 1990	10 cents
During 1990	11 cents
During 1991	13 cents
During 1992	15 cents
During 1993	17 cents
During 1994	19 cents
After 1994	20 cents.

"(B) The Leaking Underground Storage Tank Trust Fund financing rate is 0.1 cent per gallon."

(b) CARGO TRANSPORTED BETWEEN POSSESSIONS, ETC.—Subparagraph (B) of section 4462(b)(1) of the 1986 Code is amended to read as follows:

"(B) cargo loaded on a vessel in Alaska, Hawaii, or any possession of the United States for transportation to the United States mainland, Alaska, Hawaii, or such a possession for ultimate use or consumption in the United States mainland, Alaska, Hawaii, or such a possession,".

(c) DELAY IN DUE DATE FOR STUDY OF CARGO DIVERSION.—Section 1407 of the Harbor Maintenance Revenue Act of 1986 is amended by striking out "1 year from the date of the enactment of this Act" and inserting in lieu thereof "July 1, 1988".

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the provision of the Harbor Maintenance Revenue Act of 1986 to which it relates.

SEC. 10253. AMENDMENTS RELATED TO OMNIBUS BUDGET RECONCILIATION ACT OF 1986.

(a) AMENDMENT RELATED TO SECTION 1011 OF THE ACT.—

(1) Subparagraph (B) of section 501(c)(12) of the 1986 Code is amended by striking out "or" at the end of clause (ii), by striking out the period at the end of clause (iii), and inserting in lieu thereof ", or", and by adding at the end thereof the following new clause:

"(iv) from the prepayment of a loan under section 306A, 306B, or 311 of the Rural Electrification Act of 1936 (as in effect on January 1, 1987)."

(2) Subparagraph (C) of section 501(c)(12) of the 1986 Code is amended to read as follows:

"(C) In the case of a mutual or cooperative electric company, subparagraph (A) shall be applied without taking into account any income received or accrued—

"(i) from qualified pole rentals, or

"(ii) from the prepayment of a loan under section 306A, 306B, or 311 of the Rural Electrification Act of 1936 (as in effect on January 1, 1987)."

(3) The amendments made by this subsection shall apply to taxable years ending after the date of the enactment of the Omnibus Budget Reconciliation Act of 1986.

(b) AMENDMENTS RELATED TO SECTION 8011 OF THE ACT.—(1) The following provisions of the 1986 Code are each amended by striking out "the 14th day after the date on which" and inserting in lieu thereof "the 14th day after the last day of the semimonthly period during which":

(A) Subparagraphs (A) and (B) of section 5061(d)(2).

(B) Paragraph (3) of section 5061(d).

(C) Clauses (i) and (ii) of section 5703(b)(2)(B).

(D) Subparagraph (C) of section 5703(b)(2).

(2) The amendments made by paragraph (1) shall take effect as if included in the amendments made by section 8011 of the Omnibus Budget Reconciliation Act of 1986.

(c) AMENDMENT RELATED TO SECTION 9002 OF THE ACT.—Paragraph (3) of section 3509(d) of the 1986 Code is amended by striking out "subsection (d)(3)" and inserting in lieu thereof "subsection (d)(4)".

(d) AMENDMENTS RELATED TO SECTION 9202 OF THE ACT.—

(1) Section 411(b)(2) of the 1986 Code and section 204(b)(2) of the Employee Retirement Income Security Act of 1974 are each amended by striking out subparagraph (B) and by redesignating subparagraphs (C) and (D) as subparagraphs (B) and (C), respectively.

(2) Section 411(b)(2)(C) of the 1986 Code, as redesignated by paragraph (1), is amended by striking out "subparagraph" and inserting in lieu thereof "paragraph".

(3) Section 204(b)(2)(C) of the Employee Retirement Income Security Act of 1974, as redesignated by paragraph (1), is amended by striking out "(C) and (D)" and inserting in lieu thereof "(B) and (C)".

(4) The amendments made by this subsection shall take effect as if included in the amendments made by section 9202 of the Omnibus Budget Reconciliation Act of 1986.

(e) AMENDMENTS RELATED TO SECTION 9203 OF THE ACT.—

(1) Sections 411(a)(8)(B) of the 1986 Code and 3(24)(B) of the Employee Retirement Income Security Act of 1974 are each amended to read as follows:

"(B) the later of—

"(i) the time a plan participant attains age 65, or

"(ii) the 5th anniversary of the time a plan participant commenced participation in the plan."

(2) The amendments made by this subsection shall take effect as if included in the amendments made by section 9203 of the Omnibus Budget Reconciliation Act of 1986.

Subtitle C—Miscellaneous Provisions

PART I—PROVISIONS OF GENERAL APPLICATION

Subpart A—Provisions Primarily Affecting Individuals

SEC. 10301. CERTAIN GOVERNMENTAL ASSISTANCE NOT TAKEN INTO ACCOUNT IN DETERMINING DEPENDENCY DEDUCTION, ELIGIBILITY FOR EARNED INCOME CREDIT, ETC.

(a) IN GENERAL.—Section 7701 is amended by redesignating subsection (k) as subsection (l) and by inserting after subsection (j) the following new subsection:

"(k) CERTAIN GOVERNMENTAL ASSISTANCE DISREGARDED IN DETERMINING SUPPORT, ETC.—

"(1) IN GENERAL.—For purposes of subtitle A and section 7703, there shall not be taken into account any assistance described in paragraph (2) for purposes of determining—

"(A) the extent to which the support of an individual is provided by that individual, by a taxpayer who has the same principal place of abode as the individual (including determinations under section 152), or by the parents of the individual for purposes of section 152(e)(1)(A), or

"(B) whether a taxpayer is considered as maintaining a household.

"(2) ASSISTANCE DESCRIBED.—Assistance is described in this paragraph if—

"(A) it is provided under a Federal, State, or local governmental assistance program used for the support of the individual or for the maintenance of the household, and

"(B) the eligibility for the assistance (or the amount thereof) is determined on the basis of need or income."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 1987.

SEC. 10302. APPLICATION OF SCHOLARSHIP EXCLUSION TO GRADUATE STUDENTS.

(a) IN GENERAL.—Paragraph (8) of section 127(c) (relating to definitions; special rules) is amended by inserting before the period "and section 117(d) shall be applied without regard to section 117(c)".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 1986.

SEC. 10303. APPLICATION OF 14 PERCENT WITHHOLDING RATE ON NONRESIDENT ALIEN LECTURERS.

(a) IN GENERAL.—The second sentence of section 1441(b) (relating to income items) is amended by inserting before the period "or as a grant or award for lecturing or teaching at an educational organization described in section 170(b)(1)(A)(ii) and located in the United States."

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect as if included in the amendments made by section 123 of the Tax Reform Act of 1986.

SEC. 10304. 2-PERCENT FLOOR ON MISCELLANEOUS ITEMIZED DEDUCTIONS NOT TO APPLY TO PUBLICLY OFFERED REGULATED INVESTMENT COMPANIES.

(a) IN GENERAL.—Subsection (c) of section 67 (relating to disallowance of indirect deduction through pass-thru entity) is amended—

(1) by inserting "(1) IN GENERAL.—" before "The Secretary shall" and moving such heading and the text of such subsection below and 2 ems to the right of the subsection heading,

(2) by striking out "and real estate investment trusts" and inserting in lieu thereof ", real estate investment trusts, and publicly offered regulated investment companies", and

(3) by adding at the end thereof the following new paragraph:

"(2) PUBLICLY OFFERED REGULATED INVESTMENT COMPANY DEFINED.—

"(A) IN GENERAL.—For purposes of paragraph (1), the term 'publicly offered regulated investment company' means a regulated investment company the shares of which are—

"(i) continuously offered pursuant to a public offering (within the meaning of section 4 of the Securities Act of 1933, as amended (15 U.S.C. 77a to 77aa)), "(ii) regularly traded on an established securities market, or

"(iii) held by or for no fewer than 500 persons at all times during the taxable year.

"(B) Secretary may reduce 500 person requirement.—The Secretary may by regulations decrease the minimum shareholder requirement of subparagraph (A)(iii) in the case of regulated investment companies which experience a loss of shareholders through net redemptions of their shares."

(b) Effective Date.—The amendments made by this section shall take effect as if included in the amendments made by section 132 of the Tax Reform Act of 1986.

SEC. 10305. FACE VALUE LIMITATION ON DEDUCTION FOR ENTERTAINMENT TICKETS INCREASED TO INCLUDE CERTAIN SERVICE CHARGES.

(a) In General.—Subparagraph (A) of section 274(l)(1) (relating to additional limitations on entertainment tickets) is amended by striking out "shall not exceed" and all that follows and inserting in lieu thereof the following: "shall not exceed the sum of—

"(i) the face value of such ticket, plus

"(ii) any qualified service charge associated with the purchase of such ticket."

(b) Qualified Service Charge.—Paragraph (1) of section 274(l) is amended by adding at the end thereof the following new subparagraph:

"(C) Qualified service charge.—For purposes of subparagraph (A), the term 'qualified service charge' means any service charge to the extent that the charge does not exceed the greater of—

"(i) 10 percent of the face value of the ticket, or

"(ii) $5."

(c) Effective Date.—The amendments made by this section shall take effect as if included in the amendment made by section 142(b) of the Tax Reform Act of 1986.

SEC. 10306. BUSINESS USE OF AUTOMOBILES BY RURAL MAIL CARRIERS.

(a) General Rule.—In the case of any employee of the United States Postal Service who performs services involving the collection and delivery of mail on a rural route—

(1) such employee shall be permitted to compute the amount allowable as a deduction under chapter 1 of the Internal Revenue Code of 1986 for the use of an automobile in performing such services by using a standard mileage rate for all miles of such use equal to 150 percent of the basic standard rate, or

(2) if the employee does not use such standard mileage rate, section 280F(b) of such Code (relating to limitation where business use of listed property not greater than 50 percent) shall not apply to any automobile used in performing such services.

(b) Subsection (a)(1) Not To Apply if Employee Claims Depreciation Deductions for Automobile.—Subsection (a)(1) shall not apply with respect to any automobile if, for any taxable year beginning after December 31, 1986, the taxpayer claimed depreciation deductions for such automobile.

(c) Basic Standard Rate.—For purposes of this section, the term "basic standard rate" means the standard mileage rate which is prescribed by the Secretary of the Treasury or his delegate for computing the amount of the deduction for the business use of an automobile and which—

(1) is in effect at the time of the use referred to in subsection (a),

(2) applies to an automobile which is not fully depreciated, and

(3) applies to the first 15,000 miles (or such other number as the Secretary of the Treasury or his delegate may hereafter prescribe) of business use during the taxable year.

(d) Effective Date.—The provisions of this section shall apply to taxable years beginning after December 31, 1986.

SEC. 10307. PROVISIONS RELATING TO NONRECOGNITION OF GAIN ON SALE OF A PRINCIPAL RESIDENCE.

(a) Nonrecognition of Gain Where 1 Spouse Dies Before Occupying New Residence.—

(1) In general.—Subsection (g) of section 1034 (relating to rollover of gain on sale of principal residence) is amended by adding at the end thereof the following: "For purposes of this subsection, if the taxpayer dies after the date of the sale of the old residence and before the date of the purchase of the new residence, the taxpayer shall be treated as consenting to the application of paragraph (2) and the requirement that he use the new residence as his principal residence shall not apply."

(2) Effective date.—The amendment made by paragraph (1) shall apply to sales and exchanges of old residences (within the meaning of section 1034 of the Internal Revenue Code of 1986) after December 31, 1984, in taxable years ending after such date.

(b) Treatment of Ambassadors and Foreign Service Officers.—

(1) In general.—Subsection (k) of section 1034 (relating to individual whose tax home is outside the United States) is amended by adding at the end thereof the following new sentence: "In the case of an individual who is an Ambassador or a Foreign Service officer throughout the period of suspension under this subsection, the preceding sentence shall be applied by substituting '8 years' for '4 years'."

(2) Effective date.—The amendment made by paragraph (1) shall apply to sales and exchanges of old residences (within the meaning of section 1034 of the Internal Revenue Code of 1986) after December 31, 1982, in taxable years ending after such date.

(c) Treatment of Members of the Armed Forces Required to Live on Base.—

(1) In general.—Subparagraph (B) of section 1034(h)(2) (relating to members of the Armed Forces) is amended by striking out "and pursuant to a determination by the Secretary of Defense that adequate off-base housing is not available at a remote base site".

(2) Effective date.—The amendment made by paragraph (1) shall apply to sales and exchanges of old residences (within the meaning of section 1034 of the Internal Revenue Code of 1986) after December 31, 1984, in taxable years ending after such date.

SEC. 10308. CERTAIN MEALS ON VESSELS, ETC. EXEMPT FROM 80 PERCENT LIMITATION ON DEDUCTION FOR MEALS.

(a) In General.—Paragraph (2) of section 274(n) (relating to only 80 percent of meal and entertainment expenses allowed as deduction) is amended by striking out "or" at the end of subparagraph (C), by striking out the period at the end of subparagraph (D) and inserting in lieu thereof ", or", and by adding at the end thereof the following new subparagraph:

"(E) such expense is for food or beverages—

"(i) required by Federal law to be provided to crew members of a vessel at sea, or

"(ii) provided on an oil or gas platform or drilling rig located offshore or in Alaska."

(b) Effective Date.—The amendment made by this section shall take effect as if included in the amendment made by section 142(b) of the Tax Reform Act of 1986.

Subpart B—Depreciation and Low-Income Housing Credit

SEC. 10311. TREATMENT OF SINGLE PURPOSE AGRICULTURAL OR HORTICULTURAL STRUCTURES.

(a) In General.—Paragraph (3) of section 168(e) (relating to classification of property) is amended by redesignating subparagraphs (D) and (E) as subparagraphs (F) and (G), respectively, and by inserting after subparagraph (C) the following new subparagraphs:

"(D) 8-year property.—The term '8-year property' means any property which would be described in section 48(p)(2) if 'poultry' were substituted for 'livestock' in subparagraph (A) thereof.

"(E) 12-year property.—The term '12-year property' means any single purpose agricultural or horticultural structure (within the meaning of section 48(p)) not described in subparagraph (D) of this paragraph."

(b) Technical Amendments.—

(1) The table contained in subsection (c) of section 168 is amended by striking out the item relating to 10-year property and inserting in lieu thereof the following new items:

"8-year property	8 years
10-year property	10 years
12-year property	12 years".

(2) Subparagraph (C) of section 168(e)(3) is amended by striking out clause (ii).

(3) The table contained in subparagraph (B) of section 168(g)(3) is amended by striking out all that follows the item relating to subparagraph (C)(ii) and inserting in lieu thereof the following new items:

"(D) or (E)	15
(F)(i)	24
(F)(ii)	24
(G)	50."

(4) The table contained in subparagraph (A) of section 467(e)(3) is amended by striking out the item relating to 10-year property inserting in lieu thereof the following new items:

"8-year property	8 years
10-year property	10 years
12-year property	12 years".

(c) Effective Date.—

(1) In general.—Except as provided in paragraph (2), the amendments made by this section shall apply to property placed in service after December 31, 1987.

(2) Exception.—The amendments made by this section shall not apply to—

(A) any property which is constructed, reconstructed, or acquired by the taxpayer pursuant to a written contract which was binding on October 15, 1987, or

(B) any property which is constructed or reconstructed by the taxpayer if such construction or reconstruction began by such date.

SEC. 10312. CITRUS TREES TREATED AS 7-YEAR PROPERTY.

(a) In General.—Subparagraph (C) of section 168(e)(3) (relating to 7-year property) is amended by inserting after clause (i) the following new clause:

"(ii) any citrus tree, and".

(b) Effective Date.—The amendment made by this section shall apply to property placed in service after October 15, 1987.

SEC. 10313. TREATMENT OF PROPERTY USED IN A FARMING BUSINESS.

(a) In General.—Paragraph (2) of section 168(b) (relating to applicable depreciation method) is amended by striking out "or" at the end of subparagraph (A), by redesignating subparagraph (B) as subparagraph (C), and by inserting after subparagraph (A) the following new subparagraph:

"(B) any property used in a farming business (within the meaning of section 263A(e)(4)), or".

(b) Effective Date.—

(1) In general.—Except as provided in paragraph (2), the amendments made by this section shall apply to property placed in service after December 31, 1987.

(2) Exception.—The amendments made by this section shall not apply to—

(A) any property which is constructed, reconstructed, or acquired by the taxpayer pursuant to a written contract which was binding on October 15, 1987, or

(B) any property which is constructed or reconstructed by the taxpayer if such construction or reconstruction began by such date.

SEC. 10314. ADDITIONAL AMENDMENTS RELATED TO CAPITAL COST RECOVERY.

(a) Section 204(a) of the Tax Reform Act of 1986 is amended by adding at the end thereof:

"(40) The amendments made by section 201 shall not apply to—

"(A) $13,000,000 of property placed in service by a maker of parts for automotive interiors in Sheboygan, Wisconsin, and used pursuant to firm commitments from customers received by December, 1985.

"(B) A project to be located in Kern County, California, which was certified by the Federal Energy Regulatory Commission as a qualifying facility for purposes of the Public Utility Regulatory Policies Act of 1978 on June 27, 1985, and recertified by that same authority on November 28, 1986.

"(C) The fiber optic telecommunications network owned by a Delaware partnership formed under a partnership agreement of July 17, 1983, or its successors, which will cover at least 3,500 miles and will pass through 22 States and the District of Columbia.

"(D) A cogeneration plant with an estimated cost of less than $100,000,000, which is capable of producing at least 40 to 60 megawatts of electric power and at least 650,000 to 900,000 pounds of steam per hour, which was approved by the parent company's Board of Directors on or about February 10, 1986, and if construction of the plant is pursuant to commitments with respect to existing Decatur, Illinois, facilities made prior to 1986 to the Illinois Environmental Protection Agency.

"(E) A project that passes through at least 13 cities providing an intercity communications link through a fiber-optic communications network system if before February 25, 1986, a formal agreement for the construction of the system pursuant to the master plan was entered into and at least $30,000,000 was committed to the construction of the system.

"(F) $87,500,000 of property used in connection with a coal gasification project to be constructed in Summerset County, Pennsylvania."

(b) Section 204(a)(32)(M) of the Tax Reform Act of 1986, as amended by the Technical Corrections Act of 1987, is amended further by adding at the end thereof: "Section 203(b)(2) shall be applied to such property by substituting 'September 3, 1999' for 'January 1, 1989' and 'January 1, 1991'."

(c) Subparagraph (H) of section 204(a)(5) of the Tax Reform Act of 1986 is amended by adding at the end thereof: "Section 203(b)(2) shall be applied to such project by substituting 'January 1, 1992' for 'January 1, 1991'."

(d) Subparagraph (D) of section 204(a)(8) of the Tax Reform Act of 1986, as amended by the Technical Corrections Act of 1987, is amended by striking "Tennessee, or" and inserting in lieu thereof "Tennessee (such carryover election being hereby deemed valid for this purpose and for purposes of section 1315(c) until July 1, 1989), or".

(e) Section 204(a)(1)(G) of the Tax Reform Act of 1986 is amended by adding the following new sentence at the end thereof: "For purposes of this subparagraph, section 203(b)(2) shall be applied by substituting 'January 1, 1993' for 'January 1, 1991'."

SEC. 10315. REDUCTION OF INVESTMENT TAX CREDIT RECAPTURE ON CERTAIN INVOLUNTARY CONVERSIONS.

(a) In General.—If—

(1) any property is disposed of, or otherwise ceases to be section 38 property with respect to the taxpayer, on account of its destruction or damage by fire, storm, shipwreck, or other casualty, or by reason of theft, and

(2) qualified replacement property is placed in service by the taxpayer before the date 2 years after the date of the disposition referred to in paragraph (1),

the recapture amount determined with respect to the disposition referred to in paragraph (1) shall be reduced by the imputed credit amount with respect to qualified replacement property.

(b) Definitions.—For purposes of this section:

(1) The term "qualified replacement property" means any section 38 property which is placed in service by the taxpayer to replace the property described in subsection (a)(1) and to which the regular percentage does not apply by reason of section 49 of the Internal Revenue Code of 1986.

(2) The term "recapture amount" means any increase in tax under section 47(a)(1) of such Code, and any adjustment under section 47(a)(6) of such Code, which would be made by reason of the disposition referred to in subsection (a)(1).

(3) The term "imputed credit amount" means the amount of the credit which would be determined under section 46 of such Code if the regular percentage applied to the qualified replacement property.

(c) Special Rules.—For purposes of—

(1) section 47 of such Code, and

(2) section 48(q) of such Code,

any reduction in the recapture amount by reason of this section shall be treated as an investment tax credit allowed with respect to qualified replacement property.

SEC. 10316. TREATMENT OF EXPENSES RELATING TO RAILROAD TRACK.

(a) In General.—The reference to railroad track in section 168(e)(3)(C)(i) of the Internal Revenue Code of 1986 shall not be construed to require the capitalization of expenses which under generally accepted tax principles are not required to be capitalized.

(b) Exception.—Subsection (a) shall not apply to expenses involving more than 1/4 mile of track.

(c) Effective Date.—Subsection (a) shall apply to amounts paid or incurred after December 31, 1987.

(d) No Inference.—Nothing in this section shall be construed to infer the proper treatment of any amount paid or incurred during 1987.

SEC. 10317. AMENDMENTS RELATED TO SECTION 212 OF THE TAX REFORM ACT OF 1986.

(a) The title of section 212 of the Tax Reform Act of 1986 is amended by striking out "CERTAIN" and inserting in lieu thereof "STEEL".

(b) Section 212(f)(1) of the Tax Reform Act of 1986 is amended by striking "Any amount" and inserting in lieu thereof "Except as provided in subsection (g)(3), any amount".

(c) Section 212(g) of the Tax Reform Act of 1986 is amended by adding at the end thereof:

"(3) Certain additional corporations.—The term 'qualified corporation' also includes any corporation (hereinafter referred to as the parent corporation') which was incorporated in the State of Delaware on December 9, 1940, and which received, with respect to one or more defined benefit plans, from the Internal Revenue Service a written funding waiver dated September 12, 1986, whether or not conditional, under section 412 of the Internal Revenue Code of 1954 as amended, but only if such corporation certifies in writing to the Pension Benefit Guaranty Corporation and the Internal Revenue Service that any funds to which it shall be entitled under this section shall, within 30 days after receipt thereof, be used to make contributions to any plans with respect to which such finding waiver was granted. Any certification provided by a corporation pursuant to the preceding sentence shall be treated by the Pension Benefit Guaranty Corporation as acceptable collateral for purposes of such waiver. The term 'qualified corporation' also includes any other corporation which is a member of the affiliated group of which the parent corporation was the common parent on December 31, 1986."

SEC. 10318. AMENDMENTS RELATED TO SECTION 251 OF THE TAX REFORM ACT OF 1986.

(a) In the case of any person who acquires an interest in a partnership which held an interest on December 31, 1986, in the project described in section 251(d)(6) of the Tax Reform Act of 1986 and which partnership acquired such interest in December 1986, such person shall be deemed to have acquired such interest prior to January 1, 1987, (provided such interest had been reacquired by such partnership between October 1, 1987, and the day immediately preceding the date of enactment of this section). Interest on any refund of income taxes paid under section 6611 of the Internal Revenue Code of 1986 which is solely attributable to the provisions of this subsection shall not be paid for the period between—

(1) the date that is 45 days after the later of—

(A) April 15, 1987, or

(B) the date such return was actually filed, and

(2) the date such person actually acquired his interest in the partnership.

(b) Paragraph (4) of section 251(d) of the Tax Reform Act of 1986, as amended by the Technical Corrections Act of 1987, is amended by striking out "and" at the end of subparagraph (RR), by striking out the period at the end of subparagraph (SS) and by adding at the end thereof the following:

"(TT) Atrium Place, Detroit, Michigan,

"(UU) A 173 room hotel for which a UDAG grant was preliminarily approved on February 2, 1986, and the rehabilitation of which was completed by April 16, 1987, "(VV) Main Street Project, Little Rock, Arkansas, and

"(WW) River Place Complex (also known as the Parke-Davis and Company Pharmaceutical Plant), Detroit, Michigan."

SEC. 10319. AMENDMENT RELATED TO SECTION 29 OF THE 1986 CODE.

(a) General Rule.—Clause (ii) of section 29(f)(1)(A) of the Internal Revenue Code of 1986 shall be applied to a project described in subsection (b) by substituting "January 1, 1991" for "January 1, 1990".

(b) Project Described.—A project is described in this subsection if—

(1) it converts coal into gas for use as a feedstock for producing approximately 1.4 million tons of nitrogen fertilizer per year, and

(2) a ruling from the Internal Revenue Service with respect to the project was received on June 29, 1987.

SEC. 10320. PROVISIONS RELATING TO LOW-INCOME HOUSING CREDIT.

(a) Carryover of Post-1987 Housing Credit Dollar Amounts Permitted.—

(1) In general.—Subparagraph (B) of section 42(h)(6) (relating to housing credit dollar amount may not be carried over, etc.) is amended to read as follows:

"(B) Housing credit dollar amount may be carried over for a specified building.—

"(i) In general.—If—

"(I) the aggregate housing credit dollar amount which a housing credit agency may allocate for any calendar year, exceeds

"(II) the aggregate amount of such dollar amount which is otherwise allocated for such calendar year by such agency,

such agency may elect to treat all (or any portion) of such excess as a carryforward for 1 or more buildings.

"(ii) Election must specify building.—In any election under clause (i), the housing credit agency shall—

"(I) identify the building for which the carryforward is elected, and

"(II) specify the portion of the excess described in clause (i) which is to be a carryforward for such building.

"(iii) Limitations.—An election may be made under clause (i) with respect to a building only if—

"(I) such building is placed in service in the calendar year following the calendar year from which the carryforward arises, and

"(II) such building is a new building (or is treated under subsection (e) as a new building) when placed in service.

"(iv) Election.—Any election under this subparagraph (and any identification or specification contained therein) shall be made on or before December 31 of the calendar year from which the carryforward arises and, once made, shall be irrevocable."

(2) Effective date.—

(A) In general.—The amendment made by paragraph (1) shall apply to carryforwards from calendar years after 1987.

(B) Transitional rule.—In the case of a housing credit agency to which section 252(f)(2) of the Tax Reform Act of 1986 applies—

(i) subparagraph (A) shall be applied by substituting "1986" for "1987" with respect to the additional housing credit dollar amount allocated under such section, and

(ii) clauses (ii) and (iii) of section 42(h)(6)(B) of the Internal Revenue Code of 1986 (as added by this section) shall not apply to such additional housing credit dollar amount.

(b) Reduction in State Housing Credit Ceiling.—

(1) In general.—Subparagraph (C) of section 42(h)(3) (relating to State housing credit ceiling) is amended by striking out "$1.25" and inserting in lieu thereof "$1.10".

(2) Effective date.—The amendment made by paragraph (1) shall apply to calendar years after 1987.

(c) Certain Decreases in Family Size Not Taken Into Account in Determining Low Income.—

(1) In general.—Paragraph (4) of section 42(g) (relating to certain rules made applicable) is amended by adding at the end thereof the following new sentence: "In applying the last sentence of 142(d)(2)(B) for purposes of the preceding sentence, there shall not be taken into account decreases in family size resulting from death, divorce, separation, or abandonment."

(2) Effective date.—The amendment made by paragraph (1) shall take effect as if included in the amendments made by section 252 of the Tax Reform Act of 1986.

(d) Use of State Median Gross Income for Determining Qualified Low-Income Housing Project Status.—

(1) In general.—Subsection (g) of section 42 (relating to qualified low-income housing projects) is amended by adding at the end thereof the following new paragraph:

"(6) Use of state median gross income.—If State median gross income is greater than area median gross income, State median gross income shall be substituted for area median gross income in paragraphs (1) and (4) (to the extent related to section 142(d)(2)(B))."

(2) Effective date.—The amendment made by paragraph (1) shall apply to any project if the 1st building which is part of such project is placed in service after December 31, 1987.

(e) Waiver of Anti-Churning Rule for Certain Federally Assisted Buildings.—

(1) In general.—Subparagraph (A) of section 42(d)(6) is amended by striking out "or" at the end of clause (i), by striking out the period at the end of clause (ii) and inserting in lieu thereof ", or", and by adding at the end thereof the following new clause:

"(iii) in the case of a building described in subparagraph (B)(ii), to prevent such building from being converted to serve nonlow-income tenants."

(2) Effective date.—The amendment made by paragraph (1) shall apply to buildings placed in service after December 31, 1987.

(f) Section 8 Assistance Not Included in Determining Gross Rent for Certain Deep Rent Skewed Projects.—

(1) In general.—Paragraph (4) of section 42(g) is amended by striking out "(other than section 142(d)(4)(B)(iii))".

(2) Effective date.—The amendment made by paragraph (1) shall apply to any project if the 1st building which is part of such project is placed in service after December 31, 1987.

(g) Simplification of Partnership Rule.—

(1) In general.—Clause (i) of section 42(j)(5)(B) (relating to partnerships to which paragraph applies) is amended to read as follows:

"(i) which has 35 or more partners, and".

(2) Effective date.—The amendment made by paragraph (1) shall take effect as if included in the amendments made by section 252 of the Tax Reform Act of 1986.

(h) Certain Acquisitions From Governmental Units Exempt From Anti-Churning Rule.—

(1) In general.—Clause (ii) of section 42(d)(2)(D) (relating to special rules for certain transfers) is amended by striking out "or" at the end of subclause (III), by striking out the period at the end of subclause (IV) and inserting in lieu thereof ", or", and by adding at the end thereof the following new subclause:

"(V) by any governmental unit if such unit or any other governmental unit held and operated such building during the 10-year period (or, if shorter, the period since such building was first placed in service) ending on the date such property was acquired from such unit."

(2) Effective date.—The amendment made by paragraph (1) shall take effect as if included in the provision of the Tax Reform Act of 1986 to which it relates.

(i) Transitional Rule.—

(1) Clause (ii) of section 42(d)(2)(B) of the Internal Revenue Code of 1986 shall be applied to a project described in paragraph (2) by substituting "9 years" for "10 years".

(2) A project is described in this paragraph if—

(A) it is located at 6522 54th Avenue North, St. Petersburg, Florida, and

(B) it is leased by Pinellas Village, Inc., a Florida not-for-profit corporation.

Subpart C—Capital Loss Deduction for Individuals Limited to Taxable Income

SEC. 10331. LIMITATION ON CAPITAL LOSSES.

(a) In General.—Subsection (b) of section 1211 (relating to limitation on capital losses for taxpayers other than corporations) is amended by striking out all that follows "gains)" and inserting in lieu thereof "whichever of the following is the smallest:

"(1) $3,000 ($1,500 in the case of a married individual filing a separate return),

"(2) the excess of such losses over such gains, or

"(3) the taxable income for the taxable year.

For purposes of paragraph (3), taxable income shall be computed without regard to gains or losses from sales or exchanges of capital assets and without regard to the deductions provided in section 151 (relating to personal exemptions) or any deduction in lieu thereof."

(b) Effective Date.—The amendment made by subsection (a) shall take effect as if included in the amendments made by section 301 of the Tax Reform Act of 1986.

Subpart D—Ethyl Alcohol and Mixtures Thereof for Fuel Use

SEC. 10336. ETHYL ALCOHOL AND MIXTURES THEREOF FOR FUEL USE.

(a) Indigenous Product Test Frozen at Not Less Than 30 Percent Value.—Subparagraph (B) of section 423(c)(2) of the Tax Reform Act of 1986 is amended to read as follows:

"(B) has been dehydrated within that insular possession or beneficiary country from hydrous ethyl alcohol that includes hydrous ethyl alcohol which is wholly the product or manufacture of any insular possession or beneficiary country and which has a value not less than 30 percent of the value of the ethyl alcohol or mixture.".

(b) Effective Date.—The amendment made by subsection (a) takes effect January 1, 1988.

Subpart E—Expansion Of Transitional Relief From Passive Loss Rules

SEC. 10341. EXPANSION OF TRANSITIONAL RELIEF FROM PASSIVE LOSS RULES.

Paragraph (3) of section 502(d) of the Tax Reform Act of 1986 is amended by striking out "December 31, 1987" and inserting in lieu thereof "the 90th day after the date of the enactment of the Technical Corrections Act of 1987".

Subpart F—Corporate Provisions

SEC. 10346. DELAY IN EFFECT OF IRS ANNOUNCEMENT 86-47.

For purposes of applying Internal Revenue Service Announcement 86-47 (dated April 7, 1986), January 1, 1987, shall be treated as the date such announcement was made.

SEC. 10347. TREATMENT UNDER SUBCHAPTER S OF COPYRIGHT AND COMPUTER SOFTWARE ROYALTIES.

(a) In General.—Subparagraph (D) of section 1362(d)(3) (defining passive investment income) is amended by adding at the end thereof the following new clause:

"(vi) Treatment of certain royalty income.—The term 'passive investment income' shall not include royalty income—

"(I) which meets the requirements of section 543(a)(4) or 543(d) (determined without regard to paragraph (5) thereof) for the taxable year, and

"(II) which is derived from the active conduct of a trade or business of developing, manufacturing, or producing property or of promoting or marketing the right to use property."

(b) Effective Date.—The amendment made by this section shall apply to taxable years beginning after December 31, 1986.

SEC. 10348. REPEAL OF THE SHORT-SHORT RULE FOR REGULATED INVESTMENT COMPANIES.

(a) In General.—Subsection (b) of section 851 (relating to limitations) is amended by striking out paragraph (3), by adding "and" at the end of paragraph (2), and by redesignating paragraph (4) as paragraph (3).

(b) Technical Amendments.—

(1) The material following paragraph (3) of section 851(b) (as redesignated by subsection (a)) is amended by striking out "paragraphs (2) and (3)" and inserting in lieu thereof "paragraph (2)".

(2) Subsection (b) of section 851 is amended by striking out the last 2 sentences (as added by paragraphs (3) and (5) of section 10206(n) of this Act).

(3) Subsection (c) of section 851 is amended by striking out "subsection (b)(4)" each place it appears (including the heading) and inserting in lieu thereof "subsection (b)(3)".

(4) Paragraph (4) of section 851(e) is amended by striking out "subsections (b)(4)" and inserting in lieu thereof "subsections (b)(3)".

(5) Section 851 is amended by striking out subsection (g) and redesignating the subsection (h) as subsection (g).

(6) Subsection (g) of section 851 (as redesignated by paragraph (5)) is amended by striking out paragraph (3).

(c) Effective Date.—The amendments made by this section shall apply to taxable years ending after the date of the enactment of this Act.

SEC. 10349. PROVISIONS RELATING TO LIMITATION ON NET OPERATING LOSS CARRYFORWARDS.

Subsection (f) of section 621 of the Tax Reform Act of 1986 is amended by adding at the end thereof the following new paragraphs:

"(9) For purposes applying section 382(k)(6) of the Internal Revenue Code of 1986, preferred stock issued by an integrated steel manufacturer incorporated on November 9, 1982, and reincorporated on February 11, 1983, and having its principal place of business in Trenton, Michigan, and mentioned in a letter of intent dated July 10, 1987, signed by such manufacturer, shall not be treated as stock.

"(10) For purposes of section 633(c)(1)(D) of this Act, an agreement for the purchase of telecommunications assets entered into on June 30, 1986, and modified on September 11, 1986, pursuant to the order of a Federal district court, to eliminate certain assets from the original agreement, shall be deemed to be a written binding contract in effect before August 1, 1986.

"(11) The Secretary of the Treasury or his delegate may prescribe regulations under which an ownership change resulting from an acquisition of an institution described in section 593 of the Internal Revenue Code of 1986 by a Federal mutual savings and loan association under the supervision of the Federal Savings and Loan Insurance Corporation shall be disregarded for purposes of section 382(l)(5)(D) of such Code."

SEC. 10350. APPLICATION OF PRIOR LAW IN CERTAIN CASES.

Paragraph (2) of section 621(f) of the Tax Reform Act of 1986 is amended by adding at the end thereof the following new subparagraph:

"(E) Application of old rules to certain acquisitions.—In the case of a Texas resident whose birthdate is May 16, 1931, and a Michigan resident whose birthdate is November 16, 1941, in connection with a corporation incorporated in Texas on February 4, 1971, and a corporation incorporated in Florida on August 24, 1979—

"(i) the amendments made by subsections (a), (b), and (c) shall not apply to a debt foreclosure leading to a purchase at public sale on August 28, 1986, or a debt conversion occurring on September 19, 1986, and

"(ii) the amendments made by subsections (e) and (f) of section 806 of the Tax Reform Act of 1976 (including the amendment treated as part of such subsection under section 59(b) of the Tax Reform Act of 1984) shall apply to such debt foreclosure or conversion.

Subpart G—Provisions Relating to the Alternative Minimum Tax

SEC. 10351. TREATMENT OF STRUCTURED SETTLEMENTS.

(a) In General.—The last sentence of section 56(g)(4)(B)(iii) (relating to inclusion of income on annuity contract) is amended to read as follows: "The preceding sentence shall not apply to any annuity contract which is held under a plan described in section 403(a) or which is described in section 72(u)(3)(C)."

(b) Effective Date.—The amendment made by this section shall take effect as if included in the amendments made by section 701 of the Tax Reform Act of 1986.

SEC. 10352. SPECIAL RULE FOR CERTAIN MORTGAGE GUARANTY INSURERS.

(a) In General.—Section 59 (relating to other definitions and special rules) is amended by adding at the end thereof the following new subsection:

"(k) Special Rule for Mortgage Guaranty Insurers.—In the case of a taxable year to which section 56(f) applies—

"(1) Determination of regular tax.—For purposes of section 55(c)(1), the regular tax shall include the total amount paid for tax and loss bonds under section 832(e)(2) with respect to the deduction permitted under section 832(e)(1) for the taxable year. The regular tax shall be reduced (but not below zero) by the amount paid for tax and loss bonds acquired with respect to a deduction permitted under section 832(e)(1) for a prior taxable year that is restored to income under section 832(e)(5) in the current taxable year, but regular tax shall only be reduced to the extent that the payment for tax and loss bonds with respect to such prior year deduction was treated as a payment of regular tax.

"(2) Determination of applicable adjustments.—For purposes of section 56(c)—

"(A) the deduction permitted by section 832(e)(1) shall not be allowed, and

"(B) the inclusion in gross income required by section 832(e)(5) shall be disregarded to the extent that a deduction in a prior taxable year for that amount was disallowed by reason of subparagraph (A) of this paragraph."

(b) Effective Date.—The amendment made by this section shall take effect as if included in the amendments made by section 701 of the Tax Reform Act of 1986.

SEC. 10353. TREATMENT OF RURAL COOPERATIVES.

(a) In General.—Subparagraph (E) of section 56(f)(2) (relating to special rules for cooperatives) is amended by adding at the end thereof the following new sentence: "In the case of a cooperative described in section 1381(a)(2)(C), the amount determined under subparagraph (A) shall be reduced by any allocation which is in the nature of a patronage dividend."

(b) Effective Date.—The amendment made by subsection (a) shall take effect as if included in the amendments made by section 701 of the Tax Reform Act of 1986.

SEC. 10354. ALLOCATION OF INCOME AND EXPENSE FOR A CERTAIN COOPERATIVE.

(a) General Rule.—In the case of a rural electric generation and transmission cooperative incorporated on May 5, 1961, providing wholesale electricity to member cooperatives in eight States, interest income and expense derived from 9 safe-harbor lease transactions, within the meaning of section 168(f)(8) of the Internal Revenue Code of 1954 (as originally enacted by the Economic Recovery Tax Act of 1981), dated November 10, 1981, July 30, 1982, August 30, 1982, September 13, 1982, September 17, 1982, May 27, 1983, May 31, 1983, July 14, 1983, and August 16, 1983, shall be treated as income and expense derived from furnishing services, goods, or other items of value to both members and nonmembers in proportion to amounts received from the sale of electricity to members and nonmembers for purposes of applying section 277 of the Internal Revenue Code of 1986.

(b) Effective Date.—Subsection (a) shall apply with respect to leases entered into after December 31, 1980.

SEC. 10355. EXEMPTION FROM MINIMUM TAX FOR SMALL NONLIFE INSURANCE COMPANIES.

(a) In General.—Section 59 (relating to other definitions and special rules) is amended by adding at the end thereof the following new subsection:

"(l) Exception for Small Nonlife Insurance Companies.—Section 55 shall not apply to any company which for the taxable year is subject to the tax imposed by section 831(b) (relating to alternative tax for small companies)."

(b) Cross Reference.—Subsection (c) of section 831 is amended by adding at the end thereof the following new paragraph:

"**(4) For exemption from alternative minimum tax for companies subject to tax under subsection (b), see section 59(l).**"

(c) Effective Date.—The amendments made by this section shall take effect as if included in the amendments made by section 701 of the Tax Reform Act of 1986.

SEC. 10356. CHURCH SELF-FUNDED DEATH BENEFIT PLANS TREATED AS LIFE INSURANCE.

(a) In General.—Section 101 (relating to certain death benefits) is amended by adding at the end thereof the following new subsection:

"(g) Church Self-Funded Death Benefit Plans Treated as Life Insurance.—

"(1) In general.—For purposes of this section, the term 'life insurance contract' includes a plan or arrangement which provides for the payment of benefits by reason of the death of the individuals covered under such plan or arrangement, but only if such plan or arrangement—

"(A) is provided by a church for the benefit of its employees and their beneficiaries, directly or through an organization described in section 414(e)(3)(A) or an organization described in section 414(e)(3)(B)(ii), and

"(B) satisfies the requirements of section 7702 without regard to the requirement of subsections (a) and (g)(3) that such plan or arrangement be a life insurance contract under the applicable law.

"(2) Definitions.—For purposes of this subsection—

"(A) Church.—The term 'church' means a church or a convention or association of churches.

"(B) Employee.—The term 'employee' includes an employee described in section 414(e)(3)(B)."

(b) Treatment Under Section 79.—Section 79 (relating to group-term life insurance purchased for employees) is amended by adding at the end thereof the following new subsection:

"(f) Church Self-Funded Death Benefit Plans Treated as Life Insurance.—For purposes of this section, there shall be treated as a life insurance contract any plan or arrangement which is treated as a life insurance contract under section 101(g), but only to the extent there is no cash surrender value under such plan or arrangement."

(c) Effective Date.—The amendments made by this section shall take effect as if included in the amendment made by section 221(a) of the Tax Reform Act of 1984.

Subpart H—Accounting Provisions

SEC. 10361. AMENDMENTS TO SECTION 263A.

(a) General Rule.—

(1) Treatment of animals produced in farming business.—Subparagraph (A) of section 263A(d)(1) is amended to read as follows:

"(A) In general.—This section shall not apply to any of the following which is produced by the taxpayer in a farming business:

"(i) Any animal.

"(ii) Any plant which has a preproductive period of two years or less."

(2) The heading of paragraph (1) of section 263A(d) is amended to read as follows:

"(1) Section not to apply to certain property.—"

(b) Exemption for Free Lance Authors and Photographers.—Section 263A is amended by redesignating subsection (h) as subsection (i) and by inserting after subsection (g) the following new subsection:

"(h) Exemption for Free Lance Authors and Photographers.—

"(1) In general.—Nothing in this section shall require the capitalization of any qualified writing or photography expense.

"(2) Qualified writing or photography expense.—For purposes of this subsection, the term 'qualified writing or photography expense' means any expense—

"(A) which is paid or incurred by an individual in the trade or business of such individual (other than as an employee) of being a writer or photographer, and

"(B) which, without regard to this section, would be allowable as a deduction for the taxable year.

Such term does not include any expense related to printing, photographic plates, motion picture films, video tapes, or similar items.

"(3) Definitions.—For purposes of this subsection—

"(A) Writer.—The term 'writer' means any individual if the personal efforts of such individual create (or may reasonably be expected to create) a literary manuscript or a musical or dance score.

"(B) Photographer.—The term 'photographer' means any individual if the personal efforts of such individual create (or may be reasonably expected to create) a photograph or photographic negative or transparency.

"(C) Treatment of certain personal service corporations.—

"(i) In general.—In the case of a personal service corporation, this subsection shall apply to any expense of such corporation which directly relates to the activities of the qualified employee-owner in the same manner as if such expense were incurred by such employee-owner.

"(ii) Qualified employee-owner.—The term 'qualified employee-owner' means any individual who is an employee-owner of the personal service corporation and who is a writer or photographer, but only if substantially all of the stock of such corporation is owned by such individual and members of his family (as defined in section 267(c)(4))."

"(iii) Personal service corporation.—For purposes of this subparagraph, the term 'personal service corporation' means any personal service corporation (as defined in section 269A(b)).

(c) Effective Dates.—

(1) In general.—The amendments made by this section shall take effect as if included in the amendments made by section 803 of the Tax Reform Act of 1986.

(2) Rules to apply for section 280.—The rules of subsection (h) of section 263A of the Internal Revenue Code of 1986 (as added by subsection (b)) shall also apply for purposes of section 280 of the Internal Revenue Code of 1954 (as in effect before its repeal by the Tax Reform Act of 1986).

SEC. 10362. MODIFICATIONS TO INSTALLMENT METHOD RULES.

(a) Certain Nondealer Obligations Not Subject to Minimum Tax.—Subparagraph (B) of section 56(a)(6) (relating to installment sales of certain property) is amended by striking out "as defined in section 453C(e)" and inserting in lieu thereof "as defined in section 453C(e), without regard to paragraph (1)(A)(i)(III) thereof".

(b) Special Rules for Certain Nondealer Obligations.—Section 453C is amended by adding at the end thereof the following new subsection:

"(f) Special Rules for Certain Nondealer Obligations.—

"(1) In general.—In the case of any installment obligation to which this subsection applies—

"(A) the foregoing provisions of this section shall not apply, but

"(B) any indebtedness secured by such installment obligation shall be treated as a payment received on such obligation at the time the indebtedness becomes so secured.

"(2) Installment obligations to which subsection applies.—

"(A) In general.—Except as provided in subparagraph (B), this subsection applies to any applicable installment obligation described in subsection (e)(1)(A)(i)(III) which arises out of a disposition during any taxable year if the face amount of such installment obligation outstanding as of the close of such taxable year does not exceed $2,800,000, but only to the extent that the aggregate face amount of all such installment obligations (arising out of dispositions during such taxable year) outstanding as of the close of such taxable year is not greater than $5,000,000.

"(B) Exception for sale of timeshares and residential lots.—This subsection shall not apply to any installment obligation which an election under subsection (e)(4) applies.

"(C) Aggregation rules.—The rules of section 1274A(d)(1) shall apply for purposes of subparagraph (A).

"(3) Certain rules made applicable.—Rules similar to the rules of subsection (c) shall apply to any amount if treated as received under paragraph (1)(B) on an installment obligation to which this subsection applies.

"(4) Secured indebtedness.—For purposes of this subsection, indebtedness is secured by an installment obligation to which this subsection applies to the extent that payment of principal or interest on such indebtedness is secured (under the terms of the indebtedness or any underlying arrangement) by an interest in such installment obligation."

(c) 60-Percent Recognition in Case of Dealer Obligations.—Section 453 is amended by adding at the end thereof the following new subsection:

"(l) 60-Percent Recognition for Certain Dealer Obligations.—

"(1) In general.—In the case of any installment sale to which this subsection applies—

"(A) 60 percent of the gross profit (realized or to be realized when payment is completed) shall be recognized for the taxable year of the disposition, and

"(B) the remaining portion of such gross profit shall be taken into account under the installment method.

"(2) Installment sales to which subsection applies.—This subsection applies to any installment sale to which subsection (a) applies if any installment obligation arising out of such sale is described in subclause (I) or (II) of section 453C(e)(1)(A)(i) and if section 453C applies to such obligation."

(d) Effective Dates.—

(1) Subsection (a).—The amendment made by subsection (a) shall take effect as if included in the amendments made by section 811 of the Tax Reform Act of 1986.

(2) Subsections (b) and (c).—

(A) In general.—The amendments made by subsections (b) and (c) shall apply to installment obligations arising out of dispositions after October 13, 1987.

(B) Election to apply to amendment made by subsection (b) retroactively.—A taxpayer may elect to have the amendment made by subsection (b) take effect as if included in the amendments made by section 811 of the Tax Reform Act of 1986.

SEC. 10363. MODIFICATIONS TO SECTION 453C WHERE THRIFT INSTITUTION MEMBER OF CONTROLLED GROUP.

(a) General Rule.—Paragraph (2) of section 453C(e) (relating to aggregate rules) is amended to read as follows:

"(2) Aggregation of entities.—For purposes of this section—

"(A) In general.—All persons treated as a single employer under section 52 shall be treated as 1 taxpayer. The Secretary shall prescribe regulations for the treatment under this section of transactions between such persons.

"(B) Special rule for thrift institutions.—If the persons treated as 1 taxpayer under subparagraph (A) includes a financial institution referred to in section 581, the accounts in which are insured by the Federal Savings and Loan Insurance Corporation, for purposes of applying paragraph (1) or (2) of subsection (b) with respect to applicable installment obligations described in paragraph (1)(A)(i)(I), the indebtedness of such financial institution and the aggregate adjusted bases of all assets of such financial institution for a taxable year shall be reduced by an amount equal to—

"(i) the average quarterly indebtedness owed to such financial institution during such taxable year which arises out of the banking business of such financial institution, multiplied by

"(ii) a fraction, the numerator of which is the average quarterly indebtedness of such financial institution for such taxable year and the denominator of which is the aggregate adjusted bases of all assets of such financial institution held as of the close of the taxable year (determined without regard to this sentence)."

(b) Effective Date.—The amendment made by subsection (a) shall take effect as if included in the amendments made by section 811 of the Tax Reform Act of 1986.

SEC. 10364. TREATMENT OF CONTRIBUTIONS IN AID OF CONSTRUCTION TO SMALL WATER UTILITIES.

(a) General Rule.—Section 118 (relating to contributions to the capital of a corporation) is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

"(c) Special Rule for Small Water Utilities.—

"(1) In general.—For purposes of this section, notwithstanding subsection (b), the term 'contribution to the capital of the taxpayer' includes any amount of money or other property received from any person (whether or not a shareholder) by a small water utility if—

"(A) such amount is a contribution in aid of construction,

"(B) where the contribution is in property which is other than water facilities, such amount meets the requirements of the expenditure rule of paragraph (2), and

"(C) such amounts (or any property acquired or constructed with such amounts) are not included in the taxpayer's rate base for rate-making purposes.

"(2) Expenditure rule.—An amount meets the requirements of this paragraph if—

"(A) an amount equal to such amount is expended for the acquisition or construction of tangible property described in section 1231(b)—

"(i) which was the purpose motivating the contribution, and

"(ii) which is used predominantly in the trade or business of furnishing water,

"(B) the expenditure referred to in subparagraph (A) occurs before the end of the second taxable year after the year in which such amount was received, and

"(C) accurate records are kept of the amounts contributed and expenditures made on the basis of the project for which the contribution was made and on the basis of the year of contribution or expenditure.

"(3) Definitions.—For purposes of this section—

"(A) Contribution in aid of construction.—The term 'contribution in aid of construction' shall be defined by regulations prescribed by the Secretary, except that such term shall not include amounts paid as customer connection fees (including amounts paid to connect the customer's line to a main water line and amounts paid as service charges for starting or stopping services).

"(B) Predominantly.—The term 'predominantly' means 80 percent or more.

"(C) Small water utility.—

"(i) In general.—The term 'small water utility' means any regulated public utility (as defined in section 7701(a)(3))) if—

"(I) such utility is predominantly engaged in the furnishing of water,

"(II) such utility is required to provide water to members of the general public in its service area, and

"(III) the average gross receipts of such utility for the 3 taxable years preceding the taxable year in which the contribution in aid to construction is received does not exceed $10,000,000.

"(ii) Controlled group.—All members of the same controlled group of corporations (as defined in section 1563) shall be treated as 1 corporation for purposes of clause (i).

"(4) Disallowance of deductions and investment credit; adjusted basis.—Notwithstanding any other provision of this subtitle, no deduction or credit shall be allowed for, or by reason of, the expenditure which constitutes a contribution in aid of construction to which this subsection applies. The adjusted basis of any property acquired with contributions in aid of construction to which this subsection applies shall be zero."

(b) Technical Amendment.—Subsection (c) of section 362 is amended by adding at the end thereof the following new paragraph:

"(3) Exception for certain contributions in aid of contribution.—The provisions of this subsection shall not apply to contributions in aid of construction received by a small water utility to which section 118(c) applies."

(c) Effective Date.—The amendments made by this section shall apply to amounts received after December 31, 1986, in taxable years ending after such date.

SEC. 10365. ENTITIES MAY ELECT TAXABLE YEAR OTHER THAN REQUIRED TAXABLE YEAR.

(a) In General.—Part I of subchapter E of chapter 1 (relating to accounting periods is amended by adding at the end thereof the following new section:

"SEC. 444. ELECTION OF TAXABLE YEAR OTHER THAN REQUIRED TAXABLE YEAR.

"(a) General Rule.—Except as provided in subsections (b) and (c), a partnership, S corporation, or personal service corporation may elect to have a taxable year other than the required taxable year.

"(b) Limitations on Taxable Years Which May Be Elected.—

"(1) In general.—Except as provided in paragraphs (2) and (3), an election may be made under subsection (a) only if the deferral period of the taxable year is not longer than 3 months.

"(2) Changes in taxable year.—Except as provided in paragraph (3), in the case of an entity changing a taxable year, an election may be made under subsection (a) only if the deferral period of the taxable year elected is not longer than the shorter of—

"(A) 3 months, or

"(B) the deferral period of the taxable year which is being changed.

"(3) Special rule for entities retaining 1986 taxable years.—In the case of an entity's 1st taxable year beginning after December 31, 1986, an entity may elect a taxable year under subsection (a) which is the same as the entity's last taxable year beginning in 1986.

"(4) Deferral period.—For purposes of this subsection, the term 'deferral period' means the months between—

"(A) the close of the taxable period elected under subsection (a), and

"(B) the close of the 1st required taxable year ending after the elected year.

"(c) Effect of Election.—If an entity makes an election under subsection (a), then—

"(1) in the case of a partnership or S corporation, the partners or shareholders of such entity shall be subject to the additional estimated tax requires of section 6655A, or

"(2) in the case of a personal service corporation, such corporation shall be subject to the deduction limitations of section 280H.

"(d) Elections.—

"(1) Person making election.—An election under subsection (a) shall be made by the partnership, S corporation, or personal service corporation and shall be binding on the partners and shareholders.

"(2) Period of election.—

"(A) In general.—Any election under subsection (a) shall remain in effect until the partnership, S corporation, or personal service corporation changes its taxable year. Any change to a required taxable year may be made without the consent of the Secretary.

"(B) No further election.—If an election is terminated under subparagraph (A), the partnership, S corporation, or personal service corporation may not make another election under subsection (a).

"(3) Tiered structures, etc.—Except as provided in regulations, no election may be made under subsection (a) with respect to an entity which is part of a tiered structure.

"(e) Required Taxable Year.—For purposes of this section, the term 'required taxable year' means the taxable year determined under section 706(b), 1378, or 441(i) without taking into account any taxable year which is allowable by reason of a business purpose.

"(f) Regulations.—The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this section, including regulations to prevent the avoidance of subsection (b)(2)(B) or (d)(2)(B) through the change in form of an entity."

(b) Conforming Amendment.—The table of sections for part I of subchapter E of chapter 1 of such Code is amended by adding at the end thereof the following new item:

"Sec. 444. Election of taxable year other than required taxable year."

SEC. 10366. ENHANCED ESTIMATED TAX REQUIREMENTS.

(a) In General.—Subchapter A of chapter 68 (relating to additions to tax) is amended by adding after section 6654 the following new section:

"SEC. 6654A. ADDITIONAL ESTIMATED TAX REQUIREMENTS FOR PARTNERS AND SHAREHOLDERS OF ENTITIES ELECTING NOT TO HAVE REQUIRED TAXABLE YEAR.

"(a) General Rule.—If this section applies to a taxpayer for any taxable year, then there shall be added to the tax under chapter 1 for such taxable year the amount determined by applying—

"(1) the underpayment rate established under section 6621,

"(2) to the amount of the underpayment,

"(3) for the period of the underpayment.

"(b) Taxpayers to Whom Section Applies.—This section shall apply to any taxpayer for a taxable year if—

"(1) such taxpayer is a partner or shareholder in 1 or more partnerships or S corporations during any applicable election years of such partnerships or S corporations which end within the taxpayer's taxable year, and

"(2) the aggregate deferred tax amounts of the taxpayer with respect to such partnerships or S corporations is greater than $200.

"(c) Amount of Underpayment, Period of Underpayment.—For purposes of this section—

"(1) Amount.—The amount of the underpayment shall be the excess of—

"(A) the required installment, over

"(B) the amount (if any) of the installment paid on or before the due date for the installment.

"(2) Period of underpayment.—The period of the underpayment shall run from the due date for the installment to the earlier of—

"(A) the 15th day of the 4th month following the close of the taxpayer's taxable year, or

"(B) with respect to any portion of the underpayment, the date on which such portion is paid.

"(3) Number of required installments; due date.—

"(A) Number.—There shall be 4 required installments for each taxable year to which this section applies.

"(B) Due dates.—The due date for any required installment shall be determined under section 6654(c)(2) or the 1st item in the table under section 6154(b), whichever is appropriate.

"(d) Required Installments.—

"(1) Amount of installments.—The amount of any required installment for a taxable year shall be equal to 25 percent of the aggregate enhanced estimate tax amounts of the taxpayer for applicable election years ending within the taxable year.

"(2) Treatment of payment.—For purposes of this title, any payment of any portion of a required installment—

"(A) shall be designated as such by the taxpayer and shall be treated as the payment of tax imposed by chapter 1, and

"(B) shall not be taken into account for purposes of section 6654 or 6655.

"(3) Enhanced estimated tax amount.—For purposes of this section, the term 'enhanced estimated tax amount' means with respect to any applicable election year of a partnership or S corporation, an amount equal to the product of—

"(A) the applicable percentage of the highest rate of tax imposed by section 1 (35 percent for taxable years beginning in 1987), multiplied by

"(B) the net base year income of the taxpayer.

"(e) Net Base Year Income.—For purposes of this section—

"(1) In general.—A taxpayer's net base year income with respect to any partnership or S corporation shall be equal to the sum of—

"(A) the deferral ratio of the taxpayer's distributive share of the entity's net income for the base year, plus

"(B) the excess (if any) of—

"(i) the deferral ratio of the aggregate amount of applicable payments made by the entity to the taxpayer during the base year, over

"(ii) the aggregate amount of such applicable payments made during the deferral period.

For purposes of this paragraph, the term 'deferral ratio' means the ratio which the number of months in the deferral period bears to the number of months in the partnership's or S corporation's taxable year.

"(2) Distributive share.—

"(A) Partnerships.—In the case of a partnership, a taxpayer's distributive share of partnership net income shall be the amount (not below zero) determined by taking into account the taxpayer's distributive share of items described in sections 702(a) and 704 (other than credits).

"(B) S corporation.—In the case of an S corporation, a taxpayer's distributive share of the corporation's net income shall be the amount (not below zero) determined by taking into account the taxpayer's pro rata share of items described in section 1366(a) (other than credits).

"(C) Certain limitations disregarded.—For purposes of subparagraph (A) or (B), any limitation on the amount of any item described in either such subparagraph which may be taken into account for purposes of computing the taxable income of the taxpayer shall be disregarded.

"(3) Applicable payments.—

"(A) In general.—The term 'applicable payment' means any amount paid or incurred (other than ratably) by a partnership or S corporation which—

"(i) is includible in gross income of the taxpayer, and

"(ii) is not included in the distributive share of the taxpayer under paragraph (2).

"(B) Exceptions.—The term 'applicable payment' shall not include any—

"(i) gain from the sale or exchange of property between the taxpayer and the partnership or S corporation, and

"(ii) dividend.

"(4) Applicable percentage.—The applicable percentage is the percentage determined in accordance with the following table:

"If the applicable election year of the partnership or S corporation begins during:	The applicable percentage is:
1987	25
1988	50
1989	75
1990 or thereafter	100

"(f) Other Definitions and Special Rules.—For purposes of this section—

"(1) Deferral period.—The term 'deferral period' means the months between—

"(A) the close of the applicable election year of the partnership or S corporation, and

"(B) the close of the 1st required taxable year ending after the applicable election year.

"(2) Years.—

"(A) Base year.—The term 'base year' means with respect to any applicable election year, the taxable year of the partnership or S corporation preceding such applicable election year.

"(B) Applicable election year.—The term 'applicable election year' means any taxable year of a partnership or S corporation with respect to which an election is in effect under section 444.

"(3) Requirement of reporting.—Each partnership or S corporation which makes an election under section 444 shall include on any return or statement required under section 6031 or 6037, whichever is applicable, the following information:

"(A) the enhanced estimated tax amount for any applicable election year, and

"(B) such other information as the Secretary may prescribe as is necessary to carry out the provisions of this section."

(b) Conforming Amendments.—

(1) Sections 6201(b)(1), 6601(h), and 6651(e) are each amended by striking out "or 6654" and inserting in lieu thereof ", 6654, or 6654A".

(2) Sections 6622(b), 6662(b)(2), and 7203 are each amended by striking out "or 6655" and inserting in lieu thereof ", 6655, or 6654A".

(3) Sections 6658(a) and 6662(b) are each amended by striking out "or 6655" and inserting in lieu thereof "6655, or 6654A".

(4) The table of sections for subchapter A of chapter 68 is amended by inserting after the item relating to section 6654 the following new item:

"Sec. 6654A. Additional estimated tax requirements for partners and shareholders of entities not to have required taxable year."

SEC. 10367. LIMITATION ON DEDUCTIONS OF PERSONAL SERVICE CORPORATIONS ELECTING ALTERNATIVE TAXABLE YEARS.

(a) In General.—Part IX of subchapter B of chapter 1 (relating to items not deductible) is amended by adding at the end thereof the following new section:

"SEC. 280H. LIMITATION ON CERTAIN AMOUNTS PAID TO OWNER-EMPLOYEES BY PERSONAL SERVICE CORPORATIONS ELECTING ALTERNATIVE TAXABLE YEARS.

"(a) General Rule.—If—

"(1) an election by a personal service corporation under section 444 is in effect for a taxable year, and

"(2) such corporation does not meet the minimum distribution requirements of subsection (c) for such taxable year,

then the deduction otherwise allowed under this chapter for applicable amounts paid or incurred by such corporation to employee-owners shall not exceed the maximum deductible amount.

"(b) Carryover of Nondeductible Amounts.—If any amount is not allowed as a deduction for a taxable year under subsection (a), such amount shall be treated as paid or incurred in the succeeding taxable year.

"(c) Minimum Distribution Requirement.—For purposes of this section—

"(1) In general.—A personal service corporation meets the minimum distribution requirements of this subsection if the applicable amounts paid or incurred during the deferral period of the taxable year equal or exceed the lesser of—

"(A) the product of—

"(i) the applicable amounts paid or incurred during the preceding taxable year, divided by the number of months in such taxable year, multiplied by

"(ii) the number of months in the deferral period, or

"(B) the applicable percentage of the adjusted taxable income for the deferral period of the taxable year.

"(2) APPLICABLE PERCENTAGE.—The term 'applicable percentage' means the percentage (not in excess of 95 percent) determined by dividing—

"(A) the applicable amounts paid or incurred during the 3 taxable years immediately preceding the taxable year, by

"(B) the adjusted taxable income of such corporation for such 3 taxable years.

"(d) MAXIMUM DEDUCTIBLE AMOUNT.—For purposes of this section, the term 'maximum deductible amount' means the sum of—

"(1) the applicable amounts paid or incurred during the deferral period, plus

"(2) an amount equal to the product of—

"(A) the amount determined under paragraph (1), divided by the number of months in the deferral period, multiplied by

"(B) the number of months in the nondeferral period.

"(e) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) APPLICABLE AMOUNT.—The term 'applicable amount' means any amount paid to an employee-owner which is includible in the gross income of such employee, other than—

"(A) any gain from the sale or exchange of property between the owner-employee and the corporation, or

"(B) any dividend.

"(2) EMPLOYEE-OWNER.—The term 'employee-owner' has the meaning given such term by section 269A(b)(2), as modified by section 441(i)(2).

"(3) DEFERRAL AND NONDEFERRAL PERIODS.—

"(A) DEFERRAL PERIOD.—The term 'deferral period' means the month of the taxable year of the personal service corporation between—

"(i) the close of the taxable year elected under section 444(a), and

"(ii) the close of the 1st required taxable year ending after the elected year.

"(B) NONDEFERRAL PERIOD.—The term 'nondeferral period' means the portion of the taxable year of the personal service corporation which occurs after the portion of such year constituting the deferral period.

"(4) ADJUSTED TAXABLE INCOME.—The term 'adjusted taxable income' means taxable income increased by any amount paid or incurred to an employee-owner which was taken into account in computing taxable income."

(b) CONFORMING AMENDMENT.—The table of sections for part IX of subchapter B of chapter 1 is amended by adding at the end thereof the following new item:

"Sec. 280H. Limitation on certain amounts paid to owner-employees by personal service corporations electing alternative taxable years."

SEC. 10368. EFFECTIVE DATES.

(a) IN GENERAL.—Except as provided in this section, the amendments made by this subpart shall apply to taxable years beginning after December 31, 1986.

(b) ESTIMATED TAX.—The amendments made by section 10366 shall apply to taxable years beginning after December 31, 1987, with respect to applicable election years beginning after December 31, 1986.

(c) ELECTIONS.—Any election under section 444 of the Internal Revenue Code of 1986 (as added by section 10365) for an entity's 1st taxable year beginning after December 31, 1986, shall not be required to be made before the 90th day after the date of the enactment of this Act.

(d) SPECIAL RULE FOR EXISTING ENTITIES ELECTING S CORPORATION STATUS.—If a C corporation (within the meaning of section 1361(a)(2) of the Internal Revenue Code of 1986) with a taxable year other than the calendar year—

(1) made an election after September 18, 1986, and before January 1, 1987, under section 1362 of such Code to be treated as an S corporation, and

(2) elected to have the calendar year as the taxable year of the S corporation.

then section 444(v)(2)(B) of such Code shall be applied by taking into account the deferral period of the last taxable year of the C corporation rather than the deferral period of the taxable year being changed.

SEC. 10369. DELAY IN EFFECTIVE DATE FOR REQUIREMENT THAT COMMON TRUST FUNDS ADOPT THE CALENDAR YEAR AS THE TAXABLE YEAR.

The amendment made by paragraph (5) of section 10208(e) of this Act shall apply only to taxable years beginning after December 31, 1987. For purposes of section 806(e)(2) of the Tax Reform Act of 1986, a participant in a common trust fund shall be treated in the same manner as a partner, and subparagraph (C) thereof shall be applied by substituting "December 31, 1987" for "December 31, 1986".

SEC. 10370. TREATMENT OF CERTAIN FACILITIES FOR PURPOSES OF SECTION 468A.

Section 468A of the Internal Revenue Code of 1986 shall apply to the facilities of Nuclear Fuel Services, Inc., located in Erwin, Tennessee, as if the following modifications were in effect on July 18, 1984—

(1) the term "powerplant" shall be interpreted to mean "fuel facility" each place it appears,

(2) paragraph (1) of section 468A(b) of such Code shall be applied as if it read as follows:

"(1) the amount of nuclear decommissioning cost allocable to the Fund which is billed by the taxpayer to an agency or department of the United States Government for such taxable year, or",

(3) subparagraph (A) of section 468A(d)(2) of such Code shall be applied as if it read as follows:

"(A) fund 90 percent of the nuclear decommissioning cost of the taxpayer with respect to the nuclear fuel facility, and", and

(4) the term "nuclear decommissioning reserve fund" shall be interpreted as a fund required under the terms of a license by the Nuclear Regulatory Commission to satisfy the taxpayer's nuclear decommissioning obligations with respect to a nuclear fuel facility.

Subpart I—Financial Institutions

SEC. 10371. COORDINATION OF AMENDMENTS TO SECTION 593 WITH CORPORATE RATE REDUCTION.

For any taxable year which includes June 30, 1987, subparagraphs (A) and (D)(iv) of section 593(b)(2) of the Internal Revenue Code of 1986 shall each be applied by substituting for "8 percent" the percentage determined—

(1) by taking the sum of 40 percent for each month in such year beginning before July 1, 1987, and 8 percent for each month in such year beginning on or after July 1, 1987, and

(2) by dividing the sum referred to in paragraph (1) by the number of months in such taxable year.

SEC. 10372. ELECTION FOR COMMERCIAL BANKS TO USE NORMAL NET OPERATING LOSS RULES.

(a) GENERAL RULE.—The subparagraph of section 172(b)(1) which relates to bad debt losses of commercial banks is amended by adding at the end thereof the following new sentences: "A bank may elect to have the preceding sentence not apply. Such an election shall apply to such bank's 1st taxable year beginning after December 31, 1986, and all subsequent taxable years unless revoked with the consent of the Secretary."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to net operating losses for taxable years beginning after December 31, 1986.

SEC. 10373. TREATMENT OF CERTAIN OBLIGATIONS FOR PURPOSES OF THE LIMITATION ON INTEREST INCURRED TO CARRY TAX-EXEMPT BONDS.

Section 902(f) of the Tax Reform Act of 1986 is amended by adding to the end thereof the following new paragraph:

"(5) ADDITIONAL TRANSITIONAL RULE.—Obligations with respect to any of the following projects the terms of which contain an interest adjustment clause triggered by the reduction in the maximum marginal Federal corporation income tax rate shall be treated as obligations acquired before August 8, 1986, in the hands of the first financial institution acquiring such obligations in the event that such financial institution waives the interest adjustment clause or agrees to accept an interest rate lower than that required by the interest rate adjustment clause:

"(A) Alexandria, Virginia, Water Pollution Control Federation, headquarters project.

"(B) Alexandria, Virginia, American Diabetes Association, headquarters project.

"(C) Bethesda, Maryland, Federation of American Societies for Experimental Biology, headquarters project.

"(D) Alexandria, Virginia, National Society of Professional Engineers, headquarters project.

"(E) Alexandria, Virginia, International Bottled Water Association, headquarters project.

"(F) Lanham, Maryland, Automotive Parts and Accessories Association, Inc., headquarters project.

"(G) Alexandria, Virginia, American Physical Therapy Association, headquarters project.

"(H) Tulsa, Oklahoma, Society of Exploration Geophysicists, headquarters project."

Subpart J—Provisions Relating to Insurance

SEC. 10375. CHARITABLE GIFT ANNUITIES TREATED AS NOT COMMERCIAL-TYPE INSURANCE.

(a) IN GENERAL.—Paragraph (3) of section 501(m) (relating to certain organizations providing commercial-type insurance not exempt from tax) is amended by striking out "and" at the end of subparagraph (C), by striking out the period at the end of subparagraph (D) and inserting in lieu thereof ", and", and by adding at the end thereof the following new subparagraph:

"(E) charitable gift annuities."

(b) CHARITABLE GIFT ANNUITY DEFINED.—Subsection (m) of section 501 of such Code is amended by adding at the end thereof the following new paragraph:

"(5) CHARITABLE GIFT ANNUITY.—For purposes of paragraph (3)(E), the term 'charitable gift annuity' means an annuity if—

"(A) the annuity is owned by an individual who made a contribution or gift to the annuity's issuer which was allowable as a deduction under section 170, and

"(B) the annuity is described in section 514(c)(5) (determined as if any amount paid in cash by such individual to such issuer were property)."

(c) Effective Date.—The amendments made by this section shall take effect as if included in the amendments made by section 1012(a) of the Tax Reform Act of 1986.

(d) Secretary Required To Update Certain Tables.—Not later than January 1, 1989, the Secretary of the Treasury or his delegate shall revise the tables used in determining the amount of the charitable contribution in the case of annuity contracts so that such determination will reflect the value of such contribution based on market interest rates at the time such contract was issued and more recent mortality experience.

SEC. 10376. TREATMENT OF UNEARNED PREMIUM RESERVES BY COMPANIES NOT DEDUCTING SALES COMMISSIONS ON DEFERRED PREMIUM INSTALLMENTS.

(a) In General.—Paragraph (7) of section 832(b) (relating to special rules) is amended by adding at the end thereof the following new subparagraph:

"(F) Reduction not to result in double disallowance.—

"(i) In general.—In the case of a company to which this subparagraph applies, the amount of the reduction in unearned premiums under subparagraphs (B) and (C) of paragraph (4) shall be decreased (but not below zero) to the extent that the application of such subparagraphs would result in a double disallowance for sales commissions on deferred premium installments.

"(ii) Companies to which subparagraph applies.—This subparagraph shall apply to any company which, for its last taxable year ending before January 1, 1987, for the taxable year involved, and for all intervening taxable years, claimed no deduction for sales commissions on deferred premium installments."

(b) Effective Date.—The amendment made by this section shall take effect as if included in section 1021 of the Tax Reform Act of 1986.

Subpart K—Pension; Employee Benefits; ESOP's

SEC. 10381. GENERAL PROVISIONS.

(a) Tax on Nondeductible Employer Contributions.—Section 1131(d) of the Tax Reform Act of 1986 is amended by adding at the end thereof the following new paragraph:

"(3) Special rule.—In the case of a plan maintained by a corporation which was incorporated on October 14, 1982, in Alabama and which is a wholly-owned subsidiary of a corporation incorporated in Delaware, paragraph (2) shall be applied without regard to subparagraph (A) thereof."

(b) Exemption From Early Withdrawal Tax.—Section 1123(e) of the Tax Reform Act of 1986 is amended by adding at the end thereof the following new paragraph:

"(6) Special rule for certain plans.—

"(A) Exception from early withdrawal tax.—In the case of distributions described in subparagraph (B), paragraph (1) of section 72(t) of the Internal Revenue Code of 1986 shall not apply.

"(B) Distributions to which exceptions apply.—Subparagraph (A) shall apply—

"(i) to distributions made from a defined contribution plan which was the subject of a multiemployer collective bargaining agreement, which was originally effective on December 1, 1967, and with respect to which favorable determination letters were issued by the Internal Revenue Service on August 21, 1986, and February 19, 1980, and

"(ii) to distributions made under a defined benefit plan pursuant to an early retirement incentive program announced on September 23, 1986, by a company incorporated in 1919 in Indiana."

(c) Treatment of Certain Health and Welfare Benefit Funds for Purposes of Employment Taxes.—

(1) Relief of withholding and employment tax liability.—For periods before January 1, 1987, any trust fund described in paragraph (3) shall be deemed to have fulfilled all employer obligations with respect to—

(A) withholding of income taxes,

(B) withholding and employer contributions under the Federal Insurance Contributions Act, and

(C) employer contributions under the Federal Unemployment Tax Act.

(2) Relief limited to certain benefits.—Paragraph (1) shall apply only with respect to benefits paid by the trust fund to participants before January 1, 1987, as supplemental unemployment benefits, as vacation benefits, and as benefits with respect to otherwise unreimbursed medical expenses.

(3) Trust fund to which section applies.—A trust fund is described in this paragraph if such trust fund—

(A) qualifies as a voluntary employees' beneficiary association under section 501(c)(9) of the Internal Revenue Code of 1986, and

(B) provides health and welfare benefits to carpenters and their dependents in Philadelphia, Pennsylvania and surrounding areas.

(4) Effective date.—This subsection shall take effect on the date of enactment of this Act.

(d) Special Rule for Cash or Deferred Arrangements.—Section 1116(f) of the Tax Reform Act of 1986 is amended by adding at the end thereof the following new paragraph:

"(8) Special rule.—

"(A) In the case of a plan described in subparagraph (B)—

"(i) section 401(k)(4) of the Internal Revenue Code of 1986 shall not apply,

"(ii) section 401(a)(25) of such Code shall not apply,

"(iii) the plan may contain a qualified cash or deferred arrangement within the meaning of section 401(k) of such Code but without regard to the requirement in paragraph (1) thereof that the arrangement be part of a profit-sharing or stock bonus plan, pre-ERISA money purchase pension plan, or a rural electric cooperative plan,

"(iv) notwithstanding section 411(a)(7)(A)(i) or section 411(c)(3) of such Code, the employee's accrued benefit under the plan which is not based on the separate account of the employee may be expressed in the form of a lump-sum benefit payable at normal retirement age, and

"(v) employee contributions to the plan shall not be considered mandatory contributions as defined in section 411(c)(2)(C) of such Code.

"(B) Plans to which special rule applies.—A plan is described in this subparagraph if it is a defined benefit plan which was maintained on October 22, 1986, by a corporation incorporated on July 6, 1939, if such plan was originally effective on July 1, 1960, or April 7, 1969.

"(C) Application.—This paragraph shall apply to plan years beginning after December 31, 1979, and before October 15, 1992.

(e) Special Rule for Transit Passes.—

(1) In general.—Subsection (e) of section 132 is amended by adding at the end thereof the following new paragraph:

"(3) Special rule for transit passes.—The first $15 of transit passes provided per month by an employer to an employee shall be treated as a de minimis fringe."

(2) Effective date.—The amendment made by this subsection shall apply to transit passes provided in months beginning after the date of the enactment of this Act, in taxable years ending after such date.

(f) Rule for Certain Section 413(c) Plan.—For purposes of the Internal Revenue Code of 1986—

(1) Deduction limit to be determined separately for each employer.—In determining each applicable limitation provided by section 404(a) of the Internal Revenue Code of 1986 with respect to a qualified multiple employer plan, section 413(c)(6) of such Code shall not apply, and

(i) each employer's participation in the plan shall be deemed to constitute (solely for purposes of section 404(a) of such Code) the establishment and maintenance or a defined benefit plan described in section 401(a) of such Code covering only its own employees, and

(ii) the assets and liabilities of each such plan shall be deemed to be those which would be transferred to a successor plan of that employer if such employer were to withdraw from the qualified multiple employer plan determined in accordance with the contractual terms governing the qualified multiple employer plan and section 414(l) of such Code.

(2) Credit for minimum funding standard.—The minimum funding standard provided by section 412 of such Code shall be determined for any qualified multiple employer plan under section 413(c)(4) of such Code, except that a credit under section 412(b)(3) of such Code shall be allowed for the amount of any charges less credits to the funding standard account under section 412(b) of such Code with respect to which a deduction would be disallowed under section 404(a) of such Code by reason of the application of paragraph (1) of this subsection.

(3) Definition.—For purposes of this paragraph, a "qualified multiple employer plan" is any plan to which section 413(c) of the Internal Revenue Code of 1986 otherwise applies and which had on October 14, 1987, one or more participating employers which were organizations established pursuant to section 1423 of title 12 of the United States Code.

(4) Effective date.—This subsection shall apply to plan years ending on or after the date of enactment of this Act.

(g) Excise Tax on Reversions.—Subparagraph (B) of section 1132(c)(4) of the Tax Reform Act of 1986 is amended by striking out "and" at the end of clause (iv), by striking out the period at the end of clause (v) and inserting in lieu thereof ", and", and by adding at the end thereof the following new clause:

"(vi) a corporation incorporated on July 6, 1891, which has its principal place of business in Minneapolis, Minnesota."

(h) Election To Treat Lump Sum Distributions as Received in 1986.—Section 1124(b) of the Tax Reform Act of 1986 is amended to read as follows:

"(b) Special Rule for Terminated Plan.—

"(1) Eligibility for special rule.—In the case of an employee who receives a distribution prior to the date determined under paragraph (2) from a terminated plan which was maintained by a corporation organized under the laws of the State of Nevada, the principal place of business of which is Denver, Colorado, and which filed for relief from creditors under the United States Bankruptcy Code on August 28, 1986, the employee may treat a lump sum distribution received from such plan before the date determined under paragraph (2) as if it were received in 1986.

"(2) Date by which distribution must be received.—A distribution is eligible for the special rule of paragraph (1) if it is received before the earlier of—

"(A) 90 days following the resolution of a declaratory judgment action relating to the termination, or

"(B) the date on which the period of limitation under section 6511(a) of the Internal Revenue Code of 1986 expires with respect to such employee's taxable year beginning in 1986.

(i) Amendment Related to Section 1121 of the Reform Act.—Section 401(a)(9)(C) is amended by adding at the end thereof the following new sentence: "In the case of a governmental plan, the required beginning date shall be the later of the date determined under the preceding sentence or April 1 of the calendar year following the calendar year in which the employee retires."

(j) Amendment Related to Section 1107 of the Reform Act.—

(1) Exemption for nonelective deferred compensation.—Section 457(e) is amended by adding at the end thereof the following new paragraph:

"(11) Section not to apply to nonelective deferred compensation.—This section shall not apply to nonelective deferred compensation."

(2) Effective date.—The amendment made by this subsection shall apply to taxable years beginning after December 31, 1978.

(k) Amendment Related to Section 1106 of the Reform Act.—

(1) Modified limitations.—Section 415(b) is amended by adding at the end thereof the following new paragraph:

"(10) Special rule for state and local government plans.—

"(A) Limitation to equal accrued benefit.—In the case of a plan maintained for its employees by any State or political subdivision thereof, or by any agency or instrumentality of the foregoing, the limitation with respect to a qualified participant under this subsection shall not be less than the accrued benefit of the participant under the plan (determined without regard to any amendment of the plan made after October 14, 1987).

"(B) Qualified participant.—For purposes of this paragraph, the term 'qualified participant' means a participant who first became a participant in the plan maintained by the employer before January 1, 1989.

"(C) Election.—This paragraph shall not apply to any plan unless each employer maintaining the plan elects, in such manner and at such time as the Secretary may prescribe, to have this subsection (other than paragraph (2)(G)) applied without regard to paragraph (2)(F). An election may be made under this subparagraph only if it is made before the close of the first year beginning after December 31, 1988."

(2) Effective dates.—

(A) In general.—Except as provided in this paragraph, the amendment made by this subsection apply to years beginning after December 31, 1982.

(B) Election.—Section 415(b)(10) of the Internal Revenue Code of 1986 (as added by paragraph 1) shall not apply to any year beginning before January 1, 1989.

(l) Amendments Related to Section 1116 of the Reform Act.—

(1) Tax-exempt organizations.—Section 401(k)(4)(B) is amended—

(A) by striking the last sentence thereof, and

(B) by inserting "and described in section 403(b)(1)(A)" after "subtitle" in clause (ii).

(2) Multiemployer plan.—Section 401(k)(4)(B)(ii) (relating to tax-exempt organizations not eligible for cash or deferred arrangements) shall not apply to any multiemployer plan (within the meaning of section 414(f) of such Code) which contains a cash or deferred arrangement adopted before July 2, 1986.

(m) Amendment Related to Section 1112 of the Reform Act.—Section 401(a)(26) shall not apply to any governmental plan (within the meaning of section 414(d) of such Code) with respect to employees who were participants in such plan on October 14, 1987.

(n) Master and Prototype Plans.—If a master or prototype plan adopts a plan amendment required to be be made by the Tax Equity and Fiscal Responsibility Act of 1982 before July 1, 1986, such plan shall be treated as meeting the requirements of such Act with respect to the time for adopting such amendments.

(o) Air Cargo.—

(1) Air cargo.—Effective for transportation furnished after December 31, 1984, section 132(h) is amended by adding at the end thereof the following new paragraph:

"(8) Air cargo.—For purposes of subsection (b), the transportation of cargo by air and the transportation of passengers by air shall be treated as the same service."

(2) Joint ventures.—

(A) Section 132(h)(6) is amended by adding at the end thereof the following new subparagraph:

"(E) Joint ventures.—A person shall be treated as a qualified affiliate if such person is wholly owned by a group of affiliated groups, and each affiliated group in such group has a member which operates an airline. A person which is treated as a qualified affiliate under the preceding sentence shall be treated as a member of each such affiliated group for purposes of this paragraph."

(B) The amendment made by subparagraph (A) shall apply as if included in section 13207 of Consolidated Omnibus Budget Reconciliation Act of 1985.

(p) Effective Dates.—Except as otherwise provided in this section, the amendments made by this section shall take effect as if included in the provisions of the Tax Reform Act of 1986 to which such amendments relate.

SEC. 10382. EMPLOYEE STOCK OWNERSHIP PLANS.

(a) Amendment to Technical Corrections.—Paragraph (5)(A)(i)(II) of section 111B(h) of the Technical Corrections Act of 1987 is amended by inserting "(other than subsection (b)(2) thereof)" after "section 133".

(b) 1 Vote Per Participant.—Section 409(e)(5) is amended by inserting "also" before "meets".

(c) Distributions of Cash.—The last sentence of section 409(h)(2) is amended by striking out "may be resold" and inserting in lieu thereof "must be resold".

(d) Reversion Tax.—Section 4980(c)(3)(A)(ii) is amended by inserting "(except to the extent provided by the Secretary)" after "must".

(e) Early Distribution Tax.—Section 72(t)(2)(C) is amended by adding at the end thereof the following new clause:

"(iii) Exceptions.—The Secretary may provide exceptions to the requirement that the requirements of clauses (i) and (ii) be met at all times during the applicable period, including an exception which provides that amounts may be temporarily held in cash following a merger or acquisition."

(f) Effective Dates.—The amendments made by this section shall take effect as if included in the provisions of the Tax Reform Act of 1986 to which such amendments relate.

SEC. 10383. FAILURE TO SATISFY CONTINUATION COVERAGE REQUIREMENTS OF GROUP HEALTH PLANS.

(a) In General.—Chapter 43 (relating to qualified pension, etc., plans) is amended by adding at the end thereof the following new section:

"SEC. 4980B. FAILURE TO SATISFY CONTINUATION COVERAGE REQUIREMENTS OF GROUP HEALTH PLANS.

"(a) General Rule.—There is hereby imposed a tax on the failure of a group health plan to meet the requirements of subsection (e) with respect to any qualified beneficiary.

"(b) Amount of Tax.—

"(1) In general.—The amount of the tax imposed by subsection (a) on any failure with respect to a qualified beneficiary shall be the sum of—

"(A) $100 for each day in the noncompliance period with respect to such failure, plus

"(B) if such noncompliance period ends because it is no longer possible to correct such failure with respect to such beneficiary, the cost of correction.

"(2) Noncompliance period.—

"(A) In general.—For purposes of this section, the term 'noncompliance period' means, with respect to any failure, the period—

"(i) beginning on the date such failure 1st occurs, and

"(ii) ending on the date such failure is corrected.

"(B) Special rule relating to termination of noncompliance period.—In no event shall the noncompliance period with respect to any failure end after the later of—

"(i) the last day in the period applicable to the qualified beneficiary under subsection (e)(2)(B) (determined without regard to clause (iii) thereof), or

"(ii) the last day it is possible to correct such failure with respect to such beneficiary.

"(3) Minimum tax for noncompliance period where failure cannot be corrected.—If—

"(A) an amount of tax is imposed by reason of paragraph (1)(B) with respect to any failure, and

"(B) any person liable for the tax imposed by subsection (a) on such failure knew (or exercising reasonable diligence would have known) of such failure during any 30-day period during the noncompliance period with respect to such failure, the noncompliance period with respect to such failure shall not be less than 180 days.

Subparagraph (B) shall not apply unless the period beginning on the date any person liable for the tax imposed by subsection (a) on such failure knew (or exercising reasonable diligence would have known) of such failure and ending on the last day it is possible to correct such failure is at least 30 days.

"(4) $100 limit for failures on any day with respect to a qualified beneficiary.—The maximum amount of tax imposed by subsection (a) on failures on any day during the noncompliance period with respect to a qualified beneficiary shall be $100.

"(c) Liability for Tax.—The employer, the plan administrator, and each person whose act or failure to act caused (in whole or in part) the failure shall be jointly and severally liable for the tax imposed by subsection (a) on such failure.

"(d) Exceptions.—

"(1) Certain plans.—No tax shall be imposed by subsection (a) on—

"(A) any failure of a group health plan to meet the requirements of subsection (e) if all employers maintaining such plan normally employed fewer than 20 employees on a typical business day during the preceding calendar year,

"(B) any governmental plan (within the meaning of section 414(d)), or

"(C) any church plan (within the meaning of section 414(e)).

"(2) Failures not discovered.—

"(A) In general.—Except as provided in subsection (b)(3) and in subparagraph (B), the noncompliance period with respect to any failure shall not include any period for which it is established to the satisfaction of the Secretary that none of the persons referred to in subsection (c) knew, or exercising reasonable diligence would not have known, that such failure existed.

"(B) Failures discovered after notice of examination.—In the case of a failure—

"(i) which is not corrected by the date a notice of examination is sent to the employer (or other person described in subsection (c)), and

"(ii) which 1st occurred during the period under examination,

the noncompliance period with respect to such failure shall be not less than 180 days.

"(3) Failures corrected within 30 days.—No tax shall be imposed by subsection (a) on any failure if—

"(A) such failure was due to reasonable cause and not to willful neglect, and

"(B) such failure is corrected during the 1st 30 days of the noncompliance period with respect to such failure.

This paragraph shall not apply to any failure to which paragraph (2)(B) applies.

"(4) Waiver by secretary.—In the case of a failure which is due to reasonable cause and not to willful neglect, the Secretary may waive part or all of the tax imposed by subsection (a) to the extent that the imposition of such tax would be unduly burdensome relative to the failure involved.

"(e) Continuation Coverage Requirements of Group Health Plans.—

"(1) In general.—A group health plan meets the requirements of this subsection only if each qualified beneficiary who would lose coverage under the plan as a result of a qualifying event is entitled to elect, within the election period, continuation coverage under the plan.

"(2) Continuation coverage.—For purposes of paragraph (1), the term 'continuation coverage' means coverage under the plan which meets the following requirements:

"(A) Type of benefit coverage.—The coverage must consist of coverage which, as of the time the coverage is being provided, is identical to the coverage provided under the plan to similarly situated beneficiaries under the plan with respect to whom a qualifying event has not occurred. If coverage under the plan is modified for any group of similarly situated beneficiaries, the coverage shall also be modified in the same manner for all individuals who are qualified beneficiaries under the plan pursuant to this subsection in connection with such group.

"(B) Period of coverage.—The coverage must extend for at least the period beginning on the date of the qualifying event and ending not earlier than the earliest of the following:

"(i) Maximum required period.—

"(I) General rule for terminations and reduced hours.—In the case of a qualifying event described in paragraph (3)(B), except as provided in subclause (II), the date which is 18 months after the date of the qualifying event.

"(II) Special rule for multiple qualifying events.—If a qualifying event (other than a qualifying event described in paragraph (3)(F)) occurs during the 18 months after the date of a qualifying event described in paragraph (3)(B), the date which is 36 months after the date of the qualifying event described in paragraph (3)(B).

"(III) Special rule for certain bankruptcy proceedings.—In the case of a qualifying event described in paragraph (3)(F) (relating to bankruptcy proceedings), the date of the death of the covered employee or qualified beneficiary (described in subsection (f)(1)(D)(iii)), or in the case of the surviving spouse or dependent children of the covered employee, 36 months after the date of the death of the covered employee.

"(IV) General rule for other qualifying events.—In the case of a qualifying event not described in paragraph (3)(B) or (3)(F), the date which is 36 months after the date of the qualifying event.

"(ii) End of plan.—The date on which the employer ceases to provide any group health plan to any employee.

"(iii) Failure to pay premium.—The date on which coverage ceases under the plan by reason of a failure to make timely payment of any premium required under the plan with respect to the qualified beneficiary. The payment of any premium (other than any payment referred to in the last sentence of subparagraph (C)) shall be considered to be timely if made within 30 days after the date due or within such longer period as applies to or under the plan.

"(iv) Group health plan coverage or medicare eligibility.—The date on which the qualified beneficiary first becomes, after the date of the election—

"(I) covered under any other group health plan (as an employee or otherwise), or

"(II) in the case of a qualified beneficiary other than a qualified beneficiary described in subsection (f)(1)(D) entitled to benefits under title XVIII of the Social Security Act.

For purposes of subclause (I), a qualified beneficiary shall not be treated as covered by another plan if the other plan does not cover a preexisting condition which was covered by the plan under which coverage is being continued.

"(C) Premium requirements.—The plan may require payment of a premium for any period of continuation coverage, except that such premium—

"(i) shall not exceed 102 percent of the applicable premium for such period, and

"(ii) may, at the election of the payor, be made in monthly installments.

In no event may the plan require the payment of any premium for any period of continuation coverage before the day which is 45 days after the day on which the qualified beneficiary made the initial election for continuation coverage.

"(D) No requirement of insurability.—The coverage may not be conditioned upon, or discriminate on the basis of lack of, evidence of insurability.

"(E) Conversion option.—In the case of a qualified beneficiary whose period of continuation coverage expires under subparagraph (B)(i), the plan must, during the 180-day period ending on such expiration date, provide to the qualified beneficiary the option of enrollment under a conversion health plan otherwise generally available under the plan.

"(3) Qualifying event.—For purposes of this subsection, the term 'qualifying event' means, with respect to any covered employee, any of the following events which, but for the continuation coverage required under this subsection, would result in the loss of coverage of a qualified beneficiary:

"(A) The death of the covered employee.

"(B) The termination (other than by reason of such employee's gross misconduct), or reduction of hours, of the covered employee's employment.

"(C) The divorce or legal separation of the covered employee from the employee's spouse.

"(D) The covered employee becoming entitled to benefits under title XVIII of the Social Security Act.

"(E) A dependent child ceasing to be a dependent child under the generally applicable requirements of the plan.

"(F) A proceeding in a case under title 11, United States Code, commencing on or after July 1, 1986, with respect to the employer from whose employment the covered employee retired at any time.

In the case of an event described in subparagraph (F), a loss of coverage includes a substantial elimination of coverage with respect to a qualified beneficiary described in subsection (f)(1)(D) within one year before or after the date of commencement of the proceeding.

"(4) Applicable premium.—For purposes of this subsection—

"(A) In general.—The term 'applicable premium' means, with respect to any period of continuation coverage of qualified beneficiaries, the cost to the plan for such period of the coverage for similarly situated beneficiaries with respect to whom a qualifying event has not occurred (without regard to whether such cost is paid by the employer or employee).

"(B) Special rule for self-insured plans.—To the extent that a plan is a self-insured plan—

"(i) In general.—Except as provided in clause (ii), the applicable premium for any period of continuation coverage of qualified beneficiaries shall be equal to a reasonable estimate of the cost of providing coverage for such period for similarly situated beneficiaries which—

"(I) is determined on an actuarial basis, and

"(II) takes into account such factors as the Secretary may prescribe in regulations.

"(ii) Determination on basis of past cost.—If a plan administrator elects to have this clause apply, the applicable premium for any period of continuation coverage of qualified beneficiaries shall be equal to—

"(I) the cost to the plan for similarly situated beneficiaries for the same period occurring during the preceding determination period under subparagraph (C), adjusted by

"(II) the percentage increase or decrease in the implicit price deflator of the gross national product (calculated by the Department of Commerce and published in the Survey of Current Business) for the 12-month period ending on the last day of the sixth month of such preceding determination period.

"(iii) CLAUSE (ii) NOT TO APPLY WHERE SIGNIFICANT CHANGE.—A plan administrator may not elect to have clause (ii) apply in any case in which there is any significant difference between the determination period and the preceding determination period, in coverage under, or in employees covered by, the plan. The determination under the preceding sentence for any determination period shall be made at the same time as the determination under subparagraph (C).

"(C) DETERMINATION PERIOD.—The determination of any applicable premium shall be made for a period of 12 months and shall be made before the beginning of such period.

"(5) ELECTION.—For purposes of this subsection—

"(A) ELECTION PERIOD.—The term 'election period' means the period which—

"(i) begins not later than the date on which coverage terminates under the plan by reason of a qualifying event,

"(ii) is of at least 60 days' duration, and

"(iii) ends not earlier than 60 days after the later of—

"(I) the date described in clause (i), or

"(II) in the case of any qualified beneficiary who receives notice under paragraph (6)(D), the date of such notice.

"(B) EFFECT OF ELECTION ON OTHER BENEFICIARIES.—Except as otherwise specified in an election, any election of continuation coverage by a qualified beneficiary described in subparagraph (A)(i) or (B) of subsection (f)(1) shall be deemed to include an election of continuation coverage on behalf of any other qualified beneficiary who would lose coverage under the plan by reason of the qualifying event. If there is a choice among types of coverage under the plan, each qualified beneficiary is entitled to make a separate selection among such types of coverage.

"(6) NOTICE REQUIREMENT.—In accordance with regulations prescribed by the Secretary—

"(A) The group health plan shall provide, at the time of commencement of coverage under the plan, written notice to each covered employee and spouse of the employee (if any) of the rights provided under this subsection.

"(B) The employer of an employee under a plan must notify the plan administrator of a qualifying event described in subparagraph (A), (B), (D), or (F) of paragraph (3) with respect to such employee within 30 days of the date of the qualifying event.

"(C) Each covered employee or qualified beneficiary is responsible for notifying the plan administrator of the occurrence of any qualifying event described in subparagraph (C) or (E) of paragraph (3) within 60 days after the date of the qualifying event.

"(D) The plan administrator shall notify—

"(i) in the case of a qualifying event described in subparagraph (A), (B), (D), or (F) of paragraph (3), any qualified beneficiary with respect to such event, and

"(ii) in the case of a qualifying event described in subparagraph (C) or (E) of paragraph (3) where the covered employee notifies the plan administrator under subparagraph (C), any qualified beneficiary with respect to such event,

of such beneficiary's rights under this subsection.

For purposes of subparagraph (D), any notification shall be made within 14 days of the date on which the plan administrator is notified under subparagraph (B) or (C), whichever is applicable, and any such notification to an individual who is a qualified beneficiary, as the spouse of the covered employee, shall be treated as notification to all other qualified beneficiaries residing with such spouse at the time such notification is made.

"(7) COVERED EMPLOYEE.—For purposes of this subsection, the term 'covered employee' means an individual who is (or was) provided coverage under a group health plan by virtue of the performance of services by the individual for 1 or more persons maintaining the plan (including as an employee defined in section 401(c)(1)).

"(f) DEFINITIONS.—For purposes of this section—

"(1) QUALIFIED BENEFICIARY.—

"(A) IN GENERAL.—The term 'qualified beneficiary' means, with respect to a covered employee under a group health plan, any other individual who, on the day before the qualifying event for that employee, is a beneficiary under the plan—

"(i) as the spouse of the covered employee, or

"(ii) as the dependent child of the employee.

"(B) SPECIAL RULE FOR TERMINATIONS AND REDUCED EMPLOYMENT.—In the case of a qualifying event described in subsection (e)(3)(B), the term 'qualified beneficiary' includes the covered employee.

"(C) EXCEPTION FOR NONRESIDENT ALIENS.—Notwithstanding subparagraphs (A) and (B), the term 'qualified beneficiary' does not include an individual whose status as a covered employee is attributable to a period in which such individual was a nonresident alien who received no earned income (within the meaning of section 911(d)(2)) from the employer which constituted income from sources within the United States (within the meaning of section 861(a)(3)). If an individual is not a qualified beneficiary pursuant to the previous sentence, a spouse or dependent child of such individual shall not be considered a qualified beneficiary by virtue of the relationship of the individual.

"(D) SPECIAL RULE FOR RETIREES AND WIDOWS.—In the case of a qualifying event described in subsection (e)(3)(F), the term 'qualified beneficiary' includes a covered employee who had retired on or before the date of substantial elimination of coverage and any other individual who, on the day before such qualifying event, is a beneficiary under the plan—

"(i) as the spouse of the covered employee,

"(ii) as the dependent child of the employee, or

"(iii) as the surviving spouse of the covered employee.

"(2) GROUP HEALTH PLAN.—The term 'group health plan' has the meaning given such term by section 162(i)."

"(3) PLAN ADMINISTRATOR.—The term 'plan administrator' has the meaning given the term 'administrator' by section 3(16)(A) of the Employee Retirement Income Security Act of 1974.

"(4) CORRECTION.—A failure of a group health plan to meet the requirements of subsection (e) with respect to any qualified beneficiary shall be treated as corrected if—

"(A) such failure is retroactively undone to the extent possible, and

"(B) the qualified beneficiary—

"(i) is placed in a financial position which is as good as such beneficiary would have been in had such failure not occurred, and

"(ii) is treated as if he had elected the most favorable coverage in light of the expenses he incurred since the failure 1st occurred."

(b) TECHNICAL AMENDMENTS.—

(1) Section 106 (relating to contributions by employer to accident and health plans) is amended to read as follows:

"SEC. 106. CONTRIBUTIONS BY EMPLOYER TO ACCIDENT AND HEALTH PLANS.

"Gross income of an employee does not include employer-provided coverage under an accident or health plan."

(2) Subsection (i) of section 162 (relating to group health plans) is amended by striking out paragraph (2) and by redesignating paragraph (3) as paragraph (2).

(3) Section 162 is amended by striking out subsection (k) and by redesignating subsections (l), (m), and (n) as subsections (k), (l), and (m), respectively.

(4) Subparagraph (C) of section 414(n)(3) is amended by striking out "162(i)(2), 162(k)," and by striking out "and 505" and inserting in lieu thereof "505, and 4980B".

(5) Paragraph (2) of section 414(t) is amended by striking out "162(i)(2), 162(k)," and by striking out "or 505" and inserting in lieu thereof "505, or 4980B".

(6) Paragraph (1) of section 607 of the Employee Retirement Income Security Act of 1974 is amended by striking out "section 162(i)(3) of the Internal Revenue Code of 1954" and inserting in lieu thereof "section 162(i)(2) of the Internal Revenue Code of 1986".

(7) Paragraph (1) of section 2208 of the Public Health Service Act is amended by striking out "section 162(i)(3) of the Internal Revenue Code of 1954" and inserting in lieu thereof "section 162(i)(2) of the Internal Revenue Code of 1986"

(c) CLERICAL AMENDMENTS.—The table of sections for chapter 43 is amended by adding at the end thereof the following new item:

"Sec. 4980B. Failure to satisfy continuation coverage requirements of group health plans."

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1987, but shall not apply to any plan for any plan year to which section 162(k) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of this Act) did not apply by reason of section 10001(e)(2) of the Consolidated Omnibus Budget Reconciliation Act of 1985.

SEC. 10384. SPECIAL ELECTION FOR CERTAIN PERSONAL SERVICE CORPORATIONS.

(a) EFFECT OF ELECTION.—An election under this section shall result in an 18-year carryback (in lieu of any carryover) of losses incurred in taxable years beginning after December 31, 1986, which are attributable to deductions for compensation described in subsection (c) deferred under section 267(a)(2) of the Internal Revenue Code of 1986.

(b) ELECTION.—An election may be made under subsection (a) only by The Permanente Medical Group, Inc. and shall apply only so long as no person owns more than 1/5 of 1 percent of the outstanding stock of the corporation.

(c) DESCRIPTION OF COMPENSATION.—Compensation is described in this subsection if such compensation consists of 1 or more of the following elements—

(1) regular periodic compensation for a period consisting of no more than the last 1/2 month of the corporation's taxable year;

(2) accrued vacation pay not to exceed 5 weeks' regular periodic compensation;

(3) an amount paid within 2½ months after the close of the corporation's taxable year, the aggregate of which for all employees of the corporations does not exceed the revenue of the corporations.

Subpart I—Foreign Provisions

SEC. 10391. ALLOCATION OF RESEARCH AND EXPERIMENTAL EXPENDITURES.

(a) Rules for Allocating Research and Experimental Expenditures.—Section 864 is amended by adding at the end thereof the following new subsection:

"(f) Allocation of Qualified Research and Experimental Expenditures.—

"(1) In general.—For purposes of sections 861(b), 862(b), and 863(b), qualified research and experimental expenditures shall be allocated and apportioned as follows:

"(A) any qualified research and experimental expenditures expended solely to meet legal requirements imposed by a political entity with respect to the improvement or marketing of specific products or processes for purposes not reasonably expected to generate gross income (beyond de minimis amounts) outside the jurisdiction of the political entity shall be allocated only to gross income from sources within such jurisdiction;

"(B) 67 percent of qualified research and experimental expenditures (after taking into account subparagraph (A)) shall be allocated and apportioned to income from sources within the United States and deducted from such income in determining the amount of taxable income from sources within the United States; and

"(C) the remaining portion of qualified research and experimental expenditures (after taking into account subparagraphs (A) and (B)) shall be apportioned, at the annual election of the taxpayer, on the basis of gross sales or gross income, and no limitation related to apportionment on the basis of gross sales (or otherwise) shall be imposed on apportionment on the basis of gross income.

"(2) Qualified research and experimental expenditures.—For purposes of this section, the term 'qualified research and experimental expenditures' means amounts—

"(A) which are research and experimental expenditures within the meaning of section 174, and

"(B) which are attributable to activities conducted in the United States.

For purposes of this paragraph rules similar to the rules of subsection (c) of section 174 shall apply.

"(3) Affiliated group.—

"(A) Except as provided in subparagraph (B), the allocation and apportionment required by paragraph (1) shall be determined as if all members of the affiliated group (as defined in subsection (e)(5) of this section) were a single corporation.

"(B) For purposes of the allocation and apportionment required by paragraph (1)—

"(i) sales and gross income from products produced in whole or in part in a possession by an electing corporation (within the meaning of section 936(h)(5)(E)); and

"(ii) dividends from an electing corporation,

shall not be taken into account, except that this subparagraph shall not apply to sales of (and gross income and dividends attributable to sales of) products with respect to which an election under section 936(h)(5)(F) is not in effect.

"(C) The qualified research and experimental expenditures taken into account for purposes of paragraph (1) shall be adjusted to reflect the amount of such expenditures included in computing the cost-sharing amount (determined under section 936(h)(5)(C)(i)(I)).

"(D) The Secretary may prescribe such regulations as may be necessary to carry out the purposes of this paragraph, including regulations providing for the source of gross income and the allocation and apportionment of deductions to take into account the adjustments required by subparagraph (C)."

(b) Conforming Changes.—

(1) Section 861 is amended by adding at the end thereof the following new subsection:

"(f) Cross Reference.—

For the allocation and apportionment of qualified research and experimental expenditures, see section 864(f)."

(2) Subsection (c) of section 862 is amended to read as follows:

"(c) Cross Reference.—

For the allocation and apportionment of qualified research and experimental expenditures, see section 864(f)."

(3) Section 863 is amended by adding at the end thereof the following new subsection:

"(f) Cross Reference.—

For the allocation and apportionment of qualified research and experimental expenditures, see section 864(f)."

(4) Paragraph (6) of section 864(e) is amended to read as follows:

"(6) Allocation and apportionment of other expenses.—Expenses other than interest and qualified research and experimental expenditures which are not directly allocable and apportioned to any specific income producing activity shall be allocated and apportioned as if all members of the affiliated group were a single corporation."

(c) Effective Date.—The amendments made by this section shall apply to taxable years beginning after August 1, 1987.

SEC. 10392. MISCELLANEOUS PROVISIONS.

(a) Extension of Section 312(n)(8)(B).—Subparagraph (B) of section 312(n)(8) (relating to special rules for certain foreign corporations) is amended by striking out "1987" and inserting in lieu thereof "1988".

(b) Treatment of Certain Interest Received Before January 1, 1987.—

(1) Subparagraph (A) of section 1201(e)(2) of the Tax Reform Act of 1986 is amended by redesignating clauses (i) and (ii) as clauses (ii) and (iii), respectively, and by inserting before clause (ii) (as so redesignated) the following new clause:

"(i) any interest received or accrued by any taxpayer during any taxable year beginning before January 1, 1987, on any qualified loan."

(2) The amendment made by paragraph (1) shall take effect on the date of the enactment of the Tax Reform Act of 1986.

(c) Treatment of Certain United States Obligations Held by Puerto Rican Banks.—

(1) In general.—Subsection (e) of section 882 of the 1986 Code is amended by adding at the end thereof the following new sentence: "In the case of any corporation created or organized in, or under the laws of, Puerto Rico, the first sentence of this subsection shall not apply to interest which is portfolio interest (as defined in section 881(c)(2)).

(2) Exclusion from branch profits tax.—Paragraph (2) of section 884(d) of the 1986 Code is amended by striking out "or" at the end of subparagraph (C), by striking out the period at the end of subparagraph (D) and inserting in lieu thereof ", or" and by inserting after subparagraph (D) the following new subparagraph:

"(E) income treated as effectively connected with the conduct of a trade or business within the United States under section 882(e)."

(3) Effective date.—The amendments made by this subsection shall apply to taxable years beginning after December 31, 1986.

(d) Treatment of Certain Regulated Investment Companies.—

(1) In general.—Subparagraph (B) of section 861(c)(1) is amended by adding at the end thereof the following new sentences:

"For purposes of clause (ii), the gross income derived by a regulated investment company from sources outside the United States (as determined under this subchapter) shall be treated in all cases as attributable to the active conduct of a trade or business in a foreign country or possession of the United States by such company. The preceding sentence shall not apply to any regulated investment company if more than 20 percent of the gross income of the company for testing period is exempt from any income or withholding tax imposed by a foreign country (or is subject to a reduced rate of any such tax) solely by reason of the provisions of an income tax treaty between the United States and such foreign country."

(2) Effective date.—The amendment made by paragraph (1) shall apply to taxable years beginning after December 31, 1987.

(e) Treatment of Certain Financial Institutions.—

(1) In general.—Subparagraph (C) of section 864(e)(5) is amended to read as follows:

"(C) Description.—A corporation is described in this subparagraph if—

"(i) such corporation is a financial institution predominantly engaged in the conduct of a banking, financing, or similar business within the meaning of section 904(d)(2)(C)(i),

"(ii) the business of such financial institution is predominantly with persons other than related persons (within the meaning of subsection (d)(4)) or their customers, and

"(iii) such financial institution is required by State or Federal law to be operated separately from any other entity which is not such an institution (or such financial institution is operated separately from any other entity which is not such an institution and such operation is not inconsistent with regulations prescribed by the Secretary)."

(2) Effective Date.—The amendment made by paragraph (1) shall take effect as if included by the amendment made by section 1215 of the Tax Reform Act of 1986.

(f) Section 1201(e) of the Tax Reform Act of 1986 is amended by adding at the end thereof the following new paragraph:

(4) Special rule for taxpayer owning stock in foreign banking, etc., corporation.—In the case of a financial institution whose predecessor was incorporated in New York on April 19, 1871, upon any disposition of the stock of a corporation incorporated in Switzerland on April 22, 1873, which occurs after December 31, 1991—

(A) gain recognized on such disposition shall be treated as foreign source income described in section 904(d)(1)(A) of the Internal Revenue Code of 1986 (as amended by this section),

(B) section 1248 of such Code shall apply as if such Swiss corporation were a controlled foreign corporation and the deemed dividend shall be treated as income described in section 904(d)(1)(E) of such Code, and

(C) any foreign income taxes paid or deemed paid by such United States institution with respect to dividends received from such Swiss corporation which may not be credited by reason of section 904 of such Code shall be treated as paid or deemed paid in subsequent taxable years without regard to the provisions of section 904(c) of such Code limiting the taxable years to which excess foreign tax credits may be carried.

SEC. 10393. TREATMENT OF CERTAIN NON-VIRGIN ISLAND SOURCE INCOME.

(a) General Rule.—Clause (i) of subparagraph (E) of paragraph 1277(c)(2) of the Tax Reform Act of 1986 is amended to read as follows:

"(i) In general.—In the case of any pre-1987 open year, neither the United States nor the Virgin Islands shall impose an income tax on non-Virgin Island source income derived from transactions described in clause (ii) by one or more corporations which were formed in Delaware on or about March 6, 1981, and which have owned one or more office buildings in St. Thomas, United States Virgin Islands, for at least 5 years before enactment of this Act. Each such corporation shall be considered an inhabitant of the Virgin Islands for purposes of of section 28(a) of the Revised Organic Act for the period of such ownership in any pre-1987 open year."

(b) Effective Date.—The amendment made by subsection (a) shall take effect on the date of enactment of the Tax Reform Act of 1986.

SEC. 10394. TREATMENT OF CERTAIN INDEBTEDNESS.

(a) In General.—Paragraph (2) of subsection (c) of section 1215 of the Tax Reform Act of 1986 is amended by adding at the end thereof the following new subparagraph:

"(F) Indebtedness outstanding on May 28, 1986.—Indebtedness is described in this subparagraph if it is indebtedness of a Delaware corporation incorporated on August 10, 1928, the indebtedness of which on May 28, 1986, included—

"(i) $975,000,000 face amount of variable rate bank loan due May 31, 1994,

"(ii) $400,000,000 face amount 12 1/2 percent subordinated debentures due June 1, 2001, and

"(iii) $225,000,000 face amount 12 1/4 percent senior subordinated debentures due June 1, 1998."

(b) Conforming Amendment.—Subparagraph (C) of paragraph (2) of subsection (c) of section 1215 of the Tax Reform Act of 1986 is amended by striking out "(D) or (E)" and inserting in lieu thereof "(D), (E), or (F)".

(c) Effective Date.—The amendments made by subsections (a) and (b) shall take effect on the date of enactment of the Tax Reform Act of 1986.

SEC. 10395. AMENDMENT RELATED TO SECTION 1221 OF THE TAX REFORM ACT.

(a) Subparagraph (C) of section 1221(g)(3) of the Tax Reform Act of 1986 is amended by striking out "or" at the end of clause (i), by striking out the period at the end of clause (ii) and inserting in lieu thereof ", and", and by adding at the end thereof the following new clause:

"(iii) any controlled foreign corporation which on August 16, 1986, was a member of an affiliated group (as so defined) which had as its common parent a corporation incorporated in Delaware on December 13, 1967, with executive offices in New York, New York."

(b) Subparagraph (D) of section 1221(g)(3) of such Act is amended by adding at the end thereof the following: "In the case of controlled foreign corporations described in subparagraph (C)(iii), the preceding sentence shall apply by substituting "(C)(iii)" for "(C)(ii)" and "$2,000,000" for "$27,000,000".

SEC. 10396. DUAL RESIDENT COMPANY.

(a) General Rule.—In the case of a transaction which—

(1) involves the transfer by a domestic corporation, which is subject to an income tax of a foreign country on a residence basis, of its assets and liabilities to a foreign corporation in exchange for stock of such corporation, followed by the complete liquidation of the domestic corporation into its qualified parent corporation, and

(2) qualifies, pursuant to Revenue Ruling 87-27, as of reorganization which is described in section 368(a)(1)(F) of the Internal Revenue Code of 1986,

then, solely for purposes of applying Treasury Regulation section 1.1502-19 to any excess loss account (determined as of the date of such transaction and without diminution for any future adjustments) with respect to the stock of the domestic corporation, such corporation (and any qualified foreign corporation which thereafter acquires stock of such corporation) shall be treated as a domestic corporation in determining whether such corporation and any qualified foreign corporation would, with respect to the affiliated group of which the qualified parent corporation is a member, qualify as in includible corporation section 1504(b) of such Code.

(b) Definition.—

(1) Qualified parent corporation.—For purposes of this section, the term "qualified parent corporation" means a domestic corporation incorporated on June 2, 1952, in Delaware and which has its principal executive offices in McLean, Virginia.

(2) Qualified foreign corporation.—For purposes of this section, the term "qualified foreign corporation" means any foreign corporation which would qualify as an includible corporation with respect to the affiliated group of which the qualified parent corporation is the common parent if section 1504(b) of the Code is applied without regard to paragraph (3) thereof.

Subpart M—Tax-Exempt Bonds

SEC. 10401. EXPANSION OF EXCEPTION FOR SMALL GOVERNMENTAL UNITS FROM THE ARBITRAGE REBATE REQUIREMENTS.

(a) In General.—Subparagraph (C) of section 148(f)(4) (relating to exception for small governmental units) is amended by striking out "$5,000,000" each place it appears and inserting in lieu thereof "$10,000,000".

(b) Effective Date.—The amendment made by subsection (a) shall take effect as if included in the amendments made by section 1301 of the Tax Reform Act of 1986, but shall not apply with respect to amounts paid to the United States before the date of the enactment of this Act.

SEC. 10402. CLARIFICATION OF SMALL ISSUE BOND DEFINITION OF MANUFACTURING FACILITY.

(a) In General.—Subparagraph (C) of section 144(a)(12) (defining manufacturing facility) is amended by adding at the end thereof the following new sentence: "For purposes of the first sentence of this subparagraph, the term 'manufacturing facility' includes facilities which are directly related and ancillary to a manufacturing facility (determined without regard to this sentence) if—

"(i) such facilities are located on the same site as the manufacturing facility, and

"(ii) not more than a minor part of the proceeds of the issue are used to provide such facilities."

(b) Effective Date.—The amendment made by subsection (a) shall apply to obligations issued after the date of the enactment of this Act.

SEC. 10403. ADDITIONAL AMENDMENTS RELATED TO TAX-EXEMPT BONDS.

(a) Certain Redevelopment Project.—Section 1317(6)(W) of the Tax Reform Act of 1986, as amended by the Technical Corrections Act of 1987, is further amended by adding the following 2 sentences at the end thereof: "Paragraph (52) of this section shall be applied to bonds authorized under this paragraph by substituting 'September 3, 1996' for 'December 31, 1990.' In applying subparagraph (Y) of this paragraph, bonds authorized under this subparagraph shall be treated as qualified redevelopment bonds notwithstanding that the facilities to be financed are not identified at the time the bonds are issued if all such facilities financed with the proceeds of the bonds would have been eligible facilities had they been so identified."

(b) Certain Stadium Facilities.—Section 1317(3) of the Tax Reform Act of 1986 is amended by adding at the end thereof the following new subparagraph:

"(AA) A facility is described in this subparagraph if—

"(i) a resolution determining the need for the facility was adopted by the City Council on November 18, 1985, and

"(ii) a resolution determining to construct the facility was adopted by the Park Board on November 29, 1985, and confirmed by the Park Board on December 9, 1985, and

"(iii) the obligation to be used to provide financing for the facility is a Lease/Purchase Agreement entered into by the Park Board on December 9, 1985, re-executed by the Park Board on January 30, 1986, and approved by Orders of the State Board of Tax Commissioners on January 28, 1986, and April 30, 1986, or any subsequent refinancing of such agreement. The aggregate amount of bonds to which this subparagraph applies shall not exceed $6,500,000.

For purposes of this paragraph, the first refunding of bonds issued on September 18, 1986, to provide the facility described in this subparagraph shall be treated as used to provide such facility."

(c) Refunding for Certain Dock Facility Bonds.—Section 1317(43) of the Tax Reform Act of 1986 is amended by substituting "December 31, 1988" for "December 31, 1987".

(d) Pool Bonds.—Section 1317(44) of the Tax Reform Act of 1986, as amended by the Technical Corrections Act of 1987, is further amended by deleting $300,000,000" in the item relating to the Colorado Association of School Boards Pool and inserting in lieu thereof "$225,000,000", and by adding to the end of the table contained therein the following new item:

"Colorado Municipal League Pool....................... $75,000,000".

(e) Application of $150,000,000 Limitation for Certain Qualified 501(c)(3) Bonds.—

(1) Section 1317(33)(H) of the Tax Reform Act of 1986, as amended by the Technical Correction Act of 1987, is further amended by adding the following sentence to the end thereof:

"Bonds issued to finance facilities described in this subparagraph shall be treated as issued to finance such facilities notwithstanding the fact that a period in excess of 1 year has expired since the facilities were placed in service."

(2) Section 1317(33)(M) of the Tax Reform Act of 1986, as amended by the Technical Corrections Act of 1987, is further amended to read as follows:

"(M) Proceeds of an issuer are described in this subparagraph if such issue is issued on behalf of The Society of the New York Hospital to finance completion of a project commenced by such hospital in 1981 for construction of a diagnostic and treatment center, or to refund obligations issued on behalf of such hospital in connection with the construction of such diagnostic and treatment center, or to finance construction or renovation projects associated with an inpatient psychiatric care facility or other facilities of such hospital. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $150,000,000."

(3) Section 1317(33) of the Tax Reform Act of 1986, as amended by the Technical Corrections Act of 1987, is further amended by redesignating subparagraphs (N) and (O) as subparagraphs (O) and (P), and by inserting the following new subparagraph (N):

"(N) Proceeds of an issue or issues are described in this paragraph if the issues are used for advance refundings, or for the purchase, construction, renovation, and equipping of academic, medical, research, residential, or related support facilities of a university located in Dade County, Florida, which began conducting classes in 1926 and filed its certificate of reincorporation with the Florida Secretary of State on April 7, 1961. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $150,000,000."

(f) Advance Refunding of Certain Hospital Bonds.—

(1) General rule.—1 issue of qualified 501(c)(3) bonds issued to advance refund $30,350,000 of outstanding bonds of University Community Hospital, Inc. (comprised of series 1981 in the amount of $18,000,000, series 1971 in the amount of $6,000,000, and series 1966 in the amount of $6,350,000) is authorized to be issued by the existing issuer (a corporation described in Revenue Procedure 63-20) for the hospital, notwithstanding the provisions of Revenue Procedure 82-26.

(2) Effective date.—This provision shall apply to bonds issued after December 31, 1987.

(g) Local Furnishing of Electric Energy.—

(1) General rule.—For purposes of section 142(a)(8) of the Internal Revenue Code of 1986, facilities for the local furnishing of electric energy shall include a facility that is part of a system providing service to the general populace—

(i) if at least 98 percent (measured both by total number of metered customers and by their annual consumption on a kilowatt hour basis) of the retail customers of such system are located in two contiguous counties, one of which contains a city with a population of more than 400,000 people, and the confluence of three major rivers is contained within such city, and

(ii) if the remainder of such customers (numbering less than 5,000) are located in a portion of a third county which is contiguous to the county in which the city in (i) is located.

(2) Effective Date.—This paragraph shall apply to bonds issued after December 31, 1987.

(h) Local Furnishing of Gas.—

(1) General rule.—For purposes of section 142(a)(8) of the Internal Revenue Code of 1986, facilities for the local furnishing of gas shall include a facility that is part of a system providing service to the general populace—

(A) if at least 90 percent of the annual sales (measured on a cubic foot basis) is to customers of such system located in two contiguous counties, one of which contains a city having a population greater than 900,000 which city borders on the Pacific Ocean, and

(B) if the remainder of such annual sales is to a customer located in a contiguous foreign nation.

(2) Financing of foreign access facilities.—Notwithstanding the treatment provided in paragraph (1), no costs allocable to pipelines or other facilities for distribution of gas to the foreign nation described may be financed with bonds the interest on which is tax-exempt under section 103 of the Internal Revenue Code of 1986.

(3) Effective date.—This paragraph shall apply to bonds issued after December 31, 1987.

(i) Bonds for Certain Visitors Center.—

(1) General rule.—A bond described in subparagraph (B) shall not fail to be as a qualified 501(c)(3) bond described in section 145(a) of the Internal Revenue Code of 1986 solely because of an affiliation between the qualified 501(c)(3) organization benefiting from the bonds and an agency of the United States Government.

(2) Bond described.—A bond is described in this subparagraph if—

(A) the bond is issued as part of an issue, all the net proceeds of which are—

(i) to be lent to a section 501(c)(3) organization whose Certificate of Articles of Incorporation was originally issued on July 21, 1986, and

(ii) to be used by such corporation to carry out a program which is the subject of a memorandum of understanding executed by such corporation on October 22, 1986.

The aggregate amount of bonds to which this subsection applies shall not exceed $60,000,000.

(3) Effective date.—This paragraph shall apply to bonds issued after December 31, 1987.

(j) Certain Electric Utility Bonds.—

(1) General rule.—Obligations issued after September 3, 1987, for a municipal utility district formed on July 2, 1923, shall not be treated as meeting the private business use test of section 141(b) of the Internal Revenue Code of 1986 solely by reason of receipt of a letter dated September 3, 1987, from an investor-owned utility to such district proposing to purchase the municipal utility district, provided that such bonds are redeemed no later than the date on which such acquisition (or any other acquisition by a nongovernmental person) occurs. The aggregate face amount of bonds to which this paragraph applies shall be $300,000,000.

(2) Effective date.—This paragraph applies to bonds issued after September 3, 1987.

(k) Certain Residential Rental Property.—Section 1317(13) of the Tax Reform Act of 1986, as amended by the Technical Corrections Act of 1987, is further amended by adding at the end thereof the following new subparagraph:

"(CC) A residential rental project is described in this subparagraph if bonds for the project were issued under Minnesota Statutes, Chapter 462C, as amended, by the City of Eagan, Minnesota, in order to finance the construction, acquisition, improving, and equipping of the Thomas Lake Place Apartments Project pursuant to a bond resolution adopted by said City on August 1, 1986. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $13,000,000."

(l) Certain Bonds Authorized Under the Mortgage Subsidy Bond Act of 1980.—Section 1316(g) of the Tax Reform Act of 1986, as amended by the Technical Corrections Act of 1987, is further amended by redesignating paragraphs (7) and (8) as paragraphs (8) and (9) and by inserting the following new paragraph (7):

"(7)(A) The table contained in paragraph (1) of section 1104(n) of the Mortgage Subsidy Bond Tax Act of 1980 is amended by striking out "For financing on New Town In Town project" and inserting in lieu thereof "For financing on New Town In Town project, including nonresidential real property.

"(B) The December 31, 1986, termination of authority to issue qualified small-issue bonds contained in section 144(a)(12)(i) of the Internal Revenue Code of 1986, and the prohibition of Federal guarantees of such bonds contained in section 149(b) (other than section 149(b)(2)(B)(ii)) of such Code shall not apply to bonds described in subparagraph (A).

"(C) This paragraph shall apply to bonds issued after December 31, 1987."

(m) Certain Hospital Refunding Bonds.—

(1) General rule.—Section 149(b) of the Internal Revenue Code of 1986 shall be applied to any bond described in subparagraph (B) of this paragraph as if any guarantee under the Hill-Burton hospital subsidy program (42 U.S.C. 291(j)(4)) were included in paragraph (3)(A)(i) of such section.

(2) Bond described.—A bond is described in this subparagraph if it is part of approximately $5,000,000 of advance refunding bonds which are part of an issue of approximately $36,000,000 used to finance a 60-bed expansion at a hospital located on Fogg Road in South Weymouth, Massachusetts, such expansion having been approved pursuant to the laws of the Commonwealth of Massachusetts.

(n) Certain Projects.—Subparagraph (O) of section 1317(6) of the Reform Act is amended by adding the following new sentence at the end thereof: "For the purposes of this subparagraph, paragraph (52) shall be applied by substituting 'December 31, 1992' for 'December 31, 1990'."

Subpart N—Provisions Relating to Estate Tax

SEC. 10406. TREATMENT OF CERTAIN RENTS UNDER SECTION 2032A.

(a) General Rule.—Subparagraph (A) of section 2032A(b)(5) (relating to special rules for surviving spouse) is amended by adding at the end thereof the following new sentence: "For purposes of this subsection and subsection (c), such surviving spouse shall not be treated as failing to use such property in a qualified use solely because such spouse rents such property to a member of such spouse's family on a net cash basis."

(b) Effective Date.—The amendment made by subsection (a) shall take effect on October 13, 1987.

SEC. 10407. RATE OF INTEREST FOR CERTAIN ESTATE TAX POSTPONEMENTS.

(a) In General.—Section 1511 of the Tax Reform Act of 1986 is amended by adding the following at the end thereof:

"(e) Rate of Interest on Estate Tax Postponed Under Section 6163 With Respect to Remainder Interests.—

"(1) In general.—If—

"(A) the time for payment of an amount of tax imposed by chapter 11 is postponed as provided in section 6163 with respect to any remainder interest, and

"(B) the remainder interest is in a trust created prior to 1934 that provided an income interest for grantor's spouse for life and such spouse survived at least 2 remaindermen by more than 20 years and has been alive at least 50 years since the trust was enacted, and the value of the qualified remainder interests included in determining the gross estate of the decedent exceeds 50 percent of the value of the adjusted gross estate, then

"(C) the interest on the amount so postponed to the extent attributable to such remainder interest shall (in lieu of the annual rate provided by section 6601) be paid at the rate of 4 percent.

"(b) Effective Date.—The amendment made by subsection (a) shall apply to interest paid after October 13, 1987."

SEC. 10408. TREATMENT OF CERTAIN QUALIFIED REMAINDER TRUSTS.

For purposes of section 2656(b)(8) of the Internal Revenue Code of 1986, an individual who receives an interest in a charitable remainder unitrust shall be deemed to be the only noncharitable beneficiary of such trust if the interest in the trust passed to the individual under the will of a decedent who resided in Tarrant County, Texas, and died on October 28, 1983, at the age of 75, with a gross estate not exceeding $12,500,000, and the individual is the decedent's surviving spouse.

Subpart O—Exchange of Information and Reporting Provisions

SEC. 10411. EXCHANGE OF INFORMATION.

Clause (i) of section 6103(b)(5)(B) (defining State) is amended by striking out "2,000,000" and inserting in lieu thereof "1,500,000".

SEC. 10412. EXCEPTION FROM CERTAIN REPORTING REQUIREMENTS.

The requirements of section 6050M of the Internal Revenue Code of 1986 shall not apply to an entity referred to in section 246(a)(2)(D)(ii) of such Code. The preceding sentence shall take effect on January 1, 1987.

Subpart P—Exempt and Nonprofit Organizations

SEC. 10415. TREATMENT OF CERTAIN AMOUNTS PAID TO OR FOR THE BENEFIT OF AN INSTITUTION OF HIGHER EDUCATION.

(a) In General.—Section 170 is amended by redesignating subsection (m) as subsection (n), and by inserting after subsection (l) the following new subsection:

"(m) Treatment of Certain Amounts Paid to or for the Benefit of Institutions of Higher Education.—

"(1) In general.—For purposes of this section, 80 percent of any amount described in paragraph (2) shall be treated as a charitable contribution.

"(2) Amount described.—For purposes of paragraph (1), an amount is described in this paragraph if—

"(A) the amount is paid by the taxpayer to or for the benefit of an educational organization—

"(i) which is described in subsection (b)(1)(A)(ii), and

"(ii) which is an institution of higher education (as defined in section 3304(f)), and

"(B) the taxpayer receives (directly or indirectly) as a result of paying such amount the right to seating or the right to purchase seating in an athletic stadium of such institution.

An amount separately paid for tickets shall not be treated as described in this paragraph."

(b) Effective Date.—The amendment made by this section shall apply to taxable years beginning after December 31, 1983.

SEC. 10416. UNRELATED BUSINESS INCOME TAX TREATMENT OF MAILING LISTS.

(a) In General.—Section 513 (defining unrelated trade or business) is amended by adding at the end thereof the following new subsection:

"(i) Exchanges and Rentals of Member Lists.—

"(1) In General.—In the case of an organization to which this subsection applies, the term 'unrelated trade or business' does not include any trade or business which consists of—

"(A) exchanging with another such organization, names and addresses of donors to (or members of) such organization, or

"(B) renting such names and addresses to another such organization.

"(2) Organizations to which subsection applies.—This subsection shall apply to—

"(A) any organization which is described in section 501 and contributions to which are deductible under paragraph (2) or (3) of section 170(c), and

"(B) any organization described in section 501(c)(4)."

(b) Technical Amendment.—

(1) Paragraph (1) of section 513(h) is amended by striking out "include—" and all that follows and inserting in lieu thereof "include activities relating to the distribution of low cost articles if the distribution of such articles is incidental to the solicitation of charitable contributions."

(2) The subsection heading for section 513(h) is amended by striking out "and Exchanges and Rentals of Member Lists".

(c) Effective Date.—The amendments made by this section shall apply to exchanges and rentals of member lists after the date of the enactment of this Act.

SEC. 10417. TREATMENT OF CERTAIN RESTRUCTURING INCOME.

In the case of a mutual or cooperative electric company which is organized under the laws of Illinois and was incorporated on January 8, 1960, any income received or accrued from the restructuring of debt through the Rural Electrification Administration of loans guaranteed under section 306 of the Rural Electrification Act of 1936 (as in effect on January 1, 1987) shall not be taken into account in determining whether such company meets the requirements of section 501(c)(12)(A) of the Internal Revenue Code of 1986.

SEC. 10418. DETERMINATION OF STATUS OF CERTAIN PRIVATE FOUNDATION.

For purposes of section 302(c)(3) of the Deficit Reduction Act of 1984 (Public Law 98-369), a private foundation which constituted an operating foundation (as defined in section 4942(j)(3) of the Internal Revenue Code of 1986) for each of its taxable years beginning after December 31, 1969, and ending before January 1, 1983, and which was classified as an operating foundation by determination letter issued by the Internal Revenue Service in February 1972 shall be treated as constituting an operating foundation as of January 1, 1983.

SEC. 10419. CERTAIN GRANTS DEEMED TO HAVE A CHARITABLE PURPOSE.

Any grant awarded prior to 1986 by a private foundation located in the State of Michigan to an organization described in section 501(c) of the Internal Revenue Code of 1986 which provided technical assistance to local businesses and individuals seeking to establish such businesses in and around Flint, Michigan, shall be treated as made for a purpose specified in section 170(c)(2)(B) of such Code.

SEC. 10420. TAX EXEMPTION FOR ENJEBI COMMUNITY TRUST FUND.

(a) In General.—Any earnings on, and distributions from, the Enjebi Community Trust Fund created under section 103 of the Compact of Free Association Act of 1985 shall be exempt from all Federal, State, or local taxation.

(b) Effective Date.—The provisions of subsection (a) shall apply to all taxable years whether beginning before, on, or after the date of the enactment of this Act.

Subpart Q—Miscellaneous Provisions

SEC. 10421. AUTHORITY TO PRESCRIBE TOLERANCES FOR THE VOLUME OF WINE IN BOTTLES FOR PURPOSES OF THE EXCISE TAX ON WINE.

(a) In General.—Section 5041 (relating to imposition and rate of tax on wine) is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

"(d) Tolerances.—Where the Secretary finds that the revenue will not be endangered thereby, he may by regulation prescribe tolerances (but not greater than 1/2 of 1 percent) for bottles and other containers, and, if such tolerances are prescribed, no assessment shall be made and no tax shall be collected for any excess in any case where the contents of a bottle or other container are within the limit of the applicable tolerance prescribed."

(b) Effective Date.—The amendments made by subsection (a) shall apply to wine removed after the close of the first calendar month ending more than 30 days after the date of the enactment of this Act.

SEC. 10422. WHOLESALE DISTRIBUTORS OF GASOLINE MAY REMIT GASOLINE TAX.

(a) In General.—Subpart A of part III of subchapter A of chapter 32, as amended by section 1703 of the Tax Reform Act of 1986, is amended by redesignating section 4083 as section 4084 and by inserting after section 4082 the following new section:

"SEC. 4083. WHOLESALE DISTRIBUTORS PERMITTED TO REMIT TAX.

"(a) In General.—Under regulations prescribed by the Secretary, if—

"(1) a wholesale distributor acquires gasoline in a taxable event, and

"(2) an election under this subsection with respect to such distributor is in effect at the time of such event, such distributor shall be subject to the tax imposed by section 4081 with respect to such event (in lieu of the person otherwise liable for such tax).

"(b) WHOLESALE DISTRIBUTOR.—For purposes of subsection (a), the term 'wholesale distributor' means any person—

"(1) who—

"(A) sells gasoline to producers, retailers, or to users who purchase in bulk quantities and deliver into bulk storage tanks, or

"(B) purchases gasoline from a producer and distributes such gasoline to 10 or more retail gasoline stations under common management with such person, and

"(2) who elects to register under section 4101 with respect to the tax imposed by section 4081.

"(c) ELECTION.—The election under subsection (a) shall be made for such period as may be specified by the Secretary."

(b) CLERICAL AMENDMENT.—The table of sections for subpart A of part III of subchapter A of chapter 32 is amended by striking out the item relating to section 4083 and inserting in lieu thereof the following new items:

"Sec. 4083. Wholesale distributors permitted to remit tax.

"Sec. 4084. Cross references."

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the amendments made by section 1703 of the Tax Reform Act of 1986.

SEC. 10423. ELIMINATION OF RETROACTIVE CERTIFICATION OF EMPLOYEES FOR WORK INCENTIVE JOBS CREDIT.

(a) IN GENERAL.—So much of subparagraph (A) of section 50B(h)(1) of the Internal Revenue Code of 1954 (as in effect for taxable years beginning before January 1, 1982) as precedes clause (i) thereof is amended to read as follows:

"(A) who has been certified (or for whom a written request for certification has been made) on or before the day the individual began work for the taxpayer by the Secretary of Labor or by the appropriate agency of State or local government as—".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply for purposes of credits first claimed after March 11, 1987.

Subpart R—Miscellaneous Provisions

SEC. 10426. INNOCENT SPOUSE RELIEVED FROM LIABILITY.

Subsection (c) of section 424 of the Tax Reform Act of 1984 (relating to innocent spouse relieved of liability in certain cases) is amended by adding at the end thereof the following new paragraph:

"(3) TRANSITIONAL RULE.—If—

"(A) a joint return under section 6013 of the Internal Revenue Code of 1954 was made for a taxable year beginning in 1970, by individuals married on November 7, 1970,

"(B) on such return there is an understatement (as defined in section 6661(b)(2)(A) of such Code) which is attributable to disallowed deductions attributable to activities of one spouse,

"(C) after a divorce, the other spouse (hereinafter in this paragraph referred to as the 'innocent spouse') married another individual in 1980, and

"(D) the individual whom the innocent spouse married in 1980 died on October 26, 1981,

notwithstanding any law or rule of law (including res judicata), the innocent spouse shall be relieved of liability for tax (including interest, penalties, and other amounts) for such taxable year to the extent such liability is attributable to such understatement, and, to the extent the liability so attributable has been collected from such innocent spouse, it shall be refunded or credited to such innocent spouse. No credit or refund shall be made under the preceding sentence unless claim therefor has been submitted to the Secretary of the Treasury or his delegate before the date 1 year after the date of the enactment of this paragraph, and no interest on such credit or refund shall be allowed for any period before such date of enactment."

SEC. 10427. EXCLUSION FOR CERTAIN PRE-1984 FOSTER CARE PAYMENTS.

(a) IN GENERAL.—Any payments for foster care made in taxable years beginning after December 31, 1978, and before January 1, 1984, by the Federal Government (including Supplemental Security Income benefits) or the State of Michigan in the case of a foster care provider living in Grand Ledge, Michigan, and a foster care provider living in Lansing, Michigan, shall be excludable from the gross income of such provider whether or not such payment would be excludable under section 131 of the Internal Revenue Code of 1986 as in effect for taxable years beginning prior to January 1, 1987. For this purpose, the term foster care provider means—

(1) an individual who during such years served as a foster parent for more than 1 disabled foster child, and

(2) the spouse of such individual.

(b) EFFECTIVE DATE; WAIVER OF STATUTE OF LIMITATIONS.—

(1) EFFECTIVE DATE.—The provisions of this section shall apply to taxable years beginning after December 31, 1978.

(2) WAIVER OF STATUTE OF LIMITATIONS.—In the case of any foster care payment to which this section applies, the period for claiming a credit or refund of any overpayment of tax resulting from the application of this section shall not expire before January 1, 1989. If, after the application of the preceding sentence, credit or refund of any overpayment of tax resulting from the application of this section is prevented at any time before January 1, 1989, by the operation of any law or rule of law (including res judicata), credit or refund of such overpayment (to the extent attributable to the application of this section) may, nevertheless, be made or allowed if claim therefore is filed before January 1, 1989.

SEC. 10428. TREATMENT OF CERTAIN WORKERS' COMPENSATION FUNDS.

(a) TREATMENT FOR TAXABLE YEARS BEGINNING BEFORE 1987.—In the case of any taxable year beginning before January 1, 1987, a deficiency shall not be assessed against (and if assessed, shall not be collected from) any qualified group self-insurers' fund to the extent such deficiency is attributable to the timing of policyholder dividend deductions.

(b) PRE-1986 ACT LAW TO APPLY FOR TAXABLE YEARS BEGINNING AFTER 1986 AND BEFORE 1989.—Notwithstanding any provision of subtitle C of title X of the Tax Reform Act of 1986, the amendments made by such subtitle shall apply to any qualified group self-insurers' fund only with respect to taxable years beginning after December 31, 1988.

(c) QUALIFIED GROUP SELF-INSURERS' FUND.—For purposes of this section, the term "qualified group self-insurers' fund" means any not-for-profit group of two or more employers who are engaged in the same or a similar type of trade or business, who are members of a bona fide trade or professional association which has been in existence for not less than 2 years, and who enter into agreements to pool their liabilities under the State workers' disability compensation laws for the purpose of qualifying as a self-insurer under such laws, if—

(1) the group has received a certificate of approval from, and is subject to regulation by, the State board or agency that is responsible for administering the State workers' disability compensation laws,

(2) each employer who is a member of the group, by written agreement, is jointly and severally bound to assume and discharge, by payment, any lawful judgment or award entered by a court of competent jurisdiction or by the State agency responsible for administering the State workers' disability compensation laws against a member of the group,

(3) the group is prohibited by State law or regulation from using the monies collected for a purpose other than to pay, or to reserve against, claims under the State workers' disability compensation laws and expenses,

(4) the group is bound by State law or regulation or by its governing documents to promptly return to its members all monies not needed to pay, or reserve against, claims under the State workers' disability compensation laws and expenses,

(5) the group is prohibited by State law or regulation from taking projected investment income into account in determining members' premiums,

(6) the group is required by State law or regulation to submit to the State board or agency that is responsible for administering the State workers' disability compensation laws, within 120 days after the end of the group's fiscal year, and audited financial statement certified by an independent certified public accountant, and

(7) the group's investments are limited by State law or regulation to bonds, notes, or other evidences of indebtedness issued, assumed or guaranteed by the United States of America, or by an agency or instrumentality thereof, certificates of deposit in a federally insured bank, shares or savings deposits in a federally insured savings and loan association or credit union, and certificates of deposit issued by a commercial bank duly chartered under State law.

PART II—AMENDMENTS RELATED TO TAX LEGISLATION OTHER THAN THE TAX REFORM ACT OF 1986

SEC. 10431. DONATED CARGO EXEMPT FROM HARBOR MAINTENANCE TAX.

(a) GENERAL RULE.—Section 4462 (relating to definitions and special rules) is amended by redesignating subsection (h) as subsection (i) and by inserting after subsection (g) the following new subsection:

"(h) EXEMPTION FOR HUMANITARIAN AND DEVELOPMENT ASSISTANCE CARGOS.—No tax shall be imposed under this subchapter on any nonprofit organization or cooperative for cargo owned or financed by such nonprofit organization or cooperative for use in humanitarian or development assistance overseas."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on April 1, 1987.

SEC. 10432. HARBOR MAINTENANCE TAX TO APPLY ONLY ONCE TO CARGO ENTERING OR LEAVING THE UNITED STATES IN A CONTINUOUS TRANSPORTATION BY A SINGLE SHIPPER.

(a) IN GENERAL.—Subsection (g) of section 4462 (relating to definitions and special rules for harbor maintenance tax) is amended by adding at the end thereof the following new paragraph:

"(3) CARGO ENTERING OR LEAVING THE UNITED STATES.—

"(A) IMPORTS.—In the case of cargo which entered the United States and on which tax under section 4461(a) was paid by the importer, no tax shall be imposed under such section on any subsequent loading or unloading of such cargo if—

"(i) the shipper of such cargo at the time of entry and at the time of such subsequent loading or unloading is the same, and

"(ii) such subsequent loading or unloading is in connection with the continuous transportation of such cargo to its ultimate destination in the United States.

"(B) EXPORTS.—In the case of cargo which is destined for export and on a loading or unloading of which tax was imposed under section 4461(a), no tax shall be imposed under such section on any subsequent loading or unloading of such cargo if—

"(i) the shipper of such cargo at the time such tax was imposed and at the time of such subsequent loading or unloading is the same, and

"(ii) such subsequent loading or unloading is in connection with the continuous transportation of such cargo to its ultimate destination outside the United States.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take on January 1, 1988.

SEC. 10433. TREATMENT OF DISTILLED SPIRITS IN CERTAIN FOREIGN TRADE ZONES.

(a) IN GENERAL.—Subparagraph (C) of section 5061(d)(2) of the Internal Revenue Code of 1986 shall not apply to the removal of distilled spirits from a foreign trade zone (specified in the table contained in subsection (b)) during any calendar year to the extent that the quantity of distilled spirits so removed does not exceed the lesser of—

(1) the quantity specified in such table with respect to such zone, or

(2) the quantity of distilled spirits processed in such zone during such year.

(b) TABLE.—

If the number of the foreign trade zone is:	*The specified quantity* (in cases) *is:*
1	700,000
3	50,000
5	1,200
9	54,000
12	12,500
15	25,000
20	250
50	55,000
56	166,000
70	75,000
84	2,545
94	6,939.

For purpose of the preceding table, the number of a foreign trade zone is the number of such zone as in effect on the date of the enactment of this Act.

(c) EFFECTIVE DATE.—This section shall apply to distilled spirits removed after December 31, 1987.

SEC. 10434. 1 YEAR EXTENSION OF POTENTIAL COMMENCEMENT DATE FOR OIL SPILL LIABILITY TRUST FUND AND TAX.

Subparagraph (B) of section 4611(f)(2) (defining commencement date) is amended by striking out "September 1, 1987" and inserting in lieu thereof "September 1, 1988".

SEC. 10435. CLARIFICATION OF TREATMENT OF CERTAIN INTEREST FOR PURPOSES OF CRUDE OIL WINDFALL PROFIT TAX.

For purposes of applying chapter 45 of the Internal Revenue Code of 1986 with respect to periods after February 29, 1980, any crude oil which is attributable to interests in the San Juan Basin Trust or the Permian Basin Trust and with respect to which the Ella C. McFadden Charitable Trust would (but for this Act) be treated as the producer—

(1) shall be allocated among the beneficiaries of the trust on the basis of their respective shares of the income of the trust, and

(2) to the extent that any such oil is allocated to Texas Wesleyan College, such oil shall be treated as oil from a qualified charitable interest.

Subtitle D—Lobbying and Political Activities of Tax-Exempt Organizations

PART I—DISCLOSURE REQUIREMENTS

SEC. 10501. REQUIRED DISCLOSURE OF NONDEDUCTIBILITY OF CONTRIBUTIONS.

(a) GENERAL RULE.—Subchapter B of chapter 61 (relating to miscellaneous provisions) is amended by redesignating section 6113 as section 6114 and by inserting after section 6112 the following new section:

"SEC. 6113. DISCLOSURE OF NONDEDUCTIBILITY OF CONTRIBUTIONS.

"(a) GENERAL RULE.—Each fundraising solicitation by (or on behalf of) an organization to which this section applies shall contain an express statement (in a conspicuous and easily recognizable format) that contributions or gifts to such organization are not deductible as charitable contributions for Federal income tax purposes.

"(b) ORGANIZATIONS TO WHICH SECTION APPLIES.—

"(1) IN GENERAL.—Except as otherwise provided in this subsection, this section shall apply to any organization which is not described in section 170(c) and which—

"(A) is described in subsection (c) (other than paragraph (1) thereof) or (d) of section 501 and exempt from taxation under section 501(a),

"(B) is a political organization (as defined in section 527(e)), or

"(C) was an organization described in subparagraph (A) or (B) at any time during the 5-year period ending on the date of the fundraising solicitation or is a successor to an organization so described at any time during such 5-year period.

"(2) EXCEPTION FOR SMALL ORGANIZATIONS.—

"(A) ANNUAL GROSS RECEIPTS DO NOT EXCEED $100,000.—This section shall not apply to any organization the gross receipts of which in each taxable year are normally not more than $100,000.

"(B) MULTIPLE ORGANIZATION RULE.—The Secretary may treat any group of 2 or more organizations as 1 organization for purposes of subparagraph (A) where necessary or appropriate to prevent the avoidance of this section through the use of multiple organizations.

"(3) SPECIAL RULE FOR CERTAIN FRATERNAL ORGANIZATIONS.—For purposes of paragraph (1), an organization described in section 170(c)(4) shall be treated as described in section 170(c) only with respect to solicitations for contributions or gifts which are to be used exclusively for purposes referred to in section 170(c)(4).

"(c) FUNDRAISING SOLICITATION.—For purposes of this section—

"(1) IN GENERAL.—Except as provided in paragraph (2), the term 'fundraising solicitation' means any solicitation of contributions or gifts which is made—

"(A) in written or printed form,

"(B) by television or radio, or

"(C) by telephone.

"(2) EXCEPTION FOR CERTAIN LETTERS OR CALLS.—The term 'fundraising solicitation' shall not include any letter or telephone call if such letter or call is not part of a coordinated fundraising campaign soliciting more than 10 persons during the calendar year.".

(b) PENALTY.—Part I of subchapter B of chapter 68 (relating to assessable penalties) is amended by adding at the end thereof the following new section:

"SEC. 6710. FAILURE TO DISCLOSE THAT CONTRIBUTIONS ARE NONDEDUCTIBLE.

"(a) IMPOSITION OF PENALTY.—If there is a failure to meet the requirement of section 6113 with respect to a fundraising solicitation by (or on behalf of) an organization to which section 6113 applies, such organization shall pay a penalty of $1,000 for each day on which such a failure occurred. The maximum penalty imposed under this subsection on failures by any organization during any calendar year shall not exceed $10,000.

"(b) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed under this section with respect to any failure if it is shown that such failure is due to reasonable cause.

"(c) $10,000 LIMITATION NOT TO APPLY WHERE INTENTIONAL DISREGARD.—If any failure to which subsection (a) applies is due to intentional disregard of the requirement of section 6113—

"(1) the penalty under subsection (a) for the day on which such failure occurred shall be the greater of—

"(A) $1,000, or

"(B) 50 percent of the aggregate cost of the solicitations which occurred on such day and with respect to which there was such a failure,

"(2) the $10,000 limitation of subsection (a) shall not apply to any penalty under subsection (a) for the day on which such failure occurred, and

"(3) such penalty shall not be taken into account in applying such limitation to other penalties under subsection (a).

"(d) DAY ON WHICH FAILURE OCCURS.—For purposes of this section, any failure to meet the requirement of section 6113 with respect to a solicitation—

"(1) by television or radio, shall be treated as occurring when the solicitation was telecast or broadcast,

"(2) by mail, shall be treated as occurring when the solicitation was mailed,

"(3) not by mail but in written or printed form, shall be treated as occurring when the solicitation was distributed, or

"(4) by telephone, shall be treated as occurring when the solicitation was made.".

(c) CLERICAL AMENDMENTS.—

(1) The table of sections for subchapter B of chapter 61 is amended by striking out the item relating to section 6113 and inserting in lieu thereof the following:

"Sec. 6113. Disclosure of nondeductibility of contributions.

"Sec. 6114. Cross reference.".

(2) The table of sections for part I of subchapter B of chapter 68 is amended by adding at the end thereof the following new item:

"Sec. 6710. Failure to disclose that contributions are nondeductible.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to solicitations after December 31, 1987.

SEC. 10502. PUBLIC INSPECTION OF ANNUAL RETURNS AND APPLICATIONS FOR TAX-EXEMPT STATUS.

(a) General Rule.—Section 6104 (relating to publicity of information required from certain tax-exempt organizations and certain trusts) is amended by adding at the end thereof the following new subsection:

"(e) Public Inspection of Certain Annual Returns and Applications for Exemption.—

"(1) Annual returns.—

"(A) In general.—During the 3-year period beginning on the filing date, a copy of the annual return filed under section 6033 (relating to returns by exempt organizations) by any organization to which this paragraph applies shall be made available by such organization for inspection during regular business hours by any individual at the principal office of the organization and, if such organization regularly maintains 1 or more regional or district offices having 3 or more employees, at each such regional or district office.

"(B) Organizations to which paragraph applies.—This paragraph shall apply to any organization which—

"(i) is described in subsection (c) or (d) of section 501 and exempt from taxation under section 501(a), and

"(ii) is not a private foundation (within the meaning of section 509(a)).

"(C) Nondisclosure of contributors.—Subparagraph (A) shall not require the disclosure of the name or address of any contributor to the organization.

"(D) Filing date.—For purposes of subparagraph (A), the term 'filing date' means the last day prescribed for filing the return under section 6033 (determined with regard to any extension of time for filing).

"(2) Application for exemption.—

"(A) In general.—If—

"(i) an organization described in subsection (c) or (d) of section 501 is exempt from taxation under section 501(a), and

"(ii) such organization filed an application for recognition of exemption under section 501,

a copy of such application (together with a copy of any papers submitted in support of such application and any letter or other document issued by the Internal Revenue Service with respect to such application) shall be made available by the organization for inspection during regular business hours by any individual at the principal office of the organization and, if the organization regularly maintains 1 or more regional or district offices having 3 or more employees, at each such regional or district office.

"(B) Nondisclosure of certain information.—Subparagraph (A) shall not require the disclosure of any information if the Secretary withheld such information from public inspection under subsection (a)(1)(D).".

(b) Effective Date.—The amendment made by subsection (a) shall apply—

(1) to returns for years beginning after December 31, 1986, and

(2) on and after the date of the enactment of this Act in the case of applications submitted to the Internal Revenue Service—

(A) after July 15, 1987, or

(B) on or before July 15, 1987, if the organization has a copy of the application on July 15, 1987.

SEC. 10503. ADDITIONAL INFORMATION REQUIRED ON ANNUAL RETURNS OF SECTION 501(c)(3) ORGANIZATIONS.

(a) General Rule.—Subsection (b) of section 6033 (relating to certain organizations described in section 503(c)(3)) is amended by striking out "and" at the end of paragraph (7), by striking out the period at the end of paragraph (8) and inserting in lieu thereof a comma, and by inserting after paragraph (8) the following new paragraphs:

"(9) such other information with respect to direct or indirect transfers to, and other direct or indirect transactions and relationships with, other organizations described in section 501(c) (other than paragraph (3) thereof) or section 527 as the Secretary may require to prevent—

"(A) diversion of funds from the organization's exempt purpose, or

"(B) misallocation of revenues or expenses, and

"(10) such other information for purposes of carrying out the internal revenue laws as the Secretary may require.".

(b) Effective Date.—The amendments made by subsection (a) shall apply to returns for years beginning after December 31, 1987.

SEC. 10504. PENALTIES.

(a) General Rule.—Subsection (c) of section 6652 (relating to returns by exempt organizations and by certain trusts) is amended to read as follows:

"(c) Returns by Exempt Organizations and by Certain Trusts.—

"(1) Annual returns under section 6033.—

"(A) Penalty on organization.—In the case of—

"(i) a failure to file a return required under section 6033 (relating to returns by exempt organizations) on the date and in the manner prescribed therefor (determined with regard to any extension of time for filing), or

"(ii) a failure to include any of the information required to be shown on a return filed under section 6033 or to show the correct information,

there shall be paid by the exempt organization $10 for each day during which such failure continues. The maximum penalty under this subparagraph on failures with respect to any 1 return shall not exceed the lesser of $5,000 or 5 percent of the gross receipts of the organization for the year.

"(B) Managers.—

"(i) In general.—The Secretary may make a written demand on any organization subject to penalty under subparagraph (A) specifying therein a reasonable future date by which the return shall be filed (or the information furnished) for purposes of this subparagraph.

"(ii) Failure to comply with demand.—If any person fails to comply with any demand under clause (i) on or before the date specified in such demand, there shall be paid by the person failing to so comply $10 for each day after the expiration of the time specified in such demand during which such failure continues. The maximum penalty imposed under this subparagraph on all persons for failures with respect to any 1 return shall not exceed $5,000.

"(C) Public inspection of annual returns.—In the case of a failure to comply with the requirements of subsection (d) or (e)(1) of section 6104 (relating to public inspection of annual returns) on the date and in the manner prescribed therefor (determined with regard to any extension of time for filing), there shall be paid by the person failing to meet such requirements $10 for each day during which such failure continues. The maximum penalty imposed under this subparagraph on all persons for failures with respect to any 1 return shall not exceed $5,000.

"(D) Public inspection of applications for exemption.—In the case of a failure to comply with the requirements of section 6104(e)(2) (relating to public inspection of applications for exemption) on the date and in the manner prescribed therefor, there shall be paid by the person failing to meet such requirements $10 for each day during which such failure continues.

"(2) Returns under section 6034 or 6043(b).—

"(A) Penalty on organization or trust.—In the case of a failure to file a return required under section 6034 (relating to returns by certain trusts) or section 6043(b) (relating to terminations, etc., of exempt organizations), on the date and in the manner prescribed therefor (determined with regard to any extension of time for filing), there shall be paid by the exempt organization or trust failing so to file $10 for each day during which such failure continues, but the total amount imposed under this subparagraph on any organization or trust for failure to file any 1 return shall not exceed $5,000.

"(B) Managers.—The Secretary may make written demand on an organization or trust failing to file under subparagraph (A) specifying therein a reasonable future date by which such filing shall be made for purposes of this subparagraph. If such filing is not made on or before such date, there shall be paid by the person failing so to file $10 for each day after the expiration of the time specified in the written demand during which such failure continues, but the total amount imposed under this subparagraph on all persons for failure to file any 1 return shall not exceed $5,000.

"(3) Reasonable cause exception.—No penalty shall be imposed under this subsection with respect to any failure if it is shown that such failure is due to reasonable cause.

"(4) Other special rules.—

"(A) Treatment as tax.—Any penalty imposed under this subsection shall be paid on notice and demand of the Secretary and in the same manner as tax.

"(B) Joint and several liability.—If more than 1 person is liable under this subsection for any penalty with respect to any failure, all such persons shall be jointly and severally liable with respect to such failure.

"(C) Person.—For purposes of this subsection, the term 'person' means any officer, director, trustee, employee, or other individual who is under a duty to perform the act in respect of which the violation occurs.".

(b) Willful Failure To Permit Public Inspection.—

(1) In general.—Section 6685 (relating to assessable penalty with respect to private foundation annual returns) is amended to read as follows:

"SEC. 6685. ASSESSABLE PENALTY WITH RESPECT TO PUBLIC INSPECTION REQUIREMENTS FOR CERTAIN TAX-EXEMPT ORGANIZATIONS.

"In addition to the penalty imposed by section 7207 (relating to fraudulent returns, statements, or other documents), any person who is required to comply with the requirements of subsection (d) or (e) of section 6104 and who fails to so comply with respect to any return or application, if such failure is willful, shall pay a penalty of $1,000 with respect to each such return or application.".

(2) Clerical amendment.—The table of sections for part I of subchapter B of chapter 68 is amended by striking out the item

relating to section 6685 and inserting in lieu thereof the following:

"Sec. 6685. Assessable penalty with respect to public inspection requirements for certain tax-exempt organizations.".

(c) Furnishing Fraudulent Information.—Section 7207 (relating to fraudulent returns, statements, or other documents) is amended by striking out "subsection (d) of section 6104" and inserting in lieu thereof "subsection (d) or (e) of section 6104".

(d) Effective Date.—The amendments made by this section shall apply—

(1) to returns for years beginning after December 31, 1986, and

(2) on and after the date of the enactment of this Act in the case of applications submitted to the Internal Revenue Service—

(A) after July 15, 1987, or

(B) on or before July 15, 1987, if the organization has a copy of the application on July 15, 1987.

SEC. 10505. REQUIRED DISCLOSURE THAT CERTAIN INFORMATION OR SERVICE AVAILABLE FROM FEDERAL GOVERNMENT.

(a) General Rule.—Part I of subchapter B of chapter 68 (relating to assessable penalties) is amended by adding at the end thereof the following new section:

"SEC. 6711. FAILURE BY TAX-EXEMPT ORGANIZATION TO DISCLOSE THAT CERTAIN INFORMATION OR SERVICE AVAILABLE FROM FEDERAL GOVERNMENT.

"(a) Imposition of Penalty.—If—

"(1) a tax-exempt organization offers to sell (or solicits money for) specific information or a routine service for any individual which could be readily obtained by such individual free of charge (or for a nominal charge) from an agency of the Federal Government,

"(2) the tax-exempt organization, when making such offer or solicitation, fails to make an express statement (in a conspicuous and easily recognizable format) that the information or service can be so obtained, and

"(3) such failure is due to intentional disregard of the requirements of this subsection,

such organization shall pay a penalty determined under subsection (b) for each day on which such a failure occurred.

"(b) Amount of Penalty.—The penalty under subsection (a) for any day on which a failure referred to in such subsection occurred shall be the greater of—

"(1) $1,000, or

"(2) 50 percent of the aggregate cost of the offers and solicitations referred to in subsection (a)(1) which occurred on such day and with respect to which there was such a failure.

"(c) Definitions.—For purposes of this section—

"(1) Tax-exempt organization.—The term 'tax-exempt organization' means any organization which—

"(A) is described in subsection (c) or (d) of section 501 and exempt from taxation under section 501(a), or

"(B) is a political organization (as defined in section 527(e)).

"(2) Day on which failure occurs.—The day on which any failure referred to in subsection (a) occurs shall be determined under rules similar to the rules of section 6710(d).".

(b) Clerical Amendment.—The table of sections for part I of subchapter B of chapter 68 is amended by adding at the end thereof the following new item:

"Sec. 6711. Failure by tax-exempt organization to disclose that certain information or service available from Federal Government.".

(c) Effective Date.—The amendments made by this section shall apply to offers and solicitations after December 31, 1987.

Subpart B—Political Activities

SEC. 10510. CLARIFICATION OF PROHIBITED POLITICAL ACTIVITIES.

(a) General Rule.—The following provisions are each amended by striking out "on behalf of any candidate" and inserting in lieu thereof "on behalf of (or in opposition to) any candidate":

(1) Section 170(c)(2)(D).

(2) Section 501(c)(3).

(3) Paragraphs (2) and (3) of section 2055(a).

(4) Clauses (ii) and (iii) of section 2106(a)(2)(A).

(5) Section 2522(a)(2).

(6) Paragraphs (2) and (3) of section 2522(b).

(b) Status After Disqualification Because of Political Activities.—

(1) In general.—Paragraph (2) of section 504(a) (relating to status after organization ceases to qualify for exemption under section 501(c)(3) because of substantial lobbying) is amended to read as follows:

"(2) is not an organization described in section 501(c)(3)—

"(A) by reason of carrying on propaganda, or otherwise attempting, to influence legislation, or

"(B) by reason of participating in, or intervening in, any political campaign on behalf of (or in opposition to) any candidate for public office,".

(2) Clerical amendments.—

(A) The section heading for section 504 is amended by striking out "SUBSTANTIAL LOBBYING" and inserting in lieu thereof "SUBSTANTIAL LOBBYING OR BECAUSE OF POLITICAL ACTIVITIES".

(B) The table of sections for part I of subchapter F of chapter 1 is amended by striking out "substantial lobbying" in the item relating to section 504 and inserting in lieu thereof "substantial lobbying or because of political activities".

(c) Effective Date.—The amendments made by this section shall apply with respect to activities after the date of the enactment of this Act.

SEC. 10511. EXCISE TAXES ON POLITICAL EXPENDITURES BY SECTION 501(c)(3) ORGANIZATIONS.

(a) General Rule.—Chapter 42 (relating to excise taxes on private foundations and black lung benefit trusts) is amended by redesignating subchapter C as subchapter D and by inserting after subchapter B the following new subchapter:

"Subchapter C—Political Expenditures of Section 501(c)(3) Organizations

"Sec. 4955. Taxes on political expenditures of section 501(c)(3) organizations.

"SEC. 4955. TAXES ON POLITICAL EXPENDITURES OF SECTION 501(c)(3) ORGANIZATIONS.

"(a) Initial Taxes.—

"(1) On the organization.—There is hereby imposed on each political expenditure by a section 501(c)(3) organization a tax equal to 10 percent of the amount thereof. The tax imposed by this paragraph shall be paid by the organization.

"(2) On the management.—There is hereby imposed on the agreement of any organization manager to the making of any expenditure, knowing that it is a political expenditure, a tax equal to 2 1/2 percent of the amount thereof, unless such agreement is not willful and is due to reasonable cause. The tax imposed by this paragraph shall be paid by any organization manager who agreed to the making of the expenditure.

"(b) Additional Taxes.—

"(1) On the organization.—In any case in which an initial tax is imposed by subsection (a)(1) on a political expenditure and such expenditure is not corrected within the taxable period, there is hereby imposed a tax equal to 100 percent of the amount of the expenditure. The tax imposed by this paragraph shall be paid by the organization.

"(2) On the management.—In any case in which an additional tax is imposed by paragraph (1), if an organization manager refused to agree to part or all of the correction, there is hereby imposed a tax equal to 50 percent of the amount of the political expenditure. The tax imposed by this paragraph shall be paid by any organization manager who refused to agree to part or all of the correction.

"(c) Special Rules.—For purposes of subsections (a) and (b)—

"(1) Joint and several liability.—If more than 1 person is liable under subsection (a)(2) or (b)(2) with respect to the making of a political expenditure, all such persons shall be jointly and severally liable under such subsection with respect to such expenditure.

"(2) Limit for management.—With respect to any 1 political expenditure, the maximum amount of the tax imposed by subsection (a)(2) shall not exceed $5,000, and the maximum amount of the tax imposed by subsection (b)(2) shall not exceed $10,000.

"(d) Political Expenditure.—For purposes of this section—

"(1) In general.—The term 'political expenditure' means any amount paid or incurred by a section 501(c)(3) organization in any participation in, or intervention in (including the publication or distribution of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

"(2) Certain other expenditures included.—In the case of an organization formed, or availed of, substantially for purposes of promoting the candidacy (or potential candidacy) of an individual for public office, the term 'political expenditure' includes any of the following amounts paid or incurred by the organization:

"(A) Amounts paid or incurred to such individual for speeches or other services.

"(B) Travel expenses of such individual.

"(C) Expenses of conducting polls, surveys, or other studies, or preparing papers or other materials, for use by such individual.

"(D) Expenses of advertising, publicity, and fundraising for such individual.

"(E) Any other expense (including any expense to promote voter registration or voter turnout) which has the primary effect of promoting public recognition, or otherwise primarily accruing to the benefit, of such individual.

"(e) Coordination With Section 4945.—If tax is imposed under this section with respect to any political expenditure, such expenditure shall not be treated as a taxable expenditure for purposes of section 4945.

"(f) Other Definitions.—For purposes of this section—

"(1) Section 501(c)(3) organization.—The term 'section 501(c)(3) organization' means any organization which (without regard to any political expenditure) would be described in section 501(c)(3) and exempt from taxation under section 501(a).

"(2) ORGANIZATION MANAGER.—The term 'organization manager' means—

"(A) any officer, director, or trustee of the organization (or individual having powers or responsibilities similar to those of officers, directors, or trustees of the organization), and

"(B) with respect to any expenditure, any employee of the organization having authority or responsibility with respect to such expenditure.

"(3) CORRECTION.—The terms 'correction' and 'correct' mean, with respect to any political expenditure, recovering part or all of the expenditure to the extent recovery is possible, establishment of safeguards to prevent future political expenditures, and where full recovery is not possible, such additional corrective action as is prescribed by the Secretary by regulations.

"(4) TAXABLE PERIOD.—The term 'taxable period' means, with respect to any political expenditure, the period beginning with the date on which the political expenditure occurs and ending on the earlier of—

"(A) the date of mailing a notice of deficiency under section 6212 with respect to the tax imposed by subsection (a)(1), or

"(B) the date on which tax imposed by subsection (a)(1) is assessed.".

(b) TECHNICAL AMENDMENTS.—

(1) Subsections (a), (b), and (c) of section 4963 are each amended by striking out "4952," and inserting in lieu thereof "4952, 4955,".

(2) Subsection (e) of section 6213 is amended by striking out "4971" and inserting in lieu thereof "4955 (relating to taxes on political expenditures), 4971".

(3) Paragraph (1) of section 6501(l) is amended by striking out "plan, or trust" and inserting in lieu thereof "plan, trust, or other organization".

(4) Subsection (g) of section 6503 is amended by striking out "4951, 4952,".

(5) Section 6684 is amended by striking out "private foundations" and inserting in lieu thereof "private foundations and certain other tax-exempt organizations".

(6) Paragraphs (2) and (3) of section 7422(g) are each amended by striking out "4952," and inserting in lieu thereof "4952, 4955,".

(7) Subsection (b) of section 7454 is amended by striking out "the burden of proof" and inserting in lieu thereof "or whether an organization manager (as defined in section 4955(e)(2)) has 'knowingly' agreed to the making of a political expenditure (within the meaning of section 4955), the burden of proof".

(8) The chapter heading for chapter 42 is amended by striking out "BLACK LUNG BENEFIT TRUSTS" and inserting in lieu thereof "AND CERTAIN OTHER TAX-EXEMPT ORGANIZATIONS".

(9) The table of chapters for subtitle D of such Code is amended by striking out "black lung benefit trusts" in the item relating to chapter 42 and inserting in lieu thereof "and certain other tax-exempt organizations".

(10) The table of subchapters for chapter 42 is amended by striking out the item relating to subchapter C and inserting in lieu thereof the following:

"Subchapter C. Political expenditures of section 501(c)(3) organizations.

"Subchapter D. Abatement of first and second-tier taxes in certain cases.".

(c) EFFECTIVE DATES.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 10512. ADDITIONAL ENFORCEMENT AUTHORITY IN THE CASE OF FLAGRANT POLITICAL EXPENDITURES.

(a) AUTHORITY TO ENJOIN FLAGRANT POLITICAL EXPENDITURES.—

(1) IN GENERAL.—Subchapter A of chapter 76 (relating to civil actions by the United States) is amended by redesignating section 7409 as section 7410 and by inserting after section 7408 the following new section:

"SEC. 7409. ACTION TO ENJOIN FLAGRANT POLITICAL EXPENDITURES OF SECTION 501(c)(3) ORGANIZATIONS.

"(a) AUTHORITY TO SEEK INJUNCTION.—

"(1) IN GENERAL.—If the requirements of paragraph (2) are met, a civil action in the name of the United States may be commenced at the request of the Secretary to enjoin any section 501(c)(3) organization from further making political expenditures and for such other relief as may be appropriate to ensure that the assets of such organization are preserved for charitable or other purposes specified in section 501(c)(3). Any action under this section shall be brought in the district court of the United States for the district in which such organization has its principal place of business or for any district in which it has made political expenditures. The court may exercise its jurisdiction over such action (as provided in section 7402(a)) separate and apart from any other action brought by the United States against such organization.

"(2) REQUIREMENTS.—An action may be brought under subsection (a) only if—

"(A) the Internal Revenue Service has notified the organization of its intention to seek an injunction under this section if the making of political expenditures does not immediately cease, and

"(B) the Commissioner of Internal Revenue has personally determined that—

"(i) such organization has flagrantly participated in, or intervened in (including the publication or distribution of statements), any political campaign on behalf of (or in opposition to) any candidate for public office, and

"(ii) injunctive relief is appropriate to prevent future political expenditures.

"(b) ADJUDICATION AND DECREE.—In any action under subsection (a), if the court finds on the basis of clear and convincing evidence that—

"(1) such organization has flagrantly participated in, or intervened in (including the publication or distribution of statements), any political campaign on behalf of (or in opposition to) any candidate for public office, and

"(2) injunctive relief is appropriate to prevent future political expenditures,

the court may enjoin such organization from making political expenditures and may grant such other relief as may be appropriate to ensure that the assets of such organization are preserved for charitable or other purposes specified in section 501(c)(3).

"(c) DEFINITIONS.—For purposes of this section, the terms 'section 501(c)(3) organization' and 'political expenditures' have the respective meanings given to such terms by section 4955.".

(2) CLERICAL AMENDMENT.—The table of sections for subchapter A of chapter 76 is amended by striking the item relating to section 7409 and inserting in lieu thereof the following:

"Sec. 7409. Action to enjoin flagrant political expenditures of section 501(c)(3) organizations.

"Sec. 7410. Cross references."

(b) AUTHORITY TO MAKE IMMEDIATE ASSESSMENTS.—

(1) IN GENERAL.—Part I of subchapter A of chapter 70 (relating to termination of taxable year) is amended by adding at the end thereof the following new section:

"SEC. 6852. TERMINATION ASSESSMENTS IN CASE OF FLAGRANT POLITICAL EXPENDITURES OF SECTION 501(c)(3) ORGANIZATIONS.

"(a) AUTHORITY TO MAKE.—

"(1) IN GENERAL.—If the Secretary finds that—

"(A) a section 501(c)(3) organization has made political expenditures, and

"(B) such expenditures constitute a flagrant violation of the prohibition against making political expenditures,

the Secretary shall immediately make a determination of any income tax payable by such organization for the current or immediately preceding taxable year, or both, and shall immediately make a determination of any tax payable under section 4955 by such organization or any manager thereof with respect to political expenditures during the current or preceding taxable year, or both. Notwithstanding any other provision of law, any such tax shall become immediately due and payable. The Secretary shall immediately assess the amount of tax so determined (together with all interest, additional amounts, and additions to the tax provided by law) for the current year or the preceding taxable year, or both, and shall cause notice of such determination and assessment to be given to the organization or any manager thereof, as the case may be, together with a demand for immediate payment of such tax.

"(2) COMPUTATION OF TAX.—In the case of a current taxable year, the Secretary shall determine the taxes for the period beginning on the 1st day of such current taxable year and ending on the date of the determination under paragraph (1) as though such period were a taxable year of the organization, and shall take into account any prior determination made under this subsection with respect to such current taxable year.

"(3) TREATMENT OF AMOUNTS COLLECTED.—Any amounts collected as a result of any assessments under this subsection shall, to the extent thereof, be treated as a payment of income tax for such taxable year, or tax under section 4955 with respect to the expenditure, as the case may be.

"(4) SECTION INAPPLICABLE TO ASSESSMENTS AFTER DUE DATE.—This section shall not authorize any assessment of tax for the preceding taxable year which is made after the due date of the organization's return for such taxable year (determined with regard to any extensions).

"(b) DEFINITIONS AND SPECIAL RULES.—

"(1) DEFINITIONS.—For purposes of this section, the terms 'section 501(c)(3) organization', 'political expenditure', and 'organization manager' have the respective meanings given to such terms by section 4955.

"(2) CERTAIN RULES MADE APPLICABLE.—The provisions of sections 6851(b), 6861(f), and 6861(g) shall apply with respect to any assessment made under subsection (a), except that determinations under section 6861(g) shall be made on the basis of whether the requirements of subsection (a)(1)(B) of this section are met in lieu of whether jeopardy exists."

(2) Technical and conforming amendments.—

(A) Clause (v) of section 6091(b)(1)(B) is amended by striking out "section 6851(a)" and inserting in lieu thereof "section 6851(a) or 6852(a)".

(B) Paragraph (1) of section 6211(b) is amended by striking out "section 6851" and inserting in lieu thereof "section 6851 or 6852".

(C) Paragraph (1) of section 6212(c) is amended by striking out "section 6851" and inserting in lieu thereof "section 6851 or 6852".

(D) Subsection (a) of section 6213 is amended by striking out "section 6851 or section 6861" and inserting in lieu thereof "section 6851, 6852, or 6861".

(E) Section 6863 is amended—

(i) by striking out "6851" in subsection (a) and inserting in lieu thereof "6851, 6852,",

(ii) by striking out "6851 or 6861" in subsection (b)(3)(A) and inserting in lieu thereof "6851, 6852, or 6861", and

(iii) by striking out "6851(a) or 6861(a)" and inserting in lieu thereof "6851(a), 6852(a), or 6861(a)".

(F) Section 7429 is amended—

(i) by striking out "6851(a)," each place it appears and inserting in lieu thereof "6851(a), 6852(a),", and

(ii) by striking out "6851," each place it appears and inserting in lieu thereof "6851, 6852,".

(G) Paragraph (3) of section 7611(i) is amended by striking out "or section 6861" and inserting in lieu thereof "section 6852 relating to termination assessments in case of political expenditures of section 501(c)(3), or 6861".

(H) The table of sections for part I of subchapter 70 is amended by adding at the end thereof the following new item:

"Sec. 6852. Termination assessments in case of flagrant political expenditures of section 501(c)(3) organizations.".

(c) Effective Date.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 10513. TAX ON DISQUALIFYING LOBBYING EXPENDITURES.

(a) General Rule.—Chapter 41 (relating to public charities) is amended by adding at the end thereof the following new section:

"SEC. 4912. TAX ON DISQUALIFYING LOBBYING EXPENDITURES OF CERTAIN ORGANIZATIONS.

"(a) Tax on Organization.—If an organization to which this section applies is not described in section 501(c)(3) for any taxable year by reason of making lobbying expenditures, there is hereby imposed a tax on the lobbying expenditures of such organization for such taxable year equal to 5 percent of the amount of such expenditures. The tax imposed by this subsection shall be paid by the organization.

"(b) On Management.—If tax is imposed under subsection (a) on the lobbying expenditures of any organization, there is hereby imposed on the agreement of any organization manager to the making of any such expenditures, knowing that such expenditures could result in the organization not being described in section 501(c)(3), a tax equal to 5 percent of the amount of such expenditures, unless such agreement is not willful and is due to reasonable cause. The tax imposed by this subsection shall be paid by any manager who agreed to the making of the expenditures.

"(c) Organizations to Which Section Applies.—

"(1) In general.—Except as provided in paragraph (2), this section shall apply to any organization which was exempt (or was determined by the Secretary to be exempt) from taxation under section 501(a) by reason of being an organization described in section 501(c)(3).

"(2) Exceptions.—This section shall not apply to any organization—

"(A) to which an election under section 501(h) applies,

"(B) which is a disqualified organization (within the meaning of section 501(h)(5)), or

"(C) which is a private foundation.

"(d) Definitions.—

"(1) Lobbying expenditures.—The term 'lobbying expenditure' means any amount paid or incurred by the organization in carrying on propaganda, or otherwise attempting to influence legislation.

"(2) Organization manager.—The term 'organization manager' has the meaning given to such term by section 4955(f)(2).

"(3) Joint and several liability.—If more than 1 person is liable under subsection (b), all such persons shall be jointly and severally liable under such subsection.".

(b) Burden of Proof.—Subsection (b) of section 7454 (as amended by this Act) is amended by striking out "the burden of proof" and inserting in lieu thereof ", or whether an organization manager (as defined in section 4912(d)(2)) has 'knowingly' agreed to the making of disqualifying lobbying expenditures within the meaning of section 4912(b), the burden of proof".

(c) Technical Amendment.—Paragraph (1) of section 6501(l) is amended by striking out "by chapter 42 (other than section 4940)" and inserting in lieu thereof "by section 4912, by chapter 42 (other than section 4940),".

(d) Clerical Amendment.—The table of sections for chapter 41 is amended by adding at the end thereof the following new item:

"Sec. 4912. Tax on disqualifying lobbying expenditures of certain organizations.".

(e) Effective Date.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

The CHAIRMAN. Amendments printed in section 1 of House Report 100–411 are considered as having been adopted. No other amendments are in order except the amendments en bloc printed in section 2 of House Report 100–411, by and if offered by the Member indicated in said report. The amendments en bloc shall not be subject to a demand for a division of the question and shall be debatable as specified in said report.

The text of the amendments to H.R. 3545, printed in section 1 of House Report 100–411, are considered as having been adopted, as follows:

After section 2, add the following new section:

"SEC. 3. STATEMENT OF CONGRESSIONAL POLICY AND INTENT.

"(a)(1) The Congress declares and reaffirms its intention to achieve balanced multiyear deficit reduction measures pursuant to the concurrent resolution on the budget for fiscal year 1988 (H. Con. Res. 93, 100th Congress, 1st Session) and pursuant to the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 (Public Law 100–119).

"(2) Congress commits itself to enactment of appropriations and other laws reducing the Federal deficit for fiscal year 1988 by $23,000,000,000, in the manner required by such Act and consistent with the policies set forth in the concurrent resolution on the budget.

"(b) To that end, Congress commits itself to the enactment of the deficit reduction measures containing the following:

"(1) specific revenue increases of approximately $12,000,000,000 for fiscal year 1988, and commensurate revenue increases for the 2 ensuing fiscal years, as this Act provides;

"(2) annual spending reductions between $6,000,000,000 and $7,000,000,000 for fiscal year 1988, from the levels provided by the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987, through the enactment of discretionary appropriation measures for fiscal year 1988 that do not exceed the level which was allocated under section 302(a) of the Congressional Budget Act of 1974 for such spending, together with enhanced revenue, by the concurrent resolution on the budget for fiscal year 1988, and the Committees on Appropriations are instructed to achieve such spending reductions; and

"(3) other spending reductions and receipts of at least $5,000,000,000 for fiscal year 1988, and commensurate legislative changes for ensuing fiscal years, including:

"(A) reductions in permenent spending of at least $2,500,000,000 for fiscal year 1988, and reductions for ensuing fiscal years, as this Act provides;

"(B) increased general revenues as a direct result of increased funding for enforcement by the Internal Revenue Service; and

"(C) decreased payments of interest on the public debt as a direct result of these deficit reduction measures.

And conform the table of contents accordingly.

In paragraph (3) of section 408(b) of the Rural Electrification Act of 1936, as proposed to be amended by section 1042(d):

(1) In subparagraph (B), strike out "(B) The" and insert in lieu thereof "(B) On and after January 1, 1988, the".

(2) Amend subparagraph (C) to read as follows:

"(C) The interest rate on advances made on or after October 1, 1987, and before October 1, 1988, under loan commitments made before October 1, 1987, shall be equal to the average cost of moneys to the telephone bank as determined by the Governor.".

(3) In subparagraph (D), strike out "on or after the date of the enactment of this paragraph" in the material preceding clause (i) and insert in lieu thereof "on or after October 1, 1988, under loan commitments made before October 1, 1987, and the interest rate on advances made under loan commitments made or or after October 1, 1987,".

In title I, strike out subtitles F and G.

In title V, strike out section 5003 and redesignate succeeding sections accordingly.

In title III, strike out subtitle C.

In title IX, strike out subtitle B (and conform the table of contents)

And redesignate succeeding subtitles accordingly.

In title IX, strike out section 9702.

AMENDMENTS OFFERED BY MR. MICHEL

Mr. MICHEL. Mr. Chairman, I offer amendments.

The Clerk read as follows:

Amendments offered by Mr. Michel: At the end of the bill, insert the following new title:

TITLE —BUDGET FREEZE

SEC. . APPROPRIATIONS REDUCTION.

(a) Appropriations Reduction.—All discretionary appropriations for fiscal year 1988 in any Act making or continuing appropriations shall be reduced by the Committee on Appropriations of the House of Representatives to the extent necessary to achieve a reduction in discretionary budget outlays to a level $4,820,000,000 below the level allocated in House report 100-201 to such committee pursuant to section 302(a) of the Congressional Budget Act of 1974.

(b) Report by Committee on Appropriations.—(1) Before the close of the fifth calendar day beginning after the date of enactment of this section and except to the extent provided by paragraph (2), the Committee on Appropriations of the House of Representatives shall subdivide among its subcommittees the allocation of discretionary budget authority and corresponding budget outlays for fiscal year 1988 allocated to it by House Report 100-201 as reduced by subsection (a).

(2) In no event shall any allocation of discretionary budget authority for any subcommittee of the Committee on Appropriations of the House of Representatives be less than the amount of discretionary budget authority enacted for fiscal year 1987 within the jurisdiction of such subcommittee. In the case of any such subcommittee to which the allocation of discretionary budget authority for fiscal year 1988 allocated to it by House Report 100-253 is less than the amount of discretionary budget authority enacted for fiscal year 1987 within the jurisdiction of that subcommittee, the allocation required by this section shall be no less than the amount allocated to such subcommittee by House Report 100-253.

(3) The Committee on Appropriations of the House of Representatives shall promptly report to the House the subdivisions made by it pursuant to this subsection.

(c) Applicability of Section 302(f)(1) Point of Order.—For purposes of section 302(f)(1) of the Congressional Budget Act of 1974 the allocation made pursuant to subsection (b) of this section shall be deemed to be the allocation made pursuant to section 302(b) of the Congressional Budget Act of 1974 for fiscal year 1988. If the Committee on Appropriations does not comply with subsection (b)(3) before the close of the fifth calendar day beginning after the date of enactment of this section, then the budget authority enacted for fiscal year 1987 within the jurisdiction of such subcommittees shall be deemed to be the section 302(b) allocations for fiscal year 1988 unless and until such committee complies with subsection (b)(3).

(d) Applicability of Section 311 Point of Order.—For purposes of section 311 of the Congressional Budget Act of 1974, with respect to fiscal year 1988 the appropriate level of new budget outlays set forth in the most recently agreed to concurrent resolution on the budget shall be deemed to be the level set forth in H. Con. Res. 93 reduced by $4,820,000,000 and the appropriate level of total new budget authority shall be deemed to be the level set forth in H. Con. Res. 93 reduced by the amount of reduction in budget authority made pursuant to subsection (a).

Strike out all of Title X except Subpart E of Part I of Subtitle A (Section 10109 through 10111—Employee Stock Ownership Plan Estate Tax Deduction provisions) and Subtitle B (Technical Corrections to the Tax Reform Act of 1986 and corrections to other tax legislation).

At the end of the bill add the following:

SEC. . MANDATORY INCOME WITHHOLDING.

(a) Commencement of Automatic Withholding Upon Issuance of Court Order.—Paragraph (3) of section 466(b) of the Social Security Act is amended to read as follows:

"(3) Such withholding shall apply in every case where an individual residing in the State owes child support under a court order which has been issued or modified in the State (or under an order of an administrative process established by a law of the State), without the necessity of any determination as to whether the absent parent is or is not in arrears and without regard to whether or not the obligation involved is one which has been assigned to the State under section 402(a)(26) or which has been (or could upon application have been) undertaken to be collected by the State under section 454(6)."

(b) Conforming Amendments.—(1) Section 466(b)(2) of such Act is amended by striking out "in the case of a child" and all that follows down through "In either case such withholding must occur", and inserting in lieu thereof ", and must occur".

(2) Section 466(b)(4)(A) of such Act is amended by striking out all that follows "the proposed withholding" and inserting in lieu thereof a period.

SEC. 9234. STATE GUIDELINES FOR CHILD SUPPORT AWARD AMOUNTS.

(a) Rebuttable Presumption Established: Periodic Updating.—Section 467(b) of the Social Security Act is amended—

(1) by inserting "(1)" after "(b)";

(2) by striking out ", but need not be binding upon such judges or other officials"; and

(3) by adding at the end thereof the following new paragraphs:

"(2) There shall be a rebuttable presumption, in any judicial or administrative proceeding for the award of child support, that the amount of the award which would result from the application of such guidelines is the correct (and legally required) amount of child support to be awarded.

"(3) All child support orders issued or modified in a State shall be reviewed and updated to the extent necessary at least once every two years, to ensure that (taking into account any changes which may have occurred in the absent parent's financial situation or in other circumstances) they are in full compliance with such guidelines.".

(b) State Law Requirements.—Section 466(a) of such Act (as amended by section 9141(c) of this Act) is further amended by inserting immediately after paragraph (10) the following new paragraph:

"(11) Procedures under which all child support orders issued or modified in the State will be periodically reviewed and updated as required by section 467(b)(3) (and under which all child support orders so issued or modified after the date of the enactment of this paragraph will include specific provision for such periodic review and updating).".

SEC. 9235. USE OF EMPLOYMENT SECURITY INFORMATION OBTAINED THROUGH FEDERAL AND STATE TELECOMMUNICATIONS NETWORKS.

(a) In General.—Section 454 of the Social Security Act (as amended by sections 9145(b) and 9146(a) of this Act) is further amended—

(1) by striking out "and" after the semicolon at the end of paragraph (24);

(2) by striking out the period at the end of paragraph (25) and inserting in lieu thereof "; and"; and

(3) by inserting immediately after paragraph (25) the following new paragraph:

"(26) provide that the State agency administering the plan, and the Parent Locator Service, will be given access to all employment security information which is in the possession or control of any Federal or interstate telecommunications network or which is available through any other data exchange method (including information made available under section 1137(a)(4)(B)), subject to reimbursement for the reasonable cost of furnishing such information as agreed to by the parties, and will use such information for child support enforcement purposes in carrying out their duties under this part, so long as such information is adequately protected against unauthorized disclosure for other purposes under safeguards established in regulations prescribed by the Secretary.".

(b) State Law Requirements.—Section 466(a) of such Act (as amended by sections 9141(c) and 9234(b) of this Act) is further amended by inserting immediately after paragraph (11) the following new paragraph:

"(12) Procedures under which the agency or official responsible for the State's participation in any interstate telecommunications network or other data exchange arrangement that gathers, provides, or coordinates employment security information will make such information available upon request to the State agency administering the plan of the State under this part or the agency administering the plan of any other State under this part, or to the Parent Locator Service, subject to reimbursement for the reasonable cost of furnishing such information (as agreed to by the parties) and to the safeguards against unauthorized disclosure referred to in section 454(26), for use in child support enforcement as provided for in that section.".

(c) Federal Authority.—Section 452 of such Act (as amended by section 9145(a) of this Act) is further amended by adding at the end thereof the following new subsection:

"(h) In accordance with regulations prescribed by the Secretary, the head of each Federal agency which operates or participates in a telecommunications network or other data exchange arrangement that gathers, provides, or coordinates employment security information shall make such information available upon request to any State agency administering a plan under this part, and so to the Parent Locator Service, subject to reimbursement for the reasonable cost of furnishing such information (as agreed to by the parties) and to the safeguards against unauthorized disclosure referred to in section 454(26), for use in child support enforcement as provided for in that section.".

SEC. 9236. INCREASE IN PENALTIES ON STATES FOR FAILURE TO COMPLY WITH STATUTORILY PRESCRIBED PROCEDURES.

Section 466(a) of the Social Security Act is amended by striking out "In order to satisfy section 454(20)(A)" in the matter preceding paragraph (1) and inserting in lieu thereof "In order to be eligible for payments pursuant to this title or title XIX".

SEC. 9237. EFFECTIVE DATE.

Except as otherwise specifically provided, the amendments made by this part shall become effective October 1, 1987.

Mr. MICHEL (during the reading). Mr. Chairman, I ask unanimous consent that the amendments be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Illinois?

There was no objection.

The CHAIRMAN. Pursuant to the rule, the gentleman from Illinois [Mr. MICHEL] will be recognized for 30 minutes and the gentleman from Pennsylvania [Mr. GRAY] will be recognized for 30 minutes in opposition.

The Chair recognizes the gentleman from Illinois [Mr. MICHEL].

Mr. MICHEL. Mr. Chairman, I yield myself such time as I might consume.

Mr. Chairman, earlier in the day, or should I say the legislative day before, after the vote on the defeated rule I offered conciliation. There was no reason to gloat over our victory. I said we should wait until the budget summit comes up with its recommendations and only then bring our reconciliation bill to the floor of this House.

There has been no conciliation, only parliamentary trickery in the intervening period. There have been no hands across the aisle. We extended ours only to have it cut off.

And the Nation is not served by that kind of partisan strife, discord, and abuse of power.

I cannot, I will not give up my deeply rooted belief that civility and comity, fairness and decent treatment are absolutely essential in a democratic institution. Those are the marks of bipartisan cooperation.

Perhaps I am wrong. Perhaps we have come to a time when sheer power is frankly all that counts. I hope not.

Mr. Chairman, not every exercise in power is an exercise in wisdom. Not every show of force is a show of responsibility.

Even stripped of its welfare provisions, bringing this bill to the floor in an atmosphere of national economic crisis is the functional equivalent of driving while drunk, reckless, irresponsible, and dangerous to ourselves and others.

On Tuesday, October 20, the Speaker of the House came to the floor to make an eloquent plea for an economic summit. At the beginning of his remarks he said the following: "Today is not a day for partisanship. This is the day to set aside partisan political posturing, finger pointing, and blame placing—a time to face reality and seek solutions that build confidence in America," the Speaker.

Little more than a week after those words were spoken, the Speaker has brought to the floor, twice in one calendar day, incidentally, a reconciliation bill whose blatantly political features make it all the more difficult to resolve our differences ultimately at that summit meeting.

Stripping the bill of the welfare provision has not made it all that much better. It only sets forth the other bad provisions in starker relief.

And even as we speak, the majority is marking up a continuing resolution appropriation bill, the largest in the history of the Republic, and totaling better than $600 billion in discretionary spending.

So we have no choice than to offer an amendment.

And what does our amendment do?

It provides an across-the-board freeze for all discretionary spending. Savings are broken down this way:

$4.8 billion domestic spending; $6.4 billion in defense spending; a total of $11.2 billion.

The amendment would implement the freeze by requiring the Appropriations Committee to revise its 302(b) allocations for each subcommittee to reflect the freeze. And our amendment also includes the language of the gentlewoman from New Jersey [Mrs. ROUKEMA] strengthening child support enforcement under welfare reform.

The revenue section of our amendment strikes out all of the tax increases with the exception of the ESOP and technical correction sections. The result is an increase of $1.3 billion in revenues over current levels.

This brings us to the following total deficit reduction:

Spending freeze, $11.2 billion; spending reductions in the bill, $2.5 billion; revenues $1.3 billion, or a total of $15 billion.

My colleagues may say that is short of $23 billion, and it sure is. But I will tell them it matches dollar for dollar of real savings to what we have got in the majority's bill, and that is what we are here to say in unvarnished terms.

Now that is not to say that what we ultimately have got to come up with in the summit is that figure. It has got to be $23 billion at a minimum, but in real savings. And we submit that the way you get this is to have real expenditure savings first before you talk in terms of revenue.

And I am not going to say here, even among all of my colleagues, that this Member will ever have his feet bound in such concrete that he cannot give and take when that time comes. But the expenditure reduction in the majority proposal is on the cum. We have not finalized one appropriation bill, not one of the 13 has been sent to the President for signature or veto. We do not know what we have in hand, and that is why we say, and justifiably so, I think, that we are proposing a spending freeze.

The vote on the rule this morning sent a short-lived message of hope to millions of Americans, but here we are deferring hope once again.

I urge my colleagues to vote for this amendment because it will not only help to reform this reconciliation bill, but will build a bridge over the abyss that has so long separated the rhetoric of the majority from the actions we need.

I ask my colleagues to help us build the bridge by voting for my amendment, and then walk with us over that bridge toward the summit.

Mr. GRAY of Pennsylvania. Mr. Chairman, I yield 1 minute to the gentleman from New York [Mr. WEISS].

Mr. WEISS. Mr. Chairman, I thank the gentleman from Pennsylvania for yielding this time to me.

Mr. Chairman, let me just say that across-the-board freezes, spending freezes, have an allure. They seem to be very simple and very fair, but nothing could be further from the truth. Let me cite just one example.

We are in the midst of one of the greatest health crisis that this Nation has faced, the AIDS epidemic. The fiscal 1987 budget and appropriation to meet that crisis was $470 million. The fiscal 1988 proposal by the President of the United States is for $790 million because of the enormity of the crisis.

The Appropriations Committee has already appropriated in the House $970 million, and the Senate has gone along with it, and yet the proposal offered by the gentleman from Illinois [Mr. MICHEL] would cut that by more than 50 percent.

That is just one very serious example of where spending freezes take you. It is really buying a pig in a poke and I urge the defeat of the Michel amendment.

Mr. MICHEL. Mr. Chairman, I yield 1 minute to the gentleman from Georgia [Mr. GINGRICH].

Mr. GINGRICH. Mr. Chairman, I thank the gentleman for yielding me this time.

Mr. Chairman, I want to ask the Speaker, Mr. WRIGHT, and the chairman of the Ways and Means Committee, Mr. ROSTENKOWSKI, to come to the floor before we vote on the Michel amendment, because the tax provisions in the Democratic bill are outrageous.

While freezing the estate tax for most people, for example, it includes a $4 million forgiveness, as I understand it, for the Ballard family. On another occasion it includes a $2 million rehabilitation tax credit for the Claridge Hotel in Chicago. The Bureau of National Affairs has eight pages of specific goodies given away apparently at the request of specific Members, and I think the gentleman from Texas [Mr. WRIGHT] the Speaker, owes us an explanation of who the Ballard family is and why they deserve $4 million.

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And, Mr. ROSTENKOWSKI ought to tell us does the $2 million go to the English company that owns the Claridge Hotel or does it go to some local folks who used to own the Tuscany Hotel as it was then called?

Mr. GRAY of Pennsylvania. Mr. Chairman, I reserve the balance of my time.

Mr. MICHEL. Mr. Chairman, I yield 2 minutes to the gentlewoman from New Jersey [Mrs. ROUKEMA].

Mrs. ROUKEMA. Mr. Chairman, I rise today in support of the Republican leader's amendment to the reconciliation package. This amendment includes my provisions on child support enforcement as outlined in H.R. 1604.

There is a principle involved here on the child support amendments. But these reform amendments are also revenue savers and as such this reconciliation is a correct vehicle for their adoption. Preliminary CBO estimates are—$1,190 million for 3 years; $1,585 million for 5 years.

Many of you will remember my long involvement with the issue of child support enforcement reform from earlier Congresses. And it is true that we enacted landmark reform in 1984. However, our experience has shown us clearly that more needs to be done. We must go further. The Democratic bill ignores the issue. Mr. MICHEL's substitute addresses it head on.

Recent statistics show that 5 million women hold legally binding child support enforcement orders, yet only half of them receive the full amount of these payments. The rest receive little or in most cases, no support whatsoever.

Mr. Chairman, we cannot let this injustice go on. We must enact legislation that addresses this problem and closes the loopholes in the present system. My amendments attack the problems as follows:

First, require mandatory wage withholding of child support payments from the parent's wages from the time a support order is signed;

Second, mandate the courts to set State-established guidelines when determining the actual size of the child support payments;

Third, have the States to review each individual case every 2 years to determine if the support orders are keeping pace with inflation and the parent's salary levels;

Fourth, force States to disclose essential enforcement information; and

Fifth, slap stiffer penalties for States that intentionally or unintentionally serve as safe-havens for delinquents.

Of these five commonsense reforms, there are two lynch-pins. Mandatory immediate wage withholding of child support payments wage will prevent the current 30-day grace period from stretching into delinquency periods of months. And, because the nationwide enforcement network is only as good as the efforts of the separate States, stiffer penalties for noncomplying States will prevent States from serving intentionally or unintentionally as safe havens for child support delinquents.

This is not only an issue of welfare reform, it is simple justice for the over 3 million women who collect little or nothing at all of the payments legally due to them.

Let's not turn our backs on these children. Support the Michel substitute and save $585 million over 5 years.

Mr. MICHEL. Mr. Chairman, I yield 2 minutes to the distinguished gentleman from California [Mr. DANNEMEYER].

Mr. DANNEMEYER. Mr. Chairman, I rise to express support for the Michel amendment. It goes about the task of reducing the deficit by establishing a freeze in fiscal year 1988. That is a constructive way to do it. But I want to bring to my colleagues' attention, at this opportunity, some information I think we all need to have brought before us from time to time. And that is that there are recommendations lying around, unimplemented, whereby we can cut spending if we have the will to do it. The Grace Commission recommendations that have been overseen by OMB or constructively analyzed to make sure there is validity to them, total some $11.9 billion. They are in the domestic spending category. Nondefense programs, CBO recommends a total of some $10.2 billion and defense programs, CBO totals some $2.1 billion.

In other words, we have here $24.2 billion of recommended reductions in spending that come from responsible sources in the Federal process that we can implement to achieve spending reductions if we have the will to do it.

Mr. Chairman, we are deliberating a bill which is grossly misnamed. There is nothing conciliatory about it. Congress is playing the loan shark, extorting money from taxpayers. This ill-disguised tax increase does not reduce spending, it does not curb congressional excess, it makes neither amends nor apologies for fiscal mismanagement of the Federal budget. It looks the American taxpayer in the eye and threatens "you will have to pay more; you have no choice."

This is an asinine way to run a government. The leadership of this institution refuses to make the hard decisions necessary to reduce spending. By all means, avoid responsibility. Don't offend those politically active special interest groups who salivate with rapacious appetite at the public trough.

We don't need to be doing this, of course. There are alternative measures we could be undertaking. Sequestration under Gramm-Rudman-Hollings is one possibility, but we are reluctant to make major cutbacks in needed programs. There is no doubt that some of these cuts would hurt, especially in defense.

But there are other options. Both the Congressional Budget Office and the Grace Commission have identified hundreds of possible program changes which would save billions of dollars. In fact, when deliberating the first concurrent resolution on the budget earlier this year, I offered a substitute which included $24.2 billion in budget reductions from CBO and Grace proposals. The reconciliation package we are considering today claims only $4.9 billion in savings. And, significantly, $24.2 billion not only exceeds the total deficit reduction of $17.2 billion contained in the reconciliation bill, it matches the savings necessary to avoid sequestration.

Monetary policy has become a hot topic of debate in the past 2 weeks. Some of us have been making the point for years that we need sound monetary policy in order to achieve budget and economic stability. The recent reaction of the stock market has borne witness to the validity of this assertion. Investors do not believe Government leaders who reiterate empty slogans about all is well, all is under control, and how we all remain "bullish on America." Neither will anyone but fools buy the argument that we can prop up the existing system with more of the same remedies, such as this reconciliation bill.

We will not have balanced budgets and equitable trade balances until we first control the roller coaster ride of the dollar. And the value of the dollar needs to be anchored. Congressional policies are counterproductive, budget policies are bankrupt, and responsible monetary policies do not exist. Treasury has no direction and the Fed has no plan. There is something fundamentally wrong with Government leadership: it is all misadvised talk and misapplied action.

We do have the ability and the means to instill some semblance of order in the scheme of things. We do not need to resort to tax increases to reduce the deficit. We don't even need to make a slasher sequel and do a "Texas Chainsaw Massacre, Part IV" number on pet spending projects. We pay approximately $200 billion in a given year in interest on public debt, equalling or surpassing annual budget deficits. We can refinance much of this debt by issuing long-term, gold-backed bonds and eliminate the deficit over 3 or 4 years.

Gold bonds could achieve savings of $736 billion over a 10-year period, on a turnover of about $1.4 trillion of marketable debt. But Treasury and the Fed are reluctant to rock the boat, despite the fact that the ship is sinking and needs a major overhaul. The option exists of implementing a sound monetary policy necessary to stabilize our economy and control our budgets, or we can continue down the not-so-primrose path of "business as usual" and allow the course of human events to overtake us.

The choice is ours. We can impose a greater burden on the taxpayers of today and thereby merely delay the inevitable day of financial reckoning on the generations of tomorrow. Or we can utilize our gold reserves, put them to good use, anchor the dollar, stabilize our financial system, control inflation and interest rates, restrain Federal spending, eliminate the trade imbalance, and foster a more productive economic climate. And it is relatively painless, except to those international bankers who are earning money on the financial misfortune of this country.

I include copies of these spending reductions at this point in the RECORD:

CBO DEFICIT REDUCTION MEASURES

[Dollars in millions]

Function	Option	Description (modification)	Fiscal year 1988 outlay savings
050	DEF-06	Restructure the Army's Forward Area Air Defense Program.	100
	DEF-11	Delay the Army's deep attack weapons.	90
	DEF-12	Limit funding for supporting procurement.	0
	DEF-15	Alter funding for military construction (freeze fiscal year 1988 at fiscal year 1987 level, including supplemental; 1 percent real growth thereafter).	30
	DEF-17	Alter operation and maintenance funding.	1,840
270	NDD-04	Reduce subsidies provided by the REA	40
	NDD-05	Reduce Federal funds for research and development in energy supply and conservation.	940
	NDD-06	Eliminate energy conservation grants (phase out over 4 years, 25 percent reduction each year).	13
	NDD-15	Reduce credit subsidies to Federal power marketing administrations.	360
300	NDD-14	Eliminate Federal support to States for construction of sewage treatment plants (phase out grants over 14 years).	3
	NDD-16	Transfer financing of water resources to users (recover half of costs through inland waterway and port user fees).	350
350	NDD-01	Reduce Federal support for Agricultural Extension activities (reduce Extension Service by 50 percent).	173
	NDD-10	Reduce subsidies for flood and crop insurance (increase premiums to cover half of costs).	13
	AGR-01	Reduce deficiency payments by lowering target prices.	150
	AGR-03	Target income support payments toward specific groups of producers (tiered targets, with higher initial increment and lower subsequent increments).	600
	AGR-04	Limit the use of generic commodity certificates.	410
370	NDD-02	Reduce new lending under rural housing loan program (reduce new lending by 25 percent).	250
	NDD-13	Reduce direct postal subsidies (eliminate subsidies except for blind, handicapped, and charitable organizations).	80
400	NDD-16	Transfer financing of transportation programs to users and local authorities (reduce mass transit subsidies by 50 percent, eliminate cargo preference requirement).	840
450	NDD-19	Restrict eligibility for community development block grants.	10
	NDD-20	End funding of the Economic Development Administration and urban development action grants.	35
500	NDD-17	Eliminate funding for untargeted elementary and secondary education programs (eliminate chapter 2 block grant).	45
	NDD-18	Reduce campus-based student aid (consolidate programs and reduce by 10 percent).	13
550	NDD-03	Reduce funding for research supported by the National Institutes of Health (limit overhead costs only and reduce by 5 percent).	140
	FWF-03	Modify the Federal employees health benefits program.	150
	ENT-12	Limit Federal payments for long-term care (establish a comprehensive block grant and allow annual increases according to the medical CPI).	1,350
570	ENT-01	Recalculate Medicare's prospective payment rates using more recent cost data (reduce payment rates by 7.1 percent).	3,050
	ENT-02	Reduce Medicare's payments for the indirect costs of medical education (return half of savings to all hospitals).	185
	ENT-03	Reduce reimbursements for capital expenditures under Medicare (move slowly to a prospective reimbursement system and redefine capital expenses).	10
	ENT-04	Reduce total Medicare direct medical education payments (eliminate per-resident payments for FMG graduates).	150
	ENT-05	Adopt a fee schedule for reimbursing physicians under Medicare (rates updated annually by the MEI).	90
600	NDD-09	Shift housing assistance from new construction to vouchers.	—
	ENT-18	Require a 1-week waiting period for unemployment insurance benefits.	—
700	NDD-11	Convert underused acute-care beds in VA hospitals (convert 2,500 beds).	11
750	NDD-08	End funding for the Legal Services Corporation.	320
920	FWF-04	Reduce Federal travel expenses (exclude military PCS travel from 10 percent reduction).	224
Revenues	ENT-21	Reduce and retarget aid for dependent care (decrease credit by one-half percent for each additional $1,000 of AFI, to phase out above $69,000).	115
	REV-06	Repeal exemptions to the gasoline excise tax (repeal gasohol exemption and credit).	200
	REV-07	Reduce tax credits for rehabilitation of older building (limit rehabilitation tax credits to historic renovations).	300
	ENT-20	Allow the current Federal unemployment insurance tax rate to be reduced to 7 percent).	700
	REV-10	Restrict private-purpose tax-exempt bonds (raise cap and extend volume limits to new issues of private-purpose bonds).	100

Congressional Budget Office, "Reducing the Deficit: Spending and Revenue Options" (January 1987).

CITIZENS AGAINST GOVERNMENT WASTE, GRACE COMMISSION RECOMMENDATIONS PROPOSED IN THE PRESIDENT'S FISCAL YEAR 1988 BUDGET

[Outlay savings dollars in millions]

Issue number		Issue title	Number of recommendations	Fiscal year— 1987	1988	1989	1990	1991	1992
1	Army 11	Institute a biennial budget system for procurement of major weapon systems	5	0	0	0	0	0	0
2	Asset 04B	Design a Government-wide account payable system	1	0	0	0	0	0	0
3	Asset 11	Require fees for loan origination, servicing, and delinquency	4	0	0	0	0	0	0
4	Asset 13	Encourage private lenders to expand level of participation in credit programs	1	0	$1,284.0	$606.0	−$920.0	−$2,233.0	−$3,556.0
5	Asset 19	Establish GSL, PLUS, and SLS loan guarantee fees	1	$148.0	674.0	707.0	796.0	870.0	896.0
6	Asset 34	Develop Government-wide standard financial and accounting management system	1	0	0	0	0	0	0
7	Bank 05	Develop risk-related premiums	2	0	347.3	355.3	245.2	252.7	260.2
8	Bank 10	Privatize Railroad Retirement System	6	0	0	0	0	0	0
9	Bank 12	Move the Social Security equivalent of railroad retirement of SSA	1	0	0	0	0	0	0
10	Bank 13	Increase tax rate and institute experience ratings for RR unemployment premiums	2	0	0	0	0	0	0
11	Bank 16	Remove Medicare Administration from the RRB	1	0	0	0	0	0	0
12	Bank 18	Cover rail workers under social security disability	1	0	0	0	0	0	0
13	Bank 37	GNMA: annual review of security fees	1	0	0	0	0	0	0
14	Bank 40	Charge user fees: SLMA	3	0	5.7	11.6	16.2	20.6	25.0
15	CCE 03B	Have Office of Surface Mining handle rural abandoned mine programs	1	0	1.1	1.4	1.7	1.9	1.9
16	CCE 03D	Reduce excess payments to Samoa and Virgin Islands	1	0	8.2	8.5	8.8	9.0	9.2
17	CCE 03E	Eliminate unneeded mining scholarships	1	0	7.6	7.6	7.6	7.6	7.6
18	CCE 09	End Federal funding for Regional Information Sharing System	1	0	9.9	9.9	9.9	9.9	9.9
21	FMC 05	Deregulate domestic offshore shipping	1	0	0	0	0	0	0
23	HUD 05	Implement computer matching program for eligibility verification	3	0	60.0	170.0	200.0	200.0	200.0
24	HUD 10	Increase GNMA fees	1	0	44.2	72.9	99.9	126.3	151.4
25	INS 13	Revise premium and fee rates charged by HUD	3	0	486.9	401.2	454.4	504.5	546.8
26	INS 14	Use loan guarantees instead of direct loans	3	0	0	0	0	0	0
27	INT 03	Coordinate Bureau of Land Management and Forest Service land management	1	0	−3.0	2.0	8.0	10.0	14.0
28	Labor 03	Reduce cost of medical payments for Black Lung and FECA beneficiaries	3	0	0	0	0	0	0
29	Labor 07	Establish area wage scales	1	0	0	0	0	0	0
30	Labor 14A	Raise dollar value of Service Contract and Davis Bacon Acts	1	0	226.0	292.0	329.0	349.0	365.0
31	USAB 01	Enact a revised Combined Welfare Administration proposal	1	0	302.0	313.0	323.0	342.0	344.0
32	PERS 03	Limit annual leave accumulation	3	0	0	0	0	0	0
33	PERS 04	Limit sick leave accumulation	2	0	0	0	0	0	0
34	PERS 06A	Expand pay comparability study	5	0	0	0	0	0	0
35	PERS 08A	Executive level and senior executive pay: study	1	0	0	0	0	0	0
36	Private 01	Formalize privatization	3	0	0	0	0	0	0
38	Private 01E	Terminate health profession subsidies	0	68.0	186.0	188.0	201.0	214.0	225.0
39	Private 01F	Auction of communication airways	0	0	600.0	0	0	0	0
40	Private 01G	Sell excess helium program assets	0	0	48.0	21.0	21.0	22.0	22.0
41	Private 01I	Purchase maintenance for the national airspace system	0	0	−17.4	3.5	10.6	11.0	11.0
42	Private 01K	Close the FTC cigarette laboratory	0	0	.3	.3	.3	.3	.3
43	Private 01M	Sell the Naval Petroleum Reserves	0	0	2,500.0	274.0	−518.0	−728.0	−636.0
44	Private 01N	Dispose of excess real property	0	0	305.0	353.0	213.0	213.0	213.0

CITIZENS AGAINST GOVERNMENT WASTE, GRACE COMMISSION RECOMMENDATIONS PROPOSED IN THE PRESIDENT'S FISCAL YEAR 1988 BUDGET—Continued

[Outlay savings dollars in millions]

Issue number	Issue title	Number of recommendations	Fiscal year— 1987	1988	1989	1990	1991	1992
47 RAD 04	Improve management of resources in Federal research laboratories	7	0	0	0	0	0	0
48 RAD 05	Improve administration of research grants to universities	3	0	0	0	0	0	0
49 RAD 06	Expand research program reporting	4	0	0	0	0	0	0
50 SBA 05A	Cease disaster loans to businesses/individuals with other credit available	1	0	0	40.0	37.0	34.0	31.0
51 State 06B	Return AID reobligation/deobligation authority to mission directors	1	0	0	0	0	0	0
52 Treasury 10	Streamline Customs procedures	8	3.9	4.4	6.5	7.3	7.3	7.3
53 TVA 07	Make the National Fertilizer Development Program self-supporting	4	0	6.0	11.0	16.0	20.0	20.0
54 USDA 04	Eliminate housing loans and adopt improved procedures	1	0	756.0	1,352.0	1,446.0	1,597.0	1,616.0
55 USDA 20	User fees: Ag Coop Service	2	0	3.7	3.7	3.7	3.7	3.7
56 USDA 26	Reduce Public Law 480 freight differential payments	2	0	35.0	35.0	35.0	35.0	35.0
58 User 01	User charges program management	7	0	0	0	0	0	0
59 User 01A	Governmental user charges	0	0	2,089.0	2,156.0	2,081.0	2,244.0	2,277.0
61 User 01C	Certify emission and fuel economy standards	0	0	5.0	5.0	5.0	5.0	5.0
62 User 01D	Charge user fees for NOAA services	0	0	1.0	9.0	16.0	21.0	21.0
63 User 01E	Increase FAS loan origination fees	0	0	142.0	142.0	142.0	142.0	142.0
64 User 01F	Increase uranium enrichment fees	0	0	45.0	90.0	91.0	92.0	92.0
65 User 01G	Impose immigration inspection fees	0	0	100.0	100.0	100.0	100.0	100.0
66 User 01H	Increase SBA credit program fees	0	0	76.0	76.0	76.0	76.0	76.0
67 User 01I	Increase user fee for Census Bureau	0	0	8.0	8.0	8.0	8.0	8.0
68 User 01J	Impose pesticide and dumping permit fees	0	10.0	33.0	36.0	38.0	39.0	39.0
69 User 01K	Increase FFB interest surcharge	0	0	7.0	24.0	44.0	60.0	75.0
70 User 01L	Increase APHIS user fees	0	0	86.0	86.0	87.0	88.0	88.0
71 User 01M	Impose marketable security fees	0	0	12.0	14.0	18.0	19.0	19.0
72 User 01N	Impose IRS rulings fees	0	0	60.0	60.0	60.0	60.0	60.0
73 User 01O	Impose FDA new drug approval fees	0	0	26.0	26.0	26.0	26.0	26.0
74 User 01P	Increase FHA mortgage insurance premiums	0	0	442.8	328.1	354.1	378.7	395.6
75 User 01Q	Impose fees for food safety and inspection service	0	0	361.0	396.0	399.0	402.0	404.0
76 User 01R	Increase calibration user fees	0	0	1.0	2.0	2.0	3.0	4.0
77 User 01S	Charge user fees for Coast Guard services	0	0	355.0	474.0	474.0	474.0	474.0
78 User 01T	Charge for SBA assistance programs and publications	0	0	7.0	9.0	9.0	9.0	9.0
79 User 01U	Impose FDA new device approval fees	0	0	8.0	8.0	8.0	8.0	8.0
80 User 01V	Impose HCFA HMO/CMP application fees	0	0	6.0	6.0	6.0	6.0	6.0
81 User 01X	Impose EPA R&D quality assurance fees	0	0	2.0	2.0	2.0	2.0	2.0
82 User 01Y	Impose fee for industrial research associates	0	0	1.0	1.0	1.0	1.0	1.0
83 User 01Z	User fee for the International Trade Administration	0	0	9.0	9.0	9.0	9.0	9.0
84 User 02	Update recreation user fee of the Army Corps of Engineers	2	0	19.2	20.0	21.0	22.0	23.0
85 User 03	Update recreation user fee of the National Forest Service	3	0	21.0	21.0	23.0	24.0	25.0
86 User 04A	Raise recreation user fees of the National Park Service	2	0	52.0	52.0	52.0	52.0	52.0
87 User 04B	Amend National Park Service legislation	1	0	0	0	0	0	0
88 User 13	Update the fee schedule for HUD housing inspection	2	0	1.2	1.2	1.2	1.2	1.2

Source: Office of Management and Budget.

THE DEBT BUSTER BUDGET

[In billions of dollars]

	Fiscal year— 1988	1989	1990	1991	1992
Outlays:					
CBO revised baseline	1,071.1	1,126.3	1,187.8	1,248.4	1,306.4
1 percent real defense growth	+6.5	+9.8	+13.4	+16.7	+21.7
Revised outlays	1,077.6	1,136.1	1,201.2	1,265.1	1,328.1
Reductions:					
International affairs freeze	−2.9	−2.0	−1.6	−.1	−.4
Defense programs (CBO)	−2.1	−3.5	−5.0	−6.1	−6.9
1 percent defense waste target	−2.9	−3.1	−3.3	−3.4	−3.6
Non-defense programs (CBO)	−10.2	−16.2	−18.7	−20.7	−22.7
Interest savings (bonds)	−19.0	−47.0	−61.0	−71.0	−78.0
Grace savings (OMB)	−11.9	−9.9	−7.7	−6.9	−5.9
OCS royalties increase	−1.2	−1.2	−1.2	−1.2	−1.2
Total Reductions	−50.2	−82.9	−98.5	−109.4	−118.7
Net outlays	1,027.4	1,053.2	1,102.7	1,155.7	1,209.3
Revenues: CBO baseline	900.5	962.0	1,051.0	1,138.9	1,222.5
"Enhancements":					
Economic assumptions	+3.1	+7.2	+11.2	+24.0	+37.7
Tax changes (CBO)	+.8	+1.9	+2.3	+2.4	+2.8
Tax amnesty	+15.0	+15.0	+15.0	+15.0	+15.0
Total increases	+18.9	+24.1	+28.5	+41.4	+55.5
Revised revenues	919.4	986.1	1,079.5	1,180.3	1,278.0
Deficits:					
Baseline	−170.6	−164.3	−136.8	−109.5	−83.9
Total savings	−62.6	−97.2	−113.6	−134.1	−152.5
Net deficits	−108.0	−67.1	−23.2	+24.6	+68.6
G-R-H targets	108.0	72.0	36.0	0.0	

EAGLE BOND REFINANCING FORMULA

1. Amount of marketable debt falling due in given year	$625 billion
2. Old (current) effective interest rate on that debt	7.0 percent
3. Bond rate on newly issued gold bonds	1.0 percent
4. New effective rate	4.0 percent
Since all debt does not mature at the same time, it is refinanced gradually throughout the year; hence the new rate is the average of the old and bond rates on an annualized basis.	
5. Gross differential between old and bond rates	6.0 percent
6. Total savings	$37 billion

EAGLE BOND REFINANCING FORMULA—Continued

Amount of savings derived from applying gross differential to debt: this represents the maximum interest savings resulting from the maximum decline in rates.	
7. Net differential between old and new rates	3.0 percent
8. Annual savings	$19 billion
Amount of savings derived from applying net differential to debt; this represents the net interest savings resulting from the decline in effective annual rates.	
9. Carryover	$18 billion

EAGLE BOND REFINANCING FORMULA—Continued

The difference between total and annual savings is carried over into the subsequent year since all maturing debt will eventually be refinanced at the bond rate.	
Cumulative savings	$19 billion + −
The total in a given year of annual savings plus any carryover from the previous year, added to previous cumulative savings to achieve aggregate annual interest savings.	

DEBT INTEREST REDUCTION

	Year	Debt $ billion	Current effective rate	Eagle bond rate	New effective rate	Savings		Carry-over Cumulative
						Total	Annual	
1	625	7.0	1.0	4.0	(37)	19		19
2	240	9.0	1.0	5.0	(19)	10	18	47
3	130	9.4	1.0	5.2	(11)	5	9	61
4	95	9.6	1.0	5.3	(8)	4	6	71
5	65	10.5	1.0	5.7	(6)	3	4	78
6	50	11.2	1.0	6.1	(5)	3	3	84
7	60	9.3	1.0	5.1	(5)	3	2	89
8	30	12.2	1.0	6.6	(3)	2	2	93
9	30	10.0	1.0	5.5	(3)	1	1	95
10	50	7.3	1.0	4.1	(3)	2	2	99
							1	

Mr. DANNEMEYER. Also I would like to observe for the balance of the time that I have remaining that it is time that we talk about long-term reform of the monetary process that is at the basis of the instability and driving the Federal budget deficit and the Federal trade deficit. That is dealing with interest rates and maintaining the national debt.

My colleagues will recall that we are now paying about $200 billion a year to maintain the national debt of some $2.3 trillion. That is an average interest cost of about 9 percent.

Mr. GRAY of Pennsylvania. Mr. Chairman, I still reserve the balance of my time.

Mr. MICHEL. Mr. Chairman, I yield 4 minutes to the gentleman from Kansas [Mr. ROBERTS].

Mr. ROBERTS. I thank the gentleman for yielding.

Mr. Chairman, I regret in some ways that I feel compelled to make these comments. I am not on the Ways and Means, Budget, or Rules Committee.

I am one of the back rail troops who gladly yield to my often spoken colleagues when they get into the business of becoming instant Secretaries of State, Defense, Agriculture, and in this case Treasury. But, today is different.

Today is unique. We have, by manipulation of the rules, combined 2 days into one. This is better than daylight saving time. Better we should have rolled 7 days into one, rested on the eighth day and then filed an environmental impact statement. And, judging what is happening to the comity of this noble House and the effect this aberration will have upon the American public and the economy, that impact statement should be a cease and desist order.

What are we doing? What on Earth are we doing? According to the leadership, we are fulfilling our constitutional responsibility in stepping up to our deficit crisis. We have that responsibility all right but we sure as heck do not have a constitutional responsibility to make matters worse!

If the leadership was to advise George Washington at Valley Forge, freezing in the winter, they would doubtlessly advise him to tax the firewood.

This bill is being shoved, pushed, and rammed through this House at the very time our national leadership is striving to reach some bipartisan accord in deficit reduction. The folks calling these shots are the very folks taking part in the discussions.

My colleague and friend from Kansas says we are nitpicking and we should rise above partisanship—that this freeze is not real enough if you will. But, in his package, we have tax measures that most say are exactly opposite of what we need to build confidence in the market. I cannot even find out what tax measures are in this bill that effect cash accounting and estate taxes in farm country.

The real reason the orginial rule was defeated was in part due to concern over the alleged welfare reform, but it also reflected concern and frustration by Republicans and Democrats alike—boll weevils turned cicadas—that without real spending cuts a tax increase would not be applied to the deficit.

We do not take revenues and put them in a cigar box behind the Speaker's chair for him to deliver to the Secretary of the Treasury. We spend it. If you believe these revenues will be applied to the deficit you are like the missionary who invited himself to the cannibal's barbecue.

Why this substitute? The cats and dogs and turkeys and snakes and creepy and crawly things better suited for Halloween have not even been tallied up in this bill.

A congressional pay raise?

Reducing the deficit by charging tankers from Kuwait $250,000. We ought to charge at least $1 million from Iran for each silkworm they fire.

We waive import duties on ethanol coming to this country from Brazil—we in the Agriculture Committee backed off mandating more ethanol be used to reduce our costs—we took that out. You put it back in.

But never mind all of that. Let the record show I will continue to work with my friends across the aisle on any reasonable deficit package. Lock in spending cuts with this freeze, reduce the capital gains tax, I'll look at a revenue package. The first step would be to support this substitute—no its not enough but it is a step forward—something we can build on.

Mr. MICHEL. Mr. Chairman, I yield 2 minutes to the gentleman from New Hampshire [Mr. GREGG].

Mr. GREGG. Mr. Chairman, this bill which has been brought forward to us can only be improved by the passage of the Michel substitute. But as a practical matter, the underlying bill is so fundamentally flawed that it has to be defeated. It is basically the flat Earth theory of economics. It believes that if you raise taxes at a time when the market is showing a jitteriness and has dropped in value that if you squeeze out of the economy more of the productive dollars and put them into the nonproductive public sector that you somehow improve the economic forces within the economy, the economic dynamism of the economy, and cause it to be more effective. That is obviously not going to work. That is a tax bill. To pass a tax bill at this time is totally inane. It is a tax bill.

Let us talk about some of the specifics. There is $14 billion of new taxes. Now why the $14 billion of new taxes? Well, quite honestly the $14 billion of new taxes, because they actually only needed $12 million in a reconciliation bill but it costs an extra $2 billion of special interest benefits in order to get this $14 billion altogether, so for the $14 billion of new taxes we had to give away 2 billion dollars' worth of tax benefits.

Some of these new taxes are totally regressive. There is, for example, the takeover language tax in this bill. We all know that the stock market crashed on Monday. We know this bill was passed the Thursday before that Monday. And there is a lot to say that this crash was caused by that takeover language.

There is also the tip language which requires withholding on tips. I want to tell you that when the small restaurants in your district find out that the waitress has to have her tips withheld they are going to be very upset. There is the cafeteria language. It is a direct attack on the two-earner family, on the person where there are two spouses working and one of the spouses has decided not to assume some of the liabilities of taking on the benefits of a pension or a health program at their place of work but rather wishes to share the benefits of their working spouse. This is a direct attack on that working spouse.

This is a horrendous bill and should be defeated.

Mr. MICHEL. Mr. Chairman, I yield 2 minutes to the gentlewoman from Kansas [Mrs. MEYERS].

Mrs. MEYERS of Kansas. Mr. Chairman, we should be standing back from this issue and allowing the summit to do its work. But here we are on Thursday-and-a-half, after many devious complicated ways of getting this bill before us, dealing with reconciliation. So we should be dealing at least with a measure that makes some sense. We know that if we raise $12 billion in new taxes, it will be spent for new programs and will not help resolve the deficit problem. As proof of this we see there was new spending of $5 billion in the bill until this morning when the Republicans defeated the rule. In this bill there is real savings and reform in spending, $11.2 billion in the freeze, $3.5 billion in cuts and $1.3 billion in new revenue that will reach into the outyears.

I urge my colleagues to at least improve upon this measure, support the Michel substitute.

Mr. MICHEL. Mr. Chairman, I yield 2 minutes to the gentleman from Georgia [Mr. SWINDALL].

Mr. SWINDALL. Mr. Chairman, we all know that if one goes about the business of trying to cure an illness after having misdiagnosed it, they know that the illness gets worse rather than better.

The problem with the reconciliation that we are considering here is that the reason we have a deficit is because we have been taxed too little. The fact of the matter is this: Since 1981, revenues have increased by 43 percent, $256 billion. Revenues have increased by $256 billion.

Expenditures have increased by 50 percent or $326 billion.

It is very important that we understand why we have this deficit. If we do not understand that we will take all the wrong medicine.

Why is that important? Because underlying this debate is a very fundamental issue and that is: Do we want to continue, as the majority have stated they want to continue, to redistribute the wealth which eventually causes us not to create wealth? Or do we want to stimulate an economy where you create wealth by giving individuals the opportunity to spend their own money? Federal Governments can never, ever, ever create wealth. All they can do is redistribute it.

Every time we take money out of the American pocket and put it into the Federal coffers, we are taking money that could be reproducing and we are basically killing our children's futures.

I would urge my colleagues to vote for the Michel substitute, not because it achieves enough deficit reduction—clearly it does not—but because what it does is achieve, and achieve correctly, because it understands that we have this deficit not because of the myth that has floated around this city that we have not had enough revenue but rather because this bill recognizes we have been spending too much.

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Mr. GRAY of Pennsylvania. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, we have listened to the debate. First, let me compliment the distinguished minority leader for offering an alternative. This is a very positive step. I want to applaud the distinguished leader for his action, because when we were in debates earlier, we did not always have this point and counterpoint.

We now have another plan coming from our colleagues on the other side of the aisle. Let me just simply say that it is attractive if we do not look too closely at it. However, if we put our glasses on and get up close, what we are going to see are some very disturbing things and some major differences in terms of the plan offered by the leadership of the House and the minority plan.

First, the Michel plan has $18.5 billion in all of its deficit reduction actions. That is laudable. It is good. But the Gramm-Rudman target is $23 billion. So thus we would miss the target by almost $5 billion, whereas the plan of reconciliation which we have proposed has $23 billion toward a $23 billion target, with $14.5 billion in reconciliation, and we specify from appropriation accounts where we will get the other in terms of the $7 billion, from 302 and other areas.

No. 2, the Michel amendment has about $5.3 billion in reconciled cuts. That is when you back out the appropriations.

So I would just remind our colleagues of this: Do they remember what happened when we had the appropriation bills on the floor? Many of the same Members who have spoken so wonderfully about deficit reduction and the need for leadership, when the appropriation bills came along, would not vote against those bills because they wanted the things there for their districts.

I would just simply say that the Michel amendment depends a great deal on discretionary appropriated accounts to achieve the savings. Thus, as we vote, if we want $14.5 billion in reconciled savings, we should vote for the House budget package. If we want only $5.3 billion and then depend on the discretionary appropriators, then we should vote for the Michel amendment.

I should also point out that the Michel amendment deletes $9 billion in tax loophole closings and substitutes language calling for an appropriation freeze. Well, let us talk about the freeze. Everybody likes the sound of a freeze. We want to freeze spending. Let us talk about what it does.

Let us freeze FAA. I remember debate right here on the floor just 2 or 3 weeks ago where most of the Members on the opposite side of the aisle went to the well and talked about air safety and how we had to increase spending and, therefore, voted that way. Now they are being told in the Michel amendment that we should vote for a freeze. Well, that freeze would cut out $162 million for FAA operations.

Let me point to another one. A freeze sounds good, but how many Members of this House want to reduce NIH by $150 million?

A freeze sounds good. I wonder how many Members want to cut by $392 million veterans' medical care for those who have served their country and defended our freedoms? Is that the kind of priorities that we want to achieve? No, I do not think so.

I do not think Members want to cut $150 million out of NIH programs that fight cancer, AIDS research, heart disease, arthritis, diabetes, and basic research. I do not think they want to cut $162 million out of FAA operations. But that is what we get when we vote for the Michel amendment.

In all, in total, Mr. Chairman, I believe that that is not what the House wants in priorities. We want deficit reduction, but we want more reconciled deficit reductions. We get that in the House Budget Committee bill, $14.5 billion as opposed to $5.3 billion.

As I watched the appropriation bills come through, I for one know what is going to happen. If we should pass the Michel amendment today, it will be interesting to see what happens next week when the appropriation bills come through.

Mr. Chairman, I would simply say to the Members in conclusion that there is something else we learn today with regard to this so-called freeze that produced $11 billion. We call it the Miller freeze. Well, last night we put together a bipartisan team of scorekeepers in the budget summit. They got together, the Republican scorekeepers, the Democratic scorekeepers, and OMB, and guess what? We found out that the so-called Miller freeze from which they are working is not a freeze. Actually the deficit reduction in the function 050, Defense, is not what it claims to be, because OMB put in a $5 billion increase in the baseline. So if we vote for the Michel freeze, we will not get $11.1 billion or $11.2 billion in savings on the discretionary accounts of defense and nondefense; what we will get is somewhere around $6 billion, and about $5 billion of it will come out of domestic and only $1.5 billion will come out of defense.

We debated that today in our summit, and it was interesting to see the reaction of some of my Republican colleagues who were surprised at the unexplained blip in the baseline.

So, Mr. Chairman, those are the differences. I urge the Members to look carefully before they buy at this time.

Mr. MICHEL. Mr. Chairman, before yielding time to any more of my colleagues, I yield myself such time as I may consume so that I may respond in some measure to the remarks of the distinguished chairman of the Budget Committee.

Mr. Chairman, in the first place, the latest comment with respect to the disparity between budget authority and outlays with respect to the comments of the Budget Director, have no relevance whatsoever in what we are attempting to do, because our figure in our amendment frankly matches the distinguished chairman's figure on the defense item itself.

The gentleman talks about cuts in spending. How can we have a cut when we freeze the current level of spending at its present rate? That is no cut. It is a freeze at the current level. You can make all kinds of pitches here about what programs are going to be hurt and endangered, but what we mandate the Appropriations Committee to do is to go back and revamp their 302(b) allocations. We do not strike at each line item. It is up to them then to make those adjustments in house.

If FAA needs an increase, that subcommittee can very well take care of that if they want to cut out some other program. The current appropriations bill that is going to come before us next week in the mega-mega bucks area is $9 billion over last year's spending alone, and what we are attempting to do by way of our amendment is give the appropriators a message: Look, a freeze is a popular thing. It is an acceptable kind of thing. We say to them, "We would like you to conform to what we think basically most of our constituents and, yes, a good measure of this House would like to have come to pass."

Mr. Chairman, I am happy to yield 2 minutes to the gentlewoman from Connecticut [Mrs. JOHNSON].

Mrs. JOHNSON of Connecticut. Mr. Chairman, I rise in support of the Michel amendment, not because it is the ideal approach but because it will send the right message, the strong message. It is not the ideal approach because it would be nice to pick and choose, but I and some of my colleagues on both sides of the aisle stood here in the well on every single appropriation bill and offered individual, specific cuts in order to achieve cuts commensurate with the tax increases that were being proposed. We tried it. This House voted them down.

We have no option now except to do what this amendment does, which is responsible. It says we cannot spend this year any more than we spent last year. It does not cut a thing. If FAA needs more controllers—and there is not anything else in DOT that is more important than more controllers—we will slow down the number of landings and we will have the same safety quotient.

What this amendment does is send the right message to Wall Street, to the stock market and the international markets. And why? Because the message that the majority party of the House and Senate sent 10 days ago was a devastating message. It said, by even reducing the target from $36 billion, we were going to achieve that target two-thirds with revenue increases. That is a bad message, not just in fact but in fancy. It says there is no discipline in this House, there is no readiness to face up to problems, and there is no desire to face up to the enormity of the deficit.

My second message here is, I believe, equally important. The markets saw that message about deficit reduction as being a message about protectionism. If we talk to the people who watch the markets carefully, they will tell us that it was a double-barreled message. It was not just a budget message that was sent through this reconciliation bill; it was a message that said this House would not stand up to the protectionist forces that are driving portions of the trade bill. And what happened in the 1930's? Protectionism and increased taxes triggered a worldwide depression that we must protect our constituents from.

Mr. GRAY of Pennsylvania. Mr. Chairman, I yield 2 minutes to the distinguished gentleman from Delaware [Mr. CARPER].

Mr. CARPER. Mr. Chairman, as I walked over here this evening trying to sort out in my head what I might say, I thought about this. I rise first of all in opposition to the Republican substitute, but as I walked over here, I was inclined to simply say this: I did not know whether I should talk in favor of certain aspects of the Republican substitute and against others, or whether I should talk in favor of certain aspects of the Democratic plan and against others. But I think what I am going to do is take a positive approach and say that I wish there were some way that we could take part of what the gentleman from Illinois [Mr. MICHEL] is offering and we could take part of what the majority is offering, and I think we would have the beginning or the makings of a pretty darned good plan.

What we would have is basically this: we would have a deficit reduction plan that would include roughly $11 billion in spending reductions from a freeze, saying we would spend the same next year or this year as we spent last year, $11 billion by freezing discretionary spending at last year's levels. We would have, I believe, roughly $4 to $5 billion in savings from entitlement programs. We would have roughly $12 billion in new revenues. We would have probably $2 billion to $3 billion in savings then from interest on the debt by reducing our interest on the debt.

If we add it up, it adds up pretty close to $30 billion. I have not sat down and actually done that this evening, but it is about $30 billion. The best part about it is that it would be real. It would not be smoke and mirrors. These would be real savings.

I suspect that the negotiations between the Congress and the White House have broken up for the day, but if anybody is tuned in, let me say this: I know we have a couple of Members on the floor here who are serving as part of that team. I would ask that they take this, as those negotiations begin again tomorrow or this weekend or next Monday, into consideration, because they might want to take that back. I think we have there the elements of a compromise. We borrow from the best of both plans. I think it is worth considering. I think it might very well be worth doing.

Mr. Chairman, I thank the gentleman from Pennsylvania for the time.

Mr. MICHEL. Mr. Chairman, I yield such time as he may consume to the gentleman from New York [Mr. SOLOMON].

Mr. SOLOMON. Mr. Chairman, I rise in support of the Michel substitute and in opposition to the legislation.

Mr. Chairman, even though I vigorously oppose this measure because it guarantees tax increases without guaranteeing budget cuts, I do support the sections pertaining to veterans. Once again, the Committee on Veterans' Affairs has done its part on behalf of veterans to reduce the Federal deficit which hurts all Americans, not just veterans. We have actually saved $22 million more than instructed over 3 years—$112 million instead of $90 million.

As SONNY MONTGOMERY, the distinguished chairman of the Committee on Veterans' Affairs, points out, veterans are willing to sacrifice for the good of our great country. Many of them made sacrifices far beyond the call of duty while wearing the uniform of our Armed Forces, and now a grateful Nation compensates them for their disabilities.

But they do not demand that they receive their due no matter what. They are still patriotic and responsible. All they ask is that others be willing to join them in accepting reduced benefits, if benefits are to be reduced as part of the overall effort to reduce the deficit. If they are being unreasonable, I can't figure out how.

Consequently, Mr. Chairman, I, for one, absolutely will not agree to veterans' benefits being treated any differently than any other benefit, when it comes to reductions. Nobody has a stronger claim on the Federal dollar than veterans, and if any attempt is made to deal with veterans unfairly, I am confident I would have a lot of company in the fight against it.

The Committee on Veterans' Affairs has held the line year after year on spending. In inflation adjusted dollars, the VA's health care budget has not increased in more than 10 years, and I'm more than willing to compare that record to any agency or department in the entire Federal Government.

Again, as my good friend from Mississippi points out, and it bears repeating, veterans' programs have not caused the budget crisis. Yet veterans will do their part to get Federal spending under control, and their part of this reconciliation act confirms it.

Mr. GRAY of Pennsylvania. Mr. Chairman, I yield 3 minutes to the gentleman from Texas [Mr. STENHOLM].

Mr. STENHOLM. Mr. Chairman, I am tempted to rise in support of the Carper amendment at this time because I think he just put his finger right on top of the problem. But I do rise in support of the Michel amendment for one major reason.

Mr. MICHEL. Mr. Chairman, will the gentleman yield?

Mr. STENHOLM. I am happy to yield to the gentleman from Illinois.

Mr. MICHEL. Mr. Chairman, am I not correct that the gentleman from Texas requested a rule that would for all practical purposes have provided for about that kind of mix, because the gentleman is wedded to having probably an equal mix between revenues and expenditures, and, frankly, it might have been surprising to see what support there might have been for that proposition.

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The gentleman is totally correct. We were denied that opportunity to offer the amendment. The next best thing is to support the gentleman from Illinois in the gentleman's attempt to do exactly the same thing.

The reason I support the gentleman is because the gentleman has been 100 percent in his voting on spending bills.

We have had 23 spending bills before this body this year on appropriations, and that is the time when we in this body can have an effect on spending.

If we assume a 70 is a passing grade, as our children in schools must, the Members must vote 70 percent of the time for cutting spending when there is the opportunity, and 19 of my fellow Democrats passed, 120 Republicans passed, a total of 139.

The chairman of the Committee on the Budget was totally correct in his analysis of the problem that we have in this body. The rhetoric tonight really does not fit the problem. We have had a lot about taxes in the Democratic package, and I support the taxes in the Democratic package, not that I agree with every one, but the revenue I support.

The President had in his budget $8 billion, so we are fussing about $4 billion. I ask all of the Members, is all of the rhetoric we have heard 100-percent accurate?

We are finally toning down the rhetoric and talking about where we really are. The Democratic package, it is $12.2 billion in spending cuts, and in the Michel substitute it is 16.7, and I am going to vote for the Michel amendment, because it is the closest I can do to cutting spending, and that is really the problem.

If we take 12.4 and 16.7 in the Michel amendment, that is $4½ billion in total spending out of a trillion and $66 billion budget.

I ask the Members on both sides, as we wind down the debate, is it really helpful for the Members to have some of the rhetoric that we are having pointing the fingers at each other when we are only $4 billion apart on revenue between the President and the Congress, and we are $4½ billion apart in spending?

My point is, we have got to do more on spending if we are going to get the budget under control. We have not shown in our votes on either side of the aisle that we are ready to do that yet.

Vote for the Michel amendment and get another $4½ billion in spending cuts.

The CHAIRMAN. The gentleman from Illinois [Mr. MICHEL] has 6½ minutes remaining, and the gentleman from Pennsylvania [Mr. GRAY] has 16 minutes remaining.

Mr. GRAY of Pennsylvania. I would like to inquire of the Chair who has the right of closing on this amendment.

The CHAIRMAN. The gentleman from Pennsylvania [Mr. GRAY], as chairman of the committee has the right to close debate.

Mr. MICHEL. Mr. Chairman, I yield 3 minutes to the gentleman from Pennsylvania [Mr. WALKER].

Mr. WALKER. Mr. Chairman, I thank the gentleman for yielding me this time.

I rise in support of the gentleman's amendment. The gentleman from Pennsylvania [Mr. GRAY], the chairman of the Committee on the Budget, described some Members a little while ago as being surprised about what the Members find in some of these packages.

I discovered earlier today that there were some Members who were surprised to find that in this package, there is a pay increase for Members of Congress, because as soon as I mentioned that on the floor, the phones in my office began to ring off the hook wondering what it was I talking about.

Let me say it again. There is a $2,700 pay increase for Members of Congress in the bill. Members ought to know that when the Members are voting on it.

The Michel amendment does not speak to that in any way. The Michel amendment does not contain a pay increase, or it does not speak to the pay increase, but speaks to other areas of the bill. It is a perfecting amendment.

In voting for the Michel amendment, Members are not voting for a pay increase. If you vote for final passage of this, whether with or without the Michel amendment, you are in fact voting for a pay increase.

Earlier in this Congress we passed a cost-of-living increase, and then we passed a $12,000 increase. This would be the third pay increase in this year.

Our salaries will go with this pay increase from $89,500 to $92,000. I would suggest that some of the public may not understand that.

If the Members believe that deficit reduction means raising our own salaries, then vote for this bill. If the Members think that a pay increase for ourselves does not sound much like deficit reduction, I suggest you probably would have to vote against this bill; but please never, never say that no Member told you about the $2,700 pay increase that is in this bill.

It is plain to the voters that you voted to raise their taxes so that you could raise your pay.

I would like to be there for that explanation, because I would like to see the public reaction.

Mr. GRAY of Pennsylvania. Mr. Chairman, I yield 2 minutes to the gentlewoman from California [Mrs. Boxer].

Mrs. BOXER. Mr. Chairman, I thank the gentleman for yielding me this time.

Mr. Chairman, I oppose the Michel amendment. First of all, it is really a mindless way to cut the deficit, across the board. I do not know about Members who are supporting this amendment, but I was sent here to make some tough choices, and it is not easy to do that. We have got to do it.

I was not sent here to close my eyes, hold my ears, and let some other Member just slash equally across the board. There is another problem with the Michel amendment.

It may look like it is treating domestic spending and military spending equally, but it is not, because one has to think of what has come before.

What we have seen in the last 6 years is after inflation, military spending has gone up 40 percent. It gets frozen in the Michel amendment.

Domestic spending, on the other hand, has gone down 20 percent after inflation. It gets treated in the same way. It makes no sense.

It is a slaughter of domestic programs.

Across-the-board cuts, let us talk about AIDS research where we have thousands who have died, 23,000, and maybe 2 million people infected with the virus.

We are going to go back to last year's level when even the President said this is the No. 1 health priority, and we should increase spending dramatically.

Cancer research, narcotics control, air traffic control, these are areas where we should not just close our eyes and hold our ears, and cut across the board, so for those reasons I strongly urge defeat.

I think this is an irresponsible way to cut the deficit. Also, the fact that everything is coming out of the spending side, very few revenues, it is going to wreck havoc on the economy; and I think Wall Street is watching, and Wall Street would not like this approach.

Let me give you some examples of programs which would be affected if we let this amendment pass:

Compensatory education programs for disadvantaged children would be cut despite this program's track record in improving reading and math scores for low-income children.

Appropriations for Head Start would be reduced; estimates indicate that 50,000 fewer children would be served if the cuts under the Michel amendment were implemented.

The WIC Program serving low income pregnant women, infants, and children would have to terminate service to 125,000 recipients, despite the fact that the program has been shown to reduce infant mortality.

Funding for AIDS, a serious public health crisis, will be held to last year's level cutting back a $500 million necessary funding increase. This will preclude initiation of much needed research, prevention, and treatment programs while thousands of Americans die.

Mr. Chairman, these are just a few examples of programs which will be adversely impacted if we pass this disastrous substitute. Also think of the impact of such cuts on our air traffic control system, our toxic waste clean up and needed drug abuse prevent programs.

This amendment, my friends, is a disaster. We must defeat it!

Mr. GRAY of Pennsylvania. Mr. Chairman, I yield 2 minutes to the gentleman from Texas [Mr. Frost].

Mr. FROST. Mr. Speaker, I rise in opposition to the Michel substitute, and we should be very clear about what we have before the Members.

When the Members take an across-the-board approach, we do in fact affect some very valuable, important programs that even members of the minority would recognize are valuable.

What we have tried to do in developing the budget resolution throughout this year is to cut those programs that deserve to be cut, and to increase those programs that are in the national interest.

I would like to talk a little bit about programs in the health area. I chair the health task force for the Committee on the Budget.

The Michel amendment/substitute, if it is adopted, would have the following effect on health programs:

It would reduce AIDS funding by $14 million. It would reduce VA medical care by $392 million.

It would reduce alcohol, drug abuse and mental health funding by $44 million.

It would reduce funding for the Centers for Disease Control by $21 million.

It would reduce funding for maternal and child health by $20 million.

It would reduce funding for community health centers by $11 million, and reduce funding for Indian health by $35 million, and reduce Medicare administrative costs by $95 million, priority programs for a country that is concerned about the health care of its citizens.

On the other hand, what we have before the Members in our reconciliation package is a balanced approach containing half revenues and containing half cuts.

The Michel approach wipes out virtually all of the revenues in the package pending before the House. We have presented a balanced approach that protects those programs that are important to the health of this country.

Mr. MICHEL. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I wish to respond to the comments of both the gentlewoman from California and the gentleman from Texas with respect to the effect of my amendment.

Neither of those comments have any basis in fact.

The second paragraph of my amendment reads:

REPORT BY COMMITTEE ON APPROPRIATION.—(1) Before the close of the fifth calendar day beginning after the date of enactment of this section and except to the extent provided by paragraph (2), the Committee on Appropriations of the House of Representatives shall subdivide among its subcommittees the allocation of discretionary budget authority and corresponding budget outlays for fiscal year 1988 allocated to it by House Report 100-201 as reduced by subsection (a).

What this does is frankly, calls for a freeze of last year's level of spending, discretionary accounts period, not line items.

What it calls upon is the Committee on Appropriations, and under a new allocation of 302(b) allocations, to go back and rework the figures and bring up figures that conform with this year's level of total spending, not by individual line items.

They still can exercise their authority, and that is the way to make real savings. In the absence of that, we are piling on additional spending at the very time when every Member says we ought to be cutting. We are not cutting. We are freezing at this year's level of spending.

Mrs. BOXER. Mr. Chairman, will the gentleman yield?

Mr. MICHEL. I yield to the gentlewoman from California.

Mrs. BOXER. Mr. Chairman, I thank the gentleman for yielding to me.

I would like to say that I have great respect for the gentleman's opinion. I just disagree with the gentleman, because what is going to happen is, we are going to have cancer versus AIDS versus TB versus hemophiliacs, and that is what we are doing.

We need that funding for health. We do not want to pit one against the other.

Mr. MICHEL. The subcommittees have already made some determination with respect to priorities.

In the AIDS area alone, I remember when I had NIH under my jurisdication in HEW. We are now up to nearly $900 million.

If I were on that subcommittee today, I would still be keeping that figure level and reducing something else without that priority, and that is exactly what would happen under the terms of my amendment.

Mr. Chairman, I yield back the balance of my time.

Mr. GRAY of Pennsylvania. Mr. Speaker, I yield myself such time as I may consume.

I think a lot has been said about the Michel amendment. The thing that all of the Members care about is a downpayment on the deficit and sending a signal.

The Michel amendment, if the Members vote for it, is going to do about $18.5 billion, and still does not hit $23 billion, which is the minimum to avoid sequestration.

That is not going to be the right signal. In terms of equity, it has been pointed out that a freeze as constructed in this amendment will require some very negative things in choices with regard to high-priority areas, like FAA operation, compensatory education, AIDS research, VA medical care which I know none of the Members want, but that is what is there.

There is some question clearly as we debated today about the baseline not being equitable, and that most of the reductions will come out of the domestic, very little out of the Pentagon side.

Finally, in conclusion, let me say that I am sorry to hear the Members bring out that old issue that we sort of trot out when everything else fails; and that is pay raise, pay raise, pay raise.

Mr. Speaker, every Member here knows that we fight that pay raise issue on appropriations bills; and therefore, we do not need to get diverted.

I would simply say to the Members that the issue here is whether or not the Members want an equitable package that achieves the target, or do the Members want a package that misses the target by over $4 billion, and thus we will have sequestration?

☐ 1905

Did you want a package that says to the appropriators, "Here is your ceiling, it is your determination, appropriators, what to do and how to distribute it because your committee has had thousands of hearings, and is knowledgeable of what the priorities ought to be, whether we ought to cut FAA or whether we ought to cut highways; whether we ought to cut education, or whether we ought to cut transportation." Whereas, in the Michel amendment, that choice, that latitude for the appropriators is not there.

So, Mr. Chairman, I would simply urge a no vote on the Michel substitute. It does not reach the target, it is not equitable, and it is not fair.

In conclusion I would say to my colleagues, let us show some leadership and vote for the proposal that puts us on a course to avoid sequestration with a real $23 billion of deficit reduction.

Mr. Chairman, I yield back the balance of my time.

Mr. CONTE. Mr. Chairman, I am compelled to rise in opposition to the substitute amendment offered by my good friend BOB MICHEL. I do so for the same reason that I opposed any reconciliation package at this time: Because it would undermine what we are trying to accomplish at the economic summit conference. It is important for us to keep all options open for reducing the deficit—and some of the measures which are encompassed by the Michel substitute are included among those options. As I said on the floor earlier today, everything save Social Security is on the table. To preclude any of our options by premature action will serve neither the economy nor the people, both of which it is our duty to preserve. The sine qua non of budget reduction is that Congress and the President come to a mutually agreeable plan. In the first and last analysis, this is the only way to avoid sequestration. The change in the economy has brought a corresponding change in the political climate, and the congressional agenda should reflect that change. I must oppose the amendment, and ask that we take the practical approach by working through the summit conference.

Mr. RAY. Mr. Chairman, I rise in support of the Michel amendment. I have long believed that we should not increase taxes until we have implemented a cap on spending. The Michel amendment puts such a cap in place by freezing fiscal year 1988 appropriations at the fiscal year 1987 level.

An increase in taxes without a cap on spending merely leads to more spending. I regret that H.R. 3545 relies far too heavily on revenue increases and far too little on spending reductions for me to be able to support it.

If the Michel amendment is not adopted, I will be forced to vote against this budget reconciliation legislation. While I support deficit reduction, I do not believe that this is the best way to do it. I am hopeful that the budget summit between the President and congressional leaders will lead to a deficit reduction plan which I can support. One which will be acceptable to the American people.

The CHAIRMAN. All time has expired.

The question is on the amendments offered by the gentleman from Illinois [Mr. MICHEL].

The question was taken; and the Chairman announced that the noes appeared to have it.

PARLIAMENTARY INQUIRY

Mr. MYERS of Indiana. Mr. Chairman, I have a parliamentary inquiry.

The CHAIRMAN. The gentleman will state his parliamentary inquiry.

Mr. MYERS of Indiana. Mr. Chairman, in the event that the Michel amendment is defeated, must the next vote be a 15-minute vote? Can it be reduced to 5 minutes?

The CHAIRMAN. The answer to the question is no, it cannot be reduced to 5 minutes.

RECORDED VOTE

Mr. MICHEL. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device and there were—ayes 182, noes 229, not voting 22, as follows:

[Roll No. 391]

AYES—182

Archer
Armey
Baker
Ballenger
Barnard
Bartlett
Barton
Bateman
Bentley
Bereuter
Bilirakis
Bliley
Boehlert
Boulter
Broomfield
Brown (CO)
Buechner
Bunning
Burton
Byron
Callahan
Chandler
Cheney
Clinger
Coats
Coble
Coleman (MO)
Combest
Cooper
Coughlin
Craig
Crane
Daniel
Dannemeyer
Darden
Daub
Davis (IL)
Davis (MI)
DeLay
DeWine
Dickinson
DioGuardi
Dornan (CA)
Dreier
Duncan
Edwards (OK)
Emerson
Fawell
Fields
Fish
Frenzel
Gallegly
Gallo
Gekas
Gilman
Gingrich
Glickman
Goodling
Gradison
Grandy
Green
Gregg
Gunderson
Hall (TX)
Hammerschmidt
Hansen
Hastert
Hefley
Henry
Herger
Hiler
Holloway
Hopkins
Horton
Houghton
Hubbard
Hunter
Hutto
Hyde
Inhofe
Ireland
Jeffords
Johnson (CT)
Kasich
Kolbe
Konnyu
Kyl
Lagomarsino
Latta
Leach (IA)
Leath (TX)
Lent
Lewis (CA)
Lewis (FL)
Lightfoot
Livingston
Lott
Lowery (CA)
Lujan
Lukens, Donald
Lungren
Mack
Marlenee
Martin (IL)
Martin (NY)
McCandless
McCollum
McDade
McEwen
McGrath
McMillan (NC)
Meyers
Michel
Miller (OH)
Miller (WA)
Molinari
Montgomery
Moorhead
Myers
Nielson
Oxley
Packard
Parris
Pashayan
Petri
Porter
Pursell
Quillen
Rahall
Ravenel
Ray
Regula
Rhodes
Ridge
Rinaldo
Ritter
Roberts
Rogers
Roth
Roukema
Rowland (CT)
Saiki
Saxton
Schaefer
Schneider
Schuette
Sharp
Shaw
Shays
Shumway
Shuster
Skeen
Slattery
Slaughter (VA)
Smith (NE)
Smith (NJ)
Smith (TX)
Smith, Denny (OR)
Smith, Robert (NH)
Snowe
Solomon
Stangeland
Stenholm
Stump
Sundquist
Sweeney
Swindall
Tallon
Tauke
Tauzin
Taylor
Upton
Vander Jagt
Volkmer
Vucanovich
Walker
Weber
Weldon
Whittaker
Wolf
Wortley
Young (FL)

NOES—229

Ackerman
Akaka
Alexander
Anderson
Andrews
Annunzio
Anthony
Applegate
Aspin
Atkins
AuCoin
Bates
Beilenson
Bennett
Berman
Bevill
Bilbray
Boggs
Boland
Bonior
Bonker
Borski
Bosco
Boucher
Boxer
Brennan
Brooks
Brown (CA)
Bruce
Bryant
Bustamante
Campbell
Cardin
Carper
Carr
Chapman
Chappell
Clarke
Clay
Coelho
Coleman (TX)
Collins
Conte
Conyers
Coyne
Crockett
de la Garza
DeFazio
Dellums
Derrick
Dicks
Dingell
Dixon
Donnelly
Dorgan (ND)
Dowdy
Downey
Durbin
Dwyer
Dymally
Dyson
Early
Eckart
Edwards (CA)
English
Erdreich
Espy
Evans
Fascell
Feighan
Flake
Flippo

Florio
Foglietta
Foley
Ford (MI)
Ford (TN)
Frank
Frost
Garcia
Gaydos
Gejdenson
Gibbons
Gonzalez
Gordon
Grant
Gray (PA)
Guarini
Hall (OH)
Hamilton
Harris
Hatcher
Hawkins
Hayes (IL)
Hayes (LA)
Hefner
Hertel
Hochbrueckner
Howard
Hoyer
Huckaby
Hughes
Jacobs
Jenkins
Johnson (SD)
Jones (NC)
Jones (TN)
Jontz
Kanjorski
Kaptur
Kastenmeier
Kennedy
Kennelly
Kildee
Kleczka
Kolter
Kostmayer
LaFalce
Lancaster
Lantos
Lehman (CA)
Lehman (FL)
Leland
Levin (MI)
Levine (CA)
Lewis (GA)
Lloyd
Lowry (WA)
Luken, Thomas
MacKay
Manton
Markey
Martinez
Matsui
Mavroules
Mazzoli
McCloskey
McCurdy
McHugh
McMillen (MD)
Mfume
Mica
Miller (CA)
Mineta
Moakley
Mollohan
Moody
Morella
Morrison (CT)
Morrison (WA)
Mrazek
Murtha
Nagle
Natcher
Neal
Nelson
Nichols
Nowak
Oakar
Oberstar
Obey
Olin
Ortiz
Owens (NY)
Owens (UT)
Panetta
Patterson
Pease
Pelosi
Penny
Pepper
Perkins
Pickett
Pickle
Price (IL)
Price (NC)
Rangel
Richardson
Robinson
Rodino
Roe
Rostenkowski
Rowland (GA)
Roybal
Russo
Sabo
Savage
Sawyer
Scheuer
Schroeder
Schumer
Sikorski
Sisisky
Skaggs
Skelton
Slaughter (NY)
Smith (IA)
Solarz
Spratt
St Germain
Staggers
Stallings
Stark
Stokes
Stratton
Studds
Swift
Synar
Thomas (GA)
Torres
Torricelli
Towns
Traxler
Udall
Valentine
Vento
Visclosky
Walgren
Watkins
Weiss
Wheat
Whitten
Williams
Wilson
Wise
Wolpe
Wyden
Yates
Yatron

NOT VOTING—22

Badham
Biaggi
Courter
Fazio
Gephardt
Gray (IL)
Kemp
Lipinski
Madigan
Murphy
Roemer
Rose
Schulze
Sensenbrenner
Smith (FL)
Smith, Robert (OR)
Spence
Thomas (CA)
Traficant
Waxman
Wylie
Young (AK)

□ 1915

Mr. VOLKMER changed his vote from "no" to "aye."

So the amendments were rejected.

The result of the vote was announced as above recorded.

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly the Committee rose; and the Speaker, having assumed the chair, Mr. SWIFT, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 3534) to provide for reconciliation pursuant to section 4 of the concurrent resolution on the budget for the fiscal year 1988, pursuant to House Resolution 298, he reported the bill back to the House with sundry amendments considered as adopted by the Committee of the Whole.

The SPEAKER. Under the rule, the previous question is ordered.

The amendments in section 1 of House Report 100-411 are considered as adopted in the House.

The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER. The question is on the passage of the bill.

The question was taken; and the Speaker announced that the ayes appeared to have it.

Mr. LATTA. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 206, nays 205, not voting 22, as follows:

[Roll No. 392]

YEAS—206

Ackerman
Akaka
Alexander
Anderson
Andrews
Annunzio
Anthony
Aspin
Atkins
AuCoin
Bates
Beilenson
Bennett
Berman
Boggs
Boland
Bonior
Bonker
Borski
Bosco
Boucher
Boxer
Brennan
Brooks
Brown (CA)
Bruce
Bryant
Bustamante
Campbell
Cardin
Chapman
Chappell
Clarke
Clay
Coelho
Coleman (TX)
Collins
Conyers
Cooper
Coyne
Crockett
Darden
de la Garza
Dellums
Derrick
Dicks
Dingell
Dixon
Donnelly
Dorgan (ND)
Dowdy
Downey
Durbin
Dwyer
Dymally
Dyson
Early
Edwards (CA)
Espy
Evans
Fascell
Feighan
Flake
Flippo
Florio
Foglietta
Foley
Ford (MI)
Ford (TN)
Frank
Frost
Garcia
Gaydos
Gejdenson
Gibbons
Glickman
Gonzalez
Gordon
Grant
Gray (PA)
Guarini
Hall (OH)
Hatcher
Hawkins
Hayes (IL)
Hefner
Hertel
Hochbrueckner
Howard
Hoyer
Hughes
Hutto
Jacobs
Jeffords
Jenkins
Jones (NC)
Jones (TN)
Jontz
Kanjorski
Kaptur
Kastenmeier
Kennedy
Kennelly
Kildee
Kleczka
Kostmayer
Lancaster
Lantos
Leath (TX)
Lehman (CA)
Lehman (FL)
Leland
Levin (MI)
Levine (CA)
Lewis (GA)
Lloyd
Lowry (WA)
MacKay
Manton
Markey
Martinez
Matsui
Mavroules
McCloskey
McCurdy
McHugh
Mfume
Mica
Mineta
Moakley
Mollohan
Montgomery
Moody
Morrison (CT)
Mrazek
Murtha
Nagle
Natcher
Neal
Nelson
Nowak
Oakar
Oberstar
Obey
Olin
Ortiz
Owens (NY)
Owens (UT)
Panetta
Pease
Pelosi
Pepper
Perkins
Pickett
Pickle
Price (IL)
Rahall
Rangel
Rodino
Roe
Rostenkowski
Rowland (GA)
Roybal
Sabo
Savage
Sawyer
Scheuer
Schroeder
Schumer
Sharp
Sikorski
Sisisky
Skaggs
Slattery
Smith (FL)
Smith (IA)
Solarz
Spratt
St Germain
Staggers
Stokes
Stratton
Studds
Swift
Synar
Thomas (GA)
Torres
Torricelli
Towns
Traxler
Udall
Valentine
Vento
Visclosky
Volkmer
Walgren
Watkins
Weiss
Wheat
Whitten
Williams
Wilson
Wise
Wolpe
Wyden
Yates

NAYS—205

Applegate
Archer
Armey
Ballenger
Barnard
Bartlett
Barton
Bateman
Bentley
Bereuter
Bevill
Bilbray
Bilirakis
Bliley
Boehlert
Boulter
Broomfield
Brown (CO)
Buechner
Bunning
Burton
Byron
Callahan
Carper
Carr
Chandler
Cheney
Clinger
Coats
Coble
Coleman (MO)
Combest
Conte
Coughlin
Craig
Crane
Daniel
Dannemeyer
Daub
Davis (IL)
Davis (MI)
DeFazio
DeLay
DeWine
Dickinson
DioGuardi
Dornan (CA)
Dreier
Duncan
Eckart
Edwards (OK)
Emerson
English
Erdreich
Fawell
Fields
Fish
Frenzel
Gallegly
Gallo
Gekas
Gilman
Gingrich
Goodling
Gradison
Grandy
Green
Gregg
Gunderson
Hall (TX)
Hamilton
Hammerschmidt
Hansen
Harris
Hastert
Hayes (LA)
Hefley
Henry
Herger
Hiler
Holloway
Hopkins
Horton
Houghton
Hubbard
Huckaby
Hunter
Hyde
Inhofe
Ireland
Johnson (CT)
Johnson (SD)
Kasich
Kolbe
Konnyu
Kyl
LaFalce
Lagomarsino
Latta
Leach (IA)
Lent
Lewis (CA)
Lewis (FL)
Lightfoot
Livingston
Lott
Lowery (CA)
Lujan
Luken, Thomas
Lukens, Donald
Lungren
Mack
Marlenee
Martin (IL)
Martin (NY)
Mazzoli
McCandless
McCollum
McDade
McEwen
McGrath
McMillan (NC)
McMillen (MD)
Meyers
Michel
Miller (CA)
Miller (OH)
Miller (WA)
Molinari
Moorhead
Morella
Morrison (WA)
Myers
Nichols
Nielson
Oxley
Packard
Parris
Pashayan
Patterson
Penny
Petri
Porter
Price (NC)
Pursell
Quillen
Ravenel
Ray
Regula
Rhodes
Richardson
Ridge
Rinaldo
Ritter
Roberts
Robinson
Roemer
Rogers
Roth
Roukema
Rowland (CT)
Russo
Saiki
Saxton
Schaefer
Schneider
Schuette
Shaw
Shays
Shumway
Shuster
Skeen
Skelton
Slaughter (NY)
Slaughter (VA)
Smith (NE)
Smith (NJ)
Smith (TX)
Smith, Denny (OR)
Smith, Robert (NH)
Snowe
Solomon
Stallings
Stangeland
Stark
Stenholm
Stump
Sundquist
Sweeney
Swindall
Tallon
Tauke
Tauzin
Taylor
Upton
Vander Jagt
Vucanovich
Walker
Weber
Weldon
Whittaker
Wolf
Wortley
Yatron
Young (FL)

NOT VOTING—22

Badham
Baker
Biaggi
Courter
Fazio
Gephardt
Gray (IL)
Kemp
Kolter
Lipinski
Madigan
Murphy
Rose
Schulze
Sensenbrenner
Smith, Robert (OR)
Spence
Thomas (CA)
Traficant
Waxman
Wylie
Young (AK)

□ 1930

The Clerk announced the following pairs:

On this vote:

Mr. Gephardt for, with Mr. Kemp against.

Mr. Fazio for, with Mr. Thomas of California against.

Mr. Traficant for, with Mr. Courter against.

Mr. Gray of Illinois for, with Mr. Young of Alaska against.

Mr. Waxman for, with Mr. Spence against.

Mr. CHAPMAN changed his vote from "no" to "aye."

The SPEAKER. Are there other Members in the Chamber who desire to vote?

If there are other Members who desire to vote we will accommodate their vote.

Mr. LOWRY of Washington. Mr. Speaker, how am I recorded?

The SPEAKER. The gentleman from Washington is recorded as voting "aye."

Mr. BONIOR of Michigan. Mr. Speaker, how am I recorded?

The SPEAKER. We are proceeding under regular order. The Chair has been advised that there are Members on the way who desire to vote. The Chair will accommodate their wishes.

Mr. BONIOR of Michigan. Mr. Speaker, how am I recorded?

The SPEAKER. The gentleman from Michigan is recorded as voting "aye."

Mr. FROST. Mr. Speaker, how am I recorded?

The SPEAKER. The gentleman from Texas is recorded as voting "aye."

Mr. FORD of Michigan. Mr. Speaker, how am I recorded?

The SPEAKER. The Chair will announce that there is no procedure for Members to ask how they are recorded. They may look and see.

The Chair had been advised that there were other Members en route to the Chamber. If there are no other Members who desire to vote, are there any Members in the Chamber who desire to change their votes?

If there are no other Members in the Chamber who desire to vote or to change their votes, all time has expired.

If there are no other Members in the Chamber who desire to vote, or if there are no other Members who desire to change their vote, on this vote the yeas are 206.

PARLIAMENTARY INQUIRIES

Mr. GINGRICH. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER. The gentleman will state it.

Mr. GINGRICH. Mr. Speaker, I would inquire of the Parliamentarian and the Chair, once the Speaker has said the vote is closed and all time has expired, and that is on the tape, we have it on the video tape, once that has been done how can it be reopened?

The SPEAKER. The Chair will state that it always has been the disposition of the Chair and of every occupant of which the present occupant is aware to permit any Member who is in the Chamber to vote or change his vote so long as he desires to do so and is in the Chamber. The Chair had been advised that there were other Members en route and therefore the Chair was holding open and still holds open, if Members wish to change their votes or other Members wish to vote.

Mr. GINGRICH. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER. The gentleman will state it.

Mr. GINGRICH. Mr. Speaker, is it my understanding and I want to make sure that on our side of the aisle we heard the Speaker correctly, that the Speaker has offered to hold open the vote until those Members who have not yet voted but who wish to vote are recorded or may change their vote?

The SPEAKER. The Chair will respond to the gentleman's inquiry. It has been the policy——

Mr. GINGRICH. Mr. Speaker, I apologize. I do not have order and I cannot quite hear the Chair.

The SPEAKER. The House will be in order.

The Chair will respond to the gentleman's inquiry. It always has been to this occupant of the chair's knowledge a policy of the Chair to honor the desire of any Member in the Chamber to vote or to change his vote and if no other Members desire to vote or to change their votes all time has expired. On this vote the yeas are 206, the nays are 205.

Mr. EDWARDS of Oklahoma. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER. The gentleman will state his parliamentary inquiry. If it is a parliamentary inquiry, the Chair will entertain it.

Mr. EDWARDS of Oklahoma. Mr. Speaker, I do have a parliamentary inquiry. I would say the Speaker did not answer the last one. We understand what you have stated as the policy of the Chair.

But as a parliamentary matter, after the Chair has said, "All time has expired," which the Chair did, can you then reopen the vote?

The SPEAKER. The Chair will respond. On more than one occasion, the present occupant of the chair and in the Chair's observation other occupants in the chair have permitted Members to vote so long as those Members are in the Chamber and obviously desiring to cast a vote. That is the policy of the Chair.

Mr. EDWARDS of Oklahoma. Further parliamentary inquiry.

The SPEAKER. The Chair will ask if any Member desires to vote or desires to change his vote? And if not all time has expired.

□ 1955

The yeas are 206, and the nays are 205. The bill is passed. Without objection, a motion to reconsider is laid on the table.

REQUEST FOR GENERAL LEAVE

Mr. GRAY of Pennsylvania. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days to revise and extend their remarks, and to include extraneous material on the bill just passed.

The SPEAKER. Without objection, so ordered.

The Chair lays before the House——

Mr. WALKER. I object, Mr. Speaker.

Mr. FRENZEL. There was an objection, Mr. Speaker.

Mrs. JOHNSON of Connecticut. Mr. Speaker, the House is not in order. We cannot hear.

The SPEAKER. Was there an objection?

Mr. FRENZEL. There was an objection, Mr. Speaker.

The SPEAKER. Let the Chair understand. The request was that Members have 5 legislative days in which to revise and extend their remarks.

Was that request objected to?

Mr. WALKER. Yes; I objected, Mr. Speaker.

The SPEAKER. Objection is heard.

ENROLLED JOINT RESOLUTION SIGNED

Mr. ANNUNZIO, from the Committee on House Administration, reported that that committee had examined and found a truly enrolled joint resolution of the House of the following title, which was thereupon signed by the Speaker:

H.J. Res. 309. Joint resolution providing support for the Civic Achievement Award Program in honor of the Office of Speaker of the House of Representatives.

REPORT OF SEVERAL DEFERRALS OF BUDGET AUTHORITY—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES (H. DOC. NO. 100-223)

The SPEAKER pro tempore (Mr. DONNELLY) laid before the House the following message from the President of the United States; which was read, and together with the accompanying papers, without objection, referred to the Committee on Appropriations and ordered to be printed:

(For message, see proceedings of the Senate of today, Thursday, October 29, 1987.)

PROHIBITION OF IMPORTATION OF GOODS AND SERVICES OF IRANIAN ORIGIN—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES

The SPEAKER pro tempore laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, without objection, referred to the Committee on Foreign Affairs:

(For message, see proceedings of the Senate of today, Thursday, October 29, 1987.)

☐ 2000

ADJOURNMENT

Mr. WALKER. Mr. Speaker, I have a privileged motion which I send to the desk.

The SPEAKER pro tempore (Mr. DONNELLY). The Clerk will report the motion.

The Clerk read as follows:

> Mr. WALKER moves that the House do now adjourn.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Pennsylvania [Mr. WALKER].

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

Mr. WALKER. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 258, nays 56, answered "present" 1, not voting 118, as follows:

[Roll No. 393]

YEAS—258

Akaka
Anderson
Anthony
Applegate
Aspin
Atkins
AuCoin
Barton
Bateman
Bates
Beilenson
Bennett
Berman
Bevill
Bilbray
Bilirakis
Boggs
Boland
Bonior
Borski
Boucher
Boulter
Brooks
Brown (CA)
Bruce
Bryant
Bunning
Bustamante
Byron
Callahan
Campbell
Cardin
Carper
Carr
Chandler
Chapman
Cheney
Clarke
Clay
Coats
Coelho
Coleman (TX)
Collins
Combest
Cooper
Coughlin
Coyne
Craig
Crane
Crockett
Davis (MI)
DeFazio
Dellums
Derrick
Dicks
Dingell
DioGuardi
Dixon
Dorgan (ND)
Dreier
Duncan
Durbin
Dymally
Dyson
Early
Eckart
Edwards (CA)
Emerson
English
Erdreich
Espy
Evans
Fawell
Fish
Flake
Flippo
Foley
Ford (MI)
Ford (TN)
Frenzel
Frost
Gallo
Gejdenson
Gekas
Gibbons
Gingrich
Glickman
Gordon
Grandy
Grant
Gray (PA)
Guarini
Gunderson
Hall (OH)
Hall (TX)
Hamilton
Harris
Hastert
Hawkins
Hayes (IL)
Hayes (LA)
Hefner
Herger
Hertel
Hochbrueckner
Holloway
Houghton
Howard
Hoyer
Hubbard
Huckaby
Hughes
Hutto
Ireland
Jenkins
Jones (NC)
Jones (TN)
Jontz
Kanjorski
Kaptur
Kennedy
Kennelly
Kildee
Kleczka
Kostmayer
Lagomarsino
Lancaster
Lantos
Leath (TX)
Lehman (CA)
Lehman (FL)
Leland
Lent
Levin (MI)
Lewis (FL)
Lewis (GA)
Livingston
Lloyd
Lott
Lowery (CA)
Lowry (WA)
Mack
MacKay
Markey
Marlenee
Matsui
Mavroules
McCloskey
McCurdy
McGrath
McHugh
McMillan (NC)
McMillen (MD)
Mfume
Mica
Michel
Miller (CA)
Mineta
Moakley
Mollohan
Montgomery
Moody
Morella
Murtha
Nagle
Natcher
Nelson
Oakar
Oberstar
Obey
Ortiz
Owens (NY)
Owens (UT)
Packard
Panetta
Pashayan
Patterson
Pease
Pelosi
Penny
Pepper
Perkins
Pickett
Pickle
Porter
Price (NC)
Quillen
Rahall
Rangel
Ravenel
Ray
Regula
Rhodes
Rinaldo
Roberts
Rodino
Rogers
Rostenkowski
Roth
Rowland (CT)
Roybal
Sabo
Saiki
Savage
Sawyer
Saxton
Scheuer
Schumer
Sharp
Shaw
Shays
Shumway
Sikorski
Sisisky
Skaggs
Skeen
Slattery
Slaughter (NY)
Slaughter (VA)
Smith (FL)
Smith (NJ)
Snowe
Solarz
Spratt
St Germain
Stallings
Stenholm
Stokes
Stratton
Sundquist
Swift
Tallon
Tauke
Thomas (GA)
Torres
Traxler
Udall
Upton
Valentine
Vander Jagt
Vento
Visclosky
Volkmer
Walker
Watkins
Weber
Weiss
Weldon
Wheat
Whitten
Williams
Wilson
Wise
Wolf
Wolpe
Wortley
Wyden
Yates

NAYS—56

Armey
Bartlett
Bentley
Bereuter
Bosco
Boxer
Brown (CO)
Buechner
Burton
Coble
Conyers
de la Garza
DeLay
DeWine
Donnelly
Dornan (CA)
Edwards (OK)
Feighan
Fields
Frank
Gonzalez
Gregg
Hammerschmidt
Hansen
Hefley
Hopkins
Hunter
Hyde
Johnson (CT)
Konnyu
Leach (IA)
Levine (CA)
Lungren
Martin (NY)
McCollum
Meyers
Miller (OH)
Miller (WA)
Moorhead
Nielson
Ridge
Robinson
Roukema
Schaefer
Schroeder
Schuette
Smith (NE)
Smith, Robert (NH)
Staggers
Stangeland
Stump
Sweeney
Swindall
Vucanovich
Whittaker
Young (FL)

ANSWERED "PRESENT"—1

Jeffords

NOT VOTING—118

Ackerman
Alexander
Andrews
Annunzio
Archer
Badham
Baker
Ballenger
Barnard
Biaggi
Bliley
Boehlert
Bonker
Brennan
Broomfield
Chappell
Clinger
Coleman (MO)
Conte
Courter
Daniel
Dannemeyer
Darden
Daub
Davis (IL)
Dickinson
Dowdy
Downey
Dwyer
Fascell
Fazio
Florio
Foglietta
Gallegly
Garcia
Gaydos
Gephardt
Gilman
Goodling
Gradison
Gray (IL)
Green
Hatcher
Henry
Hiler
Horton
Inhofe
Jacobs
Johnson (SD)
Kasich
Kastenmeier
Kemp
Kolbe
Kolter
Kyl
LaFalce
Latta
Lewis (CA)
Lightfoot
Lipinski
Lujan
Luken, Thomas
Lukens, Donald
Madigan
Manton
Martin (IL)
Martinez
Mazzoli
McCandless
McDade
McEwen
Molinari
Morrison (CT)
Morrison (WA)
Mrazek
Murphy
Myers
Neal
Nichols
Nowak
Olin
Oxley
Parris
Petri
Price (IL)
Pursell
Richardson
Ritter
Roe
Roemer
Rose
Rowland (GA)
Russo
Schneider
Schulze
Sensenbrenner
Shuster
Skelton
Smith (IA)
Smith (TX)
Smith, Denny (OR)
Smith, Robert (OR)
Solomon
Spence
Stark
Studds
Synar
Tauzin
Taylor
Thomas (CA)
Torricelli
Towns
Traficant
Walgren
Waxman
Wylie
Yatron
Young (AK)

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The SPEAKER pro tempore (Mr. DONNELLY). All time has expired.

PARLIAMENTARY INQUIRY

Mr. EDWARDS of Oklahoma. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state his parliamentary inquiry.

Mr. EDWARDS of Oklahoma. Mr. Speaker, you have now announced that all time has expired. I am quite familiar with the policy of this Chair. Under the rules of the House could the Parliamentarian instruct us whether under the rules at this point additional votes may be cast now that the Chair has announced that time has expired?

The SPEAKER pro tempore. The Chair will state that if the Chair sees a Member in the Chamber, the Chair will allow that Member to vote.

Mr. EDWARDS of Oklahoma. Mr. Speaker, I understand the policy.

The SPEAKER pro tempore. Does the gentleman have an additional parliamentary inquiry or point of order?

Mr. EDWARDS of Oklahoma. Mr. Speaker, I am not asking a policy inquiry. I want to know the rules of the House of Representatives. After you have announced that all time has expired, may additional votes be cast or votes be changed?

The SPEAKER pro tempore. The Chair will state that the rules of the House state that the rollcall will be open for a minimum of 15 minutes, and that beyond that it is at the discretion of the Chair.

Mr. EDWARDS of Oklahoma. I thank the Chair, that is all I wanted, was an answer to the question.

The SPEAKER pro tempore. The Chair thanks the gentleman from Oklahoma.

Mrs. BOXER changed her vote from "yea" to "nay."

Mr. FRENZEL changed his vote from "nay" to "yea."

So the motion was agreed to.

The result of the vote was announced as above recorded.

Accordingly (at 8 o'clock and 25 minutes p.m.), the House adjourned until Friday, October 30, 1987, at 10 a.m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

[October 29, 1987] (Second Legislative Day)

2326. A communication from the President of the United States, transmitting amendments to the request for appropriations for fiscal year 1988 for the legislative branch, the Department of Defense-Military and the Department of Health and Human Services, pursuant to 31 U.S.C. 1107 (H. Doc. No. 100-122); to the Committee on Appropriations and ordered to be printed.

2327. A letter from the Director, Defense Security Assistance Agency, transmitting notification of the Department of the Air Force's proposed letter(s) of offer to Saudi Arabia for defense articles estimated to cost $50 million or more (transmittal No. 88-01), pursuant to 10 U.S.C. 118; to the Committee on Armed Services.

2328. A letter from the Director, Defense Security Assistance Agency, transmitting the Department of the Army's proposed letter(s) of offer to Saudi Arabia for defense articles estimated to cost $50 million or more (transmittal No. 88-03), pursuant to 10 U.S.C. 118; to the Committee on Armed Services.

2329. A letter from the Director, Defense Security Assistance Agency, transmitting notification of the Department of the Army's proposed letter(s) of offer to Saudi Arabia for defense articles estimated to cost $120 million (transmittal No. 88-03), pursuant to 22 U.S.C. 2776(b); to the Committee on Foreign Affairs.

2330. A letter from the Director, Defense Security Assistance Agency, transmitting notification of the Department of the Air Force's proposed letter(s) of offer to Saudi Arabia for defense articles and services estimated to cost $502 million (transmittal No. 88-02), pursuant to 22 U.S.C. 2776(b); to the Committee on Foreign Affairs.

2331. A letter from the Director, Defense Security Assistance Agency, transmitting the Department of the Air Force's proposed letter(s) of offer to Saudi Arabia for defense articles estimated to cost $375 million (transmittal No. 88-01), pursuant to 22 U.S.C. 2776(b); to the Committee on Foreign Affairs.

[October 29, 1987] (Second Legislative Day)

H.R. 719: Mr. Marlenee.

H.R. 975: Mr. Donnelly, Mr. Shays, Mr. de Lugo, Mr. Mica, and Mrs. Kennelly.

H.R. 1038: Mr. Solomon.

H.R. 1106: Mr. Perkins, Mr. Gordon, and Mr. Williams.

H.R. 1242: Mr. Coyne, Miss Schneider, and Mr. Clay.

H.R. 1339: Mr. Henry.

H.R. 1437: Mr. Craig.

H.R. 1604: Mr. Hayes of Illinois, Mr. Lagomarsino, and Mrs. Johnson of Connecticut.

H.R. 1638: Mr. Conyers, Mr. Jacobs, Mr. Lehman of Florida, Mr. Rangel, and Mr. Mavroules.

H.R. 1957: Mr. Boland, Mr. Studds, Mr. Frank, Mrs. Boxer, Mr. Clarke, Mr. Markey, Mr. Lantos, Mr. Ray, Mr. Baker, Mr. Sensenbrenner, Mr. Holloway, Mr. Upton, Mr. Williams, Mr. Hunter, Mr. Bonker, Mr. Lent, Mr. Ford of Michigan, Mr. DioGuardi, Mr. Hefner, Mr. Badham, Mr. Houghton, Mr. McCollum, and Mr. Anthony.

H.R. 2052: Mr. Boehlert, Mr. Pease, and Mr. Skeen.

H.R. 2183: Mr. Whitten, Mrs. Schroeder, and Mr. Grandy.

H.R. 2404: Mr. Jeffords, Mr. Atkins, Mr. Duncan, Mrs. Byron, and Mr. Franzel.

H.R. 2609: Mr. Mavroules and Mr. Flake.

H.R. 2694: Mr. Rangel, Mr. Eckart, Mr. Neal, and Mr. Morrison of Connecticut.

H.R. 2709: Mrs. Boxer, Mr. Gejdenson, Ms. Pelosi, and Mr. Torres.

H.R. 2737: Mr. Barton of Texas, Mr. Glickman, Mr. Johnson of South Dakota, Mr. McCurdy, Mr. MacKay, Mr. Neal, Mr. Miller of Washington, Mrs. Vucanovich, Mr. Savage, Mr. Chapman, Mr. Nielson of Utah, Mr. Bonker, Mr. Mrazek, Mr. Slattery, Mr. Roberts, Mr. Sweeney, Mr. Fawell, Mr. Whittaker, and Mr. Skaggs.

H.R. 2953: Mr. Howard, Mr. Lehman of Florida, Mr. Keldee, and Mr. Porter.

H.R. 2977: Mr. Baker, Mr. Chappell, Mr. Lehman of Florida, Mr. Gray of Pennsylvania, Mr. Spratt, Mr. Young of Alaska, Mr. Horton, Mr. Panetta, Mr. Florio Mr. Swindall Mr. Price of Illinois, Mr. Akaka, Mr. DeLay, Mr. Tallon, Mr. Mrazek, Mr. Dwyer of New Jersey, Mr. Berman, Mr. Cooper, Mr. Coats, Mr. Davis of Illinois, Mr. Solomon, Mr. Welgren, and Mr. Bryant.

H.R. 2999: Mr. Waxman.

H.R. 3044: Mr. Rose.

H.R. 3045: Mr. Rose.

H.R. 3071: Mr. Skaggs.

H.R. 3112: Mr. Kolter, Mr. Boehlert, Mr. Pease, and Mr. Richardson.

H.R. 3154: Mr. Mavroules.

H.R. 3228: Mr. Guarini, Mr. Jones of Tennessee, Mrs. Lloyd, Mr. Cooper, and Mr. Staggers.

H.R. 3288: Mr. Mavroules and Mr. Downey of New York.

H.R. 3433: Mr. Goodling.

H.R. 3440: Mrs. Collins.

H.R. 3470: Mr. Wolpe, Mr. Morrison of Washington, Mr. Brown of Colorado, Mr. Chapman, Mr. Obey, Mr. Badham, Mr. Lewis of California, Mr. Jacobs, Mr. Synar, Mr. Weldon, Mr. Grant, Mr. McDade, Mr. Upton, Mr. Borski, Mr. Rowland of Connecticut, Mrs. Smith of Nebraska, Mr. Combest, Mr. Ravenel, Mr. Pashayan, Mr. Robinson, Mr. McGrath, Mr. Dowdy of Mississippi, Mr. Boulter, Mr. Houghton, Mr. Young of Alaska, Mr. Lightfoot, Mr. Inhofe, Mr. Roberts, Mr. Darden, Mr. McCloskey, Mr. Fawell, Mr. Saxton, Mr. Hatcher, Mr. Weber, Mr. Bustamante, Mr. Thomas of Georgia, Mr. Ridge, Mr. Dreier of California, Mr. Hansen, Mr. Smith of Florida, Mr. Wilson, Mr. Roe, Mr. Lewis of Florida, Mr. Swindall, Mr. Ballenger, Mr. English, Mr. Glickman, Mrs. Patterson, Mr. Hopkins, Mr. Kanjorski, Mr. Florio, Mr. Martinez, Mr. Skaggs, Mr. Burton of Indiana, Mr. Mavroules, Mr. Neal, Mr. Bonior of Michigan, Mr. DioGuardi, and Mr. Mrazek.

H.R. 3478: Mrs. Collins.

H.R. 3517: Mr. Owens of New York, Mr. Nielson of Utah, Mr. Whittaker, and Mr. Bevill.

H.R. 3523: Mr. Nielson of Utah.

H.J. Res. 92: Mr. Annunzio, Mr. Badham, Mr. Biaggi, Mr. Hayes of Illinois, Mr. Olin, Mr. Roth, Mr. Shumway, Mr. Traficant, Mr. Tauzin, and Mr. Craig.

H.J. Res. 171: Mr. Sundquist and Mr. Fascell.

H.J. Res. 303: Mr. Lantos, Mr. DeFazio, Mr. Campbell, Mr. Whitten, Mr. Sawyer, Mr. Dixon, Mr. Stokes, Mr. Shaw, Mr. Stark, Mr. Grant, Mr. Green, Mr. Donnelly, Mr. Dickinson, Mr. McCloskey, and Mr. Mica.

H.J. Res. 383: Mr. Hefner, Mr. Vander Jagt, Mr. Spence, Mr. Traxler, Mr. McHugh, Mr. Moakley, Mr. Boland, Mr. Bustamante, Mr. Broomfield, Mr. Lipinski, Mr. Henry, Mr. Murphy, Mr. Yates, Mr. Annunzio, Mr. Wolf, Mr. Hatcher, Mr. Barnard, Mr. Fauntroy, Mr. Howard, Mr. Frenzel, Mr. Molinari, Mr. Wortley, Mr. Kolter, Mr. Coyne, Mr. Wyden, Mr. Sunia, Mr. Horton, Mr. McGrath, Mr. Badham, Mr. Clay, Mr. Jones of North Carolina, Mr. Lagomarsino, Mr. Lantos, Mr. Weiss, Mrs. Johnson of Connecticut, Mr. Smith of Florida, Mr. Manton, Mr. Moorhead, Mr. Green, and Mr. Valentine.

H.J. Res. 384: Mr. Hughes, Mr. Neal, Mr. Lowery of California, and Mr. Miller of Ohio.

H.J. Res. 385: Mr. Porter, Mr. Manton, Mr. Cardin, Mr. Coleman of Texas, Mr. Beilenson, Mr. Bustamante, Mr. DioGuardi, Mr. Badham, Mr. Levin of Michigan, Mr. Hochbrueckner, Mr. Lagomarsino, Mrs. Boxer, Mr. Clarke, and Mr. Miller of Washington.

H. Con. Res. 138: Mr. DeFazio.

H. Res. 283: Mr. Fuster, Mr. Fauntroy, Mr. Clarke, Mr. Konnyu, Mr. Mrazek, Mr. Edwards of California, Mr. Lantos, Mr. Owens of New York, Mr. Bonior of Michigan, Mr. Hochbrueckner, Mr. Blaz, Mr. Evans, Mr. Weiss, Mr. Neal, Mr. Brown of California, Mr. Boehlert, Mr. Bustamante, Mr. Jeffords, Mr. Dellums, Mr. Glickman, and Mr. Hughes.

EXTENSIONS OF REMARKS

REINSTATING FAVORABLE TREATMENT OF CAPITAL GAINS: KEEPING THE LIFEBLOOD OF THE U.S. ECONOMY FLOWING

HON. PHILIP M. CRANE

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 29, 1987

Mr. CRANE. Mr. Speaker, the Tax Reform Act of 1986 has nullified the many positive actions taken since 1978 to reduce the rate of taxation for capital gains. Despite the lessons of history and the indications of recent studies, Congress has again arbitrarily raised the maximum rate from 20 to 28 percent. Not only will the increased rate discourage investment, but it will also reduce the future revenues collected from the tax. A review of the history of the capital gains tax will show that a cut in the rate has always increased revenue. Recent economic studies also indicate that this will be true in the future. It is evident that the revenue-maximizing rate is about 15 percent so I have introduced appropriate legislation. H.R. 3353 sets the rate of taxation of capital gains at 15 percent.

Capital gains are those gains resulting from the sale of capital assets, such as stocks, bonds and real estate. Until passage of the Tax Reform Act, long-term capital gain (long-term gain was that resulting from the sale of a capital asset held for longer than 6 months), was entitled to preferential tax treatment. In general, 60 percent of the long-term capital gain was excluded from tax. The highest effective tax rate on a long-term capital gain was, therefore, 20 percent (40 percent of the long-term gain subject to tax times the highest marginal tax rate, 50 percent).

In the early 1970's, Congress doubled the maximum tax rate on capital gains from 25 to 49 percent. The motivation for this dramatic increase was ostensibly to increase tax revenues, but these high capital gains tax rates caused those years to be some of the most unproductive in recent history in terms of capital investment and small business growth. Many businessmen and high-technology innovators still refer to those years as the "dog days of the entrepreneur." The venture or risk capital needed to begin and finance the growth of new corporations virtually disappeared. A period of economic stagnation ensued, and many corporations went under, went deeply into debt, or in the case of many new high technology companies, were forced to sell or license their products to foreign corporations.

Mr. Ed Zschau, a Congressman from the State of California who retired his seat at the end of the 99th Congress, was a young enterpreneur just starting out in "Silicon Valley" at this time, who somehow managed to survive this difficult period. As he related over 2 years ago to the New York Times:

> In the early 1970's when my company was first getting off the ground, venture capital sources had pretty much dried up. What I did, and what many other companies had to do, was to seek capital from foreign companies. But in order to get the money, we had to sell licenses or technology or go into joint ventures. Unfortunately, we sold a lot of our good stuff off.

Something is wrong when American genius, American ingenuity and American entrepreneurial skills are being leased or sold to our foreign competitors for lack of venture capital to finance their development.

Then, in 1978, behind the leadership of the late Congressman Bill Steiger, Congress acted to reduce the capital gains tax rates from 49 to 28 percent. The results were astonishing, even to those who had proposed the reduction: Within a mere 18 months, more than $1 billion of new venture capital poured into funds for investment in new and growing companies. With a further reduction to 20 percent in 1981, the United States experienced a virtual explosion of investment and capital formation. This "explosion" has resulted in over 1 million new jobs since 1978, and contrary to the predictions of many, has actually increased captial gains tax revenues. In 1979, the first year of the Steiger tax cut, the Treasury Department collected $11.7 billion in capital gains tax revenues, up from $8.1 billion collected in 1977 and $9.3 billion collected in 1978. So much for the expected decline in revenues.

Most experts agree that the Tax Reform Act of 1986 will have devastating effects on the formation of capital and will undoubtedly result in a marked capital gains tax revenue loss over the next few years. Harvard Professor Lawrence Lindsey has simulated the revenue impact of the 1986 Tax Reform legislation and the proposed 15 percent rate as opposed to the past rate. For the 3 fiscal years from 1988 to 1990 the 1986 Tax Reform rate would result in a projected loss of $31.7 billion whereas the 15 percent rate would result in a projected gain of $14.8 billion. This is not an isolated instance; five other recent studies have indicated that the optimum capital gains rate lies between 9 and 21 percent. If the Tax Reform Act of 1986 is not amended, capital will become more expensive and our productivity, innovation and economic growth will therefore be reduced. As a result, Federal tax revenues will be diminished as proven both by economists and by history.

Furthermore, the 1986 reform will have the effect of dramatically increasing the capital gains taxation for lower and middle income taxpayers who were never subject to a maximum capital gains rate of 20 percent, even under the law in effect before this reform. Take, for example, a retired individual who holds stock as a portion of his security for his retirement. This individual must often sell his stock holdings to provide income on which to live. Under the law in effect prior to passage of this tax reform, however, the entire amount of the gain realized on the sale of these capital assets will be subject to taxation as ordinary income. For a person on a fixed income, struggling to make ends meet, the difference between these two amounts can be critical.

Also suprising to those who believe that a cut in capital gains tax is solely to the benefit of the wealthy are Dr. Martin Feldstein's findings on the origin of the revenue gain from the proposed 15 percent tax. Taxpayers with gross incomes of $100,000 and above would account for over 80 percent of the increased revenue and those with gross incomes of over $200,000 would account for over 50 percent. Thus, a cut in the tax will raise greater revenue from the wealthy who trade at their own convenience, while a hike in the tax will hurt the needy and the elderly who must realize their gains when they need the money.

When the rate of taxation of capital gains is cut, the wealthy willingly pay more taxes because the tax on capital gains is characterized by a voluntary nature of payment. The payment is voluntary because the asset need not be sold and the gain realized if the rate of taxation is deemed to be too high by the investor. A higher rate discourages the sale of capital assets in an attempt to avoid realizing the capital gain. By this mechanism the investor is locked into investments and the capital market is diminished. Because the investor chooses not to realize gains the Government receives less revenue at the higher rate. When the rate is reduced the market is stimulated and more gains are realized, yielding greater revenues from their taxation.

The fact that investors change their behavior in response to changes in the tax law requires a dynamic analysis of revenue estimates. Many of the studies cited by the opposition are static estimates that do not account for the change in behavior of the taxpayer. A dynamic analysis of the rate indicates that a cut in the rate will again raise the total revenue.

It is essential that we restore preferential capital gains tax treatment to a maximum rate of 15 percent. By enacting this legislation Congress can help to maintain a favorable atmosphere for economic growth and encourage sensible innovative risk-taking. Capital formation costs must remain cheaper at home than abroad so we will not force entrepreneurs to seek financing abroad to develop and implement their innovations. In addition to increasing revenue through enhanced investment, the reduced rate will create more jobs and thereby also raise more revenue. This legislation puts a challenge before Congress to correct one of its great blunders of the Tax Reform Act of 1986.

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

H.R. 162

HON. MICHAEL A. ANDREWS

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 29, 1987

Mr. ANDREWS. Mr. Speaker, last week the House passed H.R. 162, the High Risk Occupational Disease Notification and Prevention Act of 1987. I was proud to support this important piece of legislation.

Each year in Texas, an estimated 4,000 to 5,700 people die from occupational disease, costing Texans $461 million to $630 million every year. These estimates do not include the many Texans who are disabled each year due to work-related illnesses such as asbestosis, silicosis, pesticide poisoning, lead poisoning, and various cancers. These numbers are truly alarming, and they reflect a growing inability to reduce workplace disease hazards, despite considerable attention and effort on behalf of industry, State legislatures, and Congress.

Because of the magnitude of this problem in our State, the Texas State Legislature has consistently risen to the occasion, addressing the problem in a highly progressive manner. The Texas Hazard Communication Act, passed by the legislature in 1985, far outpaced OSHA's Hazard Communication Standard, requiring the mandatory coverage of both manufacturing and nonmanufacturing employees. OSHA will not cover nonmanufacturing employees until May 20, 1988, a significant time lag behind Texas law, which has covered nonmanufacturing employees since 1985.

This Texas bill overwhelmingly passed the State legislature, with strong support from all areas of business in the State. It is fair to say that Texas has been a leader on the issue of occupational hazard notification legislation, reflecting the desire on the part of Texas business and citizens to have progressive, innovative solutions to this problem. Thus, it is my belief that the majority of Texans, as evidenced by the businesses in my district which support H.R. 162, want Texas to continue to make progress in this area.

One question now arises for the Congress: How can we best assist our constituents, our taxpaying workers and businesses, in reducing these staggering human and monetary costs? H.R. 162, with its medical monitoring requirements, provides a possible solution—early detection, a step which may prevent deaths and reduce the severity of illnesses resulting from occupational diseases. This bill is preventive medicine in legislative form. Our intent in this bill is to save lives and prevent unnecessary health costs for individuals, corporations, and the Government.

H.R. 162 is supported by such respected health organizations such as the American Cancer Society, the American Lung Association, and the American Medical Association. In addition, numerous chemical companies in my district have voiced support of H.R. 162, including Air Products, Atlantic Richfield, Celanese, Diamond Shamrock, Dupont, W.R. Grace, Hercules, ICI Americus, Lonza, Lubrizol, National Distillers, PPG, Rohm and Haas, Union Carbide, and Upjohn. The bill also has wide support among nonchemical businesses, including IBM, Atlantic Richfield, General Electric, Eastman Kodak, Digital Equipment, and Crum & Forester Insurance.

Workers have the fundamental "right to know" not simply that the substances they handle at work are hazardous, but also what health hazards those substances may pose. Thus, although I certainly applaud the recent expansion of OSHA's Hazard Communication Standard, and the progressive, rigorous Texas Hazard Communication Act, these laws are silent on the question of medical monitoring and disease notification—which is the very heart of H.R. 162.

The bill that has been crafted, with the addition of some important amendments, is a bill we can all be proud of. We have successfully tightened the bill, by adding amendments which would: exempt small businesses with fewer than 50 employees from the job transfer provisions; exempt companies with exceptional health and safety programs from the notification requirements; exempt from job transfer provisions agricultural employees who work for an employer for fewer than 6 months in a calendar year; require that an employee show physiological signs of disease before medical removal is required; and permit the Risk Assessment Board to waive notification for persons whose exposure, based upon the latency period, would have already resulted in a specific disease.

I hope that the long-term effect of H.R. 162 will be a reduction in the human tragedy of occupational disease and the staggering economic costs associated with such disease. We must all put on our farsighted glasses and realize that early notification and medical monitoring of high-risk employees is a preventative step which government and industry must take to achieve long-term benefits.

ELEVATE THE VETERANS' ADMINISTRATION TO A CABINET LEVEL DEPARTMENT

HON. GERALD B.H. SOLOMON

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 29, 1987

Mr. SOLOMON. Mr. Speaker, I wish to express my sincere appreciation to the chairman of the Government Operations Committee, Congressman BROOKS from Texas, for conducing hearings earlier this week on legislation to elevate the Veterans' Administration to a Cabinet level department. A bill to accomplish this has been introduced in every Congress for the past 25 years. However, thanks to the work of Congressman BROOKS, this goal is within reach.

My very good friend, the chairman of the House Veterans's Affairs Committee, SONNY MONTGOMERY, should also receive credit for his work on the bill. Without his support we would never have been able to obtain so many cosponsors on the bill. My friends and colleagues from New York, Mr. HORTON, the ranking member of the Government Operations Committee, should also be commended for his contributions.

I believe that the team of BROOKS, MONTGOMERY, HORTON, and SOLOMON now pushing this legislation insures its prompt approval in the House.

I would be remiss if I failed to recognize the leadership role played by all of the veterans' service organizations in this effort. The American Legion, the Veterans of Foreign Wars, Disabled American Veterans, AMVETS, paralyzed Veterans of America, Blinded Veterans Association, Vietnam Veterans of America and many others have worked tirelessly in order to gain approval of this legislation. Few other major veterans' issues have had such united and overwhelming support. I would urge my colleagues in the House to make certain they are now cosponsoring H.R. 3471, elevating the VA to a Cabinet level department, for this is the bill currently under consideration by the Governmental Operations Committee.

Mr. speaker, I wish to submit for the RECORD a recent editorial from an upstate New York newspaper, the Dunkirk Observer, which makes some excellent points as to why the VA should be elevated to a Cabinet level department.

[From the Dunkirk (NY) Observer, Sept. 20, 1987]

ADD VA TO CABINET

Congress currently is studying a proposal which would establish the Veterans Administration (VA) as a cabinet-level agency.

This plan, which we strongly endorse, would elevate the chief of the VA from the position of administrator to the level of a secretary in the President's cabinet. Our millions of veterans of the Armed Services deserve to have their concerns represented in the cabinet—the highest level of the executive branch.

The VA administers the largest health care system in the free world. The VA has over 172 hospitals, 229 out-patient clinics and 117 nursing homes. Its annual operating budget of more than $27 billion is larger than most cabinet-level agencies such as the Departments of State, Interior, Labor, Education, Transportation, Justice, Energy and Housing and Development.

The VA ranks second only to the Department of Defense in the number of employees.

Over the years, the VA has proven itself to be a viable, hard-working agency, which has provided many types of assistance to our veterans. Through the GI Bill programs, thousands of veterans have been able to purchase homes or pursue educational or vocational opportunities.

Did you realize that the VA also is the largest trainer of health care manpower in the United States? Nearly half of the doctors in the U.S. have received all or part of their training through the VA. Most American families at some time have received medical attention from VA-trained health care personnel.

Which agency administers the largest vocational rehabilitation and training programs in the U.S.? The VA, of course. These programs have led to job opportunities for our disabled veterans.

Because of its dedication to our veterans, the VA will continue its mission with or without cabinet-level status.

However, we call upon Congress to recognize the fine work being done by the VA and show its appreciation and gratitude by adding the agency to the list of those already represented in the hierarchy in Washington.

GENERATIONS AT RISK IN A CHANGING HEALTH ENVIRONMENT: THE 1987 CONGRESSIONAL BLACK CAUCUS HEALTH BRAINTRUST WORKSHOP

HON. LOUIS STOKES

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 29, 1987

Mr. STOKES. Mr. Speaker, during the Congressional Black Caucus [CBC] Annual Legislative Weekend I convened the Health Braintrust Workshop, which has been a major impetus in advancing the direction of health care in black and minority communities. Over the years, this forum has provided a much-needed and sought-after exchange for black health care professionals in their fight to improve the health status of black America.

This year's workshop, entitled "Generations at Risk in a Changing Health Environment," focused on many critical health issues confronting the black community. Noted agency officials, and representatives of medicine and academia addressed the Health Braintrust on such timely topics as "Black Indigent Health Care," "AIDS and the Black Community," "Cultural Influences on Health," and "Minorities in the Health Professions and Biomedical Research."

Mr. Speaker, I have chaired the CBC Health Braintrust since its inception 10 years ago. In all the years, this was one of the most provocative and educational sessions ever. Over the next few weeks, I will be submitting a series of statements presented during this meeting to share with my colleagues. I am sure that everyone who reads these articles will find them to be a comprehensive perspective on the status of health of blacks in America.

BLACK INDIGENT HEALTH CARE AND CHILDREN

(Presented by Kay Johnson, Senior Health Specialist, Children's Defense Fund)

Every child needs decent health care at ever stage of her development. Good medical care must begin with comprehensive maternity care provided to a child's mother during her pregnancy, labor, and delivery. It continues throughout childhood, with care for a child's preventive, acute, and chronic health care needs. It is crucial in the teenage years to protect a youth's overall health, to promote his or her mental health, and to prevent teen pregnancy and sexually transmitted diseases.

No pregnant woman should be denied maternity care because she does not have the money to pay for it. No child—whether his or her need is for immunization's, treatment for a strep throat, dental care, hospitalization, medicines, eyeglasses, speech therapy necessary because of a hearing loss, or long-term care at home—should go without health care because his or her family cannot afford it. No teen should have to forgo counseling or services needed to prevent permature sexual activity or pregnancy.

The provision of health care to children is important for several reasons: (1) because it is both an ethical and moral social obligation, (2) because many pediatric health interventions are known to be both effective and cost-effective, and (3) because investing in our children is investing in our own futures.

Of the four and five year olds in today's America, the potential students and workers in the year 2000:

One in four is poor;

One in three is nonwhite or Hispanic, of whom two in five are poor;

One in five is at risk of becoming a teen parent;

One in six has no health insurance;

One in two has a mother working outside the home, less than half of whom receive quality child care; and

One in seven is at risk of dropping out of school.

We cannot afford to ignore these facts. No nation can dare to write off a significant portion of its human assets.

A principal challenge of the next decade is the protection of American children from want and neglect. We must begin with a national commitment to ensure that every child has basic health, nutrition, and early childhood services and thus has the capacity and opportunity to learn well and to develop strong basic academic skills. Today, not all children have such basics, and health care is a prime example of our failure to invest in early preventive care.

Preventive care during all stages of a child's life pays off in improved health as well as in financial savings to society. Early and continuous maternity care can reduce mortality and low birthweight among infants by more than 25 percent. Comprehensive health care for children after birth saves lives and helps prevent unnecessary pain and suffering. It also averts or minimizes long term health problems, helping children grow into healthy, productive adults.

WHAT HEALTH RISKS DO POOR AND MINORITY CHILDREN FACE?

Unfortunately, not all children have equal—or equitable—access to health care. This is especially true for low income children whose families are often without health insurance and the means to pay for health care services out-of-pocket. Black and minority children are disproportionately likely to have low income and are thus disproportionately likely be uninsured.

For children under 18, black children are four times more likely to live in poverty than whites.

Between 1979 and 1985 the percentage of black children living in poverty grew by 6 percent.

The risk of being uninsured is significantly higher for blacks than it is for whites. An estimated 25 percent of black adults and 25 percent of black children (under age 18) are uninsured, as compared to 15 percent of white adults and 17 percent of white children.

Lack of health insurance, particularly when combined with poverty, generally leads to inadequate access to health care services. For low income and minority children, this pattern has been well documented.

Poor, Hispanic, and black children are more likely than their nonpoor and white counterparts to have no regular source of health care.

Black children are more likely to be born to a woman who received inadequate prenatal care. In 1985, only 62 percent of black mothers, as compared to 79 percent of white mothers, giving birth that year received care in the critical first three months of pregnancy. Similarly, black pregnant women were twice as likely to receive no care or none before the seventh month of pregnancy (10 percent vs. 5 percent).

Children younger than two years old are a particularly vulnerable population. Yet, while the American Academy of Pediatric recommends no fewer than nine health examinations in the first two years of life, 10 percent of poor and black children do not see a physician at all during a year.

Nearly one-third of all children under age 17 has never visited a dentist. Among black children this problem is even more serious. For example, 46 percent of white children have a dental visit before age 5, as compared to only 28 percent of black children.

Moreover, key indicators of child health point to a worsening in health status in recent years.

The nation's rate of progress in overall infant mortality, which had been slowing since 1981, has ground to a halt. According to the most recent data from the National Center for Health Statistics, there was no statistically significant change between the 1984 and the 1985 national infant mortality rate.

Black infants continue to die at a rate twice that of white infants. The black-white infant mortality gap is approximately the same as it was in 1960 (a ratio of 1.93:1).

Low birthweight birth (birth weighing less than 5.5 pounds) is the single largest cause of infant mortality and a major cause of disability. Between 1984 and 1985, there was an actual increase in the percentage of babies born at low birthweight (6.7 to 6.8 percent). Furthermore, the racial differential remains substantial, with 5.6 percent of all white infants and to 12.4 percent of all black infants born at low birthweight in 1985.

Birth to a young mother also places a child at greater health and developmental risk. By 1984, the birth rate for black teens ages 15-17 reached its lowest point since 1970, only to rise slightly in 1985. In 1985, the birth rate among black teens age 14 years and younger also rose.

Black and minority children face startlingly greater risk for HIV virus infection and for Acquired Immune Deficiency Syndrome (AIDS). Among AIDS patients who were children (<15 years) 58 percent were black and 22 percent were Hispanic. Similarly, while blacks account for 11 percent of the population over age 15, they account for 25 percent of the adult AIDS population. Even more startling is the fact that because the majority of the women with AIDS are minority women, 90 percent of the children born with AIDS have been black or Hispanic.

Thus recent statistics reveal that black children continue to suffer disproportionately from poverty and the consequences of poverty. They are as a result more likely to be born at risk of death and disability, to suffer from preventable health related problems, and to lack adequate health care to offset their increased health risks.

WHAT CAN BE DONE?

In an effort to offset these trends, advocates have launched efforts to expand state and federal level health programs for low income families. Many of these efforts have met success in recent years. At least 25 states, for example, have appropriated state dollars to provide maternity care to low income women since 1984. Thirteen states (Alaska, Arizona, Indiana, Illinois, Massachusetts, Michigan, Minnesota, New Jersey, New York, Pennsylvania, Rhode Island, Texas, and Washington State) now supplement the federal Supplemental Food Program for Women, Infants and Children (WIC) program with state resources.

On the federal level, Congress has made sweeping changes in the Medicaid program (a public insurance program for selected groups of low income persons) to permit—and sometimes mandate—states to cover additional groups of pregnant women and children. These include:

The Deficit Reduction Act of 1984 (DEFRA) which mandated state Medicaid coverage for all children under age 5 (including children in two-parent families) whose families' incomes and resources met the states' AFDC financial eligibility test;

The Consolidated Budget Reconciliation Act of 1986 (COBRA) which extended Medicaid coverage to all pregnant women with family incomes below AFDC eligibility levels; and

The Sixth Omnibus Budget Reconciliation Act (SOBRA), which provides states the option of extending Medicaid to pregnant women and children under age five (on a year-by-year, phased-in basis) with family incomes up to the federal poverty level. As of August, 1987, 24 states had raised income eligibility standards for pregnant women and children under age 1, as permitted under SOBRA.

In addition to the Medicaid reforms outlined above, Congress is considering other proposals to further improve children's and pregnant women's access to health services. These include:

Medicaid Infant Mortality Amendments, which would: permit states to raise the Medidaid income eligibility level up to 185% of poverty for infants and pregnant women; allow states to cover children under age 5 all at once without having to phase-in their coverage over time and cover all children up to age 8 with family incomes and below the poverty level; and mandate state coverage of all children up to age 8 living below AFDC eligibility levels.

Increases in funding levels for the Maternal and Child Health Block Grant and Community and Migrant Health Centers programs; and,

Legislation to provide Medicaid coverage to all low income uninsured families on an income adjusted premium basis to the near poor and without cost to poor families. Legislation is also pending to require employers to furnish employees with health insurance.

The nation's success in improving the health status of black and minority children depends greatly on its willingness to make a commitment to reduce child and family poverty. For example, investments in public health programs initiated during the 1960s made a significant contribution to lowering our infant mortality rate. Similar preventive investments in today's children will be necessary if we are to ensure them a life of good health and opportunity, if we are to stop the cycle of poverty.

Our future is at stake. Young people between the ages of 16 and 24 comprised 27 percent of the working age population in 1978. By 1995 the young worker group will be only 18 percent of Americans of working age. These young people may come to adulthood prepared for employment, family life, and success or they may reach adulthood crippled by years of poverty, neglect, and ill health. What we do now, how we act on what we know, can make the difference.

The Prevention of Mental and Emotional Dysfunction in Poor Black Children

(Presented by Frederick C. Green, M.D., Emeritus Professor of Child Health and Development, The George Washington University, School of Medicine)

I am pleased to have the opportunity to participate in this workshop on Black Indigent Health Care as part of the 17th Annual Congressional Black Caucus Legislative Weekend.

My specific assignment is to address the question of how we can protect the mental and emotional well being of poor Black children or to prevent the development of significant mental or emotional dysfunction while growing to maturity in our society.

As a pediatrician, my concern encompasses the whole child, the integrity of his or hers life space, the quality of parenting received and the status of his or hers physical, social, emotional and intellectual well being. In essence, all factors that impinge on the childs well being. Within this context, good health is much more than the absence of disease but is a positive concept indicating the total physical, social, mental and emotional well-being of the individual. It is my belief that in our Black communities, such a holistic view is imperative for all of our child care providers. The needs and problems of children cannot be fragmented and met in a piecemeal fashion. Problems do not exist in a developmental vacuum. Health problems beget school problems begets behavioral problems and so on.

Parenthetically, I believe that the critical needs of children are: (1) to be wanted, loved and valued; (2) to have parents and care givers who are both competent and caring; (3) to have a community or society that places a high priority on their needs; and (4) for them to develop in a safe and nurturing environment, free from bigotry and intolerance. I suggest that these are goals towards which we should aspire for all of our children.

In my opinion, one of the most serious problems facing our society today is the developmental damage incurred by children being reared under unwholesome and adverse ecologic circumstances. The reality of today is that within the ranks of the 5 million Black poor children, we have too many growing up in incubators of psycho-social pathology: namely, slums, welfare hotels, shelters for the homeless, on the streets, all of this in a sea of violence and social deviance.

Further, rich or poor, all Black children being reared in this society are at significant risk for impaired psycho-social development due to the constant impact of racism on all aspects of their development, particularly as they begin to function in the larger society.

However, to be poor and black is to be in double jeopardy, making psycho-social damage almost inevitable. Whitney Young in his last book, Beyond Racism noted that too many Black children are programmed for failure from the time of their birth due to the impact of poverty, racism, disease, ignorance (poor schools). I would like to paraphrase him and suggest that the programming really begins at conception due to the noxious developmental impairing influences that can now contaminate the intrauterine environment: namely, drugs, tobacco, alcohol, infections to name a few.

Frankly, it would be easy for me to take the time allotted to me and devote it to reciting the dreary litany of what is wrong with Black kids, their families and their communities. However, that is precisely what I do not want to do since that is the deficit model approach taken by most academic child developmentalists, social scientists and program planners as they carried out their endless studies on this accessible population. The rush to always find out what is wrong and apply a quick fix rather than searching for the strengths and enhancing them as suggested by Billingsly and Hill in their book "The Strength of Black Families". Clinical judgement can become so distorted and blurred by ones preoccupation with searching for deficits that one forgets the biologic truism of the compensitory capability of living organisms, e.g., the heightened sense of hearing and touch of the blind. Therefore, it behooves those who are making judgements on the developmental progress of children to carefully look beyond the areas of developmental delay and areas of strength will often be found. I believe that this simple action can prevent significant psychological dysfunction by relieving the preoccupation with the identified deficits.

As the parent, the pediatrician and the teacher observes, analyzes and makes judgements on when and how to intervene in the developmental continuum, he or she has a profound effect on the degree to which an individuals developmental potential will be realized. In essence, the health status of an adult is a function of the manner in which problems are perceived by care providers during those critical formative years.

If problems and needs of children are only narrowly perceived as health deficits that may or may not be improved by intervention, then the results are predictable, an individual has not achieved his/her full potential. However, if problems are perceived in the broader perspective of identifying and enhancing human assets, as well as correcting human deficits, the outcome will be much improved.

I do not believe that any discussion of preventing mental and/or emotional damage to children is complete without some comments on the labeling or mislabeling of children and its negative developmental impact. Certainly this topic of labeling is particularly timely at this time, given the devastating stigmatizing consequences of identifying a young child as being a victim of AIDS.

A few years ago (1974), with the late Dr. Nicholas Hobbs of Vanderbilt University, I participated in a study that culminated in a book entitled "The Futures of Children". This study concerned the inappropriate labeling of children. Through this study and my own clinical observations I began to understand the far reaching and often devastating consequences that could occur.

One of the banes of my existence as a practioner was the common concept of a child having a "touch" of something like polio, heart disease, often started by a health provider who really had no idea of what was happening to the child.

Many children have "innocent" heart murmurs—a kind of sound made by the heart as it beats. Although some murmurs mean heart disease, "innocent" murmurs have no pathologic significance. Occasionally, a parent is told simply that the child has a heart murmur without further explanation resulting in a frightened parent who begins to limit the childs' physical activity because of his "bad heart". Thus a cardiac cripple is needlessly developed with all of the emotional dysfunction that entails simply because no one really explained the problem to the parent.

I dread to think of how many children, particularly poor children are mislabelled in school as being "mentally dull", educably mentally retarded, disruptive or other similar conditions often because they could neither see the blackboard or hear the teacher. Uncorrected correctable physical deficits is a major cause of educational dysfunction in our inner city schools. A major reason for the development of the EPSDT component of the Medicaid program was the unacceptably high numbers of children, particularly poor children, in school with uncorrected correctable physical deficits.

Finally, let me return to the topic of AIDS and the labelling of children. This is a disease of critical import—to the Black community since the majority of reported cases in children are Black and frequently poor, although social class is not a major determinant since the diseases that require frequent transfusions are not limited to a specific social class.

If there is any question as to the potential of labeling for causing mental or emotional harm, one needs only to look at the highly publicized experience of those three little Ray children in Florida who, after they were identified being HIV positive, were subjected to terrible trauma in their attempts to return to school. Finally, the family was forced to leave town after their house was burned to the ground. I would suggest that people in other communities not feel to smug because the same thing could happen in any community, particulary if community residents have not been properly educated regarding the disease and clearly defined and generally understood policies regarding school attendance have not been developed.

In summary, being a Black and poor child in our society carries a major risk for psychosocial damage. In response to the original question of preventing mental and emotional harm to poor Black children, I believe that the nature of racism in our present society precludes a major diminution of damage due to racism. The ultimate answer is the elimination of poverty, racism, ignorance and bad schools, and disease. Obviously, the above goals are not going to be achieved in the near future; progress can be made by assuring that there will be the systematic provision of developmentally appropriate services for the poor children at significant risk. Our poor Black children, like all other children need: (1) parents and care givers that are both competent and caring; (2) they need services that will effectively meet their nurturing needs; and (3) they need a concerned community that will place the priority of mothers, infants and children at the very top.

A PARENT'S GREATEST FEAR: THE CONSUMER PRODUCT SAFETY COMMISSION

HON. GEORGE MILLER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 29, 1987

Mr. MILLER of California. Mr. Speaker, parents should be able to go to bed at night secure in knowing that the product in which their child is sleeping is safe. But, as revealed in this week's hearing in the Subcommittee on Consumer Protection, at which I testified, parents have good reason to fear. The agency responsible for protecting consumers, and especially children, from unsafe products is racked by severe mismanagement.

Products that have long proven deadly to children remain on the market because the Consumer Product Safety Commission has refused or delayed action. Baby cribs, all-terrain vehicles, bunk beds, lawn darts, and pool covers are the most blatant hazards facing children today. My statement before the subcommittee discusses the threat to children.

I urge the House to support H.R. 3343, the Consumer Product Safety Improvement Act, to make vital reforms in the operation of the Consumer Product Safety Commission.

My statement follows:

STATEMENT OF HON. GEORGE MILLER ON THE CONSUMER PRODUCT SAFETY IMPROVEMENT ACT OF 1987

Mr. Chairman, I appreciate the opportunity to appear before this Subcommittee in support of legislation to restructure and reauthorize the operation of the Consumer Product Safety Commission.

The bill we are considering today is a testament to Chairman Florio and the Subcommittee's tireless efforts on behalf of consumers. I want to address its impact on children in light of the Consumer Product Safety Commission's deplorable record in recent years.

The case of Danny Lineweaver in my district puts into clear focus the failure of the Commission to protect even infants. Danny Lineweaver was found by his parents hanging from his crib cornerpost almost five years ago.

Today, at age five, he is permanently disabled as a direct result of the accident. An industry standard was agreed to just two years ago, but it is voluntary and does not fully address the hazard. It allows the production of cribs with cornerposts on which children can still hang themselves, and children continue to be killed and injured in this way.

I am proud that my constituents have formed the Lineweaver Foundation to bring attention to this issue, to warn parents of the dangers of infant cribs, and to provide information on who to call if an accident occurs. Members of the Foundation are dismayed at the Commission's failure in this area. They have commissioned with Temple University to study the threat posed by the current crib cornerpost standard, and I anxiously await the results.

The Consumer Safety Improvement Act corrects many of the weaknesses in our Nation's consumer safety law. Fifteen years ago, the Consumer Product Safety Commission was established to protect the consumer from dangerous products, to aid them in evaluating product safety, to establish uniform safety standards, and to help investigate ways to prevent product-related injuries.

Fifteen years later, there is a crisis in consumer confidence, and a special danger to children, the most vulnerable of consumers. Too often, when it comes to taking decisive action against a product that endangers young people, Americans get delay, deferral, and an abdication of authority.

All Americans, but especially our Nation's children, suffer.

A great many of the products that make it to supermarket shelves or to toy stores are used by children who do not discover the dangers until it is too late.

Lawn darts have injured over 6,000 people in eight years, the great majority of them under age 15, but compliance has been virtually non-existent. The Commission recently found that in 21 of 22 cases, manufacturers had not complied with regulations. All-terrain vehicles, used largely by youths, have been killing 20 people and injuring 7,000 each month, but no standard, either voluntary or mandatory, has yet been developed.

One hundred twenty-five children under age five die each year in accidents involving cigarette lighters, and the Commission's own staff has acknowledged that the current voluntary standard is inadequate to protect these children. But as of yet no regulatory action has been taken. I am very pleased that these three product hazards are specifically addressed in this reform measure.

There are several other children's products that present serious dangers because of the do-nothing policy adopted by this Commission.

A 6-year-old constituent of mine is permanently disabled because he almost drowned under a pool cover. At least twenty-six deaths have occured from similar accidents, but today there is still no standard to address the danger of pool covers.

No standard—other than a weak industry guideline—has been issued to address the dangers of bunk beds, even though 23 deaths have resulted and injuries have increased dramatically. A cancer-causing agent has been reduced in baby pacifiers by the Food and Drug Administration, but the Commission allows a higher and dangerous level. I hope to work with you, Mr. Chairman, and the Subcommittee to address my concerns in these areas.

The Select Committee on Children, Youth and Families, which I chair, has investigated the issue of child protection. The unmistakable conclusion we made is that failure to take reasonable steps to protect children is extremely expensive for the U.S. taxpayer and the country as a whole. That failure by the Commission in just four of the above areas costs an estimated $1 billion each year in lawsuits, medical bills, and lost lives and work. Accidents on all-terrain vehicles were estimated to cost as much as a staggering $2.8 billion in 1985.

The Consumer Product Safety Improvement Act would make the Chairman more responsive to the Commission as a whole, establish important guidelines for developing meaningful voluntary standards, and mandate greater state and local involvement in enforcement efforts. By taking these steps, we insist that the Commission live up to the madate it was given in 1972.

This bill will save American families and their children a lot of money, but more important, it will save us pain, sorrow, and unnecessary deaths and injuries from preventable accidents.

TOTAL EDUCATION AWARENESS WEEK

HON. ROBERT J. LAGOMARSINO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 29, 1987

Mr. LAGOMARSINO. Mr. Speaker, today I am introducing legislation to designate the week beginning September 11, 1988, as "Total Education Awareness Week."

Many of you may ask, "just what does he mean by total education?" It is a good question and is exactly what I hope many others will be prompted to ask as the result of this bill.

Our Nation's children are our most precious asset. Their education is among the most important responsibilities of the States and of the people of the United States. Thus we must ensure that the total needs of children—intellectual, psychological, social, and physical—are met in school. Lack of attention to any of these needs may result in the harmful deterioration of their bodies and their minds.

As Federal legislators we must take the initiative in encouraging State and local governments and local educational agencies to provide programs that help children improve self-understanding and self-control to help prevent emotional disturbance. We must see that they are addressed in a caring and consistent manner leading to a positive direction of development.

It has been established that the addition of human service professionals to the educational team has proved to be a valuable support for children, their parents, and teachers. The unique and pivotal roles that schools can play in the early intervention and teaming of effort on behalf of children must be recognized.

Schools in the United States have traditionally been more than just institutions of scholarship. I urge my colleagues to join me in my effort to acknowledge the critical role that schools can play in the total education of children and to increase awareness of and attention to this very important concept.

A TRIBUTE TO BRIAN ROSBOROUGH

HON. JOSEPH P. KENNEDY II

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 29, 1987

Mr. KENNEDY. Mr. Speaker, I rise today to pay tribute to one of my constituents, Brian Rosborough, and his organization, Earthwatch. On September 30, 1987, Mr. Rosborough was given the Conservation Service Award by Donald Hodel, Secretary of the Interior. The Conservation Service Award is one of the two highest awards that the Secretary of the Interior can give to a private citizen or group for indirect service to the Department of the Interior.

Brian Rosborough is president and publisher of Earthwatch, an international research institution based in Watertown, MA. Under his direction, Earthwatch helped the Fish and Wildlife Service to protect the endangered sea turtles nesting on Caribbean beaches. Earthwatch secured volunteers to defend and to study nesting leatherback sea turtles. For the last 5 years, these volunteers have policed the beaches at Sandy Point and Culebra National Wildlife Refuges every night of the nesting season. Their actions saved hundreds of nests from erosion and poaching, and in turn 40,000 additional hatchlings made it to the sea. For these efforts, Mr. Rosborough received the Conservation Service Award.

In addition to his work on behalf of sea turtles, Mr. Rosborough has organized expeditions to more than 70 countries in support of the sciences and humanities, and he has led scientific explorations in China, Zaire, Mauritania, Iceland, and Australia. He has also been very active in the field of education, where he has been a leader in the areas of minority career education, high school teaching, development of science curriculum, and training gifted students.

I am honored to bring Brian Rosborough's accomplishments to the attention of my colleagues. For his work to protect the endangered sea turtles and for his work in science, education, and the humanities, I salute Brian Rosborough.

INDIA URGES SWIFT BHOPAL SETTLEMENT

HON. NANCY L. JOHNSON

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 29, 1987

Mrs. JOHNSON of Connecticut. Mr. Speaker, 3 years after the tragedy in Bhopal, India, I am pleased to see the Indian Government moving to settle its legal dispute with the Union Carbide Corp. over compensation for victims of the gas leak. As in so many other instances, protracted litigation only enriches trial lawyers and does not grant needed relief to victims.

Since it describes very well the progress being made in this matter, I commend the following article from the New York Times of October 28, 1987, to my colleagues.

INDIA URGES SWIFT BHOPAL SETTLEMENT

(By Sanjoy Hazarika)

NEW DELHI, Oct. 27.—The Indian Government has authorized its attorney general to settle swiftly its bitter legal dispute with the Union Carbide Corporation over compensation for victims of the 1984 gas leak at Carbide's chemical plant in Bhopal, India, a Cabinet official said today.

"Except for perhaps the lawyers who made lots of money through it, a protracted legal battle was not in the best interests of anybody—not the victims, not the Government." said the minister, referring to the two-year legal battle waged here and in the United States.

More than 2,500 persons died in the tragedy, regarded as the world's worst industrial disaster, and tens of thousands continue to suffer serious health problems.

The latest moves for an out-of-court settlement began about two months ago after District Judge A.N. Deo, in Bhopal urged both sides to reach a settlement. He set an Oct. 30 deadline for the two sides to try to reach an agreement.

DISCUSSIONS STILL CONTINUING

However, Government and company sources said discussions were still continuing on the terms and it was unlikely that an agreement would be reached by the end of this week.

Both sides have refused to divulge details of the possible settlement but a compensation figure of more than $500 million is reportedly being discussed. In a lawsuit, the Indian Government had sought $3.3 billion from Union Carbide.

"A settlement will have to be endorsed politically" by a special Cabinet committee headed by Prime Minister Rajiv Gandhi, and the cabinet minister, who asked not to be identified. But the minister indicated that the Government was prepared to face political opposition and press through a deal, which is currently being negotiated by Attorney General K. Parasran, who has been handling the case since 1985.

An independent source said India had renewed a demand for $615 million in the latest round of negotiations. It had sought this amount in 1985, when the first negotiations began. Carbide had offered $300 million, payable over a number of years, and said it would ask its board of directors to raise that amount by $50 million. But India had rejected the offer as inadequate.

In contrast to the hostility that marked earlier negotiations, sources close to Carbide said the current round have taken place in a positive atmosphere.

Union Carbide, which is based in Danbury, Conn., would neither confirm nor deny the reports from India.

"If what the Indian Government says is true, then its quite encouraging," said Robert M. Berzok, Union Carbide's director of corporate communications. He said the company could not comment further on the negotiations.

But sources close to the company said yesterday that Carbide officials have told the Indian Government that it would be willing to make major concessions to reach a settlement by the end of the month. The sources declined to elaborate on the concessions.

The negotiations are said to have produced progress on the following issues:

Definition and identification of actual victims. Officials on both sides say there has been large-scale fraud in the filing of compensation claims. There are more than 520,000 demands for compensation, while the total number of those treated at hospitals at the time of the disaster was about 200,000.

Compensation. The two sides have agreed on classifying surviving victims into three injury categories; mild, serious and life-long impairments. Individual victims would be compensated according to a flat rate that is being worked out for their respective groups. However, the two sides have not yet worked out a timetable or formula for distributing the money.

Health costs. The company has apparently agreed to pay the substantial costs of continuing medical care and to compensate the Indian Government for the approximately $50 million it has spent since December 1984, providing food, medicine and other assistance to victims.

The settlement is also expected to cover the damage suffered by businesses in the area.

LOCAL HEROISM

HON. ROBERT E. BADHAM

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 29, 1987

Mr. BADHAM. Mr. Speaker, the police who make our cities safe face many challenges. When we look for heros, we often look for men in faraway places who perform amazing feats. But, in Newport Beach, CA we need only look to the nearest police officer.

It is my privilege today to tell my colleagues about the feats of a few of Newport Beach's heros.

Officer Mark Everton will receive the Newport Beach Police Department Medal of Valor on Wednesday, November 4. On August 27, Officer Everton arrived on the scene of an accident seconds after it occurred. He rushed to a burning, overturned car and managed to save all three occupants from what otherwise could have been a fiery death.

Five other officers will receive the Award of Merit. Lt. Timothy Riley and Officer William Barnett charged into the Newport Back Bay on October 28, 1986, and pulled out a woman who was thrown from her car into the mud and water. Officer Robert Oakley, a police helicopter pilot, landed his aircraft in a dark field following a collision with another police helicopter during a pursuit, despite the loss of all power and severe damage to the craft, saving his own life and the life of an officer riding with him. Officer Stan Bressler has been an adviser to the Police Explorer Program since 1970 and has shaped the future of law enforcement by introducing hundreds of young people to the career. Reserve Officer Jan Paul Anderson has brought innovation to the department by using his video equipment, which allows prosecutors to make stronger cases and put more criminals in jail.

Mr. Speaker, it is truly an honor to represent such men. It is my belief that the Newport Beach Police Department is one of the finest in the Nation and I'm sure my colleagues join me in commending Medal of Valor recipient Everton and the five Award of Merit recipients for a job well done.

SALVADORAN TERROR

HON. TOM SAWYER

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 29, 1987

Mr. SAWYER. Mr. Speaker, on Monday, October 26, Herbert Anaya was shot and killed in El Salvador. Mr. Anaya was the president of the nongovernmental Human Rights Commission which is involved in documenting human rights abuses in El Salvador. His murder should serve as a reminder that despite improvements in human rights in El Salvador, all is not well there.

The killing of Herbert Anaya makes clear the lengths to which some in El Salvador will go to prevent peace and reconciliation in this war torn country. Obviously, the murder of Mr. Anaya was meant to upset the unsteady political balance that exists in El Salvador as President Duarte and members of the political opposition sit down to negotiate in accordance with the Arias peace plan. We must not let these people undermine the courageous effort that is underway.

I have circulated a letter, to be sent to Secretary of State Shultz, which urges the State Department to use the leverage we enjoy as a consequence of our military aid to El Salvador to facilitate a full and impartial investigation of the circumstances surrounding the killing of Herbert Anaya. This is a perfect opportunity to use our influence constructively, as a force for change, in El Salvador. I urge all of my colleagues to join with me in asking Secretary Shultz to press for an investigation of the tragic murder of Herbert Anaya.

A nationally respected newspaper, the Akron Beacon Journal, printed an editorial entitled "Salvadoran Terror" which talks about the Anaya killing. I think it highlights some of the important issues which the death of Mr. Anaya raise for all policymakers.

[From the Akron Beacon Journal, Oct. 28, 1987]

SALVADORAN TERROR

The killing of Herbert Ernesto Anaya, the president of the Salvadoran human rights commission, is a tragic reminder of the violence that ravages El Salvador.

The Reagan administration often touts El Salvador as a Central American success story, a place where democracy has bloomed despite enormous obstacles. And indisputably, Salvadorans have courageously backed democratic rule. But the reality of politics there dictates that the military is the most powerful player in the government.

Unfortunately, the military and other security forces frequently have little patience for democracy's openness and invitation to dissent. While as yet no one has claimed responsibility for the Anaya shooting, the incident is frighteningly reminiscent of the right-wing death squads that have terrorized El Salvador over the last decade. Obviously, such brutality remains part of Salvadoran life.

The shooting reflects a country at war and rules ultimately by the gun. It underscores the challenge before those, including President Oscar Arias of Costa Rica, seeking to implement a regional peace plan for Central America. The plan calls for cooperation, compromise and a commitment to democratic rule. Sadly, the death of Herbert Anaya suggests nothing but contempt for those goals of reconciliation.

THE NATIONAL SPACE GRANT COLLEGE PROGRAM

HON. MICHAEL A. ANDREWS

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 29, 1987

Mr. ANDREWS. Mr. Speaker, I want to take this opportunity to expand on a provision incorporated in both the NASA authorization and the HUD and independent agencies appropriation bill which will greatly assist NASA in its efforts to revitalize this country's space program.

In 1863, as Americans pressed across this continent, the Land Grant Act was passed to establish universities to explore new agricultural and engineering technologies to better use the vast resources of our expanding Nation. Today I feel we are ready to apply the same concept to our drive to the space frontier.

The National Space Grant College Program, incorporated into the above mentioned legislations will enhance the abilities of institutions of higher education, government, and private industry to develop our capabilities through collaboration and cooperation in space-related activities.

Facing strong challenges to our role in space development from the Soviets, the Europeans, and the Japanese, we must take innovative steps to assure our Nation's role in space and realize its rich potential.

It is time to press our programs of education into developing the potential of space. Molded in the same form as the Land Grant Act, the Space Grant College Program will support the establishment of space grant programs at our Nation's universities, space grant fellowships for our promising researchers, and regional consortia between business and academia to pursue research and development efforts in space technology and commercialization.

Administered by NASA, the program would award grants on a competitive basis to universities, graduate researchers, and consortia. The program would be funded with $10 million in fiscal 1988 and 1989 and would complement NASA's ongoing research expenditures.

The program will give important impetus to space research and to the diffusion of knowledge. Just as the land grant colleges spread across the country to support our development of this continent, so too the space grant colleges and fellowships will foster our drive to the new frontier of space.

HUMAN RIGHTS LEGISLATION RELATING TO TIBET

HON. GERALD B.H. SOLOMON

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 29, 1987

Mr. SOLOMON. Mr. Speaker, today I am introducing legislation requesting the President to consider the human rights atrocities inflicted against the Tibetan people by the Government of the People's Republic of China in the future conduct of our relations with the PRC. I urge my colleagues in the House to join me in sponsoring this important human rights legislation.

Mr. Speaker, on October first of this year Chinese police in Tibet fired upon several thousand unarmed Tibetan demonstrators, including hundreds of women, children and Tibetan Buddist monks, killing at least six and wounding many others.

My legislation requires any notification submitted to the Congress pursuant to the Arms Control Act with respect to the sale of any defense articles to the People's Republic of China shall be accompanied by a Presidential determination that the Government of PRC is acting in good faith and in a timely manner to resolve human rights issues in Tibet.

The measure also requires that not later than 60 days after the date of enactment that the Secretary of State shall submit a report to the Congress on the human rights situation in Tibet and the transfer of millions of Chinese to Tibet.

Mr. Speaker, when the foreign aid authorization bill reaches the floor of the House of Representatives, I will offer this legislation in the form of an amendment to H.R. 3100.

MR. MOM: A MAN OF THE 1980's

HON. LOUIS STOKES

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 29, 1987

Mr. STOKES. Mr. Speaker, we have all seen many innovative examples of how parents have coped with a multitude of child care needs. From day care to education, there have been a variety of solutions to address these needs. I would like to spotlight one particular parent who devised a most ingenious solution to a very common problem.

Dr. Alfred Godson, a physician in Washington, DC, and his wife Amy are the proud parents of a 7-month-old daughter, Erin. Like many parents of their generation, Alfred and Amy have decided to share many of the responsibilities concerning their daughter's day-to-day needs. However, Alfred was unable to fulfill one special need that he knew from all the medical literature was important to infant bonding—breast-feeding.

This spurned the creation of the Baby Bonder, Alfred Goldson's patent-pending invention that allows men to experience the special intimacy associated with nursing babies. The Baby Bonder is based on the findings of the famous Harlow monkey experiments, where baby monkeys were much more likely to respond to terry-cloth "mother" monkeys with bottles for breasts than wire-mesh "mothers." And little Erin Goldson has been quite taken with her father's invention.

Mr. Speaker, Alfred Goldson should be commended not only for his creativity, but for his determination to be a full and active part of his child's life. At a time when our Nation's families are faced with many insurmountable crises, his efforts are refreshing and encouraging. I would like to share with you an article on the Goldsons and the Baby Bonder featured in a recent Washington Post magazine article. His motivation is proof to us all that, when we put our minds to it, we can accomplish anything.

MR. MOM FINALLY GETS IT ALL

What more could Alfred L. Goldson want? He is a personable, accomplished man, married 13 years to an attorney, Amy Robertson Goldson. They have a lovely house with a swimming pool and Jacuzzi, and they drive high-performance automobiles. A 1972 graduate of Howard University Medical School and now chairman of Howard University Hospital's Department of Radiotherapy, Goldson is famous in his field of cancer research. And to top off his good fortune, on St. Patrick's Day he and his wife had a beautiful baby girl, who is named, appropriately, Erin Nicole Goldson.

Sounds like Goldson has everything, right? But Goldson didn't feel that way. The birth of his daughter made him instantly aware that he was missing one thing. Or actually two things. Breasts. Sure his wife had them, and she intended to nurse the baby, but he didn't and couldn't. And that was the problem.

He knew from the medical literature how important infant bonding is, how crucial breast-feeding is to that bonding, and he was jealous.

"We were discussing how fathers interact with kids," Goldson remembers, "and I told my wife that I was going to be very active, but she said, 'You can do a lot, but you still can't nurse the baby!' It was like a friendly competition," he says with a laugh. "I had to come up with an idea how I was going to nurse, or pseudo-nurse, this baby."

Thus was born what is now called the Baby Bonder (other more ribald names were considered but discarded). This patent-pending invention of Goldson's is a terry cloth and fleece bib with fake breasts. Any adult, with baby bottle in hand, can just put on the bib and insert the bottle from the inside through the nipple openings on the bib itself. Voila! A father can almost breastfeed.

Goldson was familiar with experiments done with monkeys by Harry F. Harlow of the University of Wisconsin. Harlow put one group of baby monkeys in cages with wire-mesh "mother" monkeys that had baby bottles for breasts; the other group he put in cages with wire-mesh "mother" monkeys that were wrapped with a soft terry cloth. The researchers, says Goldson, found that monkeys were much more likely to cling to the terry-cloth mothers than to the plain wire-mesh mothers. "So I used the terry cloth and added more than wire mesh. I added myself, a warm body, eye contact and a deep voice. I felt," Goldson adds good-naturedly, "that this would be the beginning of a quantum leap in bonding with my baby."

According to Goldson, little Erin Nicole took to the Baby Bonder right away, providing him with a tangible feeling of intimacy with the baby, his busy spouse with time for her career and the baby with what is likely a first—a nursing father.

Goldson is waiting for approval of his patent application and searching for a manufacturer for the Baby Bonder. He'd like to keep the price affordable, and though he invented it for left-out fathers, he sees it as just as useful for non-nursing mothers, grandparents, friends and relatives. On a six-month sabbatical from Howard, he's due back October 1. He's already wondering how he'll wean Erin.

TEEN PREGNANCIES DECLINE: NOW WHAT?

HON. GEORGE MILLER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 29, 1987

Mr. MILLER of California. Mr. Speaker, the New York Times is reporting good news and bad news about teenage pregnancy and parenthood this month. Last week, the Centers for Disease Control reported that, during this decade, the rate of teenage pregnancy and parenthood are down. This reaffirms that sex education, school clinics, and other community-based prevention programs aimed at delaying teenage sexual activity and encouraging contraceptive use for sexually active teens are working.

The bad news is that the United States still lags far behind other developed nations in its commitment to effective programs and its willingness to face the realities head-on. Despite our most recent success, the United States rates of teenage pregnancy and childbearing, especially among the youngest teens, are still significantly higher than in the Netherlands, Sweden, France, Canada, England, and Wales.

We should listen to what teens tell us they need. Just yesterday, at a meeting of the New Jersey Governors' Task Force on Adolescent Pregnancy, dozens of teenagers pleaded for more school-based programs to help them make more informed and responsible decisions.

The administration's response has been to turn a deaf ear. Rather than building on the important success we've had in the 1980's in reducing teenage pregnancy and childbearing, the administration would undermine the very programs responsible for the success. For example, last month, the administration proposed regulations to limit the scope and restrict the range of services provided by the title X family planning program. More than one-third of the clients using title X family planning clinics are women under age 20.

I urge my colleagues to make note of today's New York Times editorial which poses the challenge, "Teen Pregnancies Decline. Now What?" We can follow the administration's policies to subvert successful efforts, or we can make a real commitment to solving the problems of teenage pregnancy by supporting those programs that make a difference. I suggest we have no choice but to follow the latter.

TEEN PREGNANCIES DECLINE. NOW WHAT?

Finally, teen-age pregnancies are starting to fall, according to new Federal figures. They vindicate calls—repeated at hearings in New Jersey yesterday—for greater efforts by parents, schools, youth programs and health centers to encourage delayed sexual activity and birth controls. Such figures are the strongest evidence yet for vigorous expansion of such programs.

Despite the turnover, the United States retains an ignominious distinction. It leads nearly all other developed nations in teen-age pregnancy, abortion and child-bearing rates. Furthermore, the most vulnerable adsolescents—girls under 15—account for most of the difference between the American teen-age birthrate and that of other countries.

Not all teen-agers would necessarily take advantage of better access to contraception. To girls trapped in poverty, a baby may seem the only possible acquisition; their foremost needs are counseling, schooling and the prospect of jobs.

But there are many young Americans who most assuredly don't want to get pregnant. New Jersey teen-agers testifying yesterday pleaded for more guidance in managing their sexuality. In New York City, about two-thirds of the 15,000 youngsters who become pregnant each year undergo abortions. It's a fair bet that with better contraceptive counseling, most would not have had to do so.

In the Netherlands, Sweden, France, Canada, England and Wales the fertility and abortion rates for teen-agers are lower than those in the United States, even though the median age at first intercourse is roughly the same. The difference is that too much of America still treats contraception as a dirty secret. The dirtier secret is the reluctance to prepare children for life in a changed world.

BOY SCOUTS RECEIVE EAGLE AWARD

HON. GEORGE W. GEKAS

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 29, 1987

Mr. GEKAS. Mr. Speaker, Sunday, November 8, 1987, will be remembered as a very special day in the lives of two young men from my district. Brett D. Shamory and Mark E. Kuhns, both of Middleburg, PA, will receive Boy Scouts' most coveted honor—the Eagle Award—before family and friends at Emmanuel Lutheran Church, Middleburg.

Both young men have received numerous awards and merit badges as they worked their way up through Scouting while holding various leadership positions. Mark Kuhns, son of Donald and Lila Kuhns, began Scouting at the age of 8 when he joined Cub Pack 3415. Three years later, he became a member of Scout Troop 415. He attended the National Scout Jamboree as a council contingent troop member in 1981, and again in 1985.

Mark is a member of Emmanuel Lutheran Church in Middleburg, and is a 1987 graduate of Middleburg High School. He participated in the theater, was a member of the baseball team, and was the golf team's MVP in his senior year.

For his Eagle project, Mark recorded data from the tombstones in Hassinger's Brick Church and the Wayside Bible Church cemeteries. This information was placed on computer disks, organized, and printed in a way to benefit the Snyder County Historical Society. The printout may be used to aid in locating burial sites and to obtain information on ancestors buried there.

Brett Shamory, son of Lee and Diane Shamory, joined Webelos den of Pact 3415 in 1980. In June 1981, he also joined Troop 415. Brett is a member of Paxtonville United Methodist Church. He is a senior at Middleburg High School and is active in soccer, basketball, baseball, the varsity club, and his school's National Honor Society.

Brett's Eagle project consisted of the computerized organization, compiling, and printing of the names and relationships of those persons buried in the Paxtonville Cemetery. This data will benefit the community, the cemetery association, and the Snyder County Historical Society.

Mr. Speaker, I would ask my colleagues in the U.S. Congress to join me in extending congratulations to Brett Shamory and Mark Kuhns for earning this worthy and special award. They have made their Congressman very proud. I wish them great success in their future endeavors.

POLES HONOR WWII CREW OF THE 390TH

HON. GERRY SIKORSKI

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 29, 1987

Mr. SIKORSKI. Mr. Speaker, today I would like to insert into the RECORD an article honoring the World War II crew of the 390th Bomb Group. This article appeared in the Albuquerque Journal and the Mississippi Daily Journal.

On September 18, 1944, a B-17 carrying supplies for Polish partisans fighting the Nazis in the Warsaw uprising was gunned down 6 miles north of Warsaw. There were 10 United States airmen on board; two survived the crash. On September 21, 1986, a monument honoring those 10 crew members was unveiled in Lomianki, Poland. This monument is believed to be the first for American soldiers that has been erected on Polish soil.

This gesture, which came as a result of a 5-year fight for the monument, is a testimony not only to those Americans who died in World War II, but to the increasing Polish-American bond. It is an honor for both American and Poles, and is reflective of our longstanding friendship with the Polish community.

[Extracted from the Albuquerque, (NM) Journal and the Northeast Mississippi Daily Journal]

CREW OF THE 390TH HONORED

LOMIANKI, POLAND—Villagers who witnessed the crash of an American warplane shot down by German artillery during World War II have fulfilled what they felt was an obligation and erected a monument to honor the crew. The 9-foot-tall stone memorial, believed to be the first in Poland for American soldiers, was erected after a five-year campaign. "They were young Americans trying to save our Poland," said Stanislaw Niegodziscz who lives about 200 yards from the crash site, six miles south of Warsaw. "We want all of America to know what they did," he said. The B-17 nicknamed "Til We Meet Again," was shot down Sept. 18, 1944, with 10 U.S. airmen on board. Two of them survived—Sgt. Marcus L. Shook and Sgt. James D. Christy. The plane was one of 107 American aircraft dropping supplies that day for Polish partisans fighting the Nazis in the Warsaw uprising. About 220,000 Poles were killed during the 63 day battle.

On 21 Sept. 1986, the monument was unveiled in a ceremony attended by villagers and veterans group. The names of the ten crew members were inscribed on a brass plaque. Killed in the crash were Lt. Francis Akins of Derry, PA (pilot), Lt. Forrest D. Shaw of Exeter, NH (co-pilot); Lt. Ely Berenson of New Jersey, (navigator); Lt. Myron S. Merrill of New Jersey, (bombardier); Sgt. Frank de Cillis of New Jersey; Sgt. George A. MacPhee of Mass.; Sgt. Walter P. Shimshock of Minneapolis, Minn.; and Sgt. Paul F. Haney of West Virginia.

Marcus Shook now resides in Belmont, MS and is a regular attendee at the 390th Bomb Group Veterans Association reunions. Shook is the only remaining survivor as Christy died in 1949. His recollection of the bailout was that at least three of the crew got out, and as soon as they cleared the aircraft "the thing exploded." Witnesses from the village recently have disclosed that one of the crewmen was shot and killed by the Germans as he drifted in his parachute. Shook says that would explain the fate of the third crewman that he thought excaped. Shook himself was fired on while in the parachute: he is quoted as saying: "I was first hit in the leg. Then I realized they were shooting at me, and I drew myself up into a ball to make a smaller target. After a little bit, my legs started dangling again and another bullet hit me in the ankle. That was a compound fracture." First he was taken to field headquarters where he was questioned. Then he went to a field hospital where both legs were put in casts. After about a week, he was finally moved to a prisoner of war hospital on Poland's western border with Germany. He stayed there until January of 1945, when the Russians broke through German lines and liberated the camp.

Shook also tells us that the crew was going to nickname the B-17 "I'll Be Seeing You," however it got lost somewhere in the Polish translation.

JOHN E. DU PONT, CHAMPION OF AMERICA'S CITIZEN ATHLETES

HON. RAYMOND J. McGRATH

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 29, 1987

Mr. McGRATH. Mr. Speaker, I would like to take this opportunity to recognize John du Pont, a gentleman who has made a tremendous contribution to the efforts of American athletes preparing to represent our Nation in international competition.

To John du Pont citizenship is not just a right, it is a trust. As one of America's most ardent citizens, he has championed the cause of liberty at home and throughout the world alike. But nowhere has his sense of purpose been stronger than with America's young athletes.

He has been a pentathlete competing in United States and international meets in 14 nations for more than 20 years, including twice being named a U.S. Olympic coach. Known as the Father of the Triathlon, John du Pont has dedicated his life to teaching and training amateur athletes in sports and in citizenship.

He is the founder of Team Foxcatcher, headquartered at its Olympic training facility at the Du Pont farm in Newtown Square, PA. His athletes have represented the United States in countries on six continents in swimming, wrestling, triathlon, track, gymnastics, and modern pentathlon. All of his teams have produced world champions and Olympic medal winners.

John du Pont is also the founder of the Delaware Museum of Natural History and, among his many accomplishments, is presently head wrestling coach at Villanova University. He has served with distinction as a citizen volunteer to law enforcement for over 20 years.

Mr. Du Pont has now announced the founding of the Foundation for America's Citizen-Athletes.

Mr. Du Pont today said:

> The Foundation's goal is to help young athletes of distinction become citizens of distinction. As we all know, America's young athletes serve as role models for their peers, and many become the heroes of tomorrow's youth. With drug abuse so prevalent today, America's young athletes must be examples of good citizenship. We are in hopes that this Foundation will allow them to take an even more active role in America's future.
>
> When our American athletes compete internationally, they are competing against many who are funded by their govern-

ments," Mr. Du Pont continued. "Here in America, in our democratic society, the responsibility to help our young athletes lies in the commitment of individual citizens. I believe Americans should do all they can to help our young athletes excel in *all* facets of their lives.

Each year the foundation will sponsor weeklong workshops in Washington, DC, where young citizen-athletes will meet with officials in U.S. Government and business. Citizen-athletes will be selected on the basis of athletic talent, academic achievement, and citizenship.

Their objective is "to help America's athletes be good citizens for today, and for tomorrow."

I hope every Member of this body will take note of the foundation's activities and do everything possible to support it.

BARTHOLDI PARK

HON. PETER W. RODINO JR.

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 29, 1987

Mr. RODINO. Mr. Speaker, 1 year ago, the Nation joined in a gala celebration of the one hundredth anniversary of the anniversary of the Statue of Liberty.

At the same time, there was a smaller gathering here in Washington to pay homage to the genius behind the Statue of Liberty—Frederic Auguste Bartholdi. With the official dedication of Frederic Bartholdi Park in 1986, we established a lasting tribute in the nation's capital to this great friend of America and the designer of one of our most important national symbols.

Bartholdi Park, located on a triangular parcel of Capitol grounds near the Rayburn Building, is distinguished by a large, beautiful fountain that was designed by Frederic Bartholdi and sent to the United States by the French Government for exhibition at the Centennial Exposition in 1876.

The fountain proudly stood in the esplanade at the main entrance to the exposition and dominated the most important vista in the fair grounds. The official guidebook directed visitors to a "large bronze fountain, with statues of the twin godesses of cities" which had the unique distinction of being simply designated "Bartholdi's Fountain." Construction of iron, bronzed and lavishly decorated, the fountain was praised for its concept and beauty.

After the Centennial Exposition closed, the U.S. Government purchased the fountain and it was placed in the old Botanic Gardens in Washington where it stood for 50 years. When the Botanic Gardens where relocated to the bottom of Capitol Hill in 1927, the fountain was dismantled and placed in storage until it was reerected in its present location. Without any marker or sign to indicate its historic and artistic importance, the fountain was a forgotten monument.

In 1985, I wrote to my good friend Chairman FRANK ANNUNZIO suggesting that Congress designate the fountain's site as Bartholdi Park to honor the creator of the Statue of Liberty. With Chairman ANNUNZIO's leadership, the Joint Committee on the Library, which oversees the Botanic Gardens, adopted this proposal and the first major renovation of the fountain was begun.

On October 30, 1986, Members of Congress and the French Minister of Culture, Francois Leotard, joined together in a ceremony dedicating Bartholdi Park and rededicating his restored fountain. In just 1 year, Bartholdi Park and Fountain have joined the ranks of recognized and beloved monuments in Washington. Now, both tourists and local residents, lunchtime visitors and students of history, know that they are standing before a very special artistic and historic link with the genius of Frederic Auguste Bartholdi.

LABEL IMPROVEMENT PROCESS

HON. GERALD B.H. SOLOMON

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 29, 1987

Mr. SOLOMON. Mr. Speaker, the U.S. Environmental Protection Agency is about to begin enforcement of a new regulation that might well cause some farmers to lose their crop and that might easily lead to a drop in property value for certain farmlands.

Despite these potential setbacks for the farming community, the EPA apparently has no intention of submitting this regulation for public review or comment, or for any other normal regulatory procedure.

By allocating to itself an additional legislative interpretation of the Endangered Species Act, and by calling this new regulation simply part of a "label improvement process," the EPA is apparently intent on legislating brand new requirements on how, where and when farmers may use pesticides.

Mr. Speaker, the issue at this point is not whether the regulation is appropriate, but why in this instance the Congress and the American people have been excluded from their rightful place in the legislative process.

Mr. Speaker, I call upon the Environmental Protection Agency to rescind its actions to date on this regulation and to open this proposed "label improvement process" to full review and comment by the American people, particularly America's farmers.

THE TWIN DEFICITS: BUDGET AND TRADE

HON. DEAN A. GALLO

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 29, 1987

Mr. GALLO. Mr. Speaker, the recent crisis on Wall Street has finally brought the message home to the Congress that action must be taken to reduce both the budget deficit and the trade deficit. Unfortunately, the temptations in Congress—to raise taxes and to enact protectionist trade legislation—send exactly the wrong signal to the world economy. Further, the facts tell us that these proposals will not resolve the problem of the twin deficits.

To deal with the Federal deficit, the Democratic leadership has presented this House with but one proposal—to tax. The historic relationship between tax increases and economic downturns should stop all talk of raising taxes at this time. Supporters of a tax increase of $14.3 billion the first year and $59 billion over 3 years wrongly claim that the 1981 tax cut has resulted in lower tax revenues. They fail to see that because of increases in Social Security and other taxes since that time, the average taxpayer is paying more taxes today than in 1981.

Further, the taxes proposed in the Democrats' budget reconciliation bill are not dedicated to deficit reduction. The revenues provide either tax breaks for special interests or ways to fund the Democrats' policy of tax and spend.

Unfortunately, the Democrats' tax and spend policies prevent real progress on the deficit. This is nothing new. With the exception of Social Security payments, tax increases have never been applied to deficit reduction, in spite of promises by congressional leaders. Since 1981, Federal revenues have increased by $256 billion, but spending has increased by $326 billion.

If our goal is to learn to live within our means through deficit reduction over a number of years, the simple fact is that we have to cut spending. An across-the-board spending freeze would be one good place to start. For this reason, I will support the Michel amendment to freeze spending at fiscal year 1987 levels.

I am asking for a commitment from this House and from the conferees and the White House that they will achieve spending reductions before resorting to any additional taxes.

Resisting the impulse to raise taxes is crucial to our economy. Equally important, the Congress must resist the impulse to raise protectionist trade barriers.

History has shown us that the Hoover administration's approach of raising the twin barriers of trade and taxes simply did not work.

The bitter lessons of 1929 and the 1930's should have taught us that there is a link between depression and a regressive trade policy.

The prospect of 199 House and Senate conferees adding special interest tidbits to a trade bill, already 1,000 pages long, is enough to scare anyone.

A commitment by congressional Democrats to put the current protectionist trade legislation on permanent hold would do a great deal to improve the mood on Wall Street.

There are no quick fixes. There is no room for political posturing. We all must share the responsibility. We must cut the budget and the trade deficit. But, contrary to the current drumbeat for tax increases and protectionist trade bills, we cannot ignore the lessons of the past—that tax hikes at times of economic uncertainty push markets down, not up, and that protectionist legislation stifles trade.

I do not want to play down the seriousness of the Federal budget deficit, but I do want to call attention to the fact that after the 1929 crash occurred, the United States had trade and budget surpluses.

There are many reasons for the current Wall Street selloff, but we must not forget that the threat of protectionism contained in the trade bill, with its potential for retaliation, is at least as damaging to the confidence of investors as the recurring Federal deficit.

THE PASSING OF A FRIEND

HON. ROBERT GARCIA

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 29, 1987

Mr. GARCIA. Mr. Speaker, on October 26 Bonnie Brady passed away, and those of us who had the pleasure and privilege of knowing her grieve her loss. Bonnie was the wife of Jack Brady, chief of staff of the House Foreign Affairs Committee.

Bonnie was a kind woman, full of wit and always smiling. I feel most for her family who must now learn to cope with her absence. But I hope that they will be able to find solace in the many rich memories they must have of Bonnie. The world was certainly made richer because of her presence.

I am reminded of a verse from the Book of Ecclesiastes when thinking about Bonnie. I hope that it can provide some small measure of comfort to the Brady family: "A good name is better than precious ointment; and the day of death than the day of one's birth."

Bonnie Brady certainly possessed a good name, and now I'm sure she is finding peace with her God. Our prayers are with Jack and his family.

PERSONAL EXPLANATION

HON. CASS BALLENGER

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 29, 1987

Mr. BALLENGER. Mr. Speaker, on Wednesday, October 28, 1987, I was in the Chamber and recorded my vote on rollcall No. 382, final passage of the Fair Credit and Charge Card Disclosure Act. However, the computer has me listed as "not voting" when in fact I voted "yes" on final passage.

H.R. 1393

HON. CURT WELDON

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 29, 1987

Mr. WELDON. Mr. Speaker, in light of a scheduled markup of H.R. 1393, the CURE legislation, in the Transportation Subcommittee of House Energy and Commerce next Thursday, October 29, I want to call to the attention of my colleagues an excellent Philadelphia Inquirer article on Conrail's recent financial performance and the dire predictions of L. Stanley Crane of more Penn Centrals if H.R. 1393 is passed. "The bill * * * will be the ruin of our industry," Crane said. "If reregulation occurs, a small group of shippers may benefit for a short period of time. But rapidly thereafter, railroads will lose the ability to offer the services and prices that the vast majority of shippers require. I'm afraid we may well face a flow out of captial from the railroad industry * * * and the railroad industry will be driven out of business." Under the Staggers Act average rail rates per ton-mile for all commodities have declined 23 percent in constant dollars between 1980 and 1986. The CURE bill should be rejected.

[From the Philadelphia Inquirer, Oct. 23, 1987]

REGULATION OF RATES IS OPPOSED BY CONRAIL

(By Tom Belden)

NEW YORK.—A worried Conrail chairman L. Stanley Crane asked Wall Street analysts yesterday to help lobby against proposed federal legislation that the industry contends would mean its economic ruin.

At a Conrail-sponsored meeting with rail analysts and at a press briefing afterward, Crane said there seems to be strong support in the House for a bill that would amend the Staggers Act, the major law that deregulated the rail industry.

The amendments, championed primarily by electric utilities, coal-mining interests and grain dealers organized as Consumers United for Rail Equity (CURE), would put controls on some rail shipping rates. The bill is scheduled to be voted on next Thursday by the House Commerce transportation subcommittee.

"The bill . . . will be the ruin of our industry," Crane said. "If reregulation occurs, a small group of shippers may benefit for a short period of time. But rapidly thereafter, railroads will lose the ability to offer the services and prices that the vast majority of shippers require. I'm afraid we may well face a flow out of capital from the railroad industry . . . and the railroads will be driven out of business."

Crane predicted that if the CURE amendments are enacted, there would be a repeat of the early 1970's crisis for rail service in the Northeast that was precipitated by the bankruptcy of the Penn Central Railroad. The collapse of Penn Central forced the federal government to form Conrail in 1976. The railroad became a private-sector company in March.

No one wants to see the Penn Central failures of the 1970s reborn in the 1990s," he said.

Charles N. Marshall, Conrail's senior vice president for marketing and sales, estimated it would take two to five years for the CURE amendments to so undermine the financial condition of railroads that nationalization of the industry might be necessary to maintain service.

"People . . . look at freight rates microscopically and forget that there has to be a railroad industry there to serve the coal industry and the utilities if any of the partners in this operation are to succeed," Marshall said. "The railroads must earn enough on their investment and must keep their tracks fixed if they are to provide a service which is a value to the utilities."

The CURE coalition contends that railroads have used the rate-making freedom gained under the Staggers Act to gouge so-called captive shippers, which are typically coal mines, grain companies or utilities that buy large quantities of coal or grain. The captives are those who have service from only one railroad and who say they have no practical, economic way other than rail to ship their products.

Proponents of the CURE bill contend that rail-shipping rates are fair and reasonable in cases where a railroad faces competition. But the proponents contend that the Interstate Commerce Commission, which has responsibility for hearing complaints of railroad rate-gouging, has failed to keep the railroads from charging exorbitant rates in situations where a carrier has a monopoly.

Railroads "have a perfect freedom, a freedom not intended by Congress, to do whatever they want with their shippers," Bob Szabo, CURE's executive director, said in a telephone interview yesterday. "The protections that Congress intended for captive shippers . . . are not working."

Railroads acknowledge that they charge some of their customers more than others to haul different types of freight, based on the amount of competition they face for different commodities. But that is no different from a retailer setting profit margins at different levels for different products, depending on competition, and Congress should not intervene to alter that, Crane said.

"It's perfectly ridiculous to set up that kind of issue in the Congress," he said.

On another issue, Crane told the analysts that Conrail will be well-managed even after his planned retirement by the end of 1988. Crane, 72, has been given much of the credit for leading Conrail to profitability since 1981, after it lost millions of dollars between 1976 and 1980.

CENTRAL AMERICAN QUEST FOR PEACE

HON. GEO. W. CROCKETT, JR.

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 29, 1987

Mr. CROCKETT. Mr. Speaker, I wish to share with my colleagues an insightful op-ed piece that appeared in the October 18 Los Angeles Times. The article does an excellent job of summarizing why it is in Central America's interest and ours for the Central American peace plan to succeed. The author, Mr. Peter D. Bell, is well qualified in this area; he served for many years with the Ford Foundation in Latin America, was president of the Inter-American Foundation, and is currently co-vice chairman of the Inter-American Dialogue. I would urge my colleagues to give this article their careful consideration.

[From the Los Angeles Times, Oct. 18, 1987]

CENTRAL AMERICAN PRESIDENTS SHOW REAL GRIT IN QUEST

(By Peter D. Bell)

It is now 73 days since the presidents of Costa Rica, Guatemala, Honduras, Nicaragua and El Salvador agreed to a set of steps for peace in Central America. The agreement caught Washington and much of the world by surprise—as has the energy and grit with which the Central American presidents have been making good on their commitments.

Peace will still elude the region on Nov. 7, the deadline for some major provisions of the agreement. Yet sufficient progress will have been made, not only to assure the effort a longer life but to infuse it with a certain robustness. The awarding of the Nobel Peace Prize last week to the plan's originator, Costa Rica President Oscar Arias Sanchez, is less a recognition of what has been accomplished than a benediction on what is underway.

If signing the Guatemala accord expressed the Central American yearning for peace, the follow-up activities of the respective presidents reflect the limitations of their power. Each party must take initiative to show good will, but none can go too far—with so much at stake—without reciprocal acts. The United States, though not a signatory, could greatly ease the process, but Central Americans are learning that they can proceed without us. This was evident when El Salvador President Jose Napoleon Duarte visited the White House on Wednesday and strongly defended the accord while also stressing friendship for the United States.

Though agreement to the Arias plan was unexpected, it was no accident. It expressed a confluence of events and trends building for many months. First and foremost, the five presidents came to a shared sense of the toll that the Central American conflicts were taking on the entire region. While the burdens of war had fallen most heavily on Nicaragua, El Salvador and Guatemala, they weighed as well on Costa Rica and Honduras, which have reluctantly given sanctuary both to refugees and anti-Sandinista rebels. Since 1981, per capita income in the region had dropped by 26% and, with continuing violence, prospects seemed bleak.

Second, for differing reasons, the presidents of Nicaragua and El Salvador were ready to pursue peace. Daniel Ortega was selected to stand for the Nicaraguan presidency as the compromise candidate—acceptable to other Sandinista factions because he was so unprepossessing. But over the past three years, he and his fellow "moderates" have established their ascendancy. A relaxation of tension is in their interest as well as their country's.

Meanwhile, Duarte's political star had fallen in El Salvador. In pursuing peace, Duarte could appeal to his people's war-weariness and show a measure of independence from the United States. And the Arias plan—by calling for an end to foreign support for insurgent groups and dialogue with unarmed opposition—legitimized the Ortega and Duarte governments and discredited the rebel causes.

Third, never enthusiastic about the U.S.-backed contras, the presidents of countries neighboring Nicaragua had become convinced that the U.S. policy toward the sandinistas was moribund. Most Central Americans believed the contras could not defeat the Sandinistas. And how, power ebbing away, President Reagan seems incapable of sustaining congressional support for the contras.

Finally, the Guatemala agreement signifies Central American independence. Since agreeing on the Arias plan, the Central American presidents have taken steps to implement provisions in advance of the deadline. For example, all the signatories have decided to set up commissions on national reconciliation. In the case of both El Salvador and Guatemala, historic meetings have been held between the governments and armed insurgents.

In Nicaragua, the Sandinistas have named their toughtest critic, Cardinal Miguel Obando y Bravo, to head the reconciliation commission, approved the reopening of the newspaper La Presna and Radio Catolica and permitted the assembly of peaceful opponents. They have also repatriated a key rebel group of Miskito Indians, promoted the previously existing amnesty program and unilaterally declared cease-fire zones in three embattled provinces. Even more promising, Ortega and the commandantes have crisscrossed the country to explain the agreement and campaign for peace. The Sandinistas appear to have gone too far to be engaging simply in propaganda ploys.

If the progress toward peace still falls short of the mark set for Nov. 7, the United States must bear much responsibility. Reagan has offered halfhearted praise for the Guatemala agreement, but also denounced it as "fatally flawed." In fact, the agreement's underlying weakness for the Administration is precisely the foundation for peace. The Central Americans will accept the existence of the Sandinista regime in return for Sandinista guarantees about its behavior at home and in the region.

By now the U.S. Administration's opposition is clear on three basic points:

First, the Central American presidents have gone a long way toward spelling out the criteria and procedures for democratization, but they also set limits on the changes to be expected. Their agreement, for example, mandates "free, pluralistic, and honest elections," while recognizing that they will be held according to the schedules of "present political constitutions." By contrast, Reagan has declared democracy to be the "bottom line"—the point on which there is "no compromise."

Three weeks ago, a White House spokesman suggested that accelerating the Nicaraguan presidential election, scheduled for 1990, might be required for U.S. support of the accord. It is one thing for the Administration to take democratization provisions seriously. It is quite another to use them to oust the Sandinistas. Central Americans realize that Nicaraguan politics, even under the agreement, will take years to become fully democratic.

Second, the agreement is unequivocal in calling for an end to support for insurrectional movements. This applies to any U.S. aid to the contras that is not for returning them to normal life. Central Americans see stopping contra aid as necessary for any real political opening but Reagan refuses to give up the contra bargaining chip, insisting it be retained to guarantee Sandinista compliance.

Third, the agreement gives little attention to measures related to security and arms limitations. In his recent speech to the Organization of American States, Reagan correctly stated that the accord "does not address U.S. security concerns in the region." What he ignored was the expectation among Central Americans that the United States would negotiate security concerns directly with the Soviet Union and Nicaragua. Nicaragua's neighbors view the withdrawal of Soviet and Cuban advisers, reduction of Communist Bloc military assistance and limitation of the size and sophistication of Sandinista armed forces as important to advancing the peace process. But they want U.S. help.

The Sandinistas might yet renege on some key promises; they may feel too threatened by political openings and civil liberties they committed to. We may never know, since the Reagan Administration seems unwilling to put the Arias plan to the test. Until the Administration is ready to consider acceptance of the Sandinista regime's continued existence, there will be nothing to negotiate about with Managua and there will be incentives for the Sandinistas not to comply with the agreement.

A majority in Congress, however, backs the Arias plan. Members cannot compel Reagan to do so—certainly not between now and Nov. 7. But by rebuffing his requests for more contra aid they can at least keep him from dealing a body blow to the peace process.

It is possible that momentum for peace is already sufficiently great and interests sufficiently real that the process will go forward. The word is being circulated by Central Americans to look not to Nov. 7 but to Dec. 5 as the next critical date. That is when the International Commission for Verification and Follow-up will make its initial assessment of compliance. Meanwhile, the Central American presidents, led by their Nobel Price laureate, must use moral suasion on the U.S. Administration to continue their struggle for peace.

STOP EXPLOITING CHILD LABORERS

HON. DON EDWARDS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 29, 1987

Mr. EDWARDS of California. Mr. Speaker, 88 million children between the ages of 11 and 15 are now part of the world's labor force. Child labor is on the rise, and exploitation of children is a world scandal.

Congressman GEORGE MILLER of California, chairman of the Select Committee on Children, Youth and Families, examines this problem in a scholarly article in the Christian Science Monitor of October 28, 1987.

The article is reprinted below:

STOP EXPLOITING CHILD LABORERS

In June 1970, the United States Fish and Wildlife Served added the whale to its list of endangered species, severely restricting the importation of whale products.

The same step was taken in 1978 to help ensure the survival of the Asian elephant. Since the Endangered Species Act in 1966, similar protection has been granted to rhinos, leopards, wombats, and many other species.

Don't the world's children deserve the same level of protection?

According the the International Labor Organization, 88 million children between the ages of 11 and 15 are now part of the world's labor force. They and millions more younger than 11, work in dismal and dangerous conditions, putting in endless hours and getting virtually nothing in return.

Child labor is on the rise in large part because third-world countries are racing to meet the demand for their products created by Western nations. A Thai government survey revealed that child labor in Thailand increased 30 percent between 1981 and 1983, and evidence suggests the rate has continued to climb in tandem with the Thai export industry. A 1985 United Nations study of Thai industry reports that "manufacturing industries employing a large proportion of child workers are those which expanded very rapidly in the last few years as a result of their export potential."

Child laborers all over the world leave a long trail of profits for company owners, traders, and Western department stores.

The Mocary factory in Morocco can product a carpet for less than $20. When it is sold to Macy's in New York for $166, Mocary executives gain almost $100 in profit. After marking up and selling the rug, labeled "Made in Morocco exclusively for R.J. Macy's," Macy's makes a $282 profit. The broker who arranges these and other transactions makes millions of dollars each year in commissions. The United States imported 10,000 carpets, worth $2.3 million, from Morocco in 1985. Western consumers create the demand for these products, but do nothing to ensure that the world's children are not sacrificed. It's time to use our economic strength to protect the children of the world rather than allow commercial demands to underwrite their enslavement.

When concerns about international exploitation of child labor are raised, we are frequently admonished that we cannot affect labor conditions abroad. We are told we cannot mandate remedies, or that foreign governments won't even respect their own fair-labor laws. Yet by prohibiting the importation of products derived from endangered species, we do attempt to influence the policies of foreign governments.

We should, in effect, add "exploited children" to the list of "endangered species." This is the essence of legislation that I recently introduced in Congress: barring the importation into the US of any item produced in violation of internationally recognized child labor rights.

We are also told that unless these children are allowed to work, they will starve. Such arguments have served to justify exploitation for centuries. Like the slaveholders who justified slavery on the basis that slaves were better off on the plantation, countries that ignore child labor laws say employers hire five-year-olds out of compassion. The truth is that these companies prefer to hire children, rather than some of the millions of unemployed adults, because they can work them long and pay them little. An Indian legal scholar estimates that if child labor was eliminated in his country, 15 million adult jobs would be created.

Stopping child labor requires a national commitment to keeping children out of the workplace. Kenya, an underdeveloped and impoverished nation, is not only more aggressive in enforcing its child labor laws, but has established Africa's first policy of universal education. In many countries, however, the government simply disregards its own child labor laws, as well as minimal international standards for child labor; enforcement of a minimum working age, prohibition of work at night or in hazardous occupations; enforced standards for minimum hours of work, health, and safety; and a ban on compulsory employment. Some governments have encouraged children to enter training programs where, in the absence of any mechanism to prevent exploitation, they are soon working 70 hours a week.

By putting economic pressure on these countries, we can force them to change their child labor practices.

As child labor stunts the mental and physical growth of children, it also stifles a nation's potential for development. Economic progress in the third world will not come by wasting away the most valuable resource for the sake of foreign exchange. Prosperity will be achieved by giving children the opportunity to grow, and allowing them to make a much greater contribution to society as adults.

THE INTRODUCTION OF LEGISLATION REGARDING THE AUTHORITY OF LAW ENFORCEMENT OFFICERS OF THE BUREAU OF INDIAN AFFAIRS

HON. JOHN J. RHODES III

OF ARIZONA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 29, 1987

Mr. RHODES. Mr. Speaker, today I am introducing, by request, legislation to clarify and strengthen the authority of law enforcement officers of the Bureau of Indian Affairs, of the Department of the Interior.

The Department of the Interior, through the Acting Assistant Secretary for Indian Affairs, forwarded draft legislation to the Congress on August 13 of this year. The bill would provide:

Explicit authority for the Secretary of the Interior to authorize law enforcement officers of the Bureau of Indian Affairs to carry firearms and make arrests;

Authority for the Secretary to enter into agreements with Federal, tribal, State, or local governmental agencies for effective enforcement of any Federal or tribal laws in Indian country; and

An increase in the authorized uniform allowance for uniformed BIA law enforcement officers from $125 to $400 a year.

The Bureau of Indian Affairs employs some 503 law enforcement officers, serving on 163 Indian reservations or areas in 23 States. The current authorities for these law enforcement officers do not clearly state the extent of their authorities, as do similar officers in the Department of the Interior and other departments. Without explicit statutory language for the Bureau of Indian Affairs to carry out these law enforcement functions, individual officers may be exposed to lawsuits alleging unauthorized law enforcement actions.

I believe that proper enforcement of the law on Indian reservations requires congressional delineation of law enforcement authorities, and it is my hope that Congress will act on the legislation as soon as possible.

THE MAD, MAD, MAD, MAD WORLD OF ERIC FEDERING

HON. NORMAN Y. MINETA

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 29, 1987

Mr. MINETA. Mr. Speaker, "An enterprise, when fairly once begun, should not be left till all that ought is won." Time has not dated Shakespeare's words. Persistence may be the single most important quality when one is trying to accomplish something. Calvin Coolidge, the silent President whose sparse words inspire other notables even today, put it this way: "Nothing can take the place of persistence. Talent will not; nothing is more common than unsuccessful men with talent. Genius will not; unrewarded genius is almost a proverb. Education will not; the world is full of derelicts."

And he should know. But time has not dated his words, either.

It is my pleasure to know a man, tenacious in the extreme, who has spent the last 5 years in a search against great odds. He is Eric Federing. His quest is for 39 minutes of footage cut from the 1963 cinerama comedy classic "It's a Mad, Mad, Mad, Mad World," produced and directed by Stanley Kramer.

Before the movie's release, its distributors, with characteristic disregard for balance and quality, sliced out frame after frame of Buster Keaton, Dick Shawn, Howard da Silva, Milton Berle, Phil Silvers, Sid Caesar, Spencer Tracy, and Ethel Merman. Stan Freberg, radio's Man of a Thousand Voices, had every one of his lines cut from the final version. Comic genius Buster Keaton ended up with only one line.

Eric Federing's vision is of a fully restored, 193-minute film.

Eric's fascination with the film dates back to its release, but his obsession began in 1978 when he learned of a missing 39 minutes. Since that time, he has established a network of fans, movie executives, archivists, and collectors, all dedicated to restoring the movie, widely acclaimed in 1963 and today as the last of the "all-star cast" comedies in the silent movie tradition. "It's a Mad, Mad, Mad, Mad World" is arguably the funniest comedy of all time.

Eric's search has led him through film cutting rooms, private film libraries, studio storage bins, all the way up to the sealed doors of a salt mine in Kansas that has been converted to use as a film storage vault. Usually, he has carried on the search by himself, with occasional help from others nearly as dedicated.

Commentators have not taken Eric Federing's efforts very seriously. The metaphors have been unkind. But like the tenacious carp swimming tirelessly against the current, Eric has not become discouraged with uncooperative movie people. "I guess they're just not in for the long haul," he said, with characteristic understatement, in a recent Washington Post article.

Critics have called his efforts for 39 minutes of classic comedy footage quixotic. Wisely, Eric Federing has chosen to ignore their slings and arrows as well as such arguments as "Do we really want to hear 39 minutes of Ethel Merman's voice?" Instead, he has focused his attention on a larger issue: The preservation of America's film heritage.

Hundreds of classic movies have literally disintegrated in their cans, victims of aging. Preservation efforts lag years behind demand and each film lost is a great loss for the popular history of our country.

Eric's latest project materializes on November 7, the 24th anniversary of the world premiere of "It's a Mad, Mad, Mad, Mad World." He is organizing and hosting a tribute to the film in Akron, Ohio's Civic Theater, one of the last "atmospheric" theaters designed by John Eberson still standing in the United States. These grand old movie houses are falling prey to wrecking balls, casualties of popular culture no longer as concerned with quality as with quantity, much like the movies that Eric is fighting to protect.

I commend Eric Federing's efforts and I very much hope that my colleagues will be able to attend. For like a bee, whose labors enrich the lives of everyone who enjoys a flower or savors honey, Eric Federing, through his efforts to restore 39 minutes of footage to "It's a Mad, Mad, Mad, Mad World," is befitting all movie goers by saving a piece of our film history from vanishing forever.

Mr. Speaker, Eric Federing has worked long, hard hours on this festival honoring "It's a Mad, Mad, Mad, Mad World." He deserves all the best. To Eric I offer this wish: Break a Leg.

COASTAL ZONE MANAGEMENT

HON. ANDY IRELAND

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 29, 1987

Mr. IRELAND. Mr. Speaker, last month I testified before the Merchant Marine Subcommittee on Oceanography in support of H.R. 3202, legislation which Congressman PANETTA and I have introduced to give the States a greater role in the process leading to offshore oil exploration and development.

Today, I would like to submit a copy of my comments for the RECORD so that my colleagues might consider supporting this proposal.

TESTIMONY OF THE HONORABLE ANDY IRELAND

Mr. Chairman, I appreciate the opportunity to appear before the Subcommittee today in support of H.R. 3202, legislation that Congressman Panetta and I have introduced to amend the Coastal Zone Management Act. As you know, this bill would give the States a role in determining whether prelease and lease activities associated with offshore oil and gas exploration are consistent with a State's coastal management plans. I am also grateful, Mr. Chairman, for your involvement and support of this proposal.

This legislation would, I believe, correct a significant flaw, created by a 1984 Supreme Court decision, in our current system of oil and gas exploration and leasing on our Outer Continental Shelf. I believe that when Congress passed the Coastal Zone Management Act in 1972, it intented to assure States with federally approved coastal management plans that federal activities affecting those coastal areas would be consistent with the State plans. The Supreme Court decision, however, dictated that the law did not require that the Interior Department sales of offshore tracts for oil and gas exploration be consistent with coastal management plans adopted by the states and approved by the U.S. Department of Commerce. I believe the Court was wrong in its interpretation of Congressional intent on the Coastal Zone Management Act.

Passage of H.R. 3202 will overturn that decision and return to the State their ability to impact the OCS process at an earlier stage, at the time of the lease sales. Currently, the States can only make consistency findings when asked to approve drilling permits.

To illustrate the importance of this legislation, I would like to reiterate the experiences of the State of Florida with the Department of Interior's current five-year oil and gas leasing plan, issued in June 1987. The Florida Congressional Delegation as well as the State of Florida opposed the plan, because it includes for potential lease some of Florida's most environmentally sensitive areas—the Florida Keys, which contain the only living coral reef in the Continental United States; Apalachicola Bay, prized for its oyster beds; and the southwest Florida shelf in the eastern Gulf of Mexico, which includes some unique marine habitats.

The OCS Lands Act requires the Department of Interior to strike a balance between energy needs and protection of such environmental resources. The Act sets up a mechanism by which the Department can coordinate federal leasing activities with the Governors of the States. The current five-year plan does not strike that crucial balance.

Despite months of negotiations and good faith efforts on the part of all of us representing Florida, the Department of Interior released its plan having paid little attention to the reams of comments received in opposition—not only from the State and the Congressional Delegation, but also from private citizens and organized groups within the State. At this point Congress has no further right to appeal in the OCS leasing process. While the State of Florida has filed a petition for judicial review, I know of no previous review that has ruled for the State over the Department of the Interior.

Clearly, federal consistency legislation such as H.R. 3202 is not only an environmental imperative, but also an economic necessity for States such as Florida. In 1986, for example, Floridians hosted 35.7 million visitors from throughout the United States. The Florida Department of Commerce estimates that these visitors spent $20 billion and added about $1 billion in revenues to the State. The State conducts visitor surveys which rank the reasons people come to Florida. Number one on everyone's list is our BEACHES. Close behind, at 2 and 3, are relaxation and climate; further down the list, but nonetheless important, are water sports and recreational fishing at numbers 6 and 7. In addition, commercial and recreational fishing is estimated to have an economic value of $2.5 billion to the State.

In other words, Mr. Chairman, the livelihood of many Floridians depends on our natural resources, primarily our pristine coastline and beautiful waters. The State of Florida is in the best position to determine what activities could potentially cause harm to these resources and whether the risk is worth any potential benefits. For this reason, the State should be able to affect the leasing process at an earlier stage, as would be permitted under H.R. 3202.

Further, you may recall, Mr. Chairman, that the dissenting views of the Supreme Court at the time of the 1984 decision emphasized that if there were to be problems in the leasing process, it would be to everyone's best interests to know what these problems were early on in the oil exploration process. Given the economic investment which oil interests must make just to lease the desired tracts, it would seem prudent business practice to know all of the potential costs prior to the permit application phase. I believe, therefore, that this legislation will benefit the States by providing increased participation in the process, as well as the oil development companies by providing the opportunity for a more accurate cost-benefit analysis. Thus, the long-term energy outlook for the United States would be improved.

To my knowledge, the State of Florida has always been fair with lessees during the consistency review of permit applications. It is my understanding that many more drilling permits have been granted by the State than have been disapproved due to inconsistencies with the State's coastal management plan.

This legislation does not give the State a veto, but provides it a greater role in a process that could have extremely serious effects on its ecology and economy. The oil interests have nothing to fear by cooperating with the State in the development of a balanced approach to oil leasing. Everyone wins when we devise ways to protect our vital environmental resources while we develop our energy resources.

I therefore urge the speedy approval of H.R. 3202 by the Subcommittee.

A THOUSAND DAYS' DETENTION

HON. ROBERT T. MATSUI

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 29, 1987

Mr. MATSUI. Mr. Speaker, I rise today to ask my colleagues to take note of an insightful article written by Prof. Robert F. Drinan concerning the internment of Japanese-Americans during World War II. Although the article was written before the House passed H.R. 442, the content of Mr. Drinan's discerning passage is well worth consideration. I urge my colleagues to take a few moments to read it.

A THOUSAND DAYS' DETENTION

(By Robert F. Drinan)

Will the 60,000 surviving Japanese-Americans confined to detention camps during World War II finally receive some indemnification for their improper incarceration? The Civil Liberties Act of 1987, H.R. 442 and S. 1009, designed to achieve that end, could be enacted in the near future. H.R. 442, with 135 co-sponsors, passed the House Judiciary Committee overwhelmingly. S. 1009, with more than 75 co-sponsors including Senate Majority Leader Robert C. Byrd and Minority Leader Robert Dole, is expected to pass.

As a member of the Commission on Wartime Relocation and Internment of Civilians appointed by President Carter and the Congress in 1980, I experienced in 20 days of hearings with over 750 witnesses the sufferings of the Americans of Japanese origin who were confined for three-and-one-half years in bleak barracks inland from the West Coast. The commission established the facts on which experts had previously come to a general consensus: There was no military necessity for uprooting Japanese families, citizens and noncitizens alike. Not a single case of espionage, sabotage or fifth-column activity was committed by an American citizen of Japanese ancestry or by a resident Japanese alien on the West Coast. Moreover, the Japanese community in Hawaii—one-third of the population of that island—was not confined. Nor were Japanese outside the West Coast arrested. It is also noteworthy that not a single resident of the United States of German or Italian origin was detained solely because of ethnic background.

The Commission on Wartime Relocation established conclusively in its 467-page report that it was wartime hysteria and a long tradition of anti-Japanese feeling in California that led to the decision to round up and confine all Japanese-Americans. The hearings the commission conducted in San Francisco, Seattle and elsewhere were extraordinarily moving as the residents of the two dozen camps recalled their humiliation and shame at being, in essence, accused of disloyalty to the nation they had adopted or in which they were born. Witnesses related how there was almost a conspiracy of silence about the camps by those who endured them lest, in their judgment, anti-Japanese feeling break out again.

It was the children and the grandchildren of those confined who, refusing to accept their elders' silence and shame over their imprisonment, began to insist that the Government that humiliated their parents and grandparents investigate its own conduct. Thus the Commission on Wartime Relocation was born. Made up of nine persons, including former Justice Arthur J. Goldberg and former Senator Edward W. Brooke, the commission worked effectively with archivists, ehtnic groups and historian who have produced a vast array of documents about an event unprecedented in American history—the confinement without a hearing or a trail of a large number of people only because of their race.

The commission looked for evidence that would justify the decision to segregate the Japanese community. There was little, if any, militay justification. One man, General John L. DeWitt, responsible for security on the West Coast, urged the Secretary of War, Henry L. Stimson, to persuade President Roosevelt to act. On Feb 19, 1942, 10 weeks after Pearl Harbor, President Roosevelt signed Executive Order 9066 giving the power to the military to confine all persons, citizens aliens, not because they were suspected of sabotage, but only because they were of Japanese ancestry. In the chaos of the first few weeks of World War II, little attention was given to the fact that 20,000 persons of Japanese ancestry were taken to barracks in desolate areas of the West.

The commission saw evidence, oral and written, of the hateful, anti-Japanese feeling at the time and the general approval of what was done to the Americans of Japanese origin.

The only group to protest the mass exclusion and detention was the American Civil Liberties Union. The lawsuit it brought was lost in the United States Supreme Court. But it was the work of the A.C.L.U. along with others, that helped to expedite the release of many Japanese after the American victory in Midway in June 1942 made the possibility of serious Japanese attacks on the United States no long credible.

The report of the Commission on Wartime Relocation persuaded a number of members of Congress that the nation should redress the injustices done to the Japanese community during World War II. During hearings at which I was authorized to testify on behalf of the commission, it became clear that the members of Congress realized that the contention that there was in fact no military necessity to separate and segregate all Japanese-Americans on the West Coast raised the most serious questions. No U.S. Government may take away the liberty of its citizens, even in wartime, unless there is some clear and provable reason. Lacking any such reason, the deprivation of liberty of any U.S. citizen is a clear violation of the Constitution, which states in the 14th Amendment that no person may be deprived of "life, liberty or property without due process of law."

There was some testimony given to Congress opposed to the claims of the commission. It reflected a reluctance to challenge the correctness of a judgment made by a high military official in the early days of the war—a decision that was ratified by the President, the Congress and the Supreme Court. Some persons in Congressional testimony also objected to the recommendation of the commission that there be a sum of $20,000 made available to every person confined to the camps for the duration of the war. That sum was calculated roughly on the idea that there should be at least $20 per day given in reparation for illegal confinement; that sum has some basis in judgments levied against Federal and state governments when they have wrongly detained persons. Since the average or median time for detention of the Japanese-Americans was 1,000 days, the suggested amount of reparation was $20,000. The commission thought first of rewarding the survivors of all those detained, but ultimately recommended that only the actual survivors collect. The commission, recognizing that the surviviors are at an age when many are dying, recommended that the oldest survivors be compensated first.

The bills presently before Congress stipulate that the survivors be paid over a three-year period. It is uncertain how many of the survivors would actually claim the money due them. Several prominent survivors have said that they would not file a claim. But they are very anxious that Congress enact and the President sign the bill that extends an apology to the Japanese people for America's violations of their rights during the war between the United States and Japan. But even if all the 60,000 detainees claim the $20,000 the total payout of $1.2 billion would be significantly less than the economic losses of the ethnic Japanese during 1942–46 which, as estimated by the Commission on Wartime Relocation, ranged from $2.5 billion to $6.2 billion.

Also involved in the mandate of the commission was the relocation of many families from the Aleutian Islands during World War II. While the removal of these American citizens may have been justified for military reasons, there has been no indemnification to the Aleuts, devout followers of the Russian Orthodox faith and represented ably on the Commission by a Russian Orthodox priest, the Rev. Ishmael V. Gromoff. The commission recommended that appropriate indemnification be made to the surviving Aleuts who were injured by the actions taken by the United States Government.

After I was appointed to the Commission on Wartime Relocation, I reread the opinion of the Supreme Court in Hirabayashi v. United States, decided on June 2, 1943, in which the Court unanimously sustained the constitutionality of Executive Order 9066.

I also reread Korematsu v. United States, in which, on Dec. 18, 1944, the Supreme Court in a 6-to-3 ruling sustained the conviction of an American citizen of Japanese descent for violating an order given pursuant to Executive Order 9066. After hearing from dozens of Japanese internees and reading the several major books on the confinement of the 120,000 Japanese-Americans (two-thirds of whom were U.S. citizens), I concluded that Justices Frank Murphy, Owen J. Roberts, and Robert H. Jackson were correct in their dissent in Korematsu. Justice Jackson, a former U.S. Attorney General, wrote that military orders are subject to review for their compliance with the Constitution and that even if General DeWitt's orders were "permissible military procedures" it does not follow that they have to be constitutional. Justice Murphy was more blunt: For him, the challenged practice was a "legalization of racism."

Americans have not focused much attention in the last 40 years on the confinement of the Japanese. The Canadians who detained most of the Japanese in Canada during the war—under worse conditions and for a longer period of time than the United States did—have also been content to forget about the sense of outrage and feeling of humiliation the Japanese community experiences today over the way in which its members were treated. The December 1982 report of the Commission on Wartime Relocation is the first official compilation of all the evidence about the acts of the United States Government toward a tiny minority of its people. The feeling appears to be growing that those acts, however, understandable at the time they were taken, must now, in the light of history, be deemed shameful.

The 100th Congress is thinking seriously of enacting a measure that is designed to confess error and make amends. No one should underestimate the resistance to that measure or be unaware of the widespread reluctance to bring it up—especially in view of the anxiety, and even panic, over the enormous federal deficit.

Every person experiences moments of regret for things done years ago. The stab of conscience is itself a grace of God. Nations, too, experience moments of grace when they recognize and regret evil things done. Perhaps the 100th Congress will recognize and recompense what a nation, angry at its opponent in war, did to 20,000 human beings of Japanese ancestry.

TRIBUTE TO LLOYD M. BENTSEN, SR.

HON. E de la GARZA

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 29, 1987

Mr. DE LA GARZA. Mr. Speaker, today the Texas Business Hall of Fame will induct into its ranks one of our State's living legends—Lloyd M. Bentsen, Sr., of Mission, TX, which I share with him as our hometown.

Many of our colleagues will recognize his name—he is the father of our State's senior Senator, LLOYD M. BENTSEN, Jr.

The elder Mr. Bentsen came to the Rio Grande Valley during World War I when he was taking flight training in San Antonio. One look and he stayed for good.

In Texas, the name Lloyd M. Bentsen, Sr., is known by virtually everyone. His civic and business accomplishments place him among the greats in Texas and America, and yet always his character has been marked by modesty and a deep sense of philanthropy.

Today the Texas Business Hall of Fame will meet in Houston to bring Mr. Bentsen into the league of Texas giants who have made our State the powerhouse that it is. The Hall of Fame for Texas business acknowledges an individual's lifetime contributions and achievements, and for Mr. Bentsen this includes agriculture, real estate, oil and gas operations, banking and financial interests, and insurance. In all these areas Lloyd M. Bentsen, Sr., has created jobs for the Texas workforce and fueled our economy to an enormously significant extent.

Mr. Bentsen is enjoying his 93d year of life—and still he works. He continues to manage the business empire which he created—and if one drives through the lush citrus orchards near his home in Mission, one might just catch a glimpse of Mr. Bentsen pruning away at the trees or picking some especially ripe fruit from the top of an extension ladder.

Because this Congressman has had the privilege of knowing Mr. Bentsen for so many years—I know he will forgive me if I dspense with modesty in my accolades to him. There is no reason for me to cloak my words in anything other than genuine pride. He is a Texan in the great tradition of those pioneer giants who shaped the State and contributed to its image as "bigger than life."

We congratulate our fellow Texan on his induction into the Texas Business Hall of Fame, and for enriching our lives with his unmatched character and great humanity toward all.

MED-AMERICA ACT OF 1987

HON. ROBERT J. LAGOMARSINO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 29, 1987

Mr. LAGOMARSINO. Mr. Speaker, today I am introducing legislation to provide access to health insurance for many individuals who are currently unable to purchase insurance. This legislation was developed by Senator JOHN CHAFEE, a member of the Senate Finance Committee and the Subcommittee on Health, which has jurisdiction over the Medicaid Program in the Senate. Senator CHAFEE has long labored in this field and has set as one of his highest priorities the provision of widespread and effective health care services to those who do not have access to such services. I share his commitment to this goal. In fact, I have also introduced H.R. 169, the national voluntary health insurance plan, an overall approach to the health insurance issue.

H.R. 169 would provide total coverage of all necessary medical and hospital care, without limits, exclusions or deductibles, for all Americans at about the same cost to the Government as the estimated present and projected cost of Medicare and Medicaid, which would be eliminated. It is based on the successful system currently operating in British Columbia. I believe the program would provide a practical and effective means of stopping the present rapid inflation in hospital costs, by greatly reducing administrative, collection, and malpractice insurance costs, among other things.

If enacted I believe this bill would provide a more effective system of health care for those who are in need of it. However, in the meantime we must proceed one step at a time. This is why I have introduced the Med-America bill.

It is estimated that between 1980 and 1985, the number of uninsured individuals grew by almost 25 percent. Between those same years the number of uninsured children grew by 14 percent. Yet during the debate on catastrophic health care in Congress, those under 65 have been largely ignored. I believe that if we are truly interested in addressing catastrophic health care expenses, we must look at both the old and the young.

More than one-third of those without any health care insurance live in families with incomes below the poverty level. Another one-third live in families with incomes between 100 and 200 percent of the poverty level.

There are other individuals who, even if they could afford to purchase insurance, are without access to private health care insurance. Who are they? They are those who have what we call preexisting conditions—some kind of a condition that causes insurance companies to refuse to insure them. Thousands of aids patients fall into this category.

Finally, there are individuals with chronic illnesses who exhaust their private health care insurance and have no where to go but into poverty to qualify for Medicaid benefits. AIDS patients frequently fall into this group, too.

For families with a chronically ill child, where the parents are relatively well off and possibly both working, to suddenly have a child with extremely severe problems means they must spend their way down into poverty so they can receive Medicaid assistance. They must exhaust their resources. Although they are trying, all they can qualify for is Medicaid.

The Med-America bill is a new approach to these problems. The bill would build on the existing Medicaid Program in three ways:

First, it would sever the tie between Medicaid and cash benefit programs—such as AFDC and SSI. As a result, States would have the option of providing Medicaid benefits to anyone whose income is below the Federal poverty level, regardless of whether or not they qualify for cash welfare programs.

Second, States would have the option to allow individuals—the so-called working poor—whose incomes are at or near the Federal poverty level to purchase health insurance through Medicaid for an income-adjusted premium, not to exceed 3 percent of the individuals' or family's adjusted gross income.

Finally, States would have the option to allow persons with family incomes and resources in excess of 200 percent of the Federal poverty level to purchase Medicaid benefits for a nonincome adjusted premium if they have been excluded from private health insurance coverage because of a medical impairment or disability or if they have exhausted one or more benefits under their private insurance plans.

I strongly believe that these steps will go far in providing Americans with access to effective health care. I urge my colleagues to join me in my effort to offer the security of health insurance to all our Nation's citizens.

SUMMARY OF MED-AMERICA INTRODUCED BY CONGRESSMAN BOB LAGOMARSINO—OCTOBER 29, 1987

ELIGIBILITY CRITERIA

At its option, and in addition to existing Medicaid optional coverage categories currently enumerated in the statute, a State may extend coverage to the following individuals:

(a) Persons with family incomes under 200% of the federal poverty level, or such other lower limit that the State may establish. Those individuals between 100% and 200% of the federal poverty level would be required to pay an income adjusted premium in order to receive these benefits. The premium can be no greater than 3% of the individual's or family's adjusted gross income.

(b) Persons with family incomes and resources in excess of 200% of the federal poverty level (or the lower level established by the State) who have been excluded from private health insurance coverage because of a medical impairment or disability or who have exhausted one or more benefits under their private insurance plans. These individuals would be allowed to purchase the Medicaid benefit with a non-income adjusted premium.

(c) Employers who are unable to purchase affordable private coverage for their employees.

BENEFITS

At a minimum, a State which elects this option would have to provide the following items and services: inpatient and outpatient hospital care; physician services; x-ray services, EPSDT and family planning services; dental services; prescription drugs; dentures; prosthetic devices; eyeglasses; rehabilitative services; and clinical services furnished by or under the direction of a physician. Hospital and physician services for the full buy-in populations (i.e. those who have exhausted their private insurance benefits or have been denied coverage by private insurers) could not be limited by the States.

Additionally, at its option a State may include in this plan all other Medicaid services allowed under federal law, including home and community-based care services, but excluding services of long-term care institutions including skilled nursing facilities, intermediate care facilities, and intermediate care facilities for the retarded.

PREMIUMS AND COST-SHARING

A State would establish an annual premium, to be paid in monthly amounts, equal to the average per recipient expenditure (excluding expenditures for long-term institutional services) during the latest period for which recipient and expenditure payment data are available. A family premium would be established for individuals purchasing coverage for themselves and for related members of their households.

Persons with incomes in excess of 200% of the federal poverty level (or the level established by the State) who are eligible under this program, would pay the full annual premium in monthly amounts.

Persons with family incomes between 100% and 200% of the federal poverty level would pay a monthly amount equal to no more than 3% of their total family adjusted gross income, as reflected in their latest federal income tax returns. Families would be eligible to have their premium contribution amount recalibrated if there were a significant change in their incomes that necessitated an adjustment in the size of their premium payment.

Families with incomes under 100% of the federal poverty level would not pay any portion of the premium.

Employers seeking coverage for employees would pay the full premium. They may choose to contribute to the cost of such coverage as a part of an employee's benefit package and thereby reduce the employee's actual health insurance costs.

A State could impose co-payment (but not deductible) requirements on families or individuals. In the case of families with incomes below the federal poverty level, co-payments could not exceed those imposed on the categorically needy. In the case of other persons covered under this program, co-payment may also be imposed for prescribed drugs, eyeglasses, dental services, dentures, and prosthetic devices even if they were not imposed on other Medicaid recipients. In no event, however, may co-payments be required for medical, dental and vision services furnished under EPSDT or for pregnancy-related care.

MAINTENANCE OF EFFORT AND CONDITIONS OF PARTICIPATION

1. In order to qualify for this program, a State's AFDC payment levels would have to be as high as they were on the date that this measure was introduced.

2. In order for a State to take advantage of the options in Med-America to provide insurance for the full cost buy-in groups (those who have been excluded from private health insurance coverage because of a medical impairment or disability or who have exhausted one or more benefits under their private insurance plans), it would be required to fully implement the SOBRA optional provisions for children and pregnant women and low-income elderly.

3. The mandatory benefit package for the buy-in population established by Med-America would also be mandatory for all individuals below 100% of poverty who qualify for the Medicaid program.

AGRICULTURE FREE MARKET AT WORK

HON. JOE MOAKLEY

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 29, 1987

Mr. MOAKLEY. Mr. Speaker, the Washington Post of October 25, 1987, reported a story of a true success story in American agriculture—the cranberry industry. The cranberry industry is remarkable in today's world of price supports, crop subsidies, and market orders. Through hard work and perseverance our country's cranberry growers have developed a remarkable story and an industry which has climbed into the Fortune 500.

I commend this article to my colleagues and again congratulate Ocean Spray, Inc., and the cranberry growers of our country.

CRANBERRIES: AGRICULTURAL FREE MARKET AT WORK—GROWERS AREN'T BOGGED DOWN IN USDA REGULATIONS, SUBSIDIES AND ALLOCATIONS

(By Ward Sinclair)

WAREHAM, MASS.—For the last 150 years, give or take a few, the Makepeace family has mucked a living from the sandy soil near Cape Cod, so on this cool October day Christopher Makepeace followed ritual: He went down to the bogs to once more watch the red gold roll in.

Christopher Makepeace is a cranberry grower. The world's largest cranberry grower, in fact, with 1,400 acres of low-lying bogs that produce the tart fruit that goes into the juices and relishes that adorn the shelves of most American grocery stores.

Harvest was under way in this 28-acre bog, flooded to the depth of a man's knee. Brilliantly red cranberries had been gentled from their vines by a shaker machine, floated to the surface and then quickly corraled and guided to shore by a work crew manipulating long wooden booms.

A huge vacuum machine sucked the berries from the water, sent them up a conveyor belt and into a waiting semitrailer that would hustle them down the road to a receiving station operated by Ocean Spray Cranberries Inc., a wildly successful farmers' cooperative that has climbed to Fortune 500 status.

Although the crop seemed abundant in this bod, looks were deceiving. "We had our best year ever last year," Makepeace said, "but this will be an off-year. It was dry in July and August and the crop suffered. The water is vital."

Now, when one thinks agriculture, the cranberry may be one of the last commodities to come to mind. Because it requires boggy, low-lying soil with a heavy clay base, it is grown commercially only in Massachusetts and four other states. And of course, the cranberry isn't high visibility—not your everyday staple.

But while their grain-growing counterparts elsewhere have reeled from one economic punch after another over the last five years, the obscure cranberry farmers have been doing just fine.

Moreover, they are doing well without a hint of federal assistance. Cranberry growing may be the quintessential example of an agricultural free market at work, with demand just enough ahead of supply to make farmers happy, and with the growers' own Ocean Spray cooperative assuring an adequate price for the raw product.

Unlike the grain farmer, the cranberry growers get no federal crop subsidies and their fruit has no federal price supports. Federal marketing orders do not allocate market shares or limit new growers, as occurs with some other crops. No surplus jams the warehouses; supply barely keeps pace with demand. And Ocean Spray, owned by 600 cranberry and 140 grapefruit growers, keeps profits up by pushing out new juice and relish mixes.

Although national acreage planted to cranberries has remained constant at less than 25,000 acres for 15 years, per-acre yields and prices have risen steadily and many farmers can figure on a remarkable gross of $10,000 per acre in a good season.

"It's a very stable industry: Every berry that is grown is used," said Jere D. Downing, Ocean Spray's horticultural director at nearby Plymouth. "All the pieces fit together. We're trying to match business development with available crops. As the crop gets bigger we can add new business outlets."

Yet not all is well in the bogs.

As urban development crowds in around the growing areas just an hour south of Boston and as public concern grows over pesticide pollution of groundwater, the industry is under unaccustomed pressures. And expansion into new bogs is limited because federal agencies refuse to allow disruption of wetlands, which the bogs are by definition.

Pushed and cajoled by the state government and lured by the prospect of cutting their costs, many growers are reducing their pesticide expenses through integrated pest management (IPM) techniques that require sophisticated oversight.

"We want to cut the industry's chemical use 75 percent by 1991," said August (Gus) Schumacher Jr., state commissioner of food and agriculture. "We are getting private industry and the state university involved in helping the growers find alternatives . . . and a number of these farmers, on their own, have made major reductions in chemical use through IPM practices."

Doug Beaton, president of the Cape Cod Cranberry Growers Association and, like Makepeace, a fourth-generation grower, agreed with Schumacher, adding that less pesticide use is in the industry's best interest.

"This is where we make our living. This is our spot. A lot of us live on our bogs, so it behooves us to be careful," Beaton said. "Chemicals have been a part of our success, but we also are better farmers, and a key concern for all of us is our clean water."

This sensivity stems in part from the 1959 chemical scare that sent the industry into a major tailspin. Just before Thanksgiving that year, the federal government announced that a small part of the crop had been tainted by a cancer-causing weed killer. Consumers turned their backs on cranberries; tons of the fruit were destroyed, and farmers abandoned thousands of acres of bogs.

"As people come in closer toward where we farm, we're getting asked more and more questions," Downing said. "There's very little understanding outside of the cranberry world how this fruit is grown."

And as the world draws closer, real estate developers come knocking on growers' doors every day with alluring offers for their land. Farmers like Beaton and Makepeace aren't interested.

"It's a life style, and people just can't understand when we say we don't want to sell," Makepeace said.

Beaton added: "We may have a large co-op working for us, but we're still small farmers and we've learned to be independent—we even custom-build a lot of our own equipment. It gives us pleasure to know we're working with a crop that has a historical image that goes back to the Pilgrims."

PERSONAL EXPLANATION

HON. BRUCE F. VENTO

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 29, 1987

Mr. VENTO. Mr. Speaker, on October 15, I was necessarily absent and was unable to vote on the question of final passage of H.R. 162, the high-risk occupational disease notification bill. Had I been present, I would have voted "yes" on rollcall No. 359.

LEGISLATING LIMITING PAY OF CONSULTANTS

HON. MICKEY LELAND

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 29, 1987

Mr. LELAND. Mr. Speaker, today my colleague, FRANK HORTON, and I are introducing legislation which will limit the rate of pay at which the U.S. Postal Service can compensate independent consultants to the same rate as that paid by other agencies and offices of the Federal Government. Senator PRYOR recently brought to the public's attention the fact that the U.S. Postal Service hired an individual consultant at the outrageous sum of $900 a day. In effect, the consultant functioned as a postal employee. He worked in an office at the U.S. Postal Service headquarters, his clerical support was provided by postal employees, his telephone, office supplies, and all other needs were furnished by the U.S. Postal Service. The staff assembled to assist in the project were all postal employees.

The consultant collected the staggering sum of $156,000 for 7½ months' work. This sum is $100,000 more than the earnings which a Senior Executive Service official, being paid at the maximum salary, would have earned over the same period of time. He also received $14,000 for expenses during this period. The same consultant was then rehired 10 months later at the same rate of pay to evaluate the results of his own recommendations. During this 130-day work period he pocketed another $117,000 and, I presume, several thousands more for expenses. This rate of pay is equivalent to an annual salary of $234,000, not including additional amounts for expenses. The annual equivalent which the consultant received exceeds, by almost three times, the amount earned by the Postmaster General. There are many chief executives of major corporations whose salaries are substantially lower.

In recent years the U.S. Postal Service has been able to hire a number of top executives, including the Postmaster General, from the corporate world at standard postal salaries. I have no doubt that they can fill any needs for consultants at the same levels of compensation. The use of consultants is widespread throughout the Federal Government and the needs which give rise to the consulting services have been met under the limitations set forth in existing Federal law. I know that the needs of the U.S. Postal Service can also be met within these same limitations.

Mr. Speaker, this legislation was drafted with the close cooperation with the U.S. Postal Service. In fact, the final language is the result of suggestions made by the U.S. Postal Service to the Subcommittee on Postal Operations and Services, which I am privileged to chair. Under the proposed legislation, the U.S. Postal Service will still be able to retain specialized services such as independent accounting services. The U.S. Postal Service will also be able to retain consultants to meet specific needs as it has in the past when it hired consulting firms to review safety procedures and to study equal employment opportunities.

In light of the fact that the U.S. Postal Service projects losses between $200 and $250 million in fiscal year 1987, and that a request for higher rates that will go into effect next spring is before the Postal Rate Commission, the proposed legislation makes good financial sense.

As chairman of the Subcommittee on Postal Operations and Services, I, along with the ranking minority member of the subcommittee, Mr. HORTON, are committed to making every effort to find areas where money can be saved or expenses limited, and this is one such area. We urge our colleagues to support this measure when it comes before us.

HAPPY GOLDEN WEDDING ANNIVERSARY TO MR. AND MRS. GENTRY SCHULTZ FRY

HON. DAN MICA

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 29, 1987

Mr. MICA. Mr. Speaker, I would like to bring to the attention of my colleagues a very special occasion that few of us are fortunate enough to experience.

We live today in a society characterized by change and instability. The traditional values of home and family, along with the institutions we grew up with—education, religion, the law, marriage—all seem less cohesive today.

That is why I am particularly pleased and privileged to have an opportunity to commend Mr. and Mrs. Gentry Schultz Fry on the occasion of their golden wedding anniversary.

Now living in Broward County, FL, Nancy and Gentry were married on Saturday, November 6, 1937. Today, they join the ranks of those who have loved, endured, agreed and, I'm sure, disagreed, for five decades. They can look back on those years with great pride and accomplishment.

Knowing their philosophy of life, I can safely say that the most cherished of those accomplishments are their 7 children and 16 grandchildren.

First there is Susan, now Mrs. Robert B. Lochrie, Jr., and their children, Robert, Glenn, and Kate; next, there is Bill and his daughters, Dana, Amber, and Kim; there is Martha and myself and our children, Christine, Andrew, Caroline, and Paul; there is Roger and his wife Carol, and their children Gentry, Lucy, and Cassidy; there is Steve and his wife, Aida, and their children, Will, Genevive, Amelia, and the spirit of Maya; there is Mary Alice and her husband, Mike; and, last but never least, Tracy.

That Nancy and Gentry would be graced with so many children and grandchildren should surprise no one; both of them come from large, happy families.

Born Anna Marie Wagner in Brooklyn, NY, Nancy, as she is affectionately called, is the daughter of Annie Golden Wagner and Julius Wagner. She is one of 10 children, with 4 sisters and 5 brothers.

Known to his friends as "Gabe" or "Schultz," Gentry Schultz Fry was born in Hannibal, MO. He is the son of Catherine Schultz Fry and James William Fry. Gentry is one of seven children, with three brothers and three sisters.

After 20 years of distinguished service in the U.S. Navy, Gentry and Nancy, a dedicated wife and mother, moved to Florida in 1950.

As they celebrate their 50th anniversary, Nancy and Gentry demonstrate to all of us the enduring power of love and commitment. I join with all of their friends, and our friends and families, in celebrating their success, past and future, and wishing them many more joyous anniversaries.

RANDOLPH WILLIAM STRIAR AND DANIEL E. STRIAR TO BE HONORED BY ROFEH INTERNATIONAL

HON. BRIAN J. DONNELLY

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 29, 1987

Mr. DONNELLY. Mr. Speaker, Mr. R.W. Striar, of Milton, will be honored as Man of the Year by the New England Chassidic Center at its 72d annual dinner on November 8, 1987, at Boston's Park Plaza Hotel.

His son, Mr. D.E. Striar, will be recognized at the same time as the benefactor of the Striar Rofeh Building in Brookline.

Mr. R.W. Striar has been a communal leader in the Greater Boston area for over six decades. He has a long history of association not only with the present Bostoner Rebbe, Grand Rabbi Levi Y. Horowitz, founder of Rofeh International, but also was a close friend and supporter of the first Bostoner Rebbe, Grand Rabbi Pinchas David Horowitz, founder of the New England Chassidic Center.

The link to the Bostoner Rebbe dates back to more than 70 years ago when David Phillip and Annie Bessie Striar helped the late Bostoner Rebbe found the Chassidic Center in 1914, located then on Poplar Street in the West End of Boston. This site served as the springboard of many spiritual and humane activities that serve the world's Jewish community.

Mr. D.E. Striar, noted business executive, has been involved in diversified businesses ranging from the chemical industry, health care field, and real estate holdings throughout the United States.

Having been brought up in a charitable atmosphere at home, Mr. Striar was able, through his good fortune, to be able to support and nurture the beginnings of a number of important facilities benefiting future generations. Mr. Striar has been involved in establishing many institutions, especially in the areas of medicine where he has dedicated wings at the Shaare Zadek Hospital and Ramban Hospital in Haifa.

Rofeh International, founded by the Bostoner Rebbe, Grand Rabbi Levi Y. Horowitz, has helped thousands who came to Boston seeking medical assistance. The institution provides an eight-family facility to house the patients and their families and a short-term residency program at its 32 bed facility. Rofeh provides contacts with leading physicians and hospitals, interpreters, transportation, and support systems.

President Ronald Reagan and many leaders in the field of medicine have lauded the work and the help provided by Rofeh International.

SIX RIVERS

HON. TOM LANTOS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 29, 1987

Mr. LANTOS. Mr. Speaker, today, with my distinguished colleague Representative STARK, I am introducing legislation to examine methods of protecting the magnificent Smith River region of northern California. The Smith is the last major undammed river in California. The area supports rare, old growth redwoods. The Forest Service's Six Rivers National Forest draft plan published earlier this year proposes extensive timber cutting and makes recommendations that will dramatically alter one of our most precious natural legacies.

This bill will study the suitability of designating this region as a national park. As yet, we hav no national park which includes within its boundaries the watershed of a wild and scenic river. The Smith River, and its watershed, could be an exciting and unique addition to our National Park System.

Yet the Six Rivers National Forest draft plan would, if implemented, deny us this opportunity. It would lead to a substantial increase in the annual timber harvest—up from the current 140 million board feet per year to 175 million board feet per year. All harvesting will be through clearcutting. Within 50 years, according to the plan, all but 6 percent of the region's old-growth forests are to be harvested creating a landscape dominated by tree-farm type forests.

Although parts of the Smith are included in the wild and scenic river system, most of the river is classified as recreational which provides the lowest level of protection available. The Forest Service proposes 20-acre clearcuts and other intensive forest management operations within the quarter mile wide recreation zone on each side of the river and its protected tributaries. This is a clear violation of the intent of the wild and scenic designation.

One paragraph from the plan clearly demonstrates the serious environmental damage that will result from implementation of the proposed forest plan:

> Maintaining visual quality in the future will more difficult as more land and vegetation is altered by management activities, primarily timber harvest activity, and road construction. The demand for visual quality will increase as recreational use of the Forest increases.—Six Rivers National Forest Draft 3-41

During the comment period on the Six Rivers National Forest draft plan, approximately 8,500 comments were received. The majority of these focused on proposals for the Smith River. Comments were also submitted on the planned destruction of old-growth habitat and its impact on the spotted owl—a sensitive species. The Forest Service would maintain old-growth habitat for only 48 out of the estimated 200 pairs of spotted owls. Similar disregard is shown for other rare and sensitive species such as the wolverine and the goshawk.

Also included in our legislation is a study of the local economy to determine its dependence on timber. We believe that there are significant other local interests in addition to timber. Tourism, recreation, and a new prison currently under construction are all helping to diversity the local economy. As the region becomes less economically dependent on timber, it is time to obtain an accurate picture of the diversification and to take action to protect this precious natural legacy.

The bill I am introducing today authorizes a study of this area to determine what action should be taken if we are to conserve the unique, natural heritage of the Smith River. There is a consensus that the management policies for the national forest lands along the Smith River can be improved to reflect the importance attached by the public to the natural resources of this region. We want future generations to have the opportunity to enjoy the Smith River and its watershed. We urge you to join with us in supporting this legislation to achieve these goals.

REPRESENTATIVE ACKERMAN SALUTES U.S. MERCHANT MARINES

HON. GARY L. ACKERMAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 29, 1987

Mr. ACKERMAN. Mr. Speaker, I rise today to add my voice to those who are outraged over recent developments in the Persian Gulf. The combatants in the Iran/Iraq war have savaged each other for more than 7 years, and I'm afraid that the Reagan administration has once again put American lives at risk without a coherent and well-defined policy to guide us.

I am particularly moved to reiterate these concerns at this time because on the despicable attack against a U.S.-flagged merchant vessel, the *Sea Isle City,* in which U.S. merchant marines suffered several casualties. The ship's captain, John Hunt, was blinded by dozens of shards of glass exploding in his face as a result of the direct hit by an Iranian silkworm missile.

The sacrifices of Captain Hunt and his men illustrates once again the often overlooked contributions of our Nation's merchant marine fleet. As an essential component of our commercial and military transportation system, the merchant marine fleet sails to every corner of the globe and is ever-reliable even in the most serious of emergencies.

If tragedies such as the strike against the *Sea Isle City* have a silver lining, it is the fact that sailors of the merchant marine may yet receive the long-overdue credit and thanks they deserve. Without their service, a dependence on foreign shippers could lead to shortages of shipping services in critical times, excessively high shipping rates and loss of employment, income and the balance of payment benefits generated by domestic maritime industries.

Mr. Speaker, let us hope that we learn some important lessons from this terible action so that innocent men and women will not be unnecessarily subjected to dangers arising from a flawed foreign policy. Let us also resolve to give the Merchant Marine the recognition and appreciation they've earned and to do all in our power as elected officials to protect their lives and welfare.

A QUESTION OF SINCERITY

HON. DONALD E. "BUZ" LUKENS

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 29, 1987

Mr. DONALD E. LUKENS. Mr. Speaker, we are all hopeful for evidence of democratization in Nicaragua under the peace accord signed in Guatemala. As signatories, the Sandinistas' support for the principles of those accords ought to be clear and unequivocal. We should be concerned when Sandinista commandante Bayardo Arce attacked the internal opposition in the official Sandinista newspaper Barricada on October 20. Arce said that the opposition had committed a grave error in believing the national dialog was a forum of equals, and stated that there was no alternative to Sandinista rule in Nicaragua.

Members will recall that this is the same commandante who said in 1984 that elections were a ploy for consolidating Marxist-Leninist rule. Mr. Speaker, we should all be concerned about the sincerity of Sandinista pronouncements on the democratization of Nicaragua.

THE 64TH ANNIVERSARY OF TURKEY

HON. MICHAEL G. OXLEY

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 29, 1987

Mr. OXLEY. Mr. Speaker, I would like to express the friendship of the American people and to honor our distinguished allies, the Government and people of Turkey on the 64th anniversary of her founding on this day in 1923 by Kemal Ataturk.

For the United States, the success of Turkey's democratic and economic development since her founding is of utmost importance. Turkey also plays an important role as a bridge between the West and the nations of the Middle East.

The American relationship with the Turkish people has a long history than many Americans realize. There were many facets to this relationship, beginning with trade when four American firms opened business in Ismir between 1810 and 1825. The U.S. Navy came into the Mediterranean to protect commercial shipping and our first commercial treaty was signed in 1830.

After the establishment of the Republic of Turkey in 1923, a United States-Turkish Treaty was signed. Formal diplomatic relations were established in 1927. Contacts and trade broadened, missionaries and educators exchanged ideas, and some business activity developed. Today, we are partners with this key ally in many essential political, defense, and commercial alliances.

Democracy struck deep roots in Turkey and she has enjoyed broad and rapid economic and social progress. When Turkey is compared historically with other Mediterranean and Islamic countries, she must be ranked high among the world's stable countries with a mature and well-balanced political system.

Turkey is of great importance to the United States for geostrategic, political, and economic reasons. In strategic terms, Turkey poses a formidable barrier to Soviet expansion in the eastern Mediterranean and Middle Eastern regions. In political terms, Turkey's position as NATO's only Muslim member makes it a bridge between the Western and Muslim worlds and enables it to play a stabilizing role in the volatile Middle East. The United States clearly has strong reasons to maintain the closest possible working relationship with Turkey.

On Turkey's 64th anniversary, let us join in congratulating this steadfast ally for her achievements and affirm our strong commitment to strengthening this valuable partnership in the future.

ERADICATION OF RIVER BLINDNESS DISEASE

HON. CLAUDINE SCHNEIDER

OF RHODE ISLAND

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 29, 1987

Miss SCHNEIDER. Mr. Speaker, I want to bring to my colleagues attention the efforts of Merck & Co., and the World Health Organization to wipe out river blindness, a devastating tropical disease. Through the ingenuity of Merck scientists who developed an effective treatment for the disease, the humanitarian action of Merck to donate the drug free of charge, and the efforts of the World Health Organization which assisted in the clinical testing of the drug and now will help distribute the drug, river blindness soon may be eradicated.

River blindness afflicts an estimated 18 million people and threatens another 85 million in much of tropical Africa and in some parts of Latin America. The disease is caused by a parasitic worm which is transmitted by flies that breed in rivers. The disease can result in blindness, weight loss, and disfiguring of the skin; 340,000 people are now blind as a result of the disease and in some villages where the disease is prevalent, the disease has blinded up to 15 percent of the population. Because of concern about disease, some entire villages have moved away from rivers which breed the flies and have settled in less fertile areas adding to the poverty and hunger of these people.

Merck & Co. scientists discovered that a drug used for parasitic infections in livestock is effective against the parasite causing river blindness. Clinical studies conducted by Merck and the World Health Organization have shown that the drug is effective and without serious side effects. A patient can be treated with one or two oral doses a year making it a particularly simple and appropriate treatment for tropical regions without modern health care systems.

Because the disease occurs in poor nations, Merck determined that the only way to get the drug to the people in need was to make the drug available at no charge. Merck and the World Health Organization are now planning to distribute the drug, and the World Health Organization will help tropical nations establish the necessary drug distribution systems.

The actions of Merck and the World Health Organization deserve our highest praise. The skill of Merck scientists and the generosity and compassion of Merck in developing and distributing this treatment will improve the lives of millions of the world's poorest citizens. The expertise of the World Health Organization and the trust it has developed in all areas of the world will be crucial to disseminating the treatment and eradicating this devastating disease. The collaboration of Merck and the World Health Organization in developing and distributing the treatment for river blindness demonstrates industry and government working together at their best to improve world health.

H.R. 3357, A BILL TO INCREASE THE NUMBER OF ACRES PLACED IN CRP

HON. CHARLES HATCHER

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 29, 1987

Mr. HATCHER. Mr. Speaker, I have introduced H.R. 3357, a bill to increase the number of acres placed in the Conservation Reserve Program [CRP] and for other purposes. This legislation is identical to S. 1521, a companion bill introduced in the Senate by Senator SAM NUNN.

The CRP was authorized by the Food Security Act of 1985—the farm bill—and under the program farmers enter into contracts to retire highly erodible cropland for 10 years. In return, the U.S. Department of Agriculture makes annual payments to participating farmers and shares one-half of the cost of establishing grass or trees on the land. To date, almost 23 million acres of highly erodible cropland has been accepted into the CRP.

The legislation which I have introduced has several major goals:

First, accelerate enrollment into the CRP with a goal of expanding the reserve to 65 million acres by 1990;

Second, provide farmers new incentives and options for the enrollment of land in the reserve;

Third, mandate the Secretary of Agriculture to formulate and carry out a ground water pilot program to address serious regional water quality or supply problems; and

Fourth, continue Commodity Credit Corporation funding for the CRP through fiscal year 1990 so the program will have a stable and certain funding base as other commodity programs have.

The success of the CRP has been quite pleasing to me in reducing agricultural surpluses, protecting the environment, assisting farmers income, and preserving erodible land. I believe expansion of this program through H.R. 3357 offers many opportunities to the agricultural sector of our Nation to address serious long range problems in a cost effective way.

Expansion of the CRP to include at least 65 million acres of land into the reserve will clearly contribute to supply control efforts of commodities at about one-half of the cost of traditional commodity programs. Also, through expansion of the CRP our farmers and land owners will have a much needed incentive for increasing the reforestation process, which will help increase the predicted timber shortages in the coming years.

This bill also addresses the concerns of farmers who would like to enter land into the CRP but have been told that their land does not qualify. H.R. 3357 would require the Department of Agriculture to offer whatever incentives are necessary to meet the 65-million-acre requirement. These incentives would include advance payments in cash or in kind for up to 50 percent of the total rental payments, bonus payments for permanently retired land, and allowances for commercial use of reserve land used for recreational purposes. The Department may also permit a specified number of acres placed in the conservation reserve to be considered as set-aside acreage under the set-aside program.

This legislation also addresses the extremely serious problem of water quality and quantity. This bill would call for the Secretary of Agriculture to formulate and carry out through 1990 a ground water pilot program in conjunction with the CRP to assist owners and operators of land in conserving and improving the soil and water resources on their farms. I believe this pilot program will help study and examine the many problems dealing with contamination of rural water supplies by fertilizers and pesticides. This is an area which we must continue to research and monitor to reduce the severity of such problems in the future.

As for financing this legislation, H.R. 3357 calls for continued use of Commodity Credit Corporation funding through 1990. A recent report conducted by the American Farmland Trust projects that the Federal Government will save $578 million during the CRP's 10-year lifespan, because the CRP payments will be much less than commodity program payments on the crops that would have been made. The report also projects that as production of commodities drops on these lands, commodity prices will rise, putting an additional $2.3 billion into farmers' pockets by 1990.

The Conservation Reserve Program has been one of the most highly successful programs to come out of the 1985 farm bill, and it is my hope that through H.R. 3357 the CRP can continue to flourish and provide our farmers new opportunities to live off the land. We can also use the CRP to play a role in the growing problem of rural development through the planting of trees and timber harvesting in many of the country's rural areas. I hope that my colleagues will join me in supporting this legislation that will benefit many agricultural interests throughout these United States.

THE 28TH ANNUAL FORT LAUDERDALE INTERNATIONAL BOAT SHOW

HON. E. CLAY SHAW, JR.

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 29, 1987

Mr. SHAW. Mr. Speaker, today marks the beginning of a spectacular 5-day event in my district, the 28th Annual Fort Lauderdale International Boat Show. This year's promises to be the best boat show ever, featuring more than 1,000 boats from countries including Italy, Korea, Finland, Sweden, Great Britain, Greece, Taiwan, Denmark, Australia, Hong Kong, France and, of course, the United States.

Last year's show was the largest in-water show on Earth, and this year's show is even bigger, including every size of boat and every type of nautical gadget imaginable.

Visitors to the show at the Bahia Mar Resort and Yachting Center will see more than $200 million in boats and marine accessories. Boats from 8 to 137 feet in length will be on display, and the show will include live entertainment, tropical fashion shows, and fishing clincis and demonstrations performed by professionals.

Friday is "Viareggio/Italian Day" at the boat show to honor the Fort Lauderdale's "twin city" in Italy. Italian exhibitors will receive special recognition, and many special activities are planned. Viareggio celebrated "Fort Lauderdale Day" on June 2 this year.

The Fort Lauderdale International Boat Show gets bigger and better each year, offering something for everyone. I congratulate the organizers of this year's show for putting on such an exciting and memorable event.

DIRECT ENERGIES TOWARD CHEMICAL WEAPONS AGREEMENT

HON. NICHOLAS MAVROULES

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 29, 1987

Mr. MAVROULES. Mr. Speaker, the arms control focus these days has centered on the pending INF agreement with the Soviet Union. I am concerned, however, that this administration's attention has been diverted from two other critical areas: reducing long-range systems and eliminating chemical and biological weapons. I would like to take this opportunity to focus specifically on the vital issue of outlawing chemical weapons.

There can be little doubt that chemical weapons are, today, being used in regional wars around the world. The effects of their use are by most standards gruesome. Onsite inspection of manufacturing and storage facilities is crucial to any agreement, and we must continue to focus our energies on achieving a comprehensive, verifiable ban on these weapons.

It is gratifying to see the Soviets become so amenable to onsite inspection. This shift, however, by no mean signals an imminent agreement. More problems remain, including the issue of how one disposes of these highly toxic chemicals. Nevertheless, it is our task to remind this administration that a comprehensive chemical weapons agreement is sorely needed.

The opportunity now exists to make substantial progress on this issue in Geneva. It is my hope that this administration makes the most of it.

NATIONAL DOMESTIC VIOLENCE AWARENESS MONTH

HON. BOB CARR

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 29, 1987

Mr. CARR. Mr. Speaker, I rise today to recognize the month of October as National Domestic Violence Awareness Month. This month has been designated to inform Americans of domestic violence assistance programs, and to educate them about the seriousness of this situation.

The problem of domestic violence is ubiquitious. Violence against women will occur at least once in two-thirds of all marriages. Battering is the single major cause of injury to women, exceeding rape and mugging. The frequency of battering is alarming. In this country, a woman is beaten every 18 seconds.

But the effect of domestic violence is far greater than physical injury. Psychological suffering can be immense and intense. Battered women live in constant fear of further abuse, and are frequently frightened and distrustful of any future relationships.

The Council Against Domestic Assistance of Lansing, MI, is one organization which has provided outstanding service to women in dangerous domestic situations. But the existing network of support for battered women and their children needs to be expanded. By making people aware of the problem and the efforts being taken to reduce it, the Nation is taking an important step in helping battered women and their children escape potentially violent situations. The recognition of October 1987 as National Domestic Violence Awareness Week is an important reminder that a significiant number of American women and children are at risk in their homes every day, and they deserve our protection and our understanding.

LONG-TERM CARE INSURANCE: A BILL TO STIMULATE THE PRIVATE MARKET

HON. MATTHEW J. RINALDO

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 29, 1987

Mr. RINALDO. Mr. Speaker, on October 15, I introduced legislation which will move us one step closer toward ensuring that all Americans have adequate protection against the financial catastrophe of long-term care. I was pleased to be joined in this effort by the distinguished minority leader of the House, ROBERT MICHEL; the ranking Republican of the Energy and Commerce Health Subcommittee, Mr. MADIGAN; the chairman of the Select Committee on Aging, Mr. ROYBAL; and by my colleagues Mr. DAUB, Mr. REGULA, Mr. HUGHES, Mr. FRENCH SLAUGHTER, Ms. SNOWE, Mr. GUNDERSON, Mr. SAXTON, and Mr. HAMMERSCHMIDT, all of whom have demonstrated an active commitment to ensuring affordable health care for senior citizens.

The immediate goal of this legislation is to develop an extensive private long-term care insurance market to help reduce the elderly's dependence on public assistance. The public policy objective is to prevent older persons from becoming impoverished simply because they need long-term home health or nursing home care. Stimulating the growth of an affordable private insurance market and providing incentives to purchase long-term care policies not only benefits the elderly but frees up scarce public funds which can be funneled back into the system for individuals who truly cannot afford to purchase such coverage for themselves. The Medicaid Program spent nearly $16 billion last year on nursing home care for the elderly. That figure is expected to rise to $45 billion by the year 2000. Tragically, nearly half of Medicaid nursing home residents were not initially poor but spent down their income and assets to State Medicaid eligibility levels. Clearly, in light of future demographic changes, Congress must take positive action now if it is to avert a crisis.

Mr. Speaker, as the Medicare catastrophic bill made its way through the House this summer, it did much to focus our attention on the true catastrophe faced by senior citizens and their families—the costs associated with long-term home health and nursing home care. During our deliberations on the Medicare bill we were told again and again that this was the protection seniors needed most. However, we were not then prepared to deal with the awesome proportions of this need. Now, real movement seems possible in the House. The framework for a constructive dialog is in place, and indeed that dialog has already begun in several important committees. Already there is a consensus that any solution to the problem of financing long-term care must be a joint venture between the Federal and State governments and the private sector—a sort of three-legged stool. All three elements are necessary in order to ensure that, whatever the solution ultimately adopted by Congress, it will be balanced and capable of bearing up under the needs of increasing numbers of senior citizens.

The viability of private insurance as a partial solution to the financing of long-term care for the elderly is directly related to, first, whether the premium is affordable, and second, whether the product is designed to meet the needs and desires of consumers. While it will be up to the insurance companies to design and price their individual policies, the Federal Government can encourage both an expansion of the market and the development of policies with minimum benefit standards and affordable premiums through a no-cost reinsurance mechanism and appropriate tax incentives. In order to fully support the market and promote product innovation, the Federal Government must also clarify the tax status of long-term care insurance and remove barriers to several logical and effective product designs.

This bill takes several important steps toward stimulating the development of private long-term care insurance, especially employer-sponsored coverage which has the greatest potential for reaching the most people. It is designed generally to provide tax treatment similar to that afforded health insurance, which has resulted in over 90 percent of the insured population under age 65 receiving their health insurance through the workplace. This has many important advantages for the insured individual. Administrative and marketing costs per person covered drop dramatically when insurance is offered through the workplace. Favorable tax treatment is a strong inducement for employers themselves to pay some or all of the costs of the employee benefit, a further stimulus to coverage. Furthermore, with the employer as the purchaser for the group, the buyer has, or is more likely to have access to, very sophisticated expertise making him a hard bargainer in the insurance marketplace. Premiums are also lower and more affordable when people are younger and healthier. With amendments such as those proposed in this bill, long-term care coverage can be folded into this country's extensive private insurance system. If even a fraction of those individuals who otherwise would have spent down to Medicaid are covered instead by private insurance, Medicaid will realize savings sufficient to offset the costs of these amendments, and more money will be available to those families truly in need.

Now, just to make sure that the intent of this legislation is not misunderstood, let me reiterate that I do not suggest that private long-term care insurance is a total solution to long-term care financing for everyone. Clearly, it will be a number of years before the effects of a long-term care insurance market make themselves felt in the health care economy, and a significant number of people are never likely to be able to purchase long-term care insurance at any price. These, however, are not arguments against stimulating the private market so much as they are arguments that the private market may not be enough—that it can not stand alone as a solution to the problem of financing long-term care.

But resolving the tax status of long-term care insurance in a way that recognizes a legitimate role for private—personal and industry—resources in meeting the costs of long-term care in no way precludes or preempts more comprehensive solutions once they are developed. This industry's tax status will have to be resolved by legislation or regulation in any event. I would like to see it resolved in a constructive matter, and I believe this legislation does just that.

Mr. Speaker, I have enclosed a section-by-section analysis of the bill for the benefit of my colleagues:

LONG-TERM CARE AMENDMENTS—ANALYSIS

Title I of the bill establishes a definition of qualified long-term care insurance for purposes of the internal revenue code. Section 1 of this title clarifies that any long-term-care insurance contract that meets this definition will be treated like life insurance or noncancellable accident and health insurance for insurance company tax purposes. Currently, the tax status of these reserves is uncertain and, unless clarified, unnecessarily increases the cost of long-term car insurance products to consumers. This section will allow insurance companies to claim deductions for reserves and increases in such reserves established for long term care insurance contracts.

Section 2 of the bill clarifies that long-term care insurance will be considered the same as "accident and health" insurance for purposes of the exclusion of benefits received under employee group insurance and employer contributions toward the purchase of such insurance. The inclusion of long-term care as accident and health insurance assures that the payment of long-term care benefits will be excluded from the income of recipients to the extent attributable to non-employer contributions. In addition, benefits paid under employer-paid long term care insurance plans, up to the amount of expenses incurred, will be treated as being incurred for medical care and thus will not be taxable. Section 2 also permits employer contibutions to be excluded from the employee's income. Finally, Section 2 allows employers to offer long-term care insurance as an option in cafeteria style benefit plans. The changes in Section 2 are geared toward giving long-term care insurance the same tax treatment as accident and health insurance.

Section 3 of the bill allows individuals to use their IRA assets, on a tax-free basis, for the express purpose of purchasing qualified long-term care insurance for themselves, their spouse, or their parents. Section 4 of the bill permits consumers to use another resource, life insurance, on a tax-free basis to purchase a qualified long-term care insurance policy. Sections 3 and 4 provide potential vehicles for individual financing of long-term care insurance.

Finally, the remainder of Title I builds on the definition of a qualified long-term care insurance policy and lays out requirements for certification by the Secretary of HHS. The certification process has strict quidelines for protection of the consumer relating to the marketing, design and service requirements of any long-term care insurance policy that qualifies for preferential tax treatment. Under this Title, the Secretary is directed to use the standards set by the National Association of Insurance Commissioners for judging such policies. These standards include fair disclosure in the marketing of policies, scope and definition of coverage, right-to-return conditions that provide a "cooling off" period, a clear prohibition that the policy cannot be cancelled because of advancing age or declining health, and regulations of provisions concerning prior institution-alization. It also strengthens the NAIC standards concerning renewability.

Title II of the bill requires that certified policies be reinsured through a Federal National Reinsurance Corporation, modeled after Fannie Mae, to be established by the Secretary of HHS and capitalized through the offering of debt instruments. Reinsurance helps to protect primary policy underwriters from excess risk, and so allows more aggressive innovation in product design and development. It also allows the products themselves to be offered without an additional "risk loaded" premium and thus helps to keep prices down.

Once again, the goal of this legislation is to encourage long-term care insurance underwrites to offer more comprehensive and affordable products to the public, and to contribute to the wider availability of long-term care coverage, especially through the workplace. Employers play an important role in selecting plans and educating their employees about benefits. These circumstances provide working age consumers more opportunities to gain information and to understand their need for long-term care coverage. It also benefits the worker's parents, since about children often serve as financial advisors to their elderly parents. As more prople become aware of their risks, they will make better decisions about their need for coverage. Insurers will, in turn, respond to the growing sophistication of the market by offering more comprehensive policies with more liberal benefit designs.

GOV. RALPH CARR: MAN OF INTEGRITY

HON. HANK BROWN

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 29, 1987

Mr. BROWN of Colorado. Mr. Speaker, recently this body approved legislation to compensate the victims of a great injustice, the Japanese-Americans who were so unfairly sent to detention camps during the Second World War.

When America went to war in 1941, the Governor of Colorado, the late Ralph Carr, courageously spoke out against unjust treatment of Americans of Japanese heritage. Recently, the Rocky Mountain News ran an article and an editorial about Governor Carr's actions. I commend them to my colleagues. My thanks go to George L. Robinson, who served on Governor Carr's staff, who brought these articles to my attention.

[From the Rocky Mountain News, Sept. 27, 1987]

COMPASSION IN COLORADO—GOVERNOR CARR HELD TO HIS IDEALS DURING WORLD WAR II INTERNMENTS

(By Berny Morson)

In a different America, people in huge art deco theaters watched Orientals in movies, their hair in pigtails, spouting fractured Confucian platitudes.

So, when that America went to war in 1941, people thought nothing of ordering Americans of Japanese heritage—including many who had lived in this country for generations—to leave the West Coast and go to concentration camps lest they serve as enemy spies and saboteurs.

Overtones of racism entered into the mass roundup, as no German immigrants were removed from their homes or neighborhoods on the East Coast or in the Midwest.

When caravans of Japanese-American refugees streamed eastward from California, nine Western governors insisted they keep moving. Only one, Gov. Ralph Carr of Colorado, pointed out that they had the same rights as others under the U.S. Constitution.

"We cannot test the degree of a man's affection for his fellows or his country by the birthplace of his grandfather," Carr told Coloradans in a radio address, three days after Japan bombed Pearl Harbor.

As Americans celebrate the 200th anniversary of the Constitution, Congress this month has voted an apology for the indignity inflicted on Japanese-Americans, and payments of $20,000 to each of the 120,000 survivors of the internment camps.

But few people outside Denver's Japanese-American community remember Carr, who died of a heart attack in 1950, and no one plans to celebrate the 100th anniversary of his birth, which occurs on Dec. 11.

"Ralph Carr? One hundredth birthday? You got me," Loyal Darr, social studies coordinator for the Denver Public Schools, said when asked about the district's plans. "I can't match the name with the deeds."

Marilee Bradbury, social studies coordinator for the Jefferson County Public Schools, had similar difficulty. When her memory was jogged, she recalled the plaque to Carr outside the governor's office at the state Capitol that reads:

"By his humanitarian effort, no Coloradan of Japanese ancestry was deprived of his basic freedoms, and when no other would accept the evacuated West Coast Japanese-Americans, except for confinement in internment camps, Governor Carr opened the doors and welcomed them to Colorado."

"He's not known; he's obscure," laments University of Colorado historian Tom Noel, "He's one of our best and most heroic governors. He was someone who could defy both parties and the conventional wisdom."

In 1974, Japanese-Americans in Denver erected a statue of Carr in the middle of Sakura Square (on 19th Street between Larimer and Lawrence streets).

"He really stuck his neck out for the Japanese people," says Hank Hara of Denver, who arrived in Colorado in 1942 with only the possessions he could cram into a '37 Chevy.

Hara and his relatives drove day and night to reach Colorado. Stopping to eat at a Laramie restaurant, Hara recalls, "We no sooner got in the door, when they said, 'We don't want you Japs.' "

Hara was later a member of the all-Japanese-American 442nd regimental combat team, the most decorated American unit of World War II. "I always wanted to go back up to that restaurant in uniform and see what they say," Hara said. "But I never did."

Kenzo Fujimori, administrator of Sakura Square, was living in Stockton, Calif., when war broke out.

"One Saturday, here comes a carload of FBI and police" to arrest his father, Fujimori recalls. "The next day, we get a call: 'Bring some warm clothing, because your dad is going someplace cold.' We didn't know if he was going to Alaska or Bismarck.

"The only time we saw him was when they put him on a bus. He held out his hand. We held his hand for a while, and then he was gone."

Frank Torizawa, owner of the Granada Fish Market at Sakura Square, was among 500 Japanese-Americans placed under guard at the Santa Anita race track near Los Angeles. Five months later, he was trundled into a railroad car and shipped to the Amache internment camp near Lamar.

"They had barbed wire and tower with soldiers on with machine guns—just like a prison," Torizawa said of Amache.

When the internment order first came, those who did not leave the West Coast voluntarily were rounded up by the Army, herded into railroad cars and shipped as far as Arkansas.

It is not clear why Carr had the courage to oppose such treatment, when others—including President Franklin Roosevelt—did not.

He ignored a U.S. senator who suggested the Colorado National Guard stop Japanese Americans at the state border; he ignored members of the Denver City Council who suggested the Japanese-Americans be placed under armed guard.

And when federal officials picked the site near Lamar for the Amache camp, Carr shocked his Denver neighbors by hiring an internee as his housekeeper.

Carr was born and raised in Colorado mining camps, principally booming Cripple Creek. He was a pudgy man with a quick sense of humor who mixed easily with others.

He was the Boulder correspondent for the Rocky Mountain News while attending the University of Colorado, and later edited newspapers in Victor and Trinidad.

But his greatest love was the law, and in 1916 he opened a law office at Antonito, then, as now, an overwhelmingly Hispanic community.

"He became very close to many of them," says Robert Carr, the late governor's son. "He spoke Spanish, and he was their attorney. Whenever they had problems they came to him."

Carr also was familiar with a small Japanese-American community at La Jara, about 14 miles north of Antonito, says the younger Carr, a Denver attorney. "He couldn't see these people being tools of the emperor of Japan," Robert Carr says.

"People told a lot of racial type of humor in those days, and Dad would have similar jokes and use that terminology, so in a sense he was a part of his generation and understood it," says the younger Carr. "But every time it came to an actual decision, he always went the other way, so it was something he basically realized was wrong.

"When it came to anything dealing with a live human who was of a minority group, he cast that all aside and—what was rather unusual at that time—went on just what the merits (of the case) were, without being colored by the racial and ethnic thing.

"His actions were different from what one might expect from the words and terminology of the day."

Robert Carr describes his father as "somewhat of a renegade Republican. Fiscally, he was conservative, but human rights-wise, he was not. . . . He took things in the Constitution quite seriously—that all men are created equal and have equal rights before the law."

By 1929, Ralph Carr was U.S. Attorney in the Hoover administration. He was a prominent Denver lawyer in 1938 when he was elected governor. He was re-elected in 1940, after bringing the state budget into line and winning praise for preventing violence during a tense labor dispute.

Long before his stand on Japanese-Americans, Carr gained a reputation for stating his position on controversial issues, and he was used to equally blunt responses.

Several city councils passed resolutions urging Carr to behave like the other governors towards the relocation. Denver City Councilman H.C. Dolph said, "I am opposed to any Japanese being brought into the state for any reason."

Carr's decision to hire a Japanese-American housekeeper raised eyebrows. He chose a woman who had been forced to interrupt her studies at the University of California. She was able to complete her degree at the University of Denver while working for the governor, his son recalls. When she graduated, he hired another housekeeper from Amache.

One neighbor wondered how the governor slept at night, knowing his family was under the same roof as a Japanese.

"That was the hysteria of the times," Robert Carr says.

Ralph Carr was not the only one who behaved courageously. The Rocky Mountain News gave him guarded support. The Denver Council of Churches was outspokenly supportive, and many Colorado school teachers reminded pupils not to harass their Japanese-American classmates.

But many Coloradans saw every Oriental as a Japanese spy and bitterly opposed Carr's stand. A Denver woman, in a letter to The Denver Post, charged that Colorado was becoming a "dumping ground' for "sneaking Japs."

"If California wants to get rid of them, why not dump them in the ocean?" she asked.

The News ran a wire-service story about how to distinguish Chinese from Japanese. A man identified as "one of America's best-known anthropologists" explained that Japanese "have a clever, smarter expression, the reflection of their materialistic and commercial interests," while Chinese faces are "mild and friendly and interesting."

In Julesburg, a man identified as "a cowboy and one-time Indian-fighter" announced that "Japs is just like Injuns." He was pictured holding a Bowie knife in a Rocky Mountain News spread.

A Weld County woman known to her neighbors as Rattlesnake Kate said she was prepared to take on the Japanese with shotgun, rifle or club.

Eventually, the hysteria died down. Late in 1942, merchants in Lamar began erecting signs welcoming trade with the 8,000 Japanese-Americans at the Amache camp, who were granted frequent leaves.

"They found out that Japanese people are very quiet, and not only that, Japanese were the biggest spenders," said Torizawa.

But Carr's political career was over.

He lost a bid to unseat U.S. Senator Ed C. "Big Ed" Johnson, who earlier had suggested Carr use the National Guard to keep the Japanese-Americans out of Colorado. The margin was about two votes per precinct, and some historians say Carr's stand on the Japanese Americans could have made the difference.

Carr later won a seat on the CU Board of Regents. The heart attack that killed him occurred during a campaign to regain the state house.

Coloradan Stood on Principle

Congress and the Western governors issued belated apologies recently to the 120,000 Japanese-Americans who were driven from their homes on the West Coast amid public hysteria following the attack on Pearl Harbor.

But few people remembered former Colorado Gov. Ralph Carr, the only one of 10 Western governors who agreed to accept the Japanese refugees who streamed eastward from California during the spring and summer of 1942.

To their shame, the governors of nine other Western states told the refugees to keep moving, and local vigilante groups were all too willing to enforce the order. Japanese-Americans were barred from restaurants and were assaulted on the streets. The possessions of one refugee family were set on fire in Arizona.

Even President Franklin Roosevelt fell victim to the hysteria. On Feb. 21, 1942, Roosevelt ordered the Army to round up Japanese-Americans who would not leave their homes voluntarily. The victims were packed into railroad cars and shipped to camps as far away as Arkansas.

Carr was among a handful of Americans—and possibly the only elected official—who remembered that the Constitution applied to Japanese-Americans. Three days after the attack on Pearl Harbor, he appealed to Coloradan's not to molest people of Japanese descent. "We cannot test the degree of a man's affection for his country by the birthplace of his grandfather," Carr said in a radio address.

When the federal government decided to locate a concentration camp for Japanese-Americans near Lamar, Carr shocked some of his Denver neighbors by hiring an internee as his housekeeper. He chose a young woman who had been forced to interrupt her studies at the University of California. She completed her degree at the University of Denver while working for the governor.

Carr paid a political price for his stand. Protests came from the Denver and Greeley city councils, as well as from ordinary citizens. Some historians believe his stand on the rights of the Japanese was the factor in his losing a close race for the U.S. Senate later in 1942.

Carr, a Republican, reflected a branch of conservatism that read the Constitution as a guarantee of individual liberties. According to people who knew him, Carr had the ability—unusual in the more prejudiced days of a half-century ago—to view people as individuals, regardless of race.

Carr died of a heart attack in 1950. Japanese-Americans erected a bust of Carr in Sakura Square in 1974. The same year, a plaque commemorating him was dedicated outside the governor's office in the state Capitol.

Since the fanfare surrounding those events, Carr has returned to obscurity. He is not part of the public school curriculum because even most educators have never heard of him.

The 100th anniversary of Carr's birth occurs on Dec. 11. No public commemoration is planned. Amid the self-congratulation we are heaping upon ourselves in this year of the Constitution's Bicentennial, we would do well to remember a man who risked his career for the Bill of Rights.

VISUAL ARTISTS RIGHTS LEGISLATION

HON. EDWARD J. MARKEY

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 29, 1987

Mr. MARKEY. Mr. Speaker, on August 7, I introduced H.R. 3221, the Visual Artists Rights Act of 1987. Senator KENNEDY introduced similar legislation in the other body.

The chairman and president of the Independent Committee on Arts Policy, Schuyler Chapin and Alberta Arthurs, have published a lucid and compelling article on this legislation and the needs it addresses. The piece by Mr. Chapin and Ms. Arthurs, published in today's New York Times, is a valuable and welcome contribution to national discussion on the protection of artists and the fostering of the arts. I commend it to the attention of my colleagues.

[From the New York Times, Oct. 29, 1987]

A BILL OF RIGHTS FOR ARTS

(By Schuyler Chapin and Alberta Arthurs)

Last fall, Jasper Johns's painting "Out the Window" was auctioned for $3.6 million, the highest sum ever paid for a work by a living artist. The painting had been acquired in 1960 for $2,250. None of the $3.6 million went to the artist.

A private collector purchased a work, two figures lying on a bed with soiled sheets, by the sculptor George Segal. The buyer subsequently removed the figures from the bed and placed them on a pedestal. The buyer ignored all letters from the sculptor protesting this mutilation, including one in which Mr. Segal offered to buy the piece back.

Both of these stories reflect something unique to the visual arts as compared with other arts. Because these works of art are original, ownable pieces of property, there is a complete severing of the artist's connection to his or her work once it is sold. In this country, the right of private property takes precedence over artists' moral or economic rights.

A bill that maintains a connection between a visual artist and that artist's work has been initiated by Senator Edward M. Kennedy, Democrat of Massachusetts, and introduced in both houses of Congress. This connection is one we already recognize with reproducible works of art, and is a link central to the incentive and protection we as a society grant to artists.

Called the Visual Artists Rights Act of 1987, the bill has two primary objectives: to secure the rights of visual artists to prevent the intentional mutilation or destruction of their work, and to provide for resale royalties.

This simple and rather modest bill elicits impassioned arguments. It requires a fundamental examination of attitudes our society holds about the nature of art; who benefits from art, what its value is and what value we place on those who create it. From this broader perspective, the Visual Artists Rights Act is a very important piece of legislation, and its passage could be a milestone in the cultural maturation of America.

The artists and arts leaders in the Independent Committee on Arts Policy examined this bill and the detailed arguments for and against it. Our decision to support the bill came after rigorous debate and analysis.

Art—physical, tangible, visual art—is more than a piece of property that some one or some institution owns. And, yes, it is even more than a valuable commodity with one of the highest rates of return on the market.

Works of art are much more than that. In some real way they belong to no one because they belong to all of us. They are among the most salient examples of the breadth and depth and complexity of human nature.

Throughout time, our species has used the arts—this richer set of symbols that only humans have devised—to transmit the heritage of people and to express most profoundly their deepest human joys, sorrows and intuitions. "Art," Elliot Eisner has said, "helps us know what we cannot articulate."

This bill says that the country wants the owners of art to protect what they have for all of us and for posterity. We don't want owners—either intentionally or through gross negligence—to mutilate or destroy what they own. We don't want Blue Cross and Blue Shield, for example, to paint John Raimondi's red sculpture "Blue Cross blue."

This bill says that we value the vision of the artist. It says that those gifted with the insight, imagination and inventiveness to create fine art are due recognition and protection from Congress.

And because we value artists and value what they do, when their works command handsome prices on the resale market, we think it only fair that some small portion of that profit return to the originator, the creator, the artist.

Opponents of this bill say that the thriving art resale market, known to be in the billions (Sotheby's recently announced record worldwide sales of $1.3 billion, and Christie's sales were just short of another billion) is so delicate that an artist royalty would be a significant deterrent to trade, thereby hurting artists instead of helping them. Investors will be so repelled by the added cost, the bill's opponents say, that they will buy and sell outside the United States or go underground.

Although comments of this sort are not surprising, the truth is that the Kennedy bill is a very reasonable proposal. The artist would be entitled to 7 percent of the appreciated value of the work, provided that the resale price is more than 150 percent of the original price and that the work cost more than $1,000 to begin with.

There are many indicators that belie the "delicacy of the market" argument. Investors have not balked, for example, at the 10 percent buyer's premium imposed by auction houses. And new York City has continued to be the art commerce capital of the world, despite our whopping sales tax of 8.25 percent.

The issue is something larger than marketplace friction. It has to do with that connection between artists and their work that we want to recognize. It has to do with knowing that the artist is the indispensable element here. And it has to do with a kind of elemental fairness intrinsic to our American values.

Ideas, even good ideas, have a hard time surviving without strong support. The Independent Committee on Arts Policy tenaciously supports and endorses this bill, applauds the senators and representatives who are working for its passage, and urges all Americans to recognize its vital importance.

BOTTLE INDUSTRY IN WASHINGTON SPREADS FALSE INFORMATION ABOUT ONEONTA, NY

HON. SHERWOOD L. BOEHLERT

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 29, 1987

Mr. BOEHLERT. Mr. Speaker, this morning's Washington Post carries a story that goes to the heart of many Americans' complaints about big business and their attitude toward the environment. In short, the highly paid lawyers and lobbyists in this town have learned too well how to twist the facts to fight just about any measure for a cleaner, safer environment.

This time the industry lobbyists are smearing the reputation of a small town that I happen to have the privilege of representing, and we won't stand for it.

The people of Oneonta, NY, population 14,000, are proud to live in the heart of some of the most beautiful country in the entire Nation. From the rolling foothills of the Catskills, to the nearby headwaters of the Susquehanna River at a lake they call Glimmerglass for its sparkling, light blue color—from the dozens of family farms to Oneonta's old-fashioned Main street—this is a land cherished for its rich history, its wildlife, and its four-season beauty. The community's high standards are attracting new businesses and new families.

Along come the highly paid lobbyists fighting a proposed bottle bill in Washington, DC. Calling themselves the "Clean Capital City Committee," they're spending millions to convince D.C. voters that bottle deposits are a costly waste of time. They even put an ad on TV that says a State bottle bill led to the closing of Oneonta's "recycling center." Now, they say: "the town's a little on the messy side again."

The biggest problem is, that's a lie. In New York, we know a bottle bill brings a cleaner, safer environment for everyone—we passed a bottle bill in 1982. In fact, the city of Oneonta began a recycling program a year before the State passed its bottle bill.

The State bottle bill had no effect on that recycling program, which is still in effect today, with strong support from the local residents, despite predictable and manageable glitches. Forget the story told by lobbyists. Bottles are not—I repeat, not—piling up in the streets or polluting the community.

We've seen this tactic used elsewhere, as when a group called Citizens for Sensible Control of Acid Rain called folks on the phone, gave them the name of the group, and said pending acid rain legislation would cost them $110 billion. This is a whopper of a big fish story, or perhaps I should say dead fish.

C-SCAR, as they're called, spent $3 million of utility company money on that campaign last year, one of the highest dollar amounts by any group for any lobbying effort in 1986. Considering the deceptive stories they spread, it's not surprising that many of my colleagues are disgusted with such stonewalling tactics.

It's about time for a more responsible attitude toward our environment from the industries that affect it most. In the long run, their economic health will be better ensured by finding ways to coordinate economic growth with environmental protection.

And it's time for an apology from the Clean Capital City Committee to the proud, clean, safe community of Oneonta, NY.

Mr. Speaker, I ask unanimous consent to reprint the article from the Washington Post below:

MESSY N.Y. TOWN CRIES FOUL OVER BOTTLE INDUSTRY AD HERE: DEPOSIT BILL DIDN'T HALT ONEONTA RECYCLING

(By Ed Bruske)

Time was, says a voice as smooth as cornsilk, when Oneonta, N.Y., had a recycling center where folks brought their bottles and cans and kept the town clean. But then the state passed a bottle deposit law, "and the recycling center shut down." Now, the voice continues, "the town's a little on the messy side again."

That's the message of one of several radio advertisements that have been airing in the Washington area on behalf of a beverage industry coalition trying to defeat a D.C. ballot measure that would require deposits on bottles and cans sold in the District.

Yesterday in Oneonta—the 14,000-population upstate New York town featured in the antideposit commercial—town officials had this response: Wrong.

"From what I've heard, it doesn't sound accurate at all," said City Clerk Elizabeth Goodman.

Said Mayor David Brenner: "They ought to check around before they say things like that."

Officials in Oneonta said passage of a deposit law in the state in 1982—legislation similar to the measure that will appear on D.C. ballots Tuesday as Initiative 28—had no effect on recycling there.

They said recycling has continued to run strong in Oneonta—and perhaps more so—since deposits were required.

"What you've got is a lot of people collecting bottles for extra money, like old folks and Boy Scouts," Goodman said. "It really works the other way."

So what did happen in Oneonta?

According to the industry advertisement, sponsored by the industry-funded Clean Capital City Committee, "Once folks were forced to take their bottles and cans back to the grocery, our recycling center went out of business."

Bruno Bruni, assistant city engineer in Oneonta, said there never was a recycling center, exactly, in Oneonta. Rather, about a year before the state deposit bill was passed, the city and surrounding township started a recycling program, contracting for help from a local center for the mentally handicapped to collect and process glass bottles. Bruni said the city built eight sheds around town where residents could drop off all kinds of glass bottles and jars.

The city also constructed a building on a local railway siding where the glass was stored until it could be crushed each month and loaded onto fright cars for shipment to a glass manufacturer in Elmira, N.Y.

There was an overall community concern about recycling as many products as we could, rather than putting them in a landfill," said Bruni, adding that the city has been forced under a consent decree with the state to close its public landfill by next June because it is full.

About two years into the program, though—or a year after the state deposit bill passed—the city employee responsible for coordinating with the handicapped group left his job and was not replaced, Bruni said. The city's contract with the center for the handicapped lapsed and was not renewed when problems arose over whether the center was paying its workers minimum wage.

However, Oneonta residents have continued to leave glass not covered by the deposit law in the town receptacles, and the city still collects it. City workers process the glass—though less frequently—and lately the glass has been piling up at the processing building because the crusher broke down. Mayor Brenner said the city plans to get it fixed soon.

"We take issue with that kind of message because the citizenry has been very good about sending the products down," Brenner said. "It's not left in the streets, nor is it making the community any dirtier."

Ed Arnold, spokesman for Clean Capital City, said yesterday that he would respond to questions about the commercial after he obtained a transcript of it. He later was unavailable for comment.

Oneonta Clerk Goodman was not pleased. "We would like to be a model community and not be featured in somebody's disaster ad," she said. "I wish they'd be good enough to send us a copy of the ad."

PROTECT VICTIMS OF FRAUD

HON. JOHN CONYERS, JR.

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 29, 1987

Mr. CONYERS, Mr. Speaker, I would like to enter into the RECORD testimony that I gave today before the Senate Judiciary on one of the most important consumer and antifraud issues today: civil RICO reform.

Civil RICO is important to victims of fraud and for deterring antisocial and fraudulent practices in commerce. Yet special interests today are urging with unconvincing reasons that the tool be weakened. That's a bad idea. I urge my colleagues to take note.

PREPARED TESTIMONY OF HON. JOHN CONYERS, JR., CHAIRMAN, HOUSE JUDICIARY SUBCOMMITTEE ON CRIMINAL JUSTICE BEFORE THE SENATE COMMITTEE ON THE JUDICIARY ON CIVIL RICO

THURSDAY, OCTOBER 28, 1987

Mr. Chairman, members of the committee, thank you for providing me the opportunity to testify today on an issue of considerable importance to me, to law enforcement and victims of crime: civil RICO.

The hearings now could not be more timely given recent events on Wall Street. For all the differing explanations of the stock market decline boil down to one essential point: that investor confidence is critical to market stability.

And while the budget and trade deficits appear clearly the major factors, the perception of corruption on Wall Street during the past year cannot be ignored as having contributed to an erosion in investor confidence. Already we are seeing in just these past two weeks small investors being blocked out of the market. Scores of lawsuits are expected to be filed. The system certainly now needs reinforcement with law that will impose and maintain integrity.

That is an appropriate starting point for discussing civil RICO. For in my judgment the basic issue is that white collar crime and fraud are of scandalous proportions, costing over $200 billion annually, and current law and law enforcement efforts—both private and public—and incommensurate to the nature and scope of the problem. Very little money defrauded is ever returned to victims and in my view civil RICO and other antifraud laws that protect citizens need strengthening, not weakening.

Civil RICO was enacted in 1970 as part of a comprehensive effort to fight organized and white collar crime. Its essential purpose was to help underresourced public prosecutors by giving citizens a "private attorney general function"—the right to sue crooks and cheats that defraud them for treble damages.

Today fraud and corruption have grown to proportions never imagined in 1970. Securities fraud is estimated to cost up to $50 billion annually, bank fraud to account for up to half of all the bank failures, and insurance fraud is estimated to cost at least $14 billion annually. Never before has the daily news been so dominated by reports of insider trading and corruption scandals.

Yet today those that oppose civil RICO—largely special business interests—make an extraordinary argument that the danger lies in the law itself, that despite the fact that less than one percent of monies defrauded the public are ever recovered, civil RICO is too tough a law, and too far reaching. The arguments are outdated and unconvincing and include the following:

1. Civil RICO litigation is flooding the federal courts: Data collected by the Administrative Office of the Courts show clearly that civil RICO is not flooding the courts, that out of a 23,000 civil filings monthly only 90—approximately .0003% of the total docket—are civil RICO cases, 60% of which have an independent basis for federal jurisdiction. A respected federal judge in California, Judge Pamela Rymer, with extensive experience in RICO litigation observes that the RICO filings have "calmed down" and actually "present no greater problem than antitrust or complicated securities cases."

2. Civil RICO is used frivolously in ordinary commercial disputes". Since the Supreme Court's decision on the intended scope of RICO in *Sedima* in July of 1985—and at the invitation of the Court to tighten the standards for RICO litigation—the Circuit Courts of Appeal have made clear that RICO only applies to systematic "patterns" of serious criminal conduct with multiple objectives. While RICO reformers point to trivial instances in which RICO cases have been attempted (domestic disputes, church members, F.B.I. sting operations, etc.) those cases are nearly always dismissed and few if any are today being brought.

The more typical and important application of RICO in commercial disputes include the use by IBM Corporation for theft of software by Hitachi Ltd., a suit settled for upward of $200 million. The trustee of the Home State Savings Bank also used RICO to sue auditors of E.S.M. Government Securities, Inc. for the injuries that Ohio bank depositors suffered when E.S.M.'s insolvency was fraudulently hidden from investors in a bribery-secured favorable audit report, a suit that was settled for $80 million. Other victims—including businesses—that have sued under RICO include Standard Oil Indiana, Armco Steel, The Bankers Trust and Co. and Allstate Insurance Company. RICO is, in short, neither pro-business nor anti-business. It is pro-victim.

3. RICO was intended to apply only to "racketeers" of the classic Edward G. Robinson mold of "Little Ceasar". The Supreme Court in *Sedima* ruled that RICO does and should apply to "any person" and that legitimate businesses "enjoy neither an inherent incapacity for criminal activity nor immunity from its consequences." A recent survey of 1043 businesses reinforces the important point. It showed that between 1970 and 1980 117 businesses had significant convictions or consent decrees for 98 antitrust violations, 28 cases of kickbacks, bribes or illegal rebates, 21 instances of illegal contributions, 11 cases of fraud, and 5 cases of tax evasion. The $200 billion annual price tag rivals only drug traffic and the fight against it is being largely lost.

The RICO "reform" effort has now abandoned its original goal of the essential repeal of the law with a prior criminal conviction recognizing the inability to justify such a rollback in the midst of an insider trading scandal and corruption climate. The newest reform effort I believe is still unjustified given the scope of the fraud problem and it is insufficient. That is why I urge you, Mr. Chairman, to consider working with me on the House side to redraft civil RICO legislation that would toughen the law where needed and make appropriate reforms where real abuses or unintended uses occur. Let me comment first on what I consider the inadequacy of the current reform effort as embodied in S. 1523.

The bill first fails to put new protections where needed. Bank fraud for instance is estimated to account for up to half of all bank failures for instance. There are new expectations today that the withdrawal of capital and collateral will precipitate new bank failures in institutions already vulnerable because of fraud.

The bill does nothing about toxic waste offenses. The National Association of Attorney's General support the concept of making a series of toxic waste offenses predicate acts under RICO. Estimates show that as much as 90% of toxic wastes put annually into 170,000 pits, ponds, lagoons and landfills are disposed improperly. The contamination of drinking water of entire communities is of scandalous proportions.

The bill also does nothing about terrorism, including domestic terrorism. Civil Rights organizations and the work of the Judiciary Subcommittee that I chair have shown shocking increases in anti-semitic and racist acts of violence and terror. With an international service of process, personal injury in cases when violence results, parens patriae RICO could be appropriately used for terrorism. Legislation that I have introduced on the House side includes bank fraud, toxic waste offenses, terrorism and other acts as predicate offenses under RICO.

My second category of concerns center around the weakening provisions of the bill. If the bill is too broadly used, (which I no longer believe it is) then the pattern of predicate acts should be amended to constrain its proper use. But it does not follow that remedies should be changed for that cripples the effectiveness of RICO as an important deterrent and as a victims rights measure.

S. 1523 first deprives businesses of the opportunity to sue for treble damages thereby eliminating one of civil RICO's most important aspects: deterrence. Actual damages in business suits are also insufficient to recover real losses such as lost investment opportunities. It also creates new burdens of proof for private citizens—seniors cheated out of home improvement funds for instance—to recover punitive damages.

The bill also has basically unfair provisions for retroactivity: changing the rules of the game for those who are in the middle of playing it. I believe conceptually that retroactivity is unfair and bad policy.

One would have thought that the level of outrage following the successive revelations of multimillion dollar insider trading scandals would prompt tougher laws, or at least discourage attempts to weaken existing ones. Not so.

The special favors for the securities industry is also unsound and unwarranted. There is no indication that current securities law is adequate to deal with the scope of the $50 billion annual securities fraud problem and every indication that civil RICO is a deterrent: that's why Boesky pleaded guilty not to securities fraud or a RICO predicate offense but to a non-RICO predicate offense. And with the recent Supreme Court decision in *Mcmahon* in which the Court ruled that arbitration could be compelled, and with the expected ruling on "misappropriation" in *Winans*, civil RICO especially under the reform bill will have increasingly few uses in the securities field. There should be no exemption.

Provisions that bar treble damages unless the defendant has a prior criminal conviction of a RICO predicate act I believe are unwise: that gives prosecutors too great and too unfair a bargaining chip.

Neither other federal fraud laws which intervene in limited instances and provide generally for actual damages, nor current state law is adequate to deal the character of fraud in our modern society. That's why key elements of the law enforcement community—the National Association of Attorney's General, the head of New York's Organized Crime Task Force—have called not for weakening the law but for strengthening it. They know from experience that public prosecutors do not have the resources to deal with the scope of the problem.

RECOMMENDATIONS

1. Civil RICO in my judgment should never be used in certain instances: labor-management disputes, landlord or marital disputes. Any amendments to the statute should reflect that.

2. If there are today instances that we can identify RICO's inappropriate use—for two phone calls or two pieces of mail; to chill First Amendment rights of an individual or organization—then we should deal with those by clarifying the pattern of predicate acts and requiring specificity in pleadings. But there is no compelling logic to change the remedies available and their important deterrent effects, there is no need to roll back the rights and remedies of individuals and small businesses.

3. Civil RICO and its current remedies should be maintained given the nature and scope of the fraud problem as we can currently identify it. There is further ample rationale for making as predicate acts invidious types of crime: new kinds of complex fraud, hate violence, toxic waste offenses.

4. I also urge that this committee undertake together with or separate from the House Judiciary Subcommittee which I chair comprehensive and systematic hearings on the nature of fraud and its scope, the ability of public and private law enforcement efforts in dealing with it, and then address the appropriate changes in fraud statutes in that context. I urge against revisions in anti-fraud law studied outside the context of the problem itself.

The RICO "reform" movement of today calls to mind similar efforts in the 1930's directed at the Securities Act of 1933, which were described by Justice, then professor, Frankfurter:

"The leading financial law firms who have been systematically carrying on a campaign against this Act have been seeking—now that they and their financial clients have come out of their storm cellar of fear—not to improve but to chloroform the Act. They evidently assume that the public is unaware of the sources of the issues that represent the boldest abuses of fiduciary responsibility * * *."

That is true today and we need more protections, not less.

LONG ISLANDERS OPPOSE SHOREHAM

HON. GEORGE J. HOCHBRUECKNER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 29, 1987

Mr. HOCHBRUECKNER. Mr. Speaker, I rise to speak of a crisis of confidence. Headline after headline in recent weeks has reported that the American people are concerned that the administration is failing to exert the kind of leadership which is necessary to take this Nation forward.

Today there was an opportunity for this administration to reassert its leadership in a manner that would have conclusively demonstrated to the citizens of Long Island, NY, that their concern over the crisis of confidence is not warranted, at least with respect to the Nuclear Regulatory Commission [NRC].

When the opportunity presented itself today, the President essentially told the people of Long Island to drop dead.

This afternoon, the NRC threw out its 7-year-old rule, and imposed a new, less restrictive rule, which will eliminate State and local participation in approval of evacuation plans. President Reagan, pledged in writing to the people of Long Island, that his administration would not impose an evacuation plan for Shoreham over State and local objections.

If leadership, commitment, and his word, had any value to the President, he would have called the NRC and directed them not to adopt this outrageous rule, because it violates the clearly stated policy commitment of his administration.

My words today should not come as a surprise to the President, or Vice President, because last week I personally delivered 15,000 signatures to the White House, from citizens of my district, calling on the President to keep his word.

The people of Long Island historically provide the largest plurality of votes for Republican Presidential candidates of any two counties in the Nation. In politics, giving one's word is sacred. The people of Long Island once accepted the administration's solemn commitment on this vital issue. Eighty percent of the people in my district oppose Shoreham, and, Mr. Speaker, we are outraged over the violation of this commitment.

JEWS FROM ARAB COUNTRIES ASK FOR JUSTICE

HON. BARNEY FRANK

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 29, 1987

Mr. FRANK. Mr. Speaker, one unfortunate and often forgotten injustice that has resulted from the Arab-Israeli conflict is the hardships faced by Jews who have fled from Arab lands. We often overlook the fact that hundreds of thousands of Jews were forced to flee their homelands under extreme pressure and duress, often leaving behind their homes and other possessions. This past week, the World Organization of Jews from Arab Countries [WOJAC] convened its third international conference in Washington, DC to discuss the interests of Jews from Arab countries. WOJAC has come to the United States to appeal for assistance for Jews who continue to be held hostage, particularly in Yemen, Syria, and Iraq; for recognition for the right to compensation for their private property and their cultural and religious assets left behind; and to call on Arab countries to end human rights abuses against their Jewish populations.

Mr. Speaker, I was visited by a delegation from the WOJAC conference and was impressed by the strength of their arguments. I ask that a description of the WOJAC and a resolution of the Israel Knesset on the occasion of the WOJAC convention in Washington be included in the RECORD, for the benefit of my colleagues, at this point.

WHAT IS WOJAC?

PURPOSE

Established in 1975, WOJAC (the World Organization of Jews from Arab Countries) seeks to represent the interests of over two million Jews from Arab countries now living throughout the world, the majority of them in Israel, where they make up approximately 44% of the population.

WOJAC came into being because of the widespread belief among Jews originating from Arab countries, that the time had come to raise the long neglected issue of their legitimate rights and claims against their countries of origin: most of them fled these countries or were forced to leave them, in the wake of humiliation, persecution, imprisonments and executions.

CHARACTER AND STRUCTURE

WOJAC is an independent, voluntary, international, non-governmental and a-political organization.

WOJAC has been approved as a NGO (Non-Governmental Organization) for association with the United Nations Department of Public Information.

The Organization includes:

The ISRAEL COUNCIL (120-150 members)—leaders of the associations representing the communities of immigrants from eight Arab Countries in Asia and Africa, as well as eminent public figures in Israel;

The ISRAELI EXECUTIVE (26 members)—carries out policies of Council.

The GENERAL MEETING (80-100 delegates)—elected every 4 years by the Israel Council and WOJAC Chapters abroad; supreme organ of WOJAC:

WORLD EXECUTIVE (23 members from eight countries, including 12 from Israel)—elected by General Meeting, sets up standing committees and defines their powers, appoints treasurer and director-general and defines terms, conditions, functions and powers of their office;

The PRESIDIUM (7 members, including 4 from Israel)—executive organ of World Executive functions in accordance with its resolutions.

Heading the organization are:

Mr. Leon Tamman of Britain, who serves as Chairman of the Presidium; and Mr. Mordechai Ben-Porat, former Minister of the State of Israel, who is Chairman of the World Executive. They exchange roles annually.

Membership is open to Jews from Arab countries and their descendants, as well as to anyone who identifies with its aims and wishes to participate in its activities in Israel and abroad.

INTERNATIONAL CONFERENCE IN WASHINGTON

WOJAC, in presenting its case to American public opinion, appeals to the American People's innate sense of fairness and traditional quest for justice. Its Third International Conference will be held in Washington, D.C., at the Omni Shoreham Hotel, between the 26-28 October 1987, under the sponsorship and with the assistance of the Conference of Presidents of Major American Jewish Organizations, as well as other American and international Jewish organizations.

The objectives of the Conference are:

1. Rights of Jews in Arab Countries—To act for the Jews held hostage in Arab countries to be permitted to leave and, up to such time, to have their civil and human rights respected.

WOJAC does not include all Arab states in one category, but draws a distinction between countries where Jews live in distress, and one or two Arab states whose attitude towards their Jewish citizens is relatively liberal.

2. Rights of Jews from Arab Countries—To win recognition for the right to compensation of the Jews who left Arab countries and were dispossessed of their private and communal property, and to ensure the salvaging of their cultural and religious assets.

3. Refugees—To win recognition, by the United States Administration and Congress of the de facto exchange of populations that occurred in the Middle East when some 600,000 out of the 850,000 Jews who left the Arab lands settled in the State of Israel, while a similar number of Palestinian Arabs left Israel to live in Arab states.

To get the Arab states to absorb and integrate the Palestinian Arab refugees in their midst, just as Israel has absorbed and rehabilitated the Jewish refugees from Arab countries at the cost of over $11 billion despite its difficult economic situation.

To support any Arab, Israeli, international or private initiatives for the development of Judea, Samaria and Gaza, that will result in a better quality of life for the Arab refugees within these areas, irrespective of the final political solution.

The Conference will examine the extent to which the vast experience and knowledge of the Jews from Arab countries regarding the lands of their origin could be utilized to help achieve greater understanding between Israel and the Arab countries, and to seek to ensure that any peace settlement will endure.

WOJAC has already held two previous international conferences: its Founding Conference took place in Paris in November 1975, followed by the Second International Conference which convened in London in November 1983.

A CALL TO THE ARAB STATES

WOJAC calls on the Arab states—

(a) To initiate a new era of peace and brotherhood between Jews and Arabs—the offspring of the same Biblical Patriarch, Abraham—on the basis of the full and fearless recognition of historical facts and legal and moral rights with reference to both sides of the dispute;

(b) To cease immediately the persecution of the Jews still living in their countries, to grant these Jews civil and human rights, including the freedom to leave, if they so desire.

(c) To fulfill their legal and moral obligations towards the Jews, including compensation for the expropriation of their property and for damages and losses suffered in their countries of origin;

(d) To return to Jewish hands the Jewish religious and cultural assets under their control, after restoration and repair;

(e) To guarantee Jews free access to sites holy to them in Arab countries;

(f) To desist from the exploitation of the Arab refugee issue for political and propaganda purposes.

(g) To absorb their brethren, the Arab refugees, in their midst, within the vast areas under their rule, just as Israel has absorbed and rehabilitated Jews who had come from Arab countries.

KNESSET RESOLUTION CONCERNING JEWS FROM ARAB COUNTRIES

1. The Knesset sends greetings to the Third International Conference of the World Organization of Jews from Arab Countries, convening in Washington today.

2. After hundreds—perhaps thousands—of years of Jewish life marked by significant cultural and economic contributions to their surroundings, the establishment of the State of Israel served to bolster both the yearning for Zion among the Jews of the Arab countries and also the manifestations of hostility and violence towards them. The Knesset hails the instances of human courage that characterized the aliya to Israel of Jews from Arab and Islamic lands. The Knesset also notes the liberal attitude of Morocco towards its Jews.

3. Most of the Jews from Arab countries came to Israel penniless, leaving behind in those countries a rich cultural heritage and much personal property. Even at this late date, with their integration in the life of the state an accomplished fact, the Knesset determines that they must receive compensation from the Arab states for their property of which they were forcibly deprived, or which was confiscated, frozen, or nationalized, and for the persecution they were made to suffer; and that the Arab states must return to the Jewish communities the cultural and religious objects and artifacts of which they have been deprived.

4. Israel, for its part, has made it known that, within the framework of a peace settlement, it will be prepared to compensate the Arabs who left Israel. In the talks concerning this compensation, the rights of the Jews who were compelled to leave the Arab states and abandon their property will be taken into account.

5. The Knesset expresses its deep concern for the fate of the Jews remaining in Arab and Islamic lands, and calls upon the Government, the countries of the world and world public opinion to continue to act to safeguard their rights and their freedom.

IN MEMORY OF THEODORE PRAHINSKI

HON. ALBERT G. BUSTAMANTE

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 29, 1987

Mr. BUSTAMANTE. Mr. Speaker, it is with great sadness that I rise to pay tribute to a great and kind man whose service to country and to the District of Columbia will long be remembered in the executive agencies of our Federal Government, the committees in Congress, and in the city council chamber and District government buildings. Mr. Theodore (Ted) Prahinski passed away suddenly on October 23, 1987.

Ted Prahinski was one of those rare breed of civil servants known as a Government patent attorney. Patent attorney's are unique in that they are schooled in both the fields of engineering and law, and Ted was one of the more innovative members of that arcane profession.

Since 1972, Ted served on the staff of the Office of Judge Advocate, Air Force Systems Command Headquarters at Andrews Air Force Base. There he became recognized for his expertise in developing legal options concerning technology transfer problems, including proprietary rights in technical data, the protection against disclosure of weapons-related data from Freedom of Information Act requests, and export controls and security classifications of technical data. In short, his work helped to pioneer new concepts in intellectual property law that blended with Congress' mandate to achieve greater competition in the Department of Defense's acquisition procedures and protected U.S. military and economic interests in the design and development of new weapons systems, items, components, and processes.

Ted also served on the Defense Acquisition Regulatory Council Subcommittee that was responsible for drafting regulations covering government/government contractor rights in technical data and computer software. In fact, it was on this very same subject that I came to know Ted Prahinski during the brief working relationship we developed. At my request, Ted worked with my office in refining language on the technical data rights provision contained in the DOD authorization bill for fiscal years 1988-89. His assistance was invaluable, and fortunately several of his ideas and suggestions were incorporated into the provisions amending the "Rights in Technical Data" section under title 10 of the United States Code. This was an issue of immense interest to Ted, and he was working on suggestions for perfecting bill language up to the very moment of his death.

Mr. Speaker, I relate this story not because he was providing this Member of Congress with the benefit of his knowledge and advice on a very technical issue. I share this experience with my colleagues because it manifests the qualities and character, for which Ted would like to be remembered best—a loyal American, a dedicated patriot, and an eager servant to his country.

I extend my deepest sympathies to his wife, Mary, and his three children. I hope that they will take comfort in knowing that his contributions to shaping Government intellectual property policy will not be forgotten, and that his ideas for improving current policy will continue to live on.

DR. STEPHEN GLEASON'S STATEMENT ON THE PERFORMANCE OF THE PEER REVIEW ORGANIZATION

HON. DAVID R. NAGLE

OF IOWA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 29, 1987

Mr. NAGLE. Mr. Speaker, today, I submit for the record a statement by Dr. Stephen Gleason of Des Moines, IA, regarding the performance of the Peer Review Organization [PRO] to be considered with modifications or amendments in the PRO laws as submitted in H.R. 2116. Dr. Gleason is currently the chairman of the Iowa Health Legislation Committee and chief medical officer of Mercy Hospital Medical Center in Des Moines, IA.

Dr. Gleason and members of the Iowa Health Legislation Committee have devoted a considerable amount of time in reviewing health care policies and their effect on rural America.

This statement by Dr. Gleason is a timely and appropriate comment on the effects that PRO has toward the accessibility to quality health care in rural America. More appropriate, however, is the effects of PRO on the medical system. I would like to thank Dr. Gleason for his time and concern and I commend this statement to you and my colleagues.

The statement follows:

Mr. Chairman and Members of the Committee: I am honored to have this opportunity to present a statement regarding Iowa's experience with the PRO review system and in support of the modification to the present PRO law addressed in H.R. 2116.

It is my understanding that the PRO issues which have surfaced in Iowa have also been reported to exist even more prevalently on a national level and are not a problem specific just to Iowa. It is, therefore, not my desire to criticize the capable staff of Iowa's PRO, but instead encourage you to look at the system under which providers and reviewers are courageously asked to function.

The process of medical peer review has historically been a somewhat unpredictable application of rules based on: 1) PRO established standards of care; 2) specific and general norms and policies; 3) specialty specific criteria; and, 4) other criteria such as those developed for highly specialized or controversial technology. All of these are generally influenced by societal trends and legal expectations. All have been created from the honest and well-meaning efforts of providers and public policymakers to establish measures of "value" and measures of "unacceptable error" in the health sciences. Also of note is the limited number of physicians who serve as review physicians in the peer review process and who have widely varying degrees of professional competence, clinical experience, and academic training. They are charged with the difficult task of sorting through these criteria and applying them fairly. The task and the responsibility is at times overwhelming.

It is, therefore, understandable that many providers report confusion over applications of policy and procedure guidelines and variations in opinions by physician reviewers locally. Although policies may not be specifically mandated by law, they may be included in individual and variable contractual agreements between HCFA and the State PRO's. Such inconsistencies put pressure on local PRO's to operate outside of acceptable uniform federal guidelines. The inexactness of the review process is, therefore, a natural consequence of:

1. Geographic variations in criteria for review.
2. Variations in local interpretation of the law.
3. Variations in PRO—HCFA contracts.
4. Variations in physician reviewer competence, bias, and diligence.
5. The rapidly evolving policies of PRO's which cause changes in reviewer and provider expectations.

The fact that the review process is such an immature science would support the need for a well developed "due process" with early involvement of an independent judiciary. It may be many years before all the kinks are out of the system. In the meantime our developing PRO system is setting practice patterns and practice norms that will forever effect the health and welfare of our nation. Such a system should be easily challenged and any punitive decisions should be allowed a lengthy hearing.

A statement submitted to this Committee on March 27, 1987 by the American Hospital Association on Implementation of the Peer Review Organization Program delineates areas within which many PRO's bear scrutiny and supports the belief that PRO problems are nationwide in scope.

Therefore, in support specifically of sections 6, 7, 9, and 10 of H.R. 2116, we believe it is critical that you be aware of the following areas of concern:

1. Focused Review: HCFA interpretations as to the intent of Federal law has resulted in inconsistent and uneven review of physicians and hospitals and results in clinically burdensome penalties which are not consistent with the severity of identified patterns of abuse. For example, a diagnosis which occurs frequently because of an epidemic disease may be reviewed more heavily even if no significant admission abuses can be documented. The PRO reviewing such cases are under pressure from HCFA to produce evidence of abuse and engage in a large and expensive paperwork exchange with reviewed physicians and do so with no evidence that quality of care is being positively affected. Consistent, reasonable interpretation of the Review Plan needs to be implemented, particularly in regard to the intensified focused review of specific DRG's or diagnoses in the absence of evidence that admission abuses occur. Such reviews focus on DRG's typically assigned to the aged, the chronically ill, and the frequently hospitalized patient and appear to be simply a cost containment mechanism. The PRO can determine the image of quality by their control of the review selection process, and as such, should be cautious not to develop incentives against caring for such groups. Therefore, early notification and debate of rules changes would allow challenge, discussion, and, if necessary, adaptation of the system toward improved patient care.

2. Inappropriate Retrospective Admission Denials: Even when the hospitalization of a patient is obviously medically necessary, denials may be generated by any one or more of the following technical circumstances: 1) medical record processing error; 2) inadvertent coding errors; 3) inexact PRO data bases; 4) failure to update the database in a timely manner to indicate review decision reversal; 5) delayed notification of policy or procedural changes; 6) retroactive application of new policies or criteria; 7) insufficient turnaround time for physician response; 8) delayed turnaround time for PRO response; 9) inadequate PRO mechanisms and staff available to handle the volume of denial activity in a timely manner; and, 10) the occasionally strained relationships between certain physicians and the PRO which hinder the meaningful exchange of information.

All of the above can be corrected through an educational process. Requiring personal and positive interaction between physicians and PRO's is particularly appropriate when minor problems exist. Establishing grievance procedures for physicians or consumers to challenge and correct obvious gliches in the system would promote a cooperative attitude and improve the accuracy of review. Effective communication at all levels must be encouraged for its lack thereof could be a major contributor to the mistrust which jeopardizes the system.

3. It is imperative to the ultimate success of any law which regulates and mandates peer review that the physician reviewers meet specific qualifications in regard to their understanding and application of medical peer review criteria. They must be willing to accept professional accountability for decisions rendered. These reviewers should exhibit the ability to analyze and interpret data, have the skills to make prudent and appropriate value judgements and be able to weigh circumstances logically and judiciously. They should not be physicians who are too inexperienced or too outdated to otherwise make a living. They should not have a chip on their shoulder or a hidden desire to be malicious. They should have the balanced demeanor of a judge. The peer review system should initiate appropriate educational activities which would inform health care providers of potential problems and implement corrective action for existing problems. Physicians who are not qualified to make appropriate evaluations of specialized care and those who have demonstrated prejudicial or biased decisions should not be allowed to participate as reviewers in the PRO process. Physicians who are under the scrutiny of a review system have a right to valid "peer" review and the physician who is contracted and reimbursed for conducting peer review must expect to be openly accountable to a higher authority for his or her decisions. I might, therefore, suggest that you further amend H.R. 2116 to include such standards and fully support section 10 precluding discriminatory review.

4. High quality, available and affordable health care is an expectation of our society and physicians find themselves caught between this expectation and their overwhelming obligation to conform to ever-increasing government policies, insurance regulations, and defensive posturing against rising legal liabilities. The accumulated effect of these factors has created an atmosphere in which the physician has shifted an inordinate amount of time to the procedural requirements of regulatory agencies at the expense of patient-centered activity. In addition, physicians and well-meaning PRO reviewers deplete resources sorting through the confusing array of quality and cost containment standards which vary from HMO's to insurers to government agencies. We must, therefore, guarantee that unnecessary reviews be eliminated—PRO's should focus on the real problem providers—and should attempt to standardize the process for all providers and consumers. Section 10 opens the door to less discriminatory policy. Further amendments to protect other forms of discrimination in the review process may be in order.

Finally, the debate continues unresolved within the medical community as to what constitutes comprehensive criteria to judge quality health care. In June of 1986, the AMA House of Delegates proposed the following definition of quality: "High quality care is treatment that improves patient's physical and emotional status as quickly as possible, promotes health and early treatment, involves patients in decision making, is given by practitioners sensitive to illness-related anxiety, is based on accepted medical principles, uses technology and other resources effectively, and is sufficiently documented in the medical records." In order to measure "quality care" as the present law intends, I would encourage you, in addition, to examine and evaluate the relationship between medical practice and patient outcome. In fact, outcome is much more important than "documentation" or other qualitative parameters which have a stronger potential for "reviewer bias" as a source of distortions in quality review data. We must, also, examine the accessibility and availability of the medical care system to determine, longitudinally, if our review and management systems are providing inappropriate incentives against seeking or providing quality care.

It is the solemn responsibility of the health care community and this Congress to provide realistic and appropriate guidelines in order to correct the inequities that interpretation of the present law have generated. Such ongoing modifications to the rules that guide our nation's health care system should not be viewed as an indictment of PRO designers, but instead should represent a prudent society's effort to improve upon and finetune applicable regulations. Thank you for the opportunity to present this statement in support of H.R. 2116. If you or members of the subcommittee have any questions, I will be glad to respond.

ANTIDRUG ABUSE LAW ENACTED 1 YEAR AGO THIS WEEK

HON. ROMANO L. MAZZOLI

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 29, 1987

Mr. MAZZOLI. Mr. Speaker, 1 year ago this week the Omnibus Anti-Drug Abuse Act was signed into law by the President, signaling the opening salvo of a new and renewed effort to rid our Nation of the scourge of drug abuse.

As a member of the House Judiciary Subcommittee on Crime, I was gratified that several initiatives on which the subcommittee had been working—such as prohibitions on money laundering and designer drugs; increased penalties for drug trafficking; and assistance to State and local antidrug efforts—became the centerpiece of the landmark antidrug legislation. And, I am encouraged at the progress that is being made by Federal, State and local agencies in implementing the act.

In this connection, I am pleased and proud to report that earlier this week the school system of the Archdiocese of Louisville received an award here in Washington for the exemplary drug and alcohol abuse prevention program it has undertaken. Father Joseph Merkt and his staff are to be commended for the fine job they are doing for the young people of the Louisville Archdiocese.

I hope that we are able to keep important antidrug initiatives on track in the face of current budgetary uncertainties. The future of our Nation's greatest resource—our children and youth—could depend on it.

CAPT. JOHN HUNT'S SACRIFICE

HON. WALTER B. JONES

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 29, 1987

Mr. JONES of North Carolina. Mr. Speaker, on October 16, 1987, the United States-flag oil tanker the *Sea Isle City* was struck by an Iranian launched Silkworm missile. This heinous attack caused severe injury to an American citizen, Capt. John Hunt, by blinding him, probably permanently.

Captain Hunt exemplifies the type of courageous individual the United States needs to support our defense sealift needs. As a member of the merchant marine he did not have to place himself in the middle of a conflict such as this. However, Captain Hunt realized that U.S. merchant ships should be allowed to travel anywhere they need in international waters. Therefore, he volunteered his considerable expertise to help lead U.S. tankers through a very dangerous area of the world.

Today, we who are safe in the United States often fail to appreciate the great risks individuals face to make our lives easier. The seas are not an easy place to make a living given normal times with storms and high seas, let alone facing mines and missiles.

Many individuals in the United States and Members of Congress have serious questions about U.S. involvement in the Persian Gulf. However, no one will deny the sacrifice that Captain Hunt and others like him are making every day in order to allow those of us in the free world to continue living at the standards of living to which we have become accustomed.

Captain Hunt, who is a member of the International Organization of Master, Mates, and Pilots, has endured great pain and will continue to suffer the loss of a great part of his life for us.

As chairman of the Committee on Merchant Marine and Fisheries I express my heartfelt thanks to Capt. John Hunt and wish him smooth sailings and fair seas wherever the winds of life blow him in his future endeavors.

IMPROVEMENTS TO CHILD SUPPORT ENFORCEMENT PROGRAM

HON. BARBARA B. KENNELLY

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 29, 1987

Mrs. KENNELLY. Today I am introducing some very necessary improvements to the Child Support Enforcement Program in a single package. The bill includes 13 different substantive and technical provisions, developed and included in the welfare reform provisions of H.R. 1720.

The bill requires that States observe guidelines on child support award amounts in setting court orders and that the guidelines be updated on a regular basis. It ensures there will be more paternity determinations in the future and increases the Federal funding match for States which adopt laws mandating wage withholding starts immediately without awaiting a 30-day arrearage. In addition, the Federal Parent Locator Services and the State child support agencies would be given access to information maintained by the Department of Labor containing information on place of employment, Social Security numbers, and addresses of employees.

The bill sets new penalties for States out of compliance with the 1984 Child Support Enforcement Amendments and sets new standards for the States to respond promptly to requests for child support enforcement. The bill adopts a carrot and stick approach to automated tracking and monitoring systems by requiring that these systems be put in place by October 1, 1992, and repealing the special 90 percent Federal match for these systems on the same date.

In addition, the legislation establishes a high level commission on interstate enforcement, still one of the most difficult problems in all of child support. The Secretary of Health and Human Services would also be expected to conduct a study of child raising costs in one- and two-parent families.

The bill provides for two sets of demonstration projects: One to identify and evaluate solutions to visitation and custody problems; another to test voluntary work, education, and training for noncustodial parents financially unable to meet their support obligations.

The total savings from these provisions is $178 million over 5 years. Improved child support enforcement should be an integral part of true welfare reform. However, I urge my colleagues who support further improvements in child support enforcement to cosponsor this bill as the single most comprehensive package pending in the House of Representatives at this time.

H.R. 3545 OMNIBUS BUDGET RECONCILIATION ACT

HON. JOE MOAKLEY

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 29, 1987

Mr. MOAKLEY. Mr. Speaker, I rise in support of the statement of the chairman of House Ways and Means Committee. I want to commend the gentleman from Illinois [Mr. ROSTENKOWSKI] for all of his efforts in putting together a responsible package of revenues which I think will bring stability in the recently volatile stock market, by highlighting our efforts to bring down the budget deficit. I would like to thank the chairman of the committee for all of his work, and would like to particularly mention several issues which are of concern to my constitutents.

There is one specific provision which is mentioned in the chairman's statement about which I am especially pleased. Section 10138 of the tax title contained in the Omnibus Reconciliation Act, would limit the deductibility of interest on debt incurred in major corporate stock acquisitions. Because of an oversight in the drafting of this provision, the tax provisions in this bill would have the effect of grandfathering hostile tender offers commenced on or before October 13, 1987, but would deny equal treatment to competing offers made after October 13 from persons or parties which have the approval of management and the board of directors of target companies.

Thus, because of the way the section is drafted, the effective date provision of section 10138 of the tax title operates to deter companies who are threatened with an ongoing hostile takeover attempt from seeking out or obtaining other offers for their shareholders' stock which management believes would be in their company's and their stockholders' best interests. After seeing the chairman's statement, I am assured that this result was not intended by the Ways and Means Committee nor its staff. The need for this assurance was urgent because I am aware of its effect on currently pending tender offers which need to be responded to before this issue can be resolved in conference.

Another issue contained in the tax provisions which is of concern to my constituents would deny amortization for intangible assets that are renewing, or any intangible asset with an indeterminate useful life. The Internal Revenue Service, and the courts, have determined that a customer list is a wasting asset with a determinate life, so that the value of such a list is depreciated under existing law when the list is sold to a purchaser.

The Ways and Means Committee provision, as drafted, would change the way in which a buyer of a customer list could depreciate the value of that list. The change would greatly affect the total value of the sale of any business that depends on a customer list and not tangible assets. Especially hard hit in my district would be home heating oil businesses whose most important asset is the customer list, since their businesses have few physical assets.

In Wednesday's meeting of the Rules Committee to consider the Omnibus Reconciliation Act, the gentleman from Illinois [Mr. ROSTENKOWSKI] and the gentleman from New York [Mr. DOWNEY] both assured me that this provision and its deleterious effect on the home heating oil businesses would be a subject of consideration in the conference on the tax provisions.

There are two other provisions I would especially like to thank the chairman of the Committee on Ways and Means for resolving favorably. One is the formula for Medicare reimbursements, which I think would very fairly cover the higher costs of providing services in urban areas, especially in my own State.

Second is the issue for freelance creators, including authors and photographers and the application of the uniform capitalization provisions in the wake of recent court decisions. The way in which the Department of Treasury contended that these rules applied to freelance creators would have created undue hardships.

It would have required each author or photographer for instance, to deduct the expenses for a work in progress only after determining the itemized expenses for each work and the proportional share of the expenses based on the income produced over the life of each creative work. I think this would have kept creative artists in the business of accounting and not in the business of writing and photographing creative works, and I am very happy that the Committee on Ways and Means, under the chairman's guidance, saw fit to correct what was obviously a serious problem for all writers and photographers nationwide.

Finally, Mr. Speaker, I would like to express my hope that an issue of particular importance to me, the tax treatment of prepaid legal services, will be considered in the near future. This item was not contained in the tax bill, and I think it is worth considering because of the benefits it provides to many working men and women who otherwise cannot afford attorneys.

Under current law, employers providing prepaid legal services to their employees, can deduct the attorneys fees as a business deduction, and the employees do not have to treat the amount paid or the value of the services as income. The current authority for classifying these services expires at the end of this year, and I hope that the committees in the House and Senate will consider extending this worthwhile provision. Thank you Mr. Chairman.